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SUPREME COURT  
OF THE STATE OF WASHINGTON

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CHRIS QUINN, et al.,  
Respondents,  
APRIL CLAYTON, et al.,  
Respondents,  
v.  
STATE OF WASHINGTON, et al.,  
Appellants,  
EDMONDS SCHOOL DISTRICT, et al.,  
Intervenors/Appellants.

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AMICUS CURIAE BRIEF OF LAW PROFESSORS

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## I. INTRODUCTION

Amici are individual law professors who have extensive knowledge in the development of the law of federal and state taxation. These amici offer their expertise in support of the State's position in this case, that Engrossed Substitute Senate Bill 5096's ("ESSB 5096's") tax on capital gains is an excise tax and not a property tax under Wash. Const., Art. VII, § 1. The State's position is grounded not only in this Court's precedent, but in history and logic.

While Amici agree with appellant Intervenors that a tax on income is not a property tax, this Court need not overrule *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933), to uphold the capital gains excise tax here. ESSB 5096 falls squarely within this Court's longstanding definition of an excise tax because the incidence of the tax operates upon the act of *transferring* capital assets and not directly upon the property itself. If this Court were to affirm



the trial court's flawed logic that a capital gains tax is "properly characterized as a tax on property" under Art. VII, § 1 because it is a "tax on the receipt of income" (CP 872), the Court would be required to extend *Culliton* far beyond its holding and to disregard the Court's extensive excise tax precedents. These precedents are consistent with U.S. Supreme Court jurisprudence addressing similar distinctions between direct taxes on property and excise taxes on acts or transactions.

The Washington Constitution does not limit the Legislature's prerogative to devise fair and equitable excise taxes to fund its residents' basic needs in housing, health care and education and to redress past economic and social inequities. The trial court erred in holding that the capital gains excise tax was a prohibited, non-uniform tax on property.

## II. IDENTITY AND INTEREST OF AMICI

The individual amici are law professors who, as reflected in their CVs (attached as the appendix to this brief), are recognized scholars on issues of state and federal taxation and/or state constitutional law:

**Reuven S. Avi-Yonah** is the Irwin Cohn Professor of Law at the University of Michigan Law School. He has authored numerous treatises and articles on taxation, including most recently, *U.S. International Taxation: Cases and Materials* (5th ed., with D. Ring, Y. Brauner and B. Wells) (Foundation Press, 2022).

**David Gamage** is a Professor of Law at Indiana University Maurer School of Law who focusses his scholarship on tax policy. He has drafted and consulted on efforts to tax wealth at the federal, state and local levels, including most recently, co-drafting legislation for President Biden's proposed Billionaires Minimum Income Tax Reform.

**Lily Kahng** is a Professor of Law at Seattle University School of Law who has written extensively on the taxation of human and intellectual capital and the effect of tax laws on workers, women, and underrepresented communities.

**Erin Scharff** is Professor of Law at Arizona State University's Sandra Day O'Connor College of Law. Her scholarship has frequently explored state constitutional limits on fiscal authority. She is a co-author of casebooks on both federal income taxation and state and local government law.

**Darien Shanske** is a Professor of Law at UC Davis School of Law. Many of his academic articles have explored the fiscal provisions of state constitutions. He is a co-author of the only available commentary on California's Constitution and was the primary author of the commentary's provisions relating to taxation.

**Hugh Spitzer** is a Professor of Law at the University of Washington School of Law, where he has taught Washington state constitutional law for decades. He is a co-author of *The Washington State Constitution* (2nd ed. Oxford University Press 2013) (with Robert F. Utter) and has authored several articles about state tax law and policy.

### **III. STATEMENT OF THE CASE**

Amici adopt the Statement of the Case in the Brief of Appellant State of Washington at 6-14 and Brief of Appellant Intervenors at 5-13.

### **IV. ARGUMENT**

#### **A. This Court distinguishes between a direct tax on property and an excise tax on the voluntary use, sale or transfer of property.**

This Court has long held that Art. VII, § 1's mandate that "all taxes shall be uniform upon the same class of property" applies only to direct taxes on property and does not limit the Legislature's broad authority to devise separate classes for the purposes of an excise tax. *See State*

*ex rel. Stiner v. Yelle*, 174 Wash. 402, 407, 25 P.2d 91 (1933) (in levying excise taxes, Legislature “has very broad power, and we cannot interfere with that power except for arbitrary action, clear abuse, or constructive fraud appearing on the face of the act or from facts of which we may take judicial knowledge.”).

The Court has defined an excise tax as one that operates upon the act or incidence of the transfer of property, such as a sales tax:

We are committed to the proposition that a tax upon the sale of property is not a tax upon the subject matter of that sale. A sales tax upon personal property or a sales tax upon real property is a tax upon the act or incidence of transfer. The imposition relates to an exercise of one of several rights in and to property. Imposition is not upon each and every owner merely because he is the owner of the property involved.

*Mahler v. Tremper*, 40 Wn.2d 405, 409-10, 243 P.2d 627 (1952) (real estate excise tax).<sup>1</sup>

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<sup>1</sup> See *Stiner*, 174 Wash. at 404 (B&O tax measured by “the application of rates against values, gross proceeds of

In applying the definition of an excise tax, courts look to “the manner in which it is assessed and the measure of the tax.” *Greater Seattle Chamber of Com. v. City of Seattle*, 22 Wn. App.2d 361, 367, ¶16, 512 P.3d 594 (2022) (payroll tax) (citation and internal quotation omitted). The appropriate question is whether the incidence of the tax falls directly on “property” or upon its *transfer*, as inheritances, sales receipts, and the proceeds of sale of real property may all be characterized as “income,” under a broad definition of the term. *See Estate of Hambleton*, 181

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sales, or gross income.”); *Morrow v. Henneford*, 182 Wash. 625, 627, 47 P.2d 1016 (1935) (sales tax is an excise tax, “defined as one levied upon the manufacture, sale, or consumption of commodities within the country”); *High Tide Seafoods v. State*, 106 Wn.2d 695, 699, 725 P.2d 411 (1986) (defining “a property tax as a tax on things tangible or intangible and an excise tax on the right to use or transfer things.”), *dismissed*, 479 U.S. 1073 (1987); *In re Estate of Hambleton*, 181 Wn.2d 802, 832, ¶ 59, 335 P.3d 398 (2014) (“estate tax is an excise tax because the tax is not levied on the property of which an estate is composed. Rather it is imposed upon the shifting of economic benefits and the privilege of transmitting or receiving such benefits.”), *cert. denied*, 577 U.S. 922 (2015).

Wn.2d at 832-33 (estate tax operates on the transfer of assets and income).

The trial court in this case held unconstitutional the 7% tax on capital gains in excess of \$250,000, reasoning “as a tax on the receipt of income, ESSB 5096 is . . . properly characterized as a tax on property” under Art. VII, § 1, (CP 872), citing *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933); *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936), and *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951). While the Intervenors provide convincing reasons to overrule *Culliton*, this Court need not do so to reverse the trial court. As the State cogently demonstrates, the capital gains tax at issue here falls squarely within the established definition of an excise tax because the incidence of the tax operates upon the transfer of capital assets. It is therefore not a direct tax on the “ownership” of an asset or property, “whether tangible or intangible” within the meaning of Art. VII, § 1.

The capital gains tax is imposed upon the sale, not the mere ownership, of a capital asset. It is “distinguishable from a tax which falls upon the owner merely because he is owner, regardless of the use or disposition made of his property.” *Morrow v. Henneford*, 182 Wash. 625, 631, 47 P.2d 1016 (1935), quoting *Bromley v. McCaughn*, 280 U.S. 124, 137, 50 S. Ct. 46, 74 L. Ed. 226 (1929). *Accord, Mahler*, 40 Wn.2d at 409-10. (“a tax upon the sale of property is not a tax upon the subject matter of that sale.”) “[T]he government is taxing . . . the shifting from one to another of a[] power or privilege incidental to the ownership of a capital asset, not the asset itself.” *Estate of Hambleton*, 181 Wn.2d at 811, ¶ 7. That is why an excise tax is measured by the amount of economic benefit resulting from a transfer, as the capital gains tax is measured here, while a property tax is typically measured by *value*—it is called an “*ad valorem*” tax. *See State ex rel. Mason County Logging Co. v. Wiley*, 177 Wash. 65, 78, 31 P.2d 539 (1934) (“an *ad*



*valorem* tax is a tax upon the value of the article or thing subject to taxation”) (Steinert, J. dissenting).

The capital gains tax is not a direct tax on the value of property. Nor is it a tax on all incidents of ownership of property, whether tangible or intangible. It is thus distinguishable from the tax on rental income, which operated directly as “a tax upon the real estate itself.” *Apartment Operators Ass’n of Seattle, Inc. v. Schumacher*, 56 Wn.2d 46, 47, 351 P.2d 124 (1960).

Rental income from property generally operates as a regular and recurring flow, rather than having its incidence triggered by specific transfers that may occur quite infrequently.<sup>2</sup> The capital gains tax established by ESSB

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<sup>2</sup> See Marjorie E. Kornhauser, *The Origins of Capital Gains Taxation: What’s Law Got to Do With It?*, 39 *Southwestern L. J.* 869, 887-906 (1985) (discussing the early American and British historical precedents for distinguishing between general income taxes on regular and recurring flows of income, such as rental income, on the one hand, and, on the other hand, taxes on capital gains arising from sales or other specific transfers that may occur irregularly and infrequently).

5096 is also markedly different from a broad-based corporate or personal tax on net income. *See Jensen*, 185 Wash. at 218-19 (personal income tax); *Power*, 39 Wn.2d at 197 (corporate income tax “taxes almost any income from almost every source”).

The Court has recognized that there is no “precise line which sets off direct taxes from others,” *Morrow*, 182 Wash. at 630, quoting *Bromley*, 280 U.S. at 136, resulting in “a maze of conflicting and bewildering decisions.” *Stiner*, 174 Wash. at 406. Given that almost every transactional excise tax “is measured by the amount of the income” realized, *Stiner*, 174 Wash. at 407, *stare decisis* does not compel the trial court’s conclusion that every tax measured by some type of income is a direct tax on property.

This Court should be wary of creating more “bewildering” decisions (*Stiner*, 174 Wash. at 406) by extending *Culliton* and *Jensen* to preclude the Legislature’s

plenary power to enact a non-uniform tax that is imposed and measured by the taxpayer's gain on transactions. The capital gains excise tax is well supported by this Court's excise tax precedent. This Court should reverse the trial court's order because SB 5096 is not a direct tax on property.

**B. The distinction between a direct tax on property and an excise tax on its transfer is well established by the United States Supreme Court.**

The distinction between a direct tax on property and an excise tax that operates upon the property's transfer is well-established not just by this Court, but by the U.S. Supreme Court's jurisprudence before and after adoption of the 16<sup>th</sup> Amendment. While the Supreme Court occasionally deviated from its expansive view of the sovereign's power to impose excise taxes, it has consistently refused to invoke *stare decisis* to expand upon these limited deviations. *See* John R. Brooks & David

Gamage, *Taxation and the Constitution, Reconsidered*,  
Tax Law Review (forthcoming 2023).

- 1. Until the *Lochner* era, the Supreme Court broadly construed Congress’s power to levy a “duty, impost or excise,” narrowly defining a direct tax on property.**

Historically, the sovereign’s power to collect “excises” was a broad one, without regard for whether a tax might be considered “direct” or “indirect.” In colonial times, most taxes took the form of either customs and other excise taxes on goods and activities, or lump-sum levies on individual “polls” (heads) or on property. Thomas J. Cooley, *Treatise on the Law of Taxation, Including the Law of Local Assessments*, 18-31 (1st ed. 1876).

The U.S. Constitution, ratified in 1788, imposed only two restrictions on Congress’s power to enact taxes. First, any “duty impost, or excise” was required to be “uniform throughout the United States” in a geographic sense—that is applied in the same manner and at the same rates across

the country. U.S. Const., Art. 1, § 8, cl.1.<sup>3</sup> Second, any “direct tax” was required to be apportioned—that is divided among the states in proportion to their shares of the population. U.S. Const., Art. 1, § 2, cl.3; §9, cl.4.<sup>4</sup>

According to Hamilton, when not assessed as a poll tax, such direct taxes that required apportionment among the states “principally relate to lands and buildings,” the major components of capital or property in the pre-industrial era. Alexander Hamilton, *The Federalist Papers*, No. 21. By contrast, the “duties, impots and excises”

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<sup>3</sup> The constitution’s “uniformity” requirement for excise or indirect taxes meant only geographic uniformity; it did not mandate only flat-rate taxes. *See Edye v. Robertson*, 112 U.S. 580, 594, 5 S. Ct. 247, 28 L. Ed. 798 (1884) (“The tax is uniform when it operates with the same force and effect in every place where the subject of it is found.”).

<sup>4</sup> The purpose of such apportionment is inextricably bound up with the requirement that enslaved persons be considered “three fifths of all other Persons.” U.S. Const., Art. 1, § 2, cl.3. *See* Bruce Ackerman, *Taxation and the Constitution*, 99 Colum. L. Rev. 1 (1999) (discussing the “tainted origins of the ‘direct tax’ clauses.”)

allowed by Art. 1, § 8 included taxes on manufactured goods as well as imports.

In a case brought shortly after ratification of the Constitution, the U.S. Supreme Court (most of whose members were involved in drafting the Constitution) held that a tax on carriages was an excise tax, and not a direct tax on property subject to apportionment. *Hylton v. United States*, 3 U.S. 171, 1 L. Ed. 556 (1796). This was so even though the carriage itself was obviously property, and the tax was imposed on the owner of the carriage. Similarly, the Whiskey Tax of 1791 was a per-gallon charge assessed on domestically distilled whiskey. Though an expansive definition of a direct tax on property might suggest the whiskey and carriage taxes were subject to the apportionment requirement, the Founding-era Congress clearly understood them to be excise taxes.

The Court continued to interpret the phrase “excise” broadly and “direct” narrowly in approving taxes levied by

Congress to fund the Civil War.<sup>5</sup> The Court held that a “direct tax” was limited to those imposed upon only “real estate and slaves” and that the 1864 tax on income and capital gains was a valid excise tax “to pay the debts and provide for the common defence and public welfare” under Art. 1, § 8. *Springer v. United States*, 102 U.S. 586, 589, 602, 26 L. Ed. 253 (1880).

While almost any tax levied on the transfer of property could be viewed as a direct tax on the property itself, prior to the *Lochner* era the Supreme Court thus took an expansive view of the legislative prerogative to enact excise taxes on the use or transfer of property. See Marjorie E. Kornhauser, *The Origins of Capital Gains Taxation:*

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<sup>5</sup> See *Pac. Ins. Co. v. Soule*, 74 U.S. 433, 444-45, 19 L. Ed. 95 (1868) (income tax on insurance companies); *Veazie Bank v. Fenno*, 75 U.S. 533, 540-48, 19 L. Ed. 482 (1869) (10% tax on bank notes); *Scholey v. Rew*, 90 U.S. 331, 347, 23 L. Ed. 99 (1874) (“succession tax”—an early form of inheritance or estate tax—imposed on the value of real estate transferred to another because of death is an “an excise tax or duty,” because it was levied on the *act* of “devolution” of the property, not the property itself).

*What's Law Got to Do With It?*, 39 Southwestern L.J. 869, 911-16 (1985).

**2. The U.S. Supreme Court briefly invalidated Congress's ability to tax new forms of wealth by holding that a tax on income derived from property was a direct tax on the property itself in *Pollock*, but then quickly retreated.**

The U.S. Supreme Court subsequently adopted a narrower view of Congress's authority to assess excise taxes, coinciding with the Court's broader protection of property rights under the due process clause, but that narrow view was short lived. In 1895, the Court in *Pollock v. Farmers' Loan & Tr. Co.*, 157 U.S. 429, 15 S. Ct. 673, 39 L. Ed. 759 (*Pollock I*), on reargument, 158 U.S. 601, 15 S. Ct. 912, 39 L. Ed. 1108 (*Pollock II*) (1895), invalidated taxes on land rents, 157 US at 583, interest from municipal bonds, 157 U.S. at 586, and taxes on income from personal property, 158 U.S. at 628, as all direct taxes subject to apportionment.



However, the Supreme Court did not continue to narrow the scope of Congress' excise tax authority. Indeed, in the early years of the 20<sup>th</sup> century, the Court upheld every tax statute that came before it as a valid excise tax that need not be apportioned.

In *Knowlton v. Moore*, 178 U.S. 41, 20 S. Ct. 747, 44 L. Ed. 969 (1900), the Court unanimously upheld a “death duty”—an estate tax, essentially—as a “duty or excise.” 178 U.S. at 83. In *Patton v. Brady*, 184 U.S. 608, 22 S. Ct. 493, 46 L. Ed. 713 (1902), the Court held that a tax levied on the value of tobacco was an excise tax and not a direct tax on property, noting the clear overlap between the two: “They are each methods by which the individual is made to contribute out of his property to the support of the government.” 184 U.S. at 622. And in *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S. Ct. 342, 55 L. Ed. 389 (1911), the Court held a corporate income tax, which taxed capital gains, was not a tax on property solely because of its

ownership, but was instead “a tax upon business done in a corporate capacity,” and therefore could be called an excise. 220 U.S. at 146.

Thus, in distinguishing between a tax on specific uses, activities or “privileges” related to property and a direct tax on property itself “solely because of . . . ownership,” *Knowlton*, 178 US at 82, the Court, while not overruling *Pollock*, refused to expand upon it to limit Congress’s ability to impose excise taxes on a wide range of activities and transactions in the country’s new industrial economy. Today, *Pollock* may be seen as one of the first of the *Lochner*-era cases, where the Court elevated property rights by deriving laissez-faire natural law from vague passages in the Constitution.<sup>6</sup>

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<sup>6</sup> See, e.g., Richard White, *The Republic for Which it Stands: The United States During Reconstruction and the Gilded Age, 1865-1896*, 820 (2017); Marjorie E. Kornhauser, *The Story of Macomber: The Continuing Legacy of Realization*, in *Tax Stories: An In-Depth Look at Ten Leading Federal Income Tax Cases*, 112 (2009).

The 16th Amendment, ratified in 1913, authorized a federal tax on “income from whatever source derived.” While the amendment overruled *Pollock*’s holding that taxing income was tantamount to taxing property, the U.S. Supreme Court had already refused to expand *Pollock*’s reasoning to other forms of taxation.

This Court has followed a similar path. Though it has held that Wash. Const., Art. VII, § 1’s requirement of uniform property taxation applies to a broad-based income tax, it has not expanded *Culliton*’s reasoning. It should not do so now because ESSB 5096’s tax on capital gains falls squarely within the Legislature’s authority to impose a transaction-based excise tax. (§ IV.A, *supra*)

**3. In interpreting the broad definition of “income” under the 16<sup>th</sup> Amendment, the U.S. Supreme Court continued to distinguish a tax on property from a tax on proceeds derived from property’s sale, use or transfer.**

The 16<sup>th</sup> Amendment did not put to rest the question whether one can receive (and therefore be taxed) on

“income” that has not been severed from the property itself, nor the transaction-based distinction between a direct tax on property, and an excise tax on its proceeds and uses.

In *Macomber v. Eisner*, 252 U.S. 189, 40 S. Ct. 189, 64 L. Ed. 521 (1920), the U.S. Supreme Court held invalid Congress’s attempt to tax stock dividends as “income” under the newly enacted corporate income tax. The Court characterized dividends paid in the form of company stock as the property of the corporation itself and therefore not taxable as “income” because those dividends did not enrich the stockholder. The tax was “direct” and subject to apportionment under Art. 1, § 9 because the dividends represented an “increase in the value of the stockholder's capital interest resulting from an accumulation of profits by the company. . .” *Macomber*, 252 U.S. at 210.

But, as it had with *Pollock*, the Court retreated from *Macomber*’s broad definition of property, holding that a

tax on unrealized profits held by a partnership is not a “property” tax subject to apportionment under Art. I, § 9 in *Heiner v. Mellon*, 304 U.S. 271, 278, 58 S. Ct. 926, 82 L. Ed. 1337 (1938). The Court later confined *Macomber* to its particular facts.<sup>7</sup>

Thus, the U.S. Supreme Court, like this Court, has on occasion held unconstitutional what the legislature has called an excise tax. However, the U.S. Supreme Court has consistently refused to expand on those decisions to limit Congress’s extensive authority to fund the changing social and economic needs of a modern nation. This Court should similarly decline to extend its Depression-era decisions to preclude the Legislature from enacting a capital gains tax

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<sup>7</sup> See *C.I.R. v. Glenshaw Glass Co.*, 348 U.S. 426, 431, 75 S. Ct. 473, 99 L. Ed. 483 (*Macomber* “was not meant to provide a touchstone to all future gross income questions.”), *reh’g denied*, 349 U.S. 925 (1955); *Helvering v. Bruun*, 309 U.S. 461, 468-69, 60 S. Ct. 631, 84 L. Ed. 864 (1940) (gain received “as a result of business transaction” held taxable as income regardless whether it is “cash derived from the sale of an asset.”).

that can be sustained under the Court's substantial excise tax jurisprudence.

**4. *Stare decisis* has not impeded the U.S. Supreme Court from refusing to extend other questionable and outdated tax precedent.**

As it did following *Pollock* and *Macomber*, the U.S. Supreme Court has refused to extend its questionable tax precedent in other contexts. For instance, in *Nat'l Bellas Hess, Inc. v. Dep't of Revenue of State of Ill.*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 2d 505 (1967), the Court held that physical presence was required before a state could force an out-of-state vendor to collect Illinois's use tax. Twenty-five years later, in *Quill Corp. v. N. Dakota By & Through Heitkamp*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992), the Supreme Court candidly explained that "contemporary Commerce Clause jurisprudence might not dictate the same result were the issue to arise for the first time today." 504 U.S. at 311. Nonetheless, the Court upheld

*Nat'l Bellas Hess*, primarily on *stare decisis* grounds. 504 U.S. at 317-18.

Because the Court crafted its upholding of the *Nat'l Bellas Hess* rule so narrowly, lower courts did not extend the physical presence rule upheld in *Quill* to other contexts. The Supreme Court let stand those lower court decisions,<sup>8</sup> and in 2018 expressly overruled *Nat'l Bellas Hess* and *Quill*, reasoning “[t]he Internet’s prevalence and power have changed the dynamics of the national economy.” *S. Dakota v. Wayfair, Inc.*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 2080, 2098, 201 L. Ed. 2d 403 (2018).

As then-10<sup>th</sup> Circuit Judge Neil Gorsuch explained, there is a small group of poorly reasoned precedents that

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<sup>8</sup> *See, e.g., Tax Comm’r v. MBNA Am. Bank, N.A.*, 220 W.Va. 163, 640 S.E.2d 226, 232-34 (2006) (physical presence not required for state corporate income tax), *cert. denied sub nom FIA Card Servs., N.A. v. Tax Comm’r*, 551 U.S. 1141 (2007); *Direct Mktg. Ass’n v. Brohl*, 814 F.3d 1129, 1147 (10th Cir. 2016) (physical presence not a predicate for out-of-state vendors to comply with Colorado’s significant regulatory requirements), *cert. denied*, 137 S. Ct. 593 (2016).

are given such a “distinguished fate” because of the weakness and narrowness of their rationale. *Direct Mktg. Ass’n.*, 814 F.3d at 1149-50 (Gorsuch, J., concurring). *Pollock* and *Culliton* may be viewed in a similar historical light; they are not just “bewildering,” *Stiner*, 174 Wash. at 406, but relics of a bygone era that venerated property rights and denigrated human rights. This Court is “under no obligation to extend” *Culliton* and *Jensen* as the trial court did below. *Direct Mktg. Ass’n.*, 814 F.3d at 1149-50.

**C. This Court should not expand on *Culliton* to limit Legislature’s ability to tax the gains realized on the transfer of capital assets.**

Just as the U.S. Supreme Court has refused to expand its precedent to narrow the legislative prerogative to enact an excise tax, this Court should decline to expand the reasoning of its Depression-era cases to limit the Legislature’s power to impose excise taxes to fund Washingtonians’ basic needs in housing, health care and



education and to redress past economic and social inequities.

Both this Court's and U.S. Supreme Court's older decisions have allowed opponents to characterize almost any tax levied on the use or transfer of property as a tax burdening that property itself, as respondents do here. But only occasionally and in a much different time have those arguments succeeded, as in *Culliton* and in *Pollock*.

*Culliton's* and *Pollock's* reasoning—that a broad-based income tax is a tax on property so any tax on income is a property tax—is far from compelling in today's transaction driven economy. And this Court has refused to blindly adhere to this syllogism in its excise tax jurisprudence. It should refuse to do so here.

At a minimum, this Court should ensure that *Culliton's* reach is limited and refrain from broadening *Culliton's* dubious logic to invalidate a tax that operates only upon the transfer of a capital asset. Rather than

extend case law that has never been applied to bar a tax narrowly targeted to the economic benefits attendant to the transfer of property, this Court should rely on its substantial excise tax precedent to uphold the Legislature's decision to tax the gains realized on the transfer of a capital asset under ESSB 5096.

*I certify that this brief is in 14-point Georgia font and contains 4,530 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).*

Dated this 12<sup>th</sup> day of December, 2022.

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The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 12, 2022, I arranged for service of the foregoing Amicus Curiae Brief of Law Professors, to the court and to the parties to this action as follows:

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OF THE STATE OF WASHINGTON

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CHRIS QUINN, et al.,  
Respondents,  
APRIL CLAYTON, et al.,  
Respondents,  
v.  
STATE OF WASHINGTON, et al.,  
Appellants,  
EDMONDS SCHOOL DISTRICT, et al.,  
Intervenors/Appellants.

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APPENDIX TO  
AMICUS CURIAE BRIEF OF LAW PROFESSORS

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Discover vs. Morgan Stanley, 2010  
Shay vs. Lockheed, 2012  
Esrey & LeMay vs. Ernst & Young, 2013  
Martin et al. vs. Ernst & Young, 2014  
Merck, Inc. vs. Apotex, Inc., 2014  
Potash vs. Sterling, 2014  
Tharaldson vs. Ernst & Young, 2015  
Danon vs. Vanguard Group, 2015  
Allsop Venture Partners vs. Curtis Mallet-Prevost, Colt & Mosle LLP, 2016  
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21. *Stanley Surrey, the Code, and the Regime*, 25 Fla. Tax Rev. 119 (2021) (with N. Fishbien)
22. *Federalizing Tax Justice*, 53 Indiana L. Rev. 461 (2020) (with O. Avi-Yonah, H. Xu, N. Fishbien)
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CURRICULUM VITAE as of September 19, 2022

## SELECTED DISTINCTIONS:

- [Ranked among the top ten most-cited U.S. tax law scholars](#) (listed as the youngest scholar on this top ten ranking and [among the faculty under 50 on the “most cited” lists](#)) [Leiter]
- [Ranked as the 5<sup>th</sup> most-downloaded U.S. tax law scholar](#) [SSRN Tax Professor Rankings]
- Regularly draft and consult on tax law reform efforts at the U.S. federal, state, and local levels, in coordination with Americans for Tax Fairness and other policy advocacy groups. Recent such efforts include co-drafting the legislation for [President Biden’s proposed Billionaires Minimum Income Tax reform](#)
- Invited to testify before the U.S. Senate Finance Committee (in 2021) and before the Democrats on the U.S. House Committee of Ways and Means (in 2021) and before several different U.S. State legislative chambers on numerous occasions (2009 to present)

## BOOKS:

Twenty-First Century Income Taxation: Buy, Borrow, Die and Beyond (with Edward J. McCaffery, work-in-progress, draft manuscript available upon request).

Taxation: Law, Planning, and Policy (Carolina Academic Press, 3<sup>rd</sup> ed., 2019) (with Michael Livingston).

Taxation: Law, Planning, and Policy (LexisNexis, 2<sup>nd</sup> ed., 2010) (with Michael Livingston).

## ARTICLES AND ESSAYS:

(most are available for download at <http://ssrn.com/author=364730>; articles that I view as my most important scholarly contributions are labeled with \*)

*Solving the Valuation Challenge: The ULTRA Method for Taxing Extreme Wealth*, 72 DUKE LAW JOURNAL (forthcoming, with Brian Galle and Darien Shanske).\*



*Taxation and the Constitution, Reconsidered*, TAX LAW REVIEW (forthcoming, with John R. Brooks).\*

*Tax Base Diversification as an Enforcement Tool* (under review, with Brian Galle and Yulia Kuchumova).

*Tax Now or Tax Never: Political Optionality and the Case for Current-Assessment Tax Reform*, 100 NORTH CAROLINA LAW REVIEW 487 (2022) (with John R. Brooks).\*

*Phased Mark-to-Market for Billionaire Income Tax Reforms*, 176 TAX NOTES FEDERAL 1875 (2022) (with Darien Shanske).

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*Wage Enslavement: How the Tax System Holds Back Historically Disadvantaged Groups of Americans*, 110 KENTUCKY LAW JOURNAL 665 (2021-2022) (with Goldburn P. Maynard Jr.) (invited).

*Weathering State and Local Budget Storms: Fiscal Federalism with an Uncooperative Congress*, 55 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 309 (2021) (with Darien Shanske, Gladriel Shobe, and Adam Thimmesch).

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*Strategic Nonconformity, State Corporate Income Taxes, And the TCJA: Part II*, TAX NOTES STATE (2020) (with Adam Thimmesch and Darien Shanske).

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- A Potential Game Changer in E-Commerce Taxation*, 67 STATE TAX NOTES 747 (2013) (with Andrew Haile and Darien Shanske).
- The Case for a State-Level Debt-Financing Authority*, 67 STATE TAX NOTES 188 (2013) (with Darien Shanske).
- Perverse Incentives Arising from the Tax Provisions of Healthcare Reform: Why Further Reforms Are Needed to Prevent Avoidable Costs to Low- and Moderate-Income Workers*, 65 TAX LAW REVIEW 669 (2012).
- A Better Way Forward for State Taxation of E-Commerce*, 92 BOSTON UNIVERSITY LAW REVIEW 483 (2012) (with Devin Heckman).
- The Saga of State 'Amazon' Laws: Reflections on the Colorado Decision*, 65 STATE TAX NOTES 197 (2012) (with Darien Shanske).
- On Tax Increase Limitations: Part II — Evasion and Transcendence*, 64 STATE TAX NOTES 245 (2012) (with Darien Shanske).
- Vendor Compensation as an Approach for State 'Amazon' Laws: Part 2*, 65 STATE TAX NOTES 459 (2012) (with Devin Heckman).
- Vendor Compensation as an Approach for State 'Amazon' Laws: Part 1*, 65 STATE TAX NOTES 385 (2012) (with Devin Heckman).

*Comments on Daniel Shaviro's Tax Reform Implications of the Risk of a U.S. Budget Catastrophe*, 50 UNIVERSITY OF LOUISVILLE LAW REVIEW 599 (2012) (invited).

*Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX LAW REVIEW 19 (2011) (with Darien Shanske).\*

*On Tax Increase Limitations: Part I — A Costly Incoherence*, 62 STATE TAX NOTES 813 (2011) (with Darien Shanske).

*O Que É Pior, Flutuações Fiscais ou Flutuações de Gastos?*, 2 REVISTA TRIBUTARIA DAS AMERICAS 245 (2011) (invited).

*Preventing State Budget Crises: Managing the Fiscal Volatility Problem*, 98 CALIFORNIA LAW REVIEW 749 (2010).\*

*Managing Fiscal Volatility by Redefining 'Tax Cuts' and 'Tax Hikes'*, 58 STATE TAX NOTES 113 (2010) (with Jeremy Bearer-Friend).

*Minimizing the Harm of State Fiscal Volatility*, 57 STATE TAX NOTES 633 (2010) (with Jeremy Bearer-Friend).

*Coping through California's Budget Crises in Light of Proposition 13 and California's Fiscal Constitution*, in Proposition 13 at 30 (Jack Citrin & Isaac Martin eds., 2009).

*Managing California's Fiscal Rollercoaster*, 49 STATE TAX NOTES 659 (2008).

*Commodification and Contract Formation: Placing the Consideration Doctrine on Stronger Foundations*, 73 UNIVERSITY OF CHICAGO LAW REVIEW 1299 (2006) (with Allon Kedem).

*Taxing Political Donations: The Case for Corrective Taxes in Campaign Finance*, 113 YALE LAW JOURNAL 1283 (2004).

## **WHITE PAPERS, AMICUS BRIEFS, AND SCHOLARLY REPORTS:**

(most are available for download at <http://ssrn.com/author=364730>)

*219 Economists, Law Professors & Other Academics Urge Congress to Include the 'Billionaires Income Tax' in Build Back Better Act* (2021) (with John R. Brooks, Brian Galle, Ari Glogower, Emmanuel Saez, & Gabriel Zucman).

*The California Tax on Extreme Wealth (ACA 8 & AB 310): Revenue, Economic, and Constitutional Analysis* (2021) (with Brian Galle, Emmanuel Saez, and Darien Shanske).

*Creating Opportunity Through a Fairer Tax System: The Case for Taxing Extreme Wealth Holdings and "Real" (Book) Corporate Profits and for Improving IRS Funding* (2021).

*How to Measure and Value Wealth for a Federal Wealth Tax Reform*, ROOSEVELT INSTITUTE ISSUE BRIEF (2021) (with Ari Glogower and Kitty Richards).

*Why a Federal Wealth Tax is Constitutional*, ROOSEVELT INSTITUTE ISSUE BRIEF (2021) (with Ari Glogower and Kitty Richards).

*The NY Billionaire Mark-to-Market Tax Act: Revenue, Economic, and Constitutional Analysis* (2020) (with Emmanuel Saez and Darien Shanske).

*The California Extreme Wealth Tax: Revenue, Economic, and Constitutional Analysis* (2020) (with Emmanuel Saez and Darien Shanske).

*Amicus Brief Of Tax Scholars In Support Of Appellants In Invest In v. Arizonans For Great Schools And A Strong Economy* (2020) (with Erin Adele Scharff et al.).

*Brief For Amici Curiae Tax And Constitutional Law Professors In Support Of Plaintiffs-Appellees In Kelvin Leon Jones Et Al., Plaintiffs, V. Ron Desantis Et Al., Defendants* (2020) (with David W. Rivkin et al.).

*Five Key Research Findings on Wealth Taxation for the Super Rich* (2019).

*Ninth Circuit Brief of Law Academics and Professors as Amici Curiae in Opposition to the Petition for Rehearing En Banc in Altera v. Commissioner* (2019) (with Leandra Lederman et al.).

*Brief Of Tax Law Professors As Amici Curiae In Support Of Petitioner in North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust* (2019) (with Daniel Hemel et al.).

*Brief of Tax Law Professors as Amici Curiae in Support of the Department of Revenue of the State of Colorado in Department of Revenue of the State of Colorado v. Agilent Technologies, Inc.* (2018) (with Darien Shanske & Hayes Holderness).

*Brief of Tax Law Professors As Amici Curiae in Support of Petitioner in Loudoun County, Virginia v. Dulles Duty Free, LLC* (2018) (with Daniel Hemel et al.).

*Brief of Amici Curiae Tax Law Professors and Economists in Support of Petitioner in South Dakota v. Wayfair* (2017) (with Daniel Hemel et al.).

*Brief of Interested Law Professors As Amici Curiae Supporting Petitioner in Brohl v. Direct Marketing Association* (2016) (with Richard Pomp et al.).

*Brief of Interested Law Professors as Amici Curiae Supporting Respondent in Direct Marketing Association v. Brohl* (2014) (with Darien Shanske et al.).

## **OP EDS:**

*The Media Got the Billionaires Income Tax Wrong*, THE AMERICAN PROSPECT, November 4, 2021 (with John R. Brooks and Ari Glogower). (<https://prospect.org/economy/media-got-the-billionaires-income-tax-wrong/>)

*California Should Pass a Small Tax on Big Wealth*, LOS ANGELES TIMES, April 22, 2021 (with Emmanuel Saez and Darien Shanske). (<https://www.latimes.com/opinion/story/2021-04-22/california-wealth-tax>)

*California Left Billions Of Repatriated Tax Dollars On The Table, The State Should Pick Up That Money Now*, CALMATTERS (2020) (with Reuven S. Avi-Yonah and Darien Shanske).

*Forget Congress and Let The Fed Handle Tax Rates*, LOS ANGELES TIMES, April 6, 2016 (with Aaron Goldzimer). (<http://www.latimes.com/opinion/op-ed/la-oe-0406-goldzimer-gamage-fed-set-tax-rates-20160406-story.html>)

*A Better Direction for California's Climate Change Policy*, SACRAMENTO BEE, March 22, 2014 (with Mark Gergen). (<http://www.sacbee.com/2014/03/22/6257858/viewpoints-a-better-direction.html>)

*How to Avoid Another Shutdown*, LOS ANGELES TIMES, October 20, 2013 (with David Louk). (<http://www.latimes.com/opinion/commentary/la-oe-gamage-federal-budget-20131020-13.0.2802966.story>)

*ObamaCare's Costs to the Working Class*, WALL STREET JOURNAL, October 30, 2012. ([http://online.wsj.com/article/SB10001424052970203335504578086702676417058.html?mod=WSJ\\_hps\\_sections\\_opinion](http://online.wsj.com/article/SB10001424052970203335504578086702676417058.html?mod=WSJ_hps_sections_opinion))

*Health Care Decision Means More Work for IRS*, SAN FRANCISCO CHRONICLE, June 29, 2012. (<http://www.sfgate.com/default/article/Health-care-decision-means-more-work-for-IRS-3674168.php>)

## **ACADEMIC APPOINTMENTS:**

### **Indiana University (Bloomington), Maurer School of Law**

- 2022 - present: Professor of Law and the Charles Whistler Faculty Fellow
- 2016 - 2021: Professor of Law
- Courses Taught: Income Taxation, Tax Policy Seminar, Health Law, and Tax Policy Colloquium

### **University of California (Berkeley), School of Law**

- Spring 2016: Visiting Professor at Georgetown Law
- Fall 2015: Visiting Professor at Duke Law
- 2010 - 2012: On academic leave while serving as Special Counsel and Senior Stanley S. Surrey Fellow to the U.S. Department of the Treasury, Office of Tax Policy
- 2007 - 2016: Assistant Professor (voted tenure by Law School faculty and by University tenure committee, but left before official award of tenure to accept joint offers from Indiana University for myself and my spouse)
- Courses Taught: Income Taxation, Tax Policy Seminar, Contracts, and Business and Tax Law from a Social Justice Perspective

### **University of Texas (Austin), School of Law**

- 2005 - 2007: Emerging Scholars Program Fellow
- Courses Taught: Federal Income Taxation, Corporate Taxation, and Tax Policy Seminar

## **MAJOR PROFESSIONAL EXPERIENCE:**

### **U.S. Department of the Treasury, Office of Tax Policy, Washington, D.C.**

- 2010 - 2012: Special Counsel and Senior Stanley S. Surrey Fellow
- Administered the individual income tax portfolio of the Department of the Treasury's Tax Legislative Counsel; oversaw the drafting of all individual income tax regulations and administrative notices; managed the implementation of the income tax provisions of the Affordable Care Act ("Obamacare"); advised on new legislation and executive branch initiatives related to the individual income tax

### **Bain & Company, San Francisco, CA**

- 2000 - 2002: Associate Consultant
- Advised clients on business strategy and organizational restructuring projects

## **EDUCATION:**

### **Yale Law School; J.D., 2002 - 2005**

- Yale Law Journal, Senior Editor / Submissions Editor
- Olin Fellow in Law and Economics
- Honors in all but three graded courses

### **Stanford University; M.A. in Economic and Organizational Sociology, 1998 - 2000**

- Co-terminal degree program: coursework consisted of a mixture of sociology, economics, and political science
- Cumulative GPA: 4.0/4.0

### **Stanford University; B.A. *with distinction* in Economics, 1996 - 2000**

- Phi Beta Kappa (elected as a Junior)
- President's Award for Academic Excellence
- Numerous intercollegiate debating awards, including: 5<sup>th</sup> in the world and top American at the World University Debate Championships (Sydney 2000)
- Cumulative GPA: 4.0/4.0

## **SELECTED UNIVERSITY AND PROFESSIONAL SERVICE:**

Chair, IU Maurer Law Faculty Committee on Career Services, 2022 - present

Faculty Advisor, Indiana University Volunteer Income Tax Assistance (VITA) Program, 2018 - present

Member, IU Maurer Law Faculty Committee on Educational Policy, 2021 - 2022



Member, IU Maurer Law Faculty Committee on Career Services, 2016 – 2018 & 2020 - 2022

Member, IU Maurer Law Faculty Lecture and Clinical Committee, 2018 - 2020

California State Controller's Council of Economic Advisors, appointed by California State Controller Betty Yee to nine-member panel for advising on comprehensive tax reform in California, 2015 – 2016

Member-At-Large, University of California (system-wide) Faculty Welfare Task Force on Investment and Retirement (TFIR), 2013 - 2015

Co-chair, Berkeley Law Faculty Colloquium Committee, 2014

Member, Berkeley Law Public Interest Placement Committee, 2014 - 2015

Faculty Mentor, UC Berkeley Regent's and Chancellor's and Cal Opportunity Scholars program, 2013 - 2015

Member, Berkeley Law Curriculum Subcommittee on Taxation, 2007 - 2010 & 2012 - 2015

Chair, Berkeley Law Financial Aid Committee, 2009 - 2010 & 2013 - 2014

Member, Berkeley Law Disqualification Appeals Committee, 2013 - 2014

Member, Berkeley Law Financial Aid Committee, 2008 - 2009 & 2012 - 2013

Co-chair, Berkeley Law Academic Placement Committee, 2009 - 2010

Member, Berkeley Law Academic Placement Committee, 2008 - 2009

## LILY KAHNG

**Seattle University School of Law**  
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Seattle, WA 98122

[kahngl@seattleu.edu](mailto:kahngl@seattleu.edu)  
206.398.4044

last updated November 16, 2022

### EMPLOYMENT

#### **Seattle University School of Law**

Professor of Law, 2011-present  
Associate Dean for Faculty Development, 2009-2011  
Associate Professor, 2001-2011 (tenured in 2004)

#### **Cornell Law School**

Visiting Professor of Law, Spring 2015, Spring 2013, Spring 2004

#### **Sandra Day O'Connor ASU College of Law**

Visiting Professor of Law, Fall 2012

#### **Department of Treasury, Office of Tax Policy**

Attorney Advisor, 1998-2001 (on leave from Cornell Law School)

#### **Cornell Law School**

Associate Professor, 1997-2001 (on leave 1998-2001)  
Assistant Professor, 1993-1997

#### **New York University School of Law**

Acting Assistant Professor, 1991-1993  
Assistant Editor, Tax Law Review, 1992-1993

#### **Salomon Brothers, New York, New York**

Vice President, Mergers & Acquisitions, 1989-1991

#### **Simpson Thacher & Bartlett, New York, New York**

Tax Associate, 1985-1989

### EDUCATION

#### **New York University School of Law**

LL.M. in Taxation, 1991

#### **Columbia University School of Law**

J.D., 1984  
Harlan Fiske Stone Scholar in 1982, 1983 and 1984

## LILY KAHNG

**Princeton University**  
A.B. in Philosophy, 1980

### COURSES TAUGHT

Federal Income Taxation, Corporate Tax, Partnership Tax, Gift and Estate Tax, Tax Policy, Taxation of Property Transactions

### PUBLICATIONS

*Who Owns Human Capital?*, 94 WASH. U. L. REV. 607 (2017)

*The Not-So-Merry Wives of Windsor: The Tax Treatment of Women in Same-Sex Marriages*, 101 CORNELL L. REV. 325 (2016), recipient of the 2017 Dukeminier Award for Best Sexual Orientation and Gender Identity Legal Scholarship, and republished in 16 DUKEMINIER AWARDS J. (2017)

*Perspectives on the Relationship Between Financial and Tax Accounting*, in TAX CONTROVERSIES: A MATTER OF PERSPECTIVE (Anthony C. Infanti ed., 2015)

*The Taxation of Intellectual Capital*, 66 FLA. L. REV. 2229 (2014)

*Path Dependence and Tax Subsidies for Home Sales*, 65 ALA. L. REV. 187 (2013)

*The IRS Tea Party Controversy and Administrative Discretion*, 99 CORNELL L. REV. ONLINE 41 (2013)

*Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers* (co-authored with Mary Louise Fellows), 81 GEO. WASH. L. REV. 329 (2013)

*Investment Income Withholding in the United States and Germany*, 10 FLA. TAX REV. 315 (2010)

*One Is the Loneliest Number: The Single Taxpayer in a Joint Return World*, 61 HASTINGS L.J. 651 (2010)

*Innocent Spouses: A Critique of the New Laws Governing Joint and Several Tax Liability*, 49 VILLANOVA L. REV. 261 (2004), excerpted in CRITICAL TAX THEORY: AN INTRODUCTION (Bridget J. Crawford & Anthony C. Infanti eds., Cambridge University Press, 2009)

*Resurrecting the General Utilities Doctrine*, 39 B.C. L. REV. 1087 (1998)

## LILY KAHNG

*Fiction in Tax*, in TAXING AMERICA (Karen Brown & Mary Louise Fellows eds., NYU Press, 1996)

### OPINIONS PIECES AND BLOGS

*Can the Smart Market Solve the Problem of Undertaxed Intangibles?*, JOTWELL, September 25, 2015

*Marriage Tax Hurts Lesbian Couples*, USA TODAY, April 13, 2015

*Next Up, Incest*, JOTWELL, September 17, 2014

### WORKS IN PROGRESS

*Rewarding Good Deeds*

*IRS Administrative Discretion: Uses and Abuses*

### SELECTED PRESENTATIONS

“Who Owns Human Capital?,” Pepperdine Law School Tax Policy Workshop, April 2016

“Who Owns Human Capital?,” NYU Law School Tax Policy and Public Finance Colloquium, April 2016

“Who Owns Human Capital?,” Maurer School of Law Tax Policy Colloquium, April 2016

“Who Owns Human Capital?,” University of Washington Law School Tax Symposium, October 2015

“The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages,” AALS Workshop on Sex, Gender and the Law, June 2015

“The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages,” AALS Workshop on Shifting Foundations in Family Law, June 2015

“The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages,” 2015 Law & Society Annual Meeting, May 2015

“The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages,” Fordham Law School Faculty Workshop, April 2015

## LILY KAHNG

“The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages,” Northwestern Law School Critical Tax Conference, April 2015

“Taxation, Inequality and Social Mobility,” 2015 Annual Meeting of the American Association of Law Schools, Tax Section, January 2015

“The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages,” UC-Davis Law School ClassCrits Conference, November 2014

“The Not-So-Merry Wives of Windsor: The Taxation of Women in Same-Sex Marriages,” University of Washington Law School Tax Symposium, October 2014

“Perspectives on the Relationship Between Financial and Tax Accounting,” 2014 Law & Society Annual Meeting, May 2014

“The Taxation of Intellectual Capital,” University of Washington Law School Graduate Tax Program Colloquium, April 2014

“The Taxation of Intellectual Capital,” Baltimore Law School Critical Tax Conference, April 2014

“The Taxation of Intellectual Capital,” University of Florida Tax Policy Colloquium, March 2014

“Perspectives on the Relationship Between Financial and Tax Accounting,” Seattle University Law School Faculty Workshop, February 2014

“Path Dependence and Tax Subsidies for Home Sales,” USC-Dalhousie Law and Public Policy Workshop, October 2013

“The IRS Tea Party Controversy and Administrative Discretion,” University of Washington University Law School Tax Symposium, October 2013

“Path Dependence and Tax Subsidies for Home Sales,” 2013 Law & Society Annual Meeting, June 2013

“Path Dependence and Tax Subsidies for Home Sales,” Hastings Law School Critical Tax Conference, April 2013

“The New American Family and the Twenty-First Century Economy: Implications for Tax Reform,” ABA Tax Section Meeting, Diversity Committee, January 2013

## LILY KAHNG

“Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers,” Sandra Day O’Connor College of Law Faculty Workshop, October 2012

“Race and Gender Inequality in Tax Subsidies for Owner Occupied Housing,” 2012 Law & Society Annual Meeting, June 2012

“Race and Gender Inequality in Tax Subsidies for Owner Occupied Housing,” International Socio-Legal Feminisms Workshop on Feminism, Taxation and Fiscal Policy, June 2012

“Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers,” Loyola-LA Tax Policy Colloquium, October 2011

“Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers,” Minnesota Law School Faculty Workshop, July 2011

“Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers,” AALS Mid-Year Conference, “Women Rethinking Equality,” June 2011

“Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers,” 2011 Law & Society Annual Meeting, June 2011

“Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers,” Saint Louis Law School Critical Tax Conference, April 2011

“Costly Mistakes: Undertaxed Business Owners and Overtaxed Workers,” Boston College Law School Tax Policy Workshop, March 2011

“Gender, Race, Wealth and Tax,” McGill Institute Conference on International Socio-Legal Feminisms, sponsored by Umea University Centre of Gender Excellence, University of British Columbia Centre for Feminist Legal Studies, Queens University Feminist Legal Studies, and McGill University, June 2010

“Investment Income Withholding in the United States and Germany,” 2010 Law & Society Annual Meeting, May 2010

“Investment Income Withholding in the United States and Germany,” Seattle University Law School, International Tax Workshop, February 2010

“Investment Income Withholding in the United States and Germany,” University of Florida Law School International Tax Symposium, September 2009

## LILY KAHNG

“One Is the Loneliest Number: The Single Taxpayer in a Joint Return World,” Indiana-Bloomington Critical Tax Conference, April 2009

“One Is the Loneliest Number: The Single Taxpayer in a Joint Return World,” 2009 Annual Meeting of the American Association of Law Schools, Tax Section, January 2009

“Income from Labor versus Income from Capital: Implications for Families,” Cascadian Legal Feminists Conference, April 2008

“Ignorant Spouses: What Kind of Knowledge Disqualifies a Spouse from Relief under the New Innocent Spouse Law?,” Seattle University Law School Critical Tax Theory Conference, April 2005

“Informal Administrative Lawmaking under the General Welfare Doctrine,” National People of Color Conference, October 2004

“Informal Administrative Lawmaking under the General Welfare Doctrine,” Rutgers (Newark) Critical Tax Theory Conference, April 2004

“Tax and Accounting Parallels in the Wake of Enron,” University of British Columbia Corporate Responsibility Conference, February 2003

“Innocent Spouses: A Critique of the New Laws Governing Joint and Several Tax Liability, Michigan Law School Critical Tax Theory Workshop, March 2002

“Gender Bias in the Income Tax,” Cascadian Legal Feminists Conference, February 2002

“Proposed Regulations under the Innocent Spouse Relief Provisions,” ABA Tax Section Meeting, May 2001

“Equitable Relief Under Section 6015(f) of the Innocent Spouse Relief Provisions,” ABA Tax Section Meeting, May 2000

“Resurrecting the *General Utilities* Doctrine,” ABA Tax Section Annual Meeting, January 1999

“Fiction in Tax,” New York University Law School Colloquium on Tax Policy and Public Finance, January 1997

“Fiction in Tax,” Minnesota Law School TAXING AMERICA Conference, November 1995

“Political Perspectives on the Taxation of Married Individuals,” Lewis & Clark Law School Conference on Taxation of the Family, October 1995

## **LILY KAHNG**

“Gender Bias in the Estate and Gift Tax,” SUNY (Buffalo) Law School Critical Tax Theory Workshop, September 1995

### **LAW SCHOOL SERVICE (SELECTED)**

Chair, Tax Focus Group (2001-Present)  
Curriculum Committee (2014-2015)  
Faculty Appointments Committee (2011-2012)  
Chair, Budget Committee (2010-2011)  
Associate Dean for Faculty Development (2009-2011)  
Co-chair, Faculty Appointments Committee (2009-2010)  
Korematsu Fellow Hiring Committee (2009-2010)  
Personnel Review Committee (2008-2009)  
Faculty Appointments Committee (2007-2008)  
Chair, Faculty Appointments Committee (2006-2007)  
Chair, Faculty Appointments Committee (2005-2006)

### **COMMUNITY SERVICE (SELECTED)**

Board of Advisers, Korean American Bar Association  
Vice Chair, Washington State Citizen Commission on Tax Preferences  
Founding Board Member, Washington State Budget & Policy Center  
Board member, CPA/Tax Attorney Clinic  
Member, Washington State Tax Structure Committee (“Gates Commission”)

### **ADMITTED TO PRACTICE**

New York



# ERIN ADELE SCHARFF

Professor of Law

Sandra Day O'Connor College of Law Arizona State University

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## ACADEMIC EXPERIENCE

SANDRA DAY O'CONNOR COLLEGE OF LAW, ARIZONA STATE UNIVERSITY, Phoenix, AZ

*Professor of Law*, 2022-present

*Associate Professor of Law (with tenure)*, 2019 – 2022

*Associate Professor of Law*, 2014 –2019

Courses: Federal Income Taxation, State and Local Government, State and Local Taxation, State and Local Finance, Torts

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

*Acting Assistant Professor of Tax Law*, August 2012 – July 2014

Courses: Tax Policy, Survey of Tax Procedure, Taxation of Property Transactions

## SCHOLARLY INTERESTS

State and Local Taxation, Local Government Law, State Constitutional Law, Fiscal Federalism, Tax Policy, Federal Income Tax Law

## EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

J.D., May 2011, *magna cum laude* and *Order of the Coif*

Honors: *Benjamin F. Butler Memorial Award*, for unusual distinction in scholarship, character, & professional activities

*Benjamin F. Butler Memorial Award*, for unusual distinction in scholarship, character, & professional activities

*Pomeroy Scholar & Butler Scholar*, recognizing the top ten students after two & four semesters

*Furman Scholar & Root-Tilden-Kern Scholar*

Activities: NEW YORK UNIVERSITY LAW REVIEW, Articles Editor; Staff Editor  
New York University Tax Clinic, Student Advocate (Fall 2010)

YALE UNIVERSITY, New Haven, CT

B.A., Religious Studies, *with distinction*, May 2004

Honors: *Anthony M. Schulte Prize for Building Town-Gown Relations*

Activities: Dwight Hall Center for Public Service, Executive Committee Member  
Elm City Congregations Organized, Urban Fellow

## **SELECTED LEGAL AND PROFESSIONAL EXPERIENCE**

HONORABLE WILLIAM A. FLETCHER, U.S. COURT OF APPEALS, NINTH CIRCUIT, San Francisco, CA  
*Judicial Clerk*, 2011-2012

JENNER & BLOCK, Washington, DC  
*Summer Associate*, Summer 2010

U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION, FEDERAL PROGRAMS BRANCH, Washington, DC  
*Summer Legal Internship Program Intern*, Summer 2010

CENTER ON BUDGET AND POLICY PRIORITIES, Washington, DC  
*Tax Policy Intern*, Summer 2009

OBAMA-BIDEN CAMPAIGN FOR CHANGE & OBAMA FOR AMERICA, IA, OH, PA, IN & KY  
*Interim Operations Director, Deputy Operations Director & Field Organizer*, 2008

## **WORKS IN PROGRESS**

*Fake Tax News* (with Kathleen Delaney Thomas) (draft available)

*What Happened to Filing Status Reform?* (with Emily Satterwaite)

*Debating the Arizona Constitution*

*The State Role in Local Fiscal Capacity*

## **ARTICLES & ESSAYS**

*Revisiting Local Income Taxes*, 74 HASTINGS L. J. (forthcoming 2023) (with Darien Shanske)

*Local Budgets, Local Decisions: The Twenty-First Century Home Rule Project's State Support for Local Democracy Provisions*, 99 N.C. L. REV. (forthcoming 2022)

*Sustainability Policy Makers and Preemption*, J. LAND USE & ENVTL. L. (forthcoming 2022) (symposium) (with Braden Kaye)

*Cities on Their Own: Local Revenue When Fiscal Federalism Fails*, 48 FORDHAM URB. L. J. 919 (2021)

*Local Authority*, 1 LOC. POWER AND POL. REV. (2020) (with Joaquin Rios)

*Preempting Politics*, 72 STAN. L. REV. 1361 (2020) (with Joshua S. Sellers)

Awarded Honorable Mention by AALS Election Law Section for 2020 Scholarly Paper Prize

*Preemption and Fiscal Authority*, 45 FORDHAM URB. L. J. 1270 (2018) (symposium)

*Green Fees: The Challenge of Pricing Externalities Under State Law*, 97 NEB. L. REV. 168 (2018)

*Hyper Preemption: A Reordering of the State Local Relationship?*, 106 GEORGETOWN L.J. 1469 (2018), reprinted in THE NEW PREEMPTION READER: LEGISLATION, CASES, AND COMMENTARY ON STATE AND LOCAL GOVERNMENT LAW (Richard Briffault, Nestor M. Davison, & Laurie Reynolds, eds. 2019)

Book Review, Vanessa S. Williamson, READ MY LIPS: WHY AMERICANS ARE PROUD TO PAY TAXES, 40 J. AM. TAX'N ASS'N 113 (2018) (peer reviewed)

*Powerful Cities?: Limits on Municipal Revenue Authority and What to do About Them*, 91 N.Y.U.L. REV. 292 (2016)

*Laboratories of Bureaucracy: Administrative Cooperation Between State and Federal Tax Authorities*, 68 TAX L. REV. 699 (2015) (peer reviewed)

*Antidiscrimination in Employment: The Simple, the Complex, and the Paradoxical*, in THE LAW AND ECONOMICS OF LABOR AND EMPLOYMENT LAW (Cynthia Estlund and Michael L. Wachter, eds. 2013) (with Samuel Issacharoff)

Note, *Taxes as Regulatory Tools: An Argument for Expanding New York City's Taxing Authority*, 86 N.Y.U. L. REV. 1556 (2011)

## CASEBOOKS

FEDERAL INCOME TAXATION (19<sup>th</sup> ed., forthcoming 2023) (with Joseph Bankman, Daniel N. Shaviro, & Kirk J. Stark)

CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW (9<sup>th</sup> ed., 2022) (with Richard Briffault, Laurie Reynolds, Nestor M. Davidson, & Rick Su)

## OTHER WORKS

*11 Arizonans are richer than millions of us, combined. Make them pay their fair share*, Ariz. REPUB. (Mar. 31, 2022), <https://www.azcentral.com/story/opinion/op-ed/2022/03/31/billionaires-income-tax-would-make-rich-pay-fair-share/7195101001/>

*Five Myths about Tax Evasion*, WASH. POST (Oc. 8, 2021), [https://www.washingtonpost.com/outlook/five-myths/five-myths-about-tax-evasion/2021/10/08/6a47b022-26df-11ec-8d53-67cfb452aa60\\_story.html](https://www.washingtonpost.com/outlook/five-myths/five-myths-about-tax-evasion/2021/10/08/6a47b022-26df-11ec-8d53-67cfb452aa60_story.html) (with Kathleen Delany Thomas)

*Abuse of Executive Discretion by State Officials on Local Budgets Shows Need for Robust Home Rule*, SLoG Blog (Oc. 7, 201), <https://www.sloglaw.org/post/abuse-of-executive-discretion-by-state-officials-on-local-budgets-shows-need-for-robust-home-rule>

*Prop 208 - Invest in Ed is Investing in the Arizona Economy*, Policy Brief for Stand with Children (September 2020), <https://investined.com/wp-content/uploads/2020/09/Yes208SmallBizPolicyBrief.pdf>

*Gov. Doug Ducey is wrong. Cities and counties have broad authority to act on COVID-19*, Ariz. REPUB. (July 9, 2020), <https://www.azcentral.com/story/opinion/op-ed/2020/07/09/gov-doug-ducey-wrong-arizona-cities-broad-power-act-coronavirus/5396125002/> (with Joshua Bendor)

*The Essential Role of Fiscal Authority in Local Democracy*, Local Solutions Support Center White Paper, Mar. 2020, <https://www.abetterbalance.org/resources/the-essential-role-of-fiscal-authority-in-local-democracy/>.

*States Should Quickly Reform Unemployment Insurance*, STATE TAX NOTES (May 4, 2020) (with Brian Galle, David Gammage, & and Darien Shanske)

NATIONAL LEAGUE OF CITIES PRINCIPLES OF HOME RULE FOR THE TWENTY-FIRST CENTURY (2020) (with Richard Briffault, Nestor M. Davidson, & Paul A. Diller)

*Opinion analysis: Presence of in-state beneficiaries alone insufficient for state to assert jurisdiction to tax trust income* SCOTUSBLOG (June 22, 2019, 11:28 AM), <https://www.scotusblog.com/2019/06/opinion-analysis-presence-of-in-state-beneficiaries-alone-insufficient-for-state-to-assert-jurisdiction-to-tax-trust-income/>

*Argument analysis: Court worries that state trust tax may tax trust income that is never distributed to in-state beneficiary*, SCOTUSBLOG (Apr. 18, 2019, 11:27 AM), <https://www.scotusblog.com/2019/04/argument-analysis-court-worries-that-state-trust-tax-may-tax-trust-income-that-is-never-distributed-to-in-state-beneficiary/>

*Argument preview: Justices consider whether beneficiary's residence is sufficient for state to assert tax jurisdiction over trust income*, SCOTUSBLOG (Apr. 10, 2019, 2:41 PM), <https://www.scotusblog.com/2019/04/argument-preview-justices-consider-whether-beneficiaries-residence-is-sufficient-for-state-to-assert-tax-jurisdiction-over-trust-income/>

*Everyone hates this tax. But without it, Trump would barely have paid any*, WASH.POST (Mar. 17, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/03/17/everyone-hates-this-tax-but-without-it-trump-would-barely-have-paid-any/>

## AMICUS BRIEFS

Brief of Amici Curiae Arizona Center for Law in the Public Interest in Support of Appellee, Free Enterprise Club v. Hobbs, No. CV-21-0304-AP/EL (2022) (filed on Jan. 14, 2022).

Brief of Amici Curiae Tax Scholar Erin Scharff, *Fann v. Arizona*, 493 P.3d 246 (Arizona 2021) (filed on March 22, 2021).

Brief of Amici Curiae Tax Scholars in Support of Appellants, *Molera v. Hobbs*, 474 P.3d 667 (Ariz. 2020) (filed on Aug. 10, 2020).

Brief of Amici Curiae Tax Scholars in Support of Invest in Education, *Molera v. Hobbs*, CV 20202-007964 (Ariz. Sup. Ct. 2020) (filed on July 24, 2020).

Brief of Amici Curiae International Municipal Lawyers Association and Legal Scholars, *Garfield County Transportation Authority v. State*, 473 P.3d 1205 (2020) (filed on June 5, 2020).

Brief of Amici Curiae Law Professors in Support of Respondent, *Brnovich v. City of Phoenix*, 468 P. 3d 1200 (Arizona 2020) (filed on March 3, 2020).

Brief of Amici Curiae Local Government Law Professors, et al. in Support of Plaintiffs-Appellants, *City of Athens v. Testa*, No. 2019-0696 (Ohio 2020) (filed Sept. 30, 2019). Covered in *Coalitions File Amici Briefs in Ohio Home Rule Tax Case*, STATE TAX NOTES (Oct. 9, 2019).

Memorandum in Support of Jurisdiction by Local Government Law Professors and National Municipal Organizations in Support of Plaintiff-Appellants' Petition for Certiorari, *City of Athens v. Testa*, No. 2019-0696 (Ohio, 2020) (filed May 20, 2019).

Brief of Ann Alstott, et al. as Amici Curiae in Support of Respondent, *PPL Corp. v. Comm'r*, 569 U.S. 329 (2013) (No. 12-43), 2013 WL 989825 (co-counsel with Michael Graetz), *cited by PPL Corp. v. Comm'r*, 569 U.S. 329, 344 (2013) (Sotomayor, J., concurring).

## SCHOLARLY PRESENTATIONS

*Laboratories of Bureaucracy: Administrative Cooperation Between State and Federal Tax Authorities*  
Tax Policy Colloquium, Maurer School of Law, Indiana State University (April 24, 2014)

*Powerful Cities, Efficient Revenues: Limits on Municipal Taxing Authority and What to Do About Them*  
Lawyering Scholarship Colloquium, New York University School of Law (March 7, 2014)  
Junior Tax Faculty Workshop, American University School of Law (June 7, 2014)  
National Tax Association Conference, Santa Fe, New Mexico (November 13, 2014)  
ASU Jr. Scholars Workshop, Phoenix, Arizona (December 12, 2014)  
ASU Faculty Workshop, Tempe Arizona (March 18, 2015)

### *Green User Fees*

Junior Tax Faculty Workshop, University of California, Irvine School of Law (June 10, 2016)  
Northern California Tax Roundtable, U.C. Hastings (April 28, 2017)  
Sustainability Conference of American Legal Education, Arizona State University (May 12, 2017)  
18th Global Conference on Environmental Taxation, University of Arizona (September 28, 2017)  
Tax Policy Colloquium, Loyola Law School (November 2017)  
Tax Policy Colloquium, Brigham Young University, J. Reuben Clark School of Law (January 22, 2018)  
Faculty Colloquium, University of Washington School of Law (February 7, 2018)  
Current Issues in Tax Law and Policy Colloquium, University of California—Irvine School of Law (April 9, 2018)

### *Preemption and Fiscal Authority*

Symposium, Urban Law Journal, Fordham University School of Law (February 16, 2018)

### *Hyper Preemption*

Panelist, Fiscal Federalism, AALS Annual Meeting (January 3, 2017)  
Faculty Colloquium, James E. Rogers College of Law, University of Arizona (February 9, 2017)  
Pepperdine University School of Law, Tax Policy Colloquium (March 6, 2017)  
Faculty Workshop, University of North Carolina School of Law (March 9, 2017)  
Faculty Workshop, Arizona State University (April 4, 2017)

### *Local Fiscal Capacity and State Law*

AMT Conference, University of San Diego School of Law (June 12, 2019)  
ASU Jr. Faculty Workshop (December 12, 2019)

### *Pricing Court Fees*

National Tax Association Annual Meeting, Philadelphia, PA (November 10, 2017)

### *Preempting Politics*

ASU Jr. Faculty Workshop (Aug. 15, 2019)  
Local Government Law Works-in-Progress Conference, University of Virginia School of Law (September 20, 2019)

*Sustainability Policymakers & Preemption*

Local Autonomy and Energy Law Symposium, Florida State University (Feb. 21, 2020).

*Revisiting Local Income Taxes*

Critical Tax Law Scholars, Tulane University School of Law (April 1, 2016)

National Tax Association Conference, Baltimore, Maryland (November 11, 2016)

Tax Law Speakers Series, University of San Diego School of Law (Feb. 10, 2020)

ASU Junior Faculty Workshop (Aug. 13, 2020)

Cardozo School of Law Local Government Workshop (Nov. 16, 2020)

Tax Policy Colloquium, New York University School of Law (Dec. 1, 2020)

Seventh Annual International and Comparative Urban Law Conference (July 17, 2021)

*Cities on Their Own: Local Revenue When Fiscal Federalism Fails*

2020 Cooper-Walsh Colloquium: The Impact of Financial Crisis on Urban Environments: Past, Present, and Future, Fordham University School of Law (Oct. 16, 2020)

*The State Role in Local Fiscal Capacity*

North Carolina Law Review Symposium on Home Rule in the Twenty-First Century, University of North Carolina-Chapel Hill (October 8, 2021)

*Fake Tax News*

The James Hausman Tax Law and Policy Workshop, University of Toronto Faculty of Law (Mar. 16, 2022)

Faculty Colloquium, Arizona State University College of Law (Apr. 18, 2022)

**DISCUSSANT, PANEL CHAIR PRESENTATIONS, ETC.**

Discussant, Taxation of Vulnerable Populations, National Tax Association Annual Meeting, Online (Nov. 19, 2021)

Moderator, Tax Law in an Age of COVID, AALS Annual Meeting, Tax Section Main Program (January 8, 2021)

Moderator, Inclusion and Addressing Racism in the Federal Income Tax Course, AALS Tax Section Webinar (July 9, 2020)

Moderator, Panel, Local Government Works-in-Progress Conference, University of Virginia (September 20, 2019)

Discussant, Brian Galle's Property Tax Exemptions, AMT Conference, University of San Diego School of Law (June 12, 2019)

Panel Chair and Discussant, Sales Tax and VAT, National Tax Association Annual Meeting, Philadelphia, PA (November 10, 2017)

Discussant, Maynard P. Goldburn's *A Plea for Courts to Abolish the Judicially Created Right of the Wealthy to Avoid Estate Taxes*, Junior Tax Faculty Workshop, University of California, Irvine School of Law (June 10, 2016)

Discussant, Omri Marion's *Private Investment Funds and International Tax Avoidance*, Junior Tax Faculty Workshop, University of California, Irvine School of Law (June 7, 2016)

Discussant, Leigh Osofsky's *Announcing Tax Enforcement Priorities*, Junior Tax Faculty Workshop, American University School of Law (June 7, 2014)

Discussant, Mirit Eyal-Cohen, *Urban Mavericks*, Junior Tax Faculty Workshop, American University School of Law (June 7, 2014)

## **CLE AND OTHER PRESENTATIONS**

Panelist, *State and Local Tax Policy Response to the Covid-19 Pandemic*, ABA Tax Section CLE Webinar (March 10, 2021)

Panelist, *State and Local Tax Policy Response to the Covid-19 Pandemic*, ABA Tax Section Midyear Meeting (January 12, 2021)

Presenter, *Preemption and Local Financing*, International Municipal Lawyers Association Webinar (June 11, 2020)

Presenter, *Home Rule For the Twenty-First Century*, Utah Municipal Lawyers Association (September 11, 2019)

Moderator & Panelist, *The California Soda Tax Ban and the Rise of Fiscal Preemption, Local Government Decision Making and Preemption: Legal Remedies and Actions*, Phoenix, Arizona (October 3, 2018)

Welcome Address, *Arizona Center for Economic Progress Democratic Primary Governor's Debate* (August 8, 2018)

Panelist, *Judicial Independence*, ASU Federalist Society (April 11, 2018)

Presenter, *Tax Cut and Jobs Act*, Cleveland Metropolitan Bar Association (March 23, 2018)

Presenter, *The Prospect of Tax Reform*, Arizona Bar Association, Tax Section (March 28, 2017)

Panelist, *Out of Ferguson: Misdemeanors as Taxes and Municipal Courts as Tax Collectors*, ABA Tax Section CLE Webinar (December 14, 2016)

Presenter, *The 30<sup>th</sup> Anniversary of the Tax Reform Act of 1986*, Sandra Day O'Connor College of Law, ASU (November 15, 2016)



Panelist, When Is Something a “Tax”?, ABA Tax Section Fall Meeting, Boston, MA (September 30, 2016)

Organizer, Environmental Racism Discussion, Sandra Day O’Connor College of Law, ASU (March 21, 2016)

Panelist, Jewish Identity & Social Justice, ASU Jewish Law Students Association, Sandra Day O’Connor College of Law (March 17, 2016)

Organizer, Environmental Justice in Wake of the Flint Water Crisis, Sandra Day O’Connor College of Law, ASU (February 19, 2016)

Panelist, Student Critical Law Panel, Sandra Day O’Connor College of Law, ASU (Feb. 16, 2016)

## **INVITED PARTICIPANT/CONSULTING EXPERT**

Center for Disease Control, Subject Matter Expert, Disparities in Emergency Medical Services and Cardiac Care (2020-present)

Guarini Center on Environmental, Energy, and Land Use Law at NYU School of Law, A Workshop on How Cities Can Help Lead the Transition to a Plant-Forward Food System (June 15, 2021)

Liman Center at Yale Law School, the Fines & Fees Justice Center, and Berkeley Law’s Policy Advocacy Clinic; Fines, Fees, and the Funding of Government Services Virtual Workshop Series (2021)

## **UNIVERSITY AND COLLEGE SERVICE**

Sandra Day O’Connor College of Law, Arizona State University

|                        |  |
|------------------------|--|
| 2021-2022              | Co-Chair, Clerkship Committee                  |
| 2020-2022              | Co-Chair, Junior Faculty Development Committee |
| 2020-2021              | Co-Chair, Colloquium Committee                 |
| 2015, 2017, 2019, 2020 | Organizer, Spring Jr. Faculty Workshop Series  |
| 2016-present           | Clerkship Committee                            |
| 2018-2020              | Faculty Advisory Committee                     |
| 2016-present           | Faculty Advisor, National Lawyers Guild        |
| 2016-2017, 2019-2020   | Appointments Committee                         |
| 2016-2018              | Diversity Committee                            |
| 2015-2016, 2017-2020   | Colloquium Committee                           |
| 2016, 2017             | Organizer, Law School Summer Colloquium        |
| 2015-2016              | Honor Code Hearing Board                       |

Arizona State University

2015-2022

Truman Section Committee, Barret Honors College

## PEER REVIEWER

*Northwestern University Law Review Peer Review Board* (2017-present)

## PROFESSIONAL SERVICE

Arizona Bar Association, Tax Section, Law School Representative (September 2014-2018, 2022-present)

Local Solutions Support Center, Law Professor Panel (2018-present)

Contributor, SLoGLawBlog.org, the State and Local Government Law Blog (2021-present)

AALS Tax Section, Chair (2020); Member, Executive Committee (2017-2021)

*Tax Prof Blog*, SSRN Roundup Editorial Team (2017-2018)

Assistant Editor, *Tax Law Review* (2012-2014)

## MEDIA APPEARANCES

*Fact or Fiction: Could you soon owe taxes on Venmo transactions?*, ABC15 (Sept. 28, 2021), <https://www.abc15.com/news/let-joe-know/fact-or-fiction-could-you-soon-owe-taxes-on-venmo-transactions>

Paul Jones, *Local Taxes on Big Business, Wealthy Underscore Challenges Facing Cities*, STATE TAX NOTES (Mar. 15, 2021)

*Arizona Supreme Court Ruling Could Have Big Impact On Economic Development*, THE SHOW (KJZZ-Phoenix), <https://theshow.kjzz.org/content/1659505/arizona-supreme-court-ruling-could-have-big-impact-economic-development> (Feb. 16, 2021)

Prop. 208, ABC15 (Sept. 27, 2020)

*Coalitions File Amici Briefs in Ohio Home Rule Tax Case*, STATE TAX NOTES (Oct. 9, 2019)

*5 Considerations for Implementing a 70% Marginal Tax Rate*, LAW360.COM (Jan. 10, 2019)

*With 9th Circuit In Spotlight, Republicans Push New Effort To Bust It Up*, HERE AND NOW (WBUR-Boston), <http://www.wbur.org/hereandnow/2017/02/10/9th-circuit-court> (Feb. 10, 2017)

*Thousands of law professors signed a letter opposing Trump's nomination for attorney general, including two from ASU, Ariz. State Press, <http://www.statepress.com/article/2017/01/sppolitics-jeff-sessions-likely-to-be-confirmed-as-attorneygeneral-despite-two-asu-professors-objection> (Jan. 26, 2017)*

## **AWARDS**

2021 Amicus Service Award, International Municipal Lawyers Association

2020 Amicus Service Award, International Municipal Lawyers Association

## **COMMUNITY INVOLVEMENT**

Phoenix Legal Action Network, Board Chair (2020-present); Vice Chair (2020); Board Member (2018-2020)

Temple Solel, Rabbinic Search Committee (2016-2017); Education Committee (2018-2020)

Temple Solel, Social Action Committee, Welcoming the Stranger Project (2016-2018)

## **BAR ADMISSIONS**

Arizona (2019); California (2012, currently inactive)





*The American Rescue Plan Act and the Limits of Ad Hoc Fiscal Federalism*, 131 YALE LAW JOURNAL FORUM 587 (2021).

*Weathering State and Local Budget Storms: Fiscal Federalism with an Uncooperative Congress*, 55 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 309 (2022) (one of four authors).

*Prudence and the Use and Abuse of the New Learning About Saliency*, 1 JOURNAL OF LAW AND POLITICAL ECONOMY 445 (2021) (peer reviewed).

*How the States Can Tax Shifted Corporate Profits: An Application of Strategic Conformity*, 94 SOUTHERN CALIFORNIA LAW REVIEW 251 (2021).

*Subsidizing Sprawl, Segregation and Regressivity: A Deep Dive into Sublocal Tax Districts*, 106 IOWA LAW REVIEW 2427 (2021) (with Deb Niemeier) (invited symposium piece).

*Agglomeration and State Personal Income Taxes: Time to Apportion (With Critical Commentary on New Hampshire's Complaint Against Massachusetts)*, 48 FORDHAM URBAN LAW JOURNAL 949 (2021) (invited symposium piece).

*Auctioning the Upzone*, 70 CASE WESTERN RESERVE LAW REVIEW 513 (2020) (with Chris Elmendorf).

*States Can and Should Respond Strategically to Federal Tax Law*, 45 OHIO NORTHERN LAW REVIEW 543 (2019) (invited symposium piece).

*Expanding State Fiscal Capacity, Part I: Combining An Entity-Level Consumption Tax, Improved Sales Factor Apportionment and a Tax on a Federal Windfall (The QBI Deduction)*, 22 FLORIDA TAX REVIEW 448 (2019).

*Proportionality as Hidden (but Emerging?) Touchstone of American Federalism: Reflections on the Wayfair Decision*, 22 CHAPMAN LAW REVIEW 73 (2019) (invited symposium piece).

*The Games They Will Play: Tax Games, Roadblocks, And Glitches Under the 2017 Tax Overhaul*, 103 MINNESOTA LAW REVIEW 439 (2019) (one of five primary authors).

*Solving 'Problems No One Has Solved': Courts, Causal Inference, and the Right to Education*, 2018 UNIVERSITY OF ILLINOIS LAW REVIEW 693 (with Chris Elmendorf).

*Interpreting State Fiscal Constitutions: A Modest Proposal*, 69 RUTGERS LAW REVIEW 1331 (2017).

*The (Now Urgent) Case for State-Level Monitoring of Local Government Finances (Or, One Way to Protect Localities from Trump's "Potemkin Villages of Nothing")*, 20 NYU JOURNAL OF LEGISLATION AND PUBLIC POLICY 773 (2017).

*Municipal Finance and Asymmetric Risk*, 4 BELMONT LAW REVIEW 65 (2017) (with Lori Raineri) (invited symposium piece).

*Tax Cannibalization and Fiscal Federalism in the United States*, 111 NORTHWESTERN UNIVERSITY LAW REVIEW 295 (2017) (with David Gamage).

*Revitalizing Local Political Economy Through Modernizing the Property Tax*, 68 TAX LAW REVIEW 143 (2014).

*Can Formulary Apportionment Save the World?: Apportionment and a State-Level Carbon Tax*, 18 CHAPMAN LAW REVIEW 191 (2014) (invited symposium piece).

*Local Fiscal Autonomy Requires Constraints: The Case for Fiscal Menus*, 25 STANFORD LAW AND POLICY REVIEW 9 (2014) (invited symposium piece).

*The Federal Role in Regulating Municipal Debt Finance*, 33 BOSTON UNIVERSITY REVIEW OF BANKING & FINANCIAL LAW 795 (2014) (invited symposium piece).

*The Philosophy of Tax: A Review of David Foster Wallace's The Pale King*, 12 JOURNAL OF LAW, CULTURE AND THE HUMANITIES 401, in print 2016, available online July 2013.

*Thucydides and Law: A Response to Leiter*. 19 LEGAL THEORY 282 (2013).

*A New Theory of the State Corporate Income Tax: The State Corporate Income Tax as Retail Sales Tax Complement*, 66 TAX LAW REVIEW 305 (2013).

*The Trouble with Tax Increase Limitations*, 6 ALBANY GOVERNMENT LAW REVIEW 50 (2012) (invited symposium piece) (with David Gamage).

*Three Essays on Tax Saliency: Market Saliency and Political Saliency*, 65 TAX LAW REVIEW 19 (2012) (with David Gamage).

*How Less Can Be More: Using the Federal Income Tax to Stabilize State and Local Finance*, 31 VIRGINIA TAX REVIEW 413 (2012).

*The Supreme Court and the New Old Public Finance: A New Old Defense of the Court's Recent Dormant Commerce Clause Jurisprudence*, 43 THE URBAN LAWYER 659 (2011).

*Going Forward by Going Backward to Benefit Taxes*, CALIFORNIA JOURNAL OF POLITICS AND POLICY, vol. 3, iss. 2, art. 14 (2011).

*Thucydides and Lawfulness in THUCYDIDES – A VIOLENT TEACHER? HISTORY AND ITS REPRESENTATIONS* (Georg Rechenauer and Vassiliki Pothou, eds. 2011).

*Attention Carbon Auditors: There's Low-Hanging Fruit in the PAB Regs*, 127 TAX NOTES 693 (2010).

*Above All Else Stop Digging: Local Government Law as a Cause (and Solution) to the Current Financial Crisis*, 43 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 663 (2010).

*What Might They Talk About at a California Constitutional Convention*, 37 HASTINGS CONSTITUTIONAL LAW QUARTERLY 641 (2010) (invited symposium piece).

*Engquist and The Erosion of the Equal Protection Clause: An Attempt to Stop the Creep of Irrational Dicta*, 61 HASTINGS LAW JOURNAL 969 (2010).

*Putting the California Constitution (Back) to Work: A Blueprint for Clearing Legal Roadblocks to Proper Infrastructure Finance*, 54 STATE TAX NOTES 567 (2009).

*Hegel and the Justification for Arbitration in a Modern State*, 1 YEARBOOK ON ARBITRATION AND MEDIATION 445 (2009).

*Revitalizing Aristotle's Doctrine of Equity*, 4 JOURNAL OF LAW, CULTURE, AND THE HUMANITIES 352 (2008).

*Public Tax Dollars for Private Suburban Development: A First Report on a National Phenomenon*, Note, 26 VIRGINIA TAX REVIEW 709 (2007).

*Four Theses Preliminary to an Appeal to Equity*, Note, 57 STANFORD LAW REVIEW 2053 (2005).

### Books

THUCYDIDES AND THE PHILOSOPHICAL ORIGINS OF HISTORY, Cambridge University Press, 2007.

THE CALIFORNIA CONSTITUTION, Oxford University Press, 2015 (With Hon. Joseph Grodin and Michael Salerno).

Responsible for introductory section on fiscal history and commentary on Articles IX (Education) (with Joseph Grodin), XI (Local Government), XIII (Taxation), XIII A (Tax Limitation), XIII B (Government Spending Limitation), XIII C (Voter Approval for Local Tax Levies), XIII D (Assessment and Property-Related Fee Reform), XVI (Public Finance), XIX – XIX C (Motor Vehicle Revenue).

### Chapters in Books

*Justice Kennedy, Federalism and the Non-Production of Rhetorical Knowledge*, forthcoming in JUSTICE ANTHONY KENNEDY: THE RHETORIC OF LIBERTY.

*Hart and Tax Law: The Case of GAARs* in POLITICAL PHILOSOPHY OF TAXATION, Springer 2022.



*A Brief Theory of Taxation and Framework Public Goods* in TAX JUSTICE AND TAX LAW: UNDERSTANDING UNFAIRNESS IN TAX SYSTEMS, Bloomsbury 2020.

*Rhetoric and Jurisprudence and the Case of Justice Scalia* in JUSTICE SCALIA: RHETORIC AND THE RULE OF LAW, University of Chicago Press, 2018.

#### Amicus Briefs and other Legal Filings

Brief of Amici Curiae Tax Law Professors in Support of Defendant's Opposition To Plaintiffs' Motion for Summary Judgment, Chamber of Commerce of the United States of America, et al., v. Peter Franchot, Case No. 1:21-cv-410-DKC (2021) (one of four primary authors).

Brief of Law Professors in Support of Petitioner in San Francisco Bay Area Renters Federation et al. v. City of San Mateo et al., Case: A159320 (2021) (one of three primary authors).

Comments on Proposed Revisions to the MTC Model Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272 (2020).

Brief of Tax Law Professors as Amici Curiae in Support of the Department of Revenue of the State of Colorado in Department of Revenue of the State of Colorado v. Oracle Corporation & Subsidiaries (August 13, 2018) (with Hayes Holderness and David Gamage)

Brief of Constitutional Law Scholars in North Carolina v. Kaestner, No. 18-475 (U.S. Supreme Court) (one of three authors)

Brief of Four US Senators in South Dakota v. Wayfair, No. 17-494 (U.S. Supreme Court) (one of two primary authors, certiorari and merits stage)

Brief for Interested Law Professors in Direct Marketing v. Brohl, No. 13-1032 (U.S. Supreme Court) (one of two primary authors)

Brief for Interested Law Professors in Direct Marketing v. Brohl, No. 12 -1175 (10<sup>th</sup> Circ.) (one of two primary authors)

#### Shorter Academic Articles and White Papers

*Maryland's Digital Tax and the ITFA's Catch-22*, 100 Tax Notes State 141 (2021) (with Chris Moran and David Gamage).

*The California Extreme Wealth Tax: Revenue, Economic, and Constitutional Analysis* (2020) (with Brian Galle, David Gamage and Emmanuel Saez).

*Is New York's Mark-to-Market Act Unconstitutionally Retroactive?*, 99 Tax Notes State 541 (2021) (one of four authors).

*How States Should Now Consider Expanding Sales Taxes to Services, Part 2*, 99 Tax Notes State 45 (2020) (one of four authors).

*Why States Should Consider Expanding Sales Taxes To Services, Part 1*, 98 Tax Notes State 1349 (2020) (one of four authors).

*The NY Billionaire Mark-to-Market Tax Act: Revenue, Economic, and Constitutional Analysis (2020)* (with David Gamage and Emmanuel Saez).

*Prompt on Remote Workforce Doctrine and Policy: Short-Term and Long-Term Considerations*, 12 Columbia J. of Tax Law 2020.

*The Case for State Borrowing as a Response to the Current Crises*, 97 Tax Notes State 1137 (2020) (with David Gamage).

*Strategic Nonconformity, State Corporate Income Taxes, And the TCJA: Part II*, 97 Tax Notes State 123 (2020) (with Adam Thimmesch and David Gamage).

*Strategic Nonconformity to the TCJA, Part I: Personal Income Taxes*, 97 Tax Notes State 17 (2020) (with Adam Thimmesch and David Gamage).

*Reforming State Corporate Income Taxes Can Yield Billions*, 96 Tax Notes State 1211 (2020) (with Reuven Avi-Yonah and David Gamage).

*States Should Consider Partial Wealth Tax Reforms*, 96 Tax Notes State 859 (2020) (with David Gamage).

*How the Federal Reserve Should Help States and Localities Right Now*, 96 Tax Notes State 765 (2020) (with David Gamage).

*States Should Quickly Reform Unemployment Insurance*, 96 Tax Notes State 635 (2020) (with Brian D. Galle, David Gamage and Erin Scharff).

*The Ordinary Diet of the Law: How to Interpret Public Law 86-272*, 96 Tax Notes State 161 (2020) (with David Gamage).

*Tax Cannibalization by State Corporate Taxes: Policy Implications*, 95 Tax Notes State 565 (2020) (with David Gamage).

*Tax Cannibalization by State Corporate Taxes: Revised Estimates*, 95 Tax Notes State 487 (2020) (with David Gamage).

*Will States Step Up in 2020? We Hope So*, 94 Tax Notes State 977 (2019) (with David Gamage).

*On Yang's Proposed Federal Tax on Subnational Tax Incentives*, 94 Tax Notes State 25 (2019) (with David Gamage).

*States Should Conform to GILTI, Part 3: Elevator Pitch and Q&A*, 94 Tax Notes State 121 (2019) (with David Gamage).

*The States Can Tax the GILTI*, 91 State Tax Notes 967 (2019) (with David Gamage).

*The States Should Tax the GILTI*, 91 State Tax Notes 751 (2019) (with David Gamage)

*Wayfair: Marketplaces and Foreign Vendors*, 90 State Tax Notes 118 (2018) (with Adam Thimmesch and David Gamage).

*The Full Deduction Rule and the Substance over Form Doctrine*, 89 State Tax Notes 1273 (2018) (with Joseph Bankman).

*White Paper on Eliminating the Water's Edge Election and Moving to Mandatory Worldwide Combined Reporting*, 89 State Tax Notes 1181 (2018).

*Maryland's Generic Drug Pricing Law Is Constitutional: A Recent Decision Misunderstands The Structure Of The Industry*, Health Affairs Blog, June 22, 2018 (with Jane Horvath).

*Wayfair: Sales Tax Formalism and Income Tax Nexus*, 89 State Tax Notes 975 (2018) (with Adam Thimmesch and David Gamage).

*Wayfair: Substantial Nexus and Undue Burden*, 89 State Tax Notes 447 (2018) (with Adam Thimmesch and David Gamage).

*The Future of SALT: A Broader Picture*, 88 State Tax Notes 1275 (2018) (with David Gamage).

*Wayfair and the Retroactivity of Constitutional Holdings*, 88 State Tax Notes 511 (2018) (with Adam Thimmesch and David Gamage).

*Why (and How) States Should Tax the Repatriation*, 88 State Tax Notes 317 (2018) (with David Gamage).

*Caveat IRS: Problems With Abandoning the Full Deduction Rule*, 159 Tax Notes 807 (2018) (one of eight authors).

*State Responses to Federal Tax Reform: Charitable Tax Credits*, 159 Tax Notes 641 (2018) (one of eight authors).

*California Constitutional Law: Interpreting Restrictions on the Initiative Power*, 51 U.C. Davis L. Rev Online 65 (2017) (with David Carrillo).

*Consumer-Based Use Tax Enforcement and Taxpayer Compliance*, 86 State Tax Notes 319 (2017) (with Adam Thimmesch and David Gamage).

*The Case for Consumer-Based Use Tax Enforcement*, 85 State Tax Notes 1049 (2017).

*The Dormant Commerce Clause: What Impact Does It Have on the Regulation of Pharmaceutical Costs?* National Academy for State Health Policy White Paper (2017) (with Anna Zaret).

*Using Taxes to Support Multiple Health Insurance Risk Pools*, 85 State Tax Notes 871 (2017) (with David Gamage).

*How States Can Respond to the AHCA: Using the McCarran-Ferguson Act*, 85 State Tax Notes 367 (2017) (with David Gamage).

*A New Theory of Equitable Apportionment*, 85 State Tax Notes 267 (2017) (with David Gamage).

*The American Health Care Act Would Toss the States a Hot Potato*, 84 State Tax Notes 579 (2017) (with David Gamage).

*A State-Level Carbon Tax with Border Adjustments*, 83 State Tax Notes 911 (2017) (with David Gamage).

*Why a State-Level Carbon Tax Can Include Border Adjustments*, 83 State Tax Notes 583 (2017) (with David Gamage).

*Tax Cannibalization and State Government Tax Incentive Programs*, 82 State Tax Notes 197 (2016) (with David Gamage).

*Using Taxes to Improve Cap and Trade: Efficient Pricing*, 81 State Tax Notes 807 (2016) (with David Gamage).

*The Federal Government's Power to Restrict State Taxation*, 81 State Tax Notes 547 (2016) (with David Gamage).

*Local Government Finance as Integrated System: The Uneasy Case for Using Special Districts in Real Estate Finance (A Response to Odinet's Super-Liens to the Rescue? A Case Against Special Districts in Real Estate Finance)*, 72 WASHINGTON AND LEE LAW REVIEW ONLINE 191 (2015).

*The Implications of Alabama Department of Revenue v. CSX Transportation Inc. and Direct Marketing Association v. Brohl*, 76 STATE TAX NOTES 445 (May 11, 2015) (with David Gamage).

*Using Taxes to Improve Cap and Trade, Part I: Distribution*, 75 State Tax Notes 99 (January 12, 2015) (with David Gamage).

*Why the Text of the Affordable Care Act Authorizes Tax Credits on the Federal Exchanges: A Response to Adler and Cannon*, 71 STATE TAX NOTES 229 (Jan. 27, 2014) (with David Gamage).

*A Potential Game Changer in E-Commerce Taxation*, 67 STATE TAX NOTES 747 (2013) (with Andy Haile and David Gamage).

*The Case for a State-Level Debt-Financing Authority*, 67 STATE TAX NOTES 188 (2013) (with David Gamage).

*The Saga of State 'Amazon' Laws: Reflections on the Colorado Decision*, 65 STATE TAX NOTES 197 (2012) (with David Gamage).

*On Tax Increase Limitations: Part II – Evasion and Transcendence*, 63 STATE TAX NOTES 245 (2012) (with David Gamage).

*On Tax Increase Limitations: Part I – A Costly Incoherence*, 62 STATE TAX NOTES 813 (2011) (with David Gamage).

### Review Essays

Review of Brian Z. Tamanaha, *A Realistic Theory of Law* (2020), 55 LAW & SOCIETY REVIEW 203 (2021).

*How Should We Govern Ourselves at Home?*, 6 JOURNAL OF LAW, CULTURE AND THE HUMANITIES 296 (2010) (review of: VIOLENCE AND SOCIAL ORDERS: A CONCEPTUAL FRAMEWORK FOR INTERPRETING RECORDED HUMAN HISTORY, Douglass C. North, John Joseph Wallis, Barry R. Weingast; DEMOCRACY AND KNOWLEDGE: INNOVATION AND LEARNING IN CLASSICAL ATHENS, Josiah Ober; CITY BOUND: HOW STATES STIFLE URBAN INNOVATION, Gerald E. Frug and David J. Barron).

*What Homevoters Want (and It is Not What You Might Think)*, 1 CALIFORNIA JOURNAL OF POLITICS AND POLICY 18 (2009) (review of Isaac W. Martin, *THE PERMANENT TAX REVOLT: HOW THE PROPERTY TAX TRANSFORMED AMERICAN POLITICS* (2008)).

*Detienne's Masters of Truth and the 'Truth' about Simonides of Ceos*, CRITICAL SENSE (Winter 2000).

### Select Op-eds

*California Should Pass a Small Tax on Big Wealth*, *LA Times*, April 22, 2021 (with David Gamage Emmanuel Saez). (<https://www.latimes.com/opinion/story/2021-04-22/california-wealth-tax>.)

Local Taxes Have Lots of Untapped Potential, *The Recorder*, Feb. 26, 2021 (with David Carrillo), <https://www.law.com/therecorder/2021/02/26/local-taxes-have-lots-of-untapped-potential/>.

*This a good time for the Legislature to invest in California by taxing large, profitable corporations*, *CalMatters*, Feb. 24, 2021 (with Reuven Avi-Yonah and David Gamage), <https://calmatters.org/commentary/my-turn/2021/02/this-a-good-time-for-the-legislature-to-invest-in-california-by-taxing-large-profitable-corporations/>.

*California Left Billions Of Repatriated Tax Dollars On The Table, The State Should Pick Up That Money Now*, CalMatters, May 29, 2020 (with David Gamage and Reuven S. Avi-Yonah), <https://calmatters.org/commentary/california-left-billions-of-repatriated-tax-dollars-on-the-table-the-state-should-pick-up-that-money-now/>.

*How to Solve the Transit Budget Crunch: Price the Private Use of Public Streets*, SPUR Blog, Dec. 18, 2020 (with Chris Elmendorf), <https://www.spur.org/news/2020-12-18/how-solve-transit-budget-crunch-price-private-use-public-streets>.

*Changing the Politics of Housing in California*, SF Chronicle, Apr. 26, 2018, <https://www.sfchronicle.com/opinion/article/Changing-the-politics-of-housing-in-California-12867888.php> (with Chris Elmendorf and Rick Frank).

*Deduct This: How states can undo one of the most potentially destructive elements of the Republican tax law*, Slate, Jan. 11, 2018, <https://slate.com/news-and-politics/2018/01/how-states-can-undo-one-of-the-most-potentially-destructive-elements-of-the-new-tax-law.html> (with Joe Bankman, Daniel Hemel and Kirk Stark).

*School Improvement Hinges on Access to Student Data*, Education Week, Sep. 1, 2017, <https://www.edweek.org/technology/opinion-school-improvement-hinges-on-access-to-student-data/2017/09> (with Chris Elmendorf).

## **MAJOR WORKS IN PROGRESS**

*The States and the New Corporate Income Tax: How States Should Respond to the OECD International Tax Framework and the Federal Corporate Alternative Minimum Tax.*

*Aristotle on the Character of Reciprocal Justice.*

## **SELECT PRESENTATIONS**

Presentation, *The American Rescue Plan Act and the Limits of Ad Hoc Fiscal Federalism*, Fourth Conference on Law & Macroeconomics, October 2021.

Presentation, *Proportionality and Home Rule and Revisiting Local Income Taxes* (with Erin Scharff), Annual International and Comparative Urban Law Conference, Urban Law Center at Fordham Law School and TU Berlin Campus El Gouna, July 2021.

Testimony, Illinois Senate Revenue Committee in Support of the Governor's FY 22 proposed revenue changes, April 2021.

Presentation, *Justice Kennedy, Federalism and the Non-Production of Rhetorical Knowledge*, Workshop on Justice Anthony Kennedy: The Rhetoric Of Liberty, McGeorge School of Law, April 2021.

Presentation, *Local Tax Options post-Upland*, 2021 Municipal Law Institute Symposium, March 2021.

Presentations, *Corporate Tax Reform Options*, American Bar Association Tax Section [presented on panels at three meetings in the fall of 2020 through winter of 2021]

Testimony, Kansas House Taxation Committee In Opposition to HB 2421, March 17, 2021.

Presentation, *Subsidizing Sprawl, Segregation and Regressivity: A Deep Dive into Sublocal Tax Districts*, Iowa Law Review Symposium: The Future of Law and Transportation, November 2020 (with Deb Niemeier).

Presentation, *Agglomeration and State Personal Income Taxes: Time to Apportion (With Critical Commentary on New Hampshire's Complaint Against Massachusetts)*, Fordham Urban Law Journal 14th Annual Cooper-Walsh Colloquium, October 2020.

Presentation, *States Should Issue Debt in Emergencies*, Loyola-L.A. School, Tax Policy Colloquium Series, October 2020.

Presentation, *Corporate Tax Reform Options*, State Legislative Leaders Foundation, September 2020.

Presentation, *Prudence and the Use and Abuse of the New Learning About Salience*, The Journal of Law and Political Economy: Developing the Field, University of Buffalo Law, October 2019.

Presentation, *How the States Can Tax Shifted Corporate Profits: An Application of Strategic Conformity*, Perspectives on Taxation Lecture Series, University of Minnesota Law School, September 2019.

Presentation, *A Brief Theory of Taxation and Framework Public Goods*, Workshop on Tax Justice and Tax Law, Cambridge University, July 2019.

Presentation, *States Can and Should Respond Strategically to Federal Tax Law*, Ohio Northern Law Review Symposium, March 2019.

Presentation, Capitol Insights Panel: The Tax Cuts and Jobs Act: How California Has Responded and Could Respond, UC Center Sacramento, August 2018 (with Kirk Stark).

Presentation, Democratic Investments, panel on Taxation and Public Services, UCSD, June 2018 (with Kirk Stark).

Testimony, CA Legislature Joint Informational Hearing, Uproar over *Upland*: Assessing the California Supreme Court's Decision, March 2018.

Presentation, *Rhetoric and Jurisprudence and the Case of Justice Scalia*, Workshop on Justice Scalia: Rhetoric and the Rule of Law, McGeorge School of Law, March 2018.

Presentation, Special Workshop: Implications of Federal Tax Reform for California, UC Center Sacramento, June 2017 (with Kirk Stark).

Presentation, *The Future of State-Level Consumption Taxes and The Refinement of Equitable Apportionment*, Duke Law, Tax Policy Workshop, March 2017.

Presentation, *The Future of State-Level Consumption Taxes and The Refinement of Equitable Apportionment*, UC Irvine School of Law, Tax Law and Policy Colloquium Series, March 2017.

Presentation, *The Future of State-Level Consumption Taxes and The Refinement of Equitable Apportionment*, Northwestern University Law School, Advanced Topics in Taxation Workshop Series, November 2016.

Presentation, *Municipal Finance and Asymmetric Risk*, Belmont University Law Review, Symposium 2016: The Modern Metropolis: Contemporary Legal Issues In Urban Communities September 2016 (paper co-written with Lori Raineri).

Presentation, *Improving California's Tax System Through Increasing the Diversity and Complementarity of its Revenue Streams*, UC Center Sacramento, April 2016 (presentation with David Gamage).

Presentation, *Tax Cannibalization and Fiscal Federalism in the United States*, Tulane Tax Roundtable, March 2016 (paper co-written with David Gamage).

Presentation, *Thoughts on Enforcing Pension Obligations*, American Law Institute Young Scholars Medal Conference: Can Law Solve the Public Pension Problem?, April 2015.

Presentation, *Local Democracy and Financial Knowledge: The Case for a Local Government Finance Commission*, James Hausman Tax Law and Policy Workshop Faculty of Law, University of Toronto, March 2015.

Presentation, *Can Formulary Apportionment Save the World?: Apportionment and a State-Level Carbon Tax*, Chapman Law School, March 2014.

Presentation, *A Rough Taxonomy of State Fiscal Policy Issues with an Emphasis on Local Fiscal Constitutions*, UC Center Sacramento, July 2013.

Testimony on *Proposition 13 and Local Tax Authority* before California Assembly Committee on Revenue and Taxation, April 2013.

Presentation, *Modernizing the Property Tax*, Tax Policy and Public Finance Colloquium, UCLA Law, March 2013.

Presentation, *Modernizing the Property Tax*, Colloquium Series on Tax Policy and Public Finance, NYU Law, March 2013.

Presentation, *The Paradoxical Fiscal Constraints on California's Cities*, Local Governments Navigating California's Constitution, conference organized by the Municipal Law Institute of the League of California Cities and the California Constitution Center of UC Berkeley School of Law, February 2013.

Presentation, *Modernizing the Property Tax*, at Loyola-L.A. Tax Policy Colloquium. Los Angeles, CA, November 2012.

Presentation, *Modernizing the Property Tax*, National Tax Association, Providence RI, November 2012.



Presentation/Seminar Participant, *Aristotle on Reciprocity*, Jurisprudential Perspectives on Tax Law, Cornell Law School, Ithaca, New York, September 2012.

Presentation, *Tax Platforms of the Presidential Candidates: Does it Make a Difference to Voters?*, ABA Tax Section Fall Meeting. Boston, MA, September 2012.

Testimony on *Assessing Tax Expenditure Programs in Light of California's Fiscal Challenges* before California Assembly Committees on Revenue and Taxation and Accountability and Administrative Review, February 2012.

Presentation, *A New Theory of the State Corporate Income Tax: The State Corporate Income Tax as Retail Sales Tax Complement*, University of Kentucky College of Law, February 2012.

Presentation, *A New Theory of the State Corporate Income Tax: The State Corporate Income Tax as Retail Sales Tax Complement*, Tax Policy Colloquium at Indiana University, Maurer School of Law, February 2012.

Discussant for panel on *Tax Policy in a Federal System*, Tax Policy Center/UCLA Tax Policy Conference - Federal Tax Reform Beyond the Beltway: How Federal Tax Reform and Tax Policy Will Affect State and Local Governments, Los Angeles, CA, February 2012.

Presentation, *How Less Can Be More: Using the Federal Income Tax to Stabilize State and Local Finance*, National Tax Association. New Orleans, LA, November 2011.

Presentation, *A New Theory of the State Corporate Income Tax: The State Corporate Income Tax as Retail Sales Tax Complement*, Northern California Tax Roundtable. UC Davis Law School, Davis, CA, November 2011.

Presentation, *How Less Can Be More: Using the Federal Income Tax to Stabilize State and Local Finance*, UC Davis Law School, Davis, CA, September 2011.

Presentation, *A Doctrinal Route Around Quill*, American Association of Law Schools Annual Conference. San Francisco, CA, January 2011.

Presentation, *Putting the California Constitution (Back) to Work: A Blueprint for Clearing Legal Roadblocks to Proper Infrastructure Finance*, New America Foundation and UC Center Sacramento Roundtable on Funding California's State and Local Governments. Sacramento, CA, June 2009.

Testimony on *California Infrastructure Financing* before California Senate Revenue and Taxation Committee, June 2009.

Presentation, *Putting the California Constitution (Back) to Work: A Blueprint for Clearing Legal Roadblocks to Proper Infrastructure Finance*, Mercatus 2008 Capital Campus California Winter Retreat. Sonoma, CA, December 2008.

## SELECT MEDIA APPEARANCES

Radio interview, *Can You Handle The Truth?: Fact-Checking Gov. Newsom's Claim That California Has A \$75 Billion Surplus*, Capitol Public Radio, June 2, 2021, <https://www.capradio.org/articles/2021/06/02/can-you-handle-the-truth-fact-checking-gov-newsoms-claim-that-california-has-a-75-billion-surplus/>.

Quoted in *NH Senators Back Banning States Taxing Remote Workers*, Law360, May 27, 2021 <https://www.law360.com/articles/1389033/nh-senators-back-banning-states-taxing-remote-workers>.

Quoted in *Is Newsom trying to be Robin Hood? What his budget means for wealth inequality in California*, Sacramento Bee, May 25, 2021, <https://www.sacbee.com/news/politics-government/capitol-alert/article251565678.html>.

Quoted in *Facing recall, Newsom uses anti-tax amendment for his own devices*, CalMatters, May 11, 2021, <https://calmatters.org/politics/2021/05/newsom-tax-rebate/>

Quoted in *California lawmakers taking a softer tone on restoring a tax break Californians lost under Trump*, LA Times, April 16, 2021, <https://www.latimes.com/politics/story/2021-04-16/california-lawmakers-taking-a-softer-tone-on-restoring-a-tax-break-californians-lost-under-trump>.

Research cited in *Maryland's First-In-Nation Digital Ad Tax Could Catch On — If It's Legal*, Forbes, March 4, 2021, <https://www.forbes.com/sites/lizfarmer/2021/03/04/marylands-first-in-nation-digital-ad-tax-could-catch-on---if-its-legal/?sh=6adaedc61802>.

Quoted in and research cited in *How U.S. states tax wage income may be forever changed by remote work*, CNBC, Nov. 5, 2020, <https://www.cnbc.com/2020/11/05/how-us-states-tax-wage-income-may-be-forever-changed-by-remote-work.html>.

Quoted in *Tech flight: Why Silicon Valley is heading to Miami and Austin, Texas*, NBC News, Jan, 24, 2021, <https://www.nbcnews.com/business/business-news/tech-flight-why-silicon-valley-heading-miami-austin-texas-n1255330>.

Quoted in *Texas' Tax Advantage Is All About Individuals, Not Business Taxes*, The Wall Street Journal, Dec. 16, 2020, <https://www.wsj.com/articles/texas-tax-advantage-is-all-about-individuals-not-business-taxes-11608123442>.

Quoted in *As COVID-19 shreds Florida's finances, new estimate says clamping down on corporate tax avoidance could raise nearly \$500 million*, Orlando Sentinel, Nov. 23, 2020, <https://www.orlandosentinel.com/news/os-ne-florida-corporate-taxes-combined-reporting-20201123-gtjv4acuincabbvb6rm7elo23u-story.html>.

Quoted in *Why do we keep voting on this? Exploring Prop. 13's 'Tax Revolt Family Tree'*, CalMatters, Oct. 22, 2020, <https://calmatters.org/politics/2020/10/prop-13-family-tree/>.

Research discussed in *Unsanitized: The Fed Can Still Save State and Local Governments*, American Prospect, August 13, 2020, <https://prospect.org/coronavirus/unsanitized-fed-can-still-save-state-local-governments/>.

Quoted in *A Dozen States Puzzling Out How to Tax Foreign Income*, Bloomberg Tax, Feb. 4, 2020, <https://news.bloombergtax.com/daily-tax-report-state/a-dozen-states-puzzling-out-how-to-tax-foreign-income?context=article-related>.

Quoted in *State of Wayfair: Drawing the Line on Corporate Taxes*, Bloomberg Tax, Aug. 22, 2019, <https://news.bloomberglaw.com/us-law-week/state-of-wayfair-drawing-the-line-on-corporate-taxes?context=article-related>.

Quoted in *Treasury Issues Crackdown on State and Local Tax Workarounds*, NY Times, Aug. 23, 2018, <https://www.nytimes.com/2018/08/23/business/economy/treasury-income-tax-deductions.html>.

Quoted in *Why Trump's online store collects sales tax in three states — while Amazon does for 45 states*, Washington Post, April 9, 2018, <https://www.washingtonpost.com/news/business/wp/2018/04/09/why-trumps-online-store-collects-sales-tax-in-three-states-while-amazon-does-for-45-states/>

Interviewed on BBC, The Briefing, December 17, 2017.

Quoted in *Kansas Tax Problems Loom Large in Federal Tax Reform*, State Tax Notes, October 17, 2017.

Quoted in *News Analysis: California Revenue Needs Stability, Experts Say*, State Tax Notes, May 22, 2015.

Research discussed in *SALT Shakers: An Interview With Darien Shanske*, State Tax Notes, Nov. 18, 2013.

## **ACADEMIC SERVICE**

2008-09: Clerkship Committee  
2009-11: Appointments Committee  
2011-12: Admissions Committee  
2012-13: Academic Standards Committee  
2013-14: Intellectual Enrichment Committee, Library Committee  
2014-15: UC Davis Committee for Planning and Budget, Law School Intellectual Enrichment Committee  
2015-16: UC Davis Committee for Planning and Budget; Law School Admissions Committee

- 2016-17: UC Task Force on Investment and Retirement; UC Davis Committee for Planning and Budget; Law School Ad Hoc Committee on ABA Accreditation
- 2017-18 UC Task Force on Investment and Retirement; UC Davis Committee for Planning and Budget; Law School Appointments Committee
- 2018-19 UC Task Force on Investment and Retirement; Law School Admissions Committee
- 2019-20 UC Task Force on Investment and Retirement; UC Davis Committee on Elections, Rules & Jurisdiction; Law School Intellectual Enrichment Committee (Chair); Shayak Sarkar Tenure Committee (Chair)
- 2020-21 UC Task Force on Investment and Retirement; UC Davis Committee on Elections, Rules & Jurisdiction; Law School Admissions Committee (Chair); Shayak Sarkar Tenure Committee (Chair)

### **PROFESSIONAL SERVICE**

Served as manuscript referee for the Yale Law Journal, Stanford Law Review, Cambridge University Press, Fordham University Press, the Journal of Politics, the American Political Science Review, Political Theory, the Journal of Policy Analysis and Management and Public Budgeting and Finance.

2019-Present, Member California Department of Tax and Fee Administration Director's Advisory Council.

2019-Present, Member of the [CA] Office of Tax Appeals Advisory Committee.

2022-Present, Member of the [CA] Franchise Tax Board Advisory Board.

# HUGH D. SPITZER

**University of Washington**  
School of Law  
Campus Box 353020  
William H. Gates Hall  
Seattle, Washington 98195-3020  
206-685-1635

- B.A. Yale University, 1970  
Cum Laude, with Special Honors  
in Political Science
- J.D. University of Washington, 1974  
Washington Law Review
- LL.M. University of California, Berkeley, 1982

## **1986–Present**

### **University of Washington School of Law**

Professor of Law

Courses regularly taught:

- Professional Responsibility
- State Constitutional Law
- Local Government Law
- Roman Law
- Transnational Law
- Regularly supervise students on independent research projects.

Washington State Constitutional Law is a course on the history and substance of Washington's constitution and the relationship between the federal and state constitutions.

Professional Responsibility is a course that focuses on fundamentals of professionalism in practice as well as the basic Rules of Professional Conduct.

Local Government Law is an introduction to American municipal law, focusing on that area of law in Washington State. The course provides a doctrinal background useful to students who may work in municipal law, and provokes thinking on how law functions in its political, economic and environmental setting.

Roman Law is an introductory course to classical Roman Law, focusing on the period 100 B.C. to 180 A.D. The course covers historical background, the structure of the Roman constitution and the courts, and doctrine in the areas of personal status, property and contracts.

Transnational Law is an introduction to comparative law and international law, focusing on aspects of those topics that American lawyers are most likely to encounter in day-to-day practice.

### **1983–1986**

#### **University of Puget Sound School of Law**

Adjunct Professor. Taught Roman Law.

### **1982–2016**

#### **Foster Pepper PLLC, Seattle, Washington**

Member

- Public finance and municipal law attorney. Bond counsel on general obligation and revenue borrowings for the State of Washington, City of Seattle and numerous cities, counties, special purpose districts, housing authorities and universities. Developed new methods of financing infrastructure and affordable housing by innovative structuring of complex transactions and by redrafting state and federal legislation. Developed new approaches to working with for-profit and nonprofit corporations to help finance housing and public infrastructure improvements.
- Mediating, negotiating and drafting intergovernmental contracts and public-private contracts, usually concerning construction of major public facilities or provision of public services. Mediating intergovernmental conflicts. Work involves careful understanding of (and assistance in development of) clients' needs, communication with other parties to understand their needs, and working to structure mutually beneficial agreements.
- Underwriters' counsel and bank counsel on public finance transactions, principally for infrastructure, low and moderate-income housing and utilities transactions. Work focuses on securities law.
- Legislation drafting (usually pro bono) to assist public entities and nonprofits and to improve drafting of existing statutes. Also drafting and/or review of bills at the request of legislators and staff. Primary drafter of legislation providing significant changes in the fields of transportation, public finance, solid waste, water quality, redevelopment, and local improvement districts.
- Advising public and private clients on state constitutional law questions. Submitting *amicus* briefs to appellate courts on state constitutional and finance matters.
- As chair of municipal and public finance department 1995-1998, responsible for managing group of twenty lawyers and staff and interfacing with firm management. Served on Executive Committee of firm.

### **1980–1981**

#### **University of Washington Graduate School of Public Affairs (now Evans School)**

Lecturer. Taught Administrative Law and Public Sector Labor Law.

### **1978–1981**

#### **Office of the Mayor, City of Seattle**

Legal Counsel and Special Assistant to Mayor Charles Royer

Policy and staffing responsibilities in public safety and justice, human rights and the courts. Directed the redrafting of substantial parts of Seattle's Criminal Code and chaired a committee of prosecutors and defense attorneys in criminal code revision. Managed the reorganization of the Seattle Human Rights Department and the Office of Women's Rights. Closely involved in redrafting Seattle's Affirmative

Action Plan and the drafting and implementation of Seattle's Women and Minority Business Enterprise Ordinance. Responsible for policy development and redrafting of Seattle's Administrative Code. Developed and implemented a new merit selection system for municipal court judges. Directed a project on municipal court overload and financing, and a project on public defender organization and finance.

### **1976–1977**

#### **Seattle City Council Staff**

Worked as legislative assistant to Councilmember John Miller, focusing principally on public facilities construction projects, transportation and recreation. Investigated issues of Council concern, drafted policy papers, and engaged in negotiations.

### **1973–1976**

#### **Hafer, Cassidy & Price**

Intern, then associate, in firm specializing in labor law. Represented unions in federal court, National Labor Relations Board, state courts, administrative tribunals and arbitrations. Represented plaintiffs in civil rights actions in federal and state courts. Intensive trial and hearings practice.

### **Summer, 1972**

#### **Washington State Law and Justice Planning Office**

Program Monitor. Evaluated a dozen governmental and nonprofit-sponsored projects funded by the federal Law Enforcement Assistance Administration. Performed program audits on, among others, programs for juvenile offenders, offender rehabilitation and domestic violence.

### **1970–1971**

#### **New York City Health and Hospitals Corporation**

Budget Analyst; Assistant to Vice-President for Program Planning, Finance and Budgeting. Assisted in development of annual budget for government corporation responsible for New York City's public hospitals. Responsible for timely production of budget document. Analyzed existing and prospective programs, among others, for drug treatment in the Bronx, housing nurses near Bellevue Hospital, and allocating scarce kidney dialysis resources.

### **Summer, 1970**

#### **U.S. Department of Health, Education & Welfare**

Program Analyst, Office of Planning and Evaluation. Performed program audits on federally-funded health and social services programs in Boston and New York.

## Major Publications and Articles

THE WASHINGTON STATE CONSTITUTION (2013) (2<sup>nd</sup> ed. Oxford University Press) (with Robert F. Utter). *Book provides an article by article, section by section analysis of Washington's constitution, describing the historical background, drafting and interpretation issues, and key court cases applying each section.*

Be Careful What You Wish For: Private Political Parties, Public Primaries, and State Constitutional Restrictions, 94 Wash. L. Rev. 823 (2019). *Describes the history of Washington State's political primary systems and the impact of U.S. Supreme Court decisions (orchestrated by the political parties) that eventually led to the state's "top two" primary system that sidelines the political parties by sending the two highest vote-getters to the general election regardless of political affiliation. The article then describes potential state constitutional problems with portions of the current system in Washington.*

Amending Codes of Judicial Conduct to Impose Campaign Contribution and Expenditure Limits on Judicial Campaigns, 25 Va. J. Soc. Pol'y & L. 87 (2018) (with Phillip A. Talmadge). *Reviews social science research documenting the impact of massive judicial campaign contributions on appellate judges, and urges state supreme courts impose contribution limits and take other actions by court rule to reduce special-interest influence on the judiciary. Argues that those actions would be permissible under federal constitutional law.*

Model Rule 5.7 and Lawyers in Government Jobs—How Can They Ever Be “Non-Lawyers”? 30 Georgetown Journal of Legal Ethics 45 (2017). *Focuses on the ethical obligations of licensed lawyers working in “non-law” government staff and management positions. Recommends that attorneys in those types of jobs should evaluate their responsibilities in the context of Rule 5.7 (“Law-related Services”) of the ABA Model Rules of Professional Conduct.*

Trumping Home Rule and Sanctuary Jurisdictions: Constraints on Federal Action to Induce State and Local Collaboration with National Programs, 6 Mun. Lawyer 6 (Nov.-Dec. 2017).

Realigning the Governmental/Proprietary Distinction in Municipal Law. 40 Seattle U. L. Rev. 173 (2016). *Details the contradictory and confusing distinction between “governmental” and “proprietary” modes of local government activities in seven doctrinal areas. Recommends abolishing that distinction and replacing it with a simpler division of municipal authority into “governmental sovereign powers” and “governmental service activities.”*

“Home Rule” vs. “Dillon’s Rule” for Washington Cities, 38 Seattle U. L. Rev. 809 (2015). *Reviews the tension between the late-nineteenth century “Dillon’s Rule” limiting city powers, and the “home rule” approach that gained dominance in the early and mid-twentieth century. Explains the occasional “zombie-like” reappearance of Dillon’s Rule and recommends ways to keep to keep that doctrine buried.*

Revisiting the Client Conundrum: Whom Does Lawyer for a Government Represent, and Who Gives Direction to That Governmental Lawyer? (Univ. of Wash. Sch. of Law Research Paper No. 25-10)(2015). *Examines the special difficulties of identifying the “client” in the context of governmental entities.*

Washington State’s Mandate: The Constitutional Obligation to Fund Post-Secondary Education, 89 Wash. L. Rev. Online 15 (2014). (With Adam Sherman.) *Focuses on provisions of the Washington State Constitution that address post-secondary education, and argues that Washington State has a constitutional obligation to support and fund its institutions of higher learning.*



Pivoting to Progressivism: Justice Stephen J. Chadwick, the Washington Supreme Court and Change in Early Twentieth Century Judicial Reasoning and Rhetoric. 104 Pac. N.W.Q 107 (2014). *Focuses on the public life and writings of a Washington Supreme Court Justice who served between 1918 and 1919, and analyzes the forces that caused a rapid reversal of the Court's doctrine as it shifted from Lochner-type rejection of government regulatory statutes to support of Progressive Era enactments by the state legislature.*

Ethics Issues in Representing Intergovernmental Entities, Proceedings of the Washington State Association of Municipal Attorneys, Spring Conference 5-1 (2014). *Analyzes key attorney ethics problems inherent in the formation, and later operation, of intergovernmental entities, and suggests ways to minimize violations of the Rules of Professional Conduct.*

Organizing Interlocal Entities: What Form is Best... and Does the Interlocal Cooperation Act Need a Rewrite? Proceedings of the Washington State Association of Municipal Attorneys, Spring Conference (2013). *Recommends a substantial overhaul of Washington's Interlocal Cooperation Act, and recommends enactment of a mechanism for creation of intergovernmental municipal corporations.*

A Local Government by Any Other Name, in Proceedings of the Washington State Association of Municipal Attorneys, Fall Conference (2009). *Suggests a taxonomy of general terms for classifying local government entities, critiques the use of multiple terms for similar concepts, and recommends legislative changes.*

Washington: The Past and Present Populist State, in THE CONSTITUTIONALISM OF AMERICAN STATES 771-84 (George E. Connor and Christopher W. Hammons, eds., 2008). *Describes the impact of the late-nineteenth century populist movement on the structure and content of Washington's constitution and the consequential impact on the state's political and legal life.*

New Life for the 'Criteria Tests' in State Constitutional Jurisprudence: 'Gunwall is Dead—Long Live Gunwall' 37 Rutgers Law Journal 1169 (2006). *Outlines the development of state constitutional jurisprudence in Washington State, and provides a general theory of state constitutional analysis.*

Taxes vs. Fees: A Curious Confusion, 38 Gonzaga Law Review 335 (2003). *Provides an analytical framework for categorizing various types of taxes and user charges, melding economic and legal concepts.*

"Municipal Police Power in Washington State 75 Washington Law Review 495 (2000). *Provides a comprehensive review of the history and scope of government regulatory powers since statehood.*

Which Constitution? Eleven Years of Gunwall in Washington State" 21 Seattle University Law Review 1187 (1998). *Reviews and analyzes all Washington Supreme Court cases citing State v. Gunwall for its six-step approach to applying the State Constitution when analogous provisions of the United States Constitution also apply.*

Bearing Arms in Washington State, Proceedings of the Washington State Association of Municipal Attorneys Spring Conference (1997). *Analyzes the Washington State Constitution's strong Right-to-Bear-Arms provision in the context of 800 years of history.*

A Washington State Income Tax – Again? 16 University of Puget Sound Law Review 401 (1993). *Presents a historical review of the Washington Constitution's tax uniformity clause, the State Supreme Court cases of the 1930s that rejected the income tax.*

An Analytical View of Recent 'Lending of Credit' Decisions in Washington State, 8 Univ. of Puget Sound Law Review 195 (1985). *Presents a close analysis of Article VIII, Sections 5 and 7 of the Washington*

*Constitution, and suggests a framework for evaluating specific government actions and proposals under those provisions.*

Court Rulemaking in Washington State, 6 University of Puget Sound Law Review No. 1 (1982). *Critiques the Washington Supreme Court's weakening of the Judicial Council and the Court's assumption of control of aspects of rulemaking that might better be handled by a Judicial Council or the Legislature.*

Intra-Union Disciplinary Proceedings, The Labor Relations Law of Canada, Chapter 14 (1977). *Describes internal discipline in Canadian labor unions.*

A Survey of the Washington Industrial and Safety Act's First Months of Operation, 9 Gonzaga Law Review 639 (1974). *Presents an overview of the initial period of putting WISHA into effect.*

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#### *Book Reviews:*

Review of Cornell Clayton, et al., *Governing the Evergreen State: Political Life in Washington*, 88 Pacific Historical Review 334 (Spring, 2019).

American Federalism: Punching Holes in the Myth, 84 Washington Law Review 717 (2009). Reviews John D. Nugent, *Safeguarding Federalism: How States Protect their Interests in National Policymaking*.

Review of Robert Schapiro, *Polyphonic Federalism: Toward the Protection of Fundamental Rights*, 40 Publius, The Journal of Federalism 563 (2009)

Review of Robert F. Williams, *State Constitutional Law: Cases and Materials* 3d ed., 21 Seattle University Law Review 997 (1998)(With Charles W. Johnson)

#### **Recent CLE Presentations**

"The Washington State Constitution and Religious Freedom," Second Annual Law and Religion Symposium, University of Washington School of Law, May 17, 2019.

"State Constitutions" (with Judge Jeffrey S. Sutton and Judge Steven C. González), Puget Sound Federalist Society, April 24, 2019.

"Lawyers in Non-Lawyer Roles (When Can a Lawyer Not be a Lawyer?)" Thurston County Bar Association, Olympia, Washington, December 4, 2018.

"History and Application of Washington's 18th Amendment," Washington Highway Users Federation, Interim Transportation Briefing, Tacoma, Washington December 12, 2018.

"History and Role of Counties in Washington," Washington State Association of Counties New Commissioner Workshop, Olympia, Washington, December 12, 2018.

"Mandatory Malpractice Insurance Task Force: Overview of Tentative Recommendations," Law of Lawyering Wash. State Bar Assoc. CLE, Seattle, Washington, December 14, 2018.

"Inheritance Law in Ancient Rome," Annual Estate Planning Seminar, Seattle, Washington, November 12, 2018.

“Ethics in Government Work—How the RPCs Apply to Agency or Legislative Employment (When Can a Lawyer Not be a Lawyer?” Legislative Staff Academy, 2018, Olympia, Washington, October 10, 2018.

“5 Mistakes that Get Lawyers in Trouble,” UW Second Friday Ethics CLE, Anchorage, Alaska, January 12, 2018.

“When Can a Lawyer *Not* be a Lawyer?” Government Lawyers Bar Association, Olympia, Washington, December 8, 2017.

“Trumping Home Rule and Sanctuary Jurisdictions,” International Municipal Lawyer Association, 2017 Annual Conference, Niagara Falls, Ontario, October 18, 2017.

“Enforcing Federal Priorities Through Commandeering and Financial Threats,” Washington State Bar Association Webinar, May 24, 2017.

“When Can a Lawyer *Not* be a Lawyer?” Washington State Society of Hospital Attorneys, Seattle, Washington, April 28, 2017.

“Realigning the Governmental/Proprietary Distinction in Municipal Law,” Washington State Association of Municipal Attorneys, Walla Walla, Washington, Thursday, October 6, 2016.

“Washington State Constitutional Law – An Overview,” Washington State Appellate Judges Program, Washington State Supreme Court, Olympia, Washington, January 27, 2016.

“Ethics: Risk – The Game of Reduction of Professional Exposure, Loss Prevention, and Bond Counsel Liability,” Panelist, 40<sup>th</sup> Annual Bond Attorneys Workshop, National Assoc. of Bond Lawyers, Chicago, Illinois, Sept. 9-11, 2015

### **Other Articles**

“Want a Nonpolitical Supreme Court? Try a Successful Foreign Model,” *The Seattle Times* April 28, 2019

“On Eve of Constitution Day, Defend the Proper Protocol for Changing It,” *The Seattle Times* September 16, 2018

“‘Aid and Comfort’ to Enemies: Trump, Russia and Treason,” *The Seattle Times* July 19, 2018

“What if President Can’t Do the Job? Here’s the Constitutional Answer,” *The Seattle Times* August 11, 2017

“Bright Rights, Big City,” *Citywise*, May/June 2016

“Protip for Sagebrush Rebels: This Land was Never Yours,” *Crosscut*, March 1, 2016

“‘Sanctuary Cities’ to Find Sanctuary in the Rehnquist and Roberts Courts,” JURIST—Academic Commentary, Dec. 30, 2016, <http://www.jurist.org/forum/2016/12/Hugh-Spitzer-sanctuary-cities.php>

“Arlene’s Flowers Case Judge Got it Right,” *The News Tribune*, December 18, 2015 (with Peter Nicolas)

“Scandal Rocks Washington’s Supreme Court! Arthur S. Beardsley’s Account of the 1908 Root-Gordon Scandal.” 69 NW Lawyer 48 (Apr/May 2015)(edited & wrote introduction)

"Don't Rob Higher Education to Fund Other Education Mandates," *The Seattle Times*, November 28, 2014 (with Stan Barer)

"Is warehousing mental patients another state constitutional dilemma?" *The Seattle Times*, August 27, 2014

"Seven ways to break D.C. gridlock," *Crosscut Public Media*, November 19, 2012

"Washington's Right to Bear Arms," *The Seattle Times*, June 3, 2012

"On Law and Life in Cuba: The Cuban Legal System and Culture Offer Contrasts and Surprises," *Washington State Bar News*, January 2012

"Calling in the Cavalry" *Cityvision Magazine* March/April 2011

Book Review: (Review of Robert Schapiro, *Polyphonic Federalism: Toward the Protection of Fundamental Rights*) *Publius, The Journal of Federalism* 2009; doi:10.1093/publius/pjp039

Book Review: "American Federalism: Punching Holes in the Myth" (Review of John D. Nugent, *Safeguarding Federalism: How States Protect Their Interests in National Policymaking*) 84 *Wash. L. Rev.* 717 (2009)

"Borrowing Your City's Future" *Cityvision Magazine*, July/August 2009

"An Academic Perspective: Why We Have 51 Constitutions" *UW Law*, Spring 2009, Volume 59

"Filibuster Lets Minority Rule in Senate, Should be Ended" *Tacoma News Tribune*, February 17, 2009

"Open doors to court rulemaking process" *Seattle Post-Intelligencer*, August 13, 2008

"Power to the people! It's in the Constitution", *Crosscut Seattle*, April 17, 2008

"Pharmacists have professional obligation to serve public", *The Tacoma News Tribune*, Friday, March 14, 2008

"Split the Justice Department to Keep Politics, Prosecution Separate" *Seattle Times*, August 1, 2007

"Saving for A Rainy Day: Good, But Not Good Enough" *Seattle Times*, March 5, 2007

"Property Rights vs. the Law" *Seattle Times*, October 27, 2006

"Those Dirty (Fill in the Blanks) Turn into Americans" *Seattle Times*, May 24, 2006

"Devil's in the Details of Tax Increment Financing" *Puget Sound Business Journal*, April 21-27, 2006

"State's Constitution, High Court Shield Us from Improper Condemnation of Property" *News Tribune*, March 19, 2006

"State Should Boost Investment in Affordable Housing" *Seattle Times*, January 13, 2006

"Remove Partisan Stain from State Elections" *Seattle Times*, June 29, 2005

"Back to the Future: How 13 Superstates Can Restore the Founders' Vision" *Seattle Times*, November 14, 2004

"Wave Goodbye to Attorney-Client Privilege?" *Washington State Bar News*, Vol. 58, No. 11, November 2004

“Watch Out for Accidental Taxes!” Washington Association of Sewer and Water Districts, Pipeline, Volume 9, Issue 8, August 2004.

“Same-Sex Marriage Decision Draws on Sound Jurisprudence” Tacoma News Tribune, August 15, 2004

“Washington State’s Upside-Down Tax System” Seattle Times, June 6, 2004

“Public Disclosure Act Services the Public” (with Sue Donaldson) Seattle Post-Intelligencer, June 1, 2004

“Keep Populism Positive” Seattle Post-Intelligencer November 19, 2003

“The Tax Devil You Know Isn’t Doing You Any Favors” Seattle Times, January 13, 2003.

“Out of Balance: State’s Tax System is Broken and Needs Fixing” Seattle Post-Intelligencer, December 8, 2002.

“There’s No Free Ride” The Seattle Times, October 6, 2002.

“Legal and Policy Analysis: Assessing the Potential for New School Funding Litigation and Initiatives,” for 2002 Washington School Law Academy (with Steven S. Miller).

“Watch For Some Big-Picture Changes Coming Monday to the Supreme Court” Seattle Post Intelligencer, January 7, 2001.

“Why Lawyers Have Often Worn Strange Clothes, Claimed to Work for Free – and Been Hated” Washington State Bar News, September 2000.

“Take the Initiative on Constitutionality” Seattle Post Intelligencer, July 16, 2000.

“Many Ways to Marry” Seattle Post Intelligencer, April 28, 2000.

“U.S. Supreme Court Decision Affirms States Exist (Surprise!)” Seattle Post-Intelligencer, July 15, 1999.

Preface to 1999 Reprint of Beverly Rosenow, Journal of the Washington State Constitutional Convention.

Book Review: “Theme and Variations” (Review of Robert F. Williams, State Constitutional Law: Cases and Materials, 2d Ed.) 21 Seattle University Law Review 997 (1998) (with Charles W. Johnson).

“Washington’s Constitution: How It Affects Us,” Four-part series in the Seattle Post-Intelligencer, November 16, 18, 19, 20, 1997.

Book Review: “The Best-Kept Secret: How to Find It and Where to Find It: Washington Legal Researcher’s Deskbook,” Washington Journal, December 19, 1996, p. 12.

“Riders’ Should Be Run Out of Washington D.C.,” Seattle Post-Intelligencer, December 21, 1995.

“O.J. Might As Well Be Tried By The Romans,” Seattle Post-Intelligencer, July 13, 1994, at A19.

“Financing an Integrated Coastal Zone Management Program,” presented to the IPCC Regional Preparatory Workshop (a United Nations international workshop on impacts of climate change), July 16, 1993.

“Caesar Would Have Arbitrated,” 47 Washington State Bar News No. 4, pp. 50-51 (1993).

Book Review: “The Fall of the House of WPPSS,” 18 Urban Lawyer 284 (1986).

“OK, Margaret. Now that you’ve got the Falklands back, what will you do with them?” Seattle Post-Intelligencer, August 1, 1982, at B5.

“Is Washington Ready for Merit Selection of Judges?” with William S. Bailey, 35 Washington State Bar News No. 6, p. 66 (1981).

“Impact of the New Court of Record Rules on Courts of Limited Jurisdiction in Washington State,” Proceedings of the Washington State Association of Municipal Attorneys (1981).

“Law Libraries Losing to ‘Double Inflation,’” 34 Washington State Bar News No. 11 (1980).

“I-90 and the Politics of Mediation,” 83 Argus No. 18 (1976).

“Business and Students,” 13 California Management Review 83 (1970).

### **Community Affairs**

Member, Washington State Bar Association Committee on Professional Ethics

Chair, Washington State Bar Association, Mandatory Malpractice Insurance Task Force

Board Member, Washington State Budget and Policy Center, 2006 to 2016

Chair, Washington State Affordable Housing Advisory Board, 2000 – 2007

Chair, Washington State GMA and Housing Task Force, 2007

Vice-Chair, Washington State Tax Structure Study Committee, 2001-2002

Member, King County Financial Policies Advisory Task Force, 2007

Board Member, Wedgwood Swim Pool, 2004-2006; President, 2006

Board Member, Institute for a Democratic Future, 2000 to present

Member, Funding Alternatives Work Group, Court Funding Task Force, 2003-2004

Member, Council on Public Legal Education, 1997-2005

Member, Governor’s Economic Development Task Force, 2002

Member, Jurisprudence Committee of the Access to Justice Board, 1997-2005

Member, King County Bar Foundation President’s Council, 1996-2002

Member and Vice-Chair, Puget Sound Water Quality Authority, 1987-1996

Member and Chair, City of Seattle Low-Income Housing Levy Oversight Committee, 1987-1996

Board Member, King County Housing Partnership (a non-profit corporation), 1990-1997; on Executive Committee 1990-1994

Board, University of Washington Law School Alumni Association, 1985-1990

Member and Secretary, Washington State Law Revision Commission (Washington State Bar Association appointee), 1982-1987

Member, Greater Seattle Chamber of Commerce Solid Waste Task Force, 1988-1990

Member, Seattle City Council's Harborfront Advisory Committee, 1987-1988

Member, Washington State Public Works Advisory Board and Chair of its Finance Subcommittee, 1984-1985

Visiting Committee, U. W. School of Law, 1980-1988

Member, METRO Citizens Transit Advisory Committee, 1975-1977

Regularly write and submit *amicus curiae* appellate briefs *pro bono* (e.g., submitted Washington State Supreme Court briefs on behalf of the American Association of University Professors opposing Initiative 601, for the Association of Washington Cities regarding street utility charges, for the Greater Seattle Chamber of Commerce supporting community redevelopment financing, and for a group of legislators supporting access to marriage for same-sex couples.

### **Awards and Recognition**

Ernest H. Campbell Award for Excellence in the Practice of Municipal Law, Washington State Assoc. of Municipal Attorneys, 2016

American Association of University Professors, UW Chapter, 2015 Award for Courage in Pursuit of Excellence in Washington State Higher Education

Seattle Magazine, Top 155 Lawyers, Designation: Constitutional Law, 2006-2012

Best Lawyers in America – Public Finance Law, 2007-2016

Super Lawyer, Washington Law and Politics, 2000-2016; Top 100 Lawyers 2011

Good in Government Award, League of Women Voters of Washington, 2006

Outstanding Alums Achievement Award, Washington Law Review, 1996

### **Professional and Bar Memberships**

Washington State Bar Association

American Bar Association

ABA Center for Professional Responsibility

American Political Science Association

American Society for Political and Legal Philosophy

National Association of Bond Lawyers

Washington State Association of Municipal Attorneys

Seattle-King County Bar Association

SKCBA Committee on Public Defense Services (approx. 1980)

SKCBA Committee on Court Modernization (approx. 1980)

7/8/2019

**SMITH GOODFRIEND, PS**

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