AMERICAN CONSTITUTIONAL LAW I
FALL 2011

ADJUNCT PROFESSOR DEREK B. BRETT, ESQ.

GENERAL INFORMATION

(1) Office Location & Office Hours:

I do not maintain a UCF-office location. All messages should be referred either through the Political Science Department; via email to derek@thebrettlawfirm.com, or by telephoning me directly at 407-422-1459. Email contact is the preferred method.

(2) Required Texts:

Constitutional Law for a Changing America: Institutional Powers and Constraints, by Lee Epstein & Thomas G. Walker (6th or 7th Edition) – including the supplemental card that allows for online access for recent case.

Constitution of the United States of America

(3) Optional Texts:

Additional readings will be announced and/or distributed in class. In particular, these readings will focus on rulings from the most recent Supreme Court term(s), and articles regarding the various uses of executive and legislative power.

(4) Grading System:

Mini-Exam: **10%**
Mid-Term Essay Examination: **30%**
Final Examination: **40%**
Class Participation and Attendance: **20%**

The student will observe the potential significance of classroom attendance and participation. Ultimately, **20%** of the overall course grade will rely upon these factors. Therefore, it is highly recommended that serious effort be dedicated to participating in any and all interactive review of reading assignments, and in-class discussion topics. I am serious – your final grade will be impacted by your class participation or lack thereof.

It is expected that every assigned case will be properly briefed prior to class. Students will be properly briefed prior to class. Students will be randomly selected to lead class discussion via their class brief(s). You may choose to complete such on large index cards, divided into the following sections:

(a) *Case Name and Year;*
(b) *Name of the Supreme Court Justice authoring the Opinion of the Court;*
(c) *Facts;*
(d) *Issues;*
(e) *Holding(s);*

(f) *Rationale;*
(g) *Significant Concurrences and/or Dissents.*

Trust me: your case brief should not exceed the space provided on the large index care.

There will be three (3) examinations: a mini-exam (multiple choice); a mid-term exam; and a final exam. It is anticipated that this method is consistent with a scheme adopted by law school professors. Similarly, the mid-term and final exams will be entirely essay. The final exam will incorporate not only subjects from the second half of the course, but potentially earlier course principles. By all means, students are expected to be original, even innovative in their answers to examination questions. Critical thinking skills are key to success in this course.

I do award grades based upon a +/- scale. However, I do so in a way that I believe will benefit the individual student. I will generally award plus (+) grades (e.g., B+, C+), when students meet those particular averages. I will only give minus (-) grades when a student falls (by perhaps a few-tenths of a percentage point) to the next lower grade but perhaps merits consideration for something more. For example, if a student averages 79.8 for his/her course grade, I am willing to consider 'bumping' the grade up from a C+ to a B-.

COURSE DESCRIPTION

Constitutional law addresses the contents of the U.S. Constitution and the interpretation of those contents. We will look at the organization of the United States Government (i.e., the distribution and execution of those powers); and the relations between the Government and persons under its jurisdiction (i.e., under the Bill of Rights). Under the United States' system, the chief problems of constitutional law center on the basic matter of judicial review, on relations between and among the three (3) branches of government, on the federal system's distribution of powers between the federal and state governments, and on the restrictions or limitation on government in either procedural or substantive (e.g., due process) contexts.

This course is primarily for the beginning student in constitutional law.

How does constitutional law relate to the study of political science? You will tell me.

We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time. – *Justice William Brennan*

COURSE OBJECTIVES

The objective of this course is to introduce you to the important role that the United States Constitution has in orienting American politics and governance. With this end in mind, we will explore the Constitution, its various interpretations, and the role of the judiciary in constitutional application, examples of the influence it has had on the function of government, and the case law that has emanated from its interpretation. The focus of this course is more than the memorization of cases and constitutional principles. Hopefully, this class will contribute to the development of your analytical and reasoning skills; the strengthening of your reading comprehension; the expansion of your vocabulary and verbal expression; the improvement of your writing skills; and the heightening of your personal expectations and discipline.

TENTATIVE COURSE OUTLINE

**** Cases Listed Are Not All-Inclusive ****

**** Scheduling is Subject to Change at Professor's Sole Discretion ****

FIRST WEEK

- Introduction to the U.S. Constitution
- Understanding the U.S. Supreme Court
- Institutional Authority

SECOND WEEK

Chapter 2 - The Judicial Power

Establishment of the Federal Judiciary/Judicial Review

- *Marbury v. Madison*
- *Martin v. Hunter's Lessee*
- *Eakin v. Raub*

Constraints on the Judicial Power: Article III

- *Ex parte McCardle*
- *Hamdan v. Rumsfeld*
- *Baker v. Carr*
- *Nixon v. U.S.*
- *Flast v. Cohen*
- *Hein v. Freedom From Religion Foundation, Inc. (If Not Included in Text; can be located at http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=06-157)*
- *Elk Grove Unified School District v. Newdow (If Not Included in Text; can be located at http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=02-1624)*

- *Massachusetts v. EPA (If Not Included in Text; can be located at http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=05-1120).*
- *Summers v. Earth Island Institute (If Not Included in Text; can be located at http://laws.findlaw.com/us/000/07-463.html)*

THIRD WEEK

Chapter 3 - The Legislature

Congressional Authority over Internal Affairs:
Institutional Independence & Integrity

- *Powell v. McCormack*
- *U.S. Terms Limits, Inc. v. Thornton*
- *Gravel v. U.S.*

Sources and Scope of Legislative Powers

- *McCulloch v. Maryland*
- *McGrain v. Daugherty*
- *Watkins v. U.S.*
- *Barenblatt v. U.S.*
- *U.S. v. Curtiss-Wright Export Corp.*
- *South Carolina v. Katzenbach*
- *NAMUDNO v. Holder (Not Included in Text; can be located at http://brennan.3cdn.net/e7f01e2f5ca3b5380e_vdm6bqzes.pdf)*

FOURTH WEEK

Chapter 4 - The Executive

Article II: Basic Considerations

- *Bush v. Gore*

The Contours of Presidential Power

- *In re Neagle*

Domestic Powers of the President

- *Clinton v. City of New York*
- *Morrison v. Olson*
- *Myers v. U.S.*
- *Humphrey's Executor v. U.S.*

Please anticipate additional cases stemming from exertions of Executive Power under the current presidential administration.

FIFTH WEEK

The 'Am I Getting It' Mini-Exam

SIXTH WEEK

Domestic Powers of the President (continued)

- *U.S. v. Nixon*
- *Mississippi v. Johnson*
- *Nixon v. Fitzgerald*
- *Clinton v. Jones*
- *Ex parte Grossman*
- *Murphy v. Ford*

The President and Foreign Policy

- *U.S. v. Curtiss-Wright Export Corp.*

SEVENTH WEEK

Separation of Powers System in Action

Domestic Powers

- *Mistretta v. U.S.*
- *I.N.S. v. Chadha*
- *Bowsher v. Synar*

Presidential Power During War and National Emergencies

- *The Prize Cases*
- *Ex parte Milligan*
- *Ex parte Quirin*
- *Korematsu v. U.S.*
- *Youngstown Sheet & Tube Co. v. Sawyer*
- *Dames & Moore v. Regan*
- *Hamdi v. Rumsfeld*
- *Hamdan v. Rumsfeld*
- *Boumediene v. Bush (If Not Included in Text; can be located at* http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=06-1195

- *Rasul v. Bush (If Not Included in Text; can be located at http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?navby=case&court=US&vol=542&invol=466*

EIGHTH WEEK

***Mid-Term Essay Examination* (Due Date: October 28, 2010, at 6PM)**

NINTH WEEK

Federalism

Nation-State Relations: The Doctrinal Cycle

- *McCulloch v. Maryland*
- *Dred Scott v. Sandford*
- *Hammer v. Dagenhart*
- *U.S. v. Darby Lumber*
- *National League of Cities v. Usery*
- *Garcia v. San Antonio Metropolitan Transit Authority*
- *N.Y. v. U.S.*
- *Printz v. U.S.*

TENTH WEEK

Federalism in Elections

- Discussion of *Bush v. Gore* and Constitutional Interpretation in Context of 2000 and 2004 (and 2008?) President Elections

Federalism (cont.)

The Eleventh Amendment

- *Alden v. Maine*

New Judicial Federalism

- *Michigan v. Long*

National Preemption of State Laws

- *State of Missouri v. Holland*
- *Crosby v. National Foreign Trade Council*
- *Pennsylvania v. Nelson*
- *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*

ELEVENTH WEEK

Commerce Power (p. 424-430; 453-489)

Constitutional Foundations of the Commerce Power

- *Gibbons v. Ogden*

Supreme Court and the New Deal

- *NLRB v. Jones & Laughlin Steel Corp.*
- *Wickard v. Filburn*
- *U.S. v. Lopez*
- *U.S. v. Morrison*
- *Gonzalez v. Raich*
- *Gonzalez v. Oregon (Not Included in Text – Can Be Located at http://supct.law.cornell.edu/supct/html/04-623.ZS.html)*

TWELFTH WEEK

VETERANS DAY – NO CLASS

THIRTEENTH WEEK

Pre-Final Q&A and In-Class Review

Final Essay Examination (Due December 2, 2010, at 6PM)

FINAL COURSE NOTES:

I AM REASSURING YOU, IN THE BODY OF THIS SYLLABUS, OF MY REASONABLE AVAILABILITY THROUGHOUT THE SEMESTER. I MAKE GREAT EFFORTS TO BE CONTINUOUSLY AVAILABLE FOR STUDENT QUESTIONS AND CONCERNS. IT IS INCUMBENT UPON YOU TO ASK QUESTIONS. IT IS INCUMBENT UPON YOU TO SEEK ASSISTANCE. THIS COURSE IS ABOUT SELF-RESPONSIBILITY AND LEARNING TO EXERCISE CRITICAL THINKING AND ADVANCED WRITING SKILLS.

***** PLEASE READ CAREFULLY THIS SYLLABUS. ** THERE IS NO NEED TO ASK QUESTIONS THAT CAN BE READILY ANSWERED, HEREIN. ATTENDING CLASS IS CRITICAL. DO NOT COMPLAIN IF YOU MISS A SESSION, OR ANY ADJUSTMENT IN THE SCHEDULE. THE THEME OF THIS CLASS IS STUDENT AS WORKER.***

I CONDUCT REVIEW SESSIONS FOR BOTH THE MIDTERM AND FINAL EXAMS. NORMALLY, THE MID-TERM REVIEW OCCURS ON THE WEEKEND FOLLOWING MY DISTRIBUTION OF THE EXAMS, IN THE STUDENT LOUNGE ON THE THIRD FLOOR OF THE STUDENT UNION. THE DATES AND TIMES FOR ANY REVIEWS WILL BE ANNOUNCED AT OR BEFORE THE TIME I DISTRIBUTE EACH RESPECTIVE EXAM.

I DO NOT NEGOTIATE GRADES. I COMMIT TO GRADING EACH PAPER FAIRLY. I AM UNIMPRESSED BY STUDENTS WHO ATTEMPT TO PERSUADE ME TO AWARD CERTAIN GRADES. YOUR GRADE WILL BE CONTINGENT UPON YOUR ASSESSED EFFORTS.

I DO AWARD EXTRA CREDIT. THE EXTRA CREDIT WILL BE AWARDED FOR ALL EXAMS WITH ME DECLARING TO WHICH EXAM ANY EXTRA CREDIT WILL BE ASSIGNED. I REQUIRE ACTUAL PROOF IN ORDER TO AWARD SUCH EXTRA CREDIT. THIS SEMESTER, EXTRA CREDIT WILL BE APPLIED AS FOLLOWS:

- ***BLOOD/PLATELET DONATION OR FOUR (4) HOURS OF APPROVED, NON-POLITICAL, COMMUNITY SERVICE WORK – 5 POINTS EXTRA CREDIT VALUE ON MINI-EXAM;***
- ***POTENTIALLY, ATTENDANCE AT A CAMPUS EVENT(S) TO BE LATER DESIGNATED – 5 POINTS EXTRA CREDIT VALUE (I WILL DETERMINE WHICH PARTICULAR EXAM SUCH CREDIT CAN BE APPLIED).***
- ***A MINIMUM OF EIGHT (8) HOURS CAMPAIGN VOLUNTEERING ON ANY POLITICAL OR ISSUE-BASED CAMPAIGN, AWARDED WITHOUT REGARD TO POLITICAL AFFILIATION OR ISSUE POSITION (INCLUSIVE OF WORK WITH ANY LOCAL PUBLICATION FOCUSING UPON THE ELECTIONS) – 10 POINTS EXTRA CREDIT VALUE ON THE FINAL EXAM.***

I WILL AWARD NO MORE THAN 10-12 POINTS OF EXTRA CREDIT PER EXAM. EXTRA CREDIT IS PROVIDED TO STUDENTS IN LIEU OF ANY GRADE CURVE. I DO NOT CURVE EXAM GRADES – I ALLOW FOR EARNED STUDENT EXTRA CREDIT TO SERVE IN PLACE OF A CURVE.

FINALLY, AS I ALLUDE TO ABOVE, I RESERVE THE ABSOLUTE RIGHT TO CHANGE THE SCHEDULE (AND DIRECTION) OF THE COURSE, WITHOUT NOTICE. ANY CHANGES TO THE SCHEDULE WILL BE COMMUNICATED TO YOU BY ME (OR MY DESIGNATED REPRESENTATIVE) PROMPTLY DURING CLASS. YOUR CONTINUED ENROLLMENT IN THIS COURSE CONSTITUTES YOUR IMPLICIT CONSENT TO ALL TERMS AND CONDITIONS STATED HEREIN.