

**CONSTITUTIONAL LAW I:  
CONSTITUTIONAL STRUCTURES OF GOVERNMENT**

COURSE OVERVIEW AND SYLLABUS

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Office Location: Gates Hall 314  
Office Hours: Fridays from 12:30 p.m. to 1:20 p.m. and by individual appointment.

**COURSE OVERVIEW**

**1. Course Description**

This course is an introductory but nevertheless important part of the larger project of exploring and understanding the United States Constitution. Specifically, this course will provide an examination of the structures of government that emerge from the United States Constitution. Major themes of the course include federalism, separation of powers, and the role of the courts. Topics of particular focus include judicial review, the executive and legislative powers, interstate commerce, state sovereign immunity, and federal preemption.

We also will address Reconstruction and the Fourteenth Amendment; however, we will do so only briefly, largely in order to understand the role that it plays in structuring and limiting governmental power. For a much more in-depth look at the Fourteenth Amendment and other constitutional provisions that protect individual rights, you should take Constitutional Law II. Constitutional Law II focuses primarily on the principles of equal protection and due process protected by the Fifth and Fourteenth Amendments, as well as the Thirteenth Amendment, and the law school strongly recommends that all JD students take the course. Students also benefit greatly from other upper-level constitutional law courses.

**2. Learning Objectives and Outcomes**

This course aims to ensure that you:

- (a) Deepen your understanding of American structures of government and how the United States Constitution divides governmental power;
- (b) Develop an understanding of key constitutional law concepts that speak to the structures of American government, including federalism, separation of powers, the role of the courts, and the Fourteenth Amendment;
- (c) Engage in legal analysis and reasoning needed for problem solving in the constitutional law arena; and
- (d) Communicate effectively in writing and orally on constitutional law matters.

### 3. Required Texts

There are two required texts for this class. The first required book for this course is **Charles Shanor's *American Constitutional Law: Structure and Reconstruction* (6th ed. 2017)**. At least one copy of this text will be on reserve at the library. I understand that copies of the Fifth Edition of the Shanor book may be available at a more reasonable price than copies of the Sixth Edition of the book. Unfortunately, I cannot guarantee that the Fifth Edition will serve as an adequate substitute for the Sixth, and any students choosing to use the former will bear the burden of ensuring that they have access to all the relevant material. Moreover, during our classroom discussions and in my PowerPoint slides, I will be referring to the pagination used in the assigned Sixth Edition of the book, not the older Fifth Edition of the book. As a result, if you choose to use the Fifth instead of the Sixth Edition of the book, you may face some logistical hurdles in translating between the pages referred to in class and the pages in your Shanor book. This all said, if you prefer to purchase and use the Fifth Edition of the book for our class, please note that I have attempted to indicate, throughout the syllabus, where the pages in the Fifth Edition correspond to pages in the Sixth Edition.

The second required book for this course is ***The Limits of Presidential Power: A Citizen's Guide to the Law* (2018)**, written by Professor Kathryn Watts and me. This book is available on [Amazon](#) in either a paperback or an e-book format. Some copies of this book are on hold at the library for those who do not wish to purchase a copy. Please note that, per UW policy, I will not retain any profits from texts assigned to my students.

I will be supplementing these two required texts with various readings that will be made available through Westlaw, Lexis, Canvas, or links to various websites. Pulling up reading assignments online using web links can be more cumbersome than reading out of a printed course pack; however, this will save you money, and the online links will facilitate the incorporation of current, developing news into the class. Occasionally I will email you with important details or additional readings; please make sure that you check your UW email regularly during the quarter.

### 4. Additional Resources

Constitutional law is difficult to summarize and simplify, and coverage of cases and other materials tends to vary significantly from class to class. As such, I would advise caution with respect to commercial outlines. However, for those wishing to consult a supplementary source, I recommend Erwin Chemerinsky's *Constitutional Law: Principles and Policies* (5th ed. 2015).

In addition, Oyez (<https://www.oyez.org>) provides an excellent online resource that contains details about the various Supreme Court cases we will be reading this quarter. Through Oyez, you can: look up which justices were on the Court when a given case was decided; read a summary of the Court's decision in a given case; see who argued different cases before the Court; and listen to recordings of many oral arguments before the Court. SCOTUSblog (<https://www.scotusblog.com/>) is another excellent resource, particularly for more recent cases, including those that are pending.

## 5. Office Hours

I encourage you to talk with me outside of class if you have questions or comments or otherwise wish to meet. I am always happy to discuss the course and its materials. In addition, I am happy to discuss career-related issues with you. I have worked as a judicial law clerk at both the federal appellate and Supreme Court levels, as an associate at a large Seattle law firm, and as a summer clerk in both the U.S. Attorney's Office in Seattle as well as at a law firm in New York. I am happy to discuss any of these experiences with you or more generally to discuss the legal profession.

For purposes of meeting, I have set aside scheduled, drop-in office hours Fridays from 12:30 p.m. to 1:20 p.m. No appointment is necessary for these office hours. If you should wish to meet with me outside of these times, please consult the information posted outside the door of my office, Room 314, which has additional times for sign-up appointments listed. If none of these times works, please email me and we will figure out the specifics.

## 6. Disability-Related Needs

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to: mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or [uwdrs@uw.edu](mailto:uwdrs@uw.edu) or [disability.uw.edu](http://disability.uw.edu). DRS offers resources and coordinates reasonable accommodations for students with disabilities or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructors, and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

## 7. Classroom Policies

**Class Preparation & Out-of-Class Work:** I expect you to treat class like you would treat a job—meaning that I expect you to show up to class on time prepared to participate in a professional manner. At a minimum, this requires that you have completed the reading, that you have thought about the implicated issues, and that you arrive to each class ready to discuss the materials on a substantive level.

Per ABA Standard 310, students are expected to devote at least two hours to out-of-class work for each 50 minutes of in-class time. Given that we generally will meet each week for 300 minutes of in-class time, this means that you are expected to devote at least 12 hours of out-of-class work to the course each week. Out-of-class work may include such

activities as reading, reviewing, outlining, studying, or otherwise working on materials and assignments for the course.

**Attendance:** If you will be absent from class on a given day, you must email me to notify me of the absence (just as you would email your employer if you were going to be absent from work). You are not required to provide me with details surrounding the specific reasons for your absence, but you are required to notify me of the absence. Under ABA Accreditation Standard 304, a law school must require regular and punctual attendance. At any time after the fifth week of a course, a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration.

**Class Participation:** I encourage students to participate voluntarily, but I will also frequently call on students randomly without prior notice. Please note that I do not use this method to intimidate or otherwise impose on students. To the contrary, I use it to ensure that everyone is included in the classroom discussion and therefore can benefit both from the insights of his or her peers and from actively engaging with the material. In addition, I emphasize student participation because speaking skills are important in the practice of law whether those skills are used in court, in presenting to clients, or in negotiating with others. Class participation may affect your final grade, as discussed below.

**Writing Exercises:** I will assign two out-of-class writing exercises during the quarter. These exercises are mandatory and must be completed in order to pass the course. In other words, your failure to complete and to turn in both of these assignments may result in an “incomplete” in the course. Also, as noted below, please be aware that particularly poor or particularly exceptional performance on your two required assignments, including but not limited to a failure to submit the assignments in a timely manner, may be factored into my assessment of your overall class participation. Otherwise, these writing assignments are ungraded and are intended to serve as safe learning opportunities.

**Recordings:** You are not allowed to make your own video or audio recordings of class sessions. I will authorize Law Media to record the class subject to the following conditions: (1) students who access the recordings agree to use the recordings only for their studies in this class; and (2) students who access the recordings agree not to distribute the recordings to anyone else. Note that you should not rely on these recordings or assume they always will be made available. Technical errors can interfere with the recording process, and listening to the audio is not a substitute for class attendance. If at any point during the quarter I feel that class participation or attendance has been low, I may withdraw my recording authorization for future classes.

**PowerPoint Slides:** I generally will post my PowerPoint slides to the course Canvas page prior to class each day. Students enrolled in this class may use the slides only for their own educational purposes, and students may not share the slides or otherwise circulate them to anyone outside of this particular section of this class—meaning that you may not circulate or otherwise share the slides with anyone outside of Professor Manheim’s section of Constitutional Law I. You may, however, discuss the material contained in those slides with whomever you like.

## 8. Grades

Your grade for the course will be determined by your score on the final exam with the caveat that your class participation and your performance on the two out-of-class writing assignments may affect your grade, as described below:

- a. **The Exam:** The exam will be open book and four hours long, and it of course will be subject to the law school's rules and honor code. If you use a computer for the exam, you must use the ExamSoft software. Those using the ExamSoft software may use the setting that permits access to electronic documents stored on a hard drive, but not the internet. Please note that I will be permitting use of the "control-F" function for this exam and that students may use hyperlinks.
- b. **Class Participation:** A variety of factors may affect my assessment of your overall class participation, including: whether you voluntarily raise insightful or thoughtful points or questions during classroom discussions, after class, or in office hours; whether you are prepared when called on; whether your performance on the two required writing assignments is particularly poor or particularly exceptional; and whether you submit your two required writing assignments in a timely manner.

A student whose class participation demonstrates extraordinary preparation and mastery may receive an upward adjustment in that student's final grade if the final-examination grade ends up close to the line between two letter grades. Conversely, a student whose class participation is particularly poor may receive a downward adjustment in that student's final grade, even if the final-examination grade does *not* straddle the line between two letter grades.

Although class participation plays only a minor role in determining your final grade in the course, it is considered a requirement for successful completion of this course. Thus, a failure to participate in good faith—such as by passing every time called on or repeatedly failing to be in class when called on—may result in a grade of incomplete in the course that can only be rectified by sitting through the entire course in a future quarter and satisfactorily participating in class discussion.

Note that when I assess students' class participation, I weight the quality of a student's participation much more heavily than the quantity of a given student's participation.

## 9. Class schedule changes

On **Friday, May 10, likely from 9:30-10:20**, students are required to attend a lecture given by Professor James Forman about his Pulitzer-Prize-winning book, [Locking Up Our Own](#). This lecture will take place in Room 138. Students will then participate in our Con Law class, which will be held at the usual time, though again in Room 138. Please note that Professor Watts's students will be joining us that day. Further details about our May 10th session will be circulated later in the quarter, once those details are known. If the early start that day is likely to pose a burden on you, please contact me about this issue well before May 10.

On Friday, April 26, our class will be held at the normal time, but Professor Watts will be teaching the class (along with her class) in Room 133. This slight adjustment to our schedule will give you the chance to hear a somewhat different perspective on our material; it also will allow me to visit Ohio State for a discussion of my recent research. For anyone interested in the topic of that research, it explores the ways that U.S. presidents are able to use law-based levers of control to influence national elections.

## **10. Reading Assignments**

Below please find the syllabus and reading assignments for the course. We will tackle an average of approximately one assignment per class period. If adjustments to this reading list become necessary, I will circulate a revised version of the Course Overview and Syllabus. Each version of the Course Overview and Syllabus is marked as such at the bottom of the page.

**SYLLABUS**  
(subject to modification)

**I. Overview of the United States Government**

Assignment 1: The Constitution and Its Interpretation  
Assignment 2: The Legislative Branch  
Assignment 3: The Executive Branch  
Assignment 4: The Judicial Branch

**II. Judicial Power to Enforce the Constitution**

Assignment 5: Standing and Mootness  
Assignment 6: Political Question Doctrine

**III. The Executive's Powers and Their Limits**

Assignment 7: The Scope of the President's Powers  
Assignment 8: Executive Privileges and Immunities/Impeachment

**IV. Congress's Article I Powers and Their Limits**

Assignments 9-12: Article I Powers, Including the Commerce Clause Power  
Assignment 13: Federalism as a Limit: The Tenth Amendment  
Assignment 14: Federalism as a Limit: The Eleventh Amendment

**V. Federalism as a Limit on State Power**

Assignment 15: Federal Preemption of State Law  
Assignments 16-17: The Dormant Commerce Clause; State Privileges and Immunities  
Assignments 18-19: Reflection and Review (Writing Assignment #1)

**VI. Introduction to the Reconstruction Amendments**

Assignments 20: Overview; State-Actor Doctrine

**VII. Equal Protection**

Assignment 21: Traditional Rational-Basis Review; Strict Scrutiny  
Assignment 22: Strict Scrutiny and the "Discriminatory Intent" Requirement  
Assignment 23: Intermediate Scrutiny; Non-Traditional Rational-Basis Review

**VIII. Congress's Power to Enforce the Fourteenth Amendment Using § 5**

Assignments 24-25: Congress's Section 14.5 Power

**IX. Reflection and Review**

Assignment 26: Reflection and Review (Writing Assignment #2)  
Assignment 27: Reflection and Review (Flow Charting)

## **READING ASSIGNMENTS**

(subject to modification)

“CB” refers to the required Shanor casebook (6th edition).

### **I. OVERVIEW OF THE UNITED STATES GOVERNMENT**

*The Aim of Assignments 1-4: These first four assignments will provide a high-level introduction to the federal government’s three branches: the legislative branch; the executive branch; and the judicial branch. You can think of these first four assignments as “Civics 101 for Law Students.”*

*Compared to readings you have completed for other 1L courses, these first four reading assignments might seem a bit different because they include a lot of information but are relatively light on cases. Note, however, that all of the materials we are covering in this introductory unit are designed to give you the background and framework necessary to understand the many complex Constitutional Law cases that we will be reading and discussing in detail throughout the remainder of this class.*

*Note: Throughout the quarter, you will be assigned most of The Limits of Presidential Power. (More specifically, you will be assigned the Introduction, Chapters 1-7, and Chapter 9.) Some students may prefer to read these chapters sequentially at the beginning of the course; that approach is perfectly fine, though not required. Chapters 8 and 10 of the book also are not required, although they may provide helpful background.*

#### **Assignment 1**

##### **The Constitution and Its Interpretation**

- Read the course syllabus in its entirety, paying close attention to the class policies.
- Read “A Brief History of the Constitution and Its Interpretation” (CB 4-9) [same in 5th ed.]
- Read “A Brief Outline of the Constitution’s Text” (CB 1-3) [same in 5th ed.].
- Read through the U.S. Constitution (CB xxv-xli) [same in 5th ed.]. Complete this reading relatively quickly; the goal is to get a sense for the Constitution’s scope and content. Note that the meaning of much of its text will not be clear to you. That is to be expected and should not deter you from reading it in full.
- Read the Introduction, as well as Chapter 1, of *The Limits of Presidential Power*.
- Read “Travel Ban Packet” (available on Canvas). This reading packet provides you with a case study involving President Trump’s “travel bans.” The case study is designed to provide you with a high-level introduction to some of the overarching structures-of-government themes that we will explore in much more detail throughout this course, including: the relationship between Congress and the executive; the role of the courts; and the role of the states. You will find two cases embedded within this packet: *Washington v. Trump* from the Ninth Circuit and *Trump v. Hawaii* from the Supreme Court.
- Complete “Student Info Sheet” (under the “Assignments” tab in Canvas) and post your response to Canvas before class on Monday, April 1.



## **Assignment 2**

### The Legislative Branch

- Reread U.S. CONST., Art. I.
- Read “Legislative Branch Packet” (available on Canvas). This packet provides you with an overview of the legislative branch and how laws are made. It also provides you with a case study involving marijuana. That case study is designed to provide you with a high-level introduction to a variety of concepts and themes that we will explore throughout our Constitutional Law class, including: Congress’s power to control the nation’s purse; federalism; preemption; and the role of the federal versus the state governments in setting national policy. You will find two cases embedded within this reading packet: *Chadha* from the Supreme Court; and *U.S. v. McIntosh* from the Ninth Circuit.
- Read Chapters 4 & 7 of *The Limits of Presidential Power*. Chapter 4 focuses on the legislative branch, and chapter 7 focuses on the role of the states and issues of federalism. Keep the marijuana case study from the “Legislative Branch Packet” in mind as you read Chapters 4 and 7 from *The Limits of Presidential Power*.

## **Assignment 3**

### The Executive Branch

- Reread U.S. CONST., Art. II.
- Read Chapters 2-3 and 5 of *The Limits of Presidential Power*.
- Read CB pp. 101-104 (on the distribution of national powers) and CB pp. 103-112 (Framework; *Youngstown*) [5th ed. pp. 114-116; 116-126].

## **Assignment 4**

### The Judicial Branch

- Reread U.S. CONST., Art. III.
- Read “Judicial Branch Packet” (available on Canvas). This packet will introduce you to the judicial branch and to a foundational case on judicial review: *Marbury v. Madison*. This packet also includes an article on “modalities of constitutional argument.”
- Read Chapter 6 of *The Limits of Presidential Power*.

## II. JUDICIAL POWER TO ENFORCE THE CONSTITUTION

*The Aim of Assignments 5-6: These two assignments are designed to introduce you to important legal limits that the Constitution places on the federal judicial power. Specifically, these two assignments will introduce you to three different doctrines that limit the power of the federal judiciary: standing; mootness; and the political question doctrine.*

### Assignment 5

#### Limits on the Judicial Power: Standing and Mootness

- Reread U.S. CONST. Art. III, taking particular note of § 2, cl. 1.
- The “Case or Controversy” Limit (CB 76-77) [5th ed. pp. 85-86].
- Standing and Mootness; *Laidlaw* (CB 77-86) [5th ed. pp. 86-98].
- Read Chapter 9 of *The Limits of Presidential Power*.
- State standing: *Massachusetts v. EPA* (CB 86-89) [5th ed. pp. 98-102].
- Think back to the “Travel Ban” materials from day one. Why did Washington State have standing to bring suit in the *Washington v. Trump* case decided by the Ninth Circuit? And why did the plaintiffs in *Trump v. Hawaii* have standing in that case?

### Assignment 6

#### Limits on the Judicial Power: Political Question Doctrine

- Reread U.S. CONST. Art. III.
- Political Questions; *Baker* and *Vieth* (CB 89-100) [5th ed. pp. 102-113].
- Read “Packet on Pending Gerrymandering Cases” (available on Canvas). This brief packet focuses on *Lamone v. Benisek* and *Rucho v. Common Cause*, two partisan-gerrymandering cases that will be argued before the Supreme Court on March 26, 2019.
- Reread U.S. CONST. Art. I, § 9, cl. 8.
- Read Part I of the “Border Wall Packet” (available on Canvas).

### III. THE EXECUTIVE'S POWERS AND THEIR LIMITS

*The Aim of Assignments 7-8: These two assignments will enable you to explore the executive power in more detail. In particular, these materials will build on the framework for executive power that you were previously exposed to as part of Assignment 3 when you read the Youngstown case. These materials also will explore various cases that speak to executive privileges and immunities.*

#### Assignment 7

##### The Scope of the President's Powers

- Reread U.S. CONST. Art. II.
- Review your notes on our Assignment 3 materials and discussion. Take particular care in reviewing the *Youngstown* case.
- Domestic Affairs; *Clinton v. City of New York* (CB 112-120) [5th ed. pp. 126-134].
- Foreign Affairs; *Curtiss-Wright* (CB 120-123); *Dames & Moore* (CB 123-127) [5th ed. pp. 135-137; 137-141].
- Read Part II of the “Border Wall Packet” (available on Canvas).

#### Assignment 8

##### Executive Privileges and Immunities

- Reread U.S. CONST. Art. II. Does this Article anywhere mention executive privileges or immunities?
- *United States v. Nixon* (CB 138-144) [5th ed. pp. 147-153].
- *Clinton v. Jones* (CB 144-150) [5th ed. pp. 153-160].
- Read the “Impeachment” packet (available on Canvas).

#### IV. CONGRESS'S ARTICLE I POWERS AND THEIR LIMITS

*The Aim of Assignments 9-17: These assignments explore Congress's Article I legislative powers, with a particular focus on the Commerce Clause. These materials also explore limits on Congress that flow from the Tenth and Eleventh Amendments, as well as broader federalism principles.*

##### Assignment 9

Article I Powers, Including the Commerce Clause Power  
*The Commerce Clause During and After the New Deal*

- Reread U.S. CONST. Art. I; take particular note of Art. I, § 8.
- Read “Introduction to Congress’s Powers” (available on Canvas).
- *Wickard* (CB 221-224) [5th ed. pp. 233-237].
- *Heart of Atlanta Motel* (CB 225-229) [5th ed. pp. 237-242].

##### Assignment 10

Article I Powers, Including the Commerce Clause Power  
*Modern Scope of the Commerce Clause*

- Reread U.S. CONST. Art. I, § 8, cl. 3 & 18.
- *Lopez* (CB 229-236) [5th ed. pp. 243-251].
- *United States v. Morrison* (CB 236-241) [5th ed. pp. 251-256].

##### Assignment 11

Article I Powers, Including the Commerce Clause Power  
*Modern Scope of the Commerce Clause (continued)*

- Reread U.S. CONST. Art. I, § 8, cl. 3 & 18.
- *Raich* (CB 241-245) [5th ed. pp. 256-261].
- *NFIB* (CB 245-251) [5th ed. pp. 261-268].
- Spend at least 10 minutes looking (online) through the full *NFIB* opinion, available at <http://goo.gl/S9JxCp>. Note that the first six pages constitute the “Syllabus,” a quasi-official summary described at the very top of the first page. The actual opinion starts on page 7 of the PDF and continues through page 193. If you look to the top of each opinion page, it will indicate whether at least five justices joined that portion of the opinion (in which case it will read “Opinion of the Court,” *see, e.g.*, page 13 of the PDF) or if fewer than five justices joined (in which case it will read “Opinion of [the relevant justices], *see, e.g.*, page 21 of the PDF; *compare id. with, e.g.*, page 130 of the PDF). Spend these 10 minutes not focused on the text of the opinion, but instead familiarizing yourself with how such an opinion looks and generally is organized.

### **Assignment 12**

#### Article I Powers, Including the Commerce Clause Power *Other Article I Powers*

- Reread U.S. CONST. Art. I, § 8.
- The Taxing Power (CB 251-252) [5th ed. pp. 269].
- *NFIB* (CB 252-257) [5th ed. pp. 269-275].
- The Spending Powers; *Dole* (CB 257-262) [5th ed. pp. 276-281].
- *NFIB* (CB 262-268) [5th ed. pp. 281-287].

### **Assignment 13**

#### Federalism as a Limit: The Tenth Amendment *Commandeering*

- Reread U.S. CONST. amend. 10.
- Introduction to Federalism Limits on Article I Powers (CB 274-275) [5th ed. pp. 289].
- The Tenth Amendment; *Garcia* (CB 275-280) [5th ed. pp. 289-296].
- Excerpt from *New York v. United States* (available on Canvas).
- *Printz* (CB 288-294) [5th ed. pp. 304-311].
- Excerpt of *Murphy* (available on Canvas).

### **Assignment 14**

#### Federalism as a Limit: The Eleventh Amendment

- Reread U.S. CONST. amend. 11.
- Introduction to the Eleventh Amendment and State Sovereign Immunity (CB 294-295) [5th ed. pp. 311-312].
- *Seminole Tribe* (CB 295-300) [5th ed. pp. 312-319].
- *Alden* (CB 300-305) [5th ed. pp. 319-325].

## V. FEDERALISM AS A LIMIT ON STATE POWER

### Assignment 15

#### Federal Preemption of State Law

- Reread U.S. CONST. Art. VI.
- Introduction to Federalism's Limits on the States (CB 309) [5th ed. pp. 330].
- Introduction to Federal Preemption of State Law (CB 326-327) [5th ed. pp. 351-352].
- "Preemption Handout" (available on Canvas).
- Read the edited version of *Geier* (available on Canvas).
- Read *Garamendi* (CB 331-336) [5th ed. pp. 356-363].
- Read pages 1-4 & 14-17 of *Zervos v. Trump* (available [here](#)). For context, recall our Assignment 8 readings and discussion. The remainder of the *Zervos v. Trump* majority decision, as well as the dissent (beginning on page 34) is optional, but it may be of interest.

### Assignments 16-17

#### The Dormant Commerce Clause; State Privileges and Immunities

- Reread U.S. CONST. Art. I, § 8, cl. 3.
- Introduction to Judicial Protection of Interstate Commerce (CB 337-338) [5th ed. pp. 364-365].
- Discrimination and Burdens on Commerce; *Philadelphia v. New Jersey* (CB 340-346) [5th ed. pp. 367-373].
- *Kassel* (CB 350-358) [5th ed. pp. 377-386].
- Excerpt from *White v. Massachusetts Council of Const. Employers, Inc.*, 460 U.S. 204 (1983) (available on Canvas).
- Reread U.S. CONST. Art. IV, § 2, cl. 1.
- Introduction to State Privileges and Immunities (CB 372) [5th ed. pp. 399-400].
- *Camden* (CB 372-378) [5th ed. pp. 400-406].

*The Aim of Assignments 18-19: These two assignments are designed to help you review and reflect on the materials we have covered thus far.*

### Assignment 18

#### Reflection and Review

- Read the packet labeled "Out-of-Class Writing Assignment" (available on Canvas).
- Come to class today ready to discuss the materials contained in the packet; your actual response to the writing assignment is not due until our next class session (Assignment 18).

### Assignment 19

#### Reflection and Review

- Submit your answer to the "Out-of-Class Writing Assignment" prior to the start of class.
- Class time today will be spent discussing your answers to the writing assignment and doing general review of the materials we have covered so far in class.

## VI. INTRODUCTION TO THE RECONSTRUCTION AMENDMENTS

*The Aim of Assignment 20: This assignment is designed to provide you with a general introduction to the Reconstruction Amendments, with a particular focus on the Fourteenth Amendment and its accompanying “state action” requirement.*

### Assignment 20

Overview of the Reconstruction Amendments; the State-Actor Doctrine

- Read “Reconstruction Amendments Packet” (available on Canvas).
- Read U.S. CONST. amend. 14.
- Read “State Action Packet” (available on Canvas).
- State Action; *The Civil Rights Cases* (CB 391-399) [5th ed. pp. 418-426].
- *Shelley v. Kraemer* (CB 399-403) [5th ed. pp. 426-430].
- *DeShaney* (CB 411-417) [5th ed. pp. 439-445].

## VII. EQUAL PROTECTION

*The Aim of Assignments 21-23: These three assignments are designed to provide you with an introduction to equal protection principles that are protected by the 5th and 14th Amendments. In particular, these assignments will introduce you to the three different formal tiers of scrutiny that the courts use when assessing the constitutionality of classifications against particular groups: strict scrutiny; intermediate scrutiny; and rationality review. These materials will also expose you to an informal level of scrutiny sometimes employed by the courts: “rational basis plus,” also sometimes referred to as “nontraditional” rational basis review.*

### Assignment 21

Traditional “Rational-Basis Review”; “Strict Scrutiny” for Race-Based Classifications

- Reread U.S. CONST. amend. 14, § 1.
- Introduction to Equal Protection (CB 567-569) [5th ed. pp. 593-595].
- Introduction to Traditional Rational Basis Review (CB 569) [5th ed. pp. 595].
- *Railway Express* (CB 569-574) [5th ed. pp. 595-600].
- *Armour* (CB 574-577) [5th ed. pp. 600-603].
- *Korematsu* (CB 595-599) [5th ed. pp. 621-627].
- Refer back to the *Trump v. Hawaii* case included within the “Travel Ban Packet” from day one of this class. What does the majority in the *Hawaii v. Trump* case say about *Korematsu* and its parallels to the *Trump v. Hawaii* case? What is the dissent’s response?
- Full, unedited opinion in *Brown v. Board of Education* (available on Canvas).
- Notes on *Brown* (CB 589-591) [5th ed. pp. 615-617].

### **Assignment 22**

#### **“Strict Scrutiny” for Race-Based Classifications (continued) and the “Discriminatory Intent” Requirement**

- *Loving* (CB 602-604) [5th ed. pp. 628-630].
- *Johnson* (CB 604-606) [5th ed. pp. 630-632].
- *Washington v. Davis* (CB 606-611), on what is referred to as the discriminatory “intent” requirement. [5th ed. pp. 632-637].
- *Yick Wo* (CB 593-594). As you read this case, consider how it relates to the *Washington v. Davis* discriminatory-intent requirement. [5th ed. pp. 619-620].

### **Assignment 23**

#### **Intermediate Scrutiny; Non-Traditional Rational-Basis Review**

- Reread U.S. CONST. amend. 14, § 1.
- Introduction to Gender and Equal Protection (CB 651-652 [5th ed. pp. 678-679].
- *Craig* (CB 652-658) [5th ed. pp. 679-685].
- *Virginia* (CB 658-666) [5th ed. pp. 685-693].
- Introduction to Rational Basis and Hybrid Review (CB 711) [5th ed. pp. 743].
- *Cleburne* (CB 711-718 [5th ed. pp. 743-750].
- Refer back to the *Trump v. Hawaii* cases included within the “Travel Ban Packet” from day one of this class. What level of scrutiny did the Court seem to apply in that case? And did the majority mention *Cleburne* at all in its decision?



## VIII. CONGRESS'S POWER TO ENFORCE THE FOURTEENTH AMENDMENT USING § 5

*The Aim of Assignments 24-25: Now that you have a basic understanding of the Equal Protection Clause found § 1 of the Fourteenth Amendment, our next two assignments will turn to explore Congress's power—under § 5 of the Fourteenth Amendment—to pass legislation designed to enforce § 1's provisions, including the Equal Protection Clause. As you will see, § 5 of the Fourteenth Amendment (unlike the Commerce Clause) provides Congress with the power to abrogate state sovereign immunity. These two assignments, accordingly, will relate to—and will build on—materials that we covered earlier in this class involving both state sovereign immunity and the Commerce Clause.*

### Assignments 24

#### Congress's Section 14.5 Power

- Reread U.S. CONST. amend. 14, taking particular note of § 5.
- Introduction to the Power to Enforce the Reconstruction Amendments (CB 737-738) [5th ed. pp. 779-780].
- Full, unedited version of the majority opinion, as well as Justice Douglas's concurring opinion, in *Heart of Atlanta Motel*, 379 U.S. 241 (1964) (available on Lexis or Westlaw). It is not necessary to read the appendix for either opinion. Do, however, take particular note of how the opinions discuss § 5 of the Fourteenth Amendment, as well as the Commerce Clause.
- *City of Boerne* (CB 743-750) [5th ed. pp. 786-793].
- Full, unedited version of the majority opinion, as well as Justice Breyer's dissent, in *United States v. Morrison*, 529 U.S. 598 (2000) (available on Lexis or Westlaw). Take particular note of how the opinions discuss § 5 of the Fourteenth Amendment, as well as the Commerce Clause.

### Assignments 25

#### Congress's Section 14.5 Power (continued)

- *Garrett* (CB 755-761) [5th ed. pp. 794-801].
- *Hibbs* (CB 761-765) [5th ed. pp. 801-806].

## **IX. REVIEW & REFLECTION**

*The Aim of Assignments 26-27: Our final two assignments are designed to help you review and reflect on the materials we have covered throughout the quarter.*

### **Assignment 26** Reflection and Review

- Complete the writing exercise that has been posted to Canvas and labeled “Review Problem.”
- Submit your answer to the review problem by the due date and time specified in the instructions for the Review Problem.

### **Assignment 27** Reflection and Review

- Review the file labeled “Flow Charting” (available on Canvas).
- In preparation for our review session today, please complete both of the following assignments:
  - (a) Imagine that a state enacts a statute. Create a flow chart to help assess the constitutionality of the state statute.
  - (b) Imagine that the president issues an Executive Order. Create a flow chart to help assess the constitutionality of the Executive Order.
- Although I will not collect your flow charts, I would like you to please bring your flow charts to class today so you can refer to them during our class discussion and review.