

Candice Hoke
Cleveland-Marshall College of Law
Cleveland State University

Education

- Yale Law School, New Haven, CT. J.D., 1983
Yale Law Journal, Senior Editor
- University of Chicago, Chicago, IL. 1978-79
Graduate Faculty of Political Science. Concentration in political philosophy and organization theory, with thesis on Hannah Arendt's Political Ethics.
- Wellesley College, Wellesley, MA. Spring 1978
Graduate studies in modern philosophy.
- Hollins College, Roanoke, VA. B.A., 1977
Political Philosophy major with Departmental Honors; Bushnell Award for "finest spirit of leadership."

Relevant Employment

- Cleveland-Marshall College of Law, Cleveland-State University, Cleveland, OH 1994- present
Associate Professor of Law, 1995-present. Tenured in 1995-96.
Director, *Center for Election Integrity*, 2005-
Project Director, *Public Monitor of Cuyahoga Election Reform*
Visiting Associate Professor of Law, 1994-95.
Current teaching includes: Election Law; Regulatory Federalism; Agency & Partnership; Employment Law; ; prior courses included: Federal Jurisdiction, Constitutional Federalism, Sex Discrimination, Work-Family Issues, Civil Procedure.
- Case Western Reserve University Law School, Cleveland, OH 1993-94
Visiting Associate Professor of Law. Taught Civil Procedure, Federal Courts, Employment Law, and Jurisprudence.
- University of Pittsburgh School of Law, Pittsburgh, PA 1987-93
Assistant Professor of Law. Primarily taught Civil Procedure, Jurisprudence, Employment Law, and Constitutional Federalism and the Regulatory State.
- Hill and Barlow, Boston, MA. 1985-87
Associate with primary emphasis in employment litigation.

- Northeastern University, Boston, MA. Summer 1986
Adjunct Assistant Professor teaching Federal Administrative Law in the
Master of Public Administration program.
- The Honorable Hugh H. Bownes of the U.S. Court of Appeals for the First Circuit 1983-85
Boston, MA and Concord, NH. Law clerk for two one-year terms.
- Thelen, Marrin, Johnson and Bridges, San Francisco, CA. Summer 1981
Summer Associate.
- Equal Rights Advocates, Inc., San Francisco, CA. Summer 1980, 1982
Legal research and case preparation for public interest law firm.
Constitutional, statutory, and administrative work in both federal and state systems.
- New Haven Legal Assistance, New Haven, CT. Spring 1980
Clinical internship in Family Law Unit.
- North Carolina Drug Commission (Governor's sole appointee). Two terms, 1974-77
Appointee to the sole State agency for the receipt and allocation of all Federal and
State funds for drug education, treatment and related programs. Served as a liaison
between Commission and the Governor's Office, and citizens' groups and the agency
on drug policy matters. Proposed successful policy and budget reforms that emphasized
education and treatment programs and crafted legislative reform of drug laws for first
offenders that was legislatively enacted. Allocated grants, planned long and short-range
budgets and programming. (Per diem compensation)
- North Carolina Governor's Office May-August 1974
Assistant to the Special Assistant for Appointments
Researched and recommended candidates for gubernatorial appointment to State Boards and
Commissions; researched Governor's statutory authority for all appointments to enable
creation of a comprehensive database to guide the office's work.

Publications

Co-author with Ronald Adrine and Thomas J. Hayes, FINAL REPORT OF THE CUYAHOGA ELECTION
REVIEW PANEL (July 20, 2006) (with staff research and drafting assistance) *found at*
<http://www.law.csuohio.edu/CERP/index.html>

The Guarantee Clause for ENCYCLOPEDIA OF AMERICAN FEDERALISM (2 vols. Greenwood Press; E.
Katz, et al., eds. 2006) solicited.

*Reasons to Eschew Federal Lawmaking and Embrace Common Law Approaches to Genetic
Discrimination*, 16 J.L. & Health 53, 55 (2001-2002).

State Discretion Under New Federal Welfare Legislation: Illusion, Reality, and a Federalism-Based Constitutional Challenge, 9 Stanford L. & Pol'y Rev. 115 (1997) (solicited for the Symposium *Welfare Reform and Beyond*).

Arendt, Tushnet, and Lopez: The Philosophical Challenge Behind Ackerman's Theory of Constitutional Moments, 47 Case W. Res. L.Rev. 903 (1997; solicited) (responding to a paper by Mark Tushnet and orally delivered as part of the *Symposium: The New Federalism After United States v. Lopez*, November 1995).

Book Review of FEDERALISM AND RIGHTS (E. Katz and G. A. Tarr, eds.) (Rowman & Littlefield, 1996) and SAMUEL BEER, TO MAKE A NATION: THE REDISCOVERY OF AMERICAN FEDERALISM (Harvard Univ. Press 1993), 46 J. Leg. Educ. (1997; solicited).

Constitutional Impediments to National Health Reform: Tenth Amendment and Spending Power Hurdles, 21 Hastings Const. L. Q. 489-575 (1994) (lead article in Symposium on Health Care and the Constitution; responsive articles in Symposium from Professors Jesse Choper, Martin Redish, and Richard Briffault).

Tenth Amendment Impediments to National Health Reform, In Brief (Spring 1994).

Transcending Conventional Supremacy: A Reconstruction of the Supremacy Clause, 24 Conn. L. Rev. 829-91 (1992).

Preemption Pathologies and Civic Republican Values, 71 Boston Univ. L. Rev. 685-766 (1991) (lead article).

Elections and Public Policy Issues

Selected Testimony, Reports and Consultation Activities

As Project Director of the *Public Monitor of Cuyahoga Election Reform*

- ❑ Initiator and co-author, *Collaborative Public Audit of the November 2006 General Election, Cuyahoga County, Ohio* (submitted on April 18, 2007) (conducted by representatives of the two major county political parties plus three election reform organizations, with the coordination and professional services of the Center for Election Integrity/Public Monitor).
- ❑ *Monitor's Report on Possible Legal Noncompliance in the November 2006 General Election*, submitted to the Cuyahoga Board of Election on January 8, 2007.
- ❑ *Memoranda* (internal reports) on election readiness and technical issues in election equipment testing, networking and tabulation (September- December 2006).
- ❑ Testimony at Cuyahoga County Board of Elections Public Meetings, regarding various county election preparation, tabulation, management and election certification issues (as Monitor from August 2006 - present).

Testimony solicited by and presented to the Elections Subcommittee, U.S. House Administration Committee, on Auditing Elections, Washington, D.C., (March 21, 2007).

Advisory Council Member, *Voting Rights Institute*, Ohio Secretary of State (2007- present); member of workgroups on Voting Technology and Election Official Training and Certification

Member, *Cuyahoga Election Review Panel* (with Judge Ron Adrine and Tom Hayes). Joint appointment by the Cuyahoga Board of Election and the Cuyahoga Board of County Commissioners (May-July 2006); published Final Report.

Numerous talks, including:

- *NAACP Public Hearing on Voter Suppression and November General Election*, November 14, 2006.
- *Improving Elections –Cuyahoga’s and Ohio’s*, Shaker Unitarian Church, October 2006.
- *Election Reform Tasks Ahead*, Greater Cleveland Voter Coalition, September 2005.

Consultant to various Federal, State, and local officials (and their staff), and nonprofit civic organizations dedicated to election reform on elections legal and policy issues (November 2004 – present).

Consultant on Ohio election law issues to proponents of an Ohio constitutional ballot initiative to establish a State minimum wage with COLA provision for automatic increases annually (Summer 2005).

Provisional Ballots in Ohio and Indiana, written testimony submitted to the U.S. Election Assistance Commission (February 2005).

Consulted on Ohio and federal election law issues (Fall 2004 - Summer 2005); drafted memoranda on Ohio and federal election law issues for several national public interest attorneys, organizations, and for media reps; answered by email and phone numerous other questions. Memos and other background information focused on:

- Ohio recount legal procedure, including roles and rights of witnesses and intersection of federal Electoral College law with State recount law
- Power of Secretary of State over county Boards of Elections
- Power of Secretary of State to issue administrative law governing elections and election technology
- Provisional ballot, absentee ballot, voter registration issues
- Conflicts on interest law pertaining to the Secretary of State and local Boards
- Power of State courts in a federal election questioning Board of Election employees’ rights, including whistleblower protection
- Voter fraud and voter suppression issues

Neutral facilitator for negotiations between the Cuyahoga County Board of Elections and third party/Democratic presidential candidates’ representatives who planned to participate in the

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presidential recount; on-site consultant for citizen groups during the recount. (December 2004).

Cleveland Music School Settlement, Cleveland, OH. Provided legal research and assessments of the various ways the Settlement employed children. (Fall 1999 and Spring 2000).

U.S. Senate, Committee on the Judiciary, Subcommittee on the Constitution.

As requested, reviewed, edited and commented on draft legislation; drafted substantial additional legislative proposals; wrote legal memoranda in support of proposed legislation, and provided written testimony for the record. The Subcommittee's draft legislation was aimed at reinvigorating federalism by reforming Federal preemption law at the congressional, agency, and judicial levels and correcting certain other abuses of constitutional federalism. (Summer and fall 1995.)

U.S. Justice Department, Office of Legal Counsel

As requested, consulted on the constitutionality under Tenth Amendment and Spending Power of the President's proposed health reform bill. (April-May 1994.)

Research Currently in Progress

Serving Two Masters: The States' Secretaries of State and Conflicts of Interest Law

Over half of the Secretaries of State—the chief State elections officers – have voted in favor of a resolution that they may actively participate in partisan elections and ballot initiatives without violating any conflict of interest rules. This paper examines the common law agency duties imposed on agents such as these State officers, arguing well settled law forbids this conduct because it violates the duty of loyalty. The paper also argues that partisan conduct by election employees within federal elections also violates the federal Hatch Act. Finally, the article examines the efforts pending in Congress and via ballot initiatives in the States to restrict the Secretaries from these activities.

Recent Media Discussions

Frequent interviewee by broadcast and print media on elections issues, most recently the *New York Times* and NPR's *All Things Considered* regarding the Cuyahoga Audit (April 2007), and AP and *Columbus Dispatch* on Ohio's plans for new voting technology performance reviews and readiness for the 2008 elections (May 2007).

On-air interviews concerning electronic voting issues, Cuyahoga's Collaborative Public Audit of the November 2006 election, federal and Ohio election law and procedures, Cuyahoga's and Ohio's 2005 –2007 elections. With various television and radio reporters including CNN, FOX National, NPR National, NPR - Oakland, California; NPR- Cleveland (WCPN) and Kent State (WKSU), FOX-8 Cleveland, WKYC-Cleveland, WEWS-Channel 5 Cleveland (February 2005-present).

Interviewed or provided background on Ohio election law and procedures, and conduct of the 2004 general election and presidential recount for journalists including the *Washington Post*, AP, *La Presse*, the *Cleveland Plain Dealer*, *Columbus Dispatch*, *Akron-Beacon Journal*, *Toledo Blade*, *Cincinnati Inquirer*, *Cleveland* magazine, *CBS-TV News*, *New York Daily News* (from November 2004 through the present.)

Weekend America 20 minute segment on the Ohio presidential recount produced by *Marketplace*, University of Southern California, broadcast nationally, December 18, 2004.

Selected Academic Lectures

Ohio: A Crucible for Improving the Nation's Elections, Conference on Election 2006 and the Future of American Politics, Oberlin College, November 10-12, 2006.

Feminism & Federalism, Mid-Atlantic Feminist Law Professors Conference, Pittsburgh, PA, February 21, 2004.

A Common Law Remedy for Genetic Discrimination, at "Is There a Pink Slip in Your Genes?" Genetic Discrimination Law Conference, Cleveland-Marshall College of Law, Cleveland, OH, December 6, 2001.

State Discretion Under New Federal Welfare Legislation: Illusion, Reality, and a Federalism-Based Constitutional Challenge, ABA Annual Meeting, Section on State and Local Government Law, August 6, 1997.

Arendt, Ackerman, and Lopez: Testing the Theory of Constitutional Moments (responding to a paper by Mark Tushnet), Symposium on the New Federalism After *United States v. Lopez*, Case Western Reserve University Law School, November 10-11, 1996.

Federalism Issues in National Health Reform, Fifteenth Annual Health Law Teachers Conference, sponsored by the American Society of Law, Medicine, and Ethics, et al., Indianapolis, IN, June 2-4, 1994.

Constitutional Impediments to National Health Reform: Tenth Amendment Hurdles, at the Conference on National Health Care Reform: The Legal Issues, sponsored by the Law-Medicine Center of Case Western Reserve University, February 25-26, 1994.

Fundamental Rights Analysis and Pennsylvania's Abortion Control Act, program on Reproductive Freedom, co-sponsored by the University of Pittsburgh Women's Studies Program and local organizations, January 29, 1992.

Are Campus Proscriptions of "Hate Speech" Consistent with Freedom of Expression? for the Pittsburgh ACLU Bill of Rights Celebration, December 15, 1991.

Citizens' Responsibilities During War, Panel on the Gulf War, University of Pittsburgh, January 24, 1991.

Libertarian Deficiencies: A Response to Roger Pilon's Theory of Rights, Pittsburgh Federalist Society, April 1990.

Editorial Consulting

Evaluated proposed text in Employment Law for LexisNexis, Spring 2001.

Evaluated proposed treatise in 1989, 1996, now published as ERWIN CHERMERINSKY, CONSTITUTIONAL LAW (Aspen 1997, 2002).

Evaluated proposed text in 1992 on FEMINIST JURISPRUDENCE (blind review) for Little, Brown/Aspen.

Evaluated proposed casebook in 1990, now published as SULLIVAN, CALLOWAY, AND ZIMMER, EMPLOYMENT LAW, (Little, Brown and Co. 1993).

Working Papers

Legal and Administrative Governance of Elections (course materials; original edition 2004-05)

The Relation Between Law and Morality, and Law and Political Values: A Selected Inquiry into Jurisprudence (2 vols., course materials; original ed. 1987 plus annual updates).

Bar Admissions

U.S. Court of Appeals for the First Circuit (1985)

U.S. District Court for Massachusetts (1985)

Massachusetts (1984)

Selected Service

Executive Committee, Yale Law School (four year term, 2007-10).

Recent Professional Activities

Cleveland Bar Association, Section on Labor & Employment (2003-present)

ABA Section on State and Local Government

Planning Committee, ABA Annual Meeting (for devolution of power panel, 1997)

Member, Government Liability and Operations Committee (1997-99)

ABA Section on Administrative & Regulatory Law, Committee on Judicial Review (1990-98)

Cleveland State University

Strategic Plan Committee 2005
Faculty Senator 2006-08; 2003-05, 2006- present
Health Care Committee, Law School representative, 2000- 06
University Safety and Health Advisory Committee, 2000-02

Cleveland-Marshall College of Law

Wide range of committees and activities.

Yale Law School Activities

Initiated and co-authored an amicus brief to the U.S. Supreme Court filed by the Yale Law Women's Association on a landmark educational civil rights question, under the supervision of Professors Burke Marshall and Barbara Underwood.