Constitutional Law 5501-23242 § 2(B)

University of Florida Levin College of Law

Syllabus & Reading Assignments

Spring 2023 (4 credit hours)

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Office Hours: Tuesdays 3:00-5:00 or drop by or set appointment

Class Meeting Time and Location: MoTuWe, 1:45-3:00 pm, Holland Hall 382

Course Description and Objectives:

This course covers the following topics:

- Article III, judicial review, and judicial power
- National legislative power, usually including the federal commerce power
- National executive power in the domestic sphere
- Federalism-based limitations on state power (including the Commerce Clause and dormant Commerce Clause)
- Due process, including related theories of implied rights
- Equal protection

My objectives (that is, intended results of instruction) for you in this course are as follows. You will:

- Know the "black-letter rules/doctrines" of Constitutional Law regarding the topics listed above.
- Apply the "black-letter rules" of Constitutional Law to new fact patterns, with the understanding that minor changes in the facts can change outcomes.
- Be able to analyze Supreme Court decisions in a sophisticated manner, with appreciation for various interpretive methodologies that influence constitutional decisions, including textualism, originalism, pragmatism, stared decisis, structuralism, and so forth.
- Understand the currents of American history from the Nation's founding to the present that have influenced the shape of today's Constitutional Law.
- Understand the procedural law underlying Supreme Court decisions
- Learn basic and then more sophisticated templates for approaching constitutional analysis. As a lawyer, knowing what questions to ask can be even more important than knowing definitive answers.

Student Learning Outcomes:

In the quizzes and final exam in this course, you will demonstrate what you are learning by:

- Identifying and stating clearly the black-letter rules in Constitutional Law that apply to novel fact patterns I will give you
- Making and identifying arguments based on the interpretive methodologies used by the Supreme Court
- Demonstrating understanding of Supreme Court procedure, such as the process of granting certiorari; discerning how votes align to create majorities or pluralities in complex cases;
- Be able to discuss how the Nation's history has influenced Constitutional Law
- Be able to analyze cases using systematic analytical tools (or templates).

Required Book:

The assigned casebook is GREGORY E. MAGGS & PETER J. SMITH, CONSTITUTIONAL LAW: A CONTEMPORARY APPROACH (5th ed. 2021), ISBN: 9781684675715. Please be sure to register for the Canvas page for this course. Please bring required book to class every day.

Class Participation and Professionalism:

Participation in classroom discussion is crucial to your success in learning Constitutional Law. I will employ various strategies to encourage and incentivize your participation, but it is not part of your grade in the course. I am a "soft" Socratic teacher, meaning I will call on students randomly to answer questions. You can notify me before class if you do not want to be called on for a particular class; just make sure you do not do it often. If I call on you and you say you are unprepared, I will circle back to you the following day. I employ this method to encourage you to read the material carefully. I also strive to model the legal reasoning process, generate discussion of the type you might have with a colleague or partner in your law firm, and allow the class to gain from the insights of those who may be reticent to volunteer. I have high expectations for your performance in this class and your eventual performance as attorneys.

Typical questions I will ask about each case are as follows: What are the facts? What portion of the Constitution is implicated? What was the holding? What was the rationale? What interpretative methodology or methodologies did the Court use to support its rationale? How many votes supported the holding? Was there a dissent? Upon what interpretive methodology did the dissent rely? Why did the parties want to pursue this case? Why did the Court limit its holding? How did the historical or social context of the case shape the decision? If the facts of the case were changed in some respect, would the case come out differently? How would you have argued this case if you represented the parties? What interpretive methodology would you have relied on to persuade the Court? What are the effects of the Court's decision? What important issues are left open by the Court's decision?

As you can see, I am interested in teaching you how to make "constitutional" arguments—arguments that other lawyers would recognize as appropriate for resolving contested issues of constitutional law. That said, the contents of this course will inevitably touch on your personal and political beliefs and even matters you may consider fundamental to your identity: we will be discussing abortion, gun control, affirmative action, and other important but potentially polarizing issues. We will also be discussing the painful history of discrimination in our country. I ask you to practice empathy and be sensitive to the different experiences, perspectives, and opinions your classmates may bring to our discussions. One of the skills that you must develop as a lawyer is how to have respectful discussions with others when you have significant differences of personal or political opinion, and I am going to do my best to model those skills in the classroom. To that end,

you may find me articulating arguments or perspectives that I deem to be missing from our discussion, or you may find that I call on you to articulate the "other side." I challenge you to learn to articulate arguments that do not comport with your own personal or political beliefs, because this is an essential legal skill. If you feel that one of our discussions has missed an important perspective but you feel uncomfortable articulating that perspective, you may email me, and I may circle back to include it without attribution to you. I ask you to be thoughtful (in both senses of that word), be self-critical, presume (rebuttably) your classmates are engaging in discussion in good faith, and listen carefully and respectfully to all views.

Class Attendance Policy:

Please let me know if you will miss class or have missed class. You may miss four classes without excuse. If you miss more than four classes without a valid excuse, you will be dropped from the class and must retake Constitutional Law.

Please do not arrive late to class if you can avoid it. Let me know if you must leave early. Please turn off your cell phone during class and focus on what is happening in the classroom. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

Grading Evaluation--Methods by which students will be evaluated:

I will evaluate your performance in this class based on your performance on the final exam and your completion of two quizzes assigned during the semester. Everyone who completes the quizzes will get the full range of points available. Failure to complete the quizzes will result in a deduction of 20 points from your final exam score. The final exam will be scored on a scale of 200 points (50 points per essay question).

Final Exam Format: Your final exam in this course will be a 5-hour, open-book, take-home exam. It will consist of four essay questions worth 50 points each, and you will be limited to answering each essay question in 750 words or fewer. I will provide you with the instructions for the final exam on the Canvas Page for this course approximately one week before the final exam date.

Exam Delays and Accommodations

The law school policy on exam delays and accommodations can be found here.

Information on UF Law Grading Policies

This course follows the Levin College of Law's grading policies found here.

Letter Grade Point Equivalent

A 4.0
A- 3.67
B+ 3.33
B 3.0
B- 2.67
C+ 2.33
C 2.0
C- 1.67
D+ 1.33
D 1.0
D- 0.67

E (Failure) 0.0 12.

Online Course Evaluation Process:

Students are expected to provide feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via https://ufl.bluera.com/ufl/.

Recordings of Class Discussions.

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

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. According to ABA Standard 310, given that we will have four "classroom hours" per week, at least 8 hours of preparation are required outside of class. However, the reading load in Constitutional Law is, of necessity, heavy. It is probably heavier than your other classes this semester because the Supreme Court writes such lengthy opinions. You may find that the time you need to spend reading exceeds the time required by ABA Standard 310, especially during the first month of so of class as you become accustomed to reading Supreme Court opinions. I have tried to be cognizant of the reading burden in setting the assignments for class.

Statement on Academic Honesty:

UF Law's Honor Code is located here.

As future members of the legal profession, I expect you to conduct yourself with the highest degree of integrity, truthfulness, professionalism, and respect for the rules and the dignity of others. Any dishonesty or attempt to gain unfair advantage while in law school will be scrutinized carefully by the Bar in determining whether you will gain admission. Act accordingly.

Statement on Diversity and Inclusion:

Every student is a valued member of our classroom. It is important to the learning environment that you feel included 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.

You may change your "Display Name" in Canvas if you desire. 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 "Allie" 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.

Health and Wellness Resources:

• U Matter, We Care: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit U Matter, We Care website to refer or report a concern and a team member will reach out to the student in distress.

• Counseling and Wellness Center: Visit the Counseling and Wellness Center website or call 352-392-1575 for information on crisis services as well as noncrisis services.

• Student Health Care Center: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.

• University Police Department: Visit UF Police Department website or call 352- 392-1111 (or 9-1-1 for emergencies).

Basic Needs Assistance:

Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. We care about you, and we can help.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This list of assignments 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. I will give you notice at the end of day of how much I expect to cover the following day.

TOPIC	**SUBTOPIC**	**ASSIGNED TEXT in CB unless specified**	**CASES (In Text)**	**Const. and other law**
INTRO	Class Procedures			Read the syllabus.
	Ten Things Everyone Should Know about the Supreme Court in 2023			Read the Constitution (may find it at p. 1499 of CB) Review the website scotusblog.com
HISTORY/OVERVIEW	Historical Setting	**1-10**		
	Organization of the Constitution	**10-13**		
	Methods of Interpretation	**13-23**		
	Illustrative Case	**23-36**	D.C. v. Heller	2nd Amendment

	Points for Discussion +	**36-43**		
THE FEDERAL COURTS: Judicial Power	Judicial Review	**45-69**	Marbury v. Madison (1803) Martin v. Hunters Lessee (1816) Cooper v. Aaron (1958)	Article III generally Article III, §1, §2 Judiciary Act of 1789
	Obstacles to Judicial Review	Omit; No assignment; LL will give brief lecture on political question, ripeness, mootness, case and controversy requirement	This material is on the bar exam, but you will not be tested on it on your final exam in this class.	
	Statutory Limits on Fed. Ct. Jurisdiction	**101-110**	Ex Parte McCardle	
FEDERALISM: FEDERAL LEGISLATIVE POWER	Express & Implied Powers	**111-132**		Art. I generally Art. 1, §8, Cl. 18
	Commerce Power: Early View	**132-137**	Gibbons v. Ogden	Art. 1, §8, Cl. 3
	Commerce Power: Middle Years	**138-153**	US v. EC Knight & Co Shreveport Rate Case Champion v. Amens Hammer v. Dagenhart	

			Carter v. Carter Coal Co.	
	New Deal & Beyond	**154-167**	NLRB v. Jones & Laughlin Steel US v. Darby Wickard v. Filburn Heart of Atlanta Motel v. US Katzenbach v. McClung	
	Recent Cases—New Limits? Or Old?	**168-204**	US v. Lopez US v. Morrison Gonzales v. Raich Ntl Fed of Indep. Busn. V. Sebelius	
	State Immunity from Federal Reg.	**242-264, 274-279**	Ntl. League of Cities v. Usery Garcia v. SAMTA NY v. US Printz. V. US	
HOT TOPIC: WHY JUDICIAL, LEGISLATIVE, AND EXECUTIVE POWER DISPUTES MATTER	The Student Debt-Relief Program, Standing, and the Major Questions Doctrine	Read: https://crsreports.congress.gov/product/pdf/IF/IF12077 https://jcnf.org/wp-content/uploads/2022/11/TX-District-Court-Student-Loans.pdf		
LIMITS ON STATE POWER	Preemption of State by Fed	**281-290**	Silkwood v. Kerr-McGee	
	Dormant Commerce Clause: Early Cases	**290-295**	Gibbons v. Ogden	https://www.scotusblog.com/2022/10/california-law-on-sale-of-pork-raises-concerns-about-interstate-moral-disputes-in-a-balkanized-nation/

	DCC: Uniform Ntl. Standard	**296-301**	Cooley v. Board of Wardens Wabash St. L. & P. Ry. Co. v. Ill	
	DCC: Discrim. Against Interstate Commerce	**302-308**	Dean Milk & Co. v. Madison Hughes v. Oklahoma	
	DCC: Excessive Burden on IC	**308-321**	SC St. Hwy. Dept v. Barnwell Bros So. Pac. V. Az. Kassell v. Consol. Freightways	
	DCC: Meaning of IC	**321-330**	City of Phila. V. NJ Camps Newfound	
	DCC: Market-Participant Exception	**330-336**	So-Central Timber Dev v. Wunnicke	
	DCC: Congressional Consent	**336-340**	Prudential Ins. Co. v. Benjamin	Will add National Pork Producers Council opinion if SC issues it before this class
	Privileges & Immunities	**340-349, 358-360**	Baldwin v. Fish & Game Piper	Art. IV, §2
	St. Power to Reg House/Sen	Omit CB Reading	Moore v. Harper	Art. I, §4 https://www.scotusblog.com/2022/06/justices-will-hear-case-that-tests-power-of-state-legislatures-to-set-rules-for-federal-elections/ Will add Moore v. Harper if SC issues it before this class
SEPARATION OF POWERS	Intro	**361-362**		Art. I, §1 Art. II, §1
PRESIDENTIAL POWERS	Domestic Affairs [Omit Foreign Affairs & Executive Privilege]	**363-375**	Youngstown Sheet & Tube v. Sawyer	

INDIVIDUAL RIGHTS	Introduction	**553-561**	Barron v. Baltimore	
	Privileges or Immunities	**561-571**	Slaughterhouse cases	
	Incorp. Of BOR	**571-594**	Adamson v. CA McDonald v. City of Chicago	
DUE PROCESS	Substantive/ Econ Liberty	**595-612**	Lochner West Coast Hotel v. Parrish Williamson v. Lee Optical	14th Amendment
	Substantive/ Fund. Rights Early Cases	**613-620**	Pierce v. Soc. Of Sisters Skinner v. Oklahoma	
	Fund Rights Contraception & Abortion	**620-651 Omit 652-667**	Griswold v Ct. Roe v. Wade Planned Parenthood v. Casey	Dobbs v. Jackson Women's Health Org. https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf
	Fund Rights Marriage & Family	**667-680**	Loving v. Va. Michael H v. Gerald D	
	Fund Rights Sexuality	**681-706, 725-731**	Lawrence v. Texas Obergefell v. Hodges	
	Procedural Due Process	**733-743**	Cleveland Bd. Of Ed. v. Loudermill	
EQUAL PROTECTION	Introduction	**745-750**		14th Amendment
	Application to Fed. Govt.	**750-753**	Bolling v. Sharpe	

	Rational Basis Review	**753-765**	Railway Exp Agency v. NY NYCTA v. Beazer	
	Racial Discrimination: Facial	**767-783**	Dred Scott v. Sandford Strauder v. WVa Korematsu v. US	
	Racial Discrimination, Purpose & Effect	**783-793**	Yick Wo v. Hopkins Washington v. Davis	
	Racial Separate but Equal Laws	**793-807**	Plessy v. Ferguson; Brown v. Bd of Ed. of Topeka Loving	
	Affirmative Action	**808-822, 825-830, 835-844**	City of Richmond v. JA Croson Co Grutter v. Bollinger Parents Involved	https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-university-of-north-carolina/ https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/ https://www.scotusblog.com/2022/10/affirmative-action-appears-in-jeopardy-after-marathon-arguments/ I will assign the new opinion if it comes out in time.
	Sex Discrimination	**850-865, 872-875**	Craig v. Boren US v. Va. Orr v. Orr	
	Alienage	**875-879**	Graham v. Richardson	
	Sexual Orientation	**891-902**	Romer v. Evans	