

**CURRICULUM VITAE  
OF  
CARL H. ESBECK**

I. CONTACTS

Office: Room 209, John K. Hulston Hall  
School of Law  
University of Missouri  
Columbia, Missouri 65211  
573-882-6543 (direct line with voice mailbox)  
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Home: 3264 S. Country Woods Road  
Columbia, Missouri 65203

II. EDUCATION

Cornell University School of Law, Ithaca, New York  
Juris Doctor, *magna cum laude*, 1974

Honors:

Herbert R. Reif prize for the best law review student comment  
Board of Editors, *Cornell Law Review*  
The Order of the Coif  
Phi Kappa Phi (scholastic honorary)

Iowa State University of Science and Technology, Ames, Iowa  
Bachelor of Science, 1971, major in mechanical engineering

III. EMPLOYMENT

2015 – present

*R.B. Price* Professor Emeritus and *Isabelle Wade & Paul C. Lyda* Professor of  
Law Emeritus, University of Missouri.

2002 - 2014

*R.B. Price* Professor and *Isabelle Wade & Paul C. Lyda* Professor of Law,  
University of Missouri. Teaching assignments are Civil Rights, Constitutional  
Law, Religious Liberty, Civil Procedure I, and Civil Procedure II.  
Publications are in the areas of church-state relations and federal civil rights  
litigation.

2001 - 2002

## CURRICULUM VITAE - CARL H. ESBECK

Page 2

Senior Counsel to the Deputy Attorney General, U.S. Department of Justice, and Director of the Department of Justice's Task Force on Faith-Based and Community Initiatives.

1999 - 2001

Director, Center for Law & Religious Freedom, Springfield, Virginia. The Center is a public interest law firm operating under the auspices of the Christian Legal Society. The Center does litigation, governmental affairs, and public education.

1991 - 1999

*Isabelle Wade & Paul C. Lyda* Professor of Law, University of Missouri.

1985 - 1991

Professor of Law, University of Missouri.

1981-1985

Associate Professor of Law, University of Missouri.

1981 -

Director/Partner, Rodey, Dickason, Sloan, Akin & Robb, P.A., Albuquerque, New Mexico.

1975-1980

Associate, Rodey, Dickason, Sloan, Akin & Robb, P.A., Albuquerque, New Mexico.

My practice was principally in the areas of civil rights and commercial litigation in both the federal and state courts and at both the trial and appellate levels. The civil rights cases largely centered on matters of academic freedom and tenure, restraints on freedom of speech and association, establishment and free exercise questions, procedural due process in order to protect property and liberty interests, public schools affording a free equivalent education to handicapped students under Sec. 504 of the Rehabilitation Act of 1973, and employment discrimination. The commercial litigation cases focused on matters involving Articles 2 and 9 of the Uniform Commercial Code. The firm of Rodey, Dickason, Sloan, Akin & Robb, P.A., has a general civil practice. When I became a director it was the largest and oldest law firm in the State of New Mexico.

1974-1975

Judicial Law Clerk, The Honorable Howard C. Bratton, Chief Judge of United States District Court for the District of New Mexico, Albuquerque, New Mexico.

IV. SELECTED HONORS

2014 Recipient of the *Lloyd E. Roberts Memorial Prize in the Administration of Justice* at the MU School of Law, awarded for *pro bono publico* work in defense of the first amendment.

2014 Recognition by Board of Directors, National Association of Evangelicals, for ten years of *pro bono publico* work on behalf of the association.

2012 Recipient of the *Shook Hardy & Bacon, Excellence in Research Award* at the MU School of Law, for excellence in faculty publications.

2010 Recipient of the *Husch Blackwell Distinguished Faculty Achievement Award* at the MU School of Law, for excellence in teaching.

2010 Selectee for Listing in *Marquis' Who's Who in America* (65th and later editions).

1999 Recipient of the *Shook Hardy & Bacon, Excellence in Research Award* at the MU School of Law, for excellence in faculty publications.

1995 Recipient of the *Defender of Religious Freedom, William Ball Award* presented by the Center for Law & Religious Freedom of the Christian Legal Society.

1995 Recipient of the *Blackwell Sanders Distinguished Faculty Achievement Award* at the MU School of Law, for excellence in teaching.

1992 Recipient of the *Lloyd E. Roberts Memorial Prize in the Administration of Justice* at the MU School of Law, awarded for my work on "charitable choice" and subsequent faith-based social service regulation and administration.

1987 Professor of the Year, selected by the students at the MU School of Law.

V. PUBLICATIONS

**ACADEMIC JOURNALS**

*Do Discretionary Religious Exemptions Violate the Establishment Clause?*, 106 KENTUCKY LAW JOURNAL 629 (2018), <http://ssrn.com/abstract=2952370>.

*When Religious Exemptions Cause Third-Party Harms: Is the Establishment Clause Violated?* 59 OXFORD J. OF CHURCH & ST. 357 (2016), <https://academic.oup.com/jcs/article/59/3/357/2805473/When-Religious-Exemptions-Cause-ThirdParty-Harms?guestAccessKey=7d90ae8f-bdd2-4160-bd17->

[3fcfe8c54a6d](#).

*Federal Contractors, Title VII, and LGBT Employment Discrimination: Can Religious Organizations Continue to Staff on a Religious Basis?* 4 OXFORD J. L. & RELIGION 368 (2015).

*Unwanted Exposure to Religious Expression by Government: Standing and the Establishment Clause*, 7 CHARLESTON LAW REVIEW 607 (2013).

*Defining Religion Down: Hosanna-Tabor, Martinez, and the U.S. Supreme Court*, 11 FIRST AMENDMENT LAW REVIEW 1 (2012).

*Uses and Abuses of Textualism and Originalism in Establishment Clause Interpretation*, 2011 UTAH LAW REVIEW 489 - 623 (2011).

*Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 NORTHWESTERN UNIVERSITY LAW REVIEW COLLOQUY 175 (2011) (w/ co-authors).

*Taxpayer Standing From Flast to Hein*, 80 SUPRA, THE ONLINE COMPANION TO THE MISSISSIPPI LAW JOURNAL 1 (2010).

*Protestant Dissent and the Virginia Disestablishment, 1776-1786*, 7 GEORGETOWN JOURNAL OF LAW & PUBLIC POLICY 51 (2009).

*What the Hein Decision Can Tell Us About the Roberts Court and the Establishment Clause*, 78 MISSISSIPPI LAW JOURNAL 199 (2008).

*The 60th Anniversary of the Everson Decision and America's Church-State Proposition*, 23 JOURNAL OF LAW AND RELIGION 15 (2007-2008).

*When Accommodations for Religion Violate the Establishment Clause: Regularizing the Supreme Court's Analysis*, 110 WEST VIRGINIA LAW REVIEW 357 (2007).

*"Play in the Joints Between the Religion Clauses" and Other Supreme Court Catachreses*, 34 HOFSTRA LAW REVIEW 1331 (2006).

*Governance and the Religion Question*, 48 JOURNAL OF CHURCH & STATE 303 (2006).

*Dissent and Disestablishment: The Church-State Settlement of the New American Republic*, 2004 BYU LAW REVIEW 1385-1592 (2004).

*The Establishment Clause as a Structural Restraint: Validations and Ramifications*, 18 JOURNAL OF LAW & POLITICS 445 (2002).

*Religion and the First Amendment: Some Causes of the Recent Confusion*, 42 WM. & MARY LAW REVIEW 883 (2000).

*Charitable Choice and the Critics*, 57 N.Y.U. ANN. SURVEY OF AM. LAW 17 (2000).

*Differentiating the Free Exercise and Establishment Clauses*, 42 JOURNAL OF CHURCH & STATE 311 (2000).

*Myths, Miscues and Misconceptions: No-Aid Separationism and the Establishment Clause*, 13 NOTRE DAME J. OF LAW, ETHICS & PUBLIC POL'Y 285-319 (1999).

*The Establishment Clause as a Structural Restraint on Governmental Power*, 84 IOWA LAW REVIEW 1-113 (1998).

*A Constitutional Case for Governmental Cooperation with Faith-Based Social Service Providers*, 46 EMORY L. J. 1 (1997).

*A Restatement of the Supreme Court's Law of Religious Freedom: Coherence, Conflict, or Chaos?*, 70 NOTRE DAME L. REV. 581 (1995).

*Government Regulation of Religiously Based Social Services: The First Amendment Considerations*, 19 HASTINGS CONST. L.Q. 343 (1992).

*Concepts of Church Autonomy in the First Amendment*, 13 JURIS DOCTOR 72 (1990).

*The Lemon Test: Should it be Retained, Reformulated or Rejected?*, 4 NOTRE DAME J. OF LAW, ETHICS & PUBLIC POL'Y 513-548 (1990).

*Tort Claims against Churches and Ecclesiastical Officers: The First Amendment Considerations*, 89 W. VA. L. REV. 1 (1986).

*Five Views of Church-State Relations in Contemporary American Thought*, 1986 BYU L. REV. 371 (1986).

*The Use of Government Funding and Taxing Power to Regulate Religious Schools*, 14 J. OF LAW & EDUCATION 553 (1985) (w/ Kline Capps); reprinted in 41 REPORT FROM THE CAPITAL 10 (May 1986).

*Religion and a Neutral State: Imperative or Impossibility?*, 15 CUMBERLAND L. REV. 701 (1984); reprinted in abridged form in 50 VITAL SPEECHES OF THE DAY 548 (July 1, 1984), and 39 REPORT FROM THE CAPITAL 4 (June 1984).

*Establishment Clause Limits On Governmental Interference With Religious*

*Organizations*, 41 WASH. & LEE LAW REVIEW 347 (1984).

*State Regulation of Social Services Ministries of Religious Organizations*, 16 VALPARAISO LAW REVIEW 1 (1981).

Comment, *Employment Practices and Sex Discrimination*, 59 *Cornell Law Review* 133 (1973).

#### **BOOK CHAPTERS AND BOOK REVIEWS**

Review Essay: *Charity for the Autonomous Self*, 32 CAMBRIDGE J. OF LAW & RELIGION 185 (2017), [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/45261765C6FAADCB4939FC1ED688E13F/S0748081417000145a.pdf/charity\\_for\\_the\\_autonomous\\_self.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/45261765C6FAADCB4939FC1ED688E13F/S0748081417000145a.pdf/charity_for_the_autonomous_self.pdf) (review of two new monographs on reforms in charity law).

*Religion During the American Revolution and the Early Republic*, in LAW AND RELIGION vol. 1, chap. 4 (Silvio Ferrari, ed., Ashgate Publishing, U.K.) (2013).

*The Formation of the First Amendment Prohibition on the Establishment of Religion*, in NO ESTABLISHMENT OF RELIGION: AMERICA'S ORIGINAL CONTRIBUTION TO RELIGIOUS LIBERTY (T. Jeremy Gunn & John Witte, Jr., eds., Oxford Univ. Press 2012).

*Regulation of Religious Organizations via Governmental Financial Assistance*, in RELIGIOUS ORGANIZATIONS IN THE UNITED STATES: A STUDY OF IDENTITY, LIBERTY, AND THE LAW (James A. Serritella ed., Carolina Academic Press 2006).

*The American System of Church-State Relations (And Its Bearing on Church Autonomy)*, in CHURCH AUTONOMY: A COMPARATIVE SURVEY (Gerhard Robbers ed., Peter Lang Publishers 2001).

*The Neutral Treatment of Religion and Faith-Based Social Service Providers: Charitable Choice and Its Critics*, in WELFARE REFORM AND FAITH-BASED ORGANIZATIONS 173-217 (Derek Davis & Barry Hankins eds., 1999).

*Equal Treatment: Its Constitutional Status*, in EQUAL TREATMENT OF RELIGION IN A PLURALISTIC SOCIETY 9-29 (Stephen V. Monsma & J. Christopher Soper eds., Eerdmans Pub. Co. 1998).

*A Typology of Church-State Relations in Current American Thought*, in RELIGION, PUBLIC LIFE, AND THE AMERICAN POLITY (Luis E. Lugo ed., Univ. of Tenn. Press 1994).

*Book Review Essay of "First Freedom: Religion and the Bill of Rights,"* by James Wood ed., 1990), in 8 J. OF LAW & RELIGION 651 (1990).

*The Establishment Clause as a Limit on Governmental Regulation of Religious Schools,* in CIVIL RIGHTS AND PRIVATE EDUCATION (Neil Devins, ed., Stanford University Series of Falmar Press 1989).

*The Establishment Clause: Assuring the Independence of Churches and a Neutral State,* in GOVERNMENT INTERVENTION IN RELIGIOUS AFFAIRS (Dean Kelley, ed., Pilgrim Press 1986).

Book Review essay of *The Naked Public Square: Religion and Democracy in America,* by Richard John Neuhaus, 50 MISSOURI LAW REVIEW 201 (1985).

#### **LEGAL ESSAYS, BLOGS, AND OP-EDS.**

*Two Decades of Bipartisan Cooperation on Government Funding and Religion . . . this can't possibly be about the U.S.,* at Cornerstone, blog of the Religious Freedom Institute at Georgetown University,  
<http://www.religiousfreedominstitute.org/cornerstone/2016/8/22/two-decades-of-bipartisan-cooperation-on-government-funding-and-religion-this-cant-possibly-be-about-the-us> (August 22, 2016).

VITAL SPEECHES OF THE DAY, *A Post-Obergefell America: Is a Season of Legal and Civic Strife Inevitable?* (January 2016).

*North Carolina suit challenges constitutionality of religious exemption for conscientious objectors,* Mirror of Justice  
<http://mirrorofjustice.blogs.com/mirrorofjustice/2015/12/carl-esbeck-on-a-north-carolina-case-involving-religious-accommodations-after-obergefell.html>  
(Dec. 17, 2015).

*Third-Party Burdens, Congressional Accommodations for Religion, and the Establishment Clause,* Hearing on Oversight of the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act, before the Judiciary Committee of the U.S. House of Representatives, Subcommittee on the Constitution and Civil Justice (February 13, 2015) [http://www.irfalliance.org/wp-content/uploads/2015/02/2015-02-11-Esbeck-testimony-RFRA-RLUIPA-third-party-harms.pdf?utm\\_source=IRFA+e-News+Feb+26&utm\\_campaign=eNews+Feb+26+2015&utm\\_medium=email](http://www.irfalliance.org/wp-content/uploads/2015/02/2015-02-11-Esbeck-testimony-RFRA-RLUIPA-third-party-harms.pdf?utm_source=IRFA+e-News+Feb+26&utm_campaign=eNews+Feb+26+2015&utm_medium=email)

*Freedom of the Church,* a posting at the blog Cornerstone, The Berkeley Center at Georgetown University, June 3, 2014.

*Watch What You Pray For*, Christianity Today (February 2014)  
<http://www.christianitytoday.com/ct/2014/may-web-only/carl-esbeck-supreme-court-prayer-greece-galloway.html>.

Town of Greece Symposium: *Can Government Actively Favor a Religious Practice?*, (Sept. 23, 2013). <http://www.scotusblog.com/2013/09/town-of-greece-symposium-can-government-actively-favor-a-religious-practice/>

*A Religious Organization's Autonomy in Matters of Self-Governance: Hosanna-Tabor and the Frist Amendment*, 13 ENGAGE 168 (2012).

*Why the Supreme Court Has Fashioned Rules of Standing Unique to the Establishment Clause*, 10 ENGAGE 83 (2009).

*The Application of RFRA to Override Employment Nondiscrimination Clauses Embedded in Federal Social Services Programs*, 9 ENGAGE 140 (2008).

*Conservatives, Evangelicals not in Lock-Step*, op-ed appearing in the LANCASTER INTELLIGENCER JOURNAL on September 21, 2006, <http://local.lancasteronline.com/4/26020>

*Church-State Relations in America: What's At Stake and What's Not?*, 100 LIBERTY MAGAZINE 3 (May/June 2005).

*On Rights and Restraints*, 94 LIBERTY MAGAZINE 22-29 (March/April 1999).

*Pluralism Without a Center? The Emergence of Many Cultures in American Society and Why It's Good*, 90 LIBERTY MAGAZINE 20 (May/June 1995).

*The Bicentennial of the U.S. Bill of Rights*, 32 DECISION MAGAZINE 16 (January 1991).

*A Case for Disestablishment of the Church of England*, 45 REPORT FROM THE CAPITAL 6 (March 1990).

*Current Practice Under 42 U.S.C. Sections 1981 and 1982*, 12 BARRISTER MAGAZINE 31 (ABA Spring 1985) (w/ Mike Shipley).

*Current Practice Under 42 U.S.C. Sections 1985 and 1986*, 11 BARRISTER MAGAZINE 34 (ABA Fall 1984) (w/ Larry Schumaker).

*Current Practice Under 42 U.S.C. Section 1983*, 10 BARRISTER MAGAZINE 31 (ABA Fall 1983).



*Back to Basics: God, Caesar and the American Experience*, 36 CHURCH & STATE MAGAZINE 20 (April 1983).

**MONOGRAPHS**

THE FREEDOM OF FAITH-BASED ORGANIZATIONS TO STAFF ON A RELIGIOUS BASIS (Center for Public Justice, 2004) (w/ Stanley W. Carlson-Thies and Ronald J. Sider). ISBN: 0-936456-04-3

A GUIDE TO CHARITABLE CHOICE: THE RULES OF SECTION 104 OF THE 1996 FEDERAL WELFARE LAW GOVERNING STATE COOPERATION WITH FAITH-BASED SOCIAL-SERVICE PROVIDERS, (Center for Public Justice and the Christian Legal Society, 1997) (w/ Stanley Carlson-Thies).

THE REGULATION OF RELIGIOUS ORGANIZATIONS AS RECIPIENTS OF GOVERNMENTAL FINANCIAL ASSISTANCE (Center for Public Justice, 1996). ISBN: 0-936456-03-5.

**ENCYCLOPEDIA ENTRIES AND OTHER COLLECTED WORKS**

ENCYCLOPEDIA OF CHRISTIANITY IN THE UNITED STATES (Mark A. Lamport, ed., Rowman & Littlefield Publishers forthcoming 2016) (entries for *Religious Freedom Restoration Act*, *Religious Land Use & Institutionalized Persons Act*, *United States v. Ballard*, and *Everson v. Board of Education*).

ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES (Paul Finkelman, ed., Taylor & Francis Publishers 2006) (entries of *Charitable Choice* and *Tilton v. Richardson*).

*A Retrospective on the Bush Initiative, 2001-04; and Turning Obstacles into Opportunities, 2005-08*, paper presented at the Federalist Society Conference on the Faith-Based Initiative: What's in Store for the Second Term? (Feb. 10, 2005), available on line at [www.fed-soc.org/Publications/Transcripts/faithbased/pdf](http://www.fed-soc.org/Publications/Transcripts/faithbased/pdf).

*Statement Before the United States House of Representatives Concerning Charitable Choice and the Community Solutions Act*, reprinted in 16 NOTRE DAME J. OF LAW, ETHICS & PUBLIC POL'Y 567 (2002).

*First Amendment Considerations and Remarks on Proceedings*, in THE ROLE OF RELIGION IN POLITICS AND SOCIETY 115-30 (Harold Heie, A. James Rudin & Marvin R. Wilson, eds., Center For Christian Studies at Gordon College and Interreligious Affairs Department of the American Jewish Committee 1998).

*American Religion and Politics: Do We Really Have a Shared Vision?*, in THE ROLE OF RELIGION IN SOCIETY 30 (American Jewish Committee 1997).

## CURRICULUM VITAE - CARL H. ESBECK

Page 10

*Table of U.S. Supreme Court Decisions Relating to Religious Liberty*, 10 J. OF LAW & RELIGION 573 (1994).

*1993 Survey of Trends and Developments on Religious Liberty in the Courts*, 10 J. OF LAW & RELIGION 543 (1994).

*A Topology of Church-State Relations in Current American Thought*, 8 J. OF FAITH AND MISSION 3 (1990).

*Ecclesiastical Disciplinary Law and The Law of Church Employees*, a seven volume work entitled EVANGELISCHES KIRCHENLEXICON (West Germany, 1990) (encyclopedia entries describing the law of the U.S.).

*Concepts of Church Autonomy in the First Amendment*, in PROCEEDINGS OF THE ABA NATIONAL INSTITUTE ON TORT AND RELIGION (May 1989).

*A Topology of Church-State Relations in American Thought*, in 15 RELIGION AND PUBLIC EDUCATION 43 (Winter 1988) (reprint).

*1987 Survey of Trends and Developments on Religious Liberty and the Courts*, in 5 J. OF LAW & RELIGION (1988).

*Religion and a Neutral State: Imperative or Impossibility?*, in RELIGION IN AMERICAN LIFE (Podell ed., H.W. Wilson Co. 1987) (reprint).

*1986 Survey of Trends and Developments On Religious Liberty in the Courts*, 4 J. OF LAW & RELIGION 431 (1987).

*Religious Beliefs, Human Rights and the Moral Foundation of Western Democracy*, in 1986 PAINE LECTURES IN RELIGION (C. Esbeck ed., 1986).

*1985 Survey of Trends and Developments on Religious Liberty in the Courts*, 3 J. OF LAW & RELIGION 211 (1986).

*Toward a General Theory of Church-State Relations and the First Amendment*, 4 PUBLIC LAW FORUM 325 (1985).

*The Limits on Law in Directing Moral Choice*, 34 ETERNITY MAGAZINE 64 (September 1983); reprinted in 4 CLS QUARTERLY 26 (Fall 1983).

*A Primer on Religious Liberty and the First Amendment*, 3 CLS QUARTERLY 1A (Summer 1982).

## VI. ACADEMIC & PROFESSIONAL ACTIVITIES

I have published widely in the area of religious liberty and church-state relations. I took the lead in recognizing that the modern U.S. Supreme Court has applied the establishment clause not as an individual right, but as a structural limit on the government's authority in explicitly religious matters. This paradigm shift has led a movement that better explains the Court special rules on standing with respect to claims under the establishment clause, and is helping to recover notions of church autonomy in an otherwise growing regulatory environment.

I am recognized as the progenitor of "charitable choice," an integral part of the 1996 Federal Welfare Reform Act (*see* 42 U.S.C. § 604a). That legislation was later made a part of three additional federal welfare programs during the Clinton Administration. I followed up that effort by assisting in the promulgation of equal-treatment regulations during the Bush Administration. I continue to work on President Obama's Office of Faith-Based and Neighborhood Partnerships concerning such matters as the right of social-service providers to employ person of like-minded faith.

While on leave from 1999 to 2002, I directed the Center for Law & Religious Freedom and then served as Senior Counsel to the Deputy Attorney General at the U.S. Department of Justice. While directing the Center, I was part of a small advocacy team at the Senate which led to passage of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). While at the Department of Justice I worked on first amendment matters generally. Additionally, one of my duties was to direct a task force to remove barriers to the equal-treatment of faith-based organizations applying for social-service grants.

In addition to traditional scholarship, I provide pro bono legal advice to the National Association of Evangelicals, the Center for Law & Religious Freedom, and each year author or coauthor four to six briefs *amicus curiae* on various first amendment matters in the federal and state courts.

## VII. SERVICE TO THE SCHOOL OF LAW

Over multiple years I have served as a member or chair of various committees at the MU School of Law, including the following: Tenure & Promotion Committee, Reaccreditation Self-Study Committee, Faculty Appointments, Honor Code Committee, Judicial Clerkship Committee, Standards & Readmissions Committee, Tenure & Promotion Committee, Search Committee for the Campbell Missouri Endowed Chair, and the *ad hoc* Planning Committee.

## VIII. PROFESSIONAL LICENSES & AFFILIATIONS

Bar Admissions: 1974 State of New Mexico; 1974 United States District Court for the District of New Mexico; 1976 United States Court of Appeals for the Tenth Circuit; 1982 State of Missouri; 1990 United States Court of Appeals for the Eighth Circuit; 1997 United States Supreme Court.

## CURRICULUM VITAE - CARL H. ESBECK

Page 12

Member, Association of American Law Schools, American Bar Association, and Missouri Bar Association.

Executive Committee of the Religious Liberty Practice Group of The Federalist Society, Washington, D.C.

Board of Directors & Member, Christian Legal Society, Washington, D.C.

Legal Counsel, National Association of Evangelicals, Washington, D.C.

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