This seminar is an opportunity to understand the function of the United States Supreme Court and other appellate courts by simulating a case currently pending before the Court. Each student will play counsel or a justice in: the selection of a case through the certiorari process; presentation of briefs and arguments by petitioners, respondents, and amici; and conference followed by an announcement of opinions. Throughout, students will reflect upon litigation strategy, judicial philosophy, and the interaction among various participants in the Supreme Court's process.

Objectives: Students should develop a practical understanding of: appellate procedure including the distinctive processes of petitions for a writ of certiorari, briefs of amici curiae, and argument before a multi-member court; the jurisprudences of the justices and dynamics of their application in particular cases; and the strategy of litigating with these distinctive processes and dynamics. Skills emphasized: problem solving, legal analysis, legal research, communication, counseling, and litigation.

Readings. The readings include commentary from David M. O'Brien, ed., Judges on Judging (CQ Press, 4th Ed. 2013), briefs and legal research about the case at issue, and colleagues' summaries. If the book is not yet available at the bookstore, you may find the book or selected readings online. We will select from the following petitions (summarized below and available on Moodle and at scotusblog.com):

Williams-Yulee v. The Florida Bar, No. 13-1499
King v. Burwell, No. 14-114
Bourke v. Beshear, No. 14-574

Questions. I am in my office all week but you can confirm my availability by e-mail. Please do not pose questions by e-mail; instead, post the question on the Moodle discussion forum where your colleagues can benefit from your questions.

Assessment. Your grade has three components: discussion (20%), presentation (20%), and paper (60%). Discussion assesses continuing constructive engagement in class discussion. Presentation assesses playing the role of a Supreme Court advocate or justice in the advocacy and consideration of a selected case. Paper measures the legal research, analysis, and writing of a 1500-word summary of your role's position in the case, framed as either a brief (counsel) or an opinion (court), drafted and due during the week.

Academic Honesty. All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code of the University of Montana. Law students should also be familiar with the Law School Honor Code in the Law Student Handbook.

Disabilities. The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students (“DSS”). If you think you may have a disability adversely affecting your academic performance, and you have not already registered with DSS, please contact DSS in Lommasson 154. The Law School will work with you and DSS to provide an appropriate accommodation.
1. CERTIORARI
Mon. 1/12
Jackson, The Supreme Court in the American System of Government (8)
Powell, What Really Goes on at the Supreme Court (4)
Stevens, Deciding What to Decide: The Docket and the Rule of Four (8)
Petitions in Williams-Yulee, King, and Bourke (on Moodle & scotusblog)
S.Ct. Rule 10 (consider which case best merits a cert. grant under the rule)

A. Introduction to course
B. Conference on certiorari (3 minutes each on best case to grant cert.)
C. Choose counsel and court roles (by lottery)

2. THE COURT AND THE CASE
Tue. 1/13
Prepare a 3-5 min. presentation on one essay from Judges on Judging; please assess how the essay’s author would approach the case.

Court: Choose your justice or an essay relevant to your justice in Part III
Counsel: Choose an essay not already chosen in Part III
Case documents: opinion below, background cases (as assigned)

A. Review the issues in the selected case
B. Discuss Judges on Judging authors’ approaches (3-5 mins. each)
C. Questions about case

3. PREPARATION
Wed. 1/14
Harlan, The Role of Oral Argument (5)
Rehnquist, The Supreme Court’s Conference (4)

Court: Draft bench memos (outline possible arguments and opinions)
Counsel: Draft briefs (for filing on Moodle at 5pm Wednesday)

A. Hear Supreme Court argument example
B. Discuss briefing and argument strategies
C. [Work session]

4. ARGUMENT
Thur. 1/15
Review all briefs

Court: Draft opinions (for filing on Moodle at 5pm Thursday)
Counsel: Prepare argument

A. Oral argument (10 minutes each, including questions)
B. Hear Opinion announcement example
C. Conference (3 minutes each, in order of seniority)

5. OPINION DAY
Fri. 1/16
Review all opinions

Court: Prepare announcements (choose lead, concurrences, & dissents)
Counsel: Review arguments and prepare for client meeting

A. Justices announce opinions seriatim (5 minutes each)
B. Counsel explain case to clients (5 minutes each)
C. Conclusion
**DRAMATIS PERSONAE**

Counsel for Petitioner
Counsel for Respondent
Solicitor General
Amicus Curiae in Support of Petitioner
Amicus Curiae in Support of Respondent
Amicus Curiae in Support of Neither Party

Chief Justice John Roberts
Justice Antonin Scalia
Justice Anthony Kennedy
Justice Clarence Thomas
Justice Ruth Bader Ginsburg
Justice Stephen Breyer
Justice Samuel Alito
Justice Sonia Sotomayor
Justice Elena Kagan

**PETITIONS FOR CERTIORARI**

**Williams-Yulee v. The Florida Bar, No. 13-1499**
Whether a rule of judicial conduct that prohibits candidates for judicial office from personally soliciting campaign funds violates the First Amendment.

**King v. Burwell, No. 14-114**
Whether the Internal Revenue Service may permissibly promulgate regulations to extend tax-credit subsidies to coverage purchased through exchanges established by the federal government under Section 1321 of the Patient Protection and Affordable Care Act.

**Bourke v. Beshear, No. 14-574**
(1) Whether a state violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment by prohibiting gay men and lesbians from marrying an individual of the same sex; and (2) whether a state violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment by refusing to recognize legal marriages between individuals of the same sex performed in other jurisdictions.