

**RPOS 336 – CONSTITUTIONAL LAW: CIVIL LIBERTIES
SPRING SEMESTER 2011**

Location: Humanities 024

Meeting times: Tu/Th 8:45am – 10:05am

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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 a 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, emailed, or handwritten briefs.* Plagiarism will be punished.

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.* 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 that, they depress your participation grade. *Do not* contact me for any absence unless there is an 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.
- **I am your professor:** I am not your friend or a roadblock between you and your degree. I will give you the tools to succeed, but your performance in class is your responsibility.

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).

PREPARING FOR CLASS

Study Questions: Study questions are available on the course website. The study questions are designed to help you to understand readings by drawing attention to some important aspects of the cases. Some study questions may appear on exams in modified form. I will never collect these. Use your own judgment in deciding how much effort to put into these.

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/>.**
- * 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

Midterm Exam	25%
Final Exam	30%
Briefs	25%
Weekly Quizzes	20%

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.

- David O'Brien, *Constitutional Law and Politics Volume Two: Civil Rights and Civil Liberties*, 7th Edition. ISBN 978-0-393-93039-9. Available at the University Bookstore and numerous sources online.
- 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.

COURSE SCHEDULE AT A GLANCE

Week	Dates	Theme	Tuesday	Thursday
1	Jan 17-21	Introduction to the Court and constitutional politics	No Class	Introduction
2	Jan 24-28			
3	Jan 31-Feb 4	Incorporation		
4	Feb 7-11	Free speech: Political speech,		
5	Feb 14-18	Offensive speech,		
6	Feb 21-25	Hate speech, and	No Class	No Class
7	Feb 28-March 4	Funded speech		
8	March 7-11	Freedom from (<i>disestablishment</i>)		
9	March 14-18	And freedom of (<i>free exercise</i>) religion		Midterm
10	March 21-25	Equal protection of the law:		
11	March 28-Apr 1	Racial discrimination		
12	April 4-8	Equal protection: sex discrimination		
13	April 11-15	Privacy: the right to be left alone and its limits (<i>spring break</i>)		
14	April 18-22		No Class	No Class
15	April 25-29			
Last	May 2-6	“What am I doing?!” Careers after college		No Class

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: Wednesday May 12th, 10:30am – 12:30pm

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 20 Thursday

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

WEEK TWO

January 25 Tuesday

* The Constitution, 1-21 (1-21)

* Limits on Judicial Power, Jurisdiction, and Court Procedure 23-27, 103-127, 175-205 (23-27, 103-119, 170-199)

January 27 Thursday → CLICKERS MUST BE PURCHASED BY TODAY

* Constitutional Interpretation 66-87, 91-95 (67-88, 92-96)

WEEK THREE**February 1 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 3 Thursday**

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

WEEK FOUR**February 8 Tuesday**

- * *Dennis v United States* (1951)
- * *Brandenburg v Ohio* (1969)

February 10 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 15 Tuesday: No class**

- * *RAV v St. Paul* (1992)
- * *Wisconsin v Mitchell* (1993)

February 17 Thursday

- * *Virginia v Black* (2003)
- * *Rust v Sullivan* (1991)

WEEK SIX**February 22 Tuesday: No class****February 24 Thursday: No class****WEEK SEVEN****March 1 Tuesday**

- * *Citizens United v FEC* (2010) (THE TEXT WILL BE EMAILED TO CLASS)
- * *Liptak, A. (2010). Supreme Court blocks ban on corporate political spending. New York Times, 21 January 2010.*

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

March 3 Thursday

- * Introduction 709-717
- * The (Dis)Establishment of Religion 718-727, 735-758

WEEK EIGHT**March 8 Tuesday**

- * *Everson v Board of Education of Ewing Township* (1947)
- * *Engel v Vitale* (1962)

March 10 Thursday

- * *Abington School District v Schempp* (1963)
- * *Lemon v Kurtzman* (1971)

WEEK NINE**March 15 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 17 Thursday**MIDTERM IN CLASS**

Section 4: Equal Protection: Race Discrimination

WEEK TEN**March 22 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 24 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 ELEVEN**March 29 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)

March 31 Thursday

- * *Freeman v Pitts* (1992)
- * *Parents Involved v Seattle School District #1* (2007)

Section 5: Equal Protection: Sex Discrimination

WEEK TWELVE**April 5 Tuesday**

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

April 7 Thursday

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

WEEK THIRTEEN**April 12 Tuesday: No class****April 14 Thursday: No class**

Section 6: Privacy

WEEK FOURTEEN**April 19 Tuesday**

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

April 21 Thursday

- * Privacy and Abortion 1249-1262 (1237-1251)
- * *Roe v Wade* (1973)

WEEK FIFTEEN**April 26 Tuesday**

- * Privacy and Abortion cont. 1262-1283 (1251-1272)
- * *Maier v Roe* (1992)
- * *Planned Parenthood v Casey* (1992)

April 28 Thursday

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

WEEK SIXTEEN**May 3 Tuesday**

No reading. Dr. Fredette will be presenting on law school and other post-college career options.