

Political Science 220
American Constitutional Law
Fall 2009

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Office Hours: T – 1:00-2:00, W 10:00-11:00, Th 1:00-2:00 and by appointment

Course Description

This course is an introduction to basic issues and principles that have provided the institutional structure for the American republic since 1789. This course includes an examination of the political and philosophical values which guided the framers of the Constitution and which are embodied in its provisions. The class will also seek to understand the symbolic power that has accrued to the Constitution and the role this power has played in efforts to resolve political conflicts within the American polity. The course endeavors to do this both through a review of the fundamental legal and political features of the judicial process and through a substantive examination of several key areas of constitutional doctrine. The specific areas of concern in this course include: (1) The nature of judicial review and judicial power, (2) The separation of powers and the powers of the President and Congress, (3) Federalism with particular concern for implications of the Tenth and Eleventh Amendments regulation, (4) Property rights under the federal constitution and (5) Voting rights and electoral politics.

Attendance

Students are expected to attend all classes. Absences due to participation in legitimate Moravian College extracurricular activities, a doctor's excuse or notification by the Dean of Students Office will allow a student to be excused from class. All other excuses are subject to the instructor's discretion.

Required Books

David O'Brien, **Constitutional Law and Politics: Volume 1 – Struggles for Power and Political Accountability**, seventh edition, (New York: W.W. Norton, 2008)

Jan Crawford Greenburg, **Supreme Conflict**, (New York: Penguin Books, 2007)

Evaluation of the Students Work

Quizzes (6 quizzes, 5 points each)	30 points
Final	100 points
Hypothetical case	50 points
Book review	50 points
Case Briefs (2, 15 points each)	30 points
Class participation and instructor evaluation	40 points

Final Exam

The final exam will consist of 100 statements referring to cases read for the course. Students will be required to identify the case to which the statement refers. A list of cases will be provided to students in advance of the final.

Quizzes

There will be six unannounced multiple choice quizzes in class. These quizzes will be worth 5 points each and will focus on the reading assignments for the day on which the quiz will be given. Make up quizzes will be permitted with verification of the situations that permit an excused absence as described above.

Case Briefs

Each student will outline or “brief” two cases. The student may choose any two of the cases listed below and submit the brief by the date indicated for the case in question. To facilitate successful completion of this assignment, students will have the opportunity to revise the brief for Baker v Carr if they choose to start with that case. **These briefs should be formatted according to the outline provided in the O’Brien text on pp. 1083 and 1084** and are due on the dates listed below.

Baker v Carr	(9/21)
Youngstown Sheet & Tube v Sawyer	(9/30)
Wesberry v Sanders	(10/14)
McCulloch v Maryland	(10/26)
United States v Lopez	(11/16)
Seminole Tribe of Florida v Florida	(11/30)

Supreme Conflict Essay

Debates about the Supreme Court often concern themselves with the degree to which the Court is a political as well as a legal institution. Based on the reading of **Supreme Conflict**, evaluate the role of politics in the operations and decisions of the Court. In doing so, consider the following:

- role of political factors in the recruitment and selection of the justices
- how much ideological or policy preferences appear to structure decisions
- what are the consequences for the Court’s legitimacy and power

The essay should be 5 to 8 pages typewritten and is due on **9/28**. The essay should show concrete evidence of having read **Supreme Conflict** but other materials can be used but must be properly cited. In this context Chapters 1 and 2 of the O’Brien text might prove useful.

Hypothetical Case Analysis

Each student will write a 6-10 page analysis of a hypothetical case concerning apportionment and electoral districting. The "hypothetical" can be found at the end of the syllabus and present a set of facts raising constitutional questions about this area of concern in the course. To complete this assignment, each student will write an analysis identifying what he or she believes the issues to be and an argument indicating how he or she believe the legal issues are to be resolved based on constitutional doctrine and precedent. The materials in the text will be the most basic source for these briefs, but additional research can be used. Due: **November 4.**

Class Participation and Instructor Evaluation

Students are expected to participate in class. This includes being prepared to answer questions pertaining to all cases assigned for class reading. Students should be ready to identify the facts of the case, the constitutional provisions applied or interpreted by the Court, the legal questions raised in regard to those provisions, the holding in the case, and the rationale for the majority opinion. A record of class participation will be kept by then instructor and, while discussion will frequently depend on volunteers, student should be prepared to respond when called upon.

Course Outline, Reading Assignments and Cases

Note: Assigned readings are to be completed on the first date listed for each topic in the outline

- I. Introduction (8/31)
- II. The U.S. Constitution: Philosophy and Structure (9/2)
Reading: Federalist 10, 51 and 78

Copies of these texts can be found at:

www.yale.edu/lawweb/avalon/federal/fed.htm

<http://www.foundingfathers.info/federalistpapers/fedindex.htm>

- III. Judicial Power, Process and Politics (9/9-9/16)
 - A. Establishing judicial review (9/9)
Reading: O'Brien, pp. 27-40, 45-60, 796-809
Cases for discussion: **Marbury v Madison**
Martin v Hunter's Lessee
Cooper v Aaron
 - B. The nature of judicial power and process (9/14)
Reading: O'Brien, pp. 150-162
Case for discussion: **Baker v Carr**

- C. Judicial power and democratic politics (9/16)
Read: Greenburg, **Supreme Conflict**, entire

IV. Separation of Powers: Foreign Affairs (9/21-9/30)

- A. Treaties and Executive Agreements (9/21)
Reading: O'Brien, pp. 249-264, 162-166
Cases for discussion: **Missouri v Holland**
United States v Pink
Goldwater v Carter
United States v Alvarez-Machain
- B. Inherent powers and Congress (9/23)
Reading: O'Brien, pp. 238-248, 338-370
Cases for discussion: **United States v Curtiss-Wright**
Youngstown Sheet & Tube v Sawyer
New York Times v United States
Dames & Moore v Regan
- C. Commander-in-Chief, War and Emergency Powers (9/28-9/30)
Reading: O'Brien, pp. 264-333
Cases for discussion: **The Prize Cases**
Ex parte Milligan
Korematsu v United States
Rasul v Bush
Hamdi v Rumsfeld
Hamdan v Rumsfeld

V. Voting rights and elections (10/5-10/19)

- A. Voting rights and apportionment (10/5 and 10/7)
Reading: O'Brien, pp. 855-905
Cases for discussion: **Gomillion v Lightfoot**
Wesberry v Sanders
Reynolds v Sims
Vieth v Jubelir
Shaw v Reno
Hunt v Cromartie
- B. Campaigns and Elections (10/14 and 10/19)
Reading: O'Brien, pp. 906-966
Cases for discussion: **Bush v Gore**
Buckley v Valeo
FEC v NCPAC
McConnell v FEC
FEC v Wisconsin Right to Life, Inc.

VI. Legislative Powers of Congress (10/21-11/1)

- A. Establishing congressional power: the commerce clause (10/21)
Reading: O'Brien, pp. 548-568, 698-703
Cases for discussion: **McCulloch v Maryland**
Gibbons v Ogden
Cooley v Board of Wardens
 - B. Economic Regulation and the Emerging National Economy: Substantive Due Process and the Commerce/Manufacturing Distinction (10/26-10/28)
Reading: O'Brien, pp. 1020-1045, 569-584, 424-429
Cases for discussion: **The Slaughterhouse Cases**
Munn v Illinois
Lochner v New York
United States v E.C. Knight
Hammer v Dagenhart
Schechter Poultry Corporation v United States
 - C. The commerce power, economic regulation and the nationalization of the economy (10/28-11/2)
Reading: O'Brien, pp. 1006-1011, 559-579
Cases for discussion: **Muller v Oregon**
West Coast Hotel v Parrish
NLRB v Jones & Laughlin
United States v Darby
Wickard v Filburn
 - D. Post New Deal applications of congressional power (11/4)
Reading: O'Brien, pp. 605-613, 1052-1054, 677-680, 430
Cases for discussion: **Heart of Atlanta Motel v United States**
Katzenbach v McClung
Lincoln Fed. Labor Union v Northwestern Iron & Metal Co.
South Dakota v Dole
 - E. Curbing congressional power (11/9-11/11)
Reading: O'Brien, pp. 614-666, 430-432
Cases for discussion: **United States v Lopez**
Reno v Condon
City of Boerne v Flores
United States v Morrison
Gonzales v Raich
Gonzales v Oregon
Industrial Union Dept., AFL-CIO v Am. Petroleum Institute
- VII. The Federal System and Limits on National Power
- A. State powers under the commerce clause (11/16)
Reading: O'Brien, pp. 703-727
Cases for discussion: **Southern Pacific v Arizona**
Bibb v Navajo Freight
Maine v Taylor
Pennsylvania v Nelson

B. The 10th and 11th Amendments as limits on federal power (11/18-11/23)

Reading: O'Brien, pp. 728-795

Cases for discussion: **Garcia v San Antonio MTA**

New York v United States

Printz v United States

Mack v United States

Seminole Tribe of Florida v Florida

Alden v Maine

Nevada Dept of Human Resources v Hibbs

VIII. Presidential Powers as Chief Executive

A. Appointment and Removal (11/30)

Reading: O'Brien, pp. 340-386

Cases for discussion: **Myers v United States**

Humphrey's Executor v United States

Bowsher v Synar

Morrison v Olson

B. Presidential prerogatives, discretion and accountability (12/2-12/7)

Reading: O'Brien, pp. 423-424, 433-480

Cases for discussion: **Immigration and Naturalization Service v Chadha**

Clinton v City of New York

United States v Nixon

Clinton v Jones

BRINSON, ET. AL. V FILLING (2011)

As a consequence of the 2010 Census, Pennsylvania lost two congressional districts, reducing the total number of its delegation to the House of Representatives from 19 to 17. The Governor appointed a five person commission to draft a plan for redistricting the state's congressional districts to meet the new apportionment requirements. The Commission consisted of two Democrats and two Republicans from the state legislature and was chaired by the Republican Chief Justice of the Pennsylvania Supreme Court. After drafting the plan, it was submitted to the General Assembly (controlled by the Democrats) and the Senate (controlled by the Republicans) for approval. Upon approval, it was signed by the Governor, a Democrat, and was scheduled to take effect for the 2012 congressional elections.

The 2010 Census also indicated a significant increase in the state's Latino population. This growth was concentrated in the eastern part of the state, particularly the Lehigh Valley and Pocono regions. These increases also significantly increased the Democratic Party voter registrations in these areas.

The Pennsylvania delegation to the U.S. House of Representatives remained stable after the 2010 election with 12 Democrats and 7 Republicans. There were no Latinos who were elected to Congress in any of the 19 existing districts.

The records of the apportionment Commission indicated a substantial amount of discussion was devoted to the partisan consequences of redistricting. The Commission needed to eliminate two congressional districts for the 2012 election and did so by redrawing district boundaries in a way that would result in the loss of one Democratic and one Republican seat. The Democratic seat would be lost through a reconfiguration of four existing Democratic districts (the 3rd, 4th, 12th and 14th) in the western part of the state into three while leaving the sole Republican district in that region (the 18th) intact. The Republican seat to be eliminated would combine the Republican parts of the 6th and 17th congressional districts (largely from Berks County) and with Republican areas in the 15th district (largely Lehigh County, excluding Allentown, and the western and northern regions of Northampton County, excluding Easton and Bethlehem) as well as Republican sections of the 8th congressional district (parts of Bucks County).

The new districting scheme would also create a new Democratic district by combining sections of the existing 11th and 15th districts. The new "horseshoe district" would cut across the Lehigh Valley, along the Route 22 corridor, include the cities of Allentown, Bethlehem, and Easton, and continue north along the Delaware River to the Stroudsburg area where it would extend west to Hazleton. In between the northern and southern corridors of the "horseshoe district," Republican areas of Lehigh and Northampton counties would be placed in the new Republican district described above.

The record of the deliberations of the redistricting Commission indicated specific discussion of the demographic changes reported in the 2010 Census. The Commission's record also showed an explicit awareness of demands for stronger representation of

Latino voters and the Commission dedicated significant time to consideration of how to provide such representation. The Commission's record also indicated that it anticipated that a failure to develop a minority-majority district in the redistricting plan might lead to a federal equal protection challenge to the overall plan.

In the Commission's description of the new "horseshoe district," Latino voters would constitute 38% of the new district compared to no more than 18.9% of any of the existing northeastern districts. Given the Democratic Party's significant voter registration advantage among Latino voters, the Commission concluded that the "horseshoe district" would initially provide a clear Democratic advantage in the 2012 congressional but that the social conservative views of many Latino would allow Republicans to be competitive over time in the new district. In either case, the new district would enhance the possibilities of the election of a Latino representative to Congress.

Upon approval of the final plan, six residents of Lehigh and Northampton Counties filed suit in federal district court to overturn the plan. They alleged that the plan was an unconstitutional racial gerrymander violating their equal protection rights because the principal basis for the plan was "race." They noted the considerable deliberations that the Commission dedicated to the concern about representation for Latino voters. The plaintiffs also charged that the Commission's motivation to avoid a federal law suit if it did not create a minority-majority district demonstrated that race was a controlling factor in the plan. They also argued that the shape of the new district did not meet traditional districting criteria such as contiguity and compactness and could only be explained by an unconstitutional effort to accommodate a specific racial group. The plaintiffs also noted that the new district fractured the historical and functional identity of the Lehigh Valley and was not a "narrowly tailored" approach to meeting any legitimate state policy goals.

Defenders of the plan argued that it was drafted with fundamental concern for issues of partisanship, as evidenced in the partisan considerations in the elimination of two existing seats and in the patterns of voter registration that were incorporated into addressing those partisan concerns. The defenders of the plan also noted the bi-partisan make up of the Commission and the overall decision making process. Furthermore, the respondents pointed out that group representation had long been a legitimate criterion for districting plans and that addressing significant demographic changes in the state was a legitimate state policy goal. Finally, it was argued that the shape of the district was "narrowly tailored" means to a legitimate end and that no other configuration would meet all of the state's necessary goals imposed by the loss of two congressional seats. The fact that the Commission did not create a minority-majority district demonstrated that fear of a race based federal law suit was not a controlling factor in the plan.

The federal district court agreed with the plaintiffs and found the "horseshoe district" to be impermissibly based on race and as such in violation of the equal protection clause. A federal appeals court reversed that decision and the U.S. Supreme Court has granted certiorari. You are clerk to an associate justice of the court and have been asked to provide a case analysis of the issue at hand with a recommendation on how to decide.