

**CONSTITUTIONAL LAW – PSCI 4200**  
**DEPARTMENT OF POLITICAL SCIENCE**  
**WESTERN MICHIGAN UNIVERSITY**  
**T/TH – 11:00AM-12:15PM; 2212 DUNBAR HALL**  
**SYLLABUS – SPRING 2009**

Professor Hurwitz  
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Office Hours: Tuesday, 12:30-3:00pm; Thursday, 8:00-9:30am

***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\\_sp09](http://homepages.wmich.edu/~mhurwitz/psci4200_conlaw_sp09)

***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.

***Required Books:*** available at the WMU Bookstore, <http://www.wmubookstore.com/>, the University Bookstore, <http://www.wmubooks.com/>, and other sources:

- 1) Louis Fisher and David Gray Adler, *American Constitutional Law*, Seventh Edition (2007)
- 2) Richard L. Pacelle, Jr., *The Role of the Supreme Court in American Politics: The Least Dangerous Branch?* (2002)

***Recommended Books:***

- 1) Lawrence Baum, *The Supreme Court*, Ninth Edition (2007)
- 2) Kevin T. McGuire, *Understanding the U.S. Supreme Court: Cases and Controversies* (2002)

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/>

***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 11:00am-12:15pm during the semester, with the exception of the following dates during which ***class is cancelled:***

January 8 – Professor attending the Southern Political Science Association Conference

March 2-6 – Spring Break

***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: Thursday, February 12 (during class)

Exam #2: Thursday, March 19 (during class)

Exam #3: Wednesday, April 22, 10:15am-12:15pm (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.

***Extra Credit Case Briefs:***

Students may brief cases for extra credit. The cases available for extra credit are those that are required reading but are not in the casebook. To receive extra credit the student must read the unedited version of the case and hand in a written brief the day it is due; no questioning about the case during class is required. Each extra credit brief that is acceptable will receive 1 point toward the final course grade; extra credit briefs are graded on an acceptable/not acceptable basis. Each student can hand in up to three extra credit briefs. A list of extra credit cases available for briefing follows this Syllabus.

**Grading:**

The final course grade is based entirely upon performance on the exams and case briefs as stated below:

Student's highest exam grade:	35%
Student's next-highest exam grade:	35%
Student's lowest exam grade:	15%
Student's case briefs/discussion:	15%
Extra credit case briefs:	1 additional point for each

**Grading 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:***

All references 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 6 - 29)

The Constitution of the United States of America, pp. 1067-1080

\*The Constitution of the Confederate States of America

[http://www.constitution.org/csa/csa\\_cons.htm](http://www.constitution.org/csa/csa_cons.htm)

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)  
[http://supct.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0002\\_0419\\_ZO.html](http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0002_0419_ZO.html)  
*Calder v. Bull* (1798), pp. 405-406  
 The Road to Marbury, pp. 41-45  
*Marbury v. Madison* (1803), pp. 46-50  
 Van Alstyne, "A Critical Guide to *Marbury v. Madison*" pp. 50-52  
 \*The Judiciary Act of 1789, 1 Statutes at Large 73,  
<http://usinfo.state.gov/usa/infousa/facts/democrac/8.htm>  
 \*\*McConnell, Michael W. "The Story of *Marbury v. Madison*: Making Defeat Look Like Victory." In Dorf, *Constitutional Law Stories* (2004), pp. 13-31.  
*Ex Parte McCardle* (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  
 Constraints on Judicial Review, pp. 57-60  
*Eakin v. Raub* (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 "Brandeis 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  
*Bush v. Gore* (2000), 966-970  
 Pacelle, Chapters 3-7 (pp. 51-169)

## II. Federalism (January 29 - February 10)

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  
 \**Willson v. Black Bird Creek Marsh Company*, 27 U.S. 245 (1829)  
[http://supct.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0027\\_0245\\_ZO.html](http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0027_0245_ZO.html)  
*Cooley v. Board of Wardens* (1852), pp. 326-328  
 \**South Carolina Highway Dept. v. Barnwell Bros.*, 303 U.S. 177 (1938)  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=303&invol=177>  
 \**Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945)  
[http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0325\\_0761\\_ZO.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0325_0761_ZO.html)  
 \**Philadelphia v. New Jersey*, 437 U.S. 617 (1978)  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=437&invol=617>  
*Granholt v. Heald* (2005), pp. 365-367

**Exam #1: Thursday, February 12 (during class)**

## III. National Power – Commerce, Taxing and Spending (February 17 - March 17)

Nationalization of the Economy, pp. 330-331

\**U.S. v. E.C. Knight Co.*, 156 U.S. 1 (1895)  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=156&invol=1>

*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)  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=234&invol=342>

\**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

*Heart of Atlanta Motel v. U.S.* (1964), pp. 802-804

\**Katzenbach v. McClung*, 379 U.S. 294 (1964)  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=379&invol=294>

From *National League to Garcia*, p. 348-349

*National League of Cities v. Usery* (1976), pp. 350-352

*Garcia v. San Antonio Metropolitan Transit Authority* (1985), pp. 352-354

State Powers Revived, pp. 354-358

*United States v. Lopez* (1995), pp. 359-361

\**Printz v. United States*, 521 U.S. 98 (1997)  
<http://www.law.cornell.edu/supct/html/95-1478.ZO.html>

*U.S. v. Morrison* (2000), pp. 362-365

\**Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000)  
<http://supct.law.cornell.edu/supct/html/98-791.ZO.html>

\**Reno v. Condon*, 528 U.S. 141 (2000), <http://supct.law.cornell.edu/supct/html/98-1464.ZO.html>

*Gonzales v. Raich* (2005), pp. 367-371

\*\*Will, George F. “Judging This Court.” *Washington Post*, June 8, 2005, p. A21

\*\*Maveety, Nancy. “Judicial Decision Making as Legal Debate: *Printz v. U.S.*” In Ivers and McGuire, *Creating Constitutional Change* (2004), pp. 153-164.

\*\*Hurwitz, Mark S. “*Kimel v. Board of Regents* (2000).” In Schultz and Vile, *The Encyclopedia of Civil Liberties in America* (2004), pp. 530-531.

The Spending and Taxing Powers, pp. 371-375

*Pollock v. Farmers’ Loan & Trust Co.* (1895), pp. 375-377

*U.S. v. Butler* (1936), pp. 377-379

*Steward Machine Co. v. Davis* (1937), pp. 380-381

*South Dakota v. Dole* (1987), pp. 382-383

Conclusions, p. 396-397

**Exam #2: Thursday, March 19 (during class)**

**IV. Separation of Powers** (March 24 - April 16)

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
- Iran-Contra Report (1987), pp. 257-258
- 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
- New York Times Co. v. United States* (1971) pp. 275-278
- Griswold, "How Sensitive Were the Pentagon Papers'," pp. 278-279
- \*\*Griswold, Erwin N. "Arguing the 'Pentagon Papers' Case." In O'Brien, *The Lanahan Readings in Civil Rights and Civil Liberties* (2003), pp. 78-88.
- 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
- Dellums v. Bush* (D.D.C. 1990), pp. 301-303
- Campbell v. Clinton* (DC Cir. 2000), pp. 303-305
- Hamdi v. Rumsfeld* (2004), pp. 293-296
- Hamdan v. Rumsfeld* (2006), pp. 296-299
- \*\*Hurwitz, Mark S. "Implied Powers." In Schultz and Vile, *The Encyclopedia of Civil Liberties in America* (2004), pp. 484-486.
- Conclusions, pp. 307

## **B. Domestic Affairs**

- Youngstown Co. v. Sawyer* (1952), pp. 272-275
- Dames and Moore v. Regan* (1981), pp. 284-287
- Creating the Executive Departments, pp. 182-186
- Morrison v. Olson* (1988), pp. 190-195
- Congressional Oversight, pp. 212-216
- Clinton v. New York* (1998), pp. 216-219
- INS v. Chadha* (1983), pp. 219-222
- Fisher, "Legislative Vetoes After *Chadha*," pp. 222-224
- Investigations and Executive Privilege, pp. 224-230
- Watkins v. United States* (1957), pp. 230-232
- Barenblatt v. United States* (1959), pp. 233-235
- United States v. Nixon* (1974), pp. 235-238
- \**Nixon v. Fitzgerald*, 457 U.S. 731 (1982)  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=457&invol=731>
- Clinton v. Jones* (1997), pp. 240-243
- \*\*Michael J. Gerhardt. "The Story of *Clinton v. Jones*: Presidential Promiscuity and the Paths of Constitutional Retribution." In Dorf, *Constitutional Law Stories* (2004), pp. 119-149.
- Political Questions, pp. 107-110
- Walter Nixon v. U.S.* (1993), pp. 112-115
- Conclusions, p. 249
- \*\*McGuire, Kevin T. *Understanding the U.S. Supreme Court: Cases and Controversies* (2002), Chapter 4, pp. 91-137

**Exam #3: Wednesday, April 22, 10:15am-12:15pm (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 <[erik.j.walton@wmich.edu](mailto:erik.j.walton@wmich.edu)> by Wednesday, January 14, 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.

#### **Cases:**

#### **Due Date:**

#### ***Judicial Review and the Role of the Supreme Court***

<i>Ex Parte McCardle</i> (1869)	Jan. 22
<i>Fletcher v. Peck</i> (1810)	Jan. 27
<i>Martin v. Hunter's Lessee</i> (1816)	Jan. 27
<i>Cohens v. Virginia</i> (1821)	Jan. 27
<i>Eakin v. Raub</i> (Pa. 1825) – Justice Gibson's Dissent	Jan. 27
<i>Bush v. Gore</i> (2000)	Jan. 27

#### ***Federalism***

<i>McCulloch v. Maryland</i> (1819)	Jan. 29
<i>Missouri v. Holland</i> (1920)	Jan. 29
<i>Gibbons v. Ogden</i> (1824)	Feb. 3
<i>Cooley v. Board of Wardens</i> (1852)	Feb. 3
<i>Granholt v. Heald</i> (2005)	Feb. 5

#### ***National Power – Commerce, Taxing and Spending***

<i>The Lottery Case (Champion v. Ames)</i> (1903)	Feb. 17
<i>Hammer v. Dagenhart</i> (1918)	Feb. 17
<i>Schechter Corp. v. United States</i> (1935)	Feb. 17
<i>Carter v. Carter Coal Co.</i> (1936)	Feb. 19
<i>NLRB v. Jones &amp; Laughlin</i> (1937)	Feb. 19
<i>United States v. Darby</i> (1941)	Feb. 19
<i>Wickard v. Filburn</i> (1942)	Feb. 19
<i>Civil Rights Cases</i> (1883)	Feb. 24
<i>Heart of Atlanta Motel v. U.S.</i> (1964)	Feb. 24
<i>National League of Cities v. Usery</i> (1976)	Feb. 26
<i>Garcia v. San Antonio Metropolitan Transit Authority</i> (1985)	Feb. 26
<i>United States v. Lopez</i> (1995)	Feb. 26
<i>U.S. v. Morrison</i> (2000)	Feb. 26
<i>Gonzales v. Raich</i> (2005)	Feb. 26

<i>Pollock v. Farmers' Loan &amp; Trust Co.</i> (1895)	March 10
<i>U.S. v. Butler</i> (1936)	March 10
<i>Steward Machine Co. v. Davis</i> (1937)	March 12
<i>South Dakota v. Dole</i> (1987)	March 12

### **Separation of Powers**

<i>United States v. Curtiss-Wright Corp.</i> (1936)	March 24
<i>The Prize Cases</i> (1863)	March 24
<i>Ex Parte Milligan</i> (1866)	March 24
<i>Korematsu v. United States</i> (1944)	March 26
<i>New York Times Co. v. United States</i> (1971)	March 26
<i>Dellums v. Bush</i> (D.D.C. 1990)	March 31
<i>Campbell v. Clinton</i> (DC Cir. 2000)	March 31
<i>Hamdi v. Rumsfeld</i> (2004)	March 31
<i>Hamdan v. Rumsfeld</i> (2006)	March 31
<i>Youngstown Co. v. Sawyer</i> (1952)	April 2
<i>Dames and Moore v. Regan</i> (1981)	April 2
<i>Morrison v. Olson</i> (1988)	April 2
<i>Clinton v. New York</i> (1998)	April 7
<i>INS v. Chadha</i> (1983)	April 7
<i>Watkins v. United States</i> (1957)	April 9
<i>Barenblatt v. United States</i> (1959)	April 9
<i>United States v. Nixon</i> (1974)	April 9
<i>Clinton v. Jones</i> (1997)	April 14
<i>Walter Nixon v. U.S.</i> (1993)	April 14

### **Extra Credit Case Brief Information and Schedule**

Each student may hand in up to 3 extra credit briefs during the semester. Extra credit briefs must be handed in the day they are due as stated in the schedule below. No discussion or questioning is required for extra credit briefs, but briefing of all dissenting and concurring opinions in each case is required to receive extra credit. Extra credit briefs are graded on an acceptable/not acceptable basis. No late extra credit briefs will be accepted.

<i>Willson v. Black Bird Creek Marsh Company</i> (1829)	Feb. 3
<i>South Carolina Highway Dept. v. Barnwell Bros.</i> (1938)	Feb. 5
<i>Southern Pacific Co. v. Arizona</i> (1945)	Feb. 5
<i>Philadelphia v. New Jersey</i> (1978)	Feb. 5
<i>U.S. v. E.C. Knight Co.</i> (1895)	Feb. 17
<i>Shreveport Rate Case (Houston, E.&amp;W.T.R. Co v. U.S.)</i> (1914)	Feb. 17
<i>Stockyards Case (Stafford v. Wallace)</i> (1922)	Feb. 17
<i>Katzenbach v. McClung</i> (1964)	Feb. 24
<i>Printz v. United States</i> (1997)	Feb. 26
<i>Kimel v. Florida Board of Regents</i> (2000)	Feb. 26
<i>Reno v. Condon</i> (2000)	Feb. 26
<i>Nixon v. Fitzgerald</i> (1982)	April 9

**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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