

# RELIGION AND THE CONSTITUTION

Professor Charlow

Syllabus - Spring 2015

## Course Description:

This writing seminar explores in depth issues involving religion that arise under the First Amendment of the United States Constitution. We study the history of the relationship between government and religion, the evolution of our interpretation of each of the Religion Clauses (Anti-establishment and Free Exercise), and a number of areas in which problems repeatedly appear at the intersection of religion and the state. For example, we will examine aid to parochial schools and school vouchers, prayer in schools and government bodies, public religious displays and monuments, teaching of evolution in public schools, religious speech in various public settings, and rights of religious people and institutions to exemption from or special accommodation under existing laws, such as the Affordable Care Act (“Obamacare”).

## Learning Objectives:

By the end of this course, students should:

- have acquired a knowledge of the basic rules, doctrines, policies, and tests used by the courts to enforce the Religion Clauses of the U.S. Constitution;
- have perfected their ability to extract rules and rationales from cases, particularly U.S. Supreme Court cases;
- understand how to read, analyze, interpret, and argue for different interpretations of the constitutional provisions studied, and appreciate how courts (especially the U.S. Supreme Court) do this;
- recognize the roles that various institutions and constituencies play in the understanding and development of federal constitutional law, and the interplay of these;
- appreciate how and why our understanding of the Religion Clauses seems to have changed over time;
- be able to identify legal issues in facts; apply rules, doctrines, and policy to facts; and weigh evidence to reach factual inferences and conclusions;
- be able to construct legal arguments and identify flaws in an argument;
- know how to use policy to analyze and persuade;
- be able to present analysis orally and argue orally;
- have improved their ability to express themselves in writing and to draft well-written, well-researched, and well-argued legal writings;
- [*only for those satisfying Writing Requirement 1,*] know how to perform comprehensive legal research using a variety of primary and secondary sources.

### **Professor's Contact Information & Office Hours:**

office            100P  
phone            (516) 463-5166  
email             [robin.charlow@hofstra.edu](mailto:robin.charlow@hofstra.edu)  
secretary        Frances Avnet, Room 104

I maintain an “open door” policy instead of limited, specific office hours. That means you are welcome to stop by *any* time, separately or in groups, to ask questions about the course content or otherwise discuss school or related professional matters. Please formulate your questions beforehand so we can use the time productively. I am usually in Monday through Thursday from about 8-8:30 am until early afternoon, except during classes (Tues, Thurs. 10:30 am-12:00 pm and Wed. 10:00 am - 12:00 pm). If you prefer to meet at a specific time, or are unsuccessful finding me in, feel free to contact me to set up an appointment that is convenient for you.

Although it is a rare occurrence, if there are any last minute or emergency announcements regarding class or the course, I will contact you by email. You are expected to check your law school email account every day, just in case.

### **Electronics & Recording Policy:**

You may use laptop computers to take notes or access relevant information in this class. However, you may not use other electronic devices, and **you may NOT record this class** without my express permission. If you need a special accommodation for the use of recording or other electronic equipment, please see the Office of Student Affairs as soon as possible.

### **Attendance & Lateness:**

You are expected to arrive on time and prepared for each class.

The rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. **Thus, you may miss no more than four class sessions.**

The Office of Student Affairs has authority to excuse class absences for religious reasons and in cases of truly compelling hardship. If you wish to claim a particular absence as excused, and

thus not counted against your maximum number of allowable absences, you must take that issue up with the Office of Student Affairs – NOT with me. **I will mark an absence as excused if and only if I receive a communication from the Office of Student Affairs to that effect.**

**If you exceed the permitted absences by not attending class, you will be administratively withdrawn from the course. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. Excessive absence may lead to additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners or other state bar examiners.**

Late arrivals are disruptive to the class. For this and other reasons, please make every effort to arrive on time to class, and to return on time from a class break. **If you are repeatedly late to class, your grade may be lowered.**

### **Casebook:**

McConnell, Garvey & Berg, RELIGION AND THE CONSTITUTION (3<sup>rd</sup> ed. Wolters Kluwer 2011), plus Supplementary updates as indicated below

### **Assignments:**

<u>Week</u>	<u>Date</u>	<u>Topic</u>	<u>Assignment (Text)</u>
1	Jan. 14	Defining Religion History	pp. 761-786, 798-802 pp.15-18, 29-35,58-69
2	Jan. 21	Free Exercise Original intent Mormon cases Modern exemptions rise ( <i>Sherbert</i> )	pp. 121-139 pp. 147-154 pp. 159-173
3	Jan. 28	Free Exercise Modern exemptions fall ( <i>Smith</i> ) Post- <i>Smith</i> : RFRA, <i>Boerne</i> , RLUIPA	pp. 173-186 pp. 186-197 <b>Topic Descrip'n Due</b>
4	Feb. 4	Free Exercise Current Issues:	

		<i>Smith</i> – (neutral, gen’ly applic’bl)	pp. 198-211
		heightened scrutiny - burdens	pp. 211-225, <i>Hobby Lobby</i> (Supp.)
5	Feb. 11	Free Exercise – Current Issues: heightened scrutiny - governmental interests	pp. 232-244
		Establishment Legislative Accommodation	pp. 257-262, 270-282, 283-296
6	Feb. 18	Establishment Government Aid: Introduction & History	pp. 367-382 [bkgnd. 382-
399]		“No aid” ( <i>Lemon</i> )	pp. 399-415 <b>Outline, Biblio. Due</b>
7	Feb. 25	Establishment Government Aid (cont’d): Neutrality State Restrictions on Aid ( <i>Davey</i> )	pp. 432-455 pp. 458-470
8	Mar. 4	Schools & Legislatures prayer  evolution and creationism	pp. 533-564, <i>Greece v. Galloway</i> (Supp.) pp. 606-620
9	Mar. 11	Public religious displays crèches Ten Commandments	pp. 564-579 pp. 587-605 <b>First Draft Due</b>
10	Mar. 18	Religious speech public fora public schools freedom of association	[bkgnd. pp. 644-652] pp. 653-665 pp. 673-686 pp. 691-699

		government vs. private	pp. 699-711, <i>Salazar v. Buono</i> (Supp.)
11	Mar. 25	Student Presentations	read assigned papers
12	Apr. 1	Student Presentations	read assigned papers
13	Apr. 15	Student Presentations	read assigned papers
14	Apr. 22	Student Presentations *if time, Film: <i>The Lord Is Not on Trial Here Today</i>	read assigned paper

**Grading, Paper Assignments, and Schedule:**

This course is a seminar. Thus, all students must be prepared for and participate in the class discussion every week. There will be no final exam. Grades will be based on a combination of a grade on written work (about 60% of the final grade—explained below) and a grade for class participation (about 40% of the final grade). Grades for class participation will consider the quality, not simply the quantity, of your participation. Presenting and acting as a “Reader” for someone else’s paper (explained below) will count as components of the class participation portion of the grade. You have a choice of two different ways to satisfy the writing component:

**Writing Option #1.** You may choose to write a substantial *research* paper of a minimum of 20 pages. This will satisfy Writing Requirement I or II, as you elect. You may write on any topic of interest within the subject matter of the course. If you have trouble identifying a paper topic, look through the miscellaneous materials in the Religion topics file in the file cabinet along the wall outside my office, or come speak with me. A written **topic description** of about a paragraph or two long explaining what you intend to write about will be due no later than the start of class on **January 28**. A **detailed** explanation of your thesis and how you plan to establish it (an “**outline**,” but written out in prose form), together with a **bibliography**, will be due no later than the start of class on **February 18**. I will discuss each of these with you, highlighting any issues that need to be addressed before you write your first draft. A **complete first draft** will be due no later than the start of class on **March 11**. Your first drafts will be returned to you with extensive comments, and you will be responsible to **arrange to meet** with me to discuss these comments before you do your presentations (explained below). The **final** version of your paper is due no later than **one week after your presentation**.

**Writing Option #2.** Alternatively, you may choose to write three shorter papers of about 7 pages each, for a total of a minimum of 20 pages. This option satisfies Writing

Requirement II. If you elect this option, there is no requirement that you do research beyond the material assigned for class, although, of course, outside research is permitted. You may write on any three topics of your choice within the subject matter of the course. For example, you could: 1) select some of the problems or questions in the book notes that we do not go over in class and try to answer or address them; 2) explain why you believe a case we studied reached the wrong conclusion, and rewrite the analysis in the opinion as you think it should have been written; or 3) examine an issue of current events that raises a Religion Clause issue and attempt to resolve it. If you select this option, a **topic statement** of what you intend to write about in your first paper is due **January 28**. Your **first paper** is due on **February 18**, and your **second paper** is due on **March 11**. I will return these two submissions to you with written comments and you must **arrange to meet** with me the week you get these back to discuss them. Each of the first two submissions must then be *rewritten*, taking into account my comments. Your **final paper** is due no later than **one week after your presentation**.

Whichever writing option you select, all writings **must include substantial logical reasoning and analysis concerning legal matters**. They should **not be solely descriptive, nor simply report your conclusions or emotions**. You are expected to consider alternative arguments in all your writings, and to improve and refine your written work as you progress through the semester.

Standard Bluebook form should be used to cite sources used in your papers. You are expected to know and understand what constitutes plagiarism, and never to engage in it; if you have any doubt whatever about what is or is not plagiarism, please consult me. Your written work will be graded based on its thoroughness, clarity, accuracy, and depth.

At each of the last several class meetings, students choosing Option #1 will present their paper thesis to the rest of the class, and students choosing Option #2 will present on a topic from one of their three writings. Presenters will explain their thesis or topic, identify issues for discussion, and lead the discussion. In each presentation week, someone who is not presenting that week will be assigned as a "Reader" for each of the works being presented. Each Reader will have read the draft version of the paper being presented to which he or she is assigned. The Reader is responsible for helping the writer/presenter to refine his or her work and for helping to progress the class discussion by coming prepared with questions and/or comments. Whether or not you are a Reader in any given week, everyone is expected to participate in the discussion on all topics.

If you have any questions about the course or the assignments, please feel free to come speak with me at any time. If you have trouble meeting any of the deadlines, please see me immediately.