Spring 2013

Course #764001
Constitutional Law, Special Problems:
Constitutional Cliffhangers

2 credit hours
Room A233

Professor Brian Kalt
Office: Room 355
kalt@law.msu.edu

Course Description and Objectives
The United States Constitution’s provisions for selecting, replacing, and punishing presidents contain serious weaknesses that could lead to constitutional controversies. This class begins by exploring six such potential controversies, including the criminal prosecution of a sitting president, a high-stakes struggle over the constitutionality of the line of succession, and a two-term president’s attempt to stay in power.

Besides being individually dramatic, these controversies provide an opportunity to think about how constitutional procedures can best be designed, interpreted, and repaired. Because they would all carry enormous political consequences, these controversies also shed light on the delicate and complicated balance between law and politics in American government.

After discussing these six particular situations, students in this class will find their own constitutional cliffhangers to write about. We will discuss how to locate and identify them, how to research and write about them, and finally, how to find realistic solutions (if any) for them. Students will present their papers and critique each other’s efforts.

At the conclusion of the course, students should have improved their mastery of the basic techniques of constitutional interpretation, and gained experience in designing realistic approaches to dealing with high-stakes but technical constitutional problems.

Reading
The core text for this class is my book, CONSTITUTIONAL CLIFFHANGERS: A LEGAL GUIDE FOR PRESIDENTS AND THEIR ENEMIES. There are some additional readings, but they are all available free of charge online. This is an unusually light amount of reading for a two-credit class. This partly reflects the highly concentrated scheduling of the class meetings (four days in January and five in March) which don’t leave you with as much time to read things as a normal class would. It also reflects the extent to which large portions of class sessions will be driven by semi-spontaneous discussions.
Paper

The centerpiece of your participation in this course will be a paper in which you discuss a constitutional cliffhanger of your own. The paper should be at least 5,000 words, not counting footnotes, but it should also be as long as it takes to cover your topic thoroughly. It is due by noon on May 8, 2013, but you will need to turn in a preliminary draft by February 15.

Attendance

Law School policies on attendance, exams, grading, and academic misconduct apply. (See your Student Handbook (www.law.ua.edu/students/handbook.pdf) for copies of these documents and Associate Dean Arrington for questions you might have.) Attendance is particularly important for this course, because participation will constitute a substantial portion of your grade (see “Grading,” below), and because it is hard to participate adequately if you aren’t there.

Grading

Your paper will count for \( \frac{2}{3} \) of your grade, and your participation in class discussions, including critiques of your classmates’ papers, will represent the remaining \( \frac{1}{3} \) of your grade.

General Policies

Paying Attention: The Code of Student Conduct requires that students behave in a manner that is conducive to a teaching/learning environment. Because much of this class will center on group discussion, it is particularly important that you respect your classmates by giving your full attention to the class. In particular, I have very low tolerance for extra-curricular use of computers and phones in my class. Even at its most stimulating, this class will not be more interesting than the entire Internet (indeed, what is?), but your attention and participation are vital to a successful semester, and the Internet and your messages will still be there when class is over.

Code of Academic Conduct: All students in attendance at the University of Alabama are expected to be honorable and to observe standards of conduct appropriate to a community of scholars. The University expects from its students a higher standard of conduct than the minimum required to avoid discipline. Academic misconduct includes all acts of dishonesty in any academically related matter and any knowing or intentional help or attempt to help, or conspiracy to help, another student. The Academic Misconduct Disciplinary Policy will be followed in the event of academic misconduct.

Accommodating Disabilities: The Law School is committed to meeting the needs of students with physical, learning, and other disabilities, and provides appropriate accommodations and services tailored to each person’s specific requirements. The Law School’s associate deans and the University’s Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact Associate Dean Arrington at (205) 348-5750 or carrington@law.ua.edu, so that their needs for support services can be evaluated and accommodated in a timely manner.
Schedule

JANUARY SESSIONS

Session 1
Tuesday, January 8, 8:00 – 9:35 am

Read:
1. The Constitution, [http://www.usconstitution.net/const.html](http://www.usconstitution.net/const.html)
2. CONSTITUTIONAL CLIFFHANGERS, Introduction and Chapter 7, including endnotes

We will discuss four fundamental questions: What is a constitutional cliffhanger? Why do they arise? How are they ever fixed? How many can you come up with in a quick run through the Constitution?

Session 2
Tuesday, January 8, 3:30 – 5:20 pm

Read:
CONSTITUTIONAL CLIFFHANGERS, Chapters 1–2, including endnotes

We will begin with a discussion of the five main sources of constitutional decision making: text, structure, history, case law, and prudential considerations.

We will then discuss the situations in the first two chapters (prosecuting a sitting president, and presidential self-pardons). You will choose sides and press the arguments that you think are the most persuasive. Doing this, you will come to recognize what constitutional interpretive techniques you personally find most and least appealing.

We will then do some drafting exercises. You will attempt to redraft the relevant constitutional provisions to avoid the cliffhangers in Chapters 1–2.

Session 3
Wednesday, January 9, 8:00 – 9:35 am

Read:
CONSTITUTIONAL CLIFFHANGERS, Chapters 3–5, including endnotes

We will discuss the situations in each of the next three chapters (presidential disability, a succession struggle, and ex-presidential impeachment). As in Session 2, you will choose sides and press the arguments that you think are the most persuasive, and again, this will help you to recognize what constitutional interpretive techniques you personally find most and least appealing.

We will then repeat the drafting exercises from Session 2, as you redraft the relevant constitutional provisions to avoid the cliffhangers in Chapters 3–5.
Session 4  
Wednesday, January 9, 3:30 – 5:20 pm

Read:  
CONSTITUTIONAL CLIFFHANGERS, Chapter 6, including endnotes

We will catch up on our previous discussion, and then move on to discuss the situation in the final chapter (term-limit evasion). We will then repeat the drafting exercise as you redraft the relevant constitutional provisions to avoid the cliffhanger in Chapter 6.

Following this, we will reflect on some general themes from the book. In particular, we will consider the changing nature of the presidency and how these largely non-legal issues can affect constitutional interpretation as a general matter.

Session 5  
Thursday, January 10, 8:00 – 9:35 am

Read:  

These articles discuss a non-presidential constitutional cliffhanger, and they afford us an opportunity to think more broadly than just about the presidency. They also give us an opportunity to discuss in more detail how to craft realistic solutions to the constitutional problems you will identify.

Session 6  
Thursday, January 10, 3:30 – 5:20 pm

We will turn our attention to your own constitutional cliffhangers. Come to class with two or three scenarios that you think you might like to write about. They can center on any mechanical provision in the Constitution, not just ones about the presidency.

The group will help probe the bounds of your scenarios. The goal of this process is for you to identify one that you would like to write about, and to begin to refine the “story” that will drive your paper.
Session 7  
Friday, January 11, 8:00 – 9:35 am

This will be our last session in the January portion of the class. We will continue to discuss and refine your scenarios. We will also discuss research techniques, so you should think about what sources you intend to use. By the end of the class, you will have finalized your topic and constructed a basic research plan. Finally, we will discuss the best ways to structure and write these sorts of research papers, which are distinct from legal-practitioner writing, but also from other, more academic writing.

Intrasession

During the seven weeks between our January and March Sessions, you will research and write up your papers. Feel free to send me multiple drafts via email, but **definitely send at least one before February 15**.

MARCH SESSIONS

In these sessions, you will present your papers to me and the class. Your presentation should take 30 minutes or so, followed by a full round of critiques and Q&A from the rest of us.

We have 805 minutes of class time in the March Sessions. Depending on enrollment in the class (which we should know in January), we may not need all of that time for your presentations. If that is the case, I will adjust the syllabus accordingly, and add some sessions of other worthwhile quick readings or additional topics for us to consider.

Sessions 8 & 9  
Monday, March 4  
8:00 – 9:35 am; 3:30 – 5:20 pm

Sessions 10 & 11  
Tuesday, March 5  
8:00 – 9:35 am; 3:30 – 5:20 pm

Session 12  
Wednesday, March 6  
8:00 – 9:35 am

Sessions 13 & 14  
Thursday, March 7  
8:00 – 9:35 am; 3:20 – 5:20 pm

Session 15  
Friday, March 8  
8:00 – 9:35 am