

Antonin Scalia Law School at George Mason University

NONPROFIT LAW (Law 269)

Spring 2025 Syllabus (as of 1.8.25)

Tuesdays and Thursdays, 1:50 – 3:15 p.m.

3 credits

Professor: JoAnn Koob: jkoob@gmu.edu

Office Hours: Tuesdays 4:30 – 5:30 p.m., Thursdays 3:15 – 4:00 p.m., and by appointment (Zoom appointments available)

Overview: Nonprofit organizations are an influential and significant sector in the United States. They range from small volunteer organizations to large corporations. This course will provide a survey of the law governing nonprofit organizations as well as an introduction to the practice of non-profit law. From the doctrinal perspective, the course will focus on federal regulations and case law that govern tax-exempt organizations. In addition, the course will examine the role of the regulatory agencies, particularly the IRS, and the practical and strategic considerations for the lawyers that represent such organizations. The course also incorporates a consideration of the role of the nonprofit sector and the policy implications for contemporary society. Students should leave this course with a comprehensive theoretical and practical vision of nonprofit law and the role nonprofit organizations play in communities across this nation.

Casebook and Readings: Our primary class material will be Nonprofit Organizations: Cases and Materials, 6th Edition, by Fishman, Schwarz, and Mayer (Fishman). Please note that the Casebook Updates supplement (which can be found on Canvas) is included as part of the text, so please refer to it when doing your readings to see whether any of the pages have supplemental material (I've generally noted this in the Assigned Readings section, but may have missed a couple of updates). Readings not found in Fishman will be provided on Canvas via link or document, and/or distributed in class.

Electronic Devices: I encourage you to go device-free during this class as much as possible. You – and your classmates – will get more out of the class. That said, laptops/tablets may be used, but solely to take notes or reference class materials. If you use such a device during class, you agree not to use it for any other purpose. Phones should not be out unless cleared in advance with the professor. Failure to follow this policy will affect your participation grade.

Attendance: The course follows the Law School's attendance policy. If a student is absent for any reason more than 20% of the course, then the student is not eligible for credit. A student who misses more than 25% of a class session will be counted as absent from that class session.

Unexpected Cancellations: If the law school has an unexpected closure (e.g., a snow day), class will still be held on the regular schedule using Zoom (in that case, I will send out a Zoom link).

Assessment and Grades:

- **Final Exam:** 50% of your final grade. The final exam will be held on April 29, 2025, at 12 p.m.
- **Nonprofit Formation Assignment (the "Assignment"):** 30% of your final grade. Details about the Assignment requirements will be discussed and distributed in class, as well as posted on Canvas. The Assignment is due on March 4, 2025 (it may be submitted as late as 11:59 p.m.).

- **Class Participation:** 20% of your final grade.

Learning Outcomes:

- Understand the legal foundations of nonprofit organizations, including identifying the key differences between the various types of Internal Revenue Code Section 501(c) organizations.
- Know how to obtain and maintain federal tax-exempt status, particularly for public charities and private foundations.
- Understand the implications of obtaining public charity versus private foundation status.
- Analyze and apply the rules and restrictions on lobbying, political activity, and unrelated business income.
- Be able to advise nonprofit organizations regarding legal compliance with federal nonprofit law and understand the penalties associated with noncompliance.
- Analyze case studies to determine how to resolve various legal issues and challenges facing nonprofit organizations.
- Assess the implications of nonprofit law from the client, regulator, and societal perspective.

Academic Integrity: Scalia Law School has adopted an honor code, which is available on [Scalia Law's Website](#).

AI Policy: Will be discussed and circulated with the Assignment materials.

Assigned Readings: The syllabus may be updated during the semester. When updated, I will send an email and update the syllabus on Canvas. Occasionally the assigned readings include specific items to consider or be prepared to discuss; this does not imply you do not otherwise need to be prepared to discuss everything covered in the assignments, but rather, is to give you notice to plan for a robust discussion on those issues noted. For the Fishman readings you should refer to the page numbers; the section headings, etc., are listed solely for reference.

* Readings denoted with an asterisk * are available on Canvas

Class Session - Date	Readings	Notes and Other Relevant Information
1 – 1/16	Overview of the Nonprofit Sector: <ul style="list-style-type: none"> • Fishman pp. 3 – 31; 36 (starting at section 2) – 45 	<ul style="list-style-type: none"> • Include Casebook Updates • Optional: The Strange Spectacular Con of Bobby Charles Thompson
2 – 1/21	Overview of the Nonprofit Sector (cont.): <ul style="list-style-type: none"> • Fishman pp. 44 – 45 (the Problem) Nonprofit Purposes: <ul style="list-style-type: none"> • Fishman pp. 63 – 81 	<ul style="list-style-type: none"> • Consider the Problem on pp. 44 – 45 • Include Casebook Updates
3 – 1/23	Forming a Nonprofit: <ul style="list-style-type: none"> • Fishman pp. 49 – 54; 56 – 62 (up to “Problems”) 	<ul style="list-style-type: none"> • Include Casebook Updates

	<ul style="list-style-type: none"> • Sample Charitable Trust Instrument, Articles of Incorporation, and Membership Agreement* (read highlighted sections; skim the rest) <p>Charitable Tax Exemption:</p> <ul style="list-style-type: none"> • Fishman pp. 287 – 307 	
4 – 1/28	<p>Charitable Tax Exemption (cont.): Organization and Operational Tests:</p> <ul style="list-style-type: none"> • Fishman 307 – 310 • 26 CFR § 1.501(c)(3)-1(a) – (c) <p>Application for Exemption:</p> <ul style="list-style-type: none"> • Fishman pp. 310 – 313 • Parts I, II, III, and IV of Form 1023 (on Canvas) <p>Meaning of “Charity:”</p> <ul style="list-style-type: none"> • Fishman pp. 313 – 317 • Fishman pp. 317 – 338 (Hospitals and Health Care Organizations) • Schedule C of Form 1023 	<ul style="list-style-type: none"> • Include Casebook Updates
5 – 1/30	<p>Charitable Tax Exemption (cont.): Meaning of “Charity:” Fishman pp:</p> <ul style="list-style-type: none"> • 340 – 346 (to Problems) (Public Interest Law Firms) • 347 – 353 (Community Development) • 354 – 359 (to Problems) (Protection of the Environment) • 359 – 364 (to Problems) (Disaster Relief) • 365 – 367 (Credit Counseling) <p>Henriques and Barstow, I.R.S. Makes An Exception On Terror Aid, NYT 11.17.2001*</p>	
6 – 2/4	No new reading	<ul style="list-style-type: none"> • Come prepared to discuss the Problems from 1/30 readings
7 – 2/6	<p>Charitable Tax Exemption (cont.): Public Policy Limitation:</p> <ul style="list-style-type: none"> • Fishman pp. 367– 395 <p>Other Exempt Purposes:</p> <ul style="list-style-type: none"> • Fishman pp. 396 – 414 (Educational Organizations) 	<ul style="list-style-type: none"> • Include Casebook Updates

	<ul style="list-style-type: none"> • Schedule B of Form 1023 • Fishman pp. 415 – 432 (Religious Organizations) • Schedule A of Form 1023 	
8 – 2/11	<p>Charitable Tax Exemption (cont.): Other Charitable Purposes:</p> <ul style="list-style-type: none"> • Fishman pp. 433 – 440 <p>Publicly Supported and Other Charities:</p> <ul style="list-style-type: none"> • Review Part X of Form 1023 • Fishman pp. 725 – 727; 747 – 758 • IRC Sections 509(a)(1), 509(a)(2), 170(b)(1)(A), and 4946 	<ul style="list-style-type: none"> • Include Casebook Updates
9 – 2/13	<p>Charitable Tax Exemption (cont.): Inurement, Private Benefit, and Sanctions:</p> <ul style="list-style-type: none"> • Fishman pp. 449 - 482 • Treasury Regulations Sections 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(1)(ii) & (iii) 	<ul style="list-style-type: none"> • Include Casebook Updates
10 – 2/18	<p>Lobbying and Political Activity:</p> <ul style="list-style-type: none"> • Fishman pp. 482 – 500 (up to Problem) 	
11 – 2/20	<p>Lobbying and Political Activity (cont.):</p> <ul style="list-style-type: none"> • Fishman pp. 502 – 550 	<ul style="list-style-type: none"> • Include Casebook Updates
12 – 2/25	<p>Commercial Activities and UBIT:</p> <ul style="list-style-type: none"> • Fishman pp. 575 – 595 (up to Note 3) • IRC Section 502 	
13 – 2/27	<p>Commercial Activities and UBIT (cont.):</p> <ul style="list-style-type: none"> • Fishman pp. 598 – 602 (up to Notes and Questions); pp. 606 – 635 	<ul style="list-style-type: none"> • Include Casebook Updates
14 – 3/4	<p>Private Foundations:</p> <ul style="list-style-type: none"> • Fishman pp. 707 – 708; 710 – 711; and 714 – 715 • Review Fishman pp. 725 – 727 • Fishman pp. 727 – 730 (PF Excise Taxes) • Fishman pp. 794 – 801 (Dist. Req.) • Fishman pp. 812 – 821 (Taxable Expenditures) • Fishman pp. 775 (from Investment Income) – 777 	<ul style="list-style-type: none"> • Include Casebook Updates

	<ul style="list-style-type: none"> Fishman pp. 809 – 811 (Jeopardy Investments) <p>Assignment is Due by 11:59 p.m. Eastern Time</p>	
15 – 3/6	<p>Private Foundations (cont.):</p> <ul style="list-style-type: none"> Review Fishman pp. 747 (from DQP Rules) - 750 Fishman pp. 803 – 808 (Excess Business Holdings) Fishman pp. 778 – 792 (Self-Dealing) Fishman pp. 772 – 774 (Operating Foundations) <p>Alternatives to PF Status:</p> <ul style="list-style-type: none"> Fishman pp. 730 – 745 Fishman pp. 760 – 770 (Supporting Orgs) IRC Section 509(a)(3) 	<ul style="list-style-type: none"> Include Casebook Updates
No Class 3/11 and 3/13 Due to Spring Break		
16 – 3/18	<p>Donor-Advised Funds:</p> <ul style="list-style-type: none"> Reading TBD 	<ul style="list-style-type: none"> Will have a guest speaker
17 – 3/20	<p>Mutual Benefit Organizations:</p> <ul style="list-style-type: none"> Fishman pp. 931 – 980 (up to Problems) 	<ul style="list-style-type: none"> Include Casebook Updates
18 – 3/25	<p>Mutual Benefit Organizations (cont.):</p> <ul style="list-style-type: none"> Fishman pp. 981 – 983 Review Form 1024 and 1024-A <p>Private Membership Associations:</p> <ul style="list-style-type: none"> Fishman pp. 985 – 1011 	
19 – 3/27	<p>Mutual Benefit Organizations (cont.):</p> <p>Private Membership Associations:</p> <ul style="list-style-type: none"> Fishman pp. 1011 – 1042 	<ul style="list-style-type: none"> Include Casebook Updates
20 – 4/1	<p>Operation and Governance:</p> <ul style="list-style-type: none"> Fishman pp. 123 – 138; 167 – 170; 174 – 175 (Notes, to Sibley Hospital); 195 – 197 (subsection d); 198 – 202; 207 – 210 	
21 – 4/3	<p>Charitable Solicitation:</p> <ul style="list-style-type: none"> Fishman pp. 241 - 278 	<ul style="list-style-type: none"> Include Casebook Updates

	Charitable Contributions: <ul style="list-style-type: none"> Fishman pp. 825 – 826; 850 – 855 (through Note 1); 857; 860 – 868 (to Note 5) 	
22 – 4/8	Charitable Contributions (cont.): <ul style="list-style-type: none"> Fishman pp. 880 – 883 (through first full paragraph) Disclosure and other Procedural Issues: <ul style="list-style-type: none"> Fishman pp. 441 – 448 (State and Local Tax Exemptions) Fishman pp. 553 – 557 (Form 990) <i>AFPP v. Bonta</i>, 594 U.S. __ (2021) (edited version on Canvas) Fishman pp. 557 – 573 (Standing by Third Parties) 	<ul style="list-style-type: none"> Include Casebook Updates Optional reading: chart showing “DC Property Tax Exemptions”
23 – 4/10	Donor Intent: <ul style="list-style-type: none"> Fishman pp. 81 – 100 (Cy Pres and Deviation) Fishman pp. 230 – 238 (to Beneficiaries) 	<ul style="list-style-type: none"> We will have a guest speaker on <i>AFPP v. Bonta</i>; it may be helpful to review the case
24 – 4/15	Nonprofit Careers: <ul style="list-style-type: none"> No required reading 	<ul style="list-style-type: none"> Will have guest speakers
25 – 4/17	Charitable Alternatives: Conversion: <ul style="list-style-type: none"> Fishman pp. 110 – 116 LLCs: <ul style="list-style-type: none"> Fishman pp. 54 – 56 B-Corps: <ul style="list-style-type: none"> B-Corps Website: <ul style="list-style-type: none"> “Our Theory of Change” (under the “The Movement” tab) “About B-Corps Certification” and “Legal Requirements” (under the “About B Corps” tab) Benefit Corporations vs. Regulation Corporations: A Harmful Dichotomy (available at the link and on Canvas) Dissolution: <ul style="list-style-type: none"> Fishman pp. 101 – 110 (Dissolution) 	<ul style="list-style-type: none"> We will continue our Donor Intent discussion, so it may be helpful to review those readings Include Casebook Updates Optional Reading: <i>The Rise and Rise of Business as a Force for Good</i>

26 – 4/22/25	Overflow, Review, and Questions	
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