

Constitutional Law Chapter 8

Chapter 8

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Chapter 7

Chapter 8:
Equal Protection

Chapter Outline:

Classification versus Invidious Discrimination

Application of the Equal Protection Clause to State and Federal Government

State Employees
Federal Government
Private Discrimination and State Action

How the Supreme Court Reviews Laws for Equal Protection Violations

Suspect Class
Fundamental Rights
Rational Basis Test
Strict Scrutiny

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Suspect Class
Fundamental Rights
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Strict Scrutiny
Intermediate Level of Scrutiny

Violations of Equal Protection: Applying the Tests
Race, Ethnicity, and National Origin (Strict Scrutiny)
Gender (Intermediate Scrutiny)
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Summaries of Major Cases



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City of Cleburne v. Cleburne Living Ctr., Inc. 473 U.S. 432 (1985)

Respondent Cleburne Living Center, Inc. (CLC), which anticipated leasing a certain building for the operation of a group home for the mentally retarded, was informed by petitioner city that a special use permit would be required, the city having concluded that the proposed group home should be classified as a "hospital for the feeble-minded" under the zoning ordinance covering the area in which the proposed home would be located. Accordingly, CLC applied for a special use permit, but the City Council, after a public hearing, denied the permit. CLC and others (also respondents here) then filed suit against the city and a number of its officials, alleging that the zoning ordinance, on its face and as applied, violated the equal protection rights of CLC and its potential residents. The District Court held the

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ordinance was facially invalid because it did not substantially further an important governmental purpose; and that the ordinance was also invalid as applied.

Held:

The Court of Appeals erred in holding mental retardation a quasi-suspect classification calling for a more exacting standard of judicial review than is normally accorded economic and social legislation.

Requiring a special use permit for the proposed group home here deprives respondents of the equal protection of the laws, and thus it is unnecessary to decide whether the ordinance's permit requirement is facially invalid where the mentally retarded are involved.

United States v. Virginia, 518 U.S. 515 (1996)

Virginia Military Institute (VMI) is the sole single-sex school among Virginia's public institutions of higher learning. VMI's distinctive mission is to produce "citizen-soldiers," men prepared for leadership in civilian life and in military service. Using an "adversative method" of training not available elsewhere in Virginia, VMI endeavors to instill physical and mental discipline in its cadets and impart to them a strong moral code. Reflecting the high value alumni place on their VMI training, VMI has the largest per-student endowment of all undergraduate institutions in the Nation. The United States sued Virginia and VMI, alleging that VMI's exclusively male admission policy violated the Fourteenth Amendment's Equal Protection Clause. The District Court ruled in VMI's favor. The Fourth Circuit reversed and ordered Virginia to remedy the constitutional violation. In response, Virginia proposed a parallel program for women: Virginia Women's Institute for Leadership (VWIL), located at Mary Baldwin College, a private liberal arts school for women.

Held:

Parties who seek to defend gender-based government action must demonstrate an "exceedingly persuasive justification" for that action.

Virginia's categorical exclusion of women from the educational opportunities VMI provides denies equal protection to women.

The remedy proffered by Virginia—maintain VMI as a male-only college and create VWIL as a separate program for women—does not cure the constitutional violation.

Romer v. Evans, 517 U.S. 620 (1996)

After various Colorado municipalities passed ordinances banning discrimination based on sexual orientation in housing, employment, education, public accommodations, health and welfare services, and other transactions and activities, Colorado voters adopted by statewide referendum Amendment 2 to the State Constitution, which precludes all

legislative, executive, or judicial action at any level of state or local government designed to protect the status of persons based on their "homosexual, lesbian or bisexual orientation, conduct, practices or relationships." Respondents, who include aggrieved homosexuals and municipalities, commenced this litigation in state court against petitioner state parties to declare Amendment 2 invalid and enjoin its enforcement. The trial court's grant of a preliminary injunction was sustained by the Colorado Supreme Court, which held that Amendment 2 was subject to strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment because it infringed the fundamental right of gays and lesbians to participate in the political process. On remand, the trial court found that the Amendment failed to satisfy strict scrutiny. It enjoined Amendment 2's enforcement, and the State Supreme Court affirmed.

Held: Amendment 2 violates the Equal Protection Clause.

Bush v. Gore, 531 U.S. 98 (2000)

The petition presents the following questions: whether the Florida Supreme Court established new standards for resolving Presidential election contests, thereby violating Art. II, § 1, cl. 2, of the United States Constitution and failing to comply with 3 U.S.C. §5, and whether the use of standardless manual recounts violates the Equal Protection and Due Process Clauses. With respect to the equal protection question, we find a violation of the Equal Protection Clause with respect to the Florida Supreme Court's ordering a manual recount of the state's voter results in the 2000 Presidential election.

Brown v. Board of Education, 349 U.S. 294 (1955)

Racial discrimination in public education is unconstitutional, 347 U.S. 483, 497, and all provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. The judgments below (except that in the Delaware case) are reversed and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit the parties to these cases to public schools on a racially nondiscriminatory basis with all deliberate speed. The judgment in the Delaware case, ordering the immediate admission of the plaintiffs to schools previously attended only by white children, is affirmed on the basis of the principles stated by this Court in its opinion, 347 U.S. 483; but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in the light of this opinion.

Regents of University of California v. Bakke, 438 U.S. 265 (1978)

The Medical School of the University of California at Davis (hereinafter Davis) had two admissions programs for the entering class of 100 students-

the regular admissions program and the special admissions program. Under the regular procedure, candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were summarily rejected. About one out of six applicants was then given an interview, following which he was rated on a scale of 1 to 100 by each of the committee members (five in 1973 and six in 1974), his rating being based on the interviewers' summaries, his overall grade point average, his science courses grade point average, his Medical College Admissions Test (MCAT) scores, letters of recommendation, extracurricular activities, and other biographical data, all of which resulted in a total "benchmark score." The full admissions committee then made offers of admission on the basis of their review of the applicant's file and his score, considering and acting upon applications as they were received. The committee chairman was responsible for placing names on the waiting list and had discretion to include persons with "special skills." A separate committee, a majority of whom were members of minority groups, operated the special admissions program. The 1973 and 1974 application forms, respectively, asked candidates whether they wished to be considered as "economically and/or educationally disadvantaged" applicants and members of a "minority group" (blacks, Chicanos, Asians, American Indians). If an applicant of a minority group was found to be "disadvantaged," he would be rated in a manner similar to the one employed by the general admissions committee. Special candidates, however, did not have to meet the 2.5 grade point cutoff and were not ranked against candidates in the general admissions process. About one-fifth of the special applicants were invited for interviews in 1973 and 1974, following which they were given benchmark scores, and the top choices were then given to the general admissions committee, which could reject special candidates for failure to meet course requirements or other specific deficiencies. The special committee continued to recommend candidates until 16 special admission selections had been made. During a four-year period 63 minority students were admitted to Davis under the special program and 44 under the general program. No disadvantaged whites were admitted under the special program, though many applied. Respondent, a white male, applied to Davis in 1973 and 1974, in both years being considered only under the general admissions program. Though he had a 468 out of 500 score in 1973, he was rejected since no general applicants with scores less than 470 were being accepted after respondent's application, which was filed late in the year, had been processed and completed.

At that time four special admission slots were still unfilled. In 1974 respondent applied early, and though he had a total score of 549 out of 600, he was again rejected. In neither year was his name placed on the discretionary waiting list. In both years special applicants were admitted with significant-ly lower scores than respondent's. After his second rejection, respondent filed this action in state court for mandatory, injunctive, and declaratory relief to compel his admission to Davis, alleging that the special

admissions program operated to exclude him on the basis of his race in violation of the Equal Protection Clause of the Fourteenth Amendment, a provision of the California Constitution, and 601 of Title VI of the Civil Rights Act of 1964, which provides, inter alia, that no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance. Petitioner cross-claimed for a declaration that its special admissions program was lawful. The trial court found that the special program operated as a racial quota, because minority applicants in that program were rated only against one another, and 16 places in the class of 100 were reserved for them. Declaring that petitioner could not take race into account in making admissions decisions, the program was held to violate the Federal and State Constitutions and Title VI. Respondent's admission was not ordered, however, for lack of proof that he would have been admitted but for the special program. The California Supreme Court, applying a strict-scrutiny standard, concluded that the special admissions program was not the least intrusive means of achieving the goals of the admittedly compelling state interests of integrating the medical profession and increasing the number of doctors willing to serve minority patients. Without passing on the state constitutional or federal statutory grounds, the court held that petitioner's special admissions program violated the Equal Protection Clause. Since petitioner could not satisfy its burden of demonstrating that respondent, absent the special program, would not have been admitted, the court ordered his admission to Davis.

Held: The judgment below is affirmed insofar as it orders respondent's admission to Davis and invalidates petitioner's special admissions program, but is reversed insofar as it prohibits petitioner from taking race into account as a factor in its future admissions decisions.

Something to Consider

Constitutional Law Chapter 8



The screenshot shows a software window titled 'Constitutional Law Chapter 8'. On the left is a vertical sidebar with six buttons: 'Summaries of Major Cases', 'Something to Consider' (highlighted in gold), 'Analysis', 'Chapter Review', 'Review Answers', and 'Quiz'. The main content area is titled 'Something to Consider' and contains the following text:

No right or wrong answers. Just for your consideration!

In this case, the Court mentions that discrimination based on race, alienage, or national origin “is unlikely to be soon rectified by legislative means.” What does the Court mean by this? Do you agree? The Court also says that laws that discriminate because of these factors might be upheld if the state shows a “compelling state interest.” Can you identify any such needs? (Follows *City of Cleburne v. Cleburne Living Ctr., Inc.*)

The entire opinion for the VMI case can be found on numerous Web sites, including <http://www.findlaw.com>. Read the entirety of the Scalia dissent. Do you find his argument or the argument of the majority to be more persuasive? (Follows *United States v. Virginia*)

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Does the majority opinion in this case support an argument that banning same-sex marriages is unconstitutional? Cite specific language in the case to support your position. (Follows *Romer v. Evans*)



Analysis

Analysis

Refer to the facts in *Living In America*, where parents are challenging the way in which school assignments are made.

- Is the school assignment based on any classification? If so, what?
The only obvious classification here is based on the neighborhood. However, there may be underlying classifications based on race or poverty. (This is the type of situation that led to busing.) While this is not clear from the questions, students should identify the potential problem.
- Is any fundamental right involved? Education, which is the right in question, is not a fundamental right.
- If this case were to be heard by the Supreme Court, which test would they use to analyze the practice? Unless the parents could show an

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b. Is any fundamental right involved? Education, which is the right in question, is not a fundamental right.

c. If this case were to be heard by the Supreme Court, which test would they use to analyze the practice? Unless the parents could show an underlying racial basis, the rational basis test would be used.

Refer to the case *City of Cleburne v. Cleburne Living Ctr., Inc.*

a. Why does the Supreme Court feel justified in departing from the general rule that state laws are presumed to be valid when laws classify by such factors such as race, alienage, and national origin?

These factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others. For these reasons, and because such discrimination is unlikely to be soon rectified by legislative means, these laws are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest.

b. Why do laws that classify by gender require heightened scrutiny? Gender generally provides no sensible ground for differential treatment. “What differentiates sex from such nonsuspect statutes as intelligence or physical disability . . . is that the sex characteristic frequently bears no relation to ability to perform or contribute to society.” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion). Rather than resting on meaningful considerations, statutes distributing benefits and burdens between the sexes in different ways very likely reflect outmoded notions of the relative capabilities of men and women. A gender classification fails unless it is substantially related to a sufficiently important governmental interest.

c. Why do laws that classify by age require only the rational basis test? While the treatment of the aged has not been wholly free of discrimination, such persons, unlike those who have been discriminated against on the basis of race or national origin, have not experienced a “history of purposeful unequal treatment” or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities.

d. Which test did the Court apply in this case and why? The Court applied a rational basis test finding that mental retardation was not a special category. The Court stated:

“How this large and diversified group is to be treated under the law is a difficult and often a technical matter, very much a task for legislators guided by qualified professionals and not by the perhaps ill-informed opinions of the judiciary. [T]he distinctive legislative response, both national and state, to the plight of those who are mentally retarded demonstrates not only that they have unique problems, but also that the lawmakers have been addressing their difficulties in a manner that belies a continuing antipathy or prejudice and a corresponding need for more intrusive oversight by the judiciary. Especially given the wide variation in the abilities and needs of the

retarded themselves, governmental bodies must have a certain amount of flexibility and freedom from judicial oversight in shaping and limiting their remedial efforts.”

3. Refer to the case *Bush v. Gore*. Why did the Court find an equal protection violation in the recount?

There were no general rules on how to count votes, and it was done differently in different counties. The recount process was inconsistent with the minimum procedures necessary to protect the fundamental right of each voter in the special instance of a statewide recount under the authority of a single state judicial officer.

4. Refer to the Brown II case.

a. According to the Supreme Court who has primary responsibility for desegregating the schools?

School authorities have the primary responsibility for elucidating, assessing, and solving these problems.

b. What practical problems could a court consider in deciding if a school district is integrating with proper speed?

The courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They could also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system.

Chapter Review

Constitutional Law Chapter 8



Chapter Review

1. What is the difference between laws based on classifications and laws that invidiously discriminate?
2. Under what, if any, circumstances does the Equal Protection Clause apply to private conduct?
3. Is the federal government bound by the provisions of the Equal Protection Clause? Explain.
4. Define the terms suspect class, quasi-suspect

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1. What is the difference between laws based on classifications and laws that invidiously discriminate?

2. Under what, if any, circumstances does the Equal Protection Clause apply to private conduct?

3. Is the federal government bound by the provisions of the Equal Protection Clause? Explain.

4. Define the terms suspect class, quasi-suspect class, and fundamental rights, and explain how each term affects the Equal Protection Clause.

 5. Compare and contrast the three tests used by the Supreme Court when evaluating laws and practices for equal protection violations.

 6. Summarize three Supreme Court cases where the Court found violations of the Equal Protection Clause.

 7. Summarize three Supreme Court cases where the Court found no violation of the Equal Protection Clause.

 8. In what ways does the Equal Protection Clause protect voting rights?

 9. What is the "one person, one vote" rule? Each vote should be of equal weight.

 10. What are some of the problems stemming from efforts to eliminate equal protection violations by such means as affirmative action?
-

Review Answers

Review Answers

- 1. What is the difference between laws based on classifications and laws that invidiously discriminate?**
Laws often treat individuals or groups differently and when there is a legitimate reason such classification is allowed. Laws that target groups for the following reasons invidiously discriminate: based on ill will or prejudice because of characteristics such as race, color, religion, sex, age, legitimacy, handicap, or national origin.
- 2. Under what, if any, circumstances does the Equal Protection Clause apply to private conduct?**
When private individuals are employees of the state or have some other strong connection to the state.
- 3. Is the federal government bound by the**

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1. What is the difference between laws based on classifications and laws that invidiously discriminate?

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2. Under what, if any, circumstances does the Equal Protection Clause apply to private conduct?

When private individuals are employees of the state or have some other strong connection to the state.

3. Is the federal government bound by the provisions of the Equal Protection Clause? Explain.

Yes, the federal government is bound by the provisions of the Equal Protection Clause through the Fifth Amendment Due Process Clause. Although no Equal Protection Clause expressly applies to the federal government, the Court says the Fifth Amendment Due Process Clause incorporates concepts of Equal Protection.

4. Define the terms suspect class, quasi-suspect class, and fundamental rights, and explain how each term affects the Equal Protection Clause.

A suspect class is one that is historically the target of discrimination. Laws or state actions that treat suspect classes differently must be strongly justified if challenged, and they are rarely legitimate.

A quasi-suspect class is a classification in the law based on factors such as gender or legitimacy that must be strongly justified if the law is challenged.

Fundamental rights are basic rights found in the Constitution, such as the right to vote and right to travel; they are most strongly protected. Any law that deprives a person of a fundamental right is subject to strict scrutiny.

5. Compare and contrast the three tests used by the Supreme Court when evaluating laws and practices for equal protection violations.

Rational Basis: Law is constitutional if the law has a reasonable relationship to legitimate government interest.

Strict Scrutiny: Law is constitutional if the law is necessary to achieving a compelling state interest.

Intermediate Scrutiny: Law is constitutional if the law is substantially related to an important government interest.

6. Summarize three Supreme Court cases where the Court found violations of the Equal Protection Clause.

(Several cases in the text do this. See Table 8-3 for a summary of the cases.)

7. Summarize three Supreme Court cases where the Court found no violation of the Equal Protection Clause.

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8. In what ways does the Equal Protection Clause protect voting rights?

The Supreme Court reviewed various laws and practices that present equal protection issues including laws that impose qualifications for voters and laws that restrict a candidate's access to the ballot. Another major issue for the Court was reapportionment or redistricting for elections. In the 2000 presidential election, the Court also considered if Florida's vote recount process violated the Equal Protection Clause.

9. What is the "one person, one vote" rule?

Each vote should be of equal weight.

10. What are some of the problems stemming from efforts to eliminate equal protection violations by such means as affirmative action?

By giving preference to minorities and women, the laws classify individuals based on race or gender. Sometimes this violates the Equal Protection Clause.

Narration Script

1. What is the relevance of the Ninth Amendment to the Constitution to the protection of civil rights and liberties?

The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This amendment allowed the courts to find rights even if not specifically spelled out in the Constitution.

2. How has the Supreme Court explained or defined the terms "civil rights" and "liberties"? According to the Supreme Court the concept of civil rights and liberties includes protection from laws that discriminate because of such factors as race, color, religion, sex, age, disability, or national

origin. It includes the right to fair and just proceedings in both criminal and civil cases. It also includes freedom from unwarranted government control in our personal, political, and economic lives. In *Bolling v. Sharpe*, 347 U.S. 497 (1954), the Court explained liberty as follows: "Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective."

3. What sources contain provisions protecting civil rights and liberties?

Several sources contain provisions protecting civil rights and liberties, including the U.S. Constitution, federal legislation, state constitutions, and state legislation.

4. Define the following: writ of habeas corpus, bill of attainder, and ex post facto laws.

A petition for a writ of habeas corpus is a document filed in court in which a prisoner (or other

person in custody) requests that he or she be released from custody.

A bill of attainder is a law that punishes a specific individual or individuals for some act.

Ex post facto laws impose criminal punishment for an act that was not a crime at the time the act occurred or that increase the punishment for a crime.

5. What are the rights found in the Bill of Rights?

The First Amendment lists rights guaranteeing freedom of religion, speech, press, assembly, and rights to petition the government. The Second Amendment addresses the right to bear arms. The Third Amendment prohibits soldiers from being quartered in private homes. The Fourth, Fifth, Sixth, and Eighth Amendments deal with the rights of those suspected of or accused of crimes. The Fifth Amendment also contains a general guarantee of due process from the federal government

and a prohibition on the taking of property for public use without just compensation. The Seventh Amendment guarantees the right to a jury trial in civil cases where the amount in controversy

exceeds \$20. The Ninth and Tenth Amendments are general statements. The Ninth Amendment makes it clear that the rights listed in the Constitution do not constitute an exclusive list.

The Tenth Amendment is a reaffirmation of states rights to exercise power.

6. What are the Reconstruction Amendments and what do they provide?

The Thirteenth, Fourteenth, and Fifteenth Amendments outlaw slavery and involuntary servitude everywhere in the United States, and the Fifteenth Amendment prohibits both the federal and state governments from interfering with the right to vote on account of race or color. The Fourteenth

Amendment prohibits states from denying individuals due process of law, equal protection of the law, or the privileges and immunities of a citizen.

7. How does the Constitution provide protection against infringement of civil rights and liberties by state and local governments?

The Thirteenth, Fourteenth, and Fifteenth Amendments were added to the Constitution, extending federal protection to state infringement of civil rights in some situations. The Fourteenth Amendment, which is the most important of the three, contains provisions that have become instrumental in the development of federal protection against state deprivation of civil rights. It prohibits any state from denying due process or equal protection of the laws to its citizens.

8. What are the protections afforded by the Fourteenth Amendment?

- All persons born in the United States or naturalized are citizens.
- No state can make or enforce laws that abridge the privilege or immunities of citizens.
- No state can deprive a person of life, liberty, or property without due process.
- No state can deny a person equal protection of the laws.

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9. Where does Congress get the power to enact civil rights legislation?

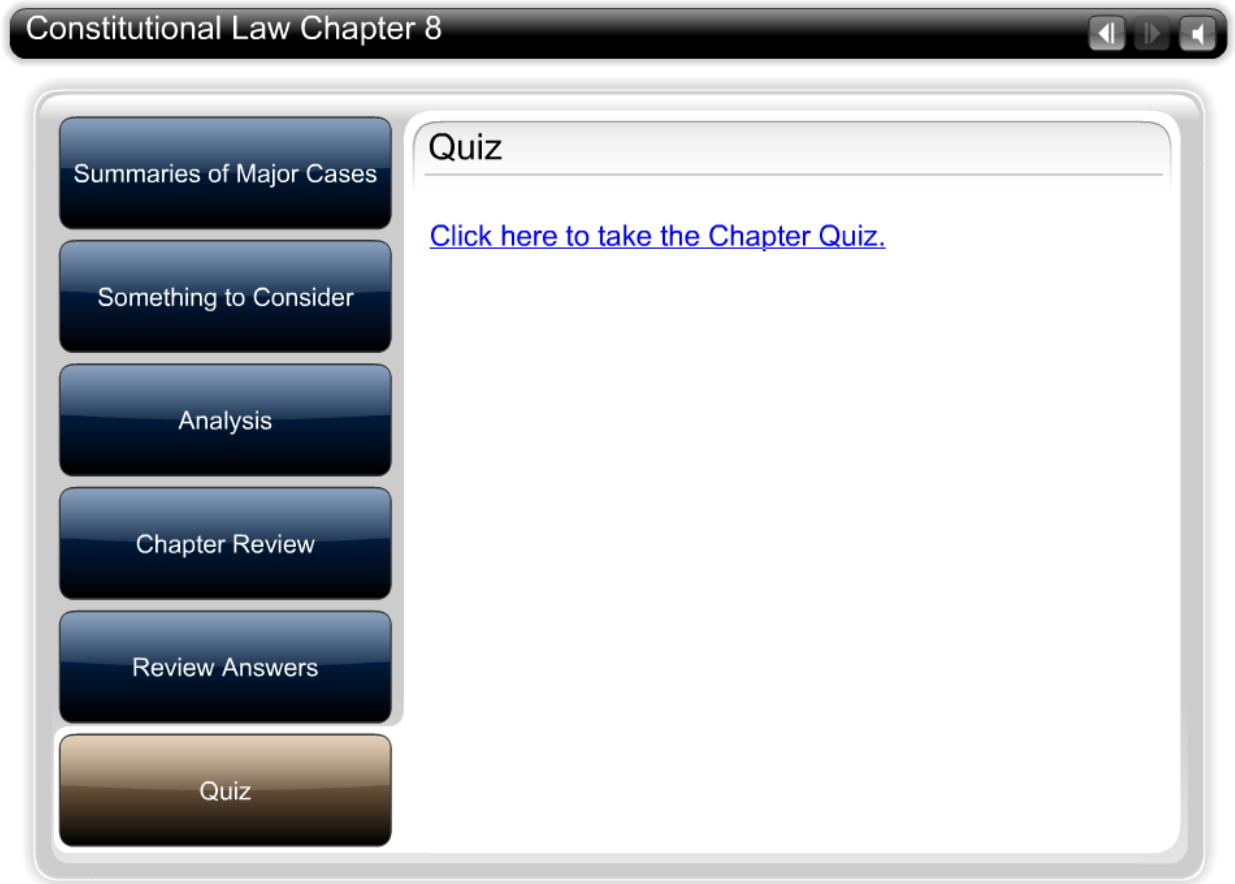
Congress has used the Interstate Commerce Clause of the Constitution, as well as the "necessary

and proper" clauses found in various amendments, especially the Fourteenth Amendment.

10. What is the "state action doctrine?"

The state action doctrine provides that the Fourteenth Amendment and others control state action not actions of individuals. However, the Court finds state action where individuals are acting on behalf of the state or where individual action has a strong nexus or connection to the state.

Quiz



The image shows a browser window with the title "Constitutional Law Chapter 8". On the left side, there is a vertical menu of buttons: "Summaries of Major Cases", "Something to Consider", "Analysis", "Chapter Review", "Review Answers", and "Quiz". The "Quiz" button is highlighted in a lighter color. The main content area on the right is titled "Quiz" and contains a blue hyperlink: "Click here to take the Chapter Quiz."

Tab Text

[Click here to take the Chapter Quiz.](#)
