

ALAN K. CHEN

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SSRN author page: https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=125088

ACADEMIC APPOINTMENT

THOMPSON G. MARSH LAW ALUMNI PROFESSOR

UNIVERSITY OF DENVER STURM COLLEGE OF LAW, Denver, Colorado

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, Fall 1999

Courses: Constitutional Law, First Amendment Law, Federal Courts, 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

THE ELGAR COMPANION TO FREEDOM OF SPEECH AND EXPRESSION (editor) (with Ashutosh Bhagwat) (forthcoming 2025)

TRUTH AND TRANSPARENCY: FREE SPEECH AND UNDERCOVER INVESTIGATIONS IN THE TWENTY-FIRST CENTURY (Cambridge University Press 2023) (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., Cambridge University Press 2022)

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

The Long Shadow of Food Lion, KNIGHT FIRST AMEND. INST. (May 31, 2024), <https://knightcolumbia.org/blog/the-long-shadow-of-food-lion> (to be republished as book chapter in a collection by Cambridge University Press)

Investigative Deception Across Social Contexts, 22-14 KNIGHT FIRST AMEND. INST. (Dec. 16, 2022), <https://knightcolumbia.org/content/investigative-deception-across-social-contexts> [<https://perma.cc/Y3LN-7CKZ>], *republished at* 4 J. FREE SPEECH L. 379 (2024), <https://www.journaloffreespeechlaw.org/chena.pdf>.

Compelled Speech and the Regulatory State, 97 IND. L.J. 881 (2022)

Lawyer Speech, Investigative Deception, and the First Amendment, 2021 U. ILL. L. REV. 1267 (with Rebecca Aviel), (*reprinted in* FIRST AMENDMENT LAW HANDBOOK 2022-2023 (Thomson Reuters, Rodney Smolla ed.))

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), (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)

AWARDS AND HONORS

James A. Tankard Jr. Book Award, 2024 (recognizing “the most outstanding book in the field of journalism and communication), Association for Education in Journalism and Mass Communication (for TRUTH AND TRANSPARENCY: FREE SPEECH AND UNDERCOVER INVESTIGATIONS IN THE TWENTY-FIRST CENTURY)

Associate Reporter, American Law Institute Restatement of the Law, Constitutional Torts (present)

Member, American Law Institute (elected 2021)

University of Denver, University Lecturer, 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

OTHER PUBLICATIONS

The First Amendment Adrift?, 2020-2021 ACS SUPREME COURT REVIEW, <https://www.acslaw.org/analysis/acs-journal/2020-2021-acs-supreme-court-review/the-first-amendment-adrift/>

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)

OPINION/COMMENTARY

Why Do States Ban “Electioneering” but Allow Guns at Polling Places?, SLATE (Jan. 5, 2021) with Joseph Blocher), <https://slate.com/news-and-politics/2021/01/guns-polling-places-georgia.html>, cited in Brief of the League of Women Voters as *Amicus Curiae* in Support of Respondents, *New York State Rifle & Pistol Association, Inc. v. Bruen*, No. 20-843 (U.S. Supreme Court)

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

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

The Long Shadow of Food Lion, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 27, 2024

Discussant, Matthew L. Schafer, *An Originalist Case for the Reporter's Privilege*, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 26, 2023

Panelist, *Can Coloradans Vote for Trump?* (online), University of Denver Center on American Politics, February 24, 2024

Podcast Interview, NEW BOOKS NETWORK, discussing FREE SPEECH AND UNDERCOVER INVESTIGATIONS IN THE TWENTY-FIRST CENTURY, January 21, 2024, <https://newbooksnetwork.com/truth-and-transparency>

Book presentation (online), FREE SPEECH AND UNDERCOVER INVESTIGATIONS IN THE TWENTY-FIRST CENTURY, Freedom of Expression Legal Network, August 2, 2023

Panelist, *Affirmative Action: The New World of College Admissions* (online), University of Denver Center on American Politics, July 6, 2023

Free Speech in the US: from the Origins to Contemporary Challenges, Conference, University of Naples, Federico II, Free Speech and the Rule of Law: European and American Perspectives, June 12, 2023

Panelist, *Comparing the Italian Constitutional Court and the American Supreme Court* (with Justices Daria de Pretis and Francesco Vigano), Italian Constitutional Court, June 5, 2023

Discussant, Deborah Pearlstein, *Legal Fictions: Bending the First Amendment to the Rule of Law*, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 29, 2023

Panelist, *Investigative Journalism in the Era of Fake News*, Denver Law Review Symposium, The Watergate State: Fifty Years of Executive Power, Illicit Speech, & the Legal Profession, April 15, 2023

Investigative Deception Across Social Contexts, University of Oklahoma School of Law, Faculty Colloquium, March 10, 2023

Investigative Deception Across Social Contexts, Lies, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 30, 2022

Investigative Deception Across Social Contexts, Lies, Free Speech, and the Law, Knight First Amendment Institute at Columbia University, April 8, 2022

Free Speech and Undercover Investigations, Loyola-GW Constitutional Law Colloquium, November 12, 2021

Qualified Immunity Panel, Eighth Circuit Judicial Conference, Colorado Springs, Colorado, October 28, 2021

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

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 Advisors, American Constitution Society, Colorado Lawyers Chapter

SELECTED LITIGATION (as legal counsel)

United States Supreme Court and Federal Courts of Appeals

People for the Ethical Treatment of Animals, Inc. v. N. Carolina Farm Bureau Fed'n, Inc., 60 F.4th 815, 820 (4th Cir.), *cert. denied*, 144 S. Ct. 325, 144 S. Ct. 326 (2023). Co-counsel before U.S. Supreme Court in challenge to North Carolina Property Protection Act as violation of First and Fourteenth Amendments.

Animal Legal Defense Fund v. Reynolds II, 89 F.4th 1065 (8th Cir. 2024). Co-counsel in challenge to second Iowa “ag-gag” law as violation of First and Fourteenth Amendments; argued case in Eighth Circuit.

Animal Legal Defense Fund v. Kelly, 9 F.4th 1219 (10th Cir. 2021), *cert. denied*, 142 S.Ct. 2647 (2022). Lead counsel in successful challenge to Kansas “ag-gag” law as violation of First and Fourteenth Amendments; argued case in Tenth Circuit.

Frasier v. Evans, No. 21-57, (United States Supreme Court), Brief of Legal Scholars of Qualified Immunity as *Amici Curiae* in Support of Petitioner.

Animal Legal Defense Fund v. Reynolds, 8 F.4th 781 (8th Cir. 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; argued case in Tenth Circuit.

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. 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 of Denver Freedom of Expression Committee

Ad Hoc Committee on Freedom of Expression, 2016-2017

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.

Chaired and 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, Eighth, 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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