

## POS 335—The American Supreme Court Fall 2011 (10:15-11:35)

Instructor: Katie Zuber

Email: kz6846@albany.edu

Office Hours: Tuesdays 11:45 to 12:45 (Political Science Contact Office)

### Course Description

This course will examine the U.S. Supreme Court through both scholarly text and judicial decisions. The class is divided into three sections (1) The Founding and Judicial Review; (2) Models of Judicial Decision-Making; and (3) Constitutional Law where students will use their new knowledge of the Court to understand and interpret important Supreme Court decisions relating to the Commerce Clause, First Amendment Rights, and Civil Rights. The course goals are to improve students' understanding of how the Court functions and to enable students to gain knowledge of some of the major concepts, models, and issues of the Public Law subfield. Moreover, students will be taught to read and interpret Supreme Court decisions which will serve as the basis for class discussion during the final weeks of the course.

### Required Texts

Available from the University at Albany Bookstore (442-5698) or online.

Baum, Lawrence. 2010. The Supreme Court. 10th Edition. CQ Press. ISBN 978-1-60426-462-3

McCloskey, Robert G. Revised by Sanford Levinson. 2010. The American Supreme Court. 5<sup>th</sup> Edition. Cambridge: Cambridge University Press. ISBN 978-0-22655-687-1

Segal, Jeffrey A. and Harold J. Spaeth. 2002. The Supreme Court and the Attitudinal Model Revisited. Cambridge: Cambridge University Press. ISBN 0-521-78971-0

Epstein, Lee and Jack Knight. 1998. The Choices Justices Make. Congressional Quarterly. ISBN 1-56802-226-3

Additional reading materials will include Supreme Court cases and journal articles. All are available on ERES. To sign onto ERES you must do the following:

1. Visit the Albany Library webpage ([library.albany.edu](http://library.albany.edu))
2. Select the *Electronic Reserves* link in the left navigation menu.
3. Sign in using your NetID and Password
4. Select Course POS 335 from your list of classes and type in the password (Marshall)
5. From there you can view, download and print the course reading materials.

### Course Requirements

*Attendance* is mandatory. You are expected to come to class ready to discuss the assigned readings for that day.

*Reading Quizzes* We will have weekly *reading quizzes*. The quizzes may be given on any day of the week at any point during our class. **NO** makeup quizzes will be given. The purpose of each quiz is to ensure students come to class having completed the assigned readings and are ready to engage the material (this, of course, is where your *participation* is factored in).

*Midterm* In addition to attendance, reading, and quizzes there will be one *mid-term exam* on Thursday October 20. The exam will be a combination of short answer topics and essays.

*Final Paper* The *final paper* is due Tuesday December 13. A handout with specific instructions will be distributed at the end of the semester.

#### Grade Formula

Reading Quizzes 35%

Midterm 25%

Final Paper 30%

Class Participation 10%

#### Cheating and Plagiarism

Plagiarism is the use of another's original words or ideas as though they were your own. Students caught plagiarizing/cheating will AT THE VERY LEAST receive a grade of F on the assignment in question and will quite likely receive a failing grade for the entire course. In addition, such cases may be referred to the Dean of Undergraduate Studies with a request for further sanctions.

### **I. The Founding and Judicial Review**

**Week 1** (Aug. 30/Sep. 1): Syllabus distribution & Introduction.

Topic: The Founding and Judicial Review.

Readings

- Baum Chapter 1
- Federalist No. 78 (ERES)
- McCloskey Chapter 1

**Week 2** (Sept. 6/8): The Founding and Judicial Review, continued

*Monday, September 5 Labor Day—No Classes*

Readings

- Marbury v. Madison (ERES)
- McCloskey Chapters 2-4

**Week 3** (Sept. 13/15): The Founding and Judicial Review, continued

Readings

- McCloskey Chapters 5-8
- Barnum (1985) "The Supreme Court and Public Opinion" (ERES)

### **II. Judicial Decision-Making**

**Week 4** (Sept. 20/22): The Legal Model

Readings

- Baum Chapter 4
- Skim SCAMR Chapter 2
- Segal (1984) "Predicting Supreme Court Cases Probabilistically" (ERES)

**Week 5** (Sept. 27): The Attitudinal Model

*Wednesday Sept. 28 Classes Suspended at 2:35 (classes resume Monday Oct. 3 at 8 a.m.)*

Readings

- Segal and Spaeth (1996) "The Influence of Stare Decisis" (ERES)

- SCAMR Chapter 3 (pp. 86-97 only)
- SCAMR Chapter 8 (pp. 312-326 only)
- Richard Brisbin “Slaying the Dragon”

**Week 6** (Oct. 4/6): Rational Choice and the SOP Model Part I: Internal Factors

*Friday October 7: Classes Suspended at 2:35 p.m. (classes resume Monday Oct. 10 at 8 a.m.)*

Readings

- Epstein & Knight Chapter 1
- Epstein & Knight Chapter 4
- Knight and Epstein “The Norm of Stare Decisis”(ERES)

**Week 7** (Oct. 11/13): SOP Model Part II: External Factors; Historical Institutionalists

Readings

- Epstein & Knight Chapter 5
- Lovell “Legislative Deferrals” (ERES)
- Epp “External Pressure and the Supreme Court’s Agenda”(ERES)

**Week 8** (Oct. 18/20): Judicial Appointments

Readings

- Baum Chapter 2
- SCAMR Chapter 5
- Overby et al. “Courting Constituents?”(ERES)

**1<sup>st</sup> Midterm Exam—End of Week 8 (Thursday Oct. 20)**

### **III. Constitutional Law (All cases will be posted on ERES)**

**Week 9** (Oct. 25/27): The Commerce Clause

Readings

- Gibbons v. Ogden (1824)
- U.S. v. E.C. Knight Company (1895)
- Champion v. Ames (1903)
- Hammer v. Dagenhart (1918)
- Adkins v. Children’s Hospital (1923)
- West Coast Hotel v. Parrish (1937)
- NLRB v Jones & Laughlin Steel (1937)
- U.S. v. Darby (1941)
- Wickard v. Fillburn (1942)

**Week 10** (Nov. 1/3): Congress and the Executive

Readings

Wartime Policies

- Ex Parte Milligan (1866)
- Ex Parte McCardle (1868)
- Youngstown Sheet & Tube Co. v. Sawyer (1952)
- Graber “Leal, Strategic or Legal Strategy: Deciding to Decide during the Civil War and Reconstruction” (ERES)

Delegation of legislative and executive power

- US v. Curtis-Wright Export (1936)
- INS v. Chadha (1983)
- Clinton v. New York (1998)

**Week 11** (Nov. 8/10): First Amendment—Religion (the Establishment and Exercise Clauses)

Readings

Incorporating the First Amendment

- Cantwell v. CT (1940)

Establishment Clause

- Everson v. Board of Education (1947)
- Mueller v. Allen (1983)
- Lemon v. Kurtzman (1971)
- Lee v. Weisman (1992)

Free Exercise

- Sherbert v. Verner (1963)
- Wisconsin v. Yoder (1972)
- Employment Division, Department of Human Resources of Oregon v. Smith (1990)
- City of Boerne v. Flores. (1997)

**Week 12** (Nov. 15/17): First Amendment—Free Speech.

Readings

- Schenck v. United States (1919)
- Dennis v. United States (1951)
- Cohen v. California (1971)
- U.S. v. O'Brien 1968)
- Tinker v. Des Moines (1969)
- Texas v. Johnson (1989)

**Week 13** (Nov. 22): Civil Rights

*Classes suspended Wednesday Nov. 23 at 8 a.m. (resume Monday Nov. 28 at 8 a.m.)*

Readings

- Dred Scott (1857)
- Plessy v. Fergusson (1896)
- Brown v. Board of Education (1954)
- Cooper v. Aaron (1958)
- Katzenbach v. McClung (1964)
- Loving v. Virginia (1967)
- Hollow Hope Chapter 2 “Brown and the Civil Rights Movement” (ERES)

**Week 14** (Nov. 29/Dec. 1) Civil Rights, continued and Rights of the Accused

Readings

Civil Rights Part II

- Griswold v. Connecticut (1965)
- Roe v. Wade (1973)
- Bowers v. Hardwick (1986)
- Romer v. Evans (1996)
- Lawrence v. Texas (2003)
- Keck (2009) “Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights” OR a direct response to Hollow Hope regarding Brown (ERES)

#### Rights of the Accused

##### Readings

- Wolf v. Colorado (1949)
- Mapp v. Ohio (1961)
- Gideon v. Wainwright (1963)
- Escobedo v. Illinois (1964)
- Miranda v. Arizona (1966)
- US v. Leon (1984)

#### **Week 15** (Dec. 6) Conclusion Discussion of Final papers

*Tuesday Dec. 6 Last Class*

Readings (NONE)

#### **Week 16** (Dec. 12)

*Final Paper due Tuesday Dec. 13*