

Chapter 6—The Constitution and Business

Checks and balances—the national government is composed of three separate branches: the executive, the legislative, and the judicial branches. Each branch of the government exercises a check on the actions of the others.

In a 1942 case, *Wickard v. Filburn*, 317 U.S. 111, the Court held that wheat production by an individual farmer intended wholly for consumption on his own farm was subject to federal regulation. The Court reasoned that the home consumption of wheat reduced the demand for wheat and thus could have a substantial effect on interstate commerce.

Just a few days after the *Lopez* case, in *U.S. v. Robertson*, 514 U.S. 669 (1995), the Court held that the activities of a Alaska gold miner involved interstate commerce because the miner purchased some equipment and supplies in LA for use in his mining enterprise, recruited workers from outside Alaska, and took some gold out of state.

Police powers—powers possessed by states as part of their inherent sovereignty. These powers may be exercised to protect or promote the public order, health, safety, morals, and welfare.

In *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429 (1978), the Supreme Court invalidated Wisconsin administrative regulations limiting the length of trucks traveling on its highways. The Court weighed the burden on interstate commerce against the benefits of the regulations and concluded that the challenged regulations “place a substantial burden on interstate commerce and they cannot be said to make more than the most speculative contribution to highway safety.”

In *Oregon Waste Systems v. Dept of Environmental Quality of the State of Oregon*, 511 U.S. 93 (1994), the Court ruled that the state of Oregon was placing an undue burden on interstate commerce by taxing waste hauled in from out-of-state at a higher rate than waste from Oregon.

When Congress chooses to act exclusively in a concurrent area, it is said to have preempted the area. In this circumstance, a valid federal statute or regulation will take precedence over a conflicting state or local law or regulation on the same general subject.

The Taxing and Spending Powers

The requirement of uniformity refers to uniformity among the states, and thus Congress may not tax some states while exempting others. Today, if a tax measure bears some reasonable relationship to revenue production, it is generally held to be within the national taxing power. The expansive interpretation of the commerce clause almost always provides a basis for sustaining a federal tax. Through the spending power, Congress disposes of the revenues accumulated from the taxing power. Congress can spend revenues not only to carry out its enumerated powers but also to promote any objective it deems worthwhile, as long as it does not violate the law.

- 1. the 1st Amendment guarantees the freedoms of religion, speech, and the press and the rights to assemble peaceably and to petition the government**
- 2. The 3rd Amendment prohibits, in peacetime, the lodging of soldiers in any house without the owner's consent**
- 3. The 4th Amendment prohibits unreasonable searches and seizures of persons, property, papers, and effects**
- 4. The 5th Amendment guarantees the rights to indictment by grand jury, to due process of law, and to fair payment when private property is taken for public use. The 5th Amendment contains the privilege against self-incrimination.**
- 5. The 6th Amendment guarantees the accused in a criminal case the right to a speedy and public trial by an impartial**

jury. It also contains the right to counsel.

6. The 8th Amendment prohibits excessive bail and fines, as well as cruel and unusual punishment.

The rights contained in the Bill of Rights are not absolute.

Freedom of speech

Generally, obscenity is still a constitutionally unsettled area, whether it deals with speech, printed materials, or film.

A state may restrict certain kinds of advertising in the interest of protecting consumers from being misled by the advertising practices. States may also have a legitimate interest in the beautification of roadsides, and this interest allows states to place restraints on billboard advertising.

Consider the case of Rubin v. Coors Brewing Co., 514 U.S. 476 (1995) concerning whether a law prohibiting the inclusion of the alcohol content on beer labels unconstitutionally restricts commercial speech.

Sunday closing laws make the performance of some commercial activities on Sunday illegal. These statutes, also known as “blue laws” have been upheld on the ground that it is a legitimate function of government to provide a day of rest.

Searches and Seizures

probable cause—reasonable grounds to believe the existence of facts warranting certain actions, such as the search or arrest of a person.

The 4th Amendment prohibits general warrants and requires a particular description of that which is to be searched or seized.

No warrant is required, however, for seizures of spoiled or contaminated food. Nor are warrants required for searches of businesses in such highly regulated industries as liquor, guns, and strip mining.

Other Constitutional Provisions

Due process clause—the provisions of the 5th Amendment and 14th Amendment that guarantee that no person shall be deprived of life, liberty, or property without due process of law. Similar clauses are found in state constitutions.

Procedural due process—requires that any government decision to take life, liberty, or property must be made fairly. For example, fair procedures must be used in determining whether a person will be subjected to punishment or have some burden imposed on him or her.

Substantive due process—focuses on the content or substance of legislation. If a law or other governmental action limits a fundamental right, it will be held to violate substantive due process unless it promotes a compelling or overriding state interest. Fundamental rights include interstate travel, privacy, voting, and all 1st Amendment rights. Compelling state interests could include the public's safety.

Equal Protection

When a law or action limits the liberty of all persons to do something it may violate substantive due process: when a law or action limits the liberty of some persons but not others, it may violate the equal protection clause.

For example, an important government objective is preventing illegitimate teenage pregnancies. Because males and females are not similarly situated in this circumstance—only females can become pregnant—a law that punishes men but not women for statutory rape will be upheld.

Constitutional Law in Cyberspace

Regulating Online Obscenity

In 1997, the U.S. Supreme Court held that the Communications Decency Act's provisions regarding "indecent" and "patently offensive" transmissions violated the 1st Amendment because of their unprecedented breadth. Although the government has an interest in protecting children from potentially harmful materials, the CDA suppressed a large amount of speech that adults have a right to send and receive.

A federal district court declared that Cyber Promotions did not have a constitutional right under the 1st Amendment to send unsolicited e-mail advertisements to AOL subscribers and that AOL was entitled to block CP's attempt to do so. Why? AOL is not governmental entity or agent. It is a private company.