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### PSC 471.01: American Constitutional Law

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PSCI 471  
American Constitutional Law  
Fall 2010

**Overview of course:** PSCI 471 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 first part of the course focuses on the doctrines of separation of powers and federalism and includes such topics as judicial review, Congress's taxing and spending power, Congress' and the President's war powers, State sovereignty, and State regulation and taxation of interstate commerce. The second part of the course deals with civil rights and civil liberties: freedom of expression, freedom of religion, due process, criminal procedure, personal privacy, and equal protection of the laws.

**Instructor:** Professor James Lopach, LA 355, 243-2946, james.lopach@umontana.edu

**Text:** Mason and Stephenson, *American Constitutional Law: Essays and Cases*, 15<sup>th</sup> edition (Pearson/Prentice Hall, 2009)

**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 October 22, and the final, scheduled for Saturday, December 18 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 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 6; Thanksgiving Break, November 24-26; last class day, Monday, December 13

**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

Jurisdiction and Organization of the Federal Courts

The Constitution, the Supreme Court, and Judicial Review

*Marbury v. Madison*

*Scott v. Sanford*

*Baker v. Carr*

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*

Federalism

*McCulloch v. Maryland*

*Cohens v. Virginia*

*United States v. Morrison*

*Tennessee v. Lane*

*Gonzales v. Raich*

Elections

*Reynolds v. Sims*

*Vieth v. Jubelirer*

*McConnell v. Federal Election Commission*

The Commerce Clause

*Gibbons v. Ogden*

*Philadelphia v. New Jersey*

*Wickard v. Filburn*

National Taxing and Spending Power

*South Dakota v. Dole*

*Rumsfeld v. Forum for Academic and Institutional Rights*

Nationalization of the Bill of Rights

*Palko v. Connecticut*

*Adamson v. California*

### Criminal Justice

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

### 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*

### Religious Liberty

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

### Privacy

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

### Equal Protection of the Laws

*Brown v. Board of Education* (1<sup>st</sup> case)  
*Moose Lodge v. Irvis*  
*Craig v. Boren*  
*Grutter v. Bollinger*

### **PSCI 400 Writing Assignments (optional):**

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 these two essays are corrected and graded by the instructor. 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 24.

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) *Altria Group Inc. v. Good* (2008 cigarette preemption case); 2) *Summers v. Earth Island Institute* (2008 environmental standing case); 3) *Hein v. Freedom from Religion Foundation* (2007 faith-based-initiative standing case); 4) *Hamdan v. Rumsfeld* (2006 military tribunal case); 5) *Gonzales v. Oregon* (2006 preemption/physician-assisted suicide case); 6) *Rapanos v. United States* (2006 federal regulation of wetlands case); 7) *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010 Presidential removal-power case); and 8) *United States v. Comstock* (2010 civil commitment of federal prisoner 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 15.

Essay on a recent civil rights or civil liberties case. For this essay, apply the guidelines given above for the second essay to one of the following Supreme Court cases: 1) *Citizens United v. FEC* (2010 campaign finance case); 2) *Christian Legal Society v. Martinez* (2010 expressive association case); 3) *Salazar v. Buono* (2010 cross on federal property case); 4) *Holder v. Humanitarian Law Project* (2010 aid to terrorist organization case); 5) *United States v. Stevens* (2010 animal cruelty video case); 6) *McDonald v. City of Chicago* (2010 handgun ban case); 7) *Berghuis v. Thompson* (2010 Miranda rule case); and 8) *Graham v. Florida* (2010 juvenile sentencing case). Essay is due November 10.

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 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 most 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.