

Civil Liberties: Free Speech

RPOS 336 (9769) – Spring 2019

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Credits: 3

Class: Thursday 4:15-7:05PM
Classroom: Fine Arts 126
Office Hours: T 2:35-4:15PM (or by appointment)
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Course Description

The First Amendment to the U.S. Constitution holds that “Congress shall make no law [. . .] abridging the freedom of speech, or of the press.” Needless to say, the text of the First Amendment’s provision governing free expression is sparse. Perhaps because of the ambiguities in the First Amendment’s language, various groups have advocated competing interpretations in an effort to reconstruct the Constitution’s rules in their favor. This is especially true recently. In the past ten years, for example, the U.S. Supreme Court has issued major decisions that impact American elections; speech on the Internet; and the relationship between public employers and their employees. There are additional issues which the Supreme Court has not squarely addressed, but continue to reemerge. State universities, for example, have dismissed students who engaged in offensive speech targeting historically disadvantaged groups and private businesses have invoked the First Amendment in an effort to refuse service to same-sex couples. These free speech issues raise fundamental questions about how we should interpret relevant provisions of the Constitution. Students will explore these issues by examining judicial opinions produced in the context of First Amendment litigation.

Student Focused Learning Objectives

Students will:

1. Analyze legal documents;
2. Organize legal rules within a theoretical framework;
3. Explain complicated legal arguments in plain language;
4. Ask relevant legal questions;
5. Apply existing legal rules to new problems;
6. Construct arguments about ongoing free speech controversies; and
7. Write a persuasive essay about an important free speech issue.

Course Structure

The course is divided into ten units designed to help students develop the skills necessary to achieve the course goals. As part of each unit, students will encounter a hypothetical problem which raises an issue involving the First Amendment. Students are then asked to supply an answer explaining whether and how the First Amendment should govern the issue.

This is a Team-Based Learning (TBL) course. Students will work in permanent teams to solve these legal problems. On the first day of class, students will be assigned to a team and students will remain on that team throughout the entire semester. Student participation and team performance will partially determine students' success in this course.

Depending on the week, teams will either be asked to submit a legal memorandum or deliver an argument in class defending the group's position. The assignment for each week can be found on the course schedule, below.

Class will proceed as follows:

1. Students are expected to read all of the assigned materials *before class*. Each group should submit a full complement of case briefs related to the cases assigned within the first five minutes of class. Please send these to [sstohler@albany.edu](mailto:ssstohler@albany.edu). For a useful guide to case briefs, (see Julie Novkov. 2014. "How to Brief a Case." Unpublished memorandum available via the course BlackBoard website (**BB**)). ***Failure to submit case briefs by the deadline will result in a 30% penalty.***
2. At the beginning of each class, students will receive a copy of the legal problem.
3. Students are given five to ten minutes to discuss with their respective teams how they believe the case should be resolved in light of the assigned readings. The team should develop a preliminary answer. During this period, students may also generate a list of questions about the problem or assigned readings and submit them to the professor for discussion.
4. Before this period expires, each team should select one group member to serve as the team captain. The captain will be responsible for managing the group for a given week. Each group member must serve as captain once before any team member can serve a second time. Failure to comply with the captain rotation schedule will result in a weekly grade and peer evaluation score of 'zero' for the offending party. The penalty will remain in force until the error has been rectified.
5. After the initial period, students can expect a discussion period lasting one to two hours.
6. Once the discussion has been completed, teams may use the remaining class period to finalize their answers and submit or present them.
7. Depending on the weekly assignment (memorandum, oral argument) the end of the session will proceed differently. If groups are tasked with a memorandum, groups may take advantage of the remaining time to complete their written answers. The team captain will be responsible for sending the final draft – *as a .docx file* – to [sstohler@albany.edu](mailto:ssstohler@albany.edu) *before 10:00PM. Please note that late answers will not be accepted.*
8. If the assignment calls for oral arguments, students will use the remaining time to complete and present their arguments. Groups will be called randomly to deliver their arguments. All members of a group must participate to receive credit.
9. In both circumstances, the team captain will also be responsible for evaluating team members' performance. This information will be kept *anonymous*, but team captains should be prepared to defend the grades they assign. Captains can expect questions from the professor if the assigned grade seems irregular. The captain will receive the same peer-evaluation and assignment grade during the week she serves as a captain. Please send evaluations to [sstohler@albany.edu](mailto:ssstohler@albany.edu).
10. The two lowest peer-evaluations and the lowest assignment grade will be dropped when calculating students' final grade.

Legal Memorandum

The legal memorandum will provide a written answer to the legal question raised by each problem students encounter in class. Assignment answers are due via email *before 10:00PM* on the day of class. Assignments which arrive late or do not answer the question will not receive credit. Answers may not exceed *two* typed pages. Answers will be graded according to the persuasiveness of the argument; the quality of writing; and the ability of the authors to demonstrate their knowledge of the law in solving the problem.

The team captain should also send a separate email grading each teammate's contributions to the assignment. Evaluations should be assessed on a 0-100 point scale.

Oral Defense

For these assignments, groups will be expected to provide an in-person defense of their answers lasting no more than five minutes. Students can expect questions throughout this five minute session, including questions about the cases assigned. Answers will be graded according to the persuasiveness of the argument; and the ability of the advocates to demonstrate their knowledge of the law as it relates to the legal question. Each student must participate for the group to receive a grade.

The team captain should also send a separate email grading each teammate's contributions to the assignment. Evaluations should be assessed on a 0-100 point scale.

Midterm Exam

To complete this course, students must submit a midterm legal memorandum. Similar to the weekly assignments, students will be presented with a hypothetical free speech issue. Students will submit a *two-page legal memorandum* containing an answer to the legal question posed in the hypothetical. Students will use cases to defend their answer to the legal issue. Unlike the weekly assignments, however, students will not work in groups for this assignment.

Memoranda will be graded according to the persuasiveness of the argument; the quality of writing; and the ability of the authors to demonstrate their knowledge of the law in solving the problem. Memoranda which do not answer the question will not receive credit. Moreover, memoranda should be restricted to First Amendment free speech issues. In the event of any irregularities, students will be expected to defend their answers in person.

The midterm question will be emailed to you after class on Thursday, 7 March 2019. Students will have until Thursday, 14 March 2019 at 7:05PM to submit their answers as a .docx file, via email (sstohler@albany.edu). Answers submitted after *7:05PM on Tuesday, 14 March 2019* will be penalized one letter grade every day for the first three days. Thereafter, answers will not be accepted. Students will not meet on March 14th; they should use the reserved time to finalize their answers. Students *must not* work in groups. Failure to adhere to this rule will result in a failing grade and expulsion from the course.

Final Paper

To complete this course, students must submit a persuasive essay *about a free speech issue*. Topics are not restricted to the American context. Nor are students required to write about an ongoing case, though there are some interesting issues currently pending before the U.S. Supreme Court. Students should not feel reluctant to ask for guidance when selecting a topic or an argument.

Moreover, students should be engaged in the research and drafting of their papers throughout the semester. Students must contact the professor after the midterm to finalize their topics.

Unlike the in-class assignments, students will be required to write and submit their own papers. Nonetheless, students are encouraged to share ideas, arguments, and feedback with colleagues. Students may proofread one another's papers, but ultimately the work must reflect students' own efforts.

Final papers will be graded according to the quality of the argument and the quality of the writing. If you have any questions about this standard, please contact me before the assignment is due.

Students must submit a final draft the paper before **4:15PM on 2 May 2019**. Late papers will be penalized *one letter grade for each day* they remain outstanding. After three days, papers will no longer be accepted.

Grading & Evaluations

You will be evaluated according to your progress toward the goals of this course. Evaluations will occur regularly in class and on students' written work. The relative weights of each portion of the evaluation are listed below:

Peer Evaluation:	5%
Midterm Paper:	30%
In-Class Tasks:	30%
Final Paper:	35%

Please notice that there is no attendance or participation grade *per se*. Instead, students' performance in class is captured in the "Peer Evaluation" and "In-Class Tasks" component of the grade. For each unit, captains will be asked to evaluate teammates' performance and contributions (as described above). Failure to attend class will result in low peer evaluation grades and will likely result in low grades on written assignments. If a student encounters a longer-term medical issue, the professor may develop alternative accommodations but only if the medical absence receives university approval.

Students are expected to attend class on *May 2nd* for one final group evaluation. Failure to submit a group evaluation will result in a reduction of the student's peer evaluation score.

The grading scale (z-score, normalized at 1.667 or higher) will be as follows:

A	3.667+
A-	3.334 - 3.666
B+	3.000 - 3.333
B	2.667 - 2.999
B-	2.334 - 2.666
C+	2.000 - 2.333
C	1.667 - 1.999
C-	1.334 - 1.666
D+	1.000 - 1.333
D	0.667 - 0.999
D-	0.334 - 0.666
E	0.333 or below

If you feel you have been awarded an unfair grade, you may contest it. However, if you want to do so, it must be done in writing and no sooner than 48 hours after you have received the grade.

In your written complaint you need to provide a specific account of what in particular you are concerned about.

Materials & Resources

We will rely mostly on the following textbook: Steven H. Shiffrin and Jesse H. Choper, *The First Amendment* (5th ed. 2011). Please do not purchase any of the supplements. We will not use them.

Law textbooks tend to be expensive. I highly encourage students to buy or rent a used copy online. I have not ordered copies of the textbook at the bookstore because they are too expensive. If necessary, purchase a used version of the fourth or sixth editions. Additional materials will be made available via the course Blackboard website.

Policies

Plagiarism is 1) the act of duplicating another person's ideas or language and 2) claiming ownership over those ideas or language. Any written submissions you make in this course are deemed to be your own unless attribute them to someone else. In each of those assignments, you will find it useful – if not necessary – to invoke the ideas of others to further your own arguments. Students are expected to do so, but students **must** indicate which ideas they have 'borrowed' from other sources. Students are expected to complete the University's online course if they have not done so already. The course is available here:

<http://library.albany.edu/infolit/integrity>.

One easy way to avoid any plagiarism is to use quotation marks to signal that students have used someone else's language. In a paper, for example, in which a student defines the so-called 'clear and present danger test,' she may assert that governments cannot "forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action" (*Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969)). Students are not expected to learn proper legal citation style in this course. A simple citation to the casebook will suffice if a student asserts the same proposition above (Shiffrin & Choper 2011, 43). Students are highly encouraged to use a similar citation style if they paraphrase someone's idea and you do not have any need for quotation marks. If you have questions about this, do not hesitate to ask. ***Failure to attribute others' ideas constitutes plagiarism and will result in a failing grade, dismissal from the course, and further disciplinary action.***

More generally, student participation in this course is governed by the University's Standard of Academic Integrity. Those standards are outlined [here](#). The Standard of Academic Integrity prohibit students from submitting the same work in multiple courses. ***Failure to comply with the Standard of Academic Integrity will result in will result in a failing grade, dismissal from the course, and other academic discipline by the University.***

Reasonable accommodations will be provided to students who required them, but I ask that you notify me early in the semester. In addition, please request that the Disabilities Resource Center contact me regarding your situation to provide documentation.

Requests for deadline extensions will be granted 1) only in the most compelling and rare circumstances; and 2) only if the extension is requested in advance of the deadline. Medical absences must receive University approval before accommodations can be made. Please contact the Undergraduate Dean to initiate this process.

The University guidelines governing incomplete grades can be found here:

<https://www.albany.edu/undergraduateeducation/grading.php>.

Requests for incomplete grades will only be granted only in rare circumstances and only when the student has *nearly* completed the course requirements but is unable to complete the remaining requirements *because of circumstances beyond the student's control*.

Course Schedule

Date	Topic	Materials	Due
Jan. 24	Introduction	<i>Schneider v. Irvington</i> Novkov, "How to Read a Case" (BB)	Group Email
Jan. 31	Class Cancelled	Email me a link to a free speech article	
Feb. 7	Danger, Danger	<i>Schenck v. United States</i> <i>Debs v. United States</i> <i>Masses Publishing v. Patten</i> <i>Abrams v. United States</i> <i>Gitlow v. New York</i> <i>Whitney v. California</i> <i>Dennis v. United States</i> <i>Brandenburg v. Ohio</i> <i>Hess v. Indiana</i>	Memo 1
Feb. 14	Yogurt	<i>New York Times v. Sullivan</i> <i>Gertz v. Robert Welch</i> <i>Time v. Firestone</i> <i>Hustler Magazine v. Falwell</i> <i>Dun & Bradstreet v. Greenmoss</i>	Memo 2
Feb. 21	You Don't Sae?	<i>Terminiello v. Chicago</i> <i>Feiner v. New York</i> <i>Cohen v. California</i> <i>Collin v. Smith</i> <i>Beauharnais v. Illinois</i> <i>Chaplinsky v. New Hampshire</i>	Memo 3
Feb. 28	No Backsies	<i>W. Va. State Bd. of Ed. v. Barnette</i> <i>Nat'l Endowment for the Arts v. Finley</i> (BB) <i>Rust v. Sullivan</i> <i>Rosenberger v. Rector & Visitors of UVA</i> <i>Legal Services Corp. v. Velazquez</i> (BB) <i>Rumsfeld v. F.A.I.R.</i>	Memo 4
Mar. 7	License to Speak	<i>Wooley v. Maynard</i> <i>Hague v. CIO</i> <i>Cox v. New Hampshire</i> <i>Int'l Soc. for Krishna Consciousness v. Lee</i> <i>Police Dept. of City of Chicago v. Mosley</i> <i>Grayned v. City of Rockford</i> (BB) <i>Perry Educ. Assoc. v. Perry Local Educators' Assoc.</i> (BB) <i>Pleasant Grove City, Utah v. Summum</i>	Memo 5
Mar. 14		Midterm Examination	Exam

Date	Topic	Materials	Due
Mar. 21		Spring Break	
Mar. 28	Cheese	<i>Burson v. Freeman</i> <i>Hill v. Colorado</i> <i>Lehman v. Shaker Heights</i> <i>United States v. O'Brien</i>	Defense 1
Apr. 4	Kids These Days	<i>Tinker v. Des Moines School District</i> <i>Hazelwood School District v. Kuhlmeier</i> <i>Morse v. Frederick</i>	Defense 2
Apr. 11	Effing Up the Scenery	<i>Boos v. Barry</i> <i>Ward v. Rock Against Racism</i> <i>Virginia State Board of Pharmacy v. Virginia</i> <i>Central Hudson Gas & Electric</i> <i>Zauderer v. Office of Disciplinary Counsel</i>	Defense 3
Apr. 18	Baker	<i>Wooley v. Maynard</i> <i>Pacific Gas & Electric v. Public Utilities Comm'n</i> <i>Roberts v. United States Jaycees</i> <i>Dale v. Boy Scouts of America</i> <i>Wooley v. Maynard</i> <i>PruneYard Shopping Center v. Robins</i> <i>Hurley v. Irish-American GLB Group of Boston</i> <i>N.A.A.C.P. v Claiborne Hardware Co.</i> <i>Johanns v. Livestock Marketing Assoc.</i>	Defense 4
Apr. 25	Campaign Finance	<i>Buckley v. Valeo</i> <i>Randall v. Sorrell</i> <i>First Nat'l Bank of Boston v. Bellotti (BB)</i> <i>Austin v. Michigan Chamber of Commerce (BB)</i> <i>Citizens United v. F.E.C.</i>	Defense 5
May 2	Review Session		