

Political Science 341: Constitutional Law I Fall 2023

Professor: Miranda Yaver

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Class Time: Tuesday/Thursday 2:00-3:20pm

Class Location: Meneely Hall 104

Office Hours: Monday 1:30-3:30 pm or by appointment

Office Location: Knapton 204

Course Description:

“It is emphatically the province and the duty of the judicial department to say what the law is.” – John Marshall, *Marbury v. Madison* (1803)

This course is designed to provide a broad introduction to American constitutional law and how it functions in the separation-of-powers system. After a brief introduction to the nation’s founding principles and the role of the Supreme Court, students will be introduced to the following dimensions of constitutional law jurisprudence: judicial power, legislative power, executive power, economic regulation, federalism, and due process. Landmark Supreme Court case excerpts will be supplemented with contemporary examples of case application and constitutional debates. Class debates and fact pattern response papers will help students to sharpen their understanding of the complex jurisprudential debates and develop persuasive arguments about the law. Students will be expected to participate actively in class discussions and activities. Readings are subject to change, and students will be alerted to which readings become recommended (or else skim-worthy) rather than required. Students will also be expected to participate in a moot court activity.

Course Requirements:

- Three short papers (approximately 5 page, double-spaced, 12-point font, submitted online by the start of class): 15% each
 1. Judicial power and justiciability
 2. Presidential power in emergency declarations
 3. Commerce Clause regulation in health care
- Moot Court on *Moore v. Harper*: 15%
- Final Exam: 25%
 - Students will have 72 hours to do a take-home (open-book, open-note) final exam comprised of a set of short essay questions and one longer essay question.
- Attendance and participation in class: 15%

Final Course Grading: The final grade for the course will be assigned based on the following scale:

A: 93+%	A-: 90-92%	B+: 87-89%
B: 83-86%	B-: 80-82%	C+: 77-79%
C: 73-76%	C-: 70-72%	D+: 67-69%
D: 63-66%	D-: 60-62%	F: > 60%

Policy Regarding Late Assignments: It is imperative that students turn in work at the specified deadlines. Failure to do so will result in a third letter grade reduction per day late unless you have received an extension in advance. Work will not be accepted at all more than one week late unless said extension was granted in advance. All students take the final exam at the assigned day and time, with the only exception of university-approved absences. If you have concerns regarding your ability to complete your work on time due to physical or mental health reasons, you are encouraged to seek appropriate treatment from campus services and to discuss with me *in advance* whether an extension is needed.

Policy Regarding Re-Grading Assignments: Students will be provided a paragraph of comments on papers so that there will be clarity as to any points that were missed. If you wish to have your paper re-graded (not rewritten, but re-grading of the same assignment), you must be aware that the re-graded assignment can result in a higher *or lower* grade.

Note on Participation: Attendance and participation is vital to understanding the concepts of the course. If you miss 6 or more classes, I will recommend that you drop the course.

Note on Office Hours: You should plan to come to office hours at least twice during the semester to discuss your academic goals and progress in the course.

Note on Slides: Slides will be posted online at the end of each topic so as to promote accessibility and academic support for students. However, if the posting of slides proves to dampen attendance and participation, I reserve the right to discontinue their posting.

All members of the academic community should be able to engage fully in the academic opportunities and services provided, regardless of disability status, and to that end accommodations to this course can be made if necessary. Please feel free to discuss with me any concerns you may have.

Statement on Academic Integrity: All work that students submit is expected to be of their own creation and give proper credit to the ideas and work of others. Thus, plagiarism, cheating, and receiving unauthorized assistance with the work in this course will not be tolerated. This includes the use of AI (*e.g.*, ChatGPT). Should a student violate academic integrity in this class, the matter will be reported to the college administration. If you have questions about citations of sources, ask prior to submitting the given assignment. Students are encouraged to consult writing services for additional assistance on writing and citation so as to avoid plagiarism.

Helpful Campus Resources: There are a number of resources on campus that may help you in your physical, emotional, and academic wellbeing.

- Student Health Center: 14 Taunton Avenue, 508-285-9500
- Student Counseling Center: 42 Howard Street, 508-286-3905

- Peer Tutoring: Scholars Lab at Wallace Library

Textbooks

The following textbook is required:

- *Constitutional Law for a Changing America: Institutions and Powers, 10th Edition*, by Lee Epstein & Thomas G. Walker.

The following textbooks are recommended:

- Chafetz, Josh. 2018. *Congress's Constitution: Legislative Authority and the Separation of Powers*. Yale University Press.
- Silverstein, Gordon. 2009. *Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics*. Cambridge University Press
- Tribe, Laurence and Joshua Matz. 2014. *Uncertain Justice: The Roberts Court and the Constitution*. Henry Holt and Co.
- Whittington, Keith. 2001. *Constitutional Construction: Divided Powers and Constitutional Meaning*. Harvard University Press.

You may use different editions to the constitutional law casebook, but page numbers correspond to the edition listed on the syllabus. Any other readings will be made available online. Students will be expected to come to class having read the material and being prepared to engage in the arguments that they present. Students will be alerted in advance to what readings are recommended rather than required, or are skim-worthy, and it is likely that we will not get to all of the cases on the syllabus. It is imperative that students check their email regularly, as that is how class announcements will be made.

Useful websites on law and the Supreme Court:

- <https://www.oyez.org/>
- <https://www.supremecourt.gov/>
- <http://www.scotusblog.com>
- <https://www.lawfareblog.com/>
- <http://electionlawblog.org/>
- <https://abovethelaw.com/>
- <https://constitutioncenter.org/>

Useful podcasts on law and the Supreme Court: What Trump Can Teach Us About Con Law, First Mondays, We the People, At Liberty, Amicus, Strict Scrutiny

Course Outline:

Tuesday, August 29: Course Introduction

- United States Constitution

Thursday, August 31: Introduction to American Politics, Separation of Powers,, and Judicial Review

- *Federalist 10, 51, 78*
- Epstein & Walker, pp. 54-61, “The Establishment of the Federal Judiciary”
- Epstein & Walker, pp. 61-68: *Marbury v. Madison* (1803)

Tuesday, September 5: Theories of Constitutional Interpretation

- Segal, Eric. 2017. “Judicial Originalism as Myth” *Vox*
- Hollis-Brusky, Amanda. 2016. “Here’s why originalism won’t be buried with Scalia.” *The Washington Post Monkey Cage*.
- Reid, Brad. 2016. “Fourteen Ways to Interpret the Constitution.” *Huffington Post*.
- Roosevelt, Kermit. 2007. “Originalism and the Living Constitution: Reconciliation.” *American Constitution Society for Law and Policy*.

Thursday: September 7: Constraints on Judicial Power

- Epstein & Walker, pp. 83-84, “Constraints on Judicial Power: Article III”
- Epstein & Walker, pp. 85-88, *Ex parte McCardle* (1868)
- Epstein & Walker, pp. 89-96, *Patchak v. Zinke* (2018)
- Epstein & Walker, pp. 103-108, *Nixon v. United States* (1993)
- *303 Creative LLC v. Elenis* (2023) (excerpt online)

Tuesday, September 12: The Supreme Court and the Shadow Docket

- Vladeck, Steve. 2021. “Texas’s Unconstitutional Abortion Ban and the Role of the Shadow Docket.” *Testimony before the Senate Judiciary Committee*.
- Millhiser, Ian. 2020. “The Supreme Court’s Enigmatic ‘Shadow Docket,’ Explained.” *Vox*.

Thursday, September 14: Legislative Powers: Sources and Scope

- Epstein & Walker, pp. 141-144, “Legislative Powers: Sources and Scope”
- Epstein & Walker, pp. 144-154, *McCulloch v. Maryland* (1819)
- Epstein & Walker, pp. 155-159, *McGrain v. Daugherty* (1927)
- Epstein & Walker, pp. 171-178, *South Carolina v. Katzenbach* (1966)

Tuesday, September 19: The Executive

- Epstein & Walker, pp. 181-184, “The Structure of the Presidency”
- Epstein & Walker, pp. 184-195, *Bush v. Gore* (2000)
- Epstein & Walker, pp. 195-200, “The President’s Constitutional Tools for Authority and Tools for Executing It”
- Epstein & Walker, pp. 202-207, *In re Neagle* (1890)

Thursday, September 21: Domestic Powers of the President

- Epstein & Walker, p. 208, “Domestic Powers of the President”
- Epstein & Walker, pp. 209-215, *Clinton v. City of New York* (1998)
- Epstein & Walker, pp. 215-221, *Morrison v. Olson* (1988)
- Epstein & Walker, pp. 221-227, *National Labor Relations Board v. Noel Canning* (2014)

Tuesday, September 26: Domestic Powers of the President

- Epstein & Walker, pp. 237-242, *United States v. Nixon* (1974)
- Epstein & Walker, pp. 242-245, *Mississippi v. Johnson* (1867)
- Epstein & Walker, pp. 245-249, *Nixon v. Fitzgerald* (1982)
- Epstein & Walker, pp. 249-244, *Clinton v. Jones* (1997)

Thursday, September 28: Interbranch Interactions: Domestic Powers

- Epstein & Walker, pp. 265-270, “Domestic Powers”
- Epstein & Walker, pp. 270-275, *Mistretta v. United States* (1989)
- Epstein & Walker, pp. 275-280, *Immigration and Naturalization Service v. Chadha* (1983)
- Epstein & Walker, pp. 280-284, *Bowsher v. Synar* (1986)

Tuesday, October 3: Interbranch Interactions: Powers over Foreign Affairs

- Epstein & Walker, pp. 284-287, “Powers over Foreign Affairs”
- Epstein & Walker, pp. 290-297, *Ex parte Milligan* (1866)

- Epstein & Walker, pp. 297-305, *Korematsu v. United States* (1944)
- *Trump v. Hawaii* (2018) (excerpt online)

Thursday, October 5: Interbranch Interactions: Power Over Foreign Affairs

- Epstein & Walker, pp. 305-311, *Youngstown Sheet & Tube Co. v. Sawyer* (1952)
- Epstein & Walker, pp. 311-313, *Dames & Moore v. Regan* (1981)
- Epstein & Walker, pp. 325-333, *Hamdi v. Rumsfeld* (2004)

TUESDAY, OCTOBER 10: OCTOBER BREAK – NO CLASSES

Thursday, October 12: Nation-State Relations

- Epstein & Walker, pp. 335-340, “Nation-State Relations”
- Epstein & Walker, pp. 341-344, “The Doctrinal Cycle of Nation-State Relations”
- Epstein & Walker, pp. 350-356, *Scott v. Sanford* (1857)
- Epstein & Walker, pp. 362-367, *Garcia v. San Antonio Metropolitan Transit Authority* (1985)
- Epstein & Walker, pp. 367-373, *New York v. United States* (1992)

Tuesday, October 17: Independent State Legislature Theory

- *Moore v. Harper* (2023)
- Millhiser, Ian. “The Supreme Court decides not to destroy democracy in the United States.” *Vox*, June 27, 2023.

Thursday, October 19: The Commerce Power

- Epstein & Walker, pp. 405-407, “Foundations of the Commerce Power”
- Epstein & Walker, pp. 407-412, *Gibbons v. Ogden* (1824)
- Epstein & Walker, pp. 412-413, “Attempts to Define the Commerce Power in the Wake of the Industrial Revolution”
- Epstein & Walker, pp. 413-418, *United States v. E.C. Knight Co.* (1895)

Tuesday, October 24: The Commerce Power

- Epstein & Walker, pp. 418-422, *Stafford v. Wallace* (1922)
- Epstein & Walker, pp. 422-425, *Champion v. Ames* (1903)
- Epstein & Walker, pp. 425-428, *Hammer v. Dagenhart* (1918)

Thursday, October 26: Moot Court!

Tuesday, October 31: The Supreme Court and the New Deal Era

- Epstein & Walker, pp. 428-433, “The Supreme Court and the New Deal”
- Epstein & Walker, pp. 433-443, *A.L.A. Schechter Poultry Corp. v. United States* (1935)
- Epstein & Walker, pp. 443-450, *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937)
- Epstein & Walker, pp. 450-454, *United States v. Darby* (1941)
- Epstein & Walker, pp. 454-457, *Wickard v. Filburn* (1942)

Thursday, November 2: The Supreme Court and the New Deal Era

- Epstein & Walker, pp. 428-433, “The Supreme Court and the New Deal”
- Epstein & Walker, pp. 433-443, *A.L.A. Schechter Poultry Corp. v. United States* (1935)
- Epstein & Walker, pp. 443-450, *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937)
- Epstein & Walker, pp. 450-454, *United States v. Darby* (1941)
- Epstein & Walker, pp. 454-457, *Wickard v. Filburn* (1942)

Tuesday, November 7: The Era of Expansive Commerce Clause Jurisprudence

- Epstein & Walker, pp. 457-458, “The Era of Expansive Commerce Clause Jurisprudence”
- Epstein & Walker, pp. 458-463, *Heart of Atlanta Motel, Inc. v. United States* (1964)
- *Katzenbach v. McClung* (1964) (excerpt online)

Thursday, November 9: Limits on the Commerce Power: The Republican Court Era

- Epstein & Walker, pp. 463-464, “Limits on the Commerce Power: The Republican Court Era”
- Epstein & Walker, pp. 464-471, *United States v. Lopez* (1995)
- Epstein & Walker, pp. 471-478, *United States v. Morrison* (2000)
- Epstein & Walker, pp. 478-485, *Gonzales v. Raich* (1995)

Tuesday, November 14: The Commerce Clause and Health Care

- Epstein & Walker, pp. 485-494, *National Federation of Independent Business v. Sebelius* (2012)

Thursday, November 16: Guest Lecture – No Readings

Tuesday, November 21: The Commerce Clause and Health Care

- *Texas v. United States* (excerpt online)
- “Congressional Authority to Regulate Abortion.” Congressional Research Service Report.

Thursday, November 16: The Commerce Clause and Health Care – Guest Lecture – No Readings

THURSDAY, NOVEMBER 23: THANKSGIVING BREAK – NO CLASSES

Tuesday, November 28: Taxing and Spending for the General Welfare

- Epstein & Walker, pp. 543-548, *United States v. Butler* (1936)
- Epstein & Walker, pp. 548-552, *Steward Machine Co. v. Davis* (1937)
- Epstein & Walker, pp. 552-556, *South Dakota v. Dole* (1987)
- *National Federation of Independent Business v. Sebelius* (refresh)

Thursday, November 30: Restrictions on the Revenue Powers of the States

- Epstein & Walker, pp. 564-565, “Restrictions on the Revenue Powers of the States”
- Epstein & Walker, pp. 565-568, *Michelin Tire Corp. v. Wages* (1976)
- Epstein & Walker, pp. 568-572, *Complete Auto Transit v. Brady* (1977)
- Epstein & Walker, pp. 572-578, *South Dakota v. Wayfair* (2018)

December 5: Economic Substantive Due Process

- Epstein & Walker, pp. 617-619, “Economic Substantive Due Process”
- Epstein & Walker, pp. 619-620, “The Development of Substantive Due Process”
- Epstein & Walker, pp. 620-626, *The Slaughterhouse Cases* 1873)
- Epstein & Walker, pp. 626-632, *Munn v. Illinois* (1877)
- Epstein & Walker, pp. 632-634, *Allgeyer v. Louisiana* (1897)

December 7: Economic Substantive Due Process

- Epstein & Walker, pp. 634-635, “The Roller-Coaster Ride of Substantive Due Process: 1898-1923”
- Epstein & Walker, pp. 635-641, *Lochner v. New York* (1905)
- Epstein & Walker, pp. 641-647, *Muller v. Oregon* (1908)
- Epstein & Walker, pp. 656-660, *West Coast Hotel v. Parrish* (1937)

**72-hour take-home final exam due at end of university-designated exam period:
December 12 12pm**