

Brannon Padgett Denning

Professor of Law
Cumberland School of Law
Samford University
Birmingham, Alabama
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Employment

The University of Tennessee School of Law, *Visiting Professor*, Summer 2010, Summer 2008, Summer 2007, Summer 2006, Summer 2005.

The Cumberland School of Law, Samford University, *Associate Professor*, 2003-2007; *Professor*, 2007-present. Tenure awarded Spring, 2005. Director of Faculty Development 2005-2010.

Southern Illinois University School of Law, *Assistant Professor*, 1999-2003. Tenure awarded Spring, 2003.

Yale Law School, *Research Associate & Senior Fellow*, 1997-1998.

Collaborated with Professor Boris I. Bittker researching and writing *Bittker on the Regulation of Interstate and Foreign Commerce* (Aspen Law & Business).

Baker, Donelson, Bearman & Caldwell, P.C., *Associate*, 1995-1997.

Member of health law group in the Memphis, Tennessee office of the state's largest law firm.

Courses Taught

Constitutional Law I, II; Contemporary Constitutional Theory Seminar; State and Local Taxation; Comparative Constitutional Law; Professional Responsibility; Legislation; Foreign Affairs and the Constitution; Gun Control and Gun Rights

Awards

2008 Harvey S. Jackson Excellence in Teaching Award (upper-level courses).

Member, American Law Institute (elected 2006).

2006 Probate and Property Magazine, Excellence in Writing Award for Best Cutting Edge Article—Real Property (for *Retail Store Size-cap Ordinances: Legitimate Land Use Regulations or Unconstitutional Economic Protectionism?* 20 Probate & Property 8 (July/Aug. 2006)).

Graduation “Hooder” 2006, 2007, 2008, 2010 (faculty selected by vote of the third-year class to hood them at graduation).

2003 Senior Class Award, Southern Illinois University School of Law (awarded annually)

to honor professor chosen by the third year class).

Education

Yale Law School, LL.M., 1999

New Haven, Connecticut

The University of Tennessee, J.D., *magna cum laude*, 1995

Knoxville, Tennessee

Honors

Order of the Coif

University of Tennessee Certificate of Academic Excellence (highest class grade):

Property, Constitutional Law I & II, Supreme Court, Gratuitous Transfers,

Land Use Law, Administrative Law

American Jurisprudence Award in Constitutional Law I

Dean's List: Spring '93, Fall '93, Spring '94, Fall '94, and Spring '95

The University of the South, B.A., *magna cum laude*, 1992

Sewanee, Tennessee

Honors

Phi Beta Kappa

Departmental Honors (Political Science)

Society of Wilkins Scholars

Order of Gownsmen, 1990-92

Omicron Delta Kappa

Pi Sigma Alpha

Publications

Books and Chapters

The Glannon Guide to Constitutional Law: Individual Rights and Liberties (2012).

Becoming a Law Professor: A Candidate's Guide (with Marcia McCormick and Jeffrey Lipshaw) (2010).

The Glannon Guide to Constitutional Law: Governmental Structure and Powers (2010).

Gun Control and Gun Rights: A Reader and Guide (with David B. Kopel and Andrew J. McClurg) (New York University Press, 2002).

Bittker on the Regulation of Interstate and Foreign Commerce (Aspen Law & Business 1999 and annual supplements, 2001-2012) (collaborator with Boris I. Bittker).

Gun Litigation and the Constitution, *in* Suing the Firearms Industry: A Legal Battle at the Crossroads of Gun Control and Mass Torts (Tim Lytton ed., U. Mich. Press, 2005) (solicited contribution).

Articles

(* denotes peer-reviewed journal)

McDonald v. Chicago: Five Takes, 26 J.L. & Pol. 273 (2011) (with Glenn H. Reynolds).

The “New Protectionism” and American Common Market, 85 Notre Dame L. Rev. 247 (2009) (with Norman R. Williams).

The New Doctrinalism in Constitutional Scholarship and *District of Columbia v. Heller*, 75 Tenn. L. Rev. 789 (2008).

Reconstructing the Dormant Commerce Clause Doctrine, 50 Wm. & Mary L. Rev. 417 (2008).

Morse v. Frederick and the Regulation of Student Cyberspeech, 35 Hastings Const. L.Q. 835 (2008) (with Molly C. Taylor).

Is the Dormant Commerce Clause Expendable? A Response to Edward Zelinsky, 77 Miss. L.J. 623 (2007).

Gonzales v. Carhart: An Alternate Opinion, 2006-2007 Cato Sup. Ct. Rev. 167 (solicited contribution).*

DaimlerChrysler Corp. v. Cuno, State Investment Incentives, and the Future of the Dormant Commerce Clause Doctrine, 2005-2006 Cato Sup. Ct. Rev. 173 (solicited contribution).*

Confederation-Era Discrimination Against Interstate Commerce and the Legitimacy of the Dormant Commerce Clause Doctrine, 94 Ky. L.J. 37 (2005-2006).

Retail Store Size-Capping Ordinances and the Dormant Commerce Clause Doctrine, 37 Urb. Law. 907 (2005) (with Rachel M. Lary).*

American Insurance Ass’n v. Garamendi and Executive Preemption in Foreign Affairs (with Michael D. Ramsey), 46 Wm. & Mary L. Rev. 825 (2004).

Why the Privileges and Immunities Clause of Article IV Cannot Replace the Dormant Commerce Clause Doctrine, 88 Minn. L. Rev. 384 (2003).

The Maine Rx Prescription Drug Program and the Dormant Commerce Clause Doctrine: The Case of the Missing Link[age], 19 Am. J. L. & Med. 7 (2003).

Constitutional Incidents: Interpretation in “Real Time,” 70 Tenn. L. Rev. 281 (2003) (with Glenn H. Reynolds).

Smokey and the Bandit in Cyberspace: the Dormant Commerce Clause, the Twenty-first Amendment, and State Regulation of Internet Alcohol Sales, 19 Const. Commentary 297 (2002).*

The Yale Law School Divisional Studies Program, 1954-1964: An Experiment in Legal Education, 52 J. Legal Educ. 365 (2002).*

The Relevance of Constitutional Amendments: A Reply to David Strauss, 77 Tulane L. Rev. 247 (2002) (with John R. Vile).

Reforming the New Confirmation Process: From “Despise and Resent” to “Advice and Consent,” 53 Admin. L. Rev. 1 (2001).

Necromancing the Equal Rights Amendment, 17 Const. Commentary 593 (2000) (with John R. Vile).*

Lower Court Interpretations of Lopez, or What If the Supreme Court Held a Constitutional Revolution and Nobody Came? (with Glenn H. Reynolds), 2000 Wis. L. Rev. 369.

Uneasy Riders: The Case for a Truth-in-Legislation Amendment, 1999 Utah L. Rev. 957 (with Brooks R. Smith).

The Constitutionality of State and Local “Sanctions” Against Foreign Countries: Affairs of State, States’ Affairs, or a Sorry State of Affairs? 26 Hastings Const. L.Q. 307 (1999) (with Jack H. McCall).

Justice Thomas, the Import-Export Clause, and *Camps Newfound/Owatonna v. Harrison*, 70 Colo. L. Rev. 155 (1999).

The Import-Export Clause, 68 Miss. L.J. 521 (1998) (with Boris I. Bittker).

Article II, The Vacancies Act, and the Appointment of “Acting” Executive Branch Officials, 76 Wash. U. L.Q. 1039 (1998).

Gun Shy: The Second Amendment as an “Underenforced Constitutional Norm,” 21 Harv. J.L. & Pub. Pol’y 719 (1998).

Comfortably Penumbra, 77 B.U.L. Rev. 1089 (1997) (with Glenn Harlan Reynolds).

Means to Amend: Theories of Constitutional Change, 65 Tenn. L. Rev. 155 (1997).

It Takes a Militia: A Communitarian Case for Compulsory Arms Bearing, 5 Wm. & Mary Bill Rts. J. 185 (1996) (with Glenn Harlan Reynolds).

Can the Simple Cite be Trusted? Lower Court Interpretations of *United States v. Miller* and the Second Amendment, 26 Cumb. L. Rev. 961 (1996).

Symposia Contributions

The Truth in Legislation Amendment: An Idea Whose Time Has Come, 78 Tenn. L. Rev. 831 (2011) (with Brooks R. Smith).

Heller, High Water(mark)? Lower Courts and the New Right to Keep and Bear Arms, 60 Hastings L.J. 1245 (2009) (with Glenn H. Reynolds).

Five Takes on *District of Columbia v. Heller*, 69 Ohio St. L.J. 671 (2008) (with Glenn H. Reynolds).

Dormant Commerce Clause Limits on the Regulation of Big Boxes and Chain Stores: An Update, 58 Case Western Res. L. Rev. 1233 (2008).

In Defense of a “Thin” Second Amendment: Culture, the Constitution, and the Gun Control Debate, 1 Alb. Gov’t L. Rev. 418 (2008).

Cuno and the Court: The Case for Minimalism, 4 Geo. J.L. & Pub. Pol’y 33 (2006).

What Hath *Raich* Wrought? Five Takes, 9 Lewis & Clark L. Rev. 915 (2005) (with Glenn H. Reynolds).

Empirical Measurements of Judicial Performance: Thoughts on Choi and Gulati's *Tournament of Judges?* 32 Fla. St. U. L. Rev. 1123 (2005).

Rulings and Resistance: The New Commerce Clause Jurisprudence Encounters the Lower Courts, 55 Ark. L. Rev. 1253 (2003) (symposium on the Commerce Clause) (with Glenn H. Reynolds).

Telling *Miller's* Tale: A Reply to David Yassky, 65 Law & Contemp. Prob. 113 (2002) (with Glenn H. Reynolds).*

The "Blue Slip": Enforcing the Norms of the Judicial Confirmation Process, 10 Wm. & Mary Bill Rts. J. 75 (2001).

Survey of Illinois Law: Constitutional Law, 25 So. Ill. U. L.J. 733 (2001).

Shorter Works

Three Cheers for Bob Lloyd, 78 Tenn. L. Rev. 639 (2011).

Locally-Grown Food Laws and Constitutional Limits on State and Local Government: Suggestions for Policymakers and Advocates, 1 J. Agric., Food Sys. & Community Dev. 139 (2010) (with Samantha Graff & Heather Wooten).*

Heller's Future in the Lower Courts, 102 Nw. U. L. Rev. 2035 (2008) (with Glenn H. Reynolds).

American Insurance Ass'n v. Garamendi; C & A Carbone v. Clarkstown; Cooley v. Board of Wardens; Crosby v. National Foreign Relations Council; Davis v. Bandemer; Katzenbach v. McClung; Vieth v. Jubelirer; MLB v. SLJ; "Progressive Era Commerce Clause Cases"; "The Right to Keep and Bear Arms"; United States v. Lopez; and West Lynn Creamery v. Healy *in* Encyclopedia of Supreme Court of the United States (David Tanenhaus et al. eds. 2009).

The Year of the Gun: Second Amendment Rights and the Supreme Court, 86 Texas Law Review *See Also* 22 (2008).

Debate, The Future of the Dormant Commerce Clause: Abolishing the Prohibition on Discriminatory Taxation, 155 PENnumbra 209 (2007) (with Edward A. Zelinsky).

Retail Store Size-Capping Ordinances: Legitimate Land Use Regulations or Unconstitutional Economic Protectionism, 20 Probate & Property 8 (July/Aug. 2006) (winner of the 2006 Excellence in Writing Award for Best Cutting Edge Article in Real Property).

Crosby v. National Foreign Trade Council and Norfolk Southern v. Shanklin, *in* The Oxford Guide to the United States Supreme Court (Kermit Hall ed., 2d ed. 2005).

The Import-Export Clause and Article I, § 10, cl. 1 *in* The Heritage Guide to the Constitution (Edwin Meese, Matthew Spalding & David F. Forte, eds. 2005).

The Dormant Commerce Clause Doctrine: Prolegomenon to a Defense, 88 Minn. L. Rev. 1801 (2004) (reply to Jim Chen, A Vision Softly Creeping: Congressional Acquiescence and the Dormant Commerce Clause, 88 Minn. L. Rev. 1764 (2004)).

Walter V. Schaefer in *Great American Judges: An Encyclopedia* (John R. Vile ed., 2003).

International Decisions, *American Insurance Ass'n v. Garamendi* and *Deutsch v. Turner Corp.*, 97 Am. J. Int'l L. 950 (2003).*

The Judicial Confirmation Process and the "Blue Slip," 85 *Judicature* 218 (March-April 2002).*

Charlton Heston, Wayne LaPierre, Firearms Litigation Clearinghouse, Potomac Institute, and Maryland v. United States, in *Encyclopedia of Guns in American Society* (Gregg Carter et al. eds, 2002).

Where Do We Stand Now? Standing in Environmental and Resources Litigation, 17 *Nat. Res. & Envir.* 14 (2002) (with Stephen Gidiere).

John Marshall, Luther Martin, Thurman Arnold, and Tapping Reeve, in *Great American Lawyers: An Encyclopedia* (John R. Vile ed., 2001).

International Decisions, *Crosby v. National Foreign Trade Council*, 120 S. Ct. 2288 (2000), 94 Am. J. Int'l L. 750 (2000) (with Jack H. McCall).*

States' Rights and Foreign Policy, 79 *Foreign Affairs* 9 (Jan./Feb. 2000) (with Jack H. McCall).

Book Reviews

Common Law Constitutional Interpretation: A Critique, 27 *Const. Commentary* 621 (2011) (book review of David A. Strauss, *The Living Constitution* (2010)).*

[Book Review](#), *Texas L. Rev. Dicta* (2011) (book review of Daniel A. Farber & Suzanna Sherry, *Judgment Calls: Principle and Politics in Constitutional Law* (2009)).

[Parties, Politics, and the Constitution](#), *Concurring Opinions Blog* (book review of Mark Tushnet, *Why the Constitution Matters* (2010)).

["Hey! Teachers! Leave Them Kids Alone."](#) *Concurring Opinions Blog* (book review of Anne Proffitt Dupre, *Speaking Up: The Unintended Costs of Free Speech in Public Schools* (2009)).

Publius For All of Us, 26 *Const. Commentary* 75 (2009) (book review of Dan T. Coenen, *The Story of the Federalist: How Hamilton and Madison Reconceived America* (2007)).*

Book Review, 24 *J.L. & Rel.* 723 (2009) (book review of *Law and the Sacred* (Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey, eds. 2007)).*

Book Review, 99 *L. Lib. J.* 621 (2007) (book review of William Wiecek, *XII Oliver Wendell Holmes Devise History of the Supreme Court of the United States, The Birth of the Modern Constitution: The Supreme Court, 1941-1953* (2006)).*

Brother, Can You Paradigm? 23 Const. Commentary 81 (2006) (book review of Jed Rubenfeld, *Revolution by Judiciary: The Structure of American Constitutional Law* (2005)).*

Judge Noonan's J'Accuse . . . ! 34 Cumb. L. Rev. 477 (2004) (book review of John T. Noonan, *Narrowing the Nation's Power: The Supreme Court Sides with the States* (2002)).

Book Review, 96 L. Lib. J. 229 (2004) (book review of Robert J. Cottrol, Raymond T. Diamond and Leland B. Ware, *Brown v. Board of Education: Caste, Culture, and the Constitution* (2003)).*

Against (Constitutional) Settlement, 19 Const. Commentary 781 (2002) (book review of Louis Michael Seidman, *Our Unsettled Constitution* (2001)).*

Book Review, 94 L. Lib. J. 141 (2002) (book review of Richard C. Cortner, *Civil Rights and Public Accommodations: The Heart of Atlanta Motel and McClung Cases*).*

Book Review, 93 L. Lib. J. 345 (2001) (book review of William E. Nelson, *Marbury v. Madison: The Origins and Legal of Judicial Review*).*

Op-Eds

Pouring State Power Away, Nat'l L.J., Dec. 13, 2004.

Time to Sober Up: The Constitution Does Let States Stop Cross-Border Alcohol Sales, Legal Times, Feb. 23, 2004.

Conservative Court Could Be Dems' Best Friend, FoxNews.Com, Nov. 27, 2002 (with Glenn H. Reynolds).

Works in Progress

Anti-Evasion Doctrines in Constitutional Law (with Michael B. Kent, Jr.)

The Least Dangerous Branch at 50: Its Continuing Relevance to Constitutional Theory

The Second Amendment as Ordinary Constitutional Law (with Glenn H. Reynolds)

Bittker on the Regulation of Interstate and Foreign Commerce, second edition

Public Presentations

Panelist, "Pathways to the International Legal Academy and What You Find There: The Various Roles of Law Professors and Legal Academics," ABA International Meeting, October 11, 2011, Dublin, Ireland.

Panelist, "Twenty-first Amendment Litigation Update," Center for Alcohol Policy Annual CLE, September 12, 2011, Dallas, TX.

Panelist, "Conference for Aspiring Law Professors," Saturday, September 10, 2011, Arizona State University Sandra Day O'Connor College of Law, Tempe, AZ.

Presenter, Sewanee CLE Program, “A Review of the Supreme Court OT 2010,” August 11, 2011, The University of the South, Sewanee, TN.

“The Constitutionality of the Individual Mandate, or Can the Government Make Us All Buy Chevy Volts?” The Redstone Club, June 10, 2011.

Presenter, Constitutional Law Forum, December 15-16, 2010, The University of Louisville College of Law, Louisville, KY.

Panelist, “Twenty-first Amendment Litigation Update,” Center for Alcohol Policy Annual CLE, October 25, 2010, Dallas, TX.

Panelist, “Conference for Aspiring Law Professors,” Saturday, October 2, 2010, Arizona State University Sandra Day O’Connor College of Law, Tempe, AZ.

Panelist, “The Rehnquist Federalism Revolution: Where Are We Now?” Saturday, July 31, 2010, Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL.

“*McDonald v. Chicago*: Five Takes,” Wednesday, June 30, 2010. The University of Tennessee College of Law, Knoxville, TN.

Participant, Liberty Fund Seminar on Private Property and the Constitution, June 18-20, 2010, Cambridge, MA.

Discussant, Vanderbilt Federalism Roundtable, February 25-26, 2010. Vanderbilt Law School, Nashville, TN.

Panelist, “*Heller* and Incorporation,” August 3, 2009, Southeast Association of Law Schools Annual Meeting, Palm Beach, FL.

“*Heller*, High Water(mark)? Lower Courts and the New Right to Keep and Bear Arms,” The Future of Second Amendment After *Heller*, University of California, Hastings School of Law, Feb. 13, 2009.

Keynote Speaker, “Alabama and the Development of American Constitutional Law,” Constitution Day Speaker, University of South Alabama, September 17, 2008, Mobile, AL.

Moderator, “What Kind of Scholarship Should We Produce?,” July 31, 2008. Southeast Association of Law Schools Annual Meeting, Palm Beach, FL.

Summer Faculty Forum, “*Heller*’s Future in the Lower Courts,” July 9, 2008. The University of Tennessee College of Law, Knoxville, TN.

“Reconstructing the Dormant Commerce Clause Doctrine,” American Enterprise Institute, April 24, 2008. Washington, D.C.

“Reconstructing the Dormant Commerce Clause Doctrine,” University of Pennsylvania Constitutional Law Workshop, February 28, 2008. The University of Pennsylvania School of Law, Philadelphia, PA.

“Dormant Commerce Clause Limits on Big Box and Formula Retail Store Regulation: An Update” at

“Corporations and Their Communities,” February 24-25, 2008. Case Western Reserve School of Law, Cleveland, OH.

“In Defense of a ‘Thin’ Second Amendment: Culture, the Constitution, and the Gun Control Debate” at “Firearms, Militias, and Safe Cities: Merging History, Constitutional Law, and Public Policy,” October 18-19, 2007. Albany Law School, Albany, NY.

Faculty Workshop, “Morse v. Frederick and the Regulation of Student Cyberspeech,” October 10, 2007. Willamette University School of Law, Salem, OR.

Summer Faculty Forum, “Morse v. Frederick and the Future of Student Speech,” July 11, 2007. The University of Tennessee College of Law, Knoxville, TN.

Summer Faculty Forum, “The Indispensability of the Anti-Discrimination Principle to the Dormant Commerce Clause Doctrine: A Response to Edward Zelinsky,” June 28, 2006. The University of Tennessee College of Law, Knoxville, TN.

Panelist, Symposium on *Cuno v. DaimlerChrysler*, October 7, 2005, The University of Minnesota School of Law, Minneapolis, MN.

Panelist, Town Hall Meeting: “The Role of the Supreme Court in American Government and Its Impact on the Lives of Average Americans,” August 25, 2005. Alabama Chapter, Alliance for Democracy and the Greater Birmingham Chapter of the National Organization for Women, Birmingham, AL.

Summer Faculty Forum, “The First Amendment and Public School Student Speech: A Problem and a Reappraisal,” June 22, 2005. The University of Tennessee College of Law, Knoxville, TN.

Presenter, “Recent Revisions to the Model Rules of Professional Conduct,” May 4, 2005. Shelby Co. (AL) Bar Association, Columbiana, AL.

Panelist, “State Tax Incentives for Business: Healthy Competition or Race to the Bottom”? May 2, 2005. The American Enterprise Institute, Washington, D.C.

Panelist, “Federalism Under the Influence: Booze, Dope, and the Commerce Clause,” November 10, 2004. The American Enterprise Institute, Washington, D.C.

Young Scholars Presentation, “Confederation-Era Discrimination Against Interstate Commerce and the Legitimacy of the Dormant Commerce Clause Doctrine,” August 3, 2004. Annual Meeting of the Southeastern Association of Law Schools, Kiawah Island, South Carolina.

Presenter, “Gun Litigation and the Constitution” at “Suing the Firearms Industry: A Legal Battle at the Crossroads of Gun Control and Mass Torts,” November 6-7, 2003. Albany, New York. Sponsored by the Albany Law School.

Panelist, “Ballistic Fingerprinting,” November 19, 2002. Sponsored by the Southern Illinois Chapter of the American Civil Liberties Union.

Panelist, “Federalism in the United States Constitution,” at “Cooperative versus Competitive Federalism: Analyzing and Comparing the U.S. and German Federal Systems.” June 20-21, 2002. Denver, Colorado.

Sponsored by the Friedrich Naumann Foundation.

Presenter, "Rulings and Resistance: The New Commerce Clause Jurisprudence Encounters the Lower Courts," at "The Commerce Clause: Past, Present, and Future." March 14-15, 2002. University of Arkansas School of Law, Fayetteville.

Panelist, "National Security and Civil Liberties: An Historical Perspective." November 27, 2001. Sponsored by the SIU Public Policy Institute and the Southern Illinois Chapter of the ACLU.

"The Commerce Clause and the Lower Courts: What if the Supreme Court Held A Constitutional Revolution and Nobody Came?" October 30, 2001. University of Notre Dame Law School Federalist Society.

"Studying Constitutional Incidents." October 12, 2000. St. Louis University School of Law Faculty Colloquium.

Participant, "Has Congress Abdicated Its Power?" October 22, 1999. St. Louis University School of Law.

Service

Professional

Visitor's Committee, Member, The University of the South, 2009-
Center for Alcohol Policy, Advisory Board Member, 2009-
AALS Constitutional Law Interest Group Executive Committee 2008-

Law School

Co-Advisor, Cumberland Law Review, 2005-
Faculty Recruitment Committee, Member 2005-present; Chair, 2008, 2009, 2010
Director of Faculty Development, 2005-2010
Ad Hoc Faculty Colloquium Committee, Chair, 2004-2010
Policy Committee, Member 2004-2006
Long-Range Planning Committee, Member 2005-2006
Selection Committee, Harvey S. Jackson Teaching Award, Member, 2004-2007
Selection Committee, Lightfoot, Franklin & White Faculty Scholarship Award, Member,
2005-2010
M.C.L. Review Committee, Member, 2003-2005

University

Program and Structures Committee, 2009-10
Athletics Committee, 2004-2005

Community

Shades Valley YMCA, Board Member, 2007-2011
Usher, St. Luke's Episcopal Church, Mountain Brook, AL

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