**CONSTITUTIONAL LAW**

**Law 5501-15393**

Section 3
Spring 2021

University of Florida Levin College of Law
Professor Merritt McAlister

Pronouns: she/her/hers
mcalister@law.ufl.edu
Zoom Personal Meeting Room: <https://ufl.zoom.us/j/3085718560>

**Syllabus**

**1. Overview.** This course examines core concepts in constitutional law. We will focus our attention on three areas: separation of powers, federalism, and individual rights. “Separation of powers” refers to our system of divided federal government and the corresponding checks and balances among the three branches of government (executive, legislative, and judicial). “Federalism” refers to the balance of power between state and federal governments. “Individual rights” refers to the individual liberties the constitution protects against state or federal governmental interference or intrusion.

This is a foundational course. There’s much more to constitutional law than we will be able to cover this semester, but this course will provide you with a foundation for further study as your law school career progresses. For example, we will not explore the First Amendment or constitutional criminal procedure provisions. Those are the subject of other, more specialized courses.

Our course will also ground you in the process of common-law judicial decisionmaking, as we explore how doctrine evolves and changes over time. We will consider different interpretive choices by different jurist—principally, “originalism” and living or common-law constitutionalism—and how those frameworks apply in context. We will consider, also, and more provocatively, whether judicial review on constitutional questions involves neutral or objective decisionmaking by jurists or whether jurists’ personal policy preferences more often drive judicial decisions.

**2. Required and Optional Materials.** Our casebook is Gregory Maggs & Peter Smith, Constitutional Law: A Contemporary Approach (5th ed. 2021). You may purchase an earlier edition for cost reasons, but I will assign reading from the Fifth Edition and you are solely responsible for ensuring that you have covered the assigned material.

Our casebook offers significant online supplemental material, including an online interactive version of the casebook and quiz questions covering the material. I encourage you to make use of these resources.

Although it is not required, you may find Professor Erwin Chemerinsky’s treatise, Constitutional Law: Principles and Policies (6th ed.), a useful resource for this course.

**3. Class Meetings.** Our class will meet on Mondays, Tuesdays, and Wednesdays from 9:00 am to 10:15 am in HH 355B. We will occasionally meet via Zoom as a class on designated “Hypothetical Days” as discussed in Section 10, below.

**4. Office Hours.** Individual office hours are held virtually each week by appointment only. My office hours are Mondays from 2:30 pm to 4:30 pm and Wednesdays from 1:00 pm to 3:00 pm. You may sign up for a 20-minute slot (or more, as needed) through your Canvas calendar (“Find an Appointment” link). Office hours are held in my Zoom personal meeting room: <https://ufl.zoom.us/j/3085718560>.

If I need to reschedule my office hours for any reason, I will adjust the available office hours through Canvas. Outside of office hours, I am happy to meet by appointment at other times; please e-mail me to arrange. I encourage you to talk with me about anything class- or law-school related. I also know a thing or two about clerkships, law-firm jobs, cooking, wine, and raising Labrador Retriever puppies.

**5. Contact Information.** My e-mail address is mcalister@law.ufl.edu. E-mail is usually the best way to reach me, and please do not hesitate to contact me regularly throughout the semester. If you need to reach me urgently, you may text or call 404.861.7619. My Zoom Personal Meeting Room, which is where I will hold all student meetings, is <https://ufl.zoom.us/j/3085718560>.

**6. Canvas.** I will use Canvas to communicate all relevant class information, including to make available supplemental video lectures, distribute in-class discussion problems, and distribute the classroom PowerPoint presentations. The Zoom information for my office hours (“Find an Appointment” in Canvas’s calendar) and any Zoom class meetings (which will occur periodically, when we work in groups, see section 10) are available through our course’s Canvas page as well. Canvas is your friend.

**7. Course Objectives and Student Learning Outcomes.** By the end of this course, you should be able to: (1) describe the core constitutional concepts of separation of powers and federalism; (2) explain the framework for substantive due process and equal protection; (3) articulate the basic limits on and extent of judicial review; (4) explain differing views of judicial decisionmaking and constitutional interpretive methodologies; and (5) describe core congressional and executive powers and the limits thereon.

**8. Class Assignments.** At the end of this syllabus, you will find a Course Reading Map, which is a list of assignments by subject matter. The Reading Map itself may provide you with a useful organizational tool.

Each assignment corresponds roughly to one class period. Although I may occasionally need to carry material over from one class to another, when I do so, I will not cold call on the “old” material. I reserve the right to remove assignments from our planned reading map depending on how quickly we move through the material.

**9. Class Preparation, Participation, and Experience.** Consistent with the American Bar Association Standard 310, you should expect to spend at least **eight hours** per week preparing for this three-hour course.

I have high expectations for the learning environment we create together. I use a “lectussion” teaching style, which means that I rely heavily on classroom discussion to explicate cases and concepts and apply those frameworks to new problems. I will supplement our discussion with a short introductory lecture each class to recap the major take-away points from the previous class and launch that day’s discussion.

I expect each of you to attend class prepared. Preparation includes completing the assigned reading, reviewing notes and/or reading material from the prior class, and thinking through assigned problems. In completing the assigned reading, please focus your attention on the main cases and the hypothetical problems; you may skim the notes, though I think they often provide helpful context or explanations.

Meaningful and thorough class preparation is essential to success in this course. Our material will be difficult at times yet deeply rewarding; my classroom expectations will ensure that we will work well together to absorb these materials and keep our focus on some of the most important and challenging questions in our constitutional system.

To ensure meaningful participation from all class members and to help you build lawyering skills, I will cold-call students using a modified Socratic method. I will use a list randomizer to generate a cold-call list, which I will re-run at the beginning of each week. I will not call on any student twice in one week or two classes in a row (i.e., Wednesday to Monday); otherwise, the cold calls are random. I also will not cold-call students on any carry-over material (i.e., material that we did not complete on the day it was assigned) but I will take volunteers to discuss that material.

I generally will dialogue with one student on a case or part of a case, but I may jump around from student to student. I will often take volunteers, especially as our discussion opens up to consider the implications of doctrine. You are encouraged to participate in our discussion.

I recognize that sometimes it is not possible to prepare fully for class; life happens. You may ask for a “pass” for an on-call day; please be judicious about such requests and be sure to email me by 8:30 am the morning of our class to request a pass.

**10. Hypothetical Days.** I believe that application of legal rules to new factual scenarios is the most important work in any law school class. It’s also the hardest work, and the work that sometimes receive the least in-class attention, yet it’s the foundation of most law school exams. We will devote four of our class sessions to working through hypothetical problems that resemble the kinds of problems you will encounter on the mid-term and final exam in this course. For those days (as indicated in the course reading map), you are to draft an answer to the problem to help prepare for the discussion. You will have no other assigned work for that day. **Because I count completion of these hypotheticals as part of your work in this class (that is, completion of all four counts as 10% of your grade, thus completing, for example, only three will earn you 7.5 of 10 available points), you must submit your draft answers before class via the “Quiz” feature in Canvas.** We will **all** meet via Zoom for those classes to enable group work (using Zoom’s breakout room feature) to discuss how to approach the hypothetical.

**11. Class Attendance.** Attendance will be recorded using UF Law school-wide attendance tracking for the Fall 2020 semester. **If you are not present seven or more times during the semester, I may lower your final grade by at least one-third of a point (e.g., from a B+ to a B).** I also reserve the right to refuse to let any student take the final exam if he, she, or they miss more than nine or more of our scheduled classes.

You do not need to tell me why you are absent. If, however, you expect to be absent from class seven times due to a family emergency or medical situation, please notify me. Observance of a University-recognized religious holiday does not count as an absence. Accordingly, please notify me of such absences.

**12. Electronic Devices.** I use interactive electronic polling to increase engagement and receive student feedback: <http://mmcalister.participoll.com>. You may use either a cellphone or a computer to participate in polling. You may not use your cellphone for any other purpose in this class. You may use a computer or tablet in class for classroom purposes if you wish, though studies suggest that students learn better through taking handwritten notes.

I expect you to be professional and respectful of the classroom environment and not use electronic devices for any other purpose. I reserve the right to reconsider my electronic device policy to preserve the classroom environment.

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**13. Evaluation.** Your final grade in this course is based on completion of four practice hypothetical problems (10%), a midterm (20%), and a final exam (70%). Both exams will be open-book, take-home exams. The practice problems are not graded; you receive credit (2.5 points per problem on a 100-point scale) for completion and timely submission of each.

**The mid-term exam will be given between 10:00 am and 12:00 pm on Tuesday, February 23; it will cover the material in Sections I, and II.A of the syllabus. Our final exam will be given on Tuesday, May 4. I will hold optional review sessions via Zoom before both the midterm and final exams.**

I will also take exceptional participation into account in setting the curve, and I reserve the right to increase grades by 1/3 of a point (e.g., from a B to a B+) if I conclude that a student’s examination performance does not reflect that student’s contributions to our learning environment. Grade adjustments are the exception, not the norm. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**14. Grading**. Your grade in this class will be based on the midterm, the final exam, and participation, as described in Sections 9, 10, 11, and 13, above. 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:

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| --- | --- |
| 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  |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**15. Accommodations**. Students requesting accommodation for disabilities must first register with the Disability Resource Center (http://www.dso.ufl.edu/drc/). 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.

**16. Student 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/>.

**17. Academic honesty.** Academic honesty and integrity are fundamental values of the UF Law School community. You should be sure that you understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School’s application of it, available at <https://www.law.ufl.edu/life-at-uf-law/officeof-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**18. COVID-19 Related Practices.** You have elected to have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.

• You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.

• This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.

• Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.

• Be mindful of how to properly enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.

• If you are experiencing COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus. (See https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/.)

• Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. (See https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/).

**CONSTITUTIONAL LAW**

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**Introduction to the Constitution**

1. **Tuesday, January 19:** The Constitution & its Interpretation: pp. 1499–1517 (please skim The Constitution if you have not read it before; I will assume some basic familiarity with its provisions) & 23–43 (*District of Columbia v. Heller*)
2. **Article III Powers**
3. **Judicial Review**
4. **Wednesday, January 20:** The Power of Judicial Review, pp. 45–57 (*Marbury v. Madison*)
5. **Monday, January 25:** Federal Judicial Supremacy, pp. 58–69 (*Martin v. Hunter’s Lessee* & *Cooper v. Allen*)
6. **Limits on Judicial Power**
7. **Tuesday, January 26:** Obstacles to Judicial Review: Political Question Doctrine & “Case” or “Controversy” Requirement, pp. 69–85 (*Baker v. Carr*, *Nixon v. United States*, & *Muskrat*)
8. **Wednesday, January 27:** Obstacles to Judicial Review: Standing, pp. 85–100 (*Allen v. Wright* & *Lujan*)
9. **Monday, February 1: Hypothetical Day #1 (class will be held via Zoom to enable group work; hypothetical posted on Canvas; submit answer via “Quiz” on Canvas before class)**
10. **Federalism**
11. **Express and Implied Legislative Powers**
12. **Tuesday, February 2:** The “Necessary and Proper” Clause, pp. 111–126 (*McCulloch v. Maryland*)
13. **Wednesday, February 3:** The Commerce Clause: Foundations, pp. 132–37 & 146–50 (*Gibbons* & *Hammer*)
14. **Monday, February 8:** The Commerce Clause: New Deal Era, pp. 154–168 (*Jones & Laughlin Steel*, *Darby*, *Wickard*, *Wickard*, *Katzenbach*, & *Heart of Atlanta*)
15. **Tuesday, February 9:** The Commerce Clause: The Modern View, pp. 168–183 (*Lopez* & *Morrison*)
16. **Wednesday, February 10:** The Commerce Clause: The Modern View, continued, pp. 184–204 (*Raich* & *NFIB*)
17. **Monday, February 15:** The Spending Power, pp. 223–236 (*Dole* & *NFIB*)
18. **Tuesday, February 16:** State Immunity from Legislation, pp. 250–64 (*New York* & *Printz*)
19. **Wednesday, February 17: Hypothetical Day #2 (class will be held via Zoom to enable group work; hypothetical posted on Canvas; submit answer via “Quiz” on Canvas before class)**
20. **Limitations on State Power**
21. **Monday, February 22:** Limitations on State Power: The Dormant Commerce Clause, pp. 302–309, 313–325 (*Dean Milk*, *Hughes*, *Southern Pacific*, *Kassel* & *City of Philadelphia*)
22. **Separation of Powers**
23. **Federal Executive Power**
24. **Tuesday, February 23: Midterm Exam [covering material through Feb. 17]**
25. **Wednesday, February 24:** Domestic Affairs, pp. 363–375 (*Youngstown Steel*)
26. **Monday, March 1:** Foreign Affairs, pp. 375–393 (*Dames & Moore*, *Curtiss-Wright* & *Goldwater*)
27. **Tuesday, March 2:** Executive Privilege & Immunity, pp. 410–416 & 429–52 (*United States v. Nixon*, *Trump v. Vance* & *Trump v. Mazars USA*)
28. **Legislative Process**
29. **Wednesday, March 3:** Delegation of Legislative Power, pp. 459–467 (*Whitman*); and Excluding the President from the Legislative Process, pp. 467–77 (*Chadha*)
30. **Monday, March 8:** Congressional Control over Executive Officials, pp. 499–502 & 530–544 (*Humphrey’s Executor* & *Seila Law*)
31. **Individual Rights**
32. **Introduction to Individual Rights**
33. **Tuesday, March 9:** Early History of Individual Rights, pp. 553–571 (*Barron* & *Slaughter-House Cases*)
34. **Wednesday, March 10:** Incorporation Doctrine, pp. 571–91 (*Adamson* & *McDonald*)
35. **Substantive Due Process**
36. **Monday, March 15:** Economic Liberty, pp. 597–612 (*Lochner*, *West Coast Hotel*, & *Williamson*)
37. **Tuesday, March 16:** Origins of Modern Substantive Due Process and Fundamental Rights, pp. 613–629 (*Pierce*, *Skinner*, & *Griswold*)
38. **Wednesday, Mach 17:** Abortion as a Fundamental Right, pp. 629–652 (*Roe* & *Casey*)
39. **Monday, March 22:** Abortion as a Fundamental Right in the Roberts Court, pp. 652–667 (*Gonzales v. Carhart* & *Whole Women’s Health*)
40. **Tuesday, March 23:** (Heterosexual) Marriage & Family as Fundamental Rights, pp. 667–680 (*Loving* & *Michael H.*)
41. **Wednesday, March 24:** Sexuality & Same-Sex Marriage as Fundamental Rights, pp. 681–706 (*Lawrence* & *Obergefell*)
42. **Monday, March 29:** Life & Death as Fundamental Rights (or Not), pp. 706–712 & 720–725 (*DeShaney* & *Glucksberg*)
43. **Tuesday, March 30: Hypothetical Day #3 (class will be held via Zoom to enable group work; hypothetical posted on Canvas; submit answer via “Quiz” on Canvas before class)**
44. **Equal Protection**
45. **Wednesday, March 31:** Distinctions, Classifications, and Basic Application, pp. 747–761 (*Bolling*, *Railway Express*, & *Beazer*)
46. **Monday, April 5:** Facially-Discriminatory Laws & Laws that Discriminate in Purpose and Effect, pp. 775–793 (*Korematsu*, *Yick Woo* & *Davis*)
47. **Tuesday, April 6:** Separate But (Un)Equal, pp. 793–807 (*Plessy*, *Brown*, & *Loving*)
48. **Wednesday, April 7:** Affirmative Action (in Education), pp. 816–827 (to n.f), 830–844 (*Grutter*, *Gratz*, *Fisher II*, & *Parents Involved*)
49. **Monday, April 12:** “Sex” Classifications, pp. 852–862, 866–875 (*Craig*, *VMI* Case, *Michael M.* & *Fenney*)
50. **Tuesday, April 13:** Alienage, Age, Disability, pp. 876–891 (*Graham*, *Clark*, *Murgia*, *Cleburne*)
51. **Wednesday, April 14:** Sexuality, pp.891–900 (*Romer* & *Windsor*)
52. **Monday, April 19: Hypothetical Day #4 (class will be held via Zoom to enable group work; hypothetical posted on Canvas; submit answer via “Quiz” on Canvas before class)**