

## **Constitutional Law I: Government Powers and Structure**

Fall 2025, Section 1

Monday and Wednesday 10:45–12:00pm

**[TBA]**

Professor Kyle Shen  
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**Office:** LB 166 (End of the hall)

**Office hours:** Monday and Wednesday 1:00-2:30pm or by email

- Online Office Hours available by appointment (email me)

### **Course Description:**

What does the Constitution say? What tools and methods can we use to interpret its meaning?  
How do we know when we are using the right tools and methods?

This first semester of a year-long course in Constitutional Law discusses how the meaning of the Constitution has changed over time in both the case law and in popular understanding. In the first semester, we focus on the way that the Constitution distributes political power, both among the three federal branches and also between federal and state governments.

The Constitution is at the heart of numerous political debates in American history and it is a focal point of our heated contemporary political discourse. Now, more than ever, may feel like a challenging time to study Constitutional Law. Many debates, once thought settled, have taken on renewed relevance. Now is an exciting time to take up these debates once more.

Given the nature of the subject matter, I expect (and invite!) disagreement and debate. I also expect these debates to be conducted with collegiality and respect for your peers, in the spirit of collaboratively honing the ways each of us thinks about the Constitution and how we craft persuasive arguments.

### **Goals for this course:**

- Provide a survey of the Constitution and accompanying case law precedent regarding the nature of federalism and separation of powers
- Introduce major legal debates regarding federal vs state power, checks and balances, and the power of the judiciary
- Sharpen persuasive communication, especially in contentious debates. Constitutional interpretation is the art of mastering rhetoric using textual interpretation, history, and political theory. The ability to use case law precedent alongside jurisprudential philosophies and principles is a critical skill useful in any area of legal practice

### **Required Readings:**

- Feldman & Sullivan, Constitutional Law, 22d Edition
- Additional readings posted to Blackboard

**I. Assignments and Grading:**

- Participation: 15%
- Midterm: 35% (Take-home, due Friday, October 10, 11:59pm on Blackboard)
- Final: 50% (In-person, close book except cheat-sheet, Date/Location TBA)

**a. Participation**

- I will call on students to participate throughout the semester, by seating arrangement
- You may also contribute to **freely** during discussions in class
- Throughout the week I will expect you to participate during discussions, *especially during the days you are called upon*
- A part of the participation grade is maintaining a collegial atmosphere in the classroom
- See Blackboard for more explanation about participation

**II. Policies and Procedures:**

a. **Office Hours:** See above for my scheduled office hours.

i. **Open Door Policy:**

I hope that each one of you can make it to at least one office hour of the semester.

Just swing by and introduce yourself!

Office hours are a wonderful time to answer any questions you may have about the course and dig deeper into the course material. They also are a great way for me to get to know each of you. You do not need a specific reason to come to my office hours!

I consider my office hours to be your time to use as you wish. You don't need a reason, just come by with whatever is on your mind. I am always delighted to speak with students.

If you would like to meet at a time other than during my scheduled office hours or you would like to meet remotely at any time, please email me to schedule.

**b. Grading Feedback and Email Policy:**

If you have a question over how something was graded, you have two weeks from the day that the assignment was handed back to challenge the grade. Grade challenges must be made in person or in office hours.

Substantive discussion must take place in person. I will not answer substantive questions about the course or about grading through email. If you would like to discuss feedback, you may come to office hours.

**c. Attendance Policy:**

Attendance in class is mandatory and will factor in to your final participation grade. Excess absences will be detrimental to your final grade.

However, I understand that we all have extenuating life events and emergencies from time to time. If you have something come up and you need to be absent, *you do not need to email me.*

*If you feel the slightest bit ill, please stay at home.*

**d. Academic Dishonesty:**

This class has a no tolerance policy for academic dishonesty. Instances of academic dishonesty may be met with, among other measures, grade penalties, failure in the class for the semester, and reporting to the Dean of Students.

**e. Sharing of Course Materials is Prohibited**

No materials used in this class, including, but not limited to, lecture hand-outs, videos, (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class unless you have my express written permission.

**III. University Resources for Students:**

- See Blackboard for handout on university resources:
  - Academic Services
  - Disability Services and Testing Accommodations
  - Mental Health and Counseling Services
  - Financial Aid, Emergency Rental Assistance, Food Aid, and other Student Support
- You also can see the list of resources by scanning this QR Code or following this link:

[https://csuohio-my.sharepoint.com/:b:/g/personal/6003877\\_csuohio\\_edu/EcrUt\\_Gg6HZGi5SdXsh-xtABnWZlPx1x4efAoOTVm3wyzg?e=Rhtqrw](https://csuohio-my.sharepoint.com/:b:/g/personal/6003877_csuohio_edu/EcrUt_Gg6HZGi5SdXsh-xtABnWZlPx1x4efAoOTVm3wyzg?e=Rhtqrw)



**\*\*See Next Page for Weekly Reading Schedule\*\***

#### IV. Course Schedule and Readings<sup>1</sup>

- All readings in Feldman & Sullivan unless otherwise specified
- You will find any additional readings on Blackboard

##### Week 1: August 20

#### I. Introduction: How should we read the Constitution?

- First Assignments Exercise:
  - Read:
    - David Souter, Commencement Speech at Harvard University (2010)
    - Scalia, “Originalism: The Lesser Evil,” 57 U. Cinn. L. Rev. (1989)
      - Excerpt: 856 – 65 (Begin at “Let me turn next to originalism”)
    - US Constitution (entire)

##### Week 2: August 25–29

#### II. Judicial Independence and Judicial Power

- 1–11 (Stop at “3. Marshall’s accomplishment”)
  - Marbury v. Madison
- Federalist #78 (on Blackboard)
- Anti-Federalist 78, 79 (on Blackboard)

**\*\*Monday Sept 1, Labor Day, No Class\*\***

##### Week 3: September 2–5

- 17–23 (“Section 2. Supreme Court Authority to Review State Court Judgments”. Stop at “6. Judicial Review and Democracy”)
  - Martin v. Hunter’s Lessee
  - Cohens v. Virginia
  - Cooper v. Aaron
- Skim 27–29 (“5. Are Supreme Court interpretations binding on the executive branch?”)
- 32–37
  - Political Restraints on the Supreme Court
- a. Cases and Controversies: Standing
  - 38–39
    - Advisory opinions
  - 41–50 (Standing. Stop at “The Constitutional and Prudential Elements of Standing”)
    - Lujan v. Defenders of Wildlife
  - Skim 65 – 71
    - “9. Generalized grievances”
    - “Mootness and Ripeness”

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<sup>1</sup> These dates are a *suggested* timeline for our coverage of the material. They are subject to change depending on how much material we cover each class and any exigent circumstances. I reserve the right to adjust the timing of reading assignments as we progress through the semester

- “Political Questions” (Stop at Baker v Carr)

#### **Week 4: September 8–12**

### **I. Federalism, Part One: The Limits of National Power**

#### **a. Establishing Congress’s Power**

- 87–101
  - McCulloch v. Maryland
- Skim 119–22 (“Values Served by Federalism”)
- Federalist #10 (on Blackboard)
- Federalist #51 (on Blackboard)

#### **b. Regulation of Interstate Commerce**

- 125–30 (Stop at “4. National ‘police’ regulation”)
  - Gibbons v. Ogden
  - U.S. v. E. C. Knight Co.
  - Houston E&W Tex. R.R. Co. v. U.S. (Shreveport Rate Case)
  - Swift & Co. v. U.S.
- Posted on Blackboard: Commerce Clause Exercise

#### **Week 5: September 15–19**

#### **c. General Police Power**

- 130–34 (“National ‘Police’ Regulation”)
  - Champion v. Ames;
  - Hipolite Egg Co. v. U.S.
  - Hoke v. U.S.
  - Hammer v. Dagenhart

#### **d. The Commerce Clause and The New Deal**

- 134–40
  - Railroad Retirement Bd. v. Alton R.R. Co.,
  - Schechter Poultry Corp. v. U.S.
  - Carter v. Carter Coal Co.
  - “FDR’s The Court-Packing Plan”
- 141–47
  - N.L.R.B. v. Jones & Laughlin Steel Corp.,
  - U.S. v. Darby
  - Wickard v. Filburn

#### **e. The Commerce Clause after the Warren Court: Expanding the Commerce Power**

- 148–52 (“6. The Commerce Power and Civil Rights”)
  - Heart of Atlanta Motel v. U.S.
  - Katzenbach v. McClung
  - Perez v. U.S.

### **Week 6: September 22–26**

#### f. The Rehnquist Revolution and the Commerce Clause

- 152–63 (“Section 4, The Contemporary Commerce Power”)
  - U.S. v Lopez
  - U.S. v. Morrison
- 164–70 (Stop at “Federal protection for endangered species”)
  - Gonzales v. Raich

### **Week 7: September 29–October 3**

- 104–06
  - US v. Comstock
- 172–78
  - NFIB v Sebelius

## II. Federalism, Part Two: The Limits of State Power and the Tenth Amendment

- 180–85. Stop at “2. The Scope of Judicial Protection of State Autonomy from Federal Encroachment”
  - Coyle v OK
  - U.S. v. Calif
  - N.Y. v. US (1946)
  - N.L.C. v. Usery
  - Garcia v. San Antonio MTA Stop at “3. ‘Commandeering...’”

### **Week 8: October 6–10**

#### a. Commandeering Doctrine

- 185–89
  - New York v. United States (1992)
- 190–93: Commandeering State Executive Branch Officials
  - Printz v. U.S
- 189–94: 3. States as Objects of Federal Regulation vs States as Regulators
  - Reno v. Condon
- 194–95: 4. Anticommandeering as a Limit to Federal Bars on State Gambling Laws
  - Murphy v NCAA

#### b. The Taxing Power

- 205–207
  - Bailey v. Drexel Furniture [Child Labor Tax Case]
- 210–213 (Stop at “Section 2. The Spending Power as a Regulatory Device”)
  - National Federation of Independent Business v. Sebelius (On Taxing)

**\*\*Take Home Midterm Due Friday, October 10, 11:59pm\*\***

### **Week 9: October 13–17**

#### c. The Spending Power

- Skim 214–21 (Stop at “The Spending Power After the New Deal”)
  - U.S. v. Butler
- 221–25
  - South Dakota v. Dole (Stop at 3. The Affordable Care Act...)
- 226–32
  - National Federation of Independent Business v. Sebelius (On Spending)

### **Week 10: October 20–24**

#### III. Executive Powers (Separation of Powers)

- 309–318
  - Youngstown Sheet & Tube Co. v. Sawyer
- 321 - 327
  - Zivotofsky v. Kerry
- 329–332
  - Dames & Moore v. Regan
- 399 – 400
  - US v Curtiss-Wright Export Corp.
- Optional Reading:
  - Federalist Papers, 70 (on Blackboard)
  - Anti-Federalist Papers, 67, 70, 74 (on Blackboard)

### **Week 11: October 27–31**

#### a. The President’s Wartime Powers

- SKIM 348–54 (Stop at “3. Comparative emergency constitutionalism”)
  - The President, Congress and War Powers
  - Emergency Constitutionalism
  - Ex Parte Milligan
- 358–61 “Executive Detention and Trial of “Enemy Combatants”
  - Ex Parte Quirin
- 362–64
  - Johnson v. Eisentrager
  - Rasul v Bush

#### b. The War on Terror (Post-9/11) Cases

- 365–73
  - Hamdi v. Rumsfeld

### **Week 12: November 10–14**

- 375–82 “Military tribunals for enemy combatants”
  - Hamdan v. Rumsfeld
- 383–95 (Stop at 2. Inherent presidential authority...)
  - Boumediene v. Bush

c. Congress's Restraints on the Executive

- 395–400 (“Section 4. Congressional Authority to Enable and Restrain the Executive”)
  - Gundy v. US
  - US v. Curtiss-Wright Export Corp (re-skim)
- 408–10 (Stop at “Congressional Constraints on Appointment and Removal of Executive Officers”)
  - Clinton v NY

**Week 13: November 17–21**

d. Presidential Immunities

- 439–442 (“Section 5. Executive Privileges, Immunities and Congress’s Power of Impeachment”)
  - US v. Nixon
- 443–47
  - Trump v. Mazars
- 448–54 (“5. Presidential immunity from civil damages liability for unofficial actions”)
  - Clinton v. Jones, 444–449
- 454–67
  - Trump v. Vance
  - Trump v US

**Week 14: November 24**

- Flex Day: Exercise or Review

**\*\*Thanksgiving Holiday: November 26–30\*\***

**Week 15: December 1**

- Flex Day: Exercise or Review

**\*\*In-Person Final Exam TBD\*\***