POLS 3930-19
U.S. Constitutional Law and Religion
Saint Louis University
Spring 2023

Instructor:	Professor Christopher M. Duncan, Ph.D.
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Email:	chris.duncan@slu.edu
Office Hours:	Tuesday and Thursday 9-10:30 & by appointment (in-person or via Zoom)
Phone:	314-977-9862
Class Meets:	TBD on Tuesday and Thursday from 11:00-12:15

Course Objectives

This course is designed first to introduce the student to the historical, political, philosophical, and jurisprudential foundations of the religion clauses of the First Amendment to the United States Constitution. That amendment holds that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Those two clauses known as the "Establishment Clause" and the "Free Exercise Clause" form the constitutional basis of religious liberty in the U.S. Students will then be asked to explore the political and legal history and contexts surrounding the doctrinal development and the evolving understanding and interpretation of the relationship between law and religion in the U.S. as asserted by the U.S. Supreme Court. To accomplish this, students will immerse themselves in the wide-body of case law dealing with critical First Amendment questions as they emerge through challenges posed to tradition, statutory law, public policy, and the actions of various government actors and officials. Finally, students will be asked to apply what they have learned in such a way as to demonstrate not only an understanding of the current constitutional status quo and the tensions within it, but also to point out what they believe a future consensus might look like in this crucial area of civil rights and liberties.

Learning Outcomes

1. Students should be able to describe the historical and philosophical underpinnings of the Establishment Clause and the Free Exercise Clause.

2. Students should understand and be able to articulate the major lines of constitutional thinking regarding the relationship between religious liberty and the law as derived from Supreme Court decisions.

3. Students should be able to independently analyze the constitutional questions and issues raised by various litigants and other parties to particular court cases and provide their own reasoned positions on the appropriate outcome.

4. Students should be able to construct well-reasoned forecasts regarding possible future trends in constitutional jurisprudence regarding religious liberty in the United States.

Required Texts*

1. *Religion and the American Constitutional Experiment* (4th edition) by John Witte, Jr. and Joel A. Nichols.

2. *Religious Liberty and the American Supreme Court: The Essential Cases and Documents* by Vincent Phillip Munoz.

*Other readings will be provided electronically during the semester.

Requirements
Students will be expected to attend each class session with the required readings done and be prepared and willing to participate thoughtfully in the discussions of them. Grades for the course will be determined based on the following:

Midterm Exam	100 points
Final Exam	100 points
Research Paper	100 points
Participation	100 points
	400 points total

Grade Scale in Points

400-368=	A
367-360=	A-
359-348=	B+
347-328=	B
327-320=	B-
319-312=	C+
311-288=	C
387-280=	C-
279-220=	D
Below 220=	F

Participation
This course will be conducted as a seminar. This means that while the instructor will lead the class and provide material via a traditional lecture format, a significant focus of the course will be on informed and grounded student participation. Such participation will take the form of analytic and descriptive contributions, well-grounded and textually informed debates and discussions, and the rendering of informed and defensible opinions regarding the key questions raised by the cases and controversies contained in a myriad of Supreme Court opinions and arguments concerning the meaning of the U.S. Constitution's religion clauses. Students will be asked to present to the class on multiple occasions brief introductions and overviews of various cases assigned in the course. Students are expected to prepare fully whether presenting or not.

Examinations
Examinations will be "take-home" exams consisting of short answer questions and longer integrative essay questions.

Research Paper
The research paper for the course will be approximately 10-15 pages in length and will require the student to explore one supreme court decision in depth while providing an independent argument as to the Court's opinion(s) and the outcome in manner that mirrors in part a law review article. The paper will be graded in parts and the rubric and due dates for the various components will be handed out once the course is up and running. Students should begin thinking about what area of constitutional law or which constitutional questions related to the course content they are interested in exploring in depth.

Civility
A course like this can give rise to strong opinions and even vigorous arguments that will for some strike a very personal chord or challenge a deeply held belief in critical ways. This is to be expected and is part of the learning process. To the degree possible, students should approach classroom debate and discussion through a "hermeneutic of generosity" while stating their own positions with what some have called "confident humility." While some degree of "personalization" might be impossible to avoid, i.e., when a deeply held belief or idea is challenged or contradicted by another it can be difficult not to "take it personally," students are asked to measure their approach during discussions such that each person and their ideas and opinions are treated respectfully and all are accorded the basic dignity each individual deserves.

The use of cell phones, computers or other electronic devices during class is prohibited except as approved for note-taking. Receiving calls, texting or other behavior that detracts from course material will not be tolerated. Anyone engaging in such behavior will be asked to leave the class and the day will be counted as an absence for the first offense. For the second offense, the person engaging in the behavior will be asked to leave and not return to class for the rest of the semester.

Important Dates

March 13-17	Spring Break (No classes)
April 6	Holy Thursday (No classes)

Course Schedule

January 17-24 (4 sessions)

American Law and Religion in Historical and Political Context

Readings
Witte and Nichols: Chapters 1-3

January 31-February 7 (3 sessions)

The Politics and Philosophy of the First Amendment

Readings

Witte and Nichols: Chapters 4-5

Court Cases

Cantwell v. State of Connecticut (26)
Everson v. Board of Education of Ewing Township (67)

February 9-March 2 (7 sessions)

The Court and The Free Exercise Clause

Readings

Witte and Nichols: Chapters 6-7

Court Cases

Torcaso v. Watkins (97)
Sherbert v. Verner (132)
Employment Division, Department of Human Resources of Oregon v. Smith (356)
City of Boerne v. Flores (446)
Burwell v. Hobby Lobby Stores (592)
Reynolds v. United States (13)
Murdock v. Pennsylvania (City of Jennette) (42)
Minersville School District v. Gobits (29)
West Virginia State Board of Education v. Barnette (52)
Thomas v. Review Board of the Indiana Employment Security Division (220)
McDaniel v. Paty (210)
Wisconsin v. Yoder (195)
Goldman v. Weinberger (296)
Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos (312)
Church of Lukumi Babalu Aye, Inc. v. City of Hialeah (404)

Locke v. Davey (508)

March 2nd **Midterm Examination Handed Out**
March 9th **Midterm Examination Due**

March 7- April 13 (9 sessions)

The Court and The Establishment Clause

Readings

Witte and Nichols: Chapters 8-9

Court Cases

Epperson v. Arkansas (151)
Zobrest v. Catalina Foothills Scholl District 409)
Abington School District v. Shempp (112)
Everson v. Board of Education (67)
Zorach v. Clauson (91)
Wallace v. Jaffree (271)
Walz v. Tax Commission of the City of New York (156)
Lemon v. Kurtzman (178)
Mueller v. Allen (242)
Zelman v. Simmons-Harris (491)
Texas Monthly, Inc. v. Bullock (328)
McCreary County v. ACLU of Kentucky (544)
Agostini v. Felton (439)
Mitchell v. Helms (466)
Board of Education of the Westside Community Schools v. Mergens (371)
County of Allegheny v. ACLU, Greater Pittsburgh Chapter (334)
Santa Fe Independent School District v. Doe (461)
Lee v. Weisman (382)
Town of Greece, New York v. Galloway (580)
Bradfield v. Roberts (23)
Capitol Square Review and Advisory Board v. Pinette (414)
Rosenberg v. Rector and Visitors of the University of Virginia (422)
Good News Club v. Milford Central School (482)
Van Orden v. Perry (526)
Illinois ex rel. McCullum v. Board of Education (82)
Engle v. Vitale (105)
Stone v. Graham (217)
Edwards v. Aguillard (296)
Wildmar v. Vincent (227)
Lamb's Chapel and John Steigerwald v. Center Moriches Union Free School District (399)

Christian Legal Society v. Martinez (559)

April 18- April 25 (3 sessions)

Government, Religious Education, and the Court

Readings

Witte and Nichols: Chapter 10

Court Cases

Board of Education v. Allen (145)
Tilton v. Richardson (188)
Committee for Public Education and Religious Liberty v. Nyquist (201)
Witters v. Washington Department of Services for the Blind (293)
Zobrest v. Catalina Foothills School District (409)
Arizona Christian School Tuition Organization v. Winn (568)

April 27-May 4 (3 sessions)

Recent Developments and the Future of the First Amendment's Religion Clauses

Readings

Witte and Nichols: Concluding Reflections

In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West (chapter 4) by Wendy Brown

Court Cases
Obergefell v. Hodges [2015]
Zuibick v. Burwell [2016]
Masterpiece Cake Shop v. Colorado Civil Rights Commission [2018]
National Institute of Family and Life Advocates v. Becerra [2018]
Kennedy v. Bremerton School District [2022]
303 Creative LLC v. Elenis [currently before the Court]

May 4th **Final Examination Handed Out**
May 10th **Final Examination Due**
May 16th **Research Paper Due**

Academic Integrity
Academic integrity is honest, truthful and responsible conduct in all academic endeavors. The mission of Saint Louis University is "the pursuit of truth for the greater glory of God and for the service of humanity." Accordingly, all acts of falsehood demean and compromise the corporate

endeavors of teaching, research, health care, and community service through which SLU fulfills its mission. The University strives to prepare students for lives of personal and professional integrity, and therefore regards all breaches of academic integrity as matters of serious concern. The full University-level Academic Integrity Policy can be found on the Provost's Office website at: https://www.slu.edu/provost/policies/academic-and-course/policy_academic-integrity_6-26-2015.pdf.

Disability Accommodations
Students with a documented disability who wish to request academic accommodations must formally register their disability with the University. Once successfully registered, students also must notify their course instructor that they wish to use their approved accommodations in the course.

Please contact the Center for Accessibility and Disability Resources (CADR) to schedule an appointment to discuss accommodation requests and eligibility requirements. Most students on the St. Louis campus will contact CADR, located in the Student Success Center and available by email at accessibility_disability@slu.edu or by phone at 314.977.3484. Once approved, information about a student's eligibility for academic accommodations will be shared with course instructors by email from CADR and within the instructor's official course roster. Students who do not have a documented disability but who think they may have one also are encouraged to contact to CADR. Confidentiality will be observed in all inquiries.

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Statement on Face Masks (2021-2022)
Throughout the COVID-19 pandemic, key safeguards like face masks have allowed SLU to safely maintain in-person learning. If public health conditions and local, state, and federal restrictions demand it, the University may require that all members of our campus community wear face masks indoors.

Therefore, any time a University-level face mask requirement is in effect, face masks will be required in this class. This expectation will apply to all students and instructors, unless a medical condition warrants an exemption from the face mask requirement (see below).

When a University-wide face mask requirement is in effect, the following will apply:

- Students who attempt to enter a classroom without wearing masks will be asked by the instructor to put on their masks prior to entry. Students who remove their masks during a class session will be asked by the instructor to resume wearing their masks.
- Students and instructors may remove their masks briefly to take a sip of water but should replace masks immediately. The consumption of food will not be permitted.
- Students who do not comply with the expectation that they wear a mask in accordance with the University-wide face mask requirement may be subject to disciplinary actions per the rules, regulations, and policies of Saint Louis University, including but not limited to those outlined in the *Student Handbook*. Non-compliance with this policy may result in disciplinary action, up to and including any of the following:
    - dismissal from the course(s)
    - removal from campus housing (if applicable)
    - dismissal from the University
- To immediately protect the health and well-being of all students, instructors, and staff, instructors reserve the right to cancel or terminate any class session at which any student fails to comply with a University-wide face mask requirement.
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When a University-wide face mask requirement is not in effect, students and instructors may choose to wear a face mask or not, as they prefer for their own individual comfort level.

ADA Accommodations for Face Mask Requirements

Saint Louis University is committed to maintaining an inclusive and accessible environment. Individuals who are unable to wear a face mask due to medical reasons should contact the Office of Disability Services (students) or Human Resources (instructors) to initiate the accommodation process identified in the University's ADA Policy. Inquiries or concerns may also be directed to the Office of Institutional Equity and Diversity. Notification to instructors of SLU-approved ADA accommodations should be made in writing prior to the first class session in any term (or as soon thereafter as possible).

In-Person Class Attendance and Participation

The health and well-being of SLU's students, staff, and faculty are critical concerns, as is the quality of our learning environments. Accordingly, the following University policy statements on in-person class attendance are designed to preserve and advance the collective health and well-being of our institutional constituencies and to create the conditions in which all students have the opportunity to learn and successfully complete their courses.

1. Students who exhibit any potential COVID-19 symptoms (those that cannot be attributed to some other medical condition the students are known to have, such as allergies, asthma, etc.) shall absent themselves from any in-person class attendance or in-person participation in any class-related activity until they have been evaluated by a qualified medical official. Students should contact the University Student Health Center for immediate assistance.

2. Students (whether exhibiting any of potential COVID-19 symptoms or not, and regardless of how they feel) who are under either an isolation or quarantine directive issued by a qualified health official must absent themselves from all in-person course activities per the stipulations of the isolation or quarantine directive.

3. Students are responsible for notifying their instructor of an absence as far in advance as possible; when advance notification is not possible, students are responsible for notifying each instructor as soon after the absence as possible. Consistent with the University Attendance Policy, students also are responsible for all material covered in class and must work with the instructor to complete any required work. In situations where students must be absent for an extended period of time due to COVID-19 isolation or quarantine, they also must work with the instructor to determine the best way to maintain progress in the course as they are able based on their health situation.

4. Consistent with the University Attendance Policy, students may be asked to provide medical documentation when a medical condition impacts a student's ability to attend and/or participate in class for an extended period of time.

5. As a temporary amendment to the current University Attendance Policy, all absences due to illness or an isolation/quarantine directive issued by a qualified health official, or due to an adverse reaction to a COVID-19 vaccine, shall be considered "Authorized" absences

Discrimination Policy:
Saint Louis University and its faculty are committed to supporting our students and seeking an environment that is free of bias, discrimination, and harassment. If you have encountered any form of sexual harassment, including sexual assault, stalking, domestic or dating violence, we encourage you to report this to the University. If you speak with a faculty member about an incident that involves a Title IX matter, **that faculty member must notify SLU's Title IX Coordinator and share the basic facts of your experience**. This is true even if you ask the faculty member not to disclose the incident. The Title IX Coordinator will then be available to assist you in understanding all of your options and in connecting you with all possible resources on and off campus.

Anna Kratky is the Title IX Coordinator at Saint Louis University (Du Bourg Hall, room 36; anna.kratky@slu.edu; 314-977-3886). If you wish to speak with a confidential source, you may contact the counselors at the University Counseling Center at 314-977-TALK or make an anonymous report through SLU's Integrity Hotline by calling 1-877-525-5669 or online at https://www.lighthouse-services.com/_StandardCustomURL/LHILandingPage.asp To view SLU's policies, and for resources, please visit the following web addresses: https://www.slu.edu/here4you and https://www.slu.edu/general-counsel.

IMPORTANT UPDATE: SLU's Title IX Policy (formerly called the Sexual Misconduct Policy) has been significantly revised to adhere to a new federal law governing Title IX that was released on May 6, 2020. Please take a moment to review the new policy and information on the following web address: https://www.slu.edu/here4you. Please contact the Anna Kratky, the Title IX Coordinator, with any questions or concerns.