

# CONSTITUTIONAL LAW

CASES AND MATERIALS

TENTH EDITION

WILLIAM COHEN  
JONATHAN D. VARAT

UNIVERSITY CASEBOOK SERIES

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# CONSTITUTIONAL LAW

TENTH EDITION

*by*

**WILLIAM COHEN**

C. Wendell and Edith M. Carlsmith  
Professor of Law, Stanford University

**JONATHAN D. VARAT**

Professor of Law  
University of California, Los Angeles

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## PREFACE

Developments of great moment may change a subject so dramatically that new editions should be reworked comprehensively. In our judgment, that kind of change has not occurred since the publication of the last edition four years ago. Justices Ginsburg and Breyer have joined the Court, replacing Justices White and Blackmun, with the result that four new Justices have been appointed since 1990 and a majority of five in the last decade. The Court has taken some steps in new and potentially significant directions, which the new edition reflects. Yet none of these developments seemed to us to call for major reorganization of the book. Indeed, the twenty new principal cases either replace earlier decisions on the same topic or add dimensions to subjects already reflected in the book's internal outlining. Because we also continue to find that the vast bulk of the organizational changes made in earlier editions have been effective pedagogically, the overall shape and blueprint of the text essentially has not changed.

Making room for the new material required us to eliminate some principal cases from the last edition and treat others in abbreviated fashion. In each instance, we attempted, without editorial comment, to highlight new refinements and to improve the clarity of presentation of materials published earlier. New developments include: increased receptiveness to equality and federalism-based limits on congressional authority; recent attention to the political question doctrine, the dormant commerce clause, and equal protection analysis of economic regulation; possibly changing standards scrutinizing sex-based classifications and addressing issues of free expression raised by new technologies for communication; new limits on unequal treatment of non-heterosexuals; new causes of action for challenging racial gerrymanders; and a variety of first amendment controversies, including new disputes about how to evaluate the validity of speech-restricting injunctions and ongoing divisions about the scope of the prohibition on establishment of religion. These and other developments contained in this edition render it current to July 1996, with the usual accompanying Supplement to be published in the summer of 1997.

Our primary goal remains, as we have emphasized in the last three editions, to provide a book that is "at the same time intellectually challenging and flexible enough to be used by law teachers with widely varying approaches to the material." As much as possible we provide "the raw materials—cases, constitutional provisions, and statutes—allowing teachers maximum freedom to pursue their own teaching strategies and requiring students to create their own generalizations from the materials." The book's organization, too, is intended "to maximize the ability of users to structure

their own courses in their own ways without inhibiting their efforts at reorganization by the nature of our editing.”

We also continue to seek to use historical or descriptive notes “to fill in background, developments, and illuminating detail in succinct and straightforward fashion in order to highlight and supplement the primary cases and permit teachers to assign the essential materials in effective and manageable doses.” And, as we previously have indicated, “by and large we have resisted the temptation to be encyclopedic through the use of multiple short descriptions of cases, because overuse of that approach seems to us ineffective.”

WILLIAM COHEN  
JONATHAN D. VARAT

Stanford, California  
Los Angeles, California  
November 1996

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