First Amendment Rights

Times: MW 4:30–5:45 P.M.  Room: 202
Office Hours: MW 10:15–11:15 A.M.

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
(copies will be printed for you to purchase)

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:

Robert C. Powers & Mark C. Alexander, A Short & Happy Guide to the First Amendment (West 2016)

Website
We will use the SIU D2L 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.

Learning Objectives
At the conclusion of this course, students should be able to:
- identify the unprotected categories of speech and explain why they receive no First Amendment protection.
- state the test for commercial speech and explain why this category receives a unique standard.
- identify a prior restraint on speech and analyze its constitutionality.
- undertake a compelled speech analysis.
- explain why freedom of association is protected and under what standard.
- explain the principle of content neutrality.
- undertake forum analysis for speech that occurs on government property.
- explain time, place, and manner restrictions as a means of speech regulation.
- apply rational basis review, intermediate scrutiny, and strict scrutiny as required by case law.
- apply the Lemon test, as well as competing tests, for Establishment Clause claims.
- apply the Smith test for Free Exercise claims.

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.

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

Wednesday, January 17
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

Monday, January 22
F. Brandenburg v. Ohio and Its Implications, pp. 52–65
G. A Last Word from Justice Holmes, pp. 65–67

CHAPTER 2: CONTENT REGULATION: THE CHAPLINKSY EXCLUSIONS

Wednesday, January 24
A. “Fighting Words”, pp. 69–80
Chapter 3: A. Offensive Language and Images, pp. 181–91

Monday, January 29

Wednesday, January 31

Monday, February 5

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

Wednesday, February 7
B. Child Pornography, pp. 191–214
Chapter 4: B. Overbreadth and Vagueness, pp. 318–24

Monday, February 12
D. Other Content, Other Harms, 254–85

Wednesday, February 14
C. Commercial Speech, pp. 214–53
CHAPTER 4: TRANS-SUBSTANTIVE DOCTRINES

Monday, February 19
A. Prior Restraints, pp. 287–317

CHAPTER 5: COMPELLED EXPRESSION

Wednesday, February 21
A. Compelled Speech, pp. 325–42

Monday, February 26
CHAPTER 6: FREEDOM OF ASSOCIATION, pp. 355–84

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

Wednesday, February 28
A. Early Development of the Doctrine, 385–94
B. Applications of the Doctrine, 394–412

Monday, March 5
B. Applications of Doctrine, supp. 5–21
C. Injunctions Against Protesters, pp. 426–36

CHAPTER 8: CONTENT NEUTRALITY: THE PRINCIPLE AND ITS PROGENY

Wednesday, March 7
A. The Principle, 437–44, supp. 23–34
B. O’Brian and the Two-Track Analysis, 444–62

Spring Break, March 10–18

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

Monday, March 26
C. Access to Nontraditional Forums and Facilities, 535–73
D. Speech on Private Property, 573–77
CHAPTER 11: TESTING THE BOUNDARIES OF DOCTRINE

Wednesday, March 28
A. “Hate Speech,” 621–54

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

Monday, April 2
A. First Amendment Rights of Government Employees, 717–46, supp. 79–86

Wednesday, April 4
B. The First Amendment in the Public Schools, 746–68

CHAPTER 13: BEYOND REGULATION: WHOSE MESSAGE IS IT?

Monday, April 9
B. When is the Government the Speaker?, 791–805, supp. 87–113

CHAPTER 16: THE ESTABLISHMENT CLAUSE

Wednesday, April 11
A. [2] The Lemon Test as Modified, 888–916
Problem, 931

Monday, April 16
B. School Prayer, 931–52
C. School Curriculum, 952–62
Problem, supp. 142–44

Wednesday, April 18
D. Displays in Public Places, 962–1001

Monday, April 23
E. Legislative Prayer, supp. 121–142

CHAPTER 17: THE FREE EXERCISE CLAUSE

Wednesday, April 25
B. Modern Cases, 1011–38, supp. 145–55
C. Discrimination Against Religion, 1038–50, supp. 155–58

FINAL EXAMINATION: Wednesday, May 9, 8:15 A.M.
IMPORTANT DATES *

Semester Classes Begin: 01/16/2018  
Last day to add full-term course (without Dean’s signature): 01/21/2018  
Last day to withdraw from the University with a full refund: 01/26/2018  
Last day to drop a full-term course for a credit/refund: 01/28/2018  
Last day to drop a full-term course (W grade, no refund): 04/01/2018  
Final examinations: 05/07-05/11/2018  
The Final exam schedule will be posted the third week of class.


SPRING SEMESTER HOLIDAYS

Martin Luther King, Jr.’s Birthday Holiday 01/15/2018  
Spring Vacation 03/10—03/18/2018

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/withdrawal.php](http://registrar.siu.edu/students/withdrawal.php)

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.php](http://registrar.siu.edu/grades/incomplete.php)

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.php](http://registrar.siu.edu/students/repeatclasses.php)

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/](http://gradschool.siu.edu/about-us/grad-catalog/)

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://disabilitieservices.siu.edu/](http://disabilitieservices.siu.edu/)

PLAGIARISM

See the Student Conduct Code [http://srr.siu.edu/student-conduct-code/](http://srr.siu.edu/student-conduct-code/)

ADVISEMENT: [http://advisement.siu.edu/](http://advisement.siu.edu/)

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](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, and 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/](http://salukicares.siu.edu/)

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/](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 through text and email alerts. To register for alerts visit: [http://emergency.siu.edu/](http://emergency.siu.edu/)

STUDENT MULTICULTURAL RESOURCE CENTER

The Student Multicultural Resource Center serves as a catalyst for inclusion, diversity, and innovation. As the Center continues its work, we are here to ensure that you think, grow, and succeed. We encourage you to stop by the Center, located in Grinnell Commons, to see the resources available and discover ways you can get involved on the campus. [Visit us at http://inclusiveexcellence.siu.edu/](http://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/](http://tutoring.siu.edu/)  

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/](http://write.siu.edu/)

DIVERSITY

Southern Illinois University Carbondale’s goal is to provide a welcoming campus where all of our students, faculty and staff can study and work in a respectful, positive environment free from racism and intimidation. [For more information visit: http://diversity.siu.edu/#](http://diversity.siu.edu/#)

MILITARY COMMUNITY

There are complexities of being a member of the military community and also a student, and 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/](http://veterans.siu.edu/)

SIU ONLINE: [https://online.siu.edu/](https://online.siu.edu/)

Need help with an issue? Please visit SALUKI SOLUTION FINDER at [http://solutionfinder.siu.edu/](http://solutionfinder.siu.edu/)

SIU embraces a unique tradition of access and opportunity, inclusive excellence, innovation in research and creativity, and outstanding teaching focused on nurturing student success. As a nationally ranked public research university and regional economic catalyst, we create and exchange knowledge to shape future leaders, improve our communities, and transform lives.