

POLS 376 “Constitutional Law II: Civil Rights & Liberties”
Spring 2014
TR 12:00 – 1:15 pm Saunders 637

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Course Description:

This course examines the civil rights and liberties protected in the Amendments to the U.S. Constitution. It is designed to follow POLS 375 (Constitutional Law I), which covers the powers and institutions outlined in the Constitution’s main articles. However, POLS 375 is not a requirement for enrolling in, or succeeding in POLS 376.

Our analysis of civil rights and liberties is guided by two central themes, “liberty” and “equality”. We will examine the ways that constitutional guarantees of basic freedoms, due process and equal protection have been interpreted by the Supreme Court, and in turn, shaped social and political norms. Our approach to constitutional law will therefore go beyond the study of legal rules and precedent. This course will encourage you to think about the Supreme Court not only as an institution that creates constitutional doctrine, but also as one whose decisions are intertwined with social and political forces. To that end, we will read cases as reflections of the ways that some of the most critical and fundamental questions in our society involving government power and individual rights evolve from individual conflicts into legal rules.

Our analysis of Supreme Court opinions consists of two parts. First, we will learn how to read a case and understand the constitutional basis for the Court’s decision and reasoning. Once we have understood the “how” and the “why” of the case we will consider the normative and ethical values that define and shape the discourse surrounding questions of fundamental rights and liberties. For example, we begin with the First Amendment’s religious freedom cases, which test the right to freely practice one’s religion against social norms defining acceptable limits of religion. We will ask: to what degree should we allow for religious exemption from generally applicable law, such as drug laws or unemployment laws? Our discussion of the First Amendment’s religious establishment clause will prompt us to consider the constitutionality of school prayer, the teaching of creationism, and the presence of religious objects, such as Christmas trees or the Ten Commandments on public grounds.

Our discussion of liberty will also include the different types of expression (speech, symbolic speech, hate speech, fighting words). We will consider in what circumstances speech is protected and when it is not. Finally, it covers the right to privacy - to make reproductive choices, engage in intimate relationships, and the right to physician assisted suicide. Our second central theme covers the Constitution’s commitment to equal protection and equal opportunities. We will take a detailed look at the path that led from the enshrinement of inequality in the slavery provisions of the

Constitution, to the Supreme Court's approval of the separate but equal doctrine, to the civil rights movement's strategy to dismantle it. Then, we will trace the legacy of *Brown v. Board of Education* in the formulation of equality principles in subsequent cases regarding discrimination on the basis of sex, sexual orientation, and affirmative action.

Required Text: Epstein, Lee, and Thomas G. Walker. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, 8th Edition. Washington, DC: Congressional Quarterly Press. This book is available at the UH bookstore. Previous editions are acceptable as well, just be sure to check the page numbers on the reading assignments.

Class Attendance and Participation: Class attendance is mandatory – your presence and participation are a vital part of everybody's learning. I will take attendance, and any absences in excess of three will result in a deduction of 4% from your class attendance and participation grade. I will call on you frequently, so I recommend that you take careful notes on the reading and write case briefs on every case even if you are not handing them in as part of your class assignment. Please note that failure to complete the reading assignment before coming to class essentially disqualifies you from participation – you may sit in class and take notes, but you may not participate in the discussion if you have not done the work. If I call on you when you are not prepared you may take a “pass” meaning that your class participation grade will not be affected. Each student gets two “passes” before his or her participation grade is affected. Your class participation, which means demonstrated preparation and active engagement in discussion and debates, counts for 45% of your final grade.

CON LAW in the News: At the beginning of every class I will invite you to submit and discuss a current (meaning within the last two months) newspaper article or Op. Ed. Piece that covers that day's assigned topic. Submission of these articles is voluntary but will be rewarded with extra credit points (5 points per article). If you chose to submit an article, email me a copy of the article and post it on Laulima the day before class, (by 5 pm). Come to class prepared to summarize the article and point to the ways it is relevant to the cases we are discussing that day. Each student may submit up to two articles.

Readings: To succeed in this class you must attend class prepared to participate by completely reading all assigned readings for that day. You will find assigned readings in the Epstein and Walker textbook, which is available for purchase at the UH Bookstore. Be sure to always bring your textbook to class. Occasionally I will post additional readings on the class Laulima website.

PAUSE: We cover a lot of cases in this class, and our pace is rapid. To make sure we are all on the same page throughout the course I will institute a “Pause” procedure to give us all some time to reflect on important concepts. This means that we will spend two minutes in silence, reflecting or writing about a new legal principle we have just talked about.

Case Briefs: Every student must complete **five case briefs** and post them on the class Laulima website by 10 pm the night before the particular case is covered in class. This way your case briefs will become part of everybody's class notes. The case brief may be no longer than **two pages** in length and cover the ten questions, outlined in Appendix A

("Briefing Supreme Court Cases") at the end of this document. When summarizing the reasoning be sure to use your own words, highlighting only important phrases the Court has used. This helps you remember the basic issues at stake. I will grade these briefs on a 5-point scale. No late briefs will be accepted. However, if you have a medical excuse, you may ask to be assigned for another brief. I will post a sign-up sheet for case briefs at my door after the first day of class. No more than **four** students may sign up for the same case. You may choose only from the cases that are marked in **bold** in the syllabus.

Case Presentations: you must be present in class the day your brief is assigned for discussion. If you are absent you will lose credit for the brief and for your presentation. Know the case well and be prepared to talk about it in detail. In particular, be prepared to answer these questions: (1) What's the conflict? (2) Who are the parties involved in the conflict? Be prepared to present the case from each point of view (3) How did the Court view and resolve this conflict? Which standard did the court use or create to settle this question of law? (4) How would you solve the question? You are encouraged to meet with your fellow case presenters before class to prepare for your presentations.

"You be the Justice" judicial opinion papers: You will choose two cases from among the cases on the syllabus that you disagree with the majority opinion. Your assignment is to write an opinion ruling the way *you* think the case should have been decided. In your opinion, be sure to speak as a Supreme Court Justice and explain the way you would answer both the Constitutional question(s) the case presents and the larger ethical dilemma or value choices the conflict poses for society. Be sure to address all the other opinions of your fellow Justices, both concurring and dissenting. DO NOT restate the facts of the case. Your opinion must be between three and five pages long (meaning: no less than three, no more than five pages). Your first opinion is due in mid-semester and your second one is due by the last day of class (May 6). No late papers will be accepted, unless you have a medical excuse.

Course Evaluation: Your final grade will be based on the following

Class attendance & participation	45%
Case briefs & presentations	25% (5 briefs & 5 presentations @ 5% each)
Judicial opinion papers	30% (2 papers @ 15% each)
extra credit (newspaper articles)	5%

Course website: This course has its own website on the UH Lualima website (lualima.hawaii.edu). You should access frequently. You should post your case briefs to this site and also email a copy to me.

Office hours: My office is in Saunders 632A. I also have an office in the Law School (Rm 243.) My office hours are on Thursday from 2-4 pm in my Saunders office. You may schedule a meeting with me at other times by appointment. I am eager to hear from you if you have any questions or feedback you about this class. The best way to reach me is by e-mail (crli@hawaii.edu).

A Note on Email Communications: Please note that you should give at least 24 hours between your email to me and your expectation of a reply. You should not expect emails

to be answered in the evening or on weekends. Please ensure that your email has an appropriate subject line, such as 'POLS 376 Assignment Question' and include your full name. Please do not write emails as though they are texts – you should consider all email communication with faculty as business letters. A word of warning: non-UH email addresses often end up in spam folders. Please use your UH email account to be certain that your email arrives without delay in my inbox and not a spam folder. For more suggestions on composing professional emails in corresponding with faculty please consult <http://www.wellesley.edu/socialcomputing/Netiquette/netiquetteprofessor.html>

Accessibility Statement: I am committed to making this class accessible to all students. Please contact me privately if you require disability-related accommodations of any kind. The KOKUA program on campus (956-7511) coordinates reasonable accommodations for students with documented disabilities.

Plagiarism Policy: Plagiarism is academic theft: it is taking somebody else's words or ideas as your own and not crediting the source. Turning in the same paper for two courses also constitutes plagiarism. Plagiarism is a serious offense and will result in automatic failure of the course. Please consult the UH Student Conduct code for exact definitions, (www.catalog.hawaii.edu/about-uh/campus-policies1.htm)

Classroom rules regarding electronic equipment: NO iPod earphones. NO telephones. NO text messaging. NO computers in class unless you are taking notes or referring to a case brief when you are making a presentation. Students using computers must sit in the front row.

Class Syllabus: *the following is our reading schedule for the semester. It is subject to change as we develop our flow as a class. Please keep checking our website and your email inboxes for updates*

Date	Topic	Case	Reading
1-14	Introduction to the Course		syllabus
1-16	The Supreme Court & the Constitution; Legal Interpretation; case briefs	District of Columbia v Heller	Intro, Ch 1 (p. 3-43) p. 390-395
1-21	Freedom of Religion (Free Exercise clause): Jehova's Witnesses, Amish, Mormons	Cantwell v. Connecticut Sherbert v. Verner Wisconsin v. Yoder	p. 93-113
1-23	Demise of the Sherbert-Yoder Test/Religious Freedom in the crossfire btw Congress and the Court (RFRA)	Oregon v. Smith City of Boerne v. Florida	p. 113 - 129
1-28	Religious Establishment: public aid to religious institutions; the Lemon test;	Everson v. BOE Lemon v. Kurtzman	p. 129-145

2-04	Religion in Schools; gov't neutrality; school vouchers, public access; the move towards accommodation	Agostini v. Felton Zelman v Simmons-Harris	p. 146-162
2-06	Teaching Religion in schools, creationism; school prayer	Edwards v. Aguillard Abington v Schempp Lee v Weissman , Santa Fe Sch Dist. v Doe	p. 162-183 Laulima
2-11	Religious displays on public grounds; Gov involvement in affairs of rel organizations	Van Orden v Perry Hosanna-Tabor Church v EEOC (if there is time)	p. 184-196
2-13	Freedom of Speech: clear & present danger; the ACLU	Schenk v. US Abrams v. US Gitlow v. New York	p. 197-212
2-18	Freedom of Speech: Preferred Freedoms, Footnote 4, contemporary speech regulation	Dennis v. US Brandenburg v. Ohio Film – “Point of Order”	p. 212-229
2-20	Content & Context of Speech: Symbolic Speech	US v. O'Brien Texas v. Johnson	p. 230-239
2-25	Public Forums and Public Order: fighting words, offensive speech	Chaplinsky v. New Hampshire Hill v. Colorado FCC v Pacifica	239-253
2-27	Hate Speech	RAV v. St. Paul Snyder v. Phelps	p. 253-263
3-04	Student Speech; the right not to speak/flag salutes	Tinker v. Des Moines ISD Morse v. Frederick West Virginia v. Barnette	p. 264-277
3-06	Freedom of Association Freedom of the Press: prior restraint	Boy Scouts v. Dale Near v. Minnesota NYTimes v. U.S.	p. 291-311
3-11	Freedom of the Press: libel	NYTimes v. Sullivan Hustler v Falwell	p. 327-343
3-18	Obscenity & pornography	Roth v US Miller v CA, Paris v. Slaton New York v Ferber	p. 343-360 laulima
3-20	The Second Amendment (right to arms)	District of Columbia v. Heller	p. 387-396
SPRING BREAK MARCH 24 – 28			
4-01	The Right to Privacy: reproductive rights	Griswold v. Connecticut Roe v. Wade Planned Parenthood v. Casey	p. 397-433

4-03	The Right to Privacy: sexual intimacy; right to marry	Bowers v Hardwick (for background) Lawrence v Texas United States v Windsor	p. 433-444 Case posted on Laulima
4-08	Civil Rights: the 14 th Amendment, separate but equal <i>First Paper Due</i>	Dred Scott v. Sanford Plessy v. Ferguson Sweatt v. Painter Brown v BOE I and II	p. 611-627
4-10	From <i>Plessy</i> to <i>Brown</i> : the NAACP's legal strategy	VIDEO	
4-15	Brown's Remedies	Swann v. Charlotte-Mecklenburg Milliken v Bradley Parents Involved v. Seattle SD	p. 627-632 posted on Laulima p. 632-639
4-17	Suspect Classifications and Strict Scrutiny	Korematsu v US Loving v. Virginia	Posted on Laulima p. 639-643
4-22	The Discriminatory Intent Requirement	Washington v Davis	Posted on Laulima
4-24	Affirmative Action in education	Regents of U. Cal v Bakke Grutter v. Bollinger Fisher v. University of Texas	689-699; 707-716, Laulima
4-29	Sex Discrimination: standards of scrutiny	Reed v. Reed Craig v. Boren US v. Virginia	p. 652-669
5-01	Discrimination based on sexual orientation and economic status	Romer v. Evans San Antonio ISD v. Rodriguez	p. 671-684
5-06	Last day of class	Course evaluations <i>"You Be the Judge" Second Paper due</i>	

Appendix: Briefing Supreme Court Cases

A student brief is an analytical outline of a Supreme Court opinion. The point of writing a brief is to emphasize what is important about the arguments the justices have used to rule on a case. Use the guidelines below in your preparation of case briefs.

1. What is the name of the case? What year did the Supreme Court decide the case?

Name of case: The party listed first is seeking reversal of an unfavorable lower court decision. The second party wants the decision affirmed. The first party is called the appellant or petitioner and the second party is called the respondent. The year is important because it helps us place the case in its broader social, political, and

economic context.

2. What circumstances triggered the dispute?

This is the background story that sets the case in motion. Remember that appellate courts address legal questions, not factual ones. Justices, however, may differ in interpreting the facts of a case. Thus, the majority opinion usually summarizes the facts of the case before elaborating the decision. Your background story should be rather short, consisting of only a few sentences.

3. What statute triggered the dispute?

Which local, state or federal law is in conflict with a Constitutional principle?

4. What provision of the Constitution is at issue?

You need to identify the both the statute and the Constitutional provisions that are at issue in the case. In addition, Supreme Court precedents may be relevant. All of these laws should be identified.

5. What is the basic legal question(s) that the Supreme Court is asked to address?

It may take some practice to sort out the legal questions involved in a case. Sometimes the Court opinion will describe the legal issues while other cases may require a close reading of the opinion. Once you have identified the legal issue(s), try to frame them in a yes or no format. This will make it easier to summarize the majority opinion.

6. What was the outcome of the dispute?

How did the Court decide? This part of your brief consists of a simple sentence, such as, "the Court ruled 5-4 for the petitioner (insert name).

7. Reasoning: How did the majority reach its decision?

This part will comprise the bulk of your brief. The majority opinion announces the Court's decision and supplies justifications for the ruling, also known as "legal reasoning." Try to trace how the Court arrived at its answers to the legal questions formulated above. A justice may have used arguments from precedent, appeals to the common sense, the "plain meaning" of the words of the law, the intent of the Framers, historical experience, logic, political philosophy, or a combination of these and other arguments. Be sure to use your own words in explaining the reasoning.

8. What legal doctrine, standards, or policy did the majority announce?

This is where you would name the constitutional test or standard that the Court has either developed in this case, or affirmed with this case

9. What other views were expressed? Concurring and dissenting opinions

Concurring opinion: Members of the Court majority may write a separate opinion that agrees with the Court decision but not its justification. Justices may wish to clarify their own view of the case or respond to a dissenting opinion.

Dissenting Opinion: Dissents are written to explain why the minority (one to four Justices) feels that the Court decision is wrong. Dissents usually identify areas of

disagreement. It is important to note the arguments of dissenting opinions because those arguments may influence a Court majority in future cases.

10. Evaluation:

In analyzing the decision of the Court, ask yourself the following questions: Do you find the opinion convincing? Is the decision consistent with previous decisions? Does the Court depart from precedent? What method(s) of interpretation was/were used to arrive at the decision? What impact did the decision have for society? Was the decision good law or good policy?
