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 several 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. There is a copy of the textbook on reserve at Addlestone Library.

The R.E.A.C.H Act requires that students read the following documents in their entirety: the U.S. Constitution, Declaration of Independence, 5 of the Federalist Papers, the Emancipation Proclamation, and one additional document foundational to the African-American freedom struggle.

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, syllabi, schedules, or exams.

Please read the assigned material listed in the syllabus prior to the class session.

III. EVALUATION

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

- Exam #1: 15%
- Exam #2: 20%
- Exam #3: 20%
- Final Project: 30%
- Class Participation: 10%
- Case Briefs/Presentation: 5%

Examinations

Examinations will be closed book and taken in class. (If needed, one of these exams will be converted to a take-home exam.) Except for any take-home exam, they will be comprised of a mix of question types, including objective, short answer, and short essay.

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.

As with law school exams, the short essay question(s) (on Exams 2 and 3) 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**.

*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, however, I expect all students to come to every class having read and studied 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 Briefs/Presentation*

You will also be required, with one other student, to present one case to the class throughout the semester. This presentation, which should last no longer than **10-15 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.
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 during every class. Only documented illness (subject to exception for Covid-related absences), 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 with a Covid-related absence should inform me as soon as possible. The student and I will make reasonable accommodations/arrangements as needed. My classes are built on mutual respect and trust, and I expect that you will be honest and truthful about the cause of your absence(s).

As tardiness disrupts the classroom environment, any student who is late more than two times will have their participation grade dropped by 10%.

The rules of the student code of conduct apply in this class. Appropriate behavior is always required. 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 during in-person class sessions. 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 an 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 will make reasonable accommodations for persons with documented disabilities. Students should apply for services at the Center for Disability Services/SNAP located on the first floor of the Lightsey Center, Suite 104. Students approved for accommodations are responsible for notifying me as soon as possible and for contacting me one week before accommodation is needed.

VII. INCLEMENT WEATHER, PANDEMIC OR SUBSTANTIAL INTERRUPTION OF INSTRUCTION

If in-person classes are suspended, I will announce to students a detailed plan for a change in modality to ensure the continuity of learning. All students must have access to a computer equipped with a web camera, microphone, and Internet access. Resources are available to provide students with these essential tools.

VIII. 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. Indeed, given current circumstances, change is likely.

Also, please be aware the both the final and mid-term exams will be based upon information contained in both the text and the lectures. Focusing upon solely the text or the lecture material will be insufficient to perform well in this class.
SECTION ONE: THE SUPREME COURT - “LEAST DANGEROUS” BRANCH?

A. Session 1: Tuesday, August 24th

Topic: Introduction to the Course & Each Other

Reading: Syllabus; How to Read and Brief a Case

B. Session 2: Thursday, August 26th


Reading: pp. 22-23; 716-721 (Articles I, II, III)

NOTE: If you are interested in/unfamiliar with the general operations of the U.S. Supreme Court, please also read pages 10-22.

C. Session 3: Tuesday, August 31st


D. Session 4: Thursday, September 2nd


Reading: NONE (review reading from prior session, particularly pages 24-27)

E. Session 5: Tuesday, September 7th

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

Reading: pp. 33-37

F. Session 6: Thursday, September 9th

Topic: Introduction to Judicial Decision-Making: Just Play the Game
Reading: pp. 37-42; Ilya Somin, “Is John Roberts a Judicial Minimalist, a Coward, or a Strategic Maximizer?” (OAKS)

G. Session 7: Thursday, September 9th

***EXAM #1***

H. Session 8: Tuesday, September 14th

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

Reading: pp. 54-69; 720-721 (Article III; review)

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

I. Session 9: Thursday, September 16th

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

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

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

J. Session 10: Tuesday, September 21st

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

Reading: pp. 109-118; Majority Opinion of Justice Breyer (selections), Texas v. United States (OAKS)

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

K. Session 11: Thursday, September 23rd

Topic: Review/Catch-Up

L. Session 12: Tuesday, September 28th

***EXAM #2***
SECTION TWO: CONGRESS - “MOST DANGEROUS” BRANCH?

M. Session 13: Thursday, September 30th

   Topic: The Necessary and Proper Clause: Rewriting (?) the Constitution, Part 1

   Reading: pp. 141-152

   Case Brief: McCulloch v. Maryland, 17 U.S. 316 (1819) (Group 4)

N. Session 14: Tuesday, October 5th

   Topic: The Necessary and Proper Clause: Rewriting (?) the Constitution, Part 2

   Reading: pp. 152-154

O. Session 15: Thursday, October 7th

   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)

P. Session 14: Tuesday, October 12th

   Topic: The Commerce Clause: Anybody Up for Some Salmonella?

   Reading: pp. 428-439


Q. Session 15: Thursday, October 14th

   Topic: The Commerce Clause: Whatcha Doin’ in My Backyard?

   Reading: 440-457

   Case Briefs: NLRB v. Jones & Laughlin Steel, 301 U.S. 1 (1937) (Group 8); Wickard v. Filburn, 317 U.S. 111 (1942) (Group 9)
*No Class On Tuesday, October 19\textsuperscript{th} (Fall Break) *

R. Session 16: Thursday, October 21\textsuperscript{st}

Topic: The Commerce Clause: Green Light…. Red Light

Reading: pp. 463-478


S. Session 17: Tuesday, October 26\textsuperscript{th}

Topic: The Commerce Clause: Eat Your Veggies!

Reading: pp. 478-493


T. Session 18: Thursday, October 28\textsuperscript{th}

Topic: Review/Catch-Up

U. Session 19: Tuesday, November 2\textsuperscript{nd}

***EXAM #3***

SECTION THREE: THE EXECUTIVE: WHO VOTED FOR THIS GUY??

V. Session 20: Thursday, November 4\textsuperscript{th}

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); \textit{Trump v. Vance} (selections; OAKS)


W. Session 21: Tuesday, November 9\textsuperscript{th}

Topic: Nothing to Be Afraid of Here - Executive Orders
Reading: pp. 297-310; Jacob M. Schlesinger, “Biden’s Hurdle: Court Dubious of Rule by Regulation,” Wall Street Journal (OAKS)

Case Briefs: Youngstown Sheet & Tube v. Sawyer, 343 U.S. 579 (1952) (Group 15)

X. Session 22: Thursday, November 11th
   Topic: Review/Makeup

Y. Session 23: Tuesday, November 16th
   Topic: Final Projects

Z. Session 24: Thursday, November 18th
   Topic: Review/Makeup (as needed)

AA. Session 25-27: November 23rd, 30th, and December 2nd
   Topic: The Supreme Court Convenes: Final Projects

(NOTE: PLEASE ALSO RESERVE THURSDAY, DECEMBER 9TH FROM 8-10 PM (FINAL EXAM TIME AS SCHEDULED BY THE REGISTRAR))