

## ARTICLES

*Offices and Officers of the Constitution Part IV: The "Office ...Under the United States" Drafting Convention*, 62 S. Tex. L. Rev. 455 (2023). (With Seth Barrett Tillman)

*Offices and Officers of the Constitution Part III: The Appointments, Impeachment, Commissions, and Oath or Affirmation Clauses*, 62 S. Tex. L. Rev. 349 (2023). (With Seth Barrett Tillman)

*Judicial Courage*, 26 Tex. Rev. L. & Pol. 355 (2021-2022).

*The Unresolved Threshold Issues in the Emoluments Clauses Litigation: The President has Three Bodies and There is No Cause of Action for Ultra Vires Conduct*, 20 Geo. J. L. & Pub. Pol'y 163 (2022) (with Seth Barrett Tillman).

*The Irrepressible Myth of Jacobson v. Massachusetts*, 70 Buff. L. Rev. 131 (2022).

*The "Essential" Second Amendment*, 26 Tex. Rev. L. & Pol. 159 (2021).

*Offices and Officers of the Constitution Part I: An Introduction*, 61 S. Tex. L. Rev. 309 (2021). (with Seth Barrett Tillman)

*Offices and Officers of the Constitution Part II: The Four Approaches*, 61 S. Tex. L. Rev. 321 (2021). (with Seth Barrett Tillman)

*What Happens if the Biden Administration Prosecutes and Convicts Donald Trump of Violating 18 U.S.C. § 2383?*, 2021 U. Ill. L. Rev. Online 190 (with Seth Barrett Tillman).

*Is the President an 'Officer of the United States' for Purposes of Section 3 of the Fourteenth Amendment*, 15 N.Y.U. J. L. & Liberty 1 (2021).

*Unreviewable: The Final Installment in the 'Epic' Obamacare Trilogy*, 2021 Cato Sup. Ct. Rev. 109.

*Corpus Linguistics and Heller*, 56 Wake Forest L. Rev. 609 (2021). (with James C. Phillips)

*The "Essential" Free Exercise Clause*, 44 Harv. J. L. & Pub. Pol'y 637 (2021).

*What Happens if the Biden Administration Prosecutes and Convicts Donald Trump of Violating 18 U.S.C. § 2383?* 2021 U. Ill. L. Rev. Online 190 (with Seth Barrett Tillman)

*The Right to Code and Share Arms*, 83 Law & Contemp. Probs. 1 (2020).

*October Term 2019 in Review: Blue June*, 8/27/2020 U. Chi. L. Rev. Online 1.

*#Heckled*, 18 First Amend. L. Rev. 1 (2019).

*The Once and Future Privileges or Immunities Clause*, 26 Geo. Mason L. Rev. 1207 (2019) (with Ilya Shapiro).

*Originalism and Stare Decisis in the Lower Courts*, 13 N.Y.U. J. L. & Liberty 44 (2019)

*ABA Model Rule 8.4(G) in the States*, 68 Cath. U. L. Rev. 629 (2019).

*Improper Commandeering*, 21 U. Pa. J. Const. L. 959 (2019).

*Remembering Professor Ronald Rotunda*, 22 Chapman L. Rev. 257 (2019).

*The Irrepressible Myth of Cooper v. Aaron*, 107 Geo. L.J. 1135 (2019).

*Five Unanswered Questions From Trump v. Hawaii*, 51 Case W. Res. J. Int'l L. 139 (2019).

*Silencing of a Conservative Speaker*, 43 Hum. Rts. 21 (2018).

*Undone: The New Constitutional Challenge to Obamacare*, 23 Tex. Rev. L. & Pol. 1(2018).

*Self-Plagiarism*, 45 Fla. St. L. Rev. 641 (2018).

*The Travel Bans*, 2017-18 Cato Supreme Court Rev. 29 (2018).

*The Domestic Establishment Clause*, 23 Roger Williams L. Rev. 345 (2018).

*Presidential Maladministration*, 2018 Ill. L. Rev. 397 (2018)

*Defiance and Surrender*, 59 S. Tex. L. Rev. 157 (2017).

*The Saving Construction at Five Years*, 11 U. St. Thomas J. L. & Pub. Pol'y 72 (2017).

*Foreword: SCOTUS after Scalia*, 11 N.Y.U. J.L & Liberty 48 (2017).

*Reply: A Pause For State Courts Considering Model 8 Rule 8.4(G) The First Amendment And "Conduct Related To The Practice Of Law,"* 30 Geo. J. Legal Ethics 241 (2017).

*The 9th Circuit's Contrived Comedy Of Errors In Washington v. Trump*, 95 Tex. L. Rev. See Also 18 (2017).

*The Legal Resistance*, 9 Faulkner L. Rev. 45 (2017).

*State Judicial Sovereignty*, 2016 Ill. L. Rev. 2033.

*Gridlock*, 130 Harv. L. Rev. 241 (2016).

*A Very Texas Term At The Supreme Court: Examining The Decisions Affecting The Lone Star State*, 79 Tex. B.J. 762 (2016).

*Civil Rights?* United States v. Texas (Scalia, J., Concurring), 2016 Cato Sup. Ct. Rev. 79

*Restoring the Lost Confirmation*, 83 U. Chi. L. Rev. Online 18 (2016) (with Randy E. Barnett).

*Collective Liberty*, 67 Hastings L.J. 623 (2016).

*Government By Blog Post*, 11 FIU L. Rev. 389 (2016). [ This essay is adapted from Unraveled: Obamacare, Religious Liberty, & Executive Power (Cambridge University Press 2016).]

*Popular Constitutionalism After Kelo*, 23 Geo. Mason L. Rev. 255 (2016).

*The Process of Marriage Equality*, 43 Hastings Const. L.Q. 243 (2016).

*Immigration Inside The Law*, 55 Washburn L.J. 31 (2015).

*The Legality Of Executive Action After King v. Burwell*, 16 Engage: J. Federalist Soc'y Prac. Groups 8 (2015).

*The Constitutionality Of DAPA Part II: Faithfully Executing The Law*, 19 Tex. Rev. L. & Pol. 213 (2015).

*The Constitutionality of DAPA Part I: Congressional Acquiescence to Deferred Action*, 103 Geo. L.J. Online 96 (2015).

*Obamacare & Man at Yale*, 2014 U. Ill. L. Rev. 1241.

*The Shooting Cycle*, 46 Conn. L. Rev. 1513 (2014) (with Shelby Baird).

*The Burden of Judging*, 9 NYU J. L. & Liberty 1105 (2014).

*What Happens if Data is Speech?*, 16 U. Pa. J. Const. L. Heightened Scrutiny 25 (2014).

*The 1st Amendment, 2nd Amendment, and 3D Printed Guns*, 81 Tenn. L. Rev. 479 (2014).

*Popular Constitutionalism and the Affordable Care Act*, 27 Pub. Aff. Q. 179 (2013) (Peer-Reviewed).

*Back To The Future Of Originalism*, 16 Chap. L. Rev. 325 (2013).

*Justice John Marshall Harlan: Professor of Law*, 81 Geo. Wash. L. Rev. 1063 (2013).  
(with Bryan Frye and Michael McCloskey)

*Originalism at the Right Time?*, 90 Tex. L. Rev. See Also. 269 (2012).

*Fantasy SCOTUS Crowdsourcing A Prediction Market for the Supreme Court*, 10 Nw. J. Tech. & Intell. Prop. 125 (with Adam Aft & Corey Carpenter).

*The Constitutionality of Social Cost*, 34 Harv. J.L. & Pub. Pol'y 951 (2011).

*Original Citizenship*, 159 U. Pa. L. Rev. PENNUMBRA 95 (2010).

*Outfoxed: Pierson v. Post and The Natural Law*, 51 Am. J. Legal Hist. 417 (2011).  
Nominated by The Green Bag for "Exemplary Legal Writing" in long articles category for 2011.

*Keeping Pandora's Box Sealed: Privileges or Immunities, The Constitution in 2010, and Property Extending the Right to Keep and Bear Arms to the States*, 8 Geo. J.L. & Pub. Pol'y 1 (2010). (with Ilya Shapiro)

*Equal Protection From Eminent Domain: Protecting The Home Of Olech's Class Of One*, 55 Loy. L. Rev. 697 (2010).

*Youngstown's Fourth Tier. Is There A Zone of Insight Beyond the Zone of Twilight?*, 40 Memphis L. Rev. 541 (2010). (with Elizabeth Bahr)

*The Tell-Tale Privileges or Immunities Clause*, 2010 Cato Sup. Ct. Rev. 163. (with Alan Gura and Ilya Shapiro)

*This Lemon Comes as a Lemon. The Lemon Test and the Pursuit of a Statute's Secular Purpose*, 20 Geo. Mason U. C.R. L.J. 351 (2010).

*Omniveillance, Google, Privacy in Public, and the Right to Your Digital Identity: A Tort for Recording and Disseminating an Individual's Image Over the Internet*, 49 Santa Clara L. Rev. 313 (2009).

## BOOK REVIEWS

*The Supreme Court's New Battlefield*, 90 Tex. L. Rev. 1207 (2012)(reviewing Adam Winkler, *Gunfight: the Battle over the Right to Bear Arms in America* (2011)).

## BOOKS

*An Introduction to Constitutional Law: 100 Supreme Court Cases Everyone Should Know*. 2d Ed. (Fredrick: Aspen Publishing, 2022). (With Randy E. Barnett)

*Constitutional Rights: Cases in Context*. 4<sup>th</sup> Ed. (New York: Wolters Kluwer, 2022). (with Randy E. Barnett).

*An Introduction to Constitutional Law: 100 Supreme Court Cases Everyone Should Know*. (New York: Wolters Kluwer, 2020). (with Randy E. Barnett)

*An Introduction to Constitutional Law: 100 Supreme Court Cases Everyone Should Know*. (New York: Wolters Kluwer, 2019). (with Randy E. Barnett)

*Constitutional Structure: Cases in Context*, 2d ed. (New York: Wolters Kluwer Law & Business, 2018). (with Randy E. Barnett).

*Constitutional Law: Cases in Context*. 3d Ed. (New York: Wolters Kluwer, 2018). (with Randy E Barnett)

*Constitutional Rights: Cases in Context*. 2d Ed. (New York: Wolters Kluwer, 2018). (with Randy E Barnett)

*Unraveled: Obamacare, Executive Power, & Religious Liberty*. (New York: Cambridge University Press, 2016).

*Unprecedented: The Constitutional Challenge to Obamacare*. (New York: PublicAffairs, 2013).

## CHAPTERS

2021 Supplement, *Constitutional law : cases in context*. 3d Ed. (New York : Wolters Kluwer, 2021).

2020 Supplement, *Constitutional law : cases in context*. 3d Ed.; *Constitutional Rights: Cases in Context*. 2d Ed.; *Constitutional Structure: Cases in Context*. 2d Ed. (New York : Wolters Kluwer, 2020).

2019 Supplement, *Constitutional law : Cases in Context*. 3d ed.; *Constitutional Rights: Cases in Context*. 2d ed. (New York : Wolters Kluwer Law & Business, 2019).

*From Being One L to Teaching One L*, in *One L Revisted*. (FORTHCOMING). available at SSRN [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2118335](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2118335)

2017 Supplement, *Constitutional law : Cases in Context*. 2d ed.(New York : Wolters Kluwer Law & Business, 2017).

2016 Supplement, *Constitutional law : Cases in Context*. 2d ed.(New York : Wolters Kluwer Law & Business, 2016).

*The Path of Big Data and the Law*, in H. Kumar Jayasuriya & Kathryn A. Ritcheske, *Big Data, Big Challenges in Evidence-Based Policy Making* (St. Paul, MN: West Academic Publishing, 2015). available at SSRN [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2332842](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2332842)

*Popular Constitutionalism and the Affordable Care Act*, in *The Affordable Care Act Decision: Philosophical and Legal Implications* (Fritz Allhoff and Mark Hall, Eds) (New York: Routledge, 2014).

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