

# USC Gould

## School of Law

### U.S. Constitutional Law II Fall 2021

#### CONTACT INFORMATION

Prof. Franita Tolson

[ftolson@law.usc.edu](mailto:ftolson@law.usc.edu)

**Office Hours:** Th 9:00-10:00 and by appointment

**Zoom Meeting ID for Office Hours/**

**After Class Discussion:** 749 194 5446

#### CLASS INFORMATION

Room: 7

T, Th 10:30-11:45

3 credits

#### COURSE DESCRIPTION

This course focuses on the individual rights guaranteed by the Fourteenth Amendment of the United States Constitution, covering the Equal Protection and Due Process Clauses.

#### LEARNING OBJECTIVES

1. Become well-versed in the legal doctrines that govern both fundamental rights and issues of equal treatment that derive from the Equal Protection and Due Process Clauses of the U.S. Constitution.
2. Expose you to the guiding principles and applicable doctrines of judicial interpretation.
3. Cultivate your ability to identify, conceptualize, and assess latent constitutional issues.
4. Foster an informed perspective on the nature and limits of judicial decisionmaking.
5. Learn to apply the relevant constitutional text and judicial caselaw to various factual scenarios to illustrate proficiency over the subject matter.

#### COURSE MATERIALS

- CONSTITUTIONAL LAW by Stone, Seidman, Sunstein, Tushnet & Karlan (Aspen 8th edition 2017) (referred to as “Casebook”).
- SUPPLEMENT (photocopied materials that have been uploaded to blackboard).
- Additional materials to be distributed from time to time.

#### READING ASSIGNMENTS

Though only the major cases are listed in the Syllabus, all materials assigned, including notes and other information, should be read.

#### ATTENDANCE AND CLASSROOM PARTICIPATION POLICY

You are required to come to class prepared and on time. Attendance is mandatory. The ABA requires each student to attend a minimum of 80% of class meetings to receive credit for the course. Roll will be taken at each class. If you must miss a class, it is your responsibility to obtain the materials, notes, and assignments from that class. **If you are not feeling well, do not come to class.**

You are expected to be fully prepared (read the cases and the assigned notes!!!) and ready to discuss the readings. **If I call on you during class and you are unprepared, then you will be marked absent for that day.** Excessive tardiness will also result in being marked absent for the day. I strongly encourage each of you to do your part to make our discussions a rewarding experience for us all.

**All students must wear a mask while in class.** If a student refuses to wear a mask, I will ask the student to leave and mark the student absent. Repeated refusal to wear a mask will result in being unenrolled from the course.

### **GRADING POLICY**

Final grades will be based primarily on the final exam. However, I reserve the right to adjust grades up or down to reflect extraordinary contributions to class discussion or extraordinary disinterest. An upward adjustment reflects high quality, not just quantity. A downward adjustment will be based on failure to participate in class discussion and/or poor attendance/tardiness.

### **ZOOM ETIQUETTE**

There are several classes this semester that will take place via zoom (listed below). The zoom information is listed in the course outline below and also available on blackboard. For zoom classes, please follow the following guidelines:

- **Make sure everyone can hear you.**
  - Use a microphone when you speak.
  - Make sure the microphone is on and close enough to pick up your voice, no matter what location you are in.
  - Don't have side conversations.
- **Make sure everyone can see you.**
  - Turn on your camera. Showing your face is important for facilitating conversation and community in these challenging times.
  - If you have privacy concerns, please use a zoom background.
  - If you have preferred pronouns and/or pronunciations, please put them in your Zoom name.
  - Wear bottoms.
- **Don't be distracting.**
  - If you aren't talking, mute or turn off your microphone.
  - Avoid noisy activities like typing while your microphone is on.
- **All classes (both zoom and nonzoom classes) will be recorded.**
  - In person classes will have audio available only.
  - These recordings will only be available to students enrolled in the course.

## COURSE OUTLINE

### Substantive Due Process

1. **Economic Substantive Due Process: Lochner and Its Demise**
  - Reading: Casebook 749-766 (stop at Ferguson v. Skrupa); 767-769
  - Main cases: Lochner v. New York (1905); West Coast Hotel Co. v. Parrish (1937); United States v. Carolene Products Co. (1938); Williamson v. Lee Optical of Oklahoma (1955).
2. **Modern Substantive Due Process: Privacy & Abortion**
  - Reading: Casebook 826-848
  - Main cases: Griswold v. Connecticut (1965); Roe v. Wade (1973).
3. **Abortion II**
  - Reading: Casebook 848-866; 879-886
  - Main cases: Planned Parenthood of Southeastern Pennsylvania v. Casey (1992); Whole Women's Health v. Hellerstedt (2016).
4. **Abortion III**
  - Reading: **Blackboard**
  - Main Cases: June Medical v. Russo
5. **Sexuality**
  - Reading: Casebook 887-897
  - Main cases: Bowers v. Hardwick (1986); Lawrence v. Texas (2003).
6. **Marriage**
  - Reading: Casebook 897-918
  - Main Cases: United States v. Windsor (2013); Obergefell v. Hodges (2015); Zablocki v. Redhail (1978).
7. **Family and Right to Die**
  - Reading: Casebook 918-928
  - Main cases: Moore v. City of East Cleveland (1977); Cruzan v. Director, Missouri Department of Health (1990); Washington v. Glucksberg (1997).
8. **Case Study (online) (9/16/21)**

#### Join Zoom Meeting:

<https://usc.zoom.us/j/92398107309?pwd=UmtHYUk2M3lEbXQ1RVp4YUUs3TzNNZz09>

Meeting ID: 923 9810 7309

## Equal Protection

### 9. Reconstruction Amendments and Judicial Reaction

- Reading: Casebook 728-736; 1531-1533; 474-484.
- Main cases: The Slaughter-House Cases (1873); The Civil Rights Cases (1883); Plessy v. Ferguson (1896).

### 10. Race: Segregation

- Reading: Casebook 485-509.
- Main cases: Brown v. Board of Education I (1954); Brown v. Board of Education II (1955).

### 11. Rational Basis Review

- Reading: Casebook 509-530.
- Main cases: New York City Transit Authority v. Beazer (1979); U.S. Department of Agriculture v. Moreno (1973); City of Cleburne v. Cleburne Living Center (1985); Romer v. Evans (1996); Minnesota v. Clover Leaf Creamery Co. (1981).

### 12. Strict Scrutiny for Race

#### a. Race-Based Classifications

- Reading: Casebook 530-547
- Main cases: Strauder v. West Virginia (1880); Korematsu v. United States (1944); Loving v. Virginia (1967); Palmore v. Sidoti (1984).

### 13. Strict Scrutiny for Race II

#### a. Race Neutral Classifications

- Reading: Casebook 549-566
- Main cases: Washington v. Davis (1976); Gomillion v. Lightfoot (1960); Palmer v. Thompson (1971); McClesky v. Kemp (1987).

### 14. Case Study (online) (10/6/21 from 12:15-1:30)

#### Join Zoom Meeting:

<https://usc.zoom.us/j/98282603781?pwd=ZnZVbnR3ZGJ3dmhEV0hUNXhpZzM1QT09>

Meeting ID: 982 8260 3781

Passcode: 115520

### 15. Affirmative Action I

- Reading: Casebook 569-593; 597-99
- Main cases: Adarand Constructors v. Peña (1994); Grutter v. Bollinger (2003); Gratz v. Bollinger (2003).

**16. Affirmative Action II**

- Reading: Casebook 599-607; 616-632
- Main cases: Fisher v. University of Texas I & II (2013, 2016); Parents Involved in Community Schools v. Seattle School District No. 1 (2007).

**17. Race based or race neutral?? The decline of the political process doctrine**

- Reading: **Blackboard**
- Main cases: Hunter v. Erickson (1969); Washington v. Seattle School District No. 1 (1982); Schuette v. BAMN (2014).

**18. Intermediate Scrutiny: Sex**

- Reading: Casebook 637-664
- Main cases: Bradwell v. Illinois (1873); Reed v. Reed (1971); Frontiero v. Richardson (1973); Craig v. Boren (1976); United States v. Virginia (1996).

**19. Equal Protection and Fundamental Rights I**

- Reading: Casebook 773-788
- Main Cases: Harper v. Virginia State Bd. of Elections (1966); Bush v. Gore (2000); Kramer v. Union Free School District (1968); Crawford v. Marion Cty. Election Bd. (2008); City of Mobile v. Bolden (1980).

**20. Equal Protection and Fundamental Rights II**

- Reading: Casebook 795-805; 813-819
- Main cases: Griffin v. Illinois (1956); Douglas v. California (1963); Boddie v. Connecticut (1971); Shapiro v. Thompson (1969); Saenz v. Roe (1999); San Antonio Independent School District v. Rodriguez (1973).

**21. Citizenship Status and Alienage**

- Reading: Casebook 696-702; 819-825
- Main cases: Sugarman v. Dougall (1973); Plyler v. Doe (1982).

**22. Case Study (online) (11/4)**

**Join Zoom Meeting:**

<https://usc.zoom.us/j/99400841083?pwd=aDBSd2Y3aFVwL3VjcW1kWWWh0S1FrQT09>

Meeting ID: 994 0084 1083

Passcode: 643559

**23. The Doctrine of State Action (2 classes)**

- Reading: Casebook 1536-1543; 1548-1550; 1556-1558; 1569-1570; 1572-1578
- Main Cases: DeShaney v. Winnebago County (1987); Flagg Bros., Inc. v. Brooks (1978); Lugar v. Edmonson Oil (1982); Shelley v. Kraemer (1948); Burton v.

Wilmington Parking Authority (1960); Marsh v. Alabama (1946); Jackson v. Metropolitan Edison (1974); White Primary Cases.

## Procedural Due Process

### 24. When Process is Due

- Reading: Casebook 928-940
- Main case: Board of Regents v. Roth (1972); Perry v. Sindermann (1972); Cleveland Board of Education v. Loudermill (1985).

### 25. What Process is Due

- Reading: Casebook 940-952  
Main cases: Mathews v. Eldridge (1976).

### 26. Case Study (**online**) (11/30)

#### Join Zoom Meeting:

<https://usc.zoom.us/j/94662518043?pwd=c0FCcmhQZkNQYmFzRXV5L2MvMU5yQT09>

Meeting ID: 946 6251 8043

Passcode: 503402

### 27. Course Review

## Statement on Academic Conduct and Support Systems

### Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” [policy.usc.edu/scampus-part-b](http://policy.usc.edu/scampus-part-b). Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, [policy.usc.edu/scientific-misconduct](http://policy.usc.edu/scientific-misconduct).

### Support Systems:

*Student Health Counseling Services - (213) 740-7711 – 24/7 on call*

[engemannshc.usc.edu/counseling](http://engemannshc.usc.edu/counseling)

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

*National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call*

[suicidepreventionlifeline.org](http://suicidepreventionlifeline.org)

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

*Relationship and Sexual Violence Prevention Services (RSVP) - (213) 740-4900 – 24/7 on call*

[engemannshc.usc.edu/rsvp](http://engemannshc.usc.edu/rsvp)

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

*Office of Equity and Diversity (OED) | Title IX - (213) 740-5086*

[equity.usc.edu](http://equity.usc.edu), [titleix.usc.edu](http://titleix.usc.edu)

Information about how to get help or help a survivor of harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following protected characteristics: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations.

*Bias Assessment Response and Support - (213) 740-2421*

[studentaffairs.usc.edu/bias-assessment-response-support](http://studentaffairs.usc.edu/bias-assessment-response-support)

Avenue to report incidents of bias, hate crimes, and microaggressions for appropriate investigation and response.

*The Office of Disability Services and Programs - (213) 740-0776*

[dsp.usc.edu](http://dsp.usc.edu)

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

*USC Support and Advocacy - (213) 821-4710*

[studentaffairs.usc.edu/ssa](https://studentaffairs.usc.edu/ssa)

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

*Diversity at USC - (213) 740-2101*

[diversity.usc.edu](https://diversity.usc.edu)

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

*USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call*

[dps.usc.edu](https://dps.usc.edu), [emergency.usc.edu](https://emergency.usc.edu)

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

*USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call*

[dps.usc.edu](https://dps.usc.edu)

Non-emergency assistance or information.

### **Help with Basic Needs**

<https://studentbasicneeds.usc.edu/>

<https://studentbasicneeds.usc.edu/resources/covid-19/>

*If you are experiencing food insecurity*

<https://studentbasicneeds.usc.edu/resources/food-insecurity/>

*If you are experiencing housing insecurity*

<https://studentbasicneeds.usc.edu/resources/housing-insecurity/>

*If you are experiencing financial insecurity*

<https://studentbasicneeds.usc.edu/resources/financial-insecurity/>

*If you need help procuring technology to perform coursework remotely*

<https://studentbasicneeds.usc.edu/resources/technology-assistance/>

We realize attending classes online and performing coursework remotely requires access to technology that not all students may possess. If you need resources to successfully participate in your classes, such as a laptop or internet hotspot, you may be eligible for the University's equipment rental program. To apply, please fill out this form (see link above) and our Student Basic Needs team will partner with you to evaluate your options.