Syllabus For

CONSTITUTIONAL LAW II

(Course No. 6380-20; 3 credits)

Professorial Lecturer Gregory E. Maggs

Content of the Course:

This course covers individual rights under the U.S. Constitution. Subjects covered include the application of the Bill of Rights to the states; the freedom of speech, association, and religion; the right to keep and bear arms; procedural and "substantive" due process of law; equal protection of the laws; citizenship; the "privileges or immunities" of citizens of the United States; and legislative protection of constitutional rights.

Learning Outcomes (ABA Accreditation Standards 301 & 302)

For the expected "learning outcomes" for this course, please see the "learning outcomes statement" at the end of this syllabus.

Class Schedule:

This course will meet via Zoom from 6:00-8:00 p.m. every Wednesday and every other Friday (i.e., Friday 1/8, 1/22, 2/5, 2/19, 3/12, 3/26, and 4/9). The first class is on Wednesday 1/6. The class will not meet during the week of spring break (3/1 - 3/5). On the last day, Friday 4/9, the class will meet from 6:00-6:55 p.m.

Office Hours, Email, Telephone:

I will hold "office hours" for answering questions via Zoom at times to be announced. You also may contact me by email at gmaggs@law.gwu.edu.

Required Books:

The assigned casebook is: Gregory E. Maggs & Peter J. Smith, Constitutional Law: A Contemporary Approach (5th ed. 2021), ISBN: 9781684675715. Several students have asked whether the 4th edition of this textbook will suffice because they already own it
or because they can obtain a used copy cheaply. The choice is difficult. On one hand, the 5th edition is expensive and we will read only a handful of cases that appear in the 5th edition but not the 4th edition. On the other hand, using the 4th edition might be inconvenient because the page numbers in the 5th edition have changed. One compromise might be to start with the 4th edition if you already own it, and buy the 5th edition only if using the 4th edition turns out to be too much of a hassle.

**Final Examination:**

This course will have a three-hour, open-book examination. The Law School has not yet announced final plans for administering spring examinations. But it is likely that you will have a 24-hour period, beginning on Tuesday, April 27, at 6:30 p.m., in which to take the examination.

**Class Participation:**

We will conduct class via Zoom. A panel of students will be "on-call" during each hour of our class sessions. Members of the on-call panel will participate with their video cameras turned on. Students who are not members of the on-call panel will participate using the chat window, with their video cameras turned off. I will direct some questions to these non-panel members, to which anyone may respond simply by typing answers in the chat window.

**Recording of Classes:**

All classes will be recorded. The recordings may be viewed through the Law School portal.

**Reading Assignments and Problems:**

At the end of each class, I will tell you how far to read for the next class. You need not read the notes and problems following the text and cases in the casebook unless they are specifically assigned.

I. THE CONSTITUTION AND INDIVIDUAL RIGHTS

A. INTRODUCTION

Text, pp. 551, 553-556

Points for Discussion (a) & (b), pp. 556-558

B. APPLICATION THE BILL OF RIGHTS TO THE STATES

Text, p. 558
II. FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT

A. INTRODUCTION

Text, pp. 997, 999-1003

Points for Discussion (a), (b) & (d), pp. 1000-1002

B. TYPES OF RESTRICTIONS AND REGULATIONS

1. Content-based Restrictions

Text, pp. 1003-1005

Reed v. Town of Gilbert, Arizona, pp. 1005-1014

Point for Discussion (a), p. 1014

Iancu v. Brunetti, pp. 1019-1024

Points for Discussion (a) & (b), p. 1024

2. Reasonable Time, Place, or Manner Restrictions

Text, p. 1025

Ward v. Rock Against Racism, pp. 1025-1029

3. Generally Applicable Regulations of Conduct

Text, p. 1030

United States v. O’Brien, pp. 1031-1034

Point for Discussion (a) & (b), pp. 1034-1035

4. Prior Restraints

Text, pp. 1042

5. Vague or Overbroad Restrictions

Text, pp. 1050-1051

NAACP v. Button, pp. 1051-1056

Point for Discussion (a), p. 1056

C. CATEGORIES OF SPEECH

1. Incitement and Advocacy of Crime

Text, pp. 1067-1072

Brandenburg v. Ohio, pp. 1073-1074

Point for Discussion (a), p. 1075

2. Defamation and Related Torts

Text, pp. 1076-1077


Point for Discussion (e), pp. 1085-1086

[United States v. Alverez]

3. Obscenity

Text, pp. 1095-1096

Roth v. United States, pp. 1096-1100

Points for Discussion (a) & (d), pp. 1100-1101

[Miller v. California]

4. Symbolic Conduct

Text, pp. 1107-1108

Texas v. Johnson, pp. 1108-1114

Points for Discussion (a) & (d), pp. 1115-1116

5. Provocative Speech

Text, p. 1116

Chaplinsky v. New Hampshire, pp. 1116-1118
Points for Discussion (b) & (c), pp. 1118-1119
Text, p. 1119
Cohen v. California, pp. 1119-1122
Points for Discussion (a) & (b), pp. 1122-1123
Text, p. 1123
Point for Discussion (b), p. 1131

6. Commercial Speech
Text, pp. 1132-1134, 1134-1135
44 Liquormart v. Rhode Island, pp. 1135-1140
Point for Discussion (a) & (b), pp. 1140-1141

7. Campaign Contributions and Expenditures
Text, p. 1142
Buckley v. Valeo, pp. 1142-1150
Points for Discussion (a) & (b), p. 1150
Text, pp. 1151-1152
Citizens United v. FEC, pp. 1152-1160
Points for Discussion (a) & (b), p. 1160

8. Speech of Public Employees
Text, pp. 1160-1161
Garcetti v. Ceballos, pp. 1161-1165
Point for Discussion (a), p. 1166
Executive Summary, pp. 1170-1173

III. FREEDOM OF THE PRESS UNDER THE FIRST AMENDMENT
A. APPLICABILITY OF GENERAL LAWS TO THE PRESS
IV. FREEDOM OF ASSOCIATION UNDER THE FIRST AMENDMENT

A. PENALIZING INDIVIDUALS FOR JOINING GROUPS

Text, pp. 1211-1212
Point for Discussion (b), p. 1213
Text, pp. 1213-1214

NAACP v. Claiborne Hardware, pp. 1214-1216
Points for Discussion (a) & (b), p. 1216

Baird v. State Bar of Arizona, pp. 1217-1220

B. FREEDOM NOT TO ASSOCIATE WITH OTHERS

Text, pp. 1226-1227, 1232

Boy Scouts of America v. Dale, pp. 1232-1238

Janus v. American Federation, pp. 1239-1243
Executive Summary, pp. 1244-1245
V. FREEDOM OF RELIGION UNDER THE FIRST AMENDMENT

A. THE ESTABLISHMENT CLAUSE

1. Introduction
   Text, pp. 1247-1248
   Points for Discussion (a) & (b), pp. 1248-1251

2. Government Aid to Religious Institutions
   Text, pp. 1253-1254, 1262-1263
   Lemon v. Kurtzman, pp. 1263-1267
   Points for Discussion (a)-(c), pp. 1267-1270
   Zelman v. Simmons-Harris, pp. 1272-1279
   Point for Discussion (a), p. 1280
   Text, pp. 1281-1282

3. Religion in Governmental Institutions
   Text, pp. 1282-1285
   Engel v. Vitale, pp. 1286-1289
   Point for Discussion (a) & (c), pp. 1289-1290
   Marsh v. Chambers, pp. 1315-1318
   Point for Discussion (a)-(e), pp. 1318-1321
   Am. Legion v. Am. Humanist Assoc., pp. 1348-1358
   Points for Discussion (a) & (b), p. 1358

B. THE FREE EXERCISE CLAUSE

Text, pp. 1359-1362
Sherbert v. Verner, pp. 1362-1366
Employment Div. v. Smith, pp. 1373-1383
Points for Discussion (a) & (d), pp. 1383-1384
VI. THE RIGHT TO KEEP AND BEAR ARMS UNDER THE SECOND AMENDMENT

District of Columbia v. Heller, pp. 23-36
Points for Discussion (b) & (e), pp. 36-38

VII. THE RIGHT TO DUE PROCESS UNDER FIFTH & FOURTEENTH AMENDMENTS

A. PROCEDURAL DUE PROCESS

Text, p. 733
Cleveland Bd. of Educ. v. Loudermill, pp. 733-738
Points for Discussion (a) & (b), pp. 738-742
Executive Summary, pp. 742-743

B. SUBSTANTIVE DUE PROCESS AND ECONOMIC LIBERTY

Text, pp. 597-599
Lochner v. New York, pp. 599-603
Point for Discussion (a), pp. 603-604
Text, pp. 604-605
West Coast Hotel Co. v. Parrish, pp. 606-608
Point for Discussions (a)-(c), p. 608
Text, p. 609
[United States v. Carolene Products Co.]
Williamson v. Lee Optical Co., pp. 610-611
Points for Discussion (a)-(c), pp. 611-612

C. SUBSTANTIVE DUE PROCESS AND FUNDAMENTAL RIGHTS

1. Early Cases
Text, p. 613

Pierce v. Society of the Sisters, p. 614
Points for Discussion (a)-(c), p. 615
Text, pp. 615-616

Skinner v. Oklahoma, pp. 616-619
Point for Discussion (a), p. 619

2. Contraception and Abortion
Text, p. 620
Griswold v. Connecticut, pp. 620-627
Points for Discussion (c) & (e), pp. 628-629
Roe v. Wade, pp. 629-635
Points for Discussion (a) & (b), p. 635
Text, p. 637
Planned Parenthood v. Casey, pp. 637-650
Points for Discussion (a)-(c), p. 650

3. Marriage and Family
Text, p. 667
Loving v. Virginia, pp. 667-668
Michael H. v. Gerald, pp. 671-678

4. Sexuality
Text, p. 681
Lawrence v. Texas, pp. 682-688
Point for Discussion (c) & (d), pp. 688-689
Obergefell v. Hodges, pp. 691-704
Point for Discussion (a), pp. 704-705

5. Death
VIII. THE RIGHT TO EQUAL PROTECTION

A. INTRODUCTION

Text, pp. 745, 747-750

B. APPLICATION TO THE FEDERAL GOVERNMENT

Text, p. 750

Bolling v. Sharpe, pp. 750-751

Point for Discussion (a) & (c), pp. 751-753

C. RATIONALITY REVIEW

Text, p. 753

NYC Transit Authority v. Beazer, pp. 757-760

Points for Discussion (a) & (b), pp. 760-761

Executive Summary, pp. 761-762

D. DISCRIMINATION ON THE BASIS OF RACE

1. Facial Discrimination

Text, pp. 767, 771-772

Strauder v. West Virginia, pp. 772-774

Text, p. 775

Korematsu v. United States, pp. 775-781

Point for Discussion (a), p. 781

2. Discriminatory Purpose and Effect

Text, pp. 783-785
Yick Wo v. Hopkins, pp. 785-786
Point for Discussion (a), p. 787
Text, p. 788
Washington v. Davis, pp. 788-790
Points for Discussion (a)-(c), pp. 790-791

3. "Separate But Equal" Laws
Text, p. 793
Plessy v. Ferguson, pp. 793-796
Brown v. Board of Education, pp. 797-800
Points for Discussion (c)-(e), pp. 800-804
Loving v. Virginia, pp. 804-806
Point for Discussion (a), pp. 806-807

4. Affirmative Action
Text, pp. 808-810
Grutter v. Bollinger, pp. 816-822
Points for Discussion (d)-(f), pp. 826-827

E. DISCRIMINATION ON THE BASIS OF SEX
Text, pp. 850-852
Craig v. Boren, pp. 852-856
Points for Discussion (a)-(c), p. 856
United States v. Virginia, pp. 856-861
Points for Discussion (a) & (b), p. 861

F. DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION
Romer v. Evans, pp. 891-895
Points for Discussion (a) & (b), pp. 895-900
Executive Summary, pp. 900-902

G. FUNDAMENTAL RIGHTS AND EQUAL PROTECTION

1. The Right to Vote
   Text, pp. 903-904
   Harper v. Virginia Bd. of Elections, pp. 905-908
   Bush v. Gore, pp. 910-914
   Point for Discussion (a), pp. 914-915

2. Apportionment
   Text, p. 916
   Reynolds v. Sims pp. 916-919
   Points for Discussion (a) & (b), pp. 919-921
   Rucho v. Common Cause, pp. 922-933
   Points for Discussion (a) & (b), p. 933

3. Welfare and Education
   Dandridge v. Williams, pp. 934-937
   Points for Discussion (a) & (b), p. 937
   Text, p. 942
   Plyler v. Doe, pp. 942-945
   Points for Discussion (a) & (b), pp. 945-946

4. Access to the Courts
   Text, p. 947
   Points for Discussion (a) & (b), p. 949-950
   Executive Summary, p. 950

IX. OTHER FOURTEENTH AMENDMENT PROTECTIONS

A. CITIZENSHIP FOR THOSE BORN IN THE UNITED STATES
Text, pp. 767-768

**Dred Scott v. Sandford**, pp. 768-770

Point for Discussion (a)-(c), pp. 770-771

**B. "PRIVILEGES OR IMMUNITIES"**

Text, pp. 560-561

**Slaughter-House Cases**, pp. 561-569

Points for Discussion (a)-(e), pp. 569-571

Text, p. 580

**McDonald v. City of Chicago**, pp. 580-590

Point for Discussion (c), p. 591

Executive Summary, p. 952

**X. LEGISLATIVE PROTECTION OF INDIVIDUAL RIGHTS**

**A. ENFORCEMENT OF THE 13TH AMENDMENT**

Text, pp. 953-954

**Jones v. Alfred H. Mayer Co.**, pp. 954-956

Points for Discussion (a) & (b), p. 957

**B. ENFORCEMENT OF THE 14TH AND 15TH AMENDMENTS**

Text, pp. 957-958

**United States v. Guest**, pp. 958-961

Point for Discussion (a), p. 961

Text, pp. 961-962

**South Carolina v. Katzenbach**, pp. 962-965

Point for Discussion (a), pp. 965-966

Text, pp. 966-967

**Shelby County, Alabama v. Holder**, pp. 967-976
Points for Discussion (a) & (b), pp. 977
Text, p. 982

City of Boerne v. Flores, pp. 982-985

Point for Discussion (a), p. 985
Text, p. 986

United States v. Morrison, pp. 986-989

Points for Discussion (a)-(b), pp. 989-990

Executive Summary, pp. 991-992
LEARNING OUTCOMES STATEMENT

This statement identifies the "learning outcomes" for this course in accordance with ABA Accreditation Standards 301 and 302 and the "Guidance" to these Standards.

(a) Knowledge and understanding of substantive and procedural law

Upon completing Constitutional Law II, students should know and understand the law pertaining to the application of the Bill of Rights to the states; the freedoms of speech, association, and religion; the right to keep and bear arms; procedural and "substantive" due process of law; equal protection of the laws; citizenship; and "privileges or immunities" of citizens of the United States.

(b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context

When assigned to read a constitutional law case, students should be able to:

1. identify and discuss the facts, the plaintiff's claim, the defendant's defense, the remedies sought, the pertinent legal rules, the issue for decision under these rules, the arguments of the parties, and the holding and reasoning of the court;

2. apply the holding to hypothetical variations of the facts;

3. discuss the logical strengths and weaknesses of the parties' arguments and the court's reasoning; and

4. identify and analyze competing policy considerations about what the law should be.

When given a hypothetical problem, students should be able to identify and discuss any claims and defenses that the parties might assert and any remedies that they might seek.

Students should be able to parse and explain constitutional law provisions, identify ambiguities in statutory provisions, and suggest improved ways of drafting statutory provisions.

Students should be familiar with the history of the Supreme Court's interpretation of the U.S. Constitution.

(c) Exercise of proper professional and ethical responsibilities to clients and the legal system
Students should be able to evaluate the legal advice that was given in actual cases, suggest what would have been better legal advice, and formulate advice that should be given in the future in similar cases.

Students should be able to identify and discuss ethical issues that arise in constitutional law cases, in raising technical defenses to avoid liability, and in giving legal advice that might encourage perjury.

(d) Other professional skills needed for competent and ethical participation as a member of the legal profession (including, but not limited to, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation)

Students should be able to present arguments as if they were representing clients in contract disputes.

Students should be able to discuss controversial legal and policy issues in a professional and respectful manner.

Students should understand the role of lawyers in advising clients as they enter into contractual arrangements and resolve or litigate disputes.