

# THE ROBERTS COURT AND THE FIRST AMENDMENT

OLLI@Berkeley

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Freight & Salvage

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## SYLLABUS

The U.S. Supreme Court under Chief Justice John G. Roberts, Jr. has handed down an unusually large number of First Amendment decisions, and several of them are remarkable, even momentous. *Citizens United* is the most notorious, but it is the most misunderstood decision of all time. The Roberts Court has also confronted free speech issues involving national security, funeral protests, violent video games, “indecent” on television, the rights of high school students, abortion buffer zones, and a “constitutional right to lie” about military service. Just this year the court decided landmark free speech cases on trademarks and social media.

In this course, we will discuss several of the key opinions. The classes:

**Sept. 28: The Current Supreme Court.** We start with the composition, practices and politics of the Roberts Court and how it does its work. We consider how the court has approached free speech issues, the impact of the late Justice Antonin Scalia on the court’s decision-making, how Scalia’s absence may be felt, and what can be expected from Justice Neil Gorsuch.

**Oct. 5: Student Speech and Funeral Protests.** Two opinions by Chief Justice Roberts treating students as disfavored First Amendment speakers but protecting funeral protesters’ hateful and ignorant speech. Compare *Morse v. Frederick* (2007) with *Snyder v. Phelps* (2011).

**Oct. 12: “Crush Videos,” Violent Video Games and Liars.** How the Court has dealt with recent attempts by government to create new categories of constitutionally unprotected speech and to restrict speech it deems to have no social value: *United States v. Stevens* (2010), *Brown v. Entertainment Merchants* (2011), and *United States v. Alvarez* (2012).

**Oct. 19: *Citizens United*.** The controversial 2010 decision allowed corporations to make independent expenditures in political campaigns. What, exactly, did the Court

decide, and what has been the effect of the decision? The court followed up with decisions on the Arizona matching funds law and the Montana campaign finance law. The aftermath includes *McCutcheon v. FEC* (2014), and *Williams-Yulee v. Florida Bar* (2015), the only case in which Chief Justice Roberts upheld a campaign finance restriction.

**Oct. 26: Abortion Protesters, Texas License Plates, and Municipal Signs.** The “abortion buffer zone” case, *McCullen v. Coakley*, and the court’s treatment of “time, place, and manner” speech regulation. *Walker v. Sons of Confederate Veterans* and the “government speech” doctrine; *Reed v. Town of Gilbert* on regulating city signage.

**Nov. 2: Some of the Roberts Court’s Fumbles, the 2017 Decisions and an Assessment of the Roberts Court’s First Amendment Jurisprudence.** How the court dealt with the FCC’s censorship of dirty words and glimpses of nudity on broadcast radio and television in *FCC v. Fox Television Stations*. The court’s decision on “material support” of terrorism, *Holder v. Humanitarian Project*. In 2017, *Matal v. Tam* on whether the government must register racially offensive trademarks, and *Packingham v. North Carolina* on banning sex offenders from social media. We end with an assessment of the extent to which the Roberts Court has advanced or diminished free speech values, and where the court may go from here.

**Recommended reading:** I have edited and will post many of the opinions to be discussed each week on the OLLI web site. While you are not of course required to do any reading, and the lectures will cover everything I think is important, you may get more out of the course if you at least dip into the opinions themselves. If you don’t like reading online and want the opinions in printed form, along with my commentary, you could buy from the publisher a book I published in January, *Free Speech: Supreme Court Opinions from the Beginning to the Roberts Court* (2017). You can get it by going to <https://students.universityreaders.com/store/>. It’s also available on Amazon.

In addition, you might be interested (as Amazon says) in Linda Greenhouse, *The U.S. Supreme Court: A Very Short Introduction* (2012)(87 readable pages on the Court’s history and work); Jeffrey Toobin, *The Oath* (2012) (very accessible portrait of Roberts Court justices and how the Court operates); Anthony Lewis, *Freedom for the Thought that We Hate* (2008)(former New York Times columnist on First Amendment issues and the Court’s role); Tribe and Matz, *Uncertain Justice: The Roberts Court and the Constitution* (2014)(Harvard law professor’s views on how the current court has dealt with constitutional issues generally).

Useful web sites on the Supreme Court are <http://www.oyez.org> (cases, justices, audio of arguments, etc.), [www.scotusblog.com](http://www.scotusblog.com) (daily updates on cases, academic commentary, etc.), and the court’s own site, <http://www.supremecourt.gov>.