

# CONSTITUTIONAL LAW: PRINCIPLES AND POLICY, CASES AND MATERIALS

Seventh Edition  
2009 Supplement

# LEXISNEXIS LAW SCHOOL ADVISORY BOARD

---

**Lenni B. Benson**

*Professor of Law &  
Associate Dean for Professional Development*  
New York Law School

**Raj Bhala**

*Rice Distinguished Professor*  
University of Kansas, School of Law

**Charles P. Craver**

*Freda H. Alverson Professor of Law*  
The George Washington University Law School

**Richard D. Freer**

*Robert Howell Hall Professor of Law*  
Emory University School of Law

**Craig Joyce**

*Andrews Kurth Professor of Law &  
Co-Director, Institute for Intellectual Property and Information Law*  
University of Houston Law Center

**Ellen S. Podgor**

*Professor of Law &  
Associate Dean of Faculty Development and Electronic Education*  
Stetson University College of Law

**Paul F. Rothstein**

*Professor of Law*  
Georgetown University Law Center

**Robin Wellford Slocum**

*Professor of Law & Director,  
Legal Research and Writing Program*  
Chapman University School of Law

**David I. C. Thomson**

*LP Professor & Director, Lawyering Process Program*  
University of Denver, Sturm College of Law

# CONSTITUTIONAL LAW: PRINCIPLES AND POLICY, CASES AND MATERIALS

---

*Seventh Edition*  
*2009 Supplement*

**Jerome A. Barron**

*Harold H. Greene Professor of Law*  
*The George Washington University Law School*

**C. Thomas Dienes**

*Lyle T. Alverson Professor of Law*  
*The George Washington University Law School*

**Wayne McCormack**

*Professor of Law*  
*University of Utah*

**Martin H. Redish**

*Louis and Harriet Ancel Professor of Law and Public Policy*  
*Northwestern University*

Library of Congress Card Number:

ISBN: 978-1-4224-7424-2

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks and Michie is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2009 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

#### NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at [www.lexisnexis.com/lawschool](http://www.lexisnexis.com/lawschool).

Editorial Offices  
121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800  
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200  
[www.lexisnexis.com](http://www.lexisnexis.com)

MATTHEW  BENDER

# Table of Contents

<b>CHAPTER 2:</b>	<b>NATIONAL POWERS &amp; FEDERALISM</b>	<b>1</b>
§ 2.01	THE NATURE OF FEDERAL POWER	1
	<i>Watters v. Wachovia Bank, N.A.</i>	1
§ 2.02	THE COMMERCE POWER	2
[C]	State Sovereignty and Federalism	2
[1]	Regulating State Activities: The Tenth Amendment	2
	<i>Haywood v. Drown</i>	2
§ 2.04	FEDERAL LEGISLATION IN AID OF CIVIL RIGHTS AND LIBERTIES	3
	<i>Northwest Austin Municipal Utility District Number One v. Holder</i>	3
§ 2.05	THE ELEVENTH AMENDMENT	3
	<i>United States v. Georgia</i>	3
<b>CHAPTER 3:</b>	<b>STATE POWER IN AMERICAN FEDERALISM</b>	<b>7</b>
§ 3.02	THE MODERN FOCUS	7
[A]	Discrimination: Purpose, Means, Effects	7
	<i>United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority</i>	7
	<i>Dept. of Revenue v. Davis</i>	19
<b>CHAPTER 4:</b>	<b>EXECUTIVE AND CONGRESSIONAL RELATIONS: SEPARATION OF POWERS</b>	<b>21</b>
§ 4.03	THE FOREIGN ARENA	21
[B]	The War Power	21
[3]	The War Power in an Age of Terrorism	21
	<i>Padilla v. Hanft</i>	21
	<i>Medellin v. Texas</i>	22
	<i>Hamdan v. Rumsfeld</i>	23
	<i>Boumediene v. Bush</i>	46
	<i>Munaf v. Geren</i>	79
<b>CHAPTER 5:</b>	<b>LIMITATIONS ON GOVERNMENTAL POWER</b>	<b>85</b>
§ 5.04	PROCEDURAL DUE PROCESS	85
	<i>Jones v. Flowers</i>	85
	<i>Tennessee Secondary School Athletic Association v. Brentwood Academy</i>	87
	<i>Caperton v. A.T. Massey Coal Co., Inc.</i>	87

---

## Table of Contents

§ 5.05	SECOND AMENDMENT . . . . .	88
	<i>District of Columbia v. Heller</i> . . . . .	88
<b>CHAPTER 6: FORMS OF SUBSTANTIVE DUE PROCESS . . . . .</b>		<b>115</b>
§ 6.01	ECONOMIC SUBSTANTIVE DUE PROCESS . . . . .	115
	[D] An Evolving View of Economic Liberties . . . . .	115
	[2] Punitive Damages . . . . .	115
	<i>Phillip Morris USA v. Williams</i> . . . . .	115
§ 6.02	FUNDAMENTAL RIGHTS . . . . .	116
	[A] Contraception and Abortion . . . . .	116
	<i>Ayotte v. Planned Parenthood of New England</i> . . . . .	116
	<i>Gonzales v. Carhart</i> . . . . .	118
	[E] Health and Life . . . . .	133
	[2] The Right to Refuse Treatment . . . . .	133
	<i>Gonzalez v. Oregon</i> . . . . .	133
<b>CHAPTER 7: THE MEANING OF EQUAL PROTECTION . . . . .</b>		<b>137</b>
§ 7.02	SUSPECT CLASSIFICATIONS — RACE . . . . .	137
	[D] Benign Quotas, Preferential Treatment, and Affirmative Action . . . . .	137
	[3] Education Revisited . . . . .	137
	<i>Parents Involved in Community Schools v. Seattle School             District No. 1</i> . . . . .	137
§ 7.04	FUNDAMENTAL RIGHTS AND INTERESTS . . . . .	170
	[C] Equal Access to the Franchise . . . . .	170
	[1] Denial of the Franchise . . . . .	170
	<i>Crawford v. Marion Cty. Election Bd.</i> . . . . .	170
	[2] Dilution of the Franchise . . . . .	170
	<i>League of United Latin American Citizens v. Perry</i> . . . . .	170
<b>CHAPTER 8: FREEDOM OF EXPRESSION . . . . .</b>		<b>173</b>
§ 8.01	FREE SPEECH DOCTRINE . . . . .	173
	[F] Speech in Restricted Environments . . . . .	173
	[1] Student Speech . . . . .	173
	<i>Morse v. Frederick</i> . . . . .	173
	<i>Garcetti v. Ceballos</i> . . . . .	188
	<i>Tennessee Secondary School Athletic Association             v. Brentwood Academy</i> . . . . .	199
	<i>Beard v. Banks</i> . . . . .	200
	[2] Publicly Funded Speech . . . . .	201
	<i>Rumsfeld v. Forum for Academic and Institutional Rights</i> . . . . .	201

---

## Table of Contents

§ 8.02	CALIBRATING FIRST AMENDMENT PROTECTION . . . . .	211
[B]	Obscene and Indecent Speech . . . . .	211
[6]	Child Pornography: Unprotected Expression? . . . . .	211
	<i>United States v. Williams</i> . . . . .	211
§ 8.03	FREEDOM OF THE PRESS: PROBLEMS OF PUBLICATION, NEWSGATHERING, AND ACCESS . . . . .	211
[C]	Access to the Media . . . . .	211
[1]	A Right of Access to the Electronic Media? . . . . .	211
	<i>F.C.C. v. Fox Television Stations, Inc.</i> . . . . .	211
§ 8.04	FREEDOM OF ASSOCIATION . . . . .	211
[B]	Association for Election Purposes . . . . .	211
[1]	Campaign Spending . . . . .	211
	<i>Wisconsin Right to Life, Inc. v. FEC</i> . . . . .	211
	<i>Randall v. Sorrell</i> . . . . .	211
	<i>FEC v. Wisconsin Right to Life, Inc.</i> . . . . .	214
	<i>Davis v. Federal Election Commission</i> . . . . .	216
[C]	The Right of Nonassociation and Compelled Speech . . . . .	216
	<i>Davenport v. Washington Education Association</i> . . . . .	216
	<i>Ysursa v. Pocatello Education Ass'n</i> . . . . .	218
	<i>Chamber of Commerce v. Brown</i> . . . . .	218
	<i>Pleasant Grove City v. Summum</i> . . . . .	219
	<i>Locke v. Karass</i> . . . . .	219
<b>CHAPTER 9: FREEDOM OF RELIGION: ESTABLISHMENT AND FREE EXERCISE . . . . .</b>		<b>221</b>
§ 9.02	FREE EXERCISE OF RELIGION . . . . .	221
[C]	Free Exercise and Accommodation . . . . .	221
	<i>Gonzales v. O Centro Espirita Beneficente Uniao</i> <i>Do Vegetal</i> . . . . .	221
<b>CHAPTER 11: LIMITATIONS ON JUDICIAL REVIEW . . . . .</b>		<b>225</b>
§ 11.03	JUSTICIABILITY LIMITATIONS . . . . .	225
[A]	The Standing Limitation: Who Can Litigate? . . . . .	225
[1]	Taxpayer and Citizen Standing: The Ideological Plaintiff and the Requirement of Injury in Fact . . . . .	225
	<i>DaimlerChrysler v. Cuno</i> . . . . .	225
	<i>Hein v. Freedom from Religion Foundation, Inc.</i> . . . . .	232
[2]	Determining the Existence of Injury and Causation . . . . .	235
	<i>Massachusetts v. EPA</i> . . . . .	235
	<i>Summers v. Earth Island Institute</i> . . . . .	237
§ 11.05	THE TIMING LIMITATION: WHEN CAN CONSTITUTIONAL LITIGATION BE BROUGHT? . . . . .	239

---

*Table of Contents*

[B] Ripeness, Prematurity and Abstractness . . . . . 239