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PSCI 471.01: American Constitutional Law

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PSCI 471
American Constitutional Law
Fall 2012

Overview of course: PSCI 471 surveys governmental powers in our political system and limitations on these powers that are 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, the 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 justice procedures, personal autonomy, and equal protection of the laws.

Instructor: Professor James Lopach, LA 349, 243-2946, james.lopatch@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 and learning goals: There will be three examinations; each will use definition and short-essay questions. The two midterm examinations are scheduled for October 3 and October 19. The final examination is scheduled for December 14 at 8:00 a.m. 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 midterm examinations can earn 25 points, and the final examination can earn 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 3; Election Day, November 12; Thanksgiving Break, November 21-23; last class day, December 7

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

Chapter Introduction

Marbury v. Madison

Scott v. Sanford

Baker v. Carr

Chapter 3: Congress and the President

Chapter Introduction

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

Chapter Introduction

McCulloch v. Maryland

Cohens v. Virginia

United States v. Morrison

Gonzales v. Raich

Chapter 5: The Electoral Process

Chapter Introduction

Reynolds v. Sims

California Democratic Party v. Jones

Citizens United v. F.E.C.

Chapter 6: The Commerce Clause

Chapter Introduction

Gibbons v. Ogden

Philadelphia v. New Jersey

Wickard v. Filburn

Chapter 7: National Taxing and Spending Power

Chapter Introduction

South Dakota v. Dole

Rumsfeld v. Forum for Academic and Institutional Rights

Chapter 9: The Bill of Rights

Chapter Introduction

Palko v. Connecticut

McDonald v. City of Chicago

Chapter 10: Criminal Justice

Chapter Introduction

Chimel v. California

Katz v. United States

Terry v. Ohio

Miranda v. Arizona

Gregg v. Georgia

Chapter 11: Freedom of Expression

Chapter Introduction

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

Chapter Introduction

Santa Fe Independent School District v. Doe

Agostini v. Felton

Sherbert v. Verner

Employment Division v. Smith

Chapter 13: Privacy

Chapter Introduction

Griswold v. Connecticut

Planned Parenthood of Southeastern Pennsylvania v. Casey

Lawrence v. Texas

Chapter 14: Equal Protection of the Laws

Chapter Introduction

Brown v. Board of Education I

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. Each must be three manuscript pages in length. Grading will be based on content (validity of argument) and correctness of writing (grammar, diction, syntax, and coherence). Each student may rewrite and resubmit the first essay and one other essay after they are corrected and returned. Each of the four essays can earn 25 points; grades will be based on the

100-point system set out above. You should document any sources with parenthetical notes in the text, not by footnotes and endnotes. You must do your own work; plagiarism will be punished.

Essay on judicial review. In a 3-page, double-spaced essay, argue either for or against judicial review. This essay should consist of 4 parts: (1) the introductory section should define judicial review, present your thesis statement (whether you are for or against judicial review), explain generally the long-standing controversy over judicial review, and preview specifically your 3 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 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 1 of the remaining 3 essays) may be submitted for revision. In each of your 4 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 on or before September 24 .

Essay on a recent separation-of-powers or federalism case. In a 3-page, double-spaced essay, summarize and give a critique of one of the following Supreme Court cases: (1) *Rapanos v. United States* (2006 federal regulation of wetlands case); (2) *Boumediene v. Bush* (2008 Guantanamo Bay habeas corpus case); (3) *Arizona Christian STO v. Winn* (2011 taxpayer standing case); (4) *NFIB v. Sebelius* (2012 health care reform case); and (5) *Arizona v. United States* (2012 immigration case). Work from the full report of the case: Supremecourtus.gov or Findlaw.com. Follow the general 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 a dissenting or concurring opinion; and Part 5 – explain the political implications of the case (who wins and who loses in our society). Essay is due October 17.

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) *United States v. Alvarez* (2012 Stolen Valor Act case); (2) *Missouri v. Frye* (2012 right to counsel/plea bargain case); (3) *United States v. Jones* (2012 GPS device search case); (4) *Florence v. Board of Chosen Freeholders* (2012 jail strip search case); and (5) *Miller v. Alabama* (2012 life without parole for juvenile homicide offender case). Essay is due November 14.

Essay on a law review article. In a 3-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 this 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 3.