

University of Washington School of Law
Constitutional Law: Freedom of Expression

LAW A 591

Syllabus

Winter 2021

Tuesday & Thursday – 8:30 am to 10:20 am [via Zoom](#)

Professor Robert Gomulkiewicz

Class Meetings On-line:

As a result of COVID-19, classes will meet on-line via Zoom. Some classes, instead, may be delivered by Panopto recordings, as noted in the syllabus or announced by Professor Gomulkiewicz. Unless a student lacks the technology to do so, students are expected to join a Zoom-based class using video as well as audio. Other expectations for Zoom-based classes include:

- Muting your microphone upon entering the Zoom classroom;
- Keeping your video feed on during class to the extent practicable;
- Unmuting your microphone when called upon, and muting it again once you are done speaking.

Course Description and Learning Objectives:

This course explores issues relating to rights of free expression found in the United States Constitution, particularly the First Amendment. This includes freedom of speech, press, and religion. Prerequisite: LAW A507 Constitutional Law I: Constitutional Structures of Government.

The learning objectives for this course include: understanding the Supreme Court's core First Amendment cases and fundamental doctrines; placing freedom of expression in its global context; learning how First Amendment issues arise in litigation practice, policy making, and other common settings; exploring how freedom of expression is often in tension with other fundamental rights; learning the boundaries of freedom of expression; understanding the interplay between freedom of religion, freedom of speech, and the Establishment Clause.

Textbook:

Feldman & Sullivan, First Amendment Law, Seventh Edition ("Text"). Other readings will be distributed in class, posted on the course website, or available on the Web or via Lexis or Westlaw.

Grading and Attendance:

There are two components to grading. A final examination counts for 80% of your grade and in-class participation counts for the remaining 20%. Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school requires regular and punctual class attendance. For additional information, review Standard 304 and the course website.

Course Evaluation:

The course evaluation will be administered on the last day of the course. Please bring your laptop or mobile device to class on this date to participate in the evaluation. Course evaluations are extremely important as they give students the opportunity to give constructive feedback to their instructors, and can be used as learning tools to improve teaching methods.

Access and Accommodation:

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. ([Links to an external site.](#)) DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

Student Learning Technologies (UW-IT) Support:

Contact help@uw.edu or 206-221-5000 for UW NetID and general networking support. UW-IT maintains a help desk at the Odegaard Undergraduate Library.

Research Services Librarians:

The Research Services librarians are legal research experts who are dedicated to helping students with research questions, database training, locating academic resources, etc. Visit the library's [UW Law Students page \(Links to an external site.\)](#)[Links to an external site. \(Links to an external site.\)](#) for more information about their services generally. To get help, you can email the Research Services librarians directly at lawref@uw.edu. You are also welcome to visit the Reference Office on L1 to speak with the Research Services librarian on duty. If you have a detailed research question or would prefer to meet privately with a librarian, you may set up an appointment.

Religious Accommodations:

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at [Religious Accommodations Policy \(https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/\)](https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/) [\(Links to an external site.\)](#). Accommodations must be requested within the first two weeks of this course using the [Religious Accommodations Request form \(https://registrar.washington.edu/students/religious-accommodations-request/\)](https://registrar.washington.edu/students/religious-accommodations-request/) [\(Links to an external site.\)](#).

Course Evaluation:

The course evaluation will be administered on the last day of the course. Please bring your laptop or mobile device to class on this date to participate in the evaluation. Course evaluations are extremely important as they give students the opportunity to give constructive feedback to their instructors, and can be used as learning tools to improve teaching methods.

Reading and Assignment Schedule:

Week 1

Class 1 -- Tue, Jan 5th

[Introduction to the First Amendment \(please read\)](#)

Topic: Overview; History and Theories of Free Speech

Reading: Text 1-16. For a comprehensive look at the history of the First Amendment, see Stewart Jay, *The Creation of the First Amendment Right to Free Expression: From the Eighteenth Century to the Mid-Twentieth Century*, 34 Wm. Mitchell L. Rev. 773 (2008) (optional reading).

Topic: Free Speech in its International Context

Readings: [Brownstein & Jacobs, Free Speech: A Global Overview \(in Global Issues in Freedom of Speech and Religion\) 2-11](#)

Class 2 -- Thurs, Jan 7th

Topic: Incitement to Violence or Subversion

Readings: [Text 16-24, 31-55](#)

[Incitement Cases Rubric-Toolkit](#)

Week 2

Class 3 -- Tue, Jan, 12th

Topic: Fighting Words; Hostile Audiences and Heckler's Veto

Readings: Text 55-72

Topic: Injury to Reputation

Readings: [NY Times v. Sullivan, 376 U.S. 254 \(1964\); \(Links to an external site.\)](#) Text 83-90; [Heed the Rising Voices, NY Times, 3/29/60 \(Links to an external site.\)](#)

Class 4 -- Thurs, Jan 14th

Topic: Restricting Hate Speech

Readings: Text 103-125; [Snyder v. Phelps, 131 S. Ct. 1207 \(2011\); \(Links to an external site.\)](#) [Excerpt of St. Paul Bias Motivated Crime Ordinance; BobTown Tort Code](#)

[In Class Exercise: Trouble in BobTown: Incitement, Fighting Words, Hate Speech](#)

Week 3

Class 5 -- Tue, Jan 19th

Topic: Sexually Explicit Expression

Readings: Text 125-126, 130-146, 160-164

Topic: Child Pornography

Readings: Text 164-169; [U.S. v. Williams, 553 U.S. 285 \(2008 \(Links to an external site.\)\)](#)
(focus on the majority opinion)

Class 6 -- Thurs, Jan 21st

Topic: Commercial Speech

Readings: Text 200-227

Week 4

Class 7 -- Tue, Jan 26th

Topic: Violent Video Games

Reading: [Brown v. Entertainment Merchants Assoc., 131 S. Ct. 2729 \(2011\) \(Links to an external site.\)](#); (optional reading) [U.S. v. Stevens, 130 S. Ct. 1577 \(2010\)](#)

[Brown v. Entertainment Merchants: Deploying the Free Expression Legal Toolkit](#)

Topic: Content-based and Content-neutral Regulations

Readings: Text 230-246

Class 8 -- Thurs, Jan 28th

Topic: Symbolic Speech: Flag Burning

Readings: Text 246-265

[Public Forums](#)

Topic: Public and Non-Public Forums

Readings: Text 325-342

Week 5

Class 9 --Tue, Feb 2nd

In Class Exercise: [Bus Ads in Bob Town](#)

Readings: Text 321-323; [King County Transit Advertising Policy](#) and [Bus Ad newspaper articles](#)

Topic: *Speech in Public Schools* ([PowerPoint Slides](#))

Readings: Text 360-368; [Morse v. Fredrick, 551 U.S. 393 \(2007\)](#); ([Links to an external site.](#)) [photo](#)

Class 10 -- Thurs, Feb 4th

Topic: *Compelled Speech*

Readings: Text 459-472

Topic: *Expressive Association*

Readings: Text 488-493, 509-522

Week 6

Class 11 -- Tue, Feb 9th

Topic: *Non-Discrimination v. Expressive Association*

Readings: [Rosenberger v. University of Virginia, 515 U.S. 819 \(1995\)](#) ([Links to an external site.](#)) (Sections I & II); [Christian Legal Society v. Martinez, 130 S. Ct. 2971 \(2010\)](#)

[In Class Exercise: BobTown Muslim Students Association](#)

Class 12 -- Thurs, Feb 11th

Topic: *Money and Political Campaigns* ([PowerPoint Slides](#))

Readings: Text 530-550; [Citizens United v. FCC, 130 S. Ct. 876 \(2010\)](#)

Week 7

Class 13 -- Tue, Feb 16th

Topic: *Freedom of the Press*

Readings: Text 583-584, 447-455

Topic: *Press Access to Information*

Readings: Text 585-603

Class 14 -- Thurs, Feb 18th

Topic: *Broadcast Media* ([PowerPoint Slides](#))

Readings: Text 169-190, 613-626

In Class Exercise: [BobTown Digital Platform](#)

Week 8

Class 15 -- Tue, Feb 23rd

Topic: *Overview of the Religion Clauses*

Reading: Text 627-639

Topic: *Laws that Discrimination Against Religion*

Readings: Text 640-650; [Trinity Lutheran Church v. Comer, 581 U.S. ____ \(2017\)](#); [Espinoza v. Montana Dept. of Revenue, \(2019\) \(optional reading\)](#)

Class 16 -- Thurs, Feb 25th

Topic: *Exemptions for Religious Exercise*

Readings: Text 650-685

Week 9

Class 17 -- Tue, Mar 2nd

Topic: *Establishment Clause: Financial Aid to Students and Schools*

Readings: Text 685-697, 705-714

Optional Readings: [American Legion v. American Humanist Assn. \(17-1717\)](#)

Class 18 -- Thurs, Mar 4th

Topic: *Establishment Clause: Prayer in Public Schools*

Readings: Text 714-727

Topic: *Establishment Clause: Religion in Public School Curriculum*

Reading: Text 727-735

Week 10

Class 19, Mar 9th

Topic: *Religious Expression in Public Forums*

Course Evaluation

Readings: [Rosenberger v. University of Virginia, 515 U.S. 819 \(1995 \(Links to an external site.\)\)](#) (Part III and Justice O'Connor concurrence); [Good News Club v. Milford Central School, 533 U.S. 98 \(2001\)](#); *Town of Greece v. Galloway*, 573 U.S. 565 (2014) and;

[Establishment Clause Toolkit \(PowerPoint slides\)](#)

In Class Exercise: [Kneel Down in BobTown](#)

Week 11

Mon, Mar 15th, 8:30 am