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Office Hours: Monday 11:50 AM -1:50 PM
or by appointment.

Constitution Law II Spring 2024

Course Time and Location

Monday and Wednesday: 10:15-11:40 AM

Reading Materials

Textbook: Brest, Levinson, Balkin, Amar, and Siegel, *Processes of Constitutional Decisionmaking* (8th Ed. 2022) (BLBAS) and 2023 Supplement (BLBAS Supp). Purchase of the Supplement is optional, as there are only a few cases assigned from it. The Supplement may be purchased at the Aspen Publishers website here: <https://aspublishing.com/products/levinson-supp-constitutionaldecisionmaking2023>

Some supplemental reading materials can be found on Westlaw/Lexis and TWEN, and will be so listed on the syllabus. All pagination for cases on Westlaw and TWEN refers to the U.S. Reports page numbers, not to the pagination systems used by Westlaw or Lexis. Unless otherwise noted, students are required to read any case assigned through TWEN in its entirety.

Grading

Grades will be based on a combination of the final exam and class participation. The final exam will consist of one or more essay questions and an “issue spotter” question. Further details of the final exam will be announced later in the semester. Class participation will be assessed on a combination of quantity and quality. Further details on this will be forthcoming in the first week of class.

Assignments

Although I will try to stick to the schedule, we may occasionally fall behind. In such an unfortunate case, we will begin the following class with the next case on the syllabus, while also covering that day's originally assigned readings, unless I say otherwise.

Learning Outcomes

Students will learn the legal doctrine of the Fourteenth Amendment, study how it has evolved over time, and come to understand competing perspectives on various contentious issues decided by court decisions interpreting the Amendment.

Contingency Plans

In the event that either state or university public health guidelines prevent this class from meeting in-person, it will be held online utilizing Zoom or other similar platform. Should this prove necessary, I will inform the class of relevant procedures online. But, to the extent possible, we will observe the same rules and procedures as during in-person sessions.

In the event that class is cancelled due to weather issues, I will consult with the class as to whether we prefer to hold class online at the pre-set time, or in person at a makeup time.

Permission to Record Classes

I hereby formally permit students to use any video or audio equipment of their choice to record classes, so long as the resulting video or audio is not used for commercial purposes or financial gain.

January 17 Introduction

Constitution of the United States BLBAS 1-16 (focus on 14th Amendment)
Dred Scott v. Sandford BLBAS 263-95 (focus on issues of rights of free African-Americans).

January 22 Race and Equal Protection after the Civil War

Strauder v. West Virginia BLBAS 413-19
Civil Rights Cases BLBAS (brief rereading of material many have studied in Con Law I).
Plessy v. Ferguson BLBAS 436-49

January 24 Race and Equal Protection (Continued)

Buchanan v. Warley 245 U.S. 60 (1917) (Westlaw/TWEN)
Korematsu v. United States BLBAS 1136-43

January 29

Race and Equal Protection: *Brown* and its Aftermath

Brown v. Board of Education I BLBAS 1105-21
Bolling v. Sharpe BLBAS 1105-1108
Brown v. Board of Education II and the impact of the *Brown* decision BLBAS 1121-25

January 31

Desegregation (Continued)/Interracial Marriage

Swann v. Charlotte-Mecklenburg BLBAS 1125-27
Keyes v. School District No. 1 BLBAS 1127-31
Pace v. Alabama 106 U.S. 583 (1883) (Westlaw/TWEN).
Loving v. Virginia BLBAS 1146-55

February 5

State Action/Facially Neutral, but Potentially Discriminatory Policies

Shelley v. Kraemer, 334 U.S. 1 (1948) (Westlaw/TWEN)
Yick Wo v. Hopkins 118 U.S. 356 (1886) (Westlaw/TWEN)
Washington v. Davis BLBAS 1175-79

February 7

Facially Neutral, but Potentially Discriminatory Policies (Continued)

Village of Arlington Heights v. Metropolitan Housing Authority, 429 U.S. 252 (1977)
(Westlaw/TWEN).
McCleskey v. Kemp BLBAS 1203-11
Racial Profiling and Equal Protection BLBAS 1211-15

February 12

Congressional Power Under Section 5/Affirmative Action I: Government Contracting

City of Boerne v. Flores BLBAS (brief coverage of case many covered in Constitutional Law I)
City of Richmond v. Croson BLBAS
Adarand Construction v. Pena BLBAS

February 14

Affirmative Action II: Education

Guest Speaker: Professor Randall Kennedy, Harvard Law School

Grutter v. Bollinger BLBAS 1248-66
Gratz v. Bollinger BLBAS 1266-68
SFFA v. Harvard BLBAS Supp 71-143

February 19

Affirmative Action in Education (Continued) /Racial Classifications in Prison/Sex Discrimination

Parents Involved in Community Schools v. Seattle School District No. 1 BLBAS 1273-1303
Johnson v. California BLBAS 1157-58
Bradwell v. Illinois BLBAS 399-403

February 21

Sex Discrimination (Continued)

Reed v. Reed and the women's rights movement BLBAS 1330-31
Frontiero v. Richardson BLBAS 1336-42
Craig v. Boren 429 U.S. 190 (1976) (Westlaw/TWEN).
Personnel Administrator v. Feeney, 442 U.S. 256 (1979) (Westlaw/TWEN)

February 26

Sex Discrimination (Continued)/Sexual Orientation Discrimination/Discrimination against the Mentally Handicapped

US v. Virginia BLBAS 1366-85
Romer v. Evans BLBAS 1596-1605
City of Cleburne v. Cleburne Living Center BLBAS 1442-53

February 28

Discrimination Against Non-citizens

Bernal v. Fainter BLBAS 1312-22
Exodus Refugee Immigration v. Pence, 165 F.Supp. 3d 718 (S.D. Ind. 2016), (Westlaw/TWEN)
Trump v. Hawaii, 138 S.Ct. 2392 (2018) Westlaw/TWEN

March 11

Frameworks for Equal Protection/Voting Rights

US v. Carolene Products (focus on Footnote 4) BLBAS 584-87
Bruce Ackerman, *Beyond Carolene Products*, 98 Harv. L. Rev. 713 (1985) (Westlaw/TWEN).
Reynolds v. Sims, 377 U.S. 533 (1964) (Westlaw/TWEN)

March 13

Section 3 Disqualification

Note: Subject to Revision if the US Supreme Court decides this case before March 13

Anderson v. Griswold (Colorado Supreme Court, Dec. 2023), pp. 1-3, 49-61, 69-87, 97-116,
available at

https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2023/23SA300.pdf

Kurt Lash, “Trump Should Not Be Disqualified by an Ambiguous Clause, NY Times, Dec. 29, 2023, available at <https://www.nytimes.com/2023/12/29/opinion/trump-section-3-14th-amendment.html>

Samuel Moyn, “The Supreme Court Should Overturn the Colorado Ruling Unanimously,” NY Times, Dec. 22, 2023, available at <https://www.nytimes.com/2023/12/22/opinion/trump-colorado-ballot-ban.html>

March 18

“Substantive Due Process” I: Economic Liberties

Slaughterhouse Cases BLBAS 382-97

Lochner v. New York BLBAS 485-94

Guest Speaker: Prof. David E. Bernstein, Scalia Law School

March 20

Substantive Due Process I: Economic Liberties (Continued)

West Coast Hotel v. Parrish BLBAS 582-84

Williamson v. Lee Optical, BLBAS 592-98

Craigmiles v. Giles, 312 F.3d 220 (6th Cir. 2002) (Westlaw/TWEN)

March 25

Substantive Due Process II: Parental Rights

Meyer v. Nebraska, 262 U.S. 390 (1923) (Westlaw/TWEN)

Pierce v. Society of Sisters, 268 U.S. 510 (1925) (Westlaw/TWEN)

March 27

Incorporation of the Bill of Rights

Incorporation of the Bill of Rights BLBAS 481-85
Adamson v. California, 332 U.S. 46 (1947) (Westlaw/TWEN)
McDonald v. City of Chicago 561 U.S. 742 (2010) (Westlaw/TWEN)

April 1

Substantive Due Process III: Public Health/The Right to Privacy

Jacobson v. Massachusetts, 197 U.S. 11 (1905) (Westlaw/TWEN)
Buck v. Bell, 274 U.S. 200 (1927) (Westlaw/TWEN)
Roman Catholic Diocese of Brooklyn v. Cuomo 141 S.Ct. 63 (2020) (Westlaw/TWEN)

April 3

Substantive Due Process IV: Right to Privacy/Abortion

Griswold v. Connecticut BLBAS 1461-76
Eisenstadt v. Baird 1482-83
Roe v. Wade BLBAS 1497-1509

April 8

Substantive Due Process IV: Abortion (Continued)

Planned Parenthood of Penn. v. Casey BLBAS 1528-55
Dobbs v. Whole Women's Health BLBAS Supp 151-216

April 10

Substantive Due Process V: Sexual Privacy and LGBT Rights

Bowers v. Hardwick BLBAS 1586-94
Lawrence v. Texas BLBAS 1606-26
United States v. Windsor BLBAS 1640-44

April 15

LGBT Rights (Continued) –Same-Sex Marriage

Obergefell v. Hodges BLBAS 1645-75
Andrew Koppelman and Ilya Somin, "Gender: The Gay Marriage Fight's Missing Piece," *USA Today*, Apr. 20, 2015, available at <http://www.usatoday.com/story/opinion/2015/04/19/supreme-court-same-sex-marriage-constitutionality-discrimination-column/70225124/>

April 17

Substantive Due Process VI: The Right to Die/Right to Travel

Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990) (Westlaw/TWEN)
Washington v. Glucksberg BLBAS 521 U.S. 702 (1997) (Westlaw/TWEN)
Crandall v. Nevada, BLBAS 242-44

Shapiro v. Thompson, 394 U.S. 618 (1969) (Westlaw/TWEN)

April 22

The Right to Travel (Continued)/Procedural Due Process

Saenz v. Roe, 526 U.S. 489 (1999) (Westlaw/TWEN)

Goldberg v. Kelly, 397 U.S. 254 (1970) (Westlaw/TWEN)

Matthews v. Eldridge, 424 U.S. 319 (1976) (Westlaw/TWEN)

Discussion of Final Exam