

# PLSC 2860: Constitutional Law I: Governmental Structures and Powers

Winter 2021

Professor Sara Chatfield

Class: Monday/Wednesday 10-11:50am on Zoom

Office Hours: Monday/Wednesday after class on Zoom and by appointment

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## Course Overview and Objectives

This course introduces students to major ideas and principles of constitutional law, with a focus on federalism, the growth of national power, and separation of powers. Within each of these areas, we will consider the development of court rulings over time, economic and political influences on court decision-making, and policy implications. This course is highly interactive and all students are expected to actively engage in class discussions.

In addition to the course readings and topics listed in the syllabus, I expect students to follow current cases before the Court. The easiest way to do this is by following one or more of the blogs or podcasts listed under "Online Sources" at the very end of the syllabus. We will discuss oral arguments and decisions throughout the quarter as time allows.

By the end of this course, you will be able to:

- Read and analyze Supreme Court decisions
- Trace legal doctrine over time and connect arguments in different cases
- Analyze both legal and political influences on Supreme Court decision-making
- Discuss legal arguments orally and in writing
- Work collaboratively to develop and critique constitutional arguments

*Important note on where this course fits in the Political Science major:* PLSC 1000 (or an equivalent course such as AP Government) is a recommended prerequisite for this class, and you will be expected to have a good background knowledge of American politics. If you are unsure about your prior preparation, please set up a time to meet with me. PLSC 2820 is a constitutional law course that focuses on equal protection of the law, fundamental rights, and freedom of speech and religion. The classes are structured similarly but cover

different material. You can take either (or both!) constitutional law courses, and you do not need to take them in any particular order.

## Covid-19 Statement

Your health and your family's health should be your priority. If you are dealing with illness, sick family members, quarantine or isolation, a bad internet connection, increased anxiety, childcare challenges, or any other issues, please reach out and we will figure out accommodations. If some aspect of this class is not working for you, we will work together to find a solution.

It is possible that the course calendar or other aspects of the course may be adjusted due to covid-19 and other contingencies at DU. Any changes will be posted to Canvas, so you should be sure to check your announcements and Canvas messages frequently.

## Online, Synchronous Class Format

Most of our class sessions will be held synchronously, via Zoom. Zoom sessions will be interactive and both your presence and participation in these sessions is required to be successful in this class. There is also a substantial group project and simulation that make up a major part of your grade. If you do encounter a serious, unanticipated challenge during the quarter, I will work with you to be successful in this class – if this happens, please reach out as soon as possible to discuss possible arrangements. **That being said, this should be reserved for challenges that are truly unanticipated – if you already know that you will not be able to attend synchronous sessions or that you will not be able to engage fully in the group project, you should select another class this quarter.**

In some weeks, asynchronous materials may replace part or all of our synchronous time. This will be announced on Canvas, so be sure to watch Canvas announcements carefully.

If you experience any technical difficulties connecting to Zoom, you can contact our classroom assistant, Jessica, for assistance (email above).

## Office Hours and Communication

I will hold drop in/group office hours immediately after class on Zoom on both Mondays and Wednesdays. You can also contact me via Canvas Messages or email at [Sara.Chatfield@du.edu](mailto:Sara.Chatfield@du.edu) with questions or to schedule an individual appointment, and our teaching assistant, Phoebe, is available for drop in hours on Tues/Thurs from 2-3pm. I am happy to schedule virtual office hours appointments by Zoom video conference or by phone.

I do my best to answer all emails sent during the work week within 24 hours. I will post updates and other announcements via Canvas, and expect that you will check your Canvas

messages at least once per day via either the website or app. You should also ensure that all Canvas announcements are forwarded to your email account.

The study of American constitutional law involves matters such as gun violence, racial discrimination, sexual assault, and other potentially sensitive topics. It is my expectation that students will engage actively and respectfully with these topics and one another during our class discussions. In this class, we will work together to develop a learning community that is inclusive and respectful. The goal of inclusiveness, in a diverse community, encourages and appreciates expressions of different ideas, opinions, and beliefs, so that conversations and interactions that could potentially be divisive turn instead into opportunities for intellectual and personal enrichment. If you are concerned about a specific reading or a comment or dynamic during class, please make an appointment with me to discuss the situation.

## Readings

Most of the readings from this class will be taken from the following textbook:

*An Integrated Approach to Constitutional Law*, Aaron Caplan (2018), **SECOND EDITION**  
You can purchase a copy of this textbook or access the readings through Alma Leganto eReserves on Canvas.

Casebook readings are supplemented with additional cases, primary sources, and articles or book chapters from political scientists and law professors. These additional readings are posted to Canvas.

We will frequently consult the cases and other readings during class, so you should either have the readings physically at your desk or have the file(s) open on your computer for every class session. If you have the ability to do so, you may find that printing the readings for this class will help with screen fatigue, as legal documents tend to be dense and time-consuming to read carefully.

I have also included several optional readings on the syllabus, which are labelled as such. Optional readings are designed to provide additional context for those who wish to engage more deeply with the course topics. They will not appear on quizzes and are not required for the oral arguments project.

## Grading and Assignments

Grading for the course will be based on class participation, a short memo, quizzes, contribution to collaborative class notes, and participation in a group mock oral argument exercise (involving written and oral components). This class uses the standard DU grading scale (94-100% = A, 90-<94% = A-, 87-<90% = B+, etc.).

### *Course Grade Breakdown:*

Quizzes: 30%

Oral Arguments Simulation: 25%

Constitutional Interpretation Memo: 20%

Class Participation: 20%

Collaborative Notes: 5%

*Quizzes:* There will be four non-cumulative quizzes scheduled throughout the quarter. The quizzes will be administered on Canvas during class time. Each quiz will contain identifications and short answers, and will be closed notes/closed book. Quizzes will cover material up to and including the reading scheduled for the date of the quiz.

Your lowest quiz score will be dropped at the end of the quarter, so **make-up quizzes are not allowed**. I recommend saving your dropped quiz score for a time when you really need it! Please add the quiz dates to your calendar now. **The four dates for quizzes are: January 27, February 10, February 24, and March 17.**

*Oral Arguments Simulation:* You will work in teams of 4 or 5 to present mock oral arguments related to a hypothetical Supreme Court case in Week 9. You will be assigned to the role of lawyer or justice. You will prepare a 5-7 page paper (modeled on either a legal brief or a Supreme Court opinion, written as a group) and an in-class extemporaneous presentation. You will also submit an assessment of your own work and your fellow group member's work.

*Constitutional Interpretation Memo:* At the end of Unit I, you will select one of four recent Supreme Court cases to read and analyze. You will identify one method of constitutional interpretation used by justices in the case and will explain how justices used this method in the memo.

*Class Participation:* I expect you to be an active participant in class discussions. Always come to class prepared to discuss and comment upon course readings and ask questions. You should prepare short written case outlines (simplified briefs) to refer to during class discussion for each of the cases on the syllabus, and I will periodically call on students at random to provide case details. **You should brief all cases indicated with a (\*) on the reading list.**

*Please note that while you are welcome to check online sources such as Oyez or to meet with a study group to double check your understanding, you should always read the original material first and write your own brief. It is unacceptable and a violation of academic integrity to read verbatim text from Oyez, other online sources, or classmates' notes when called upon in class.*

More information on the participation grade can be found on Canvas. Three low daily participation grades will be dropped at the end of the quarter.

*Collaborative Notes:* Everyone will contribute class notes to a group folder on OneDrive for *two* dates during the quarter. You will have the chance to indicate any dates you are not available during Week 1.

*Flexibility and Late Work:* Please take some time now to explore the Canvas site and make a note of specific due dates. I strongly recommend sticking to due dates as much as possible, because it can be very challenging to catch up once you fall behind and work piles up. That being said, you should make the best decisions for yourself and your health (both mental and physical). I have provided different types of flexibility for each assignment depending on the type of assignment and whether other students in the class will be impacted by late work.

*Quizzes:* Lowest quiz score will be dropped.

*Oral Arguments Simulation:* No extensions because of the impact it will have on others. But, if you encounter a serious emergency that impacts your ability to keep your commitments to your group, contact Prof. Chatfield as early as possible to make arrangements.

*Constitutional Interpretation Memo:* Contact Prof. Chatfield in advance of the due date (or, in case of an emergency, as soon as possible after the due date) to receive an extension. If you do not email about an extension, late work will be penalized at 5% per day.

*Class Participation:* Three lowest daily participation scores will be dropped. Additional make-up work may be arranged in serious situations on a case-by-case basis – contact Prof. Chatfield ASAP if this applies to you.

*Collaborative Notes:* Email another student to switch dates if needed.

*Accommodations:* I aim to work with all students to ensure that they can be successful in my classes. If you will need any accommodation this quarter because of a disability, a religious event or holy day, or a DU-sponsored athletic event, please contact me *during the first week of class* so that we can all plan accordingly. For some of these accommodations (disability, DU-sponsored athletics), you will need to submit official university documentation as soon as possible. More information about the Disability Services Program is available at <http://www.du.edu/disability/dsp> or by emailing [dsp@du.edu](mailto:dsp@du.edu). Pets, children, roommates, etc. are welcome on Zoom calls if need arises. If you have questions about the accommodation process or need an accommodation that falls outside of these categories, please send me an email or stop by my office hours as soon as possible.

*Grading Disputes:* If you would like me to take a second look at a quiz or paper, I am happy to do so. That said, there is a twenty-four hour “cooling off” period for all grade disputes, meaning that you must wait one day before lodging a complaint. If you wish to dispute the grading of an assignment, you must do so in writing, clearly identifying each issue that you dispute and your rationale for why the grade should be reconsidered. **I never negotiate grades based on reasons such as: “I need, want, or prefer an A in this class,” “I worked really hard,” or “I am close to a higher grade than what I earned.”** If you need a particular grade in this class to graduate, stay eligible for a sports team, apply to law school, or keep a scholarship, it is your responsibility to earn that grade. In order to be fair to all, every opportunity to improve your grade is open to all students and will be

communicated either on the syllabus, on Canvas, or in class. Please do not ask for special exceptions to the grading scale or policy that are not outlined in the syllabus – this is an equity issue to ensure that students who feel more comfortable asking for special favors do not receive systematically higher grades.

## Academic Honesty Policy

In fairness to students who put in an honest effort, all cases of academic dishonesty will be reported to the university and will result in penalties ranging from a reduced grade to expulsion from the university. **TurnItIn** will be used for all major writing assignments. It is **your responsibility** to ensure that you have uploaded the correct file to Canvas for each assignment – exceptions will not be made if you “accidentally” upload a file that contains plagiarized material.

For this class, quizzes are closed note and closed book – you are not permitted to use anything other than your own brain as a resource while taking the quizzes! You will have the opportunity to ask Prof. Chatfield clarifying questions on Zoom during the quizzes if needed.

Cheating includes, but is not limited to, bringing notes or written or electronic materials into an exam or quiz, using notes or written or electronic materials during an exam or quiz, copying off another person's exam or quiz, allowing someone to copy off of your exam or quiz, and having someone take an exam or quiz for you. Academic dishonesty also includes plagiarism, unauthorized collaboration, providing false or misleading information to receive a postponement or extension on a test or assignment, the submission of essentially the same written assignment for two different courses without prior permission of faculty members, and any other act designed to avoid participating honestly in the learning process.

**Ignorance is not an excuse:** All students are expected to know and abide by the University of Denver Honor Code. These expectations include academic integrity and honesty in your class participation and assignments. The Honor Code can be viewed in its entirety at this link: <http://www.du.edu/studentlife/ccs/index.html>. If you are in any way unclear about the rules concerning academic integrity, please contact me immediately. Severe and/or multiple cases of academic dishonesty during your academic career can result in a notation on your permanent academic record and expulsion from the university.

## Land Acknowledgement

The University of Denver resides on lands that are held in stewardship by the Cheyenne and Arapaho tribes and recognizes the descendant communities of the Northern Cheyenne Tribe of Montana, the Northern Arapahoe Tribe of Wyoming, and the Southern Cheyenne and Arapaho Tribes of Oklahoma. You can learn more by exploring the resources compiled by the John Evans Study Committee: <https://portfolio.du.edu/evcomm/page/52699>

## Mental Health Resources

This is a challenging time for everyone, and I encourage you to reach out for help if you need it. Regardless of your status on campus, you can reach out to the Health and Counseling Center by calling 303-871-2205 or email at [info@hcc.du.edu](mailto:info@hcc.du.edu). The central office will then connect you to resources.

## Use of Course Materials

To protect privacy and intellectual property rights, course videos, student discussions, and other course materials may be used solely for the purposes of individual or group study with other students enrolled in the class in this quarter. They may not be reproduced or shared in any way with those not enrolled in the class this quarter (including electronically or posting in any web environment, such as social media or sites like Chegg and Course Hero), except with explicit permission. This includes, but is not limited to: pre-recorded and live lectures, live and asynchronous discussions, quizzes and assignments, and visual materials such as slides and handouts. Students who violate this policy will be reported to The Office of Student Rights & Responsibilities and may be subject to both legal sanctions for violations of copyright law and disciplinary action under Student Rights & Responsibilities Policies.

## Course Schedule

### ***Unit I: Introduction to Constitutional Law***

#### **January 11: Introduction to the Constitution and U.S. Court System**

- Posted to Canvas: Syllabus and Discussion Guidelines
- The U.S. Constitution. Here is one version:  
[http://www.senate.gov/civics/constitution\\_item/constitution.htm](http://www.senate.gov/civics/constitution_item/constitution.htm)

*Optional Reading* (if you'd like a brief summary of the operation of the Supreme Court): Lawrence Baum, *The Supreme Court*, Chapter 1

#### **January 13: *Marbury v. Madison* and the Development of Judicial Review (32 pages)**

- Caplan, Ch. 1: How to Use This Book
- Caplan, Ch. 4: Judicial Review
  - *Marbury v. Madison* (1803) (\*)

*Optional Reading* (on the politics of *Marbury*): Urofsky, "The Case of the Disappointed Office-Seeker" in *Supreme Decisions*

*Optional Reading* (on impact and limitations of judicial review): Lawrence Baum, *The Supreme Court*, Washington, D.C.: CQ Press (2016), Ch. 6

#### **January 18: Martin Luther King, Jr. Day – NO CLASS**

#### **January 20: Constitutional Interpretation and Judicial Decision-Making (28 pages)**

- Caplan, Ch. 2: Introduction to Constitutional Law
  - *Ingraham v. Wright* (1977) (\*)

### ***Unit II: Vertical Separation of Powers: The Growth of National Power***

#### **January 25: Early State-Federal Relations + Reconstruction (30 pages + skim 22 pages)**

- Caplan Ch. 5: Early State-Federal Relations, pp. 99-128
  - *McCulloch v. Maryland* (1819) (\*) (national bank)
  - *Gibbons v. Ogden* (1824) (\*) (steamboats)
- Skim: Caplan, Ch. 7: The Reconstruction Amendments, pp. 171-177 and 191-205 only
  - *The Civil Rights Cases* (1883)



*Optional Reading (on McCulloch):* Daniel Farber, “The Story of *McCulloch*: Banking on National Power” in *Constitutional Law Stories*

### **January 27: The *Lochner* Era** (16 pages)

Quiz #1 in the last half hour of class time.

- Caplan, Ch. 8: The *Lochner* Era, pp. 217-229 only
  - *United States v. E.C. Knight Co.* (1894) (\*) (sugar monopoly)
  - *Hammer v. Dagenhart* (1918) (\*) (child labor)
- Posted to Canvas: *Champion v. Ames* (1903) (\*) (lottery tickets)
- Posted to Canvas: *Hipolite Egg. Co. V. U.S.* (1911) (\*) (Pure Food and Drug Act)

*Optional Reading:* William Forbath, *Law and the Shaping of the American Labor Movement* (1991). Introduction and Chapter 2 posted to Canvas.

### **February 1: The New Deal Revolution** (26 pages)

- Caplan, Ch. 9: The New Deal Revolution, pp. 263-272 only
- Posted to Canvas: *Schechter Poultry v. U.S.* (1935) (\*) (poultry slaughterhouses)
- Caplan, Ch. 9: The New Deal Revolution, pp. 279-291 only
  - *U.S. v. Darby* (1941) (\*) (Fair Labor Standards Act)
  - *Wickard v. Filburn* (1942) (\*) (wheat)

*Optional Reading (on the Four Horsemen):* Urofsky, “The Four Horsemen’s Last Ride” in *Supreme Decisions*

*Optional Reading (on Wickard):* Jim Chen, “The Story of *Wickard v. Filburn*” in *Constitutional Law Stories*

### **February 3: The Civil Rights Movement and the Commerce Clause** (23 pages)

Constitutional Interpretation Memo Due by End of Day

- Posted to Canvas: The Civil Rights Act of 1964
- Caplan Ch. 11, pp. 365-375 only
  - *Heart of Atlanta Motel v. U.S.* (1964) (\*) (racial discrimination at a motel)
- Posted to Canvas:
  - *Katzenbach v. McClung* (1964) (\*) (racial discrimination at a local restaurant)
  - Jack M. Balkin, “History Lesson”
- Caplan, pp. 379-386

## ***Unit III: Vertical Separation of Powers: New Federalism in the Modern Era***

## **February 8: New Federalism: Commerce (44 pages)**

- Caplan Ch. 13, p. 435 only
- Caplan Ch. 14, pp. 479-496 only
  - *U.S. v. Morrison* (2000) (\*) (violence against women)
- Posted to Canvas:
  - *U.S. v. Lopez* (1995) (\*) (gun-free schools)
  - *Gonzales v. Raich* (2005) (\*) (medical marijuana)

## **February 10: New Federalism: Commandeering and Taxing (42 pages)**

Quiz #2 in the last half hour of class time.

- Caplan Ch. 13, pp. 436-455
  - *Prinz v. United States* (1997) (\*) (state/local police and gun control)
  - *Reno v. Condon* (2000) (\*) (drivers' licenses and privacy)
- Posted to Canvas: *Murphy v. NCAA* (2018) (\*) (sports gambling)  
You can skip section V of the case on preemption.
- Caplan Ch. 14, pp. 457-470
  - *U.S. v. Kahriger* (1953) (\*) (illegal gambling)

## **February 15: New Federalism: Spending and Civil Rights (31 pages)**

- Caplan Ch. 14, p. 470-479
  - *South Dakota v. Dole* (1987) (\*) (highway funds and drinking age)
- Caplan Ch. 14, pp. 515-517 and pp. 532-549
  - *Shelby County v. Holder* (2013) (\*) (voting rights)

## **February 17: New Federalism: Multiple Issues and the Affordable Care Act (37 pages)**

- Caplan, Chapter 16
  - *NFIB v. Sebelius* (2012) (\*) (Affordable Care Act)

*Optional Reading (on judicial strategy in NFIB):* Bradley Joondeph (2012) "A Marbury for Our Time," *SCOTUSblog*

## ***Unit IV: Horizontal Separation of Powers: Checks and Balances in National Government***

### **February 22: Introduction to Horizontal Separation of Powers (pages TBD)**

- Caplan Ch. 15, pp. 551-557 only
- Historical Readings

- *Federalist 47*
- *Federalist 48*
- *Federalist 51*
- Tyrannophobia: The Uses and Abuses of Executive Power (podcast):  
<https://www.backstoryradio.org/shows/tyrannophobia-2>
- Readings on the Trump and Biden Administration
  - Blackhawk, "The Indian Law that Helps Build Walls" -  
<https://www.nytimes.com/2019/05/26/opinion/american-indian-law-trump.html>
  - Azari: "Presidential Impeachments Are About Politics, Not Law" -  
<https://www.vox.com/mischiefs-of-faction/2017/5/15/15638286/presidential-impeachments-political>
  - Reading on Biden Administration TBD

### **February 24: Unilateral Executive Action and Executive Orders, Part I (27 pages)**

Quiz #3 in the last half hour of class time.

- Caplan Ch. 15, pp. 557-575 only
  - *Youngstown Sheet & Tube Co. v. Sawyer* (1952) (\*) (steel seizure)
- Posted to Canvas:
  - Louis Fisher and Katy Harriger, *American Constitutional Law*, pp. 249-256 only
    - *United States v. Curtiss-Wright Corp.* (\*) (1936) (arms sales to Bolivia)

*Optional Reading:* Louis Fisher and Katy Harriger, *American Constitutional Law*, pp. 282-284 – *Dames & Moore v. Regan* (1981), discussed earlier in the portion of the text you read; we will discuss this case in class and you may consult this document for an excerpt of the opinion

*Optional Reading:* Patricia L. Bellia, "The Story of the Steel Seizure Case" in *Presidential Power Stories*

### **March 1: Unilateral Executive Action and Executive Orders, Part II (pages TBD)**

- Caplan Ch. 15, pp. 575-593
  - *Zivotofsky v. Kerry* (2015) (\*) (recognition of Israel)
- Posted to Canvas: *Trump v. Hawaii* (2018) (\*) (travel ban)
- Readings on DACA/DAPA Litigation, TBD

### **March 3: Executive Privilege and Immunity (24 pages)**

- Posted to Canvas: "Tensions Between the Judicial and Executive Branches: The Trump Subpoena Cases"
  - *Trump v. Vance* (2000) (\*)

- *Trump v. Mazars* (2000) (\*)

*Optional Reading:* Christopher H. Schroeder, “The Story of *U.S. v. Nixon*: The President and the Tapes” in *Presidential Power Stories*

### **March 8 and March 10: Oral Arguments**

### **March 15: War Powers** (30 pages + online reading)

- Posted to Canvas:
  - Louis Fisher and Katy Harriger, *American Constitutional Law*, pp. 285-311
    - *Hamdi v. Rumsfeld* (2004) (\*) (U.S. citizens as enemy combatants)
    - *Hamdan v. Rumsfeld* (2006) (\*) (rights of non-citizen enemy combatants)
    - *Boumediene v. Bush* (2008) (\*) (Military Commissions Act)
    - Also read carefully the materials on the War Powers Resolution and use of force by the President without congressional authorization.
  - Nixon’s Veto of the War Powers Resolution
  - From NPR: “Why The War Powers Act Doesn’t Work” - <http://www.npr.org/2011/06/16/137222043/why-the-war-powers-act-doesnt-work>

### **March 17: Flex Day/Catch Up Day**

We'll use this time to catch up if we got behind on any material, as well as to reflect on the quarter as a whole. We will also take Quiz #4.

## Online Sources

*SCOTUSblog* (<http://www.scotusblog.com/>) provides news and commentary on current and pending Supreme Court cases. I encourage you to check the blog and skim posts regularly.

The official Supreme Court website (<http://www.supremecourt.gov/>) is the best source for recent opinions of the court.

*Oyez* (<http://www.oyez.org/>) provides excellent summaries of cases along with audio files of oral arguments. Oyez also provides the audio of oral arguments as they become available through the Oyez podcast, and links to full-text opinions for historical and contemporary cases. Although I encourage you to use this resource during studying you should *always* read the casebook text first as this will help you learn and retain the material.

*Slate's Amicus podcast* (<http://www.slate.com/articles/podcasts/amicus.html>) provides updates on Supreme Court cases and other news and analysis throughout the term (typically from a more liberal perspective).

*The Federalist Society's SCOTUSCast podcast* (<https://fedsoc.org/commentary/podcasts?category=scotuscast>) provides legal commentary from lawyers appearing before the Supreme Court and other legal experts after oral arguments and decisions. They also host a variety of other podcasts that you can access through their website, many of which touch on constitutional law topics (typically from a more conservative perspective).

*SCOTUSTalk* (<https://www.scotusblog.com/category/scotustalk/>) is a podcast hosted by SCOTUSblog that explores and explains topics related to the judicial system, especially the Supreme court, in plain English.

*Strict Scrutiny* (<https://strictscrutinypodcast.com/>) is a podcast about the Supreme Court and legal culture featuring three women law professors and often with a focus on a gender lens toward understanding the judiciary.

## Constitutional Interpretation Memo

The goal of this paper is to analyze a recent Supreme Court case in the context of methods of constitutional interpretation. You may choose among the four recently decided cases listed on the second page of this assignment sheet.

The source material for your memo should consist of the text of the decision and any concurrences and dissents, relevant portions of the Constitution, and course readings and lectures on constitutional interpretation. You should not do any outside research for this assignment. While it is fine to use summaries through Oyez or other websites to double check your understanding of the case, you should also be reading the case itself, putting the main ideas into your own words, and citing the case. **Do not cite case summaries like Oyez or Wikipedia** – even if you consult these sources to aid in your understanding, you must still read the case itself and find your evidence in the case text.

These are the ingredients of the memo. The completed memo should not exceed 4 pages:

- 1) In 1 to 1-1/2 pages, write a **synopsis of the case**. This needs to be in your own words (no direct quotes, no copy-and-paste). Depending on the complexity of the case, you will have to get into more or less detail. The synopsis should briefly cover the facts, legal question(s) and verdict.
- 2) In 2 to 3 pages, analyze the use of **one method of constitutional interpretation** in the case. You may choose among the six methods discussed in class (history, text, precedent, values, structure, *or* consequences). You may discuss the use of this method in the majority, concurring, and/or dissenting opinions, as relevant. You may include *brief* direct quotations from the case as necessary to illustrate your points, but should generally keep these to no more than a line or two – most of this section of the memo should be **your analysis** of how the justices used your chosen method in the case.

**The fine print:** Your memo should be at least 3 pages long and no more than 4 pages long, double spaced. Use 12-point Times New Roman font and 1-inch margins, with no extra spaces between paragraphs. Please take the extra five minutes to ensure you have the correct formatting!

**Citations:** Because your source material is the provided cases, textbook, and lectures, you do not need to include a separate bibliography. But, you should clearly indicate the page number in the case for each piece of evidence that you cite using parentheses at the end of the sentence. Remember that anything not inside quotation marks must be in your own words. Please email Professor Chatfield with any questions about citations.

*Example:* Justice Sotomayor highlights the importance of the constitutional value of individual liberty in her dissent (2).

## Cases for Memo

I have selected the following four cases because each touches on issues of government powers and structure – either horizontal or vertical separation of powers in some capacity. Each was decided in the past few years. For longer cases, I have indicated particular sections of the case to focus on in your analysis. I have also included a brief summary of each case to help you decide which you are most interested in.

*Chiafalo v. Washington*, 591 US \_\_ (2020). This case deals with whether states can regulate the Electoral College votes of “faithless electors” – electors who wish to cast their vote in a different way than dictated by state law. The case involves questions of state power, the First Amendment, and the Tenth Amendment (in concurrences).

Link to PDF of case: [https://www.supremecourt.gov/opinions/19pdf/19-465\\_i425.pdf](https://www.supremecourt.gov/opinions/19pdf/19-465_i425.pdf)

*Department of Homeland Security v. Thuraisingam*, 591 US \_\_ (2020). This case deals with the expedited removal of an asylum seeker from Sri Lanka. The case involves questions of judicial power, the suspension clause, and the due process clause. Because this case is longer, I recommend focusing your analysis on pp. 1-33 of the majority opinion and skimming Sotomayor’s dissent (which starts on page 59 of the PDF – which sections will be relevant will depend on which method of interpretation you select).

Link to PDF of case: [https://www.supremecourt.gov/opinions/19pdf/19-161\\_g314.pdf](https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf)

*Rucho v. Common Cause*, 588 US \_\_ (2019). This case decides whether a partisan gerrymander in North Carolina was unconstitutional. It deals with judicial power, the political question doctrine, and the constitutionality of partisan gerrymanders under multiple sections of the Constitution. Because this case is longer, I recommend focusing your analysis on pp. 1-21 and 30-34 of the majority opinion and pp. 1-10 and 29-33 of Kagan’s dissent (which starts on page 40 of the PDF).

Link to PDF of case: [https://www.supremecourt.gov/opinions/18pdf/18-422\\_9o11.pdf](https://www.supremecourt.gov/opinions/18pdf/18-422_9o11.pdf)

*Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 588 US \_\_ (2019). This case involves a Tennessee liquor law. The law includes a residency requirement for anyone seeking a liquor license for their business, and was challenged by businesses that could not meet the requirement. The ruling deals with the commerce clause, state power, and the 21<sup>st</sup> Amendment.

Link to PDF of case: [https://www.supremecourt.gov/opinions/18pdf/18-96\\_5i36.pdf](https://www.supremecourt.gov/opinions/18pdf/18-96_5i36.pdf)

## Oral Arguments Simulation Assignment Overview

We will have two mock oral arguments days scheduled during Week 9: March 8 and March 10. Each oral argument simulation will take about 1 hour of active time with some additional time for transitions and breaks.

Everyone will be assigned to either a lawyer team or a Court team to present on one of these days. As a team, you will prepare either a legal brief or an opinion, all of which will be posted to Canvas for your classmates to read. Your grade for this assignment will be based on the written paper (50%, team grade) and your performance in the mock oral arguments on Zoom (50%, individual grade). You will be asked to assess both your own performance and the performance of your teammates, and grades for the paper may be adjusted up or down depending on this information.

### General Writing Tips:

Briefs and opinions should be 5-7 pages in length, double spaced, 12-point Century Schoolbook font (this is the font used by the Supreme Court), with 1-inch margins. Your grade will be based on your understanding of the relevant legal issues, the persuasiveness of your arguments, and the quality of your writing. In all documents, case facts should be *brief* (typically around half a page) and paraphrased in your own words – do not copy facts from the assignment sheet!

Each group will receive one grade for the team, so while you are welcome to prepare sections individually, you should also schedule a significant amount of time to meet **synchronously** in order to combine sections, make sure the argument flows well as a coherent whole, and make sure everyone agrees with and is familiar with each portion. There will also be some in-class time devoted to work on the project. If you are having trouble with a group member or group dynamics, please let me know sooner rather than later.

### Lawyer Teams:

Prepare a brief supporting your client. Your job here is *not* to present your personal opinions, but to make the best argument for your client. You should very briefly lay out the facts of the case from your client's point of view (less than one page, **not** copying-and-pasting from the assignment sheet), highlight what you see to be the most important legal question(s) facing the Court, and then spend the bulk of your time laying out the best legal arguments possible for your client's position. Be sure to consider the relevant precedents, as well as arguments based on any the other constitutional modes of interpretation and/or tests the Court has developed that you believe will help you make a strong case. You do not need to do outside research



**and you should not cite cases that are not listed on the syllabus or discussed in class.**

You will also respond to questions from the Court team on Oral Arguments Day (see below). Be sure to have a clear plan for preparing for this and rotating responses so that everyone has an equal opportunity to participate (i.e. by topic, rotating in a specific order, each person taking a certain chunk of time, or some other plan).

### **Court Teams:**

Prepare a variety of questions to ask both lawyer teams assigned to your case. These questions should indicate that you have read their briefs, in addition to thinking about the case on your own. **You should not cite or reference cases that are not listed on the syllabus or discussed in class. You can ask about topics or cases that were covered in class but not included in the briefs, if they are relevant.** After the arguments are presented, the Court will deliberate – although this will obviously be extemporaneous in the sense that you can't know exactly how the lawyers will respond, you should still do some thinking as a group about how you will structure and organize the conference.

Be sure to have a clear plan for preparing questions and rotating among Court members so that everyone has an equal opportunity to participate – during covid-19 telephonic arguments, the actual Supreme Court gives each justice a certain amount of time to ask their questions before moving to the next person. Another approach would be to rotate through the team with each justice asking one question at a time. I recommend designating a Chief Justice to keep things on track.

After oral arguments are complete, prepare an opinion declaring the *per curiam* opinion of the Court. This means that, unlike in the real world, there should *not* be concurring and/or dissenting opinions. Your job is *not* to present your personal opinions, but rather to determine which side made the better constitutional case. The opinion should very briefly lay out the facts of the case in your own words (less than one page), highlight the key legal question(s) that the Court will answer, and then spend the bulk of the opinion discussing your answers to those questions. The opinion should explicitly reference and respond to arguments raised by the lawyer teams in the briefs and oral arguments. You must address relevant precedent, and are free to utilize other modes of constitutional interpretation and/or tests the Court has developed as appropriate.

## **On Oral Arguments Day:**

Arguments will take place in class, on Zoom. A make-up assignment will be offered only in the case of serious, documented emergencies. Groups must meet together before the Oral Arguments Day to come up with a game plan – this is not something where you can “wing it” and still get a good grade. I recommend that each team choose a leader to keep things on track.

Each lawyer team will have 5 minutes to provide a brief overview of their argument. Then, each Court will have 40 minutes total to ask questions of the lawyer teams (20 minutes per team), followed by 10 minutes of a mock conference. All teams should be sure to have a clear plan for rotating who asks/answers/speaks to ensure that everyone has the opportunity to participate. I will time each segment of the arguments and cut things off if they go too long, but other than this, each Court is responsible for keeping the questioning running smoothly.

### *Sample Schedule:*

Team 1 Lawyers' Presentation: 5 minutes  
Court Questions Team 1: 20 minutes  
Team 2 Lawyers' Presentation: 5 minutes  
Court Questions Team 2: 20 minutes  
Court Conference: 10 minutes

## Citations

*Note: If you go on to law school, you will learn to cite using the Bluebook style manual. We won't be learning all the details of this citation format for this class. The basic citation format for court cases is outlined below:*

The first time you cite a case, include the full citation:

*Marbury v. Madison*, 5 U.S. 137 (1803)

The order of these elements is as follows;

- The case name (always in italics)
- The volume number in which the case appears in the U.S. Reports
- An abbreviation for the reporter who printed the case (for U.S. Supreme Court cases, it will just be U.S.)
- The page number of the first page of the case
- The year

For the most part, these citations can simply be copied from the reading, but if you're not sure or if you can't find a citation in the reading, this should be easy to Google (just enter the case name and it should pop up). *If you have checked the reading and Google and still can't figure it out, feel free to email me questions about citations.*

In a real-life situation, a brief or case would also cite page numbers when referencing a direct quote, but because we are reading edited cases, you should just use this full citation once, and thereafter refer to the case using a shortened version of the name, for example:

In *Marbury*, Justice Marshall answered three main questions.

If including a direct quotation, you can use the page number from the textbook (2<sup>nd</sup> edition) in the citation, for example:

In *Marbury*, Justice Marshall wrote: "It is emphatically the province and duty of the judicial department to say what the law is" (88).

Please keep direct quotations to an absolute minimum, including them only when necessary – for the most part, your brief or opinion should paraphrase material from the cases to indicate that you understand the material and can put it into your own words. You probably will not need to cite materials other than court cases, but if you do, utilize the *Chicago Manual of Style* Author-Date format.

## **Key Dates**

Check below for the due dates for your specific role. Everyone will be assigned to one lawyer or Court team. Because this is a team project and other students and groups will need to rely on your work, late work will not be accepted. Please communicate with Professor Chatfield as soon as possible if your group is encountering challenges. *If you experience a serious emergency and cannot meet your commitments to your group, please contact Professor Chatfield as soon as possible to discuss possible make-up arrangements on a case-by-case basis.*

## **Lawyer Teams**

Briefs Due: March 1 by 11:59pm

In-Class Arguments: March 8 or March 10

Group and Self-Assessments Due: March 19 by 11:59pm

## **Supreme Court Teams**

In-Class Arguments: March 8 or March 10

Opinions Due: March 17 by 11:59pm

Group and Self-Assessments Due: March 19 by 11:59pm