Constitutional Law
Fall 2014
Prof. S. Rush

Syllabus and Assignment Sheet

1. **Materials.** ERWIN CHEMERINSKY, CONSTITUTIONAL LAW (4th ed.). You do not need any other materials. I will cover a few recent cases in class so you do not have to buy the supplement. In putting the syllabus and classes together, I relied on the text and on Erwin Chemerinsky’s treatise on Constitutional Law. You may find this helpful and I have put a copy on reserve. You will notice as you read it that I like Prof. Chemerinsky’s organization and follow it pretty closely.

2. **Course Objectives.** This course provides students with an overview of basic Constitutional Law, focusing on separations of powers, federalism, and individual liberties (substantive due process and equal protection). It also is designed to help students develop their critical analytical skills.

3. **Coverage.** The assignment sheet is attached. I will give the assignment on Wednesday for the following week. Generally, we will cover about 20-25 pages per class but it will vary. You will quickly learn that some reading assignments are a little longer because I feel it is important to have all the reading in an area done before we start to study it. When this happens, though, the good news is that the assignment will cover you for several classes. Why do I do it this way? My style is not to study the material case by case, but rather to put the cases into an analytical framework. This is much more interesting and it also helps you develop your critical thinking.

4. **Class Participation.** The most interesting classes are those in which lots of different people participate. Some students are reluctant to talk in class and others are happy to talk every chance they get. Let’s try to strike a balance in our class. I’m happy to take volunteers, but I also will call on you. If you are not prepared for the day (unplanned things happen to all of us), please let me know before class and I’ll refrain from calling on you. Everyone’s opinion matters! Class is supposed to be an exciting place and I promise the materials will invite questions of all kinds and that we will have a good time exploring the possible answers. In this way, everyone can contribute valuable insights and further our thinking. So join in and make this class one that you look forward to because you play a significant role in it!

5. **Final Exam.** There is a same day take-home final administered on TWEN. The exam is open-book and must be done without talking to anyone about it. Grading is strictly anonymous. I will put a copy of last year’s exam on TWEN and, as you will see, I give you choices. If the format changes, I will let you know before the exam. In any event, I’ll give more details about the exam as the semester progresses. **The exam counts for 100% of your grade** unless you are eligible to have your grade raised pursuant to paragraph 7.
6. **Attendance.** I take attendance in accordance with University and ABA rules and trust you will be in class and be prepared to participate. Absences for religious reasons are excused in accordance with University Policy. Also, please be on time out of respect for everyone. It is distracting to have people coming in after class starts. If you are late, please enter through the back door and sit in the back.

7. **Grades.** Grading is done in compliance with law school policy available at [http://www.law.ufl.edu/students/policies.shtml#9](http://www.law.ufl.edu/students/policies.shtml#9). My initial grades on the final are always done anonymously and I never lower anyone’s grade after I turn them in. However, within the limits of the mandatory curve, I am willing to raise by 1/3 (a “plus”) the grades of those students whose final exam grade does not reflect the excellent performance I see in class. Before I raise your grade on this basis, however, I must be confident that you deserve it. I will be evaluating how often you participate, whether your comments demonstrate knowledge of the reading, and whether you are mindful of classmates who also want to participate and you share the floor with them. Please realize that having your grade adjusted for class participation will be unusual but it can happen.

8. **Office Hours.** My office is 319-B and my office number is 273-0948 and my e-mail address is Rush@law.ufl.edu. I am available to talk with you any time I’m in my office and will be sure to be available to meet with you MTW from 2:30-4:00. If these times are not good for you, we can arrange to meet at your convenience. If on any particular day they are not good for me, I’ll leave a note on the door. As you probably understand, sometimes I might have a meeting that will interfere with my ordinary schedule. I’ll try to let you know in class when conflicts arise.

9. **Use of Laptops.** It can be distracting to your classmates if you use your computers for activities unrelated to class. In the spirit of professional courtesy, and consistent with being an outstanding attorney, please limit the use of your laptops to activities related to class.

10. **Accommodations.** Students with special needs will be accommodated in accordance with school policy. Please see Student Affairs.

11. **Humor.** Great. Love it! Bring it with you.
Assignment Sheet

All assignments are to the required text, Erwin Chemerinsky, Constitutional Law (4th ed.).

Unit 1: Separation of Federal Powers

A. The Role of the Judiciary

1. The authority for judicial review. 1-9 (Marbury)
2. The power and method of constitutional interpretation. 327-333 (Nixon); 11-34 (Heller)

B. The Division of Power between the Executive and Legislature

3. Executive and legislative conflicts: inherent presidential power. 317-327 (Youngstown)
4. The Non-Delegation Doctrine and its demise. 344-353 (Chadha); 333-338 (Clinton)
5. Issues in foreign policy. 369-393 (Curtiss-Wright, Dames & Moore, The War Powers Resolution, Hamdi)

Unit II. Federalism: The Division of Power between the Federal and State Governments

A. The Supremacy of Federal Law

6. Establishing supremacy. 115-126 (McCulloch); 151-158 (Comstock); 126-151 (Sebelius)

B. The Commerce Clause and State Sovereignty

7. The initial scope of congressional commerce power. 158-161 (Gibbons); skim 161-167
8. Social welfare and commerce power: state sovereignty limits federal power 167-168 (Hammer, Ames)
9. The demise of state sovereignty. 168-182 (Jones, Darby, Wickard, Heart of Atlanta, Katzenbach)
10. The resurrection of state sovereignty: giving content to the Tenth Amendment. 190 - 202 (Lopez); 220 -230 (U.S. v N.Y.); 230-238 (Printz); 202 - 207 (Morrison); 210-220 (Raich);
Unit III: Individual Liberties as a Limit on Government Power

A. The Bill of Rights and the 14th Amendment

11. The Privileges or Immunities Clause. 518-530 (Barron, Slaughter-house cases, Saenz)
12. The incorporation controversy. 530-548 [skim]

B. The Concept of State Action

13. The requirement for state action. 548-592 (focus on Civil Rights Cases, Shelley, Reitman, skim the other cases); 1148-1154 (DeShaney)

C. Substantive Due Process and Economic Liberties

14. The rise of economic substantive due process. 601-606; 609-614 (Lochner); 614-619; 621-623 (Nebbia)
15. The end of economic substantive due process. 623-630 (Carolene Products)

D. Substantive Due Process: The Family, Education, and Privacy

17. Family autonomy.
   a. Marriage. 939-949 (Loving, Zablocki)
   b. Parental rights. 946-954 (Stanley, Michael H.)
   c. Family united. 955-959 (Moore)
   d. Grandparents. 9962-967 (Troxel)
18. Education. 1135-1142 (Rodriguez)
19. Contraception and abortion. 967-979 (Griswold, Eisenstadt); 979-988 (Roe v. Wade); 988-1000 and 1021-1026 (Casey) [focus on Griswold and Casey]
20. Individual autonomy and the right to die. 1030-1046 (Cruzan, Glucksberg)

E. Equal Protection

22. Racial classifications and strict scrutiny analysis.
   a. Slavery. 740-745 (Dred Scott)
   b. Separate but Equal and Beyond. (Plessy to Brown). 758-765
   c. Strict Scrutiny. 745-757 (Korematsu, Loving, Palmore); 765-771 (Johnson)
23. Discriminatory intent. 771-774 (Washington v. Davis)
24. Affirmative Action. 837-855 (Grutter); 809-824 (Parents Involved)
25. Gender classifications. 86-881 (Fronterio, Craig, VMI); 898-905 (Nguyen)
26. Alienage. 905-921 (focus on Plyler)

F. Substantive Due Process and Equal Protection Meet

27. Sexual Orientation. 720-724 (Romer); 1056-1069 (Lawrence)