

# GAIL HERIOT

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## EMPLOYMENT:

### **Professor of Law, *University of San Diego School of Law***

1989 - present (full professor since 1993).

Courses: Civil Rights Law & History, Employment Discrimination, Foundations of Contract, Property & Tort (Seminar), Legislation in the Modern Administrative State, Products Liability, Remedies, Torts.

### **Commissioner, *United States Commission on Civil Rights***

2007 - present. Appointed by the President Pro Tempore of the U.S. Senate on the recommendation of Republican Leader Mitch McConnell. Most recently re-appointed in December of 2019 to an additional six-year term.

### **Associate Dean for Academic Affairs & Professor of Law, *George Mason University School of Law*** 1998 - 1999.

Duties: Faculty administrator in charge of faculty and academic programs.  
(Held position while on leave from the University of San Diego).

### **Counsel, *United States Senate Committee on the Judiciary***

Spring Semester 1998.

Duties: Advised Committee Chairman Senator Orrin G. Hatch on civil rights issues and judicial nominations.  
(Held position while on leave from the University of San Diego).

### **Associate, *Hogan & Hartson*** (now known as Hogan Lovells), Washington, D.C.

1984 - 1989.

Duties: Litigated pharmaceutical products liability, securities, and intellectual property cases in federal and state courts at trial and appellate levels.

### **Associate, *Mayer, Brown & Platt*** (now known as Mayer Brown), Chicago, Illinois

1982 - 1983.

Duties: General litigation and commercial practice.

### **Law Clerk, *The Honorable Seymour F. Simon***, Supreme Court of Illinois

1981 - 1982.

## SELECTED ACADEMIC & PROFESSIONAL PUBLICATIONS:

*Race Preferences, Diversity, and Students for Fair Admissions: A New Day, A New Clarity*, 77 S.M.U. L. Rev. 285 (2024)(symposium issue)(with Maimon Schwarzschild).

*Not Taking No for an Answer: California Legislators Are Trying to Gut Proposition 209—Again*, City Journal, March 10, 2024.

*Closing the Credentials Gap: The Affirmative Action Ruling Represents Real Progress*, City Journal, July 18, 2023.

*An Agenda for Congress*, The New Criterion, October 2022 (symposium issue).

*The Roots of Wokeness: Title VII Damage Remedies as Potential Drivers of Attitudes Toward Identity Politics and Free Expression*, 27 Tex. Rev. L. & Politics 169 (2022).

*The Defeat of Proposition 16 in California and Mr. Dooley: Should the Supreme Court Take Note of “Th’ Ilicition Returns” the Next Time It Addresses Race-Preferential Admissions Policies?*, 22 Fed. Soc. Rev. 72 (2021)(with Alexander Heideman).

*The Sausage Factory in A Dubious Expediency: How Race Preferences Damage Higher Education* (Gail Heriot & Maimon Schwarzschild, eds.)(Encounter Books 2021)(with Carissa Mulder).

*Title VII Disparate Impact Liability Makes Almost Everything Presumptively Illegal*, 14 N.Y.U. J. L. & Liberty 1 (2020).

*The Department of Education's Obama-Era Initiative on Racial Disparities in School Discipline: Wrong For Students and Teachers, Wrong on the Law*, 22 Tex. Rev. L. & Politics 471 (2018) (with Alison Somin).

*Perceptions of Newsworthiness are Contaminated by a Political Usefulness Bias*, 5 Royal Soc. Open Sci.172239 (2018)(with Hal Pashler).

*The Nineteenth Amendment*, The National Constitution Center (2018)(with Nancy Gertner), available at <https://constitutioncenter.org/interactive-constitution/amendments/amendment-xix>.

*Apprenticeships: Useful Alternative, Tough to Implement*, Cato Institute Policy Analysis (November 17, 2016).

*A Dubious Expediency: How Race-Preferential Admissions Policies Hurt Minority Students*, Heritage Foundation Special Report 167 (August 31, 2015)(updated version titled *A Dubious Expediency* in *A Dubious Expediency: How Race Preferences Damage Higher Education* (Gail Heriot & Maimon Schwarzschild, eds.)(Encounter Books 2021).

*Working Backwards: How Employment Regulation Hurts Unemployed Millennials*, 38 Harv. J. L. & Pub. Pol'y 781 (2015).

*Online Symposium on Richard Epstein's The Classical Liberal Constitution: The Uncertain Quest for Limited Government: Due Deference to the Political Branches*, Library of Law & Liberty (March 17, 2014).

*Online Schuette Symposium: The Parade of Horribles Lives*, SCOTUSBlog (September 13, 2013).

*Fisher v. University of Texas: The Court (Belatedly) Attempts to Invoke Reason and Principle*, 2012-13 Cato Sup. Ct. Rev. 63 (2013)

*The Sad Irony of Affirmative Action*, National Affairs (Winter 2013).

*Sleeping Giant: Section Two of the Thirteenth Amendment, Hate Crimes Legislation, and Academia's Favorite New Vehicle for the Expansion of Federal Power*, Engage (December 2012)(with Alison Somin).

Online *Fisher* symposium: *Is the era of race-preferential admissions drawing to a close?*, SCOTUSBlog (September 5, 2012)(with John Eastman).

*Affirmative Action for Men? Strange Silences and Strange Bedfellows in the Public Debate Over Discrimination Against Women in College Admissions*, Engage (November 2011)(with Alison Somin).

*Just Say No to Affirmative Action*, 24 Acad. Quest. 449 (2011).

*Want to be Doctor? A Scientist? An Engineer? An Affirmative Action Leg Up May Hurt Your Chances*, 11 Engage 18 (December 2010).

*Disparate Impact and the Soft Coercion of the Uniform Guidelines on Employee Procedures*, SCOTUSBlog (February 23, 2010).

*Lights! Camera! Legislation! Grandstanding Congress Set to Adopt Hate Crimes Bill that May Put Double Jeopardy Protections in Jeopardy*, 10 Engage 4 (February 2009).

*Affirmative Action in American Law Schools*, 17 J. Contemp. Legal Issues 237 (2008)(symposium issue).

*Parents Involved in Community Schools v. Seattle School District No. 1*, in Oxford Guide To United States Supreme Court Decisions (Kermit L. Hall, James W. Ely, Jr. Joel B. Grossman, eds.)(2d ed. 2008).

*The Equal Rights Amendment: Back for an Encore Performance?* Engage Magazine 29 (February 2008).

*Book Review: Jerome Karabel's The Chosen*, Engage 153 (February 2007).

*Are Bloggers Following in the Footsteps of Publius? (And Other Musings on Blogging by Legal Scholars)*, 84 Wash. U.L.Q. 1113 (2006)(symposium issue).

*Aloha, Akaka Bill*, Engage 43 (October 2006).

*In Recent Decades, The Confirmation Process Has Been Time Consuming and Sometimes Bitter and Partisan, But It's Unlikely to Get Better as Long as Justices Are Perceived as Policymakers*, San Diego Lawyer Magazine (March-April 2006).

*Misdiagnosis: A Comment on "Illness and Injury as Contributors to Bankruptcy" and the Media Publicity Surrounding It*, 10 Tex. Rev. L. & Politics 229 (2005).

*Comment: Traditionalism and Rationalism in the Courts*, 42 San Diego L Rev. 1103 (2005)(symposium issue).

*Taking the Michigan Cases Seriously: Thoughts on Grutter v. Bollinger and Gratz v. Bollinger as Law and Practical Politics*, 36 Loy. (Chi.) L.J. 137 (2004)(symposium issue).

*Symposium on Direct Democracy: An Introduction*, 13 J. Contemp. Legal Issues 1 (2004).

*Standardized Tests Under the Magnifying Glass: A Defense of the LSAT Against Recent Charges of Bias*, 7 Tex. Rev. L. & Politics 467 (2003) (with Christopher T. Wonnell).

*Civilizing Punitive Damages: Lessons from Restitution*, 36 Loy. (L.A.) L. Rev.869 (2003)(symposium issue).

*Strict Scrutiny, Public Opinion and Racial Preferences on Campus: Should the Courts Find a Narrowly Tailored Solution to a Compelling Need in a Policy Most Americans Oppose?*, 40 Harv. J. Legis. 219 (2003).

*Symposium Introduction: Law School Admissions Reform*, Academic Questions 18 (Winter 2001-02).

*The Politics of Admissions in California*, Academic Questions 29 (Fall 2001).

*The University of California Under Proposition 209*, 6 Nexus 163 (2001) (symposium issue).

*Book Review: Richard Epstein's Re-Torts*, 3 Green Bag 2d 219 (2000).

*Book Review: Daniel A. Farber & Suzanna Sherry's Beyond All Reason: The Radical Assault on Truth in American Law*, Academic Questions 85 (Spring 1999).

*California's Proposition 209 and the United States Constitution*, 43 Loyola (New Orleans) L. Rev. 613 (1998) (symposium issue).

*Symposium on Law, Human Behavior and Evolution: An Introduction*, 8 J. Contemp. Legal Issues 1 (1997).

*An Essay on the Civil-Criminal Distinction With Special Reference to Punitive Damages*, 7 J. Contemp. Legal Issues 43 (1996) (symposium issue).

*Songs of Experience: A Review Essay of Anthony Kronman's The Lost Lawyer: Failing Ideals of the Legal Profession*, 81 Va. L. Rev. 1721 (1995).

*The Practical Role of Harm in Criminal Law and the Law of Tort*, 1 J. Contemp. Legal Issues 145 (1994) (symposium issue).

*The New Feudalism: The Unintended Destination of Contemporary Trends in Employment Law*, 28 Ga. L. Rev. 167 (1993).

*A Study in the Choice of Form: Statutes of Limitation and the Doctrine of Laches*, 1992 B.Y.U.L. Rev. 917 (1993).

*Whether Pigs Have Wings*, 38 Wayne L. Rev. 31 (1991).

*Way Beyond Candor*, 89 Mich. L. Rev. 1945 (1991).

**BOOKS EDITED:**

A Dubious Expediency: How Race Preferences Damage Higher Education (Gail Heriot & Maimon Schwarzschild, eds.)(Encounter Books 2021).

**SELECTED COMMISSIONER STATEMENTS (INCLUDING DISSENTS) IN REPORTS OF THE U.S. COMMISSION ON CIVIL RIGHTS:**

The Federal Response to Anti-Asian Racism in the United States (September 2023).

Civil Rights and Protections During the Federal Response to Hurricanes Harvey and Maria (September 2022).

The Civil Rights Implications of Cash Bail (November 2021).

Racial Disparities in Maternal Health (September 2021).

Subminimum Wages: Impact on the Civil Rights of People with Disabilities (September 2020).

Examining the Race Effects of Stand Your Ground Laws and Related Issues (April 6, 2020).

Free to Learn: Speech and Sexual Harassment on Campus (February 19, 2020).

In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes (November 2019).

Trauma at the Border: The Human Cost of Inhumane Immigration Policies (September 2019).

Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities (July 2019).

Broken Promises: Continuing Funding Shortfall for Native Americans (December 2018)

Police Use of Force: An Examination of Modern Policing Practices (November 2018)

An Assessment of Minority Voting Rights Access in the United States (September 2018)

Public Education Inequity in an Era of Increasing Concentration of Poverty and Resegregation (January 2018).

Working for Inclusion: Time for Congress to Enact Federal Legislation to Address Workplace Discrimination Against Lesbian, Gay, Bisexual, and Transgender Americans (November 2017).

Targeted Fines and Fees Against Communities of Color (September 2017).

Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898 (September 2016).

Peaceful Co-Existence: Reconciling Nondiscrimination Principles with Religious Liberties (September 2016).

The State of Civil Rights at Immigration Detention Facilities (September 2015).

Patient Dumping 59 (September 2014).

Sex Trafficking: A Gender-Based Violation of Civil Rights 65 (September 2014).

Criminal Background Checks and Disparate Impact 308 (December 2013).

Sexual Assault in the Military 161 (September 2013).

School Discipline and Disparate Impact 97 (April 2012).

Peer-to-Peer Violence + Bullying: Examining the Federal Response 181 (September 2011).

English Only Policies in the Workplace 92 (July 2011).

Healthcare Disparities 87 (December 2010).

Encouraging Minority Students to Pursue Science, Technology, Engineering and Math Careers 77 (October 2010).

The Multiethnic Placement Act: Minorities in Foster Care and Adoption 137 (July 2010).

Minorities in Special Education 103 (April 2009).

Enforcing Religious Freedom in Prison 118 (September 2008).

Affirmative Action in Law Schools 148 (April 2007).

## **CALIFORNIA INITIATIVE/REFERENDUM/LOBBYING CAMPAIGNS LED:**

Chair of Campaign, Californians for Equal Rights/No on Assembly Constitutional Amendment 7 (2024)(pending).

Co-Chair of Campaign, Californians for Equal Rights/NO on Proposition 16 (2020) (successfully prevented repeal of Proposition 209).

Co-Chair of Campaign, Yes on Proposition 209 (1996) (successfully amended California constitution to prohibit state-sponsored preferential treatment based on race, sex, color, ethnicity, or national origin).

## **SELECTED TESTIMONY BEFORE GOVERNMENTAL BODIES:**

Testimony on Respect for Law Enforcement and the Rule of Law Before the President's Commission on Law Enforcement and the Administration of Justice, July 21, 2020.

Testimony on Executive Overreach at the Department of Education's Office for Civil Rights Before the Task Force on Executive Overreach of the House of Representatives Committee on the Judiciary, May 24, 2016.

Testimony on the proposed Certainty in Enforcement Act Before House of Representatives Subcommittee on Workforce Protections, March 24, 2015.

Testimony on the proposed Matthew Shepard Hate Crimes Prevention Act Before the Senate Committee on the Judiciary, June 25, 2009.

Testimony on the proposed Native Hawaiian Government Reorganization Act Before the House of Representatives Committee on Natural Resources, June 11, 2009.

Testimony on the Fiftieth Anniversary of the Civil Rights Act of 1957 and Its Continuing Importance Before the Senate Committee on the Judiciary, September 5, 2007.

Testimony on the proposed Native Hawaiian Government Reorganization Act Before the United States Commission on Civil Rights, January 20, 2006.

Testimony on Judicial Activism Before the Subcommittee on the Constitution, Federalism and Property Rights, Committee on the Judiciary, United States Senate, July 15, 1997.



Testimony on the Civil Rights Act of 1997 (H.R. 1909) Before the Subcommittee on the Constitution, Judiciary Committee, United States House of Representatives, June 26, 1997.

Testimony on Diversity and the California Civil Rights Initiative Before the Judiciary Committee of the California Senate, September 30, 1996.

**SELECTED NEWSPAPER AND MAGAZINE OPINION ESSAYS (LAST FIFTEEN YEARS):**

*The Supreme Court Won't Shatter the DEI Dream*, Unherd, June 30, 2023.

*Why Did Prop. 16 Lose in California? Most People Oppose Racial Preferences in University Admissions*, San Diego Union Tribune, January 8, 2021.

*Undoing Ban on Race-Sex-Based Preferences Will Harm Students*, Real Clear Politics, May 16, 2020.

*How Prop. 209 Helped Under-Represented Minority Students Succeed at California Universities*, San Diego Union-Tribune, June 9, 2020.

*Threatening Teachers' Ability to Control Their Classrooms: How the U.S. Commission on Civil Rights Gets It Wrong on School Discipline* Washington Times, July 30, 2019.

*Why Routine Federal Oversight of Local Police Should Be Curtailed*, San Diego Union Tribune, December 19, 2018.

*No School Discipline Isn't Racist*, National Review Online, April 10, 2018.

*A Policy of Reducing Suspensions for Black Students Is an Obama Era Misstep: Betsy DeVos Can End It*, USA Today, March 29, 2018.

*Will the Supreme Court Rein in the Department of Education's Transgender Locker-Room Edict?*, National Review Online, October 19, 2016.

*Why Aren't There More Black Scientists?*, The Wall Street Journal, October 21, 2015.

*Harassing the Military*, The Weekly Standard, July 8, 2013.

*Is it Discriminatory to Prohibit Discrimination?*, The Daily Caller, July 11, 2011.

*Opinion: Does Affirmative Action Help College Students?*, AOLNews, December 24, 2010.

*Congress Tries to Break Hawaii in Two*, The Wall Street Journal, February 28, 2010 (with Peter Kirsanow).

*Hate Bill Threatens Innocent*, The Philadelphia Inquirer, July 22, 2009.

*The ABA's "Diversity" Diktat*, The Wall Street Journal, April 28, 2008.

*Affirmative Action Backfires*, The Wall Street Journal, August 24, 2007.

*Junk Social Science Index*, The Washington Times, July 26, 2007 (with Todd Zywicki).

**SELECTED ACADEMIC AND PROFESSIONAL SPEECHES AND DISCUSSIONS (LAST FIFTEEN YEARS):**

Speaker, They Just Can't Stop, CLE Seminar, Federalist Society, San Diego, May 13, 2024.

Panelist, Is the Whole of Government Greater Than the Sum of its Parts?, Executive Branch Review, Federalist Society, Washington, DC, April 16, 2024.

Speaker, Employment for the Profoundly Disabled Under Section 14c, Coalition for Employment Choice, via Zoom, January 11, 2024.

Panelist, Consideration of Race After SFFA v Harvard, 25<sup>th</sup> Annual Faculty Conference, Federalist Society, Washington, DC, January 5, 2024.

Panelist, SFFA and Beyond, National Lawyers Conference, Federalist Society, Washington, DC, November 10, 2023.

Panelist, Equality at the Supreme Court, Declaration of Independence Center, University of Mississippi, September 14, 2023.

Panelist, Webinar: 36 Years of Fighting Racial Preferences: A Retrospective, National Association of Scholars, July 27, 2023.

Podcast Guest, Evaluating the Court's SFFA Ruling, City Journal, July 5, 2023.

Podcast Guest, How Legal Changes to the Civil Rights Act Turbocharged the Woke Regime, High Noon with Inez Stepman, Independent Women's Forum, May 17, 2023.

Speaker, The Post-Harvard/UNC Environment, Heritage Foundation, Washington, DC, April 28, 2023.

Interviewee, The 19<sup>th</sup> Amendment, Khan Academy/ National Constitution Center, April 28, 2023.

Panelist, Affirmative Action in College Admissions, ASU + GSV, San Diego, April 18, 2023.

Speaker and Roundtable Participant, Toward a Color-Blind Civil Rights Law, Manhattan Institute, Santa Monica, March 10-11, 2023.

Podcast Guest, A Dubious Expediency, SCOTUS 101, The Heritage Foundation, February 23, 2023.

Podcast Guest, An Agenda for Congress, Regulatory Transparency Project, Federalist Society, December 21, 2022.

Speaker, Students for Fair Admissions v. Harvard: Affirmative Action Goes to Court, National Lawyers Conference, Federalist Society, Washington, DC, November 11, 2022.

Panelist, Webinar: Affirmative Action at the Supreme Court: Post Argument Analysis of SFFA v. Harvard/UNC, Manhattan Institute, October 31, 2022.

Welcoming Speaker and Panelist, 2022 Annual Conference of the Californians for Equal Rights Foundation, University of San Diego, San Diego, California, September 3, 2022.

Lecturer, Inaugural Civil Rights Fellowship, Center for Equal Opportunity, Washington, D.C., August 10, 2022.

Co-Convenor & Discussant, Roundtable on Civil Rights, American Civil Rights Project, Washington, D.C., July 21, 2022.

Moderator, Academia: The Root of Our Problems?, Free Speech 2022 Conference, Pepperdine University School of Public Policy, Malibu, California, May 23, 2022.

Speaker, Affirmative Action Reconsidered: Do Blacks Need Special Treatment to Succeed?, Old Parkland Conference, American Enterprise Institute, Hoover Institute, & Manhattan Institute, Dallas, Texas, May 13, 2022.

Podcast Guest, Toward an Anti-Woke Political Program with Richard Hanania, April 11, 2022, <https://www.youtube.com/watch?v=vusuYeGIWno&t=0s>.

Podcast Guest, Institutionalized with Aaron Sibarium and Charles Fain Lehman, Manhattan Institute, April 13, 2022, <https://www.manhattan-institute.org/institutionalized-podcast-the-civil-rights-regime-with-gail-heriot>.

Speaker, Wokeness in Education, Academia & Free Speech, Forum on Capitalism & The Rule of Law, George Mason University's Law & Economics Center, Destin, Florida, March 13, 2022.

Speaker, Culture at Big Law and Law Schools, Annual Western Chapters Conference, Federalist Society, Reagan Library, January 29, 2022.

Speaker, Wokeness in Education, Academia & Free Speech, Forum on Capitalism & The Rule of Law, George Mason University's Law & Economics Center, Charleston, South Carolina, November 20, 2021.

Speaker, Webinar: Racial Preferences in Higher Education, The John Locke Institute, November 1, 2021.

Keynote Speaker, Dubious Expediencies: How Short-Term Thinking on Race Has Caused Long-Term Problems in Higher Education, James A. Martin Center, Raleigh, North Carolina, October 29, 2021.

Speaker, Annual San Diego Lawyers Award Dinner, Federalist Society, San Diego, September 24, 2021.

Speaker, Webinar: "A Dubious Expediency: How Race Preferences Damage Higher Education," Federalist Society, July 20, 2021.

Speaker, Webinar: "A Dubious Expediency: How Race Preferences Damage Higher Education," National Association of Scholars, July 16, 2021.

Speaker, Webinar for Interns: Disparate Impact's History, Pacific Legal Foundation, July 15, 2021.

Speaker, Podcast: "A Dubious Expediency: How Race Preferences Damage Higher Education," Pacific Research Institute's Next Round, June 21, 2021.

Speaker, Webinar: "A Dubious Expediency: How Race Preferences Damage Higher Education," Californians for Equal Rights Foundation, May 26, 2021.

Speaker, Webinar: Executive Branch Review: Civil Rights in the New Administration, Federalist Society, May 18, 2021.

Panelist, Webinar: The Future of Police Reform & Civil Rights in the Biden Administration, The C. Boyden Gray Center for the Study of Administrative Law, George Mason University, February 25, 2021.

Moderator, Webinar: Crystal Ball Panel, San Diego Employers Association, January 20, 2021.

Panelist, Webinar: Was 2020 a Turning Point for Identity Politics?, Pacific Legal Foundation, January 15, 2021.

Panelist, Webinar: Mapping Higher Education's Future After the Election, National Association of Scholars, November 12, 2020.

Debater, Webinar: Proposition 16, Public Law and Policy Program @ UC Berkeley Law, October 23, 2020.

Debater, Webinar: Proposition 16, Sacramento Press Club, October 8, 2020.

Keynote Speaker, Direct Democracy, (Virtual) Meeting of the Chinese American Alliance, September 27, 2020.

Panelist, Web Event: Resolved: Songs of Women's Suffrage and the 19<sup>th</sup> Amendment, National Constitution Center, August 26, 2020.

Panelist, Webinar on Women's Equality Day, Women's Bureau, Department of Labor, August 26, 2020.

Moderator, Citizenship and Identity, The 2020 Spring Conference on Citizenship and Civic Leadership in America, School of Civic and Economic Thought and Leadership, Arizona State University, Tempe, Arizona, February 29, 2020.

Speaker, The Future of Affirmative Action, Annual Meeting of the Association of American Law Schools, Washington, D.C., January 3, 2020.

Speaker, Is the Thirteenth Amendment's Ban on Slavery a Blank Check to Congress?, Constitutional Law Center, Stanford University, November 6, 2019.

Speaker, The End of Free Speech on Campus: Title IX and Its Consequences, Orange County Congress of Republicans, Tustin, California, October 29, 2019.

Round Table Discussion Leader and Organizer, Conference on Title IX, University of San Diego, October 25-26, 2019.

Speaker, Disparate Impact and the Law, Meeting of the Mountain States Legal Foundation, Denver, Colorado, October 4, 2019.

Speaker, Celebrating the Centennial of the 19<sup>th</sup> Amendment, Association of Business Trial Lawyers, Biltmore Hotel, Los Angeles, September 17, 2019.

Round Table Discussion Leader and Organizer, Conference on Disparate Impact, University of San Diego, August 23-24, 2019.

Speaker, Title IX and Its Effect on Free Expression, Families Advocating for Campus Equality, Alexandria, Virginia, June 8, 2019.

Speaker, Alphabet Soup: EEOC v. OCR v. DOL OFCCP, Seventh Annual Executive Branch Review Conference, Federalist Society, May 8, 2019.

Round Table Participant, Colloquium: The Federalists, the Anti-Federalists, and the Constitution They Created, Santa Barbara, November 29, 2018 to December 1, 2018.

Speaker, Panel on Civil Rights, Symposium: The Swing Justice: Reflections on the Career of Justice Anthony Kennedy, Georgia State University, October 5, 2018. (broadcast via C-Span).

Speaker, Panel on Disparate Impact, Sixth Annual Executive Branch Review, The Federalist Society, Washington, DC, April 17, 2018.

Speaker, Less Discipline, More Disorder: The Unintended Consequences of Federal School Discipline Directives, The Heritage Foundation, March 12, 2018 (broadcast via C-Span).

Speaker, Symposium on Intellectual Diversity: "Why Intellectual Diversity Matters" and "What Is To Be Done?" Annual Meeting of the Association of American Law Schools, San Diego, January 6, 2018.

Panelist, Third-Party Liability of Sexual Misconduct: Universities, Landlords, Employers and Beyond, 20<sup>th</sup> Annual Federalist Society Faculty Conference in San Diego, January 5, 2018.

Panelist, Civil Rights: Race and Sex: Prime Movers of the Expansion of the Administrative State?, Federalist Society Lawyers' Convention in Washington, D.C., November 17, 2017.

Speaker, Has Title IX Veered Off Course?, Texas Tech University, Lubbock, Texas, September 14, 2017.

Speaker, Title IX, Free Speech and Academic Freedom, Faculty Conference on Free Speech and Open Inquiry, Institute for Humane Studies, Chapman University, Orange, California, February 25, 2017.

Speaker, Securing Liberty: Rebuilding American Education in an Era of Illiberal Learning, National Association of Scholars, Oklahoma City, January 21, 2017.

Speaker, Nineteenth Annual Faculty Conference: “Dear Colleague”/Guidance Letters, Consent Decrees, and Other Administrative Law Innovations, Federalist Society, San Francisco, January 6, 2017.

Speaker, Athena Roundtable Conference: Higher Education, Academic Freedom, and Civic Responsibility, American Council of Trustees and Alumni, Washington, DC, October 28, 2016.

Speaker, Considering Race in Higher Education Admissions, 89<sup>th</sup> Annual Meeting of the State Bar of California, San Diego, September 30, 2016.

Speaker, Disparate Impact: Reducing Innovation in the Workplace?, Fourth Annual Executive Branch Review, Federalist Society, Washington, DC, May 17, 2016.

Debater, Does the University of Texas’ Use of Racial Preferences in Undergraduate Admissions Violate the Constitution?, National Constitution Center, George W. Bush Presidential Library, Dallas, May 5, 2016.

Speaker, 28<sup>th</sup> Annual Sadie Alexander Commemorative Conference, University of Pennsylvania, Philadelphia, February 27, 2016.

Speaker, Racial Preferences Return to the Supreme Court: Fisher v. University of Texas, The Heritage Foundation, Washington, DC, December 7, 2015.

Speaker, Will the Supreme Court End Affirmative Action: A Preview of Fisher v. University of Texas on the Eve of Oral Argument, The Cato Institute, Washington, DC, December 7, 2015.

Speaker, Plenary Session: Workplace Equality and Race: Roadblocks and Routes to a Better Outcome, Ninth Annual Conference of the ABA Section on Labor and Employment Law, Philadelphia, November 6, 2015.

Speaker, A Supreme Court Preview: What’s in Store for the October 2015 Term?: A Panel Discussion, Federalist Society, Washington, DC, September 30, 2015.

Round Table Participant, Colloquium: Political Power and Individual Liberty in Richard Epstein’s “The Classical Liberal Constitution”, Liberty Fund, Indianapolis, August 6-8, 2015.

Round Table Participant, Colloquium: The Rule of Law: Anglo-American versus Continental Conceptions in Theory and Practice, Liberty Fund, New Orleans, December 4-6, 2014.

Speaker, Showcase Panel on Youth, Employment and the Law, National Lawyers Conference, Federal Society, Washington, DC, November 13, 2014 (text of remarks reprinted in the Harvard Journal of Law and Public Policy).

Speaker, Panel on Passion and Prudence in the Political Process: The Debate Over Federal Civil Rights Policy, Conference on Civil Rights in the United States, The Cato Institute, the Federalist Society & the Heritage Foundation, Washington, DC, September 9, 2014.

Speaker, Panel on Best Admissions Practices: How to Address Underrepresented Populations in the Wake of *Fisher v. University of Texas at Austin*, Annual Conference, National Association of College & University Attorneys, Denver, June 24, 2014.

Speaker, Panel on Affirmative Action, National Convention, American Constitution Society, Washington, DC, June 20, 2014.

Speaker, Panel on Disparate Impact Analysis, Second Annual Executive Branch Review Conference, The Federalist Society, Washington, DC, May 7, 2014.

Debater, Does Affirmative Action on Campus Do More Harm than Good?, Intelligence Squared, Harvard University, February 27, 2014 (segments broadcast over National Public Radio).

Speaker, *Fisher v. University of Texas* in Constitution Day Symposium: The Supreme Court: Past and Prologue, The Cato Institute, Washington, DC, September 17, 2013.

Speaker, Civil Rights in National Student Symposium: The Federal Leviathan: Is There Any Area of Modern Life to Which the Federal Government Power Does Not Extend?, Federalist Society, University of Texas, Austin, Texas, March 2, 2013.

Speaker, Race-Preferential Admissions Policies in Symposium: A Mighty Maze: Charting the Future of American Higher Education, National Association of Scholars, Harvard Club, New York, New York, March 1, 2013.

Speaker, Panel: Civil Rights: Who Benefits from Affirmative Action and Race and Gender Consciousness?, National Lawyers Conference, Federalist Society, Washington, DC, November 16, 2012.

Round Table Participant, Colloquium: Liberty and the Logical Foundations of Constitutional Democracy: James Buchanan's *The Calculus of Consent* after Fifty Years, Charlottesville, Va., September 27-29, 2012.

Round Table Participant, Colloquium: Liberty, Responsibility & the Legal Profession, Los Angeles, February 10-11, 2012.

Debate Participant, *Fisher v. University of Texas*: Are Campus Racial Preferences Out of Control?, The Heritage Foundation, Washington, D.C., December 16, 2011.



Debate Participant, The Matthew Shepard Hate Crimes Prevention Act, Federalist Society Student Chapter, Yale University, March 10, 2010.

Socratic Dialogue Participant, Beyond Black & White, Fred Friendly Seminars, Kaiser Permanente National Diversity Conference, San Francisco, November 5, 2009.

Speaker, Seeking Diversity: Are Law Schools Legal?, Southeast Association of Law Schools, Palm Beach, Florida, August 3, 2009.

Speaker, Civil Rights in the Age of Obama, Heritage Foundation, Washington, D.C., May 13, 2009.

Moot Court Participant, Ricci v. DeStefano, Heritage Foundation, Washington, D.C., April 16, 2009.

Debate Participant, The Matthew Shepard Hate Crimes Prevention Act, Federalist Society Student Chapter, Temple University, April 14, 2009.

Discussion Leader, Colloquium: Liberty, Responsibility & the Legal Profession, San Diego, March 26-28, 2009.

Round Table Participant, Liberty & the Structure of Government, New Orleans, February 26-28, 2009.

Moderator & Symposium Organizer, Native American Government Reorganization Act, at Federal Sovereignty, State Sovereignty, And The Sovereignty of 562 Native American Tribes: A Match Made In Heaven, Or Somewhere Less Pleasant?, Third Annual Western Conference, Federal Society, Reagan Library, Simi Valley, California, January 24, 2009.

Speaker, Affirmative Action, Federalist Society Student Chapter, Washington & Lee University, January 20, 2009.

Speaker, Presidential Panel III: Associational Diversity, Annual Meeting, Association of American Law Schools, San Diego, January 8, 2009.

Speaker, Milton Friedman and His Mom, Grassroot Institute, Honolulu, July 30, 2008.

Speaker, How Free Is the University, Speaker, American Freedom Alliance, University of Southern California, June 16, 2008.

Speaker, Hate Crimes: What Is the Proper Federal Role?, The Heritage Foundation, Washington, D.C., May 8, 2008.

Round Table Participant, Law and Liberty in the Judicial Practice of Robert H. Jackson, Sausalito, California, March 13-15, 2008.

Moderator & Symposium Organizer, Direct Democracy: The Courts and the Legislature vs. The People: Who is in Charge?, Second Annual Western Conference, Federal Society, Reagan Library, Simi Valley, California, February 23, 2008.

Speaker, Proposition 209's Effect on Student Admissions, Race and Gender Preferences at the Crossroads, California Association of Scholars, University of Southern California, January 18, 2008.

Speaker, Civil Rights: Amending State and Federal Constitutions to Prevent Sex Discrimination, The Federalist Society National Lawyers Conference, Washington, D.C., November 17, 2007.

Speaker, Grutter and Beyond, Southeast Association of American Law Schools Annual Meeting, Amelia Island, Florida, July 31, 2007.

Speaker, Lewis F. Powell Symposium: Panel on Diversity in Higher Education, Washington & Lee University, National Press Club, Washington, D.C., April 6, 2007 (broadcast on C-Span), available at <http://law.wlu.edu/powell/>.

Discussion Leader, Colloquia: The Federalists, the Anti-Federalists, and the Constitution They Created, San Diego, March 8-10, 2007 and January 24-26, 2008.

#### **SELECTED BRIEFS AMICUS CURIAE:**

Brief Amicus Curie of the American Civil Rights Project in Support of Petitioner in Metropolitan School District of Martinsville v. A.C. (23-393)(cert. stage).

Brief of the American Civil Rights Project as Amicus Curiae in Support of Appellee in Tennessee v. Department of Education (6th Cir.)

Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the U.S. Commission on Civil Rights, in Their Personal Capacities in Support of Petitioner in Students for Fair Admissions, Inc. v. President and Fellows of Harvard College; Students

for Fair Admissions, Inc. v. University of North Carolina (20-1199 & 21-707) (cert. stage & merits stage).

Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the U.S. Commission on Civil Rights, in Their Capacities as Private Citizens in Support of Petitioner in Gloucester County School Board v. G.G. (16-273) (cert. stage & merits stage).

Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the U.S. Commission on Civil Rights, in Their Capacities as Private Citizens in Support of Petitioner United States v. Metcalf (17-9340) (8<sup>th</sup> Cir. & cert. stage).

Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow in Support of Petitioners in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc. (merits stage).

Brief Amicus Curiae of Gail Heriot, Peter Kirsanow and Todd Gaziano, Members of the U.S. Commission on Civil Rights, in Support of Petitioner in Fisher v. University of Texas (11-345) (cert. stage).

Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the U.S. Commission on Civil Rights, in Their Private Capacities in Support of Petitioner in Shea v. Kerry (cert. stage).

Brief Amicus Curiae of California Association of Scholars, Center for Constitutional Jurisprudence, Reason Foundation, and Individual Rights Foundation, in Support of Petitioner in Schuette v. Coalition to Defend Affirmative Action (12-682) (cert. stage & merits stage)

Brief Amicus Curiae Brief Curiae of Gail Heriot, Peter Kirsanow and Todd Gaziano in Supporter of Petitioner in Township of Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc. (11-1507) (cert. stage),

Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the U.S. Commission on Civil Rights, in Support of Petitioner in Fisher v. University of Texas (Fisher II) (cert. stage & merits stage).

Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the U.S. Commission on Civil Rights, in Support of Petitioner in Hatch v. United States (13-6765) (10<sup>th</sup> Cir. & cert. stage).

Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the U.S. Commission on Civil Rights, in Support of Petitioner in Cannon v. United States (5<sup>th</sup> Cir. & cert. stage).

**BLOGS:** Instapundit, Volokh Conspiracy.

**OTHER ACTIVITIES:**

Book Fellow, Manhattan Institute (since 2022).

Co-Founder & Chairman of the Board, American Civil Rights Project (since 2020).

Executive Vice President & Board Member, Californians for Equal Rights Foundation (since 2020).

Board of Advisors, Center on Educational Excellence, Independent Institute (since 2019).

Board of Advisors, Liberty & Law Center, George Mason University (since 2018).

Fellow, American Conservative Union Foundation (since 2015).

Board of Directors, Bruce Kapp Memorial Animal Fund (since 2015).

Chair, Executive Committee on Civil Rights, Federalist Society (2005-2020); Chair Emeritus (since 2020).

Chair, Association of American Law Schools Section on Remedies (2001-2002).

Board of Directors, National Association of Scholars (since 1997).

Board of Directors, California Association of Scholars (since 1996).

## **EDUCATION:**

*University of Chicago Law School*—J.D. 1981 *cum laude*

(In 1981, *cum laude* was awarded to the top 9% of the class.)

*Honors:* Order of the Coif, Associate Editor, University of Chicago Law Review.

*Comment:* Civil Discovery of Grand Jury Documents, 46 U. Chi. L. Rev. 604 (1980).

*Northwestern University*—B.A. 1978 with highest distinction

(In 1978, highest distinction was awarded to the top 1% or 2% of the class.)

*Major:* Political Science with minor concentrations in economics and art history.

*Honors:* Phi Beta Kappa; Three-Year B.A. Program Participant; Alpha Lambda Delta Honor Society.