RPOS 336 – CONSTITUTIONAL LAW: CIVIL LIBERTIES
SPRING SEMESTER 2012
Location: Lecture Center 3B
Meeting times: Tu/Th 10:15am – 11:35am

Dr. J. Fredette
jfredette@albany.edu
203 Milne Hall

Office hours: Tuesdays, 11:40am-12:40pm in Humanities B16
Thursdays, 1:40-2:40pm in Milne 108
203 Milne Hall        Phone: 518-442-3112

COURSE DESCRIPTION

Individual rights and civil liberties are an important part of American political culture. This can give them a sort of timeless quality, but it is mistake to assume this is the case. While the US Constitution has remained largely unchanged for the last 222 years, its application to cases and political debates has varied widely, depending on who is speaking and when.

This course is designed to help you make sense of this continued negotiation over “core principles” of our Constitution by introducing you to influential Supreme Court cases. We will be considering these cases in light of their political and historical context, as the central theme of this course is that Constitutional interpretation is not an objective science. At the end of class, you should be able to 1) explain how protections for civil rights and liberties in the United States have changed over time; 2) analytically discuss how important debates over civil rights and liberties have been shaped by their political and historical context, and 3) evaluate efforts by judges to bring neutrality and legal coherence to their rulings.

PEDAGOGY

This course has six pedagogical components: reading, briefing, team-based learning, weekly quizzes, exams, and discussion.

Readings for the course are mainly excerpts from the Supreme Court’s written opinions in several important areas of constitutional law. Judges write opinions to justify their rulings to the audience of specialists most interested in a case – they do not attempt to create an objective record of their reasoning in the case. As such, they sometimes deliberately obscure important issues in a case, offer misleading justifications, and omit very important facts or considerations. It takes time and practice to learn how to read cases. It will get easier as the semester progresses.

You are expected to brief every case you read. A brief is a short (no more than one page) written summary of a case. Instructions will be given in class. Five briefs from each student will be requested, at random, throughout the semester. The collected briefs will be graded, and your four highest brief grades will make up the “Brief” portion of your grade (the lowest grade will be discarded). I will not accept late or emailed briefs, and will tolerate only one handwritten brief. I do not care if your printer died. I do not care if you are an A+ student who left your brief at home in another bag. Everyone makes a mistake over the course of a semester, and so I only grade four of the five briefs specifically to make up for these kinds of situations. As wiggle-room is built into this grading scheme, no one may ask for an excuse or extension. Be aware that I will
check briefs for plagiarism, and any plagiarized brief will receive an F and there will be university sanctions.

Classes will frequently begin with a team-based learning (TBL) puzzle. You will be randomly assigned to a “team” of four other students at the beginning of the term. This will be your team for the whole semester. During TBL, the class will be asked a challenging question that will require you to speculate on areas of law you have not yet covered in class, but that you may be able to figure out if you think hard about previous readings. The teams will have to discuss the question, use their critical thinking, and come to a consensus on the answer. The team that gets the most number of TBL puzzles right during the semester earns a unique privilege: all members will be able to drop their lowest quiz score. The TBL puzzles will be administered via remotes, specifically i>clickers. More information about this below.

Weekly quizzes will be given to students in class and on an individual basis in order to test your reading comprehension. These are opportunities for you to make sure you understand the material and are on the right track (and get help if you’re not), and for me to determine what concepts need more explanation. The lowest three quiz scores will be dropped; this includes absences. I will not give make-up quizzes unless there is a prolonged university-approved absence. Weekly quizzes will be administered via remotes. More information on this below.

There will be a midterm and a final. The final will be cumulative.

Finally, class time will consist of lecture and discussion. Discussion for this course comes in two varieties. The first: your garden variety discussion. I’ll pose a question and ask you to debate amongst yourselves, with some moderation by me. The second: Socratic question-and-answer sessions. I will pull a name out of a hat and ask that student to answer some questions about the cases we are reading. Students are expected to stand when responding, and speak loudly so the whole class can benefit from their answer. This is a standard pedagogical method in law school; it is an invaluable skill everywhere else. To emphasize that this is a moment for learning, and not evaluation, absolutely no grade is connected to this exercise. A thoughtful wrong answer is just as valuable for learning as a correct answer. If you have not done the reading, however, it is unlikely that your answer will be thoughtful. You have one “pass” you can use during the term for just such an instance. If you’ve already used your “pass,” and you haven’t done the reading again, don’t come to class. You’ll waste everyone’s time.

COURSE REQUIREMENTS, POLICIES, AND PROCEDURES

• **Late work:** No late work will be accepted. This includes briefs. Plan before, don’t ask for favors after.

• **Exams:** The exams will test your knowledge of the assigned cases and related constitutional controversies. They will consist of multiple choice, short answer, and essay questions.

• **Make-Up Exams:** Only provided for University-approved reasons.¹

• **Absences:** You are expected to understand and accept the grade consequences of any absence. I assume three absences without a university-approved reason are unavoidable; after

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¹ University-approved reasons: “documented hospitalization, a death in the immediate family, a personal emergency, or a religious observance, the instructor must administer a makeup exam or offer an alternative mutually agreeable to the instructor and student” (Undergraduate Academic Policy Reminders, available on the University’s website).
that, they depress your participation grade. *Do not* contact me for any absence unless there is an exam (not a quiz, a full-blown exam) that day, or it is a prolonged absence. *You are required to get class notes from peers; the professor does not take notes for students.*

- **Grading Disputes:** If you wish to dispute a grade, request a copy of the re-grading policy and follow its instructions. Your grade may stay as it is, increase, or decrease. Grade complaints will not be accepted two weeks after the exam date/paper submission date.

- **Email:** I check email once a day M-F. I do not guarantee to check my email during weekends. *I do not accept assignments, or tolerate rudeness or informality, over email.*

- **Cheating and plagiarism:** Outcomes will be a failing grade and University sanctions.

- Students needing academic accommodations for a disability should contact the Disability Resource Center, Campus Center 137, (518) 442-5490. If you have a letter from the Center, please present this letter to me so that accommodations can be discussed and arranged.

- I reserve the right to amend this syllabus and to give unannounced quizzes.

**PREPARING FOR CLASS**

**Clickers:** I use clickers as a way to get instant feedback from a large class. If this class were taught with 25 students, we would do everything in the same way, just without clickers; I would simply ask for verbal responses to my questions. One thing that clickers do that’s even better than that system, however, is they provide anonymity. So if a student is feeling unsure about the course content but still wants to participate in class, clickers provide a comfortable alternative. Weekly quizzes via clickers also provide an incentive to students to do the work.

**CLICKER GROUND RULES:**

* Your clicker must be purchased and registered by January 27th. They can be purchased from the bookstore for $37.35, and registered online at [http://www.iclicker.com/registration/](http://www.iclicker.com/registration/).

* The i>clicker is the standard student remote on campus. You can use it for more than one class. You can share it with a friend, but not one who is in the same class as you.

* If you forget your remote at home on a quiz day, you don’t get quiz points. Period. Good thing I drop your three lowest quiz scores, huh?

* If you purchase or register your remote after the January 27th date, you will miss points on all the quizzes given until you purchase and register it.

* If I see anyone cheating with the i>clicker – bringing an absent friend’s remote to class, etc – I will give a failing quiz grade to the students involved, I will not drop any quiz scores from that student’s Weekly Quiz grade at the end of term, and I may pursue University sanctions.

**GRADE BREAKDOWN**

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<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Midterm Exam</td>
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<td>Final Exam</td>
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<tr>
<td>Briefs</td>
<td>25%</td>
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<tr>
<td>Weekly Quizzes</td>
<td>20%</td>
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MATERIALS
There is one book to be bought. It is available at the University Book Store. You are expected to bring the book to class.
• The Constitution of the United States and its Amendments is REQUIRED READING. Do not assume you know what it says; very few Americans actually do. A copy is in O’Brien, pages 1-21. Some of you may find a small pocket version to be handy (I do), but it is not required.
• 1 student i>clicker remote, registered online.

IMPORTANT DATES
Tuesday, Feb 1: Last day to drop semester-length course without receiving a W
Wednesday, March 30: Last day to drop semester-length course (will receive a W)
Final: Friday, May 6th -- 3:30-5:30pm

READINGS SCHEDULE / COURSE OUTLINE
I will try to stay on this schedule, but will make adjustments if necessary. Adjustments in the readings schedule will be announced in class. Numbers in parentheses are the page numbers for the older, 6th edition of the book (there are a couple readings where I didn’t post the 6th edition pages, because I don’t know what they are; you’ll have to figure those out on your own). You are required to read the readings listed on each day before that day’s class session.

Section 1: Introduction to the Court and Constitutional Politics

WEEK ONE

January 19 Thursday
Introduction to the Class, the Constitution, and Judicial Review; how to brief a case.

WEEK TWO

January 24 Tuesday
* The Constitution, 1-21 (1-21)

January 26 Thursday  ➔ CLICKERS MUST BE PURCHASED BY TODAY
* Constitutional Interpretation 66-87, 91-95 (67-88, 92-96)
WEEK THREE

January 31 Tuesday
* Incorporation of the Bill of Rights and the Changing Role of the Court 324-341, 655-664 (304-321, 641-50)
* * Barron v Baltimore (1833)
* * West Virginia v Barnette (1943)

Section 2: Free Speech

February 2 Thursday
* Political Speech-early restrictions 408-447 (386-426)
* * Schenck v United States (1919)
* * Gitlow v New York (1925)

WEEK FOUR

February 7 Tuesday
* * Dennis v United States (1951)
* * Brandenburg v Ohio (1969)

February 9 Thursday
* Offensive Speech, Hate Speech, Funded Speech 501-516, 520-543 (479-94, 499-522)
* * Cohen v California (1971)
* * Federal Communications Commission v Pacifica (1978)

WEEK FIVE

February 14 Tuesday
* * RAV v St. Paul (1992)
* * Wisconsin v Mitchell (1993)

February 16 Thursday
* * Virginia v Black (2003)
* * Rust v Sullivan (1991)

WEEK SIX

February 21 Tuesday
* * Citizens United v FEC (2010) (THE TEXT WILL BE EMAILED TO CLASS)

Section 3: Freedom to and from Religion (Freedom of Conscience)

February 23 Thursday
* Introduction 709-717
* The (Dis)Establishment of Religion 718-727, 735-758
WEEK SEVEN

February 28 Tuesday
* Everson v Board of Education of Ewing Township (1947)
* Engel v Vitale (1962)

March 1 Thursday
* Abington School District v Schempp (1963)
* Lemon v Kurtzman (1971)

WEEK EIGHT

March 6 Tuesday
* Free Exercise of Religion 819-825, 828-852
* Sherbert v Verner (1963)
* Wisconsin v Yoder (1972)
* Employment Division, Department of Human Resources of Oregon v Smith (1990)

March 8 Thursday
MIDTERM IN CLASS

WEEK NINE

March 13 Tuesday: No Class

March 15 Thursday: No Class

WEEK TEN

March 20 Tuesday: No Class, “Informal Reading Day”
Weeks 11 and 12 squish a lot of cases together. Please take advantage of this time to read ahead and make sure you are comfortable with all 11 of those cases. We will not have time to waste.

March 22 Thursday: No Class, “Informal Reading Day”
Weeks 11 and 12 squish a lot of cases together. Please take advantage of this time to read ahead and make sure you are comfortable with all 11 of those cases. We will not have time to waste.

Section 4: Equal Protection: Race Discrimination

WEEK ELEVEN

March 27 Tuesday
* Constitutional Failure, Reconstruction 1334-1360, 1371-1388 (1325-52, 1363-82)
* Civil Rights Cases of 1883
* Plessy v Ferguson (1896)
* Shelley v Kramer (1948)
March 29 Thursday
* Attacking Racial Segregation in the Courts 1388-1416 (1382-1410)
* Brown v Board of Education I (1954)
* Bolling v Sharpe (1954)
* Brown v Board of Education II (1955)

WEEK TWELVE

April 3 Tuesday
* Attacking Racial Segregation in the Courts, cont. 1416-1434, 1440-1453 (1410-1428)
* Cooper v Aaron (1958)
* Swann v Charlotte Mecklenburg Board of Ed. (1971)
* Milliken v Bradley (1974)

April 5 Thursday
* Freeman v Pitts (1992)

Section 5: Equal Protection: Sex Discrimination

WEEK THIRTEEN

April 10 Tuesday
* Deciding on Level of Scrutiny 1513-1529 (1497-1513)
* Frontiero v Richardson (1973)
* Craig v Boren (1976)

April 12 Thursday
* Intermediate Scrutiny: Applications 1529-1548 (1513-1533)
* Michael M. v Sonoma County (1981)
* United States v Virginia (1996)

Section 6: Privacy

WEEK FOURTEEN

April 17 Tuesday
* Preliminary Steps 1232-1248, 357-368 (1222-1237, 337-347)
* Buck v Bell (1927)
* Griswold v Connecticut (1965)

April 19 Thursday
* Privacy and Abortion 1249-1262 (1237-1251)
* Roe v Wade (1973)
* Maher v Roe (1992)
* Planned Parenthood v Casey (1992)
WEEK FIFTEEN

April 24 Tuesday
* Discrimination Against Gays and Lesbians 1548-1549
* *Bowers v Hardwick (1986) (On course website)
* Lawrence v Texas (2003)

April 26 Thursday
* ACLU vs NSA 493 F.3d 644

WEEK SIXTEEN

May 1 Tuesday
No reading. A guest speaker has been invited to speak to the class about reasons to attend law school, how the application process works, and what kind of job one can hope for upon graduation.

May 3 Thursday
No reading. Jennifer Maclaughlin, the Careers Advisor of Rockefeller College, will be presenting on post-college career options for political scientists beyond law school.

WEEK SEVENTEEN

May 8 Tuesday
No reading. We end our class by considering the “next big issue” in constitutional law - SOPA. If you’ve ever used the internet, chances are you have done something that would make you a felon under SOPA’s rules. Today’s class consists of a lecture and discussion about SOPA. Is it constitutionally valid? Why or why not? If you were a lawyer defending SOPA, what would you say? If you were a lawyer who sought to overturn SOPA, how would you argue your position?