

LAW 509B-002 – Constitutional Law: Individual Rights
Spring 2022
Professor Benjamin Bricker

M&W 9 to 10:15a
Lesar Law Building 108

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Office hours: Tues. & Thurs., 2p to 4p (Faner); Friday 8:15a to 10:15a (Lesar).
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Course Description

The course focuses on the U.S. Constitution and the Supreme Court's interpretation of that document. It is difficult to overstate the importance of constitutional law to our everyday lives, and to our democratic system of government. The Supreme Court, through the exercise of judicial review, actively defines both the structure of government and the individual rights contained in the Constitution. Through the exercise of judicial review the Supreme Court also helps to determine the content of policy – becoming, much like the Congress and the President, a “national policy-maker.”

We will work through a number of questions over the semester, including how the Court has advanced civil rights and liberties, and whether the Court is an effective avenue for the protection of rights and liberties. In this course we will pay close attention to several larger current themes in civil liberties and civil rights: the due process clause, free speech, religious freedoms, equal rights, voting rights, women's rights, and gay rights.

Textbook

There is one required textbook:

- Calvin Massey and Brannon Denning. 2019. *American Constitutional Law: Powers and Liberties*, 6th edition. Wolters Kluwer. (hereinafter **MD**).

In addition, I will post some additional readings (noted below in the syllabus) on our TWEN page. Please go to our TWEN course page to obtain those readings.

Other Helpful Resources

There are quite a few secondary materials to consult to help understand difficult aspects of constitutional law. Here are a few suggestions:

Chemerinksky's *Constitutional Law* (Aspen 6th ed., 2019)

Rotunda and Nowak's *Principles of Constitutional Law* (West, 2016)

Also: scotusblog.com does a good job of keeping us up to date on the Court today.

Grading

There will be a final exam, as well as a paper this semester. The paper will be due the week after Spring Break. The final exam will take place at the end of the semester.

Paper 35%
Final 50%
Participation 15%

Information on the Paper assignment: This Supreme Court term will have more than its share of major cases this term, including cases on (1) abortion rights (*Dobbs v. Jackson Women's Health Organization*), (2) the Second Amendment (*New York State Rifle & Pistol Association Inc. v. Bruen*), (3) the First Amendment's free speech clause, (*Houston Community College System v. Wilson*), (4) the First Amendment's religion clauses (*Carson v. Makin*), and (5) the First Amendment's free speech/campaign finance doctrine (*Cruz v. FEC*). Additionally, *U.S. Navy Seals v. Biden*, a District Court case currently, involves the military and religious freedoms. **Your assignment will be to write a 12-page amicus legal brief** (note: not a case brief) arguing in favor of one outcome in the case. You can select to advocate in favor of either the petitioner or respondent in any of the above cases, or another case involving constitutional law with my permission. Treat this as a straightforward legal advocacy assignment. You may choose to focus on one aspect of the case or several aspects, but be sure to adequately develop your legal arguments, citing to past precedent whenever applicable. The amicus brief will be due on Wednesday, March 16th. There will be examples to consider on our TWEN page.

TWEN (The West Education Network)

You should register for this course on TWEN no later than the first week of classes. The syllabus and any additional reading assignments will be posted on TWEN. I will likely also send class-related e-mails to the address you list on TWEN, so be sure you list an e-mail address that you check regularly.

Attendance Policy

You are expected to attend class regularly and to be on time. In accordance with the law school rules, you may be absent up to six times without a grade or other penalty by the professor. However, if you do not attend regularly, it will be negatively reflected in your final grade. Attendance will be taken each day of class. Absences in excess of the allowable number will be dealt with in accordance with the law school rules. **However**, if you are feeling sick or were in close contact with someone who has COVID-19, do not attend class! Follow the university's policies and guidance. Do not worry about those classes counting against the attendance policy. We will work out an alternative arrangement – I can speak to students individually or in small groups to go over materials. Please take of yourself – and others – at this time.

Workload Expectations

The American Bar Association (ABA) standards for accrediting law schools contain a formula for calculating the amount of work required to earn one hour of law school credit. Pursuant to these standards, each credit hour should reasonably approximate one hour of in-class instruction and two hours of out-of-class work per week for fifteen weeks. Accordingly, for this three-credit-hour class, you should spend three hours per week in class and at least six hours per week preparing for class or engaging in other class-related activities.

Make-up Classes

To ensure compliance with ABA Standard 310, this class is required to hold an additional class session or engage in an out-of-class assignment to make up for the Martin Luther King, Jr. holiday on Monday, January 17th. We will have a make-up class on Friday, April 22nd.

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/>.

Disability Policy. SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations. Accommodation [request](#) and [renewal](#) forms can be found by clicking on the links.

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: (618) 453-2461, or siucares@siu.edu, <https://salukicare.siu.edu/>. 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.

COVID-19. SIUC's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIUC's COVID website (<https://siu.edu/coronavirus>), which includes the Saluki Safety Plan. People can also send email to pandemicinfor@siu.edu.

Course Schedule¹

Week 1

Monday, January 10th. Introduction – Read: MD, pp. 445-461 (we will continue this discussion in the next class).

Wednesday, January 12th. Incorporation and State Action. Read: MD, pp. 462-474, begin reading ch. 11 (p. 1243-46 and Civil Rights Cases, 1268-70.)

Week 2

Monday, January 17th. No class – Martin Luther King, Jr. Holiday.

¹ This is my best projection about how much we will cover in one period. We may fall behind at points, but if so we will try to catch up quickly. I reserve the right to change or modify the schedule as needed during the semester.

Wednesday, January 19th. State Action (continued). Read: MD, pp. 1252-54, 1260-62, 1268-83.

Week 3

Monday, January 24th. The Rise and Fall of Substantive Economic Due Process. Read MD, pp. 474-488.

Wednesday, January 26th. Modern Due Process. Read MD, pp. 488-525.

Week 4

Monday, January 31st. *Dobbs v. Jackson Women's Health Organization* discussion

Wednesday, February 2nd. Modern Due Process. Read MD, pp. 550-568.

Week 5

Monday, February 7th. Equal Protection – Beginnings. Read MD, pp. 635-43, 651-67.

Wednesday, February 9th. Equal Protection. Read MD, pp. 667-671, 678-718.

Week 6

Monday, February 14th. Equal Protection. Read MD, pp. 718-739.

Wednesday, February 16th. Equal Protection. Read MD, pp. pp. 756-783.

Week 7

Monday, February 21st. Voting. Read MD, pp. 790-805 (plus *Shelby County v. Holder* and *Brnovich* discussion).

Wednesday, February 23rd. Free Expression. Read MD, pp. 833-852.

Week 8

Monday, February 28th. Free Expression. Read MD, pp. 852-870, 879-885.

Wednesday, March 2nd. Free Expression. Read MD, pp. 885-921 (select cases)

Week 9: SPRING BREAK: March 7th through 11th. No class.

Week 10

Monday, March 14th. Free Expression. Read MD, pp. 921-945.

Wednesday, March 16th. Commercial Speech. Read MD, pp. 948-964.
ALSO: **TURN IN BRIEF**

Week 11

Monday, March 21st. Content Neutral Regulations. Read MD, pp. 964-981.

Wednesday, March 23rd. Expressive Conduct. Read MD, pp. 981-1006.

Week 12

Monday, March 28th. Schools & Prior Restraint. Read MD, pp. 1012-1022, 1057-61.

Wednesday, March 30th. Association. Read MD, pp. 1061-1095 – select cases.

Week 13

Monday, April 4th. Money and Speech. Read MD, pp. 1095-1122.

Wednesday, April 6th. Religion: Free Exercise. Read MD, pp. 1147-1166

- Plus discussion of Philadelphia v. Catholic Charities (2021) and Catholic Diocese v. Cuomo (2020)

Week 14

Monday, April 11th. Religion: Free Exercise. Read MD, pp. 1166-1183.

- Plus discussion of Carson v. Makin (2022)

Wednesday, April 13th. Religion: Establishment Clause. Read MD, pp. 1183-1201.

Week 15

Monday, April 18th. Religion: Establishment Clause. Read MD, pp. 1202-1230.

Wednesday, April 20th. Extra day for religion discussion.

Friday, April 22nd. Makeup class for Martin Luther King Jr. holiday: The 2nd Amendment. Read MD, pp. 1303-1320.

Reading Day and Final Exams Week from Tuesday, April 26 to Friday, May 6th.

Our Final Exam: TBD.