I. INTRODUCTION

Welcome to Constitutional Law. This 4-credit course meets on Tuesdays, Thursdays, and Fridays, from 9-10:10 a.m. in Room 273. It addresses basic questions of constitutional structure, governmental powers, and individual rights.

II. COURSE MATERIALS AND BACKGROUND READING

We will be using William Funk’s *Introduction to American Constitutional Law: Structure and Rights* (West 2014), as well as the most recent annual supplement to the casebook, which is available online at [http://www.westacademic.com/Util/Downloads/FileDownload.aspx?NSIID=1475897](http://www.westacademic.com/Util/Downloads/FileDownload.aspx?NSIID=1475897). I may have occasion to assign handouts as well.

There are several excellent constitutional law treatises available. 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. *Read the cases, not just the treatise(s) or study aids!* I recommend particularly the most recent editions of Erwin Chemerinsky, *Constitutional Law: Principles and Policies* or John E. Nowak and Ronald D. Rotunda, *Constitutional Law*. Most students find the Chemerinsky book especially useful, and I have ordered a number of copies for the bookstore. But I strongly advise you to use Chemerinsky as a supplement, not a substitute for your own reading. I should add that Chemerinsky has his own, invariably politically and jurisprudentially liberal, point of view. That’s fine, but you should realize that he offers a partial point of view, and be sure to read him critically and reach your own conclusions. 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 all 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. They have their uses, to be sure.
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 20-30 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 at first, but after that we will often move quite quickly. **You are responsible for consulting Funk’s 2016 supplement to see whether there are any additional materials you should cover in addition to those listed below.** The supplement provides the page numbers where those readings should be inserted.

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 listed the materials by section, *not by day*, so please be aware of where we are in the reading and keep up.

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Focus: Missouri, Medellin

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Focus: Morrison

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IV. “Substantive Due Process”

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Focus: Lochner, Williamson

Modern SDP: Privacy and Abortion 591-647, Supp. 21-29

Focus: Roe, Casey, Carhart, Hellerstedt

Death and Tradition 673-682

Focus: Glucksberg

Sex, Marriage, Family, and SDP-Equal Protection 653-64, 684-85, Supp. 29-44

V. Equal Protection and its Enforcement

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Focus: Washington v. Davis

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Focus: Bakke, Fisher II

Gender 749-67

Focus: US v. Virginia

Other Groups and Classifications 767-97, 828-29, Supp. 54-55
“Fundamental Rights” Equal Protection 797-807, 817-20, Supp. 55

*Focus: Reynolds*

Enforcement of the Civil War Amendments 159-65 (refresh), 301-24

*Focus: Boerne, Garrett, Hibbs*

IV. OFFICE HOURS AND CONTACT INFORMATION

My office hours will be Monday and Wednesday from 1-3 p.m. in Room 360. Feel free to stop by to discuss 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 sometimes happen, feel free to make an appointment to stop by at another time. I’m also happy to schedule coffee or drinks with groups of students. I have found those social occasions great for getting to know you and the students have found them great for getting the most out of their law school experience, and I encourage you to take me up on this very sincere invitation.

I can be reached by phone at (205) 348-6110, although email is probably the best way to contact me. You may also leave a note in my faculty mailbox or contact my assistant, Donna Tucker (dtucker@law.ua.edu). 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.

V. MAKE-UP CLASSES

I will have to travel occasionally during the semester, especially during March. Thus, you can expect at least two and possibly more makeup classes. I will schedule them as soon as possible, keeping your own class schedules in mind. You are expected to attend them, like normal classes, and I will take attendance for them, but I understand that there may be individual conflicts and will ensure that those classes are recorded for students who absolutely cannot be there.

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 don’t 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 sometimes uncomfortable with this policy, although the profusion of studies showing the learning benefits of a no-laptop rule, and the increasing number of professors who have such a policy, have eased this reaction over time. 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 ten 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. Students with a medical or other exception need not use the signup list.
3) If you sign up for laptop use, you must share your class notes for that day with your classmates. I will set up a TWEN page for the course as soon as possible, and 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 observe 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) I understand that some students purchase only the electronic version of the casebook. If, and only if, you are one of those students, you may bring in a tablet and use it only for the casebook: no Internet, email, etc.

5) To help fill the absence of laptop note-taking, I will occasionally distribute my own notes and summaries. Provided you do not distribute them beyond your classmates, you are also welcome to make audio recordings of any of my classes. You needn’t ask my permission and may feel free to place the recorder at the front of the room at any time prior to the beginning of class.

6) Students violating these policies may be subject to bizarre and imaginative punishments.

VIII. GRADES

Grades will be determined as follows:

1) I will give a mid-term exam worth 35 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. The reason for this is that I deplore the practice of giving 100 percent finals. It is of dubious assistance in helping you to learn and remember the materials, it is unduly stressful, and everyone has a bad day from time to time. With regret, and based on past experience, I cannot promise that you will receive your grades for the midterm prior to the end of exams. But I will discuss the midterm, provide some model answers, try to identify and meet with students who struggled with the midterm, and be happy to discuss it with any individual student who wishes to meet. Although I acknowledge that it would be ideal for you to have your midterm before the end of semester, even if that does not occur you will still at least have the benefit of not having to stake everything on one exam on one day. The exam will be about 60 minutes long and will be a closed-book exam, with a one-page, 300-word “outline” allowed, unless I note otherwise.
2) You will also have a final exam during the exam period. It will be 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 65 percent of your grade. Except as otherwise noted, materials covered by the midterm will not be covered on the final exam. Its length will be reduced due to your having taken the midterm. 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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