Course Description
This seminar explores the role of courts in defining and protecting civil rights, focusing on the constitutional principles of equal protection and substantive due process. By examining civil rights claims advanced by people of color, women, lesbians and gay men, and people with disabilities, we will seek to answer the following questions: Under what circumstances should courts afford heightened protection to particular groups? Should civil rights claims be framed as equality or liberty claims? Finally, what roles should courts and legislatures play in the recognition of civil rights? Prior completion of Constitutional Law II is strongly recommended.

Class Requirements
This class is a shared enterprise that depends upon your active engagement. To promote your engagement, the class has a few ground rules:
• This class deals with controversial subjects. All views are welcomed. Constructive disagreement is encouraged. In this regard, the only requirements are that we listen to each other and we treat each other with respect.
• Attendance is important. If you must miss a class, please let me know in advance. If necessary, the law school’s minimum 80% attendance rule will be enforced.
• Preparation and participation are important, too. Class participation will be factored into your grade.

TWEN
• This course has a TWEN homepage. Please register your email address no later than Tuesday, August 24. The TWEN page has a password: ELCR2012.
• Throughout the course, I will use the TWEN site to distribute reading materials and send important messages via email.

Reaction Papers
• Each student will write two reaction papers during the first 10 days, which will be focused specifically on the day’s assigned readings.
• Reaction papers will be short—a maximum of 500 words, about one single-spaced page—and they will not be graded.
• Although reaction papers will not be graded, they must be circulated to the class via email by 1:00PM on the day before class.
• Any failure to submit reaction papers in a timely manner will be factored into your grade.
• I will circulate a sign-up sheet for reaction papers on the first day of class.
• Note: All written work must include your name at the top, page numbers throughout, and a word count at the end.
Paper Requirements
Each student will submit a topic proposal, a first draft, and a final paper.

- Your topic proposal is due by Tuesday, October 2. The proposal is between 500 and 1,000 words; it includes an explanation of your topic, a description of your plan for researching it, and a summary of your argument.
- Your first draft is due by Tuesday, November 6. Your first draft will be circulated to the class; it is the foundation for your oral presentation to the class.
- Your final paper is due by Tuesday, December 4. The final paper must be a minimum of 7,000 words, excluding footnotes—roughly 25 pages double-spaced, 1-inch margins, 12-point font.
- **Note: The length of the paper is a graduation requirement, so it’s very important for you to satisfy it.**

Oral Presentations
The last two sessions on Tuesday, November 20 and Tuesday, November 27 will be devoted to oral presentations. I will randomly assign dates and times for your presentations. Each student will have 10 minutes to present your paper and 15 minutes to respond to questions.

You may write your paper on any topic related to this class—e.g., the equal protection clause, the due process clause, the roles that courts and legislatures play in the protection of civil rights, or any of the civil rights claims advanced by people of color, women, lesbians and gay men, and people with disabilities.

I encourage you to discuss your paper with me throughout the semester. I would be happy to help you choose and narrow down your topic, although you will have to think of ideas yourself. I would also be happy to talk to you about any questions that arise after you begin your research and writing. I will provide detailed feedback on your abstracts and first drafts. If you are interested, I will provide detailed feedback on your final papers as well.

Grading
Your final paper will determine 75% of your grade. The remaining 25% will be based on class participation, the completion of oral presentations, and the timely submission of reaction papers.

The grade of your final paper will be based on the quality of the paper’s (1) organization; (2) research; (3) writing; (4) analysis; (5) incorporation of feedback; and (6) evaluation of potential objections. The quality of writing depends on originality, clarity, grammar, and spelling.

If you have not written a research paper before, I strongly recommend that you read Parts I and II of the following book: **EUGENE VOLOKH, ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW** (3d ed. 2007). It provides excellent guidance on how to write a seminar paper.

Taking Notes
**Note: The use of laptops is not permitted in this class.** There is no final exam, so you do not need to transcribe any of our class discussions.
Office Hours
On most days, I will be available to answer questions after class. If you would like to meet separately, please send me an email to make an appointment. I am available to answer any questions you have about this class, or to talk more generally about career options and other issues that arise in law school.

Accommodations
The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. Reasonable prior notice is needed to arrange accommodations. If you will need accommodations in this class, please provide reasonable prior notice to Barbara Dickey, Associate Dean for Student Affairs, and the Center for Disability Services (CDS) so that we can make the necessary arrangements. CDS is located at 200 S. Central Campus Drive, Room 162, or you can call (801) 581-5050. With prior notification, all written information in this course can be made available in alternative format.

Reading Assignments
All of the assignments are posted on TWEN. Note: We will be referring to specific passages in these materials during class. **Note: You are required to print these materials in a legible sized font, read them carefully, and bring your printed copy of the materials to class.**

Tuesday, 8/21
Introduction
Erwin Chemerinsky, *Constitutional Law*
*Loving v. Virginia*

Tuesday, 8/28
The Role of the Courts
*United States v. Carolene Products*
Alexander M. Bickel, *The Least Dangerous Branch*
John Hart Ely, *Democracy and Distrust*

Tuesday, 9/3
No Class (Labor Day)

Tuesday, 9/11
No Class (to be rescheduled)

Tuesday, 9/18
Race
*Brown v. Board of Education*
*Heart of Atlanta Motel v. United States*
Michael McConnell, *The Forgotten Constitutional Moment*
Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*
Gerald Rosenberg, *Hollow Hope*

Tuesday, 9/25
Gender I
*Roe v. Wade*
*Planned Parenthood v. Casey*
John Hart Ely, *The Wages of Crying Wolf*
Catherine MacKinnon, *Reflections on Sex Equality Under Law*
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<th>Date</th>
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| Tuesday, 10/2 | Gender II                                 | *Frontiero v. Richardson*  
*United States v. Morrisson*  
Barbara Brown et al., *The Equal Rights Amendment*  
Robert Post & Reva Siegel, *Equal Protection by Law*  
John Hart Ely, *Democracy and Distrust* (on women’s rights) |
| Tuesday, 10/9 | No Class (Fall Break)                      |                                                                              |
| Tuesday, 10/16 | Sexual Orientation I                       | *Bowers v. Hardwick*  
*Washington v. Glucksberg*  
*Lawrence v. Texas*  
*In re Marriage Cases*  
Lawrence Tribe, *The “Fundamental Right” that Dare Not Speak Its Name*  
John Hart Ely, *Democracy and Distrust* (on substantive due process) |
| Tuesday, 10/23 | Sexual Orientation II                     | *Varnum v. Brien*  
*Kerrigan v. Commissioner*  
Bruce Ackerman, *Beyond Carolene Products*  
Evan Gerstmann, *Constitutional Underclass* (on suspect classifications) |
| Tuesday, 10/30 | Disability                                | *City of Cleburne v. Cleburne Living Center*  
Suzanne Goldberg, *Equality Without Tiers*  
Evan Gerstmann, *Constitutional Underclass* (on his proposal) |
| Tuesday, 11/6  | Disability                                 | *Alabama v. Garrett*  
*Tennessee v. Lane*  
Samuel Bagenstos, *The Contradictions of the Disability Rights Movement*  
Ruth Colker, *When is Separate Unequal?*  
Robert Post & Reva Siegel, *Equal Protection by Law* |
Kenji Yoshino, *The New Equal Protection*  
[Optional: Kenji Yoshino, *Tribe*] |
| Tuesday, 11/20 | Class Presentations                        |                                                                              |
| Tuesday, 11/27 | Class Presentations                        |                                                                              |
Assignment Deadlines

October 2       Topic Proposals Due
November 6      First Drafts Due
December 4      Final Papers Due