

UNIVERSITY OF MIAMI SCHOOL OF LAW

Fall 2021

U.S. CONSTITUTIONAL LAW II

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First Class Assignment

The textbook we will be using this semester will be **Stone, Seidman, Sunstein, Tushnet, and Karlan, Constitutional Law (8th Edition 2018)**. (hereinafter- the “Text”) This includes a 2018 Supplement. Unless otherwise stated, all assignments refer to the text and/or supplement. The text and supplement are published by Wolters, Kluwer.

ASSIGNMENT FOR FIRST CLASS:

For your first assignment, pick one of the hypos listed below and write a reflection paper. A reflection paper must explain what the issue is, what the competing principles or policies are, and how you think the case or issue should be resolved. The format could be that of a court opinion, in which you take the role of a judge, or, if you choose, a lawyer writing an editorial for a newspaper, or a scholar writing an abstract on the topic involved. Reflection papers may be from 300 to 1,000 words. The reflection papers must be typed and double-spaced. Standard citation practices apply. Because the essays are very short, you need not restate the facts nor focus on procedural issues. Students may only write on one of these hypos.

Hypo 1

The original Constitution contains several clauses which recognized the legitimacy of slavery or protected the “property rights” of slave masters to their slaves.

Question: Would you sign the original Constitution?

In answering this question, discuss the dichotomy of law v. morality, or natural law v. positive law, or competing theories of interpretation (or a combination of all three).

Required Reading:

Xxxix - liii in the text

State v. Post, pgs. 465-474 in text.

Prigg v. Pennsylvania, 41 U.S. 539 (1842)

Suggested Readings:

D. Robinson, *SLAVERY AND THE STRUCTURE OF AMERICAN POLITICS, 1765-1820* (1971)

Thurgood Marshall, *Commentary: Reflections on the Bicentennial of the United States Constitution*, 101 Harv. Law Review 1 (1987)

Stanford Levinson, *The Constitution in Perspective- Pledging Faith in the Civil Religion; Or Would You Sign the Constitution?* 29, William and Mary L. Rev. 113 (1987)

Hypo 2

The state of Mississippi enacts a law which generally prohibits abortions after 15 weeks of pregnancy. (Mississippi Gestation Age Act Miss Code Ann. 41-42-191) Such abortions are often called pre-viability abortions. The term viable refers to the fetus' ability to survive outside of the womb, either with or without life-support. Under current technology the fetus does not become viable until 24 weeks into the pregnancy. In 2019 the fifth Circuit upheld a lower court's decision striking down Mississippi's abortion ban. *Jackson Women's Health Org. v. Dobbs*, 945 F. 3rd. 265 (2019). The case is now before the Supreme court.

Question: Is Mississippi's Abortion ban constitutional?

Write a brief essay regarding how the court should rule in this case. In writing your essay consider the following: Arguably there are two ways the Supreme Court has mapped constitutional rights historically. In classical constitutional jurisprudence there was a notion of private sphere of rights in which the rights of the individual were absolute. There was also a public sphere in which rights were always subject to interest balancing. Arguably *Roe v. Wade* recognized a zone of autonomy up to a certain point in time of a woman's pregnancy. Is there anything left of that framework?

Required Reading:

Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L. ed. 2nd 147 (1973)

Planned Parenthood v. Casey, 505 U.S. 803, 112 S. Ct. 2791, 120 L. ed. 2nd 6774 (1992)

Preserving the Core of Roe: Reflections on Planned Parenthood v. Casey, 18 Yale J. L. Feminism 317 (2006)

The Roe'D to Confusion: Planned Parenthood v. Casey, 30 Hous. L. Rev. 1457 (1993)

Abortion: A Woman's Private Choice, 95 Texas Law Review 1189 (2017)

Hypo 3

In 2014 The school Board of the State of Erewhon publishes a regulation which prohibits, *inter alia*, a teacher to wear a shirt or face mask featuring statements or images related to the Black Lives Matter movement while teaching a classroom of students, or to post a sign on the classroom door relating to Black Lives Matter. In 2020, after the police killing of George Floyd a teacher in Roma County of the State of Erewhon posts a Black Lives Matter sign on her classroom door. Parents complained and the teacher was discharged after she refused to remove the poster. The teacher sues under 42 U.S. C. 1983 arguing her firing violated her rights under the First Amendment of the U.S. Constitution.

Write an essay outlining your views on whether the firing was in fact constitutional. In your answer discuss at least one or more of the following questions: A) Can the government sanction a citizen on the basis of the content of their expression or is the government limited to regulating time, place, and manner.) *(B) Does the government have a duty to be neutral in the realm of free expression with respect to viewpoint. (C) Can the government condition constitutional rights on one's status: i.e., agree to become a teacher one has diminished first amendment rights-at least while acting as a school employee?

Required reading:

Pickering v. Board of Education, 391 U.S. 563 (1968)

Garcetti v. Ceballos, 547 U.S. 410 (2006)

Suggested reading:

Hazelwood v. Kuhlmeier et al 484 U.S. 260 (1988)

Keeping the Free in Teacher Speech Rights: Protecting Teacher's and their Use of Social Media to Communicate with Students Beyond the School house Gates, 19 Rich. J.L. & Tech. 5 (2013)

NOTE: Public School Teachers And The First Amendment: Protecting The Right TO Teach., 65 *N.Y.U.L. Rev.* 693

Teaching in a Democracy: why Garcetti Rule Should Apply to Teaching in Public Schools, 46 *Gonz. L. Rev.* 687(2011)

* Oliver Wendell Holmes, in an often-referenced case from when he was a Massachusetts state judge, said a police officer "may have a constitutional right to talk politics, but he has no constitutional right to be a policeman" (*McAuliffe v. City of New Bedford*, 1892)

Due date: The assignment is due the first day of class. (Bring a hard copy with you.)

Good luck. I look forward to seeing everyone in class!