

CONSTITUTIONAL LAW
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SPRING 2024 SYLLABUS – LAW 5501 – 4 CREDITS

Professor Dowd
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Office Hours: Wed. 3-5pm (please email for an appointment if needed)

MEETING TIME: TuWTh 1:45p-3:00p

LOCATION: 355D

SCOPE AND OBJECTIVES:

This course provides an overview of constitutional law. It focuses on: Judicial, Legislative and Executive powers; separation of powers; federalism, and the content of civil rights and civil liberties (equal protection, fundamental rights, and procedural due process). Constitutional law, as the supreme law of the land, infuses all areas of law, and is a critical part of the social and cultural understanding of what the law is.

STUDENT LEARNING OUTCOMES:

At the end of this course, you should be able to:

- develop your knowledge of foundational Constitutional doctrine and cases in the areas of Judicial, Legislative and Executive powers; separation of powers, and civil rights and civil liberties;
- enhance your legal analysis and critical thinking, and will specifically focus on the skill of identifying and framing legal issues, and crafting legal arguments;
- develop your skill of close reading and briefing of cases;
- develop the ability to argue all possible positions on a particular case, in order to make the best case for the argument you will make; and
- provide a foundation for many other courses in which you will return to the foundational constitutional doctrines covered in this class, or delve into other areas of constitutional law.

REQUIRED READING MATERIALS:

Please be sure to register for the Canvas course and have any required materials with you in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Every student can expect to be called on to begin the discussion of a case **four times** during the semester. There will be a sign-up sheet for cases distributed in class. In addition, the class will be divided into three equal sections so that each section will be the first group on call for further discussion on their day of the week. Volunteers are encouraged on any day as well.

Students will be evaluated based upon *College of Law Policies*:

Academic honesty:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Student Honor Code at

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>

Grading scale:

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed 4 absences during the course of the semester.

Students are responsible for ensuring that they are not recorded as absent if they come in late.

Absences for religious reasons are excused according to university policy. Please be on time. A student who fails to meet the attendance requirement will be dropped from the course. The law school’s policy on attendance can be found [here](#).

Use of laptops: Please do not use your laptop or any other electronic device in class. Empirical data show that students learn better and retain more by taking handwritten notes, which is why I do not permit laptops or other electronic devices in class. Please turn your phone off and put it away. If there is an emergency reason to keep your phone on let me know.

A signup sheet for cases will be circulated the first week.

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies> .

PREPARATION TIME/WORKLOAD:

Because this course complies with ABA Standard 310, it is anticipated that you will spend **2 hours out of class** reading and/or preparing **for every 1 hour in class**. You should read every case listed on the syllabus at least twice, and ideally 3-4 times (once for the overall sense of the case; a second time to identify issues, analysis and substantive doctrine (including dissenting positions); and a third and fourth time to confirm your analysis and consider alternative analysis or substantiation. Careful, complete analysis requires close, word-by-word reading. This is a critical skill of all lawyers.

I strongly encourage you to **write your own briefs** as a method of preparation. Briefs should not only identify the facts, procedural posture, parties, issues, and the court's resolution of the issues (and the positions of any dissents), but most importantly, the strengths and weaknesses, alternative analyses (e.g., what are the opposing arguments to the Court's resolution of the issues or stronger/additional arguments to support their judgment or dissents), and finally, how you think the case might be used (or distinguished) in subsequent cases. Concurrences and dissents should be analyzed just as critically as the lead opinion.

You will use all of this analysis and information in our discussion of the cases, to learn constitutional doctrine, and in your application of what you have learned on the final exam.

I encourage you to **share your briefs** with other students as a way of making your own briefs better, by critically reading the briefs of others. "Canned" briefs are not helpful to building your reading and analytical skills.

FINAL EXAM:

The final exam will be a one day take home final on April 29, 2024. It will be open book and must be done individually and without talking to or communicating with anyone about the exam in compliance with the Honor Code. Research is prohibited. You will be given more detailed instructions prior to the final.

You will have from 8 a.m. until 6 p.m. to complete the exam. ***Your answers will be limited to specific word counts.*** I strongly urge you to take every opportunity to do practice exams so that you are comfortable with your knowledge of the course and so that you have experience complying with word count limitation.

The exam counts for 100% of your grade unless your outstanding participation is a factor, as follows:

Within the limits of the mandatory curve, I will raise a grade by a "plus" (e.g., from B to B+) if the grade of a student does not match their excellent performance in class. Such an adjustment will be rare but it can happen. This will be based on how often you participate, whether you

demonstrate knowledge of the reading, listening to your colleagues carefully, and whether you share the opportunity to participate with others.

ACCOMMODATIONS:

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Diversity of Viewpoints/policy adopted by the Faculty Senate Academic Policy Council, July 2021

“Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.”

COURSE OUTLINE

Course materials: Erwin Chemerinsky, *Constitutional Law* (7th edition 2024)

Assignments: In every class we will cover approximately one third of the week’s assigned reading (and if that takes you to the middle of a case, prepare to the end of the case for that day).

You should be familiar with (1) the parties, the procedural posture, the issues and the holding; be prepared to engage in analysis of the case, including (a) the arguments that were made, or could be made, on the issues in the case, (b) what the case stands for (alternative readings), and (c) your evaluation of the strength of the analysis in the opinion(s). You may also be asked to consider hypothetical or actual applications of the case in subsequent situations.

This is a brief outline of what we will cover:

- I. Introduction: The Constitution and Constitutional Interpretation
- II. Judicial Power
- III. Legislative Power
- IV. Executive Power
- V. Civil Rights and Civil Liberties/ Foundational Doctrines
- VI. Equal Protection
- VII. Fundamental Rights
- VIII. Procedural Due Process
- IX. First Amendment Free Speech

The following is a detailed outline, with assignments for each week and the case names of the primary cases. The weeks are arranged under the headings of the areas that we will cover summarized above. You are responsible for all the reading including note cases. All pages assigned are in Chemerinsky; any reading outside the casebook will be designated and where to find those readings.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

READING ASSIGNMENTS:

Required text: Erwin Chemerinsky, **Constitutional Law**, 7th edition 2 (Aspen Publishing 2024)

(note: page references are to Chemerinsky, 7th edition; additional cases to be read (just a few) are provided by citation, to be found on the SCOTUS website or various other websites on the internet that post official case US Supreme Court cases. You may find it helpful to print out and annotate the additional cases)

Week 1—January 16, 17, 18 I. Introduction: The Constitution and Constitutional Interpretation; II. Federal Judicial Power; III. Federal Legislative Power

xxxvii-1 (The Constitution)

United States v Nixon, 418 U.S. 683 (1974) (read the FULL case)

1-12 (Marbury v Madison)

99-108 (McCulloch v Maryland)

Week 2—January 23, 24, 25 III. Federal Legislative Power

108-133

(National Federation of Independent Business v Sebelius; Gibbons v Ogden)
139-151; 157-173

(NLRB v Jones and Laughlin Steel Corp; US v Darby; Wickard v Filburn; Heart of Atlanta Motel v US; Katzenbach v McClung; US v Lopez; US v Morrison)

Week 3—January 30, 31, February 1 III. Federal Legislative Power

173-228

(Gonzales v Raich; New York v US; Printz v US; Reno v Condon; Murphy v NCAA; US v Butler; Sabri v US; South Dakota v Dole; US v Morrison; City of Boerne v Flores; Shelby County v Holder)

Week 4—February 6, 7, 8 IV. Federal Executive Power

229-243, 288-305; 336-368

(Youngstown Sheet & Tube Co. v Sawyer; US v Nixon; US v Curtiss-Wright Export; Zivotofsky v Kerry; Dames & Moore v Regan; War Powers Resolution; Trump v. Hawaii; Nixon v Fitzgerald; Clinton v Jones; Trump v. Vance; Trump v. Mazars USA; impeachment)

**Week 5—February 13, 14, 15 V. Civil Rights and Civil Liberties: Foundational Doctrines--
Incorporation Doctrine and State Action Requirement**

447-474

(Barron v City Council of Baltimore; Slaughter-House Cases; Saenz v Roe; McDonald v City of Chicago; Timbs v. Indiana ; Ramos v. Louisiana)

474-477; 484-490; 491-495; 501-503, 1021-1027

(The Civil Rights Cases; Evans v Newton; Manhattan Community Access Corp. v Halleck; Shelly v Kraemer; Moose Lodge No. 107 v Irvis; DeShaney v Winnebago County Department of Social Services)

Week 6—February 20, 21, 22 VI. Equal Protection

609-656

add the following when we read the noted cases: Plessy v Ferguson read FULL dissent of Justice Harlan, 163 U.S. 537, 552-564 (1896); Brown v Board of Education read FULL case, 347 U.S. 483 (1954)

(Romer v Evans; Railway Express Agency v NY; NYC Transit Authority v Beazer; US Department of Agriculture v Moreno; City of Cleburne, Texas v Cleburne Living Center; Dred Scott v Sandford; Korematsu v United States; Loving v Virginia; Palmore v Sidoti; Plessy v. Ferguson, *add full dissent of Justice Harlan*; Brown v. Board of Education, *read FULL case*)

Week 7—February 27, 28, 29 VI. Equal Protection

657-710

(Washington v Davis; McCleskey v Kemp; City of Mobile v Bolden; Palmer v Thompson; Personnel Administrator of Massachusetts v Feeney; Village of Arlington Heights v Metropolitan Housing Development Corp; Brown II; Swann v Charlotte-Mecklenburg Board of Education; Milliken v Bradley; Board of Education of Oklahoma City Public Schools v Dowell; Parents Involved in Community Schools v. Seattle School District 1; Richmond v J.A. Croson)

Week 8—March 5, 6, 7 VI. Equal Protection

711-772

(Students for Fair Admissions, Inc. v. Harvard College; Frontiero v Richardson; Craig v Boren; US v Virginia; Geduldig v Aiello; Orr v. Orr; Mississippi University for Women v Hogan; Michael M v Superior Court of Sonoma County; Rostker v Goldberg; Califano v Webster; Nguyen v INS)

SPRING BREAK MARCH 10-18

Week 9—March 19, 20, 21 VI. Equal Protection; VII. Fundamental Rights

772-830

(Graham v Richardson; Foley v Connelie; Ambach v Norwick; Plyler v Doe; Massachusetts Board of Retirement v Murgia)
(Obergefell v Hodges; Michael H v Gerald D; Moore v City of East Cleveland; Meyer v Nebraska)

Week 10—March 25, 27, 28 VII. Fundamental Rights

831-900

Troxel v Granville; Skinner v Oklahoma; Griswold v Connecticut; Eisenstadt v Baird; Roe v Wade; Planned Parenthood v Casey; Dobbs v. Jackson Women’s Health Organization; Cruzan v Director, Missouri Department of Health; Washington v Glucksberg)

Week 11—April 2, 3, 4 VII. Fundamental Rights

901-960

Lawrence v Texas; Whalen v. Roe; District of Columbia v. Heller; New York State Rifle and Pistol Association v. Bruen; Saenz v. Roe; Harper v Virginia State Board of Elections; Kramer v Union Free School District; Crawford v Marion County Election Board)

Week 12—April 9, 10, 11 VII. Fundamental Rights; VIII. Procedural Due Process

968-996, 1010-1016, 1045-1057

(Reynolds v Sims; Moore v. Harper; Bush v Gore)
(San Antonio Independent School District v Rodriguez)
(Mathews v Eldridge; District Attorney’s Office for the Third Judicial District v Osborne)

Week 13—April 16, 17, 18 IX. First Amendment Free Speech, Unprotected Speech

1057-1063, 1173-1227

(Schenck v US; Frohwerk v US; Debs v US; Abrams v US; Whitney v California; Dennis v US; Brandenburg v Ohio; Holder v Humanitarian Law Project; Counterman v Colorado; Chaplinsky v. New Hampshire; Gooding v. Wilson; RAV v. City of St Paul; Virginia v. Black)

Final exam: Monday April 29.