

## Barry P. McDonald

Professor of Law

J.D., *cum laude*, Northwestern University School of Law, 1988

Professor McDonald teaches courses in constitutional law, First Amendment law, comparative constitutional law and copyright law. He is a recognized expert on constitutional law and the U.S. Supreme Court, and is frequently interviewed or writes in such major media outlets as The New York Times, The CBS Evening News, CNN, Fox News, National Public Radio and The Los Angeles Times. He is also a recognized scholar in the area of constitutional law, and particularly First Amendment law. Since joining the Pepperdine faculty in 2000, he has published several articles and essays on the law governing freedom of expression and religion in such prominent journals as the *Emory Law Journal*, *Illinois Law Review*, *Northwestern University Law Review*, *Notre Dame Law Review*, *Ohio State Law Journal* and *Washington & Lee Law Review*. His current projects include a book on the U.S. Constitution entitled *Our Dangerous Written Constitution*.

Prior to joining the faculty, Professor McDonald worked for the U.S. Department of State, the law firm of Gibson, Dunn & Crutcher, and as general counsel to two different technology companies. In law school, Professor McDonald received the Order of the Coif, the Arlyn Miner Legal Writing Award, and was an associate editor of the *Northwestern Law Review*. Upon graduation he clerked for the Honorable James K. Logan of the U.S. Court of Appeals for the Tenth Circuit, and then served as a law clerk to Chief Justice William H. Rehnquist during the 1989-90 Term of the Supreme Court of the United States. He is currently a member of the State Bar of California, the American Bar Association, and the American Association of Law Schools (AALS). Professor McDonald served as the 2008 Chairperson of the Mass Communications Law Section of the AALS. He also serves on the Litigation Advisory Committee of the national board of the Presbyterian Church of the U.S.A.

### Select Professional Publications

#### Academic Scholarship

- McDonald, Barry P., *Democracy's Religion: Religious Liberty in the Rehnquist and Roberts Courts*, \_\_ ILL. L. REV. \_\_ (2016) (forthcoming).
- McDonald, Barry P., *Regulating Student Cyberspeech*, 77 MO. L. REV. 727 (2013).
- McDonald, Barry P., *Censorship and the Media: A Foreward*, 25 NOTRE DAME J.L. ETHICS & PUB.POL'Y 1 (2011) (symposium introduction).
- McDonald, Barry P., *A Reluctant Apology for Plessy: A Response to Akil Amar*, 39 PEPP. L. REV. 91 (2011) (symposium contribution).

- McDonald, Barry P., *The Emerging Oversimplifications of the Government Speech Doctrine: From Substantive Content to a "Jurisprudence of Labels,"* 2010 BYU L. REV. 2071 (2010).
- McDonald, Barry P., *Getting Beyond Religion as Science: "Unstifling" Worldview Formation in American Public Education,* 66 WASH. & LEE L. REV. 587 (2009).
- McDonald, Barry P., *Campaign Finance Regulation and the Marketplace of Emotions,* 36 PEPP. L. REV. 395 (2009) (symposium article)
- McDonald, Barry P., *Free Speech and Press in the Modern Age: Symposium Introduction,* 36 PEPP. L. REV. i (2009) (symposium edition introduction).
- McDonald, Barry P., *If Obscenity Were to Discriminate,* 103 NW. L. REV. 475 (2009); 103 NW. L. REV. COLLOQUY 72 (2008).
- McDonald, Barry P., *Speech and Distrust: Rethinking the Content Approach to Protecting the Freedom of Expression,* 81 NOTRE DAME L. REV. 1347 (2006).
- McDonald, Barry P., *Government Regulation or Other "Abridgements" of Scientific Research: The Proper Scope of Judicial Review Under the First Amendment,* 54 EMORY L.J. 979 (2005).
- McDonald, Barry P., *The First Amendment and the Free Flow of Information: Towards a Realistic Right to Gather Information in the Information Age,* 65 OHIO ST. L.J. 249 (2004).

#### Media Articles and Op-Ed Pieces

- Barry P. McDonald, *Eight Justices Are Enough,* THE NEW YORK TIMES, May 26, 2016.
- Barry P. McDonald & Douglas W. Kmiec, *Putting Law over Politics on Supreme Court,* POLITICO, July 10, 2012.
- Barry P. McDonald, *The Supremes: Conservative Consolidation,* THE CALIFORNIA LAWYER MAGAZINE, Sept. 1, 2011.

- McDonald, Barry P., *Solicited Contributions related to Same-Sex Marriage Litigation*, THE LOS ANGELES TIMES.COM—L.A. NOW, Dec. 6, 2010.
- McDonald, Barry P., *Listen to the Terminator*, THE LOS ANGELES TIMES, November 17, 2010.
- McDonald, Barry P., Commentary: *Why the First Amendment Does Not Bar the Tort Actions in the Funeral Protest Case*, NAT'L L.J., Nov. 2, 2010.
- McDonald, Barry P., *The Supremes: Selective Minimalism in the Roberts Court*, THE CALIFORNIA LAWYER MAGAZINE, Sept. 2010 at 13.
- McDonald, Barry P., *Counseling Terrorists*, THE LOS ANGELES AND SAN FRANCISCO DAILY JOURNAL, July 2, 2010 at 4.
- McDonald, Barry P., *Putting Congress Between a Rock and a Hard Place*, THE LOS ANGELES AND SAN FRANCISCO DAILY JOURNAL, April 30, 2010 at 5.
- McDonald, Barry P., *The First Amendment and Obscenity Laws*, LOS ANGELES TIMES.COM, Op-Ed Page Dust Up Debates, July 2008.

#### Select Professional Activities Over the Past Several Years

- April, 2016: Speaker at the Central District of California Judicial Conference on key Supreme Court cases in the 2015-16 Term.
- March, 2016: Speaker at the Pasadena Republican Club on the U.S. Supreme Court.
- February, 2016: Speaker at Federalist-American Constitution Society joint program on Justice Scalia's legacy.
- September, 2015: Commentator at Federalist Society program reviewing Supreme Court decisions from October Term 2014.
- September, 2015: Speaker at American Constitution Society program on Supreme Court decisionmaking.
- July, 2015: Speaker at SEALS conference on free expression philosophy and theory.
- July, 2015: Faculty mentor to Georgia State assistant professor Emily Suski on First Amendment piece she is authoring.
- July, 2015: Presentation on U.S. constitutional law at Straus Gateway Program for foreign students.
- February, 2015: Speaker at U. of Arizona Law School Rehnquist Center Conference on Religious Liberty in the Rehnquist and Roberts Courts.

- February, 2015: Commentator at Federalist Society program on the Second Amendment and gun rights.
- September, 2014: Speaker at Citrus College Constitution Day Forum on major Supreme Court decisions.
- July, 2014: Presentation on U.S. constitutional law at Straus Gateway Program for foreign students.
- July, 2013: Speaker at SEALS conference on presidential elections and the Constitution.
- July, 2013: Moderator of SEALS panel on constitutional theory and Supreme Court decisionmaking.
- July, 2013: Participant in West Publishing Co. Innovation Conference in Minneapolis.
- March, 2013: Speaker at Byrne Judicial Conference on the judicial nomination process.
- March, 2013: Commentator at Federalist Society program on Executive Action and the First Amendment.
- September, 2012: Speaker at University of Missouri Kansas City conference on student speech rights and the First Amendment.
- July, 2012: Speaker at SEALS conference on freedom of speech in the Internet age.
- July, 2012: Speaker at SEALS conference on the First Amendment and cyberbullying.
- April, 2012: Commentator at Federalist Society program on Supreme Court October Term 2011 decisions.
- March, 2012: Panel with Erwin Chemerinsky at Byrne Judicial Conference on Supreme Court review.
- February, 2012: Speaker at University of Missouri Law Review Symposium on Cyberbullying and the First Amendment
- February, 2012: Speaker at Nootbar Conference on Creationism, Darwin and Education
- September, 2011: Debate with UVA Professor Lillian BeVier on violent video games and the First Amendment at Federalist Society Program.
- August, 2011: Speaker at Florida Conference of Circuit Judges in Marco Island on review of October, 2010 Term of Supreme Court.
- July, 2011: Moderator of SEALS panel on the Supreme Court and Access to Justice
- April, 2011: Speaker at Pepperdine Law Review Symposium on 5 Worst Decisions of the U.S. Supreme Court
- February, 2011: Speaker at Ventura County Gold Coast Chapter of the Federalist Society program on U.S. Supreme Court Trends and Decisions
- October, 2010: Speaker at eCongress Conference at Los Angeles Public Library on the constitutionality of distance lawmaking

- August, 2010: Speaker at Santa Monica Rotary Club program on review of recent Supreme Court decisions
- May, 2010: Speaker at FRIENDS program on Supreme Court's terrorist speech decision
- April, 2010: Speaker at Federalist Society program featuring Don Ayer, former U.S. Deputy Attorney General
- March, 2010: Speaker at BYU Law Review Symposium on Government Speech
- March, 2010: Speaker at Ventura County Gold Coast Chapter of the Federalist Society program on Supreme Court campaign finance decisions
- February, 2010: Speaker at Pepperdine Law School program on Alternative Legal Careers
- February, 2009: Speaker at Pepperdine Law School Alumni Reunion Supreme Court Review
- January, 2009: Moderator of Nootbar Conference Panel on Religious Liberty in America
- November, 2008: The Electoral College: Its History, Current Operation and Proposals for Reform, address to the Westlakers civic organization.
- October, 2008: An Insider's View of the Supreme Court of the United States: How Our Constitutional Law is Made, address to the Westminster Presbyterian Church Men's Group.
- October, 2008: Regulating the Paparazzi: First Amendment Considerations, presentation to the second meeting of the L.A. County Regional Paparazzi Task Force.
- September, 2008: The Electoral College: Its History, Current Operation and Proposals for Reform, address to the Westminster Presbyterian Church Seniors Organization.
- August, 2008: First Amendment Constraints on Regulating Paparazzi, testimony provided to the first meeting of the L.A. County Regional Paparazzi Task Force.
- August, 2008: First Amendment and Obscenity Laws, week long debate (four essays) in Dust Up feature of Los Angeles Times op-ed section.
- April, 2008: Organizer and Speaker at Pepperdine Law Review Symposium on Free Speech in the Modern Age
- February, 2008: The Meaning of the Establishment Clause, presentation and debate with Prof. Patrick Garry hosted by the Chapman U. School of Law Federalist Society.
- January, 2007: Secrecy in the Name of Security: First Amendment Rights of Access to Government Information, presentation and panel discussion at the Mass Communications Law Section of the 2007 AALS Conference.