

SECOND SYLLABUS FOR PHASES IIG & III

(Assignments for last three classes,
to be covered on the final exam, Thursday PM, June 12th)

--References in regular font to “Carp” are to Carp, Stidham & Manning, JUDICIAL PROCESS IN AMERICA (2014 9th Ed. CQ Press). Unless page numbers are given, the reference to a Chapter is to the entire Chapter. (*Page number equivalents to the previous 8th edition are sometimes given in italicized parentheses.*)

--References in regular font are to “Baum” are to THE SUPREME COURT (2013 11th Ed. CQ Press). Unless page numbers are given, the reference to a Chapter is to the entire Chapter. (*Page number equivalents to the previous 10th edition are frequently given in italicized parentheses.*)

--References to “Smith” are to documents prepared by Professor Smith and handed out in the previous class and/or made available via the P Sc 104D webpage.

II. H. What Happens After Decision: The Ability of Other System Participants to Enhance, or Restrict, Judicial Policy-Making

Carp, Chap. 14 (including discussion questions at end of chapter)

Baum, Chap. 6

Smith, pp. JurisStrip-1 through JurisStrip-12

III. APPLIED JUDICIAL POLITICS: Mapping Course Themes onto Recent “Real-Life” Electoral-Politics Controversies

[▼▼▼ READING FOR WEEK 9, MAY 27th ▼▼▼]

A. Judging and Politics, Part I: *Bush v. Gore* & Post-*Bush* Attempts to Use Its Equal Protection Theory (and other federal statutes) to Challenge State Limitations on Voting

Smith, pp. ELEC-1 through ELEC-42

[▼▼▼ READING FOR WEEK 10, JUNE 3RD ▼▼▼]

B. Judging and Politics, Part II: Judicial Politics at Work in Challenges to State Voter-ID Laws

- Excerpts from opinions in *Crawford v. Marion County** (Smith, pp. VOTER ID-1 through VOTER ID-20; from course webpage)
- “Main Excerpts from Pennsylvania Supreme Court Opinions in *Applewhite*” (from course webpage)
- Excerpts from Pennsylvania Commonwealth Court *Invalidation of Penn Voter ID Law (Jan. 2014)*** (from course webpage)
- Assigned pages excerpts from memoranda filed in Texas Voter ID Controversy (assignments as stated in “Basic Information on In-Class Simulation for Tuesday, June 3, 2014”; from course webpage)

*Questions to Consider as you read the excerpts from the *Crawford* case:

1. In assessing the constitutionality of the Indiana voter-ID law, the two concurring opinions and two dissenting opinions use (sometimes subtly) different standards of scrutiny. Consider how these scrutiny standards vary in terms of the degree of policy-making discretion they give to judges, the extent to which they call upon judges to make arguably “non-judicial” decisions, the extent to which they protect fundamental voting rights, etc. (Specifically, consider Justice Scalia’s claim that his relatively deferential standard is the most objective...)
2. To what extent do the differences among the Justices appear to reflect legal-system factors (e.g., different understandings of precedents, different uses of levels of scrutiny, etc.)? To what extent do the differences seem to reflect partisanship, ideology, or policy preferences (e.g., the relative importance of voting rights as compared to state authority to prevent voter fraud and assure electoral reliability)?

**Questions to Consider as you read the excerpts from the *Applewhite* decision (fourth document posted on 104D website):

1. Notice that, although *Applewhite* relies on federal equal-protection law generally and *Crawford* specifically to reject Count III of the challengers to Pennsylvania’s Voter ID law, Counts I and II instead rely on state statutory/administrative law and the Pennsylvania state constitution, respectively. To what extent do these differences explain the different outcome (i.e., the voter ID law is invalidated in *Applewhite*, but is upheld in *Crawford*).
2. Further, to what extent do the different outcomes turn on factual distinctions between how Pennsylvania’s and Indiana’s laws operate in practice?
3. To the contrary, to what extent do the different outcomes reflect “political” factors. (Specifically, of what relevance is it that Judge McGinley, who wrote the January, 2014 opinion invalidating the Voter ID law was elected in 1987 as a Democrat

– whereas Judge Simpson, who previously denied a request to preliminarily enjoin the Voter ID law, was originally elected in 2001 as a Republican?)]