

**POSC 312:  
CONSTITUTIONAL LAW – RIGHTS**

**Fall 2014  
MW, 9:30-10:45  
SSPA 104**

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**Regular Office Hours (SSPA 251): M, 11-12; T, 10-12**  
**(book appointments here: [www.CSULBPOSCWHITEHEAD.clickbook.net](http://www.CSULBPOSCWHITEHEAD.clickbook.net))**

**Course Description and Goals.** This course will examine United States Supreme Court decisions interpreting key provisions of the Constitution that limit governmental power and protect individual rights. Our primary focus will be on understanding the key concepts, ideas, and arguments that have shaped constitutional doctrine in this area. Secondly, we will also analyze how well the decisions embody and carry out the overriding values of our constitutional system, w/special attention to the rule of law, popular sovereignty, and limited government.

You will be required to study and absorb a great deal of information regarding the constitutional cases and doctrines. However, the *most important* goal of the course is for you to achieve your own understanding of constitutional language and principles, which will enable you to construct and defend your own position.

Along the way, I hope that you will develop a richer understanding of the principles behind our constitution, and a stronger ability to decide for yourself whether or not our government lives up to these principles. In order to help you reach these general goals, I will do my best to teach you how to understand, describe, and critically analyze: (1) the language, logic, and structure of the Constitutional provisions related to individual rights; (2) Supreme Court decisions interpreting those provisions; (3) the standards and tests used by the Court in these cases; and (4) historical and contemporary trends in constitutional decision making. Finally, I will help you develop and articulate your own arguments about the meaning and application of constitutional principles.

**Required Texts:**

- *Constitutional Interpretation: Volume 2 -- Rights of the Individual*, 10th edition, Craig R. Ducat, ed. (West Publishing Co., 2013).
  
- Other Readings available on BeachBoard

**Course Assignments.** Your course grade will be based upon your performance on the following assignments:

- **Constitutional Rights Foundation Paper (15%) – Due Online Sep. 28:** This is a 5-7 page (double-spaced) paper focusing on the historical debate over the Bill of Rights. See separate instructions posted on BeachBoard.
- **Mid-Term Examination (25%) – Oct. 15.** This will be an open-book and *semi*-open-note exam, comprised of one comprehensive essay question. I will provide a list of potential questions the week before the exam, and we will go over them in class.
- **Constitutional Rights Interpretation Paper (25%) – Due Online Dec. 7.** This will be an 8-10 page (double-spaced) paper in which you will analyze and take a position on a contemporary political issue related to constitutional rights. See separate instructions posted on BeachBoard.
- **Final Examination (25%) – Friday, Dec. 12, 8-10 AM.** This will be an open-book and *semi*-open-note exam, comprised of one comprehensive essay question. I will provide a list of potential questions the week before the exam, and we will go over them in class.
- **Class Participation and Overall Improvement (10%).** You will be graded on your willingness to respond to questions I pose to the class, as well as your willingness to ask questions or make comments on the issues we cover. I will also use this portion of your grade to reward overall improvement. Students who are on the borderline between one final grade and another will receive a “bump” to the higher grade if they are making every effort to succeed.

### **General Course Requirements.**

*Class Structure.* This is both a lecture and a discussion course. I will do my best to provide you with the proper context for understanding the cases and other readings. However, the only way to really understand court decisions is to talk about them together. Thus, much of our class time will be devoted to a discussion of the assigned cases. You should take notes on what I say about the cases, and you should also be ready to discuss those cases yourself. I will not take attendance. However, your attention to both the lecture and the class discussions will naturally be reflected in your grades.

*Readings.* This is a reading-intensive course. You need to keep up with the assigned cases in order to do well. Even if you do not understand them at first glance, at least make an attempt to do so *before* coming to class. Often, it will be helpful to read the cases again *after* we discuss them in class. There is too much reading to wait until the last minute, so make sure to discipline yourself and keep up.

*Papers.* You must spend a significant amount of time outside class working on the written assignments. I will give you as much feedback as I can, if you e-mail or come to see me during office hours. I will also give you detailed written instructions. However, it is *your responsibility* to gather, read, and understand the appropriate information, and to put that information together in an

accurate and persuasive way.

*Classroom Behavior.* You must be prompt, prepared, and respectful of your fellow students. Among other things, this means: being in your seat promptly when class starts and making the least amount of disruption if you happen to be late; putting electronic devices on silent; and being attentive during class -- either taking notes, listening, or engaging in class discussion, and *not* browsing the internet, messaging, texting, listening to music, or talking to other students. I reserve the right to remove inattentive or disruptive students from class for that particular class session.

*E-mail and Office Hours.* I will make every reasonable effort to help you understand the material better outside of class. The best way to reach me is almost always through e-mail (address noted at beginning of syllabus). I enjoy discussing these issues with you via e-mail, and I encourage you to take advantage of that opportunity. I will make every effort to reply to class-related e-mails within 24 hours, EXCEPT on weekends and holidays. I generally have a huge number of e-mails to answer immediately before exam dates or paper deadlines. Thus, I cannot guarantee a timely reply within 48 hours of these events. So, it is in your interest to start studying and working on your papers early so that you can take maximum advantage of my advice and help. I am also available during scheduled office hours, or by appointment when necessary. I love when students come by and chat about course-related issues – it's one of the most significant things you can do to improve your college experience!

*Grade-Related Communication –24-hour Cooling-off Period.* I am always happy to review your exams and papers with you in order to help you improve for the future. However, if you are unhappy or dissatisfied with your grade, I require you to wait for at least 24 hours before e-mailing or talking to me in person. The reason for this delay is to allow you time to re-read the exam or paper, read and understand my comments, and otherwise consider your performance in a deliberate, thoughtful way. After 24 hours have gone by, if you have questions or concerns, please don't hesitate to contact me. Always remember, this is not a game or a competition – it is a learning process. Grades are designed to help you learn the material. If your focus is only on getting a better grade, you are missing the point. I am committed to helping you grow and develop as thinkers and writers, but that will only happen if you approach class the same way.

*Problems.* Come and see me as soon as possible if you are having problems understanding, keeping up, or if there is any reason you cannot be effectively engaged in the course. I will not provide any accommodations for these issues at the last minute, but if you talk to me in advance, we can almost always work something out.

*Specific course policies* regarding paper submission, exceptions, makeups, late assignments, cheating and plagiarism, students with disabilities and course withdrawal can be seen in the *appendix* at the end of this syllabus.

## Course Outline, Schedule, and Reading Assignments:

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**Aug. 25:** Introduction to the Course

Julie Novkov, “How to Read a Case” (Link on BeachBoard)

### I. The Nature and History of American Constitutional Rights

#### A. History and Incorporation of the Bill of Rights

**Aug. 27:** Ducat, pp. D8-D10 (U.S. Constitutional amendments),  
w/special attention to: Amendments 1-10 & 14  
pp. 488-91, 495-501:  
*Barron v. The Mayor and City of Baltimore (1833)*;<sup>1</sup>  
*Palko v. Connecticut (1937)*;<sup>2</sup>  
“Exhibit 8.1” and “Exhibit 8.2”;

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**Sep. 1:** No Class – Labor Day

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### II. Freedom of Speech

#### A. Pure Political Speech

**Sep. 3:** p. D8 (text of 1<sup>st</sup> Amendment related to freedom of speech);  
pp. 802-14:  
Primary Case: *Schenck v. U.S. (1919)*;  
Secondary Cases:  
*Abrams v. U.S. (1919)*;  
*Whitney v. California (1927)*;

**Week of Sep. 10:** pp. 815-32:  
Primary Cases:  
*Gitlow v. New York (1925)*;  
*Thomas v. Collins (1945)*;  
*Terminiello v. Illinois (1949)*

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<sup>1</sup> “Primary Cases,” listed in **bold, underlined** font, are the ones we will discuss most fully in class. Pay careful attention to the facts, issues, holdings, and reasoning of these cases.

<sup>2</sup> “Secondary Cases,” listed only in *italics*, are usually mentioned in the text or notes of the case book or in summaries provided on BeachBoard. We will not discuss these cases in as much detail, but you are still responsible for knowing their basic details.

**Brandenburg v. Ohio (1969);**

Secondary Cases:

*Dennis v. U.S.* (1951);  
*Braun v. Soldier of Fortune Magazine* (11<sup>th</sup> Cir., 1992);  
*Rice v. Paladin* (4<sup>th</sup> Cir., 1996);  
*Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Advocates* (9<sup>th</sup> Cir., 2002);  
*Hedges v. Obama* (S.D. N.Y., 2012) (Link on BeachBoard --  
Only Read Introduction, “Background” Section I A & B and  
“Discussion” Section II 1, a & b);

**B. Symbolic Speech**

**Week of Sep. 15 &**

**Day of Sep. 22:** pp. 880-909:

Primary Cases:

**West Virginia State Board of Education v. Barnette (1943);**  
**United States v. O’Brien (1968);**  
**Tinker v. Des Moines Independent School District (1969);**  
**Texas v. Johnson (1989);**  
**R.A.V. v. City of St. Paul (1992);**

Secondary Cases:

*Bethel School District No. 403 v. Fraser* (1986);  
*Hazelwood School District v. Kuhlmeier* (1988);  
*Virginia v. Black* (2003);  
*Morse v. Frederick* (2006);

**C. Corporate Speech and Campaign Finance Reform**

**Sep. 24:**

pp. 909-31:

Primary Cases:

**Buckley v. Valeo (1976);**  
**Citizens United v. Federal Election Commission (2010)**

Secondary Cases:

*First National Bank of Boston v. Bellotti* (1978);  
*McConnell v. Federal Elections Commission* (2003);

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**Sunday, Sep. 28, 11:59 PM: Constitutional Rights Foundation Paper Due Online**

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**D. Time, Place & Manner Restrictions**

**Sep. 29:** No Readings – Lecture only

## E. Obscene and Violent Speech

Day of Oct. 1 &  
Week of Oct.6:

pp. 1003-29:

Primary Cases:

***Roth v. U.S. (1957);***

***Alberts v. U.S. (1957);***

***Miller v. California (1973);***

***Paris Adult Theater v. Slaton (1973);***

Secondary Cases:

*Regina v. Hicklin* (England, 1868);

*Jacobellis v. Ohio* (1964);

*Stanley v. Georgia* (1969);

*New York v. Ferber* (1982);

*Osbourne v. Ohio* (1990);

*Reno v. ACLU* (1997);

*U.S. v. Playboy Group* (2000);

*Ashcroft v. ACLU I* (2002);

*Ashcroft v. ACLU II* (2004);

*U.S. v. Stevens* (2010);

*Brown v. Entertainment Merchants Association* (2011).

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Oct. 13: Mid-Term Review

Oct. 15: Mid-Term Exam

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## Part II. Religious Freedom

### A. The Establishment Clause

#### 1. Public Prayer and Bible Reading

Oct. 20: p. D8 (Text of 1<sup>st</sup> amendment related to religion)  
pp. 1067-81:

Primary Case:

***Lee v. Weisman (1992);***

Secondary Cases:

*Engel v. Vitale* (1962);  
*Abington School District v. Schempp* (1963);  
*Wallace v. Jaffree* (1985);  
*Santa Fe Independent School District v. Doe* (2000);  
*Newdow v. U.S.* (9<sup>th</sup> Cir., 2002);  
*Town of Greece v. Galloway* (2014) (Link to summary on  
Beachboard)

## 2. Aid to Religious Organizations

Oct. 22: pp. 1085-89; 1094-1112:

Primary Cases:

***Lemon v. Kurzman* (1971);**

Secondary Cases:

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

*Edwards v. Aguillard* (1987);

***Agostini v. Felton* (1997);**

***Zelman v. Simmons-Harris* (2002);**

*Locke v. Davey* (2004);

## 3. Religious Symbols on Public Property

Oct. 27: pp. 1213-23:

Primary Case:

***Van Orden v. Perry* (2005);**

Secondary Cases:

*Lynch v. Donnelly* (1984);

*Allegheny County v. ACLU* (1989);

## B. The Free Exercise Clause

Oct. 29 &

Nov. 3: pp. 1123-41:

Primary Cases:

***Thomas v. Indiana Employment Security Review Board* (1981);**

***Employment Division, Department of Human Resources of Oregon v. Smith* (1990);**

***Burwell v. Hobby Lobby Stores, Inc.* (2014) (Link on  
Beachboard – Only Read Alito Majority and Ginsburg  
Dissent)**

Secondary Cases:

*Reynolds v. U.S.* (1878);

*Cantwell v. Connecticut* (1940);

*Sherbert v. Verner* (1963);  
*Wisconsin v. Yoder* (1972);  
*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*  
(1993);  
*Christian Legal Society Chapter v. Martinez* (2011)  
(Link to summary on BeachBoard);  
*Hosanna-Tabor Evangelical Lutheran Church v. EEOC*  
(2012) (Link to summary on BeachBoard);

### **Part III. Substantive Due Process & The Right to Privacy**

#### **A. Sexual and Reproductive Rights**

**Nov. 5 &**

**Week of Nov. 10:** p. D10 (text of 14<sup>th</sup> Amendment, Section 1, related to due process of law);  
pp. 739-55, 757-72, 779-85:

Primary Cases:

***Griswold v. Connecticut* (1965);**

***Roe v. Wade* (1973);**

***Planned Parenthood of Southeastern Pennsylvania v. Casey*  
(1992);**

***Lawrence v. Texas* (2003);**

Secondary Cases:

*Bowers v. Hardwick* (1986);

*Stenberg v. Carhart* (2000);

*Scheidler v. National Organization for Women* (2003);

*Gonzales v. Carhart* (2007);

### **Part IV. Equal Protection**

#### **A. Racial Discrimination**

##### **1. Racial Exclusion**

**Week of Nov. 17:** p. D10 (Text of 14<sup>th</sup> amendment, Section 1, related to equal protection);  
pp. 1142-71:

Primary Cases:

***Plessy v. Ferguson* (1896);**

***Brown v. Board of Education I* (1954);**

Secondary Cases:

*Bolling v. Sharpe* (1954);

*Brown v. Board of Education II* (1955);

*Cooper v. Aaron* (1965);

*Swann v. Charlotte-Mecklenburg Board of Education* (1971);

*Milliken v. Bradley* (1974);

## 2. Affirmative Action

- Nov. 24:** pp. 1186-91; 1198-1200:  
Primary Case:  
**Fisher v. University of Texas (2013)** (Link on BeachBoard -- Only Read Kennedy, Thomas, and Ginsburg opinions)  
Secondary Cases:  
*Regents of the University of California v. Bakke* (1978);  
*Grutter v. Bollinger* (2003);  
*Gratz v. Bollinger* (2003);  
*Parents Involved in Community Schools v. Seattle School District No.1* (2007);
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**Nov. 26:** No Class – Fall Break

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## B. Gender Discrimination

- Dec. 1:** pp. 1290-1307:  
Primary Case:  
**United States v. Virginia (1996)**;  
Secondary Cases:  
*Bradwell v. Illinois* (1873);  
*Reed v. Reed* (1971);  
*Frontiero v. Richardson* (1973);  
*Craig v. Boren* (1976);

## C. Sexual Orientation Discrimination

- Dec. 3:** pp. 1318-32:  
Primary Cases:  
**U.S. v. Windsor (2013)** (link on BeachBoard);  
**Perry v. Schwarzenegger (D. Cal, 2010)**  
Secondary Case:  
*Romer v. Evans* (1996);  
*Goodridge v. Dept. of Public Health* (MA, 2003);
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**Sunday, Dec. 7 at 11:59 PM:** Constitutional Rights Interpretation Paper Due;

Monday, Dec. 8:

Review for Final Exam

Friday, Dec. 12, 8-10 AM:

Final Exam

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### Appendix: Miscellaneous Course Policies

**Paper Submissions.** You must upload your paper to the appropriate electronic “dropbox” on BeachBoard. I will not accept papers submitted in any other way. You must save a copy of the electronic notification you receive when you successfully upload your paper to BeachBoard. In the event of a discrepancy as to whether or when you submitted your paper, this electronic notification is the only proof I will accept. You must also keep an electronic or paper copy of your paper.

**Exceptions, Make-ups, and Late Assignments.** Exam Dates and Paper Deadlines are firm! It is your responsibility to arrange your schedule around your academic responsibilities. In general, **exceptions will only be made for the following reasons, for which satisfactory documentation must be provided:** (1) Illness or injury to the student; (2) Death, injury, or serious illness of an immediate family member or the like; (3) Religious reasons (listed in California Education Code section 89320); (4) Jury duty or government obligation; or (5) University sanctioned or approved activities, such as artistic performances, forensics competitions, participation in research conferences, intercollegiate athletic activities, student government, required class field trips, etc.. **To be excused under #1 or 2, you must provide BOTH satisfactory documentation as soon as possible AND evidence of work completed on the assignment at the time of sickness or illness. To be excused under #s 3-5, however, you must provide me with satisfactory documentation at least 1 week prior to the exam or deadline.** If you have a legitimate excuse for missing an exam, I will arrange for an appropriate make-up exam. If you have a legitimate excuse for missing a paper deadline, we will work out an appropriate alternative deadline AS LONG AS you can demonstrate that you have already completed an appropriate amount of work on the assignment.

**Grade Reduction for Late Papers.** Written assignments are due at the *beginning* of the class period on which the deadline falls. **In the event of an unexcused late paper, I will immediately mark it down by a third of a grade for being late on the day it is due. I will then mark it down another third of a grade for every 24-hour period in which it is late.** For example, a paper due on Tuesday but not turned in until Thursday will be reduced by two-thirds of a grade -- a “B” paper would receive a “C+.” Note, however, that this does not apply to the required case briefs, which will only receive credit if they are turned in by the deadline. *You will not receive any credit for late briefs.* Make the most of the time you have to complete written assignments; no allowances will be made for last-minute problems with computers, networks, etc..

**Cheating and Plagiarism.** It is my policy to deal with any form of cheating and/or plagiarism by immediately giving a failing grade on the assignment and reporting you to the department and other administrative authorities for other possible sanctions. If you are having problems with the course material, please come and see me before doing something that could put your academic career in jeopardy.

Please note that “plagiarism” includes *any use* of the ideas or work of others as if they were one’s own, without giving appropriate credit. That means that *failing to cite your sources* is more than just a technical glitch -- it is plagiarism and will be handled as such. See separate paper instructions for citation guidelines and please see me if you are having difficulty understanding what is required in this area.

***Students with Disabilities.*** I am completely committed to providing reasonable accommodations for any student with a verifiable physical or other disability. This may include alternative testing or note-taking arranged through Disabled Student Services. However, it is your responsibility to notify me in advance of the need for such an accommodation.

***University Withdrawal Policy.*** It is your responsibility to withdraw from class if you wish to do so. I have no obligation to withdraw registered students who stop attending or completing assignments. **The deadline to withdraw from a class without a “W” for this semester is Sep. 8, 2014.**

Withdrawal from a course after that date requires the signature of the instructor and the department chair, and is permissible only for serious and compelling reasons. For example, severe or extensive medical problems would be serious and compelling, but fear of receiving a final grade lower than desired, or a change in one’s work schedule would not be considered serious and compelling. If withdrawal is allowed, a “W” will appear on your transcript.

**DURING THE FINAL THREE WEEKS OF INSTRUCTION (AFTER Nov. 14, 2014) WITHDRAWALS ARE NOT PERMITTED EXCEPT IN CASES SUCH AS ACCIDENT OR SERIOUS ILLNESS WHERE THE CIRCUMSTANCES CAUSING THE WITHDRAWAL ARE CLEARLY BEYOND THE STUDENT’S CONTROL. THE CAUSE MUST BE DOCUMENTED. ORDINARILY, WITHDRAWALS IN THIS CATEGORY INVOLVE TOTAL WITHDRAWAL FROM THE UNIVERSITY. YOU WILL NEED THE APPROVAL OF THE COLLEGE DEAN AS WELL AS THAT OF THE CLASS INSTRUCTOR AND THE DEPARTMENT CHAIRPERSON FOR EACH CLASS YOU DROP.**