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ACADEMIC EMPLOYMENT

- July 2003 to present **Rufus King Professor of Constitutional Law** (Full '05-13; Assoc. 03-05): **Cincinnati, OH**
College of Law, University of Cincinnati. Awarded tenure effective September 2005. *Teaching Areas* include constitutional law I & II, legislation & statutory interpretation, conflicts, federal courts, and criminal law. Awarded Goldman Prize for Teaching Excellence in 2005, 2007, 2008, 2013 & 2015. *Research areas* include constitutional law, American constitutional and legal history, federal courts, and legislative process. *Service* on the faculty Appointments (Chair); Library Director Search; Academic Policy; Reappointment, Promotion & Tenure (elected; Chair); Decanal Search (elected); Decanal Review (elected); and the Faculty Advisory Committee (elected).
- Dec. 1999 to June 2003 **Assistant & Associate Professor:** The William S. Boyd School of Law, **Las Vegas, NV**
University of Nevada, Las Vegas. *Course taught:* federal courts, legislative process & statutory interpretation, criminal law, and conflicts. Law Professor of the Year, selected by student-body vote to receive award for “outstanding instruction” during the 2001-02 academic year. *Service* on the faculty Curriculum, Promotion & Tenure, Dean’s Advisory, Library Director Search, and Academic Enrichment Committees.

SCHOLARLY PUBLICATIONS

- Book “POWERS RESERVED FOR THE PEOPLE AND THE STATES”: A HISTORY OF NINTH AND TENTH AMENDMENTS (Greenwood Press 2006) (with Thomas B. McAfee and Jay S. Bybee) (volume in Praeger Series of Reference Guides to the United States Constitution).
- Articles & Essays *How the Prohibition on “Under-Ruling” Distorts the Judicial Function (And What to do About it)*, 45 PEPPERDINE L. REV. ____ (forthcoming 2018) (with Kimberly Breedon).
- Constitutional Newspeak: Learning to Love the Affordable Care Act Decision*, 39 NOTRE DAME J. OF LEG. 15 (2013).
- Constitutional Forbearance*, 46 U. RICHMOND L. REV. 695 (2012).
- Nigro v. United States: The Most Disingenuous Supreme Court Opinion, Ever*, 12 NEV. L.J. 650 (2012).
- Foreign Law as Legislative Fact in Constitutional Cases*, 2011 BYU L. REV. 1005.

What McDonald Means for Unenumerated Rights, 45 GA. L. REV. 1073 (2011).

The Pursuit of Perfection: Congressional Power to Enforce the Reconstruction Amendments, 47 HOUS. L. REV. 579 (2010).

The Empirical Judiciary, 25 CONST. COMMENT. 467 (2009) (book review essay).

ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (David S. Tanenhaus, ed.) (Macmillan, 2008). Thirteen essay entries on landmark constitutional cases, including

- *Bibb v. Navajo Freight Lines*
- *Cleburne v. Cleburne Living Center, Inc.*
- *Duke Power Co. v. Carolina Environmental Study Group, Inc.*
- *Garcia v. San Antonio Metropolitan Transit Authority*
- *Gravel v. United States*
- *Hodel v. Virginia Surface Mining & Reclamation Association*
- *Missouri v. Jenkins*
- *Nixon v. Fitzgerald*
- *City of Philadelphia v. New Jersey*
- *Williamson v. Lee Optical Co.*, and
- *Younger v. Harris*

The Third Death of Federalism, 17 CORNELL J.L. & PUB. POL'Y 101 (2007).

Presidential Signing Statements and Congressional Oversight, 16 WM. & MARY BILL RTS. J.169 (2007) (symposium).

Quirin Revisited, 2003 WIS. L. REV. 309 (with Carl Tobias).

Stopping Time: The Pro-Slavery and "Irrevocable" Thirteenth Amendment, 26 HARV. J.L. & PUB. POL'Y 501 (2003).

Youngstown Revisited, 29 HASTINGS CONST. L.Q. 373 (2002) (with Carl Tobias).

Retroactive Application of "New Rules" and the Antiterrorism and Effective Death Penalty Act, 70 GEO. WASH. L. REV. 1 (2002).

Reading the Law in the Office of Calvin Fletcher, 1 NEV. L.J. 19 (2001) (Symposium on Lawyers in the American West).

Remanding to Congress: The Supreme Court's New "On the Record" Constitutional Review of Federal Statutes, 86 CORNELL L. REV. 328 (2001) (with Timothy J. Simeone).

LEARNING CONSTITUTIONAL LAW (West Publishing) (law-school level constitutional law textbook) (with Thomas B. McAfee and Louis D. Bilionis).

“Both Parties Bidding”: *The 1884 Ohio Civil Rights Act and the Fluidity of Political Alignments in the Aftermath of Federal Reconstruction* (an essay exploring the history of the legislative adoption and judicial interpretation of the 1884 statute and that history’s relevance to broader issues of historical and constitutional significance) (invited presentation at the inaugural session of the Ohio Legal History Seminar -- cooperative effort between Ohio State faculty and the Ohio Supreme Court) (with Matthew Norman).

Constitutional Law from the Ground Up: How the Prohibition on “Under-ruling” Distorts the Judicial Function (arguing that the *Agostini* rule prohibiting lower courts from “under-ruling” Supreme Court precedents, the foundations of which have been undermined by intervening Supreme Court decisions not “directly controlling” on the precise point in issue, improperly frees both the High and lower courts from the fundamental judicial obligation to decide similar cases similarly and in accord with a stated rationale) (with Kimberly Breedon).

Legislative Facts in Constitutional Litigation (taking up questions identified but left unaddressed in *Remanding to Congress*, this work surveys and critiques the U.S. Supreme Court’s conflicting approaches to questions of legislative fact material to the constitutionality of a challenged statute).

EDUCATION

University of Chicago Law School

Chicago, IL

- J.D., High Honors, 1994
- Order of the Coif
- Topic Access Editor, University of Chicago Law Review

Hanover College

Hanover, IN

- B.A., summa cum laude, 1991
- History major, with departmental honors
- Independent Study: “William James and the Nineteenth-Century Crisis in Faith”

NON-ACADEMIC

EMPLOYMENT

Fall 1997 to **Office of Senate Legal Counsel:** Assistant Senate Legal Counsel. **Washington, DC**
Nov. 1999

Represented Senate parties and interests in litigation relating to official Senate business or in which the powers and responsibilities of Congress were placed in question, including:

- Defense of civil suits against Senators as barred by Speech or Debate Clause;
- Defense of Ethics Committee attorney’s fee decision before U.S. Court of Appeals for the Federal Circuit; and
- Opposition to subpoenas seeking privileged testimony or documents.

Advised Senate committees and member offices on a wide variety of legal issues, including:

- Procedures for the Impeachment Trial of President Clinton;
- Merits of Justice Department positions regarding Free Speech, Free Exercise, Establishment Clause, and Eleventh Amendment challenges to federal statutes;
- Objections to Senate subpoenas issued or requests for information made in connection with committee investigations.

Fall 1995 to **Shea & Gardner:** Associate. **Washington, DC**
Fall 1997 Completed various litigation assignments, including:
& • Trial and appellate court briefs, including in U.S. Supreme Court;
Summer 1993 • Preparation of witnesses for testimony at evidentiary hearings; and
• Research memoranda on various legal issues.

1994-1995 **The Honorable James L. Buckley** **Washington, DC**
United States Court of Appeals for the District of Columbia Circuit: Law Clerk.

Summer 1994 **United States Department of Justice** **Washington, DC**
Federal Programs Branch, Civil Division: Summer Intern.

Summer 1992 **Geoffrey P. Miller**, Professor of Law, University of Chicago Law School: **Chicago, IL**
Research Assistant. Researched topics in insurance law, banking law, constitutional law, and American legal history.

SERVICE **PUBLICATIONS**

“History Proves Eight is Enough for the Supreme Court,” THE HILL, Nov. 4, 2016.

“Supreme Court Enters the Healthcare Maelstrom,” THE CINCINNATI ENQUIRER, March 26, 2012.

“The Constitutional Case for the Individual Mandate,” THE CBA REPORT (February 2012).

“Case Could Be a Clue About Court’s Direction,” Cincinnati Enquirer F4
(October 4, 2009).

“Haste Makes Waste,” Nevada Lawyer (May 2001).

“Haste Makes Waste for U.S. Supreme Court: Agreeing to Hear *Bush v. Gore* Left Justices Little Time for Deliberations,” Hanover Quarterly 22 (Spring 2001).

“Court Shouldn’t Have Rushed to Judgment,” Reno Gazette-Journal 11A (December 23, 2000).

“Haste Makes Waste: High Court Didn’t Have the Time to Decide Issue Deliberately” Las Vegas Review-Journal (December 17, 2000).

SELECTED **PRESENTATIONS**

AND COLLOQUIA

Symposium, “The Prohibition on ‘Under-ruling’ Distorts the Judicial Function,” presented at *The Supreme Court, Politics, & Reform* (2017 Annual PEPPERDINE LAW REVIEW Symposium), Malibu, CA, April 7, 2017.

Seminar Participant, “Democratic Constitutionalism,” Institute for Constitutional History (George Washington University Law School), New-York Historical Society, New York, NY, January 13 & 27 and February 17 & 24, 2017.

Colloquium, “Celebrating the 225th Anniversary of the Bill of Rights,” Georgetown Center for the Constitution, Georgetown University Law Center, Washington, D.C., December 2-3, 2016.

Presentation, “Evolution of the 14th Amendment and Equal Protection Through Supreme Court Cases,” Ohio Center for Law-Related Education’s Law & Citizenship Conference (for secondary school social studies teachers), Dublin, OH, Oct. 3, 2016.

CLE Presentation, “The Supreme Court’s October Term 2015: What Almost Happened But Didn't, What Did Happen, and What It Means for the Court's Future,” The Lawyer’s Club of Cincinnati, Aug. 18, 2016 (with Lou Billionis).

CLE Presentation, “The Power of the Presidential Pen and the Take Care Clause,” UC Law Downtown Teach-In for Student Scholarships, Cincinnati, OH, April 29, 2016.

CLE Presentation, “Birthright Citizenship: A Constitutional Imperative?” Inn of Court Meeting, Cincinnati Bar Association, March 15, 2016.

Colloquium, “Is the Rational Basis Test Unconstitutional?” Georgetown Center for the Constitution, Georgetown University Law Center, Washington, D.C., Feb. 12, 2016. CLE Panel Presentation, “The Empirics of Legal Interpretation,” AALS Law & Interpretation Section, AALS Annual Meeting, New York, NY, Jan. 9, 2016.

Panel Presentation, “Constitutional Law from the Ground Up: How the Prohibition on ‘Under-ruling’ Distorts the Judicial Function,” Federalist Society Works-in-Progress Session, 18th Annual Faculty Conference, New York, NY, Jan. 8, 2016.

CLE Presentation, “Birthright Citizenship: A Constitutional Imperative?” UC Law Alumni Board CLE program, Cincinnati, OH, Nov. 6, 2015.

Symposium, “Taft’s Constitutional Jurisprudence: The Evolution of a President’s Views on Presidential Power,” Taft National Historic Site, Oct. 31, 2015.

Presentation, “Founding Documents in the Classroom,” Ohio Center for Law Related Education’s annual Law & Citizenship Conference (for secondary school civics/social studies teachers), Dublin, OH, Sept. 21, 2015.

Scholarship Workshop, "How the Prohibition on Under-ruling Distorts the Judicial Function," University of Cincinnati College of Law, August 12, 2015 (with Kimberly Breedon).

"William Howard Taft and the UC College of Law: A Life-long Partnership and an Enduring Legacy," Taft Historic Site, NPS, Cincinnati, OH, July 29, 2015.

"Supreme Court Fault Lines in Health and Romance" UC Law Downtown Teach-In for Student Scholarships, Cincinnati, OH, March 6, 2015.

"An Unhappy 48th Birthday?: The Voting Rights Act After *Shelby County v. Holder*," UC Law Downtown Teach-In for Student Scholarships, Cincinnati, OH, March 7, 2014.

"S.B. 165: Five Historic Documents: Their Historical Context, Original Meaning & Enduring Significance," Taft Historic Site, NPS, Cincinnati, OH, September 28, 2013 (an Ohio Historical Society Program for Cincinnati Public School Teachers).

"Chief Justice Taft's Constitutional Jurisprudence: The Evolution of a President's Views on Presidential Power," Taft Historic Site, NPS, Cincinnati, OH, April 6, 2013.

"Federalism After 'Obamacare,'" UC Law Downtown Teach-In for Student Scholarships, Cincinnati, OH, March 1, 2013.

Seminar Participant, Economics for Law Professors, Estes Park, CO, July 15-27, 2012.

"Constitutional Forbearance," presented as part of a symposium at the University of Richmond School of Law, November 11, 2011.

Scholarship Workshop, "Constitutional Forbearance," Washington & Lee School of Law, March 21, 2011.

Scholarship Workshop, "The Pursuit of Perfection: Congressional Power to Enforce the Reconstruction Amendments," University of Kansas School of Law, January 15, 2010.

Scholarship Workshop, "The Pursuit of Perfection: Congressional Power to Enforce the Reconstruction Amendments," University of Toledo College of Law, October 28, 2009.

Scholarship Workshop, "Foreign Law as Legislative Fact in Constitutional Cases," University of Cincinnati College of Law, June 17, 2009.

Scholarship Workshop, "A Typology of Legislative Facts in Constitutional Adjudication," Maurer School of Law, Indiana University, Bloomington, IN, January 23, 2009.

"United States Supreme Court Review," Presentation to the Cincinnati Lawyers Chapter of the Federalist Society for Law and Public Policy Studies, Cincinnati, OH, August 19, 2008.

Scholarship Workshop, "A Typology of Legislative Facts in Constitutional Adjudication," University of Cincinnati College of Law, August 13, 2008.

"*United States v. Santos*," Audio Commentary on Supreme Court's June 2, 2008 ruling, Federalist Society SCOTUScast, http://www.fed-soc.org/publications/pubid.1120/pub_detail.asp

Idea Presentation, Ohio Junior Scholars' Workshop, Ohio State University, Columbus, OH, January 26, 2008.

Judge, We The People Ohio State High School Competition, Columbus, OH, January 25, 2008.

CLE Presentation, "Methods of Statutory Interpretation and the BAPCPA: An Update," Cincinnati Bar Association Bankruptcy Section, Cincinnati, OH, December 13, 2007.

Scholarship Workshop, "Presidential Signing Statements and Congress's Power and Duty to Oversee the Execution of the Laws," University of Cincinnati College of Law, June 20, 2007.

Presentation, "The Supreme Court's Drug Problem," Chase College of Law, Northern Kentucky University, Covington, KY, April 13, 2007.

Panelist, William & Mary Bill of Rights Symposium: *The Last Word?: The Constitutional Implications of Presidential Signing Statements*, Williamsburg, VA, February 3, 2007.

Idea Presentation, Ohio Junior Scholars' Workshop, Capital University Law School, Columbus, OH, January 27, 2007.

Judge, We The People Ohio State High School Competition, Columbus, OH, January 26, 2007.

CLE Presentation, "Methods of Statutory Interpretation and the BAPCPA," Cincinnati Bar Association Bankruptcy Section, Cincinnati, OH, December 2006.

Participant, Moot court/CLE program on *Whorton v. Bockting* (a habeas corpus case then pending before the U.S. Supreme Court), Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, NV, October 13, 2006.

Presentation, "The Death Penalty and the Eighth Amendment," The Ohio Center for Law-Related Education's Fifteenth Annual Law and Citizenship Conference, Columbus, OH, October 2, 2005.

Judge, We The People Ohio State High School Competition, Columbus, OH, January 28, 2005.

Presentation, "The First Amendment: Explanation & Current Issues," The Ohio Center for Law-Related Education's Fourteenth Annual Law and Citizenship Conference, Columbus, OH, September 26, 2004.

Instructor & Lecturer, Ohio Summer Institute, The Ohio Center for Law-Related Education, Columbus, OH, July 22, 2004.

Presentation, "The Pledge of Allegiance and the First Amendment," The Honorable Steve Chabot's 2004 Congressional Youth Delegation, Cincinnati, OH, April 26, 2004.

Participant, Scholar's Conference, Center for Civic Education, Los Angeles, CA, Jan. 23-26, 2004.

Presentation, "The Fifth Amendment Privilege Against Self-Incrimination," The Ohio Center for Law-Related Education's Thirteenth Annual Law and Citizenship Conference, Columbus, OH, October 27, 2003.

Instructor & Lecturer, Nevada Summer Institute, The Nevada Center for Law-Related Education, Incline Village, NV, August 6-9, 2003.

Participant, Liberty Fund Colloquium, "The Writings of Robert A. Heinlein," Tucson, AZ, December 5-8, 2002.

Presentation, "*Youngstown* Revisited," University of Cincinnati College of Law, Cincinnati, OH, November 25, 2002.

Presentation, "*Ex Parte Quirin* Revisited," University of Wisconsin Law School, Madison, WI, November 8, 2002 (with Carl Tobias).

Instructor & Lecturer, Nevada Summer Institute, The Nevada Center for Law-Related Education, Incline Village, NV, August 1-3, 2002.

Moderator and Panel Chair, "Racial Profiling, Constitutional Issues, and Other Concerns Post September 11," District Conference, United States District Court for the District of Nevada, Reno, NV, April 25-26, 2002.

Panel Member, Continuing Legal Education Program, "Professional Responsibility and Legal Ethics for the Criminal Attorney," held at Lloyd George Courthouse, Las Vegas, NV, December 2001.

Participant, Liberty Fund Colloquium, "The Book of Job and the Human Imagination," held in Indianapolis, IN, October 2001.

Presentation, "The Constitution and the Three Branches of Government," Introduction to Law Week, Boyd School of Law, August 2001.

Participant, Liberty Fund Summer Institute, "The Cradle of English Liberty: Shakespeare and Hume," held in Big Sky, MT, July-August 2001.

Participant, Liberty Fund Colloquium, “Woodrow Wilson: Liberty or Statism?” held in Savannah, GA, November 2000.

Participant, Liberty Fund Colloquium, “Providence, Free Will, and Liberty,” Williamsburg, VA, November 2000.

Panel Presentation, “Reading the Law in the Office of Calvin Fletcher,” Annual Meeting of the American Society for Legal History, Princeton, NJ, October 2000.

Presentation, “The Legislative Branch,” Introduction to Law Week, Boyd School of Law, August 1999 & 2000.

Participant, Liberty Fund Summer Seminar, “Liberal Education and the University,” Big Sky, MT, July 2000.

Presentation, “The 2000 Census, Reapportionment, and Redistricting,” at Seminar: Current Developments in Law and Public Policy, Boyd School of Law, June 2000.

Participant, Liberty Fund Colloquium, “Liberty and the Four Horsemen,” Alexandria, VA, April 2000.

Participant, Liberty Fund Colloquium, “Property and Liberty,” Williamsburg, VA, March 2000.

Panel Presentation, “The Supreme Court’s End-of-the-Term Federalism Decisions,” to Staff, Senate Judiciary Committee, July 1999.

Participant, Liberty Fund Colloquium, “American Judicial Interpretation, Liberty, and Responsibility,” November 1998.

Panel Presentation, “The First Thirteenth Amendment,” Annual Meeting of the American Society for Legal History, Seattle, WA, October 1998.

Participant, Liberty Fund Summer Seminar, “Confederation, Union, and Liberty,” held in Columbia Falls, MT, August 1998.

Participant, Liberty Fund Colloquium, “Liberty and Responsibility in the Thought of Oliver Wendell Holmes, Jr.,” held in Santa Fe, NM, October 1997.

MEMBERSHIPS

Admitted to the bar in Illinois and D.C.; Member, American Society for Legal History; Faculty Advisor, Federalist Society.