

RS 141E
Religious Liberty

Prof. Kathleen Moore
Spring 2011



NARRAGANSETT INDIANS GRANT RHODE ISLAND TO ROGER WILLIAMS

Meeting times: Tu/Th 2:00 to 3:15 p.m.
Classroom: Phelp 1508

Office hours: Wed. 1 to 3 p.m. and by appt.
Office: HSSB 3074

Contact: kmoore@religion.ucsb.edu or (805) 893-4505 (leave message)

Course Description:

Modern American society is pervasively regulated. It is also religiously diverse to a degree that is probably unprecedented in the history of the world. Thus, it is inevitable that some of these diverse religious practices will violate some of these pervasive regulations. It is equally inevitable that if we ask whether all of these regulations are necessary, sometimes the answer will be no.

This course examines legal claims that arise when individuals or groups in American society seek exemptions from regulation for reasons of religious belief or practice. Which 'free exercise' claims are granted by the courts, and why? What are the competing interests that constrain liberty? We will read judicial opinions that address such questions as the nature of sincere belief, the courts' authority to define what counts as religion, whether institutionalized settings (e.g., prisons) limit the constitutional protections of religious liberty, and other matters.

Required readings:

Books (available at UCEN Bookstore and on reserve in Davidson Library):

Winnifred Fallers **Sullivan**, *The Impossibility of Religious Freedom* Princeton University Press, 2005 ISBN 978-0-691-13058-3 (Sullivan)

Kent **Greenawalt**. *Religion and the Constitution, Volume 1: Free Exercise and Fairness*. Princeton University Press, 2009 ISBN13: 978-0-691-14113-8 (Greenawalt)

Articles are accessible on the course website (see below).

Course Website:

We will use the Gauchospace course website to provide access to assigned readings other than the four textbooks cited above. Course announcements and discussion forums will also be posted through the course website. If you are enrolled you may access the website at www.gauchospace.ucsb.edu and log into this course (RS141E).

Course Requirements:

Participation (lectures, two online discussion forums) 20%

In-class midterm 30%

Take home final exam 50%

Class participation (20%)

Your responsibility in this course is to be an active learner, not a passive sponge. To be successful, you will need to attend class regularly, complete the readings on time and actively participate. During the quarter you will be required to participate in two online discussion forums on Gauchospace. Instructions will be provided in class.

Midterm exam (30%)

An in-class exam will cover lectures and readings of the first six weeks of the quarter. Exam date is May 5th.

Final exam (50%)

A take-home essay exam will cover the lectures, a/v materials and readings of the entire quarter. This is a comprehensive exam. Questions will be distributed on the last day of class and due date is June 10th.

Schedule of Readings and Assignments

Week One ***The Right to Religious and Moral Freedom***

Introduction to the course

3/29, 3/31 Read Michael J. Perry, "From Religious Freedom to Moral Freedom," accessible on Gauchospace

Week Two ***History Behind the Free Exercise Clause***

What is the meaning of the 'religion' clauses of the First Amendment? What is the relevance of 'original understanding' for contemporary problems? Is there a difference between 'belief' and 'action'?

4/5, 4/7 Read Kent Greenawalt, Religion and the Constitution, Vol. 1, pp. 11-48, and Kathleen Flake, *The Politics of American Religious Identity*, "The American Idea of a Church," pp. 12-33 (accessible on Gauchospace).

Week Three *Definitions of Religion*

How is religion defined and legitimated in the courts? What trends can we see, historically and currently?

4/12, 4/14 Read Marie Failing, "United States v Ballard: Government Prohibited from Declaring Religious Truth," in Law and Religion (Aspen Publishers, 2010), pp. 33-49 (accessible on Gauchospace), and the following SCOTUS decisions:

Santa Fe Independent School District v. Doe (2000)

City of Boerne v. Flores (1997)

Employment Division v. Smith (1990)

Wisconsin v. Yoder (1972)

United States v. Seeger (1965)

Torasco v. Watkins (1961)

****Discussion forum assignment #1: Choose one of the cases cited above and summarize and comment upon its conception of religion and free exercise. Post on Gauchospace discussion forum. Be prepared to discuss in class, also. Three hundred to five hundred words. Due online by 1 p.m., April 14th.****

NOTE: SCOTUS decisions can be read at <http://supreme.justia.com/>

Week Four *Conscientious Objection and the Freedom to Believe*

4/19, 4/21 Read Greenawalt, pp. 49-67

Week Five *Religious Exemptions from Otherwise Valid Laws: Drug Use*

4/26, 4/28 Read Greenawalt, pp. 68-85, and Carolyn N. Long, "Employment Division, Dept of Human Resources of Oregon v Smith: the Battle for Religious Freedom, in Law and Religion (Aspen Publishers, 2010), pp. 107-126 (accessible on Gauchospace).

NOTE: No class meeting April 28th

Week Six *Religious Exemptions from Otherwise Valid Laws: Education*

5/3, 5/5 Read Greenawalt, pp. 86-108, and Rebecca French, "Wisconsin v Yoder: An Anthropologist Shapes a Supreme Court Decision, in Law and Religion (Aspen Publishers, 2010), pp. 53-70 (accessible on Gauchospace).

MIDTERM IN CLASS MAY 5TH

Week Seven *Sincerity and What Counts as Religion*

How do you measure people's convictions? Where is the line between 'religion' and 'non-religion'? Why is religion called the 'preferred' freedom?
5/10, 5/12 Read Greenawalt, pp. 109-156, and Winnifred Fallers Sullivan, The Impossibility of Religious Freedom, pp. 1-88.

Week Eight ***Controlled Environments: Military, Prisons, Graveyards***

How 'free' are institutionalized persons to practice their religious beliefs?
5/17, 5/19 Read Greenawalt, pp. 157-171, and Sullivan, pp. 89-159, and the following SCOTUS decisions:

O'Lone v Estate of Shabazz (1987)

Cutter v Wilkinson (2005)

Salazar v Buono (2010)

Snyder v Phelps (2011)

****Discussion Forum Assignment #2: Choose one of the cases cited above and summarize and comment on its conception of 'balance' between 'religious' and 'nonreligious' interests. Post on Gauchospace discussion forum. Three hundred to five hundred words. Be prepared to discuss in class, too. Due online by 1 p.m. on May 19th.****

Week Nine ***Government Interest: Burdens and Opportunities***

How far should government go to restrict its own activities that impinge on someone's religious beliefs and practices?
5/24, 5/26 Read Greenawalt, pp. 192-232.

Week Ten ***Discrimination against Religious People: Harassment and Accommodations***

Should there be a law against offensive speech when the content is 'religious'? What is the state's interest in regulating Islam?
5/31, 6/2 Read Greenawalt, pp. 359-376, and "Freeman v Dept of Highway Safety and Motor Vehicles and Webb v City of Philadelphia," in Law and Religion (Aspen Publishers, 2010), pp. 293-309 (accessible on Gauchospace).

Take-Home Final Exam Due June 10th
Send as attachment to kmoore@religion.ucsb.edu, and keep a copy.

Important Dates

April 1st last day for students to drop courses w/o a \$3 per drop fee

April 8th last day for students to add a course w/o paying \$3 fee

April 14th first discussion forum posting due

May 5th midterm in class (bring blue book)

May 19th second discussion forum posting due

May 30th Memorial Day

June 10th take-home final exam due