

# Chapter 2

## Constitutional Law

# Chapter Objectives

By the end of this chapter, you should be able to:

- Identify the state, federal, and international governing bodies that create law.
- Explain the three levels of scrutiny used by courts to determine the constitutionality of a government action.
- Differentiate between procedural due process and substantive due process.
- Identify when state or federal law applies.
- Describe the federal government's ability to regulate commerce under the Commerce Clause.
- Summarize the freedom of speech rights available to a business.

# Why Does Constitutional Law Matter to Me?

Laws that govern business have their origin in the lawmaking authority granted by the Constitution. Neither Congress nor any state can enact a law that conflicts with the Constitution.

# A Federal Form of Government

## The Federal Government and States Share Sovereign Power

- The Constitution
  - Sets forth specific powers that can be exercised by the national government; and
  - provides that the national government has the implied power to undertake actions necessary to carry out its expressly designated powers.

## Tenth Amendment

- Reserves all powers to the states that have not been expressly delegated to the national government.
- States have inherent **police powers** including right to regulate health, safety, morals and general welfare, licensing, building codes, parking regulations, and zoning restrictions.

# Classy Cycles, Inc. v. Panama City Beach (2019)

Panama City Beach, Florida, enacted two ordinances—the first to prohibit the overnight rental of motorized scooters, and the second to prohibit the rental of the scooters in the city effective at a future date. Both ordinances included an extensive rationale for their adoption, stating essentially that a geographically small city has the right to restrict a business from operating within the city when the restriction is for the safety of the city’s citizens and visitors.

# Classy Cycles, Inc. v. Panama City Beach (2019)

## Polling Question

Were the ordinances reasonably related to accomplishing the city's goal of protecting the safety of its citizens and visitors?

- Yes
- No

# Relations Among the States

## Privileges and immunities clause

The **privileges and immunities clause** prevents a state from imposing unreasonable burdens on citizens of another state.

- Basic activities include transferring property, seeking employment, and accessing the court system.

## Full faith and credit clause

The **full faith and credit clause** applies only to civil matters. It ensures that:

- Rights established under deeds, wills, contracts, and similar instruments in one state will be honored by other states; and
- That any judicial decision with respect to such property rights will be honored and enforced in all states.

# The Separation of Powers

**Checks and balances** allow each branch to limit the actions of the other two branches.

- Legislative branch can enact a law, but executive branch can veto it.
- Executive branch is responsible for foreign affairs, but treaties require consent from Senate.
- Congress determines jurisdiction of federal courts; president appoints federal judges (with advice/consent of Senate), but judicial branch has power to hold actions of other two branches unconstitutional.



# The Commerce Clause (1 of 4)

- U.S. Constitution gives Congress the power to: “regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.” (Art. 1 § 8)
- This clause has the greatest impact on business than any other Constitutional provision.

# The Commerce Clause (2 of 4)

- The Commerce Clause and the Expansion of National Powers
- **Tennessee Wine and Spirits Retailers Associations v. Thomas, (2019)** Tennessee law imposed a two-year residency requirement on any business for a state liquor license.

# The Commerce Clause (3 of 4)

## The Commerce Clause Today

- Theoretically, the commerce clause applies to virtually all commercial transactions.
- Only occasionally has the Supreme Court curbed the federal government's regulatory authority under the commerce clause.
- **Spotlight Case** Gonzales v. Raich (2005)

# The Commerce Clause (4 of 4)

## The “Dormant” Commerce Clause

- National government has exclusive power to regulate interstate commerce.
- States only have a “dormant” (negative) power to regulate interstate commerce.
- Courts balance state’s interest vs. national interest.

# Knowledge Check 1

What constitutional clause gives the federal government the power to regulate commercial activities among the states?

- A. Commerce Clause
- B. Separation of Powers
- C. Full Faith and Credit Clause
- D. Privileges and Immunities Clause

# Landmark in the Law

## Gibbons v. Ogden (1824)

- To Chief Justice Marshall, commerce meant all business dealings that substantially affected more than one state.
- The national government had the exclusive power to regulate interstate commerce.

# Heart of Atlanta Motel v. United States (1964)

The owner of the Heart of Atlanta Motel, in violation of the Civil Rights Act of 1964, refused to rent rooms to African Americans. The motel owner brought an action in a federal district court to have the Civil Rights Act declared unconstitutional on the ground that Congress had exceeded its constitutional authority to regulate commerce by enacting the statute.

# Heart of Atlanta Motel v. United States (1964)

## Polling Question

Did Congress exceed its constitutional power to regulate interstate commerce by enacting the Civil Rights Act of 1964?

- Yes
- No



# Discussion Heart of Atlanta Motel v. United States (1964)

If this case had involved a small, private retail business that did not advertise nationally, would the result have been the same? Why, or why not?

# The Supremacy Clause

- Article VI of the Constitution provides that Constitution, laws and treaties of the United States are the “supreme law of the land.”
- **Preemption:** a doctrine under which certain federal laws preempt, or take precedence over, conflicting state or local laws
- Congressional Intent
  - **Classic Case** Riegel v. Medtronic, Inc. (2008)

# Knowledge Check 2

When will congressional intent be found to preempt state laws?

- A. When a federal law is comprehensive
- B. When the Bill of Rights confers freedoms
- C. When the Supreme Court upholds the constitutionality
- D. When the federal government regulates commercial activities

# Business and the Bill of Rights (1 of 2)

**Bill of Rights:** the first ten amendments to the U.S. Constitution

1. First Amendment – freedom of religion
2. Second Amendment – right to keep and bear arms
3. Third Amendment – prohibits lodging of soldiers in any house without owner's consent during peacetime
4. Fourth Amendment – unreasonable search and seizure
5. Fifth Amendment – rights to indictment by grand jury

# Business and the Bill of Rights (2 of 2)

6. Sixth Amendment – right to speedy and public trial
7. Seventh Amendment – right to trial by jury in civil cases
8. Eighth Amendment – prohibits excessive bail/fines and cruel/unusual punishment
9. Ninth Amendment – establishes people have rights in addition to those specified in Constitution
10. Tenth Amendment – establishes powers reserved for states

# Discussion (1 of 2)

What is the Bill of Rights? What freedoms does the First Amendment guarantee?

# Limits on Federal and State Governmental Actions

## Bill of Rights

- Originally, the Bill of Rights only applied to the federal government.
- Later, the Bill of Rights was “incorporated” and applied to the States as well.
- Some protections also apply to businesses.

## The 14<sup>th</sup> Amendment

- The 14<sup>th</sup> Amendment provides (in part) that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.”
- **Judicial interpretation:** the Supreme Court is final interpreter of the Constitution, gives meaning to constitutional rights, and determines the boundaries of those rights

# The First Amendment—Freedom of Speech (1 of 3)

## Right to Free Speech

- Right to Free Speech is the basis for our democratic government.
- Free speech also includes symbolic speech, including gestures, movements, articles of clothing.

## Reasonable Restrictions

- Content-Neutral Laws
  - **Case** *Commonwealth v. Ora* (2008)
- Laws That Restrict the Content of Speech
  - **Case** *Consolidated Edison Co. v. Public Service Commission* (1980)

## Corporate Political Speech

- Political speech by corporations is protected by the First Amendment.
- **Classic Case** *Citizens United v. Federal Election Commission* (2010) — The Supreme Court ruled that corporations can spend freely to support or oppose candidates for President and Congress.



# The First Amendment—Freedom of Speech (2 of 3)

- Commercial Speech
  - Consists of communications—primarily advertising and marketing—made by business firms that involve only their commercial interests.
- Courts Give Substantial Protection to Commercial Speech
  - Restrictions must: implement substantial government interest, directly advance that interest, and go no further than necessary

# The First Amendment—Freedom of Speech (3 of 3)

## Unprotected Speech

- Threatening Speech – The speaker must have posed a “true threat” and must have meant to communicate a serious intent to commit an unlawful, violent act against a particular person or group.

## Unprotected Speech

- Obscenity
  - It is a crime to disseminate and possess obscene materials, including child pornography.
  - Defining obscene speech has proved difficult.
  - It is difficult to prohibit the dissemination of obscenity and pornography online.

## Unprotected Speech

- Virtual Child Pornography
  - It is a crime to intentionally distribute virtual child pornography—which uses computer-generated images, not actual people—without indicating that it is computer-generated.

# Group Breakout

Even though corporations can restrict the speech of their employees, should they do so? Federal law protects the right of workers to discuss some topics, such as forming a union, without fear of punishment from their employers. However, in general, while corporations may enjoy the protections of the First Amendment, their employees do not. (Remember, the Bill of Rights applies primarily to government actions, not those taken by private entities.) For years, such concerns seemed irrelevant at Google LLC.

## Discussion (2 of 2)

Judge James DeWeese hung a poster in his courtroom showing the Ten Commandments. The poster also included a number of editorial statements made by DeWeese, such as “God is the final authority, and we acknowledge His unchanging standards of behavior.” Does displaying this poster in a courtroom violate the establishment clause?

# The First Amendment—Freedom of Religion

## Applicable Standard

- Federal or state laws that do not promote or place a significant burden on religion are constitutional even if they have some impact on religion.
- Religious Displays
  - **Case** *Trunk v. City of San Diego* (2011)

## The Free Exercise Clause

- The provision in the First Amendment that prohibits the government from interfering with people's religious practices or forms of worship.
- Employers must reasonably accommodate beliefs as long as employee has sincerely held beliefs.

## Public Welfare Exception

- When religious practices work against public policy and the public welfare, the government can act.
- The government can require that a child receive certain types of vaccinations.

# Discussion The First Amendment—Freedom of Religion

Can the government establish a state-sponsored religion, or pass laws that favor one over the other?

# Due Process

- Procedural Due Process
  - Any government decision to take life, liberty, or property must be fair
  - Requires: Notice and Fair Hearing
- Substantive Due Process
  - Focuses on the content or the legislation (the right itself)

# Equal Protection

## Courts Apply Different Tests:

- Government must treat similarly situated individuals (or businesses) in the same manner.
- Strict scrutiny: if a law or action prohibits (or inhibits) some persons from exercising a fundamental right, the law or action will be subject to “strict scrutiny” by the courts
  - A classification based on a suspect trait will also be subject to strict scrutiny.

## Intermediate Scrutiny:

- Applied in cases involving discrimination based on gender or legitimacy.
  - Laws using these classifications must be substantially related to important government objectives.
- The state also has an important objective in establishing time limits (statutes of limitation).



# The “Rational Basis” Test – Economic and Social Welfare

## **Case** LMP Services, Inc. v. City of Chicago, 2019

- The owner of the Cupcakes for Courage food truck filed suit against the city, alleging that, contrary to the state constitution, the ordinance unfairly favored restaurants over “mobile food vehicles.”

# LMP Services, Inc. v. City of Chicago, 2019

## Polling Question

Did the ordinance unfairly favor restaurants over “mobile food vehicles?”

Yes

No

# Privacy Rights

- Olmstead v. United States (1928) – Justice Brandeis stated in his dissent that the right to privacy is “the most comprehensive of rights[,] and the right most valued by civilized men.”
- In the 1960s a majority on the Supreme Court endorsed the view that the Constitution protects individual privacy rights.
  - Griswold v. Connecticut (1965) found a right to personal privacy implied in constitution.

# Federal Privacy Legislation (1 of 3)

- Freedom of Information Act (1966)
- Family Educational Rights and Privacy Act (1974)
- Privacy Act (1974)
- Electronic Communications Privacy Act (1986)

# Federal Privacy Legislation (2 of 3)

- Driver's Privacy Protection Act (1994)
- Health Insurance Portability and Accountability Act (HIPAA) (1996)
- Financial Services Modernization Act (Gramm-Leach-Bliley Act) (1999)

# Federal Privacy Legislation (3 of 3)

<b>TITLE OF ACT</b>	<b>PROVISIONS CONCERNING PRIVACY</b>
<b>Freedom of Information Act (1966)</b>	Provides that individuals have a right to access information about them collected in government files.
<b>Family Educational Rights and Privacy Act (1974)</b>	Limits access to computer-stored records of education-related evaluations and grades in private and public colleges and universities.
<b>Privacy Act (1974)</b>	Protects the privacy of individuals about whom the federal government has information. Regulates agencies' use and disclosure of data, and gives individuals access to and a means to correct inaccuracies.
<b>Electronic Communications Privacy Act (1986)</b>	Prohibits the interception of information communicated by electronic means.
<b>Driver's Privacy Protection Act (1994)</b>	Prevents states from disclosing or selling a driver's personal information without the driver's consent.
<b>Health Insurance Portability and Accountability Act (1996)</b>	Requires health care providers and health care plans to inform patients of their privacy rights and of how their personal medical information may be used. States that medical records may not be used for purposes unrelated to health care or disclosed without permission.
<b>Financial Services Modernization Act (Gramm-Leach-Bliley Act) (1999)</b>	Prohibits the disclosure of nonpublic personal information about a consumer to an unaffiliated third party unless strict disclosure and opt-out requirements are met.

# The USA Patriot Act

Passed by Congress in the wake of the terrorist attacks of September 11, 2001, and then reauthorized twice (2006) and (2011).

# Knowledge Check Video: Equal Protection and Constitutional Scrutiny



Constitutional  
Scrutiny transcript





# Video Discussion

Explain why this is true – When a citizen of one state engages in basic and essential activities in another state (the “foreign state”), the foreign state must have a substantial reason for treating the nonresident differently than its own residents.

# Video Debrief

Give some examples of the three Constitutional scrutiny tests.

# Self-Assessment

- What concepts did you find difficult, and thus need a review?
- How might the topics in this chapter come up in the future in your personal (or work) life?
- What could you do to improve your contributions in class discussion?

# Summary

Now that the lesson has ended, you have learned to:

- Identify the state, federal, and international governing bodies that create law.
- Explain the three levels of scrutiny used by courts to determine the constitutionality of a government action.
- Differentiate between procedural due process and substantive due process.
- Identify when state or federal law applies.
- Describe the federal government's ability to regulate commerce under the Commerce Clause.
- Summarize the freedom of speech rights available to a business.