

# Constitutional Law

## Law 7540, sec. 1

Professor Douglas Spencer  
University of Connecticut

Spring 2018

**Class room**  
CHASE 110  
Mon. & Weds. 10:30a-12:30p

**Contact**  
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Office Hours: Monday 1:30-2:30p  
(Tuesday 1:30-2:30p)

### Course Description

This course is an introduction to American constitutional law. Topics include: the role of the judiciary and other institutions in interpreting and applying the Constitution of the United States; theories of constitutional interpretation; the practice and meaning of judicial review in a political democracy; structural and individual rights approaches to constitutional limitations on government authority; and the public-private distinction in constitutional law.

The course will be divided into sections that focus on both the structure of American government and the individual rights and liberties protected by the Constitution. We will begin by studying the division of authority between the three branches of the federal government, and also explore the concept of federalism - the relationship between the federal government and the states. The course will introduce you to controversies surrounding the judicial power and methods of constitutional interpretation. Finally, we will learn about various constitutionally guaranteed rights. This will include an introduction to the structure of constitutional protections, equal protection, an examination of fundamental rights under the Due Process Clause, and an overview of First Amendment rights.

Because constitutional law is far too large a field to cover in a single semester, we will omit enormous swaths of interesting and important doctrine, many if not all of which are covered in other courses at UConn. These include: freedom of the press (Media Law); the rights of criminal defendants (Criminal Procedure); the jurisdiction and procedure of the federal courts (which we will discuss briefly, but which is mainly covered in Federal Courts and Civil Procedure); and the Takings Clause (Property), among others.

## **Course Objectives**

1. To familiarize you with the fundamental premises and design of the constitutional system and government of the United States.
2. To expose you to the guiding principles and applicable doctrines of select subfields of constitutional law.
3. To cultivate your ability to identify latent constitutional issues.
4. To equip you with the intellectual tools necessary to properly conceptualize and analyze constitutional issues.
5. To foster an informed perspective on the nature and limits of constitutional judicial decision-making.

## **Required Text**

ERWIN CHEMERINSKY, CONSTITUTIONAL LAW, (5th ed., 2017)

## **Supplemental Texts**

You may find helpful as supplements one or more of the following:

- ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES (2017)
- LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW (1999) (very detailed but does not cover Equal Protection or Substantive Due Process)

## **TWEN**

You can find more information about the course on TWEN, including copies of the syllabus, any announcements about changes in the reading schedule, and any supplemental readings that I assign. I will also use TWEN to post announcements about the course and the material we are covering from time to time.

## **Classroom Rules and Expectations**

The principal expectation is that you will be prepared and participate in the class discussion. Class attendance and participation are important parts of this course and will factor into your grade.

Laptop use is permitted in the classroom. In my experience, I have found that laptops make it easier to keep and organize notes and outlines. However, please note that laptops make it very easy to get distracted (for you and those behind you), and also facilitate the common law student pitfall of transcribing class discussions rather than engaging with them. I will trust you all to make considered judgments on your use of laptops during class.

## Final Exam

The final exam will be an in-class, three-hour exam, tentatively scheduled for Thursday, May 17. The time and location is still to be determined. The exam will be open-book. You will also be permitted to use one sheet of paper with notes. Students who will perform well on the exam will be able to:

1. Identify issues.
2. Apply doctrine or rules to the issue.
3. Make an argument that is not conclusory (every argument should include a “because” or something similar).
4. Identify and consider counter-argument(s).
5. Explain why argument is still valid in light of the counter-argument(s).

## Students With Disabilities

According University of Connecticut policy, the university “is committed to achieving equal educational opportunity and full participation for persons with disabilities.” Assurance of equal educational opportunity rests upon legal foundations established by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. By federal law, a person with a disability is any person who (1) has a physical or mental impairment; (2) has a record of such impairment; or (3) is regarded as having such an impairment which substantially limits one or more major life activities such as self-care, walking, seeing, hearing, speaking, breathing, or learning.” All students with disabilities are entitled to a learning environment that provides for reasonable accommodation of their disabilities. Any student who requires special accommodations due to a disability should contact the Director of Student Services, Jennifer Cerny, at (860) 570-5244 or [jennifer.cerny@uconn.edu](mailto:jennifer.cerny@uconn.edu). For more information regarding the accommodations process at UConn Law, you may also visit the Disability Services website at <https://www.law.uconn.edu/student-life-resources/student-services/disability-services>.

## Class Cancellations

Class will be cancelled only if absolutely necessary. If it becomes necessary to cancel class, students will be notified by email. A banner will also be added to the Law School’s website (<http://law.uconn.edu>). If the weather is inclement, students should call the Law School hotline at (860) 570-5145. Note that the University will send general announcements via text to those who have registered for the notification service at [alert.uconn.edu](http://alert.uconn.edu). Individual students who are not comfortable driving in the existing weather conditions may exercise their discretion not to do so.

## Course Schedule

The following schedule is tentative and will be updated as we move through the course. I will announce all changes in class and on TWEN.

### **Part I: Federal Legislative Power**

Jan. 22: Constitutional Interpretation & Judicial Power

CB xli-lvii (The Constitution of the United States)

CB 1-9 (*Marbury v. Madison*)

Jan. 24: Necessary and Proper Clause

CB 115-126 (*McCulloch v. Maryland*)

CB 150-156 (*U.S. v. Comstock*)

Jan. 29: Commerce Clause I

CB 156-180

Jan. 31: Commerce Clause II

CB 182-216

Feb. 5: 10th Amendment and Limits on Congressional Power Over the States

CB 217-237

Feb. 7: Limits on State Power (preemption, dormant commerce clause)

CB 451-489

Feb. 12: Taxing & Spending Power

CB 242-245

CB 129-150 (*NFIB v. Sebelius*)

### **Part II: Federal Executive Power**

Feb. 14: Presidential Power

CB 321-341

Feb. 19: Congressional Authority Over the President

CB 347-371 (non-delegation and legislative veto)

## **Part III: Federal Judicial Power**

Feb. 21: Limits of Federal Judicial Power

CB 11-40

Feb. 26: Article III and Justiciability (Standing)

CB 40-67

Feb. 28: Article III and Justiciability (Ripeness, Mootness, and Political Questions)

CB 81-105

CB 110-114 (*Nixon v. U.S.*)

## **Part IV: Constitutional Protection of Civil Rights and Civil Liberties**

Mar. 5: State Action

CB 567-612

Mar. 7: SNOW DAY (no class)

Mar. 12-16: SPRING BREAK (no class)

Mar. 19: Equal Protection Framework (rational basis)

CB 725-754

Mar. 21: SNOW DAY (no class)

Mar. 26: History of Reconstruction and Strict scrutiny

CB 754-781

Mar. 28: facially Discriminatory vs. facially Neutral Laws

CB 781-803

Apr. 2: Classification Benefiting Minorities: Contracting & Education

CB 833-882

Apr. 4: Gender Classifications

CB 883-922

Apr. 9: Due Process & Economic Rights

CB 619-626, 628-632, 635-647

Apr. 11 – CLASS #1 (8:30 a.m.): Due Process & Fundamental Rights

CB 949-955, 1002-1014

Apr. 11 – CLASS #2 (10:30 a.m.): Reproductive Autonomy I

CB 1014-1035

Apr. 16: Reproductive Autonomy II

CB 1035-1069

Apr. 18: Sexual Orientation & Sexual Activity

1084-1097 and *Bowers v. Hardwick* (on TWEN)

Apr. 23: Same Sex Marriage & Family Autonomy

CB 955-981

Apr. 25: The Right to Vote

CB 1107-1131

Apr. 30: First Amendment (Religion)

CB 1731-1743 (*Employment Division v. Smith*)

CB 1745-1754 (*Burwell v. Hobby Lobby*)

CB 1759-1774

May 2: REVIEW SESSION