

San José State University – Dept. of Political Science
Dr. James Brent – Fall 2016
POLS 121a – Constitutional Law: Institutional Powers, Section 1

Course and Contact Information

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Course Description

“People believe in important constitutional principles — like separation of church and state, separation of powers, the rule of law — but their understanding of the Constitution at a deeper level, and their willingness to engage in learning about the document that defines us as a nation, as a people, is lacking.” – Sean O’Brien, Executive Director of the Center for the Constitution

Americans love their constitution and hold it in high regard, but few of them actually know what it says. This course is one of three courses (which may be taken in any order) that introduce you to the major provisions of the U.S. constitution as interpreted by the United States Supreme Court. This course focuses on what the constitution and the Court say and have said about the powers of the three institutions of the federal government. Specifically, we will be learning about the constitutional powers of Congress (Article I), the presidency (Article II), and the Supreme Court itself (Article III). We will also spend some time discussing the constitutional framework for federalism – the division of powers between the states and the federal government – with particular attention paid to the interstate commerce clause. The course presumes no prior knowledge of constitutional interpretation or constitutional law. As a result, we begin the course by learning how to read and brief Supreme Court decisions, and an extended discussion of the use of precedent. We then turn to the constitutional text. This course is ideal not only for students planning to attend law school, but for anyone with a general interest in American government, as we spend as much time talking about Congress and the president as we do about the Court.

Course Learning Objectives

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

- 1) read and brief Supreme Court opinions
- 2) conduct basic legal research
- 3) understand the history and nature of judicial review
- 4) understand of the differing philosophies regarding the use of judicial review;
- 5) explain the external and internal constraints on the Court's use of judicial review;
- 6) explain the leading Supreme Court cases as they pertain to judicial, legislative, presidential and bureaucratic power
- 7) understand of the leading Supreme Court cases as they pertain to federalism
- 8) explain the interplay between law and politics in the Court's opinions
- 9) synthesize the preceding into written and oral arguments

All learning objectives will be assessed through the exams, written papers, Supreme Court simulation and in-class participation.

Succeeding in a Four-Unit Course

At SJSU, students are expected to spend two hours outside of class for every one hour of class time. Because this is a **four-unit class**, you can expect to spend a minimum of eight hours per week in addition to time spent in class and on scheduled tutorials or activities. Careful time management will help you keep up with readings and assignments and enable you to be successful in all of your courses. In this class, one of the four units is an engagement unit, which consists of online quizzes, and data exercises. You are expected to spend 45 hours this semester (both to prepare for and to complete the work) to successfully complete this unit.

Required Texts/Readings

Fisher, Louis, and Katy J. Harriger. (2016) *American Constitutional Law, Volume* (11th edition) Carolina Academic Press. ISBN: 978-161138103

Course Requirements and Assignments

Your grade in this course will be determined by three case briefs, three examinations, two Supreme Court simulation term papers, five law review article summaries and class participation.

Case Briefs -- Three times during the course of the semester you will be given homework, usually taking the form of a legal brief a Supreme Court case or cases. Briefing a case will be explained in class. Essentially, briefing a case requires you to identify the facts, the legal issues, the decision, and the significance of that case. These assignments should be typewritten, and will be graded on their completeness and the depth of understanding demonstrated.

Examinations -- The three examinations will consist exclusively of essay questions -- there are no multiple choice questions in this course. In a sense, the final is cumulative. The exams will be closed-book, closed-note exams, except you will receive one of the questions in advance of each exam. Makeup exams will only be administered to students with written documentation of an acceptable excuse, and may be designed to be more difficult than the exam administered in class.

Supreme Court Simulation/Term Papers -- The Supreme Court simulation/term paper is described more fully at the end of this syllabus.

Law Review Article Summaries -- All students will be required to locate and read at least five (5) law review articles, with a minimum total length of at least 200 pages (excluding footnotes and references), and to write a 2-3 page summary of each article. The articles that you select should all be about the legal issue that is the subject of the case you have been assigned for the Supreme Court simulation.

Participation and Reading -- All students will be expected to participate orally in class. For the most part, this class will be taught using the Socratic method. The Socratic method dispenses with the traditional lecture and places greater responsibility on the students. The classes will focus very closely on the reading assigned each day. I will not tell you what the reading is about -- instead, you will tell me what the reading is about. All students must have the assigned reading completed and should be prepared to discuss it in every class. I will call upon every student to participate. Participation ought not be taken lightly. It constitutes 10% of your grade, and if you earn no participation points, your final grade will be one full letter grades lower than it would have been if you had participated regularly. I do not take attendance, but if you do not attend regularly, you will be unable to participate and will thus lower your grade.

I realize that many students are uncomfortable with participating in class. If you are one of those students, I have three suggestions:

- 1) Make sure you do the reading on a regular basis. The class discussion will be focused on the reading assignments. Even if you have trouble understanding some of the more complex portions of the assigned readings, you should be able to answer some of the questions I ask if you have done the reading carefully.
- 2) If you volunteer on a regular basis, I will not ask you to speak when you don't volunteer. You should do the readings on a regular basis. However, I fully realize that there are occasions when you simply won't have time to finish the reading. Therefore, I would urge you to voluntarily participate on those days when you *have* done the reading, because if you do so, I will refrain from calling upon you on those days when you do not volunteer.
- 3) If you are confused or have nothing to say, ask for my help. Some students find the material in this course difficult to comprehend, and therefore they find participation to be difficult. If you are one of these students, don't just sit there and continue to be confused -- ask me for help. I assume that you are enrolled in this course to learn. My job is to assist you in your learning.

NOTE that [University policy F69-24](http://www.sjsu.edu/senate/docs/F69-24.pdf) at <http://www.sjsu.edu/senate/docs/F69-24.pdf> states that "Students should attend all meetings of their classes, not only because they are responsible for material discussed therein, but because active participation is frequently essential to insure maximum benefit for all members of the class. Attendance per se shall not be used as a criterion for grading."

Grading Policy

Case Briefs (3 at 5% each)	15%
Midterm 1 (September 28)	10%
Midterm 2 (November 2)	10%
Final Exam (Dec. 15 @ 9:30)	15%
Participation	10%
Supreme Court Draft #1 (Nov. 14)	10%
Supreme Court Paper #2 (Dec. 15)	15%
Law Review Summaries (5 at 3% each)	15%

Final letter grades for the course will be assigned based on the following scale:

A = 93-100%	B = 83-87%	C = 73-77%	D = 63-67%
A- = 90-92%	B- = 80-82%	C- = 70-72%	D- = 60-62%
B+ = 88-89%	C+ = 78-79%	D+ = 68-69%	F = 59% or less

Makeup Exams -- I will be the most willing to permit you to take a make-up exam when the following three conditions are met:

- 1) you notify me in advance
- 2) you have an acceptable excuse (usually something beyond your control)
- 3) you have written documentation

Naturally, sometimes it will not be possible to meet these three conditions. Situations which do not do so will be judged by me on a case -by-case basis. I reserve the right to refuse to allow you to make up an exam (although I will usually try to accommodate you). I also reserve the right to make the make-up exam more difficult than the in-class exam.

If you miss an exam, you should approach me the next time you are in class and request a makeup. If approved, I will drop off a test at the Testing Center. You should call the Testing Center (924-5980) to arrange to take the exam.

Late Papers -- **I am more strict in enforcing penalties against late papers than missed exams!** The due date of the paper is not the *only* day that you may submit your paper. It is merely the *last* day that you may do so without incurring a penalty. Papers are due at the end of class period on the date due. All late papers, regardless of the excuse, will be penalized by one letter grade.

Anonymity Policy -- I like to grade all assignments anonymously. Therefore, you should omit your name on all assignments. Instead, you should only indicate the last four digits of your student ID number. Any assignment that contains your name will not be graded. It will be returned to you so that you may cross out your name and fill in the last four digits of your student ID number.

Note that “All students have the right, within a reasonable time, to know their academic scores, to review their grade-dependent work, and to be provided with explanations for the determination of their course grades.” See [University Policy F13-1](http://www.sjsu.edu/senate/docs/F13-1.pdf) at <http://www.sjsu.edu/senate/docs/F13-1.pdf> for more details.

University Policies

General Expectations, Rights and Responsibilities of the Student

As members of the academic community, students accept both the rights and responsibilities incumbent upon all members of the institution. Students are encouraged to familiarize themselves with SJSU's policies and practices pertaining to the procedures to follow if and when questions or concerns about a class arises. See [University Policy S90-5](http://www.sjsu.edu/senate/docs/S90-5.pdf) at <http://www.sjsu.edu/senate/docs/S90-5.pdf>. More detailed information on a variety of related topics is available in the [SJSU catalog](http://info.sjsu.edu/web-dbgen/narr/catalog/rec-12234.12506.html), at <http://info.sjsu.edu/web-dbgen/narr/catalog/rec-12234.12506.html>. In general, it is recommended that students begin by seeking clarification or discussing concerns with their instructor. If such conversation is not possible, or if it does not serve to address the issue, it is recommended that the student contact the Department Chair as a next step.

Dropping and Adding

Students are responsible for understanding the policies and procedures about add/drop, grade forgiveness, etc. Refer to the current semester's [Catalog Policies](http://info.sjsu.edu/static/catalog/policies.html) section at <http://info.sjsu.edu/static/catalog/policies.html>. Add/drop deadlines can be found on the current academic year calendars document on the [Academic Calendars webpage](http://www.sjsu.edu/provost/services/academic_calendars/) at http://www.sjsu.edu/provost/services/academic_calendars/. The [Late Drop Policy](http://www.sjsu.edu/aars/policies/latedrops/policy/) is available at <http://www.sjsu.edu/aars/policies/latedrops/policy/>. Students should be aware of the current deadlines and penalties for dropping classes.

Information about the latest changes and news is available at the [Advising Hub](http://www.sjsu.edu/advising/) at <http://www.sjsu.edu/advising/>.

Consent for Recording of Class and Public Sharing of Instructor Material

[University Policy S12-7](http://www.sjsu.edu/senate/docs/S12-7.pdf), <http://www.sjsu.edu/senate/docs/S12-7.pdf>, requires students to obtain instructor's permission to record the course and the following items to be included in the syllabus:

- “Common courtesy and professional behavior dictate that you notify someone when you are recording him/her. You must obtain the instructor's permission to make audio or video recordings in this class. Such permission allows the recordings to be used for your private, study purposes only. The recordings are the intellectual property of the instructor; you have not been given any rights to reproduce or distribute the material.”
 - It is suggested that the greensheet include the instructor's process for granting permission, whether in writing or orally and whether for the whole semester or on a class by class basis.
 - In classes where active participation of students or guests may be on the recording, permission of those students or guests should be obtained as well.
- “Course material developed by the instructor is the intellectual property of the instructor and cannot be shared publicly without his/her approval. You may not publicly share or upload instructor generated material for this course such as exam questions, lecture notes, or homework solutions without instructor consent.”

Academic integrity

Your commitment, as a student, to learning is evidenced by your enrollment at San Jose State University. The [University Academic Integrity Policy S07-2](http://www.sjsu.edu/senate/docs/S07-2.pdf) at <http://www.sjsu.edu/senate/docs/S07-2.pdf> requires you to be honest in all your academic course work. Faculty members are required to report all infractions to the office of Student Conduct and Ethical Development. The [Student Conduct and Ethical Development website](http://www.sjsu.edu/studentconduct/) is available at <http://www.sjsu.edu/studentconduct/>.

Campus Policy in Compliance with the American Disabilities Act

If you need course adaptations or accommodations because of a disability, or if you need to make special arrangements in case the building must be evacuated, please make an appointment with me as soon as possible, or see me during office hours. [Presidential Directive 97-03](#) at http://www.sjsu.edu/president/docs/directives/PD_1997-03.pdf requires that students with disabilities requesting accommodations must register with the [Accessible Education Center](#) (AEC) at <http://www.sjsu.edu/aec> to establish a record of their disability.

Course Topics and Readings

Note: All readings should be completed by the time we cover the corresponding topic in class.

Week 1 --Supreme Court Procedures – Fisher, Chapter 5

Weeks 2 and 3- How to Read a Supreme Court Opinion

- A. Types and Parts of Opinions
- B. The Use of Precedent
- C. How to Brief a Case

Weeks 4-7 -- Judicial Power

- A. Judicial Review – Fisher, Chapter 2
- B. Jurisdiction
- C. Justiciability – Fisher, Chapter 3

Weeks 8-10 – The President vs. Congress in Domestic Affairs – Fisher, Chapter 6

Weeks 11 – 13 – The President vs. Congress in Foreign Affairs – Fisher, Chapter 7

Weeks 14 – 15 -- Federalism – Fisher, Chapter 8

Supreme Court Simulation and Term Paper Assignment

In order to better understand both the law and the process the Supreme Court adopts when writing constitutional decisions, all students will participate in a simulation of the United States Supreme Court. When the Court decides a case, it hears oral argument from attorneys on both sides of the controversy and then collectively writes the majority opinion and any concurring or dissenting opinions. We will recreate these rituals in class, utilizing two actual cases that have already been granted *certiorari* by the U.S. Supreme Court. In this simulation, each student will assume one of two roles -- either an attorney arguing a case before the Court, or a justice on the Court itself. The requirements for the two roles vary. Please read the following descriptions and think about which role you would prefer to play.

The Roles

Attorneys -- Attorneys stand before the Court and orally present and defend the position of their clients.

Students who assume this role will have three responsibilities:

- a) to submit a legal brief (approximately 2 pages) to the Court 1 week before oral argument. This brief should be distributed through the course web site.
- b) to engage in oral argument before the Court for 20 minutes
- c) to submit a 10-20 page research paper to the instructor

Supreme Court Justices -- Supreme Court justices are expected to think about their assigned case before oral argument. Their formal responsibilities are as follows:

- a) to participate actively in oral argument
- b) to negotiate with other members of the Court after oral argument
- c) to submit two written opinions

The Papers

The Justices' Term Papers (Opinions) – After oral argument, the justices will meet in conference to discuss the case. All students will then write a first draft of their own, personal opinion in the case. After the first drafts have been graded and returned to you, the justices will meet in conference again. At this point, justices may mutually agree to write a joint opinion. If some justices decide that they want to form a coalition and produce a single opinion between them, that is fine!

Oral argument will be held on October 26. During the following class period (October 31), the justices will meet for an in-class conference to discuss their views on the case. First drafts (which are due November 14) must be completed on an individual basis. However, students may work in groups on their final drafts, which are due on December 15

The Attorneys' Term Papers (Briefs) -- attorneys will submit individual papers that are due on the same date as the justices' papers.

How Your Papers Will Be Graded

Papers will be graded primarily on the strength of the argument presented. The best papers will demonstrate significant legal research and an ability to apply the extant case law to the topic at hand. Papers should be logically structured and comprehensive, and the best papers will demonstrate imagination, creativity, and extensive research. In addition, papers should utilize proper forms of legal citation (to be discussed in class). Finally, points will be deducted for spelling and grammatical errors. Papers that do little more than the minimum required will receive lower grades than papers that demonstrate more effort and thought.

Attorneys –Attorneys will be graded almost exclusively on their paper. However, an exceptionally good or an exceptionally poor oral argument performance will have an impact. In addition, because the attorney's role is the most demanding, all attorneys shall receive a 5-point bonus added to their grade on the final draft of the paper.

Justices -- Justices' grades will depend wholly upon the papers they submit. However, because Paper #2 can have more than one author, the minimum length of the paper increases as the number of authors increases. A paper written by one person must be a minimum of 10 pages long. For each additional author, the opinion must be an additional 5 pages long. As an example, if a page has six authors, it must be 35 pages long.

PLEASE NOTE: Attendance is MANDATORY on October 26, the day on which we will conduct oral argument. If you have an unexcused absence on that day, you will receive a failing grade for this portion of the course. I will only permit exceptions from this policy to students who contact me ahead of time and who have written documentation of an acceptable excuse.

Political Science Program Learning Outcomes

Upon completion of the Political Science major program, students should be able to demonstrate the following learning outcomes:

1. PLO1: Breadth

Students should possess a broad knowledge of the theory and methods of the various branches of the discipline.

2. PLO2: Application

Students should be able to apply a variety of techniques to identify, understand, and analyze domestic and international political issues and organizations.

3. PLO3: Disciplinary methods

Student should be able to formulate research questions, engage in systematic literature searches using primary and secondary sources, have competence in systematic data gathering using library sources, government documents, and data available through electronic sources, should be able to evaluate research studies, and should be able to critically analyze and interpret influential political texts.

4. PLO4: Communication Skills

Students should master basic competencies in oral and written communication skills and be able to apply these skills in the context of political science. This means communicating effectively about politics and/or public administration, public policy, and law.

5. PLO5: Citizenship

Students should acquire an understanding of the role of the citizen in local, state, national, and global contexts and appreciate the importance of lifelong participation in political processes.

Political Science Departmental Writing Policy

Students of political science should develop the ability to write in clear, grammatical English. Spelling and grammar count! Students must take care that appropriate citations are used. Direct quotations must be so indicated with quotation marks and a specific reference to the page in the source from which it was taken. Failure to cite your sources constitutes academic misconduct which carries with it serious sanctions. A tutorial on citations is available at the library website at http://www.sjlibrary.org/services/literacy/info_comp/citing.htm.

For assistance with writing, please see me or visit the SJSU Writing Center located in Clark Hall, Suite 126. All Writing Specialists have gone through a rigorous hiring process, and they are well trained to assist all students at all levels within all disciplines to become better writers. In addition to one-on-one tutoring services, the Writing Center also offers workshops every semester on a variety of writing topics. To make an appointment or to refer to the numerous online resources offered through the Writing Center, visit the Writing Center website at <http://www.sjsu.edu/writingcenter>.