

Syllabus

Professor David E. Bernstein
Office Telephone: (703) 993-8089
E-mail: DavidEBernstein@aol.com

Reading assignments are in Kmiec and Presser, *Individual Rights and the American Constitution* (2d ed. 2004). You do not need to purchase a supplement for this book. I will attempt to stay roughly on schedule, but wish to be flexible enough to spend extra time talking about that the class finds of particular interest. For this reason, we may sometimes fall behind. **When we do so, please continue to follow the syllabus, unless instructed otherwise.** In the event the reading assignments need to be modified, I will inform you in class or via TWEN.

Our casebook, and the course itself, stresses the history of the evolution of constitutional doctrine. The book also provides large excerpts of major cases in order to get a real flavor for constitutional argument. Other Constitutional Law classes focus more on modern doctrine, and read smaller excerpts from a larger number of cases to get a stronger initiation into the minutiae of modern constitutional law. Please consider whether the focus of this class suits you when deciding which section of Con Law II to take.

Your exams are graded anonymously. This means that, in general, the level of your contribution to class discussion cannot affect your exam grade. However, I will be utilizing a system called "Present, On Time, and Prepared" that will allow me to adjust your grade for the course one step in either direction on the basis of your performance in class. The system functions as follows.

When you enter the classroom at the beginning of class, there will be a sign-up sheet on the front desk. If you are prepared to participate in class discussion, you may come up and place a checkmark next to your name. If you do so, you are subject to being called upon that day. If you do not, you will not be called on. You may not check your name off once class has started, so arriving late will prevent you from being counted as "present and prepared" that day. If you check your name off for at least 13 of the 14 class meetings, you will receive a one increment increase in your grade for the course, for any grade below a B+. In other words, students with exam grades below B+ (B and below) are eligible for the increment increase. **You must arrive on time to sign in. If you arrive after class starts, even by one minute, you will not be permitted to sign in!** (I understand that this is a hardship to students with jobs that sometimes conflict with class scheduling, but this policy is meant as a reward to those who are able to fully participate in class, not as a punishment for those who cannot.) Further, there are NO exceptions to the rule that you must be Present, On Time and Prepared for at least 13 of the 14 classes to receive the "bump."

Note that the present and prepared bonus will not be applied to raise a grade of A to an A+, or A- to A, or B+ to A-. If you do not check your name off for at least 9 of the 14 class meetings, you will receive a one increment decrease in your grade for the course. In addition, if you check your name off and I call on you and find that you are not prepared, I reserve the right to lower your course grade by one increment. Given that it is sometimes difficult to tell whether a student is unprepared or just doesn't know the answer to a particular question, I request that (a) you don't rely on me to enforce this rule, but rely on your ethical responsibility not to check the list if you are not prepared; and (b) if you somehow check the list and are nevertheless not prepared, you 'fess up.

Please note that I am unlikely to make it through the semester without inadvertently calling on a student who has not checked off his or her name. Should this happen to you, please point out my error and I will immediately move on.

Note also that regardless of how many students get the “bump,” the overall grade distribution is still subject to the curve.

| Date | Pages |
|-------------|---|
| January 10 | 251-90 (Contract Clause) |
| January 17 | 326-62 (state action) |
| January 24 | 363-93 (procedural due process) |
| January 31 | 604-652 (privileges and/or immunities) |
| February 7 | 653-80 and <i>Williamson v. Lee Optical Co.</i> , 348 U.S. 483 (1955); <i>Ferguson v. Skrupa</i> , 372 U.S. 726 (1963) (“economic substantive due process”) |
| February 14 | 894-898 (<i>Meyer and Pierce</i>); <i>Barron v. City of Baltimore</i> , 32 U.S. 243 (1833); <i>Palko v. State of Connecticut</i> , 302 U.S. 319 (1937); <i>Adamson v. California</i> http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/adamson.html (applying the Bill of Rights to the States); 913-17 (<i>Skinner</i>) |
| Feb. 21 | 928-42; skim <i>Eisenstadt v. Baird</i> 950-966 (stop at note 2); 968-999 (stop at note 2) |
| Feb. 28 | Conclude discussion of <i>Planned Parenthood v. Casey</i> ; <i>Gonzales v. Carhart</i> , reading TBA |
| March 6 | 909-912 (<i>Loving</i>); 899-908 (<i>Troxel</i>); 1040-1060 (<i>Lawrence</i>) |

- March 20 852-859; excerpts from *Adkins v. Children's Hospital* (1923) and *West Coast Hotel v. Parrish* (1937) (see TWEN, course materials); 860-78 (sex discrimination)
- March 27 693-704; *Buchanan v. Warley*, 245 U.S. 60 (1917); 705-08; *Bolling v. Sharpe*, 347 U.S. 497 (1954); 728-42 (race discrimination)
- Last 3 classes TBA