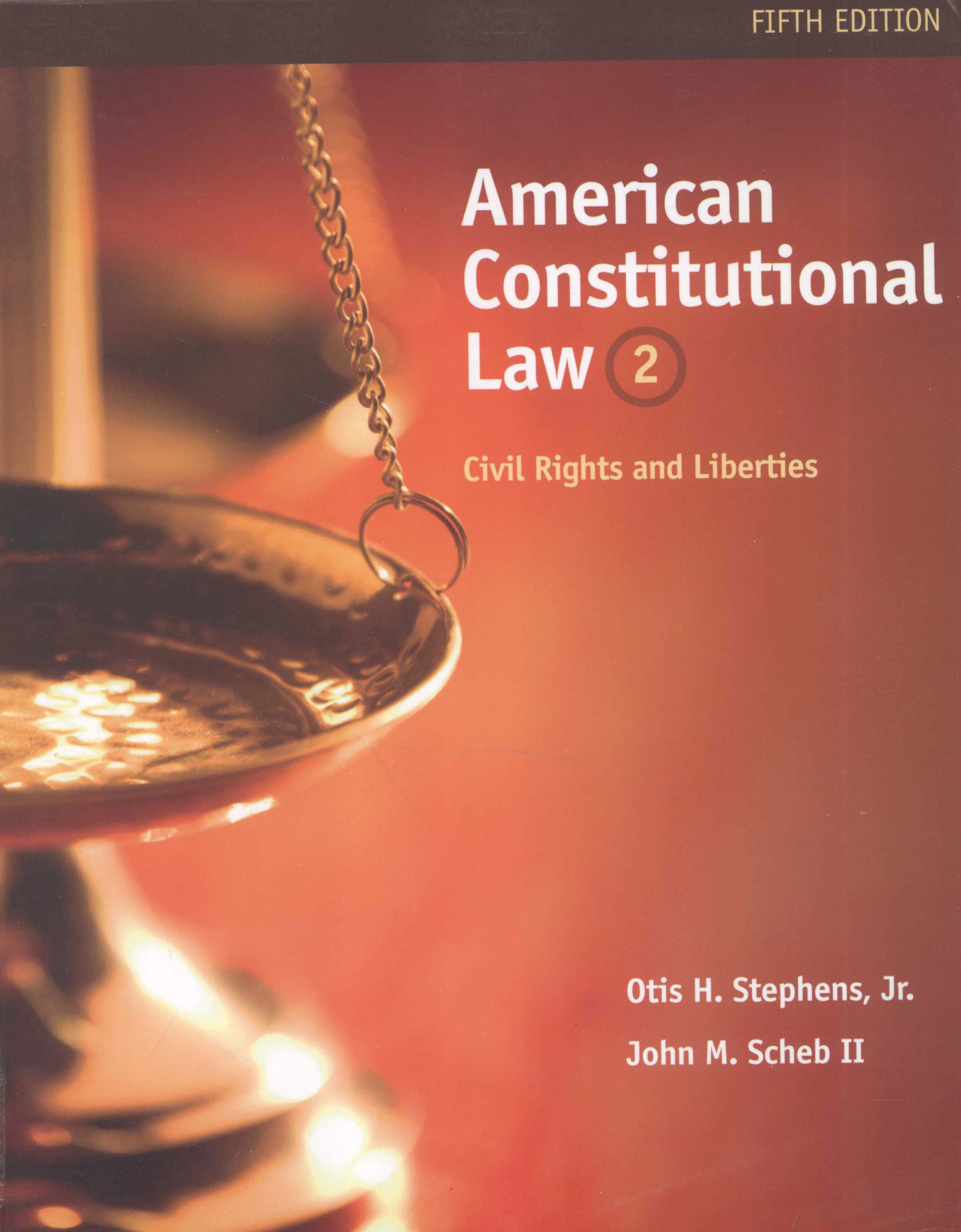


FIFTH EDITION



American Constitutional Law 2

Civil Rights and Liberties

Otis H. Stephens, Jr.

John M. Scheb II

American Constitutional Law Volume II

CIVIL RIGHTS AND LIBERTIES

FIFTH EDITION

OTIS H. STEPHENS, JR.

University of Tennessee, Knoxville

JOHN M. SCHEB II

University of Tennessee, Knoxville



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**American Constitutional Law, Volume II:
Civil Rights and Liberties,
Fifth Edition**

**Otis H. Stephens, Jr. and
John M. Scheb II**

Publisher: Suzanne Jeans
Executive Editor: Carolyn Merrill
Development Editor: Katie Hayes
Editorial Assistant: Angela Hodge
Marketing Manager: Lydia LeStar
Marketing Communications Manager:
Heather Baxley
Content Project Manager: PreMediaGlobal
Art Director: Linda Helcher
Print Buyer: Fola Orekoya
Rights Acquisition Specialist: Jennifer
Meyer-Dare
Production Service: PreMediaGlobal
Cover Designer: Dick Hannus
Compositor: PreMediaGlobal

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Library of Congress Control Number: 2010942618

Student Edition:

ISBN-13: 978-0-495-91490-7

ISBN-10: 0-495-91490-8

Wadsworth

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Preface

American constitutional law, to paraphrase Charles Evans Hughes, is what the Supreme Court says it is. But of course it is much more than that. Constitutional law is constantly informed by numerous actors' understandings of the meaning of the United States Constitution. Lawyers, judges, politicians, academicians, and, of course, citizens all contribute to the dialogue that produces constitutional law. Consequently, the Constitution remains a vital part of American public life, continuously woven into the fabric of our history, politics, and culture. Our goal in writing this textbook is to illustrate this premise in the context of the most salient and important provisions of the Constitution.

Volumes I and II of *American Constitutional Law* contain thirteen chapters covering the entire range of topics in constitutional law. Volume I examines the institutional aspects of constitutional law; Volume II deals with civil rights and liberties. Each of the chapters includes an introductory essay providing the legal, historical, political, and cultural context of Supreme Court jurisprudence in a particular area of constitutional interpretation. Each introductory essay is followed by a set of edited Supreme Court decisions focusing on salient constitutional issues. In selecting and editing these cases, we have emphasized recent trends in major areas of constitutional interpretation. At the same time, we have included many landmark decisions, some of which retain importance as precedents while others illustrate the transient nature of constitutional interpretation.

What's New in the Fifth Edition?

In preparing the fifth edition, we have endeavored to incorporate the important developments that have taken place during the four years since the fourth edition was completed. Over the last four years, the Court has rendered numerous consequential decisions across the entire range of constitutional law. We have attempted to acknowledge all, or nearly all, of them in our introductory essays and to incorporate a few of the most interesting and important ones into our set of edited cases. We have added *McDonald v. Chicago* (2010), which deals with the right to keep and bear arms, to Chapter 1. *United States v. Stevens* (2010), which deals with videos depicting extreme cruelty to animals, has been added to Chapter 3. We have included *Baze v. Rees* (2008), a death penalty case dealing with lethal injection, to Chapter 5. *Gonzales v. Carhart* (2007), a recent decision on "partial birth abortion," has been added to Chapter 6. We have included *Parents Involved in Community Schools v. Seattle School District No. 1* (2007), a recent school desegregation decision, in Chapter 7. And *Citizens United v. Federal Election Commission* (2010), a very controversial decision involving campaign finance regulation, has been placed in Chapter 8. To maintain the book at a reasonable length, we have moved several edited cases that appeared in previous editions to the companion Web site.

To make the book livelier and more visually appealing, we have added a number of recurring features that appear in shaded boxes. "Case in Point" summarizes an interesting Supreme Court decision of particular relevance to the chapter. "Sidebar" provides a brief overview of an important constitutional issue. "Supreme Court Perspectives" uses quotations from justices' opinions to illustrate differing points of view on constitutional questions. And "Constitutional Foundations" contains excerpts from the Constitution, *The Federalist Papers*, and other classic documents. Here is a list of new features by chapter:

Chapter 1

Supreme Court Perspectives: "On Liberty"

Sidebar: "Habeas Corpus: The Guantanamo Cases"

Constitutional Foundations: "Due Process of Law under the Federal and State Constitutions"

Case in Point: "Due Process of Law and the Need for an Impartial Tribunal"

Case in Point: "Can Government Inaction Be 'State Action'?"

Chapter 2

Constitutional Foundations: "An Excerpt from James Madison's Essay on Property Rights"

Supreme Court Perspectives: "The Power of Eminent Domain"

Case in Point: "Is a Forced Easement a Taking of Property?"

Chapter 3

Constitutional Foundations: "The Sedition Act of 1798"

Case in Point: "May the Government Prevent Publication of How to Make a Hydrogen Bomb?"

Sidebar: "Can a Journalist Be Prosecuted for Publishing Classified Information?"

Supreme Court Perspectives: "The Scope of First Amendment Protection"

Case in Point: "Reverend Jerry Falwell Takes on Larry Flynt"

Chapter 4

Supreme Court Perspectives: "The Traditional View of the Free Exercise Clause"

Case in Point: "Does a Cross in the Mojave National Preserve Violate the Establishment Clause?"

Chapter 5

Constitutional Foundations: 'William Blackstone on the Importance of Due Process of Law'

Case in Point: "Use of Thermal Imagers by Police"

Supreme Court Perspectives: "The Death Penalty"

Chapter 6

Constitutional Foundations: "An Excerpt from John Stuart Mill, *On Liberty* (1859)"

Case in Point: "The Terry Schiavo Case"

Chapter 7

Sidebar: "Judging the 'Disparate Impact' of Facially Neutral Policies"

Constitutional Foundations: "Federal Civil Rights Statutes Passed During Reconstruction"

Case in Point: "An Early Victory for Civil Rights"

Sidebar: "Arizona's Illegal Immigration Enforcement Law—Racial Profiling?"

Chapter 8

Constitutional Foundations: 'Constitutional Amendments Affecting Voting Rights'

Supreme Court Perspectives: "Controlling Threats to Free Elections"

Case in Point: "May a State Prohibit the Election-Day Publication of a Newspaper Editorial Urging People to Vote in a Particular Way?"

Acknowledgments

In completing this new edition, we have benefitted from the encouragement and advice of our colleagues and students in the Department of Political Science and the College of Law at the University of Tennessee. In particular, we want to thank Tennessee law students Amy Coleman, Kristin A. Wagers, and Joseph Watson for their tremendous assistance with legal research and proofreading the manuscript. Several law students assisted in the editing of Supreme Court decisions excerpted in this edition, including Paige I. Bernick, Matthew Fink, Meghan Fowler, Robby Lockett, Jonathan May, Stuart Saylor, and Rachel Thomas. We wish them thank them publicly for the care and diligence they displayed.

We also wish to express our gratitude to the editorial team at Cengage, especially Carolyn O. Merrill, executive editor for political science, and Katie Hayes, associate development editor, for their ongoing support, assistance, and encouragement. We would also like to express our appreciation to the many scholars who reviewed this edition and its predecessors. Their comments, criticisms, and suggestions were extremely helpful. Finally, we wish to acknowledge the support provided by our wives, Mary Stephens and Sherilyn Scheb. This book is dedicated to them. Although many people contributed to the development and production of this book, we, as always, assume full responsibility for any errors that may appear herein.

Otis H. Stephens, Jr.
John M. Scheb II
Knoxville, Tennessee
December 1, 2010

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VOLUME II

Civil Rights and Liberties

“Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.”

—Justice Robert H. Jackson, Writing for the Court in *Virginia State Board of Education v. Barnette* (1943)



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Robert H. Jackson: Associate Justice, 1941–1954