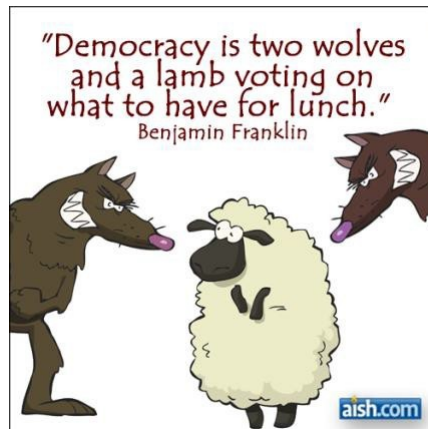


# USC Gould

School of Law

## LAW 406 - INDIVIDUAL RIGHTS in U.S. CONSTITUTIONAL LAW (4 units)

Spring 2023



**Professor** Daria Roithmayr: [droithmayr@law.usc.edu](mailto:droithmayr@law.usc.edu)

**Office Hours:** I will conduct Zoom office hours by appointment on Tuesdays from 5 to 6PM. If that option does not work for you, email me with three proposed times. You are also welcome to email me with questions at any time throughout the semester.

### CLASS POLICIES AND SYLLABUS

#### **Course Description:**

What are the limits, if any, to your freedom of speech? Can the majority of voters in your state pass a law that prevents you from organizing a political march? Can your state's legislature limit a woman's right to choose to terminate a pregnancy, and if so, in what way? Do you have a right to keep a semi-automatic weapon at home if your city bans such weapons? When does the Supreme Court get to tell state legislatures what to do?

This upper-level course explores the limits that the Constitution imposes on the majority's ability to impose its will on an individual. At a fundamental level, the course is about our relationship with the state, and with each other, as political and social actors who are connected to each other in a democratic community that is governed by majority rule. We will learn about why we all should care deeply about Constitutional law, as it carves out the contours of our individual autonomy against the will of the group. More specifically, we will study whether and how the Constitution limits the force of "majority rule," and the constraints that the Bill of Rights impose on power wielded by an elected majority. We will study such controversial subjects as the nature of fundamental rights, freedom of speech, the right to privacy and to intimate decision-making about one's body and one's procreative choice, the right to be treated equally with others, and the state's obligation to protect such rights. We will talk in class with each other about some of the most hotly-debated topics in law--sex, abortion, contraception, guns, same-sex marriage, affirmative action, drug addiction, freedom of speech and gender equality, among other things. Come prepared to have your views challenged!

**Objectives:** By the end of this course, students will:

- Be able to read constitutional rights cases to understand what the court's holding is and why the court has decided as it has.
- Have a basic understanding of the jurisprudence of individual rights amidst majoritarian political power under the Fourteenth Amendment of the US Constitution.
- Have the ability to apply key concepts from substantive due process, equal protection and procedural due process to new fact patterns.
- Have the ability to critically evaluate Fourteenth Amendment, Second Amendment and First Amendment individual rights jurisprudence
- Have the ability to articulate coherent, well-defended arguments on both sides of an issue, drawing from the readings and other sources, during class discussion.
- Be able to listen critically and engage persuasively ideas and arguments that are different from the student's own thinking.

**Materials:** STONE, SEIDMAN, SUNSTEIN, TUSHNET & KARLAN, CONSTITUTIONAL LAW (Aspen 8<sup>th</sup> ed.). You may find this treatise to be of use. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES (5th ed.) (optional). I have put a copy of the casebook and treatise on reserve in the Law Library.

Page numbers refer to the casebook. "T", "M" and "B" refer to "top," "middle" and "bottom" of page, respectively. HO refers to a handout available on Blackboard (Assignments Tab).

I will upload class slides at the end of each week to Blackboard.

**Recording classes:** Classes will be recorded so that students who cannot attend because of an excused absence can catch up. If you wish to have access to a recording of a class, please send me an email with the reason for your absence.

**Grades and Exams:** I am very much looking forward to your lively participation in class discussion and in small group exercises. I strongly encourage volunteering. Think of this as an opportunity to hone your skills of thinking, communicating and learning! 10% of your grade will come from class participation.

The midterm will cover material up until that point. The midterm will be open book. The exam will be an hour, and will be half short essay and half multiple choice. The midterm will be worth 35% of your grade.

The final exam will be open book. The exam will be multiple choice and will cover the full range of the material we have discussed in class. The final will be worth 55% of your grade.

**Blackboard:** This course presumes that students have regular access to and facility with the internet, including the course website on Blackboard. The URL for the site is: <https://blackboard.usc.edu/>. To access it, you must activate your USC e-mail account, which you can do by visiting the ITS activation page at <http://www.usc.edu/firstlogin>. For assistance, contact Blackboard's 24-hour tech support online or at 213-740-5555.

## **SYLLABUS for Individual Rights in U.S Con Law**

This class covers the Constitution's provisions on individual rights, not all of them, but many of the ones we consider to be among the most important. As you read the assigned cases, ask yourself some key questions that we will discuss at length in class:

- When should the Supreme Court be allowed to interfere with Congress or a state legislature in order to protect someone's individual rights? Remember, the Supreme Court is unelected, and legislatures reflect the will of the majority!
- What should the Supreme Court do when the Constitution doesn't lay out explicit rights but there is a common understanding or history of a person's individual right being protected?
- When interpreting the Constitution, should a court balance the government's interest in regulation against an individual's right? What

scale should the Court use to balance? What role should the judiciary play in our democracy?

### **Assignments**

**PRELIMINARY:** Before you come to your first class, you have to learn how to read and brief a judicial opinion. You will be reading shorter excerpts of cases in your casebook, but you will want to know how to extract the useful information about the opinion, and also how to figure out the court's rationale for its decision. Read the following for some tips and tricks on how to do that.

Northwestern Law School, Introduction to Case Briefing:

<https://www.law.northwestern.edu/student-life/student-services/orientation/documents/orientation-reading-introduction-to-case-briefing.pdf>

**SCHEDULE:** The following assignments are a rough approximation of our course assignment schedule. I reserve the right to adjust as we go, to reflect our need for more (or perhaps) less discussion on particular topics!

**WEEKLY TOPICS:** (with assigned reading to be completed before class)

**Week 1:**

PROTECTING INDIVIDUAL LIBERTY: How to Read the Constitution

U.S. Constitution, Amendments I-X; XIV.....xlvi-liv  
Theories of Interpretation..... 720-28  
Legal Realism..... Blackboard

SOURCES OF SUBSTANTIVE RIGHTS

Economic Interests..... 746-47  
Pre-Lochner (read as background)..... 747-49  
Lochner v. New York..... 749-54

**Week 2:**

Retreat from Lochner..... 759-69B

PRIVACY INTERESTS

Contraception

Griswold v. Connecticut..... 826-33  
Eisenstadt v. Baird..... 835 (n. 5)

Abortion

Roe v. Wade..... 836-45B

**Week 3:**

Abortion (continued)

Planned Parenthood v. Casey..... 848-66M  
Dobbs v. Jackson Women’s Health..... Blackboard

Family

Moore v. City of East Cleveland..... 918-19 (n.4)

**Week 4:**

Sexual privacy

Bowers/Lawrence v. Texas.....887-98T (thru n.1)

RIGHT TO EQUAL TREATMENT

Race and the Constitution.....465-67B

Dred Scott v. Sandford.....470-73

**Week 5:**

Plessy v. Ferguson.....480-82

Hernandez v. Texas.....[Blackboard]

Mendez v. Westminster.....[Blackboard]

**Week 6:**

The Road to Brown.....485-87

Brown v. Board of Education (I and II).....488-95B

Milliken v. Bradley.....504M-505B

**Week 7:**

Midterm

JUDICIAL REVIEW OF CLASSIFICATIONS NOT BASED ON RACE: RATIONAL BASIS

The Meaning of Equality

New York Transit Auth. v. Beazer.....510-512M

Elements of Rationality Review

Impermissible Government Purposes: Moreno; City of Cleburne; Romer.....516-19

Means-Ends Relationship: Railway Express Agency Williamson v. Lee Optical523-28 (thru n. 3)

**Week 8:**

HEIGHTENED SCRUTINY AND RACE

Invidious Discrimination:

Strauder; Korematsu.....531-36

Loving v. Virginia.....536-38B (thru n. 1)

Theories of Strict Scrutiny:

Washington v. Davis.....549-52

**Week 9:**

Notes on Motive: Rogers; Yick Wo; Gomillion;  
Arlington Heights.....540M-543M (thru n. 4), 544-59M (thru n. 6)

AFFIRMATIVE ACTION

Adarand Constructors v. Peña.....573-80B (thru n. 1e)

**Week 10:**

Grutter v. Bollinger..... 582-93  
Fisher v. University of Texas..... 600M-607  
I & II Parents Involved..... 616-32

**Week 11:**

HEIGHTENED SCRUTINY AND OTHER IDENTITY CATEGORIES

Gender

Reed, Frontiero..... 639-41  
Craig v. Boren..... 645-49  
U.S. v. Virginia..... 654-61M

**Week 12:**

Sexual Identity:

Romer v. Evans..... 680-87  
Standard of Review..... 689-96T  
Obergefell v. Hodges..... 900-17

**Week 13:**

Education:

San Antonio v. Rodriguez..... 813-819

RIGHT TO BEAR ARMS UNDER THE SECOND AMENDMENT

D.C. v. Heller..... 50-53  
McDonald v. City of Chicago..... [Blackboard]

**Week 14:**

RIGHT TO FREE SPEECH UNDER THE FIRST AMENDMENT

- Brandenburg v. Ohio.....[Blackboard]
- Tinker v. Des Moines Independent Community School Dist.....[Blackboard]
- New York Times v. Sullivan.....[Blackboard]

**Week 15:**

THE RIGHT TO VOTE

- Harper v. Virginia..... 774-76]
- Bush v. Gore..... 776-77]
- Kramer v. Union Free School District..... 777-78

FINAL EXAMINATION

(Refer to the final exam schedule in the USC Schedule of Classes at [classes.usc.edu](http://classes.usc.edu).)

**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 [Research and Scholarship Misconduct](#).

**Students and Disability Accommodations:**

USC welcomes students with disabilities into all of the University’s educational programs. The Office of Student Accessibility Services (OSAS) is responsible for the determination of appropriate accommodations for students who encounter disability-related barriers. Once a student has completed the OSAS process (registration, initial appointment, and submitted documentation) and accommodations are determined to be reasonable and appropriate, a Letter of Accommodation (LOA) will be available to generate for each course. The LOA must be given to each course instructor by the student and followed up with a discussion. This should be done as early in the semester as possible as accommodations are not retroactive. More information can be found at [osas.usc.edu](http://osas.usc.edu). You may contact OSAS at (213) 740-0776 or via email at [osasfrontdesk@usc.edu](mailto:osasfrontdesk@usc.edu).

**Support Systems:**

*Counseling and Mental Health - (213) 740-9355 – 24/7 on call*



[studenthealth.usc.edu/counseling](http://studenthealth.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) 740-9355(WELL), press “0” after hours – 24/7 on call*

[studenthealth.usc.edu/sexual-assault](http://studenthealth.usc.edu/sexual-assault)

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

*Office for Equity, Equal Opportunity, and Title IX (EEO-TIX) - (213) 740-5086*

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

Information about how to get help or help someone affected by harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants.

*Reporting Incidents of Bias or Harassment - (213) 740-5086 or (213) 821-8298*

[usc-advocate.symplicity.com/care\\_report](http://usc-advocate.symplicity.com/care_report)

Avenue to report incidents of bias, hate crimes, and microaggressions to the Office for Equity, Equal Opportunity, and Title for appropriate investigation, supportive measures, and response.

*The Office of Student Accessibility Services (OSAS) - (213) 740-0776*

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

OSAS ensures equal access for students with disabilities through providing academic accommodations and auxiliary aids in accordance with federal laws and university policy.

*USC Campus Support and Intervention - (213) 821-4710*

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

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

*Diversity, Equity and Inclusion - (213) 740-2101*

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

Non-emergency assistance or information.

*Office of the Ombuds - (213) 821-9556 (UPC) / (323-442-0382 (HSC)*

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

A safe and confidential place to share your USC-related issues with a University Ombuds who will work with you to explore options or paths to manage your concern.

*Occupational Therapy Faculty Practice* - (323) 442-3340 or [otfp@med.usc.edu](mailto:otfp@med.usc.edu)  
[chan.usc.edu/otfp](http://chan.usc.edu/otfp)

Confidential Lifestyle Redesign services for USC students to support health promoting habits and routines that enhance quality of life and academic performance.