



**TITLE:** First Amendment Issues In Public Education Settings

**SESSION DATE:** October 8, 2021

**SESSION TIME:** 8:45 AM – 10:00 AM

**SESSION DESCRIPTION:**

The issue of school speech or curricular speech has taken on new prominence with recent actions by state legislatures to restrict teaching of certain topics and litigation stemming from a public university professor's refusal to use a transgender student's preferred pronoun. A panel of experts and educators will explore the First Amendment issues, including whether public educational institutions can compel or restrict academic speech.

## **SPEAKERS:**



### ***Erwin Chemerinsky – Dean, Berkeley Law School***

Erwin Chemerinsky became the 13<sup>th</sup> Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law.

Prior to assuming this position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law, with a joint appointment in Political Science. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science. He also has taught at DePaul College of Law and UCLA Law School.

He is the author of twelve books, including leading casebooks and treatises about constitutional law, criminal procedure, and federal jurisdiction. His most recent books are *The Religion Clauses: The Case for Separating Church and State* (with Howard Gillman) (Oxford University Press 2020), and *We the People: A Progressive Reading of the Constitution for the Twenty-First Century* (Picador Macmillan 2018).

He also is the author of more than 250 law review articles. He is a contributing writer for the Opinion section of the Los Angeles Times, and writes regular columns for the Sacramento Bee, the ABA Journal and the Daily Journal, and frequent op-eds in newspapers across the country. He frequently argues appellate cases, including in the United States Supreme Court.

In 2016, he was named a fellow of the American Academy of Arts and Sciences. In 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States.

**Education:** B.S., Northwestern University (1975); J.D., Harvard Law School (1978)



### ***Braden Boucek - Director of Litigation, Southeastern Legal Foundation***

Braden Boucek serves as the Director of Litigation for Southeastern Legal Foundation.

Braden is a seasoned constitutional litigator and is proud to have spent over two decades fighting for liberty and the rule of law.

In his role as Director of Litigation, Braden manages litigation and advises on policy for Southeastern Legal Foundation. Prior to joining SLF in 2021, Braden was the Vice President for Legal Affairs at a state-based public interest law firm and policy center. For nearly 14 years before joining the freedom-based law movement, Braden served as a state and federal prosecutor in the Nashville and Memphis areas. While serving at the Justice Department, he was singled out for special recognition on multiple occasions. Braden has successfully litigated jury trials

at both the state and federal level and argued dozens of cases before state and federal appellate courts. He received his undergraduate degree from the University of Richmond and his law degree from Florida State University College of Law.

Both in and out of the courtroom, Braden works to promote individual liberty, the rule of law, and accountability in government. He regularly testifies before state legislatures, has drafted model legislation, and publishes legal scholarship. Braden is a recognized constitutional scholar, frequent speaker, commentator, and published author. His work and that of Southeastern Legal Foundation is regularly covered by national media and you will frequently hear or see him on the radio, podcasts, and television.

Braden is an active member of the Federalist Society where he serves as an expert on the Federalist Society's Regulatory Transparency Project State and local Working Group. He is also an active member of his community and church. He lives in the Nashville area with his wife and two children.



***Matthew Hawn – Teacher, Sullivan County, Tennessee***

Matthew Hawn graduated from Tennessee Tech University in 2001 with a B.S. in Finance and a minor in Economics. He continued his education at Tech, pursuing a degree in Education with a focus in History. Matthew moved back to his hometown, Kingsport, TN in 2004 and began working at Sullivan Central High School in 2005. For 16 years, Matthew has taught Economics, World History, Contemporary Issues, and Personal Finance and coached baseball, softball, and football. In 2012 he graduated from Lincoln

Memorial University earning an Education Specialist degree with a focus in school leadership. Matthew lives with his dog Marloh and enjoys introducing Bob Marley and the Beatles to his 4 year old niece, Mae.



***Roger Severino – Senior Fellow, Ethics and Public Policy Center***

Roger Severino is a Senior Fellow at the Ethics and Public Policy Center, where he directs EPPC's HHS Accountability Project. He is also at work on a book on how conservatives can harness the power of the administrative state for conservative ends long sought by the American people. Mr. Severino is a national authority on civil rights, conscience and religious freedom, the administrative state, and information

privacy, particularly as applied to health-care law and policy.

Before joining EPPC, Mr. Severino was the Director of the Office for Civil Rights at the U.S. Department of Health and Human Services (OCR), where he led a team of over 250 staff enforcing our nation's civil rights, conscience and religious freedom, and health information privacy laws. He served from 2017 to 2021 and was the longest serving OCR Director of the past three decades.

Prior to joining HHS, Mr. Severino served as Director of the DeVos Center for Religion and Civil Society at the Heritage Foundation for two years, advocating for life, family, and religious-freedom policies. Before that, he was a trial attorney for seven years in the Department of Justice's Civil Rights Division where he enforced the Fair Housing Act, the Religious Land Use and Institutionalized Persons Act, and Titles II and VI of the Civil Rights Act of 1964. Mr. Severino started his legal career at the Becket Fund for Religious Liberty, where he was Chief Operations Officer and Legal Counsel and defended the rights of people of all faiths under the First Amendment, RLUIPA, RFRA, and international law.

Mr. Severino has been profiled in *The New York Times*, *The Atlantic*, *The Wall Street Journal*, and *The Hill* and has appeared on Fox News, CNN, MSNBC, NPR, and PBS, among others.

Mr. Severino holds a J.D. from Harvard Law School, a master's degree in public policy, with highest distinction, from Carnegie Mellon University, and a bachelor's degree in business from the University of Southern California, where he was a National Merit Scholar. He is a presidentially appointed Council member of the [Administrative Conference of the United States](#) and a member of the District of Columbia and the Commonwealth of Virginia bars.

As OCR Director, Mr. Severino founded the federal government's first Division dedicated exclusively to conscience and religious freedom compliance and enforcement. He enforced the Weldon Amendment for the first time against a state (California) after it coerced families and religious organizations into paying for abortion insurance coverage, leading to a \$200 million federal funding disallowance. He also enforced laws protecting pro-life pregnancy resource centers from discrimination by states hostile to their message and enforced laws prohibiting forced participation in abortions by medical professionals.

With respect to civil rights, Mr. Severino protected older persons and people with disabilities, including infants born prematurely, from being denied life-saving care due to discriminatory "quality of life" judgments, especially during the COVID-19 pandemic. He also achieved a landmark sexual harassment resolution with Michigan State University in the wake of the Larry Nassar sexual assault scandal and protected the rights of non-English speakers to have equal access to health and human services.

In the area of health privacy, he secured the largest HIPAA monetary settlement in history and achieved the largest number of enforcement resolutions both in a single year and across four years. He also facilitated the transformational use of Skype, Zoom, and Facetime for delivery of telehealth during the COVID-19 pandemic and beyond.

His regulatory reform activities resulted in a comprehensive conscience protection regulation and proposed a life-affirming disability rights regulation. He achieved regulatory savings of \$3.6 billion in health care industry costs over five years and identified and proposed an additional \$3.2 billion in cost savings from the repeal of ineffective and unnecessary regulatory burdens.

Mr. Severino is also a Spanish speaker who teaches salsa and swing dance in his spare time.



***Brandon Tucker - Policy Director, American Civil Liberties Union of Tennessee***

Brandon Tucker serves as Policy Director for the American Civil Liberties Union of Tennessee, leading the organization's policy advocacy work. Before joining the ACLU-TN team, Brandon worked as a state advocacy strategist with the national ACLU, focusing on policing and capital punishment. Previously, Tucker served as political coordinator for the United Food & Commercial Workers International Union in Washington, D.C., managing issue, organizing and electoral campaigns in multiple states, and lobbying on behalf of members' interests. Tucker has also held political and field leadership roles for numerous political campaigns. He is a graduate of Fisk University.

**INTRODUCERS/FACILITATORS:**



***Michael Abelow, Esq. – Sherrard Roe Voight Harbison***

Mr. Abelow represents clients in complex [commercial litigation](#) and bankruptcy, including contract claims, business torts, loan restructuring, lender liability, and guaranty disputes. Prior to coming to the firm, Mike served as a litigator in the Federal Trade Commission's Bureau of Consumer Protection in Washington, D.C. Prior to that, he represented clients in complex commercial litigation, [bankruptcy](#), insurance coverage, and government contract disputes at Heller Ehrman, LLP and Crowell & Moring, LLP in Washington, D.C.

Mike graduated *summa cum laude* from Washington & Lee University School of Law in 2000, where he was a member of the Law Review.

After graduation, Mike was a law clerk for the Honorable E. A. Van Graafeiland of the United States Court of Appeals for the Second Circuit in New York.

Mr. Abelow's representative engagements include:

- Bankruptcy counsel for buyer of assets at § 363 sale; successfully moved to enforce Sale Order against Debtor and obtained Court Order permitting auction of assets.
- Lead trial counsel on behalf of lender for borrower's failure to obtain life insurance to secure the debt; obtained summary judgment on liability and prevailed at trial on damages.
- Lead trial counsel on multi-million dollar lender liability claim.
- Lead trial counsel in multi-million dollar breach of fiduciary duty claim; successfully settled case after trial.
- Lead counsel for secured creditor in Chapter 11 bankruptcy. Deposed Plaintiff's interest rate and feasibility expert and organized defense group's engagement of interest rate and feasibility expert.
- Obtained summary judgment against multi-million dollar claim for supposed engineering improvements to jointly-owned property.

Mike has taught continuing legal education courses on drafting a commercial law complaint, remedies to obtain control of defendants' property before a final judgment, and litigation budgeting.

Mike is active in the community and legal community. In the community he serves on the board of the Nashville Urban Debate League, a non-profit that brings the proven academic benefits of debate to schools and students who otherwise could not participate in this activity. He also serves as Vice President of the Seven Hills Swim and Tennis Club.

In the legal community, he serves on the boards of the Nashville Bar Association and the Mid-South Commercial Law Institute. He was previously chair of the board of the Tennessee Justice Center and currently chairs its nominating committee. Mike is a past recipient of the Tennessee Bar Association's Harris Gilbert Pro Bono Volunteer of the Year Award for his work on the *Crabtree* case, helping people with disabilities stay in their homes and communities and out of institutions.

Mike and his wife Cynthia live in Nashville and have four children. In his free time, Mike is an avid squash and tennis player, and enjoys playing board games.



***Tricia Herzfeld, Esq. – Branstetter, Stranch & Jennings, PLLC***

Tricia Herzfeld is a partner at Branstetter, Stranch & Jennings, in Nashville, TN. She has extensive experience in handling complex litigation, along with numerous, high-profile civil rights cases in state and federal courts in the areas of sexual assault, harassment and discrimination, free speech, freedom of religion, equal protection, immigrants' rights and racial profiling. Previously, Tricia was the legal director of the American Civil Liberties Union in Tennessee. She also serves on the Davidson County Election Commission.

**PRODUCERS:**

***Michael Abelow***

***Tricia Herzfeld***