

4.1: HOW THE UNITED STATES AND NEW YORK STATE CONSTITUTIONS AFFECTS OUR LIVES

INTRODUCTION

This chapter will discuss two very important legal documents, the New York State Constitution and the United States Constitution. When most people mention the “Constitution” they are usually referring to the United States Constitution which was ratified in 1788. However, 11 years early, New York State had adopted its first of four Constitutions, with the last major modifications occurring back in 1938.

This chapter will discuss both Constitutions and how they impact our lives as citizens of both the United States of America and New York State.

THE HISTORY OF THE NEW YORK STATE CONSTITUTION :

As already mentioned above, New York’s first Constitution was adopted in 1777. However, since that time, the NYS’s Constitution has been rewritten three more times, in 1821, 1846, and 1894. NYS’s current Constitution is from 1938. It was not rewritten but modified by amendments to the 1894 Constitution.

THE NEW YORK STATE CONSTITUTION OF 1777:

New York’s first Constitution was drafted right after New York’s Fourth Provincial Congress declared New York independent of Great Britain in 1776. It was formally adopted by the Convention of Representatives of the State of New York meeting in the upstate town of Kingston, on April 20th, 1777.

The Constitution declared the possibility of reconciliation between British and its former American colonies even if uncertain and remote. The Constitution then declared that there was now the need for the creation of a new New York government for the preservation of internal peace, virtue, and good order.

This new Constitution created three governmental branches: an executive branch, a judicial branch, and a legislative branch. The Constitution called for the election of a governor, 24 senators, and 70 assemblymen from 14 declared counties who were to be elected by eligible male inhabitants. The right to vote was tied to the ownership of a certain amount of property. The Constitution also guaranteed the right to a jury trial.

THE NEW YORK STATE CONSTITUTION OF 1821:

At the 1821 Convention, there was a bitter debate over the property qualifications for voting. Many at the convention felt the need to retain property ownership was a qualification for the right to vote, and was necessary to avoid as Chancellor James Kent, the state’s leading legal scholar and the head of its highest Court, said “corruption, injustice, violence and tyranny”.

However, Governor Daniel Tompkins, the chairman of the Convention who had led the State militias during the War of 1812, argued that all the men who fought in the war should have a right to vote. A motion to retain property qualifications for voting was defeated by a vote of 19 to 100, and with it one of the most important political developments in New York’s history was established.

The New York State Constitution of 1821 had many flaws. It did not give women the right to vote. It effectively disenfranchised free African American men by requiring them to own at least \$250 of property to vote. Nevertheless, it set the stage for major social and political change. As the state’s economy moved from agricultural to industrial, and with influx of immigrants arriving from around the world, the right to vote without the need to own land helped establish eventual broad-based suffrage.

THE NEW YORK STATE CONSTITUTION OF 1846:

Several changes were established in the 1846 rewrite of the NYS Constitution. Most notably, were the abolishment of the Court of Chancery, the Court for the Correction of Errors, and the New York State Circuit Courts. Jurisdiction was moved to the New York Supreme Court, and appellate jurisdiction to the New York Court of Appeals. The Attorney General, Secretary of State, Comptroller, Treasurer, and State Engineer offices went from appointed cabinet offices to elected officials.

THE NEW YORK STATE CONSTITUTION OF 1894:

The rewrite of the 1894 Constitution included the reduction in the number of years in office for the governor and lieutenant governor from three to two. The number of state senators and assemblymen was increased. The year of cabinet officer elections was changed. The State Park Reserve was given perpetual protection. Convict labor was abolished. Voting machines were allowed to be used.

THE NEW YORK STATE CONSTITUTIONAL CONVENTION OF 1938:

While the Constitution was not rewritten at this convention, 57 amendments to the 1894 Constitution were presented to the voters. Some of the notable changes approved by vote were the setting out of the rights of public works workers, the removal of a debt ceiling for NYC so the city could finance a public rapid transport system, and permission for the State legislature to provide funds for transportation to parochial schools.

THE HISTORY OF THE U.S. CONSTITUTION :

Perhaps the most important legal document ever written, the U.S. Constitution is the heart and soul of the experiment known as the United States of America.

The preamble, which has no legal applicability, is nevertheless important. It sets out the goals and aspirations of what the Framers of the Constitution were hoping to accomplish during the summer of 1787. It reads: “We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

The U.S. Constitution was proposed, debated, and written between May 14 and September 17, 1787 at a convention held in the city of Philadelphia. Every state sent delegates to this convention, with except of the state of Rhode Island. It was ratified on June 21, 1788, when New Hampshire became the ninth and last state needed to ratify the new Constitution. So, what were the circumstances and events that brought 12 of 13 states to Philadelphia in 1787, resulting in this new Constitution and thereby creating this new form of government?

THE REVOLUTIONARY WAR:

While most of us have a basic understanding of the Revolutionary War, also known as the American Revolution, it cannot be understated how much influence that war had on the formation of our Constitution and new form of government that ensued. The war started in 1775, and effectively was over by 1781 after the Continental Army defeated the British at Yorktown, with French assistance. The fighting formally ended in 1783.

The war started due to growing tensions between the British and the 13 colonies that were only getting worse. The British were continuing to raise taxes on the colonists, while at the same time, denying them representation. Violence between the British and the colonist started in 1770 with the Boston Massacre, which resulted in five dead colonists killed by British soldiers. By 1773, we have a group of Bostonians dressed as Mohawk Indians dumping 342 chests of tea into the Boston Harbor. Shortly thereafter, the 13 American colonies created a Continental Congress. Their first meeting, in 1774, in Philadelphia was to air their grievances with the British crown. By their second meeting in 1775, they voted to create the Continental Army with George Washington as the Commander in Chief. By July 4, 1776, they adopted the Declaration of Independence, a document written by a five-man committee, including Ben Franklin and John Adams, but written primarily by Thomas Jefferson. The American Revolution was now in full swing.

THE ARTICLES OF CONFEDERATION:

Our first Constitution was actually the Articles of Confederation. The Continental Congress felt the need to create a central government due to the war. Six different drafts of the Articles of Confederation were presented to the Congress, as early as 1775. The Congress adopted the final version in 1777, but they did not go into effect until 1781.

The Articles of Confederation defined itself as “a firm league of friendship” of states “for their common defense, the security of their liberties, and their mutual and general welfare.” It had a unicameral congress, in other words, one body. Each state had one vote elected by each state’s legislature. Each state retained their “sovereignty, freedom, and independence.” The new Congress could not levy taxes and could not regulate commerce. The Congress lacked sole control over foreign relations. While it had the authority to maintain an army and navy, it lacked the ability to collect revenue to do so. Nine states created their own armies, and

several had their own navies. States created their own money. States were imposing tariffs randomly on goods, and the Congress had no power to stop any of this.

The Articles of Confederation was effectively an alliance, or treaty, between the 13 colonies and it was not working very well. By 1787, without the ability to raise revenue with taxes, it was clear that maintaining a national army and navy was impossible. There was no consistent national economic policy and the economy in general was in trouble. A convention was convened to meet in Philadelphia, on May 14th, 1787, to address these issues and amend the Articles of Confederation. Twelve of the thirteen states sent delegates to the convention. Rhode Island was the sole holdout. Long known for the fierce independence, they feared the convention would lead to a stronger more centralized government, something they were long opposed to, and they therefore refused to participate.

THE CONSTITUTION CONVENTION:

The meeting was to start on May 14th, but travel was difficult, and many arrived late. Almost all the delegates had taken part in the Revolution. Twenty-nine of the fifty-four in attendance had served in the Continental forces. Over half were trained as attorneys. About 80% of them served in the Congress. Almost all had political experience. Twenty-five of them owned slaves. Most were landowners with wealth. For example, George Washington, who was in attendance, was one of the wealthiest men in the country.

Several important Founders were not in attendance. Thomas Jefferson was serving as the minister to France. He was not in favor of this convention. John Adams was serving as the minister to Britain. He was in favor of this convention and expressed such in writings to the delegates. John Hancock and Samuel Adams were absent. Patrick Henry did not attend stating he “smelt a rat in Philadelphia, tending toward monarchy.”

However, there were important Founders in attendance. As mentioned above, George Washington was in attendance, as was Benjamin Franklin. Also in attendance was James Madison, who eventually will be known as the father of our Constitution. Washington’s attendance is crucial, since he is seen as a national hero and leader, giving credibility to the convention. But Madison was perhaps the most prepared delegate. He was determined not to amend the Articles of Confederation, but to create an entirely new government. He is one of the first to arrive, and he keeps copious notes during the entire convention. He is one of the delegates from Virginia, and he presents to the convention delegates what is known as the Virginia Plan. He does so first, and this is not by accident. It was planned.

WHAT IS THE VIRGINIA PLAN?

The Virginia plan proposed three separate branches of government; legislative, executive, and judicial. It proposed separation of powers between these three branches, with checks and balances built in. It proposed a bicameral legislature, which meant a legislative branch of government consisting of two chambers. Representation would be based on the number of free inhabitants in each state. Thus, it favored larger states. Overall, it reflected a strong national form of government.

WHAT IS THE PINCKNEY PLAN?

Proposed by Charles Pinckney of South Carolina, it advanced a bicameral legislature with a House of Delegates and a Senate. The House of Delegates would have one member for each 1,000 inhabitants of a state. The House would then elect Senators who would serve four terms in rotation with Senators representing one of four regions of the country. The House would then meet to elect a President and appoint the cabinet members. The Congress would also serve as a court of appeal to resolve disputes between the states. The plan also called for a federal court system. While resembling the Virginia plan in many aspects, Pinckney did not have a coalition of support behind him that Madison had, and therefore his plan was not debated by the delegates.

WHAT IS HAMILTON’S PLAN?

Proposed by Alexander Hamilton, he advocated for doing away with state sovereignty and consolidation into one nation. It called for a bicameral legislature with one chamber elected by the people for three-year terms, and the other chamber members elected by electors chosen by the people, with life time terms. It also called for an executive again elected by electors who would also have a life time term. While well thought out, it was felt by the delegates to be too close a resemblance of the British system, and therefore a non-starter.

WHAT IS THE NEW JERSEY PLAN?

After the Virginia Plan was proposed, William Paterson from New Jersey proposed a rebuttal plan that favored smaller states like New Jersey. Under the New Jersey Plan, the legislature would remain unicameral with one vote per state, as was already the case under the Articles of Confederation. This plan also advocated for the belief that states were independent entities that remained so, even upon agreement to join the United States of America.

WHICH PLAN PREVAILED?

Ultimately, our current Constitution resembles more of the Virginia Plan proposed by James Madison than any of the others. It was modified with ideas from the New Jersey Plan to obtain compromise between the small and large states. However, much of the debate and compromise needed to create the Constitution was over the presidency, the judiciary, and slavery.

THE PRESIDENCY DEBATE AND THE ELECTORAL COLLEGE:

One of the most contentious debates was over the election of the president. There was widespread concern over a direct election of the president by the people. Many felt that information was passed along too slowly across the country, leading to the people only voting for those from their state or region. The Virginia Plan proposed the election of the president by the legislature. Some wanted the president chosen by the state governors. Others proposed that state legislatures elect the president. Others proposed that special members of Congress chosen by lot elect the president. The compromise was the Electoral College.

The compromise gave each state a number of electors equal to the number of members of the House of Representatives for each state, plus its two senators. These electors would then vote, and thereby elect the president. The election of the president would require a majority of the Electoral College vote, and if that did not happen, the house would then vote based on state block voting, not as individual members.

There is evidence to believe that the founders assumed the electors would be independent agents voting for the presidential candidate based on their merits, not necessarily on the popular vote of its states voters. Within the first decade under the Constitution, the electors were regarded more as agents of the will of the people and were expected, although not required, to vote for the presidential candidate that garnered the popular vote in their respective states. State legislatures were allowed to decide on how their electors were selected.

THE JUDICIARY DEBATE:

The debate over the judiciary centered on whether judges should be chosen by the legislature or by the president. Madison felt strongly that the link between the current judiciary and the state executives fostered corruption and patronage. He wanted the judiciary to be an independent branch of the government, and therefore felt it would be best if the legislature chose judges. However, many felt this should be the function of the president. A compromise was reached where the president would nominate judges, with the senate confirming them.

THE SLAVERY DEBATE AND COMPROMISES:

Slavery was one, if not the most controversial issues at the convention. Slavery was widespread. Twenty-five of the fifty-five delegates owned slaves, including all the delegates from Virginia. It was such an intense debate that several of the southern states made it clear they would not join this new Union if slavery was abolished.

Delegates from states opposed to slavery that wanted it outlawed felt the need and pressure to compromise. A close look at the Constitution shows the intention that the Framers neither authorized, nor prohibited slavery. Slavery is dealt with three times in the original Constitution.

It is first implied in Article 1, Section 2. It reads: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a term of years, and excluding Indians not taxed, three-fifths of all other Persons."

This is known as the Three-Fifths Compromise. It is a compromise between the northern and southern states where the enumerated population of slaves would not count one-for-one in the distribution of taxes and apportionment of the House of Representatives. This was a compromise proposed and supported by the northern states to suppress the power of the southern states in the House of Representatives.

Slavery is again implied in Article 1, Section 9 which reads: "The Migration and Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and

eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.”

This section deals with the issues of importation and taxation of the slave trade. It prohibits Congress from acting on the issue of the slave trade until 1808 and limits the tax imposed on the importation of slaves to no more than ten dollars per slave.

The third reference to slavery is in Article IV, Section 2. It reads: “No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom Service or Labour may be due.”

This clause essentially says that once a slave, always a slave, unless released by his master. It required that slaves who escape and move to a free state must be returned to their owners.

PROVIDE FOR THE COMMON DEFENSE:

Mentioned in the preamble are the words “provide for the common defense.” Why? The winning of the American Revolution by common everyday citizens against the greatest military force on the planet, the British, was viewed by some as unlikely to happen again if the United States of America was ever attacked. The French Navy was no longer protecting the Americans. At that time, the British, French, and Spanish were all strong militarily and all three had colonial ambitions. Today you can see the remnants of these ambitions in our neighbors, Canada and Mexico.

The Founders were aware of the need to establish a strong military. They realized that only a professional organized military could deter, and if need be, respond to a foreign threat. The Articles of Confederation did not make this possible. The Constitution put the responsibility of the national defense solely on the new federal government. The states would no longer have separate armies and navies. The Founders also made the common defense a shared responsibility between the Congress and the President. The President would be the commander-in-chief, but only the Congress can declare war. Congress also controls the funding.

It cannot be understated how important the common defense was to the Founders. As mentioned earlier, almost all were involved in the American Revolution in some capacity. Over half of them served in the Continental forces. For the Founders, a primary and central job of the federal government was for the common defense. Thomas Jefferson once said that “the power of making war often prevents it.”

THE UNITED STATES CONSTITUTION EXPLAINED:

The following are the highlights of the Constitution.

The Preamble:

- Has no force in law.
- Explains why the Constitution exists.
- It reflects the desire of the Founders to allow the people the power to “form a more perfect union”.

Article 1:

Establishes the first of the three branches of government, the Legislature.

Article 1, Section 1:

- The legislature is called the Congress.
- The Congress is a two-part body.
- Article 1, Section 2:
 - One part is the lower house, and it is called House of Representatives.
 - To be a member of the House you must be at least 25-years-old.
 - The members must also be citizens for at least seven years.
 - The members must also be an inhabitant of the state from which they are elected.
 - Members of the House are elected to two-year terms.
 - The members of the House of Representatives are divided among the states proportionally based on each state's population. This means the larger states have more House members.
 - The leader of the House is called the Speaker of the House, chosen by the members.

Article 1, Section 3:

- The upper house is called the Senate.
- To be a member of the Senate, you must be at least 30-years-old.
- The members of the Senate must also be citizens for nine years.
- The Senators must also be inhabitants of their states.
- The Senators are appointed by their state legislatures.
- The Senators serve six-year terms.
- Each state shall have two senators regardless of their population size.
- The Vice-President is the President of the Senate.
- The Vice-President only votes if there is a tie.

Article 1, Section 4:

- Each state establishes its method of electing members.
- It mandates that Congress shall meet at least once per year.

Article 1, Section 5:

- Sets the minimum number of members that must be present in order to meet.
- Sets fines for those who do not attend.
- It allows for members to be expelled.
- It requires both houses to record proceedings and votes.
- It requires both houses to agree to an adjournment.

Article 1, Section 6:

- Members of Congress will be paid.
- Members of Congress cannot be detained while traveling to and from Congress.
- Members of Congress cannot hold any other office of government while in the Congress.

Article 1, Section 7:

- Details how a bill becomes law.
- Requires any bill that raises money to start in the House.
- Bills passed by both houses are sent to the President.
- The President can either sign the bill or veto it.
- If the President vetoes a bill, it is sent back to Congress, and if passed by both houses by a two-thirds majority, the bill becomes law over the President's veto.
- If the President does not sign the bill, but also does not veto it, it becomes law after 10 days.
- If the bill is sent to the President, he does not sign it, and the Congress adjourns before the 10 days, the bill does not become law.

Article 1, Section 8:

- Congress has the power to establish and maintain an army and navy.
- Congress has the power to establish post offices.
- Congress has the power to create courts.
- Congress has the power to regulate commerce between the states.
- Congress has the power to declare war.
- Congress has the power to raise money.
- Congress has the power to pass any law necessary for carrying out these powers. This is known as the Elastic Clause.

Article 1, Section 9:

- Congress cannot suspend habeas corpus.
- Congress cannot issue bills of attainder.
- Ex post facto laws are prohibited.
- No law can give preference to one state over another.
- No money can be taken from the treasury, except by law.
- No titles of nobility are allowed.

Article 1, Section 10:

- States cannot make their own money.
- States cannot declare war.
- States cannot tax goods from other states.
- States cannot have navies.
- States cannot pass ex post facto laws
- States cannot grant titles of nobility
- States cannot impair the obligation of contracts

Article 2:

Establishes the second of three branches of government, the Executive.

Article 2, Section 1:

- Establishes the offices of the President and the Vice-President.
- Their terms are four-years.
- The President is elected by the Electoral College.
- Each state gets one vote for each member of Congress in the Electoral College.
- Whoever gets the most Electoral College votes is President.
- Whoever comes in second is Vice-President.
- To be President, you must be at least 35-years-old.
- Presidents must be natural-born-citizens of the United States.
- The President is paid a salary that cannot be changed while in office.

Article 2, Section 2:

- The President is Commander-in-Chief of the armed forces and the militia of all states.
- The President has a Cabinet to assist him.
- The President can pardon criminals.
- The President makes treaties with other countries that must be approved by the Senate.
- The President chooses judges that must be approved by the Senate.

Article 2, Section 3:

- The President must give a State of the Union address each year.
- The President can make suggestions to Congress.
- The President, as head of state, receives ambassadors and heads of other countries.
- The President is required to make sure laws of the United States are carried out.

Article 2, Section 4:

- The President, Vice-President, and all civil officers of the United States can be removed from office by impeachment.
- Impeachment is allowed on of the above are convicted of treason, bribery, or other high crimes and misdemeanors.

Article 3:

Establishes the third of three branches of government, the Judiciary.

Article 3, Section 1:

- Establishes the Supreme Court as the highest court in the United States.
- Gives Congress the power to establish inferior, or lower, courts.
- Terms of judges are as long as they are on good behavior, which means for life.
- Judges shall be paid and their pay cannot be lowered.

Article 3, Section 2:

- Established the Supreme Court's original jurisdiction for disputes in which a state is a party, or in cases involving representatives of foreign nations.
- In all other matters, the Supreme Court has only appellate jurisdiction.
- Requires the right to a jury trial for all crimes, except for impeachment.

Article 3, Section 3:

- Defines treason as levying war against the United States, or giving adherence to its enemies, or providing them aid and comfort.
- To be convicted, there must be two witnesses to the same act or confession in open court.

Article 4:

Establishes state obligations.

Article 4, Section 1:

- Provides that Full Faith and Credit to the laws of other states.

Article 4, Section 2:

- It requires that citizens of one state be treated the equally and fairly as other citizens from other states.
- Requires extradition for those fleeing from states where they committed a crime.
- Requires that slaves who escape be returned to their owners.

Article 4, Section 3:

- Concerns the admittance of new states into the Union.
- Concerns the control of federal lands.

Article 4, Section 4:

- Guarantees each state a Republican (representative democracy) form of government.
- Guarantees the federal government will protect the states from all invasions and insurrection.

Article 5:

- Establishes how to amend the Constitution.
- One way is for a bill to pass both houses of the legislature, by a two-thirds majority in each. Once the bill has passed both houses, it goes on to the states where it must be approved or ratified by three-fourths of the states. This is the method taken for all current amendments.
- Another way is for a Constitutional Convention to be called by two-thirds of the legislatures of the States, and for that Convention to propose one or more amendments. These amendments are then sent to the states to be approved by three-fourths of the legislatures or conventions. This method has never been used.
- Provides that no amendment could be made prior to 1808 that would affect the 1st and 4th clauses in Section 9 of Article 1.
- Provides that equal representation of the states in the Senate could not be amended without the state's consent.

Article 6:

- Establishes certain obligations of the United States.
- All debts incurred under the Articles of Confederation will be honored by the new government.
- All laws and treaties of the United States shall be the supreme law of the land.
- It requires all officers of the United States and the states to swear an oath of allegiance to the United States and the upholding of the Constitution when taking office.

Article 7:

- Required that at least nine of the thirteen states would have to ratify the Constitution before it would be applied to all the states.
- Delaware ratified the Constitution on December 7, 1787.
- Pennsylvania ratified the Constitution on December 12, 1787.
- New Jersey ratified the Constitution on December 18, 1787.
- Georgia ratified the Constitution on January 2, 1788.
- Connecticut ratified the Constitution on January 9, 1788.
- Massachusetts ratified the Constitution on February 6, 1788.
- Maryland ratified the Constitution on April 28, 1788.
- South Carolina ratified the Constitution on May 23, 1788.
- New Hampshire ratified the Constitution on June 21, 1788.
- Virginia ratified the Constitution on June 25, 1788.

- New York ratified the Constitution on July 26, 1788.
- North Carolina ratified the Constitution on November 21, 1789.

Rhode Island ratified the Constitution on May 29, 1790.

WHAT'S MISSING?

When most people think or talk about the Constitution, they most often go right to the Bill of Rights. However, the Bills of Rights were not part of the original Constitution. The original Constitution was about forming a new government. It said little about individual rights under this new government.

During the ratification process, there was much debate between the federalist, those who favored the ratification of the Constitution, and the anti-federalist, those who were opposed to the Constitution, feeling that so much centralized power would eventually lead to tyranny. Leading federalists included Alexander Hamilton, John Jay, and James Madison. Together, the three wrote 85 essays making the philosophical case for ratifying the Constitution. These essays are known as the Federalist Papers.

However, anti-federalists like George Mason, Patrick Henry, and Samuel Adams were not in favor of ratification because of the lack individual liberty protections. As the ratification process moved forward, some states refused to ratify the Constitution without adding a declaration of rights.

Amending the Constitution after it had already been ratified by several states was not seen as a practical solution. Instead, the leading federalists like James Madison promised to propose amendments to the Constitution that would provide rights of liberty to the citizenry once it was ratified. Soon after the Constitution was ratified, James Madison made good on this promise. and proposed twelve Amendments to the Constitution known as the Bill of Rights. Ten were passed and ratified by the states on December 15, 1791.

There were two amendments of the twelve that did not get ratified originally. One did in 1992, the Twenty-Seventh Amendment to the Constitution. The other has never been ratified. It would have required each congressional district not to exceed a population of 50,000 citizens.

AMENDMENTS TO THE UNITED STATES CONSTITUTION:

Amendment 1 establishes: (Ratified 1791)

Freedom of religion.

Freedom of the press.

Freedom of speech.

Freedom to assemble.

Freedom to petition the government.

Amendment 2 establishes: (Ratified 1791)

The right to own a firearm.

Amendment 3 establishes: (Ratified 1791)

That the government cannot force a homeowner to provide room and board to the military.

Amendment 4 establishes: (Ratified 1791)

Protection from the government from unreasonable search and seizure of their person or property without a warrant based on probable cause.

Amendment 5 establishes: (Ratified 1791)

Due process of law.

The requirement of an indictment for charged crimes.

That one cannot be charged twice for the same crime.

That one cannot be forced to testify against themselves.

That your property cannot be taken by the government without just compensation.

[Amendment 6 establishes: \(Ratified 1791\)](#)

The right to a fair and impartial jury.

The right to a speedy trial.

The right to an attorney.

The right to compel witnesses to testify on your behalf.

The right to confront witnesses testifying against you.

[Amendment 7 establishes: \(Ratified 1791\)](#)

The right to a civil jury trial in federal court.

[Amendment 8 establishes: \(Ratified 1791\)](#)

That punishment must be fair and not cruel.

That fines and bail will be fair.

[Amendment 9: \(Ratified 1791\)](#)

Makes the statement that rights may exist that are not stated, and just because they are not listed, does not mean they cannot be violated by the government.

[Amendment 10: \(Ratified 1791\)](#)

Provides that power not granted to the federal government belongs to the states.

[Amendment 11: \(Ratified 1795\)](#)

Changed a portion of Article 3, Section 2.

Federal Courts are prohibited from hearing certain lawsuits between the states and between citizens of different states.

State courts do not have to hear certain suits against the state, if those suits are based on federal law.

[Amendment 12: \(Ratified 1804\)](#)

Redefines how the Vice-President is chosen. It would now be cooperative, not who comes in second place.

[Amendment 13: \(Ratified 1865\)](#)

Abolishes slavery throughout entire United States.

[Amendment 14: \(Ratified 1868\)](#)

Granted citizenship to all persons born or naturalized in the United States which included freed slaves.

Prohibits the states from denying any person life, liberty, and property without due process of law.

Requires the states to provide equal protection under the law.

Removed the three-fifths counting of slaves in the census.

Stated that the United States would not pay the debts of the rebellious states.

It set out loyalty requirements of legislators that participated in the Confederacy.

[Amendment 15: \(Ratified 1870\)](#)

Granted freed male slaves the right to vote.

[Amendment 16: \(Ratified 1913\)](#)

Allowed the federal government the right to base and collect taxes on incomes.

[Amendment 17: \(Ratified 1913\)](#)

Modified Article I, Section 3, of the Constitution by allowing voters to cast direct votes for U.S. Senators.

[Amendment 18: \(Ratified 1919\)](#)

Prohibited the manufacturing, transportation, and sale of alcohol within the United States.

[Amendment 19: \(Ratified 1920\)](#)

Granted all women the right to vote.

[Amendment 20: \(Ratified 1933\)](#)

Moved the beginning and ending of the terms of the president and vice-president from March 4 to January 20, and of members of Congress from March 4 to January 3.

States that the vice-president shall be sworn in as president if the president-elect dies before being sworn in.

Allows the Congress to pass legislation on a more detailed succession plan if the vice-president cannot assume the office of the president-elect.

[Amendment 21: \(Ratified 1933\)](#)

Repeals the 18th Amendment, and therefore Prohibition.

[Amendment 22: \(Ratified 1951\)](#)

Limits the presidency to two terms of four years.

[Amendment 23: \(Ratified 1961\)](#)

Extends voting rights in presidential elections to the District of Columbia residents by granting them three electors.

[Amendment 24: \(Ratified 1964\)](#)

Prohibits any poll taxes for voting in federal elections.

[Amendment 25: \(Ratified 1967\)](#)

Clarifies that the vice-president becomes president in the event of death, resignation, removal from office, or impairment of the president.

Establishes rules for removal of a president who can no longer perform his or her duties.

[Amendment 26: \(Ratified 1971\)](#)

Grants the right to vote to eighteen-year-olds.

[Amendment 27: \(Ratified 1992\)](#)

Changes in congressional pay must take place after the current term of those representatives.

[WHAT IS THE ROLE OF THE U.S. SUPREME COURT?](#)

The U.S. Supreme Court interprets the laws that Congress makes and evaluates, whether the laws of Congress, or the laws of any of the states, violate the Constitution, Bill of Rights, or other amendments.

The United States Supreme Court website states: “The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.”

The same website also states: “The complex role of the Supreme Court in this system derives from its authority to invalidate legislation or executive actions which, in the Court’s considered judgment, conflict with the Constitution. This power of “judicial review” has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a “living Constitution” whose broad provisions are continually applied to complicated new situations.”

MARBURY V. MADISON, 5 U.S. 137 (1803) AND JUDICIAL REVIEW:

John Adams and Thomas Jefferson ran against each other for president after George Washington's two terms. John Adams was President Washington's Vice President. At the time, under the Constitution, the candidate who had the second most votes was the Vice President. John Adams and Thomas Jefferson were initially great friends, but over the years, that friendship waned, and by the time they ran for president against each other, their friendship was over. Their bids for the presidency against each other were nasty and ugly.

After losing his bid for a second term to his then Vice President Jefferson, President John Adams made several lame duck judicial appointments. However, his administration failed to deliver the required documents commissioning William Marbury as Justice of the Peace in the District of Columbia. After President Thomas Jefferson was sworn in, he told James Madison, his Secretary of State, to not deliver the documents to Marbury. Marbury then sued James Madison asking the Supreme Court to issue a writ requiring him to deliver the documents necessary to officially make Marbury Justice of the Peace.

Chief Justice John Marshall issued the opinion of the Court. While the issue before the Court was important, Justice Marshall recognized that the future role of the Supreme Court itself was in question. Was it an equal branch of government? It was clear that the appointment itself was legal, and the Commission should be delivered to Marbury by President Jefferson. But what if the Court ordered Jefferson to deliver the Commission and he refused to do so? This was a real possibility considering the cantankerous relationship between Adams and Jefferson, not to mention the fact that Jefferson was head of the Democratic Party and Justice Marshall and Marbury were federalists. The Court has no enforcement powers. The executive branch, which is the President, enforces Supreme Court orders. Then what?

Justice Marshall also was concerned about how this case was before the Court in the first place. The Supreme Court is an Appellate Court. It is supposed to decide which cases it hears on appeal. However, this case was before it based on the Judiciary Act of 1789. It was brought directly to the Supreme Court without their say.

The Court ruled that Marbury was entitled to his commission, but that according to the Constitution, the Court did not have the authority to require Madison to deliver the commission to Marbury in this case. They found that the Judiciary Act of 1789 conflicted with the Constitution because it gave the Supreme Court more authority than it was given under the Constitution, and therefore, the statute was unconstitutional. The court decision established judicial review.

As a side note, twelve years after the vicious election of 1800, Adams and Jefferson began writing letters to each other. They eventually became friends again. They remained friends for the rest of their lives. As destiny would have it, they passed away on the same day, July 4, 1826, which was the 50th anniversary of the Declaration of Independence.

HOW MANY MEMBERS ARE ON THE SUPREME COURT?

There are nine. However, that has not always been the number of Supreme Court judges. The Constitution gives Congress the power to decide on the number. It has been as few as six and as many as ten. It has had nine members since 1869.

WHAT IS THE PROCESS FOR NOMINATING AND CONFIRMING A NEW JUSTICE?

The President of the United States nominates a member to the Court. The Senate of the United States must confirm the nominee.

IS THE NOMINATING AND CONFIRMATION PROCESS POLITICAL?

The answer clearly is yes. The appointment of a Supreme Court Justice is for life. They typically are chosen based on their legal ideology. Are they strict constructionists that base decisions on the exact words in the Constitution? Or, do they believe the Constitution is a living document that can be interpreted differently based on current circumstances? Or, are they somewhere in-between? Presidents often nominate those individuals that they believe will interpret the Constitution based on their personal politics, and the Senators who must confirm, do the same.

WHAT ARE THE REQUIRED QUALIFICATIONS FOR A SUPREME COURT JUDGE?

The Constitution does not mention or require any particular qualifications. To date, all have practiced law. Forty have never been judges before becoming a United States Supreme Court Judge.

WHAT IS A WRIT OF CERTIORARI?

The losing party in a case often wishes to appeal. If everybody could appeal to the United States Supreme Court, the Supreme Court would be overloaded with tens of thousands of cases each term. The Supreme Court grants a person permission to appeal by granting them a writ of certiorari. This way the Supreme Court can pick cases to hear involving interesting and significant issues of law.

WHAT IS THE RULE OF FOUR?

After parties appeal their cases to the United States Supreme Court, four of the nine Supreme Court justices must agree to grant the writ of certiorari.

HOW DOES A CASE ARISING IN A NEW YORK TRIAL COURT MAKE ITS WAY UP THE APPELLATE PROCESS ALL THE WAY TO THE UNITED STATES SUPREME COURT?

Only a small percentage of cases ever reach the U.S. Supreme Court each year, even if they are appealed. The process to get a NYS trial court case to U.S. Supreme Court would be as follows:

First there would be a trial court verdict. The losing party (other than the government in a criminal case) would have a right to have their appeal heard by the Appellate Division of the N.Y. Supreme Court. The losing party could then appeal again to the N.Y. Court of Appeals. That appeal is discretionary. If the N.Y. Court of Appeals grants such an appeal, the losing party could then appeal to the U.S. Supreme Court on the basis that there is a U.S. Constitutional question. The U.S. Supreme Court decides on whether to grant a writ of certiorari.

WHAT IS STARE DECISIS AND CASE LAW PRECEDENT?

Stare decisis is a Latin term meaning “to stand by things decided”. It is a legal principle in which courts generally follow the application of the law as decided in similar prior cases. This is referred to as following case law precedent. Stare decisis makes the law predictable.

The general requirement is that a lower court must follow the precedent of a higher court within its jurisdiction. Decisions of lower courts are not binding on higher courts. Decisions of higher courts are not binding on courts not within their jurisdiction, although it may be what they call persuasive. Lawyers will try to persuade judges to follow their line of case precedents.

Sometimes there is no case precedent for a particular case. This is often referred to as a “case of first impression.” Judges then must do their best to interpret how the law should be interpreted or applied.

WHAT IS MEANT BY THE TERM “LANDMARK CASE ” ?

The term “Landmark Case” usually refers to highly significant decision rendered by the Court that then impact our society.

HOW TO BRIEF A CASE :

Court decisions can be very long and complicated. Students, paralegals, law enforcement, lawyers, and judges read cases to understand the law. A case brief is a summary of the important points of a case. There are many ways to brief a case. The following is one of the more common:

Citation: How the case is legally cited so others can find it.

Facts: A brief summary of what happened.

Procedural History: A summary of the lower court decisions before it reached this court.

Issue: This is the question the appellate court is being asked to answer.

Holding: This is the decision of the appellate court to the issue of question being asked.

Rationale/Reasoning: How and why the court came to its decision.

WHAT IS A CITATION?

A citation is the way to find cases in law books. All appellate cases are published in specific law books call reporters. These cases are now also found online through various legal online research services. Trial court cases are not published. So, how does one interpret a citation? What does *Texas v. Johnson*, 491 U.S. 397 (1989) mean?

Texas v. Johnson = The name of the parties of the case.

491 = Volume number of the reporter.

U.S. = The initials represent the name of the reporter

397 = Page number within the volume of the reporter.

(1989) = Year in which the case was decided.

HOW DO I SUMMARIZE THE FACTS?

Answering the following questions may help you summarize the facts.

- What happened in this case?
- Who are the people/organizations/companies involved?
- What are the motives the people involved on why they acted as they did?
- Which facts are most important?

WHAT IS THE PROCEDURAL HISTORY OF A CASE?

- Identify the lower court decisions mentioned in case.
- Include both the trial and appeals court decisions.

WHAT IS THE ISSUE OR QUESTION BEFORE THE COURT?

Answering the following four questions may be helpful in determining the issue.

- Who are the actors doing something?
- Who are the recipients of the action?
- What was the action that caused the controversy?
- What is the specific part of the Constitution/statute that is involved?

Once you determine what the issue or issue are, present it as a question, hopefully with an answer that elicits a yes or no answer.

WHAT IS THE COURT 'S HOLDING OR DECISION?

In a brief sentence or two, answer the question(s) you wrote for the issue. Courts often provide you with hints using words like “held”, “we hold”, “we find”, or “the holding of the court is.”

HOW DO I DETERMINE WHAT THE RATIONAL/REASONING IS?

Focus in on why the court made its decision to the question and who it affects.

WHAT IS A MAJORITY OPINION?

The majority opinion is the only opinion of the court that counts and has any legal bearing. If you are briefing a case, this is the opinion of the case you are concerned with. For a United States Supreme Court decision, this generally means at least five of the nine justices support the decision.

WHAT IS A CONCURRING OPINION?

A concurring opinion is when a justice agrees with the result of the majority opinion, but for a different reason. It has no legal bearing. Only the majority opinion does.

WHAT IS A DISSENTING OPINION?

A dissenting opinion is when judges disagree with the majority opinion, and write their own separate opinion attacking the legal reasoning of the main opinion and giving their own legal justification why the rule should be otherwise. It also has no legal bearing.

SAMPLE CASES AND CASE BRIEFS:

The following are two landmark First Amendment cases. They are edited for easier reading, which is called a case syllabus. The original texts of these cases are much longer and more difficult to read. Following each the case is a sample case brief.

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