AMERICAN CONSTITUTIONAL LAW II
POS 4604
SPRING 2012

ADJUNCT PROFESSOR DEREK B. BRETT, ESQ.

GENERAL INFORMATION

(1) Office Location & Office Hours:

I do not maintain a UCF-office location. All messages should be referred either through the Political Science Department; via email to derek@thetatefirm.com, or by telephoning me directly at 407-781-2392. Email contact is the preferred method.

(2) Required Texts:

Constitutional Law for a Changing America:Rights & Liberties, by Lee Epstein & Thomas G. Walker (7th Edition).

Constitution of the United States of America

(3) Optional Texts:

Additional readings will be announced and/or distributed in class. In particular, these readings will focus on rulings from the most recent Supreme Court term(s), and articles regarding civil rights and liberties.

(4) Grading System:

Mini-Exam: **10%**
Mid-Term Essay Examination: **30%**
Final Examination: **40%**
Class Participation and Attendance: **20%**

The student will observe the potential significance of classroom attendance and participation. Ultimately, **20%** of the overall course grade will rely upon these factors. Therefore, it is highly recommended that serious effort be dedicated to participating in any and all interactive review of reading assignments, and in-class discussion topics. I am serious – your final grade will be impacted by your class participation or lack thereof.

It is expected that every assigned case will be properly briefed prior to class. Students will be properly briefed prior to class. Students will be randomly selected to lead class discussion via their class brief(s). You may choose to complete such on large index cards, divided into the following sections:

(a) *Case Name and Year;*
(b) *Name of the Supreme Court Justice authoring the Opinion of the Court;*
(c) *Facts;*
(d) *Issues;*
(e) *Holding(s);*

(f) *Rationale;*
(g) *Significant Concurrences and/or Dissents.*

Trust me: your case brief should not exceed the space provided on the large index care.

There will be three (3) examinations: a mini-exam (multiple choice); a mid-term exam; and a final exam. It is anticipated that this method is consistent with a scheme adopted by law school professors. Similarly, the mid-term and final exams will be entirely essay. The final exam will incorporate not only subjects from the second half of the course, but potentially earlier course principles. By all means, students are expected to be original, even innovative in their answers to examination questions. Critical thinking skills are key to success in this course.

I do award grades based upon a +/- scale. However, I do so in a way that I believe will benefit the individual student. I will generally award plus (+) grades (e.g., B+, C+), when students meet those particular averages. I will only give minus (-) grades when a student falls (by perhaps a few-tenths of a percentage point) to the next lower grade but perhaps merits consideration for something more. For example, if a student averages 79.8 for his/her course grade, I am willing to consider 'bumping' the grade up from a C+ to a B-.

COURSE DESCRIPTION

Constitutional law addresses the contents of the U.S. Constitution and the interpretation of those contents. We will look at civil rights and liberties, including issues pertaining to incorporation doctrine, freedom of speech, civil rights practices and voting rights. Over the past 225 years, the constitutional doctrines encompassing these fundamental rights and protections have evolved dramatically. We will be discussing the underlying principles of these doctrines, and the paths taken to their current incarnations.

This course is primarily for the beginning or intermediate student in constitutional law.

How does constitutional law relate to the study of political science? You will tell me.

Alexis de Tocqueville: "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." ***Democracy in America*****, Phillips Bradley ed. (New York: Vintage 1945), V. 1: 290.**

COURSE OBJECTIVES

The objective of this course is to introduce you to the important role that the United States Constitution has in orienting American politics and governance. With this end in mind, we will explore the Constitution, particularly under the First, Ninth, Fourteenth and Fifteenth Amendments, the various interpretations of the rights and liberties subsumed under these Amendments, and the continuing role of the judiciary in constitutional application. The focus of this course is more than the memorization of cases and constitutional principles. Hopefully, this class will contribute to the development of your analytical and reasoning skills; the strengthening of your reading comprehension; the expansion of your vocabulary and verbal expression; the improvement of your writing skills; and the heightening of your personal expectations and discipline.

TENTATIVE COURSE OUTLINE
**** Cases Listed Are Not All-Inclusive ****
**** Scheduling is Subject to Change at Professor's Sole Discretion ****

Thursday, January 12

- Introduction to Civil Rights & Liberties U.S. Constitution
- Incorporation of the Bill of Rights
  - *Barron v. Baltimore*
  - *Hurtado v. California*
  - *Palko v. Connecticut*
  - *Duncan v. Louisiana*
  - *McDonald v. City of Chicago*, located at: http://www.supremecourt.gov/opinions/09pdf/08-1521.pdf

Thursday, January 19

Civil Rights

Discrimination

- RACE DISCRIMINATION
  - *Plessy v. Ferguson*
  - *Sweatt v. Painter*
  - *Brown v. Board of Education*
  - *Swann v. Charlotte-Mecklenburg Board of Education*
  - *Parents Involved in Community Schools v. Seattle School District No. 1*
  - *Loving v. Virginia*
  - *Shelley v. Kraemer*
  - *Burton v. Wilmington Parking Authority*
  - *Moose Lodge v. Irvis*

Thursday, January 26

- SEX DISCRIMINATION
  - *Reed v. Reed*
  - *Frontiero v. Richardson*
  - *Craig v. Boren*
  - *United States v. Virginia*
  - *Rostker v. Goldberg*

- SEXUAL ORIENTATION DISCRIMINATION
  - *Romer v. Evans*

- OTHER FORMS OF DISCRIMINATION
  - *San Antonio Independent School District v. Rodriguez*
  - *Plyler v. Doe*
  - *Saenz v. Roe*, located at http://www.law.cornell.edu/supct/html/98-97.ZS.html.

Thursday, February 2

The 'Am I Getting It' Mini-Exam

Right to Privacy

- *Griswold v. Connecticut*
- *Roe v. Wade*
- *Planned Parenthood of Southeastern Pennsylvania v. Casey*
- *Lawrence v. Texas*
- *Cruzan v. Director, Missouri Department of Health*

Thursday, February 9

Obscenity

- *Roth v. United States*
- *Miller v. California*
- *New York v. Ferber*
- *Ashcroft v. Free Speech Coalition*
- *Reno v. American Civil Liberties Union*
- *United States v. Williams*, located at http://www.scotusblog.com/wp-content/uploads/2008/05/06-694.pdf
- *United States v. Stevens*, located at http://www.supremecourt.gov/opinions/09pdf/08-769.pdf

Thursday, February 16

Freedom of Speech, Assembly & Association

- *Schenck v. United States*
- *Abrams v. United States*
- *Gitlow v. New York*
- *Dennis v. United States*
- *Brandenburg v. Ohio*
- *United States v. O'Brien*

Thursday, February 23

***Mid-Term Essay Examination* (Due Date: Via Email March 8, 2011, by 6PM)**

Thursday, March 1

Freedom of Speech, Assembly & Association (cont.)

- *Tinker v. Des Moines Independent Community School District*
- *Texas v. Johnson*
- *Chaplinsky v. New Hampshire*

- *Cohen v. California*
- *Hill v. Colorado*
- *R.A.V. v. City of St. Paul*

Thursday, March 15

Freedom of Speech, Assembly & Association (cont.)

- *Wisconsin v. Mitchell*
- *West Virginia State Board of Education v. Barnette*
- *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*
- *Bates v. State Bar of Arizona*
- *Central Hudson Gas & Electric Corp. v. Public Service Commission of N.Y.*
- *Boy Scouts of America v. Dale*

Thursday, March 22

Free Exercise of Religion

- *Cantwell v. Connecticut*
- *Sherbert v. Verner*
- *Wisconsin v. Yoder*
- *Employment Division, Department of Human Resources of Oregon v. Smith*
- *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, located at http://www.supremecourtus.gov/opinions/05pdf/04-1084.pdf
- *City of Boerne v. Flores*

Thursday, March 29

CATCH-UP DAY

Thursday, April 4

CATCH-UP DAY

Thursday, April 11

Pre-Final Q&A and In-Class Review

Final Essay Examination (Due April 25, 2011, at 6:00PM)

CONSTITUTIONAL LAW STUDENT'S CODE OF PERSONAL RESPONSIBILITY

Above all, this course encompasses the following fundamental aspects of personal responsibility:

· **Commitment:** the level of dedicated action(s) you continue to take after your enthusiasm for an enterprise stops.

· **Accountability:** taking full responsibility for your actions by owning up to the negative or failed results, taking action to make up for it to the person(s) you let down, and learning what you did wrong so that it doesn't occur again.

· **Maturity:** how well you are able to resist an irresistible impulse and instead have and exercise judgment and do the reasonable thing. In the brain we refer to this as exercising one's executive function.

· **Honesty:** this is simply telling the truth according to the facts as you understand them. You know honesty best, when you tell a lie. Pathological liars lie whenever they are trying to get their way and take advantage of a situation. Compulsive liars lie both when the are trying to get their way and when they are trying to get out of facing the consequences of their actions.

· **Forthrightness:** this is coming forward and telling the truth and revealing untruths that you become aware of. It is believing and following Justice Louis Brandeis words: "Sunlight is the greatest disinfectant."

· **Character:** what you do when you are frustrated, angry, annoyed, afraid and/or bored and nobody is watching and your chance of getting caught is close to nil.

· **Sacrifice:** what you do unto others who will not (immediately) be able to pay you back by doing unto you.

· **Compassion:** what you *feel* unto others who will not be able to do more than say, "Thank you."

· **Thinking ahead and planning:** overcoming the aversion to anything that causes you to forego immediate gratification.

· **Listening:** and then pausing to consider what you've heard before rejecting it, tuning out or competing with it (a skill every generation needs to learn).

FINAL COURSE NOTES:

I AM REASSURING YOU, IN THE BODY OF THIS SYLLABUS, OF MY REASONABLE AVAILABILITY THROUGHOUT THE SEMESTER. I MAKE GREAT EFFORTS TO BE CONTINUOUSLY AVAILABLE FOR STUDENT QUESTIONS AND CONCERNS. IT IS INCUMBENT UPON YOU TO ASK QUESTIONS. IT IS INCUMBENT UPON YOU TO SEEK ASSISTANCE. THIS COURSE IS ABOUT SELF-RESPONSIBILITY AND LEARNING TO EXERCISE CRITICAL THINKING AND ADVANCED WRITING SKILLS.

I CONDUCT REVIEW SESSIONS FOR BOTH THE MIDTERM AND FINAL EXAMS. THIS OCCURS ON THE SAME EVENING AS THE DISTRIBUTION OF THE EXAMS.

I DO NOT NEGOTIATE GRADES. I COMMIT TO GRADING EACH PAPER FAIRLY. I AM UNIMPRESSED BY STUDENTS WHO ATTEMPT TO PERSUADE ME TO AWARD CERTAIN GRADES. YOUR GRADE WILL BE CONTINGENT UPON YOUR ASSESSED EFFORTS.

I DO AWARD EXTRA CREDIT. THE EXTRA CREDIT WILL BE AWARDED FOR ALL EXAMS WITH ME DECLARING TO WHICH EXAM ANY EXTRA CREDIT WILL BE ASSIGNED. I REQUIRE ACTUAL PROOF IN ORDER TO AWARD SUCH EXTRA CREDIT. THIS SEMESTER, EXTRA CREDIT WILL BE APPLIED AS FOLLOWS:

- ***BLOOD/PLATELET DONATION OR FOUR (4) HOURS OF APPROVED, NON-POLITICAL, COMMUNITY SERVICE WORK – 5 POINTS EXTRA CREDIT VALUE ON MINI-EXAM;***
- ***POTENTIALLY, ATTENDANCE AT A CAMPUS EVENT(S) TO BE LATER DESIGNATED – 5 POINTS EXTRA CREDIT VALUE (I WILL DETERMINE WHICH PARTICULAR EXAM SUCH CREDIT CAN BE APPLIED).***

I WILL AWARD NO MORE THAN 10-12 POINTS OF EXTRA CREDIT PER EXAM. EXTRA CREDIT IS PROVIDED TO STUDENTS IN LIEU OF ANY GRADE CURVE. I DO NOT CURVE EXAM GRADES – I ALLOW FOR EARNED STUDENT EXTRA CREDIT TO SERVE IN PLACE OF A CURVE.

FINALLY, I RESERVE THE ABSOLUTE RIGHT TO CHANGE THE SCHEDULE (AND DIRECTION) OF THE COURSE, WITHOUT NOTICE. ANY CHANGES TO THE SCHEDULE WILL BE COMMUNICATED TO YOU BY ME (OR MY DESIGNATED REPRESENTATIVE) PROMPTLY DURING CLASS. YOUR CONTINUED ENROLLMENT IN THIS COURSE CONSTITUTES YOUR IMPLICIT CONSENT TO ALL TERMS AND CONDITIONS STATED HEREIN.