

Antonin Scalia Law School at George Mason University

FREE SPEECH CLINIC (Law 136)
Fall 2020 Course Syllabus (dated 8.11.22)

Tuesdays from 6:05– 8:05 p.m.

2 credits*

* Note this is a year-long course, with two credits earned each semester. This syllabus is for fall semester only.

Professors: Mike Connolly: jconnol5@gmu.edu
Office Hours: By appointment; Zoom appointments available

JoAnn Koob: jkoob@gmu.edu
Office Hours: Tuesdays 4:00-5:30 p.m., Room 433K, and by appointment; Zoom appointments available

Overview: The Free Speech Clinic provides students with legal practice experience through pro bono representation in actual free speech cases. Clinic students work closely with experienced attorneys to identify cases of interest, research legal issues, and draft memos, motions, briefs, and other documents. In addition, clinic students receive weekly classroom instruction on procedural and substantive issues relevant to their cases, federal and state court decisions, and recent developments in First Amendment law. Guest lecturers with a wide array of backgrounds will often attend the weekly meetings.

Readings: There is no casebook required for this course. We will provide case citations and/or post the weekly readings on TWEN.* Reading assignments are subject to change, as they are based on our guest speaker schedule and requests.

In addition, we may post optional supplemental readings on TWEN from time to time, that we think may be of particular interest based on our casework and other relevant topics.

**i.e., you will need to use TWEN, so please sign up if you have not already done so.*

Attendance: The course follows the Law School's attendance policy. If a student is absent for any reason more than 20% of the course, then the student is not eligible for credit. A student who misses more than 25% of a class session will be counted as absent from that class session. Note that we will follow the law school's then-current policy regarding COVID-related absences and make whatever corresponding accommodations exist under the policy (e.g., providing the opportunity to attend remotely via Zoom).

Assessment and Grades: Grades for fall semester will be based on a combination of case work, class participation, and a short paper, as shown below. You will be required to submit a short memo summarizing the casework you did and your role therein at the end of the semester. Guidelines for the paper will be provided as the semester progresses.

- Casework: 50%
- Paper: 25%
- Class Participation: 25%

Learning Outcomes:

- Students will understand basic principles of the speech, press, and assembly clauses of the First Amendment, as well as freedom of association.
- Students will develop litigation-focused research and writing skills.
- Students will understand the process and strategy of litigating freedom of speech claims.
- Students will exercise the professional skills expected of members of the legal profession.

Schedule: The course topics and reading list below will be updated during the semester as guest speakers are confirmed and to better reflect the Clinic's case work. We will keep you apprised of updates to the schedule and reading assignments.

*All readings denoted with an asterisk * are available on TWEN

August 23, 2022

Topic: Overview of First Amendment Law / Class and Clinic Work Overview

Reading:

- *Abrams v. United States*, 250 U.S. 616 (1919)*
- *Brandenburg v. Ohio*, 395 U.S. 444 (1969)*
- *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)*

August 30, 2022

Topic: Writing Legal Briefs / Case Projects

Reading:

- Free Speech Clinic Guide to Legal Writing*
- How to Read a Docket (TWEN)*

September 6, 2022

Topic: Time, Place, and Manner Regulations—with a focus on Charlottesville

Reading:

- *Ward v. Rock Against Racism*, 491 U.S. 781 (1989)*
- *Kessler*: Brief of Defendant re: Preliminary Injunction*
- *Kessler v. City of Charlottesville, VA*, 2017 U.S. Dist. LEXIS 128330 (Aug 11, 2017)*

Guest Speaker: Craig Brown. Craig is the City Attorney for the City of Manassas and the former City Attorney for the City of Charlottesville, Virginia, a position in which he served during the Unite the Right riots of the Summer of 2017. Craig has more than 38 years of experience as a municipal attorney.

September 13, 2022

Topic: Facebook's Oversight Board

Reading: TBD

Guest Speaker: Rachel Wolbers and TBD. Rachel Wolbers is the Head of Global Engagement at the Oversight Board. There she handles stakeholder engagement on cases and policy issues pending before the Board. Prior to the Oversight Board, she was an internet policy specialist with the Office of International Affairs at the U.S. National Telecommunications and Information Administration (the NTIA). Before the NTIA, Rachel was the policy director at Engine, a non-profit technology policy, research, and advocacy organization. Previously, she worked on Capitol Hill for several years, including as counsel for Congressman Blake Farenthold, a member of the US House Judiciary Committee. There, she advised on the technology and telecom portfolio. Rachel holds a bachelor's degree in international economics from George Washington University and a JD from Case Western Reserve University, where she served as the managing editor of the Journal of Law, Technology, and the Internet.

September 20, 2022

Topic: Commercial Free Speech

Reading: https://www.cato.org/sites/cato.org/files/pubs/pdf/pa_813.pdf

Guest Speaker: Mark Chenoweth. Professor Chenoweth is the President and General Counsel of the New Civil Liberties Alliance. He has observed the administrative state up close and personal from perches in all four branches of the federal government. Professor Chenoweth served as the first chief of staff to Congressman Mike Pompeo, as legal counsel to Commissioner Anne Northup at the U.S. Consumer Product Safety Commission, as an attorney advisor in the Office of Legal Policy at the U.S. Department of Justice, and as a law clerk to the Hon. Danny J. Boggs on the U.S. Court of Appeals for the Sixth Circuit. Professor Chenoweth has worked in several different roles in the private sector as well. He began his legal career in D.C. as a regulatory associate at Wilmer, Cutler & Pickering. He then returned to his home state of Kansas to serve as in-house counsel for Koch Industries. Most recently he spent over four years as general counsel of the Washington Legal Foundation. Professor Chenoweth is a graduate of Yale College and the University of Chicago Law School, where he co-founded the Institute for Justice Clinic on Entrepreneurship and became a Tony Patiño Fellow. He has been widely quoted and/or published in newspapers and websites including the New York Times, San Francisco Chronicle, New Hampshire Union Leader, and Metropolitan Corporate Counsel. He has also had recurring op-eds in the Los Angeles Daily Journal, and at Forbes.com.

September 27, 2022

Topic: Section 230, Data Privacy, and Free Speech on the Internet

Reading: Section 230 and the First Amendment (the readings are also available as PDFs on TWEN)

- [No Big Tech Did Not Violate the First Amendment*](#)
- [Competition and Content Moderation*](#)
- [Section 230's Challenge to Civil Rights and Civil Liberties*](#)
- [Buffalo Shooting Tests Texas Social Media Law*](#)

Data Privacy and Speech

- [The Creeping Right to be Forgotten*](#)

Guest Speaker: Jennifer Huddleston. Professor Huddleston is the Director of Technology and Innovation Policy at the American Action Forum. Her research focuses on the intersection of emerging technology and law. Her work has appeared in a wide range of outlets including USA Today, the Chicago Tribune, Business Insider, Slate, the New York Daily News, and The Hill. Professor Huddleston has appeared on media outlets including CNBC and Fox Business to discuss technology-related issues. She has also testified before Congress and state legislatures, and has been a regular panelist on issues such as transportation innovation, data privacy, and liability for content on online platforms including Section 230. Professor Huddleston has a JD from the University of Alabama School of Law and a BA in political science from Wellesley College.

October 4, 2022

Topic: The Roberts' Court and the First Amendment

Reading: TBD

Guest Speaker: Ronald Collins. Mr. Collins is Editor-in-Chief of First Amendment News (published online by the Foundation for Individual Rights in Education). He was formerly a scholar at the First Amendment Center from 2002 to 2009. He served as a law clerk to Justice Hans A. Linde on the Oregon Supreme Court and was a Supreme Court Fellow under United States Supreme Court Chief Justice Warren Burger. Mr. Collins has written numerous books on Constitutional law and the First Amendment. His latest work (co-authored with Will Creeley, and David Hudson, Jr.) is "First Things First – A Modern Course book on Free Speech Fundamentals."

NO CLASS: October 11, 2021 (Monday schedule observed)

October 18, 2022

Topic: Free Speech on College Campuses and Time, Place, and Manner Restrictions

Reading:

- *Ward v. Rock Against Racism*, 491 U.S. 781 (1989)*
- *Bowman v. White*, 444 F.3d 967 (2006)*

Guest Speaker: Will Creeley. Will Creeley is the Director of Legal Policy at the Foundation for Individual Rights in Education (FIRE). He began defending student and faculty rights for FIRE in 2006 after graduating from New York University School of Law. Will's writing has been published by The New York Times, the Wall Street Journal, The Washington Post, the Chronicle of Higher Education, Jurist, Inside Higher Ed, Daily Journal, the Charleston Law Review, and many other outlets. He edited the second edition of FIRE's Guide to Due Process and Campus Justice, co-edited the second edition of FIRE's Guide to Free Speech on Campus, and has coauthored amicus curiae briefs submitted to a number of courts, including the Supreme Court of the United States and multiple United States Courts of Appeals.

October 25, 2022

Topic: True Threats

Reading:

- *Watts v. United States*, 394 U.S. 705 (1969)*
- *Virginia v. Black*, 538 U.S. 343 (2003):* Read O'Connor's opinion only
- *Elonis v. United States*, 575 U.S. 723 (2015):* Read Roberts' opinion only

Guest Speaker: Josh Wheeler. Professor Wheeler is an Associate Professor of Political Science at Sweetbriar College in Virginia, and practices law at the Wheeler Law Group in Charlottesville. Prior to that, Professor Wheeler served for many years as the Executive Director of the Thomas Jefferson Center for the Protection of Freedom of Expression in Charlottesville. He was also formerly the Free Speech Clinic Fellow at Scalia Law.

November 1, 2022

Topic: Campaign Finance and Disclosure Laws

Reading:

- *Buckley v. Valeo*, 424 U.S. 1 (1976): Read shortened version on TWEN*
- *Citizens United v. FEC*, 558 U.S. 310 (2010): Read shortened version on TWEN*
- [FEC's Advisory Opinion to Socialist Workers Party dated 3/20/2009*](#)

Optional Reading:

- *Federal Election Commission v. Ted Cruz for Senate*: This is of interest as it is pending before the Supreme Court. Take a look at [SCOTUSblog's coverage](#) and/or the [FEC's Brief in Opposition to Motion to Affirm or Dismiss](#)

Guest Speaker: Ashley Stow. Ashley Stow currently works as Counselor to Federal Election Commission Chairman Trey Trainor. Prior to joining the FEC, Ashley was a partner at a law firm specializing in campaign finance and election law. Ashley's work experience also includes stints as General Counsel to a political data & analytics company, Senior Counsel at the Republican National Committee, Counselor to FEC Chairman Don McGahn, and Elections Counsel at the U.S. House of Representatives Committee on House Administration. Ashley is a graduate of American University's Washington College of Law and Georgetown University.

November 8, 2022

Topic: Free Speech and Censorship

Reading: TBD

Guest Speaker: Robert Corn-Revere. Bob was lead counsel for plaintiffs in *Mainstream Loudoun v. Loudoun County Library* in which the court declared public library internet filtering to be unconstitutional. In 2000, Bob argued *United States v. Playboy Entertainment Group* before the Supreme Court, where the court struck down portions of the Communications Decency Act that required that cable television operators who offered channels "primarily dedicated to sexually-oriented programming" must scramble completely or fully block such material. Beginning in 2004, Bob successfully defended

CBS Television and Viacom in an FCC proceeding resulting from the Super Bowl XXXVIII halftime show controversy. In 2009, Bob served as co-counsel for respondent in *United States v. Stevens* in which the Supreme Court ruled that a federal statute criminalizing the commercial production, sale, or possession of depictions of cruelty to animals was unconstitutional. He had a book come out last fall: MIND OF THE CENSOR AND EYE OF THE BEHOLDER, which he is willing to sign copies of during class.

November 15, 2022

Topic: Occupational Speech

Reading: TBD

Guest Speaker: Jeffrey Redfern. Jeffrey is an attorney for the Institute for Justice. Before joining IJ, Jeffrey was a member of the appellate group at Mayer Brown LLP, where he authored briefs on various constitutional issues in the U.S. Supreme Court and in lower federal and state courts. He has argued cases before the First and Seventh Circuits. Jeffrey clerked for Judge Laurence Silberman of the U.S. Court of Appeals for the D.C. Circuit. Jeffrey earned his J.D., cum laude, from Harvard Law School in 2012. Between his first and second years of law school, he clerked at IJ's Minnesota office. That experience inspired him to file his own pro se constitutional lawsuit against the government while still in school. (After over two years of litigation, the government finally provided the relief he requested.)

November 22, 2022

Topic: Overbreadth and Vagueness

Reading: *Shorted versions of each of the readings are available on TWEN

- *Grayned v. Rockford*, 408 US 104 (1972)*
- *Coates v. Cincinnati*, 402 U.S. 611 (1971)*
- *Gooding v. Wilson*, 405 U.S. 518 (1972)*
- *New York v. Ferber*, 458 U.S. 747 (1982)*