

**Govt4308**  
**Constitutional Law:**  
**The Bill of Rights**

**1. Course Number and Name:** Govt4308, Constitutional Law: The Bill of Rights

**Prerequisites:** Govt4210, Origins of the Constitution; Hist4101, U.S. History to 1800 and Govt4306, Constitutional Law: The Grant of powers to the Federal Government.

**Credits:** 3

**2. Course Description:** The issue addressed in this course has been stated in the past with great clarity: "The struggle between Liberty and Authority is the most conspicuous feature in the portions of history with which we are earliest familiar." "In all governments there is a perpetual intestine struggle, open or secret, between Authority and Liberty, and neither of them can ever absolutely prevail in the contest." The focus of Govt4308 is precisely on this struggle as it has played out in the decisions of the American courts.

**3. Course Goals:** Govt4308 traces the development of efforts of the Supreme Court and other American courts to resolve disputes relating to the authority of American governments in regulating (1) the rights of criminal defendants, (2) the unequal treatment of different groups of Americans, and (3) the freedom of individuals to express their opinions, exercise their religious beliefs, and engage in sexual activity.

**4. Course Learning Outcomes:** Students who complete this course will able to:

1. Compose brief synopses ("case briefs" or "briefs") of court opinions that identify the issues, holdings, and rationales in the opinions.
2. Identify the indicia of governmental or state action to which the protections of the Due Process Clause of the Fourteenth Amendment applies.
3. Describe the process by which the Fourteenth Amendment Due Process clause in the twentieth century has included or "incorporated" various parts of the Bill of Rights into its "liberty" and "due process" components.
4. Identify the rules and principles developed by the Supreme Court to govern the procedures applicable to criminal suspects, defendants, and convicts under the Fifth Amendment protection against self-incrimination, the Sixth Amendment right to legal counsel, and the Eighth Amendment protection against cruel and unusual punishment.
5. Recognize and explain the various forms by which laws and government officials classify and treat different groups of people, and to identify the different standards the courts apply to determine the constitutional acceptability of these classifications.
6. Identify the rules and principles developed by the Supreme Court over the years to determine the limits of governments' authority to regulate the content of the ideas individuals may wish to express and the manner and opportunity individuals may use to express them.
7. Identify the rules and principles the Supreme Court has developed over the years to limit the involvement of American governments' in religious affairs and to determine the scope of individuals' freedom to express their religious beliefs.

8. Identify the rules and principles the Supreme Court has applied over the years to regulate individuals' sexual conduct.
9. Apply the aforementioned rules, principles, and doctrines to hypothetical and realistic sets of facts by (1) identifying the constitutional issues and principles presented by a particular factual situation, (2) stating the rule accurately, and (3) reasoning logically and plausibly from the rule to a resolution of the issue presented by the facts.

**5. Course Concepts:** The following legal and constitutional concepts are the focus of Govt4308:

1. Fifth and Fourteenth Amendment Due Process.
2. The state action requirement of the Fourteenth Amendment.
3. The incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment—complete incorporation, selective incorporation.
4. Due process in criminal procedure—Fifth Amendment protection against self-incrimination, Sixth Amendment right to counsel, Eighth Amendment protections against cruel and unusual punishment, constitutional standards for capital punishment.
5. Fourteenth Amendment Equal Protection—levels of scrutiny, suspect and non-suspect classifications, compelling state interests, fundamental interests.
6. Freedom of speech—clear and present danger, time-place-manner restrictions, symbolic speech.
7. The Establishment Clause of the First Amendment—government entanglement with religion, wall of separation.
8. The Free Exercise of Religion under the First Amendment.
9. The constitutional right to privacy—abortion, homosexuality.

**6. Required Texts:**

Craig R. Ducat. *Constitutional Interpretation: Rights of the Individual*. Volume Two, 9<sup>th</sup> ed. Wadsworth, 2008. ISBN-13: 9780495503248

**7. Recommended Readings:**

Henry Abraham. *Justices, Presidents and Senators: A History of U.S. Supreme Court Appointments from Washington to Bush II*. Rowman and Littlefield, 2007. ISBN-10: 0742558959 ISBN-13: 978-0742558953

George Anastaplo. *Abraham Lincoln: A Constitutional Biography*. Rowman and Littlefield, 2001. ISBN-10: 0847694321 ISBN-13: 978-0847694327

Charles Fairman. "Does the Fourteenth Amendment Incorporate the Bill of Rights?" 2 *Stanford Law Review* 5 (1949).

John Nowak and Ronald Rotunda. *Constitutional Law*. 7<sup>th</sup> ed. West, 2004. ISBN-10: 0314144528 ISBN-13: 978-0314144522

Bernard Schwartz. *A History of the Supreme Court*. Oxford University Press, 1995. ISBN-10: 0195093879 ISBN-13: 978-0195093872

### **8. Additional Resources:**

Complete copies of Supreme Court and other court opinions are available on the Internet via several free sites. Students may be asked to register for some of the sites, but there is no charge or obligation. Some of the sites have useful search capabilities. A list of some of the most useful for students of constitutional law follows:

[www.findlaw.com](http://www.findlaw.com) A broad legal resource site sponsored by Thomson and West publishing group. This is especially useful for Supreme Court opinions through the 1980s. Use the tab "For Legal Professionals" on the main webpage.

[www.lexisone.com](http://www.lexisone.com) A narrower site sponsored by Thomson/West's chief rival in legal publishing, Lexis-Nexis. This site is more useful for recent Supreme Court decisions.

[www.supremecourtus.gov](http://www.supremecourtus.gov) The official public website of the United States Supreme Court. No registration required. This site is particularly useful for up-to-the-minute publication of new Supreme Court opinions (though the site only makes them available for about a year) and for information about the litigation process at the Supreme Court.

[www.law.cornell.edu/supct/](http://www.law.cornell.edu/supct/) The site sponsored by the Legal Information Institute of Cornell University Law School. The site is particularly useful for locating recent Supreme Court opinions, for identifying the legal issues and arguments in Supreme Court cases before and after the cases are argued, and for a wide range of legal and legal procedure information.

[www.oyez.org](http://www.oyez.org) A flashy site titled "U.S. Supreme Court Media" and featuring audio recordings of the arguments in many cases since 1955.