

POS 4606-01
The Supreme Court in American Politics
Spring 2007
Room: HCB 310
TH: 3:35-4:50

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Office Hours: Wednesday 10:00 a.m.-12:00 noon or by appointment, 567 Bellamy

Course Description

The United States Constitution divides political authority both between the national government and the states and among the three branches of national government. In this course, we will consider how the U.S. Supreme Court has defined the boundaries of these divisions by reading a number of its landmark opinions. By so doing, we analyze the policy role of the Supreme Court in American politics, a court that is at times been extremely influential and at other times largely irrelevant to important national policy outcomes.

Reading Material

We will largely be using a single textbook, which is available at the campus bookstore. In addition, we will read a few articles, which may be accessed via the hypertext below. You might choose to purchase the book at a web-based bookstore. Amazon and AbeBooks (www.abebooks.com) both have copies. The following is a full citation for our textbook.

Epstein, Lee and Thomas G. Walker. 2004. *Constitutional Law for a Changing America: Institutional Powers and Constraints, 5th ed.* Washington D.C.: CQ Press.
ISBN: 1-56802-822-9

If you do not buy through the bookstore be sure that you request the correct ISBN. Epstein and Walker comes with an access code to their companion website, which we will use.

Course Goals

First, you should develop an understanding of the constitutional law that governs the authority of the branches and levels of American government. Second, you should be familiar recognized methods of constitutional interpretation. Third by using a one of these methods and appropriate legal rules, you should be able to analyze the implications of new, hypothetical fact situations. Finally, you should be familiar with the challenges of collective legal decision-making.

Class Meetings

I will lecture a few times during the semester. When I do, I will post lecture notes. On all other meetings, we will simply discuss the cases we read. On those days I will I use a form of Socratic method. *I do not intend to post lecture notes on the days I do not lecture.* I encourage you to voluntarily participate in our discussions; however, I will often get us started by calling on one of you. It is likely that I will follow questions up with further questions. Expect to be called on at least once during the semester. This means that you need to come prepared. As I note below, your grade will be influenced by your preparation. This is your second reason to come to class.

News

I encourage you all to read the New York Times, L.A. Times, Washington Post or Miami Herald online, especially any article on the Supreme Court. There are a number of good web sites that maintain information on the Supreme Court. Here are a two good ones.

Findlaw: www.findlaw.com

Oyez Project: www.oyez.org/oyez/frontpage

Grading

Your final grade is a weighted average of the following components:

1. Attendance/Participation (10%)

Attendance is mandatory. You are expected to come to class prepared to speak. To help prepare, I encourage you to write legal briefs for each case.

Legal briefs are personal. There is no one way to write them; however, all briefs should contain the following information:

- a. Case name
- b. Year of decision
- c. What circumstances triggered the legal dispute?
- d. What statute is involved in the case?
- e. What constitutional provision is at issue?
- f. What is the basic legal question the Court is answering?
- g. What was the outcome of the case?
- h. What is the legal rule that the Court announces?
- i. What is the reasoning behind the decision?
- j. Other views (concurring or dissenting opinions)?

See page 691 of Epstein and Walker (Appendix 8) for an example.

2. Two Examinations (Each worth 30% of your grade)

Exam 1 will be held in class on **March 1**. Exam 2 will be held during finals week on Tuesday, April 24, from 5:00-7:00 p.m. Exams will require you to apply the legal rules we discuss to new hypothetical fact situations.

3. Collective Decision Making Exercise (30%)

You will be assigned to a mock Supreme Court, along with eight other students. I will name a chief justice, who will be responsible for guiding your conference discussions, and per Supreme Court practice, will assign opinion authors if he/she is in the majority. Each court will be given three legal problems to evaluate using doctrine covered in lecture. You will meet twice during class, but may communicate with each other as often as you like.

At the first in-class meeting, you will each bring draft opinions resolving each problem, copies of which are given to me. You will then discuss the cases together, take votes on the merits, and assign an initial opinion writer. The opinion writer is expected to send drafts around to the court, seeking suggestions. This is done via *Writeboard*, a web-based software for collective writing. I will show you how to use this at the beginning of the semester. If you do not agree with the majority opinion, you may draft a dissent or a concurrence. Separate opinion drafts must also be circulated via *Writeboard*. I will monitor participation on each court.

At the second in-class meeting, your court will consider completed drafts of three majority opinions, which you may choose to submit to me or continue revising. The chief justice is responsible for turning hard copies of all opinions in to me on the date indicated on the syllabus.

Your final grade is a weighted average of the following components:

- a) Overall quality of the final opinions (60%)
- b) My evaluation of your original draft opinions (20%)
- c) My evaluation of your participation (10%)
- d) A peer evaluation of your contribution to the court (10%)

Extra-Credit Work

Under no circumstances will extra credit work be permitted.

Email

I expect you to check your email. I will typically send announcements to you via email. You are responsible for the material I send electronically.

Late Paper Policy

Hard copies of all opinions are to be turned in to me personally on the announced due date during the first **10 minutes of class**. Any paper turned after this period expires will be considered one day late. I will deduct one letter grade for each day that the paper is late.

Late Exam Arrival/Missed Exam Policy

Students will be allotted the entire class period for exams occurring during the semester. For final exams, students will be allotted the entire final exam period that the University has appropriated. Students are expected to be in class for the beginning of the exam. If a student is late by 10 minutes or more, I will deduct 10 points from her final grade.

Absences for exams will be excused for participation in formally sanctioned University events if the proper documentation is provided to the instructor **prior** to the event. Absences will also be excused for extraordinary events if they are accompanied by sufficient (i.e. Health Services Excuse Forms) documentation, as defined above under “absence policy” within **two** calendar days of the absence or late arrival. The instructor reserves the right to determine what constitutes an extraordinary circumstance.

If the student has been excused for the absence, she will have **five** working days to make up a missed exam. The instructor reserves the right to administer makeup exams of any format (multiple choice, short answer, essay), which may not necessarily correspond to the original exam’s format. If a student misses an exam and does not have an excused absence, the student will receive a zero for the exam.

Note on Extraordinary Circumstances

Under no conditions will a “power-outage” or an “alarm clock failure” constitute an extraordinary circumstance.

Assignment of Letter Grades

Final course letter grades will be assigned based upon the following scale (I round to the nearest whole number):

A	93-100	C	73-76
A-	90-92	C-	70-72
B+	87-89	D+	67-69
B	83-86	D	63-66
B-	80-82	D-	60-62
C+	77-79	F	59 and below

Incomplete Grades

No incomplete grades will be given unless there is an agreement between the instructor and the student **prior** to the end of the course. The instructor retains the right to determine legitimate reasons for an incomplete grade.

Integrity of Scholarship

I will follow the guidelines established by the university. A summary of these guidelines can be found in the FSU Bulletin and Student Handbook. In short, don't cheat. The benefits are small. Even if the probability of getting caught is tiny, the costs of getting caught are huge.

Courtesy in the Classroom.

Classroom courtesy is necessary to ensure that all students have the opportunity to learn without distractions. This means no cell phones, talking during lectures (unless recognized by the professor or discussion leader), reading newspapers, etc. during class. If you must have a cell phone to receive emergency calls about kids or other family members, keep it on "vibrate." Entering and leaving is distracting to me and to other students. Therefore, you need to be on time for class and stay until the end. If you must enter late or leave early, please inform me before class begins and take the seat nearest an exit and enter or leave as quietly as possible. Also, please stay with the door to make sure it does not 'bang' as you enter or leave. Repeated disruption of class may lead to penalties that reduce your final grade.

Class discussions of political issues can often stimulate strong feelings and heated debate. Because this is a college classroom, all discussions need to be scholarly. Scholarly comments are:

- Respectful of diverse opinions and open to follow up questions and/or disagreement.
- Related to the class and course material. Scholarly comments advance the discussion about issues related to the course and/or course material rather than personal beliefs.
- Are delivered in normal tones and in a non-aggressive manner.

Unacceptable behaviors in our classroom include:

- Personal attacks. This includes attacks on a person's appearance, demeanor, or political beliefs.
- Interrupting other students is unacceptable. Raise your hand and wait to be called on either by the discussion leader or myself to prevent this problem.
- Using raised tones, yelling, engaging in arguments with other students, and being physically aggressive are unacceptable.
- Ignoring my authority to protect the integrity of the classroom is unacceptable. When you are asked to discontinue a conversation that violates the guidelines that are outlined above, I expect you to stop.

Students with Disabilities

If you anticipate needing any type of an academic accommodation in this course or have questions about physical access, please discuss this with the instructor within the first week of class. Students with disabilities needing academic accommodations should:

1. Register with and provide documentation to the Student Disability Resource Center (SDRC)
2. Bring a letter to the instructor from the SDRC indicating you need academic accommodations. This should be done within the first week of class.

This syllabus and other class materials are available in alternative format upon request. If a student's accommodations change during the semester, the student will present an updated official letter from the SDRC outlining the specific modifications.

Course Schedule

January 9 – Course Introduction

January 11 – Judicial Review: Original Jurisdiction / Group Decision Making

- Read, 3-11; 63-79
 - Marbury v. Madison (1803)

January 16 – Judicial Review: Appellate Jurisdiction

- Read, 79-84 and 88-94
 - Martin v. Hunter's Lessee (1816)
 - Cohens v. Virginia (1821)*
 - Eakin v. Raub (1825)

*Indicates case is stored on course website

January 18 – Constraints: Jurisdiction and Judiciability

- Read 94-112
 - Ex parte McCardle (1869)
 - Luther v. Borden (1849)*
 - Baker v. Carr (1962)
 - Nixon v. United States (1993)

January 23 – Constraints: Standing

- Read 112-118
 - Frothingham v. Mellon (1923)
 - Flast v. Cohen (1968)*
 - Raines v. Byrd (1997)*

January 25 – Supreme Court in American Politics

- Read, 13-35

January 30 – Supreme Court in American Politics

- Hand-out

February 1 – Legislative Authority: Enumerated and Implied Powers

- Read, 123-127 and 148-173

- McCulloch v. Maryland (1819)
- McGrain v. Daugherty (1927)
- Watkins v. United States (1957)
- Barenblatt v. United States (1959)

February 6 – Legislative Authority: Inherent and Amendment Enforcing Powers

- Read, 174-185
 - United States v. Curtiss-Wright Export Corp. (1936)
 - South Carolina v. Katzenbach (1966)
 - City of Boerne v. Flores (1997)*

February 8 – Executive Authority: Selection, Faithful Execution and the Veto

- Read, 187-216
 - Bush v. Gore (2000)
 - In re Neagle (1890)
 - Clinton v. City of New York (1998)

February 13 – Executive Authority: Appointment and Removal

- Read, 216-234
 - Morrison v. Olson (1988)
 - Myers v. United States (1926)
 - Humprey’s Executor v. United States (1935)

February 15 – Executive Authority: Privilege

- Read, 235-252
 - United States v. Nixon (1974)
 - Mississippi v. Johnson (1867)
 - Nixon v. Fitzgerald (1982)
 - Clinton v. Jones (1997)

February 20 – Separation of Powers System: War Authority I

- Read, 282-306
 - The Prize Cases (1863)
 - Ex parte Milligan (1866)
 - Ex parte Quirin (1942)
 - Korematsu v. United States (1944)

February 22 – Separation of Powers System: War Authority II

- Read, 306-316
 - Youngstown Sheet & Tube Company v. Sawyer (1952)
 - Dames & Moore v. Regan (1981)
 - Hamdam v. Rumsfeld (2004)**

**Indicates case stored at United States Supreme Court

February 27 – Review

March 1 – **MIDTERM EXAM**

March 6 – Spring Break

March 9 – Spring Break

March 13– Commerce Clause

- Read, 406-434
 - Gibbons v. Ogden (1824)
 - U.S. v. E.C. Knight Co. (1895)
 - Stafford v. Wallace (1922)
 - A.L.A. Schechter Poultry Co. v. United States (1935)
 - Carter v. Carter Coal Co.(1936)

March 15 – Commerce Clause

- Read, 434-458
 - NLRB v. Jones & Laughlin Steel Corporation (1937)
 - Wickard v. Filburn (1942)
 - United States v. Lopez (1995)
 - United States v. Morrison (2000)

March 20 – First Court Meeting

- **Individual Opinions Due**

March 22 – State Commerce Authority

- Read, 466-483
 - Cooley v. Board of Wardens (1852)
 - Southern Pacific Company v. Arizona (1945)
 - Hunt v. Washington State Apple Advertising Commission (1977)
 - Maine v. Taylor (1986)

March 27 -- 11th Amendment

- Read, 370-380
 - Seminole Tribe of Florida v. Florida (1996)*
 - Alden v. Maine (1999)
 - Board of Trustees of the University of Alabama v. Garrett (2001)*
 - Nevada Department of Human Resources v. Hibbs (2003)*

March 29– Contract Clause

- Read, 539-555
 - Fletcher v. Peck (1810)
 - Trustees of Dartmouth College v. Woodward (1819)

April 3 – Contract Clause

- Read, 555-575
 - Proprietors of Charles River Bridge v. Proprietors of Warren Bridge (1837)
 - Stone v. Mississippi (1880)
 - Home Building and Loan Association v. Blaisdell (1934)
 - United States Trust Co. v. New Jersey (1977)
 - Allied Structural Steel Co. v. Spannaus (1978)

April 5– Economic Substantive Due Process

- Read, 576-606
 - The Slaughterhouse Cases (1873)
 - Munn v. Illinois (1877)
 - Allegeyer v. Louisiana (1897)
 - Lochner v. New York (1905)
 - Muller v. Oregon (1908)

April 10 – Economic Substantive Due Process

- Read, 606-625
 - Adkins v. Children’s Hospital (1923)
 - Nebbia v. New York (1934)
 - West Coast Hotel v. Parrish (1937)
 - Williamson v. Lee Optical Company (1955)
 - BMW of North America v. Gore (1996)

April 12 – Takings Clause

- Read, 627-643
 - United States v. Causby (1946)
 - Penn Central Transportation Co. v. City of New York (1978)
 - Berman v. Parker (1954)
 - Hawaii Housing Authority v. Midkiff (1984)

April 17 – Takings Clause

- Read, 643-657
 - Nollan v. California Coastal Commission (1987)
 - Lucas v. South Carolina Coastal Council (1992)
 - Dolan v. City of Tigard (1004)
 - Kelo v. City of New London (2005)*

April 19 – Second Court Meeting/Review

April 24 – **FINAL EXAM**, 5:00-7:00 p.m.

- **Final Court Opinions Due**