

PLSC 313: Constitutional Law – Civil Rights & Liberties

Eastern Michigan University Department of Political Science

Winter 2016

Section 0; CRN 20940

Tuesday/Thursday 2:00-3:15pm

Pray-Harrold 419

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Office Hours: Tues. and Thurs., 8:15-9:15am and 12:30-1:45pm (or by appointment)

COURSE DESCRIPTION

Whether you are actively following the news or casually perusing your social media feeds, it is difficult to make it through a day without being confronted with one or more references to discrimination, police conduct, guns, abortion, religion, LGBTQ rights, immigration, voting rights, and the role of political correctness in shaping our speech. Indeed, a robust debate is going on in our country regarding the scope of civil rights and civil liberties in the United States. Unfortunately, for many people the debate on these issues is shaped by partisan talking points, questionable internet sources, or by a failure to recognize the difference between an uninformed "opinion" and a legal reality.

This course will move beyond popular politics by intensively interrogating the constitutional law of civil rights and civil liberties as promulgated by the U.S. Supreme Court. We will trace the development of First, Second, Fourth, and Fourteenth Amendment law by examining the application and modification of legal precedent in light of case facts, political and societal changes, and the composition of the U.S. Supreme Court. In addition, we will seek to understand why some "majority" precedents withstand the test of time, while others fall to previously "minority" points of view.

Importantly, this course will not seek to conclude whether one aspect of political or moral debates on these issues is "right" or "wrong," but rather to understand the legal context of civil rights and liberties issues so that we can have more informed conversations, recognize the history and current legal state of these issues, and attempt to predict future legal outcomes. Ultimately, this course is not about mere recitation of facts or personal opinions, but about developing a new approach to identifying and solving problems. Accordingly, this course is excellent preparation for anybody interested in careers in law, government, and business, or simply desiring to function as a better-informed citizen.

LEARNING OBJECTIVES

The primary goals for this course are as follows:

- 1) Develop a substantive understanding of historical and modern developments in the constitutional law of civil rights and civil liberties.
- 2) Develop a substantive understanding of the political and societal processes that interact with law to shape the decision-making environment in which U.S. Supreme Court justices decide constitutional issues regarding civil rights and civil liberties.
- 3) Apply these substantive understandings to current issues and hypothetical problems so as to predict future legal outcomes.
- 4) Develop a framework for arguing your own positions on controversial issues, regardless of which side of the debates you prefer.
- 5) Build skills in reading and effectively summarizing constitutional law.
- 6) Enhance oral and written communication and by engaging in regular class discussion and written exercises designed to synthesize and apply legal principles.

COURSE POLICIES AND RESOURCES

Communicating with the Instructor: Please feel welcome to visit my office hours with any questions about the course, or arrange for an individual appointment. You are also welcome to contact me via e-mail. ***I prefer for you to e-mail me directly as opposed to using the Canvas e-mail tool.*** You can expect an acknowledgement of your e-mail within 24 hours on weekdays, or 48 hours on weekends. Communications should be focused on course-related matters. Please note that university regulations require me to only communicate with students about the course through their official “@emich.edu” accounts. Therefore, please use your “@emich.edu” account when contacting me. I reserve the right to respond, “it’s in the syllabus,” if you ask a question that is readily answered by reading the syllabus. Additionally, please note that although I am a licensed attorney, I cannot serve as your personal legal counsel, so I will not be able to engage requests for legal advice or representation.

Course Canvas Page: This course has a supplemental Canvas page, which will be used to store the syllabus, post supplemental readings, and post grades. It is possible that we will also use it to turn in assignments. To access the page, visit <http://canvas.emich.edu>. If you have any technical difficulties with Canvas, either use the “Help” link on the Canvas user dashboard, or contact the 24/7 Canvas Helpdesk at 844-326-6322.

Electronics in Class: The use of cell phones is prohibited in class. (Exceptions will be made if you have a legitimate emergency situation that requires you to be “on-call.” Please inform me of this BEFORE class begins.) Computers/tablets may be used for note-taking, digital textbook reading, and other course-related purposes. If you use a cell phone or use the computer or other electronics for purposes unrelated to class and it becomes a distraction to others in the class or to the professor, your Attendance & Professionalism grade will be reduced as described elsewhere in this syllabus.

Late Work Policy: All assignments must be turned in at the beginning of class in paper form (unless otherwise instructed) by the due date, and all in-class assignments must be performed at the scheduled time. Assignments that are more than 24 hours late will receive no credit. Those turned in up to 12 hours late will be reduced by one letter grade. Those turned in 12-24 hours late will be reduced by 2 letter grades. The only exceptions are for properly-documented emergencies, medical conditions, religious observances, jury duty, military service, or other circumstances recognized by the University.

Accommodations for Students with Disabilities: It is my goal that this class be an accessible and welcoming experience for all students, including those with disabilities that may affect their learning in this class. If you believe you may have trouble participating or effectively demonstrating learning in this course, please meet with me (with or without an accommodation letter from the Disability Resource Center) to discuss reasonable options or adjustments. During our discussion, I may suggest the possibility/necessity of your contacting the DRC (240 Student Center; (734) 487-2470; swd_office@emich.edu) to talk about academic accommodations. You are welcome to talk to me at any point in the semester about such issues, but it is best if we can talk at least one week prior to the need for any modifications. EMU Board of Regents Policy 8.3 requires that anyone wishing accommodation for a disability first registers with the Disabilities Resource Center (DRC) in 240 EMU Student Center, telephone: (734) 487-2470. Students with disabilities are encouraged to register with the DRC promptly as you will only be accommodated from the date you register. No retroactive accommodations are possible.

Academic Dishonesty and Plagiarism: Academic dishonesty will not be tolerated in this course. Section V.A of the Eastern Michigan University Conduct Code and Judicial Structure for Students and Student Organizations provides that “engaging in academic dishonesty in any form with respect to examinations, course assignments, research projects, grades, and/or academic records” is “subject to disciplinary action.” This includes “cheating, falsification, and plagiarism.” The full policy is available at <http://www.emich.edu/policies/policy.php?id=124&term=student%20conduct>. The EMU library also offers a slideshow tutorial regarding plagiarism at

<http://www.emich.edu/library/help/plagiarism/>. Examples of academic dishonesty include, but are not limited to:

- Submitting a paper prepared by another person, in whole or in part, as your own.
- Submitting a paper for this course that is identical, or substantially similar, to one you submitted in another course.
- Copying the work of another, or assisting a person in copying your work.
- Including direct quotations or paraphrases without citing the source. [Avoid copying and pasting from electronic sources to prevent this from happening.]
- Failing to cite a source from which you obtained an argument, idea, theory, hypothesis, data, statistical results, or any other material that you are using to support positions taken in your own written work, but which you did not generate based on your own analysis of the materials. [When in doubt, cite.]
- Reproducing lecture notes without properly citing the notes and instructor.
- Falsely citing a work as representing an argument that it does not.

Written assignments in this class are subject to review by plagiarism-detecting software. Penalties for academic dishonesty will range from the student being assigned a grade of “0” for an individual assignment to a grade of “0” for the entire course. Incidents of dishonesty may also be reported to the Department and/or University, which may result in further disciplinary action as provided in the Student Conduct Code.

University Policies: For more information about University policies, please visit the Student Handbook at: <http://www.emich.edu/studenthandbook/>.

Withdrawal Deadlines: The last day to withdraw from this class for a 100% refund is Friday, January 15, 2016. The last day to withdraw with a “W” grade (no refund) is Wednesday, March 23, 2016.

COURSE TEXTS

Required Book: Epstein, Lee, and Thomas G. Walker. 2016. *Constitutional Law for a Changing America: Rights Liberties, and Justice*, 9th Edition, Thousand Oaks: Sage/CQ Press.

Supplemental Cases and Articles: Additional materials referenced in the schedule of readings will be made available on the course Canvas page.

COURSE REQUIREMENTS AND GRADING

This course will be graded on a points system (Points Earned divided by Points Possible). A summary of course requirements and associated point totals appears below.

| <u>Assignment</u> | <u>Due Date</u> | <u>Points</u> |
|--|-----------------|---------------|
| Initial All-Class Case Brief | Thurs, Jan 14 | 25 |
| 5 Discussion Briefs & On-Call Performance | “On Call” Days | 150 |
| Take-Home #1: Court Opinion | Thurs, Feb. 11 | 100 |
| Take-Home #2: Policy Memo | Tues, Mar. 15 | 100 |
| Take-Home #3: Client Brief | Tues, Apr. 5 | 100 |
| In-Class Final Exam | Thurs, Apr. 21 | 100 |
| <u>Attendance & Professionalism</u> | <u>Daily</u> | <u>50</u> |
| | | 625 |

Grading Scale: The following scale will be used to assign final course grades:

| | | | |
|----|---------|----|--------|
| A | 94-100% | C | 76-74% |
| A- | 93-90% | C- | 73-70% |
| B+ | 89-87% | D+ | 69-67% |
| B | 86-84% | D | 66-64% |
| B- | 83-80% | D- | 63-60% |
| C+ | 79-77% | F | 59-0% |

When considering “close cases” at the end of the semester (students who are within 1% of the next highest final grade), I will consider demonstrated effort throughout the semester, improvement throughout the semester, engagement in the course (as demonstrated through attendance, attentiveness, and participation), communication with the instructor, and responsiveness to instructor feedback.

All-Class Case Brief: Everybody will produce case briefs related to the January 14th reading. I will provide specific instructions in class and via the Canvas site.

Discussion Briefs and On-Call In-Class Discussion Performance: At the beginning of the semester, I will divide the class in to 5 groups. Each group will take turns being “on call” to discuss a given day’s readings, as identified on the schedule of readings and assignments. Each person in the day’s “on call” group will be expected to have done a thorough job reading and understanding the cases so as to be prepared to answer a series of questions about the cases and apply the day’s lessons to hypothetical fact patterns in

the style of the Socratic Method. As part of the preparation process, each person who is in the “on call” group must write a case Discussion Brief per guidelines I will provide in class and via Canvas. Discussion Briefs are due each day that your group is on call. The combined point value of the Discussion Brief and in-class discussion performance for each day is 30 points (20 for the brief, 10 for the discussion). There are 25 “on call” days scheduled, and therefore each group will be on call on 5 occasions throughout the semester. Full discussion points will be awarded if you demonstrate a sincere effort to engage the questions being asked, show that you read the material, and engage the material at a higher level than mere recitation of case facts or personal opinions.

One free “skipped” Discussion Brief: Unfortunately, some students will be on call on the same day that a take-home assignment is due. To ease the potential burden of this circumstance, and to ensure equity for all students in the class, everybody may skip writing one of the 5 Discussion Briefs. However, you may NOT skip the oral component of the on-call day. Therefore, I still expect you to be prepared to engage in discussion even if your on-call day falls on a day that a take-home assignment is due. If you choose to skip a Discussion Brief, then your entire “on call” grade for that day will be based on your discussion performance. If you write all 5 Discussion Briefs, then you will be graded as normal.

The effect of “passing” or being absent on an “on call” day: “Passing” on an “on call” day is not permitted. If you do not submit your Discussion Brief and are not prepared to discuss the material on your “on call” day, you will not earn points for that day. The only exception would be for emergencies or university-recognized circumstances that would be equivalent to an excused absence. If you are absent on your “on call” day (with or without an excuse), you will be expected to read, prepare a Discussion Brief, and be “on call” for the material we will be covering on whatever your next day appearing in class will be.

Take-Home Assignments: Instead of taking in-class exams during the semester, you will write 3 take-home assignments. The first will correspond to Parts 1 and 2 of the course, the second will correspond to Part 3 of the course, and the third will correspond to Part 4 of the course. These will be designed as issue-spotters that require you to read one or more fact patterns, and to act as either a judge, policy advisor, or attorney in writing a court opinion, policy memo, or legal brief discussing the issues, and either deciding how the court will rule on an issue or making your best argument for how a court should rule on an issue. Specific instructions will be provided in class and via Canvas. Each Take-Home will be due one week after we finish the corresponding parts of the course.

Final Exam: The final exam will simulate a law school-style exam experience and essentially be an in-class version of the take-home assignments. It will be non-cumulative and will consist of one or more fact patterns and require you to act either as a judge, attorney, or policy advisor by spotting the issues and discussing how the issues should or must be resolved.

Attendance and Professionalism: I will take attendance each day. You are expected to be in class regardless of whether it is your “on call” day. Attendance points are awarded on an additive basis: each class period is worth 2 points, so you will earn 2 points for each day you are in class. There are 28 class meetings, not including the final exam. Attendance is worth 50 points total, so **you may miss 3 classes without explanation without any effect on your final grade.** To be clear, even if your first 3 absences are “excused,” that does not mean that you can then miss 3 more without explanation. Absences after the first 3 (whether or not the first 3 were “excused”) will only be excused due to documented illness, bereavement, military or jury service, religious observance, or other university-recognized reason.

Attendance Bonus Points: You may continue earning attendance points after you reach the maximum 50 points. Therefore, if you do not miss any classes, it is possible that you will earn 6 extra credit points. Bonus points are not awarded by proxy (i.e. you cannot claim to have bonus-point-worthy perfect attendance because all of your absences were “excused.”)

Tardiness, leaving early, and other unprofessional behavior: If you are late to class, leave early, or frequently leave your seat during class, you will lose 1 point for that day’s attendance. If you engage in other unprofessional conduct during the class including but not limited to cell phone use, violations of the electronics policy, side conversations, and any other disruptive, rude, disrespectful, or obnoxious behavior, you will forfeit your attendance points for the day.

DISCLAIMER: THIS COURSE CONTAINS MATURE COURSE CONTENT

This course deals with some of the most controversial and sensitive topics that are discussed in our country. They invoke strong responses based on political affiliation, religious beliefs, and personal identity and experiences. Some of the legal cases we read will include language that may be deemed offensive or is outdated according to current norms, and some will reference sexual situations, so you should be prepared to encounter these references. At times we will need to engage these details, but they will not be the focus of our inquiry. If you have any concerns about the material we will be covering in this class, please see me.

SCHEDULE OF TOPICS, READINGS, AND ASSIGNMENTS

- I expect to follow this topical schedule closely, but I may reduce the number of cases covered for any particular day. I will announce any modifications in advance.
- Cases listed under each day’s “Topic” refer to the cases in the textbook and/or outside cases that will be the central focus of our discussion. Cases that are also listed under “Reading Assignment” are not in the textbook and edited versions will be posted on Canvas.

| DATE | TOPIC | READING ASSIGNMENT | ON-CALL GROUP(S) |
|--|--|---|------------------|
| Part 1: | | | |
| Foundations of Constitutional Law: | | | |
| <u>The Judicial Process and Incorporation of the Bill of Rights</u> | | | |
| R, Jan. 7 | Syllabus; Course Introduction; How to Brief Case Law | None | None |
| T, Jan. 12 | Intro to Judicial Process & Behavior | Ch. 1, 10-43 (skim) | None |
| R, Jan. 14 | ALL-CLASS CASE BRIEF DUE Judicial Review & Jurisdiction <i>Marbury v. Madison</i> <i>Ex Parte McCordle</i> | Ch. 2, 45-64 | 1, 2, 3, 4, 5 |
| T, Jan. 19 | Governmental Liability and Immunity for Constitutional Violations <i>DeShaney v. Winnebago County</i> <i>County of Sacramento v. Lewis</i> Incorporation <i>Barron v. Baltimore</i> <i>Hurtado v. California</i> | Ch. 3, 66-74 Online: <i>DeShaney</i> <i>Sacramento</i> | 1 |
| R, Jan. 21 | Incorporation, continued <i>Palko v. Connecticut</i> <i>Duncan v. Louisiana</i> The Right to Bear Arms <i>D.C. v. Heller</i> <i>McDonald v. Chicago</i> | Ch. 3, 74-87 AND Ch. 9, 379-389 Online: <i>McDonald</i> | 2 |

PART 2:
FREEDOM OF (AND FROM) RELIGION

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|------------|---|--|---|
| T, Jan. 25 | Free Exercise of Religion: Compelling Interest Analysis <i>Cantwell v. Connecticut</i> <i>Sherbert v. Verner</i> <i>Wisconsin v. Yoder</i> | Ch. 4, 95-116 | 3 |
| R, Jan. 27 | Free Exercise of Religion: Secular Regulation and RFRA <i>Employment Division v. Smith</i> <i>Lukumi Babalu Aye v. Hialeah</i> <i>City of Boerne v. Flores</i> <i>Burwell v. Hobby Lobby</i> | Ch. 4, 116-131 Online: <i>Lukumi</i> <i>Burwell</i> | 4 |
| T, Feb. 2 | Establishment Clause: Government Support of Religion <i>Everson v. Board of Education</i> <i>School Dist. Abington Twp. v. Schempp</i> <i>Lemon v. Kurtzman</i> <i>Zelman v. Simmons-Harris</i> | Ch. 4, 131-162 | 5 |
| R, Feb. 4 | Establishment Clause: Public Displays of Religion; Regulation of Religion <i>Edwards v. Aguillard</i> <i>Town of Greece v. Galloway</i> <i>County of Allegheny v. ACLU</i> <i>Van Orden v. Perry</i> <i>Hosanna-Tabor Lutheran v. EEOC</i> | Ch. 4, 162-190 Online: <i>Allegheny</i> | 1 |

PART 3:
FREEDOM OF SPEECH, ASSEMBLY, AND ASSOCIATION

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| T, Feb. 9 | Speech: Foundational Principles and the Search for a Legal Standard <i>Schenck v. U.S.</i> <i>Abrams v. U.S.</i> <i>Gitlow v. New York</i> <i>Dennis v. U.S.</i> <i>Brandenberg v. Ohio</i> | Ch. 5, 191-221 | 2 |
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| R, Feb. 11 | TAKE-HOME #1 DUE Speech: Symbolic Speech; Forum Analysis <i>U.S. v. O'Brien</i> <i>Texas v. Johnson</i> <i>Chaplinsky v. New Hampshire</i> <i>Cohen v. California</i> | Ch. 5, 221-240 | 3 |
| T, Feb. 16 | Speech: Forum Analysis; Student Speech <i>McCullen v. Coakley</i> <i>Snyder v. Phelps</i> <i>U.S. v. Alvarez</i> <i>Tinker v. Des Moines School District</i> <i>Morse v. Frederick</i> | Ch. 5, 241-267 | 4 |
| R, Feb. 19 | Speech & Association: Forced Speech, Commercial Speech, and Association <i>West VA Bd of Ed v. Barnette</i> <i>Rumsfeld v. Forum for Academic Rights</i> <i>Bates v. State Bar of Arizona</i> <i>Central Hudson v. Public Srv. Cmmsn.</i> <i>Boy Scouts of America v. Dale</i> | Ch. 5, 267-292 | 5 |
| T, Feb. 23 and R, Feb. 25: NO CLASS - WINTER BREAK | | | |
| T, Mar. 1 | Freedom of the Press <i>Near v. Minnesota</i> <i>New York Times v. U.S.</i> <i>Hazelwood School Dist v. Kuhlmeier</i> <i>Branzburg v. Hayes</i> | Ch. 6, 293-319 | 1 |
| R, Mar. 3 | Speech: Libel, Slander, and Obscenity <i>New York Times v. Sullivan</i> <i>Hustler Magazine v. Falwell</i> <i>Roth v. U.S.</i> <i>Miller v. California</i> <i>City of Renton v. Playtime Theaters</i> | Ch. 7, 321-348 Online: <i>Renton</i> | 2 |
| T, Mar. 8 | Speech: Pornography and Violence <i>New York v. Ferber</i> <i>Brown v. Entertainment Merch. Assoc.</i> <i>Reno v. ACLU</i> <i>U.S. v. Williams</i> | Ch. 7, 349-361) Ch. 8, 363-378) | 3 |

PART 4:
PRIVACY AND SEARCH AND SEIZURE

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|------------|--|---|---|
| R, Mar. 10 | Privacy: Contraception and Abortion <i>Griswold v. Connecticut</i> <i>Eisenstadt v. Baird</i> <i>Roe v. Wade</i> <i>Planned Parenthood v. Casey</i> | Ch. 10, 390-427 Online: <i>Eisenstadt</i> | 4 |
| T, Mar. 15 | TAKE-HOME #2 DUE Privacy: Sexual Relations and Medical Decisions <i>Lawrence v. Texas</i> <i>Obergefell v. Hodges</i> <i>Cruzan v. Director</i> | Ch. 10, 427-459 | 5 |
| R, Mar. 17 | Search & Seizure: Foundations, Probable Cause, and Exclusionary Rule <i>Katz v. U.S.</i> <i>U.S. v. Jones</i> <i>Illinois v. Gates</i> <i>Mapp v. Ohio</i> <i>U.S. v. Leon</i> | Ch. 11, 468-480 and 498-510 | 1 |
| T, Mar. 22 | Search & Seizure: Searches of the Home and Automobiles <i>Florida v. Jardines</i> <i>Kyllo v. U.S.</i> <i>California v. Ciraolo</i> <i>Arizona v. Gant</i> <i>California v. Acevedo</i> | Ch. 11, 478-488 Online: <i>Kyllo</i> <i>Ciraolo</i> <i>Arizona</i> <i>California</i> | 2 |
| R, Mar. 24 | Search & Seizure: Searches with Reasonable Suspicion <i>Stratford School District v. Redding</i> <i>Terry v. Ohio</i> <i>Minnesota v. Dickerson</i> <i>Illinois v. Wardlow</i> <i>Rodriguez v. U.S.</i> | Ch. 11, 488-498 Online: <i>Minnesota</i> <i>Wardlow</i> <i>Rodriguez</i> | 3 |

PART 5:
EQUAL PROTECTION AND VOTING RIGHTS

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| T, Mar. 29 | Race Discrimination: Foundational Cases <i>Plessy v. Ferguson</i> <i>Sweatt v. Painter</i> <i>Brown v. Board I</i> <i>Brown v. Board II</i> <i>Swann v. Charlotte-Mecklenburg BOE</i> | Ch. 13, 609-631 | 4 |
| R, Mar. 31 | Race Discrimination: Levels of Scrutiny; State Action Requirement <i>Cleburne v. Cleburne Living Center</i> <i>Loving v. Virginia</i> <i>Shelley v. Kraemer</i> <i>Burton v. Wilmington Parking Auth.</i> <i>Moose Lodge v. Iris</i> | Ch. 13, 637-644, 706-715 | 5 |
| T, Apr. 5 | TAKE-HOME #3 DUE Race Discrimination: Remedies & Affirmative Action <i>Parents Involved v. Seattle School Dist.</i> <i>Regents of California v. Bakke</i> <i>Grutter v. Bollinger</i> <i>Schuetz v. Coalition to Defend</i> | Ch. 13, 631-637, 649-669 Online: <i>Schuetz</i> | 1 |
| R, Apr. 7 | Gender and Sexuality Discrimination <i>Reed v. Reed</i> <i>Craig v. Boren</i> <i>U.S. v. Virginia</i> <i>Romer v. Evans</i> | Ch. 13, 669-694 | 2 |
| T, Apr. 12 | Economic and Immigrant Discrimination <i>San Antonio School Dist v. Rodriguez</i> <i>Plyer v. Doe</i> Voting Rights: Introduction <i>Bush v. Gore</i> <i>South Carolina v. Katzenbach</i> | Ch. 13, 694-706 AND Ch. 14, 717-728 | 3 |

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|------------|--|--|---|
| R, Apr. 14 | Voting Rights, con't; Campaign Finance <i>Shelby County v. Holder</i> <i>Crawford v. Marion Co. Election Bd.</i> <i>Citizens United v. FEC</i> <i>McCutcheon v. FEC</i> | Ch. 14, 732-755 | 4 |
| T, Apr. 19 | Representation & Redistricting <i>Reynolds v. Sims</i> <i>Miller v. Johnson</i> <i>Arizona State Legislature v. Arizona</i> <i>Redistricting Commission</i> Course Conclusion | Ch. 14, 755-768 Online: <i>Arizona</i> | 5 |
| R, Apr. 21 | IN-CLASS FINAL EXAM, 1:30-3:00 p.m. | | |