

**San José State University – Dept. of Political Science**  
**Dr. James Brent – Fall 2022**  
**POLS 121b – Constitutional Law: Civil Liberties (Section 1)**

**Course and Contact Information**

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<b>Office Hours:</b>	MW 8:00 to 9:00 a.m. and Mondays 10:30 to 11:30 a.m., and by appointment (held both in-person and via Zoom simultaneously)

**Course Catalogue Description**

Explores the constitutional basis for civil liberties in America. Application of methods of constitutional analysis to cases involving freedom of speech, religion, and the press. Examination of personal privacy rights including abortion, gun rights, and criminal procedures.

**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 and apply the preceding into written and oral arguments to new cases and contexts

**Succeeding in a Four-Unit Course (Required University Statement)**

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

This class will be taught in-person on the SJSU campus. However, class sessions may from time to time be held via Zoom, so students should have both internet access and access to Zoom, with a working webcam and microphone. Course content will also be delivered and assignments collected via the university's Canvas learning management system. Apparently, masks will be required until further notice.

### 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.

### 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**

**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, as explained elsewhere in this syllabus, up to 5 points (half a letter grade) of extra credit may be awarded to students who participate actively and accurately in online discussions.

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 26)	10%
Midterm 2 (Oct. 26)	15%
Final Exam (Dec. 13 @ 7:15 a.m.)	20%
Participation	10%
Supreme Court Draft #1 (Nov. 21)	10%
Supreme Court Paper #2 (Dec. 13)	20%

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 attempt to accommodate regarding missed 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 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 22	Introduction to the Course; How to Read Supreme Court Opinions	This syllabus
August 24	Approaches to Constitutional Interpretation	pp. 9 - 39
August 29	Selective Incorporation I	pp. 65 - 73
August 31	Selective Incorporation II	pp. 73 - 86
September 7	Justifications for Free Speech	pp. 183 - 197
September 12	What is Speech?	pp. 197 - 212
September 14	“Fighting Words” and Disruptive Speech	pp. 212 - 230
September 19	Student Speech Rights	pp. 230 - 243
September 21	Commercial Speech	pp. 243 - 256
September 26	<b>MIDTERM EXAM #1</b>	
September 28	Other Speech Issues	pp. 256 - 258
October 3	Libel	pp. 307 - 321
October 5	Obscenity	pp. 321 - 346
October 10	Free Exercise of Religion I	pp. 91 - 112
October 12	Free Exercise of Religion II	pp. 112 - 126
October 17	The Establishment Clause I	pp. 126-147
October 19	The Establishment Clause II	pp. 147 - 171
October 24	The Establishment Clause III	pp. 171 - 182
October 26	Search and Seizure I	pp. 433 - 449
October 31	Search and Seizure II	pp. 449 - 462
November 2	<b>MIDTERM EXAM #2</b>	
November 7	The Exclusionary Rule	pp. 462 - 478

November 9	<b>SUPREME COURT SIMULATION - ORAL ARGUMENT DAY</b>	
November 14	Self-Incrimination	pp. 478 - 495
November 16	The Right to Counsel & a Fair Trial	pp. 497 - 520
November 21	Cruel and Unusual Punishment <b>FIRST DRAFT OF PAPER DUE</b>	pp. 527 - 549
November 23	<b>THANKSGIVING; NO CLASS</b>	
November 28	The Right to Privacy and Abortion	pp. 365 - 389
November 30	Other Privacy Rights	pp. 389 - 426
December 5	The Right to Bear Arms	Chapter 8
December 13	<b>FINAL EXAM AT 7:15 a.m.</b> <b>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

### **The Cases**

The Supreme Court is still setting its calendar for its October 2022 term, but one of the two cases that we will be using in our simulation is the following:

*303 Creative LLC v. Elenis* – Lorie Smith owns a graphic design firm. She wants to start designing web sites for weddings, but she doesn't want to design sites for LGTBQ weddings. However, Colorado's anti-discrimination law forbids businesses from discriminating against gay and lesbian couples. Although this case raises issues related to free exercise of religion, the Supreme Court granted review, limiting the scope of the case to the free speech aspects.

### **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 9, 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.