



UNC
GREENSBORO
General Counsel

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From: Office of General Counsel
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Date: November 21, 2018

Re: Opinion of Office of General Counsel:
First Amendment Religious Rights and Students

I. Purpose

The Office of General Counsel has been asked to provide a legal opinion related to two students objection on religious grounds to their participation in a project assigned in a course in the Bryan School of Business and Economics. Specifically, the Office has been asked to opine as to whether the students should be granted an exemption from having to complete a project that involves developing and presenting an idea for a delivery system for an animal vaccine that limits the reproduction of wild animals. The students allege their religious beliefs prohibit them from harming animals and as such are protected by the First Amendment and exempted from participation.

II. Executive Summary

This case involves the First Amendment protections related to the free exercise of religion. The Constitutional issue presented in the case is whether the First Amendment protections for religious expression and prohibition on the establishment of a religion extend to students in the academic setting where course assignments may be inconsistent with the religious beliefs of the students. The facts in this case present two issues. First, is the assignment at issue reasonably related to "legitimate pedagogical concerns?" And second, is the student's requested accommodation such that it would alter or interfere with the essential course requirements?

In this instance, Constitutional protections related to religious freedom do not prohibit a college or university from requiring particular assignments. it is clear that the required

assignment at issue is reasonably related to legitimate pedagogical concerns and is not a pretext for religious discrimination. The University is not obligated to grant the requested accommodation (*i.e.* exempting the students from the course and/or coursework) in this case, however, it is advisable that the University (1) determine that similar exemptions have not been made in the past; and (2) determine whether there are other alternatives that would address the requested circumstances.

III. Discussion

A. Facts

The following factual scenario raised this issue to the attention of UNCG Bryan School faculty this semester.

Two UNCG students in the Bryan School expressed concerns over a course project on the basis of religious beliefs. The course project involves the development of a delivery system for an animal vaccine that limits the reproduction of wild animals such as deer for a limited period.

One student stated "As a Christian I believe that God created every being (animal or human) perfectly and in His image. I believe that we are not supposed to interfere with His creation of the natural process of reproduction. God created animals with the ultimate purpose to reproduce. hindering animals from reproducing, therefore goes against everything that my religion states and what I personally believe."

The other student noted "As a Christian, I believe that God created everything in our universe in a perfect manner. That being said, I also believe that He created everything including natural process such as the ability for females to produce offspring. You can see where this comes into conflict with what we are being asked to do in this project. I believe that by assisting a company in spreading a vaccine that prevents offspring for at least 5 years that I am going against my religious beliefs."

The course in question is required for third-year business students. There are currently 17 sections of the course comprised of 24 students in each section. Within each section, the students are divided into groups, or teams, consisting of 4 students per group and assigned a semester-long project. All groups in all sections are assigned the same project. The primary goals of this large project include students learning to problem-solve on teams as they might upon entering the workforce and learning to develop and present solutions to others.

For many years, the Bryan School has partnered with various outside businesses so that their students proposed solutions could actually address a real-world problem as they might in their future careers.

UNCG Bryan School faculty members view this as an important part of the educational process. As one faculty member described the project, "Much like an unpaid, but for-credit, internship, the student is receiving educational value from any work that they are completing."

B. Issue

The Constitutional issue presented in the case is whether the First Amendment protections for religious expression and prohibition on the establishment of a religion extend to students in the academic setting where course assignments may be inconsistent with the religious beliefs of the students.

The facts in UNCG's case present two specific questions. First, is the assignment at issue reasonably related to legitimate pedagogical concerns? And second, is the student's requested accommodation such that it would alter or interfere with the essential course requirements? It is clear in this instance that the required assignment at issue is reasonably related to legitimate pedagogical concerns.

C. Broad Legal Principle and Applicable Law

The First Amendment to the United States Constitution contains not one, but six discreet rights. These include: freedom of speech, freedom of the press, the right to peaceably assemble, the right to petition the government for a redress of grievances, the freedom to exercise one's own religion, and a prohibition on the government establishing a particular religion. This case involves the First Amendment protections related to the free exercise of religion.

1. Reasonable Relation to Legitimate Pedagogical Concerns

At a public school like UNC Greensboro, when an assignment is a required part of the curriculum, courts will likely consider this school-sponsored speech. See *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). In *Hazelwood*, the Supreme Court established the framework for analyzing such assignments and the objections students may make to them. A school may restrict student's speech in this manner through an assignment so long as the school-sponsored speech is "reasonably related to legitimate pedagogical concerns." *Id.*

Although *Hazelwood* is a K-12 case, courts have shown a willingness to apply a similar rationale to higher education, particularly when analyzing whether a student can object to an assignment, or a portion of a course's curriculum, based on a religious objection. A particularly instructive case is *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004). In that case, as student at the University of Utah noted a religious objection to saying certain lines of dialogue in a play in an actor-training program. The student posited that speaking the language as written in the script went against her Mormon faith. The student eventually had her grade lowered when she omitted the lines in question without prior approval from her instructor. The University defended the requirement to perform the lines as written by noting that performing such scripts advanced a pedagogical interest in teaching acting.

The 10th Circuit applied the *Hazelwood* framework (*i.e.* "reasonably related to legitimate pedagogical concerns") when analyzing the matter. The Court noted that curriculum is not something over which students can hold veto power. Although the Court in *Axson-Flynn* did ultimately find that there *was* a genuine issue of fact regarding the University's contention that its reasons were strictly pedagogical rather than a pretext for

religious discrimination, the general rationale from *Hazelwood* applied even in the higher education setting.¹

Additionally, the Courts in *Hazelwood* and *Axson-Flynn* noted that when a student requests a particular accommodation on the basis of a religious objection, the school must consider whether a particular accommodation requested would alter or interfere with essential course requirements.

While not precedential in the legal sense when compared with the preceding caselaw, it is important and illustrative to consider the Academy-based principles of Academic Freedom. As the 1967 Joint Statement on Rights and Freedoms of Students, AAUP Policy Documents & Reports 273-79 (10th ed. 2006) makes clear, while students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, they are nevertheless responsible for learning the content of any course of study for which they are enrolled. *Id.* at 274.

2. Verifying Need for Religious Accommodation

Courts have consistently disfavored attempts to question the truth or reasonableness of a person's religious beliefs, but institutions may request that students or organizations submit information about their professed belief in order to determine whether it is in fact sincere. *See Morin v. MGH Institute of Health Professions*, 15 Mass. L. Rep. 417 (Mass Sup. Ct. 2002).

The only goal of a request for such information is to establish whether there is a real burden on that religion being imposed by the course or assignment in question, and not to question the legitimacy of the belief(s). If there is a burden on religious belief, then the University must determine what nature of accommodations are most effective.

D. State Law or University Policy

The North Carolina State Constitution enumerates many of the same rights provided for in the First Amendment. Specifically, Section 13. Religious Liberty states "All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience."

That section is immediately followed in the North Carolina Constitution by Section 14. Freedom of Speech and Press, which reads "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse."

UNC Greensboro does not currently have a specific policy for requesting accommodations based on religious objections in the classroom. However, certain general principles involved in requesting other types of accommodations, particularly

¹ The Court noted that the University had previously accommodated a Jewish student's religious objections and that the University could not demonstrate that its requirement to read the script as written was either neutral rule of general applicability or narrowly tailored to meet a compelling government objective. The case was eventually settled, and the University of Utah developed a policy to let students opt out of activities that conflict with their religious beliefs with the approval of a professor, dean, or university vice president.

having students and faculty engage in a collaborative, interactive process may be useful in framing such issues.

E. Application of the Law to UNCG Facts

In the case at hand, it is clear that the required assignment at issue is reasonably related to legitimate pedagogical concerns as required under the *Hazelwood* and *Axson-Flynn* line of cases. The goals stated by UNCG included: a) having students work on a real-world problem, b) developing relationships with, and gaining exposure to, an actual company, c) learning to problem-solve in a group, and most importantly d) learning how to develop and present a group's solutions at the conclusion of the process in a manner closely approximating that type of presentation in a post-college setting. All of these goals are legitimately pedagogical.

In addition, because the assignment is the same across all sections, and all groups within those sections, the assignment itself is demonstrably *not* a pretext for religious discrimination of any kind.

A closer question in this matter is whether a requested accommodation would alter or interfere with essential course requirements. In the absence of further facts, the students do not appear to have requested any specific accommodation(s) outside of the entire course being waived as a requirement for their degrees. Here, faculty in the Bryan School have made logical pedagogical and educational decisions for requiring the course at issue. The decision to partner with a third-party, in this case an outside company, has been demonstrated through years of experience, to provide students with invaluable real-world experience that enhances their educational experience at UNCG and within the School of Business. Waiving the course as a requirement for graduation would certainly alter the essential requirements as determined by sound academic judgment.²

V. Opinion of the Office of General Counsel

It is the opinion of the Office of General Counsel that the University requiring students to participate in the subject matter academic initiative is not a violation of the students' First Amendment rights related to freedom of religion.

The University IS NOT obligated to grant the requested accommodation (*i.e.* exempting the students from the course and/or coursework) in this case, however, it is advisable that the University (1) determine that similar exemptions have not been made in the past; and (2) determine whether there are other alternatives that would address the requested circumstances.

More specifically, when a student expresses a religious objection in a course to an assignment or particular coursework, and requests an accommodation based on that objection (*e.g.*, a different course, section, or assignment), faculty members should consider whether granting such an accommodation would alter or interfere with

² Note: Two potential accommodations were considered in this matter. First, the assignment of a different problem for the group or groups of which these students were members was considered but determined to greatly interfere with the essential course requirements. Second, an accommodation that would amend the Bryan School's agreement with the third-party to prohibit that company from using in practice, the ideas developed by these two individual students out of the over 400 students enrolled in the same course this semester.

essential course requirements. Faculty members need to consider whether other exceptions to the same course requirements might be, or have been, made (e.g., for individuals with a different religious objection or those with accommodations for disabilities for similar assignments). Additionally, the University should conduct a thorough analysis of whether other alternatives might achieve the same educational goal(s), including alternative sections, courses, projects, and assignments. Faculty members should share such requests with their Dean's Office, who in turn may seek consultation with the Office of General Counsel as necessary.