

PS 1201: Constitution and Civil Liberties

Fall 2021

6:00-8:30 Thursday
1501 WW Posvar Hall

Instructor: Jacob Schiller
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Office Hours: 4:30-5:45 Thursday (in-person or Zoom), or by appointment

COURSE DESCRIPTION:

The study of constitutional law in this country is important because there is scarcely a facet of American life, public or private, that has not fallen within the scope of constitutional adjudication and interpretation by courts. At the apex of the American legal system is the United States Supreme Court, whose decisions have had, on occasion, dramatic and far-reaching consequences for the American political system and the life of the American people.

The field of American constitutional law may be divided into two areas. The first encompasses a broad range of issues concerning the powers of the basic institutions of American government, their powers and interactions considering. Some of the larger questions that are addressed in this area consider the nature of presidential power in regard to the use of force, or congressional power in regard to health care.

This course serves as a general introduction to the study of the other area of American constitutional law that addresses what we commonly describe as civil liberties and civil rights. Our first major area addresses questions relating to the rights of individuals in the areas covered by the Bill of Rights such as speech, association, press religion, due process of law, etc. We next consider questions of equality, racial and otherwise. A third area addresses privacy rights and the Constitution. Finally, we examine political participation and voting rights. During this term, we shall examine the role of the Court through careful analysis of its decisions in leading cases in this area. By the end of this term, students should be familiar with the significance of the Court's holdings in numerous important decisions, as well as the reasoning underlying contending positions toward the constitutional questions posed in these cases. Consequently, the major focus of this course will be the analysis and discussion of these cases in class. The teaching method employed in this class will be to engage students in dialogue over these questions of constitutional interpretation. Students will be expected to read the assigned materials carefully in order to be able to participate fully and effectively in class discussion.

Required Books

Lee Epstein and Thomas Walker. *Constitutional Law for a Changing America: Rights, Liberty and Justice*. 10th edition. (On Reserve at Hilman Library)

You should plan to bring your book to class with you each week.

Course Requirements

I expect that all members of the class will have some background in American politics, preferably having completed an introductory course. While I have not required prerequisite courses, this is an upper-level course in American politics and students without any background in judicial politics may find themselves struggling. If you are uncertain about your preparedness for this course, please come discuss this with me.

I assume that all members of the class have an inherent interest in politics or can at least fake such an interest for a few months. I expect all students to read a national news source (paper or online version) every day, as a source for political, electoral, and cultural information.

All of the readings listed in the syllabus are required and should be completed before the class for which they are assigned. If you suspect you will not be attending class every day having done the readings and being ready to participate, you should drop the course now.

Grading and Assignments

Grade Distribution

A	≥ 93%	B+	≥ 87%	C+	≥ 77%	D	≥ 60%
A-	≥ 90%	B	≥ 83%	C	≥ 73%	F	≤ 60%
		B-	≥ 80%	C-	≥ 70%		

Grade Composition

Case Briefs	20%
Quizzes (2)	20%
Exams	60%

Classes and Participation

The plan for this semester is to be back in-person for class. If this changes, I will communicate the new plan to you as quickly as possible. Since the core of this course consists of presentation and evaluation of court cases, student participation is essential. I will solicit volunteers for questions but where there is a reluctance to volunteer, I may call

upon students. I am aware that some students are hesitant to speak in class. They will not be penalized for this but students are reminded that a small, but potentially significant portion of the grade, will include evaluation of class participation, *to the extent that it may help the student as extra credit*. Excessive absences, the sole determination of which shall be left to me, may result in lowering the final grade a half or even full letter grade. Therefore, students who anticipate more than an occasional absence should be sure to contact me

Case Briefs – 20%

You will be required to prepare a case brief for at least 1 case each class session (excluding exam days). A template is available on Canvas with instructions for how to complete the form, but I will also go over this on the first day of class. Briefs will be graded on a 3 point scale – a 2 will indicate a complete and accurate brief, a 1 will indicate an incomplete or inaccurate brief, a 0 will indicate no brief was submitted. A hard copy is due to me at the start of class. Digital copies and late copies will not be accepted.

Quizzes – 20%

There will be two quizzes for this course. These will be short multiple choice/fill in the blank and should not take more than 10 minutes. The first quiz will be on the judicial system and the second will be on the amendments to the constitution. I will discuss these more, including my expectations, in class. Quiz 1 will take place on 9/30 and Quiz 2 will take place on 11/11.

Midterm Exams – 60% (30% Each)

Exams will consist of one or two longer essays, several short answer questions and perhaps a section of multiple choice questions. The exams will be on-line and presented through Canvas. Since exams will be taken on-line, they will be open-book, open notes, but with a strict time limit to compensate for the students' access to book, notes, etc. Exams will all be administered at the same time, during the ordinary class period, and students are expected to take the exam from the classroom so that I can assist with questions and any issues that may arise. I reserve the right to change the exam format from digital to hard copy. In the event that a student cannot take a scheduled examination at that time, he/she must contact me promptly for permission and arrangements for an alternative time. An unexcused absence for an exam will result in the grade of "F" for that assignment.

Course policies

COVID-19 Statement:

In the midst of this pandemic, it is extremely important that you abide by public health regulations and University of Pittsburgh health standards and guidelines. While in class, at a minimum, this means you must wear a face covering and comply with physical distancing requirements; other requirements may be added by the University during the semester. These rules have been developed to protect the health and safety of all community members. Failure to comply with these requirements will result in you not being permitted to attend class in person and could result in a Student Conduct violation. For the most up-to-date information and guidance, please visit coronavirus.pitt.edu and check your Pitt email for updates before each class.

Students with disabilities:

If you have a disability for which you are or may be requesting an accommodation, you are encouraged to contact both me and Disability Resources and Services, 216 William Pitt Union, (412)648-7890, drsrecep@pitt.edu, (412)383-7355 (TTY). Please do this as early as possible in the term. DRS will verify your disability and determine reasonable accommodations for this course. It is your responsibility to discuss with me any accommodations you wish to use in the course. If DRS determines you are eligible for accommodations, but you do not discuss it with me, I will proceed as normal.

Attendance:

Students are responsible for attending class every day and understanding the material for that day. Yes, it *will* be on the quiz. Please do not attend class if you are not willing to pay attention, or at least to pretend to pay attention (I can, in fact, see you scrolling through TikTok). If you prefer not to engage the material, please feel free to skip the class as much as you like. Doing so will make your work very poor, and therefore much easier for me to assess.

Cheating and Plagiarism:

Cheating and plagiarism will not be tolerated. Students suspected of violating the University of Pittsburgh Policy on Academic Integrity, noted below, will be required to participate in the outlined procedural process as initiated by the instructor. A minimum sanction of a zero score for the quiz, exam or paper will be imposed. (For the full Academic Integrity policy, go to www.provost.pitt.edu/info/ai1.html.)

If you have **ANY** questions about what constitutes academic dishonesty, **ASK**. **Ignorance is no excuse**. You can also consult the Arts and Sciences website for more information: <http://www.as.pitt.edu/faculty/policy/integrity.html>

Late work:

I do not accept late work. I try to strike a balance between being flexible and maintaining certain expectations of you. I have provided in this syllabus a complete schedule of all of the requirements necessary to succeed in this class. It is your responsibility to manage your time and resources in a way that enables you to meet those requirements.

That said, I do recognize the need for flexibility. You should review the schedule of assignments at the beginning of the semester and request extensions as early as possible. Extensions will be granted based on what I feel is reasonable, given both the reasoning for the request and the timing – if you ask for an extension a week before a due date you will have a much greater chance of it being granted than if you ask a day before.

Incompletes:

It is my policy not to give incompletes. I do so only in rare circumstances, such as a documented illness. (Note: Getting tired of school at the end of the term is not rare, and therefore is not a valid excuse for an incomplete.) Asking for an incomplete except in the direst of circumstances beyond your control only eats away at the precious moments we both have on earth.

Communication:

I hold high expectations of my students and will push you to perform your best. If there are any issues, academic or personal, that may affect your ability to succeed in my class, I strongly encourage you to schedule a time to discuss them with me. I will work with you to address whatever issues I can, and, at the very least, will be able to be mindful of them throughout the course. Any conversations will be kept in the strictest of confidence.

Canvas:

Be sure to check the **Canvas** site at canvas.pitt.edu *periodically for* postings and announcements. In the event that I find it necessary for me to change an assignment or the date of a scheduled exam, I will post the information on the Canvas site. Students will be responsible for all requirements and assignments posted on this site and failure to see the communications is not an acceptable excuse.

Course changes:

Circumstances may arise that require me to change details of the course and I reserve the right to make changes as I deem them necessary. In the event that such a change needs to be made I will revise the syllabus and distribute an updated syllabus and a summary of the change via email, Canvas, and in person.

Course Schedule

1. **Thursday, September 2nd** – Introduction; the Supreme Court and the federal court system; judicial organization; law and politics in the Supreme Court: methods of constitutional interpretation; jurisdiction and decision-making
 - Required Reading:
 - i. Epstein Chapter 1 (34 pages)
 - Cases to be provided in class
 - i. *Bostock v. Clayton County, Ga* (2020)
 - ii. *Altitude Exprsss v. Zarda* (2020)
 - iii. *R.G. and G.R. Harris Funeral Home v. Equal Employment Opportunity Commission* (2020)
 - iv. *June Medical Services v. Gee/Russo* (2020)

2. **Thursday, September 9th** – Judicial review and constitutional politics; incorporation of the Bill of Rights
 - Required Reading:
 - i. Epstein Chapters 2 (22 pages) and 3 (22 pages)
 - Cases to be discussed in class:
 - i. *Marbury v. Madison* (1803)*
 - ii. *Barron. v. Baltimore* (1833)*
 - iii. *Palko v. Connecticut* (1937)*
 - iv. *Duncan v. Louisiana* (1968)

3. **Thursday, September 16th** – Religion: Free Exercise and Establishment Clauses
 - Required Reading:
 - i. Epstein Chapter 4 (92 pages)
 - Cases to be discussed in class:
 - i. *Cantwell v. Connecticut* (1940)
 - ii. *Sherbert v. Verner* (1963)*
 - iii. *Wisconsin v. Yoder* (1972)
 - iv. *Employment Division, Department of Human Resources of Oregon v. Smith* (1990)*
 - v. *City of Boerne v. Flores* (1997)
 - vi. *Everson. Board of Education* (1947)
 - vii. *School District of Abington Township v. Schempp; Murray v. Curlett* (1963)*
 - viii. *Lemon v. Kurtzman; Early v. DiCenso* (1971)*
 - ix. *Zelmon v. Simmons-Harris* (2002)*
 - x. *Trinity Lutheran Church v. Comer* (2017)*
 - xi. *Edwards v. Aguillard* (1987)
 - xii. *Town of Greece v. Galloway* (2014)*
 - xiii. *Van Orden v. Perry* (2005)*
 - xiv. *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* (2012)*
 - Additional cases to be provided
 - i. *Espinoza v. Montana Department of Revenue*, decided June 30, 2020 *
 - ii. *Little Sisters of the Poor v. Pennsylvania*, decided July 8, 2020 *

- iii. *Our Lady of Guadalupe School v. Morrissey-Berru; St. James School v. Biel*, decided July 8, 2020 *
- iv. *American Legion v. American Humanist Association*, decided June 20, 2019 *

Friday, September 11th
 -Add/Drop Deadline

4. **Thursday, September 23rd** – Freedom of Speech, Assembly and Association

- Required Reading:
 - i. Epstein Chapter 5 (97 pages)
- Cases to be discussed in class:
 - i. *Gitlow v. New York* (1925) *
 - ii. *United States v. O'Brien* (1968*)
 - iii. *Texas v. Johnson* (1989)*
 - iv. *Chaplinsky v. New Hampshire* (1942)
 - v. *Cohen v. California* (1971)*
 - vi. *McCullen v. Coakley* (2014)
 - vii. *Snyder v. Phelps* (2012)*
 - viii. *United States v. Alvarez* (2012)
 - ix. *Tinker v. Des Moines Independent Community School District* (1969)*
 - x. *Morse v. Frederick* (2007)*
 - xi. *First National Bank of Boston v. Bellotti* (1978)
 - xii. *Bates v. State Bar of Arizona* (1977)
 - xiii. *Central Hudson Gas and Electric Corporation v. Public Service Commission of New York* (1980)
 - xiv. *Walker v. Texas, Sons of Confederate Veterans* (2015)
 - xv. *Matal v. Tam* (2017)*
 - xvi. *West Virginia State Board of Education v. Barnette* (1943)*
 - xvii. *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* (2006)
 - xviii. *Boy Scouts of America v. Dale* (2000)*
- Additional Case to be Provided:
 - i. *Iancu v. Brunetti*, decided June 24, 2019*

5. **Thursday, September 30th** – Freedom of Speech (cont), Freedom of the Press, Prior Restraint; Boundaries of Free Expression – Obscenity and Emerging Areas of Government Regulation; the Internet

- Required Reading:
 - i. Epstein Chapter 6 (27 pages) and 7 (47 pages)
- Quiz 1 – American Judicial System
- Cases to be discussed in class:
 - i. *Near v. Minnesota* (1931)*
 - ii. *New York Times v. United States* (1971) *
 - iii. *Branzburg v. Hayes* (1972)
 - iv. *Hazelwood School District v. Kuhlmeier* (1988)*
 - v. *New York Times Magazine v. Sullivan* (1964)*
 - vi. *Hustler Magazine v. Falwell* (1988)
 - vii. *Roth v. United States* (1957)*

- viii. *Miller v. California* (1973)
 - ix. *New York v. Ferber* (1982)
 - x. *Reno v. American Civil Liberties Union* (1997)*
 - xi. *Brown v. Entertainment Merchants Association* (2011)*
6. **Thursday, October 7th** – Freedom of Speech (cont); Freedom of the Press, Prior Restraint; Boundaries of Free Expression – Obscenity and Emerging Areas of Government Regulation; the Internet
- Required Reading:
 - i. Epstein Chapter 6 (27 pages) and 7 (47 pages)
 - Cases to be discussed in class:
 - i. *Near v. Minnesota* (1931)*
 - ii. *New York Times v. United States* (1971) *
 - iii. *Branzburg v. Hayes* (1972)
 - iv. *Hazelwood School District v. Kuhlmeier* (1988)*
 - v. *New York Times Magazine v. Sullivan* (1964)*
 - vi. *Hustler Magazine v. Falwell* (1988)
 - vii. *Roth v. United States* (1957)*
 - viii. *Miller v. California* (1973)
 - ix. *New York v. Ferber* (1982)
 - x. *Reno v. American Civil Liberties Union* (1997)*
 - xi. *Brown v. Entertainment Merchants Association* (2011)*
7. **Thursday, October 14th** – Freedom of the Press (cont); The Right to Keep and Bear Arms
- Required Reading:
 - i. Epstein Chapter 8 (73 pages)
 - Cases to be discussed in class:
 - i. *District of Columbia v. Heller* (2008)
 - Additional Case to be Provided:
 - i. *New York State Rifle and Pistol Association v. City of New York*, decided April 27, 2020*
8. **Thursday, October 21st** – Exam 1
9. **Thursday, October 28th** – The Right to Privacy; Privacy and Personal Liberty
- Required Reading:
 - i. Epstein Chapter 9 (62 pages)
 - Cases to be discussed in class:
 - i. *Griswold v. Connecticut* (1965)*
 - ii. *Roe v. Wade* (1973) *
 - iii. *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992)
 - iv. *Lawrence v. Texas* (2003)*
 - v. *Obergefell v. Hodges* (2015)*
 - vi. *Cruzan v. Director, Missouri Department of Health* (1990)
 - Additional Case to be Provided:
 - i. *June Medical Services v. Gee*, decided June 29, 2020*

10. Thursday, November 4th – The Right to Privacy; Privacy and Personal Liberty; The Rights of the Criminally Accused

- Required Reading:
 - i. Epstein Chapter 10 (64 pages)
- Cases to be discussed in class:
 - i. *Katz v. United States* (1967)*
 - ii. *United States v. Jones* (2012) *
 - iii. *Illinois v. Gates* (1983)
 - iv. *Florida v. Jardines* (2013*)
 - v. *Safford Unified School District #1 v. Redding* (2009)*
 - vi. *Terry v. Ohio* (1968) *
 - vii. *Mapp v. Ohio* (1961)*
 - viii. *United States v. Leon* (1984*)
 - ix. *Escobedo v. Illinois* (1964)*
 - x. *Miranda v. Arizona* (1966)*
 - xi. *Missouri v. Seibert* (2004)

11. Thursday, November 11th – The Rights of the Criminally Accused

- Required Reading:
 - i. Epstein Chapter 11 (58 pages)
- Quiz 2 – Amendments to the Constitution
- Cases to be discussed in class:
 - i. *Powell v. Alabama* (1932)*
 - ii. *Gideon v. Wainwright* (1963) *
 - iii. *Batson v. Kentucky* (1983)
 - iv. *Sheppard v. Maxwell* (1966)*
 - v. *Richmond Newspapers v. Virginia* (1980)
 - vi. *Gregg v. Georgia* (1976) *
 - vii. *Atkins v. Virginia* (2002)*
- Additional Cases to be Provided:
 - i. *Flowers v. Mississippi*, decided June 21, 2019*
 - ii. *Gamble v. United States*, decided June 17, 2019*

12. Thursday, November 18th – Civil Rights; Race and other types of Discrimination; Cotemporary Approaches to Equal Protection

- Required Reading:
 - i. Epstein Chapters 12 (36 pages) and SKIM 13 (68 pages)
- Cases to be discussed in class:
 - i. *Plessy v. Ferguson* (1896)*
 - ii. *Sweatt v. Painter* (1950) *
 - iii. *Brown v. Board of Education (1)* (1954)
 - iv. *Brown v. Board of Education (2)* (1955)
 - v. *Swann v. Charlotte-Mecklenburg Board of Education* (1971)
 - vi. *Parents Involved in Community Schools v. Seattle School District No.1; Meredith v. Jefferson County Board of Education* (2007)*
 - vii. *Shelley v. Kraemer* (1948)
 - viii. *Burton v. Wilmington Parking Authority* (1961)
 - ix. *Moose Lodge No. 107 v. Irvis* (1972)*

- x. *Cleburne v. Cleburne Living Center* (1985)
- xi. *Loving v. Virginia* (1967)*
- xii. *Regents of the University of California v. Bakke* (1978)*
- xiii. *Fisher v. University of Texas* (2016)*
- xiv. *Reed v. Reed* (1971)
- xv. *Craig v. Boren* (1976)
- xvi. *United States v. Virginia* (1996)
- xvii. *Romer v. Evans* (1996)
- xviii. *San Antonio Independent School District v. Rodriguez* (1973)
- xix. *Plyler v. Doe* (1982)
- Additional Cases to be Provided:
 - i. *Comcast v. National Association of African-Owned Media*, decided March 23, 2020
 - ii. *Gamble v. United States*, decided June 17, 2019
 - iii. *Bostock v. Clayton County, Ga; Altitude Express v. Zarda; R.G. and G.R. Harris Funeral Home v. Equal Employment Opportunity Commission*, decided June 15, 2020

Thursday, November 25th – NO CLASS - Thanksgiving

13. Thursday, December 2nd – Elections; Voting and Representation

- Required Reading
 - i. Epstein Chapter 14 (52 pages)
- Cases to be discussed in class:
 1. *Bush v. Gore* (2000)
 2. *South Carolina v. Katzenbach* (1966)
 3. *Shelby County Alabama v. Holder* (2013) *
 4. *Crawford v. Marion County Election Board* (2008)*
 5. *Citizens United v. Federal Election Commission* (2010)
 6. *McCutcheon et al. v. Federal Election Commission* (2014)
 7. *Reynolds v. Sims* (1964)
 8. *Miller v. Johnson* (1995)
- Additional Cases to be Provided:
 - i. *Rucho v. Common Cause; Lamone v. Benisek*, decided June 27, 2019 *
 - ii. *Virginia House of Delegates v. Bethune-Hill*, decided June 17, 2019*
 - iii. *Chiafalo v. Washington; Colorado Department of State v. Baca*, decided July 6 2020*

14. Thursday, December 9th – Exam 2