



School of Public and International Affairs
Department of Political Science

Pols 4710: Constitutional Law: Rights and Liberties
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Course Overview. Ingrained in the American psyche is the notion of *majority rule* – that is, just decisions in any fair society emanate from the *will of the people*. However, the framers of the U.S. Constitution were well aware of the shortcomings of majority rule. Early American society nearly crumbled under the instability and chaos wreaked by the decentralized and unusually democratic *Articles of Confederation*. Local majorities in the several states stripped the religious and economic rights of individuals with impunity. Whenever a system is based on the “will of the people,” one has to account for the dark but inevitable aspects of human nature (e.g. fear, greed, lust, envy, &c, you know, *Perfect Match*, *Golden Bachelorette*, or *Too Hot to Handle* episodes).

Thus, the basic design of the second U.S. system of government (the *Constitution*) reflects a reaction to pure democracy and a fundamental suspicion of popular excess (creating checks and balances, federalism). In the words of James Madison, the new Constitution was a “**republican remedy for the democratic disease**”-- that is, a representative system that attempted to preserve the dignity and inherent rights of the individual. Democracy is but one value within our constitutional system; **liberty is predominant**.

Although not entirely anticipated by the framers, the *Bill of Rights* and the Supreme Court emerged as the primary source of protections for the individual in American society. The first ten amendments to the Constitution, ratified in 1791, were a last-second concession to the many opponents of the new system who feared the new, powerful, centralized, federal apparatus. The framers could not anticipate the pivotal role the Bill of Rights would play in resolving many prominent national disputes. Nor did the framers foresee the scope of the Bill of Rights extending to the actions of state governments and agents, who emerged as the primary transgressors of individual freedom in the 20th century. And, most certainly, the framers did not conceive of the Bill of Rights extending to such issues as contraception, homosexuality, social media, school prayer, individual gun rights, facebook rappers, prisoners’ beards, or “crush” videos.

The focus of this course will be the application of the Bill of Rights by the U.S. Supreme Court. The material tends to be inherently dramatic and volatile, since any constitutional battle reflects a struggle of people and basic values—equality v. liberty, order v. freedom, spirituality v. pragmatism, and tradition v. change. The Bill of Rights potentially preserves individual freedom and dignity, and exists to allow us to develop fully—spiritually, materially, aesthetically—whatever is most valued by the individual.

“The very purpose of a Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy and place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. **One’s right to life, liberty and property, to free speech, freedoms of worship and assembly, and other fundamental rights may not be submitted to vote ...they depend on the outcome of no elections**” (Justice Robert Jackson, *WVA v. Burnette*, 1943)).

Course Goals. The purpose of this course is to (1) understand the scope and nature of the Bill of Rights (and subsequent amendments), (2) investigate how justices adopt markedly different methods to read and apply these rights, and (3) comprehend and conquer the sometimes intimidating nature of Supreme Court decisions. Our task with each case is to cut through the language and investigate the full picture, or the **context** of the decision—the people making the decisions, the **choices** they confront, and the larger **historical and cultural forces** at work. By the end of the course, we should be equipped to critically assess decisions—to recognize the other, equally legitimate legal paths that other justices, perhaps in other eras, could have taken. (4) We will also track the important cases being argued this year – and anticipate decisions that will be delivered through the spring.

Text. **Constitutional Law for a Changing America: Rights, Liberties, and Justice** (Lee Epstein, Kevin McGuire, and Thomas G. Walker, 2024, 12th Edition). This is the basic **OPTIONAL** text, packed with landmark cases, historical tidbits, and insightful commentary to boot. Could be a useful resource for law school—much of what we study comes from this text. **Other Sources:** Remember, everything we read and analyze together will be posted on elc.

ASSIGNMENTS/GRADES: after each section of the course (e.g. religious freedoms, sexual privacy, speech, guns, etc.). I will assign an essay or two, each worth 30 points. I cannot be sure how many total points will be accumulated because summers are funky, and, I am not sure what our pace will be.

OBIGATORY RESOURCES and ASSORTED POLICIES

Disability Resource Center

If you anticipate needing accommodations due to the impact of a disability or medical condition, you must register for services with the Disability Resource Center. Additional information can be found here: <http://drc.uga.edu/>

Withdrawal Policy

Undergraduate students can only withdraw from four courses and receive a withdrawal-passing (WP) grade while enrolled at the University. Students can drop any class without penalty during the drop/add period at the beginning of every semester. Dropped courses during the drop/add period do not qualify as withdrawals. Instructors have the ability to withdraw a student from the class due to excessive absences (see course attendance policy). Please review the policy here: <https://reg.uga.edu/general-information/policies/withdrawals/>

Culture of Honesty Policy

You are responsible for knowing and complying with the policy and procedures relating to academic honesty. To understand what constitutes dishonest work, as defined by the University, please carefully review the policy here: https://honesty.uga.edu/_resources/documents/academic_honesty_policy_2017.pdf

Of particular concern now is the introduction of “Artificial Intelligence” – please take note of UGA’s position on AI:

“Unless explicitly stated, artificial intelligence-based technologies, such as ChatGPT, must not be used to generate responses for student assignments. Use of artificial intelligence or word mixing software to complete assignments is considered unauthorized assistance in this course. We encourage you to use AI tools to explore the field and help you study. However, you must take full responsibility for any AI-generated materials you incorporate in your course products. Information must be verified, ideas must still be attributed, and facts must be true.”

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>) or crisis support (<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.

***** I TAKE MENTAL HEALTH CHALLENGES SERIOUSLY. IF COMFORTABLE, PLEASE DISCUSS THESE ISSUES WITH ME. *****

Course Schedule . Here's the rough order of the subjects and cases. Events may dictate a change in order, so stay tuned. Cases are in the textbook unless marked with three asterisks (***), which denotes they may be found on-line. I will announce, as the course goes along, where the cases can be found, but try <http://www.law.cornell.edu/supct> or Oyez.org or, just stick the case name in your google.

INTRODUCTION: Supreme Court Decision-Making in the Constitutional Scheme
Epstein, McGuire, and Walker, pp. 1-44 (all pages assigned hereafter refer to Epstein, McGuire, and Walker). NOTE: **this reading assignment is optional**. It is a concise, readable section regarding the role of the Court, influences on the Court, approaches to reading the Constitution, etc.

NOTE: again, I am posting page numbers for those who choose to obtain the text, BUT I WILL POST ALL REQUIRED READINGS ON ELC. The asterisks (***) merely indicate they are not in the text.

RIGHTS of PRIVACY, ABORTION, SEX, and MARRIAGE

Privacy and Abortion

Griswold v. Connecticut (1965), pp. 327-349

Roe v. Wade (1973)

Planned Parenthood v. Casey (1992) ***

Dobbs v. Jackson (2022)

Privacy and Sexual Intimacy, Relationships, and Marriage (LGBTQ+)

Lawrence v. Texas (2003), pp. 349-360.

Obergefell v. Hodges (2013)

FREEDOM of RELIGION: Establishment

The Initial Precedent

Everson v. Board of Education (1947) ***

Prayer in School

School District of Abington Township v. Schempp (1963), pp. 125-132.

Newdow v. U.S. Congress, et al. (2002) [9th Circuit Pledge case] ***

Lee v. Weisman

Kennedy v. Bremerton School District (2022), pp. 160-164.

The Lemon Test and Aid to Religious Schools

Lemon v. Kurtzman (1971)

Zobrest v. Catalina School District (1993) ***

Zelman v. Simmons-Harris (2002), pp. 132-143.

Access to Public Facilities and Funds

Lamb's Chapel v. Center Moriches School District (1993) ***, *Rosenberger v. UVA* (1995) ***, *Trinity Lutheran v. Comer* (2017) ***

Teaching Religion in Public Schools

Edwards v. Aguillard (1987), pp.145-148

Religious Displays

Van Orden v. Perry (2005)

American Legion v. American Humanist Ass. (2019), pp. 149-158.

Government Involvement in the Affairs of Religious Organizations

Hosanna-Tabor v. EEOC (2002) – firing the disabled because God ***

Fulton v. City of Philadelphia (2021) – free exercise of adoption agencies. ***

Carson v. Macon (2001) – tuition aid to religious schools. ***

FREEDOM of RELIGION: Free Exercise

The Belief Action Distinction and the Valid Secular Policy Test

Reynolds to Cantwell v. Connecticut (1940), pp. 98-106.

A Period of Balancing: The Compelling Interest Standard

Sherbert v. Verner (1963), *Wisconsin v. Yoder* (1972), pp. 106-112.

Go to Hell: The Demise of the Compelling Interest Standard

Employment Division v. Smith (1990),

Church of the Lukumi Babalu Aye v. City of Hialeah (1993), pp. 113-124.

The Current Free Exercise Chaos (b/c of acts of Congress post *Smith*)

Hobby Lobby and the Christian Wedding Cake Baker Dude Case (2018)

And maybe *Hobb* ***

DOCUMENTARY: No Greater Law..

FREEDOM of SPEECH

Seditious Speech (and Incorporation)

Schenck v. U.S. (1919), *Abrams v. U.S.* (1919)

Gitlow v. N.Y. (1925), pp. 191-196 (and Incorporation, pp. 69-89).

Dennis v. U.S. (1951), *Brandenburg v. Ohio* (1969), pp. 167-187).

The Espionage Act Lives: <https://www.cnn.com/2023/05/04/politics/proud-boys-seditious-conspiracy-verdict/index.html>

<https://www.vox.com/recode/TRUE/22256387/facebook-telegram-qanon-proud-boys-alt-right-hate-groups>

TBA: are “patriots” using, and fighting for free speech?

Symbolic Speech

U.S. v. O’Brien (1968), *Texas v. Johnson* (1989), pp. 189-202.

“Expressive Association”

Boy Scouts v. Dale (2000), pp. 202-207.

The Right Not to Speak – Compelled Speech

WVA v. Burnette (1943), *Rumsfeld* (2006)

Elenis (2003) pp. 207-214.

Other Categories of Unprotected Speech

TRUE THREATS

Virginia v. Black (2003) ***, *Elonis v. US* (2015) *** pp. 214-215.

Fighting Words and Hate Speech

Chaplinsky v. N.H. (1942) pp. 215-222, *Cohen v. CA* (1971) ***

Snyder v. Phelps (2011) ***

*** COLLEGE CAMPUS HATE SPEECH ROUNDTABLE ***

SPEECH RIGHTS of PUBLIC SCHOOL CHILDREN

Tinker v. Des Moines (1969), pp. 222-227.

Bethel v. Fraser (1986) ***

Morse v. Frederick (2007).

Government Speech

Walker v. Sons of Confederate Veterans (2015), pp. 230-237.

Matel v. Tam (2015)

Content Neutral/Content Based

Hill v. Colorado (2000) ***

McCullen v. Coakley (2014), pp. 240-245.

*** Roundtable: The 2023 Social Media Cases

When a public official blocks someone does that violate the Constitution's First Amendment?

May the state prevent social media companies from banning users for contentious rhetoric?

Did the Biden administration unlawfully put pressure on social media platforms to remove content with which it disagreed ("jawboning") — on issues such as criticism of the gov't response to the pandemic?

FREEDOM of the PRESS

Prior Restraint

Near v. Minnesota (1931), *N.Y. Times v. U.S.* (1971), pp.

Nebraska Press Association v. Stuart (1976) pp. 247-260

Student Press

Hazelwood v. Kuhlmeier (1988), pp. 260-264.

Yay! Libel and Porn

Libel

New York Times v. Sullivan (1964), pp. 275-287.

Hustler v. Falwell (1988).

Obscenity

Roth (1957), *Miller v. CA* (1973), pp. 287-296.

Child Pornography

New York v. Ferber (1982), pp. 296-300.

(pay attention to *Ashcroft* and *Williams*)

Interwebs Porn

Reno v. ACLU (1997) pp. 300-305.

Cruelty and Violence

United States v. Stevens ***, *Brown v. EMA* pp. 305-310.

THE SECOND AMENDMENT: THE RIGHT to BEAR ARMS

District of Columbia v. Heller (2008)

New York Rifle and Pistol Association v. Bruen (2022), pp. 313-323.

(*US v. Rahimi* (2023)) ***

THE FOURTH AMENDMENT: GOVERNMENT SEARCHES

What is “private?”

Katz v. U.S. (1967), *United States v. Jones* (2012) ***,
Florida v. Jardines (2013) pp. 410-14.
Carpenter v. US (2015), pp. 379-393.

Probable Cause v. Reasonableness

Terry v. Ohio (1968) pp. 393-401.

School Searches

Vernonia v. Acton (1995) ***,
Pottowatamie v. Earls (2002) ***,
Safford v. Redding (2009), pp. 403-407.

The Exclusionary Rule

Mapp v. Ohio (1961), *US v. Leon* (1984), *Hudson v. Michigan* (2006)
Herring v. US (2009) *** pp. 407-420

***** ROUNDTABLE on FOURTH AMENDMENT FREEDOM *****

Illinois v. Wardlow (1999) [is running probable cause?] ***
Wyoming v. Houghton (1999) [may a passenger in a car be searched, too?] ***
Illinois v. McArthur (2001) [can police detain you on your porch?] ***
Kyllo v. U.S. (2001) [is thermal imaging a “search?”] ***
U.S. v. Arvizu (2002) [the Court revisits “totality of circumstances ...] ***
U.S. v. Drayton (2002) [do you need to be read your rights against searches?] ***
Hiibel v. Nevada (2004) [must you provide your name when asked by police?] ***
...check out www.papersplease.org/hiibel/index.html
Illinois v. Cabellas (2005) [is a dog search a “search,” really?] ***
Scott v. Harris (2007) [is it “excessive force” and an “unreasonable detention” to run a speeding car off the road – just for speeding?] ***
Florence v. Board (2012) [can jails do strip searches regardless of danger of the inmate?]
McNeely v. Missouri (2013) [is a warrant needed to draw blood from a drunk driver?]
Maryland v. King (2013) [is a DNA swab while in custody a ‘search?’] ***
Rodriguez v. United States (2015) [Is waiting in your car for 48 minutes to fetch a drug doggie “reasonable?]

THE FIFTH AMENDMENT: RIGHT AGAINST SELF-INCRIMINATION

The Nature of Custody and Interrogation

Escobedo (1964), *Miranda* (1966), and *Seibert* (2004), pp. 420-436.

The Damn Roberts Court and Narrowing of 5th Amendment Rights

Berghuis v. Thompkins (2010) ***

Salinas v. Texas (2013) ***

THE SIXTH AMENDMENT

The Right to Counsel

Powell v. Alabama (1932), *Gideon v. Wainwright* (1963), pp. 437-446.

THE EIGHTH AMENDMENT

The Death Penalty

Gregg v. GA (1976) [is the death penalty inherently cruel, arbitrary?], pp. 465-476.

Atkins v. VA (2002) [executing the “mildly mentally retarded”], pp. 476-482.

Baze v. Rees (2008) [is lethal injection cruel/unusual] ***

Kennedy v. Louisiana (2008) [can child rapists be executed?] ***

Glossip v. Gross (2015) [Breyer, Ginsburg done with death] *** READ BEYERS DISSENT

Non-Capital Cases/”Three Strikes and Yer Out”

Ewing v. California (2003) ***

Gall v. United States (2008) ***

Kimbrough v. United States (2008) ***

Sex Offender Registries and Double Jeopardy

Otte v. Doe (2002), *Connecticut v. Doe* (2003), *Kansas v. Hendricks* (1997) *** (p. 484).

Beating People Silly in Prisons [THOMAS and ORIGINAL INTENT]

Hudson v. McMillian (awhile ago) ***

DISCRIMINATION

Racial--Segregation

Plessy (1896), pp. 497-518.

Sweatt (1950) and *Brown* (1954), *Brown II* (1955). *Swann v. Charlotte* (1971),

Parents v. Seattle (2007), pp. 528-547.

Marriage

Loving v. VA (1967), pp. 533-537.

Affirmative Action

Bakke (1978), *Students for Fair Admissions* (2022) pp. 537-549.

Illegitimate Sex/Gender Classifications

Reed (1971), *Boren* (1976), and *U.S. v. Virginia* (1996), pp. 549-565.

Aliens

Plyler v. Doe (1982), pp. 576-581.



above: aliens

Disability

PGA v. Martin (2001) ***

Toyota v. Williams (2002) ***

Equal Protection, Federal Intervention, and Elections

South Carolina v Katzenbach

Shelby v. Holder (2013)

Crawford v. Marion County Election Board (2008), pp. 584-598.

Political and Racial Gerrymandering, pp. 598-610.

Reynolds v. Sims (1964)

Miller v Johnson (1995)

Money

Citizens United (2010), pp. 617-628

McCutcheon v. FEC (2014)

