

Kentucky Law Journal
Symposium on Election Law

*Election Law Symposium: Judicial Regulation of
Politics in an Election Year*

9:00 a.m.-5:00 p.m.

January 22nd, 2016

**University of Kentucky College of Law
Courtroom**

Event Program

**UK College of Law Courtroom
Friday, January 22**

9:00 a.m.-9:15 a.m. Introduction and Welcome
Professor Joshua Douglas (University of Kentucky College of Law)
Mark Roth (Special Features Editor)

9:15 a.m.-10:30 a.m. The Constitutional Right to Vote and Voter Identification
Professor Gilda Daniels
Professor Luis Fuentes-Rohwer
Professor Michael Pitts
Professor Atiba Ellis

10:30 a.m.-10:45 a.m. Break

10:45 a.m.-12:00 p.m. Election Litigation: The Practitioner's Perspective
The Honorable Trey Grayson
Ms. Jennifer Moore
Mr. Eric Lycan
Mr. Scott White

12:00 p.m.-2:00 p.m. Lunch Break

2:15 p.m.-3:30 p.m. Judicial Review and the Most Controversial Issues Facing the Court
Professor Michael Solimine
Professor Dan Tokaji
Professor Michael Gilbert
Professor Franita Tolson

3:30 p.m.-3:45 p.m. Break

3:45 p.m.-5:00 p.m. A Discussion of *Ballot Battles: The History of Disputed Elections in the United States*
Professor Edward Foley
Professor Rebecca Green
Professor Mark Summers
Professor Tracy Campbell

5:00 p.m. Closing Remarks

The event will be moderated by staff editors of the Kentucky Law Journal.



Professor Franita Tolson, Betty T. Ferguson Professor of Voting Rights at Florida State University College of Law. Professor Tolson’s scholarship and teaching focus on the areas of election law, constitutional law, legal history and employment discrimination. Recently, she has written on the federalism implications of partisan gerrymandering and the Voting Rights Act of 1965. Her research has been published in leading law reviews, and she has written or appeared as a commentator for various mass media outlets.

Professor Tolson is a blogger for The Huffington Post.

Prior to joining Florida State, Professor Tolson was a visiting assistant professor at Northwestern University School of Law. Before entering academia, she clerked for the Honorable Ann Claire Williams of the United States Court of Appeals for the Seventh Circuit and the Honorable Ruben Castillo of the Northern District of Illinois. Professor Tolson is a graduate of the University of Chicago Law School, where she was a member of the University of Chicago Law Review and won the Thomas Mulroy Prize for Oral Advocacy in the Hinton Moot Court Competition.

Professor Luis Fuentes-Rohwer, Harry T. Ice Faculty Fellow at the Indiana University Maurer School of Law, where he teaches and writes in the areas of civil rights and legal history, with a particular emphasis on constitutional law and the Reconstruction Era. His scholarship focuses on the intersection of race and democratic theory, as reflected in the law of democracy in general and the Voting Rights Act in particular. He is interested in the way that institutions—and especially courts—are asked to craft and implement the ground rules of American politics. He received a J.D. and a Ph.D from the University of Michigan and an LL.M. from Georgetown.





Professor Michael J. Pitts, Mike Pitts joined the Indiana University-Purdue University Indianapolis law school faculty in the fall of 2006 after serving for one year as a visiting assistant professor at the University of Nebraska College of Law where he taught constitutional law, professional responsibility, employment discrimination, and election law. From 2001 to 2005, he practiced as a trial attorney in the Voting Section of the United States Department of Justice. He is a graduate of Georgetown University Law Center, where he was a member of the Order of the Coif and served as an associate editor of *The Georgetown Law Journal*.

Following law school, he clerked for the Honorable C. Arlen Beam, United States Court of Appeals for the Eighth Circuit.

Professor Pitts' scholarly work focuses on the law of democracy, particularly voting rights and election administration. His work has been cited in law reviews, political science journals, briefs, federal and state judicial opinions, and congressional testimony. He has been named a John S. Grimes fellow three times (2008-09, 2009-10, 2011-12), a Dean's Fellow in recognition of scholarly excellence eight times (2007-14), and he was elected to the American Law Institute (ALI) in 2014. He frequently provides commentary about election law issues to the media and has been quoted by *The Associated Press* and *The New York Times*, and has appeared on CNN and C-SPAN.

Professor Pitts is a two-time winner of the Red Cane Award for Best New Professor (2008 and 2009), a two-time winner of the Black Cane Award for Best Professor (2010 and 2014), and a recipient of a Trustee's Teaching Award (2010). He is also a co-author of an election law casebook titled *Election Law Litigation* (Aspen 2014).

Professor Atiba R. Ellis, Atiba R. Ellis joined the West Virginia University College of Law faculty in 2009. His research focuses on voting rights law with specific attention to how varying conceptions of the right to vote exclude voters on the margins. He has written about the economic entry barriers posed by voter ID laws, the theoretical effects of the *Citizens United* Supreme Court decision, and related topics. Professor Ellis's current research focuses on voting rights theory and how ideology affects the scope of the right to vote. He has also written on critical legal theory and legal history.

Professor Ellis is a frequent speaker at academic conferences, university and law school



lectures, and community events about voting rights law, how race and gender affect the law of politics, diversity issues, and other matters related to the law of politics.



The Honorable Trey Grayson, Trey Grayson is currently the President & CEO of the Northern Kentucky Chamber of Commerce. From 2011 to June 2014, he served as the Director of Harvard University's Institute of Politics. While at Harvard, Trey was known as an expert on the political views of millennials and the role of technology in politics and government. Prior to his time at Harvard, he was a two-term Secretary of State of the Commonwealth of Kentucky. The youngest Secretary of State in the country at the

time of his election, Trey was recognized as a national leader in government innovation, business services, election administration and civic education and served as Chair of the Republican Association of Secretaries of States and the President of the National Association of Secretaries of State. Before entering politics, he was an attorney with the law firms of Greenebaum Doll & McDonald and Keating, Muething & Klekamp. Trey received an A.B. in Government from Harvard College in 1994 and a JD/MBA from the University of Kentucky in 1998. He resides in Boone County with his wife, Nancy, and his daughters, Alex and Kate where he passionately roots for his fantasy football team, the Southern Comforts, as well as his UK Wildcats, Harvard Crimson, as well as the Reds and Bengals.

Jennifer A. Moore, Jennifer A. Moore has dedicated her practice to representing individuals and families who have been injured as a result of harmful drugs, products and medical devices, medical negligence, nursing home neglect and abuse, and automobile and truck wrecks. She is a founding partner of Grossman & Moore, PLLC in Louisville, Kentucky. She has served as court-appointed liaison counsel in a multi-district litigation involving a defective product and as trial counsel in numerous cases holding wrongdoers accountable, including representing a man who died in a vehicle fire (\$3.2 million jury verdict).



Jennifer received her Bachelor of Arts degree, magna cum laude, from Transylvania University with a major in Political Science in 1995. She received her J.D., cum laude, from the University of Kentucky College of Law in 1998. Following her graduation from law school, Jennifer clerked for the Honorable Boyce F. Martin, Jr., Chief Judge of the U.S. Court of Appeals for the Sixth Circuit. Jennifer is licensed to practice law in both Kentucky and California

and is a member of the Louisville, Kentucky, California, and American Bar Associations, American Association for Justice (AAJ), and the Kentucky Justice Association (KJA).

In recognition of her work, Jennifer Moore was named as Kentucky's Outstanding Young Lawyer by the Young Lawyers Section of the Kentucky Bar Association and the Young Democrat of the Year by the Jefferson County Democratic Party. She has also received the Outstanding Young Professional Alumni Award from the University of Kentucky College of Law and her alma mater, Transylvania University, recognized her as the Outstanding Young Alumni. Business First named Jennifer one of Louisville's "Top 40 Under 40" to watch. She was also featured in the September 2006 issue of Today's Woman as one of eight Louisville "Way to Go Woman" honorees. That same month the cover story for the weekly magazine, Velocity, profiled her legal accomplishments.

In addition to fighting for the rights of the injured, Jennifer devotes her time to various community and political organizations. She serves on the board of directors for Emerge Kentucky (Board Chair), Kentucky Justice Association, Child Sexual Abuse & Exploitation Prevention Board, Family & Children's Place, Kentucky Council for Interstate Adult Offender Supervision, Louisville Metro Parks Foundation Board, Louisville Metro Women's Network, and University of Kentucky College of Law Alumni Board, as well as being a member of the ABA's Advisory Committee to the Standing Committee on Election Law and the Kentucky Supreme Court Rules Committee. Jennifer served as Chair of the Kentucky Democratic Party from 2007 to 2009.



Eric Lycan, Eric Lycan represents clients including statewide chambers of commerce, industry trade associations and citizen groups in making their voices heard by policymakers. He advises clients on political advocacy and compliance, including First Amendment issues, campaign speech, and formation of PACs, "Super PACs", issue advocacy organizations and other entities. In addition to his practice counseling clients on compliance with campaign finance and election laws, Eric has extensive experience with complex litigation business disputes and appellate matters.

Eric was counsel for U.S. Senate Majority Leader Mitch McConnell's 2014 reelection effort. Prior to joining the firm, he was Chair of the Political Law Team at Steptoe & Johnson PLLC. He has advised advocacy groups and legislative caucuses across the region and the nation, including Kentucky, Ohio, Pennsylvania and West Virginia. Eric also represents the Kentucky Justice & Public Safety Cabinet in its groundbreaking civil

actions against unregulated offshore internet gambling operations and the internet domains through which they operate.

Scott White, Scott White is a lead trial lawyer in the firm's civil litigation and regulatory practice, drawing on his experience in the Attorney General's office and 25 years in complex civil and commercial litigation in the courtroom. Known for his lively personality, his strong relationships with leading Kentucky litigators and judges serve his clients well, often obtaining favorable and economical resolutions short of trial. But, if the case is tried, his personal skills are equally valuable in the courtroom. Scott heads M&P's Litigation Practice Group and criminal law practice, which focuses on "white collar" crimes such as personal and business tax avoidance, fraud, complex conspiracies and RICO. He also counsels financial institutions that are victims of financial crimes, whose employees may be witnesses in criminal actions, or that need to comply with grand jury subpoenas.



Scott served as legal counsel for the Alison Grimes for U.S. Senate Campaign during the 2014 election cycle. Scott has extensive experience in handling a wide range of election law issues, including campaign financing, application of federal and state election laws, and vote fraud cases.



articles.

Professor Michael E. Solimine, Professor Michael Solimine is nationally and internationally recognized as one of the leading scholars in the American civil litigation system. His scholarship has focused on, among other things, appellate litigation, empirical studies of various aspects of civil litigation in federal and state courts, and the doctrinal implications of the similarities and differences between the institutional structures of federal and state courts, and the decision making of judges on those courts. His work has been cited and discussed in more than 1,300 books and

Named the Donald P. Klekamp Professor of Law in 1994, Professor Solimine teaches in the areas of civil procedure, federal courts, conflicts of laws, and complex litigation.

Before joining the College of Law faculty in 1987, he practiced law as a civil litigator at the Dayton, Ohio office of Porter Wright Morris & Arthur.

Professor Solimine received his B.A. in Political Science from Wright State University, graduating summa cum laude as a University Honors Scholar. He received his J.D. from Northwestern University, where he was the articles editor of the *Journal of Criminal Law and Criminology*. After graduating from law school, he clerked for United States District Court Judge Walter Rice, Southern District of Ohio.

Professor Daniel P. Tokaji, Professor Daniel P. Tokaji is an authority on election law and voting rights. He specializes in election reform, including such topics as voting technology, voter ID, provisional voting, and other subjects addressed by the Help America Vote Act of 2002. He also studies issues of fair representation, including redistricting and the Voting Rights Act of 1965.



Professor Tokaji's scholarship addresses questions of political equality, racial justice, and the role of the federal courts in American democracy, with a special focus on election administration. Among the publications in which his work has appeared are the *Michigan Law Review*, *Stanford Law & Policy Review*, and *Yale Law Journal*. He is a co-author of the casebook *Election Law: Cases and Materials* (4th ed. 2008) and co-editor of *Election Law Journal*.

Media outlets have frequently sought Tokaji's election law expertise, and *The New York Times*, *Los Angeles Times*, *The Columbus Dispatch*, *The Boston Globe*, *Chicago Tribune*, and *USA TODAY* have all quoted him on the subject. He also has appeared on *TODAY*, *FOX News*, *NBC News*, and *National Public Radio*.

A graduate of Harvard College and the Yale Law School, Professor Tokaji clerked for the Honorable Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit. Before arriving at Ohio State, he was a staff attorney with the ACLU Foundation of Southern California and Chair of California Common Cause. He has litigated many civil rights and election law cases. He was lead counsel in a case that struck down an Ohio law requiring naturalized citizens to produce a certificate of naturalization when challenged at the polls. He was also an attorney for plaintiffs in cases that kept open the window for simultaneous registration and early voting in Ohio's 2008 general election, and that challenged punch-card voting systems in Ohio and California after the 2000 election.

Professor Tokaji sits on the boards of the American Constitution Society for Law and Policy, the Lawyers Committee for Civil Rights Under Law, and the Asian Pacific American Bar Association of Central Ohio.

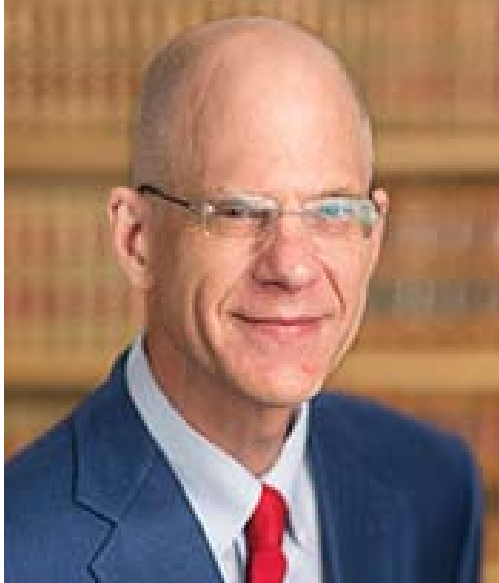


Professor Michael D. Gilbert, Sullivan & Cromwell Professor of Law. Michael Gilbert joined the University of Virginia School of Law faculty in 2009. He teaches courses on legislation, election law, direct democracy, and judicial decision-making. His recent papers examine judicial independence, campaign finance disclosure, and the interpretation of ballot initiatives. Prior to joining the faculty Gilbert clerked for Judge William A. Fletcher on the U.S. Court of Appeals for the Ninth Circuit in San Francisco. He received his Ph.D. from the Jurisprudence and Social Policy Program at the

University of California, Berkeley. He received his J.D. from Berkeley Law School, where he served as articles editor of the California Law Review. At Berkeley, he was an Olin Fellow in Law and Economics and the recipient of a grant from the National Science Foundation.

Professor Gilda Daniels, an expert on voting rights, Professor Gilda Daniels has served as a deputy chief in the Department of Justice, Civil Rights Division, Voting Section in both the Clinton and Bush administrations. She has more than a decade of voting rights experience, bringing cases that involved various provisions of the Voting Rights Act, the National Voter Registration Act and other voting rights statutes. Before beginning her voting rights career, Daniels was a staff attorney with the Southern Center for Human Rights, representing death row inmates and bringing prison condition cases. She was a Root Tilden Scholar at New York University School of Law and clerked in the Eleventh Circuit Court of Appeals with the Hon. Joseph W. Hatchett. Her areas of expertise and interest also include religion and democracy.





Professor Edward B. Foley, Edward B. Foley (known as “Ned”) directs *Election Law @ Moritz* at Ohio State’s law school, where he also holds the Ebersold Chair in Constitutional Law.

His book *Ballot Battles: The History of Disputed Elections in the United States*, to be published by Oxford University Press, was released on December 1, 2015.

Ned also serves as the Reporter for the American Law Institute’s Election Law Project, which is developing nonpartisan rules for the resolution of disputed elections.

While Ned has special expertise on the topics of recounts and provisional ballots, this year he also co-authored a casebook, *Election Law and Litigation: The Judicial Regulation of Politics* (Aspen 2014), which covers all aspects of election law.

Professor Rebecca Green, Rebecca Green is Professor of the Practice of Law and Co-Director of the Election Law Program, a joint project of the Law School and the National Center for State Courts. In that role, Green oversees its annual symposia and speaker series and undertakes a series of projects designed to educate judges about election law topics. Most recently, with generous funding from the Democracy Fund, Green has begun work on a series of state election law eBenchbooks. Other projects have included producing Election War Games at state judicial conferences in Virginia, Colorado, and Wisconsin, and supervising students on a variety of projects such as drafting an ABA report on 2012 election delays and research projects for the Presidential Commission on Election Administration. Professor Green serves as the faculty advisor to the student-run State of Elections blog.



Professor Green's research interests focus on the intersection of privacy law and elections, most recently on the topic of election transparency. She has also explored the use of alternative dispute resolution in election processes. Before law school, Professor Green earned a master's degree in Chinese legal history from Harvard University and assisted with U.S.-China trade negotiations at the U.S. Trade Representative in Washington, DC during the Clinton Administration.



Professor Mark Summers, Professor Mark Summers is Thomas D. Clark Professor of History at the University of Kentucky. He is the author of seven books, including *Rum, Romanism, and Rebellion: The Making of a President, 1884* and *Party Games: Getting, Keeping, and Using Power in Gilded Age Politics* (both UNC Press). He specializes in nineteenth century United States political and social history, and political cartoons. He earned his Ph.D from the University of California, Berkeley in 1980. His current research includes a study of the

mechanics of Gilded Age politics and the Andrew Johnson impeachment.

Professor Tracy Campbell, Tracy Campbell specializes in twentieth century United States political and social history. After graduating from UK, he earned his Ph.D. at Duke University, where his dissertation advisor was Lawrence Goodwyn. He has written four books: *The Politics of Despair: Power and Resistance in the Tobacco Wars* (Kentucky, 1993); *Short of the Glory: The Fall and Redemption of Edward F. Prichard, Jr.* (Kentucky, 1998), which was nominated for a Pulitzer Prize and was featured on NPR's "Morning Edition"; *Deliver the Vote: A History of Election Fraud, an American Political Tradition, 1742-2004* (Basic Books, 2005), and *The Gateway Arch: A Biography* (Yale, 2013), which was featured on NPR's "Weekend Edition" with Scott Simon, XM Radio's "The Bob Edwards Show," and was selected by the History Book Club. The *Gateway Arch* was also chosen as one of the "Best Books of 2013" by the *St. Louis Post-Dispatch*, and won the 2014 Missouri History Book Award. In July 2015, he appeared on C-Span's "Book TV."



In 2008, he served as George McGovern Visiting Professor of Public Leadership at Dakota Wesleyan University. He teaches courses in recent U.S. social and political history, as well as a UK Core course on "The Making of Modern Kentucky." In 2010, he received the "Great Teacher" award from the UK Alumni Association. Prof. Campbell has organized symposia and lectures that connect

history with current public policy debates. Some of those who have participated in these events are former Vice President Walter Mondale, former presidential candidate and U.S. Senator George McGovern, former U.S. Senator Walter Huddleston, former RNC Chair Mike Duncan, U.S. Senate Historian Donald Ritchie, former OAH President William Chafe, and CNN legal analyst Jeffrey Toobin. In 2006, a symposium sponsored by the Ford Center on the legacy of the Church Committee was featured on C-Span. His current research project is a social and political history of the United States in 1942.