PSC 212 The United States Supreme Court:

The Constitution at the Crossroads

Fall 2019

Monday/Wednesday 2:00 –3:15 pm

Dewey 2110D

This course will address our Constitutional system of government, particularly focusing on leading United States Supreme Court decisions, including those that address the separation of powers, the powers of the President and Congress, racial equality under the 13th-15th Amendments, freedom of expression and the religion clause of the First Amendment, implied rights including the right to privacy, reproductive freedom, gender equality, economic regulation and voting rights.

All readings for the course either will be in Kathleen M. Sullivan and Noah Feldman, Constitutional Law (19th ed. Foundation Press 2016) (Casebook) or In Handout materials available at 107 Harkness Hall. You can pick up the Handout materials before class starts. There is a reading assignment for the first class.

Academic Honesty: All students will be expected to conduct themselves in accordance with the University’s Academic Honesty policy. Assignments will be graded on an individual basis with the expectation that each assignment will be completed by each student acting alone. Students may ask questions of me after class or during office hours. Students also may study together for class preparation.

Grades: You grade for this course will be based 25 percent on your performance on the mid-term examination October 16 and 50 percent on a written presentation and 25 percent on an oral presentation at the Constitutional Convention, December 9 and 11. For the Constitutional Convention, each of you will be expected to propose an Amendment to the Constitution and based on the readings in this course to prepare the most persuasive legal analysis of why the Amendment should be enacted.

August 28: Legal Reasoning: Brown v. Board of Education, Casebook 663-665, Handout 1-10.

September 4: The Structure of the United States Legal System, Handout 11-26.

September 9: The American Revolution: Declaration of Independence, Handout 27-31, Articles of Confederation, Handout 32-37, The Constitution of the United States, Casebook lix-lxvii, 77-78. Just read the basic Constitution. We will review Amendments later.

September 11: A President, Not A King: Preamble and Article II of the Constitution, Casebook lix, lxiii-lxv; The Federalist Paper No. 69, Handout 38-42; Youngstown Sheet & Tube v. Sawyer, Casebook 304-312; Department of Commerce v. New York, Handout 43-49.

September 16: Presidential Powers in Times of War: Note, Executive Discretion in Times of War; Casebook 330-339; Ex Parte Milligan, Casebook 339-341; Ex Parte Quirin, Casebook 341-344; Hamdan v. Rumsfield, Casebook 361-369; Boumediene v. Bush, Casebook 369-377.

September 18: Limits on the Power of the President: United States v. Nixon, Casebook 421-424; Nixon v. Fitzgerald, Casebook 426-427; Clinton v. Jones, Casebook 427-434; Note, Impeachment of the President., Casebook 434-439.

September 23: Congress and the Separation of Powers: Article I of the Constitution, Casebook lix-lxiii; McCulloch v. Maryland, Casebook 79-95; United States v. Comstock, Casebook 104-106.

September 25: Congressional Powers under the Commerce Clause: Note, Casebook 115-116; Lochner v. New York, Casebook 487-498; Note, The Commerce Clause and the New Deal, Casebook 124-131; United States v. Caroline Products, Casebook 501-502; United States v. Darby, Casebook 133-136; Wickard v. Filburn, Casebook 136-137;

September 30: Congressional Powers under the Commerce and Spending Clauses: National Federal of Independent Business v. Sibelius, Casebook 161-171, 215-225.

October 2: The Power of the Judiciary: Article III of the Constitution, Casebook lxv; Federalist Paper No. 78, Handout 50-54; Marbury v. Madison, Casebook 2-11; Martin v. Hunter’s Lessee, Casebook 17-19; Cooper v. Aaron, Casebook 21-22; Dred Scott v. Sanford, Casebook 445-448.

October 7: The Second American Revolution: 13th-15th Amendments, Casebook lxix-lxx; Slaughter House Cases, Casebook 449-453; Note, The Civil Rights Statutes, Casebook 851-854; Civil Rights Cases, Casebook 854-858; Plessy v. Ferguson, Casebook 659-661; Brown v. Board of Education I and II, Casebook 663-665, 669-670.

October 9: Implementing Board v. Board of Education: Note, Casebook 670-673, Swann v. Charlotte-Mecklenburg Board of Education, Handout 55-61, Freeman v. Pitts, Handout 62-67; Adarand Contractors, Inc. v. Pena, Casebook 706-711.

October 14: Fall Break

October 16: Midterm Examination

October 21: Affirmative Action: Regents of California v. Bakke, Casebook 693-700; Gruter v. Bollinger, Casebook 712-721; Graetz v. Bollinger, Casebook 721-724; Schuette v. Coalition to Defend Affirmative Action, Casebook 733-735; Fisher v. University of Texas, Handout 68-77; Parents Involved in Community Schools v. Seattle School District, Casebook 735-745.

October 23: Gender Classifications: Craig v. Boren, Casebook 763-766; Mississippi University for Women v. Hogan, Casebook 766-768; United States v. Virginia, Casebook 769-777; Note, Equal Rights Amendment and Levels and Standards of Judicial Review, Handout 78-82.

October 28; The Right to Privacy and Reproductive Rights: Griswold v. Connecticut, Casebook 510-516; Eisenstadt v. Baird, Casebook 518; Roe v. Wade, Casebook 520-523; Planned Parenthood v. Casey, Casebook 532-538; Whole Women’s Health v. Hellerstedt, Handout 83-99.

October 30: Marital Rights: Loving v. Virginia, Casebook, Handout 100-104; Lawrence v. Texas, Casebook 561-568; United States v. Windsor, Casebook 572-579; Obergefell v. Hodges, Casebook 581-588.

November 4: Voting Rights: Reynolds v. Sims, Casebook 814-818; Rucho v. Common Cause, Handout 105-109; Citizens United v. Federal Election Commission, Casebook 1489-1497; McCutcheon v. F.E.C., Casebook 1501- 1506.

November 6: Freedom of Expression under the First Amendment: Schenck v. United States, Casebook 947-948; Abrams v. United States, Casebook 951-954; Gitlow v. New York, Casebook 961-965; Whitney v. California, Casebook 965-970; Brandenburg v. Ohio, Casebook 979-981.

November 11: Freedom of Expression under the First Amendment II: Caplinski v. New Hampshire, Casebook 987-988; Texas v. Johnson, Casebook 1189-1196; Note, Texas v. Johnson and Its Aftermath, Casebook 1196-1198; New York Times v. Sullivan, Casebook 1007-1010; Snyder v. Phelps, Casebook 1031-1034.

November 13: Time, Place and Manner Tests: Cox v. Louisiana, Casebook 1225; Heffron v. International Society for Krishna Consciousness, Casebook 1225-1227; International Society for Krishna Consciousness Inc. v. Lee, Casebook 1266-1270; Members of City Council v. Taxpayers for Vincent, Casebook 1230-1235; Clark v. Community for Creative Non-Violence, Casebook 1235-1239/

November 18; Prior Restraint and National Security: New York Times v. United States [The Pentagon Papers Case], Casebook 1376-1382; United States v. Progressive, Inc., Casebook 1382-1383; Snepp v. United States, Casebook 1383-1384; United States Complaint against Wikileaks, Handout 110-127.

November 20: New Media and Commercial Speech: Reno v. American Civil Liberties Union, Casebook 1115-1120; Ashcroft v. Free Speech California, Casebook 1124-1127; Brown v. Entertainment Merchants Ass’n, Casebook 1130-1133; Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Casebook 1134-1138; Central Hudson Gas v. Public Service Comm’n, Casebook 1144-1146; 44 Liquormart, Inc. v. Rhode Island, Casebook 1150-1154.

November 25: The Religion Clauses of the First Amendment: Free Exercise: Note, A History of the Religion Clauses, Casebook 1552-1560; Reynolds v. United States, Casebook 1570-1571; Minersville v. School Dist. of Gobitis, Casebook 1571-1572; West Virginia State Bd. Of Educ. v. Barnette, Casebook 1572-1573; Wisconsin v. Yoder, Caebook 1576-1578; Employment Div. Dept. of Human Resources v. Smith, Casebook 1583-1591; Burwell v. Hobby Lobby, Casebook 1597-1604.

November 27: Thanksgiving

December 2: The Religion Clauses of the First Amendment: The Establishment Clause: Lee v. Weisman, Casebook 1639-1646; Edwards v. Aguillard, Casebook 1652-1656; Lynch v. Donnelly, Casebook 1663-1669; McCreary County v. ACLU of Kentucky, Casebook 1674-1680.; American Legion v. American Humanist Association, Handout 128-133.

December 4: Summary of Course

December 9: Constitutional Convention

December 11: Constitutional Convention