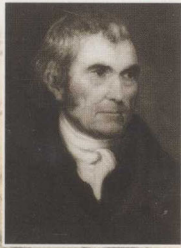
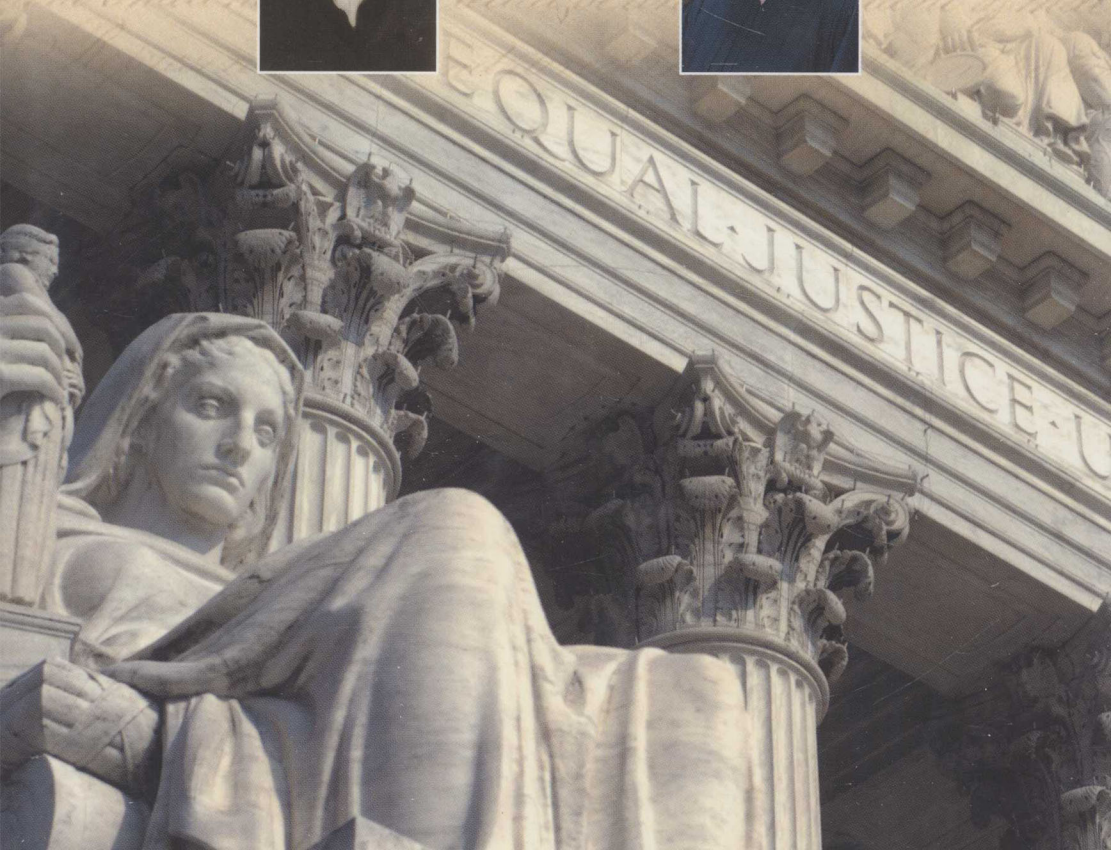


JOHN R. VILE

A COMPANION TO THE  
**UNITED STATES  
CONSTITUTION**  
AND ITS  
**AMENDMENTS**



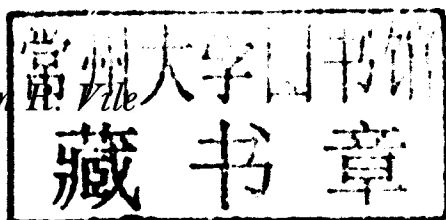
FIFTH  
EDITION



# A COMPANION TO THE UNITED STATES CONSTITUTION AND ITS AMENDMENTS

FIFTH EDITION

*John*



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A COMPANION TO THE  
UNITED STATES  
CONSTITUTION AND ITS  
AMENDMENTS

*To my dear wife, Linda Christensen Vile, in continuing celebration of  
the covenant of marriage that we made with one another in 1976.*

## PREFACE TO THE FIFTH EDITION

In a classic tale, Goldilocks discovered during her visit to the house of three bears that porridge can be too hot or too cold, that chairs can be too big or too small, and that beds can be too hard or too soft. Alternatively, they can be “just right.” So, too, students and citizens seeking knowledge of the U.S. Constitution discover that books can be too long or too short, too ponderous or too breezy, too ideological or too lifeless. Contrariwise, they can be “just right.” I have designed this book to fit into the “just right” category. To switch to an Aristotelian analogy, I have tried in this book to find a “golden mean” between serious scholarship and reader accessibility in describing and explaining the U.S. Constitution, its amendments, and its interpretations.

I am especially interested in giving citizens and students in civics, American government, and constitutional law classes access to materials that are chiefly found in erudite casebooks and commentaries on the U.S. Constitution and in professional and scholarly journals. Recognizing that scholars often validly disagree about such matters, I have emphasized both what the best scholarship suggests that those who wrote and ratified provisions of the Constitution meant and how others have subsequently interpreted them. Because the nation is now more than 200 years old, the U.S. Supreme Court has written hundreds of cases interpreting some provisions of the Constitution; in such circumstances, case interpretations can easily swallow the document they are designed to explicate. I have accordingly attempted to describe and identify important judicial trees without in doing so obscuring the view of the constitutional forest. I am grateful to the attentive readers who have responded positively to earlier editions of this book, in which I utilized this same approach.

I have designated this book as a “companion” to the Constitution in order to avoid the pretentiousness of designating it as an authoritative “guide,” or an

individualistic “interpretation.” I have included the texts of provisions from the Constitution directly in the text so that readers can compare what I say with the actual language of the document itself. Although I recognize that fallible individuals wrote and ratified the document, I believe it remains among the greatest examples of its kind and have let it speak, wherever it can, in its own voice.

Even though this is the fifth edition of this book, I have not only extensively rewritten it to make it more thorough and clearer, but I have reorganized some chapters better to highlight connections among different parts of the Constitution. I have also updated the book so that it covers all major legal developments through the 2008–2009 term of the U.S. Supreme Court, which turns out to have overlapped the end of President’s Bush’s second term, the beginning of Barack Obama’s first, and the ascent of a new justice to replace David Souter. I hope that this edition, like its predecessors, will help readers both better understand and better appreciate the Constitution. In writing this book, I further hope to honor my loving parents and inspiring teachers, the brave and wise American forebears who committed themselves to establishing and preserving a system of liberty under law, and the men and women of good will who continue to cherish and defend constitutional government today.

## ACKNOWLEDGMENTS

In writing this book I am indebted to my students, especially those who have taken my classes in American government and in constitutional law, as well as to students and teachers who have utilized prior editions of this work and who have encouraged me to continue to update it. Ever since I began full-time teaching in 1977, I have devoted at least a week or two in my introductory American government classes toward explicating the Declaration of Independence and the Constitution section by section, and another similar period to dealing specifically with the Bill of Rights, the post-Civil War Amendments, and those of the Progressive Era. In my constitutional law classes, I have utilized a traditional casebook approach that has further emphasized constitutional interpretation and development. I enjoy reading cases and recognize that they are critical to understanding U.S. history, but the more cases I have read, the more convinced I have become that it remains important to return to the textual source of constitutional interpretations, and that the text itself should be the beginning point for students of the subject.

In writing four previous editions of this book, I have been privileged to draw from research that I have written and edited or to which I have contributed. I believe that this edition will be especially enhanced by recent work I have done coediting (with David Hudson and David Schultz) and writing entries for *The Encyclopedia of the First Amendment* and by my work authoring *The Constitutional Convention of 1787: A Comprehensive Encyclopedia of America's Founding* (2 vols., ABC-CLIO, 2005).

I want therefore to thank all those teachers, students, friends, colleagues, and administrators who have taught, encouraged, and challenged me and furthered my scholarly endeavors. I especially appreciate the support I have received from



Middle Tennessee State University, where I recently moved from being a professor and chair of the Department of Political Science to working as dean of the Honors College.

My friends know how indebted I am to my wife, Linda. With God's help, she and I pledged our lives to one another in "a more perfect Union" of marriage just a week before the bicentennial celebration of the Declaration of Independence. Thankfully, our union has enabled us not only to pursue, but also to attain and enjoy, considerable happiness. I deeply appreciate the affection, encouragement, and support that she has given to our daughters, Virginia and Rebekah, and their husbands, Keith Wesolowski and Kenny Johnston, and to me. She has done this while pursuing a successful career teaching elementary school. I am pleased to rededicate this volume, like its four predecessors and my dissertation, to Linda in deepest appreciation for her continuing affection and support.

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## CHAPTER 1

# THE BACKGROUND AND PURPOSES OF THE CONSTITUTION

The U.S. Constitution established a system of self-government that distinguishes between liberty and license and between representative democracy and mob rule. The Constitution further embodies the rule of law, which is the foundation for freedom. In securing American rights, the Constitution has embodied universal principles. Both forebears and contemporaries have demonstrated their love for these principles by their willingness to sacrifice their very lives for them.

## THE COLONIAL SETTING

The United States grew from thirteen colonies that European settlers had planted in a newly discovered world an ocean away from their home countries. Almost from the beginning, the distance largely forced colonists to govern themselves. Settlers at Virginia established a legislative branch, the House of Burgesses, in 1619, and settlers to the north at Plymouth in the next year signed a charter of government, the Mayflower Compact, even before they disembarked from their ship. Immigrants came to the New World to exercise freedoms that European rulers had denied them, and although the colonists did not always grant others the freedom they sought for themselves, they continued to value liberty.

Over time, England came to rule all thirteen of the North American colonies (as well as Canada, which was originally settled by France), but this rule was initially fairly mild, and the British policy of “salutary neglect” encouraged colonial self-governance. The distance between England and the colonies was simply too great, and Britain had too many other obligations, for it to involve itself in



the day-to-day affairs of the American colonies. Britain continued its relative inattention until the French and Indian War, which lasted from 1754 to 1763. The conflict in America, between French settlers (often allied with Native Americans) and British colonists, was part of a larger worldwide conflict between France and Britain. At war's end, English leaders tried to collect taxes from the colonies for the troops that Britain had supplied. The colonists strongly resisted efforts by the English Parliament to tax them.

Most American colonists had continued to think of themselves as British citizens who were fully entitled to all English rights. In 1215, the Magna Carta, a document that English noblemen wrested from a reluctant King John, and that their successors expanded, had established the principle of "no taxation without representation" as a critical right of British citizenship. English leaders claimed that as citizens, the colonists were virtually represented in Parliament. Absent actual representation in Parliament, however, the colonists denied that this legislature had the authority, or sovereignty, to tax or legislate for them. They believed that such unaccountable power threatened not only their livelihoods, but also their most basic liberties.

Although there were other points of controversy, this dispute over parliamentary authority was a primary cause of the American Revolution of 1776. The colonists openly questioned the constitutionality of laws like the Stamp Act, the Tea Tax, and the Townshend Duties through which the British searched their homes and businesses and unsuccessfully tried to tax them, as well as laws that stationed British troops in their midst. During the initial controversy, most American colonists insisted that they were loyal English citizens who were simply asking for the rights to which English laws entitled them.

While denying parliamentary sovereignty, most colonists remained loyal to the British king, whose predecessors had granted most colonial charters, which provided the antecedents to later constitutions. Ultimately, Britain's George III showed no more sympathy to colonial interests than the Parliament did. As he rebuffed petitions from the continental congresses that the colonists convened, a permanent split seemed more and more likely. English-born immigrant Thomas Paine served as a catalyst to such action when he published *Common Sense* in January 1776. Blaming kingship and the practice of hereditary succession by which monarchs ascended the throne on the basis of birth, for war and oppression, Paine urged the colonists to declare their independence from Britain and, in anticipation of a constitution, proclaim that the law should be the only king in America.

Fighting between the colonists and the British had continued sporadically since the battles at Lexington and Concord in April 1775, and many colonists believed that a firm declaration of independence was the only remedy for their complaints. Thus, on June 7, 1776, Virginia delegate Richard Henry Lee introduced three resolutions before the Second Continental Congress. The first resolution proclaimed: