

FEDERAL JUDICIAL POWER

- ◆ **Article III Jurisdiction**
 - **Federal Question jurisdiction:** Federal courts can hear cases arising under the Constitution, treaties, and federal law.
 - **Diversity Jurisdiction:** Federal courts can hear cases between states, states and foreign citizens, and between citizens of different states.
 - Federal courts cannot hear cases between citizens of the same state unless Federal Question jurisdiction is present.
- ◆ **Supreme Court**
 - **Original Jurisdiction:** Cases where a state is a party or involving ambassadors, public minister, or consul (diplomat). Congress may not change the original jurisdiction of the Supreme Court.
 - **Appellate Jurisdiction:** All other Article III cases.
 - **Forms of review:** Supreme Court may review by writ of Certiorari (entirely discretionary) or through appeal (mandatory, but very rare). Appeal is only applicable from a federal three judge panel.
 - **State court review:** The Supreme Court may only review a state court ruling if it involves a *federal question*, is a *final judgment* from the *highest state court*, and there is *no independent state ground* for the ruling (e.g. violates the state constitution).
- ◆ **Federal Court limits**
 - **Supreme Court:** Congress may limit the Supreme Court's appellate jurisdiction under Article III, but may not expand it.
 - **Other federal courts:** Can be completely controlled by Congress within Article III.
 - **Eleventh Amendment:** Prevents a private individual from suing an entire state in Federal court (suits against state officials, cities, counties, or suits in state court are OK). Exceptions: State agrees, Congress has created a law allowing, e.g., civil rights laws.
 - **Abstention:** A discretionary power where a federal court will decline to hear a case where it involves state law and a state court has not yet ruled or the case is already active in a state court.
- ◆ **Case and controversy:** Requires a plaintiff with standing and a stake in the outcome to bring the case; must be ripe, and not moot; must not be a political question or an advisory opinion.
 - **Standing:** To have standing a plaintiff must allege an injury in fact, the injury must be traceable to a defendant and the court must be able to actually redress the harm.
 - **Taxpayers:** Have standing only when (1) Congress is using its taxing and spending powers and (2) the basis of the challenge is the constitutional limits on taxing and spending (e.g., a

taxpayer can challenge a statute which provides funding to religious schools under the establishment clause of the first amendment).

- **Associations:** have standing if one or members have standing, the claims can be litigated without the personal participation of those members, and the interests are relevant to the organization.
- **Ripeness:** an actual harm or an imminent threat of harm.
- **Mootness:** there must be an actual live controversy during all stages of litigation. Exceptions: (1) class actions with at least one member of the class' case unresolved; (2) injuries capable of repetition, yet only lasting for a short period of time (e.g., abortion statutes); (3) injunction hearings where defendant voluntarily stops action, but could resume it any time; or (4) findings of criminal convictions or insanity even though person is now released (e.g., Martha Stewart appealing even after serving time).
- **Political Questions:** Courts will not hear cases when the Constitution assigns those powers to another branch of government.
- **Advisory opinions:** Courts will not render opinions where the parties are not bound by the judgment.

CONGRESSIONAL POWERS

- ◆ **Commerce Power:** Congress can regulate foreign commerce, interstate commerce and even commerce wholly within a state if it affects interstate commerce.
 - **Limits:** Congress may not violate individual liberties in the process and congress may not force states to enact laws.
- ◆ **Taxing Power:** Congress has the power to raise revenue.
 - **Limits:** Congress may not tax exports. All import duties must be uniform throughout the U.S.
- ◆ **Spending Power:** Congress has the power to spend revenue for the common defense and the general welfare.
 - **Limits:** May not violate individual liberties; conditions imposed for receipt of funds (e.g., 55 miles an hour speed limit) must be reasonably related to the purpose of the funds.
- ◆ **Protection of Civil Rights:** Congress may use its congressional powers to protect individual rights:
 - **Commerce Clause:** may be used to regulate private discrimination.
 - **Thirteenth amendment:** does not require state action and may be used to regulate racial discrimination.

- **Fourteenth Amendment:** *usually* requires state action. Maybe used to enforce federal civil rights laws on local governments.
- **Fifteenth Amendment:** protects the right to vote against federal or state racial discrimination. Requires state action.
- ◆ **War and Defense:** Congress has the power to declare war, support any army and navy, call up the militia, and enforce civilian restrictions during wartime.
- ◆ **District of Columbia:** Congress has full legislative power over Washington, D.C.
- ◆ **Federal Property:** Congress has the power to sell, buy, exchange, protect and use federal property.
- ◆ **Investigative Power:** Congress may hold hearings and investigate any issue that it could legislate on, whether it has done so or not.
- ◆ **Immunity:** Members of Congress may not be sued civil or criminally charged for their legislative acts. (includes committee work, conducting hearings, preparing reports or giving speeches inside Congress).
- ◆ **Necessary and Proper:** Congress has the very broad ability to pass all legislation, *necessary and proper* to carry out these above powers.

PRESIDENTIAL POWERS

- ◆ **Executive Powers Generally:** The president acts as commander and chief of the armed forces; as chief executive officer of domestic matters; and as the policy leader of foreign affairs.
- ◆ **Domestic Executive Powers:** President's main function is to execute the laws passed by Congress. Usually Congressional approval is needed for the President's powers *except* in cases of emergency where Congress has not already denied the president the power.
 - If Congress delegates broad power to the executive branch to draft specific rules (e.g., the FCC) it may *only* overturn those rules by additional legislation, not by any type of veto.
- ◆ **Commander in Chief:** Only Congress may declare war. Once declared, the President may act alone. The President may also repel invasions and take emergency action without Congressional approval.
- ◆ **Foreign Affairs:** President is the chief spokesperson for the government; speaks with ambassadors and carries out day-to-day relations with foreign governments.
 - **Treaties:** Two-thirds of the Senate must approve a treaty. Once passed, a treaty has the exact same power as a federal law.

- **Executive Agreements:** May be entered into without Congresses' consent (unless Congress specifically denied the president's authority to enter into a particular agreement). Executive agreements, like treaties, become federal law.
- ◆ **Appointment and Removal:** President appoints executive branch officials. Congress generally votes to approve principal officers, heads of departments, ambassadors, diplomats, and federal judges.
 - President may remove all appointees except federal judges who must be impeached. Exception: Congress may limit the president's removal powers.
- ◆ **Presidential privileges and immunities:** The President need not disclose presidential communications, unless the need outweighs the interference with the president's executive duties.
 - **Civil suits:** The President is immune from civil litigation
- ◆ **Pardon:** The president may pardon Federal crimes, even if the person has not been tried.

FEDERALISM

- ◆ **In General:** The Constitution is only a limit on what the states may do; the tenth amendment reserves to the states or the people all power not given to the federal government.
- ◆ **Supremacy of Federal Law:** all statutes, treaties, regulations or executive orders are supreme over conflicting state laws.
- ◆ **Foreign affairs:** states may not engage in foreign relations or wage war.
- ◆ **Interstate commerce:** A state law may not unreasonably burden interstate commerce.
 - **Health or Safety:** A state law may only burden interstate commerce if it serves a legitimate health or safety objective and there were no non-burdening means for achieving this objective.
 - **State buying or selling:** If a state is acting as a buyer or seller it may burden or discriminate against interstate commerce all it wants.
 - **Taxation:** Any state tax that discriminates against interstate commerce will violate the commerce clause.
- ◆ **Intergovernmental issues**
 - **Lawsuits:** The federal government may sue a state. A state may not sue the federal government.
 - **Taxes:** The federal government may tax a state's governmental activities. A state may not do the same to the federal government.

INDIVIDUAL RIGHTS

- ◆ **State Action:** Constitutional protections only apply to government action. (Except for the 13th Amendment).
 - **Exceptions:** When a private entity performs a governmental function or when the government and private entity are working as partners.
- ◆ **Procedural Due Process:** One cannot be deprived of life, liberty or property without due process of law.
 - **Federal Government:** Due process is found under the Fifth amendment.
 - **State Government:** Due process is through the Fourteenth Amendment, which the Supreme Court has interpreted to include the First, Fourth, Fifth, Sixth and Eighth Amendments (except the right to be indicted by a Grand Jury under the Fifth Amendment).
 - **What process is due:** Minimal due process requires notice and an opportunity to be heard, prior to deprivation of liberty or property.
 - **Factors weighed by courts include:** the interest being affected; the risk of an erroneous loss; the government's interest and the burden of additional procedures.
- ◆ **Substantive Due Process**
 - **Business, Economic, Social:** *Rational basis test* is used if government action limits business, economic or social freedoms.
 - **Rational Basis Test:** Government action is presumed constitutional; burden is on the plaintiff to show that the law is irrational, arbitrary or wholly unreasonable.
 - **Fundamental Person Rights:** *Strict scrutiny test* is used if government action impedes constitutional rights, right to procreate, right to marry and divorce, the right to abortion.
 - **Strict Scrutiny:** Government action is not presumed constitutional; once plaintiff demonstrates a fundamental right is being burdened, government must prove the law is constitutional. The government must show that there is a *compelling* or *substantial need* for the law. The law also must be *narrowly tailored* to meet this need.
- ◆ **Retroactive Legislation:** States may not create laws that: retroactively enforce new crimes or punishments or impair contract rights.
- ◆ **Right to Contract:** State governments may not enact legislation which modifies preexisting contract rights, unless an important and legitimate public need is shown and the law is narrowly tailored.

EQUAL PROTECTION

- ◆ **Fourteenth Amendment:** “No State shall deny to any person . . . equal protection of the laws.”
- ◆ **Ordinary economic and social criteria:** Rational basis test applies (merely a rational government objective).
- ◆ **Protected classes:** Strict scrutiny (compelling government objective) or intermediate scrutiny (important government objective) applies to purposeful discrimination (not disproportionate effect) of:
 - **Gender** – intermediate scrutiny;
 - **Illegitimacy** – intermediate scrutiny;
 - **Sexual Orientation** – intermediate scrutiny;
 - **Free Speech** – intermediate scrutiny;
 - **Race or ethnic origin** – strict scrutiny;
 - **Aliens** - strict scrutiny; and
 - **Persons exercising fundamental rights** – strict scrutiny.

In order to overcome the *intermediate scrutiny test*, the government must show that the law or policy being challenged furthers an important government interest in a way that is substantially related to that interest.
- ◆ **Privileges and Immunities**
 - **Fourteenth Amendment:** Protects very little. Does protect right to vote, enter public lands, be protected while in custody of U.S. Marshals, and inform U.S. of law violations.
 - **Article IV, section 2:** “Comity Clause” protects out-of-state citizens from unreasonable discrimination in other states. Includes right to use courts, hold property, engage in lawful occupations, enter into contract and obtain medical care.

FREEDOM OF SPEECH

- ◆ **Time, Place, Manner:** The Government may impose *time, place and manner* restrictions on speech if the restrictions:
 - Are content-neutral,
 - Serve important government interests,
 - Are narrowly tailored and not overbroad
 - Leave alternatives channels of communication.
- ◆ **Content:** The Government may not control the content of expression unless it satisfies *strict scrutiny* or falls into one of the following categories:
 - Likely to incite *immanent* lawlessness.
 - **Fighting words.**
 - **Obscenity:**
 - Depicting sexual content which is offensive based on *contemporary community standards*.

- Content describes sexual conduct in a *patently offensive* way.
- Content lacks literary, artistic, political or scientific value.
- Defamation.
- Fraudulent commercial speech.
- ◆ **Special circumstances:** Regulations must be viewpoint neutral and reasonably related to a legitimate government purpose.
 - Nonpublic forums
 - Electronic media
 - Public employees
 - Students in school
- ◆ **Freedom of association:** Regulations must be justified by a compelling state interest.
- ◆ **Freedom of the press:** Same first amendment right as everyone else.
- ◆ **Prior restraints on speech:** Regulations which prevent speech before it occurs are rarely enforceable.
 - The regulations must show some special societal harm will result.
 - The regulations must be narrowly drawn, reasonable and definite; injunctions must be sought immediately; there must be a prompt and final determination on the validity of the restraint.

FREEDOM OF RELIGION

- ◆ **Free Exercise Clause:** Persons may not be punished on the basis of their sincerely held religious beliefs, whether or not they are part of a formal religion.
 - Conduct may be regulated: unless the regulation is specifically designed to interfere with religion.
 - e.g., Use of peyote, polygamy, etc. may be regulated by states even if it interferes with certain religious beliefs.
- ◆ **Establishment Clause:** Government may not pass any law that prefers or aids one religion over another.
 - Regulation which contains no sect preference is valid if it: (1) has a secular purpose; (2) the primary effect neither advances nor inhibits religion; and (3) does not excessively entangle the government with religion.
 - Financial benefits to religious colleges or hospitals: will be upheld if the money is used only for nonreligious purposes.
 - Public Schools: school sponsored religious activities are invalid, but accommodations of religion are valid.