

GEORGE MASON UNIVERSITY
ANTONIN SCALIA LAW SCHOOL
SEPARATION OF POWERS CLINIC

Law 728

Spring 2023

Director: Trent McCotter

“Ambition must be made to counteract ambition.” Federalist No. 51.

COURSE INFORMATION

Class Meetings: Class will be held through a variety of formats, including small group meetings and guest lectures. Below is a tentative schedule with some initial reading assignments. Things will get moved around based on when guest speakers will be available.

Contact Info: rmccotte@gmu.edu

Course Book: There is no assigned textbook. I will assign cases, chapters, articles, briefs, etc. for background and as exemplars.

Grades/Attendance: Fifty percent of the final grade will be based on student writing/research assignments for briefs. The remaining 50 percent of a student’s grade will be based on the student’s completion of weekly assignments providing updates on potential separation-of-powers cases. A student’s overall grade based on their weekly updates and brief-writing/researching may be adjusted one step upward or downward (for example, from an A up to an A+ or down to an A-) based on the student’s participation during in-class discussions. In compliance with George Mason’s attendance policy, students absent from 20 percent or more of classes may not receive credit for the course.

Class Structure: Generally, the first half of class will be dedicated to discussing the clinic’s projects and research, and the second half of class will be devoted to discussing the assigned readings. The structure may change when we have a guest speaker.

Requirements: When the Clinic finds a new matter in which we will write a brief, I will circulate an email to the class requesting volunteers for that matter (the number of students needed will vary depending on the lift required and the press of other assignments).

There is a critical weekly task for each student: provide the class with an update of decisions recently issued in your assigned circuit (*including the district courts within that circuit*) that may raise separation-of-powers issues of interest to the Clinic. Our goal is to find cases where we can submit briefs at the circuit court or Supreme Court level, either directly representing parties or via an amicus brief. Each Wednesday by noon, circulate to the entire class copies of the opinions in one or two cases you've found in the last week that may raise separation-of-powers issues, along with a blurb about each and why it may be of interest, as well as any possible vehicle issues you see. We will discuss them during that Thursday night's class.

Circuit assignments:

CADC+CA1:	CA7:
CA2:	CA8:
CA3+CA10:	CA9:
CA4:	CA11:
CA5:	
CA6:	

Outcomes: By the end of the course, students should be able to: (1) research and draft briefs that are worthy of being submitted to circuit courts or the Supreme Court, (2) recognize what makes a case an ideal vehicle for the clinic to participate, and (3) identify separation-of-powers issues even when parties or the court do not expressly flag them (think: What is really happening here? Who is doing it? Under the Constitution, should someone different be doing it?).

SCHEDULE

(May be changed on the fly)

#	Date	Event/Topics	Reading Assignment
1	Jan. 19 (810PM)	Introduction/Expectations Circuit Assignments Identifying Ideal Cases	U.S. Const. Arts. I-VII Constitutional Dysfunction on Trial pp.1-13 Social Security cases Egbert Amicus Brief (just skim)
2	Jan. 26 (810PM)	Congress/Executive Building a Case	Proclamation by Crown Act Gundy v. United States, 139 S. Ct. 2116 (2019) 47 U.S.C. 402 (a), (b); 28 U.S.C. 2112 (a), 2342, 2344 FCC Universal Service Fund Comment pp.1-14, 27-44, 58-68
3	Feb. 2 (810PM)	TBD	
4	Feb. 9 (810PM)	GUEST SPEAKER	United States v. Kerns, 9 F.4th 342, 351 (6th Cir. 2021) (only Readler concurrence) Wooden v. United States, 142 S. Ct. 1063 (2022)
5	Feb. 16 (810PM)	Congress/Executive SOP in the Motions/Application Docket	Ala. Ass'n of Realtors v. HHS, 141 S. Ct. 2485 (2021) Application, response & reply in Alabama (skim quickly) SCOTUS Application Guide
6	Feb. 23 (810PM)	Private Delegation Executive/Congress	Texas v. Rettig, 993 F.3d 408 (5th Cir. 2021) Zivotofsky v. Kerry, 576 U.S. 1 (2015) (majority and Scalia dissent only)
7	Mar. 2 (810PM)	GUEST SPEAKER	379 F. Supp. 3d 8 (D.D.C. 2019) 976 F.3d 1 (D.C. Cir. 2020)
8	Mar. 9 (810PM)	TBD	
	Mar. 16	SPRING BREAK	
9	Mar. 23 (810PM)	TBD	
10	Mar. 30 (810PM)	District Court Litigation	Complaint in Feds for Medical Freedom v. Biden (S.D. Tex.)
11	Apr. 6 (810PM)	Catch up	
12	Apr. 13 (6PM)	TBD	
13	Apr. 20 (810PM)	TBD	