

# THE CONSTITUTION AND THE SUPREME COURT

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## ***C. The Basic Framework***

### **Page 38. At the end of the Note, add the following:**

For a detailed and revealing historical account of the relationship between civil liberties and judicial review during the first part of the twentieth century, see Weinrib, *Civil Liberties outside the Courts*, 2014 Sup. Ct. Rev. 297.

### **Page 44. After section 4 of the Note, add the following:**

5. Federal supremacy reaffirmed. In *James v. City of Boise*, 136 S. Ct. 685 (2016), the Supreme Court reaffirmed that its interpretations of federal law are supreme and binding on state courts. In *Hughes v. Rowe*, 449 U.S. 5 (1980) (per curiam), the Supreme Court had interpreted 42 U.S.C. § 1988 to permit a prevailing defendant in a civil rights suit to recover fees only if “the plaintiff’s action was frivolous, unreasonable, or without foundation.” The Idaho Supreme Court concluded that it was not bound by the Court’s interpretation, reasoning that “[although] the Supreme Court may have the authority to limit the discretion of lower federal courts, it does not have the authority to limit the discretion of state courts where such limitation is not contained in the statute.” The Idaho Supreme Court proceeded to award attorney’s fees under section 1988 without first determining whether the plaintiff’s action was frivolous, unreasonable, or without foundation. In reversing, the Supreme Court stated:

“ ‘It is this Court’s responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.’ ” [citations omitted] . . . As Justice Story explained 200 years ago, if state courts were permitted to disregard this Court’s rulings on federal law, ‘the laws, the treaties, and the constitution of the United States would