

**San José State University**  
**College of Social Sciences/Department of Political Science**  
**POLS 121A - Constitutional Law: Institutional Powers**  
**Spring 2021 - Section 01**

**Course and Contact Information**

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Office Hours:	Mondays and Wednesdays -- 9:30 to 10:30 PST. and by appointment.
Class Days/Time:	Mondays and Wednesdays 10:30 to 11:45 a.m. PST

**Course Description (from the University Catalogue)**

Examines the U.S. Supreme Court, its processes, and the role it plays in the American governing system. Examination of judicial policy making through cases on judicial review, separations of powers, federalism, commerce, and tax and treaty powers.

**My 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 Outcomes (CLO)

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 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 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

## 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.

## Course Format & Technical Requirements

Due to the COVID-19 pandemic, this course will be taught via **Zoom**, with the possibility of some content being delivered via Youtube. Students should have access to a reliable internet connection, as well as a webcam and microphone. For the most part, this class is synchronous, meaning that it will be held from 10:30 to 11:45 a.m. PST, and your attendance is expected during these times. During Zoom sessions, your camera should normally be ON, and your microphone should normally be OFF, unless you are speaking. **I will be more likely to call upon students whose cameras are off.** Zoom sessions will normally not be recorded. This course also has a **Canvas site** that will be used to administer exams, collect assignments, and distribute other course materials.

## Textbook

Epstein, Lee, and Thomas G. Walker. (2019). *Constitutional Law for a Changing America: Institutional Powers and Constraints*. Washington DC: CQ Press ISBN 978-1544317908

## Course Requirements and Assignments

Your grade in this course will be determined by three case briefs, three examinations, two Supreme Court simulation term papers, one book summary, 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. **LEARNING OBJECTIVES: 1, 9**

**Examinations** -- The three examinations will consist exclusively of essay questions -- there are no multiple choice questions in this course. The exams are not cumulative. Each exam will be available for 48 hours, and you will have 90 minutes for each. Makeup exams will 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.

**LEARNING OBJECTIVES: 3 through 11**

**Supreme Court Simulation/Term Papers** -- The Supreme Court simulation/term paper is described more fully at the end of this syllabus. **LEARNING OBJECTIVES: 1, 2, 10, 11**

**Eportfolio/Website** -- You should construct an eportfolio/website with information on cases and controversies about topics related to this course (institutional powers and federalism). These should include links to videos, opinions, news articles, and other sources. Each link should include a 2-3 sentence long description of the item. To get an "A," you should provide 50 links. To get a "B," you should provide 40 links. To get a "C," you should provide at least 30 links. Anything less than 30 links will not receive credit. Further information and some examples will be given in class. **LEARNING OBJECTIVES: 2, 6, 7**

**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, and **I will be more likely to call upon you if your camera is turned off.** 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, please 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 Information

Case Briefs (3 at 5% each)	15%
Midterm 1	10%
Midterm 2	15%
Final Exam	15%
Participation	10%
Supreme Court Paper #1	10%
Supreme Court Paper #2	15%
Eportfolio/Web Site	10%

### Determination of Grades

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

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

**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.

### University Policies

Per University Policy S16-9, university-wide policy information relevant to all courses, such as academic integrity, accommodations, etc. will be available on Office of Graduate and Undergraduate Programs’ [Syllabus Information web page](http://www.sjsu.edu/gup/syllabusinfo/) at <http://www.sjsu.edu/gup/syllabusinfo/>” Make sure to review these university policies and resources.

## Course Schedule

This schedule is subject to change with advance notice, and it almost certainly will. I will post reading assignments on the Canvas site, but you should always stay at least 3 cases or 15 pages ahead of wherever we stopped discussing during the previous class session

Week	Date	Topics, Readings, Assignments, Deadlines
1	1/27	Introduction to the Course/Executive, Legislative, and Judicial Power
2	2/1	How to Read a Supreme Court Opinion/Use of Precedent -- pp. 10-22 and pp. 47-54
	2/3	Judicial Review -- pp. 54 - 70
3	2/8	Judicial Review (continued) -- pp. 70-83
	2/10	Jurisdiction -- pp. 83-96
4	2/15	Justiciability -- pp. 96-111
	2/17	Justiciability (continued) -- pp. 111-118
5	2/22	Introduction to Article II -- pp. 195-215
	2/24	<b>MIDTERM EXAM #1</b>
6	3/1	Presidential Appointment Power -- pp. 215-237
	3/3	Presidential Immunity -- pp. 237 - 255
7	3/8	The President's Power to Pardon -- pp. 255 - 260
	3/10	The President and Foreign Affairs -- pp. 284 - 305
8	3/15	The President and Foreign Affairs (continued) -- pp. 305 - 313
	3/22	The President and Foreign Affairs (continued) -- pp. 313 - 333
	3/29	SPRING BREAK
	3/31	SPRING BREAK
9	4/5	Sources of Legislative Power -- 141 - 159
	4/7	<b>MIDTERM EXAM #2</b>
10	4/12	<b>SUPREME COURT SIMULATION ORAL ARGUMENT - CASE #1</b>
	4/14	<b>SUPREME COURT SIMULATION ORAL ARGUMENT - CASE #2</b>
11	4/19	Sources of Legislative Power (continued) -- pp. 159-178
	4/21	The Legislative Control of the Executive -- pp. 266-284 <b>FIRST FINAL DRAFT OF PAPER DUE</b>
12	4/26	Introduction to Federalism -- pp. 335 - 350 and 369 - 387
	4/28	Introduction to Federalism (continued) - pp. 356 - 383

13	5/3	Introduction to the Commerce Clause -- 405-428
	5/5	The Constitutional Struggle Over the New Deal -- pp. 428-450
14	5/10	The Commerce Clause (1937-1995) -- 450-463
	5/12	The Commerce Clause (1995 - present) -- 463-494
15	5/17	Catch-up and Review <b>FINAL DRAFT DUE</b>
Final Exam	5/24 5/25	Final Exam available for 2 days online

### 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 cases to be announced in class. 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 engage in oral argument before the Court for 20 minutes
- b) to submit two briefs (a first and final draft)

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 submit a question in writing before oral argument
- b) to participate actively in oral argument
- c) to negotiate with other members of the Court after oral argument
- d) to submit two written opinions (a first and final draft)

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. Oral argument will be held on April 12 and 14. At the end of oral argument each day, the justices on that case will meet for an in-class conference to discuss their views on the case.

**Attendance is required on April 12 and 14!** Students who do not attend will have 20% deducted from their grade on the first draft.

**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.