POLI 4021: The American Constitution and Civil Liberties – Spring 2013

Dr. Laura Moyer
Classroom: 229 Tureaud Hall
Class: 9:30-10:20 MWF

Office: 208B Stubbs Hall
Office hours: Monday 1:30-3:30 or by appt.
Email: LMOYER@LSU.EDU

Course Description and Objectives

Pre-requisite: POLI 2051 or equivalent

This course uses the traditional case method as well as a court simulation (moot court) to introduce students to the study of American constitutional law. Because the case law on civil liberties and civil rights is vast, we will primarily focus on due process, privacy doctrine, and the First Amendment protections for speech, press, and religion. In addition, we will examine the development of Equal Protection doctrine as it has been applied to classifications based on race, gender, and sexual orientation.

Students will learn how to (1) distill cases to their most important components, (2) analyze and apply legal arguments about civil liberties and civil rights, (3) distinguish between and analyze different modes of Constitutional interpretation, and (4) think critically about the role of courts in making legal and social policy.

Requirements for the Course

Attendance
While no grade will be assigned for attendance alone, failing to attend class regularly will undermine your ability to succeed in the class. Special consideration for students who miss class on a day when graded work is due is limited ONLY to students with documented, excused absences. University policy states that excused absences (1) include personal illness (with a doctor’s note), family emergencies, death in the immediate family, military service, religious holiday, or participation in a school-sponsored event (athletes, band members, debate club) AND (2) that these excuses must be accompanied by written notice from the student to the instructor in a timely fashion. Students must alert their instructor in advance if missing class for a documented, school-sponsored event or because of a religious holiday; in the event of a family emergency or personal illness, notification by email must occur on the day of the missed class unless physically impossible.

Participation: in-class discussion and writing
Attendance is a necessary, but not sufficient, condition for a good participation grade. Students are expected to attend class on time and for the duration of the class period, read all assigned materials before class, complete all written assignments on time, and treat other students and the instructor with courtesy and respect (including on Moodle). Please turn off phones and put away iPods, newspapers and other unrelated materials before class begins. NO LAPTOPS are allowed. The quality of participation will be evaluated through both spoken and written contributions to class.

*Because the study of law requires both heavy reading and cumulative comprehension, it is essential that students brief all assigned cases before coming to class. The process of briefing will prepare you for class discussions and save you many hours of time in test preparation. Your participation grades will be determined by your ability to convey the information in your briefs, as well as your ability to analyze the implications, strengths, and weaknesses of legal arguments.

In-class discussion will be worth a maximum of 3 points, and in-class writing will be worth a maximum of 7 points. To earn all of points for participation, students must be outstanding and consistent in their ability to examine the implications of assigned reading, make connections across readings, demonstrate the fundamentals of legal reasoning, and analyze alternative explanations; they
must also be conscientious, responsible, and respectful in person and over email. Lack of attendance, preparedness, or respect for others in the course will result in lower grades for this part of the course.

**Exams**
In-class discussions and the readings listed on the class schedule will serve as the basis for your exams. There will be two midterm exams and one final exam to test your understanding of concepts as well as your ability to apply and analyze them. Students are expected to be present on all testing days. **Students who miss a midterm for any reason will be given a final exam** that includes the missed material. It is the student’s responsibility to alert the instructor via email by April 26 that he or she will need a cumulative final exam. **Make-ups for the final exam are totally at the discretion of the instructor** and will be only for those absences necessitated by a documented & legitimate emergency as governed by university policy. (Forgetting the correct time of the exam is not grounds for a make-up exam.)

**Special Accommodation**
*Graduate students, students wishing to receive honors credit, and students with documented disabilities who require special testing accommodations: please notify me privately at the beginning of the semester so that we can make appropriate arrangements.

**Random brief checks, “hypotheticals” and quizzes**
Each day I will randomly select several students to submit a briefed case or cases to me for a grade (check plus, check, check minus). The purpose of this is to evaluate your progress in developing the skill of briefing, not so much to determine whether the content is “right” or “wrong.” As such, the **briefs must represent your own work and adhere to the university policy on academic honesty. This means that copying briefs from any outside source is unacceptable.** There will be no make-ups; however, at the end of the semester, I will drop your lowest brief grade.

There will also be several quizzes and hypothetical exercises during the semester. To encourage you to stay on top of briefing cases, these will be open notes (but not open book). The purpose of these assignments is to alert you to gaps in your notes and understanding BEFORE each major exam: they are active study tools. Makeups for these assignments are only granted for legitimate emergencies under university policy and if notification occurs on or before the day of the assignment.

**Supreme Court Simulation**
Every student in class will participate in one of two separate simulations which will run concurrently. Each simulation will involve the consideration of a hypothetical case that requires the resolution of a legal issue relevant to our course. Students will play one of the following roles: (1) a specific justice from the past or present, (2) an attorney who represents an organized interest filing an amicus brief, or (3) an attorney representing a direct party in the case. More information about this exercise will follow in class. **Failure to participate fully in the simulation will negatively affect your grade.**

**Academic Honesty**
Every student is expected to be familiar with and abide by the University’s policy on academic honesty before performing any academic work. You can find these and the consequences for committing academic dishonesty at [http://saa.lsu.edu](http://saa.lsu.edu). Examples of academic dishonesty described in the Code include, but are not limited to cheating on tests, plagiarizing written work from any source (including Wikipedia and your friends), selling or buying academic assignments, writing a single paper for multiple classes, collaborating on an assignment without the instructor’s permission, and helping another student do any of these things. **All suspected violations will be reported,** and determinations of guilt or innocence will be made by the Office of Student Accountability.
Grading Policy

Exam 1: 15 points  Written participation: 7 points
Exam 2: 20 points  Case Briefs: 10 points
Final exam: 10 points  Quiz/hypo’s 15 points
Simulation: 20 points
Spoken participation: 3 points

The course is graded on a 100-point scale. There is no extra credit available for any student. Borderline final grades (defined as less than 1 point away from the next letter grade) will be decided based on the quality of participation. Grades will NOT be discussed over email, for confidentiality reasons; please make an appointment with me if you have a question. Written assignments are due at the beginning of class, in hard copy form; work submitted later will be subject to grade penalties.

A (90 & above)  D (60-69)
B (80-89)  F (59 & below)
C (70-79)

Required texts
- Craig R. Ducat. Constitutional Interpretation, 9th ed. (ISBN: 0-495-50284-7). Earlier, used editions are also acceptable, but be sure to check for changes in page numbers and cases.
- Additional readings posted on Moodle [Denoted as M on reading schedule]

Spring 2013: Important dates
- Drop period ends: January 23/ Last day to add: January 24
- Last day to withdraw: Thursday, March 28
- Last Day of Class: Friday, May 3
- Final exam: Friday, May 10 (12:30 – 2:30 p.m.)

Note: the syllabus represents a general plan for the course and may be subject to change, based on the discretion of the instructor.

Schedule of Readings and Assignments (to be read PRIOR to coming to class)

Mon., Jan. 14  Introduction to course

Wed., Jan. 16  I. Introduction to Law and Judicial Power
Reading:
Ducat, pp. 26-40, 89-102

Fri., Jan. 18  A. Supreme Court jurisdiction & judicial review
Reading:
Ducat, pp. 3-26; How to brief a court case [on M]

Brief case:
Marbury v. Madison

Mon., Jan. 21  NO CLASS – MLK HOLIDAY
Wed., Jan. 23  
**Supreme Court jurisdiction & judicial review (continued)**  
**Reading:**  

Brief cases from Monday’s reading (pp. 3-26):  
*Eakin v. Raub; Martin v. Hunter’s Lessee; Ex parte McCardle*

Fri., Jan. 25  
**B. Interpreting Legal Texts**  
**Reading:**  
pp. 75-89

*In class: Levinson, “On Interpretation: The Adultery Clause of the Ten Commandments”*

Mon., Jan. 28  
**Interpreting Legal Texts (continued)**  
**Reading:**  
From *Judges on Judging*: readings 16, 21, 22, and 23 (pp. 152-162, 198-223)

Wed., Jan. 30  
**II. Due Process and the “Incorporation” of the Bill of Rights**  
**Reading:**  
pp. 470-483 (pay close attention to Exhibits 8.1-8.3)

**Brief cases:**  
*Barron v. Baltimore; Slaughterhouse cases*

Fri., Feb. 1  
**Due Process and Incorporation (continued)**  
**Reading:**  
pp. 483-501

**Brief cases:**  
*Hurtado v. California; Palko v. Connecticut; Adamson v. California; Rochin v. California*

Mon., Feb. 4  
**Incorporation and the Second Amendment**  
**Brief cases:**  
*McDonald v. Chicago [on M]*

Wed., Feb. 6  
**QUIZ/HYPO 1: INCORPORATION**

Fri., Feb. 8  
**Reading:**  
pp. 435-443

**Brief cases:**  
*Lochner v. New York; Muller v. Oregon; West Coast Hotel v. Parrish*

Mon., Feb 11-Wed. Feb 13  
**NO CLASS – MARDI GRAS HOLIDAY**

4
Fri., Feb. 15  
**IV. Right of Privacy**

**A. Reproductive Rights & Abortion**

Reading:
pp. 712-728

Brief cases:
*Griswold v. Connecticut; Eisenstadt v. Baird* [pp. 721]; *Roe v. Wade*

Mon., Feb. 18  
**Right of Privacy (continued)**

Reading
pp. 728-743

Brief cases
O’Connor’s dissent in *City of Akron v. Akron Ctr for Reproductive Health; Planned Parenthood of SE Pennsylvania v. Casey*

Wed., Feb. 20  
**Right of Privacy (continued)**

**B. Anti-sodomy laws [END OF MATERIAL FOR EXAM 1]**

Reading:
pp. 752-758

Brief cases:
*Bowers v. Hardwick* [on M]; *Lawrence v. Texas*

Fri., Feb. 22  
Catch up day/review for Exam 1

Mon., Feb. 25  
**EXAM 1**

Wed., Feb. 27  
[BEGINNING OF MATERIAL FOR EXAM 2]

**V. First Amendment: Free Speech**

**A. What is speech?**

Reading:
pp. 777-783

Fri., March 1  
**B. “Clear and Present Danger”**

Reading:
pp. 783-792

Brief cases:
*Schenck v. United States; Gitlow v. New York*

Mon., March 4  
**“Clear and Present Danger” (con’t)**

Reading:
pp. 792-810

Cases:
*Thomas v. Collins; Terminiello v. Chicago; Brandenburg v. Ohio*

Wed., March 6  
**C. Free Speech: Time, Place, and Manner Limitations**
Reading:
pp.813-839

Brief cases:
Adderley v. Florida; Ward v. Rock Against Racism; Madsen v. Women’s Health Center; Rosenberger v. University of Virginia

Fri., March 8

**D. Symbolic Speech**

Reading:
pp. 859-870

Brief cases:
West Virginia State Board of Education v. Barnette; Tinker v. Des Moines School District

Mon., March 11

**Symbolic Speech (con’t)**

Reading:
pp. 870-888

Brief cases:
United States v. O’Brien; Texas v. Johnson; RAV v. City of St. Paul

Wed., March 13

**QUIZ/HYPO 2: SPEECH** (Open notes, but not open book)

Fri., March 15

**VI. First Amendment: Religion (Establishment Clause)**

Reading:
pp.1049-1064, 1068-1072

Brief cases:

Mon., March 18

**Establishment of Religion (con’t)**

Reading:
pp. 1084-1096, 1098-1099, 1101-1106

Brief cases:
Edwards v. Aguillard; Alleghany v. ACLU; Van Orden v. Perry

Wed., March 20

**First Amendment: Religion (Free Exercise of Religion)**

Reading:
pp.1106-1126

Cases:
Thomas v. Indiana Employment Security Review Board; Wisconsin v. Yoder; Employment Division of Oregon v. Smith; Church of Lukumi Babalu Aye v. City of Hialeah

Fri., March 22

**Catch up/in-class assignment related to simulation**
Mon., March 25 **QUIZ/HYPO 3: Religion**

Wed., March 27 VII. Equal Protection of the Laws
A. Race
Reading:
pp. 1127-1142

Brief cases:
Plessy v. Ferguson; Sweatt v. Painter; Brown v. Board of Education I, II

Fri., March 29 – Fri., April 5 NO CLASS: SPRING BREAK

Mon., April 8 Race (con’t)
Reading:
pp. 1145-1165

Brief cases:
Swann v. Charlotte-Mecklenburg Board of Education
Milliken v. Bradley
Parents Involved in Community Schools v. Seattle School District

Wed., April 10 Equal Protection: Race (con’t) [END OF MATERIAL FOR EXAM 2]
Reading:
pp. 1171-1176

Brief cases:
Regents of California v. Bakke (esp. Powell’s plurality opinion)

Fri., April 12 **JUSTICE PAPERS AND ATTORNEY BRIEFS DUE**

In-class preparation for oral argument

Mon., April 15 ORAL ARGUMENTS (GROUP 1)
[class held at law school]

Wed., April 17 ORAL ARGUMENTS (GROUP 2)
[class held at law school]

Fri., April 19 CONFERENCE DELIBERATIONS (BOTH GROUPS)
*Mandatory attendance*

Mon., April 22 Review for Exam 2

Wed., April 24 **EXAM 2**
Fri. April 26  [BEGINNING OF MATERIAL FOR FINAL EXAM]
B. Equal Protection: Gender
Reading:
pp. 1283-1305
Sir William Blackstone [M]

Brief cases:
Frontiero v. Richardson
Craig v. Boren

Mon., April 29  Equal Protection: Gender (con’t)
Reading:
pp. 1283-1305

Brief cases:
United States v. Virginia

Wed., May 1  C. Equal Protection: Sexual orientation
Reading
pp. 1316-1320

Brief cases
Romer v. Evans
Perry v. Brown (9th Circuit) [M]
Windsor v. U.S. (2nd Circuit) [M]

Fri., May 3  Review for final exam

Friday, May 10  **FINAL EXAM**
12:30-2:30 p.m.