

POLS 4710
Constitutional Law: Rights and Liberties
Fall Semester 2020
11:30a - 12:20p, MWF
Room: Baldwin Hall 101D

Instructor: Ted D. Rossier (trossier@uga.edu)

Office Hours: By appointment only. In person meetings available Wednesdays 10:00 - 11:00 a.m. in Baldwin 303A. I can also meet by Zoom but my availability varies. Please make all appointments by email.

Textbook: *Constitutional Law for a Changing America: Rights, Liberties, and Justice* (Epstein and Walker), 10th ed.

The above book(s) can be obtained from the university bookstore, or from the outlet of your choice (Amazon is always a good option). Some additional readings assigned below will be made available through the e-Learning Commons; however, you are responsible for downloading and reading the assigned Supreme Court cases noted below in the course schedule. For cases excerpted in the textbook, the authors provide a web link to the full text of each case, as well as audio recordings of the oral arguments where available. For other cases, I will provide the citation and instructions on how to do case searches. If you're familiar with Westlaw, please feel free to use that instead if you like; UGA libraries provides free unlimited access to all students. For any case assigned on the schedule below, *you are responsible for the entire text, including any concurring or dissenting opinions*. Merely reading or studying the excerpts in the textbook is not sufficient.

The textbook itself has an accompanying website that has a lot of resources to help you study and prepare your case briefs. It can be accessed at <https://edge.sagepub.com/conlaw>. You'll need to create an account (it's free when you purchase the book). That website also allows you to purchase an electronic copy of the book, which is less expensive if you don't mind reading online. You are not required to have a physical copy of the book for this course, so long as you have access to the electronic version.

You are responsible for **all** material listed below on the course schedule, **whether or not we cover it in class**. That includes assigned readings, cases, and any supplemental material that I post to eLC. If it's on the list, or if I post it, it's important and it may show up on an exam.

Course Description and Objectives: Constitutional law is a complex and ever-changing subject. Our primary focus will be on the historical development of the various strands of cases related to the Bill of Rights and the 14th Amendment, and we will also discuss current trends and issues that may come before the courts in the near future. Though we will cover public opinion, the political environment, and the policy implications of civil rights and liberties, our approach to the material will be mostly driven by reading and debating the merits of Supreme Court cases.

The reading assignments for the course are listed below. You should complete them prior to the week assigned. This course contains a **lot** of material, much more than we can cover in class during the semester. It is therefore **vitaly important** that you keep up with the readings, come prepared

for each class meeting, and study the assigned material regularly outside of class. Your success in the course depends on this.

For purposes of attendance (see below) and so that we stay below maximum room capacity, I will divide the class into 3 sub-sections, each meeting one day per week. Because of classroom social distancing restrictions in place for the Fall term, this course will be taught using a “HyFlex” method, where each class meeting will be recorded and uploaded to eLC. *All* students not in attendance on a given day are responsible for viewing the recordings, and for any material covered while they are not attending in-person. I *strongly encourage* you to view these online recordings during the week they are made available, so that you do not fall behind on the material. Instructions on which day you are assigned to attend will be posted to eLC prior to the beginning of the term. **Make sure to check your email daily, as this will be our primary method of communication.**

Case briefs: I will further divide each sub-section of the class into groups of 3. Each group will be assigned a topic and a set of cases, and will be responsible for briefing and discussing the cases and materials associated with their particular class period that week. Each group will present twice during the semester. I will upload instructional materials to eLC on how to brief cases for class at the beginning of the semester. I encourage each group to work together to study and brief your assigned cases, because during class discussion I will expect that each member of the group is familiar with *all three* of the assigned cases for that class period.

Following each class period, the group that presented is responsible for uploading their case briefs and any other notes to the eLC message board, so that members of the class not in attendance can read and use them as study guides. The schedule listed below is general; please refer to the supplemental document posted to eLC for specific group and case assignments.

Writing project: Shortly after the midterm exam, I will post the writing project assignment. It will be an 8-10 page paper, wherein you will be asked to analyze cases and materials that we will **not** cover in class. Projects will be due the week after Thanksgiving Break.

By the end of the course, students should:

- Understand the legal and policy implications of Constitutional cases involving civil rights and liberties
- Be able to articulate sound legal reasoning and argument
- Be able to read and analyze court opinions

Grade Composition and Exams: Grading is based on a point system consisting of participation (case presentations and class discussion - 200 pts); midterm and final exams (200 pts each); and the writing project (200 pts). All assigned readings, as well as all in-class material and supplementary items, constitute potential sources of exam questions. The presentation/discussion grade includes in-class interaction as well as online discussions.

The midterm exam will occur roughly about Week 9 of the course, but this is tentative and subject to change. Both the midterm and the final exam will be administered in a take-home format. Each exam will be distributed electronically and you will have a set amount of days to complete it using any books, notes, or online resources you need. Once completed, you will upload your answers in PDF or DOCX format to the eLC dropbox. The final will not be comprehensive and will only consist of

A	745-800	C+	615-639
A-	720-744	C	585-614
B+	695-719	C-	560-584
B	665-694	D+	520-559
B-	640-664	D	480-535

Grading scale (total points)

material covered after the midterm. Both exams will feature some short answer along with a number of “fact pattern” type questions on which you will be asked to use your legal reasoning skills to analyze hypothetical problems. For those of you intending to go to law school, this question type is very similar to those you will find on your exams there. No makeups or extensions of time will be granted except in extreme extraordinary circumstances. Personal schedules and assignments for other courses are not considered extraordinary.

A word of caution about take home exams: because you have open access to anything, I will craft exams that are more difficult, longer, and more challenging than you would expect for an in-class closed book exam. I will also have higher expectations for the quality of your answers, and will grade accordingly.

If you have a question about your grade in the course, please come see me in person during office hours or make an appointment. I will not discuss grades over email.

Attendance and Participation: It is very important that you attend class on your scheduled meeting days and participate in the discussion. However, if you are sick, do not come to class. Because of the nature of the course, makeups for attendance and participation points are generally not possible. If you are absent on your assigned day to present cases, through no fault of your own, you are required to do 2 things: 1) find a classmate to attend and present in your place, and 2) contact me for an alternate assignment in order to receive equivalent points toward your course grade.

This class is not a spectator sport. I expect that you will come to class having read the assignments for each day, and that you will pay attention to the lectures and other activities and engage with the material and myself. I welcome robust discussion (see below) and reserve the right to call on students at random if I do not feel that we are being productive. Universities are places where you must anticipate being forced out of your comfort zone, so if you are shy and don't like talking in front of people, now is the time to work on it.

Because of the nature of the course this semester, I highly encourage all students to make use of the eLC discussion forum for the course, more so than usual. You can easily build up participation points by posting or commenting on discussions that take place during the days you are not in class in-person. It is also an excellent place to ask questions or get clarification on anything that occurs in class. Because we can't all be in the same room at one time, if you have any question or comment that is relevant to the entire class, please use the discussion board.

Technology policy: I have no objection to the use of laptops or tablets in class, provided that

such use does not disrupt the proceedings or annoy/distract your classmates. Personal use of mobile phones is not permitted.

Civil Discourse: One of the primary purposes of a University, and one of the basic components of teaching and research, is the free exchange of ideas in open discourse. In the University environment, you should expect to encounter people, topics of conversation, and subject matter that you may find unfamiliar, offensive or objectionable. In this class we will practice freedom of speech. All points of view on a topic will be fairly heard without respect to party identification, ideology, etc. My expectation of you as students is that you will conduct yourselves in a mature and respectful manner when addressing either me or your fellow students during class discussions. This does not mean that we will not weigh the merits of a statement, idea, or point of view, because we will. Some viewpoints and arguments are more valid than others. That being said, disagreement should not be disagreeable. Rudeness, foul language, name calling or any type of disruptive behavior will be grounds for removal from the class and the offender will be counted absent for that day. These rules also apply to any online interactions related to the course, whether through eLC, social media, or any other form of communication.

NOTE: THIS COURSE IS RATED M FOR MATURE. Students may experience graphic language and other objectionable content as part of the facts of certain cases. The use of or discussion of such language or content shall not be considered an endorsement by the instructor that such behavior is acceptable.

Academic Integrity and honesty: As a University of Georgia student, you have agreed to abide by the University's academic honesty policy, "A Culture of Honesty," and the Student Honor Code. All academic work must meet the standards described in "A Culture of Honesty" found at <https://honesty.uga.edu/Academic-Honesty-Policy/>. Lack of knowledge of the academic honesty policy is not a reasonable explanation for a violation. Questions related to course assignments and the academic honesty policy should be directed to the instructor.

Academic misconduct includes plagiarism, cheating on exams, improper collaboration, and fraud (such as submitting the same assignment for different classes without permission, or fabricating sources). As commonly defined, plagiarism consists of passing off as one's own the ideas, words, writings, etc., which belong to another. In accordance with the definition, you are committing plagiarism if you copy the work of another person and turn it in as your own, even if you have the permission of the other person. Plagiarized assignments will automatically be given a zero.

Accommodations: It is the policy of the University to provide accommodations to students for medical problems or disabilities, and/or for religious observances. Students with a disability or health-related issue who need a class accommodation should make an appointment to speak with the instructor as soon as possible. Students who need to miss class for religious observances should contact the instructor in advance to receive an excused absence. Assignment due dates will generally not be extended except in extraordinary circumstances.

Mental Health and Wellness Resources:

If you or someone you know needs assistance, you are encouraged to contact Student Care and Outreach in the Division of Student Affairs at 706-542-7774 or visit <https://sco.uga.edu>. They will help you navigate any difficult circumstances you may be facing by connecting you with the appropriate resources or services.

UGA has several resources for a student seeking mental health services:

(<https://www.uhs.uga.edu/bewelluga/bewelluga>)

Crisis support can be reached at: (<https://www.uhs.uga.edu/info/emergencies>).

If you need help managing stress anxiety, relationships, etc., please visit BeWellUGA (<https://www.uhs.uga.edu/bewelluga/bewelluga>) for a list of FREE workshops, classes, mentoring, and health coaching led by licensed clinicians and health educators in the University Health Center.

Additional resources can be accessed through the UGA App.

Course Outline and assigned readings:

Week 1: Course overview

No in-person class on Friday, August 21

I will post an introductory lecture to eLC along with instructions for in-person attendance

No assigned readings

Week 2: Foundational material

Epstein and Walker, Intro to Part I and Chs. 1-2

U.S. Constitution + amendments

The Federalist, Nos. 45, 78

Anti-Federalist No. 81

Marbury v. Madison

Ex Parte McCordle

Week 3: The Bill of Rights and Incorporation

Epstein and Walker Ch. 3

The Federalist, No. 84

Anti-Federalist No. 84

Barron v. Baltimore

Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873)

Hurtado v. California

Palko v. Connecticut

Duncan v. Louisiana

DeShaney v. Winnebago County, 489 U.S. 189 (1989)

Week 4: Religious Liberty I (No class on Monday – Labor Day)

Epstein and Walker, Intro to Part II and Ch. 4

Thomas Jefferson's letter to the Danbury Baptists

Memorial and Remonstrance against Religious Assessments (Madison)

"David Josiah Brewer and the Christian Constitution," Hylton, *Marquette Law Review* 81:2

"The Origins and Historical Understanding of Free Exercise of Religion," McConnell, *Harvard Law Review* 103:7

Church of the Holy Trinity v. US, 143 U.S. 457 (1892) (read only)

Everson v. Board of Education

School District of Abington Township v. Schempp

Lemon v. Kurtzman
Zelman v. Simmons-Harris
Trinity Lutheran Church v. Comer
Van Orden v. Perry

Week 5: Religious Liberty II

Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC
Town of Greece v. Galloway
Reynolds v. US
Cantwell v. Connecticut
Sherbert v. Verner
Wisconsin v. Yoder
Employment Div. v. Smith
City of Boerne v. Flores
Masterpiece Cakeshop v. Colorado Civil Rights Comm'n, 584 U.S. — (2018)
Supplemental:
Masterpiece Cakeshop news report

Week 6: Freedom of Speech I

Epstein and Walker Ch. 5
Sedition Act
Virginia and Kentucky Resolutions
Report of 1800 (Madison)
Schenck v. U.S.
Gitlow v. NY
U.S. v. O'Brien
Chaplinsky v. New Hampshire
Cohen v. California
McCullen v. Coakley
Snyder v. Phelps
Tinker v. Des Moines School Dist.
Morse v. Frederick
Supplemental:
Morse v. Frederick news report and interviews
Snyder v. Phelps news report

Week 7: Freedom of Speech II

Texas v. Johnson
First National Bank of Boston v. Bellotti
Citizens United v. FEC
Matal v. Tam
West Va. State Bd. of Education v. Barnette
Wooley v. Maynard, 430 U.S. 705 (1977)
Walker v. Sons of Confederate Veterans
Rosenberger v. University of Virginia, 515 U.S. 819 (1995)
Boy Scouts of America v. Dale

Week 8: Freedom of the Press and media + Second Amendment

Epstein and Walker Chs. 6-8

Near v. Minnesota

New York Times v. U.S.

Hazelwood School District v. Kuhlmeier

Branzburg v. Hayes

New York Times v. Sullivan

Hustler Magazine v. Falwell

Miller v. California

FCC v. Pacifica Foundation, 438 U.S. 726 (1978)

Reno v. ACLU

Supplemental:

Daniel Ellsberg NPR interview

George Carlin interview segment

The Right to Bear Arms (online lecture)

Midterm exam (take home, no class)

Zoom review sessions may be scheduled prior to the distribution of the exam

Writing project posted

Week 10: Privacy, fundamental rights, and substantive due process

Epstein and Walker Ch. 9

“The Right to Privacy,” Warren and Brandeis, *Harvard Law Review* 4:5

Lochner v. New York, 198 U.S. 45 (1905)

Buck v. Bell, 274 U.S. 200 (1927)

Griswold v. Connecticut

Roe v. Wade

Planned Parenthood v. Casey

Bowers v. Hardwick, 478 U.S. 186 (1986)

Lawrence v. Texas

Obergefell v. Hodges

Cruzan v. Missouri Dept. of Health

Week 11: Rights of the accused I (No class on Friday – Fall Break)

Epstein and Walker, Intro to Part III and Chs. 10-11

Katz v. U.S.

U.S. v. Jones

Illinois v. Gates

Florida v. Jardines

Safford Unified School Dist. v. Redding

Terry v. Ohio

Week 12: Rights of the accused II (No class on Wednesday)

Mapp v. Ohio

Hudson v. Michigan

Miranda v. Arizona

Gideon v. Wainwright
Batson v. Kentucky
Gregg v. Georgia
Supplemental:
Excerpts from *Gideon's Trumpet*

Week 13: Discrimination I

Epstein and Walker, Intro to Part IV and Chs. 12-13
Biographies of Henry Billings Brown and John Marshall Harlan
"Fifth of July Speech," Frederick Douglass
Plessy v. Ferguson
Sweatt v. Painter
Brown v. Board of Education I
Brown v. Board of Education II
Swann v. Charlotte-Mecklenburg Bd. of Educ.
Parents Involved in Community Schools v. Seattle School Dist. No. 1
Shelley v. Kraemer
Burton v. Wilmington Parking Auth.
Moose Lodge No. 107 v. Irvis

Week 14: Discrimination II

Cleburne v. Cleburne Living Center
Loving v. Virginia
Regents of the Univ. of California v. Bakke
Fisher v. Univ. of Texas
Craig v. Boren
United States v. Virginia
Romer v. Evans
San Antonio Ind. Sch. Dist. v. Rodriguez
Plyler v. Doe

Week 15: No class (Thanksgiving break)

Remainder of semester: No in-person class; writing projects due on Friday 12/4; Optional Zoom review session(s) on Monday 12/7 and/or Tuesday 12/8

Final Exam: Date/time posted to eLC TBA; will be due Monday, December 14, at 5:00pm

The course syllabus is a general plan for the course; deviations announced to the class by the instructor may be necessary.