

Justiciability

Eleventh Amendment Limitation	Prohibits citizens from one state suing another state in federal court; Congress may abrogate under 13, 14, and 15 Amednment
Individual Standing	injury in fact, causation, and repressibility
Organizational Standing	individual members have standing, claim is related to purpose of the organization, and individual members are not necessary to adjudicate the claim
Mootness	Must have a live controversy
Ripeness	injury must have occurred and not be speculative

Legislative Powers

Commerce Clause	Congress has power to regulate channel, instrumentalities, and activities that substantially effect interstate commerce
Substantial Effect	Economic activity is presumed to have a substantial effect, can aggregate economic effect
Spending Power	Congress can condition federal funds to states and require states to implement certain regulations (condition must relate to purpose)
10th Amendment	Congress cannot commandeer states by forcing them to pass specific legislation

Legislative Powers (cont)

Delegation of Legislative Power	Congress may delegate its powers to an agency as long as it provides reasonably intelligible standards
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Executive Powers

Executive Orders	
Domestic Affairs	President has appointment and removal powers, the pardon power, the commander in chief power, and the duty to execute the law
Foreign Affairs	President has the power to conduct foreign negotiations, to deploy troops overseas, and to make executive agreements

State Powers

Supremacy Clause	If state law conflicts with federal law, the federal law governs.
Express Preemption	The federal law explicitly states that it is the only law allowed in that area
Implied Preemption	Congress passes a federal law intending to "occupy the field", state law conflicts directly or indirectly
Privileges and Immunities Clause	Prohibits states from discriminating against nonresidents, unless it is necessary to achieve an important government interest. Only applies to individual citizens

State Powers (cont)

10th Amendment & Commandeering	All powers not expressly given to the federal government are reserved to the states.
Dormant Commerce Clause	Clause, a state may not discriminate against out of state commerce or in a way that unduly burdens interstate commerce.
Dormant Commerce Clause - Discrimination	Can be discriminatory on its face or by its impact. State must show important interest and no other non-discriminatory means to achieve interest
Dormant Commerce Clause - Unduly Burden	If a statute is not discriminatory, the law may still be invalid if causes an "undue burden" on interstate commerce. Court will balance purpose of statute, burden on interstate commerce, and whether there are less restrictive alternatives
Market Participant Exception	can favor local business if state is acting as a buyer or seller

State Action

State Action	The constitution protects against wrongful conduct by the government, not private parties
	A private entity may be subject to the constitution if it is acting as if it is a state



5th Amendment Takings Clause

Government Action Protects from government "taking" of private property; Includes taking land and also regulatory takings by rezoning, prohibiting development, etc.

Private Property Usually involves land or other real property; Can be other property such as contract and patent rights or trade secrets

Public Use Must be rationally related to a conceivable public purpose- Includes health, safety, economic development, etc.

Physical Taking Government physically takes or occupies the land

Regulatory Taking A law has the effect of decreasing the value of the property

Total Taking the regulation leaves no economically viable use of the property

Partial Taking the regulation affects some economic use of the land, but there is still some economic use available- economic impact, reasonable expectations, character of the regulation

Exaction Local government may exact promises from a developer in exchange for construction permits. NOT a taking if essential nexus and rough proportionality

Just Compensation Property owner is entitled to the fair market value of the property at the time of the taking

5th Amendment Takings Clause (cont)

Zoning Local governments have the power to pass zoning ordinances, so long as they are reasonably related to a legitimate government purpose (health, safety, morals, and general welfare)

Variance May be granted to allow the owner to continue the nonconforming use of the land. If not granted, owner must show undue burden

Must show that the zoning ordinance amounts to a regulatory taking

Due Process

Procedural The government shall not deprive a person of life, liberty, or property without due process of law.

Amount of Due Process- Factors Interest affected, value of additional safeguards, burden or cost of additional process

Substantive Due Process Whether the government's action (such as a law or regulation) impermissibly infringes on an individual's rights

Standard of Review- Fundamental Rights (life, liberty, property, voting, travel, privacy) Strict scrutiny—only valid if necessary to achieve a compelling governmental interest

Standard of Review- Non-fundamental Rights Rational basis—valid if rationally related to a legitimate government interest

Equal Protection Clause

Discrimination Requirement Discriminatory intent—strict or intermediate scrutiny (depending on classification); Disparate impact—rational basis review

Strict Scrutiny Applies to any law involving fundamental rights and classifications based on race, ethnicity, and national origin. Government must show least restrictive means to achieve a compelling government interest

Intermediate Scrutiny Applies to laws involving gender and non-marital children born outside of marriage. Gov. must show substantially related to important government interest.

Gender discrimination—must also show an "exceedingly persuasive justification" and that facilities are substantially equivalent

Rational Basis All other rights and classifications. Plaintiff must show not rationally related to legitimate government interest.

Enabling Clause Under the 14th Amendment, Section 5—Congress may pass legislation to enforce equal protection and due process rights (overriding state statutes)



Freedom of Speech

Symbolic Speech	Expressive Conduct
Overbreadth	A statute is impermissibly overbroad if it regulates more speech than necessary to protect a compelling government interest.
Vagueness	A statute is void for vagueness if it fails to provide a person of ordinary intelligence with fair notice of what is prohibited.
Prior Restraints	A prior restraint prohibits speech before it occurs; generally not allowed unless specific procedural safeguards are in place; Standards must be narrowly drawn, reasonable, and definite
Right Not to Speak	Protected by the First Amendment
Content Based	Strict Scrutiny. Government must show the regulation is necessary to achieve a compelling governmental interest and narrowly tailored to meet that interest
Content Neutral	Intermediate Scrutiny. Government must show that the regulation is substantially related to an important government interest
Time, place, and manner	Validity depends on the type of forum

Freedom of Speech (cont)

Public Forum	Content neutral, alternative channels of communication be left open, narrowly serve a significant state interest
Nonpublic Forum	basically, any reasonable regulation of speech will be upheld
Limited Public Forum	Describes a place that is not a traditional public forum, but that the government chooses to open to all comers. Only time, place, or manner regulations are allowed
Less Protected: Commercial Speech	Commercial speech is protected unless it is false, misleading, or unlawful. Can only be regulated if interest is substantial, regulation directly advances interest, and regulation is narrowly tailored
Unprotected	Obscenity, Incitement to Violence, Fighting Words
Defamation	There are constitutional limitations on defamation actions when the plaintiff is a public official or public figure, or the speech involves a matter of public concern.

Religion

Establishment Clause	Prohibits the government from establishing a religion, preferring a particular religion over another, or preferring religion over non-religion
Facially Religious Preference	If statute shows a preference to one religion over another (or to religion over non-religion), strict scrutiny applies
Facially Neutral Statute	Lemon Test: The law must have a secular purpose; primary effect neither advances nor prohibits religion; and law does not result in excessive government entanglement with religion
Free Exercise Clause	Includes the freedom to believe and the freedom to act. Must have a genuine belief in that religion
Belief	A person's beliefs are absolutely protected
Conduct	Laws that intentionally target religions conduct are subject to strict scrutiny; Laws that are generally applicable, but happen to impact religion are subject to the rational basis test

