First Amendment Rights

Times: TTh 9:30–10:45 A.M.          Room: 108
Office Hours: TTh 2:15–4:15 P.M.

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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 Materials
2018 Casebook Supplement [Link]

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
We will use the [SIU D2L](https://d2l.siu.edu) webpage for our class. Please check it often for new postings.
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 incidental 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.
- confidently approach MBE and MEE bar-style questions on the First Amendment.

Evaluation
Casebook Problems (3 X 15%)  45%
Final Examination  55%

The casebook problems assignment is explained in detail on page four (4). The final exam will be cumulative and will consist of both multiple-choice and essay questions patterned after those you will encounter on the bar exam.

S/U Grading
The grades of students who have elected to take this course with S/U grading will be converted by the Registrar according to the following scale: 2.1 or greater = Satisfactory; below 2.1 = Unsatisfactory. Only students who receive a Satisfactory grade will earn academic credit for the course. Otherwise, the course requirements and expectations do not differ for students taking the course for an S/U grade.

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.
Casebook Problems Assignment

The casebook and its supplement contain problems that will serve as a significant component of your course grade. For a pedagogical rationale for the problem approach to teaching and grading this course, see generally Philip C. Kissam, *Teaching Constitutional Law Differently*, 9 Const. Comment. 237 (1992). Your written responses to problems will determine a substantial portion (45%) of your course grade.

You are required to submit written responses to three (3) problems before the end of the Semester. Each problem is due at the beginning of class on the day that we will cover the problem. No problem will be accepted late. At least one (1) of your responses MUST come from a problem in Chapters 5–8. Otherwise, you can choose any three problems, but you may choose only one problem from any one chapter, i.e., each of your three problems must appear in three different chapters. If you turn in a second problem from the same chapter, only the first problem will be graded. If, for any reason, you turn in fewer than three problems by the end of the semester, a grade of zero (0) will be entered for any missing problem. So, be careful to plan accordingly. The problems will be weighed all the same (15%), but some problems are greater challenges than others, so give your selections some thought and choose worthy problems. Consult the lesson. For each problem, you must cite at least four sources: two cases (including at least one Supreme Court case), one law review article, and one book or treatise. The books listed on the syllabus under “Recommended Supplementary Reading” provide helpful summaries of the case law. The Barron & Dienes *Nutshell* is especially useful.

Use only your examination number (available from the Registrar) for identification and adhere to the following formatting requirements. On the first page, include: the date, the name of the problem, the chapter and page number, and the number count of the problem among your three submissions, e.g., “Problem #2 of 3.” The maximum length is 2,359 words (including citations) per problem—the length of Justice Holmes’ Abrams dissent. At the end of each problem, perform a word count and indicate the total according to your word processing program, e.g., “2,358 words.” Print your answer on regular-sized paper, one-sided, double-spaced, in 12-pitch Times New Roman font, with a 1-inch margin around the page. Use only a staple in the top left corner to fasten the pages. Follow the latest edition of *The Bluebook* for all citations, which should appear as footnotes. If you use the exact words of another, show quotations; if you borrow an idea, cite your source. See generally Debbie Papay-Carder, Comment, *Plagiarism in Legal Scholarship*, 15 U. Tol. L. Rev. 233 (1983); Joe Mirarchi, Comment, *Plagiarism: What Is It? How to Avoid It? And Why?*, 4 T.M. Cooley J. Prac. & Clinical L. 381 (2001); but cf. Richard A. Posner, *The Little Book of Plagiarism* (2007). Your work should be your own; you should not consult with anyone else about the problems.

The failure to comply with these instructions will result in a downward adjustment of the grade on that problem.
Reading Assignments
(subject to change)

CHAPTER 1: THE PROBLEM OF SUBVERSIVE ADVOCACY

Tuesday, August 21
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. 16–22

Thursday, August 23
F. Brandenburg v. Ohio and Its Implications, pp. 50–60
G. The “True Threat,” pp. 60–63
H. A Last Word from Justice Holmes, pp. 63–65

CHAPTER 2: UNPROTECTED SPEECH: THE CHAPLINKSY EXCLUSIONS

Tuesday, August 28
A. “Fighting Words”, pp. 67–75
Chapter 3: A. Offensive Language and Images, pp. 155–75

B. “The Libelous”—or Otherwise Tortious

Thursday, August 30

Tuesday, September 4

Thursday, September 6

CHAPTER 3: NEW CANDIDATES FOR CATEGORICAL EXCLUSION OR LIMITED PROTECTION

Tuesday, September 11
C. Commercial Speech, pp. 197–232

CHAPTER 4: TRANS-SUBSTANTIVE DOCTRINES

Thursday, September 13
A. Prior Restraints, pp. 265–94
CHAPTER 5: CONTENT-BASED REGULATION

Tuesday, September 18
A. The Principle, pp. 305–12, supp. p. 1
B. Defining Content Discrimination, pp. 312–24, supp. p. 1

CHAPTER 6: REGULATING THE “TIME, PLACE, AND MANNER” OF PROTECTED SPEECH

Thursday, September 20
A. Early Development of the Doctrine, pp. 341–50
B. Applications of the Doctrine, pp. 350–60

Tuesday, September 25
B. Applications of Doctrine, pp. 360–88

CHAPTER 7: EXPRESSIVE CONDUCT AND SECONDARY EFFECTS

Thursday, September 27
A. Expressive Conduct, pp. 389–407

Tuesday, October 2
B. “Secondary Effects” as a Basis for Regulation, pp. 407–29
C. Expression and Conduct: Untangling the Doctrines, pp. 429–44

CHAPTER 8: SPEECH ON GOVERNMENT PROPERTY AND THE PUBLIC FORUM DOCTRINE

Thursday, October 4
A. Foundations of the Doctrine, pp. 445–53

Tuesday, October 9
D. Speech on Private Property, pp. 505–08

CHAPTER 9: COMPELLED EXPRESSION

Thursday, October 11
A. Compelled Speech, pp. 509–26, supp. pp. 11–12

Tuesday, October 16
CHAPTER 10: FREEDOM OF ASSOCIATION, pp. 537–65 (entire chapter)
CHAPTER 12: BEYOND REGULATION: THE GOVERNMENT AS EMPLOYER AND EDUCATOR

Thursday, October 18
A. First Amendment Rights of Government Employees, pp. 615–40

Tuesday, October 23
B. The First Amendment in the Public Schools, pp. 641–63

CHAPTER 13: BEYOND REGULATION: WHOSE MESSAGE IS IT?

Thursday, October 25
B. When is the Government the Speaker?, pp. 686–704

CHAPTER 15: TESTING THE BOUNDARIES OF DOCTRINE

Tuesday, October 30
A. “Hate Speech,” pp. 739–60

Thursday, November 1
B. Government Programs and Offensive Speech, pp. 761–72
C. The Internet as the New Public Square?, pp. 772–82

CHAPTER 17: THE ESTABLISHMENT CLAUSE

Tuesday, November 6

Thursday, November 8
B. School Prayer, pp. 857–77
C. School Curriculum, pp. 877–85

Tuesday, November 13

CHAPTER 18: THE FREE EXERCISE CLAUSE

Thursday, November 15
B. Modern Cases, pp. 946–77
Thanksgiving Vacation, November 17–25

CHAPTER 19: INTERRELATIONSHIPS AMONG THE CLAUSES

Tuesday, November 27
B. Tensions between the Religion Clauses, pp. 1008–30

Thursday, November 29
C. Religious Speech, pp. 1030–52

FINAL EXAMINATION: Thursday, Dec. 6, 8:15 A.M.

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
IMPORTANT DATES *
Semester Classes Begin .................................................. 08/20/2018
Last day to add full-term course (without Dean’s signature) ....... 08/26/2018
Last day to withdraw from the University with a full refund ....... 08/31/2018
Last day to drop a full-term course for a credit/refund .......... 09/02/2018
Last day to drop a full-term course (W grade, no refund) ......... 10/28/2018
Final examinations: .......................................................... 12/10–12/14/2018

Note: Please verify the above dates with the Registrar calendar and find more detailed information on deadlines at 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.php

FALL SEMESTER HOLIDAYS
Labor Day Holiday 09/03/2018
Thanksgiving Break 11/17–11/25/2018

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

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

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

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/

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

MORRIS LIBRARY HOURS: http://libguides.lib.siu.edu/hours

ADVICEMENT: 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

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/

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 through text and email alerts. To register for alerts visit: 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/

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 http://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/

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/

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/

SIU ONLINE: https://online.siu.edu/

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

Office of the Provost http://pvcaa.siu.edu/ Fall 2018