# First Amendment

LAW-7316-601  
Mondays and Wednesdays, 1:30-3:00 p.m.   
Zoom Room:

https://tamu.zoom.us/j/98740339123?pwd=UThpT21sQlMxYlBKZUxRUDZUbVlaUT09

Meeting ID: 987 4033 9123

Passcode: 153738

3 credit hours

## Instructor Details

Instructor: Prof. Hannah Bloch-Wehba (pronounced “Block-WEEba”)

Office: Room 140; on Zoom, https://tamu.zoom.us/my/profhbw

Email: You can reach me at hbw@law.tamu.edu. Email communication for this class should be considered formal, similar to other business-style email correspondence. I will usually answer your emails within 24 hours, except on weekends.

Office hours: Office hours will be held on Zoom, <https://tamu.zoom.us/my/profhbw>, by appointment. You can make an appointment by booking a time on my calendar: <https://calendly.com/profhbw>. I strongly encourage you to come to office hours, even if you don’t have a specific question or concern, so that I can get to know you better.

## Course Information

### Course Description

Welcome! This course will cover the constitutional rights of freedom of religion and free expression under the First Amendment, as well as related issues arising under federal and state statutes. Among other topics, the course will cover the establishment and free exercise clauses; seditious advocacy and terrorism; offensive, racist, and hate speech; obscenity; pornography; threats; media regulation; press freedom; and freedom of association.

The course will familiarize students with the fundamental protections afforded by the First Amendment and with the legal doctrines that have emanated from those protections; cultivate the ability to apply those doctrines to diverse sets of facts; foster an understanding of the relationship of law and technology; and promote informed and thoughtful perspectives concerning the validity of descriptive and normative counter-arguments.

### Prerequisites

None.

### Course Learning Outcomes

By the end of this course, students should be able to:

* Describe the historical development and current contours of First Amendment doctrine on free expression and freedom of religion;
* Analyze fact patterns with potential First Amendment issues and identify and explain the constitutional doctrines implicated by those facts;
* Assess the strengths and weakness of legislative intervention in developing law on freedom of religion and free expression;
* Understand and analyze the relationship between First Amendment doctrine and other areas of constitutional law;
* Identify and discuss new technological developments as they relate to First Amendment protections.

## Course Materials, Books, and Resources

### Required

1. Stone, Seidman, Sunstein, Tushnet, Karlan, *The First Amendment* (6th ed. 2020)
2. This course has a website on Canvas. Non-casebook readings, slides, and other materials will be posted there as the semester progresses.
3. Each day’s reading assignment will include the discussion memo(s) posted by your classmates.

## Classroom policies

### Class participation

Class is conducted primarily through discussion and the Socratic method. I expect every student to be on time, prepared, and to participate in class both by actively speaking and actively listening to one another. Attendance is not graded, but more than 4 unexcused absences will count against your class participation grade. Please let me know if you cannot make it to class.

Class participation is a vital way of developing analytic and oral presentation skills that are core to the legal profession. **I will ask the student who wrote the discussion memorandum for that day’s class to kick off the discussion.** I aim to call on a large portion of the class during each session, drawing from a randomized list of students. Students are expected to come to class having completed the reading and prepared for discussion. If you are unprepared for class, you may email me by 9:00 a.m. on the day of class to be placed on a “no call” list.

I expect students to respond thoughtfully and respectfully to each other and to the material. These norms of professional communication are particularly important to ensure that we can have an open, productive discussions throughout the semester on issues that will often be controversial or offensive. Our discussions should strive to foster an equitable and inclusive learning environment. To those ends, I expect respectful and engaged participation from all students. We all share responsibility for including all voices in the conversation, listening respectfully, being open to new and different perspectives, taking our conversations seriously, and being empathetic and understanding.

I will assume that everyone is prepared for class. In the interest of thorough preparation for class, I suggest that you write your own case briefs for each major case that we read. I will call on students who are “on call” to explain and respond to the claims and arguments advanced in the reading and by your classmates. You are free to take a “pass” on a question, but if you do so excessively over the course of the semester, your participation grade will suffer. In other words: please take a stab at answering the question, even if you fear that you are wrong or do not understand.

### “Keep it impersonal” policy

Nearly every topic we discuss in this class will be controversial. You, your classmates, or your friends, family, and loved ones, may have had experiences directly relevant to our class discussions. These life experiences will, of course, indelibly affect your perspectives on the topics we discuss. In the interest of fostering a thoughtful and productive atmosphere in class, however, I ask that you not directly recount your personal experiences as evidence or arguments for or against your answer to a given question or your position on a given topic. It is often difficult to maintain an atmosphere of open communication if discussion shifts from the merits of the laws, policies and problems we will discuss to our own personal reactions to events in our own lives— reactions that are often hard to debate or contest.

By way of example, it would contravene this policy to contribute in class by saying, “I attended a parochial school, and so I don’t think the Court gave enough weight to . . . .” Or to say, “As a woman, I think the Court should . . . .” It is, however, perfectly permissible—indeed, expected—that you will express the substance of your views, stripped of the personal narrative. (E.g., “Parochial schools educate a substantial number of children of all creeds, and I think that is an important consideration. . . .” or “I think that gender affects the Court’s understanding by . . . .”).

## Evaluation and Grading Policies

Your course grade will be based on your **final exam** (90%), your **class participation** (10%), and your timely submission of a **discussion memorandum** (ungraded, but late submission will negatively affect your grade).

**Final exam** (90%) ­

A final, take-home, open-book exam. Additional details, and prior exams, will be provided as the semester progresses. You are responsible for the material in the assigned readings as well as for what we cover in class.

**Participation** (10%)

I will base your class participation component on my evaluation of your interactions, preparedness, and thoughtfulness in class discussion and small group activities. Excessive absences may affect your participation grade.

**Discussion memo** (ungraded)

* **What**: During the semester, each of you will be required to post **one** short (<500 words), informal “discussion leader” memorandum. The memo should discuss some issue(s) relevant to the assigned readings for the next day’s class and pose three or four questions for class discussion. The memos are part of the course reading assignment.
* **Where**: the discussion memos should be posted in the “discussion” section of the Canvas site.
* **When**: the discussion memos should be posted by 5:00 p.m. the day before the class for which they are assigned. On Tuesday, January 19, I will distribute a digital signup form for these memos. On Friday, January 22, I will post the final schedule for the memos on Canvas. The first memos will be posted for Class 2, which will meet on Monday, January 25.
* **Why**: the memos help me to determine which issues you find compelling, and which you find confusing. They also give you a different kind of opportunity to participate in class discussion, and help your classmates to get to know you better.
* The memos will not be graded. A memo will affect your grade only if you fail to post it by the required time. Failure to post a memo by the applicable deadline will reduce your course grade by a third of a grade (i.e., from a B+ to a B). If you anticipate a scheduling or other conflict, you may arrange a trade with another classmate. If you experience technical difficulties, please send me an email and post your memo as soon as possible.

JD students will follow the grading scale and grading policies outlined in Academic Standards 8.1-8.54, which may be found in the Student Handbook. The following courses are subject to a maximum allowed class GPA of 3.20 regardless of size: (1) all lockstep courses, other than Legal Analysis, Research and Writing I and Legal Analysis, Research and Writing II; (2) Constitutional Law; (3) Professional Responsibility; and (4) all other nonlockstep courses with enrollments of over twenty-four J.D. students. The following courses are subject to a maximum allowed class GPA of 3.40 regardless of size: (1) Legal Analysis, Research and Writing I; (2) Legal Analysis, Research and Writing II; and (3) all nonlockstep courses (other than Constitutional Law and Professional Responsibility) with enrollments of no fewer than thirteen and no greater than twenty-four J.D. students. A maximum class GPA of 3.40 is encouraged but not mandatory for any course meeting one or more of the following criteria: (1) a graded nonlockstep course (other than Constitutional Law or Professional Responsibility) with enrollment of twelve or fewer J.D. students, (2) a graded course where at least one-third of the course instructional time is spent on one or more field trip(s), and (3) graded law clinics.

### Attendance

**You will be marked “present” if you attend the class synchronously.** If you need to miss class due to illness, family obligations, or other issues, please let me know. Attendance is not graded, but more than 4 unexcused absences will count against your class participation grade.

JD students are required to adhere to the law school’s attendance policy as outlined in the Student Handbook.

Regular and punctual class attendance is required of all students in all courses. Students are expected to attend regularly scheduled classes as well as make-up classes scheduled during the official make-up times. Official make-up times are noted on the registration materials each semester. Students are expected to adhere to special attendance requirements for some classes, such as a law clinic, intensive weekend classes, condensed format classes, distance educations classes and externships. Special attendance requirements will be published in the registration materials. A student not on academic warning or probation whose total absences in a course that does not contain a live-client component exceed twenty-five percent of the regularly scheduled class meetings and make-ups scheduled during official make-up times or whose absences exceed the special attendance requirements for the course will be withdrawn from that course, will have a W entered on his or her transcript, and will not receive credit for the course.

### Technology Policy

tl;dr: Technology is amazing! It is also distracting. Please be mindful of your technology use, stay present in the class, and refrain from using your laptop or tablet for any non-class-related activities while in class.

*longer version:*

We now have the attention spans of goldfish. I believe that laptops, cell phones, and other electronic devices largely serve as an irritant and a distraction from classroom discussion. A significant body of research also supports the conclusion that handwritten notetaking is correlated with better performance in class. For this reason, I ordinarily adopt a presumption against laptops in class, a position that the Covid-19 pandemic obviously makes impracticable.

Please be mindful of your technology use in class and thoughtful about whether what you are doing on your laptop or phone might be distracting for you and/or your classmates.

I encourage you to have Zoom in full screen mode or side-by-side with your notes and/or text. Where practicable, I encourage using a paper notebook and pen for notetaking, and a physical copy of the casebook and other course materials, to ease the need for a split screen. Please silence your cell phone and turn off any distracting alerts on your computer (e.g., the “new email” alert).

#### **Zoom Policies**

If an internet disruption or other technical interruption makes it impossible for you to attend class, please let me know via email. Zoom sessions will be recorded and posted on Canvas.

It is easy to get distracted when learning online. To the extent possible and reasonable, please try to find a quiet place to participate in class that facilitates a positive learning environment for you. You might also want to consider disabling “self view” in order to simulate a classroom experience.

I prefer, but do not require, that you turn your camera on. I recognize that you may be joining us from a childhood bedroom, a spare closet, or a backyard (if you’re lucky). No judgment here! Likewise, if your child, partner, or pet wanders into the Zoom frame, don’t worry about it. Life happens.

Please keep your microphone muted unless you are speaking. I encourage you to use headphones and a microphone if you have them in order to ensure that your classmates can hear you clearly. Please use the “raise hand” function to participate in class. If you have technical difficulties or need me to speak up, please use the “raise hand” function or the chat function. Please do not otherwise use the chat function unless absolutely necessary, as I find it distracting.

#### **Canvas Policies**

See the following link for information about how you access the Canvas learning management system: <https://it.tamu.edu/services/academics-and-research/teaching-and-learning-tools/canvas/>.

Technical requirements for the Canvas learning management system can be found at: <https://community.canvaslms.com/docs/DOC-10720-what-are-the-browser-and-computer-requirements-for-canvas>.

Texas A&M University provides students technical support in the use of Canvas. The student help desk may be reached by the following means 24 hours a day, seven days a week.

Phone: 979.845.8300

Email: [helpdesk@tamu.edu](mailto:helpdesk@tamu.edu)

Website: <https://it.tamu.edu/help/>

Help Desk Central also offers CHAT support at hdc.tamu.edu via the yellow Start Chat Now! icon. Please note that the Chat feature is only available 8:00 am – 11:59 pm.

When access to Canvas is not available for an extended period of time (greater than 5 hours), you can reasonably expect that the due date for assignments will be changed to the next day.

## Campus Safety Measures

To promote public safety and protect students, faculty, and staff during the coronavirus pandemic, Texas A&M University has adopted policies and practices for the Spring 2021 academic term to limit virus transmission. Students must observe the following practices while participating in face-to-face courses and course-related activities (office hours, help sessions, transitioning to and between classes, study spaces, academic services, etc.):

* Self-monitoring and reporting—Students should follow CDC recommendations for self-monitoring. **Students who have a fever or are exhibiting symptoms of COVID-19 should participate in class remotely and should not participate in face-to-face instruction.**

**Similarly, you must stay home** (and can participate in class remotely) **if:**

* + **You have been diagnosed with or received a positive test result for COVID-19; or**
  + **You believe that you have been in close contact** (defined as being within 6 feet for at least 15 minutes, regardless of wearing a face covering) **with someone who has or is suspected to have COVID-19**, or someone in your household has been diagnosed with or received a positive test result for COVID-19.

**You must also immediately complete the COVID-19 Report Form and follow all instructions that you receive from the University’s COVID-19 Investigations and Operations Center.**

* Face Coverings—Face coverings (cloth face covering, surgical mask, etc.) must be properly worn in all non-private spaces including classrooms, teaching laboratories, common spaces such as lobbies and hallways, public study spaces, libraries, academic resource and support offices, and outdoor spaces where 6 feet of physical distancing is difficult to reliably maintain. Description of face coverings and additional guidance are provided in the Face Covering policy and Frequently Asked Questions (FAQ) available on the Provost website.
* Physical Distancing—Physical distancing must be maintained between students, instructors, and others in course and course-related activities.
* Classroom Ingress/Egress—Students must follow marked pathways for entering and exiting classrooms and other teaching spaces. Leave classrooms promptly after course activities have concluded. Do not congregate in hallways and maintain 6-foot physical distancing when waiting to enter classrooms and other instructional spaces.
* To attend a face-to-face class, students must wear a face covering (or a face shield if they have an exemption letter). If a student refuses to wear a face covering, the instructor should ask the student to leave and join the class remotely.

The Student Code of Conduct requires students to comply with all published University rules. Students who do not comply with these safety practices will be reported to the Associate Dean of Academic Affairs (who serves as the Law School’s Student Conduct Administrator) for sanctions.

**Personal Illness and Quarantine:** Students required to self-quarantine must participate in courses and course-related activities remotely and **must not attend face-to-face course activities**. Students should notify their instructors of the quarantine requirement. Students under self-quarantine are expected to participate in courses and complete graded work unless they have symptoms that are too severe to participate in course activities.

Please visit the University’s [Covid-19 Guidance](https://www.tamu.edu/coronavirus/index.html) website for the most up to date information on Texas A&M University’s campus safety measures.

## Course Topics, Calendar, and Assignments

Below you will find a tentative plan for our course coverage this semester. A full and up-to-date schedule of the readings is available at <https://hbwhbwhbw.github.io/FirstAmendment/>. You may wish to consult the law school’s academic calendar and final exam schedule as well.

## Class 1 - January 20, 2021

Part II - The Constitution and Religion [CB 521-523]

VII. Historical and Analytical Overview [CB 523-544]

VIII.A. The Establishment Clause: The Anticoercion Principle [CB 545-559]

## Class 2 - January 25, 2021

VIII.B. The Nonendorsement Principle, History’s Relevance, and de Facto Establishments [CB 559-578]

VIII.C. Impermissible Purposes [CB 578-593]

## Class 3 - January 27, 2021

VIII.D. Facially Neutral Statutes that Incidentally Aid Religion [CB 593-616]

## Class 4 - February 1, 2021

IX. Free Exercise [CB 617-640]

Audio from [*Fulton v. City of Philadelphia*](https://www.oyez.org/cases/2020/19-123), Nov. 4, 2020 [Canvas]

## Class 5 - February 3, 2021

The Religious Freedom Restoration Act [Canvas]

## Class 6 - February 8, 2021

X. Permissible Accommodation [CB 641-661]

## Class 7 - February 10, 2021

I. The History and Philosophy of Free Expression [CB 3-17]

II.A. Content-Based Restrictions: Dangerous Ideas and Information [CB 19-24,   
27-46] (*Masses*, *Schenck*, *Debs*, *Abrams*, *Gitlow*, *Whitney*, & Notes)

## Class 8 - February 15, 2021

II.A. Content-Based Restrictions: Dangerous Ideas and Information cont’d [CB 46-71]

II.C. Classified Information [CB 93-108]

## Class 9 - February 17, 2021

II.B. Speech that Provokes a Hostile Audience Reaction [CB 72-93]

IV.C. Threats [CB 162-166]

## Class 10 - February 22, 2021

IV.A. Low Value Speech: False Statements of Fact [CB 129-154]

## Class 11 - February 24, 2021

Vagueness, Overbreadth, and Prior Restraint [109-124]

In re NSL (Canvas)

## Class 12 - March 1, 2021

IV.E. Low Value Speech: Obscenity [CB 189-211]

IV.H. Pornography [CB 279-282]

## Class 13 - March 3, 2021

IV.G. Offensive and Indecent Speech [CB 226-252]

## Class 14 - March 8, 2021

IV.H. Hate Speech [CB 253-279, 282-285]

## Class 15 - March 10, 2021

IV.D. Commercial Advertising [CB 167-188]

Sorrell v. IMS Health (Canvas)

## Class 16 - March 22, 2021

V.C. Symbolic Conduct [CB 376-401]

## Class 17 - March 24, 2021

V.A. Content-Neutral Restrictions: General Principles [CB 285-297]

Reed v. Town of Gilbert [CB 351-352]

V.B.1. The Public Forum: Streets and Parks [CB 298-308]

## Class 18 - March 29, 2021

V.B.2. The Public Forum: Other Publicly Owned Property [CB 311-323]

## Class 19 - March 31, 2021

V.B.4. Government Speech [CB 352-376]

## Class 20 - April 5, 2021

V.D. Other Means of Expression [CB 402-420]

## Class 21 - April 7, 2021

V.E. Campaign Finance [CB 421-449]

## Class 22 - April 12, 2021

V.E. Campaign Finance cont’d [CB 449-477]

## Class 23 - April 14, 2021

VI.A.-C Press Freedom & Differential Treatment [CB 481-498]

## Class 24 - April 19, 2021

VI.D. Media Regulation [CB 501-518]

USTA v. FCC (Kavanaugh, J., dissenting) (Canvas)

## Americans with Disabilities Act (ADA) Policy

Texas A&M University is committed to providing equitable access to learning opportunities for all students. If you experience barriers to your education due to a disability or think you may have a disability, please contact the Assistant Dean of Student Affairs, Rosalind Jeffers at rjeffers@law.tamu.edu. Disabilities may include, but are not limited to attentional, learning, mental health, sensory, physical, or chronic health conditions. All students are encouraged to discuss their disability related needs with Dean Jeffers as soon as possible. Due to the law school’s policy of testing anonymity, students should not discuss their disabilities with professors. For additional information visit http://law.tamu.edu/current-students/student-affairs/exam-accommodation.

## Academic Integrity Statement and Policy

*An Aggie does not lie, cheat or steal, or tolerate those who do.*

Texas A&M University students are responsible for authenticating all work submitted to an instructor. If asked, students must be able to produce proof that the item submitted is indeed the work of that student. Students must keep appropriate records at all times. The inability to authenticate one’s work, should the instructor request it, is sufficient grounds to initiate an academic dishonesty case.

You can learn more about the Aggie Honor System Office Rules and Procedures, academic integrity, and your rights and responsibilities at http://aggiehonor.tamu.edu and the law school Student Handbook.

## Title IX and Statement on Limits to Confidentiality

Texas A&M University is committed to fostering a learning environment that is safe and productive for all. University policies and federal and state laws prohibit gender-based discrimination and sexual harassment, including sexual assault, sexual exploitation, domestic violence, dating violence, and stalking.

With the exception of some medical and mental health providers, all university employees (including full and part-time faculty, staff, paid graduate assistants, student workers, etc.) are Mandatory Reporters and must report to the Title IX Office if the employee experiences, observes, or becomes aware of an incident that meets the following conditions (see University Rule 08.01.01.M1):

* The incident is reasonably believed to be discrimination or harassment.
* The incident is alleged to have been committed by or against a person who, at the time of the incident, was (1) a student enrolled at the University or (2) an employee of the University.

Mandatory Reporters must file a report regardless of how the information comes to their attention – including but not limited to face-to-face conversations, a written class assignment or paper, class discussion, email, text, or social media post. Although Mandatory Reporters must file a report, in most instances, you will be able to control how the report is handled, including whether or not to pursue a formal investigation. The University’s goal is to make sure you are aware of the range of options available to you and to ensure access to the resources you need.

Students wishing to discuss concerns in a confidential setting are encouraged to contact the Student Assistance Program at:

(855) 270-33​49 (TTY: 711) or https://humana.your-sap.com/login?returnUrl=/. Username and password information are available ​from the Office of Student Affairs.

Students can learn more about filing a report, accessing supportive resources, and navigating the Title IX investigation and resolution process on the University’s Title IX webpage.

Students and faculty can report non-emergency behavior that causes them to be concerned at http://tellsomebody.tamu.edu.

## Statement on Mental Health and Wellness

Texas A&M University recognizes that mental health and wellness are critical factors that influence a student’s academic success and overall wellbeing. Students are encouraged to engage in healthy self-care by utilizing the resources and services available from Student Assistance Program at: (855) 270-33​49 (TTY: 711) or https://humana.your-sap.com/login?returnUrl=/. Username and password information are available ​from the Office of Student Affairs. Students who need someone to talk to can contact the Student Assistance Program at (855) 270-33​49 (TTY: 711), available 24 hours a day. 24-hour emergency help is also available through the National Suicide Prevention Hotline (800-273-8255) or at https://suicidepreventionlifeline.org.

In addition, the [Texas Lawyers’ Assistance Program (TLAP)](https://www.tlaphelps.org/) provides free, confidential assistance for law students and lawyers.  If you or someone you know are dealing with substance abuse, impairment, mental health issues, or concerns related to living and studying remotely, please do not hesitate to contact the Student Assistance Program (referenced above) and/or TLAP by calling 1-800-343-TLAP or texting TLAP at 555888. Trained professionals are available on a 24/7 basis.  In addition, the [TLAP website provides helpful resources and material.](https://www.tlaphelps.org/law-students) Remember: professionals exercise good judgement when they proactively seek help and guidance.  Check out the video clip, [It’s Good to Get Help.](https://www.youtube.com/watch?v=ghYKXsFyt7Y&feature=youtu.be)

## Statement on Credit Hours

ABA accreditation standards include a formula for calculating the amount of work that constitutes a credit hour. According to ABA Standard 310(b)(1), “a “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” At A&M University School of Law we have a twelve-week semester. As this is a 3 credit hour class, applying the ABA standard to the number of credits offered for this class, you are expected to spend 3 actual hours per week (180 minutes) in class. Outside of the classroom - for a 3-credit course - you should be spending, on average, a minimum of 7 hours (420 minutes) of study time weekly in addition to class time. For more information, see Credit Hour Policy.