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PSCI 471.01: American Constitutional Law

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PSCI 471
American Constitutional Law
Fall 2011

Overview of course: PSCI 471 surveys governmental power in our political system and limitations on this power as found in the U.S. Constitution. The first part of the course focuses on the doctrines of separation of powers and federalism and includes such topics as the Supreme Court's power of judicial review, Congress's taxing and spending power, the President's war power, State sovereignty, and State regulation of interstate commerce. The second part of the course deals with civil rights and civil liberties, including freedom of expression, freedom of religion, due process, criminal procedure, personal privacy, and equal protection of the laws.

Instructor: Professor James Lopach, LA 349, 243-2946, james.lopach@umontana.edu

Text: Mason and Stephenson, *American Constitutional Law: Essays and Cases*, 16th edition (Pearson/Prentice Hall, 2012)

Class format: Students are expected to complete reading assignments (approximately ten pages) prior to each meeting. In class, the instructor will lecture on the assigned reading, call upon students to present their understanding of Supreme Court opinions, and lead class discussion concerning the significance of the cases and related contemporary issues.

Examinations: There will be two examinations. Both the midterm, scheduled for Friday, October 14, and the final, scheduled for Thursday, December 13 at 8:00 a.m., will use definition and short-essay questions. The course's learning goals, assessed by class discussion and examination, are correct understanding of the nature and evolution of constitutional principles, accurate case analysis, and effective oral and written expression.

Grading: Each of the two examinations can earn a maximum of 50 points. The instructor, at his discretion, can award up to ten extra-credit points for excellence in class attendance and participation. The course grades will be determined as follows: 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+ = 67-69; D = 63-66; D- = 60-62; F = 59 and below. For the credit/no-credit grading option, a grade of D- and above will count as "credit."

Important Days: Labor Day, September 5; Thanksgiving Break, November 23-25; last class day, Friday, December 9

Graduate increment: Graduate students must consult with the instructor about research and writing options that will fulfill the University's graduate-increment requirement.

Assigned Reading:

Introduction: A Political Supreme Court

Chapter 1: Jurisdiction and Organization of the Federal Courts

Chapter 2: The Constitution, the Supreme Court, and Judicial Review

Marbury v. Madison

Scott v. Sanford

Baker v. Carr

Chapter 3: Congress and the President

Mistretta v. United States

Immigration and Naturalization Service v. Chadha

Watkins v. United States

United States v. Nixon

Clinton v. Jones

United States v. Curtiss-Wright Export Corp.

Korematsu v. United States

Youngstown Sheet & Tube Co. v. Sawyer

Chapter 4: Federalism

McCulloch v. Maryland

Cohens v. Virginia

U.S. Term Limits, Inc. v. Thornton

United States v. Morrison

Gonzales v. Raich

Chapter 5: The Electoral Process

Reynolds v. Sims

McConnell v. Federal Election Commission

Citizens United v. F.E.C.

Chapter 6: The Commerce Clause

Gibbons v. Ogden

Philadelphia v. New Jersey

Wickard v. Filburn

Chapter 7: National Taxing and Spending Power

South Dakota v. Dole

Rumsfeld v. Forum for Academic and Institutional Rights

Chapter 9: The Bill of Rights

Palko v. Connecticut

McDonald v. City of Chicago

Chapter 10: Criminal Justice

Chimel v. California
Katz v. United States
Terry v. Ohio
Miranda v. Arizona
Gregg v. Georgia

Chapter 11: Freedom of Expression

Brandenburg v. Ohio
Clark v. Community for Creative Non-Violence
Texas v. Johnson
Boy Scouts of America and Monmouth Council v. Dale
New York Times Co. v. Sullivan

Chapter 12: Religious Liberty

Santa Fe Independent School District v. Doe
Agostini v. Felton
Sherbert v. Verner
Employment Division v. Smith

Chapter 13: Privacy

Griswold v. Connecticut
Planned Parenthood of Southeastern Pennsylvania v. Casey
Lawrence v. Texas

Chapter 14: Equal Protection of the Laws

Brown v. Board of Education (1st case)
Moose Lodge v. Irvis
Craig v. Boren
Grutter v. Bollinger

Optional PSCI 400 Writing Assignments: Each student who chooses to enroll in PSCI 400 will write four essays on topics central to the course. Each essay will be no more than three manuscript pages in length. Grading will be based on content (clarity and validity of argument) and correctness of writing (grammar, diction, syntax, and logical development). Each student may rewrite and resubmit the first essay and one other essay after consultation with the instructor about the corrected essays. Each of the four essays can earn 25 points; grades will be based on the 100-point system set out in the PSCI 471 syllabus. You can provide documentation of your sources in the text of the essay; footnotes and endnotes are not necessary. However, you must do your own work. Plagiarism will be severely punished.

Essay on judicial review. In a three-page, double-spaced essay, argue either for or against the doctrine and practice of judicial review. This essay should consist of four parts: (1) the introductory section should define judicial review, present your thesis statement (i.e., whether you are arguing for or against judicial review), explain generally the long-standing controversy over judicial review, and preview specifically your three upcoming arguments that support your thesis statement; (2) the second section should identify and explain with some detail, using concrete

examples, your first argument for or against judicial review – e.g., that judicial review supports or contradicts American democratic theory; (3) the third section should identify and explain using concrete examples your second argument for or against judicial review – e.g., that the Supreme Court’s use of judicial review has been beneficial or detrimental to the nation; (4) your fourth section should set out using concrete examples your third argument for or against judicial review – e.g., that judicial review will continue to benefit the nation regarding specific issues or the U.S. Constitution should be amended to limit the bad effects of judicial review. At your discretion you can include a concluding paragraph. This essay (and one of the remaining three essays) may be submitted for revision. In each of your four essays, use clear transitions both within and between paragraphs, precise and simple diction, direct and straight-forward syntax, the active voice, and brief quotations. Remember that good writing flows from good thinking and a willingness to revise. The first essay is due September 23.

Essay on a recent separation-of-powers or federalism case. In a three-page, double-spaced essay, summarize and give a critique of one of the following Supreme Court cases: (1) *Hamdan v. Rumsfeld* (2006 Guantanamo Bay military tribunal case); (2) *Rapanos v. United States* (2006 federal regulation of wetlands case); (3) *Boumediene v. Bush* (2008 Guantanamo Bay habeas corpus case); (4) *United States Chamber of Commerce v. Whiting* (2011 preemption of state immigration law case); (5) *Arizona Christian STO v. Winn* (2011 taxpayer standing case). Work from the full report of the case, which can be accessed at Findlaw.com. Follow the general good-writing guidelines for the first essay. Organize your essay as follows: Part 1 – give an overview of the case (facts, issue, decision) and your essay’s major points; Part 2 – identify and explain one of the majority opinion’s key legal arguments; Part 3 – identify and explain another of the majority opinion’s key legal arguments; Part 4 – summarize the arguments of the dissenting opinion; and Part 5 – explain the political implications of the case (i.e., who wins and who loses in our society). Essay is due October 21.

Essay on a recent civil rights case. For this essay, apply the guidelines given above for the second essay to one of the following Supreme Court cases: (1) *Brown v. Entertainment Merchants Association* (2011 regulation of violent video games case); (2) *Snyder v. Phelps* (2011 protest at military funeral case); (3) *Kentucky v. King* (2011 warrantless knock and enter case); (4) *J.D.B. v. North Carolina* (2011 youth in custody/Miranda warnings case); (5) *Brown v. Plata* (2011 eighth amendment prisoner release case). Essay is due November 18.

Essay on a law review article. In a three-page, double-spaced essay, you must do two things: (1) summarize and (2) evaluate a law review article (not a short “note” or “comment”) that deals with a constitutional law topic covered in PSCI 471. Follow the good-writing guidelines presented above for the first essay, and organize the essay as you deem appropriate. To identify possible law review articles, use the *Current Index to Legal Periodicals* located in the reference section of the UM Law Library. You can also access the *Index* on computers in the law and Mansfield libraries. Law reviews are shelved in the Law Library on the east and west balconies, and you can print copies of law review articles using the law library computers. The PSCI 471 instructor must approve your choice of a law review article. Essay is due December 7.