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PSCI 471.01: American Constitutional Law

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PSCI 471
American Constitutional Law
Winter 2012

Overview of course: PSCI 471, American Constitutional Law, surveys governmental power in our political system derived from the U.S. Constitution and the limitations the Constitution places on the exercise of those powers. The doctrines to be studied include separation of powers (e.g., congressional oversight, presidential war power, and judicial review), federalism (e.g., federal and state taxing and regulatory powers), civil rights (e.g., due process and equal protection) and civil liberties (e.g., freedom of expression, freedom of religion, and privacy).

Instructor: Professor James Lopach, LA 349, 243-2946, james.lopach@umontana.edu; office hours before and after each class day

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

Class format: Students are expected to read the assigned cases (see below) prior to each class meeting. In class the instructor will lecture on the assigned reading, take questions, call upon students to present their understanding of the cases, and lead discussion concerning the significance of the cases and related contemporary issues.

Briefing cases: Each student will brief each assigned case using student-made copies of the instructor-provided form (see below). Each Friday the instructor will collect each student's briefs for that week's cases. The briefs must be typewritten, appropriately arranged, and bound.

Examination: There will be a quiz administered at the end of class on the first two Fridays and an examination administered on the final Friday. Questions will come from the review sheet (see below). Each quiz will contain two definitional questions and the final examination will contain six definitional questions. Each definitional question can earn five points. Therefore, a total of 50 points can be earned on the quizzes and examination.

Grading: The graded components of the course include class attendance and participation (20 points), case briefs (30 points) and quizzes and examination (50 points). The instructor can award up to 5 extra-credit points for outstanding performance in the course. The final course grade 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. To apply the course to Political Science major or minor requirements, a grade of at least C- must be earned. For the credit/no-credit grading option, a grade of D- and above will count as "credit."

Important Days: Winter session begins on Tuesday January 3 and ends on Friday January 20. Monday January 16 is a holiday.

Graduate increment: To fulfill the graduate increment for PSCI 471, graduate students must complete the last three essays described below under "Optional PSCI 400 Writing Requirements." The schedule for submitting these essays must be arranged with the instructor.

Assigned Reading:

January 3 – Supreme Court and Judicial Review

Introduction to Chapter Two

Marbury v. Madison

Scott v. Sanford

Baker v. Carr

January 4 – Congress

Introduction to Chapter Three (pages 80-85)

Mistretta v. United States

Immigration and Naturalization Service v. Chadha

Watkins v. United States

January 5 – The President

Introduction to Chapter Three (pages 85-92)

Clinton v. Jones

Korematsu v. United States

Youngstown Sheet & Tube Co. v. Sawyer

January 6 – Federalism

Introduction to Chapter Four

McCulloch v. Maryland

United States v. Morrison

Gonzales v. Raich

January 9 – The Electoral Process

Introduction to Chapter Five

Reynolds v. Sims

California Democratic Party v. Jones

Citizens United v. Federal Election Commission

January 10 – The Commerce Clause

Introduction to Chapter Six

Gibbons v. Ogden

Philadelphia v. New Jersey

Wickard v. Filburn

January 11 – National Taxing and Spending Power and Bill of Rights

Introductions to Chapter Seven and Chapter Nine

South Dakota v. Dole

Palko v. Connecticut

McDonald v. City of Chicago

January 12 – Criminal Justice

Introduction to Chapter Ten

Chimel v. California

Katz v. United States
Miranda v. Arizona

January 13 – Freedom of Expression

Introduction to Chapter Eleven
Clark v. Community for Creative Non-Violence
Boy Scouts of America and Monmouth Council v. Dale
New York Times Co. v. Sullivan

January 17 – Religious Liberty

Introduction to Chapter Twelve
Santa Fe Independent School District v. Doe
Agostini v. Felton
Employment Division v. Smith

January 18 – Privacy

Introduction to Chapter Thirteen
Griswold v. Connecticut
Planned Parenthood of Southeastern Pennsylvania v. Casey
Lawrence v. Texas

January 19 – Equal Protection of the Laws

Introduction to Chapter Fourteen
Moose Lodge v. Irvis
Craig v. Boren
Grutter v. Bollinger

January 20 – Course Evaluation, Course Review, and Examination

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 as 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. The instructor will meet with each student to discuss the four essay topics and to establish a schedule of due dates. For the PSCI 400 part of this course, a grade of Incomplete will be considered reasonable and can be arranged.

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.

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 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 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.

Briefing Form (type in the space provided)

Student _____

Case _____

Facts

Action

Issue(s)

Decision of the Court on the issue(s)

Principal points made by the majority

•

•

•

•

Principal points made by the dissenting and/or concurring justices (if any)

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PSCI 471, Winter 2012
Review Sheet for Quizzes and Examination

<i>Marbury</i> judicial review rule	<i>Baker</i> political question rule
<i>Dred Scott</i> threshold/merits rules	<i>Youngstown</i> executive order rule
<i>Mistretta</i> intelligible principle rule	<i>Korematsu</i> war powers rule
<i>Democratic Party</i> blanket primary rule	<i>Watkins</i> rule of pertinency
<i>Gonzales</i> commerce clause rule	<i>Reynolds</i> apportionment rule
<i>Clinton</i> presidential immunity rule	<i>South Dakota</i> spending bar rule
<i>Citizens United</i> campaign finance rule	<i>Chadha</i> legislative veto rule
<i>Morrison</i> commerce clause rule	<i>Wickard</i> cumulative effect rule
<i>McCulloch</i> supremacy/implied powers rules	<i>Philadelphia</i> dormant commerce rule
<i>McDonald</i> 2 nd amendment incorporation rule	<i>Palko</i> selective incorporation rule
<i>Gibbons</i> positive commerce rule	<i>Chimel</i> post-arrest search rule
<i>Katz</i> personal privacy rule	<i>Miranda</i> silence/counsel rule
<i>Sullivan</i> public figure doctrine rule	<i>Clark</i> symbolic expression rule
<i>Boy Scouts</i> expressive association rule	<i>Santa Fe</i> establishment clause rule
<i>Employment Division</i> religious freedom rule	<i>Griswold</i> personal autonomy rule
<i>Planned Parenthood</i> abortion rule	<i>Lawrence</i> gay rights rule
<i>Agostini</i> establishment clause rule	<i>Moose Lodge</i> state action rule
<i>Craig</i> gender discrimination rule	<i>Grutter</i> affirmative action rule