

Political Science 4700
Constitutional Law: Powers
Spring 2021
Time and Location: 935-1050 Baldwin 301

Instructor: Teena Wilhelm
Office: 303C Baldwin Hall
Office Hours: Tues 11-12 and by appointment
Email: twilhelm@uga.edu

Purpose of Course:

POLS 4700 is part of a sequence of courses dealing with the theory and practice of American constitutional law. This segment deals primarily with separation of powers within the national government and with issues of federalism.

Required Text:

Lee Epstein and Thomas Walker. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 10th ed. (Washington DC: CQ Press, 2020) ISBN-13: 978-1544317908
ISBN-10: 1544317905

COURSE REQUIREMENTS

Assignments are intended to provide each student with several opportunities to demonstrate achievement of the course objectives. Specific requirements are as follows:

- | | |
|------------------------|------------|
| 1. Examination One | 25 percent |
| 2. Examination Two | 25 percent |
| 3. Class Participation | 20 percent |
| 4. Hypotheticals | 20 percent |
| 5. Moot Court | 10 percent |

DESCRIPTION OF COURSE REQUIREMENTS

Class Participation (20 percent): You should attend class, as much as possible, all of the time. That's a good general rule to follow for all of your classes, not just mine. It ensures that you don't waste your money, or your parent's money, or the money you've earned with all of your high school diligence in the form of Hope or Zell or whatever else. Still, you should do more than simply "show-up." Participation represents an integral part of this course, and attendance will be formally taken in all classes. Participation points are partly based upon regular attendance. The other portion of the grade is derived from *actual* class participation. To receive an A or B for class participation you must attend all classes, discuss the assigned reading and cases, and participate in class discussions and class activities, including moot court simulations. Class prep should include reading and "briefing" cases prior to class. While at first, briefing cases may seem tedious or overkill, with practice it will become easier.

Examinations (50 percent): There will be 2 non-comprehensive exams each worth 20 percent. The exams will be mostly short answer. The basic thrust of the exams is to identify and understand the specific ruling issued by the Court in a given case as well as the standard of review utilized in the case, and to assess the political significance of the decision for the development of public policy. Students are responsible for all background and related material offered in the text and lectures. Students who have a legitimate reason for missing the exam must notify the professor before the exam and provide the professor with validating evidence (e.g., note from doctor). Students with a valid excuse will be allowed to makeup the first exam during the professor's office hours no later than one week after the regularly scheduled examination date. Be forewarned: I will make exceptions under only the most unusual of circumstances.

Hypotheticals (20 percent): Hypothetical questions are those in which you are given a case scenario and expected to compose an attorney's argument in response to the case described. They will be given on assigned days with the topic known beforehand (one week in advance). There will be a total of 4 given throughout the semester.

Moot Courts (10 percent):

Moot Court Simulation – Participation as attorney or justice, which requires that each student participate fully in the 30 minutes of oral argument as well as the decision-on-the-merits stage.

The moot court exercise is designed to familiarize students with techniques for conducting legal research and to increase understanding of the process through which United States Supreme Court decisions are reached. Students will be given actual cases on the current SCOTUS docket to simulate the process of oral argument and decision making in the Court. As such, each student will act as attorney, justice, or amicus in one of these cases. Students who sign-up as attorneys will work as a team to research the relevant case law, develop written briefs to assist presentation, and participate in oral argument before the court. Students who participate as justices will act as a justice during oral argument, conference, and decision on the merits. Students who participate as amicus will write an amicus brief to be turned in to the professor and the justices before the case is scheduled for argument. Students will have an opportunity to sign up for their preferred case and role as the semester progresses. Anyone who misses the deadline for sign-ups will be assigned a case and role by the professor.

GRADING

A	94-100
A-	90-93
B+	87-89
B	83-86
B-	80-82
C+	77-79
C	73-76
C-	70-72
D	60-69
F	below 60 or failure to receive a grade of D or better on all components

SPECIAL NOTES

ACADEMIC HONESTY AND PROFESSIONALISM

Standards of Conduct for Students: Students should behave in a professional manner at all times. It is essential that the environment in this classroom and any other classroom be conducive to learning and tolerant of all races, ethnic groups, and gender. Any student behaving in a manner that is in any way disruptive or inappropriate to the professor or to other students in the class will be referred to the appropriate authority.

Academic Honesty: All students are responsible for maintaining the highest standards of honesty and integrity in every phase of their academic careers. For related information on University policy, see *A Culture of Honesty at the University of Georgia* issued by the Office of the Vice President for Instruction.

PREFERRED NAMES AND/OR PRONOUNS

Class rosters are provided to the instructor with the student's legal name. I am happy to address you by your preferred name and/or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

PROHIBITION ON RECORDING LECTURES

In the absence of written authorization from the UGA Disability Resource Center, students may not make a visual or audio recording of any aspect of this course. Students who have a recording accommodation agree in writing that they:

- Will use the records only for personal academic use during the specific course.
- Understand that faculty members have copyright interest in their class lectures and that they agree not to infringe on this right in any way.
- Understand that the faculty member and students in the class have privacy rights and agree not to violate those rights by using recordings for any reason other than their own personal study.
- Will not release, digitally upload, broadcast, transcribe, or otherwise share all or any part of the recordings. They also agree that they will not profit financially and will not allow others to benefit personally or financially from lecture recordings or other course materials.
- Will erase/delete all recordings at the end of the semester.
- Understand that violation of these terms may subject them to discipline under the Student Code of Conduct or subject them to liability under copyright laws

COURSE OUTLINE

Part One. Introductory Material

I. The U.S. Constitution and the Supreme Court (E&W p3-47)

District of Columbia v. Heller

A. The Constitution and Its Key Features

B. The American Legal System

1. Structure
2. Supreme Court Procedures

C. Modes of Constitutional Decisionmaking

Part Two. The Distribution of Power among the Branches of Government

II. The Judiciary (E&W, Chapter 2)

A. Judicial Review (E&W p.57-89)

Focus Cases: *Marbury v. Madison* (1803), *Martin v. Hunter's Lessee* (1816)

B. Constraints on Judicial Power (E&W p 89-119)

1. Jurisdiction. Focus Cases: *Ex parte McCardle* (1869), *Hamdan v. Rumsfeld* (2006)
2. Justiciability
 - a. Advisory Opinions
 - b. Collusive Suits
 - c. Mootness
 - d. Ripeness
 - e. Political Questions— Focus Cases: *Baker v. Carr* (1962), *Nixon v. United States* (1993)
2. Standing to Sue— Focus Cases: *Flast v. Cohen* (1968), *Hollingsworth v. Perry** (2012), *US v Windsor** (2012)
3. The Separation of Powers System as a Constraint

III. The Legislature (E&W Chapter 3)

A. The Independence and Integrity of Congress (E&W, p120-144)

1. Membership in Congress--Focus Cases: *Powell v. McCormack* (1969), *U.S. Term Limits v. Thornton* (1995)
2. The Speech or Debate Clause--Focus Case: *Gravel v. United States* (1972)

B. The Sources and Scope of Congressional Power (E&W p144-181)

1. Enumerated and Implied Powers—Focus Cases: *McCulloch v. Maryland* (1819), *McGrain v. Daugherty* (1927), *Watkins v. United States* (1957), *Barenblatt v. United States* (1959)
2. Inherent Powers—Focus Case: *United States v. Curtiss-Wright Export Corp.* (1936)
3. Amendment-Enforcing Power—Focus Case: *South Carolina v. Katzenbach* (1966)

IV. The Executive (E&W, Chapter 4)

- A. Selection of the President (E&Wp183-195). Focus Case: *Bush v. Gore* (2000)
- B. Faithful Execution of the Laws (E&Wp198-204). Focus Case: *In re Neagle* (1890)
- C. The Domestic Powers of the President (E&Wp205-252)
 - 1. Veto Power—Focus Case: *Clinton v. City of New York* (1998)
 - 2. Appointment and Removal—Focus Cases: *Morrison v. Olson* (1988), *Myers v. United States* (1926), *Humphrey's Executor v. United States* (1935)
 - 3. Executive Privilege—Focus Case: *United States v. Nixon* (1974)
 - 4. Presidential Immunity—Focus Cases: *Mississippi v. Johnson* (1867), *Nixon v. Fitzgerald* (1982), *Clinton v. Jones* (1997)
 - 5. The Power to Pardon—Focus Cases: *Ex parte Grossman* (1925), *Murphy v. Ford* (1975)
- D. Foreign Policy (E&Wp252-256). Focus Case: *United States v. Curtiss-Wright Export Corp.* (1936)

*****Test 1 will cover material to this point, date TBA*****

- V. Separation of Powers System in Action (E&W, Chapter 5)
 - A. Domestic Disputes (E&W p. 257-277)
 - 1. The Delegation of Legislative Powers—Focus Case: *Mistretta v. United States* (1989)
 - 2. Congress and Executive/Judicial Powers—Focus Cases: *INS v. Chadha* (1983), *Bowsher v. Synar* (1986)
 - B. War and National Emergencies (E&W p. 277-322). Focus Cases: *The Prize Cases* (1863), *Ex parte Milligan* (1866), *Ex parte Quirin* (1942), *Korematsu v. United States* (1944), *Youngstown Sheet and Tube Co. v. Sawyer* (1952), *Dames & Moore v. Regan* (1981), *Hamdi v. Rumsfeld* (2004), *Hamdan v. Rumsfeld* (2006)

Part Three. Nation-State Relations

- VI. Federalism: (E&W p. 325-350).
 - A. Dual v Cooperative Federalism: Focus Cases: *McCulloch v. Maryland* (1819); *Scott v Sanford*; *National League of Cities v. Usery* (1976), *Garcia v. SAMTA* (1985), *New York v. United States* (1992), *Printz v. United States* (1997)
 - B. New Judicial Federalism and National Preemption of State Laws (E&W p. 370-390) Focus cases: *Murdock v City of Memphis*; *Michigan v Long*; *State of Missouri v Holland*; *Crosby v NFTC*
- VII. The Commerce Power (E&W, Chapters 7)
 - A. Foundations of Commerce Power (E&Wp. 392-399). Focus Case: *Gibbons v. Ogden* (1824)
 - B. The Commerce Power before the New Deal (E&W p. 400-415). Focus Cases: *United States v. E.C. Knight Co.* (1895), *Stafford v. Wallace* (1922)
 - C. The New Deal Confrontation (E&W p. 415-436). Focus Cases: *A.L.A. Schechter Poultry Corp. v. United States* (1935), *Carter v. Carter Coal Co.* (1936); *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937)

D. The Commerce Power after the New Deal Confrontation (E&W p. 436-448). Focus Cases: *United States v. Darby Lumber* (1941), *Wickard v. Filburn* (1942)

E. The Republican Court and the Commerce Power (E&W p. 448-482). Focus Cases: *United States v. Lopez* (1995), *United States v. Morrison* (2000), *Gonzales v. Raich* (2005), *National Federation of Independent Business v Sebelius* (2012)

[Midterm exam will be somewhere near end of February]

[Spring Break is March 7-11]

[Final exam is April 19 or 21, TBD]

[Moot Courts are scheduled for the last two weeks of class]