

Constitutional Law I
Scalia Law School | George Mason University
Fall 2024
LAW 121 | CRN 71992 | SEC 003
4 credit hours
Arlington Campus
Tuesday, Thursday 4:00 p.m. – 6:00 p.m.

Instructor: Distinguished Visiting Professor Daniel W. Hamilton

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Office Hours: Tuesdays and Thursdays from 10 a.m. - 12 p.m. or by appointment. My office is in Hazel Hall, Room 311.

Course Overview: This course is about the interpretation and application of the United States Constitution, and the structure of American government. We will explore the landmark cases over the course of U.S. history that drive our understanding of the Constitution. In particular, we will focus on the way the Constitution and courts consider the allocation of power between the branches of the federal government, and between the federal government and the states. Constitutional interpretation has changed over time, and we will examine both historical and contemporary debates over the meaning and application of the Constitution.

Learning objectives for the course include:

- Learning the legal doctrine of the structure and application of the U.S. Constitution.
- Considering how Constitutional interpretation has changed over time.
- Understanding the competing perspectives on various issues decided by court decisions interpreting the Constitution.
- Developing the ability to debate Constitutional questions with evidence.

Required Text: The following is a required textbook for the course:

Choper, Jesse H.; Dorf, Michael C.; Fallon, Jr., Richard H.; Schauer, Frederick, Constitutional Law: Cases, Comments, and Questions (West Academic Publishing, 14th ed., 2023)

Note: You can find supplemental materials to the casebook [here](#).

The course will have a TWEN page. You will see in the syllabus that excerpts from

contemporary cases are referenced. Those will be available on the TWEN page before the classes meet.

Class Format: The class meets on the Arlington Campus from 4:00 p.m. to 6:00 p.m. on Tuesdays and Thursdays. Please read all of the assigned material and be prepared for active class discussion.

Communication Policy: In addition to office hours, I'm glad to respond to student emails within 24 hours. You should also feel free to email me on nights and weekends.

Attendance: Students are expected to attend class. Per the law school's attendance policy, a student is not eligible to receive credit for a class if they miss more than 20 percent of the class sessions. For a class like this, that meets once a week, this means a student may not miss more than three classes.

Grading: The grade in this course will be based exclusively on the final exam. The final exam will be in-person and open book with respect to any printed or physical materials you want to bring in for the exam. You may also use the internet except for generative AI. *The use of generative AI during the exam is strictly prohibited.*

The final exam is scheduled for 12 noon on Dec. 4, 2024.

Student with Disabilities: Students with disabilities may request academic accommodations as provided by federal law. Please contact George Mason University's Office of Disability Services (ODS) to request services (ods@gmu.edu, 703-993-2474).

Campus Closure or Emergency Class Cancellation/Adjustment Policy: If the campus closes, or if a class meeting needs to be canceled or adjusted due to weather or other concern, students will be contacted by email for updates on how to continue learning and for information about any changes to events or assignments.

CLASS 1 (Aug. 22): Constitutional Structure / Judicial Review (Part I)

Reading Assignment:

- The Constitution of the United States 1751-1766
- *Marbury v. Madison*, pp. 1-9
- Notes, pp. 11-13, 18-20
- *Cooper v. Aaron*, pp. 20-21

CLASS 2 (Aug. 27): Judicial Review (Part II)

Reading Assignments:

- *United States v. Windsor*, pp. 22-23
- Notes, pp. 23-26
- *Martin v. Hunter's Lessee*, pp. 26-30

CLASS 3 (Aug. 29): Congressional and Presidential Regulation of Judicial Power

Reading Assignments:

- Notes, pp. 52-53
- *Ex parte McCardle*, pp. 54-55
- *United States v. Klein*, pp. 57-58
- Notes, pp. 55-57
- Notes, pp. 59-62
- *Boumediene v. Bush*, pp. 62-63
- Notes, pp. 63-65, 66-69
- Recent proposals for reform (reading assignments may be posted on the course TWEN page)

CLASS 4 (Sept. 3): Prerequisites to Federal Jurisdiction and Judicial Review/Standing

Reading Assignments:

- Notes, pp.69-72, 1685-1686
- Correspondence of the Justices, pp. 1687-1688
- Notes, pp. 1689-1690
- *Allen v. Wright*, pp. 1690-1697
- *Lujan v. Defenders of Wildlife*, pp. 1708-1713
- *FDA v. Alliance for Hippocratic Medicine* (reading assignment to be posted on the course TWEN page)

CLASS 5 (Sept. 5): National Legislative Power: The Necessary and Proper Clause and the Commerce Clause

Reading Assignments:

- Notes, pp. 73-76
- *McCulloch v. Maryland*, pp. 76-80
- Notes, pp. 83-84
- *Gibbons v. Ogden*, pp. 84-86

CLASS 6 (Sept. 10): The Commerce Power II

Reading Assignments:

- *Hammer v. Dagenhart*, pp. 92-94
- Notes, pp. 94-98
- *United States v. Darby*, pp. 98-101
- Notes, pp. 101-103
- *Wickard v. Filburn*, pp. 103-104
- *Heart of Atlanta Motel, Inc. v. United States*, pp. 106-107
- *Katzenbach v. McClung*, pp. 107-108

CLASS 7 (Sept. 12): The Commerce Clause and Civil Rights

Reading Assignments:

- *Heart of Atlanta Motel, Inc. v. United States*, pp. 106-107
- *Katzenbach v. McClung*, pp. 107-108
- Notes, pp. 109-110
- New Limitations of the 21st Century
 - *United States v. Morrison*, pp. 110-121

CLASS 8 (Sept. 17): The Commerce Clause Continued

Reading Assignments:

- *Gonzales v. Raich*, pp. 121-126
- Notes, pp. 126-131
- *National Federation of Independent Business v. Sebelius*, pp. 131-139
- Notes, pp. 139-143

CLASS 9 (Sept. 19): Regulation Through Taxing and Spending

Reading Assignments:

- *National Federation of Independent Business v. Sebelius* (Part II), pp. 143-145
- Notes, pp. 146-148
- *South Dakota v. Dole*, pp. 152-155
- *National Federation of Independent Business v. Sebelius* (Part III), pp. 157-160

CLASS 10 (Sept. 24): Foreign Affairs Powers and Treaties: State Immunity

Reading Assignments:

- *Missouri v. Holland*, pp. 160-162
- Notes, pp. 162-164
- *Bond v. United States*, pp. 163-164
- State Immunity from Federal Regulation – Notes, pp. 165-170

CLASS 11 (Sept. 26): Federalism, the 10th Amendment, and State Sovereignty

Reading Assignments:

- *Garcia v. San Antonio Metropolitan Transit Authority*, pp. 170-174
- Notes, pp. 174-176
- *Printz v. United States*, pp. 176-182
- *Murphy v. National Collegiate Athletic Association*, pp. 185
- Notes, pp. 185-186

CLASS 12 (Oct. 1): Separation of Powers and the War Power

Reading Assignments:

- *Youngstown Sheet and Tube Co. v. Sawyer*, pp. 187-193
- Notes, pp. 193-201
- *United States v. Curtiss-Wright Export Corp.*, pp. 201-202
- Notes, pp. 212-216
- *Campbell v. Clinton*, pp. 207-212
- Notes, pp. 212-216

CLASS 13 (Oct. 3): Separation of Powers (Part II)

Reading Assignments:

- Notes, pp. 216-222
- Legislative and Line Item Vetoes
- *INS v. Chadha*, pp. 223-226

CLASS 14 (Oct. 8): Separation of Powers (Part III)

Reading Assignments:

- Appointment and Removal of Officers, Notes pp. 235-238 (please read up to *Buckley*)
- *Morrison v. Olsen*, pp. 243-249
- Notes, pp. 249-251
- *NLRV v. Canning*, pp. 260-261
- Excerpts from *United States of America v. Trump* (reading assignment to be posted on the course TWEN page)

CLASS 15 (Oct. 10): Executive Privilege, Impeachment and Presidential Immunity

Reading Assignments:

- *United States v. Nixon*, pp. 261-263
- Notes, pp. 263-266
- *Nixon v. Fitzgerald*, pp. 266-267
- Impeachment, Notes, pp. 275-279
- *Trump v. United States* (reading assignment to be posted on the course TWEN page)

CLASS 16 (Oct. 15): The State Power to Regulate: The Dormant Commerce Clause

Reading Assignments:

- Notes, pp. 281-285
- *Philadelphia v. New Jersey*, pp. 294-296
- Notes, pp. 297-299, 310-312
- *Hunt v. Washington State Apple Advertising Commission*, pp. 312-313

CLASS 17 (Oct. 17): The Dormant Commerce Clause (Part II)

Reading Assignments:

- *Minnesota v. Clover Leaf Creamery Co.*, pp. 314-315
- *Healy v. Beer Institute, Inc.*, pp. 322-324
- Regulation of Transportation, pp. 327
- *Kassel v. Consolidated Freightways Corp.*, pp. 327-332
- Notes, pp. 332-332

CLASS 18 (Oct. 22): Dormant Commerce Clause (Part III)

Reading Assignments:

- The State as a Market Participant
 - *Reeves, Inc. v. Stake*, pp. 341-344
- Notes, pp. 347-348
- Interstate Privileges and Immunity Clause
 - *United Building and Construction Trades Council v. Mayor of Camden*, pp. 348-352
- Notes, pp. 352-356

CLASS 19 (Oct. 24): State Action

Reading Assignments:

- Notes, pp. 1605-1606
- The Civil Rights Cases, pp. 1606-1608
- Notes, pp. 1608-1610
- Notes, pp. 1612-1614
- State Enforcement and *Shelley v. Kramer*, pp. 1625-1627
- Notes, pp. 1627-1628
- State Failure to Act and *DeShaney v. Winnebago County Dept. of Social Services*, pp. 1642-1644

CLASS 20 (Oct. 29): The Political Question Doctrine and Gerrymandering

Reading Assignments:

- Notes, pp. 31-32
- *Nixon v. United States*, pp. 32-37
- Notes, pp. 37-38
- *Rucho v. Common Cause*, pp. 42-49
- Notes, pp. 49-52

CLASS 21 (Oct. 31): Congressional Enforcement of Civil Rights

Reading Assignments:

- Notes, pp. 1647-1648
- Notes, pp. 1655-1657 up to *United States v. Price*
- Notes, pp. 1659-1660
- *Katzenbach v. Morgan*, pp. 1660-1664

CLASS 22 (Nov. 7): Congressional Enforcement of Civil Rights (Part II)

Reading Assignments:

- *City of Boerne v. Flores*, pp. 1664-1669
- Notes, pp. 1699-1672
- Section Five and State Sovereign Immunity
 - Notes, pp. 1672-1676

CLASS 23 (Nov. 12): Congressional Enforcement of Civil Rights (Part III)

Reading Assignments:

- The Fifteenth Amendment
 - *Shelby County v. Holder*, pp. 1677-1681
- Notes, pp. 1681-1684

CLASS 24 (Nov. 14): Judicial Review (Part III)

Reading Assignments:

- Mootness
- *DeFunis v. Odegaard*, pp. 1726-1728
- Notes, pp. 1728-1732
- Ripeness
 - *United Public Workers v. Mitchell*, pp. 1732-1736

CLASS 25 (Nov. 19): Amending the Constitution and Theories of Constitutional Interpretation

Reading Assignments:

- Readings to be distributed

CLASS 26 (Nov. 22): Course Review and Final Exam Discussion