

James M. Oleske, Jr.

Professor of Law, Lewis & Clark Law School
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ACADEMIC POSITIONS

Lewis & Clark Law School, Portland, OR

Professor, 2018-Present; Associate Professor with Tenure, 2016-2018; Associate Professor, 2014-2016; Assistant Professor, 2012-2014; Visiting Professor, 2011-2012

Courses: Administrative Law, Constitutional Law I and II, Law & Religion, Torts

Recipient of the Inaugural Huffman Scholarship Award in 2020 and the Leo Levenson Award for Excellence in Teaching in 2014

Cardiff University, Centre for Law and Religion, Cardiff, Wales, United Kingdom

Fulbright Scholar, January-June 2019

The Ohio State University, Moritz College of Law, Columbus, OH

Visiting Lecturer & Director of Moot Court, 1999-2000

Courses: Law & Religion, Advanced Appellate Advocacy

OTHER EMPLOYMENT

The White House, Washington, DC

Chief of Staff, Office of Legislative Affairs, January 2009-February 2011

Served as senior advisor to the Director of White House Legislative Affairs and managed operations in the President's legislative affairs office during the first two years of the Obama Administration.

Oregon Senate, Salem, OR

Chief of Staff, Senate Majority Office, October 2006-April 2008

Communications Director, Senate Majority Office, January 2006-September 2006

Served as senior advisor to the Majority Leader and lead staffer for the 18-member Democratic Caucus. Oversaw all policy, communications, and administrative services provided to the caucus.

United States Senate, Washington, DC

Counsel, Office of Senate Democratic Leader Tom Daschle, 2004

National Labor Relations Board, Washington, DC

Appellate Attorney, August 2000-January 2004

Argued 11 cases in the federal courts of appeals.

Mayer, Brown & Platt, Washington, DC

Associate, 1998-1999

The Honorable Samuel A. Alito, Jr., U.S. Court of Appeals for the Third Circuit, Newark, NJ

Law Clerk, 1997-1998

EDUCATION

Georgetown University Law Center, Washington, DC

Juris Doctor, summa cum laude, May 1997

Graduated First in Class

John F. Kennedy Labor Law Award

Associate Editor, GEORGETOWN LAW JOURNAL

Member, Georgetown Appellate Litigation Clinic

Best Advocate, Beaudry Cup Moot Court Competition

Middlebury College, Middlebury, VT

Bachelor of Arts, cum laude, May 1994

Honors in Major (English)

Editor in Chief, THE MIDDLEBURY CAMPUS (student newspaper)

SCHOLARSHIP

Law Review Articles and Essays

Free Exercise Opportunities (work in progress)

The ‘Mere Civility’ of Equality Law and Compelled-Speech Quandaries

9 OXFORD JOURNAL OF LAW AND RELIGION 288 (2020) (invited symposium article)

In the Court of Koppelman: Motion for Reconsideration

2020 BYU LAW REVIEW 51 (invited essay)

Free Exercise (Dis)Honesty

2019 WISCONSIN LAW REVIEW 689

A Regrettable Invitation to “Constitutional Resistance,” Renewed Confusion Over Religious Exemptions, and the Future of Free Exercise

20 LEWIS & CLARK LAW REVIEW 1317 (2017) (symposium article)

Grand Theory or Discrete Proposal? Religious Accommodations and Health Related Harms

73 WASHINGTON & LEE LAW REVIEW ONLINE 387 (2016) (invited essay)

“State Inaction,” Equal Protection, and Religious Resistance to LGBT Rights

87 UNIVERSITY OF COLORADO LAW REVIEW 1 (2016)

Doric Columns Are Not Falling: Wedding Cakes, the Ministerial Exception, and the Public-Private Distinction

75 MARYLAND LAW REVIEW 142 (2015) (invited essay)

The Evolution of Accommodation: Comparing the Unequal Treatment of Religious Objections to Interracial and Same-Sex Marriages

50 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW 99 (2015)

- Selected by UCLA's Williams Institute for a 2016 Dukeminier Award, which recognizes the best legal scholarship on sexual orientation and gender identity

The Born-Again Champion of Conscience

128 HARVARD LAW REVIEW FORUM 75 (2015) (invited book review)

The Public Meaning of RFRA versus Legislators' Understanding of RLPA

67 VANDERBILT LAW REVIEW *EN BANC* 125 (2014) (invited essay)

Obamacare, RFRA, and the Perils of Legislative History

67 VANDERBILT LAW REVIEW *EN BANC* 77 (2014) (invited essay)

Lukumi at Twenty: A Legacy of Uncertainty for Religious Liberty and Animal Welfare Laws

19 ANIMAL LAW 295 (2013)

Federalism, Free Exercise, and Title VII: Reconsidering Reasonable Accommodation,

6 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 525 (2004)

Undue Burdens and the Free Exercise of Religion: Reworking a "Jurisprudence of Doubt,"

85 GEORGETOWN LAW JOURNAL 751 (1997) (student note)

Co-Authored Amicus Briefs

Church-State Scholars in Support of Respondents, *Gateway City Church v. Newsom, et al.* (filed in the US Supreme Court on February 24, 2021)

Church-State Scholars in Support of Appellee's Petition for Rehearing, *Monclova Christian Academy, et al. v. Toledo-Lucas County Health Dept.* (filed in the US Court of Appeals for the Sixth Circuit on January 4, 2021)

Church-State Scholars in Support of Respondent, *Danville Christian Academy, et al. v. Beshear* (filed in the US Supreme Court on December 4, 2020)

Public Accommodation Law Scholars in Support of Respondents, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (filed in the Supreme Court on October 30, 2017)

In-Depth Legal Blog Posts

Fulton *Quiets* Tandon's Thunder: A Free Exercise Puzzle
SCOTUSBLOG, June 18, 2021 (invited contribution)

Tandon Steals Fulton's Thunder: The Most Important Free Exercise Decision Since 1990
SCOTUSBLOG, April 15, 2021 (invited contribution)

- Cited by Michael Helfand, *Religious Liberty and Religious Discrimination: Where Is the Supreme Court Headed?*, 2021 U. ILL. L. REV. ONLINE 98 (2021), and Madeleine M. Plasencia, *Covid-19, Lying, Mask-Less Exposures and Disability During a Pandemic*, 11 U. MIAMI RACE & SOC. JUST. L. REV. 119 (2021)

Justice Gorsuch, Kippahs, and False Analogies in Masterpiece Cakeshop
TAKE CARE, June 19, 2017

- Cited by Leslie Kendrick & Micah Schwartzman, *The Etiquette of Animus*, 132 HARV. L. REV. 133 (2018), Lawrence G. Sager & Nelson Tebbe, *The Reality Principle*, 34 CONST. COMMENT. 171 (2019), and Richard Schragger & Micah Schwartzman, *Religious Antiliberalism and the First Amendment*, 104 MINN. L. REV. 1341 (2020)

Doubling Down on a Deeply Troubling Argument in Masterpiece Cakeshop
TAKE CARE, November 14, 2017

One Notable Cost of Fidelity to Smith
TAKE CARE, September 28, 2017

Masterpiece Cakeshop and the Effort To Rewrite Smith and its Progeny
TAKE CARE, September 21, 2017

Animus Revisited: DOJ Fails To Explain Change in Position on Relevance of Campaign Statements
TAKE CARE, June 23, 2017

- Cited by Margo A. Borders, *The Future of State Blaine Amendments in Light of Trinity Lutheran: Strengthening the Nondiscrimination Argument*, 93 NOTRE DAME L. REV. 2141 (2018)

Anti-Catholic Animus, Blaine Amendments, and the Trump Travel Ban
TAKE CARE, June 15, 2017

Robert George, Constitutional Exemption Rights, RFRA, and the Harvard Law Review
MEDIUM, July 1, 2016

Long-Term Book Project

Religious Accommodation as an Individual Right: Uncertain Adjunct to a Fundamental Freedom

This is a project I began during my 2019 Fulbright Scholar visit to the Centre for Law and Religion in Cardiff, Wales. During that visit, I conducted extensive comparative research on religious accommodation law, which has been undergoing considerable transformation in recent years in both the United Kingdom and the United States. The US experience with accommodation claims provides insight from the perspective of a nation with a written constitutional guarantee of religious freedom, an explicit statutory endorsement of religious accommodation, and a jurisprudence of rights that has remained largely inward-looking. The UK, by contrast, has neither a written constitution nor an

explicit statutory requirement of religious accommodation, and its rights jurisprudence is now intertwined with that of the European Court of Human Rights, was previously intertwined with that of the Court of Justice of the European Union, and has some commonalities with that of the African Court on Human and People's Rights and the Inter-American Court of Human Rights. By detailing the lessons learned from the US and UK experiences, considering those lessons alongside the growing academic debate about the special treatment of religion, and offering a concrete proposal informed by those lessons, this book aims to serve as a valuable resource for policymakers, jurists, stakeholders, and scholars, not only in the United Kingdom and the United States, but in any jurisdiction wrestling with the issue of religious accommodation rights.

SELECTED ACADEMIC PRESENTATIONS AND CONFERENCE PARTICIPATION

Religious Exemptions During COVID, Texas Law School Federalist Society, March 2021. Participated via Zoom in a panel discussion with Professors Steven Collis (Texas) and Josh Blackman (South Texas).

Continuity, Change, and the Free Exercise Clause, AALS Annual Meeting, Joint Program of the Constitutional Law and Law & Religion Sections, January 2021. Moderated a Zoom discussion between Professors Pamela S. Karlan (Stanford), Douglas Laycock (Virginia), Michele Bratcher Goodwin (UC Irvine), and Robin Fretwell Wilson (Illinois).

Coronavirus, Fulton, and Free Exercise Doctrine at a Crossroads, Annual Law & Religion Roundtable, June 2020. Presented via Zoom.

Religious Accommodation on Both Sides of the Pond: Different Paths to a Common Norm? Presented at Oxford Brookes Law School, May 2019; York Law School, April 2019; Edinburgh Law School, March 2019.

Can a Law Right a Wrong?, Lewis & Clark Law School, September 2018. Moderated a panel discussion on the Japanese-American Redress Movement with attorneys who represented Gordon Hirabayashi, Fred Korematsu, and Minoru Yasui in litigation seeking to overturn their convictions for violating World War II curfew and relocation orders.

Masterpiece Cakeshop v. Colorado, Willamette Law School, Joint ACS/Federalist Society Event, February 2018. Debated Ilya Shapiro of the Cato Institute.

Gun Laws and the Second Amendment, League of Women Voters of Portland, Portland, OR, March 2017. Participated in panel discussion.

Animal Law and the First Amendment, 24th Annual Animal Law Conference, New York, NY, October 2016 (presentation)

Religious Exemptions and LGBT Rights, Washington State Judges Conference, Spokane, WA, September 2016 (presentation)

Religious Exemptions and LGBT Rights, Washington State Attorney General's Office Conference, Lakewood, WA, October 2015 (presentation)

State Inaction and the Public-Private Distinction, Maryland Constitutional Law Schmooze, Baltimore, MD, February 2015 (short presentation and participation in roundtable discussion)

State Inaction, Equal Protection, and Religious Resistance to LGBT Rights, Fifth Annual Law & Religion Roundtable, St. Louis, MO, June 2014, and International Consortium for Law and Religion Studies, Richmond, VA, August 2013 (presentations)

Lukumi at Twenty: A Legacy of Uncertainty for Religious Liberty and Animal Welfare Laws, Animal Law Review Symposium, Portland, OR, October 2012 (presentation)

SELECTED MEDIA

CNN, *Religious Groups Eye Legal Challenges to Delta Variant Restrictions and Vaccine Mandates*, by Ariane de Vogue, August 2, 2021

Reuters, *How COVID and Shadow Docket Exploded SCOTUS' Scope of Religious Freedom*, by Brendan Pierce, June 17, 2021

Slate, *The Supreme Court Broke Its Own Rules To Radically Redefine Religious Liberty*, by Mark Joseph Stern, April 12, 2021

National Law Journal, *Conservative Justices, Using Unsigned Order, Expand Pro-Religious Stance, Scholars Say*, by Marcia Coyle. April 11, 2021

Colorado Public Radio, extended interviews on “Colorado Matters” with Ryan Warner about LGBTQ+ rights and religious liberty in 2019 and 2018

Oregon Public Broadcasting, extended interviews on “Think Out Loud” with Dave Miller about LGBTQ+ rights, religious liberty, and free speech in 2018, 2017, and 2015

Washington Post, *This Swingers Sex Club Has Rebranded Itself as a Church. Can It Get Special Treatment Under the Law?*, by Jeff Guo, April 23, 2015

Op-Ed published in the Oregonian newspaper, *Misguided Attack on Oregon's Equal-Service Law*, March 21, 2015

Numerous additional appearances in local media since 2013 (including local network television affiliates, local commercial radio, the Oregonian, the Portland Tribune, and smaller newspapers)

LEGAL COMMUNITY INVOLVEMENT

Nootbaar Institute on Law, Religion, and Ethics: Fellow, August 2021-Present

American Constitution Society, Oregon Lawyer Chapter, Board Member, 2013-Present

AALS Law & Religion Section, Nominations Committee Member, 2020

LAW SCHOOL SERVICE

Budget Committee: Chair, Fall 2020-Present; Member, 2019, 2012-2017

ACS Student Chapter: Faculty Advisor, 2013-Present

Faculty Appointments Committee: Member, 2020, 2018

Cornelius Selection Committee: Member, 2020, 2018

Planning Committee, Lewis & Clark College Free Speech Symposium: Member, 2017-2018

Organizer, *Lewis & Clark Law Review* Paper Symposium: “Law & Religion in an Increasingly Polarized America,” 2016-2017

Public Interest Law Project (PILP) Stipend Board: Member, 2016-2017

Alumni Board: Faculty Representative, 2015-2016

Judicial Clerkship Workgroup: Member, 2013-2015

Minta Hicks Newell Memorial Scholarship Selection Committee: Member, 2014

PILP Advisory Board: Member, 2012-2014

Long Term Planning Committee: Member, 2012-2013

Gantenbein Scholarship Selection Committee: Member, 2013