

The Supreme Court's 2019 Term

Political Science 601

Spring 2020

W 1:20-3:15

Education L155

Professor Information:

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Office Hours: Wednesdays 10:30-11:30 or by apt.

Class Description: The goal of this class is to immerse you in a sample of the Court's cases this term. We will read the briefs parties file with the Court, the cases and statutes they cite, and listen to oral argument in these cases. We will tackle each case in two-week increments. In the first week, we will read the briefs filed in the case, as well as relevant precedents and other law. In the second week, we will listen to and examine oral arguments. If the Court decides the case before the conclusion of the semester, we will read the opinion and discuss it. At the conclusion of the semester, we will all be experts on some of the Court's most interesting cases of the term.

Requirements and Grades: Before each class, we will read Court decisions and briefs. I expect you to read them and to be able to discuss them in class. I will upload these materials to Canvas. Should you like to find these briefs yourselves, go to scotusblog.com, oyez.com, the Supreme Court's website, or the American Bar Association: (http://www.americanbar.org/publications/preview_home/alphabetical.html).

When we listen to oral argument, I expect you to pay careful attention. We will discuss the questions and answers throughout the oral argument. I want you to comment on and critique the arguments.

I will base your grade on **class participation** (30%), **bi-weekly memos** (40%), and a **final presentation** (30%).

Class Participation. I expect you to come prepared to all classes. This means that you have read the material assigned *and that you will discuss it*. I interact with my classes and expect students to be present and able to talk about the reading material for the day's class. Unprepared classes are boring to teach and boring to sit through. So come prepared. If discussion becomes lopsided, with only a few people speaking, *I will randomly call on people*. It is important that you participate actively in a class like this—for the flow of the class and for your grade. If you do not speak up, I may not know how much you have learned. Don't allow me to assume the worst.

Bi-weekly Memos. We will spend two classes per case. Before the first class of each case, you must turn in a 2-page memo about the case. This memo will train you to focus your thoughts and sharpen your discussion during class. What I want is a summary that analyzes – in your words – the relevant precedents and how you think they fit or do not fit with the parties' arguments. Don't simply copy and paste the argument from the briefs. Take some time and *think about* the law, how it fits in the case, and what you think the right outcome is based on precedent, statutes, and policy.

IMPORTANT: I care about your analysis AND **how well you write**. If you have the best ideas in the world but cannot communicate them, no one gains. If you can write very well but have no grasp of the content, you

may as well write fiction. What I want from you is a melding of good understanding and good writing. You will all go on to professions that require effective communication. You must learn to write effectively.

Final Oral Argument Presentation. On our last day of class, you will present mock oral arguments in the **state supreme court**. We will hold oral argument in two or three cases. I will randomly divide you into groups. For each group, some of you will sit as justices; some of you will be petitioner's attorneys; and some of you will be respondent's attorneys. Oral argument will last ~30 minutes per groups (15 minutes for each side). You will be graded on how prepared you are. This means that you will have read the relevant precedents, can discuss them, and can discuss other aspects of the case that may matter (i.e., policy implications). This is equally true for attorneys *and* justices. (I will randomly choose the Chief.) Students must prepare 2-page "briefs" that summarize what they plan to argue (if they are attorneys) and what they expect to hear (if they are justices).

Grade Scale. The grade scale is as follows:

93-100 (A)
88-92 (AB)
83-87 (B)
78-82 (BC)
70-77 (C)
60-69 (D)
< 60 (Fail)

Class Behavior. We all want to learn while in class, so do not cause disruptions in class. Be respectful to your fellow students. If you fail to do so, university guidelines require me to take action. Expect to argue both sides of every issue, whether it is something with which you agree personally or not. Good lawyering—and understanding—comes from seeing all perspectives. Bottom line, I want you to participate in class—but not inappropriately. For more information, please see <http://www.students.wisc.edu/rights/>.

Laptops. I do not allow laptops in class. They (and cell phones) are distracting to other students and entice you to read non-class related material during lecture. If you have a documented medical need that requires you to use a laptop, let me know. Otherwise, please put them away.

Academic Integrity. I hold all students to the university's academic integrity standards. For more information on those, please see: <http://students.wisc.edu/saja/integrity.html>.

Students Requiring Need-Based Accommodations. Students who need accommodations on the basis of disability should schedule an office appointment with me within the first three weeks of the semester. Please schedule this office appointment by email. To maintain the confidentiality of your request, please do not approach me before or after class to discuss your accommodation needs. The McBurney Disability Resource Center (263-2741) provides resources for students with disabilities (<http://www.mcburney.wisc.edu/>). You will need to provide documentation of disability to them in order to receive official university services and accommodations.

Course Learning Outcomes. At the conclusion of the semester, students will be experts on some of the Court's most interesting cases of the term. More broadly:

- Each student will be able to converse freely and without assistance about the Supreme Court's cases and justices.
- Each student will learn how to read and critically analyze Supreme Court opinions.
- Each student will understand how the Supreme Court operates.
- Each student will learn how to write and speak compelling legal arguments based in law.

- Each student will learn how to debate legal concepts in a civil and logical manner.

Credit Hours. This class is a three-credit course. Students achieve credit for this course by investing 45 hours of learning activities per credit. Students spend roughly 39 hours of learning in class. They will spend roughly 12 hours of work outside of class on each Supreme Court case. (This involves reading all the briefs, all the precedents, and writing memos per case.) Finally, they will spend roughly 24 hours outside class preparing for their final projects.

Schedule

*Occasionally, the Court dismisses cases that it has granted, which means that some cases on our schedule may have to be moved around a bit. I also may move some cases around (or remove them) if the Court renders a decision before the end of class.

January 22: Introduction to the Court and expectations for the class.

January 29, February 5: *Bostock v. Clayton County GA* and *R.G. & G.R. Harris Funeral Homes v. EEOC*

Issue(s): (1) Whether discrimination against an employee because of sexual orientation constitutes prohibited employment discrimination “because of . . . sex” within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2; and (2) Whether Title VII prohibits discrimination against transgender people based on (a) their status as transgender or (b) sex stereotyping under *Price Waterhouse v. Hopkins*.

February 12, 19: *Dept of Homeland Security v. Regents of Univ of CA*

Issue(s): (1) Whether the Department of Homeland Security’s decision to wind down the Deferred Action for Childhood Arrivals policy is judicially reviewable; and (2) whether DHS’s decision to wind down the DACA policy is lawful.

February 26, March 4: *Espinoza v. MT DOR*

Issue(s): Whether it violates the religion clauses or the equal protection clause of the United States Constitution to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools.

March 11, March 25: *June Medical Services v. Gee*

Issue(s): Whether the U.S. Court of Appeals for the 5th Circuit’s decision upholding Louisiana’s law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with the Supreme Court’s binding precedent in *Whole Woman’s Health v. Hellerstedt*.

April 1, 8: *Colorado Department of State v. Baca* (Arg. TBD)

Issue(s): (1) Whether a presidential elector who is prevented by their appointing state from casting an electoral-college ballot that violates state law lacks standing to sue their appointing state because they hold no constitutionally protected right to exercise discretion; and (2) whether Article II or the 12th Amendment forbids a state from requiring its presidential electors to follow the state’s popular vote when casting their electoral-college ballots.

April 15, 22: *Trump v. Mazars* (Arg. TBD)

Issue(s): Whether the Committee on Oversight and Reform of the U.S. House of Representatives has the constitutional and statutory authority to issue a subpoena to the accountant for President Trump and several of his business entities demanding private financial records belonging to the president.

April 29: Final Class—Arguments at the state supreme court

Group 1: *Our Lady of Guadalupe School v. Morrissey-Berru*

Issue(s): Whether the First Amendment's religion clauses prevent civil courts from adjudicating employment-discrimination claims brought by an employee against her religious employer, when the employee carried out important religious functions.

Group 2: *St. James School v. Biel*

Issue(s): Whether the First Amendment's religion clauses prevent civil courts from adjudicating employment-discrimination claims brought by an employee against her religious employer, when the employee carried out important religious functions.

Group 3: *Carney v. Adams*

Issue(s): (1) Whether the First Amendment invalidates a longstanding state constitutional provision that limits judges affiliated with any one political party to no more than a “bare majority” on the state’s three highest courts, with the other seats reserved for judges affiliated with the “other major political party”; (2) whether the U.S. Court of Appeals for the 3rd Circuit erred in holding that a provision of the Delaware Constitution requiring that no more than a “bare majority” of three of the state courts may be made up of judges affiliated with any one political party is not severable from a provision that judges who are not members of the majority party on those courts must be members of the other “major political party,” when the former requirement existed for more than 50 years without the latter, and the former requirement, without the latter, continues to govern appointments to two other courts; and (3) whether the respondent, James Adams, has demonstrated Article III standing.