# The Supreme Court in United States History: The Great Questions Today PSC 212 Joel Seligman

# **SYLLABUS**

Welcome to the Supreme Court in United States History. This is a

discourse, and is strongly encouraged. Students must, however, remain civil with and respectful to all members of the class.

In this syllabus, Ronald D. Rotunda, Modern Constitutional Law: Cases and Notes (11<sup>th</sup> ed. 2015) is termed Casebook and materials in the additional packet of materials available for download from Blackboard are termed Handout.

Jan. 23 READING A CASE. Brown v. Board of Education, Casebook 720-724, Handout 1-7.

WRITING ASSIGNMENT ONE: Pass/Fail; Due Jan. 23, beginning of class. Maximum length two pages, double-spaced. Please bring a paper copy to class.

Write a brief for the *Brown* case, using the format given in the Handout at page 7.

Jan. 30 THE CONSTITUTION AND THE SUPREME COURT. Article III of the United States Constitution, Casebook Ixi-Ixii; Federalist Paper No. 78, Handout 8-12, Marbury v. Madison, Casebook 1-9; Alexander Bickel, *The Least Dangerous Branch* (excerpt), Handout 13-21; Using Parts of a Judicial Decision, I-II, Handout 22-23.

Framing Questions:

- 1. Should the Court alone have the right to declare laws unconstitutional?
- 2. Should the Supreme Court justices be appointed for lifetime tenure?

WRITING ASSIGNMENT TWO: Pass/Fail; Due January 30, beginning of class. Maximum length three pages total, double-spaced.

two pages) and prepare a one page memorandum advising the President on two concerns he has raised.

First, the President wants to know if he can publicly dismiss what the Court said about his and Madison's actions as mere *dicta*. Please clarify what is holding and what is *dicta* in the opinion, and advise the President whether the language about the Jefferson Administration's actions is *dicta*. Second, while the President feels that he "won" this time, he is concerned about the possibility that the Supreme Court might declare unconstitutional the Repeal Act of 1802, which abolished the jobs of the new circuit judges appointed by the outgoing Federalists. Please formulate the rule applicable to future cases on judicial constitutional review of legislation that you formulate from *Marbury v. Madison*. Finally, briefly advise the President on whether in your opinion *Marbury* would support the Court ruling that it had the power to declare the Repeal Act of 1802 unconstitutional, or is too narrow a holding to justify such a ruling.

**Feb. 6** STRUCTURE OF CONSTITUTIONAL POWERS. United States Constitution, Casebook Iiii-Ixiii; McCulloch v. Maryland, Casebook 75-83; Korematsu v. United States, Handout 24-31; Youngstown Sheet & Tube Co. v. Sawyer, Casebook 344-351; United States v. Nixon, Casebook 414-420.

#### Framing Questions

- 1. Why are there three branches of government?
- 2. Why are powers of Congress limited?
- 3.

Raich, Casebook 268-269; Nat'l Federation of Independent Business v. Sebelius Case and Note, Handout 32-47.

WRITING ASSIGNMENT THREE: Graded; due on February 20, beginning of class. Maximum length four pages, double-spaced. Please bring a paper copy to class.

Ellie's Deli is a family-owned restaurant in Utica, New York, specializing in vegan cuisine and homemade pies, with a seating capacity of 220 customers. It is located near an exit off Interstate 90 and a somewhat greater distance from railroad and bus stations. The restaurant purchases locally the majority of its \$570,000 worth of food supply per year; the remainder (primarily apples for the pies) comes from an organic farm owned in partnership by the restaurant and a cooperative of local farmers. A new United States v. Virginia, Casebook 824-825; Note on Equal Rights Amendment, Handout 93-96; Levels and Standards of Judicial Review, Handout 97.

# For Discussion:

Make the case for or against constitution

WRITING ASSIGNMENT FOUR: Graded; due beginning of class, March 27. Maximum length four pages, double-spaced. Please bring a paper copy to class.

Gloucester County High School has a policy requiring students to use bathrooms corresponding to their "biological sex." Gavin Grimm, a transgender boy who was born female and is now in his freshman year of high school, has a deep voice and facial hair, as a result of hormone therapy. He alleges that the school's policy is discriminatory and violates his civil rights. He wants to be able to use the male bathrooms and locker rooms in the school. The case is now pending before the Supreme Court. Using only the cases addressing implied rights in the last two classes, write an argument defending the position of either Gavin Grimm and his right to use the bathroom of the sex with which he identifies, or or the Gloucester County School Board for their "biological sex" bathroom policy.

Before writing, please review Using the Parts of a Judicial Opinion, III-IV and Using Several Judicial Opinions, I and II, Handout 48-53.

April 3 FREEDOM OF EXPRESSION I. Schenck v. United States, Casebook 1013-1014; Abrams v. United States, Casebook 1014-1015; New York Times v. Sullivan, Casebook 1149-1154; Gitlow v. New York, Casebook 1016-1017; Whitney v. California, Casebook 1017-1021; Shuttlesworth v. City of Birmingham, Casebook 1056-1060; Texas v. Johnson, Casebook 1243-1250.

#### For Discussion:

Can the state require public school children to salute the flag? What if a student agrees to salute the flag but does not have to say "under God"?

April 10 FREEDOM OF EXPRESSION II. Caplinsky v. New Hampshire, Terminiello v. Chicago, Feiner v. New York, Casebook 1087; Brandenburg v. Ohio, Casebook 1023-1024; Collin v. Smith, Casebook 1092-1093; R.A.V. v. City of St. Paul, Casebook 1093-1101; Virginia v. Black, Casebook 1103-1107; Snyder v. Phelps, Handout 161-169.

# For Discussion:

1. An all-Asian American Chinatown dance-rock band called the Slants wishes to register a trademark for its name, noting that record labels and agents require bands to register their names as trademarks. The Patent and Trademark Office (PTO) denied the trademark, arguing that a decades-old law forbids official recognition of trademarks that "may disparage" members of a particular ethnic group, in this case, fellow Asians. Groups supporting the position of the PTO argue that granting the trademark would open the floodgate for hate speech in this country. The Slants say that through the band's

function solely because it is a church is not permissible. Is the state correct to deny funding in this case?

By April 19, Sasha Tulgan will be in touch with you to

May 1

The remaining 25 percent of your grade will be based upon your preparation for, and participation in, class discussions, as well as your oral presentation/defense of a Constitutional amendment.

### CONTACT INFORMATION FOR SASHA TULGAN

Please feel free to ask Sasha Tulgan questions about the course content in general, and/or about writing assignments. You can reach her by email at: sasha.tulgan@rochester.edu.