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Current Position: Kenan Professor of Law
University of North Carolina
Chapel Hill, NC

Areas of teaching and scholarship include civil procedure, constitutional law, conflict of laws, federal jurisdiction, first amendment, law of the presidency, law and the political process, legislation, mass media law, religion and the law, and remedies.

**Teaching
Experience:**

Visiting Professor, Boston University School of Law,
2012-2013.

Visiting Professor George Washington University Law School,
2009-2010.

Visiting Professor, Boston University School of Law,
Spring 2004.

Galen J. Raush Professor of Law, Case Western University
School of Law, 1985-1999

Visiting Professor, Northwestern University Law School,
1998-1999, 1993-1994.

Distinguished Visiting Professor, DePaul University, Fall
1990.

Visiting Professor, University of Connecticut, Spring
1988.

Visiting Associate Professor of Law, College of William
and Mary, Marshall-Wythe School of Law, 1984-1985.

Associate and Assistant Professor of Law,
DePaul University, College of Law, 1981-1985.

**Government
Experience:**

Solicitor General, State of Ohio, Columbus, Ohio
2007-2008

Deputy Counsel to the President and Deputy Assistant to the President, The White House, Washington, D.C.
1999-2001

Associate Counsel to the President, The White House, Washington, D.C.
1997-1998

Special Advisor to the Attorney General, United States Department of Justice
1993-1994

Special Assistant Attorney General, State of Minnesota
Office of the Attorney General, St. Paul Minnesota
1977-1981

**Legal
Education:**

J.D. University of Chicago,
University of Pennsylvania,

**Undergraduate
Education:**

B.A. University of Pennsylvania,
History and Religious Thought

Casebook:

FEDERAL COURTS
West Publishing (3rd ed.2015),
(with Wells and Nichol)

Second Edition (2010)
(with Wells, Yackle, and Nichol)

First Edition (2007)
(with Wells and Yackle)

Publications:

Conscientious Objection to War and Third-Party Burdens,
106 Ky. L. J. 685 (2018)

Extricating the Religious Exemption Debate from the Culture Wars,
41Harv. J. L & Pub. Pol. 67 (2018)

The Limits on Congress's Power To Do Nothing,
93 Ind. L. J 159 (2018)

The Constitutionality of School Prayer: Or Why Engel May Have Had It Right All Along,
46 Cap. L. J 339 (2018) (Sullivan Lecture)

State Standing to Constrain the President,
21 Chap. L. Rev. 83 (2018) (with Hessick)

Bad Statutes Make Bad Law: Burwell v. Hobby Lobby,
2014 Sup. Ct. Rev. 71

Warning: Self-Help and the Presidency,
124 Yale Online L. J.F 95 (2014)

***Actually We Should Wait: Evaluating the Obama Administration's
Commitment to Unilateral Executive-Branch Action,***
2014 Utah L. Rev. 773

***The Constitutionality of Campaign Finance Regulation: Should
Differences in a State's Political History and Culture Matter?***
74 Mont. L. Rev. 79 (2013)

***Abstention, Separation of Powers, and Recasting the Meaning of
Judicial Restraint,***
107 Nw. L. Rev. 881 (2013)

***Lessons From the Nineteenth Century Controversies Over Bible
Reading and Aid to Religious Schools,***
49 Tulsa, L. Rev. 457 (2013)

***Not a Winn-Win: Misconstruing Standing and the Establishment
Clause,***
2011 Sup. Ct. Rev. 215 (with Nichol)

National Health Care and American Constitutional Culture,
35 Harv. J. L & Pub. Pol. 131 (2012).

***Progressive Constitutionalism, Originalism, and the Significance of
Landmark Decisions in Evaluating Constitutional Theory,***
72 Ohio St. L. J. 1251 (2011).

***Smith, Ballard, and the Religious Inquiry Exception to the Criminal
Law,***
44 Texas Tech L. Rev. 239 (2011).

***Smith, Christian Legal Society, and Speech Based Claims for
Religious Exemptions from Neutral Laws of General Applicability,***
32 Cardozo L. Rev. 1937 (2011)

***Judicial Takings, Judicial Speech, and Doctrinal Acceptance of the
Model of the Judge as Political Actor,***
6 Duke J. C.L & P.P 1 (2011)

***Why the Assertion of a "Nationalist" Presidency Does Not Support
Claims for Expansive Presidential Power,***

12 U. Pa. J. Con. L. 549 (2010)

Progressives, the Religion Clauses, and the Limits of Secularism in THE CONSTITUTION IN 2020 (Balkin and Siegel eds (2009)).

The Continuing Search for a Meaningful Model of Judicial Rankings and Why It (Unfortunately) Matters,
58 Duke L. J. 1645 (2009) (with Baker and Feibelman)

Justices as Economic Fixers: A Response to A Macrotheory of the Court,
58 Duke L. J. 1627 (2009)(with Baker and Feibelman)

Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters,
88 B.U. L. Rev. 505 (2008)

The Battle Over State Immunity in THE REHNQUIST LEGACY (Bradley ed. 2006)

Break Up the Presidency?: Governors, State Attorneys General, and Lessons from the Divided Executive,
115 Yale L. J. 2446 (2006)

The Constitutional Law of Presidential Transitions,
84 N.C.L. Rev. (2006) (with Beerman)

Constitutional Coherence and the Legal Structures of American Churches in RELIGIOUS ORGANIZATIONS IN THE UNITED STATES (Serritella et al. eds. 2006)

The Judicial Nominations Wars,
39 Rich. L. Rev. 819 (2005)

The Limits on Congress's Authority to Investigate the President,
2004 U. Ill. L. Rev. 781

False Campaign Speech and the First Amendment,
153 U. Pa. L. Rev. 285 (2004)

Separation, Neutrality, and Clergy Liability for Sexual Misconduct,
2004 B.Y.U. L. Rev. 1921

Constitutional Law as Political Spoils,
26 Cardozo L. Rev. 525 (2004)

Be Careful What You Wish For: The Problems With Using Empirical Rankings To Select Supreme Court Justices,

78 S. Cal. L. Rev. 119 (2004)

The Empty Promise of Compassionate Conservatism, A Reply to Judge Wilkinson,

90 Va. L. Rev. 355 (2004).

The Limits of Secularism: Public Religious Expression in Moments of National Crisis and Tragedy,

78 Notre Dame. L. Rev. 11 (2002).

Remembering the Values of Separatism and State Funding of Religious Organizations,

18 J. L. & Pol. 479 (2002).

Conservatives and the Seven Sins of Judicial Activism,

73 Col. L. Rev. 1217 (2002).

The Supreme Court, Bush v Gore, and Rough Justice,

29 F.S.U. L. Rev. 787 (2001).

The Culture of Belief and the Politics of Religion,

63 Law & Contemp. Probs. 453 (2000).

Understanding Alden,

31 Rut. L. J. 803 (2000).

The Last Best Chance for Campaign Finance Reform,

94 Nw. U. L. Rev. 335 (2000).

State Immunity, Political Accountability, and Alden v. Maine,

75 Notre Dame L. Rev. 1069 (2000) (with Cowart).

What Is the Matter With Equality?: An Assessment of the Equal Treatment of Religion and Non-religion in First Amendment Jurisprudence,

75 Ind. L. J. 193 (2000).

The School Prayer Decisions,

16 Const. Comm. 535 (1999).

American Political Culture and the Failures of Process Federalism,

22 Harv. J. L & Pub. Pol. 139 (1998).

The Limits of An Establishment Clause "Restatement:" A Response to Professor Sedler,

43 Wayne L. Rev. 1465 (1997).

Religion as Ideas: Religion as Identity,
7 J. Contemp. Legal Issues 385 (1996).

In Defense of the Search for Truth as a First Amendment Justification,
30 Ga. L. Rev. 1 (1995).

Federalization: A Critical Overview,
44 DePaul L. Rev. 719 (1995).

***The Religious Freedom Restoration Act: Establishment,
Equal Protection and Free Speech Concerns,***
56 Montana Law Rev. 227 (1995).

***The Supreme Court, The First Amendment, and Bad
Journalism,***
1994 S. Ct. Rev. 169 (with Gilles).

Free Speech and the Problem of Democracy,
89 Nw. U. L. Rev. 191 (1994).

Truth and the Religion Clauses,
25 DePaul L. Rev. 243 (1994) (DePaul Center for
Church-State Studies, Tenth Annual Lecture)

The Other Side of Religion,
44 Hastings L.J. 843 (1993).

The Inequality of Anti-establishment,
1993 B.Y.U. L. Rev. 63 (1993).

***Is the Constitutional Concern with Religious
Involvement in the Public Square Hostility?,***
42 DePaul L. Rev. 305 (1992).

In Defense of Smith and Free Exercise Revisionism,
58 U. Chi. L. Rev. 308 (1991).

***The Concept of Offensiveness in Establishment and Free
Exercise Jurisprudence,***
66 Ind. L.J. 351 (1991).

Exchange on the Eleventh Amendment,
57 U. Chi. L. Rev. 123 (1990).

Introduction: Federal Jurisdiction in Flux,
22 Conn. L. Rev. 615 (1990).

The Eleventh Amendment, Process Federalism and the

Clear Statement Rule,
39 DePaul L. Rev. 345 (1990).

The Case Against the Constitutionally Compelled Free Exercise Exemption,
40 Case W. Res. L. Rev. 357 (1989-1990).
Reprinted in 7 J. Law & Rel. 363 (1989).

Towards a Nonunifying Theory of Unconstitutional Conditions: The Example of the Religion Clauses,
26 San Diego L. Rev. 243 (1989).

The Diversity Theory of the Eleventh Amendment: A Critical Evaluation,
102 Harv. L. Rev. 1372 (1989).

The Dilution of the First Amendment and the Equality of Ideas,
38 Case W. Res. L. Rev. 566 (1988).

Discrimination and the Right of Association,
81 Nw. U.L. Rev. 68 (1986).

The Supreme Court's Extraordinary Power To Grant Certiorari Before Judgment in the Court of Appeals,
1986 S. Ct. Rev. 259 (1986) (with Lindgren).

Regulating Religious Organizations Under the Establishment Clause,
47 Ohio St. L.J. 293 (1986) (with Blomgren).

"We Know It When We See It": The Supreme Court and Establishment,
59 S. Cal. L. Rev. 495 (1986).

An Advance in Tradition,
53 U. Chi. L. Rev. 1508 (1986).

Unprecedented Analysis and Original Intent,
27 Wm. & Mary L. Rev. 925 (1986).

Introduction, (Religion Clause Symposium)
18 Conn. L. Rev. 679 (1986).

Rethinking "Rethinking State Action",
80 Nw. U. L. Rev. 401 (1985).

The "Facts" of Federal Subject Matter Jurisdiction,
35 DePaul L. Rev. 23 (1985).

Brown v. Socialist Workers' Party: Inequality as a Constitutional Command of the First Amendment,
1983 S. Ct. Rev. 583 (1983) (with Stone).

Solving the Free Exercise Dilemma: Free Exercise as Expression,
67 Minn. L. Rev. 545 (1983).

Establishment Clause Standing: The Not Very Revolutionary Decision at Valley Forge,
11 Hofstra L. Rev. 63 (1982).

Village of Schaumburg v. Citizens for a Better Environment and Religious Solicitation: Freedom of Speech and Freedom of Religion Converge,
13 Loy. (L.A.) L. Rev. 953 (1980).

Miscellaneous Publications:

Does the First Amendment Prevent or Allow FEMA to Provide Disaster Aid to Churches?, 133 Public Health Reports 119 (2018)

Book Review: Scalia: A Court of One, 131 Pol. Sci. Q 632 (2016).

Book Review: Take Up Your Pen: Unilateral Presidential Directives in American Politics, 129 Pol. Sci. Q 501 (2014).

The Framers' Constitution, 21 DEMOCRACY 61 (2011) (with Stone)

Contributing Editor (Law), Simon and Schuster, **WEBSTER'S NEW WORLD DICTIONARY**" (4th ed. 1999 and 3d ed. 1988).

Lectures and Conferences:

Frequent speaker on constitutional law topics at conferences, symposia, and academic workshops.