

Supreme Court Agenda-Setting
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
FALL 2023 – LAW 6936 – 2 CREDITS

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Office Hours: Mondays 2:00-4:00 (or by appointment)

MEETING TIME: Wednesday 3:00-5:00

LOCATION: HOL 0285A

COURSE DESCRIPTION AND OBJECTIVES:

The Supreme Court is unique among federal courts in that it gets to control its own docket. This seminar will examine this feature in two ways. First, we will examine the roots and consequences of this control. Second, we will study the Court's agenda-control processes using the lens of social science. Throughout, we will pay careful attention to the relationship between the formal rules and the Court's actual practice.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

- Describe the history of the Court's agenda-setting powers and current practice.
- Evaluate the implications of the Court's agenda-setting practices for politics, law, and the Court itself.
- Assess and imagine proposals to reform the Court's agenda-setting powers.

REQUIRED READING MATERIALS:

H.W. PERRY, DECIDING TO DECIDE ([AMAZON](#))

WARD AND WEIDEN, THE SORCERERS' APPRENTICES ([AMAZON](#))

Other readings will be posted to the course Canvas site.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Students will be evaluated based upon class participation and the final paper.

Class Participation: This seminar depends upon your careful reading of the texts and your participation in class discussion. Every week, as you do your reading, I expect you to write down at least 3 or 4 questions or issues you would like to cover in class. Bring them with you to class to use as a reference, and then turn them in at the end of each class. You will be expected to participate in class discussion. 40% of your grade will be based on class participation. (NOTE: Class participation is not a competitive enterprise. If you prepare your questions and participate in discussion each week, you will get full credit. I will not grade based on the perceived quality or quantity of your answers, although I will mark you off if it's clear you are not prepared for class.)

Seminar Paper: This seminar will require a lot of reading. Some of the readings will be very challenging, as they involve formal models and/or empirical analysis (think math). To encourage students to read carefully and critically, participation will be a significant (roughly 40%) part of the final grade.

The remainder of the course grade will come from the final paper. Consistent with UF policy, papers should be at least 25 pages of double-spaced pages 12-point font. Please use Garamond, keep all margins to 1.25 inches or less, and do not exceed 35 pages.

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed three absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

COMPLIANCE WITH UF HONOR CODE:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located [here](#).

Note on AI tools (Chat GPT, etc.). In my view, generative AI tools are going to become like spellcheckers. I have no objection to you using such tools to help with your paper, but you should understand the limitations of these technologies. They may be very helpful to you to get started and to help structure paragraphs or larger sections, but if you leave the actual analysis up to the machine, you should not expect to do well on the final paper.

INFORMATION ON UF LAW GRADING POLICIES:

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A (Excellent)	4.0	C (Satisfactory)	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.0	D (Poor)	1.0
B-	2.67	D-	0.67
C+	2.33	E (Failure)	0.0

The law school grading policy is available [here](#).

OBSERVANCE OF RELIGIOUS HOLIDAYS:

UF Law respects students' [observance of religious holidays](#).

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

EXAM DELAYS AND ACCOMMODATIONS:

The law school policy on exam delays and accommodations can be found [here](#).

STATEMENT RELATED TO ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page, available at <https://ufl.instructure.com/courses/427635>.

MENTAL HEALTH

The law school has [collected various resources](#) to help students pursue various forms of wellness. I would like to focus attention on the mental health portion of the page:

- The University of Florida operates a Counseling and Wellness Center that provides services and information regarding mental health. [Visit their website for more information.](#)
- The University of Florida's [Disability Resource Center's website](#) can connect you with resources if you need special accommodations or services.
- UF's [U Matter, We Care](#) program offers health & wellness programs as well as programs for students in distress.
- [LawLifeline](#) – Law Lifeline is an online mental health resource designed specifically for law students.
- [Lawyers With Depression](#) – Lawyers With Depression is a website that offers information on dealing with depression.
- [Substance Abuse and Mental Health Toolkit for Law School Students and Those Who Care About Them](#) – This toolkit from the American Bar Association provides substance abuse and mental health information and resources tailored for law students.

STUDENT COURSE EVALUATIONS

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluer.com/ufl/>. Summaries of course evaluation results are available to students [here](#).

RECORDINGS OF CLASS

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Each weekly class is approximately 2 hours in length, requiring at least **4 hours of preparation**.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

Readings (subject to change)	
1 8/23	<i>What Do We Need from the Supreme Court?</i> Required Readings: • SHAPIRO Chapter 1 (Canvas) • Federalist Papers 78-84 • <i>Barak</i> (Intro, Parts II, III, and V)
2 8/30	<i>SCOTUS Introductions and Jurisdiction</i> Required Readings: • 28 U.S.C. §§ 1251-1260 • Sup. Ct. R. 10-16 • PERRY Chapters 1, 2, Extended Discussion • STERN & GRESSMAN Chapters 1: 1.1 – 1.3 and 1.18 – 1.20; Chapters 2 – 3.
3 9/6	<i>The Story of the Court's Discretion</i> Required Readings: • <i>Johnson, Origins of Supreme Court Question-Selection</i> • <i>Grove, The Exceptions Clause as a Structural Safeguard</i> • <i>Shapiro, Jurisdiction and Discretion</i>
4 9/13	<i>The Floor of SCOTUS Appellate Jurisdiction</i> Required Readings: • H&W Chapter IV.1 • <i>Grove, The Origins (and Fragility) of Judicial Independence</i> • <i>Hart, Dialogue</i> • <i>Monaghan, Jurisdiction Stripping Circa 2020</i>
5 9/20	<i>Cases and Questions</i> Required Readings: • H&W Chapter II.1 • <i>Burset, Advisory Opinions and the Problem of Legal Authority</i> • <i>Bandes, The Idea of a Case</i>
6 9/27	<i>Nondelegation</i> Required Readings: • <i>Hayburn's Case</i> (Jay, Cushing, and Duane opinion) • <i>Morrison v. Olson</i> (excerpts) • <i>Mistretta v. United States</i> (excerpts) • <i>Watts, Constraining Certiorari</i>
7 10/4	<i>Project Development and Discussion #1</i>
8	<i>Project Development and Discussion #2</i>

10/11	
9 10/18	*** First Drafts Due *** <i>Certiorari Procedures + Appeals</i> <i>Required Readings:</i> • PERRY Chapters 3 – 4 • STERN & GRESSMAN Chapters 5 – 7
10 10/25	<i>Certworthiness</i> <i>Required Readings:</i> • PERRY Chapters 5, 8 • STERN & GRESSMAN Chapter 4 • <i>Caldeira and Wright, Organized Interests</i>
11 11/1	<i>The Rule of Four (WARNING: MUCH MATH)</i> <i>Required Readings:</i> • <i>Lax, Certiorari and Compliance in the Judicial Hierarchy</i> • <i>Fang, Johnson, and Roberts, Will of the Minority</i> • <i>Godefroy and Perez-Richet, Choosing Choices</i> • <i>Sasso and Judd, Case Selection and Supreme Court Pivots</i>
12 11/8	<i>Certiorari Strategy</i> <i>Required Readings:</i> • PERRY Chapters 6, 7 • <i>Caldeira, Wright, and Zorn, Strategic Voting and Gatekeeping in the Supreme Court</i>
13 11/15	<i>Clerks</i> <i>Required Readings:</i> • STERN & GRESSMAN Chapter 1.16 • WARD AND WEIDEN, pp. 1 – 149