

**GOVT 316  
CONSTITUTIONAL LAW  
FALL 2009**

**GENERAL INFORMATION:**

Time and Place: Tuesday and Thursday 9:30 A.M.  
McMurrin Hall 212

Instructor: William E. Thro  
University Counsel & Assistant Professor

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Office Hours: 30 minutes before class and 30 minutes after class in  
McMurrin Hall 101P  
  
9:00.A.M-5:00 P.M. Monday-Friday in Administration  
Building 406C (Call first to ensure that I am available)

**COURSE OBJECTIVES:**

As Tocqueville observed, scarcely any political question arises in the United States that is not resolved eventually into a judicial one. Constitutional Law is the judicial resolution of those political questions. It is the acknowledgement and enforcement of the limitations imposed on the Government. It is the process by which the political passions of the day are measured against the timeless fundamental values of our society. This course will explore the fundamentals of constitutional law. The objectives of the course are two-fold. First, students will learn basic constitutional rules and theory. Second, students will learn to evaluate critically the basic constitutional rules and theory.

## **READING ASSIGNMENTS:**

The textbook for this class is:

Jesse H. Choper, Richard H. Fallon, Jr., Yale Kasmisar, & Steven Shiffrin, *LEADING CASES IN CONSTITUTIONAL LAW: A COMPACT CASEBOOK FOR A SHORT COURSE* (2008 ed.).

There will be a reading assignment for each class. The reading assignment will include one or more “key cases,” which will be discussed in class.

## **CLASS PARTICIPATION (50 points or 10% of the Final Grade):**

Class discussions are a critical part of learning in this class. I expect students to do all required reading and to participate in class discussions that will emphasize the “key cases.” At the end of every class, I will assign a participation grade of 0, 1, or 2 points.

Because class discussions are important, it is critical that you attend class. If you have an unexcused absence, you will receive a zero for that day. If you are ill or if there is some compelling reason for you to miss class, you will need to contact me about an excused absence. In some situations, I may request written confirmation from a health care professional.

Laptops, PDA's, and recorders are allowed only for taking notes – and all other electronic devices must be turned off. I will allow you to drink a non-alcoholic beverage, but please refrain from eating or chewing gum.

## **WRITING (200 points or 40% of the Final Grade):**

You will submit a paper dealing with a recent constitutional law decision made by the U.S. Supreme Court. You are limited to cases decided after October 1, 2004. I must approve all cases. The deadline for submitting your choice is **Tuesday, September 8, 2009.**

The paper will have four sections and the suggested length of the paper is 11-15 pages. First, the introduction will explain the issue in the case and why it is significant (1-2 pages). Second, a background section will explore previous court decisions in this area of constitutional law (3-4 pages). Third, overview section will examine the reasoning of the majority decision, concurring opinions (if any), and dissenting opinions (if any) (5-6 pages). Fourth, you will express an opinion as to whether the case was decided correctly; please provide the reasons for your opinion (2-3 pages).

The paper will be typed, double-spaced, and have 1-inch margins (top, bottom, right, and left), 12-point type, page numbers at the bottom of the page and centered. Citations will be in 12 point type, single-spaced footnotes placed at the bottom of the page.

Having attended a law school where violations of the honor code resulted in expulsion, I take the Christopher Newport University honor code seriously. Plagiarism is cheating. Plagiarism occurs when a student, with intent to deceive or with reckless disregard for proper scholarly procedures, presents any information ideas or phrasing of another as if they were his or her own and does not give appropriate credit to the original source. Examples of plagiarism include, but are not limited to: quoting, summarizing, or paraphrasing ideas without giving credit to their source; submitting work in your own name that has been copied (or purchased) from another; and allowing another to revise or edit a paper so extensively that it is no longer substantially your own work. Avoiding plagiarism is generally simple: acknowledge your sources using proper citation. It is ultimately your responsibility to know what plagiarism is and how to avoid it. Students who are uncertain as to whether contemplated conduct constitutes a violation are responsible for raising the question in advance.

The Papers are due on **Tuesday, November 3, 2009**. Absent extraordinary circumstances, I will not accept late papers.

### **EXAMINATIONS (250 points or 50% of the Final Grade):**

There will be a mid-term examination (100 points or 20% of the Final Grade) and a comprehensive final examination (150 points or 30% of the Final Grade). Both will be entirely essay. Grading is based on analytical reasoning, knowledge of the subject, and clarity of reasoning and writing.

The mid-term examination will be **Thursday, October 8, 2009**. The final examination will occur during the final examination week.

**CLASS SCHEDULE AND ASSIGNMENTS:**

**1. INTRODUCTION TO THE COURSE AND OVERVIEW OF CONSTITUTION**

**August 25—Introduction to the Course**

**August 27—Overview of the Constitution**

Reading: Appendix B

**2. JUDICIAL POWER OF THE NATIONAL GOVERNMENT**

**September 1—Judicial Review**

Reading: 1-26

Key Cases: *Marbury v. Madison* (1)  
*Martin v. Hunter's Lessee* (12)  
*Nixon v. United States* (18)

**September 3—Limitations on Judicial Review**

Reading: 853-870

Key Cases: *Allen v. Wright* (853)  
*Lujan v. Defenders of Wildlife* (859)  
*Defunis v. Odegard* (864)  
*United Public Workers v. Mitchell* (868)

**3. EXECUTIVE POWER OF THE NATIONAL GOVERNMENT**

**September 8—Topics for Case Note Due**

**September 8—Presidential Power**

Reading: 81-113, 670-73

Key Cases: *Korematsu v. United States* (670)  
*Youngstown Sheet & Tube Co. v. Sawyer* (81)  
*United States v. Curis-Wright Export Corp.* (89)  
*Boumediene v. Bush* (93)  
*Immigration & Naturalization v. Chadha* (102)  
*Morrison v. Olson* (109)

## **September 10—Impeachment and Election**

Reading: 113-19, 781-84

Key Cases: *United States v. Nixon* (113)  
*Clinton v. Jones* (117)  
*Bush v. Gore* (773)

## **4. LEGISLATIVE POWER OF THE NATIONAL GOVERNMENT**

### **September 15—Congressional Power and the Marshall Court**

Reading: 27-37

Key Cases: *McCulloch v. Maryland* (28)  
*Gibbons v. Ogden* (32)

### **September 17—Congressional Power in the 20<sup>th</sup> and 21<sup>st</sup> Centuries**

Reading: 37-68

Key Cases: *Hammer v. Dagenhart* (37)  
*United States v. Darby* (41)  
*Heart of Atlanta Motel, Inc. v. United States* (46)  
*United States v. Morrison* (49)  
*South Dakota v. Dole* (63)

## **5. AMERICAN FEDERALISM**

### **September 22—Sovereignty of the States**

Readings: 68-80

Key Cases: *Garcia v. San Antonio Metropolitan Transit Authority* (69)  
*Printz v. United States* (74)

### **September 24—Congressional Diminishment of the States' Sovereignty**

Readings: 826-52

Key Cases: *Katzenbach v. Morgan* (829)  
*City of Boerne v. Flores* (833)

## **6. ESTABLISHMENT OF NATIONAL CONSTITUTIONAL VALUES**

### **September 29—The Search for National Constitutional Values**

Readings: 154-82

Key Cases: *Calder v. Bull* 154  
*Barron v. Mayor and City of Baltimore* (158)  
*Slaughterhouse Cases* (158)  
*Lochner v. New York* (163)  
*Nebbia v. New York* (168)  
*United States v. Carolene Products* (170)  
*Kelo v. New London* (177)

### **October 1—Incorporation of the Bill of Rights**

Readings: 183-94, 295-301

Key Cases: *Palko v. Connecticut* (184)  
*Adamson v. California* (184)  
*Duncan v. Louisiana* (186)  
*District of Columbia v. Heller* (295)

## **7. MIDTERM EXAMINATION/FALL BREAK**

### **October 6—Catch Up and Review**

### **October 8—Mid Term Examination**

### **October 13—Fall Break**

### **October 15—Mid Term Examinations Returned**

## **8. FREE SPEECH—WHAT SPEECH IS NOT PROTECTED?—PART 1**

### **October 20—Advocacy of Illegal Activity**

Readings: 305-330

Key Cases: *Abrams v. United States* (309)  
*Whitney v. California* (313)  
*Dennis v. United States* (318)  
*Brandenburg v. Ohio* (327)

**October 22—No Class—Education Law Association Conference**

**9. FREE SPEECH—WHAT SPEECH IS NOT PROTECTED?—PART 2**

**October 27—Defamation and Privacy**

Readings: 331-57

Key Cases: *New York Times v. Sullivan* (334)  
*Gertz v. Robert Welch, Inc.* (339)  
*Florida Star v. BJF* (349)

**October 29—Obscenity and Offensive Speech**

Readings: 358-400

Key Cases: *Paris Adult Theatre v. Slaton* (358)  
*Miller v. California* (362)  
*Cohen v. California* (377)

**10. FREE SPEECH—CONTENT REGULATION/ PRIOR RESTRAINTS**

**November 3—Case Notes Are Due**

**November 3—Content Regulation and Commercial Speech**

Readings: 401-459

Key Cases: *United States v. O'Brien* (402)  
*Texas v. Johnson* (405)  
*Virginia v. Hicks* (420)  
*Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* (427)  
*Lorillard Tobacco Co. v. Reilly* (436)  
*R.A.V. v. City of St. Paul* (448)  
*Virginia v. Black* (459)

## November 5—Prior Restraints

Readings: 460-507

Key Cases: *Near v. Minnesota* (462)  
*New York Times v. United States* (460)  
*Branzburg v. Hayes* (478)  
*Richmond Newspapers, Inc. v. Virginia* (486)  
*International Society for Krishna Consciousness v. Lee* (498)

## 11. RELIGION

### November 10—Establishment Clause

Readings: 586-629

Key Cases: *Zelman v. Simmons-Harris* (592)  
*Wallace v. Jaffree* (603)  
*Allegheny County v. ACLU* (610)

### November 12—Free Exercise

Readings: 630-52

Key Cases: *Sherbert v. Verner* (631)  
*Employment Division, Department of Human Resources v. Smith*  
(633)  
*Board of Education v. Grumet* (644)  
*Corporation of the Presiding Bishop v. Amos* (646)  
*Cutter v. Wilkinson* (652)

## 12. EQUAL PROTECTION—RACE

### November 17—Racial Discrimination

Readings: 653-87

Key Cases: *Railway Express Agency v. New York* (654)  
*New Orleans v. Dukes* (6569)  
*United States R.R. Retirement Board v. Fritz* (659)  
*Plessy v. Ferguson* (667)  
*Brown v. Board of Educ.* (673)  
*Loving v. Virginia* (677)  
*Yick Wo v. Hopkins* (680)  
*Washington v. Davis* (681)

### **November 19—Racial Preferences**

Readings: 688-717

*Grutter v. Bollinger* (692)  
*Gratz v. Bollinger* (700)  
*Parents Involved v. Seattle School Dist.* (704)

## **13. EQUAL PROTECTION—GENDER AND OTHER CATEGORIES**

### **November 24**

Readings: 718-53

Key Cases: *Craig v. Boren* (720)  
*United States v. Virginia* (723)  
*Califano v. Webster* (733)  
*Mississippi University for Woman v. Hogan* (734)  
*Ambach v. Norwick* (738)  
*Romer v. Evans* (741)

### **November 26—Thanksgiving**

## **14. FUNDAMENTAL RIGHTS AND PRIVACY**

### **December 1—Fundamental Rights**

Readings: 754-98

Key Cases: *Kramer v. Union Free School District* (756)  
*Reynolds v. Sims* (759)  
*Shaw v. Reno* (774)  
*Saenez v. Roe* (785)  
*San Antonio Independent School District v. Rodriguez* (791)

## December 3—Privacy

Readings: 195-294

Key Cases: *Griswold v. Connecticut* (197)  
*Roe v. Wade* (208)  
*Planned Parenthood v. Casey* (218)  
*Gonzales v. Carhart* (242)  
*Washington v. Glucksburg* (266)  
*Lawrence v. Texas* (280)

## 15. FINAL EXAMINATION

**To Be Announced**

### **GRADING:**

Class Participation—50 points  
Midterm Examination —100 points  
Case Note—200 points  
Final Examination (comprehensive)—150 points

### **GRADING SCALE:**

(500 possible points)

461-500	A
450-460	A-
440-449	B+
411-439	B
400-410	B-
390-399	C+
361-389	C
350-360	C-
300-349	D
Below 300	F