

**Constitutional Law 5501-14002 § 3**  
**University of Florida Levin College of Law**  
**Syllabus & Reading Assignments**  
**Fall 2023 (4 credit hours)**

Professor Lyrissa Lidsky  
Holland Hall Office 313  
Office Phone: 352-273-0717  
Cell: 352-514-4044  
Email: [lidsky@law.ufl.edu](mailto:lidsky@law.ufl.edu)

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

**Class Meeting Time and Location:** MoTuWeThu, 9-9:55 am, Holland Hall 285C (Exam date: 12/5/23)

**First Day Assignment:** Read the syllabus. Read the Constitution.

**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, stare 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 three exams 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 completion of two in-class 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 4-hour, open-book, take-home exam. It will consist of four essay questions worth 50 points each. It will not be space-limited, but you will find it very time-pressured. Don't count on being able to look things up during the exam. 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.bluer.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 by the Bar in determining whether you will gain admission. Act accordingly.

### **Statement on Preferred Name:**

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 am happy to refer to you as you direct me.

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](https://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](mailto: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.

#### **OBSERVANCE OF RELIGIOUS HOLIDAYS:**

UF Law respects students' [observance of religious holidays](#). I will be celebrating the Jewish holidays, and you can anticipate that I will cancel (and make up) classes as necessary for that observance.

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

#### **STATEMENT RELATED TO ACCOMODATIONS 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>.

## 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. I may add assignments to the course during the semester based on the actions of the Supreme Court.

| 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)<br>Review the website <a href="http://scotusblog.com">scotusblog.com</a> |
|                                    |                                                                 |                                      |                                                                                |                                                                                                                               |
| HISTORY/OVERVIEW                   | Historical Setting                                              | <b>1-10</b>                          |                                                                                |                                                                                                                               |
|                                    | Organization of the Constitution                                | <b>10-13</b>                         |                                                                                |                                                                                                                               |
|                                    | Methods of Interpretation                                       | <b>13-23</b>                         |                                                                                |                                                                                                                               |
|                                    | Illustrative Case                                               | <b>23-36</b>                         | <u>D.C. v. Heller</u>                                                          | 2 <sup>nd</sup> Amendment                                                                                                     |
|                                    | Points for Discussion +                                         | <b>36-43</b>                         |                                                                                |                                                                                                                               |
|                                    | Illustrative Case #2                                            | <a href="#">Link</a>                 | NY State Rifle and Pistol Ass'n v. Bruen:                                      | 2 <sup>nd</sup> Amendment                                                                                                     |
|                                    |                                                                 |                                      |                                                                                |                                                                                                                               |
| THE FEDERAL COURTS: Judicial Power | Judicial Review                                                 | <b>45-69</b>                         | <u>Marbury v. Madison</u> (1803)<br><br><u>Martin v. Hunters Lessee</u> (1816) | Article III generally<br>Article III, §1, §2<br>Judiciary Act of 1789                                                         |

|                                       |                                                               |                  |                                                                                                                                                                     |                                        |
|---------------------------------------|---------------------------------------------------------------|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
|                                       |                                                               |                  | <u>Cooper v. Aaron</u><br>(1958)                                                                                                                                    |                                        |
|                                       | Obstacles to Judicial Review: The Political Question Doctrine | <b>70-80</b>     | <u>Baker v. Carr</u><br><u>Nixon v. U.S.</u>                                                                                                                        |                                        |
|                                       | Case & Controversy Requirement                                | <b>80-85</b>     | <u>Muskrat v. U.S.</u>                                                                                                                                              |                                        |
|                                       | <i>Omit</i> Standing                                          | Omit 85-100      |                                                                                                                                                                     |                                        |
|                                       | Omit Control over Jurisdiction                                | Omit pp. 100-106 |                                                                                                                                                                     |                                        |
|                                       |                                                               |                  |                                                                                                                                                                     |                                        |
| FEDERALISM: FEDERAL LEGISLATIVE POWER | Express & Implied Powers                                      | <b>111-132</b>   |                                                                                                                                                                     | Art. I generally<br>Art. 1, §8, Cl. 18 |
|                                       | Commerce Power: Early View                                    | <b>132-137</b>   | <u>Gibbons v. Ogden</u>                                                                                                                                             | Art. 1, §8, Cl. 3                      |
|                                       | Commerce Power: Middle Years                                  | <b>138-153</b>   | <u>US v. EC Knight &amp; Co</u><br><u>Shreveport Rate Case</u><br><u>Champion v. Amens</u><br><u>Hammer v. Dagenhart</u><br><u>Carter v. Carter Coal Co.</u>        |                                        |
|                                       | New Deal & Beyond                                             | <b>154-167</b>   | <u>NLRB v. Jones &amp; Laughlin Steel</u><br><u>US v. Darby</u><br><u>Wickard v. Filburn</u><br><u>Heart of Atlanta Motel v. US</u><br><u>Katzenbach v. McClung</u> |                                        |

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|-----------------------|-------------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|--|
|                       | Recent Cases—New Limits? Or Old?          | <b>168-204</b>                                                                      | <u>US v. Lopez</u><br><u>US v. Morrison</u><br><u>Gonzales v. Raich</u><br><u>Ntl Fed of Indep. Busn. V. Sebelius</u> |  |
|                       | State Immunity from Federal Reg.          | <b>242-264, 274-279</b>                                                             | <u>Ntl. League of Cities v. Usery</u><br><u>Garcia v. SAMTA</u><br><u>NY v. US</u><br><br><u>Printz. V. US</u>        |  |
|                       |                                           |                                                                                     |                                                                                                                       |  |
| LIMITS ON STATE POWER | Preemption of State by Fed                | <b>281-290</b>                                                                      | <u>Silkwood v. Kerr-McGee</u>                                                                                         |  |
|                       | Dormant Commerce Clause: Early Cases      | <b>290-295</b>                                                                      | <u>Gibbons v. Ogden</u>                                                                                               |  |
|                       | DCC: Uniform Ntl. Standard                | <b>296-301</b>                                                                      | <u>Cooley v. Board of Wardens</u><br><u>Wabash St. L. &amp; P. Ry. Co. v. Ill</u>                                     |  |
|                       | DCC: Discrim. Against Interstate Commerce | <b>302-308</b>                                                                      | <u>Dean Milk &amp; Co. v. Madison</u><br><u>Hughes v. Oklahoma</u>                                                    |  |
|                       | DCC: Excessive Burden on IC               | <b>308-321</b>                                                                      | <u>SC St. Hwy. Dept v. Barnwell Bros</u><br><u>So. Pac. V. Az.</u><br><u>Kassell v. Consol. Freightways</u>           |  |
|                       | DCC: The Latest Supreme Court Decision    | <b>Read full case (58 pages) at link</b><br><a href="https://www.">https://www.</a> | <u>Ntl. Pork Producers Council v. Ross</u>                                                                            |  |

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|----------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|---------------------------|
|                      |                                                               | <a href="https://gibsondunn.com/wp-content/uploads/2023/05/21-468_5if6.pdf">gibsondunn.com/wp-content/uploads/2023/05/21-468_5if6.pdf</a> |                                                                                                                 |                           |
|                      | DCC: Meaning of IC                                            | <b>321-330</b>                                                                                                                            | <u>City of Phila. V. NJ Camps Newfound</u>                                                                      |                           |
|                      | DCC: Market-Participant Exception                             | <b>330-336</b>                                                                                                                            | <u>So-Central Timber Dev v. Wunnicke</u>                                                                        |                           |
|                      | DCC: Congressional Consent                                    | <b>336-340</b>                                                                                                                            | <u>Prudential Ins. Co. v. Benjamin</u>                                                                          |                           |
|                      | Privileges & Immunities                                       | <b>340-349, 358-360</b>                                                                                                                   | <u>Baldwin v. Fish &amp; Game Piper</u>                                                                         | Art. IV, §2               |
|                      | St. Power to Reg House/Sen                                    | Omit CB Reading                                                                                                                           | <u>Moore v. Harper</u>                                                                                          | Art. I, §4                |
|                      |                                                               |                                                                                                                                           |                                                                                                                 |                           |
| SEPARATION OF POWERS | Intro                                                         | <b>361-362</b>                                                                                                                            |                                                                                                                 | Art. I, §1<br>Art. II, §1 |
| PRESIDENTIAL POWERS  | Domestic Affairs [Omit Foreign Affairs & Executive Privilege] | <b>363-375</b>                                                                                                                            | <u>Youngstown Sheet &amp; Tube v. Sawyer</u>                                                                    |                           |
|                      | Foreign Affairs                                               | <b>375-393</b>                                                                                                                            | <u>Dames &amp; Moore v. Regan;</u><br><u>Curtiss-Wright;</u><br><u>Goldwater v. Carter</u>                      |                           |
| OMIT                 | In Wartime                                                    | <b>OMIT</b>                                                                                                                               |                                                                                                                 |                           |
|                      | Executive Privilege                                           | <b>410-416</b>                                                                                                                            | <u>US v. Nixon</u>                                                                                              |                           |
|                      | Executive Immunity                                            | <b>416-452</b>                                                                                                                            | <u>Nixon v. Fitzgerald;</u><br><u>Clinton v. Jones;</u><br><u>Trump v. Vance;</u><br><u>Trump v. Mazars USA</u> |                           |

| Hot Topic Discussion | The Trump Prosecutions                |                                       |                                                                                          | Materials to be assigned                                                                                                                                                                                  |
|----------------------|---------------------------------------|---------------------------------------|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      |                                       |                                       |                                                                                          |                                                                                                                                                                                                           |
| INDIVIDUAL RIGHTS    | Introduction                          | <b>553-561</b>                        | <u>Barron v. Baltimore</u>                                                               |                                                                                                                                                                                                           |
|                      | Privileges or Immunities              | <b>561-571</b>                        | <u>Slaughterhouse cases</u>                                                              |                                                                                                                                                                                                           |
|                      | Incorp. Of BOR                        | <b>571-594</b>                        | <u>Adamson v. CA</u><br><u>McDonald v. City of Chicago</u>                               |                                                                                                                                                                                                           |
|                      |                                       |                                       |                                                                                          |                                                                                                                                                                                                           |
| DUE PROCESS          | Substantive/ Econ Liberty             | <b>595-612</b>                        | <u>Lochner</u><br><u>West Coast Hotel v. Parrish</u><br><u>Williamson v. Lee Optical</u> | 14 <sup>th</sup> Amendment                                                                                                                                                                                |
|                      |                                       |                                       |                                                                                          |                                                                                                                                                                                                           |
|                      | Substantive/ Fund. Rights Early Cases | <b>613-620</b>                        | <u>Pierce v. Soc. Of Sisters</u><br><u>Skinner v. Oklahoma</u>                           |                                                                                                                                                                                                           |
|                      | Fund Rights Contraception & Abortion  | <b>620-651</b><br><b>Omit 652-667</b> | <u>Griswold v Ct.</u><br><u>Roe v. Wade</u>                                              | Dobbs v. Jackson Women's Health Org.<br><a href="https://reason.com/wp-content/uploads/2022/06/2022-Dobbs-Distribution.pdf">https://reason.com/wp-content/uploads/2022/06/2022-Dobbs-Distribution.pdf</a> |
|                      | Fund Rights Marriage & Family         | <b>667-680</b>                        | <u>Loving v. Va. Michael H v. Gerald D</u>                                               |                                                                                                                                                                                                           |
|                      | Fund Rights Sexuality                 | <b>681-706, 725-731</b>               | <u>Lawrence v. Texas</u><br><u>Obergefell v. Hodges</u>                                  |                                                                                                                                                                                                           |
|                      | Procedural Due Process                | <b>733-743</b>                        | <u>Cleveland Bd. Of Ed. v. Loudermill</u>                                                |                                                                                                                                                                                                           |
|                      |                                       |                                       |                                                                                          |                                                                                                                                                                                                           |
| EQUAL PROTECTION     | Introduction                          | <b>745-750</b>                        |                                                                                          | 14 <sup>th</sup> Amendment                                                                                                                                                                                |
|                      | Application to Fed. Govt.             | <b>750-753</b>                        | <u>Bolling v. Sharpe</u>                                                                 |                                                                                                                                                                                                           |

|                 |                                         |                                                     |                                                                                     |                                                                                                                                                                                |
|-----------------|-----------------------------------------|-----------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | Rational Basis Review                   | <b>753-765</b>                                      | <u>Railway Exp Agency v. NY NYCTA v. Beazer</u>                                     |                                                                                                                                                                                |
|                 | Racial Discrimination: Facial           | <b>767-783</b>                                      | <u>Dred Scott v. Sandford</u><br><u>Strauder v. WVa</u><br><u>Korematsu v. US</u>   |                                                                                                                                                                                |
|                 | Racial Discrimination, Purpose & Effect | <b>783-793</b>                                      | <u>Yick Wo v. Hopkins</u><br><u>Washington v. Davis</u>                             |                                                                                                                                                                                |
|                 | Racial Separate but Equal Laws          | <b>793-807</b>                                      | <u>Plessy v. Ferguson</u> ;<br><u>Brown v. Bd of Ed. of Topeka</u><br><u>Loving</u> |                                                                                                                                                                                |
|                 | Affirmative Action                      | <b>808-822, Omit remainder of casebook section.</b> | <u>City of Richmond v. JA Croson Co</u><br><br><u>Students for Fair Admissions</u>  | Read <a href="https://reason.com/wp-content/uploads/2023/06/Students-for-Fair-Admission.pdf">https://reason.com/wp-content/uploads/2023/06/Students-for-Fair-Admission.pdf</a> |
|                 | Sex Discrimination                      | <b>850-865, 872-875</b>                             | <u>Craig v. Boren</u><br><u>US v. Va. Orr v. Orr</u>                                |                                                                                                                                                                                |
|                 | Alienage                                | <b>875-879</b>                                      | <u>Graham v. Richardson</u>                                                         |                                                                                                                                                                                |
|                 | Sexual Orientation                      | <b>891-902</b>                                      | <u>Romer v. Evans</u>                                                               |                                                                                                                                                                                |
|                 |                                         |                                                     |                                                                                     |                                                                                                                                                                                |
| First Amendment | Political Speech                        |                                                     | <u>New York Times v. Sullivan</u>                                                   |                                                                                                                                                                                |

#### Addendum: Con Law topics covered on the Multistate Bar Exam

##### I. The nature of judicial review

A. Organization and relationship of state and federal courts in a federal system

B. Jurisdiction

1. Congressional power to define and limit

2. The Eleventh Amendment and state sovereign immunity

C. Judicial review in operation

1. The “case or controversy” requirement, including the prohibition on advisory opinions, standing, ripeness, and mootness

- 2. The “adequate and independent state ground”
  - 3. Political questions and justiciability
- II. The separation of powers
  - A. The powers of Congress
    - 1. Commerce, taxing, and spending powers
    - 2. War, defense, and foreign affairs powers
    - 3. Power to enforce the 13th, 14th, and 15th Amendments
    - 4. Other powers
  - B. The powers of the president
    - 1. As chief executive, including the “take care” clause
    - 2. As commander in chief
    - 3. Treaty and foreign affairs powers
    - 4. Appointment and removal of officials
  - C. Federal interbranch relationships
    - 1. Congressional limits on the executive
    - 2. The presentment requirement and the president’s power to veto or to withhold action
    - 3. Nondelegation doctrine
    - 4. Executive, legislative, and judicial immunities
- III. The relation of nation and states in a federal system
  - A. Intergovernmental immunities
    - 1. Federal immunity from state law
    - 2. State immunity from federal law, including the 10th Amendment
  - B. Federalism-based limits on state authority
    - 1. Negative implications of the commerce clause
    - 2. Supremacy clause and preemption
    - 3. Authorization of otherwise invalid state action
- IV. Individual rights
  - A. State action
  - B. Due process
    - 1. Substantive due process
      - a. Fundamental rights
      - b. Other rights and interests
    - 2. Procedural due process
  - C. Equal protection
    - 1. Fundamental rights
    - 2. Classifications subject to heightened scrutiny
    - 3. Rational basis review
  - D. Takings
  - E. Other protections, including the privileges and immunities clauses, the contracts clause, unconstitutional conditions, bills of attainder, and ex post facto laws
  - F. First Amendment freedoms
    - 1. Freedom of religion and separation of church and state
      - a. Free exercise
      - b. Establishment
    - 2. Freedom of expression
      - a. Content-based regulation of protected expression
      - b. Content-neutral regulation of protected expression
      - c. Regulation of unprotected expression
      - d. Regulation of commercial speech

e. Regulation of, or impositions upon, public school students, public employment, licenses, or benefits based upon exercise of expressive or associational rights

f. Regulation of expressive conduct

g. Prior restraint, vagueness, and overbreadth

3. Freedom of the press

4. Freedom of association