

## CONSTITUTIONAL INTERPRETATION

The University of Texas at Austin  
Government 357C (Unique 37985)  
CTI 326C (Unique 29825)

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Spring, 2022 Office Hours: TBA

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### **Prerequisites**

Set by the Government Department: 6 hours lower division government courses.

### **General Description of the Course**

This course is primarily a course in Constitutional interpretation that focuses on some of the rights and liberties guaranteed by the U.S. Constitution. Most of the attention is given to the First and Fourteenth Amendments, which involve issues of freedom of expression, freedom of religion, equal protection, and fundamental liberties. Little attention is given to other rights.

The course is designed to familiarize students with constitutional approaches and concepts related to certain liberties. Presidents, governors, legislators, law enforcement officials, and many others engage in constitutional interpretation. The primary participants for our purposes, however, have been judges; therefore, the course concentrates on what judges have said the Constitution means, and how they came to such conclusions. One objective of the course is for the student to learn what the Supreme Court has said about certain parts of the Constitution and to examine the implications of the rulings for the American polity. Students should become comfortable with legal analysis and doctrine so that they can evaluate intelligently the interpretations of the justices and ask the questions that students of politics should ask. Prominent among such questions are those concerned with the proper role of courts and judges in the American political system. Also, students should begin to develop their own beliefs about the protected liberty.

Another objective of this course is to improve reasoning and communication skills. As in most courses, good writing is demanded, but it is also important to develop the capacity to think and speak on one's feet. Engaging in constitutional reasoning can assist in developing intellectual precision and political persuasiveness. Mastering the use of language, orally and in writing, increases the ability to think and communicate clearly. Moving toward such mastery is a vital part of education.

The course requires a substantial time commitment. The time required varies greatly over the course of the semester, and it varies for reasons described below. As such, it is hard for one to plan ahead.

### **Format of the Course**

Constitutional interpretation lends itself to dialog between professor and student and among students. There are few lectures. I use a combination of the Socratic and case methods. This requires students to come to class prepared and to listen to one another. Too often, students

do not benefit from this style of teaching because they ignore the comments of fellow students. The method assumes that, instead of lecturing, I am making points through discussion with students. When your colleagues are making important points, I do not have to. It is also an important skill to be able to learn to separate the wheat from the chaff.

**Students are required to attend class and participate.** Repeated lack of preparation or absences will hurt one's grade. The teaching method presumes that students heard prior discussions. When a student did not hear earlier discussions and then participates, it often wastes the time of others. I call on students and expect them to be well-prepared. If one is not prepared, one must place a note on the lectern before class begins. If in Zoom mode, one must send a note by email before class to the TA. Being prepared does **not** mean that one must fully understand the material or have the "right" answers; it means that one has read and thought carefully about the material. It is in one's long-term interest to prepare thoroughly for each class because the material is cumulative, and the workload in this course increases dramatically as the semester proceeds.

In the event that we must have Zoom sessions, you are **required to have your video on at all times showing your face** unless you have to step away momentarily, or I have given permission in advance to turn off the camera. If you are absent during a Zoom session, you must send the TA an email within 24 hours of your absence noting the date that you did not attend. Failure to do so will constitute academic dishonesty.

**Computers, cell phones, and other non-medical devices must be put away and may not be used during the class, which includes note taking.** Electronic devices are not compatible with the teaching method. This also means not glancing at cell phones or other distractions. You must bring your casebook to class.

Exceptions to the policies denoted in this syllabus are rare and must be approved by me in advance unless there is an emergency. We will discuss this more on the first day of class.

## Readings

- *Constitutional Law, 20th ed.*, Noah Feldman and Kathleen Sullivan eds., Foundation Press  
The book is also used in my "Civil Liberties" class and by other professors. [The 19<sup>th</sup> edition is permitted, but using it will require some extra effort to read material that is not included in the latest edition.] You may not use electronic versions.
- Additional readings will be required that will be on reserve or posted on Canvas.
- You must bring your casebook to class.

Assignments will be given each class period from the reading list. The next day's assignment depends upon how far we get in any given day; therefore, it is impossible to know specific daily assignments in advance. If you have to miss class, it is your responsibility to find out what was covered and what has been assigned *from a classmate*. **Do not contact me or the TA for this purpose. Get to know your fellow students.** Study groups are encouraged.

## Evaluation

- Midterm examination ( $\approx 25\%$ ). March 10th. Multiple Choice and Essay
- Group Project ( $\approx 25\%$ ). Students will participate in moot courts. A hypothetical situation will be given and each group will prepare a brief and participate in an oral argument. **The**

**courts will be held April 3-5, 7:00-10 p.m. Attendance is mandatory all evenings.**

**Exceptions are rarely granted.** More details will be given in class.

- Final examination ( $\approx 50\%$ ). Multiple Choice and Essay. Check official exam schedule for date and time. Early or late exams are rarely allowed.
- Class attendance and participation are required and may affect a grade positively or negatively. (See attendance and participation statements above)
- Plus and minus grades will be used.

## **Communications**

I encourage students to come to my virtual office hours for help or just to chat. I like getting to know you. Students should **not** use e-mail as a way of having a conversation with me about substantive issues--that is what office hours and class discussion are for. E-mail may be used for administrative reasons. **Though I will sometimes contact you via Canvas, always send emails directly to me rather than via Canvas unless I direct otherwise. Always write on the subject line or at the top of the message:** CON INTERP (not CON LAW.) I have 2 email addresses but they go to the same account. Therefore you may always reply or initiate an email to either address: [hwperry@mail.utexas.edu](mailto:hwperry@mail.utexas.edu) or [hperry@law.utexas.edu](mailto:hperry@law.utexas.edu) The TA may have a different policy.

## **COVID**

To help keep everyone at UT and in our community safe, and to continue to operate in person, it is critical that students report COVID-19 symptoms and testing, regardless of test results, to **University Health Services**, as soon as possible. Please see this [link](#) to understand what needs to be reported. In addition, to help understand what to do if a fellow student in the class (or the instructor or TA) tests positive for COVID, see this [University Health Services link](#).

To help preserve our in person learning environment, the university recommends the following.

- Adhere to [university mask guidance](#).
- [Vaccinations are widely available](#), free and not billed to health insurance. The vaccine will help protect against the transmission of the virus to others and reduce serious symptoms in those who are vaccinated.
- [Proactive Community Testing](#) remains an important part of the university's efforts to protect our community. Tests are fast and free.
- Visit [protect.utexas.edu](http://protect.utexas.edu) for more information.
- Do not come to class sick

## **Behavior Concerns Advice Line (BCAL): 512-232-5050**

### **Important Restrictions:**

***Sharing of Course Materials is Prohibited.*** No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, etc., may be shared online or with anyone outside of the class unless you have my explicit, written permission. Unauthorized sharing of materials

promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. I am well-aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

**Class Recordings:** Class recordings are reserved only for students in this class for educational purposes and are protected under FERPA. The recordings should not be shared outside the class in any form. Violation of this restriction by a student could lead to Student Misconduct proceedings.

## **Official University Policy (excerpts)**

### ***Academic Dishonesty***

Academic dishonesty will lead to failure of the course and other University disciplinary action. See *General Information Catalog*:

Scholastic or academic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, falsifying academic records, and misrepresenting facts. More information about [academic dishonesty](#) is given in Appendix C.: Sec 11. Note particularly: (d) "Plagiarism" includes, but is not limited to, the appropriation of, buying, receiving as a gift, or obtaining by any means material that is attributable in whole or in part to another source, including words, ideas, illustrations, structure, computer code, and other expression or media, and presenting that material as one's own academic work being offered for credit.

The U.T. Honor code is as follows: The core values of the University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.

### ***Accommodation for Religious Holidays***

By UT Austin policy, you must notify me of your pending absence at least fourteen days prior to the date of observance of a religious holy day. If you must miss a class, an examination, a work assignment, or a project in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence

### ***Disabilities***

The University of Texas at Austin provides upon request appropriate academic accommodations for qualified students with disabilities. For more information, contact the Division of Diversity and Community Engagement, Services for Students with Disabilities, 512-471-6259; <http://www.utexas.edu/diversity/ddce/ssd/>.

## ***Emergencies***

Links to information regarding emergency evacuation routes and emergency procedures can be found at: <http://www.utexas.edu/emergency> .

The following recommendations regarding emergency evacuation from the Office of Campus Safety and Security, 512-471-5767, <http://www.utexas.edu/safety/>:

Familiarize yourself with all exit doors of each classroom and building you may occupy. Remember that the nearest exit door may not be the one you used when entering the building.

Students requiring assistance in evacuation shall inform their instructor in writing during the first week of class.

In the event of an evacuation, follow the instruction of faculty or class instructors. Do not re-enter a building unless given instructions by the following: Austin Fire Department, The University of Texas at Austin Police Department, or Fire Prevention Services office.

## ***Title IX Reporting***

Title IX is a federal law that protects against sex and gender based discrimination, sexual harassment, sexual assault, sexual misconduct, dating/domestic violence and stalking at federally funded educational institutions. UT Austin is committed to fostering a learning and working environment free from discrimination in all its forms. When sexual misconduct occurs in our community, the university can:

1. Intervene to prevent harmful behavior from continuing or escalating.
2. Provide support and remedies to students and employees who have experienced harm or have become involved in a Title IX investigation.
3. Investigate and discipline violations of the university's [relevant policies](#).

Faculty members and certain staff members are considered “Responsible Employees” or “Mandatory Reporters,” which means that they are required to report violations of Title IX to the Title IX Coordinator. **I am a Responsible Employee and must report any Title IX related incidents** that are disclosed in writing, discussion, or one-on-one. Before talking with me, or with any faculty or staff member about a Title IX related incident, be sure to ask whether they are a responsible employee. If you want to speak with someone for support or remedies without making an official report, see more information about reporting options and resources, at [titleix.utexas.edu](http://titleix.utexas.edu) or contact the Title IX Office at [titleix@austin.utexas.edu](mailto:titleix@austin.utexas.edu).