

Submit original with signatures + 1 copy + electronic copy to Faculty Senate (Box 7500).  
 See <http://www.uaf.edu/uafgov/faculty-senate/curriculum/course-degree-procedures/> for a complete description of the rules governing curriculum & course changes.

**TRIAL COURSE OR NEW COURSE PROPOSAL**  
 (Attach copy of syllabus)

**SUBMITTED BY:**

Department	Paralegal Studies	College/School	CRCO/CTC
Prepared by	Deana Waters	Phone	455-2835
Email Contact	<a href="mailto:dmwaters@alaska.edu">dmwaters@alaska.edu</a>	Faculty Contact	Deana Waters

**1. ACTION DESIRED (CHECK ONE):**

Trial Course	<input type="checkbox"/>	New Course	<input checked="" type="checkbox"/>
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**2. COURSE IDENTIFICATION:**

Dept	PLS	Course #	F270	No. of Credits	3
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Justify upper/lower division status & number of credits: **This course is a substantive legal specialty course and represents second-year level instruction and expectations of students.**

**3. PROPOSED COURSE TITLE:** **Constitutional Law for Paralegals**

**4. To be CROSS LISTED? YES/NO**  NO **If yes, Dept:**  **Course #**

NOTE: Cross-listing requires approval of both departments and deans involved. Add lines at end of form for additional required signatures.

**5. To be STACKED?\* YES/NO**  NO **If yes, Dept.**  **Course #**

**How will the two course levels differ from each other? How will each be taught at the appropriate level?:**

\* Use only one Format 1 form for the stacked course (not one for each level of the course!) and attach syllabi. Stacked course applications are reviewed by the (Undergraduate) Curricular Review Committee and by the Graduate Academic and Advising Committee. Creating two different syllabi (undergraduate and graduate versions) will help emphasize the different qualities of what are supposed to be two different courses. The committees will determine: 1) whether the two versions are sufficiently different (i.e. Is there undergraduate and graduate level content being offered); 2) are undergraduates being overtaxed?; 3) are graduate students being undertaxed? In this context, the committees are looking out for the interests of the students taking the course. Typically, if either committee has qualms, they both do. More info online – see URL at top of this page.

**6. FREQUENCY OF OFFERING:** **Every Fall**  
 Fall, Spring, Summer (Every, or Even-numbered Years, or Odd-numbered Years) — or As Demand Warrants

**7. SEMESTER & YEAR OF FIRST OFFERING** (Effective AY2015-16 if approved by 3/31/2015; otherwise AY2016-17) **Fall 2017**

**8. COURSE FORMAT:**

NOTE: Course hours may not be compressed into fewer than three days per credit. Any course compressed into fewer than six weeks must be approved by the college or school's curriculum council. Furthermore, any core course compressed to less than six weeks must be approved by the Core Review Committee.

**COURSE FORMAT:** (check all that apply)  1  2  3  4  5  6 weeks to full semester

**OTHER FORMAT (specify)**

**Mode of delivery (specify lecture, field trips, labs, etc)**

**9. CONTACT HOURS PER WEEK:**  3 **LECTURE** hours/weeks  **LAB** hours /week  **PRACTICUM** hours /week

Note: # of credits are based on contact hours. 800 minutes of lecture=1 credit. 2400 minutes of lab in a science course=1 credit. 1600 minutes in non-science lab=1 credit. 2400-4800 minutes of practicum=1 credit. 2400-8000 minutes of internship=1 credit. This must match with the syllabus. See <http://www.uaf.edu/uafgov/faculty-senate/curriculum/course-degree-procedures-guidelines-for-computing/> for more information on number of credits.

**OTHER HOURS (specify type)**

10. **COMPLETE CATALOG DESCRIPTION** including dept., number, title, credits, credit distribution, cross-listings and/or stacking (50 words or less if possible):

Example of a **complete** description:

FISH F487 W, O Fisheries Management  
3 Credits Offered Spring

Theory and practice of fisheries management, with an emphasis on strategies utilized for the management of freshwater and marine fisheries. *Prerequisites:* COMM F131X or COMM F141X; ENGL F111X; ENGL F211X or ENGL F213X; ENGL F414; FISH F425; or permission of instructor. Cross-listed with NRM F487. (3+0)

PLS F270 Constitutional Law for Paralegals

3 credits, offered Fall

Exploration of constitutional law as it applies to the day-to-day work of a paralegal in criminal law, civil procedure, family law, administrative/employment law and personal injury litigation. Examination of the separation of powers among the branches of the federal government; federalism and states' rights; economic and property rights; and individual freedoms and protections under the Constitution, with an emphasis on due process.

*Prerequisite:* PLS F102 or permission of instructor. (3+0).

11. **COURSE CLASSIFICATIONS:** Undergraduate courses only. Consult with CLA Curriculum Council to apply S or H classification appropriately; otherwise leave fields blank.

H = Humanities

S = Social Sciences

Will this course be used to fulfill a requirement for the baccalaureate core? If YES, attach form.

YES:

NO:

X

IF YES, check which core requirements it could be used to fulfill:

O = Oral Intensive, Format 6

W = Writing Intensive, Format 7

X = Baccalaureate Core

11.A Is course content related to northern, arctic or circumpolar studies? If yes, a "snowflake" symbol will be added in the printed Catalog, and flagged in Banner.

YES

NO X

12. **COURSE REPEATABILITY:**

Is this course repeatable for credit?

YES

NO

X

Justification: Indicate why the course can be repeated (for example, the course follows a different theme each time).

How many times may the course be repeated for credit?

TIMES

If the course can be repeated for credit, what is the maximum number of credit hours that may be earned for this course?

CREDITS

If the course can be repeated with variable credit, what is the maximum number of credit hours that may be earned for this course?

CREDITS

13. **GRADING SYSTEM:** Specify only one. Note: Changing the grading system for a course later on constitutes a Major Course Change – Format 2 form.

LETTER: X

PASS/FAIL:

**RESTRICTIONS ON ENROLLMENT (if any)**

14. **PREREQUISITES**

PLS F102

These will be required before the student is allowed to enroll in the course.

15. **SPECIAL RESTRICTIONS, CONDITIONS**

16. **PROPOSED COURSE FEES**

N/A

Has a memo been submitted through your dean to the Provost for fee approval?

Yes/No

**17. PREVIOUS HISTORY**

Has the course been offered as special topics or trial course previously?

Yes/No

No

If yes, give semester, year, course #, etc.:

**18. ESTIMATED IMPACT**

WHAT IMPACT, IF ANY, WILL THIS HAVE ON BUDGET, FACILITIES/SPACE, FACULTY, ETC.

The course will be taught online by faculty or adjunct faculty. There will be no foreseeable impact on budget, facilities, or faculty resources.

**19. LIBRARY COLLECTIONS**

Have you contacted the library collection development officer (kljensen@alaska.edu, 474-6695) with regard to the adequacy of library/media collections, equipment, and services available for the proposed course? If so, give date of contact and resolution. If not, explain why not.

No	X	Yes				The UAF paralegal program has its own library in room 103 at CTC, which is maintained according to guidelines provided by the American Bar Association, which has approved the UAF paralegal program. All library resources required by students are maintained in this library in addition to those already being maintained in the Rasmussen Library. All paralegal students have full access to the LexisNexis research system which allows online access to most of the materials required by the course, and also to a limited version of Westlaw through the Rasmussen Library.
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**20. IMPACTS ON PROGRAMS/DEPTS**

What programs/departments will be affected by this proposed action?  
Include information on the Programs/Departments contacted (e.g., email, memo)

No other programs or departments will be impacted by this new course.

**21. POSITIVE AND NEGATIVE IMPACTS**

Please specify positive and negative impacts on other courses, programs and departments resulting from the proposed action.

No other department teaches a similar course, so no negative impacts are foreseen.

**JUSTIFICATION FOR ACTION REQUESTED**

The purpose of the department and campus-wide curriculum committees is to scrutinize course change and new course applications to make sure that the quality of UAF education is not lowered as a result of the proposed change. Please address this in your response. This section needs to be self-explanatory. Use as much space as needed to fully justify the proposed course.

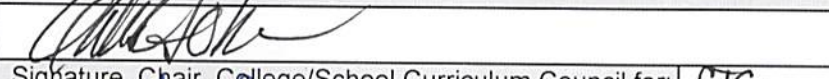
The Paralegal Program is concurrently seeking to delete the 400-level "other law related" course, currently PS F435, PS F436 or JRN F413, from its curriculum. Paralegal students often experience difficulty in registering for these courses due to lack of class standing or prerequisites.

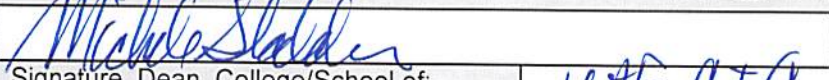
The CTC Paralegal Advisory Board has indicated that constitutional law is an integral component of a paralegal's education and recommended development of a required, paralegal-specific constitutional law course. This new course will replace the upper division course and will be better suited for an associate degree program with a focus on workforce development. PLS

270 will focus on constitutional law concepts and practical applications that paralegals will encounter in the workforce.

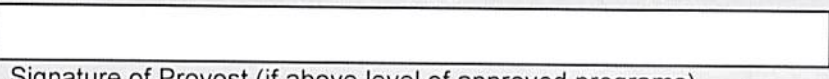
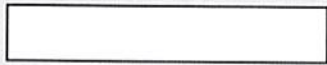
**APPROVALS:** Add additional signature lines as needed.

 Date 9/1/16  
Signature, Chair, Program/Department of: Paralegal Studies

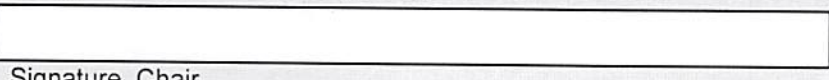
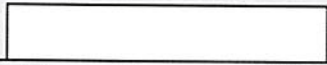
 Date 10/11/16  
Signature, Chair, College/School Curriculum Council for: CTC

 Date 10/11/16  
Signature, Dean, College/School of: WAF CTC

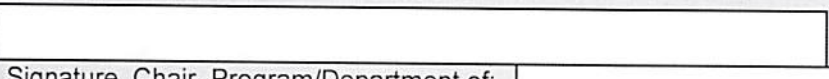
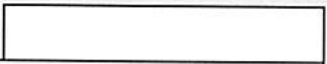
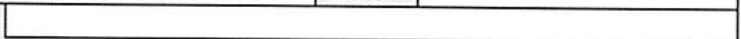
Offerings above the level of approved programs must be approved in advance by the Provost.

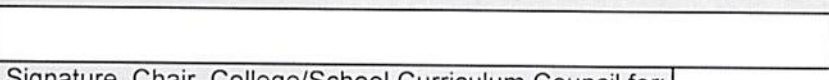
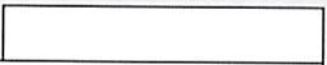

 Date   
Signature of Provost (if above level of approved programs)

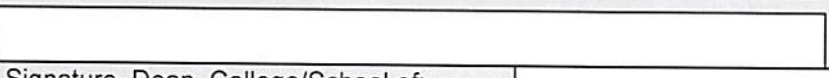

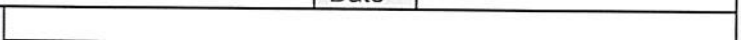
**ALL SIGNATURES MUST BE OBTAINED PRIOR TO SUBMISSION TO THE GOVERNANCE OFFICE**

 Date   
Signature, Chair  
Faculty Senate Review Committee:  Curriculum Review  GAAC  
 Core Review  SADAC

**ADDITIONAL SIGNATURES:** (As needed for cross-listing and/or stacking)

 Date   
Signature, Chair, Program/Department of: 

 Date   
Signature, Chair, College/School Curriculum Council for: 

 Date   
Signature, Dean, College/School of: 

**CONSTITUTIONAL LAW FOR PARALEGALS  
PLS F270, 3 CREDITS**

**SYLLABUS AND COURSE OUTLINE**

**INSTRUCTOR:** Deana M. Waters, Program Coordinator, 604 Barnette Street, Room 103, [dmwaters@alaska.edu](mailto:dmwaters@alaska.edu), 907-455-2835 or 907-388-0786. Tentative office hours are Monday through Thursday, 11:00 a.m. to 3:00 p.m.

**TEXT:** *Constitutional Law: Principles and Practice, 2d Ed.*, Joanne Baker Hames and Yvonne Ekern, ISBN 9781111648541. Supplemental materials will be provided on Blackboard.

**COURSE DESCRIPTION:** Exploration of constitutional law as it applies to the day-to-day work of a paralegal in criminal law, civil procedure, family law, administrative/employment law and personal injury litigation. Examination of the separation of powers among the branches of the federal government; federalism and states' rights; economic and property rights; and individual freedoms and protections under the Constitution, with an emphasis on due process.

**COURSE GOALS:** The United States Constitution applies to all areas of the law. This course will provide students with the necessary foundation in constitutional law for other paralegal courses, such as Civil Procedure, Criminal Law, Family Law, Probate Law, Contracts and Real Estate, and Legal Research and Writing.

**PREREQUISITE:** PLS F102 or permission of instructor. Completion of ENGL F111X is recommended.

**STUDENT LEARNING OUTCOMES:** At the completion of this course, the student will be able to:

- Articulate the roles of the federal, state and local governments.
- Explain the concept of separation of powers.
- Articulate the concept of federalism and how it impacts states' rights
- Describe and apply the civil liberties and rights protected under the U.S. Constitution
- Describe the due process and equal protection clauses of the U.S. Constitution and their impact on civil rights
- Articulate when a law can deprive people of certain freedoms
- Describe the freedoms protected by the Constitution such as, speech, assembly and religion
- Articulate the standards the courts use in determining whether, and in what manner, government agents may restrict freedoms
- Articulate the economic and property rights protected by the U.S. Constitution
- Describe the protections afforded a criminal suspect under the U.S. Constitution

**INSTRUCTIONAL METHODS:** This will be web-based learning environment. Instructional methods include reading, watching videos/listening to audio, participating in discussion, case studies, group activities and other structured learning activities. Weekly vocabulary, assignments and/or quizzes will be used to evaluate student learning. A mid-term and final exam will be used in evaluation.

**GRADING POLICY:** Your grade for this course will be based 1) Discussion group responses and participation, 20%; 2) weekly written assignments (vocabulary, quizzes, projects) 30%; 3) mid-term exam, 25%; and 4) final exam, 25%. Grades will be based on a traditional letter grade (A=90-100%, B=80-89%, C=70-79%, D=60-69%, F=59% or less). Plus and Minus grades will not be used (i.e. no A- or B+).

Per UAF regulations, a "C" (including C+ and C-) indicates a satisfactory level of acquired knowledge and performance in completion of course requirements.

C- (1.7) is the minimum acceptable grade that undergraduate students may receive for courses to count toward the major or minor degree requirements, or as a prerequisite for another course. A minimum grade of C (2.0), however, MAY be required by specific programs for prerequisite and / or major / minor courses. Please consult specific program listings in the UAF Catalog.

C- (1.7) is the minimum acceptable grade required for all Core (X) Courses.

**OTHER COURSE POLICIES:** Students are expected to complete assignments, readings and discussion group posting in a timely manner. Since this is a web-based course, late work will not be accepted and you will lose points for untimely submission of work. Make up exams may be allowed on a case-by-case basis and only if the circumstances are beyond the control of the student (student hospitalization, death in family, etc.).

**ASSIGNMENT GRADING RUBRIC:** (Includes discussion question posts and responses)

Factor	Excellent (A)	Good (B)	Satisfactory (C)	Poor (D)	No Credit (F)
Thoroughness	Answered all questions in the exercise completely and in the appropriate order.	Answered all questions in the exercise but not completely and/or not on the appropriate order	Answered most of the questions in the exercise but not completely and/or not on the appropriate order	Did not answer many of the questions in the exercise but did make some reasonable effort to do so.	Made little or no reasonable effort to answer the questions posed in the assignment
Demonstrated Understanding of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the students comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal	Student has cited at least	Student has cited one	Student has cited	Student has cited poor or	Student has not cited any

<p>research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class is sufficient.)</p>	<p>two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.</p>	<p>excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.</p>	<p>appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.</p>	<p>inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.</p>	<p>legal authorities or has cited authorities that are irrelevant.</p>
<p>Organization</p>	<p>Essay is organized very well; the reader can clearly understand where the essay is going at all point and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.</p>	<p>Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.</p>	<p>Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.</p>	<p>Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.</p>	<p>Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.</p>
<p>Critical Thinking and Analysis</p>	<p>Shows excellent critical thinking and analysis. The student was able to apply the cited law to the facts of the given case in a clear and convincing manner.</p>	<p>Shows good critical thinking and analysis. The student's points are well argued and well supported.</p>	<p>Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.</p>	<p>Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.</p>	<p>Shows no effort critical thinking or analysis. The student's points make no sense.</p>

**ACADEMIC HONESTY/PLAGIARISM:** In the “real world,” legal professionals seek to never reinvent the wheel once it has been created. Written work previously prepared by another legal professional is routinely recycled and re-used. In drafting pleadings, lawyers, as a matter of course, will “borrow” language from published opinions and case law, but always with the appropriate citations. You will rarely have to draft a document or prepare a form from scratch.

However, for the purpose of this course, where you are graded on your individual performance, any sharing or borrowing of work, or any other type of academic dishonesty or plagiarism will not be tolerated. You are free to discuss ideas or questions regarding assignments with your classmates, but you must turn in your own work product. Penalties for dishonesty or plagiarism can range from a failing grade on the project to academic withdrawal from the class.

**DISABILITY SERVICES:** The Office of Disability Services implements the Americans with Disabilities Act (ADA), and ensures that UAF students have equal access to the campus and course materials. The instructor will work with the Office of Disabilities (208 WHITAKER BLDG, 474-5655) to provide reasonable accommodation to students with disabilities.

**SUPPORT SERVICES:** The CTC Support Center offers a variety of support services including academic support through developmental coursework, workshops, classroom presentations, and one-on-one advising to overcome academic hurdles. Math labs, tutoring, computer labs, and the writing center are all available for student use. Academic and personal counseling, crisis intervention, and resource referrals are available when these issues block academic success.

**VETERANS SERVICES:** Military service members (active, separated, retired and dependents) who need services or resources may contact the Veteran and Military Services Office at 111 Eielson, 474-2475, wecrary@alaska.edu.

**DISCRIMINATION, HARASSMENT AND VIOLENCE:** University of Alaska Board of Regents have clearly stated in BOR Policy that discrimination, harassment and violence will not be tolerated on any campus of the University of Alaska. If you believe you are experiencing discrimination or any form of harassment including sexual harassment/misconduct/assault, you are encouraged to report that behavior. If you disclose sexual harassment or sexual violence to a faculty member or any university employee, they must notify the UAF Title IX Coordinator about the basic facts of the incident. Your choices for disclosure include:

- 1) You may confidentially disclose and access confidential counseling by contacting the UAF Health & Counseling Center at 474-7043;
- 2) You may access support and file a Title IX report by contacting the UAF Title IX Coordinator at 474-6600;
- 3) You may file a criminal complaint by contacting the University Police Department at 474-7721.

## **TENTATIVE COURSE OUTLINE:**

### **Lesson One. Introduction to Constitutional Law**

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- Explain the purpose of the Constitution
- Describe the documents and incidents that gave rise to the Constitution
- Describe the general content and organization of the Constitution
- Differentiate between the Constitution and constitutional law
- Read a U.S. Supreme Court case
- Describe the relationship between constitutional law and other U.S. law



Read Chapter 1 Introduction to Constitutional Law in text.

### **Chapter Outline**

1. Historical background.
  - a. Magna Carta
  - b. English Bill of Rights
  - c. Declaration of Independence
  - d. Articles of Confederation
  - e. Constitutional Convention.
2. The United States Constitution
  - a. Preamble
  - b. Articles
  - c. Amendments
3. The Constitution and Case Law
4. How to Read a Supreme Court case
5. The Constitution and Other Sources of US Law
  - a. Statutory Law
  - b. State Constitutions
  - c. Case Law

**Vocabulary:** Articles of Confederation, bicameral, federalists/antifederalists, stare decisis, majority opinion, concurring opinion, syllabus of decision

**Learning Activity:** Look up the Articles of Confederation. Compare and contrast the Articles to the Constitution. What elements are the same? What elements are different? Discuss why the Articles ultimately failed as the establishing document of the new government.

**Discussion Questions:** 1) Describe how historical documents, such as the Magna Carta and English Bill of Rights, influenced the Founding Fathers? 2) In your opinion, what is the most important protection the Bill of Rights gives to citizens? Why is this protection so important?

### **Lesson Two: The Constitution and the Federal Government Overview**

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- Explain the concept of federalism
- Describe separation of powers
- Describe the provisions of the constitution that relate to individual branches of government
- Explain the concepts of executive privilege and executive immunity
- Describe the impeachment process as related to the executive branch
- Summarize the provisions of the Constitution as it relates to the judicial branch
- Explain the importance of the Judiciary Act of 1789
- Explain the current structure of the federal court system and the role of each court

Read Chapter 2 The Constitution and the Federal Government Overview in text.

## Chapter Outline

1. Federalism
2. Separation of Powers and Checks and Balances
3. The Legislative Branch
  - a. Qualifications and Selection of Legislators
  - b. Compensation of Legislators
  - c. Legislative Powers
  - d. The Legislative Process
  - e. Powers of Congress
  - f. Impeachment
4. The Executive Branch
  - a. Presidential Qualifications
  - b. Presidential Selection
5. The Judicial Branch
  - a. The Judiciary Act of 1789
  - b. Subsequent Litigation
  - c. Constitutional versus Legislative Courts
6. The Federal Court System
  - a. Federal Trial Courts
  - b. US Court of Appeals
  - c. Court of Appeals for Armed Forces
  - d. United States Supreme Court

**Vocabulary:** federalism, separation of powers, checks and balances, Necessary and Proper Clause, impeach, inherent power, enumerated power, inferior court, diversity of citizenship, constitutional courts, legislative courts, magistrate judges

**Learning Activity:** Watch video "Constitutional Principle #2: Federalism" (<https://www.youtube.com/watch?v=TbiiKfBW s4>). Discuss the different powers found in federalism and give examples of each. What is the source of each type of power?

**Discussion Question:** In McCullough v. Maryland, 17 U.S. 316, 4 Wheat. 316, 4 L. Ed. 579 (1819), the Court stated "[t]here is nothing in the Constitution which excludes incidental or implied powers. If the end be legitimate, and within the scope of the Constitution, all the means which are appropriate and plainly adapted to that end, and which are not prohibited, may be employed to carry it into effect pursuant to the Necessary and Proper clause." Take health insurance for example. Discuss how the government can the government compel individuals to purchase health insurance. Where does the mandatory purchase of health insurance fall under the express powers given to Congress in Article 1, Section 8? How does the ends (obtaining health care) justify the means (mandatory purchase)?

## Lesson Three: Federal Judicial Powers

**Lesson Objectives:** At the conclusion of this chapter, students should be able to

- Explain the concept of jurisdiction
- List the types of cases with federal subject matter jurisdiction
- Compare the original and appellate jurisdiction of the Supreme Court
- Explain the differences between a direct appeal and a petition for writ of certiorari

- Discuss the concept of justiciability
- Describe the effects of mootness, ripeness, standing and political questions on the power of courts to hear cases
- Explain the doctrine of judicial review
- Discuss the importance of the Eleventh Amendment to the federal judicial system
- Describe the relationship between state and federal courts
- Explain the importance of the Supremacy Clause

Read Chapter 3 Federal Judiciary Power in text.

### Chapter Outline

1. Jurisdiction of the Federal Court
  - a. Subject matter
  - b. Original vs. appellate
  - c. Supreme Court original jurisdiction
  - d. Supreme Court appellate jurisdiction
  - e. Writ of Certiorari
2. Case or controversy: Justiciability
  - a. Mootness
  - b. Ripeness
  - c. Standing
  - d. Political question
3. The Nature of Judicial Power
4. Judicial Review
5. The Relationship Between State and Federal Courts
  - a. Concurrent jurisdiction
  - b. Abstention doctrine
  - c. Supreme Court review of state court decisions
  - d. Supremacy Clause

**Vocabulary:** federal question, original jurisdiction, writ of certiorari, The Rule of Four, justiciable, mootness, ripeness, standing, political question, writ of mandamus, writ of habeas corpus, remand, judicial review, Writ of Certiorari

**Learning Activity:** Go to the following website: <http://judiciallearningcenter.org/the-power-of-judicial-review/>. Complete the case studies and take the quiz. The common theme of these cases is judicial review. Describe your understanding of judicial review and explain why it is important to our system of government.

**Discussion Question:** The U.S. Supreme Court has been leading the way (or some say “judicially legislating”) on cutting edge issues through its power to interpret the Constitution. There has been controversy regarding the court’s authority to *interpret* law versus the court *making* law. Proponents of judicial activism claim it is a legitimate form of judicial review. Detractors claim that judicial activism usurps power from the legislative branch. Examples of judicial legislation are found in the following decisions:

Brown v. Board of Education (1954) [concept of separate but equal public schools is not constitutional].

New York Times v. Sullivan (1964) [the freedom to debate and criticize the merits of public officials without fear of a libel suit].

Roe v. Wade (1973) [a woman's right to choose as guaranteed under "liberty" in the 14th Amendment].

Miller v. California (1973) [the Court defined pornography].

Reno v. A.C.L.U. (1997) [affirmed freedom of speech on the Internet].

Do you think the Court should make law as well as interpret law according to the Constitution? What are some advantages or disadvantages to the court making law? How does this affect the separation of powers?

#### **Lesson 4: Federal Legislative Powers**

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- List the general areas that Congress can regulate
- Identify the constitutional articles and amendments that enumerate the powers of Congress
- Explain the Necessary and Proper Clause
- Summarize the taxation and spending power of the federal government
- Describe the difference between interstate and intrastate commerce
- Summarize the tests used by the Court to determine if an activity can be regulated by Congress under the Interstate Commerce Clause
- Describe the types of laws passed by Congress pursuant to the Interstate Commerce Clause
- Describe the war and fiscal powers of Congress
- Explain the situations under which Congress can conduct investigations and delegate authority to administrative agencies

Read Chapter 4 Federal Legislative Powers in text.

#### **Chapter Outline**

1. The Legislative Power in General
2. Taxation and Spending Powers
  - a. Limitations on the Power to Tax
  - b. Income Tax: Direct or Indirect
  - c. Regulation versus Revenue
  - d. Taxes in Conflict with Other Constitutional Provisions
  - e. Spending Power
3. Interstate Commerce Power
  - a. Interstate Commerce and the Supreme Court
  - b. Interstate Commerce and Congress
  - c. Limits on the Power to Regulate Interstate Commerce
4. War Powers
5. Fiscal Powers
6. Power to Investigate
7. Delegation of Congressional Powers

**Vocabulary:** enumerated, Necessary and Proper Clause, intrastate, poll tax, police powers, contempt

**Learning Activity:** The Constitution makes the President Commander-in-chief of the armed forces and gives Congress the power to declare war, and to raise and support armies. In the wake of the terrorist attacks on the World Trade Center and the Pentagon in 2001, Congress passed Public Law 107-40, authorizing President George W. Bush to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." For the first time, "organizations and persons" are specified in a Congressional authorization to use force pursuant to the War Powers Resolution, rather than just nations. It appears that Congress delegated its authority to the President to declare war on terrorism. If Congress felt that the President was overstepping his authority, how would Congress limit the President's actions?

**Discussion Question:** Article I Section 8 of the Constitution enumerates the powers of the legislative branch of the federal government. Why do you think this branch of government was given more power than the other branches? What prevents the legislative branch from exercising too much power?

## **Lesson 5: Federal Executive Power**

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- Identify the sources of presidential powers
- Outline the constitutionality of enumerated presidential powers
- Distinguish between express and implied presidential powers
- Summarize the powers of the president as commander in chief
- Explain the main features of the War Powers Act
- Explain the provisions of the Suspension Clause
- Discuss various situations where the president has the power to suspend habeas corpus
- Compare and contrast a treaty and an executive agreement
- Describe how a presidential appointment work and explain the relevance of the term *inferior officer*
- Describe the types of offenses subject to presidential pardon

Read Chapter 5 Federal Executive Power in text.

### **Chapter Outline**

1. Executive Orders and Proclamations
2. Express versus Inherent Powers
3. The President as Commander in Chief
  - a. Military Action in the Absence of Congressional Declaration of War
  - b. Nature and Limits of Powers as Commander in Chief
4. Treaties and Executive Agreements
5. Appointment Power
6. Power to Pardon
7. Executive Privilege
8. Presidential Immunity

## 9. Impeachment of a President

**Vocabulary:** Presentment Clause, inherent powers, executive order, presidential proclamation, martial law, treaty, executive agreement, pardon, executive privilege, immunity

**Learning Activity:** Review the Constitution. Identify by articles and sections that reference impeachment of a president. Compare and contrast what you think the founders meant by “high crimes and misdemeanors” and what that term means in today’s society.

**Discussion Question:** One of the requirements to serve as President is to be a natural born citizen of the United States. In the 2016 presidential election, there was a great deal of controversy over Ted Cruz’s standing to run as president. He was born in Canada to a US Citizen. Does the requirement of Article II, Section 1, Clause 5 mean that a presidential candidate must be born within US territorial borders or that the candidate must simply be born to a US citizen? How does the 14<sup>th</sup> amendment, which gives citizenship to “all persons born or naturalized in the United States” affect the natural born requirement for a presidential candidate? Explain and support your position.

## Lesson 6: State Powers and the Constitution

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- Describe the principles used by the Supreme Court in evaluating the constitutionality of a state law
- Explain the terms *express preemption*, *field preemption* and *conflict preemption*
- Explain how the Interstate Commerce clause limits the rights of states to enact laws
- Describe the criteria used by the court to determine if a state law violates the Dormant Commerce Clause
- Explain why states may have constitutional problems when they tax out-of-state businesses
- List the criteria used by the Court to determine the constitutionality of a tax on an out-of-state business
- Identify the provisions of the U.S. Constitution that limit the powers of a state to enact laws or impose taxes
- Explain how the Equal Protection Clause and Due Process Clause affect the constitutionality of laws dealing with interstate commerce

Read Chapter 6 State Powers and the Constitution in the text

### Chapter Outline

1. Federal Preemption
  - a. Express Preemption
  - b. Field Preemption
  - c. Conflict Preemption
2. Dormant Commerce Clause
  - a. Discriminatory State Laws
  - b. Market Participant Exception
  - c. Burden on Interstate Commerce versus Local Benefit
3. State Tax Laws and Commerce

#### 4. Other Constitutional Challenges to State Laws

Vocabulary: dormant commerce clause, express preemption, field preemption, conflict preemption, saving clause, imposts, duty of tonnage, full faith and credit, extradite

**Learning Activity:** Federal preemption is the concept that state laws can be rendered void and unenforceable if a federal statute preempts the state statute. State policies are usually subordinate to federal policies under the Supremacy Clause. Read the article at <http://harvardjol.com/2015/08/05/going-green-an-analysis-of-colorados-amendment-64/>.

Alaska recently decriminalized the possession, manufacture and use of marijuana. However, under federal law, possession, use and manufacture of marijuana is illegal. Discuss what steps Alaska may take to ensure that its marijuana decriminalization laws are not preempted by federal law. Discuss how federal enforcement of the Controlled Substances Act could represent a dramatic expansion of federal power at the expense of state autonomy.

**Discussion Question:** *Cooley v. Board of Wardens*, 53 U.S. 299 (1851) is a case involving the constitutionality of a state law that required vessels to use local pilots when entering a state harbor. If vessels failed to use a local pilot, a fine was imposed. The US Supreme Court held that the regulation of pilots did come under Commerce Clause. The Court decided in *Cooley* that states have the right to regulate their harbors and ports and that local rules would be better than a national one. Fast forward more than 150 years. Do you think that concept would still apply in today's commercial climate? For example, let's say that the Alaska legislature decided to impose a tax on all merchandise purchased online and shipped to Alaska. The intent of the tax was to raise revenue and promote the purchase of locally produced goods rather than goods manufactured elsewhere. Do you think the Supreme Court would find this action constitutional? Explain your position.

### Lesson 7 Constitutional Protections of Civil Rights and Liberties

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- Explain the importance of the Ninth Amendment to the protection of civil rights and liberties
- Summarize the Court's various descriptions of *civil rights* and *liberties*
- List the various sources of protections of civil rights and liberties
- Summarize the rights and liberties found in the Bill of Rights
- Describe the rights afforded by the Second Amendment
- Explain how the Constitution provides protection against the infringement of civil rights and liberties by state and local governments
- Describe the protections afforded by the Fourteenth Amendment
- Describe the constitutional protections that give Congress the power to enact civil rights legislation
- Explain what is meant by the *state action doctrine*

Read Chapter 7 Constitutional Protections of Civil Rights and Liberties in text. Watch video at <http://www.annenbergclassroom.org/page/habeas-corpus-the-guantanamo-cases>

#### Chapter Outline

1. Civil Rights and Liberties: Sources of Protections

- a. Protections Original Constitutional
- b. Protections Found in the Bill of Rights
- c. Protections Found in Other Amendments
2. The Bill of Rights and State Government
  - a. Fourteenth Amendment
  - b. The Incorporation Doctrine
3. Due Process Clauses of the Fifth and Fourteenth Amendments
4. The Equal Protection Clause of the Fourteenth Amendment
5. Privileges and Immunities Clause of the Fourteenth Amendments
6. Congress and Civil Rights Legislations
  - a. State Action Doctrine
  - b. Interstate Commerce Clause

**Vocabulary:** writ of habeas corpus, bill of attainder, ex post facto law, Reconstruction Amendments, poll tax, Incorporation Doctrine

**Learning Activity:** In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court held that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. *McDonald v. City of Chicago*, 561 U.S. 742 (2010) applied this holding to states through the 14<sup>th</sup> Amendment. The Alaska Constitution guarantees this same right and states that “the individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.” However, the owners or management of facilities, including such places as hospitals, universities, gymnasiums, or private property, may restrict or deny the possession of firearms on their premises. In your opinion, may a private or public property owner constitutionally restrict an individual’s right to possess a firearm for the purposes of self-defense? Explain your position.

**Discussion Question:** Read the case brief for *Heart of Atlanta Motel Inc. v. United States*, on pages 187-189 of the text. A motel owner in Atlanta challenged the constitutionality of Title II of the Civil Rights Act of 1964. His business served mostly interstate travelers. He claimed that Congress had exceeded its authority under the Commerce Clause by regulating a local private business and that the federal government itself did not have the authority to forbid private businesses from discriminating. He also claimed that the law should be declared invalid under the Due Process Clause of the Fifth Amendment because the Civil Rights Act deprives him of his right to carry on his business and interferes with his property and liberty. The Court found that the Interstate Commerce Clause allowed Congress to enact a law that protected the civil rights of individuals even at the expense of hotel owner's private property rights. Do you agree with the Court ruling? Explain your position.

## **Lesson 8: Equal Protection**

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- Explain the difference between classification and invidious discrimination
- Describe the circumstances under which the Equal Protection Clause applies to private conduct
- Explain why the federal government is subject to the requirements of the Equal Protection Clause



- Define the terms *suspect class*, *quasi-suspect class* and *fundamental rights*
- Compare and contrast the three tests used by the Supreme Court when evaluating laws and practices for equal protection violations
- Describe examples of laws that do and do not violate the Equal Protection Clause
- Explain how the Equal Protection Clause protects voting rights
- Summarize the "one person, one vote" rule
- Describe the difficulties stemming from the efforts to eliminate equal protection violations

Read Chapter 8 Equal Protection in text.

### Chapter Outline

1. Classification versus Invidious Discrimination
2. Application of the Equal Protection Clause to State and Federal Government
  - a. State Employees
  - b. Federal Government
  - c. Private Discrimination and State Action
3. How the Supreme Court Reviews Laws for Equal Protection Violations
  - a. Suspect Class
  - b. Fundamental Rights
  - c. Rational Basis Test
  - d. Strict Scrutiny
  - e. Intermediate Level of Scrutiny
4. Violations of Equal Protection: Applying the Tests
  - a. Race, Ethnicity, and National Origin (Strict Scrutiny)
  - b. Gender (Intermediate Scrutiny)
  - c. Alien Status (Strict or Intermediate Scrutiny)
  - d. Other Classifications
5. Equal Protection and Voting Rights
  - a. Voter Qualifications
  - b. Access to Ballot
  - c. One Person, One Vote: Apportionment and Districting
  - d. Uncounted Votes
6. Remedies for Violations of Equal Protection
  - a. Desegregation and Schools
  - b. Affirmative Action
  - c. Nonlegislative Remedies

**Vocabulary:** invidious discrimination, segregation, separate but equal, suspect class, discrete and insular minority, quasi-suspect class, fundamental right, police powers, facially neutral, gerrymander

**Learning Activity:** Listen to the oral arguments in *Grutter v. Bollinger* (<https://www.oyez.org/cases/2002/02-241>) and *Gratz v. Bollinger* (<https://www.oyez.org/cases/2002/02-516>). These two cases deal with college admission standards based primarily on race. Analyze the Court's holdings in both cases and discuss how admission standards based on race at the undergraduate level (*Gratz*) was found in

violation of equal protection, but the admission standards at the graduate level (Grutter) were not.

**Discussion Question:** States across the country are requiring a photo ID in order to vote. Proponents of the photo ID requirement believe that the practice will discourage voter fraud and protect the integrity of elections. A valid ID is required to purchase alcohol, cash a check or apply for health insurance. Opponents equate this requirement with “poll taxes” or voting fees used in the post-Abolition South to discourage African-Americans from voting. Critics believe the threat of fraud is exaggerated and that requiring a photo ID to vote will disenfranchise certain classes of individuals (the poor, minority or senior citizens) by making it too difficult to vote. What is your position on this issue? What solutions can you offer to resolve the issue?

## **Lesson 9: Due Process**

**Lesson Objectives:** At the conclusion of this lesson, the student should be able to

- Distinguish substantive due process from procedural due process
- Determine if private conduct is regulated by the Due Process Clause
- Explain the standards used by the Supreme Court when it reviews a law for substantive due process violations
- Describe some of the liberty interests that are protected by substantive due process
- Describe the property interests protected by substantive due process
- Explain the relationship of the Due Process Clause to criminal cases
- Explain the relationship of the Due Process Clause to civil cases
- Describe the basic requirements for due process whenever the government deprives a person of life, liberty or property

Read Chapter 9 Due Process in text.

### **Chapter Outline**

1. Due Process—An Overview
  - a. Who Is Considered a Person?
  - b. What Constitutes Government Action?
  - c. How Liberty and Property Are Interpreted
2. Substantive Due Process
  - a. Standard for Determining Substantive Due Process Violations
  - b. Substantive Due Process and Liberty
  - c. Substantive Due Process and Property
3. Procedural Due Process
  - a. Standards for Determining Procedural Due Process Violations
  - b. Procedural Due Process and Criminal Cases
  - c. Procedural Due Process and Civil Lawsuits
  - d. Procedural Due Process and Government Agencies

**Vocabulary:** substantive due process, procedural due process, liberty of contract, fundamental right, in personam jurisdiction, in rem jurisdiction, administrative agency

**Learning Activity:** Read the case in *Daniels v. Williams*, 474 U.S. 327 (1986) at <https://supreme.justia.com/cases/federal/us/474/327/case.html>. Download the decision in *Youngberg v. Romero*, 457 US 307 (1982) from Lexis or Google Scholar. Compare and contrast why the court used different standards in these two cases. Why did the Court find that Daniels was not deprived of due process, but Youngberg was?

**Discussion Question:** Read the case except from *City of Chicago v. Morales* on pages 247-249 of your text. Imagine if Fairbanks adopted a similar ordinance that prohibits groups of more than 3 people from "loitering" in Golden Heart Plaza for longer than one hour. Imagine also if the ordinance was enforced with groups of local residents, such as chronic inebriates or the homeless, more than tourists. Would this ordinance be constitutional? Would it meet the tests of procedural due process? Explain your conclusion.

## Property Lesson 10: Economic Freedoms and Rights

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- Identify provisions of the Constitution that protect property rights and economic interests, and briefly describe the protections granted by each provision
- Describe how substantive due process protects economic interests
- Explain how the Supreme Court used the Due Process Clause to strike down labor laws and business regulations
- Describe the different ways government takes property so as to require compensation under the Fifth Amendment
- List the criteria used by the Supreme Court to determine if a law or regulation results in a taking for Fifth Amendment purposes
- Describe examples of laws or regulations that resulted in a taking for Fifth Amendment purposes
- Compare and contrast a *taking* with a *forfeiture*
- Identify the type of law that comes under the provisions of the Contract Clause
- Explain what is meant by the *obligation of contracts*
- Explain how state police power affects the contract clause

Read Chapter 10 in text.

### Chapter Outline

1. Economic Due Process
  - a. Substantive Due Process and Labor Laws
  - b. Substantive Due Process and Regulation of Businesses
2. The Fifth Amendment Takings Clause
  - a. Public Use
  - b. Taking: Physical versus Regulatory
  - c. Property Subject to the Takings Clause
  - d. Just Compensation
  - e. Taking versus Forfeiture
3. The Contract Clause
  - a. "Law" and the Contract Clause
  - b. Obligation of Contracts
  - c. The Contract Clause versus State Police Power

Vocabulary: eminent domain, condemnation, inverse condemnation, monopoly

Learning Activity: Read the case excerpt of *Craigmiles v. Giles*, pages 274-275 in your text. Then read *Hageland Aviation Services, et al v. Harms*, 210 P.3d 444 (Alaska 2009) on Google Scholar. The Court in *Craigmiles* reviewed the appeal on a "rational basis," requiring that the regulation bear some rational relation to a legitimate state interest. What were the "legitimate state interests" argued by *Hageland*? What test did the Alaska Supreme Court use to determine whether a government action effects a taking in its decision? Discuss the similarities of these two cases.

Discussion Question: In *Lochner v. New York*, pages 269-271 in the text, the Court describes certain contracts that are not protected by the Constitution. Do you agree that these kind of contracts should not have protection under the Constitution? Why did the Court think the police power was exceeded by New York? Do you agree with the majority reasoning or with the dissent? Explain your position.

## Lesson 11: Freedom of Expression

**Lesson Objectives:** At the conclusion of this lesson, students should be able to

- List the five rights included in freedom of expression
- Summarize the theories explaining constitutional protection of speech
- Describe the various types of speech that are constitutionally protected
- Explain how political campaign finance laws involve freedom of speech issues
- Describe the types of speech that are not constitutionally protected
- Discuss the free speech issues of students in public schools
- Provide examples of situations that are not protected by the right to assembly
- Compare and contrast the right of a free press with the rights of criminal defendants
- Explain the reporter's privilege and its limitations
- Describe circumstances where the press can be required to disseminate information

Read Chapter 11 Freedom of Expression in text.

### Chapter Outline

1. Background
2. Freedom of Speech
  - a. What Is Speech?
  - b. Why Is Speech Protected?
  - c. Symbolic Speech
  - d. Public Forum
  - e. Compelling a Person To Speak
  - f. Political Campaign Finance Laws
  - g. Obscenity
  - h. Defamation
  - i. Fighting Words
  - j. Hate Speech
  - k. Speech Intended to Incite Illegal Action
  - l. Speech in Educational Institutions

- m. Commercial Speech
- 3. Peaceable Assembly and the Right to Petition
- 4. Freedom of the Press—The Press Clause of the First Amendment
- 5. Freedom of the Press and the Right of a Defendant to a Fair Trial
  - a. Fairness of Trials and Prior Restraints
  - b. Access to Prisoners and Courtrooms
  - c. Reporter's Privilege
  - d. When Government May Require the Press to Disseminate Certain Messages
  - e. Taxes and the Press
  - f. Sales Tax on the Sale of Cable Television Services

Vocabulary: prurient interest, seditious libel, defamation, libel, slander, fairness doctrine

**Learning Activity:** Listen to the oral arguments in *Morse v. Frederick*, 551 U.S. 383 (2007) at <https://www.oyez.org/cases/2006/06-278>. One issue the Court decided was whether the First Amendment allows public schools to prohibit students from displaying messages promoting the use of illegal drugs at school-supervised events. The majority opinion held that schools do have the right to restrict student speech related to illegal drug use and the government has a compelling interest in preventing under-age drug use. Now that the possession and use of marijuana has been decriminalized in Alaska, do you think the court would reach a different conclusion? Explain your position.

**Discussion Question:** In *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), the Court ruled that “fighting words” are not protected by the First Amendment. In light of our current language practices, calling a person a “damned racketeer” and a “damned Fascist” seem mild. Give some examples of what might be considered fighting words in today's society. Explain why these could be considered fighting words, or words intended to inflict injury or incite a breach of the peace.

## Lesson 12: Freedom of Religions

**Lesson Objectives:** At the conclusion of this lesson, the student should be able to

- Compare and contrast the Establishment Clause with the Free Exercise Clause
- Identify three major theories regarding the interpretation of the Establishment Clause
- Explain the effect of the First Amendment on prayer in public school
- Describe how teaching evolution created freedom of religion issue
- Summarize arguments for and against grants of tax exemption to religious institutions
- Analyze circumstances under which the government can give financial aid to religious schools
- Explain the relevance under the Free Exercise Clause of the difference between religious conduct and religious beliefs
- Describe how the Supreme Court applies the Free Exercise Clause to claims for unemployment benefits, compulsory education and Sunday closings.

Read Chapter 12 “Freedom of Religion” in the text.

### Chapter Outline

1. Religious Protections of the First Amendment

2. What Is Religion?
  - a. Attempts at Defining Religion: Selective Service Act
3. The Establishment Clause
  - a. Separation of Church and State
  - b. Major Theories of Establishment Clause Interpretation
4. Education and Religion
  - a. School Prayer
  - b. The Issue of Evolution
5. Financial Aid to Religion
  - a. Tax Exemptions for Churches
  - b. Aid to Parochial Schools and Students
  - c. Aid to Religious Colleges and Universities
6. Free Exercise Clause
  - a. Religious Conduct
  - b. Jehovah's Witnesses Cases
  - c. Unemployment Benefits
  - d. Compulsory Education: Amish Children
  - e. Sunday Closing Laws
  - f. Religious Freedom Restoration Act

**Vocabulary:** Establishment Clause, Free Exercise Clause, strict separation theory, neutrality theory, symbolic endorsement test, accommodation theory

**Group Activity.** In your assigned group (one group will advocate for Capital City, the other for the permit applicant) consider the following situation: For over a century, the Capital City town square was used for public speeches, gatherings, and festivals advocating and celebrating a variety of causes, both secular and religious. State law makes the square available “for use by the public . . . for free discussion of public questions, or for activities of a broad public purpose.” To use the square, a group must simply fill out an official application form and meet several criteria that primarily consider safety, sanitation and noninterference with other uses of the square. The Ku Klux Klan applied to use the square to display a cross and the city denied the permit, claiming it would violate the Establishment Clause. Discuss the pros and cons of the city's argument, and then vote on how you would decide the issue. Draft a group position statement and post it in the discussion forum for the other group to review and comment upon. [Check the case of *Capital Square Review and Advisory Board v. Pinette*, 515 U.S. 753 (1995) to see how the Court resolved this issue.]

**Discussion Question 1:** The *Lemon v. Kurtzman* test is used by the court to determine if the government violates the Establishment Clause. See page 342 in the text. Read the facts from the “Big Mountain Jesus” case and apply the Lemon test. Post your determination of whether the statue is in violation of the Establishment Clause.

**Discussion Question 2:** Read the memorandum decision from the District Court and the decision from the 9<sup>th</sup> Circuit in the “Big Mountain Jesus” case. Do you agree with the decisions? Why or why not?

### **Lesson 13: The Rights to Privacy under Due Process and Equal Protection Clauses**

**Lesson Objectives:** At the conclusion of this lesson, the student should be able to

- Describe the constitutional sources for the right to privacy
- List specific examples of conduct that is protected by the right to privacy
- Explain the relations of the Ninth Amendment to the right to privacy
- Explain and describe why the Court struck down laws dealing with right to marry, involuntary sterilization and same sex relationships
- Explain and describe the Court's reasoning in affirming right to contraceptives, in limiting *Roe v. Wade* and right to reject medical care

Read Chapter 13 in text. Read decision in *Obergefell et al. v. Hodges*.

### Chapter Outline

1. The Right to Privacy
2. The Ninth Amendment
3. The Right to Marry
4. The Right to Reproductive Freedom
5. Contraception
6. Abortion Rights
7. Constitutional Protection for Sexual Acts and Sexual Orientation
8. The Right to Die

Vocabulary: fundamental right, unenumerated rights, strict scrutiny, right to privacy

Learning Activity: Read the entire Zablocki case and concurring opinions. Do you find the due process or the equal protection analysis more compelling? Explain your position.

Discussion Question: Immediately after the Court's decision in *Obergefell et al. v. Hodges*, which gave same sex couples the right to marry under the Due Process and Equal Protection Clauses, a Billings, Montana man applied to the county clerk for a marriage license to legitimize his plural marriages. The county clerk denied Nathan Collier's application for a license to marry his second wife based on Montana law that prohibits bigamy. You can read the details in this article, [http://billingsgazette.com/news/state-and-regional/montana/polygamous-billings-trio-applies-for-wedding-license/article\\_97631ed5-c5b8-54e2-9423-c2f262bbff78.html](http://billingsgazette.com/news/state-and-regional/montana/polygamous-billings-trio-applies-for-wedding-license/article_97631ed5-c5b8-54e2-9423-c2f262bbff78.html). Collier claims that plural marriages should be validated by the *Obergefell* decision and "it's about marriage equality." Do you think the Court intended *Obergefell* to legitimize plural marriages? Where do you think the right to marry will go next? Close relatives? Non-humans (animals)? Inanimate objects (cars, trees, mannequins)? Explain your position.

## Lesson 14: Criminal Justice and the Constitution

**Lesson Objectives:** At the conclusion of this lesson, the student should be able to

- List the amendments in the Bill of Rights that provide constitutional protections for those accused of a crime
- Explain the importance of the Fourteenth Amendment and the Incorporation Doctrine to the constitutional rights of the accused
- Define the exclusionary rule

- Summarize the protections found in the Fourth, Fifth, Sixth and Eighth Amendments
- Discuss the importance of decisions such as *Miranda*, *Gideon*, and *Mapp*
- List the constitutional rights that apply to juvenile proceedings and those that do not apply

Read Chapter 14 Criminal Justice and the Constitution in your text. Watch *Mapp v. Ohio* video at <http://www.annenbergclassroom.org/page/search-and-seizure-mapp-v-ohio>.

### Chapter Outline

1. The Exclusionary Rule
2. The Fourth Amendment: Search and Seizure
  - a. Definitions of Search and Seizure
  - b. Reasonableness and Probable Cause
  - c. Warrants
  - d. Contemporary Issues
3. The Fifth Amendment: Self-Incrimination, Grand Jury, and Double Jeopardy
  - a. Self-Incrimination
  - b. Grand Jury
  - c. Double Jeopardy
4. The Sixth Amendment: Right to Counsel and a Fair Trial
  - a. Right to Counsel
  - b. Right to a Fair Trial
5. The Eighth Amendment: Bail and Cruel and Unusual Punishment
  - a. Bail
  - b. Cruel and Unusual Punishment: Proportionality
  - c. Cruel and Unusual Punishment: The Death Penalty
6. The Juvenile Justice System

**Vocabulary:** execute, standing, fruit of the poisonous tree, rational suspicion, probable cause, affidavit, exigent, *Miranda* warnings, indicted, subpoena, mistrial, indigent, arraign, statute of limitation, *voir dire*, proportionality

**Learning Activity:** Consider the following facts: Riley was stopped for a traffic violation, which eventually led to his arrest on weapons charges. An officer searching Riley incident to the arrest seized a cell phone from Riley's pants pocket. The officer accessed information on the phone and noticed the repeated use of a term associated with a street gang. At the police station two hours later, a detective specializing in gangs further examined the phone's digital contents. Based in part on photographs and videos that the detective found, the State charged Riley in connection with a shooting that had occurred a few weeks earlier and sought an enhanced sentence based on Riley's gang membership. Riley moved to suppress all evidence that the police had obtained from his cell phone. Was the search of Riley's phone legal? Did the police have probable cause to search the phone for gang-related activity? Was there an exception that applied to the search? Explain your position.

**Discussion Question:** Trial by an impartial jury is a right guaranteed by the Sixth Amendment. In recent years, grassroots activists have promoted the notion of jury nullification. Jury nullification is the term given to the process where the jury of a criminal case acquits the defendant regardless if he has broken the law in question. The jury would do this in a case



where they judge the *law* to be unjust, therefore the jury can vote to find the defendant innocent since the jury found the law itself to be immoral, unfair, unjustly applied, or unconstitutional. By voting to acquit, the jury therefore nullifies the law. How does the concept of jury nullification fit with the Sixth Amendment? Can a jury truly be impartial under this concept? Do you think a jury is the ultimate check on the power of the court and legislature in determining the justness of a law? Explain your position.