

Constitutional Law: First Amendment Religion Clauses
Fall 2009
Professor Zoë Robinson

The Basics

Class Meetings: Mondays and Wednesdays, 1pm – 2:15pm, in Room 804

My Office Hours: Mondays and Wednesdays, 2:30pm – 3:30pm

My Office: Room 719

My Phone Number: 312-362-8541

My Email Address: zrobins2@depaul.edu

Course Overview

This course explores religious freedom in America under the First Amendment. The focus of the course is on the constitutional doctrines relating to the Free Exercise Clause and the Establishment Clause of the First Amendment, as well as the underlying assumptions and conflicts that have animated First Amendment constitutional argument over time. In addition, the course will examine the extent to which religious interest groups have influence over, and control the development of, religion clause jurisprudence, as well as the religion clauses in their broader (and narrower) context.

Course Requirements

You are required to:

- (a) do all of the required reading carefully and on time
- (b) show up to class on time, prepared, and participate in class discussion
- (c) take the final exam

Casebook and Readings

The casebook for this course is McConnell, Garvey, and Berg, “Religion and the Constitution” (Second Edition, Aspen). “CB” refers to pages in our casebook. The course also relies heavily on supplements supplied by me; these will be made available on the course website one week before the class. Supplemental readings are marked “Supp.” **Be aware that this course does not rely on the organizational structure of the casebook, therefore you should use the casebook as directed** (i.e. for individual cases or readings) and not take anything from the way the book is organized (which is very different from the structure of this course).

Note on reading assignments: the reading assignments will average 20 pages per class (or 40 pages per week). Sometimes there will be a little less, and sometimes a little more. The readings themselves are challenging, so leave yourself sufficient time to complete them. In addition, each class builds on the previous classes so you should not let yourself get behind – it will be difficult to catch up.

You should also be aware that I call on students in class, by name, at random, and without warning. If you are unprepared for any class you must tell me beforehand via email; you will have two “free passes,” if you continue to be unprepared after that, I reserve the right to reduce your grade.

Note on class decorum: (1) Please arrive on time for class. Late arriving students are distracting for everyone. Similar to being unprepared, it is a bad idea to be late. (2) Please do not talk during class, either verbally or via IM. (3) Please do not use your laptop computer during class for things other than taking notes, use of the internet is distracting for everyone.

Grading Policy

Examination: Your grade will be determined largely on the basis of the final exam. The exam will be an in-class, three hour exam open notes exam. The exam will cover *all* assigned reading as well as anything we discuss in class. I will hold an exam review session at the end of the semester and will answer questions about the exam in detail at that point.

Participation: Class participation is important – the issues we will study are fascinating, but also challenging and active participation is essential to your learning and understanding. I reserve the right reduce or increase your grade based on classroom participation. Classroom participation will be measured by the quality and not the quantity of your contributions.

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Syllabus

Note: there will be no class on 9/7 or 11/25.

<p>#1 August 24</p>	<p style="text-align: center;">I. Introduction</p> <p>A. The Clauses, Supp. 1.1</p> <p>B. Overview of the Interpretive Debate</p> <p style="padding-left: 40px;">1. Methodological options, Supp. 1.2</p> <p style="padding-left: 40px;">2. Use of history in religion clause interpretation</p> <p style="padding-left: 80px;">a. Originalism and the religion clauses, Supp. 1.3</p> <p style="padding-left: 80px;">b. The case against, Supp. 1.4</p>
<p>#2 August 26</p>	<p style="text-align: center;">II. History and the Religion Clauses</p> <p>A. Pre-Adoption Views</p> <p style="padding-left: 40px;">1. Early religion clauses: state (colonial) constitutions and charters, Supp. 2.1</p> <p style="padding-left: 40px;">2. Religion in the post-revolution states, Supp. 2.2</p> <p style="padding-left: 40px;">3. Perspectives on religion, CB 29-35</p>
<p>#3 August 31</p>	<p>B. Adoption of Religion Clauses (Primary Sources)</p> <p style="padding-left: 40px;">1. Political arguments for religious protection</p> <p style="padding-left: 80px;">a. John Locke, A Letter Concerning Toleration, CB 38-40</p> <p style="padding-left: 80px;">b. George Washington, Letter to the Religious Society Called Quakers, CB 42</p> <p style="padding-left: 80px;">c. Thomas Jefferson, Letter to a Committee of the Danbury Baptist Association, CB 42</p> <p style="padding-left: 40px;">d. Virginia Declaration of Rights, CB 45-46</p>

	<ul style="list-style-type: none"> e. A Bill for Establishing Religious Freedom, CB 54-55 2. Framing the First Amendment <ul style="list-style-type: none"> a. Congressional debates, CB 58-62 b. Background, Supp. 3
#4 September 2	<ul style="list-style-type: none"> C. Adoption of Religion Clauses (Secondary Sources) <ul style="list-style-type: none"> a. Establishment Clause, Supp.4 b. Free Exercise Clause, CB 87-94
#5 September 9	<p style="text-align: center;">III. Opening Issues for Judicial Review</p> <ul style="list-style-type: none"> A. Fourteenth Amendment Incorporation of the Religion Clauses <ul style="list-style-type: none"> 1. Early view, <i>Permoli</i>, CB 71-72 2. The Fourteenth Amendment and Incorporation, CB 72-73 (Note 2) 3. Incorporation of the religion clauses, CB 73-74 (Note 3) 4. Against incorporation, <i>Newdow</i>, CB 74-76 B. Standing and Religion Clause Claims <ul style="list-style-type: none"> 1. Standing Redux, Supp. 5 2. Constitutional standing (<i>Hein</i>), Supp. 5
#6 September 14	<ul style="list-style-type: none"> 3. Prudential standing (<i>Newdow</i>), Supp. 6.1 C. Defining Religion <ul style="list-style-type: none"> 1. Relatively restrictive understandings <ul style="list-style-type: none"> a. <i>Davis</i>, CB 119-120 b. <i>Yoder</i>, Supp. 6.2
#7 September 16	<ul style="list-style-type: none"> 2. Relatively expansive understandings <ul style="list-style-type: none"> a. <i>Frazee</i>, Supp. 7.1

	<p>b. <i>Welsh</i>, Supp. 7.2</p> <p>3. Autonomy-based resistance</p> <p>a. Resolving validity and sincerity of belief: <i>Ballard</i>, Supp. 7.3</p> <p>b. Resolving organizational schisms: <i>Jones v. Wolf</i>, Supp. 7.4</p>
	<p style="text-align: center;">IV. Free Exercise Clause</p> <p>A. Defining the Free Exercise Clause Issues</p> <p>B. Action-Belief Dichotomy</p> <p>C. Burdens on Religious Conduct (Accommodation Debate)</p> <p>D. Purpose (Values) of the Free Exercise Clause</p>
	<p style="text-align: center;">V. Establishment Clause</p> <p>A. Defining the Establishment Clause Issues</p> <p>B. Baseline Approach</p> <p>C. Carve-Outs</p> <p>D. (Cash) Subsidies for Religion</p> <p>E. Coercion into Religion</p> <p>F. Proselytizing and Endorsing</p> <p>G. Purpose (Values) of the Establishment Clause</p>
	<p style="text-align: center;">VI. Political Accommodation of Religion (Reconciling the Clauses)</p> <p>A. Judicially Permitted Accommodations</p> <p>B. Judicially Disallowed Accommodations</p> <p>C. Political Animation (Religion and Politics)</p>
	<p style="text-align: center;">VII. Religion Clauses in their Broader (and Narrower) Context</p> <p>A. State Protections for and from Religion</p>

	<p>B. International Protections for and from Religion</p> <p>C. An Introduction into Religious Freedom in other Jurisdictions</p> <p>D. An Introduction to Religion, Terrorism, and the Law</p>
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