

**San José State University – Dept. of Political Science**  
**Dr. James Brent – Fall 2020**  
**POLS 121b – Constitutional Law: Civil Liberties**

**Course and Contact Information**

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**Course Description**

America was founded on the idea of limited government, and nothing in the constitution embodies this ethos than the Bill of Rights. This course will focus on how the U.S. Supreme Court has interpreted the first 10 amendments to the constitution, which contain many of the civil liberties that Americans value the most, such as freedom of speech, freedom of religion, and freedom from unreasonable search and seizure. All of these provisions, in one way or another, are currently under assault, and although we will spend a lot of time in the past, we will always be keeping an eye on the present and future.

**Course Learning Objectives**

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

- 1) read and brief Supreme Court opinions
- 2) conduct basic legal research
- 3) understand the theory of freedom of speech, the different types of speech; and the circumstances under which speech can be restricted
- 4) explain the differences between the two religion clauses of the First Amendment
- 5) understand the various aspects of criminal due process, including the right to council, freedom from self-incrimination, search and seizure, and cruel and unusual punishment
- 6) explain the foundation and evolution of the right to privacy
- 7) explain the Court's recent decisions regarding the right to bear arms
- 8) understand the doctrine of selective incorporation
- 9) explain the differences between judicial activism and judicial restraint and identify them in Supreme Court opinions
- 10) demonstrate a familiarity with the leading cases in all of these areas of law; and
- 11) synthesize the preceding into written and oral arguments

**Succeeding in a Four-Unit Course**

At SJSU, students are expected to spend two hours outside of class for every one hour of class time. Because this is a **four-unit class**, you can expect to spend a minimum of eight hours per week in addition to time spent in class and on scheduled tutorials or activities. Careful time management will help you keep up with readings and assignments and enable you to be successful in all of your courses. In this class, one of the four units is an

engagement unit, which consists of online quizzes, and data exercises. You are expected to spend 45 hours this semester (both to prepare for and to complete the work) to successfully complete this unit.

### **Course Format & Technical Requirements**

Due to the COVID-19 pandemic, this course will be taught via **Zoom**, with the possibility of some content being delivered via Youtube. Students should have access to a reliable internet connection, as well as a webcam and microphone. For the most part, this class is synchronous, meaning that it will be held from 9:00 to 10:15 a.m. PST on Tuesdays and Thursdays, and your attendance is expected during these times. During Zoom sessions, your camera should normally be ON, and your microphone should normally be OFF, unless you are speaking. Zoom sessions will be recorded and made available to class members. This course also has a **Canvas site** that will be used to administer exams, collect assignments, and distribute other course materials. In addition, in order to increase student engagement, all students should [subscribe to Tophat](#) and download the Tophat app to their phone, PC or other device. The cost for Tophat is \$30. There is also a **free Android app** available that I developed specifically for students in this course. Both Tophat and my app are available at the Google Play store.

### **Required Texts/Readings**

Epstein, Lee, and Thomas G. Walker. (eds.) *Constitutional Law for a Changing America: Rights, Liberties and Justice* (10<sup>th</sup> ed.). Washington DC: CQ Press. ISBN: 978-1506380308

Occasionally, additional excerpts from recent Court decisions will be distributed via Canvas. In addition, as noted above, students should have a Tophat account, which costs \$30.

### **Course Requirements and Assignments**

Your grade in this course will be determined by three case briefs, three examinations, two Supreme Court simulation term papers, one book summary, and class participation.

Case Briefs -- Three times during the course of the semester you will be given homework, usually taking the form of a legal brief a Supreme Court case or cases. Briefing a case will be explained in class. Essentially, briefing a case requires you to identify the facts, the legal issues, the decision, and the significance of that case. These assignments should be typewritten, and will be graded on their completeness and the depth of understanding demonstrated. **LEARNING OBJECTIVES: 1, 9**

Examinations -- The three examinations will consist exclusively of essay questions -- there are no multiple choice questions in this course. The exams are not cumulative. You will receive one of the questions in advance of each exam. Each exam will be available for 48 hours, and you will have 90 minutes for each. Makeup exams will be administered to students with written documentation of an acceptable excuse, and may be designed to be more difficult than the exam administered in class. **LEARNING OBJECTIVES: 3 through 11**

Supreme Court Simulation/Term Papers -- The Supreme Court simulation/term paper is described more fully at the end of this syllabus. **LEARNING OBJECTIVES: 1, 2, 10, 11**

President Trump Memos -- President Trump has taken or proposed actions of questionable constitutionality regarding virtually every provision of the Bill of Rights. Throughout the semester, you will be asked to write

three (3) three-page memos to the president explaining whether the action or proposal is constitutional or not.

**LEARNING OBJECTIVES: 2, 3, 4, 5, 6, 10, 11**

**Participation and Reading** -- All students will be expected to participate orally in class. For the most part, this class will be taught using the Socratic method. The Socratic method dispenses with the traditional lecture and places greater responsibility on the students. The classes will focus very closely on the reading assigned each day. I will not tell you what the reading is about -- instead, you will tell me what the reading is about. All students must have the assigned reading completed and should be prepared to discuss it in every class. I will call upon every student to participate. Participation ought not be taken lightly. It constitutes 10% of your grade, and if you earn no participation points, your final grade will be one full letter grades lower than it would have been if you had participated regularly. I do not take attendance, but if you do not attend regularly, you will be unable to participate and will thus lower your grade.

I realize that many students are uncomfortable with participating in class. If you are one of those students, I have three suggestions:

- 1) Make sure you do the reading on a regular basis. The class discussion will be focused on the reading assignments. Even if you have trouble understanding some of the more complex portions of the assigned readings, you should be able to answer some of the questions I ask if you have done the reading carefully.
- 2) If you volunteer on a regular basis, I will not ask you to speak when you don't volunteer. You should do the readings on a regular basis. However, I fully realize that there are occasions when you simply won't have time to finish the reading. Therefore, I would urge you to voluntarily participate on those days when you *have* done the reading, because if you do so, I will refrain from calling upon you on those days when you do not volunteer.
- 3) If you are confused or have nothing to say, ask for my help. Some students find the material in this course difficult to comprehend, and therefore they find participation to be difficult. If you are one of these students, please don't just sit there and continue to be confused – ask me for help. I assume that you are enrolled in this course to learn. My job is to assist you in your learning.

In addition, up to 5 points (half a letter grade) of extra credit may be awarded to students who participate actively and accurately within the Tophat app.

NOTE that [University policy F69-24](http://www.sjsu.edu/senate/docs/F69-24.pdf) at <http://www.sjsu.edu/senate/docs/F69-24.pdf> states that “Students should attend all meetings of their classes, not only because they are responsible for material discussed therein, but because active participation is frequently essential to insure maximum benefit for all members of the class. Attendance per se shall not be used as a criterion for grading.”

### **Grading Policy**

Case Briefs (3 at 5% each)	15%
Midterm 1 (September 24 and 25)	10%
Midterm 2 (Oct. 29 and 30)	10%
Final Exam (Dec. 15 and 16)	15%
Participation	10%
Supreme Court Draft #1 (Nov. 19)	10%
Supreme Court Paper #2 (Dec. 9)	15%
Trump Memos (3 at 5% each)	15%

Final letter grades for the course will be assigned based on the following scale:

A = 93 to 100%	A minus = 90 to 92%	B plus = 88 to 89%	B = 83 to 87%
B minus = 80 to 82%	C plus = 78 to 79%	C = 73 to 77%	C minus = 70 to 72%
D plus = 68 to 69%	D = 63 to 67%	D minus = 60 to 62%	F = 59% or less

**Makeup Exams** -- I will be the most willing to permit you to take a make-up exam when the following three conditions are met:

- 1) you notify me in advance
- 2) you have an acceptable excuse (usually something beyond your control)
- 3) you have written documentation

Naturally, sometimes it will not be possible to meet these three conditions. Situations which do not do so will be judged by me on a case -by-case basis. I reserve the right to refuse to allow you to make up an exam (although I will usually try to accommodate you).

**Late Papers** -- **I am more strict in enforcing penalties against late papers than missed exams!** The due date of the paper is not the *only* day that you may submit your paper. It is merely the *last* day that you may do so without incurring a penalty. Papers are due at the end of class period on the date due. All late papers, regardless of the excuse, will be penalized by one letter grade.

**Office Hours** -- “Office hours” have a somewhat different meaning during the pandemic. Unless indicated otherwise, I will be available for phone or Zoom consultations for one (1) hour before each class every Tuesday and Thursday. I can almost always meet after class, as well. And, of course, we can arrange additional Zoom or phone consultations at our mutual convenience.

## University Policies

### Workload and Credit Hour Requirements

Success in this course is based on the expectation that students will spend, for each unit of credit, a minimum of 45 hours over the length of the course (normally 3 hours per unit per week with 1 of the hours used for lecture) for instruction or preparation/studying or course related activities including but not limited to internships, labs, clinical practica. Other course structures will have equivalent workload expectations as described in the syllabus.

Other important university policies can be found [by clicking here](#).

## Course Topics and Readings

Note: You should always be prepared to discuss the next three (3) cases in the Epstein and Walker textbook from where we left off at the end of the previous class period..

<b>Date</b>	<b>Topic</b>	<b>Reading</b>
August 20	Introduction to the Course; How to Read Supreme Court Opinions	This syllabus
August 25	Approaches to Constitutional Interpretation	pp. 9 - 39
August 27	Selective Incorporation I	pp. 65 - 73
September 1	Selective Incorporation II	pp. 73 - 86
September 3	Justifications for Free Speech	pp. 183 - 197
September 8	What is Speech?	pp. 197 - 212
September 10	“Fighting Words” and Disruptive Speech	pp. 212 - 230
September 15	Student Speech Rights	pp. 230 - 243
September 17	Commercial Speech	pp. 243 - 256
September 22	Other Speech Issues	pp. 256 - 258
September 24 and 25	<b>MIDTERM EXAM #1</b>	
September 29	Libel	pp. 307 - 321
October 1	Obscenity	pp. 321 - 346
October 6	Free Exercise of Religion I	pp. 91 - 112
October 8	Free Exercise of Religion II	pp. 112 - 126
October 13	The Establishment Clause I	pp. 126-147
October 15	The Establishment Clause II	pp. 147 - 171
October 20	The Establishment Clause III	pp. 171 - 182
October 22	Search and Seizure I	pp. 433 - 449

October 27	Search and Seizure II	pp. 449 - 462
October 29 and 30	<b>MIDTERM EXAM #2</b>	
November 3	<b>NO CLASS; ELECTION DAY</b>	
November 5	The Exclusionary Rule	pp. 462 - 478
November 10	<b>SUPREME COURT SIMULATION - ORAL ARGUMENT DAY</b>	
November 12	Self-Incrimination	pp. 478 - 495
November 17	The Right to Counsel & a Fair Trial	pp. 497 - 520
November 19	Cruel and Unusual Punishment <b>FIRST DRAFT OF PAPER DUE</b>	pp. 527 - 549
November 24	The Right to Privacy and Abortion	pp. 365 - 389
November 26	<b>THANKSGIVING; NO CLASS</b>	
December 1	Other Privacy Rights	pp. 389 - 426
December 3	The Right to Bear Arms	Chapter 8
December 9 and 10	<b>FINAL EXAM FINAL DRAFT OF PAPER DUE</b>	

### Supreme Court Simulation and Term Paper Assignment

In order to better understand both the law and the process the Supreme Court adopts when writing constitutional decisions, all students will participate in a simulation of the United States Supreme Court. When the Court decides a case, it hears oral argument from attorneys on both sides of the controversy and then collectively writes the majority opinion and any concurring or dissenting opinions. We will recreate these rituals in class, utilizing two actual cases that have already been granted *certiorari* by the U.S. Supreme Court. In this simulation, each student will assume one of two roles -- either an attorney arguing a case before the Court, or a justice on the Court itself. The requirements for the two roles vary. Please read the following descriptions and think about which role you would prefer to play.

#### **The Roles**

Attorneys -- Attorneys stand before the Court and orally present and defend the position of their clients.

Students who assume this role will have three responsibilities:

- a) to submit a legal brief (approximately 2 pages) to the Court 1 week before oral argument. This brief should be distributed through the course web site.
- b) to engage in oral argument before the Court for approximately 25 minutes
- c) to submit 10-20 page first and final drafts of a brief in the case

Supreme Court Justices -- Supreme Court justices are expected to think about their assigned case before oral argument. Their formal responsibilities are as follows:

- a) to submit at least one question in advance
- b) participate actively in oral argument
- c) to submit 10-20 page first and final drafts of an opinion in the case

Oral argument will be held on Tuesday, November 10. First drafts are due on November 19. Final drafts will be due on December 9.

### **How Your Papers Will Be Graded**

Papers will be graded primarily on the strength of the argument presented. The best papers will demonstrate significant legal research and an ability to apply the extant case law to the topic at hand. Papers should be logically structured and comprehensive, and the best papers will demonstrate imagination, creativity, and extensive research. In addition, papers should utilize proper forms of legal citation (to be discussed in class). Finally, points will be deducted for spelling and grammatical errors. Papers that do little more than the minimum required will receive lower grades than papers that demonstrate more effort and thought.

Attorneys –Attorneys will be graded almost exclusively on their paper. However, an exceptionally good or an exceptionally poor oral argument performance will have an impact. In addition, because the attorney's role is the most demanding, all attorneys shall receive a 5-point bonus added to their grade on the final draft of the paper.

**PLEASE NOTE:** Attendance is MANDATORY on November 10, the day on which we will conduct oral argument. If you have an unexcused absence on that day, you will receive a 20% penalty on the first draft of your paper . I will only permit exceptions from this policy to students who have written documentation of an acceptable excuse.

## Political Science Program Learning Outcomes

Upon completion of the Political Science major program, students should be able to demonstrate the following learning outcomes:

**1. PLO1: Breadth**

Students should possess a broad knowledge of the theory and methods of the various branches of the discipline.

**2. PLO2: Application**

Students should be able to apply a variety of techniques to identify, understand, and analyze domestic and international political issues and organizations.

**3. PLO3: Disciplinary methods**

Student should be able to formulate research questions, engage in systematic literature searches using primary and secondary sources, have competence in systematic data gathering using library sources, government documents, and data available through electronic sources, should be able to evaluate research studies, and should be able to critically analyze and interpret influential political texts.

**4. PLO4: Communication Skills**

Students should master basic competencies in oral and written communication skills and be able to apply these skills in the context of political science. This means communicating effectively about politics and/or public administration, public policy, and law.

**5. PLO5: Citizenship**

Students should acquire an understanding of the role of the citizen in local, state, national, and global contexts and appreciate the importance of lifelong participation in political processes.

## Political Science Departmental Writing Policy

Students of political science should develop the ability to write in clear, grammatical English. Spelling and grammar count! Students must take care that appropriate citations are used. Direct quotations must be so indicated with quotation marks and a specific reference to the page in the source from which it was taken. Failure to cite your sources constitutes academic misconduct which carries with it serious sanctions. A tutorial on citations is available at the library website at [http://www.sjlibrary.org/services/literacy/info\\_comp/citing.htm](http://www.sjlibrary.org/services/literacy/info_comp/citing.htm).

For assistance with writing, please see me or visit the SJSU Writing Center located in Clark Hall, Suite 126. All Writing Specialists have gone through a rigorous hiring process, and they are well trained to assist all students at all levels within all disciplines to become better writers. In addition to one-on-one tutoring services, the Writing Center also offers workshops every semester on a variety of writing topics. To make an appointment or to refer to the numerous online resources offered through the Writing Center, visit the Writing Center website at <http://www.sjsu.edu/writingcenter>.



