

GREGORY P. MAGARIAN
Washington University School of Law
Campus Box 1120, One Brookings Drive
Saint Louis, MO 63130
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EMPLOYMENT

Washington University School of Law St. Louis, MO
Thomas and Karole Greene Professor of Law 2019-present
Professor of Law 2008-2019

Villanova University School of Law Villanova, PA
Professor of Law 2004-2008
Associate Professor, Assistant Professor 1999-2004

Research Interests: Expressive Freedom; Firearms Regulation; Law and Religion;
Media Law; Election Law

Courses Taught: Constitutional Law; First Amendment; Legislation; various First
Amendment seminars (Free Speech and Social Power, Free Speech in Schools,
Political Speech, Comparative Law of Free Expression)

Jenner & Block Washington, DC
Associate 1995-1999

Hon. John Paul Stevens, United States Supreme Court Washington, D.C.
Law Clerk 1994-95

Hon. Louis F. Oberdorfer, United States District Court Washington, DC
Law Clerk 1993-94

EDUCATION

University of Michigan Law School Ann Arbor, MI
Juris Doctor May 1993

Honors: Degree awarded *magna cum laude*
Editor-in-Chief, MICHIGAN LAW REVIEW (Vol. 91)
Henry M. Bates Memorial Scholarship (outstanding graduate)

University of Michigan Institute of Public Policy Studies Ann Arbor, MI
Master of Public Policy May 1993

Yale University New Haven, CT

Bachelor of Arts (English)

May 1989

Honors: Degree awarded *summa cum laude*
Phi Beta Kappa; Special Distinction in the English Major

SCHOLARLY PUBLICATIONS

BOOK

MANAGED SPEECH: THE ROBERTS COURT'S FIRST AMENDMENT (Oxford University Press 2017)

JOURNAL ARTICLES AND BOOK CHAPTERS

How Cheap Speech Underserves and Overheats Democracy, 54 U.C. DAVIS L. REV. (forthcoming 2021) (symposium)

Kent State and the Failure of First Amendment Law, 65 WASH. U. J. L. & POL'Y (forthcoming 2021) (chair installation address)

The Internet and Social Media, in ADRIENNE SARAH ACKARY STONE & FREDERICK SCHAUER EDS., THE OXFORD HANDBOOK OF FREEDOM OF SPEECH at 350 (Oxford University Press 2021)

Conflicting Reports: When Second Amendment Claims Threaten First Amendment Interests, 83 LAW & CONTEMP. PROBS. No. 3, at 169 (2020) (symposium)

Political and Nonpolitical Speech and Guns, 28 WM. & MARY BILL RTS. J. 429 (2020) (symposium)

Taming Uncivil Discourse, 41 POL. PSYCHOL. 383 (2020) (with James L. Gibson & Lee Epstein)

Data-Driven Constitutional Avoidance, 104 IOWA L. REV. 1421 (2019) (with Lee Epstein & James L. Gibson)

When Audiences Object: Free Speech and Campus Speaker Protests, 90 U. COLO. L. REV. 545 (2019) (symposium), reprinted in FIRST AMENDMENT LAW HANDBOOK 2019-2020 (Rodney A. Smolla ed., 2019)

Forward Into the Past: Speech Intermediaries in the Television and Internet Ages, 71 OKLA. L. REV. 237 (2018) (symposium)

The View From My Window, 95 WASH. U. L. REV. 1459 (2018) (symposium on my book)

- The New Religious Institutionalism Meets the Old Establishment Clause*, in MICAH SCHWARTZMAN ET AL. EDS., *THE RISE OF CORPORATE RELIGIOUS LIBERTY* (Oxford University Press 2016)
- The Marrow of Tradition: The Roberts Court and Categorical First Amendment Speech Exclusions*, 56 WM. & MARY L. REV. 1339 (2015) (symposium)
- Chief Justice Roberts' Individual Mandate: The Lawless Medicine of NFIB v. Sebelius*, 108 NW. U. L. REV. COLLOQUY 15 (2013)
- Speaking Truth to Firepower: How the First Amendment Destabilizes the Second*, 91 TEX. L. REV. 49 (2012), reprinted in *FIRST AMENDMENT LAW HANDBOOK 2013-2014* (Rodney A. Smolla ed., 2013)
- Justice Stevens, Religion, and Civil Society*, 2011 WIS. L. REV. 733
- Religious Argument, Free Speech Theory, and Democratic Dynamism*, 86 NOTRE DAME L. REV. 119 (2011)
- Substantive Media Regulation in Three Dimensions*, 76 GEO. WASH. L. REV. 845 (2008) (symposium)
- The Jurisprudence of Colliding First Amendment Interests: From the Dead End of Neutrality to the Open Road of Participation Enhancing Review*, 83 NOTRE DAME L. REV. 185 (2007)
- Market Triumphalism, Electoral Pathologies, and the Abiding Wisdom of First Amendment Access Rights*, 35 HOFSTRA L. REV. 1373 (2007) (symposium)
- The Pragmatic Populism of Justice Stevens's Free Speech Jurisprudence*, 74 FORDHAM L. REV. 2201 (2006) (symposium)
- Substantive Due Process as a Source of Constitutional Protection for Nonpolitical Speech*, 90 MINN. L. REV. 247 (2005)
- The First Amendment, the Public-Private Distinction, and Nongovernmental Suppression of Wartime Political Debate*, 73 GEO. WASH. L. REV. 101 (2004)
- Regulating Political Parties Under a "Public Rights" First Amendment*, 44 WM. & MARY L. REV. 1939 (2003)
- How to Apply the Religious Freedom Restoration Act to Federal Law Without Violating the Constitution*, 99 MICH. L. REV. 1903 (2001)
- Toward Political Safeguards of Self-Determination*, 46 VILL. L. REV. 1219 (2001) (symposium)

OTHER PUBLICATIONS

Trump's Most Tragic Legacy Will Be Seen in Ranks of Judiciary, ST. LOUIS POST-DISPATCH (Dec. 12, 2019)

Don't Call Him "Justice," MISSOURI LAWYERS WEEKLY (Oct. 24, 2018)

The People's Court and the People's Rights, ST. LOUIS POST-DISPATCH (Jul. 10, 2018)

What Price Victory?, THE COMMON READER (May 9, 2018) (book review essay)

Bookends: Justice Stevens and Justice Scalia, 94 WASH. U. L. REV. 1401 (2018)

Free Speech and Political Stagflation, OUPBLOG (Sep. 26, 2017)

First Amendment Expert Calls Post-Dispatch Editorial on Protests "Irresponsible" and Imprecise, GATEWAY JOURNALISM REVIEW, vol. 46, no. 346 (June 22, 2017)

A Law Supreme, THE COMMON READER (Feb. 12, 2016) (book review essay)

Hobby Lobby in Constitutional Waters: Two Life Rings and an Anvil, 67 VAND. L. REV. EN BANC 67 (2014); *Whose Accommodation?*, 67 VAND. L. REV. EN BANC 135 (2014) (roundtable essay and response)

Entering Liberty's Refuge (Some Assembly Required), 89 WASH. U. L. REV. 1375 (2012) (symposium introduction)

Judge Jerry Smith's Order to DOJ: The Fifth Circuit Order Undermined the Judicial Authority It Purported to Defend, NATIONAL LAW JOURNAL (April 16, 2012)

Redistinguishing "Ought" From "Is," CONCURRING OPINIONS (Feb. 7, 2012)

Tribute to Justice Stevens, 44 LOYOLA L.A. L. REV. 836 (2011)

Honoraria, Anonymity, and the Klan (Tribute to Justice Stevens), SCOTUSBLOG (April 23, 2010)

Introduction to Symposium – Privacy Law in the New Millennium: A Tribute to Richard C. Turkington, 51 VILL. L. REV. 787 (2006)

Above the Law: President Bush and the Constitution, COMMONWEAL (June 18, 2004), p. 12

How Bush Won, COMMONWEAL (Nov. 8, 2002), p. 36 (book review essay)

Introduction to Symposium – Napster: Innocent Innovation or Egregious Infringement?, 9 VILL. SPORTS & ENT. L.J. 1 (2002)

Public Libraries Emerge as New Arena for First Amendment Battles Over Indecency and the Internet, LDRC LIBELLETTTER (Libel Defense Resource Center) (March 1998), p. 33

Book Notice: MARK A. GRABER, TRANSFORMING FREE SPEECH (1991), 90 MICH L. REV. 1425 (1992)

Note – Fighting Exclusion from Televised Presidential Debates: Minor-Party Candidates’ Standing to Challenge Sponsoring Organizations’ Tax-Exempt Status, 90 MICH. L. REV. 838 (1992)

ACADEMIC PRESENTATIONS

How Cheap Speech Underserves and Overheats Democracy, Symposium: 25th Anniversary of *Cheap Speech and What It Will Do*, University of California-Davis (virtual) (Oct. 30, 2020)

Kent State and the Failure of First Amendment Law, address for installation as the Thomas and Karole Green Professor of Law, Washington University School of Law (March 5, 2020); Media Law Resource Center (virtual) (April 30, 2020)

Speech Inequality and a First Amendment of Obligations, Symposium: Not Your Father’s First Amendment, Drexel University School of Law (Nov. 15, 2019)

Conflicting Reports: When Gun Rights Threaten Free Speech, Symposium: Gun Rights and Regulation Outside the Home, Duke University School of Law Center for Firearms Law and Policy (Sep. 27, 2019); Symposium: The First Amendment and an Informed Society, University of North Carolina School of Law (Nov. 8, 2019)

One Hundred Years of First Amendment Law: Foundations, Deviation, and Renewal, Constitution Day Address, University of South Dakota School of Law (Sep. 18, 2019)

Political and Nonpolitical Speech and Guns, Symposium: *Heller* at Ten, University of California-Hastings College of Law (Jan. 18, 2019); Symposium on the Intersection Between Constitutional Rights, William and Mary Law School (March 15, 2019)

The Roberts Court’s First Amendment (panel with Michael W. McConnell and Donald B. Verrilli, Jr.), Tenth Circuit Judicial Conference, Colorado Springs (Aug. 23, 2018)

When Audiences Object: Free Speech and Campus Speaker Protests, 26th Annual Ira C. Rothberger, Jr. Conference on Constitutional Law: Listeners and the First Amendment, University of Colorado School of Law (April 13, 2018)

Forward Into the Past: Speech Intermediaries in the Television and Internet Ages, Symposium on Falsehoods, Fake News, and the First Amendment, University of Oklahoma School of Law (Feb. 9, 2018)

The View From My Window, Symposium on GREGORY P. MAGARIAN, *MANAGED SPEECH: THE ROBERTS COURT’S FIRST AMENDMENT*, Washington University School of Law (Jan. 19, 2018)

Fair and Balanced: The Roberts Court on Regulations of Political Dissent and Commercial Profit, Boston College Law School (April 4, 2014); U.S. Law Study Group, Waseda University Law School (June 11, 2016); Aoyama Gakuin University Law School (June

22, 2016)

Keeping Money Out of Politics: Citizens United and McCutcheon, Washington University First Amendment Roundtable (April 15, 2016)

Speakers, Cornered: The Roberts Court in the Public Forum, Freedom of Expression Scholars Conference, Yale Law School (May 3, 2015); Workshop on Politics, Ethics, and Society, Washington University, Department of Political Science (Feb. 13, 2015)

The McCullen Decision and the Future of the Public Forum Doctrine, Conference on *McCullen v. Coakley*, Villanova University School of Law (Oct. 17, 2014)

The Marrow of Tradition: Categorical Exclusions From First Amendment Protection, Symposium on the Contemporary First Amendment: Freedom of Speech, Press, and Assembly, William and Mary Law School (Feb. 21, 2014)

The New Religious Institutionalism Meets the Old Establishment Clause, Conference on the New Religious Institutionalism, DePaul University College of Law (Sep. 27, 2013)

Commentary on IAN MACMULLEN, CIVICS BEYOND CRITICS: CHARACTER EDUCATION IN A LIBERAL DEMOCRACY, Washington University Department of Political Science (Sep. 14, 2013)

Speaking Truth to Firepower: How the First Amendment Destabilizes the Second, Ohio State University Moritz College of Law (Feb. 16, 2012); Second Amendment Litigation and Jurisprudence Conference, Chicago (April 24, 2013)

The Idea of the Public Interest in U.S. Defamation Law, Conference on the Public Interest in U.K. and European Law, Queen's University, Belfast (Oct. 21, 2011)

Stability and Dynamism in Constitutional Free Speech Protection, Fudan University Law School (Oct. 27, 2009)

Principles of Free Speech in the United States and China, Shanghai Jiaotong University Law School (Oct. 22, 2009)

The Balance Between Civil Liberties and National Security in U.S. Constitutional Law, East China University of Law and Politics (Oct. 21, 2009)

Substantive Media Regulation in Three Dimensions, Symposium on Access to the Media, 1967-2007 and Beyond, George Washington University Law School (Oct. 11, 2007)

The Jurisprudence of Colliding First Amendment Interests, Marquette University Law School (March 27, 2007)

Market Triumphalism, Electoral Pathologies, and the Abiding Wisdom of First Amendment Access Rights, Symposium on Reclaiming the First Amendment: Constitutional Theories of Media Reform, Hofstra University School of Law (Jan. 19, 2007)

Participation Enhancing Review as a Basis for Courts to Resolve Conflicts Between First

- Amendment Interests*, University of Missouri School of Law (March 24, 2006)
- The Pragmatic Populism of Justice Stevens' Free Speech Jurisprudence*, Conference on the Jurisprudence of Justice John Paul Stevens, Fordham University School of Law (Oct. 1, 2005)
- Substantive Due Process as a Source of Constitutional Protection for Nonpolitical Speech*, University of Wisconsin Law School (March 12, 2004); University of Kentucky College of Law (March 18, 2005)
- The First Amendment, the Public-Private Distinction, and Nongovernmental Suppression of Wartime Political Debate*, Pace University School of Law (Sep. 19, 2003); Boston College Law School (Oct. 31, 2003)
- Regulating Political Parties Under a "Public Rights" First Amendment*, Rutgers School of Law Camden (March 26, 2002)
- Toward Political Safeguards of Self-Determination*, Symposium on New Voices on the New Federalism, Villanova University School of Law (Oct. 28, 2000)

INTERNATIONAL TEACHING

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|---|-----------------------------------|
| <i>Introduction to U.S. Constitutional Rights</i>
Aoyama Gakuin Law School | Tokyo, Japan
June 2016 |
| <i>Comparative Law of Free Expression (European Union-United States)</i>
University of Utrecht, Institute for Global Justice | Utrecht, Netherlands
July 2010 |
| <i>Introduction to U.S. Constitutional Law</i>
Fudan University | Shanghai, China
October 2009 |
| <i>Comparative Law of Free Expression (Canada-United States)</i>
University of Montreal | Montreal, Canada
July 2005 |

INSTITUTIONAL LEADERSHIP

- | | |
|---|-----------|
| Co-chair, Judicial Clerkship Committee | 2019-2020 |
| Co-chair, Joint Search Committee for the Sally D. Danforth Chair in Religion and Politics | 2014-2016 |
| Chair, Promotions and Tenure Committee | 2014-2015 |
| Chair, Faculty Appointments Committee | 2012-2013 |
| Chair, Washington University Reading Group on the Supreme Court | |

