PSC 3192W: SUPREME COURT SIMULATION
Department of Political Science   ●   George Washington University
Spring 2024   ●   Wednesdays, 12:45 – 3:15   ●   Monroe 115

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Office hours: Fridays, 1:45-3:15pm (or by appt.)

COURSE DESCRIPTION
In this course, we will engage with political science and legal scholarship on Supreme Court decision making, legal interpretation, the use of precedent, and written and oral argumentation before courts. Students will apply their knowledge of these topics in **Supreme Court simulation** where they will play the roles of lawyers and Supreme Court justices and experience what it is like to argue and decide difficult legal issues. This course is a WID (Writing in the Discipline) course, and there will be three core writing assignments directly related to the simulation component of the course. Students will learn writing techniques for: (1) communicating and applying precedent and legal doctrine to disputes over statutory and constitutional matters, (2) answering legal questions with well-argued legal justifications, and (3) considering and examining alternative arguments to their preferred positions.

LEARNING OUTCOMES
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.
- have a greater understanding of how lawyers and justices do their work in cases (participating in oral arguments, writing briefs, opinions, debating important legal and constitutional issues, etc.) as a result of engaging in the simulation component of the course.

READINGS
You do not need to purchase any textbooks for this class. All books, book sections, and articles are available to download for **FREE** via the GW library.

OUT-OF-CLASS, INDEPENDENT LEARNING PER WEEK
Students are expected to spend a minimum of 300 minutes of out-of-class work for every 150 minutes of direct instruction, for a minimum total of 2.5 hours a week. For our class, students should expect to have 2.5 hours of direct instruction and a minimum of 5 hours of independent learning, totaling a minimum of 7.5 hours per week

COURSE REQUIREMENTS

1. Class attendance and participation (10%): Students are expected to come to class having done the required reading and/or preparation for simulation. Since we will be engaging in Supreme Court simulation, coming to class every week is particularly important for the ultimate success of the simulation. Simulation will ONLY work well if every student is sufficiently prepared each week.

Core components of simulation:

- Each student will participate in the role of a lawyer (in one case) and Supreme Court justice (in multiple cases). As justice, you will take on the role of one of the current or retired justices.
- As lawyer, each student will choose a pending case on the Supreme Court's docket that has not yet been granted full review and oral argument. An ideal source for these cases is Scotusblog.com's "Petitions We're Watching" (see "Petitions" on the main menu bar). Such cases are viable candidates for full review (i.e., cert grants) by the Supreme Court. When you click on the links, you'll see links for the lower court ruling, the cert petition, and other material. I will go over this website in class. Students should choose their case by **Friday, Feb. 9**. I encourage you to research cases and narrow down early in the semester.
- You'll write about this case for the midterm paper and lawyer brief assignments discussed below. You will also do two oral presentations: a presentation of your midterm paper and the full oral argument in front of student justices based on your lawyer brief.
- As justice, each student will participate in 8 lawyer oral arguments. Justices will also participate in a discussion and conference vote on their cases.

2. Midterm paper (20%): Each student will write a paper analyzing the facts, background, and legal context of the case on which you are a lawyer. Key to this paper assignment is demonstrating a your knowledge and understanding of the relevant **Supreme Court precedents and legal doctrines** that are central to your case—and the beginnings of how they apply to your case. For this paper, you are not specifically presenting your written argument for your position on the case; you will do that in your lawyer brief. The core objective is this paper is to show what you have learned about the core legal precedents and doctrine that are central to your case. Papers should be approximately **3,500 words** (which is about 10-12 pages, double-spaced). Papers can be slightly longer, but they should not be any shorter. I will provide more detail in the form of guidelines and a rubric. **Due Fri., March 1.**

3. Midterm paper presentation (lawyer) (10%): Each lawyer will have 9 minutes to present and "teach" the rest of us about Supreme Court precedents and legal doctrines central to their case. The point is not to argue for your position in the case, which you'll do in full oral arguments. Instead, the objective is to explain to the rest of us what you have learned about the legal context of your case and how it will generally apply. I will provide more details about this. Students should save a little bit of time for questions from the justices who will participate in this case.

4. Lawyer brief (20%): Each student will prepare a lawyer brief designed to persuade the justices to vote in your favor on the central legal question(s) in the case. *A lawyer brief is an **answer** to the legal question and a set of legal justifications (rooted in precedent and legal doctrine) for **why** the legal question should answered in your favor*. A lawyer brief includes: (1) the legal question(s), (2) facts of the case, (3) which legal provisions (constitutional or statutory) are at play, (4) an answer to the legal question that is justified by arguments, precedents, and legal doctrine, and (5) an examination of alternative arguments and why you think your argument is superior. The fourth and fifth parts will constitute the bulk of your lawyer brief. The briefs will be published on Blackboard so the justices in your case can read them in advance of oral arguments. Lawyer briefs

should be approximately **3,500 words** (which is about 10-12 pages, double-spaced). They can be slightly longer, but they should not be any shorter. I will provide more detail in the form of guidelines and a rubric. **Due Sun., Mar. 31**.

5. **Oral argument (lawyer)** (10%): Oral arguments are rooted in the lawyer brief. Each lawyer will have about 18 minutes for oral argument. We will do oral arguments over 2 class sessions. We will use Chief Justice Roberts' oral argument structure that was used during Covid: Each lawyer gives a 2-3 minute overview of their arguments and perhaps some additional points for emphasis. Then, the justices ask questions. Thus, the bulk of the argument is not a formal presentation by the lawyer but a lively and rigorous Q&A between the justices and the lawyer.

6. **Oral argument (justice participation**) (10%): Justices will carefully read through the lawyers' briefs ahead of oral argument. Per the format discussed above, the justices will ask questions and present hypotheticals to the lawyers to gain clarity on the briefs and the case more generally. I strongly recommend that each justice prepare a brief list of questions for each lawyer *before* oral arguments. But in addition, you may think of some questions spontaneously, arising in the course of the colloquy between the lawyer and justices. In the week after oral arguments, justices will convene to discuss and vote on each case.

7. **Written opinions (Final Paper)** (20%): Each justice will write an opinion in ONE case in which they were justice. If the justice is in the majority, he or she will write the paper as if it's the majority opinion. If in dissent, the justice will write the opinion as if it's the primary dissent. Papers should be approximately **3,500 words** (which is about 10-12 pages, double-spaced). Papers can be slightly longer, but they should not be any shorter. I will provide more detail in the form of guidelines and a rubric. **Due Finals Week** (designated date of final exam).

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				

COURSE SCHEDULE (Subject to minor changes)

Week 1, Jan. 17: *Course Introduction*

Week 2, Jan. 24: *The Supreme Court: Introduction and Basics*
- Greenhouse, Linda. 2012. *The U.S. Supreme Court: A Very Short Introduction.* Oxford University Press. [Available for free download via GW library.]

Optional:
- Johnson, Timothy R. 2016. "The Supreme Court Decision Making Process." *Oxford Research Encyclopedia of Politics*. https://oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-98 (January 13, 2020).
- Bartels, Brandon L. 2015. "The Sources and Consequences of Polarization in the U.S. Supreme Court." In *American Gridlock: The Sources, Character, and Impact of Political Polarization*, eds. James A. Thurber and Antoine Yoshinaka. New York, NY: Cambridge University Press.

Week 3, Jan. 31: *Legal Interpretation*
- Solum, Lawrence B. 2018. "Originalism versus Living Constitutionalism: The Conceptual Structure of the Great Debate." *Northwestern University Law Review* 113(6): 1243–96.
- Tobia, Kevin, Brian G. Slocum, and Victoria Nourse. 2021. "Progressive Textualism." *Georgetown Law Journal* 110(6): 1437–94.
- Balkin, Jack M. 2007. "Fidelity to Text and Principle." *Advance: The Journal of the ACS Issue Briefs* (2): 47–56.

Research cases for lawyer role; narrow down options (by Friday, Feb. 2)

Week 4, Feb. 7: *Precedent and Legal Doctrine I*
- Gerhardt, Michael J. 1991. "Role of Precedent in Constitutional Decisionmaking and Theory." *George Washington Law Review* (1): 68–159. ***Read Sections I and II, pp. 76-114***.
- Barrett, Amy Coney. 2012. "Precedent and Jurisprudential Disagreement." *Texas Law Review* 91(7): 1711–38.
- Re, Richard M. 2020. "Precedent as Permission." *Texas Law Review* 99(5): 907–50.

Select lawyer case by Friday, Feb. 9; research case

Week 5, Feb. 14: *Precedent and Legal Doctrine II*
- Solum, Lawrence B. 2018. "Originalist Theory and Precedent: A Public Meaning Approach." *Constitutional Commentary* 33(3): 451–70.
- Strauss, David A. 2015. "Does the Constitution Mean What It Says?" *Harvard Law Review* 129(1): 1–61.
- Grove, Tara Leigh. 2023. "Is Textualism at War with Statutory Precedent?" *Texas Law Review* (Forthcoming). https://papers.ssrn.com/abstract=4583510.

Week 6, Feb. 21: *"Making Your Case": Written and Oral Argumentation and Persuasion*
- Scalia, Antonin, and Bryan Garner. 2008. "Making Your Case." *ABA Journal* 94(5):41-48.
- Case study, ***303 Creative LLC v. Elenis*** **(2023)**:
    - https://www.scotusblog.com/case-files/cases/303-creative-llc-v-elenis/
    - Read lawyer briefs (petitioner, respondent, and petitioner's reply brief)
    - Read Supreme Court's majority opinion (skim dissent).

Week 7, Feb. 28: *"Making Your Case" Contd.; Lawyer Groups, Discuss Midterm Papers*

** Midterm paper due Friday, March 1 **

Week 8, Mar. 6: *Oral Presentations of Midterm Papers*
- Read midterm papers on which you're a justice.

** No class Mar. 13 – Spring Break **

Week 9, Mar. 20: *Small Group Discussion of Cases and Lawyer Briefs*

Week 10, Mar. 27: *Discussion Among the Justices About the Cases*

** Lawyer Briefs Due Sunday, Mar. 31 **

Week 11, Apr. 3: *ORAL AGUMENTS, DAY 1*

Week 12, Apr. 10: *ORAL ARGUMENTS, DAY 2*

Week 13, Apr. 17: *Conference Discussion of Cases; Casting Votes; Determine Majority and Minority Opinions; Discuss Written Opinions*

Week 14, Apr. 24: *Discussion of Oral Arguments and Opinions; Course Wrap-up*

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

University Policies

Academic Integrity Code

Academic integrity is an essential part of the educational process, and all members of the GW community take these matters very seriously. As the instructor of record for this course, my role is to provide clear expectations and uphold them in all assessments. Violations of academic integrity occur when students fail to cite research sources properly, engage in unauthorized collaboration, falsify data, and otherwise violate the Code of Academic Integrity. If you have any questions about whether or not particular academic practices or resources are permitted, you should ask me for clarification. If you are reported for an academic integrity violation, you should contact Student Rights and Responsibilities (SRR) to learn more about your rights and options in the process. Consequences can range from failure of assignment to expulsion from the University and may include a transcript notation. For more information, please refer to the SRR website at studentconduct.gwu.edu/academic-integrity, email rights@gwu.edu, or call 202-994-6757.

University policy on observance of religious holidays

Students must notify faculty during the first week of the semester in which they are enrolled in the course, or as early as possible, but no later than three weeks prior to the absence, of their intention to be absent from class on their day(s) of religious observance. If the holiday falls within the first three weeks of class, the student must inform faculty in the first week of the semester. For details and policy, see "Religious Holidays" at provost.gwu.edu/policies-procedures-and-guidelines.

Use of Electronic Course Materials and Class Recordings

Students are encouraged to use electronic course materials, including recorded class sessions, for private personal use in connection with their academic program of study. Electronic course materials and recorded class sessions should not be shared or used for non-course related purposes unless express permission has been granted by the instructor. Students who impermissibly share any electronic course materials are subject to discipline under the Student Code of Conduct. Please contact the instructor if you have questions regarding what constitutes permissible or impermissible use of electronic course materials and/or recorded class sessions. Please contact Disability Support Services at disabilitysupport.gwu.edu if you have questions or need assistance in accessing electronic course materials.

Academic support

Writing Center

GW's Writing Center cultivates confident writers in the University community by facilitating collaborative, critical, and inclusive conversations at all stages of the writing process. Working alongside peer mentors, writers develop strategies to write independently in academic and public settings. Appointments can be booked online at gwu.mywconline.

Academic Commons

Academic Commons provides tutoring and other academic support resources to students in many

courses. Students can schedule virtual one-on-one appointments or attend virtual drop-in sessions. Students may schedule an appointment, review the tutoring schedule, access other academic support resources, or obtain assistance at academiccommons.gwu.edu.

Support for students outside the classroom

Disability Support Services (DSS) 202-994-8250

Any student who may need an accommodation based on the potential impact of a disability should contact Disability Support Services at disabilitysupport.gwu.edu to establish eligibility and to coordinate reasonable accommodations.

Counseling and Psychological Services 202-994-5300

GW's Colonial Health Center offers counseling and psychological services, supporting mental health and personal development by collaborating directly with students to overcome challenges and difficulties that may interfere with academic, emotional, and personal success. healthcenter.gwu.edu/counseling-and-psychological-services.

Safety and Security
- Monitor GW Alerts and Campus Advisories to Stay Informed before and during an emergency event or situation
- In an emergency: call GWPD/EMeRG 202-994-6111 or 911
- For situation-specific actions: refer to GW's Emergency Response Handbook and Emergency Operations Plan
- In the event of an armed Intruder: Run. Hide. Fight.

AI Policy (written by Profs. Robert Betz and Eric Lawrence)

We are entering a new technological era with the rise of generative Artificial Intelligence (AI), such as GPT, LLaMA, laMDA and other large language models, that are driving an ongoing conversation about their academic uses. Writing aid products like Grammarly, QuillBot, Caktus.ai, etc. advertise their AI features (GrammarlyGO, etc.). We are also learning about the potential benefits and misuse of AI and how it can be applied in the classroom. Learning to use generative AI is an emerging skill, but we must use generative AI tools effectively and responsibly.

Generative AI has been discussed at length within academia, but other sectors are also grappling with its use due to its rapid rise and increased access to the tools. In the private sector, e.g., many workplaces are considering banning its use, partly due to security risks (see "Most businesses to ban ChatGPT, generative AI apps on work devices," August 8, 2023, CSOonline). We are all trying to figure out the right way to use GAI in the long and medium run, but below I have outlined the expectations in our class of its permitted and prohibited use.

Permitted:

- A student types a prompt into an AI tool and reviews the generated content to help them study for a quiz or exam (i.e., a study guide).

- A student types a prompt into an AI tool and uses the generated content to help them brainstorm ideas for a paper or research project.
- A student types a prompt into an AI tool and uses the generated content to help them create a citation for a source and/or reference list.
- A student types a prompt into an AI tool and uses the generated content to help them with small group discussion.

Citing GAI and Verifying its Accuracy:

- By submitting work for evaluation in this course, *you represent it as your own intellectual product*. If you include content (e.g., ideas, text, code, images) that was generated, in whole or in part, by generative AI tools (including, but not limited to, ChatGPT and other large language models) in work submitted for evaluation in this course, you must document and credit your source. Material generated using other tools should be cited accordingly.
- If you include material generated by a generative AI tool and it is substantively incorrect you will lose points as appropriate. You should verify the accuracy of all content you include in your work.

Sample citation:

- "ChatGPT-4. (YYYY, Month DD of query). 'Text of your query.' Generated using OpenAI. https://chat.openai.com/.
  - "ChatGPT-4 (2023, August 9) 'What is a pressing policy issue in the District of Columbia?" Generated using OpenAI. https://chat.openai.com/.

Prohibited:

- While taking an out-of-class ("take-home") or an in-class quiz, a student types a prompt into a generative AI tool and incorporates some or all of the generated content into their submitted answer.

Be aware of the limits of GAI:

- Generative AI is a tool, but you need to cite it when you use it. Always. No exception. And you are prohibited from using it as stated above.
- It may stifle your own independent thinking, creativity, and understanding of class concepts. Minimum effort into both generative AI prompts and your assignments will produce low quality results. Effectively and correctly using AI in academic work takes time and effort.
- Don't trust anything or everything AI says. If it gives you a number or fact, assume it is wrong un- less you either know the answer or can check it with another non-AI source. This is an opportunity for you to practice your critical analysis skills. As noted above, you will be responsible for any errors of omissions provided by the tool.
- AI tools are based on data that can include biases and reflect historical or social inequities and thus the AI tool can replicate those biases and inequities. Be aware that it can also produce problematic and potentially offensive answers.