

## **CONSTITUTIONAL LAW: POWERS**

### **POLS 4700 – FALL 2026**

(Prerequisite: POLS 1101 or POLS 1101E or POLS 1101H or POLS 1101S)

W/F 9:55-11:15 a.m.  
Baldwin Hall 301

Professor: Dr. John A. Maltese, Associate Dean, SPIA

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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Website: <https://spia.uga.edu/faculty-member/john-anthony-maltese/>

### **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*, 12<sup>th</sup> 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](https://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 19 through WEDNESDAY, AUGUST 26:**

#### **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*

**FRIDAY, AUGUST 28:**

**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.

**WEDNESDAY, SEPTEMBER 2 and FRIDAY, SEPTEMBER 4:**

**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*

**WEDNESDAY, SEPTEMBER 9:**

**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 11 through WEDNESDAY, SEPTEMBER 23:**

**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*

**FRIDAY, SEPTEMBER 25:**

**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).

**WEDNESDAY, SEPTEMBER 30:**

**FIRST IDENTIFY EXAM**

**FRIDAY, OCTOBER 2 and WEDNESDAY, OCTOBER 7:**

**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*, 10<sup>th</sup> 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)

**FRIDAY, OCTOBER 9:**

**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.*

**WEDNESDAY, OCTOBER 14:**

**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*

**FRIDAY, OCTOBER 16:**

**MIDTERM EXAM**

**WEDNESDAY, OCTOBER 21 and FRIDAY, OCTOBER 23:**

**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*

**WEDNESDAY, OCTOBER 28:**

**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, OCTOBER 30 – FALL BREAK]**

**WEDNESDAY, NOVEMBER 4 through WEDNESDAY, NOVEMBER 11:**

**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 13:**

**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*

**WEDNESDAY, NOVEMBER 18:**

**SECOND IDENTIFY EXAM**

**FRIDAY, NOVEMBER 20:**

**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*

**[THANKSGIVING HOLIDAY: WEEK OF NOVEMBER 23-27]**

**TUESDAY, DECEMBER 1:**

**PAPER DUE IN CLASS ON TUESDAY, DECEMBER 1.**

**FINAL EXAM: On the scheduled day and time for our class period.**

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