

**UNIVERSITY OF DAYTON
SCHOOL OF LAW**

Law 6115: Religion and the Law
Fall 2017: Room

Prof. CJ Russo

COURSE DESCRIPTION:

In light of the central role religion has played throughout American history, this course relies on seminal Supreme Court opinions and selected readings to examine the legal, educational, social, and policy issues arising in the relationship between law and religion in the United States. This proposed course is designed to provide students with a good working understanding of how landmark litigation involving religion in a wide array of areas such as its place in public schools to aid to faith-based institutions to its role in the public square (as evidenced in holiday displays) to issues involving matters of conscience (as reflected in disputes over contraception, abortion, and same sex marriage) and emerging issues on the rights or minority religions in an increasingly multi-cultural and multi-religious United States.

TEXT/REQUIRED READING:

1. Leslie C. Griffin, Law and Religion, Cases and Materials, 4th ed. (2016), Foundation Press, ISBN-13: 9781634605236
2. Materials as Distributed in Class
3. Cases named in Syllabus

CLASS REQUIREMENTS

ATTENDANCE

Students are required to attend all classes, be prepared, and (hopefully) participate in class. Students with more than two unexcused absences may have their grades reduced by one grade increment. Please note that I take attendance daily by passing a sign-in sheet around. Please try to be on time for the start of class. Also, please turn your cell phone off before coming to class.

PARTICIPATION

This class employs a modified Socratic method and may call on students alphabetically if insufficient volunteers offer to present on cases.

EXAMINATION

There will be a closed book final examination on

OFFICE HOURS

My office is located in 651 A Fitz Hall. If I am not traveling, I am in every day. Thus, please feel free to stop by at any time, no appointment is necessary. If it is inconvenient for you to just stop by, please let me know and we can schedule an appointment at a mutually convenient time. You can reach me by phone in my office at (937) 229-3722 or in my home at (937) 299-6545, or e-mail at crusso1@udayton.edu

PROJECTED COURSE OUTLINE/ SYLLABUS (30 class hours)

- Unit 1 Introduction: The History of the Religion Clauses 3 Class Hours**
 Text, C. 1, 1-18, 29-44; skim 18-29; C. 2, 45- top 46, 63-73
 Cantwell v. Connecticut, 310 U.S. 298 (1940)
 Lemon v. Kurtzman, 403 U.S. 602 (1971)
 Lee v. Weisman, 507 U.S. 577 (1992)
 Lynch v. Donnelly, 465 U.S. 668 (1984)
 Town of Greece v. Galloway, 134 S. Ct. 1811 (2014)
- Unit 2 State Aid to Faith-Based Educational Institutions 4 Class Hours**
- Unit 2A K-12 schools**
 Text, C. 3, 134-162
- 1) Introduction**
 Pierce v. Society of Sisters, 268 U.S. 510 (1925)
 Cochran v. Louisiana State Bd. of Educ., 281 U.S. 370 (1930)
 - 2) Student Transportation**
 Everson v. Board of Educ., 330 U.S. 1 (1947)
 Wolman v. Walter, 433 U.S. 229 (1977)
 - 3) Books and Instructional Materials**
 cf. Abington v. Schempp, Murray v. Curlett, 374 U.S. 203 (1963)
 Board of Educ. v. Allen, 392 U.S. 236 (1968)
 Mitchell v. Helms, 530 U.S. 793 (2000)
 - 4) Tax Status, Tuition, and the Use of Public Funds**
 cf. Walz v. Tax Comm'n, 397 U.S. 664 (1970)
 Lemon v. Kurtzman, 403 U.S. 602 (1971)
 Mueller v. Allen, 463 U.S. 388 (1983)
 Zelman v. Simmons-Harris, 536 U.S. 639
 Trinity Lutheran v. Pauley, cert granted 136 S. Ct. 891 (2016)
 - 5) Student Services/ Secular Instruction**
 Meek v. Pittenger, 421 U.S. 349 (1975)
 Wolman v. Walter, 433 U.S. 229 (1977)
 Grand Rapids v. Ball, 473 U.S. 373 (1985)
 Aguillar v. Felton, 473 U.S. 402 (1985)
 Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993)
 Board of Educ. of Kyrias Joel . . . v. Grumet, 512 U.S. 687 (1994)
 Grumet v. Cuomo, 659 N.Y.S.2d 173 (N.Y. 1997), Grumet v. Pataki,
 697 N.Y.S.2d 846 (N.Y. 1999), cert. denied, 528 U.S. 946 (1999)
 Agostini v. Felton, 521 U.S. 203 (1997)
 Mitchell v. Helms, 530 U.S. 793 (2000)

Unit 2B Higher Education

Tilton v. Richardson, 403 U.S. 672 (1971)
 Hunt v. McNair, 413 U.S. 734 (1973)
 Bob Jones Univ. v. U.S. 461 U.S. 574 (1983)
 Locke v. Davey, 540 U.S. 712 (2004)

Unit 3 Religious Activity In Public Educational Institutions 5 Class Hours

1) Religious Instruction in the Public Schools

Illinois ex rel. McCollum v. Board of Educ., 333 U.S. 203 (1948)
 Zorach v. Clauson, 343 U.S. 306 (1952) 1157

2) (a) Student Prayer and Moments of Silence at School Functions

Text, C. 2, 73-100 (prayer)
 Engel v. Vitale, 370 U.S. 421 (1962)
 Abington v. Schempp, Murray v. Curlett, 374 U.S. 203 (1963)
 Wallace v. Jaffree, 472 U.S. 38 (1985)
 Marsh v. Chambers, 463 U.S. 783 (1983)
 Lee v. Weisman, 505 U.S. 577 (1992)
 Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000)

(b) School Board Prayer

Cf. Marsh v. Chambers, 463 U.S. 783 (1983)
 Cf. Town of Greece v. Galloway, 134 S. Ct. 1811 (2014)
 Coles ex rel. Coles v. Cleveland Bd. Of Educ., 171 F.3d 369
 (6th Cir. 1999), petition for reh'g en banc denied, 183 F.3d
 538 (6th Cir. 1999)
 Bacus v. Palo Verde Unified Sch. Dist. Bd. of Educ., 52 Fed.App'x 355
 (9th Cir. 2002)
 Doe v. Indian River Sch. Dist. 653 F.3d 256 (3d Cir. 2011), cert. denied,
 565 U.S. 1157 (2012)

3) Student Sponsored Religious Activity in the Schools

Text, C. 3, 163-180
 Widmar v. Vincent, 454 U.S. 263 (1980)
 Equal Access Act, 20 U.S.C.A. §§ 4071-72
 Westside Community Sch. v. Mergens, 496 U.S. 226 (1990)

4) Religion and the Public School Curriculum

Text, C 10, 603-619, 629-688
 Epperson v. Arkansas, 393 U.S. 97 (1968)
 McClean v. Arkansas, 529 F. Supp. 1255 (E.D. Ark. 1982)
 Edwards v. Aguillard, 482 U.S. 578 (1987)
 C.H. ex rel. Z.H. v. Oliva, 226 F.3d 198 (3^d Cir. 1999)

Eklund v. Byron Union Sch. Dist., 154 Fed.Appx. 648 (9th Cir. 2005)
 C.F. v. Capistrano Unified Sch. Dist., 654 F.3d 975 (9th Cir. 2011)

5) Religious Symbols and Other Religious Influences in Schools/ on Public Property

Text, C 3, 102-134

Stone v. Graham, 449 U.S. 39 (1980)

Lynch v. Donnelly, 465 U.S. 668 (1984)

Allegheny County v. ACLU, Greater Pittsburgh, 492 U.S. 573 (1989)

Elk Grove Sch. Dist. v. Newdow, 542 U.S. 1 (2004)

Skoros v. City of N.Y., 437 F.3d 1 (2d Cir. 2006), cert. denied, 549 U.S. 1205 (2007).

6) The Use of Public K-12 School Facilities by Religious Groups

Lamb's Chapel v. Center Moriches . . . , 508 U.S. 384 (1993)

Good News Club v. Milford Cent. Sch., 533 U.S. 98 (2001)

Higher Education

1) Graduation Prayer

Tanford v. Brand, 104 F.3d 982 (7th Cir. 1997), cert. denied, 522 U.S. 814 (1997)

Chaudhuri v. State of Tenn., 130 F.3d 232 (6th Cir. 1997)

2) Speech/ Access to Facilities

Text, C. 3, 163-180

Widmar v. Vincent, 454 U.S. 263 (1980)

Rosenberger v. Rectors and Visitors of Univ. of Va., 515 U.S. 819 (1995)

Christian Legal Society v. Martinez, 561 U.S. 661 (2010), on remand sub nom. Christian Legal Soc'y v. Wu, 626 F.3d 483 (9th Cir. 2010).

Unit 4 Religion in Public Life: Holiday Displays, Speech2 Class Hours

Text, C. 3, 102-133

Lynch v. Donnelly, 465 U.S. 668 (1984)

McCreary Cty., Ky. v. American Civil Liberties Union of Ky., 545 U.S. 844 (2005)

Van Orden v. Perry, 545 U.S. 677 (2005)

Snyder v. Phelps, 562 U.S. 443 (2011)

Unit 5 Religion and Employment

5 Class Hours

C. 4, 181-215

Work Rules-Requirements

Braunfeld v. Brown, 366 U.S. 599 (1961)

Sherbert v. Verner, 374 US 398 (1963)

Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986), on remand, 925 F2d 47 (2d Cir. 1991), cert. denied, 501 U.S. 1218 (1991)

1) Religious Garb

Text, C 8, 443-471

Goldman v. Weinberger, 475 U.S. 503 (1986)

Singh v. McHugh, 18f. F. Supp.3d 201 (D.D.C. 2016)

Cooper v. Eugene Sch. Dist. No. 4J, 723 P.2d 298 (Or. 1986), appeal dismissed, 480 U.S. 942 (1987).

2) Employment in Religious Institutions

Corporation of Presiding Bishops v. Amos, 483 U.S. 327 (1987)

Employment Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872 (1990), reh'g denied, 496 U.S. 913 (1990); on remand, 799 P.2d 148 (Or. 1990)

Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunities Comm'n, 563 U.S. 903 (2011).

Unit 6	Religion and Matters of Conscience-Lifestyles	4 Class Hours
	Text, C. 5, 245-310	
	Griswold v. Connecticut, 381 U.S. 479 (1965)	
	Roe v. Wade, 410 U.S. 113 (1973)	
	Lawrence v. Texas, 539 U.S. 558 (2003)	
	Oberkfell v. Hodges, 135 S. Ct. 2971 (2015)	
	Webster v. Reproductive Health Servs., 492 U.S. 490 (1989)	
Unit 7	Land Use, Property, and Tax	2 Class Hours
	Text, C 7, 395-442	
	Walz v. Tax Comm'n of New York City, 397 U.S. 664 (1970)	
	City of Boerne v. Flores, 521 U.S. 507 (1997)	
Unit 8	The Rights of Minority Religions	2 Class Hours
	Text, C. 11, 689-721	
	Wisconsin v. Yoder, 406 U.S. 205 (1972)	
	Lyng v. Northwest Indian Cemetery, 485 U.S. 439 (1988)	
	Employment Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872 (1990), reh'g denied, 496 U.S. 913 (1990); on remand, 799 P.2d 148 (Or. 1990)	
Topic 9	Emerging Issues	Up to 2 Class Hours
	Readings TBA	