

Constitutional Law II

Political Science 272

Winter Term 2026

Instructor: Steven Poskanzer

Course Hours 2a:

Monday 9:50-11:00 a.m.

Wednesday 9:50-11:00 a.m.

Friday 9:40-10:40 a.m.

Location: Hasenstab Hall 105

Course Description

This course will explore the United States Constitution and the legal doctrines that have emerged from it, using them as lenses through which to understand the history—and shape the future—of this country. Using prominent Supreme Court opinions as teaching tools and loci of debate (including cases on the Court’s recent and current dockets), this course will explore the different kind of theoretical approaches with which to make Constitutional arguments and interpret the Constitution. It is one of two paired courses (the other being POSC 271) that complement each other. Both courses address the structure and functioning of the United States government, and both explore historic Constitutional “trends” towards greater equality and more liberty (albeit haltingly, and with steps both forward and backward).

This course will focus in particular on the separation of powers across the branches of the federal government—a topic of pressing national importance as the President seeks to expand the legal and political authority of the Executive branch. In its examination of equality, this course will explore how gender equality is very much unfinished Constitutional work on our way towards a “more perfect union.” Our examination of gender equality will include a careful examination of the Court’s decision in *Dobbs v. Jackson Women’s Health Organization*. In exploring matters of personal liberty, this course will examine First Amendment freedom of speech and other fundamental rights protected under the 14th Amendment’s Due Process Clause. The course will require close reading of judicial opinions and other texts, and learning how to construct arguments using logic and precedent.

A special feature of this course will be an intra-class “moot court” exercise using the case of *Trump v. Slaughter*. As described below, this case concerns whether the President has the constitutional authority to fire a member of the Federal Trade Commission before her term expires. The Supreme Court heard oral argument in this case in December, and its decision is expected late this spring.

Learning Outcomes/Assessment Goals

My hope and expectation are that, by taking this course, students should:

- Understand the genius—as well as the complexity, contradictions, and flaws—of the Constitution of the United States.

- Appreciate how the Constitution can be used as a powerful lens through which to view and understand the history—and shape the future—of this country. This will include a solid grasp of both historic trends and major emerging issues in constitutional law.
- Gain a sophisticated knowledge of the structure and functioning of government (especially the federal government) in the United States. This will include a particular focus on the role of the federal judiciary, especially the Supreme Court.
- Understand and be able to use a range of theoretical approaches/tools to make constitutional arguments and interpret the Constitution.
- Understand the unsettled and sometimes contradictory nature of legal argumentation and adjudication (in common parlance, to grasp that “The Law’s favorite color is gray”).
- Learn how to craft and articulate arguments based on legal principles/reasoning.

This course is also meant to give students a good perspective on what law school/legal practice entails, thereby helping them gauge their level of interest in a legal career.

Finally, through this course I want students to acquire a continuing interest in/commitment to their responsibilities as citizens and/or participants in our legal system.

Six (6) credits

This course can be applied to satisfy the Social Inquiry graduation requirement.

Course Materials

We will be reading large portions of Daniel Farber and Neil S. Siegel’s book *United States Constitutional Law*, Second edition (Foundation Press: 2024) (hereafter “Farber/Siegel”). You should purchase this volume online.

While not a required text, many students have found it useful to acquire a pocket copy of the United States Constitution for handy reference. Such a document can be acquired through many online sources or simply printed out, see, e.g.: <https://nccs.net/products/pocket-constitution-of-united-states>.

We will also be reading a large number of Supreme Court opinions (typically in edited form), legal commentary and analysis by constitutional scholars, and press accounts of current controversies.

I have posted all of the non-Farber/Siegel readings for this course on the class Moodle site.

Depending on legal developments, supplemental readings may also be assigned and posted on the course’s Moodle site.

Course Requirements

Exams

There will be a midterm examination and a final examination for this course. Both will be closed-book exams, but you may consult the Constitution.

Moot Court

Last December, the Supreme Court heard oral arguments in *Trump v. Slaughter* (D.C. Cir 2025). In this case, the Court is considering whether President Trump can lawfully fire a member of the Federal Trade Commission (“FTC”) before her term expires and without cause (i.e., there was no claim of wrongdoing on the Commissioner’s part). Prior Supreme Court precedent—particularly *Humphrey’s Executor v. United States* (1935)—holds that the President has no such power, as the FTC was statutorily created as an independent agency with commissioners coming from different political parties and serving staggered seven-year terms. However, the President embraces an expansive view of his power (called the “unitary executive” theory) that would vest him with control over the personnel and actions of the entire executive branch. So the outcome in this case may have implications extending far beyond the FTC.

We’ll be discussing the distribution of power across the branches of the federal government—and the constitutional checks and balances meant to sustain it—at length in class, but I want to take our analysis one step further and give you a chance, as part of a team project, to hone your legal argument-crafting and oral presentation skills.

In Week 8, we will have a “moot court” on *Trump v. Slaughter*. I’ll randomly assign students to one of three groups: one to take the position of the petitioner in the case; another to take the position of the respondent; and the third to act as Justices on our own Carleton version of the Supreme Court. We’ll devote one full class session to oral arguments in the case, with each group having half of the session (30 minutes) to make the best argument(s) it can for the side to which it has been assigned. The Justices will ask questions of the parties during these presentations, just as occurs with the real Supreme Court. Following oral arguments, at a session the next week, the Justices (having conferred in the interim to make their decision) will present their conclusions and supporting justifications. We’ll then take some time to consider what we’ve learned from the debates, and to predict how the actual decision will play out.

While the litigant groups will not be asked to write a formal legal brief for the oral argument, nor will the group assigned to be Justices have to write a formal legal opinion, each group will be asked to prepare a written summary (typically three-four pages) of their arguments/conclusions. I will give each group a collective grade for the project, based on the rigor and tightness of its reasoning and quality of its oral presentation.

To help the groups with this assignment, we will be reading the DC Circuit Court of Appeals decision in *Trump v. Slaughter* and also the briefs submitted to the Supreme Court by the actual litigants in the case. Groups can be creative in devising and presenting their arguments (using any outside sources they wish, including the transcripts of the actual oral arguments), and I will also be available to offer help and guidance. The point of this exercise is to give you a more practical taste of how lawyers—and judges!—think and work.

Class Participation

You are also expected to participate in class discussions and, on occasion, to post after-class reflections on the course's Moodle site. (See the discussion on Preparation for Class, Attendance and Class Participation below). You will receive a grade for class participation that will figure into your final grade.

Course Outline and Reading Assignments

While this syllabus presents an estimated, session-by-session, schedule of where we should be, this may vary a bit, depending on how fast we're moving. I shall try to keep everyone regularly apprised of where we are on the syllabus. But I also want to ensure that we spend sufficient time on each part of the course so that you understand the concepts and we can explore the issues adequately before we move on to the next unit. If you miss class, please contact a fellow student or me to learn at what point on the syllabus we ended and the topics we will be covering in the next class. It is always a good idea to read ahead if you can, since the reading for some units will be more voluminous than for others.

A note about the selection of topics: Constitutional law is a vast field, and even in two 10-week courses it is not possible to cover it all. Therefore, just as with most law school courses on this subject, I have had to leave out some topics entirely (e.g., constitutional procedure related to criminal law; some sections of First Amendment law) or touch upon them only briefly (e.g., federal courts and their jurisdiction; constitutional history; the procedural requirements [e.g., notice and hearings] that comprise "due process" under the 5th and 14th Amendments). If you have an interest in topics that are not covered, I am happy to provide suggestions for supplemental reading on your own.

A note about the readings: As I noted above, we will be reading a large number of Supreme Court opinions and using what is commonly known as the "case method" in our learning. I am consciously following this approach because I want you to appreciate how lawyers and judges reason and write. Distilling the principal holdings and meaning of a judicial opinion is an acquired skill (indeed, it's a critical aim of the first year of law school!), but I assure you that you can develop this ability even in our undergraduate-level class. To that end, the following observations are meant to give guidance—and reassurance:

- You do not need to understand—much less master!—every jurisdictional or procedural point made in the opinions, all the references made to other cases, or analytic frameworks that we have not discussed in class.
- Try to be alert to the particular kinds of arguments the judges or the litigants are trying to make, and how you might strengthen or rebut those positions. To help you do this, we will spend time in the first few weeks reviewing many of the different approaches for making constitutional arguments.
- Judicial precedents are not consistent in their reasoning and results. Indeed, I've purposefully included cases that directly contradict each other so that you will see and grow comfortable with this.

- Many opinions address more than one issue or topic, and litigants typically offer alternative arguments in support of the result they seek. Do not be surprised, therefore, when you see us cycle back to the same case(s) to elucidate different points. And don't worry if the first time you read an opinion some of the topics addressed therein don't make sense or haven't been covered yet (we'll get there eventually!)
- Some of the older Supreme Court opinions we will be reading (in particular, those dealing with gender discrimination) rest upon arguments and use terminology that many of us would find offensive today. An honest and searching study of constitutional law and history requires us to engage directly with these decisions and their consequences (which of course does not mean that we agree with their reasoning or results).

Week 1

January 5 (Class 1)

Introductions/Housekeeping Matters

Goals of the Course

Purposes the Constitution Serves

The Constitution Itself

Readings:

United States Constitution

Declaration of Independence

January 7 (Class 2)

Brief Account of Constitutional History

Primers on:

Sources of Law/Precedent

Federal Judiciary

How Cases Get to the Supreme Court

Readings:

Farber and Siegel, *United States Constitutional Law* Chapter 2, pp. 33-37

Articles of Confederation

Amar, *The Words that Made Us*, Chapter 4, pp. 151-179

Note on “The *certiorari* process”

January 9 (Class 3)

How and Why Constitutional Disputes Arise

Nature of the U.S. Legal System and its Consequences

Jurisdictional and Decisional Constructs

Readings:

Farber/Siegel Chapter 3, pp. 45-63

FDA v. Alliance for Hippocratic Medicine (2024)

Rucho v. Common Cause (2019)

Suggested Additional Readings:

Minda, “Origins of Modern Jurisprudence” and “Modern Conceptual Jurisprudence” in *Postmodern Legal Movements*

Week 2

January 12 (Class 4)

Nature of the U.S. Legal System and its Consequences (continued)

Jurisdictional and Decisional Constructs (continued)

Readings:

Farber/Siegel Chapter 3, pp. 45-63

FDA v. Alliance for Hippocratic Medicine (2024)

Rucho v. Common Cause (2019)

Suggested Additional Readings:

Minda, “Origins of Modern Jurisprudence” and “Modern Conceptual Jurisprudence” in *Postmodern Legal Movements*

Different Approaches for Making Constitutional Arguments

Readings:

Note on “Marshall’s Methods of Constitutional Interpretation”

Clinton v. City of New York (1998)

McCulloch v. Maryland (1819)

McDonald v. City of Chicago (2010)

January 14 (Class 5)

Different Approaches for Making Constitutional Arguments (continued)

Readings:

Note on “Marshall’s Methods of Constitutional Interpretation”

Clinton v. City of New York (1998)

McCulloch v. Maryland (1819)

McDonald v. City of Chicago (2010)

Dickerson v. United States (2000)

INS v. Chadha (1983)

NLRB v. Noel Canning (2014)

Goldwater v. Carter (1979)

Brown v. Board of Education (1954)

Note on “The Natural Law Tradition in America”

Bradwell v. Illinois (1873)

Meyer v. Nebraska (1923)

Roper v. Simmons (2005)

January 16 (Class 6)

Different Approaches for Making Constitutional Arguments (continued)

Readings:

Note on “Marshall’s Methods of Constitutional Interpretation”

Clinton v. City of New York (1998)

McCulloch v. Maryland (1819)

McDonald v. City of Chicago (2010)

Dickerson v. United States (2000)

INS v. Chadha (1983)

NLRB v. Noel Canning (2014)

Goldwater v. Carter (1979)

Brown v. Board of Education (1954)

Note on “The Natural Law Tradition in America”

Bradwell v. Illinois (1873)

Meyer v. Nebraska (1923)

Roper v. Simmons (2005)

Week 3

January 19 (Class 7)

Structure/Functions of the United States Government

Reading:

McCulloch v. Maryland (1819)

Separation of Powers Within the Federal Government

General Principles

Readings:

Farber/Siegel Chapter 2, pp. 19-33 and pp. 37-43

Liptak, “Trump’s Actions Have Created a Constitutional Crisis, Scholars Say” *New York Times* 2/10/25

Crouch, Rozell, and Sollenberger, “The Unitary Executive Theory and President Donald J. Trump,” *Presidential Studies Quarterly*, Vol. 47, No. 3 (2017)

Judicial Power in Tension with Legislative/Executive Branches

Readings:

Note on “The Election of 1800”

Note on “Early Political Struggles over the Federal Judiciary”

Marbury v. Madison (1803)

Note on “Judicial Review in a Democratic Polity”

Liptak, “On the Supreme Court’s Emergency Docket, Sharp Partisan Divides,” *New York Times* 9/14/ 25

Trump v. CASA (2025)

Suggested Additional Reading:

Whittington, “The Politics of Judicial Review” from *Repugnant Laws: Judicial Review of Acts of Congress from the Founding to the Present*

January 21 (Class 8)

ZOOM Class session

Separation of Powers Within the Federal Government (continued)

Executive Power in Tension with Legislative Power

Reading:

Farber/Siegel Chapter 7, pp. 199-251

Vetoes and Control over Appropriations

Readings:

Clinton v. City of New York (1998)

INS v. Chadha (1983)

Howe, “Supreme Court allows Trump administration to withhold billions in foreign-aid funding,” *SCOTUSblog* 9/26/25

Liptak, “There Are Lessons From the Nixon Era in Trump’s Attempts to Freeze Spending,” *New York Times* 10/19/25

January 23 (Class 9)

Separation of Powers Within the Federal Government (continued)

Executive Power in Tension with Legislative Power (continued)

Reading:

Farber/Siegel Chapter 7, pp. 199-251

Authority of Executive Agencies

Readings:

Savage, “Legal Conservatives’ Long Game: Amp Up Presidential Power but Kneecap Federal Agencies,” *New York Times* 7/2/24

Loper Bright Enterprises v. Raimondo (2024)

“When a President Takes on the Administrative State,” *Harvard Law Today* 3/12/25

Tang, “Will This Conservative Legal Doctrine Undo Trump’s First Months in Office?,” *New York Times* 4/20/25

Presidential Power to Remove Appointees

Readings:

Humphrey’s Executor v. United States (1935)

Trump v. Wilcox (2025), including dissent

Reed, “Fire by Trial,” *Harvard Law Bulletin* Fall 2025

Week 4

January 26 (Class 10)

Separation of Powers Within the Federal Government (continued)

Executive Power in Tension with Legislative Power (continued)

Reading:

Farber/Siegel Chapter 7, pp. 199-251

Presidential Emergency Powers

Reading:

Youngstown Sheet & Tube v. Sawyer (1952)

Control over Foreign Policy

Readings:

Note on “The War Powers Resolution”

Dames & Moore v. Regan (1981)

Korematsu v. United States (1944)

Marimow, “Supreme Court Confronts Trump and His Tariffs in Test of Presidential Power,” *New York Times* 11/3/25

January 28 (Class 11)

Separation of Powers Within the Federal Government (continued)

Executive Privilege and Immunity

Readings:

United States v. Nixon (1974)

Trump v. United States (2024) majority opinion

Impeachment/Conviction

Reading:

Gerhardt, “How Impeachment Works,” 87 *Mo. L. Rev.* 743 (2022)

Suggested Additional Readings:

Trump v. United States (2024) Sotomayor dissent

Goldsmith, “The Presidency After *Trump v. United States*,”
SSRN: <https://ssrn.com/abstract=5162059> 3/2/25

January 30 (Class 12)

The Push for More Equality

The Adoption/History of the Fourteenth Amendment

Introductory Background on Equal Protection Analysis

Readings:

Farber/Siegel Chapter 8, pp. 253-263 and pp. 267-275

United States v. Carolene Products Co. (1938) (Footnote 4 especially!)

How Gender-based Bias is Unfinished Constitutional Business on the Way to a “More Perfect Union”

Readings:

Farber/Siegel Chapter 11, pp. 357-381

Note on “On Sex, Gender, and Sexual Orientation”

Note on “Women’s Citizenship in the Antebellum Era”

Minor v. Happersett (1874)

Bradwell v. Illinois (1873)

Note 1 on “The Nineteenth Amendment”

Note 2 on “The Nineteenth Amendment”

Amar, “The right...to vote,” *America’s Constitution: A Biography*, pp. 419-428

Adkins v. Children’s Hospital (1923)

Goesaert v. Cleary (1948)

Craig v. Boren (1976)

United States v. Virginia (1996)

Week 5

February 2 (Class 13)

ZOOM Class session

The Push for More Equality (continued)

How Gender-based Bias is Unfinished Constitutional Business on the Way to a “More Perfect Union” (continued)

Readings:

Farber/Siegel Chapter 11, pp. 357-381

Note on “On Sex, Gender, and Sexual Orientation”

Note on “Women’s Citizenship in the Antebellum Era”

Minor v. Happersett (1874)

Bradwell v. Illinois (1873)

Note 1 on “The Nineteenth Amendment”

Note 2 on “The Nineteenth Amendment”

Amar, “The right...to vote,” *America’s Constitution: A Biography*, pp. 419-428

Adkins v. Children’s Hospital (1923)

Goesaert v. Cleary (1948)

Craig v. Boren (1976)

United States v. Virginia (1996)

February 4 (Class 14)

The Push for More Equality (continued)

Emergence of Constitutionally-protected LGBTQIA+ Rights

Readings:

Farber/Siegel Chapter 13, pp. 452-465

Bowers v. Hardwick (1986)

Romer v. Evans (1996)

Lawrence v. Texas (2003)

Obergefell v. Hodges (2015)

United States v. Skrametti (2025)

February 6 (Class 15)

MIDTERM EXAM (in class)

Week 6

February 9

MIDTERM BREAK—No Class

February 11 (Class 16)

Catch-Up and The Push for More Equality (continued)

Emergence of Constitutionally-protected LGBTQIA+ Rights (continued)

Readings:

Farber/Siegel Chapter 13, pp. 452-465

Bowers v. Hardwick (1986)

Romer v. Evans (1996)

Lawrence v. Texas (2003)

Obergefell v. Hodges (2015)

United States v. Skrametti (2025)

If Possible.... Special Topic for Moot Court: *Trump v. Slaughter* Litigation

Readings:

Slaughter v. Trump (D.C. Cir. 2025), including dissent

Howe, “Trump v. Slaughter: an explainer,” *SCOTUSblog* 12/3/25

Marimow, “Justices Seem Ready to Give Trump More Power to Fire Independent Government Officials” *New York Times* 12/8/25

February 13 (Class 17)

Special Topic for Moot Court: *Trump v. Slaughter* Litigation

Readings:

Slaughter v. Trump (D.C. Cir. 2025), including dissent

Howe, “Trump v. Slaughter: an explainer,” *SCOTUSblog* 12/3/25

Marimow, “Justices Seem Ready to Give Trump More Power to Fire Independent Government Officials” *New York Times* 12/8/25

The Push for More Liberty

Incorporation of (much of) the Bill of Rights

Readings:

Farber/Siegel Chapter 8, pp. 264-267

Note on “The Evolution of the Bill of Rights and Its ‘Incorporation’ Against the States”

Note on “The Incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment”

Review Midterm Exam

Week 7

February 16 (Class 18)

The Push for More Liberty (continued)

Reproductive Freedom/Abortion

Readings:

Farber/Siegel Chapter 13, pp. 422-452

Roe v. Wade (1973)

Note on “Did *Roe* Cause the Abortion Conflict?”

Dobbs v. Jackson Women’s Health Organization (2022)

Kantor and Liptak, “Behind the Scenes at the Dismantling of *Roe v. Wade*,” *New York Times* 12/15/23

“The Post-*Roe* World,” *Harvard Magazine* 7/18/22

“Lessons of *Roe*, 50 years later,” *The Harvard Gazette* 1/31/23

Belluck, “*Abortion Shield Laws: A New War Between the States*,” *New York Times* 2/22/24

February 18 (Class 19)

The Push for More Liberty (continued)

Reproductive Freedom/Abortion (continued)

Readings:

Farber/Siegel Chapter 13, pp. 422-452

Roe v. Wade (1973)

Note on “Did *Roe* Cause the Abortion Conflict?”

Dobbs v. Jackson Women’s Health Organization (2022)

Kantor and Liptak, “Behind the Scenes at the Dismantling of *Roe v. Wade*,” *New York Times* 12/15/23

“The Post-*Roe* World,” *Harvard Magazine* 7/18/22

“Lessons of *Roe*, 50 years later,” *The Harvard Gazette* 1/31/23

Belluck, “*Abortion Shield Laws: A New War Between the States*,” *New York Times* 2/22/24

February 20 (Class 20)

The Push for More Liberty (continued)

Liberty of Expression

First Amendment Background

Readings:

Note on “Historical Background” of the First Amendment

Note on “Why Should Freedom of Speech Be a Fundamental Right?”

What IS Speech?

Reading:

Texas v. Johnson (1989)

Moot Court Preparation

Readings:

Briefs before the Supreme Court in *Trump v. Slaughter*

Petitioner’s Brief

Respondent’s Brief

Petitioner’s Reply Brief

Week 8

February 23 (Class 21)

Moot Court Oral Argument

Readings:

Briefs before the Supreme Court in *Trump v. Slaughter*

Petitioner's Brief

Respondent's Brief

Petitioner's Reply Brief

February 25 (Class 22)

The Push for More Liberty (continued)

Liberty of Expression (continued)

How the Philosophy of the First Amendment Actually Plays Out

Constitutionally-valid Restrictions on Speech

Readings:

Brandenburg v. Ohio (1969)

R.A.V. v. City of St. Paul (1992)

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council (1976)

Location-based Issues with Speech

Readings:

United States v. Grace (1983)

Widmar v. Vincent (1981)

International Society for Krishna Consciousness, Inc. v. Lee (1992)

February 27 (Class 23)

The Push for More Liberty (continued)

Liberty of Expression (continued)

Constitutionally-valid Restrictions on Speech (continued)

Readings:

Brandenburg v. Ohio (1969)

R.A.V. v. City of St. Paul (1992)

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council (1976)

Location-based Issues with Speech (continued)

Readings:

United States v. Grace (1983)

Widmar v. Vincent (1981)

International Society for Krishna Consciousness, Inc. v. Lee (1992)

Week 9

March 2

No Class—Instructor Conflict

March 4 (Class 24)

Moot Court Decision and Discussion

The Push for More Liberty (continued)

Second Amendment and the Right to Bear Firearms

Readings:

District of Columbia v. Heller (2008)

New York State Rifle & Pistol Association, Inc. v. Bruen (2022)

Hubler, “In the Gun Law Fights of 2023, a Need for Experts on the Weapons of 1791,”
New York Times 3/14/23

March 6 (Class 25)

ZOOM Class session

The Push for More Liberty (continued)

Second Amendment and the Right to Bear Firearms (continued)

Readings:

District of Columbia v. Heller (2008)

New York State Rifle & Pistol Association, Inc. v. Bruen (2022)

Hubler, "In the Gun Law Fights of 2023, a Need for Experts on the Weapons of 1791,"
New York Times 3/14/23

Week 10

March 9 (Class 26)

The Push for More Liberty (continued)

Fifth and Fourteenth Amendments and Procedural Due Process

Reading:

Farber/Siegel Chapter 9, pp. 297-301

Substantive Due Process and Different Ways of Thinking About It

Background and Meaning

What Qualifies as a "Fundamental" Liberty-based Substantive Due Process Right?

Readings:

Farber/Siegel Chapter 12, pp. 383-391 and pp. 399-414; Chapter 13, pp. 417-422 and pp. 465-469

Loving v. Virginia (1967)

Skinner v. Oklahoma (1942)

Meyer v. Nebraska (1923)

Wisconsin v. Yoder (1972)

Moore v. City of East Cleveland (1977)

Cruzan v. Director, Missouri Department of Health (1991)

Washington v. Glucksberg (1997)

Griswold v. Connecticut (1965)

March 11 (Class 27)

The Push for More Liberty (continued)

Substantive Due Process and Different Ways of Thinking About It (continued)

Background and Meaning (continued)

What Qualifies as a “Fundamental” Liberty-based Substantive Due Process Right? (continued)

Readings:

Farber/Siegel Chapter 12, pp. 383-391 and pp. 399-414; Chapter 13, pp. 417-422 and pp. 465-469

Loving v. Virginia (1967)

Skinner v. Oklahoma (1942)

Meyer v. Nebraska (1923)

Wisconsin v. Yoder (1972)

Moore v. City of East Cleveland (1977)

Cruzan v. Director, Missouri Department of Health (1991)

Washington v. Glucksberg (1997)

Griswold v. Connecticut (1965)

Musings on Constitutional Futures (If time permits)

Suggested Additional Readings:

Barnett and Wurman, “Trump Might Have a Case on Birthright Citizenship,” *New York Times* 2/15/25

Allen, “Let the House Grow!,” *The Harvard Gazette* 11/7/22

Levinson, “Let’s fix how we fix the Constitution,” *The Harvard Gazette* 11/14/22

Brown-Nagin, “Enshrine an affirmative right to vote,” *The Harvard Gazette* 11/21/22

Jackson, “Change the Senate,” *The Harvard Gazette* 11/29/22

Sachs, “Amendments should start with states,” *The Harvard Gazette* 12/5/22

Review and Conclusion

Preparation for Class, Attendance, and Class Participation

We will be meeting face-to-face, although there will be a couple of occasions when (due to prior commitments I have) we will need to meet by Zoom or I will record a lecture in advance for you to watch.

The readings for the course are typically several hundred pages per week, and of course I expect you to have done the relevant reading before each session. Many of the readings are judicial opinions that illustrate how judges apply the law to specific disputes—and sometimes create new law. Reading such opinions is something of an acquired skill, because of the formal language and structure used by judges and the reliance upon precedent in crafting a decision, but you will get the hang of it quickly (really!) To that end, I will introduce you to (1) basic legal terminology and concepts; (2) the mechanics and impact of legal reasoning; and (3) the case method approach to studying law and divining legal principles.

I believe that lasting learning is best attained through joint discussion and deliberation, with teachers and students as active partners in intellectual dialogue. Our class sessions are designed to help build upon and confirm your understanding not just of the assigned material but of the underlying issues and themes. Therefore, your attendance and participation are important. I will assume from your presence that you are benefiting and learning from the course. Conversely, I will infer from your absence that you are not. Of course, I understand that sometimes emergencies or other unexpected circumstances (including medical circumstances) arise that make attendance on a given day impossible. If this is the case, please talk with me as soon as possible so we can make arrangements to get you caught up. However, if you accumulate more than two unexcused absences, I will deduct from your course average.

While I will periodically offer mini-lectures to explicate a particularly complicated or unfamiliar topic, much of our class will be a free-wheeling Socratic debate and discussion, led and facilitated by me. While I will expect people to participate voluntarily, I will also call upon students by name, often to present a particular case. (Ordinarily I will give students advance notice of the case[s] they will be responsible for). In other words, be ready to participate. Your comments, questions, observations, and critique of the readings (and of my and others' arguments) will make this a richer learning experience for us all.

To that end, during the first week of the class I will break us into sub-groups, each of which will be charged with helping us reflect upon the discussions. Starting with Week 1 of the term, and continuing through Week 8, at the end of each week each of the members of designated sub-groups will be asked, on two occasions:

To post on the course's Moodle site, within 48 hours after the last session of the week, a short reflection/analysis piece (e.g., one page or 300-400 words) of the idea(s) discussed in our class sessions that week that you find most compelling, provocative, or worthy of further examination—and why you feel that way.

Because these post-class reflections will be of value to all participants, everyone should read them.

Further Background and Ground Rules for Discourse

As you'll quickly discover from our discussions and the readings, while many people perceive "the law" as providing (or wish for it to provide) clarity and certainty in the rules that govern society and in the adjudication of the disputes that inevitably arise, there is often more "gray" than black/white in constitutional law. This means that there is lots of room for debate and disagreement on what the current law is, and that, instead of me simply giving you "answers," we shall be exploring together both what the law means and what it should be.

A most valuable skill required in legal analysis is seeing how the sides of an argument (and often there are more than two sides!) can be laid out in the cleanest and most powerful of terms. This is also something we'll work on together.

Let me also lay out a few "ground rules" for our discourse in class:

- Our class must be marked by mutual respect for and civility towards each other. Everyone should feel included and able to express their views thoughtfully.
- We'll be reading about and debating intense and divisive issues that go to the heart of American democracy and how it is functioning. Accordingly, academic freedom and First Amendment freedom of expression (which are not the same thing!) will be linchpins of our work together. I support both of those values in their proper context, and expect you to do the same. This means we must be willing to consider the substantive merits of seriously-offered ideas with which we disagree (or even which offend our sensibilities).
- Substantive arguments about the law are to be expected, but they must never turn into personal attacks. If someone (and this includes me!) says something in class that offends you, I would ask that you take it up politely and honestly with that individual later.
- Because I want our classroom to be both an intellectually challenging and a supportive place, I will endeavor to alert students to topics or readings that I know may be wrenching to address. In turn, you should feel free to advise me privately if you cannot engage as you ordinarily would with regard to any particular topic.
- I will always endeavor to address everyone by their preferred name and pronouns (though it may take me a bit of time to memorize them all!) Because I do not want to subject anyone to public scrutiny on this matter, please let me know privately (email is fine) if you have a particular way you would like to be addressed.
- Some legal terminology (and how it is used by judges and commentators) shifts over time. The case law you'll read may use terms in ways we would not do so today. For example, what we might regard as clear differences between discrimination on the basis of biological sex, of gender, or of sexual orientation have not always been recognized and described as distinct from each other. However, I will ordinarily refer to "gender-based" discrimination in the law as opposed to "sex-based" distinctions.

We will also have an opportunity during the first week of class to discuss collectively whether there are further ground rules for discourse that we'll want to observe.

Grading

I will compute your grade from a course average with the following weights:

- Midterm Exam 25%
- Final Exam 40%
- Moot Court exercise (group grade, based on both argument outline and oral presentation) 20%
- General Class Participation (including Moodle posts and especially in class-contributions) 15%

My standard grades for Moodle posts range from a “√” (meaning solid and acceptable), to “+” (meaning strong), to “++” (meaning exceptionally strong and original in its thinking)

All written assignments are due on the due date, as confirmed in class by the instructor.

- Late assignments will be penalized.
- Missed assignments will receive a grade of zero (0).

However, I do understand that sometimes emergencies or other unexpected circumstances arise that make meeting a deadline impossible. If this is the case, please talk with me as soon as possible so we can make appropriate arrangements.

Academic Integrity

In an academic community, cheating and plagiarism are “capital offenses” that are the most serious violations of our shared standards and expectations. Academe relies upon the ethical conduct of scholars, who are expected always to give proper credit to the ideas of others that they rely upon/build upon. Students are held to the same standards in their own work. Any act of academic dishonesty or misconduct will be referred to the Academic Standing Committee. For further information, see: https://apps.carleton.edu/handbook/academics/?policy_id=21359

Accessibility

I want everyone in the class to be able to learn effectively. To that end, Carleton is committed to providing reasonable accommodations to students with disabilities. Students seeking accommodations should contact the Coordinator of Disability Services at (507) 222-4464 to begin the process.

Other resources that may be of value and aid to students include the College’s Academic Support center (<https://www.carleton.edu/asc/>) and Writing Center (<https://www.carleton.edu/writing-center/>).

Artificial Intelligence

The use of ChatGPT or other AI tools to prepare written assignments for this class is prohibited.

Observance of Religious Holidays

I will seek to accommodate or make alternative arrangements for students who need to come late to class, who need to be absent from class, or who need to submit an assignment late in order to observe a religious holiday. I would ask that you let me know in advance if you are experiencing such a conflict, so that I can work with you to find an appropriate and fair accommodation. You can find further information about the College's policy on religious holidays at: <https://www.carleton.edu/chaplain/religious-observances/> .

Contacting the Instructor:

I can be reached at:

Office: 303 Hasenstab Hall

Office hours: Tuesday 1-2:00 pm

Thursday 10-11:00 am

and by appointment, as needed

Phone: (507) 222-4563

Fax: (507) 222-5615

Email: sposkanzer@carleton.edu (This is probably the fastest way to reach me)

I would ask each of you to come to office hours at least once, so I can get to learn more about you, your motivations for taking the course, and your longer-term aspirations.