

Chapter 4 - Business and the Constitution

Introduction

- The U.S. Constitution is very brief, only about 7,000 words.
 - A legal journal article will probably be longer.
 - Provides a flexible framework for law making.
 - Provides limits and protection of individual freedoms.

The constitutional powers of government

- A Federal Form of Government
 - Compromise in which the national government shares sovereign power with the states
- The Separation of Powers
 - Legislative branch
 - Executive branch
 - Judicial branch
- The Commerce Clause
 - Gives the federal government the power to regulate commercial activities among the various states
 - Expansion of national powers under the commerce clause
 - Regulatory powers of the states
 - “Dormant” commerce clause
- The Supremacy Clause
 - Allows laws enacted by the federal government to take priority over conflicting state laws
 - Article VI of the Constitution

Business and the Bill of Rights

- Bill of Rights was adopted in 1791, and includes the first 10 amendments to the U.S. Constitution.
- Protections for the individual against various types of interference by the federal government
 - **First** Amendment – freedoms of religion, speech, and the press and the rights to assemble peaceably and to petition the government
 - **Second** Amendment – right to keep and bear arms
 - **Third** Amendment – prohibits, in peacetime, the lodging of soldiers in any house without the owner’s consent
 - **Fourth** Amendment – prohibits unreasonable searches and seizures of persons or property
 - **Fifth** Amendment – guarantees the rights to indictment by a grand jury, due process of law, and to fair payment when private property is taken for public use; also prohibits compulsory self-incrimination and double jeopardy
 - **Sixth** Amendment – guarantees the accused in a criminal case the right to a speedy and public trial by an impartial jury and with counsel. The accused has the right to cross-examine witnesses against him or her and to solicit testimony from witnesses in

his or her favor

- **Seventh** Amendment – guarantees the right to a trial by jury in a civil case involving at least \$20
- **Eighth** Amendment – prohibits excessive bail and fines, as well as cruel and unusual punishment
- **Ninth** Amendment – establishes that the people have rights in addition to those specified in the Constitution
- **Tenth** Amendment – establishes those powers neither delegated to the federal government nor denied to the states are reserved for the states

Business and the bill of rights

- Limits on Federal and State Governmental Actions
 - Fourteenth Amendment passed in 1868 provides, in part, that “n[o] State shall...deprive any person of life, liberty, or property, without due process of law.”
 - Rights secured by the Bill of Rights are not absolute.
 - Supreme Court ultimately is the final interpreter of the Constitution.
- The First Amendment—Freedom of Speech
 - Reasonable restrictions
 - Reasonableness is analyzed on a case-by-case basis
 - Corporate political speech – protected
 - *Citizens United v. Federal Election Commission*
 - Commercial speech – generally protected
 - Unprotected speech
 - Certain speech is NOT protected: defamatory, threatening, “fighting words,” obscene
- The First Amendment—Freedom of Religion
 - The establishment clause prohibits government from establishing a state-sponsored religion, or passing laws that favor one over the other.
 - The free exercise clause guarantees a person’s right to freely exercise her religion.
 - Employers must reasonably accommodate beliefs as long as employee has sincerely held beliefs.

Due process and equal protection

- Due Process
 - Fifth and Fourteenth Amendments provide that no person shall be deprived “of life, liberty, or property, without due process of law.”
 - **Procedural** due process
 - **Substantive** due process
- Equal Protection
 - Fourteenth Amendment: a state may not “deny to any person within its jurisdiction the equal protection of the laws.”
 - Supreme Court used due process clause of Fifth Amendment to make the equal protection clause applicable to the federal government

Privacy rights

- 1928 *Olmstead v. United States*
- 1965 *Griswold v. Connecticut*
- Privacy rights receive protection under various federal statutes and the Constitution.
- Federal Privacy Legislation
 - 1966 Freedom of Information Act
 - 1974 Privacy Act

- Medical Information
 - Privacy of individuals' health records
 - Health Insurance Portability and Accountability Act (HIPAA)
- The USA Patriot Act
 - Gives government officials increased authority to monitor Internet activities and to gain access to personal financial and student information