First Amendment Rights

Times: MW 3:00–4:15 P.M.  Room: 204

Instructor: Steven J. Macias  Office: 234
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Description
Perhaps the most iconic feature of the U.S. Constitution, the First Amendment retains a popular place in the public imagination. This course focuses primarily on the freedom of speech guaranteed by the First Amendment, with due attention also given to freedom of association and the religion clauses. Because the language of the constitutional text is so vague—extending protection to the “freedom of speech” or the “free exercise” of religion—our understanding of First Amendment law will depend entirely on Supreme Court opinions and scholarly critiques of those opinions. Our study of First Amendment case law and theory will be supplemented with exercises designed to present you with problems you might face in practice. Finally, as the First Amendment tends to be bar examiners’ favorite “Con Law” subject, we will supplement our study with practice bar-type questions as well.

Required Books
(available at 710 Bookstore for $11.65)

Recommended Supplementary Reading
The First Amendment chapters in the Chemerinsky treatise (recommended in your Constitutional Law course) are just as useful as the rest of the book. If you are looking for a First-Amendment-focused supplement, the following are suggested:
Russell L. Weaver, Understanding the First Amendment (5th ed., LexisNexis 2014)

Website
We will use the SIU Online webpage for our class. Please check it often for new postings.

Writing Assignments
Because most of the material we will cover is potential bar exam material, we will periodically practice writing out old bar exam questions, including essays, multiple choice, and performance tests. Although writing assignments will not be graded, they will serve as the basis for class discussion and individualized feedback.
Evaluation
There will be a final examination that consists of essay questions and multiple-choice analysis. It will account for the semester grade.

Administrative Assistant
Susan McLaren, susanw@law.siu.edu
Office: 243
Please contact Susan if I am unavailable and she will relay any messages to me.

Attendance Policy
The Attendance Rules specified in the School of Law Rules III.5(f)–(g) are in full force. Attendance will usually be taken with a sign-in sheet, which each student is required to sign at the beginning of class. It should be noted that a student who is called upon in class, but in the opinion of the instructor, is unprepared, may be marked as absent for the day. A student may “note out” of class discussion for a particular day but must not sign the attendance sheet for that day.

Pop Quizzes: There will be occasional pop quizzes at the beginning of class sessions that will test basic comprehension of that particular day’s assigned reading. A passing score will be required to earn credit for attendance on a day in which a quiz is administered.

Laptops and Other Electronic Devices
Laptop computers should not be used in class for any purpose other than taking notes. If any student inappropriately uses a laptop (for sending email, chatting, web browsing, etc.) he/she will be marked as absent for the day. The easiest way to avoid suspicion of laptop misuse is not to use one in class in the first instance.

Workload Expectations
The American Bar Association (“ABA”) law-school-accreditation standards contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310, “a ‘credit hour’ is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks.” This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out-of-class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.
Reading Assignments
(subject to change)

CHAPTER 1: THE PROBLEM OF SUBVERSIVE ADVOCACY

Monday, August 22
A. First Encounters, pp. 3–12
B. The Abrams Case and the Holmes Dissent, pp. 12–16
C. Learned Hand and the Masses Case, pp. 16–21

Wednesday, August 24
F. Brandenburg v. Ohio and Its Implications, pp. 52–65
G. A Last Word from Justice Holmes, pp. 65–67

Monday, August 29

CHAPTER 2: CONTENT REGULATION: THE CHAPLINSKY EXCLUSIONS
A. “Fighting Words”, pp. 69–80
Chapter 3: A. Offensive Language and Images, pp. 181–91

Wednesday, August 31

Monday, September 5
NO CLASS—Labor Day Holiday

Wednesday, September 7

Monday, September 12

CHAPTER 3: CONTENT REGULATION: NEW CANDIDATES FOR CATEGORICAL EXCLUSION OR LIMITED PROTECTION

Wednesday, September 14
B. Child Pornography, pp. 191–214
Chapter 4: B. Overbreadth and Vagueness, pp. 318–24

Monday, September 19
D. Other Content, Other Harms, 254–85

Wednesday, September 21
C. Commercial Speech, pp. 214–53
CHAPTER 4: TRANS-SUBSTANTIVE DOCTRINES

Monday, September 26
A. Prior Restraints, pp. 287–317

CHAPTER 5: COMPELLED EXPRESSION

Wednesday, September 28
A. Compelled Speech, pp. 325–42

Monday, October 3
CHAPTER 6: FREEDOM OF ASSOCIATION, pp. 355–84

CHAPTER 7: REGULATING THE “TIME, PLACE, AND MANNER” OF PROTECTED SPEECH

Wednesday, October 5
A. Early Development of the Doctrine, 385–94
B. Applications of the Doctrine, 394–412

Monday, October 10
B. Applications of Doctrine, supp. 4–20
C. Injunctions Against Protesters, pp. 426–36

CHAPTER 8: CONTENT NEUTRALITY: THE PRINCIPLE AND ITS PROGENY

Wednesday, October 12
A. The Principle, 437–44, supp. 21–32
B. O’Brien and the Two-Track Analysis, 444–62

Monday, October 17
C. “Secondary Effects” as a Basis for Regulation, 475–97
D. Expression and Conduct: Untangling the Doctrines, pp. 497–511

CHAPTER 9: SPEECH ON GOVERNMENT PROPERTY AND THE PUBLIC FORUM DOCTRINE

Wednesday, October 19
A. Foundations of the Doctrine, 513–21
B. Mass Demonstrations and the Problem of the “Hostile Audience”, 521–35

Monday, October 24
C. Access to Nontraditional Forums and Facilities, 535–73
D. Speech on Private Property, 573–77
CHAPTER 11: TESTING THE BOUNDARIES OF DOCTRINE

Wednesday, October 26
A. “Hate Speech,” 621–54

CHAPTER 12: BEYOND REGULATION: THE GOVERNMENT AS EMPLOYER AND EDUCATOR

Monday, October 31
A. First Amendment Rights of Government Employees, 717–46, supp. 68–75

Wednesday, November 2
B. The First Amendment in the Public Schools, 746–68

CHAPTER 13: BEYOND REGULATION: WHOSE MESSAGE IS IT?

Monday, November 7
B. When is the Government the Speaker?, 791–805, supp. 76–91

CHAPTER 16: THE ESTABLISHMENT CLAUSE

Wednesday, November 9
A. [2] The Lemon Test as Modified, 888–916
Problem, 931

Monday, November 14
B. School Prayer, 931–52
C. School Curriculum, 952–62
Problem, supp. 118–20

Wednesday, November 16
D. Displays in Public Places, 962–1001

November 19–27: Thanksgiving Vacation

Monday, November 28
E. Legislative Prayer, supp. 98–118

CHAPTER 17: THE FREE EXERCISE CLAUSE

Wednesday, November 30
B. Modern Cases, 1011–38, supp. 121—31
C. Discrimination Against Religion, 1038–50, supp. 131–33
IMPORTANT DATES *
Semester Class Begins: ..................................................08/22/2016
Last day to add full-term course (without Dean’s signature): 08/28/2016
Last day to drop from the University with a full refund: 09/02/2016
Last day to drop a full-term course for a credit/refund: 09/04/2016
Deadline to apply to graduate at the end of this term: 09/16/2016
Last day to drop a full-term course (W grade, no refund): 10/30/2016
Final examinations: ..................................................12/12-12/16/2016
Commencement: ....................................................12/17/2016
Note: For more detailed information on the above deadlines, please visit http://registrar.siu.edu/calendars. For add/drop dates that apply to shorter-than-full-term courses, please look at the Schedule of Classes search results at http://registrar.siu.edu/schedclass/index.html.

FALL SEMESTER HOLIDAYS
Labor Day Holiday 09/05/2016
Fall Break 10/08—10/11/2016
Veterans Day Holiday 11/11/2016

WITHDRAWAL POLICY ~ Undergraduate only
Students who officially register for a session must officially withdraw from that registration in a timely manner to avoid being charged as well as receiving a failing grade for those classes. An official withdrawal must be initiated by the student, or on behalf of the student through the academic unit, and be processed by the Registrar’s office. For the proper procedures to follow when dropping courses and when withdrawing from SIU visit: http://registrar.siu.edu/students/withdraw.html

INCOMPLETE POLICY ~ Undergraduate only
An INC grade may be assigned when, for reasons beyond their control, students engaged in passing work are unable to complete all class assignments for the course. An INC must be changed to a completed grade within one full semester (undergraduates), and one full year (graduate students), from the close of the term in which the course was taken or graduation, whichever occurs first. Should the student fail to complete the remaining course requirements within the time period designated, the incomplete will be converted to a grade of F and such grade will be computed in the student's grade point average. For more information visit: http://registrar.siu.edu/grades/incomplete.html

REPEAT POLICY
An undergraduate student may, for the purpose of raising a grade, enroll in a course for credit more than once. For students receiving a letter grade of A, B, C, D, or F, the course repetition must occur at Southern Illinois University Carbondale. Effective for courses taken Summer 2013 or later, only the most recent (last) grade will be calculated in the overall GPA and count toward hours earned. This policy will be applied to all transferrable credit in that only the last grade will be used to calculate grade point average. Only those courses taken at the same institution are considered repeats under this policy. See full policy at http://registrar.siu.edu/students/repeatclasses.html

GRADUATE POLICIES
Graduate policies often vary from Undergraduate policies. To view the applicable policies for graduate students, please refer to the graduate catalog at http://gradschool.siu.edu/about-us/grad-catalog/index.html

DISABILITY POLICY
Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must contact DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/

PLAGIARISM
Student Conduct Code http://srr.siu.edu/student_conduct_code/

SAFETY AWARENESS FACTS AND EDUCATION
Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: http://safe.siu.edu

SALUKI CARES
The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: call (618) 453-1492, email siucares@siu.edu, or http://salukicares.siu.edu/index.html

SIU’S EARLY WARNING INTERVENTION PROGRAM (EWIP)
Students enrolled in courses participating in SIU’s Early Warning Intervention Program might be contacted by University staff during a semester. More information can be found at the Core Curriculum’s Overview webpage: http://corecurriculum.siu.edu/program-overview/

EMERGENCY PROCEDURES
We ask that you become familiar with Emergency Preparedness @ SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and though text and email alerts. To register for alerts visit: http://emergency.siu.edu/

INCLUSIVE EXCELLENCE
SIU contains people from all walks of life, from many different cultures and sub-cultures, and representing all strata of society, nationalities, ethnicities, lifestyles, and affiliations. Learning from and working with people who differ is an important part of education as well as an essential preparation for any career. For more information visit: http://www.inclusiveexcellence.siu.edu/

LEARNING AND SUPPORT SERVICES
Help is within reach. Learning support services offers free tutoring on campus and math labs. To find more information please visit the Center for Learning and Support Services website:
Tutoring: http://tutoring.siu.edu/
Math Labs: math.siu.edu/courses/course-help.php

WRITING CENTER
The Writing Center offers free tutoring services to all SIU students and faculty. To find a Center or Schedule an appointment please visit: http://write.siu.edu/

AFFIRMATIVE ACTION & EQUAL OPPORTUNITY
Our office's main focus is to ensure that the university complies with federal and state equity policies and handles reporting and investigating of discrimination cases. For more information visit: http://diversity.siu.edu/

MILITARY COMMUNITY
There are complexities of being a member of the military community and also a student. Drill schedules, calls to active duty, complications with GI Bill disbursement, and other unforeseen military and veteran related developments can complicate academic life. If you are a member of the military community and in need of accommodations please visit Veterans Services at http://veterans.siu.edu/

Additional Resources:
ADVICEMENT: http://advisement.siu.edu/
SIU ONLINE: http://online.siu.edu/
SALUKINET: https://salukinet.siu.edu/
MORRIS LIBRARY HOURS: http://www.lib.siu.edu/