

# KATHERINE MIMS CROCKER

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**Assistant Professor of Law** ▪ William & Mary Law School

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## ACADEMIC APPOINTMENTS

### **William & Mary Law School**

*Assistant Professor of Law*, 2019–present

Courses: Federal Courts; State & Local Government Law; Property Service

- Enrichment Committee, 2019–2021; Faculty Secretary, 2020
- Faculty Mentor (among several), Student Bar Association Group Mentorship Program, 2020; Faculty Supervisor (among several), Summer Writing Project Program, 2020

### **Duke University School of Law**

*Olin-Smith Fellow and Postdoctoral Associate*, 2017–2019

Course: Judicial Decisionmaking (co-taught)

## EDUCATIONAL BACKGROUND

### **University of Virginia School of Law**

J.D. 2012, Order of the Coif

- Graduated first in the class
- Faculty Award for Academic Excellence; Shannon Award; Jackson Walker LLP Award
- *Virginia Law Review*, Articles Development Editor

### **Harvard University**

A.B. 2009, *cum laude*, History and Science

## JUDICIAL CLERKSHIPS

**Justice Antonin Scalia**, Supreme Court of the United States

*Law Clerk*, 2013–2014

**Judge J. Harvie Wilkinson III**, U.S. Court of Appeals for the Fourth Circuit

*Law Clerk*, 2012–2013

## LEGAL SCHOLARSHIP

### **A Scapegoat Theory of *Bivens***

96 *Notre Dame Law Review* (forthcoming 2021) (essay)

- Invited contribution to annual Federal Courts, Practice & Procedure Issue
- Early planning stages; working title

### **Reconsidering Section 1983's Nonabrogation of Sovereign Immunity**

73 *Florida Law Review* (forthcoming 2021)

## **An Organizational Account of State Standing**

94 *Notre Dame Law Review* 2057 (2019) (essay)

- Invited contribution to annual Federal Courts, Practice & Procedure Issue
- Summary: This essay contends that because state plaintiffs are more like organizational plaintiffs than the literature has generally recognized, state standing in federal courts should not produce the level of controversy and confusion evident in many high-profile challenges to federal-government action. The essay argues that one can see state standing and organizational standing as fitting side by side (in the sense that the doctrines run in parallel) or hand in glove (in the sense that the former represents a subtype of the latter). After conducting a preliminary comparison of states' and organizations' capacities to serve as representational plaintiffs, the essay concludes that the legal community should be relatively comfortable with the broad scope of state standing.

## **Qualified Immunity and Constitutional Structure**

117 *Michigan Law Review* 1405 (2019)

- Cited in a dissenting opinion from the Supreme Court of Appeals of West Virginia
- Summary: Qualified immunity shields federal, state, and local executive officials from lawsuits for damages alleging the violation of federal rights that were not “clearly established.” The doctrine has received criticism from wide-ranging sources, but the Supreme Court has continued to rely on and reinforce it. This article contends that an account rooted in constitutional structure (specifically, separation of powers and federalism) can likely help explain why qualified immunity has proved so sticky—but cannot vindicate it. Combined with previous commentary, this analysis renders qualified immunity ripe for rejection or replacement with a more rights-protective alternative.

## **A Prudential Take on a Prudential Takings Doctrine**

117 *Michigan Law Review Online* 39 (2018) (essay)

Summary: A “ripeness” requirement articulated by the Supreme Court in the *Williamson County* case forced plaintiffs who wanted to raise federal takings claims to seek state remedies first. This essay argues that the Court should reject the requirement in a then-upcoming decision (as it ultimately did). The essay advocates discarding the doctrine not because it was a “prudential” rule belonging to a class that recent decisions had viewed with skepticism, but because it was a poorly considered prudential rule for several reasons. The essay’s enduring contention is that the Court should take a careful approach to evaluating purportedly prudential jurisdictional limitations, for treating such rules as illegitimate across the board would undermine a host of doctrines with obscure foundations.

## **Justifying a Prudential Solution to the *Williamson County* Ripeness Puzzle**

49 *Georgia Law Review* 163 (2014)

- Cited in *Arrigoni Enterprises, LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (dissent from denial of certiorari)
- Cited in majority opinions by the U.S. Court of Appeals for the Federal Circuit and the Supreme Court of Oklahoma
- Summary: This article argues that treating the *Williamson County* ripeness requirement described above as constitutional in character (as the Supreme Court sometimes did) created serious problems for litigants and the judicial system. So, the article contends, courts should have instead consistently viewed the rule as a “prudential” preference for

giving state courts precedence over federal courts in deciding property-related issues. This argument had substantial real-world relevance because the rule seems often to have prevented takings plaintiffs from obtaining federal review and may (paradoxically) have precluded state review too. Justifying a prudential classification opened the door to exceptions where the rule’s potential harms outweighed its supposed benefits.

### **Securing Sovereign State Standing**

97 *Virginia Law Review* 2051 (2011) (note)

- Roger and Madeleine Traynor Prize  
(for one of two best written works by graduating UVA law students)
- Second Place, Brown Award for Excellence in Legal Writing  
(national contest for law students)
- Summary: This note argues that a jurisdictional bar to states bringing certain suits against the federal government should apply only to claims premised on “quasi-sovereign” interests, not “sovereign” interests. On a theoretical level, the note outlines and applies a general framework for understanding state standing in federal courts. And on a practical level, it bears relevance to issues that have arisen in several salient constitutional cases of late, including challenges to the Affordable Care Act’s individual mandate and the Trump administration’s travel bans.

## **MEDIA COMMENTARY**

### **As She Lies in State, a Tribute to Justice Ginsburg**

*Richmond Times-Dispatch*, Sept. 25, 2020 (op-ed)

### **Justice Scalia: The Man I Knew**

*Richmond Times-Dispatch*, Feb. 28, 2016 (op-ed)

## **LITIGATION PRACTICE**

**McGuireWoods LLP**, Richmond, VA

*Counsel*, 2017–2019

*Associate*, 2014–2017

## **PROFESSIONAL AFFILIATIONS**

### **Virginia State Bar**

*Board of Governors*, Education of Lawyers Section

### **Virginia Bar Association**

### **American Inns of Court Foundation**

*Member*, John Marshall Inn of Court

*Selection Committee*, Temple Bar Scholarship

*Recipient*, Temple Bar Scholarship (2014)

### **Supreme Court Historical Society**