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CONSTITUTIONAL LAW IN
THE PEOPLE'S REPUBLIC
OF CHINA

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Constitutional Law in the People's Republic of China

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I. Introduction

The current constitution of China was adopted December 4, 1982.² Since 1949, China has had four different Constitutions.³ The current constitution has been amended four times.⁴ The current Constitution is divided into different chapters and contains one hundred thirty eight articles.⁵ These chapters include: (1) General Principles; (2) Fundamental Rights and Duties of Citizens; (3) Structure of the State; and, (4) the National Flag, the National Anthem, the National Emblem and the Capital.⁶ There are numerous similarities and differences that exist between the Constitutions of China and the United States, and this paper will primarily focus on the Chinese Constitution for purposes of comparing these two documents.

II. Preamble

Both the United States and China constitutions have preambles. The U.S. Constitution preamble introduces the general underlying purpose of the document, stating that it is intended to "establish Justice, insure domestic Tranquility; provide for the common defence, [and] promote the general Welfare. . . ."⁷ The Chinese preamble discusses many more things. It begins by providing the historical context of the socialist revolution in China, discussing how Mao Zedong overthrew and overcame imperialism, feudalism and bureaucrat-capitalism and founded the People's Republic of China (PRC).⁸ It goes on to tell how the Chinese people have taken state power and become masters of the country.⁹ The basic task of the nation is to concentrate its effort on socialist

modernization along the road of Chinese style socialism.¹⁰

The preamble of the Chinese constitution was amended in 1993. It summarizes the PRC's goals:

"The basic task of the nation is to concentrate its efforts on socialist modernization by following the road of building socialism with Chinese characteristics. Under the leadership of the Communist Party of China . . . the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship, follow the socialist road, persist in reform and opening-up, steadily improve socialist institutions, develop a socialist market economy, advance socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a powerful and prosperous socialist country with a high level of culture and democracy."¹¹

The preamble also discusses how China carries out and adheres to five principles in foreign policy: mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries.¹²

III. Articles

There are seven Articles in the U.S. Constitution and 27 Amendments, whereas in the Chinese Constitution there are 138 Articles which have been amended four times.¹³ The articles of the Chinese Constitution can be broken down into several general categories for the purpose of comparison and analysis.

A. General Purposes

Article 1 of the 1982 Constitution states that China is a “socialist state under the people's democratic dictatorship,” and Article 2 grants the power of China to the people.¹⁴ On the other hand, the United States doesn't specifically proclaim an economic ideology in the U.S. Constitution. In China, the National People's Congress (NPC) and the local people's congresses are the organs which the people exercise state power. The NPC and its permanent Standing Committee has the most power.¹⁵ Article 3 of the Chinese constitution states that NPC members are elected democratically and Article 4 grants all ethnicities in China equal rights.¹⁶ The US Constitution grants its citizens equal rights via the Fourteenth Amendment.¹⁷ Article 5 of the Chinese Constitution states that no law or regulation can contravene the Constitution, and Article 6 emphasizes that the basis of the socialist economic system of China is public ownership of the means of production.¹⁸

Article 9 of the Chinese Constitution states that all national resources are owned by the state, while Article Ten says that the State may, in the public interest, appropriate or requisition land for its use while making compensation.¹⁹ Meanwhile, the Fifth Amendment of the US Constitution has a provision that promises its citizens that no “private property shall be taken for public use, without just compensation.”²⁰ Article 11 of the Chinese Constitution, which was amended in 2004, allows the State to permit the private sector of the economy to exist and develop within the limits prescribed by law, as they are major components of the socialist market economy.²¹ Article 13 states that “[t]he lawful private property of citizens is inviolable,” and the State protects the rights of citizens to private property.²² Article 14 was amended in 2004 to establish a social security system and Article 18 expressly permits foreign enterprises and foreign economic organizations to invest in China.²³ By

comparison, the United States Constitution says nothing about social security, and also does not mention foreign investment.

Article 19 of the Chinese Constitution discusses how the State shall make primary education compulsory, and develop colleges.²⁴ Article 25 advocates the State's goal of promoting family planning.²⁵ Meanwhile, the U.S. Constitution doesn't speak to family planning or compulsory education, possibly indicating an aversion to constitutional mandates which interfere with the lives of citizens.

Article 28 of China's Constitution provides that the state is responsible for maintaining public order and suppressing treasonable and other counter-revolutionary activities, as “it penalizes criminal activities that endanger public security and disrupt the socialist economy.”²⁶ The U.S. Constitution also grants its government the right to declare the punishment of treason and to deal with situations when public safety may require certain actions.²⁷

B. Fundamental Rights and Duties of Citizens

PRC Constitution Article 33 states that every person holding the nationality of the PRC are citizens of such, and was amended in 2004 to emphasize that the State respects and preserves human rights.²⁸ Article 34 requires PRC citizens to reach the age of eighteen to vote and stand for election.²⁹ The U.S. Constitution also mentions citizenship requirements for the U.S. and describes who can vote and run for election of offices.³⁰ Article 35 of the Chinese Constitution grants citizens of the PRC the enjoyment of free speech, freedom of the press, assembly, association, procession and demonstration, and Article 36 grants every Chinese citizen of the PRC the enjoyment of the freedom of religious belief.³¹ While these are constitutional guarantees, it is unlikely that such protections are rigorously enforced in China as they are in the U.S. For instance, the First Amendment to the U.S. Constitution

essentially has the same provisions and these provisions have been upheld and zealously guarded.³²

The Chinese Constitution further maintains that the State cannot compel citizens to believe or not to believe in any religion, or discriminate against any particular religion as such.³³ However, the caveat is that no one can use religion to disrupt the public order, interfere with the educational system of the state or impair the health of the citizens.³⁴ This is not wholly unfamiliar for U.S. citizens though, as case law has maintained similar restrictions on speech or religion when it would cause imminent lawless action or would injure another, for example.³⁵

Article 37 of the Chinese Constitution discusses unlawful arrest and detention, which is prohibited; it also states unlawful searches are prohibited.³⁶ Furthermore, Article 40

states that no person's correspondence can be infringed upon unless to meet the needs of state

security or investigation into criminal

offenses.³⁷ The U.S. Constitution has similar provisions

protecting against illegal searches and seizures and detentions.³⁸ The Chinese

Constitution also grants the State the power to censor correspondence in accordance with procedures prescribed by law.³⁹ Article 41

allows the citizens of China to criticize and make suggestions to any state organ. Article 42 grants the Chinese citizens the right and duty to work, while Article 43 grants Chinese citizens the right to rest and have vacations.⁴⁰ No provisions for granting the right to work and have vacations are seen in the U.S.

Constitution. Article 44 prescribes the system of retirement for workers and Article 45 grants Chinese citizens the right to assistance from the State when they are old, ill or

disabled.⁴¹ The United States has no Constitutional provision touching these subjects. The Chinese State “develops social

insurance, social relief and medical and health services that are required to enable citizens to enjoy the right.”⁴²

Article 48 mandates that women in China have equal rights with men in all things.⁴³ The United States does not mandate social insurance or anything of the like in the Constitution, but does grant all citizens equal rights, regardless of gender.⁴⁴ Article 49 discusses marriage, and lists husband and wife specifically.⁴⁵ No direct reference to what constitutes a marriage is in the Constitution however. There have been proposals to the committees in the PRC National People's Congress to legalize same-sex marriage.⁴⁶ Since these bills are being proposed, it implies same-sex marriages are not allowed.

C. The National People's Congress

PRC Constitution Article 57 makes the National People's Congress the highest organ of state power. The permanent body of the NPC is the Standing Committee.⁴⁷ Article 58 grants the NPC the ability to exercise the legislative power of the State and Article 59 ordains that the NPC

is composed of deputies, elected by the provinces, autonomous regions and municipalities directly under the Central

Government.⁴⁸ The election of deputies to the NPC is conducted by

the Standing Committee of the NPC.

However, a list of the names of all the candidates at all

levels including the county and township levels are put forth by the Communist Party of China

(CPC).⁴⁹ The list of names usually corresponds to the exact number of seats to be filled.⁵⁰

Therefore this clearly shows how the CPC still controls the government. The annual sessions of

the NPC are started and run by the Standing Committee's Presidium. The Presidium is a list

created by the Standing Committee.⁵¹ In turn, the Presidium nominates people for many of the

top government posts in the PRC. The Presidium is very important because it controls the NPC, as it dictates what matters are sent to the Congress for a vote.⁵² Article 60 of the 1982 Constitution states that the NPC is elected for a term of five years, and Article 61 requires the NPC to meet in session once a year.⁵³ The U.S. Constitution has some requirements for the members that make up its body, but no political party has the ability to mandate who is elected. Some U.S. constitutional requirements consist of being a certain age or residing in the jurisdiction for a certain amount of time.⁵⁴ Article 62 lists the functions and powers of the NPC. Some of the important powers grant the NPC the power to amend the Constitution, enact and amend statutes, elect the President and Vice President, select the Premier of the State Council and Secretary-General of the State Council, elect the Chairman of the Central Military Commission; examine the state budget, and decide on questions of war and peace.⁵⁵ Many of these provisions simply don't apply to the U.S., but some of the most important powers of the U.S. Congress is to borrow and coin money, collect taxes, to regulate commerce, declare war, and to make and amend laws.⁵⁶ The NPC has the power to amend the Constitution with a two-thirds majority vote.⁵⁷ Article 63 grants the NPC the right to recall or remove from office certain officers, while Article 64 discusses the amendment process.⁵⁸ Amendments are proposed by the Standing Committee of the NPC or by more than one-fifth of the deputies to the NPC and adopted by a majority vote of more than two-thirds of all the deputies to the Congress.⁵⁹ Statutes and resolutions are adopted by a majority vote of more than one half of all the deputies to the NPC.⁶⁰ The U.S. Constitution discusses the ways that Congress can pass bills or try to add an amendment to the Constitution. For an amendment, two-thirds of Congress and

three-fourths of States must ratify the constitutional change before it is adopted.⁶¹

Article 65 of the Chinese Constitution discusses the Standing Committee. The Standing Committee actually fulfills most of the functions of the NPC, because it selects who will serve on the Presidium and otherwise controls the NPC.⁶² The members of the Standing Committee are elected by the NPC, however those who serve are selected from a list of names submitted and approved by the Communist Party.⁶³ The Standing Committee is composed of a Chairman, Vice Chairman, Secretary General, and several members.⁶⁴ Importantly, Article 65 states that the NPC elects, and has the power to recall, all those on its Standing Committee and Article 66 maintains the Standing Committee is elected for the same term as the NPC.⁶⁵ Article 67 spells out the powers of the Standing Committee. Among the various provisions, the Standing Committee has the power to interpret the Constitution and supervise its enforcement; to enact and amend statutes; to interpret statutes; to supervise the work of the Central Military Commission (CMC), State Council (SC), the SPC and Supreme People's Procuratorate. The Standing Committee also has the power to annul decisions, rules and regulations of the SC that contravene the Constitution or the Statutes. The Standing Committee can decide on the granting of special pardons and can decide when the NPC is not in session: proclamations of war. The Standing Committee can decide on the enforcement of martial law as well. Those who can be nominated to the NPC standing committee are elected among its members by the NPC from a list of names submitted/approved by the Communist Party of China (CPC).⁶⁶ In turn, this demonstrates the CPC's control over the Standing Committee and the NPC.

Within the Standing Committee, there is also the powerful Standing Committee Council of Chairmen, which controls and directs the day to day work of the Standing Committee.⁶⁷ Yet again, the list of candidates

for the Standing Committee Council of Chairmen is submitted and approved by the CPC.⁶⁸ The Council of Chairmen can effectively derail a bill by refusing to place it on the agenda.⁶⁹ Furthermore, the Standing Committee is very powerful as the committee seemingly has powers that are executive, judicial, and legislative in nature. The powers of the Standing Committee are in direct conflict with the U.S. separation of powers doctrine. In the U.S., only the Judicial branch has the ability to interpret the law; the Legislative branch has the power to make and amend the law; and the Executive branch has the ability to make sure the laws are enforced.⁷⁰

The Chinese legislative process has three stages: submission of draft legislation, consideration by the committee and a placement for a vote.⁷¹ The Presidium decides whether or not to place the bill on the agenda for a vote.⁷² Therefore the Presidium has the control to determine whether or not a bill can even have a chance to become a law. However, for example the State Council has the inherent power to make administrative regulations that don't need approval of the Congress.⁷³ The Presidium can refer the bill to the Law Committee to investigate the bill.⁷⁴ If the Presidium allows the bill to be discussed, after the NPC delegates and special committees express their opinions, the Presidium can decide to approve the bill in its amended form. Following this, the bill will be presented at the annual NPC meeting for approval by majority vote.⁷⁵ After approval, the bill is signed and enacted by the President of the PRC.⁷⁶

D. The President of the People's Republic of China

Article 79 discusses the requirements to be eligible for election as President or Vice President by the NPC: to be eligible for election for these positions, a citizen must be at least 45 years old.⁷⁷ The President and Vice President's term of office is the same as the NPC and they shall not serve more than two

consecutive terms.⁷⁸ Article 80 states that the President in pursuance of the decisions of the NPC and its Standing Committee promulgate statutes; has the power to remove certain officials; can order pardons; can decide on entering the state of emergency; and proclaim a state of war.⁷⁹ Article 81 allows the President in pursuance of the Standing Committee and NPC to ratify and abrogate treaties and agreements with foreign states, and Article 84 discusses the order of succession in-case the President dies.⁸⁰ However, the President is largely a ceremonial office, but if the President holds other offices then he or she may still yield significant power.⁸¹

The U.S. Constitution establishes the positions of President and Vice President. Some of the provisions impose eligibility restrictions on potential presidential candidates, while also imposing a two term limit, allowing for presidential pardon, and bestowing the President with the title of Commander and Chief.⁸² These are the powers that are similar to the Chinese President's power. However, the Chinese President seemingly wouldn't be able to wage war as Commander and Chief unless he also was Chairman of the Central Military Commission.

E. The State Council

Article 85 describes the State Council. The State Council is the executive body of the highest organ of state power.⁸³ Article 86 lists who composes the State Council, while Article 89 discusses its powers and functions. Some of these powers include, enacting "administrative measures and rules," issuing decisions and orders, "implement[ing] the plan for national economic and social development and the state budget," conducting foreign affairs, protecting minorities, and deciding "on the enforcement of marital law."⁸⁴ The premier of the State Council is in charge of the administration and operation of the state and is one of the most powerful positions in the PRC.⁸⁵ The State Council has issued

thousands of rules and regulations that affect all aspects of the political, economic and social life of the PRC.⁸⁶

F. Central Military Commission

Article 93 of the 1982 describes the armed forces of the country and its control by the

Central Military Commission (CMC).⁸⁷

Interestingly, the chairmanship of the CMC is not subject to term restrictions. The CMC directs the armed forces.⁸⁸ The Chairman is the leader and is responsible for the commission. There are two CMCs; one for the CPC and one for the government. However, membership in both is identical.⁸⁹ The CPC nominates all the members of the Commission to serve on both.⁹⁰ Arguably the Chief of Staff for the President of the United States is similar to the CMC, with the President being the equivalent of the Chairman of the CMC. However, there is no mention of a Chief of Staff in the US Constitution.

G. The Local People's Congress

The People's Congress and governments are established in provinces and municipalities

directly under the Central Government.

Article 97 of the 1982 Constitution describes how members are elected. Deputies are elected by the People's Congress directly below the national level.⁹¹ However, deputies to the People's Congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships and towns are elected directly by their constituencies. The people's congresses at the provincial and national levels are elected by the congresses one level below and are controlled by the CPC.⁹² Article 100 discusses how the people's congresses can adopt local regulations which don't contravene the Constitution, the statutes and administrative rules and regulations of the Central Government. Article 103 sets up a standing committee like that of the NPC. Article 104 states that the standing committee of a local people's congress decide issues in all fields of work in its administrative area.⁹³

While the U.S. has state governments, they are sovereign on all issues that the US Constitution doesn't speak to.⁹⁴ Therefore, seemingly the States of the US are more powerful than the provincial governments in China.

H. The People's Court

PRC Constitution Article 123 proclaims the people's courts as the judicial organs of the state.⁹⁵ Article 124 establishes the Supreme People's Court (SPC) and the local people's courts at different levels; the term of office for the President of the SPC is the same as the NPC and the SPC President cannot serve more than two consecutive terms.⁹⁶ Article 138 establishes the Supreme People's Procuratorate.⁹⁷ However, what is interesting about the courts in the PRC is that they don't have the power to determine whether a constitutional violation has occurred.⁹⁸ They also lack the ability to interpret the Constitution.⁹⁹ The U.S. Constitution discusses the United States Supreme Court and specifically what cases may be heard in particular situations.¹⁰⁰

In the U.S. the legislative branch makes the laws, and the judicial branch interprets these laws to determine if they are constitutional. If the court finds the law unconstitutional, a new law must be made or an Amendment to the Constitution can override the Supreme Court's legal decision. In China, courts lack a central role in the legal system, and with the notable exception of the SPC, have only a limited role in the interpretation of laws.¹⁰¹

The SPC and the Supreme People's Procuratorate have authority to interpret questions of law arising out of specific applications of law in the adjudicative work of the courts and the work of the procuratorate respectively.¹⁰² Where the two bodies differ fundamentally, the matter is

referred to the NPC Standing Committee.¹⁰³ The SPC is empowered only to issue interpretations of questions of law arising out of concrete applications; general questions about ambiguities; and gaps in laws that are within the exclusive authority of the NPC Standing Committee.¹⁰⁴ The SPC is at once a judicial, legislative and administrative organ.¹⁰⁵ Meanwhile, the U.S. Supreme Court has judicial power only in those cases it hears, which are those arising under the Constitution, or dealing with federal laws and treaties.¹⁰⁶

I. The Constitution – Behind the Scenes

While the 1982 Constitution eliminated provisions from the 1978 and 1975 Constitutions creating explicit control of the State by the CPC, the CPC continues to run the show by behind-the-scenes measures.¹⁰⁷ The CPC is connected to the PRC Constitution. The real power is wielded by a small group of leading individuals within the CPC.¹⁰⁸ In turn, the leader of the CPC has the most power in the country.

In China, the President is merely a ceremonial officer of China, whereas in the United States, the President has immense powers.¹⁰⁹ Another difference is seen in Congress. While the local government officials in China are directly elected by the people, members of the National People's Congress are not popularly elected. Essentially, provincial leaders are selected by the people, and then vote for those members who make up the NPC.¹¹⁰ This may seem like a foreign concept for a citizen of the United States, but up until the adoption of the Seventeenth Amendment in 1913, US Senators were elected by the state legislatures.¹¹¹ State legislatures were closer to the people and thus it was reasoned that anyone elected by the State legislatures could adequately represent the people as well.

One final distinction between the U.S. and China is that all sovereign power in the PRC resides in the central level authorities, whereas in the U.S. the fifty states are sovereign entities and exercise sovereign power except powers delegated to the U.S. in the Constitution.¹¹²

J. The Communist Party of China

Interestingly China endorses a multi party system of political parties under the leadership of the CPC. However many members of the other parties, are also members of the CPC.¹¹³ China's CPC has its own Congress and Central Committee.¹¹⁴ The Central Committee has power over certain things, which include: propaganda; relations with other political parties; international liaisons; and personal appointments. The leadership of the Central Committee is its Politburo and its Standing Committee.¹¹⁵ One of the members of the Politburo Standing Committee is the General Secretary of the Central Committee, considered to be the top post in the Party.¹¹⁶ Since the CMC's are the same members in the government and the CPC, the CPC has significant power in controlling the armed forces.¹¹⁷ The basic mechanism used by the Party to control the Party system, the government, and all other social and economic institutions is called the, "Nomenklatura system."¹¹⁸ This system refers to a list of Party or government positions kept by Party leaders that can be filled only by certain persons whose names appear on a list of candidates or nominees for those positions.¹¹⁹ Therefore, the Party has the ability to put whoever they want in office. With this, the Party can have its officials run the government, thus having the connection between the two organs.

IV. Conclusion

Although the Constitution sets forth the outlines of state power, the real power lies in the hands of the CPC.¹²⁰ Due to China's desire to play a larger role in international affairs, the PRC has adopted several amendments to the 1982 Constitution that are important for US businesses to know. As aforementioned, the Chinese Constitution specifically states that the State will protect private businesses within the limits of the law. Moreover, in the Chinese Constitution, the PRC grants freedom of speech and religion for example, and maintains that every citizen shall have equal rights. These are fundamental rights that every US citizens has. However, China also has significant differences from U.S. constitutional law, that can be seen in the structure of government and how government actors use their power. The CPC dominates the Chinese government with behind-the-scenes provisions, whereas in the US the voters are allowed to elect anyone that meets age and citizenship requirements. A major difference between the US and China is also seen in their separation of powers doctrine. China has no separation of powers, whereas the US does. While Chinese citizens have freedoms, it seems that these freedoms are considered gifts from the PRC, and not rights; whereas in the US, freedom is a natural right. Furthermore, while China allows political parties like the US does, China's behind the scenes provisions guarantees and safeguards the CPC from ever losing power. The US has a two party system and both parties are relatively safe from being replaced but they don't have anywhere near the power the CPC yields in China. Three words can sum up the differences between the US and China: behind the scenes.

¹¹ Brian Barnwell is a 2011 graduate of Albany Law School. This paper was prepared for the 2011 Introduction to Chinese Law course.

² Xian Fa (1982) (P.R.C.).

³ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 71 (West 2nd ed. 2009).

⁴ Xian Fa (1982) (P.R.C.).

⁵ See generally Xian Fa (1982) (P.R.C.).

⁶ Xian Fa (1982) (P.R.C.).

⁷ U.S. Const. pmb.

⁸ Xian Fa pmb. (1982) (P.R.C.).

⁹ Xian Fa pmb. (1982) (P.R.C.).

¹⁰ Xian Fa pmb. (1982) (P.R.C.).

¹¹ Xian Fa pmb. (1982) (P.R.C.).

¹² Xian Fa pmb. (1982) (P.R.C.).

¹³ U.S. Const.; Xian Fa (1982) (P.R.C.).

¹⁴ Xian Fa art. 1-2 (1982) (P.R.C.).

¹⁵ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 80 (West 2nd ed. 2009).

¹⁶ Xian Fa art. 3-4 (1982) (P.R.C.).

¹⁷ U.S. Const. amend. XIV, § 1.

¹⁸ Xian Fa art. 5-6 (1982) (P.R.C.).

¹⁹ Xian Fa art. 9-10 (1982) (P.R.C.).

²⁰ U.S. Const. amend. V.

²¹ Xian Fa art. 11 (1982) (P.R.C.).

²² Xian Fa art. 13 (1982) (P.R.C.).

²³ Xian Fa art. 14, 18 (1982) (P.R.C.).

²⁴ Xian Fa art. 19 (1982) (P.R.C.).

²⁵ Xian Fa art. 25 (1982) (P.R.C.).

²⁶ Xian Fa art. 28 (1982) (P.R.C.).

²⁷ U.S. Const. amend. XIV, § 1.

²⁸ Xian Fa art. 33 (1982) (P.R.C.).

²⁹ Xian Fa art. 34 (1982) (P.R.C.).

³⁰ U.S. Const. amend. XIV, § 1.

³¹ Xian Fa art. 35-36 (1982) (P.R.C.).

³² U.S. Const. amend. I.

³³ Xian Fa art. 36 (1982) (P.R.C.).

³⁴ Xian Fa art. 36 (1982) (P.R.C.).

³⁵ See *Brandenburg v. Ohio*, 395 U.S. 444 (1969);

Cantwell v. State of Connecticut, 310 U.S. 296

(1940); *Chaplinsky v. State of New Hampshire*, 315

U.S. 568 (1942).

³⁶ Xian Fa art. 37 (1982) (P.R.C.).

³⁷ Xian Fa art. 40 (1982) (P.R.C.).

³⁸ See U.S. Const. amend. IV.

³⁹ Xian Fa art. 40 (1982) (P.R.C.).

⁴⁰ Xian Fa art. 41-43 (1982) (P.R.C.).

⁴¹ Xian Fa art. 44-45 (1982) (P.R.C.).

⁴² Xian Fa art. 45 (1982) (P.R.C.).

⁴³ Xian Fa art. 48 (1982) (P.R.C.).

⁴⁴ U.S. Const. amend. XIV, § 1.

⁴⁵ Xian Fa art. 49 (1982) (P.R.C.).

⁴⁶ Ramon Johnson, *Gay China: Gay Life, Marriage and Adoption Rights in China*, available at http://gaylife.about.com/od/samesexmarriage/ig/Gay-World-Tour.--_7/Gay-World-Tour---China.htm.

⁴⁷ Xian Fa art. 57 (1982) (P.R.C.).

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- ⁴⁸ Xian Fa art. 58-59 (1982) (P.R.C.).
- ⁴⁹ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 90 (West 2nd ed. 2009).
- ⁵⁰ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 90 (West 2nd ed. 2009).
- ⁵¹ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 90 (West 2nd ed. 2009).
- ⁵² Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 90 (West 2nd ed. 2009).
- ⁵³ Xian Fa art. 60-61 (1982) (P.R.C.).
- ⁵⁴ See e.g. U.S. Const. Art. II, § 1.
- ⁵⁵ Xian Fa art. 62 (1982) (P.R.C.).
- ⁵⁶ U.S. Const. Art. 1, §8.
- ⁵⁷ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 149 (West 2nd ed. 2009).
- ⁵⁸ Xian Fa art. 63-64 (1982) (P.R.C.) (namely the President/Vice President, Premier, Chairman of the CMC, and the President of the SPC).
- ⁵⁹ Xian Fa art. 64 (1982) (P.R.C.).
- ⁶⁰ Xian Fa art. 64 (1982) (P.R.C.).
- ⁶¹ U.S. Const. Art. V.
- ⁶² Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 92 (West 2nd ed. 2009).
- ⁶³ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 92 (West 2nd ed. 2009).
- ⁶⁴ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 92 (West 2nd ed. 2009).
- ⁶⁵ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 92 (West 2nd ed. 2009).
- ⁶⁶ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 92 (West 2nd ed. 2009).
- ⁶⁷ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 93 (West 2nd ed. 2009).
- ⁶⁸ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 93 (West 2nd ed. 2009).
- ⁶⁹ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 163 (West 2nd ed. 2009).
- ⁷⁰ See generally [U.S. Const. Art. I-III](#).
- ⁷¹ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 160 (West 2nd ed. 2009).
- ⁷² Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 160 (West 2nd ed. 2009).
- ⁷³ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 161 (West 2nd ed. 2009).
- ⁷⁴ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 161 (West 2nd ed. 2009).
- ⁷⁵ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 162 (West 2nd ed. 2009).
- ⁷⁶ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 162 (West 2nd ed. 2009).
- ⁷⁷ Xian Fa art. 79 (1982) (P.R.C.).
- ⁷⁸ Xian Fa art. 79 (1982) (P.R.C.).
- ⁷⁹ Xian Fa art. 80 (1982) (P.R.C.).
- ⁸⁰ Xian Fa art. 81, 84 (1982) (P.R.C.).
- ⁸¹ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 102 (West 2nd ed. 2009).
- ⁸² U.S. Const. Art. II; U.S. Const. amend. XXII.
- ⁸³ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 97 (West 2nd ed. 2009).
- ⁸⁴ Xian Fa art. 89 (1982) (P.R.C.).
- ⁸⁵ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 100 (West 2nd ed. 2009).
- ⁸⁶ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 155 (West 2nd ed. 2009).
- ⁸⁷ Xian Fa art. 93 (1982) (P.R.C.).
- ⁸⁸ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 104 (West 2nd ed. 2009).
- ⁸⁹ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 105 (West 2nd ed. 2009).
- ⁹⁰ Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 105 (West 2nd ed. 2009).
- ⁹¹ Xian Fa art. 83 (1982) (P.R.C.). (Cities divided into districts, municipalities, provinces)
- ⁹² Daniel C.K. Chow, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL* 88 (West 2nd ed. 2009).
- ⁹³ Xian Fa art. 104 (1982) (P.R.C.).
- ⁹⁴ U.S. Const. amend. X.
- ⁹⁵ Xian Fa art. 123 (1982) (P.R.C.).
- ⁹⁶ Xian Fa art. 124 (1982) (P.R.C.).
- ⁹⁷ Xian Fa art. 130 (1982) (P.R.C.).

⁹⁸ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 78 (West 2nd ed. 2009).

⁹⁹ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 78 (West 2nd ed. 2009).

¹⁰⁰ See U.S. Const. Art. III.

¹⁰¹ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 172 (West 2nd ed. 2009).

¹⁰² Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 174 (West 2nd ed. 2009).

¹⁰³ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 174 (West 2nd ed. 2009).

¹⁰⁴ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 177 (West 2nd ed. 2009).

¹⁰⁵ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 179 (West 2nd ed. 2009).

¹⁰⁶ U.S. Const. Art. III, § 2.

¹⁰⁷ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 76 (West 2nd ed. 2009).

¹⁰⁸ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 69 (West 2nd ed. 2009).

¹⁰⁹ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 102 (West 2nd ed. 2009).

¹¹⁰ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 102 (West 2nd ed. 2009).

¹¹¹ [U.S. Const. amend. XVII.](#)

¹¹² Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 87 (West 2nd ed. 2009).

¹¹³ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 123 (West 2nd ed. 2009).

¹¹⁴ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 126 (West 2nd ed. 2009).

¹¹⁵ People's Republic of China, The Central Organizations of the CPC, available at http://english.gov.cn/2005-09/02/content_28610.htm.

¹¹⁶ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 127 (West 2nd ed. 2009).

¹¹⁷ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 128 (West 2nd ed. 2009).

¹¹⁸ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 132 (West 2nd ed. 2009); Sebastian Heilmann and Sarah Kirchberger, The Chinese Nomenklatura in Transition: Center for East Asian and Pacific Studies Trier University, Germany (2000) available at http://www.chinapolitik.de/studien/china_analysis/analysis1.pdf ("The nomenklatura system basically consists of two elements: a strictly hierarchical list of leadership positions to be filled by the Communist Party, and a second list of those persons suitable to fill the position in question.").

¹¹⁹ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 132 (West 2nd ed. 2009).

¹²⁰ Daniel C.K. Chow, THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA: IN A NUTSHELL 117 (West 2nd ed. 2009).