

Courts and Public Policy

01:790:409

Tuesday/Friday – 12:10 to 1:30

Livingston Campus – Lucy Stone Hall – Room A142

Instructor

Douglas Cantor

Department of Political Science

Office hours: Monday/Tuesday – 2pm to 4pm (in-person only)

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COURSE DESCRIPTION

Do judges in the United States interpret policy and law or do they do more? Do judges implement or lead policy? Is policymaking a legitimate role that a judge can exercise? If so, in what capacity? And to what degree are policymaking decisions made by judges effective? The ability of judges to have a profound effect on the political and legal landscape of the United States can often be overwhelming for voters.

This course examines the role of judges and courts in policymaking processes, and asks if, or to what degree, judges play in policymaking processes. The course takes place in four parts. We begin with a background on how legal and political scholars examine if and how judges exercise policymaking activity. We then examine three policymaking areas to test our framework. Second, we examine the role of courts in the implementation and evolution of the Endangered Species Act of 1973. The third part of the course examines the role of courts and campaign finance reform, notably since *Citizens United v FEC (2010)*. Our final part of the course examines the role of the courts and water law, notably on two decisions made in the summer of 2023 on both overall water use and the Clean Water Act of 1972.

REQUIRED TEXTS

You are required to purchase only one low-cost book (Winkler). Other books will be required but they will be provided by the library at no additional charge or by myself. You are free to purchase print editions with your own resources through publishers or Amazon. Instructions for library access are provided under each text, and I will also give a live demonstration during class.

****Despite my active effort to provide online access to most of the readings below, I strongly encourage you to print out the readings each week, work with a physical copy, and have that physical copy on hand with you during class each week.****

Rice, Douglas. *Lighting the Way: Federal Courts, Civil Rights, and Public Policy*. University of Virginia Press, 2020.

Edward A. Fitzgerald. 2015. *Wolves, Courts, and Public Policy : The Children of the Night Return to the Northern Rocky Mountains*. Lanham, Maryland: Lexington Books.

Winkler, Adam. 2018. *We the Corporations : How American Businesses Won Their Civil Rights*. First edition. New York, NY: Liveright Publishing Corporation, a Division of W.W. Norton & Company. (***)**This is the only book you will have to buy**(***)

Shaw, Daron R., Brian E. Roberts, and Mijeong Baek, *The Appearance of Corruption: Testing the Supreme Court's Assumptions about Campaign Finance Reform* (New York, 2021; online edn, Oxford Academic, 18 Feb. 2021)

Other readings to be listed on the syllabus and will be available online

Course Grading Criteria

Attendance – 10%

Classroom Debate Participation – 10%

Mock Case Debate Brief or Ruling 1 – 15%

Mock Case Debate Brief or Ruling 2 – 15%

Mock Case Debate Brief or Ruling 3 - 15%

Final Mock Opinion Ruling – 25%

Annotated Bibliography (Final) – 5%

Peer Review (Final) – 5%

****Any student that receives a failing grade for attendance and participation will receive a failing grade for the class****

Mock Case Debates – During each unit, we will be examining a mock prompt written by Professor Cantor that presents you with a hypothetical case. Each of you will assume one of the following roles: A judge, interest group member, or attorney. Each of you will write an individual brief (if you are an attorney or interest group member) or ruling (if you are a judge). While you will work in groups during class during debates, each of you are responsible for submitting your own individual briefs or rulings. All of you will serve at least one time in each capacity.

Classroom Debates: Along with each mock case, we will have scheduled debate days in the classroom where you assume your designated roles. The purpose of these is to get all of you yelling at each other, but more importantly to also help you flesh out ideas for your briefs or rulings.

Final Mock Opinion (along with bibliography and peer review) – The final assignment for this class will be the assignment of one pending federal case, relevant to this class, that has not had its ruling issued yet. More details will be made on the course website.

Attendance - I realize that we are living in hectic times, and life happens. Thus, I am providing you with four unexcused days. Students tend to have a habit of feeling as though they should still come to class if they are feeling ill. I have done my best to alleviate that stress by providing you with these days to accommodate you with an incredibly lax attendance policy.

EMAIL POLICY

For lengthy exchanges regarding course materials and class issues, please make every effort to talk to me in-person by attending the office hours of myself or your TA. In the event that you do email, I will make every reasonable effort to help you understand the material better outside of class and make every effort to reply to class-related e-mails within 24-48 hours, EXCEPT on weekends and holidays. I generally have a huge number of e-mails to answer immediately before exam dates or paper deadlines. Thus, I cannot guarantee a timely reply within 48 hours of these events. So, it is in your interest to start studying and working on your papers early so that you can take maximum advantage of my advice and help.

I am also available during scheduled office hours and during class. I love when students come by and chat about course-related issues – it's one of the most significant things you can do to improve your college experience! I would encourage all of you to bring your questions to office hours, which are in-person, rather than email. It will be good practice for communication.

I am generally around on campus during the week. If you walk by my office during non-office hours and see my door open, feel free to swing by to discuss anything you like.

Civility

Being rude, insulting, disrespectful, or cynical to fellow classmates is expressly forbidden in this course. Professionalism and respect for your cohort is required and any student that violates this will be contacted directly, possibly be assigned a zero for the current module, and in extreme circumstances may be reported to higher levels within the university.

ACCOMMODATIONS

“Rutgers University is committed to providing an environment where all students can equally participate in the academic experience. The accommodation of students with disabilities who meet admissions requirements is mandated by both federal and state law. Rutgers University supports these laws by pledging to comply with their requirements.”

<http://www.rci.rutgers.edu/~polcomp/fachand.shtml#sec1>

If you anticipate needing any type of reasonable accommodation in this course or have questions about accessibility, please contact me immediately.

This class fulfills the following Core Curriculum requirements: Social and Historical Analysis (SCL, HST)

Submitting Work

All submissions must be done through our course platform and are due at the assigned due time on the assigned due date. I do not accept email submissions unless there is a dire technical emergency. A dire technical emergency is defined as an unavoidable crash in hardware or software that could not have been avoided in any other circumstances. Thus, for example: “I waited until the last second to submit the assignment, and then my Wi-Fi kicked out and/or the website simply wouldn’t take the assignment,” does not constitute a dire technical emergency.

If you have a dire technical emergency, please email your TA your assignment after exhausting all measures. Your e-mail must include

1. A copy of the assignment.
2. A screenshot
3. An explanation of the technical problem.

You will still be required to submit your work through the course website after the fact, your email will simply hold the submission time.

To be as clear as possible: Any issues you run into on the day of a due date that might interfere with you completing the submission before the submission time ends, be they personal or technical, **must be communicated to your TA before the submission time expires.**

If you regularly encounter tech problems due to your resources, submit your work prior to the due date and/or time.

Late Penalties: I deduct ½ a letter grade per day that an assignment or paper is late.

Extensions are not granted for assignments unless the party in question has documentation for an emergency. To qualify, the request and documentation must fall under the category of medical, family emergency, or religious matter. All requests for excusals must fall under one of these three categories, be accompanied by documentation, and must be submitted via direct email. All communications sent regarding these matters will remain private between the student and instructor.

All deadlines are negotiable so long as you negotiate with me as a class in advance.

Classroom Inclusion

My name is Professor Douglas Cantor, I use he/him pronouns, and my classroom is a Safe Zone. I will gladly honor your request to address you by an alternate/preferred name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

Language Disclaimer

Political Science is the study of power; who gets what, where, and when. Often times, studying the field requires examination of historical facts and figures that, by modern standards, may have written or spoken in terms that are unacceptable by the standards of today. We may read historical quotes from, for example, a piece of legislation or a court ruling. We may, in other instances, discuss the polling effects from a gaffe by a politician that may be considered offensive or insensitive. Please note that any language used verbatim from historical and empirical sources may not reflect my own personal lexicon. If any of the language used in our units makes you feel uncomfortable or can be considered triggering, please feel free to contact your TA or myself for accommodations for alternate work.

I will always do my best to give fair warning if a sensitive piece of writing or media is on the horizon, but humbly ask for your forgiveness in advance if I miss a warning from time to time. The history of the United States with respect to this specific matter is quite an abyss, and it is difficult to have all of it committed to memory at all times. If any of the language used in our units makes you feel uncomfortable or can be considered triggering, please feel free to contact me for accommodations. My door is always open and I'm always willing to listen. I have never turned down a request for an alternate assignment within this context.

Rutgers Resources: Wellness and Services

Final Exam/Paper Date and Time

The final exam grid is posted here:

<https://scheduling.rutgers.edu/sites/default/files/pdf/Fall%202021%20NB%20Exam%20Grid%20081621.pdf>

See the full policies at <https://scheduling.rutgers.edu/scheduling/exam-scheduling/final-exam-policies>

Student-Wellness Services

Report a Bias Incident If you experience or witness an act of bias or hate, report it to someone in authority. You may file a report online and you will be contacted within 24 hours. The bias reporting page is [here](#).

[Click here to report a bias incident](#)

Bias is defined by the University as an act, verbal, written, physical, psychological, that threatens, or harms a person or group on the basis of race, religion, color, sex, age, sexual orientation, gender identity or expression, national origin, ancestry, disability, marital status, civil union status, domestic partnership status, atypical heredity or cellular blood trait, military service or veteran status.

Counseling, ADAP & Psychiatric Services (CAPS)

(848) 932-7884 / 17 Senior Street, New Brunswick, NJ 08901/

<http://health.rutgers.edu/medical-counseling-services/counseling/>

CAPS is a University mental health support service that includes counseling, alcohol and other drug assistance, and psychiatric services staffed by a team of professionals within Rutgers Health

services to support students' efforts to succeed at Rutgers University. CAPS offers a variety of services that include: individual therapy, group therapy and workshops, crisis intervention, referral to specialists in the community, and consultation and collaboration with campus partners.

Crisis Intervention : <http://health.rutgers.edu/medical-counseling-services/counseling/crisis-intervention/>

Report a Concern: <http://health.rutgers.edu/do-something-to-help/>

Violence Prevention & Victim Assistance (VPVA)

(848) 932-1181 / 3 Bartlett Street, New Brunswick, NJ 08901 / www.vpva.rutgers.edu/

The Office for Violence Prevention and Victim Assistance provides confidential crisis intervention, counseling and advocacy for victims of sexual and relationship violence and stalking to students, staff and faculty. To reach staff during office hours when the university is open or to reach an advocate after hours, call 848-932-1181.

Disability Services

(848) 445-6800 / Lucy Stone Hall, Suite A145, Livingston Campus, 54 Joyce Kilmer Avenue, Piscataway, NJ 08854 / <https://ods.rutgers.edu/>

Rutgers University welcomes students with disabilities into all of the University's educational programs. In order to receive consideration for reasonable accommodations, a student with a disability must contact the appropriate disability services office at the campus where you are officially enrolled, participate in an intake interview, and provide documentation:

<https://ods.rutgers.edu/students/documentation-guidelines>. If the documentation supports your request for reasonable accommodations, your campus's disability services office will provide you with a Letter of Accommodations. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. To begin this process, please complete the Registration form on the ODS web site at:

<https://ods.rutgers.edu/students/registration-form>.

COURSE SCHEDULE

Part I – Establishing a Framework: Federal Courts and Judicial Agendas

Week 1 – Course Introduction

Read: Rice – Intro and Chapter 1

Sept 5 – Course Introduction

Sept 8 - Lecture and/or activity

Week 2 –

Read: Rice – Chapters 2 and 3

Sept 12 – Lecture and/or activity

Sept 15 – Lecture and/or activity

Week 3 –

Read: Rice – Chapter 4

Sept 19 – Lecture and/or activity

Sept 22 – Lecture and/or activity

Part II – Courts, Wolves, and the Endangered Species Act

Week 4 –

Read – Fitzgerald – Introduction, Chapters 1 and 2

Sept 26 – Lecture and/or activity

Sept 29 – Classroom Debate for Mock Case #1

Week 5 –

Read: Fitzgerald – Chapters 3, 4, and 5

Oct 3 – Lecture and/or activity

Oct 6 – Classroom Debate for Mock Case #2

Oct 9 - Brief #1 due for attorneys and interest groups

Week 6 –

Read: Fitzgerald – Chapters 6 and 7

Oct 10 – Lecture and/or activity

Oct 13 – Judges rulings

Oct 16 - Ruling #1 due for judges

Part III – Courts vs Campaign Finance Reform

Week 7 –

Read:

Oct 17 – Lecture and/or activity

Oct 20 – Lecture and/or activity

Week 8 –

Read:

Oct 24 – Lecture and/or activity

Oct 27 – Classroom Debate for Mock Case #2

Week 9 –

Read:

Oct 31 – Lecture and/or activity

Nov 3 – Classroom Debate for Mock Case #2

Brief #2 due for attorneys and interest group members

Week 10 -

- Read:

Nov 7 – Lecture and/or activity

Nov 10 – Judges Rulings

Ruling #2 due for judges

Part IV – Courts and the Clean Water Act

Week 11 –

Read: - The Clean Water Handbook – Chapter 1

Nov 14 – Lecture and/or activity

Nov - 17 – Lecture and/or activity

Week 12 –

Read: - Rapanos v U.S. (2006)

Nov 21 – Lecture and/or activity

Nov 24 – Classroom Debate for Mock Case #3

Brief #3 due for attorneys and interest groups

Week 13 –

Read: City of Maui v Hawaii Wildlife Fund (2020)

Nov 28 – Lecture and/or activity

Dec 1 – Classroom Debate for Mock Case #3

Week 14 –

Read: - Sackett v EPA (2012), Sackett v EPA (2023)

Dec 5 –

Dec - 8 – Judges Rulings

Annotated Bibliography due

Dec 11 – Ruling #3 due for judges

Week 15 –

- Read: Navajo (2023)

Dec 12 – Final day of class!