

Federal Law Toolkit

This guide is intended to provide public librarians with information related to federal law so that they may assist pro se litigants with research. We will first give a short description of federal law, followed by sources of federal law. We will then go over the structure of federal courts, followed by a discussion on federalism. Finally, we will provide resources and web links.

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What is Federal Law?

The United States has a dual sovereign system. States have constitutions and laws that generally only affect those who live and/or do business within that state. Additionally, the federal government has a constitution which gives it power to govern everyone in the country and can invalidate or preempt state laws on subjects in the federal domain. For example, as patents and copyrights are in the Federal Constitution, those areas are no longer available for states to legislate in. These systems, in theory, work together to create laws that protect every citizen. Obviously, this does not always happen, and these laws often conflict. This is an issue that will be discussed in later sections. For now, we are going to focus on the simple question of what exactly the federal law is.

Federal laws can take many forms. A “law” here is not necessarily a document that says “citizens cannot do X.” Rather, laws can include constitutional rights, decisions from the Supreme Court, executive orders, agency rules, and Acts of Congress. The right to vote, the Americans with Disabilities Act, and *Brown v. Board of Education* are all examples of federal laws.

Federal laws affect everyone in the country, regardless of which state or territory they reside in. Someone in Alabama is subject to the same federal laws as someone in Maine.

Sources of Federal Law

Federal laws do not only come from the Constitution. This section will explain the different sources of federal law, as well as provide tips on how to find the laws both online and in print.

Constitution

The United States Constitution is the source of all federal laws and rights. A free online version of the Constitution can be found here:

https://www.constituteproject.org/constitution/United_States_of_America_1992.

The Constitution consists of several parts, each focusing on a specific power granted to the federal government. The main body of the Constitution includes such powers as creating the chambers of Congress, defining the relationship between state and federal governments, and establishing the court system.

Additionally, the Constitution has 27 amendments. These amendments are meant to protect rights, freedoms, and some restrictions that the government felt were important enough to be constitutionally protected. The first ten are collectively known as the Bill of Rights, and include such rights as the freedom of speech, freedom of the press, and the right to a trial by jury. These amendments were ratified at the time of the Constitution’s enactment. The other amendments have been added at various points in the nation’s history; the Eleventh Amendment was ratified in 1795, while the Twenty-seventh Amendment (the most recent) was ratified in 1992. These

amendments include the abolition of slavery, Prohibition (and its subsequent repeal), and changes to Senate election processes.

All told, the Constitution is a hefty though short (remarkably succinct for the basis of a government) document that contains the bedrock of our government. All laws, whether those be federal, state, or local, must be constitutional: that is, they must operate within the bounds of the Constitution. We get into more of the interplay between the Constitution, federal law, and state law later in this guide, but knowing that Constitution is the standard is necessary to understanding federal law.

If reading through and understanding the Constitution seems overwhelming, that's because it is! There is an entire subset of the legal field, constitutional law, that focuses on the intricacies and interpretations of the Constitution. A person with no legal training is not expected to be familiar with the voluminous corpus of Constitutional commentary and interpretation. The Federalist Papers are an accessible contemporaneous starting point, and are available at this link:

https://avalon.law.yale.edu/subject_menus/fed.asp

Congress

The United States Congress is the federal legislative body of the United States. Put simply, they write the federal laws. Congress is a bicameral body, meaning that it contains two separate but co-existing bodies: the Senate and the House of Representatives (often shortened to just "House"). The Senate consists of 100 Senators, two for each state, and each Senator serves six-year terms. Senators represent their state as a whole, rather than representing districts. The House consists of a varying number of Representatives, and is based on population. (This is why the Census and legislative district boundaries are so important!) Representatives from the House serve two-year terms, and represent a small geographical area within their state.

Congress is responsible for creating federal laws that are more specific than the Constitution. After all, the Constitution does not contain every single law that the United States has; rather, it provides basic rights and responsibilities that the federal government has to provide and follow.

The process of lawmaking is complicated, and does not need to fully be explained here. One classic explanation is Schoolhouse Rock's "I'm Just a Bill" from 1975 (available here: <https://www.youtube.com/watch?v=OgVKvqTItto>). Our official legislative process has not changed since 1975 (or ever, really), so that video is truly a great explanation. Congress legislates on a variety of topics, including the military, tax codes, health insurance (the Affordable Care Act, for example), environmental protections, the postal service, etc. Congress also sets the legal procedures for federal elections, including the electoral college, and sets rules regarding presidential compensation. In short, Congress legislates pretty much everything. This does not mean that Congress has unlimited power. Laws that Congress passes must be constitutional; if the law is not, the Supreme Court can invalidate the law. Additionally, proposed laws can be vetoed by the President; this means that the President has the final say as to whether

a proposed law actually becomes a law. The bar to override a veto is fairly high, but it is possible. Additionally, representatives in both chambers are only in their position through the will of the voters; if voters believe that their Senator or Congressperson is no longer representing them in an acceptable way, the representative can be voted out.

Congressional laws are organized into the Statutes at Large and the U.S. Code. The Statutes at Large is a chronological arrangement of all Congressional laws, while the US Code is arranged by subject and is updated periodically. As an example, the Americans with Disabilities Act (ADA) is cited as 104 Stat. 327 in the Statutes at Large, and 42 U. S. C. ch. 126 in the U.S. Code. If you look for the ADA in the U.S. Code, you will find the exact same text as you would if you looked in the Statutes at Large. Typically, lawyers and judges cite to the U.S. Code, as it is seen as more official; any update to the legislation gets added to that section of the Code directly, while any update in the Statutes at Large would reside in a different section than the original piece of legislation. The U.S. Code can be found at <https://uscode.house.gov/>, and the Statutes at Large can be found at <https://www.loc.gov/collections/united-states-statutes-at-large/about-this-collection/>.

Common Law

Common law, or judge-made law, looks a bit different at the federal level than at the state level. State courts are of general jurisdiction but federal cases must involve a ‘federal question’ (or there is diversity jurisdiction) Typically, federal courts only have the power to review cases that involve federal law. This means that someone involved in a legal dispute that only involves state law cannot typically take their case to a federal court. The main exception to this is if the defendant or litigant believes that something unconstitutional is occurring, federal courts can hear the case. For example, if someone violated a state criminal law but felt that their right to a fair trial was violated, they can take that alleged violation to federal court. Another example is if a state law criminalized something constitutionally protected, such as free speech, persons residing within that state can sue in federal court to attempt to have the law declared unconstitutional. There is an important distinction here: federal courts are not taking cases where a person broke a state law; rather, they are hearing cases where the person who broke a state law had their rights violated by the State or a state actor. Indeed, prior cases have made it so there can be no federal criminal common law.

We get into the structure of the federal courts later. What is important here is the kinds of cases that the federal courts take, as well as the results of those cases. Many federal court cases are focused on constitutional rights and whether those rights are being upheld, either by Congress or by individual States. Probably the most well-known example of a constitutional case is *Brown v. Board of Education*, which held that racial segregation in schools violated the Equal Protection Clause of the Fourteenth Amendment.

Executive Orders

Executive orders are Presidential directives that manages operations of the federal government. Executive orders are not legislation, but they are subject to judicial review (meaning the federal courts can review the order for constitutionality). Many executive orders are proposed by federal agencies before the President orders them.

All Presidents except William Henry Harrison (who died just 31 days after his inauguration) have issued executive orders, though modern executive orders look very different than those issued by earlier Presidents. Probably the most famous executive order is the Emancipation Proclamation, issued by Abraham Lincoln in 1862.

Executive orders cannot create new laws. An example of this is President Truman's executive order that placed all of the country's steel mills under federal control. This was invalidated by the Supreme Court in 1952, as it attempted to make a new law rather than clarify or further a law that already existed.

As such, executive orders are not technically a source of federal law. However, they provide further direction or clarification on existing laws, and can be helpful when understanding why federal agencies behaved a certain way.

An archive of executive orders can be found here: <https://www.archives.gov/federal-register/executive-orders/disposition>

Agency Rulemaking

The final source of federal law we are going to discuss is agency rulemaking. As with executive orders, these are not laws per se, but do provide rules for how certain aspects of the government are supposed to behave.

Federal agencies, such as the Environmental Protection Agency (EPA) and the Department of Labor, have their own policies, known as Rules. These Rules can either implement or explain a law or policy for the agency, or can describe the agency's organization or procedures. Agencies cannot issue Rules without being granted the authority to do so by Congress (most agencies have this power, however). The rulemaking process is complicated, and includes a public comment period where members of the public can voice their opinion on the proposed rule. While there is not a Schoolhouse Rock video on this process, it is laid out in an easy-to-understand way at <https://www.regulations.gov/learn>. You can also investigate the process of rulemaking as well as make or view public comments at [regulations.gov](https://www.regulations.gov)

Finalized Rules live in the Code of Federal Regulations: <https://www.ecfr.gov/>.

Structure of Federal Courts

Article III of the Constitution is what gives the court system its power, and gives Congress the ability to create and structure lower federal courts.

The lowest federal court is the trial court, known as District Courts. This does not mean that this court is necessarily less important or impactful than the Supreme Court, which is the highest federal court. This simply means that this is the first step in someone's legal process. If a party in the District Court case does not agree with the outcome and/or feels that their constitutional rights were violated, they can appeal that decision to the Court of Appeals. If they again feel the need to appeal, they can do so to the Supreme Court. The Supreme Court decides which cases to hear by issuing a "writ of certiorari." The Supreme Court declines most cases but will often hear cases wherein two lower appellate courts disagree so as to provide uniformity in the interpretation of the laws.). We will discuss the courts here in reverse order, with the Supreme Court being discussed first.

Supreme Court

The highest court is the Supreme Court (SCOTUS). It has ultimate jurisdiction over all federal and state courts in the U.S. SCOTUS has the power of judicial review, meaning that SCOTUS can review the decisions of lower courts and determine their constitutionality.

The vast majority of cases heard by SCOTUS are appeals cases. This means that a case was first heard in a lower federal or state court, but that a party in the case was unhappy with the decision based on a perceived constitutional violation. SCOTUS chooses which appeals it hears; indeed, less than 1% of appeals made to SCOTUS are heard by it.

Every law passed and lower court decision made has to follow previous SCOTUS decisions. If a law or court decision does not follow previous SCOTUS decisions, that law or court decision can be declared unconstitutional and overturned. Using *Brown v. Board of Education* as an example, if a city attempted to legalize racial segregation for schools, that law would likely be found unconstitutional for violating *Brown*.

Courts of Appeals

The next level down from SCOTUS is the Courts of Appeals. There are thirteen appellate courts in the United States, mostly divided by geography, and referred to as Circuits. Illinois, where I am, is in the Seventh Circuit, while California is in the Ninth Circuit. U.S. territories are also in these circuits, with Puerto Rico sharing the First Circuit with Maine, Massachusetts, and Rhode Island. Washington, D.C., being neither a state nor a territory, has its own circuit.

The job of these appeals courts is to review decisions made by the lowest level of federal courts, the District Courts. If the circuit finds that the District Court decision was incorrect or unconstitutional, it can overturn the decision and send it back to the District Court for a new trial with the understanding that the District Court will follow the interpretation of the law that the

Circuit used. If the Circuit finds that the District Court decision was correct, there are no changes made to the District Court decision. Circuit decisions can be appealed to the Supreme Court.

Decisions from these circuits must be followed by lower courts within that circuit. For example, if the Seventh Circuit interprets a law in a certain way, every court in that circuit must then interpret that law in the same way. Courts in the Eighth Circuit, however, do not have to interpret that law in that way.

District Courts

District courts are the first step in a lawsuit. There are 94 District Courts in the United States, broken up geographically. These cases likely seem more familiar: there is a single judge (Circuit courts employ more than one judge to decide cases, and there are currently nine members of the Supreme Court), and the outcome of the case is likely being decided by a jury. District Courts examine the facts and allegations of a case and apply legal principles to decide who is right. District Court cases can be appealed to Circuit Courts.

Where to Find Case Law

Cases are published in volumes called reporters. There are several different reporters, each containing different courts' decisions. These typically published by two companies, West and Lexis, although some courts have their own reporter that they are responsible for publishing. Case citations reveal the jurisdiction and level of court, and citations for each reporter are included below.

Supreme Court decisions are published in United States Reports (the official reporter), Supreme Court Reporter (West's version) and Lawyer's Edition (Lexis's version). These citations look like "U.S.", "S. Ct.", and "L. Ed." respectively.

Federal circuit court decisions are published in West Federal Reporters, which have three series. In a case citation, this can look like "F.", "F.2d" or "F.3d". If a case has "F.2d" in its citation, this means that the case was published in the second series of the reporter.

Federal trial court decisions are published in West Federal Supplement, which has two series. Those citations can look like "F. Supp." or "F. Supp.2d".

Federalism

One of the more confusing aspects of federal law is how it interacts with state law. After all, it seems likely that a state law would conflict with a federal law.

Our government handles this conflict with a concept called preemption, which comes from the Supremacy Clause of the Constitution. When a state and federal law conflict, federal law preempts state law. This means that the federal law trumps the state law, and that federal law is the one that applies. If the federal law states that all newly manufactured cars must have airbags, states cannot say that that law does not apply to them.

This does not mean that states cannot legislate themselves. Rather, preemption is typically understood as a floor, not a ceiling. One example of this is environmental regulation. If federal regulations set a certain standard for pollution levels, state governments cannot legislate standards that are less stringent; however, they are free to legislate standards that are more protective. There are some situations that have ceilings, but those are typically spelled out in the law itself.

There are also situations where the federal law is so comprehensive that there is simply no room for states to create their own legislation. One example of this is federal regulations of television and radio. As these are inherently interstate activities (meaning that they cross state lines and affect people living in multiple states), the federal regulation needed to be so clear and precise as to fairly regulate for those living in multiple states. This leaves virtually no room for states to create their own legislation.

Resources

Federal law is extremely complicated; even those within the legal field have difficulties understanding and interpreting it. In researching federal law, you must first determine if the question is one of state or federal law, or your issue concerns the interaction between them. If it is a federal matter you may need to go to the Constitution, Court opinions, executive orders, the CFR, or any combination thereof for all relevant information. There are some pieces of federal law that are requested more often than others, such as the ADA and certain environmental protections. A list of commonly requested laws and regulations can be found on <https://www.usa.gov/laws-and-regulations>, and official website that includes a compilation of these common requests. The site also includes information on taxes, government agencies, and other practical parts of the government that many struggle to understand.

<https://www.congress.gov/> is the official website of the U.S. Congress, and includes information on bills, schedules, and reports.

<https://www.supremecourt.gov/> is the official website of the Supreme Court, and includes opinions, oral argument transcripts, and other relevant information. <https://www.scotusblog.com/> is an independent site that includes news about the Supreme Court, as well as analyses of decisions.

Because the primary law can be difficult to parse or even find depending on the issue, checking sources like law reviews and journals, treatises, practitioner aids and legal encyclopedias that

contain citations to the primary law can help a lot. Wex is a good free online source. Nutshells published by West academic are softbound guides to various legal topics that are comparatively inexpensive

The government or agency website is also a great starting place for research on that topic. For example, labor and employment issues are nicely sorted on the DOL site, while irs.gov includes information related to the IRS.