

The First Amendment

Information

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Course Description

This course offers an introduction to the First Amendment through the lens of constitutional law. The First Amendment reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” These provisions, which collectively recognize core liberties concerning expression and religion, are among the most fundamental building blocks of the American political order. In this course, we consider the original meaning and contemporary application of these provisions by examining important Supreme Court decisions. We also consider how existing jurisprudential principles inform our understanding of cutting-edge First Amendment questions and the importance of American political institutions in shaping the development of First Amendment doctrine.

Reading

There are no required texts to purchase. We will be reading U.S. Supreme Court opinions, which are in the public domain and freely available online through sites such as [Google Scholar](#) (select the “case law” button) and [Court Listener](#). Assigned cases are hyperlinked below to their respective Google Scholar pages. There are several options for printing opinions. First, the easiest option is to copy and paste the opinion from Google Scholar into a text processing program such as Microsoft Word. Second, you can use the citation information included below to download opinions in a variety of formats through the university’s subscription to [Lexis](#). Third, you can use the citation information included below to download the opinions with original pagination as printed in the U.S. Reports through the university’s subscription to [HeinOnline](#). Note that the dates provided below are recommendations for completing each block of assigned readings. Depending on course progress we may be behind or slightly ahead of the assigned readings on any given day; regardless, you should keep up with the recommended completion dates as things will even out over time.

Grading

Grades will be comprised of the following components:

- First Exam (35%)
- Second Exam (35%)
- Research Paper (20%)
- Simulation (10%)

Final grades will be distributed according to the following scale:

A	93-100	C	73-76
A-	90-92	C-	70-72
B+	87-89	D+	67-69
B	83-86	D	63-66
B-	80-82	D-	60-62
C+	77-79	F	59 and below

Course Topics

Foundations

1. Historical Context
2. Judicial Review
3. Incorporation
4. State Action

Expression

1. Free Speech Methodology
 - Places
 - Prior Restraint
 - Content-Based vs. Content-Neutral Restrictions
 - Overbreadth and Vagueness
2. Non-Speech Expression
 - Association
 - Symbolic
 - Commercial
 - Donations
3. Limitations
 - Incitement
 - Fighting Words
 - Threats
 - Obscenity
 - Profanity
 - Torts

Religion

1. Free Exercise
 - Accommodation
 - Noncompliance
 - Laws of General Applicability
2. Establishment
 - Interpretive Approaches
 - Displays
 - School Prayer
 - Vouchers
 - Release Time

Course Schedule

1. January 9: Introduction
2. January 16: [New York Times v. United States](#), 403 U.S. 713 (1971)
3. January 23: [Texas v. Johnson](#), 491 U.S. 397 (1989)
4. January 30: [Citizens United v. Federal Election Commission](#), 558 U.S. 310 (2010)
5. February 6: [RAV v. St. Paul](#), 505 U.S. 377 (1992)
6. February 13: [Miller v. California](#), 413 U.S. 15 (1973)
7. February 20: No Class (Monday Class Schedule)
8. February 27: First Exam
9. March 6: No Class (Spring Break)
10. March 13: [New York Times v. Sullivan](#), 376 U.S. 254 (1964)
11. March 20: [West Virginia v. Barnette](#), 319 U.S. 624 (1943)
12. March 27: [Employment Division v. Smith](#), 494 U.S. 872 (1990)
13. April 3: [Lee v. Weisman](#), 505 U.S. 577 (1992)
14. April 10: Second Exam
15. April 17: Simulations
16. April 24: Simulations + Final Papers Due (hard copy at the beginning of class)

Simulation

We will conduct Supreme Court simulations involving First Amendment questions that are currently on the Supreme Court's docket. These cases include:

- [Masterpiece Cakeshop v. Colorado Civil Rights Commission](#) (16-111)
- [National Institute of Family and Life Advocates v. Becerra](#) (16-1140)
- [Minnesota Voters Alliance v. Mansky](#) (16-1435)
- [Lozman v. City of Riviera Beach](#) (17-21)

There are two components to the simulation. The first is a written paper analyzing the proper disposition of the assigned case using existing precedent. It should be 7–10 pages with the grade based primarily on the thoroughness and quality of the research and analysis. The second component is participation as an attorney or justice in a simulated oral argument. Simulation performance is evaluated on the basis of preparedness, question quality, and interactivity with the attorney (for justices) or justices (for attorneys). The links above provide access to relevant material, including the lower court opinion, briefs, and oral argument transcripts and audio.

Course Policies

Applicable [university policies](#) will be followed. These include, but are not limited to, policies on matters such as [excused absences](#), [classroom conduct](#), [academic integrity](#), and [disability-related accommodation](#). Students are bound by university policies regardless of prior knowledge or understanding. As a result, it is good practice to periodically review these policies.

Although the university's policy on [excused absences](#) addresses numerous contingencies, it delegates discretion to faculty with respect to several matters. As a result, the following policies are adopted pursuant to university's regulations. First, excused absences will generally be limited to the mandatory and "other allowable" reasons delineated by university policy. There is a strong presumption against the grant of excused absences for any other reason, though exceptions may be considered on a case by case basis. Second, appropriate independent documentation must generally be provided for any excused absence. If documentation cannot be provided for good reason, other verification may be required. I reserve the right to determine what constitutes acceptable documentation or verification for purposes of classifying an absence as excused subject to applicable university policy. Third, without an excused absence, make-up exams can be taken and late papers submitted within 24 hours of the original deadline with a 20% reduction in grade for that course component. Time will be tolled on non-business days, including weekends and university holidays.

The syllabus is subject to change.