

**U. of Minnesota Law School**  
**Constitutional Law I, fall '09**  
**Prof. Heidi Kitrosser**  
**Thursdays & Fridays, 1:25pm – 2:40pm, room 15**

**Course Overview:** Constitutional Law I focuses on the structuring of power among the three federal branches and between the federal and state governments. It breaks down into three rough categories of study: (1) Federalism, or the relationship between the federal and state governments, (2) Separation of powers, or the relationship between the legislative, executive and judicial branches of the federal government, and (3) Judicial review, or the scope of federal court powers to review and invalidate decisions of lower courts, the other federal branches and state governments.

People often think that these topics sound dry compared to the individual rights topics (such as abortion, desegregation and affirmative action) that you will study in Constitutional Law II. Well, they are dry. (Just kidding) In reality, these topics encompass some of the most pressing issues of our day. These are issues that not only relate to important current events, but that raise fundamental questions about matters such as the scope of our federal government, the leeway that states have to refuse federal directives, the leeway that the President has to keep information from Congress and the judiciary, and the leeway that the President has to circumvent statutory mandates. My hope and intent is that this course will give you not only an ability to interpret and make arguments about the words in the Constitution and relevant case law, but about current controversies ranging from executive privilege to the firing of several U.S. Attorneys to warrantless wiretapping to state attempts to impose environmental standards that exceed federal regulatory standards.

**Course Materials:**

- \* Casebook: Sullivan and Gunther, Constitutional Law, 16<sup>th</sup> edition
- \* Casebook supplement: Sullivan & Gunther, 2009 supplement

In addition to the casebook & the casebook supplement, I will occasionally provide separate supplemental materials, most or all of which will be posted in advance on the course's TWEN site. Please be sure to keep track of any supplemental materials that I provide as they are considered part of your course materials.

***Be sure to enroll yourself in the TWEN course for this class.***

**Office Hours and Related Issues:**

My office is room # 334. My scheduled office hours for the fall semester '09 are on Wednesdays from 12:30pm – 2pm. If you are unable to drop by during that time and would like to talk to me, please contact me by e-mail to make an appointment.

Generally, I prefer that you ask me substantive questions in person rather than by e-mail. If you have a question that you feel can efficiently be answered by e-mail, go ahead and send it to me, but if I feel that it is too unwieldy for an e-mail response I will suggest that you come by to discuss it with me in person.

**Class Discussions / Participation:**

Discussion between students and between the professor and students are an important part of class. *The presumption every day is that you will be present and prepared to be called on “cold.” If an extraordinary circumstance arises that causes you to be unprepared for a class that you attend, you must let me know in advance – ideally by e-mail prior to class but at minimum in person right before the beginning of class.* As indicated below under “Grading,” I retain the discretion to adjust your grade downward for excessive absence or lack of preparation, and to adjust your grade upward for extraordinary participation.

**Grading:**

Your grade will be based on an exam at the end of the semester. However, as noted above, I may revise your grade (up or down) based on class attendance and participation.

The exam will be an 8-hour, open-book and open-note essay exam that you must take on computer. There will be a word limit. I will determine the specific word limit when I write the exam. If you exceed the word limit you will receive no credit for any words that go beyond the limit. Trust me, this policy is enforced and can substantially impact your grade. You will be required to write the number of words in your exam on the front page of the exam.

**Last day of class / pre-exam Q & A session:**

There will be *no class* on Wednesday, 12/9, which would otherwise have been our last class session for the semester (Wednesday, 12/9 is an “administrative Friday” which is why we would otherwise have had class that day – see the law school academic calendar if you’d like further clarification). In lieu of that last class, I will schedule a Q & A session for sometime shortly before your final exam, date and time TBA.

**List of Planned Assignments / Course Outline:**

**I. Introduction to Constitutional Interpretation: The Example of the Second Amendment**

**Day 1:** supp. reading #1

**II. Federalism**

**A. Introduction to Federalism, to Congress' Enumerated Powers and to the Necessary and Proper Clause**

**Day 2:** Casebook, pp. 60-76

**B. The Commerce Clause**

**Day 3:** Casebook, pp. 82 - 96

**Day 4:** Casebook, pp. 96 - 106

**Day 5:** Casebook, pp. 106 - 119

**Day 6:** Casebook, pp. 119 - 126

\* supp. reading #2 (download from TWEN)

**C. The 10<sup>th</sup> Amendment**

**Day 7:** Casebook, pp. 126 – 143

**Day 8:** \* Day 7 materials continued

\* supp. readings #3a and 3b (download from TWEN)

**D. The Spending Clause**

**Day 9:** \* Casebook, pp. 162 – 166

\* supp. reading #4 (download from TWEN)

**E. The Dormant Commerce Clause**

**Day 10:** Casebook, pp. 174 – 194

**Day 11:** \* Casebook, pp. 194 – 206

\* Casebook supplement, pp. 1-2

**Day 12:** Casebook, pp. 206 – 214 (stop before *Kassel*)

**F. Preemption Doctrine**

**Day 13:** Casebook, pp. 229 – 237

**III. Separation of Powers**

**A. The Reach of Executive Power to Interpret or Circumvent Legislation**

**Day 14:** \* Casebook, pp. 244 – 254

\* supp. reading #5 (download from TWEN)

**Day 15:** Supp. readings #6a, 6b, 6c (download from TWEN)

**B. The Reach of Government (particularly Executive) Powers of War and Peace (note some substantial overlap between these materials and those in previous section, IIIA)**

**Day 16:** Casebook, pp. 260 – 270

**Day 17:** Casebook, pp. 270 – 281 (through note 2)

**Day 18:** \* Casebook, pp. 281 (beginning with note 3) – 291

\* Casebook supplement, pp. 3 - 9

**C. The Reach of Congress' Power to Shape Congressional-Executive Relations**

**Day 19:** Casebook, pp. 291 – 306

**Day 20:** Casebook, pp. 306 – 307, 310 – 317 (stop before note 2)

**D. Executive Privileges and Immunities**

**Day 21:** \* Casebook, pp. 320 – 324

\* Supp. readings #7a, 7b, 7c

**Day 22:** Casebook, pp. 324 (start with note 3) – 338

**IV. Judicial Review**

**Day 23:** Casebook, pp. 1 – 15

**Day 24:** \* Previous day's materials continued

\* + Casebook, pp. 15 – 19

**Day 25:** Casebook, pp. 19 – 30

*A Q & A session will be scheduled for some time prior to the exam (exact date, time, place TBA toward the end of the semester)*