

POSC 3890: Religious Liberty and the Constitution

317 Tillman - MWF, 11:15-12:05

Professor Danny Frost

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What is the Constitutional place of religion in American society? Does the Constitution forbid prayer during public school hours or on school property? Do religious believers have the right to be “exempt” from laws that affect everyone else? Should religious student groups have the same access to university resources that secular student groups have? Does the teaching of evolution (or creationism) in public schools violate religious liberty? Though the religion clauses in the 1st Amendment are short (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”), they have been an ongoing source of controversy throughout American history. In this course seek to understand the history of these disagreements and the relevance of the religion clauses for contemporary issues.

This course will be taught as a Clemson Thinks² course. Clemson Thinks² courses are intended to help students develop critical thinking skills that can be used across the curriculum. We will spend time learning about the elements of thought, intellectual standards, and intellectual traits that lead to good thinking. We will apply insights about critical thinking to the subject matter and we will reflect on our own thinking processes throughout the semester. In-class and out-of-class assignments will be designed to help students develop critical thinking skills, including identifying and summarizing arguments, analyzing and evaluating arguments, and developing arguments on the topics we study in class. Students will take a critical thinking pretest and posttest to measure critical thinking skills. When students leave the course, they will have significant artifacts (such as the pro-and-con paper and their Moot Court briefs/opinions) that can demonstrate their critical thinking abilities.

Student Learning Outcomes:

1. Students will identify and summarize arguments in Supreme Court opinions and other course readings.
2. Students will identify assumptions of arguments.
3. Students will compare and contrast competing arguments.
4. Students will articulate arguments on both sides of an issue.
5. Students will analyze and evaluate arguments.

6. Student will develop well-reasoned arguments in response to arguments found in readings and articulate them clearly in course papers and/or the moot court exercise.

Required texts:

- Michael W. McConnell, John H. Garvey, and Thomas C. Berg, *Religion and the Constitution*, 2nd or 3rd ed. (New York: Wolters Kluwer, 2011). [RC]
- Linda Elder and Richard Paul, *Critical Thinking: Concepts and Tools* (Foundation for Critical Thinking, 2014). [CT]
- Additional readings will be available on Blackboard.

Assignments:

1. Take the California Critical Thinking Skills Test (CCTST) pretest (during first week of classes) and posttest (during last week of classes). You will not be graded on your performance on the test, but you will be graded on whether you complete it. Instructions about how to take the class will be announced in class.
2. Short paper 1: Identify five assumptions in an opinion. Discuss whether you think the assumptions are reasonable or not. Defend your views. Two pages or fewer.
3. Short paper 2: Discuss how and why the majority opinion and a dissent differ in a particular case. Compare and contrast the arguments given.
4. Arguing Pro and Con: Choose a topic that have studied that you have a strong opinion on. Write two pages defending your opinion and two pages defending the opposing position, but do not state which opinion is your own. Make each position as strong as it can be. Students will read and evaluate each other's papers. Ideally, the reader will not know which argument is the one you are most committed to.
5. Short paper 3: Select a Supreme Court opinion (majority, concurrence, or dissent). Evaluate the strength, consistency, and relevance of the arguments presented in it. Does the justice make a compelling case for his or her view?
6. For the Moot Court exercise, develop arguments on one side of the case. Write a brief or an opinion defending your position. Further details will be announced in class.
7. In-class debates: Periodically throughout the course we will hold in-class debates. Students will be graded individually for their contributions.
8. In-class presentations: students will describe the course material, make an argument about it, and raise critical questions for class discussion.
9. Various in-class assignments to develop critical thinking.

In-Class Assignments:

Students will participate in many in-class assignments, including short writing assignments and debates. For the most part, in-class assignments will be given full credit if they are completed. Two in-class assignments will be dropped from each student's final grade. If a student has an excused absence on the day of an in-class assignment, that student may make-up the in-class assignment by writing a 1-page, single-spaced argumentative paper on a topic we discuss in class within one week of the absence. Students wishing to exercise this option should speak with me.

In-class writing assignments may include listing questions about the course readings; generating arguments for or against an idea and then discussing those arguments with other students; "SEE-I" exercises (explained in class); summarizing the main points of the discussion; quizzes on the course material; and so forth.

Moot Court Exercise:

Each student will participate in the Moot Court exercise either as an attorney or a justice. Attorneys will individually write a six-page brief arguing for their position and will present oral arguments in court. Justices will hear the arguments and individually write a ten-page decision for the case. Papers are due one week after the moot court exercise is complete. Details about the moot court topic and process will be announced in class.

Debates:

Each student is required to participate in debates. The dates for the debates are listed in the syllabus and the topics of and participants in the debates will be announced a few days prior to the debate.

On the day of the debate the participants will bring a one-page paper that lists four or more arguments that can be made in favor of or against the proposition to be debated (the papers will be submitted to me after the debate and will be included as part of your debate performance). The arguments need not be more than one or two sentences in length, but can be longer. Students will then be randomly assigned into two teams: one in favor of and one against the proposition. The teams will confer for a few minutes to discuss what each person will say in their opening statement. Each participant will then have two minutes to make arguments for their position. After that we will open the floor for further discussion. The "judges" (students who not on a side of the issue) will vote on which side made the best case for their position.

Debate participants are graded individually rather than as a team. All participants can receive full credit if they merit it.

For-and-Against Paper:

In this assignment students will choose a controversial topic we discuss in class and then write two pages in favor of and two pages against a position on that topic. Students should write as strongly as possible on both sides; ideally, readers will not be able to tell which part of the paper is the student's real opinion. Using a rubric, students will grade each other's papers in class and give feedback about the strength of each side. I will also grade the paper, and only my grade will count towards the student's final grade.

In-Class Presentations:

Each student will have the opportunity to give two in-class presentations. On the day that a student presents, the student will describe the reading for the day for about five minutes, and then make an argument about the material and raise critical questions that will serve as a basis for class discussion. Students should come with at least five thoughtful and critical questions that can stimulate class discussion.

Criteria for All Written and Oral Work:

All papers and written portions of exams will be graded on three criteria: 1) demonstration of mastery of course materials, 2) persuasive argumentation, and 3) clear and coherent writing.

1) Demonstration of mastery of course materials: To receive a high grade on a written assignment, a student's paper must demonstrate awareness of the major positions and arguments regarding the issue. It must be clear to the reader that you have read and comprehended what is at stake in the controversy. The paper must also focus on the most important facts and issues and not get sidetracked with trivial or less-important matters. Doing this requires an exercise of judgment – you cannot include all facts and arguments, and so you must select those that you think are most important in describing and resolving the issue. Arguments in the paper must draw upon the student's knowledge of course material.

2) Persuasive argumentation: argumentation is the currency of legal discourse. In any good student paper there must be a clear thesis that is defended with rigorous and persuasive justifications. Provide evidence, legal and otherwise, that supports your claim(s). You must present opposing positions clearly and charitably in their strongest form, but also show why they are insufficient or lacking. There must be no "straw-man" attacks on opposing positions.

3) Clear and coherent writing: connected to (2), the writing in your paper should clearly and cohesively work to prove your thesis. Your writing should be easy to

follow, with one idea leading to another in a clear and coherent fashion. The selection of facts, issues, and arguments in the paper should clearly work to prove the thesis. The paper should be coherent in that all parts work to prove the thesis. There should be no disjointed points or arguments that do not connect with the main argument of the paper.

Attendance and Participation:

I welcome questions, concerns, rebuttals, requests for clarification, etc. A question or comment from a student demonstrates that that student cares enough about the material to think about its meaning and implications. Please participate!

Attendance will be recorded, but students will not be graded for attendance. In-class assignments, of course, are graded.

Grading:

The mid-term exam will count for 10% of the final grade; the final exam 10%; taking the CCTST pretest (2%) and posttest (3%); Moot Court paper 30%; Short papers 5% each; in-class assignments 5%; debates 5%; in-class presentations 10%; and the pro-and-con paper 10%. Final grades will be awarded as follows: A = 90-100, B = 80-89, C = 70-79, D = 60-69, F = 0-59.

Exams can be made-up only under exceptional circumstances. Late work will be assessed a 10% penalty for each day it is late.

Laptop Policy

As a general matter, laptops, tablets, and other electronic devices are not allowed in class. In my experience, too many students forgo the legitimate in-class uses of such devices and instead use them to check Facebook, news websites, or do other things that distract themselves and others from the class discussion. You are unlikely to learn much about Constitutional law if your attention is focused on the internet.

If you feel that you must take notes on a laptop or other device, please submit a signed, hand-written note to me which reads: "I hereby promise that I will use my laptop (or other device) ONLY for note-taking purposes while I am in Professor Frost's class. If I break this promise, I agree to be assessed a penalty or extra work at Professor Frost's discretion."

Please note that even if you do use a laptop to take notes, you must still bring paper to class in order to complete in-class assignments. These assignments must be handed in at the end of class.

Academic Integrity:

Clemson University's official statement on academic integrity reads: "As members of the Clemson University community, we have inherited Thomas Green Clemson's vision of this institution as a 'high seminary of learning.' Fundamental to this vision is a mutual commitment to truthfulness, honor, and responsibility, without which we cannot earn the trust and respect of others. Furthermore, we recognize that academic dishonesty detracts from the value of a Clemson degree. Therefore, we shall not tolerate lying, cheating, or stealing in any form."

If you are unsure about what constitutes plagiarism, please visit Clemson's website on academic integrity: <http://www.clemson.edu/academics/academic-integrity/index.html>.

Students with Disabilities:

Students with disabilities who need accommodations should make an appointment with Dr. Arlene Stewart, Director of Disability Services, to discuss specific needs within the first month of classes. Students should present an Academic Accommodation Letter from Student Disability Services when they meet with instructors. Student Disability Services is located in Suite 239 Academic Success Building (656-6848; sds-l@clemson.edu). Please be aware that accommodations are not retroactive and the new Academic Accommodation Letters must be presented each semester. I am happy to provide accommodations that are in accordance with University regulations.

If the Professor is Late:

In the event that the professor is late to class, wait in class until ten minutes after the scheduled start time. If the professor does not appear within ten minutes, class is officially canceled for that day.

Tentative Reading Assignments and Class Schedule (subject to change, as announced in class). Most page assignments are from McConnell et al., *Religion and the Constitution*.

Jan 7 Intro: no readings

TAKE THE CALIFORNIA CRITICAL THINKING SKILLS TEST (CCTST) WITHIN ONE WEEK

Jan 9 Critical Thinking I: Structures of Thought and the meaning of "Religion"

CT: 2-7

- RC: 761-769
- Jan 12 Critical Thinking II: Intellectual Standards and conscientious objectors
- CT: 8-10
RC: 769-784
- Jan 14 Critical Thinking III: Intellectual Traits
- CT: 13-15, 21-22
RC: 793-801
- Jan 16 NO CLASS, but read:
- RC: 1-14
- Smith, *The Rise and Decline of American Religious Freedom*, pp. 48-66
(online)
- Jan 19 NO CLASS: Martin Luther King, Jr., Day
- Jan 21 The Theory and Practice of Religious Establishments
- RC: 15-29
- Jan 23 Major Influences on Religious Liberty
- RC: 29-47
- Jan 26 Framing the First Amendment
- RC: 58-71
- Jan 28 Foreign and International Comparisons
- RC: 88-90, 95-113
- Jan 30 Historical Debate Over Free Exercise
- RC: 122-138
- Feb 2 Belief and Conduct: The Mormon Cases
- RC: 147-159

Feb 4 Modern Exemptions

RC: 159-173

Feb 6 The Demise of Exemptions

RC: 173-186

Feb 9 Free Exercise after *Smith*

RC: 186-202

Feb 11 Issues under Heightened Free Exercise Scrutiny I

RC: 225-244

Feb 13 Issues under Heightened Free Exercise Scrutiny II

RC: 244-257

Feb 16 *Burwell v. Hobby Lobby*

Reading on Blackboard

Feb 18 The “Clash” of the Clauses

RC: 257-263, 266-275

Feb 20 Pervasive Governmental Presence

RC: 296-313

Feb 23: Internal Church Disputes

RC: 319-331

Feb 25 Church Autonomy

Hosanna-Tabor v. EEOC (online)

Briefs (online)

Feb 27 MIDTERM

March 2 Intro to Government Aid to Religion

RC: 367-382

March 4 The *Lemon* Approach

RC: 399-415

March 6 *Lemon* Applied to Different Institutions

RC: 415-432

March 9 “Neutral” Aid?

RC: 432-438, 441-457

March 11 Is Neutrality in Aid Constitutionally Required?

RC: 458-470

March 13 “Strings” on Government Aid

RC: 481-492

March 16-20 NO CLASS

March 23 Religious Social Services and Government Aid

RC: 492-502

March 25 Compelled Statements of Belief

RC: 522-533

March 27 Prayer in Public Schools

RC: 533-536, 548-564

March 30 Prayer in Town Meetings

Town of Greece v. Galloway (online)

April 1 Public Religious Displays

RC: 564-579

April 3 Ten Commandments Displays

RC: 587-605

April 6 Evolution and Creationism in Public Schools

RC: 606-614, 620-633

April 8 Religious Voices in Case Law

RC: 715-727

April 10 Public and Religious Reasons

RC: 727-744

April 13 Religion and Free Speech

RC: 639-652

April 15 Religious Speech on School Property

RC: 661-665, 673-686

April 17 Does Free Exercise Add More Protection?

RC: 686-699

April 20 MOOT COURT

TAKE CCTST POST-TEST

April 22 MOOT COURT

April 24 Review

Final exam: Tuesday, April 28, 8:00 AM