

POLS 314: Civil Rights & Civil Liberties (Fall 2015)

Instructor: Andre P. Audette

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Office: 421 Decio Hall

Meeting Schedule: TR 3:30-4:45

Office Hours: MWR 1:30-2:30, or by appointment

Classroom: DeBartolo Hall 206

Course Description

Constitutional law often requires a balancing between the civil rights and liberties of the people and the power of the government to enforce laws. In the United States, the Supreme Court is the final arbiter of this conflict and plays an essential role in defining citizens' fundamental rights and freedoms. In this course, we will explore the constitutional basis for civil rights and liberties, how our understanding of these rights has evolved over time, and how social, political, and other extralegal factors might influence judicial decisionmaking on these issues. We will do so primarily through an examination of case law, focusing on the Bill of Rights and the 14th Amendment of the Constitution. For each case you should seek to understand what the law is, what the law should be, how the law was made and interpreted, and whose interests are reflected in the law. By the end of the semester, you will be able to apply similar types of legal reasoning to deliver an "opinion of the Court" on a civil liberties case that is currently on the docket of the U.S. Supreme Court.

Prerequisite: one introductory course in American politics or legal studies

Course Objectives

- Learn to read, analyze, and critically evaluate court cases and legal reasoning
- Develop a broad knowledge of judicial processes, techniques of constitutional interpretation, and the role of the courts in the American political system
- Understand and articulate the framework and legal tests used by the Supreme Court to decide cases of civil liberties and civil rights
- Examine legal issues with a political and historical lens
- Leave this course better able to synthesize and intelligently express your own points of view, both orally and in writing

Required Texts

You are not required to purchase any text for this course.

The course material will consist primarily of abridged court cases, supplemented with other short texts to expand on or explain the case. All readings are available on Sakai (sakai.nd.edu) under the “Resources” tab. I will also distribute other short and relevant articles that are published over the course of the semester via Sakai and email.

Please bring either a copy of the readings (paper or electronic) or detailed notes with you to class.

Course Requirements

Be aware upfront that this is an intensive course with a good deal of reading and other assignments. This is not meant to be cruel and unusual punishment, but to help you understand the difficult and advanced material we will be covering this semester. It may appear daunting, but is set up this way to help you succeed and take the skills you learn into your post-undergraduate career.

To help you achieve the course objectives, final grades will be assessed through the following evaluations:

- 9 quizzes, 7 which count towards your grade (20%)
- 2 hypothetical case briefs (10%)
- Moot court (20%)
- Final paper (20%)
- Final exam (20%)
- Participation (10%)

Further information on these course requirements will be distributed in class

Quizzes:

Over the course of the semester there will be nine quizzes, seven of which will count for your final grade. I will drop the two lowest scores. Regularly being quizzed on course material is shown to help students retain information better, so it will serve you well to study for the quizzes in preparation for the final paper and final exam. The quizzes will be primarily on the type of cases we are studying at a given time (ex. free speech, freedom of religion, etc.), but will have a portion that is cumulative. They are not meant to trick you; everything you need to know for the quiz will come from the reading or our class discussions. It will help you to know (at a minimum) the basic facts of the cases, how they differ from each other, and the legal reasoning behind them. The quizzes are closed-book.

Case Briefs:

During the semester, you will complete two case briefs on hypothetical cases, one on free speech and one on freedom of religion. The briefs should be 3-5 pages double-spaced, covering the relevant facts of the case, the constitutional questions that rise from it, the expected decision, and the legal reasoning for the decision. You should approach the assignment as if you are a law clerk arguing to your employer how the case should turn out; thus the most important part of the brief will be the legal reasoning based on precedent and established legal norms. The briefs are due at the start of class on the day indicated. Please bring a paper copy to class.

Moot Court:

On November 10th we will hold a simulated Supreme Court session based on a case that is currently in the court system. The entire class will decide on which case will be granted cert. Prior to the session, students will be randomly assigned to various roles, including petitioning and respondent lawyers, amici lawyers, and Supreme Court justices. Based on the role you are assigned, you will also be assigned a persona to play (for example, if you are a Supreme Court justice, you may be assigned to act as Justice Scalia).

In preparation for the moot court, you will meet with your legal team to prepare for the oral arguments, to consider the relevant legal facts, and to prepare arguments or questions for the litigants.

Additionally, each student will turn in a 3-5 page (double-spaced) writing assignment. If you are assigned to a lawyer role, you will turn in a case brief arguing for your assigned position using relevant legal arguments. These are due on the day the Court is in session. If you are assigned to a Supreme Court justice role, you will turn in an opinion (majority, concurring, or dissenting) based on your reading of the case and the oral arguments. These are due one week from the day the Court is in session.

Final Paper:

In a 10-15 page paper (double-spaced), you will write a majority opinion of the court in the case of *Friedrichs v. California Teachers Association* (14-915), currently on the docket for the October term of the Supreme Court. Over the course of the semester, you should carefully read the briefs from the case in the lower courts and the relevant precedent cited therein, some of which we will not read in class. You should also pay particular attention to how free speech laws have developed over time and how they will impact the ruling in this case. In addition to your legal opinion, you should address how you think the Court will decide the case (including whether it aligns with your own interpretation), and review the relevant materials discussed throughout the semester. A suggested reading guide/calendar will be distributed in class once we have practiced reading and interpreting case law.

Final Exam:

The final exam is cumulative and will cover each of the case types (ex. free speech, freedom of religion, etc.). The exam is in-class and open-book. While there will be factual questions regarding specific cases, the majority of the test will consist of questions that ask you to synthesize from across the cases we read. Thus, you should not expect to rely solely on your notes or print-outs of the cases.

Participation:

A large part of our class will be based on discussion; therefore, it is essential that you come to class ready to actively participate. This includes (but is not limited to): attending class regularly, carefully reading the assigned texts, sharing your thoughts, opinions, and insights in discussion, considering and raising opposing viewpoints, engaging in respectful dialogue with others, listening attentively to others' perspectives, and following the discussion policies listed in this syllabus. You will receive an advisory midterm participation grade to help you assess where you are at halfway through the course.

An additional way of earning participation points is by participating in online discussion responses through Sakai. Every Monday I will post questions based on the readings to the "Forums" tab, found at sakai.nd.edu. Importantly, online discussion is not a substitute for in-class attendance and participation, and will only count for partial credit. This is simply a way for you to increase your participation grade by discussing points you were unable to raise in class or had more time to think about after class or your own further research.

Grades will be calculated using the following scale:

| <u>Letter Grade:</u> | <u>Percentage</u> | <u>Letter Grade:</u> | <u>Percentage</u> |
|----------------------|-------------------|----------------------|-------------------|
| | <u>Grade:</u> | | <u>Grade:</u> |
| A | 93-100% | C | 73-76.99% |
| A- | 90-92.99% | C- | 70-72.99% |
| B+ | 87-89.99% | D+ | 67-69.99% |
| B | 83-86.99% | D | 63-66.99% |
| B- | 80-82.99% | D- | 60-62.99% |
| C+ | 77-79.99% | F | 0-59.99% |

Course Policies

Academic Honor Code:

All students are expected to be familiar with and uphold the University of Notre Dame Academic Code of Honor (<http://www.nd.edu/~hnr/code/>). Any student found to have violated these policies of academic integrity will receive a failing grade on the assignment and may be subject to further penalties by the university. If you have any questions about avoiding plagiarism or any of the other policies, please do not hesitate to ask.

Late Work/Extra Credit:

An important part of career preparation is the ability to meet deadlines and fulfill the requirements of your work. Therefore, late assignments will be subject to a half-letter grade reduction for every 24 hour period that the assignment is late. Additionally, there will be no extra credit given on an individual basis.

Laptops and Electronic Devices:

You are permitted to use laptops in class for note-taking purposes only. Cell phones and other electronics should be put away during class. To do otherwise detracts not only from your learning, but from other students' as well.

Attendance:

Class attendance is expected, but not required, in this course. However, keep in mind that it is impossible to participate if you do not attend class. Furthermore, you are responsible for all of the material covered in class, and it is thus in your best interest to attend every class. If you must miss a class, it is your responsibility to get notes from another student or to contact the instructor before the next class to discuss the material you missed.

Discussion Policies:

The goal of discussion is to understand and learn from the viewpoints and experiences of others in order to better understand our own opinions and the functioning of the world around us. Specifically, our goal in this course is to consider various components of and to think critically about American democracy. Just as multiple voices are necessary for a healthy democracy, your participation is important for the learning experiences of your fellow classmates and your instructor. Therefore, participation will be graded on the quality, and not just quantity, of your contribution to this endeavor. To create an environment where everyone has the opportunity to participate, respect for individual differences and viewpoints will be maintained at all times. In sum, you are allowed and encouraged to disagree with other students, the professor, or the texts, but disagreement should always be expressed in a respectful manner inside and outside of the classroom.

Exceptions, Extensions, and Exemptions:

Exceptions to the policies and schedule on this syllabus are granted only in the cases of a true emergency. Please make arrangements with your instructor if an emergency arises.

Disability Statement:

If you have a disability, I am happy to work with you and the Office of Disability Services (ODS) to provide the appropriate accommodations. At the beginning of the semester, please contact the ODS (disabilityservices.nd.edu) to make the necessary arrangements.

Syllabus Changes:

I reserve the right to make changes to the syllabus or the course schedule. Advance notice will be provided for any changes.

Questions, Concerns, Comments

If you have any questions at any point, please do not hesitate to contact me. I encourage you to come to my office hours even if you just want to discuss politics or some other subject, and I can set up appointments if you are unable to meet during the scheduled times. (Please try to give me at least 24 hours notice if you'd like to make an appointment.)

Other Resources

As your instructor, I am happy to assist you in meeting your goals for this semester. Notre Dame also has a number of other resources to assist you with this process. I will highlight a few here, and am willing to discuss any additional concerns you may have in my office hours or via email.

Writing Center: Schedule appointments online at writingcenter.nd.edu

Library System: library.nd.edu or political science librarian Pix Fleming (kflemin4@nd.edu)

University Counseling Center: (574) 631-7336 or ucc.nd.edu

Campus Ministry: 114 Coleman-Morse Center or campusministry.nd.edu

Career Center: 248 Flanner Hall or careercenter.nd.edu

Course Outline and Schedule

*Note: the assigned cases (available on Sakai) are abridged. **For this class, you should not attempt to read the cases in their entirety, unless assigned.** Use the time you save to take notes and develop a strong understanding of each case.*

*Reading assignments are to be completed before the date they are listed.

Tuesday, Aug. 25th – Introduction

- Overview of the court system, constitutional interpretation, and how to read/understand cases

Thursday, Aug. 27th – Free Speech and Its Dangers

- *Schenck v. United States* (1919), *Abrams v. United States* (1919), *Gitlow v. New York* (1925), *Whitney v. California* (1927)

Tuesday, Sept. 1st – Free Speech and Its Dangers II

- *Chaplinsky v. New Hampshire* (1942), *Brandenburg v. Ohio* (1969), *Elonis v. United States* (2015)

Thursday, Sept. 3rd – Symbolic Speech

- *United States v. O'Brien* (1968), *Tinker v. Des Moines Independent Community School District* (1969), *Cohen v. California* (1971), *Texas v. Johnson* (1989), *Walker v. Texas Division, Sons of Confederate Veterans* (2015)
- **QUIZ 1**

Tuesday, Sept. 8th – Obscenity

- *Ginsberg v. New York* (1968), *Miller v. California* (1973), *Barnes v. Glen Theatre, Inc* (1991), *Brown v. Entertainment Merchants Association* (2011)

Thursday, Sept. 10th – Political Speech

- *Buckley v. Valeo* (1976), *McConnell v. FEC* (2003), *Citizens United v. FEC* (2010)
- **QUIZ 2**

Tuesday, Sept. 15th – Freedom of the Press

- *Near v. Minnesota* (1931), *New York Times v. United States* (1971), *Hazelwood School District v. Kuhlmeier* (1988)

Thursday, Sept. 17th – Public Figures in Speech and Press

- *New York Times v. Sullivan* (1964), *Hustler Magazine v. Falwell* (1988), *Snyder v. Phelps* (2011), Case summary of *United States v. Manning*
- **QUIZ 3**

Tuesday, Sept. 22nd – Freedom of Association

- *NAACP v. Alabama* (1958), *Roberts v. United States Jaycees* (1984), *Hurley v. Irish-American Gay, Lesbian, & Bisexual Group of Boston* (1995), *Boy Scouts of America v. Dale* (2000)
- **CASE BRIEF 1 DUE**

Thursday, Sept. 24th – Establishment of Religion: Public Prayer

- *Engel v. Vitale* (1962), *Abington School District v. Schempp* (1963), *Lee v. Weisman* (1992), *Town of Greece v. Galloway* (2014)

Tuesday, Sept. 29th – Establishment of Religion: Funding Religious Organizations

- *Everson v. Board of Education* (1947), *Walz v. Tax Commission of the City of New York* (1970), *Lemon v. Kurtzman* (1971), *Zelman v. Simmons-Harris* (2002)

Thursday, Oct. 1st – Establishment of Religion: Public Displays

- *Lynch v. Donnelly* (1984), *Van Orden v. Perry* (2005), *McCreary County v. American Civil Liberties Union* (2005), *Pleasant Grove City v. Summum* (2009)
- **QUIZ 4**

Tuesday, Oct. 6th – Free Exercise of Religion: Religious Practices

- *Cantwell v. Connecticut* (1940), *Wisconsin v. Yoder* (1972), *Church of Lukumi Babalu Aye v. City of Hialeah* (1993), *Christian Legal Society v. Martinez* (2010)

Thursday, Oct. 8th – Free Exercise of Religion: Employment Issues

- *Sherbert v. Verner* (1963), *Employment Division v. Smith* (1990), *Hosanna-Tabor v. Equal Employment Opportunity Commission* (2012), *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores* (2015)
- **QUIZ 5**

Tuesday, Oct. 13th – Freedom of Religion: The Local Context

- *Wirtz v. City of South Bend* (2012), *Burwell v. Hobby Lobby Stores, Inc.* (2014), *University of Notre Dame v. Burwell* (2015)
- **CASE BRIEF 2 DUE**

Thursday, Oct. 15th – Unions and Important Cases for Your Final Paper

- *Aboud v. Detroit Board of Education* (1977), *Keller v. State Bar of California* (1990), *Knox v. Service Employees International Union, Local 1000* (2012), *Harris v. Quinn* (2014)

Tuesday, Oct. 20th – Thursday, Oct. 22nd **NO CLASS – FALL BREAK**

Tuesday, Oct. 27th – Investigations and Evidence Gathering

- *Mapp v. Ohio* (1961), *Miranda v. Arizona* (1966), *Illinois v. Gates* (1983), *United States v. Jones* (2012)

Thursday, Oct. 29th – Investigations and Evidence Gathering II

- *Terry v. Ohio* (1968), *New York v. Quarles* (1984), *United States v. Leon* (1984), *Vernonia School District v. Acton* (1995), *Riley v. California* (2014)
- **QUIZ 6**

Tuesday, Nov. 3rd – Moot Court Preparation Day

- Read the briefs for the moot court case

Thursday, Nov. 5th – Right to Counsel and Fair Trial

- *Powell v. Alabama* (1932), *Gideon v. Wainwright* (1963), *Strickland v. Washington* (1984), *Batson v. Kentucky* (1986)

Tuesday, Nov. 10th – Moot Court Day

- **MOOT COURT**
- **LAWYER PAPERS DUE**

Thursday, Nov. 12th – Cruel and Unusual Punishment

- *Furman v. Georgia* (1972), *Gregg v. Georgia* (1976), *Ingraham v. Wright* (1977), *McCleskey v. Kemp* (1987)

Tuesday, Nov. 17th – Cruel and Unusual Punishment II: Quick Hits from The Modern Era

- *Roper v. Simmons* (2005), *Kennedy v. Louisiana* (2008), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), *Hall v. Florida* (2014), *Glossip v. Gross* (2015)
- **JUSTICE PAPERS DUE**

Thursday, Nov. 19th – Privacy, Abortion, and Birth Control

- *Griswold v. Connecticut* (1965), *Roe v. Wade* (1973), *Planned Parenthood v. Casey* (1992), *Gonzales v. Carhart* (2007)
- **QUIZ 7**

Tuesday, Nov. 24th – Sexuality and Gay Rights

- *Romer v. Evans* (1996), *Lawrence v. Texas* (2003), *United States v. Windsor* (2013), *Obergefell v. Hodges* (2015)

Thursday, Nov. 26th **NO CLASS – HAPPY THANKSGIVING!**

Tuesday, Dec. 1st – Race and Ethnicity

- *Dred Scott v. Sandford* (1857), *Plessy v. Ferguson* (1896), *Brown v. Board of Education* (1954), *Brown v. Board of Education II* (1955)

Thursday, Dec. 3rd – Race and Ethnicity II

- *Korematsu v. United States* (1944), *Hernandez v. Texas* (1954), *Heart of Atlanta Motel, Inc. v. United States* (1964), *Loving v. Virginia* (1967), *Adarand Constructors, Inc. v. Peña* (1995)
- **QUIZ 8**

Tuesday, Dec. 8th – Affirmative Action

- *Regents of the University of California v. Bakke* (1978), *Grutter v. Bollinger* (2003), *Fisher v. University of Texas* (2013)

Thursday, Dec. 10th – Sex and Gender

- *Reed v. Reed* (1971), *Frontiero v. Richardson* (1973), *Craig v. Boren* (1976), *United States v. Virginia* (1996)
- **QUIZ 9**

Thursday, Dec. 17th – The End

- **FINAL PAPER DUE AT 10:30AM**
- **FINAL EXAM (10:30AM-12:30PM)**

As stated on your final paper rubric and assignment sheet, please bring a paper copy to class and email a copy to aaudette@nd.edu before 10:30AM on Thursday, Dec. 17th.