

**POLS 4780**  
**The Supreme Court, Law, and Politics**  
**Fall 2017**

Dr. Richard L. Vining, Jr.  
Office: Baldwin 376  
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Office hours: Fri 11:00-12:00  
Classroom: Baldwin 101D  
Meetings: MWF 2:30-3:20

The federal judiciary is frequently involved in political disputes with the elected branches. Such events have long taken place, from the vigorous attacks on Justice Chase and the Marshall Court to recent episodes involving campaign finance reform, gun rights, LGBT rights, etc. Several recent nominations of prospective Supreme Court justices have also caused political turmoil. How did the judiciary become such an object of political scrutiny? Is the current situation unique? This course examines the circumstances in which the Supreme Court of the United States and its justices are involved in politics – either as subject, participant, or arena for settlement.

**Readings.** The following textbooks are required:

Colton C. Campbell and John Stack, Jr., eds. – *Congress Confronts the Court* (2001)  
Michael Comiskey – *The Judging of Supreme Court Nominees* (2004)

**All readings below marked with an asterisk (\*) will be available via electronic sources.**

**Examinations.** There will be a midterm examination and a final examination. No exceptions will be made for the scheduled examination times except in the case of a documented medical emergency. If you have additional needs or have permission from the Disability Resource Center for extra time on exams, please contact me privately and arrangements will be made.

**Paper.** *An 8-10 page research paper is due November 10.* Write a well-research paper about a single political conflict or series of related conflicts involving the Supreme Court. A list of possible paper topics will be distributed. Additional topics may be pursued if they are approved by the instructor. *A proposal and tentative bibliography are due on September 13.*

**Grading.**

Midterm examination 30%; paper 30%; final examination 40%

Grades will be assigned based on the following scale:

100-94	A	89-86	B+	79-76	C+	69-66	D+
93-90	A-	85-83	B	75-73	C	65-60	D
		82-80	B-	72-70	C-	59-00	F

**Academic Integrity.** Neither plagiarism nor cheating will be tolerated. Appropriate citations are expected and encouraged. All students are expected to behave in accordance with the guidelines of the UGA Honor Code. If you are unsure whether certain actions are acceptable, consult your instructor.

**Attendance.** An attendance sheet will be circulated at each class meeting. Class attendance will be taken into account in deciding final grades in borderline cases. It is to your advantage to attend.

## Course Outline

**Mon., Aug. 14: Discussion and course overview**

### **I. The Federal Judiciary: Structure and Institutional Context**

**Wed., Aug. 16-Fri., Aug. 18**

### **II. Theories of Judicial Decision-making**

**Mon., Aug. 21 –Fri., Aug. 25: Theories and models of judicial decision-making**

Jeff Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (2002), p. 44-53, 86-114\*

### **III. The Politics of Supreme Court Nominations**

**Mon., Aug. 28-Fri. Sep. 1: Perspectives on the Confirmation Process**

Michael Comiskey, *The Judging of Supreme Court Nominees*, p. 1-84, 104-133

**Mon., Sept. 4 NO CLASS (LABOR DAY HOLIDAY)**

**Wed., Sep. 6: Film: *Sex & Justice***

**Fri., Sep. 8: FDR's Proposed Reorganization of the Supreme Court, 1937**

Jamie Carson and Benjamin Kleinerman, "A Switch in Time Saves Nine: Institutions, Strategic Actors, and FDR's Court-Packing Plan," *Public Choice* (2002)\*

### **IV. Intracourt Politics**

**Mon., Sept. 11-Wed., Sept. 13: The Justices Clash**

Phillip Cooper, "Fighting Justices: Hugo L. Black and William O. Douglas and Supreme Court Conflict," *The American Journal of Legal History* (1994)\*

### **PAPER PROPOSALS DUE SEPTEMBER 13**

### **V. The Supreme Court vs. Congress**

**Fri., Sept. 15-Mon., Sept. 18: Congressional Checks on the Judiciary**

Colton Campbell and John Stack, Ch. 1 in *Congress Confronts the Court* (2001)

Louis Fisher, "Congressional Checks on the Judiciary", Ch. 2 in *Congress Confronts the Court* (2001)

**Wed., Sept. 20: Judicial Impeachment: Merely a "Scarecrow"?**

Mary Volcansek, "Separation of Powers and Judicial Impeachment," Ch. 3 in *Congress Confronts the Court*, Campbell and Stack, eds. (2001)

**Fri., Sept. 22: Case Study: Samuel Chase**

Adam Perlin, "The Impeachment of Samuel Chase: Redefining Judicial Independence," *Rutgers Law Review* (2010)\*

**Mon., Sept. 25-Wed., Sept. 27: Judicial Departures: Leaving the Bench**

Artemus Ward, *Deciding to Leave*, Ch. 1 (2003)\*

**Fri., Sept. 29: Congress vs. the Court: Reconstruction and the Civil War**

Lee Epstein and Thomas G. Walker, "The Role of the Supreme Court in American Society: Playing the Reconstruction Game", Ch. 14 in *Contemplating Courts*, Lee Epstein, ed. (1995)\*

**Mon., Oct. 2: Congress vs. the Court: Religious Freedom and the Flag**

Carolyn Long, "Congress, the Court, and Religious Liberty: The Case of Employment Division of Oregon v. Smith," Ch. 6 in *Congress Confronts the Court*, Campbell and Stack, eds. (2001)

John Clark and Kevin McGuire, "Congress, the Supreme Court, and the Flag," *Political Research Quarterly* (1996)\*

**Wed., Oct. 4: Congress vs. the Court: Usurpation of Powers: *INS v. Chadha***

Louis Fisher, "The Legislative Veto: Invalidated, It Survives," *Law and Contemporary Problems* (1993)\*

**Fri., Oct. 6: Congress, Courts, and Judicial Administration**

Richard Vining, and Teena Wilhelm, "The Chief Justice as Advocate-in-Chief: Examining the Year-End Report on the Federal Judiciary," *Judicature* (2012)

**Mon., Oct. 9: Midterm Exam**

**VI. The Supreme Court vs. the President**

**Wed., Oct. 11: The Court and Executive Power: *U.S. v. Nixon, Clinton v. Jones***

Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America: Institutional Powers and Constraints* (2007), p. 239-244, 252-257\*

**Fri., Oct. 13: The Supreme Court and Race**

Lee Epstein and Thomas Walker, *Con Law for a Changing America: Rights, Liberties, and Justice* (2007), p. 626-647\*

Barbara Perry, "Splitting the Difference: The Supreme Court's Search for the Middle Ground in Racial Gerrymandering Cases," Ch. 6 in C. Banks and J. Green, *Superintending Democracy* (2001)\*

**VII. The Supreme Court and the Public/Press**

**Mon., Oct. 16-Fri., Oct. 20: Public Knowledge of the Courts**

Greg Caldeira and Kevin McGuire, "What Americans Know About the Courts and Why It Matters," in *Institutions of American Democracy: The Judiciary* (2005)\*

Rorie L. Spill and Zoe M. Oxley, "Philosopher Kings or Political Actors? How the Media Portray the Supreme Court," *Judicature* (2003)\*

**Mon., Oct. 23: Public Reaction to Supreme Court Decisions**

Anke Grosskopf and Jeffrey Mondak, "Do Attitudes toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court" *Political Research Quarterly*, 1998\*

Bert Kritzer, "The American Public's Assessment of the Rehnquist Court" *Judicature*, 2005\*

**Wed., Oct. 25: The Supreme Court and Public Opinion – Who Leads?**

Micheal Giles, Bethany Blackstone, and Richard Vining, "The Supreme Court in American Democracy," *Journal of Politics* (2008)\*

**Fri., Oct. 27: NO CLASS (FALL BREAK)**

### **VIII. Settling Political Conflicts**

**Mon., Oct. 30: Southern School Desegregation**

Video: *With All Deliberate Speed* (2004)

**Wed., Nov. 1-Fri., Nov. 3: The Death Penalty**

John D. Bessler, "Tinkering Around the Edges: The Supreme Court's Death Penalty Jurisprudence." *American Criminal Law Review* (2012)\*

**Mon., Nov. 6-Wed, Nov. 8: The Supreme Court as Arbiter: Privacy and Abortion**

Lee Epstein and Thomas G. Walker, *Constitutional Law for a Changing America: Rights, Liberties, and Justice* (2007), p. 412-449\*

**Fri., Nov. 10: The Centennial Crisis**

William Rehnquist, "2003 Albritton Lecture: The Supreme Court and the Disputed Election of 1876." *Alabama Law Review* 55 (2003)\*

**Papers due November 10**

**Mon., Nov. 13: Election 2000: Chaos, Courtrooms, and Counting Ballots**

Akhil Reed Amar, "Bush, Gore, Florida, and the Constitution," *Florida Law Review* (2009)\*

**Wed., Nov. 15: Film: CNN Election 2000**

**Fri., Nov. 17: Gun Rights**

Jon S. Vernick, Lainie Rutkow, Daniel W. Webster, and Stephen P. Teret. "Changing the Constitutional Landscape for Firearms: The US Supreme Court's Recent Second Amendment Decisions," *American Journal of Public Health* (2011)\*

**Mon. Nov. 20-Fri., Nov. 24: NO CLASS (THANKSGIVING HOLIDAY)**

**Mon., Nov. 27-Wed., Nov. 29: Gay Rights**

Nan D. Hunter, "Reflections on Sexual Liberty and Equality: 'Through Seneca Falls and Selma and Stonewall'," *UCLA Law Review* (2013)\*

**Fri., Dec. 1: The Affordable Care Act**

Robert J. Muise and David Yerushalmi. "Wearing the Crown of Solomon? Chief Justice Roberts and the Affordable Care Act 'Tax'," *Journal of Health Politics, Policy and Law* (2013)\*

**Mon., Dec. 4: Going Forward**

Larry Baum, "The Future of the Judicial Branch: Courts and Democracy in the Twenty-First Century," in *Institutions of American Democracy: The Judiciary* (2005)\*

**Tues., Dec. 5: Review**

**Weds., Dec. 13: Final exam 12:00-3:00 PM**