

U.S. Constitutional Law: Civil Rights and Liberties  
POLI/LGST 111B  
Summer 2023

T, Th 6:00-9:30 PM  
Engineering 2 194

Dr. Eric Stephen Snickars, Instructor  
[esnickar@ucsc.edu](mailto:esnickar@ucsc.edu)

Office Hours: Wednesdays 5:00-6:00 PM on Zoom

*It is emphatically the province and duty of the judicial department to say what the law is.* With these words, the U.S. Supreme Court began its journey into constitutional law. The Court consistently reiterates its role as “ultimate interpreter of the Constitution” every time it denies attempts by the executive and legislative branches to exercise their powers. However, the Court’s early 19th century proclamation of its power of judicial review was anything but a simple matter of constitutional interpretation; it was mired in the partisan politics of the age. Constitutional doctrine can rarely, if ever, be read outside of the political context of the time. The U.S. Supreme Court is, and always has been, a *political* Court.

This course provides an upper division introduction to U.S. Constitutional Law, emphasizing foundations, religion, expression, privacy, and discrimination. Although we will consider history, context, and politics, this class ultimately focuses on constitutional *doctrine*, i.e., the rules and debates generated by the members of the U.S. Supreme Court. As such, course readings focus mostly on edits of U.S. Supreme Court opinions. Careful reading and scrutiny of Supreme Court opinions is necessary for successful completion of this course.

### Goals

As this course progresses, the successful student will attain: (1) a substantive command of major debates and rules from assigned Supreme Court decisions; (2) increased skills reading and understanding Supreme Court cases; (3) a command of basic legal analysis.

Understanding U.S. Constitutional Law is not a self-evident endeavor. It requires the development of reading skills relatively exclusive to lawyers, judges, and other participants in the legal process. If this is your first time reading cases and/or case excerpts, the process of developing reading skills will likely be very difficult at first. However, if you fully and faithfully prepare for and attend class, you’ll find yourselves becoming socialized little by little.

### Requirements

Each student is required to: (1) read all assignments; (2) participate in classroom discussions and activities (15%); (3) participate in one on-call exercise (15%); (4) complete take-home midterm

exam (35%); (5) complete the take-home final exam (35%). Failure to complete any one of these assignments will result in a failing grade.

Attendance in class is not only required, but necessary for your success in this course. I will take attendance during class randomly throughout the quarter. If, for some reason, you must miss class, please notify me via e-mail, ideally in advance. Insufficient attendance will likely result in course failure. If there are ongoing issues that prevent you from normally attending class, please take another class, because I fear you will not pass this one.

I reserve the right to deduct points from your final grade for the following infractions: (1) missing class; (2) arriving to class late; (3) talking while someone else is talking; (4) being unprepared for class, e.g., not having done the assigned readings; (5) not fully participating in class exercises, e.g., being "finished" long before others because you've only performed a cursory analysis and/or used the time to socialize.

### Class Participation

Your participation is necessary for your own successful understanding of course material. You must be *fully present* – providing your full attention to lectures as well as to our corresponding discussions – to be successful in this course.

My debates and class exercises are designed to maximize your understanding of course concepts. Any hypotheticals are almost always based on real-life cases and scenarios, allowing students to both extend and apply knowledge from cases and lectures. The better prepared you are for class – and the more enthusiastic you are to participate – the better the exercises will go.

Regarding student questions during lecture, I prefer that you write them down and wait for me to invite questions; I will do so often enough. While I invite and encourage questions, we have quite a bit of material to cover in a relatively small amount of time, so I try to precisely manage class times to balance the assigned materials with student curiosity.

Your participation grade will be primarily based on your performance in section.

**Bring your textbook in class every day, as you will want to reference it during class.**

### Classroom Policies

Attendance is required. If for some reason you must miss class, please notify me via e-mail.

Please arrive to class on time. Late arrivals may count as absences. If, for some reason, you cannot arrive on time – or are otherwise at risk of being late – please let me know ahead of time.

Whether during discussions or lectures, raise your hand and wait for me to call on you before you speak. When I don't enforce this rule, the class often devolves into chaos.

You are expected to be "fully present," avoiding all outside distractions, including but not limited to texting, the use of social media, and the crowdsourcing of notes.

Under *no* circumstances can any student make audio or video recordings of this class without my permission, which I will likely give, but I need to know about it.

Classes will be discussion oriented.

### Office Hours

I will hold office hours on Wednesdays from 5-6 PM on Zoom. They are "walk-in," and I will see students in the order you appear. You may make an appointment with me if you like, and such appointments will take precedence over walk-ins. Appointments will occur during office hour times.

If you cannot meet with me during office hours, please contact me so we can set up a meeting time. (Please remember that office hour times are the most convenient for me.) I'm on campus on Tuesdays and Thursdays, so if you have a scheduling conflict, we should be able to work something out.

### On-call Exercise

Students must sign up to perform the on-call exercise for one class period; sign-ups will occur on Canvas (via the Calendar tab) beginning at 6 PM on Friday, 8/4; you must sign up by class time Tuesday 8/8. The sign-up days are first-come, first-served, and when a day is filled up, there will be no more slots. Given that daily attendance is required, this should not be a problem for anybody.

Although you can feel free to consider the subject matter when deciding on your date, I cannot guarantee that we will not fall a touch behind with our schedule. Therefore, please note that you are signing up for a particular *day*, and not for a particular case or subject matter. Whatever the material is for that day, you will be responsible for it. I will do my best to maintain the schedule on the syllabus.

For the exercise, you will be responsible for the cases discussed that class period. This means that I will rely on those on call for the Socratic portion of the class. During this period, I will ask that the on-call students sit in the front row of the classroom so I can be sure to address you directly.

My questions to on-call students will be structured around the notion of a *brief* of each case. A basic case brief consists of: (1) the relevant **facts** that brought the parties to the Court; (2) the legal **issue(s)** (or "question presented") before the Court; (3) the **rule(s)** upon which the case was decided; (4) the **analysis** (or "reasoning") that applied the rule to the facts of the case; (5) the **conclusion**, i.e., which side won the case. (Note that your textbook helps you out by providing

the facts for you in the style of a brief.) This method is abbreviated "FIRAC" – facts, issue, rule, analysis, conclusion.

Law students learn how to write case briefs during the first year of law school. A brief is basically a means of taking organized notes on the case so that you have something to reference when you discuss or review the case. If it helps you to formally write out case briefs, I encourage you to do so. Briefs are for your own purposes; therefore, in this class, there is no "right" or "wrong" way to do it.

In addition to asking you FIRAC recall questions, I may ask you to compare cases, or I may provide hypothetical facts see if they change how we reason a case. Additionally, I may ask you about politics and/or policy, so be sure to read actively.

This "Socratic method" is the primary way that law students learn cases. It forces students to work with cases critically and precisely, as opposed to simply passively listening to a lecture.

#### A "Disclaimer" on Debate

In this class, we will discuss many contentious issues, which will undoubtedly induce emotional responses at times. If you do not desire – or are otherwise uncomfortable with – debate and disagreement on contentious issues, you should consider taking another class. Legitimate viewpoints in this class consist of arguments supported by appropriate evidence. Insulting opinions will not be tolerated. *Please* let me know if you have any questions on this policy.

That being said, I reserve the right to cut off any discussion if I feel that it is getting too intense.

#### Academic Dishonesty

If you are caught plagiarizing or cheating in any way, you will be subject to academic discipline. In this course, please abide by the values of honesty, respect, and civility. Read and understand the university's policies on academic integrity:

<https://registrar.ucsc.edu/navigator/section1/academic-integrity.html>

Plagiarism occurs when a writer fails to cite ideas or words that are not their own. All cases of plagiarism will be prosecuted per university policy. If you have any questions on this policy, please ask.

I have prosecuted offenses in the past and, unfortunately, I'm likely to do so again in the future.

#### Disability Accommodations

UC Santa Cruz is committed to creating an academic environment that supports its diverse student body. If you are a student with a disability who requires accommodations to achieve equal access in this course, please submit your Accommodation Authorization Letter from the Disability Resource Center (DRC) to me privately, preferably within the first two weeks of the quarter. At this time, I would also like us to discuss ways we can ensure your full participation in the course. I encourage all students who may benefit from learning more about DRC services to contact DRC by phone at [831-459-2089](tel:831-459-2089) or by email at [drc@ucsc.edu](mailto:drc@ucsc.edu).

Please see the DRC website for more details: <https://drc.ucsc.edu>

In this class, I will do my best to honor the ideals of Universal Design. If you require an accommodation, please let me know by Friday, 8/11.

### A Note on Adulthood and Personal Responsibility

I fully realize that the following paragraphs apply to a small number of students, so please don't be insulted.

You are all adults, and I will treat you accordingly. This means that you are responsible for completing all requirements. I will not contact you if you miss classes and/or assignments. I will not double-check if you've turned your exams into Canvas in the proper formats.

Additionally, I will not compute preliminary grades to determine what you need in order to achieve a particular grade; the percentages are listed in the syllabus, so you can compute your grade at any time, meaning that your guess is as good as mine. If you ask me to compute your grade, I will assume that you haven't read this syllabus – which is assigned reading – and I will make note of this for your participation grade.

### Crowdsourcing of Notes

You are more than welcome to share notes with each other, but you must *not* do so during class time. If you have a question, raise your hand and ask, but under no conditions are you to be using any applications to communicate with each other during class. I will subtract points from your grade if you do so.

### Assignments

All readings appear in the latest edition of *Constitutional Law for a Changing America: Rights, Liberties, and Justice* (11<sup>th</sup> edition, 2022) by Lee Epstein and Thomas G. Walker, available through various online sources. Assignments are listed on the day they are discussed or due.

## **WEEK ONE**

**8/1/23**

### *Constitutional Foundations*

What is the purpose of creating a Founding document? Is a constitution necessary to create a nation? What sorts of powers should constitutions grant, and what rights should they protect?

How did the Founders reconcile their stark disagreements, and what concessions were made in the name of creating a new nation? To what extent do we see the legacy of these original compromises today?

How do we explain the relationship between U.S. democracy and the Supreme Court? What is the Court's role in U.S. democracy? Do we betray a major democratic element of our republic when we allow nine unelected judges to overturn the will of our directly elected leaders, or does the Court's electoral insulation offer citizens more protection than our elected leaders are able to provide?

The original Constitution enumerates the powers and constraints of each formal branch of government. From this big picture standpoint, what does the Bill of Rights add to the Constitution that wasn't there before?

READ: U.S. Constitution; Fuller's Case of the Speluncean Explorers (on Canvas)

**8/3/23**

### *Judicial Review*

The "holding" of *Marbury v. Madison* is repeatedly cited by the Court as precedential authority for its power of judicial review. What did the Court decide in *Marbury v. Madison*? What was the reasoning behind Justice Marshall's decision? What does this decision demonstrate to you about the nature of Constitutional Law?

READ: Review syllabus for questions; Intro to the Court (1-44, optional);  
Judicial Review (45-65, Chapter 2: The Judiciary – Institutional Powers and Constraints)

### *Incorporation of the Bill of Rights*

How did the Court go about "nationalizing" the Bill of Rights? To what extent does this "incorporation" against the states comport with the intent of the Founders? What might be some consequences of incorporation?

READ Incorporation (67-87, Chapter 3: Incorporation of the Bill of Rights); Approaching Civil

## **WEEK TWO**

**8/8/23**

**Sign up for on call by class time.**

### *The First Amendment: Free Exercise of Religion*

The two religion clauses are often described as being in tension with each other. Some will even go so far as to argue that we cannot legitimately consider one clause without considering the impact on the other. To what extent do you agree or disagree with this claim?

How does the Court define “religion” in these cases? To what extent will the Court allow the government to define religion? To what extent *should* the government and/or the Court define religion? If we *don't* define religion, to what extent can we enforce the Free Exercise clause? Must the Court define religion in order to protect it?

To what extent do the three tests the Court ultimately articulates “protect” religion? Are all religions protected with the same vigor? For which test, if any, do you advocate and why?

To what extent is the Court "protecting" religion, as opposed to balancing interests?

If you were an attorney challenging government action under the Free Exercise Clause, which test(s) would you use to argue in your brief today?

As you read, note in particular how the free exercise test develops over time, and the conditions that arguably allow the test to change and develop.

READ: Free Exercise (95-126)

### *The First Amendment: The Establishment Clause*

What is a *Wall of Separation*? To what extent can this philosophy be realistically applied? What would be the consequences of enforcing a strict wall of separation?

How do we determine whether the Establishment Clause has been violated? If you were an attorney before the Court, for which test(s) would you argue and why?

Should private schools receive public funds? Are there circumstances where you might be willing to allow public funds, and others where you would oppose their use? To what extent, if at all, does *pragmatism* influence your position?

READ: Intro to Establishment Clause (126-136, from “Religious Establishment” until the beginning of the Lemon Test)

**8/10/22**

READ: The Rise and Fall(?) of the *Lemon* Test (137-160); Religious Displays through the end of the chapter (161-179)

### ***WEEK THREE***

**8/15/22**

#### *The First Amendment: Freedom of Expression*

How does the context of expression change how it is handled under the First Amendment? Do you agree with the Court’s reasoning that there is a clear line between “speech” and “conduct”? To what extent is there is such a thing as “pure” speech?

Should the government be able to prohibit “offensive” words on public streets? In public courtrooms? To what extent should the government be able to prohibit threatening, hurtful, and intimidating speech?

To what extent is “hate speech” protected or unprotected, according to the Court? Should hate speech be protected? What reasoning exists for protecting speech that has no use whatsoever in public discourse?

According to the Court, does the First Amendment protect the right of private groups to discriminate? In other words, should private groups be allowed to associate with whomever they choose, or should the government be able to prevent associational discrimination? Why or why not?

Should the liberty to speak include the liberty *not* to speak? Why or why not? According to the Court, to what extent does the First Amendment protect the right not to speak? What is the Court’s reasoning for the rule?

READ: Intro to Speech (recommended 181-186); Tests and Guidelines (186-201); Symbolic Speech (203-214) (through *Johnson*); Association (216-222); Right Not to Speak (222-230); Offensive Speech (222-238)

**8/17/23**

NO CLASS EXAM PERIOD  
EXAM RELEASED AT **8/16/23** TIME TBA  
EXAM DUE ON 8/21/23 TIME TBA

## **WEEK FOUR**

**8/22/23**

What level of First Amendment rights should be accorded to minor students? How could the Court consistently reason that armbands in an elementary school were protected, but a banner message from a high school student on a public street was not?

How should a balance between a free press and the fear of defamation be achieved? Do you agree with the Court's solution? Why or why not?

How do you define "obscenity"? To what extent should it be given First Amendment protection? Via the five ways of constitutional interpretation introduced earlier in the course, how would you argue for or against First Amendment protection of pornography? Does the context of child pornography impact your constitutionalism?

READ:

Student Speech (238-245); Content Neutrality (252-260) Prior Restraint (263-284)

**8/24/23**

READ: Defamation (287-299)

### *"Privacy" and Reproductive Rights*

Where does "privacy" come from? Was it in the Framers' Constitution? If you can find it, where is it?

Which, if any, of the Court member's justifications for "privacy" do you find most compelling? Can you find a constitutional basis for protecting reproductive rights outside of privacy and/or Due Process?

What, if any, acceptable reasons exist for protecting rights that are clearly not specifically in the Constitution? Are there certain conditions whereby the Court should step in and essentially legislate, or must the Court draw a line and refuse to maximize its judicial role? What theory (or theories) might justify the Court in either maximizing or minimizing its "activism"?

How should new anti-abortion laws be viewed via the current status of the "right to abortion"? What are the arguments for and against the constitutionality of these new rules? Considering *politics*, i.e., the membership of the Court and their own reasons for making decisions, how do you think these new rules might fare if the current Court were to decide their constitutionality?

READ: Reproductive Rights 341-395

## **WEEK FIVE**

**8/29/23**

### *Discrimination and Constitutional Equality*

As you read these materials, consider the extent to which the Court honored the constitutional intent(s) of the Civil War Amendments. More specifically, to what extent has *Equal Protection* been honored? How should the Equal Protection and Due Process Clauses be deployed?

To what extent does the notion of three tiers of scrutiny – determined on the basis of race and gender – contrast with the notion of *equal* protection?

What are the limits of “state action” with regard to the scope of the Fourteenth Amendment? Do you agree or disagree with the line the Court has drawn?

When reading *Craig v. Boren*, consider the level of scrutiny used to strike the Oklahoma law. The Court majority claimed it was using the same test used in *Reed v. Reed*. If you read the cases precisely enough, you should have a response to this claim.

To what level of scrutiny should rules targeting sexual orientation be held?

Does affirmative action advance or hinder the goals of the Fourteenth Amendment? Outside of potential constitutional barriers, is affirmative action a positive or desirable policy? To what extent should the Constitution be deployed as a barrier, if at all?

READ: Discrimination 523-578

**8/31/23**

READ: Discrimination 578-615

**FINAL EXAM released 8/31/23 after class**

**\*The final examination is due to Canvas on Monday, 9/4 at 11:59 PM.\***

### Syllabus Changes

Although unlikely, this syllabus is subject to change at any time. I will note any changes during class.

**IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT ANYTHING ON THIS SYLLABUS,  
PLEASE CONTACT ME.**