**CONSTITUTIONAL LAW § 2**

**LAW 5501, CLASS NUMBER 15186 -00SH (4 CREDITS)**

**PROFESSOR MILLS**

**FALL 2021**

**MONDAY, TUESDAY, & THURSDDAY 1-2:15 PM**

**ROOM 355C**

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.

1. **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).

1. **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

- Federalism

- Due Process

- Equal Protection

- Constitutionality of laws in light of the above principles.

1. **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.

1. **Testing:**

The final exam will be a 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. 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).

There will also be a mandatory 30-minute essay test approximately in the middle of the semester .

1. **Class Participation:**

Class participation is an important part of the course. I will designate certain students who will be primarily responsible for class materials for a particular day. If you are not prepared for class on a particular day, let me know before class.

I will also call on volunteers. My expectation is that the topics in Constitutional Law will elicit substantial conversations.

Class participation has a positive impact on your grade.

1. **Class Preparation:**

Given that we meet two 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 about the materials, and synthesizing your learning and knowledge of the assigned materials.

1. **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:

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| --- | --- |
| **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 |

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*](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies).

1. **Accommodation:**

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

1. **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.

1. **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*.

1. **Office Hours:**

My office hours will be each Tuesday and Thursday from 11 am- Noon. Tuesdays will be by Zoom and Thursdays will be in my office in 320B Holland Hall. My email is [mills@law.ufl.edu](mailto:mills@law.ufl.edu). My office phone is 352-273-0835

1. **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/>.

1. **Preferred Name and Pronouns**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL.  The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison."   To update your display name, go to one.uﬂ.edu, click on the dropdown at the top right, and select "Directory Proﬁle." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom.  This change may take up to 24 hours to appear in Canvas.   This does not change your legal name for ofﬁcial UF records

1. **Discourse, Inclusion, and the Classroom Ethos**

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

 As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution (if applicable).

1. **Recording in Class**

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.”

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| CLASS | BASICS | ASSIGNMENT |
|  | **I. Introduction** | **Pages** |
| CLASS 1 | The Constitution, Scavenger Hunt (Canvas) | XXXIX - LV |
|  | SEPARATION OF FEDERAL POWERS |  |
|  | **II. The Federal Judicial Power (Role of Judiciary)** |  |
| CLASS 2 | A. Authority for Judicial Review  *Trump v. Hawaii*, *Marbury, Martin, Cohens* | 395-406; 1-11 |
| CLASS 3 | B. Limits on the Federal Judicial Power  1. Interpretive Limits  How should the Constitution be interpreted? –  *Nixon*, *Heller* – 2nd Amend | 11-13  286-290; 13-32 |
|  | **III. Federal Executive Power (Division of Power Between Executive & Legislative)** |  |
|  | A. Inherent Presidential Power  *Youngstown*, review *Nixon & Trump*  B. Legislative Veto (Nondelegation Doctrine) and Its Demise  *Chadha*  C. Separation of Powers & Foreign Policy  1. Difference between foreign & domestic policy  *Curtiss Wright*, *Zivotofsky v. Kerry*  2. Treaties & Executive Agreements  *Dames & Moore v. Regan*  3. War Powers  AUMF – Is it appropriate delegation?  D. Presidential Power & the War on Terrorism  1. Detentions – *Hamdi*, *Boumediene*  2. Military Tribunals – *Quirin* | 275-290  292-293; 304-312  339-351  351-354  354-358  358-387  387-395 |
|  | **IV. The Federal Legislative Power** |  |
|  | A. Congress & the States: Supremacy of Federal Law Framework  *McCulloch*  B. The Necessary & Proper Clause  *Comstock*  (in note)  C. The Commerce Power  1. Initial Scope of Commercial Power  *Gibbons*  2. 1890s-1937: Limited Federal Commerce Power  a. What is commerce?  *Knight, Carter Coal* (both in notes)  b. What does “among the states” mean?  1. Direct Effect – *Shreveport Rate* (in notes)  2. Indirect Effect – *Schechter Poultry* (in notes)  3. Stream of Commerce – *Swift, Stafford, Alton RR*  (all in notes)  c. Social Welfare: State Sovereignty Limits Federal Power  *Hammer, Ames* (both in notes)  3. 1937-1990s: Broad Federal Commerce Power – Demise of  State Sovereignty  *Jones*, *Darby*, *Wickard*, *Heart of Atlanta, Katzenbach*,  *Hodel* (skim), *Perez* (skim), *Garcia* (skim)  4. 1990- Revival of State Sovereignty: 10th Amend.  a. Congress’ Authority to Regulate  Commerce Among States  *Lopez*, *Raich*  b. Giving Context to the 10th Amend.  *New York, Printz*, *Condon*, *Sebelius, Murphy* | 119-130  155  155-159  159-166  166-187  187-199; 207-215  216-236; 130-154; 236-240 |
|  | INDIVIDUAL LIBERTIES AS A LIMIT ON THE POWER OF GOVERNMENTS |  |
|  | **V. Protection of Civil Rights & Civil Liberties** |  |
|  | A. Bill of Rights & 14th Amendment  1. Application of BOR to states – Privileges and  Immunities Clause  *Barron*, *Slaughterhouse Cases*, *Saenz*  2. The controversy over incorporation of BOR into  D/P Clause of 14th Amend.  *Palko* (skim), *Adamson* (skim), *Duncan* (skim),  *McDonald, Timbs*  B. The Application of the BOR to Private Conduct  1. Requirement of State Action (waving the wand)  *Civil Rights Cases: Stanley*  2. Exceptions to State Action  a. Public functions  *Marsh*, *Terry*, *Evans (*skim all 3)  b. Entanglement  *Shelley*, *Burton* (skim), *Moose Lodge* (skim)  *Norwood* (skim), *Brentwood*  4. Inaction as State Action?  *DeShaney* | 503-516  516-532  532-536  536-540; 543-546; 551-552  553-556; 561-568; 571-578  1134-1140 |
|  | **VI. Substantive D/P: Economic Liberties** |  |
|  | A. Introduction  B. The Lochner Era: The Rise of Substantive D/P (using freedom  of K to limit government economic regulations)  *Lochner*, *Muller*, *Adkins*, *Weaver*  C. The End of Substantive D/P – Starting in 1937  *Parrish*, *Carolene Products*, *Lee Optical* | 579-584  584-599  599-606 |
|  | **VII. Substantive D/P: Family, Education, Privacy** |  |
|  | A. Introduction: Fundamental Rights  B. Family Autonomy  a. Right of Parents to control upbringing of children  *Meyer*, *Pierce*  b. Marriage  *Loving*  c. Family togetherness  *Moore*  d. Right to custody of one’s children – who is a parent?  *Stanley*, *Michael H*  e. Grandparents  *Troxel*  C. Reproductive Autonomy  1. Right to procreate  *Buck*, *Skinner*  2. Purchase & use of contraceptives  *Griswold*, *Eisenstadt*  3. Termination  *Roe*, *Casey, Hellerstedt*  D. Individual Autonomy & the Right to Die  *Cruzan*, *Glucksberg*  E. Right to Bear Arms  Review *McDonald* | 903-909  942-945  909-915  938-941  929-938  945-950  950-952  952-961  961-987; 1006-1011  1015-1030  523-529 |
|  | **VIII. Equality: Equal Protection** |  |
|  | A. Introduction: What is equality?  B. What is rational? Does law have a legitimate purpose?  *Cleburne*  C. Race & National Origin: Strict Scrutiny  1. Slavery  *Dred Scott*  2. Separate but equal  From *Plessy* to *Brown*, *Rodriguez*  3. Strict scrutiny  *Korematsu*, *Loving*, *Palmore*  4. Racially neutral laws with discriminatory impact:  Proof of discriminatory purpose  *Washington v. Davis*, *Palmer*  5. Affirmative action  *Grutter*, *Gratz*, *Fisher*  D. Gender  1. Level of scrutiny  *Frontiero*, *Craig*, *VMI*  2. Proving gender  *Geduldig*  3. Gender Classifications Benefitting Women  *Rostker, Califano*, *Nguyen, Sessions* (notes)  E. Alienage  *Graham*, *Foley*, *Ambach*, *Plyler*  F. S.O.: E/P & S-D/P Meet—The Ga(y)ping Hole  *Romer*, *Lawrence, Windsor* (notes), *Obergefell, Pavan* (Canvas), *Masterpiece Cake* | 683-689  689-691; 707-711  711-718  728-738; 1121-1128  718-728  738-742; 752-754  790-792; 802-833  836-851  851-854  862-876  876-891  Note at 696; 900-901; 691-696; 1031-1042; 911-915 (Windsor notes); 915-929; 1690-1700 |