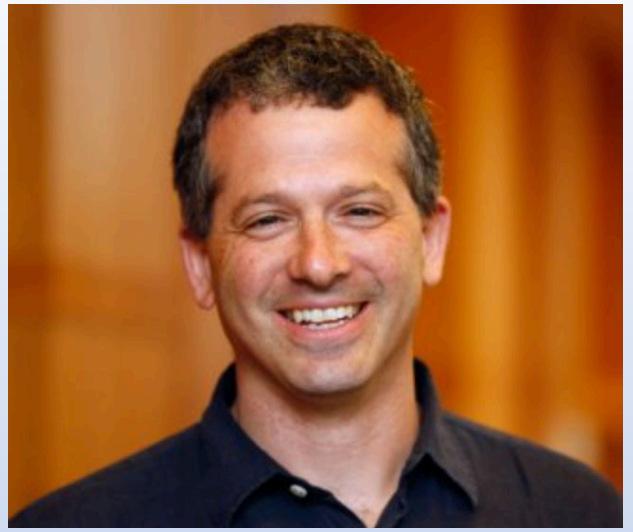
Practical Implications of the Supreme Court's Recent Free Exercise and Establishment Decisions

Presented by Richard Schragger and Joshua Matz

About the Speakers



- Richard Schragger is the Walter L. Brown Professor of Law at the University of Virginia where he teaches property, local government law, urban law and policy, and church and state. His scholarship focuses on the intersection of constitutional law and local government law, federalism, urban policy, and the constitutional and economic status of cities.
- He has authored articles on the Establishment and Free Exercise clauses, the role of cities in a federal system, local recognition of same-sex marriage, takings law and economic development, and the history of the anti-chain store movement.
- Schragger received an M.A. in legal theory from University College London and received his J.D., *magna cum laude*, from Harvard Law School.

About the Speakers



- Joshua Matz is a partner at Kaplan Hecker & Fink LLP and a former law clerk to Justice Anthony Kennedy. He has co-authored two books with Professor Larry Tribe of Harvard Law School.
- In 2020, Joshua represented the City of Philadelphia as merits counsel at the U.S. Supreme Court in *Fulton v. Philadelphia*. That same year, he successfully defended Kentucky Governor Andy Beshear's COVID-19 public health measures against a Free Exercise Clause challenge at the US Supreme Court.
- In addition, Joshua has filed amicus briefs at the U.S. Supreme Court in a wide range of church-state cases, including *Trump v. Hawaii*, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, *Little Sisters of the Poor v. Trump*, *Kennedy v. Bremerton School District*, *303 Creative LLC v. Elenis*, and *Groff v. DeJoy*.

Outline of Topics

1. Introduction
2. School Prayer
3. Government Religious Expression
4. Funding
5. Religious Exemptions & Accommodations
6. Religious Land Use
7. Conclusion

Introduction

- First and Fourteenth Amendment Principles
- Decline of the Establishment Clause
- Expansion of the Free Exercise Clause
- Importance of Neutral Decision-making
- Lessons from Recent Supreme Court Decisions

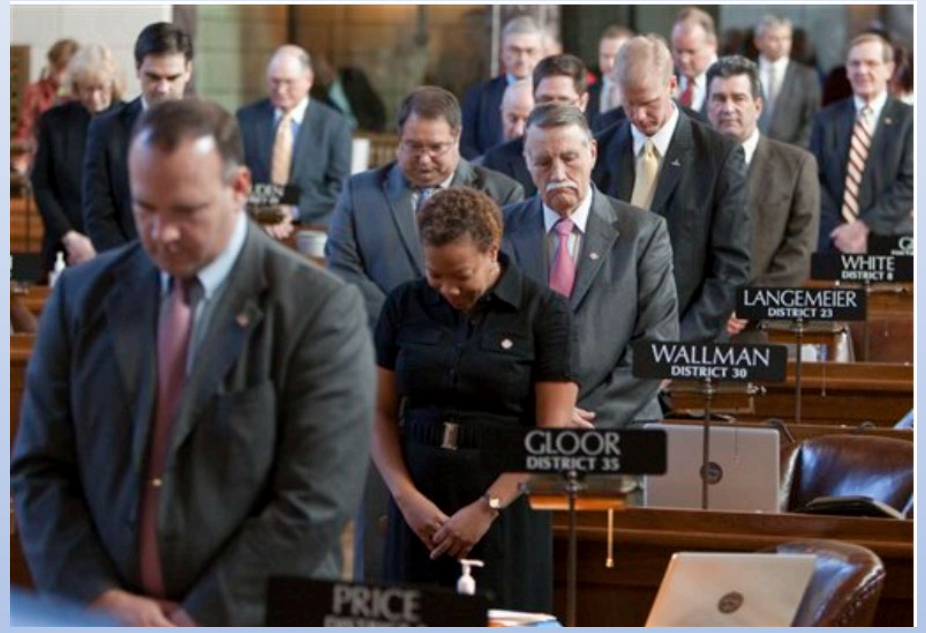
School Prayer

- Core Principles
- *Kennedy v. Bremerton*
- Implications of *Kennedy*



Government Religious Expression

- Clergy Led Prayer
  - *Marsh v. Chambers*
  - *Town of Greece v. Galloway*
- Legislator Led Prayer
  - *Lund v. Rowan County* (4th Circuit)
  - *Bormuth v. Jackson* (6th Circuit)
- Religious Symbols
  - *American Legion v. American Humanist Ass'n*
- Implications



Funding

- *Trinity Lutheran Church of Columbia v. Comer*
- *Espinoza v. Montana Dep't of Revenue*
- *Carson v. Makin*
- Formal Neutrality



Religious Exemptions & Accommodations



- *Employment Division v. Smith*: Neutrality & General Applicability
- *Tandon v. Newsom*: The Importance of Secular Exemptions
- *Fulton v. Philadelphia*: The Dangers of Discretion
- *Masterpiece Cakeshop v. Colorado Civil Rights Commission*: Rhetoric & Neutrality
- *303 Creative LLC v. Elenis*: Freedom of Speech and Religious Exceptions
- *Our Lady of Guadalupe School v. Morrissey-Berru*: The Ministerial Exception
- *Groff v. DeJoy*: Religious Accommodations under Title VII

Religious Land Use

- RLUIPA Genesis and Core Principles
- *The Redeemed Church of God (Victory Temple) Bowie v. Prince George's Cty.*
- *Thai Meditation Association of Alabama v. City of Mobile*
- *Thai Meditation* Implications



Conclusion

- Attention to History, Original Meaning, & Tradition
- “Structural Preferentialism” and Required Formal Neutrality
- Beware of Dogma
- Return to Categorical Strict Scrutiny?
- Pending Statutory Interpretation (Title VII & RLUIPA)

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