Sure. We all know the basics of American government. Montesquieu described three equal branches of government. John Locke stated that the three branches of government are essentially equal but that the legislative branch—the peoples’ branch, was to be the most important. The judicial branch consisting of all the federal courts surmounted by the United States Supreme Court would in theory be equal to the other coordinate branches. To a degree the three coordinate branches although having different functions gave an appearance of equality but in actuality that was never how it was. For most of American history the Supreme Court has played a subordinate role to the other branches but times have changed and the Supreme Court has gained more prominence in our political system. As the national legislature has become increasingly divided and immobilized and the American president has not enjoyed high levels of support, the United States Supreme Court seems to have taken center stage in our politics. Major constitutional decisions that the august tribunal has handed down in recent years have been dramatic and far reaching affecting all Americans. It may be fairly said that the United States Supreme Court is now “first among equals”. The American Bill of Rights and its First Amendment freedoms of speech and press protected in the words set forth. In our American charter, the United States Constitution are among the most eloquent statements articulating the fundamental importance of human rights to a democratic society. At the same time, it is understood that our American individual rights are not always absolute rights but may in many instance be subject to certain restrictions. Those restrictions have always been held by the Supreme Court of the nation to be few and far between and subject to rigorous judicial examination before any restrictions may be applied. In the United States it is the United States Supreme Court that will test the limits of freedom of expression, freedom of religion, freedom of the press and all the other freedoms guaranteed by our Constitution. The task is daunting but in all instances the Court is committed to provide the utmost protection to our foundational American principles. So it is in all issues of civil liberties. Whether First Amendment rights, Fourteenth Amendment guarantees of due process and equal protection or any other constitutional rights, the Court has a responsibility to determine what those rights mean according to their interpretation of the Constitution.

One writer assigned the term “Storm Center” to the United States Supreme Court and that title may well be an apt description of the Court seen as a whirling axis upon which the stormy issues confronting our nation are ultimately drawn in for resolution. An even more suitable description of the Court would be to say that the Court is a vortex that sucks into itself those many contentious issues we face as a nation. Having sucked those issues into its vortex, the Court then attempts, not altogether successfully, to calm the storms and lessen the polarization of society that the controversial issues have created. Out of the vortex then emerge “solutions” and resolutions of the conflicts that the Court has examined. The Court rulings define what the Constitution says and that’s that. The conflicts and confusion become settled law and no one would dare doubt the wisdom of those highly placed members of highest bench in the nation. (Is the foregoing statement one of satire or perhaps sarcasm?) Conflicts and confusion—am I suggesting that there are conflicts and confusion resulting from the Obergefell v. Hodges decision recognizing a constitutional right to same sex marriage or conflicts and confusion regarding freedom of religion for employees or employers whose interests clash regarding employer provided medical insurance such as contraceptives. (See Burwell v. Hobby Lobby Stores, Inc.)
It is inevitable that we do question the wisdom of the justices. Knowing that we are not angels and neither are the Justices, we question both the wisdom of the members of the Court and their ability and willingness to rise above their biases as they decide cases. Such questioning is mostly an exercise in futility inasmuch as no action short of amending the Constitution or lobbying for a judicial reversal of a decision is going to change anything. In most instances neither remedy has proven to be successful in the past nor is such a remedy likely to prove to be successful in the future. Simply expressed, the Court is the omnipotent strong player in the drama of American government and is the final arbiter of Constitutional meaning. Should we question judicial wisdom? Not only should we question the merits of judicial decisions, we must do so. After all, the justices are human. They have different beliefs, prejudices, backgrounds and widely varying life experiences. All of those forces have shaped the justices and have impacted their decisions. There was a time when many Americans believed that the mere donning of a robe gave the high priests special access to truth. These justices were able to pluck Platonic essences from the eternal ether and thereby gain a vision of truth that mortal human beings without robes could not possibly begin to understand. Belief in the “cult of the robe” is no longer prevalent in our society and unrobed the justices seem to be as human as the rest of us. If it were otherwise, how could nine justices split their votes on a controversial issue and hand down a five to four ruling? Doesn’t sound much like they were all plucking the same truth from the same ether!

Thus, it seems that in spite of our noble commitment to the doctrines of separation of powers and legislative supremacy (Thank you James Madison by way of Montesquieu and John Locke!) one power would appear to emerge stronger than its coordinate branches. Among the trifecta of the legislative, executive and judicial branches of the federal government the Supreme Court is dominant. Having the last word in a debate is not without significance. Ah, poor James Madison and the concept of checks and balances. To think, Madison believed that since men are not angels, checks and balances would protect the Republic from lesser beings than angels. The one minor detail he did not consider was that even the doctrine of separation of powers could not protect against political leaders wherever located in the political system who are neither angelic nor priestly in the discharge of their duties.

Little did Madison suspect that the Supreme Court would have the last word as to what policies would stand and what policies would fall. Yet again, the dominant power of the Supreme Court and judicial review illustrate that the concept of checks and balances doesn’t quite get the job done. Judicial review and constitutional interpretation may or may not have been the intention of the Founding Fathers when they wrote our sacred document. Be that as it may, judicial review, a concept some would say of murky and questionable pedigree, is here to stay. So there it is, the United States Supreme Court is indeed a paradox -“First among equals”-maybe so?

Studying Supreme Court opinions and the reasoning behind those decisions is essential to any understanding of our Constitution and the issues addressed by the Court. Yes, we are under the Constitution. Justice Holmes stated clearly and succinctly. “We are under the Constitution and the Constitution is what the judges say it is.” We may not always like the arrangement we have and we may well be aware that Justices wearing robes are not angels but they do, after all, dwell in a marble temple occupying exalted thrones overlooking (looking down) upon Capitol Hill.

Now that we have context, we are ready to begin. Our mandate is examination of civil or human rights issues and legal cases related to those issues. A good starting point is the Bill of Rights of the United States Constitution. The first ten amendments of the Constitution, the Bill of Rights are the logical beginning point. But there is more. The Constitution’s Fourteenth Amendment is inseparable from our inquiry. Social, moral, religious and ethical questions permeate human rights issues and we will not shy
away from including those questions in our work together. Those elements are crucial to judicial rulings and are quite naturally crucial to most all of our discussions.

Needless to say, human rights issues are controversial, contentious and emotional. Our humanity, similar to the humanity of judges and justices, cannot be separated dispassionately or emotionally from our opinions in those issues. That is a given. But we are all scholars and men and women of good will and civility. Respect and willingness to engage in dialog as reasonable and mature individuals is a requisite to being a member of this class. I know that at one time “nice” people were encouraged to refrain from discussing such topics as religion and politics. Forget that nonsense. This stuff is what we do here.

It is not possible to cover every important issue in human/civil rights so there will be some necessary selectivity in the topics we examine. This selectivity comes at a price. Topics dear to my heart will in some instances will be covered lightly if covered at all. I will do my best to be as representative and inclusive as possible. When you think about the breadth of topics in our polarized and pluralistic society and the clashes of viewpoints about “rights” you understand the complexity of it all. We as a nation and the Supreme Court as a deciding body are not merely deciding individual cases and the constitutional relevance of those specific cases. At the same time we are also deciding who we are as a people and as a nation. In a divided society of differing and competing values of varying traditions, making it all work within a constitutional framework is no easy task. We will make honest efforts to do our best to sort out some of the difficulties that our judicial system has encountered in the sensitive areas of civil rights I wish us all well.

Our class discussions are based upon United States Supreme Court cases. Because the United States is a common law nation, actual court cases are the basis for constitutional interpretation. Students will read and brief multiple cases throughout the academic term. Our casebook will provide the case materials and students are encouraged to consult additional source material in order to gain a more comprehensive understanding of the cases being studied. Supplementary assignments will be made inasmuch as the most recent Supreme Court rulings concerning civil rights are not yet in textbook form. Those decisions handed down in the past few months are much too important to ignore and will be included in our work. It is possible that there may be decisions handed down during our term together. If so, we will turn our attention to those cases. Briefs will be required for submission before the cases are discussed in class. It would be highly advisable to be two cases ahead of where we are in class. Stale briefs will not be tolerated or accepted. There is no value whatsoever in submitting a late brief.

Class attendance and participation are a vital component in assessing the quality of student work in the course. That comment states an obvious truth that requires no elaboration. Given the nature of the course, there can be no makeup tests. Class attendance policy follows university guidelines and class absences will be detrimental to class performance assessment.
Our primary textbook is:

**Constitutional Law: Rights, Liberties and Justice** (Constitutional Law for a Changing America)
9th Edition  Lee Epstein and Thomas Walker

*New York Times*

Grading and Test Schedule:

- First In-term writing opportunity – October 7th  25%
- Second In-term writing opportunity – October 30th  25%
- Final Exam – December 14th (12:00-2:30 P.M.)  25%
- Research Topic and Participation  25%

**Total**  100%

The research topic involves selecting a civil liberties topic and writing a paper of ten to fifteen pages. Each student must confer with the instructor in order to obtain instructor approval. The topic must be selected before September 16th.