

CONSTITUTIONAL LAW: RIGHTS

Fall 2022

3 credits

MW 1:30-2:45pm

Professor Erin Miller

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Office Hours: M 2:50-3:50pm, Room 425

Course Description

This course examines constitutional rights, particularly those protected under the Equal Protection/Due Process Clauses and related questions of judicial role and theories of interpretation. Key topics covered include equal protection, substantive due process, economic rights, gun rights, and sexual autonomy rights.

Learning Objectives

In this course, students will:

- Acquire a sophisticated understanding of the jurisprudence of individual rights under the Fourteenth Amendment of the United States Constitution.
- Be able to apply key concepts from substantive due process, equal protection and procedural due process to new fact patterns.
- Be able to critically evaluate Fourteenth Amendment individual rights jurisprudence
- Be able to articulate coherent, well-defended arguments on both sides of an issue during class discussion.
- Listen critically to and engage with ideas and arguments that are different from the student's own thinking.

Course Materials

The required casebook for this course is STONE, SEIDMAN, SUNSTEIN, TUSHNET & KARLAN, *CONSTITUTIONAL LAW* (Aspen 8th ed.). For those who want to reduce expenses, the book is available for rental on Amazon. All other materials will be posted on Blackboard.

Your time is most productively spent reading the casebook and paying attention during class. You should not need additional materials for study aids. If you do, however, want to read more, I recommend one treatise/hornbook: ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* (6th ed.). I have placed copies of both the casebook and the treatise on reserve in the library.

Grading

The bulk of your grade will be based on a take-home examination conducted at the end of the semester. That exam will be open book; its exact duration will be announced later in the term.

In addition, 10% of your grade will be based on class participation. Particularly thoughtful participation or particularly poor participation may, respectively, raise or lower your final grade. The occasional incorrect, forgetful, or timid answer should not lower your final grade; a pattern of being absent, being unprepared for class, or disrespecting the learning environment likely will.

Starting in the second week of class, I will sometimes “cold call” students—meaning that I may ask you to contribute to classroom discussion even if you have not volunteered to do so. You should be prepared to answer questions about all materials assigned for the class—including about case facts, legal principles, and your own thoughts and opinions about the materials. The purpose for cold calling is not to test you, but to allow us all to reason *together* aloud about legal rules and principles. I will do everything in my power to ensure that this is a comfortable experience for everyone, including the following:

- When calling on students, I will move down each row of the seating chart, and snake between rows, so that you should have some advance warning of when you will be called on. I will not call on more than five students in one class.
- You are permitted to request a “pass” for any day during the term that you wish not to be called on. However, you must submit any pass request to me via email at least one hour prior to the start of the relevant class; please use as your subject line “Pass for [insert calendar date].” I will return to any students who pass, unless you indicate that you are passing indefinitely. Indefinite passes are allowed, but may lower your grade in the course.

Office Hours

My regular office hours will be held Mondays immediately after class in my office, Room 425, from 2:50-3:50pm. I will hold extended office hours during the final two weeks of the term. Additional meetings may be arranged by appointment.

Course Policies

Attendance. You may miss three classes, without permission and without penalty. Any further absences may each lower your participation grade, absent an emergency-level justification cleared with me in advance. (I will always clear illness, including COVID-19-related symptoms.) I suggest that, particularly at the beginning of the term, you reserve your free absences for professional commitments, which I do not consider to be emergencies.

Zoom and Recordings. I do not plan to use Zoom in this class. However, every lecture will be audio-recorded. To encourage class participation and for privacy reasons, I will make these recordings available to students only upon request—including in cases of official USC accommodations. Please remember that USC has a policy that prohibits sharing of any online course content outside of the learning environment.

Classroom norms. Some of the topics that we will grapple with in this course are controversial. While you will at times be encouraged to express your own reactions, those expressions must always be couched in respect for your fellow classmates and the classroom environment.

Tentative Schedule of Classes & Assignments

Below is a preliminary schedule of topics we will cover, with reading assignments. While you are welcome to read ahead using this as a rough guide, the reading assignments for each class may change and will only be confirmed a couple of days in advance, based on how quickly we are progressing through the material.

- CB=Casebook
- BB=Blackboard; refers to supplemental materials to be found on Blackboard under “Content”
- Readings start and end at the most obvious break on the page, unless otherwise indicated (e.g., I sometimes will ask you to read starting at, or through the end of, a particular case note)

Class	Rights Source	Topic	Assignment	Significant Cases
1		Introduction; constitutional history; theories of interpretation	CB xlvii-viii (amends. 1-10, 14), 22-25, 719-28; BB reading (TBA)	
2		History of race and the Constitution I: before and after the Civil War	CB 465-69 n.2, 470-82; Frederick Douglass’s July 4 speech (BB)	<i>Post, Dred Scott, Plessy</i>

3	Equal protection	History of race and the Constitution II: racial desegregation	CB 485-501	<i>Brown v. Board of Education I & II</i>
4	Equal protection	Rational basis review	CB 509-12, 515-19, 526-28 n.3	<i>Beazer, Moreno, Cleburne, Railway Express, Lee Optical</i>
5	Equal protection	Invidious racial classifications	CB 530-38 n.1, 540-43 n.4, 769 (footnote text only)	<i>Strauder, Korematsu, Loving, Carolene Products (fn4)</i>
6	Equal protection	Facially nonracial classifications	CB 549-52, 554-59 n.6	<i>Davis, Arlington Heights, Yick Wo, Gomillion</i>
7	Equal protection	Affirmative action I	CB 573-81 n.2, 582-93	<i>Adarand Constructors, Grutter</i>
8	Equal protection	Affirmative action II	CB 600 n.2-607, 616-20; <i>SFA v. Harvard</i> materials (BB)	<i>Fisher, PICS, SFA</i>
9	Equal protection	Gender I: the advent of heightened scrutiny	CB 637-41, 645 n.6-649	<i>Reed, Frontiero, Craig</i>
10	Equal protection	Gender II: the application of heightened scrutiny	CB 654-61, 664-69	<i>VMI, Nguyen, Morales-Santana</i>
11	Equal protection	Sexual orientation & gender identity	CB 680-87, 689-92 n.2	<i>Romer, Windsor (CA2)</i>
12	Equal protection	Other candidate classes for protection: citizenship, wealth, disability	CB 696-701 n.3, 706-09 n.1, 713-17 (bottom of page)	<i>Sugarman, City of Cleburne</i>
13		State action doctrine	CB 1529-30, 1538-43, 1548-50, 1569-70, 1572-74 n.2	<i>Flagg, Lugar, Shelley, Marsh</i>
14		Evolution of the Fourteenth Amendment	CB 728-32, 738-46	<i>Slaughter-House Cases, McDonald</i>
15	Express right/ incorporation	Second Amendment	CB 50-53, 54 n.4-56 n.8; <i>NY Rifle & Pistol Ass'n</i> excerpt (BB)	<i>Heller, NY Rifle & Pistol Ass'n</i>
16	Due process	Procedural rights	CB 928-34, 940-43	<i>Roth, Sinderman, Loudermill, Eldridge</i>
17	Substantive due process	Economic rights I: the <i>Lochner</i> era	CB 746-54	<i>Lochner</i>
18	Substantive due process	Economic rights II: post- <i>Lochner</i>	CB 759-67 n.1	<i>Nebbia, West Coast Hotel, Carolene Products, Lee Optical, Skrupa</i>
19	Substantive due process: privacy	Reproductive autonomy I: contraception	CB 825-33, 835 n.5-836 n.6	<i>Griswold, Baird</i>
20	Substantive due process: privacy	Reproductive autonomy II: history of abortion	CB 836-42 n.1, 844-46 n.1, 848-66 (skim <i>Casey</i> concurrence/ dissents)	<i>Roe, Casey</i>

21	Substantive due process: privacy	Reproductive autonomy II: abortion in the present	CB 879-82; <i>Dobbs</i> excerpt (BB)	<i>Hellerstedt, Dobbs</i>
22	Substantive due process: privacy	Sexual autonomy & family autonomy	CB 887-98 n.2, 918-19, 919 n.3-921 n.4	<i>Lawrence, Moore, Michael H., Troxel</i>
23	Substantive due process: privacy	Marriage autonomy	CB 900-917	<i>Obergefell</i>
24	Substantive due process: privacy	Bodily autonomy & the right to die	CB 922-23, 923-27 n.2; BB materials (TBA)	<i>Cruzan, Glucksberg</i>
25	SDP + EP	Fundamental interests I: procreation, judicial process, & travel	CB 769-72, 795-96, 801-06 n.3	<i>Skinner, Griffith, Douglas, Shapiro, Saenz</i>
26	SDP + EP	Fundamental interests II: voting	CB 774-80 n.2	<i>Harper, Bush v. Gore, Kramer</i>
27	SDP + EP	Fundamental interests III: education & welfare	CB 810-11, 813-19 n.1, 820-24	<i>Dandridge, Rodriguez, Plyler v. Doe</i>
28		Review		

Statement on Academic Conduct and Support Systems

The following statement represents University policy.

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. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, policy.usc.edu/scientific-misconduct.

Support Systems:

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

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

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, 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

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

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

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

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, 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

Non-emergency assistance or information.