

First Amendment Law, Fall 2019
Prof. Lorianne Updike Toler

SYLLABUS PART I
FREEDOM OF RELIGION

Books JAMES H. HUTSON, RELIGION AND THE FOUNDING OF THE AMERICAN REPUBLIC (1998)
 EUGENE VOLOKH, THE FIRST AMENDMENT AND RELATED STATUTES: PROBLEMS, CASES AND POLICY ARGUMENTS (2016) (6th ed.)

Foundations

Aug. 26 Required reading: Hutson Chapters 1-2
 Optional reading: James I, The True Law of Free Monarchies (1616), available at <https://www.bl.uk/collection-items/the-true-law-of-free-monarchies-by-king-james-vi-and-i>

Aug. 28 Required reading: Hutson Chapter 3
 Optional reading: Jonathan Mayhew, A Discourse Concerning Unlimited Submission (1750), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1044&context=etas>

Sep. 2 (Labor Day – no class)

Sep. 4 Required reading: Hutson Chapter 5
 Optional reading: James Madison, Memorial & Remonstrance (1785), <https://founders.archives.gov/documents/Madison/01-08-02-0163>

“Wall of Separation” Doctrine & Incorporation

Sep. 9 Required reading: Hutson Chapter 6
 Optional reading: Danbury Baptists to Thomas Jefferson Draft, Thomas Jefferson to Danbury Baptists (Dec. 31 (?), 1801), <https://founders.archives.gov/?q=thomas%20jefferson%20to%20danbury%20baptists%20&s=1111311111&sa=&r=2&sr=#TSJN-01-36-02-0152-0002-fn-0002>

Lorianne Updike, The Wall of Separation Between Church & State: Constitutional Fact or Fiction? L22 SUTHERLAND J. L. & PUB. POL'Y (2005)

Sep. 11 Required reading: Reynolds v. U.S., 98 U.S. 145 (1879)
 Everson v. Board of Education (1947) & notes,
 Volokh 892-97, 834-37

ESTABLISH CLAUSE

The Lemon Test, Government Prayer

Sep. 16 Required reading: Lemon v. Kurtzman (1971), Volokh 897-903, 725-28
Engel v. Vitale (1962), Volokh 784-88
Marsh v. Chambers (1983), Volokh 791-98

The No-Endorsement Principle

Sep. 18 Required reading: Volokh, 782-84
Ten Commandments Cases - McCreary County v. ACLU (2005), Van Orden v. Perry (2005), Volokh 803-28

The No-Religious-Purpose Principle

Sep. 23 Required reading: McGowan v. MD (1961), Edwards v. Aguillard (1987), McCreary County v. ACLU (2005), 844-64

The No-Coercion Principle

Sep. 25 Required reading: Lee v. Weisman (1992), Town of Greece v. Galloway (2014), 864-881

Public Funds & Religious Institutions

Sep. 30 Required reading: Mitchell v. Helms (2000), 915-23; Zelman v. Simmons-Harris (2002) 924-39

FREE EXERCISE CLAUSE

Religious Exemptions, pre-1970

Oct. 2 Required reading: Prince v. Mass. (1944), Sherbert v. Verner (1963), Gillette v. US (1971), Wisc. V. Yoder (1972), US v. Lee (1982), Bob Jones Univ. v. US (1983), 961-87

Religious Exemptions, current

Oct. 7 Required reading: Employment Division v. Smith (1990), Thomas v. Review Bd. (1981), US v. Lee (1982), 991-1001 (skipping over Reynolds); Hosanna-Tabor Evangelical Lutheran Church v. EEOC (2012), RFRA, RLUIPA, 1005-24

Oct. 9 Required reading: Burwell v. Hobby Lobby (2014), Holt v. Hobbs (2015), 1024-48

Discrimination Against the Religious

Oct. 14 (Columbus Day – no class)

Oct. 15 Required reading: McDaniel v. Paty (1978), Church of Lukumi Babalu Aye, Inc. v. City of Hialeah (1993), Locke v. Davey (2004), 729-51