

**POLS 376 “Constitutional Law II: Civil Rights & Liberties” (Spring 2015)  
TR 12:00 – 1:15 pm, Saunders 541**

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**Graduate Teaching Assistant:** Adam Foster

**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.

We begin our discussion of liberty 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 on public grounds. Our discussion of liberty will also include the different types of expression (speech, symbolic speech, hate speech, fighting words) that are protected and the ones that are not. Finally, it covers the right to privacy to make reproductive and sexual choices and the right to physician assisted suicide.

Our second central theme covers civil rights legislation’s basic premise of equal protection and equal opportunities. We will take a detailed look at the path that led from 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. Bookmarked in between our two main themes will be our analysis of criminal justice cases the Court has decided: specifically the rights of the criminally accused as

they pertain to: searches and seizures, the right to counsel, the right to silence, and the right against cruel and unusual punishment.

**Course Goals:** upon successful completion of the course students should be able to:

- Discuss the historical context of civil rights and liberties
- Describe the basic process of judicial review
- Brief Supreme Court cases
- Interpret Supreme Court opinions
- Discuss theories of Constitutional interpretation
- Evaluate the constitutionality of laws that either afford or restrict the rights and liberties of citizens

**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 for purchase at the UH bookstore.

**Class Attendance and Participation:** Class attendance is central part of your success in this course. This is a highly interactive class, taught in the Socratic style, and your presence and participation are a vital part of everybody's learning. I will take attendance, and I will strive to make each class enjoyable and productive. I will call on you frequently and grade you on your ability to discuss the cases. It will be helpful to take careful notes on the readings 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 readings. 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 three “passes” before the participation grade is affected.

**Missing Class:** Your “passes” may also be used as absences from class. Once your passes are used up you will lose points for each day you are unprepared or absent. You do not need my permission to miss class, be it for travel, medical appointments, or other important events that you feel have priority over coming to class. You are in charge of managing your own academic lives and schedules; just know that there will be consequences for every class you miss. If you must miss a class, be sure to catch up with the readings and ask your colleagues about announcements you miss. DO NOT ask me to review classes you missed.

**Discussing Cases:** Many of the issues we discuss in this class are controversial and (should) elicit passionate opinions. This is what makes Constitutional Law such a fascinating topic. I welcome your passion for these issues, and I hope you can challenge your colleagues' opinions in a productive manner. Clearly, there is no “right” or “wrong” way to feel about a case, and I will never reward or punish you for the content of your views. We all benefit from considering opposing points of view, but only if these are expressed in a respectful and intelligent manner.

**Readings:** To succeed in this class you must attend class prepared to participate by completely reading all assigned readings for that day. All the readings assigned are in the Epstein and Walker textbook, which you should bring to class for every meeting.

**Case Briefs:** Every student must complete **four case briefs**. Select your briefs from among the ones that are highlighted in **bold** in the syllabus. Your brief may be no longer than **two pages** in length (single spaced) 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. Briefs must be typed, printed, and submitted at the beginning of class. If you miss class on the day of your assigned brief you will not receive credit, and you will not be able to sign up for another brief later. No more than three students may sign up for the same case.

**Case Brief Discussions:** you must be present in class the day your brief is assigned for discussion. 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?

**Quizzes:** there will be four IN CLASS quizzes. These will be multiple choice and short answer questions that test your understanding of the cases and themes developed in class. Attending class and carefully doing the readings are the best way to prepare for these quizzes. If you miss a quiz for any reason, you will not be able to make it up. You may only make up a quiz in extreme circumstances (illness or death in the family), but you must notify me BEFORE the beginning of class to let me know that you will be absent for these reasons and supply a note testifying to your absence.

**“You be the Justice” Final paper:** You will chose one cases we have studied 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 as well as the larger ethical or policy question this 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 final paper is due on the last day of class. No late papers will be accepted, unless you have a medical excuse.

**Internet Links:** There are many fabulous web sites available to help you study any aspect of Constitutional law. Our textbook lists many of these. The one to start with is the [Legal Information Institute](#) at Cornell University. You can also go to the web site of the [United States Supreme Court](#) itself and read full opinions.

**Course website:** This course has its own website on the UH Lualima website (lualima.hawaii.edu) which you should access frequently.

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

class attendance & participation	20%
4 quizzes	40% (10% each)
case briefs	20% (4 briefs, 5 points each)
final paper	20%

**Office hours:** My office is in Saunders 614, and I am there most days. My office hours are on Mondays and Fridays but please feel free to schedule meetings at different times. I am eager to hear from you about questions or feedback you have about this class. If you are concerned with *any* aspect of this class please contact me right away - I can only help you if I know there is a problem. The best way to reach me is by e-mail ([heyer@hawaii.edu](mailto:heyer@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.

**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 (956-7511) coordinates reasonable accommodations for students with documented disabilities. It is located in room 103 of the Student Services Center (<http://www.hawaii.edu/kokua/>)

**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 constitutes plagiarism, as well as copying parts of case briefs from online sources. There are many ways to succeed in this course: cheating and plagiarism is not one of them. 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](http://www.catalog.hawaii.edu/about-uh/campus-policies1.htm))

**Classroom rules regarding electronic equipment:** NO earphones. Silence all cell phones. NO text messaging. NO computers in class unless you are taking notes.

**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
1-12	Introduction to the Course		syllabus
1-14	The Supreme Court & the Constitution; Legal Interpretation; case briefs		Intro, Ch 1 (p. 3-43)
1-19	<b>Judicial Review</b> Incorporating the Bill of Rights	Marbury v. Madison Barron v. Baltimore	Ch 2 (p. 45-56), Ch 3 (p. 66-79)

	<i>Practice only, no briefs</i> optional: <i>Marbury v Madison</i> video <a href="https://www.youtube.com/watch?v=rXwTrArJ1zM">https://www.youtube.com/watch?v=rXwTrArJ1zM</a>	Hurtado v. California Palko v. Connecticut	
1-21	<b>Freedom of Religion</b> (Free Exercise clause): Jehova’s Witnesses, Amish, Mormons	Cantwell v. Connecticut <b>Sherbert v. Verner</b> <b>Wisconsin v. Yoder</b>	p. 93-113
1-26	Demise of the Sherbert-Yoder Test/Religious Freedom in the crossfire btw Congress and the Court (RFRA)	<b>Oregon v. Smith</b> City of Boerne v. Florida	p. 113 - 129
1-28	<b>Religious Establishment:</b> public aid to religious institutions; the Lemon test; rel. separationism	<b>Everson v. BOE</b> <b>Lemon v. Kurtzman</b>	p. 129-145
2-2	Religion in Schools; gov’t neutrality; school vouchers, public access; the move towards accommodation	<b>Agostini v. Felton</b> <b>Zelman v Simmons-Harris</b>	146-162
2-4	Teaching Religion in schools, creationism; school prayer	<b>Edwards v. Aguillard</b> Abington v Schempp <b>Lee v Weissman</b>	162-
2-9	Religious displays on public grounds; Gov involvement in affairs of rel organizations	<b>Van Orden v Perry</b> <b>Hosanna-Tabor Church v EEOC</b>	184-196
2-11	<b>FIRST QUIZ: the religion clauses</b> <b>Freedom of Speech:</b> clear & present danger; the ACLU	<b>Schenk v. US</b> <b>Abrams v. US</b>	197-212
2-16	Freedom of Speech: Preferred Freedoms, Footnote 4, contemporary speech regulation	Gitlow v. New York Dennis v. US <b>Brandenburg v. Ohio</b>	p. 212-229
2-18	Content & Context of Speech: Symbolic Speech	<b>US v. O’Brien</b> <b>Texas v. Johnson</b>	p. 230-239
2-23	Hate Speech	<b>RAV v. St. Paul</b> <b>Snyder v. Phelps</b>	239-253
2-25	Review class ( <i>instructor out of town for conference</i> )		p. 253-263
3-3	Student Speech; the right not to speak/flag salutes	<b>Tinker v. Des Moines ISD</b> <b>Morse v. Frederick</b> <b>West Virginia v. Barnette</b>	p. 264-277
3-5	<b>SECOND QUIZ: free speech</b> <b>Freedom of Association</b>	<b>Boy Scouts v. Dale</b>	p. 291-311
3-10	<b>Freedom of the Press:</b> prior restraint, libel	Near v. Minnesota <b>NYTimes v. U.S.</b> <b>NYTimes v. Sullivan</b> Hustler v Falwell	p. 327-343
3-12	<b>The Right to Privacy:</b> reproductive rights	<b>Griswold v. Connecticut</b> <b>Roe v. Wade</b> <b>Planned Parenthood v. Casey</b>	p. 397-433
3-17	The Right to Privacy: sexual intimacy; the right to die	Bowers v Hardwick (for background) <b>Lawrence v Texas</b> <b>Cruzan v Missouri DOH</b>	p. 433-451

3-19	<b>Rights of the criminally accused:</b> 4 <sup>th</sup> Amendments searches and seizures; searching students	<b>Katz v. U.S.</b> U.S. v. Jones Safford USD v. Redding	p. 465-475 p. 487-492
3-23 and 3-27 SPRING BREAK, no class			
3-31	5 <sup>th</sup> Amendment: Self incrimination, right to silence <i>First Paper Due</i>	Escobedo v. Illinois <b>Miranda v. Arizona</b>	p. 517-533
4-2	6 <sup>th</sup> Amendment: Right to counsel	Powell v. Alabama <b>Gideon v. Wainwright</b>	p. 540 - 550
4-7	8 <sup>th</sup> Amendment: cruel punishment, the death penalty	<b>Gregg v. Georgia</b> <b>Atkins v. Virginia</b>	p. 573-596
4-9	<b>THIRD QUIZ: rights of the criminally accused</b> Civil Rights: the 14 <sup>th</sup> Amendment, separate but equal, the NAACP	<b>Plessy v. Ferguson</b> <b>VIDEO</b>	p. 611-627
4-14	From <i>Plessy</i> to <i>Brown</i> : the NAACP's legal strategy	Sweatt v. Painter <b>Brown v BOE I and II</b>	
4-16	Brown's Remedies	<b>Loving v. Virginia</b> Swann v. Charlotte-Mecklenburg BOE <b>Parents Involved v. Seattle SD</b>	p. 632-643
4-21	Sex Discrimination: standards of scrutiny	<b>Reed v. Reed</b> <b>Craig v. Boren</b> <b>US v. Virginia</b>	p. 652-669
4-28	Discrimination based on sexual orientation and economic status	<b>Romer v. Evans</b> <b>San Antonio ISD v. Rodriguez</b>	p. 671-684
4-30	Affirmative Action in education	<b>Regents of UCal v. Bakke</b> <b>Grutter v. Bollinger</b>	689-699; 707-716
5-6	<b>FOURTH QUIZ: equal treatment</b> Voting Rights: regulation of election campaigns	<b>Bush v Gore</b> <b>Citizens United v FEC</b>	p. 721-729; 742-750
	Last day of class	Course evaluations <i>"You Be the Judge" 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 state 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?

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