**PSC 404: AMERICAN CONSTITUTIONAL LAW II – CIVIL RIGHTS & CIVIL LIBERTIES**

LIVE COURSE  
Stephen F. Austin State University  
Department of Government  
SPRING 2020

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**INSTRUCTOR INFORMATION**

<table>
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<tr>
<th>NAME:</th>
<th>Dr. Donald M. Gooch</th>
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<tr>
<td>E-MAIL:</td>
<td><a href="mailto:goochdm@sfasu.edu">goochdm@sfasu.edu</a></td>
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<tr>
<td>ALT E-MAIL:</td>
<td><a href="mailto:goochdm.sfasu@gmail.com">goochdm.sfasu@gmail.com</a></td>
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<tr>
<td>OFFICE:</td>
<td>Vera Dugas Liberal Arts North 111</td>
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<tr>
<td>OFFICE PHONE:</td>
<td>936-468-2098</td>
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<td>OFFICE HOURS:</td>
<td>MW 11:00am – 1:30pm</td>
</tr>
<tr>
<td>WEB PAGE:</td>
<td><a href="http://www.donaldgooch.com">www.donaldgooch.com</a></td>
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<tr>
<td>BLOG:</td>
<td><a href="http://www.poliscipundit.com">www.poliscipundit.com</a></td>
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**COURSE INFORMATION**

Course Number:  
PSC 404  
Section: 001  
Prerequisites:  
PSC 141 | PSC 142  
Credit Hours: 3

Course Description: “This course explores the philosophical roots of civil rights and liberties, and the major political controversies and legal developments in the United States through an analysis of the case law on the constitutional guarantees of personal and social freedoms derived from the Bill of Rights and the Fourteenth Amendment. Topics to be covered include: the role of the judiciary in protecting rights, method of constitutional interpretation, incorporation, the right to bear arms, economic liberty, abortion and privacy rights, freedom of religion, freedom of speech, freedom of association, freedom of the press, the death penalty, and equal protection before the law.”  
*General Bulletin, 2016-17, p.323*  

Class Meeting Days & Times:  
MWF 9:00AM – 9:50AM

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**REQUIRED TEXTS**

*American Constitutional Law Vol. II. 6th Ed.*  
New York: Thompson Wadsworth.
It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule."

*Chief Justice John Marshall, Marbury v. Madison*

**COURSE OBJECTIVES**

**General Education Core Curriculum Objectives/Outcomes:**
This course is associated with the major, second major, and minor in the political science.
The course is not part of the general education core curriculum. No specific general education objectives or outcomes are addressed in this course.

**Program Learning Outcomes:**
The following program learning outcomes for a political science major are addressed in this course:
PLO #5 – “The student will create research papers, briefs, or reports.”

**Student Learning Outcomes:**
By the end of the course, students will be able
- To describe the basic themes and concepts related to the study of American constitutional law.
- To understand the American judicial system – in particular the process and particulars of the United States Supreme Court.
- To think critically about the evolution of constitutional law and legal theory in areas of the law that affect civil rights & civil liberties.
- To discuss the major USSC cases that benchmarked the evolution of constitutional law as to civil rights & civil liberties.

Students are expected to go beyond rhetoric and ideology to develop critical thinking about the American political system. As a result, students are encouraged to ask questions and to challenge assumptions of class discussions while respecting the logical and reasoned positions of others.
COURSE OVERVIEW
This course has two main goals. One is to help students develop an understanding of civil rights and civil liberties as ensconced in and protected by the American Constitution, as interpreted by the federal judiciary and mainly the United States Supreme Court. We will begin with the Constitution, and then move to the role of the judiciary in the American political system, particularly judicial review. We will address the major topics of Civil Rights and Civil Liberties and Supreme Court doctrine in each of:

- Property Rights & Economic Freedom
- Expressive Freedom and Speech
- Religious Liberty and Church-State Interactions
- Criminal Justice
- Personal Autonomy and the Right to Privacy
- Equal Protection and Antidiscrimination
- Elections, Representation, & Voting Rights

The other goal of this course is to help students learn to think like constitutional lawyers. You will learn how to analyze fact patterns using legal rules, construct legal arguments, and critically evaluate arguments. For the most part we will be reading and discussing written opinions of the United States Supreme Court. Your book also contains excellent explanatory material that provides some context for these opinions.

I am both a political scientist and a student of the law. The two professions have different ways of viewing judicial decision-making. Most political scientists see judges as political actors and policy-makers, and don’t think they are all that different than members of congress or the executive branch—all three branches involve people advancing their policy preferences. When considering a Supreme Court decision, they focus on the judges’ backgrounds, partisan affiliations, the political significance and context of the case, and so forth.

Lawyers view court decisions very differently. They are interested and trained in law, so they employ “legal reasoning,” something that most non-lawyers don’t know how to do. They focus on the legal authority cited, the logic of the opinions, and the rule or rules that emerge from the case as precedent for future cases. Judges rarely expose their policy preferences in opinions, and instead couch their decisions in neutral principles of law.

Both these ways of looking at cases have merit and validity, depending upon your objective. We will examine the law from the legal perspective. In our day-to-day activities, you will endeavor to think like a lawyer. They are trained to apply legal rules to fact situations, and to explain their decisions in terms of those rules. You will practice doing that. It is something you do not presently know how to do and come to this class to learn. No weight given to easy political judgments of the sort anybody could produce without even doing the reading.

WRITING INTENSIVE COURSE
As this is a writing intensive course, writing assignments account for a substantial component of the course grade. The writing assignments are the primary vehicle for learning the material covered in the course.

EVALUATION

1) Exams. There will be a Midterm and a Final. The final is not comprehensive. Exam questions will consist of short IDs and essay answers to hypotheticals on constitutional issues we cover in class.
2) Participation. You are expected to attend class in any course at SFASU. Consistent class attendance, reading and preparation, and participation are essential. For a class on constitutional law, this entails following the lessons according to the schedule of assignments, actively participating in the class discussion of the cases, and completing your case brief assignments for each class. These responsibilities are the same for the virtual setting. You should read and be prepared before you log on to the virtual classroom. You should consider the questions and do the appropriate readings prior to answering a discussion question. And you should actively engage with the material in every forum on the D2L shell that has been provided for you in this class.

The reading material consists mainly of edited versions of United States Supreme Court opinions, many of which were written long ago. The language and logic are complicated, unfamiliar, and hard to follow sometimes. It takes effort to read and understand judicial opinions, and you will need to be prepared for quizzes and examinations.

In order to do this, you must actively participate in our discussion of these cases which will feature my explanations and those of your classmates. You must ask questions and discuss the material. It is not enough to be AT your seat when doing class activities. You must be IN the class, mentally present as well as physically present.

I expect you to finish the readings assigned for a lesson before you participate in the virtual classroom, answer a discussion question, or take a quiz. In live discussions, be prepared to discuss the readings with your case briefs on hand so that you can reference them. This is essential to getting a good grade in this course. Failure to participate in the course requirements for discussion and interaction will guarantee failure in the course.

Five or more missed class assignments may result in you being dropped from the course.

Participation in the Course will take the following forms:

READING & WRITING PRIOR TO PARTICIPATION
In order to adequately discuss the answers to discussion questions, or to participate in a virtual class, you will need to have read all of the materials, prepared the briefs for that lesson and have them on hand when you participate.

ANSWERING DISCUSSION QUESTIONS
Answers to discussion questions will be graded on quality, substance, and clarity of expression

ENGAGING IN THE CLASSROOM
Participation in the classroom is essential for good performance in this class. You must be active in the conversation, and prepared to discuss a case when you are called on to brief the case for the class.

3) Case Briefs. You will submit case briefs on D2L. However, you are ALWAYS expected to have completed ALL case briefs for every class period. I will grade your case briefs, which will be submitted to D2L by the posted deadline. I expect you to finish the readings assigned for each day before you log on to the virtual classroom and to be prepared to discuss the readings with your case briefs. This is essential to getting a good grade in this course. I will randomly call on one case brief group every class – that group will be responsible for answering questions about the assigned case briefs and the assigned textbook readings for that day, during that class. Do your case briefs. Come to the virtual classroom.
prepared to discuss those briefs and the readings EVERY SINGLE CLASS PERIOD.

4) **Quizzes.** There will be regular quizzes on the material we are covering in the course. These are administered on D2L, posted on Monday and due by 11pm, Sunday unless otherwise indicated.

5) **Issue paper.** You will be assigned a Constitutional controversy on civil rights or civil liberties that the Supreme Court has grappled with and you will provide a study of that issue. You will include relevant USSC cases, the major controversies and Court doctrines applied, the evolution and disposition of Court decisions in the area, highlight important reasoning offered in the opinions in the majority, dissenting, and concurring opinions, and address the political and Constitutional significance of the Court doctrine as precedent and policy. This will require outside research and I expect that you will rely on legitimate sources. This paper will be a minimum of 10 pages (excluding intro and reference pages) and a maximum of 15 pages. Information on formatting, citations, and structure will be provided in the paper assignments on D2L.

6) **Issue paper presentation.** You will make a virtual presentation on ZOOM on D2L of 5-8 minutes, using appropriate visuals, on your issue to the class. These will be completed the last week of the course.

7) **Discussions.** Each lesson has two discussions. In order to earn full discussion points, you must answer each of the discussion questions and respond to the answer from a colleague in the class (2 posts per discussion).

### WEIGHTING SCALE

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<td>Final Exam</td>
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<td>Quizzes</td>
<td>140</td>
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<td>Issue Paper Presentation</td>
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<td>Discussions</td>
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<td><strong>TOTAL</strong></td>
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### GRADING SCALE

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<tr>
<td>A</td>
<td>90% and up</td>
<td>738 – 820</td>
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<tr>
<td>B</td>
<td>80% - 89%</td>
<td>656 – 737</td>
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<td>C</td>
<td>70% - 79%</td>
<td>574 – 655</td>
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<td>D</td>
<td>60% - 69%</td>
<td>492 – 573</td>
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<td>F</td>
<td>59% &amp; below</td>
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EXAM POLICIES
- Make-up exams are given only under the most extreme circumstances (e.g. death in the family).
- If you are unable to take the exam at the scheduled time, then you must notify your instructor ahead of time and must provide written documentation to substantiate your absence.
- Failure to inform your instructor of an absence prior to the exam or failure to provide adequate documentation will result in a score of zero points (0%) on the exam.
- The instructor solely determines what constitutes adequate documentation to substantiate an absence.
- You should observe the test taking requirements as set for the exam on D2L.

PARTICIPATION POLICIES
- Students are expected to attend virtual classes and participate on the discussion forums. A strong correlation exists between attendance and student performance in the course. Thus, attendance and participation is required for this course. Moreover, regular attendance and participation makes a clear and distinct statement about personal responsibility; habits developed during a student’s career at SFA carry over to the post-university world of employment.
- Class begins promptly at the time scheduled. Students are expected to be present for the entire class period. Late log-ins and early log-offs are not tolerated. Tardiness is distracting to fellow students in the class. If either late arrivals or early departures become a problem during the semester, the instructor will count as absent those students who fail to be on time and/or do not stay for the duration.
- Students should demonstrate common courtesy for their fellow students during virtual classroom sessions and in the discussion forums. Observe the participation guidelines as set out on D2L.

ACADEMIC HONESTY

The following is taken from SFASU’s Policy Manual (2016), section on “Academic Integrity” (A-9) Academic integrity is a responsibility of all university faculty and students. Faculty members promote academic integrity in multiple ways including instruction on the components of academic honesty, as well as abiding by university policy on penalties for cheating and plagiarism.

Definition of Academic Dishonesty: Academic dishonesty includes both cheating and plagiarism. Cheating includes but is not limited to (1) using or attempting to use unauthorized materials to aid in achieving a better grade on a component of a class; (2) the falsification or invention of any information, including citations, on an assigned exercise; and/or (3) helping or attempting to help another in an act of cheating or plagiarism. Plagiarism is presenting the words or ideas of another person as if they were your own. Examples of plagiarism are (1) submitting an assignment as if it were one's own work when, in fact, it is at least partly the work of another; (2) submitting a work that has been purchased or otherwise obtained from an Internet source or another source; and (3) incorporating the words or ideas of an author into one's paper without giving the author due credit.

Please read the complete policy at http://www.sfasu.edu/policies/academic_integrity.asp. All cases of academic dishonesty will be handled according to University policies and procedures (A-9.1). The consequences for academic dishonesty may range from a score of zero (0) on the assignment to an “F” for the course. For details, students should refer to the SFA Policy Manual (2016) or the University’s General Bulletin, 2016 – 2017 section entitled “Academic Integrity” and other sources of University policy.

WITHHELD GRADES


At the discretion of the instructor of record and with the approval of the academic chair/director, a grade of WH will be assigned only if the student cannot complete the course work because of unavoidable circumstances. Students must
complete the work within one calendar year from the end of the semester in which they receive a WH, or the grade automatically becomes an F. If students register for the same course in future semesters, the WH will automatically become an F and will be counted as a repeated course for the purpose of computing the grade point average.

**STUDENTS WITH DISABILITIES**

To obtain disability related accommodations, alternate formats and/or auxiliary aids, students with disabilities must contact the Office of Disability Services (ODS), Human Services Building, and Room 325, 468-3004 / 468-1004 (TDD) as early as possible in the semester. Once verified, ODS will notify the course instructor and outline the accommodation and/or auxiliary aids to be provided. Failure to request services in a timely manner may delay your accommodations.

For additional information, go to [http://www.sfasu.edu/disabilityservices/](http://www.sfasu.edu/disabilityservices/).

**ACCEPTABLE STUDENT BEHAVIOR**

Classroom behavior should not interfere with the instructor’s ability to conduct the class or the ability of other students to learn from the instructional program (see the Student Conduct Code, policy D-34.1). Unacceptable or disruptive behavior will not be tolerated. Students who disrupt the learning environment may be asked to leave class and may be subject to judicial, academic or other penalties. This prohibition applies to all instructional forums, including electronic, classroom, labs, discussion groups, field trips, etc. The instructor shall have full discretion over what behavior is appropriate/inappropriate in the classroom. Students who do not attend class regularly or who perform poorly on class projects/exams may be referred to the Early Alert Program. This program provides students with recommendations for resources or other assistance that is available to help SFA students succeed.
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<th>COVERAGE</th>
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<th>READING ASSIGNMENTS &amp; CASES</th>
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<tr>
<td>WEEK 1</td>
<td>Lessons 1A &amp; 1B</td>
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- Course Structure  
- Navigating the Course  
- Expectations for Students  
- How to Brief a Case  
- Introduction to Constitutional Law  
- Supreme Court in the Constitutional System  | “How to Read a Legal Opinion” – Orrin Kerr |
| WEEK 2 | Lessons 2A & 2B |  
- Introduction  
- Judicial Protection of Civil Rights & Civil Liberties  
- Rights Recognized in the Original Constitution  
- The Bill of Rights  | S&S v2: p. 1-35  
Ex Parte Milligan  
Boumedine v. Bush  
The Slaughterhouse Cases  
The Civil Rights Cases  
Shelley v. Kramer  
Barron v. Baltimore |
| WEEK 3 | Lessons 2A & 2B |  
- Constitutional Sources of Civil Rights & Civil Liberties  
- The Civil War Amendments  
- The Nationalization of the Bill of Rights  
- Voting Rights  
C.B.Q. Railroad Co. v. Chicago  
Palko v. Connecticut  
Addamson v. California  
Rochin v. California  
Duncan v. Louisiana  
McDonald v. Chicago |
| WEEK 4 | Lesson 3A & 3B |  
- Introduction  
- The Contracts Clause  
- The Rise of Economic Due Process  | S&S v2, Ch12 p. 76-97  
Dartmouth College v. Woodward  
Charles River Bridge Co. v. Warren Bridge Co.  
HBLA v. Blaisdell  
Munn v. Illinois  
Lockner v. New York |
| WEEK 5 | Lesson 3A & 3B |  
- Property Rights & Economic Freedom  
- The Fall of Economic Due Process  
- Equal Protection & Economic Regulation  
- Property Rights & the Takings Issue  | S&S v2, Ch12 p. 76-97  
Adkins v. Children's Hospital  
West Coast Hotel Co. v. Parrish  
Ferguson v. Skrupa  
Hawaii Housing Authority v. Midkiff  
Delon v. City of Tigard  
Kelo v. City of New London  
- Issue Paper Assigned - |
| WEEK 6 | Lesson 4A & 4B |  
- Expressive Freedom & The First Amendment  
- Introduction  
- Interpretive Foundations of Expressive Freedom  
- The Prohibition of Prior Restraint  
- The Clear and Present Danger Doctrine  
- Fighting Words, Hate Speech, & Profanity  
- Symbolic Speech and Expressive Conduct  | S&S v2, Ch3 p. 135-167 & 174  
Near v. Minnesota  
New York Times Company v. United States  
Schneck v. United States  
Brandenburg v. Ohio  
Cohen v. California  
Texas v. Johnson  
Virginia v. Black |
| WEEK 7 | Lesson 4A & 4B |  
- Defamation  
- Obscenity and Pornography  
- The Overbreadth Doctrine  
- Expressive Activities in the Public Forum  
- Electronic Media and the First Amendment  
- Commercial Speech  | S&S v2, Ch3 p. 135-167 & 174  
Miller v. California  
Reno v. American Civil Liberties Union  
United States v. Stevens  
Edwards v. South Carolina  
Adderley v. Florida  
Lorillard Tobacco Company v. Reilly  
National Endowment for the Arts v. Finley  
Boy Scouts of America v. Dale |
| WEEK 8 |  |  
- Exam Review + Midterm Exam  | MIDTERM EXAM  |
| WEEK 9 | Lesson 5A & 5B |  
- Religious Liberty & Church-State Relations  
- Introduction  
- Interpretive Foundations of the Religious Clauses  
- Religious Belief and the Right to Proselytize  
- Unconventional Religious Practices  
- Patriotic Rituals and Civic Duties  | S&S v2, Ch4 p. 218-243  
W. V. State Board of Education v. Barnette  
Wisconsin v. Yoder  
Employment Division v. Smith  
Church o/f Lukumi Babalu aye, Inc. v. Hialeah  
Everson v. Board of Education  
Abington School District v. Schemp |
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<tr>
<th>WEEK 10</th>
<th>COVERAGE</th>
<th>LECTURE TOPICS</th>
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<td>Freedom of Religion versus Parenthood</td>
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<td>Separation of Church &amp; State</td>
<td>Santa Fe Independent School District v. Doe</td>
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<td>Religion and Public Education</td>
<td>Edwards v. Aguillard</td>
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<td>Governmental Affirmations of Religious Belief</td>
<td>Agostini v. Felton</td>
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<td>Tax Exemptions, Tax Credits, Vouchers &amp; Subsidies</td>
<td>Marsh v. Chambers</td>
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<td>Lesson 6A &amp; 6B</td>
<td>Introduction</td>
<td>McCreary County v. ACLU</td>
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<td>Search &amp; Seizure</td>
<td>Van Orden v. Perry</td>
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<td>The Exclusionary Rule</td>
<td>Walz v. Tax Commission</td>
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<td>Arrest</td>
<td>Zelman v. Simmons-Harris</td>
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<td>Police Interrogations and Confessions of Guilt</td>
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<td>The Right to Counsel</td>
<td>Olmstead v. United States</td>
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<td>Bail, Pretrial Detention, &amp; Plea Bargaining</td>
<td>Katz v. United States</td>
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<td>Trial by Jury</td>
<td>Weeks v. United States</td>
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<td>The Protection Against Double Jeopardy</td>
<td>Mapp v. Ohio</td>
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<td>Incarceration and the Rights of Prisoners</td>
<td>United States v. Leon</td>
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<td>The Death Penalty</td>
<td>Miranda v. Arizona</td>
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<td>Appeal and Post-conviction Relief</td>
<td>Dickerson v. United States</td>
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<td>Introduction</td>
<td>Jacobson v. Massachusetts</td>
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<td>Constitutional Foundation of Right to Privacy</td>
<td>Meyer v. Nebraska</td>
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<td>Procreation and Birth Control</td>
<td>Buck v. Bell</td>
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<td>The Abortion Controversy</td>
<td>Poe v. Ullman</td>
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<td>Privacy and Living Arrangements</td>
<td>Griswold v. Connecticut</td>
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<td>The Demise of Sodomy Laws</td>
<td>Roe v. Wade</td>
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<td>The Right to Die</td>
<td>Planned Parenthood v. Casey</td>
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<td>Introduction</td>
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<td>Judicial Scrutiny in Equal Protection Cases</td>
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<td>The Struggle for Racial Equality</td>
<td>Bowers v. Hardwick</td>
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<td>The Affirmative Action Controversy</td>
<td>Lawrence v. Texas</td>
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<td>Gender-Based Discrimination</td>
<td>Washington v. Glucksberg</td>
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<td>Discrimination Based on Sexual Orientation</td>
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<td>Other Forms of Discrimination</td>
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<td>WEEK 13</td>
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<td>Issue Paper Presentations</td>
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<td>WEEK 14</td>
<td>Lesson 8</td>
<td>Midterm to Final</td>
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This is a preliminary schedule only. The instructor reserves the right to make changes to the schedule as needed.