

Litigating the Pandemic:
How to Challenge and Defend Government Action
Syllabus

Description

Drawing from the fast-paced litigation over the most high-profile pandemic measures, this course explores what to do as a lawyer when government action imposes substantial burdens on life. Whether certain lawsuits are viable in an emergency context, and how best to prosecute or defend them, will be the central themes of each class. Course materials will include a variety of opinions and pleadings at various stages of legal and administrative proceedings in federal and state courts, to equip students with knowledge on how to achieve results in the most appropriate and expedited manner.

Instructor

Ray Treadwell, Chief Deputy General Counsel
Executive Office of Florida Governor Ron DeSantis
E-mail: ray.treadwell@eog.myflorida.com

Dates

August 15-19, 2022

Time

9 a.m. to 11:50 a.m. M, T, W, Th
9 a.m. to 10:50 a.m. F

Office Hours

2:30 p.m. to 4:30 p.m. M, T, W, Th and by appointment other times

Required Reading

Students will be provided a variety of judicial opinions and court pleadings related to the aspect(s) of the pandemic under discussion each day. Students will spend approximately two hours reading in preparation for every hour of class.

Learning Outcomes

After completing this course, a student should be able to plead a lawsuit or

administrative challenge to government action, litigate a preliminary injunction motion, and understand the legal frameworks and major doctrines that will decide such cases.

Evaluation and Grading

The grade will be determined by combining in-class participation (25%) and performance on the final exam (75%).

Final Exam

The final exam will be a written exam with a few short-essay questions. Students must apply their understanding of constitutional structure, statutory-based claims, and litigation strategy. The law school policy on exam delays and accommodations can be found [here](#).

Attendance

Attendance will be taken at each class. Students with a legitimate excuse for missing a class must email the instructor in advance.

Grading Policy

This course follows the Levin College of Law's grading policies found [here](#). This chart describes the letter grade/grade point equivalent in place:

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)	0.00

Students will succeed by keeping up with the class reading assignments, actively participating in each class, and concisely but persuasively answering the questions on the final exam.

Accommodations

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible.

Also, with prior notification to the professor, students are entitled to be excused from class or other scheduled academic activity to observe a religious holiday of their faith. Students are entitled to have a reasonable amount of time to make up the material or activities covered in their absence. Students will not be penalized due to absence from class or other scheduled academic activity because of religious observances.

Academic Honesty

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>.

Evaluation

Students are expected to provide respectful feedback on the quality of instruction by completing course evaluations through GatorEvals. Guidance on how to give feedback is [here](#). 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 through ufl.bluer.com/ufl/. Summaries of course evaluation results will be available [here](#).

Recordings

Students can record class lectures **only** (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. Any other purpose is prohibited. A student cannot publish a recorded lecture without the instructor's written consent.

A "class lecture" is an educational presentation intended to inform or teach enrolled students about a particular subject (including instructor-led discussions that form part of the presentation) and delivered by an

instructor hired or appointed by the University of Florida, or by a guest instructor, as part of a University of Florida course. A class lecture excludes lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving only student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without the instructor's permission 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 to another student in the same class. A recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, a media platform, including social media or a book, magazine, newspaper, leaflet, or third-party note/tutoring service. A student who publishes a recording without written consent may be sued by a person injured by the publication and disciplined under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

Disclaimer

This syllabus represents the instructor's current plans and objectives. Plans may need to change to enhance the course learning opportunity.

Schedule (Detailed)

Monday – Beaches & Bars

Article II, s. 6, Florida Constitution

Article IV, s. 1, Florida Constitution

Fla. Stat. § 252.36 (2020) Emergency management powers of the Governor.
Various Executive Orders by Governor DeSantis (20-28, 20-71, 20-91, 20-112, 20-120, 20-123)

Ullhfelder v. DeSantis, Case No. 2020-CA-000552 (Fla. 2nd Cir. Ct.) – Motion to Dismiss; Response to Motion to Dismiss

Orlando Bar Group, LLC v. DeSantis, Case No: 2020-CA-010922-O (Fla. 8th Cir. Ct.) – Oral Argument Transcript

The Boars Lair Saloon v. DeSantis, Case No. CACE-20-011518 (Fla. 17th Cir.

Ct.) – Order Denying Preliminary Injunction

Discussions on the constitutional and statutory powers of the Governor and Legislature to respond in an emergency, and whether the line-drawing between essential and non-essential businesses is susceptible to challenge. In-class arguments over the rationality of certain line-drawing during the pandemic.

Tuesday – Churches & Synagogues

S. Bay United Pentecostal Church v. Newsom, 140 S. Ct. 1613 (2020)
Calvary Chapel Dayton Valley v. Sisolak, 140 S. Ct. 2603 (2020)
Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63 (2020)
S. Bay United Pentecostal Church v. Newsom, 141 S. Ct. 716 (2021)
Tandon v. Newsom, 141 S. Ct. 1294 (2021)

Discussion on the limitations and obligations of the judiciary to scrutinize government infringements on fundamental rights in an emergency.

Wednesday – Cruise Lines & Eviction Moratoriums

State of Florida v. Becerra, Case No. 8:21-cv-839-SDM-AAS (M.D. Fla.) – Complaint; Motion for Preliminary Injunction
Alaska Tourism Restoration Act, Pub. L. 117-14
Alabama Ass'n of Realtors v. United States Dep't of Health & Hum. Servs., No. 21-5093, 2021 WL 2221646 (D.C. Cir. June 2, 2021)
Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2320 (June 29, 2021)
Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485 (Aug. 26, 2021)

Discussion on the tension between federal, state, and local interests in an emergency, the scope of agency authority, and the best methods to challenge or defend federal administrative action.

Thursday – Schools

Florida Education Association v. DeSantis, Case No. 1D20-2470 (Fla. 1st DCA) – Order Reinstating the Stay Pending Appeal; Order Reversing the Preliminary Injunction

Governor DeSantis, Executive Order No. 21-175

Florida Department of Health, Emergency Rule 64DER21-12

Scott v. DeSantis, Case No. 2021-CA-001382 (Fla. 2nd Cir. Ct.) – Final Judgment (Sept. 2, 2021)

Florida Department of Health, Emergency Rule 64DER21-15

Dortch v. Alachua County School Board, 330 So. 3d 976 (Fla. 1st DCA 2021)

Fla. Stat. §§ 120.52(8), 120.54(4), 120.56(1),(3),(5)

School Boards v. Fla. Dept. of Health, Case No. 21-3066RE (Fla. Div. of Admin. Hrgs.) – Petition to Determine Invalidity of Emergency Rule; Select Portions of Hearing Transcript (expert witnesses)

Fla. Stat. § 1002.20(3)(n) (enacted Nov. 18, 2021, expires June 1, 2023)

Discussion on the justiciability of “safety,” the standing required to bring suit over questions of safety, the constitutional hierarchy of decision-makers on laws governing safety, and the best methods to challenge or defend state administrative action.

Friday – Vaccine & Mask Mandates

State of Florida v. Dept. of Health & Human Servs., Case No. 3:21-cv-2722 (N.D. Fla. 2021) – Order Denying Motion for Preliminary Injunction

Biden v. Missouri, 142 S. Ct. 647 (2022)

NFIB v. Dept. of Labor, 142 S. Ct. 661 (2022)

Machovec v. Palm Beach Cty., 310 So. 3d 941 (Fla. 4th DCA 2021)

Green v. Alachua Cty., 323 So. 3d 246 (Fla. 1st DCA 2021)

[SKIM THIS CASE] *Health Freedom Defense Fund, Inc. v. Biden*, Case No. 8:21-cv-1693 (M.D. Fla. 2022) – Order Granting Summary Judgment

Discussion on the role of policy in judicial review and statutory interpretation, the predominance of preliminary injunctions, forum shopping, and the viability of emergency justification for government mandates or restrictions as time proceeds.

◇ ◇ ◇