

**Political Science 3301-300E:  
Gender, Sexuality, and U.S. Law**  
Spring 2016 Course Syllabus

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Office Hours: Mondays 1:00PM - 3:00PM and by Appointment

Office Location: Ketchum Building (KTCH) 236

## **Course Overview**

### **Course Description**

This course provides both a historic and contemporary overview U.S. courts' treatment of gender and sexual orientation. Focusing largely on court cases, we will examine policy issues including, but not limited to: same-sex marriage, the right to privacy, affirmative action, abortion, discrimination in education and in the workplace, as well as First Amendment law relevant to gender and sexuality. This course is approved for arts and sciences core curriculum: human diversity.

### **Objectives**

By the end of the course, students should be able to:

- *Identify* key court cases relevant to gender and sexual orientation law and *summarize* the major holdings of these cases.
- *Choose* relevant case law that would govern different situations and circumstances and *compare and contrast* the facts of cases already decided with hypothetical or ongoing cases.
- *Explain* why either the plaintiff or defendant should win a hypothetical or ongoing case based on case law and then defend that judgment against plausible alternative interpretations of case law.

### **Course Overview**

On June 26, 2015, the United States Supreme Court ruled that bans on same-sex marriage violate the U.S. Constitution, effectively legalizing same-sex marriage across the fifty states. Also in its 2015 term, and in a lesser known case, the Court clarified the requirements for filing a disparate treatment lawsuit under the Pregnancy Discrimination Act. Unlike many other legal topics, gender and sexuality law are relatively new areas of litigation. And, in this course, we are going to examine case law, past and present, as well as speculate on how ongoing or hypothetical (yet entirely plausible) controversies might be decided by the courts in the future.

The primary objective of this course is to get you to think about familiar issues like abortion, same-sex marriage, and affirmative action from a purely *legal* perspective. Throughout this

course, I would like to see all of you develop a keen legal mind. This includes creating and defending arguments you believe in, but also stepping into your opponents' shoes and building up their case to be as strong as it can be. As this course progresses, my hope is that you will come to realize that not all positions on these issues can easily be categorized as having a liberal or conservative bent, and that sometimes the best interpretation of law might dictate outcomes you yourself disagree with.

This course more closely resembles a law course than a theoretically or historically-driven course. As such, our focus will *not* be on feminist thought or queer theory. Nor will we focus on the history of either the Women's Rights Movement or Gay Rights Movement. That said, the textbook for this course has been written to omit most of the *procedural* aspects of law that are more pertinent to lawyers than undergraduates. These include definitional issues, legal issues of standing, mootness, ripeness, etc. Perhaps some of you are deeply interested in law. Perhaps some of you simply need to fulfill the human diversity requirement for your major. For whatever reason you are taking this course, I would like you to keep in mind two things:

First, this course is **rigorous**. There will be a very short writing assignment each week and multiple short papers to get you thinking like a lawyer from day one. You should not get discouraged if the material does not "click" right away. I realize that for some of you, legal writing will come naturally. For others, not so much. That is why I weigh your performance toward the end of the semester significantly more than your performance toward the beginning. Improvement is always rewarded in this class.

Second, I will do my absolute best to make sure that if you truly want to succeed in this course, you will know how to do so. This includes, on my end, coming to class prepared and organized, being available via email to answer questions, and being willing to meet with you to further discuss the material during office hours or by appointment. I look forward to working with you all and hopefully by the end of the course, you will realize that you have learned so much more about gender and sexuality law than you thought was possible!

## **Communication Policies**

I will be holding office hours on Mondays from 1:00PM to 3:00PM in KTCH 236. Outside of those office hours, the best way to reach me is through email. I usually respond within twenty-four hours, excluding weekends and university holidays. If you have not received a response after twenty-four hours, please feel free to email me again. It is *completely* appropriate to do so. If I cannot answer your questions via email and you cannot meet during my office hours, please schedule an appointment with me.

# Course Requirements

## Prerequisites

You should have taken either PSCI 1101 (Introduction to American Politics) or WMST 2000 (Introduction to Feminist Studies) before taking this course. This prerequisite requirement, however, will not be strictly enforced. It is helpful to have a working knowledge of the U.S. court systems, but this is not necessarily either.

## Required Texts

There are two required books for this course. They have been submitted to the University of Colorado – Boulder Bookstore and should be available there.

1. Author: Katharine T. Bartlett, Deborah L. Rhode, Joanna L. Grossman, and Samantha L. Buchalter  
Title: Gender Law and Policy  
Publisher: Wolters Kluwer Law & Business  
ISBN #: 978-1454841289  
Date/Edition: 2014; **2 edition**  
Cost: \$107.96
2. Author: Martha C. Nussbaum  
Title: From Disgust to Humanity: Sexual Orientation and Constitutional Law  
Publisher: Oxford University Press  
ISBN #: 978-0195305319  
Date/Edition: 2010; 1 edition  
Cost: \$16.71

Additional readings can be found on D2L. These will include recent court decisions that have yet to reach even the most updated textbooks and condensed versions of cases involving sexual orientation that are mentioned in the Nussbaum textbook.

## Student Responsibilities

Over the course of the semester we will deal with many controversial topics, and it is more than likely that we will differ in our perspectives on these topics. I expect everyone to treat each other with respect. Disagreement over ideas is appropriate (and perhaps encouraged) but it is not appropriate to let that disagreement manifest itself as personal attacks. Analyzing “the law” should minimize the desire to be disrespectful. A simple statement of an opinion neither contributes to the discussion nor will be rewarded, because this course is not about opinions on these controversial issues directly, but rather your analysis of the law in regards to these issues. A respectful classroom environment is one that will facilitate lively discussions surrounding the topic and should contribute to learning.

Students will also be required to complete five short papers and take the final exam in order to pass this course. Failure to turn in five papers or take the final exam will result in an earned F.

## Grading Scale

I will be using the following grading scale to evaluate your work:

93.00-100	A	73.00-76.99	C
90.00-92.99	A-	70.00-72.99	C-
87.00-89.99	B+	67.00-69.99	D+
83.00-86.99	B	63.00-66.99	D
80.00-82.99	B-	60.00-62.99	D-
77.00-79.99	C+	0.00-59.99	F

## Evaluation

The objectives for this course largely revolve around understanding court cases and being able to convincingly apply them in different settings. To best achieve those objectives, I have determined that your grades will compose of five short papers, attendance, participation in class discussions and your reaction papers, and a final exam.

1. **Short Papers × 5 (50%):** You will be required to write five short papers. After each class, I will post the assignment based on that week's readings and lecture. It will be due in class the following week. You may elect to write *any* five short papers, so long as you write five throughout the semester. The first one you write will be worth 5% (of your total grade), the second, third, and fourth ones you write will be worth 10% each, and the final paper will be worth 15% for a total of 50% of your grade. Each assignment will have two questions describing scenarios both from real and hypothetical cases. You will then be required to identify the relevant case law and legal test, apply the test to the particular series of facts, make a determination of which party should win, and defend your argument against plausible counterarguments or interpretations of the facts. Each paper will be a maximum of three pages, single-spaced, in length.

You may turn in more than five papers throughout the semester. If you choose to do more than five, your grade on any subsequent papers will *replace* the score you earned on your lowest graded paper, regardless of if the score is better.

Example 1: Student A earns an 80, 90, 75, 80, and 95 on their first five papers. Student A elects to write a sixth paper and earns an 85. That sixth paper will replace Student A's third paper and will be worth 10%.

Example 2: Student B earns a 90, 95, 100, 90, and 85 on their first five papers. Student B elects to write a sixth paper and earns an 80. That sixth paper will replace Student B's fifth paper and will be worth 15%. It was not worth it for Student B to write a sixth paper. Student B then writes a seventh paper and earns a 95. That seventh paper will replace Student B's fifth paper (which was at an 80 due to the sixth paper).

## 2. Attendance, Participation, and Reaction Papers (20%):

### a. Attendance (5%)

You will be required to attend each class session. Since each evening class is the equivalent of three standard classes, missing any class without a documented, legitimate reason for missing class will count against your grade in this section.

### b. Participation (5%)

Failing to attend class will mean that you also cannot participate. My classes provide ample opportunity for students to participate. Whether it is simply answering questions about the cases (which reveals that you came to class prepared), furthering class discussions (which shows you are thinking on your feet about the class topics) or merely asking questions about the material, I expect some participation from each of you every class period. To aid in this effort, I will require short reaction papers from the readings.

### c. Reaction Papers (10%)

I will post a question from the readings, similar to questions for the short papers, and you will be required to write a half-page, single-spaced paper answering the question. These will be graded on a check plus (good), check (satisfactory), check minus (unsatisfactory) system. You can elect to not write *one* reaction paper this semester. I will give you all one “pass” and you can turn in your “pass” at any time. This pass will excuse you from the reaction paper for that week and from me asking you any questions about the material. In other words, missing class will always hurt your grade, but you can come to class without being prepared one time and not be penalized for it.

3. **Final Exam (30%):** Cumulative final exam to be taken April 26, 2016. This will test your knowledge of the court cases, the circumstances they apply to, and your ability to apply some of these cases in a timed setting to hypothetical and real scenarios. More details on the final exam will be provided later in the semester.

## Submission Policies

You will be required to submit your assignments both in paper and electronic format. A stapled paper copy should be turned in during class and you should upload your assignment to the Dropbox folder on D2L in a format that can read it (.pdf or .docx). Submitting a paper in a .pages format or any other format that D2L cannot read will result in a 10% deduction in grade. I tend to grade rather quickly and almost always have feedback done within a week of submission.

## Late Work

Because you have options as to when you will complete the five papers, any late papers will not be accepted. Plan ahead of time which five topics appeal the most interesting to you and submit those papers on time. Because one evening class is the equivalent of three standard classes, missing even more class this semester will hurt that portion of your grade in a substantial way. If you foresee problems attending class on Tuesday evenings, please consider taking another course. If a conflict with class is unavoidable, please contact me and I may be able to get you access to my recorded lectures on that particular topic.

## **Grade Appeals**

If you are unhappy with a grade you earned, follow these two steps. First, wait twenty-four hours, then set up a time to talk to me about it. I will read over your assignment again and discuss with you exactly why that grade was assigned. If, however, that is unsatisfactory, you will be required to write an explanation for why you believe a higher grade was earned. I will then reevaluate the assignment based on your reasons and make a determination. A request for a re-grade must be submitted within one week of receiving the assignment back.

## **Cheating/Plagiarism**

Any form of academic dishonesty will not be tolerated. Plagiarism on any assignment will result in automatic failure of the course itself and a report to the Honor Code Council will be made. Plagiarism is defined as the use of another's ideas or words without appropriate acknowledgement. Examples of plagiarism include, but are not limited to, the following: failing to use quotation marks when directly quoting a source; failing to document distinctive ideas from a source; fabricating or inventing sources; and copying information from computer-based sources, i.e., the Internet. Cheating is defined as using unauthorized materials or receiving unauthorized assistance during an examination or other academic exercise.

## **Subject to Revision**

I reserve the right to make small revisions to this syllabus including but not limited to: due date changes, assignment modifications and the potential curving of grades (never to the detriment of a student). You will be notified of these changes via email, and a revised syllabus will be posted to D2L as soon as a change has been made. Please check D2L for the most up-to-date syllabus.

## **Course Schedule**

### **Gender Law**

#### **Topic 1: Formal Equality**

##### **Week 1 (January 19, 2016)**

- Topics Covered:
  - Section A: Historical Foundations for Women's Claim to Formal Equality
  - Section B: Formal Quality and the Constitutional Right to Equal Protection
- Readings:
  - Bartlett et al. (2014): pages 1-50
- Assignment Due:
  - None

##### **Week 2 (January 26, 2016)**

- Topics Covered:

- Section C: Formal Equality in Employment – Part 1
  - Part 1: The Equal Pay Act: Formal Equality Paradigm
  - Part 2: Title VII: Finding the Limits of Formal Equality
    - Sub-section a: What is Discrimination “Based on Sex”?
    - Sub-section b: What is Discrimination? The Special Case of Appearance Regulation
- Readings:
  - Bartlett et al. (2014): pages 50-103
- Assignments Due:
  - Week 1 Short Paper
  - Week 2 Reaction Paper

### **Week 3 (February 2, 2016)**

- Topics Covered:
  - Section C: Formal Equality in Employment – Part 2
    - Part 2: Title VII: Finding the Limits of Formal Equality
      - Sub-section c: When is Sex a “Bona Fide Occupational Qualification?”
  - Section D: State Public Accommodations Laws and Associational Freedoms
  - Chapter 2, Section A: Remedying the Effects of Past Discrimination (Affirmative Action)
- Readings:
  - Bartlett et al. (2014): pages 104-135; 145-168
- Assignments Due:
  - Week 2 Short Paper
  - Week 3 Reaction Paper

### **Topic 2: Substantive Equality**

### **Week 4 (February 9, 2016)**

- Topics Covered:
  - Section B: Eliminating the Disadvantages of Women’s Differences
  - Section D: Substantive Equality in the Family
- Readings:
  - Bartlett et al. (2014): pages 168-204; 240-280
- Assignments Due:
  - Week 3 Short Paper
  - Week 4 Reaction Paper

### **Week 5 (February 16, 2016)**

- Topics Covered:
  - Section C: Recognizing Sex-Linked Average Differences: Education and Sports
  - *Documentary*: Sporting Chance: The Lasting Legacy of Title IX
- Readings:
  - Bartlett et al. (2014): pages 204-240
- Assignments Due:
  - Week 4 Short Paper
  - Week 5 Reaction Paper

### **Topic 3: Nonsubordination and Autonomy**

#### **Week 6 (February 23, 2016)**

- Topics Covered:
  - Section A: Women's Rights and Power in the Liberal State
  - Section B: Sexual Harassment
  - Section C: Domestic Violence
- Readings:
  - Bartlett et al. (2014): pages 291-369
- Assignments Due:
  - Week 5 Short Paper
  - Week 6 Reaction Paper

#### **Week 7 (March 1, 2016)**

- Topics Covered:
  - Section A: Sex and Consent
- Readings:
  - Bartlett et al. (2014): pages 521-581
- Assignments Due:
  - Week 6 Short Paper
  - Week 7 Reaction Paper

#### **Week 8 (March 8, 2016)**

- Topics Covered:
  - Section B: Pregnancy and Autonomy
- Readings:
  - Bartlett et al. (2014): pages 581-653
- Assignments Due:
  - Week 7 Short Paper
  - Week 8 Reaction Paper

### **Sexual Orientation Law**

### **Topic 4: Theories and Regulation of Sexuality**

#### **Week 9 (March 15, 2016)**

- Topics Covered:
  - Politics of Disgust
  - Politics of Humanity
  - Sodomy Laws: Disgust and Intrusion
- Readings:
  - Nussbaum (2010): pages 1-93
  - Court Cases (on D2L)
    - *Bowers v. Hardwick* (1986), ***Lawrence v. Texas* (2003)**, *Lofton v. Secretary of the Dept. of Children & Family Services*, *Reliable Consultants v. Earle*, *Witt v. Dept. of the Air Force*
- Assignments Due:

- Written Quiz on Gender Law
- Week 8 Short Paper
- Week 9 Reaction Paper

### **Topic 5: Sexual Orientation Discrimination**

**\*Bolded\*** cases are the *most* important cases for that topic

#### **Week 10 (March 29, 2016)**

- Topics Covered:
  - Discrimination and Antidiscrimination
  - Lesbian Parents
  - Employment and Other Forms of Discrimination Based on Sexual Orientation
- Readings:
  - Nussbaum (2010): pages 94-125
  - Bartlett et al. (2014): pages 407-425
  - *Court Cases* (on D2L)
    - *Norton v. Macy*, *Watkins v. United States Army*, ***Romer v. Evans* (1996)**, *Nabozny v. Podlesny*, *Davis v. Monroe County Board of Education* (1999) [revisited], *Saxe v. State College Area School District*
  - EEOC July 2015 Decision (on D2L)
- Assignments Due:
  - Week 9 Short Paper
  - Week 10 Reaction Paper

#### **Week 11 (April 5, 2016)**

- Topics Covered:
  - A Right to Marry?
  - First Amendment Law, Part 1: Hate Speech
- Readings:
  - Nussbaum (2010): pages 126-166
  - Bartlett et al. (2014): pages 385-406
  - *Court Cases* (on D2L)
    - *United States v. Windsor* (2013), ***Obergefell v. Hodges* (2015)**, *Virginia v. Black* (2003), ***Snyder v. Phelps* (2011)**, *Wisconsin v. Mitchell* (1993)
- Assignments Due:
  - Week 10 Short Paper
  - Week 11 Reaction Paper

### **Topic 6: Special Topics in Sexuality Law**

#### **Week 12 (April 12, 2016)**

- Topics Covered:
  - Sex Clubs, Public Sex, Risky Choices
  - Pornography
  - First Amendment Law, Part 2: Expressive Association, Free Speech and Government Employees, and Speech in Public Schools
- Readings:
  - Nussbaum (2010): pages 167-209

- Bartlett et al. (2014): pages 370-385
- *Court Cases* (on D2L)
  - ***Roberts v. United States Jaycees* (1984), *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston* (1995), *Boy Scouts of America v. Dale* (2000)**, know ***Pickering v. Board of Education* (1968)** test, *Shahar v. Bowers*, *Dixon v. University of Toledo*, *Piggee v. Carl Sandburg College*, know ***Tinker v. Des Moines Independent Community School District* (1969)** test, *Fricke v. Lynch*, *Doe v. Yunits*, *Zamecnik v. Indian Prairie School District No. 204*
- Assignments Due:
  - Week 11 Short Paper
  - Week 12 Reaction Paper

### Week 13: (April 19, 2016)

- Topics Covered:
  - Women and Homosexuals in the Military
  - Gender Identity and the Law
  - Religious Liberty versus LGBT Equality
- Readings:
  - Bartlett et al. (2014): pages 425-434; 700-717
  - *Court Cases* (on D2L)
    - Know ***Rostker v. Goldberg* (1981)**, *Watkins v. United States Army*, *High Tech Gays v. Defense Industrial Security Clearance Office*, *Holloway v. Arthur Andersen & Co.*, *Brown v. Zavaras*, *Glenn v. Brumby*, ***Schroer v. Billington***, *Etsitty v. Utah Transit Authority*, *Gay Rights Coalition of Georgetown University Law Center v. Georgetown University*, ***Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez* (2010)**, *Harper v. Poway Unified School District*
- Assignments Due:
  - Week 12 Short Paper
  - Week 13 Reaction Paper

### Week 14: Final Exam (April 26, 2016)

## University Policies

### Disability

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 can be addressed. Disability Services determines accommodations based on documented disabilities.  
 Contact: (303) 492-8671, Center for Community, N200, and  
<http://www.colorado.edu/disabilityservices>.

### Religious Observances

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\\_religh.html](http://www.colorado.edu/policies/fac_religh.html).

## **Classroom Behavior**

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, color, culture, religion, creed, politics, veteran's status, sexual orientation, gender, gender identity, and gender expression, age, disability, 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 alternative 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](http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code).

## **Discrimination and Harassment**

The University of Colorado at Boulder Discrimination and Harassment Policy and Procedures, the University of Colorado Sexual Harassment Policy and Procedures, and the University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy 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 Student Conduct (OSC) at (303) 492-5550. Information about the ODH, the above reference 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 should be reported to the Honor Code Council ([honor@colorado.edu](mailto: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://honorcode.colorado.edu/>.