

## **PSC 192W: SUPREME COURT DECISION MAKING**

Department of Political Science • George Washington University  
Spring 2010 • Mondays, 3:30 – 6:00 • Duques 362

Professor Brandon Bartels

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Office hours: Wednesdays, 2:00-4:00

*Note:* I will post course materials and announcements on Blackboard.

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### **COURSE DESCRIPTION**

In this course, we will confront the following questions: What explains how Supreme Court justices make decisions on the cases that come before them? Are they driven by their ideological leanings? Or do they simply do what the law requires? Are justices strategic in their decision making, anticipating what their colleagues as well as the other branches of government might do as a result of their choices? Political science and legal scholarship provides varying and conflicting responses to these questions. We will address those debates—which are contained in the readings—in class via a seminar-style format. As described below, you will learn about Supreme Court decision making in a number of “active” ways: reading and discussing the literature on social science approaches to explaining Supreme Court decision making, visiting the Supreme Court, attending Supreme Court oral arguments for a case, engaging in social scientific analysis of Supreme Court decision making, and writing papers that summarize your experiences, present original arguments, and discuss results from data analysis.

### **LEARNING OBJECTIVES**

As a result of completing this course, students will:

- possess an in-depth and well-rounded understanding of how the U.S. Supreme Court does its business and how the justices go about deciding cases the way they do.
- possess a solid understanding of cutting-edge political science research on Supreme Court decision making, as a result of reading this work and engaging in class discussion—in a seminar-style format—of it.
- have a greater understanding of the inner workings of the Court, as a result of taking a tour of the Court, attending the Court’s oral arguments for a case, doing background research on that case, and incorporating the information from oral arguments for the case into the final paper.
- be able to engage in social science research on Supreme Court decision making (hypothesis testing via data analysis).
- be able to write a paper that: (1) contains original ideas and (2) engages in empirical analysis capable of supporting those ideas.

### **REQUIRED READING**

We will primarily read journal articles and excerpts from books. I will post the reading on Blackboard. There is one required book for the course, which is available at the Bookstore:

Baum, Lawrence. 2009. *The Supreme Court* (Tenth Edition). Washington, DC: CQ Press.  
(ISBN: 978-1-60426-462-3)

## COURSE REQUIREMENTS

The workload will be demanding; I have high expectations for my students. You will find that if you come to class prepared, the class sessions and discussions will be very stimulating. Your final grade will be a weighted average of the following tasks:

1. **Class attendance and participation** (10%): Students are expected to come to class having done the readings and prepared to discuss those readings. Once again, this is a seminar, which relies heavily on class discussion. Seminars **ONLY** work well when every student has done the required reading. Some of the readings will be challenging. But you should work through the hard parts and read through the entire article.
2. **Readings notes and questions** (15%): *By 2:00pm sharp on the day of class*, students will email me a short document (in Word) that contains the following information for each reading:
  - a. What the authors attempt to do in the article. What research question(s) the authors are posing.
  - b. The general conclusions/findings that the article uncovers.
  - c. Questions you have about the research in general—something you did not understand or something you particularly agree or disagree with.
  - d. Any other comments or opinions on the article.
3. **Data analysis assignment** (10%): There will be a brief assignment covering some basics of data analysis. **Due Monday, February 22.**
4. **Midterm paper** (25%): The midterm paper will require you to engage in empirical analysis of a Supreme Court decision making topic and write up the results of your analysis. I will give you more details on this paper early in the semester. **Due Friday, March 12 at 5:00pm SHARP!**
5. **Oral arguments summary** (10%): You will attend a Supreme Court oral argument. Make sure you plan ahead for this. Oral argument schedules are available on the Court's website: <http://supremecourtus.gov>. You will provide a short summary of the oral arguments you attended. Include the following information: (1) the name of the case and what issues and facts are involved in the case, (2) who argued the case for each side, (3) a brief summary of the arguments each attorney made, (4) a summary of some of the questions that the justices asked. **Due by the last day of class (Monday, April 26).**
6. **Final paper** (30%): The final paper will be an opportunity to integrate ideas and information from the oral argument you attended (as well as surrounding cases) and from an analysis of a set of cases (via data analysis). I will give you more information regarding the final paper early on in the semester. **Due on our designated date for the final exam (TBA).**

## GRADING SCHEME

93-100%: A	90-92.9: A-	
87-89.9: B+	83-86.9: B	80-82.9: B-
77-79.9: C+	73-76.9: C	70-72.9: C-
67-69.9: D+	60-66.9: D	
<60: F		

## ACADEMIC INTEGRITY

I personally support the GW Code of Academic Integrity. It states: “Academic dishonesty is defined as cheating of any kind, including misrepresenting one's own work, taking credit for the work of others without crediting them and without appropriate authorization, and the fabrication of information.” For the remainder of the code, see: <http://www.gwu.edu/~ntegrity/code.html>

## SUPPORT FOR STUDENTS OUTSIDE THE CLASSROOM

### *DISABILITY SUPPORT SERVICES (DSS)*

Any student who may need an accommodation based on the potential impact of a disability should contact the Disability Support Services office at 202-994-8250 in the Marvin Center, Suite 242, to establish eligibility and to coordinate reasonable accommodations. For additional information please refer to: <http://gwired.gwu.edu/dss/>

### *UNIVERSITY COUNSELING CENTER (UCC) 202-994-5300*

The University Counseling Center (UCC) offers 24/7 assistance and referral to address students' personal, social, career, and study skills problems. Services for students include:

- crisis and emergency mental health consultations
  - confidential assessment, counseling services (individual and small group), and referrals
- <http://gwired.gwu.edu/counsel/CounselingServices/AcademicSupportServices>

## SECURITY

In the case of an emergency, if at all possible, the class should shelter in place. If the building that the class is in is affected, follow the evacuation procedures for the building. After evacuation, seek shelter at a predetermined rendezvous location.

## COURSE SCHEDULE (Subject to change)

**Week 1, January 11:** *Course Introduction*

**Week 2, January 18:** **NO CLASS, Martin Luther King Jr. Day**

*Supreme Court Tour* (Substitute for Wed., Apr. 28 class)

**Week 3, January 25:** *Introduction to the Supreme Court; Oral Arguments*

- Baum, All
- Johnson, Timothy R., and Jerry Goldman. 2009. “The Role of Oral Arguments in the Supreme Court.” From *A Good Quarrel*, eds. Timothy R. Johnson and Jerry Goldman.
- Lithwick, Dahlia. 2009. “*Elk Grove Unified School District v. Newdow*.” From *A Good Quarrel*, eds. Timothy R. Johnson and Jerry Goldman.

**Week 4, February 1: Supreme Court Appointments; Intro to Data Analysis**

- Excerpt from: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York, NY: Cambridge University Press.

**Week 5, February 8: “Deciding to Decide”: The Certiorari Process; More Data Analysis**

- Excerpt from: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York, NY: Cambridge University Press.

**Week 6, February 15: NO CLASS, Presidents’ Day**

**\*\* Data analysis assignment due Monday, February 22**

**Week 7, February 22: Law versus Ideology: The Legal versus Attitudinal Model (Part I)**

- Excerpt from: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York, NY: Cambridge University Press.
- Segal, Jeffrey A. 1984. “Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-81.” *American Political Science Review* 78:891-900.
- George, Tracey E., and Lee Epstein. 1992. “On the Nature of Supreme Court Decision Making.” *American Political Science Review* 86:323-37.

**Week 8, March 1: Law versus Ideology: The Legal versus Attitudinal Model (Part II)**

- Kahn, Ronald. 1999. “Institutionalized Norms and Supreme Court Decision-Making: The Rehnquist Court on Privacy and Religion.” In *Supreme Court Decision-Making: New Institutional Approaches*, eds. Cornell W. Clayton, and Howard Gillman. Chicago: The University of Chicago Press.
- Gilman, Howard. 2001. “What’s Law Got to do With It?” *Law & Social Inquiry* 26:465-504.
- Knight, Jack, and Lee Epstein. 1996. “The Norm of Stare Decisis.” *American Journal of Political Science* 40:1018-35.
- Excerpts of abortion cases

**Week 9, March 8: Law versus Ideology: The Legal versus Attitudinal Model (Part III)**

- Richards, Mark J., and Herbert M. Kritzer. 2002. “Jurisprudential Regimes in Supreme Court Decision Making.” *American Political Science Review* 96:305-20.
- Bailey, Michael A., and Forrest Maltzman. 2008. “Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court.” *American Political Science Review* 102:369-84.
- Bartels, Brandon L. 2009. “The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court.” *American Political Science Review* 103(3):474-95.

**\*\* Midterm paper due Friday March 12 at 5:00pm SHARP**

**Week 10, March 15: NO CLASS, Spring Break**

**Week 11, March 22:** *Strategic Behavior: The Collegial Context*

- Maltzman, Forrest, and Paul J. Wahlbeck. 1996. "May It Please the Chief? Opinion Assignments in the Rehnquist Court." *American Journal of Political Science* 40:421-33.
- Maltzman, Forrest, and Paul J. Wahlbeck. 1996. "Strategic Policy Considerations and Voting Fluidity on the Burger Court." *American Political Science Review* 90:581-592.
- Wahlbeck, Paul J., James F. Spriggs, and Forrest Maltzman. 1998. "Marshalling the Court: Bargaining and Accommodation on the United States Supreme Court." *American Journal of Political Science* 42:294-315.
- Spriggs, James F., Forrest Maltzman, and Paul J. Wahlbeck. 1999. "Bargaining on the U.S. Supreme Court: Justices' Responses to Majority Opinion Drafts." *Journal of Politics* 61:485-506.

**Week 12, March 29:** *Strategic Behavior: The Separation-of-Powers Context*

- Epstein, Lee, and Thomas G. Walker. 1995. "The Role of the Court in American Society: Playing the Reconstruction Game." In *Contemplating Courts*, ed. Lee Epstein. Washington, D.C.: CQ Press.
- Eskridge, William. 1991. "Reneging on History? Playing the Court/Congress/President Civil Rights Game." *California Law Review* 79:613.

**Week 13, April 5:** *Constraint and Influence: Oral Arguments*

- Johnson, Timothy R., James F. Spriggs, and Paul J. Wahlbeck. 2007. "Oral Advocacy before the United States Supreme Court: Does it Affect the Justices' Decisions?" *Washington University Law Review* 85:457-527.

**Week 14, April 12:** *Constraint and Influence: The Solicitor General*

- Excerpt from: Pacelle, Richard L., Jr. 2003. *Between Law & Politics: The Solicitor General and the Structuring of Race, Gender, and Reproductive Right Litigation*. College Station, TX: Texas A&M University Press.
- Segal, Jeffrey A. 1990. "Supreme Court Support for the Solicitor General: The Effect of Presidential Appointments." *Western Political Quarterly* 43:137-52.
- Bailey, Michael A., Brian Kamoie, and Forrest Maltzman. 2005. "Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making." *American Journal of Political Science* 49:72-85.

**Week 15, April 19:** *Psychological Perspectives on Supreme Court Decision Making (Part I)*

- Excerpts from: Baum, Lawrence. 2006. *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton, NJ: Princeton University Press.
- Excerpts from: Klein, David, and Gregory Mitchell, eds. 2010. *The Psychology of Judicial Decision Making*. Oxford University Press.

**\*\* Oral arguments summary due by Monday, April 26**

**Week 16, April 26:** *Wrap-up; Meetings with Students about Final Papers*

**\*\* FINAL PAPER DUE DURING FINALS WEEK (on the day designated for our final exam)**