

C. FUNDAMENTAL AMERICAN CONSTITUTIONAL DOCUMENTS

Research References

West's Key Number Digest
Constitutional Law §=500 to 502

Primary Authority

48 U.S.C.A. §§ 737, 1421b, 1561

A.L.R. Library

A.L.R. Index, Constitutional Law
West's A.L.R. Digest, Constitutional Law §=500 to 502

§ 7 Pre-Constitution national documents: Declaration of Independence; Northwest Ordinance; Articles of Confederation

Research References

West's Key Number Digest, Constitutional Law §=500

While statements of principles contained in the Declaration of Independence do not have the force of organic law¹ and therefore cannot be made the basis of any judicial decision as to the limits of rights and duties, yet it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence,² and the courts have sometimes referred to the Declaration in determining constitutional questions.³

On July 13, 1787—two years before the Constitution of the United States was adopted—Congress enacted the Northwest Ordinance,⁴ captioned "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio," this landmark legislation—which was to have a profoundly important effect on the subsequent development of both state and national law—was the fundamental instrument of government for an area covering more than a quarter-million square miles.⁵ The territory to which the ordinance applied included all of present-day Michigan, Indiana, Illi-

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¹*Ellan v. Martin*, 38 Wash. App. 91, 684 P.2d 769 (Div. 3 1984).

²*Gulf, C. & S.F. Ry. Co. v. Ellis*, 165 (1897); *McKinster v. Sager*, 163 Ind. 671, 72 N.E. 854 (1904).

³For example, *Gulf, C. & S.F. Ry. Co. v. Ellis*, 165 U.S. 150, 17 S. Ct. 255, 41 L. Ed. 666, 41 L. Ed. 666 (1897); *American Federa-*

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nois, Wisconsin, and Ohio and part of Minnesota.⁶ The federal courts have generally held that the Ordinance was superseded by the adoption of the Constitution of the United States on the ground that the Constitution places all the states of the Union on an equal basis which would not be the case if the Ordinance continued to be in force after the adoption of the organic law.⁷ Even after the adoption of the Constitution, however, some of the provisions of the Ordinance were continued in force by acts of Congress during the period of the territorial government of the Northwest Territory.⁸

In both the federal courts and those of the states created out of the Northwest Territory, the doctrine that the Ordinance has been superseded by the state constitution when a new state has been admitted to the Union is adhered to, and no effect is given to that Ordinance except insofar as its principles may have been embodied in the state constitution.⁹

Following the Revolutionary War, the Articles of Confederation were drafted in 1777 and submitted by the Continental Congress to the state legislatures for approval, but they were not approved by all the states until 1781.¹⁰ The newly independent states did not favor a centralized executive authority, and the government ultimately created by the Articles of Confederation amounted to little more than a loose confederation of states that derived its authority from acceptance of the principles of the confederation by the state legislatures through ratification.¹¹ The articles created a government with a single branch of government—a Congress with members appointed by the state legislatures.¹² Congress was given the sole and exclusive power to make war and peace, to enter into treaties and other alliances, to coin money, to establish a postal system, to send and receive ambas-

⁶374P (6th Cir. 1994).

⁷State of Mich. v. U.S., 40 F.3d 817, 95 Ed. Law Rep. 846, 1994 FED App. 0374P (6th Cir. 1994).

⁸*Chapin v. Eye*, 179 U.S. 127, 21 S. Ct. 71, 46 L. Ed. 119 (1900).

⁹*Sandoz v. Manistee River Imp. Co.*, 123 U.S. 298, 8 S. Ct. 113, 31 L. Ed. 149 (1887); *Huse v. Glover*, 119 U.S. 543, 7 S. Ct. 313, 30 L. Ed. 487 (1886); *Cardwell v. American River Bridge Co.*, 113 U.S. 205, 5 S. Ct. 423, 28 L. Ed. 959 (1885).

¹⁰*Strader v. Graham*, 51 U.S. 82, 10 How. 82, 13 L. Ed. 357, 1850 WL 6936 (1850).

¹¹*Hawkins v. Bleakly*, 243 U.S. 210, 37 S. Ct. 255, 61 L. Ed. 678 (1917) (Lewal);

¹²*Sandoz v. Manistee River Imp. Co.*, 123 U.S. 286, 8 S. Ct. 113, 31 L. Ed. 149 (1887) (Michigan); *Huse v. Glover*, 119 U.S. 543, 7 S. Ct. 313, 30 L. Ed. 487 (1886) (Illinois); *Dixon v. People*, 168 Ill. 179, 48 N.E. 108 (1897); *State ex rel. Donahay v. Edmondson*, 89 Ohio St. 93, 105 N.E. 269 (1913).

¹³*Quinton, A Brief History of the Adoption of the United States Constitution*, 75 Iowa L. Rev. 891 (May 1990).

¹⁴*Quinton, A Brief History of the Adoption of the United States Constitution*, 75 Iowa L. Rev. 891 (May 1990).

¹⁵*Quinton, A Brief History of the Adoption of the United States Constitution*, 75 Iowa L. Rev. 891 (May 1990).

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