



Legal Terms in Political Science

This is a list of terms in alphabetical order for PSCI 244 - Voting, Voice, and Virtual Freedoms in the Internet Age, and PSCI 307 - Constitutional Law I, though they may have application elsewhere. Most if not all of these terms have *highly* contested definitions, so take anything written here with a grain of salt. If you have any questions about terms covered or wish to see more terms added, email me at irubenst@iwu.edu.

These are difficult terms that do not have readily apparent definitions. It is easy to confuse terms, but hopefully, this list helps you keep track of them.

- **Absolute Rights:** Absolute rights are those rights that can never be encroached upon under any circumstances. There is not a test to determine the constitutionality of laws infringing upon Absolute rights. Laws interfering with absolute rights should always be deemed unconstitutional. Absolute rights are freedom of thought, religion, rights against torture, rights against slavery, rights against ex-post-facto criminal laws. These are comparable to human rights in international law.
- **Appellate Jurisdiction:** Appellate Jurisdiction is when a higher court reviews a decision made by a lower court, often because the losing party in a case wants the opinion reversed. The court, acting in its appellate capacity, might reverse the lower courts decision, remand the decision back to the lower court for further review, amend the decision by changing the decision in some way, or affirm the lower court's decision by declaring that the lower court's analysis was accurate. The majority of Supreme Court cases are taken on appeal. Article III, Section 2 declares that "in all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction."
- **Certiorari:** (Sare-shee-o-law-ree) - A Writ of Certiorari occurs when a higher court, like District Courts, Appeals Courts, or the Supreme Court hears a case that was already decided in a lower court. For the Supreme Court to grant Certiorari, four of the Supreme Court Justices must agree to hear the case.
- **Clear and Present Danger Test:** Established by Justice Holmes in *US v. Schenck*, the Clear and Present Danger test, deals with limitations on time, place, and manner of free expression. If speech, or other forms of expression, can be reasonably assumed to cause or threaten harm, then that speech will not be protected by the First Amendment.

- **Colorblind districting:** When districts are drawn up, the colorblind approach to districting sees race as irrelevant, ultimately all that matters in this approach is where people live. The idea is to not see race, thus allowing black and white people to live in the same districts without the expectation that people will vote along racial lines. This position is typically favored by Republicans.
- **Enumerated Powers:** Enumerated powers are clearly listed and outlined powers. An example of enumerated powers is Congress's powers found in Article I, Section 8 of the Constitution. Those powers, including the power to tax and establish post offices, are clearly outlined. The Federal Government does not have unlimited powers or limitless discretion.
- **Ex-Post-Facto:** Article IX and X of the Constitution declare that it is unconstitutional for either Congress or the States to make laws that retrospectively criminalize actions that were legal at the time an action was carried out.
- **Fundamental Rights:** Fundamental rights are rights that the US government believes are very important to protect and accord high protection to those rights. If one or more fundamental right(s) is/are called into question by a law, then that law must pass strict scrutiny. Rights like these include marriage, procreation, abortion, international and interstate travel, representation in government, etc.
- **Gerrymandering:** Gerrymandering occurs when a political party consciously manipulates the boundaries of voter districts in such a way that the boundaries would benefit their political party. That is why some districts have bizarre and, at first glance, arbitrary borders but in fact, those borders were drawn up in a way to benefit the political party in power as that party gets to decide how borders are drawn up.
- **Intermediate Scrutiny:** Laws that are analyzed under Intermediate Scrutiny must show that the law in question furthers an important governmental interest. Under intermediate scrutiny, the law must show that there is a substantial link between the means of the law and the interest involved. This test can be triggered when there is a difference in how the law affects one gender more than another. Another time this test is triggered is when a law prohibits speech (or other expression) based on time, place, and manner, so long as those are content-neutral prohibitions and do not deal with specific speech.
- **Marketplace of Ideas:** In Justice Oliver Wendell Holmes's dissent in *US v. Abrams*, Holmes articulates that the best way that free speech should be handled in a democracy is for ideas to enter something comparable to a free market where the best ideas available will be accepted while weaker ideas will fall out of popularity. Holmes essentially believes that we should not censor the ideas of others but should instead let ideas survive or fail based on their own merits and their appeal to human reason.

- **“Natural” Justice:** A number of Supreme Court Justices, such as Justice Chase and even Chief Justice John Marshall, appeal to “natural law.” Natural law is nothing explicitly written or decided upon by members of society but results from ‘laws’ of human nature and the nature of society, as a human enterprise, itself. In the US, our social compact, the Constitution, helps us begin to understand natural justice, at least in Chase’s view. Justice Chase gleans facts about American society not only from the social compact but principles of American law. An example of this is that a Judge may not rule in his own case.
- **Original Jurisdiction:** Original Jurisdiction is when a court is the first court to hear a case. The Supreme Court’s original jurisdiction is enumerated and defined in Article III, Section 2. Among cases where the Supreme Court has original jurisdiction is when the U.S. itself is a party, when ambassadors and public officials are involved, and when a citizen of one state is in conflict with another state. These are only a few examples of Supreme Court Original Jurisdiction.
- **Plenary Powers:** Plenary powers are not listed, they are all those powers that are not explicitly limited. An example of plenary powers is States’ powers found in Article I, Section 10 of the Constitution, which grants the States all powers not given to the Federal Government. These powers are not limited to explicitly enumerated powers and include the power to regulate education and the police power.
- **Preclearance (Section 5 of the Voting Rights Act):** Section 5 of the VRA establishes that changes to voting procedures in States that historically discriminate against black voters must first submit proposed changes to the Federal Government before they can change voting laws. Section 5 intentionally targets Southern States as they were most responsible for limiting voting rights for African Americans.
- **Prefatory/Operative Clause:** In *D.C. v. Heller*, Justice Scalia argues that the Second Amendment can be split between a prefatory clause and an operative clause. The prefatory clause, “a well regulated Militia, being necessary to the security of a free State,” establishes the context of the right to bear arms as well as a purpose behind gun ownership. The operative clause, “the right of the people to keep and bear Arms, shall not be infringed,” establishes the right conferred upon the people. In Scalia’s view, a prefatory clause, while important for context and establishing some purpose, has no ability to limit the right conferred upon the people by the operative clause.
- **Protected vs. Unprotected Speech:** In the landmark case of *Chaplinsky v. New Hampshire*, the Supreme Court set the precedent that some forms of speech, including obscenity, libel, and fighting words, are not protected by the First Amendment. This case created a Two-Tiered approach where the vast majority of speech is protected by the First Amendment, but speech that by its nature has the effect of disturbing the peace or is likely to incite violence is unprotected.

- **Race-Conscious Districting:** When districts are drawn up, the Race-Conscious approach takes race into account and draws up voting districts in such a way that a large bloc of black voters might be able to vote for candidates preferable for Black voters. This is typically favored by Democrats. (That is the theory behind it, but as black voters are not monolithic, the bloc of voters is not so easy to cultivate).
- **Rational Basis:** Laws that are analyzed under the Rational Basis test must show that the law furthers a legitimate governmental interest. So long as there is a reasonable link between the means of the law and the interest, the law is likely to be constitutional. This applies to laws that do not in any way infringe upon Fundamental Rights.
- **Strict Scrutiny:** Laws that are analyzed under strict scrutiny must show that the law in question furthers a compelling governmental interest, which is the hardest standard to prove. Under strict scrutiny, the law must use the least restrictive means and must be narrowly tailored to fulfill the interest. All other avenues and options besides this law must be exhausted. The reason the law must use the least restrictive means is that it interferes with Fundamental freedoms and/or discriminates based on race or religion.
- **Supremacy Clause:** Article VI of the Constitution establishes that the Constitution, and the Federal Government which is designed by the Constitution, acts as the “supreme law of the land.” This means that when there might be a State law in conflict with federal law, the federal law will be prioritized over the State law. The Constitution is the ultimate law that *all* Americans abide by (so long as we assume that the Constitution *is* the law).
- **Surplusage:** Chief Justice John Marshall establishes in *Marbury v. Madison* that “It cannot be presumed that any clause in the constitution is intended to be without effect” (174). The fundamentally important idea here is that every phrase within the constitution was written in a particular way for some particular purpose. The Founders were not careless, they did not mindlessly repeat phrases or clauses. There are no redundancies.
- **Writ of Mandamus:** A writ of Mandamus is a process by which a judge can order a governmental body or official to fulfill some legal duty. Under Section 13 of the Judiciary Act of 1789, the Supreme Court was given the ability to order a writ of Mandamus, though Chief Justice John Marshall declared that power unconstitutional for the Supreme Court as it violated the Court’s original jurisdiction as defined by Article III of the Constitution.