

ALAN K. CHEN

University of Denver Sturm College of Law
2255 E. Evans Avenue, Denver, Colorado 80208-0640
(303) 871-6283; email: achen@law.du.edu
Web site: www.law.du.edu/chen/
SSRN author page: [http://ssrn.com/author = 125088](http://ssrn.com/author=125088)

ACADEMIC APPOINTMENT

**WILLIAM M. BEANEY MEMORIAL RESEARCH CHAIR & PROFESSOR
UNIVERSITY OF DENVER STURM COLLEGE OF LAW, Denver, Colorado**

Associate Dean for Faculty Scholarship, 2008-2014

*Visiting Research Fellow, Queen Mary & Westfield College, University of London,
London, England, on sabbatical leave Fall 1999*

*Courses: Constitutional Law, First Amendment, Federal Courts, Public Interest Lawyering
Lab, Social Change Lawyering*

OTHER PROFESSIONAL EXPERIENCE

STAFF COUNSEL, ROGER BALDWIN FOUNDATION OF ACLU, INC., Chicago, Illinois

*Supervised and conducted civil rights and civil liberties litigation in federal and state
courts at both trial and appellate level. Emphasis on Fourth Amendment, privacy, and First
Amendment litigation (Sept. 1987-June 1992).*

LAW CLERK, HONORABLE MARVIN E. ASPEN, Chicago, Illinois

United States District Court Judge for the Northern District of Illinois (Sept. 1985-August 1987)

EDUCATION

STANFORD LAW SCHOOL, Stanford, California

J.D., 1985

*Hilmer Oehlmann, Jr. Award for Excellence in First Year Legal Research and Writing
Best Brief, Marion Rice Kirkwood Moot Court Competition*

CASE WESTERN RESERVE UNIVERSITY, Cleveland, Ohio

B.A., Political Science, 1982, *summa cum laude*

Graduation with Honors in Political Science

Madge McKinney Award for Excellence in Political Science

Mather Alumnae Award for Excellence in Political Science

SCHOLARSHIP

Books

FREE SPEECH BEYOND WORDS: THE SURPRISING REACH OF THE FIRST AMENDMENT (NYU Press 2017) (with Mark Tushnet and Joseph Blocher)

LAW, LAWYERING, AND SOCIAL CHANGE (Wolters Kluwer Law & Business 2013) (with Scott L. Cummings)

TEACHER'S MANUAL FOR LAW, LAWYERING, AND SOCIAL CHANGE (Wolters Kluwer Law & Business 2014) (with Scott L. Cummings)

Articles

Free Speech, Rational Deliberation, and Some Truths About Lies (work in progress)

Developing a Taxonomy of Lies Under the First Amendment, forthcoming, 88 U. COLO. L. REV. ____ (2017)

Free Speech and the Confluence of National Security and Internet Exceptionalism, forthcoming 85 FORDHAM L. REV. ____ (2017)

Free Speech and Democracy in the Video Age, 116 COLUM. L. REV. 991 (2016) (with Justin Marceau)

High Value Lies, Ugly Truths, and the First Amendment, 69 VAND. L. REV. 1435 (2015) (with Justin Marceau) (*reprinted in* FIRST AMENDMENT LAW HANDBOOK, 2016-2017 ed. (Rodney A. Smolla, ed. 2016).

Instrumental Music and the First Amendment, 66 HASTINGS L.J. 381 (2015)

Rights Lawyer Essentialism and the Next Generation of Rights Critics, 111 MICH. L. REV. 903 (2013)

Right Labels, Wrong Categories: Some Comments on Steven D. Smith's, Why is Government Speech Problematic?, (response to paper presented at the 17th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law) (DENV. U. L. REV. ONLINE) (2010)

Rosy Pictures and Renegade Officials: The Slow Death of Monroe v. Pape, 78 UMKC L. REV. 889 (2010)

Bureaucracy and Distrust: Germaneness and the Paradoxes of Academic Freedom Doctrine, 77 U. COLO. L. REV. 955 (2006)

The Facts About Qualified Immunity, 55 EMORY L. J. 229 (2006) (reprinted in 22 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Thomson West 2006))

Forced Patriot Acts, 81 DENV. U. L. REV. 703 (2004)

Foreword: Bill Beaney's Continuing Relevance, 81 DENV. U. L. REV. 217 (2003)

Statutory Speech Bubbles, First Amendment Overbreadth, and Improper Legislative Purpose, 38 HARV. C.R.-C.L. L. REV. 31 (2003)

Shadow Law: Reasonable Unreasonableness, Habeas Theory, and the Nature of Legal Rules, 2 BUFF. CRIM. L. REV. 535 (1999)

The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law, 47 AM. U. L. REV. 1 (1997)

"Meet the New Boss," 73 DENV. U. L. REV. 1253 (1996)

The Ultimate Standard: Qualified Immunity in the Age of Constitutional Balancing Tests, 81 IOWA L. REV. 261 (1995)

Due Process as Consumer Protection: State Remedies for Distant Forum Abuse, 20 AKRON L. REV. 9 (1986)

OPINION/COMMENTARY

Judge Gorsuch and the Role of Public Interest Litigation in Our Democracy, Dorf on Law, <http://www.dorfonlaw.org/2017/03/judge-gorsuch-and-role-of-public.html> (reposted at ACS Blog: https://www.acslaw.org/acsblog/judge-gorsuch-and-the-role-of-public-interest-litigation-in-our-democracy?utm_content=buffer9462&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

Arkansas's Reckless Rush to the Execution Chamber (with Justin Marceau), Dorf on Law, <http://www.dorfonlaw.org/2017/03/arkansas-reckless-rush-to-execution.html> (reposted at NEWSWEEK: <http://www.newsweek.com/why-arkansas-rush-execute-eight-prisoners-567836>)

Senate Should Not Delay Obama's Supreme Court Nomination, DENVER POST, <http://www.denverpost.com/2016/02/19/senate-should-not-delay-obamas-supreme-court-nomination/>

The Continuing Problems with Lethal Injection (with Justin Marceau), Huffington Post Blog, http://www.huffingtonpost.com/justin-marceau/problems-with-lethal-injection_b_5626764.html

Promoted Commenter on *United States v. Alvarez* (First Amendment challenge to Stolen Valor Act), SCOTUS Blog, <http://www.scotusblog.com/community/the-stolen-valor-act/#comment-17464>

Protecting Words That Hurt, THE NEW YORK TIMES, Room for Debate, <http://www.nytimes.com/roomfordebate/2010/10/06/free-speech-and-picketing-funerals/the-perils-of-censorship>

OTHER PUBLICATIONS

Qualified Immunity Limiting Access to Justice and Impeding Development of the Law, ABA HUMAN RIGHTS (July 2015)

Legislation Restricting Access to Indoor Tanning Throughout the World, ARCHIVES OF DERMATOLOGY Online First (July 2012) (with M. Pawlak, M. Bui, M. Amir, D. Burkhardt, and R. Dellavalle)

Colorado Court of Appeals Rejects Churchill Free-Speech Retaliation Claim, ABA SECTION ON LITIGATION, FIRST AMENDMENT AND MEDIA LITIGATION COMMITTEE (February 2011) (on line).

Teens in the UV Tanning Booth? Tax the Tan, (co-authored with Dellavalle, RP, Schilling, LM, Hester, EJ), ARCHIVES OF PEDIATRIC AND ADOLESCENT MEDICINE 2003, 157: 845-846

Youth Access Laws: In the Dark at the Tanning Parlor, (co-authored with Dellavalle, Parker, Cersonsky, Hemme, Burkhardt, and Schilling), 139 ARCHIVES OF DERMATOLOGY 443 (April 2003)

Liability of Private Firms Performing Public Functions, TRIAL, Oct. 1999, at 60. *Constitutional Law*, in 1997 ANNUAL SURVEY OF COLORADO LAW (1997)

Burns v. Reed – Narrowing the Prosecutor's Protection From Liability for Unconstitutional Conduct, 3 POLICE MISCONDUCT AND CIVIL RIGHTS LAW REPORT 121 (1991)

RECENT ACADEMIC PRESENTATIONS

Developing a Taxonomy of Lies under the First Amendment, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 29, 2017

Free Speech and the Supreme Court, Constitutional Rights & Remedies Program, University of Denver Sturm College of Law, April 24, 2017

Developing a Taxonomy of Lies under the First Amendment, 25th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law, University of Colorado School of Law, April 14, 2017.

Free Speech and the Confluence of National Security and Internet Exceptionalism, Fordham Law Review Symposium on Terrorist Incitement on the Internet, Fordham Law School, April 7, 2017.

Some Remarks on First Amendment Coverage and New Technologies, Oklahoma City University School of Law Symposium, March 24, 2017.

Ag-Gag Legislation: The First Amendment and Animal Agriculture, Duke Law School Chapter, Student Animal Legal Defense Fund, February 27, 2017

SCOTUS Takes on “The Slants” and the Slurs: Free Speech and Offensive Trademarks, University of Denver Chapter of the Federalist Society, January 17, 2017

Preview of the United States Supreme Court, October 2016 Term, at Holland & Hart LLP & University of Colorado School of Law, September 26 & 28, 2016

Integration of New Teaching Materials on Social Justice and Community into the Clinical Curriculum, AALS Conference on Clinical Legal Education, May 2, 2016

Free Speech and Democracy in the Video Age, Loyola Constitutional Law Colloquium, November 7, 2015

Preview of the United States Supreme Court, October 2015 Term, at Reilly Pozner LLP & University of Colorado School of Law, October 7 & 8, 2015

Reviewing the Supreme Court's 2014/15 Term, Colorado Lawyers Chapter of the Federalist Society Luncheon, July 13, 2015.

Video Image Capture, Democracy, and the First Amendment, Plenary Session, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, May 3, 2015

High Value Lies, Ugly Truths, and the First Amendment, Loyola Constitutional Law Colloquium, November 8, 2014

AWARDS

Robert B. Yegge Excellence in Teaching Award, 2011

Outstanding Faculty Member, University of Denver Sturm College of Law, 2007-08, awarded by Student Bar Association

Denver University Law Review Faculty Appreciation Award, 2004

Professor of the Year, University of Denver College of Law, 1998-99. Co-recipient selected by students for excellence in law teaching

Colorado Trial Lawyers Association Award for the Outstanding Brief of 1997, *Williams v. City and County of Denver*

American Civil Liberties Union of Colorado, Edward Sherman Award for Outstanding Cooperating Attorney, 1997

PROFESSIONAL AFFILIATIONS

Association of American Law Schools

AALS Scholarly Papers Committee, 2011-12 (appointed to committee to select winner of the annual scholarly paper competition)

Chair, Civil Rights Section 1998-99

Executive Committee Member, Civil Rights Section (1994-2001) and Federal Courts Section, 2000-2001

Member, Board of Directors and Legal Panel, Civil Rights Education and Enforcement Center

Member, Board of Advisors, American Constitution Society, Colorado Lawyers Chapter

Member, American Civil Liberties Union of Colorado Legal Panel

AMICUS BRIEFS (in capacity as legal scholar amicus curiae)

Hernandez v. Pena, No. 15-118, U.S. Supreme Court, Brief of Eleven Law Professors as Amicus Curiae in Support of Petitioner

Lane v. Franks, No. 13-483, U.S. Supreme Court, Brief of Law Professors as Amicus Curiae in Support of Petitioner

McCullen v. Coakley, No. 12-1168, U.S. Supreme Court, Brief of Eugene Volokh, Richard W. Garnett, Michael Stokes Paulsen, Timothy Zick, William E. Lee, Alan K. Chen, & Ronald J. Krotoszynski, Jr. as Amici Curiae in Support of Petitioners

Ashcroft v. Al-Kidd, No. 10-98, U.S. Supreme Court, Brief of Legal Scholars as Amici Curiae in Support of Respondent

Snyder v. Phelps, No. 09-751, U.S. Supreme Court, Brief of Amici Curiae Scholars of First Amendment Law in Support of Respondent Phelps

Fields v. City of Philadelphia, No. 16-1650, Third Circuit, Brief of Amici Curiae First Amendment Law Professors in Support of Plaintiffs-Appellants and Supporting Reversal

SELECTED LITIGATION (as legal counsel)

United States Supreme Court and Federal Courts of Appeals

Animal Legal Defense Fund v. Wasden, Ninth Circuit. Challenge to Idaho “ag-gag” law as violation of First and Fourteenth Amendments (oral argument pending).

Lockett v. Fallin, 841 F.3d 1098 (10th Cir. 2016) (*argued*), *petition for certiorari pending*, No. 16-1255. Civil rights claim on behalf of inmate challenging lethal injection execution as violation of Eighth Amendment.

Western Watersheds Project v. Michael, Tenth Circuit, No. 16-8083. Author of Brief of Amici Curiae First Amendment Legal Scholars in Support of Plaintiffs-Appellants and Supporting Reversal (oral argument pending).

Headwaters Forest Defense v. County of Humboldt, U.S. Supreme Court and Ninth Circuit. Civil rights action against police officers who used pepper spray on peaceful, political protestors as violation of Fourth Amendment. 240 F.3d 1185 (9th Cir. 2000), *cert. granted, judgment vacated and remanded for reconsideration*, 534 U.S. 801 (2001), *amended opinion reinstating judgment*, 276 F.3d 1125 (9th Cir.), *cert. denied*, 537 U.S. 1000 (2002).

Williams v. City and County of Denver, Tenth Circuit. Amicus brief for Colorado Trial Lawyers Association in case claiming violations of Due Process Clause by police officer and municipality for death of innocent bystander during officer's high speed chase, 99 F.3d 1009 (10th Cir. 1996).

University of Colorado v. Derdeyn, U.S. Supreme Court. Opposition to state's petition for certiorari in U.S. Supreme Court in successful class action Fourth Amendment challenge to state university random urine testing program for student athletes and cheerleaders. 863 P.2d 929 (Colo. 1993), *cert. denied*, 511 U.S. 1070 (1994).

Dimeo v. Griffin, Seventh Circuit. Class action Fourth Amendment challenge to state regulation requiring random urine testing regulations for licensed horse racing professionals. 924 F.2d 664 (7th Cir. 1991), *rev'd en banc*, 943 F.2d 679 (7th Cir. 1991)

Federal District Courts

Ketcham v. National Park Service, District of Wyoming. Challenge to federal agency's denial of public and media access to observe culling of bison as violation of First Amendment (pending).

Animal Legal Defense Fund v. Herbert, District of Utah. Challenge to Utah "ag-gag" law as violation of First and Fourteenth Amendments (pending).

Lane v. Owens, District of Colorado. Civil rights action on behalf of public school students and teachers in Colorado challenging Colorado law requiring daily recitation of Pledge of Allegiance in all public schools as violation of First Amendment. No. 03-B-1544 (PAC) (2004).

Henry v. Ryan, Northern District of Illinois. Civil right claim contesting county policy of suspicionless blood and saliva testing for DNA codes of citizens without probable cause or reasonable individualized suspicion as violation of Fourth Amendment. 775 F. Supp. 247 (N.D. Ill. 1991).

Nelson v. Streeter, Northern District of Illinois. Suit against local government officials for physical seizure and censorship of painting depicting late Mayor Harold Washington in women's undergarments from private art school exhibition. 16 F.3d 145 (7th Cir. 1994)

Summeries v. Chicago Housing Authority, Northern District of Illinois. Class action suit on behalf of 150,000 public housing tenants and their invited guests challenging sweep inspections and searches of tenants, their guests and their personal effects, and ban on consensual overnight visitation.

Doe v. Belleville Public School District No. 118, Southern District of Illinois. Challenge to exclusion of child with AIDS from public school classroom. 672 F. Supp. 341 (S.D. Ill. 1987).

State Courts

Hickenlooper v. Freedom from Religion Foundation, Inc., Colorado Supreme Court. Principal author of amicus curiae brief for the American Civil Liberties Union, the ACLU of Colorado, and Americans United for Separation of Church and State before the Colorado Supreme Court. 338 P.2d 1002 (Colo. 2014).

Churchill v. University of Colorado, Colorado Supreme Court. Principal author of amicus curiae brief for the American Civil Liberties Union and the ACLU of Colorado before the Colorado Supreme Court. 285 P.3d 986 (Colo. 2012).

Aubin v. City of Chicago, Cook County Circuit Court. Class action suit raising facial and as applied First Amendment challenge to Chicago flag desecration ordinance on behalf of artists who desired to use flags or images of flags in their artistic expression.

BAR ADMISSIONS

Admitted California (1985), Illinois (1988)

United States Supreme Court, United States Court of Appeals for the Seventh, Ninth, and Tenth Circuits, United States District Court for the Northern District of Illinois, United States District Court for the Northern District of California, United District Court for the District of Colorado

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