

POLS 4780
The Supreme Court, Law, and Politics
Fall 2016

Dr. Richard L. Vining, Jr.
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Office hours: Fri 11:00-12:00
Classroom: Peabody 201
Meetings: MWF 2:30-3:20

The federal judiciary is frequently involved in political disputes. 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, gay rights, etc. Several recent nominations of prospective Supreme Court justices have also caused political turmoil. How did the judiciary become 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 in an electronic format.

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 18.* 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 approved by the instructor. *A proposal and tentative bibliography are due on September 21.*

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

Fri., Aug. 12: Discussion and course overview

I. The Federal Judiciary: Structure and Institutional Context

Mon., Aug. 15-Wed., Aug. 17

II. Theories of Judicial Decision-making

Fri., Aug. 19 –Wed., Aug. 24: 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

Fri., Aug. 26-Wed., Aug. 31: Perspectives on the Confirmation Process

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

Fri., Sept. 2: Film: *Sex & Justice*

NO CLASS MON., SEPTEMBER 5 (LABOR DAY)

Wed., Sept. 7: FDR's Proposed Reorganization of the Supreme Court, 1937

IV. Intracourt Politics

Fri., Sept. 9-Wed., Sept. 14: 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)*

V. The Supreme Court vs. Congress

Fri., Sept. 16-Mon., Sept. 19: 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)

PAPER PROPOSALS DUE SEPTEMBER 19

Wed., Sept. 21: 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. 23: Case Study: Samuel Chase

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

Mon., Sept. 26-Wed., Sep. 28: Judicial Departures: Leaving the Bench

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

Fri., Sept. 30: 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. 3: 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. 5: 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. 7: MIDTERM EXAM

VI. The Supreme Court vs. the President

Mon., Oct. 10: 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*

Wed., Oct. 12: 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

Fri., Oct. 14-Mon., Oct. 17: 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)*

Wed., Oct. 19: 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*

Fri., Oct. 21: 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)*

VIII. Settling Political Conflicts

Mon. Oct. 24-Wed., Oct. 26: The Death Penalty

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

FRIDAY, OCTOBER 28: FALL BREAK

Mon., Oct. 31: Southern School Desegregation

Video: *With All Deliberate Speed* (2004)

Wed., Nov. 2-Fri., Nov. 4: 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*

Mon., Nov. 7: The Centennial Crisis

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

Wed., Nov. 9: Election 2016 and the Federal Courts

Fri., Nov. 11: Election 2000: Chaos, Courtrooms, and Counting Ballots

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

Mon., Nov. 14: Film: CNN Election 2000

Wed., Nov. 16-Fri., Nov. 18: Gay Rights

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

RESEARCH PAPER DUE November 18

THANKSGIVING BREAK NOVEMBER 21-25

Mon. Nov. 28: 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)*

Wed., Nov. 30: 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)*

Fri., Dec. 2: 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)*

Mon., Dec. 5: Review

Wed., Dec. 7: Final exam 3:30-6:30 PM