

CONSTITUTIONAL LAW

CASES AND MATERIALS

FOURTEENTH EDITION

JONATHAN D. VARAT

VIKRAM D. AMAR

WILLIAM COHEN

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UNIVERSITY CASEBOOK SERIES®

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FOURTEENTH EDITION

by

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For Our Families, Who Sustain Us

PREFACE

During the last four years two new Justices have joined the Supreme Court. Associate Justice David H. Souter retired after the October 2008 Term, and President Barack H. Obama appointed Sonia Sotomayor—who previously had served as both a federal district and federal Court of Appeals judge—to replace him before the October 2009 Term began. In the summer of 2010, Associate Justice John Paul Stevens retired from the Court after nearly 35 years of Court service, and President Obama appointed Solicitor General Elena Kagan as his replacement.

Changes in the Court's membership tend to produce changes in approach or direction in the Court's constitutional doctrine. Over time, that is likely to be true of the impact of these two recent appointments, and this new edition already reflects important developments that seem directly tied to the previous two appointments made in the middle of the last decade; namely, the replacement of Chief Justice William H. Rehnquist with Chief Justice John G. Roberts, Jr., and the replacement of Associate Justice Sandra Day O'Connor with Associate Justice Samuel A. Alito. Examples include the Commerce Clause and the Tax and Spending Clause rulings from the Affordable Care Act case; seminal First Amendment campaign finance decisions concerning corporate and union expenditures and attempts to regulate wealthy self-funded candidates; the application of the Second Amendment to state governments; and perhaps the opinions arising from the State of Arizona's attempts at immigration reform. The resolution of currently pending cases involving issues like affirmative action, same-sex marriage, and the scope of congressional power to enforce civil rights also are likely to be significantly affected by the views of these relatively new Justices.

In addition to constitutional shifts that might have been difficult to predict just five years ago, the Court has continued to hand down a large number of important rulings in areas that have been receiving regular attention for some time, including significant free speech rulings arising in a variety of settings, cases involving access to federal courts, separation of powers, the Takings Clause, Equal Protection and Affirmative Action, Congressional Power under Section Five of the Fourteenth Amendment, and freedom of association. Although the Court has yet to decide many constitutional cases arising out of the Great Recession that began in late 2007, the Congressional, Executive and societal reactions to the downturn and its aftermath will likely produce disputes the Court will grapple with in the coming years. And the recent re-election of President Obama—a Democrat—to a second term may herald further appointments to the Court that may exert a significant influence on subsequent constitutional controversies.

Against this ever-changing backdrop of judicial, political and economic change, our goal in this book remains unaltered: to offer comprehensive coverage of almost all major areas of constitutional doctrine by focusing more than any other major casebook on the text of Supreme Court opinions and other primary documents. For decades the distinctive pedagogical essence of the book—its commitment to providing as much of the raw case, constitutional provision, statutory and historical note material as is practical—has allowed teachers the freedom to structure the course in their own ways, and has encouraged students to formulate their own generalizations directly from the materials. All major topics concerning the role of the federal judiciary, separation of powers, federalism, the non-criminal aspects of the Bill of Rights, and the Reconstruction Amendments are covered.

While our educational goals and primary techniques have not wavered, one feature of this Fourteenth Edition that is new should be highlighted. Although we incorporated the developments over the last four years that occupied close to three hundred pages in the 2012 softbound supplement, we worked hard—through condensation, consolidation and trimming of other, less vital, sections in the book—to reduce the overall

length of the text by nearly two hundred pages. The process of tightening was difficult, but we believe that the final product is not only more user-friendly (because the book overall is more streamlined and less unwieldy); it is also pedagogically superior, because in the overwhelming majority of instances we were able to retain the essence of the Justices' opinions while excising less crucial portions that could be distracting.

In keeping with our past practice, we have included in this publication cases decided by the Court through the October 2011 Term; a 2013 softbound supplement will address decisions handed down during the October 2012 Term.

Notes on style: As we have done in prior editions, we have indicated our restatement of the facts or other passages in principal cases by placing square brackets around our descriptions; we have omitted footnotes of the Court without specifically indicating that fact; footnotes that we have kept retain their original numbering; footnotes we have added to cases are indicated by letters.

Jonathan D. Varat
Vikram D. Amar

Los Angeles, California
Davis, California
January 2013

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