

**POLS 433A: CONSTITUTIONAL LAW
FALL 2007**

**FANER 1006
MWF: 2:00 – 2:50**

PROFESSOR: Comparato
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PHONE: 453-3193
OFFICE HOURS: MF, 8:00 – 10:00 a.m.

TEACHING ASSISTANT: Matt Bergbower
OFFICE: Faner 3174
OFFICE HOURS: MTW 10:30-11:30 a.m.

COURSE PURPOSE

In this course we will examine the interrelationship between the branches of the national government as well as the nature of the federal-state relationship with particular emphasis on the use of the commerce power by the national government. The concepts we will discuss are quite fluid, and we will focus on the role of the Supreme Court in interpreting the Constitution in these areas and what impact the Court has had in these areas. The Court has played an active role in defining the powers of each branch of government, outlining where those powers overlap with other branches and, placing limits on the use of those powers. The Court has also been at the forefront in defining the proper operation and functions of a federal system, placing limits on the power of the individual states to encroach on the operation of the federal government, as well as limiting the federal government from taking on functions traditionally performed by states.

I expect that when you have completed this course you will have a strong understanding of the basic principles that define the powers of the three branches of government and their relationship with each other. You should also better understand the complex, and evolving relationship between the federal government and the states.

BOOKS

Epstein, Lee, and Thomas G. Walker. 2004. *Constitutional Law For a Changing America: Institutional Powers and Constraints*. 5th Edition. Washington D.C.: CQ Press.

Carter, Lief H., and Thomas F. Burke. 2007. *Reason in Law*. 7th Edition. New York: Longman.

Lane, Michael K. 2001. *Style Manual for Political Science*. Revised Edition. Washington, DC: American Political Science Association.

Additional cases not contained in the texts will be posted on *Blackboard*. These are marked in **bold** throughout the syllabus. I will also make additional readings available on *Blackboard* as well.

COURSE REQUIREMENTS

Your grade will be based on your performance on two exams, a research paper, case briefs, quizzes, and class participation.

CONTACTING ME

You are always welcome to stop by my office during office hours to discuss questions/issues related to the course or other academic matters. If my office hours conflict with your schedule, you may also contact me by phone or via *Blackboard*. I will do my best to return your call within 24 hours. If you would like a more immediate response, I check my email frequently, and will return messages as promptly as possible. This is a difficult class, and I expect that many of you will encounter problems in completing some of the assignments. Please take advantage of the opportunity to discuss the course material with me outside of class, particularly if you are having trouble, or would like additional clarification.

COURSE WEB PAGE

This course will be managed using [Blackboard](#). Detailed instructions to assist you in creating an account and adding this course can be accessed from the [Morris Library](#) main page. You will have access to all course information, including the syllabus, course schedule, reading assignments, resources for your papers, discussion boards, and an email system to contact me or other students in the class. I will regularly post messages regarding the reading, schedule, assignments, and grades to the course page. Therefore, you should make a habit of checking the course page on a daily basis to keep up with reading assignments and other course related announcements. There are numerous computer labs on campus, so access to *Blackboard* should not be a problem. You may also access information related to the course from the [course web page](#). You **MUST** create an account by the second day of class. Ten points will be deducted daily until you create an account.

EXAMS (20% EACH)

As this is an upper level course, I expect you to develop your analytical and writing skills. The test questions are designed to challenge your ability to extrapolate from the information provided in class and in the readings, and also to convey that information in a clear, concise, and effective manner. I expect you to know the material and be able to analyze it critically. If you are unable to take an exam on the day it is scheduled, you will not be allowed to reschedule it for another time, but will instead complete a written assignment on a topic of my choosing to be completed within two weeks of the date scheduled for the missed exam. No student will be allowed to take the final exam prior to its scheduled date. All exams, including the final are non-comprehensive.

RESEARCH PAPER (30%)

Each of you will choose a topic related to the Supreme Court's interpretation of the institutional powers of the branches of government and the relationship between those institutions, or between the federal government and the states. Potential topics include: the Court's interpretation of the War Powers Act; the implications of the "new judicial federalism" for the relationship between state and federal courts; the limits of Congress' ability to tax as interpreted by the Court; and, the development and current state of the Court's interpretation of the Commerce clause.

You are required to set up an appointment with me by **September 21st** to inform me of your topic. I suggest that you make an appointment with me about potential topics as soon as possible. I will not allow more than one student write on any given topic, so the earlier you see me, the greater chance you have of getting your most desired topic. You may want to go through the book and scan for topics that might be of interest, and come into our meeting with two or three ideas for your paper. I will try to help you focus and refine your specific research question, and provide you with some ideas and suggestions for sources of data and plans of attack for completing your paper.

The paper should be 20 – 25 pages in length, and should consist of some original research on your part. This may require that you collect quantitative data to answer a specific research question, or it may require you to conduct an in-depth qualitative analysis of the Court's interpretation of particular vein of law. I will provide you with a number of resources to assist in completing the paper, including some general sources of data and information, and a detailed list of guidelines for style, length, and format of the paper. The paper is due in my mailbox in the Political Science main office by December 7th, at 4:00 p.m. Ten points will be deducted for each day that your paper is late.

CASE BRIEFS/QUIZZES (20%)

Most of our focus this semester will be on cases decided by the Supreme Court. Briefing will help you to better understand the cases, and make studying for the exams much easier. You are expected to come to class every day having completed all of the reading, and having briefed the appropriate cases for that day's topic. I will randomly assign 5 – 10 sets of cases to be briefed throughout the semester. I will collect those briefs in class one week from the date they are assigned. All briefs must be prepared on a typewriter or word processor and

printed. Make sure that your name is on every page and that all briefs are stapled together. I do not accept briefs via email. **Late briefs will not be accepted under any circumstances.** I will discuss the proper formatting and content of briefs during the first week of class.

The other component of this portion of your grade will consist of quizzes administered randomly throughout the semester. The quizzes will cover assigned reading material including, but not limited to, cases from Epstein and Walker. Quizzes will be unannounced. Make certain that you bring paper and a pen to class every day so that you can take the quiz. Quizzes will take no more than ten minutes and will be turned in immediately. Books, notes, and other supplementary sources may not be used for the quizzes.

PARTICIPATION (10%)

Attendance in this course is required. However, mere attendance is not sufficient; you must be an active member of the class. For many of you, this is the first time you have been exposed to Supreme Court cases, and we will devote a significant portion of class time to the discussion and analysis of those cases. In order to receive credit for this portion of your grade you must show a willingness to engage the material, discussing cases in a critical manner. I expect volunteers to lead discussion on cases that are assigned. I will also call on students to present the facts of the case and to provide an analysis of the Court's decision. Reading the course material thoroughly and coming to class prepared to discuss cases is expected, and essential to learning the material.

Because I feel that class time is so important, I do not offer excused absences, except for religious observance, as required by the University. You must notify me at least three class periods prior to the day you will be absent in order to be excused from class for religious reasons.

You will have two "free" absences, meaning that you may miss class twice without points being subtracted from your grade. For every absence after the first two, including illness, ten points will be deducted from your final grade. You may prevent those points from being deducted by submitting a one-page, single spaced, analysis paper, covering the material to be covered in class the day you were absent, within one week from the day of your absence. In the paper, you should discuss the primary legal issues involved, the Court's reasoning, and the outcome of the cases. A maximum of five analysis papers may be submitted to cover absences. If you complete five analysis papers (and continue to miss class), ten points will be deducted for every additional absence.

I begin class promptly at the scheduled time. I do not tolerate tardiness. If you enter class late, I consider that an absence, and points will be deducted accordingly. I will not make a point to remind you that you are late or that you are accumulating absences. It is your responsibility to monitor your own attendance and submit analysis papers as necessary. If you have circumstances that dictate chronic absence or tardiness, I strongly suggest that you reevaluate your decision to take this class.

STUDENT CONDUCT

Students should behave in a professional and courteous manner at all times. Students are expected to turn off all cell phones and pagers when entering class. Eating is not permitted. It is essential that students feel comfortable in the classroom, and while disagreement is expected and encouraged, please remain respectful of your fellow students and the professor. Any student behaving in a manner that is in any way disruptive or inappropriate will be removed, and potentially sanctioned as outlined in the [University Student Conduct Code](#). You should also reference the *Professor-Student Agreement* posted on *Blackboard* for additional information regarding the expectations I have of you, and what you should expect from me.

ACADEMIC INTEGRITY

It is considered cheating to submit someone else's work as your own. Using information from another source (book, article, internet site, another student, etc.) without properly crediting the author is plagiarism. Direct quotations, paraphrased information, and the general use of another person's idea must be properly referenced in your work. During exams, you are not allowed external aids (notes, books, etc.). The penalty for violations such as plagiarism, cheating, or other misconduct will result in a failing grade in the course, and may result in a formal charge of misconduct as outlined in the [University Student Conduct Code](#), possibly leading to further sanctions, including suspension or expulsion. If you have any questions about what constitutes cheating and plagiarism, contact the Southern Illinois University office of Academic Advising, or view the [University Undergraduate Catalog](#) for more information.

DISABILITIES

Students with disabilities who require individualized testing or other accommodations should identify themselves to me immediately. Every effort will be made to accommodate your needs. [Disabilities Support Services](#) can assist you with testing, note-taking, and accessibility issues.

EMERGENCY PROCEDURES

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on the BERT website at www.bert.siu.edu, Department of Public Safety's website www.dps.siu.edu (disaster drop down) and in the Emergency Response Guidelines pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

GRADING

Midterm Exam	100 points (20%)
Final Exam	100 points (20%)
Research Paper	150 points (30%)
Case Briefs/Quizzes	100 points (20%)
<u>Participation</u>	<u>50 points (10%)</u>
Total	500 points

GRADING SCALE (PERCENTAGES)

A	90 – 100
B	80 – 89
C	70 – 79
D	60 – 69
F	59 – Below

COURSE SCHEDULE¹

The schedule for the class is tentative, as circumstances may dictate that we spend more time on some subject matter, and less time on other areas. I will also deviate from the syllabus to discuss a number of resources available to you in obtaining information to prepare for the research paper.

I. INTRODUCTION TO THE SUPREME COURT (AUGUST 20TH – 27TH)

- A. The Role of the Court in the American Legal System
 - **Epstein & Walker (E&W), pp. 13 – 51**
- B. Approaches to Supreme Court Decision-Making
 - **Carter & Burke (C&B), pp. 1 – 133**
- C. Legal Research and Briefing Cases
 - **E&W, pp. 691 – 692**

II. INSTITUTIONAL AUTHORITY

- **E&W, pp. 57 – 62**
- A. The Judiciary (August 29th – September 10th)
 - 1. The Power of Judicial Review
 - **C&B, 134 – 187**
 - **E&W, pp. 63 – 94**
 - **Cases:** *Marbury v. Madison* (1803), *Martin v. Hunter's Lessee* (1816)
 - 2. Debates over Judicial Review
 - **Case:** *Eakin v. Raub* (1825)
 - 3. “Constraints” on Judicial Power
 - **E&W, pp. 94 – 122**
 - a. Jurisdiction
 - **Case:** *Ex parte McCordle* (1869)
 - b. Justiciability
 - **Cases:** *Baker v. Carr* (1962), *Nixon v. United States* (1993)
 - c. Standing to Sue
 - **Case:** *Flast v. Cohen* (1968)
 - d. Separation of Powers
- B. The Legislature (September 12th – 24th)
 - 1. Independence and Integrity of Congress
 - **E&W, pp. 121 – 148**
 - a. Membership: Seating and Discipline
 - **Case:** *Powell v. McCormack* (1969)
 - b. Term Limits
 - **Case:** *U.S. Term Limits v. Thornton* (1995), *Cook v. Gralike* (2001)
 - c. Institutional Integrity: The Speech or Debate Clause
 - **Case:** *Gravel v. United States* (1972)
 - 2. The Sources and Scope of Legislative Power
 - **E&W, pp. 148 – 185**
 - a. Enumerated and Implied Powers
 - **Case:** *McCulloch v. Maryland* (1819)

¹ I reserve the right to make changes to this syllabus as necessary.

- b. Congressional Investigations
 - **Cases:** *McGrain v. Daugherty* (1927), *Watkins v. United States* (1957), *Barenblatt v. United States* (1959)
 - c. Inherent Powers
 - **Case:** *United States v. Curtiss-Wright Export Corp.* (1936)
 - d. Amendment-Enforcing Power
 - **Case:** *South Carolina v. Katzenbach* (1966)
- C. The Executive (**September 26th – October 5th**)
1. Presidential Selection
 - **E&W, pp. 187 – 204**
 - **Case:** *Bush v. Gore* (2000)
 2. General Executive Powers: Faithful Execution of the Law
 - **E&W, pp. 204 – 211**
 - **Case:** *In re Neagle* (1890)
 3. Domestic Powers
 - **E&W, pp. 211 – 258**
 - a. The Veto Power
 - **Case:** *Raines v. Byrd* (1997), *Clinton v. City of New York* (1998)
 - b. Appointment and Removal
 - **Cases:** *Morrison v. Olson* (1988), *Myers v. United States* (1926), *Humphrey's Executor v. United States* (1935)
 - c. Executive Privilege
 - **Case:** *United States v. Nixon* (1974)
 - d. Presidential Immunity
 - **Cases:** *Mississippi v. Johnson* (1867), *Nixon v. Fitzgerald* (1982), *Clinton v. Jones* (1997)
 - e. The Power to Pardon
 - **Cases:** *Ex parte Grossman* (1925), *Murphy v. Ford* (1975)
 4. Foreign Policy
 - **E&W, pp. 258 – 262**
 - **Case:** *United States v. Curtiss-Wright Export Corp.* (1936)
- D. Separation of Powers/Checks and Balances (**October 8th – 17th**)
1. Domestic Powers
 - a. The Delegation of Legislative Powers
 - **E&W, pp. 263 – 271**
 - **Case:** *Mistretta v. United States* (1989)
 - b. Congress Usurping Judicial and Executive Powers
 - **E&W, pp. 271 – 281**
 - **Cases:** *Employment Division v. Smith* (1990), *City of Boerne v. Flores* (1997), *Immigration and Naturalization Service v. Chadha* (1983), *Bowsher v. Synar* (1986)
 2. War and National Emergencies
 - **E&W, pp. 281 – 316**
 - **Cases:** *The Prize Cases* (1863), *Ex parte Milligan* (1866), *Ex Parte Quirin* (1942), *Hirabayashi v. United States* (1944), *Korematsu v. United States* (1944), *Youngstown Sheet and Tube Co. v. Sawyer* (1952), *Dames & Moore v. Regan* (1981), *Rasul v. Bush* (2004), *Hamdi v. Rumsfeld* (2004), *Rumsfeld v. Padilla* (2004), *Hamdan v. Rumsfeld* (2006)

III. NATION – STATE RELATIONS

- **E&W, pp. 319 – 323**

A. Federalism (**October 22nd – November 2nd**)

1. Theories of Federalism

- **E&W, pp. 325 – 345**
- **Cases:** *McCulloch v. Maryland* (1819), *Scott v. Sandford* (1857), *Hammer v. Dagenhart* (1918)

2. Present Views of Federalism

- **E&W, pp. 345 – 380**
- **Cases:** *United States v. Darby Lumber* (1941), *National League of Cities v. Usery* (1976), *Garcia v. San Antonio Metropolitan Transit Authority* (1985), *New York v. United States* (1992), *Printz v. United States* (1997), ***Seminole Tribe v. Florida* (1996)**, *Alden v. Maine* (1999)

3. New Judicial Federalism

- **E&W, pp. 380 – 388**
- **Cases:** *Murdock v. City of Memphis* (1874), *Michigan v. Mosley* (1975), *Michigan v. Long* (1983)

4. National Preemption of State Laws

- **E&W, pp. 388 – 405**
- **Cases:** *State of Missouri v. Holland* (1920), *Crosby v. National Foreign Trade Council* (2000), *Pennsylvania v. Nelson* (1956), *Pacific Gas and Electric Company v. State Energy Resources Conservation and Development Commission* (1983)

B. The Commerce Power (**November 5th – 16th**)

1. Foundations and Defining Interstate Commerce

- **E&W, pp. 406 – 420**
- **Cases:** *Gibbons v. Ogden* (1824), *United States v. E.C. Knight* (1895), *Stafford v. Wallace* (1922)

2. The New Deal

- **E&W, pp. 420 – 446**
- **Cases:** *Schechter Poultry Corp. v. United States* (1935), *Carter v. Carter Coal Company* (1936), *NLRB v. Jones and Laughlin Steel Corporation* (1937), *Wickard v. Filburn* (1942)

3. Modern Limitations

- **E&W, pp. 446 – 458**
- **Cases:** *United States v. Lopez* (1995), *United States v. Morrison* (2000), ***Nevada Department of Human Resources v. Hibbs* (2003)**

4. Regulating Commerce as National Police Power

- **E&W, pp. 458 – 466**
- **Cases:** *Champion v. Ames* (1903), *Heart of Atlanta Motel v. United States* (1964), ***Gonzalez v. Raich* (2005)**

5. State Power to Regulate Commerce

- **E&W, pp. 466 – 483**
- **Cases:** *Cooley v. Board of Wardens* (1852), *Southern Pacific Company v. Arizona* (1945), *Hunt v. Washington State Apple Advertising Commission* (1977), *Maine v. Taylor* (1986), ***Granholm, Governor of Mich. v. Heald* (2005)**

C. Economic Substantive Due Process (**NOVEMBER 26TH – 30TH**)

1. Development

- **E&W, pp. 576 – 594**
- **Cases:** *Slaughterhouse Cases* (1873), *Munn v. Illinois* (1877), *Allgeyer v. Louisiana* (1897)

2. Substantive Due Process Matures
 - **E&W, pp. 594 – 609**
 - **Cases:** *Lochner v. New York* (1905), *Muller v. Oregon* (1908), *Adkins v. Children’s Hospital* (1923)
 3. The Decline of Substantive Due Process
 - **E&W, pp. 609 – 625**
 - **Cases:** *Nebbia v. New York* (1934), *West Coast Hotel v. Parrish* (1937), *Williamson v. Lee Optical Company* (1955), *BMW of North America v. Gore* (1996), *State Farm Mutual Automobile Insurance Co. v. Campbell* (2003)
- D. The Takings Clause (**December 3rd – 7th**)
1. Definitions and Concepts
 - **E&W, pp. 627 – 643**
 - **Cases:** *United States v. Causby* (1946), *Penn Central Transportation Company v. City of New York* (1978), *Berman v. Parker* (1954), *Hawaii Housing Authority v. Midkiff* (1984)
 2. Modern Interpretations
 - **E&W, pp. 643 – 657**
 - **Cases:** *Nollan v. California Coastal Commission* (1987), *Lucas v. South Carolina Coastal Council* (1992), *Dolan v. City of Tigard* (1994), *Kelo v. City of New London* (2005)

IMPORTANT DATES

MIDTERM EXAM: FRIDAY, OCTOBER 19TH
FINAL EXAM: FRIDAY, DECEMBER 14TH, 12:50 – 2:50 P.M.
FINAL PAPER: FRIDAY, DECEMBER 7TH, (BY 4:00 P.M. – POLITICAL SCIENCE OFFICE)

CLASS WILL NOT MEET:

- September 3rd (Labor Day)
- November 19th – 23rd (Thanksgiving Break)