FOREWORD

It is with considerable pride that I write these lines celebrating the 35th anniversary of the *Creighton Law Review*. The pride, however, is neither personal nor proprietary. It is rather an institutional pride for a job well done by (more than) a generation of contributors to these pages—students, faculty, and legal practitioners. It is an institutional pride that comes when Creighton, as a nationally ranked comprehensive university, counts among its constituent faculties, the School of Law.

I started my Creighton days as a political science professor and it is with a bit of nostalgia and considerable gratitude that I write this Foreword. Class discussion often addressed the normative issues related to "good" governance. Constitutionalism was often the link to good governance and as such constitutional analysis occupied the thoughts of many scholars. Indeed, Aristotle scrutinized over 158 Constitutions in his search of "good" government. It seemed in the safe confines of the classroom that theory was often remotely connected to practice. But, the horrific and painful events of 9/11 remind us all that issues of "good" governance are of exceptional importance. This edition of the *Creighton Law Review* offers a timely and cogent review of the constitutional issues related to "religion and the law."

Constitutionalism is the foundation of American government. The formal expression of the details of governance between the people and the government is more than a formality, it is the basis of our sustained respect of the rule of law. While electoral politics seem to manifest the working elements of our representative democracy, constitutional values are given form by the judiciary. The judiciary often serves as the safety valve for citizens, particularly the minority. Of course the message varies as the judicial actors settle into activist or restrained roles. With respect to religion, Chief Justice Rehnquist and others have long raised concerns over the "wall of separation" and that states are not afforded enough influence in determining issues of religion. Other judicial actors maintain that the separation is needed to protect citizens from the majority dictates. This edition of the *Creighton Law Review* provides citizens with a meaningful assessment of the ever-unfolding relation between government and religion.

I urge the reader to carefully assess the tensions between majority and minority rights. It is increasingly important that our constitutional principles embrace tolerance rather than dogma. This *Creighton Law Review* should serve as a catalyst for discussion and ultimately "good" law making. This review analyzes cases and issues

ranging from religion and copyright law to religion's effect on sex education. Let me pick one discussed case, *Good News Club v. Milford Central School*, for the sake of example.

Justice Clarence Thomas, writing for the majority in *Good News Club v. Milford Central School*, captured the restrained jurisprudence when he wrote: "We decline to employ Establishment Clause jurisprudence using a modified heckler's veto, in which a group's religious activity can be proscribed on the basis of what the youngest members of the audience might misperceive." The holding in this case allows for religious groups to utilize public school facilities during after hours. Is Justice Thomas encouraging governmental support of religion while belittling the so-called heckler? Or, is he protecting religion from governmental hostilities? Let the debate begin and let the debate bring about "good" constitutionalism.

I congratulate the authors, editors, and the Creighton Law School community for their fine work on this most important topic, "religion and the law." No doubt this edition will provide enduring lessons as we continue to strive for "good" constitutionalism.

Again, thank you for the honor of participating in the *Creighton Law Review*'s 35th anniversary. Congratulations on a job well done. I, like your readers, look forward to many more rewarding years.

Rev. John P. Schlegel, S.J.
President