

# PETER J. SMITH

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## ACADEMIC EXPERIENCE

### THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

*Arthur Selwyn Miller Research Professor of Law* 2018-Present  
*Professor of Law* 2005-2018  
*Associate Professor of Law* 2001-2005  
*Associate Dean for Research and Faculty Development* 2011-2014

- Teach Constitutional Law, Civil Procedure, and Legislation and Regulation
- Chosen by the Classes of 2022, 2016, and 2010 as the recipient of the Distinguished Faculty Service (teacher of the year) Award
- Appointments Committee (Chair, 2016-17; 2010-11; Member, 2005-07; 2009-11; 2015-17); Self-Study Committee (Co-Chair, 2007-08); Dean Search Committee (Vice-Chair, 2010-11); Intellectual Life Committee (Chair, 2020-21; 2011-14); Tenure and Promotion Committee (2011-14); Ad Hoc Committee on Curricular Reform (2017-19); Teaching Committee (2012-14); Clerkship Committee (2001-2005; 2018-21); Academic Scholarship Committee (2002-2005)

## EDUCATION

### HARVARD LAW SCHOOL,

J.D., *magna cum laude*, 1997

- Sears Prize (awarded to the two students with highest 2L grade point averages)

### YALE UNIVERSITY

B.A., *magna cum laude* with distinction in History, 1992

- *Phi Beta Kappa*
- Robert E. Lewis Award (outstanding intramural athlete)
- Norman S. Buck Trophy (for contribution to the life of Branford College)
- Freshman Counselor

## BOOKS

CONSTITUTIONAL LAW: A CONTEMPORARY APPROACH (with Gregory E. Maggs) (West Publishing, 1<sup>st</sup> ed. 2009, 2<sup>d</sup> ed. 2011, 3<sup>d</sup> ed. 2015, 4<sup>th</sup> ed. 2018, 5<sup>th</sup> ed. 2021, 6<sup>th</sup> ed. 2023)

CONSTITUTIONAL LAW (UNDERGRADUATE EDITION) VOLUMES 1 AND 2 (with Gregory E. Maggs) (West Publishing, 1<sup>st</sup> ed. 2018, 2<sup>d</sup> ed. 2021, 3<sup>d</sup> ed. 2023)

LEGISLATION AND REGULATION: A CONTEMPORARY APPROACH (West Publishing, 1<sup>st</sup> ed. 2021, 2<sup>d</sup> ed. 2023)

CONSTITUTIONAL LAW AND MILITARY JUSTICE (with Gregory E. Maggs and Lisa Schenck) (West Publishing 2021, 2022-23)

## ARTICLES

*Establishment Clause Mythology*, 75 CASE WESTERN L. REV. \_\_ (forthcoming 2025) (with Robert W. Tuttle)

*Gordon College and the Future of the Ministerial Exception*, 47 J. COLLEGE AND UNIV. LAW 1 (2022) (with Robert W. Tuttle)

*Civil Procedure and the Ministerial Exception*, 86 FORDHAM L. REV. 1847 (2018) (with Robert W. Tuttle)

*Originalism and Level of Generality*, 51 GA. L. REV. 485 (2017)

*God and State Preambles*, 100 MARQ. L. REV. 757 (2017) (with Robert W. Tuttle)

*The Return of Lochner*, 100 CORNELL L. REV. 527 (2015) (with Thomas B. Colby)

*Federalism, Lochner, and the Individual Mandate*, 91 BOSTON U. L. REV. 1723 (2011)

*Biblical Literalism and Constitutional Originalism*, 86 NOTRE DAME L. REV. 693 (2011) (with Robert W. Tuttle)

*How Different Are Originalism and Non-Originalism?*, 62 HASTINGS L.J. 707 (2011)

*Living Originalism*, 59 DUKE L. J. 239 (2009) (with Thomas B. Colby)

*Textualism and Jurisdiction*, 108 COLUM. L. REV. 1883 (2008)

*New Legal Fictions*, 95 GEO. L. J. 1435 (2007)

*Federalism, Instrumentalism, and the Legacy of the Rehnquist Court*, 74 GEORGE WASHINGTON LAW REVIEW 906 (2006)

*The Marshall Court and the Originalist's Dilemma*, 90 MINN. L. REV. 612 (2006)

*Sources of Federalism: An Empirical Analysis of the Court's Quest for Original Meaning*, 52 UCLA L. REV. 217 (2004) (awarded honorable mention in AALS Scholarly Paper Competition)

*States as Nations: Dignity in Cross-Doctrinal Perspective*, 89 VA. L. REV. 1 (2003)

*Pennhurst, Chevron, and the Spending Power*, 110 YALE L.J. 1187 (2001)

*Commas, Constitutional Grammar, and the Straight-Face Test: What If Conan the Grammarian Were a Strict Textualist?* 16 CONST. COMM. 7 (1999)

*The Anticommandeering Principle and Congress's Power to Direct State Judicial Action: Congress's Power to Compel State Courts to Answer Certified Questions of State Law*, 31 CONN. L. REV. 649 (1999)

## PRESENTATIONS

"The Return of Lochner," Northwestern University Law School Colloquium on Constitutional Law, Chicago, IL (November 2015)

"The Return of Lochner," St. Louis University Law School Faculty Workshop, St. Louis, MO (October 2014)

"Living Originalism," Conference on Constitutional Theory, University of Southern California Gould School of Law, Los Angeles, CA (April 2009)

“Originalism’s Living Constitutionalism,” Colloquium on Constitutional and Legal Theory, University of Texas Law School, Austin, TX (March 2008)

“New Legal Fictions,” Colloquium on Constitutional Law, New York University School of Law, New York, NY (September 2006)

“Federalism, Instrumentalism, and the Legacy of the Rehnquist Court,” Symposium, George Washington University Law School, Washington, DC (October 2005)

**LECTURES**

Civil Procedure, *Law School for Everyone Part I*, THE GREAT COURSES (The Teaching Company, 2017) (twelve-lecture series)

Legislation and Regulation, THE GREAT COURSES (The Teaching Company, 2019) (twelve-lecture series)

**PROFESSIONAL  
EXPERIENCE**

**SUPREME COURT OF THE UNITED STATES**, Washington, DC  
*Assistant to the Special Master* 2003-2010  
No. 132, Original, *Alabama et al. v. North Carolina*

**SUPREME COURT OF THE UNITED STATES**, Washington, DC  
*Counsel of Record* 2003  
Represented amicus curiae Satellite Broadcasting Association of America in *Top Rank, Inc. v. Florida State Boxing Comm’n*, No.03-549 (U.S. S. Ct.).

**U.S. DEPARTMENT OF JUSTICE, CIVIL APPELLATE STAFF**, Washington, DC  
*Attorney, Attorney General’s Honor Program* 1998-2001  
Briefed and argued a wide variety of cases in the U.S. Courts of Appeals, including *Hibbs v. Nevada*, 273 F.3d 833 (9th Cir. 2001) (upholding the constitutionality of the Family and Medical Leave Act), *aff’d*, 123 S. Ct. 1972 (2003), and *Western States Medical Center v. Shalala*, 238 F.3d 1090 (9th Cir. 2001) (addressing constitutionality of Food and Drug Administration Modernization Act), *aff’d sub nom. Thompson v. Western States Medical Center*, 535 U.S. 357 (2002). Assisted the Solicitor General in drafting briefs for cases in the Supreme Court, including *Alden v. Maine*, *Saenz v. Roe*, *Grupo Mexicano v. Alliance Bond Fund*, and *Buckman Co. v. Plaintiffs’ Legal Committee*. Helped to develop the legal strategy in the government’s suit against the tobacco industry and co-authored the brief in opposition to the industry’s motion to dismiss the suit.

**U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**, Atlanta, GA  
*Law Clerk, Chambers of Judge Phyllis A. Kravitch* 1997-1998