

CONSTITUTIONAL LAW SPRING 2026

SECTION 2, LAW 5501, CLASS 27550, 4 CREDIT HOURS

SYLLABUS AND CLASS PROCEDURES

Professor Michael Allan Wolf

Office: Holland 307

Office phone: 352-273-0934

Email: wolfm@law.ufl.edu

Office hours: Monday, 3-5 pm

OUR CLASS WILL MEET ON TUESDAYS AND THURSDAYS FROM 10:00 am-12:00 noon, IN ROOM 355B.

If my office door is open, you are welcome, as I do not restrict my contact with students to a few hours per week. If you would like to set up an appointment, please send me an email message.

THERE IS ONE REQUIRED TEXT FOR THIS CLASS: ERWIN CHEMERINSKY, CONSTITUTIONAL LAW (7th ed. 2023).

ADDITIONAL ASSIGNMENTS (INCLUDING NEW CASES) WILL BE POSTED ON CANVAS OR DISTRIBUTED BY EMAIL. 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 DESCRIPTION (FROM WEB PAGE): Introduction to United States Constitutional Law. Topics include judicial enforcement of the Constitution to preserve individual liberties; judicial review; separation of powers; structure and powers of the federal government; and federalism.

STUDENT LEARNING OUTCOMES: By the end of this course, it is my hope that students will:

- be skilled and experienced at reading cases carefully and efficiently,
- have the ability to identify key passages in constitutional law opinions,
- understand the often-subtle differences between majority, dissenting, and concurring positions,

- appreciate how U.S. Supreme Court decisions reflect changes in social, economic, political, and ideological developments in American society and thought,
- write well-organized answers to essay questions that spot issues, relate the relevant law to the pertinent facts, and resolve those issues,
- be able to identify key aspects of important Supreme Court decisions,
- be familiar with American constitutional law doctrines regarding the powers and limitations of the three branches of government, due process, equal protection, various forms of discrimination, and incorporation of and protections afforded by of fundamental rights.

COURSE EXPECTATIONS AND GRADING EVALUATION:

THERE WILL BE THREE GRADED TESTS DURING THE SEMESTER: The first test will have two parts. The first part is a closed-book, multiple-choice test in which students will have 20 minutes to answer 20 questions. The answer choices will be the names of the cases that we will have covered up to that point in the course. The second part of the first test will be a 30-minute essay test in which the students will be able to use their Chemerinsky 7th edition casebooks only. There will be 0-15 points awarded for test one.

The second test's format is similar to that of the first part of the first test. It will be a closed-book, multiple-choice test in which students will have 50 minutes to answer 50 questions. The answer choices will be the names of the cases that we will have covered up to that point in the course. There will be 0-25 points awarded for test two.

The third test (final exam) will be a 3 1/2-hour essay test in which the students will be able to use their Chemerinsky 7th edition casebooks only. There will be 0-60 points awarded for this test.

I expect that students will have done the assigned readings for each class. I will rely on student participation to facilitate the learning of challenging concepts. Students who participate at a consistently high level may be rewarded by a one-half grade bump (e.g., from B+ to A-). I reserve the right to lower the grades of students who disrupt the learning environment by a one-half grade bump.

ATTENDANCE POLICY: Each student is permitted six hours of absences (NOT six two-hour classes) during the semester. Within one week of missing class, you are responsible for reporting to me via email that you missed class. There is no need to explain your absence, as I do not differentiate between excused and non-excused

absences. The law school's policy on attendance can be found here:
<https://syllabus.ufl.edu/syllabus-policy/uf-syllabus-policy-links/>.

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES: Other information about UF Levin College of Law policies can be found at this link:
<https://ufl.instructure.com/courses/427635/files?preview=98226140>.

UF ACADEMIC POLICIES AND RESOURCES: Other information about UF academic policies and resources can be found at this link:
<https://syllabus.ufl.edu/syllabus-policy/uf-syllabus-policy-links/>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: 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 2 hours in length, requiring at least 4 hours of preparation outside of class including reading the assigned materials and preparing answers to questions distributed before class.

INTERNET USE IN THE CLASSROOM: I expect that during each class all students will be prepared to conduct research on the internet (usually Lexis or Westlaw) using a laptop, tablet, or other means. Of course, students are not to use these devices (including smart phones) for any non-pedagogical purposes.

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.

U.S. Constitution xxxvii–l (2 hours)

Chapter 1. The Federal Judicial Power (5 hours)

Document: Biden student loan forgiveness: 83 Fed. Reg. 61512 (Oct. 12, 2022)

The Authority for Judicial Review: pp. 1-9 (Marbury, Martin, Cohens)

Limits on Federal Judicial Power: p. 10

Interpretive Limits: pp. 10-12

The Second Amendment Right to Bear Arms: pp. 914-936 (Heller, Bruen majority) plus Rahimi (Canvas)

The Modern Use of the Contracts Clause: pp. 550-53 (Blaisdell)

The Major Questions Doctrine: pp. 254-61 (Biden)

Chapter 3. The Federal Executive Power (5 hours)

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)

Inherent Presidential Power: pp. 229-37 (Youngstown)

The Scope of Inherent Power: The Issue of Executive Privilege: pp. 237-42 (Nixon) plus Trump v. United States (Canvas)

Checking Appointment Power: pp. 278-79 (Humphrey's Executor)

Separation of Powers and Foreign Policy: pp. 289-92 (Curtiss-Wright)

Separation of Powers and Domestic Regulation: Jarkesy (Canvas) and Learning Resources (oral argument/decision on Canvas)

Chapter 2. The Federal Legislative Power

Document: CDC COVID-19 nationwide moratorium on tenant evictions: 86 Fed. Reg. 43244 (Aug. 6, 2021) (Canvas)

5 hours:

Introduction: Congress and the States: p. 99-100

The Framework for Analysis: *McCulloch v. Maryland*: pp. 100-08 (*McCulloch*)

The Necessary and Proper Clause: pp. 129-30

The Commerce Power: p. 130

The Initial Era: *Gibbons v. Ogden* Defines the Commerce Power: pp. 130-33 (*Gibbons*)

The 1890s-1937: A Limited Federal Commerce Power: pp. 133-35

What is “Commerce”? pp. 135-36

What Does “Among the States” Mean?: pp. 136-38

Does State Sovereignty Limit Congressional Power: pp. 138-39

1937-1990s: Broad Federal Commerce Power: pp. 139-40

Key Decisions Changing the Commerce Clause Doctrine: pp. 140-47 (*Jones & Laughlin*, *Darby*, *Wickard*)

The Meaning of “Commerce Among the States”: p. 147

6 hours:

Civil Rights Laws: pp. 147-150 (*Heart of Atlanta*, *McClung*)

Regulatory Laws: p. 151 (*Hodel*)

Criminal Laws: pp. 151-52 (*Perez*)

The Tenth Amendment Between 1937 and the 1990s: p. 152-57 (*Garcia*)

1990s-???: Narrowing of the Commerce Power and Revival of the Tenth Amendment as a Constraint on Congress: pp. 157-58

What is Congress’s Authority to Regulate “Commerce Among the States”? pp. 156-81 (*Lopez*, *Morrison*, *Raich*)

Does the Tenth Amendment Limit Congress’s Authority?: pp. 181, 189-96, 198-201 (*Printz*, *Murphy*)

Conditions on Grants to State Governments: pp. 205-08 (Dole)

What Role Should Concern Over Protecting States Have in Defining Congress's Powers?: pp. 108-30 (Sebelius)

Congress's Powers Under the Post-Civil War Amendments: pp. 207-08

Whom May Congress Regulate Under the Post-Civil War Amendments?: pp. 208-12 (Morrison)

What is the Scope of Congress's Power?: pp. 212-27 (Boerne, Holder)

FIRST TEST

Chapter 5. The Structure of the Constitution's Protection of Civil Rights and Civil Liberties (5 hours)

Document: Trump Executive Order on birthright citizenship (Jan. 20, 2025) (Canvas)

Introduction: pp. 447-48

The Application of the Bill of Rights to the States: pp. 448-51 (Barron)

A False Start in Applying the Bill of the Rights to the States: The Privileges or Immunities Clause and the Slaughter-House Cases: pp. 450-57

The Incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment: pp. 459-60

The Debate Over Incorporation: pp. 460-63 (Palko, Adamson)

The Current Law as to What's Incorporated: pp. 463-71 (McDonald, Timbs)

The Content of Incorporated Rights pp. 472-75 (Ramos)

The Application of the Bill of Rights and the Constitution to Private Conduct

The Requirement for State Action: pp. 475-78 (Civil Rights Cases)

The Exceptions to the State Action Doctrine: pp. 478-79

The Public Functions Exception: pp. 479-81, 483-91 (Marsh, Terry, Evans, Halleck)

The Entanglement Exception: pp. 491-92

Judicial and Law Enforcement Actions: pp. 492-95 (Shelley)

Government Regulation: pp. 498-503 (Moose Lodge)

Government Subsidies: pp. 502-04 (Norwood)

Entwinement: pp. 508-13 (Brentwood) plus Lindke (Canvas)

United States v. Wong Kim Ark (Canvas)

Trump v. CASA (Canvas)

Chapter 6. Economic Liberties (5 hours)

Document: Biden Executive Order 14076 on access to reproductive health care services (July 8, 2022)

Introduction: p. 515

Historical Overview: pp. 515-16

Organization of the Chapter: pp. 516-17

Economic Substantive Due Process

Introduction pp. 517

The Early History of Economic Substantive Due Process: pp. 517-20

Substantive Due Process of the Lochner Era: pp. 520-26 (Allgeyer, Lochner)

Maximum Hours Laws: pp. 528-29 (Muller)

Minimum Wage Laws: pp. 529-31 (Adkins)

Economic Substantive Due Process Since 1937

Pressures for Change: pp. 533-34

The End of Lochnerism: pp. 533-36 (West Coast Hotel, Carolene Products)

Economic Substantive Due Process Since 1937: pp. 537-39 (Lee Optical)

The Takings Clause

Introduction: pp. 560-61

Is There a “Taking”: p. 561

Possessory Takings: pp. 561-63, 564-71 (Loretto, Cedar Point)

Regulatory Takings: pp. 572-74, 575-78 (Pennsylvania Coal, Penn Central)

Is It for “Public Use”?: pp. 598-604 (Kelo)

Chapter 8. Fundamental Rights (5 hours)

Introduction: p. 795

The Concept of Fundamental Rights: p. 795

The Ninth Amendment: p. 797

Framework for Analyzing Fundamental Rights: p. 797

First Issue: Is There a Fundamental Right?: pp. 798-99

Second Issue: Is the Constitutional Right Infringed?: p. 799

Third Issue: Is the Means Sufficiently Related to the Purpose: pp. 799-800

Constitutional Protection for Family Autonomy

The Right to Marry (first part): pp. 800-01 (Loving)

The Right to Keep the Family Together: pp. 825-28 (Moore)

The Right of Parents to Control the Upbringing of Their Children: pp. 828-30 (Meyer, Pierce)

Constitutional Protection for Sexual Orientation and Sexual Activity: pp. 901-05 (Lawrence majority)

The Right to Marry (second part): pp. 805-17 (Obergefell) plus Muñoz (Canvass)

Constitutional Protection for Reproductive Autonomy: pp. 834-37 (Buck, Skinner)

The Right to Purchase and Use Contraceptives: pp. 837-43 (Griswold)

The Right to Abortion: pp. 845-51, 859-72 (Roe, Dobbs majority and Thomas concurring)

Chapter 7. Equal Protection

Document: Biden Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals (June 15, 2022) (Canvass)

4 hours:

Introduction

Constitutional Provisions Concerning Equal Protection: pp. 609-10

A Framework for Equal Protection Analysis: p. 610

Question 1: What Is a Classification?: pp. 610-11

Question 2: What Is the Appropriate Level of Scrutiny?: pp. 611-12

Question 3: Does the Government Action Meet the Level of Scrutiny: pp. 613-14

The Protection of Fundamental Rights Under Equal Protection: pp. 614-15

The Rational Basis Test

Introduction: pp. 615-16

Does the Law Have a Legitimate Purpose?: p. 616

What Constitutes a Legitimate Purpose?: pp. 616-20 (Romer)

Must It Be the Actual Purpose, or Is a Conceivable Purpose Enough?: pp. 621-22

The Requirement for a “Reasonable Relationship”: p. 623

Cases in Which Laws Are Deemed Arbitrary and Unreasonable: pp. 628-34 (Moreno, Cleburne)

6 hours:

Race Discrimination and Slavery Before the Thirteenth and Fourteenth Amendments: pp. 634-35

Dred Scott v. Sandford: pp. 635-38 (Scott)

The Post-Civil War Amendments: pp. 638-39

Strict Scrutiny for Discrimination Based on Race and National Origin: pp. 639-40

Proving the Existence of a Race or National Origin Classification: p. 640

Race and National Origin Classifications on the Face of the Law: p. 640

Race-Specific Classifications That Disadvantage Racial Minorities: pp. 640-45 (Korematsu)

Racial Classifications Burdening Both Whites and Minorities: pp. 645-47 (Loving)

Laws Requiring Separation of the Races: pp. 648-51 (Plessy)

The Initial Attack on “Separate but Equal”: pp. 652-53

Brown v. Board of Education: pp. 652-56 (Brown I)

Facially Neutral Laws with a Discriminatory Impact or with Discriminatory Administration

The Requirement for Proof of a Discriminatory Purpose: pp. 657-60 (Washington)

Is Proof of Discriminatory Effect Also Required?: pp. 668-71 (Palmer)

How Is Discriminatory Purpose Proven?: pp. 670, 672-74 (Arlington Heights)

SECOND TEST

2 hours:

Remedies: The Problem of School Desegregation

Introduction: The Problem of Remedies: pp. 676-77 (Brown II)

Massive Resistance: pp. 676-80

When Should Federal Desegregation Remedies End?: pp. 686-88 (Dowell)

Racial Classifications Benefiting Minorities: p. 700

The Emergence of Strict Scrutiny as a Test: pp. 701-02

The Use of Race to Benefit Minorities in College and University Admissions: pp. 711-18 (SFA majority)

Sex Discrimination: p. 737

The Level of Scrutiny: pp. 737-39

The Emergence of Intermediate Scrutiny: pp. 740-49 (Frontiero, Craig, Virginia)

United States v. Skrametti (Canvas)

FINAL EXAM