

MICHAEL W. McCONNELL

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PROFESSIONAL EXPERIENCE

Frances and Richard Mallery Professor of Law, Director of the Stanford Constitutional Law Center at Stanford Law School & Senior Fellow at Stanford University's Hoover Institution.

September 2009-present

Circuit Judge, United States Court of Appeals for the Tenth Circuit

December, 2002-2009

University of Utah, S.J. Quinney College of Law

Presidential Professor (1997-2009)

Visiting Professor of Law (1994-95)

University of Chicago, The Law School

William B. Graham Professor of Law (1992-96)

Professor of Law (1989-92)

Assistant Professor of Law (1985-89)

Senior Fellow, John M. Olin Center for Inquiry into the Theory and Practice of Democracy (1989-96)

Visiting Professor

Harvard Law School (Winter Terms 2011, 2010, 2009, 2007, 2005, 1999)

Stanford Law School (February 2008, 2006)

Drake Law School (April 2003)

Mayer, Brown & Platt, Special Consultant (1989-2002), constitutional and appellate litigation

President's Intelligence Oversight Board, Member (1988-90)

Department of Justice, Assistant to the Solicitor General (1983-85)

Office of Management and Budget, Assistant General Counsel (1981-83)

U.S. Supreme Court, Law Clerk to Justice William J. Brennan, Jr. (1980-81)

U.S. Court of Appeals for the D.C. Circuit, Law Clerk to Chief Judge J. Skelly Wright (1979-80)

EDUCATION

Michigan State University, B.A. (high honors) (1976)

Alumni Distinguished Scholar

National Merit Scholar

Phi Beta Kappa

Opinion Page Editor, Michigan State News

University of Chicago, The Law School, J.D. (honors) (1979)

Order of the Coif

Comment Editor, University of Chicago Law Review

Floyd R. Mechem Scholar

University of Notre Dame, doctor of laws (honorary) (2008)

Michigan State University College of Law, doctor of laws (honorary) (2009)

LITIGATION EXPERIENCE

Argued twelve cases in U.S. Supreme Court

Briefed and/or argued numerous cases on behalf of parties or amici in other courts

Member of the Bar of the District of Columbia Court of Appeals (admitted Dec., 1981)

ACADEMIC AND PROFESSIONAL ORGANIZATIONS

Fellow, American Academy of Arts and Sciences (elected 1996)

Chair, Constitutional Law Section, Ass'n of American Law Schools (1998-99)

U.S. Association of Constitutional Law, member (2000-present)

Advisory Board, Program in Jewish Law and Interdisciplinary Studies, Cardozo Law School, Yeshiva University (2006-present)

CIVIC ORGANIZATIONS

Board of Directors, The Laboratory Schools, The University of Chicago (an independent school located in Hyde Park in Chicago) (1991-95)

Board of Directors, Austin Christian Law Center (a low-income legal aid clinic located in the Austin neighborhood on the far west side of Chicago) (1992-96)

National Council of Churches, Committee on Religious Liberty (1993-2002)

Co-Chair, Emergency Committee to Defend the First Amendment (1996-2002)

Assistant Scoutmaster, Troop 38, Salt Lake Council, Boy Scouts of America (1999-2006)

Elder, First Presbyterian Church, Salt Lake City (2007-09)

PUBLICATIONS

Books

CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (Angela Carmella, Robert Cochran & Michael W. McConnell eds., Yale University Press 2001)

THE CONSTITUTION OF THE UNITED STATES (with Michael Stokes Paulsen, Steven G. Calabresi, and Samuel L. Bray) (Foundation Press 2010)

RELIGION AND THE CONSTITUTION (Michael W. McConnell & John Garvey eds., Aspen Publishing Co. 2002)

RELIGION AND THE CONSTITUTION (Michael W. McConnell & John Garvey eds., Aspen Publishing Co. 2d ed. 2006)

RELIGION UNSHACKLED: THE REAL MEANING OF THE ESTABLISHMENT CLAUSE (working title) (under contract to Oxford University Press)

ARTICLES

First Amendment

Is There Still a "Catholic Question" in America? Reflections on John F. Kennedy's Speech to the Houston Ministerial Association, Notre Dame Law Review, Volume 86 Number 4, August 2011, pgs. 1635-1653.

Moderation and Coherence in American Democracy, 99 Cal. L. Rev. 373 (2011), available at: <http://www.californialawreview.org/assets/pdfs/99-2/13080273769-McConnell.pdf>

"*Religion and Its Relation to Limited Government*," 33 HARV. J. OF LAW & PUB. POL. 943 (2010)

"*The Influence of Cultural Conflict on the Jurisprudence of the Religion Clauses of the First Amendment*," in Peter Cane, et al., eds., LAW AND RELIGION IN THEORETICAL AND HISTORICAL CONTEXT (Cambridge Univ. Press 2008)

"*Religious Souls and the Body Politic*," 155 THE PUBLIC INTEREST 126 (2004)

"*Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*," 44 WM. & M. L. REV. 2105 (2003).

"*Education Disestablishment: Why Democratic Values Are Ill-Served by Democratic Control of Schooling*," 18 NOMOS: Moral and Political Education 87 (S. Macedo & Y. Tamir, eds. 2002)

"*The Supreme Court's Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic*," 37 TULSA L. REV. 7 (2001)

"*State Action and the Supreme Court's Emerging Consensus on the Line Between Establishment and Private Religious Expression*," 28 PEPPERDINE L. REV. 681 (2001)

"*Religious Freedom, Separation of Powers, and the Reversal of Roles*," 2001 B.Y.U. L. REV. 611

"*The Problem of Singling Out Religion*," 50 DEPAUL L. REV. 1 (2000)

"*Old Liberalism, New Liberalism, and People of Faith*," in R. COCHRAN, ET AL., CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (forthcoming)

"*Believers As Equal Citizens*," in Nancy L. Rosenblum, ed. OBLIGATIONS OF CITIZENSHIP AND DEMANDS OF FAITH (Princeton Univ. Press, 2000)

Educational Vouchers: The Legal Issues, in VOUCHERS AND THE PROVISION OF PUBLIC SERVICES (Brookings-Urban Institute 2000)

Neutrality, Separation, and Accommodation: Tensions in American First Amendment Doctrine, in LAW AND RELIGION (Rex J. Ahdar, ed., Ashgate Publishing Co. United Kingdom 2000)

"*The New Establishmentarianism*," 75 CHICAGO-KENT L. REV. 453 (2000)

"*Why Is Religious Liberty The 'First Freedom'?*", 21 CARDOZO L. REV. 1243 (2000)

"*Five Reasons to Reject the Claim that Religious Arguments Should be Excluded from Democratic Deliberation*," 1999 UTAH L. REV. 639

- “*Religion and Free Speech*,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, Supp. II, 2000
- “*Establishment Clause (update)*,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, Supp. II, 2000
- “*Lamb’s Chapel v. Center Moriches Union Free School District*,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, Supp. II 2000
- “*Governments, Families, and Power: A Defense of Educational Choice*,” 31 Conn. L. Rev. 847 (1999)
- “*What Would It Mean to Have a ‘First Amendment’ for Sexual Orientation?*” in Saul M. Olyan & Martha Nussbaum, eds., SEXUAL ORIENTATION & HUMAN RIGHTS IN AMERICAN RELIGIOUS DISCOURSE (Oxford Press 1998)
- “*Freedom from Persecution or Protection of the Rights of Conscience?: A Critique of Justice Scalia’s Historical Arguments in City of Boerne v. Flores*,” 39 WM. & MARY L. REV. 819 (1998)
- “*Equal Treatment and Religious Discrimination*,” in S. Monsma & J. C. Soper, EQUAL TREATMENT OF RELIGIOUS IN A PLURALISTIC SOCIETY (1998)
- “*Theological Foundations of the Religion Clause of the First Amendment to the United States Constitution*,” in Jorge Rodríguez, ed., SECULARISMO ELIBERTÀ RELIGIOSA (1998)
- Comment: “*Institutions and Interpretation: A Critique of City of Boerne v. Flores*,” 111 HARV. L. REV. 153 (1997)
- “*Establishment and Toleration in Edmund Burke’s ‘Constitution of Freedom’*,” 1996 SUP. CT. REV. 275
- “*Edmund Burke’s Tolerant Establishment*,” in N. Reynolds & W.C. Durham, RELIGIOUS LIBERTY IN WESTERN THOUGHT 203 (1996)
- “*The Doubtful Constitutionality of the Clinic Access Bill*,” 1 VA. J. OF SOC. POL & LAW 261 (1994) (with Michael Stokes Paulsen)
- “*God Is Dead and We Have Killed Him!*”: *Freedom of Religion in the Post-Modern Age*,” 1993 B.Y.U. L. REV. 163
- “*Religious Freedom at a Crossroads*,” 59 U. CHI. L. REV. 115 (1992)
- “RELIGIOUS LIBERTY (Update),” in Encyclopedia of the American Constitution 444 (Supp. I, 1992)
- “*Christ, Culture, and Courts: A Niebuhrian Examination of First Amendment Jurisprudence*,” 42 DEPAUL L. REV. 191 (1992)
- “*Accommodation of Religion: An Update and a Response to the Critics*,” 60 GEO. WASH. L. REV. 685 (1992)
- “*America’s First ‘Hate Speech’ Regulation*,” 9 CONST. COMM. 17 (1992)

“Should Congress Pass Legislation Restoring the Broader Interpretation of Free Exercise of Religion?” 15 HARV. J. OF LAW & PUB. POL. 181 (1992)

“For the Religious Freedom Restoration Act,” FIRST THINGS, No. 21 (Mar. 1992), at 42 (with Cole Durham, Edward McGlynn Gaffney, & Douglas Laycock)

“The Selective Funding Problem: Abortions and Religious Schools,” 104 HARV. L. REV. 989 (1991)

“A Response to Professor Marshall,” 58 U. CHI. L. REV. 329 (1991)

“An Open Letter on Religious Freedom,” FIRST THINGS, No. 11, (Mar. 1991), at 44 (with Edward McGlynn Gaffney & Douglas Laycock).

“Multiculturalism, Majoritarianism, and Educational Choice: What Does Our Constitutional Tradition Have to Say?” 1991 U. CHI. L. FOR. 123

“The Origins and Historical Understanding of Free Exercise of Religion,” 103 HARV. L. REV. 1409 (1990)

“Academic Freedom in Religious Colleges and Universities,” 53 LAW & CONTEMP. PROB. 303 (1990), reprinted in W. Van Alstyne, ed., FREEDOM AND TENURE IN THE ACADEMY (Duke 1993)

“Free Exercise Revisionism and the Smith Opinion,” 57 U. CHI. L. REV. 1109 (1990)

“Taking Religious Freedom Seriously,” FIRST THINGS (May, 1990), at 30, reprinted in T. Eastland, ed., Religious Liberty in the Supreme Court (1993)

Book Review, A Nation Dedicated to Religious Liberty, by A. Adams & C. Emmerich, 8 J. L. & RELIG. 397 (1990)

“An Economic Approach to Issues of Religious Freedom,” 56 U. CHI. L. REV. 1 (1989) (with Richard A. Posner)

“Unconstitutional Conditions: Unrecognized Implications for the Establishment Clause,” 26 SAN DIEGO L. REV. 255 (1989)

“The Religion Clauses of the First Amendment: Where Is The Supreme Court Heading,?” 32 THE CATHOLIC LAWYER 187 (1989)

“Why ‘Separation’ Is Not the Key to Church-State Relations,” 106 CHRISTIAN CENTURY 43 (Jan. 18, 1989)

“You Can’t Tell the Players in Church-State Disputes Without a Scorecard,” 10 HARV. J. OF LAW & PUB. POL. 27 (1987)

“The First Amendment Jurisprudence of Judge Robert H. Bork,” 9 CARDOZO L. REV. 63 (1987)

“Making Peace Between the Religion Clauses,” 33 U. CHI. L. SCH. REC. 6 (Fall 1987)

“Political and Religious Disestablishment,” 1986 B.Y.U. L. REV. 405 (1986)

“Coercion: *The Lost Element of Establishment*,” 27 WM. & M. L. REV. 931 (1986)

“*Remedial Education Programs for Private School Students: Judicial Developments and Future Prospects*,” in THE CHURCH, THE STATE, AND THE SCHOOLS: CONTEMPORARY ISSUES IN LAW AND POLICY (C. Vergon, ed. 1986)

“*Accommodation of Religion*,” 1985 SUPREME CT. REV. 1

Constitutional and Interpretive Theory

The Ninth Amendment in Light of Text and History, CATO SUP. CT. REV. 13 (2009-2010)

Natural Rights and the Ninth Amendment: How Does Lockean Legal Theory Assist in Interpretation, 5 N.Y.U. J. of Law & Lib. 1 (2010).

Active Liberty: A Progressive Alternative to Textualism and Originalism?, 119 HARV. L. REV. 2387 (2006) (Book review of Justice Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution* (2005)).

Toward a Counterhistory of the Supreme Court, in REIGNING IN JUDICIAL IMPERIALISM: EFFECTIVELY LIMITING THE SUPREME COURT TO ITS CONSTITUTIONAL POWERS (C. Wolfe, ed., forthcoming)

“*Brennan’s Approach to Reading and Interpreting the Constitution*,” 43 N.Y.L.S. L. Rev. 41 (1999) (with Jeffrey Rosen, Burt Neuborne, Roger Pilon, and Stephen Reinhardt)

“*Textualism and the Dead Hand of the Past*,” 66 GEO. WASH. L. REV. 1127 (1998)

“*Tradition and Constitutionalism Before the Constitution*,” 1998 U. ILL. L. REV. 173

“*Glamis, Yes; Cawdor, Yes—but King of Scotland?*” in William N. Eskridge & Sanford Levinson, eds., CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES (NYU Press 1998)

“*The Asymmetricality of Constitutional Discourse*,” XL NOMOS 300 (1998)

“*Institutions and Interpretation: A Critique of City of Boerne v. Flores*,” 111 HARV. L. REV. 153 (1997)

“*The Right to Die and the Jurisprudence of Tradition*,” 1997 UTAH LAW REV. 665

“*The Importance of Humility in Judicial Review: A Comment on Ronald Dworkin’s ‘Moral Reading’ of the Constitution*,” 65 FORDHAM L. REV. 1269 (1997)

“*The Role of Democratic Politics in Transforming Moral Convictions Into Law*,” 98 YALE L.J. 1503 (1989)

“*A Moral Realist Defense of Constitutional Democracy*,” 64 CHI. - KENT L. REV. 89 (1988)

“*On Reading the Constitution*,” 73 CORN. L. REV. 359 (1988)

“*The Rule of Law and the Role of the Solicitor General*,” 21 LOY.-L.A. L. REV. 1105 (1988)

“*The Counter-Revolution in Legal Thought*,” 41 POLICY REVIEW 18 (Summer 1987), reprinted in revised form as “*Four Faces of Conservative Legal Thought*,” 34 U. CHI. L. SCH. REC. 12 (Spring 1988)

Allocation of Powers

Moderation and Coherence in American Democracy, California Law Review: April 2011, Vol. 99, No. 2.

What Would Hamilton Do? Hoover Digest Research and Opinion: 2011 no. 4 Fall, pgs. 160-166.

"The Redistricting Cases: Original Mistakes and Current Consequences," 24 HARV. J. OF LAW & PUB. POL. 103 (2000)

"Institutions and Interpretation: A Critique of City of Boerne v. Flores," 111 HARV. L. REV. 153 (1997)

"Federalism: Evaluating the Founders' Design," 55 U. CHI. L. REV. 1484 (1987)

"Why Hold Elections? Using Consent Decrees to Insulate Policies From Political Change," 1987 U. CHI. L. FOR. 295 (1987)

"The Politics of Returning Power to the States," 6 HARV. J. OF LAW & PUB. POL. 103 (1982)

Economic Rights and Regulation

"State Action, Due Process, and Regulated Health Care: The Downstream Effects of American Manufacturers Mutual Insurance Company v. Sullivan," Health Care Monthly 3 (June 1999) (with Steffan N. Johnson)

"When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy," 60 U. CHI. L. REV. 425 (1993) (with Randal C. Picker)

"Contract Rights and Property Rights: A Case Study in the Relationship Between Individual Liberties and Constitutional Structure," 76 CALIF. L. REV. 267 (1988), also printed in E. Paul, ed., LIBERTY, PROPERTY, AND THE FOUNDATIONS OF THE AMERICAN CONSTITUTION (SUNY Press 1988)

"Public Utilities' Private Rights: Paying for Failed Nuclear Power Projects," 1988 REGULATION, No. 2, at 35

"A Choice of Law Approach to Products-Liability Reform," in NEW DIRECTIONS IN LIABILITY LAW (W. Olson, ed.), 37 PROC. OF THE ACAD. OF POL. SCI. 90 (1988)

"The Power to Tax," THINK (the IBM magazine) 35 (Sept. 1987)

Fourteenth Amendment

"Two-and-a-Half Cheers for Bush v. Gore," 68 U. CHI. L. REV. 657 (2001), reprinted in Cass R. Sunstein & Richard A. Epstein, *The Vote: Bush, Gore & the Supreme Court* (U. Chi. Press 2001).

Concurring Opinion, in *WHAT BROWN SHOULD HAVE SAID* (Jack Balkan ed., NYU 2001)

"The Originalist Case for Brown v. Board of Education," 19 HARV. J. OF LAW & PUB. POL. 457 (1996)

"*Segregation and the Original Understanding--A Reply to Professor Maltz*," 13 CONST. COMM. 233 (1996)

"*Originalism and the Desegregation Decisions*," 81 VA. L. REV. 947 (1995)

"*The Originalist Justification for Brown: A Reply to Professor Klarman*," 81 VA. L. REV. 1937 (1995)

"*The Forgotten Constitutional Moment*," 11 CONST. COMM. 115 (1994)

"*The Fourteenth Amendment: A Second American Revolution or the Logical Culmination of the Tradition?*" 25 LOY.-L.A. L. REV. 1159 (1992)

"*How Not To Promote Serious Deliberation About Abortion*," 58 U. CHI. L. REV. 1181 (1991)

"*Affirmative Action After Teal: A New Twist or a Turn of the Screw?*" 7 REGULATION, No. 2, at 38 (Mar./Apr. 1983)

Criminal Law

"*The Booker Mess*," 83 DENVER U. L. REV. 665 (2006)

Newspaper Columns and Miscellaneous

We the People, Wall St. J., Oct. 23, 2010, p. C5 (Book Review of Pauline Maier, *Ratification: The People Debate the Constitution* (2010).

The Health Vote and the Constitution - II, Wall St. J., Mar. 20, 2010

The House Health-Care Vote and the Constitution, Wall St. J., Mar. 15, 2010

The Pay Czar Is Unconstitutional, Wall St. J., Oct. 30, 2009

"*Calvinism and Liberty*," BOOKS & CULTURE (Jan/Feb 2009) (Book review of John Witte, *The Reformation of Rights* (2008))

Dialogue with Prof. Alan Brinkley, Slate Magazine, Fall, 2000 (series of commentaries on the Election 2000 litigation)

Book review of R. Kent Newmyer, *JOHN MARSHALL AND THE HEROIC AGE OF THE SUPREME COURT* (2001), Washington Post, Jan. 27, 2002

"*A Muddled Ruling*," Wall St. Journal (Dec. 14, 2000)

"*Supremely Ill-Judged*," Wall St. Journal (Nov. 24, 2000)

"*Lee, Rex Edwin*," ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, Supp. II, 2000

Protecting our Tradition of Religious Liberty, Chicago Tribune, July 17, 1999

Lies, Damned Lies, and the "Evidence" for the Violence Against Women Act, Salt Lake Tribune, June 4, 2000

"We Worship the Same God You Do," in Paul M. Anderson, ed., *PROFESSORS WHO BELIEVE: THE SPIRITUAL JOURNEY OF CHRISTIAN FACULTY 200* (1998)

"Salt Lake City Council Deserves Credit for Wrestling With Gay Rights Ordinance," Salt Lake Tribune AA6 (Nov. 22, 1998)

"Protecting Free Exercise: A Compelling Case for "Compelling State Interest," LIBERTY Nov./Dec. 1998, at 15

"The Supreme Court 1998," FIRST THINGS (Nov. 1998), at 37

"Protecting our tradition of religious liberty," Chicago Tribune (July 17, 1998)

"Roe v. Wade at 25: Still Illegitimate," Wall Street Journal (Jan. 22, 1998)

"A Constitutional Campaign Finance Plan," Wall Street Journal (Dec. 11, 1997)

"Breaking the Law, Bending the Law," FIRST THINGS (June/July 1997), at 13

"Supreme Humility," Wall Street Journal (July 2, 1997)

"Don't Neglect the Little Platoons," in *FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM* (J. Cohen, ed. 1996)

"Keeping Faith in the Political Arena," Currents (Newsday magazine), Sept. 22, 1996, at A42.

Stuck With A Lemon: A New Test for Establishment Clause Cases Would Help Ease Current Confusion, 83 ABA JOURNAL 46 (Feb. 1997)

"A Basic Right Turned Into A Wrong," Chicago Tribune, § 1, p. 15 (July 6, 1994)

"Redefine campaign finance 'reform," Chicago Tribune (June 29, 1993)

"Free Speech Outside Abortion Clinics," Wall Street Journal (Mar. 31, 1993).

"Freedom From Religion," The American Enterprise, Jan/Feb 1993, at 34.

"'Hate Speech' Case: Twisted Path to Good Result: the Right Embraces This Right," Legal Times of Washington (and associated newspapers), July 27, 1992, at S30

"Trashing Natural Law," New York Times, op-ed page (July 15, 1991)

"Inquisition Isn't Needed," USA Today, 10A (Sept. 11, 1991)

"He Is A Talented Jurist," Newsday, Ideas 5 (July 12, 1987)

Comment, *"The Appealability of Orders Denying Motions for Disqualification of Counsel in the Federal Courts,"* 45 U. CHI. L. REV. 450 (1978)