

## LS 138: Supreme Court and Public Policy

Summer 2024

Lectures: Zoom MTuWTh from 10:00am-12:00pm

Discussion 101: Zoom on W 2:00pm-4:00pm

Discussion 102: Zoom on Th 2:00pm-4:00pm

Discussion 103: Zoom on M 12:00pm-2:00pm

Discussion 104: Zoom on Tu 4:00pm-6:00pm

### *Teaching Team*

Professor

Kyle DeLand (he/him)

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Graduate Student Instructors (GSIs)

Laura Ramirez (Dis 101, Dis 102)

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### *Professor Office Hours*

Office hours are an excellent opportunity to get to know the teaching team better and to seek our advice, discuss grades, or work through course difficulties. In this syllabus, I have noted topics well suited to office hours discussion.

Days/Times: Tuesdays 1pm-3pm; by appointment.

Please sign up at this [link](#) or arrange an appointment by email.

Location: via Zoom (permanent link under the bCourses -> Zoom tab)

### *Notable Dates*

First Class: Monday 5/20

Short Essay 1: Friday 6/7 by 11:59pm

Midterm Exam: Monday 6/10

Short Essay 2: Sunday 6/23 by 11:59pm

Last Class: Th 6/27

Final Exam: Fri 6/28

Semester End: Fri 6/28

No Class: Monday, 5/27 (Memorial Day)

No Class: Wednesday 6/19 (Juneteenth)

### **Synopsis:**

In this core social sciences course in the Legal Studies Program, we will examine the major legal, social, and political issues before the United States Supreme Court from the twentieth century to the present. An interdisciplinary mix of history and political science, the course is arranged around six case studies: Racial Desegregation and Civil Rights,

Criminal Constitutional Law, Voting Rights, Reproductive Rights, Gun Rights, and Civil Rights for LGBT individuals, particularly Gay Marriage. Students will read deeply in the legal cases and academic commentary surrounding some of the most famous cases of the twentieth century, like *Brown v. Board of Education of Topeka* (1954) and *Roe v. Wade* (1973), as well as lesser known, but vitally important, decisions by the Court.

In each case study, we will explore the specific historical *events* surrounding the cases, the legal *reasoning* of the Court, and the social and political *effects* of the decisions over time. We will also think generally about the changing relationship between SCOTUS and American society by asking questions like: Under what conditions does SCOTUS produce social change? What roles does politics play in Supreme Court decisions? How do popular social movements influence the Court and translate their goals into law?

### **Grades:**

All grades will be posted to bCourses. Major assignments will have rubrics provided in advance. Grading will be done by the GSI's and they will provide you with more details throughout the semester.

You may inquire about your overall grade or individual assignment grades at any time, though your first stop should be with the GSI before discussing a grading matter with the Professor. This is a good topic for office hours.

Regrade Policy: You may appeal to the teaching team for a "regrade" on an essay or exam provided that you submit a paragraph explaining your reasoning with specific references to your own work and the rubric.

### *Distribution*

Discussion Section assignments and participation - 15%

Mid-Term Exam – 25%

2 x Short Essays – 30% (15 each)

Final exam - 30%

### **Readings:**

All text-based readings can be found as PDFs under the "Files" tab on our bCourses page, organized by weekly folders. Podcast assignments are linked below in the Schedule and can be found for free on podcast apps like Spotify or Apple Podcasts. Written transcripts will be provided under the Files tab. Readings should be completed before the lecture for which they are listed.

Please contact the Professor by email if you have problem accessing or using a PDF or file for our course.

Optional Readings: Some weeks I will list optional secondary or primary source readings. You may find these sources helpful but they will not be tested directly. Dive as deep down the rabbit holes as you like!

Difficulty: Some of the readings in this course, especially court cases, may prove challenging. This is normal. We will discuss some strategies for reading and taking notes but please speak to the GSI or the Professor if the readings routinely prove difficult and overly time-consuming. This is a good topic for office hours.

### **Writing:**

Word Limits: Some written assignments have a word limit. This limit *excludes* citations. You may exceed the limit by 100 words before grade penalties will be applied. Note: 250 words roughly translates to 1 page.

Formatting & Citations: All writing assignments can be written in Microsoft Word (free Cal download, [here](#)) or converted to a .docx format if written in Pages, Google Docs, or another word processor.

- Format: Please use Times New Roman, size 12 font, double spacing, and 1-inch margins. Please include a title, the word count, and number your pages in the header. Your work should be proofread for errors.
- Citations: When you need to use a citation, please use Chicago style:
- We will cover how to do this in class. If you're unsure *how* to cite something, then try your best and include the author's name, date, and page number. An incorrect citation will get a note from the GSI about how to fix it but will not affect your grade; *failing* to cite ideas or words that are not your own *will* affect your grade.

Difficulty: If you have difficulty with the writing assignments please bring it up with the teaching team. This is a good topic for office hours. You might also consider reaching out to the Student Learning Center Writing Program.

Academic Honesty: All work submitted must reflect your own work and the ideas and quotes of others should be cited. Your work will be analyzed by Turnitin software.

Large Language Models (AI Chatbots): In general, I would discourage you from using AI language models like ChatGPT, for reasons stated below. However, should you find these tools useful, for translation for instance, keep the following in mind.

You *must* substantially edit, revise, and check the work. Treat any AI-generated text as a *very* rough draft. For reasons of:

- Honesty: The submitted assignment *must* be substantially your own and not AI-generated text.
- Quality: My experience with ChatGPT suggests that, unedited, it will produce a "C"-quality undergraduate essay (at best).
- Falsehoods: Large Language Models can "hallucinate" and make up facts and even court cases. See this [video](#) on how this has gone wrong in legal settings. Submission of an assignment with such obvious falsehoods *will* be considered

evidence of academic dishonesty by the teaching team and result in a grade of 0 for the assignment.

### **Other Course Policies:**

Contact with the Teaching Team: Please correspond with the teaching team by email. We will endeavor to respond to all weekday emails within 24 hours. However, this does not extend to weekends – do not expect a reply to your 9pm Friday email until the following Monday morning.

Disabled Students' Program Accommodations: All DSP accommodations will be honored and supersede any and all course policies when called for in the letter. Do not hesitate to reach out with questions or concerns to myself, the GSIs, or the DSP office.

Respectful Classroom Environment: This class contains discussion of personal and politically charged topics like abortion, police violence, the death penalty, guns, racial inequity, and so on. This is made more difficult by the current national political climate; however, bullying will not be tolerated.

Please keep the following in mind when engaging in our classrooms together *and* outside the classroom on bCourses, Discord, etc.:

- Normative versus Positive Statements: Most of the time, we will be discussing *positive* or analytical questions like “Why did the Supreme Court decide X case the way they did?” and not *normative* or value-based questions like “How *should* the Supreme Court have decided X case?” Understanding why the Supreme Court decided a case one way does not imply endorsement of that decision.
- Regard for Others: Your own experience and understanding does not reflect the universal experience of others in our class. Be respectful and responsive in terms of language usage, tenor, and comportment. Conversely, please *assume good faith* with those who express ideas with which you disagree.
- Discuss and Challenge Ideas not People: As best you can, keep the focus on the statements and ideas of your peers (and your teaching team) rather than on their identity or person.

Personal, Health, or Mental Health Difficulties: Life happens during every semester. All of us, including the teaching team, may face stress, anxiety, depression, sickness, grief, etc. during our class. As far as you are comfortable, you may discuss these issues with the teaching team. However, we are not mental health professionals so please consider reaching out to Campus Mental Health Services should the need arise.

Late Assignments and Extensions: Whenever possible, extensions should be cleared with the teaching team by email at least 24 hours before the due date of the assignment. An extension longer than 2 days should be discussed in office hours. Do not feel obligated to disclose personal or medical information to us. Without an extension, late assignments will be accepted up to one week from their original due date, with a grade penalty of -5%

per day late. Remember, a maximum score of a 65 is way better than a maximum score of 0 for non-submission!

### Useful Databases/ Resources:

NexisUni (for full case texts): <https://guides.lib.berkeley.edu/az.php>

Oyez (for case summaries and audio of oral arguments): <https://www.oyez.org/>

SCOTUSblog (for contemporary court news): <https://www.scotusblog.com/>

Linda Greenhouse, *The U.S Supreme Court: A Very Short Introduction* (available as a free e-book through the [library](#) or as an inexpensive paperback). We will read selections of this work but if you would like to read the whole work it is – as the title says – very short.

## Schedule of Assignments

### Week 1: Course Introduction, Case Study 1: Desegregation Cases

Monday 5/20: Welcome to LS 138! Intro to Constitutional Law

- Readings (R): (1) Syllabus; (2) Linda Greenhouse, “Is There Any Tinge of Regret Among the Anti-Abortion Justices?” *New York Times*, June 23, 2023; (3) Feinman, “Constitutional Law and Constitutional Politics.”

Tuesday 5/21: History and Political Science of SCOTUS

- (1) Greenhouse, “Origins”; (2) Greenhouse, “The Court and the Other Branches;” (3) Alexander Hamilton, *Federalist # 78*; (4) Brutus’s Essay 15; (5) Gerald Rosenberg, *The Hollow Hope*, Chapter 1.

Wednesday 5/22: Case Study 1: Law in Jim Crow America

- R: (1) Rebecca J. Scott, “Public Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge;” (2) *Plessy v. Ferguson* (1896).
- Optional: Orin Kerr, “How to Read a Legal Opinion.”

Thursday 5/23: [CS1] Complex Revolution in *Brown* and Backlash

- R: (1) *Brown v. Board of Education of Topeka* (1954); (2) *Brown v. Board II* (1955); (3) Michael Klarman, “Brown v. Board of Education: Law or Politics;” (4) Michael Klarman, “Why Massive Resistance;” (5) *Cooper v. Aaron* (1958).
- Optional: *Sweatt v. Painter* (1950).

### Week 2: Desegregation Cases, Case Study 2: Criminal Constitutional Law

Monday 5/27: NO CLASS (Memorial Day)

Tuesday 5/28: [CS1] Long Tail of Racial Desegregation

- R: (1) *Milliken v. Bradley* (1974); (2) *Parents Involved v. Seattle School District* (2007); (3) Mary L. Dudziak, “The Court and Social Context in Civil Rights History.”
- Writing: Short Essay 1 Assigned

Wednesday 5/29: [CS 2] Incorporation and Criminal Constitutional Law

- R: (1) *Mapp v. Ohio* (1961); (2) *Gideon v. Wainwright* (1963); (3) *Miranda v. Arizona* (1966); (4) Sara Mayeux, “What Gideon Did;”

Thursday 5/30: [CS 2] Loopholes and Police Discretion

- R: (1) *Terry v. Ohio* (1968); (2) More Perfect Podcast, “Mr. Graham and the Reasonable Man” (1 hr 8 min); (3) *Graham v. Connor* (1989); (4) Obasogie and Newman, “The Futile Fourth Amendment.”
- Optional: *Whren v. United States* (1996).

### Week 3: CS 2: Criminal Constitutional Law, CS 3: Voting Rights

Monday 6/3: [CS 2] Dealing with Death

- R: (1) *Furman v. Georgia* (1972); (2) *McCleskey v. Kemp* (1987); (3) Rosenberg, “Criminal Law.”

Tuesday 6/4: [CS 3] Into the Political Thicket

- R: (1) *Smith v. Allwright* (1943); (2) *Baker v. Carr* (1962); (3) More Perfect (Podcast), “The Political Thicket Reprise” (45 min).

Wednesday 6/5: [CS 3] One Person, One Vote and the VRA

- R: (1) *Reynolds v. Sims* (1964); (2) *South Carolina v. Katzenbach* (1965); (3) **Voting Rights Act of 1965** (excerpts); (4) **secondary article**.

Thursday 6/6: [CS 3] Exiting the Political Thicket

- R: (1) *Davis v. Bandemer* (1986); (2) *Shelby County v. Holder* (2013); (3) *Rucho v. Common Cause* (2019); (4) Rosenberg, “Reapportionment” (pages 293-303).

Friday 6/7: Short Essay 1 Assignment due by 11:59pm

### Week 4: Midterm Exam, CS 4: Reproductive Rights

Monday 6/10: Midterm Exam on Case Studies 1-3

Tuesday 6/11: [CS 4] The Open Secret, Criminal Abortions, and the *Roe* Revolution

- R: (1) Leslie Reagan, “Radicalization of Reform;” (2) *Griswold v. Connecticut* (1965); (3) *Roe v. Wade* (1972); (4) More Perfect Podcast, “Part 1: The Viability Line” (44 min).
- Optional: Leslie Reagan, “An Open Secret.”

Wednesday 6/12: [CS 4] Backlash and the Great Failed Compromise

- R: (1) Robert Post and Reva Siegel, “Roe Rage: Democratic Constitutionalism and Backlash,” (excerpts); (2) *Planned Parenthood v. Casey* (1992).
- Optional: *Gonzalez v. Carhart* (2007).

Thursday 6/13: [CS 4] The Unraveling of a Right

- R: (1) *Dobbs v. Jackson* (2022); (2) More Perfect, “If Not viability, Then What” (35 min); (3) Greenhouse, “Religious Doctrine, Not the Constitution, Drove the Dobbs Decision.”
- Optional: Lens and Donley, “Abortion, Pregnancy Loss, & Subjective Fetal Personhood.”
- Writing: Short Essay 2 Assigned

### **Week 5: CS 5: Gun Rights and the Originalist Revolution**

Monday 6/17: [CS 5] From the “Forgotten Amendment” to *Heller*

- R: (1) *US v. Miller* (1939); (2) More Perfect Podcast, “The Gun Show Reprise” (1 hr 9 min); (3) *DC v. Heller* (2008); (4) Reva Siegel, “Dead or Alive: Originalism as Popular Constitutionalism in *Heller*.”
- Optional: Frye, “The Peculiar Story of *United States v. Miller*”

Tuesday 6/18: [CS 5] Originalism and its Discontents

- R: (1) Levin, “Federalists in the Attic;” (2) Lund, “The Second Amendment, *Heller*, and Originalist Jurisprudence.”
- Optional: Posner, “In Defense of Looseness.”

Wednesday 6/19: NO CLASS (Juneteenth)

Thursday 6/20: [CS 5] The Rule of History and Tradition

- R: (1) *New York State Rifle & Pistol Association Inc. v. Bruen* (2022); (2) Lund, “Fidelity Tested;” (3) Bazelon, “How History and Tradition Cases are Changing American Law.”

### **Week 6: CS 6: LGBT Civil Rights, Final Exam**

Sunday 6/23: Assignment Due: Short Essay 2 by 11:59pm

Monday 6/24: [CS 6] Law and the Birth of the Gay Rights Movement

- R: (1) Cain, “Litigating for Lesbian and Gay Rights: A Legal History” (excerpts); (2) *Bowers v. Hardwick* (1986).

Thursday 6/25: [CS 6] Equality and Liberty for Homosexuals

- R: (1) *Romer v. Evans* (1996); (2) *Lawrence v. Texas* (2003); (3) *Obergefell v. Hodges* (2015).
- Optional: *United States v. Windsor* (2012).

Wednesday 6/26: [CS 6] Transgender Civil Rights Course Wrap-up

- R: (1) *Bostock v. Clayton County* (2022); (2) Petition for Review in *US v. Skrmetti* (2023).
- Optional: Katie Eyer, “Transgender Constitutional Law;” Transgender Bill of Rights.

Thursday 6/27: Course Wrap-up and Review Session

- R: (1) Greenhouse, “Look at What John Roberts and His Court Have Wrought Over 18 Years;” (2) Erwin Chemerinsky, “Thinking about the Supreme Court’s Successes and Failures.”

Friday 6/28: Final Exam on Case Studies 4-6