

POSC 3890: Religious Liberty and the Constitution

227 Riggs Hall - TTh 2:00-3:15

Professor Danny Frost

Fall 2016

Office: 230I Brackett Hall

Office hours: Monday 1:00-3:00, Wednesday 9:00-11:00

Phone: 864-656-1097

dfrost@clemson.edu

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 articulate arguments on both sides of an issue.
3. Students will analyze and evaluate arguments.
4. 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. Exams (20%): Two exams will be given during the semester: a midterm (10%) and a final (10%). Exams will include both multiple-choice and written portions. The exams will require you to demonstrate your understanding of the course material and make arguments on a side of a controversy. The final exam is cumulative.
2. Take the California Critical Thinking Skills Test (CCTST) (5%): pretest (during first week of classes) and posttest (near the end of the semester). 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.
3. Case Briefs (20%): Case briefs require you to summarize and think critically about the course material. (See below for further details on this and other assignments.)
4. Arguing Pro and Con (10%): 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. Moot Court exercise (20%): Each student will participate in the moot court exercise as a justice or an attorney.
6. Debates (10%): Each student will be required to participate periodically in debates. Participants will be judged on the basis of how well they present their arguments and respond to counter-arguments. Debaters will be evaluated individually, but all can receive full credit.
7. In-class presentations (10%): students will describe the course material and raise critical questions for class discussion.
8. In-class assignments (5%): in-class assignments are designed to help students understand and engage with the course material.

Case Briefs:

A case brief is a short summary and an assessment of one case. You will be required to write 5 case briefs over the course of the semester. Brief the cases that appear in bold in the course schedule (e.g., **Case Brief: *Employment Division v. Smith*** on September 20). **Briefs should be no more than 600 words.**

There are a variety of formats for writing case briefs. For the purposes of this class, I would like you to include 6 sections:

- 1) The facts (in brief)
- 2) The legal issue
- 3) The holding
- 4) The reasoning of the majority opinion
- 5) The reasoning of any significant concurring or dissenting opinions
- 6) Analysis and evaluation

Sections 1-5 are primarily descriptive – that is, you must truthfully describe the case. You cannot include everything in your brief, so you must be selective and only choose those things that are most essential to getting the point across (that is why it's called a "brief"). Section 6 (analysis and evaluation) requires you to make arguments about what is said in the decision. In this section you could address some of the following questions (not meant as a checklist, but only to stimulate your thinking): who is right – the majority or the dissent? Why? Which reasons presented are the most persuasive? Is something crucial missing from the analysis of the Court? Can you think of a better way to resolve the issue? Did the Court go too far (or not far enough) in pursuing its vision of justice or the law? Did the Court interpret the Constitution correctly? Section 6 should occupy about 1/3 of your total brief.

DO NOT PLAGIARIZE THE CONTENT OF YOUR BRIEFS. Nearly every semester I have at least one clear case of plagiarism. This is a huge headache for the students and me. You can easily find briefs for all the cases in this course online, but resist the temptation to present others' work as your own. It is dishonest and cheats you out of the opportunity to develop your own capacity to think. Everything in your briefs must be either your own original work or clearly attributed to another author.

To ensure that you are writing case briefs well, submit your first brief, *Employment Division v. Smith*, to dfrost@clemsun.edu on September 27. Within a short time I will give you feedback for the brief. Credit will be given for submitting the brief, but the brief will not be graded at this time. All case briefs for the semester will be due at 11:59 PM on December 2, the day after the last day of class.

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.

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 briefly describe the reading for the day and then raise at least five thoughtful and critical questions that will serve as a basis for 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.

Non-Discrimination Policy:

Clemson University is committed to a policy of equal opportunity for all persons and does not discriminate on the basis of race, color, religion, sex, sexual orientation, gender, pregnancy, national origin, age, disability, veteran’s status, genetic information or protected activity (e.g., opposition to prohibited discrimination or participation in any complaint process, etc.) in employment, educational programs and activities, admissions and financial aid. This includes a prohibition against sexual harassment and sexual violence as mandated by Title IX of the Education Amendments of 1972.

Emergency Guidelines from Clemson University Police Department (Please Read)

All students and employees should be familiar with the following guidelines. For additional information about safety see <http://www.clemson.edu/cusafety/preparedness/>.

Evacuation:

- When evacuating buildings, do not use elevators as they may lose power, stranding riders.
- Familiarize yourself with the locations of stairwells and exits.

- Individuals needing assistance evacuating should move to a stairwell away from the hazard, dial 911, and provide the Dispatcher with their exact location and what they need regarding evacuation.
- When evacuating follow the instructions provided by Public Safety personnel to reach a safe place.
- To seek “Tornado Safer Places,” get to the lowest level of the building time allows, stay away from areas with windows and glass, and put as many walls as you can between yourself and the outside. In public buildings, bathrooms typically have an additional wall.

Active Shooter:

- Always call 911 as soon as you possibly can.
- Run away from the area, if it is safe to do so, time allows and the gunman is not nearby.
- Hide if the gunman is too close to your location. Find a safer place, lock and barricade doors, turn lights out and cell phones off or to vibrate.
- Fight. As a last resort, resolve to fight the intruder with everything you have at your disposal.

A short video prepared and presented by the Department of Homeland Security can be found at the following link: dhs.gov/video/options-consideration-active-shooter-preparedness-video.

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*.

Aug 18 Intro: no readings

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

Aug 23 Critical Thinking I: Structures of Thought and the meaning of “Religion”

CT: 2-7

RC: 761-769, 793-798

Aug 25 Critical Thinking II: Intellectual Standards; are Faith and Reason Compatible?

CT: 8-10

Leiter, *Why Tolerate Religion?* 26-42

Beckwith, *Taking Rites Seriously*, 13-14, 18-30, 46-51

Aug 30 Critical Thinking III: Intellectual traits; Public and Religious Reasons

CT: 13-15, 21-22

RC: 718-744

Sept. 1 The Theory and Practice of Religious Establishments

RC: 15-36

Sept. 6 The Virginia Assessment Controversy; Locke's *Letter Concerning Toleration*

RC 38-58

Sept. 8 Framing the First Amendment

RC: 58-71

Smith, *The Rise and Decline of American Religious Freedom*, 48-66
(online)

Sept. 13 Foreign and International Comparisons

RC: 88-90, 95-118

Sept. 15 Historical Debate Over Free Exercise and the Mormon Cases and PRO
AND CON PAPER DUE

RC: 122-138, 147-159

Sept. 20 The Rise and Demise of Exemptions

RC: 159-182

Brief: Employment Division v. Smith

Sept. 22 Free Exercise after *Smith*

RC: 182-202

Sept. 27 Issues Under Heightened Free Exercise Scrutiny

RC: 232-257

Sept. 29 MIDTERM

Oct. 4 *Burwell v. Hobby Lobby*, *Zubik v. Burwell*

Online

Brief: Burwell v. Hobby Lobby

Oct. 6 How Religious Liberty Became Controversial

Readings TBD

Oct. 11 Intro to Government Aid to Religion

RC: 367-382

Oct. 13 The *Lemon* Approach

RC: 399-426

Brief: Lemon v. Kurtzman

Oct. 18 “Neutral” Aid?

RC: 426-457

Oct. 20 Is Neutrality in Aid Constitutionally Required?

RC: 458-480

Brief: Locke v. Davey

Oct. 25 “Strings” on Government Aid; Religious Social Services

RC: 481-502

Oct. 27 The “Clash” of the Clauses

RC: 257-263, 266-283

Nov. 1 Pervasive Governmental Presence

RC: 296-313

Nov. 3 Internal Church Disputes

RC: 313-317, 323-347

Hosanna-Tabor v. EEOC (online)

Brief: Hosanna-Tabor v. EEOC

Nov. 8 Fall Break

Nov. 10 Compelled Statements of Belief; Prayer in Public Schools

RC: 529-536, 548-564

Nov. 15 Public Religious Displays

RC: 564-579, 587-605

Nov. 17 MOOT COURT

Nov. 22 TAKE CCTST TEST IN-CLASS

Nov. 24 Thanksgiving

Nov. 29 Evolution and Creationism in Public Schools

RC: 606-633

Dec. 1 April 15 Religious Speech on School Property

RC: 661-665, 673-686

FINAL: Thursday, December 8, 8:00 AM