

Constitutional Law II

PS 3380/Spring 2009

Dr. Amanda DiPaolo/250 Peck Hall
Office Hours: MW 9:00-10:00 a.m.
TR 11:00-2:00 p.m

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Course Description

This course examines the jurisprudence of civil rights and liberties developed in Supreme Court decisions in the modern era, and especially in the past 50 years. Specific attention will be paid to the ways in which the Court has handled questions of race, gender, religious pluralism, free speech, press, and expression, and privacy.

This course has several objectives. The first, and most obvious, is to survey important Supreme Court decisions, particularly in the areas of civil rights and liberties. By studying constitutional law decisions in (roughly) chronological order, students should gain perspective as to the evolution of American political discourse on a variety of contemporary issues. Other objectives for this course are more practical in nature. Through their writing assignments, students will exercise analytical thinking skills as well as the ability to write concisely. Students will also become familiar with the practice of briefing Supreme Court decisions. Finally, students will develop public speaking and argumentation skills.

Course Readings

- Epstein and Walker, Rights, Liberties, and Justice, 6th ed.
- Cases not found in the book are online (D2L).

Course Requirements

The course grade will be determined on the following basis:

Case reports (25%). Students are expected to participate regularly in class discussions. To encourage this participation (and to help prepare you for the mock trials) students are required to write case reports every week of the semester (with the exception of the first week of class and the three weeks in which the moot courts are held). It is your responsibility to pass in these reports at the start of lecture. I will not accept late reports and I will not track you down and beg you for your work. Either you do them or you don't. Case reports should consist of a paragraph detailing the rationale given by the Court on why a law/action is either Constitutional or unconstitutional. You need to include a paragraph on EACH case we are covering. The case analyses will be graded on a ✓+, ✓, ✓-, or 0 basis.

Moot Courts (75%). There will be three moot court exercises, each worth 25% of the course grade. Moot court sessions will be held on **February 17 & 19** (first moot court exercise), **March 31 & April 2** (second moot court exercise), and **April 23 & 28**. On the scheduled days, moot court sessions will take place during the time when lecture ordinarily is held. Each moot court session will feature three teams: (i) lawyers questioning the constitutionality of a statute, (ii) lawyers defending this statute, and (iii) Supreme Court Justices presiding over the dispute. The grade for each moot court will be determined by oral participation (25%) and by a 5-6 page essay (75%).

I use the plus/minus scale. Grades divisions are thus: 90-100=A; 87-89=B+; 83-86=B; 80-82=B-; 77-79=C+; 73-76=C; 70-72=C-; 67-69 D+; 63-66=D; 60-62=D-; below 60, F

Do you have a lottery scholarship?

To retain Tennessee Education Lottery Scholarship eligibility, you must earn a cumulative TELS GPA of 2.75 after 24 and 48 attempted hours and a **cumulative** TELS GPA of 3.0 thereafter. You may qualify with a 2.75 **cumulative** GPA after 72 attempted hours (and subsequent semesters), if you are enrolled full-time and maintain a **semester** GPA of at least 3.0. A grade of C, D, F, or I in this class may negatively impact TELS eligibility. Dropping a class after 14 days may also impact eligibility; if you withdraw from this class and it results in an enrollment status of less than full time, you may lose eligibility for your lottery scholarship. Lottery recipients are eligible to receive the scholarship for a maximum of five years from the date of initial enrollment, or until a bachelor degree is earned. For additional Lottery rules, please refer to your Lottery Statement of Understanding form, review lottery requirements on the web at <http://scholarships.web.mtsu.edu/telsconteligibility.htm>, or contact the Financial Aid Office at 898-2830.

Students with Disabilities

If you have a disability that may require assistance or accommodation, or you have questions related to any accommodations for testing, note takers, readers, etc., please speak with me as soon as possible. You may also contact the Office of Disabled Student Services (898-2783) with questions about such services.

Plagiarism

While it should go without being said, plagiarism will not be tolerated in any form in this class. If you have a question about whether something constitutes plagiarism, please see me before handing in an assignment. Violations will result, in the least, in **failure of the course** and possible expulsion from the university.

Pieces of Free Advice

It is my practice to give, absolutely free of charge, three pieces of advice that will help students do well in PS 3380. A wise man gave them to me, and now I give them to you.

(1) The reading assignments in Epstein and Walker frequently include material beyond the specific decisions listed on the syllabus. Please note that the decisions listed on the syllabus are the central focus of the course and the lectures. The additional material in *RLJ* is designed to help you understand the syllabus-listed decisions better. If you feel that you can understand the listed decisions without reading the additional material, more power to you. But please be aware: there is no substitute for reading the decisions themselves.

(2) Students will find that the more actively they engage the reading, the better they will do in PS 3380. Supreme Court decisions are not meant to be merely skimmed; they are meant to be debated. Students who come to lecture ready to ask questions will meet with the greatest success.

(3) The final grade for this course is determined by a number of assignments distributed across the semester. If you do not keep up with the course by attending lecture, by turning in case analyses, and by completing the moot court assignments, you will do very poorly.

Schedule of classes: subject to change

Conundrums of Contemporary Constitutional Interpretation

1/15 Introduction (RL&J, 95-98)
US v. Carolene Products Co. (1936)

A. Race and Desegregation

1/20 Plessy v. Ferguson (627)
Sweatt v. Painter (633)
Brown v. Board of Education (636)

1/22 Green v. New Kent County School Board (online)
Swann v. Charlotte-Mecklenburg Board of Education (642)
Milliken v. Bradley (online)

1/27 Missouri v. Jenkins (online)
United States v. Fordice (online)

B. Principles of Antidiscrimination and Equal Protection

- 1/29 Loving v. Virginia (647)
 Washington v. Davis (online)
 Shelly v. Kraemer (652)
- 2/3 Burton v. Wilmington Parking Authority (655)
 Moose Lodge No. 107 v. Irvis (657)
 Village of Arlington Heights v. Metropolitan Housing Development District (online)
- 2/5 Frontiero v. Richardson (665)
 Craig v. Boren (669)
 United States v. Virginia (675)
- 2/10 San Antonio Independent School District v. Rodriguez (694)
 Plyler v. Doe (701)
First Moot Court Essay Due

2/17 & 2/19 **Moot Court arguments to be held in lecture**

C. Rights of the Criminally Accused: A Glimpse of the 4th and 5th Amendments

- 2/24 Katz v. United States (484)
 Mapp v. Ohio (510)
 Miranda v. Arizona (531)
- 2/26 Batson v. Kentucky (564)
 McClesky v. Kemp (online)
 Gideon v. Wainwright (554)

D. The Constitutionality of Affirmative Action

- 3/3 Regents of the University of California v. Bakke (708)
 Adarand Constructors, Inc. v. Peña (718)
- 3/5 Grutter v. Bollinger (723)
 Johnson v. California (online)

E. Religious Pluralism

3/17 Incorporation of the Bill of Rights
 Reynolds v. United States (online)
 Wisconsin v. Yoder (115)
 Employment Division v. Smith (124)

3/19 Locke v. Davey (online)
 Everson v. Board of Education (140)
 Lemon v. Kurtzman (151)

3/24 Agostini v. Felton (160)
 Zelman v. Simmons-Harris (167)
 Wallace v. Jaffree (online)

F. Second Amendment

3/26 United States v. Miller (403)
 D.C. v. Heller (online)
Second Moot Court Essay Due

3/31 & 4/2 **Moot Court arguments to be held in lecture**

G. Freedom of Expression – and Its Limits

4/7 Schenck v. United States (213)
 Abrams v. United States (215)
 Dennis v. United States (231)
 Brandenburg v. Ohio (239)

4/9 West Virginia State Board of Education v. Barnette (286)
 Cohen v. California (262)
 Texas v. Johnson (255)
 Boy Scouts of America v. Dale (307)

H. Fundamental Rights: Privacy and Beyond

4/14 Griswold v. Connecticut (415)
 Roe v. Wade (423)
 Planned Parenthood of Southeastern Pennsylvania v. Casey (439)

4/16 Lawrence v. Texas (452)
 Romer v. Evans (687)

4/21 Cruzan v. Director, Missouri Department of Health (461)
 Washington v. Glucksberg (online)

Vacco v. Quill (online)

4/23 & 4/28 Moot Court arguments to be held in lecture