

Humanities Seminars Program
Supreme Court & Precedent

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This 5-week course explores the United States Supreme Court and its role in deciding some fundamental social questions. It will also focus on the role that precedent (*stare decisis* for those who took Latin or went to law school) should and does play in the Supreme Court's resolution of these issues.

As you consider the cases we will discuss, take time to reflect on the following from *Federalist* No. 78:

The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. . . .

and Justice Louis D. Brandeis' 1932 caution that:

Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. . . . [I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. The court bows to the lessons of experience and the force of better reasoning, recognizing the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function.

Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-409 (1932) (Brandeis, J. dissenting).

In this course, we will gain a better understanding of the Court's reasoning, predict how it may evolve in the future, and reassess whether Hamilton and Brandies were correct.

At relevant points, discussion will be strongly encouraged from the attendees during all classes.

The readings will be available as PDFs on Box@UA. Additional readings (e.g., recent news articles) may be posted during the course. All readings are optional.

Class Schedule:

Class 1: Overview of the 2022-2023 term & Introduction to Precedent

Introductory lecture and discussion will quick survey the major cases of the 2022-2023 term including *303 Creative LLC v. Elenis* (intersection of public-accommodation laws and an artist's Free Speech rights); *Andy Warhol Foundation for the Visual Arts v. Goldsmith* (copyrights & transformative art); and *Gonzalez v Google LLC* (application of the Communications Decency Act). A significant portion of lecture will focus on *Students for Fair Admissions* (race as a factor in undergraduate admissions).

We'll also introduce the concept and approaches to precedent in preparation for the following weeks.

No assigned readings.

Students for Fair Admissions v. President & Fellows of Harvard College (instructor provided)

Students for Fair Admissions v. Univ. of North Carolina (instructor provided)

Class 2: Abortion

The class will address the right to abortion as found in *Roe v. Wade* and *Planned Parenthood of Southeastern PA v. Casey*, then turn to *Dobbs v. Jackson Women's Health Organization* (2022) which overruled those cases. Lecture will also address the response of the state and federal elected branches to the *Dobbs* decision.

Readings:

Roe v. Wade (1973) (instructor provided)

Dobbs v. Jackson Women's Health Organization (2022) (instructor provided)

Class 3 Second Amendment

The Supreme Court gave broader protections to the Second Amendment's right to keep and bear arms in *NY State Rifle & Pistol Ass'n v. Bruen* (2022). The class would briefly address the background

leading up to *Bruen*, *Bruen*, and then the judicial and political responses to *Bruen*. The lecture will also address the majority's "text and history" approach and whether such an approach may limit legislative action in other areas.

Readings:

NY State Rifle & Pistol Ass'n v. Bruen (2022) (instructor provided)

D.C. v. Heller (2008) (instructor provided)

Class 4 Elections

The class would focus primarily on two voting rights cases from the 2022-2023 term. The first is *Merrill v. Milligan* which examines the impact of the Voting Rights Act on the State of Alabama's redistricting, and also *Moore v. Harper*¹ which examines the Constitutional provision relating to a state legislature's right to prescribe the manner of elections of Senators and Representatives. I would anticipate discussing *Shelby County v Holder* (2013) and *Brnovich v. DNC* (2021) which also relate to the Voting Rights Act.

Readings:

Allen v. Milligan (instructor provided)

Moore v. Harper (instructor provided)

Class 5: Preview of 2023-2024 term

The class will be a wrap-up of the prior classes. We'll return to a discussion of precedent in light of how it has been applied. We'll also look forward to the cases in the 2023-2024 term that would have begun in October. One case already on the Court's docket includes *CFPB v. Community Financial Services Ass'n of America, Ltd.* (whether the funding to the Consumer Financial Protection Bureau is unconstitutional).

No assigned readings.

¹ Please note that the North Carolina Supreme Court granted rehearing on the underlying decision on February 3, 2022, about two months after the U.S. Supreme Court had heard arguments. That state court action has raised questions on whether the U.S. Supreme Court has jurisdiction to hear the case. Should the U.S. Supreme Court decide not to decide the case, changes may be made to this class. Notice will be provided to those enrolled.