

# Brigham Young University Education and Law Journal

---

Volume 2016 | Number 1

Article 1

---

Spring 3-20-2016

## Frontmatter

Follow this and additional works at: <https://digitalcommons.law.byu.edu/elj>



Part of the [Law Commons](#)

---

### Recommended Citation

*Frontmatter*, 2016 BYU Educ. & L.J. (2016).

Available at: <https://digitalcommons.law.byu.edu/elj/vol2016/iss1/1>

.

This Frontmatter is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Brigham Young University Education and Law Journal by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

**BRIGHAM YOUNG  
UNIVERSITY  
EDUCATION AND  
LAW JOURNAL**



**VOLUME 2016**

**NUMBER 1**

# BRIGHAM YOUNG UNIVERSITY EDUCATION AND LAW JOURNAL



**Volume 2016**

**Number 1**

**Brigham Young University Education and Law Journal** is published by the Brigham Young University Department of Educational Leadership and the J. Reuben Clark Law School, Provo, Utah 84602. All communications should be sent to the editorial offices at the J. Reuben Clark Law School.

Views expressed herein are to be attributed to their authors and not to the *Brigham Young University Education and Law Journal* nor to Brigham Young University, unless otherwise indicated.

SUBSCRIPTIONS: The *Brigham Young University Education and Law Journal* is published twice annually. The subscription rate is \$32 for one year, \$58 for two years. Periodicals postage paid at Provo, Utah, and at additional mailing office Pub. # 128170. Send address changes to:

Brigham Young University Education and Law Journal  
JRCB 471G  
Provo, Utah 84602

CITATION: 2016 BYU EDUC. & L.J. [page number]

ISSN: 1930-5273

ONLINE ISSN: 1930-5281

Copyright © Brigham Young University Education and Law Journal, 2016.

BRIGHAM YOUNG UNIVERSITY  
EDUCATION AND LAW JOURNAL

Volume 2016

Number 1

*Editor-in-Chief*

ADAM BALINSKI

*Executive Editor*

ASHLEY BERTOLDO

*Publications Editor*

ERIN ADAMS

*Note & Comment Editors*

STUART TAYLOR

STEPHANIE COTTON-BETTERIDGE

*Lead Articles Editors*

CASSIDEE FEINAUER

COURTNEY FEINAUER

TREVOR FUGATE

PERRIS NELSON

RYAN SLAUGH

*Managing Editor -*

*Publication*

JONI LAWRENCE

*Managing Editor -*

*Administration*

ZACHARY MELTON

*Solicitations Editor*

SHAUNTE RUIZ

*Submissions Editors*

CLARK CAMPBELL

ALLIE HALES

BRIAN SABEY

*Senior Editors*

SAMUEL GEORGE

ZACK JONES

ABBY MCKEON

JON MCPHERSON

T.C. TAYLOR

*Associate Editors*

JONATHAN BLUDORN

JOHN BROOKS

ANNA CARUSO

ADAM CHEVRIER

DONNY DAYTON

STEVE DEARING

CARA DUCHENE

BROOKE ELLIS

LAUREN FLORES

REBEKAH-ANNE GEBLER

KELSIE GODWIN

TYLER HUFF

ALISA LILLYWHITE

CHAUNTEL LOPEZ

JORDAN MCDOWELL

KATHERINE MCKEEN

HANNAH ROBERTS

*Faculty Advisor*

SCOTT E. FERRIN

*Dean Advisor*

DAVID H. MOORE

**BRIGHAM YOUNG UNIVERSITY  
EDUCATION AND LAW JOURNAL**

***National Board of  
Advisors***

CHARLES J. RUSSO, J.D.,  
ED.D.  
University of Dayton

RICHARD FOSSEY, J.D.,  
ED.D.  
University of North Texas

FRED HARTMEISTER, J.D.,  
ED.D.  
Texas Tech University

JAY HEUBERT, J.D., ED.D.  
Teachers College, Columbia

RALPH MAWDSLEY, J.D.,  
PH.D.  
Cleveland State University

JULIE F. MEAD, PH.D.  
University of Wisconsin,  
Madison

MARTHA MCCARTHY, PH.D.  
Indiana University, Bloomington  
Penn State University

PHILIP T. K. DANIEL, J.D., ED.D.  
Ohio State University

FRANK BROWN, PH.D.  
University of North Carolina,  
Chapel Hill

DOUG STEWART, PH.D.  
Queensland University of  
Technology, Founding Editor,  
Australia & New Zealand  
Journal of Law & Education

WILLIAM THRO, J.D.  
University of Kentucky

JULIE UNDERWOOD, J.D.,  
PH.D.  
Former Associate Executive  
Director & General Counsel,  
National School Boards  
Association

**BRIGHAM YOUNG UNIVERSITY**  
**J. REUBEN CLARK LAW SCHOOL FACULTY**

***Faculty***

- ANDERSON, CURTIS B. (2015), Associate Teaching Professor. B.A., 1991, J.D., 1994, Brigham Young University.
- ASAY, CLARK D. (2014), Associate Professor of Law. B.A., 2001, Brigham Young University; M.A., 2002, University of Cambridge; J.D., 2007, Stanford Law School.
- AUGUSTINE-ADAMS, KIF (1995), Charles E. Jones Professor of Law. B.A., 1988, Brigham Young University; J.D., 1992, Harvard Law School.
- BAIR, STEPHANIE PLAMONDON (2015), Associate Professor of Law. B.S., 2001, University of Prince Edward Island; Ph.D., 2008, University of Utah; J.D., 2012, Harvard Law School.
- COLLINGS, JUSTIN M. (2013), Associate Professor of Law. B.A., 2006, Brigham Young University; J.D., 2010, Ph.D., 2013, Yale University.
- DANIELS, BRIGHAM (2010), Associate Professor of Law. M.P.A., 2000, University of Utah; J.D., 2003, Stanford Law School; Ph.D., 2010, Duke University.
- DOXEY, GARY B. (2005), Associate Director of International Center for Law and Religion Studies. B.A., 1980, J.D., 1984, Brigham Young University; Ph.D., 1992, Cambridge University.
- DURHAM, W. COLE JR. (1976), Gates University Professor of Law and Director of International Center for Law and Religion Studies. B.A., 1972, J.D., 1975, Harvard University.
- FARMER, LARRY C. (1974), Marion G. Romney Professor of Law. B.S., 1968, University of Washington; Ph.D., 1975, Brigham Young University.
- FEE, JOHN E. (2000), Professor of Law. B.A., 1992, Brigham Young University; J.D., 1995, University of Chicago.
- FLEMING, J. CLIFTON JR. (1974), Ernest L. Wilkinson Chair and Professor of Law. B.S., 1964, Brigham Young University; J.D., 1967, George Washington University.
- GEDICKS, FREDERICK M. (1990), Guy Anderson Chair and Professor of Law. B.A., 1977, Brigham Young University; J.D., 1980, University of Southern California.
- GERDY, KRISTIN B. (1995), Teaching Professor and Director, Rex E. Lee Advocacy Program. B.A., 1992, J.D., 1995, Brigham Young University.
- GORDON, JAMES D. III (1984), University Assistant to the President for Planning and Assessment, and Marion B. and Rulon A. Earl Professor of Law. B.A., 1977, Brigham Young University; J.D., 1980, University of California, Berkeley.
- HERNANDEZ, CARL III (2001), Associate Teaching Professor. B.A., 1988, J.D./M.P.A., 1992, Brigham Young University.
- HOAGLAND, MARY H. (1994), Assistant Dean. B.A., 1978, Brigham Young University; M.A., 1982, San Diego State University; J.D., 1984, San Joaquin College of Law; Ph.D., 2007, Brigham Young University.
- HURT, A. CHRISTINE (2014), Rex J. and Maureen E. Rawlinson Professor of Law. B.A., 1990, Texas Tech University; J.D., 1993, University of Texas School of Law.
- JENNEJOHN, MATTHEW C. (2013), Associate Professor of Law. B.A., 2002, Brigham Young University; MSc, 2004, London School of Economics; J.D., 2007, Columbia University School of Law.
- JENSEN, ERIC TALBOT (2011), Associate Professor of Law. B.A., 1989, Brigham Young University; J.D., 1994, University of Notre Dame; LL.M., 2001, The Judge Advocate General's School; LL.M., 2006, Yale Law School.
- JONES, RONNELL ANDERSEN (2008), Associate Dean and Professor of Law. B.S., 1995, Utah State University; J.D., 2000, The Ohio State University.
- MOORE, DAVID H. (2008), Professor of Law. B.A., 1992, J.D., 1996, Brigham Young University.
- NIELSON, AARON L. (2013), Associate Professor of Law. B.A., 2003, University of Pennsylvania; LL.M. 2006, University of Cambridge; J.D., 2007, Harvard Law School.
- NÚÑEZ, D. CAROLINA (2007), Associate Professor of Law. B.A., 2001, J.D., 2004, Brigham Young University.
- PRESTON, CHERYL BAILEY (1989), Edwin M. Thomas Professor of Law. B.A., 1975, J.D., 1979, Brigham Young University.

RASBAND, JAMES R. (1995), Dean and Hugh W. Colton Professor of Law. B.A., 1986, Brigham Young University; J.D., 1989, Harvard Law School.

SCHARFFS, BRETT G. (1997), Associate Dean and Francis R. Kirkham Professor of Law. B.S.B.A., 1986, M.A., 1987, Georgetown University; B.Phil., 1989, Oxford University; J.D., 1992, Yale Law School.

SMITH, D. GORDON (2007), Glen L. Farr Professor of Law. B.S., 1986, Brigham Young University; J.D., 1990, University of Chicago Law School.

STAHELI, KORY D. (2007), Director, Law Library. B.A., 1984, J.D., 1987, M.L.I.S., 1991, Brigham Young University.

STANCIL, PAUL J. (2014), Professor of Law. B.A., 1993, University of Virginia; J.D., 1996, University of Virginia School of Law.

STEELE, MICHALYN (2011), Associate Professor of Law. B.A., 1992, M.A., 1994, Brigham Young University; J.D., 2001, Georgetown University Law Center.

SUN, LISA GROW (2008), Associate Professor of Law. B.S., 1994, University of Utah; J.D., 1997, Harvard Law School.

WARDLE, LYNN D. (1978), Bruce C. Hafen Professor of Law. B.A., 1971, Brigham Young University; J.D., 1974, Duke University.

WELCH, JOHN W. (1980), Robert K. Thomas University Professor of Law. B.A., 1970, M.A., 1970, Brigham Young University; J.D., 1975, Duke University.

WORTHEN, KEVIN J (1987), University President, and Hugh W. Colton Professor of Law. B.A., 1979, J.D., 1982, Brigham Young University.

# **J. REUBEN CLARK LAW SCHOOL FACULTY**

## ***Part-Time Faculty***

AFFLECK, ADAM S.  
AVERY, ROBERT  
BARLOW, MATTHEW  
BENSON, DEE V.  
BURDSAL, NATHAN  
CLARK, ELIZABETH  
CLEMES, KAREN  
COOK, BENJAMIN J.  
CUNDICK, TED D.  
DOMINGUEZ, DAVID  
DUTCHER, DAVID  
FALE, HUTCH  
FERRIN, SCOTT  
GIGGER, JOSHUA  
GLADE, LEEANN

GRIFFITH, SUSAN  
HOPKINS, STEVEN  
JENSEN, MARY  
KIMBALL, DALE A.  
LEAVITT, PETER  
LEE, THOMAS R.  
LEHNHOF, LANCE S.  
LEWIS, MATTHEY  
LINTON, MORRIS  
MATIS, GREG  
MCCLEVE, SHEILA K.  
MCCULLOUGH, LEE S.  
MOURITSEN, STEPHEN  
MURRAY, KEVIN R.  
NEELEMAN, STANLEY

NUFFER, DAVID  
OWEN, STANFORD B.  
PEAD, DUSTIN  
PETERSON, JANET  
PHILLIPS, GREGOTY  
SCHAERR, GENE  
TAYLOR, RYAN  
TENNEY, RYAN  
TIPPETT, ROBERT S.  
TODD, DAVID R.  
VAN WOERKOM, DANIEL  
WALKER, JEFFREY N.  
WARNER, PAUL M.  
WATERMAN, STEVEN  
WISE, JANE



# BRIGHAM YOUNG UNIVERSITY DEPARTMENT OF EDUCATIONAL LEADERSHIP AND FOUNDATIONS

## *Chair*

Sterling C. Hilton

## *Faculty*

- BOREN, DAVID MCKAY (2014), Assistant Clinical Professor. B.S., 2003, M.S., 2006, Ph.D., 2010, Brigham Young University.
- FERRIN, SCOTT E. (1997), Associate Professor. B.A., 1980, J.D., 1984, Brigham Young University; M.Ed, 1989, Ed.D, 1996, Harvard University.
- GEO-JAJA, MACLEANS A. (2005), Professor. B.S., 1976, Morehead State University; M.S., 1980, Indiana State University; Ph.D., 1986, University of Utah.
- HALLAM, PAMELA R. (2006), Associate Professor. B.A., 1979, M.Ed., 1990, Brigham Young University; Ed.D., 2006, University of Utah.
- HILTON, STERLING C. (2003), Associate Professor. & Chair, B.A., 1987, M.A./M.S., 1990, Brigham Young University; Ph.D., 1996, John Hopkins University
- HITE, JULIE M. (2006), Professor. B.S., 1980, M.O.B., 1995, Brigham Young University; Ph.D., 1999, University of Utah.
- HITE, STEVEN J. (2003), Professor. B.S., 1980, M.S., 1982, Brigham Young University; Ed.D., 1985, Harvard University.
- MAYES, CLIFFORD T. (1996), Professor. B.A., 1977, University of Arizona; M.A., 1979, University of Oregon; M.A., 1981, University of Arizona; Psy.D., 1992, Southern California University; Ph.D., 1997, University of Utah.
- PRATT, MICHAEL S. (2012), Visiting Professor. B.S., 1975, University of Utah; M.Ed., 1979, Ed.S., 1983, Ed.D., 1989, Brigham Young University;
- RANDALL, E. VANCE (2003), Professor. B.S., 1975, M.Ed., 1978, Brigham Young University; Ph.D., 1989, Cornell University.
- RICHARDS, A. LEGRAND (1996), Associate Professor. B.S., 1975, Brigham Young University; M.Ed., 1976, Harvard University; Ph.D., 1982, Brigham Young University.

## *Part-Time Faculty*

POULSEN, DENIS P.  
SORENSEN, CHRIS

## INTRODUCTION

The *Brigham Young University Education and Law Journal* is published twice yearly through a cooperative effort of the J. Reuben Clark Law School and the Brigham Young University Department of Educational Leadership and Foundations. It provides a forum for scholarly works concerning legal topics within the field of education. The *Journal* primarily focuses on discussions of legal issues faced in higher education and by K-12 school administrators, teachers, and their legal advisors.

As one of a limited number of arenas for scholarly discussion in the field of education law, the *Journal* is always in the process of considering papers to publish. Papers dealing with any area of education law are considered by the *Journal* staff for publication. An abstract and the author's resume or vita should be included with each submission.

To expedite the editing and publication process, papers should be submitted electronically, in Microsoft Word version 97 or newer, to the e-mail address below. Subsequent communications will be sent to authors by e-mail whenever possible. When e-mail is unavailable, please mail a hard copy and a computer diskette. The *BYU Education and Law Journal* reserves the right to reject paper submissions for any reason.

To submit papers, subscribe to the *Journal*, obtain past issues, or make comments, please contact the *Journal* at:

BYU Education and Law Journal  
Brigham Young University  
471G JRCB Provo,  
UT 84602 (801)  
422-3671  
lawed@law.byu.edu

**BRIGHAM YOUNG UNIVERSITY  
EDUCATION AND LAW JOURNAL**

**Volume 2016**

**Number 1**

***Articles***

Zero Tolerance, Threats of Harm, and the  
Imaginary Gun: “Good Intentions Run Amuck”  
*Todd A. DeMitchell, Ed.D., M.A., M.A.T.,  
& Elyse Hambacher, Ph.D., M.A.* ..... 1

Is it Really a Choice? How Charter Schools  
Without Choice May Result in Students  
Without a Free Appropriate Public Education  
*Erin Hankins Diaz, J.D., M.Ed.* ..... 25

***Student Notes & Comments***

Between a Tomahawk and a Hard Place: Indian  
Mascots and the NCAA  
*Stephanie Jade Bollinger* ..... 73

Off the Constitutional Map: Breaking the  
Endless Cycle of School Finance Litigation  
*Madeline Davis* ..... 117

Codifying Commonsense: Religious Viewpoint  
Antidiscrimination Acts and the Free Speech  
Rights they Protect  
*Brandon Harvard Riches* ..... 161

Utilizing Prosecutorial Discretion to Reduce the  
Number of Juveniles with Disabilities in the  
Juvenile Justice System  
*Mary Willis* ..... 191