

**CONSTITUTIONAL LAW § 2A  
LAW 5501, CLASS NUMBER 27549 (4 CREDITS)  
PROFESSOR BERTA E. HERNÁNDEZ-TRUYOL**

**SPRING 2026**

**TUESDAY & THURSDAY – 10:00AM-NOON  
ROOM 345 HOLLAND HALL**

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**COURSE DESCRIPTION & SYLLABUS**

**1. Class Materials:**

CONSTITUTIONAL LAW, 7th ed., Chemerinsky, 2024. ISBN: 978-8-8861-4457-4. You are required to have a physical copy of the textbook.

2024-2025 Case decisions included in the syllabus will on CANVAS.

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 the 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). If time permits, 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 anticipate that students will want to be present for every class. As I understand that unanticipated events such as illness or family emergencies may arise and that religious holyday observance may result in an absence, I have asked that all classes be recorded to provide access to class coverage in such instances. (For students' recordings of class see #14 below).

I take attendance in accordance with University and Law School policy and ABA rules. 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.

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

### **5. Testing:**

There will be four graded tests during the semester. The first two tests are closed-book. Students will have 20 minutes to match the names of the cases that we have covered with a notable quote or principle from each case. Each of these tests will account for 10% of your grade.

The third test will be a multiple choice, in-class, closed-book test on separation of powers and federalism. This assessment will count for 30% of your grade.

The final exam will be an in-class essay exam. The exam is open-book. The book must be a physical copy. No tabs are allowed although marginalia in the assigned readings is permitted. It will be distributed and collected in person. Further information regarding the exam will be available later in the semester. The exam accounts for 50% of the grade.

There will also be a mandatory 30-minute practice essay approximately in the middle of the semester in which the students will be able to use their Chemerinsky 7<sup>th</sup> 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 2-3 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 or 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 welcome volunteering, I will also call on all 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 two times per week for a 4-credit-hour course, anticipate spending about 4-6 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.

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Each weekly class is approximately 4 hours in length, requiring at least **8 hours of preparation** outside of class.

## 8. Grades:

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class is bound by 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. Exam Delays and Accommodations:

The law school policy on exam delays and accommodations can be found [here](#).

## 10. Internet Policy and Related Issues:

The internet, and more generally your laptop, is a great learning tool and invaluable asset for 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>. The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments unless expressly authorized by the professor to do so.

## **12. Office Hours:**

12:00pm – 1:00pm Tuesday and Thursday or by appointment.  
My office is 319-A, my office number is 273-0928, and my email is [hernandez@law.ufl.edu](mailto: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.bluer.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

## **14. Recordings of 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 guest 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 and Student Conduct Code.

**15. Statement Related to Accommodations for Students with Disabilities:**

Students requesting accommodations 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 (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page, available at <https://ufl.instructure.com/courses/427635>.

**16. The assignment sheet is attached. Depending on legal developments, the Syllabus content is subject to change throughout the semester.**

**17. UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:**

Other information about UF Levin College of Law policies can be found at this [link](#).

**18. UF ACADEMIC POLICIES AND RESOURCES:**

Other information about UF academic policies and resources can be found at this [link](#).

CLASS	BASICS	ASSIGNMENT
	<b>I. Introduction</b>	<b>Pages</b>
1	The Constitution, Scavenger Hunt(Canvas)	XXXVII – L CANVAS
	SEPARATION OF FEDERAL POWERS	
	<b>II. The Federal Judicial Power (Role of Judiciary)</b> Document: Biden Student Loan Forgiveness: 83 Fed. Reg. 61512 (Oct. 12, 2022) (CANVAS)	
2 & 3	A. Authority for Judicial Review <i>Trump v. Hawaii, Marbury, Martin, Cohens</i>	336-345; 1-11
4 & 5	B. Limits on the Federal Judicial Power 1. Nationwide injunctions – Casa (CANVAS) 2. Interpretive Limits: How should the Constitution be interpreted? <i>a. The second Amendment Heller, NYS Rifle &amp; Pistol Assoc. v. Bruen, Rahimi</i> (CANVAS) <i>b. The Modern Use of the Contracts Clause: Blaisdell</i> <i>c. The Major Questions Doctrine: W.V. v. EPA</i> (notes), Biden	10-12  914-946 CANVAS  550-53 253-261
	<b>III. Federal Executive Power (Division of Power Between Executive &amp; Legislative)</b> Document: Trump Executive Order 14527 Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits (Apr. 2, 2025)(CANVAS)	
6 & 7	A. Inherent Presidential Power <i>Youngstown</i> B. The Scope of Inherent Power: The Issue of Executive Privilege <i>Nixon, Trump (review), Trump v. Vance, Trump v. Mazars, Trump v. U.S.</i> (CANVAS) C. Constitutional Problems of the Administrative States 1. Non delegation Doctrine and Its Demise ( <i>Schechter, Panama, Gundy</i> ). 2. Legislative Veto <i>Chadha</i> D. Checking Appointment Power: Humprey's Executor E. Separation of Powers & Foreign Policy 1. Difference between foreign & domestic policy <i>Curtiss Wright</i> 2. Treaties & Executive Agreements <i>Dames &amp; Moore v. Regan</i> F. Separation of Powers & Domestic Regulation: <i>Jarkesy</i> (CANVAS), <i>Learning Resources, Inc. v. Trump</i> (oral argument/decision on CANVAS) G. <b>FIRST MATCHING QUIZ</b>	229-237; 351-368  237-253; CANVAS  261-269  278-279  288-292  298-301  CANVAS
	<b>IV. The Federal Legislative Power</b> Document: CDC COVID-19 nationwide moratorium on tenant evictions: 86 Fed. Reg. 43244 (Aug. 6, 2021) (CANVAS)	

A. Congress & the States: Supremacy of Federal Law Introduction	99-108
B. Framework for Analysis <i>McCulloch</i>	100-108
C. The Necessary & Proper Clause <i>Comstock</i> (innote)	129-130
D. The Commerce Power	130-133
1. Initial Scope of Commercial Power <i>Gibbons</i>	133-135
2. 1890s-1937: Limited Federal Commerce Power	135-136
a. What is commerce? <i>Knight, Carter Coal</i> (both in notes)	136-138
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> (oth in notes)	138-139
3. 1937-1990s: Broad Federal Commerce Power- Demise of State Sovereignty	139-140
Key Decisions Changing the Commerce Clause Doctrine: <i>Jones, Darby, Wickard</i>	140-147
a. The Meaning of Commerce Among the States	
1. Civil Rights Laws: <i>Heart of Atlanta, Katzenbach</i>	147-150
2. Regulatory Laws: <i>Hodel</i>	151
3. Criminal Laws: <i>Perez</i>	151-152
b. The Tenth Amendment Between 1937 and the 1990s: <i>Garcia</i>	152-157
4. 1990-Narrowing of the Commerce Power and Revival of the 10 <sup>th</sup> Amendment as a Constraint on Congress	157-158; 108-111
a. Congress’s Authority to Regulate Commerce Among States <i>Lopez, Raich</i>	158-167; 171-181
b. Does the 10 <sup>th</sup> Am Limit Congress’s Authority? <i>Printz, Murphy</i>	181,189-196, 198-201
c. Conditions on Grants to State Governments: <i>Dole</i>	205-208
d. What Role Should Concern Over Protecting States Have in Defining Congress’s Power? <i>Sebelius</i>	108-111 (Review), 111-30
5. Congress’s Powers Under the Post-Civil War Amendments	207-208
a. Whom May Congress Regulate Under the Post-Civil War Amendments? <i>Morrison</i>	208-211
b. Scope of Congress’s Power (notes including notation on <i>Boerne</i> and <i>Holder</i> )	211-213, 218 (note)
<b>SECOND MATCHING QUIZ</b>	



	INDIVIDUAL LIBERTIES AS A LIMIT ON THE POWER OF GOVERNMENTS	
	<b>V. The Structure of the Constitution's Protection of Civil Rights &amp; Civil Liberties</b> Document: <b>Trump Executive Order of Birthright Citizenship (Jan. 20, 2025) (CANVAS)</b>	
	<p>A. Bill of Rights &amp; 14th Amendment</p> <ol style="list-style-type: none"> <li>1. Application of BOR to states—Privileges and Immunities Clause <i>Barron, Slaughterhouse Cases, Saenz</i></li> <li>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>Timbs, Ramos v. Louisiana, McDonald</i></li> <li>3. Birthright Citizenship <i>U.S. v. Wong Kim Ark</i> (CANVAS)</li> </ol> <p>B. The Application of the BOR to Private Conduct</p> <ol style="list-style-type: none"> <li>1. Requirement of State Action (waving the wand) <i>Civil Rights Cases: Stanley</i></li> <li>2. Exceptions to State Action <ol style="list-style-type: none"> <li>a. Public functions <i>Marsh, Terry, Evans</i> (skim all 3)</li> <li>b. Entanglement <ol style="list-style-type: none"> <li>1. Judicial and law enforcement actions <i>Shelley</i></li> <li>2. Government regulation <i>Burton</i> (skim), <i>Moose Lodge</i> (skim)</li> <li>3. Government subsidies <i>Norwood</i> (skim)</li> <li>4. Entwinement <i>Brentwood</i> (skim), <i>Lindke</i> (CANVAS)</li> </ol> </li> </ol> </li> <li>3. Inaction as State Action? <i>DeShaney</i></li> </ol>	<p>434-438 447-458</p> <p>458-474</p> <p>CANVAS</p> <p>474-477 477-479 479-481; 483-486 490 (note)</p> <p>491-494 498-503</p> <p>503-504 508-513, CANVAS</p> <p>1021-1026</p>
	MULTIPLE CHOICE TEST	
	<b>VI. Substantive D/P</b> Document: <b>Biden Executive Order 14076 on access to reproductive health care services (July 8, 2022) (CANVAS)</b>	
	<p>A. Chapter 6 Economic Liberties</p> <ol style="list-style-type: none"> <li>1. Introduction, Historical Overview, Organization of Chapter, Early History</li> <li>2. The Lochner Era: The Rise of Substantive D/P (using freedom of K to limit government economic regulations) <i>Allgeyer, Lochner</i> <ol style="list-style-type: none"> <li>a. Maximum hours <i>Muller</i></li> <li>b. Minimum Wage <i>Adkins</i></li> <li>c. Consumer Protection <i>Weaver</i></li> </ol> </li> <li>3. The End of Substantive D/P—Starting in 1937 <ol style="list-style-type: none"> <li>a. Pressure for Change</li> <li>b. End of Lochnerism <i>Parrish, Carolene Products</i></li> <li>c. Economic SDP since 1937 <i>Lee Optical</i></li> </ol> </li> </ol>	<p>515-520</p> <p>520-527</p> <p>527-529 529-530 531-532</p> <p>532-533 533-536 536-538</p>

	<p>B. Chapter 8 Fundamental Rights – Family Education/Privacy-Fundamental Rights</p> <p>1. Introduction: The Concept of Fundamental Rights Framework for Analysis of Rights: 3 issues</p> <p>2. Family Autonomy</p> <p>a. Right of Parents to control upbringing of children, <i>Meyer, Pierce</i></p> <p>b. Marriage: <i>Loving, Zablocki, Obergefell, Moore, Muñoz</i> (CANVAS)</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>C. Individual Autonomic &amp; the Right to Die <i>Cruzan, Glucksberg, Vacco</i></p> <p>D. Reproductive Autonomy</p> <p>1.. Right to procreate <i>Buck, Skinner</i></p> <p>2. Purchase &amp; use of contraceptives <i>Griswold, Eisenstadt (skim)</i></p> <p>3.. Termination <i>Roe, Casey (skim)</i></p> <p>3. The Future of SDP?- <i>Dobbs</i></p> <p>E. Right to Bear Arms</p> <p>Review: <i>Heller, NYS Rifle, Rahimi</i> (CANVAS)</p>	<p>795-800</p> <p>827-830</p> <p>800-817</p> <p>824-827</p> <p>817-824</p> <p>831-834</p> <p>888-901</p> <p>834-837</p> <p>837-844</p> <p>859-887</p> <p>914-946, CANVAS</p>
	<b>VII. Equality: Equal Protection Document: Biden Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals (June 15, 2022) (CANVAS)</b>	
	<p>A. Introduction: What is equality? Constitutional Provisions, Framework: 3 Questions; Protection of Fundamental Rights under E/P</p> <p>B. What is rational? Does law have a legitimate purpose? <i>Moreno, Cleburne, Romer</i></p> <p>C. Race &amp; National Origin: Strict Scrutiny</p> <p>1. Race and Slavery Before the 13<sup>th</sup> and 14<sup>th</sup> Amendments <i>Dred Scott</i></p> <p>2. Separate but equal From <i>Plessy</i> to <i>Brown</i> to <i>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>SFAA v. Harvard</i></p> <p>D. Sex/Gender</p> <p>1. Level of scrutiny, Early Cases, Emergence of intermediate Scrutiny <i>Frontiero, Craig, VMI</i></p> <p>2. Proving gender <i>Geduldig, Bostock</i> (CANVAS), <i>Skrmetti</i> (CANVAS)</p>	<p>609-615</p> <p>628-633, 616-620</p> <p>633-640</p> <p>648-657; 1010-1016</p> <p>640-648</p> <p>657-660; 668-670</p> <p>700-702; 710-734</p> <p>737-749</p> <p>749-753, CANVAS</p>

	<p>3. GenderClassificationsBenefittingWomen  <i>Orr, Hogan, Rostker, Califano, Nguyen, Sessions</i> (notes)</p> <p>E. S.O.: E/P &amp; S-D/PMeet—The Ga(y)pingHole  <i>Romer</i> (review), <i>Lawrence, Windsor</i> (notes), <i>Obergefell</i> (review),  <i>Pavan</i></p>	<p>752-757, 760-772</p> <p>793-794; 616-621; 901-911; 802-805 (Windsor notes); 805-818</p>
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