



Amending the United States Constitution

GOV 355M | Course ID 37405
Spring 2024

Course Description

An examination of the evolution of the United States Constitution from the founding to the present, with a focus on the major forces and fault lines that have made the Constitution today one of the world's most difficult to amend. Students will learn about the creation and reform of the Constitution, the formal and informal processes of constitutional amendment, as well as successful and failed amendment efforts. Students will also learn about the (for now) unused path to amending the Constitution: a national constitutional convention. Over the course of the term, students will read and discuss materials from perspectives in law, history, philosophy, and political science.

Contact Information

Richard Albert

*William Stamps Farish Professor in Law and Professor of Government
Director of Constitutional Studies
The University of Texas at Austin
Phone: 617-756-2622
Email: richard.albert@law.utexas.edu*

Office: JON 6.217 | Law School
Office hours: Monday 11:30am-12:30pm and 2:30pm-3:30pm. And by appointment.

Teaching Assistant

Drew W. Buffalino
Master of Global Policy Studies (in progress)
School of Public Affairs
The University of Texas at Austin
Phone: (732) 947-6444
Email: dwbuffalino@gmail.com

Class Meetings

Days: Monday and Wednesday
Time: 1:00pm – 2:30pm
Room: Law School Building | TNH 2.138 (Monday), TNH 2.137 (Wednesday)



Learning Outcomes

By the end of this course, you will be able to:

1. Discuss the origins of the U.S. Constitution.
2. Understand the codified rules of constitutional amendment in the United States.
3. Evaluate and critique the claims that the U.S. Constitution is broken and must be replaced.
4. Identify the reasons for the rigidity of the U.S. Constitution.
5. Understand the options for building an amendment procedure from start to finish.

In addition, you will achieve the learning outcomes associated with each of our 28 class sessions.

Grading and Assessment Methods

Overall course grades will be assigned on the basis of a final examination, a midterm examination, an essay, and class attendance.

Final Examination: 50 percent. The University has scheduled the final exam on Saturday, May 4, 1:00pm-3:00pm. The classroom has not yet been assigned; I will share that information with you when it is given to me. The examination will consist of two essay questions and four short answer questions. The examination will be open-book. Additional details to be distributed and discussed in class.

Midterm Examination: 30 percent. Held in class on Wednesday, March 6, 2024. The examination will consist of one essay question and three short answer questions. The examination will be open-book. Additional details to be distributed and discussed in class.

Essay: 20 percent. Due at the beginning of class on Monday, February 12, 2024. Additional details to be distributed and discussed in class.

Attendance: One cannot earn percentage points toward the overall course grade for attending class. But one can lose percentage points from the overall course grade for unexcused absences.

To avoid a penalty for a class absence, please notify the Teaching Assistant (Drew W. Buffalino) prior to given class for which you will be absent or as soon as practicable after the class absence.

The entire spectrum of grades permitted by the University, including plus and minus grades, may be assigned as the overall course grade in this course.



Attendance Policy

Regular and punctual attendance is required in all courses pursuant to the [University's attendance policy](#). Under University policy, poor attendance may have a negative impact on grades.

Attendance is required in this course, subject to reasonable exceptions including religious holidays. Attendance will be taken at the beginning of every class session. Classes will not be recorded.

Use of AI Tools

The use of AI tools is not permitted in connection with graded work in this course.

Holidays and Special Events

The University does not hold classes on Monday, January 15, 2024, in observance of Martin Luther King, Jr. Day.

In addition, the University does not hold classes during Spring break on March 11-16, 2024.

The last day of class is Monday, April 29, 2024.

The Possibility of a Few Online Classes

I intend to hold all classes in-person. However, there is a possibility that I may have to hold a small number of sessions on Zoom—consistent with University rules—in order to travel to Kingston. I have been appointed by the Government of Jamaica to advise on writing and enacting a new constitution for the country. My apologies in advance if a small number of sessions move online.

Reading Materials

These two books, below, are required in this course. I have made arrangements with the University for both books to be made available to you at the lowest possible cost.

1. SANFORD LEVINSON, OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT) (Oxford University Press, 2006). ISBN: 978-0-19-988571-8 [please feel free to use either the print or digital version, and either the original or updated version]
2. RICHARD ALBERT, CONSTITUTIONAL AMENDMENTS: MAKING, BREAKING, AND CHANGING CONSTITUTIONS (Oxford University Press, 2019). ISBN: 978-0-19-064050-7 [please feel free to use either the print or digital version]

All other assigned readings will be made available at no cost online.



Reading Assignments

On the list of reading assignments below, “SL” refers to this required text: SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT)* (Oxford University Press, 2006).

On the list of reading assignments below, “RA” refers to this required text: RICHARD ALBERT, *CONSTITUTIONAL AMENDMENTS: MAKING, BREAKING, AND CHANGING CONSTITUTIONS* (Oxford University Press, 2019).

For certain additional items, only specific pages are assigned. But please do feel free to read more than what is assigned, if you are so inclined.

Though I do not expect to make any changes to this syllabus, this syllabus is subject to change. Those missing a particular class are responsible for asking about any changes announced in class.

Session 1: Is the U.S. Constitution Broken? Wednesday, January 17, 2024

1. Jeffrey Toobin, *Our Broken Constitution*, THE NEW YORKER, December 1, 2013

Learning Outcome: Confront the radical claim that the U.S. Constitution is broken, and begin to form one’s own answer(s) and/or qualification(s) to the question whether the U.S. Constitution is indeed “broken,” as some observers contend.

Session 2: An Overview of the U.S. Constitution Monday, January 22, 2024

1. *The Constitution of the United States* (including amendments):

Learning Outcome: Read the entire U.S. Constitution from start to finish, from “We, the People” to the Twenty-Seventh Amendment.

Session 3: The Irregular Origins of the U.S. Constitution Wednesday, January 24, 2024

1. Articles of Confederation, *article XIII* (1781)
2. *Address of the Annapolis Convention*, September 14, 1786
3. Journals of the Continental Congress, Volume 32 (February 21, 1787), *pages 71-74*
4. The Constitution of the United States, *article VII* (1789)
5. Richard Albert, *Four Unconstitutional Constitutions and their Democratic Foundations*, 50 CORNELL INTERNATIONAL LAW JOURNAL 169 (2017), pages 172-177

Learning Outcome: Learn about what some regard as the “illegal” beginnings of the U.S. Constitution, with reference to the replacement of the Articles of Confederation.



Session 4: Is it Time for a New Constitutional Convention?
Monday, January 29, 2024

1. SL, Introduction and Chapter 1

Learning Outcome: Introduce the overarching question in this course: do you believe it is time for a new constitutional convention?

Session 5: The Text of Article V
Wednesday, January 31, 2024

1. Librarian of Congress, *Article V: Amending the Constitution*, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION

Learning Outcome: Become familiar with the text and interpretation of the rules of constitutional amendment in the U.S. Constitution.

Session 6: The Equal Rights Amendment
Monday, February 5, 2024

1. Julie C. Suk, *The Equal Rights Amendment, Then and Now*, in THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES (Deborah Brake et al. eds., 2021)
2. *State of Illinois & State of Nevada v. Ferriero* (D.C. Cir. 2023)

Learning Outcome: Explore the origins, evolution, and future of the Equal Rights Amendment.

Session 7: What Amendments Would You Make to the U.S. Constitution? Part I
Wednesday, February 7, 2024

1. SL, Chapter 2

Learning Outcome: Identify and evaluate the criticisms of the U.S. Constitution in relation to legislative power.

Session 8: What Amendments Would You Make to the U.S. Constitution? Part II
Monday, February 12, 2024

1. SL, Chapter 3

Learning Outcome: Identify and evaluate the criticisms of the U.S. Constitution in relation to executive power.



Session 9: What Amendments Would You Make to the U.S. Constitution? Part III

Wednesday, February 14, 2024

1. SL, Chapter 4

Learning Outcome: Identify and evaluate the criticisms of the U.S. Constitution in relation to judicial power.

Session 10: What Amendments Would You Make to the U.S. Constitution? Part IV

Monday, February 19, 2024

1. SL, Chapter 5

Learning Outcome: Identify and evaluate the criticisms of the U.S. Constitution in relation to political participation and representation.

Session 11: The Moral Code of the U.S. Constitution

Wednesday, February 21, 2024

1. Richard Albert, *America's Amoral Constitution*, 70 AMERICAN UNIVERSITY LAW REVIEW (2021)
2. Franciska Coleman, *America's Constitutional Contradictions*, 71 AMERICAN UNIVERSITY LAW REVIEW FORUM 1 (2021)

Learning Outcome: Explore the moral foundations of the U.S. Constitution.

Session 12: Amendment Difficulty in the United States

Monday, February 26, 2024

1. Stephen M. Griffin, *The Nominee is ... Article V*, 12 CONST. COMMENT. 171 (1995)
2. Richard Albert, *The World's Most Difficult Constitution to Amend?*, 110 CALIFORNIA LAW REVIEW 2005 (2022)

Learning Outcome: Explore why it is so difficult to amend the U.S. Constitution.

Session 13: Informal Constitutional Amendment

Wednesday, February 28, 2024

1. Andrea Scoseria Katz, *Why Write? The Desuetude of Article V and the Democratic Costs of Informal Constitutional Amendment*, 30 INDIANA INTERNATIONAL & COMPARATIVE LAW REVIEW 365 (2020), pages 376-381
2. Richard Albert, *Constitutional Disuse or Desuetude: The Case of Article V*, 94 BOSTON UNIVERSITY LAW REVIEW 1029 (2014), pages 1060-1081

Learning Outcome: Learn how the U.S. Constitution can change without an alteration to its text.



Session 14: The Role of the President in Constitutional Amendment Monday, March 4, 2024

1. Sopan Joshi, *The Presidential Role in the Constitutional Amendment Process*, 107 NORTHWESTERN UNIVERSITY LAW REVIEW 963 (2013)
2. Richard Albert, *The Case for Presidential Illegality in Constitutional Amendment*, 67 DRAKE LAW REVIEW 857 (2019)

Learning Outcome: Inquire whether and why the president should or should not have an official constitutional role in amending the U.S. Constitution.

Session 15: In-Class Midterm Examination Wednesday, March 6, 2024

The midterm examination will consist of one essay question and three short answer questions. The examination will be open-book.

Session 16: The Functions of Constitutional Amendment Monday, March 18, 2024

1. RA, Chapter 1

Learning Outcome: Understand the functions of constitutional amendment.

Session 17: Constitutional Amendment vs. Constitutional Dismemberment Wednesday, March 20, 2024

1. JOHN RAWLS, *POLITICAL LIBERALISM* (Columbia University Press, 1993), pages 237-239
2. RA, Chapter 2

Learning Outcome: Understand the conventional theory of constitutional change and the distinction between constitutional amendment and constitutional dismemberment.

Session 18: Measuring Amendment Difficulty Monday, March 25, 2024

1. DONALD S. LUTZ, *PRINCIPLES OF CONSTITUTIONAL DESIGN* (Cambridge University Press, 2006), pages 157-170
2. Tom Ginsburg & James Melton, *Does the Constitutional Amendment Rule Matter at All?*, 13 INT'L J. CONST. L. 686, pages 692-693, 699-701
3. RA, Chapter 3

Learning Outcome: Examine the limits of studies of comparative amendment difficulty.



Session 19: Unamendability
Wednesday, March 27, 2024

1. RA, Chapter 4

Learning Outcome: Examine the three forms of constitutional unamendability.

Session 20: Designing an Amendment Procedure
Monday, April 1, 2024

1. JON ELSTER, ULYSSES UNBOUND: STUDIES IN RATIONALITY, PRECOMMITMENT, AND CONSTRAINTS (Cambridge University Press, 2000), pages 96-105
2. RA, Chapter 5

Learning Outcome: Consider the options for designing constitutional amendment rules.

Session 21: Lessons for the United States from Alabama?
Wednesday, April 3, 2024

1. Mike Cason, Alabama Constitution of 2022 Removes Repealed Laws, Racist Language, ADVANCE LOCAL, July 31, 2022
2. Othni J. Lathran, Memo to Committee on the Recompile of the Constitution, Background Information on the Removal of Racist Language, Aug. 27, 2021
3. Sarah Swetlik, What's in Alabama's New State Constitution of 2022?, ADVANCE LOCAL, Nov. 9, 2022
4. RA, Chapter 6

Learning Outcome: Consider whether the United States could replicate Alabama's recent constitutional reform.

Session 22: Is the U.S. Constitution Contained in a Single Document?
Monday, April 8, 2024

1. Richard Albert, Multi-Textual Constitutions, 109 VIRGINIA LAW REVIEW 1629 (2023)

Learning Outcome: Discover the surprising reality about the form of the U.S. Constitution.



Session 23: Alternative Constitutional Histories
Wednesday, April 10, 2024

1. [Letter from Thomas Jefferson to “Henry Tompkinson”](#) (Samuel Kercheval) (July 12, 1816), in 10 THE PAPERS OF THOMAS JEFFERSON, May 1816 to January 1817, 222-28 (J. Jefferson Looney ed., 2013)
2. Richard Albert, [The Constitution America Could Have Had](#), 84 UNIVERSITY OF PITTSBURGH LAW REVIEW 585 (2023)

Learning Outcome: Explore three alternative American constitutional histories, drawing from the ideas of Thomas Jefferson, Abraham Lincoln, and James Madison.

Session 24: Is Cross-Partisan Agreement Possible?
Monday, April 15, 2024

1. National Constitution Center, [The Proposed Amendments](#) (August 2022)

Learning Outcome: Examine a series of amendments proposed at a convention of libertarian, progressive, and conservative scholars.

Session 25: A National Constitutional Convention
Wednesday, April 17, 2024

1. Congressional Research Service, [The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress](#) (2016)
2. Lorianne Updike Toler, [Constitution-Writing Rules](#), SSRN (2023), pages 11-22

Learning Outcome: Confront the open questions in relation to holding a national constitutional convention.

Session 26: Three Views on Constitutional Reform in the United States
Monday, April 22, 2024

1. Jill Lepore, [The United States’ Unamendable Constitution](#), THE NEW YORKER, October 26, 2022
2. Timothy Lynch, [Amending Article V to Make the Constitutional Amendment Process Itself Less Onerous](#), 78 TENNESSEE LAW REVIEW 823 (2011)
3. Thurgood Marshall, [The Constitution’s Bicentennial: Commemorating the Wrong Document?](#), 40 VANDERBILT LAW REVIEW 1337 (1987)

Learning Outcome: Encounter three different views on the Constitution, and whether it should be reformed.



Session 27: Revisiting the National Referendum on a Constitutional Convention
Wednesday, April 24, 2024

1. SL, Chapters 6 and 7

Learning Outcome: Apply our readings and discussions to answering the all-important question raised by Sanford Levinson: it is time for a new constitutional convention?

Class Visitor: Sanford Levinson
W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law
Professor of Government
The University of Texas at Austin

Session 28: Discussion on Course Themes and Topics
Monday, April 29, 2024

1. Sample review questions to be circulated in advance.

Our Classroom Community

Professional Courtesy and Sensitivity

Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender identity & expression, and nationalities. Class rosters are provided to the instructor with the student's legal name, unless they have added a "chosen name" with the appropriate University office, which you can do here: https://utdirect.utexas.edu/apps/ais/chosen_name.

Classroom Safety and COVID-19

The University provides [guidance and information](#) to help us preserve our in-person learning environment.

Accessibility

The University is committed to creating an accessible and inclusive learning environment consistent with university policy and federal and state laws. If you are a student with a disability, or you think you may have a disability, and may need academic accommodations, please contact the [Division of Campus and Community Engagement, Disability and Access \(D&A\)](#) for information and assistance. If you are already registered with D&A, please deliver your Accommodation Letter as early as possible in the semester to arrange your approved accommodations. If you have accommodations for graded assessments, arrangements must be made well in advance.