

## CONSTITUTIONAL LAW

Stephen F. Austin State University  
Department of Government  
**FALL 2012**



### INSTRUCTOR INFORMATION

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### COURSE INFORMATION

**Course Number:** PSC 403  
**Section:** 090  
**Prerequisites:** PSC 141 | PSC 142  
**Semester Credit Hours:** 3



Course Description: “American Constitutional Law - A study of the American federal constitutional provisions concerning the organization of government and the powers, rights, duties, and responsibilities of both the government and the individual citizen. Major Supreme Court cases will be analyzed and critiqued.” *General Bulletin, 2012-2013, p.345-346*

Class Meeting Days & Times: T, TR 8:00am - 9:15am  
Room: T. E. Ferguson Liberal Arts 374

### REQUIRED TEXTS

Stephens, Otis H. Jr. and John M. Scheb II. *American Constitutional Law Vol. I & II*. 2008. New York: Thompson Wadsworth.

Melone, Albert P. *Researching Constitutional Law*, 3<sup>rd</sup> ed. 2004. Long Grove, IL: Waveland Press, Inc.

## SUGGESTED READINGS

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Hansford, Thomas G and James F. Spriggs II. *The Politics of Precedent on the U.S. Supreme Court*. 2006. Princeton: Princeton University Press.

Maltzman, Forrest, James F. Spriggs II & Paul J. Wahlbeck. *Crafting Law on the Supreme Court: The Collegial Game*. 2000. Cambridge: Cambridge University Press.

Spaeth, Harold J. and Jeffrey A. Segal. 1999. *Majority Rule or Minority Will: Adherence to Precedent on the U.S. Supreme Court*. Cambridge: Cambridge University Press.

Shapo, Helene S., Marlyn R. Walter, and Elizabeth Fajans. 1995. *Writing and Analysis in the Law, 3<sup>rd</sup> ed.* New York: The Foundation Press, Inc.

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington D.C.: CQ Press.

Weihofen, Henry. 1980. *Legal Writing Style, 2<sup>nd</sup> ed.* St. Paul: West Publishing Co.

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**"It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule."** -- Chief Justice John Marshall, *Marbury v. Madison*

### **COURSE OBJECTIVES:**

#### **General Education Core Curriculum Objectives/Outcomes:**

This course is associated with the major, second major, and minor in the political science. The course is not part of the general education core curriculum. No specific general education objectives or outcomes are addressed in this course.

#### **Program Learning Outcomes:**

The following program learning outcomes for a political science major are addressed in this course:

PLO #5 – “The student will create research papers, briefs, or reports.”

#### **Student Learning Outcomes:**

By the end of the course, students will be able

- To describe the basic themes and concepts related to the study of American constitutional law.
- To understand the American judicial system – in particular the process and particulars of the United States Supreme Court.
- To think critically about the evolution of constitutional law and legal theory in areas of the law such as the Commerce Clause, checks & balances between the branches, judicial authority, civil liberties and civil rights.
- To discuss the major USSC cases that have benchmarked the evolution of constitutional law.

Students are expected to go beyond rhetoric and ideology to develop critical thinking about the American political system. As a result, students are encouraged to ask questions and to challenge assumptions of class discussions while respecting the logical and reasoned positions of others.

### **COURSE OVERVIEW:**

This course has two main goals. One is to help students develop an understanding of how governmental power is structured by the American Constitution, as interpreted by the federal judiciary and mainly the United States Supreme Court. We will begin with the Constitution, and then move to the role of the judiciary in the American political system, particularly judicial review. We will also learn about separation of powers among the branches of the national government. This will include the powers of the president, the federal bureaucracy, and Congress, and other areas of doctrine concerning the nature and extent of national and state government power under the U.S. Constitution. We will then cover the relationship between national and state government, i.e. federalism. We will also consider the major cases and legal principles associated with civil liberties and civil rights.

The other goal of this course is to help students learn to think like constitutional lawyers. You will learn how to analyze fact patterns using legal rules, construct legal arguments, and critically evaluate arguments. For the most part we will be reading and discussing written opinions of the United States Supreme Court. Your book also contains excellent explanatory material that provides some context for these opinions.

I am both a political scientist and a student of the law. The two professions have different ways of viewing judicial decision-making. Most political scientists see judges as political actors and policy-makers, and don't think they are all that different than members of congress or the executive branch—all three branches involve people advancing their policy preferences. When considering a Supreme Court decision, they focus on the judges' backgrounds, partisan affiliations, the political significance and context of the case, and so forth.

Lawyers view court decisions very differently. They are interested and trained in law, so they employ “legal reasoning,” something that most non-lawyers don't know how to do. They focus on the legal authority cited, the logic of the opinions, and the rule or rules that emerge from the case as precedent for future cases. Judges are not given to exposing their policy preferences in opinions, and instead couch their decisions in neutral principles of law.

Both these ways of looking at cases have merit and validity, depending upon your objective. For most of this course we will examine the law from the legal perspective. Towards the end we will consider to arguments regarding the court as a political actor. But as far as our day-to-day activities, you will endeavor to think like a lawyer. They are trained to apply legal rules to fact situations, and to explain their decisions in terms of those rules. I want you to practice doing that. It is something you do not presently know how to do and come to this class to learn. I do not want you to fall back on easy political judgments of the sort anybody could produce without even doing the reading.

## EVALUATION

- 1) *Exams*. There will be a Midterm and a Final.
- 2) *Participation*. You are expected to attend class. Consistent class attendance, reading and preparation, and participation are essential. The reading material consists mainly of edited versions of United States Supreme Court opinions, many of which were written long ago. The language and logic are complicated, unfamiliar, and hard to follow sometimes. It takes effort to read and understand judicial opinions, and you will need to be prepared for class, listen to my explanations and those of your classmates, ask questions, and discuss the material. Cramming for the exams you will take is all but impossible. I will grade you on your participation and attendance. Furthermore, 3 or more unexcused absences will result in the docking of a letter grade from your final grade in the class. 5 or more unexcused absences will result in you being dropped from the course.
- 3) *Case Briefs*. I will periodically pick up your case briefs to be graded and returned throughout the semester.
- 4) *Quizzes*. I will periodically post quizzes for you to take for credit. These quizzes will cover material you are responsible for up to that point in the class (since the previous quiz), including the readings for the day of the quiz. No warnings will be provided – you are expected to come to class prepared to be quizzed on materials.
- 5) *Appellate Brief*. This is a brief of a case presenting constitutional questions where you will be assigned one of the parties to the case and asked to write a 15-20 page legal argument on the constitutional questions for that party. Additional details will be provided later in the semester.

## WEIGHTING SCALE

Evaluation	Points
Midterm	100
Final Exam	150
Case Briefs	100
Appellate Brief	100
Brief Defense	50
Quizzes	100
Participation	100
<b>TOTAL</b>	<b>700</b>

## GRADING SCALE

A	90% and up	630 – 700
B	80% - 89%	560 – 629
C	70% - 79%	490 – 559
D	60% - 69%	420 – 489
F	59% and dwn	0 – 419

Stu's Views

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No, your honor, I'm a different kind of "counselor." I'm supposed to ask "leading questions."

Most of this class will be in-class discussion. I expect you to finish the readings assigned for each day before you come to class and to be prepared to discuss the readings with your case briefs. *This is essential to getting a good grade in this course.*

## ACADEMIC HONESTY:

The following is taken from SFASU's *Policy Manual (2011)*, section on "Academic Integrity" (A-9) Academic integrity is a responsibility of all university faculty and students. Faculty members promote academic integrity in multiple ways including instruction on the components of academic honesty, as well as abiding by university policy on penalties for cheating and plagiarism.

Definition of Academic Dishonesty: Academic dishonesty includes both cheating and plagiarism. Cheating includes but is not limited to (1) using or attempting to use unauthorized materials to aid in achieving a better grade on a component of a class; (2) the falsification or invention of any information, including citations, on an assigned exercise; and/or (3) helping or attempting to help another in an act of cheating or plagiarism. Plagiarism is presenting the words or ideas of another person as if they were your own. Examples of plagiarism are (1) submitting an assignment as if it were one's own work when, in fact, it is at least partly the work of another; (2) submitting a work that has been purchased or otherwise obtained from an Internet source or another source; and (3) incorporating the words or ideas of an author into one's paper without giving the author due credit.

Please read the complete policy at [http://www.sfasu.edu/policies/academic\\_integrity.asp](http://www.sfasu.edu/policies/academic_integrity.asp).

All cases of academic dishonesty will be handled according to University policies and procedures (A-9.1). The consequences for academic dishonesty may range from a score of zero (0) on the assignment to an "F" for the course. For details, students should refer to the *SFA Policy Manual (2011)* or the University's *General Bulletin, 2011 – 2012* section entitled "Academic Integrity" and other sources of University policy.

### **WITHHELD GRADES**

The following is taken from SFASU's *Policy Manual* (2011), "Semester Grades Policy" (A-54). At the discretion of the instructor of record and with the approval of the academic chair/director, a grade of WH will be assigned only if the student cannot complete the course work because of unavoidable circumstances. Students must complete the work within one calendar year from the end of the semester in which they receive a WH, or the grade automatically becomes an F. If students register for the same course in future semesters, the WH will automatically become an F and will be counted as a repeated course for the purpose of computing the grade point average.

### **STUDENTS WITH DISABILITIES**

To obtain disability related accommodations, alternate formats and/or auxiliary aids, students with disabilities must contact the Office of Disability Services (ODS), Human Services Building, and Room 325, 468-3004 / 468-1004 (TDD) as early as possible in the semester. Once verified, ODS will notify the course instructor and outline the accommodation and/or auxiliary aids to be provided. Failure to request services in a timely manner may delay your accommodations.

For additional information, go to <http://www.sfasu.edu/disabilityservices/>.

### **ACCEPTABLE STUDENT BEHAVIOR**

Classroom behavior should not interfere with the instructor's ability to conduct the class or the ability of other students to learn from the instructional program (see the Student Conduct Code, policy D-34.1). Unacceptable or disruptive behavior will not be tolerated. Students who disrupt the learning environment may be asked to leave class and may be subject to judicial, academic or other penalties. This prohibition applies to all instructional forums, including electronic, classroom, labs, discussion groups, field trips, etc. The instructor shall have full discretion over what behavior is appropriate/inappropriate in the classroom. Students who do not attend class regularly or who perform poorly on class projects/exams may be referred to the Early Alert Program. This program provides students with recommendations for resources or other assistance that is available to help SFA students succeed.





## SCHEDULE OF ACTIVITES ASSIGNMENTS / EXAMINATIONS

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### WEEK 1

*Introduction: What's Constitutional Law?*

How to Brief a Case (online)

The Supreme Court & the Judicial System

Readings: S&S v1, Ch1

“How to Read a Legal Opinion” – Orrin Kerr (handout)

### WEEK 2

*The Judicial System, con't*

Congress & National Powers

Readings: S&S v1, Ch2

### WEEK 3

*The Powers of the Presidency*

Readings: S&S v1, Ch3

### WEEK 4

*The Dynamics of the Federal System*

Readings: S&S v1, Ch5

### WEEK 5

*The Constitutional Basis for Civil Rights & Civil Liberties*

Readings: S&S v2, Ch1

### WEEK 6

*Property Rights and Economic Freedom*

Readings: S&S v2, Ch2

### WEEK 7

*Expressive Freedom and the First Amendment*

Readings: S&S v2, Ch3

### WEEK 8

Finish Materials, Review

**MIDTERM EXAM**

*Appellate Brief Project Assigned*

WEEK 9

*Religious Liberty and Church-State Relations*

Readings: S&S v2, Ch4  
Melone, Ch1

WEEK 10

*The Constitution and Criminal Justice*

Readings: S&S v2, Ch5  
Melone, Ch2

WEEK 11

*Personal Autonomy and the Constitutional Right of Privacy*

Readings: S&S v2, Ch6  
Melone, Ch3

WEEK 12

*Equal Protection and the Antidiscrimination Principle*

Readings: S&S v2, Ch7  
Melone, Ch5

WEEK 13

*Elections, Representation and Voting Rights*

Readings: S&S v2, Ch8  
Melone, Ch6

WEEK 14

*Judicial Politics: Judges as Policy Makers*

Readings: OPEN

WEEK 15

**BRIEF DEFENSE**

*Appellate Brief Papers Due*

**EXAM WEEK**

**FINAL EXAM**

THIS IS A PRELIMINARY SCHEDULE ONLY. THE INSTRUCTOR RESERVES THE RIGHT TO MAKE CHANGES TO THIS SCHEDULE AS NEEDED.