

**Department Seminar: Freedom of Religion in the USA, Cases and Controversies  
GOVT-455-01**

Department of Government, Georgetown University

**Wednesdays 2:15-4:05 pm**

Fall 2008

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. In the first unit, we will explore the idea of religious freedom at the time of the drafting and ratification of the Constitution so as to glean some understanding of the meaning of the text. We will explore philosophers, theologians, and the writings of some of the leading intellectuals of the founding era, as well as gain a sociological and historical view of the diverse practices of religion in America. In the second unit, we will examine how the so-called establishment clause was interpreted over the past two hundred years, by reading cases in state and federal courts. In the third unit, likewise, 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. In the fourth unit, we will read a few contemporary theorists who challenge us to think more carefully about how to protect religious freedom.

Our goal is not to decipher the particular legal issues of the cases we read so much as to understand how a political system like that in the US can deal with the problems of religion and morality that the legal cases expose. 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 through lectures, discussion, and presentations by students. 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



Sept. 17: Continue discussing materials from Sept. 10  
**Paper deadline #1:** By this class, you should have discussed (email or in person) your research topic.

Religious Freedom:

Sept. 24: *Reynolds v. US* (1878); *Sherbert v. Verner* (1963)

Oct. 1: *Employment Division, Department of Human Resources of Oregon v. Smith* (1990) and *Religious Freedom Restoration Act*

Oct. 8: *Church of Lukumi Babalu Aye v. City of Hialeah* (1993)  
**Paper deadline #2:** By this class, you will submit a draft outline, including summary of major research highlights

Oct. 15: *Warner v. City of Boca Raton* (we will use some materials from Sullivan, *The Impossibility of Religious Freedom*)

Prohibiting Establishment:

Oct. 22: *Everson v. Board of Education* (1947); *Lemon v. Kurtzman* (1971)

Oct. 29: *Lynch v. Donnelly* (1984)

Nov. 5: *Marsh v. Chambers* (1983); *Lee v. Weisman* (1992)  
**Paper deadline #3:** By this class, you will submit your comprehensive and annotated outline.

Nov. 12: *McCreary County v. ACLU of Kentucky* (2005); *Van Orden v. Perry* (2005)

New Directions:

Nov. 19: Read and discuss Winnifred Sullivan, *The Impossibility of Religious Freedom* (selections), selections from Michael McConnell

Nov. 26: **NO CLASS**

Dec. 3: Last Class  
Read and discuss Noah Feldman, *Divided by God*

**Final Paper due by 5pm on December 18.**