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Professional Experience:

Northwestern University, John Paul Stevens Professor of Law and Professor of Political Science, since 2007. Affiliated faculty, Philosophy Dept., since 2012.

Constitutional Court of Republic of Georgia, Summer School on Constitutional and Human Rights Law, taught short course, 2018.

Korea Advanced Institute of Science and Technology/Northwestern University, taught short course, 2016; 2018; 2019.

Tel Aviv University, taught short course, winter, 2012.

University of Illinois, taught short course, winter, 2010.

Northwestern University, Professor of Law and Political Science, 2003-2007. Ranked twelfth (450 citations) in “50 most cited faculty who entered teaching since 1992,” 2002 Educational Quality Ranking of U.S. Law Schools, http://www.leiterrankings.com/faculty/2002faculty_impact_newprofs.shtml. Tied for #35 (87 citations per year) in “50 most cited faculty per year of law teaching, 2003-04,” http://www.leiterrankings.com/faculty/2003faculty_impact_citesyear.shtml.

University of Chicago, Visiting Professor of Law, spring, 2007.

Northwestern University, George C. Dix Professor of Constitutional Law, 2002-03.

Northwestern University, Associate Professor of Law and Political Science, 2000-03.

Northwestern University, Assistant Professor of Law and Political Science, 1997-2000.

University of Texas at Austin School of Law, Visiting Assistant Professor, spring, 1997.

Princeton University, Assistant Professor of Politics, 1992-97.

Chief Justice Ellen A. Peters, Connecticut Supreme Court, law clerk, 1991-92.

U.S. Senate Commerce Committee, Subcommittee on the Consumer, professional staff member specializing in product liability reform, January, 1986 - January, 1987.

U.S. Rep. William Patman, staff aide, summer 1984.

Education:

University of Chicago, A.B, Humanities, 1979.

General academic honors

Special honors for outstanding bachelor's thesis

First prize in McLaughlin competition for best undergraduate paper, 1977

Yale University, M.A., Political Science, 1986.

Yale Law School, J.D., 1989.

Finalist, Cardozo briefwriting prize, Moot Court, Spring 1989

Senior Editor, Yale Law Journal

John M. Olin Fellow in Law, Economics, and Public Policy, 1986-89

Yale University, Ph.D., Political Science, 1991.

Dissertation: "The Antidiscrimination Project: Foundations, Scope, Limits"

Edward S. Corwin Award for best dissertation in public law, American

Political Science Association, 1993

Prize for year's best paper by a graduate student, organized section on law,

American Political Science Association, 1990

Fellowships and honors:

Association of American Law Schools Section on Jurisprudence Hart-Dworkin Award in Legal Philosophy, 2019.

Brigham Young University Law School, Annual Law & Religion lecture, 2019.

Northwestern University, Martin E. & Gertrude G. Walder Award for Research Excellence, 2015.

Miami University of Ohio, O'Hara Lecturer, 2011.

University of Arizona, Sabbatical Visitors Program, 2009.

DePaul University College of Law, Enlund Distinguished Scholar in Residence, 2008.

Harvard University, Program in Ethics and the Professions, fellow, 1994-95.

National Endowment for the Humanities Summer Research Stipend, 1993.

Center for Studies in Law, Economics, and Public Policy, Yale Law School, summer research fellow, 1991, 1990, 1988.

Publications (by field):

Constitutional Theory

[*A Right to Discriminate? How the Case of *Boy Scouts of America v. James Dale* Warped the Law of Free Association*](#) (with Tobias Barrington Wolff), Yale University Press, 2009.

[*The Tough Luck Constitution and the Assault on Health Care Reform*](#), Oxford University Press, 2013.

[*Forced Labor: A Thirteenth Amendment Defense of Abortion*](#), 84 Northwestern U. L. Rev. 480 (1990). Cited as year's best graduate student paper, organized section on law, American Political Science Association.

Talking to the Boss: On Robert Bennett and the Countermajoritarian Difficulty, 95 Northwestern U. L. Rev. 955 (2001).

The Right to Privacy?, 2002 U. of Chicago Legal Forum 105.

[*Signs of the Times: Dale v. Boy Scouts of America and the Changing Meaning of Nondiscrimination*](#), 23 Cardozo L. Rev. 1819 (2002).

[*How "Decentralization" Rationalizes Oligarchy: John McGinnis and the Rehnquist Court*](#), 20 Constitutional Commentary 11 (2003).

[*Expressive Association and the Ideal of the University in the Solomon Amendment Litigation*](#) (with Tobias Barrington Wolff), 25 Soc. Phil. & Pol'y 92 (2008). Reprinted in Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul, eds., [*Freedom of Association*](#), Cambridge University Press, 2008.

[*Forced Labor, Revisited: The Thirteenth Amendment and Abortion*](#), in Alexander Tsesis, ed., [*The Promises of Liberty: The History and Contemporary Relevance of the Thirteenth Amendment*](#), Columbia University Press, 2010.

[*Why Jack Balkin is Disgusting*](#), 27 Constitutional Commentary 177 (2010).

[*Bad News for Mail Robbers: The Obvious Constitutionality of Health Care Reform*](#), 121 Yale L.J. Online 1 (2011). Most visited article in the history of the Yale Law Journal Online (more than 100,000 hits in first month).

[*Bad News for Everybody: Lawson and Kopel on Health Care Reform and Originalism*](#), 121 Yale L.J. Online 515 (2012).

[*Respect and Contempt in Constitutional Law, Or, Is Jack Balkin Heartbreaking?*](#), 71 Md. L. Rev. 1126 (2012).

[*Originalism, Abortion, and the Thirteenth Amendment*](#), 112 Colum. L. Rev. 1917 (2012).

[*'Necessary,' 'Proper,' and Health Care Reform*](#), in Nathaniel Persily, Gillian Metzger, and Trevor Morrison, eds., [*The Health Care Case: The Supreme Court's Decision and Its Implications*](#), Oxford University Press, 2013.

[*How the Obamacare Case Defined Deviancy Down*](#), 92 Tex. L. Rev. 1617 (2014).

[*Passive Aggressive: Scalia and Garner on Interpretation*](#), 41 Boundary 2: an international journal of literature and culture 227 (Summer 2014).

[*Left-Evangelicalism and the Constitution*](#), review of John W. Compton, [*The Evangelical Origins of the Living Constitution*](#), 128 Harv. L. Rev. Forum 1 (2014).

[*Did the Law Professors Blow It in the Health Care Case?*](#), 2014 U. of Illinois L. Rev. 1273.

[*Six Overrulings*](#), review of John Paul Stevens, [*Six Amendments*](#), 113 Mich. L. Rev. 1043 (2015).

The Commerce Clause (with Randy Barnett), National Constitution Center Interactive Constitution (2016), <http://constitutioncenter.org/interactive-constitution/articles/article-i/section8-commerce/clause/21>.

[*Sex and the Civitas*](#), review of Geoffrey Stone, [*Sex and the Constitution*](#), New Rambler (2017).

Tebbe and Reflective Equilibrium, 31 J. Civ. R. & Econ. Dev. 125 (2018).

[*"The Function of the Independent Lawyer as a Guardian of Our Freedom": The Great Stevens Dissent in Walters*](#), 114 Northwestern U. L. Rev. 771 (2020).

Theory of Discrimination Law

[*Antidiscrimination Law and Social Equality*](#), Yale University Press, 1996. Winner of 1997 Myers Center Award for outstanding work on intolerance in North America

Feminism and Libertarianism: A Response to Richard Epstein, 1999 U. of Chicago Legal Forum 115.

On the moral foundations of legal expressivism, 60 Maryland L. Rev. 777 (2001).

Justice for Large Earlobes! A comment on Richard Arneson's 'What is Wrongful Discrimination?', 43 San Diego L. Rev. 809 (2006).

[*On Affirmative Action and 'Truly Individualized Consideration'*](#) (with Donald Rebstock), 101 Northwestern U. L. Rev. 1469 (2007); 101 Nw. U. L. Rev. Colloquy 49 (2006).

Free Speech

[First Amendment Stories](#), editor (with Richard Garnett), Foundation Press, 2012.

[*Does Obscenity Cause Moral Harm?*](#), 105 Colum. L. Rev. 1635 (2005). Reprinted in Rodney Smolla, ed., [First Amendment Handbook 2005-2006](#) (Thomson/West 2005).

[*Reading Lolita at Guantanamo*](#), 53 Dissent 64 (Spring, 2006). Reprinted in Utne Reader, Sept./Oct. 2006, and 57 Syracuse L. Rev. 209 (2007).

[*Eros, Civilization, and Harry Clor*](#), 31 N.Y.U. Rev. of Law & Social Change 855 (2007).

Free Speech and Pornography: A Response to James Weinstein, 31 N.Y.U. Rev. of Law & Social Change 899 (2007).

[*Why Phyllis Schlafly is Right \(But Wrong\) About Pornography*](#), 31 Harvard J. Law & Public Policy 105 (2008).

[*Is Pornography 'Speech'?*](#), 14 Legal Theory 71 (2008).

[*Madisonian Pornography or, The Importance of Jeffrey Sherman*](#), 84 Chicago-Kent L. Rev. 597 (2009).

[*Waldron, Responsibility-Rights, and Hate Speech*](#), 43 Ariz. St. L. Rev. 1201 (2012).

[*Veil of Ignorance: Tunnel Constructivism in Free Speech Theory*](#), 107 Northwestern U. L. Rev. 647 (2013).

Review of Ishani Maitra & Mary Kate McGowan, eds. [Speech and Harm: Controversies Over Free Speech](#), 123 Ethics 768 (2013).

[*You're All Individuals: Brettschneider on Free Speech*](#), 79 Brooklyn L. Rev. 1023 (2014).

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[Entertaining Satan: Why We Tolerate Terrorist Incitement](#), 86 Fordham L. Rev. 535 (2017).

Freedom of Religion

[Defending American Religious Neutrality](#), Harvard University Press, 2013.

Akhil Amar and the Establishment Clause, 33 Univ. of Richmond L. Rev. 393 (1999).

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[Secular Purpose](#), 88 Va. L. Rev. 87 (2002).

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Is it Fair to Give Religion Special Treatment?, 2006 U. of Illinois L. Rev. 571.

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The Troublesome Religious Roots of Religious Neutrality, 84 Notre Dame L. Rev. 865 (2009).

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[Phony Originalism and the Establishment Clause](#), 103 Northwestern U. L. Rev. 727 (2009).

The Nonproblem of Fundamentalism, 18 Wm. & Mary Bill of Rights J. 915 (2010).

[How Shall I Praise Thee? Brian Leiter on Respect for Religion](#), 47 San Diego L. Rev. 961 (2010).

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[*The Story of Welsh v. United States: Elliott Welsh's Two Religious Tests*](#), in [First Amendment Stories](#), above.

[*Justice Stevens, Religious Enthusiast*](#), 106 Northwestern U. L. Rev. 567 (2012).

[*And I Don't Care What It Is: Religious Neutrality in American Law*](#), 39 Pepperdine L. Rev. 115 (2013).

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[*Keep It Vague: The Many Meanings of Religious Freedom*](#), 140 Commonweal, Nov. 15, 2013.

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[*Invisible Women: Why an Exemption for Hobby Lobby Would Violate the Establishment Clause*](#) (with Frederick Mark Gedicks), 67 Vanderbilt L. Rev. En Banc 51 (2014).

[*The Costs of the Public Good of Religion Should be Borne by the Public*](#) (with Frederick Mark Gedicks), 67 Vanderbilt L. Rev. En Banc 185 (2014).

[*"Religion" as a Bundle of Legal Proxies: Reply to Micah Schwartzman*](#), 51 San Diego L. Rev. 1079 (2014).

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[*The piety of my negative Judaism*](#), 16 Rutgers J. L. & Religion 303 (2015).

[*Gay Rights, Religious Accommodations, and the Purposes of Antidiscrimination Law*](#), 88 S. Cal. L. Rev. 619 (2015).

[*Is Hobby Lobby Worse for Religious Liberty Than Smith?*](#) (with Frederick Mark Gedicks), 9 St. Thomas Journal of Law & Public Policy 223 (2015).

[*Lupu, Tuttle, and singling out religion*](#), review of Ira C. Lupu and Robert W. Tuttle, [Secular Government, Religious People](#), 111 Nw. U. L. Rev. Online 41 (2016).

[*Greenawalt and the Place of Religion*](#), 93 U. of Detroit Mercy L. Rev. 369 (2016).

[*Kent Greenawalt, Defender of the Faith*](#), review of Kent Greenawalt, [Exemptions: Necessary, Justified, or Misguided?](#), 95 Tex. L. Rev. 821 (2017).

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Gay Rights

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[The Miscegenation Analogy: Sodomy Law as Sex Discrimination](#), 98 Yale L. J. 145 (1988).

Review of Harvard Law Review Editors, Sexual Orientation and the Law, Federal Bar News & Journal, Jan./Feb. 1991.

[Why Discrimination Against Lesbians and Gay Men is Sex Discrimination](#), 69 N.Y.U. L. Rev. 197 (1994). Cited as one of the 25 most influential articles ever published in the N.Y.U. Law Review. See 75 N.Y.U. L. Rev. 1561 (2000) (commentary by David Richards).

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Why Gay Legal History Matters, review of William N. Eskridge, Jr., Gaylaw, 113 Harv. L. Rev. 2035 (2000).

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Against Blanket Interstate Nonrecognition of Same-Sex Marriage, 17 Yale J. L. & Feminism 205 (2005).

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Natural Law (New), in Alan Soble, ed., Sex from Plato to Paglia: A Philosophical Encyclopedia (Greenwood 2006).

The Defense of Marriage Act: Federal Level, in Mark Strasser, ed., Defending Same-Sex Marriage, v. 1: "Separate but Equal" No More, Praeger, 2007.

The Difference the Mini-DOMAs Make, 38 Loyola L. Rev. 265 (2007).

Homosexuality and Infertility, in Alan Soble & Nicholas Power, eds., Philosophy of Sex: Contemporary Readings, 5th ed., Rowman & Littlefield, 2007; also 6th ed. 2012.

[The Limits of Strategic Litigation](#), 17 L. & Sexuality 1 (2008).

[DOMA, Romer, and Rationality](#), 58 Drake L. Rev. 923 (2010).

[Salvaging Perry](#), 125 Harv. L. Rev. Forum 69 (2012).

Sexual Disorientation, 100 Georgetown L. J. 1083 (2012).

[More Intuition than Argument](#), review of Sherif Girgis, Ryan T. Anderson, & Robert P. George, What is Marriage? Man and Woman: A Defense, 140 Commonweal, May 3, 2013, 23.

[Why Scalia should have voted to overturn DOMA](#), 108 Nw. U. L. Rev. Colloquy 131 (2013).

[Judging the Case Against Same-Sex Marriage](#), 2014 U. of Illinois L. Rev. 431.

[Beyond Levels of Scrutiny: Windsor and "Bare Desire to Harm"](#), 64 Case Western Reserve L. Rev. 1045 (2014).

[A Marriage By Any Other Name: Why Civil Unions Should Receive Federal Recognition](#) (with Deborah A. Widiss), 3 Indiana J. of L. & Soc. Equality 56 (2015).

[The Elane Photography Cert Denial: A Zombie in the Supreme Court](#), 7 Alabama Civ. Rights & Civ. Liberties L. Rev. 77 (2015).

The Joys of Mutual Contempt, in Religious Freedom, LGBT Rights, and the Prospects for Common Ground (William Eskridge, Jr. and Robin Fretwell Wilson, eds., Cambridge University Press 2019).

[Bostock, *LGBT Discrimination, and the Subtractive Moves*](#), 105 Minnesota L. Rev. Headnotes 1 (2020).

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Political Philosophy

Sex Equality and/or the Family: From Bloom vs. Okin to Rousseau vs. Hegel, 4 Yale J. L. & Humanities 399 (1992).

[The Fluidity of Neutrality](#), 66 Rev. of Politics 633 (2004).

Should Noncommercial Associations Have an Absolute Right to Discriminate?, 67 Law and Contemporary Problems 27 (Autumn 2004).

Are the Boy Scouts being as bad as racists? Judging the Scouts' antigay policy, 18 Public Affairs Quarterly 363 (2004).

[Drug Policy and the Liberal Self](#), 100 Northwestern U. L. Rev. 279 (2006).

[The Limits of Constructivism: Can Rawls Condemn Female Genital Mutilation?](#), 71 Rev. of Politics 459 (2009).

Review of Robert Audi, Democratic Authority and the Separation of Church and State, Notre Dame Philosophical Reviews (2012), <http://ndpr.nd.edu/news/29609-democratic-authority-and-the-separation-of-church-and-state/>.

Review of John Tomasi, Free Market Fairness, Notre Dame Philosophical Reviews (2012), <http://ndpr.nd.edu/news/30638-free-market-fairness/>.

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[Ronald Dworkin, Religion, and Neutrality](#), 94 B.U. L. Rev. 1241 (2014).

[Review](#) of Benjamin Gregg, Human Rights as Social Construction, 13 Contemp. Pol. Theory 380 (2014).

[Review](#) of Sonu Bedi, Beyond Race, Sex, and Sexual Orientation, 13 Perspectives on Politics 174 (2015).

[Does Respect Require Antiperfectionism? Gaus on Liberal Neutrality](#), 22 Harv. Rev. of Phil 53 (2015).

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[If Liberals Knew Themselves Better, Conservatives Might Like Them Better](#), 20 Lewis & Clark L. Rev. 1201 (2017).

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Short pieces:

No Fantasy Island, New Republic, Aug. 7, 1995.

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[What Georgia Voters Need to Know](#), The Hill, Nov. 12, 2020.

[COVID-19, masks and the freedom to drive drunk](#), The Hill, Nov. 29, 2020.

Selected blog posts:

I occasionally contribute to the Balkinization blog, <http://www.balkin.blogspot.com/>.
Some examples:

[Response to the symposium on Gay Rights vs. Religious Liberty](#), July 25, 2020.

[Affirmative action and racial tribalism](#), Nov. 25, 2018.

[Corrupting the National Book Award?](#), Oct. 26, 2017.

[Winters on Oligarchy](#), Aug. 4, 2011.

[A short guide to Obama and socialism](#), March 9, 2009. Noted by [NY Times Opinionator](#), republished in [Hungarian translation](#), and covered by NPR “On the Media”, week of March 13, 2009.

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Forthcoming:

Hobby Lobby is Dangerous for Religious Liberty (with Frederick Mark Gedicks), in [Law, Religion, and Freedom: Conceptualizing a Common Right](#) (W. Cole Durham, Jr. & Donlu Thayer, eds., Oxford University Press 2020).

In Praise of Evil Thoughts, Soc. Phil. & Pol’y (2020).

In progress:

The Corruption of Libertarianism: How a Philosophy of Freedom was Betrayed by Delusion and Greed

Pornography and Liberal Education

Why do (Some) Originalists Hate America?

Bar Membership:

Connecticut, admitted 1990

New York, admitted 1991

Press appearances:

Quoted in New York Times (more than 20 times; [Quotation of the Day](#) Feb. 15 2014), Washington Post, Wall Street Journal, Chicago Tribune, USA Today, Boston Globe, International Herald Tribune, New Republic, Christian Science Monitor, and many others. Appeared on CNN Situation Room, NBC Today Show, Chicago Tonight, Fox Chicago Perspective, WBEZ Odyssey, NPR All Things Considered, NPR Morning Edition, NPR To The Point, NPR On the Media, Against the Grain, At Issue, The Diane Rehm Show, Jerry Springer on the Radio, and many others.

Editorial responsibilities:

Referee for Harvard University Press, Yale University Press, Princeton University Press, the University of Chicago Press, Columbia University Press, Oxford University Press, Cambridge University Press, Cornell University Press, Routledge Press, New York University Press, *Review of Politics*, *Law and Social Inquiry*, *Ethics*, *Political Theory*, *Public Affairs Quarterly*, *Polity*, *Law and Philosophy*, *Journal of Social Philosophy*, *Hypatia*, *Journal of Law and Religion*, *American Journal of Legal History*, *Journal of Homosexuality*, *Journal of Politics*, *Ethical Theory and Moral Practice*, *International Review of Law, Moral Philosophy and Politics*, and the National Endowment for the Humanities.

Other activities:

Expert consultant, Zappone v. Revenue Commissioners (Ireland), Oct. 2006.

Member, John Evans Study Committee, Northwestern University, 2013-14. Report (May, 2014) at <https://www.northwestern.edu/provost/committees/equity-and-inclusion/study-committee-report.pdf>.

Author (with Ilya Somin), [Brief amicus curiae of legal scholars](#), Obergefell v. Hodges (U.S. Supreme Court, 2015), 2015 WL 1048436.

[Brief of Amici Curiae William N. Eskridge Jr. and Andrew Koppelman](#), Bostock v. Clayton County, Georgia (U.S. Supreme Court, 2019), 2019 WL 2915046.

President, Board of Directors, [Piccolo Theatre](#), Evanston, Illinois, 2016-2018 (Vice President, 2016; Treasurer, 2015-16; Secretary, 2013-14).