

# Constitutional Law II

## Howard University School of Law

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## Syllabus Fall 2011

(revised 15 Aug. 2011)

<http://iipsj.com/SDJ/ConLaw2/>

Please note that although the syllabus shows what is planned, the course is unlikely to follow the schedule exactly. This syllabus is subject to change to address current events and ongoing developments in the law, and to meet the students' needs as perceived by the professor during the semester. Furthermore, the 2010 supplement is not yet available (and won't be until late summer), so supplement citations are to the old, 2009, supplement.

**Where: Room LL101**

**When: TThF 9:00-9:50 am**

### Howard University Statement of ADA Procedures

Howard University is committed to providing an educational environment that is accessible to all students. In accordance with this policy, students in need of accommodations due to a disability should contact the [HUSL Office of the Dean of Students](#) (202-806-8006), for verification and determination of reasonable accommodations as soon as possible after admission to the Law School and at the beginning of each semester as needed.

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#### Course Overview

This course focuses on equal protection, on freedom of speech and the press, on freedom of religion, and to some extent on privacy as part of substantive due process.

The course also examines methods of interpreting the Constitution and some of the issues relating to the various methods.

The course is taught primarily using cases and class discussion. Some Socratic questioning is used, some topics are lectured, some areas are explored primarily through problems, and on rare occasions a skills exercise may be used to explore certain issues.

#### Learning Objectives

Upon completion of the course, the student should demonstrate mastery of the following knowledge and skills:

- Ability to analyze a new factual situation and to determine the relevant Constitutional law issues in it
- Ability to state and apply the relevant Constitutional law doctrine, policies, and principles to the situation to reach a conclusion about the probable outcome of it
- Knowledge of the standard of review relevant to each type of individual right and the ability to apply it in the appropriate setting

- Understand the changes in Constitutional law doctrine over time and what causes those changes
- Knowledge of and ability to use various methods of constitutional interpretation

## Course Materials

### Required Book and Materials

The Constitution

William D. Araiza, Phoebe A. Haddon, and Dorothy E. Roberts, *Constitutional Law: Cases, History, and Dialogues* (3d ed. Lexis/Nexis 2006).

William D. Araiza, Phoebe A. Haddon, and Dorothy E. Roberts, **2010 Supplement to Constitutional Law: Cases, History, and Dialogues.**

Supplemental materials as noted in the syllabus and possibly other materials to be provided by the professor from time to time

### Recommended Books

Weaver, Hancock, Lively, Frieland, & Scott, *Inside Constitutional Law: What Matters and Why* (Aspen 2008)

Allan Ides & Christopher N. May, *Constitutional Law: Individual Rights – Examples and Explanations* (5th ed. Wolter Kluwers 2010)

Weaver, Frieland, Hancock, Lively, *Acing Constitutional Law* (West 2010)

## Professor Contact Information

Office: 402 Houston Hall

Phone: 202-806-8017

Email: [stevenjamar@iipsj.org](mailto:stevenjamar@iipsj.org) (I typically respond to email within 24 hours.)

Office Hours: The times listed below may change. I will post up-to-date office hours online at <http://www.iipsj.com/SDJ/>

Tue 10:00 - 12:30 pm

Th 10:00 - 12:30 pm

Fri 10:00 - 12:30

Occasionally I will not be able to keep these office hours because of other commitments.

If you need to see me at another time, please [contact me](#) by email so we can make an appointment.

I am often in my office at times not posted as office hours and during those times I am generally able to meet with students.

## Grade Components

Final Examination

100 pts.

## Course Requirements

### Preparation

Read the assigned material before class each day. Be prepared to brief the cases orally and to discuss the problems presented by the readings. Sometimes we will delve deeply into cases while other times we will discuss topics using cases and other readings as background and resources. Both types of classes require detailed preparation.

Pay close attention to the standard of review in each case.

## Attendance

**The law school attendance policy will be enforced.** If you miss 25% or more of the scheduled class sessions, starting from the first day of scheduled classes, you will receive an "F" for the course unless you formally withdraw from the course before the last day to drop a course as set by the law school academic calendar. Under the law school policy, attendance means being present at the start of class and throughout the class period. **Tardy students and students who leave class early will be counted as absent.**

## SCHEDULE

Please note that this schedule identifies the topics to be considered in the order in which they will be considered and the readings for the topics. After the first class, the specific reading for the next class will be given. Thereafter most assignments will be given on a weekly basis. I anticipate trimming some of the readings as the semester progresses. Bracketed material may be dropped if time requires.

### Judicial Power

Constitution Articles 1, 2, 3 & Amends. 1, 5, & 14. *Araiza, et al*, pp. 1-13 *Marbury v. Madison*

### Equal Protection

*Araiza, et al*, Part IV: Equal Protection, pp. 803-824

[Seattle Schools, 551 U.S. 701 \(2007\)](#), *Araiza, et al*, 2010 Supp. 141-175)

*Araiza, et al*, Part IV: Equal Protection, pp. 824-830 (optional: Derrick Bell piece 830-842)

*Araiza, et al*, 842-854 Slavery -- The Constitutional Convention's Unfinished Business

Race & the Civil War Amendments: *Araiza, et al*, pp. 854-869; 873-887

Steven D. Jamar, [A Brief History of Brown v. Board of Education](#) on the [Brownat50.org](#) website.

The Desegregation Principle: *Araiza, et al*, pp. 893-917; 925-928

Discriminatory Intent, pp. 928; 934-941; 950-954 (955-981 -- *lecture/discussion, recommended but not assigned reading*)

[ICCPR Handout](#) -- Section 26

### Affirmative Action

*Araiza, et al*, pp. 981-984; [Seattle Schools](#), *Araiza, et al*, 2010 Supp. 141-175

### Gender-based discrimination

*Araiza, et al*, pp. 1044-1063; 1069-1088; 1095-1111

*optional {Araiza, et al, pp1088-1112 gender-disparate impact}*

### Other types of discrimination

*Araiza, et al*, pp. 1112-1122; 1130-1132

### Fundamental Rights under the EP Clause

*Araiza, et al*, pp. 1132-1188 fundamental rights strand of EP

- travel 1132-1135

- voting 1135-1157, especially *Bush v. Gore* 1145-1157
- education 1157-1176 (*Rodriguez*)
- sexual conduct, sexual orientation; read *Romer v. Evans* 1122-1128, and both parts of *Lawrence* case -- pp. 418-427 (substantive due process/liberty/privacy) and pp. 1176-1188 (EP portion -- concurrence); [Perry v. Schwartzenegger \(download\)](#) read pp. 109-136 (Cal. Prop. 8); {recommended: [Conaway v. Dean \(MD Ct. App. 2007\) \(download pdf\)](#) pp 26-87 (majority opinion)}

### Substantive Due Process (liberty & privacy)

*Araiza, et al*, 319-353; 2010 Supp. 68-86 (*Carhart*); 395-409; 418-429

### State Action

*Araiza, et al*, pp. 1715-1784

### Freedom of Speech & Association

[ICCPR Handout](#) -- Sections 18, 19, 20, 22

*Araiza, et al*, freedom of speech basics 1189-1214;

Libel/Defamation 1214-1232

Obscenity 1232-1261

Fighting words/hate speech 1261-1282

Partially protected speech – commercial speech 1283-1310

{*Campaign financing* 1310-1335; 2010 supp. 178-202 (*Citizens United v FEC* and *Randall v Sorrell*)}

Content neutrality & Public Forum 1335-1370; [Summum \(download\)](#)

Time place manner 1370-1383

Symbolic speech 1383-1408

Secondary effects doctrine 1408-1416

Doctrinal Hybrids 1416-1425

{*Governmental speech* 1425-1445; 2010 supp. 220-226 (*Garcetti v Caballos*)} [Summum \(download\)](#)

Speech in public schools 1445-1453; 2010 supp. 226-227

Prior restraints 1453-1474

Overbreadth & vagueness 1474-1490; supp. 227-232

Freedom of association 1490-1505

### Freedom of the Press

*Araiza, et al*, Freedom of the press 1505-1548

Medium-specific standards (airwaves) 1548-1586

### Freedom of Religion

*Araiza, et al*, Freedom of religion introduction 1586-1596

Establishment clause 1596-1683, 2010 supp. 232-234 (*CLS*)

Free exercise 1683-1714

Revisit *Rosenberger*, *Summum*, *CLS* as review of Speech, Establishment, and Exercise issues

## **Second Amendment and Incorporation**

[Heller \(pdf\)](#) (2010 Supp. 3-34)

*Araiza, et al*, pp. 305-319

*McDonald v. Chicago* (2d amendment incorporation case) (2010 Supp. 35-68)

## **Habeas**

[Boumediene \(2008\)](#) (rtf - edited -- this is all that is required for class. If you want to read the full opinion, you can download the pdf version: [Boumediene \(2008\)\(full case -- pdf\)](#))

## **Economic Rights**

Contract Clause: *Araiza, et al*, pp. 271-283

Takings Clause: *Araiza, et al*, pp. 283-305

## **December 2011 - Final Exam**

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