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PSC 471.01: American Constitutional Law

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PSC 471
American Constitutional Law
Fall 2009

Overview of course: PSC 471, American Constitutional Law, surveys governmental power in our political system and the limitations the U.S. 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 and criminal procedure, personal privacy, and equal protection of the laws.

Instructor: Professor James Lopach, LA 350, 243-2946, james.lopatch@umontana.edu

Text: Mason and Stephenson, *American Constitutional Law: Essays and Cases*, 15th 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 16, and the final, scheduled for Friday, 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 discussion. 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 dates: Last day to add and drop a class and change grading option with a drop/add form is November 2. Holidays are September 7 and November 11 and 25-27.

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:

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

Hammer v. Dagenhart

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 (1st case)
Moose Lodge v. Irvis
Craig v. Boren
Grutter v. Bollinger

PSC 300 and 400 Writing Assignments (optional):

Each student who chooses to enroll in PSC 300 and PSC 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 PSC 471 syllabus. Documentation of your sources can be provided in the text of each essay; footnotes and endnotes are not necessary. However, you must do your own work; plagiarism will be severely punished.

Essay on an instructor-assigned course topic. 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 the long-standing controversy over judicial review, and preview your 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 reinforces 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. A separate concluding section is not necessary. 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 21.

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); and 6) *Rapanos v. United States* (2006 federal regulation of wetlands 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 12.

Essay on a recent civil rights or civil liberties case. For this essay, follow the guidelines given above for the second essay regarding one of the following Supreme Court cases: 1) *Safford United School District No. 1 v. Redding* (2008 school strip search case); 2) *District Attorney’s Office v. Osborne* (2008 access to DNA evidence case); 3) *Caperton v. A.T. Massey Coal Co.* (2008 recusal of state judge case); 4) *Melendez-Diaz v. Massachusetts* (2008 right to confront state lab analyst case); 5) *Herring v. United States* (2008 good-faith exception to the exclusionary rule case); and 6) *Morse v. Frederick* (2007 school speech case). Essay is due November 6.

Essay on a law review article. In a three-page, double-spaced essay, you should 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 PSC 471. Follow the good-writing guidelines presented above for the first essay, and structure the essay’s paragraphs as makes most sense to you. 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 the Law Library’s computers. 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 PSC 471 instructor must approve your choice of a law review article. Essay is due December 2.