

CONSTITUTIONAL LAW & JUDICIAL POLICYMAKING

UNIVERSITY OF WISCONSIN OSHKOSH

Political Science 305 (001C) | Spring 2024 | T/TH 9:40–11:10 | 3 Credits | Sage 3221

Fourteenth Amendment

Section 3

No Person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

In 2024, the Supreme Court will decide whether the 14th Amendment, Section 3 permits states to exclude Mr. Trump from presidential election ballots due to his actions on January 6, 2021.

Getty images.

JERRY D. THOMAS

J.D., Chicago-Kent College of Law, IIT

Ph.D., University of Kentucky

M.P.A., University of South Carolina

thomasj@uwosh.edu

pronouns: he/him

Office Hours: T/TH 12:15–1:15

W 10:00–11:00

Sage 4628

COURSE DESCRIPTION

This course surveys civil rights/liberties and government powers (congress, president, courts, agencies, and states). The course examines cases wrestling with overlapping and competing boundaries of power among institutions as well as powers exercised in conflict with individual rights and liberties.

[Catalogue Description: *The American Constitution as seen in the jurisprudence of the Supreme Court; judicial review; federalism; the contract clause; taxing and spending power; interstate commerce.*]

LEARNING OBJECTIVES

Constitutional Law Learning Objectives

- Identify, describe and apply major constitutional powers of Congress
- Describe and apply the constitutional principles surrounding federalism and the boundaries of federal and state authority
- Identify and analyze how courts reconcile competing constitutional powers of government and citizen liberties
- Identify, describe, and apply equal protection principles to citizen groups
- Conduct legal analyses, applying constitutional law principles to contemporary conflicts

Political Science Department Learning Goals

This course focuses on developing students' analytical skills (legal analyses), written communication (written analyses on exams), oral communication (expressing legal arguments during class), and critical examination and application of theory (applying legal arguments—theory—to new situations). These goals overlap with UWO's essential learning outcomes for students: written/oral communication and critical/creative thinking.

INCLUSION

Every person is affected by the Constitution irrespective of race, gender, sex, sexuality, socio-economic status, national origin, ethnicity, veteran status, religion, physical or learning ability, political affiliation, and other characteristics with which students commonly identify. *Input from all students is valued and expected.*

ATTENDANCE

Attendance is expected, and participation is required. I take attendance at the beginning of each class mainly to learn student names. Absences are sometimes necessary, but it is unnecessary to contact me unless it is an extended absence. Students should contact a classmate for missed notes or assignments. I do not supply notes or give one-on-one lectures, but I am always happy to meet with students to review unclear points.

LATE ASSIGNMENTS

I give makeup exams and accept late assignments only with a university-approved absence.

TEXTBOOK AND READINGS

The textbook is required, either the print version or the e-book. Other readings will be available electronically at no cost to students.

American Constitutional Law: Introductory Essays and Selected Cases, 18th Edition (2022) by Alpheus Thomas Mason and Donald Grier Stephenson.

ISBN: 978-0-367-75863-9 (print)
978-1-000-43129-2R180 (e-book)

ASSESSMENT AND GRADING

I use the 93/90/87 grading scale for this course.

A	93–100	B-	80–82	D+	67–69
A-	90–92	C+	77–79	D	63–66
B+	87–89	C	73–76	D-	60–62
B	83–86	C-	70–72	F	0–59

Participation (25%)—Participation is based on student preparation for and contributions to class. Minimally, students must attend class, read, and prepare. Participation comfort levels vary substantially. At one end of the spectrum are *deathers*—students who fear public speaking (more than death). I structure the class to help students overcome this fear. On the other end of the spectrum are *gunners*—students are eager to speak and tend to dominate conversations. These students should be mindful that learning involves active listening and should provide classmates with an opportunity to speak. Quality of participation is important. Students receive the best participation grades when they demonstrate critical thinking and assimilate complex ideas, including classmates' ideas, across a range of topics. These participators contribute meaningfully to the learning of others, including the professor. Students write a reflection at the end of the term assessing their own participation, both strengths and challenges.

Exams (3 x 25% = 75%)—There are three exams, a combination of objective questions, legal analyses, and essays.

STUDENT CONSUMER INFORMATION

Students should see the following URL for disclosures about essential consumer protection items required by the Students Right to Know Act of 1990 available [here](#).

GRIEVANCES

The Department of Political Science is committed to offering you a high-quality classroom experience, and we take your feedback seriously. If you have concerns about anything related to this course, assignments, or teaching method, you are encouraged to first speak with your instructor directly. If you are not comfortable speaking with the instructor, you are invited to speak with the Chair of the Department of Political Science, Dr. Tracy Slagter at slagtert@uwosh.edu. She will be super helpful.

ACCESSIBILITY SERVICES

It is the policy and practice of UW Oshkosh to create an inclusive learning environment. UWO provides reasonable accommodations to students who have disabilities that may affect their ability to participate in course activities or meet course requirements. We accommodate *flexibly* and *individually*. Register with *Accessibility Services* or *Project Success* to get an accommodation recommendation form.

Accessibility Services

125 Dempsey Hall

(920) 424-3100

dean1@uwosh.edu

[Accessibility Services Website](#)

NOTE TO POLITICAL SCIENCE MAJORS

This course counts as an elective toward the political science major and minor. Majors should take Political Methodology (245) in either their sophomore year or first semester of junior year. PS245 is a prerequisite for the senior capstone, Political Analysis (401) and cannot be taken concurrently.

ACADEMIC INTEGRITY

UWO is committed to academic integrity for all students. System guidelines state, “Students are responsible for the honest completion and representation of their work, for the appropriate citation of sources, and for respect of others’ academic endeavors.” We expect students to review and adhere to procedures related to academic honesty as outlined in Chapter UWS 14, Wisconsin Administrative Code, available on the Dean of Students website [here](#). Students should direct questions regarding the code (and institutional procedures approved to implement the code) to the Dean of Students Office.

SCHEDULE AND ASSIGNMENTS

Changes to the schedule are inevitable, especially in a course on American government and politics where current events drive our focus and discussions. Changes to the schedule will be communicated in class or through e-mail. If substantive changes are made, notification will be provided in a timely manner and a revised syllabus made available.

Week 1 (Feb 5)

Course Overview, Introductions, Green Glass Door

U.S. Constitution (695–705)

Articles I, II, and III, and Amendments

Judicial Review (chapter 2)

Week 2 (Feb 12)

Jurisdiction & Court Organization (chapter 1)

Federalism (chapter 4)

Week 3 (Feb 19)

Congress and lawmaking (chapter 3)

Investigations

- *Watkins v. U.S.* (investigations)
- *Recent cases to be announced*

Commerce Clause (chapter 6)

- *Heart of Atlanta Motel v. U.S.* (public accommodation)
- *Katzbach v. McClung* (Ollie's BBQ)
- *U.S. v. Lopez* (gun-free school zone act)
- *Gonzales v. Raich* (legalization of marijuana) (Oyez)

Taxing and Spending (chapter 7)

- *South Dakota v. Dole* (minimum drinking age) (majority)
- *National Federation of Independent Businesses v. Sebelius* (ACA) (Canvas)

Week 4 (Feb 26)

Executive Power (from chapter 3)

- *Youngstown Sheet & Tube v. Sawyer* (steel mills seizure) (majority)
- *U.S. v. Nixon* (privilege)
- *Nixon v. Fitzgerald* (immunity)
- *Clinton v. Jones* (immunity)
- *Trump v. Mazars* (Oyez)
- *Trump v. Vance* (immunity) (Oyez)
- *Recent cases to be announced*

Week 5 (mar 4)

Review and exam 1

Week 6 (Mar 11)

Bill of Rights, Incorporation, Second Amendment (chapter 9)

- *District of Columbia v. Heller* (hand gun bans)
- *McDonald v. City of Chicago* (incorporating *Heller*)
- *Recent cases to be announced*

Religious Liberty (chapter 12)

- *West Virginia State Board of Education v. Barnette* (flag salute)
- *Employment Division v. Smith* (peyote)
- *American Legion v. American Humanist Assoc.* (cross memorial) (Oyez)

Week 7 (Mar 18)

Freedom of Expression, Association, and Press (chapter 11)

- *Brandenburg v. Ohio* (imminent lawless action)
- *Texas v. Johnson* (flag burning)
- *Boy Scouts of America v. Dale* (association)
- *New York Times Co. v. U.S.* (press and prior restraint) (per curiam)

- *Ashcroft v Free Speech Coalition* (child pornography)
- *Recent cases to be announced*

Week 8 (Mar 25): Spring Break

Week 9 (Apr 1)

Privacy (chapter 13)

- *Griswold v. Connecticut* (birth control)
- *Washington v. Glucksberg* (physician-assisted suicide) (Canvas)
- *Lawrence v. Texas* (sodomy)

Abortion (chapter 13)

- *Roe v. Wade* (abortion)
- *Planned Parenthood v. Casey* (abortion)
- *Dobbs v. Jackson Women's Health Org.* (abortion) (Canvas)

Week 10 (Apr 8)

Review and Exam 2

Week 11 (Apr 15)

Marriage (chapter 13)

- *Loving v. Virginia* (interracial marriage)
- *Obergefell v. Hodges* (same-sex marriage)

Current Events and Cases

Week 12 (Apr 22)

Equal Protection (chapter 14)

- *Brown v. Board of Education* (state school desegregation)
- *Bolling v. Sharpe* (federal school desegregation)
- *Korematsu v. U.S.* (strict scrutiny and race discrimination)
- *Frontiero v. Richardson* (sex discrimination)
- *Craig v. Boren* (sex discrimination, heightened scrutiny)
- *Cleburne v. Cleburne Living Center* (mental disability—rational basis)
- *Romer v. Evans* (gays and lesbian) (majority)
- *Grutter v. Bollinger* (affirmative action) (Oyez)
- *Recent cases to be announced*

Week 13 (Apr 29)

Electoral Process (chapter 5)

- *Miller v. Johnson* (majority-minority districts) (majority)
- *Reynolds v. Sims* (one person, one vote) (majority)
- *Citizens United v. Federal Election Commission* (corporate spending and speech)
- *Recent cases to be announced*

Week 14 (May 6)

Current Events and Cases

Week 15 (May 13)

Wrap-up, review, reflections, course evaluations, and exam 3