

U.S. constitutional issues

Introduction

The United States' legal and political system rests on a foundational document; the United States Constitution (the “Constitution”) designed to balance power, protect individual rights and provide a stable framework for governance. But as times change, new technologies, shifting political dynamics and evolving social values pose challenges that the Constitution could not have foreseen.

As of current, several constitutional issues have become especially acute. Some stem from reinterpretation of core constitutional provisions by the courts (especially the Supreme Court of the United States, “SCOTUS”); others arise from clashes between federal and state law; others from structural tensions for instance, between executive power and the separation of powers or between collective security and individual liberties.

This article explores several of the most important constitutional issues today:

- (1) Executive power and separation of powers.
- (2) Judicial power, injunctions and the role of courts.
- (3) Individual rights and liberties (speech, privacy, reproductive rights, equal protection).
- (4) Structural questions around representation, democracy, and federalism.

- (5) Emerging challenges from technology and governance (e.g. algorithmic power). Where relevant, I highlight the constitutional “articles/clause” at play, recent Supreme Court or federal- court decisions and why each issue matters.

1.1 The growth of executive power, war, military force and foreign policy

One of the most fundamental issues concerns how much power the President has, particularly in matters of foreign policy, national security and military action and whether such power undermines the separation of powers enshrined in the Constitution.

Under the Constitution:

Article I of the U.S. Constitution gives Congress the power to declare war.

Article II of the U.S. Constitution vests the President with the role of Commander-in-Chief of the armed forces.

But how these powers interact when the President can unilaterally order military action or bypass Congress has long been debated. In 2025, this debate resurfaced strongly after the administration initiated military strikes abroad without explicit congressional approval. Some constitutional scholars argue that such actions may violate Article I’s requirement that only Congress can declare war or authorize prolonged hostilities.

This tension raises serious constitutional questions: Does the President's unilateral use of military force erode Congress's war-making authority? If so, does that undermine the constitutional balance and risk shifting the U.S. toward unchecked executive power?

1.2 Removal power, independent agencies and administrative oversight

Another contested area involves the President's power to remove or fire officials in independent agencies or exert influence over bodies meant to be insulated from politics. The Constitution does not explicitly lay out detailed rules on this but the structure of separation of powers and checks and balances implies limits.

Recent efforts by political leadership to consolidate executive control including proposals to dismantle certain civil-service protections or reorganize agencies have revived concerns. Some legal scholars now question whether such moves are consistent with the constitutional design that shields certain bureaucratic and regulatory functions from direct political influence.

If unchecked, such consolidation may erode the independence of regulatory, oversight or adjudicatory bodies thereby weakening institutional safeguards and blurring the lines between branches of government.

2.1 Universal (Nationwide) injunctions and the power of courts

In recent years, a controversial practice has emerged: federal judges issuing "universal" or "nationwide" injunctions i.e., court orders that block an executive action or law not just for the specific plaintiffs in a case but across the entire country. Critics argue this effectively gives a single judge the power to override legislation or executive policy nationwide, raising separation-of-powers concerns.

In 2025, legal debate intensified over whether this practice is constitutional. Some scholars assert that grants of nationwide injunctions exceed the proper judicial role, because they allow courts to act as "mini-legislatures," invalidating policy for all rather than just for litigants.

The pushback has gained traction: some state-level courts, for instance, are reconsidering whether to follow the approach of nationwide injunctions.

If the practice is curtailed or eliminated, it could significantly shift the balance of power likely limiting judicial intervention and increasing reliance on Congress or executive-legislative negotiation to settle contested policies. It would also make legal relief for constitutional or statutory violations more fragmented and potentially inconsistent across jurisdictions.

2.2 Procedural issues; Right to jury, exhaustion and the scope of civil claims

Beyond injunctions, procedural aspects of access to justice are also under scrutiny. A recent case illustrates this: in **Perttu v. Richards** (heard by SCOTUS in 2025), a prisoner alleged that their grievances were retaliated against (including sexual harassment by an official) and the question is whether factual disputes over

exhaustion of administrative remedies must be decided by a jury under the Seventh Amendment to the United States Constitution (guaranteeing jury trial in civil cases).

This raises structural constitutional issues: how procedural rights (jury trial, access to courts, fair procedure) interact with administrative law, prison litigation reforms and institutional checks. If courts continue to narrow access to jury trials or raise procedural barriers, in practice constitutional rights may become hollow.

3.1 Freedom of speech, political expression and national security laws

In January 2025, the Court issued a major ruling in **TikTok, Inc. v. Garland**, upholding the constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACA). The law bars distribution of certain foreign-owned applications (e.g., social-media apps) deemed by the executive as national-security threats, a law that critics challenged under the First Amendment to the United States Constitution (freedom of speech) and other constitutional protections (due process, takings). SCOTUS ruled that applying the law to the petitioners did not violate their First Amendment rights.

This decision underscores a constitutional fault line: how to balance free speech and political expression against national security and sovereignty concerns. As more legislation and executive action target foreign-owned digital platforms, the scope of government power to regulate speech, information flows and technology will likely expand raising serious concerns about censorship, prior restraint and corporate liability.

3.2 Reproductive rights, privacy and state-level constitutional protections

After the Supreme Court's landmark 2022 decision in Dobbs v. Jackson Women's Health Organization (which overturned the federal constitutional right to abortion), reproductive rights in the U.S. have become heavily fragmented dependent on state law. In 2024 and 2025, multiple state courts have revisited abortion bans, invoking state-level constitutional protections. For instance, in **Allegheny Reproductive Health v. Pennsylvania Department of Health and Human Services**, the state supreme court struck down a Medicaid ban on abortion coverage under its state Equal Rights Amendment (sex discrimination clause).

Similarly, in Nevada a court ruled that Medicaid abortion bans violated the state's ERA.

These developments reveal a constitutional reality: after Dobbs, federal constitutional protection for abortion is gone (no more federal right to abortion) but many state constitutions still protect aspects of bodily autonomy, privacy, equal protection or "natural-right" guarantees.

This state-by-state patchwork creates major constitutional and practical issues: access to reproductive care is drastically different depending on where one lives; fundamental rights may exist in some states but not others; and legal uncertainty persists especially for interstate individuals or providers.

3.3 Equal protection, anti-discrimination and state constitutional remedies

The shift toward state-level constitutional protections also highlights the growing importance of state constitutions in guaranteeing rights beyond what the federal Constitution enshrines. As shown above in Pennsylvania and Nevada, state Equal Rights Amendments (ERAs) may now serve as vehicles to protect reproductive rights or challenge gender-based discrimination.

But this reliance raises inequality issues across states, a fundamentally constitutional concern: when rights depend on geography, equality under the law is undermined.

4.1 Partisan gerrymandering and judicial non-intervention

One of the long-standing constitutional issues, representation fairness remains unresolved. In 2025, the League of Women Voters of South Carolina v. Alexander saw the South Carolina Supreme Court reject a challenge to a congressional map on grounds of partisan gerrymandering. The Court ruled that such claims were nonjusticiable under the state constitution essentially declining to review them.

Given that the federal courts (including SCOTUS) have generally avoided intervening in partisan-gerrymandering disputes (viewing them as “political questions”), the result is that many gerrymanders survive without constitutional review, entrenching political advantage and potentially undermining democratic representation.

4.2 Congressional term limits and institutional reform

Another structural debate gaining attention is whether to impose term limits on members of Congress something not provided under the Constitution. Proponents argue term limits could reduce entrenched incumbency, promote responsiveness and limit institutional corruption; opponents counter that experience, expertise and continuity in legislative work are valuable.

If term limits were adopted, either through a constitutional amendment or perhaps a constitutional convention, it would reshape congressional dynamics and potentially diminish the power of entrenched political elites. But achieving that would require significant political consensus: either two-thirds of both houses of Congress + ratification by 3/4 of states or a convention both challenging.

Thus, structural reform remains a constitutional debate: how to balance stable institutions and representation fairness and whether the Constitution should or can be amended to reflect modern demands.

5.1 Algorithmic governance, delegation and constitutional legitimacy

Perhaps the most forward-looking constitutional challenge is posed by the rise of algorithmic governance: decisions traditionally made by public institutions, welfare eligibility, healthcare access, employment screening, policing are increasingly made by automated systems. But these systems often operate under private entities or loosely-regulated agencies, outside established constitutional oversight.

A 2025 legal-scholar article argues that algorithmic governance raises deep constitutional questions: about who authorizes such power, whether delegation of discretion to algorithms undermines representative legitimacy and whether individuals retain constitutional rights to challenge automated decisions.

This issue implicates multiple constitutional doctrine areas: non delegation (can legislative or regulatory bodies delegate too much authority to algorithms or private actors?), due process, administrative law and accountability. As algorithmic systems expand, the constitutional order may need new frameworks or risk power being exercised without effective democratic consent.

5.2 The challenge of amendment & constitutional adaptation

Historically, the Constitution is intentionally difficult to amend. Over roughly two centuries, thousands of amendment proposals have been introduced but only 27 ratified. Many argue this rigidity creates problems: adapting to modern realities, technology, social values, demographic change becomes extremely difficult.

As demands grow for structural changes, term limits, stronger campaign-finance rules, explicit privacy rights, algorithmic-governance regulation, the constitutional amendment path may be too slow or politically improbable. The tension between preserving constitutional stability and enabling necessary reform defines a central constitutional challenge for the U.S. in coming decades.

The constitutional issues above are not merely academic or procedural. They have real consequences for governance, rights, stability and equality in the United States in:

- **Erosion of checks and balances:** Excessive executive or agency power (military force, regulatory control, administrative discretion) risks undermining the constitutional separation of powers which can lead to authoritarian drift.
- **Judicial limitations and unequal access:** If courts retreat from nationwide injunctions or narrow procedural access (juries, class actions, exhaustion rules), constitutional rights may become uneven in practice accessible only to those with resources or located in favorable jurisdictions.
- **Rights fragmentation:** As with reproductive rights, constitutional protections may vary radically by state, creating inequality based on geography; fundamental rights like privacy, bodily autonomy or equal protection may no longer be universal across the country.
- **Democratic legitimacy challenges:** Gerrymandering, lack of effective redistricting oversight, absence of congressional term limits, all strain the representativeness and accountability of democratic institutions.
- **Governance without oversight:** Algorithmic decision-making, delegated power to private or quasi-public actors and shifting administrative authority may operate outside traditional democratic or constitutional safeguards endangering transparency, accountability and individual rights.

Given these pressures, what can the U.S. do to address constitutional issues and preserve democratic legitimacy? Some possible paths are:

Revive constitutional amendment efforts: For structural problems (term limits, campaign finance, explicit privacy or digital- rights protections), pursue serious amendment campaigns though difficult, they may be the only legitimate way to modernize the constitutional framework.

Strengthen state constitutional protections and litigation: As seen in abortion- access and equal- rights cases, state constitutions remain important arenas for protecting rights; encouraging state- level reforms may compensate for federal inaction.

Reform judiciary practices: Limit or legislate the use of universal injunctions; ensure procedural access (jury trial, exhaustion rules) remains robust; safeguard judicial independence against political pressure.

Regulate administrative and algorithmic governance: Congress (or state legislatures) should legislate clear limits on delegation to algorithms or private entities, ensuring that decisions affecting rights remain subject to democratic oversight and accountability consistent with constitutional principles.

Promote civic education & constitutional awareness: As constitutional questions grow more complex (especially with technology), public understanding of rights, institutional design and constitutional norms becomes critical. Civic engagement and informed debate can drive reform or resistance where needed.

Conclusion

The Constitution of the United States remains, on paper, a foundational beacon of democratic governance, rights and institutional balance. But as of now, it is being tested hard. Between expanding executive and administrative power, altered judicial practices, fragmented rights protections and emerging technological governance, the structural and substantive meaning of constitutional governance is under pressure.

Whether the U.S. will adapt through amendments, judicial reform, legislative action or state- level innovation remains uncertain. What is clear, however, is that the next several years are likely to be decisive. The decisions made (or not made) now will shape whether the Constitution remains a living framework or becomes, for many, a brittle set of abstract words unable to meet contemporary needs.