

# THE 14<sup>TH</sup> AMENDMENT and SUING LOCAL GOVERNMENT

## Course Policies and Syllabus

MWF 9:00-9:50

Professor Sanders

### SYLLABUS

**Course Description:** The course will be divided into 2 parts. The first part of the course will explore the historical, doctrinal, and theoretical underpinnings of the 14<sup>th</sup> Amendment, including notable Supreme Court decisions interpreting the 14<sup>th</sup> Amendment and its various clauses. A considerable amount of class time will be spent exploring documentaries, interviews, speeches and other media that provide historical context for the various Supreme Court decisions under the 14<sup>th</sup> Amendment. This portion of the course will make up about  $\frac{3}{4}$  of the course.

The second part of the course will explore various federal statutes such as section 1983 and doctrines such as qualified immunity involved in suing state and local governments. In the second part, you will also learn how to sue (and to a limited extent, defend) local governments for violations of the 14<sup>th</sup> Amendment.

This aspect of the course will bring all the doctrines learned in the first and second parts of the course together in a practical way. Using the fact pattern on which your midterm exam will be based, you will litigate (pretrial litigation) a mock suit against a municipal government. You will learn how to handle all the major parts of the pretrial litigation process. You will learn to draft a complaint, conduct discovery (including interrogatories, requests for production, requests for admission, and depositions) and respond to defense motions to dismiss and/or motions for summary judgment.

### **Grading.**

Midterm (essay)	20%
Final (Summary Judgment)	40%
Class Presentations and Participation	20%
Discovery and Other Exercises	20%

**Contact Info:** Office: 236D  
E-Mail: docksanders@gmail.com

**Office Hours:** MWF 3:00-5:45

**Required Materials:** Scott Gaylord, Chris Green *Federal Constitutional Law: Vol. 5, The Fourteenth Amendment*, Carolina Press, ISBN 978-1-53100-22015. Michele Alexandre, *The New Frontiers of Civil Rights Litigation*, Carolina Press, ISBN 978-1-61163-416-7.

**For those REALLY interested:** Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism*; Eric Foner, *Reconstruction*; Douglas A. Blackmon, *Slavery by Another Name*; Michelle Alexander, *The New Jim Crow*; Carol Anderson, *White Rage*; Ira Katznelson, *When Affirmative Action was White*; Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime and the Making of Modern Urban America*; Robert Caro, *The Years of Lyndon Johnson Books 1-4*; Edwin Black, *War Against the Weak: Eugenics and America's Campaign to Create a Master Race*; Juan Williams, *Thurgood Marshall American*

*Revolutionary*; Joshua Bloom and Waldo E. Martin Jr, *Black Against Empire: The History and Politics of the Black Panther Party*; Radley Balko, *The Rise of the Warrior Cop*;

**TWEN.** This class will use the TWEN webcourse. You must register for the TWEN Webcourse so you can receive emails from me. Once registered, you are responsible for logging on to TWEN to access handouts, exercises, assignments, and announcements. Should you decide to delete the webcourse after the semester concludes, you should wait until receiving your final grade to do so. This is because you will receive emails from me including a score-confirmation spreadsheet and other grade-related inquiries, after the semester concludes.

**Assignments.** An outline of tentative reading assignments (syllabus) is provided below. However, reading assignments for upcoming classes will be adjusted based on progress and need. Students should bring the required materials listed above and all handouts with them to class. You may also regularly be given questions, problems, quizzes, and other assignments to work on outside of class.

**Attendance, Preparation and Participation.** You should come to class on time and be prepared to discuss the assignments for that class. You may be quizzed frequently on reading assignments as well as on any material covered in the two-week period preceding the day of the pop quiz. This means, in preparation for each class, you should not only read the cases, you should study, understand, memorize and be able to apply the rules announced in each case. Furthermore, you should review and study notes and rules (student notes and any notes I have provided) from the prior class. Also, before the beginning of each class week, you should review and study all notes and rules from the prior week.

A failure to attend class regularly, or to be prepared in class, will adversely affect your grade. Students must miss no more than 5 classes over the course of the semester in order to receive credit for the course. Moreover, because quizzes may be given on a regular basis, missing classes also means missing quizzes. This will directly affect your grade.

In the event of an absence, any request to make up a quiz, exam or other assignment should be made only after an excuse is obtained from Dean Mouton in the Dean of Student's office.

**Class Structure.** 20% of your grade will derive from presenting and leading the class in discussing the assigned cases. Each student will be called to present 2-3 times. You will be called to present in alphabetical order and will be only required to present one case per class. You will be awarded 5-10 percentage points for each presentation. You will receive a bonus point for each presentation you make over the required minimum. Each student will also serve as a designated questioner for each case presented. Your score per presentation will depend on a number of factors including your knowledge of the facts, issues and reasoning as well as your responses to questions asked by the professor, the questioner and the class. Visual aids and added historical and social context will also boost your score.

**Class Discussions.** All students will be on call each and every class period. Each student should be prepared to be orally examined on the assigned cases, problems, and materials. Students should also be prepared to answer hypotheticals designed to test their understanding of the rules and rationales underlying the rules as well as to engage in debates with other students concerning the issues, rules and rationales.

Each student is awarded four (4) passes that he or she may use at his or her discretion. Thereafter, a percentage point (1.0) will be deducted from your final grade total for each instance of un-readiness.

**Technology.** The use of laptops is limited to course-related activity. Other unauthorized uses will result in point deductions. Internet usage is not allowed during class for any purpose unless under the express direction of the professor. The audio or video recording of the lecture and/or class discussion is not allowed.

**Professionalism.** You are expected to treat your colleagues like you want to be treated. You are also expected to be respectful of the teaching process and to abstain from any activity that might detract from the learning environment, included but not limited to engaging in distracting side-conversations and not waiting to be acknowledged before you speak. You are expected to be in class on time and to remain in class throughout the class period, barring an emergency such as a restroom need.

## READING and OTHER ASSIGNMENTS

### PART I: The 14<sup>th</sup> Amendment

• <b>Chapter 1 · The State Action Doctrine</b>	1
○ A. Introduction 1 Exercise 1	1
○ B. Original Meaning of the State Action Doctrine	2
▪ Exercise 2	5
○ C. The Seminal Case	5
▪ The Civil Rights Cases: <i>United States v. Stanley</i>	5
Exercise 3	10
○ D. Exceptions to the State Action Doctrine	12
▪ 1. The Thirteenth Amendment	13
▪ 2. The Public Functions Exception	13
▪ <i>Jackson v. Metropolitan Edison Company</i>	13
• Exercise 4	17
▪ 3. The Entanglement Exception	18
▪ <i>Burton v. Wilmington Parking Authority</i>	19
Exercise 5	22
▪ Exercise 6	23
▪ Exercise 7	25
• <b>Chapter 2 · The Privileges Or Immunities Clause</b>	27
○ A. Introduction	27
Exercise 1	27
○ B. Original Meaning of the Privileges or Immunities Clause	28
○ C. The Short-Lived Privileges or Immunities Clause	38
<i>The Slaughter-House Cases: The Butchers' Benevolent Association of New Orleans v. The Crescent City Live-Stock Landing and Slaughter-House Company</i>	38
Exercise 2	
<i>Cruikshank v. United States</i> , 92 U.S. 542	H.O.
<i>Bradwell v. Illinois</i> , 83 U.S. 130	H.O.

○ D. Continued Dormancy of the Privileges or Immunities Clause	50
<i>McDonald v. City of Chicago</i>	51
Exercise 3	53
● <b>Chapter 3 · The Due Process Clause</b>	55
○ A. Introduction	55
Exercise 1	55
○ B. Original Meaning of the Due Process Clause	57
○ C. The Incorporation Doctrine	64
<i>Barron v. The Mayor and City Council of Baltimore</i>	65
Exercise 2	67
<i>McDonald v. City of Chicago</i>	69
Exercise 3	76
○ D. “Classical” Substantive Due Process	77
<i>Lochner v. New York</i>	78
Exercise 4	85
<i>West Coast Hotel Co. v. Parrish</i>	88
Exercise 5	93
○ <b><i>The Supreme Court Documentary</i></b>	
○ <i>Meyer v. Nebraska</i>	94
Exercise 6	96
○ E. The New Deal Settlement	97
<i>Williamson v. Lee Optical of Oklahoma, Inc.</i>	97
Exercise 7	99
<i>United States v. Carolene Products Co.</i>	99
Exercise 8	102
○ F. Modern Substantive Due Process	103
▪ 1. Introduction	103
▪ 2. Origins of Modern Substantive Due Process	104
<i>Griswold v. Connecticut</i>	104
Exercise 9	111
<b><i>Documentary on 1960’s Women’s Rights Movement</i></b>	
▪ 3. Right To Marriage	114
<i>Loving v. Virginia</i>	114
Exercise 10	116
○ Sexual Orientation and Gender Identity	(A) 865-866
<i>Obergefell v. Hodges</i>	117
Exercise 11	127
<b><i>Gay Rights Movement Documentaries (1960’s-present)</i></b>	
▪ 4. Right to Family Integrity	129
<i>Moore v. City of East Cleveland</i>	129
Exercise 12	133
▪ 5. Right to Rear One’s Children	135
<i>Troxel v. Granville</i>	135
Exercise 13	138
▪ Right to Welfare?	
<i>Goldberg v. Kelly, 397 U.S. 254</i>	H.O.
▪ Right to Conceive?	
<i>Skinner v. Oklahoma, 316 U.S. 535 (1942)</i>	H.O.
<b><i>Eugenics/Buck v. Bell Documentary</i></b>	
▪ 6. Right to Artificial Birth Control	139
<i>Eisenstadt v. Baird</i>	139
Exercise 14	143

	<b><i>Sexual Revolution Documentary</i></b>	
▪	7. Right to Abortion	144
	<i>Roe v. Wade</i>	144
	Exercise 15	156
	<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i>	159
	Exercise 16	174
	<b><i>Reversing Roe Documentary</i></b>	
▪	8. Right to Sexual Autonomy	179
	<i>Bowers v. Hardwick</i> , 478 U.S. 186	<b>H.O.</b>
	<i>Lawrence v. Texas</i>	180
	Exercise 17	190
	<b><i>Lawrence v. Texas Documentary</i></b>	
	<b><i>Sexual Revolution (Gay Rights Excerpts)</i></b>	
▪	9. Right to Assisted Suicide	191
	<i>Washington v. Glucksberg</i>	192
	Exercise 18	198
▪	10. Rights To Education and Welfare	199
	<i>San Antonio Independent School District v. Rodriguez</i>	200
	<b>Handout</b>	
	Exercise 19	210
	<b><i>A Class Apart</i> documentary (Mexican American Civil Rights)</b>	
•	<b>Chapter 4 · The Equal Protection Clause</b>	213
•	A. Introduction	213
	Exercise 1	213
•	B. Original Meaning of the Equal Protection Clause	214
○	1. Race in Antebellum America	214
	<b><i>Slavery Documentary</i></b>	<b>VID</b>
	<i>Dred Scott v. Sandford</i>	215
	Exercise 2	219
	<b><i>Dred Scott Documentary Excerpt</i></b>	
○	2. The Equal Protection Clause’s Original Meaning	220
•	<b>Jim Crow Documentary</b>	<b>VID</b>
•	C. Limited Application	226-227
•	Law as Power	(A) 191-192
•	<i>Plessy v. Ferguson</i>	(A) 193-200
	Exercise 3	231
•	Historical Background of Civil Rights	(A) 3-12
•	D. Revival of the Equal Protection Clause	233
○	1. Pre-Brown	233
○	<i>Sweatt v. Painter</i>	(A) 200-204
○	2. <i>Brown v. Board of Education (I)</i>	(A) 204-207
	Exercise 4	237
○	3. “Reverse Incorporation”	239
	<i>Bolling v. Sharpe</i>	(A) 207-209
	Exercise 5	240
○	Brown and Constitutional Remedies	
▪	<i>Brown v. Board of Educations (II)</i>	(A) 209-212
▪	<i>Cooper v. Aaron</i>	(A) 212-218
▪	<i>Green v. County School Board of New Kent County Virginia</i>	(A) 218-223
▪	<i>Milken v. Bradley</i>	(A) 224-230

▪	<i>Missouri v. Jenkins</i>	(A) 230-238
•	<b>E. Equal Protection Doctrine Today</b>	241
○	1. Introduction	241
○	2. <b>Rational Basis Review</b>	242
▪	a. Economic and Social Regulations	242
	<i>Railway Express Agency, Inc. v. New York</i>	242
	Exercise 6	244
▪	b. Age	244
	<i>Massachusetts Board of Retirement v. Murgia</i>	244
	Exercise 7	248
▪	c. Disability	249
	<i>City of Cleburne, Texas v. Cleburne Living Center</i>	249
	Exercise 8	256
▪	<i>Buck v. Bell</i>	(A) 484-486
▪	d. Sexual Orientation	257
	<i>Romer v. Evans</i>	257
	Exercise 9	263
▪	<i>Bipartisan Legal Advisory Group of the United States House of Representatives v. Windsor</i>	(A) 877-895
○	3. <b>Strict Scrutiny</b>	265
▪	a. What Makes a Classification Suspect?	265
▪	b. Distinguishing Suspect from Non-Suspect Classifications	266
•	(i) Introduction	266
•	(ii) Facially Discriminatory Classifications	266
	<i>Loving v. Virginia</i>	266
	Exercise 10	268
•	(iii) Facially Neutral Classifications	268
	<i>Washington v. Davis</i> , 426 U.S. 229 (1976)	HO
	<i>Village of Arlington Heights v. Metropolitan Housing Development Corporation</i>	269
	Exercise 11	272
▪	c. Race and National Origin	273
▪	<i>Yick Yo v. Hopkins</i> , 118 U.S. 356	H.O.
	<i>Korematsu v. United States</i>	273
	Exercise 12	277
	<b><i>Japanese Internment Documentary</i></b>	
▪	<b><i>Slavery Reparations Documentary</i></b>	
▪	<b>Affirmative Action</b>	
•	Law as Power, Voluntary vs. Involuntary	(A) 255-257
•	<i>City of Richmond v. J.A. Croson Company</i>	(A) 257-269
▪	Exercise 13	289
•	<i>Adarand Constructors, Inc v. Peña</i>	(A) 269-274
•	<i>Personnel Administrator of Massachusetts v. Freeney</i>	(A) 274-282
•	<i>Regents of the Univ. of Cal v. Bakke</i> , 438 U.S. 265	H.O.
	H.O.	
•	<i>Gratz v. Bollinger</i>	(A) 282-291
•	<i>Grutter v. Bollinger</i>	(A) 291-305
•	<i>Fisher v. University of Texas I</i> 133 S.Ct. 2411	
•	<i>Fisher v. University of Texas II</i> 136 S.Ct 2198	(A) 317-325

▪	<b>Handout</b>	
	Exercise 14	304
▪	<b>Race and Criminal Justice</b>	
▪	<i>McCleskey v. Kemp</i> , 107 S. Ct. 1756 (1987)	H.O.
	<b><i>True Justice: Bryan Stevenson’s Fight for Equality</i></b>	
	<i>United States v. Clary</i> , 846 F.Supp. 768 (E.D.Mo)	H.O.
	<i>United States v. Clary</i> 34 F.3d 709(8 <sup>th</sup> Cir. 1994)	
	<b><i>Rick Ross: Crack in the System Documentary</i></b>	
	<i>State V. Russell</i> , 477 N.W. 2d 886	H.O.
	<i>Armstrong V. United States</i>	H.O.
	<i>Floyd v. City of New York</i> , 959 F. Supp. 2d 540 (S.D.N.Y. 2013).	H.O.
	<b><i>Rick Ross: Crack in the System Documentary</i></b>	
▪	d. Alienage	308
	<i>Ambach v. Norwick</i>	309
	Exercise 15	312
	<i>Graham v. Richardson</i>	(A) 410-415
	<i>Mathews v. Diaz</i>	(A) 415-420
	<i>Bernal v. Fainter</i>	(A) 364-370
	<i>Katzenbach v. Morgan</i>	(A) 403-410
	<i>Pylar v. Doe</i>	(A) 441-453
○	4. <b>Intermediate Scrutiny</b>	313
○	a. Introduction	313
○	b. Gender	313
	<i>Craig v. Boren</i>	313
	Exercise 16	316
	<i>United States v. Virginia</i>	(A) 175-191
	Exercise 17	326
▪	c. Legitimacy	329
	<i>Clark v. Jeter</i>	329
	Exercise 18	331
○	5. “Fundamental Rights Equal Protection”	332
▪	a. Introduction	332
▪	b. Marriage	333
	Exercise 19	334
▪	<b>Voting Rights</b>	
	• Law as Power, Historical Overview, The Legal Environment	(A) 671-676
	• <i>United States v. Anthony</i>	(A) 676-682
▪	c. Voting	334
	<i>Reynolds v. Sims</i>	334
	Exercise 20	343
	Exercise 21	345
	<i>Miller v. Johnson</i>	(A) 764-780
▪	<i>Davis v. Bandemer</i> , 478 U.S. 109	H.O.
▪	<i>Common Cause v. Rucho</i>	H.O.
▪	d. Access to Courts	345
	<i>M.L.B. v. S.L.J.</i>	346
	Exercise 22	348
▪	e. Right to Travel	349
	<i>Shapiro v. Thompson</i>	349
	Exercise 23	351

## PART II: Section 1983 and Government Immunity (handouts)

- **Section 1983**
  - Law as Power, Historical Overview (A) 555-559
  - Elements of Section 1983 Claims
  - Rights Enforceable under 42 USC 1983]  
*Tennessee v. Garner* (A) 559-568
- **Substantive Due Process and 42 U.S.C. 1983** (A) 581-589
- **Equal Protection and 42 U.S.C. 1983** H.O.
- **Government Immunity**
  - *Monell v. Department of Social Services of the City of New York* (A) 589-607
  - *Pembaur v. City of Cincinnati* (A) 607-614
  - *Board of the County Commissioners of Bryan County, Oklahoma v. Brown* (A) 614-623
  - *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* (A) 623-634
- **Color of State Law and Station Action**
  - *Lugar v. Edmonson Oil Co.* (A) 634-643
- **Remedies under 42 U.S.C 1983**
  - *Memphis Community School District v. Stachura* (A) 643-652
- **Standing, Ripeness and Mootness**

## PART II (continued): Pretrial Litigation for 14<sup>th</sup> Amendment Violations (handouts, simulations, and exercises)

- **Initial Pleadings**
  - *FRCP* 3, 5.1, 7.1, 8
  - Jurisdiction
  - Drafting the complaint
  - Government Responses
    - *FRCP* 8,12
    - Answer to Complaint
    - Motion to Dismiss
- **Conducting Discovery**
  - *FRCP* 26
  - **Interrogatories**
    - *FRCP* 33
    - Strategy
    - Drafting interrogatories
    - Dealing with government objections
  - **Requests for Production**
    - *FRCP* 34
    - Strategy
    - Drafting production requests
    - Dealing with government objections
    - Subpoenaing documents and other items from non-parties

- *FRCP 45*
- **Requests for Admissions**
  - *FRCP 36*
  - Strategy
  - Drafting requests for admission
- **Depositions**
  - *FRCP 30*
  - Preparing client to be deposed
  - Preparing to depose Defendants, witnesses and other parties
  - Objections
- **Summary Judgment**
  - *FRCP 56*
  - **Responding to Summary Judgment Motion**
    - Summary Judgment Standard
    - Citing the record

