

CONSTITUTIONAL LAW—12TH EDITION
AND
INDIVIDUAL RIGHTS IN
CONSTITUTIONAL LAW—5TH EDITION

GERALD GUNTHER

1996 Supplement

by
FREDERICK SCHAUER

University Casebook Series
Foundation Press

1996 SUPPLEMENT

CONSTITUTIONAL LAW
Twelfth Edition

**INDIVIDUAL RIGHTS IN
CONSTITUTIONAL LAW**
Fifth Edition

By

GERALD GUNTHER
William Nelson Cromwell Professor of Law,
Stanford University

1996 SUPPLEMENT

By

FREDERICK SCHAUER
Frank Stanton Professor of the First Amendment
John F. Kennedy School of Government
Harvard University

With the assistance of

VIRGINIA WISE
Lecturer on Law
Harvard University

Westbury, New York
THE FOUNDATION PRESS, INC.

COPYRIGHT © 1991–1995 THE FOUNDATION PRESS, INC.

COPYRIGHT © 1996

By

THE FOUNDATION PRESS, INC.
All rights reserved

ISBN 1-56662-380-4



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



PREFACE

This Supplement covers the major constitutional developments since July 1, 1995, and includes full treatment of the Supreme Court Term that ended on July 1, 1996. Legislative, executive, and administrative developments are included as well, with July 5, 1995, being the cut-off date for such materials.

The Supplement is keyed by specific page numbers for Constitutional Law (Twelfth Edition) and Individual Rights in Constitutional Law (Fifth Edition). As used here, the abbreviation for the former is "12th Ed.," and for the latter "Ind.Rts."

As I have made clear for all of the Supplements since 1983, this one is entirely the work of the undersigned, and any errors or omissions are my responsibility, and not Professor Gunther's.

There has been a recent and noticeable rise in the number of opinions relying heavily on so-called "non-legal" materials. Among the most memorable are the joint opinion of Justices O'Connor, Kennedy, and Souter in *Planned Parenthood of Southeastern Pennsylvania v. Casey* in the 1991 Term, the dissenting opinion of Justice Breyer in *United States v. Lopez* in the 1994 Term, and Justice Ginsburg's opinion of the Court in *United States v. Virginia* in the just-completed 1995 Term, but there are many others as well. In all of these opinions, we find heavy citation of social science data and articles from social science journals; frequent reference to primary historical materials; and argumentative support coming from studies and analyses performed in disciplines other than the law. Although the phenomenon is not totally new—the "Brandeis brief" predates this Supplement by several generations, and scholars still debate the importance and the wisdom of the reliance on social science findings in *Brown v. Board of Education*—it is clear that the use by many of the Justices of materials other than cases, constitutional provisions, statutes, canonical sources of constitutional history, legal treatises, and the law review literature is on the increase.

As many of Justice Scalia's recent dissents indicate, this development is hardly without controversy. But the range of questions is larger than one might find explicitly engaged on the pages of the *United States Reports*. One question, of course, is whether any of this citation to social science data and the researches of non-lawyers actually makes a difference to the outcome. In an odd twist on a Legal Realist hypothesis, perhaps all of these extra-legal references are superfluous, merely the superficial indicia of erudition added by law clerks to support results reached on other grounds. But perhaps they signal an increased awareness by members of the Court that disputed factual propositions lie at the center of many of the largest decisions of constitutional law. Or perhaps the

PREFACE

proliferation of non-legal references is a product of the ease of gaining access to them in a world in which technological change and economic integration makes research into the so-called “non-legal” far easier than it has ever been before.

Whatever the cause of these developments, the consequences are even more intriguing. Will judges, lawyers, and legal scholars become more sensitive to the empirical dimensions—often contested or contestable—of the constitutional conclusions they reach in the name of constitutional doctrine? Will lower courts follow the lead of the Supreme Court in the kind of information they appear to use? Will law schools find it increasingly necessary to train their students in the use of materials that the Supreme Court has now put at the closer to the center of legal argumentation? And will all of this, if the trend continues, alter our conception of just where one finds the law, and thus of what law is? It is too early to offer definitive answers to these or a host of other related questions, but as the kind of material that the Supreme Court uses changes, it is worth watching whether what the Court *does* changes as well, and whether this reflects a larger change in the nature of constitutional law specifically, and law in general, than is often appreciated.

Changes in the nature of legal information, and in the size of the domain of legal information, are not only increasingly important, but also increasingly beyond the expertise of the constitutional generalist. I remain grateful to my wife and collaborator, Virginia Wise, for many things, but plainly one of them is her mastery of an increasingly vast informational universe that I can only begin to glimpse. She is a *sine qua non* to me for many reasons, but what she knows appears increasingly to be the *sine qua non* of constitutional competence.

FREDERICK SCHAUER

South Pomfret, Vermont
July, 1996

TABLE OF CASES

Principal cases are in italic type. Non-principal cases are in roman type.
References are to Pages.

-
- | | |
|---|---|
| <p>Abel, United States v., 447
 Able v. United States, 221
 <i>Adarand Constructors, Inc. v. Pena</i>, 274
 Addington v. Texas, 217
 Aguilar, United States v., 73
 <i>Alexander v. United States</i>, 325, 349, 350
 American Airlines, Inc. v. Wolens, 66
 <i>American Civil Liberties Union v. Reno</i>, 328
 Anderson v. Celebrezze, 311
 Ankenbrandt v. Richards, 507
 <i>Arizona v. Evans</i>, 6
 Arizona v. Rumsey, 40
 Armstrong, United States v., 264
 Associated Industries of Missouri v. Lohman, 67
 Atascadero State Hosp. v. Scanlon, 41</p> <p>Bacchus Imports, Ltd. v. Dias, 64
 Baldwin v. G. A. F. Seelig, Inc., 65
 Barclays Bank PLC v. Franchise Tax Bd. of California, 63
 <i>Barnes v. Glen Theatre, Inc.</i>, 351, 369
 Barnett Bank of Marion County, N.A. v. Nelson, 66
 Batson v. Kentucky, 235, 264, 313
 Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 216
 Blum v. Yaretsky, 314
 <i>BMW of North America, Inc. v. Gore</i>, 215
 <i>Board of County Commissioners, Wabaunsee County, Kansas, Petitioner v. Keen A. Umbehr</i>, 444, 445, 446
 <i>Board of Educ. of Kiryas Joel Village School Dist. v. Grumet</i>, 459
 <i>Board of Educ. of Oklahoma City Public Schools, Independent School Dist. No. 89, Oklahoma County, Okl. v. Dowell</i>, 264, 265
 Bose Corp. v. Consumers Union of United States, Inc., 449
 Bowers v. Hardwick, 221, 353
 Bowsher v. Synar, 71
 <i>Bray v. Alexandria Women's Health Clinic</i>, 316
 Brecht v. Abrahamson, 2, 40
 Brown v. Thomson, 510</p> | <p>Brown-Forman Distillers Corp. v. New York State Liquor Authority, 65
 <i>Burdick v. Takushi</i>, 311
 Burlington Northern R. Co. v. Ford, 219
 Burns v. United States, 218
 <i>Burson v. Freeman</i>, 438
 Burton v. Wilmington Parking Authority, 314
 <i>Bush v. Vera</i>, 309, 310</p> <p><i>C & A Carbone, Inc. v. Town of Clarkstown, N.Y.</i>, 63
 Cammermeyer v. Aspin, 221
 Campbell v. Acuff-Rose Music, Inc., 325
 <i>Capitol Square Review and Advisory Bd. v. Pinette</i>, 483
 Carlton, United States v., 148
 Case of Hayburn, 4
 Chemical Waste Management, Inc. v. Hunt, 62
 Chevron Oil Co. v. Huson, 1
 Chisom v. Roemer, 321
 Church of Scientology of California v. United States, 506
 <i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i>, 486
 <i>Cincinnati, City of v. Discovery Network, Inc.</i>, 333
 Cipollone v. Liggett Group, Inc., 66
 City of (see name of city)
 <i>Cohen v. Cowles Media Co.</i>, 456
 Coleman v. Thompson, 6
 Collins v. City of Harker Heights, Tex., 216
 <i>Colorado Republican Federal Campaign Committee, Douglas Jones, Treasurer v. Federal Election Commission</i>, 437
 Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 119, 148, 507
 Connecticut v. Doeher, 218
 Connick v. Myers, 443
 County of (see name of county)
 CSX Transp., Inc. v. Easterwood, 66</p> |
|---|---|

TABLE OF CASES

- Dahl v. Secretary of United States Navy, 221
 Dalton v. Specter, 69
 Daniel v. Paul, 37
 Davis v. Michigan Dept. of Treasury, 1
Dawson v. Delaware, 447
 Dean Milk Co. v. City of Madison, Wis., 62
 Dennis v. Higgins, 8
Denver Area Educational Telecommunications Consortium, Inc. v. Federal Communications Commission, 328
Dolan v. City of Tigard, 134
- Eastern R. R. Presidents Conference v. Noerr Motor Freight, Inc., 378
Edenfield v. Fane, 334
Edge Broadcasting Co., United States v., 335
Edmonson v. Leesville Concrete Co., Inc., 263, 313
 Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Const. Trades Council, 507
 E.E.O.C. v. Arabian American Oil Co., 263
 Employment Div., Dept. of Human Resources of State of Or. v. Smith, 485
- F.C.C. v. Beach Communications, Inc.*, 220
 F. C. C. v. Pacifica Foundation, 367
 F.D.I.C. v. Meyer, 503
 Federal Election Com'n v. National Conservative Political Action Committee, 437
 Felker v. Turpin, 7
Florida Bar v. Went for It, Inc., 336
Fordice, United States v., 269
Forsyth County, Ga. v. Nationalist Movement, 349, 410
 Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources, 62
44 Liquormart, Inc. v. Rhode Island, 5, 338
 Foucha v. Louisiana, 216, 217
 Franklin v. Gwinnett County Public Schools, 503
Franklin v. Massachusetts, 505, 509
 Freedman v. State of Md., 449
Freeman v. Pitts, 266
 Freightliner Corp. v. Myrick, 66
 Frisby v. Schultz, 320
 Fulton Corp. v. Faulkner, 63
- Gade v. National Solid Wastes Management Ass'n, 66
 General Motors Corp. v. Romein, 147, 148
Gentile v. State Bar of Nevada, 440, 452
 Georgia v. McCollum, 315
 Giese, United States v., 447
 Golden State Transit Corp. v. City of Los Angeles, 8
- Gregorio T. By and Through Jose T. v. Wilson, 59 F.3d 1002, p. 5
 Gregorio T. By and Through Jose T. v. Wilson, 54 F.3d 599, p. 5
Gregory v. Ashcroft, 40, 262, 322
 Griffin v. Breckenridge, 316
 Griggs v. Duke Power Co., 263
 Growe v. Emison, 510
- Hafer v. Melo, 321
Harper v. Virginia Dept. of Taxation, 1, 6
 Harris v. Forklift Systems, Inc., 375
 Harris v. McRae, 67
 Harris v. Reed, 6
 Hastings v. United States, 73
 Hays, United States v., 504
Heller v. Doe by Doe, 216, 220, 221, 262
 Hern v. Beye, 67
 Hernandez v. New York, 262
 Hess v. Port Authority Trans-Hudson Corp., 68
 High Tech Gays v. Defense Indus. Sec. Clearance Office, 221
 Hilton v. South Carolina Public Railways Com'n, 40
Holder v. Hall, 307, 322
Honda Motor Co., Ltd. v. Oberg, 214
 Hunt v. Washington State Apple Advertising Commission, 65
Hurley & South Boston Allied War Veterans Council v. Irish-American Gay, Lesbian and Bisexual Group of Boston, 428
- Ibanez v. Florida Dept. of Business and Professional Regulation, Bd. of Accountancy*, 332, 336
 Illinois State Bd. of Elections v. Socialist Workers Party, 311
 I.N.S. v. Chadha, 71
 International Primate Protection League v. Administrators of Tulane Educational Fund, 501
International Soc. for Krishna Consciousness, Inc. v. Lee, 414
 International Union, United Auto., Aerospace and Agr. Implement Workers of America, UAW v. Johnson Controls, Inc., 261
 Itel Containers Intern. Corp. v. Huddleston, 65
 Izumi Seimitsu Kogyo Kabushiki Kaisha v. United States Philips Corp., 7
- Jackson v. Metropolitan Edison Co., 314
 Jacobellis v. State of Ohio, 449
 Jacobson v. United States, 326
James B. Beam Distilling Co. v. Georgia, 1
J.E.B. v. Alabama ex rel. T.B., 235, 263
 Johnson v. De Grandy, 307

TABLE OF CASES

- Jones v. Clear Creek Independent School Dist., 462
 Jones v. United States, 217
 J. W. Hampton, Jr., & Co. v. United States, 72

 Katzenbach v. McClung, 37
 Keeton v. Hustler Magazine, Inc., 449
 Kraft General Foods, Inc. v. Iowa Dept. of Revenue and Finance, 63
 Kras, United States v., 163

Ladue, City of v. Gilleo, 418
 Lakewood, City of v. Plain Dealer Pub. Co., 410
Lamb's Chapel v. Center Moriches Union Free School Dist., 411, 480
 Landgraf v. USI Film Products, 2, 263
 Larkin v. Grendel's Den, Inc., 460
 League of United Latin American Citizens v. Wilson, 5
Leathers v. Medlock, 452
Lebron v. National R.R. Passenger Corp., 315
Lee v. International Soc. for Krishna Consciousness, Inc., 414
Lee v. Weisman, 234, 462
 Lehman v. City of Shaker Heights, 367
 Lehnert v. Ferris Faculty Ass'n, 441
 Lemon v. Kurtzman, 460
 Little Rock Family Planning Services, P.A. v. Dalton, 67
 Lockhart v. Fretwell, 3
Lopez, United States v., 9
 Lorance v. AT & T Technologies, Inc., 263
Lucas v. South Carolina Coastal Council, 119, 506
 Lugar v. Edmondson Oil Co., Inc., 313
Lujan v. Defenders of Wildlife, 503

Madsen v. Women's Health Center, Inc., 320, 350, 389
 Mahan v. Howell, 510
 Maine v. Taylor, 67
 Marsh v. Chambers, 475
 Marsh v. State of Ala., 313
 Martin v. Wilks, 263
 Massachusetts Bd. of Retirement v. Murgia, 219
 Masson v. New Yorker Magazine, Inc., 324, 325
 Mathews v. Eldridge, 214, 218
 McCarthy v. Madigan, 503
 McDade v. United States, 73
McIntyre v. Ohio Elections Com'n, 409, 440
 Medtronic, Inc. v. Lora Lohr; Lora Lohr v. Medtronic, Inc., 66
 Meinhold v. United States Dept. of Defense, 221

 Meritor Sav. Bank, FSB v. Vinson, 375
 Mesquite, City of v. Aladdin's Castle, Inc., 506
 Miami Herald Pub. Co. v. Tornillo, 424, 426
 Michigan v. Long, 6
 Miller v. California, 364
Miller v. Johnson, 307
Missouri v. Jenkins, 115 S.Ct. 2038, pp. 69, 271
 Missouri v. Jenkins, 110 S.Ct. 1651, p. 265
 Montana Department of Revenue v. Kurth Ranch, 61
 Morales v. Trans World Airlines, Inc., 66
Morse v. Republican Party of Virginia, 321, 442
 Mugler v. Kansas, 169

 National Bellas Hess, Inc. v. Department of Revenue of State of Ill., 67
National Organization for Women, Inc. v. Scheidler, 319, 320, 389
National Treasury Employees Union, United States v., 442
 Nebraska Press Ass'n v. Stuart, 441
New York v. United States, 43, 61, 68, 508
 New York Times Co. v. Sullivan, 449
 New York Times Co. v. United States, 392
Nixon v. United States, 74
Nordlinger v. Hahn, 219, 312
 Norman v. Reed, 311
Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Fla., 502, 506

 O'Connor v. Consolidated Coin Caterers Corp., 264
 O'Connor v. Donaldson, 217
O'Hare Truck Service, Incorporated v. City of Northlake, 444, 445
 Oklahoma Tax Com'n v. Jefferson Lines, Inc., 67
Oregon Waste Systems, Inc. v. Oregon Department of Environmental Quality of State of Or., 62

Pacific Mut. Life Ins. Co. v. Haslip, 213
 Paris Adult Theatre I v. Slaton, 353
 Pasadena City Bd. of Ed. v. Spangler, 267
 Patterson v. McLean Credit Union, 2, 263, 264
 Paul v. Davis, 216, 217
 Payne v. Tennessee, 39
 Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 438
 Philadelphia, City of v. New Jersey, 62, 63, 65
 Philadelphia Newspapers, Inc. v. Hepps, 449
 Philips v. Perry, 221

TABLE OF CASES

- Planned Parenthood Affiliates of Michigan v. Engler, 67
Planned Parenthood of Southeastern Pennsylvania v. Casey, 40, 149, 168
Plaut v. Spendthrift Farm, Inc., 3, 72, 501
 Plowman, State v., 385
 Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico, 40
 Powers v. Ohio, 262, 506
 Presley v. Etowah County Com'n, 321
 Price Waterhouse v. Hopkins, 263
- Quackenbush v. Allstate Ins. Co., 508
 Quill Corp. v. North Dakota By and Through Heitkamp, 67
- Rankin v. McPherson, 163
R.A.V. v. City of St. Paul, Minn., 326, 327, 350, 362
 Regan v. Taxation With Representation of Washington, 453
 Regents of University of California v. Bakke, 503
Reno v. Catholic Social Services, Inc., 506
Reno v. Flores, 216
 Reynoldsville Casket Co. v. Hyde, 3
 Richenberg v. Perry, 222
 Richmond, City of v. J.A. Croson Co., 503
 Riggins v. Nevada, 217
 Rivers v. Roadway Exp., Inc., 2
 Riverside, County of v. McLaughlin, 506
 Robertson, United States v., 11
 Robinson v. Jacksonville Shipyards, Inc., 374
 Roe v. Wade, 8, 40
Romer v. Evans, 222
Rosenberger v. University of Virginia, 412, 481
Rubin v. Coors Brewing Co., 336
Rust v. Sullivan, 150, 167, 452
- Sandin v. Conner, 217
 Seattle Times Co. v. Rhinehart, 441
 Seminole Tribe of Florida v. Florida, 40
Shaw v. Hunt, 309, 310
Shaw v. Reno, 263, 295, 307, 309, 310, 510
 Shelley v. Kraemer, 314
Siegert v. Gilley, 73, 216
Simon & Schuster, Inc. v. New York State Crime Victims Bd., 324, 439, 454
 Singleton v. Wulff, 506
 Smith v. Allwright, 321
 Smith v. Daily Mail Pub. Co., 456
 Snapp v. United States, 443
 Sochor v. Florida, 6
 South-Central Timber Development, Inc. v. Wunnicke, 67
 South Dakota v. Dole, 61
 Speiser v. Randall, 449
- State v. _____ (see opposing party)**
 Steffan v. Perry, 221
 Summit Health, Ltd. v. Pinhas, 8
 Swift & Co., United States v., 265
- Thomasson v. Perry, 222
 Touby v. United States, 72
 Trinova Corp. v. Michigan Dept. of Treasury, 67
Turner Broadcasting System, Inc. v. F.C.C., 425
TXO Production Corp. v. Alliance Resources Corp., 214
- United Food and Commercial Workers Union Local 751 v. Brown Group, Inc., 502
 United Mine Workers of America v. Pennington, 378
United States v. _____ (see opposing party)
 United States Bancorp Mortg. Co. v. Bonner Mall Partnership, 506
United States Dept. of Commerce v. Montana, 508
 United States Dept. of Treasury v. Fabe, 67
 United States Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc., 501
United States Term Limits, Inc. v. Thornton, 84
- Vance v. Universal Amusement Co., Inc., 392
 Vasquez v. Harris, 7
Virginia, United States v., 238
 Vitek v. Jones, 217
 Voinovich v. Quilter, 510
- Wallace v. Jaffree, 472
Waters v. Churchill, 449
 Watson v. Perry, 222
 Weiss v. United States, 71
West Lynn Creamery, Inc. v. Healy, 64
 Widmar v. Vincent, 412
 Williams, United States v., 6
Wisconsin v. City of New York, 510
Wisconsin v. Mitchell, 383, 448
 Wisconsin Public Intervenor v. Mortier, 66, 263
 Wyant, State v., 385
 Wyatt v. Cole, 73, 313, 321
 Wyoming v. Oklahoma, 65, 67, 501
- X-Citement Video, Inc., United States v., 326, 507
- Yee v. City of Escondido, Cal., 7, 119
 Ylst v. Nunnemaker, 6

TABLE OF CASES

Young v. American Mini Theatres, Inc., 367		<i>Zobrest v. Catalina Foothills School Dist.</i> , 458, 507
--	--	---

*

TABLE OF CONTENTS

Numbers on the left indicate where the new materials fit into the casebooks. Cases and legislative material set out at length are in **bold face**.

	Page
PREFACE	iii
TABLE OF CASES	xiii

CHAPTER 1(1). THE NATURE AND SOURCES OF THE SUPREME COURT'S AUTHORITY

Casebook	Individual Rights	Supplement
12 Ed.	5th Ed.	Page
28	(28)	
		James B. Beam Distilling Co. v. Georgia --- 1
		Harper v. Virginia Department of Taxation 1
		Landgraf v. USI Film Products 2
		Rivers v. Roadway Express, Inc. 2
		Reynoldsville Casket Co. v. Hyde 3
36	(36)	Lockhart v. Fretwell 3
42	(42)	Pardon legislation 3
43	(43)	Plaut v. Spendthrift Farm, Inc. 3
47	(47)	Recent jurisdiction-affecting legislation 5
50	(50)	Legislative proposals regarding judges and term limits 5
51	(51)	Desegregation and federal jurisdiction 5
60	(60)	Arizona v. Evans 6
60	(60)	Ylst v. Nunnemaker; Coleman v. Thompson; Sochor v. Florida; Harper v. Virginia Department of Taxation 6
64	(64)	Supreme Court workload; Vasquez v. Harris --- 7

CHAPTER 3. THE COMMERCE POWER

97	Individual rights and the commerce power; Golden State Transit Corp. v. Los Angeles; Dennis v. Higgins 8	8
142	Summit Health, Ltd. v. Pinhas 8	8
156	United States v. Lopez 9	9
	Allied-Bruce Terminix Companies, Inc. v. Dobson 39	39
174	Continuing debates about stare decisis; Payne v. Tennessee; Hilton v. South Carolina Public Railway Comm'n; Planned Parenthood of South- eastern Pennsylvania v. Case (cross-reference); Brecht v. Abrahamson; Seminole Tribe of Florida v. Florida; 44 Liquormart, Inc. v. Rhode Island 40	40

TABLE OF CONTENTS

Casebook 12 Ed.	Individual Rights 5th Ed.	Supplement Page
175	Gregory v. Ashcroft	40
	New York v. United States	43

CHAPTER 4. OTHER NATIONAL POWERS IN THE 1787 CONSTITUTION

200	Montana Dept. of Revenue v. Kurth Ranch	61
201	New York v. United States (cross-reference)	61
201	The amendment process	61

CHAPTER 5. STATE REGULATION AND THE NATIONAL ECONOMY: CONSTITUTIONAL LIMITS AND CONGRESSIONAL ORDERING

252	Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources; Chemical Waste Management Inc. v. Hunt; Oregon Waste Systems, Inc. v. Oregon Dept. of Environ- mental Quality ; C & A Carbone, Inc. v. Town of Clarkston; Kraft General Foods v. Iowa Department of Revenue; Fulton Corp. v. Faulkner	62
252	C & A Carbone, Inc. v. Town of Clarkston ..	63
261	West Lynn Creamery, Inc. v. Healy	64
261	Wyoming v. Oklahoma	65
274	Itel Containers International v. Huddleston	65
300	Wisconsin Public Intervenor v. Mortier; Cipollone v. Liggett Group, Inc.; Medtronic Inc. v. Lohr; Barnett Bank N.A. v. Marion	66
300	Wyoming v. Oklahoma	67
302	United States Department of Treasury v. Fabe	67
306	Quill Corp. v. North Dakota	67
307	Trinova Corp. v. Michigan Department of Treasury	67
310	New York v. United States; Hess v. Port Authority Trans-Hudson Corp	68

CHAPTER 6. SEPARATION OF POWERS: THE PRESIDENT, CONGRESS, AND THE COURT

322	Dalton v. Specter	69
339	Balanced budget proposals	69
339	The Continuing Stringency of Separation of Powers Review	70
	Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, Inc.	70

TABLE OF CONTENTS

Casebook 12 Ed.	Individual Rights 5th Ed.	Supplement Page
351	Weiss v. United States -----	71
359	Touby v. United States -----	72
372	Procedures for impeachment; Nixon v. United States (cross-reference) -----	72
377	Siebert v. Gilley; Wyatt v. Cole -----	73
392	Recent applications of Powell v. McCormack ---	74
393	Nixon v. United States -----	74
	U.S. Term Limits, Inc. v. Thornton -----	84

CHAPTER 8(3). SUBSTANTIVE DUE PROCESS: RISE, DECLINE, REVIVAL

473	(144)	Concrete Pipe and Products v. Construction Laborers Pension Trust -----	119
475	(146)	Yee v. Escondido, California -----	119
476	(147)	Lucas v. South Carolina Coastal Council --	119
		Dolan v. City of Tigard -----	134
490	(161)	General Motors Corp. v. Romein -----	147
491	(162)	Concrete Pipe and Products v. Construction Laborers Pension Trust; United States v. Carlton -----	148
519	(190)	Natural Law and the Thomas hearings -----	148
522	(193)	Abortion legislation -----	149
530	(201)	Parental notification legislation -----	149
553	(224)	Rust v. Sullivan -----	150
		Congressional and executive reaction to Rust v. Sullivan -----	167
		Planned Parenthood of Southeastern Pennsylvania v. Casey -----	168
		Bray v. Alexandria Women's Health Clinic (cross-reference) -----	211
		Freedom of Choice Act of 1993 -----	211
564	(235)	Pacific Mutual Life Insurance Co. v. Haslip -----	213
		TXO Production Corp. v. Alliance Resources Corp -----	214
		Honda Motor Co., Ltd. v. Oberg -----	214
		BMW of North America, Inc. v. Gore -----	215
573	(244)	Foucha v. Louisiana (cross-reference) -----	216
573	(244)	Collins v. Harker Heights, Texas -----	216
		Reno v. Flores -----	216
597	(268)	Siebert v. Gilley -----	216
598	(269)	Riggins v. Nevada -----	217
598	(269)	Foucha v. Louisiana -----	217
		Sandin v. Conner -----	217
599	(270)	Connecticut v. Doeher -----	218
600	(271)	Burns v. United States -----	218

TABLE OF CONTENTS

Casebook 12 Ed.	Individual Rights 5th Ed.		Supplement Page
625	(296)	Burlington Northern Railroad Co. v. Ford -----	219
635	(306)	Nordlinger v. Hahn -----	219
		Federal Communication Commission v. Beach Communications; Heller v. Doe ---	220
		Cammermeyer v. Aspin; Dahl v. Secretary of the Navy; Meinhold v. Department of Defense; Steffan v. Perry -----	221
		Romer v. Evans -----	222
625	(346)	J.E.B. v. Alabama ex rel. T.B. -----	235
		United States v. Virginia -----	238
679	(350)	International Union of Aerospace, Automobile, and Agricultural Workers v. Johnson Controls, Inc. -----	261
701	(372)	Gregory v. Ashcroft -----	262
705	(376)	Powers v. Ohio; Hernandez v. New York; Edmonson v. Leesville Concrete Co.; J.E.B. v. Alabama ex rel. T.B. (cross-reference) -----	262
708	(379)	Civil Rights Act of 1991 -----	263
715	(386)	O'Connor v. Consolidated Coin Caterers Corp. -----	264
727	(398)	Board of Education of Oklahoma City Public Schools v. Dowell (cross-reference) -----	264
750	(421)	Congressional response to Missouri v. Jenkins -	265
750	(421)	Measuring compliance with long-standing decrees -----	265
		Board of Education of Oklahoma City Public Schools v. Dowell -----	265
		Freeman v. Pitts -----	266
		United States v. Fordice -----	269
		Missouri v. Jenkins -----	271
819	(482)	Adarand Constructors, Inc. v. Pena -----	274
		Hopwood v. Texas -----	294
		Shaw v. Reno -----	295
		Miller v. Johnson -----	307
		Shaw v. Hunt; Bush v. Vera -----	309
854	(525)	Burdick v. Takushi -----	311
870	(541)	Nordlinger v. Hahn -----	312

CHAPTER 10(5). THE POST-CIVIL WAR AMENDMENTS AND CIVIL LEGISLATION: CONSTITUTIONAL RESTRAINTS ON PRIVATE CONDUCT; CONGRESSIONAL POWER TO IMPLEMENT THE AMENDMENTS

922	(593)	Wyatt v. Cole -----	313
924	(595)	Edmonson v. Leesville Concrete Co. -----	313
		Georgia v. McCollum -----	315

TABLE OF CONTENTS

Casebook 12 Ed.	Individual Rights 5th Ed.		Supplement Page
		Lebron v. National Railroad Passenger Corp.	315
945	(616)	Section 1985(c), abortion, and the Bray case	315
945	(616)	Bray v. Alexandria Women's Health Clinic National Organization for Women, Inc. v. Scheidler	316
945	(616)	Freedom of Access to Clinic Entrances Act of 1994; <i>Frisby v. Schultz</i> (cross-reference); <i>Madsen v. Women's Health Clinic, Inc.</i> (cross-reference)	319
946	(617)	<i>Hafer v. Melo</i> ; <i>Wyatt v. Cole</i>	320
958	(629)	<i>Presley v. Etowah County Commission</i> ; Morse v. Republican Party of Virginia ..	321
959	(630)	<i>Chisom v. Roemer</i>	321
		<i>Holder v. Hall</i>	322
993	(664)	Gregory v. Ashcroft	322

CHAPTER 11(6). FREEDOM OF EXPRESSION— SOME BASIC THEMES: REGULATION OF SPEECH BECAUSE OF ITS CONTENT

1069	(740)	<i>Simon & Schuster, Inc. v. New York State Crime Victims Board</i> (cross-reference)	324
1070	(741)	<i>Simon & Schuster Inc. v. New York State Crime Victims Board</i> (cross-reference)	324
1088	(759)	<i>Masson v. New Yorker Magazine Inc.</i>	324
1092	(763)	<i>Campbell v. Acuff-Rose Music Inc.</i>	325
1093	(764)	<i>Campbell v. Acuff-Rose Music Inc.</i>	325
1121	(792)	Alexander v. United States	325
1125	(796)	<i>Jacobson v. United States</i> ; <i>United States v. X-Citement Video, Inc.</i>	326
1126	(797)	Recent Anti-Pornography Legislative Proposals	326
1137	(808)	Proposed legislation on hate speech restrictions	326
		R.A.V. v. City of St. Paul (cross-reference) ..	327
1163	(834)	Recent indecency developments; American Civil Liberties Union v. Reno; Denver Area Educational Television Consortium v. FCC	328
1177	(848)	<i>Ibanez v. Florida Board of Accountancy</i>	332
1189	(860)	City of Cincinnati v. Discovery Network ..	333
		Edenfield v. Fane	334
		United States v. Edge Broadcasting	335
		Ibanez v. Florida Board of Accountancy ..	335
		Rubin v. Coors Brewing Co.	336
		Florida Bar v. Blakely	336
		44 Liquormart, Inc. v. Rhode Island	338

TABLE OF CONTENTS

CHAPTER 12(7). FREEDOM OF EXPRESSION: ADDITIONAL PERVASIVE THEMES; THE PUBLIC FORUM PROBLEM

Casebook 12 Ed.	Individual Rights 5th Ed.		Supplement Page
1208	(779)	Forsyth County, Georgia v. Nationalist Movement -----	349
1211	(882)	Alexander v. United States -----	349
1216	(888)	R.A.V. v. City of St. Paul (cross-reference) -----	350
		Alexander v. United States -----	350
1227	(898)	Barnes v. Glen Theatre, Inc. -----	351
1248	(919)	R.A.V. v. City of St. Paul -----	362
		Harris v. Forklift Systems, Inc. -----	375
		Wisconsin v. Mitchell -----	383
1268	(939)	Bray v. Alexandria Women's Health Clinic (cross-reference) -----	389
1268	(939)	Madsen v. Women's Health Clinic -----	389
1270	(941)	McIntyre v. Ohio Elections Comm'n -----	409
1292	(963)	Forsyth County, Georgia v. Nationalist Movement -----	410
1316	(987)	Lamb's Chapel v. Center Moriches Union Free School District -----	411
		Rosenberger v. University of Virginia -----	412
1323	(994)	International Society for Krishna Consciousness v. Lee -----	414
1333	(1004)	City of Ladue v. Gilleo -----	418
1355	(1026)	Access, Cable Television and the First Amendment -----	424
1355	(1026)	Turner Broadcasting System v. FCC -----	425
1356	(1027)	Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston -----	428

CHAPTER 13(8). FREEDOM OF EXPRESSION IN SOME SPECIAL CONTEXTS

1367	(1038)	Campaign finance reform proposals -----	437
1367	(1038)	Colorado Republican Federal Campaign Committee v. Federal Communications Commission -----	437
1374	(1045)	Burson v. Freeman -----	438
1393	(1064)	Public statements by parties and attorneys Gentile v. State Bar of Nevada -----	440
1402	(1073)	Lehnert v. Ferris Faculty Association -----	441
1434	(1105)	Hatch Act amendments -----	442
1434	(1105)	United States v. National Treasury Employees Union -----	442

TABLE OF CONTENTS

Casebook 12 Ed.	Individual Rights 5th Ed.	Supplement Page
1438	(1109)	First Amendment activity as criminal evidence ----- 447
		Dawson v. Delaware ----- 447
		Wisconsin v. Mitchell (cross-reference) ---- 448
		O'Hare Truck Service, Inc. v. City of North Lake; Board of Commissioners, Wabaunsee County v. Umbehr ----- 448
1445	(1116)	A Note on First Amendment Procedure ---- 449
1445	(1116)	Waters v. Churchill ----- 449
1446	(1117)	Leathers v. Medlock (cross-reference) ----- 452
1447	(1118)	Rust v. Sullivan (cross-reference) ----- 452
1470	(1141)	Gentile v. State Bar of Nevada (cross-reference) ----- 452
1499	(1170)	Leathers v. Medlock ----- 452
		Simon & Schuster Inc. v. New York State Crime Victims Board ----- 454
		Cohen v. Cowles Media Co ----- 456

CHAPTER 14(9). THE CONSTITUTION AND RELIGION: "ESTABLISHMENT" AND "FREE EXERCISE"

1517	(1188)	Zobrest v. Catalina Foothills School District ----- 458
1520	(1191)	Board of Education, Kiryas Joel Village v. Grumet ----- 459
1529	(1200)	Congressional proposals regarding school prayer ----- 461
1529	(1200)	Lee v. Weisman ----- 462
1531	(1202)	Lamb's Chapel v. Center Moriches Union Free School District ----- 480
		Rosenberger v. University of Virginia ---- 481
		Capitol Square Review and Advisory Board v. Pinette ----- 483
1585	(1256)	Religious Freedom Restoration Act ----- 486
1586	(1257)	Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah ----- 486

CHAPTER 15(10). PROPER CONDITIONS FOR CONSTITUTIONAL ADJUDICATION: INTERESTED PARTIES; CONCRETE CONTROVERSIES; JUSTICIABLE ISSUES

1595	(1266)	United States National Bank of Oregon v. Independent Insurance Agents of America -- 501
1621	(1292)	International Primate Protection League v. Administrators of Tulane Educational Fund - 501
1621	(1292)	Wyoming v. Oklahoma ----- 501
		United Food Workers v. Brown Group ----- 502