

Faith and Learning: The Role of Religion in Higher Education

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What Is Religion?

- Any sincerely held moral or ethical belief of an individual
- Legal protections extend to beliefs as well as all aspects of religious observance and practice.

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Relevant Legal Principles

- First Amendment (public institutions)
 - Free Exercise Clause
 - Establishment Clause
 - Free expression
 - Freedom of association
- Religious freedom restoration acts (state level)
 - Increase scrutiny on state action that may infringe exercise of religious rights

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Relevant Legal Principles

- Discrimination statutes and policies (may apply at both public and private institutions)
- Contract theory (related to handbooks, university policies, etc.)

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Free Expression – Religious Viewpoints

- National organizations such as Alliance Defense Fund and Foundation for Individual Rights in Education (FIRE) are seeking and supporting test cases.

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“Intellectual Diversity” Legislation

- Academic Bill of Rights; Intellectual Diversity in Higher Education Act
 - Would require public institutions to expose students to a diversity of views in curricula, reading lists, and campus speakers
 - Prohibits grading of students, or hiring and firing of faculty, based on political or religious beliefs
 - Discussed at federal and state levels
 - Criticized by AAUP and others for violating academic freedom and autonomy (legislating what would ordinarily be academic judgments)

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Controversial Speakers and Performers on Campus

- Educational mission in higher education – exposure to marketplace of ideas (some of which may be offensive)
 - Not same as K-12; assumes a higher maturity level and ability for critical reflection; not same sort of “captive audience”
- Schools can fight offensive speech with more speech; seek to provide balance; be clear they are not endorsing particular speakers or messages

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Religious Accommodation: Curriculum and Classroom

- Colleges can require students to learn course content/subject matter, and determine essential course requirements.
- Students have free speech rights but do not have veto power over curriculum; there is no legal requirement that classes be viewpoint neutral or balanced (or that students be protected from offensive ideas).

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Curriculum and Classroom

- Schools' decisions must be based on educational judgment, not a pretext for religious discrimination. (See *Axson-Flynn* case)
- Requirements should be neutral with regard to religion, and have general applicability and a secular purpose.
 - If exceptions are made for some students or religious backgrounds, need to be consistent (e.g., on course schedules or assignments)

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Ethical and Professional Standards

- Evaluate students on mastery of content, not on personal beliefs or opinions.

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Other Campus Contexts

- Accommodations may reflect campus commitment to the educational benefits of a diverse student body.
 - Again, consistency is key (can't have exceptions for lots of other reasons except for religion)
- Decisions about use of finite resources and space may be based on health, safety, or other content-neutral reasons (not favoring one religion over another).

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Displays of Art or Religious Symbols

- Context is critical – be clear institution is not endorsing or criticizing a particular religion

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Student Organizations

- Public institutions must comply with First Amendment
- Private institutions may have greater latitude, especially if decisions are related to mission of institution and clearly stated expectations

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Funding

- If a public institution provides funding to a variety of student organizations, it cannot single out religious viewpoints as a reason for denying funding. (See *Rosenberger*)
- Public institutions' mandatory student fee allocation systems must be **viewpoint-neutral**. (See *Southworth*)

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Membership and Leadership Rules

- Student organizations base their right to set requirements on membership and leadership on freedom of association.
- Institutions are concerned about non-discrimination laws and policies (e.g., based on sexual orientation).

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Freedom of Association

- Courts have applied a **balancing test** – would application of non-discrimination requirements interfere with a central tenet of an organization’s beliefs/expression?
- Christian Legal Society chapters have brought cases around the country; some require members and officers to sign a “Statement of Faith”

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Christian Legal Society Cases

- Mixed results to date
 - Forced inclusion of members who don't subscribe to Statement of Faith would violate the organization's expressional interests (*Southern Illinois*; 7th Cir. 2006)
 - Refusal to deny funding to CLS does not restrict it from choosing members, having meetings or expressing itself -- it could do so without this funding (*Hastings College of Law*; N.D. Cal. 2006)

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Compromise Solution

- Many schools allow such organizations to base decisions about membership and leadership on willingness of individuals to subscribe or adhere to their stated **mission and beliefs** – but not on the mere **status** of an individual (e.g., based on one's sexual orientation)

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Other Legal Challenges

- Content-neutral, even-handed application of institutional policies should generally prevail over other constitutional claims (e.g., free speech, free exercise, equal protection).

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State Support and Funding: Religiously-Affiliated Institutions

- Establishment Clause concern
- Under *Lemon* balancing test, a rule must:
 1. Have a secular purpose;
 2. Have a principle or primary effect that neither advances nor inhibits religion; and
 3. Not create excessive entanglement between government and religion (may be part of prong #2)

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Public Funds for Scholarships for Religious Study

- ***Locke v. Davey (2004):***
 - State of WA gave student scholarship based on merit and need to attend any college of his choice
 - Student could take classes of his choice, but could not major in theology (state constitution prohibited use of public funds to train ministers or support degrees that are devotional in nature)
 - Supreme Court upheld state's interest based on the Establishment Clause – noting that the student was not prevented from freely exercising his religious beliefs.

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Government Bonds

- California Supreme Court said religious colleges could get government-issued bonds if they use facilities in ways that are equivalent to use of facilities at secular institutions (dorms, dining halls, classrooms, etc. – but not churches or other buildings focused on religious instruction) (2007).
- Thus, the “wall” between church and state is not absolute.

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What to Do?

- Train people and provide resources related to different religious traditions.
- Don't question truth of religious beliefs, but verify sincerity if necessary.
- Focus on viewpoint-neutrality of rules, and consistent application.