

Courts and Civil Liberties

Pol Sci 344

Fall 2013
T/Th 1:00-2:30, Seigle Hall L002

Instructor

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Office Hours: M 1:00-3:00 and by appointment

Course Description

This course introduces students to the basic concepts in American constitutional law and the techniques of constitutional interpretation. The goal is to familiarize students with the basic themes in the American Constitution in areas related to civil rights and liberties, with a focus on 1st Amendment and Equal Protection issues.

Required Texts

This course has only one assigned textbook:

Epstein, Lee and Thomas G. Walker. 2013. *Constitutional Law for a Changing America: Rights, Liberties, and Justice* (8th ed.). Washington: CQ Press. ISBN-13: 978-1-4522-2674-3

I strongly recommend that you do not purchase a previous edition of this casebook. It is fine for you to purchase a used copy of the book, provided that it is the 8th edition.

There will be handful of recent decisions that we will cover that are not included in the casebook. I will print and distribute excerpts from these decisions over the course of the semester.

Complete opinions from all Supreme Court cases are available online at:
supreme.justia.com/cases/federal/us/

Class Requirements & Circuits

This class will mostly be taught using “soft” Socratic method, in which dialogue between the teacher and students is essential. All students are expected to keep up with course materials, and come to class prepared to discuss both the details of cases and the principles involved.

For each class session, students are expect to:

- Attend all classes, having read the designated material from the case book;
- Be well-prepared to answer questions about the facts and findings of the week’s cases, subject to cold-calling if there are no volunteers;
- If you cannot attend a class, please let me know ahead of time

Before *THREE* class sessions of your choosing, each student is expected to:

- Post a response to the week’s readings on Blackboard by midnight on the day prior the class meeting;
- Be prepared to discuss your Blackboard response in class

I hope that it will be necessary to cold-call on students only on rare occasions. I will always ask for volunteers before cold-calling.

Grading

Final grades for this course will be comprised of four components:

Component	Percent
Participation	15%
Midterm Exam	25%
Final Exam	35%
Moot Court	25%

Details of the Components:

Participation: Class participation will be composed of both your participation in class discussions and your responses to the readings posted on Blackboard. You are required to post three responses over the course of the semester. At least one of these posts should be made during the first half of the course. You should post under the correct week in the Discussions tab on the Pol Sci 344 Blackboard site.

There is no required format or length to the Blackboard posts, although I would expect many will be about one typed page or two paragraphs. You may respond to any aspect of any case in the week's readings; you may tie together multiple cases, or readings from previous weeks, or simply argue why you think a particular opinion is correct or incorrect, etc.

The Blackboard posts will not be given individual letter grades; for the most part, they will be graded on a pass/fail basis. If I find your post particularly interesting or insightful, I may ask you to expand on it in class.

You will also be graded on your overall participation in class, including attendance and discussion.

Exams: There will be two examinations in the course, a midterm on October 15, and a final on the designated final exam date. The final will be cumulative, but focus on material from the second half of the semester. Each exam will have a designated in-class review session, and the final will have at least one additional optional review session. The final exam will consist of two or three hypothetical cases or essay questions that will require you to apply and/or explain and interpret the learned legal principles. The midterm will also include a short essay, but also include some multiple choice and short answer questions.

Moot Court: 25% of your grade will depend on your performance in one of two Moot Court simulation, held on Nov. 19 or Nov. 21. On those two days we will transform the classroom into the Supreme Court of the United States. On each day, two will be asked to volunteer to play the role of petitioning and respondent lawyers. The rest of the class will play the role of a justice on the Supreme Court for one of the two sessions. The order of moot court sessions, and the composition of each Court will be subject to random draw.

(a) Those volunteering to take on the role of petitioning and respondent lawyers are required to fulfill the following tasks:

- Write a brief to the Court, arguing your side of the case (due at beginning of class on Nov. 14, approximately 5-8 pages). The brief will be distributed to the Court.
- Present oral arguments to the assembled Court on Nov. 19th or Nov. 21st.

(b) The remaining students will play the role of a justice on the Supreme Court. They are required to fulfill the following tasks:

- Sit en banc with your fellow justices to hear oral arguments on Nov. 19th or Nov. 21st. You will be expected to have read the brief and be prepared to ask questions.
- Write the opinion of the Court following the process on the Supreme Court (with slight modifications):
 - Discuss and record your preliminary vote in conference, immediately following oral arguments. The justices will agree on a preliminary distribution of labor for writing an opinion of the Court, as well as a dissenting opinion, if necessary.
 - Produce written opinions, due on December 12th. Each justice may choose to join in the opinion of another justice, or write a concurring or dissenting opinion. Opinions may be distributed and edited among any number of justices prior to being submitted. All justices joining an opinion will receive the grade for that opinion.

(c) Assignment of justice and lawyer roles, as well as the distribution of the hypothetical cases, will take place on October 22nd. Please let me know by email or in person by Sunday, October 20th if you are interested in taking on a lawyer role. A random draw will determine lawyer roles if more students are interested in a lawyer role than roles are available.

Class Schedule

Unit 1: The Judiciary

- August 27th: Introduction
 - Reading: Epstein & Walker, Chapter 1
- August 29th: Fundamentals of Judicial Review
 - Reading: Epstein & Walker, Chapter 2
 - Focus Cases:
 - *Marbury v. Madison* (1803)
 - *Ex Parte McCordle* (1869)
- September 3rd: Bill of Rights Incorporation
 - Reading: Epstein & Walker, Chapter 3
 - Focus Cases:
 - *Barron v. Baltimore* (1833)
 - *Palko v. Connecticut* (1937)
 - *Duncan v. Louisiana* (1968)

Unit 2: Religious Freedom

- September 5th & September 10th: Free Exercise
 - Reading: Epstein & Walker, p. 93-128
 - Focus Cases:
 - *Cantwell v. Connecticut* (1940)
 - *Sherbert v. Verner* (1963)
 - *Wisconsin v. Yoder* (1972)
 - *Employment Division v. Smith* (1990)
 - *City of Boerne v. Flores* (1997)
- September 12th & September 17th: Establishment of Religion
 - Reading: Epstein & Walker, p. 128-196
 - Focus Cases:
 - *Everson v. Board of Education* (1947)
 - *Lemon v. Kurtzman* (1971)
 - *Agostini v. Felton* (1997)
 - *Zelman v. Simmons-Harris* (2002)
 - *School District of Abington Township v. Schempp* (1963)
 - *Lee v. Weisman* (1992)

Unit 3: Free Speech

- September 19th: Early Free Speech Jurisprudence
 - Reading: Epstein & Walker, p. 192-225
 - Focus Cases:
 - *Schenck v. United States* (1919)
 - *Abrams v. United States* (1919)
 - *Gilow v. New York* (1925)
 - *Dennis v. United States* (1951)
 - *Brandenburg v. Ohio* (1969)
- September 24th: Symbolic Speech
 - Reading: Epstein & Walker, p. 225-258
 - Focus Cases:
 - *United States v. O'Brien* (1968)
 - *Texas v. Johnson* (1989)
 - *Cohen v. California* (1971)
 - *R.A.V. v. City of St. Paul, Minnesota* (1992)
- September 26th : Limitations of Freedom of Speech
 - Reading: Epstein & Walker, p. 258-297
 - Focus Cases:
 - *Tinker v. Des Moines* (1969)
 - *Morse v. Frederick* (2007)
 - *West Virginia Board of Education v. Barnette* (1943)
 - *Central Hudson Gas v. Public Service Commission* (1980)
- October 1st: Freedom of the Press
 - Reading: Epstein & Walker, Chapter 6
 - Focus Cases:
 - *Near v. Minnesota* (1931)
 - *New York Times v. United States* (1971)
 - *Hazelwood School District v. Kuhlmeier* (1988)
 - *Branzburg v. Hayes* (1972)
- October 3rd & October 8th: Obscenity & Libel
 - Reading: Epstein & Walker, Chapters 7 & 8
 - Focus Cases:
 - *New York Times v. Sullivan* (1964)
 - *Gertz v. Welch* (1974)
 - *Hustler Magazine v. Falwell* (1988)
 - *Roth v. United States* (1957)
 - *Miller v. California* (1973)
 - *New York v. Ferber* (1982)

MIDTERM

- October 10th: Catch-Up & Midterm Review
- October 15th: Midterm (in class)

Unit 4: Discrimination

- October 17th & October 22nd: Racial Discrimination
 - Reading: Epstein & Walker, p. 603-652
 - Focus Cases:
 - *Plessy v. Ferguson* (1896)
 - *Sweatt v. Painter* (1950)
 - *Brown v. Board of Education, I & II* (1954, 1955)
 - *Swann v. Charlotte-Mecklenberg* (1971)
 - *Loving v. Virginia* (1967)
 - *Shelley v. Kraemer* (1948)
- October 24th & October 29th: Gender & Sexual Orientation
 - Reading: Epstein & Walker, p. 652-678
 - Focus Cases:
 - *Reed v. Reed* (1971)
 - *Craig v. Boren* (1976)
 - *United States v. Virginia* (1996)
 - *Romer v. Evans* (1996)
 - *United States v. Windsor* (2013)*
- October 31st: Affirmative Action
 - Reading: Epstein & Walker, p. 689-719
 - Focus Cases:
 - *Regents of the University of California v. Bakke* (1978)
 - *Grutter v. Bollinger* (2003)
 - *Fisher v. University of Texas* (2013)*

Unit 5: Election Law

- Nov. 5th: Voting Rights
 - Reading: Epstein & Walker, p. 721-742
 - Focus Cases:
 - *Bush v. Gore* (2000)
 - *South Carolina v. Katzenbach* (1996)
 - *Shelby County v. Holder* (2013)*
 - *Crawford v. Marion County Election Board* (2008)
- Nov. 7th: Regulation of Campaigns & Districts
 - Reading: Epstein & Walker, p. 742-768
 - Focus Cases:
 - *McConnell v. FEC* (2003)*
 - *Citizens United v. FEC* (2010)
 - *Reynolds v. Sims* (1964)
 - *Miller v. Johnson* (1995)

Unit 6: Right to Privacy - Nov. 12th & Nov 14th

- Reading: Epstein & Walker, p. Chapter 10
- Focus Cases:
 - *Griswold v. Connecticut* (1965)
 - *Roe v. Wade* (1973)
 - *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992)
 - *Bowers v. Hardwick* (1986)
 - *Lawrence v. Texas* (2003)

Moot Court Arguments

- First Moot Court Arguments Tuesday, Nov. 19th
- Second Moot Court Arguments Thursday, Nov. 21st
- Moot Court Opinions due December 12th

Unit 7: Right to Bare Arms, November 26th

- Reading: Epstein & Walker, p. Chapter 9
- Focus Cases:
 - *District of Columbia v. Heller* (2008)

December 3rd & December 5th: Catch-Up & Exam Review

FINAL EXAM December 17th