

ROBERT J. PUSHAW

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EDUCATION

YALE LAW SCHOOL, New Haven, CT, J.D. 1988.

Notes Editor, *Yale Law Journal*, 1987-88.

Editor, *Yale Journal of International Law*, 1986-87.

Olin Foundation Fellow, Yale Center for Studies in Law, Economics,
and Public Policy, 1986-88.

LA SALLE COLLEGE, Philadelphia, PA, B.A. (History) 1980.

Graduated *Summa Cum Laude* in three years; awarded General College
Honors; received full-tuition Presidential Scholarship.

LEGAL ACADEMIC EMPLOYMENT

JAMES WILSON ENDOWED PROFESSOR, Pepperdine University School of Law,
August 2002-present (Visiting Professor, 2001-2002).

Associate Dean for Research & Faculty Development, 2012-2015.

EARL F. NELSON PROFESSOR, University of Missouri School of Law, 2000-2002.
Associate Professor & Professor, August 1992-April 2000.

VISITING PROFESSOR, University of Alabama School of Law, March 2-14, 2014
(short course on The Constitution, War Powers, and Terrorism).

VISITING PROFESSOR, University of Illinois College of Law, Champaign, IL,
March 5-15, 2012 (short course on War Powers and Terrorism).

VISITING PROFESSOR, Notre Dame Law School, March 15-24,
2009 (short course on Constitutional History).

VISITING PROFESSOR, Vanderbilt Law School, Nov. 2-12, 2008 (short course on
Historical Foundations of Constitutional Law).

LEGAL ACADEMIC EMPLOYMENT (continued)

VISITING PROFESSOR, University of Illinois College of Law, Sept. 24-Oct. 4, 2007
(short course on Legal History).

VISITING PROFESSOR, Florida State University College of Law, January-May 1999
(Contracts and Federal Courts).

OTHER LEGAL EMPLOYMENT

ASSOCIATE, Employment Law Department, Davis Wright Tremaine, Seattle, WA,
September 1989-July 1992. Member, Washington State Bar Association, since
1990 (ID # 19488).

CLERK, Judge James L. Buckley, United States Court of Appeals, District of
Columbia Circuit, Washington, DC, August 1988-August 1989.

SCHOLARSHIP

Congress's Early Implementation of the Commerce Clause: Casting Further Doubt on the
Amar/Balkin Thesis (work in progress to be submitted March 2017).

Talking Textualism, Practicing Pragmatism: Rethinking the Supreme Court's Approach
to Statutory Interpretation, 51 *Georgia Law Review* _____ (2016).

Justice Brandeis, Judicial Restraint, and Jurisdictional Discretion, 32 *Touro Law Review*
(2016) (symposium issue).

American Constitutional Developments Since 1980 (invited essay published in *American
Governance* (2015)).

Article III: The Judicial Vesting Clause (invited essay published in *The Heritage Guide
to
the Constitution* 301-304 (revised 2d ed. 2014)).

Fortuity and the Article III "Case": A Critique of Fletcher's *The Structure of Standing*, 64
Alabama Law Review 289-348 (2013) (symposium issue).

The Paradox of the Obamacare Decision: How Can the Federal Government Have
Limited Unlimited Power?, 65 *Florida Law Review* 1993-2053 (2013).

SCHOLARSHIP (continued)

The Likely Impact of *National Federation* on Commerce Clause Jurisprudence, 40 *Pepperdine Law Review* 975-1000 (2013) (coauthored with Grant S. Nelson).

Obamacare and the Original Meaning of the Commerce Clause: Identifying Historical Limits on Congress's Powers, 2012 *University of Illinois Law Review* 1703-1754.

Explaining *Korematsu*: A Reply to Dean Chemerinsky, 39 *Pepperdine Law Review* 173-196 (2011) (symposium issue).

Wartime Limits on Civil Rights and Civil Liberties; The "Enemy Combatant" Decisions (invited essays published in *National Security, Civil Liberties, and the War on Terror* (M. Katherine Darmer & Richard D. Fybel eds., 2011)).

Limiting Article III Standing to "Accidental" Plaintiffs: Lessons from Environmental and Animal Law Cases, 45 *Georgia Law Review* 1-103 (2010).

Creating Legal Rights for Suspected Terrorists: Is the Court Being Courageous or Politically Pragmatic?, 84 *Notre Dame Law Review* 1975-2051 (2009).

Justifying Wartime Limits on Civil Rights and Liberties, 8 *Chapman Law Review* 675-703 (2009) (symposium issue).

Partial-Birth Abortion and the Perils of Constitutional Common Law, 31 *Harvard Journal of Law & Public Policy* 519-593 (2008).

A Short History of Federal Preemption Law, in *The Preemption Defense in Tort Actions: Law, Strategy, and Practice* 39-57 (2008) (coauthored with Alan E. Untereiner).

A Neo-Federalist Analysis of Federal Question Jurisdiction, 95 *California Law Review* 1515-1571 (2007).

The "Enemy Combatant" Cases in Historical Context: The Inevitability of Pragmatic Judicial Review, 82 *Notre Dame Law Review* 1005-1084 (2007).

Does Congress Have the Constitutional Power to Prohibit Partial-Birth Abortion?, 42 *Harvard Journal on Legislation* 319-353 (2005).

The Medical Marijuana Case: A Commerce Clause Counter-Revolution?, 9 *Lewis & Clark Law Review* 879-914 (2005) (symposium issue).

Article III: The Judicial Vesting Clause (invited essay published in *The Heritage Guide to the Constitution* 231-234 (2005)).

SCHOLARSHIP (continued)

Examining the Supreme Court's Theory that Judicial Restraint Promotes Federalism, 46 *William & Mary Law Review* 1289-1341 (2004) (symposium issue).

Defending Deference: A Response to Professors Epstein and Wells, 69 *Missouri Law Review* 959-970 (2004) (symposium issue).

Methods of Interpreting the Commerce Clause: A Comparative Analysis, 55 *Arkansas Law Review* 1185-1211 (2003) (symposium issue).

Politics, Ideology, and the Academic Assault on *Bush v. Gore*, 2 *Election Law Journal* 97-109 (2003) (invited book review essay).

How is Constitutional Law Made?, 100 *Michigan Law Review* 1265-1289 (2002) (book review essay) (coauthored with Tracey E. George).

A Critique of the Narrow Interpretation of the Commerce Clause, 96 *Northwestern University Law Review* 695-719 (2002) (coauthored with Grant S. Nelson).

Judicial Review and the Political Question Doctrine: Reviving the Federalist "Rebuttable Presumption" Analysis, 80 *North Carolina Law Review* 1165-1201 (2002) (symposium issue).

The Inherent Powers of Federal Courts and the Structural Constitution, 86 *Iowa Law Review* 735-867 (2001).

Bush v. Gore: Looking at *Baker v. Carr* in a Conservative Mirror, 18 *Constitutional Commentary* 341-384 (2001).

The Presidential Election Dispute, the Political Question Doctrine, and the Fourteenth Amendment: A Reply to Professors Krent and Shane, 29 *Florida State University Law Review* 603-623 (2001) (symposium issue).

Rethinking the Commerce Clause: Applying First Principles to Uphold Federal Commercial Regulations But Preserve State Control Over Social Issues, 85 *Iowa Law Review* 1-173 (1999) (coauthored with Grant S. Nelson; I bore substantial responsibility for writing the Introduction, Part I, and Part II).

Why the Supreme Court Never Gets Any "Dear John" Letters: Advisory Opinions in Historical Perspective, 87 *Georgetown Law Journal* 473-497 (1998) (book review essay).

Congressional Power Over Federal Court Jurisdiction: A Defense of the Neo-Federalist Interpretation of Article III, 1997 *Brigham Young University Law Review* 847-898.

SCHOLARSHIP (continued)

Justiciability and Separation of Powers: A Neo-Federalist Approach, 81 *Cornell Law Review* 393-512 (1996).

Article III's Case/Controversy Distinction and the Dual Functions of Federal Courts, 69 *Notre Dame Law Review* 447-532 (1994).

Note, Labor Relations Board Regulation of Parochial Schools: A Practical Free Exercise Accommodation, 97 *Yale Law Journal* 135-155 (1987).

PRESENTATIONS

Annual Constitution Day Lecture, "Interpreting Our Constitution;" UCLA Center for Liberal Arts & Free Institutions; September 22, 2016.

Panelist, "Supreme Court Cases to Watch," 2016 Central District of California U.S. Judicial Conference; Ojai, CA, Apr. 16, 2016. With Barry McDonald and Deanell Tacha.

Panelist, "Louis Brandeis: An Interdisciplinary Retrospective;" Touro Law Center, March 31, 2016. Other speakers were Felice Batlan, Anita Bernstein, Vincent Blasi, Robert Cochran, Barry Cushman, John Dzienkowski, Ken Elzinga, Joel Goldstein, Mark Graber, Kent Greenawalt, Renee Knake, Frederick Lawrence, Randy Lee, Lance Liebman, Judith McMorro, William Nelson, Russell Pearce, Edward Purcell, and Steve Winter.

Moderator, "Doing Justice Without Doing Harm," Pepperdine University School of Law Nootbaar Institute on Law, Religion, and Ethics, March 12, 2016.

Panelist, "Conference on *Originalism and the Good Constitution*;" University of San Diego School of Law, Apr. 11, 2014. Other panelists included Vik Amar, Stephen Gardbaum, John McGinnis, Bernadette Meyler, Lawrence Rosenthal, and Amanda Tyler.

Lecture, "The 'Unitary' Commerce Clause;" University of Alabama School of Law, March 6, 2014.

Panelist, "Symposium: *The Structure of Standing at 25*;" University of Alabama School of Law, Feb. 22, 2013. Other presenters were William Fletcher, Heather Elliott, Andrew Hessick, Tara Grove, Tom Rowe, Jonathan Siegel, Max Stearns, and Ernest Young.

Panelist, "Limited Federal Power and the Commerce Clause;" co-sponsored by the John Templeton Foundation & the Federalist Society, Las Vegas, NV, Jan. 25-26, 2013. Other participants included Tom McAfee, John McGinnis, Andrew Hessick, Randy Kozel, Kurt Lash, Sai Prakash, Lee Strang, and Chris Walker.

PRESENTATIONS (continued)

Debate, "Federalism and the Supreme Court;" Pepperdine University School of Law, Oct. 17, 2012 (with Ilya Shapiro).

Panelist, "Supreme Court Review;" California-Irvine Law School, July 17, 2012. Other speakers were Jennifer Chacon, Erwin Chemerinsky, Marcia Coyle, and Rick Hasen.

Presenter, Originalism Works-in-Progress Conference, University of San Diego Law School Originalism Center, Feb. 4, 2012. With Jack Balkin, Kurt Lash, & John Mikhail.

Debate, "Confronting Terror: Is Fear Wagging the Post 9-11 Policy Dog?;" co-sponsored by the Libertarian Law Council and the Federalist Society, Oct. 18, 2011 (with former U.S. Rep. Bob Barr).

Panelist, "Whither the Court;" UCLA Law School, August 29, 2011. Other panelists were Katherine Stone, Eugene Volokh, Jonathan Varat, and Adam Winkler.

Debate, "The Feasibility of Repealing Obamacare;" Pepperdine University School of Law, March 28, 2011 (with Doug Bandow).

Panelist, "The Individual Healthcare Mandate;" Pepperdine University School of Law Judicial Clerkship Institute, March 18, 2011. Other presenters were Jack Balkin and Jonathan Varat.

Debate, "The Constitutionality of Obamacare;" co-sponsored by the American Constitution Society and the Federalist Society; Loyola Law School, March 9, 2011 (with Adam Winkler).

Panelist, "The Kagan Nomination;" co-sponsored by the American Constitution Society, the Federalist Society, and the Women's Law Association of Los Angeles, hosted by Gibson, Dunn & Crutcher, July 1, 2010 (with Adam Winkler and M.C. Sungalia).

Panelist, "Detention, the War on Terrorism, and the Federal Courts;" Pepperdine University School of Law Judicial Clerkship Institute, March 19, 2010. Other panelists included Akhil Amar, Judith Resnik, and Judges Paul Friedman and Harris Hartz.

Lecture, "Standing in Environmental Law;" Arizona State University Law School, February 1, 2010.

Faculty Workshop, "Limiting Standing to 'Accidental' Plaintiffs;" University of California-Davis School of Law, October 5, 2009.

Lecture, "The Supreme Court and the War on Terrorism;" Notre Dame Law School, March 19, 2009.

PRESENTATIONS (continued)

Panelist, "Lincoln's Constitutionalism in Time of War: Lessons for the War on Terror?;" Chapman Law Review Symposium, January 30, 2009. With Marjorie Cohn, Katherine Darmer, and Roger Pilon.

Panelist, "Habeas Corpus and the War on Terror;" AALS Annual Meeting, Federal Courts Section, San Diego, January 9, 2009. Fellow speakers included Richard Fallon, Trevor Morrison, Judith Resnik, and Stephen Vladeck.

Lecture, "Judicial Review and the 'Enemy Combatant' Cases;" Villanova University School of Law, December 5, 2008.

Panel Discussion, "The 2008 Election and Reproductive Rights;" UCLA School of Law, October 29, 2008. Other panelists were Kim Buchanan, Frances Olsen, and Adam Winkler.

Faculty Colloquium, "Creating Legal Rights for Suspected Terrorists: Is the Court Being Courageous or Pragmatic?;" Seton Hall University School of Law, October 6, 2008.

Panelist, "Detention and Trials of Suspected Terrorists: Questions for the Next Administration;" Meeting of the Libertarian Law Council and The Federalist Society (Los Angeles Lawyers Chapter), September 26, 2008.

Lecture, "Judicial Review in War Powers Cases;" University of Illinois College of Law, October 3, 2007.

Faculty Workshop, "The Partial-Birth Abortion Decisions: Implications for Congressional Power and Constitutional Privacy Rights;" Villanova University School of Law, March 16, 2007.

Panelist, "Conference in Honor of Paul Mishkin;" University of California-Berkeley School of Law, October 27-28, 2006. Other panelists included Janet Alexander, Jesse Choper, Daniel Farber, Martha Field, John Harrison, John Jeffries, James Pfander, Robert Post, Scot Powe, Martin Redish, John Robinson, Kermit Roosevelt, George Rutherglen, Chris Schroeder, Neil Siegel, Carlos Vazquez, Larry Yackle, Ernest Young & John Yoo.

Commentator, "The Supreme Court: Past and Prologue;" Symposium at the Cato Institute Center for Constitutional Studies, Washington, DC, September 14, 2006. The other invited law professors were Randy Barnett, Dale Carpenter, Walter Dellinger, Martin Flaherty, Allison Hayward, Larry Ribstein, Ilya Somin, and John Yoo.

Respondent, "The Rookie Year of the Roberts Court;" Symposium at Pepperdine University School of Law, August 30, 2006. With Akhil Amar, Erwin Chemerinsky, Elizabeth Garrett, Douglas Kmiec, and Kenneth Starr.

PRESENTATIONS (continued)

Faculty Colloquium, “The Commerce Clause After *Raich*: The Wisdom of a Neo-Federalist Approach;” Duke Law School, February 10, 2006.

Lecture, “Does Congress Have the Constitutional Power to Ban Partial-Birth Abortion?”
Faculty Speakers’ Series, UCLA Law School, April 11, 2005.

Panelist, “Analyzing the Supreme Court’s 2004-05 Term;” Pepperdine University School of Law, Judicial Clerkship Institute, March 19, 2005. Fellow participants were Erwin Chemerinsky and Kenneth Starr.

Panelist, “Dual Enforcement of Constitutional Norms;” William & Mary School of Law, November 14, 2004. Other panelists were Chief Justice William Rehnquist, Justices Ellen Peters and Randall Shepard, and Professors James Gardner, Daniel Rodriguez, Jim Rossi, Lawrence Sager, Robert Schapiro, Michael Solimine, and Robert Williams.

Panelist, “Interdisciplinary Perspectives on Fear and Risk Assessment in Times of Democratic Crisis;” Symposium at University of Missouri School of Law, February 20-21, 2004. Other participants included Cass Sunstein, Lee Epstein, Tracey George, Chris Guthrie, Rachel Moran, and Geoffrey Stone.

Panelist, “Golf, the Right to Exclude, and Private Country Clubs;” AALS Section on Law and Sports, AALS Annual Meeting, Atlanta, January 5, 2004. The other speakers were Anita Bernstein, Alfreda Robinson, and Kim Yuracko.

Panelist, “The Partial-Birth Abortion Ban Act of 2003: Perspectives on the Commerce Power, the Fourteenth Amendment, and the Separation of Powers;” AALS Annual Meeting, Atlanta, January 4, 2004. With William Araiza, Teresa Collett, Allan Ides, Ann Massie, and David Smolin.

Lecture, “The Recent Liberal Rejection of Supreme Court-Centered Constitutional Interpretation;” Distinguished Faculty Workshop Series, Loyola Law School, Los Angeles, March 17, 2003.

Panelist, “The Commerce Clause: Past, Present and Future;” Conference at the University of Arkansas Law Center, March 14-15, 2002. The other panelists included Randy Barnett, Mark Brandon, Jesse Choper, Barry Cushman, James Ely, Richard Friedman, Grant Nelson, Saikrishna Prakash, Harry Scheiber, Adrian Vermuele, and John Yoo.

Panelist, “Combating Terrorism and the Impact on Civil Liberties;” Federalist Society of Los Angeles, February 6, 2002. With Abraham Sofaer, Karl Manheim, and Steve Rhode.

Lecture, “Reconciling Inherent Judicial Powers with Constitutional Principles;” Notre Dame Law School, December 10, 2001.

PRESENTATIONS (continued)

Debate with Laurie Levenson, "The Future of Constitutional Law;" Federal Bar Association Annual Judges' Appreciation Night, Riverside, CA, November 15, 2001.

Panelist, "*Baker v. Carr*: A Commemorative Symposium;" University of North Carolina School of Law, November 2-3, 2001. Other participants included Guy-Uriel Charles, James Gardner, Heather Gerken, Richard Hasen, Pamela Karlan, Sanford Levinson, Burt Neuborne, Nathaniel Persily, Mark Tushnet, and William Van Alstyne.

Panelist, "The Law of Presidential Elections: Issues in the Wake of Florida 2000;" Symposium at the Florida State University College of Law, March 23, 2001. The panelists were Richard Briffault, Guy Charles, James Gardner, Elizabeth Garrett, Heather Gerken, Richard Hasen, Pamela Karlan, Harold Krent, Sanford Levinson, William Marshall, John McGinniss, Spencer Overton, Richard Pildes, Robert Schapiro, Peter Shane, and Ernest Young.

Presenter, "Transcending Boundaries: The Constitution, Families, Federalization, and Federalism;" Joint Session of the AALS Sections on Constitutional Law, Family Law, and Federal Courts, AALS Annual Meeting, San Francisco, January 4, 2001. Other speakers were Ann Estin, Douglas Laycock, Vicki Jackson, Larry Kramer, Judith Resnik, Dan Rodriguez, and Reva Siegel.

Panelist, "The Constitution and Social Choice;" Law & Society Conference, Miami, May 26, 2000. With Evan Caminker, Barry Friedman, and Max Stearns.

HONORS AND AWARDS

Richard Caruso Research Fellow, August-December 2010; September-December 2003.
Competitive fellowship to pursue scholarship in constitutional law.

Faculty Speaker, Law School Graduation, May 2007. Elected by the Class of 2007.

Professor of the Year, Pepperdine University School of Law, February 2007.
Annual award for teaching excellence.

Faculty Speaker, Law School Graduation, May 2005. Chosen by the Class of 2005.

Uniform Law Foundation Scholar, 2004.
Analyzed possible changes to Uniform Conflict of Laws–Limitations Act.

Shook, Hardy & Bacon Award for Research Excellence, October 2000.
Endowed prize conferred each year for meritorious legal scholarship.

William T. Kemper Fellowship for Teaching Excellence, May 2000.
The University of Missouri’s highest award for outstanding teaching.

Faculty Development Leave, January-May 2000.
Funded leave of absence, based upon a competitive university-wide application process, designed to enhance professional development.

Blackwell Sanders Distinguished Faculty Achievement Award, September 1998.
Annual prize granted to the law school’s top teacher.

Nominee, Provost's Outstanding Junior Faculty Teaching Award, May 1997.
University honor recognizing superior teaching by faculty members with less than six years of experience.

Shook, Hardy & Bacon Award for Research Excellence, October 1996.

TEACHING AND RESEARCH INTERESTS

Courses Taught: Constitutional Law; Advanced Constitutional Law; Federal Courts; Legal History; Contracts; Civil Procedure; Wills, Trusts & Estates; War Powers.

Other Areas of Interest: Administrative Law; Labor and Employment Law.

SERVICE ACTIVITIES

Professional: Advisory Board Member, Social Science Research Network, Federal Courts & Jurisdiction Section, 2006-present.
Executive Committee, Federal Courts Section of the Association of American Law Schools, Jan. 1999-Jan. 2002.

Pepperdine University School of Law:

Director, Distinguished Scholars' Workshop Series, 2002-present;
Committee on Summer Research Grants, 2003-present;
Faculty Adviser, Pepperdine Law Review, 2013-present;
Faculty Appointments Committee, 2005-2013;
Task Force on Clinical Education, 2011;
Coordinator, Symposium, "The Roles of Congress, the President, and the Courts in the War on Terrorism," January 19, 2007;
Faculty Adviser, Pepperdine Law Review Symposium on Preemption, April 9, 2005;
Faculty Scholarship Committee, 2002-2006;
Curriculum Committee, 2004-2007;
Academic Standards Committee, 2001-2003;
Endowed Professor Selection Committee, 2003-04, 2013-14.

University of Missouri:

Judicial Clerkship Committee, 1992-2001;
Library Committee, 1992-2001 (appointed chair in 1997);
Student Mentoring Program, 1992-2001;
Faculty Adviser, *Missouri Law Review*, 1996-2001;
Readmissions Committee, 1999-2000;
Curriculum Committee, 2000-2001;
Junior Faculty Mentoring Program, 1999-2001;
Committee on Teaching Assessment, 2000-2001.
Big 12 Faculty Fellowship Program, 1997-1999;
First-Generation College Students Mentoring Program, 1994-1998;
Chancellor's Special Advisory Committee on the Disposition of Native American Remains, 1995-96.

EMPLOYMENT (BEFORE LAW SCHOOL)

YOUTH DIRECTOR, St. Anthony Church, Casper, WY, July 1983-July 1985.
Created education and youth program: recruited and trained teachers; organized youth group projects and CYO Sports; provided counseling and tutoring.

TEACHER, History and Physical Education, Sts. Peter & Paul High School,
St. Thomas, Virgin Islands, September 1982-June 1983.

JOURNALIST/PUBLICIST, Frontier Apostolate, Prince George, British
Columbia (Canada), August 1980-July 1982.

Missionary volunteer: wrote and edited diocesan newspaper; directed publicity, fund-raising, and alumni affairs; coached high school basketball, baseball, and rugby teams.

PERSONAL

Married Patricia McCormack on August 14, 1982, in Wexford, Ireland.
Three Children: Christina (USC `12, Johns Hopkins SAIS `17)
 Stephanie (USC `13, Montana MFA – Creative Writing `17)
 Carolyn (Harvard `16, Lieutenant (Aviation), USMC)

REFERENCES

AKHIL AMAR, Sterling Professor of Law & Political Science, Yale Law School
Akhil.Amar@yale.edu (203) 432-4838

WILLIAM HENNING, Executive Professor, Texas A & M School of Law
 Professor Emeritus, University of Alabama Law School
 Professor Emeritus, University of Missouri School of Law
bhenning@law.tamu.edu (817) 212-3899

NANETTE LAUGHREY, Senior Judge, U.S. District Court (E.D. Mo.)
 Professor Emeritus, University of Missouri School of Law
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GRANT NELSON, Professor, Pepperdine University School of Law
 Professor Emeritus, UCLA Law School
 Professor Emeritus, University of Missouri School of Law
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GEORGE PRIEST, Edward Phelps Professor of Law & Economics, Yale Law School
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