

THE **Federalist** PAPER

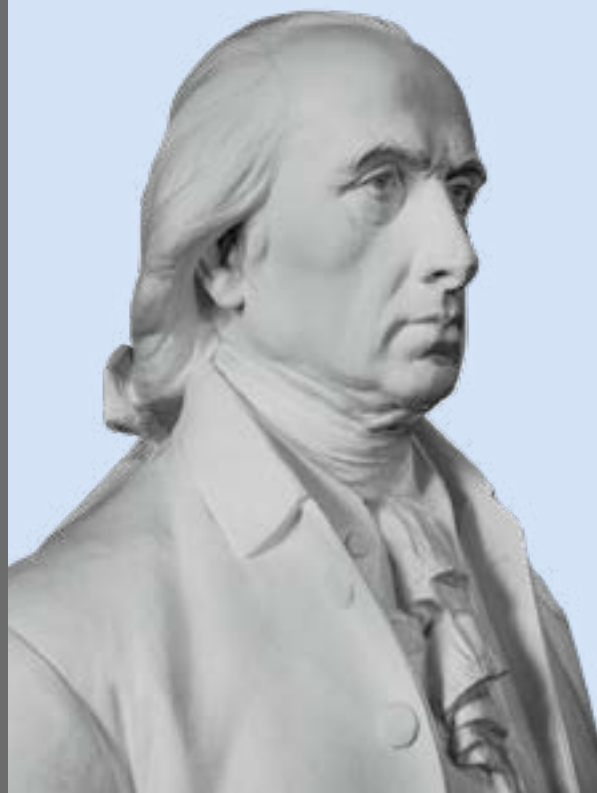
THE MAGAZINE OF THE FEDERALIST SOCIETY • FEDSOC.ORG



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Summer 2022

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“The courts must declare the sense of the law; and if they should be disposed to exercise **will** instead of **judgment**, the consequence would equally be the substitution of their pleasure to that of the legislative body.”

EDITOR'S LETTER



*Dear
Friend,*

Forty years and we're still going strong!

The first half of 2022 has been busy and exciting for the Federalist Society. The National Student Symposium was hosted by our University of Virginia Student Chapter, and it featured a keynote address by Governor Glenn Youngkin and fascinating panel discussions about the Federalists and Anti-Federalists. Professor Chris Walker received the Joseph Story Award. Student Chapters have done a great job of getting back to in-person programming, and they look forward to continuing in the fall.

Our Lawyers Chapters have eagerly kept up in-person programming too, including a noteworthy Florida Chapters Conference featuring keynotes by former Vice President Mike Pence, Governor Ron DeSantis, and Justice Neil Gorsuch. Many new regional and statewide conferences have been held in the past few months, and several more new conferences are coming soon; check out the save-the-dates on page 7, and mark your calendar for the one closest to you!

Our Practice Groups hosted the Tenth Annual Executive Branch Review Conference in May, and it continued the tradition of critically examining executive branch actions in various spheres. The Freedom of Thought Project held an inaugural dinner and panel at the conclusion of the conference and looks forward to continuing its work of highlighting threats to fundamental freedoms and supporting free and open discourse. Our new In-House Counsel Project had a nationwide launch conference that was a great success, with counsel from more than 100 companies attending and a keynote address by former U.S. Attorney General (and former Verizon General Counsel) William Barr. Stay tuned for more information about future programming from this important new project.

FedSoc Studios released a new documentary about Frederick Douglass and the right to vote and continues to produce high quality and informative videos on legal subjects. Our Regulatory Transparency Project, Article I Initiative, and State Courts Project continue to produce excellent events, videos, podcasts, and papers, some of which are highlighted in this issue, and all of which can be found at fedsoc.org. And don't miss new articles from the *Federalist Society Review* and posts on the FedSoc Blog!

Please save the date for the 2022 National Lawyers Convention, which will be held November 10-12 at the Mayflower Hotel in Washington, DC. We hope you enjoy this issue of the *Federalist Paper*. Please send any questions or comments to us at info@fedsoc.org. We'll see you at the NLC!

*Sincerely,
Katie McClendon
Director of Publications*

STUDENT

THE FEDERALIST PAPER • SUMMER 2022 • FEDSOCIETY.ORG



Were the Founders Themselves Originalists?
Prof. Akhil Amar, Prof. John McGinnis, Judge William Pryor (moderator)



The Anti-Federalists: Planting Seeds of American Populism
Prof. Akhil Amar, Prof. Michelle Kundmueller, Prof. Edward White, Judge Lisa Branch (moderator)



21st Century Federalism: A View From the States
Justice Goodwin Liu, Judge Jeffrey Sutton, Prof. Julia Mahoney, Judge Neomi Rao (moderator)



4 Debate: Resolved: The Federalists Designed a Constitution of Plenary Federal Power
Prof. John Mikhail, Prof. Michael McConnell, Judge Trevor McFadden (moderator)



Article I Award
Zack Austin, First Prize, with Nate Kaczmarek, Director of the Article I Initiative



Modern Debates, Old Insights: The Federalists, Anti-Federalists, and Executive Power
Prof. Jennifer Mascott, Prof. Julian Davis Mortenson, Prof. Saikrishna Prakash, Prof. Michael Rappaport, Judge Paul Matey (moderator)



Toasting 40 Years
the Federalist Soc
Prof. Lillian BeV



DIVISION



Keynote Address
Governor Glenn Youngkin



Banquet Exchange
Judges Andrew Oldham
and Amul Thapar



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A few highlights of student chapter activities outside the National Student Symposium



LAWYERS

Western Chapters Conference
January 29 • Reagan Library



Florida Chapters Conference
February 4 • Disney



Missouri Conference
January 24 • Jefferson City



Judge Jim Ho & Allyson Ho
February 15 • DC Young Lawyers



Oklahoma State Dinner
March 5 • Governor's Mansion



CHAPTERS

Ohio Chapters Conference
April 1 • Columbus



Former AG William Barr
April 5 • DC Young Lawyers



Wisconsin Conference
April 29 • Pewaukee

Midwestern Chapters Conference
April 23 • Springfield



Save the Date

Florida Young Lawyers Summit
Tampa • July 15-16

North Carolina Chapters Conference
Raleigh • September 9

Alabama Chapters Conference
Birmingham • September 9

Texas Chapters Conference
Austin • September 23-24

Kentucky Chapters Conference
Louisville • September 29

Southern California Conference
Orange County • September 30

Arizona Originalism Symposium
Phoenix • October 7

Arkansas Chapters Conference
Little Rock • October 28


PRACTICE




Opening Address
Sen. Mike Lee




Address
Sen. James Lankford



Regulation By Surrogate?
Is the Government Evading
the APA?



The Executive Branch's
Duty to Enforce



ABA Accreditation of Law
Schools




American Investment in
China



Administrative State on the
Brink?



Climate Risk a New
Regulatory Risk?



Religious Liberty and the
Department of Defense



Selective Enforcement of
Civil Rights Law by the
Administrative Agencies

GROUPS



230+ Attendees • From 100+ Companies • 20 Sponsors

2 Plenary Panels

8 Breakout Sessions
2 Book Signings

Plenary Panels

Do Corporate Lawyers Care About Federalism?

Shawn Fagan (CLO, Citadel)
Cameron Findlay (GC, Archer Daniels Midland)
Hester Peirce (Commissioner, SEC)
Myron Steele (former Chief Justice, DE Supreme Court)
Rachel Brand, moderator (CLO, Walmart)

How Should Corporate Lawyers Handle Cybersecurity Concerns?

Rick Sharma (CLA, Bridgewater)
Hayley Chang (AGC, Meta)
Sujit Raman (GC, TRM Labs)
Brent McIntosh, moderator (GC, Citigroup)

Keynote Address New Challenges for In-House Counsel

William P. Barr

Former U.S. Attorney General, former General Counsel for Verizon

Breakout Sessions

Digital Economy
Katherine Kirkpatrick
Sumon Dantiki
Patrick Otlewski

State Litigation
Eric Ciesielski
Noel Francisco
Jeffrey Sutton
Evan Young
Tara Morrissey

Pushing Back
Stephen Cox
Askley Garry
Paul Ray
Matt Krueger

Antitrust
Makan Delrahim
Dina Kallay
Nate Eimer
James Speta

Investigations
Amy Boring
Will Chang
John Richter
Ricardo Solano

Lightning Round
Corinne Snow
Zachary Terwilliger
Rick Sofield
Patrick Traylor
Ephraim Wernick

Int'l Compliance
Catherine Keller
Anne MacDonald
Chad Mizelle
Mike Walsh

Climate Change
Lindsay See
Kristin Westgard
Robert Dunn

Book Signings

One Damn Thing
After Another
William Barr

Who Decides?
Jeffrey Sutton

FACULTY DIVISION

Faculty at the National Student Symposium



We hosted a luncheon panel for students interested in academia who attended the 2022 National Student Symposium. Interested students heard from Julia Mahoney (UVA), Paul Mahoney (UVA), Michael McConnell (Stanford), John McGinnis (Northwestern), Lee Liberman Otis (moderator, Federalist Society Faculty Division), and Chris Walker (Ohio State).



We hosted four winners of the Young Legal Scholars Paper Competition, who presented their papers shortly before the 2022 National Student Symposium. Josh Blackman (South Texas), Jonathan Green (Incoming Bigelow Fellow, Chicago), Michael Morley (FSU), and Ilan Wurman (ASU), received feedback from distinguished senior scholars Akhil Amar (Yale) and Julia Mahoney (UVA), as well as Bernadette Meyler (Stanford) and Bertrall Ross (UVA) who participated virtually. The panel was moderated by Michael McConnell (Stanford).

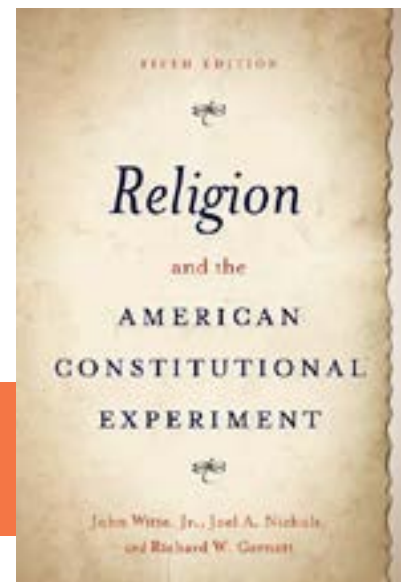


Chloe Zagrodzky, student at the University of Chicago Law School and the 2022 Joseph Story Award Chair, presented the 2022 Joseph Story Award to Professor Chris Walker (then-Ohio State) on March 5th at the Federalist Society's 2022 National Student Symposium. Professor Walker will be moving to the University of Michigan this coming academic year.

Save the Date

Federalist Society Faculty Division Reception
at the annual meeting of the Southeastern Association of Law Schools
Sandestin, FL • July 31

2023 Annual Faculty Conference
alongside the AALS annual conference
San Diego, CA • January 5-6



Just Published

FEDSOC STUDIOS

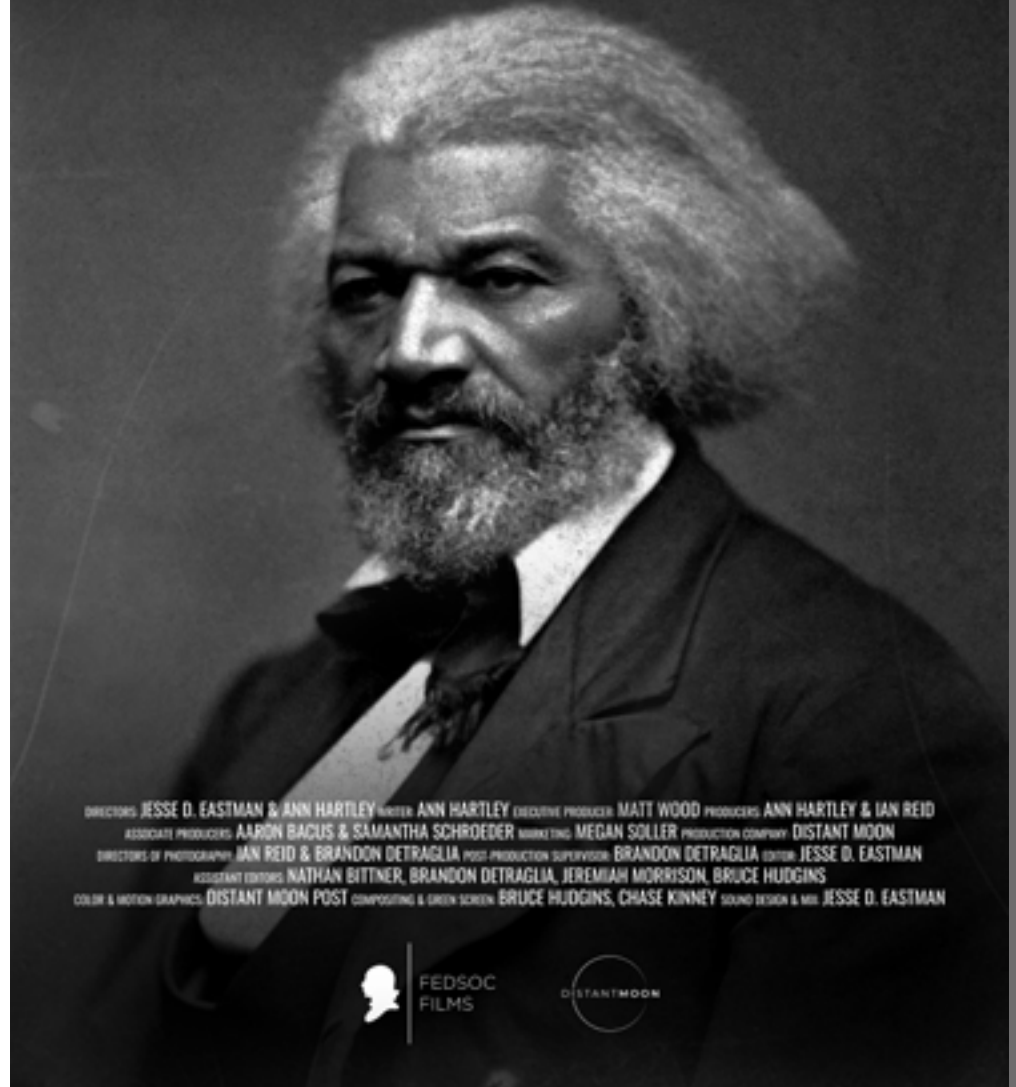
LUCAS MOREL | TIMOTHY SANDEFUR | BRADLEY REBEIRO

IMAGE OF AN FREDERICK DOUGLASS AND THE RIGHT TO VOTE AMERICAN

Upon the ratification of the Thirteenth Amendment in 1865, many Americans thought that slavery had been abolished once and for all. Frederick Douglass, however, argued that “slavery is not abolished until the black man has the ballot.” His fight to secure the vote would transform not only the Constitution, but what it meant to be an American.

As a fervent abolitionist, orator, and former slave, Douglass was without question the most influential black voice in the United States during the Reconstruction period. His belief that the right to vote was a natural right drove him to campaign tirelessly for what would become the Fifteenth Amendment. Despite opposition from President Andrew Johnson, reluctant legislators, and even fellow suffragists, Douglass remained undeterred.

Learn about Douglass’ crusade in the new film from FedSoc Studios, **Image of an American: Frederick Douglass and the Right to Vote.**



Watch this and other documentaries and event videos at youtube.com/thefederalistsociety.

Image of an American has been accepted to six film festivals.



New at the
Regulatory Transparency Project

Event Videos



Podcasts



Paper



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ARTICLE I

New at the
Article I Initiative

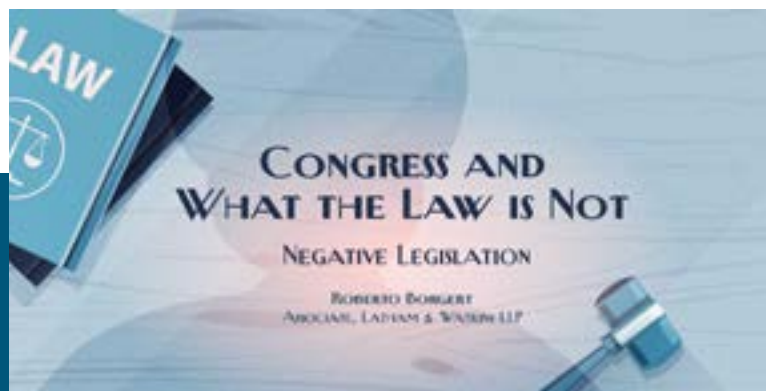


Featured 2015 Address from Sen. Orrin Hatch



In Necessary and Proper Podcast Episode 76, we look back to the late Senator Orrin Hatch's Address to the 2015 National Lawyers Convention. That year's Convention was focused on "The Role of Congress," and Senator Hatch eloquently discussed Congress's place in the Constitution's separation of powers as well as the importance of prudence in effective governance. You can listen to his remarks on the Necessary & Proper podcast or watch a video of the speech at articleiinitiative.org.

The Federalist Society lost a dear friend in losing Senator Hatch this year. If you haven't yet, please read Lee Otis's reflections on his life and work in her April 25 post on the FedSoc Blog, *In Memoriam Orrin Hatch*. As she says, "the Federalist Society grew up with Orrin Hatch. He will be greatly missed."



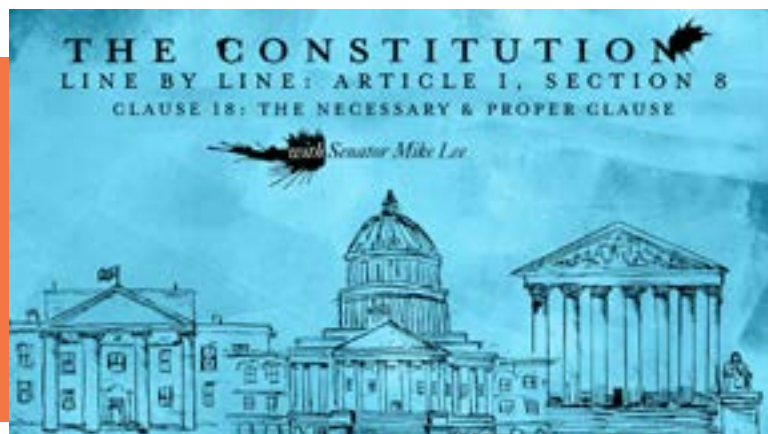
Animated Video

The Initiative recently collaborated with 2020 Article I Writing Contest winner Roberto Borgert to produce a new animated video highlighting his view that Congress can limit the statutory interpretations of the Judiciary and clarify the exact scope of legislation by applying limits to new laws or "negative legislation." Visit articleiinitiative.org to watch.



The Constitution Line by Line Documentary Series

Our 16-episode video series featuring Senator Mike Lee reading and analyzing every section of the first Article of the Constitution is the most popular video project in the Initiative's history. Episode 14 on the Necessary and Proper Clause was recently released, and you can view all episodes at articleiinitiative.org.



Follow us
articleiinitiative.org



FREEDOM OF THOUGHT



Freedom of Thought Project Launch Dinner

At the conclusion of the Executive Branch Review Conference, the Freedom of Thought Project hosted an inaugural dinner and a panel titled **Public and Private Regulation: What's Driving ESG?** Judge Gregory Katsas of the DC Circuit moderated a discussion featuring Hon. Boyden Gray, Matt Stoller of the American Economic Liberties Project, Professor Christina Skinner of the Wharton School, and Professor Julia Mahoney of the University of Virginia. The panelists discussed whether the widespread corporate adoption of ESG goals harms individual liberty and the implications of this growing corporate behavior for democratic accountability.



STATE COURTS

Principles of State Constitutional Interpretation

by Justice Clint Bolick, published in the *Federalist Society Review*

State constitutionalism—the practice of state courts deciding cases on independent state constitutional grounds—is a vital yet underdeveloped attribute of American federalism. Our system of dual sovereignty ensures the capacity of state courts to interpret their own constitutions to provide greater protections for individual rights than the federal constitution. When they do so, their decisions are not subject to review by federal courts absent a federal issue.

The subject has received significant judicial and academic attention ever since U.S. Supreme Court Justice William J. Brennan, Jr., in a pair of trailblazing law review articles in 1970 and 1984, urged state courts to independently interpret their constitutions to elevate the protection of individual rights. Indeed, in the years leading up to his second article, Brennan counted over 250 state court decisions “holding that the constitutional minimums set by

the United States Supreme Court were insufficient to satisfy the more stringent requirements of state constitutional law.” On issues encompassing free speech, religious liberty, private property rights, due process, privacy, capital punishment, education, victims’ rights, and the rights of criminal defendants, state courts have frequently identified greater constitutional protections than their federal counterparts.

And yet the methodology of state constitutional interpretation remains largely unexamined. Rarely have state courts specified when they will interpret their state constitutions independently and how they will go about that task. As a result, the jurisprudence is inconsistent and confusing, and constitutional rights may not be protected to the extent the framers of our state constitutions intended. State court judges typically, and often correctly, blame practitioners for failing

to raise and develop state constitutional arguments adequately. But if our jurisprudence lacks coherent methodology to determine whether and how to independently interpret our state constitutions, how can practitioners know when to raise such arguments and how to present them effectively?

Use the QR code to keep reading:



SCAN ME

PUBLICATIONS & BLOG

New from the Federalist Society Review



The Uniform Token Regulation Act: A Proposal for States to Lead on Regulatory Clarity for Digital Tokens
Paul N. Watkins, Danielle DuBose



Gender Identity Policy Under the Biden Administration
Rachel N. Morrison



Bargaining Rights Gone Wrong: How State Courts Invented a Constitutional Duty to Bargain and How It Harms Individual Workers
Alexander MacDonald



Against Living Common Goodism
William H. Pryor

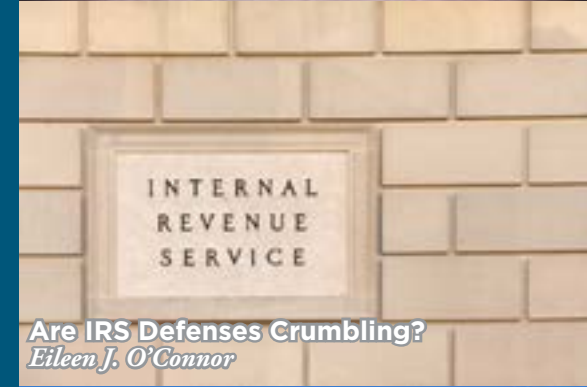


Principles of State Constitutional Interpretation
Clint Bolick

New from the FedSoc Blog



Religious Liberty Update on Congressional and Executive Branch Actions
Christine Pratt



Are IRS Defenses Crumbling?
Eileen J. O'Connor



Congress Must Decide How to Choose Between Courts and Agency Adjudication
Devin Watkins



Tweet at Your Own Peril: The Third Circuit Holds that Anyone—Literally Anyone—Can File an Unfair Labor Practice Charge
Alexander MacDonald



The Biden Administration's Proposed Charter School Rules
Paul F. Zimmerman, Paul R. Moore

Read more at fedsoc.org/commentary

The Federalist Society
for Law and Public Policy Studies

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— Est. 1982 —

Save the Date
**2022 National
Lawyers Convention**

*November 10 - 12, 2022
In-person | Washington, D.C.*



fedsoc.org/nlc

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