Constitutional Law Outline

I. Organization of the Courts in the Federal System

A. The United States Supreme Court

1. **Jurisdiction**
   - Article III, Section 2 grants the Supreme Court original jurisdiction in cases:
     - Affecting ambassadors, other public ministers, and consuls.
     - In which a state is a party.
   - Congress cannot expand or restrict the Supreme Court’s original jurisdiction.
   - Article III, Section 2 grants the Supreme Court appellate jurisdiction in all other cases mentioned in Article III. Congress can make exceptions and regulations to this appellate jurisdiction.
   - The Supreme Court's power extends to:
     - Determining the constitutionality of acts of the executive and legislative branches.
     - Determining the constitutionality of state statutes.
     - Reviewing state court decisions to ensure they comply with the U.S. Constitution and federal statutes.
     - Deciding other state law questions.
   - Federal law establishes two methods to invoke Supreme Court appellate jurisdiction:
     - Appeal (mandatory jurisdiction)
     - Certiorari (discretionary jurisdiction)
   - The Supreme Court generally only hears cases by writ of certiorari.
   - The Supreme Court may exercise discretion in selecting cases presented by writ of certiorari, granting it only if four justices vote to accept the appeal.
   - The Supreme Court has mandatory jurisdiction in:
     - Direct appeals from decisions of three-judge panels in federal district courts.
     - Cases specified by federal law.
     - Cases certified by federal circuit courts of appeal.
2. **Judicial Review in Operation**
   - Article III, Section 2 limits federal court jurisdiction to "cases" and "controversies," meaning an actual dispute between litigants.
   - This limitation prohibits federal courts from issuing advisory opinions, or opinions on hypothetical facts and abstract issues.
   - The "case or controversy" requirement includes the doctrines of standing, ripeness, and mootness, which can be raised by the court or parties at any time.
     - **Standing**:
       - A plaintiff must show a "personal stake" in the case.
       - A plaintiff must establish:

        - **Injury in fact**: A concrete and particularized injury. This injury need not be physical or economic, but if the injury is in the future it must be actual and imminent.
        - **Causation**: The injury was caused by the defendant's violation of a constitutional or federal right.
        - **Redressability**: The plaintiff would benefit from the remedy sought in the litigation.
    - **Third-party standing**:
        - A party may have standing to enforce the rights of a third party if:
            - There is a special relationship between the claimant and the third party.
            - The third party is unable or unlikely to assert their own rights.
    - **Organizational standing**:
        - An organization has standing if:
            - A member has standing.
            - The member's injury is related to the purpose of the organization.
            - Individual members are not required to participate in the lawsuit.
- **Ripeness**:
    - Requires that a party has experienced actual harm or an imminent threat of harm.
    - A claim based on contingent future events that may not occur is not ripe for adjudication.
- **Mootness**:
    - A live controversy must exist at all stages of review.
    - If events subsequent to filing end the plaintiff's injury, the case is moot.
    - **Exceptions**:
        - **Voluntary cessation**: If the defendant voluntarily ceases the challenged activity but can resume it at any time, the case is not moot.
        - **Capable of repetition, yet evading review**: A case is not moot when the challenged action is too short in duration to be fully litigated and there is a reasonable expectation that the plaintiff will be subject to the same action again.

3. **Political Questions and Justiciability**
    - **Political question doctrine**:
        - Federal courts will not decide political questions.
        - Political questions are issues:
            - Constitutionally committed to another branch of government.
            - Incapable of resolution and enforcement by the judicial process.
        - To determine if an issue is a political question, courts will look at:
            - If there is a textually demonstrable constitutional commitment of the issue to another branch.
            - If there is a lack of judicially discoverable and manageable standards for resolving the issue.

- **Examples of political questions**:
  - Challenges to the impeachment process.
  - Challenges to the amendment ratification process.
  - Challenges to the President's power to unilaterally terminate a treaty.
  - Foreign affairs issues.
  - Guaranty Clause issues under Article IV.
  - Partisan gerrymandering.

4. **Abstention**
   - Federal courts may abstain from deciding a case where there are strong policy reasons to allow state courts to resolve the matter.
   - Federal courts may abstain in these situations:
     - To avoid interfering with pending state proceedings (Younger abstention)
     - To avoid duplicative litigation (Colorado River abstention)
     - To allow state courts to clarify unclear state law.
5. **Adequate and Independent State Grounds**
   - The Supreme Court cannot review a state court decision that rests on adequate and independent state law grounds, even if a federal question is involved.
   - A state law ground is adequate and independent if it fully supports the state court ruling and is independent of federal law considerations.
   - The Supreme Court will deny review if reversing the state court's federal law decision would not change the outcome of the case.
   - **Exceptions**:
     - The Supreme Court may review a state decision if:
       - A state law incorporates a federal law by reference.
       - Important federal interests are included with substantive state law.
     - If the state court explicitly states its decision rests on state law interpretation, the Supreme Court will not review.
     - If the state court's opinion is unclear whether it rests on state or federal law, the Supreme Court may:
       - Obtain clarification from the state court.
       - Presume the state court decision relied partly on federal law and review the case.

The Separation of Powers

I. The Powers of Congress

A. Legislative Power

1. **Source and Scope:**
   - Article I, Section 1 vests all legislative power in Congress.
   - Congress can exercise only those powers granted to it by the Constitution.
   - Incidental to the power to make laws, Congress has the right to:
     - Conduct investigations and hearings.
     - Consider matters on which it may legislate.
     - Do all things "necessary and proper" for enacting legislation.

2. **Enumerated Powers**:
    - Article I, Section 8 enumerates specific powers of Congress, including:
        - **Commerce Clause:** The power to regulate commerce among the states, with foreign nations, and with Indian tribes.
            - Congress can regulate:
                - The channels of interstate commerce (highways, waterways, and air traffic).
                - The instrumentalities of interstate commerce (cars, trucks, ships, and airplanes).
                - Activities that substantially affect interstate commerce.
            - Limitations:
                - Congress cannot regulate non-economic intrastate activity.
                    - Exception: Congress can regulate non-economic intrastate activity if the regulation is part of a comprehensive scheme.
        - **Taxing Power:** The power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States.
            - A tax will be upheld if:
                - It is reasonably related to revenue production.
                - Congress has the power to regulate the activity taxed.
                - The tax's dominant purpose is revenue generation.
            - Limitations:
                - Congress cannot tax exports.
        - **Spending Power:** The power to pay the debts and provide for the common defense and general welfare of the United States.
            - Congress can use its spending power to encourage states to adopt policies consistent with federal goals, even if Congress lacks the power to directly regulate in those areas.
            - Congress can attach conditions to the receipt of federal funds by states, as long as the conditions:
                - Are clearly stated.
                - Relate to the purpose of the spending program.
                - Do not violate the Constitution.
        - **War and Defense Powers**:
            - Congress has the power to declare war, raise and support armies, provide and maintain a navy, and make rules for the government and regulation of the land and naval forces.
            - Congress can establish military courts and tribunals.
        - **Admiralty and Maritime Power**:
            - Congress has plenary power to fix and determine maritime laws throughout the country.
        - **Bankruptcy Power**:
            - Congress has the power to establish uniform laws on the subject of bankruptcies throughout the United States.
        - **Postal Power**:
            - Congress has the power to establish post offices and post roads.

        - **Immigration and Naturalization Power**:
            - Congress has plenary power to regulate immigration and naturalization.
        - **Power Over Federal Property**:
            - Congress has the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.
        - **Necessary and Proper Clause**:
            - Congress has the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.
            - This clause grants Congress implied powers to enact legislation that is reasonably related to carrying out its enumerated powers.
3. **Congressional Limits on the Executive**:
    - Congress has the power to:
        - Control the purse strings of the federal government through its appropriations power.
        - Impeach and remove the President, Vice President, and all civil officers of the United States for treason, bribery, or other high crimes and misdemeanors.
        - Investigate the activities of the executive branch.
            - This power is implied from the Necessary and Proper Clause.
            - Congress can use its investigative power to:
                - Gather information to support legislation.
                - Oversee executive branch activities.
                - Expose wrongdoing.
        - Confirm presidential appointments.
        - Ratify treaties.

II. The Powers of the President

A. Executive Power

1. **Source and Scope**:
    - Article II, Section 1 vests the executive power in the President.
    - The President has a duty to faithfully execute the laws.
    - The President has broad discretion in carrying out the laws, but cannot act without congressional authorization.
2. **Express Powers**:
    - Article II grants the President specific powers, including:
        - **Commander in Chief:** The power to command the armed forces.
        - **Treaty Power:** The power to make treaties with the advice and consent of the Senate (two-thirds of Senators present must concur).
        - **Appointment Power:** The power to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution.

        - Congress may vest the appointment of inferior officers in the President, the courts, or the heads of departments.
    - **Pardon Power:** The power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.
    - **Veto Power**: The power to veto legislation passed by Congress.
        - Congress can override a veto with a two-thirds vote of both houses.
3. **Implied Powers**:
    - The President has inherent powers not expressly granted in the Constitution, derived from:
        - **The Vesting Clause**: "The executive Power shall be vested in a President of the United States of America."
        - **The Take Care Clause**: The President "shall take Care that the Laws be faithfully executed."
    - Examples of implied powers:
        - **Executive Privilege**: The right to withhold information from Congress and the courts.
        - **Executive Orders**: Directives issued by the President to executive branch officials, having the force of law.
        - **Executive Agreements**: International agreements made by the President without Senate approval.
            - These agreements do not have the same legal force as treaties, but are binding on the United States.

III. The Powers of the Judiciary

A. Judicial Power

1. **Source and Scope**:
    - Article III, Section 1 vests the judicial power of the United States in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish.
    - The federal judiciary has the power to:
        - Interpret and apply the Constitution and federal laws.
        - Adjudicate cases and controversies.
        - Exercise judicial review to determine the constitutionality of acts of the other branches and the states.
2. **Limitations**:
    - Federal courts are limited to deciding "cases" and "controversies."
    - They cannot issue advisory opinions.
    - They must meet the requirements of standing, ripeness, and mootness.
    - They will not decide political questions.

IV. Interbranch Checks and Balances

The Constitution establishes a system of checks and balances to ensure no single branch of government becomes too powerful.

1. **Examples**:
   - Congress can impeach and remove the President.
   - The President can veto legislation passed by Congress.
   - The Supreme Court can declare laws passed by Congress or actions taken by the President unconstitutional.
   - Congress can control the funding of executive branch agencies.
   - The Senate must confirm presidential appointments.
   - The Senate must ratify treaties negotiated by the President.
2. **Purpose**:
   - The system of checks and balances prevents tyranny and ensures accountability.
   - It encourages cooperation and compromise among the branches.

V. Delegation Doctrine

1. **General Rule**:
   - Congress cannot delegate its legislative power to the executive branch.
2. **Exception**:
   - Congress can delegate rule-making authority to executive agencies if it provides:
     - **Intelligible Principles**: Clear guidelines and standards to guide the agency's discretion.
3. **Purpose**:
   - The delegation doctrine ensures that Congress retains ultimate legislative authority.

The Relation of Nation and States in a Federal System

1. **Intergovernmental Immunities**: The extent to which each government is immune from regulation and taxation by the other.
2. **Authority Reserved to the States**: The powers that remain with the states, including the Tenth Amendment and the Dormant Commerce Clause.
3. **National Power to Override State Authority**: Situations where federal law preempts state law, focusing on the Supremacy Clause and express and implied preemption.
4. **Relations Among States**: The obligations states owe to each other, including the Full Faith and Credit Clause and the Privileges and Immunities Clause.

I. Intergovernmental Immunities

A. Immunity of the Federal Government

1. **Source**: The Supremacy Clause (Article VI, Clause 2) establishes that the Constitution, federal laws made pursuant to it, and treaties are the "supreme Law of the Land," binding on state judges.
2. **Scope**:
   - **Immunity from State Regulation and Taxation**: States generally cannot regulate or tax the federal government or its agencies. This immunity stems from the Supremacy Clause and the principle that a state cannot interfere with the operations of the federal government.

        - **Examples**: States cannot require a federal contractor to obtain a state license to construct facilities at an Air Force base. States cannot impose environmental regulations on federal agencies operating within their borders.
        - **Exceptions**: States may tax federal employees' income, as long as the tax is nondiscriminatory and applies to all similarly situated individuals.
    - **Immunity from Suit**: The federal government enjoys sovereign immunity, meaning it cannot be sued without its consent. Congress has waived sovereign immunity in certain cases, such as tort claims under the Federal Tort Claims Act.
        - **Exceptions**:
            - Suits against federal officers for actions taken in their personal capacity.
            - Suits seeking injunctive relief against federal officers for actions taken in their official capacity.

B. Immunity of State Governments

1. **Source**: The Tenth Amendment reserves powers not delegated to the federal government to the states. The Eleventh Amendment prohibits federal courts from hearing lawsuits against states brought by citizens of another state or foreign country.
2. **Scope**:
    - **Immunity from Federal Taxation**: States are generally immune from federal taxation that would interfere with their essential governmental functions.
        - **Example**: The federal government cannot tax state park land.
        - **Exception**: States can be taxed on activities that are not essential governmental functions, such as operating a state-owned liquor store.
    - **Immunity from Suit in Federal Court**: The Eleventh Amendment generally bars private individuals from suing states in federal court for money damages. This immunity extends to state agencies and officials acting in their official capacity.
        - **Exceptions**:
            - Suits brought by the federal government against a state.
            - Suits brought by one state against another state.
            - Suits against state officials for violations of federal law.
            - Suits for prospective injunctive relief against state officials.
            - Suits authorized by Congress under its powers to enforce the 13th, 14th, and 15th Amendments.
            - Suits where the state has expressly waived its immunity.

II. The Authority Reserved to the States

A. The Tenth Amendment

1. **Text**: "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."
2. **Scope**: The Tenth Amendment reserves to the states all powers not expressly delegated to the federal government by the Constitution. This reservation of power is the foundation of state police power, which allows states to regulate for the health, safety, welfare, and morals of their citizens.

3. **Limitations**:
    - **Supremacy Clause**: Federal law is supreme over state law, so any state law that conflicts with valid federal law is preempted.
    - **Enumerated Powers of Congress**: The Constitution specifically grants certain powers to the federal government, such as the power to regulate interstate commerce.
    - **Anti-Commandeering Doctrine**: The federal government cannot "commandeer" state governments by forcing them to enact or administer federal programs.
        - **Examples**:
            - *New York v. United States* (1992): The Supreme Court struck down a provision of the Low-Level Radioactive Waste Policy Amendments Act that required states to either take title to radioactive waste generated within their borders or regulate it according to federal standards. The Court held that this provision violated the Tenth Amendment by forcing states to choose between regulating according to federal dictates or taking ownership of radioactive waste, a task traditionally relegated to the federal government.
            - *Printz v. United States* (1997): The Supreme Court invalidated a provision of the Brady Handgun Violence Prevention Act that required state and local law enforcement officers to conduct background checks on prospective handgun purchasers. The Court reasoned that this provision violated the Tenth Amendment by compelling state officials to execute a federal program.

B. The Dormant Commerce Clause

1. **Concept**: Even in the absence of federal legislation, the Commerce Clause (Article I, Section 8) implicitly restricts state and local laws that burden interstate commerce. This restriction is known as the "dormant" or "negative" Commerce Clause.
2. **Purpose**: The Dormant Commerce Clause ensures that states do not erect barriers to the free flow of goods and services across state lines. It prevents states from engaging in economic protectionism that favors their own citizens or businesses at the expense of those from other states.
3. **Analysis**:
    - **Discriminatory Laws**: If a state or local law discriminates against interstate commerce on its face or in its purpose, the law is subject to strict scrutiny. The law will be upheld only if the state can demonstrate that it is necessary to achieve a compelling state interest and there is no less restrictive alternative.
        - **Example**: A state law that prohibits the sale of out-of-state milk unless it is bottled in the state would be considered discriminatory.
    - **Nondiscriminatory Laws**: If a state or local law is facially neutral but has a disproportionate adverse impact on interstate commerce, the law is subject to a balancing test. The court will weigh the burden on interstate commerce against the local benefits of the law. The law will be upheld if the local benefits outweigh the burden on interstate commerce.

        - **Example**: A state law that requires all trucks passing through the state to have a certain type of mudflap, regardless of their origin, would be considered nondiscriminatory, even if it increases costs for out-of-state trucking companies.
4. **Exceptions**:
    - **Congressional Authorization**: Congress can expressly authorize states to enact laws that would otherwise violate the Dormant Commerce Clause.
    - **Market Participant Exception**: If a state acts as a market participant, rather than a regulator, it may favor its own citizens or businesses. This exception applies when the state is buying or selling goods or services, or providing subsidies.
        - **Example**: A state-owned cement factory may give preferential treatment to in-state buyers.

III. National Power to Override or Extend State Authority

A. The Supremacy Clause

1. **Source**: Article VI, Clause 2 establishes that the Constitution, federal laws made pursuant to it, and treaties are the "supreme Law of the Land." This clause forms the basis for the doctrine of preemption, which dictates that federal law supersedes conflicting state law.

B. Express Preemption

1. **Definition**: Occurs when a federal law explicitly states that it preempts state or local law in a particular area.
2. **Scope**: Express preemption clauses must be narrowly construed. Federal law preempts state law only to the extent specified in the preemption clause.

C. Implied Preemption

1. **Definition**: Occurs when federal law implicitly preempts state or local law, even if the federal law does not expressly address preemption.
2. **Types**:
    - **Conflict Preemption**: Arises when it is impossible to comply with both federal and state law.
        - **Example**: If a federal law sets a minimum wage of $7.25 per hour and a state law sets a minimum wage of $15 per hour, the state law is preempted because it is impossible for an employer to comply with both laws.
    - **Obstacle Preemption**: Arises when state law stands as an obstacle to the accomplishment of the purposes and objectives of Congress.
        - **Example**: If a federal law requires airlines to provide passengers with certain safety information and a state law prohibits airlines from providing that information, the state law is preempted because it interferes with the federal objective of promoting air safety.
    - **Field Preemption**: Arises when federal law so thoroughly occupies a field of regulation that it leaves no room for state regulation. This type of preemption occurs

when Congress has evidenced an intent to occupy the field through a comprehensive regulatory scheme.
    - **Example**: Federal law extensively regulates the labeling of food products. A state law that imposes additional labeling requirements on food products would likely be preempted under the field preemption doctrine.

D. Authorization of Otherwise Invalid State Action

1. **Concept**: Congress has the power to authorize states to enact laws that would otherwise be unconstitutional under the Dormant Commerce Clause or other constitutional provisions.
2. **Scope**: Congressional authorization must be clear and unambiguous.

IV. Relations Among States

A. Full Faith and Credit Clause

1. **Source**: Article IV, Section 1 requires states to give full faith and credit to the public acts, records, and judicial proceedings of every other state.
2. **Scope**: This clause requires states to:
    - Recognize and enforce judgments of other states.
        - **Example**: If a person obtains a judgment in a lawsuit in State A, that judgment is enforceable in State B.
    - Give effect to the laws of other states, as long as those laws do not violate the public policy of the forum state.
        - **Example**: If a couple is validly married in State A, that marriage is generally recognized in State B, even if State B has different marriage laws.
3. **Limitations**:
    - **Penal Judgments**: A state is not required to enforce the criminal laws or penal judgments of another state.
    - **Public Policy Exception**: A state may refuse to enforce the laws of another state if those laws violate its strong public policy.
    - **Lack of Jurisdiction**: A state is not required to give full faith and credit to a judgment of another state if that state lacked jurisdiction to enter the judgment.

B. Privileges and Immunities Clause

1. **Source**: Article IV, Section 2 guarantees that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."
2. **Scope**: This clause prohibits states from discriminating against citizens of other states with respect to fundamental rights and essential activities. This clause aims to prevent states from treating their own residents more favorably than out-of-state residents.
3. **Protected Rights and Activities**: The Privileges and Immunities Clause protects a range of rights, including:
    - **The Right to Travel**: Citizens have a fundamental right to travel freely among the states.

- **The Right to Seek Employment**: Citizens have a right to seek employment in any state.
  - **Exception**: States may require residency for certain government jobs, such as police officers or teachers.
- **The Right to Own Property**: Citizens have a right to own property in any state.
- **Access to Courts**: Citizens have a right to access the courts of any state.

4. **Analysis**: To determine whether a state law violates the Privileges and Immunities Clause, courts consider:
   - Whether the law discriminates against out-of-state citizens.
   - Whether the discrimination burdens a fundamental right or an essential activity.
   - Whether the state has a substantial justification for the discrimination.
   - Whether there are less restrictive means to achieve the state's objective.
5. **Exceptions**: The Privileges and Immunities Clause does not prohibit discrimination against out-of-state residents:
   - If the discrimination is related to protecting a legitimate state interest.
   - If the state has a substantial reason for the difference in treatment.
   - If the discrimination bears a substantial relationship to the state's objective.
     - **Example**: In *Supreme Court of New Hampshire v. Piper* (1985), the Supreme Court invalidated a New Hampshire rule limiting bar admission to state residents. The Court found that the rule discriminated against out-of-state residents and did not bear a substantial relationship to the state's objective of ensuring the competency of its lawyers.

C. Interstate Compacts

1. **Source**: Article I, Section 10 permits states to enter into agreements or compacts with each other, but requires congressional consent if the compact increases state power in a way that could interfere with federal supremacy.
2. **Purpose**: Interstate compacts allow states to cooperate on matters of mutual concern, such as environmental protection, resource management, and law enforcement.

Individual Rights

I. Due Process

A. General Constitutional Basis

1. **Fifth Amendment (Federal):** No person shall be deprived of life, liberty, or property, without due process of law.
2. **Fourteenth Amendment (State):** Nor shall any State deprive any person of life, liberty, or property, without due process of law.
3. **Selective Incorporation:** Most provisions of the Bill of Rights apply to the states through the Fourteenth Amendment.

B. Procedural Due Process

1. **Definition:** The government must follow fair procedures before depriving a person of life, liberty, or property. This includes notice of the charges or proceedings and the opportunity to be heard.
2. **Property:** This includes interests that a person has a legitimate claim to, like public education or government employment (but not at-will employment).
3. **What process is due?** The amount of process due depends on the balancing test established in *Matthews v. Eldridge*:
    - Importance of the interest to the person: More important interests require more process.
    - Government interest/burden in efficiency: More burdensome procedures may result in less process.
    - Value of procedural safeguards: Higher risk of erroneous deprivation necessitates more process.
4. **Examples:**
    - A parolee must have an evidentiary hearing before parole revocation [*Morrissey v. Brewer*].
    - An adult must have an adversary hearing before involuntary commitment to a mental institution.
    - A minor child is entitled to a screening by a neutral fact-finder before commitment for medical treatment [*Parham v. J.R.*].
5. **Waiver:** Due process rights can be waived if done voluntarily and knowingly.

C. Substantive Due Process

1. **Definition:** Protects fundamental rights that are not explicitly listed in the Constitution.
2. **Standards of Review:**
    - **Strict Scrutiny:** Applied to laws affecting fundamental rights. The burden is on the government to prove the law is necessary to achieve a compelling government interest.
        - Examples: Privacy rights (MCSOFA: Marriage, Contraception, Sexual Conduct, Obscenity in the home, Family Relations, Abortion), right to vote, right to interstate travel, right to refuse medical treatment.
    - **Rational Basis:** Applied to all other rights. The burden is on the plaintiff to show the law is not rationally related to a legitimate government interest.
        - Examples: Right to education (not a fundamental right), welfare benefits, economic regulations.

D. Fundamental Rights under Substantive Due Process

1. **Right to Privacy:** Although not explicitly mentioned in the Constitution, this right encompasses various personal choices.
    - **Contraception:** States cannot prohibit the distribution or use of contraceptives.
    - **Marriage:** The right to marry is fundamental and protected by the Fourteenth Amendment.
        - **Same-sex Marriage:** Restrictions on same-sex marriage have been struck down, even though the Court applied rational basis review.

- **Abortion:** *Roe v. Wade* established a trimester framework for abortion regulations. *Planned Parenthood v. Casey* replaced this with an "undue burden" standard. However, in *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Roe* and *Casey*, holding that the Constitution does not confer a right to abortion.
- **Family Relations:** The government cannot dictate family living arrangements without a compelling reason [*Moore v. East Cleveland*].
- **Parental Rights:** Parents have a fundamental right to make decisions concerning their children's care, custody, and control.
  - Termination of parental rights requires a high level of due process.

2. **Right to Vote:** Citizens over 18 have the right to vote in all federal, state, and local elections. Restrictions on this right face strict scrutiny.
   - **Ballot Access:** Regulations of ballot access for candidates based on age, residency, or filing fees only require rational basis review.
   - **Voter ID Requirements:** Generally upheld as reasonable exercises of state police power.
3. **Right to Interstate Travel:** Citizens can move between states without undue burdens. Restrictions on this right are subject to strict scrutiny.
   - Durational residency requirements for receiving state benefits are generally unconstitutional [*Shapiro v. Thompson*].
4. **Right to Refuse Medical Treatment:** Individuals have a right to refuse unwanted medical treatment, but this right is not absolute and may be balanced against state interests.
5. **Right to Bear Arms:** The Second Amendment protects the right to keep and bear arms for self-defense in the home. This right applies to both federal and state governments [*McDonald v. City of Chicago*].

II. Equal Protection

A. Constitutional Basis

1. **Fourteenth Amendment:** No State shall deny to any person within its jurisdiction the equal protection of the laws.
2. **Applies to the Federal Government:** The Court has read equal protection principles into the Fifth Amendment's Due Process Clause, making it applicable to the federal government.

B. Standards of Review

1. **Strict Scrutiny:** Applied to laws classifying individuals based on suspect classifications (race, national origin, alienage) or affecting fundamental rights. The burden is on the government to show the law is necessary to achieve a compelling government interest.
2. **Intermediate Scrutiny:** Applied to classifications based on quasi-suspect classifications (gender, non-marital children). The burden is on the government to show the law is substantially related to an important government interest.

3. **Rational Basis:** Applied to all other classifications. The burden is on the plaintiff to show the law is not rationally related to a legitimate government interest.

C. Suspect Classifications

1. **Race:** Laws that discriminate based on race are subject to strict scrutiny.
    - **De Jure Discrimination:** Intentional discrimination on its face or by application.
    - **De Facto Discrimination:** A law that is racially neutral on its face but has a discriminatory impact. Proving discriminatory intent is required to trigger strict scrutiny.
    - **Affirmative Action:** Programs designed to benefit historically disadvantaged racial minorities. These are also subject to strict scrutiny.
        - Quotas and set-asides are generally prohibited unless there is a history of specific and identifiable discrimination [*Richmond v. J.A. Croson Co.*].
2. **National Origin:** Discrimination based on national origin also triggers strict scrutiny.
3. **Alienage:** Laws that discriminate against non-citizens are generally subject to strict scrutiny.
    - **Exception:** State and local governments can discriminate in areas related to self-government and democratic process (e.g., voting, holding elected office, serving on a jury). These are subject to rational basis review.

D. Quasi-Suspect Classifications

1. **Gender:** Gender classifications are subject to intermediate scrutiny. The government must show an "exceedingly persuasive justification" for the discrimination [*United States v. Virginia*].
    - Laws that perpetuate stereotypes about traditional gender roles are likely to be struck down.
2. **Non-Marital Children:** Classifications based on legitimacy (birth status) receive intermediate scrutiny. Laws that discriminate against non-marital children are generally unconstitutional.

E. Other Classifications

1. **Wealth:** Classifications based on wealth are subject to rational basis review.
2. **Age:** Age classifications also receive rational basis review.
3. **Mental Disability:** Classifications based on mental disability are subject to rational basis review.
4. **Sexual Orientation:** The Supreme Court has not designated sexual orientation as a suspect or quasi-suspect class, so these classifications are reviewed under rational basis. However, the Court has struck down laws that discriminate against LGBTQ individuals, even while applying this lower standard.

III. Individual Rights and State Action

A. State Action Doctrine

1. **Generally:** The Constitution's individual rights provisions only apply to actions by the government (state action). Private conduct is generally not subject to constitutional constraints.

B. Types of State Action

1. **Traditional Government Function:** When a private entity performs a function traditionally and exclusively reserved to the government (e.g., running an election).
2. **Public Function:** When a private entity exercises powers traditionally performed by the government and is significantly involved in public affairs.
3. **Entanglement:** When the government is significantly involved in private conduct, either through encouragement, endorsement, or entwinement.

C. Private Conduct and the Thirteenth Amendment

1. **Exception:** The Thirteenth Amendment, which prohibits slavery and involuntary servitude, can be used to reach private conduct that constitutes a "badge or incident of slavery".

IV. First Amendment Freedoms

A. Freedom of Speech and Expression

1. **General Principles:** The First Amendment protects individuals from government restrictions on speech and other forms of expression. It applies to the states through the Fourteenth Amendment.
2. **Types of Restrictions:**
    - **Content-Based:** Restrictions based on the subject matter or viewpoint of the speech. These are subject to strict scrutiny.
        - **Exceptions:** Unprotected speech categories like obscenity, defamation, fighting words, incitement to imminent lawless action, and true threats are not protected by the First Amendment.
    - **Content-Neutral:** Restrictions that regulate the time, place, and manner of speech, but not its content. These are subject to intermediate scrutiny.

B. Unprotected Speech

1. **Incitement to Imminent Lawless Action:** Speech that is directed to inciting or producing imminent lawless action and is likely to incite such action [*Brandenburg v. Ohio*].
2. **Fighting Words:** Words that by their very utterance inflict injury or tend to incite an immediate breach of the peace.
3. **True Threats:** Statements meant to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals.
4. **Obscenity:**
    - **Miller Test:** To be considered obscene, the material must:
        - Appeal to the prurient interest (applying contemporary community standards).

        - Depict or describe sexual conduct in a patently offensive way (applying contemporary community standards).
        - Lack serious literary, artistic, political, or scientific value (applying a national reasonable person standard).
    - **Child Pornography:** Not protected by the First Amendment.
5. **Defamation:** False statements of fact that harm someone's reputation. Public figures and officials must prove actual malice (knowledge that the statement was false or reckless disregard for the truth) to recover damages.
6. **Commercial Speech:** Speech that proposes a commercial transaction. Receives less protection than other forms of speech.
    - **Central Hudson Test:** Commercial speech restrictions must:
        - Concern lawful activity and not be misleading.
        - Serve a substantial government interest.
        - Directly advance that interest.
        - Not be more extensive than necessary to serve that interest.

C. Content-Neutral Restrictions: Time, Place, and Manner

1. **Public Forums:** Streets, sidewalks, parks, and other public places traditionally open to expressive activity. Content-neutral restrictions in these forums must meet intermediate scrutiny.
    - Must be narrowly tailored to serve an important government interest.
    - Must leave open alternative channels of communication.
2. **Limited Public Forums:** Places not traditionally open to public expression but opened by the government for a specific purpose (e.g., a school auditorium open for a debate).
3. **Non-Public Forums:** Government property not historically open to expressive activity (e.g., military bases, prisons). The government can regulate speech in these forums as long as the restrictions are reasonable and viewpoint neutral.
4. **Permit Requirements:** Can be imposed for activities like parades or protests as long as the criteria for issuance are content-neutral and there are clear standards to prevent arbitrary denials.

D. Prior Restraint

1. **Definition:** A government action that prevents speech from occurring. Generally presumed to be unconstitutional.
    - **Heavy Burden:** The government bears a heavy burden to justify prior restraint. It must show a compelling interest and that the restraint is narrowly tailored.
2. **Examples:**
    - **Injunctions:** Court orders prohibiting speech can constitute prior restraint. They must be narrowly drawn and specific.
    - **Licensing Schemes:** Systems requiring pre-approval for speech can be prior restraints if they give officials unfettered discretion to deny permits.

E. Overbreadth

1. **Definition:** A law that prohibits a substantial amount of protected speech along with unprotected speech.
2. **Substantial Overbreadth:** The overbreadth must be substantial in relation to the law's legitimate sweep to be unconstitutional.
3. **Standing:** A person whose speech would be constitutionally protected can challenge an overbroad law, even if their own speech could be regulated.

F. Vagueness

1. **Definition:** A law that is so unclear that a reasonable person cannot tell what speech is prohibited and what is permitted.
2. **Due Process Violation:** Vague laws violate due process because they fail to provide fair notice of what conduct is forbidden.

G. Freedom of Association

1. **Expressive Association:** The right to join with others to express ideas and advocate for change. Subject to strict scrutiny if the government interferes with this right.
   - **Public Employment:** Public employees have free speech rights, but the government has more leeway to regulate their speech when it relates to their official duties.
   - **Loyalty Oaths:** Generally permissible for public employees, but they cannot be overbroad or vague.
2. **Intimate Association:** The right to form close personal relationships with others (e.g., family, friends). This right is protected under the Fourteenth Amendment's Due Process Clause.

H. Freedom of the Press

1. **No Prior Restraint:** The government cannot prevent the press from publishing information, except in very limited circumstances.
2. **Libel and Privacy:** The press can be held liable for publishing false information that harms someone's reputation (libel) or invades their privacy. Public figures have a higher burden to prove libel.

I. Freedom of Religion

1. **Free Exercise Clause:** Prohibits the government from interfering with the free exercise of religion.
   - **Strict Scrutiny:** Laws that intentionally target religious practices or beliefs are subject to strict scrutiny.
   - **Neutral Laws of General Applicability:** Generally do not violate the Free Exercise Clause, even if they incidentally burden religious practices [*Employment Division v. Smith*].
2. **Establishment Clause:** Prohibits the government from establishing a religion or favoring one religion over another.

- **Lemon Test:** A law must have a secular purpose, its primary effect must neither advance nor inhibit religion, and it must not foster excessive government entanglement with religion.
- **Endorsement Test:** The government cannot endorse or disapprove of religion.
- **Coercion Test:** The government cannot coerce individuals to participate in religious activities.

3. **Examples:**
   - School prayer is generally unconstitutional, as it violates the Establishment Clause.
   - Government funding of religious schools is permissible if the aid is neutral and goes to the students, not the school directly (e.g., vouchers) [*Zelman v. Simmons-Harris*].

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