

RELIGION AND SPORTS IN THE UNDERGRADUATE CLASSROOM: A SUREFIRE WAY TO SPARK STUDENT INTEREST

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I. INTRODUCTION

A time-honored adage contends that it is improper to discuss religion in polite company. Ignoring this advice in the undergraduate classroom can generate uncomfortable and potentially heated situations. Yet, religion is of high interest to many of our students. Many of them are also interested in sports. Some represent their institution as a member of an intercollegiate squad; others played on high school teams. Still other students enjoy sports recreationally or as spectators. In this article, I propose to use our students' interests in religion and sports as a means of generating classroom discussions and prompting extra-curricular reading on topics pertaining to business law.

The traditional business law class typically devotes one or more class periods to the topic of constitutional law. It is here that one finds the most natural fit for religion and sports. For example, a coach at a public high school may ask for a Christian prayer, prompting an inquiry into its legitimacy in light of the establishment clause of the First Amendment. In other settings, a Jewish athlete may ask to wear his yarmulke (headdress) while competing, or a Mormon athlete may ask to be excused from Sunday competition so as to honor his or her religious beliefs. In these and other cases, the free exercise clause takes center stage.

The present discussion begins with a brief primer on the First Amendment, outlining the classic Supreme Court cases that set the contours of the establishment clause and the free exercise clause of the First Amendment. The article then discusses a series of cases involving the interface between religion and sports. In many of these cases, the U.S.

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Supreme Court has not definitively ruled, and the federal circuits and the various states have come to different conclusions about the nature and acceptability of the relationship between religion, prayer, students, employers, and employees. Many questions remain unclearly answered, and changing views and perceptions related to religious tolerance continue to present challenges for communities and the courts.¹

Many students might be initially reluctant to enter the fray of religious discussion, but by using sports-related examples, I have found that more students are willing to participate because they can relate to the context. Examples can be quite different depending upon whether the student attended a public or a parochial school. Most students find at least some of the cases to be provocative, generating further reading and prompting discussions both in and out of the classroom.²

II. A PRIMER ON THE FIRST AMENDMENT

Before proceeding into sport specifics, it is wise to briefly explore three significant Supreme Court cases that business law professors should know when dealing with religion issues in the American legal landscape. These three cases are the foundation for the more specific sports law cases and examples you can present later. Developed from these three cases are “tests” known as the Lemon, coercion, and endorsement tests.

The “Lemon” test springs from *Lemon v. Kurtzman*, where the U. S. Supreme Court coined the phrase “excessive entanglement” between the government and religion.³ The Court said that a total separation between church and state is not required, but a lower court must invalidate a state statute if it lacks a “secular legislative purpose.”⁴ More specifically, a statute is only acceptable if 1) that statute has a secular purpose; 2) its principal or

¹ The article focuses on sports-related cases and issues. It is not meant to review the myriad of interscholastic cases around the country that are not sports related, many of which have caused considerable confusion regarding what is acceptable for a high school graduation ceremony or speech. See, e.g., *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963 (5th Cir. 1992); *ACLU of N.J. v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471 (3d Cir. 1996); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Adler v. Duval Cnty. Sch. Bd.*, 851 F. Supp. 446 (M.D. Fla. 1994) (“Adler I”); *Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475 (11th Cir. 1997) (“Adler II”), *vacated*, 531 U.S. 801 (2000), *reinstated*, 250 F.3d 1330 (11th Cir. 2001) (“Adler III”); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979 (9th Cir. 2003); *Compare Chaudhuri v. State of Tenn.*, 130 F.3d 232 (6th Cir. 1997).

² The challenge to motivate class discussion and extra-curricular reading may be particularly poignant for students of the so-called “millennium generation.” See generally Megan Thomas, *Gen Y: No Job, Lots of Loans, Grim Future*, MSNBC, July 29, 2010, http://www.msnbc.msn.com/id/38364681/ns/business-economy_at_a_crossroads/.

³ *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁴ *Id.* at 612.

primary effect neither advances nor inhibits religion; and 3) it must not foster an excessive entanglement with religion.⁵

According to the “coercion test” in *Lee v. Weisman*, the government may not coerce anyone to support or participate in religion or its exercise.⁶ This was considered “groundbreaking” as it was the first case to address the distinction between curricular and extracurricular scholastic activities.⁷ In short, prayer at a public school ceremony, such as graduation, violates the establishment clause when state officials (e.g., a school principal) control the religious exercise and make attendance and participation in it mandatory.⁸

Finally, under the “endorsement test,” the government cannot endorse, favor, promote or prefer any religious belief or practice.⁹ That is, a government action is invalid if it creates a perception in the mind of a reasonable observer that the government is either endorsing or disapproving of religion.¹⁰ Of course, the fundamental basis for all these decisions stems from the First Amendment which states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. . . .”¹¹

Instructors need to carefully distinguish the two First Amendment clauses that address the interface between government and religion: the “establishment clause” and the “free exercise clause.” The former prohibits the government from establishing religion; the latter guarantees the individual the right to practice his or her religion. Although the First Amendment expressly limits only congressional action, states through the application of the Fourteenth Amendment’s equal protection clause must also preserve the freedom of religion established in the Bill of Rights.¹² In addition, many states have constitutional provisions and statutes that address religion specifically. For example, the state of Michigan Constitution provides:

⁵ *Id.* at 612-13.

⁶ 505 U.S. 577 (1992) (holding as unconstitutional school-imposed invocations and benedictions at public school graduation ceremonies).

⁷ See Bridget Asplund, *First Amendment-Establishment Clause-Student-Led, Student-Initiated Prayer at Football Games Violates the Establishment Clause-Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), 13 SETON HALL J. SPORT L. 97, 106 (2003).

⁸ *Lee v. Weisman*, 505 U.S. 577, 598-99 (1992).

⁹ *City of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573 (1989) (holding that the display of a crèche inside a city building violated the First Amendment). See generally *Lynch v. Donnelly*, 465 U.S. 668 (1984) (upholding a city-sponsored display of a crèche as part of a Christmas display in a park).

¹⁰ *Lynch v. Donnelly* 465 U.S. 688, 692 (1984).

¹¹ U.S. CONST. amend. I, cl. 1.

¹² See *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947); see also Mark Strasser, *Religion in the Schools: On Prayer, Neutrality, and Sectarian Perspectives*, 42 AKRON L. REV. 185 (2009).

Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.¹³

By exploring and comparing your state's constitution or statutes related to religious exercise in this context, you have an opportunity to review or discuss the First Amendment and its relationship to other concepts such as federalism, federal preemption, and states' rights before utilizing sports examples.¹⁴

I have found that after reviewing the three religion tests there is also a chance to review the geography and composition of the thirteen federal circuits. This emphasizes the varied perceptions of religion and sports law depending upon the location of the constitutional debate. This is also a good time to review the concept of "state action" and its relationship to the Fourteenth Amendment.¹⁵

III. SPORTS-RELATED EXAMPLES

The following examples should serve as a solid introduction to sports law and its convergence with religion in the United States. Due to time constraints in undergraduate business law courses, it is not in your best interest to get tripped up by the religion cases of yester-year.¹⁶

¹³ MICH. CONST. art 1, § 4.

¹⁴ See Patricia L. Donze, *Legislating Comity: Can Congress Enforce Federalism Constraints Through Restrictions on Preemption Doctrine*, 4 N.Y.U. J. LEGIS. & PUB. POL'Y 239 (2000-01).

¹⁵ U.S. CONST. amend. XIV, § 1. See generally Dionne L. Koller, *Frozen in Time: The State Action Doctrine's Application to Amateur Sports*, 82 ST. JOHN'S L. REV. 183 (2008) (exploring state action decisions involving the U. S. Olympic Committee (USOC) and the National Collegiate Athletic Association (NCAA)).

¹⁶ See, e.g., *Engel v. Vitale*, 370 U.S. 421 (1962) (State officials may not mandate that a prayer be recited at the beginning of each school day, even if the prayer is denominationally neutral and student participation is optional. Students can engage in voluntary prayer activities on state property, however); see also *Wallace v. Jaffree*, 472 U.S. 38 (1985) (Supreme Court invalidated an amendment to an Alabama statute that added "or voluntary prayer" to a statute

I express to my students that the discussion of religion in the context of sports law can be divided into three environments: intercollegiate, interscholastic, and professional sports. If time allows after leading the students through these three environments, I offer a “grab bag” of related items that we usually do not have time to discuss in-depth. These are mentioned later in this paper. I point out that there have been issues or incidents related to various faiths including Christians, Jews, Mormons, Muslims and Mennonites in the context of sports and the law.

A. *Intercollegiate Sports*

I begin with the intercollegiate sports because that is the environment in which we work, and that is the world in which our audience (students) lives. I often ask my students if they felt pressured to conform to certain conduct, such as prayer in high school or college. Most of my students tell me that they did not feel uncomfortable saying team prayers, even if they are not religious themselves, as they found it more of a team-building exercise. It is important to keep moving forward and to provide just enough information on each environment to pique the students’ interest for further exploration outside of the classroom. The following categories are designed to reflect that brevity.

1. Christianity Generally

I bridge the introductory material (i.e., the three “tests”) to a 2004 incident at the federally funded U. S. Air Force Academy. Head football coach Fisher DeBerry briefly hung a banner in the locker room, which displayed a four-paragraph poem from the Fellowship of Christian Athletes.¹⁷ This banner was known as the “Competitors Creed,” and reads in part:

“I am a Christian first and last, I am created in the likeness of God Almighty to bring Him Glory, I am a member of Team Jesus Christ, I wear the colors of the cross. . . .”¹⁸

The banner stayed up for one day before the coach was asked to remove it by Academy officials.¹⁹ The full poem is found in *Appendix A*. I ask the

that authorized a period of silence “for meditation” in the Alabama public schools as statute was motivated by a religious purpose).

¹⁷ See Heather Cook, *Service Before Self? Evangelicals Flying High at the U.S. Air Force Academy*, 36 J.L. & EDUC. 1, 8 (2007).

¹⁸ See FELLOWSHIP OF CHRISTIAN ATHLETES, <http://www.fca.org/aboutfca/> (last visited Aug. 3, 2010); see also TEAM JESUS CHRIST, <http://www.facebook.com/group.php?gid=104309435376> (last visited Aug. 2, 2010).

students to review the poem and then tell me whether they feel DeBerry may have crossed the line. The answer is usually “yes.”

DeBerry is not alone, however, in terms of proselytizing Christianity at a public university by a high-profile individual. Recent National Football League (NFL) first-round draft choice Tim Tebow, a Heisman trophy winner and quarterback from the University of Florida, regularly wore eye black containing Biblical verses as a student-athlete.²⁰ After his departure, the National Collegiate Athletic Association (NCAA) changed its rules to prevent eye black messages. Some now refer to this as the “Tim Tebow Rule.”²¹ Consider, too, the way in which University of Georgia head football coach Mark Richt has publicly displayed his devotion to the Christian faith.²²

2. Islamic Issues

Of course, not all intercollegiate issues involve those who follow Christianity. Consider Andrea Armstrong, once a member of the Islamic faith and former University of South Florida (USF) women’s basketball player who wanted to wear Islamic clothing on the court.²³ USF asked the NCAA for an exemption to its uniform policy to allow her to wear long pants, a top with long sleeves and a scarf during games, but she quit the team in 2004.²⁴ In 2007, a case was settled against New Mexico State University on behalf of four Muslim football players who alleged that they were dismissed from the team because of their religious beliefs.²⁵

¹⁹ Michael Bradley, *Separation of Church and Football*, SPORTS ILLUSTRATED, May 26, 2005, <http://sportsillustrated.cnn.com/vault/article/web/COM1045050/index.htm> (noting that DeBerry’s actions were “dangerous” due to the tremendous influence he has over his impressionable student-athletes).

²⁰ Josh Wiley, *Tim Tebow Bible Verses-Game by Game*, ASSOCIATED CONTENT, Jan. 1, 2010, http://www.associatedcontent.com/article/2546065/tim_tebow_bible_verses_game_by_game.html.

²¹ Michael DiRocco, *The Message is Out on Eye Black in College Football and the NFL*, JACKSONVILLE.COM, Apr. 17, 2010, <http://jacksonville.com/sports/college/florida-gators/2010-04-17/story/message-out-eye-black-college-football-and-nfl>.

²² See Paul Newberry, *Georgia, Coach Richt Keeping the Faith*, L. A. TIMES, Dec. 29, 2002, available at <http://articles.latimes.com/2002/dec/29/sports/sp-georgiadawg29>; see also Elizabeth B. Halligan, *Coercing Adults?: The Fourth Circuit and the Acceptability of Religious Expression in Government Settings*, 57 S.C. L. REV. 923, 944 (2006).

²³ Greg Garber, *An Angry Backlash*, ESPN, Sep. 24, 2004, <http://sports.espn.go.com/espn/news/story?id=1887618>.

²⁴ *Id.*; see also Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L.J. 441, 499-500 (2008).

²⁵ Associated Press, *New Mexico State's Mumme Settles Lawsuit with Former Players*, June 21, 2007, <http://sports.espn.go.com/ncf/news/story?id=2912321>. The lawsuit claimed that the Muslim athletes were singled out, could not freely exercise their religion and had to recite the Lord’s Prayer along with other teammates prior to a game.

3. Mormonism

Brigham Young University (BYU), a Mormon institution, maintains a policy against Sunday competition in accordance with its religious philosophy.²⁶ BYU takes this competition principle very seriously, and remains the lone influential holdout in NCAA's Division I.²⁷ In fact, Eli Herring, a devout Mormon and star tackle at BYU, refused to play on Sundays despite the Oakland Raiders drafting him in the sixth round of the 1995 NFL draft.²⁸ Some argue that BYU was not invited to the PAC-10 conference in 2010 due to its religious mission and the unnecessary conflicts that may arise.²⁹

BYU's no Sunday play policy has caused a few problems between student-athlete participation and intercollegiate competition on occasion, most recently when one of its divers could not compete on Sunday at the 2010 NCAA Swimming and Diving Championships.³⁰ Until 1998, the NCAA had a rule which stated,

If a participating institution has a policy against Sunday competition, it shall inform the governing sports committee prior to the beginning of the championship in order for it or one of its

²⁶ See Lee Benson, *BYU is Lone Holdout for Not Playing on Sundays*, DESERET NEWS, Jul. 6, 2010, available at <http://www.deseretnews.com/article/700046058/BYU-is-lone-holdout-for-not-playing-on-Sundays.html> (noting that other private institutions run by Christian churches such as Southern Methodist, Texas Christian, St. Joseph's, and Notre Dame do not have a similar policy). Brigham Young University is sponsored by the Church of Jesus Christ of Latter-Day Saints (LDS). See *History of BYU*, BRIGHAM YOUNG U., <http://yfacts.byu.edu/viewarticle.aspx?id=137> (last visited August 3, 2010).

²⁷ *Id.* But see Todd Beate, *Never on Sunday: NCAA Rescinds the "BYU Rule"*, NAT'L SPORTS LAW INST., July, 1998, <http://law.marquette.edu/cgi-bin/site.pl?!2130&pageID=215> (noting that Campbell University, a Baptist school in North Carolina, has a similar rule).

²⁸ Mark Kram, *Ex BYU-Star Puts Sabbath Above NFL*, SEATTLE TIMES, Oct. 15, 1995, available at <http://community.seattletimes.nwsourc.com/archive/?date=19951015&slug=2146889> (also noting that former BYU athletes and practicing Mormons Steve Young, San Francisco 49ers quarterback, and Shawn Bradley, Philadelphia 76ers center, participated in Sunday games on a regular basis).

²⁹ See Eddie Dzurilla, *Brigham Young University Not Wanted in Pac-10 Due to Discrimination*, BLEACHER REPORT, May 28, 2010, <http://bleacherreport.com/articles/398103-byu-is-not-wanted-in-the-pac-10-due-to-discrimination> (The PAC-10 decided to invite the Universities of Colorado and Utah).

³⁰ See, e.g., Doug Bean, *D-I Sidebar: Despite Sunday Embargo, BYU's Watson Goes Home Decorated*, NCAA, Mar. 28, 2010, <http://www.ncaa.com/sports/m-swim/spec-rel/032810aaa.html> (NCAA decided to push back the championships one day to Sunday after a virus attacked numerous athletes from Arizona, Texas and Stanford); see also Molly Farmer, *"Y" Earns a 'Win' for Forfeit on Sunday*, DESERET NEWS, Apr. 20, 2010, <http://www.deseretnews.com/article/700026094/Y-earns-a-win-for-forfeit-on-Sunday.html>.

student-athletes to be excused from competing on Sunday. The championship schedule shall be adjusted to accommodate that institution, and such adjustment shall not require its team or an individual competitor to compete prior to the time originally scheduled.³¹

Often referred to as the “BYU Rule,” this rule meant that NCAA Division I schools were not required to participate in athletic competitions held on Sundays.³² The rule has been modified now and calls for teams to formally register their refusal to play on certain days with the NCAA before the beginning of the academic year.³³

4. Team Chaplains

Concern over the establishment clause’s separation between church and state has raised eyebrows for decades.³⁴ As demonstrated above, high profile individuals at public universities have created environments that appear to have blurred this wall of separation. I ask my students how they feel about chaplains in general, and then ask whether or not a state institution, which is funded by taxpayers, should have a position such as team chaplain? Furthermore, I ask if college teams should have team rabbis and priests as well. This usually generates lively class discussion. In 2007, Iowa State University (ISU) dealt with this issue when then head football coach, Gene Chizik, expressed his desire to have someone in that position. Public outrage by some faculty and the ISU Athletics Council ensued, and a petition against institutionalizing a team chaplain drew moderate national attention. ISU’s President, Gregory L. Geoffroy, supported creating the new position of team chaplain, but insisted that the new position had to be a volunteer (called “Volunteer Life Skills Assistant”), could not promote any particular religious group or belief, and had to be committed to working with people of a variety of faiths.³⁵ In addition, to measure the effectiveness of the position he requested that exit interviews be conducted with student-athletes about their experiences with the new assistant. Kevin Lykins, a Baptist pastor, also

³¹ Beatse, *supra* note 27.

³² See Scott C. Idleman, *Religious Freedom and the Interscholastic Athlete*, 12 MARQ. SPORTS L. REV. 295 (2001).

³³ See NCAA Bylaw, Article 31.1.4.1 (2010-11). This provides advance notice for the NCAA to accommodate possible scheduling conflicts during the academic year for its championships.

³⁴ See generally Daniel Gordon, *A Constitutional Res Gestae: Ending the Dueling Histories of Everson and McCollum and the Nazi State*, 16 WIDENER L.J. 1 (2006).

³⁵ *President Geoffroy’s Letter to Athletics Director Jamie Pollard*, IOWA ST. U., June 28, 2007, <http://www.public.iastate.edu/~nscentral/news/2007/jun/geoffroy.shtml>.

known for his participation with the FCA, was ultimately hired for the position.³⁶

B. Interscholastic Sports

At the interscholastic (i.e., high school) level, there are two areas that dominate the discussion of religion: prayers related to sports practice and competition, and the possible “religious” exercises conducted at the high school graduation ceremony.³⁷ Issues involve members of many faiths. In 2010, for example, Fordson High School in Dearborn, Michigan, decided to hold pre-season football practices between 11 p.m. and 4 a.m. in order to accommodate the celebration of Ramadan for its predominately Muslim squad.³⁸

I find that the plight of New Jersey high school football coach Marcus Borden, a Catholic by faith and a tenured Spanish teacher at East Brunswick High School at the time, provides enough ammunition for an interesting discussion in the interscholastic context. Borden resigned (and then was reinstated) after school administrators told him that he could not lead the team in prayer prior to sports contests or team dinners.³⁹

Borden won at the district court level, but the case was reversed by the Third Circuit which held that because the community knew he led the team in prayer for twenty-three seasons, a reasonable observer would perceive the display as a government endorsement of religion (a violation of the establishment clause).⁴⁰ After certiorari was denied by the U. S. Supreme Court in 2008, Borden, a public school employee, was finally banned from leading his team in prayer, and eventually forced to discontinue even the act

³⁶ See WCF COURIER, *Pastor Named to ISU Football Position*, July 26, 2007, http://wfcourier.com/news/breaking_news/article_7b83af24-6a29-5eaa-bebd-e2fdbd8a13de.html; See also FELLOWSHIP OF CHRISTIAN ATHLETES,

<http://www.fca.org/aboutfca/> (last visited Aug. 3, 2010) (recognizing “[t]he FCA Mission: To present to athletes and coaches and all whom they influence the challenge and adventure of receiving Jesus Christ as Savior and Lord, serving Him in their relationships and in the fellowship of the church.”).

³⁷ See *supra* note 12 and accompanying text.

³⁸ ESPN.com News Services, *Mich. School Practices 11 p.m. to 4 a.m.*, ESPN, Aug. 16, 2010, <http://sports.espn.go.com/ncaa/highschool/news/story?id=5467167>.

³⁹ *Borden v. Sch. Dist. of Twp. of E. Brunswick*, 523 F.3d 153 (3d Cir. 2008), *cert. denied* 129 S. Ct. 1524 (2009) (holding that the coach had no free speech right to contravene the local school board’s policy prohibiting faculty participation in student-led prayer activity).

⁴⁰ *Id.* at 159-60; see also Neal H. Hutchens, *Silence at the Schoolhouse Gate: The Diminishing First Amendment Rights of Public School Employees*, 97 Ky. L.J. 37, 52 (2008).

of bowing his head and getting down on one knee during a student-led team prayer.⁴¹

Other interscholastic examples could include Catoosa County, Georgia cheerleaders who created controversy in 2009 when they held religious banners for football players to run through before football games. The school decided to end the practice after complaints over school sponsored religion because the cheerleaders were perceived as representing the interests of the school.⁴² The same year, a Kentucky parent expressed outrage that her son was baptized on a trip led by the high school head football coach.⁴³ More recently, in 2010, a federal district court in Missouri held that a local school district's decision to stop distributing flyers to parents through local schools, including a flyer for a summer soccer camp called "Victory Through Jesus", did not violate the Constitution.⁴⁴

In *Menora v. Illinois High School Ass'n.*, a few orthodox Jewish players desired to wear a yarmulke during basketball games.⁴⁵ The IHSA forbade hats or headgear (other than headbands). In the end, the plaintiffs failed to prove their religious practices were subject to an undue burden, and yarmulkes remained banned from high school basketball.⁴⁶ I then ask how the students would feel if any sort of jewelry, even religious-types such as a cross, were banned from all high school athletic competitions. This is an excellent opportunity to give students extra credit for consulting the local

⁴¹ *Borden v. Sch. Dist. of Twp. of E. Brunswick*, 523 F.3d at 179; *see also* *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (holding that when a public employee makes a statement pursuant to their official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communication from employer discipline); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 404-7 (5th Cir. 1995) (upholding the injunction against the girls' basketball coach who led the team in the Lord's Prayer in each practice, prayers in the locker rooms before and after the games in the center of the basketball court, and on the school bus travelling to and from basketball games).

⁴² *See* Dorie Turner, *Bible Verses Banned from Ga. High School Field*, KNOXNEWS, Oct. 3, 2009, <http://www.knoxnews.com/news/2009/oct/03/bible-verses-banned-ga-school-football-field/>.

⁴³ Andrew Woolfson, *Ky. School Trip Included Baptisms*, THE COURIER J., Sept. 8, 2009, http://www.usatoday.com/news/nation/2009-09-07-kentucky-football-trip-baptisms_N.htm.

⁴⁴ *Victory Through Jesus Sports Ministry Found. v. Lee's Summit R-7 Sch. Dist.*, 2010 U.S. Dist. LEXIS 54388 (W.D. Mo. June 3, 2010) (holding that the plaintiff did not even have standing to seek injunctive relief).

⁴⁵ *Menora v. Ill. High Sch. Ass'n.*, 683 F.2d 1030 (7th Cir. 1982).

⁴⁶ *Id.* at 1035 (noting that the players had no constitutional right to wear yarmulkes insecurely fastened by bobby pins yet vacating district court decision and remanding the case to allow the parties to come to compromise that complied with Jewish law and protected the safety of all athletes); *see also* *Hadley v. Rush Henrietta Sch. Dist.*, 409 F. Supp. 2d 164 (W.D.N.Y. 2006) (upholding preliminary injunction pending litigation in favor of student allowing him to participate in lacrosse despite not receiving a mandatory tetanus vaccination due to their religious beliefs).

high school athletic association, and determining what is or is not acceptable to wear during high school athletic competitions.

C. Professional Sports

Since there usually is not “state action” involved in a professional sports contest, though there have been attempts to demonstrate state action based upon use of public stadiums by professional sports teams, this category provides fewer examples of real or potential conflict between religion and sports than the previous two.⁴⁷ In professional sports, one of the most important differences, of course, is that the participants are usually adults and employees.⁴⁸

In 2010, Muslim NFL player Husain Abdullah of the Minnesota Vikings, kept his commitment to practice football without food or water during his observance of Ramadan. According to Abdullah’s Islamic beliefs, obtaining drink and food during Ramadan is only acceptable before sunrise and after sunset.⁴⁹ The Vikings accommodated his devotion to this religious observance, and allowed him to practice in the summer heat despite his refusals.⁵⁰ There have been a few other noteworthy Muslim examples in this context as well.⁵¹

A more frequent area of contention has occurred when religion (particularly Judaism), patriotism, and protest have collided. This has happened in several prominent instances involving sports participants and fans connected to the word “God.”⁵² In fact, there has been concern over

⁴⁷ David G. Roberts, *The Constitutionality of the NFL Patdown Policy after Sheehan and Johnston*, 58 CASE W. RES. L. REV. 979 (2008) (discussion of constitutional challenges to 2005 NFL pat-down policy prior to entrance to football games).

⁴⁸ Section 703 of Title VII of the 1964 Civil Rights Act provides:

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin or . . . to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

⁴⁹ *Id.*

⁵⁰ Associated Press, *Husain Abdullah to Fast for Ramadan*, ESPN, Aug. 8, 2010, <http://sports.espn.go.com/nfl/trainingcamp10/news/story?id=5447211>.

⁵¹ *Id.* (noting that Abdullah’s older brother Hamza, also an NFL player, and former NBA all-star Hakeem Olajuwon also observed this fasting practice).

⁵² At this point, I offer that there is no reference to “God” in the Constitution though “Creator” is mentioned in the Declaration of Independence. This usually elicits student comments or

what some refer to as “forced patriotism” at times involving songs.⁵³ One of the best ways to reach students is to solicit their opinion as to whether they feel that song “God Bless America” is a religious song endorsing Judeo-Christianity (“God”) or merely a song demonstrating patriotism.

1. “God Bless America”

On September 11, 2001, members of the U. S. Congress gathered on the steps of Capitol Hill for a news conference and began singing “God Bless America.”⁵⁴ Since that day, the song has commonly been sung during the seventh-inning stretch in Major League Baseball games upon the impetus of MLB Commissioner Bud Selig, who supported its use during the seventh inning stretch instead of “Take Me Out to the Ball Game.”⁵⁵

In 2004, MLB player Carlos Delgado walked out of the dugout when the song was played. He affirmed that this was his way of protesting the ongoing war in Iraq.⁵⁶ In 2009, the New York Yankees decided to allow spectators to go to the restroom while the song was being sung after a federal lawsuit was filed by the New York Civil Liberties Union and Queens resident Bradford Campeau-Laurion who was thrown out of the stadium in 2008 after leaving his seat to attend his business. Claiming that this was “compelled patriotism,” Campeau-Laurion, who was a Boston Red Sox fan, received a settlement and his legal fees.⁵⁷ In 2009, three teenage fans sued the Newark Bears, a minor league baseball team, claiming that they were ejected from the game by the owner because they did not stand during this song.⁵⁸

inquiry related to the phrases “In God We Trust” on currency and “God Bless America.” See generally James Adam Browning, *Newdow v. United States Congress: Is There Any Room for God*, 34 N. KY. L. REV. 51 (2007).

⁵³ See Alan K. Chen, *Forced Patriot Acts*, 81 DENV. U. L. REV. 703 (2004).

⁵⁴ *Congress Vows Unity, Reprisals for Attacks*, CNN, Sept. 12, 2001, <http://archives.cnn.com/2001/US/09/11/congress.terrorism/>.

⁵⁵ William C. Rhoden, *Delgado Makes a Stand by Taking a Seat*, N.Y. TIMES, July 21, 2004, available at <http://www.nytimes.com/2004/07/21/sports/baseball/21rhoden.html> (characterized Selig as having “ordered” all teams to play it thereby turning it into a political issue); see also *‘Take Me Out to the Ballgame turns 100’*, N.Y. DAILY NEWS, Apr. 4, 2008, available at http://www.nydailynews.com/entertainment/music/2008/04/04/2008-04-04_take_me_out_to_the_ballgame_turns_100.html.

⁵⁶ *Id.*

⁵⁷ Associated Press, *Fan Cries Foul Over Yankee Stadium Ejection*, NBC SPORTS, Apr. 15, 2009, <http://nbcsports.msnbc.com/id/30230537/>; see also Associated Press, *Fan Booted from Yankee Stadium Gets \$10K*, CBS NEWS, Apr. 15, 2009, <http://www.cbsnews.com/stories/2009/07/07/sportsline/main5142139.shtml>.

⁵⁸ Katherine Santiago, *Three Teens Sue Newark Bears for Booting Them from Stadium for Refusing to Stand During ‘God Bless America,’* THE STAR-LEDGER, Sept. 10, 2009, available at http://www.nj.com/news/index.ssf/2009/09/three_teens_sue_newark_bears_h.html.

2. “Star Spangled Banner”

The “Star Spangled Banner,” the national anthem since 1931, has caused some controversy at sporting events similar to “God Bless America.” In 1996, Mahmoud Abdul-Rauf, of the NBA’s Denver Nuggets, refused to stand when the song was played, as is the tradition, before sporting events.⁵⁹ In 2003, Toni Smith of NCAA Division III Manhattanville College in Purchase, New York, stood but turned her back on the flag during the playing of the national anthem.⁶⁰

In 2010, Goshen College, a small Christian College with ties to the Mennonite Church, decided to play the “Star Spangled Banner” for the first time in the school’s history at a college baseball game. This Indiana college has held that the national anthem displays love for country over love for God,⁶¹ however, many Mennonites claim that the lyrics describe using war and military to defend the country. Due to this reaction, the college ended up playing only an instrumental version.⁶²

3. Judaism

Particularly in baseball, Jewish athletes-and fans-have made headlines by drawing attention to choices involving the observance of religious holidays or the participation in sport at the professional level.⁶³ In 1934, Hank Greenberg anguished over whether or not to play on Rosh Hashanah, the Jewish New Year, and the Detroit News ran a headline saying “Talmud Clears Greenberg for Holiday Play.”⁶⁴ Greenberg skipped batting practice

⁵⁹ Richard C. Crepeau, *The Sports Song of Patriotism, PopPolitics*, <http://www.poppolitics.com/archives/2003/02/The-Sports-Song-of-Patriotism> (last visited Aug. 5, 2010).

⁶⁰ *Id.*; see also Associated Press, *Vietnam Vet Protests Women’s Game*, SPORTS ILLUSTRATED, Feb. 23, 2003, available at http://sportsillustrated.cnn.com/basketball/college/women/news/2003/02/23/vet_protest_ap/.

⁶¹ Dan McFeely, *National Anthem Splits Indiana’s Goshen College*, USA TODAY, Mar. 23, 2010, available at http://www.usatoday.com/news/nation/2010-03-22-national-anthem-goshen-college_N.htm.

⁶² *Id.*

⁶³ Associated Press, *Jets to Play Titans at 1 p.m. in Week 3*, ESPN, Apr. 17, 2009, <http://sports.espn.go.com/nfl/news/story?id=4078103>. (New York Jets owner requested change of the start time of against the Tennessee Titans from 4:15 pm to 1:00 pm to accommodate fans observing Yom Kippur which began at sundown that Sunday).

⁶⁴ Jeff Merron, *Green, Koufax and Greenberg-Same Dilemma, Different Decisions*, ESPN CLASSIC, Sept. 26, 2001, available at http://espn.go.com/classic/s/merron_on_green.html.

but eventually chose to play, hitting two home runs in the Detroit Tigers 2-1 victory.⁶⁵

Sandy Koufax regularly pitched on the Jewish Sabbath (sundown Friday to sundown Saturday), but never pitched on the first day of Passover or Rosh Hashanah. In 1961, Yom Kippur (annual atonement for sins) began at sundown on September 19 and ended at sundown September 20. On the night of the 20th, he pitched the Dodgers to a win with a 13-inning, 15-strikeout, 205-pitch performance. In 1965, Koufax refused to pitch in game one of the World Series because it was Yom Kippur. Instead of pitching that day, Koufax attended synagogue in Minneapolis.⁶⁶ MLB player Shawn Green, more recently, allowed Yom Kippur to interfere with his playing schedule.⁶⁷

IV. OTHER WORTHWHILE EXAMPLES

Due to the limited time frame of this subject in my business law or legal environment course, I keep a few other items reserved in case class discussion leads me in their direction. Here are some “grab-bag” examples of other subjects worthy of discussion if time allows:

- Cassius Clay, who changed his name to Muhammad Ali, losing his boxing license, and going to jail over refusing to report for military duty as a “conscientious objector.”⁶⁸
- Overly demonstrative displays of pointing fingers to the sky, which started with Philadelphia Eagles running back Herb Lusk who was the first NFL player to kneel in the end zone and pray on Sunday, Oct. 9, 1977.⁶⁹
- A NASCAR race car sponsored by Church of Scientology or proclaiming Christianity on the hood.⁷⁰
- Faith Night promotions (religious theme nights) sponsored by professional teams.⁷¹

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*; see also Garber, *supra* note 23.

⁶⁸ See Christopher J. McKinney, *Professional Sports Leagues and the First Amendment: A Closed Marketplace*, 13 MARQ. SPORTS L. REV. 223, 239-242 (2003).

⁶⁹ Jorge L. Ortiz, *Pointing: It isn't Just for Pop-Ups Anymore*, USA TODAY, June 14, 2006, available at http://www.usatoday.com/sports/baseball/2006-06-13-pointing-up_x.htm.

⁷⁰ Associated Press, *Scientology Publisher to Sponsor Team*, ESPN, June 7, 2006, <http://sports.espn.go.com/rpm/news/story?seriesId=2&id=2474395> (noting that driver Morgan Shepherd competed in the No. 89 Victory in Jesus Racing Ministries car as well).

⁷¹ Audie Cornish, *Baseball Teams Woo Christian Fans to Games*, NPR, May 26, 2006, <http://www.npr.org/templates/story/story.php?storyId=5434639>.

- Whether the Colorado Rockies promote Christian values as part of its organization.⁷²

V. CONCLUSION

This article was written to suggest a supplemental way to reach your students by using sports related examples when teaching the subject of religion in a business law course. Courts recognize differences between prayers in the locker room and prayers during graduation. They express concern over whether a “prayer” is a religious prayer or just a team-bonding moment. Finally, courts have shown concern over whether the prayer is led by the students, led by a state actor such as a public school coach, or endorsed by school administrators. There have been examples of where religion, the First Amendment, and patriotism have collided as well. This can present a challenge to professors who lack a constitutional law background, or who may be unsure how to stimulate a learning environment given the subject matter.

Though many questions remain with regard to the future of religion and the three sports law environments, providing your students with recent sports law related examples provided in this article should facilitate a general understanding of the material, in a context many undergraduate students can relate to. It can generate discussion on the differences and similarities between religion and patriotism. And, most importantly, it creates a stimulating and active-learning environment in a context to which most students in your course can relate.

⁷² Bob Nightengale, *Baseball's Rockies Seek Revival on Two Levels*, USA TODAY, June 1, 2006, available at http://www.usatoday.com/sports/baseball/nl/rockies/2006-05-30-rockies-cover_x.htm.