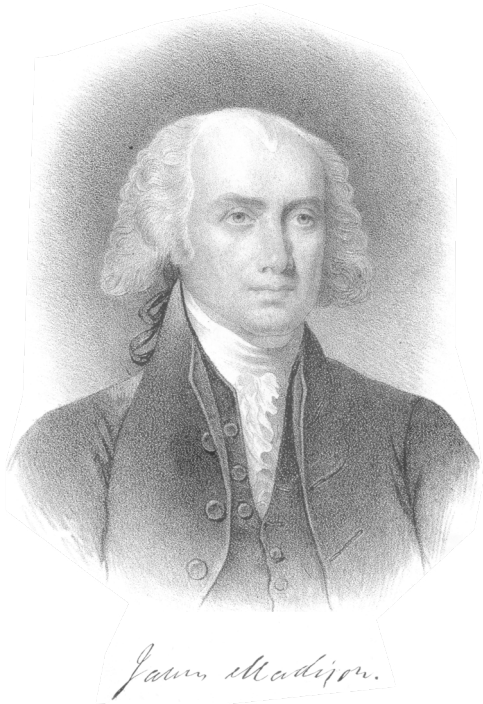




# THE Federalist PAPER

*Congress of the United States, which shall consist of a Senate and House  
Members chosen every second Year by the People of the several States, and the Electors  
ous Branch of the State Legislature.  
the Age of twenty five Years, and been seven Years a Citizen of the United States,  
all be chosen.  
States which may be included within this Union, according to their respective  
Persons, including those bound to Service for a Term of Years, and excluding Indians  
made within three Years after the first Meeting of the Congress of the United States,  
all by Law direct. The Number of Representatives shall not exceed one for every  
until such enumeration shall be made, the State of New Hampshire shall be  
Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania  
with Carolina five, and Georgia three.  
Executive Authority thereof shall issue Writs of Election to fill such Vacancies.  
tion; and shall have the sole Power of Impeachment.  
tors from each State, chosen by the Legislature thereof, for six Years, and each  
it Election, they shall be divided as equally as may be into three Classes. The Seats  
d Year, of the second Class at the Expiration of the fourth Year, and of the third  
second Year; and if Vacancies happen by Resignation, or otherwise, during the  
Appointments until the next Meeting of the Legislature, which shall then fill  
of thirty Years, and been nine Years a Citizen of the United States, and who shall  
but shall have no Vote, unless they be equally divided.  
more, in the Absence of the Vice President, or when he shall exercise the Office of  
... Affirmation. When the President*



# THE FEDERALIST PAPER

Fall 2023

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We hope you enjoy this issue of the *Federalist Paper*. Please send any questions or comments to us at [info@fedsoc.org](mailto:info@fedsoc.org).

DESIGN: Aaron Sandford || COVER ART: Public domain image of the U.S. Constitution, obtained from the National Archives Catalog.

# EDITOR'S LETTER



*Dear Friend,*

Preparations for the National Lawyers Convention are in full swing at the FedSoc headquarters! We look forward to seeing many of you there. The theme of this year's convention is *Originalism on the Ground*. Showcase panels will explore originalism—one of the ideas that has animated this organization for more than 40 years—and what it looks like in practice today. We look forward to the thought-provoking panels and convivial fellowship that are the hallmarks of our favorite event of the year.

Our student chapters have begun another school year and are doing an amazing job of recruiting new members, putting on events, and making connections between students, faculty, and local lawyers. In this issue, we shine the spotlight on our Emory Student Chapter, which is truly going above and beyond what a typical student chapter does and is making an impact on campus. Our lawyers chapters have been coming together for state and regional conferences this summer and fall, and they've put on some really wonderful programs. The Faculty Division hosted the James Kent Academy this summer for aspiring legal academics.

Our Practice Groups have been very active in standing up both live and virtual events. A small

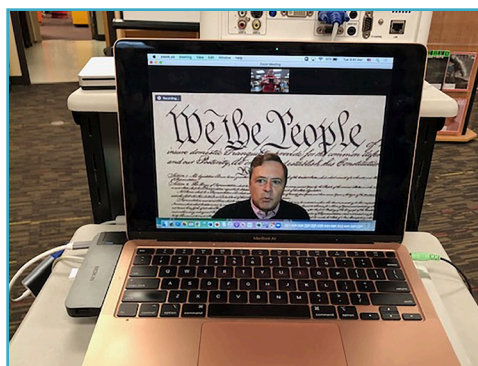
selection of those is highlighted in this issue, and we hope you'll visit our website to watch videos from past events you might have missed. Speaking of videos, the Regulatory Transparency Project has just released a new video series called *Regulation and Red Tape*, and our Digital division has a new documentary called *Katz on the Internet* which it will screen at the NLC.

There's more to read and explore in this issue, and we hope you enjoy learning about all the great things that are happening at the Federalist Society. Be sure to visit [fedsoc.org](https://fedsoc.org) and check our weekly email to find out about upcoming events and newly released articles, podcasts, and videos.

We couldn't do any of this without the tireless work and generous contributions of our volunteers and donors. We hope you've enjoyed a local or virtual event or benefitted from our digital content or publications recently. Please reach out to us at [info@fedsoc.org](mailto:info@fedsoc.org) if you'd like to share any feedback with us. We are so grateful for your support.

*Katie McClendon*

DIRECTOR OF PUBLICATIONS



## CONSTITUTION DAY

The Federalist Society has undeniably played an integral role in elevating the Constitution in public discourse. Yearly on Constitution Day, which recognizes the September 17, 1787, signing of the U.S. Constitution, we facilitate programming in middle and high school civics classrooms across the country to provide instruction related to the Constitution.

This project began as a pilot in 2020, and has grown into an extremely popular, organic effort where our members can remain involved all year.

Thank you for your role in supporting these specific efforts and participating in our programming. Our work would not be possible without your partnership. To donate directly in honor of the Constitution and our programming, please visit [fedsoc.org/donate](https://fedsoc.org/donate).

# STUDENT DIVISION

The fall semester is underway, and our student chapters have hit the ground running! Our chapters have been tabling at their schools' organization fairs, holding recruitment events, and hosting speakers. Student leaders have reported a record number of signups and interested 1Ls at their organization fairs. This could be our best year yet!



**1** Members of the Penn chapter gather for a recruitment event.

**2** Arizona chapter members enjoy their annual recruitment mixer.

**3** Illinois chapter members attend their school's recruitment fair.

**4, 5** Arizona chapter members enjoy their annual recruitment mixer.

**6** The Arizona State chapter is ready to recruit new members at their school's recruitment fair.

**7** The Hawaii chapter recruits new members at their school's organization fair.

**8** The Texas chapter has a packed house for their first event of the year.

**9** The Patrick Henry undergraduate chapter participates in their school's club fair.

**10** Berkeley chapter members enjoy a social mixer.

## Fall 2023 Student Chapter Highlights

Judges Bill Pryor and Kathryn Mizelle and Justice Sarah Campbell on life on the bench — **VANDERBILT**

A conversation with Senator Saxby Chambliss — **GEORGIA**

Judges Chad Readler and Patrick Bumatay on the value of dissent — **MICHIGAN**

Judge John Bush on the founders — **NEW MEXICO**

Judges Amul Thapar and Trevor McFadden on the interaction between district and appellate courts — **NOTRE DAME**



**11** The Kentucky chapter kicks off their year with a SCOTUS Review.

**13** Texas A&M board members pose with speakers after their first event.

**15** The Suffolk chapter is ready to recruit new members.

**16** The UVA chapter gets ready to recruit new members at their school's activities fair.

**12** Members of the Texas Tech chapter pose with their recruitment table.

**14** Berkeley chapter members enjoy a social mixer.



**CLOCKWISE FROM LEFT**

Emory chapter executives in front of the law school with Professor Matt Cavedon, one of the chapter's faculty advisors.

Top L-R: Jacob Bristol (Clerkship Chair), Brynn Radak (VP of Marketing), Atid Malka (Treasurer); Bottom L-R: Alex Chiang (Secretary), Sophia Bavaro (President), Robert Schmidt (Vice President).

Emory chapter members enjoying the end-of-the-year banquet in the spring.

## CHAPTER SPOTLIGHT

### EMORY UNIVERSITY SCHOOL OF LAW

**Sophia Bavaro**  
*Chapter President*

“ The Emory Student Chapter of the Federalist Society has been increasingly active in recent years. This year, we have a great event line-up already planned, and we look forward to scheduling even more events in the coming months. Besides regular programming, our chapter has a few special activities that make our chapter unique.

We have had various usual activities like a back-to-school BBQ and a general body meeting. But in addition, we have had a dinner to introduce our new 1Ls to our faculty members who are friends of FedSoc. We have also had a panel featuring Annie Donaldson Talley and our Professor Jonathan Nash called “The Dark Side of Authority: Shedding Light on Agency Coercion.” One of our upcoming events is a co-sponsored event with the Atlanta Lawyers Chapter and Atlanta Young Lawyers Chapter entitled “The So-Called Private Nondelegation Doctrine and How Everyone Gets It Wrong.” We host an annual SCOTUS term preview, and this year, it will feature Emory Law Professors Tom Arthur, Richard Freer, Lindsey Simon, Sasha Volokh, and Jonathan Nash. We have an all-star lineup for other events later in the year, including Alan Dershowitz, Governor Brian Kemp, and Professor John Yoo. We’ll continue our tradition of helping our members get clerkships by holding clerkship panels and inviting judges

and their clerks to speak to and meet our chapter.

Our book club meets every Monday. This semester, we are reading and discussing Logan Beirne’s *Blood of Tyrants*. We are excited that Professor Beirne will attend one of our meetings to discuss his book.

We are rolling out two publications this year, spearheaded by Editor-in-Chief Ashley Strain. Our newsletter is the Emory Federalist Society’s *Appellate Digest*, and our new journal is the *Emory Federalist Perspective*. Ashley will work with a team of fifteen editors to produce both publications.

*Appellate Digest* articles will review U.S. Supreme Court and Georgia state court decisions, providing summaries of the arguments, commentary, and further resources. We have already received several submissions for the *Emory Federalist Perspective*, and we welcome more, which may be sent to [fedsocemory@gmail.com](mailto:fedsocemory@gmail.com). The journal has two editions each year: fall and spring. The fall issue is open to all submissions. The spring issue is themed and coincides with our end-of-the-year banquet.

Each year, we select a theme for the banquet and spring edition that reflects ongoing struggles within and outside the law school. Last year, we selected Religious Liberty, since our law school’s student government decided to host the Barrister’s Ball on Good

Friday and Passover, excluding some students, many of whom are our members. This decision reflected the more general issue of the rise of secularism in modern society. Essays were submitted by several professors and were handed out at the banquet, and Professor Matt Cavedon gave an incredible talk.

This year’s theme is Law and Truth: The Lawyer’s Responsibility to Tell the Truth. We chose this topic to honor one of our classmates and board members who passed away over the summer. He was known for his fearlessness in speaking his mind regardless of what anyone else thought. An article he wrote will be published posthumously in the upcoming spring issue or our new journal. We are currently organizing his memorial service and setting up a foundation in his name that will provide scholarships for free-thinking students who stand up for their principles. We welcome further submissions to the journal on this topic.

We have special programming for 1L students, including a mentorship program connecting upperclassmen with 1Ls to help them navigate the first year of law school. To learn more about our chapter and to stay abreast of our upcoming events and programs, visit [emoryfederalistsociety.org](http://emoryfederalistsociety.org) and follow us on Facebook, Instagram, and LinkedIn.

# LAWYERS CHAPTERS

In the summer and fall months, the Lawyers Division hosted a series of successful regional and statewide events, including the Midwestern Regional, Florida Young, Alabama, and Texas Conferences, as well as our Inaugural Tennessee Chapters Conference. Programming focused on prevalent legal topics such as education policy, *NYT v. Sullivan*, academic freedom, state attorneys general offices, separation of powers in the Tennessee Constitution, corporate activism, legal challenges in gender identity post-*Bostock*, and courage in daily legal life.

The “Save the Date” list highlights a sampling of the Lawyers Division’s roster of upcoming 2023-24 statewide events. Programming continues to flourish at the local chapter level as well, with event attendance anticipated to attain or surpass pre-pandemic numbers.

## Save the Date

Arkansas Conference  
**October 20**, Bentonville

Arizona Statewide Dinner  
**October 26**, Phoenix

Missouri Conference  
**January 19**, Jefferson City

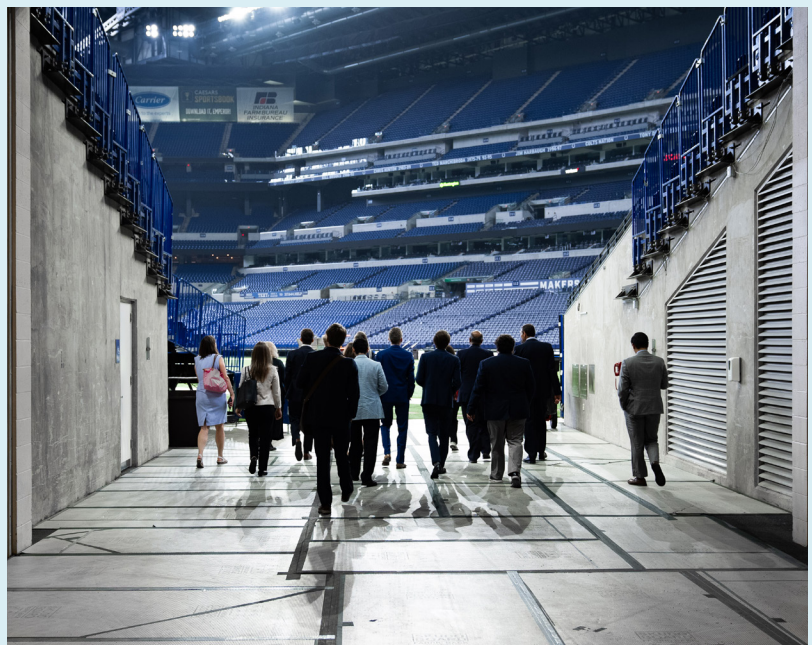
Western Conference  
**January 26-27**, Simi Valley

Florida Conference  
**February 2-3**, Orlando

Ohio Conference  
**April 12**, Columbus

**JUNE 16**

Midwestern Regional Conference  
Lucas Oil Stadium  
Indianapolis





**JUNE 22**

DC Young Lawyers  
Reception  
Judge Oldham &  
Judge Thapar



**JULY 21-22**

Florida Young Lawyers Summit  
Miami



**SEPTEMBER 7-8**

Alabama Chapters Conference  
Birmingham



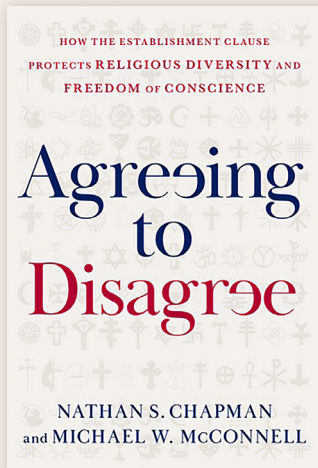
**SEPTEMBER 15**

Tennessee Chapters Conference  
Nashville



**SEPTEMBER 22-23**  
Texas Chapters Conference  
Houston





## AGREEING TO DISAGREE

Professors Nathan Chapman and Michael McConnell recently published a new book with Oxford University Press, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience*. In this book, Chapman and McConnell examine the legal history of the Establishment Clause of the First Amendment and how it was understood by Americans in the early Republic. They argue that the Establishment Clause is best understood as a provision meant to protect religious pluralism and debate, rather than to ensure a secular public square.

# FACULTY DIVISION

## JAMES KENT ACADEMY

August 2-5, 2023 • Annapolis

The Faculty Division held its annual James Kent Academy August 2-5 in Annapolis, Maryland. The Academy brings together law students and recent graduates who demonstrate interest and strong potential in becoming the next generation of legal scholars. During the Academy, thirteen participants learned from current professors about the academic career track and received personalized career planning and publishing advice. They also attended seminars on academic discussions going on in constitutional law, tax law, and corporate law, as well as questions surrounding empirical methods and the law. Participating faculty this year included Randy Barnett (Georgetown), Patrick Barry (Michigan), Michael Heise (Cornell), Dan Kelly (Notre Dame), John Duffy (Virginia), Miranda Perry Fleischer (San Diego), and Robert Miller (Iowa).

Prof. Daniel Kelly (Notre Dame) speaks to James Kent Academy attendees.



Participants in the James Kent Academy present paper ideas and enjoy a sunset sail in Annapolis Harbor.

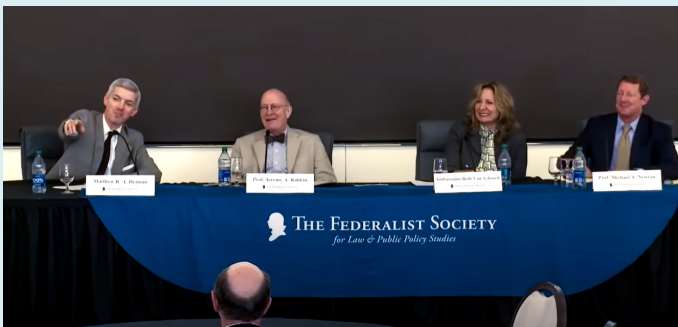
# PRACTICE GROUPS



2023 NATIONAL SECURITY SYMPOSIUM

## THE LEGAL, PRACTICAL, AND POLICY IMPLICATIONS OF THE RUSSIA-UKRAINE CONFLICT

The 2023 National Security Symposium was held on June 29 and was co-sponsored with the National Security Institute. The half-day conference brought together distinguished practitioners and scholars to examine the legal, practical, and policy implications of the war between Russia and Ukraine. With two panels and a luncheon keynote address, the conference focused on both what has happened in the conflict so far and what could happen in its aftermath, whenever and however it ends. Attendees were offered up to 180 minutes of CLE credit.



**PANEL 1**

Scott R. Anderson, *VISITING FELLOW, BROOKINGS INSTITUTION; GENERAL COUNSEL AND SENIOR EDITOR, LAWFARE; SENIOR FELLOW, NATIONAL SECURITY LAW PROGRAM, COLUMBIA LAW SCHOOL*

Richard Goldberg, *SENIOR ADVISOR, FOUNDATION FOR DEFENSE OF DEMOCRACIES*

Moderator: Eric Kadel, *PARTNER, SULLIVAN & CROMWELL LLP*

**PANEL 2**

Ambassador Beth Van Schaack, *AMBASSADOR AT-LARGE FOR GLOBAL CRIMINAL JUSTICE, US DEPARTMENT OF STATE*

Prof. Michael A. Newton, *DIRECTOR, INTERNATIONAL LEGAL STUDIES PROGRAM, VANDERBILT UNIVERSITY LAW SCHOOL*

Prof. Jeremy A. Rabkin, *PROFESSOR OF LAW, ANTONIN SCALIA LAW SCHOOL, GEORGE MASON UNIVERSITY*

Moderator: Matthew R. A. Heiman, *GENERAL COUNSEL & CORPORATE SECRETARY, WAYSTAR HEALTH; SENIOR FELLOW AND DIRECTOR OF PLANNING, NATIONAL SECURITY INSTITUTE*

**KEYNOTE**

Hon. Kay Bailey Hutchison, *FORMER UNITED STATES AMBASSADOR TO NATO, FORMER UNITED STATES SENATOR, TEXAS*

## WEBINARS



### “The Diversity Lie” 20 Years Later

MAY 2

Professors Brian Fitzpatrick and Randall Kennedy joined us to consider how Prof. Fitzpatrick’s 2003 article, *The Diversity Lie*—published in the wake of *Grutter v. Bollinger*—has held up over the past 20 years, especially in light of the then-pending *SFFA v. Harvard* and *SFFA v. UNC* cases.

**6,559 VIEWS AND LISTENS**



### Higher Ed & DEI

MAY 18

Ilya Shapiro and Professor Todd Clark discussed the merits of Diversity, Equity, & Inclusion initiatives and how state-level policy could shape the future of DEI on college campuses. Devon Westhill of the Center for Equal Opportunity moderated the discussion.

**7,907 VIEWS AND LISTENS**



### What is the Future of Textualism

JUNE 1

Top scholars joined FedSoc to explore recent debates about the legitimacy, vitality, and future application of textualism in legal and constitutional interpretation. The discussion was prompted by and touched on the use of textualism in recent U.S. Supreme Court decisions.

**5,130 VIEWS AND LISTENS**



### Major Questions Doctrine in the Tech and Telecom Sectors after *West Virginia v. EPA*



JUNE 20

This webinar, featuring a stellar panel of tech, telecommunications, and administrative law experts, explored how the reinvigorated Major Questions Doctrine may impact technology and telecom policy.

**5,020 VIEWS AND LISTENS**



ALL PAST WEBINARS



### Courthouse Steps Decision: *303 Creative v. Elenis*

JULY 7

On July 7, 2023, we hosted a Post-Decision Courthouse Steps webinar on *303 Creative LLC v. Elenis*, in which a panel of experts broke down and discussed the Court’s decision and the possible effects of this case affecting religious liberty, free speech, and state laws.

**5,301 VIEWS AND LISTENS**



### Litigation Update *Missouri v. Biden*

JULY 19

On July 4, 2023, a preliminary injunction was issued in *Missouri v. Biden*. At issue is the constitutionality of alleged collusion between various federal government agencies and social media companies. Some observers are calling the case a major battleground for the future of internet speech. In this July 19 webinar, Harmeet K. Dhillon and Casey Mattox delivered an update on recent developments in the case.

**2,164 VIEWS AND LISTENS**

### *Newman v. Moore*: Intra- Federal Circuit Dispute Raises Multiple Cross- Disciplinary Issues

JULY 26

In a unique virtual event approved for Ethics & Anti-Bias CLE Credit, a panel of experts discussed an ongoing issue in the U.S. Court of Appeals for the Federal Circuit. Chief Judge Kimberly Moore has filed a complaint against Judge Pauline Newman under the Judicial Conduct and Disability Act of 1980, and Judge Newman has filed suit against Chief Judge Moore. The case raises interesting and unusual issues of professional responsibility, judicial ethics, and rules of conduct, which a panel of experts from a range of specialties expertly unpacked in this webinar.

**7,378 VIEWS AND LISTENS**





## SPECIAL LUNCHEON EVENTS

Following on a long line of in-person luncheon programs, the Practice Groups hosted several topical luncheon presentations over the summer. Among others, we co-sponsored with the ABA a May 24 luncheon panel about Civility & the Law featuring ABA President Deborah Enix-Ross, Charles J. Cooper, David Boies, and moderator Reginald J. Brown. Also notable was the July 20 Annual Supreme Court Roundup featuring Paul Clement.



**Top** Panelists Charles J. Cooper and David Boies laugh at a comment during the May 24 Civility & the Law Luncheon

**Middle** Deborah Enix-Ross, president of the ABA, participates in a panel discussion on Civility & the Law

**Bottom** Paul Clement presents at the 2023 Annual Supreme Court Roundup hosted at the Mayflower Hotel in Washington DC

# MEMBERSHIP & ALUMNI RELATIONS

Alumni Relations recommenced its annual summer reception series. Co-sponsored by the Freedom of Thought Project, receptions were hosted for students and alumni of 11 student chapters. Attendees were able to hear from speakers such as Senator J.D. Vance, Judge Neomi Rao, Andrew Ferguson, and more.



Roger Severino speaks with attendees of the Duke Alumni Reception.



The Harvard Alumni Chapter hosts a discussion with Rod Rosenstein and Zach Terwilliger.



Federalist Society President and CEO Gene Meyer and Harvard Student Chapter President Ben Pontz.



Andrew Ferguson, Solicitor General of Virginia, engages with an attendee of the University of Pennsylvania and Columbia joint Alumni Reception.



Hon. Kyle Duncan gives remarks to the Stanford Alumni Chapter.



Senator J.D. Vance converses with Prof. Amy Chua at the Yale Alumni Reception.



# REGULATORY TRANSPARENCY PROJECT

THE REGULATORY TRANSPARENCY PROJECT PRESENTS:

## REGULATION AND RED TAPE

SERIES



In this new video series, leading legal experts debate some of the most controversial regulatory issues in America today. Moderated by former OIRA Administrator the Hon. Paul J. Ray, *Regulation and Red Tape* tells true stories of how federal regulatory actions impact the lives of ordinary Americans. Watch all five episodes here, and join the conversation!



### EPISODE 1

Mergers, Monopolies, & the FTC

### EPISODE 2

*Sackett v. EPA*: A Tale of Wetland Regulations

### EPISODE 3

*Boucher v. USDA*: Navigating the Swampbuster Provisions

### EPISODE 4

Tax Inversions: Unpacking the Pfizer Case

### EPISODE 5

TARP: Examining the 2008 Bank Rescue Plan

**IN-PERSON  
EVENT**



U.S. Senator Dan Sullivan (R-AK) gives the keynote address.



(Left-to-Right)  
David M. Uhlmann,  
Susan Bodine,  
Eric Schaeffer and  
Jeffrey H. Wood.



Michael  
Buschbacher  
moderates the  
panel discussion.



The *Environmental Enforcement: Policies, Priorities, and the Rule of Law* panel discussion took place at the Mayflower Hotel.

*Environmental Enforcement:  
Policies, Priorities, and the Rule of Law*

On June 20, 2023, the Federalist Society's Regulatory Transparency Project and ConservAmerica hosted an in-person luncheon and panel discussion at the Mayflower Hotel. A panel of leading voices on environmental enforcement discussed past and current environmental enforcement priorities, policies and actions at EPA and DOJ, the value of transparency and impartiality in environmental enforcement, and varying perspectives on the future of environmental enforcement in the United States. The panel also explored ways to increase environmental compliance and integrity in enforcement decision-making.

**KEYNOTE**

Dan Sullivan, U.S. SENATOR, ALASKA

**PANELISTS**

Susan Bodine, PARTNER, EARTH & WATER LAW

Eric Schaeffer, EXECUTIVE DIRECTOR, ENVIRONMENTAL INTEGRITY PROJECT

David M. Uhlmann, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Jeffrey Wood, PARTNER, BAKER BOTTS LLP

Michael Buschbacher, PARTNER, BOYDEN GRAY PLLC

PODCAST EPISODE HIGHLIGHTS



*Affirmative Action in Employment*

July 21 • Eric Dreiband

*The CHIPS Act, Immigration, and the Innovation Economy*

August 14 • Adam Thierer, Caleb Watney

*Drone Surveillance and the Fourth Amendment*

July 21 • Trace Mitchell, Jay Stanley, Brent Skorup

WEBINARS

WATCH



*Examining the SEC's Approach Towards Crypto*

Paul Grewal, Stephen Palley, J.W. Verret

*The Evolution of HUD's Affirmatively Furthering Fair Housing Rules: A Look at the Latest Proposed Regulation*

Paul Compton, Thomas Silverstein, Braden Boucek

*Utah v. Walsh: Latest Developments in the Challenges to the Department of Labor's ESG Rule*

Braden Boucek, Paul Compton, Thomas Silverstein

*The 2023 Bank Runs and Failures: What Do They Mean Going Forward?*

William M. Isaac, Keith Noreika, Lawrence J. White, Alex J. Pollock

*Liability in the Digital Ecosystem: A Conversation on Biden's New National Cybersecurity Strategy*

Jamil N. Jaffer, Paul Rosenzweig, Robert Strayer

*A Discussion on the National Marine Fisheries Service's Regulatory Authority: Whales, Speed Limits, and Legal Questions*

Braden Boucek, Jane Luxton

# FREEDOM OF THOUGHT

## STATE POWER REVIEW

### CONSIDERING THE ROLE OF STATES IN PRESERVING FREEDOM

The Freedom of Thought Project's conference was the State Power Review: Considering the Role of States in Preserving Freedom, hosted on June 28, 2023. It featured four panels and a fireside chat during lunch.

Watch the discussions by following the QR code below or navigating to [fedsoc.org/conferences/2023-freedom-of-thought-conference](https://fedsoc.org/conferences/2023-freedom-of-thought-conference)



#### WHEN TWITTER SPEAKS: CONTROL, ACCESS, AND THE ROLE OF STATES

Ryan Baasch, ASSISTANT SOLICITOR GENERAL, OFFICE OF THE ATTORNEY GENERAL, TEXAS

Alan Gura, VICE PRESIDENT FOR LITIGATION, INSTITUTE FOR FREE SPEECH

Ray Treadwell, CHIEF DEPUTY GENERAL COUNSEL, EXECUTIVE OFFICE OF THE GOVERNOR, STATE OF FLORIDA

Jonathan D. Urick, ASSOCIATE CHIEF COUNSEL, U.S. CHAMBER OF COMMERCE LITIGATION CENTER

**Moderator:** Hon. Chad A. Readler, UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT





## CORPORATE POWER AND STATE POWER: STRUCTURAL PROTECTIONS FOR LIBERTY

Jonathan Berry, *MANAGING PARTNER, BOYDEN GRAY & ASSOCIATES*

Hon. Rohit Chopra, *DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU*

Alexandra Gaiser, *DIRECTOR OF REGULATORY AFFAIRS, RIVER FINANCIAL*

Erika Maley, *PRINCIPAL DEPUTY SOLICITOR GENERAL, COMMONWEALTH OF VIRGINIA*

**Moderator:** Hon. Paul B. Matey, *UNITED STATES COURT OF APPEALS, THIRD CIRCUIT*

## FIRESIDE CHAT: CORPORATE POWER AND THE RULE OF LAW

Ryan Newman, *GENERAL COUNSEL, EXECUTIVE OFFICE OF  
THE GOVERNOR, STATE OF FLORIDA*

James M. Burnham, *PRESIDENT, VALLECITO CAPITAL, LLC*





## CORPORATE SPEECH AND THE FIRST AMENDMENT

Jim Campbell, *CHIEF LEGAL COUNSEL, ALLIANCE DEFENDING FREEDOM*

Prof. Adam Candeub, *PROFESSOR OF LAW & DIRECTOR OF THE INTELLECTUAL PROPERTY, INFORMATION & COMMUNICATIONS LAW PROGRAM, MICHIGAN STATE UNIVERSITY COLLEGE OF LAW*

T. Elliot Gaiser, *ASSOCIATE, JONES DAY*

Casey Mattox, *VICE PRESIDENT FOR LEGAL AND JUDICIAL STRATEGY, AMERICANS FOR PROSPERITY*

**Moderator:** Hon. Lisa Branch, *UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT*

## ACADEMIC FREEDOM IN HIGHER EDUCATION: THE ROLE OF STATES DEFENDING FREEDOM OF THOUGHT



Mark Bauerlein, *EMERITUS PROFESSOR, EMORY UNIVERSITY; EDITOR, FIRST THINGS*

Joe Cohn, *LEGISLATIVE AND POLICY DIRECTOR, FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION (FIRE)*

Andrew Ferguson, *SOLICITOR GENERAL, COMMONWEALTH OF VIRGINIA*

Prof. John Hasnas, *PROFESSOR OF BUSINESS AND EXECUTIVE DIRECTOR, GEORGETOWN INSTITUTE FOR THE STUDY OF MARKETS AND ETHICS, MCDONOUGH SCHOOL OF BUSINESS, GEORGETOWN UNIVERSITY; PROFESSOR OF LAW (BY COURTESY), GEORGETOWN UNIVERSITY LAW CENTER*

**Moderator:** Hon. S. Kyle Duncan, *UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT*



## Competition Policy, Corporate Concentration & Freedom of Thought: Approaching the Draft Merger Guidelines — July 20, 2023

Hon. Jonathan S. Kanter, *ASSISTANT ATTORNEY GENERAL FOR THE ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE*

Doha Mekki, *PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE*

Prof. Todd J. Zywicki, *GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, ANTONIN SCALIA LAW SCHOOL, GEORGE MASON UNIVERSITY*

Moderator: James M. Burnham, *PRESIDENT, VALLECITO CAPITAL, LLC*



## 2023 Freedom of Thought Conference Attendee Spotlight

# ERICH MAKAROV

Penn L'22

### *Why did you come to the conference?*

I attended the conference because, while there are ample Federalist Society events covering government regulation, few systematically delve into the grand narratives coloring our understanding of the specifics. For attorneys who lived through its founding days, and watched the organization grow to its present success, in-depth discussions about first principles may seem redundant. But for the growing ranks of young lawyers—who didn't live through those years of intellectual sparring and who see increasing conflicts within the legal system—revisiting first principles is essential. The Freedom of Thought Project has been an essential player in the revival of these serious conversations, and its programming immediately gets my attention for that reason.

### *Did the conference meet your expectations?*

The conference exceeded my expectations. First, most of the panels addressed questions that forced the speakers to approach their first principles critically. These topics challenged speakers to offer substantive solutions rather than falling back on arguments rooted solely in textual interpretation.

Second, I appreciated the emphasis on the practical that permeated the conference. Most of the speakers had extensive experience fostering liberty either in private practice or public service. They gave valuable insights into the policies and legal formulations that most effectively secured the rights of the American people. We in the new legal generation are more accustomed to abstract discussions about case law and methods of interpretation. Rarely do we have such an

opportunity to learn how talented, principled attorneys create and apply the laws that are essential to advancing liberty.

### *Were there any speakers who stood out?*

The speaker who stood out most to me was actually a moderator—Judge Matey. Rather than providing a mere summary of issues to be discussed by the panelists, Judge Matey shared an account of American history built on extensive research and infused with his own experience as a judge. It was a unique opportunity to hear a federal judge's perspective on the foundational narrative of the American legal system. It was also a reminder that good judges are deeply involved in the intellectual developments that improve our understanding of the law.

### *Did you find anything encouraging about the conference?*

What I found most encouraging was the open nature of the intellectual inquiry. Seeing Jonathan Berry—a conservative who served in the Trump administration—engage in an honest, good faith discussion with Rohit Chopra—a key figure in progressive politics—inspired confidence in our system's ability to cultivate skill and integrity from all political camps derived from civil discussion. It also inspired confidence in the Federalist Society as the vehicle for bringing together the many perspectives to improve the legal system, consistent with the ideals that birthed our nation.

The Freedom of Thought Project continues to be a powerful instrument in the journey to re-embracing the founding values of the American republic and this conference brought us a bit closer to that goal.



IMAGE: AJ Colores

# IOWA SUPREME COURT RETAINS THE EMERGENCY AID DOCTRINE AS AN EXCEPTION TO THE WARRANT REQUIREMENT

Autumn Hamit Patterson

July 26, 2023

Excerpted from  
*State Court Docket Watch*

The Iowa Supreme Court has recognized a community-caretaking exception to the Fourth Amendment’s warrant requirement for decades. Among other things, that exception allowed police officers to enter residences without a warrant to provide emergency aid. But two years ago, the United States Supreme Court clarified in *Caniglia v. Strom* that there is not a “standalone doctrine that justifies warrantless searches and seizures in the home” whenever police officers

are performing “caretaking” duties.” In *State v. Abu Youm*, the Iowa Supreme Court addressed whether warrantless entries to provide emergency assistance are still permissible after *Caniglia*. It said yes and concluded, over a dissent, that the particular warrantless search at issue was lawful. *Abu Youm* will be a staple in suppression hearings in coming years as the opinion demonstrates the continued viability of the emergency aid doctrine.

In *Abu Youm*, police responded to calls that gunshots were fired at an apartment complex. Once police arrived at the scene, a witness identified a specific apartment as the location of the gunfire and said he saw “a man lying on its balcony after the shooting.” Police saw broken glass on the ground that was consistent with a recent shooting. They then asked a man who was standing on the identified balcony, Sam Abu Youm, whether he had heard gunshots. He denied hearing gunshots, and the police went up to his apartment. After the police knocked on his door, another man opened the door and stepped outside so the officers could not see the inside of the apartment. That man objected to the officers entering the apartment without a warrant, but the officers claimed they could enter the apartment “to make sure no one had been shot” under a “public safety exception.” During a search for an injured occupant, officers saw a shell casing and a rifle. They then obtained a search warrant and found drugs, a scale, pistols, and money in boxes.

Abu Youm sought to suppress the evidence at his subsequent prosecution, arguing the warrantless entry violated the federal and state constitutions and that evidence recovered after the search warrant—which was obtained as a result of the warrantless search—should be excluded. The district court denied the suppression motion, and the intermediate appellate court affirmed that decision. On appeal, the Iowa Supreme Court did too. It was a 4-3 decision written by Justice Thomas Waterman and joined by Chief Justice Susan Christensen, Justice Edward Mansfield, and Justice David May.

First, the Iowa Supreme Court concluded that “one branch” of its community-caretaking exception—the “emergency aid doctrine”—survived *Caniglia*. The court explained that the emergency aid doctrine requires an exigency to apply, which is “[w]hat was missing in *Caniglia*,” because the warrantless search in that case occurred “after the suicidal occupant had left by ambulance.” The court also highlighted language from *Caniglia* that reaffirmed “that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to ‘render emergency assistance to an injured occupant or to protect an occupant from imminent injury.’” And it flagged that “[t]hree separate concurrences emphasized that point.”

Second, the court held the warrantless entry and initial search of Abu Youm’s apartment were justified by the emergency aid

*Abu Youm will be a staple in suppression hearings in coming years as the opinion demonstrates the continued viability of the emergency aid doctrine.*

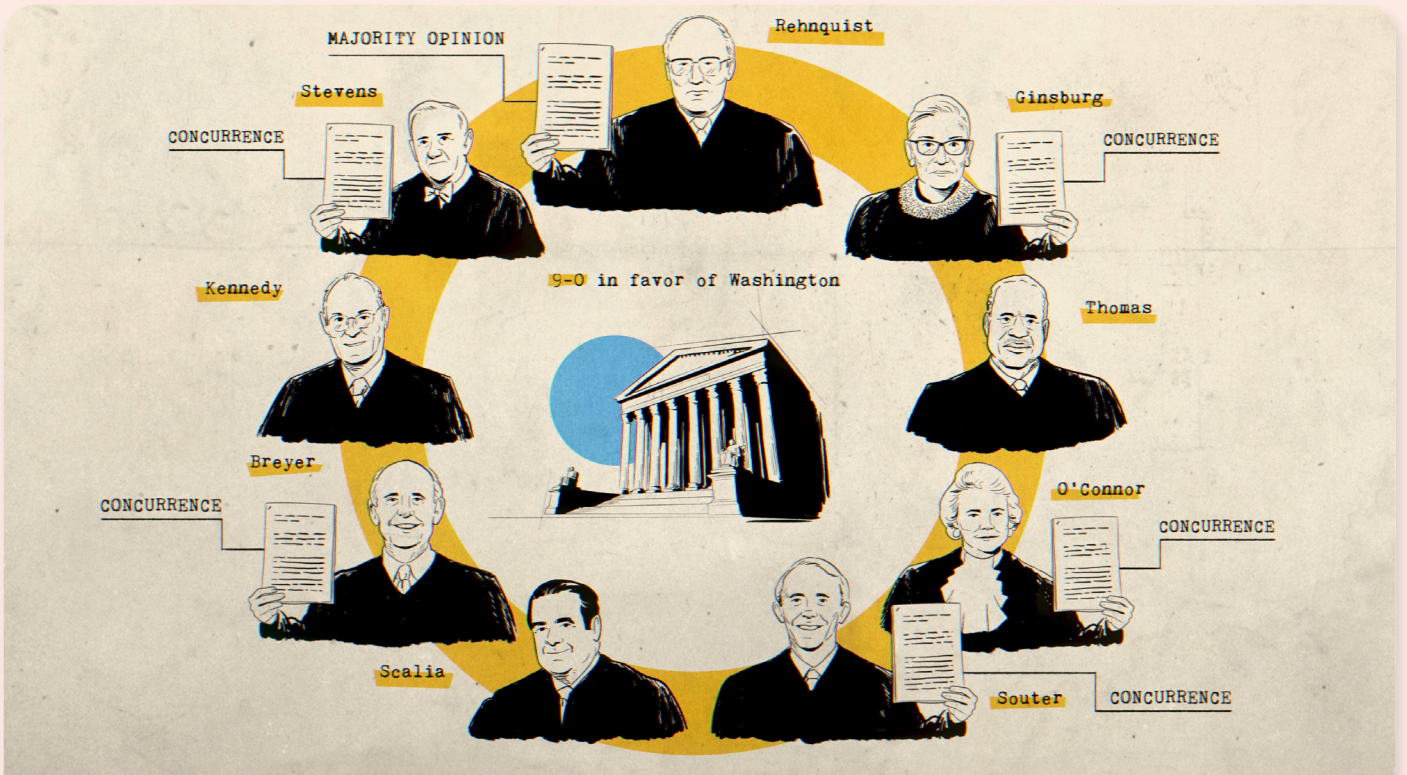
doctrine. Citing both its own and U.S. Supreme Court precedent, the court explained that it is a well-established rule that police can “enter a home without a warrant” in “exigent circumstances” and that “[o]ne such exigency is the ‘need to assist persons who are seriously injured.’” It concluded it was objectively and subjectively reasonable to think emergency assistance was necessary based on the facts. Specifically, the court pointed to the reports of gunshots, testimony that a body was seen lying on the balcony, and physical evidence that was consistent with a recent shooting as a reasonable basis for the officers to conclude that it was necessary to enter “the apartment to render aid to a potentially wounded individual, or at the very least to verify that no one had been shot.” Although the officers exhibited some “lack of haste” at the scene, the court reasoned that “the officers’ caution was understandable” as they faced “an unknown number of armed men inside the apartment.” The court concluded that such caution did not belie the officers’ claims that they were dealing with an emergency, noting that concluding otherwise could incentivize police to act too hastily and without measured judgment.

Justices Matthew McDermott, Christopher McDonald, and Dana Oxley disagreed. In the dissenting opinion, Justice McDermott, writing for the three, criticized the majority’s factual recitation as “contortive” and highlighted factual details that he believed revealed “an investigatory, not caretaking, purpose” behind the warrantless entry and search. For example, he found it significant that the officers did not “alert[] dispatch that medical assistance might be needed,” and that they walked, rather than ran, to the apartment. Justice McDermott also emphasized that, to justify a warrantless entry, the Iowa Constitution requires police to have both an objective basis to think community-caretaking activity is necessary and a subjective intent to engage in caretaking. Although he acknowledged that the majority mentioned the objective and subjective components, he concluded the court failed to “meaningfully apply” them and that it improperly analogized to federal cases that apply an objective test. In sum, the dissent believed “the ‘emergency aid’ exception should apply only in cases of true emergency” and thought the facts of the case did not fit the bill.

For the full article, including citations, use the following QR code or visit [fedsoc.org/commentary](https://fedsoc.org/commentary).



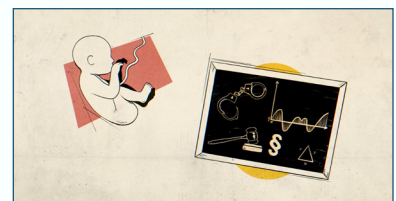
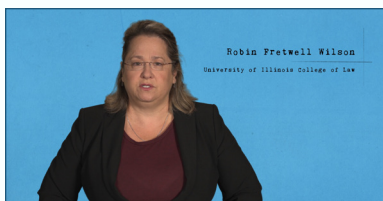
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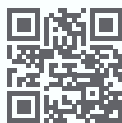
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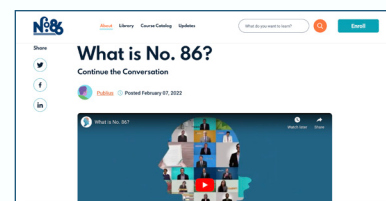
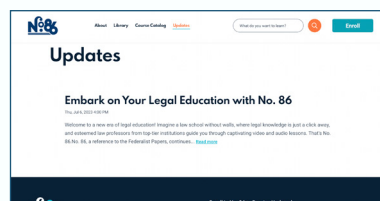
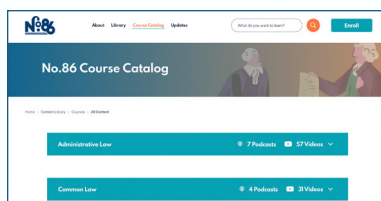
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KATZ v. UNITED STATES

What will ~~cats~~ mean for privacy in the digital age?



**Amy Peikoff - John Bash - Jake Laperruque - Orin Kerr**

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Director of Photography: **Matthew Wood** Second Unit DP: **David Zlutnick & Dominic Sterett** Associate Producers: **Ann Hartley & Guy DeSanctis** Marketing & Distribution: **Megan Soller & Alexa Secrest**  
Post Production: **Motivo Media** Camera Operators: **Dominic Sterett & David Zlutnick** Studio Manager: **Alex Yershov**



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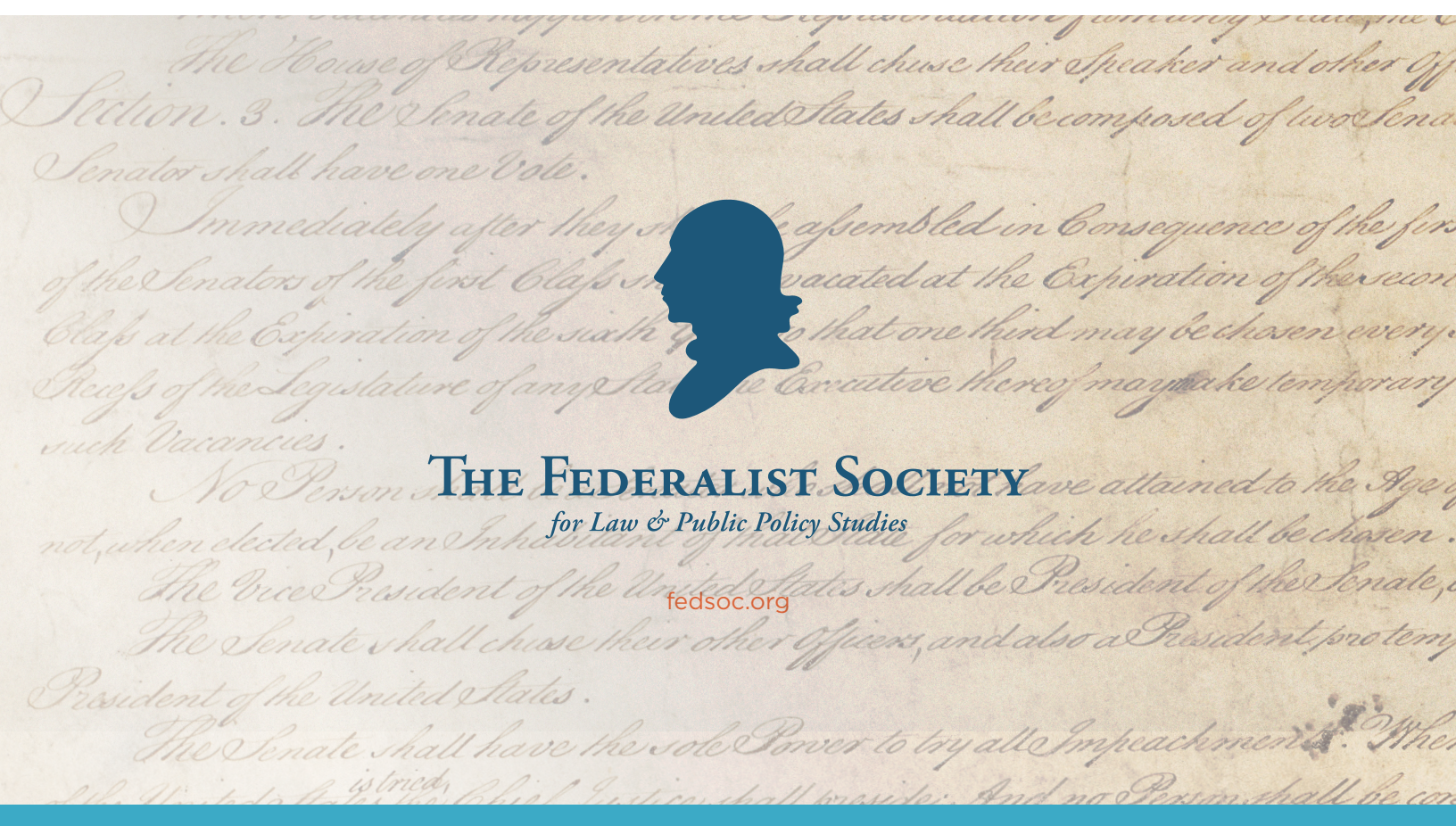
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