

ASHUTOSH BHAGWAT

University of California, Davis
School of Law
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Davis, California 95616
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EXPERIENCE

- 2015 - Present** **University of California, Davis School of Law**
Davis, California
Martin Luther King Jr. Professor of Law
Professor of Law (2011-2015)
Law school courses I have taught include constitutional law,
administrative law, contracts, antitrust, regulated industries,
constitutional theory, and first amendment/mass media law
- May, 2011 to Present** **California Independent System Operator**
Member, Board of Governors
Chair, Audit Committee (2012 to Present)
- 1994 – 2011** **University of California, Hastings College of the Law**
San Francisco, California
Professor of Law (2000 - 2011)
Harry H. and Lillian H. Hastings Research Chair (2008-2009)
Associate Academic Dean (2002 - 2004)
Associate Professor of Law (1997 - 2000)
Assistant Professor of Law (1994 - 1997)
- Spring, 2005** **Leiden University**
Leiden, The Netherlands
Visiting Professor of Law
- 1992 - 1994** **Sidley & Austin**
Washington, D.C.
Associate
Practiced in appellate, regulatory, and general litigation areas, with a focus
on telecommunications issues
- 1991 - 1992** **Associate Justice Anthony M. Kennedy**
Supreme Court of the United States, Washington, D.C.
Law Clerk

1990 - 1991

Judge Richard A. Posner

United States Court of Appeals for the Seventh Circuit, Chicago, Illinois
Law Clerk

1986 - 1987

Board of Governors of the Federal Reserve System,

Division of Research and Statistics, Washington, D.C.
Research Assistant

EDUCATION

1987 - 1990

University of Chicago Law School

Chicago, Illinois

J.D. with Honors

Order of the Coif

Articles Editor, University of Chicago Law Review

D. Francis Bustin Prize for An Outstanding Student Comment

Joseph Henry Beale Prize for Outstanding Work in the first-year
Research and Writing Program

John M. Olin Fellow in Law and Economics

1982 - 1986

Yale University

New Haven, Connecticut

B.A., *summa cum laude*, with Honors in History

Fellows Prize of Jonathan Edwards College, for highest academic
average in the college

Phi Beta Kappa

PUBLICATIONS

Books

THE MYTH OF RIGHTS: THE PURPOSES AND LIMITS OF CONSTITUTIONAL RIGHTS (Oxford 2010)

Teacher's Manual to Stone, Seidman, Sunstein, Tushnet & Karlan, *Constitutional Law*, 6th ed.
(Aspen 2009) (with Mark Tushnet)

Teacher's Manual to Stone, Seidman, Sunstein, Tushnet & Karlan, *Constitutional Law*, 5th ed.
(Aspen 2005) (with Mark Tushnet)

Teacher's Manual to Stone, Seidman, Sunstein & Tushnet, *Constitutional Law*, 4th ed. (Aspen
2001) (with Mark Tushnet)

Book Chapters

The Story of Whitney v. California: The Power of Ideas in Michael C. Dorf, ed.,
CONSTITUTIONAL LAW STORIES, 2nd ed. (Foundation 2009)

Affirmative Action and Benign Discrimination in Vikram David Amar and Mark V. Tushnet,
eds., GLOBAL PERSPECTIVES ON CONSTITUTIONAL LAW (Oxford University Press 2009)

The Story of Whitney v. California: The Power of Ideas in Michael C. Dorf, ed.,
CONSTITUTIONAL LAW STORIES (Foundation 2004)

Articles and Published Briefs

Liberty or Equality?, 20 Lewis & Clark L. Rev. __ (forthcoming 2016)

The Democratic First Amendment, 110 Nw. U. L. Rev. __ (forthcoming 2016)

Posner, Blackstone, and Prior Restraints on Speech, 2015 BYU L. Rev. __ (forthcoming 2015)

Free Speech Without Democracy, 49 U.C. Davis L. Rev. 59 (2015)

Producing Speech, 56 Wm. & Mary L. Rev. 1029 (2015)

Reed v. Town of Gilbert: Signs of (Dis)Content?, 9 N.Y.U. J. L. & Liberty 137 (2015)

Religious Associations: Hosanna-Tabor and the Instrumental Value of Religious Groups, 92
Wash. U. L. Rev. 73 (2014)

Truthiness: Corporate Public Figures and the Problem of Harmful Truths,
99 Minn. L. Rev. 297 (2014)

Terrorism and Associations, 63 Emory L.J. 581 (2014)

Justice Kennedy's Free Speech Jurisprudence: A Quantitative and Qualitative Analysis, 44
McGeorge L. Rev. 167 (2013) (with Matthew Struhar)

Details: Specific Facts and the First Amendment, 86 S. Cal. L. Rev. 1 (2012)

Liberty's Refuge, or the Refuge of Scoundrels?: The Limits of the Right of Assembly, 89 Wash.
U. L. Rev. 1381 (2012)

Sorrell v. IMS Health: Details, Detailing, and the Death of Privacy, 36 Vt. L. Rev. 855 (2012)

Associations and Forums: Situating CLS v. Martinez, 38 Hastings Con. L. Q. 543 (2011)

Associational Speech, 120 Yale L.J. 978 (2011)

A Brief History of the Commercial Speech Doctrine (With Some Implications for Tobacco Regulation), 2 Hastings Science & Technology L. J. 103 (2010)

Wyeth v. Levine and Agency Preemption: More Muddle, or Creeping to Clarity?, 45 Tulsa L. Rev. 197 (2009)

Cooper v. Aaron and the Faces of Federalism, 52 St. Louis U. L.J. 1087 (2008)

The Test That Ate Everything: Intermediate Scrutiny in First Amendment Jurisprudence, 2007 U. Ill. L. Rev. 783

Brief of Constitutional Law Professors, David L. Faigman and Ashutosh A. Bhagwat, et al., as Amici Curiae in Support of Respondents in Gonzales v. Carhart and Gonzales v. Planned Parenthood, Nos. 05-380, 05-1382 (Introduction and Published Brief to United States Supreme Court), 34 Hastings Con. L. Q. 69 (2006) (with David L. Faigman and Kathryn M. Davis)

What If I Want My Kids to Watch Pornography?: Protecting Children from “Indecent” Speech, 11 Wm. & Mary Bill of Rt.s J. 671 (2003)

Institutions and Long Term Planning: Lessons from the California Electricity Crisis, 55 Admin. L. Rev. 95 (2003)

Cloning and Federalism, 53 Hastings L.J. 1133 (2002)

Affirmative Action and Compelling Interests: Equal Protection Jurisprudence at the Crossroads, 4 U. Penn. J. Con. L. 260 (2002)

Injury Without Harm: Texas v. Lesage and the Strange World of Article III Injuries, 28 Hastings Con. L. Q. 445 (2001)

Parking at BART, or Economics and Its Discontents, 4 Green Bag 2d 7 (2000)

Separate But Equal?: The Supreme Court, the Lower Federal Courts, and the Nature of the “Judicial Power,” 80 B.U. L. Rev. 967 (2000)

Unnatural Competition?: Applying the New Antitrust Learning to Foster Competition in the Local Exchange, 50 Hastings L.J. 1479 (1999)

Modes of Regulatory Enforcement and the Problem of Administrative Discretion, 50 Hastings L.J. 1275 (1999)

The McCleskey Puzzle: Remedying Prosecutorial Discrimination Against Black Victims in Capital Sentencing, 1998 S. Ct. Rev. 111 (with Evan Tsen Lee)

Hard Cases and the (D)Evolution of Constitutional Doctrine, 30 Conn. L. Rev. 961 (1998)

Purpose Scrutiny in Constitutional Analysis, 85 Cal. L. Rev. 297 (1997)

Three-Branch Monte, 72 Notre Dame L. Rev. 157 (1996)

Of Markets and Media: The First Amendment, the New Mass Media, and the Political Components of Culture, 74 N.C. L. Rev. 141 (1995)

Book Reviews

Assembly Resurrected (reviewing *Liberty's Refuge: The Forgotten Freedom of Assembly* by John D. Inazu), 91 Tex. L. Rev. 351 (2012)

Book Review (reviewing *Bush v. Gore: Exposing the Hidden Crisis in American Democracy* by Charles L. Zelden), 27 Law & History Rev. 715 (2009)

One Nation Color-Blind (reviewing *One Nation Indivisible: How Ethnic Separatism Threatens America*, by J. Harvie Wilkinson, III), 1 Green Bag 2d 105 (1997)

Shorter Pieces and Encyclopedia Entries

More Flexible First Amendment Approach is Needed, Daily Journal 7 (July 1, 2015)

Elonis v. United States, What is a Threat?, Daily Journal 7 (October 13, 2014)

Content Matters . . . Or Does It?, Daily Journal 7 (July 24, 2014)

Public Prayer: Between a Rock and . . ., Daily Journal 7 (May 12, 2014)

Hobby Lobby/Citizens United analogies inherently flawed, Daily Journal 7 (April 11, 2014)

Heckler's Vetoes in High Schools, Jurist (March 7, 2014), available at <http://jurist.org/forum/2014/03/ashutosh-bhagwat-heckler-vetoes.php>

Parents Involved in Community Schools v. Seattle School District/Meredith v. Jefferson County Schools in Vikram Amar et al., eds., ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (Macmillan 2008)

Miller v. California in Vikram Amar et al., eds., ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (Macmillan 2008)

Bartnicki v. Vopper in Vikram Amar et al., eds., ENCYCLOPEDIA OF THE SUPREME COURT OF THE

UNITED STATES (Macmillan 2008)

Burson v. Freeman in Paul Finkelman, ed., *ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES*
(Routledge 2006)

Student Comment

Patronage and the First Amendment: A Structural Approach, 56 U. Chi. L. Rev. 1369 (1989)

CONFERENCES AND PRESENTATIONS

Free Speech Foundations, held at the Northwestern University School of Law
October 25, 2015
Paper Title: The Democratic First Amendment

Anthony Kennedy Lecture
Northwestern School of Law of Lewis & Clark College, Portland, Oregon
September 23, 2015
Talk: Liberty or Equality?

Third Annual Conference on Governance of Emerging Technologies: Law, Policy and Ethics
Scottsdale Resort & Conference Center, Scottsdale, Arizona
Sponsored by the Sandra Day O'Connor College of Law, Arizona State University
May 26-28, 2015
Talk: Data, Privacy and the First Amendment

Freedom of Expression Scholars Conference, held at the Yale Law School
May 2-3, 2015
Paper Title: Who's Afraid of Content Regulation?

National Muslim Law Students Association, Power in Diversity Conference, held at
UC Berkeley School of Law
March 20, 2015
Talk: The First Amendment and the Nature of Democratic Citizenship

The Religious Rights of Corporations in the Aftermath of *Burwell v. Hobby Lobby*, held at
UC Hastings College of the Law
February 20, 2015
Talk: Corporate Rights and Third Party Burdens

California Lawyer Energy Roundtable
September 26, 2014
Discussion with leading energy lawyers regarding the current state of the industry. Roundtable

will be published in the California Lawyer magazine

Twentieth Annual Adventist Attorneys Association Conference
Sacramento, California
September 15, 2014
Talk: Supreme Court Review

Fifth Annual Law and Religion Roundtable, held at the Washington University in St. Louis
School of Law
June 26-27, 2014

The Value of Privacy, held at UC Hastings College of the Law on April 7, 2014
Panel on Business, Consumers, & Data Collection
Moderator

The Contemporary First Amendment: Freedom of Speech, Press, and Assembly, held at the
William and Mary Law School
February 21-22, 2014
Paper Title: Producing Speech

First Amendment Roundtable, held at the Washington University in St. Louis School of Law
January 31, 2014

American Association of Law Schools Annual Meeting, held in New York City on January 2-5,
2014
Scholarly Papers Competition Panel
Moderator

California Lawyer Energy Roundtable
October 11, 2013
Discussion with leading energy lawyers regarding the current state of the industry. Roundtable
will be published in the California Lawyer magazine

Speech, Symbols and Substantial Obstacles: The Doing and “Undue”ing of Abortion Law since
Casey, held at the University of California, Berkeley School of Law
October 4, 2013
Talk: Professional Speech Regulation

2013 Pacific Judicial Council Biennial Conference, held in the Territory of Guam
September 23, 2013
Talk: A Supreme Court Review

California Senate Public Safety Subcommittee on Gangs, Guns and Drugs , Sacramento,
California, hearing on “The Impact of Media Violence on Public Safety.”

July 10, 2013.

Testimony regarding First Amendment limits on regulating media violence.

Freedom of Expression Scholars Conference, held at the Yale Law School

May 4-5, 2013

Paper Title: Terrorism and Associations

Federalist Society and John Templeton Foundation Colloquium on Freedom of Assembly and Religious Liberty, held at the Ballantyne Hotel, Charlotte, North Carolina

March 22-23, 2013

The Evolution of Justice Anthony Kennedy's Jurisprudence, held at the University of the Pacific, McGeorge School of Law

April 6, 2012

Paper Title: Justice Kennedy's Free Speech Jurisprudence: A Quantitative and Qualitative Analysis

Engaging *Liberty's Refuge*, held at the Washington University in St. Louis School of Law

March 2, 2012

Paper Title: Liberty's Refuge or the Refuge of Scoundrels: The Limits of the Right of Assembly

The Electoral Tribunal of the Federal Judiciary of Mexico, Mexico City

January 20, 2012

Talk: The Separation of Powers and the Role of the Judiciary in the American Constitutional System

California Independent System Operator Legal Forum, Folsom, California

November 1, 2011

Talk: The Path of Free Speech Law after *Sorrell v. IMS Health*

Chicago-Kent Faculty Workshop Series, Chicago-Kent College of Law

October 25, 2011

Paper Title: Details: Specific Facts and the First Amendment

Constitutional Constraints on State Health Care & Privacy Regulation after *Sorrell v. IMS Health*, sponsored by the University of New Hampshire and Vermont Law Reviews, held at the University of New Hampshire Law School

October 14, 2011

Paper Title: *Sorrell v. IMS Health*: Details, Detailing, and the Death of Privacy

Freedom of Association Conference, University of San Diego School of Law

November 19-20, 2010

Constitutional Conversations, Stanford Constitutional Law Center
October 28, 2010
Paper Title: Associational Speech

The Constitution on Campus: The Case of *CLS v. Martinez*, held at the University of California,
Hastings College of the Law
October 1, 2010
Paper Title: Associations and Forums: Situating *CLS v. Martinez*

Implementing the Tobacco Control Act: Advice to the FDA, held at the University of California,
Hastings College of the Law
August 28, 2009
Paper Title: Commercial Speech Doctrine – A Brief History

The Roberts Court: Distinguishing *As Applied v. Facial* Challenges in the Midst of Ideological
Differences, held at the University of California, Hastings College of the Law
February 6, 2009
Moderator

Childress Lecture and Symposium on the Fiftieth Anniversary of *Cooper v. Aaron*, held at the
Saint Louis University School of Law
October 5, 2007
Paper Title: *Cooper v. Aaron* and the Faces of Federalism

Talk to the law faculty of the University of Leiden, The Netherlands
June 13, 2005
Talk: Intermediate Scrutiny in the Area of First Amendment Law

Security in America: Privacy and Safety in the New Millennium, held at the University of
California, Hastings College of the Law
March 21, 2003
Opening Remarks

Legal Theory Scholar at the S.J. Quinney College of the Law at the University of Utah
April 18, 2002.
Paper title: Institutions and Long Term Planning: Lessons from the California Electricity Crisis

Conceiving a Code for Creation: The Legal Debate Surrounding Human Cloning, held at the
University of California, Hastings College of the Law
January 26, 2002.
Paper title: Cloning and Federalism

Northern District of California District Court Judges' Retreat, held in Sonoma, California
October 18, 2001

Talk: Supreme Court Update

Equal Protection After the Rational Basis Era: Is it Time to Reassess the Current Standards of Review?, held at the University of Pennsylvania Law School

February 2-3, 2001

Paper title: Affirmative Action and Compelling Interests: Equal Protection Jurisprudence at the Crossroads

Mixed Signals: Academic and Industrial Perspectives on the Telecommunications Act of 1996, held at the University of California, Hastings College of the Law

March 6, 1999

Paper title: Unnatural Competition?: Applying the New Antitrust Learning to Foster Competition in the Local Exchange

Antitrust Symposium: Antitrust Issues in the Telecommunications and Software Industries, held at Southwestern University School of Law

March 2, 1996

HONORS/AWARDS/LEADERSHIP

Member, Board of Directors, Sacramento Federal Judicial Library and Learning Center Foundation

Chair, 2014 American Association of Law Schools Committee to Review Scholarly Papers

Member, American Law Institute

2003 Rutter Award for Teaching Excellence, UC Hastings College of the Law

BAR MEMBERSHIPS

Washington, D.C.

United States Court of Appeals for the Seventh Circuit