

CONSTITUTIONAL LAW § A
LAW 5501, CLASS NUMBER 14645 (4 CREDITS)
PROFESSOR BERTA E. HERNÁNDEZ-TRUYOL

SPRING 2022

TUESDAY, WEDNESDAY, & THURSDAY – 10:45AM-NOON
ROOM 345

COURSE DESCRIPTION & SYLLABUS

1. Class Materials:

CONSTITUTIONAL LAW, 6th ed., Chemerinsky, 2020. ISBN: 978-1-5438-1307-4.

Unless otherwise indicated, the reading assignments refer to the required casebook. Every student is expected to have completed the assigned readings **prior** to class. Assignment pages refer to the Chemerinsky casebook. Otherwise, as indicated in syllabus, readings are posted on Canvas.

Students also are expected to read additional materials as indicated and as posted on the Canvas page, usually in either pdf or html format. Adobe Reader 6.0 or higher should be used to view pdfs, otherwise you may experience some difficulties. Students should check Prof. Hernández's Canvas Course page on a regular basis for updates to the online materials and readings. Dates of last update are given for your convenience.

Note: In order to inform the course materials, we will often start classes with a current event that implicates the constitutional issue being studied in that class.

2. Course Objective:

The purpose of this course is to provide students with an overview of Constitutional Law as well as to develop your critical thinking. After we review the Constitution and its structure, we will study the Separations of Powers, which includes Judicial, Executive and Legislative powers with the latter also including Federalism (the division of power between Federal and State governments). Following, we will study individual liberties (substantive due process and equal protection). We will take a very brief look at the First Amendment in the context of an assigned case at the end of the course.

3. Student Learning Outcomes:

At the conclusion of the course, students should be able to read and critically analyze cases. Students will have a basic knowledge of and will be able to analyze:

- Separation of Powers and the roles of each branch:
 - Judiciary
 - Executive
 - Congress
- Federalism
- Due Process
- Equal Protection
- Constitutionality of laws in light of the above principles.

4. Attendance:

I take attendance in accordance with University and Law School policy and ABA rules. Law School policy states as follows:

“Class attendance is a primary obligation of each student, whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor.”

The American Bar Association’s standards provide that “regular and punctual class attendance is necessary to satisfy residence and class hour requirements.”

Absences for religious reasons are excused in accordance with university policy.

Please be on time as it is distracting for everyone to have persons coming into the classroom after class starts.

5. Testing:

There will be three graded tests during the semester. The first test is closed-book. Students will have 20 minutes to match the names of the cases that we will have covered up to that point in the course with a notable quote from each case. This test will account for 10% of your grade.

The second test will be a closed-book test following the format of the first test in which students will have 30 minutes to match the case quotes with the cases that we have covered up to that point in the course. This test will account for 15% of your grade.

The final exam will be a same day take-home exam. The exam is open-book. It will be distributed and collected electronically on ExamSoft. Further information regarding the exam will be available later in the semester. The exam accounts for 75% of the grade.

There will also be a mandatory 30-minute essay test approximately in the middle of the semester in which the students will be able to use their Chemerinsky 6th edition casebooks only. This will be graded for your information as $\sqrt{-}$, $\sqrt{}$, or $\sqrt{+}$.

There also will be three ungraded but required reflection pieces that should be 3-5 pages in length (12-point font, double spaced). The first piece will be at the end of the first section: separation of powers; the second at the end of Protection of Civil Rights and Civil Liberties; and the third at the end of Substantive Due Process. Each should focus on a case or series of cases that had an impact on you, that had a significant effect on how you think about the law

6. Class Participation:

Class participation is an important part of the course. I anticipate that students will keep up with the reading and be prepared for class discussion. The most instructive and enjoyable classes are those in which many people take part in the conversation. I understand that some students are eager to speak while others are reluctant to do so. While I will call on volunteers, I will also call on others. If you are not prepared for class on a particular day, please let me know *before* class and I will not call on you that day. We all have unexpected things happen that can derail our plans. I look forward to everyone contributing their insights in class. Failure to participate in any of the required class obligations may negatively affect your grade.

7. Class Preparation:

Given that we meet three times per week for a 4-credit-hour course, anticipate spending about 3-4 hours preparing for *each* class meeting. Prep time includes reading the materials, briefing the cases, thinking critically about the materials and asking questions about what you have read (Does the decision make sense?, Is the decision correct in light of the law?, Does the law make sense? Why or why not?, etc.) as well as synthesizing your learning and knowledge of, and questions about, the assigned materials. The case briefs must be written, and I will from time to time ask you to turn in your briefs.

8. Grades:

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 (Average)	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

Grading is in accordance with Law School policy, which is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies>.

9. Accommodation:

Students with needs for accommodations should see Student Affairs whose staff will work with students according to Law School and University policy.

10. Internet Policy and Related Issues:

The internet, and more generally your laptop, is a great learning tool and invaluable asset to effective advocates. It should be used during class time as you will use it in practice: responsibly and ethically, consistent with the high professional standards that will be expected of you by your clients and by those who will employ you. This is important not only to you, but also to all the students around you who are affected by how you use your computer. It can be distracting to your classmates if you use your computer for activities unrelated to class. When you are talking, you should lower your laptop to facilitate communication.

Cell phones, tablets, and other electronic equipment should be turned off and not used during class. If you need to leave your phone on vibrate to receive an emergency call, please feel free to do so.

11. Academic Misconduct:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

12. Office Hours:

My office is 319-A, my office number is 273-0928, and my email is hernandez@law.ufl.edu. I have an open-door policy.

13. Course Evaluations:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

14. The assignment sheet is attached.

CLASS	BASICS	ASSIGNMENT
	I. Introduction	Pages
	The Constitution, Scavenger Hunt (Canvas)	XXXIX - LV
	SEPARATION OF FEDERAL POWERS	
	II. The Federal Judicial Power (Role of Judiciary)	
	A. Authority for Judicial Review <i>Trump v. Hawaii, Marbury, Martin, Cohens</i>	395-406; 1-11
	B. Limits on the Federal Judicial Power 1. Interpretive Limits How should the Constitution be interpreted? – <i>Nixon, Heller</i> – 2nd Amend	11-13 286-290; 13-32
	III. Federal Executive Power (Division of Power Between Executive & Legislative)	
	A. Inherent Presidential Power <i>Youngstown</i> , review <i>Nixon & Trump</i>	275-290
	B. Legislative Veto (Nondelegation Doctrine) and Its Demise <i>Chadha</i>	292-293; 304-312
	C. Separation of Powers & Foreign Policy 1. Difference between foreign & domestic policy <i>Curtiss Wright, Zivotofsky v. Kerry</i>	339-351
	2. Treaties & Executive Agreements <i>Dames & Moore v. Regan</i>	351-354
	3. War Powers AUMF – Is it appropriate delegation?	354-358
	D. Presidential Power & the War on Terrorism 1. Detentions – <i>Hamdi, Boumediene</i> 2. Military Tribunals – <i>Quirin</i>	358-387 387-395
	IV. The Federal Legislative Power	
	A. Congress & the States: Supremacy of Federal Law Framework <i>McCulloch</i>	119-130
	B. The Necessary & Proper Clause <i>Comstock</i> (in note)	155
	C. The Commerce Power 1. Initial Scope of Commercial Power <i>Gibbons</i>	155-159
	2. 1890s-1937: Limited Federal Commerce Power a. What is commerce? <i>Knight, Carter Coal</i> (both in notes)	159-166
	b. What does “among the states” mean? 1. Direct Effect – <i>Shreveport Rate</i> (in notes) 2. Indirect Effect – <i>Schechter Poultry</i> (in notes) 3. Stream of Commerce – <i>Swift, Stafford, Alton RR</i> (all in notes)	
	c. Social Welfare: State Sovereignty Limits Federal Power <i>Hammer, Ames</i> (both in notes)	166-187
	3. 1937-1990s: Broad Federal Commerce Power – Demise of State Sovereignty <i>Jones, Darby, Wickard, Heart of Atlanta, Katzenbach,</i>	

	<p><i>Hodel</i> (skim), <i>Perez</i> (skim), <i>Garcia</i> (skim)</p> <p>4. 1990- Revival of State Sovereignty: 10th Amend.</p> <p>a. Congress' Authority to Regulate Commerce Among States <i>Lopez, Raich</i></p> <p>b. Giving Context to the 10th Amend. <i>New York, Printz, Condon, Sebelius, Murphy</i></p>	<p>187-199; 207-215</p> <p>216-236; 130-154; 236-240</p>
	INDIVIDUAL LIBERTIES AS A LIMIT ON THE POWER OF GOVERNMENTS	
	V. Protection of Civil Rights & Civil Liberties	
	<p>A. Bill of Rights & 14th Amendment</p> <p>1. Application of BOR to states – Privileges and Immunities Clause <i>Barron, Slaughterhouse Cases, Saenz</i></p> <p>2. The controversy over incorporation of BOR into D/P Clause of 14th Amend. <i>Palko</i> (skim), <i>Adamson</i> (skim), <i>Duncan</i> (skim), <i>McDonald, Timbs</i></p> <p>B. The Application of the BOR to Private Conduct</p> <p>1. Requirement of State Action (waving the wand) <i>Civil Rights Cases: Stanley</i></p> <p>2. Exceptions to State Action</p> <p>a. Public functions <i>Marsh, Terry, Evans</i> (skim all 3)</p> <p>b. Entanglement <i>Shelley, Burton</i> (skim), <i>Moose Lodge</i> (skim) <i>Norwood</i> (skim), <i>Brentwood</i></p> <p>4. Inaction as State Action? <i>DeShaney</i></p>	<p>503-516</p> <p>516-532</p> <p>532-536</p> <p>536-540; 543-546; 551-552</p> <p>553-556; 561-568; 571-578</p> <p>1134-1140</p>
	VI. Substantive D/P: Economic Liberties	
	<p>A. Introduction</p> <p>B. The Lochner Era: The Rise of Substantive D/P (using freedom of K to limit government economic regulations) <i>Lochner, Muller, Adkins, Weaver</i></p> <p>C. The End of Substantive D/P – Starting in 1937 <i>Parrish, Carolene Products, Lee Optical</i></p>	<p>579-584</p> <p>584-599</p> <p>599-606</p>
	VII. Substantive D/P: Family, Education, Privacy	
	<p>A. Introduction: Fundamental Rights</p> <p>B. Family Autonomy</p> <p>a. Right of Parents to control upbringing of children <i>Meyer, Pierce</i></p> <p>b. Marriage <i>Loving</i></p> <p>c. Family togetherness <i>Moore</i></p> <p>d. Right to custody of one's children – who is a parent? <i>Stanley, Michael H</i></p> <p>e. Grandparents <i>Troxel</i></p>	<p>903-909</p> <p>942-945</p> <p>909-915</p> <p>938-941</p> <p>929-938</p> <p>945-950</p>

	<p>C. Reproductive Autonomy</p> <p>1. Right to procreate <i>Buck, Skinner</i></p> <p>2. Purchase & use of contraceptives <i>Griswold, Eisenstadt</i></p> <p>3. Termination <i>Roe, Casey, Hellerstedt</i></p> <p>D. Individual Autonomy & the Right to Die <i>Cruzan, Glucksberg</i></p> <p>E. Right to Bear Arms Review <i>McDonald</i></p>	<p>950-952</p> <p>952-961</p> <p>961-987; 1006-1011</p> <p>1015-1030</p> <p>523-529</p>
	VIII. Equality: Equal Protection	
	<p>A. Introduction: What is equality?</p> <p>B. What is rational? Does law have a legitimate purpose? <i>Cleburne</i></p> <p>C. Race & National Origin: Strict Scrutiny</p> <p>1. Slavery <i>Dred Scott</i></p> <p>2. Separate but equal From <i>Plessy to Brown, Rodriguez</i></p> <p>3. Strict scrutiny <i>Korematsu, Loving, Palmore</i></p> <p>4. Racially neutral laws with discriminatory impact: Proof of discriminatory purpose <i>Washington v. Davis, Palmer</i></p> <p>5. Affirmative action <i>Grutter, Gratz, Fisher</i></p> <p>D. Gender</p> <p>1. Level of scrutiny <i>Frontiero, Craig, VMI</i></p> <p>2. Proving gender <i>Geduldig</i></p> <p>3. Gender Classifications Benefitting Women <i>Rostker, Califano, Nguyen, Sessions</i> (notes)</p> <p>E. Alienage <i>Graham, Foley, Ambach, Plyler</i></p> <p>F. S.O.: E/P & S-D/P Meet—The Ga(y)ping Hole <i>Romer, Lawrence, Windsor</i> (notes), <i>Obergefell, Pavan</i> (Canvas), <i>Masterpiece Cake</i></p>	<p>683-689</p> <p>689-691; 707-711</p> <p>711-718</p> <p>728-738; 1121-1128</p> <p>718-728</p> <p>738-742; 752-754</p> <p>790-792; 802-833</p> <p>836-851</p> <p>851-854</p> <p>862-876</p> <p>876-891</p> <p>Note at 696; 900-901; 691-696; 1031-1042; 911-915 (Windsor notes); 915-929; 1690-1700</p>