Syllabus, Course Requirements and Grading Criteria

I. INTRODUCTION

Welcome to Constitutional Law. This 4-credit course meets on Tuesdays, Wednesdays, and Fridays from 2:00-3:15 p.m. It addresses basic questions of constitutional structure, governmental powers, and individual rights.

II. COURSE MATERIALS AND BACKGROUND READING

We will be using Kathleen M. Sullivan and Gerald Gunther, Constitutional Law (17th ed. 2010), as well as the most recent annual supplement to the casebook and, perhaps, some occasional handouts. We will also be using the following materials:

1) A document prepared by Prof. Marty Lederman of Georgetown Law School discussing the ACA—the “Obamacare” legislation—and subsequent legal challenges to it, focusing on the constitutionality of the individual mandate. Please read it immediately, and be prepared to discuss it on the first day of class. I encourage you to read the full versions of the cases he excerpts, and to keep up with news accounts regarding the legislation, its constitutionality, and the litigation on this issue before the Supreme Court, which will hold oral arguments later in the semester. I will hand out a copy of these materials in class, but it is available on the TWEN page for this course. Please register for the TWEN page immediately (no password is required for the course) and download it; you’ll find it at the tab marked “Course Materials” on the left side of the page.

2) Wilson Huhn has written a relatively short book called Obamacare (The Patient Protection and Affordable Care Act). It is available on Amazon as an e-book for the fairly low price of $6.39. Please download a copy of it and read the whole thing. In particular, for the first day of class, you might want to focus on the section discussing the constitutionality of the Act and the judicial opinions that have addressed this issue so far. There are several excellent constitutional law treatises available, and you may find them useful if you have questions about particular topics or just find certain areas particularly engaging. I would, however, caution against undue reliance on these volumes for regular study or, especially, exam preparation. If you do still want to look at a treatise, I recommend Erwin Chemerinsky, Constitutional Law: Principles and Policies (4th ed. 2011), or John E. Nowak and Ronald D. Rotunda, Constitutional Law (8th ed. 2009). Most students find the Chemerinsky book particularly useful— but I strongly advise you to use Chemerinsky as a supplement, not a substitute for your own reading; too many people let Chemerinsky call the shots for them rather than reach their own conclusion.
For a more complicated but very interesting read, you might try Laurence H. Tribe, *American Constitutional Law*, vol. 1 (3d ed. 2000), or his second edition, published in 1988 (the second edition covers the entire corpus of constitutional law; the first volume of the third edition is roughly coincident with the materials covered in this class). Of course, the standard outlines, supplemental study materials, and other Cliff Notes of the law are also available if you want them. From time to time, I may also hand out bibliographies of interesting secondary material on particular topics.
III. COURSE COVERAGE

This course covers a broad range of topics. A preliminary schedule of readings follows, subject to revision; any revisions will be announced in class. As a rule of thumb, unless otherwise noted, I suggest you set a reading pace of 25 pages per class, and stick to it even if we lag behind, as we will cover longer stretches of material more quickly from time to time. We will go a little more slowly on the first 40 pages or so, but after that we will often move quite quickly. Please also consult your supplement to see whether there are any additional materials you should cover in addition to those listed below.

We will attempt to cover the material as follows. For each section of reading, where possible, I have specified the most important material. That does not rescue you from your obligation to read the remaining material, but it may help you to allocate your time and efforts and focus your outline. Note that I have not listed the materials by class day, so please be aware of where we are in the reading and keep up. If we keep a good pace, I will try to add some material later in the semester on the First Amendment.

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<td><em>Introduction</em></td>
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<td>1) ACA handout and portions of Huhn e-book noted above.</td>
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<td>2) United States Constitution, at App. A of the casebook. Again, read it carefully, preferably more than once. Also please look up and read the Articles of Confederation; you can find a link to it at the “Course Materials” tab on the TWEN page.</td>
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I. The Nature and Sources of the Supreme Court’s Authority

Judicial Review 1-15, 19-30

*Focus: Marbury*

Constitutional and Prudential Limits on Constitutional Adjudication 30-59

*Focus: Lujan, EPA, Baker*

II. Congressional Powers and Their Limits

National and States in the Federal System 60-81

*Focus: McCulloch, U.S. Term Limits*

The Commerce Power: Antecedents 82-106
The Commerce Power: The Modern Approach  
*Focus: Lopez, Morrison, Raich*

The Commerce Power: External Limits  
*Focus: Garcia, New York v. United States*

Taxing and Spending  
*Focus: Dole*

Dormant Commerce Clause/Preemption  
*Focus: Gibbons, Phila. v. New Jersey*

**III. The Executive/Separation of Powers**

Executive Encroachment: The Basic Approach  
*Focus: Youngstown*

The Constitution at War  
*Focus: Hamdi, Hamdan, Boumediene*

Note: The focus for this material is on the constitutional aspects of war powers, not on every last detail of the post-9/11 cases. Read it with that recommendation in mind.

Congressional Control Over the Executive Branch  
*Focus: Chadha, Bowsher, Morrison*

Executive Privileges and Immunities  
*Focus: Nixon, Clinton v. Jones*
IV.  Due Process

Background on Incorporation 349-350, 363-367, 369-375

Procedural Due Process 495-500

Economic Substantive Due Process 375-398

Focus: Lochner, Williamson

Non-Economic Substantive Due Process: Privacy 427-438

Focus: Griswold

SDP: Contraception and Abortion 438-464

Focus: Roe, Casey, Carhart

SDP: Death 484-495

Focus: Glucksberg

SDP: Family and Sex 464-484

Focus: Lawrence

V.  Equal Protection

Race Discrimination: The Fundamentals 501-521

Focus: Brown

Race Discrimination: Purpose and Effect 521-531

Focus: Washington v. Davis

Race and Affirmative Action 531-576

Focus: Bakke, Adarand, Grutter, PICS

Other Suspect Classifications: Sex 586-616

Focus: US v. Virginia

Other Suspect Classes 620-641
Focus: Cleburne, Romer

Review of Economic Regulation Redux 641-654

Focus: None (skim this reading)

Fundamental Interests and Equal Protection 654-655, 654-680 (skim)

Focus: Reynolds

Fundamental Interests and Welfare Rights 680-692

Focus: Rodriguez

Enforcing the Civil War Amendments 693-699, 723-759

Focus: Katzenbach, City of Boerne

IV. OFFICE HOURS AND CONTACT INFORMATION

My office hours will be Tuesday and Wednesday from 10 a.m.-noon in Room 360. Feel free to stop by to discuss questions on the class or anything else. No appointments are necessary during office hours. If you can’t make it during those hours or if I am unavailable then, which does happen, feel free to make an appointment to stop by at another time. I’m also happy to schedule lunch or coffee with groups of students.

I can be reached by phone at (205) 348-6110. You may also leave a note in my faculty mailbox or contact my assistant, Donna Morrow. I can be reached by email at phorwitz@law.ua.edu. I will try to return emails and calls promptly, but there may be delays depending on my availability or your question.

You must sign up for the TWEN page for this class. We’ll discuss the use of the TWEN page in class.

V. MAKE-UP CLASSES

If I need to miss a class and believe a make-up is necessary, I will schedule a make-up period before the end of classes. I have a couple of scheduled trips this semester, so you can expect at least one or two makeup classes.
VI. ATTENDANCE AND PARTICIPATION

Regular and punctual attendance is required. Each student is responsible for keeping track of his or her absences. Attendance will be taken at the start of class through distribution of an attendance sheet. If you are not in your seat at the beginning of class and do not personally initial the sign-in sheet at that time, you are considered absent. Students may initial only their own names, not those of other students. Lack of preparation, early departure, or inappropriate behavior may result in a student being marked absent.

Moreover, because this is not simply a case-parsing class, but ideally a wide-ranging discussion about constitutional law, I take seriously your obligation to read and think about the materials assigned for each class. Although I welcome volunteers, I do call on students. I expect anyone who has been called on to be ready to discuss the case. I do not expect perfection, but I will hold you to your obligation to do the reading and do your best to make sense of it and discuss it with me. To make things a little easier, only one half of the class will be on call during any given week: students whose last names begin with the letters A-M will be on call for a week, then N-Z, and so on. If you are on call for the week, be ready; a student who is unprepared for class may be counted as absent for that day. I still expect everyone, not just the on-call students, to come to class prepared and on time, and ready to focus on this class only. If you are aware in advance that you will be absent from class, or that you cannot do the reading, please let me know, or leave a message in my mailbox.

VII. LAPTOP POLICY

A modified NO LAPTOP POLICY is in effect for this class. Students are often uncomfortable with this policy. But I have had a good deal of experience with the costs and benefits of laptop use in class, and I am confident it will be to your benefit; indeed, many students have subsequently told me they learned better, retained more, and enjoyed the class more than any other class because of this policy. The policy works as follows:

1) Subject to the exceptions noted below, the use of laptops, Ipads, mobile devices, etc., is forbidden in class. If there is a medical need for an exception, you may address that with the Assistant Dean for Students.

2) Up to six students may sign up each day to take notes by laptop, subject to the conditions below. You may sign up as often as you wish. I will have a signup sheet with me and you may fill it out at the beginning of each week. Laptop use is, obviously, limited to note-taking, not the use of the Internet for any purposes.
3) If you sign up for laptop use, you **must** share your class notes for that day with your classmates. You will be expected to post your notes on the “Discussion” tab on the TWEN page no later than 5 p.m. on the Friday of the week during which you used a laptop. Allow me to note that some students have told me that they absolutely cannot learn unless they use a laptop—and yet have declined to use their laptop, because they didn’t want to share their notes with anyone else. If you sincerely believe that you absolutely need to use your laptop in order to learn, then that advantage ought to outweigh your reluctance to share your notes. Regardless, the rule stands: if you want to sign up to take notes via laptop, you must share those notes with your classmates by the end of the week. Keep in mind that even if you are using your laptop, you are still on call and expected to follow the class discussion and participate if called on.

4) To help fill the absence of laptop note-taking, I will occasionally distribute my own notes and summaries.

### VIII. GRADES

Grades will be determined as follows: 1) I will give a mid-term exam worth 30 percent of your grade. I have not determined the date of the exam yet (and I encourage you to let me know about other scheduled evaluations you have, like your briefs for Legal Research and Writing, so I can schedule it appropriately), but it will be after we have finished the Commerce Clause and related materials. I will try to give you your grades as quickly as possible after the mid-term, but you can expect some reasonable delay. Students are welcome to discuss their exams with me for purposes of improving on the final, although I will change grades only on account of mathematical or clerical errors. The exam will be between 60 and 90 minutes long and will be a closed-book exam unless I note otherwise. 2) You will also have a final exam during the exam period. It will be mostly closed-book, but you will be allowed to bring in an outline or checklist of one page, containing no more than 300 words. It will constitute 70 percent of your grade. Specific details and discussion concerning the final exam will be given in class, and I will hand out some practice questions. I would be happy to discuss your exams with you after grades have been turned in, for the sole purpose of discussing ways of improving your performance on future examinations. I will change grades only for mathematical or clerical errors.

### IX. DISCLAIMER

This is a syllabus, not a binding contract. In the words of Justice Holmes, “It is an experiment, as all life is an experiment.” Dates and details are subject to change. Actual mileage may vary. Void where prohibited.

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