WINTER 2020
POLITICAL SCIENCE 104B
Individual Liberties–Fundamental Rights
Visiting Professor Glenn Smith

FIRST SYLLABUS FOR PHASES I, II & III

(Assignments testable on Midterm)

--References to "O'Brien" are to the TENTH Edition of VOLUME TWO of O'Brien, CONSTITUTIONAL LAW AND POLITICS (2017 W.W. Norton & Co.).
[References in brackets and in italics are to the closest equivalent assignment in the NINTH Edition (2014) of O'Brien.]
--References to "Smith & Fusco" are to G. Smith & P. Fusco, CONSTITUTIONAL LAW FOR DUMMIES (2012 John Wiley & Sons, Inc.)
--References to "Smith Reading Materials" are to handouts or case excerpts distributed by Professor Smith and/or made available on the class webpage.

[🡻🡻🡻 READ FOR 1/9 🡻🡻🡻]

I. An Initial Overview: INDIVIDUAL LIBERTIES AND FUNDAMENTAL RIGHTS UNDER THE U.S. CONSTITUTION

A. An Introduction to the Scope and Approach of the Course

In class lecture; no reading assignment

B. The Constitutional Framework of Individual Liberties and Fundamental Rights, Part 1: A Brief Introduction to "State Action"; The Bill of Rights, and the Civil War Amendments

Smith & Fusco**,** skim pp. 13-16; read pp. 17-18, read pp. 24-29, and skim pp. 30-31

C. The Constitutional Framework of Individual Liberties and Fundamental Rights, Part 2: The "Incorporation" Controversy

O'Brien, pp. 312-321 *[pp. 336-345]*

[🡻🡻🡻 READ FOR 1/16 🡻🡻🡻]

II. FREEDOM OF SPEECH: CASE STUDIES IN THE DIFFICULT BALANCING ACT BETWEEN INDIVIDUAL RIGHTS AND IMPORTANT (COMPELLING?) GOVERNMENTAL NEEDS

A. An Introduction to Freedom of Speech & the Constitution

Smith & Fusco, pp. 201-204
Skim O'Brien, pp. 408-417 *[pp. 444-454]*

B. The Classic Line-Drawing Question: When Can Government Penalize "Subversive" Speech?

Smith & Fusco, pp. 204-206
O'Brien, pp. 418-433 *[pp. 455-470]*
O'Brien, pp. 443-447 *[pp. 481-484]*
Smith Reading Materials, pp. SM-1 through SM-3 (the "Ron Rash" hypothetical)

C. When Government May Penalize Speech Because it is Offensive or Otherwise Harmful: The Attempt to Define Categories of Unprotected Sexual Speech and Fighting Words – and Distinguish them from Protected, but Offensive or Intolerant, Speech

Smith & Fusco, pp. 206-210; pp. 221(starting with "Allowing more restriction when speech 'goes to school'") – 224

[🡻🡻🡻 READ FOR 1/23 🡻🡻🡻]

O'Brien, pp. 455-458 (through sentence re: *Jenkins v. Georgia,* ending "was not obscene, despite lower court rulings to the contrary.")
O'Brien, pp. 468-475; 490-495
[pp. 491-494; 504-512; 527-532]
O'Brien, pp. 504-535 *[pp. 540-572]*
Smith Reading Materials, pp. SM-4 & SM-5 (brief highlighted excerpts from Justice Powell's and Blackmun's *Pacifica* concurrence)
Skim O'Brien, pp. 546-550 (grayed-in box, "In Comparative Perspective") *[pp. 584-588]*

[🡻🡻🡻 READ FOR 1/30 🡻🡻🡻]

D. The Challenge of Applying First Amendment Principles to Special Kinds of Regulation (Content-Neutral) and Special Forms of Speech ("Symbolic Speech")

Smith & Fusco, pp. 211-212; pp. 214-216
Smith Reading Materials, pp. SM-6 through SM-17 (excerpts from *Time v. Regan*)

[FREE-SPEECH-BASED IN-CLASS SIMULATION: Smith Materials, pp. SM-18 through SM-45 (materials for in-class simulation)]

Smith & Fusco, p. 220 ("Protecting conduct that 'speaks'")
O'Brien, pp. 635-638; 645-659 *[pp. 681-684; pp. 692-709]*

[🡻🡻🡻 READ FOR 2/6 🡻🡻🡻]

III. FREEDOM *FOR* RELIGION: Modern Approaches to the Free Exercise Clauses

A. An Overview of the Free-Exercise Decision Legacy

Smith & Fusco, pp. 228-231
O'Brien, pp. 795-807 *[pp. 854-867]* (Read the *Sherbet* and *Yoder* decisions, and Skim the charts to get a sense of the subjects and directions of the Free-Exercise case law)

B. The Modern Meaning of Free Exercise, Part 1: Two Paradigm Cases Showing Different Responses to Governmental Policies Discriminating Against vs. Incidentally Burdening Religion

O'Brien, pp. 808-821 *[pp. 867-881]*

C. The Modern Meaning of Free Exercise, Part 2: The Latest Supreme Court Guidance on When Differential Treatment of Religion Triggers Strict Scrutiny

O'Brien, pp. 828-831 *[890-895]*
Smith Reading Materials, pp. SM-46 through SM-54 (highlighted major excerpts from *Trinity Lutheran Church v. Comer (2017)*)

IN-CLASS MIDTERM = ON THURSDAY, FEBRUARY 13TH, 5 PM