

Constitutional Law II

Fall 2026 • Monday and Tuesday, 3:15-4:40 PM; Main Law Room 208

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Office Hours: Mondays, 5-7, or by appointment

Course Description

This course will focus on the most influential rights enumerated by the United States Constitution. The substance will be (1) First Amendment: Freedom of Speech; (2) First Amendment: Freedom of Religion and the Establishment Clause; (3) Fourteenth Amendment: Equal Protection; (4) Substantive Due Process; and (5) Procedural Due Process. In addition to learning the relevant content for understanding these constitutional provisions, this course will aid you in developing an understanding of what rights do, understanding how lawyers should make sense of rights in the political and legal order, and honing your skills in constitutional interpretation.

Except for changes that substantially affect implementation of the evaluation (grading) statement, this syllabus is a guide for the course and is subject to change with advance notice.

Required Texts

Geoffrey R. Stone, Louis M. Seidman, Cass R. Sunstein, Mark V. Tushnet, Pamela S. Karlan, Aziz Z. Huq, and Leah Litman, *Constitutional Law* (9th ed. 2023). You should bring this text with you to class every day, and page references below are to this text. Please note the policy regarding access to electronic materials during the exam below (you are only permitted to refer to printed materials and materials available offline, though it is possible to access e-books offline and thus you should be able to access e-books during the exam). Note that some professors here use the same casebook for Con Law I and Con Law II (including me, and I assigned it last semester, so it might be possible to buy one from one of my former Con Law I or Con Law II students); if you took Con Law I with me, you should already have it. You can also purchase it new via aspenpublishing.com or via a website such as Amazon. While the publishers have made a 2024 supplement available for the casebook, it is entirely optional and reading will not be assigned from it.

I post supplementary materials to Canvas (such as case excerpts or secondary sources beyond than those provided in the casebook). Where materials supplementary to the casebook are assigned, I will typically post them to Canvas and provide due advance notice. Where such supplementary materials are already assigned, they are underlined and noted as such in the syllabus below.

Class Attendance

Attendance is required for this course. In accordance with the law school's accreditation requirements, you cannot receive credit for the course if you miss more than 20% (5) of the scheduled class meetings.

Excused absences include documented illness, deaths in the family and other documented crises, call to active military duty or jury duty, religious holy days, and official University activities. These absences will be accommodated in a way that does not arbitrarily penalize students who have a valid

excuse. Consideration will also be given to students whose dependent children experience serious illness.

Class Participation

I expect students to be prepared for each class, and I will call on students to discuss the assigned readings. If you are unable to prepare due to extraordinary circumstances, you should contact me via email before class. I reserve the right to adjust grades (which are otherwise wholly determined by the final exam) upward on the margin due to very strong participation, and downward on the margin due to consistent lack of preparation.

You will receive a name placard early in the semester. Please bring it with you to class and set it up in front of you; it makes it much easier (and greatly increases how quickly I learn your names).

Class Preparation

The syllabus divides reading assignments by topic, which does not necessarily correlate to the reading per class. Typical preparation will involve around 25 pages of reading per class. Because pace can vary, it is recommended you stay somewhat ahead of where we might end on a given day.

When page ranges are assigned, you are, in principle, responsible for all material in those pages; there will be an emphasis on core cases that are *italicized*. However which cases you should focus on can evolve over the semester; when you review material synthesize the reading with what we have covered in class (and hopefully you have discussed out of class).

Grading/Exam

Other than possible class participation adjustment as noted above, the grade in this class will be based entirely on a three-hour final exam that will be administered in person.

You will be permitted to any bring printed materials (casebook, notes, outlines, etc.) as well as access non-online files to the exam, but during the exam there will be no access to the internet (though it is permitted and indeed expected that you will type your exam using the FSU exam software). Use of AI, internet research, copy-paste into the exam from any source, or other assisted text generation during the exam is prohibited.

University Attendance Policy:

Excused absences include documented illness, deaths in the family, and other documented crises, call to active military duty or jury duty, religious holy days, and official University activities. These absences will be accommodated in a way that does not arbitrarily penalize students who have a valid written excuse. Consideration will also be given to students whose dependent children experience serious illness.

Academic Honor Policy:

The Florida State University Academic Honor Policy outlines the University's expectations for the integrity of student's academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process. Students are responsible for reading the Academic Honor Policy and for living up to their

pledge to “. . . be honest and truthful and . . . [to] strive for personal and institutional integrity at Florida State University.” (Florida State University Academic Honor Policy, found at <http://fda.fsu.edu/academic-resources/academic-integrity-and-grievances/academic-honor-policy>)

Americans With Disabilities Act:

FSU is committed to providing reasonable accommodation for all persons with disabilities in a manner that is consistent with the academic standards of the course while empowering the student to meet the integral requirements of the course. Students with disabilities needing academic accommodation should: (1) register with and provide documentation to the Office of Accessibility Services; and (2) request a letter from the Office of Accessibility Services to be sent to the instructor indicating the need for accommodation and what type; and (3) meet (in person, via phone, email, zoom, etc...) with each instructor to whom a letter of accommodation was sent to review approved accommodations. Please note that instructors are not allowed to provide classroom accommodations to a student until appropriate verification from the Office of Accessibility Services has been provided. This syllabus and other class materials are available in an alternative format upon request. For the latest version of this statement and more information about services available to FSU students with disabilities, contact the:

Office of Accessibility Services
874 Traditions Way
108 Student Services Building
Florida State University
Tallahassee, FL 32306-4167
(850) 644-9566 (voice)
(850) 644-8504 (TDD)
oas@fsu.edu
<https://dsst.fsu.edu/oas>

Academic Success:

Your academic success is a top priority for Florida State University. University resources to help you succeed include tutoring centers, computer labs, counseling and health services, and services for designated groups, such as veterans and students with disabilities. The following information is not exhaustive, so please check with your advisor or the Department of Student Support and Transitions to learn more.

Confidential campus resources:

Various centers and programs are available to assist students with navigating stressors that might impact academic success. These include the following:

Victim Advocate Program
University Center A, Rm. 4100
(850) 644-7161
Available 24/7/365
Office Hours: M-F 8-5
<https://dsst.fsu.edu/vap>

Counseling and Psychological Services (CAPS)

Florida State University's Counseling and Psychological Services (CAPS) primary mission is to address psychological needs and personal concerns, which may interfere with students' academic progress, social development, and emotional well-being. The following in-person and virtual (tele-mental health) services are available to all enrolled students residing in the state of Florida:

1. Individual therapy
2. Group therapy
3. Crisis Intervention
4. Psychoeducational and outreach programming
5. After hours crisis-hotline
6. Access to community providers for specialized treatment

Call 850-644-TALK (8255) for more information on how to initiate services.

Counseling and Psychological Services

250 Askew Student Life Center

942 Learning Way

(850) 644-TALK (8255)

Walk-in and Appointment Hours:

M-F 8 am – 4 pm

<https://counseling.fsu.edu/>

Services at UHS are available to all enrolled students residing in Florida:

The mission of University Health Services (UHS) is to promote and improve the overall health and well-being of FSU students. UHS provides a coordinated continuum of care through prevention, intervention, and treatment. Services include general medical care, priority care, gynecological services, physicals, allergy injection clinic, immunizations, diagnostic imaging, physical therapy, and a medical response unit. The Center for Health Advocacy and Wellness (CHAW) assists students in their academic success through individual, group, and population-based health and wellness initiatives. Topics include wellness, alcohol and other drugs, hazing prevention, nutrition and body image, sexual health, and power based personal violence prevention. For more information, go to uhs.fsu.edu.

University Health Services

Health and Wellness Center

960 Learning Way

Tallahassee, FL 32306

Hours: M-F, 8 am – 4 pm

(850) 644-6230

<https://uhs.fsu.edu/>

I. Introduction

A. Rights and interpretation

US Constitution, Amendments I and XIV (xliv-xlvi)

RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1997) 90-94; Dworkin, *Rights as Trumps*, in JEREMY WALDRON, THEORIES OF RIGHTS (1984)

Alexander Meiklejohn, *What Does the First Amendment Mean?* 20 U. CHI. L. REV. 461 (read pp. 463-464)

B. Tiers of Scrutiny and (the limits of) their relevance

NYC City Transit Authority v. Beazer, 444-447

Free Speech Coalition v. Paxton (2025): I.B; II.A; III.B; IV

II. First Amendment: Free Speech

A. Content-based Limitations

Introduction: *Chiles v. Salazar* (2026): II (intro); II.A; II.B

1. Provocative or sensitive content

- a. The Modern Rule of Dangerous Ideology: *Brandenburg v. Ohio* (919-932)
- b. Audience Reaction: *Cantwell v. Connecticut*; *Chaplinsky v. Connecticut*; *Snyder v. Phelps* (932-946)
- c. Sensitive Information: *New York Times Co. v. US* (The Pentagon Papers case) (946-956)

2. Low value speech

- a. Factual Falsity: *NYT v. Sullivan* (969-987)
- b. Advertising: *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* (995-1011)
- c. Obscenity and Related Speech: *Miller v. California*; *Paris Adult Theater I. v. Slaton* (1019-1027); *Cohen v. California* (1037-1045)
- d. Hate Speech: *Beauharnais*; *R.A. V. v. St. Paul*; *Virginia v. Black* (1055-1078)

B. Content Neutral Restrictions

- a. General Principles (1078-1087); see also *Paxton* above
- b. Public Forum: *Adderley v. Florida*; *Police Department of Chicago v. Mosley*; *Lehman v. City of Shaker Heights* (1087-1117)
- c. (Un)equal Access and Government Speech: *Rust v. Sullivan*; *Utah v. Summum* (1125-1144)
- d. Symbolic Conduct: *United States v. O'Brien* (1144-1161)
- e. Non-Speech Expression and Association: *Boy Scouts v. Dale* (1161-1175)

III. Religion and Government

History and background (1251-1266) [*skim as you find useful*]

A. Establishment Clause

- a. Establishment Clause: *Lee v. Wiseman*; *American Legion v. American Humanist Association* (1266-1297)
- b. Neutral Statutes: *Mueller v. Allen* (1297-1310)

B. Free Exercise Clause

- a. Free Exercise and Required Accommodations: *Employment Division, Department of Human Resources v. Smith* (1310-1328)
- b. Permissible Accommodation: *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*; *Masterpiece Cakeshop v. CCRC* (1328-1345)
- c. Free Exercise and Establishment in Dialogue: *Kennedy v. Bremerton School District* (2022)

IV. Equal Protection and Protected Classifications

- a. Rational Basis Review: *NYC City Transit Authority v. Beazer* (again!) (444-463)

A. Race and Equal Protection

- a. Towards Strict Scrutiny of Explicit Racial Classifications: *Brown I* and *Brown II*; *Strauder v. West Virginia*; *Korematsu v. United States*; *Loving v. Virginia* (422-444; 463-481)
- b. 'Benign' Racial Classifications: *City of Richmond v. Croson*; *Adarand Constructors v. Peña* (498-509); *Louisiana v. Callais* (2026)
- c. Invidiously motivated, facially neutral statutes: *Yick Wo v. Hopkins*; *Gomillion v. Lightfoot*; *Village of Arlington Heights* (485-490)
- d. Racially neutral motivation with disparate effect: *Washington v. Davis* (481-485); *Alexander v. NAACP* (2025)
- e. School Admissions and surviving strict scrutiny: *Grutter v. Bollinger*; (509-531); *Students for Fair Admissions v. President and Fellows of Harvard College* (2023)

B. Gender and Heightened Scrutiny

US v. Virginia (the VMI case); *Nguyen v. INS*; *Sessions v. Morales-Santana* (572-594); ; *B.P.J./Hecox* (2026)

C. Sexual Orientation and Rational Basis Review 'with bite' (or not?)

Romer v. Evans (594-610); *United States v. Skremetti* (2025)

V. Substantive Due Process

- a. The *Lochner* Era and the Aftermath: *Lochner v. New York*; *US v. Carolene Products Co.* (655-675)

b. The Further Evolution of Due Process: Reproductive Rights: *Griswold v. Connecticut*; *Roe v. Wade*; *Dobbs v. Jackson Women's Health Organization* (726-764)

VI. Procedural Due Process

a. The Principle of Procedural Due Process: *Loudermill* (801-807)

b. Satisfying Procedural Due Process: *Mathews v. Eldridge* (812-815)