

ROBERT W. TUTTLE

George Washington University Law School
720 20th Street, NW
Washington, DC 20052

(202) 994-8163
mobile (202) 236-0518
e-mail: rtuttle@law.gwu.edu

EMPLOYMENT:

George Washington University Law School, 1992-present. Associate Dean for Academic Development, 2025-present; David R. and Sherry Kirschner Berz Research Professor of Law and Religion, 2006-present; Professor of Law, 2002-present; Associate Professor of Law, 1994-2002, with tenure, 1998-2002; Associate Professorial Lecturer in Law, 1992-94. Areas of instruction: Religion & Law, Professional Responsibility, Property.

George Washington University, Columbian College of Arts and Sciences, Professor of Religion (by courtesy), 2013-present.

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

EDUCATION:

University of Virginia	Ph.D. (Religious Ethics), 1997
George Washington University Law School	J.D., 1991
Lutheran School of Theology at Chicago	M.A., 1989
College of William and Mary	B.A. (Religion and English), 1985

WORKS IN PROGRESS:

The Mistaken Turn to Church Autonomy, with Peter J. Smith, forthcoming 2026 (confidential draft available on request).

PUBLICATIONS:

The Ten Commandments in Louisiana Public Schools: A Study in the Survival of Establishment Clause Norms, with Ira C. Lupu, 99 Chicago Kent L. Rev. ____ (forthcoming 2025), available at https://scholarship.law.gwu.edu/faculty_publications/1771/

Establishment Clause Mythology, with Peter J. Smith, 75 Case Western L. Rev 573 (2024).

The Remains of the Establishment Clause, with Ira C. Lupu, 74 Hastings L.J. 1763

(2023).

Gordon College and the Future of the Ministerial Exception, with Peter J. Smith, 47 *Journal of College & University Law* 1 (2022)

Foster Care and the Growing Tension Between the Religion Clauses: A Comment on Rogers v. HHS, 60 *Family Court Review* 70 (2022)

The Radical Uncertainty of Free Exercise Principles: A Comment on Fulton v. Philadelphia, with Ira C. Lupu, 5 *American Constitution Society Supreme Court Review* 221 (2020-2021)

#MeToo Meets the Ministerial Exception: Sexual Harassment Claims by Clergy and the First Amendment's Religion Clauses, with Ira C. Lupu, 25 *William & Mary Journal of Race, Gender & Social Justice* 249 (2019).

Civil Procedure and the Ministerial Exception, with Peter J. Smith, 86 *Fordham L. Rev.* 1847 (2018)

Trinity Lutheran Church v. Comer: Paradigm Lost?, with Ira C. Lupu, *American Constitution Society*, Supreme Court Term, 2016-2017

God and State Preambles, with Peter J. Smith, 100 *Marquette Law Review* 757 (2017)

The Mystery of Unanimity in Hosanna-Tabor Evangelical Lutheran Church & School v EEOC, with Ira C. Lupu, 20 *Lewis & Clark Law Review* 265 (2017)

Ethics and Religious Counseling in a Pluralistic Environment, 89 *The Military Chaplain* 14 (Winter 2016)

Religious Exemptions and the Limited Relevance of Corporate Identity, with Ira C. Lupu, book chapter in *THE RISE OF CORPORATE RELIGIOUS LIBERTY*, ed. Chad Flanders, Zoe Robinson, and Micah Schwartzman (Oxford Univ. Press, 2016)

SECULAR GOVERNMENT, RELIGIOUS PEOPLE, with Ira C. Lupu (Wm. B. Eerdmans, 2014).

Review of *LEX CHARITATIS: A JURISTIC DISQUISITION ON LAW IN THE THEOLOGY OF MARTIN LUTHER*, by Johannes Heckel, *The Lutheran Quarterly* XXV:4 (Winter, 2011).

Churches in Court: The Legal Status of Religious Organizations in Civil Lawsuits, Pew Forum on Religion and Public Life, in collaboration with Ira C. Lupu and the editors at the Pew Forum (March 2011). (Fifth installment of a commissioned series of Background Papers on Religion and Law, sponsored by the Pew Charitable Trusts).

The Forms and Limits of Religious Accommodation: The Case of RLUIPA, with Ira C. Lupu, 32 Cardozo Law Review 1907 (2011).

Biblical Literalism and Constitutional Originalism, with Peter J. Smith, 86 Notre Dame Law Review 693 (2011).

Same-Sex Family Equality and Religious Liberty, with Ira C. Lupu, 5 Northwestern Journal of Law & Social Policy 274 (2010).

Courts, Clergy, and Congregations: Disputes Between Religious Institutions and their Leaders, with Ira C. Lupu, 7 Georgetown Journal of Law & Public Policy 119 (2009).

Shifting Boundaries: The Establishment Clause and Government Funding of Religious Schools and Other Faith-Based Organizations, Pew Forum on Religion and Public Life, in collaboration with Ira C. Lupu and the editors at the Pew Forum (May 2009). (Fourth installment of a commissioned series of Background Papers on Religion and Law, sponsored by the Pew Charitable Trusts).

The State of the Law 2008: A Cumulative Report on Legal Developments Affecting Government Partnerships with Faith-Based Organizations, with Ira C. Lupu (Roundtable on Religion and Social Welfare Policy, 2008).

Constitutional Change and Responsibilities of Governance Pertaining to the Faith-Based and Community Initiative, with Ira C. Lupu, in Compendium on Research for the White House Conference on the Faith-Based and Community Initiative (2008).

The Cross and the College: Accommodation and Acknowledgment of Religion at Public Universities, with Ira C. Lupu, 17 William and Mary Bill of Rights Journal 938 (2008).

Ball on Needle: Hein v. Freedom From Religion Foundation and the Future of Establishment Clause Adjudication, with Ira C. Lupu, 2008 Brigham Young University Law Review 115.

The State of the Law 2007: Legal Developments Affecting Government Partnerships with Faith-Based Organizations, with Ira C. Lupu (Roundtable on Religion and Social Welfare Policy, 2007).

A Delicate Balance: The Free Exercise Clause and the Supreme Court, Pew Forum on Religion and Public Life, in collaboration with Ira C. Lupu and the editors at the Pew Forum (October 2007). (Third installment of a commissioned series of Background Papers on Religion and Law, sponsored by the Pew Charitable

Trusts).

Instruments of Accommodation: The Military Chaplaincy and the Establishment Clause, with Ira C. Lupu, 110 West Virginia Law Review 87 (2007).

Should Churches Be Tax Exempt?, Journal of Lutheran Ethics (September 2007), online at: <http://www.elca.org/jle>

Religious Displays and the Courts, Pew Forum on Religion and Public Life, in collaboration with Ira C. Lupu and the editors at the Pew Forum (June 2007). (Second installment of a commissioned series of Background Papers on Religion and Law, sponsored by the Pew Charitable Trusts).

The Limits of Equal Liberty as a Theory of Religious Freedom, with Ira C. Lupu, review of Religious Freedom and the Constitution, by Christopher L. Eisgruber and Lawrence G. Sager, 85 Texas Law Review (2007).

Religion in Public Schools, Pew Forum on Religion and Public Life, in collaboration with Ira C. Lupu and the editors at the Pew Forum (May 2007). (First installment of a commissioned series of Background Papers on Religion and Law, sponsored by the Pew Charitable Trusts).

A Lutheran Perspective on Legal Ethics, in Faith and Law, ed. Robert F. Cochran, Jr. (NYU Press, 2007).

The State of the Law 2006: Legal Developments Affecting Partnerships Between Government and Faith-Based Organizations, with Ira C. Lupu (Roundtable on Religion and Social Welfare Policy, 2006).

Federalism and Faith, with Ira C. Lupu, 56 Emory Law Journal 19 (2006).

The State of the Law 2005: Legal Developments Affecting Partnerships Between Government and Faith-Based Organizations, with Ira C. Lupu (Roundtable on Religion and Social Welfare Policy, 2005).

The Faith-Based Initiative and the Constitution, with Ira C. Lupu, 55 DePaul Law Review 1 (2005).

State of the Law 2004: Developments in the Law Concerning Government Partnerships with Religious Organizations, with Ira C. Lupu (Roundtable on Religion and Social Welfare Policy, 2004).

Sexual Misconduct and Ecclesiastical Immunity, with Ira C. Lupu, 2004 Brigham Young University Law Review 1789.

State of the Law 2003: Developments in the Law Concerning Government Partnerships with Religious Organizations, with Ira C. Lupu (Roundtable on Religion and Social Welfare Policy, 2003)

All You Need is Love: Basic Christian Ethics and Protestant Antilegalism, 18 Journal of Law and Religion 427 (2003)

Zelman's Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles, with Ira C. Lupu, 78 Notre Dame Law Review 918 (2003)

Love Thy Neighbor: Churches and Land Use Law, in Church & State: Lutheran Perspectives (Stumme and Tuttle, eds., Fortress Press: 2003)

Sites of Redemption: A Wide-Angle Look at Government Vouchers and Sectarian Service Providers, with Ira C. Lupu, 18 Journal of Law and Politics 537 (2002)

Historic Preservation Grants to Houses of Worship: A Case Study of Separationism, with Ira C. Lupu, 43 Boston College Law Review 1139 (2002)

Government Partnerships with Faith-Based Service Providers: The State of the Law, with Ira C. Lupu (Roundtable on Religion and Social Welfare Policy, 2002)

The Distinctive Place of Religious Entities in Our Constitutional Order, with Ira C. Lupu, 47 Villanova Law Review 260 (2001)

Whether Lawyers, Too, Can Be Saved, Journal of Lutheran Ethics (September 2001), online at <http://www.elca.org/jle>

Review of The Promise of Lutheran Ethics, (Bloomquist and Stumme eds. 1998), 16 Journal of Law and Religion 861 (2001)

Ethical Considerations for Judges and Attorneys in Drug Court (National Drug Court Institute 2001)

How Firm a Foundation? Protecting Religious Land Uses After Boerne, 68 George Washington Law Review 861 (2000)

Response to Professor Joanne Brant, in *Religion in the Workplace: Proceedings of the 2000 Annual Meeting of the Association of American Law Schools Section on Law and Religion*, 4 Employee Rights and Employment Policy Journal 109 (2000).

Reviving Privacy?, 67 George Washington Law Review 1183 (1999)

Gambling: A Study Guide (Evangelical Lutheran Church in America, 1998)

Death's Casuistry, 81 Marquette Law Review 371 (1998)

Dependency and Delegation: Ethics in Marital Representation, with Naomi Cahn, 21 Seattle Univ. Law Review 97 (1998)

Protestant Ethics and the Common Law: The Case of Paul Ramsey, 1996 Annual of the Society of Christian Ethics 171.

Legal Counseling in a Pluralistic Society, with Thomas Morgan, 63 George Washington Law Review 984 (1995).

The Fiduciary's Fiduciary: Legal Ethics in Fiduciary Representation, 1994 Illinois Law Review 889.

PRO BONO ACTIVITIES:

Special Counsel to the Office of General Counsel, ELCA, 2023-present (focus on constitutional issues affecting the church, including participation in the drafting or editing of all amicus briefs joined by the ELCA, and served as consultant in the development of ELCA Social Statement on Faith and Civic Life, adopted in August, 2025).

Board Member, Lutheran Services in America, 2008-2013 (elected by ELCA Churchwide Assembly). Board Treasurer, 2012-2013; Chair, Audit Committee, 2009-2012; member, CEO Search Committee, 2011-2012; consultant, 2013-present.

Legal Counsel to the Bishop, Metropolitan Washington, DC, Synod of the Evangelical Lutheran Church in America. 1999-2023.

Task Force Member, ELCA Social Statement on Criminal Justice, 2008-2013. Member of writing team for study document (published 2010), draft social statement (published 2011), and final social statement (adopted by Churchwide Assembly in August, 2013).

Board Member, Division for Church in Society, Evangelical Lutheran Church in America, 1999-2005.

Consultant, Division for Church in Society, Evangelical Lutheran Church in America. 1995-2002. Co-director of ELCA Study Project on Church-State Relations. Author of 1998 ELCA study on gambling.

Advisory Council Member, OASIS Program Crisis Intervention Service, Lutheran Services in America. 2001-2004.

Ethics Consultant, National Drug Court Institute, Ethics and Confidentiality Advisory Committee. 1998-2002, 2015-2019

Advisory Board, Word & World: Theology for Christian Ministry.

Chairman, Good Shepherd Legal Services. 2002-04.

Ethics Consultant, American Bar Association Task Force on Gatekeeper Regulations.

SELECTED PRESENTATIONS

- “The Rule of Law as Paradox,” Franklin J. Matchette Lecture, The Catholic University of America, October, 1996
- “Ethical Considerations in Appellate Practice,” Federal Circuit Bar Conference, March, 1997
- “Clearing Conflicts of Interest,” Panel on Conflicts, American Intellectual Property Law Association Annual Meeting, October, 1998
- “Lawyer Participation in Client Wrongdoing,” Panel on Lawyers and Client Fraud in the Health Care Industry, American Health Lawyers Association Conference on Fraud and Abuse in Health Care, October, 1998
- “Ethical Issues in Drug Court Practice,” National Association of Drug Court Practitioners Annual Training Conferences, June, 1999, 2000 & 2001
- “Constitutional Law and the Representation of Religious Institutions,” ELCA Attorneys’ Association Conference, September 2000
- “The Rule of Law or the Rule of Lawyers?” Roanoke College, March 2001
- “The Distinctive Place of Religious Entities in Our Constitutional Order,” with Ira C. Lupu, The 2001 Giannella Lecture, Villanova School of Law
- “Charitable Choice, Lutheran Theology, and the Constitution,” 2002 Annual Meeting of Lutheran Services in America
- “Can You Represent the Church and Still be an Ethical Lawyer?” ELCA Attorneys’ Association Conference, May 2002
- “Serving the Neighbor of Another Faith,” 2002 Convocation of Lutheran Teaching Theologians, August 2002
- “One Nation Under God: Reflections on the Law of Church and State,” O. P. Kretzmann Lecture, Valparaiso University, March 2003
- “Two Kingdoms and Two Clauses: Lutheran Theology and the First Amendment,” Crumley Lecture, Roanoke College, April 2003
- “Government Financing of Religious Organizations,” 2004 Annual Meeting of the National Diocesan Attorneys Association, April 2004
- “Advocacy for the Neighbor: Assessing the Faith-Based Initiative,” 2005 Annual Meeting of the Council of Health and Human Services Ministries, United Church of Christ
- “The Faith-Based Initiative and the Constitution,” with Ira C. Lupu, 2005 Annual Lecture of the Center on Law and Religion, DePaul University School of Law
- “Current Challenges for the Governance of Religious Non-profits,” ELCA Conference on Connecting Institutions, January 2006
- “Legal Ethics in Internal Investigations,” panel presentation, ABA National Institute on the Foreign Corrupt Practices Act, October 2006
- “Ethical Issues for Lawyers in Military Tribunals,” National Institute for Military Justice, November 2006
- “The Military Chaplaincy and the Establishment Clause,” International Society of Military Ethics Annual Meeting, January 2007; West Virginia Law Review Symposium, April 2007; National Conference on Ministry to the Armed Forces Annual Meeting, January 2008 and January 2009.

“Church, State, and the Ten Commandments: A Lutheran Perspective,” Convocation Lecture, Lutheran Theological Seminary at Gettysburg, April 2008
 “Reflections on the Establishment Clause: What Could Be Wrong with Doing Good?” Keller Center for the First Amendment, University of Colorado, Boulder, CO, October 2008
 “Missional Church and U.S. Civil Society: Thoughts on the Legal Distinctiveness of Religious Organizations,” Luther Seminary, St. Paul, MN, November 2008.
 “Political Activities by Religious Entities,” Panel Discussion, AALS Annual Meeting, San Diego, CA, January 2009.
 “Current Legal Issues Affecting the Military Chaplaincy,” National Conference on Ministry in the Armed Forces, Washington, DC, January 2009.
 “The Vocation of a Chaplain,” Lecture Series, Lutheran Chaplains Professional Development Seminar, Jacksonville, FL, April 2009.
 “Church Property and Constitutional Law,” ELCA Attorneys Association Annual Meeting, St. Petersburg, FL, November 2009.
 “The State of the Law: Faith-Based and Neighborhood Partnerships,” Panel presentation, Brookings Institution, February 2010.
 “Secular Government, Religious People,” with Ira C. Lupu. Law and Religion Roundtable at Brooklyn Law School, June 2010; Faculty Workshops at Law School and Religious Studies Department, University of Virginia, October 2010.
 “The Forms and Limits of Religious Accommodation: The Case of RLUIPA,” with Ira C. Lupu, Cardozo Law School, October 2010.
 “DADT Repeal and the Military Chaplaincy,” National Conference on Ministry in the Armed Forces, Washington, DC, January 2011.
 “The Military Chaplaincy and the Religion Clauses,” Episcopal Office of Armed Service and Federal Chaplaincies, Annual Chaplains' Conference, Richmond, VA, May 2011.
 “In Praise of Secular Government,” Address to Convocation of ELCA Bishops, Washington, DC, December 2011.
 Panel presentation on the Supreme Court’s decision in *Hosanna-Tabor v. EEOC*, AALS Annual Meeting, Washington, DC, January 2012.
 “Recent Developments in the Law Related to Military Chaplaincy,” National Conference on Ministry in the Armed Forces, Washington, DC, January 2012.
 “Secular Government, Religious People,” with Ira C. Lupu, William and Mary Law School, Institute of Bill of Rights, Williamsburg, VA, April 2012.
 Panel presentation on HHS contraceptive mandate, Georgetown Law Center, September 2012 (online at: <http://www.youtube.com/watch?v=1J4rCsq732c>)
 “Secular Government, Religious People,” Berz Lecture, GW Religion Department, March 2014.
 Panel discussion of Secular Government, Religious People, responding (with Ira C. Lupu) to reviews by William Marshall, Andrew Koppelman, and Marty Lederman, Georgetown Law Center, June 2015.
 “Secular Government, Religious People,” ELCA Attorneys Association Bi-Annual Meeting, Washington, DC, September 2015.
 “Ethical Issues in the Representation of Religious Organizations,” ELCA Attorneys

Association Bi-Annual Meeting, Washington DC, September 2015.
“Ethics and Religious Counseling in a Pluralistic Environment,” Military Chaplains
Association Annual Meeting, Washington DC, October 2016.

BAR ADMISSIONS:

Virginia, 1992 (inactive); District of Columbia, 1999 (active)