

## Constitutional Law II: The First Amendment

Prof. Susan Williams  
Office #270

Fall 2008

### Required texts:

Shiffrin and Choper, *The First Amendment* (4th ed.2006) (CB)

Shiffrin and Choper, 2008 Supplement (Supp.)

Reproduced Materials (R) (available at IU Bookstore)

### Reading Assignments:

The following outline is a tentative schedule of reading assignments. I will make specific assignments for each week at the end of the preceding week. As the semester progresses, I will probably vary some of the assignments that are listed below, but this is the present plan.

### Examinations and Grading:

There will be one final examination in this course. It will be a take-home exam. I will provide more specific information about the format towards the end of the semester.

Your grade in the course will also depend on your class participation. I will raise or lower grades based on the quantity and quality of your contribution to class discussions. Since you obviously cannot participate if you are not present, class attendance will affect your grade.

### Part I: Freedom of Speech

#### I. Introduction

R 1-28

#### II. The History of the Free Speech Clause

R 29-60

#### III. The Purpose of the Free Speech Guarantee

##### A. The epistemological purpose: the search for truth

R 61-82

##### B. The political purpose: the foundation of democracy

R 83-112

##### C. The psychological purpose: personality and self-fulfillment

R 113-30

##### D. The sociological purposes: utility and toleration

R 131-38, 151-62

##### E. Current theory: Blends and Boundaries

R 139-50

#### IV. Government Regulation of Speech on the Basis of Content

##### A. Categories which the government may regulate based on content

###### 1. Subversive speech

CB 3-28

CB 28-50

###### 2. Libel and speech which invades privacy

CB 50-61, 66-68

CB 68-81, 256-64

- CB 81-95
- 3. Fighting words, hostile audiences, and offensive speech  
CB 120-32, 466-74
- 4. Obscenity and pornography
  - a. Obscenity: definitions and justifications  
CB 95-115  
CB 144-55
  - b. Harm to women  
CB 155-70; R 173-88
  - c. Near-obscene speech  
CB 212-20
- 5. Commercial speech  
CB 230-46  
CB 246-56
- 6. Hate speech  
CB 170-76; R 189-220  
CB 264-87
- B. Enforced Speech: The Right to Silence  
R 163-72; CB 494-507
- C. Government Control of Speech in Exchange for Benefits: Subsidies, tax expenditures,  
and public employment  
CB 391-411; Supp. 5-9  
CB 416-41; Supp. 4  
CB 522-30; Supp.9-15
- V. Government Regulation of Speech that is Content-Neutral
  - A. The Traditional Public Forum  
CB 357-63, 377-89
  - B. New fora: Non-traditional public places  
CB 363-77
- VI. Government Regulation Not Aimed at Speech: The Symbolic Speech Problem  
CB 178-87, 201-07, 220-29  
CB 187-200, 207-11
- VII. Some Special First Amendment Issues
  - A. Prior Restraints  
CB 311-21
  - B. Money in the Political Process  
CB 531-546  
CB 546-60; Supp. 16-19
  - C. Freedom of Association  
CB 507-22
- Part II: Freedom of Religion
  - I. Introduction and History  
R 221-30
  - II. The Purpose of the Religion Clauses
    - A. Enlightenment Liberalism  
R 231-42

- B. Protecting the Faith
  - R 243-52
- C. Secularism
  - R 253-68
- III. The Establishment Clause
  - A. Financial Aid to Religious Institutions
    - CB 565-88
  - B. Religion in Government Activities
    - 1. The public schools
      - CB 588-607, 631-37
    - 2. Government programs
      - CB 607-31, 637-42
  - C. Institutional Entanglement
    - CB 676-83
- IV. The Free Exercise Clause
  - A. The Definition of Religion
    - CB 669-75
  - B. Religiously Based Conflict with Government Regulation
    - CB 643-68
    - R 269-end
- V. Conflict Between the Clauses
  - CB 684-97

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Reading Assignment:

Wed., 8/27: R1-28