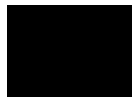
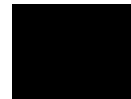
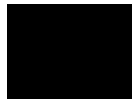


CONSTITUTIONAL LAW

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UNITED STATES CONSTITUTION

- ▶ The US Constitution is the source of the authority for all laws in the United States.
 - ▶ It is the **SUPREME LAW OF THE LAND**:
 - ▶ It creates and allocates power between the legislative, executive, and judicial branches of the federal government; and
 - ▶ It allocates power between the federal government and the states.

UNITED STATES CONSTITUTION

- ▶ PREAMBLE
- ▶ ARTICLE I –VII
 - ▶ Federal Powers and State Powers
 - ▶ Commerce Clause
 - ▶ Supremacy Clause
- ▶ AMENDMENTS 1, 4, 5, 6, 9, 10, AND 14
 - ▶ Speech and assembly
 - ▶ Search and seizure
 - ▶ Right to trial, due process, just compensation for takings
 - ▶ Equal Protection

UNITED STATES CONSTITUTION

- ▶ PREAMBLE

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, 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."

UNITED STATES CONSTITUTION

- ▶ ARTICLE I
 - ▶ Legislative Branch
 - ▶ The commerce clause is found in Article I, section 8
- ▶ ARTICLE II
 - ▶ Executive Branch
- ▶ ARTICLE III
 - ▶ Judicial Branch

COMMERCE CLAUSE

- ▶ ARTICLE I, SECTION 8
- ▶ COMMERCE CLAUSE
 - ▶ Federal government regulates commerce
 - ▶ Interstate
 - ▶ Intrastate if regulation impacts multiple states
 - ▶ 1824, in *Gibbons v. Ogden*, the Supreme Court held that the commerce clause applied to intrastate commerce if the commerce concerned more than one state
 - ▶ Supreme Court held in 1995 in *U.S. v. Lopez* federal Gun-Free School Zone Act was too broad and not based on interstate interest

COMMERCE CLAUSE

- ▶ COMMERCE CLAUSE
 - ▶ It does not expressly exclude state regulation of commerce.
 - ▶ States have a legitimate interest in regulating commerce in their areas.
 - ▶ Fire and building codes, antidiscrimination laws, parking regulations, zoning ordinances, licensing requirements, and many other state statutes have been enacted pursuant to a state's police powers.

COMMERCE CLAUSE

- ▶ **COMMERCE CLAUSE**
- ▶ State regulations that have substantial and harmful effects on interstate commerce require:
 - ▶ courts to balance the state's interest in the merits and purposes of the regulation
 - ▶ against the burden placed on interstate commerce.
 - ▶ State laws enacted pursuant to a state's police powers carry a strong presumption of validity.
 - ▶ Because the courts balance the interests involved, it is extremely difficult to predict the outcome in a particular case.

SUPREMACY CLAUSE

- ▶ **ARTICLE VI**
- ▶ **SUPREMACY CLAUSE**
 - ▶ The Constitution of the United States is the highest law in the land.
 - ▶ A direct conflict between a federal law and a state law, the state law is declared invalid.
 - ▶ Some powers are concurrent which means the courts must determine which law governs in a particular circumstance.
 - ▶ Congressional intent to preempt will be found if the federal law is so pervasive, comprehensive, or detailed that the states have no room to supplement it.

LAW SUITS

- ▶ Most frequently caused by:
 - ▶ First Amendment Violation
 - ▶ Fourth Amendment Violation
 - ▶ Right to Remain Silent
 - ▶ Right to an Attorney and Trial
 - ▶ Due Process Violation
 - ▶ Equal Protection Violation

CONSTITUTIONAL AMENDMENTS

- ▶ **FIRST AMENDMENT**
 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIRST AMENDMENT

- ▶ Private speech is protected, mostly
- ▶ Not all speech is protected, for example defamatory speech, "fighting words" or words that are likely to incite others to respond violently and obscene speech.

FIRST AMENDMENT

- ▶ Religious speech is protected, mostly
- ▶ Federal or state regulation that does not promote religion or place a significant burden on religion is constitutional even if it has some impact on religion.

FIRST AMENDMENT

- ▶ Commercial speech is protected but may be regulated
- ▶ Time, Place and Manner
- ▶ If regulation is content based, generally, you lose... Unless
 - ▶ Important governmental issue
 - ▶ Crime
 - ▶ Health and safety
 - ▶ Property values
 - ▶ "Issue" is not related to the speech
 - ▶ Restriction is necessary to protect "issue"

FIRST AMENDMENT

- ▶ ASSEMBLY
 - ▶ Federal or state regulation that does not place a significant burden or have the effect of prohibiting the assembly is constitutional even if it has some impact on it.

FOURTH AMENDMENT

- ▶ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FOURTH AMENDMENT

- ▶ Before searching or seizing private property, government officials must obtain a search warrant which must be based on probable cause.
 - ▶ Exceptions: danger or destroy evidence
- ▶ In *Marshall v. Barlow's*, the Supreme Court held that the government inspectors do not have the right to enter business premises without a warrant, although the standard of probable cause is not the same as that required in nonbusiness contexts. The existence of a general and neutral enforcement plan will justify issuance of a warrant.

FIFTH AMENDMENT

- ▶ No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger: nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

FIFTH AMENDMENT

- ▶ Takings Clause/Public Use Clause.
 - ▶ The power of government to take private property for public use is called eminent domain.
 - ▶ Courts apply rational basis scrutiny when reviewing statutes authorizing eminent domain.

SIXTH AMENDMENT

- ▶ In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

TENTH AMENDMENT

- ▶ The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

FOURTEENTH AMENDMENT

- ▶ LIMITS STATE GOVERNMENTS
- ▶ "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State;
- ▶ nor shall any: State deprive any person of life, liberty, or property, without due process of law;
- ▶ nor deny to any person within its jurisdiction the equal protection of the laws."

FOURTEENTH AMENDMENT

- ▶ States have the right to adopt higher standards than Federal law unless Federal law specifically prohibits States from acting on the issue.
- ▶ Due Process is required for all. It is divided into two categories or types:
 - ▶ Procedural Due Process; and
 - ▶ Substantive Due Process

FOURTEENTH AMENDMENT

- ▶ PROCEDURAL DUE PROCESS:
 - ▶ Requires that deprivations of life, liberty, or property must be consistent with fundamental fairness.
 - ▶ The minimum requirement is notice and a fair hearing before a neutral decision maker.
- ▶ SUBSTANTIVE DUE PROCESS:
 - ▶ Requires laws to be clear and not overly broad in scope.
 - ▶ Laws failing the test are declared void for vagueness.

FOURTEENTH AMENDMENT

- ▶ STANDARD OF REVIEW FOR CONSTITUTIONAL CHALLENGES TO LAWS OR GOVERNMENT ACTIONS
 - ▶ STRICT SCRUTINY
 - ▶ INTERMEDIATE SCRUTINY
 - ▶ RATIONAL BASIS SCRUTINY

FOURTEENTH AMENDMENT

- ▶ STANDARD OF REVIEW FOR DUE PROCESS CHALLENGES
- ▶ STRICT SCRUTINY
 - ▶ Used if the law effects a fundamental right:
 - ▶ free speech; freedom of religion; interstate travel; voting; and privacy.
 - ▶ The law or regulation must be necessary and narrowly tailored to promote a compelling state interest by using the least restrictive means possible.

FOURTEENTH AMENDMENT

- ▶ STANDARD OF REVIEW FOR DUE PROCESS CHALLENGES
- ▶ If a statute prohibits commercial speech (such as a statute that bans advertising in specific locations), a court applies intermediate scrutiny;
- ▶ If, however, a statute compels disclosure of purely factual and uncontroversial information, a court applies rational basis scrutiny.
- ▶ As an example of the latter, the Second Circuit Court of Appeals recently upheld under rational basis scrutiny a New York City health code requiring fast food restaurants to post calorie content information on their menus and menu boards.

FOURTEENTH AMENDMENT

- ▶ Dairy Product Services v. City of Wellsville, 13 P.3d 581 (Utah 2000)
- ▶ Dairy facility disposed of wastewater that burdened city's facility. A fee was charged. Offensive odors violations.
- ▶ Dairy failed to pay fee and correct problems.
- ▶ Business license renewal denied.

FOURTEENTH AMENDMENT

- ▶ Business continued to operate.
- ▶ City got an injunction against business.
- ▶ Due process not denied.
 - ▶ Adequate notice of violations and fees due.
 - ▶ Adequate procedures.
 - ▶ Appropriate remedies.

FOURTEENTH AMENDMENT

- ▶ 14th Street Gym v. Salt Lake City, 183 P.3d 262 (Utah 2008)
- ▶ Social club catering to gay males.
- ▶ Business license suspended for lewd activity.
- ▶ Given a provisional license.
- ▶ Police observed two men engaged in oral sex in the steam room.
- ▶ City revoked license.

FOURTEENTH AMENDMENT

- ▶ Court held city revocation was arbitrary and capricious.
- ▶ No evidence gym had knowledge or culpable behavior.
- ▶ No evidence owner or agents knew of or condoned the acts.

FOURTEENTH AMENDMENT

- ▶ *Spinelli and Olinville Arms v. City of New York*, 2009 U.S. App. 17640.
- ▶ Spinelli owned a gun store.
- ▶ City ordinance gave police right to inspect at all times and required certain security.
- ▶ Officers inspected without a warrant and found violations.
- ▶ Officers shut store, confiscated weapons (over 300), and revoked license.

FOURTEENTH AMENDMENT

- ▶ Notice sent to owner said "as a result of failure to provide adequate security" her license was suspended and she had to surrender all firearms.
- ▶ Business has a right to privacy.
 - ▶ Need a warrant to search, generally
 - ▶ May search without a warrant if reasonable such as "the burden of obtaining a warrant likely to frustrate the governmental purpose behind the search."
 - ▶ Unannounced searches to discover security infractions

FOURTEENTH AMENDMENT

- ▶ Due Process
 - ▶ Pre-deprivation due process, generally required.
 - ▶ Exigent circumstances necessitating prompt action.
 - ▶ Post-deprivation due process
 - ▶ Severity of depriving someone of his livelihood.
 - ▶ Lose business
 - ▶ Lose reputation
 - ▶ Cost of closing

FOURTEENTH AMENDMENT

- ▶ Risk of erroneous deprivation under procedures used.
 - ▶ Notice—details of violation, not general conclusory charges
 - ▶ The facts!
- ▶ Opportunity to be heard.
 - ▶ Promptness of hearing
 - ▶ Good reason for any delay serve important government purpose
 - ▶ Reason for delay vs. harm caused by it

FOURTEENTH AMENDMENT

- ▶ Did city have a legitimate reason for not providing meaningful post-deprivation due process?

Preemption

- ▶ *Chicanos Por La Causa v. Criss Candelaria* (Arizona), 558 F.3d 856 (U.S. App. 9th Cir. 2009)
- ▶ Action filed against new state law which allowed the state to revoke a business license for hiring illegal aliens. It requires employers to use the federal verification system to establish eligibility to work.

FOURTEENTH AMENDMENT

- ▶ Court said federal law did not preempt state law.
- ▶ Authority to regulate the business lays with the state or local government.
- ▶ No civil or criminal sanctions may be imposed by state except for licensing and similar laws
- ▶ State provides a right to notice and a hearing before suspension of license.
- ▶ State does not define who is eligible to work

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