

## **Freedom of Religion in the US, Cases and Controversies**

School of Continuing Studies, Georgetown University

**Wednesday 6:15-8:55 pm**

Summer 2009

Instructor: Michael Kessler

### **Course Description**

In many ways, the hallmark achievement of the American founding was creating a democratic system that protected individual rights, notably freedom of religion and conscience. The 1st Amendment aimed to protect citizens from encroachment by the state upon their conscience, to prevent a religious group from hijacking the political order, and to ensure religions had the freedom to pursue their noble ends unfettered by state administration. This course will examine the history and context of the Constitution's protections for religious freedom and the ways that these principles have played out over time--in cases, popular opinion, and political wrangling.

The course will be structured around four units.

1. We will explore philosophers, theologians, and sermons from the colonial period for their views on tolerance, freedom, and the relation of religion and government, as well as gain a sociological and historical view of the diverse practices of religion in America.
2. We will explore the idea of religious freedom and toleration at the time of the drafting of the Constitution so we can glean some understanding of the meaning of the text.
3. We will explore how the free exercise of religion was interpreted over the past two hundred years, by reading cases in state and federal courts.
4. We will examine how the establishment clause was interpreted over the past two hundred years, by reading cases in state and federal courts.

We shall attempt to comprehend how political and legal theorists have understood the relationship between "Church and State" and whether religious and moral activity should be regulated and then to see how political and legal institutions have grappled with these questions in real-life conflicts.

The course will be conducted mostly through discussion and presentations by students, with some background lectures as appropriate. Students should be prepared to participate actively, based on a thoughtful reading of the texts.

### **Course Goals**

- To explore and understand the intellectual, material, and historical context of the US Constitution's protection of religious freedom
- To cover the basic history and theory of legal protections of religious freedom and prohibitions on establishment of religion by reading and analyzing cases in state and federal courts
- To explore and understand basic theoretical positions defining new potential paths for political and legal approaches to protecting religious freedom in the US

- To conduct an in-depth research project on a specific topic within this issue area, culminating in a 10 page paper exploring a significant topic.

### **Expectations and Assignments**

- Students should be prepared to participate actively in class discussions (25% of total grade)
- You should strive to achieve the ideals of a liberal arts education: free and candid exchange of ideas, rigorous critique of claims, and toleration for considering variant positions. This portion of the grade will take into account familiarity with the readings, your active and keen questioning of the text and your colleagues, attendance, and the quality of your class participation in general.
- Students must adhere to the principles of conduct set forth in the Georgetown University Undergraduate Honor System.
- Attend the class. If you have a legitimate excuse, I need to know it (by email). Otherwise, please be there.
- Thoughtful reading of the texts in advance of class.
- We will have very active class conversations. I will ask students to take on and defend positions. You will be encouraged to ask questions, make critiques of other's claims, and you therefore need to be prepared for every class as if you may be asked about any of the material.
- Complete the Paper. More details discussed in class.

### **Readings**

Most readings will be provided for you on handouts. A few short books will also be available for purchase.

### **Course Schedule**

May 20: First Class  
Read: Browse whole Constitution, esp. Arts. 1-4, and read closely Amendments 1-10

#### Background Materials:

##### *Religious Freedom in the Colonies*

May 27: James Hutson, Church and State in America, selections

June 3: Sermons from Elisha Williams (1744) and Jonathan Mayhew (1766)

##### *Religious Freedom at the Founding*

June 10: Handout from The Founder's Constitution; US Constitution, Bill of Rights

### *Religious Free Exercise*

- June 17: *What gets Protected?*  
*Reynolds v. US* (1878); *Sherbert v. Verner* (1963)
- June 24: *Employment Division, Department of Human Resources of Oregon v. Smith* (1990); and *Church of Lukumi Babalu Aye v. City of Hialeah* (1993)
- July 1: *What is Sincere Religious Belief?*  
*Warner v. City of Boca Raton* (from Winnifred Sullivan, The Impossibility of Religious Freedom)

### *Prohibiting Establishment*

- July 8: *Govt. funding of Religion in Education and the Lemon test*  
Selections from *Everson v. Board of Education* (1947); *Lemon v. Kurtzman* (1971)
- July 15: *Standing to Sue for breach of Establishment Clause*  
Selections from *Flast v. Cohen* (1968) and *Hein v. Freedom From Religion Foundation* (2007)
- July 22: *Govt. Displays of Religion*  
Selections from *Lynch v. Donnelly* (1984) and *County of Allegheny v. ACLU* (1989); *Pleasant Grove City v. Summum* (2008)
- July 29: *Govt. Endorsement of Religious Speech/Prayer*  
Selections from *Lee v. Weisman* (1992); *Marsh v. Chambers* (1983); *McCreary County v. ACLU of Kentucky* (2005); *Van Orden v. Perry* (2005)
- Aug 5: *Govt. Endorsement in Foreign Affairs*  
Selections from *LaMont v. Woods* (1991)