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New Book Charts Rise of Corporate Religious Liberty



UVA Law professor Micah Schwartzman's scholarship focuses on the philosophical foundations of corporate rights and religious freedoms.

How Americans think about religious liberty has changed dramatically in the past decade, the results of a culture war that continues to play out in the courts. A new collection of essays co-edited by University of Virginia School of Law professor [Micah Schwartzman](#) examines this evolution and the rise of the idea that corporations have a right to religious freedom.

"It's a major development in the law that religious freedom has become an issue surrounding not only individuals, but corporations and other kinds of organizations — I think it changes the nature of our public discussion," Schwartzman said. "It also connects debates about religious liberty with broader debates about the constitutional rights of corporations."

"The Rise of Corporate Religious Liberty," published by Oxford University Press and co-edited by Chad Flanders of St. Louis University School of Law and Zoë Robinson of DePaul University College of Law, gathers 22 essays from 26 authors.

"We have a diversity of views — there are lots of questions that arise when you move from an idea of religious freedom that's focused on individuals to an idea that's focused on groups, organizations and corporations, and the book is about that transition," Schwartzman said.

The book emerged from a conference at DePaul that took place following the 2012 Supreme Court decision *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, which said employees could not sue a religious organization for employment

discrimination. (The case was [argued by UVA Law professor Douglas Laycock](#).)

Then came *Hobby Lobby* in 2014, in which the Supreme Court said private, for-profit companies could claim a religious exemption from the Affordable Care Act's requirement that employers cover certain kinds of contraceptives. The book's scope quickly expanded.

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In April, the Supreme Court will hear *Zubik v. Burwell*, in which religious nonprofits are appealing the government's requirement that they file a form to request a religious exemption to the contraception mandate. The challengers argue that the accommodation is insufficient to protect their religious liberties.

"One question that emerges out of *Hobby Lobby* is how far does the government have to go in accommodating different kinds of organizations? ... What counts as a substantial burden on their religious practice?" Schwartzman said. "Another question is ... can the government show that its interests are sufficiently compelling, that its policy is the least-restrictive means of achieving those interests? These are very much the kinds of questions this book is about."

The featured authors, including several UVA Law professors, are leaders in the field of religious liberty.

"UVA has a strong presence in this book, partly because UVA has a strong presence in this field," Schwartzman said.

Schwartzman co-authored an essay with UVA Law professor [Richard Schragger](#), arguing that the nature of a group — whether it is considered a "person," a collection of individuals or a legal fiction— is largely irrelevant in deciding whether to assign rights to the group.

"We should ascribe rights to groups based on a broader assessment of the values that those groups serve and the interests of individuals within them, and should try to think about whether giving rights to groups [and] recognizing their ability to defend different kinds of values is important, and if it is, then the law has resources to make sense of assigning rights to them," he said.

UVA Law professor [Frederick Schauer](#) has a paper in the book comparing claims in *Hobby Lobby* and other religious exemption cases to arguments based on free speech doctrine. [Douglas Laycock](#), one of the nation's leading experts on religious freedom, contributed "The Campaign Against Religious Liberty,"

which focuses on religious accommodations and the culture wars after *Hobby Lobby*.

Though the nature of religious liberty has shifted with cases like *Hobby Lobby*, Schwartzman said it reflected a broader trend in the expansion of the rights of corporations, such as through cases like *Citizens United*. That 2010 decision said the First Amendment prohibited the government from restricting political spending by nonprofit corporations.

"Over the last 10 or so years, we've seen important changes in the way that corporations assert constitutional rights and the recognition of their rights by the courts, and this is part of that set of changes," Schwartzman said. "If you are concerned about the power of corporations, their reach and the rights assigned to them, then the issues in this book ought to matter to you."

Schwartzman is the Edward F. Howrey Professor of Law. He teaches constitutional law and topics related to religious liberty. He received his B.A. and J.D. from the University of Virginia and his D.Phil. from the University of Oxford.

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