

Fred Smith, Jr.
Assistant Professor of Law
fsmith@law.berkeley.edu

APPOINTMENTS

University of California, Berkeley Law School— Berkeley, CA
Assistant Professor of Law 2010- Present
Visiting Assistant Professor 2010
Courses: Federal Courts, Constitutional Law, Constitutional Litigation

Emory University, School of Law—Atlanta, GA
Visiting Professor of Law 2015-Present
Associate Professor of Law 2017-
Courses: Federal Courts, Constitutional Law, Due Process

EDUCATION

Stanford Law School, J.D., 2007
Honors: Kirkwood Moot Court Finalist; American Constitutional Society National Moot Court Finalist; American College of Trial Lawyers National Trial Competition, National Quarterfinalist

Harvard University, B.A. in Sociology and Afro-American Studies, 2004
Honors: Magna Plus Honors Thesis

JUDICIAL CLERKSHIPS

The Honorable Sonia Sotomayor 2013-14
United States Supreme Court—Washington, D.C.

The Honorable Barrington Parker 2009-10
United States Court of Appeals, Second Circuit—New York, NY

The Honorable Myron H. Thompson 2007-08
Middle District of Alabama— Montgomery, AL

LAW REVIEW PUBLICATIONS

Undemocratic Restraint, 69 VAND. L. REV. ____ (2017) (forthcoming)

Local Sovereign Immunity, 116 COLUM. L. REV. 409 (2016)

Due Process, Republicanism, and Direct Democracy, 89 N.Y.U. L. REV. 582 (2014)

Awakening the People's "Giant": Sovereign Immunity and the Constitution's Republican Commitment, 80 FORDHAM L. REV. 1941 (2012)

Crawford's Aftershock: Aligning the Regulation of Non-Testimonial Hearsay with the Purposes and History of the Confrontation Clause, 60 STAN. L. REV. 1497 (2008)



Gendered Justice: Do Male and Female Judges Rule Differently on Questions of Gay Rights?, 57 STAN. L. REV. 2087 (2005)

BOOKS

CONSTITUTIONAL TORTS, 4th ed. (2014) (with Sheldon H. Nahmod, Tom Eaton, and Michael L. Wells).

SHORT PUBLICATIONS

What Now: Lessons and Questions from Ferguson, Missouri, EMORY LAWYER (Summer 2015)

Supreme Court Broadens Power to Invalidate Laws Deemed "Improper," S.F. CHRONICLE (June 20, 2012)

The Impact of Judicial Activism on the Moral Character of Its Citizens, ENGAGE (September 2012)

WORKS IN PROGRESS

Abstention in the Time of Ferguson

Republicanizing Local Sovereign Immunity

Republican Restraint

Prevailing Over Mootness: Attorneys Fees, Preliminary Injunctions, and Democratic Values

Federally Created Immunities in State Courts

Incorporating Republicanism

RESEARCH PRESENTATIONS

Loyola Chicago Law School—Chicago, IL November 2016

Presented *Abstention in an Age of Accountability* at the Constitutional Law Colloquium

Thurgood Marshall School of Law—Houston, TX October 2016

Presented on *Executive Orders and Separation of Powers*

University of North Carolina, School of Law—Raleigh, NC October 2016

Presented *Abstention in an Age of Accountability* at *Southeastern Association of Law Schools Junior Scholars Workshop*

Midwest Law and Economic Association—Atlanta, GA September 2016

Presented *Abstention in an Age of Accountability* at MLEA Annual Meeting

Southeastern Association of Law Schools—Amelia Island, FL August 2016

Presented *Undemocratic Restraint* at Annual Meeting

University of Washington Law School—Seattle, WA July 2016

Presented *Undemocratic Restraint* at the Civil Procedure Workshop

University of Miami—Miami, FL July 2016

Presented *Undemocratic Restraint* at the John Mercer Langston Workshop

Duke Law School—Durham, N.C. May 2016

Presented *Undemocratic Restraint* at the Culp Colloquium

Emory Law School —Atlanta, GA	April 2016
Participated on panel on “When States Can Be Sued” at National Association of Attorney Generals Southern Region Meeting	
University of California, Los Angeles —Los Angeles, CA	April 2016
Presented <i>Undemocratic Restraint</i> at the UCLA Law Faculty Workshop.	
Loyola Chicago Law School —Chicago, IL	November 2015
Presented <i>On Judicial Prudence</i> at the Constitutional Law Colloquium	
University of California, Berkeley —Berkeley, CA	October 2015
Presented <i>Is Judicial Prudence Ever Prudent?</i> at the Berkeley Law School Faculty Workshop	
University of San Francisco —San Francisco, CA	October 2015
Presented <i>Is Judicial Prudence Ever Prudent?</i> at the University of San Francisco Law School Faculty Workshop	
William and Mary Law School —Williamsburg, VA	September 2015
Presented <i>On Judicial Prudence and Republican Restraint</i> at the William and Mary Law School Faculty Workshop	
University of California, Irvine —Irvine, CA	September 2015
Presented <i>On Judicial Prudence</i> at the Federal Courts Junior Faculty Workshop	
University of California, Irvine —Irvine, CA	July 2015
Presented <i>Local Sovereign Immunity</i> at the John Mercer Langston Writing Workshop	
Duke Law School —Durham, NC	May 2015
Presented <i>Local Sovereign Immunity</i> at the Culp Colloquium	
University of California, Berkeley —Berkeley, CA	February 2015
Presented <i>Local Sovereign Immunity</i> at the Berkeley Law Faculty Workshop	
Stanford Law School —Palo Alto, CA	February 2015
Presented <i>Local Sovereign Immunity</i> at the Stanford Law Faculty Workshop	
Emory Law School —Atlanta, GA	October 2014
Presented <i>Local Sovereign Immunity</i> at the Emory Law Faculty Workshop	
Loyola Chicago Law School —Chicago, IL	November 2014
Presented <i>Equal Sovereignty</i> at the Constitutional Law Colloquium	
Emory Law School —Atlanta, GA	April 2013
Presented <i>The Thirteenth Amendment, Labor Rights, and Sovereign Immunity</i> at Vulnerability and the Human Condition Initiative Workshop	
Loyola Chicago Law School —Chicago, IL	November 2012
Presented <i>Due Process, Republicanism and Direct Democracy</i> at the Constitutional Law Colloquium	
William and Mary Law School —Williamsburg, VA	October 2012
Presented <i>Local Sovereign Immunity</i> at the Federal Courts Junior Faculty Workshop	
Law and Society International Conference —Honolulu, HI	June 2012
Presented <i>The Thirteenth Amendment and Labor Rights</i>	
Bahcesehir University —Istanbul, Turkey	May 2012
Presented about separation of powers as a part of a Constitutional Law Workshop series.	
Duke Law School —Durham, NC	May 2012
Presented <i>The Other Ex parte Young Fiction</i> at the Culp Colloquium	

University of California, Berkeley Law School—Berkeley, CA January 2012
Presented *Iqbal, Arar*, and the Future of Government Accountability at the Thelton Henderson Center for Social Justice’s Workshop

University of California, Berkeley Law School—Berkeley, CA January 2012
Presented *‘Til Voters Do Us Part* at Center for the Study of Law and Society Workshop

New York University—New York, NY February 2011
Presented *Baldwin, Republicanism and a Forgotten Guarantee* at James Baldwin's Global Imagination Conference

University of Georgia—Athens, GA January 2011
Presented *The Guarantee Clause and Sovereign Immunity* at the University of Georgia School of Law’s Faculty Workshop

COMMUNITY PRESENTATIONS

American Constitution Society—Atlanta, GA January 2017
Served on a panel at Emory Law School about hate crimes

Emory Public Interest Committee Conference- Atlanta, GA October 2016
Served on a panel about civil-rights oriented litigation

The Association of Corporate Counsel—San Francisco, CA October 2016
Served on panel about the United States Supreme Court with Hon. Alex Kozinski, Hon. James Robart, and Supreme Court advocate Aaron Street

Black Law Students Association—Atlanta, GA September 2016
Moderated panel about diversity and inclusion hosted by the Emory chapter of BLSA

Federalist Society— Atlanta, GA September 2016
Serving on panel hosted by the Atlanta lawyer chapter of the Federalist Society with Georgia Solicitor General Britt Grant

American Constitution Society—Atlanta, GA September 2016
Serving on panel hosted by Georgia Lawyer ACS Chapter about the Supreme Court with Georgia Supreme Court Justice David Nahmias and Supreme Court advocate Merritt McAllister

The Decatur Book Festival—Atlanta, GA September 2016
Moderated a discussion with Jim Obergefell, the lead plaintiff in *Obergefell v. Hodges*, in which the Supreme Court ruled in favor of marriage equality.

The Reichstag—Berlin, Germany July 2016
Presented on the Rise of Populism at Conference sponsored by the American Council on Germany

University of Miami—Miami, FL July 2016
Commentator at John Mercer Langston Conference, University of Miami

John Marshall Law School—Atlanta, GA April 2016
Presented remarks about the Supreme Court to the new student chapter of the American Constitution Society

Emory Law School—Atlanta, GA April 2016
Panel about Justice Scalia’s jurisprudence sponsored by student chapter of American Constitution Society

University of California, Berkeley—Berkeley, CA October 2015

Respondent to Randy Barnett at the Berkeley Political Science Department's Baxter Liberty Initiative Lecture

Bar Association of San Francisco—San Francisco, CA October 2015
Panelist for "Supreme Court Preview" sponsored by the Appellate Section of Bar Association of San Francisco

Bryan Cave LLP—Atlanta, GA September 2015
Panelist on Supreme Court Preview panel sponsored by Atlanta Lawyer Chapter of the Federalist Society

University of California, Berkeley—Berkeley, CA February 2015
Respondent to Amanda Hollis-Brusky on *Ideas with Consequences: The Federalist Society and the Conservative Counterrevolution*

Morrison Foerster LLP—San Francisco, CA July 2015
Moderator of "*Obergefell v. Hodges*: Marriage Equality at the Supreme Court" at panel sponsored by the American Constitution Society's Bay Area Lawyer Chapter and the Bay Area Lawyers for Individual Freedom

University of California, Davis—Davis, CA November 2014
Moderator of panel at conference entitled "Poverty, Precarity, & Work: Struggle and Solidarity in an Era of Permanent (?) Crisis"

University of California, Berkeley—Berkeley, CA September 2014
Panelist at "Marriage Equality and the Supreme Court," sponsored by the Federalist Society's UC Berkeley Student Chapter

Stanford Law School—Palo Alto, CA March 2013
Moderator of "A Conversation with Federal Judges" sponsored by the American Constitution Society

Bar Association of San Francisco—San Francisco, CA October 2012
Panelist for "Supreme Court Preview" sponsored by the Appellate Section of Bar Association of San Francisco

Orrick, Herrington & Sutcliffe LLP—San Francisco, CA October 2011
Moderator of "Supreme Court Preview: Upcoming Cases and Potential Controversies," sponsored by the American Constitution Society's Bay Area Lawyer Chapter and Bay Area Lawyers for Individual Freedom

University of California, Berkeley—Berkeley, CA September 2011
Panelist for discussion on judicial restraint sponsored by the Federalist Society's UC Berkeley Student Chapter

MEDIA APPEARANCES

Georgia Public Broadcasting, *Political Rewind*, Feb. 1, 2017 (Radio Interview), available at <http://gpbnews.org/post/tensions-escalate-over-scotus-cabinet-nominees>

Yahoo News, Michael Walsh, *Dylann Roof's request to represent himself was odd but not unprecedented*, Nov. 28, 2016 (Online News Quotation), available at <https://www.yahoo.com/news/dylann-roofs-request-to-represent-himself-was-odd-but-not-unprecedented-204443035.html>

Atlanta Journal-Constitution, Janel Davis, *Supreme Court ruling revives importance of campus diversity*, June 23, 2016 (Newspaper Quotation), available at <http://www.myajc.com/news/news/local-education/supreme-court-ruling-revives-importance-of-campus-/nrmXx/>

WABE, *Once Blocked, Georgia's 20-Week Abortion Ban Can Now Be Enforced*, May 26, 2016 (Radio Interview), available at <http://news.wabe.org/post/once-blocked-georgias-20-week-abortion-ban-can-now-be-enforced>

WABE, *Expected Ga. Law Shift Could Affect Immigrant Students' Suit*, Apr. 28, 2016 (Radio Quotation), available at <http://news.wabe.org/post/expected-ga-law-shift-could-affect-immigrant-students-suit>

Daily Report, Gabrielle Orum Hernández, *Ex-Clerks to Sotomayor and Alito Say Scalia's Empty Seat Isn't a Crisis*, Apr. 16, 2016, available at <http://www.dailyreportonline.com/id=1202754750133/ExClerks-to-Sotomayor-and-Alito-Say-Scalias-Empty-Seat-Isnt-a-Crisis?slreturn=20160602212000>

WXIA-TV, *Meet Merrick Garland, Obama's Supreme Court* (Television Interview), available at <http://mox.11alive.com/story/news/nation-now/2016/03/16/meet-merrick-garland-obamas-supreme-court-nominee/81867134/>

New York Times, Shaila Dewan, *Court by Court, Lawyers Fight Policies That Fall Heavily on the Poor*, Oct. 23, 2015 (Newspaper Quotation), available at <http://www.nytimes.com/2015/10/24/us/court-by-court-lawyers-fight-practices-that-punish-the-poor.html>

Athens Banner-Herald, Joe Johnson, *An Athens story: From sharecropping to the U.S. Supreme Court*, June 29, 2013 (Newspaper Feature), <http://onlineathens.com/local-news/2013-06-29/athens-story-sharecropping-us-supreme-court>

LAW SCHOOL SERVICE ACTIVITIES

Academic Excellence Session Lecturer, Black Law Students Association, Emory Law School
Multistate Bar Exam Review Session Lecturer, Emory Law School
Advisor, Queer Caucus, Berkeley Law School
Advisor, American Constitution Society, Berkeley Law School
Facilitator, Professionalism Program, Emory Law School
Selection Committee, Berkeley Law School Thelen Marrin Writing Prize (2015)
Berkeley Law School, Faculty Workshop Committee (2014-15)
ACS Student Chapter Advisor, Berkeley Law School (2010-13)
Civil Procedure and Litigation Reading Group (2012)
Clerkships Committee (2010-2013)

OTHER PROFESSIONAL SERVICE ACTIVITIES

Co-Organizer, Ninth Annual Junior Federal Courts Conference, Atlanta (2017)
Lambda Legal Atlanta Leadership Circle (2016-Present)
National Board, Civil Rights Corps (2016-Present)
National Moot Court Competition Problem Writer, National Black Law Students Association (2016)
American-German Young Leader, American Council on Germany, Berlin (2016)
Host Committee, Atlanta Black Jewish Coalition Seder (2016)
Advisor, Emerging Scholars Program (2015-)
Board, Northern California Chapter of the American Constitution Society (2012-13)
Host Committee, Transgender Law Center Annual Gala (2012)

OTHER LEGAL EXPERIENCE

Bondurant, Mixson and Elmore, LLP— Atlanta, GA 2008-09
Drafted appellate briefs; complaints; trial court briefs; discovery requests; legal correspondence; and memoranda on issues varying from voting rights to business disputes

- Western Judicial Circuit of Georgia, District Attorney's Office**—Athens, GA 2007
Co-authored briefs; crafted suppression motions; examined witnesses and argued at arraignments and suppression hearings; represented the State in trials involving juvenile offenders.
- Stanford Supreme Court Litigation Clinic**—Palo Alto, CA 2005-06
Co-drafted petitions for certiorari and briefs that were submitted to the United States Supreme Court; authored memoranda evaluating the strengths and weaknesses of potential cases; helped prepare attorneys for oral argument by participating in moot sessions.
- Committee to Re-Elect Justice Leah Sears**—Atlanta, GA 2004
Assisted in debate preparation; oversaw scores of volunteers throughout the state of Georgia.
- Justice George Carley, Supreme Court of Georgia**— Atlanta, GA 2004
Drafted bench briefs and memoranda on cases and legal issues before the court.
- Harvard Law School Professor Lani Guinier**—Cambridge, MA 2003-04
Provided research assistance.
- University of Georgia Legal Aid Clinic**—Athens, GA 2003
Researched for appellate briefs and suppression motions; interviewed clients and witnesses in preparation for trials; advised in jury selection.
- Rainbow Push Coalition, General Counsel's Office**—Atlanta, GA 2002
Co-authored a report on the diversity of corporate boards throughout the United States; conducted research for speeches; wrote press releases on sociopolitical issues.
- Civil Rights Project of Harvard Law School**—Cambridge, MA 2001-03
Conducted research; edited research papers and legal briefs.

BAR ADMISSIONS

State of Georgia