

**VOTING, VOICE, AND VIRTUAL FREEDOM
CONSTITUTIONAL LAW II: CIVIL LIBERTIES
POLITICAL SCIENCE 308
SPRING 2015**

Introduction

1-8 Receive syllabus and course pack; get acquainted

Part One: The Legacy of the Voting Rights Act of 1965 in the 1980s and 1990s

1-13 The “quota queen” speaks: The strange case of civil rights activist and jurist Lani Guinier
Guinier, *The Tyranny of the Majority*, vii-xx; 1-40

1-15 How litigation altered a movement’s vision
Guinier, *The Tyranny of the Majority*, 41-118

1-19 SPECIAL EVENT: Martin Luther King, Jr. Day Teach-in Hansen Student Center 1-4PM
Voting Rights and Social Justice

1-20 SPECIAL CLASS VISIT: Vernon Burton discusses the color-blind ideal
Glaser and Ryan, *Changing Minds, If Not Hearts*, 1-29; 117-137

1-20 SPECIAL EVENT: Professor Vernon Burton’s lecture “From Abraham Lincoln, the Emancipation
Proclamation, the Gettysburg Address to the March on Washington,” Beckman Auditorium, Ames
Library 4 PM

1-22 CLASS DEBATE: *is group representation or color blindness the better ideal?*
Guinier, *The Tyranny of the Majority*, 119-156; 176-182
Fried, *Order and Law*, 89-131

1-26 **Micro-essay #1 due by 4pm in CLA 251:**

Part Two: Rights, Reconstruction, and Reapportionment

1-27 Reconstruction and the uneasy constitutionality of the Thirteenth Amendment
Ackerman, *We the People*, 99-185

1-29 Radical Republicans and Amendments 14 and 15
Ackerman, *We the People*, 186-252

2-3 The Civil Rights Movement and the Reapportionment Revolution
Course Pack: *Reynolds v. Sims* 377 US 533 (536-615)

2-5 The Constitutionality of the Voting Rights Act of 1965 and its aftermath
Course Pack: *South Carolina v. Katzenbach* 383 US 301 (307-362); *Shaw v. Reno* 509 US 630 (633-
674)

2-10 The racial polarization argument and its end?
Course Pack: *Thornburg v. Gingles* 478 US 30 (34-108)
“Race, Region, and Vote Choice,” *Harvard Law Review* (2010):1386-1436

- 2-12 CLASS DEBATE: *should the Voting Rights Act be retired?*
 Course Pack: *Shelby County v. Holder* (Slip opinion 2012:1-24; 1-3; 1-37)
- 2-13 SPECIAL EVENT: Professor Dianne Pinderhughes' lecture: "The Voting Rights Act and the Problem of Race in American Politics," Ames Library, Beckman Auditorium, 4 PM
- 2-16 **Micro-essay #2 due by 4pm in CLA 251**

Part Three: Voice and the First Amendment

- 2-17 Illegal advocacy: World War I
 Course Pack: *Schenck* 249 US 48 (48-53); *Abrams* 250 US 616 (616-631)
 (skim) Posner, "The Speech Market and the Legacy of *Schenck*," 121-151 in *Eternally Vigilant*
- 2-19 Holmes and Brandeis dissent and concur
 Course Pack: *Gitlow* 268 US 652 (654-673); *Whitney* 274 US 357 (372-379)
 (skim) Blasi, "Free Speech and Good Character," 61-95 in *Eternally Vigilant*
- 2-24 Illegal advocacy: the Cold War
 Course Pack: *Dennis* 341 US 494 (500-517; 561-569; 579-591); *Brandenburg* 395 US 444 (444-457)
 Bollinger and Stone, "Dialogue" 2-31 in *Eternally Vigilant*
- 2-26 CLASS DEBATE: *can the state require public school children to salute the flag?*
 Course Pack: *Gobitis* 310 US 586 (591-607); *Barnette* 319 US 624 (625-642; 646-671)
- 3-2 **Micro-essay #3 due by 4pm in CLA 251**
- 3-3 The two-tier theory and "unprotected" exceptions: fighting words and "hate" speech
 Course Pack: *Chaplinsky* 315 US 568 (569-574); *Beauharnais* 343 US 250 (251-259; 266-275; 302-305); *R.A.V. v. St. Paul* 505 US 377 (379-411)
- 3-3 SPECIAL EVENT: Professor Victoria Hattam's lecture: "Racial Categories/Racial Politics," Ames Library, Beckman Auditorium, 4PM
- 3-5 CLASS DEBATE: *is posting anti-gay signs around campus expression or harassment?*
 Course Pack: IWU's "University Policy and Regulations: Campus Environment";
 IWU's "Campus Posting Policy"
 Fish, "The Dance of Theory," *Eternally Vigilant*, 199-231
- 3-6 **Micro-essay #4 due by 4pm in CLA 251**

3-7/3-15 Spring Break

Part Four: Virtual Reality: Free Speech, the Internet, and Campaign Finance Reform

- 3-17 Another exception: broadcast media, scarcity and the fairness doctrine
 Course Pack: *CBS* 412 US 94 (97-155; 170-204); *Tornillo* 418 US 241 (243-263)

- 3-19 State versus managerial censorship: the “must-carry” debate
Course Pack: *Red Lion* 395 US 367 (369-401); *Denver Area* 518 US 727 (732-768)
Fiss, “The Censorship of Television,” 257-283 in *Eternally Vigilant*
- 3-19 SPECIAL EVENT: Professor James Galser’s lecture: “White Attitudes toward Racial Preferences in College Admissions: Studies in Persuasion” Ames Library, Beckman Auditorium, 4 PM
- 3-24 Is there a right to receive information?
Course Pack: *Turner Broadcasting II* 520 US 180 (185-258); *Forbes* 523 US 666 (669-695)
Sunstein, “The Future of Free Speech,” 285-310 in *Eternally Vigilant*
- 3-26 An Affirmative First Amendment for the Digital Age
Nunziato, *Virtual Freedom*, 1-69
- 3-31 Framing “Net Neutrality” as a First Amendment issue
Nunziato, *Virtual Freedom*, 70-133
- 4-2 CLASS DEBATE: *does the market place or democratic deliberation better defend net neutrality as a First Amendment ideal?*
Course Pack: *Verizon v. FCC* (DC Circuit Appeals Court) 1-17
Nunziato, *Virtual Freedom*, 133-156
- 4-6 **Micro-essay #5 due by 4pm in CLA 251**
- 4-7 Campaign finance reform in the 1970s
Course Pack: *Buckley v. Valeo* 424 US 1 (6-30); *McConnell v. FEC* (slip opinion 2003 1-50)
- 4-9 McCain-Feingold (BCRA) and campaign finance today
Course Pack: *Citizens United v. FEC* (slip opinion 2010 1-57; 1-14; 1-9; 1-41)
- 4-14 The case for reform
Lawrence Lessig, *Republic, Lost*, 91-192
- 4-16 CLASS DEBATE: *is money speech?*
Lawrence Lessig, *Republic, Lost*, 193-247
Kathleen M. Sullivan, “Against Campaign Finance Reform,” 311-327
- 4-20 **Micro-essay #6 due by 4pm in CLA 251**
- 4-21 The co-evolution of practices and principles
Strauss, “Freedom of Speech and the Common-Law Constitution” 33-59 in *Eternally Vigilant*
- 4-24 Final Exam 1:15-3:15

CLASS READING

A course pack, passed out on the first day of class, is a required text. It contains selections from every Supreme

Court case to be read for this class. Each student will be billed for a copy; those who drop the class after January 16 will still be billed.

The following books should be purchased.

- Bruce Ackerman, *We the People: Transformations* (Cambridge, Ma.: Harvard University Press, 1998)
Lee C. Bolinger and Geoffrey R. Stone, eds., *Eternally Vigilant: Free Speech in the Modern Era* (Chicago: University of Chicago Press, 2002)
Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (New York: The Free Press, 1994)
Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (New York: Twelve Press, 2011)
Dawn C. Nunziato, *Virtual Freedom: Net Neutrality and the Free Speech Internet Age* (Stanford: Stanford Law Books, 2009)

Additional chapters from the following books or articles listed in the class schedule can be found on the class moodle page.

- Stephen Ansolebehere, Nathaniel Persily, and Charles Stewart III, “Race, Region, and Vote Choice,” *Harvard Law Review* Vol. 123 (2010):1386-1436
Charles Fried, *Order and Law: Arguing the Reagan Revolution—A First-hand Account* (New York: Simon & Schuster, 1991)
James M. Glaser and Timothy J. Ryan, *Changing Minds If Not Hearts: Political Remedies for Racial Conflict* (Philadelphia: University of Pennsylvania Press, 2013)
Kathleen M. Sullivan, “Against Campaign Finance Reform,” *Utah Law Review* (1998):311-327

SOCIAL CONTRACT

Students are required to complete six (750 word) micro-essays. Help conserve paper by single-spacing your essay and printing on both sides of a sheet of paper. All assignments and the final exam will be posted on my homepage: <http://www.iwu.edu/~jsimeone>: on the menu page, click on ASSIGNMENTS below the list of syllabi. Re-writes are allowed and encouraged. Revisions must be thorough, students must visit me during office hours, and all drafts must be handed in together. I will accept revisions until the last day of class, April 21.

- 60% micro-essays (10% each)
- 25% final exam
- 15% class participation (includes attendance at 5 special class lectures)

Office: CLA 251
Office telephone: 556-3126
Office hours: TTH 4-5; W 9-11; 1-2
Homepage: www.iwu.edu/~jsimeone

COURSE OBJECTIVES

Students in this class will learn to

- read Supreme Court cases critically and with an understanding of legal doctrine
- write persuasive essays using the claim-objection-rejoinder format
- develop oral debating skills by participating in class debates
- distinguish and articulate three different value positions on freedom of speech
- learn how to improve written drafts through thorough revision