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**CURRENT POSITION**

Sandra Day O'Connor Professor of Law and Professor of Government, College of William & Mary

**PUBLICATIONS**

**Books and Edited Collections**

*The Company They Keep: How Partisan Divisions Came to the Supreme Court* (with Lawrence Baum), OXFORD U. PRESS (2019).

*The Democratic Constitution* (WITH LOUIS FISHER), OXFORD U. PRESS 2<sup>nd</sup> ed. (2015); 1<sup>st</sup>ed. (2004).

*Political Dynamics of Constitutional Law* (with Louis Fisher), WEST PUBLISHING CO. 6<sup>th</sup> ed. (2019); 5<sup>th</sup> ed. (2011); 4<sup>th</sup> ed. (2006); 3<sup>rd</sup> ed. (2001); 2<sup>nd</sup> ed. (1996); 1<sup>st</sup> ed. (1992).

Editor & Contributor [with Keith Whittington], *Congress and the Constitution*, Constitutional Conflicts Series; DUKE U. PRESS (2005).

Editor & Contributor [with Davison Douglas], *A Year at the Supreme Court*, Constitutional Conflicts Series; DUKE U. PRESS (2004).

Editor & Contributor, *Government Lawyering*, 61 LAW & CONTEMP. PROBS. Vols. 1 & 2 (1998).

Editor & Contributor [with Davison Douglas], *Redefining Equality*, OXFORD U. PRESS (1998).

*Shaping Constitutional Values: The Supreme Court, Elected Government, and the Abortion Dispute*, Interpreting American Politics Series; JOHNS HOPKINS U. PRESS (1996).

*Federal Abortion Politics: A Documentary History* [with Wendy Watson], 5 Vol., GARLAND PUBLISHING (1995).

Editor & Contributor, *Elected Branch Influences in Constitutional Decisionmaking*, 56 LAW & CONTEMP. PROBS., Vol. 4 (1993).

Editor & Contributor, *Public Values, Private Schools*, Stanford Series on Education & Public Policy, FALMER PRESS (1989).

## Law Review Articles

*The Independent Agency Myth* (with David E. Lewis), 108 CORNELL L. REV. (forthcoming 2023).

*Circuit Personalities* (with Allison Orr Larsen), 108 VA. L. REV. (forthcoming).

- Featured in *The National Law Journal* (Avalon Zoppo, How Fostering Circuit Personalities Can Help Curb Partisan Divisions in the Judiciary, April 22, 2022)

*Weaponizing En Banc*, 96 NYU L. REV. 1373 (2021) (with Allison Orr Larsen).

- Featured in *The New York Times* (Adam Liptak, On Federal Appeals Courts, a Spike in Partisanship, Feb. 22, 2021)
- Discussed in *The Wall Street Journal* (Brent Kendall, Trump Appointees Poised to Influence Legal Outcomes for Decades to Come, Jan. 31, 2021)
- Selected as download of the week on *Legal Theory Blog*, Feb. 13, 2021

*State Constitutionalism in the Age of Party Polarization*, 71 RUTGERS L. REV. 1129 (2019) (Williams Lecture).

*Congress, the Courts, and Party Polarization*, 21 CHAP. L. REV. 55 (2018) (symposium).

*Split Definitive: How Party Polarization Turned the Supreme Court into a Partisan Court*, 2016 SUPREME COURT REV. 301 (2017) (with Lawrence Baum).

- Featured in *The New York Times* (Adam Liptak, The Polarized Court, May 10, 2014; Carl Hulse, Political Polarization Takes Hold of the Supreme Court, July 5, 2018; Linda Greenhouse; Supreme Court Party Time, Nov. 22, 2018)
- Featured in *The Washington Post* (E.J. Dionne, Jr., Gorsuch's Big Fat Lie, March 22, 2017; Ruth Marcus, Partisanship is Poison, Oct. 5, 2018)

*The Vanishing Common Law Judge?*, 165 U. PENN. L. REV. 595 (2017) (with David Klein).

- Selected as download of the week on *Legal Theory Blog*, April 22, 2016

*The Amicus Machine* (with Allison Orr Larsen), 102 VA. LAW REV. 1901 (2016).

- Featured in *The New York Times*, Adam Liptak, *Study Shows How Much Work It Takes to Be Supreme Court's Friend*, (March 7, 2016)
- Awarded the Eisenberg price for best piece of scholarship about appellate advocacy by the American Academy of Appellate Lawyers

*Rethinking Judicial Minimalism*, 69 VAND. L. REV. 935 (2016) (symposium).

- Featured in *The New York Times* (Kate Zernike, How Did Roe Fall?, June 25, 2022)
- Featured in *Vox* (Zack Beauchamp, Think Polarization is Bad Now?, June 28, 2022)
- Featured in *JOTWELL*, April 7, 2016

*'Ideology' or 'Situation Sense'? An Experimental Investigation of Motivated Reasoning and Professional Judgment*, 164 U. PENN. L. REV. 349 (2016) (with Dan Kahan et al.).

- Featured in *The Wall Street Journal* (Jacob Gershman, Study; Judges are Far Less Biased Than Law Students, April 9, 2015)
- Featured in *The Washington Post* (Chris Mooney, The Science of Why You Really Should Listen to Science and Experts, April 6, 2015)

*50 States, 50 Attorneys General, and 50 Approaches to the Duty to Defend*, 124 YALE L. J. 2100 (2015) (with Saikrishna B. Prakash).

- Featured in *The New York Times* (Adam Liptak, It's Illinois v. Illinois in Supreme Court Deal for Justices' Attention, Oct. 26, 2015)
- Cited by U.S. Supreme Court in *Berger v North Carolina State Conference of the NAACP*, 597 U.S. \_\_\_ (2022)

*Measuring Party Polarization in Congress: Lesson from Congressional Participation as Amicus Curiae*, 65 CASE WESTERN L. REV. 933 (2015) (symposium).

*Congress's Limited Power to Represent Itself in Court*, 99 CORN. L. REV. 571 (2014) (with Tara Leigh Grove).

*Dicta, Schmicta: Theory Versus Practice in Lower Court Decision-Making*, 54 WM. & MARY L. REV. 2021 (2013) (with David Klein).

*Reverse Advisory Opinions*, 80 U. CHI. L. REV. 859 (2013) (with Saikrishna Prakash).

*Party Polarization and Judicial Review: Lessons from the Affordable Care Act*, 106 NW. U. L. REV. 1821 (2012).

*The Indefensible Duty to Defend*, 112 COLUM. L. REV. 507 (2012) (with Saikrishna Prakash).

- Featured in *The New York Times* (Peter Baker, For Obama, Tricky Balancing Act in Enforcing Defense of Marriage Act, March 28, 2013)
- Featured in *The Washington Post* (Fred Barbash, Trump Won't Defend an Act of Congress in Court, March 29, 2019)

*Party Polarization and Congressional Committee Consideration of Constitutional Questions*, 105 NW. U. L. REV. 737 (symposium) (2011).

*Public Opinion and State Supreme Courts* (with Nicole Mansker) 13 U. PA. J. CONST. L. 455 (2011) (symposium).

*Why the Supreme Court Cares about Elites, Not the American People* (with Lawrence Baum), 98 GEO. L.J. 1516 (2010).

- Featured in *The New York Times* (Adam Liptak, Health Care Case is Seen as Helping Law but Hurting Court, Oct. 1, 2012)
- Featured in *The Washington Post* (Robert Barnes, Obamacare Threatens to End John Roberts's Dream of a Nonpartisan Supreme Court, Feb. 27, 2015)

*How State Courts Take Consequences into Account: Towards a State-Centered Understanding of State Constitutionalism*, 62 STAN. L. REV. 1695 (2010) (symposium).

*Walk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants*, 12 U. PA. J. CONST. L. 491 (2010) (symposium).

*How Planned Parenthood v. Casey (Pretty Much) Settled the Abortion Wars*, 118 YALE L.J. 1318 (2009) (symposium).

- Featured in *The New York Times* (Kate Zernike, How did Roe Fall?, June 25, 2022)

*Presidential Unilateralism and Political Polarization*, 45 WILLAMETTE L. REV. 395 (2009) (symposium keynote).

*The More Things Change*, 12 GREEN BAG 137 (2009).

A list of 1983-2008 law review publications can be found at <https://law2.wm.edu/faculty/bios/fulltime/nedeви.php>

### **Book Chapters**

*The Constitutional Politics of Congress*, in OXFORD HANDBOOK ON THE CONSTITUTION OF THE UNITED STATES (M. Graber, S. Levinson, M. Tushnet eds.) Oxford U. Press (2015).

*Group Formation and Precedent*, in PRECEDENT IN THE UNITED STATES SUPREME COURT (C.J. Peters ed.) Springer (2014).

*Congress and Judicial Supremacy*, in THE POLITICS OF JUDICIAL INDEPENDENCE (Bruce Peabody ed.) Johns Hopkins U. Press (2011).

*Social Psychology, Group Formation, and Supreme Court Decisionmaking* (with Will Federspiel) in THE PSYCHOLOGY OF JUDICIAL DECISION-MAKING (David Klein & Greg Mitchell eds.) Oxford U. Press (2010).

*Rethinking the New Judicial Federalism: The Case of Same Sex Marriage*, in DUAL ENFORCEMENT OF CONSTITUTIONAL NORMS (James Gardner & Jim Rossi eds.) Oxford U. Press (2010).

*The Constitution and Congressional Committees, 1970-2000*, (with K. Whittington & H. Hicken) in *LEGISLATURES AND CONSTITUTIONALISM* (Tsui Kahana ed.) Cambridge U. Press (2006).

*Alexander Bickel and the New Judicial Minimalism*, (with Christopher J. Peters), *THE JUDICIARY AND AMERICAN DEMOCRACY* (Ken Ward ed.) SUNY Press (2005).

*Substantive Due Process, Public Opinion, and the Right to Die*, *THE REHNQUIST COURT* (C. Bradley ed.) Cambridge U. Press (2005).

*Congressional Factfinding and the Scope of Judicial Review*, *CONGRESS AND THE CONSTITUTION* (Neal Devins & Kevin Whittington eds.) Constitutional Conflicts Series, Duke U. Press (2005).

A listing of 1985-2004 book chapters can be found at <https://law2.wm.edu/faculty/bios/fulltime/nedeви.php>

## **Editorials**

*Think State Supreme Courts Will Save Abortion Rights Think Again*, *WASHINGTON POST*, June 22, 2022.

*What Trump Must Learn From Truman*, *N.Y. DAILY NEWS*, Jan. 9, 2019.

*The Hidden Silver Lining if Kavanaugh is Confirmed*, *WASHINGTON POST*, Oct 5, 2018 (with Lawrence Baum).

*The Federalist Society Majority*, *SLATE*, July 6, 2018 (with Lawrence Baum).

*Strike Down Obamacare, Says DOJ*, *WALL STREET JOURNAL*, June 13, 2018 (with Sai Prakash).

*Federalist Court: How the Federalist Society became the de facto selector of Republican Supreme Court justices*, *SLATE*, Jan. 31, 2017 (with Lawrence Baum).

*Legal scholarship highlight: The Amicus Machine*, *SCOTUSBLOG* (2016) (with Allison Orr Larsen)

*Can a state's attorney general pick and choose which laws to defend?* (with Saikrishna Prakash), *LOS ANGELES TIMES*, April 19, 2016.

*Ideological Imbalance: Why Democrats usually pick moderate-liberal justices and Republicans usually pick conservative ones* (with Lawrence Baum), *SLATE*, March 17, 2016.

*Counsel Rests*, *SLATE*, January 13, 2014.

*Split Definitive* (with Lawrence Baum), *SLATE*, November 11, 2011.

*Sign Them Up* (with John McGinnis), THE LEGAL TIMES, July 24, 2000.

*Don't Rush the Court* (with Michael Fitts), THE NEW YORK TIMES, February 16, 1998.

A listing of 1982-1997 opinion pieces can be found at  
<https://law2.wm.edu/faculty/bios/fulltime/nedevi.php>

### **Other Publications**

*Why Congress Did Not Think About the Constitution When Enacting the Affordable Care Act*, 106 NW. U. L. REV. Colloquy 261 (2012).

*Do Judicial Elections Facilitate Popular Constitutionalism* (with Nicole Mansker), 111 COLUM. L. REV. SIDEBAR 27 (2011).

*Congressional Responses to Supreme Court Decisions*, in ENCYCLOPEDIA OF THE SUPREME COURT (M. Graber *et al.* eds.) Gale MacMillan (2008).

*Politique partisane et indépendance judiciaire*, 7 POLITIQUE AMÉRICAINNE 103 (2007) (symposium).

*Bob Jones University v. U.S.*, ENCYCLOPEDIA OF CIVIL LIBERTY, Routledge (2006).

*Zelman v. Sommers-Harris*, OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES (K. Hall ed.) Oxford U. Press (2005).

*What Brown Teaches Us About the Rehnquist Court's Federalism Revival*, PS, April 2004 at 211.

*Working with Congress: The Warren-Rehnquist Court Connection*, BULLETIN OF THE AMERICAN ACADEMY OF THE ARTS AND SCIENCES, Summer 2004, at 15 (symposium).

*Defending Congress's Interests in Court: How Lawmakers and the President Bargain Over Department of Justice Representation*, 32 PRESIDENTIAL STUDIES QUARTERLY 157 (2002).

*William Jefferson Clinton*, ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (L. Levy, et. al, eds.) Macmillan (2000).

*State Regulation of Religious Education*, RELIGION AND AMERICAN LAW: AN ENCYCLOPEDIA (P. Finkelman ed.) Garland (2000).

*Bob Jones University v. United States*, RELIGION AND AMERICAN LAW: AN ENCYCLOPEDIA (2000).

A listing of other 1983-1999 publications can be found at  
<https://law2.wm.edu/faculty/bios/fulltime/nedevi.php>

## **EDUCATION**

A.B. (Economics), 1978, Georgetown University  
J.D., 1982, Vanderbilt Law School; Member: Tennessee Bar

## **PROFESSIONAL EXPERIENCE**

Director, Institute of Bill of Rights Law, College of William and Mary, July 2004-June 2020; Goodrich Professor of Law and Professor of Government, November 1997-June 2015 ; Professor of Law, May 1993 to November 1997; Associate Professor of Law, May 1990 to March 1993; Assistant Professor of Law, July 1987 to March 1990.

Co-editor, Constitutional Conflicts Book Series, Duke University Press, 1993-2009.

Visiting Professor of Law (short course), Vanderbilt Law School, Fall 2015, Fall 2012, Fall 2008.

Visiting Professor of Law, George Washington University Law School, Spring 2006.

Visiting Professor of Law, Cardozo Law School, Fall 1997.

Assistant General Counsel, US Commission on Civil Rights, Washington DC, March 1986-July 1987; Attorney-Advisor, April 1984 to March 1986.

April 1983 to April 1984: Project Director, Vanderbilt Institute for Public Policy Studies, April 1983-April 1984; Research Associate, June 1982-April 1984.

July 2022.