

Sexuality and the Law

COURSE SYLLABUS

Professors Sarah Warbelow and Brian Moulton

George Mason University School of Law

Spring 2023

COURSE DESCRIPTION

This course will cover developments in sexual orientation and gender identity law with an emphasis on current legislative developments. Topics to be discussed include privacy and the regulation of sexual activity, marriage, religious refusals, employment discrimination, education, and military policy. Participants will be encouraged to examine sexuality in the context of constitutional and statutory protections and limitations.

LEARNING OUTCOMES

In this course, students will learn: the development of constitutional doctrine regarding privacy, due process and equal protection as it impacts sex, sexual orientation and gender identity, as well as statutory interpretation and statutory proposals for protections against discrimination; how courts and policymakers seek to balance the allegedly competing interests of LGBTQ equality and religious liberty; how to apply these principles to unsettled legal questions regarding sexuality.

COURSE EVALUATION AND ASSIGNMENTS

The class will be conducted using a seminar format. Students will be expected to have completed the assigned readings prior to class and to participate in class discussions in a meaningful way. Quality of participation will be valued over quantity. Grades will be based on participation and a take-home final exam.

Class participation accounts for 20% of your grade. Dissenting viewpoints and an open airing of diverse perspectives are strongly encouraged. No student will be penalized or advantaged on the basis of political opinions. Attendance is mandatory and will factor into a student's participation grade.

The final assignment for this course will be a comprehensive take-home final. Students will have 48 hours in which to complete the exam. It may be obtained any day, 9-5, during exam week but no later than 48 hours before the last day of exams. Additional details will be provided closer to the exam period.

CONTACT INFORMATION

Brian Moulton: briankmoulton@gmail.com

Sarah Warbelow: swarbelow@gmail.com

Please include both of us when reaching out about the class. We will not have set office hours but are available to meet with students at their request.

REQUIRED TEXTS

Eskridge, Hunter, & Joslin, *Sexuality, Gender and the Law*, **5th Edition** (Foundation Press 2023). The professors will use Westlaw's TWEN to distribute additional assignments and other course information.

COURSE CONTENT AND ASSIGNMENTS

January 18: Introduction/Course Overview, Liberty & Autonomy I

Review of key terminology, constitutional and statutory provisions

CB pgs. 5-22

January 25: Liberty & Autonomy II, Equal Protection

CB pgs. 22-33

CB pgs. 40-53

CB pgs. 87-97

February 1: Sexual Activity, Marriage

CB pgs. 145-164

CB pgs. 205-210, 217-244

February 8: Other Relationship Recognition

CB pgs. 247-273

text of Respect for Marriage Act (available on TWEN)

CB pgs. 694-702

CB pgs. 709-715

CB pgs. 722-726

CB pgs. 738-744

February 15: Establishing Parentage, Surrogacy, Multiparent Families

CB pgs. 773-805

CB pgs. 816-828

CB pgs. 829-837

February 22: Adoption, Foster Care, Custody and Visitation

CB pgs. 839-850

CB pgs. 855-879

March 1: Expressive Association and Viewpoint.

CB pgs. 133-136

CB pgs. 192-202

CB pgs. 359-392

CB pgs. 946-951

March 8: Religious Liberty, Part I.

CB pgs. 287-311

Keeton v. Anderson-Wiley (available on TWEN)

Ward v. Polite (available on TWEN)

March 15: No Class – Spring Recess

March 22: Religious Liberty, Part II.

CB pgs. 319-342

CB pgs. 659-668

1.8.23

Bruff v. North Mississippi Health Services (available on TWEN)
EEOC v. Harris Funeral Home (available on TWEN)

March 29: Workplace Part I

CB pgs. 98-108
CB pgs. 181-191
CB pgs. 565-572
CB pgs. 601-604
CB pgs. 618-624
CB pgs. 635-644

April 5: Workplace Part II/ Education Part I

CB pgs. 645-658
CB pgs. 669-674
CB pgs. 883-890, 892-896
CB pgs. 902-907
CB pgs. 909-918

April 12: Education Part II

CB pgs. 919-920
CB pgs. 932-946
CB pgs. 965-976
B.P.J. v. West Virginia State Board of Education (TWEN)

April 19: Sexual and Gender Minorities in the Regulatory State

CB pgs. 1007-1024
CB pgs. 1034-1049
CB pgs. 1061-1066
CB pgs. 1071-1076

April 27 - May 11: Final Examinations Period