A. Introduction

“...every valuable end of Government is best answered by the enlightened confidence of the people: and by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority…”

George Washington, First Annual Message to Congress

This course is part two of a two-part series introducing the basic concepts in American constitutional law, its historical development, and techniques of constitutional interpretation. The goal of the series is to familiarize students with the basic themes in the American Constitution—popular sovereignty, the separation of powers, federalism, and individual rights—and the major political conflicts that have shaped and been shaped by these ideas over time.

Part Two focuses on issues of Civil Liberties and Civil Rights. The Civil Liberties section surveys the various constitutional protections that may be employed by individuals against the state under the United States Constitution. The Civil Rights section explores the long struggle for racial equality that has shaped the American polity since before the Constitution was written and the application of equal protection principles to other protected classes.

B. Course Objectives

The goal of this course is to prepare students to be informed and responsible citizens in a racially, religiously, economically, ideologically, and culturally diverse society based on the rule of law, including fundamental rights and equal protection of the laws.

Over the course of the semester students should:

- Learn the basic civil rights and civil liberties protected by the U.S. Constitution.
- Learn how underrepresented groups, including racial minorities, women, homosexuals, the poor, the disabled, religious minorities, and ideological minorities, have employed the legal system to defend their rights and liberties in the United States.
- Develop their own views of how to resolve legal disputes based on cultural conflict in a just, equitable, and logically consistent manner.
- Improve their ability to develop and defend oral and written arguments.
- Appreciate the complexity and indeterminacy of legal issues involved in balancing competing claims of rights and justice in a diverse society.

Students will be assessed on their knowledge of civil rights and civil liberties, as well as how rights claims have been advanced in the legal system through a final exam and in-class Socratic discussions. Students will be assessed on the development of their own views, their ability to
craft arguments, and their appreciation of legal complexity through a moot court exercise and in-class discussions.

C. Course Materials

Epstein and Walker, Constitutional Law for a Changing America: Rights, Liberties, and Justice (7th ed. 2010) [hereafter EW]

D. Student Responsibilities and Grades

Final grades for the course will be based on five factors:
- Socratic discussion (10%)
- Active participation in class discussion (10%)
- Pop quiz (5%)
- Moot court exercise (35%)
- Final exam (40%)

Students enrolled in the honors section should see me outside of class to discuss their project.

Regular attendance in all classes is expected of all students; however, attendance will not be taken. Instead, the participation grade will be based on each student’s performance in a Socratic discussion and in general class discussions. At the beginning of each class one or two students will be randomly selected to engage in a Socratic style discussion during the class period, during which I will question the student about his or her understanding and opinion of the reading. Students selected to perform will be expected to have a strong knowledge of the day’s reading and will be evaluated accordingly. Any student not prepared to discuss the reading may take a pass; absent students will automatically take a pass. Passes will negatively affect the Socratic grade. Near the end of the class, I will encourage a general discussion on the day’s reading.

More information regarding each assignment will be provided later in semester. For each written assignment, papers must be double-spaced, 12-point Times New Roman font, with 1-inch margins. Paragraphs must be indented and must not be separated by a blank line. Papers must use a standard citation system of your choice and a cover page that does not count toward the page total. Written material will be evaluated based on writing quality, organizational structure, logical clarity, and a demonstrated understanding of course material. Class participation will be evaluated based on frequency and quality of in-class comments. All papers should be emailed to mhall30@slu.edu; written material should not be submitted in hard copy. Students are required to meet all deadlines for course material. Written material submitted within 24 hours of the deadline will be accepted with a 10% grade reduction. WRITTEN MATERIAL WILL NOT BE ACCEPTED MORE THAN 24 HOURS AFTER THE DEADLINE!

All students are required to fill out a course evaluation at the end of the semester.

Office Hours: Dr. Hall’s office is located in McGannon 154. Office Hours are on Wednesday from 2:00-4:00 p.m. and by appointment.
**Academic Honesty Statement**

The University is a community of learning, whose effectiveness requires an environment of mutual trust and integrity. Academic integrity is violated by any dishonesty such as soliciting, receiving, or providing any unauthorized assistance in the completion of work submitted toward academic credit. While not all forms of academic dishonesty can be listed here, examples include copying from another student, copying from a book or class notes during a closed book exam, submitting materials authored by or revised by another person as the student’s own work, copying a passage or text directly from a published source without appropriately citing or recognizing that source, taking a test or doing an assignment or other academic work for another student, securing or supplying in advance a copy of an examination or quiz without the knowledge or consent of the instructor, sharing or receiving the questions from an on-line quiz with another student, taking an on-line quiz with the help of another student, and colluding with another student or students to engage in academic dishonesty.

All clear violations of academic integrity will be met with appropriate sanctions. In this course, academic dishonesty on an assignment will result in an automatic failing grade for the course and a report of academic dishonesty sent to the Academic Honesty Committee of the College of Arts and Sciences. In the case of Class B violations, the Academic Honesty Committee may impose a larger sanction including, but not limited to, assigning a failing grade in the course, disciplinary probation, suspension, and dismissal from the University.

Students should refer to the following SLU website for more information about Class A and B violations and the procedures following a report of academic dishonesty: http://www.slu.edu/x12657.xml

**Students with Special Needs - Disability Services**

Any student who feels that he/she may need academic accommodations in order to meet the requirements of this course—as outlined in the syllabus, due to presence of a disability, should contact the Office of Disabilities Services. Please telephone the office at 314-977-2930, or visit Room 131 in the Academic Resources Center, 3840 Lindell Blvd. Confidentiality will be observed in all inquiries.

**Arts & Sciences Grading Scale**

The Arts & Sciences Grading Scale can be accessed at: http://www.slu.edu/x6352.xml

Grade Points: A 4.0, A- 3.7, B+ 3.3, B 3.0, B- 2.7, C+ 2.3, C 2.0, C- 1.7, D 1.0, F 0.0

Course grading scale:
A: 93-100, A-: 90-92, B+: 87-89, B: 83-86, B-: 80-82, C+: 77-79, C: 73-76, C-: 70-72, D: 60-70, F: below 60

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**D. Weekly Schedule**

**Week 1: An Introduction to Civil Rights and Civil Liberties**

**Wednesday, January 18: Introduction**

EW 3-9

- The Living Constitution
- The Road to the Bill of Rights
- The Amendment Process
- The Supreme Court and the Amendment Process

**Friday, January 20: Supreme Court Decision Making**

EW 10-44

- Processing Supreme Court Cases
- The Role of Law
- The Role of Politics
Week 2: Foundations of Civil Liberties and Free Speech

Monday, January 23: Incorporation
EW 67-79
Must the States Abide by the Bill of Rights?
   Barron v. Baltimore (1833)
Incorporation through the Fourteenth Amendment
   Hurtado v. California (1884)
A Standard Emerges
   Palko v. Connecticut (1937)

Wednesday, January 25: Free Speech Theory
Readings distributed by email:
   Bork, Robert H. “Neutral Principles and Some First Amendment Problems.”
   Redish, Martin. “The Value of Free Speech.”

Friday, January 27: The Development of Legal Standards
EW 193-212
   Schenck v. United States (1919)
   Abrams v. United States (1919)
   Gitlow v. United States (1925)

Week 3: Freedom of Speech

Monday, January 30: The Development of Legal Standards, cont.
EW 212-226
   Dennis v. United States (1951)
   Brandenburg v. United States (1969)

Wednesday, February 1: Fighting Words and Protest
EW 235-251
   Chaplinski v. New Hampshire (1942)
   Cohen v. California (1971)

Friday, February 3: Symbolic Speech
EW 266-270, 226-235, 257-261
   West Virginia State Board of Education v. Barnette (1943)
   United States v. O’Brien (1968)
   Tinker v. Des Moines (1969)

Week 4: The Boundaries of Free Expression
Monday, February 6: Hate Speech
EW 251-257 and online reading
Wisconsin v. Mitchell (1993)

Wednesday, February 8: Obscenity
EW 319-338 and online reading
Roth v. United States (1957)
Miller v. California (1957)

Friday, February 10: Libel
EW 338-356
Gertz v. Welch (1974)
Hustler Magazine v. Falwell (1988)

Week 5: Free Exercise of Religion

Monday, February 13: in Free Exercise Law
EW 96-106
Cantwell v. Connecticut (1940)

Wednesday, February 15: Basic Issues Basic Issues and the Compelling Interest Test
EW 106-116
Sherbert v. Verner (1963)
Wisconsin v. Yoder (1972)

Friday, February 17: The Smith Test
EW 116-129
Employment Division v. Smith (1990)
City of Boerne v. Flores (1997)

Week 6: Religious Establishment

Monday, February 20: Building the Lemon Test
EW 129-148, 186-192
Everson v. Board of Education (1947)
Lemon v. Kurtzman; Early v. DiCenso (1971)
Government Endorsement of Religion: Holiday Displays
Van Orden v. Perry (2005)

Wednesday, February 22: Prayer and Religious Principles in Public Schools
EW 165-186
Lee v. Weisman (1992)

Friday, February 24: Aid to Religious Schools
   EW 148-165
   Agostini v. Felton (1997)

Weeks 7 and 8 (February 27-March 9): Midterm Moot Court Exercises

Spring Break (March 12-16)

Week 9: The Second Amendment

Monday, March 19: The Right to Keep and Bear Arms
   EW 374-383
   Initial Interpretations
   United States v. Miller (1939)
   The Second Amendment Revisited

Wednesday, March 21: Incorporating the Second Amendment
   EW 383 and online reading
   McDonald v. Chicago (2010)

Friday, March 23: The Right to Privacy: Foundations
   EW 385-394
   Griswold v. Connecticut (1965)

Week 10: The Right to Privacy

Monday, March 26: Reproductive Freedom and the Right to Privacy
   EW 394-418
   Roe v. Wade (1973)
   Planned Parenthood v. Casey (1992)

Wednesday, March 28: Private Activities and the Application of Griswold
   EW 418-439
   Cruzan v. Director, Missouri Dept. of Health (1990)

Friday, March 30: The Criminal Justice System and the Right to Counsel
   EW 441-448, 519-529
   Powell v. Alabama (1932)
   Gideon v. Wainwright (1963)
Week 11: The Rights of the Criminally Accused

Monday, April 2: The Fifth Amendment and Self-Incrimination
EW 497-518
   Escabedo v. Illinois (1964)
   Miranda v. Arizona (1966)

Wednesday, April 4: The Exclusionary Rule
EW 477-494
   Mapp v. Ohio (1961)

Friday, April 6: NO CLASS, Good Friday

Week 12: Civil Rights and the Constitution

Monday, April 9: NO CLASS,

Wednesday, April 11: Racial Discrimination
EW 577-594
   The Fourteenth Amendment
   The Fifteenth Amendment
   Plessy v. Ferguson (1896)
   Sweatt v. Painter (1950)

Friday, April 13: Anti-Subordination v. Anti-Classification
EW 594-601, 612-617
   Brown v. Board of Education I (1954)
   Brown v. Board of Education II (1955)
   Loving v. Virginia (1967)

Week 13: Civil Rights, cont.

Monday, April 16: The Post-Brown Era/Expanding the Application of Brown
EW 601-612
   Swann v. Charlotte-Mecklenburg Board of Education (1971)

Wednesday, April 18: The State Action Requirement
EW 617-624
   Shelly v. Kraemer (1948)
   Burton v. Wilmington Parking Authority (1961)
   Moose Lodge No. 107 v. Irvis (1972)
Friday, April 20: Early Sex Discrimination Cases
EW 624-634
  Reed v. Reed (1971)
  Craig v. Boren (1976)

Week 14: Civil Rights, cont.

Monday, April 23: The Court’s Application of Intermediate Scrutiny
EW 634-642

Wednesday, April 25: Sexual Orientation, Economic Status, and Alien Status
EW 642-659
  Romer v. Evans (1996)

Friday, April 27: Remediying the Effects of Discrimination
EW 659-676
  Regents of the University of California v. Bakke (1978)
  Adarand Constructors, Inv. V. Pena (1995)

Week 15: Civil Rights, cont. and Elections

Monday, April 30: The Court Reconsiders Its Affirmative Action Policies
EW 676-688

Wednesday, May 2: Political Representation
EW 718-737
  Baker v. Carr (1962)
  Reynolds v. Sims (1964)

Friday, May 4: Regulation of Election Campaigns
EW 711-718 and online reading
  Citizens United v. FEC (2010)

Week 16: Conclusion

Monday, May 7: Review and Conclusion

Monday, May 14: Final Exam, 12:00-1:50 a.m.