CONSTITUTIONAL LAW
Political Science 320
T/TH 10:50-12:05
Maybank Room 316
Fall 2019

Instructor: Claire Wofford, J.D., Ph.D.  Office: 114 Wentworth Street, Room 206

Office Hours: Wed: 1:00-2:00; Th: 12:30-1:30 (and by appointment)

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I. CONTENT & OBJECTIVES

This course is an examination of the United States Constitution, as interpreted by the U.S. Supreme Court. It will focus on the authority of, and relationships between, the three branches of the federal government. We will examine the scope and limits to the legal and policymaking power of the Court, the Congress, and the Executive branch. In covering these topics, we also will consider various theories of Constitutional interpretation, the influence of “extralegal” factors on judicial decision-making, and the role of the Supreme Court in the democratic process.

This course will be taught primarily using the “case method,” which uses specific cases to extract legal rules and larger legal principles. In this way, the course will be similar to what one might experience in law school, but with the workload and intimidation factor greatly reduced. As this is an undergraduate political science course, we also will explore the political context surrounding Court decisions as well as the role that ideological positions of the justices might (or might not) play in shaping their votes and opinions.

At the conclusion of this course, students will:

1) Demonstrate knowledge of basic doctrines of American Constitutional law.
2) Understand the relationships among the various branches of government, both as articulated in the Constitution and as defined by the Supreme Court.
3) Gain proficiency in legal reasoning and be able to apply extant legal doctrines to hypothetical cases.
4) Evaluate the operation of the U.S. Supreme Court and its role in shaping the balance of power among governmental institutions.

II. REQUIRED TEXTS

Each student must purchase/borrow:

Please note that if you choose to use an earlier version of the text, the pages will not match those listed in the syllabus and there may be material that is not included in the older book. I strongly recommend you use the 10th edition. I have placed two copies of the textbook on reserve at the library.

Additional readings are assigned and will be posted on OAKS. It is the student’s responsibility to check email and OAKS regularly for information about any changes in course material, schedules, or exams.

III. EVALUATION

Grades will be based upon the following elements: three examinations, one final project, case brief presentation, and class participation. The contribution of each to your final grade is as follows:

Exam #1: 10%
Exam #2: 20%
Exam #3: 25%
Final Project: 30%
Class Participation: 10%
Case Brief Presentations: 5%

Examinations

Two examinations will be closed-book and taken in class. They will be comprised of a mix of question types, including objective, short answer, and short essay. Similar to what one might confront in law school, the short essay question(s) will be hypothetical cases to which students must apply the substantive law they have learned in the course. There will be many opportunities to practice this during class sessions, but please be aware that this is a skill that takes effort and practice on your part. The weight given to the exams reflects the likelihood of a learning curve. One of these exams (Exam #2) will be take-home. This will be an essay exam involving a hypothetical case. Further details will be discussed in class.

Exams must be taken or turned in at the scheduled time, unless arrangements have been made with me at least 48 hours prior to the exam. Make-up exams will only be offered once and will be more difficult than the regular test.

Final Project

In lieu of a final exam, you will be required to complete a final project in which you will act as either a Supreme Court justice or an attorney arguing before the Court. The project will include participation in a simulated oral argument (held during the last three class sessions) and completion of a final paper (either a legal brief or judicial opinion). Further details will be forthcoming.
Class Participation

The class participation element may be satisfied by in or out of class questions, or through other arrangements with the instructor. As discussion is central to the course, I expect all students to come to every class having already read and carefully considered the material, ready to participate.

To ensure that all students have an equal opportunity for participation, I will be employing a modified version of the “Socratic method,” in which the student and I will engage in an in-class dialogue (potentially lasting several minutes) about a particular case or set of cases. I use the term “modified” because students will know, in advance, when they are likely to be called upon. More specifically, beginning the second full week of the semester, I will be calling upon students in alphabetical order, by last name. When called upon, the student will be expected to answer my questions about the case facts and Court opinions as well as the implications of the case for legal doctrine and the political system more broadly. Good preparation will be essential for this element of the grade, as students will be assessed on effort as well as the quality of the response. The grading scale for this will be a 0-4. Students who have an unexcused absence the day they are called upon will be assigned a zero.

Please note that you may still be called upon in class even if it is not your “assigned” day, so you must come prepared for every session. I also reserve to right to give random pop quizzes if it appears that students are not reading the material and coming to class well-prepared. If instituted, these quizzes will be factored into your class participation grade.

Case Brief Presentations

You will also be required, with one other student, to present one case to the class. This presentation, which should last no longer than 10 minutes, will be an oral form of a “case brief” in which you explain various elements of a case. In addition, you must post a copy of your case brief on OAKS at least 24 hours prior to your presentation date and time. The other students in the class are expected to read this brief and come prepared with any questions or concerns about the brief, which the presenters will answer in class. Specific instructions for how to write a case brief have been posted on OAKS. Case and group assignments will be posted as soon as the class list is finalized.

Grading Scale

The grading system is based upon the following scale: 93-100% A; 90-92 A-; 87-89% B+; 83-85% B; 80-82% B-; 77-79% C+; 73-76% C; 70-72% C-; 67-69% D+; 63-67% D; 60-62% D-; 0-59% F. Extra credit is not permitted.
IV. ATTENDANCE AND CLASS BEHAVIOR

Attendance is required for all classes; attendance will be taken. Only documented illness, family emergency, or institutional permission constitute excused absences. Please let me know of any such absences in advance whenever possible; if you will be missing class for a school-related reason (activity, athletics etc.), you must let me know twenty-four hours before your absence. Any student who has more than two unexcused absences may be assigned a lower or failing final grade. As tardiness disrupts the classroom environment, any student who is late more than two times will be assigned one unexcused absence.

The rules of the student code of conduct apply in this class. Appropriate behavior is required at all times. Students may not speak while other students or the instructor is speaking. Classroom debate is highly encouraged, but students are expected to conduct themselves with decorum and respect.

Laptops are not allowed in the classroom. Use of cell phones during class is strictly prohibited. Turn phones off before entering the classroom.

V. ACADEMIC INTEGRITY

Lying, cheating, attempted cheating, and plagiarism are violations of our Honor Code that, when identified, are investigated. Each incident will be examined to determine the degree of deception involved.

Incidents where the instructor determines the student’s actions are related more to a misunderstanding will handled by the instructor. A written intervention designed to help prevent the student from repeating the error will be given to the student. The intervention, submitted by form and signed both by the instructor and the student, will be forwarded to the Dean of Students and placed in the student’s file.

Cases of suspected academic dishonesty will be reported directly by the instructor and/or others having knowledge of the incident to the Dean of Students. A student found responsible by the Honor Board for academic dishonesty will receive a XXF in the course, indicating failure of the course due to academic dishonesty. This grade will appear on the student’s transcript for two years after which the student may petition for the XX to be expunged. The F is permanent. The student may also be placed on disciplinary probation, suspended (temporary removal) or expelled (permanent removal) from the College by the Honor Board.

Students should be aware that unauthorized collaboration--working together without permission--is a form of cheating. Unless the instructor specifies that students can work together on an assignment, quiz and/or test, no collaboration during the completion of the assignment is permitted. Other forms of cheating include possessing or using an unauthorized study aid (which could include accessing information via a cell phone or computer), copying from others’ exams, fabricating data, and giving unauthorized assistance. Research conducted and/or papers written for other classes cannot be used in
whole or in part for any assignment in this class without obtaining prior permission from the instructor.

Students can find the complete Honor Code and all related processes in the Student Handbook at http://studentaffairs.cofc.edu/honor-system/studenthandbook/index.

VI. DISABLED STUDENTS

The College of Charleston policy regarding disabled students and reasonable accommodations will apply in this class and accommodations will be provided for those students with documented disabilities. Please speak with me as soon as possible if you are in need of assistance.

VII. ASSIGNMENTS AND LECTURE TOPICS

Please note that I reserve the right to alter these assignments as necessary. Notice of such changes will be provided in advance and students are expected to alter their reading as necessary.

Also, please be aware that the final project and the exams will be based upon information contained in both the text and the material covered in class. Focusing only upon one of these will be insufficient to perform well in this class.

SECTION ONE: THE SUPREME COURT - “LEAST DANGEROUS” BRANCH?

A. Session 1: August 20th

   Topic: Introduction to the Course & Each Other

   Reading: Syllabus; How to Read and Brief a Case (available on OAKS)

B. Session 2-3: August 22nd and 27th


   Reading: pp. 22-33; 716-721 (Articles I, II, III); Concurrence of Justice Roberts, Citizens United v. FEC, pp. 5-8; Concurrence of Justice Thomas, Gamble v. United States, pp. 1-2 (available on OAKS)

C. Session 4-5: August 29th and September 3rd

   Topic: Introduction to Judicial Decision-Making: The Role of “Politics”

   Reading: pp. 33-42; Lawrence Friedman, “Supreme Court Justices Should Not Be Called Liberal or Conservative” (available on OAKS)
D. Sessions 6-7: September 5th & 10th

**Topic:** The Breadth of Judicial Power: Beyond the Confines of the Constitution

**Reading:** pp. 54-69; 75-77; 79-83; David Friedman, “What’s the Point of the Supreme Court?” (available on OAKS)

**Case Brief:** Marbury v. Madison, 5 U.S. 137 (1803) (Group 1)

E. Sessions 8-9: September 12th & 17th

**Topic:** The “Limits” of Judicial Power: Deference and Denial (Part 1)

**Reading:** pp. 91-103; Rucho v. Common Cause, slip op. No. 18-422 (2019) (Majority opinion (p.16-21; 33-34) & Dissenting opinion (29-33); available on OAKS))

**Case Brief:** Baker v. Carr, 369 U.S. 186 (1962) (Group 2)

F. Session 10: September 19th

**Topic:** The “Limits” of Judicial Power: Deference and Denial (Part 2)

**Reading:** pp. 109-118; Trump v. Hawaii, 585 U.S. ___ (2018); (Majority Opinion (pp. 24-26); available on OAKS))

**Case Brief:** Flast v. Cohen, 392 U.S. 83 (1968) (Group 3)

G. Session 11: September 24th

**Topic:** Make-Up Class (As needed)

H. Session 12: September 26th

****EXAM #1****

SECTION TWO: THE CONGRESS - “MOST DANGEROUS” BRANCH?

I. Sessions 13: October 1st

**Topic:** The Necessary and Proper Clause: Rewriting (?) the Constitution

**Reading:** pp. 141-154

**Case Brief:** McColluch v. Maryland, 17 U.S. 316 (1819) (Group 4)
J. Session 14: October 3rd

Topic: The Commerce Clause: What’s Money Got To Do With It?

Reading: pp. 405-416

Case Briefs: Gibbons v. Ogden, 22 U.S. 1 1824) (Group 5)
United States v. E.C. Knight Co, 156 U.S. 1 (1895) (Group 6)

K. Sessions 15: October 8th & 10th

Topic: The Commerce Clause: Sick Chickens and Backyard Gardens

Reading: pp. 428-449; 454-457

NLRB v. Jones & Laughlin Steel, 301 U.S. 1 (1937) (Group 8)
Wickard v. Filburn, 317 U.S. 111 (1942) (Group 9)

L. Session 16: October 17th

Topic: The Commerce Clause: Whoa, Nellie!

Reading: pp. 463-478


M. Session 17: October 22nd

Topic: The Commerce Clause: Eat Your Vegetables

Reading: pp. 478-493

Case Briefs: Gonzales v. Raich, 545 U.S. 1 (2005) (Group 12)

N. Session 18: October 24th

Topic: Make-Up Class (as needed)

***Exam #2 Distributed Via Oaks At Noon On Friday, October 25th. Due (Hard Copy In My Office Or Box) By Noon On Monday, October 28th  ***
SECTION THREE: THE PRESIDENCY – DICTATOR IN CHIEF?

O. Session 19: October 29th

Topic: Executive Privilege - What Happens in the White House Stays in the White House

Reading: pp. 195-201; 235-241; Neil Katyal, “Trump’s Abuse of Executive Privilege” (available on OAKS)


P. Session 20: October 31st

Topic: Nothing to Be Afraid Of Here - Executive Orders

Reading: pp. 297-310

Case Briefs: Korematsu v. United States, 323 U.S. 214 (1944) (Group 15)
Youngstown Sheet & Tube v. Sawyer, 343 U.S. 579 (1952) (Group 16)

Q. Session 21: November 5th

Topic: The War on Terror – How “Low” Can You Go?

Reading: pp. 321-333


R. Session 22: November 7th

Topic: Make Up Class (as needed)

S. Session 23: November 12th

****EXAM #3****

T. Session 24: November 14th

Topic: In Class Group Projects

U. Session 25-27: November 19th, 21st, and 26th

Topic: The Supreme Court Convenes: Final Projects