

**Course Description – “Legal Policy Challenges – Federalism and Separation of Powers Issues under the United States Constitution”**

**Instructor: Judge Robert G. Flanders, Jr. (rflanders@haslaw.com)**

This course will combine an overview of the current American legal system with an introductory look at the history, philosophy, and structure of the federal constitution and government, with particular emphasis on judicial review, separation of powers, and the commerce clause in United States Supreme Court jurisprudence. Students will be expected to read, analyze, and be prepared to discuss critically assigned reading and legal materials for each weekly class. Each class will be conducted as a seminar and taught via the Socratic Method used in many law schools. Some classes may consist, in part, of short tests, spot quizzes, and previously unannounced examinations on the reading material for that week. The educational objectives of this course are to introduce students to the American legal system and to the federalism issues established in the Federal Constitution, including separation of powers and commerce clause problems. Students are expected to develop skills in legal analysis and critical reasoning and an appreciation of the policy implications of constitutional decision-making.

The readings will come primarily from three required texts:

1. Understanding Supreme Court Opinions, by T.R. van Geel (5<sup>th</sup> Ed. 2007) (Pearson Education, Inc.) (this text was ordered by the Bookstore on August 6<sup>th</sup>; please check with the Bookstore the week of August 20<sup>th</sup>);
2. Processes of the Law – Understanding Courts and Their Alternatives, by Judith Resnick (Foundation Press 2004); and
3. Constitutional Law (Second Edition 2005) (Aspen), by Erwin Chemerinsky (Const. Law).

4. 2007 Supplement to Constitutional Law (Second Edition 2005) (Aspen), by Erwin Chemerinisky (Suppl.).

There is also one recommended (but not required) text:

5. Constitutional Law: Principles and Policies (Aspen-2006) (Third Edition) by Erwin Chemerinisky (CL-Principles and Policies.).

Students will be graded as follows:

1. Class participation and attendance (40%).
2. Cumulative scores on any tests, quizzes and/or a final exam (60%), plus an optional 10 to 15 page paper research project on a topic covered or relevant to the subjects in this course.

Attached is the Syllabus for this course.

**Public Policy 0170, Section 14**  
**Syllabus**

For each of the classes, the students shall read the material in the below listed texts and be prepared to discuss and analyze same in class:

<b>Class</b>	<b>Text: Understanding Supreme Court Opinions (Fifth Edition – 2007) By T.R. van Geel</b>	<b>Text: Processes of the Law By Judith Resnick</b>	<b>Texts: Constitutional Law (Second Edition -2005) By Erwin Chemerinisky/2007 Supplement</b>
One September 9	Ch. 1, pp. 1-17 (17)		Constitution of the U.S., xxxix-liv (16 pages) <u>CL: Principals and Policies</u> , Ch. 1, pp. 1-32, Historical Background and Contemporary Themes
Two September 16	Ch. 2 and Ch. 3, pp. 19- 47 (28)		<u>Const. Law</u> , Ch. 1, A. The Authority for Judicial Review, pp. 1-10, B. Methods of Constitutional Interpretation, pp. 10-24

<b>Class</b>	<b>Text: Understanding Supreme Court Opinions (Fifth Edition – 2007) By T.R. van Geel</b>	<b>Text: Processes of the Law By Judith Resnick</b>	<b>Texts: Constitutional Law (Second Edition -2005) By Erwin Chemerinisky/2007 Supplement</b>
Three September 23	Ch. 4, pp. 49-79 (30)		<u>Const. Law</u> , Ch. 3, The Federal Executive Power, A. The Inherent Presidential Power, pp. 271-287; B. Authority of Congress to Increase Presidential Power, pp. 287-292
Four <sup>1</sup> September 30	Ch. 5 and Ch. 6, pp. 81-115 (34)		<u>Const. Law</u> , Ch. 3, C. The Constitutional Problems of the Administrative State, pp. 292-320
Five October 7	Ch. 7, pp. 177-134 (17)		<u>Const. Law</u> , Ch. 3, D. Separation of Powers and Foreign Policy, pp. 32-331; E. Presidential Power and the War on Terrorism, pp. 331-354; Supplement pp. 47-61, <u>Hamden</u> and Military Tribunals
Six <sup>2</sup> October 14	Ch. 8, pp. 135-158 (23)		<u>Const. Law</u> , Ch. 2, Federal Legislative Power, A. Introduction: Congress and the States, pp. 99-112; B. The Commerce Power Before 1937, pp. 112-129

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<sup>1</sup> Optional Paper Topic Due

<sup>2</sup> Outline For Optional Paper Due

<b>Class</b>	<b>Text: Understanding Supreme Court Opinions (Fifth Edition – 2007) By T.R. van Geel</b>	<b>Text: Processes of the Law By Judith Resnick</b>	<b>Texts: Constitutional Law (Second Edition -2005) By Erwin Chemerinisky/2007 Supplement</b>
Seven October 21		Introduction, pp. 1-5 Civil Actions, pp. 5-22	<u>Const. Law</u> , Ch. 2, Post 1937 Commerce Power Cases, pp. 129-152
Eight October 28		Claims for Relief, pp. 22-39	<u>Const. Law</u> , pp. 153- 176, <u>Lopez</u> and <u>Morrison</u> and <u>Pierce</u> Cases; Supplement pp. 29-43, <u>Gonzales v. Raich</u>
Nine <sup>3</sup> November 4		Criminal Actions, pp. 40-56	<u>Const. Law</u> , pp. 176- 197, the 10 <sup>th</sup> Amendment, <u>New York</u> , <u>Printz</u> and <u>Reno</u> cases; C. The Taxing and Spending Power, pp. 198-207
Ten November 11		Choosing the Law to Apply, pp. 57-70	<u>Const. Law</u> , pp. 207- 224, pp. 258-269, Congress' Powers Under the Post Civil War Amendments
Eleven <sup>4</sup> November 18		Remedial Powers, pp. 71-80	<u>Const. Law</u> , pp. 224- 230, Congressional Power to Authorize Suits Against State Governments; pp. 230- 258, The Limitations on this Power; Supplement pp. 43-46

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<sup>3</sup> First Draft Due for Optional Paper

Class	Text: Understanding Supreme Court Opinions (Fifth Edition – 2007) By T.R. van Geel	Text: Processes of the Law By Judith Resnick	Texts: Constitutional Law (Second Edition -2005) By Erwin Chemerinisky/2007 Supplement
Twelve November 25		Institutional Forms, pp. 81-106	<u>Const. Law</u> , Preemption, pp. 364-381; pp. 381-402, The Dormant Commerce Clause; Supplement pp. 63-71, <u>United Haulers v. Oneida-Herkimer</u>
Thirteen December 2		The Litigation Participants, pp. 107-130	Constitutional Law, Dormant Commerce Clause, pp. 402-423, Supplement pp. 71-80, <u>Grandholm v. Heald</u> , and pp. 80-82, <u>American Trucking v. Michigan</u>
Fourteen December 9		Rulemaking, pp. 131-146	Constitutional Law, Exceptions to Dormant Commerce Clause, pp. 423-443

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<sup>4</sup> Final Draft Due for Optional Paper