

**CONSTITUTIONAL LAW (Spring 2018)**  
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Constitutional law, as a legal discipline and field of study, is exceptionally important, especially today. From health care to immigration to transgender discrimination to drones to education and beyond, constitutional law is at the heart of American public policy, not to mention the newspaper headlines. Many of the topics and doctrines covered are complicated and, frankly, convoluted at times. In this course we will explore some of the most sensitive topics, such as abortion, affirmative action, antidiscrimination, gun rights, and privacy. This course surveys the United States Constitution, how it is interpreted, and who interprets it. Following the text of the Constitution, the course begins with popular sovereignty as expressed in the Preamble. Next the course examines the vesting and limitation of legislative powers in Article I, executive power in Article II, and judicial power in Article III, as well as the relationship of the federal government to the States. Then the course examines the Bill of Rights with a focus on the First Amendment. The course concludes by examining the Fourteenth Amendment's Due Process and Equal Protection Clauses. Please note that the breadth of constitutional law means that even in a four-credit course such as this there will be entire topics that go largely if not entirely unexplored. Many class topics could be entire courses, such as the first amendment. This class is a survey of American constitutional law and I encourage you to explore the areas you will sample here more fully during your second and third years of law school. My hope is that you will find this course fun—yes, we will have fun!—interesting, and important. Nevertheless, without a doubt, you will also find it among the most difficult of your first year, if not your entire law school career. This is due to at least two reasons. First, we will cover a great deal of dense material, with substantial reading assignments for each class, and we meet three days in a row. You will need to set aside a minimum of 2-3 hours on Monday, Tuesday, and Wednesday to prepare for classes the following day, so please plan accordingly to not only read, but also to reflect upon and internalize the reading assignments. Second, the material can be very complicated, at times, especially because for many of you, this is your first exposure to constitutional law doctrine and cases. The good news is that we are in this together, and I believe you will find our time to be intellectually rigorous and rewarding.

**Class Hours:** Tuesdays and Thursdays, 9-10:30AM Wednesdays 1-2:30PM

**Office Hours:** Wednesdays 11-12:30 and by appointment. My office is located in BLB 116. (Please note that occasionally office hours will not be held from noon-12:30 due to faculty meetings.)

**Required Materials:** In addition to the constitutional provision(s) at issue, the text is Choper, Fallon, Dorf & Schauer, *Leading Cases in Constitutional Law* (West 2017). The syllabus, also a course outline, lists tentative assignments by day though this is subject to change over the semester. Sometimes additional reading will be posted on TWEN. Boldface denotes leading cases. Each assignment includes questions to guide your reading. You are required to register for TWEN and check it each time you prepare for class. You are responsible for all materials posted to TWEN.

**Learning Outcomes:** At the end of this course, you will understand:

- Judicial review – the scope and limits of the judicial power to resolve constitutional issues;
- Separation of powers – the relationship among branches within the federal government;

- Federalism – the relationship between the federal government and state governments;
- Equality – the scope and limits of constitutional claims to equal protection of the laws, including issues of race discrimination and sex discrimination;
- Liberty – the scope and limits of constitutional claims to liberty of various kinds, including rights of personal autonomy and the family;
- Method – available methods of constitutional argument, interpretation, analysis, and/or decision;
- Context – connections among the foregoing concepts, and how these lessons can be understood within relevant historical, social, political, and/or theoretical contexts.

**Assessment.** Your grade is primarily based upon the *final exam*, but *participation* will also be a factor. The *final exam* measures a four-hour, open-book, take-home exam that will be conducted on May 10, 2018 from 9AM to 1PM. More details will be provided as the exam date approaches. *Participation* includes three components: (1) *class discussion*; (2) *opening/response briefs and arguments*; and (3) *mock midterm exam*. You will not receive points or letter grades for *participation*, but failure to satisfy any component will result in the lowering of your grade by 1/3. So, for example, if you receive an A on the final exam but you do not complete the mock midterm exam, you would receive an A- as your final grade. More details about each are provided below.

- **Class Discussion:** Each session will be a mix of traditional lecture and Socratic questioning. It is very important that you have read the material and be prepared to discuss it in class. I cold call at random. If you are unprepared, you will be expected to call on co-counsel (so speak to a classmate in advance—consider this the first of many networking opportunities you should be engaging in with your colleagues). I do this not to cause anxiety, but because I believe one of the most important skills for successful lawyering is the ability to think and speak in the moment. Our class is a safe space for you to practice and hone this skill, one that will set you apart from others. Also, I believe each of you has an important voice to share—you would not have been admitted to this law school otherwise—and we want to hear from you. That said, due to the sensitive nature of some topics, if there is a subject matter about which you do not wish to discuss in class, please notify me at least 24 hours in advance by email. Final grades may be increased or lowered by 1/3 for exceptional contributions or poor contributions, a determination which is solely in my discretion.
- **Opening/Response Briefs and Arguments:** You are required to orally present in class and write two briefs—(1) an opening brief (in support of the majority) and (2) a response brief (in support of the dissent or, if unanimous, the losing party). A hardcopy of your argument must be turned in during the class BEFORE you are assigned to do the opening or the response arguments. Topic selections will be made on a sign-up sheet circulated in class, and they are final unless a classmate will swap. (*You must coordinate this, do not contact me to facilitate if you need to trade dates.*) To prepare your opening/response written briefs, you do not need to conduct any additional research beyond reading the full opinion in its entirety. You can find opinions on Westlaw or another website I recommend is Oyez: <https://www.oyez.org/> Your brief need not be in official Supreme Court brief format. Instead, you should summarize in a few paragraphs (500 words max—and it is fine if it is less) the key issues presented in the case you've selected and explain why the Court should decide in your favor. You are fully responsible for all work on the briefs, and your tutors are not permitted to review them in advance of submission. The opening/response briefs and arguments will not be graded but you must complete them or your grade will be reduced. See the Feedback Rubric

for more guidance.

- **Mock Midterm Exam:** The mock midterm exam will be administered as a part of regularly scheduled class hours. You will receive group feedback from teaching assistants and you will have the option to meet with them one-on-one for individual feedback. Grades are subject to deductions for unprofessional conduct. Please refer to the attached Course Rubric for more information. You also will receive formative assessment via a practice mid-term exam. The practice mid-term is not graded but you must complete it or your class discussion grade will be reduced. Tutors will provide group and individual feedback on the practice mid-term exam. See the Feedback Rubric for more guidance.

**Laptops:** To improve learning outcomes, laptops and all other electronic devices are banned in this class. For an explanation why, please read David Cole's op-ed *Laptops v. Learning*: <http://www.washingtonpost.com/wpdyn/content/article/2007/04/06/AR2007040601544.html>

**Attendance:** You are expected to attend all class sessions. If you fail to attend at least 80% of class meetings you will be in violation of ABA and Law Center policy and may be dropped from the course. I will keep track of attendance by passing around a sign-in sheet. It is an honor code violation to sign in for another student. Late arrivals may be treated as absences. I understand that almost everyone has to miss class from time to time so there is no need to contact me unless you will exceed the allowable number of absences. But I want to stress that you will almost certainly find this course much more difficult if you do not attend regularly, and in any event you will be in default of your obligations to contribute to class discussion for the benefit of your classmates. If you have special circumstances requiring a more extended absence, please do not hesitate to speak with me about it. You are responsible for keeping track of your own absences—please do not contact me to ask how many classes you have missed.

**Sensitive Topics:** More than any other course in the first year of law school, Constitutional Law deals with sensitive topics about which people have strongly held and widely divergent opinions. I find that class discussion is the most productive when students feel free to try out positions with which they (or others) may not agree and to test the assumptions underlying their own (or others') views. For this reason, class discussion is strictly "off the record." Outside of the classroom, you may not attribute any statements made in class to any of your classmates. And any audio or visual recording of class is prohibited. The only exception to this policy is that I will arrange to record any make-up classes that might become necessary. Please also refer to "Class Participation" above, if you wish to not be called on about a particularly sensitive topic.

**Movie Wednesdays:** On four Wednesdays during the semester, we will enjoy a 20-30 minute documentary about the topic of the day, in addition to regular class discussion. If you must miss a movie Wednesday, please email me for access to view the documentary on your own.

**Tutors:** Ryan Graham and Katherine Kyler are tutors for this course. Their office hours and contact information will be provided during our first class. You may meet with tutors to discuss questions about material covered in class, exam preparation, and feedback about your performance on the opening/response arguments after you complete your presentation. Tutors also will be available to discuss your work on the practice midterm.

**ADA Accommodations:** The Law Center is committed to meeting the needs of students with physical, learning and other disabilities and provides appropriate accommodations and

services tailored to each person's specific requirements. Please do not inform me about your disability as it may compromise the integrity of anonymous grading. Please contact the Center For Students With Disabilities at (713) 743-5400 for more information.

**Counseling and Psychological Services.** The Law Center has asked me to include this information in the syllabus: Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus.

[http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)