

Assignment 1: Judicial Opinion
English 280W: Law & Literature
Emma Davenport

Assignment Snapshot

You will analyze an existing majority opinion in order to then write your own concurring or dissenting opinion, using the conventional format of a judicial opinion.

Introduction to Assignment

You have now learned how to read, brief, and critique a court opinion. This assignment will enable you to put these skills into practice, first by demonstrating your mastery of an existing majority opinion, and second by practicing actually writing an opinion of your own in the conventional form.

Procedure

We will complete this project in a series of smaller steps. Each step will be explained in detail as we work through the process, but the following provides an overview of the individual tasks you will complete:

1. Identify your case

Each of you will be assigned a single case with which to work, and several of you will be working on the same case. However, this is not a group project; you will work independently of the other students who share your case, except as authorized by me.

The cases are:

- *Washington v. Glucksberg* (1997): physician-assisted suicide
- *Boy Scouts of America v. Dale* (2000): gay leaders in the Boy Scouts
- *Burwell v. Hobby Lobby* (2014): corporate religious exemptions to requirement of insurance coverage for contraceptives

2. Brief the Majority Opinion

Brief the majority opinion for your case, in the form we have previously used (although you will not be reading any concurrences or dissents; you may omit those two elements from your brief). Your brief must be typewritten, using our template. Your brief should be descriptive, rather than evaluative: your goal is to understand the majority's argument.

However, as you read the majority opinion, you should be annotating your text with evaluative judgments of your own. Consider the extent to which your case contains logical fallacies, faulty reasoning, and/or rhetorically persuasive moves; but also consider the strengths of the majority's argument. Eventually, you will need to decide whether to write an opinion that concurs with the majority opinion or dissents from it.

Your brief should be composed primarily of paraphrases, not direct quotes: render the court's opinion in your own words. If you do use any quotations, make sure to note the page numbers from which any quotes are taken, and put the page numbers in parentheses at the end of the quote.

3. Brief Your Concurrence or Dissent

Determine whether you would like to write a concurrence or a dissent to the majority opinion. Gather the elements of your argument by composing a brief for your opinion.

Some of the elements of your brief will be identical to the elements of the majority brief (e.g., the parties, procedural posture, facts, arguments of the parties, and possibly the issue/question)—for these elements, you may copy-and-paste from your majority opinion brief if you feel that your majority opinion brief accurately portrays those elements. If your majority opinion brief could use some revising, here is the place to make those revisions.

The issue/question, holding, and rule of your brief will differ significantly from the majority brief if you choose to dissent from the majority opinion. If you choose to concur with the majority, the issue/question, holding, and rule may be similar to those of the majority brief. Regardless of whether you choose to concur or dissent, however, the **reasoning** of your brief will differ substantially from that of the majority opinion.

Your reasoning should engage with **both** the **strengths** and **weaknesses** of the majority opinion. You should identify **logical fallacies, faulty reasoning, and/or rhetorically persuasive moves** that you find in the majority opinion. However, you should also consider how the judge who wrote the majority opinion would **defend** what you have identified as faulty argumentation. You should acknowledge how someone who disagrees with your position might attack your own argument, and respond with **counter-arguments**. You may address the **justice** of the majority's opinion with regard to the specific facts of this case and/or the wider **policy implications** of the decision beyond the specific facts of this case.

Your ultimate goal is to write a persuasive, well-reasoned, and thoughtful analysis that engages with the majority opinion's argument, ultimately supporting or contesting its validity.

This brief will serve the purposes of an outline, collecting all the necessary components of your concurrence or dissent in an organized way. This brief will function as the template for your opinion.

4. Write Your Concurrence or Dissent

Using the brief that you have composed, write a legal opinion concurring with or dissenting from the majority opinion. You should not review the parties, procedural posture, facts, or arguments of the parties in your opinion, since those will already have been covered in the majority opinion. However, you should make evident at the very beginning of your opinion whether you are concurring or dissenting, what your main arguments will be, and what you believe the court should have decided.

Any quotations from the majority opinion must be indicated with quotation marks and must reference the page number from which the quote is taken (in parentheses after the quote). No outside sources are required, nor are they encouraged; you are to write your opinion only in reference to the majority opinion as it is given to you by me. If you do consult any outside sources for any reason, you must indicate that you have done so by submitting a bibliography of any outside sources you consult. If you consult no outside sources, no bibliography is necessary.

Logistics and Deadlines

Grading: As indicated on our syllabus, this assignment is worth **30 percent** of your final course grade, weighted as follows:

Majority Opinion brief	10 points
Your Dissent/Concurrence brief	10 points
Final Dissent/Concurrence	20 points

Deadlines: Deadlines for each task are indicated on your syllabus: you'll complete one step each **Monday by noon** for the next three weeks.

Length and Format: The final dissent/concurrence length is **three to four full pages**. Your work should be **typed** in standard-sized, normal-looking font (Times New Roman or Garamond recommended), double-spaced, with 1-inch margins. **Minimum and maximum lengths** are firm. Please include **page numbers** on each page. You should submit your work as a **.docx (Microsoft Word)** document. The top of the **first page** of your document should be formatted as follows:

Concurrence to [your case name] **or** Dissent from [your case name]
Case Citation
Your Name

Citations: A Works Cited or Bibliography is not necessary (unless you consult outside sources, which is not encouraged). Quotations from the case should simply be followed by a page number in parentheses. Example:

According to the majority, "Bunny rabbits are objectively preferable to marmots" (6).