

THE CONSTITUTION AND RELIGION IN THE

Classroom...

Can I be a faculty
advisor at a student
prayer meeting?

Why are my
religious holidays not
school holidays?

Can my
school really offer a
Bible class?

Can I ask my
students to perform
religious music?

Can I
mention Jesus in
my homework?



**THE
CONSTITUTION
AND RELIGION IN THE**

Classroom...



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Classroom...



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OUR EXPERTS

In order of appearance



Ambassador Robert A. Seiple retired President and CEO of the First Freedom Center, served as the first U.S. Ambassador-at-Large for International Religious Freedom. In that position, he was charged with promoting religious freedom worldwide, advancing reconciliation in areas and nations where conflict existed along religious lines, and focusing the State Department's attention on this issue. Ambassador Seiple has also served as President of World Vision, Inc., the largest privately funded relief and development agency in the world; Founder and Director of the Institute for Global Engagement, a "think tank with legs" that develops sustainable environments for religious freedom worldwide; President of Eastern College and Seminary; and in a number of administrative positions at Brown University, including Vice President for Development. From 1966-1969, Seiple served in the U.S. Marine Corps, attaining the rank of Captain and flying 300 combat missions in Vietnam. He was awarded numerous medals, including the Distinguished Flying Cross. Seiple received an A.B. from Brown University in 1965. Ambassador Seiple chairs the Washington Coalition and co-chairs First Step Forum, two groups active in religious freedom issues. He also chairs the Advisory Committee for the Templeton Honors College at Eastern University and serves on the Board of the Denver Seminary.



Kevin J. "Seamus" Hasson, JD, is Founder and President of the Becket Fund for Religious Liberty, a bipartisan, interfaith, public-interest law firm that protects the free expression of all religious traditions (www.becketfund.org). Its central principle is that because the religious impulse is natural to human beings, religious expression is natural to human culture. Hasson and the Becket Fund have successfully represented clients from nearly every faith tradition, literally from Anglicans to Zoroastrians. Hasson enjoys broad credibility in the national media. He has been widely quoted, appearing for example, in *Newsweek* and *The New York Times*, as well as on broadcast news programs, including The Today Show, Dateline NBC and Al-Jazeera. He lectures and debates widely at venues ranging from the Harvard Law School to the Vatican, and is the author of *The Right to be Wrong, Ending the Culture War over Religion in America*. Before founding the Becket Fund, Hasson was an attorney at Williams & Connolly in Washington D.C., where he focused on religious liberty litigation. From 1986 to 1987, he served in the Office of Legal Counsel at the Justice Department, where he advised the White House and cabinet departments on church-state relations. He is a 1985 magna cum laude graduate of Notre Dame Law School and also holds a Master's degree in theology from Notre Dame.



T. Jeremy Gunn, JD, Ph.D., is an Associate Professor in the School of Humanities and Social Sciences at Al Akhawayn University in Morocco. He is the former Director of the ACLU's Program on Freedom of Religion and Belief (www.aclu.org/religion) and a former Senior Fellow for Religion and Human Rights at the Center for the Study of Law and Religion at Emory University, Atlanta, Georgia. Gunn is a member of the Advisory Council on Freedom of Religion or Belief of the Organization for Security and Cooperation in Europe and advises several organizations involved in freedom of religion and belief, including the First Freedom Center. Gunn received his Ph.D. in the Study of Religion at Harvard University in 1991, a J.D. magna cum laude from Boston University in 1987, and an A.M. from the University of Chicago. Before moving to the ACLU, he was the Director of Research for the U.S. Commission on International Religious Freedom and also worked on religious freedom at the U.S. Department of State. He was an attorney in private practice at Covington & Burling. He also was a Senior Fellow at the U.S. Institute of Peace and has taught courses at the Université d'Aix-Marseille in France, the Universität Trier in Germany, the Université de Tunis in Tunisia, and at Université Laval in Québec, Canada. He has dozens of publications to his credit, including the *Religious Freedom (Modern Period)* in the Encyclopedia of Christianity.



President Rodney A. Smolla, JD, is president of Furman University in Greenville, South Carolina. He is the former dean of the Washington and Lee School of Law and the University of Richmond School of Law. Smolla graduated from Yale University in 1975 and Duke Law School in 1978, where he was first in his class. He then served as law clerk to Judge Charles Clark on the United States Court of Appeals for the Fifth Circuit. After practicing law in Chicago at Mayer, Brown, and Platt, Dean Smolla entered academic life and taught at law schools at De Paul, University of Illinois, University of Arkansas and The College of William and Mary. He is the author or co-author of several books, and his book *Free Speech in an Open Society* won the William O. Douglas Award as the year's best monograph on freedom of expression. President Smolla is also a frequent magazine and newspaper contributor and media commentator. He serves on numerous civic and professional boards, including the First Freedom Center's Board of Trustees and on the Center's National Program Advisory Board, on the Board of Directors of the American Arbitration Association, and the Board of Directors of Media General.

OVERVIEW

INTRODUCTION

Religious freedom, the freedom of conscience, is a core ideal of American democracy. The United States is, arguably, the most religiously diverse society in the world and, among developed nations, one of the most religious. Religious freedom is the first freedom listed in our nation's Bill of Rights. This liberty is a fundamental right that every individual possesses, including students in public schools. Because of this, religious liberty in the school deserves particular study by high-school students and their teachers.

The First Amendment begins with the words:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

These words guarantee the right to profess and practice any faith or none, and to assert these beliefs within the bounds of the law. The First Amendment also prevents the government from coercing individuals in matters of religion. The national commitment to inalienable individual rights is set forth in the Declaration of Independence. Religious freedom is one such inalienable right, and it is a central aspect of individual identity.

The classroom is one of the most critical places where religious freedom can be both taught and lived. This DVD and guide have been designed to assist you in your First Amendment studies. The DVD and guide may be used anytime during the school year in social studies classes and other courses of study, by high-school debate and forensics teams, and as a general information resource. You may also find it useful for National Constitution Day classes (September 17). The purpose of these materials is to help you, the teacher, find a way to both implement and teach this first freedom in your classroom today, as you educate young people to become the citizens of tomorrow.

Beyond the classroom, the courtroom is another critical place where religious liberty issues are laid out and decided. In this DVD, we attempt to bring these two

arenas together by sharing with you the differing legal perspectives of two of the country's foremost authorities on religious freedom.

This package contains:

- A 22-minute-long DVD
- Background information
- Primary document analysis
- Answers to frequently asked questions
- Lesson ideas and class exercises
- Debate/forensic team topic



These materials will open the door for you and your students to grapple with and learn about one of the core values that underlies the Constitution. You will find its content balanced, and sometimes surprising. If you decide to teach a class on this topic, we encourage you to consider asking your students to submit an essay in our annual essay competition. The winners receive cash prizes of \$3,000, \$1,500 and \$750. For the topic, research requirements, and guidelines, please visit www.firstfreedom.org.

BACKGROUND OF THE PROJECT

This project is based on a recording of a live debate between two legal experts, Jeremy Gunn and Seamus Hasson, on the First Amendment in the public schools. The debate is about some of the key issues and cases in this area of law. Like other formal debates and like courtroom practice, this debate is characterized by courteous and respectful argumentation that is based on a deep knowledge of law and fact.

Our debaters are real people, not actors. Their debate has not been scripted. All of their taped statements are a part of their actual conversations. This is a documentary presentation of their debate and the remarks that precede and follow it. Only a scripted narrator and captions have been added to the DVD in order to make this discussion more accessible to a high-school audience.

We realize that teachers, students and parents have many questions about religious freedom, so when we announced our 2006/2007 student essay competition, we solicited these questions on our website. The debate and your questions were our starting place and guide for the DVD and teacher's manual.

To the end of fulfilling the Council for America's First Freedom's mission to promote understanding about and respect for religious freedom, we will explain:

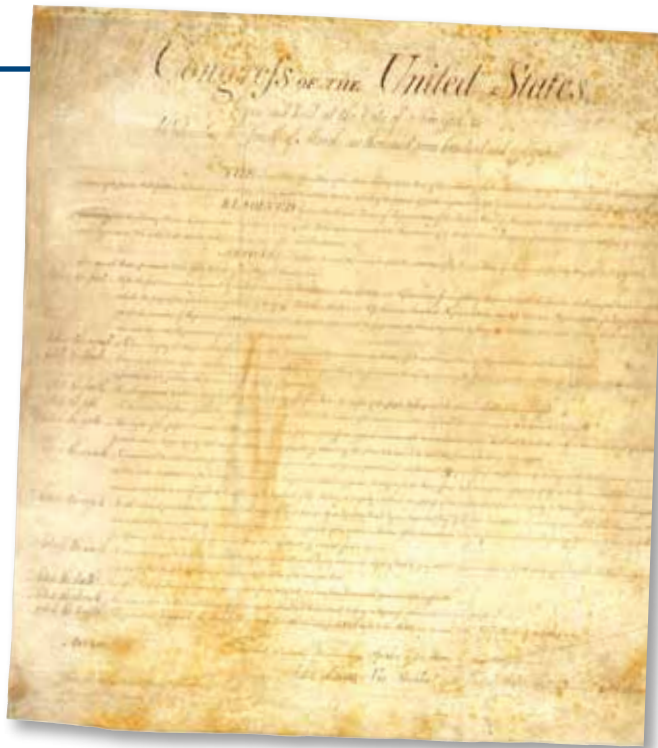
- The meanings of the Establishment Clause and the Free Exercise Clause of the First Amendment
- Some of the principles that the courts have applied
- How you can apply your understanding to real-life situations

We hope you will find this material useful, as you explore the special responsibilities that teachers and school representatives have for protecting religious freedom. You will be able to analyze religious freedom scenarios in class as the Supreme Court might, when you engage in stimulating and intriguing discussion of real-life situations.

This manual is not intended, however, to provide legal advice or to serve as a substitute for actual legal counsel about specific situations. When issues arise, we urge you to consult the appropriate school administrator or licensed attorney in your area. Please remember also that the law is changing, and that you may consult our website for updates on these changes.

LEGAL HISTORY

In 1791, the Congress of the United States ratified the First Amendment to the Constitution. It protects five rights, amongst them, freedom of religion. This inalienable right to freedom of conscience is the foundation for the right to religious freedom. Freedom of religion is set out in the first sixteen words of the amendment through two clauses: one relates to government, and the other relates



to individuals. “*Congress shall make no law respecting an establishment of religion,*” is the first clause, the **Establishment Clause**. It applies to our government—federal, state and local. The second clause, “*or prohibiting the free exercise thereof,*” is the **Free Exercise Clause** and protects individuals and groups. (Article VI in the main body of the Constitution provides that there will be no “religious test” for federal office.)

Initially, the religious liberty clauses of the First Amendment applied only to the federal government (*Congress shall make no law...*). States could continue to have established churches, to grant certain civil privileges to members of their churches, and to support the established church with tax revenue. The Thirteenth and Fourteenth Amendments were written to end slavery, and they expanded individual rights and the power of the federal government. In 1925, the Supreme Court extended the interpretation of the word “liberty” in the Fourteenth Amendment’s Due Process Clause (“no state...shall deprive any person of life, liberty or property without due process of law”) to other freedoms in the Bill of Rights. This legal doctrine is called “incorporation”, and by using it, the Court was able to extend rights enumerated in the Bill of Rights to the state and local level. The religion clauses were found to apply to state and local government (i.e., incorporated) in 1940 (free exercise) and 1947 (establishment) respectively. Some historians and lawyers, however, still question whether these decisions accurately reflect the framers’ intent.

PRINCIPLES OF THE FIRST AMENDMENT

The religious liberty clauses of the First Amendment are two sides of one coin; they work together to protect religious liberty. The legal definitions of these clauses are highly contested in the courts, although there are some basic rules of thumb that can be applied by schools and school officials.

- The Establishment Clause bars the school or school official from promoting or inhibiting religious beliefs or non-belief. Schools may not sponsor or lead prayer or other religious activities; lessons and school activities must arise from secular and academic motives.
- The Free Exercise Clause protects students' religious expression (i.e., religious speech, act, attire, diet, or other restrictions), but may be limited when order and safety are at risk.

For more detailed information, see pages 6-10 and Online Resources on page 14 of this manual.

The Williamsburg Charter offers another approach to understanding the complex meaning of these clauses. In 1988, this document was jointly authored by political leaders, scholars, and leaders from America's religious communities. They had gathered to address the mounting tensions in the nation's culture wars over religious liberty issues, and to recommit Americans to these constitutional principles.

You will find the Charter's *Summary of Principles* at the end of this manual. You may use it as a primary document to explore these issues with your students from the perspective of its three main underlying principles: **rights**, **responsibilities** and **respect**. The Charter asserts that a just and secure society can only exist when each group and individual assumes responsibility to protect the rights of all, regardless of differing opinions. The summary points out that "how we debate, and not what we debate, is critical" to a robust society.¹ The DVD provides an example of the mutual respect that is necessary to permit robust dialogue and debate.

RIGHTS TO AND RESPONSIBILITIES FOR RELIGIOUS FREEDOM

Let us examine how you could interpret the two clauses of the Constitution religious freedom provisions in a particular situation. To do that, we suggest two steps:

1. Define whether the issue relates primarily to the Establishment Clause or the Free Exercise Clause (the most critical step).
2. Apply basic principles about rights and responsibilities, and your common sense to determine an outcome.

Step One: Defining the facts

Whose free exercise rights?

As a starting point, we can say that students in school are the primary beneficiaries of free exercise *rights*, i.e., the right to express their religion through word and deed. As private citizens, teachers also have these same *rights*. Only when teachers are acting in their official capacity at a public school are these rights outweighed by their *responsibilities*.

Free exercise claims might arise over issues such as:

- Student attire and grooming
- Student prayer
- Student religious speech
- Student religious texts
- Student religious literature
- Student-initiated clubs
- Teachers' free expression in teacher-only areas of the school, or when off duty after school and on weekends



What are the Establishment Clause responsibilities?

Teachers, school administrators, and anyone who is speaking or acting in an official capacity as an agent of the public school is prohibited from inculcating or denigrating religion in his or her contract day. Teaching, reading and other school activities that touch on religion must be motivated by an academic and secular (not religious) purpose. School officials also have a *responsibility* to protect the free exercise rights of students. Because students are required to attend school, they have sometimes been described as a "captive audience." This is why courts have been particularly sensitive to the role of religion in the classroom—the danger of coercion is greater with a "captive audience" of young people.

¹ The Williamsburg Charter: Summary of Principles. See appendix.

Classic establishment clause concerns can arise over issues such as:

- The presence of a teacher’s Bible in class
- Teacher’s speech or actions between classes or on a school field trip
- Religious beliefs expressed in official morning or afternoon announcements
- Mandatory prayers or oaths

In some situations, there may be coercion between or among students or conflicts between free speech and religious freedom rights. These are tough issues to resolve, and the concept of the “captive audience” is an unsettled area of the law. In the debate, you will see the experts acknowledge how difficult it is for school officials to draw a clear line. Teachers can, however, advise students to respect the rights of others, and to do what they can to protect the rights of those with whom they disagree. The school will also be best served by creating reasonable and neutral guidelines before such a situation arises.

Can free exercise and no establishment facts co-exist?

Because life is often more untidy than a set of abstract definitions might suggest, there are a number of situations that combine questions of rights and responsibilities. We call these situations “hybrid” cases, since they bring up both establishment and free exercise concerns. Like a “hybrid” car engine, they are powered by claims that arise from two sources: the Establishment Clause and the Free Exercise Clause. Examples of this kind of case might arise when a student responds to an assignment with a religious response, or if a student asks the class to join in his or her prayer. A student may, within his or her protected free exercise rights, respond to an assignment by writing about religion or even religious belief, so long as that response meets the criteria of the assignment. However, in a situation where a student is requiring participation of the rest of the class, as might occur in a student presentation, the teacher must ensure that there is no religious or anti-religious “coercion” by the student leader.

Not all hybrid situations, however, constitute an impermissible establishment of religion; the results go both ways. Some examples of hybrid situations are:

- Class discussion and participation during lessons about religion or sacred texts

- In-class student presentations on religion
- The presence of a minister at a school career day
- Teacher leadership of an after-school prayer group at another school in the district

In a hybrid case, both modes of analysis must be applied.

Step Two: Respect and Implementing the Constitution

Free Exercise Rights Respected

In the classic free exercise situation, when a student’s assertion of his or her religious freedom conflicts with school rules, teachers and administrators should ask, “How can I best and most fairly accommodate (be respectful of and responsible toward) this person’s right to freedom of conscience?” Of course, this applies to students or parents of all faiths or none. Is this belief sincerely held? Is this accommodation reasonable and not in conflict with the underlying educational mission of the school? Administrators, students and parents will want to resolve requests for particular exceptions together, unless there is a clear written policy on the issue.

Establishment Clause Responsibilities Implemented

How can teachers and school officials avoid violating the Establishment Clause? In classic establishment clause situations (is the school favoring one religion over another, or religion over non-religion?), teachers and administrators should ask, “What is the academic purpose (which neither inculcates nor denigrates any religion) of this lesson or activity?” If the lesson or activity has a clear academic rationale or purpose, it is appropriate under the First Amendment religious freedom clauses. Another useful test to determine an establishment clause issue is one mentioned by Jeremy Gunn in the DVD. He suggests that you think about the situation as though it involved a religion or set of beliefs other than your own, and that you ask yourself, “Would I still be comfortable with this?” The Constitution does not differentiate between religions or beliefs. All religions and beliefs share the same rights and restrictions.

FREQUENTLY ASKED QUESTIONS

THE ESTABLISHMENT CLAUSE

Teacher's Rights

Guidance Counselor: *Is it legal for a guidance counselor to discuss God/religion with students, as long as students want to or initiate it?*

Teacher: *If teachers, administrators, and counselors cannot talk about religion on campus, to whom do students go for help?*

Teacher: *Student rights are clearly spelled out concerning religious freedoms in school. But what are teacher rights concerning religious beliefs? Can teachers legally display religious jewelry or clothing? How far can a teacher go short of evangelism?*

In the case of a tragedy or an individual student's need for counseling, if a student brings up his or her faith, the student should be permitted to talk about it. The counselor should let discussion of religion come from the student, and then should refer the student to parents or clergy for answers. The question of what teachers may or may not wear to teach has not been settled by the courts. Most legal experts agree that teachers may wear modest religious jewelry, but not proselytizing messages. Your school district or state may have rules or guidelines for you to consult.

Students may discuss religion in the classroom, if it is relevant to the classroom topic being discussed and is not coercive or disruptive. Students may also distribute

religious materials and invite other students to attend religious events, subject to the school's time, place and manner restrictions.

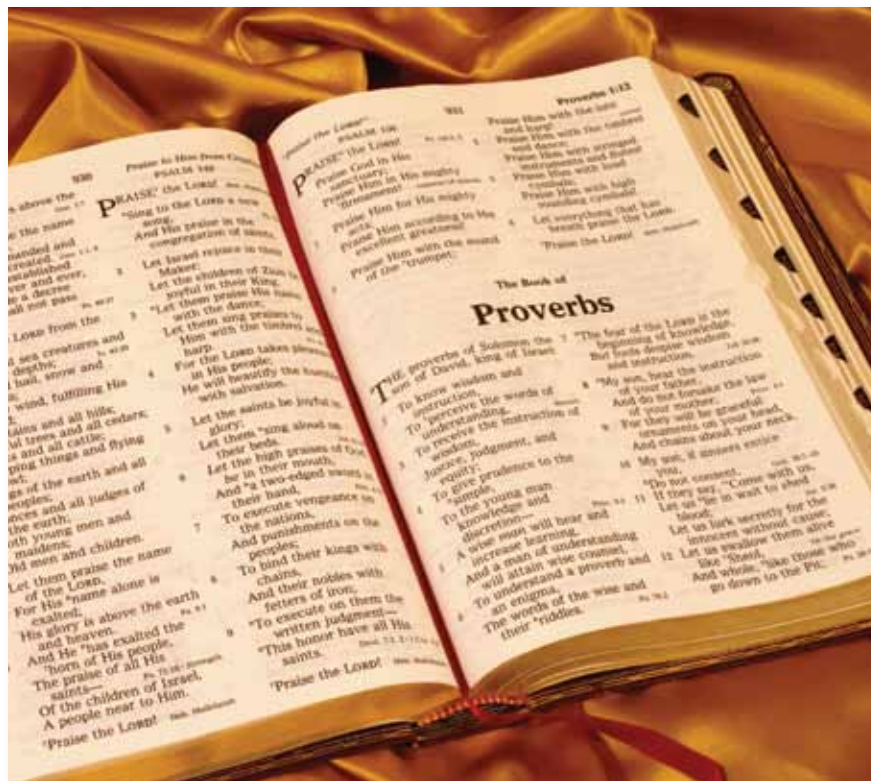
Teacher: *May I, as a teacher, keep a Bible on or in my desk?*

There is no court case addressing this issue in particular, but in the interest of promoting an atmosphere of fairness and respect, it may be a good idea for teachers to keep any personal devotional items out of sight and to read them only when students are not present. Otherwise, Bibles may be in the room for instructional use, as well as Qur'ans and other religious texts.

Teacher: *If a student asks about my religious beliefs, can I answer openly and honestly?*

There is no legally binding answer to this question, unless you are a teacher in Utah. (In that case, consult the Utah State Education Code.) The question is one of sensitivity. Many teachers who have responded to this question in workshops on religious freedom in the schools have given

different answers. A general rule of thumb is that the younger the student, the more cautious the teacher should be to respond neutrally. The younger the student, the harder it is to distinguish between the teacher as a private person and the teacher as an authority figure. In the case of very young students, it is best to be sensitive to the pressure children can feel to "be like" and "be liked by" the teacher.



With older students, many teachers feel that being honest and open improves the classroom dynamic and provides a “teachable moment” in which students can learn how the religion clauses of the First Amendment apply to teachers and students. Other teachers prefer not to identify themselves religiously or politically.

THE FREE EXERCISE CLAUSE

Student and Teacher Rights

Teacher: *Many students ask whether or not they have the right to wear T-shirts proclaiming either their adherence to Satanism or the Wiccan religion. Many schools have banned such as improper, while other more traditional Christian religions are widely accepted in the school’s dress code. Those students see such a prohibition as a violation of their freedom of religion. Can students wear religious symbols to school?*

Student religious or political messages may only be censored if the school can reasonably forecast a “substantial disruption” (*Tinker v. Des Moines, 1969*) or if the content is vulgar (*Bethel School District v. Fraser, 1986*) or if it advocates illegal use of drugs (*Morse v. Frederick, 2007*). School policies regarding student attire must be written and applied in a way that is viewpoint neutral.

In states that have religious freedom acts, guiding questions, such as whether the stated religious belief is a sincerely held one, whether or not wearing the garment poses a significant burden to the student’s free expression, and whether banning student attire serves a strong interest of the school (such as order and safety) may be used on a case-by-case basis.

Teacher: *Can I allow students to express their religious beliefs?*

Student: *Is it legal to carry a Bible to class?*

Parent: *Can my child take his Bible to school and read a verse to the class? The teacher has told the students they cannot read a Bible verse and cannot pray at school.*

Students may freely express their religious beliefs or carry a Bible, so long as they are not disruptive to the class and school day. The prohibition on promoting, inhibiting, or establishing religion applies to teachers, counselors and administrators as representatives of the state, and, in some states to students when they are leading a “captive audience.”

A student may read aloud from his or her Bible in class only when this reading serves a secular, non-devotional purpose.

Prayer

Teacher: *Can students pray individually in school?*

Teacher: *If a student asks for time to pray, can I grant it?*

Teacher: *Is organized prayer legal?*

Teacher: *Can teams pray before games?*

Student: *Why, if religious freedom is in the Constitution, are we not allowed to pray in school?*

Students in the public school may pray alone or in groups a number of times during the school day, as long as they do not coerce other students or disrupt



the school day activities or lessons. In most states, no school official or employee may participate in or lead prayer with students. Prayer among students at school or at school-sponsored events must be student initiated and student led.

HYBRID CASES

Clubs and Other Before and After-School Activities

Teacher: *Can students be denied the right to have a Bible study on campus before, after or outside of the school day?*

Teacher: *What are the guidelines for students witnessing to other students at school, for example a religious club?*

Teacher: *Can faculty members supervise, be present during or participate in religious clubs or activities with students?*

Student: *If Christians can have a club, why can't Wiccans have one, too?*

Student: *Are students allowed to print information in school publications promoting mission trips and such?*

The Equal Access Act of 1984 (20 U.S.C. 4071-74) governs non-curriculum related clubs in secondary schools. According to the act, in schools that allow non-curriculum related clubs, students may form religious clubs on the same basis as other extra-curricular clubs. Any rules or procedures that apply to all non-curriculum clubs also apply to the religious clubs.

Equal Access religious clubs must be student initiated and student led. The school may assign its faculty to attend meetings for liability purposes, but school faculty may not engage in the club activities. The same rules apply for all religious clubs, Christian and non-Christian.



Clubs may only be denied permission to form if they violate fair and content-neutral guidelines applied by the school to all clubs.

Furthermore, most legal experts now agree that students have a right to distribute religious materials at school and invite other students to attend religious events, subject to the school's time, place and manner restrictions.

Curriculum, Assignments and Homework

Teacher: *How can we introduce religion in the classroom without making any student feel that his or her religion is being either privileged or denigrated?*

Religion and the tenets and texts of religions should be presented to the class when there is an academic purpose for doing so. A balanced approach to the yearlong curriculum will include the faiths as they normally arise in history, art, language and other classes.

Student: *Why don't we study world religions? We should know about religions other than our own.*

Student: *With the variety of religions we have, America has become a proud, diverse country. A teacher's job is to teach students about the many different religions around the world and to explain the significance of their beliefs. Learning about religion is not a bad thing. So why do people today make a big issue about the beliefs of other religions?*

Teacher: *May a teacher teach about the religions of immigrants to the United States between the founding of this country and the 1890's—especially in comparing and contrasting the roles of women and children, education, government and citizens' responsibilities in these areas?*

Teacher: *Can we discuss various religious texts, such as the Bible, as literature in an English class?*

Teacher: *Is the performance of sacred music at public school concerts a violation of the First Amendment?*



Teacher: *I have seen and heard of schools being so worried about getting sued for any mention of religion or God or prayer in school, they completely ban the topic altogether. Is that not equally constitutionally wrong?*

Teaching about religion, when done in an objective and fair academic manner, is consistent with the First Amendment. In the Supreme Court's decision in *Abington v. Schempp* (1963), Justice Tom Clark wrote:

"[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be affected consistently with the First Amendment."

Schools should include religion in the curriculum in order to ensure that students receive a complete education. The National Council for the Social Studies concludes:

"Omitting study about religions gives students the impression that religions have not been, and are not now, part of the human experience. Religions have influenced the behavior of both individuals and nations, and have inspired some of the world's most beautiful art, architecture, literature, and music. History, our own nation's religious pluralism, and contemporary world events are testimony that religion has been and continues to

be an important culture influence." NCSS Board of Directors, 1984

But how do we decide which faith traditions should be included? Factors that may be weighed in making this determination are those traditions that have played a significant role in the subject matter or historical period being studied, and the diversity present in the community.

How much attention should be paid to each faith tradition? Again, a balanced approach will include the faiths as they normally arise in the history, art, or language arts course. For example, a music program in December could be a balance of music from religious as well as secular sources, and the music program throughout the year could represent a diversity of cultures and religions.

Teacher: *Is it okay to explain the benefits of religious meditation and prayer to the students?*

Once again, the teacher in this case must ask what the academic purpose of this lesson is. If there is a legitimate academic purpose that does not have the effect of promoting or denigrating religion, then it may be permissible; but it is not permissible to involve students in the activities of "meditation and prayer" in the classroom, nor is it advisable to role-play any religious activity or ritual.



Student: *Am I allowed to express my religious beliefs in a painting or mural at school?*

Students may freely express themselves religiously in class discussions, artwork, and assignments where their

religious perspective is relevant to the topic. Schools have the right to determine the content of school-wide displays, but schools may not ban students' religious artwork simply because of its religious content.

Teaching Evolution

Teacher: *Are teachers allowed to discuss any theory other than Evolution in schools as an alternative to Evolution?*

Teacher: *It is my understanding that if a student initiates a discussion on Creationism, it is allowed, as long as the teacher does not advocate Creationism as fact. Is that true? Students have told me that some teachers have not been open to discussion of Creationism in science class when the teacher brings up Evolution. Evolution has been taught as fact, not theory, and teachers are afraid to allow students to bring up alternative theories.*

Student: *If we truly have freedom of religion, why can't teachers (especially the science teachers) teach Evolution and Creationism and let the students decide for themselves?*

Some teachers and scholars of educational theory support “teaching the controversy” by allowing science teachers to also present the dissenting voices within the scientific community who challenge the dominant view of evolutionary theory. Students may bring up their own religious views in class, and teaching about these views as religious views is also constitutionally permissible.

In an important court case, *Kitzmiller v. Dover Area School District* (2005), a Pennsylvania federal district court found that the school board had violated the Establishment Clause when it required teachers to present Intelligent Design as an alternative theory to Evolution. Teachers were required to read a statement in science classes, asserting that Evolution is an unproven theory and noting an alternative theory, Intelligent Design. This theory was explained in texts available to students in the school library.

The issue of Intelligent Design has not been tested in other federal courts, and there is no nationally binding court ruling on it. New conflicts over Intelligent Design and other challenges to the teaching of Evolution are

certain to arise. Refer to Online Resources on Page 14 to find more information about this controversy.

Teacher: *Can a teacher read from the Bible to answer any creation questions that may be asked during class discussion?*

A teacher may read from the Bible to clarify *what* the Bible says about creation, not *how* the world was created. The Bible may also be analyzed for its literary value. A teacher may not, however, read from the Bible for devotional purposes or to promote or inculcate a religious viewpoint.

Holidays

Teacher: *What kind of holiday decorations can I display, if the holiday has a religious significance – holidays such as Easter, Christmas and Passover?*

Student: *Is it illegal for public schools to have a Christian themed Christmas program at school?*

Schools may not celebrate religious holidays, but they may teach about them as they normally arise in the curriculum. So long as the entire yearlong curriculum is balanced with regard to religions, any religion may be taught to provide a complete and well-rounded education. Teachers may use artifacts, photos, and symbols to teach about the various religions and their holidays only for the limited time those are being discussed in the classroom. Religious decorations should not be displayed without an academic purpose. Many school districts have specific regulations about this, and those regulations should be consulted for guidance.



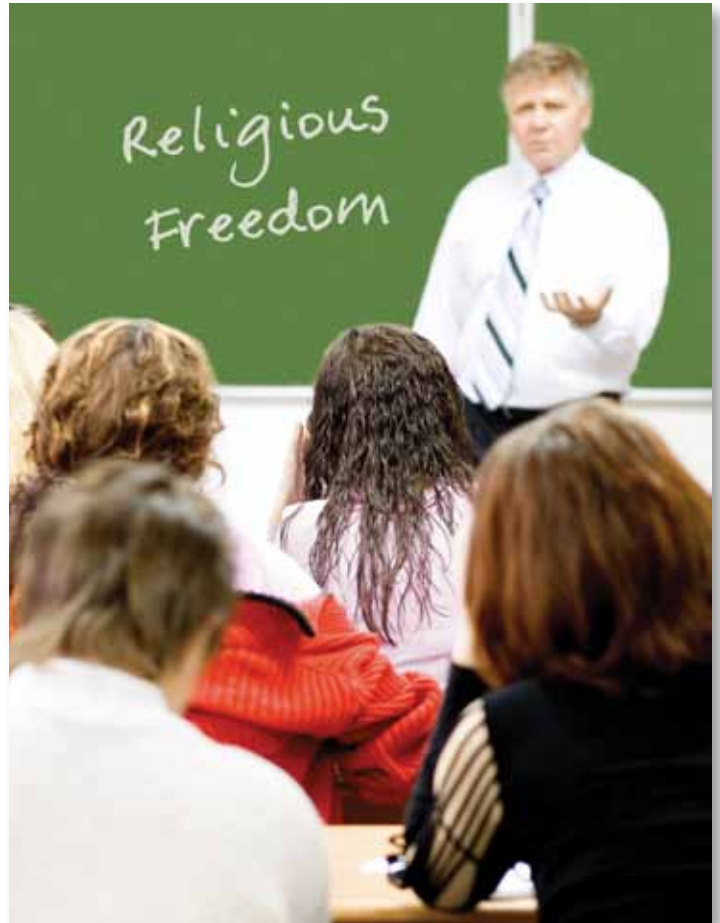
LESSON IDEAS FOR WATCHING THE DVD AND TEACHING THE FIRST AMENDMENT

OVERVIEW AND RATIONALE

The following lessons explore the importance of religious freedom as a foundation of American democracy by looking at agreements and disagreements about how religious liberty plays out in America's public schools. Although there have been numerous conflicts and controversies over issues, such as prayer in the schools and the role of religion in the curriculum, there is significant agreement in the legal community about how these issues should be resolved. Understanding how rights and responsibilities are balanced in these situations can lead to a more nuanced view of religion in the schools, and to a more civil school and classroom environment.

LESSON CONTEXT

In this DVD, students will hear the perspectives of two renowned religious liberty experts from opposing camps in legal debate. Students will learn to apply the democratic principles underlying the religious liberty clauses of the First Amendment to class activities. These lessons are appropriate for high-school civics, government and U.S. history classes, as well as current events studies.



LESSON OBJECTIVES

1. Students will be able to name and identify the two religious liberty clauses of the First Amendment. They will understand and be able to describe the differences between the two clauses and their one unifying purpose—to protect freedom of conscience.
2. Students will understand that they possess numerous rights to the free expression of religion, but that there are some limits on the free exercise of religion in the United States, and they will be able to provide explanations for those limitations.
3. Students will explore the meaning of a democratic civil society and will be able to describe the role of religious freedom in creating and maintaining one.

STARTING THE CLASS

Before viewing the DVD, write the words of the two religious freedom clauses on the board, and ask students what they think each one means. Use what you learned in the teacher background section to guide the discussion, getting as many responses from the students as possible. This activity is designed to help you and the students assess baseline knowledge about freedom of religion and the constitutional protections for it.

Introduce the topic of study to the class—religious freedom in the public schools. Ask them to think about and list either out loud or privately:

1. Why we have conflict over religion in the public schools
2. If student free exercise rights exist
3. If they have freedom *for* religion, freedom *from* religion, or both

As you watch the DVD with your class, you may want to stop the recording between the main parts of the film and pause to have a brief discussion. If you decide to approach showing the DVD this way, here are some stopping points, activities, and discussion question that you might find helpful.

View Part I - Introduction to the Issues (stop at 5:10)

Part I includes:

- The religious liberty clauses
- The principles of rights and responsibilities
- The challenges of religious majorities/minorities in the schools

Discussion Question

- What surprised the students about what they heard in this opening segment?
- Why is religion in the schools a topic of debate?

View Part II - The Case of Prayer in the Public Schools (stop at 13:36)

Part II includes:

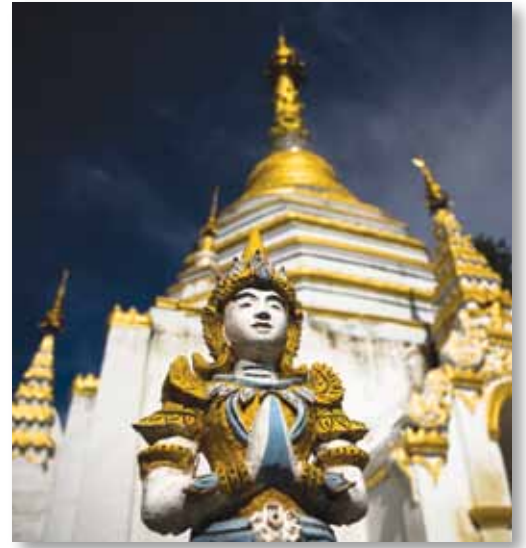
- Discussion of court case *Engle v. Vitale* (1962), no government-sponsored prayer in schools
- Clarification of the difference between permissible prayer (student initiated) and impermissible prayer (government required/promoted/led by teacher)
- Example of civil debate
- Introduction to difference between students praying in school and adults praying in the legislature

Discussion Questions

- Why is a prayer led by school officials said to “establish” religion?
- Does it violate free exercise? How, and why or why not?
- Why is it okay for legislators to open with a prayer, but it’s not okay for a teacher or school administrator to lead a class in prayer?
- When can students pray in school?

Activities

1. **Analyzing the Arguments:** Give students a few minutes to write their interpretation of what they heard in their own words.
2. **Exchanging Viewpoints:** Ask students to pair off and exchange responses to one of the following provocative questions or statements about prayer in the schools, or another of your choice. After a few minutes, ask students



to switch partners and continue as long as time allows. Leave time for class-wide discussion and reaction to the views expressed.

Potential questions:

Is there such a thing as a prayer that would be acceptable to everyone?

Is prayer in a public school an establishment or a free exercise issue?

Can you imagine a situation in which school-led prayer would violate students' free exercise?

Potential statements:

"Prayer is a divine responsibility."

"Religion should be a private matter only."

View Part III - Class Assignments and the Curriculum (stop at 19:15)

Part III includes:

- Discussion of *Bauchman v. West High School (1997)* and the role of religious choral music
- Discussion of the constitutionality of study about religion in the schools

Before viewing the segment, engage students in a discussion about religion in the curriculum. Is it a good idea or a bad one? Why or why not? What are the challenges, the rewards?

Some post-viewing questions to consider are:

- Is Rachel's case about establishment or free exercise?
- How would you resolve her case?
- What guidelines should there be for teaching about religion in the schools?

Activities

Interpreting Primary Source Documents

Ask students to read the *Summary of Principles* from the Williamsburg Charter. Ask them to number their paper from 1-10 and rewrite each of the principles in their own words. Break the class into five groups, assigning two of the principles to each group. Ask each group to summarize in their own words the main ideas in their two statements. Ask each group to report their ideas to the class.

Four-Corner Debate Topic

Make four signs, one each for Agree, Disagree, Strongly Agree and Strongly Disagree. Put one in each of the four corners of the room. Write a provocative statement that will draw a strong reaction and ask students to write their responses on paper for a few minutes. Then ask them to go to the corner of the room that best matches their reaction. Have each group select a spokesperson that will report their opinions to the class later. Have students share their responses. When time is up, have reporters share the group's discussion. After all the reports have been given, ask the students whose opinions have changed, to move to the corner that now reflects their opinion. At the end of the exercise, examine some of the views that were shared.



View DVD Conclusion - Democratic Principles of Debate

Extension Activities

First Freedom Student Essay Competition

Ask your class to submit essays and/or videos to the First Freedom Student Competition, a national essay and video contest that offers high-school students an opportunity to compete for a \$2,500 award, as they examine religious freedom, its history, current importance, and relevance in their lives. For more information visit www.firstfreedom.org and click on the red button, center column, for the student competition section.

Social Contract/Constitutional Convention

Ask students to consider how we can live with deep differences in a civil society. What agreements need to be in place? How do we come to agreement? Suggest forming a civil society in this class by developing your own social contract or constitution. First ask students to suggest what things need to be in the constitution and list them on the board. When all the suggestions are in, ask students to individually rate them 1-10. By a show of hands, determine the order of the suggestions. Produce a constitutional document that each student will sign in the next class as an enactment of the classroom constitution.

Interpreting the Religious Liberty Clauses

Organize students into 3-5 groups. Give each one a question from the FAQs and ask them to:

1. Determine whether this is a question of establishment, free exercise or a combination (hybrid).
2. Determine which of the Williamsburg Charter principles most closely addresses their question.
3. Ask them to present their answers to resolve the question based upon the resources and their discussion.

ONLINE RESOURCES

- www.ed.gov/Speeches/04-1995/prayer.html
www.ed.gov/Speeches/08-1995/religion.html

Joint Statement on Religion in the Public Schools issued by the Clinton Administration—consensus document authored by a large group of advocacy, public interest, educational and religious groups

- www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html
www.ed.gov/policy/gen/guid/religionandschools/letter_20030207.html

Bush Administration guidance on Prayer in the Public Schools

- www.firstamendmentcenter.org/rel_liberty/publicschools/faqs.aspx?id=6246

First Amendment Center, First Amendment Schools, Religious Liberty

- www.pewforum.org/religion-schools

The Pew Forum on Religion and Public Life, Religion and Public Schools

- www.aarweb.org/Public_Affairs/Religion_in_the_Schools/default.asp

American Academy of Religion, Religion in the Schools



PRIMARY DOCUMENT

WILLIAMSBURG CHARTER

Summary of Principles • June 15, 1988

***“Congress shall make no law respecting an establishment of religion,
or prohibiting the free exercise thereof ... “***

The Religious Liberty clauses of the First Amendment to the Constitution are a momentous decision, the most important political decision for religious liberty and public justice in history. Two hundred years after their enactment they stand out boldly in a century made dark by state repression and sectarian conflict. Yet the ignorance and contention now surrounding the clauses is a reminder that not all the questions arising from them have been answered. We acknowledge our deep and continuing differences over religious beliefs, political policies and constitutional interpretations. But together we celebrate the genius of the Religious Liberty clauses, and affirm the following truths to be among the first principles that are in the shared interest of all Americans:

1. Religious liberty, freedom of conscience, is a precious, fundamental and inalienable right. A society is only as just and free as it is respectful of this right for its smallest minorities and least popular communities.
2. Religious liberty is founded on the inviolable dignity of the person. It is not based on science or social usefulness and is not dependent on the shifting moods of majorities and governments.
3. Religious liberty is our nation’s “first liberty,” which under girds all other rights and freedoms secured by the Bill of Rights.
4. The two Religious Liberty clauses address distinct concerns, but together they serve the same end — religious liberty, or freedom of conscience, for citizens of all faiths or none.
5. The No Establishment clause separates Church from State but not religion from politics or public life. It prevents the confusion of religion and government, which has been a leading source of repression and coercion throughout history.
6. The Free Exercise clause guarantees the right to reach, hold, and exercise or change beliefs freely. It allows all citizens who so desire to shape their lives, whether private or public, on the basis of personal and communal beliefs.
7. The Religious Liberty clauses are both a protection of individual liberty and a provision for ordering the relationship of religion and public life. They allow us to live with our deepest differences and enable diversity to be a source of national strength.
8. Conflict and debate are vital to democracy. Yet if controversies about religion and politics are to reflect the highest wisdom of the First Amendment and advance the best interests of the disputants and the nation, then how we debate, and not only what we debate, is critical.
9. One of America’s continuing needs is to develop, out of our differences, a common vision for the common good. Today that common vision must embrace a shared understanding of the place of religion in public life and of the guiding principles by which people with deep religious differences can contend robustly but civilly with each other.
10. Central to the notion of the common good, and of greater importance each day because of the increase of pluralism, is the recognition that religious liberty is a universal right. Rights are best guarded and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

We are firmly persuaded that these principles require a fresh consideration, and that the reaffirmation of religious liberty is crucial to sustain a free people that would remain free. We therefore commit ourselves to speak, write and act according to this vision and these principles. We urge our fellow citizens to do the same, now and in generations to come.

The mission of the First Freedom Center is to advance the fundamental human rights of freedom of religion and freedom of conscience. The Center is a politically and religiously neutral 501(c)(3) organization. Its offices and interactive conference space, featuring the exhibit, *Faces of Religious Freedom*, are located in historic downtown Richmond, Virginia, in fully-renovated nineteenth-century row buildings. The exhibit explores the lives and deeds of individuals who have helped define the concept of religious freedom. Visits and tours are welcomed and can be arranged by calling 804-643-1786. A virtual tour of the exhibits, as well as a regularly updated news-clipping board, student competition information, teacher resources, a calendar of events, and information about the Center may be viewed online at www.firstfreedom.org.



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