

CONSTITUTIONAL LAW: POWERS

POLS 4700 – FALL 2025

MWF 9:10-10:00 a.m.
Baldwin Hall 301

Professor: Dr. John A. Maltese

Office: 206 Candler Hall (542-2059)

Office hours: By appointment. (I can usually meet right after class in my Baldwin Hall office. Otherwise, I can set up an appointment at your convenience. As Associate Dean, my schedule changes from week to week. When I am not in meetings, I can usually be found in my Candler Hall office, but it is safest to email me to set up a time to meet.)

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Course Objectives and Learning Outcomes:

POLS 4700 is part of a sequence of courses dealing with the theory and practice of American constitutional law. This segment deals primarily with separation of powers within the national government (the specific powers of Congress, the Executive Branch, and the Judiciary) and with issues of federalism (the division of power between the national government and the states). Upon successful completion of this course you should be able to:

- Read and analyze Supreme Court opinions and understand how they influence the balance of power in government and impact public policy.
- Explain judicial review, how it developed in the United States, debates over its use, and its role in enforcing the rule of law.
- Explain competing theories of constitutional interpretation, their strengths and weaknesses, and the influence each has on how Justices decide cases and craft legal opinions.
- Identify the source and scope of power allocated to the three branches of government at the national level, and how and why that balance has changed over time.
- Compare and contrast dual and cooperative federalism and discuss how each affects the balance of power between the national government and the states.
- Understand why Supreme Court interpretations have varied over different historical eras.

Required text:

Lee Epstein, Kevin T. McGuire, and Thomas G. Walker, *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 12th edition (Sage/CQ Press, 2026).

As appropriate, I will provide supplemental readings in eLC.

Course requirements:

There will be two essay exams and a five-page paper (that together will account for two-thirds of your grade) and two identify exams dealing primarily with the identification of cases and concepts (that together will account for one-third of your grade). The paper will count as half of your final exam grade (midterm = one-third of your grade, and final + paper = one-third of your grade). You are expected to keep up with the reading and to attend class on a regular basis.

STUDENTS ARE TO BE PRESENT ON ALL TESTING DAYS. There will be no make-up exams without documented evidence of illness or family emergency.

The course syllabus is a general plan for the course; deviations announced to the class by the instructor may be necessary.

Academic Honesty:

ALL WORK ON ALL ASSIGNMENTS MUST BE YOUR OWN. All academic work must meet the standards contained in “A Culture of Honesty.” Students are responsible for informing themselves about those standards before performing any academic work. **Ignorance of what constitutes plagiarism is no excuse**, so familiarize your self with what plagiarism is. **I will refer cases of suspected academic dishonesty to the Office of Judicial Programs.** The link to more detailed information about academic honesty can be found at: <https://honesty.uga.edu/Academic-Honesty-Policy/>

Course Format:

This class will be a fully face-to-face class with all exams to be taken in person. You are strongly advised to attend all classes.

Use of AI in this Course:

UGA’s policy is that the use of AI for coursework is not permitted unless explicitly authorized by me (your course instructor) ahead of time.

Well-being Resources:

UGA Well-being Resources promote student success by cultivating a culture that supports a more active, healthy, and engaged student community.

Anyone needing assistance is encouraged to contact Student Care & Outreach (SCO) in the Division of Student Affairs at 706-542-8479 or visit sco.uga.edu. Student Care & Outreach helps students navigate difficult circumstances by connecting them with the most appropriate resources or services. They also administer the Embark@UGA program which supports students experiencing, or who have experienced, homelessness, foster care, or housing insecurity.

UGA provides both clinical and non-clinical options to support student well-being and mental health, any time, any place. Whether on campus, or studying from home or abroad, UGA Well-being Resources are here to help.

- Well-being Resources: <https://well-being.uga.edu>
- Student Care and Outreach: <https://sco.uga.edu>
- University Health Center: <https://healthcenter.uga.edu>
- Counseling and Psychiatric Services: <https://caps.uga.edu> or CAPS 24/7 crisis support at 706-542-2273
- Health Promotion/ Fontaine Center: <https://healthpromotion.uga.edu>
- Disability Resource Center and Testing Services: <https://drc.uga.edu>

Additional information, including free digital well-being resources, can be accessed through the UGA app or by visiting <https://well-being.uga.edu>.

Course Outline

WEDNESDAY, AUGUST 13 through FRIDAY, AUGUST 22:

I. The Distribution of Powers within the National Government.

A. Introduction.

Reading: Epstein, McGuire & Walker (EMW), “An Introduction to the U.S. Constitution,” pp. 3-11.

B. Judicial Power.

1. Judicial Review.

Reading: EMW, chapter 2, pp. 51-83; Section 13 of The Judiciary Act of 1789 (on eLC).

Cases: *Hylton v. U.S.* (know the significance of this case)
Marbury v. Madison
Martin v. Hunter's Lessee
Judge Gibson's dissent in *Eakin v. Raub*

MONDAY, AUGUST 25 through WEDNESDAY, AUGUST 27:

2. External Constraints on the Court.

Reading: EMW, pp. 83-89 and 114-116.

Case: *Ex Parte McCordle*

3. The Structure of the Judicial System and the Supreme Court's Place Within It; The Supreme Court Decides.

Reading: EMW, chapter 1, pp. 13-24.

FRIDAY, AUGUST 29 through FRIDAY, SEPTEMBER 5:

4. Gatekeeping Rules and Threshold Requirements (part 1).

a. Jurisdiction (which court?) versus Justiciability (any court?).

b. Justiciability and its Subsets (part 1):

i. No "collusive" suits (must be a real controversy).

ii. Mootness and Ripeness (when?)

iii. Standing (who?)

iv. Political Questions (what?)

Reading: EMW, pp. 891-105; *Muskrat v. U.S.* (on eLC); "Mootness: The *Padilla* and *Sosna* Cases" (on eLC); *Doe v. Bush* (on eLC); "Standing" and *FDA v. Alliance for Hippocratic Medicine* (on eLC).

Cases: *Muskrat v. U.S.*
Padilla v. Hanft
Sosna v. Iowa
DeFunis v. Odegaard
FDA v. Alliance for Hippocratic Medicine
Doe v. Bush
Frothingham v. Mellon
Flast v. Cohen
City of Los Angeles v. Lyons

Baker v. Carr
Nixon v. United States

[MONDAY, SEPTEMBER 1: LABOR DAY HOLIDAY]

MONDAY, SEPTEMBER 8 and WEDNESDAY, SEPTEMBER 10:

- 5. Modes of Constitutional Interpretation.**
 - a. Constitutional Absolutism (“Interpretivism”)**
 - b. Originalism**
 - c. Judicial Restraint (“The Rational Basis Test”)**
 - d. Judicial Activism (“The Strict Scrutiny Test”)**

Reading: Craig Ducat, “The Modes of Constitutional Interpretation,” 77-93 (available on eLC).

FRIDAY, SEPTEMBER 12 through FRIDAY, SEPTEMBER 19:

- B. Legislative Power.**
 - 1. The Source and Scope of Legislative Power:**
 - a. Enumerated and Implied Powers.**

Reading: EMW, chapter 3, pp. 119-122; 140-155.

Cases: *McCulloch v. Maryland*
McGrain v. Dougherty

- b. Amendment-Enforcing Powers.**

Reading: EMW, pp. 169-175; *Sherbert v. Verner* (on eLC); *Employment Division, Dept. of Human Resources of Oregon v. Smith* (on eLC); *City of Boerne v. Flores* (on eLC).

Cases: *South Carolina v. Katzenbach*
Sherbert v. Verner
Employment Division, Dept. of Human Resources of Oregon v. Smith
City of Boerne v. Flores

- c. The Treaty Power.**

Reading: Ducat, chapter 3, section a, pp. 128-131 (on eLC).

Case: *Missouri v. Holland*

MONDAY, SEPTEMBER 22 and WEDNESDAY, SEPTEMBER 24:

2. Delegation of Legislative Power.

Reading: EMW, chapter 5, pp. 258-271; *J.W. Hampton, Jr. & Co. v. U.S.* (available on eLC); you should also read Justice Powell's concurring opinion in *INS v. Chadha* (also available on eLC).

Cases: *J.W. Hampton, Jr. & Co. v. U.S.*
Panama Refining Co. v. Ryan
Schechter Poultry v. U.S.
Gundy v. U.S.
INS v. Chadha (including Powell's concurring opinion).

FRIDAY, SEPTEMBER 26:

FIRST IDENTIFY EXAM

MONDAY, SEPTEMBER 29 through FRIDAY, OCTOBER 3:

C. Executive Power.

1. The Source and Scope of Presidential Power: Three Theories of Presidential Power.

Reading: Joseph A. Pika, John A. Maltese, Andrew Rudalevige, "Interpreting Constitutional Language," excerpt from *The Politics of the Presidency*, 10th edition, SAGE/CQ, 2021 (available on eLC); EMW, 292-297 (also read the additional concurring opinions in *Youngstown Sheet & Tube Co. v. Sawyer* by Douglas, Burton, and Clark on eLC) and 242-248.

Case: *Youngstown Sheet & Tube Co. v. Sawyer* (know all opinions)

MONDAY, OCTOBER 7 and WEDNESDAY, OCTOBER 8:

1. The Source and Scope of Presidential Power: Three Theories of Executive Power (continued).

Reading: EMW, pp. 281-291; 242-247.

Cases: *Korematsu v. U.S.*
Ex Parte Milligan
Trump v. U.S.

FRIDAY, OCTOBER 10 and MONDAY, OCTOBER 13:

2. Donald Trump's Use of Executive Power.

Reading: To be assigned on eLC.

Cases: *Trump v. CASA*

WEDNESDAY, OCTOBER 15 and MONDAY, OCTOBER 20:

3. The President's Removal Power.

Reading: EMW, pp. 215-220; *Morrison v. Olson* on eLC.

Cases: *Myers v. U.S.*
Humphrey's Executor v. U.S.
Morrison v. Olson

WEDNESDAY, OCTOBER 22:

MIDTERM EXAM

FRIDAY, OCTOBER 24 through WEDNESDAY, OCTOBER 29:

II. The Distribution of Powers between the National Government and the States.

A. The Commerce Clause: Early History and the Rise of "Dual Federalism."

Reading: EMW, pp. 383-404.

Cases: *Gibbons v. Ogden*
U.S. v. E.C. Knight
Stafford v. Wallace
Champion v. Ames
Hammer v. Dagenhart

[FRIDAY, OCTOBER 31: FALL BREAK]

MONDAY, NOVEMBER 3 and WEDNESDAY, NOVEMBER 5:

B. “Liberty of Contract” in the Dual Federalist Era.

Reading: EMW, 597-621; also read *Buck v. Bell*, 274 U.S. 200 (1927)(on eLC).

Cases: *Lochner v. New York*
Buck v. Bell
Muller v. Oregon
Adkins v. Children’s Hospital
West Coast Hotel v. Parrish

FRIDAY, NOVEMBER 7 through WEDNESDAY, NOVEMBER 12:

D. The Commerce Power Since 1937: The Rise of “Cooperative Federalism.”

Reading: EMW, 405-431; *Katzenbach v. McClung* (available on eLC).

Cases: *Schechter Poultry Corp v. U.S.*
Carter v. Carter Coal
NLRB v. Jones & Laughlin Steel
U.S. v. Darby
Wickard v. Filburn
Heart of Atlanta Motel v. U.S.
Katzenbach v. McClung

FRIDAY, NOVEMBER 14 through WEDNESDAY, NOVEMBER 19:

D. Dual Federalism Revived?

Reading: EMW, 431-456.

Cases: *U.S. v. Lopez*
U.S. v. Morrison
Gonzales v. Raich
National Federation of Independent Business v. Sebelius

FRIDAY, NOVEMBER 21:

SECOND IDENTIFY EXAM

MONDAY, NOVEMBER 24 and MONDAY, DECEMBER 1:

E. Taxing and Spending Powers as a Means of Government Regulation.

Reading: EMW, 496-521.

Cases: *McCray v. U.S.*

Bailey v. Drexel Furniture Co.

U.S. v. Butler

Steward Machine Co. v. Davis

South Dakota v. Dole

National Federation of Independent Business v. Sebelius

**[WEDNESDAY, NOVEMBER 26 and THURSDAY, NOVEMBER 28:
THANKSGIVING BREAK]**

MONDAY, DECEMBER 1 and TUESDAY, DECEMBER 2:

F. The Negative or Dormant Commerce Clause

Reading: Ducat, “The Negative or Dormant Commerce Clause” (on eLC).

Cases: *Kassel v. Consolidated Freightways*

City of Philadelphia v. State of New Jersey

PAPER DUE IN CLASS ON TUESDAY, DECEMBER 2.

FINAL EXAM: WEDNESDAY, DECEMBER 10, 2025, 8:00 a.m.-11:00 a.m. Please confirm this date and time at:

<https://reg.uga.edu/general-information/calendars/final-exam-schedule/>

You are expected to take the Final Exam at the scheduled time.