

**DANIEL P. TOKAJI**

Associate Professor of Law  
The Ohio State University, Moritz College of Law  
55 W. 12th Avenue  
Columbus, OH 43210  
614.292.6566  
tokaji.1@osu.edu

**EXPERIENCE**

**THE OHIO STATE UNIVERSITY, MORITZ COLLEGE OF LAW** **2003-present**

- Assistant Professor of Law
- Associate Director, Election Law @ Moritz Project
- Research interests: election law, election administration, racial justice, freedom of speech
- Courses taught: Fourteenth Amendment, Legislation, Federal Courts, Civil Procedure, Legal Writing
- Moot Court Advisor of the Year (2004)

**AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA** **1995-2003**

- Staff Attorney, ACLU Foundation of Southern California (1996 - 2003).
- George Slaff First Amendment Fellow, ACLU Foundation of Southern California (1995 - 96)

**JUDGE STEPHEN REINHARDT, NINTH CIRCUIT COURT OF APPEALS** **1994-95**

- Law Clerk. Drafted bench memoranda and opinions on federal issues including First Amendment, Fourth Amendment, employment, due process, immigration, and disability benefits.

**SIMPSON, THACHER & BARTLETT** **1993**

- Summer Associate. Wrote memoranda and briefs on environmental, insurance and legal malpractice issues.

**NAACP LEGAL DEFENSE & EDUCATIONAL FUND** **1992**

- Summer Intern. Researched and wrote memoranda and briefs on educational equity, school desegregation, employment discrimination, and fair housing issues.

**EDUCATION**

**YALE LAW SCHOOL** **J.D., 1994**

- *Yale Law Journal*
- *Yale Journal of Law & the Humanities*
- Director, Disability Clinic
- Coker Teaching Fellow, Contracts I, Professor Reva Siegel
- Research Assistant, Professor Jerry Mashaw

**HARVARD UNIVERSITY** **A.B., 1989**

- Summa Cum Laude, English and American Literature/Philosophy
- Phi Beta Kappa
- Supervisor, University Lutheran Homeless Shelter
- Big Brother Program, Phillips Brooks House

## **PUBLICATIONS**

### ***Articles & Essays***

*Leave It to the Lower Courts: On Judicial Intervention in Election Administration*, – OHIO STATE LAW JOURNAL – (forthcoming 2007).

*Absentee Voting for People with Disabilities*, – MCGEORGE LAW REVIEW – (forthcoming 2007) (with Ruth Colker).

*Intent and Its Alternatives: Defending the New Voting Rights Act*, 58 ALABAMA LAW REVIEW 349 (2007).

*If It's Broke, Fix It: Improving Voting Rights Act Preclearance*, 49 HOWARD LAW JOURNAL 785 (2006).

*The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 SOUTH CAROLINA LAW REVIEW 689 (2006).

*Early Returns on Election Reform: Lessons from Ohio's Experience*, 73 GEORGE WASHINGTON LAW REVIEW 1206 (2005).

*The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM LAW REVIEW 1711 (2005).

*First Amendment Equal Protection: On Discretion, Inequality and Participation*, 101 MICHIGAN LAW REVIEW 2409 (2003).

*Promoting Equality by Protecting Local Power: A Neo-Federalist Challenge to State Affirmative Action Bans*, 10 STANFORD LAW & POLICY REVIEW 129 (1999) (with Mark D. Rosenbaum).

*The Club: Asian Americans and Affirmative Action*, 1 NEXUS LAW JOURNAL, No. 2, at 47 (1996).

Note, *The Persistence of Prejudice: Process-Based Theory and the Retroactivity of the Civil Rights Act of 1991*, 103 YALE LAW JOURNAL 567 (1993).

### ***Book Chapters***

*The Story of Shaw v. Reno: Representation and Raceblindness*, in RACE LAW STORIES (Foundation Press, forthcoming 2007).

*Political Equality After Bush v. Gore: A First Amendment Approach to Voting Rights*, in FINAL ARBITER: THE CONSEQUENCES OF *BUSH V. GORE* FOR LAW AND POLITICS (SUNY Press 2005).

*The Possibility of Dissent in the Age of Terrorism: A First Amendment Problem and a Proposal for Reform*, in AMERICAN NATIONAL SECURITY AND CIVIL LIBERTIES IN AN ERA OF TERRORISM (Palsgrave Macmillan 2004).

### ***Book Reviews***

*The Birth and Rebirth of Election Administration*, 6 ELECTION LAW JOURNAL 118 (2007) (book review of

Roy G. Saltman's *The History and Politics of Voting Technology*).

*Healing the Blind Goddess: Race and Criminal Justice*, 98 MICHIGAN LAW REVIEW 1941 (2000) (book review of David Cole's *No Equal Justice*, with Mark D. Rosenbaum).

### ***Funded Research Projects***

*Registration to Recounts: The Election Ecosystems of Five Midwestern States*. Report examining the election administration practices of five midwestern states, funded by Joyce Foundation (forthcoming 2007) (with Profs. Ned Foley and Steve Huefner).

*Reforming Ohio's Democracy: What's Wrong, What We Can Do About It*. Lead author of report on Ohio's election, campaign finance, lobbying, redistricting, and ethics systems, funded by the Joyce Foundation (2006)(with Prof. Herb Asher, Catherine Turcer, Peg Rosenfeld, and Anne Henkener).

*Provisional Voting and Voter ID*. Assisted in research and writing reports on the states' implementation of provisional voting and voter identification, funded by the U.S. Election Assistance Commission (2006) (with Rutgers University's Eagleton Institute and Prof. Ned Foley).

### ***Web-Based Publications (partial list)***

"Equal Vote" Blog (<http://moritzlaw.osu.edu/blogs/tokaji/>)

*Election Law @ Moritz* Weekly Comments (available at <http://electionlaw.osu.edu>):

- "Money for Data: Funding the Oldest Unfunded Mandate"(June 5, 2007, with Thad Hall)
- "The Politics of Justice" (May 22, 2007)
- "Early Voting in 2008" (March 13, 2007)
- "Congress Turns to Election Administration" (Nov. 28, 2006)
- "Recount Redux? What Might Happen in a Close Election (Oct. 31, 2006)
- "In Praise of Pre-Election Litigation" (Sept. 19, 2006)
- "Thinking About Democracy: Justice Stevens and the Roberts Court" (July 18, 2006)
- "Voting Technology: Beyond HAVA, Beyond Paper" (Mar. 14, 2006)
- "The Moneyball Approach to Election Reform" (Oct. 18, 2005)
- "The Carter-Baker Report: Two Wrongs Don't Make a Right" (Sept. 20, 2005)
- "Are Election Reforms Increasing the Margin of Litigation?" (June 21, 2005)
- "ID and the Right to Vote" (Apr. 12, 2005)
- "How Did Ohio's Voting Equipment Fare in 2004?" (Feb. 8, 2005)
- "The Paper Trail" (July 27, 2004)
- "The Help America Vote Act: An Overview" (2004)
- "Voting Technology: From 2000 to 2004 and Beyond" (2004)

*Findlaw.com* Guest Columns:

- "Litigating the 2006 Elections: The Top Three Issues Dominating Battles In And Out of Court, And the Reasons for the Election Lawsuit Explosion" (Sept. 27, 2006).
- "Ohio's 'Coingate' Scandal: How It Exposes the Flaws of Our Campaign Finance System" (July 7, 2005).
- "The 2008 Election: Could It Be A Repeat of 2000?" (Nov. 30, 2004).

"Vote by Mail: An Exchange," *American Prospect Online*, May 10, 2006.

## **PRESENTATIONS (partial list)**

“New Challenges to Voting and Democracy: What to Look Out for in 2008,” Southeastern Association of Law Schools Annual Meeting (Amelia Island, FL, August 4, 2007).

“Breaking Ballot Barriers,” Campus Progress National Student Conference (Washington, DC, June 26, 2007).

“The New Vote Denial: Voter ID and Other Barriers to Equal Participation,” ACLU Biennial Conference (Seattle, June 14, 2007)

“Obstacles to an Integrated Pro-Democracy Agenda,” Proteus Fund, Conference on Broader Democracy Agenda (Chicago, May 15-16, 2007).

“The Voting Rights of Asian Americans,” Conference of Asian Pacific American Law Faculty, William Mitchell Law School (St. Paul, MN, April 27-28, 2007).

“Asian Pacific American Voting Rights,” Yale Law School Pacific Islander, Asian, and Native American Students’ Association (New Haven, April 24, 2007).

“The Birth and Re-birth of Election Administration,” Midwest Political Science Association Annual Meeting, Voting and Elections Technology Section (Chicago, April 13, 2007).

“Voter Participation,” Stanford Law School Conference on Elections and Democracy (Stanford, CA, April 6-7, 2007).

“Voting Rights Act Reauthorization,” Federalist Society, Debate with Roger Clegg, Moritz College of Law (Columbus, March 27, 2007).

“Absentee Voting for People with Disabilities,” ABA Conference on Facilitating Voting as People Age, McGeorge School of Law (Sacramento, CA, March 21-24, 2007).

“Leave It to the Lower Courts: On Judicial Intervention in Election Administration,” Yale Law School, Election Law Workshop (New Haven, March 14, 2007).

“Mentoring and Networking,” Asian Pacific American Bar Association of Central Ohio (Columbus, March 8, 2007).

“Voting Access, Integrity & the Trustworthiness of the Democratic Process,” NYU Annual Survey of American Law Symposium (New York, NY, February 23, 2007).

“Registration to Recounts: The Election Ecosystems of Five Midwestern States,” Midwest Democracy Network, Joyce Foundation (Chicago, February 14, 2007).

“Vote Suppression in the 21st Century: What Happens and How to Stop It,” People for the American Way, Senate Russell Office Building (Washington, DC, February 9, 2007).

“Contemporary Threats to Voting Rights,” Moritz Black Law Students Association (Columbus,

February 2, 2007).

“Voter ID and Related Legal Issues,” Ohio Association of Elected Officials (Columbus, January 24, 2007).

“The Future of Election Reform,” Opening Remarks, Kent State University, Conference on Election and Ethics Reform (Columbus, January 16, 2007).

“The New Vote Denial: Voter ID and Other Barriers to Participation,” University of Michigan Law School (Ann Arbor, November 29, 2006).

“Disenfranchised or Detected? How the Country's Most Restrictive Photo ID Law Affected Election Day Voting in Indiana,” American Constitution Society, Indiana Chapter (Indianapolis, November 10, 2006).

“The Future of Voting Rights,” OSU Politics, Society and Law Program (Columbus, October 24, 2006).

“Voter ID: Legal Issues,” Caltech/MIT Voting Technology Project, Conference on Voter Identification and Voter Registration, MIT (Cambridge, MA, October 6, 2006).

“LULAC and the Future of the VRA,” Co-organizer and Panelist, Ohio State Law Journal Symposium on Election Law and the Roberts Court (Columbus, September 30, 2006).

“The Sordid Business of Democracy,” Dean’s Lecture, Ohio Northern University (Ada, OH, September 21, 2007).

“The New Voting Rights War,” American Constitution Society, Northeast Ohio Chapter (Cleveland, July 11, 2006).

“Reexamination of the Voting Rights Act,” Federalist Society, Debate with Abigail Thernstrom and Linda Chavez, National Press Club (Washington, DC, June 28, 2006).

“Junior Faculty Feedback,” AALS New Law Teachers’ Conference (Washington, DC, June 23, 2006).

“Redistricting: Where Should We Draw the Lines?,” American Constitution Society, National Convention (Washington, DC, June 16, 2006).

“Accessible Democracy: The Voting Rights of People with Disabilities,” Ohio Association of Election Officials (Cleveland, June 14, 2006).

“Life, Death, and Strategy: The Death Penalty, Life Without Parole, and Juveniles,” Liman Colloquium, Yale Law School, (New Haven, CT, March 30, 2006).

“Are U.S. Elections Getting Better or Worse? Is HAVA Working?,” Center for Democracy and Election Management, American University (Washington, D.C., March 28, 2006).

“If It’s Broke, Fix It: Improving Voting Rights Act Preclearance,” Washington & Lee Law School

Faculty Workshop (Lexington, VA, February 6, 2006).

“Voting Rights Act Reauthorization,” Midatlantic People of Color Conference, American University (Washington, DC, January 27, 2006).

“The Story of *Shaw v. Reno*,” Ohio Legal Scholarship Workshop (Columbus, January 21, 2006).

“Defending the New Voting Rights Act,” AALS Annual Meeting (Washington, DC, January 7, 2006).

“The Story of *Shaw v. Reno*,” Race Law Stories Conference, Fordham Law School (New York, November 11, 2005).

“Election Reform and the Voting Rights Act,” Branton Symposium, Howard Law School (Washington, DC, October 28, 2005).

“The Increasing Role of the Judiciary in Elections,” Judges Day, Moritz College of Law (Columbus, October 27, 2005).

“Where Election Reform Meets Voting Rights,” University of South Carolina Law Review Symposium (Columbia, SC, October 20, 2005).

“Threats to Voting Systems,” National Institute on Standards and Technology (Gaithersburg, MD, October 7, 2005).

“The Moneyball Approach to Election Reform,” University of the District of Columbia Law Review Symposium (Washington, DC, September 30, 2005).

“Who Draws the Lines? Who Counts the Votes,” Co-organizer, Keynote Respondent and Panelist, Conference on Independent Election Administration, Moritz College of Law (Columbus, September 9-10, 2005).

“Voting Rights and Election Reform,” AFL-CIO Annual Union Lawyers’ Conference (San Francisco, CA, May 11, 2005).

“The Life and Legacy of Fred Korematsu,” Keynote, Asian Pacific American Law Students Association Annual Banquet (Columbus, April 7, 2005).

“When the First Amendment and University Policy Intersect: Human Dynamics, Legal Complexities, and Religious Beliefs,” Ohio State University (Columbus, April 7, 2005).

“The State of Elections: What Went Right and Wrong in the Administration of the 2004 Elections,” Funders’ Committee for Civic Participation (New York, December 14, 2004).

“A Framework for Understanding Electronic Voting,” National Academies’ Computer Science and Telecommunications Board, (Washington, DC, December 9, 2004).

“Early Returns on Election Reform,” George Washington Law Review Symposium, Library of

Congress (Washington, DC, November 15, 2004).

“Election Law, Voting Rights and the 2004 Election,” American Constitution Society, Miami Chapter, University of Miami (Miami, FL, October 22, 2004).

“E-Voting: Problems Expected in the November Election?,” Commonwealth Club (San Francisco, CA, October 7, 2004).

“Judicial Review of Election Administration,” Colloquium, Notre Dame Law School (South Bend, IN, September 27, 2004).

“The 2004 Election and Beyond,” Organizer and Panelist, Conference on Electronic Voting, Moritz College of Law (Columbus, September 23, 2004).

“The Great Paper Trail Debate,” Computers, Freedom and Privacy Conference (Berkeley, CA, April 23, 2004).

“The Racial Privacy Initiative,” Loyola Law School Faculty Workshop (Los Angeles, November 3, 2003).

“The California Recall: Legal Issues and Implications,” Moritz College of Law (Columbus, September 24, 2003).

## **LITIGATION (partial list)**

### ***Voting and Democracy***

- *Boustani v. Blackwell*. Obtained permanent injunction against Ohio election law requiring naturalized citizens to produce a certificate of naturalization at the polls when their eligibility to vote is challenged (with ACLU of Ohio).
- *Stewart v. Blackwell*. Constitutional and Voting Rights Act challenge to Ohio’s use of non-notice voting equipment. (with ACLU of Ohio).
- *Southwest Voter Registration Education Project v. Shelley*. Challenge to California gubernatorial recall election set for October 7, 2003, on the ground that the use of unreliable punch card voting machines would violate voters’ rights under the Equal Protection Clause and Voting Rights Act (with ACLU of So. Cal.).
- *Common Cause v. Jones*. Challenged California's use of pre-scored punch card voting machines under Equal Protection Clause and Voting Rights Act. Obtained orders applying *Bush v. Gore* to disparities in voting equipment and decertifying punch cards effective March 2004.
- *Voting Rights Coalition v. Wilson*. Required California to implement “Motor Voter” law and defended law against constitutional challenge.

### ***Freedom of Speech***

- *SEIU Local 660 v. Los Angeles* and *D2K Planning Coalition v. Parks*. Successfully challenged

restrictions on political demonstrations at 2000 Democratic National Convention. Secured opinion striking down rules restricting parades and access to public parks, and temporary restraining order against police department's interference with protesters (with Carol Sobel, Bob Myers and Professor Karl Manheim).

- *Hamilton v. City of San Bernardino, Eakins v. State of Nevada, Chaker v. Grogan*. Successfully challenged California and Nevada defamation laws criminalizing false citizen complaints against police officers.

### ***Disability Rights***

- *Beauchamp v. Los Angeles County Metropolitan Transportation Authority*. Class action under Americans with Disabilities Act, successfully challenging failure to accommodate mobility-impaired bus riders (with Stanley Fleishman, David A. Warshaw, and Peter J. Eliasberg).
- *Flores v. Los Angeles County Metropolitan Transportation Authority*. Americans with Disabilities Act class action on behalf of people with severe disabilities who rely on complementary paratransit service (with Western Law Center for Disability Rights, and Protection & Advocacy, Inc.).

### ***Race and Gender Equity***

- *Coalition for Economic Equity v. Wilson*. Challenged California's Proposition 209, which prohibited race- and sex-conscious affirmative action.
- *Regents of the University of California v. Superior Court/Molloy*. Argued open meeting act case before California Supreme Court, seeking to hold Governor and Regents liable for pre-meeting agreement to abolish affirmative action (with Lawyers' Committee for Civil Rights and First Amendment Project).

### ***Poverty and Welfare***

- *Saenz v. Roe*. Co-wrote brief to United States Supreme Court, resulting in opinion striking down California law reducing welfare benefits for newly arrived California residents (with Professor Evan Caminker, Professor Laurence Tribe, and NOW Legal Defense and Education Fund).

### ***Immigrants' Rights***

- *Gregorio T. v. Wilson*. Successfully challenged California's Proposition 187, which would have denied public education and benefits to undocumented immigrants (with MALDEF and others).

### **NONPROFIT BOARDS**

- Asian Pacific American Bar Association of Central Ohio, Founding Board Member (2006-present).
- American Civil Liberties Union of Ohio, Board Member (2004-present).
- Conference of Asian Pacific American Law Faculty, Executive Board Member (2004-present).
- Common Cause, National Governing Board Member (1999-2005).
- California Common Cause, Board Member (1997-2003), Chair (2000-03).

## **BAR ADMISSIONS**

*State courts:* California (1996); Massachusetts (1995) (inactive).

*Federal courts:* United States Supreme Court (1999); United States Court of Appeals for the Ninth Circuit (1996); United States District Courts for the Central District of California, Northern District of California, and Eastern District of California (1996).