

Political Science 4251 - 001
CONSTITUTIONAL LAW II

SPRING 2012

Prof. W. Douglas Costain

M/W/F 9:00 -9:50 am

EKLC E1B20

Office: Muen. D0046

Phone: 303.492.6806

Hours: T/Th 10-11:00 am,

F 10:30-11:15am **and** by appointment

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Pre Law Advising: M-F pm, (by appt. only)

University Club 111; For appoint: *use Advising Portal*

This course examines selected aspects of the evolution of the US Constitution through interpretation by the Supreme Court. Competing theories and methods of constitutional interpretation are critiqued and assessed, using Cass Sunstein's categories. The Supreme Court as a social and political institution will be briefly reviewed in the first part of the course. Then we look at the major cases decided by the Court in many key areas of civil rights and civil liberties. Through analysis of these cases we will discuss the changing doctrines used by the Justices to allocate and limit individual freedoms and government powers.

NOTE: There will be several supplements to this syllabus. One will provide guidelines on how to brief cases. C-SPAN and other electronic media will be used to supplement written and lecture material. Students are responsible for arranging to access any and all material resulting from absence from class.

COURSE REQUIREMENTS

Required Books: (All are paperbacks and one copy of each will be on reserve at Norlin Library)

Lee Epstein, T. Walker, *Constitutional Law for a Changing America: Vol.2 Rights, Liberties and Justice*: 7th edition (2010).

Cass Sunstein, *Radicals in Robes*, (2007)

OPTIONAL: Lawrence Baum, *The Supreme Court 10th Ed.* (2010) **essential for students without background courses on the US Courts.**

Accommodation of Disability/ Religious Observances/ Requirements of the Honor Code:

If you require special accommodations, due to disability or religious observances please notify me before January 27. I will meet your needs. The Office of Disability Services is located in Center for Community N200; (303. 492.8671.) The CU Honor Code, with its description of unethical behavior, and the academic sanctions that may result, is available at: www.colorado.edu/academics/honorcode/.

Discrimination or Harassment for any reason is an offense against the university community and is subject to sanctions. To file a complaint, call 303.492.2127. To review policies, go to: colorado.edu/odh

EXAMINATIONS:

First Examination, Wednesday, **Feb 22** (25%)

Second Examination, Wednesday, **March 21** (25%)

Final Examination, Saturday, **MAY 5** (30%) **4:30- 7:00 PM**

CLASS PARTICIPATION: (20%) Includes THREE written case Briefs and Oral Participation:

Each student will prepare and submit THREE (3) written case briefs *in her own words* on specific cases assigned from the syllabus. The lowest grade will be dropped and the best TWO will count. Details will be given later in class. Attendance will also count towards the participation grade.

Extra-Credit: Optional Oral Reports (April 13 Proposal Deadline!)

Case briefings/presentations by individuals or coops on current constitutional cases NOT analyzed in the course will be arranged. Bonus points worth **up to 10 points (added to the in-class exams score)** will be earned by participants. DEADLINE for proposing extra-credit presentations is Friday April 13th.

Constitutional News: Students can earn bonus points by reporting to the class on **news** of a Constitutional case before the federal courts or a court's opinion on a current Constitutional case. Web sources include: (www.uscourts.gov/links.html)(findlaw.com/casecode)(oyez.org) (law.cornell.edu/supct/index.html)

TOPICS AND ASSIGNMENTS

- Jan 18 Introduction The politics of the Supreme Court
- Jan 20-25 Epstein & Walker, *Constitutional Law...: Rights, Liberties and Justice*, I Ch. 1. Baum, **The Supreme Court**, chapter 1, 2.
- Jan 27-Feb 1 The Cases; Baum, ch. 3. Epstein/Walker, **C.L.F.C.A.**, I-Intro. and *Federalist* #78.(753-756) Epstein, & Walker, **C.L.C.A.** I-#1. **Sunstein, Radicals in Robes**, Intro., chapters 1, 2.
- Feb 3-6 Decision-Making/Policy/Impact; Baum, ch. 4-6.
- Feb 8-10 Briefing Court Cases: Judicial Review and its Limits; Epstein & Walker, I Ch. 2. Cases: *Marbury v. Madison*; *Ex parte McCordle*. **Sunstein**, ch. 6-8.
- *Feb 11* *Saturday*-Women in Law Day; 9am-4pm -CU Law School
- Feb 13 Incorporation/ Nationalization of the Bill of Rights; Epstein & Walker, I Ch. 3 and cases
II Civil Liberties: Religion: Exercise and Establishment
- Feb 15 Epstein & Walker, II Ch. 4, and Free Exercise cases (plus *H.-T, Evan. Lutheran Church v EEOC, 2012*)
- Feb 17-20 Religious Establishment: Epstein & Walker, II Ch. 4(second half) and cases
- Feb 22 WEDNESDAY FIRST EXAMINATION- BRING unmarked "BLUE" BOOKS**
(Review Sheet will be distributed)
- Feb 24-27 Freedom of Speech, Assembly and Association II Ch. 5, Cases. Legal Standards/Times of Crisis
- Feb 29 –March 2 Freedom of Speech. II Ch. 5 “Regulating Expression” cases
- FIRST BRIEF DUE
- March 5-9 Free Press, **Ch. 6**, and cases Obscenity **Ch. 7**, and cases
Libel **Ch. 7**, and cases New Media **Ch. 8** and cases
- March 12-14 The Second Amendment, Ch. 9, cases-(plus-*McDonald v Chicago 2010*)
Sunstein, ch.9.
- The Right of Privacy**
- March 14-16 Foundations, Ch. 10, *Griswold, Roe, Planned Parenthood* cases
- March 19 “Applications of Griswold”, Ch. 10, and cases **Sunstein**, ch. 3.
(Review Sheet will be distributed)
- MARCH 21 WEDNESDAY -SECOND EXAMINATION -- BRING "BLUE" BOOKS**

March 23 Friday No Class!
(March 26-30) SPRING BREAK!!

III: Rights of the Criminally Accused:

April 2 Ch. 11, with Intro. and cases up to *Terry v OH*
April 4 Exclusionary Rule, (4th Amend.) Ch. 11, and 2nd half cases

(APRIL 4-Weds) (Law School Information Day UMC-Aspen Room 1-4pm)

April 6 Self incrimination and the 5th Amend., Ch. 11, and cases

April 9-11 Right to Counsel, (& Bail), Ch. 12, and cases
Sixth Amendment & Fair Trial, Ch. 12 cases

April 13 Eighth Amend./death penalty, Ch. 12, cases & conclusion.
SECOND BRIEF DUE

IV: Civil Rights

April 16-18 Intro & in Chapter 13, Racial Discrimination, and cases
cases--*Plessy to Brown II*. cases--*Swann to Moose Lodge*.

April 20-23 Sex Discrimination in Chapter 13, and cases; **Sunstein**, ch. 4.
Sexual Orientation & Other Discrimination in Chapter 13, and cases

April 23-25 Affirmative Action & Conclusion in Chapter 13, and cases-
Sunstein, ch.5.

April 25-30 Elections and Voting Chapter 14; Voting Rights (3 cases)
THIRD BRIEF DUE

April 30-May 2 “Representation/campaigns” Ch. 13, cases; (plus-*Citizens United v FEC*)

May 4 Catch Up and Review

FINAL EXAMINATION (non-cumulative) MAY 5 Saturday – 4:30 -7:00 PM