

GOV2021: Con Law II

Spring 2018
Sills Hall 111
T/Th 10.05 – 11.25

Professor Maron W. Sorenson

Office: 301B Dudley Coe
Office Hours: T/Th 2.35-3.35; W 10.00-11.00
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COURSE DESCRIPTION¹

This course deals with civil liberties in the United States and how the United States Supreme Court decides which rights and liberties get which protections, at which times. Specifically, our focus will be on the First Amendment and the Right to Privacy. Special emphasis will be placed on how the Supreme Court defines, establishes, and protects these liberties through its interpretation of the Constitution.

In addition, students will learn the fundamentals of the Constitution, become familiar with the workings of the United States Supreme Court, and develop a critical knowledge of many of the cases that have defined the Supreme Court of the United States during its history. Throughout the course, students will be asked to draw connections between disparate cases in American constitutional history. The goal is not to memorize the specifics of every major case. Rather, the goal is to develop a deep understanding of the relationships among the many cases that we will be studying. In other words, students will develop a critical synthesis of American Constitutional Law.

REQUIRED TEXT:

- Lee, Epstein and Thomas Walker. 2016. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*. 9th Edition. Washington D.C.: CQ Press.

GRADES:

Grading scale. The course will follow a standard grading scale:

97-100	A	77-79	C+
93-96	A	73-76	C
90-92	A-	70-72	C-
87-89	B+	67-69	D+
83-86	B	63-66	D
80-82	B-	60-62	D-

Midterm Exam [25% of the course grade]. The midterm exam will consist of a hypothetical set of case facts relevant to the first half of the semester. You will write a legal opinion as if you're the Court's swing justice.

Final Exam [25% of the course grade]. The final exam will test on your knowledge of key terms and themes or concepts and landmark cases so identified in class. You will **not** be expected to know dates or names of the voluminous cases in the text or mentioned in class. The exam will include essay questions.

Case Study [20% of course grade] You will complete a two-part case study (each worth 10%) over the course of the semester, one part before and one part after the midterm. The idea is to become an expert on one current Supreme Court case: *Masterpiece Bakeshop v. Colorado Civil Rights Commission*. This case pulls on case law from several areas of study, and so is a fitting application of your knowledge.

¹ Revisions: none as of 1/20/2018.

Daily Briefs [10% of course grade] Using the format learned last semester, you will brief all cases on the syllabus and should show up to class with each brief in hard copy so that you can take notes directly onto it. If you prefer to brief by hand, you may do so as long as your handwriting is legible and briefs are on loose-leaf paper. Daily briefs are graded for completion – either you completed it or you did not – and will be collected at the end of every class meeting where I will simply say, “Turn in brief X.” Daily briefs must be turned in at this time – late or emailed daily briefs will not be accepted. Each student gets two free briefs that, if not turned in, will not count against the daily brief grade. Finally, Remember that the standard rules for academic honesty apply. You are encouraged to form study groups to discuss and ensure understanding of each case, but the final product should be your own.

Case Presentation [10% of course grade] Each student will present an assigned case to the class. More information will be provided.

Class Participation [10% of course grade] Presence in class is a minimum requirement for class membership. You are expected to read and understand the assignments and contribute to class discussions. For some, constructive participation will mean speaking more than you are naturally inclined to do. For others constructive participation may mean speaking a bit less than usual and encouraging others to contribute. Participation in class might involve any of these things:

- Trying to make a point that is difficult to articulate,
- Challenging or distinguishing points made by others,
- Elaborating or clarifying arguments that have been made by others,
- Offering textual evidence for or against a claim.

One final point - tardy arrivals are distracting and disruptive; promptness is appreciated.

CLASS EXPECTATIONS

Staple. I know this seems like an odd one, but staples are required in multi-page assignments. Any multi-page document that is not stapled will be treated like several assignments: I will grade only one.

Integrity. One of the great goals of education is to learn to conduct oneself honorably in intellectual affairs. This means you are responsible for understanding and following Bowdoin’s Academic Honor Code. Plagiarism, the unacknowledged appropriation of another person’s words or ideas, is a serious academic offense. It is imperative that you hand in work that is your own, **and that you cite or give credit to others whenever you draw from their work.** If you have questions concerning plagiarism please ask me or consult [Bowdoin’s Academic Honor Code](#).

Engagement. Come to class ready to discuss readings and engage in discussion. Since good discussions require a variety of voices, I expect all participants to be present both physically and mentally. **Because of this, the use of electronic devices will not be allowed during lectures. Students should turn off and put away all electronic devices, including cell phones, tablets, and laptops.**

Communication. Class announcements may be sent out via email, and you are therefore expected to use your Bowdoin email account, or to have email from that account forwarded to the account that you use on a regular basis. Also make sure to check the blackboard site on a regular basis in case of changes. I can be reached via email or during office hours and generally check my email three times a day: morning, early afternoon, and evening. I will do my best to respond to emails within 24 hours on weekdays and 36 hours on weekends. If I do not respond in that time period, please resend your email as it might have been inadvertently missed or buried in my inbox.

Changes. I reserve the right to make reasonable alterations to the syllabus and the class policies during the semester. I will email you an updated syllabus as appropriate.

COURSE OUTLINE/READING ASSIGNMENTS

All of the readings below come from Epstein and Walker. There are also a good number of cases discussed in the text that are not excerpted in the book. You will also want to be very familiar with these cases for your papers and exams. **Dates are listed on the syllabus, but they are subject to change.**

I. Introduction to the Judiciary:

1-65 of Epstein and Walker.

II. Freedom of Religion

A. Introduction

B. Free Exercise Clause

- 1/25 *Cantwell v. Connecticut* (1940)
- 1/25 *Sherbert v. Verner* (1963)
- 1/25 *Wisconsin v. Yoder* (1972)
- 1/30 *Employment Division v. Smith* (1990)
- 1/30 *City of Boerne v. Flores* (1997)

C. Religious Establishment

- 2/1 *Everson v. Board of Education* (1947)
- 2/1 *School District of Abington Township v. Schempp* (1963)
- 2/1 *Lemon v. Kurtzman; Earley v. DiCenso* (1971)
- 2/6 *Zelman v. Simmons-Harris* (2002)
- 2/6 *Edwards v. Aguillard* (1987)
- 2/8 *Town of Greece v. Galloway* (2014)
- 2/8 *Van Orden v. Perry* (2005)
- 2/8 *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012)

III. Free Expression, Assembly, and Association

A. The Development of Legal Standards

- 2/13 *Schenk v. U.S.* (1919)
- 2/13 *Abrams v. U.S.* (1919)
- 2/15 *Gitlow v. New York* (1925)
- 2/15 *Dennis v. U.S.* (1951)
- 2/15 *Brandenburg v. Ohio* (1969)

A. Content and Contexts

- 2/20 *U.S. v. O'Brien* (1968)
- 2/20 *Texas v. Johnson* (1989)
- 2/20 *Chaplinsky v. New Hampshire* (1942)
- 2/20 *Cohen v. California* (1971)
- 2/22 *McCullen v. Coakley* (2014)
- 2/22 *Snyder v. Phelps* (2011)
- 2/27 *US v. Alvarez* (2012)
- 2/27 *Tinker v. Des Moines Independent School District* (1969)
- 2/27 *Morse v. Frederick* (2007)
- 3/1 *West Virginia State Board of Education v. Barnette* (1943)
- 3/1 *Rumsfeld v. Forum for Academic and Institutional Rights Inc.* (2006)
- 3/1 *Boys Scouts of America v. Dale* (2000)

Midterm 3/6

IV. Freedom of the Press:

A. Prior Restraint

- 3/8 *Near v. Minnesota* (1931)
- 3/8 *New York Times v. U.S.* (1971)
- 3/27 *Hazelwood School District v. Kuhlmeier* (1988)

B. Governmental Control

C. Media and Special Rights

- 3/27 *Branzburg v. Hayes* (1972)

V. The Boundaries on Expression: Obscenity and Libel:

A. Libel

- 3/29 *New York Times v. Sullivan* (1964)
- 3/29 *Hustler Magazine v. Falwell* (1988)

B. Obscenity

- 4/3 *Roth v. U.S.* (1957)
- 4/3 *Miller v. California* (1973)
- 4/3 *New York v. Ferber* (1982)

VI. Right to Privacy

A. Introduction to Right of Privacy

- 4/10 *Griswold v. Connecticut* (1965)

B. Reproductive Freedom

- 4/10 *Roe v. Wade* (1973)
- 4/10 *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992)

C. Private Activities

- 4/12 *Lawrence v. Texas* (2003)
- 4/12 *Obergefell v. Hodges* (2015)
- 4/12 *Cruzan v. Director, Missouri Dept. of Health* (1990)

VII. Discrimination

A. Discrimination: Racial

- 4/17 *Plessy v. Ferguson* (1896)
- 4/17 *Brown v. Board I and II* (1954, 1955)
- 4/17 *Loving v. Virginia* (1967)
- 4/19 *University of California v. Bakke* (1978)
- 4/19 *Grutter v. Bollinger* (2004)
- 4/19 *Fisher v. University of Texas* (2016)

B. Discrimination: Gender

- 4/24 *Reed v. Reed* (1971)
- 4/24 *Craig v. Boren* (1976)
- 4/24 *United States v. Virginia* (1996)

C. Discrimination: Sexual Orientation

- 4/26 *Romer v. Evans* (1996)
- 4/26 *United States v. Windsor* (2013) BLACKBOARD

VIII. Elections

A. Voting Rights

- 5/1 *South Carolina v. Katzenbach* (1966) – from last semester
- 5/1 *Shelby County v. Holder* (2013)
- 5/1 *Crawford v. Marion County Election Board* (2008)

B. Campaign Finance

- 5/3 *McConnell v. FEC* (2003) BLACKBOARD
- 5/3 *Citizens United v. FEC* (2010)
- 5/3 *McCutcheon v. FEC* (2014)

C. Representation

- 5/8 *Reynolds v. Sims* (1964)
- 5/8 *Miller v. Johnson* (1995)

Final Exam: 5/19 9.00-12.00