

JONATHAN R. NASH

Robert Howell Hall Professor of Law

Director of the Emory University Center for Law and Social Science

Co-Director of the Emory Center on Federalism and Intersystemic Governance

Emory University School of Law

1301 Clifton Road NE

Atlanta, Georgia

(404) 712-1715

jonathan.nash@emory.edu

Academic Experience and Fellowships

EMORY UNIVERSITY SCHOOL OF LAW, Atlanta, GA

Robert Howell Hall Professor of Law – May 2017 to present

Professor of Law - July 2008 to May 2017

- Director, Emory University Center for Law and Social Science, 2018-present
- Co-Director, Emory Center on Federalism and Intersystemic Governance, 2018-present
- Appointed inaugural David J. Bederman Research Professor, 2014-2015; professorship awarded based upon scholarly productivity and engagement.
- Teach courses in Federal Courts, Civil Procedure, Transnational Civil Litigation, Habeas Corpus, Judicial Decision Making, Legislation & Regulation, Environmental Law, International Environmental Law, and Land Use.
- Other courses: Courts, Judges, and Voting; Law and Economics; Property.
- Appointments Committee, 2009-10, 2011-13 (Chair); Colloquium Committee, 2008-09, 2013-17 (Chair); Curriculum Committee, 2008-09, 2018-19; Promotion & Tenure Committee, 2009-10, 2018-19 (Chair); Law School Delegate to Univ. Faculty Council & Senate, 2013-14; Law School Delegate to the Univ. President's Faculty Advisory Council, 2014-17.

UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL

Visiting Professor of Law - Academic Year 2007-2008

TULANE LAW SCHOOL, New Orleans, LA

Robert C. Cudd Professor of Environmental Law - July 2007 to June 2008

Robert C. Cudd Associate Professor of Environmental Law - October 2004 to June 2007

Associate Professor - July 2002 to October 2004

- Tenured, July 2006.
- Visiting Professor, Hofstra Law School, Fall 2006.
- Visiting Scholar, Columbia Law School, Fall 2005.

UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL

Harry A. Bigelow Fellow and Lecturer in Law - September 2000 to July 2002

NEW YORK UNIVERSITY CENTER ON ENVIRONMENTAL AND LAND USE LAW,
New York, NY

Postdoctoral Research Fellow - April 2000 to September 2000

Research Associate - June 1999 to March 2000

With Richard Revesz, designed a tradable pollution permit system for regional and local pollutants. Participated in development of a plurilateral international model regime for trading greenhouse gas emissions permits.

Organizational Appointments

Co-Founder, Society for Environmental Law and Economics. Member, Executive Board, Canadian Law and Economics Association, 2009-12, Secretary, 2012-2016, and Co-Vice President, 2016-present; Elected Member, American Law Institute, 2016-present.

Judicial Clerkships

THE HONORABLE DONALD STUART RUSSELL, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT, Spartanburg, SC

Law Clerk - September 1993 to September 1994

THE HONORABLE NINA GERSHON, CHIEF MAGISTRATE JUDGE, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, New York, NY

Law Clerk - September 1992 to September 1993

Education

EMORY UNIVERSITY SCHOOL OF GRADUATE STUDIES, Atlanta, GA

Candidate for Ph.D. in Political Science

Coursework completed; comprehensive examinations passed; admitted to Ph.D. candidacy.

HARVARD LAW SCHOOL, Cambridge, MA

LL.M., June 1999

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

J.D., *magna cum laude*, May 1992

Honors Order of the Coif

Vanderbilt Medal for Outstanding Contributions to the School of Law

Editor-in-Chief, *Annual Survey of American Law*

Graduate Editor, *New York University Tax Law Review*

COLUMBIA COLLEGE, New York, NY

B.A. in Mathematics, *summa cum laude*, May 1988

Honors Phi Beta Kappa

Dean's List

Van Amringe Columbia Mathematics Prize

Honorable Mention, National Science Foundation Fellowship Competition

Academic Publications

National Personal Jurisdiction, EMORY L.J. (forthcoming 2019)

Discovery Cost Allocation, Incentives, and Signaling, VAND. L. REV. (forthcoming 2018)
(with Joanna Shepherd) (symposium contribution)

The Case for Tipping and Unrestricted Tip-Pooling: Promoting Intrafirm Cooperation,
59 B.C. L. REV. 1 (2018) (with Samuel Estreicher)

Sovereign Preemption State Standing, 112 NW. U. L. REV. 201 (2017)

The Production Function of the Regulatory State: How Much Do Agency Budgets Matter?, 102 MINN. L. REV. 695 (2017) (with J.B. Ruhl & James Salzman)

Judicial Laterals, 70 VAND. L. REV. 1911 (2017) (symposium contribution)

Unearthing Summary Judgment's Concealed Standard of Review,
50 U.C. DAVIS L. REV. 87 (2016)

Doubly Uncooperative Federalism and the Challenge of U.S. Treaty Compliance,
55 COLUM. J. TRANSNAT'L L. 3 (2016)

Institutionalizing Pro Bono, in *BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA*
285 (Samuel Estreicher & Joy Radice eds., Cambridge U. Press 2016)
(with Samuel Estreicher)

A Functional Theory of Congressional Standing, 114 MICH. L. REV. 339 (2015)

Interparty Judicial Appointments, 12 J. EMPIRICAL LEG. STUD. 664 (2015)

Environmental Law in Austerity, 32 PACE ENVTL. L. REV. 481 (2015) (essay; symposium
contribution) (with James Salzman & J.B. Ruhl)

Standing Doctrine Notwithstanding, 93 TEX. L. REV. SEE ALSO 189 (2015) (response to
Richard Fallon's *The Fragmentation of Standing*)

*Expertise and Opinion Assignment on the Courts of Appeals: A Preliminary
Investigation*, 66 FLA. L. REV. 1599 (2014)

Standing's Expected Value, 111 MICH. L. REV. 1283 (2013)

Rethinking the Principal-Agent Theory of Judging,
99 IOWA L. REV. 331 (2013) (essay) (with Rafael I. Pardo)

Legal Defeasibility in Context and the Emergence of Substantial Indefeasibility, in *THE
LOGIC OF LEGAL REQUIREMENTS: ESSAYS ON LEGAL DEFEASIBILITY* 377 (Jordi
Ferrer & Giovanni B. Ratti eds., Oxford U. Press 2013)

On the Efficient Deployment of Rules and Standards to Define Federal Jurisdiction,
65 VAND. L. REV. 509 (2012)

The Supreme Court and the Regulation of Risk in Criminal Law,
92 B.U. L. REV. 171 (2012)

Does Ideology Matter in Bankruptcy? Voting Behavior on the Courts of Appeals,
53 WM. & MARY L. REV. 919 (2012) (with Rafael I. Pardo)

The Curious Landscape of the Extra-Territoriality of US Environmental Laws, in
*BEYOND TERRITORIALITY: TRANSNATIONAL LEGAL AUTHORITY IN AN AGE OF
GLOBALIZATION* 163 (Gunther Handl, Joachim Zekoll & Peer Zumbansen eds.,
Martinus Nijhoff 2012)

Prosecuting Federal Crimes in State Courts, 97 VA. L. REV. 243 (2011) (with Michael G. Collins)

Mark to Ecosystem Service Market: Protecting Ecosystems Through Revaluing Conservation Easements, in REBUILDING THE ARK: NEW PERSPECTIVES ON ESA REFORM 117 (Jonathan H. Adler ed., AEI Press 2011)

The Institutional Dynamics of Transition Relief, 85 N.Y.U. L. REV. 391 (2010) (with Jonathan S. Masur)

Null Preemption, 85 NOTRE DAME L. REV. 1015 (2010)

Property Frames, 87 WASH. U. L. REV. 449 (2010) (with Stephanie M. Stern)

The Curious Legal Landscape of the Extraterritoriality of U.S. Environmental Laws, 50 VA. J. INT'L L. 997 (2010) (essay)

Allocation and Uncertainty: Strategic Responses to Environmental Grandfathering, 36 ECOLOGY L.Q. 809 (2009)

The Majority That Wasn't: Stare Decisis, Majority Rule, and the Mischief of Quorum Requirements, 58 EMORY L.J. 831 (2009)

Packaging Property: The Effect of Paradigmatic Framing of Property Rights, 83 TUL. L. REV. 691 (2009) (symposium contribution)

Judicial Election versus Judicial Appointment: Evaluating the Potential for a Race to the Bottom, 64 N.Y.U. ANN. SURV. AM. L. 617 (2009) (symposium contribution)

Identitarian Anxieties and the Nature of Inter-Tribunal Deliberations, 9 CHI. J. INT'L L. 613 (2009) (with Adeno Addis) (symposium contribution)

Precautionary Standing, 34 ADMIN. & REG. NEWS 10 (2009)

Public Choice over Efficiency: The Case of Road Traffic Management, in 6 CRITICAL ISSUES IN ENVIRONMENTAL TAXATION 307 (Jacqueline Cottrell et al. eds., Oxford U. Press 2009)

The Uneasy Case for Transjurisdictional Adjudication, 94 VA. L. REV. 1869 (2008)

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, 61 VAND. L. REV. 1745 (2008) (with Rafael I. Pardo)

Standing and the Precautionary Principle, 108 COLUM. L. REV. 494 (2008) (essay)

Economic Efficiency versus Public Choice: The Case of Property Rights in Road Traffic Management, 49 B.C. L. REV. 673 (2008)

- Beyond Kyoto: The Treatment of Outliers*, 15 U.C. DAVIS J. INT'L L. & POL'Y 31 (2008)
(symposium contribution)
- Examining the Perceived Quality of Appellate Review in the Bankruptcy System*,
NORTON BANKR. L. ADVISER, Aug. 2008, at 1 (with Rafael I. Pardo)
- Taxes and the Success of Non-Tax Market-Based Environmental Regulatory
Regimes*, in 5 CRITICAL ISSUES IN ENVIRONMENTAL TAXATION 735 (Nathalie
J. Chalifour et al. eds., Oxford U. Press 2008)
- Grandfathering and Environmental Regulation: The Law and Economics of New Source
Review*, 101 NW. U. L. REV. 1677 (2007) (with Richard L. Revesz)
- Trading Species: A New Direction for Habitat Trading Programs*,
32 COLUM. J. ENVTL. L. 1 (2007) (reprinted in 38 ENVTL. L. REP. NEWS & ANALYSIS
10,539 (2008), as one of the best articles on legal and policy solutions to pressing
environmental problems)
- Prejudging Judges*, 106 COLUM. L. REV. 2168 (2006) (essay)
- The Illusion of Devolution in Environmental Law*, 38 URB. LAW. 1003 (2006) (essay)
- Framing Effects and Regulatory Choice*, 82 NOTRE DAME L. REV. 313 (2006)
- Resuscitating Deference to Lower Federal Court Judges' Interpretations of State Law*,
77 S. CAL. L. REV. 975 (2004)
- A Context-Sensitive Voting Protocol Paradigm for Multimember Courts*,
56 STAN. L. REV. 75 (2003)
- Examining the Power of Federal Courts to Certify Questions of State Law*,
88 CORNELL L. REV. 1672 (2003)
- Environmental Superliens and the Problem of Mortgage-Backed Securitization*,
59 WASH. & LEE L. REV. 127 (2002)
- The Design of Marketable Permit Schemes to Control Local and Regional Pollutants*, in
AN INTRODUCTION TO THE LAW AND ECONOMICS OF ENVIRONMENTAL POLICY:
ISSUES IN INSTITUTIONAL DESIGN 331 (Timothy Swanson ed., Elsevier Science
2002) (with Richard L. Revesz)
- Markets and Geography: Designing Marketable Permit Schemes to Control Local and
Regional Pollutants*, 28 ECOLOGY L.Q. 569 (2001) (with Richard L. Revesz)
- Too Much Market? Conflict Between Tradable Pollution Allowances and the "Polluter
Pays" Principle*, 24 HARV. ENVTL. L. REV. 465 (2000)
- Pendent Party Jurisdiction Under the Foreign Sovereign Immunities Act*,
16 B.U. INT'L L.J. 71 (1998)

Book Reviews

Book Review of SAUL BRENNER & JOSEPH M. WHITMEYER, STRATEGY ON THE UNITED STATES SUPREME COURT (2009), POLITICAL SCIENCE QUARTERLY, vol. 125, no. 1, Spring 2010, at 141

Book Review of NANCY SCHERER, SCORING POINTS: POLITICIANS, ACTIVISTS, AND THE LOWER FEDERAL COURTS APPOINTMENT PROCESS (2005), PERSPECTIVES ON POLITICS, vol. 4, no. 2, June 2006, at 397

Book ENVIRONMENTAL LAW AND POLICY: THE ESSENTIALS (Aspen Publishers 2010)

Edited Book PROCEEDINGS OF THE FIFTY-EIGHTH ANNUAL NYU CONFERENCE ON LABOR LAW—WORKPLACE PRIVACY: HERE AND ABROAD (Kluwer 2010)

Note *An Economic Approach to the Availability of Hazardous Waste Insurance*, 1991 ANN. SURV. AM. L. 455

Op-Eds *Chief Justice Roberts Will be the New ‘Swing’ Vote*, THE HILL, June 30, 2018

Alabama Senate Loss Will Rein in Trump’s Judicial Selections, THE HILL, Dec. 14, 2017

The Case Against Four Person Majorities on the Supreme Court, THE HILL, July 24, 2017

Justice Kagan Channels Scalia in Textualist Supreme Court Opinion, THE HILL, July 6, 2017

Trump Reshapes the Lower Federal Courts with Little Progressive Scrutiny, THE HILL, June 23, 2017

Was Politics the Trump Card in Court’s Travel Ban Decision?, THE HILL, June 2, 2017

Forget Gorsuch: Trump’s Lower Court Nomination May Be More Important, THE HILL, March 29, 2017

Gorsuch on Supreme Court Might Impact Federal Agencies Most of All, THE HILL, Feb. 2, 2017

What Kind of Judges Will Trump Appoint?, THE HILL, Nov. 13, 2016

New Court Ruling May Lead to Citizens Challenging Executive Overreach, THE HILL, Oct. 8, 2016

When a Supreme Court Tie Produces More Guidance, Not Less, THE HILL, May 4, 2016

Michigan v. EPA and the Future of Chevron Deference, THE HILL, July 16, 2015

Article III Protectionism, THE HILL, June 2, 2015

The Fifth Circuit's Curious About-Face, NAT'L L.J., Nov. 12, 2012, at 39

More Appellate Judges Shouldn't Yield Less Appellate Review: The Fifth Circuit's Shameful Disappearing Act in Comer, NAT'L L.J., July 12, 2010, at 34

Resolution Oversight, NAT'L L.J., May 31, 2010, at 34 (with Rafael I. Pardo)

Work in Progress

FEDERAL COURTS (casebook project with Michael G. Collins)

Upcoming and Recent Presentations

Can and Should Courts Create Courts? Problems of Judicial Institutional Self-Design, Annual Civil Procedure Workshop, Palo Alto, CA, November 2018

The Collegiality of Dissent, Canadian Law and Economics Association Annual Meeting, Toronto, Canada, September 2018

The Problem of Predictive Regulation, Canadian Law and Economics Association Annual Meeting, Toronto Canada, September 2018

The Collegiality of Dissent, Midwestern Law and Economics Association Annual Meeting, Tuscaloosa, AL, September 2018

The Problem of Predictive Regulation, Midwestern Law and Economics Association Annual Meeting, Tuscaloosa, AL, September 2018

The Collegiality of Dissent, Society for Institutional and Organizational Economics Annual Meeting, Montreal, Canada, June 2018

The Problem of Predictive Regulation, Society for Environmental Law and Economics Annual Meeting, Chicago, Illinois, June 2018

Discovery Cost Allocation, Incentives, and Signaling, American Law and Economics Association Annual Meeting, Boston, MA, May 2018

Public Perception of Climate Change Information Provided by the Government Versus the Market, Annual Sustainability Conference of Legal Educators, Phoenix, AZ, May 2018

The Collegiality of Dissent, Midwest Political Science Association Annual Meeting, Chicago, IL, April 2018

Examining Federal District Judges' Referrals to Magistrate Judges, Annual Law and Economics Theory Conference, Houston, TX, December 2017

Discovery Cost Allocation, Incentives, and Signaling, Midwestern Law and Economics Association Annual Meeting, Milwaukee, WI, October 2017

Discovery Cost Allocation, Incentives, and Signaling, Vanderbilt Law Review Symposium, Nashville, TN, October 2017 (with Joanna Shepherd)

Rules, Standards, and General Jurisdiction, Annual Civil Procedure Workshop, Tucson, AZ, October 2017

Certification of Division Under Marshall and Taney: An Examination, Canadian Law and Economics Association Annual Meeting, Toronto, Canada, September 2017

Judicial Laterals, Society for Institutional and Organizational Economics Annual Meeting, New York, NY, June 2017

Private Control Over Regulatory Dockets Through Lawsuits to Compel Agency Action: An Examination, Society for Environmental Law and Economics Annual Meeting, Oxford, United Kingdom, May 2017

Judicial Laterals, American Law and Economics Annual Meeting, New Haven, CT, May 2017

The Production Function of the Regulatory State, Annual Sustainability Conference of Legal Educators, Phoenix, AZ, May 2017

Certification of Division Under Marshall and Taney: An Examination, Midwest Political Science Association Annual Meeting, Chicago, IL, April 2017

Judicial Laterals, Vanderbilt Law Review Symposium, Nashville, TN, March 2017

The Production Function of the Regulatory State, Canadian Law and Economics Association Annual Meeting, Toronto, Canada, September 2016

Certification of Division Under Marshall and Taney: An Examination, Midwestern Law and Economics Association Annual Meeting, Atlanta, GA, September 2016

Unearthing Summary Judgment's Concealed Standard of Review, Annual Civil Procedure Workshop, Seattle, WA, July 2016

The Production Function of the Regulatory State, Society for Institutional and Organizational Economics Annual Meeting, Paris, France, June 2016

The Case for Tipping and Unrestricted Tip-Pooling: Promoting Intrafirm Cooperation, Society for Institutional and Organizational Economics Annual Meeting, Paris, France, June 2016

The Production Function of the Regulatory State, Society for Environmental Law and Economics Annual Meeting, Austin, TX, May 2016

Public Perception of Climate Change Information Provided by the Government Versus the Market, Society for Environmental Law and Economics Annual Meeting, Austin, TX, May 2016 (with Cherie Metcalf)

The Production Function of the Regulatory State, American Law and Economics Association Annual Meeting, Cambridge, MA, May 2016

Public Perception of Climate Change Information Provided by the Government Versus the Market, American Law and Economics Association Annual Meeting, Cambridge, MA, May 2016 (with Cherie Metcalf)

Panelist, “States’ Standing to Sue the United States”, National Association of Attorneys General 2016 Southern Region Meeting, Atlanta, GA, April 2016

An Empirical Investigation of the Effect of Collegiality on Judicial Decision-Making, Midwest Political Science Association Annual Meeting, Chicago, IL, April 2016

An Empirical Investigation of the Effect of Collegiality on Judicial Decision-Making, Society for Empirical Legal Studies Annual Meeting, St. Louis, MO, October 2015

An Empirical Investigation of the Effect of Collegiality on Judicial Decision-Making, Midwest Law and Economics Association Annual Meeting, Lawrence, KS, October 2015

An Empirical Investigation of the Effect of Collegiality on Judicial Decision-Making, Canadian Law and Economics Association Annual Meeting, Toronto, Canada, September 2015

Examining Federal District Judges’ Referrals to Magistrate Judges, International Society for New Institutional Economics Annual Meeting, Cambridge, MA, June 2015

Climate Science, Prediction Markets, and Public Opinion, International Society for New Institutional Economics Annual Meeting, Cambridge, MA, June 2015 (with Cherie Metcalf)

Climate Science, Prediction Markets, and Public Opinion, Society for Environmental Law and Economics Annual Meeting, Groningen, Netherlands, May 2015

Examining Federal District Judges’ Referrals to Magistrate Judges, Midwest Political Science Association Annual Meeting, Chicago, IL, April 2015

Interparty Judicial Appointments, Society for Empirical Legal Studies Annual Meeting, Berkeley, CA, November 2014

Interparty Judicial Appointments, University of Notre Dame Law and Economics Workshop, South Bend, IN, November 2014

Examining Federal District Judges’ Referrals to Magistrate Judges, Midwestern Law and Economics Association Annual Meeting, Indianapolis, IN, October 2014

Examining Federal District Judges’ Referrals to Magistrate Judges, Canadian Law and Economics Association Annual Meeting, Toronto, Canada, September 2014

Interparty Judicial Appointments, International Society for New Institutional Economics Annual Meeting, Durham, NC, June 2014

A Formal Model of Federal Court Certification of Questions of Law, International Society for New Institutional Economics Annual Meeting, Durham, NC, June 2014

Interparty Judicial Appointments, American Law and Economics Association Annual Meeting, Chicago, IL, May 2014

Examining the Fate of Interparty Judicial Appointments, Midwest Political Science Association Annual Meeting, Chicago, IL, April 2014

The Benefits and Costs of Standing to Sue to Override Agency Priorities, Conference on the Democratization of Risk Governance, Tel Aviv, Israel, December 2013

Expertise and Opinion Assignment on the Courts of Appeals, University of Chicago Law School Workshop on Judicial Behavior, Chicago, IL, November 2013

Interparty Judicial Appointments and Judicial Decisionmaking, Canadian Law and Economics Association Annual Meeting, Toronto, Canada, September 2013

Rethinking the Principal-Agent Model of Judging, American Law and Economics Association Annual Meeting, Nashville, TN, May 2013 (with Rafael I. Pardo)

Rethinking the Principal-Agent Model of Judging, Southern Economics Association Annual Meeting, New Orleans, LA, November 2012 (with Rafael I. Pardo)

Reviewer

Cambridge University Press; Oxford University Press; *American Journal of Political Science*; *Economic Change and Restructuring*; *International Review of Law & Economics*; *Social Science Quarterly*; *Stanford Law Review*; *Yale Law Journal*

Other Legal Experience

SQUADRON, ELLENOFF, PLESENT & SHEINFELD, LLP, New York, NY
Associate Attorney, Litigation Department - October 1999 to March 2000

GIBSON, DUNN & CRUTCHER LLP, New York, NY
Associate Attorney, Litigation Department - January 1997 to July 1998

DEWEY BALLANTINE, New York, NY
Associate Attorney, Tax Department - October 1994 to December 1996
Summer Associate - Summer 1991

Bar Admissions

New York, 1993; U.S. Court of Appeals for the Fourth Circuit, 1994; U.S. District Courts for the Southern and Eastern Districts of New York, 1997; U.S. Supreme Court, 1998.