

# What is Law and What is NOT Law

Please sincerely consider the following in all that you do in your official capacity:

**From: The Federalist Papers, No. 78, by Alexander Hamilton -**

“There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principle; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid. ...

It is not otherwise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. ...

A constitution is, in fact, and must be regarded by the judges as, a fundamental law. ...

... the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. ...

... where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental.”

**Some Court Decisions** (Which are not law, but are evidence of the law <sup>1</sup>):

**1. “In the United States, sovereignty resides in the people, who act through the organs established by the Constitution.** Chisholm v. Georgia, 2 Dall. 419, 471; Penhallow v. Doane’s Administrators, 3 Dall, 54, 93; McCulloch v. Maryland, 4 Weat 316, 404, 405; Yick Wo v. Hopkins, 118 U.S. 356, 370.

**The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress can not invoke the sovereign power of the people to override their will as thus declared.”**

[PERRY v. UNITED STATES, 294 US 331, 353, (1934)]

**2. “All laws which are repugnant to the Constitution are null and void.”**

[Marbury vs. Madison, 5 US (2 Cranch) 137, 174,176 (1803)]

**3. “Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”**

[Miranda vs. Arizona, 384 US 436, 491(1966)]

**4. “An unconstitutional act is not law, it confers no rights; it imposes no duties; affords no protections; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.”**

[Norton vs. Shelby County, 118 US 425, 442 (1886)]

5. **“The claim and exercise of a constitutional right cannot be converted into a crime.”** [Miller vs. U.S., 230 F. Supp. 486, 489 (1956)]

6. **“There can be no sanction or penalty imposed upon one because of his exercise of constitutional rights.”** [Sherar vs. Cullen, 481 F. 2d 946 (1973)]

7. **“Constitutional rights may not be denied simply because of hostility to their assertion and exercise:**

**Vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them.”**  
[Watson vs. City of Memphis, 373 US 526, 535 (1963)]

8. **“The state cannot diminish Rights of the people.”**  
[Hurtado vs. California, 110 US 516 (1884)]

9. **“A written constitution is not only the direct and basic expression of the sovereign will, it is also the absolute rule of action and decision for all departments and officers of government with respect to all matters covered by it, and must control as it is written until it is changed by the authority which established it. No function of government can be discharged in disregard of or in opposition to the fundamental law. The state constitution is the mandate of the sovereign people to its servants and representatives. No one of them has a right to ignore or disregard its mandates, and the legislature, the executive officers, and the judiciary cannot lawfully act beyond its limitations. Disobedience or evasion of a constitutional mandate may not be tolerated even though such disobedience may, at least temporarily, promote to some respects the best interest of the public.**

**Neither emergency nor economic necessity justifies a disregard of cardinal constitutional guaranties.**

**The constitution of each state, so far as it is consistent with the provisions of the Federal Constitution, is the fundamental law of the state and a part of its supreme law, and acts passed by the legislature inconsistent therewith are invalid. There is no law enforceable by the courts above or beyond a constitution.”**

[16 Am. Jur. 2d, 81 without citations referenced or stated]

10. **“The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of decision so branding it. “No one is bound to obey an unconstitutional law and no courts are bound to enforce it.” ”**

[16 Am. Jur. 2d, Section 177; later 2d, Section 256]

Remember <sup>1</sup> what Justice Story stated, speaking for the unanimous Supreme Court of the United States of America in Swift v. Tyson [16 Peter 1, 18 (1842)]:

**“In the ordinary use of language it will hardly be contended that the decisions of Courts constitute laws. They are, at most, only evidence of what the laws are; and not of themselves laws.”**

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1. See the document titled: There Is No Such Thing As “Case Law”, hand-delivered on April 14, 2011