

# Law or Politics? The U.S. Supreme Court and Individual Rights

GVPT 202 — Fall 2024

Lecture: Monday & Wednesday 1:00-1:50pm, #XXX XXX Hall  
Discussion Section: Friday (time & room location vary by section)

**Instructor:** Prof. Patrick Wohlfarth  
Office Hours: XXX, or by appt.

E-mail: [patrickw@umd.edu](mailto:patrickw@umd.edu)  
Office: 1115C Tydings Hall

## Teaching Assistants:

What are your individual rights and liberties under the U.S. Constitution? Similarly, why do U.S. Supreme Court justices often reach such different conclusions about the meaning of individual rights in the U.S. Constitution? The answers to these questions may seem self-evident, but the reality is that rights are fluid and depend on the eye of the beholder.

The Supreme Court regularly defines the scope of individual rights in the United States. In just the last few years, the Court has issued decisions that have critically shaped citizens' ability to access the ballot box, to legally carry guns in public, to exercise their religious beliefs, to live free of discrimination based on their sexual identity, and to obtain an abortion. Citizens' individual rights, while often thought to be a product of constant, unbiased jurisprudence, are not static; they are subject to (and do!) change. The "rule of law" and citizens' rights have shifted considerably over time. Yet, scholars and observers continuously debate why this is the case. These dynamics may be the result of shifting societal norms, pressure from external political forces, varying interpretations of history and framers' intent, turnover in the justices themselves, or some murky mixture of all the above.

This course will consider the fluid state of constitutional rights in the United States. Students will explore recent and current U.S. Supreme Court cases shaping these rights. They will grapple with open-ended debates in which scholars engage continuously over the determinants of legal change and the prevailing interpretation of individual rights in the U.S. Constitution. In doing so, the course will draw upon interdisciplinary scholarship from political science, legal studies, economics, psychology, and linguistics. And, it will engage students through team-based, experiential learning, including through mock oral arguments designed to simulate how attorneys and justices deliberate over the scope of individual rights on the U.S. Supreme Court.

## Course Description & Learning Objectives

This course examines the fluid state of individual rights before the U.S. Supreme Court. It will consider how recent cases the Court has decided and current pending cases have shaped the meaning of the U.S. Constitution. A critical component will involve peer deliberation over the proper roles of law and politics and their impacts on the current state of individual rights in the United States. Students will examine constitutional case studies throughout the semester and contribute to group and classroom discussions of policy issues confronting the sitting Court. Students will also learn the foundational concepts of how the Court operates as both a legal and political institution, as well as its place in the larger political system. Special emphasis will be given to the social scientific study of the U.S. Supreme Court.

This is a three-credit undergraduate “Big Question” course designed for students participating in Carillon Communities. Carillon empowers students with the skills and knowledge to design meaningful academic and career paths beginning in their first semester on campus. We cultivate intentional living-learning experiences through paired Big Question and Studio courses that foster creative thinking and teamwork, introduce diverse perspectives and disciplines, and support student success and well-being.

Students must complete all assigned readings, come to class prepared, and actively participate in classroom discussions. Following this course, students should be able to:

- Consider the competing roles of political change and desire for legal continuity on the interpretation of the U.S. Constitution and the fluid state of individual rights.
- Describe the Supreme Court’s role in the larger American political system, its place in the separation of powers, and how the political environment shapes individual rights.
- Examine different systematic methodological tools and analytical approaches that social scientists (and academic experts) use to study the U.S. Supreme Court’s decision making and the importance of those decisions for individual rights in the United States.
- Improve writing skills and the ability to articulate analytical writing in a clear and cohesive manner.

## Course Reading

Required readings for this course will be drawn from two sources:

- Baum, Lawrence. 2021. *The Supreme Court* (14th ed.). Washington: Sage Press.
- Published U.S. Supreme Court opinions (available online: <https://www.supremecourt.gov/opinions/>)

I encourage all students to regularly follow the ongoing activities of the Supreme Court during the current term—oral arguments, *certiorari* petitions, and published opinions—prior to class

each day, as I will often integrate them into classroom discussions. In addition to coverage in major newspapers (e.g., *New York Times*, *The Washington Post*), the *SCOTUSblog* is a superb resource to stay informed about all the action happening on the Court (available at: <http://www.scotusblog.com/>). *Please Note:* I may announce additional (required) readings during the semester and post them on the course website (<https://elms.umd.edu>).

## Course Requirements & Evaluation

Students' final grades will reflect the sum of points earned from the following categories:

Short Oral Argument Papers (two total)	20%
Group Presentations	20%
Midterm Exam	20%
Final Exam	20%
Section Quizzes	20%

Grades are defined below and are based upon how many points you earn according to the following distribution:

A+	“Excellent mastery of the subject”	97-100 pts.
A		93-96 pts.
A-		90-92 pts.
B+	“Good mastery of the subject”	87-89 pts.
B		83-86 pts.
B-		80-82 pts.
C+	“Acceptable mastery of the subject”	77-79 pts.
C		73-76 pts.
C-		70-72 pts.
D+	“Borderline understanding of the subject”	67-69 pts.
D		63-66 pts.
D-		60-62 pts.
F	“Failure to understand the subject”	fewer than 60 pts.

## Attendance, Participation & Section Quizzes

I expect you to come prepared to class, participate in section discussions, and demonstrate comprehension of the assigned readings. Your teaching assistant will administer a short quiz during each Friday discussion section. Quizzes will usually feature one open-ended question based on the current week's class material and/or the section reading assigned for that day. Some weeks' quizzes will be graded based solely on completion; others will be graded based on the content (and accuracy) of your answer. I will drop your lowest quiz grade, and thus your average grade on all remaining quizzes will contribute 20% toward your final course grade. The objective of this policy is to improve the substantive quality of section discussions and to incentivize the regular study and attendance necessary to maximize your

learning potential in this course.

**IMPORTANT:** Your teaching assistant will administer quizzes at different times across different weeks (i.e., sometimes at the beginning of section, other times at the end of section). If you are not present (or, are late) when your teaching assistant administers a quiz, you will not receive extra time. Any quiz missed due to an unexcused absence will result in a zero grade (with no exceptions). An absence will only be excused if you present the appropriate documentation to your teaching assistant. If you miss a quiz due to an excused absence, you must contact your teaching assistant **within one week following your return to class** in order to arrange a makeup. Failure to arrange a makeup date within this one-week period will result in a zero grade for the missed quiz.

## Exams

There will be two exams in this course—an in-class midterm and final examination. I will notify you of the precise format at least one week before each exam. You can expect the exams to test your knowledge of the lectures, in-class discussions, and required readings. Generally, exams are designed to test students’ knowledge of both the “political, social, economic, and ethical dimensions involved in the course” and “basic terms, concepts, and approaches that experts employ” in studying law and politics on the U.S. Supreme Court. Regular attendance and reading will be critical to achieve success on each exam.

## Mock Oral Arguments & Short Papers

This course will feature a semester-long group project involving simulated Supreme Court oral arguments. During five class meetings, specified groups of students will participate in a mock oral argument of a select case currently being considered by the U.S. Supreme Court (cases TBA). I will structure, and facilitate, these mock oral argument sessions around salient, interesting issues on the Court’s docket. Approximately two weeks into the semester, I will randomly divide each discussion section into groups of four students and assign each group two cases and roles to argue during a future class meeting. Groups will meet throughout the semester to study, organize, and prepare oral argument presentations.

Three groups will participate in each mock oral argument—one group will argue as the petitioner’s attorneys, one group will argue as the respondent’s attorneys, and the third group will sit as justices. During a single lecture meeting, we will hold two mock oral arguments (i.e., two cases) and divide the argument time between each side of the case (approximately 20 minutes per case). By the end of the semester, each student/group will have participated in two mock oral arguments.

Students will be graded on their presentations—and quality of preparation—by the instructor and the teaching assistants. This means that students will have read the relevant case history and major precedents, can discuss them, and can discuss other aspects of the case that may matter (i.e., policy implications). This is equally true for both attorneys and justices. Each individual student’s grade on the group presentation will also incorporate a peer evaluation

by fellow group members (to minimize free-riding by a group member). Before participating in a scheduled oral argument, I encourage the whole group to meet with the teaching assistant to seek feedback and guidance. I will also allocate time during select discussion sections for group planning.

I expect students to come to class prepared, having read assigned background material on these case studies. The purpose of these oral argument sessions is to promote the pedagogical mission of encouraging students to “communicate major ideas and issues raised by the course through effective written and/or oral presentations.” They are also designed to encourage students to “think in new ways about their lives” and the political vs. legal dimensions of the U.S. Constitution.

To help facilitate these discussions, all students must select two (of the ten) cases and prepare a short (4-5 pages, 1-inch margins) oral argument brief for each case that addresses the background facts of the case, outlines the legal question(s), and makes an argument about how the Court should decide the case (and why). *Note:* Students must write at least one of the two short papers on a case where their group will not be presenting at the mock oral argument. I expect students to submit these writing assignments online by the beginning of class (on the day of the case’s scheduled oral argument). Late papers will be subject to a 10% penalty (10 points) **per day** beyond the due date. More details will follow approximately two weeks into the semester. Here are excellent resources for researching cases appearing before the U.S. Supreme Court:

- (1) <https://www.scotusblog.com/case-files/terms/>
- (2) <http://www.supremecourt.gov/>

## Course Policies

Please consult the general list of classroom policies, prepared by the Office of Undergraduate Studies at: <http://www.ugst.umd.edu/courserelatedpolicies.html>. The following are relevant course-specific policies to supplement those from Undergraduate Studies:

### Academic Integrity

Academic integrity is a core value of institutions of higher learning. It is your responsibility to refrain from engaging in plagiarism, cheating, and dishonest behavior. The official university honor code policy is located at: <http://www.president.umd.edu/policies/iii100a.html>. Needless to say, exams, quizzes, and the assigned term paper should reflect only your own work. But, studying and class preparation can (and should) be done with others.

### Students with Disabilities

I will make every effort to accommodate those who register with the Disability Support Service (DSS) office and provide a University of Maryland DSS Accommodation form. I can only accommodate those who present the required written DSS documentation.

## Excused Absence Policy

If at all possible, you should give advance notice if you must miss class (and have an accepted, verifiable excuse). When advance notice is not feasible, you must present the appropriate documentation **on the very next class that you are in attendance** in order to verify that your absence should be excused. Consistent with university guidelines, excused absences only occur “due to illness, religious observance, participation in University activities at the request of University authorities, or compelling circumstances beyond the student’s control.” No student will be allowed to make up a quiz, exam, or request an extension on the term paper deadline without a verifiable excused absence.

You may submit a self-signed note in order to be excused for missing one class. This note must include the date of illness, a statement that the information you have provided is true, and must be signed by you. You must also state that if your absence is found to be false, you understand that you will be referred to the Office of Student Conduct. Please note that official university policy states only one self-signed note for a single absence will be allowed. For all other non-consecutive absences, I will require written documentation from the Health Center or a medical doctor. Please also note that scheduled exam dates and the term paper due date are considered major grading events, and thus a self-signed note will not be sufficient to verify an excused absence on these three class days. Lastly, please be aware that university policy requires a written request (within the first two weeks of the semester) from any student who must miss a scheduled class due to a specific religious observance.

## COURSE SCHEDULE

The following is a (tentative) class and reading schedule, which is subject to change. It is essential that you do not fall behind in the reading, as it will be difficult to catch up. **Note:** Required readings listed each day should be completed **PRIOR** to the start of class.

### Week 1 — The Roberts Court & A Primer on Judicial Power

- Consider the major issues and major decisions issued by the Roberts Court.
- Discuss the constitutional (and institutional) foundations of the U.S. Supreme Court.
- Consider the U.S. Supreme Court in an historical context, including its institutional capacity and the development of its decision-making authority in the American political system.

August 26: Course Introduction

August 28: Baum Ch. 1

August 30 (section): Baum Ch. 1

### Week 2 — Theories of Judicial Decision Making

- Provide an overview of the central theoretical perspectives of Supreme Court decision making and discuss their respective strengths and weaknesses.
- Discuss observable (empirical) implications of different theoretical perspectives and consider systematic analytical approaches to distinguish between them.

September 2: No Class (Labor Day)

September 4: Baum Ch. 4

September 6 (section): Baum Ch. 4; *Federalist No. 78* (Elms)

### **Week 3 — Judicial Selection: Appointment & Confirmation**

- Discuss each stage of the judicial selection process, including the principal actors and decision-making motivations behind the departure, appointment, and confirmation of Supreme Court justices.
- Consider systematic evidence to better understand political behavior at each stage of the judicial selection process.

September 9: Baum Ch. 2

September 11: Baum Ch. 2

September 13 (section): Collins & Ringhand (2015): “The Institutionalization of Supreme Court Confirmation Hearings” (Elms)

### **Week 4 — Agenda-Setting & Oral Argument**

- Discuss how the Supreme Court’s agenda-setting process operates, including how that process has evolved over time.
- Consider analytical approaches to systematically examine why justices decide to review certain cases (and not others) and how the agenda-setting process critically shapes judicial policy.
- Discuss the purpose of oral argument in the Supreme Court’s decision-making process.

September 16: Baum Ch. 3

September 18: Baum Ch. 3

September 20 (section): TBD

### **Week 5 — Opinion Writing & Judicial Impact**

- Discuss the process of opinion writing on the Supreme Court and the different types, and principal components, of judicial opinions.

- Examine the potential role of strategic decision making in crafting the language of opinions (and thus the meaning of constitutional and statutory interpretation) on the Supreme Court.
- Consider the degree to which Supreme Court decisions can generate, or at least catalyze, broad social change in American politics.

September 23: Baum Ch. 5-6

September 25: Baum Ch. 6

September 27 (section): Baum Ch. 6

## **Week 6 — Voting Rights & The 14th/15th Amendments**

- Examine recent decisions of the Roberts Court and describe how they have changed the state of voting rights across the United States.

September 30: *Shelby County v. Holder* (2013)

October 2: *Shelby County v. Holder* (2013)

October 4 (section): *Brnovich v. Democratic National Committee* (2021)

## **Week 7 — Same-Sex Marriage & The 14th Amendment**

- Examine recent decisions of the Roberts Court and describe how they have changed the rights of same-sex couples (and sexual identity generally) in the United States.

October 7: *Obergefell v. Hodges* (2015)

October 9: *Obergefell v. Hodges* (2015)

October 11 (section): *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (2018)

## **Week 8 — Midterm Review & Exam**

- Review for, and complete, the midterm exam.

October 14: Midterm Review

October 16: ***Midterm Exam***

October 18 (section): TBD

## **Week 9 — Freedom of Speech & The 1st Amendment**



- Examine Supreme Court decisions of the Roberts Court on the 1st Amendment and how they have shaped the state of free speech rights in the United States.

October 21: *Morse v. Frederick* (2007)

October 23: *Mahanoy Area School District v. B.L.* (2021)

October 25 (section): *Kennedy v. Bremerton School District* (2022)

## **Week 10 — Religious Freedom & The 1st Amendment**

- Examine Supreme Court decisions that have shaped the state of religious freedoms—restrictions on government establishment & individual free exercise—in the United States.

October 28: *Town of Greece v. Galloway* (2014)

October 30: *American Legion v. American Humanist Association* (2019)

November 1 (section): *Carson v. Makin* (2022); *Employment Division v. Smith* (1990)

## **Week 11 — Mock Oral Arguments #1 & #2**

- Hold student-led mock oral arguments on four cases (TBA) currently pending before the Supreme Court.

November 4: **Mock Oral Arguments #1**

November 6: **Mock Oral Arguments #2**

November 8 (section): TBD

## **Week 12 — Gun Rights & The 2nd Amendment**

- Examine recent decisions of the Roberts Court on the Second Amendment and describe how they have changed the state of individual gun ownership rights & government regulation in the United States.

November 11: *District of Columbia v. Heller* (2008)

November 13: *McDonald v. Chicago* (2010)

November 15 (section): *New York State Rifle & Pistol Association Inc. v. Bruen* (2022) (Elms)

## **Week 13 — Mock Oral Arguments #3 & #4**

- Hold student-led mock oral arguments on four cases (TBA) currently pending before the Supreme Court.

November 18: **Mock Oral Arguments #3**

November 20: **Mock Oral Arguments #4**

November 22 (section): TBD

November 25: Thanksgiving Holiday (no class)

November 27: Thanksgiving Holiday (no class)

November 29: Thanksgiving Holiday (no section)

## **Week 14 — Abortion, Right to Privacy, & Substantive Due Process**

- Examine Supreme Court decisions and describe how they have changed the state of abortion rights in the United States.

December 2: *Roe v. Wade* (1973)

December 4: *Planned Parenthood v. Casey* (1992)

December 6 (section): *Dobbs v. Jackson Women's Health Organization* (2022)

## **Week 15 — Mock Oral Arguments #5**

- Hold student-led mock oral arguments on two cases (TBA) currently pending before the Supreme Court.

December 9: **Mock Oral Arguments #5**

## **Final Exam: TBA**

### **One Final Note:**

All grade appeals **will only be considered in writing**. Should you believe that you deserve a higher grade on an exam, quiz, or a paper, you must write a paragraph or so outlining your case and why the grade should be changed. After you submit this written appeal, your teaching assistant and I will then be happy to read your explanation and re-grade your exam, quiz, or paper. The deadline for consideration of any appeal will be **one week** following receipt of a particular grade. Of course, you may always ask questions for clarification, but no grade changes will be considered that you have not conducted in writing (or that you fail to submit before the one-week deadline).

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