First Amendment Rights

Times: TuTh 9:00–10:15 A.M. Room: 108

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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 the press and 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

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
There is a TWEN 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.

Laptops and Other Electronic Devices
Laptop computers should not be used in class for any purpose other than taking notes or reading from an electronic version of the casebook supplement. 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(b)(1), “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

Tuesday, January 19
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

Thursday, January 21
F. Brandenburg v. Ohio and Its Implications, pp. 52–65
G. A Last Word from Justice Holmes, pp. 65–67

Tuesday, January 26
NO CLASS—out of town

CHAPTER 2: CONTENT REGULATION: THE CHAPLINKSY EXCLUSIONS

Thursday, January 28
A. “Fighting Words”, pp. 69–80
Chapter 3: A. Offensive Language and Images, pp. 181–91

Tuesday, February 2

Thursday, February 4

Tuesday, February 9

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

Thursday, February 11
B. Child Pornography, pp. 191–214
Chapter 4: B. Overbreadth and Vagueness, pp. 318–24

Tuesday, February 16
D. Other Content, Other Harms, 254–85

Thursday, February 18
C. Commercial Speech, pp. 214–53

CHAPTER 4: TRANS-SUBSTANTIVE DOCTRINES

Tuesday, February 23
A. Prior Restraints, pp. 287–317

CHAPTER 5: COMPELLED EXPRESSION

Thursday, February 25
A. Compelled Speech, pp. 325–42

Tuesday, March 1
B. Compelled Subsidy, pp. 342–54, supp. 1–3, *Friedrichs v. California Teachers Ass’n*

Thursday, March 3
CHAPTER 6: FREEDOM OF ASSOCIATION, pp. 355–84

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

Tuesday, March 8
A. Early Development of the Doctrine, 385–94
B. Applications of the Doctrine, 394–412

Thursday, March 10
B. Applications of Doctrine, supp. 4–21
C. Injunctions Against Protesters, pp. 426–36

Spring Break March 12–20

CHAPTER 8: CONTENT NEUTRALITY: THE PRINCIPLE AND ITS PROGENY

Tuesday, March 22
A. The Principle, 437–44, supp. 22–34
B. *O’Brien* and the Two-Track Analysis, 444–62

Thursday, March 24
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

Tuesday, March 29
A. Foundations of the Doctrine, 513–21
B. Mass Demonstrations and the Problem of the “Hostile Audience”, 521–35
Thursday, March 31
C. Access to Nontraditional Forums and Facilities, 535–73
D. Speech on Private Property, 573–77

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

Tuesday, April 5
A. First Amendment Rights of Government Employees, 717–46, supp. 71–79

Thursday, April 7
B. The First Amendment in the Public Schools, 746–68

CHAPTER 13: BEYOND REGULATION: WHOSE MESSAGE IS IT?

Tuesday, April 12
A. Paying the Piper—and Calling the Tune?, 769–91
B. When is the Government the Speaker?, 791–805, supp. 80–96

CHAPTER 16: THE ESTABLISHMENT CLAUSE

Thursday, April 14
A. [2] The Lemon Test as Modified, 888–916
Problem, 931

Tuesday, April 19
B. School Prayer, 931–52
C. School Curriculum, 952–62
Problem, supp. 78–80

Thursday, April 21
D. Displays in Public Places, 962–1001

CHAPTER 17: THE FREE EXERCISE CLAUSE

Tuesday, April 26
B. Modern Cases, 1011–38, supp. 127—37
C. Discrimination Against Religion, 1038–50, supp. 138–40

CHAPTER 18: INTERRELATIONSHIPS AMONG THE CLAUSES

Thursday, April 28
A. Definition of Religion, 1051–71
Administrative Notices

For an enlightening critique of “syllabus bloat,” see this article, which I link to as both my apology for, and objection to, the length of this document.

Emergency Procedures:
Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (Bert) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website at www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

Disability Support Services:
Disability Support Services (“DSS”) 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 come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Care:
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: (618) 453-5714, or siucares@siu.edu, http://salukicares.siu.edu/index.html. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.