The First Amendment

PS 470
Fall 2018
4 Credits

Lecture:
Tue. & Thurs. 4:00-5:15pm
Soc Sci 6102

Instructor: Brendon Westler
bwestler@wisc.edu
M 10:00-12:00 am & Appt.
Meiklejohn House 201

Discussion Sections:
Tue. 8:50-9:40am
Tue. 2:25-3:15pm
Thurs. 2:25-3:15pm

Teaching Assistant: Jackson Parr
jgparr@wisc.edu
Tue 12:00-2:00 & Appt.
North Hall Lounge

Course Description:

This course explores legal, historical, and philosophical aspects of the First Amendment. This means discussing and analyzing what we have come to consider as acceptable—or not—regarding issues of limiting and allowing speech, association, and religion. Reasonable people will disagree over whether or not these lines have been drawn properly. That we limit certain types of expression, association, or religious practice is not obvious or necessary, and in fact is the product of long historical and legal process. By exploring this process, we position ourselves to better understand what is at stake when making First Amendment claims.

In this course, we critically examine key court cases (mostly from the US Supreme Court) that together have greatly influenced how we think about the First Amendment. We will also be reading a few secondary sources related to the theoretical and historical aspects of the course topic. The orientation of the course is to explore First Amendment law while incorporating a view from legal and/or political theory.

Many of the issues discussed in the course remain controversial today. In light of this fact, and in the best spirit of the freedom of speech, I will take this opportunity to remind students to be respectful of their fellow classmates—both in presenting opinions and in responding to others.

Requirements:
Case Briefs/Attendance: 10%
Speech Restrictions Paper: 10%
Midterm Exam: 25%
Judicial Opinion/Attorney’s Brief: 25%
Final Exam: 30%

Grading Scale:
93 % + A
88-92.99 A/B
83-87.99 B
78-82.99 B/C
73-77.99 C
68-72.99 D
68> F
Important Dates/Deadlines:

- October 4—Speech Restriction Paper Due
- October 18—No Lecture
- October 23—Midterm Exam
- November 22—No Class: Thanksgiving
- November 27—Attorney’s Briefs Due
- November 29—Moot Court in Section (No Lecture)
- December 4—Moot Court in Section (No Lecture)
- December 6—Judicial Opinion Paper Due (Nov. 29 Section)
- December 11—Judicial Opinion Paper Due (Dec. 4 Sections)
- December 17—Final Exam (12:25-2:25)

For dates related to enrollment (e.g., Add, Drop, Withdraw), see: https://registrar.wisc.edu/dates/.

Required Texts:


Students are required to purchase these editions. Students must bring the texts to lecture and section when the text is under discussion.

In an effort to reduce cost to students, most readings will be available online. Please bring the readings to lecture and discussion sections, physically or electronically. Readings as listed in the syllabus are subject to change, pending pace of class and other factors.

Exams:

There are two exams in the course: one midterm exam and one final exam. The midterm will be held on October 23. The final exam is on Monday December 17, 2018 from 12:25-2:25pm.

Both exams will be some combination of short/medium length answers, fill-in-the-blank, and multiple choice. The final exam will be comprehensive in nature but will prioritize material from the second half of the class.

Attendance:

This will be determined through the semi-regular collection of case briefs. Case briefs are short depictions of the cases. Each case should fill between .5 and 1 page. In the case briefs, you should provide the facts of the case (its name, parties involved, the events that led to the case), the legal issues in question, the decision of the court, and a brief summary of the rationale for the
decision. A clear description and an example will be posted on Canvas.

Collections will be random and without prior announcement, with one exception (see below). This means that it is important for you to bring your case briefs with you to class. The case briefs will be graded on a pass/fail basis.

**Moot Court:**

One portion of your grade will be determined though participation in a moot court during your discussion sections. You must attend the moot courts; we will collect case briefs to ensure attendance.

In the moot court, you will either take on the role of an attorney or that of a justice. If you are an attorney (only two in a section), you must make an argument on behalf of your client as to why their position ought to win. This argument will first be made in the form of a written paper to be distributed to the section before the moot court and then again as part of an oral presentation. For this extra work, attorneys receive a small amount of extra credit on their paper. The justices are responsible for reading the attorneys briefs, posing questions during the moot court, and writing up their decisions in an opinion paper.

**Papers:**

There are two papers required in this course. Brief descriptions are provided here, with more complete instructions provided closer to the due date:

- Speech Restrictions Paper: This is a 2-3 page reflection paper on themes pertaining to limitations placed on speech.
- Attorney’s Brief/Judicial Opinion: This is a 5 page paper connected to the topic of the Moot Court.

Grading rubrics will be available to help guide you and to let you know what the instructor is looking for. In short, the paper must be well-organized, well-argued, with good use of supporting (textual) evidence. Late papers will be penalized a half letter grade per day. Papers more than three days late will not be accepted.

**Credit Hours:**

There are four credits given for successful completion of this course. For each credit hour, there is an expectation that there are 50 minutes of classroom activity per week and two hours of student work outside the classroom per week. This means that in addition to attending lecture and discussion weekly, there is an expectation that students average eight hours of work each week outside of the classroom. The majority of these hours will be spent doing the readings for the course. The remainder of the time will be spent writing the required papers, preparing for exams, writing case briefs, and so on.
Learning Outcomes:

- Understand history of key Supreme Court cases in the 19th and 20th centuries
- Fashion an argument based on past cases and other sources
- Balance competing constitutional claims
- Organize a short reflective essay
- Apply constitutional tests to new cases
- Identify and critically analyze key concepts of legal thought
- Present arguments and ideas orally and in the form of a paper
- Become familiarized with law school-style exam

Course Plan:

September 6—Introduction

What are rights, what are their limits?

September 11—
Read: The US Constitution and Amendments

September 13—
Read: John Stuart Mill, On Liberty, Ch. 1; Alexander Meiklejohn, Free Speech and Its Relation to Self-Government, Ch. 1

Content-Based Restrictions/Political Speech—Dangerous Ideas and Information

September 18—
Read: Schenck v. United States; Debs v. United States

September 20—
Read: Gitlow v. New York (Annotation and Syllabus); Whitney v. California

September 25—
Read: Dennis v. United States (Annotation and Syllabus); Brandenburg v. Ohio

Symbolic Speech: Time, Place, Manner Restrictions

September 27—
Content-Based Restrictions/Obscene or Offensive Speech—“Low” Value Speech

October 2—
Read: Roth v. United States (Annotation and Syllabus); Miller v. California (Obscene Speech)

October 4—
Read: Barnes v. Glen Theatre (Annotation and Syllabus); Erie v. Pap’s A.M. (Annotation and Syllabus)
Speech Restrictions Paper Due

October 9—
Read: R.A.V. v. St. Paul (Annotation and Syllabus); Clearly, Beyond the Burning Cross (Selections TBD) (Offensive Speech)

October 11—
Read: Beauharnais v. Illinois (Annotation and Syllabus); Wisconsin v. Mitchell (Offensive Speech)

Academic Freedom and Campus Speech

October 16—
Read: Jacob Levy, “Safe spaces...”; Donald Downs “Academic Freedom: What It Is, What It Isn’t, And How to Tell the Difference”

October 18—No Lecture (Review for Midterm in sections on Thursday Oct. 18 and Tuesday Oct. 23)

October 23—Midterm Exam

Regulation of Political Solicitation, Contribution, Expenditure, and Activity

October 25—
Read: Buckley v. Valeo, Citizens United v. FEC (Annotation and Syllabus)

The Right Not to Speak

October 30—
Read: West Virginia Board of Education v. Barnette (Annotation and Syllabus); Wooley v. Maynard

Religion—Establishment Clause
November 1—
**Read:** Abington v. Schempp (Annotation and Syllabus), Lemon v. Kurtzman

November 6—
**Read:** Lee v. Weisman (Annotation and Syllabus), Lynch v. Donnelly

November 8—
**Read:** Mueller v. Allen (Annotation and Syllabus), Zobrest v. Catalina Foothills

**Religion—Free Exercise and Required Accommodations**

November 13—
**Read:** Reynolds v. United States, Sherbert v. Verner

November 15—
**Read:** Wisconsin v. Yoder, Employment Division v. Smith (Annotation and Syllabus)

**Religion—Free Exercise and Permissible Accommodations**

November 20—
**Read:** Jesus Christ of Latter-Day Saints v. Amos

November 22—**No Class, Thanksgiving**

November 27—
**Read:** Texas Monthly v Bullock (Annotation and Syllabus), Kiryas Joel v Grumet
**Attorney’s Briefs Due**

November 29—**No Lecture: Moot Court in Section**

December 4—**No Lecture: Moot Court in Section**

**Conclusions**

December 6—
**Read:** Jonathan Rauch, Kindly Inquisitors (Chs. 1-3)
**Judicial Opinion Papers Due for Nov. 29 Section**

December 11—
**Read:** Jonathan Rauch, Kindly Inquisitors (Chs. 4-6)
**Judicial Opinion Papers Due for Dec. 4 Sections**

December 17—**Final Exam: 12:25-2:25pm**