Professor Mark S. Hurwitz  
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Office Hours: Tuesday, 8:00-9:30a.m.; Thursday, 2:00-4:30p.m.

**Course Objectives:**
This course focuses on constitutional law concerning the structure of governmental institutions and their powers, from both a legal and nonlegal perspective. We will utilize a case book approach commonly used in a constitutional law class in law school, although we will make use of additional readings as well. In addition to learning about constitutional law in general, this approach is designed to expose students to judicial cases in order to understand the legal analyses employed by the Supreme Court within different political contexts.

**Course Web Site:**
The course web site, which includes course information and links to other sources of information, including this Syllabus, can be found at: [http://homepages.wmich.edu/~mhurwitz/psci4200_conlaw_sp08](http://homepages.wmich.edu/~mhurwitz/psci4200_conlaw_sp08)

**Communicating Information:**
Information will be communicated from the professor to students in three ways: 1) in class; 2) the course web page; 3) email. Students must activate and check your ‘wmich.edu’ email account to receive messages. Consequently, “I did not receive notice” is not a sufficient excuse.


**Recommended Books:**


NOTE: Chapter 4 of the McGuire book is an Assigned Reading that is available on-line through the course reserve section of the WMU Library system.

**Assigned Readings:**
Readings on course reserve are available on-line through the WMU Libraries system, [http://www.wmich.edu/library/reserves/](http://www.wmich.edu/library/reserves/)
**Assigned Cases:**

There are a number of required cases not provided in the Fisher “casebook.” The citation for each such case is provided in the Schedule of Assignments, if the student wants to find them in the library. As well, a URL is provided for each, if the student wants to find them on the internet. Either is acceptable, so long as the student understands that these Assigned Cases are required reading. When reading an Assigned Case, the student must read the majority opinion and all concurring and dissenting opinions.

The following web sites house nearly all of the Supreme Court’s cases:

http://supct.law.cornell.edu/supct/
http://www.findlaw.com/casecode/supreme.html
http://web.lexis-nexis.com.libproxy.library.wmich.edu/universe (accessible through WMU Library system with Bronco NetID)

The source of these cases is irrelevant. Nevertheless, cases from these internet sites are not edited, which means that they are much longer than those in the casebook; indeed, many unedited Supreme Court cases are well over 100 pages in length. Thus, it is strongly advised that students purchase the Fisher casebook, as opposed to obtaining all of the cases from the internet, not only because the cases are edited in the casebook, but also because there are readings in the casebook that are unavailable elsewhere.

**Class Schedule:**

We meet every Tuesday and Thursday from 9:30-10:45am during the semester, with the exception of the following dates during which **class is cancelled:**

- March 3-7 – Spring Break
- April 3 – Professor attending Midwest Political Science Association Conference

**Exams:**

There are three (3) non-cumulative exams in this class. All exams consist of a variety of question types (e.g., multiple choice, short answer, essay) and are based on the entire body of material presented in class and in the assigned readings. Much of the material on the exams is delivered in class; however, some material from the readings not covered in class is tested on the exams as well. The exam schedule follows:

- Exam #1: Tuesday, February 12 (during class)
- Exam #2: Tuesday, March 18 (during class)
- Exam #3: Monday, April 21, 8-10 a.m. (during final exam period)

**Case Briefs:**

Each student is responsible for two (2) case briefs. When each of your cases is discussed in class, you must answer questions about the case you have briefed. Case briefs not handed in the day they are due or discussed in class will be assigned a grade of zero (0). A list of cases available for briefing, instructions and requirements for the briefs, due dates, and a sample case brief, follow this Syllabus.

**Grading:**

The final course grade is based entirely upon performance on the exams and case briefs as stated below, as there is no extra credit in this class:

- Student’s highest exam grade: 35%
- Student’s next-highest exam grade: 35%
- Student’s lowest exam grade: 15%
- Case Briefs/Discussion: 15%
Graduation Scale:
The following numerical averages translate into final course grades:

90+: A (4.0)
85-89: BA (3.5)
80-84: B (3.0)
75-79: CB (2.5)
70-74: C (2.0)
65-69: DC (1.5)
60-64: D (1.0)
--60: E (0.0)

Make-up Exams:
It is completely the student’s responsibility to take the exams when they are scheduled. As a general rule, make-up exams will not be allowed; thus, a missed exam counts as a zero (0) toward the final course grade. Notwithstanding, at the professor’s sole discretion make-ups will be permitted, but only the gravest of reasons will be accepted, if documented in writing by the proper authority. Even if there is an acceptable reason for missing the regularly scheduled exam, permission to take a make-up will be granted only if the student provides the professor with prompt and proper notification; that is, the student must inform the professor of the reason for missing the exam with proper documentation before the exam takes place, and the reason must be acceptable to the professor. If a make-up is permitted, both the format and questions can, and likely will, be different from the regularly scheduled exam.

Incomplete Grades:
Note that the professor does not give grades of Incomplete in this class under any circumstance, as a missed exam or case brief counts as a zero (0) toward the final course grade.

Academic Honesty and Integrity:
Per WMU policy: You are responsible for making yourself aware of and understanding the policies and procedures in the Undergraduate and Graduate Catalogs that pertain to Academic Honesty. These policies include cheating, fabrication, falsification and forgery, multiple submission, plagiarism, complicity and computer misuse. [The policies can be found at http://catalog.wmich.edu/, follow links to Academic Policies, Student Rights and Responsibilities.] If there is reason to believe you have been involved in academic dishonesty, you will be referred to the Office of Student Conduct. You will be given the opportunity to review the charge(s). If you believe you are not responsible, you will have the opportunity for a hearing. You should consult with the professor if you are uncertain about an issue of academic honesty prior to the submission of an assignment or test. [The Code of Honor passed by the Faculty Senate in November 2004 and administration in December 2004, can also be found at http://catalog.wmich.edu/]

Special Needs:
Any student with special needs should inform the professor as soon as possible, so that appropriate accommodations can reasonably be made.

Class Procedure:
Class will be conducted in a combination of lecture/discussion and socratic method format. Classes will complement but not regurgitate material from the readings. Students are encouraged to ask questions or raise issues at any time on the readings, the class discussion, or a contemporary issue concerning constitutional law or civil liberties.
Assignments:
The Schedule of Assignments notes the topics to be covered and the dates for lectures and exams. This schedule will be followed as closely as possible; however, the professor reserves the right to change if necessary, and students will be notified appropriately (in class, email, and/or the web page) of any changes. Additionally, there may be material handed out in class or posted on the class web page (such as current news issues on constitutional law) for which students additionally are responsible. Since this schedule is comprehensive, it is imperative that the students keep up with the material.

Schedule of Assignments:

Note: All references in the Schedule of Assignments are to the Fisher casebook, unless provided otherwise. A case or reading denoted by * signifies that it is not found in any of the assigned books, and alternate references are supplied; a reading denoted by ** signifies that it is in the Assigned Readings on Course Reserve.

I. Judicial Review and the Role of the Supreme Court (January 8 - 29)
The Constitution of the United States of America, pp. 1067-1080
Constitutional Politics, pp. 3-7
Judge as Lawmaker, pp. 17-19
Independent State Action, pp. 20-22
Who Has the “Last Word”?, pp. 22-25
Who Shall Interpret?, pp. 30-31
Pacelle, Introduction, Chapters 1-2 (pp. 1-49)
**Davis, Sue and J.W. Peltason. Understanding the Constitution (2004), Chapter 1, pp. 2-42.
Decision Making: Process and Strategy, p. 147
Jurisdiction: Original and Appellate, pp. 148-149
Writ of Certiorari, pp. 149-151
From Oral Argument to Decision, pp. 152-158
Unanimity and Dissent, pp. 160-164
Caseload Burdens, pp. 166-169
Threshold Requirements, p. 79
Cases and Controversies, pp. 79-80
Advisory Opinions, pp. 80-82 (including Box on p. 81)
Standing to Sue, pp. 84-86
Mootness, pp. 100-101
Ripeness, pp. 103-105
The Doctrine of Judicial Review, p. 35
Sources of Judicial Review Authority, pp. 35-38
Framers’ Intent, pp. 38-40
Federalist No. 78, pp. 40-41
*Chisholm v. Georgia, 2 U.S. 419 (1793)
Calder v. Bull (1798), pp. 405-406
The Road to Marbury, pp. 41-45
Marbury v. Madison (1803), pp. 46-50


Ex Parte McCcardle (1869), pp. 1050-1051
Fletcher v. Peck (1810), pp. 407-408
Martin v. Hunter's Lessee (1816), pp. 52-54
Cohens v. Virginia (1821), pp. 55-57
Constrains on Judicial Review, pp. 57-60
Ex Parte McCardle (Pa. 1825) – Justice Gibson’s Dissent, p. 60-63
The Boundaries of Judicial Review: Interview with Justice Powell, pp. 63-64
Ashwander v. TVA (The “Brandes Rules”) – Justice Brandeis’ concurrence, p. 83
Methods of Constitutional Interpretation, pp. 64-72
The Doctrine of Original Intent: Attorney General Meese vs. Justice Brennan, pp. 72-73
Stare Decisis – Justice Jackson’s concurring opinion in McGrath v. Kristensen (1950), pp. 75-76
Presidential Elections, 955-966
Pacelle, Chapters 3-7 (pp. 51-169)

II. Federalism (January 29 - February 7)
Principle of Federalism, pp. 309-315
McCulloch v. Maryland (1819), pp.315-319
Missouri v. Holland (1920), pp. 319-320
Commerce Clause, pp. 320-324
Gibbons v. Ogden (1824), pp. 324-326
*Brown v. Maryland, 25 U.S. (12 Wheat) 419 (1827)
    http://web.lexis-nexis.com/universe/document?_m=42f74bc7c47e8ab4f9432a112106658b&docnum=1&wchp=dGLbVtb-zSkVb&md5=f6e3d0dadcf023110dec4e8517b6293
*Willson v. Black Bird Creek Marsh Company, 27 U.S. 245 (1829)
Cooley v. Board of Wardens (1852), pp. 326-328
*South Carolina Highway Dept. v. Barnwell Bros., 303 U.S. 177 (1938)
*Southern Pacific Co. v. Arizona (1945), 325 U.S. 761 (1945)
    http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=461&invol=190
    http://supct.law.cornell.edu/supct/html/02-722.ZO.html
Granholm v. Heald (2005), pp. 365-367

Exam #1: Tuesday, February 12 (during class)
III. National Power – Commerce, Taxing and Spending (February 14 - March 13)

Nationalization of the Economy, pp. 330-331
*U.S. v. E.C. Knight Co., 156 U.S. 1 (1895)
The Lottery Case (Champion v. Ames) (1903), pp. 331-333
*Shreveport Rate Case (Houston, E.&W.T.R. Co v. U.S.), 234 U.S. 342 (1914)
*Stockyards Case (Stafford v. Wallace), 258 U.S. 495 (1922)
  http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=258&invol=495

Hammer v. Dagenhart (1918), pp. 333-335
The New Deal, pp. 338-341
Schechter Corp. v. United States (1935), pp. 209-211
Carter v. Carter Coal Co. (1936), pp. 341-343
Court Packing, pp. 1036-1042
NLRB v. Jones & Laughlin (1937), pp. 343-346
United States v. Darby (1941), pp. 336-338
Wickard v. Filburn (1942), pp. 346-348
Congress Interprets the Commerce Clause (Civil Rights), pp. 801-802
Civil Rights Cases (1883), pp. 770-772
*Katzenbach v. McClung, 379 U.S. 294 (1964)

From National League to Garcia, p. 348-349
State Powers Revived, pp. 354-358
*Printz v. United States, 521 U.S. 98 (1997)
Gonzales v. Raich (2005), pp. 367-371
**Will, George F. “Judging This Court.” Washington Post, June 8, 2005, p. A21

The Spending and Taxing Powers, pp. 371-375
Pollock v. Farmers’ Loan & Trust Co. (1895), pp. 375-377
Steward Machine Co. v. Davis (1937), pp. 380-381
Conclusions, p. 396-397

Exam #2: Tuesday, March 18 (during class)
IV. Separation of Powers (March 20 - April 17)
Separation of Powers Doctrine, pp. 171-175
Federalist No. 47, 48, and 51, pp. 177-179

A. Foreign Affairs
Presidential Power; Prerogative, pp. 179-180
Separation of Powers: Emergencies and Foreign Affairs, p. 251-254
United States v. Curtiss-Wright Corp. (1936), pp. 254-256
Executive Prerogative, pp. 261-265
The Prize Cases (1863), pp. 265-267
Ex Parte Milligan (1866), pp. 267-269
Korematsu v. United States (1944), pp. 269-272
Griswold, “How Sensitive Were the Pentagon Papers?,” pp. 278-279
War Power, pp. 287-293
*Gulf of Tonkin Resolution, H.J. RES 1145 (1964)
http://www.afa.org/magazine/aug2004/0804keeper.asp
War Powers Resolution (1973), pp. 299-301
Campbell v. Clinton (DC Cir., 2000), pp. 303-305
Hamdan v. Rumsfeld (2006), pp. 296-299
Conclusions, pp. 307

B. Domestic Affairs
Youngstown Co. v. Sawyer (1952), pp. 272-275
Creating the Executive Departments, pp. 182-186
Congressional Oversight, pp. 212-216
INS v. Chadha (1983), pp. 219-222
Fisher, “Legislative Vetoes After Chadha,” pp. 222-224
Investigations and Executive Privilege, pp. 224-230
Barenblatt v. United States (1959), pp. 233-235
Political Questions, pp. 107-110
Conclusions, p. 249
Exam #3: Monday, April 21, 8-10 a.m. (during final exam period)

**Case Brief Information and Schedule**

As the Syllabus provides, each student is required to brief two (2) cases during the semester. This entails writing a case brief, then discussing the case in class as well as answering questions about the case based upon your case brief. At the end of the class in which the case you have briefed is discussed, you must hand in a hard copy of the brief. Both the written case brief and your discussion of the case in class count toward your final course grade in accordance with the Syllabus.

The following list contains the cases for briefing (which includes only those assigned cases in the Fisher casebook), as well as dates on which the case briefs must be completed. To sign up for a case brief, you must email my teaching assistant at todd.a.curry@wmich.edu by Wednesday, January 16, 5pm, with a list of five (5) cases you are interested in briefing. There are four sections of the course; make sure you choose one case in three of the sections, and two in either the National Power or Separation of Powers section – this is necessary to ensure that each case has a student assigned to it, and that only one student, or perhaps two if necessary, is responsible for any single case brief. I then will assign students (on a first come, first served basis) the cases for which each student is responsible to brief.

<table>
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<tr>
<th>Cases:</th>
<th>Due Date:</th>
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<tr>
<td><strong>Judicial Review and the Role of the Supreme Court</strong></td>
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<td>Ex Parte McCardle (1869)</td>
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<td>Fletcher v. Peck (1810)</td>
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<td>Cooley v. Board of Wardens (1852)</td>
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National Power – Commerce, Taxing and Spending

The Lottery Case (Champion v. Ames) (1903) Feb. 14
Hammer v. Dagenhart (1918) Feb. 14
Schechter Corp. v. United States (1935) Feb. 14
Carter v. Carter Coal Co. (1936) Feb. 19
NLRB v. Jones & Laughlin (1937) Feb. 19
United States v. Darby (1941) Feb. 19
Wickard v. Filburn (1942) Feb. 19
Civil Rights Cases (1883) Feb. 21
Heart of Atlanta Motel v. U.S. (1964) Feb. 21
Gonzales v. Raich (2005) Feb. 26
Pollock v. Farmers’ Loan & Trust Co. (1895) Feb. 28
U.S. v. Butler (1936) Feb. 28
Steward Machine Co. v. Davis (1937) March 11

Exam #2: March 18

Separation of Powers

United States v. Curtiss-Wright Corp. (1936) March 20
The Prize Cases (1863) March 20
Ex Parte Milligan (1866) March 20
Korematsu v. United States (1944) March 25
Campbell v. Clinton (DC Cir. 2000) March 27
Youngstown Co. v. Sawyer (1952) April 1
Dames and Moore v. Regan (1981) April 1
Morrison v. Olson (1988) April 1
INS v. Chadha (1983) April 8
Watkins v. United States (1957) April 10
Barenblatt v. United States (1959) April 10
Clinton v. Jones (1997) April 15

Exam #3: April 21
Marbury v. Madison
U.S. Sup.Ct. (1803)
CJ Marshall

Facts: President Adams, as a lame duck, appointed Marbury and others to a federal judicial post (DC Justice of the Peace). The appointments were approved by the Senate, sealed, but failed to be delivered by the Sec of State, John Marshall (the CJ who decided this case). After being sworn in, Pres Jefferson refused to acknowledge the appointments. Marbury, based on an act of Congress, went directly to the US SupCt to have a writ of mandamus issued, so he could secure his position.

Issue: Is Marbury entitled to his post? If has a right to that post, do the laws afford a remedy? If yes, is a mandamus from the SupCt the proper remedy?

Holding: YES. YES. YES, but...

Rationale: Judicial commission was appointed, approved, signed, and sealed (all discretionary acts were carried out). Failure of delivery (a ministerial act) does not preclude Marbury from his post. Marbury also has a legal right to his post via a remedy. A mandamus IS the proper remedy; BUT, the SupCt does NOT have the power to issue such a writ. §13 of the Jud. Act of 1789 gave the SupCt the power to issue writs of mandamus. But, the Const limits the cases where the SupCt has original jurisdiction, and Congress cannot change the SupCt’s original jurisdiction; but, Congress did that by passing §13. Syllogism: 1) the Const is the supreme law of the land; 2) §13 is contrary to the Const; 3) therefore, §13 is unconst’al. Since §13 is repugnant to the Const, it is ruled to be invalid. The key to this case is not that Marbury gets his post, although not by the SupCt issuing a writ of mandamus. Instead, the key to this decision is that the SupCt affirmatively asserts its power of judicial review over a co-equal branch of the federal govt: “It is emphatically the province and duty of the judicial dept to say what the law is.”

Other opinions: None

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