I. GENERAL CLASS DESCRIPTION

This seminar will examine Supreme Court decision making from both a theoretical and practical perspective. The class will survey representative cases that are currently pending on the Court’s docket. Extensive preparation will be required of class members who will play the roles of lawyers and justices as they simulate oral argument as well as the justices’ conferences and the opinion writing process. Class objectives include refining your writing skills and oral communication skills, developing appellate advocacy skills, and gaining a better understanding of how the Supreme Court operates and reaches decisions. A secondary objective is developing a better understanding of statutory interpretation—although public attention tends to focus on the Supreme Court’s constitutional cases, much of its docket is statutory. Enrollment is limited to a maximum of 18 students.

II. CLASS MEETINGS AND ATTENDANCE REQUIREMENTS

This class will meet on Tuesdays and Thursdays from 3:30 p.m. to 5:20 p.m. Given the nature and size of the class, regular attendance is mandatory. If you must miss a class for which you have an assigned role due to a serious and unplanned emergency or illness, you must notify me by email or phone, and you must arrange for a colleague to play your assigned role for you. If you know at the beginning of the quarter that you will be absent from class on a particular day due to a planned and unavoidable absence, please let me know during the first week of classes so that we can work together to try to avoid giving you an assigned role on that given day.

III. OFFICE HOURS

Because I do not have an office on campus, I will not have regularly scheduled office hours. Nevertheless, I will generally be available to meet with students after class. In addition, I am very willing to meet with students, or to talk by phone, as often as demand warrants, so please feel free to call or to email me to set up a time.

IV. GENERAL CLASS FORMAT AND STRUCTURE

During the first four weeks of the class, we will devote our class time to gaining a general understanding of the decision making process at the Supreme Court by reading and discussing literature on the Court. Discussion during these initial weeks will be aimed at giving you a general introduction to the Court and how it decides cases.

The remaining weeks of the class will focus on five specific cases currently pending before the Supreme Court. Students will be expected to read the briefs in the selected cases, to locate and read relevant authorities cited in the briefs, and to come to class prepared to simulate a pre-assigned role of oral advocate, justice, or law clerk in the cases.

V. ORAL ARGUMENTS AND OPINIONS

During weeks 5 through 9 of this class, class meetings will focus on five specific cases currently pending before the Supreme Court. The briefs that the parties filed in the actual cases will be available on the class website, and all members of the class are expected to read them. Some selected amicus curiae briefs (meaning “friend of the court” briefs) also will be assigned as reading. In addition to reading the assigned briefs and lower court opinions, class members will need to determine on their own what additional relevant authorities cited in the briefs (e.g.,
key cases or other key legal authorities) should be consulted, and class members must look up and review these relevant authorities using Lexis, Westlaw or other library resources. This means that reading for oral argument weeks will be heavy and that a fair amount of “self-teaching” will be required during the weeks devoted to oral arguments when you have an assigned role.

A. “Case preparation” days: On “case preparation” days, I will provide a high-level overview of the case that we will be covering that week with the goal of setting the stage, putting the case into a broader legal context, and providing you with a basic doctrinal framework for the issues we will be studying through that particular week’s case. Although I will lecture some during these “case preparation” sessions, you should be ready and prepared to contribute to class discussion of the cases and to answer questions about the cases during these “case preparation” sessions.

B. “Oral argument” days: On “oral argument” days, we will hold a simulated oral argument in the assigned case for the first hour of class. Each student will be assigned to complete at least one oral argument during the quarter. This means that somewhere two or three students will be assigned an oral advocacy role in each case, and that nine students—one representing each current justice—will serve as the justices of the Court in each case. The remaining students without assigned roles in a given week will sit as “law clerks” in the courtroom and will simply watch the oral argument.

During the quarter, each student should expect to: (a) deliver at least one oral argument; (b) sit as a justice on two or three different cases during the term and write a major opinion in one of those cases; and (c) sit as a law clerk in the remaining cases. The week or weeks that you sit out as a law clerk will be your “light” weeks in terms of reading and work load, and the weeks that you deliver an oral argument or sit as a justice will be your “heavy” weeks in terms of reading and work load.

When serving as a justice on the Court, the student’s task is to act as his or her justice would and to play the role of his or her assigned justice. Note, however, that there is one exception to this rule: The student assigned to play the role of Justice Thomas cannot remain silent (as the real Justice Thomas generally does during arguments) but rather must engage in the argument and ask questions.

After the oral argument session each week, the justices will hold a simulated “conference” in class to discuss the case and to vote on the case. These conference discussions will contain discussion of how each student (representing his/her justice) intends to vote. At the end of the conference, the task of writing an opinion for the Court will be assigned to one or more justices. If appropriate, additional justices will be assigned the job of writing concurrences or dissents. Note that each student in the class will be assigned the task of writing one majority opinion or one major concurring or dissenting opinion during the quarter from the perspective of his or her assigned justice.

After the conference each week, the entire class will participate in a general “debriefing” of the case, which will include discussion of the brief writers’ and oral advocates’ strategy in arguing the case.

The justices assigned the task of writing opinions will distribute them to their Court of nine by posting the drafts on the course website. The other justices who sat on that case will review these drafts, requesting and/or demanding revisions when appropriate and indicating ultimately which opinion they will join. The ultimate goal of this exchange is to produce an opinion for the Court that in essence predicts how the real Supreme Court will decide the case. 

Note: If the real Supreme Court hands down a decision in a case that we are hearing before you
have circulated and finalized your own opinion in this class, you must refrain from reading the Court’s actual decision until after you have circulated your opinion. I understand that you may not be able to avoid reading all press accounts or blog posts about the decision, but I ask you to avoid pulling up and reading the Court’s actual decision until *after* you have drafted your own opinion, circulated it, and finalized it.

VI. **RESPONSIBILITIES OF PARTICIPANTS**

The success of this simulation-based class depends on the willingness of the participants to take their roles as justices and oral advocates very seriously. The major responsibilities of class members include:

a. Reading the assigned materials carefully and coming to class prepared each day.

b. Researching the persona of the justice you represent. You will play the role of the same justice over the course of the quarter and must try to act as your assigned justice would throughout the quarter. This does not require reading a great many opinions, but it does require reading enough opinions or literature on your justice to get a feel for the justice’s attitudes.

c. Delivering one pre-assigned oral argument over the course of the quarter. You should be fully prepared to deliver a polished, prepared, professional oral argument. Please also dress the part on the day of your oral argument by wearing business attire on the day you deliver your oral argument.

d. Being prepared to participate actively in the arguments that you are pre-assigned to judge. This means that you should come to oral argument with questions that you think your assigned justice would ask. *(Note: You must refrain from reading the actual oral argument transcript from cases we will be covering in class until after we have held our own mock oral argument in class. This rule is to prevent you from simply parroting the questions that the Justices on the Court actually asked. Don’t worry if you happened to read some of the oral argument transcripts for cases we will be covering prior to seeing this syllabus and the class rules. Just please do not re-read the transcripts again.)*

e. Drafting one majority opinion (or major concurring/dissenting opinion) over the course of the quarter and revising it promptly to incorporate the concerns of colleagues. First drafts of majority opinions are due 12 calendar days after the oral argument. First drafts of concurrences and dissents are due 18 calendar days after oral argument. All draft opinions should be posted to the appropriate case folder on the course web site using the following naming convention: “DRAFT: Justice [Name] [Maj./Conc./Dissent] in [Case Name].”

f. Promptly reviewing opinions of colleagues. As a justice, your response as to whether or not you plan to join a colleagues’ opinion, or whether you wish to request changes before joining an opinion, is due no later than 3 calendar days after the opinion has been posted. If a majority opinion has circulated but you as a justice want to review a concurring or dissenting opinion before casting your ultimate vote, then your vote is due no later than 3 days after the concurring or dissenting opinion has been posted (instead of 3 days after the majority opinion has posted). Your justices’ responses to colleagues’ opinions should be posted to the course web site in the appropriate case folder.

g. Posting your final version of your one required majority opinion (or major concurring/dissenting opinion) to the appropriate online folder and labeling it using the following naming convention: “FINAL: Justice [Name] [Maj./Conc./Dissent] in
[Case Name].” These “final” opinions must be posted no later than Friday, April 4th. Please note that April 4th is the absolute last date on which final opinions may be posted because final grades are due to Academic Services on April 14th, and I need time to grade the final opinions.

VII. REQUIRED READINGS
Much of the assigned reading will be from The Supreme Court Sourcebook (referred to in the reading list as “SCS”). Other required readings will be accessible via the course website or, in some instances, circulated in hard copy in class.

VIII. OPTIONAL SUPPLEMENTAL RESOURCES AND READINGS
For those of you who are interested in reading supplemental, optional materials on the Court, I would recommend the following resources that cover the Court in one way or another:

- The Supreme Court’s own website has some useful information about the Court, the justices, and the Court’s docket at www.supremecourtus.gov. There is a link on the site to briefs in pending cases; this link will allow you to access all briefs that have been filed in a case (not just those briefs that I assign to you from a given case).
- The best website for tracking current Supreme Court developments is Scotusblog, which can be found at www.scotusblog.com. If you read Scotusblog, please refrain from reading posts about the oral arguments in the cases we will be deciding in class until after we have held our own oral argument in class. The same rule follows for reviewing posts about the Court’s own opinions in cases we will be deciding.
- The best comprehensive resource on Supreme Court practice is Supreme Court Practice, by Eugene Gressman, Kenneth Geller, Stephen Shapiro, Timothy Bishop, and Edward Hartnett. It covers Supreme Court rules, procedures and protocol, and it also offers advice on briefing and argument.
- Supreme Court and Appellate Advocacy, by David Frederick, offers guidance on preparing for and presenting oral argument.
- Reading Law: The Interpretation of Legal Texts, a recent book co-authored by Justice Scalia and Bryan A. Garner, is a helpful guide to statutory interpretation.

IX. GRADING
There will be no final exam in this class. Attendance is crucial in this class. Unexcused absences or poor class participation will count against you. Also, please note that late assignments will be marked down at least one full letter grade and potentially more depending on how late the assignment is. Specifically, students will be graded on the basis of the following:
(a) Your performance arguing a case will count for 30 percent of your grade.
(b) Your performance playing the role of your assigned justice when judging cases being argued by others and when casting votes on draft opinions will count for 15 percent of your grade.
(c) Your written opinion will count for 45 percent of your grade. Note that I will take both your draft and final opinion into account when assigning your opinion a grade, but more weight will be attached to your final opinion.
(d) Your participation in general class discussions (such as discussions on “case preparation” days and general discussions that take place after each oral argument) will count for 10 percent of your grade.
X. **Weekly Schedule and Assigned Reading**

A class schedule and reading list follows on the next page. I reserve the right to amend or change this schedule as the quarter progresses or if the total number of students enrolled in the class changes. If I need to revise this schedule and reading list, I will post a new revised version of this syllabus to the course website.

The assigned readings will be available online via hyperlinks embedded into the electronic syllabus or, in some circumstances, may be handed out in class.

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<tr>
<th>Class Session</th>
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<tr>
<td>Tues., Jan. 7</td>
<td>An Introduction to the Court</td>
<td>Course syllabus; Questions presented from cases we will study; SCS pp. 6-19 from Chapter 1 and SCS pp. 79-92 from Chapter 2</td>
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<td>Thurs., Jan. 9</td>
<td>The Justices</td>
<td>Selected materials from SCS Chapter 2; additional materials on course website (see below)</td>
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<td>The Solicitor General and the Supreme Court Bar</td>
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<td>Merits Briefs</td>
<td>Selected materials from SCS Chapter 5</td>
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<td>Writing Judicial Opinions</td>
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<td>Selected briefs and decision below</td>
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<td>Thurs., Feb. 6</td>
<td>Oral Arguments in <em>United States v. Bond</em></td>
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<td>Thurs., Feb. 13</td>
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<td>Case Prep for <em>NLRB v. Noel Canning</em></td>
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<td>CLASS SESSION</td>
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<td>Thurs., Feb. 20</td>
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<td>Tues., Feb. 25</td>
<td>Case Prep for United States v. Castleman</td>
<td>Selected briefs and decision below</td>
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<td>Thurs., Feb. 27</td>
<td>Oral Arguments in United States v. Castleman</td>
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<tr>
<td>Tues., Mar. 4</td>
<td>Case Prep for Halliburton Co. v. Erica P. John Fund, Inc.</td>
<td>Selected briefs and decision below</td>
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**Part III. Wrapping Up the Course**

| Thurs., Mar. 11  | End of Term review Course Evaluation | To be determined |

**P ART I: AN INTRODUCTION TO THE U.S. SUPREME COURT AND ITS DECISIONAL PROCESS**

**Tues., Jan. 7**  
**Introduction to the Course and An Overview of the Supreme Court**

*Assigned reading:*

1. Carefully read the course syllabus in its entirety so that you are aware of the course structure, course expectations, and course goals.
2. Read pp. 6-19 from Chapter 1 of *The Supreme Court Sourcebook* (“SCS”), and pp. 79-92 from SCS Chapter 2.
3. Read the questions presented from the cases we will be arguing in class this quarter, which can be found on the course syllabus below. Come to class today prepared to rank order which case you would prefer to argue this quarter and which justice you most would like to role play this quarter. You will be asked to rank order the justices from 1-9 and to rank order the cases from 1-5 in order of your own individual preferences. In deciding which cases you are most interested in, you might want to read not only the questions presented in the cases, but you also might want to glance at some of the briefs in the cases. You should also pay attention to the date when the cases will be argued in our class when deciding which cases to preference.

**Thurs., Jan. 9**  
**The Justices**

*Assigned reading:* Read pp. 21-41, 50-58, 70-78 from Chapter 2 of the SCS, “The Justices.”

**Tues., Jan. 14**  
**Certiorari**

*Assigned reading:* Read selected materials from SCS Chapter 4, “Certiorari.”

**Thurs., Jan. 16**  
**The Solicitor General and the Supreme Court Bar**

*Assigned reading:* Read briefs in opposition to certiorari in Seale and Mina. Read article by David Strauss and brief in Duarte (all found on course web page).

**Thurs., Jan. 23**  
**Merits Briefs**
Assigned reading: Read selected materials from SCS Chapter 5, “Written Advocacy.”

Tues., Jan. 28  Oral Argument
Assigned Reading: Read selected materials from Chapter 6 of the SCS, “Oral Argument.”

Thurs., Jan. 30  Opinion Writing
Assigned Reading: Read selected materials from Chapter 7 of the SCS, “Deciding Cases.”

PART II:
SIMULATIONS OF PENDING CASES

CASE #1:
Bond v. United States, No. 12-158

Tues., Feb. 4  Case Preparation

Thurs., Feb. 6  Oral Argument

Questions presented: (1) Whether the Constitution’s structural limits on federal authority impose any constraints on the scope of Congress’ authority to enact legislation to implement a valid treaty, at least in circumstances where the federal statute, as applied, goes far beyond the scope of the treaty, intrudes on traditional state prerogatives, and is concededly unnecessary to satisfy the government’s treaty obligations; and (2) whether the provisions of the Chemical Weapons Convention Implementation Act, 18 U.S.C. § 229, can be interpreted not to reach ordinary poisoning cases, which have been adequately handled by state and local authorities since the Framing, in order to avoid the difficult constitutional questions involving the scope of and continuing vitality of this Court’s decision in Missouri v. Holland.

Assigned reading for this week:
1. Brief for petitioner Carol Bond
2. Brief for the Cato Institute as amicus curiae
3. Brief for the United States
4. Reply brief for petitioner Carol Bond
5. Third Circuit decision (available as an appendix to the petition for a writ of certiorari)

CASE #2:
Northwest, Inc. v. Ginsberg, No. 12-462

Tues., Feb. 11  Case Preparation

Thurs., Feb. 13  Oral Argument

Questions Presented: Whether the court of appeals erred in holding, in contrast with the decisions of other circuits, that respondent’s implied covenant of good faith and fair dealing was not preempted under the Airline Deregulation Act because such claims are categorically unrelated to a price, route, or service, notwithstanding that respondent’s claim arises out of a frequent-flyer program (the precise context of American Airlines, Inc. v. Wolens) and manifestly enlarged the terms of the parties’ undertakings, which allowed termination in Northwest’s sole discretion.
**Assigned reading for this week:**
1. Brief for petitioner Northwest, Inc.
2. Brief for the United States as amicus curiae
3. Brief for respondent Binyomin Ginsberg
4. Reply brief for petitioner Northwest, Inc.
5. Ninth Circuit decision (available as an appendix to the petition for a writ of certiorari)

**Case #3:**

*NLRB v. Noel Canning*, No. 12-1281

**Tues., Feb. 18**  Case Preparation

**Thurs., Feb. 20**  Oral Argument

*Questions presented:*  (1) Whether the President’s recess-appointment power may be exercised during a recess that occurs within a session of the Senate, or is instead limited to recesses that occur between enumerated sessions of the Senate; (2) whether the President’s recess-appointment power may be exercised to fill vacancies that exist during a recess, or is instead limited to vacancies that first arose during that recess; and (3) whether the President's recess-appointment power may be exercised when the Senate is convening every three days in pro forma sessions.

**Assigned reading for this week:**
1. Brief for petitioner NLRB
2. Brief for respondent Noel Canning
3. Reply brief for petitioner
4. D.C. Circuit decision (available as an appendix to the petition for a writ of certiorari)

**Case #4:**

*United States v. Castleman*, No. 12-1371

**Tues., Feb. 25**  Case Preparation

**Thurs., Feb. 27**  Oral Argument

*Question presented:* Whether the respondent’s Tennessee conviction for misdemeanor domestic assault by intentionally or knowingly causing bodily injury to the mother of his child qualifies as a conviction for a “misdemeanor crime of domestic violence” under 18 U.S.C. § 922(g)(9).

**Assigned reading for this week:**
1. Brief for the United States
2. Brief for respondent James Castleman
3. Reply brief for the United States (to be filed January 15)
4. Sixth Circuit decision (available as an appendix to the petition for a writ of certiorari)
Case #5:  
*Halliburton Co. v. Erica P. John Fund, Inc.*, No. 13-317

Tues., Mar. 4  Case Preparation

Thurs., Mar. 6  Oral Argument

**Questions presented:**  (1) Whether this Court should overrule or substantially modify the holding of *Basic Inc. v. Levinson*, to the extent that it recognizes a presumption of classwide reliance derived from the fraud-on-the-market theory; and (2) whether, in a case where the plaintiff invokes the presumption of reliance to seek class certification, the defendant may rebut the presumption and prevent class certification by introducing evidence that the alleged misrepresentations did not distort the market price of its stock.

**Assigned reading for this week:**
1. Selected merits briefs (The merits briefs in this case have not yet been filed. Petitioner’s brief will be filed this month; respondent’s brief will be filed in early February, and petitioner’s reply brief will be filed on February 26.)
2. Fifth Circuit decision (available as an appendix to the petition for a writ of certiorari)

**PART III:**

**WRAP UP AND REVIEW**

**Tues., Mar. 11**  End of Term Review  
Course Evaluation:  Bring your laptop or mobile device to class to participate in the online evaluation.

**Assigned reading:** To be determined. Course evaluations will be completed at this session.