

**Political Science 340**  
**Constitutional Law: Governmental Powers, Conflicts and**  
**Constraints**  
**Spring 2025 – Wednesday 6:00 – 8:50 p.m.**  
**DMC 156**



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**Course Description and Goals**

Few institutions in American life and politics are more cherished or more hotly debated than the “Constitution” of the United States. The Constitution is the bedrock of the American polity, as well as a source of some of our most divisive political controversies. Although most Americans tend to equate constitutional law with notions of civil rights, due process and liberties, two clearly important aspects of the Bill of Rights and Fourteenth Amendment, this course will focus on these and other provisions of the Constitution in our discussion of the nature and scope of government powers and limitations, found in Presidential powers, powers of Congress and the role of the judiciary, as well as the relationship between the federal government and state governments. At first glance, some may suggest that such issues are well-settled and require little attention. To the contrary, a brief perusal of current events both domestically and abroad reveals many unanswered questions with regard to American governmental powers and constraints. Some of these questions appear(ed) to be settled, like the “right to abortion,” are no longer settled. These powers, or lack thereof, directly affect both Americans and non-Americans alike. Constitutional law, particularly at the hands of the current Supreme Court, is in a state of flux. This course is, in short, relevant to our times. More so than ever before.

The goals of this course are several-fold. First, throughout the semester you will be asked to read and analyze many Supreme Court opinions (excerpted to make this possible). Through this process, you will gain a facility to distill the meaning of complex legal rulings and doctrine. You will be exposed to several points of view on each question presented in any given case. Second, you will learn how to conduct legal analysis, the kind many of you will encounter in law school in the future. Lastly, it is my sincere hope that each student may come away with a better understanding of how to “think like a lawyer” when it comes to constitutional issues and appreciate that there is always another point of view. Whether students ultimately go off to law school or opt for a non-legal career, thinking like a lawyer offers significant advantages that may augment and enhance your careers.

In order to accomplish these goals, this class will, to a degree, be taught much like a law school class. Although some lectures will take place, students will be asked to identify and track the progress of the law through reading case decisions, offering case briefs in class and giving their insight to the class. For that reason, it’s important that students read the materials *prior* to coming to class and prepare case briefs so that they can participate in the class discussion. It is through these discussions that students will come to understand the constitutional dynamics of various issues.

Here are some key features of the Constitution that we are going to study:

- Stare decisis – how judges decide cases based on precedent
- Checks and balances inherent in our system of government
- Federalism: Limited government
- Popular sovereignty: Republicanism, and
- Separation of powers and
- Bill of Rights – Limits on Government power especially through criminal process

### **Primary Learning Objectives:**

1. Provide an overview of the American legal system, read and analyze court decisions and apply such rulings to different factual situations.
2. Develop critical thinking skills and a refined set of skills in analytical thinking, problem-solving, persuasiveness, and academic writing.
3. Conceive, research and write a significant research paper based upon a case that is presently before the United States Supreme Court.

### **Required Texts**

David M. O’Brien, *Constitutional Law and Politics, Volume One: Struggles for Power and Governmental Accountability*, 12th Edition (New York: W.W. Norton)

David M. O’Brien, *Storm Center-The Supreme Court in American Politics*, 12th Edition (New York: W.W. Norton)

Additional required readings will be assigned throughout the semester and will be available on Blackboard ([www.blackboard.usc.edu](http://www.blackboard.usc.edu)). Note: Both of the books may be purchased at the University bookstore or on-line if you so choose.

## Course Requirements

- **Midterm Examination:** Students will take a closed-book, in-class midterm exam on February 26, 2025. The Midterm will be 25% of the grade.
- **Research Paper – Pick a Supreme Court decision either studied in class or decided recently by the Court and write a paper analyzing, commending or criticizing the decision based on Constitutional principles discussed in class.** This will be worth 25% of your grade.
- **Final Exam:** A closed-book/closed-note final exam will be held on May 7th \_\_, regular class time from 7 to 9. The Essay portion of the test will be take home. The exam will be worth 50% of your total grade.

**Participation:** Although participation is not strictly required, extra credit will be given based on your participation which can raise your scores by as much as 5 points. Awarded to students who: (1) attend nearly all classes and (2) actively participate throughout the semester.

**NB:** You should confirm the date and time of the final exam with your other final exams now so a conflict does not arise at the end of the semester. Likewise, note the date and time of this exam before you book any flight home. Flights home do not constitute a sufficient reason for altering the date of the final exam.

**Note:** An “incomplete” will only be granted in this class under exceptional of circumstances that must be verified (e.g., a serious illness that prevents you from taking the final) and only if you have completed all of the course requirements except the final exam. In other words, every student must complete each course requirement (midterms, paper, final) in order to receive a passing grade in the course.

## General Course Policies

You must attend class and keep up with the readings if you hope to do well in this course. Although lectures will touch on many of the readings, I will not be summarizing the readings during class. The reading schedule is manageable but only if you are diligent about doing the reading.

Preparing case briefs is a key component of the course. We will show you how to brief cases for the designated cases on a weekly basis. Briefs are not submitted nor graded but are a tool to assist students in discussing the cases during class and to prepare for exams. If you are diligent about preparing briefs throughout the semester, you will be far ahead of the game when it comes time to prepare for the midterm and final exam.

You must spend a significant amount of time outside class working on the research paper. If you need assistance on how to carry out social science research, please start with the

teaching assistant. It is your responsibility to find appropriate sources in the library and on-line, digest the information contained in those sources and put that information together in a persuasive, analytic way.

You must be prompt, prepared, and respectful of your fellow students. Among other things, this means being attentive during class -- either taking notes, listening, or engaging in class discussion, and *not* texting, on social media, reading the paper, sleeping, listening to music, etc.

### **Plagiarism and/or Cheating**

It is USC policy to deal with any form of cheating and/or plagiarism by immediately giving a failing grade in the course and reporting the student to the department and other administrative authorities for appropriate action. If you are having problems with the course material, please come and see me *before* doing something that could put your academic career in jeopardy.

Please note that “plagiarism” includes *any* borrowing from the work of others without giving appropriate credit. If you use ChatGPT or some AI program to write the paper, it is plagiarism just the same. To assist in ensuring that plagiarism does not occur, all written assignments will be processed through “Turnitin” which USC subscribes to. Turnitin is a program that assists in identifying papers that contain plagiarized material.

### **Office of Student Accessibility Services**

Any student requesting academic accommodations must register with the Office of Student Accessibility (OSAS) each semester – before the scheduled exam. A letter of verification for approved accommodations must be obtained from OSAS. Please make sure the letter is delivered to me (and the TA) as early in the semester as possible.

This syllabus is not a contract. It is my intention to keep with the schedule but I reserve the right to change or clarify course topics, assignments and deadlines. Any such changes will be noted in class as well as posted in advance on Blackboard.

## Course Outline and Schedule of Classes

### **I. Introduction to the Constitution As a Written Document**

- **January 15 – Class No. 1 -- Class Introduction.** During this first week, review the syllabus closely, evaluate the amount of work required for the class and decide if you are up to the challenge. Be forewarned, this class requires a fair amount of work in and outside of class. **Reading:** NYT Opinion: How to Stave Off Constitutional Extinction – 07/2/23 posted on Blackboard)

### **II. The American Judicial System and Judicial Power**

- **January 15 (Part II): Lecture No. 2 -- Overview of the US Court System Sources of Law in US**
  - **Common law** (Judicial)
  - **Statutory law, Regulatory**
  - **Constitutional law****Reading:** Storm Center: Chapter 3  
CONLAW: pp. 1-26 (United States Constitution)
  
- **January 22: Lecture No. 3 Operation of Court System in U.S. -- Concepts of Judicial Jurisdiction, Judicial Review & Stare Decisis**  
Storm Center: Chapter 4; CONLAW: pp. 27-107  
Federalist Papers Federalist Papers #78  
*Marbury v. Madison*, p.50-59  
*Eakin v. Raub* (dissenting opinion), p. 59-62  
*Article DuPage Bar Association: An Insider's Look within the U.S.*  
*Supreme Court: a U.S. Supreme Court Clerk's Revelations*  
**(Blackboard)**
  
- **January 22: Lecture No. 4 Scope of Judicial Power – Art. III**  
Storm Center: Chapter 5; CONLAW: pp. 187-219, 775-783  
*Martin v. Hunter's Lessee*  
*Cooper v. Aaron*
  
- **January 29: Lecture No. 5 Judicial Interpretation of Constitution – Schools of Thought between Activist Judges and Strict Constructionists**  
CONLAW: pp. 75-78, 373-  
*Dred Scott v. Sanford*, 19 How. (60) U.S. 1857: 1410-1421  
*District of Columbia v. Heller* **(Blackboard)**

## II. Article III -- Limits on Judicial Power

- **January 29: Lecture No. 6 Jurisdiction and Justiciability**  
Storm Center: pp. 172-196 (review)  
CONLAW: pp. 108-163  
*Flast v. Cohen*  
*Valley Forge v. Americans United*  
*Lujan v. Defenders of Wildlife*  
*Hein v. Freedom from Religion Foundation, Inc.*
- **Feb 5: Lecture No. 7 Justiciability & Other Limitations on Courts**  
Storm Center: Chapter 6; CONLAW: pp. 166-188  
*Goldwater v. Carter*  
*Elk Grove Unified School District v. Newdow*  
*Doe v. Bush v. Gore (Blackboard – 1<sup>st</sup> Cir. Case)*  
*Baker v. Carr*
- [ Lecture No. 8 reserved ]
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## III. Presidential Power

- **Feb. 5: Lecture No. 9 Presidential Power over Foreign Policy**  
CONLAW: pp. 223-257  
*United States v. Curtiss-Wright Corporation*  
*Dames & Moore v. Regan*  
*Zivotofsky v. Kerry*  
*Trump v. IRAP (Blackboard)*
- **Feb. 12: Lecture No. 10 Presidential Power over Domestic Policy**  
CONLAW: pp. 353-382  
*Youngstown Sheet & Tube v. Sawyer*  
*New York Times Co. v. United States*

## IV. Presidential Power over Treaties and Executive Agreements

- **Feb. 12: Lecture No. 11**  
CONLAW: pp. 258-279  
*Missouri v. Holland*  
*United States v. Pink*  
*Medellin v. Texas*

## V. Presidential War-Making and Emergency Powers

- **Feb. 19 Lecture No. 12**  
CONLAW: pp. 280-313  
The Prize Cases  
*Ex parte Milligan*  
*Korematsu v. United States*
- **Feb. 19: Lecture No. 13**  
CONLAW: pp. 313-346  
Rasul v. Bush  
Hamdi v. Rumsfeld (**Blackboard**)  
Hamdan v. Rumsfeld (**Blackboard**)  
Boumediene v. Bush

**Feb. 26: MIDTERM EXAM – IN CLASS**

## VI. Appointment/Removal and Pardon Powers

- **March 5: Lecture No. 14: Appointment/Removal**  
CONLAW: pp. 376-420  
Myers v. United States  
Humphrey's Executor v. United States  
Bowsher v. Synar  
Morrison v. Olson
- **March 5: Lecture No. 15 Pardon Power**  
Ex Parte Grossman (**Blackboard**)  
Murphy v. Ford (**Blackboard**)  
Bush Commutes Libby's Prison Sentence (**Blackboard**)  
Article, Does President have Power to Pardon Anyone? Himself? Your Questions, Answered (**Blackboard**)

## VII. Privileges, Immunities and Impeachment

- **March 12: Lecture No. 16 Privileges**  
CONLAW: pp. 472-492  
United States v. Nixon  
Clinton v. Jones  
*United States v Trump*

- **March 12: Lecture No. 17 Immunities and Impeachments**  
 CONLAW: pp. 516-529  
 Gibson v. Florida Legislative Investigation Committee  
 Watkins v. United States (**Blackboard**)  
 Barenblatt v. United States (**Blackboard**)  
 Walter L. Nixon v. United States

**March 19: Spring Break (No Class)**

## **VIII. Congress' Lawmaking Authority**

- **March 26: Lecture No. 18 Commerce Clause – Part I**  
 CONLAW: pp. 530-571  
 McCulloch v. Maryland  
 Gibbons v. Ogden  
 United States v. E.C. Knight Company  
 Hammer v. Dagenhart
- **March 26: Lecture No. 19 Commerce Clause – Part II**  
 CONLAW: pp. 571-600  
*NLRB v. Jones & Laughlin Steel Corp.*  
*United States v. Darby Lumber Company*  
*Wickard v. Filburn*  
*Heart of Atlanta Motel v. US/Katzenbach v. McClung*
- **April 2: Lecture No. 20 COMMERCE CLAUSE**  
 CONLAW: pp. 600-645  
 United States v. Lopez  
 United States v. Morrison  
 Gonzales v. Raich]

## **IX. Bill of Rights and Criminal Procedure – ConLaw for Criminals**

- **April 2: Lecture No. 21 Cases and Readings posted on Blackboard**  
 Fourth Amendment – Warrant requirement  
*Arizona v. Hicks & Riley v. California*
- **April 9: Lecture No. 22 Constitutional Violations & Exclusionary Rule**  
 Cases and Readings posted on Blackboard  
 Fifth Amendment right against self-incrimination  
*Terry v. Ohio*  
*Mapp v. Ohio & Miranda v. Arizona*



## **IX. Delegation of Congressional Authority/ Limitations on Executive Power**

- **April 9: Lecture No. 23**  
CONLAW: pp. 420-471  
*Schechter Poultry Corp. v. United States*  
*AFL-CIO v. American Petroleum Institute*  
*INS v. Chadha*  
*Clinton v. City of New York*

## **X. State Power within the Federal System**

- April 16: Lecture No. 24 States Power with Interstate Commerce**  
CONLAW: pp. 674-698  
*Cooley v. The Board of the Port of Philadelphia*  
*Southern Pacific Co. v. Arizona*
- April 16: Lecture No. 25 States Power with Interstate Commerce (cont.)**  
CONLAW: pp. 698-700  
*Bibb v. Navajo Freight Lines, Inc. (Blackboard)*  
*Maine v. Taylor*
- April 23: Lecture No. 26 Federal Preemption over State Laws**  
CONLAW: pp. 700-703  
*Pacific Gas & Elec. v. State Energy Resources (Blackboard)*  
*Crosby v. National Foreign Trade Council (Blackboard)*  
*Pennsylvania v. Nelson*  
**Paper/Opinion Due in Class**

## **XI. State Immunity within the Federal System**

- April 23: Lecture No. 27 Commandeering State Power & State immunity**  
CONLAW: pp. 744-769  
*Seminole Tribe of Florida v. Florida*  
*Alden v. Maine*  
*Nevada Dept. of Human Resources v. Hibbs*
- CONLAW: pp. 685-744  
*Garcia v. San Antonio Metropolitan Transit Authority*  
*New York v. United States*  
*Printz v. United States*
- April 30: Lecture No. 28 Review for Final Examination and Course wrap**

**May 2:       Classes End – Review Period**

**May 7:       Final Exam In Class (Exam time from 7 to 9 p.m.)**