U.S. Constitutional Law and Politics I – Fall 2017

Course Information:

Course: PSC 2214 (formerly PSC 114)
Time: Thursday 7:10-9:40 pm
Location: Monroe Hall 250

Instructor Information:

Name: Daniel W. Ericson, Esq.
Office: Monroe Hall 461
Hours: By Appointment
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Phone: 202-452-3359 (office during the day, M – F)

Course Description:

This course will cover the powers of federal and state governments under the United States Constitution. Primarily, we will address the powers of the Judiciary, Congress, and the President. The issues that we will cover include judicial review, justiciability (i.e., the appropriateness of a case for federal court determination), Congress’s enumerated and implied powers, presidential power, separation of powers disputes – with an emphasis on national security issues – and federal-state relations. We will place significant U.S. Supreme Court cases in their political and historical contexts. When possible, we will study contemporary issues in constitutional law and policy (but this is not a class in current events). For instance, we will analyze the constitutional issues addressed by the various opinions from U.S. Supreme Court Justices in National Federation of Independent Business v. Sebelius (2012) and Hollingsworth v. Perry (2013).

Course Prerequisites:

PSC 1 – Introduction to American Politics and Government (or similar course).

Texts (only first is required; the other texts are recommended):

2. Charles Rossiter (editor), The Federalist Papers
3. Bob Woodward and Scott Armstrong, The Brethren: Inside the Supreme Court
Learning Outcomes:

1. You should understand how the Supreme Court decides cases, and have a substantial knowledge of the constitutional provisions and cases covered in the course. You also should understand the political and historical contexts of significant cases.

2. In addition to developing knowledge of the constitutional law covered, you should be able to apply the law that we learn to factual scenarios provided by the instructor to determine whether any constitutional issues are implicated.

3. Finally, you should be able to think critically about the material, such that you can prepare concise answers to questions asked by the instructor both in an ordinary class sessions and on the examinations -- bolstered by examples from the case law and other material.

Grading:

1. **Final Examination** – 50% – Covers Units III – V – **12/??/17**- Covers Units III – V – Date and Time TBD.

2. **Mid-Term Examination** – 35% - **10/26/17** – Covers Units I – III (in part) – 7:10 – 8:50 pm

3. **Other** - Participation (Required and Volunteered)/Attendance/`Possible and Occasional Unannounced Collection of Case Briefs (via e-mail) – 15%

The grading scale will be as follows: 93 through 100 = A; 90-92 = A-; 87 - 89 = B+; 83 – 86 = B; 80 – 82 = B-; 77 – 79 = C+; 73 – 76 = C; 70-72 = C-, and so forth. For exceptional participation and contribution to class, your grade may be improved a half step.

The examinations likely will include both objective and subjective questions. There may be some combination of multiple-choice questions, short answer questions, and at least one or two lengthy essays on each exam. The essay(s) will likely include both a hypothetical component (i.e., apply the law to a hypothetical factual pattern developed by the instructor) and a policy component (i.e., a “what-do-you-think and why” kind of question more typical of University social science courses). The final will be longer than the mid-term and more writing will be required. Please note that I have a policy of not answering student questions twenty-four hours before exams in order to maintain a level playing field.

I shall post some assigned readings and other material on Blackboard, so be sure to check Blackboard frequently. I encourage students to post questions regarding course topics (or other constitutional law and policy issues, for that matter) on Blackboard. That way, all of us can benefit from the discussions.
Class Format and Policies:

The principal focus of the course will be to read and discuss U.S. Supreme Court decisions in constitutional law. This will include a combination of instructor lecture and student recitation. In most classes, I will call on students – based on who “is on call” for that class – to both discuss and answer questions regarding the reading assignments. This exercise will count towards your participation grade. I will take volunteers as well. If you are “on call” for a particular day and not prepared, you may place a note on the podium before class (or e-mail me at least one hour before class) to inform me of this, so I will not call on you. You may do this once during the semester for any reason whatsoever. In any other case in which you are “on call,” you must be excused from participation (e.g., illness, family emergency, religious absence, etc.) in the event you are not prepared. “Having a lot of other work in other classes” is not a legitimate basis to avoid participation. If I call on you and you “pass” or are clearly unprepared, your participation grade will be affected. Regarding attendance, in order to both do well and get something out of our class, you will need to attend and be prepared to participate with the cases briefed. On the day that you are “on call,” you may be called on without volunteering to discuss the assigned reading.

The “on-call” system will commence on September 7. For purposes of the “on-call system,” the class will be divided by last name as follows: Thursday 9/7 – A-J; Thursday 9/14 – K-Z; Thursday 9/21 – ROSH HASHANAH – NO CLASS; Thursday 9/28 – A-J; Thursday 10/5 – K-Z; Thursday 10/12 – A-J; Thursday 10/19 – K-Z; Thursday 10/26 – MID TERM EXAM – NO ONE IS ON CALL; Thursday 11/2 – GROUP WORK - NO ONE IS ON CALL; Thursday 11/9 – A-J; Thursday 11/16 – K-Z; Thursday 11/23 – THANKSGIVING – NO CLASS; Thursday 11/30 – A-J; Thursday 12/7 – K-Z*.

*Depending upon student availability, I may extend the time of the last class briefly to include a final review session.

Assignments:

The readings primarily will come from the “Epstein & Walker” (EW) text. I will add materials to the readings that I will post on Blackboard’s electronic reserve. You should review in the appendix of the text any constitutional provisions mentioned in the readings. I also recommend reviewing any Federalist Papers cited in the readings. And please note that, due to the length of each class session, the reading assignments will be challenging. Therefore, please do not wait until the night before class to complete the readings and case briefs.

The reading schedule is likely to change at least somewhat, and I reserve the right to amend the syllabus as necessary. We may have to rearrange the dates of coverage of particular material, based upon our rate of progress. In any event, I will do my best to tell you at the end of each class what I expect to cover in the
following class. When I haven’t done so or posted the assignment on Blackboard, the syllabus will provide the default assignment.

**Unit I – Introduction to Constitutional Law and the U.S. Supreme Court / The Marshall Court / Justiciability**

Thursday 8/31 – Introduction to the Course and Syllabus; Introductory Material, Terminology – EW 1-44; 51-56; Transcript of Justice Brennan Speech (1985) & Transcript of Justice Scalia Speech (2005) (both transcripts provided by instructor on Blackboard’s electronic reserve); In-class Exercises (available on electronic reserve)

Thursday 9/7 – *Federalist Papers*, No. 78 on The Judiciary Department (which will be available on the electronic reserve); Important Marshall Court Decisions and Related Material – EW 57-84

Thursday 9/14 – Justiciability and the Political Question Doctrine – EW 93-110; and Article III Standing – EW 110-119.

Thursday 9/21 – NO CLASS – ROSH HASHANAH. Although class will not meet this week, I strongly encourage you to go to this site: [https://www.oyez.org/cases/2017](https://www.oyez.org/cases/2017) and read about a case to be considered by the Supreme Court during the 2017-2018 Term. After doing so, please feel welcome to ask me any questions you may have about the case or share your views with me via e-mail.

Thursday 9/28 – Finish Standing – *Lujan v. Defenders of Wildlife* (1992) (*Lujan* will be available on the electronic reserve); *Hollingsworth v. Perry* (2013) (*Hollingsworth* will be available on the electronic reserve); **Start Unit II** on Congress’s Institutional Authority – EW 120-126 (assignment does not include *Powell v. McCormack*)

**Unit II – The Legislature’s Institutional Authority and Federalism Matters**

Thursday 10/5 – Congress’s Institutional Authority – EW 144-156 (not including Power to Investigate); 330-336; and Dual Federalism – EW 350-363

**Unit III – The Legislature’s Commerce Power, Taxing and Spending Authority, and Economic Regulation**

Thursday 10/12 – The Commerce Power (until the early 20th Century) EW 391-401 (not including *E.C. Knight*) and EW 404-405; The Supreme Court, The New Deal, and the Court-Packaging Plan – EW 415-429; and The Commerce Power: 1937 - 1995 – EW 429-436 (not including *Darby*)
Thursday 10/19 – The Modern and Changing Commerce Clause and Commerce Clause as Civil Rights Authority – EW 439-448 and The Rehnquist Court and the Commerce Clause – EW 455-475

Thursday 10/26 – MID-TERM EXAMINATION (35% of Grade) (100 minutes); *if we do not get to Gonzalez v. Raich (2005) before the mid-term, I shall lecture on the case after the mid-term. If we already have covered Gonzalez before the mid-term, I’ll be happy to answer questions generally about the U.S. Supreme Court and law school.

Thursday 11/2 – The Constitutionality of the Patient Protection and Affordable Care Act of 2010 – EW 474-482 (Individual Mandate under the Commerce Clause); The Spending Power – EW 539-543; The Constitutionality of the Patient Protection and Affordable Care Act of 2010 (Individual Mandate and Congress’s Taxing Authority and the Medicaid Expansion under the Spending Power) – EW 543-550. (In this meeting, we will divide the class into groups to discuss and debate the various legal issues raised by the Affordable Care Act under questioning from the instructor who will play the role of a judge).

Unit IV – Article II of the U.S. Constitution: Executive Power


Thursday 11/16 – Continue and Conclude Domestic Powers of the President – EW 210-226; Executive Privilege – EW 227-234 (not including Mississippi v. Johnson); and Executive Immunity – EW 237-246

Thursday 11/23 – HAPPY THANKSGIVING – NO CLASS

Unit V – Separation of Powers and Disputes Including National Security Issues

Thursday 11/30 – The Power to Pardon – EW 246-250 & Nixon Pardon Proclamation by President Ford on EW 251; The Legislative Veto and Legislative Appointment – EW 266-276; Discussion of the instructor’s separation of powers analysis and framework (which will be available on the electronic reserve); Presidential Power During War and National Emergencies (Civil War Era) – EW 277-289

Thursday 12/7 – Continue Presidential Power During War and National Emergencies (20th Century) – EW 290-294, 301-308; Supplement to National Security Reading (which will be available on electronic reserve); EW 311-322
Other Information

I support the GW Code of Academic Integrity. It states: “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.” The remainder of the Code is available through GWU’s website.

Any student who may need an accommodation based on the potential impact of a disability should contact the Disability Support Services office at 202-994-8250 to establish eligibility and to coordinate reasonable accommodations. Please provide me with the supporting documentation; I will be happy to assist you.