

CONSTITUTIONAL LAW

Political Science 320

T/TH 4:00-6:45 pm

Maybank Room 111

Fall 2017

Instructor: Claire Wofford, J.D., Ph.D. **Office:** 114 Wentworth Street, Room 205

Office Hours: Wed: 1:00-2:00 (or by appointment)

Email: woffordcb@cofc.edu; **Phone:** 953-5217

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 the three branches of the federal government, the relationship between them, and the ability of the federal government to regulate economic activity. 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 and strategic behavior 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:

Epstein, Lee and Thomas G. Walker. 2017. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 9th ed. CQ Press: Washington, D.C.

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 9th edition.

Additional readings may be 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, 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: 15%

Examinations

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 three exams reflects the likelihood of a learning curve.

Exams must be taken 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 class session) and completion of a final paper (either a legal brief or judicial opinion). Further details will be forthcoming.

Class Participation

Your class participation grade will be comprised of two elements:

- 1) *In-Class Contributions (7.5%)*: Your grade here will be determined by the quality and quantity of your contributions to class discussion. 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, ongoing dialogue 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 class session, I will be calling upon students in alphabetical order, by last name. When asked, the student will be expected to answer my questions about the case facts and Court opinion(s) 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, and students will be assessed on effort as well as the quality of the response. Students who have an unexcused absence the day they are called upon will be assigned a zero.
- 2) *In-Class Presentation (7.5%)*: You will also be required, with one other student, to present a case to the class throughout the semester. 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. Specific instructions for this assignment are posted on OAKS. Group assignments will be posted as soon as the class list is finalized.

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.

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 an unexcused absence may be assigned a lower or failing final grade. Students will be assigned one unexcused absence for every two times they are late to class.

The rules of the student code of conduct apply in this class. Appropriate behavior is required at all times. Students are expected to attend class prepared and on time. 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 and cell phones are prohibited in the classroom. Please see me if you have questions about this policy or need accommodations.

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 be 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.

VI. 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 (in class and/or via OAKS) and students are expected to alter their reading as necessary.

Also, please be aware the exams will be based upon information contained in **both the text and the class sessions**. Focusing upon solely the text or the lecture material will be insufficient to perform well in this class.

SECTION ONE: THE JUDICIARY: THE “LEAST DANGEROUS” BRANCH

A. Session One: October 12th

Topic #1: Introduction to Class

Reading: Syllabus; How to Read and Brief a Case

Topic #2: Introduction to Judicial Decision-Making: The Role of Law

Reading: pp. 23-33; 722-726 (Articles I, II, III)

B. Sessions Two: October 19th

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

Reading: pp. 33-43

C. Session Three: October 24th

Topic #1: The Breadth of Judicial Power: Beyond the Confines of the Constitution

Reading: pp. 55-70; 79-81

Case Brief: *Marbury v. Madison* (Group 1)

Topic #2: The “Limits” of Judicial Power: Deference and Denial (part 1)

Reading: pp. 90-102

Case Brief: *Baker v. Carr* (Group 2)

D. Session Four : October 26th

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

Reading: pp. 107-118

Case Brief: *Flast v. Cohen* (Group 3); *Hollingsworth v. Perry* (Group 4)

E. Session Six: November 2nd

*****EXAM #1*****

SECTION TWO: THE CONGRESS – THE “MOST DANGEROUS” BRANCH

F. Session Seven: November 7th

Topic #1: The Breadth and Limits of Legislative Power: The Necessary and Proper Clause

Reading: pp. 144-156; 171-178

Case Brief: *McCulluch v. Maryland* (Group 5)

Topic #2: The Breadth and Limits of Legislative Power: The Commerce Clause (part 1)

Reading: 415-431; 439-458

Case Briefs: *United States v. E.C. Knight* (Group 6); *A.L.A. Schechter Poultry Corp v. United States* (Group 7); *NLRB v. Jones and Laughlin Steel Corp* (Group 8)

G. Session Eight: November 9th

Topic: The Breadth and Limits of Legislative Power: The Commerce Clause (part 2)

Reading: 463-467; 472-500

Case Briefs: *Wickard v. Filburn* (Group 9); *United States v. Lopez* (Group 10); *Gonzales v. Raich* (Group 11)

H. Session Nine: November 14th

*****EXAM #2*****

SECTION THREE: THE EXECUTIVE– CLERK AND COMMANDER

I. Session Ten: November 16th

Topic #1: The President’s Domestic Powers: Appointment & Removal

Reading: pp. 196-198; 212-219; 229-238;

Case Briefs: *Morrison v. Olsen* (Group 12); *Humphrey’s Executor v. United States* (Group 13)

Topic #2: The President’s Foreign Powers: The “Sole Organ”

Reading: pp. 263-267; 319-328

Case Briefs: *United States v. Curtiss-Wright* (Group 14); *Zivotofsky v. United States* (Group 15)

J. Session Eleven Twelve: November 21st

Topic #1: The President’s Foreign Powers: Executive Orders

Reading: pp. 303-316

Case Briefs: *Korematsu v. United States* (Group 16); *Youngstown Sheet & Tube v. Sawyer* (Group 17)

Topic #2: President’s Foreign Powers: The War on Terror

Readings: pp. 330-340

Case Briefs: *Hamdi v. Rumsfeld* (Group 18)

K. Session Twelve: November 28th

*****EXAM #3*****

L. Session Thirteen: November 30th

Topic: The Supreme Court Convenes (Final Projects)