**Religious Freedom Jurisprudence and Controversial Topics in the News Posterboard Project
Applied Government
Mr. Faulhaber**

**BACKGROUND:**

When most people hear the First Amendment they think of freedom of speech when in fact the speech clause is actually the third clause of the First Amendment. Moreover, when it comes to religion, many people are just plain wrong about what protections they have and what the U.S. Constitution actually says about church and state. For example, many people erroneously believe that the phrase separation of church and state is enshrined in either the Declaration of Independence and/or the US Constitution. It is found in neither. Instead, the phrase was included in a letter to the Danbury Baptists in which Thomas Jefferson advocated for “a wall of separation between Church & State.” This letter is not a legal document nor did it express the wishes of all the Founders- many of whom did not want to see a wall, let alone a high wall of separation between church and state. Jefferson was referencing the separation of church and state found in Virginia which was an outlier and not indicative of the rest of the nation, particular Massachusetts Bay. Most people wrongly believe that the pilgrims sailed to the New World for religious freedom. That is half true. They were Puritans that wanted a purer form of religion free from the corruption of the state and sailed to Plymouth to practice this stricter religion without government interference. That, however, did not mean that they were willing to be tolerant of other religions. To bring home this point, nine of the first thirteen states had an official religion.

The Founders believed the First Amendment was about expression, expressing your conscience or who you are and what you believe. They understood, there was nothing more representative of a person than who they were then in their faith. Consequently, the first two clauses of the First Amendment are the Establishment Clause and the Free Exercise Clause. The Establishment Clause, which reads: “Congress shall make no law respecting an establishment of religion…” has been interpreted by the Supreme Court to mean that government cannot prefer one religion over another or religion over nonreligion. The primary battleground for the Establishment Clause is on government property and specifically, public schools. When reviewing these cases, the justices consider whether or not students or citizens feel compelled, are a captive audience, have their conscience unduly interfered with, if the government is violating its duty to be neutral, or is creating an undue influence. Because students and their views are more mailable and each of the preceding considerations more accentuated, the vast majority of Establishment Clause cases come out of school policy debates. When reviewing these policies, The Court applies a variety of tests including the *Lemon* Test (three-pronged test you will find littered throughout your readings), the Endorsement Test (whether a casual observer would view the cases as a violation), the Presumption of Constitutionality which are all variation on the Balancing Test often used in speech cases.

Although historically the vast majority of religious cases have dealt with the Establishment Clause, the more recent cases of significance relate to the Free Exercise Clause which states that “Congress shall make no law… prohibiting the free exercise thereof.” Many religious persons believe they have free reign to practice their religion without restriction. This is another misconception. Although no right is absolute-saying fire in a crowded theatre as an example when free speech is limited-the Supreme Court has limited the free exercise of religion more than most other rights. The Court sees a distinction between faith and practice and while protecting the former, is willing to limit the latter. For example, the Court has upheld bans on polygamy and mandatory vaccinations to attend public school. In the case of *Oregon v. Smith (1988),* two Native Americans who worked as counselors for a private drug rehabilitation organization, ingested peyote, a powerful hallucinogen, as part of the religious ceremonies as member of their Native American church. As a result of this conduct, they were fired as counselors. The fired counselors sued, claiming Oregon’s state drug laws that prohibited the consumption of illegal drugs for sacramental religious uses violated the Free Exercise Clause of the US Constitution. The Supreme Court observed that the Court has never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that government is free to regulate. They elaborated that allowing exceptions to every state law or regulation affecting religion “would open the prospect of constitutionally required exemptions from civic obligations of almost every conceivable kind.” Justice Scalia cited examples of compulsory military service, payment of taxes, vaccination requirements, and child-neglect laws. The Court once again saw a distinction between belief and practice.

This jurisprudence, however, is changing as the composition of the Court has changed with more religiously orientated justices comprising the majority on the Court. This change is not unprecedented. The Founders did not agree on the degree of separation and the aforementioned clauses originally were only applicable to the national government (reference the above 9/13 state sponsored religions). With the ratification of the Fourteenth Amendment which many call America’s “Second Founding” and the subsequent incorporation of religious freedom, the United States went from religion being an integral part of public affairs, both inside schools and public buildings, to a more secular-nonreligious-society in public affairs (although the United States is still considered the most religious Western nation). The United States is built on progress and trying to meet the lofty goals of the Declaration and striving to become the “more perfect union” expressed in the Preamble of the United States Constitution. And like everything else, this progress worked out of competing visions between Adams(Federalists) and Jefferson(Democrat-Republicans) regarding the role of what sort of relationship religion and government would have in public life. Since the Supreme Court has the final say on the meaning of the Constitution, those competitions are ultimately fought and determined with Supreme Court and its jurisprudence defines the extent of America’s Separation of church and state.

**ASSIGNMENT:**

Create a Posterboard similar to the CloseUp packets and Street Law case studies regarding a controversial religious freedom issue that has already worked its way through the courts and is moot because it has already been decided (although I believe many of these cases might have different outcomes if decided under this Court). The Posterboards should include

* Catchy Meme or Cartoon (such as was included in the Montana Case Packet)
* The Background of Issue or Story of What Happened
* Constitutional Clause/Provision and Government Law (state or federal)/Policy Involved
* Jurisprudence (Case Law and Precedents)
* Best Argument(s) for Each Side
* Outcome on **Back** (so when we discuss it in class you will have it available)

We will have a silent debate at the high school and middle school (Ms. Averett’s 8th Grade Students) and you will moderate a discussion in your class and via assembly at the middle school to inform the students of the outcome and demonstrate your understanding of the issue.

**SUGGESTED TOPICS**

* A Seattle Football Coach prays with his team after the game at the 50-yard line while the students lead the prayer and he stays at the circle's edge
* A courthouse places the 10 commandments sculpture in its rotunda
* A school mandates Creationism teaching *Edwards v Aguillard* Case Study (Creationism):
* A town sponsors a religious holiday display OR A School performs “A Christmas Carol”
* A state mandates all citizens get the COVID vaccine (*Jacobson v Massachusetts)*
* A state legislature mandates a moment of silence to begin the school day at all public schools (the Montana legislature is looking at enacting this) *Wallace v Jaffree*:
* A Prayer is given before football game offered by students elected by their peers *Santa Fe v. Doe* Case (Student Led Prayer before a football Game)
* A prayer is offered at Graduation by an invited guest Lee v. Weisman (Prayer at)
* A prayer is offered by a student valedictorian at graduation or a student thanks God in her speech
* Parent suit claiming Under “God” in the Pledge violates the Constitution *Elk Grove Unified School District v. Newdow*
* School Vouchers to religious schools *Zelman v. Simmons-Harri*s and Montana Case
* Refusal of a parent to administer medicine or illicit medical help to a child for religious reasons
* A City/State passes Covid-19 ordinances restricting religious institutions that is or are not the same for businesses
* A school ban on teachers wearing overt religious ornaments and/or students prohibited from wearing hijabs or yarmulkes in violation of hat policy and dress codes
* The creations of a Religious Freedom Restoration Act-the Montana legislature is looking at enacting this
* A Business refuses service based upon faith *Masterpiece Cakeshop, LTD. v. Colorado Civil Rights Division*
* A business refuses to follow an Affordable Care Act mandate for Mandatory birth control and cites Religious exemptions for businesses for birth control)*Hobby Lobby* Case

OTHER CASES TO CONSIDER

* *West Virginia v. Barnette (Flag Salute)*
* *Everson* v. *Board of Ed* (Bus Reimbursement)
* *Engel v. Vitale* (non-Demoninational Prayer to start a school Day)
* *Greece v. Galloway* (Prayer before City Council Meeting)
* *The American Legion v The American Humanist Association* (Peace Cross Case)
* *Wisconsin v. Yoder* (State requirement that Amish children attend school until 16)
* *Reynolds v. United States* (polygamy):
* *Oregon v Smith* (Drugs in Religious Ceremonies)
* *Trinity Lutheran v. Comer* (Aide to Religion)

**Self-Evaluation** **Grading Rubric Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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In the LEFT column: Place a check plus next to those you completed in an exceptional manner, a check plus/check mark if it was only completed well, a check mark next to the criteria in which you completed okay, a check mark/check minus if it was completed okay but not great, a and a check minus that you completed but not very well, and place an X next to the criteria not completed at all (worth 0 pts.).

In the RIGHT column: Place the appropriate grade in the space to the immediate left of EACH criteria required by determining those areas you performed or were lacking and based upon the point value listed. Place a N/A or “not applicable next to any criterion not required for your specific role. Average the points together in place that score in the “your estimate” blank.
 ***\*\*\*Remember, a perfect grade should reflect perfect work and only be used when the work done had no deficiencies & could not have been performed any better***.\*\*

**Preparation: Time invested During/ Outside of class (1-20): \_\_\_\_\_\_**

\_\_\_\_\_ \_\_\_\_\_Completed Chapter 5-3 Notes from the textbook: The First Amendment and Freedom of Religion/Landmark Cases (pgs. 108-111)
\_\_\_\_\_ \_\_\_\_\_Read and Printed out, Read, and highlighted/underlined the Common Interpretation of the Clause Dealing with My Issue
\_\_\_\_\_ \_\_\_\_\_Printed out, Read, and highlighted/underlined the conservative/liberal Interpretation of the Clause Dealing with My Issue

\_\_\_\_\_\_ \_\_\_\_Spent time researching the jurisprudence associated with my topic/court case

\_\_\_\_\_\_ \_\_\_\_Researched recent events or recent jurisprudence that relates to my topic/court case
\_\_\_\_\_ \_\_\_\_\_Put in multiple hours outside of class to complete this project and/or the weekend working on the Poster Board Project

\_\_\_\_\_ \_\_\_\_\_Properly used class time and did NOT waste ANY class time

\_\_\_\_\_ \_\_\_\_\_Gathered necessary information for other to be knowledgeable about my topic/court case

\_\_\_\_\_ \_\_\_\_\_Spent necessary time on project to make poster board effective by fulfilling the project’s requirements

 **\_\_\_\_\_\_\_\_\_\_/20**

**Policy Proposal: Material Covered (1-20):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** \_\_\_\_ \_\_\_\_\_Poster Board addressed a topic/court case in a thoughtful and respectful manner
\_\_\_\_ \_\_\_\_\_Poster Board provided clarity on a topic/court case by explaining the issue as outlined in the assignment section

\_\_\_\_ \_\_\_\_\_Poster Board cited facts from research and information from court jurisprudence

\_\_\_\_ \_\_\_\_\_Poster Board has a clear arguments and positions on the topic presented

\_\_\_\_\_ \_\_\_\_Poster Board Addressed the modern debate surrounding an issue even if it was addressed earlier by the Court

\_\_\_\_\_ \_\_\_\_Poster Board Fostered Discussion that was relevant, informed, and intelligent and effective in getting information across

\_\_\_\_\_ \_\_\_\_Poster Board Clarity: Was easy to understand and provided clear arguments/positions on the issue as demonstrated by the comments

\_\_\_\_\_ \_\_\_\_Poster Board Creativity: Was dynamic and had interesting elements to draw attention and wasn’t boring, dull, or blah

\_\_\_\_\_ \_\_\_\_Poster board was neat, did not look thrown together and appropriate for the classroom

\_\_\_\_ \_\_\_\_\_The use of language, word choice, and sentence structure enhanced the argument and Poster Board contains NO spelling errors

\_\_\_\_ \_\_\_\_\_Poster Board is of adequate length to explain proposal for the layman and was easy to read and understand
  **\_\_\_\_\_\_\_\_\_\_/20**

**Poster Board Presentation and Self-Reflection (1-10): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

\_\_\_\_\_ \_\_\_\_\_Cited history, discussed facts, and had clear main arguments that showed a strong grasp of the topic/court case involved

\_\_\_\_\_ \_\_\_\_\_Asked questions that demonstrated a strong grasp of the topic/court case, its history and its significance

\_\_\_\_\_ \_\_\_\_\_Showed ability to think on feet fostering discussion and weaving arguments into questions using **hypotheticals** for long-term effect of decision

\_\_\_\_\_ \_\_\_\_\_Placed the appropriate mark next to EACH category and did not just give yourself 100% in **each** section; used ½ points

\_\_\_\_\_ \_\_\_\_\_Answered each question with deep thought and MINIMALLY three sentences for each question

 **\_\_\_\_\_\_\_\_\_\_/10**

**TOTAL\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/50**

**REFLECTION QUESTIONS:** Learning involves some permanency. The discussion needs legs. After the simulation and completing your self-evaluation, re-cap the conversation with your parent(s), guardian(s), adult(s) in your life about what you heard and reflect deeply on what was discussed. **Answer each question on the bottom/back of this sheet and return with your rubric.**
**QUESTION #1.** What were your (and, if time, your loved one’s) initial thoughts on the subject and question? How has that opinion evolved and/or become more nuanced?

QUESTION #2. Whose Posterboard were you most impressed? Explain.

**QUESTION #3.** List and describe the most meaningful ideas, concepts, and/or principles learned through this project.

QUESTION #4. Explain what you did well on the project. Explain what could you could have done differently and would change if you were to complete this project again? How would you rate the project overall (1-10) and what changes -if any- would you make to the rubric, the simulation format, And/Or the prep?

QUESTION #5. **OVERALL PERFORMANCE:** How would you rate your project (1-10) based upon your preparation, knowledge and understanding of the issue, and performance in regards to your prior projects and your peers? Justify the ranking. Did the rubric give you the correct grade? Explain. If the overall score determined through the rubric is different from the grade you believe you deserve explain why and the grade you believe is warranted.