

CONSTITUTIONAL PROTECTIONS

A **comprehensive, doctrine-level synthesis** of all major **constitutional protections under United States law**, organized by structural category, amendment, and doctrinal application. This is aligned with **MBE/MEE analytical frameworks** and litigation usage.

I. STRUCTURAL CONSTITUTIONAL PROTECTIONS (FOUNDATIONAL)

1. Separation of Powers

- Legislative (Article I), Executive (Article II), Judicial (Article III)
 - **Purpose:** Prevent tyranny via functional division
 - **Doctrines:**
 - Nondelegation Doctrine
 - Executive Privilege
 - Judicial Review (established in Marbury v. Madison)
 - Checks and Balances (veto, impeachment, judicial review)
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2. Federalism

- Division of power between federal and state governments
- **Key Doctrines:**
 - Supremacy Clause (Art. VI)

- Preemption (express, implied, field, conflict)
 - Anti-Commandeering Doctrine
 - Tenth Amendment (reserved powers)
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3. State Action Requirement

- Constitution applies **only to governmental conduct**
 - Exceptions:
 - Public Function Doctrine
 - Entanglement Doctrine
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II. INDIVIDUAL RIGHTS – BILL OF RIGHTS (AMENDMENTS 1–10)

A. FIRST AMENDMENT – FUNDAMENTAL FREEDOMS

1. Religion

- **Establishment Clause**
 - Lemon Test (secular purpose, primary effect, entanglement)
 - Endorsement Test
- **Free Exercise Clause**
 - Neutral laws of general applicability valid

- Strict scrutiny for targeted burdens
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2. Speech

- **Protected Speech**
 - Political speech (highest protection)
 - Symbolic speech
 - **Unprotected / Less Protected**
 - Obscenity
 - Incitement (Brandenburg test)
 - Fighting words
 - True threats
 - **Content-Based Restrictions → Strict Scrutiny**
 - **Content-Neutral → Intermediate Scrutiny**
 - **Prior Restraint Doctrine**
 - **Overbreadth & Vagueness Doctrines**
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3. Press

- No prior restraints (strong presumption invalidity)
- Freedom from censorship

4. Assembly & Association

- Freedom of expressive association
 - Time, place, manner restrictions allowed if reasonable
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5. Petition

- Right to complain to government without retaliation
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B. SECOND AMENDMENT

- Right to bear arms for self-defense
 - Subject to regulation (not absolute)
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C. THIRD AMENDMENT

- No quartering of soldiers in private homes
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D. FOURTH AMENDMENT – SEARCH & SEIZURE

Core Protection:

- Freedom from unreasonable searches and seizures

Doctrines:

- Warrant Requirement (probable cause + particularity)
- Reasonable Expectation of Privacy (Katz test)
- Exclusionary Rule
- Fruit of the Poisonous Tree Doctrine

Exceptions:

- Search Incident to Arrest
- Plain View Doctrine
- Consent
- Stop and Frisk (Terry)
- Automobile Exception
- Exigent Circumstances

E. FIFTH AMENDMENT

1. Self-Incrimination

- Miranda Rights
- Custodial interrogation protections

2. Double Jeopardy

- No second prosecution for same offense

3. Due Process (Federal)

- Procedural Due Process
- Substantive Due Process

4. Takings Clause

- Government cannot take private property without **just compensation**
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F. SIXTH AMENDMENT – CRIMINAL PROCEDURE

- Right to counsel
 - Right to speedy trial
 - Right to public trial
 - Right to impartial jury
 - Right to confront witnesses
 - Right to compulsory process
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G. SEVENTH AMENDMENT

- Right to jury trial in civil cases (federal)
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H. EIGHTH AMENDMENT

- No cruel and unusual punishment
- No excessive bail

- No excessive fines
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I. NINTH AMENDMENT

- Recognition of **unenumerated rights**
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J. TENTH AMENDMENT

- Powers reserved to states or people
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III. POST-CIVIL WAR AMENDMENTS (CRITICAL RIGHTS EXPANSION)

A. THIRTEENTH AMENDMENT

- Abolishes slavery
 - Applies to **private conduct**
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B. FOURTEENTH AMENDMENT (CORE OF MODERN RIGHTS)

1. Due Process Clause

- **Incorporation Doctrine** (applies Bill of Rights to states)
- Fundamental rights protection

2. Equal Protection Clause

Levels of Scrutiny:

- **Strict Scrutiny** (race, fundamental rights)
- **Intermediate Scrutiny** (gender)
- **Rational Basis** (economic/social)

Key Doctrines:

- Discriminatory intent requirement
 - Affirmative action analysis
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3. Privileges or Immunities Clause

- Limited modern application (mostly dormant)
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C. FIFTEENTH AMENDMENT

- No racial discrimination in voting
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IV. VOTING & DEMOCRATIC PARTICIPATION

Amendments Expanding Suffrage:

- 15th → Race
- 19th → Gender

- 24th → No poll tax
 - 26th → Age (18+)
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Doctrines:

- One Person, One Vote
 - Gerrymandering (limited justiciability)
 - Voting Rights protections
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V. SUBSTANTIVE DUE PROCESS (UNENUMERATED RIGHTS)

Recognized fundamental rights include:

- Privacy
- Marriage
- Procreation
- Family integrity
- Parental rights
- Bodily autonomy

Standard: Strict scrutiny if fundamental right implicated

VI. PROCEDURAL DUE PROCESS

Analysis Framework:

1. Life, liberty, or property interest?
2. What process is due?

Balancing Test:

- Private interest
 - Risk of error
 - Government interest
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VII. EQUAL PROTECTION ANALYSIS FRAMEWORK

1. Classification?
 2. Level of scrutiny?
 3. Government justification?
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VIII. CRIMINAL PROCEDURE INCORPORATION

Most Bill of Rights protections apply to states via the **Fourteenth Amendment**, including:

- 4th, 5th, 6th, 8th Amendments
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IX. LIMITATIONS & EXCEPTIONS

- State Action Doctrine

- Political Question Doctrine
 - Standing, Ripeness, Mootness
 - Sovereign Immunity (11th Amendment)
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X. ENFORCEMENT MECHANISMS

- 42 U.S.C. § 1983 Civil Rights Actions
 - Habeas Corpus
 - Exclusionary Rule
 - Injunctive Relief
 - Declaratory Judgments
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XI. KEY THEMATIC SYNTHESIS (BAR EXAM TAKEAWAY)

All constitutional protections reduce to three master doctrines:

1. **Liberty Protection (Due Process)**
 2. **Equality Protection (Equal Protection)**
 3. **Structural Constraint (Federalism + Separation of Powers)**
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