

U.S. Constitution [1789]

The Constitution was established by authority of free people to create a government to secure their rights. However, the Constitution did not recognize rights for the majority of people, counting slaves, tribal Indians, women, and children.

Southern states would not join the Union unless slavery was legalized. Slavery was built into the Constitution without using the word. Instead, in determining “who counts” for the purpose of establishing number of representatives for Congress or taxes, the Constitution refers to “the whole number of free Persons... and, excluding Indians..., three-fifths of all other Persons.”* Migration and importation of “such Persons as... existing States” thought “proper to admit” could not be prohibited until 1808.** The Constitution also required return of escaped “Laborers” (runaway or “fugitive” slaves) to their owners.***

* Article I, Section 2, Three-Fifths Clause changed by 14th Amendment, 1868

** See Article I, Section 9, Migration and Importation Clause. Legal importation of new slaves ended when Act Prohibiting Importation of Slaves went into effect in 1808. Domestic slavery was made illegal by 13th Amendment, 1865

*** Article IV, Section 2, Fugitive Slaves Clause changed by 13th Amendment, 1865

1789

**U.S. Constitution
legalizes slavery**

Dred Scott v. Sandford (sic) [1857]

A federal law, the Missouri Compromise of 1821, abolished slavery in U.S. territories—lands not yet states. Under Missouri law, if slaves entered free territory, they remained free for life. When Dred Scott, a slave, returned from free territory to Missouri, he sued for emancipation. Scott's case introduced “substantive due process” in U.S. law with its focus on protected liberties instead of procedure.

Supreme Court ruled that substantive due process protects the liberty of certain persons to own slaves. Court decides Americans of African descent are not citizens; they have no standing and could not sue in federal court; and Congress lacked authority to ban slavery in U.S. territories.* Instead of settling the slavery question, the ruling increased tensions.

Dred Scott and his family were emancipated in May 1857, when his owner's widow moved to Massachusetts and married an abolitionist.

* Court overruled by 13th, 14th, and 15th Amendments, 1865–1870

1857

**African Americans
are NOT citizens**

The Slaughterhouse Cases [1873]

Waste products from slaughterhouses upstream of New Orleans were creating serious health problems for city residents. When the state consolidated upstream slaughterhouses to move them south of the city, other slaughterhouses sued, claiming the monopoly violated their privileges and immunities under the 14th Amendment.

This was the first test of the 14th Amendment. A split court ruled that the Privileges and Immunities Clause did not apply to states.

The ruling gutted the 14th Amendment Privileges and Immunities Clause and kept door open for Jim Crow laws in the South. To this day, this right is seldom used.

1873

**privileges &
immunities do not
apply to states**

***Minor v. Happersett* [1875]**

When a Missouri suffragist was denied the vote, she and her husband filed suit. They claimed the state's restrictive voting laws violated the privileges and immunities of citizenship guaranteed under the 14th Amendment.

Supreme Court ruled that allowing only male citizens to vote was not a violation of women's rights under the 14th Amendment. Privileges under 14th Amendment did not include the right to vote, because voting was not an inherent right of citizenship. States controlled the right to vote and the Court had decided in 1873 that the Privileges and Immunities Clause did not apply to states. States continued to deny women the right to vote.*

* Court overruled by 19th Amendment, 1920

1875

women denied

14th Amendment
protection

***Plessy v. Ferguson* [1896]**

In 1891, citizens in New Orleans, Louisiana, organized to test if “separate but equal” state laws were constitutional. A 30-year-old shoemaker who was seven-eighths Caucasian bought a first-class train ticket. He was arrested when he boarded the white only car.

In 1896, the Supreme Court ruled that Louisiana state law did not violate the 13th Amendment, because it did not require slavery. And it did not violate the 14th Amendment, because it dealt with political, not social, equality.

The Supreme Court held that state laws enforcing racial segregation are constitutional if separate accommodations are “equal.” African Americans effectively lost 14th Amendment rights and much access to the white world. This ruling legalized “Jim Crow” racial discrimination laws and practices.*

* Court overruled by *Brown v. Board of Education*, 1954

1896

separate

but equal

***Hunter v. Pittsburgh* [1907]**

Supreme Court settles a public debate between federal Judge Dillion and Michigan Supreme Court Justice Cooley over powers of local government. The Court ruled municipalities have no rights that are not granted by state legislatures. Under this ruling, a Pennsylvania law giving political power to local governments was unconstitutional. Known as “Dillon’s Rule,” this is used in 39 states to usurp citizens of local governing authority and to stop people from adopting laws to protect public health and welfare, workers, and the environment against harm from corporate activities permitted by the state.

Court: "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising... governmental powers of the state... The number, nature, and duration of the powers conferred upon these corporations... rests in the absolute discretion of the state... The state, therefore, at its pleasure, may modify or withdraw all such powers..."

Cooley (Home Rule) Doctrine: *“Local government is a matter of absolute right and the state cannot take it away.”* Thomas Cooley, 1871

1907

**Municipal rights
preempted by state**

***Buckley v. Valeo* [1976]**

Supreme Court found: “The [voter’s] increasing dependence on television, radio and... mass media for news and information has made these expensive modes of communication [essential] instruments of effective political speech.”

The Court reasoned that “restrictions on spending during election campaigns reduce a person’s amount of expression.” Further, “The First Amendment denies government the power to determine that spending to promote one’s political views is wasteful, excessive, or unwise.”

The Court struck down limits on campaign spending as unconstitutional because they are direct limits on political speech – political money is speech under the 1st Amendment.

Supreme Court upheld limits on campaign contributions to protect election integrity – until 2010 *Citizens United* decision.

1976

**political money
is free speech**

USA PATRIOT Act [2001]

Passed by Congress and enacted by President George W. Bush after September 11, 2001, this law violates civil liberties and privacy of individuals in trade for more security. The law allows government to monitor U.S. citizens by searching phones, financial records, and more to determine if someone is a terrorist. Also, the law authorizes indefinite detention without trial of non-U.S. citizens suspected of being terrorists until the “War on Terrorism” is finished.

Originally scheduled to expire, Congress renewed key provisions in 2011 under the Dept. of Defense budget bill.

Law infringes 1st Amendment rights of speech, assembly, and petition of grievances; 4th Amendment rights against unreasonable search and seizures; 5th Amendment right of due process; and 6th Amendment rights to a speedy and public jury trial.

Benjamin Franklin, 1755: *“Those who would give up essential Liberty, to a little temporary Safety, deserve neither Liberty nor Safety.”*

2001

USA PATRIOT Act
spying on U.S. citizens
& indefinite detention*

***non U.S. citizens only until 2011**

Wal-Mart v. Dukes [2011]

Wal-Mart worker Betty Dukes sought to file a class action lawsuit,* claiming gender discrimination in pay and career advancement. The case represented 1.6 million women, all former or current Wal-Mart employees from 1998 to 2001.

Supreme Court ruled case did not meet class requirements. Plaintiffs needed “proof” that a company has a policy of paying less to women or people of color. “Proof” means actual paycheck stubs. Submitting “proof” subjects workers to harassment, intimidation, and job termination. Statistics showing that a company’s female workers earn far less and get fewer promotions than men are not proof.

Ruling reversed 45 years of progress towards wage equity among gender and race and protects discriminatory practices.

* a legal dispute in which a group of people claim the same or similar injuries were caused by the same product or action and they sue the defendant as a group

2011

**gender/wage
discrimination**

USA PATRIOT Act extended [2011]

Every year Congress passes a National Defense Authorization Act to monitor the Department of Defense budget. However, the 2011 NDAA reauthorization extended the PATRIOT Act. It also extended indefinite detention measures for U.S. citizens. People spied on and suspected of being terrorists may be whisked away anywhere in the world and detained indefinitely without trial.

The law violates 1st Amendment rights of speech, assembly, and petition of grievances; 4th Amendment rights against unreasonable search and seizures; 5th Amendment right of due process; and 6th Amendment rights to a speedy and public jury trial.

In 2013, in response to Edward Snowden's exposure of the government's bulk collection of phone and internet records, the USA Freedom Act was enacted to revise, but not stop, government surveillance of private citizens.

2011

**USA PATRIOT Act
indefinite detention
U.S. citizens**

Shelby County v. Holder [2013]

Supreme Court struck down the heart of the Voting Rights Act of 1965 – the strong enforcement measures to address entrenched racial discrimination in voting. Court ruled the “coverage formula” measure is unconstitutional under Amendment 10, as the measure exceeded Congress’ authority. Ruling makes the “preclearance requirement” inoperative and frees nine states, mostly in the south, to change election laws without advance federal approval.

Minority Justices dissent: *“For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made... Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” (emphasis added)*

2013

**allows racial
discrimination
in voting**

***Burwell v. Hobby Lobby* [2014]**

At issue was whether a provision in the Affordable Care Act could require closely-held* corporations to provide contraception coverage for employees without violating the owners' religious freedom rights.

Supreme Court ruled family-owned corporations were entitled to religious freedoms under the 1st Amendment. The ruling allows closely-held corporations to assert religious rights of owners. This greatly expands power of stockholders at expense of workers' 1st Amendment rights.

Justice Ginsburg dissents: *"For-profit corporations cannot be considered religious entities... Judicial precedent states that religious beliefs... must not impinge on the rights of third parties, as... this ruling would do to women seeking contraception..."*

* "Closely-held" is a private, for-profit corporation owned either by nongovernmental organizations or a small number of shareholders and which owns or trades its stock privately (not on the stock market)

2014

**freedom of religion
for some corporations**