

Columbian College of Arts and Sciences

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| Course Number | PPPA 2001-10 CRN 64025 | Semester: Spring 2023 |
| Course Title: | Justice and the Legal System 2: Constitutional Law for the 21 st Century | |
| Meeting Time/Place: | Monday from 3:30 PM to 6:00 PM Phil 109 | |
| Instructor: | Professor Jill F. Kasle Media and Public Affairs Building, Room 607 (202) 994-8213 - kasle@gwu.edu | |

“People ask me sometimes, ‘When will there be enough women on the court?’ My answer is: ‘When there are nine.’ Ruth Bader Ginsburg, Associate Justice, United States Supreme Court 1993-2020

“The best way to gain self-confidence is to do what you are afraid to do.” – Swati Sharma

The Lawyer’s Creed: Mind Your Manners. Tell the Truth. Know the Law.

I. Introduction to the Course

As we begin this class in January 2023, democracy seems to be holding its breath. For more than two years, former president Donald Trump and his followers have loudly claimed that the election that was held in November 2020 was so corrupt that the results should be thrown out and a new election should be held at once. **(Note: the procedure for holding a presidential election is outlined in the Constitution. There is no provision for a “do-over”.)**

Trump insisted that Vice President Mike Pence had the authority to overturn the results of the popular vote by rejecting presidential electors **(electors are described in the Constitution)** who were pledged to vote for Joe Biden and only counting electors pledged to vote for Trump. **(Note: the vice president’s duties regarding the Electoral College are outlined in the Constitution and are entirely ministerial. As a result, the Vice President does not have the power to reject votes from presidential electors.)**

In pursuit of Trump's claim that he actually won the presidential election, some 60 lawsuits were filed by Trump's lawyers around the country seeking to overturn the results of the election. All were dismissed by judges—in many cases, judges appointed by Trump—for lack of evidence. **(Note: the judicial power of the United States—the authority of judges to decide cases—is established in the Constitution.)**

Trump's claims about a stolen election came to a head on January 6, 2020, the day when Congress was scheduled to meet to certify the results of the election **(specified in the Constitution)**. On that day, Trump gave a speech to thousands of his supporters, telling them ““And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore.” (Trump has since said that he thinks those words were “extremely calming.”)

Following the speech, the audience marched down Constitution Avenue to the Capitol and attacked the building. Lives were lost, people were seriously injured, the building was defaced, congressional offices were ransacked, and members of Congress had to be hastily evacuated from the building. Trump's followers, under the Trump-inspired delusion that the Vice President could single-handedly overturn the results of the election, erected a gallows which they planned to use to hang the Vice President for his failure to reinstate Trump to the presidency.

The response throughout the country was outrage and a belief that the assault on the Capitol was not a spontaneous event. Trump was impeached for this behavior—earning the twisted distinction of becoming the first president ever to be impeached twice—but the Senate, then split 50-50 between Democrats and Republicans, could not reach the Constitutionally-mandated two-thirds vote to convict. **(Note: the impeachment process is outlined in the Constitution.)**

Shortly before July 4, 2020, Nancy Pelosi, the Speaker of the House, appointed a special committee to investigate the Jan. 6 assault on the Capitol. **(The authority of Congress to conduct oversight hearings and serve as a check on the President is outlined in the Constitution.)** The committee, under the leadership of chairman Bennie G. Thompson, Democrat of Mississippi, and vice-chairman Liz Cheney, Republican of Wyoming, issued an 845-page report in early January 2023 specifying Trump's violations of the law and the Constitution and sent four criminal referrals (recommendations for prosecution) of Trump to the Justice Department. **(The legal principle that the President has to obey the law just like everyone else is derived from the Constitution.)**

Trump is also facing other legal peril. The Attorney General of the United States has appointed a Special Counsel to investigate Trump's seizure of and refusal to return several hundred pages of classified documents that were found in Trump's home pursuant to a search warrant **(search warrants are described in the Constitution)**.

The District Attorney of Fulton County, Georgia, convened a special grand jury to investigate whether a taped phone call that Trump made to the Georgia Secretary of State asking the official to “find” enough votes in Georgia to overturn Biden’s win in the state constitutes election fraud. That special grand jury has now concluded its work and sent a report to the presiding judge. When the report is released, we will know if a regular grand jury will be convened to hear evidence and return (or not) an indictment **(described in the Constitution)** against Trump. The Trump Organization recently lost a case in New York involving tax fraud and Trump is also being investigated in New York for financial crimes involving his real estate properties.

Meanwhile, the Supreme Court **(established by the Constitution)** is also in crisis. In September 2020, a Gallup poll found that 58% of the public approved of the job the Supreme Court was doing; by September 2021, that number had fallen to 40%. The primary reason for the sharply reduced faith in the Supreme Court had to do with a feeling on the part of the public that the Court is unduly influenced by politics. (Remember: the Supreme Court depends for its legitimacy on the public’s trust. If only 40% of the public approves of the Court, that’s a problem.)

As you can see, the Constitution has played a foundational role in the most important legal events of the past few years. We will study Constitutional law against this background.

II. What will I learn in this course?

You will read Supreme Court opinions closely and analyze legal arguments. You will develop your ability to write in a brief and clear style. You will learn the basics of oral advocacy, the legal term for public speaking. You will get a preview of law school. You will gain confidence in your ability to grasp complex legal concepts, construct effective arguments, and express yourself orally and in writing. The process will be demanding, challenging, frustrating, and deeply rewarding.

III. What are the course objectives?

- 1)** You will learn to write in a brief and clear style, read complex legal material, and understand how the legal system works. Another course objective is to help you understand how the Supreme Court does its job.
- 2)** You will also learn a new skill: oral advocacy. As you undertake to learn this skill, remember that you are in a class of people who are just as nervous as you are. Remember also that I am here to support you.
- 3)** I hope this class deepens your appreciation for the Constitution.

IV. Are there prerequisites for this course?

This course is different from every other course you have ever had. Unless you already have a law degree (which seems unlikely), nothing in your past educational career has prepared you for this course. What makes the course different is the emphasis on thinking like a lawyer, writing like a lawyer, and speaking like a lawyer.

V. Who teaches the course? Is she nice?

The professor in the course is Jill F. Kasle. Professor Kasle earned bachelor's and master's degrees from Northwestern University and a law degree from Boston University. In her professional life, Professor Kasle has done almost everything that a lawyer can do except become a judge and get indicted. Her proudest academic achievement is membership in Phi Beta Kappa. More than anything, Professor Kasle wants to help you learn and be successful in this class. Her approach to the class is a lot like Professor McGonagall's approach to her Transfiguration classes at Hogwarts School of Witchcraft and Wizardry with occasional touches of Professor Snape. (For those who don't understand the references, see the Harry Potter books.)

VI. Meeting with the professor

I am happy to meet with you to talk about anything you want to talk about, whether related to the course or not.

I do not hold designated office hours because designated office hours often conflict with a student's availability. However, I will be happy to make an appointment to meet with you at almost any mutually convenient time. To make an appointment, send me your availability and I will get back to you as soon as possible with a meeting day and time. Things being what they are as I write this syllabus (January 2023), the meetings will probably take place over Zoom. Here is the link: <https://gwu-edu.zoom.us/j/93182894234?pwd=V2ZrM1ZXM3VXS3Z0UzlrZVZub1pjQT09>

Sometimes students feel uncomfortable asking me questions – they don't want me to know that they're confused. Fortunately, this class has three secret weapons for dealing with this very situation: my student helpers Kelsey Marx, Elizabeth (Lizzie) Hahn, and Rahul Kothari. Kelsey and Rahul are juniors; Lizzie is a sophomore.

When you go to Kelsey or Lizzie or Rahul for help, they will let me know that a student has come to them for help but they will never tell me the name of the student who sought their help. So your visits are completely anonymous as far as I'm concerned. Kelsey's email is marx@gwu.edu, Lizzie's email is elizabethhahn@gwu.edu, and Rahul's email is rahulkothari@gwu.edu.

We also have a secret weapon for students who need help with their writing: Zach Benzaoui (zbenzaoui@gwu.edu), a tutor at the University Writing Center. Zach, a junior, took the class two years ago. He's a wonderful writer and, perhaps more to the point, he knows me and he knows what I'm looking for in your writing. I encourage you to get in touch with Zach early in the semester if you feel that your writing might need a tune-up. To schedule appointments at the Writing Center and book an appointment with Zach, use this link: <https://writingcenter2.drupal.gwu.edu/appointments#appointment-types/>

Tip: if you make an appointment with Kelsey or Rahul or Lizzie or Zach or me, please keep the appointment. If you must cancel, send an email cancelling the appointment – you do not need to give a reason for the cancellation. The point is, do not ghost us – ghosting will have a negative effect on your standing in the class.

VII. Communicating with the professor

I try my best to respond to student emails within 24 hours and I would appreciate your doing the same with my emails to you.

VIII: YIKES! What have I gotten myself into?

Is it true that most students get an A in this class?

Yes.

Really?

Really. Work *with* me (instead of *against* me) and you will do fine.

OK, so how do I get an A in this class?

- 1) Come to class
- 2) Do the homework
- 3) Meet all the deadlines
- 4) Answer the questions that I ask in class
- 5) Write well
- 6) Make good use of the abundant help that is offered in this class

IX. Grading Percentages and Assessments

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|-------------------------|-----|
| 1) Participation credit | 25% |
| 2) Midterm | 25% |
| 3) Final Exam | 50% |
- 4) Extra credit opportunity: Supreme Court “visit” and “What I Learned” paper

Participation Credit: The readings in this class are court opinions, almost all from the Supreme Court. Before each class, please read the assigned cases and prepare a case abstract for each case (more about case abstracts during our first class session). When you come to class, I will employ the time-honored law school technique of cold calling, *i.e.*, I will randomly call on students and ask questions about the assigned reading. The answers to my questions will be in your case abstracts. **You earn participation credit by answering the questions.** There is only one wrong answer to any of my questions: “I don’t know.” If I ask you a question and your response is “I don’t know”, you are telling me that you haven’t read the case and you’re working against me (see above).

Midterm and Final: Midterm: In this class (and in law school), we use what are called fact pattern exams. A fact pattern, also known as a hypo (short for “hypothetical”), presents an invented legal case that students, acting as Supreme Court Justices, decide. Your midterm will be a hypo. **Here is a typical hypo:**

“In July 2021, Good Weather University (GWU), a fine institution of higher learning in Washington, DC, established a mandatory vaccination policy for all students, faculty, and staff to combat the spread of the Delta variant of COVID, as follows:

“All students, faculty, and staff must have at least the first vaccination shot against COVID before arriving on campus for the Fall 2021 semester and must have the second shot within 30 days of arriving on campus. Students who live in Florida, Texas, Louisiana, Alabama, and Missouri (states with excessively high rates of COVID cases, including hospitalizations and deaths) must have both shots before arriving on campus. Students who fail to follow this policy will not be able to access campus buildings (including their residence halls).”

John Smith is a resident of Miami, Florida. John is a rising junior at Good Weather University. John, who is 23 years old, took time off after high school and joined the Florida National Guard. For the past few weeks, John has been with his Guard unit on an emergency basis helping to evacuate Americans from Kabul, Afghanistan.

John had planned to get his first COVID vaccination before returning to GWU in August but the situation in Kabul is so dire that he will barely have time to get back to Florida, pack, and make it to campus before classes start on August 30.

John's GWorld card won't work if he arrives on campus unvaccinated. So John authorizes his lawyer to file a request for an injunction against GWU's vaccination policy in Federal District Court in Miami. The District Court finds in favor of John but the Court of Appeals reverses and finds in favor of GWU. What result in the Supreme Court?"

Here is the outline of the answer:

"The issue in the case is the following: Is Good Weather University's vaccine mandate legal? The holding is [**give the holding**]. The Supreme Court finds in favor us [**state who wins**].

The standard of review in this case is [**give the standard of review**]. When applying this standard of review, the Court will ask [**state the questions that are part of the chosen standard of review**]. In this case, [**apply the standard of review**].

The Court relies for its decision in this case on the precedent case of [**give the name of the precedent case**]. In that case, the Court wrote [**give the relevant holding from the precedent case**]. We apply that precedent case here by [**describe how the Court uses the precedent case to decide the current case**]."

Final Exam: Another fact pattern exam.

Extra Credit: We will discuss the extra credit opportunities in class.

Tip: I **strongly** discourage you from using the internet in this course. Here's why:

- 1) If you lift material from the Internet and use that material on any written work in this course, you've committed plagiarism.
- 2) There's a lot of writing about the law online. Some of the writing is good, some of the writing is bad, and some of the writing is just plain wrong. **Problem:** you won't know the difference. You're new to the study of law so you don't yet have the ability to discern accurate legal writing from inaccurate legal writing. Suppose you lift something from the internet that's wrong and put that material on your paper. What do you suppose the result will be? (See above where reference is made to Professor Snape.)
- 3) Some phrases in the law—such as standard of review, which we talk about a lot in this course--have two meanings. If you go online to find the definition of standard of review, you could easily find the "wrong" definition but, again, you're new to the study of law so you won't know that the definition you've taken from the internet is the wrong one. Result: a low grade on an exam.

X. Readings

Monday, January 23 – no class

**Monday, January 30: Introduction to reading cases; the Constitution
(click on the title to access the reading)**

["How to Read a Legal Opinion" by Orin Kerr](#)

[South Bay United Pentecostal Church v. Newsom](#) 1 (May 2020)

[South Bay United Pentecostal Church v. Newsom](#) 2 (Feb. 2021)

The Constitution – you can find a copy online

Monday, February 6: The Big Three

Note: The list of cases that follows comes from a syllabus prepared by Professor Douglas Linder of the University of Missouri School of Law and is freely and intentionally made available to all via the Internet.

Marbury v. Madison

[Background](#)

[Opinion](#)

McCulloch v. Maryland

[Background](#)

[Opinion](#)

Gibbons v. Ogden

[Background](#)

[Opinion](#)

Monday, February 13: Separation of Powers

Youngstown Sheet & Tube v. Sawyer

[Background](#)

[Opinion](#)

Dellums v. Bush

Bush v. Gore

Monday, February 20: no class – President's Day

Monday, February 27: Executive Privilege

U.S. v. Nixon

[Background](#)

[Opinion](#)

[Trump v. Thompson](#) 20 F. 4th 10 (2021)

[Trump v. Thompson](#) 595 U.S. ____ (January 19, 2022)

Monday, March 6: The National Commerce Power

U.S. v. Lopez

[Background](#)

[Opinion](#)

U.S. v. Morrison

[Background](#)

[Opinion](#)

Monday, March 13: no class – Spring Break

Monday, March 20 and Monday, March 27: Due Process

Protection of Economic Interests

Lochner v. New York

[Opinion](#)

Nebbia v. New York

[Opinion](#)

Protection of Individual Rights

The Right to Privacy

Griswold v. Connecticut

[Background](#)

[Opinion](#)

The Right to Marry

[Loving v. Virginia](#)

[U.S. v. Windsor](#) – Justice Kennedy’s opinion and Justice Scalia’s dissent

[Obergefell v. Hodges](#)

The Right to Abortion

[Roe v. Wade](#) (start at V)

Planned Parenthood v. Casey

[Background](#)

[Opinion](#)

Dobbs v. Jackson Women’s Health

The Right to Choice in Sexual Matters

Lawrence v. Texas

[Background](#)

[Opinion](#)

Monday, April 3 and Monday, April 10: Equal Protection

Discrimination on the basis of “safety”

Railway Express Agency v. New York

[Background](#)

[Opinion](#)

Discrimination on the basis of race and ethnic ancestry

Plessy v. Ferguson

[Background](#)

[Opinion](#)

Brown v. Board of Education

[Opinion](#)

Discrimination on the basis of gender

Craig v. Boren

[Background](#)

[Opinion](#)

Miscellaneous but Extremely Important University Policies

Academic Integrity Code

Academic integrity is an essential part of the educational process and all members of the GW community take these matters very seriously. As the instructor of record for this course, my role is to provide clear expectations and uphold them in all assessments. Violations of academic integrity occur when students fail to cite research sources properly, engage in unauthorized collaboration, falsify data, and otherwise violate the [Code of Academic Integrity](#).

If you have any questions about whether or not particular academic practices or resources are permitted, you should ask me for clarification. If you are reported for an academic integrity violation, you should contact the Office of Student Rights and Responsibilities (SRR) to learn more about your rights and options in the process. Consequences can range from failure of assignment to expulsion from the university and may include a transcript notation. For more information, please refer to the SRR website (<https://studentconduct.gwu.edu/academic-integrity>), email rights@gwu.edu, or call 202-994-6757.

University policy on observance of religious holidays

Students must notify faculty during the first week of the semester in which they are enrolled in the course, or as early as possible, but no later than three weeks prior to the absence, of their intention to be absent from class on their day(s) of religious observance. If the holiday falls within the first three weeks of class, the student must inform faculty in the first week of the semester. For details and policy, see “Religious Holidays” at provost.gwu.edu/policies-procedures-and-guidelines.

Use of Electronic Course Materials and Class Recordings

Students are encouraged to use electronic course materials, including recorded class sessions, for private personal use in connection with their academic program of study. Electronic course materials and recorded class sessions should not be shared or used for non-course related purposes unless express permission has been granted by the instructor.

Students who impermissibly share any electronic course materials are subject to discipline under the Student Code of Conduct. Please contact the instructor if you have questions regarding what constitutes permissible or impermissible use of electronic course materials and/or recorded class sessions. Please contact Disability Support Services at disabilitysupport.gwu.edu if you have questions or need assistance in accessing electronic course materials.

Academic support

Writing Center

GW's Writing Center cultivates confident writers in the University community by facilitating collaborative, critical, and inclusive conversations at all stages of the writing process. Working alongside peer mentors, writers develop strategies to write independently in academic and public settings. Appointments can be booked online at gwu.mywconline.

Academic Commons

Academic Commons provides tutoring and other academic support resources to students in many courses. Students can schedule virtual one-on-one appointments or attend virtual drop-in sessions. Students may schedule an appointment, review the tutoring schedule, access other academic support resources, or obtain assistance at academiccommons.gwu.edu.

Support for students outside the classroom

Disability Support Services (DSS) 202-994-8250

Any student who may need an accommodation based on the potential impact of a disability should contact Disability Support Services at disabilitysupport.gwu.edu to establish eligibility and to coordinate reasonable accommodations..

Counseling and Psychological Services 202-994-5300

GW's Colonial Health Center offers counseling and psychological services, supporting mental health and personal development by collaborating directly with students to overcome challenges and difficulties that may interfere with academic, emotional, and personal success. healthcenter.gwu.edu/counseling-and-psychological-services.

Safety and Security

- In an emergency: call GWPD 202-994-6111 or 911
 - For situation-specific actions: review the Emergency Response Handbook at: safety.gwu.edu/emergency-response-handbook
 - In an active violence situation: Get Out, Hide Out, or Take Out. See go.gwu.edu/shooterpret

Stay informed: safety.gwu.edu/stay-informed

Average minimum amount of out-of-class or independent learning expected per week

In a 15-week semester, including exam week, students are expected to spend a minimum of 100 minutes of out-of-class work for every 50 minutes of direct instruction for a minimum total of 2.5 hours of instruction/study per week. A 3-credit course should include 2.5 hours of direct instruction and a minimum of 5 hours of independent learning, totaling a minimum of 7.5 hours of instruction/study per week. More information about GW's credit hour policy can be found at provost.gwu.edu/policies-forms (webpage); or provost.gwu.edu/files/downloads/Resources/Assignment-Credit-Hours-7-2016.pdf (form).]

Title IX language:

The George Washington University and its faculty are committed to creating a safe and open learning environment for all students. If you or someone you know has experienced sexual harassment (including sexual assault, dating or domestic violence, and stalking) you are encouraged to report these events to the university's Title IX office at (202) 994-7434 or at titleix@gwu.edu.

Please be aware that faculty members are required to disclose information about suspected or alleged sexual harassment or other potential violations of the Title IX Sexual Harassment and Related Conduct Policy to the Title IX Office. If you, or another student you know, wishes to speak to a confidential resource who does not have this reporting responsibility, please contact Counseling and Psychological Services through the Colonial Health Center 24/7 at 202-994-5300 or the Office of Advocacy and Support at 202-994-0443 or at oas@gwu.edu.

