

PSCI 4774 Liberal Democracy and the First Amendment Fall 2011

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Office Hours: MWF 12-12:30, 2-3
Ketchum 102

Welcome to Liberal Democracy and the First Amendment!

This course explores the meaning of the Constitution through an examination of leading opinions of the U.S. Supreme Court, an institution that is both legal and political in nature. This semester focuses on the First Amendment's provisions regarding religion (establishment and free exercise) as well as freedom of speech, press and association.

This is a challenging course that requires your continual attendance and participation. If you are the type of person who only shows up for exams, drop this course now. You will be unable to pass.

In addition, this is not a lecture course. I have structured this course to rely on student participation, including class briefs and presentations. The final weeks of the semester will require participation in oral and written arguments on cases within the federal court system. If you are the kind of person who is reluctant to speak in class or in public, you must overcome this if you want to succeed in law school or in any profession. I have included assignments that should give you some confidence--or at least advance notice--about expressing yourself before the class.

A warning to students considering law school: this class may test your taste for the law, but it will not measure your aptitude for, desire for, or future success in law school. The study of constitutional law is more than a legal enterprise. It requires knowledge of language, history, moral philosophy and democratic theory, and it raises fundamental political questions about the nature of the Constitution, the role of judges in the federal political system and—most broadly--about the sort of community the American nation is and aspires to be. I thus consider this course an essential element of a general liberal and civic education.

Texts

O'Brien, Constitutional Law and Politics Vol. 2: Civil Rights and Civil Liberties (2011) **ISBN-10:** 0393935507

Additional readings available on course website (D2L: learn.colorado.edu)

Requirements

Exams: You will write two exams during class. Each exam will include objective and essay components.

Alternate or make-up exams will NOT be given without express written permission from the university produced in advance. If you need extra time or assistance to take these exams--or for any part of this course--please let me know as soon as possible so we can make reasonable accommodations.

In compliance with the Americans With Disabilities Act, all qualified students enrolled in this course are entitled to "reasonable accommodations." It is the student's responsibility to inform the instructor of any such needs before the end of the second week of class.

Briefs: You will be required to write two case briefs during the semester and present those cases in class. An appendix in the text demonstrates how to write an effective brief. Follow that structure, and be sure to include your own assessment of whether you believe the case was rightly decided. Where was the reasoning of the majority opinion especially strong or weak? Do the dissents or concurring opinions have stronger arguments?

Briefs should be no longer than two pages, single-spaced—the briefer, the better. Send me a copy of your brief by e-mail to frank.colucci@colorado.edu **24 hours** before we discuss the case in class. During class I will expect you to answer questions about your case from me and from other students.

Participation: I expect you to come to class prepared to discuss the assigned readings and to debate issues raised by these cases. Consider each class a business meeting—come to class on time, turn off all cell phones at the beginning of each session, and display respect for your fellow students. Disruptive students will be asked to leave.

I reserve the following rights: (1) to call on students even when they do not volunteer (2) to give in-class surprise quizzes that test your knowledge of the readings. I hope never to have to do either. So keep up with the readings and be prepared to participate in class.

Oral argument: During the last two weeks of class, we will hold oral arguments on three cases currently within the federal court system. Students will be assigned to roles as counsel for the parties in these cases, prepare 10-12 page written briefs on behalf of their client, and take part in an oral argument.

I will provide details about this assignment and the cases to be argued by midterm.

Grading

Exam 1	25%
Exam 2	30%
Oral argument (written and oral)	30%
Class briefs and participation	15%

Class schedule

*case on course website

Aug. 22	Introduction to First Amendment
Aug. 24	Free speech and the Constitution O'Brien, pp. 430-449
Aug. 26	Reading and briefing cases O'Brien, pp. 1647-1650 Kerr, How to Read a Law Case http://volokh.com/files/howtoreadv2.pdf West Virginia v. Barnette (p. 676)
Aug. 29	Foundations of free speech—clear and present danger Schenck v. U.S. Gitlow v. New York
Aug. 31	APSA Meetings—NO CLASS
Sept. 2	APSA Meetings—NO CLASS
Sept. 5	LABOR DAY--NO CLASS
Sept. 7	Imminent lawless action Dennis v. U.S. Brandenburg v. Ohio Cohen v. California
Sept. 9	Symbolic speech and public order *Clark v. CCNV Texas v. Johnson

- Sept. 12 *Hill v. Colorado
 *Snyder v. Phelps (2011)
- Sept. 14 Free speech and minors
 *Hustler v. Herceg
 *Brown v. EMA (2011)
- Sept. 16 True threats
 Virginia v. Black
 *American Coalition of Life Activists (2002, 9th Circuit)
- Sept. 19 Free speech and public schools
 Tinker v. Des Moines
 Bethel School District v. Fraser (p. 538)
- Sept. 21 The above continued
 *Hazelwood v. Kuhlmeier
 Morse v. Frederick
- Sept. 23 Foundations of libel
 New York Times v. Sullivan
 *Dun & Bradstreet v. Greenmoss (White dissent)
- Sept. 26 Masson v. New Yorker
 *Hustler v. Falwell
 *Milkovich v. Lorain Journal
- Sept. 28 Libel and reputation
 *Florida Star v. B.J.F.
 Cox v. Cohn
- Sept. 30 Prior restraint
 Near v. Minnesota
 New York Times v. U.S. (Pentagon Papers)
- Oct. 3 Obscenity, pornography and offensive speech
 Miller v. California
 Paris Adult Theater v. Slaton
 New York v. Ferber
- Oct. 5 The above continued
 City of Erie v. Pap's A.M.
 *U.S. v. Williams
 *U.S. v. Stevens

- Oct. 7 Regulation of broadcast, Internet and digital technology
 Red Lion
 FCC v. Pacifica
 United States v. American Library Association
- Oct. 10 Ashcroft v. Free Speech Coalition
 *FCC v. Fox Broadcasting (2009)
- Oct. 12 The above continued
- Oct. 14 Catch-up day
- Oct. 17 MIDTERM EXAM**
- Oct. 19 Religion and the Constitution
 O'Brien, pp. 738-758
 Everson v. Board of Education
- Oct. 21 Prayer in public schools
 Engle v. Vitale
 Abington v. Shempp
- Oct. 24 Wallace v. Jaffree
 Lee v. Weisman
- Oct. 26 *Santa Fe v. Doe
 Elk Grove School District v. Newdow (p. 164)
- Oct. 28 Religion in the public square
 *Lynch v. Donnelly
 Van Orden v. Perry
 McCreary County v. ACLU
- Oct. 31 The above continued
- Nov. 2 Aid to religious groups and schools
 Everson v. Board of Education
 Lemon v. Kurtzman
- Nov. 4 The above continued
 Zobrest v. Catalina Foothills
 Rosenberger v. Virginia
 Agostini v. Felton

Nov. 7	The above continued *Good News Club v. Milford Zelman v. Simmons-Harris
Nov. 9	Free exercise of religion *Reynolds v. U.S. Sherbert v. Verner Wisconsin v. Yoder
Nov. 11	Recent issues in free exercise Employment Division v. Smith Locke v. Davey City of Boerne v. Flores
Nov. 14	Organization for oral argument
Nov. 16	Organization for oral argument
Nov. 18	PARTY BRIEFS DUE
Nov. 21-25	FALL BREAK
Nov. 28	Oral argument (tentative)
Nov. 30	Oral argument (tentative)
Dec. 2	Oral argument (tentative)
Dec. 5	Freedom of association NAACP v. Alabama Roberts v. Jaycees Hurley v. Irish-American Gay, Lesbian, and Bisexual Group
Dec. 7	Boy Scouts of America v. Dale *Christian Legal Society v. Martinez
Dec. 9	Catch-up day

OPINIONS ANNOUNCED

FINAL EXAM TBA

Policy statements

Disabilities: If you qualify for accommodations because of a disability, please submit to me a letter from Disability Services in a timely manner so that your needs be addressed. Disability Services determines accommodations based on documented disabilities. Contact: 303-492-8671, C4C building, and <http://www.Colorado.EDU/disabilityservices> . If you have a temporary medical condition or injury, see guidelines at www.colorado.edu/disabilityservices/go.cgi?select=3Dtemporary.html .

Religious accommodations: Campus policy regarding religious observances requires that faculty make every effort to deal reasonably and fairly with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. See full details at http://www.colorado.edu/policies/fac_relig.html .

Learning environment: Students and faculty each have responsibility for maintaining an appropriate learning environment. Those who fail to adhere to such behavioral standards may be subject to discipline. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. See policies at <http://www.colorado.edu/policies/classbehavior.html> and at http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code .

The University of Colorado at Boulder policy on Discrimination and Harassment, the University of Colorado policy on Sexual Harassment and the University of Colorado policy on Amorous Relationships apply to all students, staff and faculty. Any student, staff or faculty member who believes s/he has been the subject of sexual harassment or discrimination or harassment based upon race, color, national origin, sex, age, disability, creed, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550.

Information about the ODH, the above referenced policies and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at <http://www.colorado.edu/odh> .

Honor code: All students of the University of Colorado at Boulder are responsible for knowing and adhering to the academic integrity policy of this institution. Violations of this policy may include: cheating, plagiarism, aid of academic dishonesty, fabrication, lying, bribery, and threatening behavior. All incidents of academic misconduct shall be reported to the Honor Code Council (honor@colorado.edu; 303-735-2273). Students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member and non-academic sanctions (including but not limited to university probation, suspension, or expulsion). Other information on the Honor Code can be found at <http://www.colorado.edu/policies/honor.html> and at <http://www.colorado.edu/academics/honorcode/> .

