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PROFESSIONAL
EMPLOYMENT:

F. Elwood & Eleanor Davis Professor of Law Emeritus, The George Washington University, June 2012 – present.

F. Elwood & Eleanor Davis Professor of Law, The George Washington University. September, 2002 – June 2012.

Emory University Center for Law and Religion. Senior Fellow, 2008-present.

Legal Monitoring & Analysis Project, Roundtable on Religion and Social Welfare, sponsored by a grant from the Pew Charitable Trusts. Co-director, 2002-2008.

Associate Dean for Faculty Development, The George Washington University Law School. July, 2004 – December, 2005.

Louis Harkey Mayo Research Professor of Law, The George Washington University. June, 1992 - August, 2002 –

September, 1990 – June, 1992, Professor of Law, The George Washington University

September, 1989 - July 1990: Professor-in-Residence, Appellate Staff, Civil Division, United States Department of Justice

September, 1980 - 1990: Professor of Law, Boston University

Spring, 1983: Visiting Professor of Law, University of California

(Berkeley)

September, 1973 - August, 1980: Associate Professor of Law, Boston University

July, 1971 - June, 1973: Associate, Hill and Barlow, Boston, Massachusetts

EDUCATION: Cornell University, A.B. (Government), 1968; Harvard University, J.D. magna cum laude, 1971
Honors: Harvard Law Review
Member, Board of Editors, 1969-1970
Case Editor, 1970-1971

ACADEMIC WRITING:

“The Ten Commandments in Louisiana Public Schools: A Study in the Survival of Establishment Clause Norms,” 100 Chicago-Kent Law Review ____ (forthcoming 2025) (co-authored with Robert Tuttle), in Symposium, In Search for Common Ground: Religion and Secularism in a Liberal Democratic Society

“The Centennial of Meyer & Pierce: Parents’ Rights, Gender-Affirming Care, and Issues in Education,” 26 Journal of Contemporary Legal Issues 147 (2025), in Symposium, Educational Choice: The Legacy of Meyer v. Nebraska and Pierce v. Society of Sisters

“The Remains of the Establishment Clause,” 74 Hastings Law Journal 1763 (2023) (co-authored with Robert Tuttle), in Symposium, The Present and Future of Religious Freedom

“The Radical Uncertainty of Free Exercise Principles: A Comment on *Fulton v. City of Philadelphia*,” American Constitution Society, Supreme Court Rev. (5th ed. 2020-21), pp. 221-256, (co-authored with Robert Tuttle)

“#MeToo Meets the Ministerial Exception: Sexual Harassment Claims by Clergy and the First Amendment’s Religion Clauses,” Volume 25, William & Mary Journal of Race, Gender, and Social Justice (2019) (co-authored with Robert Tuttle)

“Trinity Lutheran Church v. Comer: Paradigm Lost?,” American Constitution Society, Supreme Court Term, 2016-2017, https://acslaw.org/pdf/sc_review/sc_review-9.pdf (co-authored with Robert Tuttle)

“The Mystery of Unanimity in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*” 20 Lewis & Clark Law Review 1265 (2017) (co-authored with Robert Tuttle), in Symposium, Law & Religion in an Increasingly Polarized America

“Moving Targets: *Obergefell*, *Hobby Lobby*, and the Future of LGBT Rights,” 7 Alabama Civ. Rts. Civ. Lib. L. Rev. 1 (2015) in Symposium, “Antidiscrimination Law & Policy after Hobby Lobby”

“Religious Exemptions and the Limited Relevance of Corporate Identity,” (co-authored with Robert Tuttle) in *The Rise of Corporate Religious Liberty* (Zoe Robinson, Chad Flanders, and Micah Schwartzman, eds.), Oxford University Press, 2015

“*Hobby Lobby* and the Dubious Enterprise of Religious Exemption,” 38 Harv. J. L. & Gender 35 (2015)

“Secular Government, Religious People,” (William B. Eerdmans Publishing Co., 2014) (co-authored with Robert Tuttle)

“Teaching *United States v. O’Brien*: Three Conversations and the Wisdom of John Hart Ely,” 16 Green Bag 2d 291 (2013)

“The Forms and Limits of Religious Accommodation: The Case of RLUIPA,” 32 Cardozo L. Rev. 1907 (2011) (co-authored with Robert Tuttle)

“Same-Sex Family Equality and Religious Freedom,” 5 Northwestern J. of Law & Social Policy 274 (2010) (co-authored with Robert Tuttle)

“Federalism and Faith Redux,” 33 Harv. J. Law & Pub. Pol’y 935 (2010)

“Courts, Clergy, and Congregations: Disputes Between Religious Organizations and their Leaders,” 7 Georgetown J. of L. & Pub. Pol. 119 (2009) (co-authored with Robert Tuttle)

“Government Partnerships w Faith-Based Organizations: A Final Report on Legal Developments,” The Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, SUNY (co-authored with Robert Tuttle) (December, 2008)

“The Faith-Based and Community Initiative: Constitutional Change and Responsibilities of Governance,” in *Innovations in Effective Compassion*, Compendium of Research Papers Presented at the Faith-Based and Community Initiatives Conference on Research, Outcomes, and Evaluation (co-authored with

Robert Tuttle) (2008).

“The Cross at College: Accommodation, Acknowledgment, and Religion at Public Universities,” 16 William & Mary Bill of Rights Journal 939 (2008), in Symposium, the First Amendment on Campus) (co-authored with Robert Tuttle)

“Ball on a Needle: Hein v Freedom of Religion Foundation, Inc. And the Future of Establishment Clause Adjudication,” 2008 B.Y.U. L. Rev. 115 (co-authored with Robert Tuttle)

“The State of the Law, 2007: Legal Developments Affecting Government Partnerships with Faith-Based Organizations,” The Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, SUNY (co-authored with Robert Tuttle) (December, 2007)

“Instruments of Accommodation: The Military Chaplaincy and the Constitution,” 110 W. Va. L. Rev. 89 (2007) (co-authored with Robert Tuttle)

“The Limits of Equal Liberty as a Theory of Religious Freedom,” 85 Texas L. Rev. 1247 (2007) (reviewing Eisgruber & Sager, Religious Freedom and the Constitution) (co-authored with Robert Tuttle)

“The State of the Law, 2006: Legal Developments Affecting Government Partnerships with Faith-Based Organizations,” The Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, SUNY (co-authored with Robert Tuttle) (December, 2006)

“Federalism and Faith,” 55 Emory L. Rev. 19 (2006), in Randolph W. Thrower Symposium (co-authored with Robert Tuttle)

“The State of the Law, 2005: Legal Developments Affecting Partnerships Between Government and Faith-Based Organizations,” The Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, SUNY (co-authored with Robert Tuttle) (December, 2005)

“The Faith-Based Initiative and the Constitution,” 55 DePaul Law Review 1 (2005) (co-presented as the Annual Church-State Lecture, co-authored with Robert Tuttle)

“The State of the Law, 2004: Partnerships Between Government and Faith-Based Organizations,” The Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, SUNY (co-authored with Robert Tuttle) (December, 2004)

“Sexual Misconduct and Ecclesiastical Immunity,” 2004 Brigham Young University Law Review 1789, in Symposium, Church Autonomy (co-authored with Robert Tuttle)

“Partnerships Between Government and Faith-Based Providers: Annual Report on the State of the Law, Fall, 2003,” The Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, SUNY (co-authored with Robert Tuttle) (December, 2003)

“Zelman’s Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles,” 78 Notre Dame Law Review 917 (2003) (co-authored with Robert Tuttle)

“Government Partnerships with Faith-Based Service Providers: The State of the Law,” The Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, SUNY (December, 2002) (co-authored with Robert Tuttle)

“Historic Preservation Grants to Houses of Worship: A Case Study in the Survival of Separationism, 43 Boston College Law Review 1139 (2002), in Symposium, The Religion Clauses: Shifting into Neutral? (co-authored with Robert Tuttle)

“Sites of Redemption: A Wide-Angle Look at Vouchers and Sectarian Service Providers,” 18 Journal of Law & Politics 537 (2002), in Symposium, The End of Separatism (co-authored with Robert Tuttle)

“The Distinctive Place of Religious Institutions in the Constitutional Order,” 47 Villanova Law Review 37 (2002) (Donald Giannella Lecture) (co-authored with Robert Tuttle)

“Government Messages and Government Money: *Santa Fe, Mitchell v. Helms*, and the Arc of the Establishment Clause,” 42 William & Mary Law Review 771 (2001), in Symposium, Religion in the Public Square

“Threading Between the Religion Clauses,” 63 Law & Contemporary Problems 439 (2000), in Symposium, The Constitution Under Clinton: A Critical Assessment

“The Case Against Legislative Codification of Religious Liberty,” 21 Cardozo Law Review 565 (1999) in Symposium, State and Federal Religious Liberty Legislation)

“The Religion Clauses and Justice Brennan in Full,” 87 California Law Review 1105 (1999).

"The Increasingly Anachronistic Case Against School Vouchers," 13 Notre Dame Journal of Law, Ethics, & Public Policy 375 (1999)

"Gloria Steinem at the Harvard Law Review Banquet," 1 Green Bag 2d 15 (1998)

"The Most-Cited Federalist Papers," 15 Constitutional Commentaries 403 (1998)

"Time, The Supreme Court, and the Federalist," 66 George Washington Law Review 1324 (1998), in Symposium, Textualism and the Constitution.

"Section 5 of the Fourteenth Amendment," in The Constitution and Its Amendments (Encyclopedia in progress, Macmillan Publishing)

"Why the Congress Was Wrong and the Court was Right: Reflections in on *City of Boerne v. Flores*," 39 William & Mary Law Review 793 (1998), in Symposium on *Flores*

"The Failure of RFRA," 20 University of Arkansas at Little Rock Law Review 575 (1998), in Symposium on Religious Liberty After *City of Boerne v. Flores*

"To Control Faction and Protect Liberty: A General Theory of the Religion Clauses," 7 Journal of Contemporary Legal Issues 357 (1996).

"Uncovering the Village of Kiryas Joel," 96 Columbia Law Review 104 (1996).

"Six Authors in Search of a Character," 70 Chicago-Kent Law Review 71 (1995), Introducing Symposium, "The Struggle Between Faculty Author and Student Editor for Control of the Text."

"Of Time and the RFRA: A Lawyer's Guide to the Interpretation of the Religious Freedom Restoration Act," 56 Montana Law Review 171 (1995) in The James R. Browning Symposium, "The Religious Freedom Restoration Act."

"The Separation of Powers and the Protection of Children", 61 University of Chicago Law Review 1317 (1994), in Symposium, "Mediating Institutions: Beyond the Public-Private Distinction."

"The Lingering Death of Separationism," 62 George Washington Law Review 230 (1994).

"Employment Division v. Smith and the Decline of Supreme Court-Centrism", 1993 Brigham Young University Law Review 259 in Symposium, "New Directions in Religious Liberty."

"Which Old Witch? A Comment on Professor Paulsen's Lemon is Dead", 43 Case Western Reserve Law Review 883 (1993), in Symposium, "Religion and Public Schools After Lee v. Weisman."

"Statutes Revolving in Constitutional Law Orbits", 79 Virginia Law Review 1 (1993).

"Models of Church-State Interaction and Religion Clause Strategy", 42 DePaul Law Review 223 (1992), in Symposium, "Confronting the Wall of Separation."

"The Trouble with Accommodation", 60 George Washington Law Review 743 (1992), in Symposium, "Religion in Public Life".

"Separation of Church and State", in Supplement (1992) to K. Karst & L. Levy, Encyclopedia of the American Constitution.

"Reconstructing the Establishment Clause: The Case Against Discretionary Accommodation", 140 University of Pennsylvania Law Review 555 (1991).

"When Cultures Collide", 103 Harvard Law Review 951 (1990) (review of R. Nagel, Constitutional Cultures).

"Where Rights Begin: The Problem of Burdens on the Free Exercise of Religion," 102 Harvard Law Review 933 (1989).

"Risky Business", 101 Harvard Law Review 1303 (1988) (review of L. Tribe, American Constitutional Law (2nd ed. 1988)).

"Home Education, Religious Liberty, and the Separation of Powers," 67 Boston University Law Review 971 (1987).

"Intergenerationalism and Constitutional Law," 85 Michigan Law Review 1390 (1987) (review essay).

"Free Exercise Exemption and Religious Institutions: The Case of Employment Discrimination," 67 Boston University Law Review 391 (1987).

"Home Education, Religious Liberty, and the Separation of Powers: A Comment on Care and Protection of Charles," 72 Massachusetts Law Review 47 (1987).

"Keeping the Faith: Religion, Speech and Equality in the U. S. Constitution," 18 University of Connecticut Law Review 739 (1986) in Symposium, "Religion and the Law."

"Fair Representation as Equal Protection," (co-authored with Michael C. Harper), 98 Harvard Law Review 1211 (1985).

"Constitutional Theory and the Search for the Workable Premise," 8 University of Dayton Law Review 579 (1983), in Symposium, "Judicial Review and the Constitution - The Text and Beyond."

"Speech Categories and the Future of Free Speech Law," 68 Cornell Law Review 394 (1983) (review of F. Haiman, Speech and Law in a Free Society).

"Choosing Heroes Carefully: Reflections on Democracy and Distrust," 15 Harvard Civil Rights - Civil Liberties Law Review 779 (1980) (review essay).

"Untangling the Strands of the Fourteenth Amendment," 77 Michigan Law Review 981 (1979).

"Welfare and Federalism: AFDC Eligibility Policies and the Scope of State Discretion," 57 Boston University Law Review 1 (1977).

Cases and Notes on Public Welfare Law, (unpublished teaching materials, authored in 1977).

Book Review, Weiler: In the Last Resort, 55 Boston University Law Review 312 (1975).

"Factors Influencing the Development of Environmental Law," I. Sax (ed.), Industrial Pollution (Van Nostrand Reinhold, 1974).

AREAS OF

INSTRUCTION: Constitutional Law, Law of Democracy, Religion and the Constitution

SELECTED PROFESSIONAL

ACTIVITIES:

Presentation, "*Hobby Lobby* and the Dubious Enterprise of Religious Exemption," February 2015, Spring Colloquium of the Public Rights, Private Conscience Project: "Law, Rights, Religion," at Columbia Law School Center for Gender & Sexuality Law

Panelist, "Entering Hobby Lobby: The Case and Its Implications for Religious Freedom and Business," March, 2014, Religious Freedom Project, Berkley Center for Religion, Peace, and World Affairs, Georgetown University

Presentation, College of William & Mary School of Law, Works-in-Progress series, April 2012, with Robert W. Tuttle, several chapters of book manuscript in progress, "Secular Government, Religious People"

Presentation, George Washington University Law School, Works-in-Progress series, March 2011, with Robert W. Tuttle, several chapters of book manuscript in progress, "Secular Government, Religious People"

Presentation, Cardozo Law School, Symposium on the 20th anniversary of Employment Division v. Smith, October 2010, with Robert W. Tuttle, "The Forms and Limits of Religious Accommodation – The Case of RLUIPA"

Presentation, Works-in-Progress Series, University of Virginia Department of Religion, with Robert W. Tuttle, September 2010, several chapters of book manuscript in progress, "Secular Government, Religious People"

Presentation, Works-in-Progress Series, University of Virginia Law School, with Robert W. Tuttle, September 2010, several chapters of book manuscript in progress, "Secular Government, Religious People"

Presentation, First Annual Law and Religion Roundtable, Brooklyn Law School, with Robert W. Tuttle, June 2010, "Secular Government, Religious People"

Panel presentation, Annual Meeting of the Federalist Society, November 2009, "Federalism and Faith Redux"

Faculty workshop at GW, with Robert W. Tuttle, August 2009, "Same-Sex Family Equality and Religious Liberty."

Co-Director of Legal Research and Analysis (with Robert Tuttle), 2002-date, Roundtable on Religion and Social Welfare Policy, Rockefeller Institute of Government (State University of New York), sponsored by Pew Charitable Trusts (multiple public appearances in this capacity, including national Meetings of Religion Newswriters Association, Association of Public Human Services Administrators, Catholic Charities, Lutheran Social Services, National Grant Managers Association)

Presenter (with Robert Tuttle) of Annual Lecture at DePaul Center for Church-State Studies, April, 2005

Conferee, Symposium on Church Autonomy, Brigham Young University
February 2004 (with Robert Tuttle)

Panelist, The Constitutional Status of the Religious Land Use and
Institutionalized Persons Act, Pew Forum on Religion and Public Life: Cutter v.
Wilkinson, National Press Club, March, 2005

Panelist, Judgment Day for School Vouchers, Pew Forum on Religion and Public
Life, National Press Club, June 28, 2002

Conferee, Symposium on the Religion Clauses, Boston College Law School,
April 2002 (with Robert Tuttle)

Conferee, Symposium on the End of Separatism, University of Virginia Law
School, February, 2002 (with Robert Tuttle)

Donald Giannella Memorial Lecture, Villanova Law School, March 2001 (with
Robert Tuttle)

Conferee, Symposium on Religion in the Public Square, Marshall-Wythe School
of Law, College of William & Mary, March 2000

Conferee, Symposium on Civil Law and Religious Institutions, The George
Washington University Law School, March 2000

Conferee, Symposium on The Constitution in the Clinton Administration, Duke
University Law School, September, 1999

Conferee, Cardozo School of Law, Yeshiva University, State and Federal
Religious Liberty Legislation (February, 1999)

Conferee, University of Arkansas (Little Rock), Symposium on Religious Liberty
After *City of Boerne v. Flores* (September, 1997)

Conferee, University of San Diego, Symposium on Religion and the Constitution
(February 23 - 24, 1996)

Member, Legal Scholars Board, DePaul University College of Law Center for
Church/State Studies

Member, National Advisory Council, Americans United for Separation of Church
and State (1996-99)

Conferee, University of Montana School of Law, James R. Browning Symposium

on the Religious Freedom Restoration Act (September 30 - October 1, 1994)

Of counsel, Brief Amicus Curiae of Americans United for Separation of Church and State et al., in Board of Education of the Kiryas Joel Village School District v. Grumet, U.S. Supreme Court (Nos. 93-517, 93-527, 93-539, October, 1993 Term)

Conferee, New York University School of Law, Program on Philanthropy and the Law, Conference on Religious Institutions as Nonprofit Entities: Issues of Access, Special Status, and Accountability (October 14-15, 1993)

Conferee, Brigham Young University, Symposium, New Directions in Religious Liberty (January 22-23, 1993).

Conferee, Case Western Reserve University, in Symposium, Religion and Public Schools After Lee v. Weisman (November 13-14, 1992).

Conferee, American Jewish Committee, "Religious Liberty in the 1990's" (New York City, September 10-11, 1992)

Testimony on H.R. 2797, The Religious Freedom Restoration Act, Before the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary (May 14, 1992) (Printed in Serial No. 99)

Conferee, DePaul University (Center for Church-State Relations), Symposium, Confronting the Wall of Separation -- December 5-7, 1991

Lecturer, Distinguished Speaker Series, James Madison Constitutional Law Resource Center, Drake University, September 12-13, 1991

Conferee, University of Pennsylvania, Bicentennial Conference on the Status of the Religion Clauses of the First Amendment -- May 30 - June 1, 1991

Lecturer, Boston University, Program of Instruction in Professional Responsibility -- Jan. 9, 1991 -- "The Government Lawyer -- The Problem of Identifying the Client"

Faculty Advisor for Family Law, Probate Law Journal (Published Jointly by The National College of Probate Judges and Boston University School of Law) (1988-89)

Lecturer, University of Massachusetts Constitutional Bicentennial Program, John F. Kennedy Library (July, 1987)

Lecturer, American Jewish Congress, Young Professionals Group (Brookline, MA., November, 1986)

Conferee, University of Connecticut Law Review Conference on Religion and the Law (April, 1986)

Panelist and Discussion Leader, AALS Workshop for New Law Teachers (Washington, D.C., July, 1985)

Author, Brief Amicus Curiae, in *Donnelly v. Lynch*, 525 F.Supp. 1150 (D.R.I. 1981), rev'd, 465 U.S. 668 (1985).

Respondent, Conference on "Religion, Law, and the Political Process," sponsored by Council on Religion and the Law (Harvard Law School, 1981)

Keynote Speaker, Annual Conference of National Association of Public Welfare Attorneys (1979)

Consultant, Massachusetts Department of Public Utilities (1974-1978) (drafted consumer protection rules for residential telephone service)

Task Force on Public Health and Welfare, Massachusetts Special Study Commission on the Equal Rights Amendment (1976)

Participant, Lawyers' Panel for Civil rights, Criminal Justice Project (1972-1973)

Reporter, Workshop in New Directions in Law and Psychoanalytic Theory (Harvard Law School, 1972)