

IOWA LAW REVIEW

*presents*

Symposium 2022



# THE FUTURE OF RELIGIOUS FREEDOM

Discussing the Evolving Legal Theories and Doctrine

Friday, October 14, 2022, from 8:30 a.m. to 4:00 p.m.  
225 Boyd Law Building, University of Iowa



# Agenda

Join us on Zoom

<https://uiowa.zoom.us/j/97310189041>

## Thursday, October 13

6 – 9 p.m.      **Dinner, St. Burch Tavern**  
Speakers and invited guests

## Friday, October 14

8 – 8:45 a.m.    **Welcome Breakfast**  
Open to all participants and presenters

8:45 – 9 a.m.    **Opening Remarks**  
**Dean Kevin Washburn**  
N. William Hines Dean and Professor of Law  
University of Iowa College of Law

**Kate M. Conlow**  
Editor in Chief, *Iowa Law Review*

**Meg Sill**  
Symposium Editor, *Iowa Law Review*

**All Times Central**



# Agenda

9 – 10:20 a.m.

## Panel One

### Doctrinal Questions and Supreme Court Decisions

#### Professor Stephanie H. Barclay

Notre Dame Law School

*The Religion Clauses After Kennedy v. Bremerton School District*

#### Professor Nathan S. Chapman

University of Georgia School of Law

*Rethinking the Smith Regime*

#### Professor Michael A. Helfand

Pepperdine Caruso School of Law

*Substantial Burdens as Civil Penalties*

#### Professor Christopher C. Lund

Wayne State University Law School

*Answers to Fulton's Questions*

10:30 –

11:50 a.m.

## Panel Two

### Doctrine and Procedure as Mechanisms to Shift Social and Political Issues

#### Professor Micah Schwartzman

University of Virginia School of Law

*Religious Freedom and Abortion*

#### Professor B. Jessie Hill

Case Western Reserve University School of Law

*Symbols of Inequality: Identity, Ownership and the First Amendment*

#### Professor Andrew Koppelman

Northwestern Pritzker School of Law

*The Increasingly Dangerous Variants of the “Most-Favored-Nation” Theory of Religious Liberty*



# Agenda

**12 – 1:30 p.m. Lunch Break**

Lunch provided in Room 494 for *Iowa Law Review* Board Members, Student Writers, and Symposium Presenters

**1:30 –** **Keynote Address**

**2:30 p.m.**

**Judge Diane P. Wood**

Seventh Circuit Court of Appeals

**2:50 – 4 p.m. Panel Three**

**Religious Freedom Through the Lenses of Legal Theories**

**Professor Paul Gowder**

Northwestern Pritzker School of Law

*Can Religious Accommodations Undermine Liberal Freedom? A Rule of Law Approach*

**Professor Elizabeth Sepper & Professor James D. Nelson**

University of Texas at Austin School of Law

University of Houston Law Center

*Religion Law and Political Economy*

**Professor Nelson Tebbe**

Cornell Law School

*Does Dobbs Reinforce Democracy?*

# Speaker Bios



## Keynote Speaker

### Judge Diane P. Wood

Seventh Circuit Court of Appeals

Diane P. Wood is a Circuit Judge of the United States Court of Appeals for the Seventh Circuit and a Senior Lecturer in Law at the University of Chicago Law School. Judge Wood attended the University of Texas at Austin, earning her B.A. in 1971 (highest honors), and her J.D. in 1975 (Order of the Coif). She clerked for Judge Irving L. Goldberg on the U.S. Court of Appeals for the Fifth Circuit (1975-76), and for Justice Harry A. Blackmun of the U.S. Supreme Court (1976-77). She began her career as a legal academic in 1980 after a brief period at the U.S. Department of State. From 1993 until she was appointed a Circuit Judge for the Seventh Circuit in 1995, she served as Deputy Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice. She was Chief Judge of the Seventh Circuit from October 1, 2013, to July 4, 2020. Judge Wood is a Fellow of the American Academy of Arts & Sciences, a Board Member of the American Bar Foundation, is an Emerita member of the Council of the American Law Institute, and a Board Member of the Bolch Institute. Judge Wood is married to Dr. Robert L. Sufit. She has three children, three step-children, and five grandchildren. She enjoys playing the oboe and English horn in several Chicago-area amateur orchestras.

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## Faculty Organizer

### Professor Christopher Lund

Wayne State University College of Law

Christopher C. Lund is a professor of law at Wayne State University Law School, where he teaches a variety of courses, including Torts, Contracts, Constitutional Law, Religious Liberty in the United States and Evidence. Excited to teach students, he has been voted Professor of the Year eight times. In 2022, Lund was named as the second associate dean for research and faculty development.

Lund's scholarly interests vary, but his principal focus has been in the field of religious liberty. His academic work has been (or will be) published in student-edited law reviews, such as the *Michigan Law Review*, the *Virginia Law Review*, and the *Northwestern University Law Review*, peer-reviewed legal journals, such as the *Journal of Law and Religion*; and peer-reviewed interdisciplinary journals, such as *History of Religions*. Along with Michael McConnell and Thomas Berg, he is the author of a leading church-state casebook, *Religion and the Constitution*, the fourth edition of which was published by Aspen in 2016. In 2017, he was awarded the Berman Prize for Excellence in Scholarship by the Law and Religion Section of the American Association of Law Schools for his piece, *Religion is Special Enough*.

Lund's academic work has been cited extensively by courts and commentators. In the Supreme Court's recent decision about the constitutionality of a WWI memorial cross, for example, Justice Alito's majority opinion cited one of his articles while Justice Ginsburg's dissent cited a brief he had written for the case. In another case, Justice Stephen Breyer brought up another of Lund's briefs at oral argument, calling it "very excellent." Lund is regularly called on for his expertise by media outlets, civil rights organizations and religious groups. He has served as chair of the Section on Constitutional Law of the Association of American Law Schools, as well as chair of the Section on Law and Religion and the Section on New Law Professors.

Lund joined Wayne State University Law School in 2009 from the Mississippi College School of Law. Before teaching, he clerked for the Hon. Karen Nelson Moore on the U.S. Court of Appeals for the Sixth Circuit, served as the Madison Fellow at Americans United for Separation of Church and State and practiced law at Dechert LLP in Philadelphia. Lund earned his law degree with high honors from the University of Texas School of Law and his bachelor's from Rice University, summa cum laude, with majors in mathematics and psychology.



**Professor Stephanie Barclay**  
Wayne State University College of Law

Professor Stephanie Barclay's research focuses on the role our different democratic institutions play in protecting minority rights, particularly at the intersection of free speech and religious exercise. Barclay's academic writing has been published or

is forthcoming in publications such as the *Harvard Law Review*, the *Washington University Law Review*, the *Notre Dame Law Review*, and the *Boston College Law Review*. Her recent article, "An Economic Approach to Religious Exemptions," was selected for the 2020 Stanford/Harvard/Yale Junior Faculty Forum. Barclay is a Nootbaar Fellow at the Nootbaar Institute on Law, Religion, and Ethics at Pepperdine University, and a Faculty Affiliate at the Constitutional Law Center at Stanford Law School. She graduated summa cum laude from BYU Law School, where she was elected to the Order of the Coif. She recently completed a clerkship on the United States Supreme Court, and she is currently pursuing a DPhil in Law at Oxford as a Clarendon Scholar and a Tang Scholar.

Barclay directs Notre Dame Law School's Religious Liberty Initiative, which involves promoting religious liberty scholarship, hosting events for thought leaders in this space, and launching a new Religious Liberty Clinic. Through this program, students defend religious freedom for individuals of all faiths. Students advise clients outside of the courtroom, as well as pursue their claims in the trial courts and appeals up to and including the U.S. Supreme Court. Barclay has served on the Steering Committee for the Quill Project at Pembroke College, on the Board of the UVU Center for Constitutional Studies, as a subcommittee chair for the JRCLS International Religious Freedom Committee, and as the Chair of the AALS Law and Religion Section.



**Professor Nathan Chapman**  
University of Georgia School of Law

Nathan S. Chapman is the Pope F. Brock Associate Professor of Professional Responsibility. His scholarship focuses on the historical and theoretical underpinnings of constitutional law, especially the law of religious liberty and due process. He is the author, with Michael W.

McConnell, of a forthcoming volume from the Oxford University Press titled *Agreeing to Disagree: How the Establishment Clause Promotes Religious Pluralism and Protects Freedom of Conscience*.



## **Professor Paul Gowder**

Northwestern Pritzker School of Law

Paul Gowder is a Professor of Law at Northwestern University's Pritzker School of Law, and the author of *The Rule of Law in the Real World* (Cambridge University Press, 2016) and *The Rule of Law in the United States: An Unfinished Project of Black Liberation* (Hart/Bloomsbury 2021). His research

spans fields including political and legal philosophy, racial justice, constitutional theory, platform governance, and classical Athenian law.

Gowder has a Ph.D. from Stanford (political science) and a J.D. from Harvard. He has taught beginning and advanced constitutional law courses, statistics and programming for lawyers, torts, critical race theory, and legal ethics, among other subjects. He is also a fellow of the Integrity Institute. Formerly, he was a legal aid and civil rights lawyer, and in those contexts represented victims of police misconduct, predatory lending, employment discrimination, unlawful eviction, domestic violence, and numerous other injustices.



## **Professor Michael Helfand**

Pepperdine Caruso School of Law

Michael A. Helfand is the Brenden Mann Foundation Chair in Law and Religion and Co-director of the Herbert and Elinor Nootbaar Institute for Law, Religion and Ethics at Pepperdine Caruso School of Law. In addition, he also serves as Visiting Professor and Oscar

M. Ruebhausen Distinguished Fellow at Yale Law School. His academic articles have appeared in numerous law journals, including the *Yale Law Journal*, *New York University Law Review*, and *Duke Law Journal*. Professor Helfand also often provides commentary on clashes between law and religion, writing for various general audience publications, including the *Wall Street Journal*, *Los Angeles Times*, *USA Today*, and the *Forward*.



## **Professor B. Jessie Hill**

Case Western Reserve University  
School of Law

Jessie Hill is the Associate Dean for Research and Faculty Development and Judge Ben C. Green Professor of Law at Case Western Reserve University School of Law. Ms. Hill's teaching focuses on constitutional law, civil rights, reproductive rights, and law and religion. She is a graduate of Brown University and Harvard Law School. Her scholarship is published or forthcoming in the *Michigan Law Review*, *Duke Law Journal*, *Georgetown Law Journal*, *Columbia Journal of Gender and Law*, and *Texas Law Review*, among others. Prior to teaching, Professor Hill worked at the Reproductive Freedom Project of the national ACLU office in New York, litigating challenges to state-law restrictions on reproductive rights, and then practiced First Amendment and civil rights law with a small law firm in Cleveland. She also served as law clerk to the Honorable Karen Nelson Moore of the U.S. Court of Appeals for the Sixth Circuit.

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## **Professor Andrew Koppelman**

Northwestern Pritzker School of Law

Andrew Koppelman is John Paul Stevens Professor of Law, Professor (by courtesy) of Political Science, and Philosophy Department Affiliated Faculty at Northwestern University. He received the Walder Award for Research Excellence from Northwestern, the Hart-Dworkin award in legal philosophy from the Association of American Law Schools, and the Edward S. Corwin Prize from the American Political Science Association. His scholarship focuses on issues at the intersection of law and political philosophy. He has written more than 100 scholarly articles and eight books, most recently *Burning Down the House: How Libertarian Philosophy Was Corrupted by Delusion and Greed*, forthcoming from St. Martin's Press. You can find his recent work at [andrewkoppelman.com](http://andrewkoppelman.com).

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**Professor James Nelson**  
University of Houston Law Center

James Nelson is the Vinson & Elkins Professor at the University of Houston Law Center. He also holds an appointment at the C. T. Bauer College of Business at the University of Houston. His recent work on corporate law, governance, and rights has been published in the *Columbia Law*

*Review*, the *Virginia Law Review*, the *Vanderbilt Law Review*, and the *Harvard Business Law Review*.

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**Professor Micah Schwartzman**  
University of Virginia School of Law

Micah Schwartzman is the Hardy Cross Dillard Professor of Law and director of the Karsh Center for Law and Democracy at the University of Virginia School of Law. His research and teaching focus on law and religion, constitutional law, and political philosophy. Schwartzman received his

B.A. and J.D. from the University of Virginia and his doctorate in politics from the University of Oxford, where he studied as a Rhodes Scholar. His work has appeared in the *Harvard Law Review*, *University of Chicago Law Review*, *Michigan Law Review*, *Supreme Court Review*, and others. He has also published commentary in *The New York Times*, *The Washington Post*, *The Atlantic*, *The New Republic*, and *Slate*. He co-edited *The Rise of Corporate Religious Liberty* (Oxford University Press).

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**Professor Elizabeth Sepper**  
University of Texas at Austin School of Law

Elizabeth Sepper, Professor of Law at the University of Texas at Austin, is a nationally recognized scholar of health law, religious liberty, and equality. She has written extensively on conscientious refusals to provide reproductive and end-of-life healthcare and on conflicts over

religion and insurance coverage. Professor Sepper's articles appear in top journals, including the *Yale Law Journal*, *Columbia Law Review*, *Virginia Law Review*, and *Northwestern University Law Review*. She is an editor of *Law, Religion*,

*and Health in the United States* (Holly Fernandez Lynch, I. Glenn Cohen, & Elizabeth Sepper, eds. Cambridge Univ. 2017).

Sepper received her B.A. in History magna cum laude with distinction from Boston University. She received her LL.M. and J.D. magna cum laude from New York University School of Law. Following law school, she clerked for the Hon. Marjorie Rendell of the U.S. Court of Appeals for the Third Circuit, practiced human rights law with a focus on women's rights, and was a Center for Reproductive Rights fellow at Columbia Law School. Prior to joining the Texas faculty, she was a professor at Washington University School of Law.



### **Professor Nelson Tebbe** Cornell Law School

Nelson Tebbe is the Jane M.G. Foster Professor of Law at Cornell Law School. Professor Tebbe works on freedom of speech, freedom of religion, and general constitutional law.

Tebbe is the author of *Religious Freedom In An Egalitarian Age* (Harvard University Press, 2017). There, he examines the contemporary conflict between free exercise and equality law, and he argues for a way forward that vigorously protects civil rights while safeguarding the ability of religious traditionalists to dissent.

His articles have appeared in *Columbia Law Review*, *Cornell Law Review*, *Georgetown Law Journal*, *Harvard Law Review*, *Journal of Religion*, *Michigan Law Review*, *Supreme Court Review*, *University of Pennsylvania Law Review*, *Virginia Law Review*, and many others. As a media commentator, he has published opinion pieces in outlets such as *The Atlantic*, *The New York Times*, *Scotusblog*, *Slate*, and the *Washington Post*. Tebbe is co-organizer of the Annual Law and Religion Roundtable and a member of the executive committee of the AALS Section on Law and Religion.

He sits on the Board of Faculty Editors for the book series *Corpus Juris: The Humanities in Politics and Law*, published by Cornell University Press.

Before teaching, Tebbe clerked for Judge John M. Walker Jr. of the U.S. Court of Appeals for the Second Circuit and practiced law at the American Civil Liberties Union and at Davis Polk & Wardwell. He was a Fulbright Scholar at the University of Cape Town in South Africa. A graduate of Yale Law School and Brown University, Professor Tebbe also holds a Ph.D. with distinction in the anthropology and sociology of religion from the University of Chicago.

Iowa Law Review  
190 Boyd Law Building  
Iowa City, IA 52242-1113

[ilr.law.uiowa.edu/symposia/upcoming-symposium](http://ilr.law.uiowa.edu/symposia/upcoming-symposium)  
[ilr@uiowa.edu](mailto:ilr@uiowa.edu)  
319-335-9054



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