The body of Supreme Court decisions that interpret and give meaning to provisions in the United States Constitution makes up what scholars and lawyers call “Constitutional Law.” Americans commonly believe that the various provisions of the Constitution mean what the Supreme Court says they mean. But is this really true? Do other institutions have the authority to interpret the Constitution for them? Can we find meaning in the Constitution outside Court decisions? How do the justices know what nebulous concepts like “liberty” mean, and how much deference should they give to the democratically elected legislatures who pass statutes that represent the popular will of the people? How do we determine the scope of the President’s executive powers? Who determines what the proper meaning of the President’s so-called “commander-in-chief power?” What powers should States have in the 21st Century? And what principles should be used when judges or others engage in constitutional interpretation? This semester, we are going to examine these and other questions regarding constitutional theory and interpretation. We will study key areas of the Constitution and constitutional law, including judicial review, basic structures of governments, the powers of Congress and of state legislatures, and voting rights.

In the past decade, the U.S. Supreme Court has handed down major decisions regarding the constitutionality of military efforts to classify and detain “enemy combatants” in the war on terrorism, the scope of federal legislative powers (including Obamacare), the scope of state sovereignty, affirmative action programs used by universities in their admissions process, state laws making “homosexual sodomy” a crime, same-sex marriage, campaign finance, the right to bear arms, voting rights and the taking of private property through eminent domain. Of course, the text of the U.S. Constitution is vague, and often times silent on these and other particular policy issues. The Court has to interpret various constitutional provisions to determine the limits of federal power, the scope of individual rights, whether legislation passed by democratically elected legislatures violates the meaning of those provisions.

The goals of this course are to understand the impact the Constitution and the Supreme Court have on law, politics, and society; trace the historical development of the Supreme Court and constitutional law; gain an understanding of the relevant legal doctrines; consider the role of executive and legislative actors in constitutional interpretation; and explore various theoretical issues regarding the meaning of the Constitution, including theories of constitutional interpretation and the relationship between the rule of law and democracy. This requires that you keep up with the reading assignments, and that you develop and defend positions of your own regarding different legal issues and judicial philosophies. In the end, what you get out of this course really depends upon what you put into it. YOU MUST KEEP UP WITH THE READING OR YOU WILL BE HOPELESSLY LOST BY THE FIRST EXAM. Because much of the learning that takes place in this class happens in the classroom during in-class discussion, appropriate classroom demeanor and respect for your peers is required. You should familiarize yourself with the University’s student code of conduct; basically, you are expected to act as an adult and in a professional manner in class. Distractive or otherwise inappropriate behavior may result in your grade being lowered, dismissal from the class, or other disciplinary action.
Course Requirements: Readings, Assignments and Examinations

Readings. We will focus on Supreme Court cases in the casebook, *American Constitutionalism: Volume 1 Structures of Government*, by Howard Gillman, Mark Graber and Keith Whittington (2nd Edition, 2017), designated by “GGW” on the syllabus. We will follow the outline below; at the end of each class you will be told which cases or portions of the assigned readings to focus on for the next class. You should take note at the outset of this class that the cases themselves are only partially the subject of our study. Rather, the cases are examples of problems (legal and political in nature) that arise in the context of constitutional interpretation, and they are examples of how to analyze those problems. Simply memorizing the outcome in the cases is merely one of many objectives in this course; rather you should use the opinions in the Supreme Court cases as examples of reasoning, analysis and argumentation, and learn to apply those methods of reasoning, analysis and argumentation to new and hypothetical scenarios. Additionally, other supplemental readings will be made available to you on Blackboard throughout the semester (“BB” on the syllabus). You are responsible for any materials assigned in class. The supplemental readings will allow us to go beyond the caselaw of the Supreme Court and address important issues involving the role of the Court and other institutions in constitutional construction, the meaning of the Constitution in a historical context and debates over interpretive theories. You are also expected to read a reputable national news source and stay informed of any current events and developments relevant to the course material.

Assignments and Exams. It is very difficult to learn the material in this course and to develop your own positions on the legal, political and theoretical issues raised throughout the course, without being actively engaged in discussion and debate. Class is an open forum for discussion. You are encouraged to go out on the proverbial limb and take intellectual risks as you wrestle with the material in this course. Regular attendance, preparation and participation are required. You will be expected to answer questions in class about the readings for each class. Regular class absences or lack of preparedness will adversely affect your grade. In addition, there will be a midterm examination and a final examination. You will also be required to do a case brief which will be assigned during the first two weeks of the semester and will not require any outside research.

No late assignments will be accepted. Academic misconduct of any type on an assignment or exam will result in a grade of “F” for the course, non-negotiable.

Grades will be based on attendance and participation, a case brief (assignment will be made available on Blackboard) and two exams. Final course grades will be calculated as follows:

- Attendance and participation (15%)
- Case brief, due **Thursday, January 25**, Safe Assign AND hard copy in class (15%)
- Midterm Exam, **Thursday, March 9** in class (30%)
- Final Exam, **Tues, May 8, 10:00-11:50 AM** (40%)

* Note that exceptional in-class participation can be weighed more heavily. “Exceptional” means quality - not quantity – of participation. Additionally, the Final Exam may be weighted more heavily for those who show substantial improvement over their midterm exam.
Course Outline

Note: Casenames are in italics and page references for Court decisions are to the Gillman, Graber and Whittington ("GGW") casebook. Additional readings and court opinions will be available on Blackboard ("BB"). We will follow the order of the readings as listed below, but you should pay attention in class for the pace of our progress and possible modifications.

I. Introduction: Overview of the Constitution, Supreme Court and Judicial Review

A. Establishment of Judicial Review
   Readings: The U.S. Constitution, 715-727
   GGW, Ch. 1, pp. 3-10
   GGW, Ch. 3 (all)
   GGW, Ch. 4, pp. 93-118
   - Calder v. Bull, p. 104
   - Marbury v. Madison, p. 106
   - Martin v. Hunter's Lessee, p. 115

B. Legitimacy, Constitutional interpretation and Scope of Judicial Review
   Readings: GGW, Ch. 1, pp. 10-18
   GGW, Ch. 10, pp. 568-582
   GGW, Ch. 11, pp. 619-627
   - Cooper v. Aaron pp. 440
   - City of Boerne, p. 621
   - Baker v. Carr, pp. 449
   - Nixon v. U.S., BB
   - Massachusetts v. EPA p. 629
   - Elk Grove School District v. Newdow, BB

C. The Elected Branches and Constitutional Politics
   Readings: GGW Ch 1, pp. 18-26
   GGW Ch. 6, pp. 256-257

II. Federalism: National vs. State Powers

A. The Necessary and Proper Clause and State Sovereignty
   Readings: GGW Ch. 4, pp. 118-139
   - McCulloch v. Maryland, 129
   GGW, Ch. 5, 201-206
   - Comstock v. U.S., BB

B. The Commerce Power
   Readings: GGW, Ch. 4, pp. 145-153
   - Gibbons v. Ogden, p. 149
   GGW Ch. 7, pp. 354-367
   - E.C. Knight, p. 359
C. The Taxing and Spending Powers
Readings: GGW Ch. 10, pp. 584-588
- *South Dakota v. Dole*, p. 585
- *Sebelius*, BB

D. The Tenth and Eleventh Amendments and Issues of State Sovereignty
Readings: GGW Ch. 4, pp. 156-163
- *Chisholm*, p. 159
GGW Ch. 9, pp. 532-537
- *NLC v. Usery*, 532
GGW Ch. 10, pp. 587-594
- *Garcia v. San Antonio MTA*, p. 589
GGW Ch11., pp.657-676
- *Thornton*, p. 658
- *Printz*, p. 664
- *Chisholm v. Georgia* p. 159
- Read “The Passage of the Eleventh Amendment,” p. 162
- *Alden v. Maine*, p. 670
- *Nevada Dept. of HR v. Hibbs*, BB
- *Sebelius*, BB (reread)

III. The Separation of Powers

A. Executive Power, National Security and War Powers
Readings: GGW, Ch. 6, pp. 295-313
- *Ex Parte Merryman*, p. 299
- *The Prize Cases*, p 311
GGW, Ch. 8, pp. 490-502
- *Korematsu v. United States*, BB
- *Steel Seizure Case*, p. 493

GGW, Ch. 9, pp. 543-553
- *The Keith Case*, p. 550

GGW, Ch. 11, pp. 686-707
- *Hamdi v. Rumsfeld*, p. 701

**B. Congressional Power, Executing the Law and the Administrative State**

Readings: GGW, Ch., pp. 504-509
- *Curtiss-Wright*, p. 507

GGW Ch. 10, pp. 596-606
- *INS v. Chadha*, p. 597
- *Bowsher v. Synar*, p. 603
- *Mistretta*, BB

GGW, Ch. 11, pp. 676-686
- *Clinton v. NY*, p. 678

**C. Appointment and Removal Powers**

Readings: GGW, Ch. 4, pp. 170-173
- *Myers v. U.S.*, p. 403

GGW, Ch. 8, pp. 502-504
- *Buckley v. Valeo*, BB
- *Morrison v. Olson*, p. 606

**D. Executive Privilege and Immunity**

Readings: GGW, C. 9 pp. 553-558
- *U.S. v. Nixon*, 553

**IV. Democracy, Elections and Voting Rights**

Readings: GGW, Ch. 4, pp. 179-182
- *South Carolina v. Katzenbach*, p. 477
- *Gomillion v. Lightfoot*, BB

GGW, Ch. 10, pp. 563-566
- *Shaw v. Reno* (BB)

GGW, Ch. 11, pp. 658-663
- *Thornton*, p. 658 (reread)
- *Shelby County* (BB)
Other Items and Policies:

Undergraduate Writing Awards
The Department of Political Science recognizes, on an annual basis, outstanding undergraduate papers written in conjunction with 300-400 level political science courses or directed studies, such as independent studies or honors theses. Winners are expected to attend the Department’s spring graduation ceremony where they will receive a certificate and a check for $100.00. No more than two papers may be submitted by a student. There is no requirement as to the length of papers submitted for the award. Often the Department awards prizes for both an outstanding short paper and an outstanding long paper. The number and types of award is dependent upon the papers submitted for consideration in any given year. Authors do not have to be political science majors or have a particular class standing. Only papers written in the previous calendar year are considered for the award. However, papers completed in the current spring semester are eligible for the following year’s competition even if the student has graduated. Papers can be submitted by students or faculty and must be supplied in triplicate to the undergraduate secretary. All copies must have two cover pages – one with the student’s name and one without the student’s name. Papers are not to be stapled or bound. Instead, please use paper clips. Papers are generally due in March and notice of call for papers and submission deadlines will be published in the department e-announcements. You may also contact the department for information at 753-1015.

Department of Political Science Web Site
Undergraduates are strongly encouraged to consult the Department of Political Science website on a regular basis. This up-to-date, central source of information will assist students in contacting faculty and staff, reviewing course requirements and syllabi, exploring graduate study, researching career options, tracking department events, and accessing important details related to undergraduate programs and activities. To reach the site, go to http://polisci.niu.edu.

Accommodations for Students with Disabilities
A student who believes that reasonable accommodations with respect to course work or other academic requirements may be appropriate in consideration of a disability must (1) provide the required verification of the disability to the Center for Access-Ability Resources, (2) meet with the Center for Access-Ability Resources to determine appropriate accommodations, and (3) inform the faculty in charge of the academic activity of the need for accommodation. Students are encouraged to inform the faculty of their requests for accommodations as early as possible in the semester, but must make the requests in a timely enough manner for accommodations to be appropriately considered and reviewed by the university. If contacted by the faculty member, the staff of the Center for Access-Ability Resources will provide advice about accommodations that may be indicated in the particular case. Students who make requests for reasonable accommodations are expected to follow the policies and procedures of the Center for Access-Ability Resources in this process, including but not limited to the Student Handbook. A wide range of services can be obtained by students with disabilities, including housing, transportation, adaptation of printed materials, and advocacy with faculty and staff. Students with disabilities who need such services or want more information should contact the Center for Access-Ability Resources at 815-753-1303.