

## HNRS 2120 SS: Abortion, Education, Guns & Privacy as State Constitutional Rights

Mark W. Denniston, J.D., Ph.D  
11:30 to 12:20 a.m. MWF in LI 325  
Spring 2024

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“Drop-In” hours: M/W: 9:00-9:25 a.m. and T/Th 8:00-9:00 a.m.; also by appointment

### **Description**

State supreme courts can recognize, pursuant to state constitutions, MORE (but not fewer) rights than what the U.S. Supreme Court has interpreted the Bill of Rights in the U.S. Constitution to require. This has implications for the rights to abortion, education, bearing arms, and privacy across this country. We will examine state supreme court opinions establishing these rights, while also critiquing U.S. Supreme Court opinions.

### **Learning Outcomes**

Specific learning objectives of this course include:

1. Students should be able to explain differences in federal and state constitutional rights, including how they are created and modified.
2. Students should be able to identify and explain the issue, holding and reasoning employed by state supreme courts in individual state supreme court decisions.

**Course Format and Requirements:** The format of this course resembles a seminar. There will be some lecture, but mostly there will be guided classroom discussions of the readings, and students will be expected to answer questions about the readings (i.e. the “Socratic method”). All members of the class will be expected to provide frequent in-class verbal contributions. As seen below, the degree to which students provide in-class contributions will play a significant role in grade determination. *Therefore, each member of the class is expected to have read that week’s assigned material listed in the syllabus prior to class time on Monday.*

**Grading Policies:** The overall grade for the course will be determined as follows:

Participation	10%	94-100	A	77-80	C+
Quizzes	10%	90-94	A-	74-77	C
1 <sup>st</sup> Midterm Exam	20%	87-90	B+	70-74	C-
2 <sup>nd</sup> Midterm Exam	25%	84-87	B	60-70	D
<u>Final Exam</u>	<u>35%</u>	80-84	B-	≤ 60	E
Total	100%				

*However, each exam is required to pass the class—failure to complete any of the exams will result in failure of the course, not just a zero on the exam in question.*

**Re-grading:** Instructors sometimes make mistakes in grading. For that reason, I will agree to re-grade a brief or mid-term exam, subject to a few restrictions. Please wait 24 hours after an item is returned to you before requesting a re-grade, and use that time to re-read the material covered by the brief or exam. If, after re-reading the material, you feel that I misunderstood a point you made, I ask that you prepare a one paragraph written statement (e.g. email) with your request, detailing what you believe I have overlooked or how you feel the grade is unfair. I will never penalize a request for re-grade by lowering your grade.

Participation: Attendance and participation are *not* the same thing. Participation requires contributing to class discussions and asking questions, while attendance is being physically present in the classroom. Multitasking during class (texting, Facebook, etc) is distracting to everyone. If I see you doing this, I may not interrupt class to tell you to stop, but I will note this and lower your participation grade. Likewise if you come late to class (or stand to leave before I dismiss class), I am unlikely to further disrupt class by commenting on your untimely arrival/departure, but will deduct from your participation score. On the other hand, coming to office hours with questions and contributing to the on-line review sessions will count toward class participation.

Student Code: All students are responsible for knowing and adhering to the Weber State University Student Code. Visit [http://www.weber.edu/ppm/Policies/6-22\\_StudentCode.html](http://www.weber.edu/ppm/Policies/6-22_StudentCode.html) for more information about the Weber State University Student Code. Violations of academic ethics and honesty include, but are not limited to, the following types of academic misconduct:

- Plagiarism, which is the unacknowledged (uncited) use of any other person's or group's ideas or work. This includes purchased or borrowed papers;
- Cheating, which includes copying another student's work or any actual or attempted use of materials or resources not authorized by the instructor for exams or assignments;
- Collusion, which is the unauthorized collaboration with another person in preparing work offered for credit;
- Falsification, which is the intentional and unauthorized altering or inventing of any information or citation in an academic exercise, activity, or record-keeping process.

Additional examples of plagiarism include, but are not limited to: failing to use quotation marks when directly quoting from a source; failing to document distinctive ideas from a source; and copying, without attribution, information from the Internet. Even if you provide a citation to a source at the end of lifted text, *you have still plagiarized if you haven't distinguished the material you have lifted from another text from you own words*. In other words, BOTH lifting text word for word AND paraphrasing too closely are forms of plagiarism. See <http://www.plagiarism.org/> for more information and further definitions/explanations of plagiarism. If you are in doubt regarding any of these issues, please see me during office hours.

Regarding the distinction between assistance and cheating: Asking a friend for assistance with a particularly difficult point, or discussing an out of class assignment together prior to writing it as individuals, as well as consulting on-line/published aids prior to writing or in order to edit your own work, can all constitute legitimate assistance so long as the submitted assignment is the product of your own work. However, copying work, sharing answers, and asking friends to complete assignments for you all constitute cheating.

During exams, all electronic devices, including cell phones, iPods, MP3 players, etc., must be turned off and completely stowed out of reach, along with any notebooks or papers. Please be aware that in this class cheating or plagiarism of any sort will result in a grade of zero on the assignment in question and may be grounds for failure of the course. Instances of academic misconduct will be documented in a memo and forwarded to the Chair of the Criminal Justice Department and Dean of Students for their records.

*Disability Services:* Any student requiring accommodations or services due to a disability must contact Services for Students with Disabilities (SSD) in room 181 of the WSU Student Services Center. SSD can also arrange to provide course materials (including this syllabus) in alternative formats if necessary. See the SSD website for more information: <http://www.weber.edu/ssd/>

*Religious Observances:* I will make every effort to reasonably and fairly deal with students who, because of religious obligations, have conflicts with exams or assignments.

If you need an accommodation of any scheduled activity, due to a conflict with a religious holiday or observance, please let me know in writing (email) of the conflict during the first two weeks of the semester if possible, or as soon as possible after becoming aware of the conflict.

**Class Decorum:** We will be discussing controversial subjects and you may vehemently disagree with something that is said by another student or perhaps even myself. However, part of respecting your colleagues is to honor differences in people, ideas, and opinions. Therefore, questions and comments by others should be treated with civility at all times. Your own opinions and arguments become stronger by considering alternative arguments seriously—consequently it is inappropriate to interrupt each other. Furthermore, it is only appropriate to address the substance of another person’s argument, not the character of the person with which you disagree. Also, it is inappropriate to expect a student to explain or defend the views or positions of a racial, ethnic, religious, or political group with which they may be associated. I reserve the authority to ask you to modify your behavior and/or leave class if your behavior or comments are offensive or disruptive to the learning environment and deduct accordingly from your participation grade.

If you prefer an alternate name or gender pronoun please advise me of your preference (e.g. first day note cards or email) and I will happily honor your request. In addition please follow these in-class policies regarding decorum:

- ⤴ Please make every effort to come to class on time (see Participation section above).
- ⤴ Please do not start putting your notebooks, etc, away until I dismiss class. If you must leave class early please alert me prior to class and sit near an exit.
- ⤴ ***If you miss class please obtain the notes from someone in class, review them and the readings for that day, then contact me if you have any questions.***
- ⤴ If you have questions about the readings please raise them during class discussion. If your question is not answered, please see me during office hours or email me.
- ⤴ Weber State University is committed to providing an environment free from harassment and other forms of discrimination based upon race, color, ethnic background, national origin, religion, creed, age, lack of American citizenship, disability, status of Veteran of the Vietnam era, sexual orientation or preference or gender, including sexual/gender harassment. Specifically the University policy on sexual harassment prohibits both unwelcome sexual contact and unwanted sexual comments/language and includes an anti-retaliation policy to protect complainants. If you have questions regarding the University’s policy against discrimination and harassment you may contact the university’s Affirmative Action/Equal Opportunity office (i.e. the AA/EO office) at 801-626-6239 if you face discrimination by faculty, staff or other students.

**Counseling and Psychology Services:**

College is a stressful time in your lives. On top of academic stresses such as exams, papers, presentations, reading, etc. you may also be struggling to balance work and family obligations, and many of you may also be dealing with illnesses of family members. Please know that if you experience anxiety, depression, or grief there are University services available to assist you. Many of these services are free of charge to you as they are funded by student fees. The first step is just asking for help. So if you are struggling with depression, anxiety, relationship problems, academic or career uncertainty, identity confusion, loneliness, grief, or other concerns, the WSU Counseling & Psychological Services Center can help. Please call 801-626-6406 to schedule an appointment or visit <http://www.weber.edu/counselingCenter/> for more information.

**Campus Closures:**

If, for any reason, Weber State University must close the campus for an extended period of time, this course will continue virtually through Canvas.

**Cancelled Classes:**

If I need to cancel class unexpectedly, I will inform you via Canvas by posting an announcement. I would recommend that you set up your notifications so that you receive Canvas announcements immediately through your email, etc. (I also use the Canvas announcements for other more routine class communications such as distributing review sheets, adjustments to course readings, drawing your attention to newspaper articles, etc).

**Missing an Exam:** If you absolutely must miss an exam due to medical or family emergency please be in touch with me as soon as possible (scheduled exam make ups for religious or athletic reasons should be arranged with the instructor in the first two weeks of the semester). Please note that I am much more sympathetic to those who contact me before missing the exam. You should also plan to document your emergency excuse (i.e. with a hospital or doctor's note), although I may waive this requirement if contacted prior to the exam. Granting make-up exams *is completely at the discretion of the instructor* without well-documented medical excuse of the student's or immediate family's illness or injury (i.e. children, spouse, or parents). Even if a makeup is granted the instructor reserves the right to penalize taking an exam late up to 75% of your exam grade, especially if your request is after the fact, and is insufficiently explained and documented. Remember failure to take an exam will result in failing the course.

**Starfish:** Throughout the term, you may receive emails from Starfish (an advising software package the University purchased earlier this year) regarding your course grades or academic performance. Please pay attention to these emails and take the recommended actions. They are sent to help you be successful both in this course and with your University education in general. *Students may also raise flags in Starfish that signal to the instructor and academic advisor that they need additional help.* Advisors are available to connect students with a variety of campus resources and answer questions. You may find the Starfish program at your eWeber portal.

**Success in this Class and Contacting the Instructor:** Please contact me with any questions not answered during class. The best way to contact me with questions is during office hours, or email me if you cannot make office hours. I answer email within 48 hours, so if you do not receive a reply within that time, that means I did not get, or overlooked, your email and you should try to contact me again. The readings and concepts explored in this course are difficult, and students will need to carefully complete the reading assignments before class, come to class on a regular basis and take good notes, and participate fully in class discussion in order to be successful in the course. *In addition, all students are welcome and encouraged to come to office hours, although students having trouble with the material should make an effort early on in the term to come to office hours, ask questions, and address ways of improving course performance.*

**Course Texts and Materials:**

All readings and cases listed below will be posted on Canvas.

**Class Schedule and Readings:**

**Week One (week of Jan. 8)**

Introduction to New Judicial Federalism

Denniston Chapter 1

**Week Two (week of Jan. 15)**

Why state constitutional law?

**NO CLASS MONDAY, Jan. 15th**

Justice Brennan law review article

**Week Three (week of Jan. 22)**

Abortion: Introduction and Background

articles TBD

**Week Four (week of Jan. 29)**

Abortion continued

*Hodes & Nauser v Schmidt* (Kan. 2019)

**Week Five (week of Feb. 5)**

Abortion continued –political aftermath

articles re voting in Kansas, Ohio, and Legislature reaction  
also S.C. case

**Week Six (week of Feb. 12)**

Begin Right to Education

**1st Exam, Mon. Feb. 12th**

Chapter X: School Funding Clauses

**Week Seven (week of Feb. 19)**

Education continued

**NO CLASS MONDAY, Feb. 19th**

*State v Lobato* (Colorado 2013)

**Week Eight (week of Feb. 26)**

Education wrap-up

TBD

**Week Nine: NO CLASS SPRING BREAK: MARCH 4<sup>th</sup> through March 8th**

**Week Ten (week of March 11)**

Guns

*Arnold v City of Cleveland* (Ohio 1993)

**Week Eleven (week of March 18)**

Guns cont.

law review articles **TBD**  
**2nd Exam, Fri. March 29th**

**Week Twelve (week of March 25)**

Court Constraining Amendments

Williams and Friedman pp. 246-68

**Week Thirteen (week of April 1)**

State searches upon curtilage

*State v Bullock* (Mont. 1995)  
*State v Christensen* (Tenn. 2017)

**Week Fourteen (week of April 8)**

State rejections of Exclusionary Rule

*State v Cline* (Iowa 2000)  
Denniston Chapter 5 article

**Week Fifteen (week of April 15)**

Cruel juvenile punishments

*State v Houston* (Utah 2015)  
Denniston & Binning 2019 law review article

**In Class Review: last day of class**

**FINAL EXAMINATION: Tuesday, April 23<sup>rd</sup> from 11:00 a.m. – 12:50 p.m.**

*This syllabus is intended to give students guidance regarding what will be covered during the course, and will be followed as closely as possible. However, the instructor reserves the discretion to modify or supplement this syllabus as needed by making announcements in class and on Canvas. Changes in reading assignments/schedule may be adjusted merely through in-class announcements.*

## HOW TO BRIEF A CASE

A “brief” is a structured summary of a case to help you and your classmates analyze a case for the most important considerations. You should first read the entire case (and any other introductory material in the text) to get a general sense of what the case is about and the grounds on which it was decided. After the second reading, summarize the following points:

1. Title: This should include the full name of the case, the year it was decided (in parenthesis) and the vote of the Court in deciding the case.
2. Facts: Who are the parties? (Sometimes it is tricky figuring out who is who. The “plaintiff” or “petitioner” is the party who initiates the action in the trial court, the “defendant” or “respondent” is the party against whom the action is filed. In the court of appeals, the “appellant” is the party who is appealing, which could be either the plaintiff/petitioner or defendant/respondent from the trial court; the “appellee” is the party against whom the appeal is taken, generally the “winner” in the trial court. In the Supreme Court, however, the party petitioning for a writ of certiorari [a request for the Supreme Court to review the case] may be called the “petitioner” and the opposing party the “respondent.” Note also that sometimes both parties take appeals, though they raise different issues.)  
  
What has happened in the history of the parties, and in the lower courts, that is necessary to understand what the fight between the parties is about? Usually the author of the textbook has summarized much of the facts, and this summary can usually be furthered summarized to a short paragraph ( $\approx$  3 to 5 sentences).
3. Issues: What question was the Court being called upon to answer? What is the appealing party claiming that the lower court did wrong? You should list all of the issues raised, by stating each issue in the form of a question.
4. Arguments: How does each party claim the issues should be decided? Why?
5. Holding: This should be a concise, one-sentence statement of how the Court has resolved the case by stating how the law stands now that the Court has ruled. It may be followed by a short notation such as: “court of appeals reversed, district court affirmed.”
6. Rationale: Summarize the Court’s reasoning by stating the arguments the majority relies upon in making its decision. What arguments did it consider and reject? Why? Is the Court relying upon earlier precedents or legal principles, or is it distinguishing or overruling earlier cases? In short you must answer this question, *why* did the Court choose to make the law x and not y, where y might be old rejected precedent or the preferred interpretation of the losing party.
7. Concurrence/Dissent: (If one exists) what in the majority opinion do the concurring and/or dissenting opinion(s) disagree with? Why?

Please note that this method is a guideline that may be modified to suit your purposes in briefing cases. It may not be possible to identify each of these points from the excerpts we will be reading for this class. **Remember, briefs should be written in your own words: copying from Wikipedia or other sources is plagiarism as much as if you were writing a research paper.**