

**PSPA 3110 Sec. 001:
Constitutional Law of Individual and Equal Rights
SCI 3246**

Fall 2009

MF 10- 11:15pm

SCI 3246

Professor: Dr. Emily A. Neff-Sharum

Office hours: M 2:30pm- 5pm, W 10-noon , or by appointment

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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

Case brief book	15%
First written assignment	15%
Midterm	20%
Second written assignment	25%

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;

Extra credit is not available for this course.

Case brief books—All students are required to brief every case. At random times during the course of the semester, I will ask you to turn in copies of briefs from sets of cases we have already covered. When asking you to turn in briefs, I will make the announcement at the end of the preceding class period. Think of this as the equivalent of a pop quiz.

How to compose a brief can be found in your textbook on page 1595. I would recommend including an additional section that emphasizes how the decision makes a change to previous precedent. Writing a brief for each case is highly required for several reasons. First, writing briefs forces you to think about what you are reading in a systematic way. Second, briefs will be a useful tool in studying for exams and completing your written assignments. Well-written briefs will allow you to use your time for this course more efficiently.

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.

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.

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_accessing_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 11-- Introduction

Jan 15-- 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

Week 2—

Jan 18 — No Class--- Martin Luther King, Jr. Day

Jan 22— 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

SUBSTANTIVE VERSUS PROCEDURAL DUE PROCESS

Week 3--

Jan 25—

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; Lecture—Gay marriage as a substantive due process argument?

ECONOMIC RIGHTS

Jan 29— Right to contract pp 263-267; Review *Slaughterhouse Cases*; *Lochner v New York* pp 284; *Muller v Oregon* pp 290-292; *West Coast Co. v. Parrish* pp 292-295

Week 4—

Feb 1— The “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

FREEDOM OF SPEECH

Feb 5— 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 5—

Feb 8— 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;

Feb 12— Offensive Speech and Lewd Speech pp 501-506; *Cohen v California* (1971) pp 507-511; *Federal Communications v Pacifica Foundation* (1978) pp 511-516
Symbolic Speech; *Texas v Johnson* (1989) pp 674-681;

Week 6--

Feb 15— FIRST PAPER DUE— 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

2ND AMENDMENT RIGHT TO BEAR ARMS

Feb 19— 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

Week 7--

Feb 22-- Exam Review Day

Feb 26— MIDTERM EXAM

ESTABLISHMENT AND FREE-EXERCISE CLAUSES

Week 8--

March 1— 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; **March 5 —** *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 March 8-12th

CONSTRUCTED RIGHTS—ASSOCIATION AND PRIVACY

Week 10--

March 15— 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 **March 19 —** Right to Privacy pp 1232-1235; *Buck v Bell* (1927) pp 1247-1248; *Griswold v Connecticut* (1965) pp 359-368; Abortion and Privacy; *Roe v Wade* (1973) pp 1249-1262; *Maher v Roe* (1977) pp 1262- 1265;

Week 11--

March 22— *Planned Parenthood of Southeastern Pennsylvania v Casey* (1992) pp 1271- 1283; *Gonzales v Carhart* (2007) pp 1283- 1292

March 26— Privacy and Personal Autonomy pp 1296-1299; *Commonwealth of Kentucky v Wasson* (1992) pp 219-223 *Lawrence v Texas* (2003) pp 1304- 1315

Week 12--

March 29— *Cruzan by Cruzan v Director, Missouri Dept. of Health* (1990) pp 1316-1323; *Washington v Glucksberg* and *Vacco v Quill* (1997) pp1323-1333

April 2— No class—Good Friday

EQUAL PROTECTION AND RACE DISCRIMINATION

Week 13—

April 5— Reconstruction Failures; *The Civil Rights Cases* (1883) pp 1371-1378; *Plessy v Ferguson* (1896) pp 1378-1383; *Shelley v Kraemer* (1945) pp 1383-1385

April 9— 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 12— *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

April 16— 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 19— 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

April 23— *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 26— 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 30— Review for Final Exam.

FINAL EXAM—Monday, May 3, 2010 10:45am-1:15pm