

**POLS 8450**  
**Judicial Politics II**  
**Fall 2019**

Dr. Richard L. Vining, Jr.  
Office: Baldwin 376  
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Office hours: Monday 1:00-2:00  
Classroom: Baldwin 302  
Meetings: Tuesday 6:30-9:15 PM

This course examines the research literature in judicial politics, focusing on both classics in the field and contemporary contributions. Participants are expected to have basic knowledge of American political processes and political science research techniques.

Student performance evaluations will be based on the following:

- (1) course participation (25%)
- (2) manuscript review (15%)
- (3) mock conference paper proposal (5%)
- (4) research paper (25%)
- (5) final examination (30%)

Participation is expected and required. Students should come to class prepared to discuss the assigned readings, and be prepared to respond when called upon by Dr. Vining. Manuscript reviews will be written in response to anonymous manuscripts submitted to journals for blind peer review (not for widespread distribution). The research paper will resemble a conference paper, complete with data analysis consistent with your level of training. Please discuss your topics, data sources, and research methods with the instructor for approval.

Students are required to purchase the following books:

- \* Virginia Hettinger, Stefanie Lindquist, and Wendy Martinek, *Judging on a Collegial Court* (2006)
- \* Jeffrey Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (2002)

Additional readings will be available from either JSTOR or other online databases. If you have difficulty locating course readings, please consult your instructor or colleagues for assistance.

While the course should follow the schedule below as closely as possible, adjustments may be made as necessary. Make note of such adjustments and prepare accordingly.

## Course Schedule

### **August 20. American courts: origins, structure, role, study.**

1. U.S. Constitution, Article III.
2. The Federalist Papers #78-82.
3. C.H. Pritchett. 1968. "Public Law and Judicial Behavior." *Journal of Politics* 30: 480-487.
4. N. Maveety. 2003. *The Pioneers of Judicial Behavior*, Ch. 1.
5. P. Brace, M. Hall, and L. Langer. 2001. "Placing State Supreme Courts in State Politics." *State Politics & Policy Quarterly* 1: 81-110.

### **August 27. Data and measurement.**

1. H. Spaeth and J. Segal. 2000. "The U.S. Supreme Court Judicial Data Base." *Judicature* 83: 228-235.
2. T. George and R. Sheehan. 2000. "Circuit Breaker: Deciphering Courts of Appeals Decisions using the U.S. Courts of Appeals Data." *Judicature* 83: 240-247.
3. P. Brace and K. Butler. 2001. "New Perspectives for the Comparative Study of the Judiciary: The State Supreme Court Project." *Justice System Journal* 22: 243-262.
4. M. Hall and J. Windett. 2013. "New Data on State Supreme Court Cases." *State Politics & Policy Quarterly* 13: 427-445.
5. A. Martin and K. Quinn. 2007. "Assessing Preference Change on the US Supreme Court." *Journal of Law, Economics, and Organization* 23: 365-385.
6. T. Clark. 2009. "Measuring Ideological Polarization on the United States Supreme Court." *Political Research Quarterly* 62: 146-67
7. T. Clark and B. Lauderdale. 2010. "Locating Supreme Court Opinions in Doctrine Space." *American Journal of Political Science* 54: 871-890.
8. K. McGuire. 2004. "The Institutionalization of the U.S. Supreme Court." *Political Analysis* 12: 128-142.

### **September 3. Judicial decision-making I: Legal model and extralegal explanations.**

#### ***Legal model***

1. J. Spriggs II and T. Hansford. 2001. "Explaining the Overruling of U.S. Supreme Court Precedent." *The Journal of Politics* 63: 1091-1111.
2. F. Cross and E. Tiller. 1998. "Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals." *Yale Law Journal* 107: 2155-2176.

#### ***Biographical approach***

1. J.W. Howard. 1971. "Judicial Biography and the Behavioral Persuasion." *American Political Science Review* 65: 704-715.

#### ***Social background theory (personal attribute models)***

1. C.N. Tate and R. Handberg. 1991. "Time Binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior, 1916-1988." *American Journal of Political Science* 35: 460-480.

#### ***Small group theory***

1. E. Snyder. 1958. "The Supreme Court as a Small Group." *Social Forces* 36: 232-238.
2. T. Hagle. 1993. "'Freshman Effects' for Supreme Court Justices." *American Journal of Political Science* 37: 1142-1157.

#### ***Norms***

1. R. Sickels. 1965. "The Illusion of Judicial Consensus." *American Political Science Review* 59: 100-104.
2. T. Walker, L. Epstein, and W. Dixon. 1988. "On the Mysterious Demise of Consensual Norms in the United States Supreme Court." *Journal of Politics* 50: 361-389.

**September 10. Judicial decision-making III: The attitudinal and strategic models.**

1. C.H. Pritchett. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values 1937-1947*, Ch. 2.
2. J. Segal and H. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*, Ch. 3 (p. 86-97), Ch. 4, Ch. 8 (p. 312-326), Ch. 10
3. W. Murphy. 1964. *Elements of Judicial Strategy*, Ch. 2-3.
4. M. Bergara, B. Richman, and P. Spiller. 2003. "Modeling Supreme Court Strategic Decision Making: The Congressional Constraint." *Legislative Studies Quarterly* 28: 247-280.

**September 17. Judicial decision-making VI: Competing explanations and integrated models.**

***Competing explanations of lower court behavior***

1. V. Hettinger, S. Lindquist, and W. Martinek. 2006. *Judging on a Collegial Court*.

***Integrated models***

1. L. Epstein, W. Landes, R. Posner. 2013. *The Behavior of Federal Judges*, Ch. 1.
2. P. Brace and M.G. Hall. 1997. "The Interplay of Preferences, Case Facts, Context, and Rules in the Politics of Judicial Choice." *Journal of Politics* 59: 1206-1231.

**September 24. External influences on courts: SOP and interest groups.**

***SOP***

1. L. Epstein and T. Walker. 1995. "The Role of the Supreme Court in American Society: Playing the Reconstruction Game," in Lee Epstein (ed.), *Contemplating Courts*.
2. J. Yates and A. Whitford. 1998. "Presidential Power and the United States Supreme Court." *Political Research Quarterly* 51: 539-550.
3. T. Clark. 2009. "The Separation of Powers, Court-curbing and Judicial Legitimacy," *American Journal of Political Science* 53: 971-989.
4. S. Schorpp. 2012. "Strategic Anticipation of Noncompliant Governors: State Supreme Court Behavior in Response to the Political Environment." *Justice System Journal* 33: 275-293.
5. G. Johnson. 2015. "Executive Power and Judicial Deference: Judicial Decision Making on Executive Power Challenges in the American States." *Political Research Quarterly* 68: 128-141.

***Interest groups***

1. L. Epstein and C.K. Rowland. 1991. "Debunking the Myth of Interest Group Invincibility in the Courts." *American Political Science Review* 85: 205-217.
2. P. Collins. 2007. "Lobbyists before the U.S. Supreme Court: Investigating the Influence of Amicus Curiae Briefs." *Political Research Quarterly* 60: 55-70.

**October 1. Agenda-setting and legal participants.**

***Agenda-setting***

1. C. Cameron, J. Segal, and D. Songer. 2000. "Strategic Auditing in a Political Hierarchy..." *American Political Science Review* 94: 101-116.
2. M. Giles, T. Walker, and C. Zorn. 2006. "Setting a Judicial Agenda: The Decision to Grant En Banc Review in the U.S. Courts of Appeals." *Journal of Politics* 68: 852-866.

***Legal participants***

1. A. McAtee and K. McGuire. 2007. "Lawyers, Justices, and Issue Salience: When and How Do Legal Arguments Affect the U.S. Supreme Court." *Law & Society Review* 41: 259-278.
2. C. Dislear and L. Baum. 2001. "Selection of Law Clerks and Polarization in the U.S. Supreme Court." *Journal of Politics* 63: 869-885.
3. J. Segal. 1988. "Amicus Curiae Briefs by the Solicitor General During the Warren and Burger Courts: A Research Note." *Western Political Quarterly* 41: 135-144.
4. T. Johnson. 2003. "The Supreme Court, the Solicitor General, and the Separation of Powers." *American Politics Research* 31: 426-451.
5. S. Corbally, D. Bross, and V. Flango. 2004. "Filing of Amicus Curiae Briefs in State Courts of Last Resort: 1960-2000." *Justice System Journal* 25: 39-56.

## **October 8. Public knowledge and perception of courts.**

### ***Courts and Media***

1. R. Spill and Z. Oxley. 2003. "Philosopher Kings or Political Actors? How the Media Portray the Supreme Court." *Judicature* 87: 22-29.
2. V. Baird and A. Gangl. 2006. "Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness." *Political Psychology* 27: 597-614.
3. T. Collins and C. Cooper. 2012. "Case Salience and Media Coverage of Supreme Court Decisions: Toward a New Measure." *Political Research Quarterly* 65: 396-407.
4. R. Vining and T. Wilhelm. 2010. "Explaining High-Profile Coverage of State Supreme Court Decisions." *Social Science Quarterly* 91: 704-723.
5. R. Vining, T. Wilhelm, J. Collens. 2015. "A Market-Based Model of State Supreme Court News: Lessons from Capital Cases." *State Politics & Policy Quarterly* 15: 3-23.

### ***Public perception of courts***

1. J. Gibson and G. Caldeira. 2009. "Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court." *Journal of Politics* 71: 429-441.
2. J. Gibson and G. Caldeira. 2009. "Confirmation Politics and the Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science* 53: 139-155.
3. D. Cann and J. Yates. 2008. "Homegrown Institutional Legitimacy: Assessing Citizens' Diffuse Support for State Courts." *American Politics Research* 36: 297-329.

## **October 15. Effect of public opinion on courts.**

1. M. Giles, B. Blackstone, and R. Vining. 2008. "The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision-making." *Journal of Politics* 70: 293-306.
2. J. Shepherd. 2009. "The Influence of Retention Politics on Judges' Voting." *The Journal of Legal Studies* 38: 169-206.
3. B. Canes-Wrone, T. Clark, A. Semet. 2018. "Judicial Elections, Public Opinion, and Decisions on Lower-Salience Issues." *Journal of Legal Studies* 15: 672-707.

### ***Public support for courts***

1. G. Caldeira and J. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36: 635-691.
2. S. Benesh. 2006. "Understanding Public Confidence in American Courts." *Journal of Politics* 68: 697-707.
3. J. Gibson and G. Caldeira. 2011. "Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court?" *Law & Society Review* 45: 195-219.
4. J. Gibson. 2009. "'New Style' Judicial Campaigns and the Legitimacy of State High Courts." *Journal of Politics* 71: 1285-1304.

## **October 22. Judicial administration and leadership.**

### **Federal courts**

1. D. Danelski. 2016. "The Influence of the Chief Justice in the Decisional Process of the Supreme Court," Ch. 1 (p. 19-46) in Danelski and Ward, *The Chief Justice: Appointment and Influence*.
2. D. Nixon. 2003. "Policy-Making by Different Means: The Chief Justice's Attempts to Shape Policy through the Judicial Conference of the United States." *Rationality and Society* 15: 345-360.
3. J. Ura and C. Flink. 2016. "Managing the Supreme Court: The Chief Justice, Management, and Consensus." *Journal of Public Administration Research and Theory* 26: 185-196.
4. R. Vining, T. Wilhelm, and D. Hughes. 2019. "The Chief Justice as Effective Administrative Leader: The Impact of Policy Scope and Interbranch Relations." *Social Science Quarterly* 100: 1358-1368.

### **State courts**

1. L. Langer, J. McMullen, N. Ray, and D. Stratton. 2003. "Recruitment of Chief Justices on State Supreme Courts: A Choice between Institutional and Personal Goals." *Journal of Politics* 65: 655-675.
2. M. Hall and J. Windett. 2016. "Discouraging Dissent: The Chief Judge's Influence in State Supreme Courts." *American Politics Research* 44: 682-709.
3. D. Hughes, T. Wilhelm, R. Vining. 2015. "Deliberation Rules and Opinion Assignment Procedures in State Supreme Courts: A Replication." *Justice System Journal* 36: 395-410.
4. R. Vining, T. Wilhelm, E. Boldt, B. Black. 2019. "Judicial Reform in the American States: The Chief Justice as Political Advocate." *State Politics & Policy Quarterly* (forthcoming).

## **October 29. \*\*No class – send manuscript review and conference abstract to Dr. Vining\*\***

## **November 5. State judicial selection: Process and Campaigns**

### ***Competition, Ambition, and Endorsements***

1. M. Streb and B. Frederick. 2009. "Conditions for Competition in Low-Information Judicial Elections: The Case of Intermediate Appellate Court Elections." *Political Research Quarterly* 62: 523-537.
2. J. Jensen and W. Martinek. 2009. "The Effects of Race and Gender on the Judicial Ambitions of State Trial Court Judges." *Political Research Quarterly* 62: 379-392.
3. R. Vining and T. Wilhelm. "The Causes and Consequences of Gubernatorial Endorsements: Evidence from State Supreme Court Elections." *American Politics Research* 39: 1072-1096.

### ***Campaign spending and advertising***

1. M.G. Hall and C. Bonneau. 2008. "Mobilizing Interest: The Effects of Money on Citizen Participation in State Supreme Court Elections." *American Journal of Political Science* 52: 457-470.
2. E. Rock and L. Baum. 2010. "The Impact of High-Visibility Contests for U.S. State Court Judgeships: Partisan Voting in Nonpartisan Elections." *State Politics & Policy Quarterly* 10: 368-396.
3. M. Streb and B. Frederick. 2011. "When Money Cannot Encourage Participation: Campaign Spending and Rolloff in Low Visibility Judicial Elections." *Political Behavior* 33: 665-684.
4. M.G. Hall and C. Bonneau. 2013. "Attack Advertising, the White Decision, and Voter Participation in State Supreme Court Elections." *Political Research Quarterly* 66: 115-126.
5. D. Hughes. 2019. "New-Style Campaigns in State Supreme Court Retention Elections." *State Politics & Policy Quarterly* 19: 127-154.

### **November 12: State judicial selection: Outcomes and effects**

1. C. Bonneau and M.G. Hall. 2003. "Predicting Challengers in State Supreme Court Elections: Context and the Politics of Institutional Design." *Political Research Quarterly* 56: 337-349.
2. M.G. Hall and C. Bonneau. 2005. "Does Quality Matter? Challengers in State Supreme Court Elections." *American Journal of Political Science* 50: 20-33.
3. C. Bonneau. 2005. "Electoral Verdicts: Incumbent Defeats in State Supreme Court Elections." *American Politics Research* 33: 818-841.
4. C. Bonneau. 2005. "What Price Justice(s)? Understanding Campaign Spending in State Supreme Court Elections." *State Politics & Policy Quarterly* 5: 107-125.
5. D. Cann and T. Wilhelm. 2011. "Case Visibility and the Electoral Connection in State Supreme Courts." *American Politics Research* 39: 557-581.
6. B. Canes-Wrone and T. Clark. 2012. "Judicial Independence and Retention Elections." *The Journal of Law, Economics, & Organization* 28: 211-234.
7. R. Gill and K. Eugenis. 2019. "Do Voters Prefer Women Judges? Deconstructing the Competitive Advantage in State Supreme Court Elections." *State Politics & Policy Quarterly*

### **November 19: Federal judicial selection: Process**

1. J. Gimpel and R. Wolpert. 1996. "Opinion-Holding and Public Attitudes Toward Controversial Supreme Court Nominees." *Political Research Quarterly* 49: 163-176.
2. K. Bratton and R. Spill. 2004. "Moving Up the Judicial Ladder: The Nomination of State Supreme Court Justices to the Federal Courts." *American Politics Research* 32: 198-218.
3. N. Scherer, B. Bartels, and A. Steigerwalt. 2008. "Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Confirmation Process." *Journal of Politics* 70: 1029-1039.
4. R. Vining. 2011. "Grassroots Mobilization in the Digital Age: Interest Group Response to Supreme Court Nominees." *Political Research Quarterly* 64: 790-802.
5. S. Smelcer, A. Steigerwalt, R. Vining. 2012. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly* 65: 827-840.
6. P. Collins and L. Ringhand. 2016. "The Institutionalization of Supreme Court Confirmation Hearings." *Law & Social Inquiry* 41: 126-151.
7. L. Dancy, K. Nelson, E. Ringsmuth. 2014. "Individual Scrutiny or Politics as Usual? Senatorial Assessment of U.S. District Court Nominees." *American Politics Research* 42: 784-814.

### **November 26. Federal judicial selection: Confirmation and impact**

#### ***The U.S. Supreme Court***

1. J. Kastellec, J. Lax, and J. Phillips. 2010. "Public Opinion and Senate Confirmation of Supreme Court Nominees." *Journal of Politics* 72: 767-784.
2. C. Shipan and M. Shannon. 2003. "Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations." *American Journal of Political Science* 47: 654-668.

#### ***Lower federal courts***

1. M. Giles, V. Hettinger, and T. Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54: 623-641.
2. W. Martinek, M. Kemper, and S. Van Winkle. 2002. "To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977-1998." *Journal of Politics* 64: 337-361.

#### ***The effects of judicial turnover***

1. A. Kuersten and D. Songer. 2003. "Presidential Success through Appointments to the United States Courts of Appeals." *American Politics Research* 31: 107-137.
2. D. Cottrell, C. Shipan, and R. Anderson. 2019. "The Power to Appoint: Presidential Nominations and Change on the Supreme Court." *The Journal of Politics* 81: 1057-1068.
3. A. Madonna, J. Monogan, and R. Vining. 2016. "Confirmation Wars, Legislative Time, and Collateral Damage." *Political Research Quarterly* 69: 746-759.

### **December 3. Judicial departures.**

#### ***The U.S. Supreme Court***

1. P. Squire. 1988. "Politics and Personal Factors in the Retirement from the United States Supreme Court." *Political Behavior* 10: 180-190.
2. C. Zorn and S. Van Winkle. 2000. "A Competing Risks Model of Supreme Court Vacancies, 1789-1992." *Political Behavior* 22: 145-166.
3. A. Ward. 2003. *Deciding to Leave*, Ch. 1.

#### ***The lower federal courts***

1. T. Hansford, E. Savchak, D. Songer. 2010. "Politics, Careerism, and the Voluntary Departures of U.S. District Court Judges." 2010. *American Politics Research* 38: 986-1014.
2. R. Vining. 2009. "Politics, Pragmatism, and Departures from the U.S. Courts of Appeals, 1954-2004." *Social Science Quarterly* 90: 834-853.

#### ***State courts***

1. M.G. Hall. 2001. "Voluntary Retirements from State Supreme Courts: Assessing Democratic Pressures to Relinquish the Bench." *Journal of Politics* 63: 1112-1140.
2. D. Hughes. 2019. "Judicial Institutions and the Political Economy of Retirements." *Political Behavior* (forthcoming).

### **Final exam (take home, due December 12 – details TBA)**

\* Final exam will be placed in graduate student mailboxes to be completed within 24 hours of opening envelope. Submit hard copy to Political Science main office or to Dr. Vining.