

THE FIRST AMENDMENT (PSC 380)

Spring 2023, Concordia College

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Course Overview and Introduction

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” –First Amendment, U.S. Constitution

These 45 words anchor the Bill of Rights of the U.S. Constitution. Compared to most advanced industrialized democracies, they represent an especially radical commitment to free expression. They are the reason the United States cannot prohibit Holocaust denial (**as in Germany and numerous other European countries**), speech that denigrates religion or religious figures (e.g. insults against the Prophet Muhammad, **as in Austria**), or hate speech against marginalized groups (**as the Council of Europe recommends for EU member-states**). Contrary to perhaps the biggest misconception about the First Amendment, they are the reason why you *can* – in most but not all instances – **yell “Fire!” in a crowded theater**. And they are the reason why former President Trump will never be prosecuted simply for *claiming* (without evidence) that the 2020 election was stolen.

Whether or not you agree with this state of affairs, the First Amendment is the cornerstone of civic life in the United States. In this course, you will learn how the U.S. Supreme Court has interpreted the First Amendment over the past 100 years. We’ll cover dozens of Supreme Court cases; here are some examples (with the Court’s answer in parentheses):

- Can Congress prohibit Americans from falsely claiming to have won the Congressional Medal of Honor or other military awards? (No; see *United States v. Alvarez*, 2012)
- Can a well-known fundamentalist preacher (considered a public figure) sue a pornographic magazine for inflicting emotional distress – if the magazine published a satirical cartoon depicting an incestuous relationship between the preacher and his mother? (No; see *Hustler v. Falwell*, 1987)
- If an anti-LGBTQ+ hate group protests in the vicinity of a military funeral (but does not break any trespassing laws), can the deceased servicemember’s father sue the group for “intentional infliction of emotional distress?” (No; see *Snyder v. Phelps*, 2011)
- Can the government make it illegal to burn or desecrate the American flag? (No; see *Texas v. Johnson*, 1989)
- Can a municipal government pass an ordinance that specifically prevents people from displaying a burning cross or swastika, if the display is intended to “arouse anger, alarm, or resentment” on the basis of race or another protected characteristic? (No; see *R.A.V. v. St. Paul*, 1992)

- Can a public school football coach conclude each game by praying on the 50-yard-line – even if an onlooker might (erroneously) conclude that his religious expression was endorsed by the school? (Pre-June 2022, probably not; post-June 2022, yes. See *Kennedy v. Bremerton School District*, 2022)

Along the way, we'll cover a number of important legal concepts – none more pivotal than the “two tracks” of analysis that guide First Amendment law. (That is, the Court typically protects speech from content or viewpoint-based discrimination – but tolerates content-neutral “time, place, and manner” restrictions to protect public order or government function.) We'll examine the Court's decisions on different categories of speech and expression: obscenity, political speech, symbolic speech, incitement to violence, campaign spending, and press freedoms. We'll pay particular attention to hate speech – probably the least popular form of speech currently protected by the First Amendment. Finally, we'll discuss the tension between religious freedom and church-state separation – one perennially unsettled domain of First Amendment jurisprudence.

Yet PSC 380 is not *just* about the Supreme Court's interpretation of the First Amendment. **Debates about free speech are neither new nor unique to the United States.** Thus, we'll consider not only Supreme Court law (*per se*) – but also the historical and philosophical context for free speech debates. Alongside excerpts from Supreme Court cases, we'll read Jacob Mchangama's *Free Speech*, an excellent introduction to this topic. And midway through the semester, we'll examine two divergent perspectives on hate speech: Nadine Strossen's *HATE* and Michael Bérubé and Jennifer Ruth's *It's Not Free Speech*. We will engage these arguments not as Supreme Court Justices bound by precedent – but as democratic participants affected by the Court's decisions.

Like all good classes, you will probably leave PSC 380 with more questions than answers – questions that cut to the heart of democratic citizenship, political tolerance, and the tension between equity and freedom. However, you will develop *exactly* the skills that democratic citizenship (not to mention law school) demands: analytical reasoning, critical thinking, and (through a mock *amicus curiae* brief and in-class presentation) oral and written communication skills. It won't be easy – but I promise it will be worth your time.

Moodle

You should familiarize yourself with [the Moodle page](#) for this course. You'll use Moodle to submit your MLK, Jr. Day reflection paper, take-home midterm exam, mock *amicus curiae* brief, and reflection memos. I'll post the PDF excerpts from Supreme Court cases on Moodle (usually two weeks prior to the relevant in-class discussion). And you can always use Moodle to see your current grade. From time to time, I may also post optional additional readings (like news articles and essays germane to class discussion) on Moodle.

Emails

Throughout the semester, I will use email to communicate with the class. **Please check your Cobbernet email at least once per day**, even if you usually use a different email account. Emails will often contain important announcements, updates, or clarifications about the course material. If I decide to move class online due to inclement weather, I will notify you by email – and I will email you the Zoom link to attend class remotely, too.

Textbooks

This course has **three required textbooks**, all available at the Cobber Bookstore; copies are also available through online vendors like [Amazon](#) and [Book Scouter](#).

- Jacob Mchangama, *Free Speech: A Global History from Socrates to Social Media* (Basic Books, 2022)
- Nadine Strossen, *HATE: Why We Should Resist It With Free Speech, Not Censorship* (Oxford University Press, 2020)
- Michael Bérubé and Jennifer Ruth, *It's Not Free Speech: Race, Democracy, and the Future of Academic Freedom* (Johns Hopkins University Press, 2022)

Alongside these texts, we will read excerpts from various Supreme Court rulings. **Excerpts from these cases will be posted on Moodle.** You should come to class prepared to discuss the Court's decisions – and consider them in light of the other assigned readings.

For most of the semester, Monday's and Wednesday's classes will cover several chapters from one of the assigned books; Friday's class will apply what we've read to the Supreme Court cases assigned for that week. In this way, you'll first learn about the historical and social context for free speech debates – and then learn how jurists (working *within* this context) have thought about these debates.

Expectations

This is an advanced, upper-level political science class. For most class sessions, you are required to:

- **Read (ahead of time) selections from the textbooks and course readings, as indicated in the schedule below.** Most weeks, we'll cover about 75-100 pages from the assigned readings. Each week will cover a distinct topic or set of readings; you should complete the assigned readings by the first class of the week (in most cases, Monday).
- **Come prepared for difficult but important discussions.** If you've signed up for *The First Amendment*, there's a good chance you have strong views on what constitutes protected speech or expression, religious freedom or impermissible government establishment of religion, and numerous related issues. **It is impossible to discuss the First Amendment without talking about speech and expression that most people find patently offensive.** This demands that we talk to each other without sugar-coating or dumbing-down vital topics. During the course of the semester, each of us – including your instructor – will struggle to find the right words, get the facts wrong, say something offensive without meaning to do so, or otherwise be human. Be present for these conversations. There's no other option.
- **Keep up with current events by reading a daily national newspaper.** The campus library provides students **free online access** to the *New York Times*; [click this link](#) to log-in with your Cobbernet username and password.
- **Complete various small group exercises and short, in-class writing assignments.** Participation is a graded part of this course, **and these exercises are your chance to participate.** Small group exercises are typically 10-15 minutes long; in most cases, I ask students to brainstorm and report responses to a prompt question. Other times, I require the

class to complete very short (4-5 minute) in-class writing assignments on discussion questions relevant to that day's topic. These will not be graded for "correct" answers. Rather, they will help facilitate discussion and give me a clear sense of students' willingness to participate. **Remember to bring writing utensils and notebook paper to each class.**

Reflection Memos (15% of grade)

Three times during the semester, you must write a **Reflection Memo** on the readings for the upcoming week. The memos must demonstrate that you have read the assigned readings, thought critically about the author or authors' questions and arguments, and considered how you might contribute to class discussion.

Memos should be approximately 3-4 paragraphs, although you're welcome to write more than that! Keep the following template in mind:

1. **Identify a specific quotation or passage** from the assigned readings. Don't just pick any random passage; choose something that sparked your interest. Except for Weeks 14 and 15 (where we'll only be reading Supreme Court opinions), I *strongly* encourage you to pick a passage from the assigned book for that week (i.e. Mchangama, Strossen, or Bérubé and Ruth).
2. **Explain what you found interesting about the passage you selected** – and unpack your thoughts further. For example, do you agree or disagree with the authors' claims? Does the passage (and the assigned readings in general) challenge your preconceived notions about free speech and/or the First Amendment? Do the authors leave anything out of the conversation that you would like to address in class? Have we encountered other perspectives that challenge the author(s)' claims – and if so, how might we reconcile these competing views? Do you bring a different perspective to the conversation – based on your lived experiences, your political attitudes, or your knowledge from another course? Did the passage cause you to think about the course topic in a new or challenging way? (**You do not need to answer all these questions!** But some of them might come in handy if you're struggling to collect your thoughts.)

Bottom line: Reflection Memos are an invitation to critical thinking. They are an opportunity to dialogue directly with your instructor and classmates, and to help steer class discussion in interesting (and unexpected!) directions. **I take students seriously as intellectuals.** This means that in class, I will often refer to your Reflection Memos for that week – and invite you to comment further on the insights you raise.

Note that students are assigned, based on the first letter of your last name, to one of three groups. These groups correspond with weeks for which group members must submit memos to Dr. Schmidt. On weeks that you're scheduled to submit a Reflection Memo, you must **submit your memo on Moodle by 7:30pm (CST) the evening before that week's first class.** Be sure to type your memo in the online text box associated with the assignment.

Group A (Last names A-H): memos due Weeks 3, 10, and 13

Group B (Last names J-L): memos due Weeks 5, 11, and 14

Group C (Last names M-Z): memos due Weeks 7, 12, and 15

Memos compose 15 percent of your final grade (5 percent each); each memo will receive a maximum of ten points (6 = needs improvement; 8 = adequate; 10 = excellent).

Reflection Paper (MLK, Jr. Day) (10% of Grade)

On Monday, January 16, Concordia College will celebrate Dr. Martin Luther King, Jr. Day. The MLK Day Planning Committee has arranged a full day of plenary sessions, concurrent sessions, and other events that challenge Concordia to renew our commitment to antiracist action. [Click here for more information.](#) Your instructor will be in attendance for most (if not all) of the scheduled activities.

You are required to attend **at least two scheduled events** during MLK, Jr. Day. Listen to what the speakers have to say. Take thoughtful notes about ideas or concepts that challenge your pre-conceived notions about the U.S. political system (and racial justice in particular). And pay special attention to the theme for this year's MLK, Jr. Day: **Generated by Love: Let Our Voices Be Seen and Heard.**

Your reflections will be the basis of a substantive writing assignment. I (Dr. Schmidt) will be traveling between January 30 and February 7. While I'm away, you're responsible for writing an essay that synthesizes the course material with the perspectives you heard on MLK, Jr. Day.

This is a creative writing assignment, not a take-home exam; I'm looking for depth and insight, not "correct" answers. Here's the order-of-events while I'm away:

1. On **Monday, January 30 (12:00pm)**, I'll post on Moodle an **open-ended** prompt (question or set of questions) for your essay. I *promise* that this is not "busy work"; the questions will make you think, and you'll immediately (I hope) see the connection to both PSC 380 and the MLK, Jr. Day activities. **You can take your essay in whatever direction you like, but you must talk about the events you attended on MLK, Jr. Day.**
2. While you're writing your essay, **feel free to talk with your classmates.** Bounce ideas off them. Compare notes about PSC 380, the MLK, Jr. Day events, and the essay prompt itself. Your essay must be your own work – but if the prompt inspires you to dialogue with your classmates, that's terrific.
3. **Essays are due on Monday, February 6 at 7:30pm CST.** You must upload your essay to Moodle in .doc or .docx format. Essays must be double-spaced, using a standard 12-point font (e.g., Times New Roman, Calibri). These are not intended to be long papers; **think in terms of 4-5 pages**, but feel free to write more than this.

Essays will be graded on how **completely, professionally, and thoughtfully** you addressed the prompt question. Remember to proofread your essay for spelling or grammatical errors, too.

Class Visit: Dr. Nadine Strossen (5% of Grade)

Dr. Nadine Strossen (New York School of Law) will visit our class on Wednesday, February 15. As the former president of the American Civil Liberties Union, Dr. Strossen has been personally involved with many of the Supreme Court cases we'll read about. She is the author of one of our

assigned books (*HATE*), and (whether you agree with her perspective or not) is at the forefront of public debate on the First Amendment.

In preparation for Dr. Strossen's visit, you're required to submit **at least two substantive questions** for class on February 15. Our class that day will be open-ended; this is your chance to pick Dr. Strossen's brain about *anything* First Amendment-related that happens to be on your mind. Don't feel limited by the topic for that week. During our conversation, I'll ask as many of your questions as possible.

Questions can be as long or short as you would like. This assignment will be graded on completion; that is, you'll get 100 percent if you send me two questions (any two questions) for Dr. Strossen. But I *urge* you to make good use of this opportunity. To my knowledge, PSC 380 is the only class that Dr. Strossen will be visiting on her (very busy) trip to campus. Let's make it count.

Please upload your questions to Moodle no later than Monday, February 13 at 7:30pm.

Take-Home Midterm Exam (25% of Grade)

You are required to complete a midterm, take-home exam that covers all the material up to that point. The exam will be posted on Moodle; you have three days to write and submit your exams (see **Course Schedule**, below). Exams should be uploaded to Moodle as a .doc or .docx (Microsoft Word) file.

The exam will contain three (3) essay questions; your response to each question should be about two to three (2-3) double-spaced pages. Exam questions will draw *heavily* on our class discussions – asking you to make a principled, creative argument that engages with the course topic. As such, an “A” exam will demonstrate not just knowledge of course material (*per se*) – but also your unique insights about the First Amendment (or free speech in general) and your willingness to consider alternate perspectives. Responses will not be graded on grammar, spelling, or punctuation. However, remember that if your writing is difficult to follow or contains many typographical errors, it might be more difficult to assess whether you understand the course material.

Mock Amicus Brief (Final Paper) (25% of Grade)

Amicus curiae is Latin for “friend of the court.” In judicial proceedings, interested parties submit amicus briefs to offer an informed opinion on how the court should rule. Amicus briefs are often filed by interest groups, purporting to represent people with an interest in the outcome of the case. For example, the American Civil Liberties Union (ACLU) and American Center for Law and Justice (ACLJ) routinely file competing amicus briefs in Establishment Clause cases. The ACLU typically argues that the government has violated the Establishment Clause by appearing to endorse religion; the ACLJ counters that ceremonial religious gestures do not violate the Establishment Clause.

The Supreme Court is not required to read amicus briefs; some Justices take them more seriously than others. Nevertheless, amicus briefs are hard work. *Amici curiae* must present a principled argument – defended not with political flourishes, but with legal reasoning and (often) data.

For your final project, you must write a **mock amicus brief** for a First Amendment-related Supreme Court case. You must choose a Supreme Court case that was decided (or argued, pending the Court's decision) within the past twenty-five (25) years. But here's the catch: **you can choose the Supreme Court case you write about, but I (Dr. Schmidt) will decide whether your amicus brief supports the petitioner or respondent.** Don't worry: I won't automatically assign you to a position I know you don't hold; at my Office Hours, we'll use statistical software to *randomly* assign you to one of the two sides. Once you know which side you're required to defend, you may choose which organization your brief purports to represent (e.g., the American Civil Liberties Union; the U.S. Conference of Catholic Bishops; the Federalist Society).

Bottom line: don't choose a case unless you're prepared to make a principled, "friend of the court" argument for *either* side. If you'd feel uncomfortable writing a brief that supports the Westboro Baptist Church's right to protest without being sued for emotional distress, don't pick *Snyder v. Phelps* (2011). It's really that simple.

Your brief should be 15-20 pages. While this is shorter than the typical amicus brief, you should still follow the standard conventions:

1. **Explain why your organization has a legitimate interest in the outcome of the case – and why you bring significant expertise to bear on the legal question.** Everyone has opinions; describe why yours is not *just* an opinion. Why does your organization *care* so much about this case? What group or groups do you claim to represent – and why should the Court believe that you represent them? As the Justices make their decision, why should they listen to you? What information can you provide the Court that it would not otherwise have? What credentials or expertise do you bring to the question?
2. **Summarize your organization's argument** in several pages. This is your chance to *preview* your argument – and (depending on the patience of the Justices) might be the only part of your brief that they read. Keep it short, but make it count.
3. **Defend each component of your argument with data and/or legal reasoning.** Typically, *amici curiae* make 2-4 distinct arguments, each constituting a separate section of their brief. Your argument is not an opinion column; it is grounded in **research**. Explain how the Court's decision will affect the people that your organization represents; how your organization interprets the facts of the case and/or the legal question facing the Court; and/or why you believe the government does (or does not) have a compelling interest in the policy-in-question.

For example, consider *United States v. Alvarez* (2012). In that case, the Court considered whether it was constitutional for Congress to prohibit Americans from falsely claiming to have won military awards (e.g., the Purple Heart, the Bronze Star). If you were writing an *amicus curiae* brief on behalf of the Military Order of the Purple Heart, you might make the following arguments:

1. The Stolen Valor Act addresses a serious public problem; people falsely claim to have received military decorations much more frequently than people realize.
2. Congress has a legitimate public interest in preventing this *particular* type of fabrication. At a time when veterans still face significant employment discrimination, decorated war heroes have been accused of fabricating or embellishing their records.

On the other hand, if you were writing on behalf of the American Civil Liberties Union, you might argue that the Stolen Valor Act criminalizes constitutionally protected speech:

1. The First Amendment of the U.S. Constitution protects an individual's right to publicly misrepresent their accomplishments.
2. Congress has no "compelling government interest" in prohibiting people from embellishing or fabricating their military record.

Note that these are two different kinds of arguments. When people argue that the government can restrict speech, they often cite the *harm* that this speech causes. That is, they attempt to show that the First Amendment should not cover the speech-at-issue. In contrast, when people argue that the government can't restrict speech or expression, they appeal to the First Amendment itself. As *amici curiae* arguments, both arguments should be appropriately nuanced, thoughtful, and academic. Nevertheless, to defend restrictions on speech or expression, you'll need to justify (often with data) the government's interest in these restrictions. To oppose such restrictions, you'll need to explain why the restrictions don't survive "strict scrutiny." (Don't worry, you'll learn what that is.)

This assignment will be challenging but rewarding. As the semester proceeds, plan to meet with me several times (at my Office Hours or by appointment) to discuss your progress. Grades will be based on (1) your attention to the assignment instructions, (2) the quality and professionalism of your argument and research, and (3) the professionalism (e.g., formatting, spelling, and grammar) of your brief itself.

Mock Amicus Brief (Oral Presentation) (10% of Grade)

Alongside your mock *amicus curiae* brief, you must prepare a short class presentation that outlines your arguments. Presentations should be approximately 10-12 minutes; slides or visual aids might help you organize your thoughts, but these are not required. Be sure to leave 2-3 minutes to answer questions from your instructor and classmates.

These presentations are not intended to simulate oral arguments before the Supreme Court. However, they *are* an opportunity to practice your oral communication skills. Approach your presentation as if you were given the opening statement in a public debate on behalf of the group represented in your brief. Begin by describing the facts of the Supreme Court case at-issue. Introduce your group's interest in the outcome of the case. Then, outline the arguments in your amicus brief as cogently, systematically, and persuasively as possible. **This is a formal presentation**; avoid casual asides, in-jokes, references to our class, or commentary on the project itself. Presentations will be graded on professionalism, organization, and relevance to the course topic.

Course Schedule

PART 1: HISTORY OF FREE SPEECH, WITH CONTEMPORARY APPLICATIONS

Week 1 (Friday, January 13): Course Introduction and Overview.

- **Read:** Course syllabus. (Remember that **syllabi are contracts** between the student and instructor; you are responsible for **carefully** reading this syllabus, reviewing the course requirements, and asking your instructor to clarify anything that is unclear.)

Week 2 (Monday, January 16 - Friday, January 20): Basic Theories and Approaches to Free Speech; Political Speech; Fighting Words and Direct Incitement

- **Note:** on Monday, class will reconvene at campus activities designed to recognize Dr. Martin Luther King, Jr. Day.
- **Wednesday:** Mchangama, *Free Speech*, Introduction + Chapters 1-2
- **Friday:** excerpts from *Schenk v. United States* (1919), *Abrams v. United States* (1919), *Debs v. United States* (1920), *Gitlow v. New York* (1925), *Chaplinsky v. New Hampshire* (1942), and *Brandenburg v. Ohio* (1969)

You are REQUIRED to attend at least two (2) scheduled events for Dr. Martin Luther King, Jr. Day (on Monday, January 16). While I won't take attendance, your Reflection Paper requires participation in this important event.

When you attend, be sure to **take notes** on the presentations you heard! You'll use these notes (and your insights from class) for your **MLK, Jr. Day Reflection Paper** (due Monday, February 6).

Week 3 (Monday, January 23 - Friday, January 27): Symbolic Speech

- Reflection memos due from Group A (on Sunday, January 22, 7:30pm)
- **Monday and Wednesday:** Mchangama, *Free Speech*, Chapters 3-5
- **Friday:** excerpts from *Minersville School District v. Gobitis* (1940), *West Virginia State Board of Education v. Barnette* (1943), *United States v. O'Brien* (1969), *Tinker v. Des Moines* (1969), *Texas v. Johnson* (1989)

Week 4 (Monday, January 30 - Friday, February 3): No class; this week, you're responsible for writing your MLK, Jr. Day Reflection Paper.

Dr. Schmidt will be traveling from January 30 through February 7. Class will reconvene on Wednesday, February 8.

During Week 4, you're responsible for working on your **MLK, Jr. Day Reflection Paper**.

The prompt for your essay will be **posted (on Moodle) on Monday, January 30 at 12:00pm**. Your papers are **due on Monday, February 6 at 7:30pm CST**. You must submit your paper on Moodle in .doc or .docx format.

Week 5 (Wednesday, February 8 - Friday, February 10): Time, Place, and Manner and the “Two Tracks” of Analysis

- **No class on Monday, February 6**
- Reflection memos due from Group **B** (on Tuesday, February 7, 7:30pm)
- **Wednesday:** Mchangama, *Free Speech*, Chapters 6-8
- **Friday:** excerpts from *Police Department of City of Chicago v. Mosley* (1972), *Reed v. Town of Gilbert* (2015), and *Minnesota Voters Alliance v. Mansky* (2018)

Week 6 (Monday, February 13 - Friday, February 17): Obscenity

- No reflection memos due this week; **all students must submit two questions for Dr. Strossen** (due Monday, February 13 at 7:30pm)
- **Monday:** Mchangama, *Free Speech*, Chapters 9-11
- **Wednesday: classroom visit, Dr. Nadine Strossen** (New York School of Law)
- **Friday:** excerpts from *Miller v. California* (1973), *Bethel School District v. Fraser* (1986), *Reno v. ACLU* (1997), *United States v. American Library Association* (2003), and *Ashcroft v. ACLU* (2004)

Week 7 (Monday, February 20 - Friday, February 24): Freedom of the Press

- Reflection memos due from Group **C** (on Sunday, February 19, 7:30pm)
- **Monday and Wednesday:** Mchangama, *Free Speech*, Chapters 12-13 + Conclusion
- **Friday:** excerpts from *New York Times v. Sullivan* (1964), *New York Times v. United States* (1971), *Hustler v. Falwell* (1987), news coverage of *Palin v. New York Times* (2022)

(Almost) Mid-Semester Check-In

Have you met with Dr. Schmidt about your mock amicus brief?

Have you picked the Supreme Court case that your amicus brief will discuss?

Have you asked Dr. Schmidt to randomly select which side your brief will defend?

If the answer to any of these questions is “no,” get to it!

Week 8 (Monday, February 27 - Friday, March 3): Exam Review; Take-Home Midterm Exam

- On Monday, February 27, we'll hold an **exam review session**. Ideally, the review session will put you in the strongest possible position to write your Take-Home Midterm Exam.
- On Wednesday (March 1) and Friday (March 3), we won't meet in-person. You should use our regularly scheduled class time to work on your take-home exam. **The exam is due on Friday, March 3 at 7:30pm CST.**

Your TAKE-HOME MIDTERM EXAM will be posted on Moodle on Tuesday, February 28 at 12:00pm CST. The exam will cover all the material through Week 7.

Exams are due on Friday, March 3 at 7:30pm CST. You must submit your complete exam on Moodle in .doc or .docx format.

Week 9 (Monday, March 6 - Friday, March 10): Spring Interim; no class.

PART 2: HATE SPEECH: A BRIDGE TOO FAR?

Week 10 (Monday, March 13 - Friday, March 17): Hate Speech, Week 1 of 4

- Reflection memos due from Group **A** (on Sunday, March 12, 7:30pm)
- **Monday and Wednesday:** Bérubé and Ruth, *It's Not Free Speech*, Introduction + Chapters 1-3
- **Friday:** longer excerpts from *Beauharnais v. Illinois* (1952) and *Matal v. Tam* (2017)

Week 11 (Monday, March 20 - Friday, March 24): Hate Speech, Week 2 of 4

- Reflection memos due from Group **B** (on Sunday, March 19, 7:30pm)
- **Monday and Wednesday:** Bérubé and Ruth, *It's Not Free Speech*, Chapters 4-6
- **Friday:** longer excerpts from *Capitol Square Review and Advisory Board v. Pinette* (1995)

Week 12 (Monday, March 27 - Friday, March 31): Hate Speech, Week 3 of 4

- Reflection memos due from Group **C** (on Sunday, March 26, 7:30pm)
- **Monday and Wednesday:** Nadine Strossen, *HATE: Why We Should Resist It With Free Speech, not Censorship* (entire book)
- **Friday:** longer excerpts from *Snyder v. Phelps* (2011)

Week 13 (Monday, April 3 - Wednesday, April 5): Hate Speech: Week 4 of 4

- Reflection memos due from Group **A** (on Sunday, April 2, 7:30pm)

- **Monday:** Nadine Strossen, *HATE: Why We Should Resist It With Free Speech, not Censorship* (review)
- **Wednesday:** longer excerpts from *R.A.V. v. St. Paul* (1992) and *Virginia v. Black* (2002)

Easter Recess (break) runs from Wednesday, April 5 (end of academic day) to Monday, April 10.

PART 3: FREEDOM OF RELIGION: A (VERY BRIEF) INTRO

Week 14 (Wednesday, April 12 - Friday, April 14): Establishment Clause: A “Wall of Eternal Separation” and the Court’s Accommodationist Turn

- Reflection memos due from Group **B** (on Tuesday, April 11, 7:30pm)
- **Wednesday:** excerpts from *Engel v. Vitale* (1962), *Murray v. Curlett* (1963), *Lemon v. Kurtzman* (1971), *Edwards v. Aguillard* (1987), and *Santa Fe Independent School District v. Doe* (2003)
- **Friday:** excerpts from *Marsh v. Chambers* (1983), *Board of Education of Westside Community Schools v. Mergens* (1990), *Good News Club v. Milford Central School* (2001), *Elk Grove Unified School District v. Newdow* (2004), *Hein v. Freedom from Religion Foundation* (2007), and *Kennedy v. Bremerton School District* (2022)

Week 15 (Monday, April 17 - Friday, April 21): Free Exercise and Government Interference with Religious Practice

- Reflection memos due from Group **C** (on Sunday, April 16, 7:30pm)
- **Monday:** excerpts from *Wisconsin v. Yoder* (1972), *Employment Division v. Smith* (1990), *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993), *Gonzales v. O Centro Espirita Beneficente União do Vegetal* (2006), *Cutter v. Wilkinson* (2005), and *Christian Legal Society v. Martinez* (2010)
- **Wednesday:** class will reconvene at the Celebration of Student Scholarship (COSS). I encourage students to check out your classmates’ original research – and to think about original research that you might conduct during your academic career at Concordia.
- **Friday:** longer excerpts from *Burwell v. Hobby Lobby Stores* (2013), *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018); oral argument transcripts from *303 Creative LLC v. Elenis* (2022)

Your mock amicus brief (written component) is due on Sunday, April 23 at 7:30pm CST. You must submit your paper on Moodle in .doc or .docx format.

Week 16 (Monday, April 24 - Friday, April 28): Final Projects, Presentations

- Each student should prepare a 10-12 minute presentation that presents the central arguments of their *amicus curiae* brief. Group **A** will present on Monday; group **B**, on Wednesday; group **C** on Friday. See the assignment instructions for more information.

Finals Week (Monday, May 1 - Friday, May 5): Semester Recap

- During Finals Week, we will meet as a class to reflect on everything we've learned this semester. There are no assigned readings for this week, and there is no final exam. Class dates (still in Old Main 302) are as follows:
 - Monday, May 1 (last day of classes): 10:30-11:40am
 - Thursday, May 4: 8:30-10:30am

Course Policies

Grading

Your final grade will be weighted as follows:

- **Reflection Memo 1**, 5 percent
- **Reflection Memo 2**, 5 percent
- **Reflection Memo 3**, 5 percent
- **Questions for Dr. Strossen**, 5 percent (graded on completion)
- **MLK, Jr. Day Reflection Paper**, 10 percent
- **Midterm Exam (Take-Home)**, 25 percent
- **Mock Amicus Brief (Written Component)**, 25 percent
- **Mock Amicus Brief (In-Class Presentation)**, 10 percent
- **Participation**, 10 percent.
 - I will recognize good-faith efforts to participate in class discussions. **Moreover, I will encourage participation with structured opportunities for students to collect their thoughts.** Frequent in-class writing exercises will help me gauge students' level of preparation for class. Just as important, these impromptu exercises will give *you* ideas for comments, insights, and questions. (If you have questions about the quality of your class participation, please see me during my office hours.)

Please note that **there will not be opportunities to earn extra credit** in this course.

Office Hours

Regardless of your performance in this class, I encourage you to stop by my office hours. During this time, I will certainly help students that might be struggling in PSC 380 – or who need clarification about the course material. However, I am also interested in your professional and intellectual development. Please see me as a *resource* (and ally) as you progress through your academic careers.

My office hours are **Tuesdays (9:30-11:30am) and Thursdays (1:00-3:00pm)**, in Old Main 311. To make either an in-person or virtual appointment, email me or sign up here: <https://concordia.campus.eab.com/pal/UGe9GygII5>. For virtual appointments, you'll receive the Zoom link after you sign up. However, **you can come to office hours even if you haven't made an appointment** or can't get the above link to work.

Attendance Policy

Concordia College requires students to attend all classes as scheduled; I will take attendance at each class session. Note that while you won't be graded on attendance (*per se*), unexcused absences will affect your participation score.

Students will be excused from class in cases of illness, family emergency, or religious observance. Generally, students should provide documentation of illness (e.g., a valid doctor's note) to be excused from the participation requirement for missed classes. However, I recognize that due to COVID-19 mitigation measures, it is not always practical (or safe) to obtain a doctor's note; in these cases, please keep open communication with your instructor to ensure you are not penalized for health circumstances beyond your control.

In addition, **Concordia students will not be penalized for missing class due to participation in a co-curricular activity.** Students should notify their instructors of scheduled absences at the beginning of the semester, or as soon as that information is available to them.

Finally, not everything is an excused absence. You will **not** be excused from class for family vacations, family visits to campus, birthdays, or similar recreational activities. Presumably, your family and friends want you to succeed in college; attending classes as scheduled is an important part of that.

Deadlines

Students must complete the midterm exam within the allotted time period; late exams will only be permitted in cases of illness, family emergency, religious observance, or participation in a co-curricular activity. Please note that if you qualify for a make-up exam, you will receive an "alternate" version of the exam. Your version will not be more difficult, but it might have different questions. **If you miss the midterm exam deadline without a valid excuse, you will receive zero (0) percent on the exam, and will not have the opportunity to complete a make-up exam.**

You will lose points for late submissions on your (1) MLK, Jr. Day Reflection Paper, (2) Reflection Memos, and (3) questions for Dr. Strossen. Specifically, **I will deduct ten (10) percentage points (one letter grade) for each day that your assignment was overdue.** Assignments will be considered "one day late" if they were submitted the day the assignment was due but after the 7:30pm deadline.

Finally, you must present your in-class presentation on the scheduled date, and submit your mock amicus brief by the April 23 deadline. If you believe that you cannot meet these deadlines, I will only issue an "incomplete" (I) grade under *extraordinary* (and documented)

extenuating circumstances. **You are responsible for initiating the request for an “incomplete,” and for meeting with the Center for Student Success and/or Disability Services to discuss the need for this request.**

Expectations Regarding Academic and Personal Integrity

All students are expected to make a personal pledge to uphold Concordia’s and general professional standards on academic honesty and integrity. For more information, see the College’s [Student Handbook and Academic Policies](#).

As the instructor-of-record for this course, **I am required to report academic integrity violations to the Office of Academic Affairs.** Depending on the severity or deliberateness of the offense, penalties for academic misconduct may include: an automatic zero (0) percent on the assignment in question, an automatic failing grade (F) for the course, or (at the administrative level) suspension from the College.

Avoiding plagiarism is essential for anyone at any stage of their academic career. **In my experience, however, most cases of plagiarism are not deliberate;** rather, students are not aware that what they are doing constitutes plagiarism. For example, you are **not allowed to use AI chatbots** to write your reflection paper. (Note: using statistical software, I can *easily* determine whether an essay has been written using an AI chatbot.)

There are multiple ways to plagiarize, but here’s a good rule-of-thumb: plagiarism means that you have copied from another text – without appropriate citation – **any intellectually unique sequence of three or more words.** There are obvious exceptions to this rule; proper nouns (e.g., “National Republican Convention,” “Senator Amy Klobuchar”) or technical terms (e.g., “clear and present danger”) need not appear in quotations, nor do phrases likely to appear in most academic writing on your topic (e.g., “In the United States”). But if you keep the “three words” rule in mind, it will be *extremely* hard to accidentally plagiarize. If you have questions about what constitutes plagiarism, feel free to ask me and/or refer to the College’s guidelines on academic integrity (see above).

Inclement Weather

Due to inclement weather (e.g., blizzards, freezing rain), I may occasionally need to move class online. **In these cases, you are still expected to attend remotely.** I will send a Zoom link to students’ Cobbernet email addresses. However, if the College has not cancelled in-person classes and I have not emailed you, plan to attend class in-person.

If you live off-campus and cannot safely come to class due to inclement weather, **please let me know at least two hours prior to our scheduled class.** In these cases, I expect students to attend class remotely (via Zoom) – and I will send you a Zoom link for this purpose. (Note that inclement weather is the *only* situation in which I will allow students to “virtually” attend an otherwise in-person class.)

COVID-19

As campus continues to navigate the COVID-19 pandemic, keep the following considerations and policies in mind:

- Concordia College no longer requires students to wear masks or face coverings to prevent the spread of COVID-19. **However, students should feel free to wear a mask in class.** I expect students to respect your classmates' and instructor's decisions on this matter.
- As of January 6, 2022, **Concordia College requires that students be vaccinated against COVID-19.** This comes after the Food and Drug Administration's full approval of Pfizer's COVID-19 vaccine. Vaccines remain the best way to keep yourself and others safe. To find walk-in sites, make an appointment, or find sites that offer a specific vaccine, you can visit the following link: <https://vaccineconnector.mn.gov/en-US/>. For more information about the College's (ongoing) COVID-19 response, you can visit <https://www.concordiacollege.edu/about/covid-response-planning/>.
- **I expect students to stay home from class if you are ill.** If you experience COVID-19 symptoms or test positive for COVID-19, it is important that you receive prompt medical attention – and that you self-isolate to protect others from infection. In this event, **I will ensure that you are not penalized for health circumstances beyond your control.**
- **If you are considered a “close contact” of someone infected with COVID-19, you are no longer required to quarantine.** However, you must wear a high-quality mask for 10 days, monitor yourself for symptoms, and test at least five full days after your initial exposure. If you test negative, continue to mask and take precautions through day 10. If you test positive, isolate immediately for a period of five full days before returning to class. **In these circumstances, I will again ensure that you are not penalized for following the campus's specified COVID-19 mitigation measures.**
- **Campus resources are in-place to help students affected by COVID-19.** Students who find it difficult to complete course work are expected to contact the course instructor and the Center for Student Success (success@cord.edu). Students who have technology issues are expected to contact ITS (pcsupport@cord.edu). Students who miss class for an extended period should reach out to Center for Student Success (success@cord.edu).

Concordia's Diversity Statement

Concordia College aspires to be a diverse community that affirms an abundance of identities, experiences, and perspectives in order to imagine, examine, and implement possibilities for individual and communal thriving. Critical thinking grounded in the liberal arts compels us to participate in intentional dialogue, careful self-reflection, and honest interactions about difference, power, and inequity. As responsible engagement in the world calls us to recognize worlds that are familiar or unfamiliar, visible or less visible, Concordia will act to increase and support diversity in all areas of campus life.

Value of Diverse Perspectives, Backgrounds, and Identities

As your instructor, I am committed to diversity, equity, and inclusion at Concordia. Ultimately, **inclusion is a quality-of-life issue.** Students are unlikely to succeed in (let alone enjoy) an educa-

tional environment where their contributions are neither valued nor noticed. More than ever, liberal arts education must celebrate students with under-represented racial and ethnic backgrounds, sexual orientations or gender identities, religious beliefs, and socioeconomic statuses. Students with physical or learning disabilities must be fully included in campus life. And instructors must proactively *and quickly* address discrimination in all its forms.

Just as importantly, if you feel under-valued and unnoticed in class, this is probably not your fault. Rather, it is your instructor's responsibility to promote an inclusive learning environment. During the semester, I will do my utmost to promote diverse perspectives, backgrounds, and identities in the classroom. But if I ever fall short, please let me know. Like everyone at Concordia, I am still learning; like everyone, there are "blind spots" in my cultural sensitivity and awareness. For this reason, I value *any* feedback that makes my classroom more inclusive – and would consider it a privilege to learn from you.

Pronouns and Identity

Class rosters are provided to us with the students' legal names. Because all people have the right to be addressed in accordance with their personal identity, the instructor will gladly honor your request to address you by an alternate name or gender pronoun. Please let him know how you would prefer to be addressed as soon as possible.

Concordia's Interfaith Cooperation Statement

Concordia College practices interfaith cooperation because of its Lutheran dedication to prepare thoughtful and informed global citizens who foster wholeness and hope, build peace through understanding, and serve the world together.

Religious Accommodations

Students from all faiths and religious backgrounds (and no or uncertain faiths) are welcome in this classroom. If a religious holiday precludes your class attendance, please make arrangements with the instructor in advance for retrieving information and turning in class assignments. If you are entitled to religious accommodations for spring 2022, I strongly encourage you to contact me as soon as possible. [Click here](#) to read the College's Religious Accommodations Policy.

Concordia's Sexual Misconduct Policy

Concordia College takes sexual assault, dating violence, domestic violence, stalking, and sexual harassment **seriously**. All faculty members, including myself, are mandatory reporters, which means that if I learn about any form of sexual misconduct, I must report it to the Title IX coordinator. For more information, I strongly encourage students to access both the [College's Title IX Resources](#) and [Sexual Misconduct Policy](#).

Accommodations for Students with Disabilities

Concordia College values diversity and inclusion. We are committed to providing students with access to mental health services and equitable access to learning opportunities.

The Counseling Center and Disability Services Office (Old Main 109A) is the campus office that helps students find solutions and relief through talk therapy and reasonable accommodations. Additional **Community and Online Resources** are also available on Cobbernet.

- If you feel stressed, anxious, worried, or lonely, please consider contacting a staff member in the Counseling Center and Disability Services Office to learn more or to set up an appointment with a counselor. All appointments are free and confidential and can be arranged by emailing counseling@cord.edu, or calling (218) 299-3514, or by stopping in Lower Level, Old Main, room 109A.
- If you have, or think you may have, a disability (e.g., matters concerning mental health, attention, learning, autism spectrum disorders, chronic health, traumatic brain injury and concussions, vision, hearing, mobility, or speech impairments), please contact the Director of the Counseling Center and Disability Services Office to arrange a confidential discussion regarding equitable access and reasonable accommodations. Appointments can be arranged by emailing counseling@cord.edu, or calling (218) 299-3514, or by stopping in Lower Level, Old Main, room 109A.
- Accommodations can be coordinated with the staff in the Counseling Center and Disability Services Office. To receive reasonable and appropriate accommodations in your course(s), you will need to share your Letter of Accommodation (LOA) with your class instructor(s) as soon as possible so necessary arrangements can be made. Accommodations can start only after the LOA has been shared with your instructor, and accommodations are not retroactive. Your information will be kept confidential.
- For additional information on accommodations (e.g., accommodation petition process or appeal process for accommodation plans) please see the Policy for the Accommodation of Students with Disabilities in the Concordia College Course Catalog.

Please contact me if you feel there are aspects of my instruction or design of this course that could better support your learning.

Mental Health

It is very important that your first priority this semester be to take care of yourself. Monitor and take care of your own health and well-being. It is important to recognize stressors you may be facing, which might be personal, emotional, physical, financial, mental, or academic. Sleep, exercise, balanced nutrition and connecting with others are great strategies to help you flourish at Concordia. If you are having difficulties maintaining your well-being, feel free to contact me and/or pursue other campus resources, such as the Counseling Center. Contact the Counseling Center to learn more, at counseling@cord.edu, (218) 299-3514, or stop in Lower Level, Old Main, Room 109A. All appointments are free and confidential.