



CONSTITUTIONAL LAW II – GOVT-2232-20
Georgetown University – Summer 2024

Instructor: Prof. Joseph E. Hartman
Email: je93@georgetown.edu

Class times/location: Monday - Thursday, 10:50 AM-12:45 PM
Healy 103

Office Hours: Mondays & Wednesdays, 12:55-2:00 PM, by appointment

Class Description and Objectives:

This course explores the ways that the Constitution limits governmental authority over individuals within the U.S. by examining four issues within civil rights and civil liberties, broadly conceived: (1) the right to privacy, including abortion, the right to die and intimate associations; (2) free exercise of religion and the establishment clause; (3) freedom of speech and expression; and (4) equal protection, focusing on racial, gender and LGBTQ+ discrimination.

Note: Con Law I is not a prerequisite to Con Law II.

Course Materials

The following text is required for this class, and is available at the University Bookstore:

David O'Brien, Constitutional Law and Politics, vol. 2: Civil Rights and Civil Liberties (12th ed.)

In addition, students are required to read other selected materials as indicated in the class schedule below. From time to time there may be recommended, but not required, supplemental readings relevant to the subject matter of the course.

Preparation for and Participation in Class

There will be roughly 60-80 pages of reading per week, but the reading is at times dense. You will be expected to complete the reading prior to each class meeting. Although this course is presented largely in lecture format, ***your participation through questions and discussion will determine the quality of the course***. Accordingly, please come prepared; it not only facilitates class discussion, but it is very difficult to absorb a lot of cases at once. ***Your papers will be much better if you keep up on the readings.***

Course Grading and Requirements:

Your grade will be determined by your overall average, with each assignment graded on a 0-100-point scale. In addition to readings and attendance at lectures, you are required to complete two judicial opinion papers and a take-home final exam. The point distribution is as follows:

Judicial Opinion Papers:	25 percent
Class Participation:	5 percent
In-Class Exercises and Moot Court Simulations:	10 percent
Final Exam:	35 percent

Judicial Opinion Papers: Students will write two five-page judicial opinions in which they will “rule” on hypothetical fact patterns that relate to cases discussed in class.

Class Participation: Class attendance and regular participation are an important part of this course. If you wish to do well in this class, attendance is necessary. The participation grade will be based on how well you prepare for and engage in class discussions.

- Class discussion should reflect a comprehensive understanding of the assigned readings. Good participation moves beyond discussion of current events to critical engagement of the readings and application of the theories to specific substantive issues. Students will be called upon regularly in class to discuss assigned materials and related topics.
- Students are expected to promptly attend all classes and to complete all their assignments in a timely fashion. Missed classes, unless otherwise excused, may result in a reduction in your participation grade.

In-Class Exercises and Moot Court Simulations: For each judicial opinion paper, we will conduct mock Supreme Court oral arguments, with students serving as counsel and Supreme Court Justices. Immediately after oral arguments, we will have a question and answer session with the remainder of the class that will further assist you with preparation for your judicial opinion papers.

The grade ranges are defined as follows:

A= unusual excellence (A- 90-93.99; A 94-100)

B= work distinctly above average (B- 80-82.99; B 83-86.99, B+ 87-89.99)

C= work of average quality (C- 70-72.99; C 73-76.99; C+ 77-79.99)

D= below average work, the lowest passing mark (D 60-69.99)

F= Failure, no course Credit (59.99 and below)

Technical Support

- **Canvas** - Students have 24/7 access to <http://canvas.georgetown.edu/getting-help>, including live chat and a support hotline at (855) 338-2770
- **Zoom** - For support with Zoom, email: zoom@georgetown.edu
- **Use of Georgetown University-issued accounts** for Google Mail, Calendar, Groups, Talk, Docs, Sites, Video, and Contacts is governed by the contract between Georgetown University and Google. For help managing your Google Documents, visit [Google Drive Help Center](#).
- **Contact the UIS Service Center** at help@georgetown.edu if you have a question regarding:

- your GU netID and/or password
- your GU email account
- any connectivity issues

Academic Resources

Please note that the University offers a number of valuable academic resources, including:

- Georgetown University Writing Center (Lauinger Library, 217A; 202-687-4246; <http://writingcenter.georgetown.edu/>)
- Academic Resource Center (Leavey Center, Suite 335; 202-687-8354; arc@georgetown.edu; <http://ldss.georgetown.edu/>)

Students with disabilities should contact the Academic Resource Center (ARC) (Leavey Center, Suite 335; 202-687-8354; arc@georgetown.edu; <http://ldss.georgetown.edu/index.cfm>) before the start of classes to allow their office time to review the documentation and make recommendations for appropriate accommodations. If accommodations are recommended, you will be given a letter from ARC to share with your professors. You are personally responsible for completing this process officially and in a timely manner. Neither accommodations nor exceptions to policies can be permitted to students who have not completed this process in advance.

Academic Integrity, Classroom Conduct, and Extensions Policy

Students must follow the University Honor Code, which states:

In the pursuit of the high ideals and rigorous standards of academic life, I commit myself to respect and uphold the Georgetown University Honor System: To be honest in any academic endeavor, and To conduct myself honorably, as a responsible member of the Georgetown community, as we live and work together.

Failure to comply with the Honor Code will result in a grade of F in the course. Additional information concerning Georgetown's honor system is available at:

https://www11.georgetown.edu/programs/gervase/hc/honor_system.html.

Classroom Conduct

While classroom discussions will often be spirited and intense, students should be respectful and considerate of others' views and opinions. Student communications through email and social media (e.g., Facebook, Twitter) should remain respectful and professional as well.

Late Assignments

Two 24-hour extension "coupons" are included in this syllabus, which you may use to obtain extensions on an assignment due date. You may use the coupons all at once, individually, or in any combination you choose. No student may use more than two coupons over the course of the semester. I will keep track of student coupon use. Other than death in one's immediate family or a Dean's excuse attesting to a medical emergency, I will not permit extensions beyond those available through the coupons. A coupon allows a paper to be turned in by midnight the next **calendar** day after the original due date. Thus, a paper due on a Tuesday may be turned in at midnight on Wednesday without penalty, if submitted with a coupon. Note that a paper due on a Tuesday must be turned in on Friday by midnight with three coupons to be considered on time. For papers that exceed the coupon extension, I will deduct **five points** (out of a possible 100) for

every day a paper is late. ***Coupons are for use on paper assignments only. You may not use the coupons on the final exam, which must be turned in on time.***

Electronic Media Policy

For in-person sessions, students should turn off all cell phones, pagers, or other communication devices while in class. ***Unless you have a need documented by the Academic Resource Center, you may not use laptop computers, phones, tablets or other electronic devices during class time.*** Recent studies have confirmed not only that laptops and tablets tend to be distracting, but also that taking handwritten notes rather than typing results in superior information retention and conceptual grasp of the material studied, as it requires students to process the material rather than simply take dictation. Moreover, this course seeks to develop your capacity to think with agility and analytical rigor, and not just to absorb information.

Virtual Classroom Policies

Should exigent circumstances require us to meet virtually on Zoom, please adhere to the following practices:

- Attend class on time and remain on Zoom throughout the session;
- Arrive to the Zoom class prepared to discuss readings, current events, and other assigned materials;
- Unless you have received my prior approval, keep webcams and speakers on throughout the entire class session;
- Keep your microphone muted unless speaking;
- Dress appropriately for class;
- Limit eating to before or after class (or during breaks);

TENTATIVE SCHEDULE OF TOPICS AND ASSIGNMENTS

July 8: **Welcome and Course Introduction**

Rights, The Bill of Rights and the 14th Amendment

O'Brien, pp. 17-21

Amendments I - XV

The Nationalization of the Bill of Rights/Selective Incorporation

O'Brien, pp. 323-340

Barron v. Baltimore (1833)

I. THE CONTEXT OF CIVIL RIGHTS

July 9: **"Lochnerizing:" The Development and Demise of a "Liberty of Contract"**

O'Brien pp. 262-295

The Slaughterhouse Cases (1873)

Munn v. Illinois (1877)

Lochner v. New York (1905)

Muller v. Oregon (1908)

West Coast Hotel v. Parrish (1937)

II. THE RIGHT TO PRIVACY

The Origins of Privacy and the Question of Abortion

O'Brien, pp. 354-368

Rochin v. California (1952)

Griswold v. Connecticut (1965)

July 10: **Privacy and Reproductive Freedom**

O'Brien, pp. 1241-1270

Buck v. Bell (1927)

Roe v. Wade (1973)

The Scope of Privacy: From *Roe* to *Casey*

O'Brien, pp. 1270-1293

Maher v. Roe (1977)

Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)

Judicial Politics of Abortion in the Roberts Era

O'Brien, pp. 1294-1348, 1382-83

Whole Woman's Health v. Hellerstedt (2016)

Dobbs v. Jackson Women's Health Organization (2022)

July 11 **Privacy and Personal Autonomy I: Intimate Associations**

O'Brien, pp. 1348-1367

Lawrence v. Texas (2003)

Privacy and Personal Autonomy II: The Right to Die

O'Brien, pp. 1367- 1381

Cruzan by Cruzan v. Director, Missouri Department of Health (1990)

Washington v. Glucksberg (1997) and *Vacco v. Quill* (1997)

WRITING WORKSHOP

First Judicial Opinion Paper – Assignment Handed Out

III. FREEDOM OF SPEECH

July 15 **Judicial Approaches to the First Amendment**

O'Brien, pp. 432-477

Schenck v. United States (1919)

Gitlow v. People of the State of New York (1925)

Dennis v. United States (1951)

Brandenburg v. Ohio (1969)

First Judicial Opinion Paper – Moot Court/Oral Arguments

- July 16 **Fighting Words and Offensive Speech**
 O'Brien, pp. 519-572
Cohen v. California (1971)
FCC v. Pacifica (1978)
Bethel School District No. 403 v. Fraser (1986)
R.A.V. v. City of St. Paul, Minnesota (1992)
Wisconsin v. Mitchell (1993)
Virginia v. Black (2003)
Brown v. Entertainment Merchants Association (2011)
- July 17 **11:00 – Guest Lecture, TBD**
- July 18: **Symbolic Speech and Speech-Plus-Conduct**
 O'Brien, pp. 656-689
West Virginia State Board of Education v. Barnette (1941)
Tinker v. Des Moines Independent Community School District (1969)
Morse v. Frederick (2007)
Texas v. Johnson (1989)
First Judicial Opinion Paper Due

IV. FREEDOM FROM AND OF RELIGION

- July 22: **Establishment Clause Incorporation and School Prayer**
 O'Brien, pp. 708-752
Everson v. Board of Education of Ewing Township (1947)
Engel v. Vitale (1962)
Abingdon School District v. Schempp (1963)
- The Lemon Test**
 O'Brien, pp. 752-771
Lemon v. Kurtzman (1971)
Wallace v. Jaffree (1985)
Lee v. Weisman (1992)
- July 23 **Recent Developments: The Ten Commandments, School Funding and Prayer**
 O'Brien, pp. 772 - 808
Zobrest v. Catalina Foothills School District (1993)
Van Orden v. Perry (2005)
McCreary v. American Civil Liberties Union of Kentucky (2005)
Carson v. Makin (2022)
Kennedy v. Bremerton School District (2022)
- July 24-25 **No Class**

July 29

Free Exercise and the Limits of Pluralism

O'Brien, pp. 808 - 829

Sherbert v. Verner (1963)

Wisconsin v. Yoder (1972)

Neutrality, Targeting Religion and RFRA

O'Brien, pp. 830 - 847

Employment Division v. Smith (1990)

Church of the Lukumi Babalu Aye v. City of Hialeah (1993)

City of Boerne v. Flores (1997)

Recent Developments in Free Exercise: "Play in the Joints" and Non-Discrimination

O'Brien, pp. 848 – 859

Locke v. Davey (2004)

Trinity Lutheran Church of Columbia v. Comer (2017)

Second Judicial Opinion Paper – Assignment Handed Out

V. EQUAL PROTECTION AND RACIAL DISCRIMINATION

July 30

Racial Discrimination and State Action

O'Brien, pp. 1384 - 1440

Dred Scott v. Sandford (1857)

The Civil Rights Cases (1883)

Plessy v. Ferguson (1896)

Shelley v. Kraemer (1948)

Racial Discrimination in Education I: From *Plessy* to *Brown*

O'Brien, pp. 1440 - 1469

Brown v. Board of Education of Topeka, Kansas (Brown I) (1954)

Bolling v. Sharpe (1954)

Brown v. Board of Education of Topeka, Kansas (Brown II) (1955)

July 31

Film: *The Murder of Emmett Till*

Second Judicial Opinion Paper – Moot Court/Oral Arguments

Aug. 1

Racial Discrimination in Education II: From *Brown* to *Parents Involved* O'Brien, pp. 1469 - 1495

Cooper v. Aaron (1958)

Freeman v. Pitts (1992)

Parents Involved in Community Schools v. Seattle School District No. 1 (2007)

Use of Race in Higher Education Admissions: The *Bakke* Case

O'Brien, pp. 1496 – 1517

Regents of the University of California v. Bakke (1978)

Affirmative Action and Government Contracts

O'Brien, pp. 1518 - 1526

City of Richmond v. J.A. Croson (1989)

Aug. 5

Race and Equal Protection in the Twenty-First Century

O'Brien, pp. 1526 – 1554

Gratz v. Bollinger (2003)

Grutter v. Bollinger (2003)

Schuetz v. Coalition to Defend Affirmative Action, Integration, and Immigration Rights and Fight for Equality By Any Means Necessary (2014)

Fisher v. University of Texas at Austin (Fisher II) (2016)

Students for Fair Admissions v. Harvard University (2023) (pdf)

Second Judicial Opinion Paper Due

VI. EQUAL PROTECTION AND NONRACIAL CLASSIFICATIONS

Aug. 6:

Gender Discrimination and the Rise of Intermediate Scrutiny

O'Brien, pp. 1554 - 1583

Frontiero v. Richardson (1973)

Craig v. Boren (1976)

Michael M. v. Superior Court of Sonoma County (1981)

United States v. Virginia (1996)

Final Exam Handed Out

Aug. 7

Discrimination Against the LGBTQ Community

O'Brien, pp. 1584 – 1643

Romer v. Evans (1996)

Obergefell v. Hodges (2015)

Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018)

Bostock v. Clayton County, Georgia (2020)

303 Creative LLC v. Elenis (2023) (pdf)

Aug. 8:

Last Day of Class

Concluding Remarks

Class Evaluations

Aug. 14:

Final Exam Due, 11:59.59 p.m.

Syllabus Modification: In some instances, the syllabus might need to be altered, and the Instructor retains the right to do so. In those instances, the Instructor will give notice of those changes to the class in a timely manner.

Extension Coupons



COUPON #1 – CONSTITUTIONAL LAW II (SUMMER 2024)

This coupon entitles you to an automatic, no questions asked, 24-hour (one calendar day) extension on any paper for Constitutional Law II, subject to limitations detailed in the syllabus.



COUPON #2 – CONSTITUTIONAL LAW II (SUMMER 2024)

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