

# CHAPTER 6

Constitutional Law

# CASE FILE

- ▶ Read the case file on page 104 and write a paragraph explaining your personal position on this situation. Assume that the school in question is a public school.
  - ▶ Do you think dress codes are permitted?
  - ▶ How about the process by which the students were expelled?
- ▶ In class: We will read some case law relating to this situation.
  - ▶ After reading the case law construct case briefs for each of the three cases.

# CONSTITUTIONAL LAW 105-106

- ▶ What is the Supremacy Clause and what does this clause do? How does this clause influence every other aspect of law?
- ▶ What is Judicial Review? What Case established this concept and what does this process allow the supreme court to do?
  - ▶ How does Judicial review work? Can the Court actively find laws and consider their constitutionality?
  - ▶ What questions was asked in regards to this case that led the court to establishing the idea of Judicial Review?
- ▶ Read the supplied summary of Marbury v Madison on page 106 and 107 and answer the Case Analysis Questions
- ▶ **Define All Bolded Vocabulary Terms in your Vocabulary File** – For each definition copy the definition from your book. Redefine the word in your own terms and develop or provide an example that you will remember **or** explain why this is important to the study of law.

# ORGANIZATION OF GOVERNMENT

## ▶ The Supremacy Clause

- ▶ Makes the United States Constitution the Supreme Law of the Land
  - ▶ No other law (state or federal) (statutory or case) can conflict with the Constitution.
  - ▶ Includes the Constitution's 27 amendments

## ▶ Constitutional Principles

- ▶ Separation of Powers - Constitutional Doctrine that creates three separate branches of government
- ▶ Checks and Balances – Gives each of the three branches a check on the other branch's power to ensure no one branch becomes too powerful or has too much control.

## ▶ Judicial Review

- ▶ Not written into constitution nor mentioned in amendments
- ▶ Power under checks and balances granted to Supreme Court by Supreme Court under the decision for Marbury v Madison.
  - ▶ Allows the Court to make laws inconsistent with the constitution unenforceable.
- ▶ Passive Power – Only acts when problem is brought to the attention of the court.
- ▶ United States v Windsor

# JUDICIAL REVIEW

- ▶ Read the [United States v Windsor Opinion Available on Google Drive](#)
  - ▶ Explain how Judicial review is implemented in this case by identifying
    - ▶ What laws were effectively declared unconstitutional
    - ▶ Under what constitutional reasoning were these laws declared unconstitutional
    - ▶ Summarize the case in as case brief format.

# THE BILL OF RIGHTS (RELIGIOUS FREEDOM) 107-112

- ▶ Read Application 6.1, and the Cases indicated on page 110 – 112
  - ▶ Based on your reading present a brief discussion regarding the Courts view on religion and religious freedom in the United States.
- ▶ Based on your reading – revisit the case file at the start of the chapter. Is the school's policy constitutional under the religious argument in cases you've read about?
  - ▶ If so why? If not how can this policy be altered in order to be Constitutional?
- ▶ **Define All Bolded Vocabulary Terms in your Vocabulary File** – For each definition copy the definition from your book. Redefine the word in your own terms and develop or provide an example that you will remember **or** explain why this is important to the study of law.

# BILL OF RIGHTS

- ▶ Bill of Rights
  - ▶ Limitations on the power of government to interfere with the freedom of the people and states
  - ▶ Originally only applied to the federal government
- ▶ 14<sup>th</sup> Amendment – States can not deprive citizens of rights without due process of law
  - ▶ Applies the Constitutional Rights to State Governments
    - ▶ Ensures states can not infringe on citizen's Constitutional rights
  - ▶ Incorporation Doctrine – The idea that the rights in the bill of rights are included in the broad idea of 'due process'
- ▶ First Amendment
  - ▶ Receives the most attention from the Court – Freedom of: Religion, Speech, Press, Assembly and Petition
    - ▶ Freedom of Speech receives the most attention among all of these.
  - ▶ Freedom of Religion
    - ▶ Establishment Clause – Congress shall make no law prohibiting the free exercise of religion.
      - ▶ Court Prevents the Government from supporting specific religion as well. (Lemon v Kurtzman)

# FREEDOM OF SPEECH / (112-122)

- ▶ Identify situations in which freedom of speech is not protected by the Constitution? Explain why.
- ▶ Read Application 6.2 and 6.3 on 113 and 114 – Explain why it is necessary (according to the courts) to limit freedom of speech for students in school? Under *Morse v Frederick*
  - ▶ Consider the situation in *Morse v Frederick* would you agree with the court? Why or why not? Explain.
- ▶ Take note of the Guidelines noted in Application 6.4 with special attention to any exceptions noted. Pick one of the guidelines used and explain it in your own words. Explain why you think the court would utilize this guideline and hypothesize the consequences of a lack of your selected standard.
- ▶ Read the case files on page 117 through 122. Pick one case and explain the decision made and how the decision impacts freedom of speech in detail. In a general manner what do these three cases show about the court's altitude towards free speech? (Please don't just pick the shortest case *Ashcroft* is one of the most interesting)
- ▶ **Vocabulary**
- ▶ **Rights of Criminal Defendants – We Will cover this in more detail in chapter 15 but for now please just add Application 6.5 to your notes.**

# CIVIL RIGHTS 123 - 126

- ▶ Discuss the history of civil rights in the United States. Were civil rights always a forgone conclusion for all Americans?
- ▶ In your reading the 14<sup>th</sup> amendment is mentioned in regard to Civil rights. Look up the history of the 14<sup>th</sup> amendment. Why is this an important civil rights amendment and what does this amendment do?
- ▶ Read *Brown v Board of Education* (124-126) Answer all Case analysis questions
  - ▶ Despite the fact that the court overruled a previous decision why is this not a violation of Stare decisis? Explain
- ▶ What is affirmative action? What are some of the legal issues cited with affirmative action policies? Explain. Why is race such a tough topic to consider for the courts given history and affirmative action?
- ▶ **Vocabulary**
- ▶ Research the case *University of California v Bakke* explain the issue with affirmative action brought up in this case? What was the decision of the court?
- ▶ Read *PGA Tour Inc. v Martin* for in class discussion – focus on the concept of Civil Rights

# PRIVACY AND DUE PROCESS (128-137)

- ▶ Add Application 6.6 to your notes for Voting Rights under the constitution. We will review this briefly in class.
- ▶ Discuss the term procedural due process / substantive due process and the rational bias test in the context of restricting privacy rights. Under what circumstances does the government have the right to restrict privacy?
- ▶ Read *Griswold v Connecticut* and answer the Case analysis questions.
  - ▶ In this case explain the argument of *Griswold* as to the illegality of the Connecticut law. What reasoning does he use to argue Connecticut's restrictions are unconstitutional?
- ▶ Read *Lawrence v Texas* Explain the privacy concerns in this situation. What had Texas done that was considered to be unconstitutional? Why were the state's actions illegal?
- ▶ **Vocabulary**
- ▶ **Read *Roe v Wade* for in class discussion – focus on the concept of due process.**

# APPLICATION AND ANALYSIS

- ▶ Reread the case file at the beginning of the chapter. Construct a basic argument for both sides.
  - ▶ Argue why the students were right
  - ▶ Argue why the school was right
- ▶ Answer Question 2 under application and Analysis ensure you reread the section on Ashcroft v Free Speech Coalition to inform your answer.
  - ▶ Why would the Ashcroft decision be a balancing act regarding Obscenity?
  - ▶ Is the Ashcroft decision based on an obscenity alone?