

OREGON LAW REVIEW

2006

VOLUME 85
NUMBER 2

(ISSN 0196-2043)

Periodicals postage paid at Eugene, OR and additional mailing office.
Published quarterly by the University of Oregon School of Law.
Subscription \$35.00 per annum. Single copies \$12.00. Special and symposium issues set on *ad hoc* basis.
Editorial and publication office: School of Law, 1221 University of Oregon, Eugene, OR 97403-1221.
Telephone: (541) 346-3844, Fax: (541) 346-1596.
POSTMASTER: Send address changes to Oregon Law Review, 1221 University of Oregon, Eugene, OR 97403-1221.

COPYRIGHT © 2007, UNIVERSITY OF OREGON

2006-2007 OREGON LAW REVIEW EDITORIAL BOARD

EDITOR-IN-CHIEF

Sarah Burgundy

Articles Editors

Katherine de la Foreman
Jaejung Kim
Nick Newton

Notes & Comments Editor

Anthony Musante

Summer Editors

Ivan C. Jen*
Karl Kaufman
Anthony Musante

Michael Borges
Mario D. Conte
Karl Kaufman
Danielle Lordi

Justin Boyd
Christopher J. Canale
Laura A. Carlsen
Abra Cooper
Gabriel A. Dietz
Melissa Engelmann
Quinn P. Harrington
Juna Hickner
Justin E. Hobson
Emily Jarrell

Andrea Coles-Bjerre

Executive Editors

Caitlin Carey
W. Blake Mikkelsen
Chad Spraker

Operations Editor

Christopher J.M. Pallanch

Associate Editors

Jennifer Reed
Shayna Reeves
Amanda E. Seelos

Staff Editors

Dane E. Johnson
Tiffany Keb
Robert Kinney
Robert W. Kirsher
Matt Lehman
Farron Lennon
Megan N. Miskill
Brendan P. Murphy
Kirk M. Neste
Matthew O'Brien

Faculty Advisors

Robert L. Tsai

Margaret Paris, Dean

Jeannette M. Lavander, Journal Office Coordinator

* Recipient, 2006 Maxine Lee Award for Editorial Excellence

Member of the National Conference of Law Reviews

The University of Oregon and the *Oregon Law Review* are equal opportunity and affirmative action institutions.

Managing Editors

Caryn J. Ackerman*
Corrinne Hill
Terry R. Miller

Systems Editor

Michele Buck-Romero

Senior Associate Editors

Tyler J. Black
Ivan C. Jen*
Sarah Peterson*

Evan Smith
Selena C. Smith
Edward R. Thunen
Amy Zubko

Ryan M. Orr
Kara Pierce
Harvey Rogers
Matt Snell
Michael O. Stephenson
Megan G. Thompson
Maggie Walter
John Wilson
Christopher L. Winstanley
Ellen Wu

Margaret Paris

Foreword

TOM LININGER*

Symposium: Disentangling Church and State: Have the Courts Done Enough?

On March 24, 2006, in Portland, Oregon, *Oregon Law Review* and the Kenneth J. O'Connell Program at the University of Oregon School of Law cohosted a symposium entitled *Disentangling Church and State: Have the Courts Done Enough?* The conference drew academics, practitioners, and federal and state judges for a lively discussion of recent developments in this dynamic area of the law.

The symposium honored the legacy of former Oregon Supreme Court Justice Kenneth O'Connell. Chief Justice O'Connell served on the Oregon Supreme Court for nineteen years and was a law professor at the University of Oregon during the 1930s, 1940s, and 1950s. He left a bequest to support programs that bring together judges, lawyers, and law professors for colloquia on a wide range of issues, particularly issues of concern to appellate judges. The 2005 O'Connell Conference addressed civil and criminal litigation, and the 2007 O'Connell Conference will address ethical issues that arise in the representation of government and business clients.

This issue of the *Oregon Law Review* continues the discussion that took place in Portland. It includes a number of important pieces relating to the interaction of church and state. Professor Erwin Chemerinsky's insightful Essay recounts his experience representing Thomas Van Orden in a petition to the U.S. Supreme Court protesting a monument to the Ten Commandments on state property in Texas.¹ The Article by Kelly Clark, Kristian Spencer Roggendorf, and Peter Janci addresses the complex questions that recently arose in tort litigation of sexual abuse of

* Assistant Professor, University of Oregon School of Law; B.A., Yale University; J.D., Harvard Law School.

¹ *Infra* p. 351.

children allegations against Catholic priests.² Charles Hinkle's Article analyzes the evolution of Oregon's own constitutional law in the context of church–state relations—a body of law that has diverged significantly from its federal counterpart.³

Several of this issue's Articles focus on U.S. constitutional history. Professor Clark Lombardi's Article proposes a new interpretation of *Reynolds v. United States*,⁴ a landmark Free Exercise case, against the backdrop of nineteenth-century case law and political debates.⁵ Professor Steven Green's Article offers a fresh perspective on the Founders' intent when they fashioned the Establishment Clause: it suggests that they regarded church–state separation as a “spacious conception” that would develop over time.⁶ Finally, Professor Mark David Hall's Article examines how the Supreme Court relies on history as a guide to the interpretation of the Free Exercise and Establishment Clauses.⁷

Whether the present salience of church–state issues in the United States deserves classification as a “Fourth Great Awakening,”⁸ or whether it simply continues a long tradition of controversy surrounding the proper relationship between the government and religion, one thing is certain: the topic will continue to challenge legal scholars and judges long into the future. The Articles in this issue illuminate the debate.

On behalf of *Oregon Law Review* and the Kenneth J. O'Connell Program, I extend my sincere thanks to all the participants in the symposium, including the contributors to this issue. In addition, special thanks are due to Caleb Langston, who served as Editor-in-Chief, and Ed Wilson, who served as Symposium Editor of the *Oregon Law Review* during the 2005-2006 school year. Both worked tirelessly to organize the conference and to solicit submissions by the conference participants. Sarah Burgundy, Editor-in-Chief for the 2006-2007 school year, has done an excellent job coordinating the editing and publication of the symposium issue. All the other members of the *Oregon Law Review* staff who played a role in the symposium deserve commendation for their hard work.

² *Infra* p. 481.

³ *Infra* p. 541.

⁴ 98 U.S. 145 (1878).

⁵ *Infra* p. 351.

⁶ *Infra* p. 443.

⁷ *Infra* p. 563.

⁸ ROBERT WILLIAM FOGEL, *THE FOURTH GREAT AWAKENING AND THE FUTURE OF EGALITARIANISM* (2000).