Course Overview and Objectives:
This course focuses on the development of constitutional interpretation of certain types of civil liberties by the U.S. Supreme Court from both a legal and nonlegal perspective. We will utilize a case book approach commonly used in a constitutional law/civil liberties class in law school, although we will make use of additional readings as well. In addition to learning about civil liberties in general and whether or not the judiciary protects them, this approach is designed to expose students to judicial cases so they can understand the legal analyses employed within particular contexts by the Supreme Court.

Course Web Site:
The course web site, which includes course information and links to various sources, including this Syllabus, can be found at: http://homepages.wmich.edu/~mhurwitz/psci4220_civlib_su07

Communicating Information:
Information will be communicated from the professor to students in three ways: 1) in class; 2) the course web page; 3) email. You must activate and check your ‘wmich.edu’ email account to receive messages. Consequently, “I did not receive notice” is not a sufficient excuse.

Required Books: available at the WMU Bookstore, http://www.wmubookstore.com/, and other sources:

Recommended Books:
2) Lawrence Baum, The Supreme Court, Ninth Edition (CQ Press 2007)

NOTE: Chapter 7 of the Pacelle book is an Assigned Reading that is available on-line through the course reserve section of the WMU Library system.

Assigned Readings:
Readings on course reserve are available on-line through the WMU Libraries system, http://www.wmich.edu/library/access/coursereserve.php
**Assigned Cases:**
There are a number of required cases not provided in the Fisher “casebook.” The citation for each such case is provided in the Schedule of Assignments, if the student wants to find them in the library. As well, a URL is provided for each, if the student wants to find them on the internet. Either is acceptable, so long as the student understands that these Assigned Cases are required reading. When reading an Assigned Case, the student must read the majority opinion and all concurring and dissenting opinions.

The following web sites house nearly all of the Supreme Court’s cases:
- http://supct.law.cornell.edu/supct/
- http://web.lexis-nexis.com.libproxy.library.wmich.edu/universe (accessible through WMU Library system with Bronco NetID)

The source of these cases is irrelevant. Nevertheless, cases from these internet sites are not edited, which means that they are much longer than those in the casebook; indeed, many unedited Supreme Court cases are well over 100 pages in length. Thus, it is strongly advised that students purchase the Fisher casebook, as opposed to obtaining all of the cases from the internet, not only because the cases are edited in the casebook, but also because there are readings in the casebook that are unavailable elsewhere.

**Class Schedule:**
Class takes place every Monday and Wednesday during the Summer I semester, with the exception of the following date during which *class is cancelled*:
- Monday, May 28 – Memorial Day

**Exams:**
There are three (3) exams in this class. All of the exams consist of a variety of question types (e.g., multiple choice, short answer, essay). While the exams are not cumulative, concepts in the latter part of the semester build upon that presented previously. The exams are based on the entire body of material presented in class and in the assigned readings. Much of the material on these exams is delivered in class and not necessarily in the readings; however, some material from the readings that is not covered in class is tested on the exams as well. The exam schedule follows:
- Exam #1: Monday, May 21 (during class)
- Exam #2: Wednesday, June 6 (during class)
- Exam #3: Wednesday, June 27 (during last class in Summer I)

**Case Briefs:**
Each student is responsible for two (2) case briefs. When your case is discussed in class, you must answer questions about the case you have briefed. A list of cases available for briefing, instructions and requirements for the briefs, due dates, and a sample case brief, follow this Syllabus

**Grading:**
The final course grade is based entirely upon performance on the exams and case brief, as there is no extra credit in this class. Final course grades will be based on the student’s performance as follows:
- Student’s highest exam grade: 35%
- Student’s next-highest exam grade: 35%
- Student’s lowest exam grade: 15%
- Case Briefs/Discussion: 15%
Grading Scale:
The following numerical averages translate into final course grades:

- 90+: A (4.0)
- 85-89: B (3.5)
- 80-84: B (3.0)
- 75-79: C (2.5)
- 70-74: C (2.0)
- 65-69: D (1.5)
- 60-64: D (1.0)
- 50+: E (0.0)

Make-up Exams:
It is completely the student’s responsibility to take the exams when they are scheduled. As a general rule, make-up exams will not be allowed; thus, a missed exam counts as a zero (0) toward the final course grade. Notwithstanding, at the professor’s sole discretion make-ups will be permitted, but only the gravest of reasons will be accepted, if documented in writing by the proper authority. Even if there is an acceptable reason for missing the regularly scheduled exam, permission to take a make-up will be granted only if the student provides the professor with prompt and proper notification; that is, the student must inform the professor of the reason for missing the exam with proper documentation before the exam takes place, and the reason must be acceptable to the professor. If a make-up is permitted, both the format and questions can, and likely will, be different from the regularly scheduled exam.

Incomplete Grades:
Note that the professor does not give grades of Incomplete in this class under any circumstance, as a missed exam counts as a zero (0) toward the final course grade.

Academic Honesty and Integrity:
Per WMU policy: You are responsible for making yourself aware of and understanding the policies and procedures in the Undergraduate (pp. 274-276) Catalog that pertain to Academic Honesty. These policies include cheating, fabrication, falsification and forgery, multiple submission, plagiarism, complicity and computer misuse. If there is reason to believe you have been involved in academic dishonesty, you will be referred to the Office of Student Conduct. You will be given the opportunity to review the charge(s). If you believe you are not responsible, you will have the opportunity for a hearing. You should consult with the professor if you are uncertain about an issue of academic honesty prior to the submission of an assignment or test.

Special Needs:
Any student with special needs should inform the professor as soon as possible, so that appropriate accommodations can reasonably be made.

Class Procedure:
Class will be conducted in a combination of lecture/discussion and socratic method format. Classes will complement but not regurgitate material from the readings. Students are encouraged to ask questions or raise issues at any time on the readings, the class discussion, or a contemporary issue concerning constitutional law or civil liberties.
Assignments:
The Schedule of Assignments notes the topics to be covered and the dates for lectures and exams. This schedule will be followed as closely as possible; however, the professor reserves the right to change if necessary, and students will be notified appropriately (in class, email, and/or the web page) of any changes. Additionally, there may be material handed out in class or posted on the class web page (such as current news issues on civil liberties) for which students additionally are responsible. Since this schedule is comprehensive, it is imperative that the students keep up with the material.

Schedule of Assignments:
Note: All references in the Schedule of Assignments are to the Fisher casebook, unless provided otherwise. A case or reading denoted by * signifies that it is not found in any of the assigned books, and alternate references are supplied; a reading denoted by ** signifies that it is in the Assigned Readings on Course Reserve.

I. The Supreme Court, Judicial Power, and the Role of the Supreme Court in Social Policy
(May 7 - 9)
The Constitution of the United States of America, Appendix 1
Rosenberg: Preface, p. xi; Introduction (pp. 1-8), Chapter 1 (p. 9-36)
Constitutional Politics, p. 3
Mechanical Jurisprudence, pp. 3-4
Litigation as a Political Process, pp. 4-7
Judge as Lawmaker, pp. 17-19
School Desegregation, pp. 20
Independent State Action, pp. 20-22
Who Has the Last Word?, pp. 22-24
Walter F. Murphy, Who Shall Interpret?, pp. 29-30
The Doctrine of Judicial Review, p. 33
Sources of Judicial Review Authority, pp. 33-36
Federalist No. 78, pp. 38-39
The Road to Marbury, pp. 39-43
Marbury v. Madison (1803) pp. 44-48
Jurisdiction: Original and Appellate, p. 140-141
Constraints on Judicial Review, pp. 55-58
The Carolene Footnote, p. 770 (box)

Note: The following [bracketed] readings are not required for this course; however, it is expected that the student understand the content therein which stems from other courses, such as PSCI 3200 and 4200.
[Framers’ Intent, p. 36]
[Threshold Requirements, p. 75]
[Cases and Controversies, pp. 75-79]
[Standing to Sue, pp. 80-82]
[Mootness, pp. 96-97]
[Ripeness, pp. 99-101]
[Political Questions, pp. 103-106]
[The Writ of Certiorari, pp. 141-144]
[From Oral Argument to Decision, pp. 145-151]
[Unanimity and Dissent, pp. 152-158]
II. Incorporation of the Bill of Rights (May 9 - 14)
   Nationalization of the Bill of Rights, p. 384-385
   The Incorporation Doctrine, pp. 385
   *Barron v. Baltimore, 32 U.S. 242 (1833)
   Slaughter-House Cases (1873), pp. 424-427
   Adamson v. California (1947), pp. 388-390
   Duncan v. Louisiana (1968), pp. 646-648
   Table 8.3: Incorporation of Bill of Rights, pp. 386-387
   The Incorporation Doctrine: Testimony by Justice Rehnquist, pp. 390-392
   O’Brien (Lanahan) Readings: No. 3, Cortner

III. Freedom of Speech (September 14 - 16)
   Free Speech in a Democratic Society, p. 445
   Free Speech and National Security, pp. 445-449
   Schenck v. United States (1919), pp. 449-450
   Abrams v. United States (1919), pp. 450-453
   Dennis v. United States (1951), pp. 457-460
   Yates v. United States (1957), pp. 460-462
   Associational Rights, pp. 462-465
   Regulation of Speech, pp. 465-472
   Edwards v. South Carolina (1963), pp. 472-474
   Adderley v. Florida (1966), pp. 474-476
   Forms of Speech, pp. 483-487
   *United States v. O’Brien (1968)
   Conclusions, p. 500
   O’Brien (Lanahan) Readings: No. 10, (Greenawalt)
   **The Chronicle of Higher Education: “Mexican Court Says Professor May Be Prosecuted for Poem That Offends National Symbols.” October 12, 2005

Exam #1: Monday, May 21 (during class)

IV. Racial Discrimination (May 21 - June 4)
   Rosenberg: Civil Rights, Introduction, Chapters 2-4 (pp. 39-156)
   Racial Discrimination; Slavery, pp. 753-756
   Dred Scott v. Sandford (1857), pp. 757-760
   Lincoln’s Critique of Dred Scott, pp. 27-28
   Civil War Amendments, pp. 760-764
   Slaughter-House Cases (1873), pp. 424-427
   Civil Rights Cases (1883), pp. 764-766
Plessy v. Ferguson (1896), pp. 766-769
*Strader v. West Virginia, 100 U.S. 303 (1880)
*Yick Wo v. Hopkins, 118 U.S. 356 (1886)
School Desegregation, pp. 769-777
Review: The Carolene Footnote, p. 770 (box)
*Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938)
*Sweatt v. Painter, 339 U.S. 629 (1950)
Government’s Brief in Brown, pp. 777-778
Brown v. Board of Education I (1954), pp. 778-781
O’Brien (Lanahan) Readings: No. 28, Kluger
Brown v. Board of Education II (1955), pp. 782-783
Cooper v. Aaron (1958), pp. 783-785
*Griffin v. School Board of Prince Edward Co., 377 U.S. 218 (1964)
  http://caselaw.findlaw.com/scripts/getcase.pl?navby=search&linkurl=<%LINKURL%>
  &graphturl=<%GRAPHURL%>&court=US&case=/us/377/218.html
*Green v. County School Board of New Kent County, 391 U.S. 430 (1968)
*Freeman v. Pitts, 503 U.S. 467 (1992)
O’Brien (Lanahan) Readings: No. 29, Orfield
Desegregating Other Activities, pp. 788-792
Congress Interprets the Commerce Clause, pp. 795-796
Employment and Affirmative Action, pp. 799-808
Regents of the University of California v. Bakke (1978), pp. 808-811
  http://supct.law.cornell.edu/supct/html/02-241.ZO.html
  http://supct.law.cornell.edu/supct/html/02-516.ZO.html
O’Brien (Lanahan) Readings: No. 30, Shaw
O’Brien (Lanahan) Readings: No. 31, Jones
Conclusions, pp. 818

Exam #2: Wednesday, June 6 (during class)
V. Rights of Privacy (June 6 - 13)
Rosenberg: Chapter 6, pp. 175-201
O’Brien (Lanahan) Readings: No. 1, Hamilton
O’Brien (Lanahan) Readings: No. 2, McCloskey
Dimensions of Privacy, pp. 885-889
*Buck v. Bell (1927), pp. 889-890
*Skinner v. Oklahoma, 316 U.S. 535 (1942)
*Loving v. Virginia, 388 U.S. 1 (1967)
Substantive Due Process, pp. 430-434
Lochner v. New York (1905), pp. 434-437
West Coast Hotel Co. v. Parrish (1937), pp. 439-441
Review: The Carolene Footnote, p. 770 (box)
Use of Contraceptives, pp. 892-894
Griswold v. Connecticut (1965), pp. 894-896
Abortion Rights, pp. 896-905
*Roe v. Wade (1973), pp. 905-908
Planned Parenthood v. Casey (1992), pp. 918-921
*Gonzalez v. Carhart, 550 U.S. ___, No. 05–380 (April 18, 2007)
http://www.law.cornell.edu/supct/html/05-380.ZO.html
O’Brien (Lanahan) Readings: No. 33, Ginsburg
Ruth Bader Ginsburg on Abortion, p. 125 (box)
Gay Rights, pp. 931-936
Lawrence v. Texas (2003), pp. 939-942
Defining the Limits of Privacy, pp. 942-944
Financial Privacy Act of 1978: Congressional Debate, pp. 944-946
The Right to Privacy: The Bork Hearings, pp. 946-948
The Right to Die, pp. 924-926
Cruzan v. Director, Missouri Dept of Health (1990), pp. 926-929
Vacco v. Quill (1997), pp. 929-931
Conclusions, p. 949

VI. Gender Issues (June 13 - 25)
Rosenberg: Abortion and Women’s Rights, Introduction, pp. 173-174; Chapters 7-8, pp. 202-246
The Struggle for Women’s Rights, pp. 821-826
Bradwell v. State (1873), pp. 826-828
Congress Responds to Bradwell; Equal Pay Act of 1963; Civil Rights Act of 1964, pp. 828-829
Review: The Carolene Footnote, p. 770 (box)
Contemporary Gender Issues, pp. 832-840
*Goeseart v. Cleary, 335 U.S. 464 (1948)  
http://caselaw.findlaw.com/cgi-bin/getcase.pl?navby=case&court=us&vol=335&invol=464  
Debate on Equal Rights Amendment, p. 1025 (box)  
*Reed v. Reed, 404 U.S. 71 (1971)  
Frontiero v. Richardson (1973), pp. 840-842  
Craig v. Boren (1976), pp. 842-844  
Personnel Administrator of Massachusetts v. Feeney (1979), pp. 846-848  
Michael M. v. Sonoma County Superior Court (1981), pp. 844-846  
Senate Debates Women in Combat, pp. 853-854  
O’Brien (Lanahan) Readings: No. 32, Williams  
O’Brien (Lanahan) Readings: No. 35, O’Brien  
Conclusions, p. 883  

VII. Concluding Thoughts – Can, or Should, the Supreme Court Affect Social Change? If so, What Can, or Should, We Do About It? (June 25)  
Rosenberg: Chapter 5 (pp. 157-169); Chapter 9 (pp. 247-265); Chapter 12 (pp. 336-343)  
O’Brien (Lanahan) Readings: No. 5, Brennan  
O’Brien (Lanahan) Readings: No. 36, Klarman  
O’Brien (Lanahan) Readings: No. 16, Posner  
Efforts to Curb the Court, p. 1023  
Constitutional Amendments, pp. 1023-1026  
Statutory Reversals, pp. 1026-1030  
Court Packing, pp. 1030-1036  
Withdrawing Jurisdiction, pp. 1036-1042  
Noncompliance, pp. 1045-1050  
Conclusions, pp. 1050-1058  
Conclusions, p. 1058  

EXAM #3: Wednesday, June 27 (during class)
As the Syllabus provides, each student is required to brief two (2) cases during the semester. This entails writing a case brief, then discussing the case in class as well as answering questions about the case based upon your case brief. At the end of the class in which the case you have briefed is discussed, you must hand in a hard copy of the brief. Both the written case brief and your discussion of the cases in class count toward your final grade in accordance with the Syllabus.

The following list contains the cases for briefing (which includes only those assigned cases in the Fisher casebook), as well as the dates on which the case briefs must be completed. To sign up for your case brief, you must email my teaching assistant at david.henry@wmich.edu by Wednesday, May 9, 5pm, with a list of four (4) cases you are interested in briefing, in rank order. Make sure you choose no more than one case per section – this is necessary to ensure that each assigned case has a student assigned to it, and that only one student, or perhaps two if necessary, is responsible for any single case brief. I then will assign students (on a first come, first served basis) the cases for which each is responsible to brief.

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<th>Cases:</th>
<th>Freedom of Speech</th>
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<tr>
<td>Schenck v. United States (1919), pp. 449-450</td>
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Privacy

*Buck v. Bell* (1927), pp. 889-890
*West Coast Hotel Co. v. Parrish* (1937), pp. 439-441
*Planned Parenthood v. Casey* (1992), pp. 918-921
*Lawrence v. Texas* (2003), pp. 939-942
*Cruzan v. Director, Missouri Dept. of Health* (1990), pp. 926-929
*Vacco v. Quill* (1997), pp. 929-931

Gender

*Bradwell v. State* (1873), pp. 826-828
*Frontiero v. Richardson* (1973), pp. 840-842
*Craig v. Boren* (1976), pp. 842-844

Exam #3: June 27
**Marbury v. Madison**  
U.S. Sup.Ct. (1803)  
CJ Marshall

**Facts:** President Adams, as a lame duck, appointed Marbury and others to a federal judicial post (DC Justice of the Peace). The appointments were approved by the Senate, sealed, but failed to be delivered by the Sec of State, John Marshall (the CJ who decided this case). After being sworn in, Pres Jefferson refused to acknowledge the appointments. Marbury, based on an act of Congress, went directly to the US SupCt to have a writ of mandamus issued, so he could secure his position.

**Issue:** Is Marbury entitled to his post? If has a right to that post, do the laws afford a remedy? If yes, is a mandamus from the SupCt the proper remedy?

**Holding:** YES. YES. YES, but...

**Rationale:** Judicial commission was appointed, approved, signed, and sealed (all discretionary acts were carried out). Failure of delivery (a ministerial act) does not preclude Marbury from his post. Marbury also has a legal right to his post via a remedy. A mandamus IS the proper remedy; BUT, the SupCt does NOT have the power to issue such a writ. §13 of the Jud. Act of 1789 gave the SupCt the power to issue writs of mandamus. But, the Const limits the cases where the SupCt has original jurisdiction, and Congress cannot change the SupCt's original jurisdiction; but, Congress did that by passing §13. Syllogism: 1) the Const is the supreme law of the land; 2) §13 is contrary to the Const; 3) therefore, §13 is unconst'al. Since §13 is repugnant to the Const, it is ruled to be invalid. The key to this case is not that Marbury gets his post, although not by the SupCt issuing a writ of mandamus. Instead, the key to this decision is that the SupCt affirmatively asserts its power of judicial review over a co-equal branch of the federal govt: “It is emphatically the province and duty of the judicial dept to say what the law is.”

**Other opinions:** None

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