
The First Amendment

Syllabus – Spring 2023

Professor Peter N. Salib

psalib@central.uh.edu

Office: TUII-120

Zoom Link: <https://zoom.us/j/96352469806>

Meetings: Monday and Wednesday 10:30 a.m. – 12:00 p.m. (location TBD)

Readings and Materials: Our casebook for this course will be *The First Amendment* by Stone, et. al. (Sixth Edition), ISBN: 9781543807806. In addition to being for sale at the campus bookstore, the text can also be rented at a reasonable rate from [Amazon](https://www.amazon.com).

Any other readings will be posted on our class Blackboard site.

Learning Objective: Understand the First Amendment’s protections for speech and religion, including doctrine, historical evolution, and current trends.

Class Preparation and Discussion: Nearly every topic we will cover this semester will be controversial. First Amendment law touches on, among other things: terrorism; offensive, racist, and hate speech; obscenity; pornography; and threats. In order for our classroom discussions of these topics to be productive, I expect the following:

Class preparation: I expect everyone to carefully read the assignments for each meeting and to come to class ready to discuss. Class will include some cold-calling (with students selected via random number generator), as well as (I hope) lots of volunteer-based discussion. Of course, sometimes life gets in the way. So if you have not had a chance to read before class, please email me before 9 a.m. on the day of our meeting. You get three freebies—reprieves from cold calls with no good reason required and no penalty imposed.

The “keep it impersonal” policy: Given the sensitive nature of the topics we will discuss, I ask that students refrain from directly recounting their personal experiences, even when directly relevant to our discussion. It can be difficult to maintain an atmosphere of productive, open communication if discussion shifts from law and policy to our own personal reactions to lived experiences. The latter are difficult to debate or contest. Of course, your personal experiences will and *should* inform your views on law and policy. To that extent, you absolutely ought to raise arguments influenced by your own lives. Here is an example of what I mean: In class, try to argue, e.g., that “The Court overlooks [X] difficulties faced by [people who have experienced Y],” rather than, “As a [person who has experienced Y] ...”

Classroom Confidentiality: Our discussions will be most productive if students feel free to try out positions with which they (or others) may not agree and to test the assumptions underlying their own (or others’) views. In fact, I will often ask students to argue positions with which they may disagree. Proficiently deploying such arguments for clients’ benefit is literally a lawyer’s job! For these reasons, class

discussion is strictly “off the record.” Outside of the classroom, you may not attribute any statements made in class to any of your classmates. And any unauthorized audio or visual recording of class is prohibited.

Grading: Grades in this course will be primarily based on a final take-home exam. Engagement in class discussion is, as noted above, a vital part of this course’s design. Thus, repeated and unexcused failures to prepare for our meetings may adversely impact grades.

Office Hours: My office hours will Mondays and Wednesdays from 2:30 to 3:30 p.m. I am also happy to correspond by email, as well as to set up alternative meeting times, should they be necessary.

Syllabus: This is a preliminary syllabus, arranged by topic. I may update, add, or remove readings over the course of the semester to fit our evolving topics of conversation.

This class will meet 23 times during the Spring Term (plus one additional half-hour review session). Our meeting dates for the semester and the required readings are below.

Meeting Topics and Assignments

- I. Free Speech
 - a. Class 1 – Jan. 19
 - i. First Amendment Theory
 - ii. Content-based restrictions: Dangerous ideas and information [CB 19-23, 27-46]
 - b. Class 2 – Jan. 24
 - i. Content-based restrictions: Dangerous ideas and information cont’d [CB 46-51, 57-71]
 - ii. Classified information [CB 93-108]
 - c. Class 3 – Jan. 26
 - i. The Heckler’s Veto [CB 72-93]
 - ii. Threats [CB 162-66]
 - d. Class 4 – Feb. 2
 - i. Low value speech: false statements of fact [CB 129-154]
 - e. Class 5 – Feb. 9
 - i. Vagueness, overbreadth, and prior restraints [109-124]
 - f. Class 6 – Feb. 14
 - i. Low value speech: obscenity [CB 189-211]
 - ii. Pornography [CB 279-282]
 - g. Class 7 – Feb. 16
 - i. Offensive and indecent speech [CB 226-252]
 - h. Class 8 – Feb. 21
 - i. Hate speech [CB 253-279, 282-285]
 - i. Class 9 – Feb. 23
 - i. Commercial speech [CB 167-188]
 - j. Class 10 – Feb. 28
 - i. Symbolic conduct [CB 376-401]
 - k. Class 11 – Mar. 2
 - i. Content-neutral restrictions: general principles [CB 285-297]; Reed v.

- Town of Gilbert [CB 351-352]
 - ii. The public forum: streets and parks [CB 298-308]
 - l. Class 12 – Mar. 7
 - i. The public forum: other publicly owned property [CB 311-323]
 - m. Class 13 – Mar. 9
 - i. Government speech [CB 352-376]
 - n. Class 14 – Mar. 21
 - i. Other means of expression [CB 402-420]
 - o. Class 15 – Mar. 23
 - i. Campaign finance [CB 421-431, 449-460]
 - p. Class 16 – Mar. 28
 - i. Freedom of the press and differential treatment [CB 481-498]
 - q. Class 17 – Mar. 30
 - i. Regulating the media [CB 501-518]
- II. Freedom of religion
 - a. Class 18 – Apr. 4
 - i. The Establishment Clause and anticoercion [CB 545-559]
 - b. Class 19 – Apr. 6
 - i. The nonendorsement principle [CB 563-578]
 - ii. Impermissible purposes [CB 578-593]
 - c. Class 20 – Apr. 11
 - i. Facially neutral statutes that incidentally aid religion [CB 593-616]
 - d. Class 21 – Apr. 13
 - i. Free exercise [CB 617-640]
 - e. Class 22 – Apr. 18
 - i. Permissible Accommodation [CB 641-661]
 - f. Class 23 – Apr. 20
 - i. COVID-19, the shadow docket, and the death of *Smith*? (Blackboard)
 - g. Class 24 – Apr. 25
 - i. Wrap-up

Here is some additional information that the University would like you to have:

Excused Absence Policy

Regular class attendance, participation, and engagement in coursework are important contributors to student success. Absences may be excused as provided in the University of Houston Undergraduate Excused Absence Policy and Graduate Excused Absence Policy for reasons including: medical illness of student or close relative, death of a close family member, legal or government proceeding that a student is obligated to attend, recognized professional and educational activities where the student is presenting, and University-sponsored activity or athletic competition. Under these policies, students with excused absences will be provided with an opportunity to make up any quiz, exam or other work that contributes to the course grade or a satisfactory alternative. Please read the full policy for details regarding reasons for excused absences, the approval process, and extended absences. Additional policies address absences related to military service, religious holy days, pregnancy and related conditions, and disability.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Center for Students with DisABILITIES. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Syllabus Changes

Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through email.