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FOCUS AREAS

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EXPERIENCE

Michael W. McConnell is Senior Of Counsel in the Palo Alto office of Wilson Sonsini Goodrich & Rosati, where he specializes in federal appellate litigation. From 2002 to 2009, he served as Circuit Judge on the United States Court of Appeals for the Tenth Circuit, with chambers in Salt Lake City and Denver, where he wrote majority opinions in cases involving securities, antitrust, administrative law, federal lands, First Amendment, criminal law and procedure, and other topics. Since leaving the bench in 2009, Judge McConnell has taught constitutional law at Stanford Law School and practiced law on a part-term basis as "of counsel" to the D.C. office of Kirkland & Ellis.

Highlights of Judge McConnell's recent litigation experience include briefing and four oral arguments in the U.S. Supreme Court:

- ***Horne v. Dep't of Agriculture*, 135 S. Ct. 1039 (2015).** In an 8-1 opinion by Chief Justice Roberts, the Court held that a program that compelled raisin producers to turn over a portion of their crop to a government agency without payment violates the Fifth Amendment.
- ***Horne v. Dep't of Agriculture*, 569 U.S. 513 (2013).** In an opinion by Justice Thomas, the Court unanimously reversed a Ninth Circuit decision holding that a Fifth Amendment Takings Clause claim cannot be raised as a defense in an administrative proceeding.
- ***CompuCredit Corp. v. Greenwood*, 565 U.S. 95 (2012).** In an 8-1 opinion by Justice Scalia, the Court held that claims against a credit repair organization for alleged misrepresentations are subject to arbitration.
- ***Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661 (2010).** In a 5-4 opinion by Justice Ginsburg, the Court rejected the argument that the First Amendment protects the right of a religious student group at a public law school to reserve leadership positions for adherents of its religion.

McConnell argued eleven previous cases in the Supreme Court before going on the bench. Other highlights since 2010 include briefing and argument in:

- ***S.E.C v. Securities Investor Protective Corp.*, 758 F.3d 357 (D.C. Cir. 2014).** Court held that client SIPC was not required to cover losses from a \$7 billion fraud committed by a non-member.
- ***Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.*, 23 Cal. App. 3d 1129 (2018).** Court held that state Labor Board was required to tally workers' ballots in a five-year-old union decertification election.
- ***Delano Farms Co. v. California Table Grape Comm'n*, 4 Cal. 5th 1204 (Cal. Sup. Ct. 2018).** California Supreme Court unanimously rejected challenge under state free speech clause to a mandatory joint advertising and promotion program.

As an appellate generalist, Judge McConnell has participated in cases involving antitrust law, copyright, Commerce Clause extraterritoriality doctrine, securities law, First Amendment, Section 230 of the Communications Decency Act, administrative law, environmental law, federal preemption, and criminal law.

Since 2009, McConnell has taught at Stanford Law School as the Richard and Frances Mallery Professor and as Director of the Constitutional Law Center at Stanford Law School. He is a Senior Fellow at Stanford University's Hoover Institution. His courses include Constitutional Law, First Amendment, Creation of the Constitution, and numerous advanced courses in constitutional areas. He previously held chaired professorships at University of Chicago and University of Utah, and Visiting Professorships at NYU School of Law and Harvard Law School. He is a member of American Academy of Arts and Sciences, and recently delivered the Tanner Lectures in Human Values at Princeton University.

In addition to numerous law review publications, McConnell is co-editor of two popular casebooks, in Constitutional Law and Religion & the First Amendment. He is nearing completion of a book on presidential power entitled *The President Who Would Not Be King*, under contract to Princeton University Press. According to a recent study, he is the second-most cited scholar in U.S. Supreme Court opinions in the past decade.

McConnell is a graduate of University of Chicago Law School and the James Madison College of Michigan State University. After graduation from Chicago, he was law clerk to Supreme Court Justice William J. Brennan, Jr., and to Chief Judge J. Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit. He was awarded honorary doctorates from University of Notre Dame and Michigan State Law School. He has been Assistant General Counsel to the Office of Management & Budget, specializing in regulatory reform, Assistant to the Solicitor General, and Member of the President's Intelligence Oversight Board.

CREDENTIALS

Education

- J.D., University of Chicago Law School, 1979
Order of the Coif; Comments Editor, University of Chicago Law Review; Recipient, Floyd R. Mechem Scholar
- B.A., Michigan State University, 1976
Recipient, Alumni Distinguished Scholar; Recipient, National Merit Scholar; Phi Beta Kappa; Opinion Page Editor, Michigan State News

Associations and Memberships

- Advisory Board, Program in Jewish Law and Interdisciplinary Studies, Cardozo Law School, Yeshiva University, 2006-present
- Member, U.S. Association of Constitutional Law, 2000-present
- Elder, First Presbyterian Church, Salt Lake City, 2007-2009
- Assistant Scoutmaster, Troop 38, Salt Lake Council, Boy Scouts of America, 1999-2006
- Chair, Constitutional Law Section, Association of American Law Schools, 1998-1999
- Co-Chair, Emergency Committee to Defend the First Amendment, 1996-2002
- Fellow, American Academy of Arts and Sciences, elected 1996
- National Council of Churches, Committee on Religious Liberty, 1993-2002
- Board of Directors, Austin Christian Law Center (a low-income legal aid clinic located in the Austin neighborhood on the far west side of Chicago), 1992-1996
- Board of Directors, The Laboratory Schools, The University of Chicago (an independent school located in Hyde Park in Chicago), 1991-1995

Admissions

- Bar of the District of Columbia
- U.S. District and Bankruptcy Courts for the District of Columbia
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Supreme Court

INSIGHTS

Select Publications

Books:

- *The President Who Would Not Be King* (forthcoming, Princeton University Press)
- *The No-Establishment Rule* (forthcoming, Oxford University Press)
- Co-author with P.E. Peterson, *Scalia's Constitution: Essays on Law and Education*, Cham, Switzerland: Palgrave Macmillan, 2018

- Co-author with M.S. Paulsen, S.G. Calabresi, S.L. Bray, and W. Baude, *The Constitution of the United States*, St. Paul, Minnesota, Foundation Press, Third Edition, 2017
- Co-author with T.C. Berg and C.C. Lund, *Religion and the Constitution*, Wolters Kluwer, Fourth Edition, 2016
- Co-author with M.S. Paulsen, S.G. Calabresi, and S.L. Bray, *The Constitution of the United States: Text, Structure, History, and Precedent*, New York, New York: Foundation Press, Second Edition, 2013
- Co-author with J. Garvey eds., *Religion and the Constitution*, Aspen Publishing Co., Third Edition, 2011

Articles:

▪ **First Amendment:**

- "Churches and Government Funding," 21(1) *Journal of Markets & Morality* 49-69, Spring 2018
- "On Resolving Church Property Disputes," 58(2) *Arizona Law Review* 307-58, 2016
- "The Hobby Lobby Decision," *Point of View*, Issue 91, Fall 2014
- "Why Protect Religious Freedom?" (book review) 123(3) *Yale Law Journal*, 2013
- "Reconsidering Citizens United As a Press Clause Case," 123(2) *Yale Law Journal*, 2013
- "Reflections on Hosanna-Tabor," 35(3) *Harvard Journal of Law and Public Policy* 821-37, 2012
- "Is There Still a 'Catholic Question' in America? Reflections on John F. Kennedy's Speech to the Houston Ministerial Association," 86(4) *Notre Dame Law Review* 1635-53, 2011
- "A Free Speech Year at the Court," *First Things*, October 2011
- "Religion and Its Relation to Limited Government," 33(3) *Harvard Journal of Law and Public Policy* 943, 2010
- "Establishment and Disestablishment at the Founding, Part I: Establishment of Religion," 44(5) *Williams and Marry Law Review* 2105-208, 2003
- "Education Disestablishment: Why Democratic Values Are Ill-Served by Democratic Control of Schooling," 43 *NOMOS: Moral and Political Education* 87-146, 2002
- "The Supreme Court's Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic," 37 *Tulsa Law Review* 7-44, 2001
- "State Action and the Supreme Court's Emerging Consensus on the Line Between Establishment and Private Religious Expression," 28 *Pepperdine Law Review* 681, 2001
- "Religious Freedom, Separation of Powers, and the Reversal of Roles," 2001 *BYU Law Review* 611, 2001
- "The Problem of Singling Out Religion," 50 *DePaul Law Review* 1, 2000
- "Old Liberalism, New Liberalism, and People of Faith," chapter, *Christian Perspectives on Legal Thought*, Yale University Press, 2001
- "Believers As Equal Citizens," chapter, *Obligations of Citizenship and Demands of Faith*, Princeton University Press, 2000
- "The New Establishmentarianism," 75 *Chicago-Kent Law Review* 453, 2000
- "Why Is Religious Liberty The 'First Freedom?'" 21 *Cardozo Law Review* 1243, 2000
- "Five Reasons to Reject the Claim that Religious Arguments Should be Excluded from Democratic Deliberation," 1991 *Utah Law Review* 639, 1999
- "Governments, Families, and Power: A Defense of Educational Choice," 31 *Connecticut Law Review* 847, 1999
- "What Would It Mean to Have a 'First Amendment' for Sexual Orientation?" chapter, *Sexual Orientation and Human Rights in American Religion Discourse*, Oxford Press, 1998
- "Freedom from Persecution or Protection of the Rights of Conscience?: A Critique of Justice Scalia's Historical Arguments in *City of Boerne v. Flores*," 29 *William and Mary Law Review* 819, 1998
- "Institutions and Interpretation: A Critique of *City of Boerne v. Flores*," 111 *Harvard Law Review* 153, 1997
- "Establishment and Toleration in Edmund Burke's 'Constitution of Freedom,'" 1996 *Supreme Court Review* 275, 1996
- "Edmund Burke's Tolerant Establishment," chapter, *Religious Liberty in Western Thought* 203, 1996
- Co-author with M.S. Paulsen, "The Doubtful Constitutionality of the Clinic Access Bill," 1 *Virginia Journal of Social Policy & the Law* 261, 1994
- "God Is Dead and We Have Killed Him!: Freedom of Religion in the Post-Modern Age," 1993 *BYU Law Review* 163, 1993
- "Religious Freedom at a Crossroads," 59 *University of Chicago Law Review* 115, 1992
- "Religion Liberty (Update)," chapter, *Encyclopedia of the American Constitution* 444, Supp. I, 1992
- "Christ, Culture, and Courts: A Niebuhrian Examination of First Amendment Jurisprudence," 42 *DePaul Law Review* 191, 1992

- "Accommodation of Religion: An Update and a Response to the Critics," 60 *George Washington Law Review* 685, 1992
- "America's First 'Hate Speech' Regulation," 9 *Constitutional Commentary* 17, 1992
- "Should Congress Pass Legislation Restoring the Broader Interpretation of Free Exercise of Religion?" 15 *Harvard Journal of Law and Public Policy*, 1992
- "The Selective Funding Problem: Abortions and Religious Schools," 105 *Harvard Law Review* 989, 1991
- "A Response to Professor Marshall," 58 *University of Chicago Law Review* 329, 1991
- "Multiculturalism, Majoritarianism, and Educational Choice: What Does Our Constitutional Tradition Have to Say?" 1991 *University of Chicago Law Review* 123, 1991
- "The Origins and Historical Understanding of Free Exercise of Religion," 103 *Harvard Law Review* 1409, 1990
- "Academic Freedom in Religious Colleges and Universities," 53 *Law & Contemporary Problems* 303, 1990, reprinted in *Freedom and Tenure in the Academy*, 1993
- "Free Exercise Revisionism and the Smith Opinion," 57 *University of Chicago Law Review* 1109, 1990
- "Book Review: A Nation Dedicated to Religious Liberty," 8 *Journal of Law and Religion* 397, 1990
- Co-author with R.A. Posner, "An Economic Approach to Issues of Religious Freedom," 56 *University of Chicago Law Review* 1, 1989
- "Unconstitutional Conditions: Unrecognized Implications for the Establishment Clause," 26 *San Diego Law Review* 255, 1989
- "The Religion Clauses of the First Amendment: Where Is The Supreme Court Heading?" 32 *The Catholic Lawyer* 187, 1989
- "Why 'Separation' Is Not the Key to Church-State Relations," 106 *Christian Century* 43, January 18, 1989
- "You Can't Tell the Players in Church-State Disputes Without a Scorecard," 10 *Harvard Journal of Law and Public Policy* 27, 1987
- "The First Amendment Jurisprudence of Judge Robert H. Bork," 9 *Cardozo Law Review* 63, 1987
- "Making Peace Between the Religion Clauses," 33 *University of Chicago Law School Record* 6, Fall 1987
- "Political and Religious Disestablishment," 1986 *BYU Law Review* 405, 1986
- "Coercion: The Lost Element of Establishment," 27 *William and Mary Law Review* 931, 1986
- "Remedial Education Programs for Private School Students: Judicial Developments and Future Prospects," *The Church, the State and the Schools: Contemporary Issues in Law and Policy*, 1986
- "Accommodation of Religion," 1985 *The Supreme Court Review* 1, 1985
- **Constitutional and Interpretive Theory:**
 - "What Are The Judiciary's Politics?" 45 *Pepperdine Law Review* 455, 2018
 - "Time, Institutions, and Interpretation," 95 *Boston University Law Review* 1745, 2015
 - "Ways to Think About Unenumerated Rights," 2013(5) *University of Illinois Law Review* 1985-97, 2013
 - "Non-State Governance," 2010 *Utah Law Review* 7, 2010
 - "The Ninth Amendment in Light of Text and History," *Cato Supreme Court Review* 13, 2009-2010
 - "Natural Rights and the Ninth Amendment: How Does Lockean Legal Theory Assist in Interpretation," 5(1) *NYU Journal of Law & Liberty* 1-29, 2010
 - "Active Liberty: A Progressive Alternative to Textualism and Originalism?" 119 *Harvard Law Review*, 2387 (book review of Justice Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution*, 2005), 2006
 - Co-author with J. Rosen, B. Neuborn, R. Pilon, and S. Reinhardt, "Brennan's Approach to Reading and Interpreting the Constitution," 43 *New York Law School Law Review* 41, 1999
 - "Textualism and the Dead Hand of the Past," 66 *George Washington Law Review* 1127, 1998
 - "Tradition and Constitutionalism Before the Constitution," 1998 *University of Illinois Law Review* 173, 1998
 - "The Importance of Humility in Judicial Review: A Comment on Ronald Dworkin's 'Moral Reading' of the Constitution," 65 *Fordham Law Review* 1269, 1997
 - "The Forgotten Constitutional Moment," 11 *Constitutional Commentary* 115, 1994
 - "The Fourteenth Amendment: A Second American Revolution or the Logical Culmination of the Tradition?" 25 *Loyola of Los Angeles Law Review* 1159, 1992
 - "How Not To Promote Serious Deliberation About Abortion," 58 *University of Chicago Law Review* 1181, 1991
 - "The Role of Democratic Politics in Transforming Moral Convictions Into Law," 98 *Yale Law Journal* 1503, 1989
 - "A Moral Realist Defense of Constitutional Democracy," 64 *Chicago-Kent Law Review* 89, 1988

- "On Reading the Constitution," 73 *Cornell Law Review* 359, 1988
- **Allocation of Powers:**
 - "The OLC Opinion on Recess Appointments," *Advancing a Free Society*, January 12, 2012
 - "Moderation and Coherence in American Democracy," 99(2) *California Law Review*, April 2011
 - "What Would Hamilton Do?" *Hoover Digest Research and Opinion*, No. 4, 160-6, Fall 2011
- **Economic Rights and Regulation:**
 - "A State Bankruptcy Policy and the Constitution: Michael McConnell Responds," (responding to comments on the earlier essay "Extending Bankruptcy Law to States: Is It Constitutional?"), *Law & Liberty*, July 2016
 - "Extending Bankruptcy Law to States: Is It Constitutional?" *Law & Liberty*, July 2016
 - "The Raisin Case," 2014 *Cato Supreme Court Review* 313-32, 2014-2015
 - "Horne and the Normalization of Takings Litigation: A Response to Professor Echeverria," 43 *Environmental Law Reporter* 10749, 2013
- **Fourteenth Amendment:**
 - Co-author with N. Chapman, "Due Process As Separation of Powers," 121(7) *Yale Law Journal* 1672-1807, 2012
 - "The Right to Die and the Jurisprudence of Tradition," 1997 *Utah Law Review* 665, 1997
 - "Originalism and the Desegregation Decisions," 81 *Virginia Law Review* 947, 1995
 - "The Originalist Justification for Brown: A Reply to Professor Klarman," 81 *Virginia Law Review* 1937, 1995

Newspaper Columns and Miscellaneous:

- "The Way Trump Is Asserting the Rights of His Office Is Not Impeachable," *The Washington Post*, May 1, 2019
- "The Latest Assault on Obamacare Is a Dog of a Case. No Way Kavanaugh Disagrees," *The Washington Post*, September 6, 2018
- "Justices Confound Expectation in Colorado Wedding Cake," (regarding *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, SCOTUS no. 16- 0111) *Legal Aggregate*, June 4, 2018
- "Brett Kavanaugh Will Bring Middle Principles to Our Polarized Nation," *The Hill*, September 1, 2018
- "Kavanaugh and the 'Chevron Doctrine,'" *Defining Ideas* (Hoover Institution), July 30, 2018
- "Sessions's Refusal to Defend the ACA Destroys Another Democratic Norm," *The Washington Post*, June 19, 2018
- "Trump's Not Wrong About Pardoning Himself," *The Washington Post*, June 8, 2018
- "Constitution at 230: U.S. Has Talented, Independent Judiciary, But There Are Dangers," *The Philadelphia Inquirer*, September 17, 2017
- "A Personal Reflection on Judge Neil M. Gorsuch from a Former Colleague," 69 *Stanford Law Review Online* 107-8, 2017
- "A Flawed Restraining of a Flawed Order," *Defining Ideas* (Hoover Institution), February 10, 2017
- "Should We Abolish the Electoral College? Yes and No," *Stanford Magazine*, September/October 2016
- "A Question of Prerogative," *Defining Ideas* (Hoover Institution), December 1, 2016
- "Obama's Unconstitutional Immigration Order," *Defining Ideas* (Hoover Institution), April 2016
- "Defusing the Supreme Court Fight," *The Wall Street Journal*, March 24, 2016
- "Antonin Scalia Was Democracy's Legal Champion," *The Wall Street Journal*, February 14, 2016
- "Neil Gorsuch: An Eloquent Intellectual," *Defining Ideas* (Hoover Institution), February 2016
- "Our Elected Monarch," 49 *International Society of Barristers Quarterly* 1, 2016
- "Yes, We Should Consider Refugees' Religion," *Politico: The Agenda*, November 25, 2015
- "When Courts Take on the President," *Daily Journal*, September 28, 2015
- "Alexander the Great: Leave Hamilton on the \$10 Bill," *The Weekly Standard*, July 20, 2015
- "Why Obama's Immigration Order Was Blocked: The Injunction Isn't About Prosecutorial Discretion. It Is About Granting Illegal Aliens Benefits Not Allowed by Law," *The Wall Street Journal*, February 17, 2015
- "2013 Supreme Court Roundup," 236 *First Things: A Monthly Journal of Religion and Public Life* 33, 2013
- "Obama Suspends the Law," *The Wall Street Journal*, July 8, 2013
- "No, He Can't," *Hoover Digest*, 4, Fall 2013
- "The Constitution and Same-Sex Marriage," *The Wall Street Journal*, March 22, 2013
- "What If Robert Bork Had Joined the Supreme Court?" *Slate Magazine*, December 14, 2012
- "Law Blog Expert Panel: Reactions to the Healthcare Ruling," *The Wall Street Journal*, June 29, 2012
- "Citizens United and the Wisconsin Vote," *The Wall Street Journal*, June 11, 2012
- "Ruling the Future," *Slate Magazine*, June 11, 2012

- "Hatch Is a Loyal Advocate for Religious Liberty," *Desert Morning News*, May 27, 2012
- "O's Ugly 'Warning'—Bizarre Shot at Supreme Court," *The New York Post*, April 4, 2012
- "Democrats and Executive Overreach," *The Wall Street Journal*, January 10, 2012
- "Falling Short of Our Ideals," *The New York Times: Room for Debate*, December 22, 2011
- "Is Religion Special?" *Deseret News*, Sunday, November 20, 2011
- "Taking Religious Freedom Seriously," *First Things*, May 1990, reprinted in *Religious Liberty in the Supreme Court*, 1993
- "An Open Letter on Religious Freedom," *First Things*, No. 11, March 1991

Book Chapters:

- Co-author with P.E. Peterson, eds., "Introduction: Scalia on Education Law, Philosophy and Pedagogy" chapter, *Scalia's Constitution: Essays on Law and Education*, Cham, Switzerland: Palgrave Macmillan 1-7, 2018
- Co-author with P.E. Peterson, eds., "Scalia and the Secret History of School Choice" chapter, *Scalia's Constitution: Essays on Law and Education*, Cham, Switzerland: Palgrave Macmillan 69-83, 2018
- "Foreword," *A Debt Against the Living: An Introduction to Originalism*, Cambridge, UK: Cambridge University Press ix-xii, 2017
- "Constitutional Theory and Political Science" chapter, *The Upside-Down Constitution*, Balkinization, June 2013
- "The Anchor of Our Republic" chapter, *The Constitution—The Essential Users Guide*, Time Publishing 34-44, 2012
- "Establishment at the Founding" chapter, *No Establishment of Religion—America's Original Contribution to Religious Liberty*, Oxford University Press 45-69, 2012
- "Origins of the Fiscal Constitution" chapter, *Is U.S. Government Debt Different?*, FIC Press 45-53, 2012
- "Schism, Plague, and Last Rites in the French Quarter: The Strange Story Behind the Supreme Court's First Free Exercise Case" chapter, *First Amendment Stories*, New York, New York: Foundation Press, 2012
- "Religion and Free Speech," chapter, *Encyclopedia of the American Constitution*, Supp. II, 2000
- "Establishment Clause (update)," chapter, *Encyclopedia of the American Constitution*, Supp. II, 2000
- "Lamb's Chapel v. Center Moriches Union Free School District," chapter, *Encyclopedia of the American Constitution*, Supp. II, 2000
- "Glamis, Yes; Cawdor, Yes—but King of Scotland?" chapter, *Constitutional Stupidities, Constitutional Tragedies*, NYU Press, 1998
- "The Asymmetricality of Constitutional Discourse" chapter, 40 *NOMOS* 300, 1998