

PSCI 4210 CONSTITUTIONAL LAW: RIGHTS AND LIBERTIES
FALL 2016
TR 11:00 AM – 12:20 PM, BLB 225

Instructor

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Office Hours: T 2:00 – 4:00, W 12:00 – 2:00, and by appointment

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Course Description and Objectives

This course provides a survey of constitutional provisions that define our rights as citizens in the United States. Specifically, we will cover issues of free expression; freedom of religion; privacy; and equal treatment based on race, gender, and sexual orientation. There is a separate course that considers the constitutional basis for governmental power in the U.S., and yet another that considers the constitutional rights afforded those accused of crimes. While much of our focus will be on decisions of the U.S. Supreme Court, we will also consider the historical and political context in which these cases exist and the interplay between the courts and the elected branches of government.

The primary objectives of this course are to introduce you to important legal issues that affect us all in our daily lives while simultaneously developing skills in legal reasoning and research, critical thinking, and written communication.

While there are no formal prerequisites to this course, students who lack a basic understanding of American governmental processes (most notably the structure and function of the U.S. courts), a working knowledge of U.S. history, or facility with English will find this class more difficult. You should plan to spend six to nine hours a week outside of class working on this material.

Course Materials

There is a single required textbook for this course:

Fisher and Harriger. *American Constitutional Law, 11th Edition, Volume 2, Constitutional Rights: Civil Rights and Civil Liberties*. Durham, N.C.: Carolina Academic Press. (ACL)

You are welcome to purchase this book through Amazon, the publisher's website, or the UNT bookstore. Make sure that the book you purchase is Volume 2 (Volume 1 is a totally different set of materials) and the 11th Edition (there are new cases added for each edition). There is a copy of this book on reserve in the Willis Library.

All other readings will be posted on Blackboard.

Assignments and Grading

Your grade in this class will be based on the following components:

Exams (3 @ 20% each)	60%
Participation	10%
Briefs	10%
Paper	20%
Total	100%

Grades will be assigned using a standard scale: 90% - 100% is an A, 80% - 89% is a B, 70% - 79% is a C, 60% - 69% is a D, and any score below a 60% is an F. I use standard mathematical rounding. If I offer extra credit, it will be for the whole class.

Class Communication

Blackboard: We will use Blackboard for a variety of purposes in this class: several readings will be posted in Blackboard, your grades will be posted in Blackboard, and your final paper must be turned in through Blackboard. In addition, there is a discussion board for frequently asked questions. If you have a question that may be of general interest to the class, please post it in the discussion board. Your classmates can answer the question there. I will regularly check the wiki and will update/correct any information. I will also send class announcements via Blackboard's e-mail.

E-Mail: You are welcome to contact me via e-mail. If you send me a question that is about class policy, you will likely get one of two responses: (1) it is on the syllabus or (2) you should post this to the discussion board. I am not trying to be difficult, but I want to encourage you to look for guidance elsewhere and to help each other in the class.

If, however, you have a question or concern that is private, please do e-mail me at wendy.watson@unt.edu. If you write me Monday through Friday, I will respond within 24 hours (barring some emergency). If you write me after close of business on Friday, you can expect an answer back during the day on Monday. When you e-mail me, you should (1) provide a subject line that indicates which class the e-mail concerns; (2) sign the e-mail with your full name; (3) include a proper salutation ("Dear Professor Watson" is safe); and (4) if you expect a response, ask a specific question.

Facebook: I have created a Facebook group for this course. Membership is entirely optional. Note that anything you share in the Facebook community is governed by Facebook's privacy policies. The group is closed (I will only admit members of the class), but content may be shared by group members and I have no control over that. Please be cautious about what you say there. Insulting or offensive posts will be removed.

<https://www.facebook.com/groups/WatsonCivilLibertiesF2016/>

Remind: Remind is an app for your iPhone or Android device. You join our class on Remind, and I will be able to contact you with class announcements via text. Please sign up for Remind if you do not regularly check your UNT e-mail address.

Law Firms

You will sign up to be a member of simulated law firm (three-four people). Your firm will be able to collaborate on case briefs and will be required to collaborate on the term paper and proposed exam questions (see below). If you do not sign up for a firm by Monday, September 5 at 5 PM, you will be assigned to one.

Graded Work

Exams: There are three exams in this course, each over roughly one third of the material. Exams will be held in the university computer testing center (330 Sage Hall). Exams will include multiple-choice questions and a “hypothetical” (a fact pattern in which you will need to identify legal issues and make a legal argument).

On the Sunday before the exam, the “managing partner” of each law firm will submit 5 proposed multiple-choice questions (including the correct answer and three “distractors”). You should use the firm’s discussion board to develop proposed questions as the material is covered. The process of developing proposed questions is a great way to study! To encourage firms to write challenging questions, the firm with the highest exam average at the end of the term will receive bragging rights, and the individual with the highest exam average will receive the course “book award” (a law school tradition of honoring the highest grade in the class).

If you miss an exam for any reason, you will need to complete a make-up exam (of my creation) during final exam week.

Participation: You must sign up for an account with REEF polling (FMI see Blackboard). Because UNT has a site license for this software, there is no charge to sign up. You will need to bring some sort of device (smart phone, phone with text capabilities, tablet, or laptop) to class every day so you can respond to REEF polls over the reading. To earn the REEF point for a day, you must answer 75% of the questions. REEF constitutes 10% of your grade. If you need to miss class for any reason, you must notify me before class starts. I will simply award you the points for the day for the first three times that happens. After that, your participation grade will suffer. ** NB: If we have technical difficulty with REEF, I reserve the right to assess participation/attendance in another way. **

Briefs: In this context, a brief is a stylized summary of a court decision. We will discuss the structure of briefs in class. You are expected to brief all of the cases we read in class. You may be fainting right now, but don’t worry: members of a simulated law firm can work together on briefing cases. You should have a hard (paper) copy of every case brief in every class. I will periodically pick up a brief. If you collaborate on briefs, you should include the names of all collaborators on the copy that is turned in.

Paper: Twenty percent of your grade in this class will be based on a simulated legal brief (in this case, a brief is a legal argument made to a court) on a real case that may or may not be heard by the U.S. Supreme Court. Details about the paper are located at the end of this syllabus.

Class Policies

Late Work: Late briefs will not be accepted. Late papers will be docked by 10% for each period they are late: on the due date but after 5 PM (10%); 12:01 AM Friday to midnight Friday (20%); 12:01 AM Saturday to midnight Saturday (30%); 12:01 AM Sunday to midnight Sunday (40%); after midnight Sunday (no credit ... a score of 0).

Missed Exams: If you need to miss part or all of an exam (assessment) for any reason, you will need to notify me IN WRITING within 24 hours of your absence. Make-up exams will be held during the time reserved for the final exam by the university (Tuesday, December 13, 10:30 – 12:30) and will be essay in format.

Academic Integrity: Academic integrity is defined in the UNT Policy on Student Standards for Academic Integrity. Any suspected case of Academic dishonesty will be handled in accordance with the University policy and procedures. Possible academic penalties range from a verbal or written admonition to a grade of F in the course. Plagiarism on the course paper will result in an F in the course; plagiarism on a case brief will result in a “0” for that portion of the assignment. Further sanctions (imposed by the university) may apply to incidents involving major violations. I report all instances of academic misconduct to the university. FMI: <http://facultysuccess.unt.edu/academic-integrity>

Students with Disabilities: The University of North Texas makes reasonable academic accommodation for students with disabilities. Students seeking reasonable accommodation must first register with the Office of Disability Accommodation (ODA) to verify their eligibility. If a disability is verified, the ODA will provide you with a reasonable accommodation letter to be delivered to faculty to begin a private discussion regarding your specific needs in a course. You may request reasonable accommodations at any time, however, ODA notices of reasonable accommodation should be provided as early as possible in the semester to avoid any delay in implementation. Note that students must obtain a new letter of reasonable accommodation for every semester and must meet with each faculty member prior to implementation in each class. Students are strongly encouraged to deliver letters of reasonable accommodation during faculty office hours or by appointment. Faculty members have the authority to ask students to discuss such letters during their designated office hours to protect the privacy of the student. For additional information see the Office of Disability Accommodation website at <http://www.unt.edu/oda>. You may also contact them by phone at 940.565.4323.

Student Conduct: Student behavior that interferes with an instructor's ability to conduct a class or other students' opportunity to learn is unacceptable and disruptive and will not be tolerated in any instructional forum at UNT. Students engaging in unacceptable behavior will be directed to leave the classroom and the instructor may refer the student to the Dean of Students to consider whether the student's conduct violated the Code of Student Conduct. The university's expectations for student conduct apply to all instructional forums, including university and electronic classroom, labs, discussion groups, field trips, etc. The Code of Student Conduct can be found at <http://deanofstudents.unt.edu>.

Course Schedule

Readings and case briefs should be completed prior to the class meeting for which they are listed. This schedule is subject to change in the event of instructor illness or a university inclement weather event.

Introduction to the Course, the Court, and Legal Resources

- August 30 (T) Read the syllabus
 Use Blackboard discussion board to identify “law firm” associates
 Join class Facebook group (optional)
- September 1 (R) Read “Primer on the Courts and Judicial Review” (on Blackboard)
 Enroll in law firm on Blackboard
- September 6 (T) Read “How to Brief a Supreme Court Case” (Blackboard)
 Read and Brief *Love v. Reed* (8th Cir., 2000) (Blackboard)
 Read “Introduction to Legal Reasoning” (Blackboard)
 Meet with your firm to choose cases for paper
- September 8 (R) Read “Introduction to Legal Research” (Blackboard)
 Meet in 136 Willis for legal research and writing workshop

Free Expression

- September 13 (T) Read ACL pp. 445- 463
 Brief *Schenck v. U.S.* (1919)
 Brief *Abrams v. U.S.* (1919)
 Brief *Gitlow v. New York* (1925)
 Brief *Whitney v. California* (1927)
 Brief *Dennis v. U.S.* (1951)
 Brief *Brandenburg v. Ohio* (1969)
 Brief *Holder v. Humanitarian Law Project* (2010)
- September 15 (R) Read ACL pp. 463 – 488
 Brief *Walker v. Texas Div., Sons of Confederate Veterans* (2015)
 Brief *Cohen v. California* (1971)
 Brief *R.A.V. v. St. Paul* (1992)
 Brief *Tinker v. Des Moines School Dist.* (1969)
 Brief *Morse v. Frederick* (2007)
- September 20 (T) Read ACL pp. 488 – 506, 1042-1061
 Brief *Texas v. Johnson* (1989)
 Brief *Snyder v. Phelps* (2011)
 Brief *FCC v. Pacifica Foundation* (1978)
 Brief *Buckley v. Valeo* (1976)
 Brief *Citizens United v. FEC* (2010)

- September 22 (R) Read ACL pp. 509 - 527
 Brief Near v. Minnesota (1931)
 Brief New York Times Co. v. U.S. (1971)
 Brief Branzburg v. Hayes (1972)
- September 27 (T) Read ACL pp. 527 - 548
 Brief Nebraska Press Assn. v. Stuart (1976)
 Brief Gannett Co. v. DePasquale (1979)
 Brief Richmond Newspapers, Inc. v. Virginia (1980)
 Brief New York Times Co. v. Sullivan (1964)
 Brief Gertz v. Robert Welch, Inc. (1974)
 Brief Hustler Magazine v. Falwell (1988)
- September 29 (R) Read ACL pp. 548 - 566
 Brief Roth v. U.S. (1957)
 Brief Miller v. California (1973)
 Brief New York v. Ferber (1982)
 Brief Reno v. ACLU (1997)
- October 2 (S) Managing partners submit EXAM 1 questions via Blackboard
- October 4 (T) EXAM 1 - Meet in 330 Sage Hall
- October 6 (R) Review EXAM 1

Freedom of Religion

- October 11 (T) Read ACL pp. 569 - 591
 Brief Minersville School District v. Gobitis (1940)
 Brief West Virginia State Board of Education v. Barnette (1943)
 Brief Goldman v. Weinberger (1986)
 Brief Burwell v. Hobby Lobby Stores, Inc. (2014)
- October 13 (R) Read ACL pp. 591 - 608
 Brief Lynch v. Donnelly (1984)
 Brief Allegheny Co. v. Greater Pittsburgh ACLU (1989)
 Brief Employment Division v. Smith (1990)
 Brief City of Boerne v. Flores (1997)
- October 18 (T) Read ACL pp. 608 - 640
 Brief Everson v. Bd. of Education (1947)
 Brief Lemon v. Kurtzman (1971)
 Brief Zelman v. Simmons-Harris (2002)
 Brief Engel v. Vitale (1962)
 Brief Wallace v. Jaffree (1985)
 Brief Lee v. Weisman (1992)
 Brief Santa Fe Ind. Sch. Dist. v. Doe (2000)
 Brief McCreary County v. ACLU (2005)

Civil Rights

- October 20 (R) Read ACL pp. 787-803
 Brief Dred Scott v. Sandford (1857)
 Brief Civil Rights Cases (1883)
 Brief Plessy v. Ferguson (1896)
- October 25 (T) Read ACL pp. 803-826
 Brief Brown v. Board of Education (1954)
 Brief Bolling v. Sharpe (1954)
 Brief Brown v. Board of Education II (1955)
 Brief Cooper v. Aaron (1958)
 Brief Swann v. Charlotte-Mcklenburg (1971)
 Brief Milliken v. Bradley (1974)
 Brief Parents Involved in Community Schools v. Seattle (2007)
- October 27 (R) Read ACL pp. 826-857
 Brief Shelley v. Kraemer (1948)
 Brief Heart of Atlanta Motel v. U.S. (1964)
 Brief Regents of the University of CA v. Bakke (1978)
 Brief Fullilove v. Klutznick (1980)
 Brief Richmond v. Croson Co. (1989)
 Brief Adarand Constructors, Inc., v. Pena (1995)
 Brief Gratz v. Bollinger (2003)
 Brief Grutter v. Bollinger (2003)
- October 30 (S) Managing partners submit EXAM 2 questions via Blackboard
- November 1 (T) EXAM 2 – Meet in 330 Sage Hall
- November 3 (R) Review EXAM 2
- November 8 (T) Read ACL pp. 861 – 872
 Brief Bradwell v. State (1873)
- November 10 (R) Read ACL pp. 872 – 898
 Brief Fronteiro v. Richardson (1973)
 Brief Craig v. Boren (1976)
 Brief Michael M. v. Sonoma County Superior Court (1981)
 Brief Personnel Administrator of Mass. v. Feeney (1979)
 Brief Johnson v. Transportation Agency (1987)
 Brief Automobile Workers v. Johnson Controls (1991)
 Brief Rostker v. Goldberg (1981)
 Brief U.S. v. Virginia (1996)

November 15 (T) Read ACL pp. 898 – 912
 Brief Yick Wo v. Hopkins (1886)
 Brief Plyler v. Doe (1982)
 Brief Shapiro v. Thompson (1969)
 Brief San Antonio School Dist. v. Rodriguez (1973)
 Draft of term paper due to team members on Blackboard

November 17 (R) Read ACL pp. 912 – 922
 Brief Romer v. Evans (1996)
 Brief U.S. v. Windsor (2013)

Privacy

November 22 (T) Read ACL pp. 925 – 936
 Brief Buck v. Bell (1927)
 Brief Stanley v. Georgia (1969)
 Brief Griswold v. Connecticut (1965)
 Feedback of team member papers due via Blackboard (by 5 PM)

November 24 (R) THANKSGIVING

November 29 (T) Read ACL pp. 936 – 960
 Brief Roe v. Wade (1973)
 Brief Harris v. McRae (1980)
 Brief Akron v. Akron Center for Reproductive Health (1983)
 Brief Planned Parenthood v. Casey (1992)
 Brief Stenberg v. Carhart (2000)
 Brief Gonzales v. Carhart (2007)

December 1 (R) Read ACL pp. 960 – 987
 Brief Cruzan v. Director, Missouri Dept. of Health (1990)
 Brief Vacco v. Quill (1997)
 Brief Bowers v. Hardwick (1986)
 Brief Lawrence v. Texas (2003)
 Brief Obergefell v. Hodges (2015)
 FINAL PAPER DUE AT 5:00 PM VIA BLACKBOARD

December 4 (S) Managing partners submit EXAM 3 questions via Blackboard

December 6 (T) EXAM 3 – Meet in 330 Sage Hall

December 8 (R) Review EXAM 3
“Best” firm award and individual book award
End of semester celebration

December 13 (T) MAKE-UP EXAMS 10:30 AM – 12:30 PM

PAPER ASSIGNMENT

You are part of a small (four person) law firm. Your firm has taken on four cases that have been accepted for review by the U.S. Supreme Court (in reality, these are petitions for review, but the Supreme Court has not yet decided to hear any of these cases). You need to divide the four cases up among the members of your law firm, each tackling one of them.

Your job is to write a brief to the U.S. Supreme Court supporting your client's position (I am telling you who your client is, so you don't have a choice of which side to take here ...). A brief is a persuasive argument. An example of a brief (this type of brief) is posted on Blackboard under the "Paper" tab.

Here are the cases you will be addressing:

Stormans v. Wiesman (U.S. Court of Appeals for the 9th Circuit): Washington state regulations require licensed pharmacies to provide "timely delivery" of all prescription medications to those who hold a valid prescription. There are exceptions to the rule that allow pharmacies to deny delivery for business reasons (such as a fraudulent prescription or the patient's inability to pay). Similarly, there is an exception that allows an individual pharmacist to refuse to fill a prescription based on a religious objection. Stormans, Inc., operates a pharmacy d/b/a Ralph's Thriftway. Because of the religious objection of the company's owner, Stormans, Inc., has decided not to stock the medication generally referred to as the "morning after pill," a drug that has an abortifacient effect). Stormans, Inc., has challenged the Washington regulations as a violation of the Free Exercise Clause of the First Amendment. Question: Do corporations have Free Exercise rights that can be asserted under the U.S. Constitution. Your client is Stormans, Inc.

Pro-Football v. Blackhorse (U.S. Court of Appeals for the 4th Circuit): Section 2(a) of the Lanham Act (which allows for the trademarking of commercial marks) prohibits the registration of trademarks that "may disparage ... persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute." Petitioner owned six trademark registrations for the NFL Washington Redskins. In 2014, the U.S. Patent and Trademark Office canceled those registrations because the mark (the "Redskins") disparages Native Americans. While there are a host of questions presented by this case, and a companion case involving a rock band called "The Slants," your inquiry is limited to the case of the Redskins and the question of whether the nondisparagement clause of the Lanham Act violates the petitioner's right to free speech. Your client is the United States of American, Intervenor-Respondent, which seeks to uphold the statutory provision.

Packingham v. State of North Carolina (Supreme Court of North Carolina): Like many states, North Carolina maintains a registry for individuals who have been convicted of sex offenses. Lester Packingham was convicted in 2002 of an offense that requires him to register as a sex offender. North Carolina has updated its sex offender registration law numerous times. In 2008, it added a provision that, among other things, prohibits registrants from "being" on social networking websites (a commercial website that "facilitates the social introduction" of people) if the site is known to allow minors to maintain accounts. Packingham created an account on Facebook. While there is no evidence that he approached or communicated with any minors, he posted a status

indicating that “God is good” (for dismissing a parking ticket). He was arrested and charged with a felony. He has challenged the application of the statute as a violation of his First Amendment rights. Your client is the State of North Carolina.

Colorado State Board of Education v. Taxpayers for Public Education (Supreme Court of Colorado): The Douglas County School District adopted a public scholarship program to help families who wish to send their children to private school offset the tuition at those schools. The policy was explicitly neutral toward religious schools: the scholarship could be used to attend any private school, whether it was religious or not. The Supreme Court of Colorado struck down the program as violating a provision of the Colorado Constitution which prohibits the use of any public money to “aid ... any church or sectarian society.” The questions presented is whether the “no aid” provision of the Colorado Constitution is in conflict with the First Amendment because, as applied here, it forces the school district to discriminate against religious schools. Your client is Taxpayers for Public Education (the group opposing the program and thus supporting the Colorado Supreme Court’s decision).

Here are some things you need to know:

- Your finished brief should be formatted like a brief (please see the example on Blackboard). The entire document will be 12 – 15 pages in length. Of that 12 – 15 pages, no more than three pages should be devoted to a recitation of the facts underlying the dispute in your case.
- You will need to do actual legal research, looking up cases online. You can use Lexis/Nexis (which we will cover in class), Oyez, or Findlaw. They all work. You are also welcome to use law review articles, but you cannot rely on other websites.
- You should use “Bluebook” citation format (this is the citation format used by lawyers). You can find all the information you need about Bluebook citation format here: <https://www.law.cornell.edu/citation/>
- Spelling, grammar, and organization absolutely matter. While you may be tempted to mimic “legalese,” keep in mind that clarity comes first. Don’t use words if you don’t know what they mean.
- On **November 15**, you will distribute a draft of your paper to your law firm via Blackboard. Each member of the firm should review the briefs of their fellow associates. You should use “track changes” or some similar electronic notation system and send your fellow associate your notes electronically, via the file share feature of Blackboard. You must return the briefs you reviewed by Thursday, **November 22**, so your associates have time to incorporate your comments into their final products. Failure to provide feedback to your classmates will result in a 10% deduction (per missing paper – so up to 30%) off YOUR paper grade.
- Your final briefs must be uploaded to Blackboard (via TurnItIn) no later than **5:00 PM on Thursday, December 1**.