

San José State University – Dept. of Political Science
Dr. James Brent – Spring 2018, Tuesday/Thursday, 10:30 to 11:45
POLS 121b – Constitutional Law: Civil Liberties

Course and Contact Information

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| Office Hours: | Mondays, 4:30 to 6:00 p.m Tuesdays and Thursdays, 9:00 to 10:30 |

Course Catalogue Description

Explores the constitutional basis for civil liberties in America. Application of methods of constitutional analysis to cases involving freedom of speech, religion, and the press. Examination of personal privacy rights including abortion, gun rights, and criminal procedures.

Course Learning Objectives

By the end of this course, you should be able to:

- 1) read and brief Supreme Court opinions
- 2) conduct basic legal research
- 3) understand the theory of freedom of speech, the different types of speech; and the circumstances under which speech can be restricted
- 4) explain the differences between the two religion clauses of the First Amendment
- 5) understand the various aspects of criminal due process, including the right to council, freedom from self-incrimination, search and seizure, and cruel and unusual punishment
- 6) explain the foundation and evolution of the right to privacy
- 7) explain the Court's recent decisions regarding the right to bear arms
- 8) understand the doctrine of selective incorporation
- 9) explain the differences between judicial activism and judicial restraint and identify them in Supreme Court opinions
- 10) demonstrate a familiarity with the leading cases in all of these areas of law; and
- 11) synthesize the preceding into written and oral arguments

Succeeding in a Four-Unit Course

At SJSU, students are expected to spend two hours outside of class for every one hour of class time. Because this is a **four-unit class**, you can expect to spend a minimum of eight hours per week in addition to time spent in class and on scheduled tutorials or activities. Careful time management will help you keep up with readings and assignments and enable you to be successful in all of your courses. In this class, one of the four units is an engagement unit, which consists of online quizzes, and data exercises. You are expected to spend 45 hours this semester (both to prepare for and to complete the work) to successfully complete this unit.

Required Texts/Readings

Epstein, Lee, and Thomas G. Walker. (eds.) *Constitutional Law for a Changing America: Rights, Liberties and Justice* (9th ed.). Washington DC: CQ Press. ISBN: 978-1483384016

Course Requirements and Assignments

Your grade in this course will be determined by three case briefs, three examinations, two Supreme Court simulation term papers, five legal memos and class participation.

Case Briefs -- Three times during the course of the semester you will be given homework, usually taking the form of a legal brief a Supreme Court case or cases. Briefing a case will be explained in class. Essentially, briefing a case requires you to identify the facts, the legal issues, the decision, and the significance of that case. These assignments should be typewritten, and will be graded on their completeness and the depth of understanding demonstrated. **LEARNING OBJECTIVES: 1, 9**

Examinations -- The three examinations will consist exclusively of essay questions -- there are no multiple choice questions in this course. In a sense, the final is cumulative. The exams will be closed-book, closed-note exams, except you will receive one of the questions in advance of each exam. Makeup exams will only be administered to students with written documentation of an acceptable excuse, and may be designed to be more difficult than the exam administered in class. **LEARNING OBJECTIVES: 3 through 11**

Supreme Court Simulation/Term Papers -- The Supreme Court simulation/term paper is described more fully at the end of this syllabus. **LEARNING OBJECTIVES: 1, 2, 10, 11**

President Trump Memos -- President Trump has taken or proposed actions of questionable constitutionality regarding virtually every provision of the Bill of Rights. Throughout the semester, you will be asked to write five (5) two-page memos to the president explaining whether the action or proposal is constitutional or not. **LEARNING OBJECTIVES: 2, 3, 4, 5, 6, 10, 11**

Participation and Reading -- All students will be expected to participate orally in class. For the most part, this class will be taught using the Socratic method. The Socratic method dispenses with the traditional lecture and places greater responsibility on the students. The classes will focus very closely on the reading assigned each day. I will not tell you what the reading is about -- instead, you will tell me what the reading is about. All students must have the assigned reading completed and should be prepared to discuss it in every class. I will call upon every student to participate. Participation ought not be taken lightly. It constitutes 10% of your grade, and if you earn no participation points, your final grade will be one full letter grades lower than it would have been if you had participated regularly. I do not take attendance, but if you do not attend regularly, you will be unable to participate and will thus lower your grade.

I realize that many students are uncomfortable with participating in class. If you are one of those students, I have three suggestions:

- 1) Make sure you do the reading on a regular basis. The class discussion will be focused on the reading assignments. Even if you have trouble understanding some of the more complex portions of the assigned readings, you should be able to answer some of the questions I ask if you have done the reading carefully.
- 2) If you volunteer on a regular basis, I will not ask you to speak when you don't volunteer. You should do the readings on a regular basis. However, I fully realize that there are occasions when you simply won't have time to finish the reading. Therefore, I would urge you to voluntarily participate on those days when you *have* done the reading, because if you do so, I will refrain from calling upon you on those days when you do not volunteer.
- 3) If you are confused or have nothing to say, ask for my help. Some students find the material in this course difficult to comprehend, and therefore they find participation to be difficult. If you are one of these students, please don't just sit there and continue to be confused – ask me for help. I assume that you are enrolled in this course to learn. My job is to assist you in your learning.

It is hard to predict how much time we will spend discussing individual cases. Therefore, you should always be prepared to discuss the next three (3) case excerpts in the Epstein & Walker text from where we left off in the previous class session.

NOTE that [University policy F69-24](http://www.sjsu.edu/senate/docs/F69-24.pdf) at <http://www.sjsu.edu/senate/docs/F69-24.pdf> states that “Students should attend all meetings of their classes, not only because they are responsible for material discussed therein, but because active participation is frequently essential to insure maximum benefit for all members of the class. Attendance per se shall not be used as a criterion for grading.”

Grading Policy

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|-----------------------------------|-----|
| Case Briefs (3 at 5% each) | 15% |
| Midterm 1 (February 27) | 10% |
| Midterm 2 (April 3) | 10% |
| Final Exam (May 22 @ 9:45) | 15% |
| Participation | 10% |
| Supreme Court Draft #1 (April 19) | 10% |
| Supreme Court Paper #2 (May 22) | 15% |
| Trump Memos (5 at 3% each) | 15% |

Final letter grades for the course will be assigned based on the following scale:

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| A = 93-100% | B = 83-87% | C = 73-77% | D = 63-67% |
| A- = 90-92% | B- = 80-82% | C- = 70-72% | D- = 60-62% |
| B+ = 88-89% | C+ = 78-79% | D+ = 68-69% | F = 59% or less |

Makeup Exams -- I will be the most willing to permit you to take a make-up exam when the following three conditions are met:

- 1) you notify me in advance
- 2) you have an acceptable excuse (usually something beyond your control)
- 3) you have written documentation

Naturally, sometimes it will not be possible to meet these three conditions. Situations which do not do so will be judged by me on a case -by-case basis. I reserve the right to refuse to allow you to make up an exam (although I will usually try to accommodate you). I also reserve the right to make the make-up exam more difficult than the in-class exam.

If you miss an exam, you should approach me the next time you are in class and request a makeup. If approved, I will drop off a test at the Testing Center. You should call the Testing Center (924-5980) to arrange to take the exam.

Late Papers -- **I am more strict in enforcing penalties against late papers than missed exams!** The due date of the paper is not the *only* day that you may submit your paper. It is merely the *last* day that you may do so without incurring a penalty. Papers are due at the end of class period on the date due. All late papers, regardless of the excuse, will be penalized by one letter grade.

Anonymity Policy -- I like to grade all assignments anonymously. Therefore, you should omit your name on all assignments. Instead, you should only indicate the last four digits of your student ID number. Any assignment that contains your name will not be graded. It will be returned to you so that you may cross out your name and fill in the last four digits of your student ID number.

University Policies

Workload and Credit Hour Requirements

Success in this course is based on the expectation that students will spend, for each unit of credit, a minimum of 45 hours over the length of the course (normally 3 hours per unit per week with 1 of the hours used for lecture) for instruction or preparation/studying or course related activities including but not limited to internships, labs, clinical practica. Other course structures will have equivalent workload expectations as described in the syllabus.

Other important university policies can be found [by clicking here](#).

Course Topics and Readings

Note: You should always be prepared to discuss the next three (3) cases in the Epstein and Walker textbook from where we left off at the end of the previous class period..

Week 1 (January 24) – Introduction to the Course

- A. Course Requirements
- B. Judicial Review Defined
- C. How to Read Supreme Court Opinions

Week 2 (January 30, February 1) – Interpreting the Constitution:

- A. Judicial Activism vs. Judicial Restraint **Pages 390-401**
- B. Selective Incorporation

Weeks 3 through 7-(February 6 - March 8) -- Freedom of Expression – **Chapters 5, 6, 7 and 8**

- A. The Theory of Free Speech
- B. The Definition of Speech
- C. Types of Speech
- D. Circumstances Under Which Speech Can Be Restricted

Weeks 8, 9 and 10 (March 13 – April 5) – The Religion Clauses – **Chapter 4**

- A. Free Exercise of Religion
- B. The Establishment Clause

Weeks 11, 12 and 13 (April 10 – April 26) – Criminal Due Process

- A. Search and Seizure and the Exclusionary Rule – **pages 468-514**
- B. Self-Incrimination – **pages 514 - 533**
- C. The Right to Counsel – **pages 536 - 547**
- D. Trial Procedure – **pages 547 - 569**
- E. Cruel and Unusual Punishment – **pages 569 - 595**

Week 14 – The Right to Privacy (May 1, May 3)– **pages 401-458**

- A. The Genesis of the Right to Privacy
- B. Abortion Rights
- C. Other privacy rights

Week 15 (May 8 and May 10)-- The 2nd Amendment: The Right to Bear Arms – **Chapter 9**

Supreme Court Simulation and Term Paper Assignment

In order to better understand both the law and the process the Supreme Court adopts when writing constitutional decisions, all students will participate in a simulation of the United States Supreme Court. When the Court decides a case, it hears oral argument from attorneys on both sides of the controversy and then collectively writes the majority opinion and any concurring or dissenting opinions. We will recreate these rituals in class, utilizing two actual cases that have already been granted *certiorari* by the U.S. Supreme Court. In this simulation, each student will assume one of two roles -- either an attorney arguing a case before the Court, or a justice on the Court itself. The requirements for the two roles vary. Please read the following descriptions and think about which role you would prefer to play.

The Roles

Attorneys -- Attorneys stand before the Court and orally present and defend the position of their clients. Students who assume this role will have three responsibilities:

- a) to submit a legal brief (approximately 2 pages) to the Court 1 week before oral argument. This brief should be distributed through the course web site.
- b) to engage in oral argument before the Court for 20 minutes
- c) to submit a 10-20 page research paper to the instructor

Supreme Court Justices -- Supreme Court justices are expected to think about their assigned case before oral argument. Their formal responsibilities are as follows:

- a) to participate actively in oral argument
- b) to negotiate with other members of the Court after oral argument
- c) to submit two written opinions

The Cases

National Institutes of Family and Life Advocates v. Becerra – California lawmakers became concerned that some anti-abortion groups were operating institutions that falsely marketed themselves as full-service family planning clinics and were misleading clients about their own purpose and their clients' options. In response, the state enacted the Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (Reproductive FACT). This law requires such centers that do provide medical services – but not abortions – to post a sign informing clients that information about abortion services is available by calling a posted phone number. The law also requires clinics that do not provide medical services to clearly state this in their advertising. This law was challenged on several First Amendment grounds.

Masterpiece Cake Shop v. Colorado Civil Right Commission – In 2012, Masterpiece Cake Shop refused to serve a gay couple seeking to purchase a wedding cake for their own wedding. The Colorado Civil Rights Commission ruled that the cake shop had violated the state's anti-discrimination statutes and imposed a fine. The cake shop appealed to the Supreme Court, arguing that requiring them to make the cake violates the owner's First Amendment right to free exercise of religion.

The Papers

The Justices' Term Papers (Opinions) – After oral argument, the justices will meet in conference to discuss the case. All students will then write a first draft of their own, personal opinion in the case. After the first drafts have been graded and returned to you, the justices will meet in conference again. At this point, justices may mutually agree to write a joint opinion. If some justices decide that they want to form a coalition and produce a single opinion between them, that is fine!

Oral argument will be held on Tuesday, April 10. During the following class period (April 12), the justices will meet for an in-class conference to discuss their views on the case. First drafts (which are due April 19) must be completed on an individual basis. However, students may work in groups on their final drafts, which are due on May 22.

The Attorneys' Term Papers (Briefs) -- attorneys will submit individual papers that are due on the same date as the justices' papers.

How Your Papers Will Be Graded

Papers will be graded primarily on the strength of the argument presented. The best papers will demonstrate significant legal research and an ability to apply the extant case law to the topic at hand. Papers should be logically structured and comprehensive, and the best papers will demonstrate imagination, creativity, and extensive research. In addition, papers should utilize proper forms of legal citation (to be discussed in class). Finally, points will be deducted for spelling and grammatical errors. Papers that do little more than the minimum required will receive lower grades than papers that demonstrate more effort and thought.

Attorneys –Attorneys will be graded almost exclusively on their paper. However, an exceptionally good or an exceptionally poor oral argument performance will have an impact. In addition, because the attorney's role is the most demanding, all attorneys shall receive a 5-point bonus added to their grade on the final draft of the paper.

Justices -- Justices' grades will depend wholly upon the papers they submit. However, because Paper #2 can have more than one author, the minimum length of the paper increases as the number of authors increases. A paper written by one person must be a minimum of 10 pages long. For each additional author, the opinion must be an additional 5 pages long. As an example, if a page has six authors, it must be 35 pages long.

PLEASE NOTE: Attendance is MANDATORY on April 10, the day on which we will conduct oral argument. If you have an unexcused absence on that day, you will receive a 20% penalty on the first draft of your paper . I will only permit exceptions from this policy to students who contact me ahead of time and who have written documentation of an acceptable excuse.

Political Science Program Learning Outcomes

Upon completion of the Political Science major program, students should be able to demonstrate the following learning outcomes:

1. PLO1: Breadth

Students should possess a broad knowledge of the theory and methods of the various branches of the discipline.

2. PLO2: Application

Students should be able to apply a variety of techniques to identify, understand, and analyze domestic and international political issues and organizations.

3. PLO3: Disciplinary methods

Student should be able to formulate research questions, engage in systematic literature searches using primary and secondary sources, have competence in systematic data gathering using library sources, government documents, and data available through electronic sources, should be able to evaluate research studies, and should be able to critically analyze and interpret influential political texts.

4. PLO4: Communication Skills

Students should master basic competencies in oral and written communication skills and be able to apply these skills in the context of political science. This means communicating effectively about politics and/or public administration, public policy, and law.

5. PLO5: Citizenship

Students should acquire an understanding of the role of the citizen in local, state, national, and global contexts and appreciate the importance of lifelong participation in political processes.

Political Science Departmental Writing Policy

Students of political science should develop the ability to write in clear, grammatical English. Spelling and grammar count! Students must take care that appropriate citations are used. Direct quotations must be so indicated with quotation marks and a specific reference to the page in the source from which it was taken. Failure to cite your sources constitutes academic misconduct which carries with it serious sanctions. A tutorial on citations is available at the library website at http://www.sjlibrary.org/services/literacy/info_comp/citing.htm.

For assistance with writing, please see me or visit the SJSU Writing Center located in Clark Hall, Suite 126. All Writing Specialists have gone through a rigorous hiring process, and they are well trained to assist all students at all levels within all disciplines to become better writers. In addition to one-on-one tutoring services, the Writing Center also offers workshops every semester on a variety of writing topics. To make an appointment or to refer to the numerous online resources offered through the Writing Center, visit the Writing Center website at <http://www.sjsu.edu/writingcenter>.