Constitutional Law

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Email: greg.goelzhauser@usu.edu
Meetings: Zoom (email to schedule)
Format: Online/Asynchronous

Course Description

This course introduces the study of constitutional law. Our goal is to understand the analytical legal foundations underlying enduring constitutional law debates that shape the American political order. Coverage includes institutional power, civil rights, and civil liberties. Along the way we consider fundamental questions in constitutional law such as: How does the Supreme Court interpret the Constitution? How does the Supreme Court referee a system of divided government power? How does the Supreme Court balance government power and individual liberty? And what role does the Supreme Court play in the broader constitutional dialogue animating American politics? Understanding constitutional law informs our consideration of American political development and helps apply established jurisprudential principles to new controversies as they arise. As a result, studying constitutional law enriches engagement in public affairs.

Grading

Course grades are based on the following components:

- Quizzes - 20%
- Participation - 20%
- Midterm Exam - 20%
- Final Exam - 20%
- Research Project - 20%

Final grades are issued according to the following scale:

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<tr>
<th>Grade</th>
<th>Percentage</th>
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<tr>
<td>A</td>
<td>93–100</td>
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<td>A-</td>
<td>90–92</td>
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<td>B+</td>
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<td>B</td>
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<td>D-</td>
<td>60–62</td>
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<td>F</td>
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Reading

To help alleviate the financial burden associated with college attendance, all course readings are freely available and hyperlinked below. Most readings are Supreme Court opinions, which are hyperlinked through Google Scholar. For note taking purposes, opinions can be copied from Google Scholar and pasted into your preferred word processing program (e.g., the freely available Google Docs application) or downloaded in PDF format. If you prefer officially paginated versions from the United States Reports, they are freely available through the Library of Congress or the university’s HeinOnline subscription. Opinions can also be downloaded in a variety of formats through the university’s Nexis Uni subscription. Articles are either freely available online or through university.
subscriptions. If you are on campus, just click the hyperlinks below; if you are off campus, connect to the university’s network through a VPN then click the hyperlinks below.

Course Modules

1. Course Introduction [08/30–09/03]
   • The U.S. Constitution

2. Judicial Power [09/07–09/10]
   • Marbury v. Madison, 5 U.S. 137 (1803)
   ⋆ 09/06 is a university holiday

3. Legislative Power [09/13–09/17]

4. Executive Power [09/20–09/24]
   • Youngstown v. Sawyer, 343 U.S. 579 (1952)

5. Federalism [09/27–10/01]
   • Printz v. United States, 521 U.S. 898 (1997)

6. Midterm Exam [10/04–10/08]
   ⋆ Exam is due 10/08

7. Research Immersion I [10/11–10/14]
   • Select a case, listen to oral argument, and be prepared to discuss the proceeding. If the case you select for the research project has already been argued, listen to that argument (this information and a link to the relevant audio file is available through the case pages hyperlinked in the Research Project section below). If not, select a decision with precedential implications for your chosen case. Recent oral argument audio is available on the Supreme Court’s website, and audio dating back to 1955 is available from Oyez.
Browse the correspondence between justices concerning Roe v. Wade, 410 U.S. 113 (1973). Memoranda from the case being heard during the 1971 term are here, while memoranda from the 1972 term, after the case was held over for reargument, are here. These exchanges offer insight into the typically secretive process of crafting Supreme Court opinions. Note that the correspondence is grouped by justice in order of seniority rather than being ordered sequentially. Be prepared to discuss the correspondence.

* 10/15 is a university holiday

8. First Amendment [10/18–10/22]

- Morse v. Frederick, 551 U.S. 393 (2007)


- Terry v. Ohio, 392 U.S. 1 (1968)


- City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)


* Exam is due 11/19


* 11/24–11/26 is a university holiday
* Final paper is due 12/03 (in accordance with the no-test week policy)

14. Presentations [12/06–12/10]


* Presentation is due 12/08
* Participation reflection is due 12/10
* 12/10 is the last day of class
Contact

I am here for you and you should contact me regularly. You do not need a reason to contact me, and any reason you do have need not involve a course-specific question or concern. Please also reach out just to say hello and talk about professional matters such as career options. These student-faculty interactions are an important part of the college experience. As an undergraduate student, I benefited a great deal from faculty mentorship and I want to pay that forward—so please let me help you. I am also happy to help you secure university resources or assistance with other matters. To that end, there is partial list of important student resources at the end of the syllabus.

I generally respond to email within 24 hours excluding holidays and weekends. Given this policy, the deadline for module-specific questions is the module’s penultimate day (generally Thursday) by 5:00pm to ensure that you receive a response before the module ends. To schedule a Zoom meeting, email me a list of your available dates and times. Zoom meetings are without video by default so there is no need to worry about your appearance or where you connect from (please do not worry about these things with me in any event), but just let me know if you prefer to use video. All course communications from me go through Canvas.

Dates and Deadlines

Modules generally begin on Monday and end Friday in accordance with the standard university workweek. To maximize student flexibility, however, modules will open on Canvas the weekend before and end the weekend after their corresponding weekday start and end dates. I understand how important this flexibility can be for managing the considerable student time demands associated with things like employment, child care, and extracurricular activities. Although you can participate in the course over holidays and weekends, I encourage you to reserve that time for self care if possible; if you need the flexibility afforded by the holiday and weekend grace periods, please try to commit to a different block of time during the week to disconnect from the course and practice self care. Notwithstanding the grace periods, I will only send course communications such as deadline reminders on non-holiday weekdays. If you participate during holiday and weekend grace periods, please also keep in mind the email and contact details described above—I may not be available to assist you during those times.

Deadlines follow module dates. Assignments must be completed and turned in by 11:59pm at the end of the grace period following the deadline date, at which point the relevant Canvas page will automatically lock and prevent submission. Discussion posts must be submitted and quizzes and exams completed by the end of the grace period following the module’s end date as listed in the schedule above. The research paper is due 12/03 (with a grace period through 12/05) in accordance with the university’s no-test week policy. There is no grace period for the presentation (due 12/03) or participation reflection (due 12/10); the former policy is because there must be a posted presentation for discussion to proceed and the latter is because 12/10 is the last day of class.

Reading Supreme Court Opinions

Reading Supreme Court opinions will be a new experience for most students in this course. The opinions we read resolve salient political questions and are meant to be understood by the general public. Developing skill comprehending these opinions is an important part of becoming an engaged
public affairs participant. The most prominent startup cost to engaging with judicial opinions is learning new terminology. You will regularly encounter terms you do not understand, but that is a normal part of any learning process. Moreover, the solutions are straightforward. First, look up terms you do not understand online, either through general searches or a free legal dictionary (e.g., here; here; and here). Second, ask me to clarify—I am always happy to help.

As you read Supreme Court opinions, consider the following questions: What are the case facts? What is the legal question the Court is trying to answer? What analytical legal framework is the Court using to derive an answer to that question? What is the Court’s answer to the legal question? What are the Court’s reasons for reaching its conclusion? What perspective do any concurring or dissenting opinions add to the debate? To assist you with getting started, the first module includes readings offering advice about how to read opinions as well as background information on important terminology. Recognize that the learning process will be ongoing throughout the semester, however, and embrace that as part of the educational experience.

Quizzes and Exams

There are 8 quizzes and the 2 lowest grades are dropped. Only modules numbered 2–5 and 8–11 in the course schedule above have quizzes. The quizzes emphasize reading and lecture material. Quiz questions are multiple choice or true/false and can be taken at any point during the module; the deadline for completing each quiz is 11:59pm by the end of the module. The 6 counted quizzes are equally weighted for a combined 25% of the total course grade.

There are two optional exams. The final exam is not comprehensive. Exams are essay-based and emphasize questions detailed as part of class discussion and presented as module-specific learning objectives in the lectures. The deadline for completing each exam is 11:59pm by the end of the respective exam module. The two exams are equally weighted for a combined 25% of the total course grade. Those who choose not to take the optional exams will receive their then-current quiz grades on the exam due dates in place of exam grades. The exams are elective because the quizzes and discussion questions adequately assess competence and require substantial analytical and written investment each week. But the option is there for those who want the opportunity to improve their grade.

Class Participation

Participation is essential for this course. Discussing the module-specific questions I post on Canvas is the primary participation mechanism. You need not discuss each question, and high-quality and thorough engagement with one or two posted questions is better than perfunctory engagement with every question. As discussed below, other forms of participation are expected as well. Discussion performance is a function of post quality, quantity, and variety. Notwithstanding the module-specific guidelines described below, participation grading is holistic and based on performance throughout the semester.

Quality and variety are key to successful participation. Quality has two dimensions. First, it is important to demonstrate high-level engagement with course materials and discussion posts, including readings, lectures, and peer comments. Second, engagement should be thorough rather than cursory—think at the paragraph rather than sentence level for discussion posts, for example.
Variety encompasses post timing and type. Contributions posted early during a module help set the discussion agenda and provide opportunity for extended dialogue; later contributions enrich ongoing conversations and may be more nuanced with the benefit of additional reflection time. To help give discussion a chance to ripen during a module, plan to post roughly half of your contributions during the semester within a module’s first three days (usually by Wednesday). With respect to post type, answering one or more of the questions I provide is essential, but you will also want to occasionally post your own thoughtful questions with a preliminary analysis, respond to others, and contribute more generally to class dialogue.

At the end of the semester, you must turn in a participation reflection detailing your contributions to the course and self-grading your performance based on the rubric below. This reflection should be organized by module and include all of your postings. Before posting comments to Canvas, I recommend drafting them in a document with module headings so you can easily assess your participation performance throughout the semester. Maintaining the reflection document throughout the semester will also prevent you from having to do additional assembly work when it is due. In addition to the module-specific discussion posts, include any other form of participation you would like me to consider and make sure to grade your own performance. Participation grades are based on the following rubric:

- **A** = Multiple substantial and thorough contributions nearly every module demonstrating high-level engagement with the material; regular posting within three days of a module beginning; and significant variation in post type over the course of the semester, including answering posted questions, providing your own discussion questions and analysis, and responding thoughtfully to others.

- **B** = At least one and sometimes multiple substantial and thorough contributions nearly every module demonstrating high-level engagement with the material; periodic posting within three days of a module beginning; and significant variation in post type over the course of the semester, including answering posted questions, providing your own discussion questions and analysis, and responding thoughtfully to others.

- **C** = Periodic but irregular contributions, at least some of which are substantial, thorough, and demonstrate meaningful engagement with the material; regularly waiting until the end of a module to post; or little variation in post type.

- **D** = Rare contributions; routinely making comments that are cursory and demonstrate little or no engagement with the material; regularly waiting until the end of a module to post; or little variation in post type.

- **F** = No contributions; regular but off-topic contributions; contributions that violate the Student Code; or failure to turn in the participation reflection.

**Research Project**

The research project involves analyzing a constitutional law question on the Supreme Court’s current docket. This project reinforces our broader emphasis on understanding the analytical legal foundations underlying core constitutional law issues and learning how to apply those foundations to cutting-edge legal disputes in American politics. The research paper should address these questions: What are the important case facts? What are the most relevant precedents for analyzing the
question presented? How might the Supreme Court apply existing legal frameworks to the facts and question presented? How do you think the Supreme Court will answer the question presented? For the last question, here is no need to take a position on how you think the Supreme Court should decide the case—just address how you think it will decide the question based on your understanding of how the facts map onto existing precedent.

• Does an elected body’s decision to issue a censure resolution in response to a member’s speech violate the First Amendment’s Speech Clause?
  
  Houston Community College System v. Wilson

• Does a state’s prohibition on students who are participating in an otherwise generally available student-aid program from using their aid to attend schools that provide religious instruction violate the First Amendment’s Free Exercise Clause?
  
  Carson v. Makin

• Does a state’s refusal to grant concealed-carry firearm licenses for self-defense purposes violate the Second Amendment?
  
  New York State Rifle & Pistol Association v. Bruen

• Does Congress’s decision to establish the Supplemental Security Income program in all fifty states, the District of Columbia, and the Northern Marina Islands, while excluding Puerto Rico and other territories, violate the equal protection component of the Fifth Amendment’s Due Process Clause?
  
  United States v. Vaello-Madero

• Does a state’s prohibition on pre-viability elective abortions violate the Fourteenth Amendment’s Due Process Clause?
  
  Dobbs v. Jackson Women’s Health Organization

Hyperlinks are to SCOTUSblog case pages. These pages compile comprehensive information about each case, including the lower court opinion and briefs. To get started, read the lower court opinion in your chosen case and primary briefs filed by the petitioner and respondent. At that point, you should have a good sense of the primary arguments and relevant precedents. You should read the relevant precedents closely and may want to conduct further research at this stage using additional primary and secondary materials.

Research paper quality is primarily a function of insightful and analytically precise engagement with the questions listed above. This is a semester-long project, and paper quality should reflect a semester’s worth of thought, research, development, and revision. The paper should be 7–10 pages and include: a title page with summary information (name, course, case citation) and reference list (citing any referenced cases or other sources). The title page and reference list do not count toward the page requirement. The paper should include a separate section for each question listed above. Text for the 7–10 page component must be doubled spaced in 12-point Times New Roman font with no extra space between paragraphs. There is no specific citation formatting requirement—just provide enough information so that I can locate the reference. For cases, this includes the case title, citation, and decision year; for other sources, this includes the author’s name, publication title, publication year, journal name, book publisher, or url if using an online source. Although you are not required to follow it, you can review the American Political Science Association’s style manual.
for an example approach to citing references. Use footnotes instead of endnotes if necessary, with footnote text in single-spaced 10-point Times New Roman font. Failure to follow these guidelines will result in a grade deduction.

We have two research immersion modules. These modules are intended to encourage regular and thoughtful project development throughout the semester. In addition to helping ensure a high grade, consistent work on the project will help yield a final product that can be used as a writing sample for things like internship and job applications. Varying course content with immersion modules also helps with research skill acquisition and avoiding learning fatigue while providing additional active learning opportunities. Research Immersion Module I uses oral arguments as a vehicle for thinking about constitutional argumentation. Listening to oral arguments in your chosen case or a related precedent will help with issue comprehension and give you a sense for what kinds of questions justices consider when making decisions. Research Immersion Module II explores how motivated reasoning impacts precedent interpretation. Discussion during these modules counts toward participation.

The research project also includes a presentation component. Presentation quality is primarily a function of clarity in conveying the key points developed in your paper. The presentation may be in the form of a written discussion post or video. Videos can be created and uploaded through Canvas using Kaltura. The presentation should be about 5 minutes, either in terms of reading time for posts or video length. Although the research project grade is primarily based on the paper, failure to complete the presentation or performance defects will result in a reduction in the overall project grade. Questions and comments on peer presentations count toward participation.

**Delivery Format**

This course is online and asynchronous due to the pandemic. That means there are no in-classroom meetings, scheduled class times, or scheduled Zoom meetings. To compare time expectations for in-classroom and asynchronous online instruction formats, it is helpful to understand that the term “credit hour” is defined by federal regulation. One credit hour is defined as the “amount of work represented in intended learning outcomes and verified by evidence of student achievement... that reasonably approximates not less than...[o]ne hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks.” Applying this definition to a 3 credit hour course yields a regulatory expectation that students spend at least 3 hours on “in class” activities and 6 hours on “out of class” activities.

The regulatory definition of “credit hour” for an in-classroom course is transportable to the asynchronous online format. For the “in-person” component, plan to spend about 150 minutes (in-classroom classes typically meet MWF x 50 minutes or TR x 75 minutes) each week doing things you would typically do in the classroom: actively engaging lecture, participating in discussion, and completing assessments. For the “out of class” component, plan to spend about 300 minutes (150 x 2 as required by regulation) doing things you would typically do for a course outside of the classroom: actively engaging assigned readings, reviewing lecture and reading notes, and working on the semester-long research project. Of course, this is general guidance for thinking about time allocation during the semester, demands may vary by module as with in-person courses.
Plan for Success

This section offers advice about how to manage the course and perform at a high level. As an initial matter, it is important to emphasize that there is no one correct way to do well in this course. Adopt a strategy that works for you. My advice is below, and if you follow these guidelines you should do very well in the course.

1. Commit in advance to spending specific time blocks on this course and spread those blocks out over the course of each week if possible. Start as early in the module as possible. If you cannot commit to specific time blocks for the entire semester, make a plan at the beginning of each module. If you cannot commit to specific time blocks each module, do the best you can to set aside time as far ahead as possible. Deadlines for discussion, quizzes, exams, and the research paper are at the end of each module to give you maximum flexibility.

2. Actively engaging the readings is the first thing you should do each module. Take notes on important points using your preferred method. Keep a list of questions you have concerning the material and make note of anything you would like to discuss with me or the class. For each Supreme Court decision, check that you can answer the questions posed in the Reading Supreme Court Opinions section above.

3. Actively engage lecture recordings after completing the readings. The slides are posted so you can take notes as the lecture progresses. As with readings, keep a list of questions you have concerning the material and make note of anything you would like to discuss with me or the class. Plan to pause and rewind the lecture recordings to clarify key points; the expectation that you will do so is built into the lecture length. Every module is capped at 50 slides to help manage cognitive load. By the end of each lecture, you should be able to answer the learning objective questions included in each presentation; solidifying the information will require additional consideration, but you should have a good start on being able to thoroughly answer those questions after actively engaging the readings and lecture.

4. After carefully engaging the readings and lecture, you will be well positioned to ask me clarifying questions. Feel free to ask me questions before this point, of course, but it is particularly important to clear up questions that remain at this stage. As noted in the Contact section above, email me by, or schedule a Zoom meeting to occur before, 5:00pm on the module’s penultimate day (generally Thursday) to ensure you receive an answer by module’s end.

5. With substantive module content coalescing, you will then be well positioned to participate in class discussion at a high level. Feel free to participate in discussion at any point, but having everyone contribute after thoroughly digesting the material will yield the most collectively beneficial results. As described further in the Class Participation section above, remember that your first discussion post should often be made by a module’s third workday (generally Wednesday) to ensure that class discussion has a change to ripen.

6. Regularly devote time to two activities as the semester progresses. First, periodically review materials from each module included as part of an upcoming exam. Periodic review will help you identify areas of confusion and master the material in preparation for exams. Second, consistently work on the research paper. As discussed in the Research Project section, paper quality should reflect a semester’s worth of thought, research, development, and revision.
Course Policies

Applicable university policies are followed. These policies include but are not limited to matters concerning excused absence, class conduct, academic integrity, and disability accommodation. Module-specific discussions and quizzes are due by the last date listed for the module above. Deadlines for the exams, research project, and participation reflection are also listed above. Canvas pages automatically lock at 11:59pm on deadline dates subject to the grace periods described above. Participation in discussion and quiz completion are not permitted post-deadline without an excused absence. When an excused absence leads to a missed deadline, the deadline will be extended for the length of the excused absence with time tolled for weekends and university holidays. Absent excusal, a missed exam may be taken or late paper turned in with a 10% reduction for each late day. The syllabus is subject to change.

Mental Health

Mental unwellness is common—particularly during the pandemic. College students are among those experiencing particularly high levels of depression (see, e.g., here; here; here; here; and here). If you are feeling unwell, you are not alone and there are a variety of resources at your disposal:

The National Suicide Prevention Lifeline offers free 24/7 counseling

- 1-800-273-8255 (English)
- 1-888-628-9454 (Spanish)

USU’s Counseling and Psychological Services offers telehealth counseling for students

- 435-797-1012

Utah’s SafeUT offers 24/7 support for students

- Start a school-specific chat
- Download the app from Google Play or the Mac App Store
- Submit a school-specific note of concern about a student

The Crisis Text Line offers free 24/7 support, including for school-related stress

- Text HOME to 741741

The Steve Fund offers free 24/7 text support for university students of color

- Text STEVE to 741741

The Trevor Project offers free 24/7 support, including chat, for LGBTQ students

- 1-866-488-7386
- Text START to 678678

The Veterans Crisis Line offers free 24/7 support, including chat, for veterans

- 1-800-273-8255 (press 1 after dialing)
- Text to 838255
Student Resources

Academic Success Center (studying, test taking, and stress management)

Allies on Campus (LGBTQA+ support training)

Campus Recreation (physical wellness)

Career Services (job postings and professional mentoring)

Counseling and Psychological Services (mental wellness)

Disability Resource Center (course accommodations, consultation, grievances)

Inclusion Center (LGBTQA+, multicultural, and nontraditional student resources)

Pandemic (seeking medical treatment, support, policies, updates)

Public Safety (campus police)

SAAVI Office (advocates for sexual assault and stalking victims)

Sexual Misconduct (health, reporting, evidence preservation, advocates)

Student Nutrition Access Center (groceries)

Student Support Services (services for low income, first generation, and disabled students)

Think, Care, Act (assisting students in distress)

Title IX and Nondiscrimination (sexual misconduct and differential treatment)

Veterans Resource Office (transition support, financial resources, mentoring)

Upstanding (bystander intervention against sexual violence and other interpersonal harm)

Writing Center (tutoring as research paper assistance)