

PPD 314
PUBLIC POLICY AND THE LAW
Spring 2017

Professor Nona Randois
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Class Meeting: Tues 6:00-9:20pm
Class Location: VKC 205
Office Hours: Tues 5:00 – 6:00pm
or by appointment

As every student of American government and policy understands, the Framers of the U.S. Constitution created three separate and distinct branches of government: the Executive, the Legislative, and the Judicial. The goal of this class is to investigate the means by which the president and the legislators create law and public policy, and then focus on how courts both enable—and limit—the elected branches' policymaking choices. We will study the U.S. Constitution and read and analyze a series of judicial opinions and case studies in order to understand the full extent of judicial power. As we will see, judges have addressed and shaped major policy issues throughout history, including voting rights, campaign finance, segregation, marriage, drugs, property rights, taxes, and guns.

By investigating judges and courts, the class will highlight an important (though often hidden) field of public policymaking in the judicial context. For this reason, the course is ideal for undergraduate students interested in law and public policy generally, but also for those students considering Law School.

The objectives of our class include the following: 1) identifying the division of policymaking powers across the three branches of government, 2) understanding the specific nature of courts' policymaking powers, 3) reading and analyzing judicial opinions, and 4) objectively presenting and discussing controversial law and public policy topics.

COURSE REQUIREMENTS AND GRADING

1. Class Participation—20%
2. Short Assignments—40% Please submit assignments via blackboard

Due January 31	Summary of Judge Posner's 9 Theories
Due: March 10	Report on California's recreational marijuana law
Due March 28-April 25	Three case briefs (please submit brief via blackboard <i>prior</i> to class discussion)
4. Midterm Examination—20%
5. Final Examination—20%

READING & ASSIGNMENTS

The reading assignments are presented on pages 3-5 below. All of the readings other than the Constitution and judicial opinions (cases) are available in a course reader at the bookstore. I have not included the Constitution and cases in the course reader in an effort to reduce costs. These materials can be found for free online from a variety of sources including the National Archives (the Constitution: <https://www.archives.gov/founding-docs/constitution>), Cornell's Legal Information Institute (<https://www.law.cornell.edu>), and Google Scholar (<https://scholar.google.com>). Please make sure when you start reading a case that the citation is the same as given below, because a court case often has several decisions with the same name and different citations. Also, when a case is assigned to read, the assigned reading includes all concurring and dissenting opinions.

A FEW TECHNICAL ISSUES

1. Due Dates. Assignments are due on the dates marked *** below.

2. Disability accommodations. Any student requesting academic accommodation based on a disability must register with Disability Services and Programs (DSP). A letter of verification for approval of accommodations can be obtained from DSP. Please be sure the letter is delivered to me as early in the semester as possible. DSP is located in STU 301 and is open 8:30 a.m. to 5:00 p.m., Monday through Friday. The phone number for DSP is (213) 740-0776.

3. Academic Integrity & Plagiarism. Students should maintain strict adherence to standards of academic integrity, as described in the University Student Conduct Code (available at <http://scampus.usc.edu/1100-behavior-violating-university-standards-and-appropriate-sanctions/>). Please note that the paragraph 11.11 of the code lists the following as an example of a code violation:
 - A. The submission of material authored by another person but represented as the student's own work, whether that material is paraphrased or copied in verbatim or near-verbatim form.
 - B. The submission of material subjected to editorial revision by another person that results in substantive changes in content or major alteration of writing style.
 - C. Improper acknowledgment of sources in essays or papers.

Note: Culpability is not diminished when plagiarism occurs in drafts that are not the final version. If any material is prepared or submitted by another person on the student's behalf, the student is expected to proofread the results and is responsible for all particulars.

OUTLINE AND READINGS

WEEK 1—INTRODUCTION

- January 10: *The Constitution of the United States* including all 27 amendments
(<https://www.archives.gov/founding-docs/constitution> or
<https://www.law.cornell.edu/constitution/overview>)
Maurice Vile, *The Separation of Powers*, 686-689 in *A Companion to the American Revolution* (Jack P. Greene and J.R. Pole, eds) (2004)
Michael Zuckert, *Rights*, 691-695 in *A Companion to the American Revolution* (Jack P. Greene and J.R. Pole, eds) (2004)

WEEK 2—THE POLICYMAKING PLAYERS: POLITICAL PARTIES AND ELECTED BRANCHES

- January 17: A. James Reichley, *Introduction & the Intention of the Founders*, 1-28 in *The Life of the Parties* (1992)
Daniel Farber and Philip Frickey, *Arrow's Theorem and the Democratic Process*, 38-62 in *Law and Public Choice: A Critical Introduction* (University of Chicago Press 1991)
Charles R. Shipan, *Does Divided Government Increase the Size of the Legislative Agenda?* 151-170 in *The Macropolitics of Congress* (E. Scott Adler and John S. Lapinski, eds) (Princeton University Press 2006)

WEEK 3-- THE POLICYMAKING PLAYERS: ACTIVISTS

- January 24: Edwin Amenta, Neil Caren, Elizabeth Chiarello, and Yang Su, *The Political Consequences of Social Movements*, 36 *Annual Rev. Soc.* 287-307 (2010)
Rebecca E. Zietlow, *Popular Originalism? The Tea Party Movement and Constitutional Theory*, 64 *Fla. L. Rev.* 483-511 (2012)

WEEK 4-- THE POLICYMAKING PLAYERS: JUDGES

- January 31: Judge Richard Posner, *Nine Theories of Judicial Behavior* 19-56 in *Richard Posner, How Judges Think* (Harvard College Press 2008)
Lee Epstein and Andrew Martin, *Does Public Opinion Influence the Supreme Court? Possibly Yes (But We're Not Sure Why)*, 13 *U. Pa. J. Const. Law* 263-281 (2011)

Submit a summary of Posner's Nine Theories

WEEK 5— UNDERSTANDING AMERICAN COURTS

- February 7: Lee Epstein and Thomas G. Walker, *Understanding the U.S. Supreme Court* 11-47 in *Constitutional Law for a Changing America: Institutional Powers and Constraints* (CQ Press 2014)
Marbury v. Madison, 5 U.S. 137 (1803)

WEEK 6—READING JUDICIAL OPINIONS

- February 14: *Gideon v. Wainwright*, 372 U.S. 335 (1962)
Brown v. Board of Education, 347 U.S. 483 (1954)

WEEK 7—MIDTERM

February 21

WEEK 8—THE RIGHT TO POSSESS GUNS

February 28: *District of Columbia v. Heller*, 554 U.S. 570 (2008)
Amanda Carey, *Chicago City Council passes new gun ordinance on handgun possession proposed by Mayor Daley* (The Daily Caller, July 2, 2010)

WEEK 9— THE RIGHT TO MARRY

March 7: *Loving v. Virginia*, 388 U.S. 1 (1967)
John DeWitt Gregory and Joanna Grossman, *The Legacy of Loving*, 51 Howard L.J. 15-52 (2008)
Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015)

Submit 4 page report on California's recreational marijuana law via Blackboard by Tuesday, March 21

WEEK 10: SPRING BREAK

March 14

WEEK 11— THE RIGHT TO USE MARIJUANA

March 21: Kenneth J. Meier, *The Politics of Drug Abuse: Laws, Implementation, and Consequences*, West. Political Q. 42-69 (1990).
Gonzales v. Raich, 545 US 1 (2005).
David Ogden, *Memorandum for Selected U.S. Attorneys on Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana* (October 19, 2009)

WEEK 12— THE RIGHT TO PRIVATE PROPERTY

March 28: *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)
Dolan v. City of Tigard, 512 U.S. 374 (1994)
Marice Ashe, JD, MPH, David Jernigan, PhD, Randolph Kline, JD, and Rhonda Galaz, JD, *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, Am J Public Health 93(9), 1404–1408 (September 2003).
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447982/>

WEEK 13— THE DUTY TO CONTRIBUTE PROPERTY TO THE COMMON GOOD

April 4: *Kelo v. City of New London*, 545 U.S. 469 (2005)
Amanda Goodin, *Rejecting the Return to Blight in Post-Kelo State Legislation*, 82 NYU L. Rev. 177-208 (2007)

WEEK 14— CONGRESS' POWER TO TAX AND SPEND

- April 11: Lee Epstein and Thomas Walker, *Taxing and Spending for the General Welfare*, 530-550 in *Constitutional Law for a Changing America: Institutional Powers and Constraints* (CQ Press 2014)
National Federation of Independent Business v. Sebelius, 567 U.S. ___, 132 S.Ct. 2566, 183 L. Ed. 2d 450 (2012)
Barry Friedman, *Obamacare and the Court: Handing Health Policy Back to the People*, 91 Foreign Affairs 87-98 (2012)

WEEK 15— THE RIGHT TO VOTE

- April 18: *Shelby County v. Holder*, 570 U.S. ___, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013)

WEEK 16— CAMPAIGN FINANCE

- April 25: *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)
Western Tradition Partnership v. Montana, 363 Mont. 220 (2011)
American Tradition Partnership v. Bullock, 567 U.S. __ (2012)
Michael W. McConnell, *In Defense of Citizens United*, 123 Yale Law Journal (2013)

Final Exam: May 9, 7:00-9:00pm