

## Constitutional Law: Advanced Topics

Time: TTh 10:00–10:50 A.M.

Room: 202

Instructor: Steven J. Macias

Office: 234

Email: [smacias@siu.edu](mailto:smacias@siu.edu)

Phone: 618-536-8464

Office Hours: TTh 11:00 A.M.–12:00 P.M.

### Description:

The goal of this advanced Constitutional Law course is to pick up where the required course leaves off, focusing on individual rights not covered in the primary course, yet tested on the bar exam. This semester, we will be focusing on four specific areas of law: (1) the Constitution's original rights (2) the First (Press Rights) and Second Amendments, (3) Property Rights, and (4) the Congressional Enforcement Power of the 13th, 14th, and 15th Amendments. At the same time that we are covering new legal doctrines, we are simultaneously reinforcing the methods of analysis to which you were introduced in Constitutional Law. By the end of the course, students should have fully mastered individual-rights analysis. Because our substantive topics are limited, we will be able to spend much more time focusing on problem-solving skills and bar exam preparation than is possible in the required course.

### Course Materials:

- Course Reader available at [The Printing Plant](#)
- Gaylord et al., *Federal Constitutional Law*, vol. 4 (2d ed. Carolina Academic Press, 2018). ISBN: 978-1-53100-646-4
- The [Chemerinsky treatise](#), which was recommended in your first Constitutional Law course, will also be valuable for this course.

### Learning Objectives:

At the conclusion of this course, students should be able to:

- articulate the void-for-vagueness doctrine, identify its textual source, state the rationale behind it, and know the leading cases.
- identify which activities the First Amendment's Press Clause protects, which parties can seek protection under the Clause, and what activities are *not* protected by the Clause as articulated in case law.
- articulate the individual right protected by the Second Amendment, explain the competing theories of that right, explain how the incorporation doctrine works in this particular context as well as more generally, and understand the unanswered questions that are still being litigated in the lower courts.
- know which rights are protected by the language of the original, unamended, Constitution, especially the prohibitions on bills of attainder, ex post facto laws, and the impairment of contracts.
- articulate the modern test for the Contracts Clause, including the differences in application as between public and private contracts.

- state the varying tests for Takings Clause claims, including the definition of “public purpose.”
- be able to define a “regulatory taking” and use the relevant case law to analyze laws that implicate such conditions.
- have a general sense of the “unconstitutional conditions” doctrine over several substantive areas, including takings and congressional spending.
- analyze claims of congressional authority under the enforcement clauses of the Reconstructions Amendments, distinguishing between the interpretive and the remedial powers, and appropriately applying the “congruence and proportionality” test.
- use the Supremacy Clause to undertake preemption analysis, distinguishing between express and implied preemption, and conflict and field preemption.

### **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/or performance tests. Although writing assignments will not be graded, they will serve as the basis for class discussion and individualized feedback.

### **Structure of Course:**

Each student is expected to come to class prepared to discuss the assigned readings. At each class meeting, the instructor will randomly call upon students to respond to inquiries about the material under discussion. Those dialogues, along with material formally presented in lectures, slides, handouts, and the assigned readings constitute the course material that will be examined on both the final exam.

### **Evaluation:**

There will be a closed-book final examination that will account for the semester grade on **Thursday, May 2, 1:15 P.M.**

### **Attendance Policy:**

The School of Law [Rules](#) primarily govern students’ attendance requirements. Pursuant to those Rules, the maximum number of absences for this course is set at three (3). The sanction set out in Rule III.5(g)(iii)—a reduction in a student’s final grade of three-tenths (0.3) of a point per absence—is in effect for any student who exceeds the three permitted absences.

Because oral participation is a central (and graded) component of this course, attendance is essential. This means that it is not possible to duplicate the classroom experience through watching a video of the course for any given day. Being “on call” and prepared to undergo oral examination serves as a pedagogical benefit both to the individual student as well as to the entire class.

Signing the daily attendance sheet is a representation that you have completed the readings and spent time thinking about any questions asked in the reading or by the instructor beforehand. It is also a representation that you have spent at least 2 hours in preparation for the class as required by the ABA Standard 310(b)(1) set out below. I will consider any misrepresentation on the

attendance sign-in sheet to be “educational wrongdoing”—information that I must report to the bar examiners of any state to which you apply for admission.

### **D2L Website:**

There is website for this class on D2L, <http://mycourses.siu.edu/>, which will contain supplemental course materials. It will also be my primary means of communicating with students outside of class. Thus, it is imperative that you visit the website frequently as you are strictly responsible for all materials and information posted therein.

### **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. Once each class session begins, assume that both audio and visual are being recorded.

### **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 2-credit hour class, meaning that we will spend two 50-minute blocks of time together each week. The amount of assigned reading and out-of-class preparation should take you about 2 hours for each class session and 4 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 **6 hours per week (2 in class and 4 preparing for class) on course-related work.**

**For important university announcements, please see this attachment from the Provost:**  
<https://pvcaa.siu.edu/forms/syllabus-attachment-spring-2019.pdf>



## Reading Assignments

Class	Date	Topic	Pages*
1	Jan. 15	Vagueness—Criminal	1–15
2	Jan. 17	Vagueness—Civil	15–29
3	Jan. 22	Press Clause—Singling Out the Press	807–23
4	Jan. 24	Press Clause—Claims of Exemption	823–37
5	Jan. 29	Press Clause—Access to Gov’t	837–57
6	Jan. 31	Second Amendment—The Right	1657–80
7	Feb. 5	Second Amendment—Incorporation	1680–1703
8	Feb. 7	Second Amendment—Applying <i>Heller</i>	1704–28
9	Feb. 12	Original Rights—Bills of Attainder	1–23
10	Feb. 14	Original Rights—Ex Post Facto Laws	23–43
11	Feb. 19	Contracts Clause—Origins	1–20 (book)
12	Feb. 21	Contracts Clause—New Deal	20–35 (book)
13	Feb. 26	Contracts Clause—Today	36–50 (book)
14	Feb. 28	Takings—Eminent Domain	81–96
15	Mar. 5	Regulatory Takings—Early Cases	97–127
16	Mar. 7	Regulatory Takings—Balancing Test	127–49
17	Mar. 19	Regulatory Takings—Unconstitutional Conditions	149–72
18	Mar. 21	Regulatory Takings—Unconstitutional Conditions	172–95
19	Mar. 26	Regulatory Takings—Unconstitutional Conditions	196–230
20	Mar. 28	Regulatory Takings—Unconstitutional Conditions	230–51
21	Apr. 2	Unconstitutional Conditions on Spending	1878–93
22	Apr. 4	Congressional Enforcement of Civil Rights	1058–62 (skim) 1062–84
23	Apr. 9	Remedial Power— <i>Shelby Co.</i>	229–44 (book)
24	Apr. 11	Interpretive Power	1084–1100
25	Apr. 16	Interpretive Power, cont.	1100–15
26	Apr. 18	Preemption—Express	51–65 (book)
27	Apr. 23	Preemption—Implied	65–77 (book)
28	Apr. 25	Preemption—Field & Conflict	77–98 (book)

**FINAL EXAMINATION: Thursday, May 2, 1:15 P.M.**

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\* The pages listed in this column refer to the pages of the original sources reproduced in the course reader. Those pages assigned from the Gaylord et al. text are indicated as coming from the “book.”