Constitutional Politics
Pol Sci 3325

Spring 2014
T/Th 11:30-1:00, Seigle Hall 304

Instructor
Nick Goedert
Seigle Hall 207B
314-935-3206
ngoedert@wustl.edu
Office Hours: M 1:00-3:00 and by appointment

Course Description
The purpose of this course is to introduce students to the politics of the U.S. Supreme Court's interpretation of the Constitution. We will first discuss the origins of the Constitution, the structure operation and work of the Supreme Court and each branch of the U.S. government, and the nature of legal reasoning and legal development. Afterwards, we will examine various areas of the law relating to institutional powers and constraints (e.g., federalism, Congressional authority). In so doing, we will develop an understanding of the legal doctrine in each area of the law, and track the changes in this law, and the accompanying legal philosophy behind it, over the course of U.S. history.

Required Texts
This course has only one assigned textbook:

I strongly recommend that you do not purchase a previous edition of this casebook. It is fine for you to purchase a used copy of the book, provided that it is the 8th edition.

There will be handful of recent decisions that we will cover that are not included in the casebook. I will print and distribute excerpts from these decisions over the course of the semester. These decisions are marked with “*” in the syllabus.

Complete opinions from all Supreme Court cases are available online at: supreme.justia.com/cases/federal/us/

Class Requirements & Circuits
This class will mostly be taught using “soft” Socratic method, in which dialogue between the teacher and students is essential. All students are expected to keep up with course materials, and come to class prepared to discuss both the details of cases and the principles involved. The make the burden somewhat lighter, the class will be divided about three “Circuits” at the second class meeting. For each week of the semester, one of the three Circuits is designated as on call. Each Circuit is responsible for three weeks of the semester.
During weeks in which your Circuit is on call, you are expected to:

• Post a response to the week’s readings on Blackboard prior the class meeting;
• Be particularly well-prepared to answer questions about the facts and findings of the week’s cases, subject to cold-calling if there are no volunteers;
• Be prepared to answer follow-up questions, and discuss your Blackboard response;
• If you cannot attend a class in which you are on call, please let me know ahead of time; I may ask you to be on call for a class later in the semester.

During weeks in which you are not on call, students are expected to:

• Attend all classes, having read the designated material from the case book;
• Participate in class discussion as volunteers;
• Post two additional Blackboard responses on weeks of your choosing.

I hope that it will be necessary to cold-call on students only on rare occasions. I will always ask for volunteers before cold-calling.

**Grading**

Final grades for this course will be comprised of four components:

<table>
<thead>
<tr>
<th>Component</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation</td>
<td>15%</td>
</tr>
<tr>
<td>Midterm Exam #1</td>
<td>15%</td>
</tr>
<tr>
<td>Midterm Exam #2</td>
<td>15%</td>
</tr>
<tr>
<td>Final Exam</td>
<td>30%</td>
</tr>
<tr>
<td>Paper</td>
<td>25%</td>
</tr>
</tbody>
</table>

Details of the Components:

*Participation:* Class participation will be composed of both your participation in class discussions and your responses to the readings posted on Blackboard. You are required to post five responses over the course of the semester. You should post under the correct week in the Discussions tab on the Pol Sci 3325 Blackboard site.

• Three of these posts are required on the weeks in which your Circuit is on call. These responses should be made by 10pm on the night before we discuss the case or cases you are responding to.
• Two additional responses on any other week you choose. The posts can be made in direct response to a previous post on the same topic. These responses should be made before the class meeting.

There is no required format or length to the Blackboard posts, although I would expect many will be about one typed page or two paragraphs. You may respond to any aspect of any case in the week’s readings; you may tie together multiple cases, or readings from previous weeks, or simply argue why you think a particular opinion is correct or incorrect, etc.
The Blackboard posts will not be given individual letter grades; for the most part, they will be graded on a pass/fail basis. If I find your post particularly interesting or insightful, I may ask you to expand on it in class.

You will also be graded on your overall participation in class, including attendance, focusing on discussion participation during on-call weeks.

*Exams:* There will be three examinations in the course, two one-hour midterm tests on February 11th and March 6th, and a final on the designated final exam date. The final will be cumulative, but focus on material from the second half of the semester. The midterms will be predominantly multiple-choice, with some short answer questions. The final exam will also consist of one or two hypothetical cases or essay questions that will require you to apply and/or explain and interpret the learned legal principles.

*Paper:* The final graded component of the course is a two-part paper, in which each student will be asked to take on the role of a current or former Supreme Court Justice in deciding a hypothetical case. Roles will be assigned on March 6th. Judges will be assigned such that each Circuit will represent one era of the Supreme Court’s history; for example, the First Circuit might be assigned the “Conservative Court” era of the early 20th century, with students representing Justices like William Howard Taft and Oliver Wendell Holmes. The facts of the hypothetical case will be assigned shortly after Spring break.

The first part of the assignment is to write an analytical paper on the assigned Justice, addressing biographical facts, but concentrating on their ideological preferences and historic impact. You should address the confirmation hearing, how newspapers judged the justice before confirmation, and their behavior and major opinions while on the bench. Due at beginning of class on April 8th; approximately 3-5 pages.

The second part is to write an opinion, either alone or with other Justices in your Circuit, deciding the hypothetical case. On April 8th, in lieu of our normal class, each Circuit will conference as a group to discuss their views and preliminary votes on the case, and assign the writing of opinions and dissents. You should decide the case as you think your assigned Justice would. You may join in writing an opinion with any number of other Justices in your Circuit as you believe appropriate, but all Justices joining the opinion will receive the same grade. Due on the day before the exam; approximately 5-7 pages.
Class Schedule

Week 1: Jan. 14 & Jan. 16 – Introduction
- No one on call
- Reading: Epstein & Walker, Chapter 1

Week 2: Jan. 21 & Jan. 23 – The Judiciary
- 1st Circuit on call
- Reading: Epstein & Walker, Chapter 2; Boerne v. Flores excerpt
- Focus Cases:
  o Marbury v. Madison (1803)
  o Martin v. Hunter’s Lessee (1816)
  o City of Boerne v. Flores (1997)*
  o Ex part McCarrle (1869)
  o Baker v. Carr (1962)

Week 3: Jan. 28 & Jan. 30 – The Legislature
- 2nd Circuit on call
- Reading: Epstein & Walker, Chapter 3
- Focus Cases:
  o Powell v. McCormack (1969)
  o U.S. Term Limits v. Thornton (1965)
  o McCulloch v. Maryland (1819)
  o McGrain v. Daugherty (1927)
  o Barenblatt v. U.S. (1959)

Week 4: Feb. 4 & Feb. 6 – The Executive
- 3rd Circuit on call
- Reading: Epstein & Walker, Chapter 4
- Focus Cases:
  o Clinton v. City of New York (1998)
  o Myers v. U.S. (1926)
  o Clinton v. Jones (1997)
  o Murphy v. Ford (1975)
  o U.S. v. Curtis-Wright (1936)

Week 5: Feb. 11 & Feb. 13 – First Midterm/Separation of Powers
- **First Midterm Test Feb. 11th**
- No one on call
- Reading: Epstein & Walker, p. 257-277
- Focus Cases:
  o INS v. Chadha (1983)
Week 6: Feb. 18 & Feb. 20 – Separation of Powers
• 1st Circuit on call
• Reading: Epstein & Walker, p. 277-322
• Focus Cases:
  o *The Prize Cases* (1803)
  o *Ex parte Milligan* (1866)
  o *Ex parte Quirin* (1942)
  o *Korematsu v. U.S.* (1944)
  o *Youngstown Sheet & Tube v. Sawyer* (1952)

Week 7: Feb. 25 & Feb. 27 – The Doctrinal Cycle/Federalism
• 2nd Circuit on call
• Reading: Epstein & Walker, 330-370
• Focus Cases:
  o *McCulloch v. Maryland* (1819)
  o *Scott v. Sanford* (1857)
  o *Alden v. Maine* (1999)

Week 8: March 4 & March 6 – Federalism/Second Midterm
• **Second Midterm Test March 6th**
  • No one on call
  • Reading: Epstein & Walker, 362-399
  • Focus Cases:

No class March 11 & March 13 (Spring Break)

Week 9: March 18 & March 20 – The Commerce Power
• 3rd Circuit on call
• Reading: Epstein & Walker, p. 392-448
• Focus Cases:
  o *Gibbons v. Ogden* (1824)
  o *U.S. v. E.C. Knight* (1895)
  o *Stafford v. Wallace* (1922)
  o *Hammer v. Dagenhart* (1918)
  o *Schechter Poultry Corp. v. U.S.* (1935)
  o *Carter v. Cater Coal Company* (1936)
  o *NLRB v. Jones & Laughlin Steel Corporation* (1937)
  o *Wickard v. Filburn* (1942)
Week 10: March 25 & March 27 – Modern Commerce Clause & Dormant Commerce Clause

- 1st Circuit on call
- Reading: Epstein & Walker, p. 471-544
- Focus Cases:
  - *Gonzales v. Raich* (2005)
  - *Cooley v. Board of Wardens* (1852)

Week 11: April 1 & April 3 – Taxation & Obamacare Decision

- 2nd Circuit on call
- Reading: Epstein & Walker, Chapter 8; *NFIB v. Sebelius*
- Focus Cases:
  - *Pollock v. Farmers’ Loan & Trust* (1895)

Week 12: April 8th – Moot Court Conference & Contract Clause

- **Biographical Paper Due & Small Group Moot Court Conferences April 8th**
- Reading: Epstein & Walker, Chapter 9
- Focus Cases:
  - *Fletcher v. Peck* (1810)
  - *Charles River Bridge v. Warren Bridge* (1837)
  - *Home Building & Loan v. Blaisdell* (1934)

Week 13: April 15 & April 17 – Economic Liberties & Substantive Due Process

- 3rd Circuit on call
- Reading: Epstein & Walker, Chapter 10
- Focus Cases:
  - *Munn v. Illinois* (1877)
  - *Adkins v. Children’s Hospital* (1923)
  - *West Coast Hotel v. Parrish* (1937)

Week 14: April 22 & April 24 – The Takings Clause

- No one on call
- Exam Review April 24
- Reading: Epstein & Walker, Chapter 11
- Focus Cases:
  - *U.S. v. Causby* (1946)