

FALL SEMESTER 2021 CONSTITUTIONAL LAW 1 SYLLABUS THURGOOD

MARSHALL SCHOOL OF LAW (Due to the COVID 19 Pandemic this syllabus is subject to change)

LAW 512 SECTION 4

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Office Location TMSL 236L

Office Hours: Monday Wednesday Friday 12:00 P.M.-3:00 P.M.

Class Time Monday, Wednesday & Friday 11:00 – 11:50 A.M.

Class Room Location

Thurgood Marshall School of Law Room 208

Westlaw, TWEN Page

Please be sure to sign up for the TWEN page because information relevant to this class will be posted on the TWEN page during the semester.

Course Book:

Constitutional Law Twentieth Edition (2019) by Noah Feldman and Kathleen M. Sullivan and the Feldman and Sullivan Constitutional Law, 20th Edition 2021 Supplement

Highly Recommended Additional Reading: *Case Analysis and Fundamentals of Legal Writing*, by Williams P. Statsky & R. John Wernet, Jr. (any available edition). According to Statsky & Wernet, “No one has devised a universally accepted method of acquiring the skill of reading and applying court opinions. ... This book, however, starts with the assumption that much can be learned about opinions and their jurisprudential context before confronting thousands of them in the reporters and casebooks. The beauty of a court opinion is the wealth of learning it can provide about legal analysis and our legal

system. This learning is the foundation for the development of the skills of reading and applying opinions.” Students are expected to read the notes following the cases in the textbook. The supplementary reading” in this syllabus is typically very helpful in developing strong legal analysis clarifying the process of identifying specific legal issues. From time to time, other reading material may be assigned.

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Course Description

Introduce basic theories of Constitutional Law, including policy considerations. There will be an in-depth study of judicial review, limitations on judicial review, national power, state powers, executive and congressional relations, procedural due process, substantive due process, equal protection, and state action.

Course Objective

The objective of this course as stated by Kathleen M. Sullivan and Noah Feldman, the authors of the casebook, is that any student learning constitutional law in this class will be readily equipped to practice it. This class will pursue Sullivan’s and Feldman’s goal of uncovering and explaining the rules, standards, and policies that inform practice before the Court as much as it strives to provide an analysis of the Court’s evolving constitutional law doctrine.

Student Learning Outcomes

After successful completion of the course, students should be able to competently:

- 1) Analyze appellate opinions involving Constitutional Law in order to extract relevant principles and rules, draw analogies and distinctions, and develop legal arguments
- 2) Articulate important doctrinal rules, standards and principles of Constitutional Law from memory, explain what they mean and provide appropriate examples
- 3) Demonstrate a practical understanding of Constitutional Law by recognizing commonly encountered issues and applying relevant standards and rules when presented in hypothetical and unfamiliar fact patterns

4) Communicate, orally and in writing, appropriate legal and factual arguments in support of each side of controversies involving commonly encountered problems and issues in Constitutional Law

GRADING

Your final grade will be based on the following:

Exam #1 Friday September 17 25%

Exam #2 Friday October 15 25%

Final Examination Thursday December 2, 2021 9 AM Room 203 50%

100%

PARTICIPATION

Class Participation: Each student is required to read the assigned materials before they are discussed in class in order to contribute to the class discussion of the cases and related policy concerns. No points are awarded for the act of participating in the class discussion. Some of the cases may be assigned to individual students in advance.

ATTENDANCE

Students are expected to attend this synchronous online class on a regular basis. The grade of any person who has been absent from class more than five (5) times during the semester may be lowered one (1), two (2), or three (3) grades depending on the number of excess absences. Excessive absence from class may result in administrative withdrawal from the course. The number of absences a student may accumulate in a semester before the administration withdraws a student from class defines excessive absence. Absence is defined as a failure to attend class, or failure to be present at the start of this synchronous class without a reasonably appropriate justification. The number of absences permitted in a three-hour course this semester is five.

PROFESSIONALISM

Electronic Devices: Laptop computers, tablets, or mobile devices may be used for assessing your e-textbook and for class-related note taking and reference. During class, however, it is inappropriate to use those devices for any other propose (e.g., to download music, play games, watch DVDs, access inappropriate web sites, or to instant message others). Use of a laptop, tablet, or mobile device, use of approved ear plugs in class is a privilege. In addition to any other sanction, the use of these devises may be rescinded, individually or collectively, if it is abused. Cell phones, smart watches, and similar devices must have the ringer turned off (or the volume muted).

Classroom Conduct: Students are expected to demonstrate professionalism while attending class. You must respect your classmates at all times. Refrain from excessive side conversations or other distracting conduct during class. It is important that you do not the classroom during instruction. Once class begins, you should remain seated and fully engaged in the discussion. If you have a medical condition that requires you to regularly leave after class has begun, please Dean Mouton for approval. Otherwise, such disruption of class will be considered as unacceptable.

READING ASSIGNMENTS

WEEK 1 (August 16-20)

pp. 1-74 **supplement add to end of note 1 at p. 49:**

TransUnion v. Ramirez; supplement add to end of note 2, Causation, at p. 50: California v. Texas

The Supreme Court's Authority and Role; The Power of Judicial Review; Supreme Court Authority to Review State Court Judgments Constitutional: Judicial Exclusivity in Constitutional Interpretation; Constitutional and Prudential Limits on Constitutional Adjudication: The "Case or Controversy" Requirements

WEEK 2 (August 23- 27) pp. 75- 160

Federalism History and Principles; enumerated powers and McCulloch v. Maryland; The Limits On the Necessary and Proper Clause; The Location of Sovereignty In The Federal System; Values Served By Federalism; The Commerce Power and its Federalism-Based

Limits; The Commerce Power before the New Deal; The Commerce Power after the New Deal; The Contemporary Commerce Power

WEEK 3 (August 30-September 3)

pp. 160 - 239

The Contemporary Commerce Power; The Tenth Amendment as an External Constraint on the Federal Commerce power; State Sovereign Immunity and the Eleventh Amendment; The National Taxing and Spending Powers and their Federalism-based limits; the Taxing Power as a Regulatory Device; Federal Limits On State Regulation of Interstate Commerce; the Dormant Commerce Clause;

Week 4 (September 6-10)

pp. 239 - 295

***No Class Monday Labor Day The Dormant Commerce Clause; The Interstate Privileges and Immunities Clause of Article IV; Congressional Ordering of Federal-State Relationships by Preemption and Consent; Other Aspects of Federal-State Relationships; Separation of Powers; Executive Assertions of Power;

Week 5 (September 13-17) pp. 297 - 345

Executive Assertions of Power; Congressional War and Treaty Powers, and the Implied Power over Foreign Affairs; Executive and Congressional discretion in times of war on terrorism **Friday September 17 Exam #1**

Week 6 (September 20- 24)

pp. 345 – 424

a supplement insert on p. 391, bottom of the page **Gundy v. United States**;
supplement add to end of note 3 at p. 424, **United States v. Arthrex**,

Executive and Congressional discretion in times of war on terrorism; Congressional authority to restrain and Enable the Executive

Week 7 (September 27 – October 1) pp. 424 – 504

a supplement insert at p. 424, replacing note 4: Seila Law LLC v. Consumer Financial Protection Bureau; supplement add to note 3 at p. 424 after discussion of Seila Law: Collins v. Yellen; a supplement insert at p. 427 as new note 3: *Congressional subpoenas of a sitting president’s financial records. Trump v. Mazars USA, LLP*; a supplement insert on p. 435 as new note number 2: *Trump v. Vance*

Executive Privileges, Immunities, and Congress’s Power of Impeachment; The Post-Civil War Amendments and the “incorporation” of Fundamental rights; Individual Rights before the Civil War; The Post-Civil war Amendments; The “Incorporation” of the Bill of Rights Through the Due Process Clause; Due Process; Substantive due process and Economic Liberties;

Week 8 (October 4 - 8) pp. 504 – 583

A supplement insert at p. 546 after the note at the bottom of the page: *June Medical Services v. Russo*,

Due Process; Substantive due process and Economic Liberties; Substantive due process and Privacy

Week 9 (October 11—15) pp. 583-649

Supplement , add to end of note 5 at 632: Cedar Point Nursery v. Hassid,

****Midterm Exam Friday October 15 Exam #2**

Substantive due process and Privacy; Procedural Due Process and the right to a hearing; Textual Guarantees of Economic Liberties: The Takings Clause and the Contract Clause; Equal Protection; Minimum Rationality Review of Economic Regulation

Week 10 (October 18-22) pp. 649-729

Equal Protection; Minimum Rationality Review of Economic Regulation; Race Discrimination;

Week 11 (October 25 – 29) pp. 729-805

Race Discrimination; Sex Discrimination; Discrimination Based on other Potentially “Suspect” Classifications; the “Fundamental Interests” Branch of Equal Protection

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Week 12 (November 1 - 5) pp. 805-865

A supplement insert at the end of note 3 on p. 825:

Rucho v. Common Cause

The “Fundamental Interests” Branch of Equal Protection; Congress’s Civil Rights Enforcement Powers; the Civil Rights statutes of the Reconstruction Era; The Requirement of State Action; Congressional Power to Reach Private Interference With Constitutional Rights; Congressional Power to Enforce Civil Rights Under the 14th and 15th Amendments

Week 13 (November 8 - 12) pp. 865-901

Congressional Power to Enforce Civil Rights under the 14th and 15th Amendment

Week 14 (November 15 – 19) pp. 902-929

Congressional Power to Enforce Civil Rights under the 14th and 15th Amendments

Week 15 (November 22-26)

Last Day of Class Tuesday November 23

Review and TBA

Reading Period Wed November 24, 2021

Thanksgiving Holiday Thurs – Fri November 25-26, 2021

Week 16 (November 29- December 3)

Final Examinations

Week 17 (December 6-10)

Final Examinations

ACCOMMODATIONS

Effective Fall 2021 semester, the Thurgood Law administrative process for student disability accommodation will be carried out by the TSU Student Accessibility Services Office (SASO). Managed by Director Sharron Benavides, SASO specializes in accommodation services and will provide efficient and professional services to Thurgood Law students who may need accommodations. The following is the transition process for accommodation services:

Previously Approved Law Students

Law students who have been approved for accommodations in previous years by the Law School Student Affairs Office must complete the SASO [Accommodation Request Form](#) to request pre-

approved accommodations for the Fall 2021 academic term. Students who have questions should contact SASO via email DisabilityServices@tsu.edu or phone 713-313-4210.

Accommodation Request Form link <http://www.tsu.edu/students-services/departments/disability-services/forms/student-accomodation-request-form.html>.

The procedure for law students who have not been previously approved for accommodation is as follows:

New Accommodation Requests

1. Students must have a diagnosed disability and authentic documentation to apply for services.
2. Once the applicant's disability information is received, SASO will contact the student to schedule an Intake (virtual) appointment for the student to self-report any disability challenges/barriers associated with the condition that impacts their functioning abilities in the learning environment.
3. SASO will next determine the student's eligibility status and accommodation plan based on the disability, historical documentation, and self-reporting data. SASO will send a notification letter indicating the applicant's service status. The notification letter requires the applicant's signature.
4. Upon receipt of the signed notification letter, SASO will forward a copy of the accommodation letter to the student, with instruction on how to complete the accommodation process.
5. Students must meet with each Instructor to discuss how accommodations will be implemented. The student and Instructor must sign the accommodation letter. The student will return a copy of the signed accommodation letter to SASO electronically. The signed accommodation letter is used for advocacy purposes if accommodation concerns are reported.

COVID Related Accommodations

TSU is completely re-opening for the Fall 2021 academic term for synchronous (in-person) courses. COVID-related protocols for the Fall 2021 academic term will support the quarantine time range for students who test positive or are exposed to COVID during the Fall 2021 semester. Documentation is required.

- COVID accommodations will be processed for those who report testing positive or exposed to COVID. Documentation is required.
- Students will quarantine for 10 days.
- Students must submit Release of Care documentation from a licensed health care professional to Student Accessibility Services Office (SASO), return to class, and discuss missed assignment/exam make up plans with Instructors. Students will not engage in class activities during the quarantine period.
- Students must communicate if more time is needed. Documentation is required to support additional time needs.

Instructors are not to re-teach the course for excessive absences. Students are encouraged to seek assistance from the Instructor and pursue tutoring. It is anticipated that students will engage in self-study during the absence time.

Accommodation services are not to fundamentally alter course/program formats, requirements, standards, and/or guidelines. Consequently, no remote/online attendance or learning modalities will occur for synchronous (in-person) formatted courses for the Fall 2021 academic term.

Students who have questions should contact SASO via email DisabilityServices@tsu.edu or phone 713-313-4210.

The above accommodation information was provided by Amy L. Ratra, Associate Dean – Student Services and Instructional Support Thurgood Marshall School of Law <http://www.tsulaw.edu>

POLICIES & PROCEDURES

Student rules and regulations govern the management of the Thurgood Marshall School of Law. These rules and regulations are derived from requirements for the Accreditation of the law school by the American Bar Association. Texas Southern University and the Faculty of Thurgood Marshall School of Law require compliance with these rules. The rules adopted by the Faculty are amendable by a majority vote of the faculty. As law students and future lawyers, each of you should read carefully these rules and maintain the copy you received for future reference while enrolled as a student at the law school. A copy of this document is posted on the law school's web-site at www.tsu.edu/academics/law under Students Affairs.

The Thurgood Marshall School of Law is a full-time day program. Students are expected to devote full time to law study. Employment is strongly discouraged for first year students. In no event may any student work in excess of 20 hours per week during the academic year. If you should have any questions about these rules and regulations you are strongly encouraged to discuss them with your professors and/or any member of the administration of the law School.

Every law student, from the date of admission to graduation shall be charged with Knowledge of all provisions of the Student Rules and Regulations. A copy shall be posted on the law school's web site and remain there throughout each Academic Year. Hard copies will be placed in the office of the Student Bar Association, the office of each currently registered Student organization, the office of Assistant Dean for Student Development, the office of each administrative law school department, and to each member of the faculty.

Assessment Description

The primary format for your examinations will be mostly objective but may also include a timed essay on your midterm exam. All of the questions are designed to help you develop the legal reasoning skills necessary to development effective legal arguments. It is highly recommended that you prepare for these exams by reviewing the assigned reading as well as the material covered in class. The professor will give Examination #1 on Friday September 17 will include consist of 25 objective multiple choice questions. Examination #2 on Friday October 15 will consist of 22 objective multiple-choice questions and a 3 point timed essay. Exams and reviews may be scheduled throughout the semester at times, other than when the class meets. A separate schedule of dates and times may be announced in the future. Practice exams may be administered throughout the semester to support you in developing your legal analysis skills. The two exams and the final exam at the end of the semester are mandatory. Failure to take a mandatory exam may result in a reduced or failing final grade. Excessive absences and lack of preparations may result in a lower grade in this course.

Title IX

Texas Southern University is committed to fostering a safe learning environment. As professor, one of my responsibilities is to help create a safe learning environment in class. Texas Southern University and Federal Regulations (Title IX) policy prohibit discrimination based on sex and this includes sexual harassment, sexual violence and misconduct, dating violence, domestic violence, and stalking. Texas Southern University understands that these incidents can undermine a student's

academic success, so Texas Southern University encourages students who have experienced sexual conduct prohibited by university policy to report these incidents when they happen to the University's Title IX Coordinator or University Confidential Resource so that the student can get the help they may need.

It is my goal that you feel able to share information related to your life experiences in classroom discussions, in your written work, and in one-to-one meetings. I will seek to keep information you share private to the greatest extent possible. However, I also have a mandatory responsibility to notify the University's Title IX Coordinator when I become aware of incidents of prohibited conduct that violate the university's Title IX policy.

Students may speak confidentially to the University Counseling Center. Please feel free to visit their website www.tsu.edu/ucc for more information about their services. Also, students may speak with the University's Title IX Coordinator by calling 713.313.1371 or emailing titleix@tsu.edu.

THURGOOD MARSHALL SCHOOL OF LAW
COVID-19 INFORMATION SHEET
HEALTH AND SAFETY ON CAMPUS

1. The University does not require COVID-19 vaccination as a condition for attending school. As a protective measure, students are encouraged to get vaccinated. The St. Luke's vaccination clinic, located on campus in the Nabrit Science Building, is open and accessible to the entire University community, Monday-Friday, 9 a.m. – 7 p.m. There is no cost for the vaccination.

2. Students are expected to continuously self-screen for the symptoms of COVID-19. If you have symptoms and are not fully vaccinated, you should call the Student Health Center at (713) 313-7173. Please remember to exercise caution and be courteous of your fellow students.

3. Students who experience a medical emergency on campus should call (713) 313-7000. If off campus, call 911. Please inform the dispatch operator if you are experiencing shortness of breath, difficulty breathing, coughing, or have a fever.

4. Students who are unable to attend classes for health reasons, including those relating to COVID-19, should immediately contact the Associate Dean of Student Services, Amy Ratra (miami.ratra@tsu.edu), for further guidance.

5. Students who contract the COVID-19 virus must report the information to the Associate Dean of Student Services, Amy Ratra, and the Student Accessibility Services Office (SASO), by phone at 713-313-4210 or by email at disabilityservices@tsu.edu.

6. Students who contract the COVID-19 virus will be required to quarantine under the advice of Student Accessibility Services Office (SASO). Such students are required to submit Release of Care documentation from a licensed health care professional to SASO and notify the Associate Dean of Student Services, Amy Ratra, before they return to the law school.

7. While on campus and in classrooms, students are encouraged to conduct themselves in a manner conducive to the health and safety of the entire TSU community.

a. Students should practice hand hygiene, cough etiquette, and general cleanliness.

b. Face coverings (over the nose and mouth) are not required as per the guidelines from the State of Texas. However, students are strongly encouraged to wear face coverings (over the nose and mouth) while in the law school building.

c. Students should wash or disinfect their hands before each class and after physical interaction with other persons in the classroom.

d. Students should maintain classroom cleanliness. Students should create a clean classroom environment by putting away unnecessary personal items and cleaning their seating area intermittently.

e. Students who do not conduct themselves on campus in a manner conducive to the health and safety of those with whom they come in contact may be subject to discipline up to expulsion from law school.

ATTENDANCE POLICY

8. Law school classes will be fully in-person this fall. The law school attendance policy will be strictly enforced.

9. Students who contract the COVID-19 virus will be barred from attending in-person classes until submitting Release of Care documentation from a licensed health care professional to Student Accessibility Services Office (SASO). Such students will be required to study and keep up with the prescribed readings.

10. Students that are excused from in-person class attendance because they contracted the COVID-19 virus should designate a student in each of their classes to make audio recordings of the lectures. Professors are required to allow such recordings to be made. Furthermore, professors are required to meet with such students to answer questions about the materials covered during their COVID-19-related absence.

UNIVERSITY RESOURCES

11. COVID-19 TESTING

Location: H&PE 109

Hours of Operation: No appointments are necessary. Tuesday – Thursday 8 a.m. – 11:30 p.m.

Results will be available within 24 hours if the test is taken by 11:30 a.m.

12. The St. Luke's vaccination clinic is open and accessible to all University personnel and community, Monday – Friday, 9 am – 7 pm in the Nabrit Science Building.

13. STUDENT HEALTH SERVICES a. Student Health Services is open 8:00 a.m. – 5:00 p.m. Monday – Friday by appointment only.

b. A nurse is available at (713) 313-7173, Monday – Friday, from 8:00 a.m. – 5:00 p.m. to schedule appointments.

c. Appointments will be scheduled virtually and in-person, as needed.

d. If you are currently enrolled and need a copy of your immunization record go to <https://tsu.medicatconnect.com>.

e. If you are off campus but in the local area and need assistance contact the Harris County Health Department COVID-19 hotline: www.ReadyHarris.org. If you don't have the internet, call (832) 927-7575 or Houston Health Department COVID-19 Call Center: (832) -393-4220.

14. UNIVERSITY COUNSELING CENTER a. The University Counseling Center (UCC) is providing convenient Telemental Health Services to all students.
- b. Students may call 713-313-7800 to request an appointment. If someone does not answer, please leave your T-Number, name, and a contact number. Students may also complete this form to request an appointment, and someone will contact them during business hours:
- c. Students may receive a call from a blocked or private number, please answer, as it may be your counselor trying to contact you.
- d. If a student experiences a crisis outside of regular business hours, the student can call 833-848-1765.
- e. Other resources for support outside of the UCC include: i. Crisis text line – Text Steve to 741-741.
ii. National Suicide Hotline - 800-273-TALK (8255)

https://forms.office.com/Pages/ResponsePage.aspx?id=ViJL72KUK0Su4urH7Z-1ZFNJ2YNoWsVPstLk4r8W_X1UOUk2SUxMRVoyVEdQTVkzV09YRVBLNU5OTy4u.