

The Graduate School of Political Management

THE GEORGE WASHINGTON UNIVERSITY

M.P.S. in Legislative Affairs

Summer 2020, Session II

June 30 – August 6 2020

Congress and the Courts

LGAF 6240.LH3

3 Credits

Tuesday & Thursday/6:00 – 8:00 pm EST

BASIC INFORMATION AND RESOURCES

Instructor

Anthony Marcum

Contact Information

Phone Number: (740) 310-3571

Email Address: awmarcum@email.gwu.edu

Communication

You should feel free to contact me by email, and I will make every effort to respond to you within 24 hours. If the question or concern is more urgent, you may call or text me on my cell phone. I will typically communicate by email or through a Blackboard announcement. I am also available for virtual office hours by appointment.

Blackboard Site

A Blackboard course site has been set up for this course. Each student is expected to check the site throughout the semester, as Blackboard will be the primary venue for outside classroom communications between the instructors and the students. Students can access the course site at <https://blackboard.gwu.edu>. Support for Blackboard is available at 202-994-4948 or helpdesk.gwu.edu.

Academic Integrity

All members of the university community are expected to exhibit honesty and competence in their academic work. Students have a special responsibility to acquaint themselves with, and make use of, all proper procedures for doing research, writing papers, and taking exams. Members of the community will be presumed to be familiar with the proper academic procedures and will be held responsible for applying them. Deliberate failure to act in accordance with such procedures will be considered academic dishonesty. Academic dishonesty is defined as “cheating of any kind, including misrepresenting one’s own work, taking credit for the work of others without crediting them and without appropriate authorization, and the fabrication of information.” Acts of academic dishonesty are a legal, moral, and intellectual offense against the community and will be prosecuted through the proper university channels. The University Code of Academic Integrity can be found at <http://studentconduct.gwu.edu/code-academic-integrity>.

University Policy on Observance of Religious Holidays

- Students should notify faculty during the first week of the semester of their intention to be absent from class on their day(s) of religious observance.
- Faculty should extend to these students the courtesy of absence without penalty on such occasions, including permission to make up examinations.
- Faculty who intend to observe a religious holiday should arrange at the beginning of the semester to reschedule missed classes or to make other provisions for their course-related activities

Support for Students with Disabilities

GW's Disability Support Services (DSS) provides and coordinates accommodations and other services for students with a wide variety of disabilities, as well as those temporarily disabled by injury or illness. Accommodations are available through DSS to facilitate academic access for students with disabilities. Please notify your instructor if you require accommodations. Additional information is available at <http://disabilitysupport.gwu.edu/>.

Title IX: Confidentiality and Responsible Employee Statement

The George Washington University (GWU) and its faculty are committed to helping create a safe and open learning environment for all students. If you (or someone you know) have experienced any form of sexual misconduct, including sexual assault, dating or domestic violence, or stalking, know that help and support are available. GWU strongly encourages all members of the community to take action, seek support and report incidents of sexual misconduct to the Title IX Office. Please be aware that under Title IX of the Education Amendments of 1972, faculty members are required to disclose information about such misconduct to the Title IX Office.

If you wish to speak to a confidential employee who does not have this reporting responsibility, you can contact Mental Health Services through Colonial Health (counselors are available 24/7 at 202-994-5300 or you can make an appointment to see a counselor in person.). For more information about reporting options and resources at GWU and the community, please visit <https://haven.gwu.edu/>.

Attendance Policy

You are expected to attend all classes and be prepared to discuss all reading assignments. If an unexpected situation does arise, and you are unable to attend class, please email me as soon as possible. Similarly, if you are unprepared for class discussion, please email me before class. (Absent extenuating circumstances, this privilege may not be used more than once during the semester.)

Out-of-Class/ Independent Learning Expectation

Over the course of the semester, students will spend at least 2 hours (100 minutes) per week in class. Required reading for the class meetings and written response papers or projects are expected to take up, on average, 7 hours (350 minutes) per week. Over the course of the semester, students will spend 25 hours in instructional time and 87.5 hours preparing for class.

Course Evaluation

At the end of the semester, students will be given the opportunity to evaluate the course through GW's online course evaluation system. It is very important that you take the time to complete an

evaluation. Students are also encouraged to provide feedback throughout the course of the semester by contacting any/all of the following:

Dr. Casey Burgat
Director, Legislative Affairs Program
cburgat@gwu.edu | 202-994-6000

Dr. Jack Prostko
Associate Dean for Learning and Faculty
Development
College of Professional Studies
jackp@gwu.edu | 202-994-3592

Suzanne Farrand
Director of Academic Administration, GSPM
sfarrand@gwu.edu | 202-994-9309

THE COURSE

Legislative Affairs Program Objectives

Upon completion of the Master's degree in Legislative Affairs, students will:

1. Gain both theoretical and practical knowledge related to the U.S. Congress, general issues in the legislative arena, and how to effectively advance legislation;
2. Hone their oral and written communication skills in both theoretical and technical aspects of legislative affairs;
3. Be able to conduct cutting-edge research and engage in effective problem solving by learning critical thinking skills;
4. Learn how to work effectively with others, the value of collaborative work, and will understand ethical issues involved in the legislative arena.

Graduate School Expectations

Students enrolled in a graduate program should take their academic responsibilities seriously and be prepared to meet the following expectations:

1. Utilize effective time management skills so as to complete and submit their assignments on their required due dates and times.
2. Have attained a mastery of written communication skills including proper sentence structure, grammar, spelling, and word usage.
3. Understand how to properly format in-text citations and references for resources and information integrated into their written assignments.

Course Description and Overview

This course will examine the institutional and political nature of the federal judiciary. We will begin by examining the modern scope and structure of the federal judiciary. From there, we will explore the institutional and political relationship between the Congress and the federal courts. Last, we will discuss current controversies in the federal judiciary, Congress' reactions to these controversies, and possible solutions.

This is not a law course. Students are not expected to have familiarity with case law, legal doctrines, or the federal court system before taking this course. Instead, this course is intended for students to think critically about Congress' relationship with the federal court system, and materials will draw on a variety of sources, including judicial opinions, academic literature, legislation, and popular commentary.

Course Learning Objectives

1. Gain a better understanding of the legal nuances and administrative complexities of the federal court system.
2. Learn about how politics shape public perceptions of the federal judiciary, and Congress' role in shaping the U.S. Supreme Court and lower federal courts.
3. Develop research and writing skills in order to think critically about federal court reform topics and identify potential legislative solutions.

Course Requirements

Students will be expected to think critically about the topics covered in class, be prepared to discuss assigned reading materials, and submit all assignments on time.

Class Preparation and Participation (15% of grade.) Class sessions will include a substantial amount of discussion of the materials and relevant current events. It is essential that you have read the assigned material and are ready to participate actively in these discussions. (10% of grade.) In the three instances where students will write and submit reaction papers, it is important that students be prepared to summarize their reactions to the readings and help lead class discussion. (5% of grade.)

Reaction Papers (15% of grade.) During the semester, students will write three reaction papers (appx. 750 - 1000 words) in response to any of the readings assigned for that class. Reaction papers can include (but are not limited to) connections among the readings for class, the content we will be covering during the class, related current events, or questions that arose during the reading. The reaction papers should be emailed to me at least one day before class. Students may choose any three classes to submit their reactions papers, but should aim to submit reaction papers roughly every other week.

Midterm Exam (30% of grade.) The midterm exam will cover topics discussed in the first half of the course. The exam will be available after our Thursday, July 16 class, and must be emailed to me before the start of our next class, Tuesday, July 21. The exam will be open-book. The exam will have three questions; you are required to answer two. Each answer must be no longer than 1000 words. Additional instructions will be on the exam.

Final Paper (40% of grade.) Your final assignment will be a research paper (2,500 - 3,000 words). Your paper will identify a topic that is ripe for reform and potential legislative solutions. You are welcome to explore any topic discussed in class or the readings. To help your research, you must submit your topic idea (along with a very brief outline) to me by Thursday, July 23. The paper will be due before our final class on Thursday, August 6. We will discuss the requirements for the final paper further during the course.

Evaluation and Grading

Assignment	Learning Objective(s) Addressed	Due Date	Weight
Class Participation	In-class discussions	All semester	15%
Reaction Papers	Weekly Reading Assignments	Three by the final class (8/6)	15%
Midterm Exam	Analysis of first half of course	Distributed: 7/16 Due: 7/21	30%
Final Paper	Detailed policy recommendation	Proposal: 7/23 Due: 8/6	40%
Total			100%

Following is the grade scale for all GSPM classes:

Grade*	Grading Standard
A 94-100	Your work is outstanding and ready for submission in a professional environment. Your material, effort, research, and writing demonstrate superior work.
A- 90-93	Represents solid work with minor errors. Overall, excellent work.
B+ 87-89	Very good. Represents well-written material, research, and presentation, but needs some minor work.
B 83-86	Satisfactory work, but needs reworking and more effort. Note that although not a failing grade, at the graduate level, anything below a “B” is viewed as unacceptable.
B- 80-82	You’ve completed the assignment, but you are not meeting all of the requirements.
C+ 77-79	Needs improvement in content and in effort. Shows some motivation and concern.
C 73-76	Needs reworking, improved effort, and additional research. Shows minimal motivation and concern.
C- 70-72 (lowest grade to pass)	Poor performance. Major errors, too many misspellings, problems with accuracy, etc.
F Below 70	Unacceptable performance, or inability to submit the assignment.

*Please note that you may be penalized for late submission of assignment(s).

Required Text and Learning Materials

Reading materials for each class will be posted either on Blackboard or hyperlinked on the syllabus. Please let me know if you are unable to access any of the readings. As we progress through the course, I may change weekly readings assignments based on our discussions or current events. I will communicate any changes through announcements on Blackboard.

Tentative Course Calendar*

*The instructor reserves the right to alter course content and/or adjust the pace to accommodate class progress. Students are responsible for keeping up with all adjustments to the course calendar.

Class 1 – June 30

Topic: The “least dangerous” branch.

Content Covered: Early debates about the scope of judicial power. Is Chief Justice Marshall’s famous opinion in *Marbury v. Madison* consistent with the Founders’ desires?

Reading Due Today:

- U.S. Constitution, Article III, <https://www.law.cornell.edu/constitution/articleiii>
- Alexander Hamilton, Federalist 78, https://avalon.law.yale.edu/18th_century/fed78.asp
- Brutus, Anti-Federalist No. XV, https://presspubs.uchicago.edu/founders/documents/a3_2_1s22.html
- Mark Miller, Judicial Politics in the United States, Chapters 1 and 10 (on Blackboard)
- William Treanor, Federal Court Stories: Marbury v. Madison (on Blackboard)

Class 2 – July 2

Topic: Judicial independence and legitimacy

Content Covered: What is judicial independence? What is judicial legitimacy? Is there a difference between “legal” legitimacy and “sociological” (or public) legitimacy? What are the consequences of an illegitimate judiciary?

Reading Due Today:

- Federal Judicial Center, Judicial Independence, <https://www.fjc.gov/history/talking/judicial-independence-talking-points>
- Tara Grove, The Supreme Court’s Legitimacy Dilemma (on Blackboard)
- Richard Hasen, The Supreme Court May No Longer Have the Legitimacy to Resolve a Disputed Election, <https://www.theatlantic.com/ideas/archive/2020/02/supreme-court-elections/605899/>
- Leah Litman, et al., We ought to be concerned about preserving the political order of the Supreme Court, https://www.washingtonpost.com/opinions/yes-the-publics-perception-of-the-supreme-court-matters/2019/06/18/5b25128c-91e6-11e9-b58a-a6a9afaa0e3e_story.html
- Ilya Shapiro, How the Supreme Court undermines its own legitimacy, <https://www.washingtonexaminer.com/opinion/how-the-supreme-court-undermines-its-own-legitimacy>

Assignment(s) Due Today:

- Reaction paper (voluntary)

Class 3 – July 7

Topic: The Supreme Court and “inferior” courts

Content Covered: Overview of the establishment, administration, and jurisdiction of the Supreme Court and other “inferior” courts.

Reading Due Today:

- Mark Miller, Judicial Politics in the United States, Chapters 2 and 7 (on Blackboard)
- Adam Feldman, Stat Pack for October Term 2019, <https://www.scotusblog.com/reference/stat-pack/>

- Federal Judicial Caseload Statistics 2019, <https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2019>

Assignment(s) Due Today:

- Reaction paper (voluntary)

Class 4 – July 9

Topic: Policymaking in the federal courts

Content Covered: The Administrative Office of the U.S. Courts (AO) is an agency within the federal judiciary tasked with the daily administration of the federal courts. We will discuss the AO's structure, policymaking authority, and relationship with Congress.

Reading Due Today:

- Judicial Conference of the United States, Strategic Plan for the Federal Judiciary (on Blackboard)
- Chief Justice Roberts, 2019 Year-End Report on the Federal Judiciary (on Blackboard)
- Administrative Office of U.S. Courts, The Judiciary Fiscal Year 2021 Congressional Budget Summary (on Blackboard)
- Judge Audrey Fleissig, House Judiciary Testimony, Sept. 26, 2019 (on Blackboard)
- Seamus Hughes, House Judiciary Testimony, Sept. 26, 2019 (on Blackboard)

Assignment Due Today:

- Reaction paper (voluntary)

Class 5 – July 14

Topic: Ways to “curb” the Court

Content Covered: There are a myriad of ways for Congress to influence or impose its will upon the federal judiciary. This class will discuss the advantages and disadvantages of a few potential curbing measures.

Reading Due Today:

- Federal Judicial Center, FDR's “Court-Packing” Plan, <https://www.fjc.gov/history/timeline/fdrs-court-packing-plan>
- Jamelle Bouie, Mad About Kavanaugh and Gorsuch? The Best Way to Get Even Is to Pack the Court, <https://www.nytimes.com/2019/09/17/opinion/kavanaugh-trump-packing-court.html>
- Steven Calabresi, Republicans Should Expand the Federal Courts, <https://www.nationalreview.com/2017/11/gop-tax-bill-should-expand-federal-courts/>
- Kevin M. Lewis, Jurisdiction Stripping: When May Congress Prohibit the Courts from Hearing a Case? (on Blackboard)
- Sen. Ted Cruz, We Must Not Submit Our Constitutional Freedoms, and the Promise of our Nation, to Judicial Tyranny, https://www.cruz.senate.gov/?p=press_release&id=2368
- Judith Resnik, Opening the Door, <https://slate.com/news-and-politics/2006/02/court-stripping-unconscionable-and-unconstitutional.html>
- Brennan Center for Justice, Impeachment and Removal of Judges: An Explainer, <https://www.brennancenter.org/our-work/analysis-opinion/impeachment-and-removal-judges-explainer>

Assignment(s) Due Today:

- Reaction paper (voluntary)

Class 6 – July 16

Topic: Ways to “save” the Court

Content Covered: Scholars and public officials have proposed numerous plans to “save” the Court. This class will discuss the advantages and disadvantages of a number of these plans.

Reading Due Today:

- Dan Epps and Ganesh Sitaraman, How to Save the Supreme Court, <https://www.vox.com/the-big-idea/2018/9/6/17827786/kavanaugh-vote-supreme-court-packing>
- SCOTUSBlog, Sherry on the “Kardashian Court,” <https://www.scotusblog.com/2019/11/academic-highlight-sherry-on-the-kardashian-court/>
- Kermit Roosevelt & Ruth-Helen Vassilas, Supreme Court justices should have term limits, <https://www.cnn.com/2019/09/30/opinions/supreme-court-term-limits-law-roosevelt-vassilas/index.html>
- Steve Vladeck & John Eastman, Setting term limits for Supreme Court would bring too many political problems, <https://www.dallasnews.com/opinion/commentary/2017/03/07/setting-term-limits-for-supreme-court-would-bring-too-many-political-problems/>
- Kevin M. Lewis, A Code of Conduct for the Supreme Court? Legal Questions and Considerations (on Blackboard)

Assignment(s) Due Today:

- Reaction paper (voluntary)
- **Midterm exam distributed**

Class 7 – July 21

Topic: Judges and Judgeships

Content Covered: Through legislation, Congress determines the size and structure of the federal judiciary. How are judgeships determined? Do population and caseload increases justify splitting circuit courts? What are the political interests behind such reforms?

Reading Due Today:

- Cara Bayles, Crisis to Catastrophe: As Judicial Ranks Stagnate, ‘Desperation’ Hits the Bench, <https://www.law360.com/articles/1140100/as-judicial-ranks-stagnate-desperation-hits-the-bench>
- Cara Bayles, ‘In A Timely Manner’: Three Decades Of Judgeship Bills, <https://www.law360.com/in-depth/articles/1140612>
- Judge Diarmuid O’Scanlain, The Case for Restructuring the Ninth Circuit: An Inevitable Response to an Unavoidable Problem (on Blackboard)
- Judge Sidney Thomas, Testimony Opposing Division of the Ninth Circuit (on Blackboard)

Assignment(s) Due Today:

- Reaction paper (voluntary)
- **Midterm exam due**

Class 8 – July 23

Topic: Confirmations: Part 1

Content Covered: The Senate has the power to confirm federal judges nominated by the President. What is the process for confirming judicial nominees? How have the politics of judicial confirmations changed?

Reading Due Today:

- Barry J. McMillon, The Appointment Process for U.S. Circuit and District Court Nominations: An Overview (on Blackboard)
- Kevin M. Lewis & Valerie C. Brannon, Questioning Judicial Nominees: Legal Limitations and Practice (on Blackboard)
- National Constitution Center, History of Supreme Court Confirmation Hearings, <https://constitutioncenter.org/podcast-transcript-history-of-supreme-court-confirmation-hearings>

Assignment Due Today:

- Reaction paper (voluntary)
- **Final paper proposal due**

Class 9 – July 28

Topic: Confirmations: Part 2

Content Covered: Should judicial confirmations be “depoliticized?” If so, how? Are these considerations any different when it comes to lower court nominees?

Reading Due Today:

- Sarah Binder, The Senate confirmed Eric Miller to the 9th Circuit Court of Appeals — despite his home state senators’ objections. That’s new., <https://www.washingtonpost.com/politics/2019/02/28/senate-confirmed-eric-miller-ninth-circuit-court-appeals-despite-feinsteins-objection-thats-new/>
- Glenn Kessler, Schumer’s claim that ‘blue slips’ were a ‘longstanding requirement’ for judicial nominees, <https://www.washingtonpost.com/politics/2019/04/05/schumers-claim-that-blue-slips-were-longstanding-requirement-judicial-nominees/>
- Sarah Binder, The Republican Senate went nuclear again to speed up confirming conservative judges, <https://www.washingtonpost.com/politics/2019/04/06/this-week-republican-senate-went-nuclear-again-now-it-can-speed-up-confirming-conservative-judges/>
- James Wallner, Democrats support Trump’s judicial nominees, <https://www.legbranch.org/democrats-support-trumps-judicial-nominees/>
- John Gramlich, Federal judicial picks have become more contentious, and Trump’s are no exception, <https://www.pewresearch.org/fact-tank/2018/03/07/federal-judicial-picks-have-become-more-contentious-and-trumps-are-no-exception/>
- Press Release, Portman, Brown Thank Members of Ohio Bipartisan Judicial Advisory Commission, <https://www.portman.senate.gov/newsroom/press-releases/portman-brown-thank-members-ohio-bipartisan-judicial-advisory-commission>

Assignment Due Today:

- Reaction paper (voluntary)

Class 10 – July 30

Topic: Congress in the courtroom

Content Covered: From time to time, Congress seeks to initiate or participate in litigation in federal court. We will discuss how and why Congress engages in litigation and roadblocks lawmakers often encounter when they go to court.

Reading Due Today:

- Wilson Freeman & Kevin Lewis, Congressional Participation in Litigation: Article III and Legislative Standing (on Blackboard)

- Michael Lynch & Rachel Surminsky, When Congress sues the president, it's likely to fail, <https://www.washingtonpost.com/news/monkey-cage/wp/2014/11/20/when-congress-sues-the-president-its-likely-to-fail/>
- *Blumenthal, et al. v. Trump* (D.C. Cir. 2020)

Assignment(s) Due Today:

- Reaction paper (voluntary)

Class 11 – August 4

Topic: Public opinion, interest groups, and the media

Content Covered: Congress is not the only body interested in the composition and decisions of federal courts. The public's views are shaped largely through media coverage. Interest groups are often involved in impact litigation and advocating for and against judicial nominees.

Reading Due Today:

- Mark Miller, Judicial Politics in the United States, Chapter 9 (on Blackboard)
- Browse the following websites: <https://demandjustice.org/>, <https://www.takebackthecourt.today>, <https://judicialnetwork.com/>, <https://article3project.org/>, <https://fixthecourt.com/>
- Amanda Palleschi, The SCOTUS beat: Reading the tea leaves of the Supreme Court, <https://www.cjr.org/politics/supreme-court-kennedy.php>

Assignment Due Today:

- Reaction paper (voluntary)

Class 12 – August 6

Topic: Current controversies

Content Covered: A discussion of current controversies concerning Congress and the federal judiciary. Potential topics include transparency efforts, universal injunctions, judicial misconduct and harassment allegations, and pending legislation.

Reading Due Today:

- To be determined (readings will be posted on Blackboard)

Assignments Due Today:

- Reaction paper (voluntary)
- **Final paper due**

Copyright Statement

Unless explicitly allowed by the instructor, course materials, class discussions, and examinations are created for and expected to be used by class participants only. The recording and rebroadcasting of such material, by any means, is forbidden.