

## **EDWARD B. FOLEY**

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### **Current Employment**

#### **Moritz College of Law, Ohio State University**

Director, *Election Law @ Moritz*, 2004-present

Charles W. Ebersold & Florence Whitcomb Ebersold Chair in Constitutional Law, 2014-present

Chief Justice Thomas J. Moyer Professor for the Administration of Justice  
& the Rule of Law, 2012-2014

Isadore & Ida Topper Professor of Constitutional Law, 2011-2012

Robert M. Duncan/Jones Day Designated Professor of Law, 2003-2011

Professor of Law, 1998-2003 (on leave, 1999-2000)

Associate Professor of Law, 1995-1998; Assistant Professor of Law, 1991-1995

RESEARCH AREAS: Election Law, including recounts and ethics of electoral competition

TEACHING AREAS: Election Law; Constitutional Law; First Amendment; Jurisprudence

### **Past Employment**

#### **State Solicitor, Office of the Ohio Attorney General, 1999-2000**

Responsible for the State's major appellate and constitutional litigation

#### **Jenner & Block, Washington, D.C., 1989-1991**

Associate attorney specializing in First Amendment litigation

#### **United States Supreme Court, 1988-1989**

Law clerk to Justice Harry A. Blackmun

#### **Wilmer, Cutler & Pickering, Washington, D.C., 1987-1988**

Associate attorney in firm's litigation department

#### **United States Court of Appeals, D.C. Circuit, 1986-1987**

Law clerk to Chief Judge Patricia M. Wald

### **Education**

#### **Columbia University School of Law, J.D., 1986**

Harlan Fiske Stone Scholar, 1983-86

Robert Noxon Toppan Prize in Constitutional Law, 1985

Class of 1912 Prize in Contracts, 1984

Writing & Research Editor, *Columbia Law Review*, 1985-86

**Yale College, B.A., magna cum laude, in History, 1983**

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**PUBLICATIONS****Books:**

BALLOT BATTLES: THE HISTORY OF DISPUTED ELECTIONS IN THE UNITED STATES (Oxford University Press; available December 1, 2015)

ELECTION LAW AND LITIGATION: THE JUDICIAL REGULATION OF POLITICS (Aspen 2014) (co-authored with Michael J. Pitts & Joshua A. Douglas)

FROM REGISTRATION TO RECOUNTS REVISITED: DEVELOPMENTS IN THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES (2011) (co-authored with Steven F. Huefner, Daniel P. Tokaji & Nathan A. Cemenska)

FROM REGISTRATION TO RECOUNTS: THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES (2007) (co-authored with Steven F. Huefner, Daniel P. Tokaji & Nathan A. Cemenska)

**Book chapters:**

*The Court Stops the Recount: Bush v. Gore*, ELECTION LAW STORIES (Foundation Press forthcoming 2016)

*Recounts: Elections in Overtime*, in LAW AND ELECTION POLITICS: THE RULES OF THE GAME (Matthew Streb, ed.) (Routledge 2013)

*Democracy in the United States, 2020 and Beyond*, in RACE, REFORM, AND REGULATION OF THE ELECTORAL PROCESS 209-225 (Cambridge U. Press 2011) (Gerken, Charles & Kang, eds.)

*Uncertain Insurance: The Ambiguities and Complexities of Provisional Voting* in Morgan Felchner (ed.), VOTING IN AMERICA: AMERICAN VOTING SYSTEMS IN FLUX—DEBACLES, DANGERS AND BRAVE NEW DESIGNS (2008)

*The Legitimacy of Imperfect Elections: Optimality, Not Perfection, Should Be the Goal of Election Administration*, in Andrew Rachlin (ed.), MAKING EVERY VOTE COUNT: FEDERAL ELECTION LEGISLATION IN THE STATES 97-112 (Princeton University 2006)

**Articles and Essays:**

*Voters as Fiduciaries*, U. CHI. L. FORUM (forthcoming 2015)

*The Speaking Ballot*, 89 N.Y.U. L. REV. ONLINE 52 (2014)

*The Judicialization of Politics: The Challenge of the ALI Principles of Election Law Project*, 79 Brook. L. Rev. 551 (2014) (co-authored with Steven F. Huefner)

*Virtue over Party: Samuel Randall's Electoral Heroism and Its Continuing Importance*, 3 U.C. IRVINE L. REV. 475 (2013)

*A Big Blue Shift: Measuring an Asymmetrically Increasing Margin of Litigation*, 28 J. L. & POL. 501 (2013)

*The Posterity Project: Developing a Method for Long-Term Political Reform*, 66 OKLAHOMA L. REV. 1 (2013)

*Voting Rules and Constitutional Law*, 81 GEO. WASH. L. REV. 1836 (2013)

*The Separation of Electoral Powers*, 74 MONTANA L. REV. 139-163 (2013)

*If the Congress Won't Act, the Nonprofit Community Can*, 12 ELECTION L. J. 343 (2013)

*Electoral Dispute Resolution: The Need for a New Sub-Specialty*, 27 OHIO ST. J. DISPUTE RES. 281-290 (2012)

*The Tale of Two Teams*, 10 ELECTION L. J. 475-482 (2011) (book review essay)

*How Fair Can Be Faster: The Lessons of Coleman v. Franken*, 10 ELECTION L. J. 187-226 (2011)

*The Lake Wobegone Recount: Minnesota's Disputed 2008 U.S. Senate Election*, 10 ELECTION L. J. 129-164 (2011)

*The Founders' Bush v. Gore: The 1792 Election Dispute and Its Continuing Relevance*, 44 INDIANA L. REV. 23-84 (2010)

*The McCain v. Obama Simulation: A Fair Tribunal for Disputed Presidential Elections*, 13 N.Y.U. J. LEG. & PUB. POL. 471-509 (2010)

*Lost Opportunity: Learning the Wrong Lesson from the Hayes-Tilden Dispute*, 79 FORDHAM L. REV. 1043-1089 (2010) (with Nathan Colvin)

*The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. MIAMI L. REV. 475-534 (2010) (with Nathan Colvin)

*Unsuccessful Provisional Voting in the 2008 Election*, in PROVISIONAL BALLOTS: AN IMPERFECT SOLUTION (Pew Center on the States 2009) (with David A. Kimball), available at [http://www.pewcenteronthestates.org/initiatives\\_detail.aspx?initiativeID=54789](http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=54789)

*Gatekeeping vs. Balancing in the Constitutional Law of Elections: Methodological Uncertainty on the High Court*, 17 WILLIAM & MARY BILL OF RIGHTS JOURNAL 507-538 (2008) (co-authored with Christopher S. Elmendorf)

*Voter ID, 5-4? If So, So What?: U.S. Supreme Court Preview—Crawford v. Marion County Election Board*, 7 ELECTION L. J. 63 (2008)

*Voter ID: What's at Stake?*, 156 U. PA. L PENNUMBRA 241 (2007)

*Election Law and the Roberts Court: an Introduction*, 68 OHIO STATE L.J. 733 (2007)

*The Future of Bush v. Gore?*, 68 OHIO STATE L.J. 925 (2007)

*Refining the Bush v. Gore Taxonomy*, 68 OHIO STATE L.J. 1035 (2007)

*The Analysis and Mitigation of Election Errors: Theory, Practice, Policy*, 18 STANFORD L. & POLICY REVIEW 350-381 (2007)

*The Where and When of Voting*, 6 ELECTION LAW JOURNAL 270-277 (2007) (a review essay on John Fortier, ABSENTEE AND EARLY VOTING (2006))

*The Promise and Problems of Provisional Voting*, 73 GWU L. Rev. 1193 (2005)

*Tax Code Section 527 Groups Not an End-Run Around McCain-Feingold*, 72 U.S. LAW WEEK 2403 (2004) (co-authored with Donald Tobin)

*The Major Purpose Test: Distinguishing Between Election-Focused and Issue-Focused Groups*, 31 NORTHERN KENTUCKY L. REV. 341 (2004)

*Is Lawrence Still Good Law?*, 65 OHIO STATE L.J. 1133 (2004)

*Compelling Interests and How Best to Achieve Them: A Response to Bauer*, 3 ELECTION LAW JOURNAL 13 (2004).

*The Ultimate Line-Drawing Case*, BNA MONEY & POLITICS REPORT, September 5, 2003.

*Narrow Tailoring Is Not the Opposite of Overbreadth: Defending BCRA's Definition of Electioneering Communications*, 2 ELECTION LAW JOURNAL 457 (2003).

*Smith for Congress and Its Equivalents: An Endorsement Test under Buckley and MCFL*, 2 ELECTION LAW JOURNAL 3 (2003)

*Learning (and Teaching) from Doing*, 5 JOURNAL OF APPELLATE PRACTICE AND PROCESS 107 (2003)

*Good Fences Make Good Neighbors: When Free Speech Conflicts with Other Constitutional Rights*, COLUMBUS BAR BRIEFS, October 2002, p. 36

*Judging Voucher Programs One at a Time*, 27 U. DAYTON L. REV. 1 (2001)

*Requiem for Hercules*, 18 CONSTITUTIONAL COMMENTARY 445 (2001)

*The Bicentennial of Calder v. Bull: In Defense of a Democratic Middle Ground*, 59 OHIO STATE L. J. 1599 (1998)

*Philosophy, the Constitution, and Campaign Finance*, 10 STANFORD L. & POL. REV. 23 (1998)

*Rodriguez Revisited: Constitutional Theory and School Finance*, 32 GEORGIA L. REV. 475 (1998)

*Jurisprudence and Theology*, 66 FORDHAM L. REV. 2401 (1998)

*Public Debate and Campaign Finance*, 30 CONNECTICUT L. REV. 817 (1998)

*The Elusive Quest for Global Justice*, 66 FORDHAM L. REV. 249 (1997)

*School Funding: What Next?*, OHIO STATE LAW RECORD 4 (Summer 1997)

*Interpretation and Philosophy: Dworkin's Constitution*, 14 CONSTITUTIONAL COMMENTARY 151 (1997)

*The Regulation of Private Schools*, 25 CAPITAL L. REV. 819 (1996)

*Social Justice and Child Poverty*, 57 OHIO STATE L. J. 485 (1996)

*Equal Dollars Per Voter: A Constitutional Principle of Campaign Finance*, 94 COLUMBIA LAW REVIEW 1204 (1994)

*Political Liberalism and Establishment Clause Jurisprudence*, 43 CASE WESTERN RESERVE LAW REVIEW 963 (1993)

*Tillich and Camus, Talking Politics*, 92 COLUMBIA LAW REVIEW 954 (1992)

**Newspaper Op-Eds:**

*Election 2014: The Vote You Save May Be Your Own*, N.Y. Times Opinion Pages (Nov. 4, 2014) (with Josh Douglas), <http://www.nytimes.com/2014/11/04/opinion/elections-2014-the-vote-you-save-may-be-your-own.html> (with front-page online link on Election Day)

*When Another Speaker Stood Firm Against Obstructionists in His Own Party*, ROLL CALL (Oct. 16, 2013)

*Election Reforms Must Include New Endgame*, ROLL CALL (Jan. 15, 2009)

*In '62, Minnesota Set the Recount Standard*, MINNEAPOLIS STAR TRIBUNE (Nov. 18, 2008)

*Let's Not Repeat 2000: A special political tribunal could help resolve election conflicts without mistrust*, 31 LEGAL TIMES 62 (April 21, 2008)

*Provisional Ballots May Be the Hanging Chad of '08*, (co-authored with Tova Wang), THE HILL (February 27, 2008)

*Look to Minnesota for Vote Counting Solution*, COLUMBUS DISPATCH (Dec. 19, 2007)

*Precedent Must Be High Court's Guide*, COLUMBUS DISPATCH (August 6, 2007)

*A Bipartisan Way to Settle a Disputed Presidential Election in Ohio?* COLUMBUS BAR LAWYERS QUARTERLY (February 14, 2007)

*Redistricting Reform: Back on the Agenda*, (co-authored with Bradley A. Smith), COLUMBUS DISPATCH (November 18, 2006)

*New Rules Needn't Lead to Lost Votes*, DAYTON DAILY NEWS (November 1, 2006)

*The Federalism Defect in the Prosecution of Tom DeLay*, ROLL CALL (November 28, 2005)

*How to Avoid an Electoral Katrina*, THE PRESS-ENTERPRISE (Riverside, CA) (November 6, 2005)

*If Not Issue 4, Then What?*, CLEVELAND PLAIN-DEALER (November 4, 2005)

*The Need for a Fair Referee*, COLUMBUS DISPATCH (September 24, 2005)

*The Nine in a Pickle*, N.Y. SUN (October 28, 2004)

**Electronic:**

**Videotaped Lectures:**

Election Law issues for State Court Judges: Election Day Litigation Post-Voting Litigation (2008), National Center for State Courts-William & Mary School of Law, available at <http://icmeducation.org/electionlaw/>

FREE & FAIR COMMENTARY, available at <http://moritzlaw.osu.edu/electionlaw/freefair/>

E-BOOK ON ELECTION LAW (2004) (general editor and contributor), available at <http://moritzlaw.osu.edu/electionlaw/ebook/index.html>

**GOVERNMENT TESTIMONY**

Ohio Constitution Modernization Commission, Bill of Rights and Voting Committee (Nov. 14, 2013)

Ohio Constitution Modernization Commission, Committee on Legislative and Executive Branches (July 10, 2013)

U.S Senate Rules Committee, Hearing on *Citizens United* Supreme Court Decision, Feb. 2, 2010

“Provisional Ballots in Ohio,” Secretary of State Brunner’s Election Summit (Dec. 2, 2008; also Mar. 12, 2009 follow-up presentation on draft report from first summit)

U.S. Elections Assistance Commission, Presentation of Provisional Voting Report, May 22-23, 2006 (draft report presented September 6, 2005)

Ohio House of Representatives Rules Committee, Hearing on Redistricting Reform, May 17, 2006

U.S. House of Representatives Committee on Administration, Hearing on 2004 Election and the Implementation of HAVA, March 21, 2005

U.S. Election Assistance Commission, Hearing on Provisional Voting, Columbus, Feb. 23, 2005

Ohio Senate Rules Committee, Hearing on Campaign Finance Legislation, December 14, 2004

Ohio House of Representatives State Government Committee, Hearing on Campaign Finance, December 14, 2004

Federal Election Commission, Hearing on Political Committee Status, April 14, 2004

U.S. Senate Rules Committee, Hearing on 527 Organizations, March 10, 2004

Vermont Senate Committee on Government Operations, Public Financing of Elections, January 29, 1997

### **CONFERENCES & PRESENTATIONS**

Participant, “Online Political Advertising” Conference, Stanford Law School (Sept. 18, 2015)

Presenter, Principles for the Resolution of Disputed Elections, American Law Institute Election Law Project, Philadelphia (Sept. 11, 2015)

Paper Presenter (with co-author Charles Stewart), “Explaining the Blue Shift in Election Canvassing,” APSA annual meeting, San Francisco (Sept. 4, 2016)

Presenter, ALI Election Law Project, Republican National Lawyers Association annual meeting, New York (Aug. 15, 2015)

Presenter, Voting Rights Act 50 Years Later, National Association of State Elections Directors annual meeting, Cleveland (June 24, 2015)

Participant, “Democratic Politics in an Age of Transparency” conference, Stanford University (June 8-9, 2015)

Panelist, “Election Law Stories” conference, Moritz College of Law (June 5, 2015)

Co-convener and participant, “A Conversation on Ohio Election Administration,” Joint Project of Bipartisan Policy Center & *Election Law @ Moritz* (funded by Joyce Foundation) (December 10, 2014)

Participant, Conference on Implementation of Presidential Commission on Election Administration (Bauer-Ginsberg) Report, Bipartisan Policy Center (May 16, 2014)

“The Idea of a Talking Ballot,” Conference on *Money in Politics 2030: Toward a New Jurisprudence*, Brennan Center for Justice (May 1-2, 2014)

Co-convener and participant, “A Conversation on Redistricting Reform,” Joint Project of Bipartisan Policy Center & *Election Law @ Moritz* (funded by Joyce Foundation) (April 18, 2014)

Participant, “A Conversation on Civility and Civil Discourse in American Politics and Society,” convened by Chief Justice Moyer Legacy Committee (April 16, 2014)

Panelist, “Lessons from the Presidential Commission on Election Administration,” Moritz Legislation Clinic Conference (Feb. 28, 2014)

Participant, “Conversations in Constitutional Law,” University of Maryland Law School (Feb. 20-21, 2014)

“Ballot Battles: The History of Disputed Elections in the United States,” Faculty Workshop, Moritz College of Law at The Ohio State University (Feb. 11, 2014)

“Elections Policy: Looking Back and Forward,” National Conference of State Legislatures Fall Forum, Washington, D.C. (Dec. 3, 2013)

Consultant and participant, “National conversation on political unity,” Bipartisan Policy Center’s Commission on Political Reform (October 15, 2013)

Moderator, “Ohio Constitutional Reform and the Prospects for Bipartisanship,” Ohio State University (October 14, 2013)

Moderator, “Fixing American Democracy: The Quandries of Political Reform,” Ohio State University (Sept. 27, 2013)

Moderator, “Do Party Primaries Serve the Public Interest?” Ohio State University (Sept. 26, 2013)

“Law as Tiller, Justice as Compass: a Tribute to Tom Moyer,” Ohio Judicial Conference Annual Meeting (Sept. 12, 2013)



Discussant, "Voting Rights after *Shelby County*," Brookings Institution, Washington, D.C. (July 1, 2013)

"The Future of Election Reform (in light of the 2012 elections), American Law Institute's Annual Meeting (May 19, 2013) (with Steven Huefner)

"The Risk of Overtime in a Future Presidential Election," Symposium on the Voting Wars, University of Virginia (March 23, 2013)

Moderator, "The Future of Civics Education," Moyer Legacy Celebration, Ohio Supreme Court (March 19, 2013)

"The Possibility of a Fair System of Election Laws," Symposium on Legislative Issues in Election Law, University of Oklahoma (February 15, 2013)

"The Risk of Overtime in a Future Presidential Election," Symposium on Is America Governable?, University of Texas (January 25, 2013)

"Election Law Equal Protection," Symposium on Law and Democracy, George Washington University, (Dec. 16, 2013)

"Preparing for Overtime," University of Kentucky Law School (Oct. 26, 2012)

"The Separation of Electoral Powers," Symposium on Republican Form of Government in the States, University of Montana Law School (Sept. 28, 2012)

"Impartial Election Administration," Federalist Society—Columbus Chapter (Sept. 20, 2012)

Keynote Address, "Virtue over Party: Electoral Heroism and Why It Matters," Symposium on Foxes, Henhouses, and Commissions: Assessing the Nonpartisan Model in Election Administration, Redistricting, and Campaign Finance, U.C. Irvine Law School (Sept. 14, 2012)

"Report on Election Law Project," American Law Institute's Annual Meeting, May 23, 2012 (with Steven Huefner)

Panelist, *HAVA @ 10: Closing Roundtable*, ELECTION L. J. (transcription of symposium held May 18, 2012)

Panelist, "Disputed Elections: What Can the Nation Learn From Minnesota?," Humphrey School of Public Affairs, University of Minnesota (co-sponsored by the Bipartisan Policy Center), April 24, 2012

"A Model Calendar for Disputed Presidential Elections," ALI Election Law Project meeting, Washington, D.C., Feb. 10, 2012 (also Dec. 16, 2011)

“March 1, 1877: The Stormiest Session in Congress—and Its Relevance Today,” Isadore & Ida Topper Professorship Investiture, Jan. 24, 2012

“Preparing for 2012: Managing the Risk of Litigation that Might Decide the Presidential Election,” Federal Bench & Bar Conference, Columbus, Ohio, Oct. 28, 2011

Moderator & Presenter, “ALI’s New Election Law Project,” ALI Annual Meeting, San Francisco, May 16, 2011

“A Fair Tribunal for Disputed Presidential Elections: Specifying the Details,” Symposium on Talking the Vote: Facilitating Disputed Election Processes through ADR, Ohio State Journal of Dispute Resolution, Feb. 18, 2011

“*Bush v. Gore* in Historical Perspective,” Symposium on *Bush v. Gore: A Decade Later*, St. Thomas Law Review, Miami Gardens, Florida, Nov. 13, 2010

“Disputed Elections in the Progressive Era: A Missed Opportunity for Bipartisan Institutional Reform,” Ohio State Legal History Workshop, Oct. 29, 2010

“Provisional Ballots: Tension Between Vote-Counting Transparency and Ballot-Casting Secrecy,” Symposium on *Privacy, Democracy & Elections*, William & Mary Bill of Rights Journal, Williamsburg, Oct. 22, 2010

“The Need for a Constitutional Umpire: Disputed Presidential Elections and a Neo-Madisonian Repair,” Symposium on *The Adequacy of the Presidential Succession System in the 21<sup>st</sup> Century*, Fordham Law Review, April 16-17 2010

“Monumental Oversight: The Founding Generation and Disputed Elections,” Conference on *The Future of Political Parties*, Kenyon College Center for the Study of American Democracy, April 8-10 (conference included a series of seminars on the past, present, and future of political parties, as well as public sessions recorded by C-SPAN)

“The *McCain v. Obama* Simulation: a Fair Tribunal for Disputed Presidential Elections,” Symposium on *Helping America Vote: The Past, Present, and Future of Election Administration*, NYU Journal of Legislation & Public Policy, April 1, 2010

“The Moritz Model Redistricting Commission Project,” Midwest Democracy Network Redistricting Forum (Columbus), Mar. 1, 2010

“How Fair Can Be Faster—and other Lessons of *Coleman v. Franken*,” Symposium on *The Past, Present, and Future of Election Law: a Festschrift for Daniel Lowenstein*, UCLA Law School, Jan. 29, 2010

Debate on *Citizens United* with Brad Smith, Federalist Society podcast, Jan 22, 2010, available at [http://www.fed-soc.org/publications/pubid.1770/pub\\_detail.asp](http://www.fed-soc.org/publications/pubid.1770/pub_detail.asp) (also participated in a similar debate with Brad Smith at Moritz, sponsored by the *Ohio State Law Journal* and

our chapters of ACS and the Federalist Society)

“What a Model Redistricting Commission Can Accomplish,” Conference on Redistricting Reform, the Brookings Institution, Nov. 17, 2009

“*McCain v. Obama*: A Hypothetical Case to Illustrate a Real, Ongoing Problem,” symposium on the 2008 presidential election, Ohio State Department of Political Science and Mershon Center, Oct. 2, 2009

“Civics Education & Neo-Madisonism” Moritz Summer Brownbag Workshop, Aug. 12, 2010

“Lessons from *Coleman v. Franken*,” Moritz Summer Brownbag Workshop, July 29, 2009

“The Idea of a Model Redistricting Commission,” Conference on Redistricting Reform, sponsored by the League of Women Voters and Campaign Legal Center, The Pocantico Center of the Rockefeller Brothers Fund, July 22-24, 2009

“How to Implement a Model Redistricting Commission,” Midwest Democracy Network Summer Meeting (Columbus), June 24-26, 2009

“Democracy, 2020: Identifying Feasible Election Reform for the Decade,” AEI-Brookings Election Reform Project, June 2, 2009

“Democracy in the United States, 2020 and Beyond: How Can Scholarly Research Shape a Vision and Help to Realize It?,” Conference on *The Future of Elections Scholarship: Policy Questions and a Research Agenda for Reform*, co-sponsored by the Tobin Project and the American Law Institute, Duke Law School (Feb. 27-28, 2009)

“The Past, Present, and Future of Disputed Elections,” *The University of Miami Law Review* (Jan. 30-31, 2009)

“The *McCain v. Obama* Simulation and the Minnesota Recount: Lessons Learned,” Association of American Law Schools Annual Convention (Jan 10, 2009)

“The Minnesota Recount,” University of Minnesota Humphrey Institute (Dec. 10, 2008)

Moderator, Panel Discussion on Election Audits, Pew Make Voting Work Conference (Dec. 9, 2008)

“The Rejection of Absentee Ballots,” University of California Washington Center (Dec. 3, 2008) (conference co-sponsored by *Election Law Journal* and AEI-Brookings)

“Introductory Explanation of the *McCain v. Obama* Simulation” (Oct. 20, 2008)

*The Original Bush v. Gore: An Historical Perspective on Disputed Elections*, University Distinguished Lecture, The Ohio State University (Oct. 14, 2008)

“The History of Disputed Elections and Relevance for Future Reforms,” National Center for State Legislatures (Sept. 12, 2008)

*Disputed Statewide Elections: History, Current Risk & Future Institutional Reform*, AEI-BROOKINGS ELECTION REFORM PROJECT (May 20, 2008)

*Provisional Voting Data: Assessment of Current Needs & Availability*, DATA FOR DEMOCRACY CONFERENCE, sponsored by Pew Charitable Trusts (May 12-13, 2008)

*The Federalization of Election Law*, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT ANNUAL CONFERENCE (May 8, 2008)

*Amicus Court and Election Law ADR*, Faculty Workshop (with Steve Huefner), Moritz College of Law (April 22, 2008)

*Minnesota’s Gubernatorial Election of 1962 and Its Relevance Today*, THE FUTURE OF ELECTION REFORM, 2008 AND BEYOND, Conference of Humphrey Institute of Public Affairs, University of Minnesota (April 14, 2008)

*The Need for an Amicus Court to Resolve Disputed Elections*, HOW WE VOTE, Conference Sponsored by National Center for State Courts and *William & Mary Law Review* (March 14, 2008)

*An Amicus Court for Disputed Elections*, THE WAY WE CHOOSE: A SYMPOSIUM ON THE FUTURE OF AMERICAN ELECTION LAW, University of Virginia Law School, sponsored by *The Journal of Law & Politics* (February 23, 2008)

*From Registration to Recounts: Book Launching Symposium*, AEI-BROOKINGS ELECTION REFORM PROJECT (December 4, 2007)

*The Supreme Court at a Time of Transition*, OHIO STATE BAR ASSOCIATION, 3-hour CLE lecture (Columbus, November 30, 2007; Cleveland, December 14, 2007) (video & slides available on OSBA CLE website)

*The Justice Institute*, 3-day seminar /CLE, Newark, Ohio (November 8-10, 2007)

Principal Organizer, DEMOCRACY INDEX CONFERENCE, Moritz College of Law (September 28-29, 2007)

Faculty Brownbag, *The Roberts Court and the Future of Precedent*, Moritz College of Law (July 25, 2007)

*A Model Court for Contested Elections*, TOBIN PROJECT INSTITUTIONS OF DEMOCRACY WORKING GROUP MEETING, Kennedy School of Government, Harvard University (June 23, 2007)

*State-to-State Comparison of Procedures for Redressing Electoral Error*,  
CONFERENCE ON DEMOCRACY, Stanford Law School (April 6-7, 2007)

*The Future of Bush v. Gore and its Relevance to Election Administrators*, WINTER CONFERENCE  
OF OHIO ASSOCIATION OF ELECTION OFFICIALS (January 24, 2007)

*Confusion is the Culprit: Voter ID in 2006*, AEI-BROOKINGS PROJECT ON ELECTION REFORM  
(November 28, 2006)

*The 2006 Elections: Are We Ready?*, AEI-BROOKINGS PROJECT ON ELECTION REFORM  
(September 22, 2006)

Panelist, *Current Election Law Research on Election Reform*, AEI-BROOKINGS PROJECT ON  
ELECTION REFORM (May 23, 2006)

*Optimality, not Perfection, Should Be the Goal of Election Administration*, Woodrow Wilson  
School Princeton University, (April 7, 2006)—oral presentation of *Beyond the Symbolic  
Suffrage?*, paper for Making Every Vote Count: a Colloquium on Election Reform  
(available at [http://region.princeton.edu/pub\\_detail\\_32.html](http://region.princeton.edu/pub_detail_32.html))

*Choosing a Supreme Court Justice* (with Alan Michaels), OSU WINTER COLLEGE (February 25,  
2006)

Panelist, *Justice O'Connor's Legacy*, FEDERALIST SOCIETY OF COLUMBUS (October 4, 2005)

Participant, *Independent Election Administration: Who Draws the Lines? Who Counts the Votes?*  
Moritz College of Law (September 9-10 2005)

*Replacing Justice O'Connor: the Future of the Supreme Court and Constitutional Law*,  
COMMUNITY LEADERS FORUM, Unitarian Church of Columbus (August 24, 2005)

Participant, *Next Steps on Election Reform*, conference sponsored by League of Women Voters  
Education Fund and McCormick Tribune Foundation, Chantilly, Virginia (March 3-4  
2005)

*Provisional Voting and the Verification of Voter Registration*, NATIONAL CONFERENCE OF STATE  
LEGISLATURES FALL FORUM, Savannah (December 9, 2004)

*The Promises and Problems of Provisional Voting*, SYMPOSIUM ON LAW AND DEMOCRACY,  
George Washington University (November 15, 2004)

*Constitutionally Creative Ways to Deter Deliberatively False Campaign Speech: Incentives for  
Counterspeech*, FEDERALIST SOCIETY ANNUAL NATIONAL CONVENTION (November 12,  
2004)

*Regulating False Campaign Advertising: Ways to Facilitate Counterspeech*, Moritz College of Law (October 11, 2004)

Featured Speaker, *The Problem of False Campaign Advertising: the Need for an Unofficial Umpire*, LEAGUE OF WOMEN VOTERS OF METROPOLITAN COLUMBUS, ANNUAL MEETING (September 22, 2004)

*The Regulation of 527 Groups*, PANEL DISCUSSION ON DEVELOPMENTS IN CAMPAIGN FINANCE LAW, Moritz College of Law (September 15, 2004)

*U.S. Supreme Court: Annual Review*, OHIO STATE BAR ASSOCIATION, 3-hour CLE, Cleveland and Columbus (December 2003)

*Recent Developments in the U.S. Supreme Court's*, COLUMBUS CITY ATTORNEY OFFICE CLE (October 29, 2003)

*Stare Decisis in Constitutional Law*, GEORGETOWN DISCUSSION GROUP ON CONSTITUTIONAL LAW (October 26, 2003)

*Ohio Judicial Elections*, ABA COUNCIL OF CHIEF JUDGES, Boston (October 9, 2003)

*Stare Decisis in the U.S. Supreme Court*, ANNUAL MEETING OF OHIO COURT OF APPEALS JUDGES (September 10, 2003)

*Judges Should Not Be Elected*, Franklin Inn of Court (September 11, 2002)

*Defining the Limits of the First Amendment: Three Cases from Last Year and One Currently Under Review*, Moritz College of Law (February 26, 2002)

*The School Voucher Case*, Franklin Inn of Court (February 14, 2002)

*The Supreme Court: Past, Present, and Future*, Preble County (Ohio) Community Improvement Corporation (January 31, 2002)

*U.S. Supreme Court: Annual Review*, OHIO STATE BAR ASSOCIATION, CLE, (December 13, (CLEVELAND) and December 18, (COLUMBUS) 2001)

*Judging Voucher Programs One at a Time*, University of Dayton Law School (October 17, 2001)

*First Monday in October: Supreme Court Review and Look Ahead*, COLUMBUS BAR ASSOCIATION CLE (with Alan Michaels), (September 26, 2001)

*Towards a Scholarship of Persuasion*, Moritz College of Law (August 1, 2001)

*Federalism and Stare Decisis*, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL ANNUAL

SUMMER MEETING, Burlington, Vermont (June 22, 2001)

*Democracy-Defining Constitutionalism*, Faculty Workshops at OSU and University of Dayton (Spring 1998)

Panelist, *The Clean Money Option: Public Financing of Election Campaigns*, Brennan Center for Justice (January 21, 1997)

*Fairness and Campaign Finance*, COUNCIL ON GOVERNMENT ETHICS LAWS ANNUAL MEETING, Philadelphia (December 11, 1996)

*Intergenerational Trusteeship: A New Conception of Democracy*, Georgetown University School of Law (December 9-10 1995)

*An Education in Political Philosophy*, University of Michigan School of Law (March 10, 1995)

*The Education of Philosopher-Citizens*, Case Western Reserve University School of Law (January 26, 1995)

*Population Growth and Global Justice*, Mershon World Affairs Seminar, The Ohio State University (December 6, 1994)

*Towards a Just Constitution for the World*, Columbia University School of Law (October 3, 1994)

*World Federalism and American Federalism*, Georgetown University School of Law, Washington, D.C. (December 3-4 1993)

*School Choice and the Establishment Clause*, Ohio Northern University College of Law (October 7, 1993)

*The Regulation of Curriculum in Parochial Schools*, OHIO LEGAL THEORY WORKSHOP (March 18, 1993)

*The Religion Clauses and the Culture Wars*, ASSOCIATION OF AMERICAN LAW SCHOOLS SECTION ON LAW AND RELIGION, San Francisco (January 9, 1993)

*Civil Disobedience by Judges and Other Officials*, The Ohio State University College of Law (December 6, 1992)

*Rawlsian Liberalism and Establishment Clause Jurisprudence*, Case Western Reserve University School of Law (November 13-14 1992)

*Lee v. Weisman and the Idea of the Secular State*, Ohio Northern University School of Law, Ada, Ohio (February 27, 1992)

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**PUBLIC SERVICE**

Reporter, American Law Institute project on election law, 2010-present

Co-leader (with Nancy Rogers), ADR-based Redistricting Reform Initiative (funded by Joyce Foundation), 2009-2011

Member, ABA Task Force on Redistricting Reform, 2006-2008

Member, Working Group on Non-partisan Election Administration, American University Center for Democracy and Election Management. 2006-2008

Supervisor of legal research and analysis, Eagleton-Moritz Project on Provisional Voting and Voter Identification Issues, under contract with U.S. Election Assistance Commission, 2005-2006

Member, Working Group on State Implementation of Election Reform, The Century Foundation, 2005 (final report at <http://www.reformelections.org/publications.asp?pubid=542>)

Member, Advisory Committee, Board of Elections of Franklin County, Ohio, 2005

Member, Disclosure Working Group, *Judicial Impartiality: Next Steps* (sponsored by Chief Justice Thomas Moyer, Ohio Supreme Court, League of Women Voters, et al.), 2003-2004

Consultant, on behalf of Senator John McCain *et al.*, Intervenor-Defendants, in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003); 251 F.Supp.2d 156 (2003)

Counsel of Record, on behalf of Arizona *et al.*, as *amici curiae*, in *Moore v. Chamber of Commerce*, No. 02-305 (U.S. S.Ct.); 288 F.3d 187 (5<sup>th</sup> Cir. 2002)

Lead Counsel, on behalf of Appellants in *Common Cause/Ohio et al. v. Ohio Elections Commission*, 150 Ohio App.3d 31, 779 N.E.2d 766 (Ohio Court of Appeals, Franklin County) (2002); also lead counsel in proceedings before Ohio Election Commission

Counsel, *Amicus curiae* brief on behalf of Brennan Center for Justice, et al., *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002)

Counsel, *Amicus curiae* brief on behalf of OSU College of Law professors, *Grutter v. Bollinger*, 288 F.3d 732 (6<sup>th</sup> Cir. 2002)

Member, National Advisory Board, Public Campaign, Washington, D.C., 1997-1998

Member, Advisory Board, National Voting Rights Institute, 1996-1998

Member, Working Group on Campaign Finance Litigation, The Twentieth Century Fund, 1997-



1998

Member, Committee on Pre-Law Education, American Bar Association, 1993-1998

Member, State Governing Board, Common Cause of Ohio, 1993-1998

Counsel, *Amicus Curiae* Citizens for Educational Freedom et al., *Simmons-Harris v. Goff*, Ohio Court of Appeals, 10th District (October 28, 1996) (Cleveland school vouchers case)

Counsel, *Amicus Curiae* Institute for Democracy in Education, *DeRolph v. Ohio*, Ohio Supreme Court (March 11, 1996) (statewide school funding case)

Director, Ohio Legal Theory Workshop, 1993-95

Adviser, Governor's Commission on Educational Choice, State of Ohio, 1992-93

### **PROFESSIONAL RECOGNITION**

University Distinguished Lecture, The Ohio State University (Oct. 14, 2008)

Recipient (on behalf of *Election Law @ Moritz*), Ohio State Bar Foundation Research Award (November 4, 2005)

Lawdragon 500: Leading Lawyers in America, *Lawdragon* Magazine (October 2005)

Recipient, Liberty Bell Award, Columbus Bar Association, February 25, 2005

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