

While the relationship between religion and government has been important throughout American and world history, interest in American church–state relations has skyrocketed in recent years. Only two decades ago, we felt confident that there was a sufficient body of judicial decisions to justify a full-length casebook. Now we have a hard time finding room for all the decisions in this rapidly changing field. Changes in American society—in particular, changing norms of sexual morality—have given rise to new kinds of cases. In many such instances, religious-liberty disputes reflect the dramatic increase in America’s political and cultural polarization. Changes in the composition of the United States Supreme Court are leading to significant, though as of yet ultimately uncertain, changes in legal doctrine. And as the field changes, so must the book—this new edition contains more than 100 pages of new material.

Despite all this new material, the book still organizes itself around three fundamental ways in which government interacts with religion:

- the regulation of religious activity (Chapter 3),
- the funding of religious activity (Chapter 4), and
- the treatment of religion in government’s culture-shaping activities such as public schools (Chapter 5).

Each of these ties together a number of sections—a structure designed to help students see logical relationships between cases that may involve quite different sets of facts. In each of these three major areas, we examine doctrines under both components of the First Amendment’s religion provision—free exercise and nonestablishment.

One of the chief reasons why the Supreme Court’s case law on religion has been so inconsistent and shifting is that for years the Court treated these two First Amendment concepts in isolation from each other, labeling cases as “Free Exercise Clause cases” or “Establishment Clause cases.” The structure of this casebook—with free exercise rulings immediately followed by nonestablishment rulings in the same area, and vice versa—is designed to help teachers and students think about the two clauses together, to consider the implications of nonestablishment in every free exercise dispute, and vice-versa. The interaction of these two clauses is the key point of Chapter 1; it continues to be emphasized throughout the text.

This casebook seeks throughout to integrate current issues concerning religion and the state with historical and theoretical perspectives on those issues. One of the great rewards of studying church–state relations is the rich history of reflection and debate on a subject that extends back for centuries. The questions that underlie today’s debates—for example, how to maintain a moral framework for society and at the same time respect the rights of conscientious dissenters—are truly perennial questions, even though they may take different forms in different

times and places. Accordingly, Chapter 2 of the book provides a concentrated historical background on the development of religious liberty in America from the established churches of the colonial era up through the enactment of the First Amendment. Subsequently, each of the three largest parts of the book (Chapters 3 through 5, listed above) begins with a historically oriented section, and the text returns to historical and theoretical materials throughout.

To make possible the integration of these rich historical and theoretical perspectives, the casebook relies on fairly significant notes following the leading cases. It is difficult to make sense of the Supreme Court's case law under the Religion Clauses, which is so shifting and inconsistent taken on its own terms, without understanding that there are various historical and theoretical tensions that pull the Justices in different directions. The notes following the cases aim to help students by summarizing the holding and rationale of the case before delving into its complications and variations. And the authors have worked hard to include questions on both sides of the issues. People who look through the book will find citations to a wide range of authors.

The richness of the subject of religion and the state means that it is difficult to cover every page of these materials in one course. Different emphases are possible: basic Religion Clause doctrines, the historical background of current issues, the legal problems faced by religious organizations, and so forth. The Teacher's Manual accompanying the book provides instructors with suggested syllabi for these varying emphases.

New developments following the publication of this edition, such as Supreme Court decisions and significant lower court decisions and scholarly commentary, will be posted on the supplemental website at <https://aspenpublishing.com/McConnell-Religion5>. In addition, materials from prior editions that we have chosen to omit may still be found in this supplement.

A word about editing style: Another advantage of a subject as focused as religion and the Constitution is that students can read opinions in something resembling their actual form, without the need for constant severe editing. Therefore, a number of the cases here are lightly edited. We have, however, tried to streamline the reading by eliminating reported citations within excerpts. (The case citation almost always appears somewhere else in the materials.) We have indicated the editing out of text within an excerpt by ellipses, but we have not indicated where citations or footnotes have been dropped.

Finally, as with the previous editions, we welcome comments from teachers and readers on all aspects of the book.

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