First Amendment Rights

Times: MW 8:30–9:45 am
Room: 206
Instructor: Steven J. Macias
Office: 234
Email: smacias@siu.edu
Phone: 618-536-8464

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 and association guaranteed by the First Amendment, with due attention also given to 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

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:

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 Williams, 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.

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 www.dps.siu.edu (disaster drop down) and in the 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.
Reading Assignments

CHAPTER 1: WHAT SPEECH IS NOT PROTECTED?

I. Advocacy of Illegal Action

Monday, January 13
Emerging Principles, pp. 2–16
State Sedition Laws, pp. 16–27

Wednesday, January 15
Communism and Illegal Advocacy, pp. 27–41
A Modern “Restatement”, pp. 41–49

II. Reputation & Privacy

Wednesday, January 22
Group Libel, pp. 50–54
Public Officials and Seditious Libel, pp. 54–65
Private Individuals and Public Figures, pp. 65–76

Monday, January 27
Emotional Distress, pp. 76–78, supp. 3–9
Disclosure of Private Facts, pp. 78–92

IV. Obscenity

Wednesday, January 29
The Search for a Rationale, pp. 102–10
A Revised Standard, pp. 111–22
Vagueness and Overbreadth: An Overview, pp. 122–26

V. “Fighting Words,” Offensive Words and Hostile Audiences

Monday, February 3
Fighting Words, pp. 127–29
Hostile Audiences, pp. 129–33
Offensive Words, pp. 133–39

VI. Should New Categories Be Created?

Wednesday, February 5
Harm to Children and the Overbreadth Doctrine, pp. 140–50
Harm to Women: Feminism and Pornography, pp. 150–65
Monday, February 10
Racist Speech Revisited: The Nazis, pp. 165–70
Animal Cruelty and the Flight from New Categories, pp. 171–75
Violent Video Games, supp. 9–16
Stolen Valor, supp. 16–23

CHAPTER 2: DISTINGUISHING BETWEEN CONTENT REGULATION AND MANNER REGULATION: UNCONVENTIONAL FORMS OF COMMUNICATION

Wednesday, February 12
All of Ch. 2 on Symbolic Speech, pp. 176–209

CHAPTER 3: IS SOME PROTECTED SPEECH LESS EQUAL THAN OTHER PROTECTED SPEECH?

Monday, February 17
Near Obscene Speech, pp. 210–27

Wednesday, February 19
Commercial Speech, pp. 227–52, supp. 25
Private Speech, 253–60

Monday, February 24
Hate Speech Revisited, pp. 260–83

CHAPTER 4: PRIOR RESTRAINTS

Wednesday, February 26
Foundation Cases: Licensing & Injunctions, 284–95
Obscenity and Commercial Speech, pp. 295–301
Licensing “Professionals”, pp. 301–06
National Security, pp. 306–16

CHAPTER 5: JUSTICE AND NEWSGATHERING

Monday, March 3
Publicity About Trials, pp. 317–24
Newsgathering: Protection of Confidential Sources, pp. 324–37

Wednesday, March 5
Newsgathering: Access to Trials, pp. 337–49

Spring Break March 10–14
CHAPTER 6: GOVERNMENT PROPERTY AND THE PUBLIC FORUM

Monday, March 17
Foundation Cases, pp. 351–57
New Forums, pp. 357–71

Wednesday, March 19
Privacy & The Public Forum, pp. 371–82

CHAPTER 7: GOVERNMENT SUPPORT OF SPEECH

Monday, March 24
Subsidies of Speech, pp. 383–97, supp. 27

Wednesday, March 26
Government as Educator and Editor, pp. 397–414
Government as Employer, pp. 414–22, supp. 27

CHAPTER 8: THE ELECTRONIC MEDIA

Monday, March 31
Access to the Mass Media, pp. 423–46

Wednesday, April 2
The Electronic Media and Content Regulation, pp. 446–66, supp. 29

CHAPTER 9: THE RIGHT NOT TO SPEAK, THE RIGHT TO ASSOCIATE, AND THE RIGHT NOT TO ASSOCIATE

Monday, April 7
The Right Not to Be Associated with Particular Ideas, pp. 467–82, supp. 31–32
Intimate Association and Expressive Association, pp. 482–94

CHAPTER 10: WEALTH AND THE POLITICAL PROCESS: CONCERNS FOR EQUALITY

Wednesday, April 9
All of Ch. 10, pp. 495–526, supp. 33

CHAPTER 11: ESTABLISHMENT CLAUSE

Monday, April 14
Introduction, pp. 528–30
Aid to Religion, pp. 530–53

Wednesday, April 16
Religion and Public Schools, pp. 554–72
Monday, April 21
Official Acknowledgment of Religion, pp. 572–607, supp. 37

CHAPTER 12: FREE EXERCISE CLAUSE AND RELATED PROBLEMS

Wednesday, April 23
Conflict with State Regulations, pp. 608–33, supp. 39–40

Make-up Class
Unusual Beliefs and Practices, pp. 633–39

CHAPTER 13: PREFERENCE AMONG RELIGIONS, pp. 640–47
CHAPTER 14: CONFLICT BETWEEN THE CLAUSES, pp. 648–60