

## The Enduring Constitution: Six Basic Principles of the Constitution

**Judicial Review****Understanding the Principle**

The principle of judicial review grows out of the principle of checks and balances. Judicial review empowers the judicial branch to determine whether laws passed by the legislative branch, as well as actions taken by the executive branch, conform to the Constitution.

While judicial review is not named as such in the Constitution, it is based on provisions within that body of law. For example, Article VI states: “The Constitution...shall be the supreme law of the land, and the judges in every State shall be bound thereby....”

The Supreme Court has emerged as the court of final appeal in judging what is and is not unconstitutional, due primarily to the *Marbury v. Madison* decision. At first, it used this power sparingly. Before the Civil War, the Supreme Court declared only two acts of Congress unconstitutional. In the decade following the Civil War, however, it struck down 10 congressional acts, as well as 46 State laws. Since then, those numbers have continued to grow steadily.



the Supreme Court building

age 18. In *Reno v. ACLU*, the Supreme Court found them unconstitutional on the grounds that they violated rights of free speech guaranteed under the 1st Amendment.

Many cases are brought to the Supreme Court on appeal from lower State and federal courts, creating a situation where the judicial system is essentially reviewing its own determinations of an act or law’s constitutionality. For example, in 2000 the Court affirmed a Washington State Supreme Court decision that declared unconstitutional a State law permitting anyone to ask the courts for visitation rights at any time if it is in a child’s best interest. In the *Troxel v. Granville* decision, the Court decided the Washington State law violated parents’ rights to raise their children.

Although it may seem like the Supreme Court strikes down a lot of laws and government actions, the Court has actually held more actions of government to be constitutional than unconstitutional at the State and federal levels. In 2000, the Court upheld a Colorado law making it illegal to distribute literature or voice protest to a person without the person’s consent if they are within 100 feet of a health care office. The law was enacted primarily to protect women entering abortion clinics. In 1997, the Court declared constitutional a provision of Congress’s Cable Television Consumer Protection and Competition Act of 1992 requiring cable companies to designate some of their channels for local television stations.

**The Constitution at Work**

Judicial review of State laws in recent years has often focused on social issues, such as the Virginia State law that excluded women from enrolling in the Virginia Military Institute. In 1996, in the case of *United States v. Virginia*, the Supreme Court found that Virginia’s exclusion denied women “equal protection of the laws,” a right guaranteed by the 14th Amendment of the Constitution.

The Supreme Court continues to review congressional acts covering many different topics. In 1997, concerns over the Internet brought a congressional act under judicial review. The Communications Decency Act of 1996 contained two provisions that prohibited sending or displaying obscene or indecent messages to anyone under

**Questions for Review and Discussion**

1. What power does the principle of judicial review bestow on the judicial branch?
2. Why do you suppose judicial review developed in the United States, even though it is not specifically mentioned in the Constitution?