

JONATHAN L. MARSHFIELD

Associate Professor of Law
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ACADEMIC POSITIONS

University of Florida Levin College of Law, Gainesville, FL

Appointments:

Associate Professor of Law (pre-tenure), 2022-present

Courses:

State & Local Government Law
Civil Procedure
Constitutional Change (seminar)

Service:

Appointments Committee, 2023 (spring), 2023-24

University of Nebraska College of Law, Lincoln, NE

Appointments:

Assistant Professor of Law, 2019-2022

Courses:

Civil Procedure I & II
Civil Rights Litigation

Awards:

Professor of the Year (1L), 2020-21, 2021-22

Illustrative Service:

Pro Bono Committee, 2019-20, 2020-21
Curriculum Committee, 2020-21

University of Arkansas School of Law, Fayetteville, AR

Appointments:

Associate Professor of Law (with LRW tenure), 2018-2019
Associate Professor of Law (pre-tenure, LRW appointment), 2016-present
Assistant Professor of Law (tenure-track, LRW appointment), 2013-16

Courses:

Legal Research & Writing I & II
State & Local Government
Law of Constitutional Amendment (summer)
Law & Development (co-taught)

PUBLICATIONS

Law Review Articles

American Democracy and the State Constitutional Convention, 92 FORDHAM L. REV. (forthcoming 2024).

- Argues that the state constitutional convention deserves serious consideration in conversations about democratic reform because of its majoritarian credentials and proven design in limiting special interest influence.

America's Other Separation of Powers Tradition, 74 DUKE L. J. (forthcoming 2023).

- Argues that the separation of powers under state constitutions is not designed to maintain internal checks and balances but to enhance direct popular accountability by separating government along lines most useful for voters.

America's Misunderstood Constitutional Rights, 170 U. PA. L. REV. 853 (2022).

- Argues that although the Federal Bill of Rights has operated as an important bulwark against abusive democratic majorities, state bills of rights are grounded in the belief that constitutional rights should protect democratic majorities from oppressive or evasive government.

Forgotten Limits on the Power to Amend State Constitutions, 114 NW. U. L. REV. 65 (2019).

- Argues that when state constitutions are amended outside of a convention, there are inherent substantive limits on amendment that courts should more readily enforce.

The Amendment Effect, 98 B.U. L. REV. 55 (2018).

- Theorizes and investigates whether frequent amendment of a constitution's text influences the practice of judicial review.

Amendment Creep, 115 MICH. L. REV. 215 (2016).

- Argues that although constitutional amendment rules are styled as procedural provisions, they are also repositories of important substance relevant to judicial resolution of many constitutional issues.

Decentralizing the Amendment Power, 19 LEWIS & CLARK L. REV. 963 (2016).

- Theorizes normative justifications for including subnational units in constitutional amendment processes and builds a taxonomy of decentralization mechanisms found in amendment rules around the world.

Models of Subnational Constitutionalism, 115 PENN ST. L. REV. 1151 (2011).

- Theorizes rationales for allowing subnational units in federal systems to draft constitutions and argues that subnational constitutions can facilitate broader constitutional engagement by making formal amendment more accessible.

Federalism and Political Competition in Emerging Democracies, 10 WASH. U. GLOB. STUD. L. REV. 297 (2011).

- Argues that federalism can promote constructive political competition by providing alternative forums for opposition parties and tests this hypothesis by examining political competition in post-apartheid South Africa.

Evaluating South Africa's Post-Apartheid Democratic Prospects through the Lens of Economic Development Theory, 9 RICH. J. GLOBAL L. & BUS. 431 (2010).

- Explores whether South Africa's post-apartheid financial data are consistent with economic conditions indicative of democratic stability.

Providing Meaningful Judicial Review of Municipal Redevelopment Designations: Redevelopment in New Jersey Before and After Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 40 RUTGERS L. J. 451 (2009) (with Hon. James R. Zazzali).

- Uncovers New Jersey's state constitutional history regarding economic redevelopment and identifies pressing state constitutional issues after *Kelo*.

Authorizing Subnational Constitutions in Transitional Federal States: South Africa, Democracy, and the KwaZulu-Natal Constitution, 41 VAND. J. TRANSNAT'L L. 585 (2008).

- Argues that subnational constitutions were critical in South Africa's transition to democracy and that they may be useful transitional institutions elsewhere.

Symposium Articles, Essays, and Book Chapters

State Constitutional Rights, State Courts, and the Future of Substantive Due Process Protections, 76 SMU L. REV. (forthcoming 2023) (solicited symposium article).

- Argues that state constitutional rights can provide important protections post-*Dobbs* because of their responsiveness to intra-state democratic majorities.

Political Functions and Limitations of Contemporary State Constitutions in the United States, in DOES QUEBEC NEED A WRITTEN CONSTITUTION? (Richard Albert ed., McGill-Queen's Univ. Press 2023).

- Argues that state constitutions in the United States serve important political functions that may be relevant and helpful to constitutional designers in other political systems.

State Constitutions and the Interaction between Formal Amendment and "Unwritten" Constitutions, in AMENDING AMERICA'S UNWRITTEN CONSTITUTION (Richard Albert, Ryan Williams, Yaniv Roznai, eds.) (Cambridge 2022).

- Argues that even though state constitutions are easily and frequently amended, they are nevertheless supplemented by informal "unwritten" constitutions.

The Single-Subject Rule and the Politics of Constitutional Amendment in Initiative States, 101 NEB. L. REV. 101 (2022) (symposium article).

- Argues that in contemporary state constitutional politics, the single-subject rule can work to undermine rather than protect the initiative.

Popular Regulation? State Constitutional Amendment and the Administrative State, 8 BELMONT L. REV. 342 (2021) (solicited symposium article).

- Argues that state constitutional amendments affect state agencies in significant but underappreciated ways that have no analog in federal administrative law and theory.

Professor Robert F. Williams – Teacher, Mentor, Scholar & Friend, 72 RUTGERS L. REV. 1219 (2020).

- Festschrift essay honoring career of Robert F. Williams.

Unpacking America's Constitutional Layers, 55 TULSA L. REV. 239 (2019).

- Solicited review of JEFFREY S. SUTTON, 51 IMPERFECT SOLUTIONS (2018) and LUCAS A. POWE, JR., AMERICA'S LONE STAR CONSTITUTION (2018).

The People and Their Constitutions, 71 RUTGERS L. REV. 1233 (2019).

- Solicited review of JOHN DINAN, STATE CONSTITUTIONAL POLITICS: GOVERNING BY AMENDMENT IN THE AMERICAN STATES (2018).

Courts and Informal Constitutional Change in the States, 52 NEW ENG. L. REV. (2018) (invited keynote article for paper symposium).

- Presents original data showing that although state constitutions are amended regularly, courts are more active in reforming rights than amendment actors.

Respecting the Mystery of Constitutional Change, 65 BUFF. L. REV. 1057 (2018) (solicited).

- Argues that there are many inter-related factors that influence whether constitutional reform manifests in formal amendment or informal change.

Improving Amendment, 69 ARK. L. REV. 477 (2016) (symposium).

- Proposes a new Jeffersonian model of state constitutional amendment that replaces the statewide referendum with debate and ratification by county legislative bodies.

Foreign Precedent in State Constitutional Interpretation, 53 DUQ. L. REV. 413 (2015) (solicited).

- Argues that concerns regarding the use of foreign precedent to interpret the United States Constitution may be inapplicable to state constitutional interpretation and that foreign precedent may have special salience for state constitutional interpretation.

Dimensions of Constitutional Change, 43 RUTGERS L.J. 593 (2013) (invited book review).

- Reviews CONSTITUTIONAL DYNAMICS IN FEDERAL SYSTEMS – SUBNATIONAL PERSPECTIVES (Michael Burgess & G. Alan Tarr eds. 2012).

A Tribute to Chief Justice James R. Zazzali: More Than a "Caretaker", 59 RUTGERS L. REV. 667 (2007) (with Gregory L. Acquaviva & David M. Stauss).

- Provides a substantive tribute to the jurisprudence of the Chief Justice of the Supreme Court of New Jersey.

Books

THE NEBRASKA CONSTITUTION: A REFERENCE GUIDE (with Peter J. Longo & Anthony Schutz) (3d ed. forthcoming 2024 U. Neb. Press).

SELECT ACADEMIC PRESENTATIONS

Invited Workshop Presentation, University of Wisconsin Law School, April, 2023 ("America's Other Separation of Powers Tradition").

Invited Symposium Presentation, SMU Dedman School of Law, March, 2023 ("State Constitutional Rights, State Courts, and the Future of Substantive Due Process").

Faculty Workshop, University of Minnesota Law School, Minneapolis, MN, September, 2022 ("America's Other Separation of Powers Tradition").

Conference Workshop, Center on Federalism and Intersystemic Governance at Emory University School of Law, July 2022 (America’s Other Separation of Powers Tradition”)

Invited Presentation, Center for Constitutional Studies at Utah Valley University, Provo, UT, November, 2021 (“America’s Misunderstood Constitutional Rights”).

Faculty Workshop, University of Kansas School of Law, April, 2021 (“America’s Misunderstood Constitutional Rights”).

Symposium Presentation, Belmont College of Law, January, 2021 (“Popular Regulation? State Constitutional Amendment and the Administrative State”)

Invited Presentation, Catholic University of Pernambuco, Recife, Brazil, September, 2019 (“The Structure and Application of Contemporary State Constitutional Rights”).

Invited Key-Note Address and Article, New England School of Law, Boston, MA, April 2018 (“Courts and Informal Constitutional Change in the States”).

Faculty Workshop, University of Oklahoma College of Law, Norman, OK, November, 2016 (“The Amendment Effect”).

Faculty Workshop, University of Arkansas, Fayetteville, AR, September, 2016 (“The Amendment Effect”).

Faculty Workshop, University of Memphis, Cecil C. Humphreys School of Law, Memphis, TN, February, 2016 (“Amendment Creep”).

Symposium Presentation, University of Arkansas School of Law, Fayetteville, AR, January 2016 (“Improving Amendment”, co-organizer of symposium with Richard Albert).

Faculty Workshop, University of Arkansas, Fayetteville, AR, September, 2015 (“Amendment Creep”).

Conference Workshop, ICON-S Conference on Public Law, New York University, New York, NY, July 2015 (“Amendment Creep”).

Junior Faculty Workshop, Washington University School of Law, St. Louis, MO, September, 2014 (“Decentralization in Constitutional Amendment Rules”).

Faculty Workshop, University of Arkansas, Fayetteville, AR, September, 2014 (“Decentralization in Constitutional Amendment Rules”).

Conference Workshop, International Association of Constitutional Law, University of Oslo, Oslo, Norway, June, 2014 (“Subnationalism and Processes of Constitutional Change”).

Symposium Presentation, The Dickinson School of Law at Penn State University, State College, PA, September, 2010 (“Models of Subnational Constitutionalism”).

CONSULTING & ACADEMIC SERVICE

Editorial Board Member – REVIEW OF CONSTITUTIONALISM AND CONSTITUTIONAL CHANGE (solicited inaugural member of new peer-reviewed journal focusing on constitutional change).

Referee: PUBLIUS – THE JOURNAL OF FEDERALISM (Oxford Journals), NATIONAL JOURNAL OF CONSTITUTIONAL LAW (Canada).

Constitutional Adviser – Advised foreign officials in Ukraine (in coordination with The Public International Law & Policy Group).

Constitutional Adviser – Advise the Arkansas Public Policy Center (provide assessments regarding proposed state constitutional changes).

Legislation Adviser – Advise the Arkansas Bar Association (provide assessments of state constitutional issues related to proposed legislation).

EDUCATION

New York University School of Law, New York, NY

LL.M. (Legal Theory), 2010

Thesis: *State Constitutionalism in Comparative and Normative Context*

Thesis advisers: Liam B. Murphy & Roderick M. Hills, Jr.

Rutgers University School of Law, Camden, NJ

J.D. (High Honors), 2006

Rutgers Law Journal, Notes Editor, 2005-06; Staff Editor, 2004-05

M. Donald Kepner Award (highest grade in Federal Courts)

First Year Property Award (highest grade in Property)

First Year Legal Writing Award

Research Assistant to Professors Robert F. Williams and Michael A. Carrier

Cedarville University, Cedarville, OH

B.A. (Honors), 2002

CLERKSHIPS

Hon. Robert B. Kugler, U.S. District Court for the District of N.J., Camden, NJ

Law Clerk, 2010-11

Hon. James R. Zazzali, N.J. Supreme Court, Trenton, NJ

Law Clerk, 2006-07

PRACTICE EXPERIENCE

Saul Ewing LLP, Princeton, NJ

Litigation Associate, 2007-09, 2010, 2012-13

Litigated broad range of complex commercial disputes in state and federal court; drafted motion and appellate briefs; took and defended expert and lay depositions as lead counsel; examined witnesses at hearings; developed litigation strategies directly with clients; managed junior attorneys and large-scale electronic discovery projects.

Litigation Examples:

In re September 11th Consolidated Cases (S.D.N.Y.) - represented multiple Cantor Fitzgerald entities against American Airlines regarding business losses stemming from acts of international terror on September 11, 2001.

BGC Partners, Inc. v. Board of Trade of the City of Chicago, Inc., et al. (N.Y. Sup. Ct.) - represented BGC Partners, Inc., a Cantor Fitzgerald affiliate, against

the Chicago Board of Trade and the Chicago Mercantile Exchange regarding electronic trading platform licensing rights.

Latham & Watkins LLP, Newark, NJ

Litigation Associate, 2011-12

Litigated complex commercial and environmental matters; drafted briefs and research memoranda; defended depositions; worked directly with environmental consultants; managed the review and production of electronically stored information; represented multiple third-party defendants in environmental superfund litigation.