CONSTITUTIONAL LAW I
SYLLABUS

Professor Tiffany C. Graham
TR 3:30-4:45
Fall Term 2009
Room 206

Office Number 239
Extension 2036
tgraham@laverne.edu

Materials

Required:

• GERALD GUNTHER & KATHLEEN SULLIVAN, Constitutional Law (16th ed.)
  (Foundation Press 2007).
• GUNTHER & SULLIVAN 2009 Supplement

Recommended (if you wish to have additional guidance):

• LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW (Foundation, 3d ed. 2000).
• ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES (Aspen 2006).

Office Hours

• Tuesday – 8:30-10:00; 10:30-12:30
• Wednesday – 8:30-10:30; 1:00-2:00
• Thursday – 8:30-10:00; 10:30-12:30

Class Participation

Constitutional Law is a course that benefits greatly from vibrant class discussion. I will therefore expect everyone to participate. A significant form of participation will occur when students are on call. I will assign students to panels, each one of which will be on call for an entire assigned week. Within the confines of the panel that is on call, I will use a system of blind-calling. You will know in advance the panels to which you have been assigned, as well as the weeks during which your panel will be on call. It is not outside of the realm of possibility that a student will be called on multiple times, even during the same week his or her panel is on call. I will allow on-call students one opportunity to pass. If you pass more than once, I reserve the right to mark you absent and call on you blindly in the future, even when your panel is not on-call. It is okay if you do not know the answer to a question; I do not expect you to know everything. I
do, however, expect you to try.

I also encourage wide-ranging class discussion, so please be prepared to participate, even on those days when you are not on call.

**Attendance Policy**

Students are expected to attend all classes, and be on time for all classes. I will provide sign-in sheets for every single class. *Please make sure you sign the sheet.* If you do not do so, you will be counted as absent.

**Exam and Grading**

The final exam will be a four-hour, open-book, open materials exam. The exam may cover material contained in the assigned reading but not discussed in class. You will be free to consult any written materials you think will help in writing the exam, although no knowledge beyond the assigned reading and lectures will be expected or rewarded. You will not be permitted to discuss the exam with any other person. Grades will be based entirely on the final exam.

Please be forewarned: the open-book, open materials exam format is *not* an easier format. In fact, many students find that it is harder than the closed-book format because the professor may feel free to write a harder exam. If you do not study extremely hard for an open-book exam, you may find yourself spending precious time flipping through your notes rather than identifying issues and crafting your responses. Moreover, since every student will walk into the exam with his or her notes, everyone will be operating from at least the same baseline when the exam begins. Only those students who have mastered the substance of the law and who understand the manner of its application will find themselves at or near the top of the curve.

**Reading Assignments**

Below are the assigned readings for the topics I expect to cover during the semester. Dates and readings are subject to change. All page numbers refer to the casebook unless otherwise noted.

1. **August 18**

   *Topics:*

   **Overview**
   - Read pp. A-1 – A-14 (Constitution of the United States)
     Federalist ## 45-47 (on TWEN)

   **Judicial Review**
   - Read pp. 1-9 and n. 5 (pp. 12-14)
2. **August 20**
   *Topics:*
   - *The Authority of the Supreme Court to Review State Court Judgments*
     - Read pp. 15-19
   - *Interpretive Authority and the Supreme Court – Who Gets the Last Word?*
     - Read pp. 19-27

3. **August 25**
   *Topics:*
   - *Political Restraints on the Supreme Court; Constitutional Limits on the Supreme Court – Advisory Opinions, Mootness, Ripeness; Standing*
     - Read pp. 27-48

4. **August 27**
   *Topic: Political Question Doctrine*
   Read pp. 49-59

5. **September 1**
   *Topic: Early Articulations of the Scope of National Power in the Federal System*
   Read pp. 60-71; nn. 4-5 (pp. 74-76)

6. **September 3**
   *Topic: Federal Limits on the Scope of State Power*
   Read pp. 76-81

7. **September 8**
   *Topics:*
   - *Early Understandings of the Commerce Power: 1824-1936*
     - Read pp. 82-96
   - *The Decline of Limits on Commerce Clause Doctrine: 1937-1995*
     - Read pp. 96-106

8. **September 10**
   *Topic: New Limits on the Commerce Power Since 1995*
   Read pp. 106-126

9. **September 15**
   *Topic: Tenth Amendment Limits on Congressional Regulation*
   Read pp. 126-143

10. **September 17**
    *Topic: Eleventh Amendment Limits on Congressional Power and the Notion of Dual Sovereignty*
    Read pp. 143-149
11. September 22
   **Topics:**
   *The Taxing and Spending Powers as Regulatory Tools*
   • Read pp. 150-166
   • Exam Review

12. September 24
   **Topics:**
   *The Dormant Commerce Clause as a Federally-Based Limit on the Scope of State Regulatory Authority – Early Developments*
   • Read pp. 174-183 (stop at n. 4)

   *Facial State Discrimination and Home Processing Requirements*
   • Read pp. 183 (starting with n. 4)-187 (stop at the end of the case); 188 (starting with n. 3) – 202

13. September 29
   **Topics:**
   *Market Participant Exception; State Protectionism*
   • Read pp. 202-213

   *The Modern Court’s Balancing Test*
   • Read pp. 213-222

14. October 1
   **Topics:**
   *The Modern Court’s Balancing Test, cont.*
   • No add’l reading on this topic

   *The Privileges and Immunities Clause*
   • Read pp. 222-229

15. October 6
   **Topic:** Preemption of State Authority and Consent to Otherwise Invalid State Laws
   Read pp. 229-240
16. October 8
   Topics:
   Executive Encroachment on the Legislative Domain; Executive Authority Over Foreign and Military Affairs
   • Read pp. 244-260
   Executive Discretion in Wartime
   • Read pp. 260-270

17. October 13
   Topic: Executive Discretion in Wartime, cont.
   Read pp. 270-291

18. October 15
   Topics:
   Congressional Encroachment on the Executive Domain
   • Read pp. 291-306
   Congressional Control Over Executive Officers
   • Read pp. 306-320

19. October 20
   Topics:
   Executive Privilege and Immunities
   • Read pp. 320-338
   • Exam Review

20. October 22
   Topics:
   Early Conceptions of the Applicability of the Bill of Rights to the States
   • Read pp. 339-348
   “Due Process” and the Incorporation Controversy
   • Read pp. 354-361

21. October 27
   Topic: Economic Regulation and Liberty of Contract – the Lochner era
   Read pp. 362-375

22. October 29
   Topic: Decline and Fall of the Lochner Era
   Read pp. 375-384
23. November 3  
Topic: Constitutional Safeguards of Economic Rights I: the Takings Clause  
Read pp. 384-401

24. November 5  
Topic: Constitutional Safeguards of Economic Rights II: the Takings Clause, cont., and the Contracts Clause  
Read pp. 402-413

25. November 10  
Topic: Modern Substantive Due Process Doctrine I: Contraception  
Read pp. 413-424

26. November 12  
Topic: Modern Substantive Due Process Doctrine II: Abortion (Roe)  
Read pp. 424-434

27. November 17  
Topic: Modern Substantive Due Process Doctrine II: Abortion (Casey and Carhart)  
Read pp. 434-450

28. November 19  
Topic: Modern Substantive Due Process Doctrine III: Family Relationships and Sexuality  
Read pp. 450-469

29. November 24  
Topic: Modern Substantive Due Process Doctrine IV: Right to Die  
Read pp. 469-480

November 26 – No Class

30. December 5  
Topic: Final exam review