

CONSTITUTIONAL LAW

The United States Constitution is the supreme law of the land. It establishes the basic structure of the federal government and guarantees certain rights to U.S. citizens. This section gives a brief overview of the U.S. government and highlights some of the “greatest hits” of the Constitution.

INTRODUCTION TO U.S. GOVERNMENT

The United States federal government is composed of three branches: the legislative branch, the executive branch, and the judicial branch. Each branch serves a separate function. The powers of each branch are described in the first three Articles of the Constitution. Mechanisms called “checks and balances” exist to prevent each of the three branches from having so much power that the other branches cannot legitimately serve their constitutional functions.

The legislative branch of the U.S. government serves to create federal laws. The legislative branch includes two separate legislative bodies, the Senate and the House of Representatives. The Constitution sets forth the specific legislative powers of each, and details eligibility requirements for a person to become a Representative or Senator.

The role of the executive branch is to enforce the laws created by the legislative branch. The executive branch includes the President, who appoints a Cabinet of presidential advisors who must be approved by the Senate. Each Cabinet member heads a department within the executive branch. Each department is responsible for a different area of policy. For example, issues relating to farming and food production would be addressed by the Secretary of Agriculture, who heads the Department of Agriculture.

The judicial branch interprets laws and determines if a law is unconstitutional. The judicial branch includes the U.S. Supreme Court and lower federal courts. There are nine justices on the Supreme Court.

FIRST AMENDMENT: FREE SPEECH AND EXPRESSION

Most forms of speech and expression are protected by the First Amendment to the Constitution. The Supreme Court has carved out exceptions to free speech and expression, however, and has held that some types of speech are entitled to little if any protection under the Constitution.

Common types of unprotected speech and expression include:

- **Obscenity:** Obscenity relates to speech and expression containing sexual content. In order for speech or expression to be considered obscene, it must “appeal to the prurient interest in sex,” be patently offensive by community standards, and lack “serious literary, artistic, political, or scientific value” by national standards. *Miller v. California* (1973) 413 U.S. 15.
- **Incitement and Fighting Words:** Speech and expression that incites violent behavior or illegal activity is not protected by the Constitution.

- **Defamation:** Libel (a defamatory statement made in writing) and slander (a defamatory statement made orally) are not Constitutionally-protected speech.
- **Symbolic Actions:** A symbolic action will not be protected by the First Amendment if it is otherwise illegal.

Speech and expression that is otherwise protected can nevertheless be regulated by law to a certain degree. Regulations governing the time, place, and manner of speech and expression are permissible if enforced without regard to the content of the speech or expression.

Exercising one's right to free speech and expression generally does not require a permit or other government authorization. Major exceptions to this rule include marches or parades that disrupt traffic or are not limited to a sidewalk, large gatherings requiring the use of amplified sound, and large gatherings at certain locations such as on federal property.

DUE PROCESS

The Constitution guarantees that the government will not deprive individuals of life, liberty, or property without "due process of law." There are two kinds of due process: "Procedural Due Process" and "Substantive Due Process."

Procedural Due Process

Procedural Due Process refers to the manner in which the government takes action in depriving one's life, liberty, and/or property, and examines whether or not that manner is fair. Procedural Due Process guarantees that an individual be permitted to utilize whatever mechanisms exist to ensure that the government acts fairly against the individual's rights. At a minimum, Procedural Due Process requires that an individual be given notice of the government's intent to restrict an interest as well as an opportunity to be heard. For example, the government by law must follow certain procedural steps before revoking an individual's parole.

Substantive Due Process

Substantive Due Process requirements serve to prohibit the government from creating laws which would restrict an individual's fundamental freedoms. Over the years, the Supreme Court has held these fundamental freedoms to include freedom of speech, freedom of religion, and freedom to make personal choices regarding abortion, contraception, and family life.

EQUAL PROTECTION

The Constitution guarantees individuals "equal protection of the laws." Laws or government actions which in effect treat groups of individuals differently based on race or national origin are highly scrutinized by courts. A lower standard of scrutiny is applied to laws which treat groups differently based on age, gender, or other characteristics.

Getting Help

General Legal

Student Legal Services, 858.534.4374 or <http://sls.ucsd.edu>