Constitutional Law of Individual and Equality Rights

PSPA 3110 Sec. 001 **Spring 2012**

Instructor: Dr. Emily Neff-Sharum
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Please check Blackboard regularly.

The passage of the Bill of Rights, and later the Fourteenth Amendment, attached to our constitutional structure protections for individual liberties and equal rights. The provisions of these protections were vague. Over the course of history, the Supreme Court has been a key actor in the evolution of these provisions into our modern understanding of civil rights and liberties. This course will provide an understanding of this evolution. More than just understanding decisions, this course will consider the political context of Supreme Court and its effect on democratic process and electoral accountability. This course does not cover constitutional law regarding government structure nor the rights and liberties associated with criminal procedures (Fourth and Fifth Amendments). While those areas of constitutional law are important they are covered in PSPA 3100 and PSPA 3120.

This course is designed to help students build the necessary skills to be successful in careers that require students to engage the law. Whether working as a legal advocate or paralegal or seeking to enter law school, this course will provide the foundation in reading legal material for comprehension, critical thinking skills, and writing necessary to be successful.

REQUIRED MATERIALS

Text: O'Brien, David. 2008. *Constitutional Law and Politics Volume One: Struggles for Power and Governmental Accountability.* Seventh Edition. New York: W.W. Norton & Company.

Either reading the excerpt I provide or obtaining and reading the full opinions for 2009 cases as assigned.

I highly recommend keeping abreast of current events that may develop during the course of the quarter regarding decisions the Supreme Court makes. You can keep up by either reading a national newspaper (i.e., www.washingtonpost.com or www.nytimes.com), listening to the news (i.e., podcasts available at npr.org), or watching the news (i.e., your favorite news program or cnn.com).

Cases from your book are experts. If you would like to read the full text of the opinions, there are several sites available. You can find selected Supreme Court decisions available for free at http://www.law.cornell.edu/supct or through Lexis-Nexis available through the UNCP library. Other sources for finding additional material of interest for cases include the Supreme

Court's website, http://www.supremecourtus.gov/, and the Oyez Project's multi-media site where you can hear recordings of oral arguments, http://www.oyez.org/.

GRADING

Quizzes and participation	10%
First written assignment	13%
Second written assignment	18%
Exam 1	17%
Exam 2	17%
Final exam	25%

Grading scale—100-95 = A; 94-92= A-; 91-88= B+; 87-84=B; 83-80=B-; 79-77= C+; 76-73= C; 72-70= C-; 69-67= D+; 66-63= D;

Quizzes— Quizzes will be review of key points important for the day's lecture and drawn either from reading assigned or previous lecture. While some quizzes will be announced, many will be pop quizzes.

Written Assignments—Each assignment will ask you to write an analytical essay on an assigned topic. You will be asked to construct and explain constitutional arguments using your own words. Clear and effective writing will be essential to receiving a good grade. The first assignment will be roughly three pages and the second assignment will be roughly five to six pages. Details for each assignment will be provided in class.

You must use APA style for citations http://owl.english.purdue.edu/owl/resource/560/01/.

Penalty for late papers is 10 points per day! This penalty is established as a deterrent from handing in late work. It is not supposed to be fair compensation for the extra time spent on the paper. You are much better off submitting your work on time and avoiding the penalty. Please respect deadlines.

Exams—Exams will test your knowledge of the assigned cases and related constitutional controversies as well as your understanding of related legal process and concepts. Exams will consist of short answer and short essay questions. You must take exams at the assigned times. There are no make up exams except for dire and unforeseeable emergencies. Please bring confirming documentation of your situation with any request for a make up exam, otherwise the request will not be allowed.

Grade complaints must be made in writing after 24 hours but no later than one week after return of your assignment. Complaints must be specific about why a mistake in grading has happened and must be responsive to the comments provided. I worked hard or I need this grade to get into law school are not acceptable grounds for complaint.

Extra Credit- Students have the option of earning 5 points of extra credit, which will be assigned to your lowest scoring course component. Extra credit is earned by attending a combination of three of the following events: departmental movie nights, the public viewing of

the State of the Union Address, annual spring International Relations/ Public Administration speaker, and other talks as announced.

PREPARING FOR CLASS

Read the assigned material. This class will move quickly, and concepts will build upon each other. The result is that if you miss a section of reading, later cases will be difficult for you to understand. Be sure you keep up on the reading.

DISABLED STUDENTS: Any student with a documented disability needing academic adjustments is requested to speak directly to Disability Support Services (located in the D.F. Lowry Building) and the instructor, as early in the semester as possible. All discussions will remain confidential. Please contact DSS at 521-6695. The syllabus is also available in alternate formats upon request. Please call the aforementioned number if you desire this.

"When testing accommodations or alternative testing is needed, students are responsible for discussing this issue with the professor to make the appropriate arrangements to have the exam administered. It is the responsibility of the student to schedule exams with DSS at least one week prior to the exam date. Failure to schedule an exam one week in advance may lead to DSS denying the requested time and date for the exam." For the Exam Proctoring Authorization Form and for more information, visit http://www.uncp.edu/dss/students/directions_for_accesing_exams_for_current_students.htm.

ACADEMIC DISHONESTY: Academic dishonesty will not be tolerated. Any instance of academic dishonesty (plagiarism, cheating, etc.) found will result in an automatic "F" for that assignment and notification to the appropriate Deans.

From the UNCP Student Handbook: "Plagiarism is intentionally or knowingly presenting someone else's words or ideas as one's own. You avoid plagiarism by very carefully acknowledging the sources of ideas you use and by appropriately indicating any material that has been quoted [or paraphrased] (that is, by using quotation marks and properly acknowledging the source of the quote, usually with a clear reference source citation and page number)." If an instance comes up where you are unsure whether or not you should cite, play it safe and cite. Visit http://www.unc.edu/depts/wcweb/handouts/plagiarism.html for more information on plagiarism.

COURSE SCHEDULE

SUPREME COURT POLITICS AND INCORPORATION OF THE BILL OF RIGHTS
Week 1- Jan. 9-13
Tues-- Introduction
Thurs-- U.S. Constitution pp 1-22 skim Constitution, read Amendments carefully; Constitutional Interpretation pp 66-95, skip text box on pp 68-70 and pp 88-91; Justiciability pp 103- 127, skip text boxes on pp 105, 108, 111-114, 117, 120-122; *Elk Grove Unified School District v Newdow* (2004) pp166- 173

INCORPORATION OF THE BILL OF RIGHTS/ SUBSTANTIVE VERSUS PROCEDURAL DUE PROCESS
Week 2 – Jan. 16- 20
Tues —Incorporation of the Bill of Rights and the Changing Role of the Court pp 324- 339, skip text boxes; *Barron v The Mayor and City of Baltimore* (1833) pp 339-341; *Slaughterhouse Cases* (1873) pp 277-281; *Palko v Connecticut* (1937) pp 346- 349; *Duncan v Louisiana* (1968) pp 368- 369
Thurs-- Substantive versus procedural due process- Right to contract pp 263-267, *Lochner v New York* pp 284, and *West Coast Co. v. Parrish* pp 292-295; Warren Court Due Process Revolution and Retreat pp 375- 390 skip Development of Law textbox 384-389; *County of Sacramento v Lewis* (1998) pp 396-401
Essay #1 assigned

ECONOMIC RIGHTS/ FREEDOM OF SPEECH
Week 3—Jan. 23-27
Tues— "Takings Clause" *Hawaii Housing Authority v Midkiff* pp 303; *Lucas v South Carolina Coastal Council* pp 306; *Kelo v City of New London, Connecticut* pp 311
Thurs– Early Restrictions on Political Speech pp 419-426; *Schenck v United States* (1919) pp 427-428; *Gitlow v New York* (1925) pp 428-433; *Dennis v United States* (1951) pp 433-444; *Brandenburg v Ohio* (1969) pp 445-447

Week 4—Jan. 30-Feb. 3
Tues— Hate Speech and Hate Crimes; *R.A.V. v City of St. Paul, MN* (1992) pp 520-529; *Wisconsin v Mitchell* (1993) pp 529-531; *Virginia v Black* (2003) pp 531-538;
ESSAY 1 DUE!
Thurs— Offensive Speech and Lewd Speech pp 501-506; *Cohen v California* (1971) pp 507-511; *Federal Communications v Pacifica Foundation* (1978) pp 511-516; *Brow v. Entertainment Merchants Assoc.* (2011) excerpt on Blackboard

Week 5—Feb. 6-10
Tues— The Speech and Privacy; *Rust v Sullivan* (1991) pp 438-543; *Cox Broadcasting Corp. v Cohn* (1975) pp 569-572; *Snyder v Phelps* (2011) excerpt on Blackboard

Thurs— Speech plus conduct; *Texas v Johnson* (1989) pp 674-681; Symbolic Speech in Schools; *West Virginia v Barnette* (1943) pp 655- 664; *Tinker v Des Moines Independent Community School District* (1969) pp 664-667; *Morse v Fredrick* (2007) pp 669-674

EXAM 1/ 2ND AMENDMENT RIGHT TO BEAR ARMS
Week 6—Feb. 13- 17
Tues— Exam 1
Thurs— Introduction to 2nd Amendment; read syllabus section of either *Presser v Illinois* (1886) *http://supreme.justia.com/us/116/252/case.html* or *U.S. v Miller* (1939) *http://www4.law.cornell.edu/supct/html/historics/USSC_CR_0307_0174_ZO.html*; *District of Columbia, et. al. v Heller* (2008) on Blackboard

2nd AMENDMENT/ ESTABLISHMENT AND FREE-EXERCISE CLAUSES
Week 7—Feb. 20-24
Tues-- *McDonald v Chicago* (2010) on Blackboard; **Go over midterm**
Thurs— TBA

Week 8—Feb. 27- March 2
Tues— Establishment Clause; *Everson v Board of Education of Ewing Township* pp 735-741; *Engel v Vitale* (1962) pp 742-746; *Van Orden v Perry* (2005) pp. 803-810;
Thurs — *McCreary v American Civil Liberties Union of Kentucky* (2005) pp 810-819; *Employment Division, Department of Human Resources of Oregon v Smith* (1990) pp 837; *Church of the Lukumi Babalu Aye v City of Hialeah* (1993) pp846; *Locke v Davey* (2004)

Week 9—SPRING BREAK—NO CLASS Feb. 27- March 2

CONSTRUCTED RIGHTS—ASSOCIATION AND PRIVACY
Week 10- March 12-16
Tues— Freedom of Association pp 688-693; *NAACP v Alabama* (1958) pp 694-697; *Boy Scouts of America v Dale* (2000) pp 700-708; Right to Privacy pp 1232-1235; *Buck v Bell* (1927) pp 1247-1248; *Griswold v Connecticut* (1965)
Thurs— ; Abortion and Privacy; *Roe v Wade* (1973) pp 1249- 1262; *Maher v Roe* (1977) pp 1262- 1265; pp 359-368; *Planned Parenthood of Southeastern Pennsylvania v Casey* (1992) pp 1271- 1283; *Gonzales v Carhart* (2007) pp 1283- 1292

Week 11-- March 19- 23
Tues— Privacy and Personal Autonomy pp 1296-1299; *Commonwealth of Kentucky v Wasson* (1992) pp 219-223 *Lawrence v Texas* (2003) pp 1304- 1315
Thurs-- *Cruzan by Cruzan v Director, Missouri Dept. of Health* (1990) pp 1316- 1323; *Washington v Glucksberg* and *Vacco v Quill* (1997) pp1323-1333

EXAM 2
Week 12— March 26- 30
Tues- Review
Thurs- Exam 2

EQUAL PROTECTION AND RACE DISCRIMINATION

Week 13— April 2- 6

Tues— Reconstruction Failures; *The Civil Rights Cases* (1883) pp 1371-1378; *Plessy v Ferguson* (1896) pp 1378-1383; *Shelley v Kraemer* (1945) pp 1383-1385

Thurs— Racial Segregation and Race; *Brown v. Board of Education I* (1954) pp 1401- 1406; *Bolling v. Sharpe* (1954) pp 1412-1413; *Brown v. Board of Education II* (1955) pp 1413-1416; *Cooper v Aaron* (1958) pp 1416-1421

Week 14— April 9-13

Tues— *Swann v Charlotte Mecklenberg Board of Ed.* (1971) pp 1422-1426; *Milliken v Bradley* (1974) pp 1427- 1430; *Freeman v Pitts* (1992) pp 1431-1434; *Parents Involved v Seattle School District #1* (2007) pp 1440- 1453

Thurs— Reverse Discrimination Claims; *Regents of the University of California v Bakke* (1978) pp 1464- 1473; *Ricci v DeStefano* (2009) Excerpt on Blackboard OR full text online http://www.supremecourtus.gov/opinions/08pdf/07-1428.pdf

EQUAL PROTECTION AND SEX DISCRIMINATION

Week 15— April 16- 20

Tues—Levels of Scrutiny of Scrutiny; *Frontiero v Richardson* (1973) pp 1521-1524; *Craig v Boren* (1967) pp 1525-1529; *Michael M. v Superior Court of Sonoma County* (1981) pp 1529-1532

ESSAY 2 DUE!

Thurs—*United States v Virginia* (1996) pp 1533-1544; Women's rights through statutory interpretation- *Lilly Ledbetter v Goodyear tire Co.* (2008) on Blackboard

Week 16— April 23- 27

April 25— Discrimination Based on Sexual Orientation; *Romer v Evans* (1996) pp 1550- 1560; Review *Dale v Boy Scouts of America;* Discrimination Based on Immigrant Status; *Plyler v Doe* (1982) pp 1583-1598

April 29— Review for Final Exam**.**

FINAL EXAM—Tuesday, May 1, 8am-10:30 pm