

We the People

“Earlier today, we heard the beginning of the Preamble to the Constitution of the United States, ‘We, the people.’ It’s a very eloquent beginning. But when that document was completed, on the seventeenth of September in 1787, I was not included in that ‘We, the people.’ I felt somehow for many years that George Washington and Alexander Hamilton just left me out by mistake. But through the process of amendment, interpretation, and court decision, I have finally been included in ‘We, the people.’” – Representative Barbara Jordan, an African American, speaking in the House Judiciary Committee on July 25, 1974.

The use of the Preamble

An example of the way courts utilize the Preamble is *Ellis v. City of Grand Rapids*, 257 F. Supp. 564 (W.D. Mich. 1966). Substantively, the case was about eminent domain. The City of Grand Rapids wanted to use eminent domain to force landowners to sell property in the city identified as "blighted," and convey the property to owners that would develop it in ostensibly beneficial ways: in this case, to St. Mary's Hospital, a Catholic organization. This area of substantive constitutional law is governed by the Fifth Amendment, which is understood to require that property acquired via eminent domain must be put to a "public use." In interpreting whether the proposed project constituted a "public use," the court pointed to the Preamble's reference to "promot[ing] the general Welfare" as evidence that "[t]he health of the people was in the minds of our forefathers." "[T]he concerted effort for renewal and expansion of hospital and medical care centers as a part of our nation's system of hospitals, is as a public service and use within the highest meaning of such terms. Surely this is in accord with an objective of the United States Constitution: ‘* * * promote the general Welfare.’”

On the other hand, courts will not interpret the Preamble to give the government powers that are not articulated elsewhere in the Constitution. *United States v. Kinnebrew Motor Co.*, 8 F. Supp. 535 (W.D. Okla. 1934) is an example of this. In that case, the defendants were a car manufacturer and dealership indicted for a criminal violation of the National Industrial Recovery Act (NIRA). The Congress passed the statute in order to cope with the Great Depression, and one of its provisions purported to give to the President authority to fix "the prices at which new cars may be sold." The dealership, located in Oklahoma City, had sold an automobile to a customer (also from Oklahoma City) for less than the price for new cars fixed pursuant to NIRA. Substantively, the case was about whether the transaction in question constituted "interstate commerce" that Congress could regulate pursuant to the Commerce Clause. Although the government argued that the scope of the Commerce Clause included this transaction, it also argued that the Preamble's statement that the Constitution was created to "promote the general Welfare" should be understood to permit Congress to regulate transactions such as the one in the case, particularly in the face of an obvious national emergency like the Great Depression. The court, however, dismissed this argument as erroneous, instead insisting that the only relevant issue was whether the transaction which prompted the indictment actually constituted "interstate commerce" under the Supreme Court's precedents interpreting the Commerce Clause.