

**Political Science 4251 - 001
CONSTITUTIONAL LAW II**

SPRING 2011

Prof. W. Douglas Costain
T/Th 3:30 -4:45 pm
Hellems 199

Office: Muen. D0046
Phone: 303.492.6806
Hours: T/Th 10-11:00 am,
F 10:30-11:30 **and** by appointment
e-mail: costaind@colorado.edu
Graduate Assistant: Mark.Denniston@colorado.edu hours: Tues. 4:45-5:15pm. Mon. afternoons by appt

Pre Law Advising: M-W-F (by appt. only)
University Club 111; For appoint: aac.colorado.edu
Graduate Assistant: Mark.Denniston@colorado.edu

This course examines selected aspects of the evolution of the US Constitution through interpretation by the Supreme Court. The Supreme Court as a social and political institution will be briefly reviewed in the first part of the course. Then we look at the major cases decided by the Court in many key areas of civil rights and civil liberties. Through analysis of these cases we will discuss the changing doctrines used by the Justices to allocate and limit individual freedoms and government powers. With Democrats now in control of the White House and US Senate, we will track the policies within the Justice Department and the politics of judicial appointments closely. NOTE: There will be several supplements to this syllabus. One will provide guidelines on how to brief cases. C-SPAN and other electronic media will be used to supplement written and lecture material. Students are responsible for arranging to access any and all material resulting from absence from class.

COURSE REQUIREMENTS

Required Books: (All are paperbacks and one copy of each will be on reserve at Norlin)

Lee Epstein, T. Walker, *Constitutional Law for a Changing America: Vol. 2 Rights, Liberties and Justice*: 7th edition (2010).

Jeffrey Toobin, *The Nine: Inside the Secret World of the Supreme Court* (2007)

OPTIONAL: Lawrence Baum, *The Supreme Court* 10th Ed. (2010) **essential for students without background courses on the US Courts.**

Accommodation of Disability/ Religious Observances/ Requirements of the Honor Code:

If you require special accommodations, due to disability or religious observances please notify me before January 27. I will meet your needs. The Office of Disability Services is located in Center for Community N200; (303.492.8671.) The CU Honor Code, with its description of unethical behavior, and the academic sanctions that may result, is available at: www.colorado.edu/academics/honorcode/.

Discrimination or Harassment for any reason is an offense against the university community and is subject to sanctions. To file a complaint, call 303.492.2127. To review policies, go to colorado.edu/odh

Examinations:

First Examination, Tuesday, **Feb 15** (25%)

Second Examination, Thursday, **March 17** (25%)

Final Examination, Thursday, **MAY 5** (35%) **8:00- 10:00 AM** (note humane start time)

Case Briefings and Oral Discussion Leaders: (15%) "Briefing groups" of two or three students will be formed to provide in class overviews, and written case briefs of the cases from the syllabus *including updates on recent appellate and Supreme Court decisions*. Each student will prepare and submit a **written brief in her own words** on specific cases from the syllabus, which will be distributed to the class via email, 24 hours in advance of the class discussion. Each person will also be responsible for leading class discussion on the cases with their briefing group. Details will be given later in class.

Extra-Credit: Optional Oral Reports (April 12 Proposal Deadline!)

Case briefings/presentations by individuals or coops on current constitutional cases NOT analyzed in the course will be arranged. Bonus points worth **up to 10 points (added to the in-class exams score)** will be earned by

participants. DEADLINE for proposing extra-credit presentations is Tuesday April 12th.

Constitutional News: Students can earn bonus points by reporting to the class on **news** of a Constitutional case before the federal courts or a court's opinion on a current Constitutional case. Web sources include:

(www.uscourts.gov/links.html)(findlaw.com/cascode)(oyez.org) (law.cornell.edu/supct/index.html)

TOPICS AND ASSIGNMENTS (# = briefing group)

- Jan 11-18 Introduction The politics of the Supreme Court
Epstein & Walker, *Constitutional Law...: Rights, Liberties and Justice* I Ch. 1.
Toobin, **The Nine**, Prologue and chapters 1-8. Baum, **The Supreme Court**, chapter 1, 2.
- Jan 20-25 The Justices; Baum, **The Supreme Court** ch.2. Toobin, **The Nine**, ch. 19-24
- Jan 27-Feb 1 The Cases; Baum, ch. 3. Epstein/Walker, **C.L.F.C.A.**, I-Intro. and *Federalist* #78.(697-699) Decision-Making; Baum, ch. 4. Epstein, & Walker, **C.L.C.A.** I-#1. The Court and Policy; Baum, ch. 5. Toobin, ch. 25-26. The Court's Impact. Baum, ch. 6.
- *Jan 28 Friday* *Use of History in Popular Constitutionalisms; State Capitol (old CO Supreme Court)*
Jan 29 *Saturday* - Women in Law Day; 9am-4pm -CU Law School
- Feb 3 Briefing Court Cases: Judicial Review and its Limits; Epstein & Walker, I Ch. 2. Cases: *Marbury v. Madison*; *Ex parte McCordle*.
- Feb 3, 8 Incorporation/ Nationalization of the Bill of Rights; Epstein & Walker, I Ch. 3 and cases (**Student Group #1**)
- II Civil Liberties: Religion: Exercise and Establishment**
- Feb 8-10 Epstein & Walker, II Ch. 4, and Free Exercise cases (**Student Group #2**)
- Feb 10 Religious Establishment: Epstein & Walker, II Ch. 4 (second half) and cases (**Student Group #3**)
- Feb 10 Freedom of Speech, Assembly and Association II Ch. 5, Cases. (**Student Group #4**) Legal Standards/Times of Crisis
- Feb 15 TUESDAY FIRST EXAMINATION**- BRING unmarked "BLUE" BOOKS
(Review Sheet and review time will be arranged)
- Feb 17 Freedom of Speech. II Ch. 5. (first half) (**Student Group #6**) "Regulating Expression" cases ending with *Hill v. CO*.
Regulating Expression, Ch. 5, and cases (**Student Group #7**)
Begin with: *R.A.V. v. City of St Paul MN*. (second half)
- Feb 22-24 Free Press, Ch. 6, and cases (Student Group #8)
Obscenity Ch. 7, and cases (Student Group #9)
- Feb 24 Libel Ch. 7, and cases (Student Group #10)
New Media Ch. 8 and cases (student group #11)
- March 1 The Second Amendment, Ch. 9, cases- (*McDonald v Chicago 2010*) (Student Group #12)

The Right of Privacy

March 1-3 Foundations, Ch. 10, *Griswold*, *Roe*, *Planned Parenthood* cases (Student Group #13)

March 3 “Applications of *Griswold*”, Ch. 10, and cases (Group #14)

III: Rights of the Criminally Accused:

March 8 Ch. 11, with Intro. and cases up to *Terry v OH* (Student Group #15)

March 10 Exclusionary Rule, (4th Amend.) Ch. 11, and 2nd half cases (Group #16)

March 15 Self incrimination and the 5th Amend., Ch. 11, and cases (Group # 17)

(Review Sheet and Review time will be arranged)

MARCH 17 THURSDAY -SECOND EXAMINATION -- BRING "BLUE" BOOKS

(March 21-26) *SPRING BREAK!!*

March 29 Right to Counsel, (& Bail), Ch. 12, and cases (Student Group #18)
Sixth Amendment & Fair Trial, Ch. 12 cases (Student Group #19)

(March 30-Weds) (Law School Information Day UMC-Aspen Room 1-4pm)

March 31 Eighth Amend./death penalty, Ch. 12, cases & conclusion. (Student Group #20)

IV: Civil Rights

April 5-7 Intro & in Chapter 13, Racial Discrimination, and cases
(Student Group #21), cases--*Plessy* to *Brown II*.
(Student Group #22), cases--*Swann* to *Moose Lodge*.

April 12 Sex Discrimination in Chapter 13, and cases (Student Group #23)
Sexual Orientation & Other Discrimination in Chapter 13, and cases (Group #24)

April 14 Affirmative Action & Conclusion in Chapter 13, and cases-with 2010-11
Obama/Holder policy/politics update (Student Group #25)

April 19 Elections and Voting Chapter 14; Voting Rights (3 cases) (Student Group #26)

April 21-26 “Representation/campaigns” Ch. 13, cases; (*Citizens United v FEC*)(Student Group #27)

April 28 Catch Up and Review

FINAL EXAMINATION (non-cumulative)

MAY 5 THURSDAY – 8:00 -10:00 AM