

Judicial Politics (Fall 2021)

POLS 6600-0 (CRN: 1175)

Department of Political Science and Public Administration
College of Liberal Arts and Social Sciences
Auburn University at Montgomery

Professor: David A. Hughes, Ph.D.
Meeting Times: M/W, 10:50 to 12:05 pm (Goodwyn 208)
Weekly one-on-ones, TBD
Office: Goodwyn Hall 209G
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Course Overview: This course offers a rigorous analysis of one of the three major political institutions in American politics—the judiciary. We will study how the U.S. Constitution institutionalizes the judiciary, how judges work as policy-makers in the American political system, and how the inherently political nature of the judiciary has payoffs for American politics. As such we will study judicial institutions, policy-making, appointments, decision-making, retirements, and much more. We will also draw parallels from the federal judiciary to other judicial institutions such as the American states. By the time you complete this course, you should have a rigorous understanding of some of the major pieces of literature in the area of judicial politics along with some of the outstanding questions that will continue to propel scholarly interests in this field.

Prerequisites: There are no prerequisites for enrolling in this course aside from standing as an Auburn University at Montgomery graduate student.

Student Learning Objectives: By the time students complete this course, they should be able to: (1) Analyze and critique prevailing theories related to law and courts, (2) Analyze how political actors and institutional rules affect legal outcomes, and (3) Summarize, explain, critique, and contribute to judicial politics research.

Textbooks and Materials: There are three required texts for this course. You should either purchase copies or acquire them from the AUM Library Reserves:

- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: Congressional Quarterly Press. ISBN: 978-1568022260.
- Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring about Social Change*, 2nd ed. Chicago: University of Chicago Press. ISBN: 978-0-226-72671-7.
- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press. ISBN: 978-0521789714.

Assigned journal articles are accessible via JSTOR or Google Scholar. Any other readings will be posted electronically on Blackboard.

Internet Materials: All course materials provided by me (syllabus, lecture slides, etc.) are available on my personal [website](#) or on [Blackboard](#).

Office Hours: I am available to meet with you either in-person or remotely during office hours to address any of your questions or concerns. Amidst the COVID-19 pandemic, I am making efforts to avoid crowding in the Political Science Department's office suite. To meet with me in-person, therefore, I ask that you reserve a 30 minute block of my office hours using the following web application ([link here](#)). Alternatively, you may schedule a video or voice conference if you would prefer to meet remotely.

Email: I encourage you to contact me via email as needed. Please note, however, that I observe ordinary working hours and will not necessarily respond to your email on a weekend, an AUM-observed holiday, or outside the hours of 9:00 am to 5:00 pm.

COVID-19: All AUM students and employees are required to properly wear face coverings (securely covering the nose and mouth) when inside campus buildings and using university transportation – regardless of vaccination status or distancing. Spaces where face coverings are required include classrooms, labs, common areas, elevators and other shared indoor spaces. Face masks do not have to be worn outdoors, when alone in private offices, when eating inside campus dining facilities, when in campus residence hall rooms with a roommate, in open-air athletic venues or when exercising in the Wellness Center.

A Note on Student Evaluations of Teaching: AUM utilizes voluntary student evaluations of teaching for each of its courses. These evaluations are anonymous, and I will not be able to view them until after final grades are posted. I value student input and use constructive comments to help me refine future iterations of the course. Nevertheless, as you complete these surveys, I ask that you please be aware of the following issues scholars have identified with respect to student evaluations of teaching:

- Research finds that student evaluations often reflect factors unrelated to instructor or course quality.
 - Courses that are required for degree programs, courses that have larger class sizes, and courses that require mathematics typically receive lower student evaluation scores.
 - Female instructors, instructors of color, members of the LGBTQ community, those with a linguistic accent, and older instructors are also likely to be penalized in student evaluations.
- Research finds that student evaluations of teaching are generally unrelated to student learning outcomes.
- To learn more about the problems scholars have identified with student evaluations of teaching, navigate to the following [address](#).

Course Requirements: The following assignments are intended to provide students with numerous opportunities to demonstrate achievement of the course objectives. Specific requirements are as follows:

• Research Paper:	60% (20% per draft)
• Discussion Leadership:	30% (15% per assignment)
• Participation:	10%

Research Paper: You will write a research paper that demonstrates your mastery of judicial politics. If you have already completed POLS 6060 and POLS 6080, then for your paper you will state a clear research question, outline your theory and hypotheses, and test those hypotheses using either quantitative or qualitative techniques. If you have not yet completed POLS 6060 and POLS 6080, then you may either write a literature review or a research design paper. Your final project will be between 5,000 and 10,000 words, including title page (with an abstract), tables and figures, notes, and references. Your writing should conform to the American Political Science Association's style guide. Your research paper will be due in three stages or drafts. The first draft will be a research proposal. Here, you will walk me through your proposed research question/literature review topic, theory and hypotheses/analysis of the major strains in

the literature, and potential sources for data/potential critiques of the literature. This draft should be between 2,000 and 3,000 words. Your second draft will be your first attempt at a fully-fledged paper. That is, it should be as close to the finished product as possible. I will return this product with comments, and you will use these comments to make final revisions for the third and final draft.

Discussion Leadership: Throughout the semester, you will be assigned to serve as a discussion leader on two occasions. On the days that you are the discussion leader, you will come to class prepared to lead the class in the engagement of that day's assigned readings. You will be assessed on this component based upon your written understanding of these readings and your ability orally to communicate your knowledge of these subjects. Your written and oral assessments will be weighted equally for the sake of grading. You will turn in a typed summary and critique of each of your assigned readings on the day you are the designated discussion leader via email. I will post additional information about my expectations regarding this assignment at a later date.

Participation: As the vast majority of this course requires you to engage in small group discussions, you are expected to be an active participant during our in-class meetings. Note that this is not the same thing as simply "showing up." Even on the days for which you are not assigned to be discussion leader, you are expected to have read the course materials and to have prepared to engage in thoughtful discussion with your peers relating to the day's concepts.

Late and Makeup Assignments: I will accept late assignments with the provision that any materials turned in late will be penalized by 10 percentage points for every day they are late. Exceptions may be granted for verifiable illnesses, emergencies, etc. Makeup assignments may be completed for full credit provided that you properly document the reason you were unable to complete an assignment by its due date and that you complete this makeup within seven days of the time you were cleared to resume AUM activities.

Grading Rubric: To help you better understand how I grade your written assignments, I provide the following grading rubric. Failure to adhere to academic standards of excellence are grounds for penalization as outlined in the section on "Academic Honesty."

- a) Grammar and Mechanics (33.33%): Writing earning full credit on this component of the rubric will exhibit no grammatical errors whatsoever. Sentence fragments, missing punctuation, or improper punctuation are all grounds for penalization as are improper citation formats.
- b) Organization and Flow (33.33%): Writing earning full credit on this component of the rubric will exhibit a clear and logical progression of ideas. Wandering writing styles with minimal attention to transitions in ideas are grounds for penalization.
- c) Clarity and Persuasiveness (33.33%): Writing earning full credit on this component of the rubric will exhibit a clearly identifiable and plausible argument supported appropriately by evidence. Vague or incoherent arguments that misrepresent or fail to cite appropriate evidence are grounds for penalization.

Final Grades: Your final grade will be assessed according to the following scale:

A	90 to 100
B+	87 to 89
B	80 to 86
C+	77 to 79
C	70 to 76
D+	67 to 69
D	60 to 66
F	Below 60

Tentative Schedule: A tentative schedule appears below. Please refer to the assigned readings and due dates often. Additional readings may be assigned from time-to-time as deemed necessary.

Date	Topic	Reading	Due
August 16	Syllabus	U.S. Constitution, Article III	
August 18	Introduction to American courts	<ul style="list-style-type: none"> Segal and Spaeth, Ch. 1 & 4 <i>Marbury v. Madison</i> (1803) 	
August 23	Judicial supremacy The counter-majoritarian difficulty	<ul style="list-style-type: none"> Bickel (1968)* Whittington, Keith. 2005. “Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court.” <i>American Political Science Review</i>. 	
Models of Judicial Decision-Making			
August 25	The Legal Model	<ul style="list-style-type: none"> Segal & Spaeth, Chs. 2 & 7 Spriggs, James and Thomas Hansford. 2002. “The U.S. Supreme Court’s Incorporation and Interpretation of Precedent.” <i>Law & Society Review</i>. 	
August 30	The Attitudinal Model	<ul style="list-style-type: none"> Segal and Spaeth, Ch. 3 & pp. 312-326 Gillman, Howard. 2001. “Review: What’s Law Got to Do with It? Judicial Behavioralists Test the ‘Legal Model’ of Judicial Decision Making.” <i>Law & Social Inquiry</i>. 	
September 1	The Strategic Model	<ul style="list-style-type: none"> Epstein and Knight, Chs. 1-2 Spriggs, James, Forrest Maltzman, and Paul Wahlbeck. 1999. “Bargaining on the U.S. Supreme Court: Justices’ Responses to Majority Opinion Drafts.” <i>The Journal of Politics</i>. 	
Assessing Judicial Attitudes and Policy-Making			
No Class for Labor Day Holiday (September 6)			
September 8	The spatial/utility model of judicial politics	<ul style="list-style-type: none"> Hammond, Bonneau, and Sheehan (Chs. 4-6)* Posner, Richard. 1993. “What do Judges and Justices Maximize? (The Same Thing Everybody Else 	

		Does).” <i>Supreme Court Economic Review</i> .	
September 13	Federal Judicial Ideology	<ul style="list-style-type: none"> Segal, Jeffrey A. and Albert D. Cover. 1989. “Ideological Values and the Votes of the U.S. Supreme Court Justices.” <i>American Political Science Review</i>. Giles, Micheal, Virginia Hettinger, and Todd Peppers. 2001. “Picking Federal Judges: A Note on Policy and Partisan Selection Agendas.” <i>Political Research Quarterly</i>. Martin, Andrew and Kevin Quinn. 2002. “Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999.” <i>Political Analysis</i>. 	
Staffing the Courts			
September 15	Federal Appointments	<ul style="list-style-type: none"> Segal and Spaeth, Ch. 5 Nemacheck, Christine. 2012. “Selecting Justice: Strategy and Uncertainty in Choosing Supreme Court Nominees.”* Kastellec, Jonathan, Jeffrey Lax, and Justin Phillips. 2010. “Public Opinion and the Senate Confirmation of Supreme Court Nominees.” <i>The Journal of Politics</i>. Howard, Nicholas O. and David A. Hughes. Forthcoming. “Revisiting Senatorial Courtesy and the Selection of Judges to the U.S. Courts of Appeals.” <i>Political Research Quarterly</i>. 	Draft 1 of research paper due
September 20-22	Elections	<ul style="list-style-type: none"> Hall, Melinda Gann. 2001. “State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform.” <i>American Political Science Review</i>. Hall, Melinda Gann and Chris Bonneau. 2008. “Mobilizing Interest: The Effects of Money on Citizen Participation in State Supreme Court Elections.” <i>American Journal of Political Science</i>. Hall, Melinda Gann and Chris Bonneau. 2013. “Attack 	

		<p>Advertising, the <i>White</i> Decision, and Voter Participation in State Supreme Court Elections.” <i>Political Research Quarterly</i>.</p> <ul style="list-style-type: none"> • Hughes, David. 2020. “Does Local Journalism Stimulate Voter Participation in State Supreme Court Elections?” <i>The Journal of Law and Courts</i>. 	
September 27	Retirements	<ul style="list-style-type: none"> • Hughes, David. 2019. “Judicial Institutions and the Political Economy of Retirements.” <i>Political Behavior</i>. • Vining, Richard. 2009. “Politics, Pragmatism, and Departures from the U.S. Courts of Appeals, 1954-2004.” <i>Social Science Quarterly</i>. 	
Agenda-Setting, Bargaining, and Decisions on the Merits			
September 29	Deciding to Decide Repeat Players The 10 th Justice	<ul style="list-style-type: none"> • Segal and Spaeth, Ch. 6 • Perry, H.W. 1991. <i>Deciding to Decide: Agenda Setting in the United States Supreme Court</i>, Chs. 2-3.* • McGuire, Kevin. 1995. “Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success.” <i>The Journal of Politics</i>. • Bailey, Michael. 2005. “Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making.” <i>American Journal of Political Science</i>. 	
October 4	<i>Amicus Curiae</i>	<ul style="list-style-type: none"> • Caldeira, Gregory and John Wright. 1988. “Organized Interests and Agenda Setting in the US Supreme Court.” <i>American Political Science Review</i>. • Collins, Paul. 2007. “Lobbyists before the US Supreme Court: Investigating the Influence of Amicus Curiae Briefs.” <i>Political Research Quarterly</i>. 	
October 6	Oral Arguments The Chief Justice Effect Opinion Assignments	<ul style="list-style-type: none"> • Segal and Spaeth, Ch. 9 • Maltzman, Forrest and Paul Wahlbeck. 2004. “A Conditional Model of Opinion Assignment on 	

		<p>the Supreme Court.” <i>Political Research Quarterly</i>.</p> <ul style="list-style-type: none"> Johnson, Timothy, Paul Wahlbeck, and James Spriggs. 2006. “The Influence of Oral Arguments on the US Supreme Court.” <i>American Political Science Review</i>. 	
October 11	Opinion Bargaining Collegiality	<ul style="list-style-type: none"> Epstein and Knight, Chs. 3-4 Wahlbeck, Paul, James Spriggs, and Forrest Maltzman. 1998. “Marshalling the Court: Bargaining and Accommodation on the United States Supreme Court.” <i>American Journal of Political Science</i>. 	
Constraints on Judicial Power			
October 13	The Separation of Powers	<ul style="list-style-type: none"> Segal and Spaeth, pp. 326-348 Epstein and Knight, pp. 138-156 Segal, Jeffrey, Chad Westerland, and Stefanie Lindquist. 2011. “Congress, the Supreme Court, and Judicial Review: Testing a Constitutional Separation of Powers Model.” <i>American Journal of Political Science</i>. 	
October 18	Public Opinion	<ul style="list-style-type: none"> Epstein and Knight, pp. 157-181 Huber, Gregory and Sanford Gordon. 2004. “Accountability and Coercion: Is Justice Blind When It Runs for Office?” <i>American Journal of Political Science</i>. Canes-Wrone, Brandice, Tom Clark, and Jason Kelly. 2014. “Judicial Selection and Death Penalty Decisions.” <i>American Political Science Review</i>. 	
October 20	Legitimacy Theory	<ul style="list-style-type: none"> Gibson, James, Gregory Caldeira, and Vanessa Baird. 1998. “On the Legitimacy of National High Courts.” <i>American Political Science Review</i>. Gibson, James. 2008. “Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and ‘New-Style’ Campaigns.” <i>American Political Science Review</i>. Clark, Tom. 2009. “The Separation of Powers, Court Curbing, and 	

		Judicial Legitimacy." <i>American Journal of Political Science</i> .	
October 25	The Media	<ul style="list-style-type: none"> Cann, Damon and Teena Wilhelm. 2011. "Case Visibility and the Electoral Connection in State Supreme Courts." <i>American Politics Research</i>. Hoekstra and Jeffrey Segal. 1996. "The Shepherding of Local Public Opinion: The Supreme Court and Lamb's Chapel." <i>The Journal of Politics</i>. 	
The Hollow Hope?			
October 27 – November 1	Civil Rights	<ul style="list-style-type: none"> Rosenberg, pp. 1-172 Fox, Justin and Matthew Stephenson. 2011. "Judicial Review as a Response to Political Posturing." <i>American Political Science Review</i>. Hall, Matthew. 2014. "The Semiconstrained Court: Public Opinion, the Separation of Powers, and the U.S. Supreme Court's Fear of Nonimplementation." <i>American Journal of Political Science</i>. 	Draft 2 of research paper due (Nov. 1)
November 3-8	Abortion Rights	<ul style="list-style-type: none"> Rosenberg, pp. 158-268 Franklin, Charles and Liane Kosaki. 1989. "Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion." <i>American Political Science Review</i>. Johnson, Timothy and Andrew Martin. 1998. "The Public's Conditional Response to Supreme Court Decisions." <i>American Political Science Review</i>. 	
November 10-15	The Environment, Reapportionment, and Criminal Law	<ul style="list-style-type: none"> Rosenberg, pp. 269-338 Canes-Wrone, Brandice, Tom Clark, and Amy Semet. 2018. "Judicial Elections, Public Opinion, and Decisions on Lower-Salience Issues." <i>Journal of Empirical Legal Studies</i>. 	
November 17	Same-Sex Marriage	<ul style="list-style-type: none"> Rosenberg, pp. 339-429 	Complete evaluations
No Class for Thanksgiving Holiday (November 22-24)			
November 29	Catch up day		

December 6	Final Exam Period (10:45 am to 1:15 pm): Meet to workshop final draft of research paper.
December 8	Final draft of research paper due

General University Policies

Attendance Reporting Policy: An attendance verification policy is in place for students accepting federal grants and loans. Absences from class may affect a student's eligibility for these funds. For regularly scheduled classes, attendance is monitored for the first three class meetings; for classes that meet on weekends, or once per week, attendance is monitored for the first two class meetings; for classes that meet for "half-term", attendance is monitored for the first two class meetings. Students who have not attended/participated in any session by the report date are reported as no shows and their financial aid may be reduced or cancelled as a result.

Withdrawal: A student who wishes to withdraw from the course or has missed too many classes must complete the standard process for dropping a class by the withdrawal date for the term (Sunday October 31, 2021).

Disability Accommodations: Students in face-to-face classes who need accommodations are asked to arrange a meeting during office hours to discuss your accommodations. If you have a conflict with office hours, an alternate time can be arranged. To set up this meeting, please contact me by email. If you have not registered for accommodation services through the Center for Disability Services (CDS), but need accommodations, make an appointment with CDS, 147 Taylor Center, or call 334-244-3631 or e-mail CDS at cds@aum.edu.

Free Academic Support: All students have the opportunity to receive free academic support at AUM. Visit the Learning Center (LC) in the WASC on second floor Library or the Instructional Support Lab (ISL) in 203 Goodwyn Hall. The LC/ISL offers writing consulting as well as tutoring in almost every class through graduate school. The LC may be reached at 244-3470 (call or walk-in for a session), and the ISL may be reached at 244-3265. ISL tutoring is first-come-first served. Current operating hours can be found at <https://www.aum.edu/academics/academic-support/warhawk-academic-success-center/learning-center-isl/>.

Academic Honesty: The Student Academic Honesty Code applies to all students taking Auburn University at Montgomery classes. By act of registration, all students agree to conform to this Code. The regulations are designed to support the interests of Auburn University at Montgomery and its students and faculty in maintaining the honesty and integrity essential to and inherent in an academic institution. The full policy can be found in the Student Handbook beginning on p. 67 (<https://www.aum.edu/aum-student-handbook/>). In this course, any act of academic dishonesty, as defined in the AUM Student Handbook, will result in a grade of zero on the assignment in question and may, depending upon the severity of the infraction, result in further sanctions as outlined in the AUM Student Handbook.

Technology Assistance: Students may seek technology assistance from the ITS Help Desk located in the computer lab on the first floor of the Taylor Center. You may also call 334-244-3500 or email helpdesk@aum.edu.

Curtiss Course Critiques: AUM is committed to effective teaching. Students assist in maintaining and enhancing this effectiveness by completing teaching evaluations in a thoughtful and honest manner. We ask that you take time to respond to all questions and write comments. I can use your feedback to know

what is working in the course and what is not working and improve the learning experience. The instructor will not be given students comments nor informed of the aggregate results of evaluations until after final grades have been submitted. All individual student responses will be confidential. The evaluations will be available on the following schedule: Opens – November 10, 2021; Closes – December 2, 2021.
<https://www.aum.edu/curtiss-course-critiques/>

Important Dates: The following are important dates of which you should be aware:

• Last Day to Add Classes	Sunday, Aug. 22, 2021
• Last Day for 100% Refund	Tuesday, Aug. 24, 2021
• Labor Day Holiday	Monday and Tuesday, Sept. 6-7, 2021
• Last Day for 50% Refund	Sunday, Sept. 12, 2021
• Mid-Semester Grades Due	Sunday, Oct. 10, 2021
• Last Day to Drop	Sunday, Oct. 31, 2021
• Thanksgiving Holiday	November 20 – 28, 2021
• Classes End	Tuesday, Nov. 30, 2021