

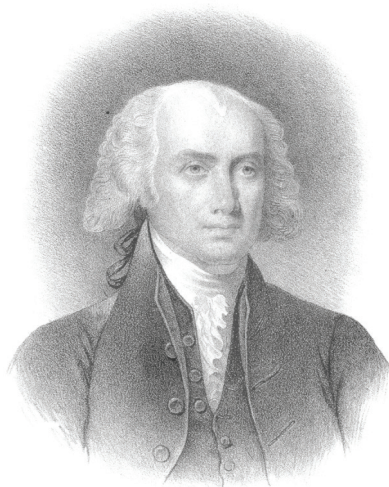


THE Federalist PAPER

THE
FEDERALIST
SOCIETY



THE MAGAZINE OF THE FEDERALIST SOCIETY • FEDSOC.ORG • WINTER 2025



James Madison.

THE FEDERALIST PAPER

Winter 2025

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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.

DESIGN: Aaron Sandford



EDITOR'S LETTER

Dear Friend,

The Federalist Society's year is off to an exciting start as we welcome our new president, Sheldon Gilbert! We are grateful to outgoing president Eugene Meyer for his decades of service to the Society and look forward to many more years of continuing the work he started during his long tenure. See inside for an interview with Sheldon to learn more!

The 2024 National Lawyers Convention was a truly historic one for the Federalist Society. We moved the convention from the Mayflower Hotel to the Washington Hilton to make room for hundreds more attendees and several additional panels. Despite the change, we enjoyed the same rigorous discussion and joyful fellowship that have marked the Society since our founding. The theme of this year's NLC was *Group Identity and the Law*. Our Showcase Panels explored various aspects of that theme, while breakout panels covered topics such as judicial nominations in the next administration, environmental law in a post-Chevron world, religious liberty and parental rights, and the future of antitrust. Other highlights included a fireside chat with Senator Eric Schmitt, a vigorous Rosenkranz Debate, and an inspiring Olson lecture. The Antonin Scalia Memorial Dinner featured a delightful and informative discussion between Justice Neil Gorsuch and former Justice Stephen Breyer. See

inside for photos and details, and visit our website to watch the panels you missed!

Our Student Chapters, Lawyers Chapters, Faculty Division, and Practice Groups continue to host panels, convene luncheons and conferences, publish articles, and record webinars and podcasts. See inside for a student chapter profile, an interview with a longtime volunteer leader, and information about recently released articles, podcasts, and webinars. You will also find featured events and content from the Article I Initiative, Regulatory Transparency Project, Freedom of Thought Project, and External Relations.

There's more to read in this issue, including Randy May's popular blog post, *The Judiciary Is Not Just Another Political Branch*, and Abhi Kambli and Erin Gaide's fascinating writeup of *The Student Loan Forgiveness Saga*. Please visit fedsoc.org and sign up for our weekly email to learn about our upcoming events and newly released videos, podcasts, and articles. And please reach out to us at info@fedsoc.org if you'd like to share any feedback. We couldn't do any of this without the generous support and tireless work of our volunteers and donors, for which we are very grateful.

Katie McClendon

DIRECTOR OF PUBLICATIONS & PRO BONO



Volume 25 of the **Federalist Society Review** is now available in full. The twenty articles published in 2024 make up a fantastic volume of informative and thought-provoking legal insights. Use the QR code to find the full list of articles, and read about liability for corporate discrimination, stare decisis in abortion law, the Supreme Court Justices' Code of Conduct, the future of deference, and much more!







INTRODUCING *Sheldon Gilbert*

Sheldon Gilbert joined the Federalist Society as our second President & CEO on January 2, 2025. Sheldon succeeded Eugene B. Meyer, who served in that role for more than 40 years.

Before joining FedSoc, Sheldon was Senior Lead Counsel for Strategic Initiatives at Walmart. Prior to his work at Walmart, he served as Vice President for Content and Development and Senior Fellow for Constitutional Studies at the National Constitution Center; Director of the Institute for Justice's Center for Judicial Engagement; and Associate Chief Counsel for Litigation at the U.S. Chamber of Commerce's Litigation Center. He is a graduate of George Washington School of Law and the University of Utah.

Sheldon is a child of the Mountain West, where he was born in a coal

mining town in Utah and raised in Idaho near the Grand Tetons. He is married and has four children.

Upon his selection as the new FedSoc president, Sheldon said, "The Federalist Society's strength comes from our members, and I'm proud to work alongside them to promote the Society's founding principles and provide a thoughtful forum for discussion and debate. It's an honor to serve our members—including law school students and faculty, public servants in every branch of government, and private sector and non-profit lawyers—who tirelessly and fearlessly work to defend the Constitution, preserve freedom, and promote the rule of law."

Be sure to keep an eye out for Sheldon and say hello at an upcoming conference or event! ■

Torch Pictures

STUDENT DIVISION



1



2

1 Texas students attended a debate about progressive prosecution moderated by Professor Lee Kovarsky and featuring Harris County DA Kim Ogg and Professor Jennifer Laurin.

2 Officers from the Puerto Rico chapter stood with Judge John Bush.



3

3 Chicago chapter members posed for a picture during the 2024 National Lawyers Convention.



4



5



6

4 The Emory chapter listened as Professor Josh Blackman and Professor Sasha Volokh discussed *U.S. v. Rahimi*.

5 The Arizona State chapter hosted a debate about DEI between Devon Westhill and Ray English, moderated by Jon Riches.

6 Members of the George Washington chapter enjoyed an end of semester social.

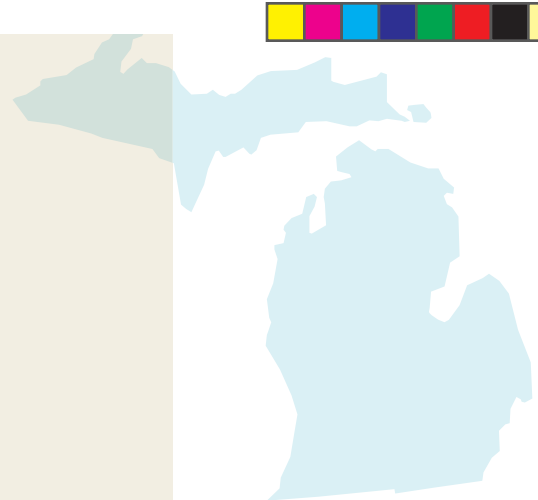


7 Professor Chad Squitieri, Roman Martinez, and Professor Jennifer Mascott spoke to the Catholic Law chapter about administrative law.

8 Justice Brian Hagedorn of the Wisconsin Supreme Court and Professor Randy Kozel spoke to the Wisconsin chapter about originalism, precedent, and stare decisis.

9 The Princeton chapter prepared to recruit new members.

10 Hans von Spakovsky spoke to the Clemson chapter about election law.



Upcoming Event

NATIONAL STUDENT SYMPOSIUM

The University of Michigan Law School Federalist Society will host the 44th National Student Symposium on **March 7-8, 2025**. Hundreds of students from all over the country will gather in Ann Arbor for two days of debate and discussion about this year's topic, *Congress: Reviving the Impetuous Vortex*. The banquet and keynote address will be held at world-renowned Michigan Stadium ("The Big House"). A 50% travel reimbursement (hotel not included) is available to dues-paying student members.

fedsoc.org/symposium



11



14



15



12



16



17



13



18

11 Judge Andrew King and Judge Chad Readler joined members of the Akron board for a post-event photo.

12 To celebrate Constitution Day, the Regent chapter served cookie cake and ice cream before a talk about the President's removal power.

13 Members of the Georgetown Undergraduate chapter posed with Noel Francisco.

14 The St. John's chapter hosted a student-faculty mixer.

15 Members of the WashU chapter walked shelter dogs during a community service outing.

16 Members of the University of North Carolina chapter attended the annual Antonin Scalia Memorial Dinner.

17 The UVA chapter displayed FedSoc information for interested students to read.

18 Officers from the Washington & Lee chapter gathered with Judge Marvin Quattlebaum.



CHAPTER SPOTLIGHT

MICHIGAN LAW FEDERALIST SOCIETY

Katherine R. Slivensky

Chapter President

This year, the Michigan Law chapter of the Federalist Society has proudly offered engaging and memorable events, fostering intellectual diversity and meaningful discussions. The fall semester featured extraordinary moments, including a visit to the U.S. Supreme Court, where members met Justice Brett Kavanaugh and gained firsthand insights. Members also attended the Michigan Lawyers Chapter's Annual Grano Dinner in Detroit, where we met former Attorney General John Ashcroft and networked with members of the Michigan Lawyers Chapter.

Also in the fall, the Michigan Law chapter hosted prominent jurists and scholars, such as Judges Chad Readler, David McKeague, and Wes Hendrix, and Professors Sherif Girgis and Jonathan Adler. Topics discussed ranged from ESG, vaping, and the FTC to state constitutions, civil liberties, and motherhood in the legal profession.

This spring, the Michigan Law chapter will host the Second Annual Michigan Chapters Banquet, welcoming members from the Michigan Lawyers Chapter and from student chapters across the state. We will also inaugurate the Michigan Law Federalist Society Lecture Series, featuring lectures from Judge Paul B. Matey, Professor Adrian Vermeule, and Michael Huston, the alumnus whose donation made this event possible.

On March 7-8, 2025, hundreds of Federalists will descend upon Ann Arbor for the National Student Symposium, culminating in the Keynote Banquet at Michigan Stadium. The theme of this year's symposium is "Congress: Reviving the Impetuous Vortex." Programming will explore whether—and to what extent—Congress should seize the opportunity to exert more political control once again.

Later in the spring, the chapter will host distinguished speakers including Judges Eric Murphy and David Stras, and SEC Commissioner Hester Peirce. Our End-of-Year Chapter Banquet will feature Chief Judge William H. Pryor as the keynote speaker. We look forward to a semester brimming with opportunities to engage our law school and add value to the Federalist Society at large.



THE JUDICIARY IS NOT JUST ANOTHER POLITICAL BRANCH

Randolph May
President, The Free State Foundation
November 4, 2024

There has been a relentless campaign on the Left to politicize—and therefore delegitimize—the Supreme Court as an institution. Integral to this cause has been an effort to paint the Court as just another partisan branch of government, akin to the executive and legislative branches.

This campaign to politicize the Supreme Court is not only wrong-headed but dangerous. Dangerous because, to the extent it succeeds, it undermines the

rule of law upon which our system of constitutional government rests. This is because the rule of law depends on the American people's conviction that the Court, with "neither FORCE nor WILL, but merely judgment," as Alexander Hamilton put it in Federalist No. 78, "remains truly distinct from both the legislature and the executive."

While survey data show that Americans have more confidence in the Supreme Court than in the



other two branches, it's also true that confidence has declined meaningfully in the last decade. In a September 2024 Gallup survey asking, "Do you approve or disapprove of the way the Supreme Court is handling its job?" 44% approved, 51% disapproved, and 5% had no opinion.

More disturbingly, according to Gallup, the Court's depressed approval ratings are driven largely by exceedingly low trust (24%) and job approval (15%) among Democrats. These low ratings have contributed to a near-record 57-point gap in the Supreme Court's overall job approval rating between Republicans and Democrats.

This should come as no surprise considering the Left's incessant attacks, including from the highest ranks of government. Recall Senate Majority Leader Chuck Schumer railing against what he called a "MAGA Supreme Court" after the Supreme Court's ruling in the landmark presidential immunity case. And President Joe Biden's declaring "this is not a normal court" after the Court's ruling ending affirmative action in college admissions. Of course, there has been much more in the same vein.

None of the above is news, of course. And to be sure, the Supreme Court as an institution, and its Justices, shouldn't be immune from criticism. It never has enjoyed such immunity in our nation's history.

But something is different now. Press stories, now more frequently than ever before, portray the Supreme Court as just another political branch, controlled by one party or the other. A November 6 story in *Forbes* suggests that, with Donald Trump's victory, the Supreme Court is likely to remain "firmly in Republican hands for years to come." Elsewhere, *Vox* called out "this Supreme Court, with its 6-3 Republican supermajority."

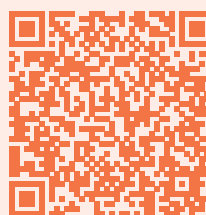
I get that the Justices are appointed by Republican or Democrat presidents and confirmed by a Senate in which one party or the other holds a majority. But when the press characterizes the Court as being in "Republican hands" or having a "Republican supermajority," it fuels the notion that the Justices, once they don their robes, are expected to act on a party basis. This partisan gloss makes it more difficult to maintain the public's confidence in the work of the Court. It's

one thing to characterize the Court, or individual Justices, as "conservative" or "liberal," "right" or "left," "originalist" or "purposivist," or whatever other jurisprudential or philosophical label may be thought appropriate. It's quite another to leap from the philosophical to the partisan.

Indeed, there are many empirical studies showing that there is much less partisanship among the Justices—measured by associating the votes of individual Justices with the party of the president that nominated them—than is often assumed. For example, in an October 2024 article in the *City Journal*, Ilya Shapiro, Supreme Court scholar and the Manhattan Institute's Director of Constitutional Studies, conducts a deep dive examining the Court's opinions from the last term. He points out that "[o]nly 11 of the 58 opinions in argued cases last term resulted in 'partisan' 6-3 splits and nearly half the decisions were unanimous." What's more, he demonstrates that, to the extent party identification matters, when the unanimous decisions are excluded, there was 81% alignment among Democrat appointees versus only 35% among Republican appointees.

All those who care about the rule of law, whether on the Left or the Right, should make a conscious effort to rebuff attempts to label the Supreme Court or its Justices on a partisan basis. This characterization delegitimizes the Court's work in the mind of the public.

And the press, singled out for special protection under the First Amendment, should know better—and do better. Rather than boosting the cause of politicizing the Court, a responsible press would help educate the public regarding the Court's unique role in our constitutional system as an institution whose decisions are grounded in law, not politics. ■



The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the author. To read this blog post online with links to sources, opposing views, and an author bio, or to read more from the FedSoc Blog, follow the QR code or visit fedsoc.org/commentary/fedsoc-blog.

LAWYERS CHAPTERS

During the fall months, the Lawyers Division hosted seven conferences and two statewide events, including the Alabama, Tennessee, Texas, North Carolina, Arkansas, and Kentucky Conferences, as well as the Inaugural Georgia Chapters Conference at the College Football Hall of Fame. The Michigan and Arizona chapters held statewide dinners, and chapters across the country programmed a record number of local events.

UPCOMING EVENTS

Missouri Chapters Conference
February 21
Jefferson City, MO

Ohio Chapters Conference
April 4
Columbus, OH

Third Circuit Conference
April 25
Philadelphia, PA

RECENT EVENTS

SEPTEMBER 5-6
Alabama Chapters Conference
Homewood





SEPTEMBER 13

Tennessee Chapters Conference
Nashville



SEPTEMBER 20-21

Texas Chapters Conference
Fort Worth



OCTOBER 4

Inaugural Georgia Chapters Conference
Atlanta



OCTOBER 11
North Carolina Chapters Conference
Raleigh



OCTOBER 18
Arkansas Chapters Conference
Bentonville



OCTOBER 25
Kentucky Chapters Conference
Frankfort



OCTOBER 28
Michigan Chapter
Grano Award
Presentation and Dinner
Detroit

The Michigan Chapters held their annual Grano Dinner and Award Presentation in October, featuring a fireside chat with former U.S. Attorney General John Ashcroft and Judge Brock Swartzle of the Michigan Court of Appeals. This year's recipient of the Grano Award was Judge Mark Boonstra of the Michigan Court of Appeals.

The Grano Award is presented to a Michigander of note who, like Professor Grano, has exhibited a great respect for the rule of law, a deep appreciation of the separation of powers, and a dedication to the principle that ours is a government of laws, and not of men.



MEMBERSHIP

AN INTERVIEW WITH JUDGE ALAN O. FORST

Judge Forst has served on the Florida Fourth District Court of Appeal since 2013.



When and how did you first join the Federalist Society?

I was in the process of securing a summer clerkship at U.S. DOJ in 1984. I had been a research assistant in the Civil Rights Division's Office of the Assistant Attorney General immediately prior to starting law school. I stopped by my old office, and one of the political appointees asked me if I was familiar with the Federalist Society. I was not. I was told that FedSoc was looking for a law student to serve as coordinator of the 1985 National Student Symposium in DC. Soon thereafter, I was meeting with Gene Meyer and Lee Liberman and was designated as the symposium coordinator, helping put together a weekend featuring events at Georgetown Law, the White House, and the Supreme Court, with presentations by Chief Justice Burger, Senator Hatch, Solicitor General Rex Lee, and DC Circuit Judges Bork, Scalia, and RBG. It was a pretty good introduction to FedSoc!

What has your involvement looked like since then?

As I was working with Gene and Lee to organize the symposium, I founded and led a FedSoc chapter at my law school. I also attended the first FedSoc lawyers chapter event, a lunch in DC in summer 1985 (FedSoc trivia: the

first speaker at a lawyers chapter event was Mike Horowitz, and the second was Linda Chavez). A station wagon transported a group from DOJ to the Chinatown restaurant. Chuck Cooper was in the front seat. Roger Clegg and some others were in the back seat. I was in the luggage space in the very back. I continued attending DC Lawyers Chapter events as I spent my first 13 years as a lawyer in DC, including a stint as special assistant to EEOC Chairman Clarence Thomas, a fabulous mentor who let me tag along to his FedSoc presentations. I attended the first National Lawyers Convention in 1987, and I've attended all but one since then. As a young lawyer, I sat next to a DOJ summer law clerk at a FedSoc DC Lawyers Chapter lunch: John Kennedy Jr.

Our young family moved to Florida in late 1998, and I soon became active in helping build the Miami and Tallahassee FedSoc chapters while also becoming active with the Labor & Employment Law Practice Group. My wife and I attended one of the first FedSoc regional leadership weekends in New Orleans and became regulars. I began hosting Friday dinners for the Florida leadership delegation, inviting Dean Reuter and Lisa Ezell to join us. In 2008, I organized a FedSoc reception at the Florida Bar's annual convention. We're still doing this, and it's

a great way to make a large state smaller. Similarly, I started organizing Florida delegation dinners following the Barbara K. Olson Memorial Lecture at the national conference. After about eight years of 15-40 people, we're now in the 90-135 attendee zone the past nine years—with a wait list.

What is the most challenging aspect of your vocation as a judge? What is most rewarding?

I was appointed to an appellate judgeship in 2013. I have such great respect for the individuals who "take the black" (Game of Thrones reference). My challenge is to never take the responsibility entrusted to me lightly; every case is important. My reward is being able to pay it forward by mentoring and through bar and community service.

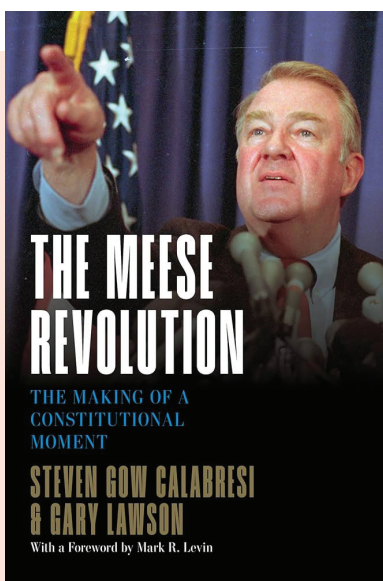
What is your favorite thing about being a member of the Federalist Society?

I have met many of my best friends through the Federalist Society. That is not an exaggeration. I have also viewed some memorable speeches, debates, and panels. I really respect the so-called liberals who add balance to FedSoc debates and panels and love to see them treated warmly by the audience—the juice is worth the squeeze!

The annual Florida Chapters Conference is now one of the Federalist Society's most-attended events. Why do you think the Florida chapters have grown exponentially over the years?

The Florida Chapters Conference was the next step in the process: we started a Florida dinner at the Southern Leadership Meetings, a FedSoc reception at the Florida Bar annual convention, a Florida dinner at the NLC. We realized that there is a desire for networking and community, and the FedSoc national office has been very supportive. I had the good fortune (thank you Jason Gonzalez) to introduce Leonard Leo at our first statewide conference, and we've benefited from the tireless work of Lisa Ezell and her team in making every conference and chapter event a success. I am grateful that I was able to meet some incredible lawyers and judges as a law student and young lawyer and then play a part in building the Florida chapters and creating new opportunities for networking and great programs for lawyers and judges young and old and in-between. And I no longer have to sit in the back of the station wagon (though Chuck Cooper is still riding shotgun in the front seat).

ANNUAL FACULTY CONFERENCE



New Book Spotlight

The Meese Revolution

By Steven Gow Calabresi & Gary Lawson

You cannot describe the rise of originalism without telling the story of Ed Meese. Meese's story threads through virtually all of the important legal and policy events of the 1980s, many of which continue to shape the world of the 21st century. In this book, Professors Steven Calabresi and Gary Lawson tell that story, which will inform and inspire lawyers who are practicing in the legal landscape Meese helped to create. We are still living through the Meese Revolution.



Institutional Neutrality

Prof. Stephen Sachs (Harvard) moderated a discussion about the state of institutional neutrality on college campuses among Professors Robert George (Princeton), Andrew Crespo (Harvard), Evelyn Douek (Stanford), and Robert Post (Yale).



Abortion Law After Dobbs

Professors Stephen Sachs (Harvard) and Stephanie Barclay (Georgetown), Dean Rachel Rebouché (Temple), and moderator Prof. Sherif Girgis (Notre Dame) discussed the post-*Dobbs* abortion law landscape.



Luncheon Discussion: South Africa v. Israel

Professors Chimène Keitner (UC Davis) and Samuel Estreicher (NYU) discussed the International Court of Justice case *South Africa v. Israel* in a lunchtime panel moderated by Judge David Stras of the 8th Circuit.



Regulation of Algorithms

Professors Eugene Volokh (Hoover Institution) and Christina Mulligan (Brooklyn) discussed the regulation of algorithms and fielded audience questions alongside moderator Prof. Saurabh Vishnubhakat (Cardozo).



Works In Progress

Prof. Eric Claey (George Mason), Prof. Mark Kubisch (Pepperdine), Prof. Michael J.Z. Mannheimer (Northern Kentucky), Branton Nestor (Stanford), Prof. Mark Pickering (St. Thomas-Miami), and Prof. David Upham (St. Thomas-Miami) each gave short presentations on scholarly articles they are working on in a session moderated by Prof. Joel Alicea (Catholic).



The Future of Administrative Statutes

Prof. Ilan Wurman (Minnesota) moderated a panel examining the effects of *Loper Bright* and *Relentless* on administrative law which featured Professors Eric Bolinder (Liberty), Tara Leigh Grove (Texas), and Brian Slocum (Florida State).

PRACTICE GROUPS



Governor Glenn Youngkin gave the conference's lunchtime address.



William Anthony Estrada, Luke Berg, and Thomas S. Vaseliou spoke on the panel *A Discussion on the Right: Parental Rights in Education*.

2024 Education Law & Policy Conference

September 11, 2024

The 2024 Education Law & Policy Conference was held on September 11 and focused on the theme of “A New Civil Rights Movement in Education?” Alongside our co-sponsors, the Defense of Freedom Institute, we hosted an “An Armchair Conversation on the State of Civil Rights on Campus” with Ilya Shapiro, along with three plenary sessions. The panels focused on “Title IX: Gender Identity and So Much More,” “Race and Education After *SFFA*,” and “Parental Rights in Education.” The conference also boasted a lunch address by Virginia Governor Glenn Youngkin.

SAVE THE DATE

Executive Branch Review Conference XIII
MAY 7, 2025



Supreme Court Preview: What Is in Store for October Term 2024?

October 1, 2024

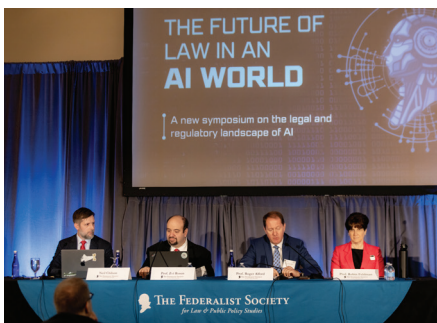
On October 1, 2024, the Faculty Division and Practice Groups hosted a panel at the Mayflower Hotel in Washington, DC, regarding the upcoming Supreme Court term, which began on October 7, 2024. The event covered the Court's docket including a discussion on major cases involving Tennessee's gender dysphoria treatment law, the First Amendment and pornography, the FDA and e-cigarettes, Facebook and securities law, and the definition of firearm kits under the Gun Control Act of 1968. The panel also discussed broader questions about the direction of the Court.

FedSoc's Lee Otis introduced the panelists on the October Supreme Court Preview panel.

Prof. Roger Alford and Prof. Zvi Rosen presented their papers on the panel *Past as Prologue? How will Generative AI Disrupt Our Approaches to Competition Policy and Our Copyright System?* Neil Chilson and Prof. Robin Feldman moderated and provided comments.

Brent Skorup and Kevin Frazier (participating remotely) presented their papers on the panel *Let Slip the AI Overlords? Justice and Federal Regulators*. Prof. Andrea Simoncini and Adam White moderated and offered comments.

Prof. James Cooper, Evangelos Razis, and Sarah Hunt presented their papers on the panel *Is the Hour Getting Late? Will Federalism Guide AI and Meet the Demands of Global Opportunities and Threats?* Lieutenant General Mike Groen and Adam Thierer moderated and offered comments.



The Future of Law in an AI World

October 8, 2024

The Society's "The Future of Law in an AI World" symposium took place on October 8, 2024, at the Mayflower Hotel in Washington, DC. With the rapid advancements in AI presenting novel legal and ethical challenges, the symposium focused on the evolving legal and regulatory frameworks surrounding AI. It invited article submissions from lawyers, scholars, policymakers, and other experts, all exploring AI-related issues grounded in conservative legal principles. A blue ribbon editorial committee selected eight winners and eight runners-up from across the topic categories.



PRACTICE GROUP & PRACTICE GROUP LEADER OF THE YEAR

The Practice Groups continued the tradition begun in 2023 designed to spotlight the exceptional efforts and contributions of our members by presenting awards to both the Practice Group and Practice Group Leader of the year. The Criminal Law & Procedure Practice Group won Practice Group of the Year in recognition of its outstanding production of 18+ webinars, an Executive Branch Review Conference panel, and two live events, demonstrating the high level of engagement across the Executive Committee. Additionally, the Practice Group Leader of the Year honor was presented to Casey Mattox, a member of the Free Speech & Election Law Practice Group, in acknowledgment of his valuable contributions to event planning and his many speaking engagements both with Practice Groups programming and with other divisions of the Society.



TOP Nate Kaczmarek, Vice President & Director, Practice Groups and Article I Initiative, posed with Casey Mattox, Practice Group Leader of the Year

BOTTOM Members of the Criminal Law & Procedure Practice Group posed with their Practice Group of the Year award

TOP FIVE WEBINARS



The Future of Civil Rights Enforcement at the EEOC, OFCCP, and DOJ



AI Policy In President Trump's Second Term



Courthouse Steps Oral Argument: *United States v. Skrametti*



What Does "New" Mean? Agency Action Post-Chevron



Addressing Antisemitism in Higher Education



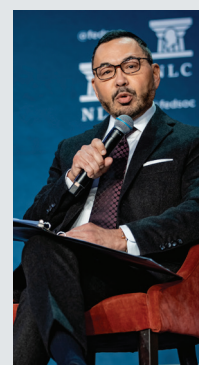
NATIONAL LAWYERS CONVENTION 2024

WASHINGTON HILTON HOTEL
NOVEMBER 14-16, 2024

GROUP IDENTITY *and the* LAW



The 2024 National Lawyers Convention took place November 14-16 at the Washington Hilton in Washington, DC. Following opening remarks from Judge Andy Oldham of the 5th Circuit, the Convention featured four Showcase Panels discussing the convention theme of “Group Identity and the Law” and numerous breakout sessions sponsored by the Practice Groups. Headline events included the Sixteenth Annual Rosenkranz Debate pitting Miguel Estrada against Patrick Philbin in a debate over whether Congress can ban TikTok, the Twenty-Third Annual Barbara K. Olson Memorial Lecture featuring a rousing defense of free speech by Professor Jonathan Turley, and the 2024 Antonin Scalia Memorial Dinner where attendees enjoyed a friendly chat about regulation between Justices Neil Gorsuch and Stephen Breyer. The Convention closed with Professor Stephen Sachs’s Robert H. Bork Memorial Lecture and a tribute to outgoing president Gene Meyer by an array of longtime FedSoc leaders.





PRACTICE GROUPS PANELS



T. Elliot Gaiser, Eric Olson, and Jonathan Skrmetti spoke on the panel *Special Solitude—Lawsuits Against the Executive Branch and Their Futures*, which was moderated by Judge Britt C. Grant.



Luke McCloud spoke on the Federalism & Separation of Powers Practice Group Panel, *A Revival of the Separation of Powers at the Supreme Court?* The panel, which also featured Russell Balikian, Zhonette Brown, Roman Martinez, and moderator Judge Daniel Bress, discussed *Loper Bright v. Raimondo* and the demise of *Chevron* deference.



Paul Watkins, Chair of the Financial Services & E-Commerce Practice Group, introduced the panel, *Have National Bank Charters Become Unworkable?* The panelists—John Court, Will Hild, Prof. Todd Zywicki, and moderator Judge Ryan D. Nelson—discussed state banking regulations and federal preemption.



Panelists Dan Morenoff and Johnathan J. Smith had a heated discussion on the Civil Rights panel, *Developments in Disparate Impact Law & Policy*. The panel, which also included Jenny Yang, Joshua Thompson, and moderator Judge John B. Nalbandian, discussed the future of disparate-impact analysis after *Students for Fair Admissions v. Harvard*.



David Lat offered comments on the panel *Federal Judicial Selections in the Next Administration* alongside co-panelists Michael Fragoso, Prof. Robert Luther III, Prof. Carl Tobias, and moderator Judge Michael B. Brennan.



FERC Commissioner Lindsay See spoke on the Environmental Law and Property Rights panel, *Environmental Law in a Post-Chevron World—How Should Congress, Agencies, and States Respond?* The panel also included Prof. Todd Aagaard and Andrew Wheeler and was moderated by Judge Thomas M. Hardiman.



Jennifer Rosato Perea addressed the crowd on the Professional Responsibility Practice Group panel, *Oversight or Micromanagement? The ABA & Law Schools*. Judge Carlos T. Bea moderated the discussion, which also included Dean Michael F. Barry, Dr. Dayna Bowen Matthew, and Justice Nels Peterson. The panel discussed law school accreditation requirements that mandate identity-based training for law students.



In a panel discussing recent attacks on the judiciary and whether those criticisms are legitimate, there were sharp disagreements between Judge Edith H. Jones and Prof. Stephen I. Vladeck. The panel, *The Continued Independence of the Judiciary*, also featured remarks from Prof. Daniel Epps and Kannon K. Shanmugam, and Judge James C. Ho moderated.



Prof. Carissa Byrne Hessick spoke on the Criminal Law & Procedure panel, *Evaluating the Progressive Prosecutor Experiment*, alongside John Creuzot, Zack Smith, Ray Tierney, and moderator Judge Kevin C. Newsom.



Prof. Melissa Moschella addressed the crowd on the Religious Liberties panel, *Religious Liberty, Parental Rights, and the Challenges Posed by the Transgender Movement*. Also on the panel were Prof. Ira Lupu, Jason Miyares, Prof. Steve Sanders, and moderator Judge Kyle Duncan.



Dean André Douglas Pond Cummings, Roger Severino, and Tobi Young spoke on the Litigation panel, *Diversity and Modern Litigation*. The panel, which also included Prof. Darrell D. Jackson and was moderated by Judge Patrick J. Butmatay, discussed the use of diversity in choosing multidistrict litigation teams.



Judge Kathryn Mizelle spoke on the Administrative Law and Regulation panel, *What Is the Future of Administrative Law?* The panel popped a bottle of champagne and discussed the future of administrative law after the Supreme Court's decision in *Loper Bright v. Raimondo* and also included Paul Clement, Prof. Cary Coglianese, Prof. Philip A. Hamburger, and moderator Judge Naomi Rao.



Christopher Mufarrige spoke on the Corporations, Securities, & Antitrust panel, *The Future of Antitrust*, alongside Adam Cella, Thomas DeMatteo, Michael Kades, Alex Okuliar, and moderator Judge Jennifer Walker Elrod.



Robin Colwell and Scott Blake Harris spoke on the Telecommunications & Electronic Media Practice Group panel, *Administration in Review and What Lies Ahead: Communications and Technology Policy Challenges in Times of Transformational Change*. The panel also included Umair Javed, Prof. Mario Loyola, and moderator Judge Michael H. Park, and addressed regulation of AI, cybersecurity, privacy, consumer protection, and more.



Prof. Richard Epstein addressed the crowd on the International and National Security Law panel, *Engage or Disengage: How Should the Next United States Administration Interact with the International Criminal Court and International Court of Justice?* Judge Charles Brower, Prof. Diane Desierto, and Prof. Michael A. Newton also participated in this discussion moderated by Judge Stephanos Bibas.



Kenneth L. Marcus spoke on the panel *Campus Chaos: Protected Speech or Unprotected Conduct?* alongside Dean Thomas J. Miles, Prof. Nadine Strossen, Prof. Eugene Volokh, and moderator Judge David R. Stras. The panel discussed the extent to which First Amendment protections apply to student actions like camping out or taking over buildings and how administrators should act to protect their students.



The panel *Data, Algorithmic Integrity, and AI* explored how corporate and governmental AI is being shaped to provide outputs that reinforce “mainstream” economic, ideological, and operational norms, considering regulation and vested interests. Stewart A. Baker, Christopher Ekren, Victoria Luxardo Jeffries, and Prof. John C. Yoo participated in the discussion moderated by Judge Stephen Alexander Vaden.



David Thompson spiritedly discussed Second Amendment issues on the panel *Applying the Text and History Methodology to Looming Second Amendment Battles After Rahimi*. The panel also included Prof. William Merkel, Mark W. Smith, and moderator Judge Amul Thapar.



R. Pepper Crutcher Jr. and Rebecca Dornon spoke on the Labor & Employment Law panel, *Agency Exuberance: A Flaw or Feature in Labor and Employment Law?* This panel discussed the extent of agency powers in the context of labor and employment agency rulemaking and adjudication during the last two administrations, and it also included Bradford J. Kelley and moderator Judge Chad A. Readler.



Justice Charles Canady spoke alongside Justice Clint Bolick, Danielle Hirsch, Lucy Ricca, and moderator Justice J. Brett Busby on the panel *Physician, Heal Thyself—Regulatory Reform of the Legal Profession*. The experts on this panel examined the pros and cons of three changes to state legal licensing regimes.



FTC Commissioner Melissa Holyoak addressed the crowd on the Intellectual Property panel, *Intellectual Property Rights with the Emergence of AI*. This panel discussing how to protect intellectual property rights in an AI-filled world featured Jordan Gimbel, Rep. Darrell Issa, Judge Paul Redmond Michel, and moderator Judge Ryan T. Holte.



FREEDOM OF THOUGHT LUNCHEON BREAKOUT PANEL ON BUILDING A COURAGEOUS AND EFFECTIVE CAREER

During the National Lawyers Convention, the Freedom of Thought Project hosted a luncheon breakout panel on Friday afternoon. The panelists discussed how accomplishing anything of significance in this political environment requires courage. They also explored how to equip future leaders to accomplish great things in public service, the pressure to keep open the option to return to a large law firm, and what we should be doing to support people who demonstrate courage—including those who make the courageous choice to balance their careers with responsibilities to family and children.

Panelists

Libby Locke, *PARTNER, CLARE LOCKE LLP*

Jonathan Mitchell, *PRINCIPAL, MITCHELL LAW PLLC*

Jonathan Skrmetti, *ATTORNEY GENERAL, TENNESSEE*

Annie Donaldson Talley, *PARTNER, LUTHER STRANGE & ASSOCIATES*

MODERATOR Gregory G. Katsas, *U.S. COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT*

FREEDOM OF THOUGHT STUDENT & ALUMNI EVENTS AT THE NLC

The Freedom of Thought Project hosted alumni events for over 25 schools, featuring an impressive lineup of speakers addressing topics such as freedom of thought on law school campuses, state litigation, election campaigns, and more.



FACULTY BREAKFAST

Faculty members enjoyed breakfast together while discussing the state of academia and opportunities for faculty collaboration.





ARTICLE I



UNDERSTANDING THE NDAA

A new video from the Article I Initiative featuring Garrett Exner



Garrett Exner

Executive Director, Public Interest Fellowship



ARTICLE I INITIATIVE

Watch this video
and find other
Article I Initiative
content online:

articleiinitiative.org



For over six decades, Congress has passed a National Defense Authorization Act (NDAA) every year. Unlike most large pieces of legislation, the NDAA is typically passed with wide bipartisan margins. Members from both sides of the aisle weigh in and give relatively direct instruction on how a department of the executive branch—the Department of Defense—should run itself, regardless of which party controls the White House.

This process is an anomaly in the relationship between Article I and Article II authorities. Congress gives far more latitude to the executive in running most other agencies and departments. Only with DoD does Congress use such a heavy hand each year—legislating new offices into existence, dictating the exact number of aircraft and ships to purchase, and restricting the use of funds for specific items and programs. The NDAA may be the best example of congressional oversight of the executive branch. . . .

It seems that Congress could curtail the movements and operations of the executive branch in other agencies if it simply began exercising the muscles of yearly authorizations of each department. This would take time, staff, and an increase in expertise on Capitol Hill, but these costs may be worth it for Congress to realize its full potential and exercise the full scope of its constitutional authority. The executive branch was never meant to encompass such a large number of unelected officials operating with minimal oversight. As it stands, most executive agencies are only held accountable through occasional hearings designed to increase political pressure on the administration to change policies. In a perfect world, Congress would provide oversight through legislation, dictating many of the policies at the agencies, as the Constitution envisions. Providing oversight via NDAA-style yearly authorizations could empower the people far more, and it could also hold the key to curtailing the growth of the bureaucracy. ■





THE STUDENT LOAN FORGIVENESS SAGA

HOW THE LITIGATION PLAYED OUT AND WHAT'S NEXT

Abhishek Kambli and Erin Gaide OFFICE OF THE KANSAS ATTORNEY GENERAL
December 3, 2024

On October 3, 2024, a court in the Eastern District of Missouri hit the brakes on the Biden Administration's third attempt to forgive student debt en masse. Having been blocked by the courts in its two prior attempts to put unpaid student loans on the backs of taxpayers, the administration tried a new tack. It pointed out that it had the power to "modify" the terms and conditions of federally backed student loans. And it claimed that "modify" meant "forgive completely." As they had twice before, a coalition of states sued to stop the administration from illegally discharging billions of dollars in loan debt.

Now, no one can sue to stop a federal regulation until it is "final." And at the time the states sued to stop this particular rule, the Department of Education had not put a final version of anything in the Federal Register. So the Department argued the rule was not "final" and could not be challenged. However, the Department had taken steps to effectuate the rule, including sending emails to all student loan borrowers and changing contracts with student loan servicers such that they would be required to cancel millions of dollars in debt at the push of a button. Based on these actions, the court found the rule was final and could be challenged (and blocked).

The Biden Administration is not done. Despite failing to legally mass forgive student debt three times, it announced a fourth attempt in late October. The questionable legal basis for this plan and the outcome of the presidential election make it unlikely this phase will see the light of day.

Biden Loan Forgiveness Part One: The HEROES Act

Upon taking office, President Biden announced a three-part plan for mass student loan forgiveness. First, claiming authority under the HEROES Act (a law passed in the wake of the 9/11 terrorist attacks to help those who had suffered hardship because of the attacks), he announced that every borrower with an income under \$125,000 (or \$250,000 for married couples) would have \$10,000 of debt canceled, \$20,000 for Pell Grant recipients.

Six states sued. Among other things, they argued that the HEROES Act's minor allowance for the Department of Education to "waive" or "modify" the terms of specific loans did not authorize \$400 billion of across-the-board forgiveness. A district court in Missouri dismissed the states' case, but the states asked the Eighth Circuit for an injunction, which the circuit court granted. The Biden Administration appealed,

and the Supreme Court agreed to hear the case, leaving the injunction in place.

On June 30, 2023, in *Biden v. Nebraska*, the Supreme Court sided with the states. First, it found the states had standing to sue because the Missouri Higher Education Loan Authority (MOHELA), a state-chartered loan servicer that paid into a state education fund, would be harmed when many of the loans it serviced (and earned fees off of) were wiped off the books. Then, the Court found that the Biden Administration had exceeded its authority under the HEROES Act. Invoking what has become known as the “major questions doctrine,” the Court found that eliminating billions in student debt was such a costly and politically important act, Congress would have spoken clearly if it had intended to give the Department of Education that power. Congress ordinarily reserves such major questions for itself. Thus, the Court enjoined the HEROES Act forgiveness plan. The Administration scrapped the program.

Biden Loan Forgiveness Part Two: The SAVE Plan

While litigation over HEROES Act forgiveness was pending, the Administration tried a new tactic: the Saving on a Valuable Education Plan (SAVE). SAVE is an updated Income Driven Repayment (IDR) Plan. IDR Plans help borrowers who struggle to repay their loans by allowing them to make a lower monthly payment (a percentage of their discretionary income) over a longer period of time than is required by the usual repayment plan. The SAVE Plan made the terms of IDR Plans more generous than ever before. Among other things, it (1) defines “discretionary income” to be income above 225% of the applicable federal poverty guideline, (2) sets the monthly payment amount at \$0 if the borrower’s income falls below that threshold, (3) caps the monthly payment amount at 5% of the borrower’s income that goes above that threshold for undergraduate loans, and (4) cancels all loans where the original principal balance was \$12,000 or less after the borrower has made 120 monthly payments or the equivalent. The result was that borrowers would repay as little as \$0 per month and could only repay

60% of their loans. The Department estimated the SAVE Plan would cost \$156 billion.

The Department of Education finalized the SAVE Plan on July 11, 2023—ten days after the Supreme Court issued its decision in *Biden v. Nebraska*. A number of states sued to stop the plan in both Kansas and Missouri. Both lawsuits claimed that the Department was forgiving loans without congressional authorization, in violation of the major questions doctrine, and that the Plan was arbitrary and capricious, in violation of the APA.

On June 24, 2024, judges in both cases agreed that the SAVE Plan violated the major questions doctrine and blocked separate parts of the SAVE Plan, effectively prohibiting the Department from lowering payments or forgiving balances. On appeal, the Tenth Circuit (handling the Kansas case) stayed the injunction, but the Eighth Circuit (handling the Missouri case) enjoined the entire plan. The Supreme Court denied the Department’s emergency application to allow the SAVE Plan to take effect while litigation continued. The Eighth Circuit recently heard oral argument on the injunction, and a decision is expected in the next few months. The Tenth Circuit abated Kansas’s case in light of the Eighth Circuit’s ruling.

Biden Loan Forgiveness Part Three: Waiver Again

Phase Three of loan forgiveness commenced in April 2024. For this round, the Department of Education turned to the Higher Education Act.

As background, in 1965 Congress created the FFELP, which was intended to provide government-backed student loans for students who did not qualify for loans guaranteed by states or nonprofits. Under the program, a student could take out a loan, and the lender could buy insurance from the federal government. Then, if the student defaulted on the loan or was unable to pay it back (because of death or disability), the federal government would pay the balance of the loan to the lender and take over the note. The Department could then recover the balance from the student. Congress gave the Secretary of Education the authority to “enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however

acquired, including any equity or any right of redemption” on those defaulted loans. Later, in 1993, Congress authorized the first Direct Loan program. Now, rather than merely backing loans from private lenders, the federal government would loan money directly to students. For a while, FFELP and direct loans existed side by side. But in 2010, Congress ended FFELP loans and essentially took over the whole student loan system. And what became of the old FFELP loans? Student borrowers who had taken out such loans could continue to pay them back as they had previously, or they could consolidate the loans and take advantage of better terms offered by the Direct Loan Program. But no new FFELP loans could be issued.

Phase Three of the administration’s forgiveness plan blurred the lines between the Direct Loan and FFELP programs. It took the Department’s authority to “modify” FFELP loans and simply applied it to direct loans as well. Then, it interpreted “modify” to mean the Department had authority to cancel debt altogether (much as it had done in Phase One, which the Supreme Court struck down).

The Department proposed canceling the balance of a loan above what was initially borrowed for borrowers with income under \$125,000 and up to \$20,000 for borrowers with higher incomes. The Department also proposed automatically canceling the loans of any borrower who is eligible for any form of forgiveness, even if the borrower had not successfully applied for forgiveness. The plan was expected to cancel debt for around 25 million borrowers.

The Department announced Phase Three would be finalized in October. However, behind the scenes, there were signs that the Department actually intended to cancel the loans a month earlier—before anyone could mount a legal challenge. Missouri discovered communication between MOHELA and the Department of Education in which the Department told MOHELA to be ready to hit the button on loan forgiveness on September 8. The Department planned to send a list of those who were eligible for forgiveness to loan processors and expected that the loan processors would forgive the loans within the next day.

Upon discovering this information, Missouri and other states sued again, even though the Rule had not

yet been published. Despite the lack of any published rule, Missouri argued that the agency had already made its decision and, therefore, the new phase was challengeable as a final action under the Administrative Procedure Act. On the substance, they argued (as before) that the Rule violated the major questions doctrine and the APA. They also argued the expedited timeline (which the Department admitted was planned) violated the Congressional Review Act and the Department’s own statutes. A court in the Southern District of Georgia temporarily blocked the plan, preventing the Department from acting upon the Rule (though not preventing it from publishing the Rule). Later, the Georgia court determined that the State of Georgia did not have a legal right to sue but that the State of Missouri did, so the court transferred the case to the Eastern District of Missouri. The Eastern District of Missouri preliminarily enjoined the Rule entirely. The Department has neither appealed that order nor published the Rule, but it has nonetheless paused payment obligations for millions of borrowers.

What’s Next?

Still undeterred, the Department announced “phase four” of loan forgiveness on October 31, 2024. This plan redefines “hardship” in the Higher Education Act, which allows the Secretary to “waive all or part of any student loan debts owed to the Department based on the Secretary’s determination that a borrower has experienced or is experiencing hardship related to such a loan.” This Rule would likely have taken effect in early 2025, but the Trump Administration is unlikely to implement it. ■



The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the author. To read this blog post online with links to sources, opposing views, and an author bio, or to read more from the FedSoc Blog, follow the QR code or visit fedsoc.org/commentary/fedsoc-blog.



REGULATORY TRANSPARENCY PROJECT

VIDEO



A JOURNEY THROUGH INVISIBLE BOUNDARIES

Invisible forces shape the world around us. Rules and regulations determine everything from the cars we drive to the medical treatments we receive, influencing how we build our future.

In the Regulatory Transparency Project's new three-part video series, host Adam Thierer takes us through the hidden boundaries shaping the things Americans use daily. Experts will explore the tensions between innovation and control, safety and freedom.

Our new series, *Shaped*, will be released in 2025.



Watch the Teaser

IN-PERSON EVENT

Politics in the Workplace: The Legal and Business Challenges

In the aftermath of the 2024 elections, and as citizens continue to engage in discourse on important political topics and opinions, companies can expect that political speech and activity will continue to occur in the workplace. Recent reports show that 87% of employers expressed concern about managing divisive political and social beliefs among their employees. Because political discussions often involve issues with personal significance to employees, even a small disagreement can erupt into a heated argument. This can negatively impact productivity, employee morale, and working relationships as employees discuss or even advocate their political opinions. The way an employer proactively handles and responds to politics in the workplace is critical because it affects a significant range of issues, such as an organization's brand, reputation, compliance with labor and employment laws (including anti-discrimination laws and the National Labor Relations Act), and employee rights related to political speech and activities. This panel examined how companies could address and are addressing politics in the workplace.

SPEAKERS

Bradford J. Kelley, *SHAREHOLDER, LITTLER*

Andrew Rogers, *CHIEF COUNSEL AND CHIEF OF STAFF (OCL), U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*

MODERATOR Amanda Freeman, *ASSOCIATE CORPORATE COUNSEL AND STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION*



FEATURED WEBINARS

Department of Government Efficiency: Opportunities and Challenges

President Trump announced shortly after his election that entrepreneurs Elon Musk and Vivek Ramaswamy would lead a new Department of Government Efficiency “to cut the federal government down to size.” In a November op-ed published in the *Wall Street Journal*, Musk and Ramaswamy promised DOGE would yield “a drastic reduction in federal regulations” that would pave the way for “mass head-count reductions across the federal bureaucracy.”

Part I considered the challenges that DOGE will face as it attempts to fulfill its sweeping mandate within its eighteen-month time limit: the certainty of widespread resistance to DOGE from interests benefitting from the status quo, the complexity of the process for rescinding existing regulations, and the strength of the perspective that administrative reform efforts should focus on improving rather than simply eliminating regulation.

Part II continued the discussion of DOGE’s challenges and identified some specific executive actions that could mitigate at least some of these challenges.

Part I



SPEAKERS

Prof. Nicholas Bagley, *PROFESSOR OF LAW, UNIVERSITY OF MICHIGAN LAW SCHOOL*

Prof. Christopher Walker, *PROFESSOR OF LAW, UNIVERSITY OF MICHIGAN LAW SCHOOL*

MODERATOR Hon. Susan Dudley, *FOUNDER, GW REGULATORY STUDIES CENTER & DISTINGUISHED PROFESSOR OF PRACTICE, TRACHTENBERG SCHOOL OF PUBLIC POLICY & PUBLIC ADMINISTRATION, GEORGE WASHINGTON UNIVERSITY*

Part II



SPEAKERS

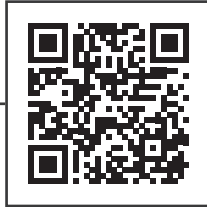
J. Kennerly Davis Jr., *FORMER DEPUTY ATTORNEY GENERAL FOR VIRGINIA*

Abhishek Kambli, *DEPUTY ATTORNEY GENERAL, OFFICE OF THE KANSAS ATTORNEY GENERAL*

MODERATOR Casey Mattox, *VICE PRESIDENT, LEGAL STRATEGY, STAND TOGETHER*

PODCAST

Fourth Branch



Explainer Episode 74

Incorporation by Reference and Voluntary Standards

Rosario Palmieri, Karen Harned

Explainer Episode 75

Defining the Term “Equity” from a Legal and Historical Standpoint

GianCarlo Canaparo, Mike Gonzalez, Linda Chavez

Explainer Episode 76

Examining State AGs’ Use of Outside Counsel

Ketan Bhirud, Luke Wake

Explainer Episode 77

State Regulatory Reform and Overcoming Regulatory Inertia

Tanner Jones, Jonathan Wolfson

Explainer Episode 78

An Overview of Electric Industry Regulation

J. Kennerly Davis

Explainer Episode 79

Don’t Chase Rabbit Trails: The SEC Now and in the Next Administration

C. Wallace DeWitt, Brian Knight, Jennifer Schulp

Explainer Episode 80

The Rule of Law in Immigration and Other Enforcement Proceedings, Business Challenges, and Equal Access to Justice Act

Randel K. Johnson, Andrew G. I. Kilberg

Explainer Episode 81

State AG Litigation Against Federal Agencies: A Kansas Perspective

Erin Gaide, Abhishek Kambli

Explainer Episode 82

Is Gender Dysphoria a Protected Disability?

Gregory S. Baylor, Rachel Morrison

FREEDOM OF THOUGHT EVENT

FREEDOM OF THOUGHT PROJECT



Preserving Judicial Independence in a Time of Political Division

Many of our members and fellow citizens are concerned about ongoing attacks on Supreme Court Justices and other judges, and about growing threats to judicial independence more generally. On October 16, the Freedom of Thought Project hosted an event that addressed these widespread concerns, featuring two all-star panels moderated by the Washington Post's Megan McArdle. The event was sold out, and the audience was enthusiastically engaged with these important discussions of issues that are so important to the rule of law and constitutional governance.

Panel

James Burnham, *PRESIDENT, VALLECITO CAPITAL*

Jay Edelson, *FOUNDER & CEO, EDELSON PC*

Nicole Stelle Garnett, *JOHN P. MURPHY FOUNDATION PROFESSOR OF LAW, UNIVERSITY OF NOTRE DAME LAW SCHOOL*

MODERATOR Megan McArdle, *COLUMNIST, WASHINGTON POST*

Fireside Chat

T. Elliot Gaiser, *SOLICITOR GENERAL, OHIO*

Eric Wessan, *SOLICITOR GENERAL, IOWA*

MODERATOR Megan McArdle, *COLUMNIST, WASHINGTON POST*



Visit **freedomofthought.fedsoc.org** to stay informed on the latest Freedom of Thought programming and sign up for email updates!

ARCHIVE COLLECTION

The Federalist Society's Archive Collection features over 100 addresses and speeches dating all the way back to the early days of the Society. With updated title cards, speaker information, and streamlined editing, these remastered releases showcase panels from past National Lawyers Conventions, National Student Symposiums, and more.

Some of the most popular videos include a 1987 panel featuring Justice Antonin Scalia, Judge Frank Easterbrook, Judge Laurence Silberman, Prof. Laurence Tribe, and Senator Orrin Hatch; Hon. Robert H. Bork's address at the 1988 Student Symposium; a 1991 Student Symposium panel consisting of Professors Nadine Strossen, Bruce Ackerman, Robert Ellickson, and Richard Epstein, moderated by William Barr; and a 1999 panel on school choice moderated by now-Senator Ted Cruz during his days in private practice.

For further information, check out the Collection's YouTube playlist at the QR code below!



Featuring:

Hon. Antonin Scalia | U.S. Supreme Court
Hon. Frank Easterbrook | U.S. Court of Appeals, 7th Circuit
Prof. Laurence Tribe | Harvard Law School
Hon. Laurence Silberman | U.S. Court of Appeals, D.C. Circuit
Hon. Orrin Hatch | U.S. Senator, Utah (Moderator)

1987 Annual Lawyers Convention: Methods of Statutory Construction



1988 Annual Lawyers Convention: Improving National Drug Policy

Featuring Dr. Ron Paul



1991 National Student Symposium: How Effective Are Bills of Rights?

Moderated by Ted Olson



1991 Annual Lawyers Convention: Bankruptcy Law & Financial Institutions

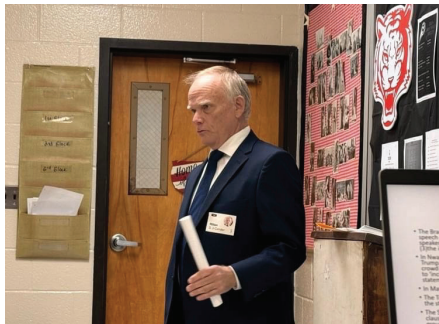
Featuring then-Professor Elizabeth Warren



1988 National Lawyers Convention: After the Independent Counsel Decision

Moderated by then-U.S. Attorney for the District of New Jersey, Samuel Alito

EXTERNAL RELATIONS



CONSTITUTION DAY

The Federalist Society hosted its fifth annual Constitution Day program. During the week of Constitution Day—September 17—Federalist Society volunteers taught middle and high school students about America’s founding documents and principles. We matched Federalist Society members—both lawyers and law students—with middle and high school students from forty-eight states.

“I loved being in the classroom teaching kids. Amazing opportunity! Thank you FedSoc and BRI!”

— CHRISTINE FILE

“Our person was so amazing that I wish I could clone him. His passion and breadth AND depth of knowledge made the topic come alive in a way that would make the Founding Fathers proud.”

— KRISTINE POPTANICH

2024 CIVIL JUSTICE UPDATE

The 2024 Civil Justice Update is a one-stop shop for information about notable changes to the civil justice landscape in 2024. Author Mark Behrens examines developments at the federal level and in all 50 states, including new legislation, court decisions, rules changes, and even developments at the ALI. Practitioners should bookmark this comprehensive update for reference, and those interested in civil justice policy should read the entire paper to get a sense for the nationwide landscape and how it is changing.

View or
download
the paper



Like other election years, 2024 featured some activity in states on civil justice issues, but lawmakers mostly focused on other priorities and campaigns. The plaintiffs' bar continued a push to increase awards in wrongful death cases and found success in a few states. A number of states updated their rules of evidence governing expert testimony to mirror or more closely align with 2023 amendments to Federal Rule of Evidence 702. Consumer data privacy laws continued to attract attention in the states, but an "outlier" bill that included a private right of action was vetoed in Vermont. Governors in Florida and West Virginia vetoed legislation that would have provided companies meeting certain requirements with protection from lawsuits following a data breach.

Amendments to the Federal Rules of Evidence (new Rule 107 and amended Rules 613, 801, and 1006) took effect on December 1, 2024. The federal judiciary's Standing Committee gave final approval to the first proposed rule for multidistrict litigation and amendments to privilege log rules. The proposed rules are on track to take effect on December 1, 2025. ■

The Federalist Society
for Law and Public Policy Studies

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THE FEDERALIST SOCIETY
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