Preface to the Eighth Edition

While the U.S. Supreme Court term ending in June 2025 did not have some of the pyrotechnics of previous terms, there were enough important changes that justified a new edition. I remain committed to Calvin's philosophy of Goldilocks editing (not too long, not too short, but just right). However, this has become somewhat more difficult with what seems to be a trend toward ever-lengthening Court opinions. I thus continue to look for places where older cases can be culled or at least summarized to give more space for the newer cases in a particular area. I want to express gratitude to those of you who have adopted this casebook, and especially those who continued to use it after I assumed its editorship. If you have suggestions for its improvement, I'd love the benefit of them. I want to thank all the folks at Aspen and The Froebe Group who work hard to produce a quality project. Joe Terry is a wonderful source of support. Longtime editor Joanne Butler placed me in the eminently capable hands of Anton Yakovlev; I thank both of them for their support as well. Kathy Langone is another longtime collaborator who is most helpful in keeping me on deadline and so understanding when I need just one more week! Special thanks to Tom Daughhetee for his hard work on this edition. My research assistant, Wyatt Huggins, Cumberland School of Law, class of 2025, was invaluable in the preparation of the annual supplements that made creation of this new edition much easier than it would have been otherwise. And of course, my continued thanks to Martha Massey and the rest of the Massey family for their support of my continuation of Calvin's work.

Brannon P. Denning
Birmingham, Alabama

October 2025

Preface to the Seventh Edition

The 2021-2022 Term of the U.S. Supreme Court brought a number of momentous cases. As has tended to be true of momentous cases recently, the majority and dissenting opinions are quite long, and multiple justices often concur or pen separate dissents. This presents a challenge for the casebook editor. One does not want to be like the hapless barber who found, to his frustration, that no matter how much hair he cut on that day's client, it was still too short. I hope that I have captured the essence of the argument in the Term's blockbuster cases, doing justice to both the majority and the dissenters. I hope this new edition continues to honor the memory of Calvin Massey and the casebook he created. Various people have helped bring this new edition forward; particular thanks are owed to Joanne Butler and Kathy Langone. Special thanks to Joe Terry for his continued encouragement and support. This edition was supported by a summer research grant from the Cumberland School of Law for which I thank Dean Corky Strickland and Associate Dean Jill Evans. Trent Mansfield, Cumberland School of Law, Class of 2023, provided outstanding assistance. Finally, thanks to Martha Massey and the rest of the Massey family for the continued privilege of maintaining Calvin's work.

Brannon P. Denning
Birmingham, Alabama

July 2022

Preface to the Sixth Edition

I am honored and humbled by the prospect of continuing Calvin's excellent casebook, which I have used since the first edition. For the sixth edition, I have tried to leave Calvin's voice intact; where I have added, I hope that I have done so in ways that he would have approved. I have continued his efforts to balance comprehensiveness with conciseness. Where possible, I have folded some older excerpted cases into introductory narrative paragraphs and otherwise tried to mitigate the "casebook bloat" to which constitutional law casebooks so often succumb and which Calvin was conscientious to avoid. I thank John Devins for the opportunity to serve as the successor author to Calvin, and to Lori Wood and Patrick Cline for excellent editorial assistance. Thanks as well to my colleagues who use this casebook and who offered valuable feedback prior to this edition. Morgan Hoggle, Cumberland School of Law, Class of 2019 gave much-appreciated aid in the preparation of the edition. Above all, however, I thank the Massey family—especially Martha Massey—for entrusting me with Calvin's work. I promise to be a good steward of this part of his legacy.

Brannon P. Denning
Birmingham, Alabama

September 2018

Preface to the Fifth Edition

The tension between comprehensive coverage and concise presentation continues. I have pared down the space allotted to existing cases and removed some cases that have been eclipsed by events in order to make room for new material. I hope that this surgery has been successful. I have tried to allow the justices to speak for themselves, but I have attempted to limit their occasional tendency to engage in polemics. The structure of the book remains largely unchanged.

I am grateful to the many people who have made this edition possible. Thanks go to Lori Wood, the professors who reviewed the Fourth Edition and provided their useful comments, all the adopters of my casebook, and the students who have used my casebook. And thanks also to the justices of the United States Supreme Court, who provide much of the raw material for any Constitutional Law casebook. I have tried to let them speak. But not so much as to overwhelm the student of Constitutional Law, who has quite enough to assimilate and ponder as he or she plows through law school.

Calvin Massey
Deer Isle, Maine

August 2015

Preface to the Fourth Edition

In the interest of brevity I have eliminated some cases, edited others more tightly, and eliminated some extraneous notes and commentary. I have reorganized the materials on the interstate commerce power to provide a more chronological approach. I have also altered the presentation of the materials on free expression, mostly in an attempt to bring more clarity to the content-based categories that are outside of the First Amendment. Significant new principal cases include National Federation of Independent Business v. Sebelius, Snyder v. Phelps, United States v. Stevens, Brown v. Entertainment Merchants Association, and United States v. Alvarez. Other significant cases decided since the prior edition went to press are included as note cases, sometimes with extensive excerpts. This edition is current through October Term 2011.

I continue to be grateful to the many people who make this casebook possible. I thank everyone who wrote me about errors or suggestions for change. I am grateful to all the people at Aspen Publishers who have supported this casebook since its inception. Particular thanks go to Barbara Roth, Barbara Lasoff, and Paul Sobel, each of whom shepherded this edition through the publication process. As always, I appreciate the students who read this book and think about the issues raised in its pages, and I am grateful to the professors who use my book as the springboard for their teaching. I am especially in debt to my wife, Martha Massey, who never complains about the time I devote to this book, and who is a marvelously acute lay critic of Constitutional Law. Of course, I continue to have the utmost respect for those statesmen of the eighteenth century who brought into being the structure of government and charter of liberties we call the Constitution, and to all those who have come afterwards who have preserved our fundamental law for us and our descendants.

Calvin Massey
Concord, New Hampshire

November 2012

Preface to the Third Edition

It continues to be difficult to be concise without being superficial. I have tried to accommodate new cases and more problems by the judicious editing of existing materials. A few note cases have disappeared, and some interstitial commentary has been shortened.

I have reorganized the materials dealing with voting rights as an aspect of equal protection, mostly by separating denial and dilution of the right to vote. I have also reorganized some materials in the discussion of free expression, particularly by separating false statements of fact from such "civility torts" as intentional infliction of emotional distress. I have added a new, and short, Chapter 12—The Right to Keep and Bear Arms—which contains District of Columbia v. Heller and the many questions raised by that decision. This edition is current through the October 2007 term of the Supreme Court. I have included more problems and queries in this edition. I hope that these problems will prove useful to teachers and students, yet still leave plenty of opportunity for individual teachers of constitutional law to employ their own devices and strategies. As with the prior editions, I have attempted to avoid ideological bias in the presentation of constitutional law.

I continue to be grateful to the many people who make this casebook possible. First, I thank the fellow professors who provided suggestions for change or who found errors, especially Mark Weiner, Brannon Denning, and Robert Natelson. Second, I continue to appreciate the people at Aspen Publishers who have supported this casebook since its inception. Third, I appreciate the careful attention of Katy Thompson and the copy editors at Publication Services. Finally, I particularly value the students who read and think about the content of my book and the professors who choose it as the vehicle for their teaching.

Calvin Massey
San Francisco, California

February 2009

Preface to the Second Edition

The second edition of this casebook is intended to be concise, but achieving that goal gets harder as the reach of constitutional law grows ever larger. I have tried to pare materials even as I have included important new cases. This edition is current through the 2003-2004 term of the Supreme Court. I have included more problems and hypothetical issues, but I have continued to give short shrift to academic commentary. This is not so much because I think the academic literature unimportant; it stems from my overall philosophy that my casebook should focus on what actually gets discussed in the constitutional law classrooms of America.

I am grateful to many people for their assistance in connection with this edition. First, I am especially thankful to fellow professors who provided suggestions for change or found errors. Special thanks go to Mike Allen, Brannon Denning, Brian Landsberg, and Randy Lee. I am always delighted to receive comments from students and professors. Please let me know your thoughts. As always, I appreciate the people at Aspen Publishers who make it possible for this book to exist. Special thanks go to Kathy Yoon, Ruth Kwon, and Carol McGeehan. Finally, I particularly appreciate the students who read and think about my book and the professors who choose to use my book as the vehicle for their teaching. I have tried to make this book a teaching vehicle, and I have approached the task of its creation as if I were teaching on paper. I have tried to leave ample room for the individual approaches of constitutional law teachers and have tried to eschew any particular bias in the presentation of constitutional law. I hope I have succeeded.

Calvin Massey
Boston, Massachusetts

February 2005

Preface to the First Edition

This casebook is intended to be concise. Given the breathtaking scope of American constitutional law, this has been no easy task. I have tried to include the material that is actually covered in most survey courses of constitutional law taught in American law schools.

Constitutional law is a political subject, but it is not just politics. Learning constitutional law is a bit like learning a new language. New vocabulary, grammar, and syntax need to be learned in order to speak politics through the vernacular of the law. This is to suggest not that the making of constitutional law is some version of Orwellian "newspeak" but that constitutional law deals with political disagreement in a fashion of its own. A principal objective of this book is to enable the student to master, as thoroughly as is possible in an introductory course, the fundamentals of the language of constitutional law.

Like many legal subjects, constitutional law involves several levels of understanding. At its simplest, there is a prevailing doctrine to be learned. But learning doctrine alone is a superficial undertaking. One needs also to ask why the doctrine is the way it is, to determine whether it is justifiable in terms of the fundamental premises of constitutional law, and to propose alternative ways of expressing our constitutional principles. A survey course not only must ground students in doctrine but must simultaneously challenge them to evaluate doctrine critically. There is a constant tension between these two objectives—description and prescription—and that tension is reflected to some extent in this casebook. If I have emphasized one aspect of these objectives, it is probably doctrine, but that is because I place great faith in my fellow teachers of constitutional law to use their classrooms to spark the creative and critical thinking of their students. I hope that my text has at least planted the seed of critical thought in students; I have not tried to write a casebook that emphasizes theory above all.

The individual teachers will, of course, make their own determination of what materials they choose to cover. If this book is to be used for a single-semester survey course, teachers must decide which portions to omit. I have included as much free expression material as space would permit, but in a single-semester course substantial portions must be pared away. At the beginning of Chapter 9 I have included materials that capture the essential architecture of modern free expression law; beyond that it is for each instructor to choose. If this book is used in a year-long or two-semester survey course, virtually the entire book can be used, although teachers may wish to omit some materials and reorganize others. I have placed the subject of congressional power in the context of section 5 of the Fourteenth Amendment in Chapter 11, but this material could easily be assigned at the end of Chapter 3, which deals with the powers of Congress. I start discussion of the commerce power with United States v. Lopez, but teachers who prefer to teach the commerce clause chronologically could assign the remainder of that section to be read before the

Lopez material. Other simple choices of reorganization can readily be made. Most of all, I have tried to create a good teaching tool for students and teachers alike.

I have edited cases to be faithful to the original text, but I have omitted internal citations in the cases, renumbered footnotes so that they appear in consecutive numerical order within each chapter of this book, and changed antiquated punctuation to conform to modern usage. Omitted material in cases is indicated by ellipses or brackets, and material added to cases is always within brackets.

Calvin Massey
Boston

January 2001