

ALAN K. CHEN

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ACADEMIC APPOINTMENT

THOMPSON G. MARSH LAW ALUMNI PROFESSOR

UNIVERSITY OF DENVER STURM COLLEGE OF LAW, Denver, Colorado

University Lecturer, University of Denver, 2017-2018

William M. Beaney Memorial Research Chair, 2014-2017

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 and Book Chapters

FREE SPEECH AND UNDERCOVER INVESTIGATIONS IN THE TWENTY-FIRST CENTURY (forthcoming Cambridge University Press 2022) (with Justin Marceau)

Cause Lawyering for the Caged: Invisibility, Moral Suasion, and Disenfranchisement in the Prisoners' Rights and Animal Protection Movements (with Vikram D. Amar) (book chapter) in *CARCERAL LOGICS* (Justin Marceau & Lori Gruen eds., forthcoming Cambridge University Press 2021)

FREE SPEECH BEYOND WORDS: THE SURPRISING REACH OF THE FIRST AMENDMENT (NYU Press 2017) (with Mark V. 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

Compelled Speech and the Regulatory State, 97 *IND. L.J.* ____ (forthcoming 2022)

Lawyer Speech, Investigative Deception, and the First Amendment, 2021 *U. ILL. L. REV.* 1267 (with Rebecca Aviel)

Cheap Speech Creation, 54 *U.C. DAVIS L. REV.* 2405 (2021)

Free Speech, Rational Deliberation, and Some Truths About Lies, 62 *WM. & MARY L. REV.* 357 (2020), (to be reprinted in *FIRST AMENDMENT LAW HANDBOOK 2021-2022* (Thomson Reuters, Rodney Smolla ed.))

The Intractability of Qualified Immunity, 93 *NOTRE DAME L. REV.* 1937 (2018)

Developing a Taxonomy of Lies Under the First Amendment, 89 *U. COLO. L. REV.* 655 (2018)

Free Speech and the Confluence of National Security and Internet Exceptionalism, 86 *FORDHAM L. REV.* 379 (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 (Thomson Reuters, Rodney Smolla ed.))

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

Why Do States Ban “Electioneering” but Allow Guns at Polling Places?, SLATE (Jan. 5, 2021), <https://slate.com/news-and-politics/2021/01/guns-polling-places-georgia.html>

Judge Gorsuch and the Role of Public Interest Litigation in Our Democracy, Dorf on Law (Mar. 22, 2017),

<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 (Mar. 14, 2017),

<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 (Feb. 19, 2016), <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 (Sept. 27, 2014),

http://www.huffingtonpost.com/justin-marceau/problems-with-lethal-injection_b_5626764.html

OTHER PUBLICATIONS

The First Amendment Adrift?, 2020-2021 ACS SUPREME COURT REVIEW (forthcoming)

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)

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 (all presentations from March 2020 through May 2021 were virtual)

Compelled Speech Doctrine and the Regulatory State, Plenary Panel on Compelled Speech, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 30, 2021

Compelled Speech Doctrine and the Regulatory State, Indiana Law Journal Symposium, Compelled Speech: The Cutting Edge of First Amendment Jurisprudence, March 5, 2021

Discussant, Gregory Magarian, *How Cheap Speech Underserves and Overheats Democracy*, U.C. Davis Law Review Symposium, Cheap Speech Twenty-Five Years Later: Democracy & Public Discourse in the Digital Age, October 30, 2020

Discussant, Brian Soucek, *The Constitutional Irrelevance of Art*, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, October 24, 2020

Newsgathering in Troubled Times, Access and Accountability Conference 2020, Yale Law School, October 23, 2020

Reviewing the Supreme Court's 2019/20 Term: A Panel Discussion, Colorado Lawyers Chapter of the Federalist Society, Denver, Colorado, August 12, 2020

Current Issues in Free Speech Before the U.S. Supreme Court, Constitutional Rights & Remedies Program, February 13, 2020

Impeachment Through History: High Crimes & Misdemeanors, the Process, & Potential Consequences, American Constitution Society Western Regional Convening, University of Denver, October 25, 2019

AWARDS

University of Denver, University Lecturer Award, 2018

PETA Justice for Animals Award, 2018

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

The Journal of Free Speech Law (peer reviewed journal), Editorial Board Member

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

SELECTED LITIGATION (as legal counsel)

United States Supreme Court and Federal Courts of Appeals

Animal Legal Defense Fund v. Kelly, ___ F.4th ___, 2021 WL 3671122 (10th Cir. Aug. 19, 2021). Successful challenge to Kansas “ag-gag” law as violation of First and Fourteenth Amendments

Frasier v. Evans, No. 21-57, Brief of Legal Scholars of Qualified Immunity as *Amici Curiae* in Support of Petitioner.

Animal Legal Defense Fund v. Reynolds, ___ F.4th ___, 2021 WL 3504493 (8th Cir. Aug. 10, 2021). Partially successful challenge to Iowa “ag-gag” law as violation of First and Fourteenth Amendments

Evans v. Sandy City, et al., 2019 WL 4054819 (10th Cir.), Principal author of Brief of *Amici Curiae* the ACLU Foundation of Colorado, the ACLU of Kansas Foundation, the ACLU of New Mexico Foundation, the ACLU of Oklahoma Foundation, and the ACLU of Utah Foundation in Support of Plaintiff-Appellant's Petition for Rehearing En Banc

Colorado Independent v. District Court for the Eighteenth Judicial Dist. of Colorado, No. 18-404 (U.S. 2018), Brief of Scholars of Law and Journalism as *Amici Curiae* in Support of Petitioner.

Animal Legal Defense Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018). Successful challenge to Idaho “ag-gag” law as violation of First and Fourteenth Amendments.

Lockett v. Fallin, 841 F.3d 1098 (10th Cir. 2016) (argued), *cert. denied* 137 S.Ct. 2298 (2017). Civil rights claim on behalf of inmate challenging lethal injection execution as violation of Eighth Amendment.

Western Watersheds Project v. Michael, 869 F.3d 1189 (10th Cir. 2017). Principal Author of Brief of *Amici Curiae* First Amendment Legal Scholars in Support of Plaintiffs-Appellants and Supporting Reversal.

Headwaters Forest Defense v. County of Humboldt, 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). Civil rights action against police officers who used pepper spray on peaceful, political protestors as violation of Fourth Amendment.

Williams v. City and County of Denver, 99 F.3d 1009 (10th Cir. 1996). 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.

Federal District Courts

Animal Legal Defense Fund v. Reynolds, No. 4:19-cv-124 (S.D. Iowa). Pending challenge to second Iowa “ag-gag” law as violation of First and Fourteenth Amendments.

Animal Legal Defense Fund v. Herbert, 263 F.Supp.3d 1193 (D. Utah 2017). Successful challenge to Utah “ag-gag” law as violation of First and Fourteenth Amendments.

Ketcham v. National Park Service, 2016 WL 4269037 (D. Wyo.). Challenge to federal agency’s denial of public and media access to observe culling of bison as violation of First Amendment.

Lane v. Owens, No. 03-B-1544 (PAC) (D. Colo. 2004). 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.

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).

ADMINISTRATIVE SERVICE

University Strategic Planning for Research Task Force, Scholarship, 2009-2014.

Higher Learning Commission (HLC) Accreditation Steering Committee, & HLC Acquisition, Discovery, and Application of Knowledge Working Group, 2008-2010.

Associate Provost for Research Search Committee, 2009-10.

Chaired and been a member of all major law school committees (Promotion & Tenure, Appointments, Faculty Executive Committee) on multiple occasions.

BAR ADMISSIONS

Admitted California (1985), Illinois (1988), Colorado (certified pro bono counsel since 2014)

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

[Last updated 8/21]