

# PSC 6114 / 3192W Theories of Judicial Review: The Supreme Court and Constitutional Interpretation



## Instructor Information

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## Biography

I am an Associate Professor in the Department of Political Science at GWU, where I have been teaching since 2009. Prior to that, I was an Assistant Professor at Stony Brook University from 2006-2009. I received my Ph.D. in political science from The Ohio State University. My research and teaching interests center on American politics, judicial politics, law and courts, and research methodology. In particular, I examine judicial decision making, the Supreme Court, inter-branch interactions, judicial appointment politics; public opinion, political behavior, and institutional legitimacy.

## Communication Policy

Email is the best way to contact me. I typically reply to emails quickly, but please allow 24 hours for me to respond (weekends or holidays are exceptions). If I do not respond to respond within 24 hours, feel free to send a follow-up. I hope to return graded assignments within 5 business days.

## Course Description

Welcome to Theories of Judicial Review! This is an online course in which I hope we will have lively discussions with each other about constitutional interpretation and theory via multiple forms of written communication.

The course will occur over 6 weeks and we will focus on two “modules” per week, each centered around one or two readings on a particular topic. All course materials -- readings, schedules, brief video lectures -- will be posted on Blackboard.

We will study controversies and theories behind the U.S. Supreme Court’s power of judicial

review, whereby the Court can invalidate a law that it deems to be in violation of the U.S. Constitution. We will study competing perspectives on the origins of judicial review, including the textbook view concerning Chief Justice Marshall's assertion of this power in the landmark *Marbury v. Madison*. We will also focus on various theories of constitutionalism and interpretation, including popular constitutionalism, defenses of judicial supremacy, originalism, living constitutionalism, and judicial minimalism. We will also examine the political context of the Court's use of judicial review vis-a-vis the other branches of government--concerning both political foundations and supports for judicial review and political constraints on the use of judicial review. Finally, we will seek to relate of this work to current cases being considered by the Court. With the course being run concurrently during the most active month of Supreme Court ruling announcements (i.e., June), we will seek to apply these theories to the present context, both in assignments and discussions.

## Course Goals

By the end of this course, you should be able to:

1. Generate original ideas, opinions, and critiques of theories of constitutional interpretation and express them clearly in writing.
2. Apply theories of constitutional interpretation to current U.S. Supreme Court cases and controversies.

## Text & Materials

### Prerequisites

N/A

### Textbooks

You will need to purchase the following two books (via Amazon, Google Play, additional websites that sell used books, etc.):

- Bennett, Robert W., and Lawrence B. Solum. 2011. *Constitutional Originalism: A Debate*. Cornell University Press.
- Tushnet, Mark. 1999. *Taking the Constitution Away from the Courts*. Princeton University Press.

Additional articles and book chapters will be posted on Blackboard.

### Media

As I will discuss during the class, students are expected to follow legal developments regarding key Supreme Court cases in popular media outlets such as the *New York Times* and the *Washington Post*. In addition, students should read posts on the following legal blogs:

- SCOTUSBlog (<http://www.scotusblog.com/>)

- The Volokh Conspiracy (<http://www.volokh.com/>)
- Balkanization (<http://balkin.blogspot.com/>)
- Concurring Opinions (<http://www.concurringopinions.com/>)

## Technology

### Technical Skills Required

In order to function at full capacity in this course, you should be able to:

- Use a digital camera or scanner
- Use your computer to upload recordings and images to your computer
- Be open to learning and register for new technologies
- Be flexible when technological glitches happen (which is a given)
- Seek technological help when necessary by calling

### Hardware & Software

You will need to meet the [minimum technology requirements](#) for all online courses at GW.

### Student Technology Services

If you have any problems with software in this course, be sure to reference the Help tab in your left-hand navigation for more information.

## Course Structure

### Methods of Instruction

The course will employ the following methods of instruction:

- **Lectures:** I will post brief video lectures two times per week outlining some of the major issues in the readings and raising discussion questions for the discussion board.
- **Required readings:** Students are expected to have read the readings each week in order to be prepared to participate in online discussions.
- **Student-led discussions:** Each student will lead one online discussion of a reading (or readings) sometime throughout the semester. See below for more details.
- **Discussion board participation:** Students are expected to be active participants on the online discussion board.

### Assignments

This course includes the following assignments:

- **Discussion leader:** Each student will take on the role of discussion leader one time during the course. The student is expected to offer a brief summary of the reading, offer some general impressions, and pose questions that will spur a lively discussion of the readings in the class.

- **Discussion board participation:** Student participation via the discussion board is a significant component of the course and is a major part of fulfilling the overall course goals. Dialogue between class participants enhances an understanding of the material and ignites critical thinking and intellectual curiosity about key topics. Students are expected to participate on the online discussion board on each topic of the course. I would like all students to give their general impressions of the reading for the day, including criticisms, things you particularly liked about the reading, constructive criticism of the material, questions you have to clear up any confusion, and general discussion questions you have.
- **Final paper on pending Supreme Court case assignments (20-25 pp.):** Sometime during the first week or so of class, you will choose a Supreme Court case that has not yet been decided (and will likely be decided by the end of June). I will give you resources for choosing your case. Your case must be on a constitutional issue (e.g., the Court is considering whether or not to strike down a law or government action as a violation of the U.S. Constitution). You will research the case extensively, reading the briefs of the litigants to the case, reading the lower court opinion, listening to Supreme Court oral arguments on the case, and reading media and legal blog coverage of the case. Your final paper will offer a brief summary of the issues of the case. The bulk of your paper will be an intensive application of the theories and perspectives discussed in this class to the context of the case you have decided. I would like you to take a position on what theory you think is most appropriate for the resolution of your case. What's the most justifiable outcome and why? Also, I want you to predict how you think the case will actually be decided (including the voting lineup of the justices).
- **Blog post:** In the middle of the semester (after Week 3), I would like each of you to write a blog post (like what you would see on a legal blog like Scotusblog, Volokh Conspiracy, or Balkanization) about the case you have chosen. I will give you latitude on how you want to frame your post, but I encourage you to use it as an opportunity to begin putting forth some of your ideas that you will write about in your final paper. Your classmates and I will give you comments on the blog post, which will be your primary source of feedback for your post.

## Assessment and Grading

### Grading Schema

Below is the list of assignments and the percentage allocation for each:

Assignment	Point Value Per Assignment	Number of Assignments	Total Percent of Final Grade
Discussion leader	100	1	10%

Discussion boards	100	12	25%
Final Paper on Supreme Court Case	100	1	35%
Blog Post	100	1	20%
Blog Post Comments	100	1	10%
<b>Total</b>	<b>15</b>		<b>100%</b>

## Grading Scale

I use a standard grading scale:

100%-98%: A+	97-93: A	92-90: A-
89-88: B+	87-83: B	82-80: B-
79-78: C+	77-73: C	72-70: C-
69-68: D+	67-63: D	62-60: D-
<60: F		

## Late Work Policy

I will generally not accept late work. Exceptions include sickness or death in the family.

## University Policies

### Netiquette

Most colleges and universities have a policy regarding the use of computers and networks owned by the institution or used by its employees. The George Washington University has such a [policy](#). Beyond that policy however, is the idea of network etiquette, or netiquette, which is a less formal, less legally focused idea of courtesy among users of online communication systems.

Please observe the following rules of Netiquette when submitting posts:

- Remain professional, respectful, and courteous at all times.
- Remember that a real human being wrote each post and will read what you write in response. It is easy to misinterpret discussion posts. Let's give the benefit of the doubt.
- If you have a strong opinion on a topic it is acceptable to express it as long as it is not phrased as an attack. Please be gracious with differing opinions.

- When upset, wait a day or two prior to posting. Messages posted (or e-mailed) in anger are often regretted later.
- Proofread and use the spell check tool when you type a post. It makes the post easier to read and helps your readers understand what you are saying. If you discover a mistake after publishing the post you can reopen and correct it.

The instructor reserves the right to delete any post that is deemed inappropriate for this discussion forum without prior notification to the student. This will include any post containing language that is offensive, rude, profane, racist, or hateful.

Posts that are seriously off topic or serve no purpose other to vent frustration will also be removed.

### **Academic Integrity**

Please review the [University's policy on academic integrity](#). All graded work must be completed in accordance with The George Washington University Code of Academic Integrity.

Academic dishonesty is defined as cheating of any kind, including misrepresenting one's own work, taking credit for the work of others without crediting them and without appropriate authorization, and the fabrication of information. Common examples of academically dishonest behavior include, but are not limited to, the following: cheating, fabrication, plagiarism, falsification and forgery of University academic documents, and facilitating academic dishonesty.

### **Students with Disabilities**

If you feel you may need an accommodation based on the impact of a disability, please contact me privately to discuss specific needs. Please contact the Disability Support Services Office at (202) 994-8250, Suite 242 Marvin Center, <http://gwired.gwu.edu/dss>, to establish eligibility and to coordinate reasonable accommodations.

### **University Counseling Center (UCC)**

The University Counseling Center (UCC) offers 24/7 assistance and referral to address students' personal, social, career, and study skills problems. Services for students include: crisis and emergency mental health consultations, confidential assessment, counseling services (individual and small group), and referrals. They can be reached at (202) 994-5300.

### **Alert DC**

Alert DC provides free notification by e-mail or text message during an emergency. Visit [GW Campus Advisories](#) for a link and instructions on how to sign up for alerts pertaining to GW. If you receive an Alert DC notification during class, you are encouraged to share the information immediately.

### **GW Alert**

GW Alert provides a popup notification to desktop and laptop computers during an emergency. In the event that we receive an alert to the computer in our classroom, we will follow the instructions given. You are also encouraged to download this application to your personal computer. Visit [GW Campus Advisories](#) to learn how.

### **Additional Information**

Additional information about emergency preparedness and response at GW or the University's operating status can be found on [GW Campus Advisories](#) or by calling the GW Information Line at (202) 994-5050.