

POLI 331 Constitutional Law—Special Topics
The First Amendment: Freedom of Expression and Religious Liberty
Fall 2021
CBB 271 (Chem Bio)
TTh 3:30-4:45

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Office: SCI D-337
Office Hours: MW 11:30am-1:00pm, and by appointment. Zoom appointments can be scheduled too.
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This course examines the First Amendment to the U.S. Constitution. We focus on Supreme Court opinions to learn and understand the basic constitutional law and principles concerning freedom of expression and religious liberty.

Learning Outcomes

Some of the learning outcomes for this course are:

- students will learn to closely and critically read and analyze constitutional law cases decided by the Supreme Court and other courts;
- students will study legal cases and other materials to learn, understand, and explain doctrinal developments in First Amendment law and regulation;
- students will learn about the role of courts and judicial policymaking in interpreting and applying constitutional law;
- students will learn how the First Amendment affects specific policy areas in American politics at the local, state, and federal level.

Readings

The reading for the semester will consist mainly of Supreme Court cases on the First Amendment. Most of the cases are in a free digital casebook. Other cases not in the casebook will be available in Canvas. The digital casebook is also in Canvas, and you may download it if you wish. We will also read Free Speech on Campus, and a copy of that book will be loaned to each student.

Casebook: Ruthann Robson, *First Amendment: Cases, Controversies, and Contexts*, 2nd ed, Published by CALI eLangdell Press, 2020. Available under a Creative Commons BY-NC-SA 4.0 License. The casebook is available in Canvas.

Other: Free Speech on Campus, by Erwin Chemerinsky and Howard Gillman. Yale University Press, 2017. To be loaned to students by Prof. Blakeman

Grading

Class participation	25%	Final Paper	25%
Online Midterm	25%	Online Final Exam	25%

Online Midterm: The midterm exam is open book which means you can use the text book and other course materials to answer the essay question. The exam prompt will open at a set time and day, and you will have several days in which to write your essay after the assignment opens in Canvas. The dates of the mid-term exam will be set soon. Minimum word count is 1000 words. Exam opens on Monday October 11 and closes Friday October 22 at 11:59pm.

Online Final Exam: the final exam is open book, similar to the midterm exam. You will answer one essay prompt. Minimum word count is 1000 words. The final will open Saturday December 11 and close Thursday December 16 at 11:59pm.

Both online exams are graded based on the exam rubric for the course. Please familiarize yourself with the rubric prior to the exams. The rubric will be in Canvas.

Final Paper: the topic and content of the final paper will be determined soon. It is due in Canvas no later than Friday, December 10, at 11:59pm. NOTE: no extensions for the paper will be granted. You must upload your paper to the Canvas website for the course. I will only accept papers through Canvas, NOT through e-mail or other electronic means. You do NOT need to hand in a hard copy of the paper to me. The writing assignment will be available in Canvas later in the semester and specific instructions for the assignment will be available in Canvas at a later date too. It will have a minimum word count of 2000 words.

Participation: your participation grade is heavily dependent on class attendance AND active participation in discussions. Please see the participation grade rubric for more information.

This course often requires *active* participation from students, which means much of our time centers on classroom discussion. To facilitate discussion, I will, from time to time, call on people to participate. If this kind of classroom interaction isn't for you, then I suggest you drop the class.

All written work will be scanned for plagiarism by Turnitin.com. Plagiarism on any assignment will result in a 0 grade for that specific assignment. Instances of plagiarism may lead to academic misconduct proceedings at the university level.

Grade distribution:

A	94-100%	A-	90-93%		
B+	87-89%	B	84-86%	B-	80-83%
C+	77-79%	C	74-76%	C-	70-73%
D+	66-69%	D	60-65%	F	<60%

Make-up exams: Since the exams are open in Canvas for several days it is unlikely that you will miss one. There are circumstances, though, that do arise that cover several days, from military deployment to serious illness. If you miss an exam, a make-up might be scheduled depending on your reasons for missing it. Please be ready to provide *documentation* of your excuse in the form of a university letter, doctor's excuse, etc.

Class Decorum: in this kind of class, which focuses on discussion of controversial topics, please be sure to show proper respect for the ideas and thoughts of others in the class.

Statement on Academic Integrity: I take very seriously the issue of academic integrity—the idea that academic honesty is a vital part of higher education. For the UWSP policy on academic integrity—what it is, and violations of it—I refer you to pages 5 and 6 of the Community Rights

and Responsibilities Document given to all UWSP students. Academic misconduct in this course may result in sanctions, which may include (but are not limited to): a 0 on a specific assignment; a failing grade in the course; removal from the course.

Student Privacy: Federal law protects your privacy as a college student, which means your academic records generally cannot be released without your permission. Therefore, I cannot discuss your grades and classroom performance with your roommate, friends, and even parents.

Communication: I will use UWSP e-mail as the main means of communicating with the class.

September

Introduction

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7/9 Introductory Materials

David Obrien, “The Politics of Constitutional Interpretation” in Canvas

Bert Nueborne, “An Overview of the Bill of Rights” in Canvas

Free Speech on Campus, Chapter 2: Why is Free Speech Important?

Foundational Cases

September 14/16/21/23

The Alien Act: An Act Respecting Alien Enemies

The Sedition Act: An Act in Addition to the Act, Entitled "An Act for the Punishment of Certain Crimes Against the United States

Ex Parte Vallandigham (Canvas case file)

Schenck v. United States

Abrams v. United States

Note: Justice Oliver Wendell Holmes

Gitlow v. New York

Whitney v. California

Bridges v. California

Cantwell v. Connecticut (Canvas case file)

Dennis v. United States

United States v. O'Brien

Holder v. Humanitarian Law Project

Offensive Speech

September 28/30

Chaplinsky v. New Hampshire

Cohen v. California

Hess v. Indiana

NEA v. Findley

Note: The Heckler's Veto

FCC v. Fox and FCC v. Pacifica (Canvas case file)

October

Hate Speech

October 5/7/12

Brandenburg v. Ohio
R.A.V. v. St. Paul
Wisconsin v. Mitchell
Virginia v. Black
Elonis v U.S. (Canvas Case File)
"True Threats"

Marches and Protests and the Public Forum

October 14/19/21/26

Skokie Cases: National Socialist Party v. Skokie, Illinois: federal and state cases (Canvas case file)
Texas v. Johnson
Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston
Doe v. McKesson in Canvas
Southeastern Promotions, Ltd. v. Conrad
Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Ward v. Rock Against Racism
McCullen v. Coakley
Packingham v. North Carolina
Capitol Square Review Board v. Pinnette (Canvas case file)

Book Discussion: Free Speech on Campus

October 28

November 2/4

November

Free Speech in Schools

November 9/11

Tinker v. Des Moines Independent Community School District
Bethel School District No. 403 v. Fraser
Hazelwood School District v. Kuhlmeier
Morse v. Frederick
June 2021: Mahoney School District Case

Freedom of the Press

November 16/18/23

Near v. Minnesota
New York Times Co. v. United States
Sheppard v. Maxwell

Nebraska Press Assn. v. Stuart
Seattle Times Co. v. Rhinehart
Houchins v. KQED, Inc.
Branzburg v. Hayes
Cohen v. Cowles Media Co.
Miami Herald Publishing Co. v. Tornillo
New York Times Co. v. Sullivan
Gertz v. Robert Welch, Inc.
Time, Inc. v. Hill
Hustler Magazine v. Falwell

November 25 Thanksgiving

Freedom of Religion

November 30
December 2/7/8

United States v. Seeger
Welsh v. United States

The Establishment Clause

Everson v. Board of Education of Ewing Twp.
Engel v. Vitale
Lemon v. Kurtzman
Santa Fe Independent School District v. Doe
Note: Elk Grove Unified Sch. Dist. v. Newdow
Zelman v. Simmons-Harris

Religion and the Public Square

McGowan v. Maryland
Marsh v. Chambers
Town of Greece, New York v. Galloway
Allegheny County v. Greater Pittsburgh ACLU
McCreary County, Kentucky v. ACLU of Kentucky
Van Orden v. Perry
American Legion v. American Humanist Assn.

Free Exercise of Religion

Reynolds v. United States
Sherbert v. Verner
Employment Division, Department of Human Resources of Oregon v. Smith
RFRA
Text of Religious Freedom Restoration Act (RFRA)
RLUIPA(Religious Freedom Restoration Act)
Church of the Lukumi Babalu Aye v. City of Hialeah
Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission
Trump v. Hawaii