

**CONSTITUTIONAL LAW**  
**Political Science 320, Section 1**  
**T/TH 9:25-10:40**  
**Maybank Hall, Room 115**  
**Fall 2022**

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**Instructor:** Claire Wofford, J.D., Ph.D.

**Office:** 9 Liberty Street, Room 226

**Office Hours:** By appt

**Email:** [woffordcb@cofc.edu](mailto:woffordcb@cofc.edu)

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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 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:

Epstein, Lee and Thomas G. Walker. 2020. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 10th 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 10<sup>th</sup> 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: #1,#10, #51,#68, #78,, the Emancipation Proclamation, and one additional document foundational to the African-American freedom struggle- I have a Dream.

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, 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: 25%  
Class Participation: 15%  
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) 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 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 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, so please consult OAKS for the current syllabus.**

Also, please be aware the both the final and mid-term exams will be based upon information contained in **the text, readings, 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 23<sup>rd</sup>**

**Topic:** Introduction to the Course & Each Other

**Reading:** None

### **B. Session 2: Thursday, August 25<sup>th</sup>**

**Topic:** Introduction to Judicial Decision-Making: The Role of “Law,” Part 1

**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 30<sup>th</sup>**

**Topic:** Introduction to Judicial Decision-Making: The Role of “Law,” Part 2

**Reading:** pp. 30-31; Concurrences of Justice Roberts, *Citizens United v. FEC* (selection); Opinion of Justice Alito, *Dobbs v. Mississippi Women’s Health* (OAKS)

### **D. Session 4: Thursday, September 1<sup>st</sup>**

**Topic:** Introduction to Judicial Decision-Making: The Role of “Law,” Part 3

**Reading:** pp. 24-30

### **E. Session 5: Tuesday, September 6<sup>th</sup>**

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

**Reading:** pp. 33-37; Lawrence Friedman, “Supreme Court Justices Should Not Be Called Liberal or Conservative” (OAKS)

### **F. Session 6: Thursday, September 8<sup>th</sup>**

**Topic:** Introduction to Judicial Decision-Making: The Role of “Politics” (cont.) and 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: Tuesday, September 13<sup>th</sup>**

**Topic:** Introduction to Judicial Decision-Making: Review

**Reading:** None

**H. Session 8: Thursday, September 15<sup>th</sup>**

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

**I. Session 9: Tuesday, September 20<sup>th</sup>**

**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**)

**J. Session 10: Thursday, September 22<sup>nd</sup>**

**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**)

**K. Session 11: Tuesday, September 27<sup>th</sup>**

**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**)

**L. Session 12: Thursday, September 29<sup>th</sup>**

**Topic:** Review/Catch-Up

**Reading:** None

**M. Session 13: Tuesday, October 4<sup>th</sup>**

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

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

**N. Session 14: Thursday, October 6<sup>th</sup>**

**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**)

**O. Session 15: Tuesday, October 11<sup>th</sup>**

**Topic:** The Necessary and Proper Clause: “Rewriting” the Constitution, Part 2

**Reading:** pp. 152-154

**P. Session 16: Thursday, October 13<sup>th</sup>**

**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**)

**Q. Session 17: Tuesday, October 18<sup>th</sup>**

**Topic:** The Commerce Clause: Would You Like Salmonella With That?

**Reading:** pp. 428-439

**Case Brief:** *A.L.A. Schechter Poultry v. United States*, 295 U.S. 495 (1935) (Group 7)

**R. Session 18: Thursday, October 20<sup>th</sup>**

**Topic:** The Commerce Clause: Trespassing 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)

**S. Session 19: Tuesday, October 25<sup>th</sup>**

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

**Reading:** pp. 463-478

**Case Briefs:** *United States v. Lopez*, 514 U.S. 549 (1995) (Group 10); *United States v. Morrison*, 529 U.S. 598 (2000) (Group 11)

**T. Session 20: Thursday, October 27<sup>th</sup>**

**Topic:** The Commerce Clause: Eat Those Veggies!

**Reading:** pp. 478-493

**Case Briefs:** *Gonzales v. Raich*, 545 U.S. 1 (2005) (Group 12); *NFIB v. Sebelius*, 567 U.S. 519 (2012) (Group 13)

**U. Session 21: Tuesday, November 1<sup>st</sup>**

**Topic:** Review/Catch-Up

**V. Session 22: Thursday, November 3<sup>rd</sup>**

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

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

**No Class on Tuesday, November 8<sup>th</sup> (Fall Break)**

**W. Session 23: Thursday, November 10<sup>th</sup>**

**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); *Trump v. Vance* (selections; OAKS)

**Case Brief:** *United States v. Nixon*, 418 U.S. 683 (1974) (Group 14)

**X. Session 24: Tuesday, November 15<sup>th</sup>**

**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)

**Y. Session 25: Thursday, November 17<sup>th</sup>**

**Topic:** Review/Makeup

**Z. Session 26: Tuesday, November 22<sup>nd</sup>**

**Topic:** The Supreme Court Convenes (Case #1)

**No Class on Thursday, November 24<sup>th</sup> (Thanksgiving)**

**AA. Session 27: Tuesday, November 29<sup>th</sup>**

**Topic:** The Supreme Court Convenes (Case #2)

**BB. Session 28: Thursday, December 1<sup>st</sup>**

**Topic:** The Supreme Court Convenes (Case #3)

(NOTE: Please also reserve Thursday, December 8<sup>h</sup> from 10:30-12:30 (final exam time as scheduled by the registrar))