

POLI 331 Constitutional Law: Special Topics
The First Amendment: Freedom of Speech, Press, and Religion
M, W 9:35-10:45
CCC 234

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Course Outline and Objectives

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 read and analyze closely and critically 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.

Participation: 25% your semester grade is based on participation in class. This semester I do not have a required attendance policy. However, your participation grade is heavily dependent on class attendance AND participation in discussions. Please see the participation grade rubric for more information. I will post your participation grade and attendance in D2L on a regular basis.

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.

Reading: *the readings for this course are extensive and consist mainly of legal cases organized topically around each of the administrative law areas studied this semester. You must be prepared to work in this class, and you must come to class prepared to discuss the assigned reading. Therefore, you must keep up with the reading assignments. If you cannot do the reading for each seminar, then do not take this class.*

The readings are in the assigned casebook and in D2L.



Bring your casebook with you to class!!!

Grading

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

Online Midterm: The online midterm exam listed above will consist of two essay questions answered in D2L. It is an open-book exam. You will have 3 hours to answer the question prompts once you open the exam.

The Midterm exam opens on Wednesday October 18 at 5pm, and closes on Saturday, October 21 at 12 noon.

Online Final Exam: There will be an online final exam consisting of two essay exams and possibly some short answer questions. The exam will be an open book exam. You will have 3 hours to complete the exam once you have opened it.

The Final Exam will open on Tuesday, December 19 at 5pm. It closes on Friday, December 22 at 5pm.

Both online exams are graded based on the exam rubric for the course. Please familiarize yourself with the rubric prior to the exams.

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 there are only two exams in this course, and both are online in D2L, you most likely will NOT miss one. However, if you do miss the mid-term or final due to illness, family emergency, or university-related event, you may take a make-up exam scheduled by me. Please be ready to provide *documentation* of your excuse in the form of a university letter, doctor’s excuse, etc.

Writing assignment: The writing assignment is due in D2L no later than Friday, December 15, 12 noon. NOTE: no extensions for the paper will be granted. You must upload your paper to the D2L website for the course. I will only accept papers through D2L, 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 D2L later in the semester and specific instructions for the assignment will be available in D2L at a later date too. It will have a minimum word count of 2500 words.

A guide for the writing assignment will be placed in D2L at a later date.

The writing assignment is graded based on a rubric. Please review the rubric prior to starting the paper.

Class Decorum: academic success hinges upon a classroom environment that supports learning. To that end, I ask that all classroom disruptions be kept to a minimum.

No Screens: You may NOT use any device with a screen during class, unless you have my explicit permission to do so. In that circumstance, screens may only be used in class for course-specific objectives. Any other use is prohibited.

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. I expect you to monitor your university e-mail account frequently.

Reading:

The readings are from the casebook listed below, and cases and other materials found in D2L.

TEXTRENTAL: *American Constitutional Law*, 7th ed. Edited by Louis Fisher and Katy J. Harriger. (Carolina Academic Press, 2016).

D2L: several cases and other course materials will be placed in D2L.

All readings and cases are required. The page numbers listed in the syllabus cover the introductory commentary for each section and the start of each case.

NOTE that the course is organized differently than other courses you've taken. Each date or set of dates will focus on first amendment law issues, broadly defined. The cases listed under each section are the cases you are responsible for reading. Not all cases will be covered in class, but you are expected to know each case listed. You will have the opportunity to demonstrate your knowledge of the cases in class discussions, exams, and the written paper.

September

6 Introduction

Freedom of Expression

11/13/18/20 Key and Foundational Cases

Introductory Lecture

Read Casebook introductory materials on 445-449; 467-476

Ex Parte Vallandigham	D2L
Schenk v. United States	450
Abrams v. United States	451
Gitlow v. New York	452
Whitney v. California	454
Cantwell v. Connecticut	D2L
Minersville School District v. Gobitis	581
Chaplinsky v. New Hampshire	D2L
West Virginia Board of Education v. Barnette	582
Niemotko v. Maryland	D2L
Dennis v. United States	456

See also Concurring and Dissenting Opinions by Justice Jackson and Justice Douglas in D2L
German Constitutional Course Cases on Political Parties D2L
U.S. v. O'Brien D2L

25/27 Hate Speech

Beauharnais v. Illinois	D2L
Brandenburg v. Ohio	458
Watts v U.S.	D2L
Skokie Cases: National Socialist Party v. Skokie, Illinois: federal and state cases	
R.A.V. v. St. Paul	482
Capital Square Review and Advisory Board v. Pinnette	D2L
KKK Adopt a Highway Cases	D2L
Wisconsin v. Mitchell	D2L
Virginia v. Black	D2L
Elonis v. U.S.	D2L
Snyder v. Phelps	494

October

2/4 Hate Speech

Cases listed above

9/11/16 Schools and Universities

Tinker v. Des Moines	484
Bethel School District v. Fraser	D2L
Morse v. Frederick	486
Widmar v. Vincent	D2L
Rosenberger v. University of Virginia	D2L
Good News Club v. Milford School	D2L
Board of Regents of the Univ of Wisconsin v Southworth	D2L
UWM v. Board of Regents of the University of Wisconsin	D2L
Dambrot v. Central Michigan University	D2L
College Republican v. Reed	D2L
Univ of Cincinnati v. Young Americans for Liberty	D2L

Read Casebook introductory materials, 548-556

Roth v. U.S.	557	
Stanley v. Georgia		D2L
Miller v. California	559	
Cohen v. California		
State Supreme Court Case		D2L
U.S. Supreme Court Case		479
New York v. Feber	560	
FCC v. Pacifica	503	
FOX v. FCC	D2L	
Brown v. Entertainment Merchants Assoc		D2L

30 Special Cases

National Endowment for the Arts v. Finley		D2L
Hurley v. Gay, Lesbian, and Bisexual Group of Boston		D2L
Heffon v. International Society for Krishna Consciousness		D2L
Texas v Johnson	492	

November

1/6 Freedom of the Press

Read Casebook introductory materials 509-520, 536-539

Near v. Minnesota	520	
NY Times v. U.S.	522	
NY Times v. Sullivan	540	
Gertz v. Robert Welch	543	
Hustler Magazine v. Falwell	546	

8/13 Religious Liberty Lecture and Background Readings

Casebook: 569-573

The Virginia Statute for Establishing Religious Freedom

House Debate on the Religious Clauses

D2L:

Roger Williams, Bloody Tenet of Persecution

John Locke, Letter on Toleration

James Madison, Memorial and Remonstrance Against Religious Assessments

Adam Smith, Selections from A Wealth of Nations

Other readings to be assigned

15 Early Cases

People v. Phillips	D2L
Blasphemy Cases	D2L
Reynolds v. U.S.	D2L

Read Casebook introductory materials, 574-580

Review: Minersville School District v. Gobitis and West Virginia Board of Education v. Barnette
Sherbert v. Verner D2L
Wisconsin v. Yoder D2L
Goldman v. Weinberger 584
Wisconsin v. Miller D2L
Employment Division of Oregon v. Smith 603
NOTE: other parts of the Oregon v. Smith opinion will be in D2L
Passage of the Religious Freedom Restoration Act 605
Church of the Lukumi Baba Lu Aye v. City of Hialeah D2L
City of Boerne v. Flores 606
Burwell v. Hobby Lobby Stores 588

29 The Establishment Clause

Read Casebook introductory materials, 591-598; 608-617; 623-629

Everson v. Board of Education of Ewing Township, NJ 617
Engel v. Vitale 629
Lemon v. Kurtzman 619
Wallace v. Jaffree 632
Lamb’s Chapel v. Center Moriches Union Free School District D2L
Lee v. Weisman 634
Sante Fe ISD v. Doe 636

Displaying the Ten Commandments and Holiday Displays

Stone v. Graham	D2L	McCreary Co. v. ACLU	638
Lynch v. Donnelly	598	Van Orden v. Texas	D2L
Allegheny Co v. ACLU	600	Pleasant Grove City, Utah v. Summun	D2L

December

4/6/11/13 The Establishment Clause

Remember that the final paper is due December 15.

Remember the online final exam in D2L. See above for details.

GRADING Rubrics

Participation Rubric

Your participation grade in this class will be based on the following rubric. Students are expected to participate regularly in class discussions. Participation is to be based on *quality and quantity*. If you don't come to class, you obviously cannot participate. Given that you will be graded on your participation in a somewhat spontaneous atmosphere of seminar discussion, the following general rules apply for participation grades.

NOTE: I will frequently refer to the text during class. You are expected to have your textbook with you for reference.

A **grade shows that the student:**

- frequent participation in class discussions;
- shows a real familiarity with the assigned readings;
- demonstrates a critical and analytical reading of the material;
- shows an ability to go beyond mere description of the readings by, among other things, raising questions about how and why a specific piece was written and the message that it conveys;
- understands the readings well enough to prompts further class discussion;
- is able to make connections between and among assigned readings and to larger political and philosophical issues, and American political constitutional development;

B **grade shows that the student:**

- usually participates in class discussions;
- shows a basic familiarity with the assigned readings;
- can describe the readings and make connections between reading selections;

C **grade shows that the student:**

- infrequently participates in class discussions;
- shows minimal familiarity with the assigned readings;
- shows only basic understanding of the readings;
- participation is not well-informed, based on the assigned readings, and tends to describe the readings without providing individual analysis.

D/F **shows that the student is deficient for the following reasons:**

- participation is infrequent due to student absence;
- student is not prepared and has not done the reading prior to class;
- student cannot engage in discussion of the readings;
- student shows hostility, indifference, or inability to engage with other students in the class.

EXAM Rubric

Mid-Term and Final

Criteria	▽ A Excellent	▽ A-/B+	▽ B	▽ B-/C+	▽ C	▽ C-/D
▼ Demonstrated knowledge of the main principles and arguments of relevant readings and cases	Excellent knowledge of the main principles and arguments of readings cases		Shows good knowledge of the readings or cases		Shows minimal knowledge of the readings or cases	Shows little to no knowledge of the readings or cases
▼ Ability to integrate and use case selections in a coherent argument	Excellent ability to integrate and use cases in a coherent argument		Good ability		Average ability	Poor use of cases; argument is incoherent
▼ Ability to distinguish between the cases	Excellent demonstrated ability		Good demonstrated ability		Average ability	Unable to distinguish between cases
▼ Essay shows that the author has a thorough understanding of the assigned materials	Demonstrates thorough understanding		Demonstrates good understanding		Average understanding	Author does not show an understanding of the cases
▼ Essay shows that the author can write critically and analytically about the materials	Excellent writing abilities		Good writing abilities		Average	Essay does not demonstrate critical and analytical writing
▼ Well organized, coherent essay that addresses the specific question(s).	Excellent essay organization and coherence. Questions are addressed in full.		Good essay organization and coherence. Questions are generally addressed in full.		Average essay organization and coherence. Questions are not addressed in full.	Poor essay organization and coherence. Questions are not addressed in full.

