

POL SCI 411
CONSTITUTIONAL LAW: GOVERNMENT POWERS & FEDERALISM
UNIVERSITY OF WISCONSIN - MILWAUKEE
FALL 2007

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COURSE MEETING TIMES & LOCATION: MW 11:00am-12:15pm, Physics Building (PHY) 133

COURSE DESCRIPTION:

In this course, we will explore constitutional developments in defining the nature and scope of judicial, congressional, and executive power. The course will also address the enduring constitutional debates surrounding the appropriate balance of power between the national and state governments. In this setting, students will be introduced to basic legal terminology and alternative theories of constitutional interpretation. In addition, students will be challenged to consider the Supreme Court in light of the larger political context in which it operates.

Legal Research Assignment Due Date: Monday, September 24

Mid-term Exam: Monday, October 22 (regular class time)

Final Exam: Friday, December 14 (10:00 am – 12:00 noon)

Mock Court #1: Mon., Dec. 3

Mock Court #2: Mon., Dec. 3

Mock Court #3: Wed., Dec. 5

Mock Court #4: Wed., Dec. 5

Mock Court #5: Mon., Dec. 10

REQUIRED TEXTBOOK & ON-LINE CASE ARCHIVE:

Epstein, Lee and Thomas G. Walker. 2007. *Constitutional Law for a Changing America: Institutional Powers and Constraints*. Sixth Edition. Washington, D.C.: CQ Press.

Online Case Archive: Access is free to those who purchase a “new” copy of the textbook. For those purchasing a used copy, you may purchase access through the following Web site:

<http://www.cqpress.com/product/CLCA-Online-Case-Archive.html>

CLASS REQUIREMENTS AND POLICIES:

Class Readings, Case Assignments, & Participation

It is important that students arrive to class having read the assigned material. To encourage class participation, students will be assigned one case to prepare for a Q & A exchange with the instructor (See "Case Assignments" under course content on our D2L Web page for your assignment). In this process, students will be asked to summarize case facts, articulate the legal question or questions presented in the case, and discuss the reasoning of the majority and any separate opinions, etc. If you miss class on the day in which your assigned case was discussed, it is your responsibility to contact the instructor (via e-mail) in order to be assigned another case. Failure to be fully prepared to discuss your assigned case will result in a significant deduction of your course participation grade. If your case is part of the assigned reading for the next class, you should assume the case will be discussed during the next class, and you should be prepared accordingly. You are highly advised to prepare a written brief to assist you during the Q&A. Students will also be called on randomly in class and will be expected to provide insightful responses, indicating that they have both read and thought about the material. Therefore, you must complete all reading assignments, including case assignments, regardless of whether you are assigned to discuss the case in class.

Active participation in this course is expected of all students, including those auditing the course or those taking the course under the credit/no credit option.

General Class Conduct

I seek to create a classroom environment which is marked by mutual respect. At all times, I expect students to conduct themselves in a highly professional and courteous manner. Please do not arrive late, leave early, or talk while the instructor is talking or a classmate has the floor. Students who leave class early, arrive late, or disrupt class discussion in any way will receive significant deductions on their course participation grades. Please note that students who spend class time surfing the Internet, text messaging, or reading outside materials, etc. will also receive significant deductions on the participation component of their course grades.

If you need to leave a class early, or if you know that you will be late, please inform me in advance whenever possible.

The use of cell phones in this class will not be tolerated. Please silence the ringer of your cell phone prior to entering the classroom.

Please make sure you check the course D2L Web site on a regular basis. I will post reading assignments and special announcements on the page. In addition, the site will include discussion forums so that students can extend debate and discussion beyond the classroom. Please remember to extend professional courtesy to your classmates when participating in these online discussions.

Exams

There will be two exams in this class. The final exam will emphasize material covered since the mid-term exam, but it might also include some questions that are cumulative in nature. Both exams will be closed book and will involve essay questions. Both exams will also present students with at least one hypothetical case scenario that will require a written response. All responses are required to be written in ink. The instructor will supply blue books for the examinations.

Make-up exams will only be given to students who have a medical excuse, University-excused absence, or other reasonable excuse (as determined by me). In order to qualify for a make-up examination, students must provide supporting documentation for missing the scheduled exam and must contact me (by phone or e-mail)

prior to the scheduled exam. If a student cannot contact me prior to the exam due to extenuating circumstances, the student is required to contact me within 24 hours after the missed exam.

Students who have been approved to take a make-up exam for the mid-term must take it on **Thursday, October 25 at 3:30 pm (location TBA)**. This will be the only such opportunity I extend unless the student has a documented emergency on that day and provides me with sufficient notice. If you miss the final exam, you should follow the above procedures regarding notification and documentation, and I will arrange a time for you to take a make-up final exam.

The results of exams (or any other component of the student's grade) will not be conveyed to students over the phone or in an e-mail message.

Legal Research Assignment

A legal research assignment will be distributed to students on Monday, September 10 and will be due in class on **Monday, September 24**. The assignment is required to be typed, and students are not to collaborate on the assignment. If you need help with the assignment, please consult the instructor or the TA.

Mock Supreme Court & Bench Memo/Attorney Argument Brief

Each student will be assigned to play the role of a Supreme Court justice or an attorney in a mock Supreme Court. Students wishing to volunteer to play the role of an attorney should contact the instructor early in the semester as these positions are limited. Case assignments will be distributed to students at least one month prior to their mock court date.

At the mock court, each attorney will be allotted 15 minutes to present his or her oral argument. Those assigned to be justices are required to ask questions of each attorney. Students assigned the role of a justice should note that active participation (asking a minimum of two informed and well-developed questions) is required to receive a passing grade for the assignment. Therefore, students wishing to earn an above-average score should strive to surpass minimum requirements.

As part of this simulation, students are also required to prepare either a "bench memo" (for those assigned as justices) or an "argument brief" (for those assigned to serve as attorneys). A "bench memo" should include an introductory section (2-3 paragraphs) describing the student's assigned justice with special attention toward his/her ideological leanings, behavioral tendencies, and his/her likely approach to the issues raised in the case. Following this brief section, the student should list a minimum of ten questions they might ask of the attorneys during oral argument. Please make every effort to evenly divide your questions between those that you can ask of the petitioner and those you can ask of the respondent.

Students assigned as attorneys should submit an "argument brief" with an introductory section (2-3 paragraphs) that describes the attorney's overall strategy for persuading the Court of the strength and validity of his or her side, paying attention to likely coalitions among the justices and their known approaches to issues raised in the case. Following this section, the student should list a minimum of ten talking points or argumentative points that he or she expects to raise during oral argument.

Bench memos and argument briefs should not exceed three pages (typed, double-spaced, one-inch margins, 12-point font). As with any written assignment, sources (e.g., journal/law review articles, books, or legal cases) used in the development of the memo or brief must be cited appropriately throughout the text using in-text parenthetical citations, footnotes, or endnotes, and each student should attach a "works cited" list with full citations. The "works cited" list will not be factored into the three-page limit. Student memos/briefs must be submitted in class on the day of the student's mock court. Otherwise, late penalties (see below) will apply.

It is very important that students attend all of the mock court sessions and that students are familiar with all of the case scenarios. Further instructions for the mock court will be posted on the course D2L Web site. Please make sure you read these guidelines very carefully!

If a student should miss class on the date of his or her mock court, the student will receive a zero on the assignment *unless* the student has a medical excuse or other reasonable excuse (as determined by the instructor) and the student contacts the instructor before class (if possible) or within 24 hours of the missed class. The student will also need to present supporting documentation for the absence. If the student meets these qualifications, the student may submit a research paper as a make-up assignment for both the simulation and memo/brief requirements. The research paper must be 6-8 pages (typed, double-spaced, one-inch margins on all sides, 12-point font) and must discuss 3-4 major arguments on both sides of the student's assigned case. Students must consult and cite multiple scholarly sources (e.g., journal articles, books, law review articles) and relevant case precedents in preparing the paper. Any source used in the development of the paper must be cited appropriately throughout the paper using in-text parenthetical citations, footnotes, or endnotes, and each student should attach a "works cited" list with full citations. These make-up assignments must be submitted no later than 5 days (including weekends) after the student's assigned mock court date. You should submit these assignments directly to the instructor (if possible). Otherwise, you can leave them in the envelope posted on my office door. You will need to send me an e-mail message indicating that you have submitted the assignment in the envelope (please note the time and date of the submission in the message).

Grades

Legal Research Assignment	15%
Mid-term Exam	25%
Final Exam	35%
Mock Court Simulation (10% in-class; 5% memo)	15%
Participation	10%

Point Scale

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

Grading Concerns

If you have questions or concerns regarding how an exam or assignment was graded by the TA, your first step should be to discuss the issue with the TA during office hours or by appointment. If you are not satisfied after that point, you should meet with me during office hours, and I will re-grade the assignment or the exam. Please note that the grade I assign might be lower than the grade assigned by the TA. I ask that all students who wish to appeal grading matters do so within one week of the assignment or exam being returned to the class.

Extra Credit Activities

Extra credit opportunities (including pop quizzes and legal brief assignments) might be presented to students in class. Legal briefs submitted for extra credit are required to be typed and should follow the format outlined in class. Extra credit points earned before the date of the mid-term exam will be added to the student's mid-term exam point score. Extra credit points earned after the date of the mid-term exam will be added to the student's final exam point score. Please note that I do not accept late extra credit assignments, nor do I offer make-up opportunities for extra-credit assignments.

Academic Dishonesty

I do not tolerate acts of plagiarism or any forms of cheating on exams or assignments, including extra credit assignments (e.g., case briefs). Students who are caught engaging in academic misconduct will receive an “F” (zero percentage points) for the assignment or exam. It is also possible that a student who is caught engaging in academic misconduct will receive an “F” for the course. If I suspect a case of academic misconduct, I will follow the academic misconduct and reporting policies of the University of Wisconsin-Milwaukee.

Dropping the Course & Incompletes

The decision to drop the course is that of the student, and it is the student’s responsibility to become familiar with all relevant drop deadlines (please see the UWM calendar for further details). An incomplete may be given to a student who is unable to complete the course requirements due to extenuating circumstances (e.g., serious illness, injury, family emergency, etc.). Supporting documentation is necessary to receive an incomplete.

Submitting Course Assignments & Late Penalties

Assignments are due in class on the date noted in the syllabus. Any assignment submitted after its due date will be subject to a ten percentage point deduction for each day it is late (including weekends). Assignments submitted after class on the date they are due will be considered one day late. Late work should be handed directly to me (i.e., the instructor) whenever possible. Otherwise, students can leave late work in the envelope posted on my office door (Bolton 602), but it is the student’s responsibility to send me an e-mail message noting the date and time at which the assignment was submitted and to confirm that I received the late assignment. Assignments left in the envelope after 5:00 pm will be posted as received the next day. Please do not leave assignments in my departmental box or slide them under my office door.

Under most circumstances, I will not accept course assignments or any parts thereof submitted via e-mail. Students are required to submit hard copies of all assignments on the date noted on the syllabus.

Student Accommodations

If you will need accommodations in order to meet any of the requirements of this course, please contact me as soon as possible. Students should also contact a Student Accessibility Center (SAC) counselor on campus (414) 229-6287.

OUTLINE OF TOPICS & CASES

Below is an outline of topics and cases that we will likely cover this semester. Since it may not be possible to determine how much time we will need to spend on each topic/case, specific reading assignments will be announced in each class and will be posted on the course D2L Web site. The list of cases and topics is subject to change.

** denotes that a case excerpt may be found at www.cqpress.com/clca.htm*

*** denotes that a case excerpt is available on reserve at the Golda Meir library*

INTRODUCTION TO THE STUDY OF CONSTITUTIONAL LAW

- Brief introduction to the judicial process and online legal research tools
- The U.S. Constitution
- Judicial review - *The Federalist* No. 78 (pg. 697 in Epstein & Walker)
- Modes of constitutional interpretation

THE ROLE OF THE SUPREME COURT IN THE CONSTITUTIONAL SCHEME

- *Marbury v. Madison*
- *Martin v. Hunter's Lessee*
- *Ex Parte McCardle*

THE NATURE AND LIMIT OF JUDICIAL POWER

Advisory Opinions/Collusive Lawsuits

- *Muskrat v. United States*

Mootness

- *DeFunis v. Odegaard**
- *Sosna v. Iowa***

Ripeness

- *United Public Workers v. Mitchell*
- *International Longshoreman's Union v. Boyd*

The Doctrine of Political Questions

- *Baker v. Carr*
- *Nixon v. United States*
- *Goldwater v. Carter**

Standing to Sue

- *Allen v. Wright***

THE LEGISLATURE & POWERS OF CONGRESS

Enumerated and Implied Powers

- *McCulloch v. Maryland***(*Read the excerpt on reserve*)

Inherent Powers

- *United States v. Curtiss Wright Export Corp.*

Amendment-Enforcing Power

- *South Carolina v. Katzenbach*
- *City of Boerne v. Flores**

THE EXECUTIVE BRANCH & THE NATURE OF EXECUTIVE POWER

Appointment and Removal Powers

- *Myers v. United States*
- *Humphrey's Executor v. United States*
- *Morrison v. Olson*

Executive Privilege & Immunity from Lawsuit

- *United States v. Nixon*
- *Clinton v. Jones*

Executive Power in Foreign Affairs and in Times of War/Emergencies

- *The Prize Cases*
- *United States v. Curtiss-Wright Export Corporation*
- *Ex Parte Milligan*
- *Youngstown Sheet & Tube Co v. Sawyer*
- *Hamdi v. Rumsfeld*
- *Hamdan v. Rumsfeld*

THE DELEGATION OF LEGISLATIVE POWER & THE SEPARATION OF POWERS

- *J.W. Hampton, Jr. & Co. v. United States*
- *Panama Refining Co. v. Ryan (the Hot Oil Case)*
- *Schechter Poultry Corp. v. United States*
- *INS v. Chadha*
- *Bowsher v. Synar*
- *Clinton v. City of New York*

GENERAL SCOPE OF CONGRESSIONAL POWER TO REGULATE INTERSTATE COMMERCE

Classical view

- *Gibbons v. Ogden*

Formal & Realist Approaches to Interpreting the Commerce Clause

- *United States v. E.C. Knight*
- *Champion v. Ames [The Lottery Case]*
- *Houston, East & West Texas Railway Co. v. U.S. [The Shreveport Rate Case]**
- *Hammer v. Dagenhart [The Child Labor Case]*
- *Stafford v. Wallace*

The New Deal Crisis and the Rise of the Regulatory State

- *Schechter Poultry Corp. v. United States*
- *Carter v. Carter Coal Co.*
- *NLRB v. Jones & Laughlin Steel Corp.*
- *United States v. Darby*
- *Wickard v. Filburn*

The Civil Rights Crisis, the Fourteenth Amendment, & the Commerce Clause

- *The Civil Rights Cases (instructor will summarize)*
- *Heart of Atlanta Motel v. United States*
- *Katzenbach v. McClung (instructor will summarize)*

Limits on Congressional Use of the Commerce Power

- *United States v. Lopez*
- *United States v. Morrison*

Recent Development - Commerce Clause

- *Gonzales v. Raich*

Implied Federalism Limits on Congressional Power - Commandeering

- *New York v. United States*
- *Printz v. United States*

Implied Limits on Local Power – The Dormant Commerce Clause

- *Hunt v. Washington State Apple Advertising Commission*
- *Maine v. Taylor*