

FEDERAL COURTS

Professor Howard Wasserman
Office: RDB 2065
Phone: 348-7482
e-mail: howard.wasserman@fiu.edu

Fall 2025
11 a.m.-12:15 p.m. Monday/Tuesday
RDB 2007

Office Hours: 10:30 a.m.-Noon Wednesday/Thursday
2-3:15 p.m. Wednesday/Thursday
3:30-4:30 p.m. Monday/Tuesday
Whenever I am in my office
Email questions for the Blog

No Class on the Following Days:

- Monday, September 1 for Labor Day. Make-up built into schedule.
- Tuesday, September 23 for Jewish Holy Days. Make-up TBD.

Notes:

- All classes will be audio-recorded
- If you are sick, please stay home, for your health and for that of your colleagues. I will not take or record attendance.

Course Outline:

This course examines the role and powers of the federal courts in the legal and constitutional order in the United States. We examine the jurisdiction of the United States Supreme Court and the “inferior” federal courts and the legal rules and doctrines that expand or narrow that jurisdiction. We also examine the interactions and relations between the federal judiciary and other legal and political actors, such as the federal legislative and executive departments, the state courts, and the state legislatures. This course will mix doctrine, policy, and theory to try to make legal and logical sense of the rules that govern the federal judiciary.

This course is essential for anyone interested in all substantive areas that involve litigation and dispute resolution in federal court--this includes intellectual property, securities regulation, antitrust, labor, employment discrimination, constitutional and civil rights, and transnational business.

The material is organized to follow the ebb and flow of federal judicial authority. We begin with the jurisdiction of the United States Supreme Court, both original and appellate, then the original and appellate jurisdiction of the federal district courts and federal circuit courts of appeals. Having considered what federal courts are empowered to do, we then examine the limits on that power. First are judicially created limits on federal jurisdiction, such as Eleventh Amendment sovereign immunity, justiciability, and abstention. Second is the power of the other branches of the federal government to control and limit the jurisdiction of the federal courts and federal judges.

This is a reading-intensive course. At this stage in your academic career, you have the intellectual tools to manage the work because you know how to read and grasp legal materials. This also is among the most intellectually rich and engaging subjects in the law school curriculum; I expect the material to create high-level and intensive class discussions.

Academic Purpose

The point of this class is to study and understand how courts, political officials, and commentators understand the power of the federal courts. The focus is not on the views of the instructor or of students. Readings and discussions are not intended to espouse, promote, advance, inculcate, or compel a particular feeling, perception, viewpoint, or belief.

In addition, academic freedom and responsibility are essential and integral to the University as a community of scholars engaged in the pursuit of truth and the communication of knowledge in an atmosphere of tolerance and freedom. The University serves the common good through teaching, research, scholarship/creative activities, and service. Fulfilling these functions requires preserving the intellectual freedoms of teaching, expression, research, and debate.

Required Course Materials:

- 1) ERWIN CHEMERINSKY FEDERAL JURISDICTION (9th ed. 2025) (“CHEMERINSKY”)
Appendix A: The Constitution
Appendix B: Selected Statutes
- 2) JAMES E. PFANDER PRINCIPLES OF FEDERAL JURISDICTION (4th ed. 2022) (“PFANDER”)
Appendix: Selected Constitutional and Statutory Provisions
- 3) *Federal Courts Blog*: <http://fiufedcourts.blogspot.com> (*Supplemental Materials* post)

Technology and Class Conduct

Use of laptops, tablets, book readers, smart phones, and similar devices during class is absolutely prohibited, unless you have received permission or accommodation in advance.

Phones must be turned off when class begins.

Class attendance is required.

You must be in class on time unless I have previously given you permission to come late. You may not enter the room once class has begun unless I have given you permission to come late. Once class has begun, do not leave unless absolutely necessary. Please limit movement in and out of the room during class; I reserve the right to change this policy mid-semester. Exceptions to these policies for medical or similar reasons will be made for documented accommodations.

For those of you who prefer having (or being able to obtain) more precise notes, classes will be audio-recorded and the audio file for each class session will be posted on the ***Blog***. You are welcome and encouraged to review the recording and Blog your notes. This is, in fact, comparable to what you will experience in practice. You will go through a day of trial or deposition working with your own brief notes and your participation in events, then receive a transcript a day or two later.

The use of ChatGPT and other generative AI, LLM, or similar programs for written assignments is prohibited and will be deemed a violation of College of Law academic policies.

Plagiarism Policy

Just don't.

Assessments

Your final grade consists of three components. Details on each provided separately.

- **Oral Arguments:** 40 points (30 points for argument, 10 points for judging)
- **Reaction Papers** 120 points (3 papers, worth 40 points each)
- **Class Participation:** 30 points

Class Function

Every student will be assigned to three panels, with approximately 10 students per panel. Panelists will be the first ones called on during class discussions and will be expected to help lead the conversation, which obviously entails a high level of preparation of the cases and problems assigned on that material.

The panel will be “on call” for each of eleven (11) topics on the syllabus. Panelists will be the first ones called on during class discussions and will be expected to lead the conversation, which obviously entails a high level of preparation of the cases and problems assigned on that material. Panels will be assigned at random, although I will try to make sure no one has consecutive panels

You will write your reaction papers (**Assessments** for details) on your panelist topics.

Panelists should not and will not be the only ones prepared for class or participating, of course. I want and expect all members of the class to engage with the material and in the classroom conversations.

In evaluating class participation, I consider overall performance, both for the classes in which you were assigned as a panelist and overall participation in the broader conversation throughout the semester.

Federal Courts Blog:

To read the *FIU Fed Courts Blog*, go to <http://fiufedcourts.blogspot.com/>; posts can be read going down from most recent. The blog serves several purposes.

We will use the blog for posting:

- Syllabus, assignment information, and all additional assigned readings.
- Supplemental Materials—additional cases, statutes, rules, and readings. Bookmark this post.
- Audio recording of each class meeting.
- A short after-class post containing a summary and some additional points about the just-completed session, as well as assignments, materials, questions, and issues you should think about for the next class.
- Generate ongoing conversations with *short* posts about the law of Federal Courts, the class discussions, reaction papers, and, most importantly, real-world stories touching on this material (I promise there will be a lot of them). I occasionally will post questions to the blog and encourage written responses for the blog.

All of this is by way of saying that you should get in the habit of checking the blog *at least* once or twice

during the day.

Because you do not have access to write for the blog, email posts, stories, etc. to me and I will put them on the site.

College of Law J.D. Student Handbook

This class is administered and conducted in accordance with all the provisions of the Florida International University College of Law J.D. Student Handbook. Students are expected to be familiar with and to conduct themselves in line with those policies.

Assignments:

This class works without a casebook. Instead, we will look at two treatises on federal jurisdiction, which discuss the cases and organize, explain, and synthesize the materials. CHEMERINSKY is the more-detailed book, will form the focus of most of our discussion, and should be the main focus of your reading; PFANDER offers a supplementary overview. There is a trade-off: You have more total pages of reading on a given topic, but the reading will be somewhat more straightforward than parsing cases yourself. Nevertheless, you must read the material closely enough that you understand it well enough to talk about it in class. This includes being familiar with what key cases are about.

The treatise reading will be supplemented by reading and parsing the text of constitutional provisions, statutes, rules, and other textual sources. We also will read all or pieces of some more recent cases.

The cases listed in each section are the ones we will focus on in class discussions, so you should spend extra time with the treatise discussions.

Unless otherwise indicated, constitutional provisions can be found in Appendix A of CHEMERINSKY (which includes the full Constitution) and statutory provisions can be found in Appendix B of CHEMERINSKY. Other provisions are in the Appendix of PFANDER or should be downloaded from the ***Blog***, as indicated. Please have all assigned constitutional and statutory provisions with you in class.

Assignments and materials noted with ***Blog*** are available to be downloaded from the ***Blog***.

Questions for each topic provided in the **Guiding Questions** document, available on the ***Blog***.

Introduction: Federal Courts and Constitutional Structure

Provisions:

U.S. CONST. art. III

U.S. Const. art. II § 2 cl.2 (appointment); Art. I § 4; Art. I § 2, cl.5-6 (impeachment)

U.S. CONST. art. I, §§ 8, 9

U.S. CONST. art. VI, cl.2-3

U.S. CONST. amends. X, XI, XIII, XIV, XV

Maps of the Federal Judicial System (*Blog*)

Theme: History and Constitutional Foundations

CHEMERINSKY 1-16

PFANDER 1-22

Cases:

Marbury v. Madison

Commentary:

THE FEDERALIST No. 78 (***Blog***)

THE FEDERALIST No. 79 (***Blog***)

Chervinsky, *Chase Impeachment* (***Blog***)

Theme: Separation of Powers, Parity, Comity, Federalism

CHEMERINSKY 26-43, 40-44

PFANDER 22-26, 32-36

Theme: Judicial Activism

Theme: The Judicial Role

Cases:

Trump v. CASA (***Blog***)

Theme: Judicial Supremacy and Judicial Departmentalism

CHEMERINSKY 16-17

PFANDER 22-23

Cases:

Trump. CASA (***Blog***)

Theme: Good Writing and Talking Procedure

Commentary:

Good Writing and Talking Procedure (***Blog***)

Supreme Court of the United States

Structure and Role

CHEMERINSKY 18-20, 652-54, 666-69

Provisions:

U.S. CONST. art. III § 1

Sup. Ct. R. 10, 14.1(a) (***Blog***)

Materials:

Supreme Court Biennial Appointments and Term Limits Act (***Blog***)

Eight is Enough (***Blog***)

Alternatives to Term Limits (***Blog***)

Vladeck, *History of Certiorari* (Separate post on ***Blog***)

Original Jurisdiction

CHEMERINSKY 10-16, 660-66

PFANDER 12-13, Ch. 3 (All)

Provisions:

U.S. CONST. art. III, § 2, cl.2

28 U.S.C. § 1251

28 U.S.C. §§ 1331, 1332, 1345, 1346

28 U.S.C. § 1651

Cases:

Marbury v. Madison

Nebraska v. Colorado (***Blog***)

Texas v. California (***Blog***)

Commentary:

Vladeck, “Original” *Jurisdiction and the Wyandotte Doctrine* (***Blog***)

Appellate Jurisdiction: State Courts

1) Background:

Structure of Florida Courts (***Blog***)

2) Power of Review:

CHEMERINSKY 652-54, 656-60

PFANDER 103-14

Provisions:

28 U.S.C. § 1257

28 U.S.C. § 1257 (pre-1988 Version) (***Blog***)

Cases:

Martin v. Hunter’s Lessee

Murdock v. City of Memphis

3) Independent and Adequate State Grounds:

CHEMERINSKY 696-719

PFANDER 114-20

Provisions:

28 U.S.C. § 1257 (current)

Cases:

Michigan v. Long

4) Finality:

CHEMERINSKY 676-89

PFANDER 121-24

Provisions:

28 U.S.C. § 1257 (current)

Cases:

Cox Broadcasting v. Cohn

Moore v. Harper

Appellate Jurisdiction: Federal Courts of Appeals

CHEMERINSKY 670-72, 673-74, 689-91

PFANDER 124-30

Provisions:

28 U.S.C. §§ 1253, 1254, 1291, 1651

Supreme Court Rule 10, 11 (***Blog***)

Map of the Federal Judicial System (***Blog***)

Materials:

Vladeck, *The rise of certiorari before judgment* (***Blog***)

Federal Courts of Appeals

Structure

CHEMERINSKY 20-23

Provisions

28 U.S.C. §§ 46, 371 (***Blog***)

Fed. R. App. P. 3, 4(a), 35 (***Blog***)

Map of the Federal Judicial System (***Blog***)

Finality and Collateral Order Doctrine:

CHEMERINSKY 691-95

Provisions:

28 U.S.C. § 1291

28 U.S.C. § 1295

Fed. R. App. P. 4(a) (***Blog***)

Cases:

Coopers & Lybrand v. Livesay

Cohen v. Beneficial Industrial Loan Corp.

Will v. Hallock

Mohawk Industries, Inc. v. Carpenter

Interlocutory Review:

CHEMERINSKY 695

PFANDER 124-30

Provisions:

28 U.S.C. § 1292

28 U.S.C. § 1361

28 U.S.C. § 1651

28 U.S.C. § 2072(c)

Fed. R. Civ. P. 23(f), 54(b) (***Blog***)

Federal District Courts

Structure

CHEMERINSKY 23-24

PFANDER 131-33

Map of the Federal Judicial System (***Blog***)

Jurisdictional Overview

CHEMERINSKY 267-73

Provisions:

U.S. Const. art. III, § 2

28 U.S.C. §§ 1331, 1332, 1337, 1338, 1367, 1361

42 U.S.C. § 2000e-5(f) (***Blog***)

15 U.S.C. § 1121 (***Blog***) (Lanham Act)

Removal

PFANDER § 5.11

CHEMERINSKY 754-65, 348-56

28 U.S.C. §§ 1441-1443, 1446-1447

28 U.S.C. §§ 1454-1455 (***Blog***)

Removal and Exclusive Jurisdiction

Provisions:

28 U.S.C. § 1338

28 U.S.C. § 1454 (***Blog***)

“Arising Under” Jurisdiction

1) Arising Under

CHEMERINSKY 273-84, 287-88, 288-96
PFANDER 133-53

Provisions:

U.S. CONST. art. III, § 2
28 U.S.C. §§ 1257, 1331, 1333, 1337, 1338
42 U.S.C. §§ 2000e-2; 2000e-5(f)(1), (3) (**Blog**)
15 U.S.C. § 1121 (**Blog**) (Lanham Act)
42 U.S.C. § 1983

Cases:

Louisville & Nashville RR v. Mottley
Mims v. Arrow Fin. Servs.
Grable & Sons Metal Prods. v. Darue Eng. & Mfg.
Gunn v. Minton
Morrison v. Australia National Bank (**Blog**) (Parts I & II)

2) Complete Preemption:

CHEMERINSKY 286-87
PFANDER 173-77

Materials: Notice of Removal in *Rodriguez v. MLB* (**Blog**)

Three-Judge District Courts

CHEMERINSKY 672-73
PFANDER 257-62

Provisions:

28 U.S.C. §§ 2281-2282 (repealed) (**Blog**)
28 U.S.C. § 2284
28 U.S.C. § 1253

Cases:

Ex Parte Young (discussed in PFANDER)
Shapiro v. McManus (**Blog**)

Declaratory Judgments

CHEMERINSKY 45-46, 284-86
PFANDER 80-81, § 5.6, 267-62

Provisions:

28 U.S.C. §§ 2201-2202 (**Blog**)

Cases:

Ex Parte Young (Review in PFANDER)

Skelly Oil v. Phillips Petroleum, Inc.

Franchise Tax Bd. v. Construction Laborers's Trust

Medimmune v. Genentech, Inc. (**Blog**) (focus on procedural background)

Documents:

Complaint in *MGM v. Acosta* (**Blog**)

Non-Article III Jurisdiction

CHEMERINSKY 24-26, 217-21, 222-40
CHEMERINSKY 243-53
CHEMERINSKY 624-28, 644-47
PFANDER § 10.3; 127-30

Provisions:

U.S. Const. amend VII

28 U.S.C. §§ 631, 636 (**Blog**)

28 U.S.C. §§ 1334

28 U.S.C. §§ 157-158 (**Blog**)

28 U.S.C. § 1259 (**Blog**)

28 U.S.C. § 1292(d)

28 U.S.C. § 1295

28 U.S.C. § 1491(a)

28 U.S.C. § 1631

SCOTUS Review of Non-Article III Tribunals

U.S. CONST. Art. I, § 8, cl.14; Art. IV, § 3, cl.2; Art. III, § 2, cl.2

28 U.S.C. §§ 1257, 1258, 1259 (**Blog**)

Limiting the Federal Judicial Role:

Eleventh Amendment/Sovereign Immunity

CHEMERINSKY 395-417, 418-28, 438-65
CHEMERINSKY 624-28
PFANDER 248-74

Provisions:

U.S. Const. amend XI

Limiting the Federal Judicial Role: Justiciability

Standing

1) Constitutional and Statutory Considerations:

CHEMERINSKY 47-83, 90-105
PFANDER 36-41, 43-56, 61-67, 90-93

Cases:

Allen v. Wright

Clapper v. Amnesty International

Susan B. Anthony List v. Driehaus (**Blog**)

Lujan v. Defenders of Wildlife

Lexmark Int'l, Inc. v. Static Control Components, Inc. (PFANDER)

TransUnion v. Ramirez

Sierra v. City of Hallandale Beach (Newsom concurrence, pp. 42-47) (**Blog**)

Hypos: (To be posted)

2) Taxpayer Standing:

CHEMERINSKY 91-97
PFANDER 41-43

3) Third-Party and Other Standing:

CHEMERINSKY 83-90, 105-07

4) State Standing:

CHEMERINSKY 112-16
PFANDER 58-61

Cases:

Biden v. Nebraska

Ripeness

CHEMERINSKY 116-28
PFANDER 79-82

Provisions:

28 U.S.C. §§ 2201 (**Blog**)

Cases:

Medimmune v. Genentech, Inc. (**Blog**)

Susan B. Anthony List v. Driehaus (**Blog**)

Mootness

CHEMERINSKY 128-48

PFANDER 67-78

Provisions:

28 U.S.C. §§ 2201 (**Blog**)

Fed. R. Civ. P. 23(a), (b)(2)

Cases:

Honig v. Doe

Already v. Nike (**Blog**)

Chafin v. Chafin (**Blog**)

FBI v. Fikere

Pap's A.M. v. City of Erie

West Virginia v. EPA

Limiting the Federal Judicial Role: Abstention and Related Doctrines

General Principles

CHEMERINSKY 28-32, 767-69

PFANDER 361-63

Provisions:

28 U.S.C. §§ 2201-2202 (**Blog**)

28 U.S.C. §§ 2281-2282 (repealed) (**Blog**)

28 U.S.C. § 2284

28 U.S.C. § 2283

Statutory Abstention

CHEMERINSKY 722-51

PFANDER 354-61

Provisions:

28 U.S.C. § 2283

28 U.S.C. § 1341

28 U.S.C. § 2201

26 U.S.C. § 7421(a) (**Blog**)

42 U.S.C. § 1983

Cases:

Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs

Vendo Co. v. Lektro-Vend Corp.

Mitchum v. Forster

Smith v. Bayer Corp. (**Blog**)

NFIB v. Sebelius

Colorado River Abstention

CHEMERINSKY 841-62

Cases:

Colorado River Water Conservation Dist. v. United States

Wilton v. Seven Falls Co.

International Comity Abstention

Cases:

Royal and Sun Alliance Ins. Co. v. Century Int'l Arms (**Blog**)

Other Abstention Doctrines

CHEMERINSKY 784-88

PFANDER 369-70

Pullman Abstention

PFANDER 363-69 (overview)

Younger Abstention

PFANDER 371-81 (overview)

Congressional Control of Federal Courts

When Does Congress “Decide” a Case?

CHEMERINSKY 43-44, 187-95

PFANDER 26-31

Provisions:

Fed. R. Civ. P. 60(b) (**Blog**)

Cases:

Plant v. Spendthrift Farm, Inc.

United States v. Klein

Bank Markazi v. Peterson

Patchak v. Zinke

Discussion:

Protection of Lawful Commerce in Arms Act: 15 U.S.C. §§ 7901-7903 (**Blog**)

No Kings Act (**Blog**)

Congressional Accountability for Judicial Activism Act of 2005,
H.R. 3073 (**Blog**)

Controlling the Judicial Power

CHEMERINSKY 181-209, 26-32

PFANDER 22-26, 425-46

Discussion:

Scholarly Debate

Cameras in the Courtroom Act, H.R. 464 (**Blog**)

Sunshine in the Courtroom Act (**Blog**)

Shadow Docket Sunlight Act (**Blog**)

Letter from Chief Justice Roberts to Sen. Richard Durbin (**Blog**)