

FOREWORD

MY RELIGION, MY RULES: EXAMINING THE IMPACT OF RFRA LAWS ON INDIVIDUAL RIGHTS

*Bryan A. Hum**

INTRODUCTION

The seventy-ninth volume of the *Albany Law Review* hosted its annual fall symposium on October 22, 2015 at Albany Law School. Each year the journal continues its proud and honored tradition of hosting symposia on emerging legal issues to highlight their impact on society.¹ This year's symposium brought scholars and practitioners together from across the country to Albany to discuss the complex, controversial, and contemporary issues surrounding religious freedom.

The symposium, entitled: *My Religion, My Rules: Examining the Impact of RFRA Laws on Individual Rights*, featured a panel discussion that provided an overview of current federal and state legislation that either permits or prohibits religious activities (focusing primarily on the federal Religious Freedom Restoration Act, the law at issue in the Supreme Court's controversial *Hobby Lobby* decision in 2014). Additionally, the discussion highlighted the role of religion in today's society and whether it should be protected or

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¹ Previous Albany Law Review symposia include: Symposium, *A Loaded Debate: The Right to Keep and Bear Arms in the 21st Century*, 78 ALB. L. REV. 743 (2014/2015); Symposium, *Fractured Communities: Hydraulic Fracturing and the Law in New York State*, 77 ALB. L. REV. 643 (2013/2014); Symposium, *What Are We Saying: Violence, Vulgarity, Lies . . . and the Importance of 21st Century Free Speech*, 76 ALB. L. REV. 753 (2012/2013); Symposium, *Protecting Workers' Rights in a Post Wisconsin World: Strategies for Organizing and Action in an Era of Diminished Resources and Embattled Unions*, 75 ALB. L. REV. 449 (2011/2012); Symposium, *Big Oil, Big Consequences, and the Big Unknown: Exploring the Legal, Regulatory and Environmental Impact of the Gulf Oil Spill*, 74 ALB. L. REV. 475 (2010/2011); Symposium, *Main Street, Wall Street, and K Street: Regulating Financial Markets in New York and Beyond*, 73 ALB. L. REV. 363 (2010); Symposium, *Defining Race*, 72 ALB. L. REV. 855 (2009); and Symposium, *The Work and Scholarship of Professor Alan Dershowitz*, 71 ALB. L. REV. 861 (2008).

diminished.

MODERATOR

This year we were honored to have Professor Vincent Bonventre as the moderator of the panel. Currently, Professor Bonventre is a Professor of Law at Albany Law School where he teaches courses in criminal, constitutional, and international law. He earned his B.S. from Union College, and a J.D. from Brooklyn Law School. Subsequently, Professor Bonventre earned his M.A.P.A. and Ph.D. from the University of Virginia. In the interim, he returned to the Army and did criminal work with the Judge Advocate General's Corps. Following his work with JAG Corps, Professor Bonventre clerked for two judges of the New York State Court of Appeals. Between those clerkships, he served as a Supreme Court Judicial Fellow, having been selected by Chief Justice Warren Burger. After his clerkships, Professor Bonventre began his career in academia at Albany Law School.

PANELISTS

Louise Melling is a Deputy Legal Director at the ACLU and the Director of its Center for Liberty, which involves the ACLU's work on women's rights; reproductive freedom; lesbian, gay, bisexual and transgender rights; and freedom of religion and belief. In this role, she leads the work of the ACLU to address the intersection of religious freedom and equal treatment, among other issues. Prior to her role as Deputy Legal Director, Ms. Melling was Director of the ACLU's Reproductive Freedom Project, which oversaw nationwide litigation, public education campaigns, as well as advocacy efforts in the state legislatures. Ms. Melling has been with the ACLU since 1992, serving in several roles before her role as Director of the Reproductive Freedom Project in 2003, and most recently, Deputy Legal Director. She is a 1987 graduate of Yale Law School.

Roderick Hills, Jr. is the William T. Comfort, III Professor of Law at New York University School of Law. He teaches and writes about public law, focusing on the law governing the division of powers between central and subcentral governments; which encompasses areas such as constitutional law, education law, land use regulation, jurisdiction and conflicts of law, education law, and local government law. Professor Hills has been a cooperating council with the ACLU of Michigan, while he filed several amicus briefs in the U.S. Supreme Court. Professor Hills holds bachelor's and law degrees from Yale

University. He served as a law clerk for the Hon. Patrick Higginbotham of the U.S. Court of Appeals for the Fifth Circuit, and previously taught at the University of Michigan Law School.

Dr. Mark Modak-Truran is the J. Will Young Professor of Law at Mississippi College School of Law. He previously served as the 2014–15 Research Fellow at the Center of Theological Inquiry (Princeton, NJ) for the Center's *Inquiry on Law and Religious Freedom*. Dr. Modak-Truran received his M.A. and Ph.D. in Religious Ethics from The University of Chicago and his J.D. from Northwestern University School of Law. He has twice served as the Co-Chair of the Association of American Law School's Section on Law and Religion, and his research and writing focus on law and religion and legal theory.

Cynthia Brown is a legislative attorney for the American Law Division within the Congressional Research Service at the Library of Congress, where she advises Congress on issues related to religious freedom. In that role, she has provided nonpartisan written analyses and personal consultations to members of Congress and their staff on issues of First Amendment protections and statutory implications for religion that arise in the congressional agenda. Her work has examined religious objections to requirements under the Affordable Care Act; the ramifications of *Burwell v. Hobby Lobby Stores, Inc.* for statutory religious freedom protections; the potential impacts of federal recognition of same-sex marriage for religious objectors; and issues of civil rights related to religious discrimination. Ms. Brown also serves as an adjunct professor at George Washington University Law School.

Dean Alicia Ouellette serves as Albany Law School's President and Dean, while also being a Professor of Law at Albany Law School and a Professor of Bioethics in the Union Graduate College/Mt. Sinai School of Medicine Program in Bioethics. Prior to her appointment as President and Dean, she served as Associate Dean for Academic Affairs and Intellectual Life. Dean Ouellette's research focuses on health law, disability rights, family law, children's rights and human reproduction. Before joining the law faculty, Dean Ouellette served as an Assistant Solicitor General in the Office of the New York State Attorney General. Before that, Dean Ouellette worked in private practice and served as a confidential law clerk to the Hon. Howard A. Levine on the New York State Court of Appeals. She received an A.B. from Hamilton College and a J.D. from Albany Law School, where she served as the editor-in-chief of the *Albany Law Review*.

IN THIS ISSUE

This year's symposium issue features carefully-selected articles related to the topic of the symposium. The first article, *When One's Right to Marry Makes Others "Unmerry"* by Professor Shai Stern,² examines the Supreme Court's ruling in *Obergefell v. Hodges* and the ongoing tension between the competing views of the fundamental right of marriage.³ Professor Stern classifies the *Obergefell* decision as the "contemporary peak in a seemingly endless, centuries-long clash between liberal states and diverse cultures and religions characterized by illiberal norms."⁴ He concludes that the decision in effect opens the door to a nuanced conceptualization of a state's obligation to "protect and foster" opportunities for diverse communities so that they may define alternative conceptions of what he calls "the good."

In *Ruiz-Diaz v. United States: RFRA, Substantial Burden, and the Ninth Circuit's Causation-Nexus Requirement*,⁵ Scott Pollock analyzes the Ninth Circuit's decision in *Ruiz-Diaz v. United States* and its central question of whether and when the refusal of immigration benefits, specifically to religious workers, violates RFRA or the Free Exercise Clause of the First Amendment if religious-based exceptions are not made available.⁶ The article discusses, *inter alia*, the classification of religious workers, immigration laws and how they affect religious workers, and the Supreme Court decisions following *Ruiz-Diaz* that undermine its rationale. Mr. Pollock concludes that the Ninth Circuit's decision went too far in adhering to a concept of "substantial burden" that was based on "an overly restrictive and now discredited view."⁷

Finally, in *Opting Out in the Name of God: Will Lawyers Be Compelled to Handle Same-Sex Divorces?*,⁸ Professor Bill Piatt explores the rights of attorneys in opting out of their legal duties for religious reasons and their constitutional and statutory protections

² Shai Stern, *When One's Right to Marry Makes Others "Unmerry"*, 79 ALB. L. REV. 627 (2015/2016).

³ *Id.* at 627.

⁴ *Id.* at 631.

⁵ Scott D. Pollock, *Ruiz-Diaz v. U.S.: RFRA, Substantial Burden, and the Ninth Circuit's Causation-Nexus Requirement—A Wrinkle or a Roadblock for Future Immigration-Related Religious Freedom Challenges?*, 79 ALB. L. REV. 661 (2015/2016).

⁶ *Id.* at 663.

⁷ *Id.* at 681.

⁸ Bill Piatt, *Opting Out in the Name of God: Will Lawyers Be Compelled to Handle Same-Sex Divorces?*, 79 ALB. L. REV. 683 (2015/2016).

in doing so.⁹ The article begins by discussing the general right to “opt out” in situations where personal religious beliefs prevent participation.¹⁰ Next, Professor Piatt discusses the role of lawyers in same-sex divorce proceedings in tandem with obligations under the profession’s Model Rules of Professional Conduct.¹¹ He concludes by holding that the likely answer to his question will be answered in the affirmative and that attorneys will be compelled to handle same-sex divorces.¹²

CLOSING THOUGHTS

I hope that you find this year’s symposium issue to not only be informative, but also interesting and enlightening as to the current state of religion and its value in today’s society. I would like to thank the hardworking members of the *Albany Law Review* who helped make the event, and this whole past year, a success. It has been a pleasure working alongside such a talented group of individuals, who I am proud to not only call my classmates and colleagues, but also friends. Additionally, I would like to thank the panelists for their time, energy, knowledge, and enthusiasm, which helped to create an engaging and entertaining discussion. I am also grateful for the authors who dedicated their time and resources to providing the journal with well-written and thought provoking articles.

You can be sure that *Albany Law Review* will be back next year with another exciting symposium as we continue in our mission of tackling the most pressing legal issues of our time.

Thank you.

⁹ *Id.* at 685.

¹⁰ *Id.* at 686.

¹¹ *Id.* at 693.

¹² *Id.* at 698.