

**Religion and the First Amendment
SYLLABUS**

Fall Semester 2007

Thursdays, 1:55-3:55 pm, Rm. 75

Professor Angela Carmella

Office Hours, Rm. 418: Thurs. 4:00-6:00

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Assignments are from Leslie C. Griffin, **LAW AND RELIGION: CASES AND MATERIALS** (Foundation Press, 2007). Notice of any amendments or additions to this syllabus will be given in class and posted on TWEN.

Class 1. (August 23) Chapter I. Free Exercise of “Religion”

Read Pages 1-35

Class 2. (August 30) Chapter II. Introduction to Establishment

Read Pages 36-78

Class 3. (September 6) Chapter III. Individual Conscience and the State: The Military

Read Pages 84-114

Class 4. (September 20) Chapter III. Individual Conscience and the State: Medicine, Law

Read Pages 114-164

Class 5. (September 27) Chapter IV. Protecting “Free Exercise” of Religion: Constitutional Exemptions: From *Sherbert* to *Smith*

Read Pages 165-200, 683-694

Class 6. (October 4) Chapter IV. Protecting “Free Exercise” of Religion: Statutory Exemptions: From RFRA to RLUIPA

Read Pages 200-236

Class 7. (October 11) Chapter V. Church Autonomy: Disputes About Religious Employment; Tort Suits Against Religious Organizations

Read Pages 259-313

Class 8. (October 18) Chapter VI. An Establishment of Religion: Public Funding of Religion

Read Pages 314-372

Class 9. (October 25) Chapter VI. An Establishment of Religion: Prayer and the Pledge; Religious Symbols

Read Pages 372-416

Class 10. (November 1) Chapter VI. An Establishment of Religion: The Ten Commandments

Read Pages 417-466

Class 11. (November 8) Chapter VII. Religion and Politics; Standing to Sue

Read Pages 467-490; *Hein v. Freedom from Religion Foundation, Inc.* (2007)

Class 12. (November 15) Chapter VIII. Teaching About Religion and Science

Read Pages 563-612

Class 13. (November 27) Chapter IX. Comparative Religious Freedom

Read Pages 619-661

Class 14. (November 29) Chapter X. The Old and New Law of Religion

Read Pages 683-703

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COURSE REQUIREMENTS:

- * Preparation of weekly assignments as set forth in the Syllabus.
- * Weekly attendance and participation, and preparation for and participation in specially assigned panel discussions. PLEASE NOTE: You are responsible for attending class. A sign-up sheet will be handed out at the beginning of each class. Anyone missing more than 25% of the class sessions will be administratively withdrawn from the seminar.
- * Final Paper (together with all related writing assignments), as set forth below.

COURSE OBJECTIVES:

- * To gain a firm understanding of the overall jurisprudence of the Religion Clauses and a mastery of one's paper topic.
- * To understand the role of the Supreme Court, Congress and the Executive, state counterparts, religious institutions, interest groups and individuals in the development of the jurisprudence of the Religion Clauses.
- * To grapple with the meaning of religious freedom in the context of pluralism.
- * To explore a variety of church-state models, including those of other nations.

I. GENERAL PARTICIPATION AND WEEKLY PANEL

In addition to your general participation in class, you will be required to play a special role three times during the semester. Each week I will assign four students to do the following tasks for the next class: two students will present the facts and basic arguments of the cases, and two other students will serve as commentators on the cases and other assigned materials. The commentators will email several questions about the readings to me by 5:00 pm Wednesday evening (the day before class), which I will circulate by email and post on TWEN. This will help focus our discussion. Your thoughtful preparation will be most appreciated.

II. PAPER

Schedule for Required Submissions:

* **Due by Monday, September 10:** 2 page description of your topic, the research you have done and plan to do, and your tentative thesis.

* **Due by Monday, September 24:** 5 page submission containing a detailed outline of the paper, to include your thesis, your research findings, your main arguments, and your conclusions. A bibliography should be attached to this submission.

* **Due by Monday, October 22: First Draft.** You should make this version as complete and thoughtful as possible. In many cases I will require additional drafts. **You must attach the previous draft to any new draft submitted** (so that I can see how you have responded to my comments and questions). Even if I do not require an additional draft, you are welcome to submit more than one draft for my review and comment.

* **Due by Friday, December 14: Final Paper.** Please attach all prior draft(s) which I have reviewed. This date is the last day of the exam period. **Depending upon your exam schedule, you may want to submit the final paper much earlier.**

* You must send each submission by email attachment or by hard copy in the box outside my office by 5:00 pm of the due date, at the latest. Each submission will be returned with comments as quickly as possible, and meetings will be scheduled to discuss your progress, as needed.

*Your final grade for the seminar will be based upon the following:

Class Preparation and Participation: 25%

Final Paper: 75%

*For AWR Credit: If you are using this seminar to fulfill your Advanced Writing Requirement, please note that my determination of your grade and my certification of your paper for AWR credit are two independent decisions. Therefore, in accordance with school policy, I may grade your Final Paper (and submit a final grade for the seminar) but still require you to continue work on the paper until it is certifiable under Seton Hall's AWR standards.

GUIDELINES FOR WRITING A PAPER

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Professor Angela Carmella

You must read **Seton Hall's AWR Web Page:**

(http://law.shu.edu/administration/registrar_bursar/advanced_writing_requirement/index.htm).

Also note: the Honor Code applies to paper preparation.

1. The standard for the paper is that of a satisfactory law review article. Your topic should relate to one or more of the major themes of the seminar and must include analysis of and commentary on applicable Supreme Court decisions (and decisions of other courts, where relevant).
2. You must let me know by Week 3 of the seminar whether you plan to use this paper to fulfill the Advanced Writing Requirement. If you have already satisfied the writing requirement, all the requirements of the seminar continue to apply.
3. Thorough and up-to-date research of federal and state cases, federal and state statutes, law review literature, and other materials (historical, theological, anthropological, psychological, political, philosophical, etc.) pertinent to your topic is required (using both manual and computer-based sources).
4. Make sure your paper has a beginning, a middle and an end: a statement of your thesis, your analysis, and your conclusions. Include headings and subheadings to emphasize the structure of your argument. I will return for re-doing any careless or sloppy submission (e.g., disorganized structure, obvious grammar and spelling errors, unchecked lower court decisions, downloaded string cites, etc.). No credit will be given for such submissions.
5. The paper should embody your work, your analysis, your conclusions. Secondary sources (e.g., law review articles) can help you get a sense of the scholarly debates, but they should not be at the center of your piece. You must demonstrate an awareness of the scholarly literature on your topic (even if only in the footnotes), but law review commentators should not control what you say. **Do not rely on secondary sources when you can easily make use of the primary source** (for instance, don't rely on a law review article's description of a case. Read the case yourself, and describe it in your own words.) **Anything copied from another source must be placed in quotations and acknowledged in a footnote. The source of anything that is not your original thought or analysis must be acknowledged in a footnote.** If you find that you are citing the same scholar(s) over and over again, that is a signal that you are borrowing too heavily from secondary sources and that the paper is not the product of your own thinking. If you're not sure, please see me.
6. Use the footnotes to cite authorities and to develop sub-themes. This will ensure that the text flows smoothly, and will enable you to make subsidiary comments. Footnotes may also be used to cite contrary views.

7. PLEASE do not include lengthy statements of facts for cases that we have discussed at length in class. AND PLEASE do not use footnotes to pad your paper. String cites (e.g., long lists of cases that we have studied in class or lifted from law review articles) are unacceptable.

8. For footnotes, use the format set forth in A Uniform System of Citation, published by the Harvard Law Review Association (known as "The Blue Book"). I cannot certify a paper that does not conform to this footnote format.

9. Papers must be double spaced and typed, using font size 12. Footnotes (single spaced, font size 10) should be placed at the bottom of a page. Papers (including footnotes) must run at least 25 pages, and may be up to 30 pages in length. For anything longer than 30 pages, see me.

10. You may not use this seminar paper for credit in more than one seminar without permission from both professors. (And even with permission, the paper must be at least 50 pages.) You must inform me if you have done a paper on a similar topic in any other law school class, undergraduate or graduate course, or for work.

11. If you plan to develop the seminar paper into a publishable note or article, please consult with me.

12. The grade for your Final Paper will be based on clarity of expression, thoroughness of research, quality and depth of analysis, demonstrated understanding of the reasoning behind applicable precedent, ability to apply analysis and principles to new situations, ability to relate your topic to the larger themes of the seminar, and the use of proper format. I will also look carefully at how well you have addressed the comments and questions I raised on your topic statement, outline/abstract, bibliography, and earlier draft(s). An additional note: If I needed to repeatedly correct *persistent* errors (misreadings of cases, research errors, citation errors, general carelessness) throughout the entire drafting process, I will take that into account in assigning a final grade even if the errors do not appear in the final paper.

13. Here are just a few ideas for paper topics (You are not required to choose from this list):

1. Public Schools: curriculum and textbooks (who decides, concerns of censorship); whether children can express religious beliefs in their school work
2. Religious activities in public schools during non-instructional time (Religious Meetings, Distribution of Literature, the Equal Access Act)
3. Homeschooling and private religious schools (Licensing of teachers, standard curricula, accreditation)
4. Church/religious residential child care (standards, licensing) and the federal Act for Better Child Care

5. Religious accommodation and discrimination in employment, Title VII, and the proposed federal Workplace Religious Freedom Act
6. Prisoners' RLUIPA claims (worship, prayer, dress, diet, religious literature)
7. Privileged communications between clergy and penitent/counselee: e.g., child abuse statutes that require disclosure
8. Tax credits, deductions and exemptions (property, sales, income)
9. Tort liability of clergy (re: counseling, disciplinary action against member); sexual harassment claims against churches
10. Federal aid to religious schools abroad
11. Use of public property for religious displays; municipal seals containing religious images
12. Sacred lands for Native Americans
13. Church participation in politics and government regulation of lobbying and political activities; proposed protections for "pulpit speech" (without loss of tax-exempt status)
14. Intra-church disputes (property, discipline of members)
15. Religious speech in school as protected by the Free Speech clause, and implications for curriculum control by schools
16. Diplomatic recognition of the Vatican
17. Right of former church members to sue church for fraud/deceit/return of contributions
18. Provision of services (special education, therapeutic) to religious school students
19. RLUIPA case law in the land use context (zoning regulations prohibiting religious activity in homes or prohibiting location of a house of worship in residential area, or prohibiting social services offered by church; historic preservation of churches; eminent domain actions affecting churches, etc.)
20. Military personnel and conscientious objection; military chaplains
21. Proposed Bible in History and Literature Curriculum in the public schools
22. Trademark and tradenames of churches, and copyrights on sacred texts; what to do with schisms and differing versions of texts

23. Drug use as part of religious ceremony
24. Church involvement in sanctuary movement (and lawsuits) to protect illegal immigrants; the problem of employer sanctions (churches refusing to police immigration credentials of employees on behalf of the government)
25. Analysis of the "American Civil Religion"
26. Labor-Management Relations and NLRB jurisdiction over religious schools; unions and church employees
27. Analysis of constitutional law treatment for certain religious communities that have been active in litigation (e.g., Church of Scientology, Amish, Christian Science, Jehovah's Witnesses)
28. Charitable solicitation statutes; how religious groups are regulated, exempted.
29. Rights to refuse medical treatment, blood transfusions; religious objections to autopsies.
30. Accommodating religious diversity in public schools; religious books and holiday celebrations in the classroom (the "December dilemma")
31. Status and analysis of Moment of Silence legislation
32. Analysis of specific state constitutional protections for free exercise and non-establishment (how they differ from federal, whether broader, etc.) and cases decided under them
33. Constitutional analysis of education tax-credits, vouchers, "school choice" plans after Zelman and Locke
34. Comparative analysis of church-state relations in U.S. and another nation (e.g., treatment of minorities in U.S. vs. another nation, for instance, Muslims in France)
35. Questions of public funding for anti-religious (or religious) art, literature, music, or performance; historical governmental controls on "blasphemy"
36. Religious considerations in child custody disputes/ in adoptions.
37. Discovery of church records and their use in litigation
38. Analysis of one particular Supreme Court Justice's opinions, development of his/her theories in the church-state area

39. Compare/contrast opinions of two (or more) justices in church-state area, or compare/contrast opinions of one justice in two areas (free speech and free exercise, e.g.)
40. Write the Supreme Court opinion for a pending case (or lower court decision)
41. Religious garb (clothing) statutes and how they restrict people from employment
42. The impact of the Religious Freedom Restoration Act in the federal area
43. An analysis of the state RFRA's and related case law.
44. Clinton's/Bush's aggressive protection policies on religious liberty (statements, executive orders, solicitor general's positions on litigation) as compared with prior administration's policies; as compared with Congress; as compared with the judiciary.
45. Bankruptcy and rights to tithe (contribute money) to churches
46. The Ashcroft Amendment to the 1996 Welfare Reform Act, permitting federal funding of church-sponsored social services, and Bush's Faith Based Initiative funding proposals.
47. Standing to sue under the Establishment Clause/ as compared with Free Exercise standing
48. Pick a particular interpretive philosophy and analyze cases from that perspective.
49. Analyze whether/how cases deal with group identity (race, ethnic, class) as well as religion.
50. New immigrants and the religious traditions they bring to America and how courts and legislatures treat them. Or a historic look at immigrants and their religious traditions and how courts and legislatures treated them.
51. Prayer meetings in the oval office/attorney general's office.
52. Religious groups as participants in the scientific debates on cloning, medical research.
53. Sexual abuse by clergy: criminal prosecutions of, and tort liability for, churches; resulting bankruptcy of church institutions.
54. Government anti-terrorism surveillance of religious groups under the Patriot Act
55. Teaching evolution vs. creation science vs. "intelligent design" in public schools.

56. The role of religion in the thinking of a judge, legislator, executive.
57. Religious law and religious tribunals: how do they/should they relate to federal and state law?
58. Civil law solutions to the “get” issue (in Judaism) so that a divorced spouse can remarry.
59. Dept. of Justice’s Religious Freedom project, which focuses on religious discrimination claims.
60. The role of the Equal Protection Clause and civil rights statutes in addressing religious discrimination.
61. Exploring religion/religious conduct as an “inherently (or presumptively) beneficial” activity in various state laws.
62. Oath taking on the Koran (or other minority holy books).