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Inside



Constitutional Law

What Matters and Why

Russell L. Weaver • Catherine Hancock • Donald E. Lively
Steven I. Friedland • Wendy B. Scott



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Inside Constitutional Law

What Matters and Why

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Preface

This book provides an overview of constitutional law and is designed for the reader who desires an introduction to the subject, but who does not wish to read a lengthy treatise.

This book is different from most other study guides because it includes visual aids such as charts, cartoons, and photographs, in addition to presenting the concepts in plain language. Each chapter also contains the following components:

- An **Overview** that briefly summarizes the topics discussed in the chapter.
- A **Connections** section that explains how the topics in that chapter relate to the overall context of constitutional law, and therefore to other topics in the book.
- **FAQs** (Frequently Asked Questions) and **Sidebars** that help explain terminology and offer additional examples.
- **Key terms** in boldface that will help you learn some of the language of constitutional law. As in so many areas of law, learning to speak the language will help you to understand the concepts.

This book has been reviewed by faculty members as well as by law students who have taken constitutional law classes. Why have we asked students to read this book? To make sure that it is understandable and useful to you, which is the ultimate test of its success.

We thank you for buying *Inside Constitutional Law: What Matters and Why*, and we hope that it is valuable for you.

Russell L. Weaver
Catherine Hancock
Donald E. Lively
Steven I. Friedland
Wendy B. Scott

February 2009

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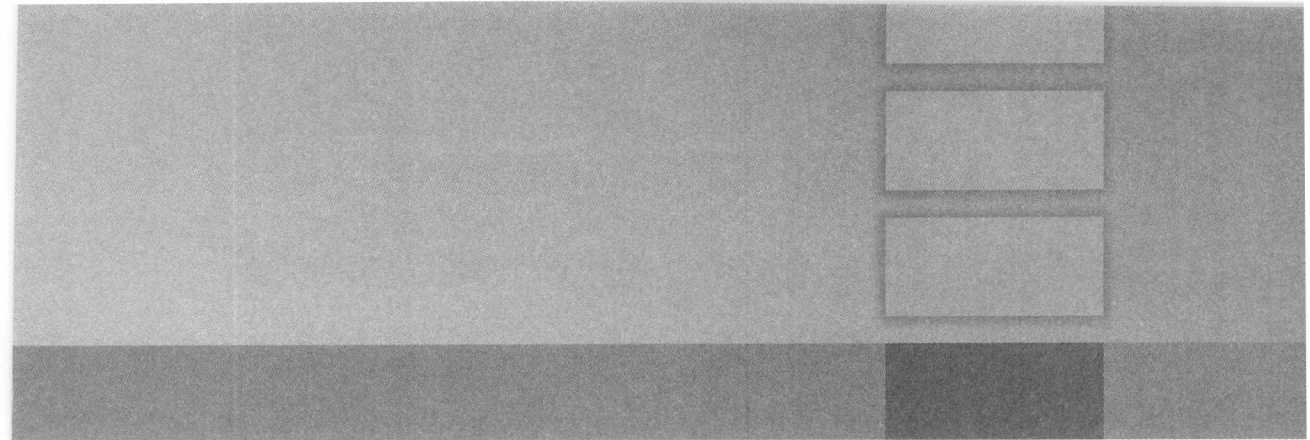
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1

The Federal Government

Judicial Review

1

By their nature, constitutions address fundamental issues of governmental structure and power.

Unlike parliamentary democracies, which blend executive and legislative functions, the United States constitutional system is based on the principle of separation of powers, and there is persistent tension among the three branches of government as each branch strives to check and balance (and, at times, to overreach) each other. Judicial review is a vital part of this system of checks and balances. Judicial review establishes the judiciary (defined broadly to include both the United States Supreme Court and the lower federal courts) as the primary interpreter of constitutional doctrine and allows the judiciary (in appropriate cases) to invalidate actions of Congress or the executive branch. Although the power of judicial review is significant, it is not unbounded. There are significant limitations and restraints on the scope of judicial authority.

O V E R V I E W

A. *MARBURY* AND "THE POWER TO SAY WHAT THE LAW IS"

1. The *Marbury* Decision
2. *Marbury* and Judicial Review

B. JUDICIAL REVIEW AND THE STATES

C. RESTRAINTS ON JUDICIAL AUTHORITY

1. Practical Limitations on Judicial Authority
2. Principles of Constitutional Adjudication
3. Congressional Control over Federal Court Jurisdiction
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5. The Case or Controversy Requirement