

Political Science 311  
Spring 2008  
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MWF 1:30-2:35/MC 301  
Office Hours: MW 12:15-1:15  
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## CIVIL RIGHTS AND LIBERTIES

The following book is required:

Epstein and Walker, CONSTITUTIONAL LAW FOR A CHANGING AMERICA, Vol. II:  
RIGHTS, LIBERTIES, AND JUSTICE

Recent attempts by the government to find terrorists within our midst have challenged our civil liberties as they have not been challenged for fifty years. The Bush administration has asserted its right spy on Americans without a warrant and to hold terrorist suspects indefinitely without a lawyer or the ability to challenge their imprisonment in court. The Patriot Act has relaxed controls on the ability of law enforcement official to search and seize materials from American citizens. Yet despite these developments, most Americans remain ignorant of their rights. What does it mean to say, "Congress shall make no law . . . abridging the freedom of speech"? Does it mean that you and I can never be prohibited from speaking or punished for our words? Obviously not, since (as Oliver Wendell Holmes noted) even free speech does not give one the right to falsely shout "Fire!" in a crowded theater. Under what circumstances can the government stop you from speaking? To what extent can government involve itself with religion? What does it mean to say no state shall deny its citizens "equal protection of the laws"? To what extent does treating people differently according to their race, income, or gender violate the Constitution? What are the rights of criminal defendants?

These are the kinds of questions we will consider in this course. We will find that the answers to such questions, and therefore the content of our civil rights and liberties, vary greatly with the changing political climate of our country. So although you will learn the tools for a traditional legal analysis of a case, this course will also emphasize the political context and political theories behind the legal issues.

### COURSE REQUIREMENTS

The course combines lecture and class discussion. The most important requirement is that you attend class prepared to discuss the reading. **ALWAYS BRING YOUR TEXTBOOK TO CLASS.** For each case you read, formulate the legal issue, locate the legal test used (if obvious), and underline or highlight the main points of each opinion: I will expect you to know these in class discussion. (You will learn in class how to come up with these pieces of information.)

Attendance is required. You can have five unexcused absences without penalty. After that, your

final grade will be lowered by 1/3 of a grade. It will be lowered an additional 1/3 of a grade for every 3 subsequent unexcused absences. (E.g., missing 9-11 classes lowers your final grade by 2/3 of a grade; 12-14 classes, 1 grade, and so on.) Coming to class late counts as one-half of an absence. If you miss class because of illness or emergency, let me know after you have returned to class and your absences will be erased. *Please do not call me before class to tell me you will not be present.* On the other hand, excellent participation (thoughtful contributions to class discussion) can raise your final grade.

Formal assignments consist of a midterm, a final examination, and three briefs. Briefs are due the day the case is discussed in class. (Cases to be briefed are indicated by the words **[BRIEF DUE ON THIS CASE]** after them.) Exams may not be taken at a times other than those regularly scheduled except in extraordinary situations. Only one late brief will be accepted, and it must be turned in no more than a week late; the grade will be lowered.

Excellent participation (thoughtful contributions to class discussion) will raise your final grade; consistent evidence of lack of preparation in response to questions will lower it. I also reward improvement, so if there is an upward trend to your work, the later (better) grades will be given more weight.

Your grade will be decided as follows:

Midterm #1	25%
Midterm #2	25%
Final	35%
Briefs	15%

### SCHEDULE OF READING ASSIGNMENTS

Note: Some cases are available in the online case archive tied to your textbook. These cases are designated “WEB.” To access them, go to <http://clca.cqpress.com/> and click on the picture of our textbook (“Rights, Liberties, and Justice”). Then find the link to the case assigned and click on it. (The fastest way is to hit Ctrl+F and type in the name of one of the parties to the case.) To read the case, you have to type in an access code that comes with your textbook. For your convenience, I have also put these cases on electronic reserve. A few cases are exclusively on electronic reserve, and these are designated RESERVE. To access them go to <http://scholar.csuohio.edu/> and click on “Course Reserves.”

If you are interested in reading the full opinions, rather than the edited versions presented in our book, any Supreme Court case can be found at <http://findlaw.com/casecode/supreme.html>. (Try a “party name search.”) There are also blogs by various constitutional law professors that might interest you: [www.scotusblog.com](http://www.scotusblog.com) and [balkin.blogspot.com](http://balkin.blogspot.com). They contain links to still others.

Week 1 (January 14)

- M Introduction
- W US Constitution and amendments (791-800)  
Text, 3-46, 95-8
- F Matthew Brzezinski, "Hady Hassan Omar's Detention" (RESERVE)  
Schenck v. US (1919) (210-15)(For the antiwar pamphlet in the case, see  
<http://1stam.umn.edu/archive/primary/schenck.pdf>)

## I. FIRST AMENDMENT: FREEDOM OF SPEECH AND PRESS

### Week 2 (January 21)

- M HOLIDAY
- A. Communists, Racists, "Clear and Present Danger"**
- W Abrams v. US (1919) (215-19)(For the circulars at issue in the case, see  
[1stam.umn.edu/archive/primary/Abrams.pdf](http://1stam.umn.edu/archive/primary/Abrams.pdf))  
Gitlow v. New York (1925)(219-29)(For the manifesto at issue in the case, see  
<http://1stam.umn.edu/archive/primary/gitlow.pdf>)
- F Dennis v. US (1951) (229-37)  
Brandenburg v. OH (1969) (237-44)

### Week 3 (January 28)

- B. Symbolic Speech**
- M US v. O'Brien (1968)(244-50)(For photographs, see  
<http://1stam.umn.edu/archive/primary/OBrien.pdf>)  
Tinker v. Des Moines (1969)(250-55)  
Texas v. Johnson (1989) (255-60)
- C. Offensive Speech**
- W Chaplinsky v. NH (1942)(261-62)  
Cohen v. CA (1971) (262-66)
- D. Special Contexts/Public Forum Analysis**
- F Adderley v. FL (1966)(WEB)

Morse v. Frederick (2007)(WEB) [**BRIEF DUE ON THIS CASE**]

Week 4 (February 4)

**E. Hate Speech**

- M RAV v. St. Paul (1992) (275-83)  
Wisconsin v. Mitchell (1993) (283-86)  
VA v. Black (2003)(WEB)

**F. Freedom of Association; Compulsory Speech**

- W Text, 286  
Roberts v. United States Jaycees (1984)(WEB)  
Boy Scouts of America v. Dale (2000)(306-12)

**G. Freedom of the Press: Prior Restraint and Searches**

- F Text, 314-15  
New York Times v. US (1971)(318-26)  
Hazelwood School District v. Kuhlmeier (1988)(326-31)(For page proofs of the article in question, see <http://1stam.umn.edu/archive/primary/hazelwood.pdf>)

Week 5 (February 11)

**H. Obscenity and Pornography**

- M Roth v. US (1957) (347-56)  
Miller v. CA (1973) (356-62)  
NY v. Ferber (1982)(362-65)

**II. FIRST AMENDMENT: FREEDOM OF RELIGION**

**A. Free Exercise Clause**

- W Text, 99-104  
Braunfeld v. Brown (1961)(WEB)  
Sherbert v. Verner (1963)(107-15)  
Wisconsin v. Yoder (1972) (115-20)  
 F **MIDTERM #1**

Week 6 (February 18)

- M HOLIDAY
- W Lyng v. Northwest Indian Cemetery Protective Association (1988)(WEB)  
Employment Division v. Smith (1990) (121-30)
- F Boerne v. Flores (1997)(131-38)  
Cutter v. Wilkinson (2005)(WEB)

Week 7 (February 25)

**B. Establishment Clause**

- M Everson v. Board of Education (1947)(138-48)  
Lemon v. Kurtzman; Earley v. DiCenso (1971)(148-60)  
School District of Abington Township v. Schempp (1963) (184-89)
- W Lee v. Weisman (1992)(189-200)  
Santa Fe Independent School District v. Doe (2000)(WEB)
- F Edwards v. Aguillard (1987)(177-84)  
Agostini v. Felton (1997)(160-67)

Week 8 (March 3)

- M Zelman v. Simmons-Harris (2002)(167-73)  
Locke v. Davey (2004)(WEB)
- W McCreary County, KY v. ACLU of KY (2005)(WEB)  
Van Orden v. Perry (2005)(200-207) [**BRIEF DUE ON THIS CASE**]

**III. FOURTEENTH AMENDMENT: EQUAL PROTECTION CLAUSE**

**A. Race discrimination: Schools**

- F Constitutional law in the streets:  
FILM: *Eyes on the Prize*

**SPRING BREAK, MARCH 11-18**

Week 9 (March 17)

- M Plessy v. Ferguson (1896) (626-31)

Sweatt v. Painter (1950) (631-35)  
Brown v. Board of Education I and II (1954, 1955) (635-42)

W Swann v. Charlotte-Mecklenburg Board of Education (1971) (642-47)  
Milliken v. Bradley (1974) (WEB)

**B. Race Discrimination: "Private" Discrimination**

F Shelley v. Kraemer (1948) (651-55)  
Burton v. Wilmington Parking Garage (1961)(655-57)  
Moose Lodge 107 v. Irvis (1972) (657-60)

Week 10 (March 4)

**C. Affirmative Action**

M Text, 706-708  
Grutter v. Bollinger (2003)(723-33)  
Parents Involved in Community Schools v. Seattle School District #1/Meredith v. Jefferson County Board of Education (2007)(WEB)(These two cases are consolidated into one opinion.)

W **MIDTERM #2**

**D. Sex Discrimination**

F Reed v. Reed (1971)(660-65)  
Frontiero v. Richardson (1973)(665-69)  
Craig v. Boren (1976) (669-74)

Week 11 (April 2)

M Michael M. v. Superior Court of Sonoma County (1981)(WEB)  
Rostker v. Goldberg (1981)(684-86)  
United States v. Virginia (1996) (674-82)

**E. Discrimination Based on Sexual Orientation**

W Bowers v. Hardwick (1986)(WEB)  
Romer v. Evans (1996)(686-93)  
Lawrence v. Texas (2003)(452-60)

**F. Discrimination Against the Poor; Other Kinds of Discrimination**

- F San Antonio Independent School District v. Rodriguez (1973) (693-701)  
Plyler v. Doe (1982) (701-05)

**IV. THE RIGHTS OF CRIMINAL DEFENDANTS**

Week 12 (April 7)

- M Jose Padilla, Petition for the Writ of Habeas Corpus (RESERVE)  
Padilla v. Hanft (US Court of Appeals, 4<sup>th</sup> Circuit) (RESERVE)  
Padilla v. Hanft: Court Order (RESERVE)

**A. Fourth Amendment: Search and Seizure**

- W Text, 475-82, 494-500  
Illinois v. Gates (1983)(489-94)  
Katz v. US (1967)(483-89)
- F Terry v. OH (1968)(500-507)  
Hiibel v. Sixth Judicial Circuit of Nevada (2004) (WEB)(case name incorrectly spelled “Hibel” on the website)

Week 13 (April 14)

- M Kyllo v. US (2001)(WEB)  
Illinois v. Caballes (2005)(WEB) [**BRIEF DUE ON THIS CASE**]
- W Mapp v. OH (1961)(507-16)  
US v. Leon (1984)(516-21)
- F Film: *The Thin Blue Line*

Week 14 (April 21)

**B. Fifth Amendment/Self-Incrimination**

- M *The Thin Blue Line* (cont.)  
Escobedo v. IL (1964)(526-31)  
Miranda v. AZ (1966)(531-40)

- W     Brewer v. Williams (1977)(WEB)  
       Rhode Island v. Innis (1980)(WEB)  
       Missouri v. Seibert (2004)(544-47)

**C.     Sixth Amendment: Right to Counsel**

- F     Powell v. Alabama (1932)(Scottsboro Boys Case)(550-53)  
       Text, 558-60  
       Rompilla v. Beard (2005)(WEB)

Week 15 (April 30)

**D.     Eighth Amendment: Cruel and Unusual Punishments**

- M     Gregg v. GA (1976)(581-92)  
       Atkins v. VA (2002) (592-602)

- W     Ewing v. CA (2003)(WEB)  
       Roper v. Simmons (2005)(WEB)

**E.     Race and the Criminal Justice System**

- F     Batson v. KY (1986)(562-70)  
       McClesky v. Kemp (1987)(WEB)

**FINAL EXAM: WEDNESDAY, MAY 7, 1-3 PM**