

POL SCI 412: Civil Rights and Civil Liberties

Spring 2022

MW 2-3:15p, LUB S185

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“It is emphatically the province and duty of the judicial department to say what the law is.”

John Marshall for the Court, *Marbury v. Madison*, 5 U.S. 137 (1804), at 177.

This course is designed to familiarize you, the dutiful student, with Supreme Court policy making in the form of the Court’s written opinions. The Supreme Court, the highest judicial institution in the United States, makes decisions that affect the lives of people all over the country. In this course, I hope to promote an understanding and appreciation of the profound influence the Supreme Court has on life as we know it, as well as to convey the very political nature of this institution. All too often, we Americans subscribe to the myth which surrounds this highest of legal institutions, shrouding it in the “cult of the robe,” placing its justices above politics and above the “humanness” of humanity. However true that may be in theory, since the creation of the High Court was indeed a means to check popular control of government, it is not true in reality. Politics plays an everyday role in the functioning of the Supreme Court, evidenced by the occasional ruckus surrounding a Supreme Court nomination, or picketing outside the Court over an unpopular opinion, or political mobilization over a Constitutional amendment to overrule a Court decision. Politics is present on the Court, both in the outside forces that hope to influence it, and in the internally-held policy preferences of its justices. Even the Constitution is not without controversy, as it is an extremely vaguely written document, able to be convincingly construed in any number of ways. Hence the many conflicting opinions written by the justices themselves, charged to make sense of our forefathers’ legacy.

In this course, then, you will read **many** opinions written by these Supreme Court justices, both the majority opinions and the accompanying disagreements (dissents and concurrences). This task will seem daunting at first, almost like learning a foreign language, but by the end of the semester, you’ll be a pro! Note that we will consider many controversial issues in this course that raise the hackles of many, so be prepared to do so in an **open-minded, civil manner**. After all, the justices disagree all the time, in writing, and yet, by all accounts, still get along (even if they do engage, occasionally, in a little high-brow name-calling...). Indeed, if ever there were a course perfectly suited to understanding that there is always more than one reasonable way to look at a particular issue, it’s this one. How fun!

REQUIRED TEXT

Epstein, Lee and Thomas G. Walker. 2021. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*. 11th ed. Washington, DC: Congressional Quarterly Press. (An earlier edition may be acceptable, but it is up to you to be sure you’re completing the correct reading assignments.)

ALSO REQUIRED

This course has a course site on CANVAS (<https://uwm.edu/canvas/>). You should take any actions necessary to secure access to it immediately. If you have any problems accessing the course site or any questions regarding the performance of CANVAS, you should contact the University Help Desk (<https://www4.uwm.edu/technology/help/campus/>) or try to answer your question yourself on the CANVAS site, which has a fantastic help system, including 24-hour live chat help (<https://uwm.edu/canvas/home/>).

EXPECTATIONS

I expect you to participate fully in this course by completing assignments on time, carefully, and thoughtfully. I expect you'll want to actively participate in class in a constructive and literate way. (These cases are so interesting and provocative!!) And, I know you'll put forth every effort.

I also expect that you have a life outside this class and that, sometimes, it will interfere with your ability to do your best work. And, it's really none of my business *why* life is getting in your way (though I absolutely care about you and hope life isn't throwing you too many curveballs. We have many resources on this campus (linked on our CANVAS site) – do NOT hesitate to seek the help you need. It is OK to need help!!). So, I have adopted SPECIFICATIONS-BASED GRADING for your eight assigned briefs with an opportunity to redo any for which you did not receive credit. (Exams will be graded in the conventional way.) More detail on the grading system is on CANVAS.

WORKLOAD AND LEARNING OBJECTIVES

This is a three-credit course, and as such you should average about ten hours of work per week to achieve the learning objectives of this course. Those learning objectives, which drive everything in the course, are as follows:

LO1: Learn to read, comprehend, and critically evaluate Supreme Court opinions, both majority and separate, and understand every side in a legal dispute.

LO2: Learn to summarize complex texts (Supreme Court opinions) concisely, using excellent writing that boils the Court's reasoning down to its essence.

LO3: Practice making evidence-based arguments about legal questions, applying caselaw to novel questions to make a strong argument for a particular resolution.

LO4: Practice presentation skills to aim toward concise but complete communication about a case to your peers.

LO5: Understand major issues in constitutional law pertaining to civil rights and civil liberties.

HOW YOU'LL SPEND YOUR TIME

We generally expect students to put in around 144 hours of work over the course of the semester for a three-credit course. (This is an estimate; actual time will vary by week and across students.) You should expect to spend about:

- 2.5 hours per week in class
- 4 hours per week reading and annotating your assigned Supreme Court decision and the other cases assigned for that week (I've loaded them into Hypothes.is for your use, though using Hypothes.is is NOT required)
- 3 hours per week writing and uploading your case brief

ACADEMIC HONESTY

You need to be very careful to always do and submit **your own work**. I expect you to follow the University's academic honesty policy and to avoid plagiarism. If you have any questions about how to fully do so, please don't hesitate to ask. UWM's policy can be found here: http://www4.uwm.edu/acad_aff/policy/academicmisconduct.cfm. It is indeed plagiarism to copy the justices' words without citation or attribution, to copy the summary of a decision found on any of the various websites that provide them, or to submit as your own old briefs floating around from earlier offerings of this course or briefs posted by various websites. Writing briefs is a useful skill and will help improve your performance on the exams. In fact, I think you should brief ALL the cases we'll cover, though I'm only requiring you to brief eight of them.

I do hope and expect that you will enjoy this class, engaging in the discussions we'll have, thinking through the material you'll read, and listening and considering various sides of the issues we'll raise! This is a serious class and I expect a lot. But, I know you'll do your best to meet (and exceed!) my expectations.

ACCOMMODATIONS

All students need some help sometimes. Whether it be due to a physical or learning disability, a family obligation, an illness, or some other challenge, please contact me as soon as possible so we can figure out something that will work for you while continuing to meet my learning objectives. Every effort will be made to accommodate your needs. The University also has policies on a variety of issues you might face. Learn more about incompletes, military call-ups, sexual harassment, and more, here: <http://www4.uwm.edu/secu/SyllabusLinks.pdf>.

COURSE REQUIREMENTS AND GRADING

First, we need to figure out the course site and the syllabus. In order to do so, your first assignment is to annotate the syllabus, using Hypothes.is. See CANVAS for details.

[5% for completion]

In an effort to spread out the material in response to past student comments, evaluation in this course will include three examinations. Each of these exams will be short answer/essay in nature (i.e., a set of hypothetical cases to which you'll apply Supreme Court precedent). I will post a review sheet detailing the exam and the material covered on it (though that's just a list of terms) when the exams approach and I will show you a sample question and a good answer to give you an idea of my expectations. The exams are worth progressively more to give you credit for learning how to take the exams. (There will likely be extra credit questions on each exam.)

[10% exam one; 15% exam two; 20% exam three]

In addition to these three exams, you will be expected to brief **EIGHT (8)** cases over the course of the semester. (This means you'll have a case to brief in most, but not all weeks.) You will be placed into one of eight groups, each of which will be responsible for briefing a set of cases spaced throughout the term, as noted on the syllabus. All of the members must hand in a complete and unique brief, meeting all specifications. (A handout on briefing with specifications is posted to CANVAS.)

And then, I expect all members of the group to help present the case, in class. You may earn, at most, half credit for a brief you do not help present. (Those absent on briefing days may submit a video to the relevant CANVAS discussion to make up for their absence, or may participate during class over Zoom. I must hear from you **BEFORE** the missed class in order to allow you these opportunities.)

Several cases will be covered each week. The rest of the class will also be responsible for reading those cases presented by other groups, and, as mentioned above, I suggest that you brief them all yourself as a study tool. Copies of a solid (though lengthy) brief (written by me) for each case will be placed on CANVAS for your use in studying, before each exam.

[6.25% each for eight briefs = 50% total]

GRADING SCALE

The grading scale is as follows (with the note that I reserve the right to curve grades as needed):

100 – 93	A	77 – 73	C
92 – 90	A-	72 – 70	C-
89 – 88	B+	69 – 68	D+
87 – 83	B	67 – 63	D
82 – 80	B-	62 – 60	D-
79 – 78	C+	59 – 0	F

READINGS

The following is a list of topics to be covered each week and the readings (cases usually) that should be completed. All readings are from Epstein and Walker's 11th Edition text unless otherwise indicated. The cases listed are those that will be covered that week. (Skim any cases that are in Epstein and Walker but are not being covered in class.) In addition to the listed cases, each week I'll cover some additional cases, for context, some of which will have been in your textbook reading. There are some cases we'll cover that are **NOT** excerpted in your book or on its online supplement. For those that are not, you may search the case name on Google Scholar and then choose "Case law" from the pulldown menu on the left side to find the full text (or access them on our CANVAS page via Hypothes.is). **All briefing groups are expected to read the *entire opinion* including dissents and concurrences, not just the excerpted version found in the Epstein & Walker text, and all cases are provided in pdf format on Hypothes.is.** Everyone else in the class should read *at least* the Epstein & Walker excerpt when available, and the majority opinion when not available, scanning the separate opinions to discern the justices' reason for disagreement.

Any direct quotes must be cited to the *United States Reports*, the official reporter of the U.S. Supreme Court. (In Google Scholar, the side of the opinion marks the U.S. Reports pages. Citations are also embedded within the text with an asterisk. See the Briefing Cases handout for more detail.)

COURSE SCHEDULE

Below is our schedule for the semester. As you'll see, we're trying to cover the waterfront in civil rights and civil liberties here, but there is only so much we can do in one semester. I try, whenever possible, to at least draw your attention to the most current cases in the most important areas of law, but again, we'll run out of time. Hopefully, you'll find one of the special topics courses offered by the Department to be of interest sometime soon to dive more deeply into some of these fascinating topics. (We have offered Obscenity and the First Amendment, Civil Liberties in Times of Crisis, Campaign Finance, Law & Politics, Free Speech, and Freedom of Religion all under POL SCI 471, usually online, and we regularly offer POL SCI 464 Sex, Gender, and the Law.)

With all that in mind, we have the following schedule for this term:

WEEK ONE: INTRODUCTION TO THE COURSE

ONLINE DUE TO OMICRON!

January 24 & January 26

Introduction to the Course; Introduction to the Supreme Court

READ: Review CANVAS site; Syllabus (see Hypothes.is ASSIGNMENT too and page on using Hypothes.is in POL SCI 412)

MEET via Zoom on January 24 and January 26, 2pm – 3:15p. Link in CANVAS Announcement and in Module 1.

ASSIGNMENTS:

Annotate the Syllabus via Hypothes.is by WEDNESDAY (5% of your grade)
Post to “TELL ME ONE THING” DISCUSSION (see CANVAS)

WEEK TWO: INTRODUCTION TO THE COURT

January 31 & February 2

General Introduction to the Constitution of the United States and Supreme Court Decision Making; The Judiciary: Institutional Powers and Constraints

READ: *The Constitution of the United States* (Appendix 1); Chapter 1 (Understanding the Supreme Court); Chapter 2 (The Judiciary: Institutional Powers and Constraints)

ASYNCHRONOUS ON January 31: No in-person class. PLEASE VIEW VIDEO ON CANVAS under Module 2.

February 2: IN CLASS on the power of the judiciary. See you in Lubar S185!

WEEK THREE: INCORPORATION AND BRIEFING

February 7 & February 9

Incorporation – Making the Bill of Rights Apply to the States; Briefing Cases

READ: Chapter 3 (Incorporation of the Bill of Rights); How to Read Supreme Court Decisions; Briefing Cases (CANVAS Handout and VIDEO)

February 7: IN CLASS on incorporation

February 9: IN CLASS on Briefing Cases

ASSIGNMENT:

Annotate Briefing Cases handout on Hypothes.is by WEDNESDAY (Extra Credit!)

WEEK FOUR: LET THE BRIEFING BEGIN!

February 14 & February 16

The First Amendment – Freedom of Speech and Association

READ: Approaching Civil Liberties; Chapter 5 (Foundations of Freedom of Expression); Chapter 6 (Modern-Day Approaches to Free Speech)

February 14: IN CLASS

GROUP 1(1): *Brandenburg v. Ohio*, 395 U.S. 444 (1969) *Association*

GROUP 2(1): *West Virginia v. Barnette*, 319 U.S. 624 (1943) *Symbolic Speech*

GROUP 3(1): *U.S. v. O'Brien*, 391 U.S. 367 (1968) *Symbolic Speech*

GROUP 4(1): *Tinker v. Des Moines*, 393 U.S. 503 (1969) *Symbolic Speech*

February 16: IN CLASS

GROUP 5(1): *Cohen v. California*, 403 U.S. 15 (1971) *Symbolic Speech*

GROUP 6(1): *Texas v. Johnson*, 491 U.S. 397 (1989) *Symbolic Speech*

GROUP 7(1): *Snyder v. Phelps*, 562 U.S. 443 (2011) *Hate speech*

GROUP 8(1): *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) *Association*

WEEK FIVE: THE BOUNDARIES OF FREE SPEECH

February 21 & February 23

Obscenity

READ: Chapter 8 (The Boundaries of Free Expression (Obscenity section))

February 21: IN CLASS

GROUP 1(2): *Roth v. U.S.*, 354 U.S. 476 (1957) *Obscenity*

GROUP 2(2): *Miller v. California*, 413 U.S. 15 (1973) *Obscenity*

GROUP 3(2): *New York v. Ferber*, 458 U.S. 747 (1982) *Child Pornography pandering*

February 23: IN CLASS

GROUP 4(2): *Reno v. ACLU*, 521 U.S. 844 (1997) *Obscenity (internet)*

GROUP 5(2): *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) *Child Pornography*

GROUP 6(2): *Brown v. Entertainment Merchants Association*, 564 U.S. ____ (2011) *Violent video games*

WEEK SIX: LIBEL and FREE PRESS

February 28 & March 2

READ: Chapter 8 (The Boundaries of Free Expression (Libel section)); Chapter 7 (Freedom of the Press)

February 28: IN CLASS

GROUP 7(2): *Near v. Minnesota*, 283 U.S. 697 (1931) *Prior Restraint*

GROUP 8(2): *New York Times v. Sullivan*, 376 U.S. 254 (1964) *Libel*

GROUP 1(3): *Hustler v. Falwell*, 485 U.S. 46 (1988) *Libel*

GROUP 2(3): *New York Times v. U.S.*, 403 U.S. 713 (1971) *Free Press*

March 2: IN CLASS

GROUP 3(3): *Brandenburg v. Hayes*, 408 U.S. 665 (1972) *Free Press*

GROUP 4(3): *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980) *Free Press*

GROUP 5(3): *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) *Free Press (High School)*

Review for Exam #1

WEEK SEVEN: EXAM and RIGHT TO BEAR ARMS

March 7 & March 9

March 7: IN CLASS

EXAM #1

In classroom, 2-3:15, closed book.

More details about the exam content and format is on CANVAS.

March 9: IN CLASS

READ: Chapter 9 (The Right to Keep and Bear Arms)

GROUP 6 (3): *District of Columbia v. Heller*, 554 U.S. 570 (2008) *Right to bear arms*

WEEK EIGHT: PRIVACY

March 14 & March 16

READ: Chapter 10 (Privacy and Personal Liberty)

March 14: IN CLASS

Go over Exam #1

GROUP 7(3): *Buck v. Bell*, 274 U.S. 200 (1927) *Involuntary sterilization*

GROUP 8(3): *Griswold v. Connecticut*, 381 U.S. 479 (1965) *Birth control*

March 16: IN CLASS

GROUP 1(4): *Roe v. Wade* 410 U.S. 113, (1973) *Abortion* (Note: Concurrences are attached to *Doe v. Bolton*, 410 U.S. 179 (1973) – You need to include them.)

GROUP 2 (4): *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) *Abortion*

WEEK NINE: SPRING BREAK

March 21 & March 23

SPRING BREAK! ENJOY!

WEEK TEN: PRIVACY and RELIGION

March 28 & March 30

READ: Chapter 10 (Privacy and Personal Liberty) and Chapter 4 (Religion: Exercise and Establishment)

March 28: IN CLASS

GROUP 3 (4): *Bowers v. Hardwick*, 478 U.S. 186 (1986) *Homosexual sodomy*

GROUP 4 (4): *Cruzan v. Director, Missouri Dept of Health*, 497 U.S. 261 (1990) *Right to die*

GROUP 5(4): *Washington v. Glucksberg*, 521 U.S. 702 (1997) *Right to die*

GROUP 6(4): *Lawrence v. Texas*, 539 U.S. 558 (2003) *Homosexual sodomy*

March 30: IN CLASS

GROUP 7(4): *Wisconsin v. Yoder*, 406 U.S. 205 (1972) *Free Exercise (Education)*

GROUP 8(4): *Employment Division v. Smith*, 494 U.S. 872 (1990) *Free Exercise (Peyote)*

GROUP 1(5): *City of Boerne v. Flores*, 521 U.S. 507(1997) *Free Exercise (Building)*

WEEK ELEVEN: FREEDOM OF RELIGION & SEARCH AND SEIZURE

April 4 & April 6

READ: Chapter 4 (Religion: Exercise and Establishment); The Criminal Justice System and Constitutional Rights, Chapter 11 (Investigations and Evidence (Searches and Seizures section))

April 4: IN CLASS

GROUP 2(5): *Abington v. Schempp*, 374 U.S. 203 (1963) *Establishment (Bible Reading)*

GROUP 3(5): *Edwards v. Aguillard*, 482 U.S. 578 (1987) *Teaching Evolution*

GROUP 4(5): *Van Orden v. Perry*, 545 U.S. 677 (2005) *Public displays*

GROUP 5(5): *Lee v. Weisman*, 505 U.S. 577 (1992) *Establishment (Prayer at graduation)*

April 6: IN CLASS

GROUP 6(5): *Town of Greece v. Galloway*, 572 U.S. ____ (2014) *Prayer before meetings*

GROUP 7(5): *Mapp v. Ohio*, 367 U.S. 643 (1961) *Exclusionary rule*

GROUP 8(5): *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) *Student searches*

WEEK TWELVE: SEARCH AND SEIZURE/ATTORNEYS

April 11 & April 13

Search and Seizure, Attorneys, & Review for Exam #2

READ: The Criminal Justice System and Constitutional Rights, Chapter 11 (Investigations and Evidence (Searches and Seizures and Self-Incrimination)); Chapter 12 (Attorneys, Trials, and Punishments)

April 11: IN CLASS

GROUP 1 (6): *United States v. Antoine Jones*, 565 U.S. 400 (2012) *GPS devices*
GROUP 2 (6): *Riley v. CA/U.S. v. Wurie*, 573 U.S. 373 (2014) *Cell phones*
GROUP 3 (6): *Gideon v. Wainwright*, 372 U.S. 335 (1963) *Right to Atty*
GROUP 4 (6): *Escobedo v. Illinois*, 378 U.S. 478 (1964) *Attorney*

April 13: IN CLASS

GROUP 5 (6): *Miranda v. Arizona*, 384 U.S. 436 (1966) *Warnings*
GROUP 6 (6): *Rhode Island v. Innis*, 446 U.S. 291 (1980) *Interrogation*
GROUP 7 (6): *Batson v. Kentucky*, 476 U.S. 79 (1986) *Fair Trial*

WEEK THIRTEEN: EXAM #2 and DEATH PENALTY

April 18 & April 20

April 18: IN CLASS

EXAM #2

In classroom, 2-3:15, closed book.

More details about the exam content and format is on CANVAS.

April 20: IN CLASS

READ: Chapter 12 (Attorneys, Trials, and Punishments)
GROUP 8 (6): *Gregg v. Georgia*, 428 U.S. 153 (1976) *Death Penalty*
GROUP 1 (7): *McCleskey v. Kemp*, 481 U.S. 279 (1987) *Death Penalty*
GROUP 2 (7): *Atkins v. Virginia*, 536 U.S. 304 (2002) *Death Penalty*
GROUP 3 (7): *Roper v. Simmons*, 543 U.S. 551 (2005) *Death Penalty*

WEEK FOURTEEN: RACE DISCRIMINATION

April 25 & April 27

READ: Civil Rights and the Constitution, Chapter 13 (Race Discrimination and the Foundations of Equal Protection)

April 25: IN CLASS

Go over Exam #2

GROUP 4 (7): *Plessy v. Ferguson*, 163 U.S. 537 (1896) *Separate but equal*
GROUP 5 (7): *Sweatt v. Painter*, 339 U.S. 629 (1950) *Separate but equal*

April 27: IN CLASS

GROUP 6 (7): *Brown v. Board of Education I and II*, 347 U.S. 483(1954) & 349 U.S. 294 (1955) *Education*
GROUP 7 (7): *Loving v. Virginia*, 388 U.S. 1 (1967) *Marriage*

WEEK FIFTEEN: SEX DISCRIMINATION & AFFIRMATIVE ACTION

May 2 & May 4

READ: Chapter 14 (Contemporary Approaches to Equal Protection)

May 2: IN CLASS

GROUP 8 (7): *Craig v. Boren*, 429 U.S. 190 (1976) *Drinking age*
GROUP 1 (8): *United States v. Virginia*, 518 U.S. 515 (1996) *VMI*

Group 2 (8): *Romer v. Evans*, 517 U.S. 620 (1996) *Sexual orientation discrimination*

Group 3 (8): *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015) *Same Sex Marriage*

May 4: IN CLASS

Group 4 (8): *Regents v. Bakke*, 438 U.S. 265 (1978) *Affirmative Action*

Group 5 (8): *Grutter v. Bollinger*, 539 U.S. 306 (2003) *Affirmative Action*

WEEK SIXTEEN: VOTING RIGHTS & REVIEW FOR FINAL

May 9 & 11

COVER: Chapter 15 (Voting and Representation)

May 9: IN CLASS

Group 6 (8): *SC v. Katzenbach*, 383 U.S. 301 (1966)

Group 7 (8): *Crawford v. Marion County*, 553 U.S. 181 (2008)

Group 8 (8): *Citizens United v. FEC*, 130 S. Ct. 876 (2010)

May 11: IN CLASS

Review for Exam #3

Future of the Court

FINALS WEEK

May 14, May 16 - 21

EXAM #3

In classroom. Our final is **Monday, May 16, 3p – 5p**
