

## THOMAS C. BERG

### Work Address

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### Legal Employment

- 2002- ST. IVES PROFESSOR OF LAW, UNIVERSITY OF ST. THOMAS  
\* Teaching: constitutional law, intellectual property, law and religion, religious liberty, federal courts  
\* Research: constitutional law, First Amendment; intellectual property; law and religion  
\* Co-Director, Terrence J. Murphy Institute for Catholic Thought, Law, and Public Policy
- 1992-2002 PROFESSOR, CUMBERLAND LAW SCHOOL, SAMFORD UNIVERSITY (ASSOCIATE PROFESSOR 1994-97; ASSISTANT PROFESSOR 1992-94)
- 1991-92 CENTERPIECE PROJECT COORDINATOR, DEPAUL UNIVERSITY CENTER FOR CHURCH-STATE STUDIES
- 1988-91 ASSOCIATE, MAYER, BROWN & PLATT (CHICAGO)  
\* Practice: appellate and commercial litigation, nonprofit institutions
- 1987-88 LAW CLERK, HON. ALVIN B. RUBIN, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (BATON ROUGE, LA)
- 1987 SUMMER HONORS INTERN, U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION, APPELLATE STAFF

### Education

- 1991-92 UNIVERSITY OF CHICAGO DIVINITY SCHOOL (M.A., 1992)  
\* Concentration in social ethics and American religion  
\* Entering Fellowship (full tuition, merit-based)
- 1984-87 UNIVERSITY OF CHICAGO LAW SCHOOL (J.D., CUM LAUDE, 1987)  
\* Executive editor, *University of Chicago Law Review*, volume 54  
\* Bustin Prize, 1987 (best student journal note)  
\* Beale Prize, 1985 (best work in first-year writing course)
- 1982-84 LINCOLN, OXFORD UNIVERSITY (RHODES SCHOLAR; M.A., 1992; B.A., FIRST-CLASS HONORS, 1984)  
\* Degree in philosophy and politics
- 1978-82 NORTHWESTERN UNIVERSITY (B.S., JOURNALISM, WITH HIGHEST DISTINCTION, 1978)

## **Other Teaching Experience**

Visiting Professor, Faculty of Law and Political Science, University of Aix-Marseilles, Aix-en-Provence, France, March-April 2007

Faculty Member, International Summer School in Law and Religion, University of Siena, Italy, August 2006

## **Publications**

### **Books (Written or Edited)**

[Editor] THE FREE EXERCISE OF RELIGION CLAUSE: ITS CONSTITUTIONAL HISTORY AND THE CONTEMPORARY DEBATE (Prometheus Books 2007)

RELIGION AND THE CONSTITUTION (Aspen Publishing 2d ed. 2006; 1st ed. 2002) (with Michael McConnell and John Garvey)

\* Winner of 2004 Alpha Sigma Nu Book Award for Professional Studies from the Association of Jesuit Colleges and Universities

TEACHERS' MANUAL TO RELIGION AND THE CONSTITUTION (Aspen Publishing 2d ed. 2006; 1st ed. 2002) (with McConnell and Garvey)

[Co-editor] RELIGIOUS ORGANIZATIONS IN THE UNITED STATES: A STUDY OF IDENTITY, LIBERTY, AND THE LAW (Carolina Academic Press 2006) (edited with James Serritella, Cole Durham, Edward Gaffney, and Craig Mousin)

THE STATE AND RELIGION IN A NUTSHELL (West Publishing 2d ed. 2004; 1st ed. 1998)

### **Book Chapters**

"The Story of the School Prayer Cases," in FIRST AMENDMENT STORIES (Richard Garnett and Andrew Koppelman eds., Foundation Press forthcoming 2009)

"*Lemon v. Kurtzman* in Context," in LAW AND RELIGION CASES IN CONTEXT (Leslie Griffin ed., Aspen Publishers forthcoming 2009)

"The Federal Constitution," in RELIGIOUS ORGANIZATIONS IN THE UNITED STATES (Serritella et al eds., Carolina Academic Press 2006)

"Religiously Affiliated Education," in RELIGIOUS ORGANIZATIONS IN THE UNITED STATES (Serritella et al eds., Carolina Academic Press 2006)

"Too Good to Be True: The New Era Philanthropy Scandal and Its Implications," in MORE MONEY, MORE MINISTRY: THE FINANCING OF AMERICAN EVANGELICAL RELIGION (Larry Eskridge and Mark Noll eds., Eerdmans Publishing 2000)

## Full-Length Articles

*Religious Choice and Exclusions of Religion*, 157 U. PA. L. REV. PENNUMBRA (forthcoming 2008)

*Religious Organizational Freedom and Conditions on Government Benefits*, GEORGETOWN J. L. & PUBLIC POLICY (forthcoming 2009)

*Intellectual Property and the Preferential Option for the Poor*, 5 J. CATH. SOCIAL THOUGHT 123 (2008) (symposium contribution); abstract and download at <http://ssrn.com/abstract=966681>

*Can Religious Liberty Be Protected as Equality?*, 85 TEXAS L. REV. 1185 (2007) (invited) (reviewing CHRISTOPHER EISGRUBER AND LAWRENCE SAGER, RELIGIOUS FREEDOM AND THE CONSTITUTION (2006)); abstract and download at <http://ssrn.com/abstract=964340>

*John Courtney Murray and Reinhold Niebuhr: Natural Law and Christian Realism*, 4 J. CATH. SOCIAL THOUGHT 3 (2007) (symposium contribution); abstract and download at <http://ssrn.com/abstract=847985>

*What's Right and Wrong with "No Endorsement of Religion,"* 21 WASH. U. J. L & POL. 307 (2006) (invited symposium contribution), abstract and download at <http://ssrn.com/abstract=901884>

*The Permissible Scope of Limitations on Freedom of Religion and Belief in the United States*, 19 EMORY INTERNAT. L. REV. 1277 (2005) (invited symposium contribution); abstract and download at <http://ssrn.com/abstract=895191>

*Foreword: Pro-Life Progressivism and the Fourth Option in American Public Life*, 2 U. ST. THOMAS L. J. 235 (2005) (symposium foreword); abstract and download at <http://ssrn.com/abstract=877634>

*Minority Religions and the Religion Clauses*, 82 WASH. U. L.Q. 919 (2004); abstract and download at <http://ssrn.com/abstract=594604>

(with Douglas Laycock) *The Mistakes in Locke v. Davey and the Future of State Payments for Services Provided by Religious Institutions*, 40 TULSA L. REV. 227 (2004) (invited lead symposium article); abstract and download at <http://ssrn.com/abstract=647707>

*The Voluntary Principle and Church Autonomy, Then and Now*, 2004 B.Y.U. L. REV. 1593 (invited symposium contribution)

*Vouchers and Religious Schools: The New Constitutional Questions*, 72 U. CINCINNATI L. REV. 151 (2003); abstract and download at <http://ssrn.com/abstract=409180>

*Copying for Religious Reasons: A Comment on Principles of Copyright and Religious Freedom*, 21 CARDOZO ARTS & ENTERTAINMENT L. J. 287 (2003) (invited symposium contribution); abstract and download at <http://ssrn.com/abstract=355440>

*Why a State Exclusion of Religious Schools from School Choice Programs is Unconstitutional*, 2 FIRST AMENDMENT L. REV. 22 (2003) (invited symposium contribution)

*The Pledge of Allegiance and the Limited State*, 8 TEX. REV. L. & POLITICS 41 (2003) (invited); abstract and download at <http://ssrn.com/abstract=503622>

*Faith Under Democracy: What Have Believers Lost, What Have They Gained?*, 2 GEORGETOWN J. L. & PUBLIC POLICY 44 (2003) (invited; comments on panel on Protestantism)

*Race Relations and Modern Church-State Relations*, 43 BOSTON COLLEGE L. REV. 1009 (forthcoming 2002) (invited symposium contribution); abstract and download at <http://ssrn.com/abstract=314941>

*Religious Liberty in America at the End of the Century*, 16 J. LAW & RELIG. 187 (2001) (invited)

*Anti-Catholicism and Modern Church-State Relations*, 33 LOYOLA U. CHI. L. J. 121 (2001) (invited symposium contribution); abstract and download at <http://ssrn.com/abstract=294342>

*Religious Conservatives and the Death Penalty*, 9 WM. & MARY BILL RTS. J. 31 (2000) (symposium contribution); abstract and download at <http://ssrn.com/abstract=259152>

*The Alabama Religious Freedom Amendment: An Interpretive Guide*, 31 CUMBERLAND L. REV. 47 (2000)

*The New Attacks on Religious Freedom Legislation And Why They Are Wrong*, 21 CARDOZO L. REV. 415 (1999) (invited symposium contribution)

*State Religious Freedom Statutes in Public and Private Education*, 32 U. CAL. DAVIS L. REV. 531 (1999) (invited symposium contribution)

*Religious Speech in the Workplace: Harassment or Protected Speech?*, 22 HARVARD J. L. & PUBLIC POLICY 959 (1999)

*Some Religiously Devout Justices: Historical Notes and Comments*, 81 MARQUETTE L. REV. 383 (1998) (invited featured symposium contribution, with William G. Ross)

*The Constitutional Future of Religious Freedom Legislation*, 20 U. ARK. LITTLE ROCK L. REV. 715 (1998) (invited symposium contribution)

*Religious Freedom After Boerne*, 2 NEXUS: A JOURNAL OF OPINION 91 (1997) (invited symposium contribution)

*Religion Clause Anti-Theories*, 72 NOTRE DAME L. REV. 693 (1997)

*Civility, Politics, and Civil Society: Response to Anthony Kronman*, 26 CUMBERLAND L. REV. 871 (1996) (part of 1996 Rushton Lecture Symposium at Cumberland)

*Religion, Race, Segregation, and Districting: Comparing Kiryas Joel with Shaw/Miller*, 26 CUMBERLAND L. REV. 365 (1996) (part of 1995 voting rights symposium at Cumberland)

*Slouching Toward Secularism: A Comment on Kiryas Joel School District v. Grumet*, 44 EMORY L. J. 433 (1995)

*Church-State Relations and the Social Ethics of Reinhold Niebuhr*, 73 NORTH CAROLINA L. REV. 1567 (1995)

*Proclaiming Together? Convergence and Divergence in Protestant Evangelism, 1945-67*, 5 RELIG.

& AMER. CULTURE 49 (Winter 1995)

*What Hath Congress Wrought? An Interpretive Guide to the Religious Freedom Restoration Act*, 39 VILLANOVA L. REV. 1 (1994)

Comment, *The Guarantee of Republican Government: Proposals for Judicial Review*, 54 U. CHICAGO L. REV. 208 (1987) (winner of 1987 Bustin Prize at University of Chicago Law School)

### Short Publications

“Creativity and Justice,” online database on Intellectual Property, Justice, and Religious Thought (forthcoming launch 2008)

“*Church of Lukumi Babalu Aye v. Hialeah*,” in ENCYCLOPEDIA OF THE SUPREME COURT (Gale Publishing, forthcoming)

*Diversity and Devotion*, ST. THOMAS LAWYER, Summer 2008, at 20

*Ministers, Minimum Wages, and Church Autonomy*, 9 ENGAGE 135 (June 2008), available at [http://www.fed-soc.org/doclib/20080703\\_berg.Engage.9.2.pdf](http://www.fed-soc.org/doclib/20080703_berg.Engage.9.2.pdf)

*Christian Politics, Old and New*, COMMONWEAL, July 18, 2008, at 22, available at [http://www.commonwealmagazine.org/article.php3?id\\_article=2272](http://www.commonwealmagazine.org/article.php3?id_article=2272) (reviewing E.J. DIONNE, SOULED OUT (2007); MARK TOULOUSE, GOD IN PUBLIC (2007); and GARRY WILLS, HEAD AND HEART: AMERICAN CHRISTIANITIES (2007))

Testimony on H.R. 2015, the Employment Non-Discrimination Act of 2007, House Education and Labor Committee, Subcommittee on Health, Employment, Labor and Pensions, Sept. 5, 2007, available at <http://www.clsnet.org/clrfPages/advocacy/clsHR21015Testimony.pdf>

“*Bd. of Ed., Kiryas Joel School Dist. v. Grumet*,” “Establishment Clause Doctrine,” “No Coercion Test,” and “State Religious Freedom Statutes,” in THE ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES 157, 533, 1101, 1548 (Paul Finkelman ed., Routledge Press 2006)

“Religion,” in THE OXFORD COMPANION TO THE SUPREME COURT (Kermit Hall ed., Oxford Univ. Press 2005)

“The Free Exercise Clause,” in THE HERITAGE GUIDE TO THE CONSTITUTION (2005)

*Ritual Tea and Religious Freedom*, THE CHRISTIAN CENTURY, Nov. 1, 2005

*How Wide the Divide?*, Christianity Today.com, Sept. 12, 2005, available at <http://www.christianitytoday.com/books/features/bookwk/050912.html> (reviewing NOAH FELDMAN, DIVIDED BY GOD: AMERICA’S CHURCH-STATE PROBLEM AND HOW TO SOLVE IT (2004))

*Religious Freedom in the Catacombs*, AMERICA, June 7-14, 2004, at 17, available at <http://www.americamagazine.org/gettext.cfm?articleTypeID=1&textID=3628&issueID=487>

*Order in the Court*, THE CHRISTIAN CENTURY, Dec. 27, 2003, at 26, available at <http://www.mirrorofjustice.com>

*Life With Others*, THE CHRISTIAN CENTURY, Nov. 22, 2003 (reviewing WILLIAM R. HUTCHISON, RELIGIOUS PLURALISM IN AMERICA: THE CONTENTIOUS HISTORY OF A FOUNDING IDEAL (2003))

Entry on “Land Use Restrictions” (with Douglas Laycock) in THE ENCYCLOPEDIA OF RELIGIOUS FREEDOM (Berkshire Publishing, 2003)

Chief Drafter, Joint Statement of Law Professors on School Vouchers and the Constitution, Pew Forum on Religion and Public Life (2002) (available at <http://pewforum.org/issues/files/VoucherPackage.pdf>)

Book Review, *The Time It Happened Here*, BOOKS ON LAW: JURIST, April 2001, available at <http://www.jurist.law.pitt.edu/lawbooks/revapr01.htm#Berg> (reviewing SHAWN FRANCIS PETERS, JUDGING JEHOVAH’S WITNESSES: RELIGIOUS PERSECUTION AND THE DAWN OF THE RIGHTS REVOLUTION (2000))

“Religious Liberty” and “*Lee v. Weisman*,” in THE ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (Leonard Levy and Kenneth Karst eds., Macmillan Co. 2000)

Entries in LAW AND RELIGION: AN ENCYCLOPEDIA (Garland Press, Paul Finkelman ed., 2000). Entries include the “coercion” test in Establishment Clause cases, the church-state opinions of Chief Justice Rehnquist, the *Kiryas Joel v. Grumet* decision, the abortion funding decision (*Harris v. McRae*), and the *Presbyterian Church v. Hull Church* decision.

*The Alabama Religious Freedom Amendment: A Lawyer’s Guide*, 60 ALA. LAWYER 396 (November 1999) (with Frank Myers)

Book Review, *Outlawing Illegal Acts*, BOOKS AND CULTURE, October-November 1999, at 22 (reviewing JAMES JACOBS AND KIMBERLY POTTER, HATE CRIMES: CRIMINAL LAW AND IDENTITY POLITICS (1999))

Book Review (to be titled), BOOKS AND CULTURE (forthcoming) (reviewing JOHN T. NOONAN, THE LUSTRE OF OUR COUNTRY: THE AMERICAN EXPERIENCE OF RELIGIOUS FREEDOM (1998))

“Leo Pfeffer,” in THE OXFORD AMERICAN NATIONAL BIOGRAPHY (Oxford Univ. Press, 1999) (on noted church-state litigator and scholar)

*Finally, A Sound Ruling in Prayer Case*, BIRMINGHAM NEWS, July 18, 1999, at C1

*Is There a Right to Jury Trial in Copyright Infringement Suits Seeking Statutory Damages?*, 1997-98 (AMERICAN BAR ASSOCIATION) PREVIEW OF U.S. SUPREME COURT CASES 155

*Excluding a Candidate from a Debate on a State-Owned Television Station: Editorial Judgment or Suppression of Free Speech?*, 1997-98 PREVIEW OF U.S. SUPREME COURT CASES 40

*Is “Integrity” Empty, or Worse?*, 27 CUMBERLAND L. REV. 653 (1997) (reviewing STEPHEN L. CARTER, INTEGRITY (1996))

*Confusion About Fusion: Can a State Refuse to Allow a Candidate to Be the Nominee of More than One Political Party?*, 1996-97 PREVIEW OF U.S. SUPREME COURT CASES 146

*Confronting the Court: Is the Constitution Just What the Judges Say It Is?*, BOOKS AND CULTURE, October 1996

*Booze Wars II, The Sequel: May States Prohibit Advertising the Price of Liquor?*, 1995-96 PREVIEW OF U.S. SUPREME COURT CASES 76

*“No News Is Good Booze”*: *Can the Government Prohibit Statements of Alcohol Content on Beer Labels?*, 1994-95 PREVIEW OF U.S. SUPREME COURT CASES 126

*Supreme Court Religious Ruling Misconstrues First Amendment*, BIRMINGHAM NEWS, July 22, 1994, at 9A

*“Make the Law Go Away: When a Case is Settled on Appeal, Should the Court of Appeals Vacate the Trial Court Judgment?”*, 1993-94 PREVIEW OF U.S. SUPREME COURT CASES 110

*Religious Freedom Implications in 1993*, 14:3 CHRISTIAN LEGAL SOCIETY QUARTERLY 10 (Fall 1993)

*Drug Conspiracies: When a Drug Courier is Unconstitutionally Searched, May the ‘Kingpin’ Object?*, 1992-93 PREVIEW OF U.S. SUPREME COURT CASES 294

Letters to *The New York Times*, October 1998, October 1995

### **Works in Progress**

*Diversity and Devotion: Church, State, and Society in Modern America* (draft book in progress)

*Golf and the Law* (draft book in progress)

*Stewardship, Creativity, and Intellectual Property* (draft article in progress)

### **Major Presentations, Testimony, Consultations** (By invitation unless starred (then by accepted proposal))

Panelist, “Civil Rights, Social Justice, and the 2008 Elections,” University of St. Thomas School of Law Community Justice Project, October 24, 2008

“Church and State Since the Williamsburg Charter of 1888,” Conference on the Williamsburg Charter’s 20th Anniversary, William and Mary Law School, April 18, 2008

“Conscience Claims by Professionals,” Inn of Court, St. Paul, MN, April 16, 2008

“Religious Organizational Freedom and Conditions on Government Benefits,” Conference on Church Autonomy (“The Things that Are and Are Not Caesar’s”), Georgetown Law School, March 14, 2008, audio/video available at [http://www.fed-soc.org/publications/pubID.986/pub\\_detail.asp](http://www.fed-soc.org/publications/pubID.986/pub_detail.asp)

“Religious Multiculturalism and Its Traps,” Conference on Religion, Multiculturalism, and Citizenship, Harvard Law School, February 29-March 1, 2008

“The Complexities of Religious Pluralism,” Faculty Colloquium, Notre Dame Law School, January 15, 2008

“The Bill of Rights: Background, Birth, Development,” Bill of Rights Institute Seminar, Minneapolis, Nov. 8, 2007

“Does the First Amendment Have Anything to Say About School Vouchers?,” Conference on Educational Choice: Emerging Legal and Policy Issues, Brigham Young University Law School, Oct. 22, 2007

“The Complexities of Religious Pluralism,” Faculty Colloquium, University of St. Thomas School of Law, October 15, 2007

Testimony on H.R. 2015, the Employment Non-Discrimination Act of 2007, House Education and Labor Committee, Subcommittee on Health, Employment, Labor and Pensions, Sept. 5, 2007, available at <http://www.clsnet.org/clrfPages/advocacy/clsHR21015Testimony.pdf>

“Social Justice, Religious Integrity, and Modern-Church State Relations,” Faculty Colloquium, St. Louis University Law School, April 25, 2007

Panelist, “Whither Religious Pluralism in America?,” Midwest Political Science Association Annual Conference, Chicago, April 12, 2007

“Constitutional Judicial Review in the United States,” Faculte de Droit et de Science Politique, University of Aix-Marseilles, Aix-en-Provence, France, March 21, 2007

“Religion and the State in the United States,” Faculte de Droit et de Science Politique, Aix-en-Provence, France, March 15, 2007

“Intellectual Property and the Preferential Option for the Poor,” Conference on the Preferential Option for the Poor, Villanova Law School. Oct. 27, 2006 \*

Keynote Address, “State Governments and the Political Divisiveness of Religion,” Conference on Religion and State Governments, Indiana University-Indianapolis School of Law, Sept. 29, 2006

“Constitutional Rules and the Free Religious Market,” Law and Religion Summer School, University of Siena, Italy, August 30, 2006

“Religion and the New Court,” Federalist Society, University of Kentucky Law School, Feb. 22, 2006

“Federalism and Religious Freedom,” Thrower Symposium on Federalism, Emory University Law School, February 16, 2006

“The Consistent Ethic of Life,” Mayflower United Church of Christ, Minneapolis, MN, Jan. 30, 2006

“What’s Right and Wrong with ‘No Endorsement of Religion,’” Conference on the Rehnquist Court and the First Amendment, Washington University (St. Louis) Law School, Nov. 18, 2005

Speaker, Debate on Ten Commandments Displays, Cumberland Law School, Oct. 13, 2005 (with co-

panelists Jay Sekulow, Marci Hamilton, and Ronald Sider)

Panelist on Abortion: Current Legal Issues, Macalester College NARAL Pro-Choice Chapter, St. Paul, MN, Sept. 30, 2005

“John Courtney Murray and Reinhold Niebuhr: Natural Law and Christian Realism,” Conference on the Legacy of John Courtney Murray for American Law and Politics, Villanova Law School, Sept. 16, 2005 \*

“Christianity and the Secular in Modern Public Life,” Law and Culture Lecture Series, John Paul II Cultural Center, Washington DC, November 4, 2004

“The Pledge of Allegiance and the Limited State,” Minnesota Attorney General’s Continuing Legal Education Program, St. Paul, MN, June 11, 2004

Featured scholar, First Amendment Theory Seminar, Prof. Steven Shiffrin, Cornell Law School, April 15, 2004

“The Voluntary Principle and Church Autonomy, Then and Now,” Conference on Church Autonomy, Brigham Young University Law School, February 6-7, 2004

“The Pledge of Allegiance and the Limited State,” Annual Meeting, Association of American Law Schools (AALS), Section on Law and Religion, January 3, 2004

“Freedom of Religion and Belief in the U.S.,” for Conference on Freedom of Religion and Belief, European-American Consortium on Church-State Relations, Budapest, Hungary, December 5-7, 2003

“Comments on *Lawrence v. Texas*,” to Minnesota Lavender Bar Association, October 15, 2003

“Why a State Exclusion of Religious Schools from School Choice Programs is Unconstitutional,” at Conference on Separating Church and the States: The Blaine Amendments, University of North Carolina Law School, March 29, 2003

“Stewardship, Creativity, and Intellectual Property,” for Roundtable at Christian Legal Scholars’ Symposium, Savannah, GA, November 2, 2002 \*

“School Vouchers: The Next Round of Questions,” for Loop Breakfast Forum, Center for Church-State Studies, DePaul Law School, October 29, 2002

“Freedom of Religion and Belief in the U.S.,” for Conference on Freedom of Religion and Belief, European-American Consortium on Church-State Relations, Emory Law School, September 19-21, 2002

“Copying for Religious Reasons,” for Conference on Copyright: Engine of Free Expression or Tool of Private Suppression?, Cardozo Law School, April 15, 2002

“Race Relations and Modern Church-State Relations,” for Conference on Shifting into Neutral: The Decline of Church-State Separationism, Boston College Law School, April 5, 2002

“Secular Theology, Mainline Protestantism, and Church-State Relations,” for Federalist Society

Conference on Religion and Democracy in America, Ann Arbor, Michigan, March 22, 2002

“Anti-Catholicism and Modern Church-State Relations,” for Conference on Church and State, Loyola Law School (Chicago), February 3, 2001

“Stewardship, Creativity, and Intellectual Property,” for Christian Law Professors’ Fellowship Conference, San Francisco, January 6, 2001

Panelist, “Legal Issues Stemming from the Scopes Trial,” for Natchez Literary Celebration, Natchez, Mississippi, June 2, 2000

“Religious Conservatives and the Death Penalty,” for Conference on Religion’s Role in the Administration of the Death Penalty, Institute for Bill of Rights Studies, William and Mary College of Law, April 7, 2000 (invitation based on paper proposal)

Briefing on the Religious Liberty Protection Act, for U.S. Senate staff, April 6, 2000

Speaker, AALS Annual Meeting, Joint Program of Sections on Law and Religion and Gay and Lesbian Legal Issues, January 2000

“Developments in the Law of Religious Freedom,” Cumberland Law School Year-Ed Continuing Legal Education Program, December 29-30, 1999

Discussion Leader, Judicial Seminar on the Founding of the Republic, sponsored by Liberty Fund, in San Diego, California, June 22-27, 1999

Participant, Colloquium on Religious Liberty in Early Nineteenth-Century America, sponsored by Liberty Fund, in Richmond, Virginia, March 18-21, 1999

“The New Attacks on Religious Freedom Legislation,” for Conference on Religious Freedom Legislation: Is It Wise? Is It Constitutional?, Cardozo Law School, February 8, 1999

“Religious Freedom in Public and Private Schools,” for Conference on Restoring Religious Freedom in the States, sponsored by Council on Religious Freedom, at Georgetown Law School, January 28-29, 1999

Keynote Address, “Too Good to Be True: The New Era Philanthropy Scandal and Its Implications,” for Conference on The Financing of American Evangelical Religion, at Wheaton College (Illinois), December 5, 1998

“Religious Speech in the Workplace,” for American Bar Association, Individual Rights Section, at ABA Annual Conference, Toronto, August 3, 1998

“The Religious Liberty Protection Act of 1998,” Testimony to the House Judiciary Committee, Subcommittee on the Constitution, June 16, 1998

Roundtable Participant and Invited Witness, for Symposium on International Human Rights Standards and the United States: The Case of Religious Belief, Emory Law School, January 29, 1998 (including invited testimony to U.N. Special Rapporteur for Religious Freedom)

“Religious Freedom After *Boerne*,” at University of Arkansas-Little Rock Law School Symposium

on *City of Boerne v. Flores*, Sept. 19-20, 1997

Participant, in Consultation on “Religion and the Public Schools,” sponsored by Lilly Endowment and DePaul University Center for Church-State Studies, August 2-3, 1997

“Religious Freedom After *City of Boerne v. Flores*,” Testimony to the House Judiciary Committee, Subcommittee on the Constitution, July 14, 1997

“The Third Disestablishment of Religion: Church and State in American Society from 1945 to 1975,” at Cumberland Colloquium on Law, Religion, and Culture, May 2, 1997

“Some Religiously Devout Justices: Historical Notes and Comments” (with William Ross), at Symposium on Religion and the Judicial Process, Marquette Law School, April 8, 1997 (invited featured presentation)

“Religious Pragmatism and Legal Thought,” at Faculty Workshop, St. Mary’s Law School, March 29, 1996

“The Religion of Supreme Court Justices: Preliminary Enquiries and Assessments” (with William Ross), at Cumberland Colloquium on Law, Religion, and Culture, March 15, 1996

“Civility, Politics, and Civil Society,” at Cumberland Law School Rushton Distinguished Lecturer Series (response to Anthony Kronman), February 29, 1996

“The Federal Constitution” and “Religiously Affiliated Education,” at Conference on Legal Structures and Religious Institutions, DePaul University College of Law, April 2-3, 1995

“The Voluntary Principle and the Incorporation of the Establishment Clause,” at Cumberland Distinguished Lecturer Series (response to Akhil Amar), March 2, 1995

“Church-State Relations and the Social Ethics of Reinhold Niebuhr,” at Cumberland Colloquium on Law, Religion, and Culture, April 6, 1994

### **Major Professional and Academic Awards**

John Courtney Murray Award, DePaul University Center for Church-State Studies, 2006

Alpha Sigma Nu Book Award, Association of Jesuit Colleges and Universities, 2004, for RELIGION AND THE CONSTITUTION (with Michael McConnell and John Garvey)

Religious Liberty Defender of the Year, Christian Legal Society, 1996

### **Significant Litigation**

Filed briefs (as either primary or a primary author) in

*Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211 (2006) (amici curiae, on the merits)

*Locke v. Davey*, 540 U.S. 712 (2004) (amici, on the merits)

*Board of Regents v. Southworth*, 529 U.S. 217 (2000) (amici, on the merits)

*Agostini v. Felton*, 521 U.S. 203 (1997) (amici, on the merits)

*Capitol Square Review Board v. Pinette*, 515 U.S. 557 (1995) (amici, on the merits)

*Board of Education, Kiryas Joel School District v. Grumet*, 512 U.S. 687 (1994) (amici, on the merits)

*Lamb's Chapel v. Center Moriches School District*, 508 U.S. 384 (1993) (amici, on the merits)

*International Society for Krishna Consciousness v. George*, cert. denied, 499 U.S. 914 (1991), stay granted, 494 U.S. 1075 (1990) (certiorari petition and successful stay application, for petitioner Hare Krishnas)

*Board of Education v. Mergens*, 496 U.S. 226 (1990) (amici, on the merits)

*Andrews v. Vermont Dept. of Education*, cert. denied, 528 U.S. 1066 (1999) (amici, supporting certiorari petition in school tuition voucher case)

*Russian Orthodox Church Outside Russia v. Church of Holy Resurrection*, cert. denied, 513 U.S. 1121 (1995) (amicus, supporting certiorari petition in church property case)

*Bishop v. Delchamps*, cert. denied, 505 U.S. 1218 (1992) (amicus, supporting certiorari petition asserting free speech rights of college professor)

*Munn v. Algee*, cert. denied, 502 U.S. 900 (1991) (certiorari petition, for petitioner, a Jehovah's Witness, asserting right to refuse blood transfusion)

*Village of Bensenville et al. v. FAA*, Nos. 05-1383, 05-1456 (D.C. Cir., argued May 5, 2006) (amici, several religious and civil liberties groups, supporting challenge to desecration of cemetery planned pursuant to O'Hare Airport expansion)

*Uniao do Vegetal v. Ashcroft*, 389 F.3d 1073 (10th Cir. 2004) (en banc) (amici, several religious and civil liberties groups, successfully defending right of small religious group under Religious Freedom Restoration Act to ingest tea with hallucinogenic substance at worship service)

*Kong v. Scully*, 341 F.3d 1132 (9th Cir. 2003) (amici, several religious and civil liberties organizations, successfully defending constitutionality of Medicare accommodations for persons religiously opposed to medical treatment)

*University of Great Falls v. N.L.R.B.*, 278 F.3d 1335 (D.C. Cir. 2002) (amici, numerous religious colleges, successfully defending college's autonomy under NLRA)

*Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000) (amicus, Center for Law and Religious Freedom, successfully defending student-initiated speech at public school events)

*Children's Healthcare Is A Legal Duty v. Min de Parle*, 212 F.3d 1084 (8th Cir. 2000) (amici, several religious and civil liberties organizations, successfully defending constitutionality of

Medicare accommodations for persons religiously opposed to medical treatment)

*In re Young*, 141 F.3d 854 (8th Cir. 1998) (amicus, Coalition for the Free Exercise of Religion, successfully defending validity of Religious Freedom Restoration Act as applied to federal law)

*Siegel v. Truett-McConnell College*, 73 F.3d 1108 (11th Cir. 1995) (amici, approximately 100 colleges, successfully asserting right of religious college to consider religion in hiring)

*Pope v. East Brunswick Board of Education*, 12 F.3d 1244 (3d Cir. 1993) (amicus, successfully defending high school student religious group meetings under Equal Access Act)

*Hedges v. Wauconda School District*, 9 F.3d 1295 (7th Cir. 1993) (amicus, successfully defending student meetings under Equal Access Act)

*Doe v. Ottawa Jaycees*, 934 F.2d 743 (7th Cir. 1991) (amicus, Anti-Defamation League of B'nai Brith, successfully attacking government-sponsored religious paintings on public property)

*Bush v. Holmes*, 919 So.2d 392 (Fla. 2006) (amici, defending right of families choosing religious schools to be included equally in state voucher program for students in failing public schools)

*Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998) (amicus, successfully defending inclusion of religious schools in low-income voucher program in Milwaukee)

*Thompson v. Jackson*, 546 N.W.2d 140 (Wis. 1996) (same)

## **Law School Service**

### **University of St. Thomas School of Law**

Co-Director, Terrence J. Murphy Institute for Catholic Thought, Law, and Public Policy (2004- )

Chief drafter, UST Law School Self-Study, for application for ABA provisional accreditation (August 2002)

Committees: Accreditation (Co-chair 2002-03, member 2004-06), Faculty Appointments (2002- , Chair 2003-07), Publications Director Search (2002), Self-Study (2007- )

Faculty advisor, *University of St. Thomas Law Journal* (2002- )

Co-chair, Murphy Institute Conference, "Prudential Judgment, Public Policy, and the Catholic Social Tradition," April 6-8, 2006

\* Speakers included John McGreevy (Notre Dame History), Christopher Wolfe (Marquette Political Science), Robert Vischer (UST Law), Michael Baxter (Notre Dame Theology), Charles Clark (St. John's Economics), David Durenberger (UST), and 20 concurrent panelists. Selected papers published in the *Law Journal*, volume 3 (2006).

Co-chair, Murphy Institute Inaugural Conference, "The Catholic Intellectual Tradition and the Good Society," April 7-9, 2005

\* Speakers included John Finnis (Oxford and Notre Dame), James Gordley (Boalt Hall), John Coughlin (Notre Dame), Lisa Schiltz (UST Law), Paul Griffiths (Illinois-Chicago)

Philosophy), Mark Sargent (Villanova), and Christopher Wolfe (Marquette Political Science), and 18 concurrent panelists. Selected papers published in the *Law Journal*, volume 2, issue 3 (2005).

Faculty editor, *Law Journal Symposium*, “Catholicism and the Court: The Relevance of Faith Traditions to Jurisprudence,” November 10, 2006

\* Speakers included Hon. Diarmuid O’Scannlain (U.S. Court of Appeals for the Ninth Circuit), Sanford Levinson (Texas), Michael Gerhardt (North Carolina), Peggy Steinfelds (*Commonweal Magazine*), Dennis Coyle (Georgetown), and others. Papers published in the *Law Journal*, volume 4, issue 1 (2007).

Faculty editor, *Law Journal Symposium*, “The Future of Pro-Life Progressivism,” March 11, 2005

\* Speakers included Jim Wallis (*Sojourners Magazine*), Sidney Callahan (St. John’s (NY) and Feminists for Life), Helen Alvare (Catholic U.), John Carr (U.S. Conference of Catholic Bishops), Kevin Doyle (NY Capital Defender), Ted Jelen (UNLV Political Science). Papers published in the *Law Journal*, volume 2, issue 2 (Fall 2005).

Co-faculty-editor, *Law Journal Symposium*, “God, the Person, History, and the Law: Themes in the Work of Judge John Noonan,” October 17-18, 2003

\* Speakers included Jean Bethke Elshtain (University of Chicago Divinity), Hon. Stephen Reinhardt (U.S. Court of Appeals for the Ninth Circuit), John Powell (Ohio State), Sanford Levinson (Texas), Michael Perry (Emory), Steven Smith (San Diego), Alan Brownstein (California-Davis), Richard Helmholz (Chicago), Fr. Charles Curran (SMU Theology), Leslie Griffin (Houston), Ali Khan (Washburn), and approximately 20 others. Papers published in the *Law Journal*, volume 1, issue 1 (Fall 2003).

## **Cumberland Law School**

Organizer and co-chair, conference on “Civil Rights in the New Decade,” co-sponsored by Cumberland Law School and the Birmingham Civil Rights Institute, February 15, 2001

\* Speakers included Richard Lazarus (Georgetown), Deborah Ramirez (Northeastern), Eric Yamamoto (Hawaii). Papers published in *Cumberland Law Review*, volume 32 (2001).

Organizer and co-chair, 30th anniversary conference on the Voting Rights Act, “Where Do We Go From Here? The Past, Present, and Future of Voting Rights,” October 8-10, 1995, Birmingham, AL

\* Conference co-sponsored by Cumberland Law School, Birmingham Civil Rights Institute, and Miles Law School. I conceived idea for conference, enlisted other sponsors, and organized law-related sessions (including CLE arrangements). Three-day conference involved about 25 speakers, including Pam Karlan (Virginia), Chris Eisgruber (NYU), James Blumstein (Vanderbilt), and former Attorney General Nicholas Katzenbach. Selected papers published in the *Cumberland Law Review*, volume 26, number 2 (including one paper cited extensively in *Bush v. Vera*, 517 U.S. 952 (1996)).

Co-founder and co-chair, Cumberland Colloquium on Law, Religion, and Culture (interdisciplinary scholarship workshop series), 1994-2001

\* With a colleague, I conceived idea for this workshop series and enlisted speakers and organize meetings. Speakers included Kent Greenawalt (Columbia), James Boyd White (Michigan), Michael Perry (Wake Forest), Andrew Koppelman (Northwestern), Phillip Hamburger (Chicago), William Marshall (Case Western), Steven Smith (Notre Dame), Marci Hamilton (Cardozo), Robert Tuttle (George Washington), Alan Brownstein (California-Davis), Frederick Gedicks (Brigham Young), Mark Janis (Connecticut), David

Forte (Cleveland State), Teresa Collett (South Texas), and Cumberland and Samford faculty.

Co-founder and planning committee member, Cumberland Law School Rushton Distinguished Lecturer Series, 1995-98

\* With two other colleagues, I conceived idea for this series, enlisted speakers, and organized sessions. Lecturers included Akhil Amar (Yale), Anthony Kronman (Yale), Lawrence Friedman (Stanford), Dan Carter (Emory History Department), Kip Viscusi (Harvard), and Edward Imwinkelreid (California-Davis). Respondents included James Boyd White (Michigan), Sanford Levinson (Texas), Michael Curtis (Wake Forest), Michael Paulsen (Minnesota), Anthony Lewis (New York Times), Nancy King (Vanderbilt), Lucie White (Harvard), Norval Morris (Chicago), William Mayton (Emory), Gary Schwartz (UCLA), Thomas Ulen (Illinois), and several Cumberland faculty.

Organizer, Cumberland Law School faculty brown-bag presentations, 1994-97

Faculty committees: Faculty Recruitment (1993-96, 2000), Curriculum (Chair 1998-2000, overseeing full-scale curriculum reform), Advocacy and Clinical Education (1992-97), Judicial Clerkships (1994-98, 2000, chair 1997-98), External Relations (1994-97), Alumni Relations (1995-97), Strategic Planning and Self-Study (1996-98), Ad Hoc Faculty Grievance Committee (2001)

Faculty sponsor: Law Review (1999-2001), Student Speakers' Forum (1993-99), Cumberland Democrats (1995-97)

Coach, National Moot Court Team, 1998; advisor and judge for other moot court teams

### **Other Academic and Legal Work and Positions**

Chair, Law and Religion Section, Association of American Law Schools, 1997 (program chair, 1996; newsletter editor, 1994-95)

\* As program chair, organized section's program for the 1997 AALS Annual Conference, featuring Stephen Carter (Yale), Stanley Fish (Duke), and Steven Smith (Colorado).

Contributor, *Mirror of Justice* weblog, <http://www.mirrorofjustice.com>; guest contributor, SCOTUS Blog, <http://www.scotusblog.com>, summer 2005

Member, Committee on Religious Liberty, National Council of Churches of Christ, 1998-present

Member, Legal Advisory Board, Roundtable on Religion and Social Welfare Policy, Pew Forum on Religion and Public Life, 2003-present

Member, Board of Legal Scholars, DePaul University Center for Church-State Studies, 1994-2004

Member, Advisory Committee, Center for Law and Religious Freedom (Annandale, VA), 1999-present

Member, Board, Democrats for Life of Minnesota, <http://www.dflamn.org>

Advisor to Center for Law and Religious Freedom and to religious organizations, on a variety of matters concerning church and state and religious freedom, including litigation, pending legislation, and policy

Quotes on legal subjects in numerous media outlets, including *New York Times*, *Time*, *U.S. News and World Report*, PBS, *National Law Journal*, *Boston Globe*, *Boston Herald*, *Charlotte Observer*, *Minneapolis Star-Tribune*, *New Orleans Times-Picayune*, *Orlando Sentinel*, *National Catholic Reporter*, *National Catholic Register*, and Minnesota Public Radio

Associate, Crossroads Center for Faith and Public Policy, 1995-present

Researcher, Park Ridge Center for Faith, Health, and Ethics, 1991-92 (compiling positions of various religious communities on issues of medical ethics and health policy)

Member, Rhodes Scholarship Selection Committees, Louisiana (1988), Wisconsin (1989-90), Alabama (1992-96)

Member: American Bar Association, U.S. Supreme Court Historical Society

Admitted to practice: Minnesota (2004), Illinois (1989), U.S. Supreme Court (1993), U.S. Court of Appeals for the Eleventh Circuit (1995)

### **References**

Hon. Michael W. McConnell, U.S. Court of Appeals for the Tenth Circuit; (801) 524-5145, [judge\\_michael\\_mcconnell@ca10.uscourts.gov](mailto:judge_michael_mcconnell@ca10.uscourts.gov)

William P. Marshall, University of North Carolina Law School; (919) 843-7747; [wpmarsha@email.unc.edu](mailto:wpmarsha@email.unc.edu)

Alan Brownstein, Professor, University of California Davis Law School; (530) 752-2586; [aebrownstein@ucdavis.edu](mailto:aebrownstein@ucdavis.edu)

Andrew R. Klein, Associate Dean, Indiana University Law School-Indianapolis; (317) 274-2099; [anrklein@iupui.edu](mailto:anrklein@iupui.edu)

Stephen J. Ware, Professor, University of Kansas Law School; [ware@ku.edu](mailto:ware@ku.edu)

### **Personal**

Married to Maureen Kane Berg, September 23, 1989

Two sons, Brendan (born 1995) and Aidan (born 1998)

Member, St. Stephens Episcopal Church, Edina, MN (committees: Rector Search, Strategic Planning, Adult Education)

Co-composer and arranger, *Got It Made* (musical comedy, with Maureen Kane Berg) (produced by Flower Shop Project, Minneapolis, November 2007)

Musical director, Public Offenders all-lawyer comedy troupe, Chicago: *Shark Bites* (1991), *We're Keeping Our Day Jobs (We Hope)* (1992)

Musical director, University of Chicago Law School musical comedy shows: *Oedifice Lex* (1986), *A Class Act* (1987)

Hobbies: Golf, choral singing, piano, musical composition, travel, photography