

POLS 4770
The Supreme Court: Cases and Controversies
Fall 2022

Dr. Richard L. Vining, Jr.
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Office hours: By appointment
Classroom: Baldwin 102
Meetings: Tues & Thurs, 11:10-12:25 (face-to-face)

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.

Students in this course should become familiar with the structure and functions of the federal courts, major theories of judicial decision making, and major historical events in Supreme Court history. In addition, students will develop research skills including proficiency with academic writing and familiarity with academic journals and databases.

Readings. The following textbook is required:

Michael Comiskey – *The Judging of Supreme Court Nominees* (2004)

All readings below marked with an asterisk (*) will be available via ELC. 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 8**.

Exams will be taken without notes or outside sources.

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.

UGA Student Honor Code: "I will be academically honest in all of my academic work and will not tolerate academic dishonesty of others." A Culture of Honesty, the University's policy and procedures for handling cases of suspected dishonesty, can be found at www.uga.edu/ovpi.

Mental Health and Wellness Resources.

- If you or someone you know needs assistance, you are encouraged to contact Student Care and Outreach in the Division of Student Affairs at 706-542-7774 or visit <https://sco.uga.edu>. They will help you navigate any difficult circumstances you may be facing by connecting you with the appropriate resources or services.
- UGA has several resources for a student seeking mental health services (<https://www.uhs.uga.edu/bewelluga/bewelluga>) or crisis support (<https://www.uhs.uga.edu/info/emergencies>).
- If you need help managing stress anxiety, relationships, etc., please visit BeWellUGA (<https://www.uhs.uga.edu/bewelluga/bewelluga>) for a list of FREE workshops, classes, mentoring, and health coaching led by licensed clinicians and health educators in the University Health Center.
- Additional resources can be accessed through the UGA App

Attendance. This course will not have a graded attendance component, but much of the lecture material will not appear in the readings. Everyone is encouraged to attend regularly. Students will be informed of any adjustments to regular course attendance by the instructor via ELC and e-mail.

Week 1 (8/18): Discussion and course overview

Week 2 (8/23, 8/25)

The Federal Judiciary: Structure and Institutional Context

Week 3 (8/30, 9/1): Theories of Judicial Decision-making

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

Week 4 (9/6, 9/8): The Politics of Supreme Court Nominations

Perspectives on the Confirmation Process Michael Comiskey, *The Judging of Supreme Court Nominees*, p. 1-84, 104-133

PAPER PROPOSALS DUE September 8

Week 5 (9/13, 9/15): Interbranch Battles over the Bench

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)*

9/15 Video: Confirmation hearings (via ELC; Dr. Vining at conference)

Week 6 (9/20): Intracourt Battles

Phillip Cooper, *Battles on the Bench*, Ch. 1-2 (1995)*

Week 6 (cont., 9/22): The Supreme Court vs. Congress

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)

Week 7 (9/27, 9/29): Judicial Impeachment

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

Impeachment Case Study: Samuel Chase

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

Week 8 (10/4) Judicial Departures

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

Week 8 (cont., 10/6): The Court in Wartime

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)*

Week 9 (10/11): The Court and Government Powers

Congress vs. the Court: Usurpation of Powers: *INS v. Chadha*

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

Week 9: Midterm Exam 10/13 (Turn in via ELC)

Week 10 (10/18): 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)

Week 10 (cont., 10/20). The Supreme Court vs. the President

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*

Week 11 (10/25): 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)*

Week 11 (cont., 10/27): The Supreme Court and the Public/Press

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)*

Week 12 (11/1): The Public and 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*

Week 12 (cont., 11/3): Settling Political Conflicts

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*

Dobbs reading TBD – will post to ELC

Week 13 (11/8): The Supreme Court in Elections

The Centennial Crisis

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

Week 13, cont. (11/10)

Election 2000: Chaos, Courtrooms, and Counting Ballots

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

Research paper November 10

Week 14 (11/15, 11/17): Contemporary Issues

The Death Penalty

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

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)*

Week 15 (11/22) Contemporary Issues (cont.)

Gay Rights

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

Week 16 (11/29) Contemporary Issues (cont.)

The Affordable Care Act

Robert J. Muike 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)*

Week 16 cont. (12/1) Final Exam Review and Online Course Evaluation

Final exam Tuesday, December 13, 12:00 PM – 3:00 PM