

## RESUME

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### MICHAEL KENT CURTIS

JUDGE DONALD SMITH PROFESSOR OF CONSTITUTIONAL AND PUBLIC LAW  
WAKE FOREST UNIVERSITY SCHOOL OF LAW

LIST OF MOST RECENT ACTIVITIES, 2016. FOR 2015 AND BEFORE, PLEASE SEE THE FULL RESUME.

**Article:** “Using the Voting Rights Act to Discriminate, North Carolina’s Use of Racial Gerrymanders, : Racial Gerrymanders, Two Racial Quotas, Safe Harbors, Shields, and Inoculations To Undermine Multiracial Coalitions and Black Political Power, 51 Wake Forest Law Review 421 (Summer, 2016) .] Invited submission.

**Presentation and participation in final wrap up panel:** Sewanee, Tennessee, University of the South, a symposium on the 14<sup>th</sup> Amendment and the significance of history. Sept. 2016.

#### **Op-eds:**

“A TV Ad, Racial Gerrymanders and Racial Quotas, Huffington Post Nov. 7, 2016

Also in the Greensboro News-Record, on line, Nov.7, 2016 under the newspaper’s headline:  
“The Anti-Edmunds ad and the N.C. Racial Gerrymanders.”

“A Welcome Defeat for the North Carolina Legislature’s Effort to Hobble Black Voting, Huffington Post, Aug. 2, 2016

#### **Courses:**

Constitutional Law I and II, 2016.

Legal and Constitutional History 2016 [small to tiny]

Upcoming 2017: Development of a new focus for the Election Law course: Election Law and Gerrymanders. Largely new material with a focus on North Carolina.

#### **Recent Committee work:**

Faculty disciplinary committee: review of potential honor council offenses. We have had several recent meetings.

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### ***PERSONAL***

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Married to Deborah F. Maury. One son, Matthew Curtis-Maury.

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### ***EDUCATION***

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University of the South, A.B., summa cum laude, valedictorian (1964); Phi Beta Kappa.

University of North Carolina, J.D., with honors (1969); Chief Justice Walter Clark Award ; Order of the Coif.

University of Chicago, M.A. in Political Science (1990).

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### ***EMPLOYMENT***

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Wake Forest University School of Law, Winston-Salem, NC

- Professor of Law, 1994 – present
- Associate Professor of Law, 1991 – 1994
- Visiting Professor of Law, Fall 1990

Smith, Patterson, Follin, Curtis, James, Harkavy & Lawrence

- Partner, 1971 to 1991 (admitted to the bar of North Carolina in 1969; admitted to the bar of the United States Supreme Court in 1974). General trial practice, including tort, libel, products liability, environmental, civil liberties, civil rights, free speech, litigation under 42 USC sec. 1983, torts and products liability, criminal law, employment discrimination cases, selective service law, constitutional law, and some environmental law.

NC Civil Liberties Union, Cooperating Attorney: Representative pro-bono cases include:

- Representation of a man threatened with jail if he criticized a judge's decision in the media;
- Representation of a preacher arrested for preaching on a downtown sidewalk to protest a semi-nude stroll;
- Representation of high school students who wanted to print an article on birth control in the school newspaper;

- Representation of a member of the Black Panther party arrested for selling a newspaper in downtown Burlington, NC;
- Preparation of amicus brief against an effort to declare *The Curious Eye*, which was a high school literary reader, obscene; and
- Representation of motorists who taped over the slogan “First in Freedom” on North Carolina license plates.

Lewis Roca, Phoenix Arizona, Summer Associate (1968).

North Carolina Supreme Court, Law Clerk to Chief Justice William H. Bobbitt (1969-1970).

Chair of the Amicus Committee of the North Carolina Association of Trial Lawyers, now North Carolina Advocates for Justice for a number of years.

Guilford College, Instructor at teaching Criminal Law, Constitutional Law, and Evidence (1974-1977) (concurrent with law practice).

North Carolina Occupational Safety and Health (OSHA) Review Board, Member (1977-1985) and Chair (1978-85) (concurrent with law practice).

Francis Lewis Law Center, Washington and Lee University, Lawyer in Residence (May 1985).

Dispute Settlement Center, Mediator.

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### ***COURSES TAUGHT***

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Constitutional Law I and II  
Election Law & Gerrymanders, new course, Spring 2017.  
American Legal History (with an emphasis on civil liberties)  
Democracy Under Siege  
American Legal History from the Great Depression to the Warren Court  
Freedom of Speech and Press  
Classical Rhetoric for Lawyers  
Election Law (twice)  
Agency (years ago)  
Criminal Law (during law practice)  
Selected Constitutional Topics

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## **BOOKS**

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*(For publications in chronological order, see the list in Appendix 1 at the end of this resume.)*

*No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights*, Duke University Press (1986) (second hardback printing 1987; first paperback printing, 1990; second paperback printing, 1994); for selected reviews of *No State Shall Abridge*, see 101 Harvard Law Review 869-873 (1988), 85 Michigan Law Review 1118-92 (1987), 81 American Political Science Review 278-279 (1987). The book was described by Professor Akhil Amar of Yale Law School as “one of the most important and most impressive works of constitutional scholarship of the late twentieth century.” In the Bimonthly Review of Law Books (March-April 2001), Professor Michael Gerhardt (then at William and Mary School of Law, now at UNC Law School) named it as one of the five law books every law student should read. Comments on the book are set out below.

*Editor, The Constitution and the Flag: Vol. 1, The Flag Salute and vol. 2, Flag Burning* (Garland Press 1993). (Articles, Cases, and Materials on the flag salute and flag burning controversies with an extended introduction by Michael Kent Curtis.)

*Free Speech: The People’s Darling Privilege: Struggles for Freedom of Expression in American History* (Duke University Press, Nov. 2000) Winner of the N. C. Literary and Historical Society’s 2001 Mayflower Cup Award for the best non-fiction book by a North Carolina author. Selected by an Independent panel of judges as the Winner of the 2001, Playboy Foundation Heffner First Amendment Award for the best book of the year on the subject of the 1<sup>st</sup> Amendment. (Judges included 1<sup>st</sup> Amendment Attorney and author Floyd Abrams and Professor Robert O’Neil of the University of Virginia Law School, Founding Director of the Thomas Jefferson Center for the Protection of Free Expression.) Selected comments on the book are included below.

Michael Kent Curtis, J. Wilson Parker, Davison Douglas, Paul Finkelman, and William Ross, *Constitutional Law in Context* (Carolina Academic Press, 1<sup>st</sup> ed. 2003, 2<sup>nd</sup> ed. 2006, 3<sup>rd</sup> ed. 2011), a two-volume constitutional law casebook with additional historical context, explanations of constitutional analysis with charts, and a timeline of American history.

Supplements to *Constitutional Law in Context*: 2007, 2008, and 2009, 2010, 2011, 2012, 2013, 2014 and 2015-16.

We are working on a new one volume edition of *Constitutional Law in Context*

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## **CONTRIBUTIONS TO BOOKS**

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Book chapter: “*Lincoln and Executive Power During the Civil War: An Examination of One Case. Constitutional Power or, In Effect, An Exercise of Prerogative Power*” in *Extra Legal Power and Legitimacy: Perspectives on Prerogative* (Oxford Press 2013).

Book chapter, “Democratic Ideas and Media Realities: A Puzzling Free Press Paradox,” in *Free Speech* (Cambridge Univ. Press 2004. Paul, Miller, and Paul, eds.).

Book chapter in *The Law of Slavery*, Madison House Publisher (1997): “The 1859 Crisis over Hinton Helper's Book *The Impending Crisis: Slavery, Free Speech, and the Meaning of the First Section of the Fourteenth Amendment*,” a condensed version of the article that appears below.

“Reading the First Amendment by the Light of the Burning Flag,” introduction to 1 *The Constitution and the Flag* (1993)

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### ***RECENT ARTICLES***

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***Articles 2016 back to 2007. A full list of all articles, etc. is in the appendix***

“Using the Voting Rights Act to Discriminate: North Carolina’s Use of Racial Gerrymanders, Two Racial Quotas, Safe Harbors, Shields, and Inoculations To Undermine Multiracial Coalitions and Black Political Power, 51 Wake Forest Law Review 421 (Summer, 2016) .] By invitation.

“Race as a Tool in the Struggle for Political Mastery: North Carolina’s ‘Redemption’ Revisited 1870-1905 and 2011-2013, XXXIII Law and Inequality, 53-142 (Winter 2015).

Michael Kent Curtis and Eugene Mazo, Campaign Finance and the Ecology of Democratic Speech, 103 Ky L. J. 529 [issue 4] (2015).

“Reflections on Albion Tourgée’s 1896 View of the Supreme Court: A ‘consistent enemy of personal liberty and equal right’?”, 5 Elon L. Rev. 19 (2013) In the symposium on A Radical Notion of Democracy: Law, Race, and Albion Tourgée , sponsored by the UNC Center for Southern Studies, UNC Law School, Elon Law School and others. Invited participation.

“A Unique Religious Exemption from Anti-discrimination Laws in the Case of Gays? Putting the Call for Exemptions For Those Who Discriminate Against Married or Marrying Gays In Context.” 47 Wake Forest University Law Review 173 (2012). By invitation.

“The Fraying Fabric of Freedom,” 44Texas Tech Law Review 89 (Fall 2011) (part of symposium on Criminal law and the First Amendment (published in 2012). By invitation.

[2010] “Constitutional Law of Speech and Press, Politics, Rhetoric, and Dialogue,(Extended Review of *Eloquence & Reason: Creating A First Amendment Culture* by Robert L. Tsai), 103 Nw. U. L. Rev. 1863-1896 (2009) (invited submission). By invitation.

“The Bill of Rights and the States, An Overview From One Perspective, 18 J. of Contemp. Legal Issues 3 (2009) (keynote; invited symposium submission).

“The Klan, The Congress, and the Court: Congressional Enforcement of the Fourteenth and Fifteenth Amendments & the State Action Syllogism, a Brief Historical Overview,” 11 U. Pa. J. of Const. L. 1381 (2009) (invited symposium submission).

“Be Careful What You Wish For: Gays, Dueling High School T-Shirts and the Perils of Suppression,” 44 Wake Forest L. Rev. 431 (2009) (Symposium on Equality Based Perspectives on Free Speech) (invited submission).

“Transforming Teenagers Into Oral Sex Felons: The Persistence of the ‘Crime Against Nature’ After *Lawrence v. Texas*” by Michael Kent Curtis and Shannon Gilreath, 43 Wake Forest Law Review 155 (2008).

“Lincoln, The Constitution of Necessity, and the Necessity of Constitutions: A Reply to Professor Paulsen,” 59 Maine L. Rev. 1 (2007).

***Articles for Symposiums and Other Invited Participation*** (duplicates a number of items on the list above)

Reflections on Albion Tourgee’s 1896 View of the Supreme Court: A “consistent enemy of personal liberty and equal right”? 5 Elon L. Rev. 19-87 (2013).(Tourgee symposium.)

Review Essay: “Constitutional Law of Speech and Press: Politics, Dialogue and Rhetoric,” an extended review of Robert Tsai, *Eloquence and Reason: Creating A First Amendment Culture*,” 103 Nw. Univ. L. Rev. 1863 (2009) [2010](invited essay).

“The Bill of Rights and the States: An Overview from One Perspective,” 18 J. of Contemporary Legal Issues 3 (2009) (lead article, symposium on the incorporation doctrine).

“The Klan, The Congress, and the Court: Congressional Enforcement of the Fourteenth and Fifteenth Amendments & the State Action Syllogism, A Brief Historical Overview,” 11 U. of Pa. J. of Constitutional Law 1381 (2009) (Symposium on the Second Founding: the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments).

“The Bill of Rights and the States Revisited After *Heller*,” 60 Hastings L. J. 1445 (2009) (symposium on the right to bear arms after *Heller*).

“Be Careful What You Wish For: Gays, Dueling High School T-Shirts and the Perils of Suppression,” 44 Wake Forest L. Rev. 431 (2009) (Symposium on Equality Based Perspectives on Free Speech).

“The Fourteenth Amendment: Recalling What the Court Forgot,” 56 *Drake L. Rev.* 911 (2008) (Drake Constitutional Law Symposium on Forgotten Constitutional Provisions).

“St. George Tucker and the Legacy of Slavery,” 47 *Wm. & Mary L. Rev.* 1157 (2006). (William and Mary Symposium on St. George Tucker).

“Democratic Ideals and Media Realities: A Puzzling Free Press Paradox,” 21 *Social Philosophy and Policy* 385 (2004) (symposium on freedom of speech).

“Judicial Review and Populism,” 38 *Wake Forest L. Rev.* 313 (2003) (Wake Law Review symposium on the 200<sup>th</sup> Anniversary of *Marbury v. Madison*).

“John A. Bingham and the Story of American Liberty,” 36 *U. Akron L. Rev.* 617 (2003) (contribution to Akron Law School symposium on John A. Bingham, the main drafter of section 1 of the 14<sup>th</sup> Amendment. Bingham should be added to the pantheon of framers of the Constitution).

“Teaching Free Speech from an Incomplete Fossil Record,” 34 *University of Akron Law Review* 231 (2000) (a contribution to Akron Law School symposium on education and the Constitution).

“Free Speech and Its Discontents: The Rebellion against General Propositions and the Danger of Discretion,” 31 *Wake Forest Law Review* 419 (1996)--comment on Oliver Wendell Holmes devise lecture by Professor Sunstein.

“Privileges or Immunities, Individual Rights and Federalism,” 12 *Harvard Journal of Law and Public Policy* 53 (1989), (symposium article, originally presented at a Federalist Society conference)

“Conceived in Liberty: The Fourteenth Amendment and The Bill of Rights,” 65 *North Carolina Law Review* 889 (1987), originally presented at a symposium on the bicentennial of the Constitution sponsored by the University of North Carolina at Chapel Hill.

### ***Encyclopedia Articles***

Articles on Barron v. Baltimore and Saenz v. Roe in *Encyclopedia of the Supreme Court of the United States*. (2008).

Article on the Alien and Sedition Acts in *Milestone Documents in American History* (2008).

Articles on “Incorporation Doctrine” and the “Fourteenth Amendment,” in the Oxford Companion to the Supreme Court (2005).

“Slavery and Civil Liberties,” *Encyclopedia of the American Constitution*, 2424 (2d ed. 2000).

Articles on “*Barron v. Baltimore*,” pp. 25-27 and “Incorporation of the Bill of Rights and the Religion Clauses,” 236-39. *Encyclopedia of Law and Religion*, Paul Finkelman, ed., (2000).

Essays on “Incorporation Doctrine and Original Intent” at 1356 and “Fourteenth Amendment, Section 5” at 1087 in *Encyclopedia of American Constitution* (2d. ed. 2000).

“Albion Tourgee,” 21 *American National Biography* 769 (1999).

“The Fourteenth Amendment (Enactment),” in *The Constitution and Its Amendments* (1999).

Essays on the “Fourteenth Amendment” and “The Incorporation Doctrine” in *The Oxford Companion to The Supreme Court of the United States* (1993).



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**BOOK REVIEWS**

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***Book Reviews on the Following Books: (\* By Invitation)***

Book Review: *Undaunted Radical, the Selected Writing of Albion Tourgee*, Mark Elliott and John David Smith, eds. 78 *Journal of Southern History* 194 (2012).\*

Book Review: Pamela Brandwein, *Rethinking the Judicial Settlement of Reconstruction*: Cambridge University Press (2011), 1 *American Political Thought* 161 (2012).\*

Book Review: Phillip I Blumberg, *Repressive Jurisprudence in the Early American Republic: The First Amendment and the Legacy of English Law*, *Journal of American History* (2012) 99: 583-584.\*

Review Essay: *Constitutional Law of Speech and Press: Politics, Dialogue, and Rhetoric*, an extended review of Robert Tsai, *Eloquence and Reason: Creating A First Amendment Culture*,” 103 *Nw. Univ. L. Rev.* 1863 (2009) [2010?]\*

*Victory of Law: The Fourteenth Amendment, the Civil War, and American Literature, 1852-1867*, by Deak Nabers, *Civil War Book Review* (Fall 2007), [www.cwbr.com](http://www.cwbr.com).\*

Geoffrey Stone, *Perilous Times: Free Speech in Wartime*, 21 *Const. Commentary* (2004, 2006)

Robert Martin, *The Free and Open Press: The Founding of American Democratic Press Liberty (1640-1800)*, 46 *Am. J. Legal Hist.* 108 (2004).\*

*Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*, by Ronald M. Labbe and Jonathan Lurie (2003), 37 *Journal of Interdisciplinary History* 143.\*

“The Court and the Empire,” A review of *The Imperial Republic* by James G. Wilson, 20 *Constitutional Commentary* 163 (2003).

William Nelson, *Marbury v. Madison: The Origins of Judicial Review*, in 5 *The Green Bag* 329 (2002).\*

Bruce Ackerman, *We the People: Transformations*. *American Journal of Legal History*, Vol. XLII, 417 (1998).\*

*The Constitution, Law, and American Life: Critical Aspects of the Nineteenth Century Experience*, 11 *Constitutional Commentary* 425 (1994).\*

William Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine*, 26 *Willamette Law Review* 3 (1990)\*

Russell Mokhiber, “*Corporate Crime and Violence*,” 25 Willamette L. Rev. 733-38 (1989) and 21 Trial Briefs #2 at 17 (1989)

*The End of Obscenity*, 1 New Law Books Review 84 (1986-87).\*

*The Politics of Judicial Interpretation: Courts, the Department of Justice, and Civil Rights, 1866-76*, 56 U. Cincinnati Law Review 551 (1987).\*

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### ***SELECTED RECENT PRESENTATIONS***

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September 2016, Yes History Matters, symposium on the 14<sup>th</sup> Amendment, University of the South, Sewanee, Tennessee.

Oct 1, 2015, Presentation by Michael Curtis and others on the Legal Implications of Reconstruction at the symposium: “The Freedmen’s and North Carolina State’s Constitutional Conventions of 1865.” The symposium included a Keynote Address by David W. Blight of Yale University on “Why Reconstruction Still Matters.”

July 2015, Half-baked presentation to Wake Law Faculty on North Carolina’s recent adventures in racial gerrymandering.

January 28, 2013: A Unique Exception from Anti-Discrimination Laws in the Case of Married or Marrying Gays. Presentation for the faculty of Georgia State University School of Law.

April 2012: Debates on the Affordable Care Act at the Wake Forest University School of Medicine and at Wake Forest Law School (with Professor Mark Hall).

October 13, 2012: American Journalism Historians Association. Annual Conference: Lost Cause, Lost Reality (Civil War), North Carolina’s [Pre-]Civil War Experience: Presentation on Freedom for Anti-Slavery Speech in North Carolina and Elsewhere Before the Civil War. (\*By invitation.)

November 4, 2011: “Was Tourgee right? Was the Supreme Court a consistent enemy of liberty and equal right?” Presentation for the symposium “A Radical Notion of Democracy: Law, Race and Albion Tourgee, 1865-1905” sponsored by UNC Center for the Study of the American South, The North Carolina Department of Cultural Resources; Elon University School of Law, UNC School of Law, and the NC Institute for Constitutional Law.

October 19, 2011: “North Carolina Tried Democracy: Albion Tourgee and the Historical Background of the North Carolina Constitution of 1868.” Conference on Greensboro Lawyers in the 19<sup>th</sup> Century.\*

April 2011: “The Fraying Fabric of Freedom,” a lunch keynote address on free speech history and the First Amendment, conference on free speech and press and criminal law. Texas Tech University, April 2011\* [invited presentation].

March 2011: “Lincoln the War President,” Conference on Prerogative Powers, Michigan State University [invited presentation].

2010: Presentation to the Greensboro Bar Association on Albion Tourgee, lawyer for Plessy in *Plessy v. Ferguson*. Tourgee was an advocate of racial equality, an opponent of the KKK, a Radical Republican, a Framers of the North Carolina Constitution, a Superior Court Judge, a Novelist, and much more.\*

February 5-6, 2010: Comment on a paper by Randy Barnett on Anti-Slavery Constitutionalism, Conference on Interpretivism, Center for Constitutional Interpretivism, University of San Diego School of Law.\*

February 25, 2010: Presentation at ABA Teleconference on Incorporation of the Bill of Rights and *McDonald v. City of Chicago*.\*

November 2010: Presentation on “*Citizens United and Davis v. FEC: Lochner on Steroids and Democracy on Life Support*,” to a colloquium at the University of Illinois School of Law (invited presentation).

February 2009: Keynote Address: “Revisiting Application of the Bill of Rights to the States in Light of *Heller*” for the Symposium: *The Second Amendment After Heller*, Hastings College of Law & Hastings Law Review.\*

January 2009: Keynote Address: “The Bill of Rights and the States: An Overview from One Perspective,” Conference on Incorporation of the Bill of Rights sponsored by the University of San Diego School of Law and its Institute on Originalism.\*

October 2008: “The Klan, the Congress and the Court: Congressional Enforcement of the 14<sup>th</sup> Amendment Against Private Violence” (American Constitution Society Conference on the Second Founding, University of Pennsylvania School of Law).\*

2008: “Be Careful What You Wish For: Dueling High School T-Shirts [About Homosexuality] & The Perils of Suppression” (Wake Forest Law Review Symposium).\*

2008: “Andrew Johnson and the Fourteenth Amendment” (National Parks Service Symposium on Andrew Johnson) near the Andrew Johnson Historic Site, Tusculum College, Tennessee.\*

2007: “The Fourteenth Amendment: Recalling What the Court Forgot” (Drake Constitutional Law Symposium)\*

2005: “The Future of the Supreme Court,” Winston-Salem Bar Association.\*

“The Ecology of Freedom of Expression,” at a symposium on free speech at the University of Maryland.\*

April 2003: “Democratic Ideals and Media Realities,” Conference on Freedom of Speech, Social Philosophy and Policy Center, Bowling Free State University.\*

January 2003: “John Bingham and the Story of American Liberty,” Legal History section, Association of American Law Schools, Washington, D.C.

March 2003: Keynote address: “42 U.S.C. section 1983 and the Secret Story of American Liberty,” at a North Carolina Bar Association program on litigation under 42 U.S.C. section 1983.\*

November 2003: “Lincoln and Civil Liberties During the Civil War,” a presentation to the American Society of Legal History.

November 2003: “Lincoln and Vallandigham: Civil Liberties During the Civil War, a presentation to the Library of Congress program on the Civil War.”\*

October 2002: “John A. Bingham and the Story of American Liberty: The Lost Cause Meets the ‘Lost Clause.’” Symposium, John Bingham and the Meaning of the Fourteenth Amendment, University of Akron School of Law.\*

February 2002: Presentation at program on The Constitution in Times of Crisis, North Carolina Bar Association.\*

October 2000: “The Constitution and the Other Constitution,” a contribution to a symposium on the Constitution and the Presidential Election, Wake Forest University. (Broadcast on C-Span).\*

March 2000: “John Bingham and Civil Liberties,” Symposium on the 100<sup>th</sup> Anniversary of the Death of John Bingham, Library of Congress, Washington, D.C. (Broadcast on C-Span).\*

November 1999: Talk at symposium: Back to the Future: What 19<sup>th</sup> Century Free Speech Law Can Teach lawyers today, Federalist Society National Lawyers Conference, Washington, D.C.\*

February 1998: “Two Textual Adventures,” symposium on textualism and the Constitution, George Washington University.\*

RECENT REQUESTED PRE-PUBLICATION Reviews of ARTICLES OR BOOKS [service, additional]

THE ORIGINS OF COLOR-BLINDNESS: LESSONS FROM THE POLITICAL THOUGHT OF ALBION TOURGÉE, Reviewed for *American Political Thought*, summer 2015.

Review of a campaign finance article for tenure consideration for Professor Timothy Kuhner, Georgia State University School of Law, Fall, 2015.

College of Law.

***PRESENTATIONS BASED ON  
FREE SPEECH, "THE PEOPLE'S DARLING PRIVILEGE"***

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"Civil Liberties During the Civil War: The Case of Clement Vallandigham," a presentation at the Library of Congress program on the Civil War in American Memory (October 2002).\*

"Putting the Constitution in Context: Adding History to the Teaching of Constitutional Law"—presentation focusing on use in teaching of stories from free speech history from the Sedition Act though the Civil War. AALS Annual Meeting (January 2002).

"The Trial of Clement Vallandigham before a Military Commission for Making an Anti-War Speech During the Civil War. Presentation at a Program on the War and the Constitution, AALS Annual Meeting (January 2002)."

"The Development of Our Free Speech Tradition." Presentation to the faculty at DePaul Law School (November 2001)\*

"A New Birth of Freedom: The Crusade Against Slavery and the Nationalization of Freedom of Speech," Fourth Annual Bell Distinguished Lecture in Law, College of Wooster, Wooster Ohio. (Previous lecturers were Judge Samuel H. Bell, James Boyd White of the University of Michigan School of Law, and Robin West, Georgetown Univ. Law Center.)\*

"A New Birth of Freedom: The Crusade Against Slavery and Freedom of Speech," presentations to the law faculty and another sponsored by the Center for the Study of the American South, UNC at Chapel Hill (February 23, 2001).\*

"Free Speech History," at a symposium on *Free Speech, The People's Darling Privilege*, held at William and Mary Law School (January 19, 2001).\*

"Teaching Free Speech from an Incomplete Fossil Record, Symposium on Education and the Constitution," University of Akron School of Law (March 2000).\*

***SELECTED OP-EDS***

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"A TV Ad, Racial Gerrymanders and Racial Quotas, Huffington Post Nov. 7, 2016

Also in the Greensboro News-Record, Nov.7, 2016 under the newspaper's headline:  
"Michael Curtis, The Anti-Edmunds ad and the N.C. Racial Gerrymanders."

“A Welcome Defeat for the North Carolina Legislature’s Effort to Hobble Black Voting, Huffington Post, Aug. 2, 2016

“Our Debt to the Abolitionists,” Huffington Post, Feb. 20, 2015.

“Free Speech Matters,” Huffington Post, Aug. 20, 2015

“Using Race (Again) in the Struggle for Political Mastery,” Huffington Post, Feb 3, 2015.

“Some Supreme Court Decisions Should Be Criticized—Even if the Chief Justice is Within Earshot,” Huffington Post, March 22, 2010.

“John A. Bingham, Ohio’s Best Choice” (suggesting that Bingham, the main framer of section 1 of the Fourteenth’s Amendment, should be Ohio’s choice for its open slot in Statutory Hall in the U.S. Capitol), Akron Beacon Journal and Akron Beacon Journal.com.

“The Mob Assault on Free Speech: Using Organized Groups To Prevent Discussion Is An Affront To Our Rights,” Houston Chronicle, August 23, 2009 at B-10.

“Democrats and Civil Rights: The Rest of the Story,” Tallahassee Democrat, Thursday, June 19, 2008 at 3-B. (Responding to a story implying consistent racism on the part of the Democratic Party and consistent support for civil rights by Republicans.)

A similar article providing historical balance was published in several other outlets where the original article appeared, *e.g.*, [Greensboro] News Record, May 28, 2007 at A-7.

“Taken on Faith: Leaflet’s Claim About Plan to Ban Bible Speaks Volumes,” Winston-Salem Journal, October 1, 2004 at A15.

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***SELECTED COMMENTS ON MY BOOKS***

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***Praise for Free Speech, The People’s Darling Privilege***

“For a recent history of antebellum developments in the area of free speech, see the acclaimed Michael Kent Curtis, *Free Speech, “The People’s Darling Privilege”: Struggles for Freedom of Expression in American History* (2000)”.

Presser and Zainaldin, *Law and Jurisprudence in American History: Cases and Materials* (5th Ed. 2003)

“This is the type of text that should be required reading for judges and lawyers. ...The importance of training today’s and tomorrow’s leaders in the judiciary, the bar, the Congress, and the executive branch on the struggles endured during the first 100 years of our nation cannot be

overemphasized. Without an understanding of the foundation of our freedoms, we can lose the tether of history that ties a concept such as ‘free speech’ with the reality of how it affects our lives. Curtis is nowhere more on target than when he observes: ‘Politicians, lawyers and judges have a special duty to protect free speech. But free speech is too important to leave exclusively to judges, lawyers, and politicians. It belongs to the American people.’”

Judge Robert S. Lasnik, United States District Court for the Western District of Washington in *Books on Law*, Book Reviews

“Michael Kent Curtis has written the seminal study of free speech law and practice before and immediately after the Civil War. ... Curtis is a brilliant storyteller. His free speech narratives will benefit scholars who read for business and history buffs who read for fun. The prose is clear, the tales fascinating.”

Professor Mark Graber in the *William and Mary Bill of Rights Journal*

“Michael Kent Curtis...has made an extremely valuable contribution to the literature addressing the history of free speech in America. Although there are countless books on the theories behind the speech guarantee...Curtis brings a fresh perspective. The first hundred years of American history are rich with stories such as this. Curtis does an outstanding job of bringing them to life. He is to be commended for keeping editorial comments to a minimum and allowing the participants to make his points for him. The book is painstakingly documented to provide first-person accounts from sources such as newspapers and town meetings.”

Professor Paul Weizer in *Perspectives in Political Science*

“This volume is emblematic of the growing awareness among constitutional law scholars that it is not sufficient to study simply what the Supreme Court has said about the meaning of the Constitution. ... Constitutional law professors are adept at teaching students how to analyze the constitutional text and how to follow or distinguish Supreme Court precedent. However, many of us are not cognizant of the history and traditions that give meaning to our fundamental freedoms. Michael Curtis’s book fills a portion of that gap.

If one has a Court-centered understanding of Constitutional Law—that the Constitution is what the Supreme Court says it is-- ... then [the traditional casebook approach] that essentially begins in 1919 with the Supreme Court’s decision in *Schenck*] makes perfect sense. But ... prior to *Schenck* this Nation had examined the role of freedom of expression ... in a number of contexts and had committed itself to a broad definition of that freedom. In this book, Michael Kent Curtis fills the gap between Jefferson and Lincoln with stories of courage, drama, and sacrifice....

The stories that Curtis tells resonate with events of the 20<sup>th</sup> and 21<sup>st</sup> Centuries. The killers of Lovejoy are cut from the same cloth as the killers of civil rights leaders....”

Professor Wilson R. Huhn in *Constitutional Commentary*

“Curtis offers a deep and careful exploration of a series of historical struggles for freedom of expression. ... Curtis's most important contribution to our scholarly literature is his detailed discussions of the connection between slavery, the abolitionist movement, and freedom of

expression. [N]o other scholar has investigated this issue in such depth, and none has put it in the context of legal analysis and First Amendment theory. In a series of powerful chapters, Curtis explores how abolitionists used First Amendment concepts to challenge slavery, and in turn how conservatives in the North and almost all whites in the South developed an ideology of suppression in an ultimately futile effort to quell debate on this subject. ... The history of speech and anti-slavery is critical for our understanding of how opposition to free speech works, and also how best to fight ideas with which we disagree.”

Professor Paul Finkelman in the *William and Mary Bill of Rights Journal*

“[A] major contribution to the scholarship of [the era from 1798 to ...the 1860s]. For ... the historical detail, the review of relevant legal and political theory, and the lessons from history ..., this book is a must read for anyone interested in the period from 1798 to 1870 or in the development of free speech theory and practice in the United States.”

Professor Timothy C. Schiell, in *The Historian*

“This very fine book is a successor to the author’s *No State Shall Abridge...* Michael Kent Curtis shows here that free speech issues loomed very large in the antebellum period, and that the Republicans who controlled Congress when the Fourteenth Amendment was written had many speech-related grievances on their mind. Both in the North and in the South there had been serious efforts to suppress antislavery speech, including suppression of Republican party speech in the South. Those efforts at suppression had sparked counter movements to defend speech, promoting the growth of a “free speech tradition.” Most of this tradition grew up outside the courts....

Curtis revises our concept not only of the aim of the amendment but also of the development of free speech thinking in the United States. The received wisdom accepts several notions that Curtis reveals to be false....

In addition to forwarding such important arguments, Curtis’s book is in form a series of “free speech stories” gracefully written and engaging to read.... Sprinkled into the stories are fine analytic discussions.”

Professor Michael P. Zuckert in the *Journal of American History*

“A “rich and original study.”

James Boylan, in the *Columbia Journalism Review*

“Curtis’s stories are as riveting as a superior novel.”

Nat Hentoff, in *The Village Voice*

“Many legal scholars hope to publish one book ...that helps reshape the way we think about an important issue of law.” [Michael Kent Curtis] has “do [ne] it twice.” “This book...will change the way the think about one of our most fundamental constitutional rights.”

Professor Davison Douglas in *Trial Briefs*



“Curtis..., a leading scholar of the history of the First Amendment, resurrects the long-neglected and surprising story of free speech in 18<sup>th</sup> and 19<sup>th</sup> century America.”

James L. Swanson in the *Chicago Tribune*

“Michael Kent Curtis's first book, *No State Shall Abridge*, was one of the most important and most impressive works of constitutional scholarship of the late twentieth century. This second book is a worthy successor, building on a decade of painstaking scholarship and filled with fascinating tales and keen insights. Until Curtis came along, many of the most important chapters in the story of American free Expression had been all but lost. Now, thanks to Curtis, they are found—and what a find it is! No law professor I know handles constitutional history better than Curtis. He is a national treasure.”

Professor Akhil Reed Amar, Yale Law School and author of *The Bill of Rights: Creation and Reconstruction*

“A major contribution to scholarship on the history of free speech in the United States from 1800 through the Civil War.”

David Rabban, University of Texas School of Law

### ***Praise for No State Shall Abridge***

“Taking on a formidable array of constitutional scholars...[Curtis] refutes their argument with vigor and effectiveness, conclusively demonstrating the legitimacy of the incorporation thesis.... A bold, forcefully argued, important study. Library Journal

“Michael Kent Curtis has made an important contribution to a historical debate of great significance. ... [He performs] his task in a careful, measured, and judicious way. ... *No State Shall Abridge* helps clear the path toward a better understanding of what the Constitution stands for.”

Stephen Macedo, *Reason*

“Curtis’s impressive book should find a receptive audience on both sides of the debate over the appropriate exercise of judicial review.”

Gary J. Jacobsohn, *American Political Science Review*

One of the five books all law students should read.

Professor Michael Gerhardt in the *Bimonthly Review of Law Books* (March-April 2001).

“No one whose works cuts athwart 14<sup>th</sup> amendment jurisprudence can afford to ignore the thesis developed by Curtis. The book is persuasive and crucially important. Curtis alters the path of scholarship with his excellent work.”

Leonard W. Levy, editor, *Encyclopedia of the American Constitution*

“*No State Shall Abridge* is a remarkable piece of scholarship. ... Curtis gives us a more detailed and convincing account [of the origins of the 14<sup>th</sup> Amendment] than we have ever had before.”

Anthony Lewis, author and journalist

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***SELECTED PROFESSIONAL ACTIVITIES***

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Faculty committee re: potential honor council offenses, 2016.

Faculty Evaluation Committee, Fall, 2015 and Winter 2016. Sid Shipiro, Chair: Evaluating Andrew Verstein and Gregory Parks for promotion and clarification of meaning of teaching standard.

Faculty Evaluation Committee, Miles Foy, Chair: We proposed and drafted a new standard for Legal Analysis and Writing tenure and evaluated and reported on Chris Coughlin for tenure as Professor of Legal Writing and on Tonya Marsh for promotion to Associate Professor (2012 and before).

University Committee on Academic Freedom and Responsibility (2011- 2012, 2015-).

Committee for Albion Tourgee Program: Institute of Southern Studies, Chapel Hill, N.C. (2010 and following).

Chair, Constitutional Law Section, Association of American Law Schools (January 2001 - January 2002).

Member of Wake Forest University Senate; Executive Committee Member (2002).

Member, American Society for Legal History; Constitutional Law Section, AALS; North Carolina Advocates for Justice, North Carolina and American Bar Associations

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***AWARDS, HONORS***

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1985: Frank Porter Graham Award from the North Carolina Civil Liberties Union for achievement in defending and advancing civil liberties in North Carolina. (Based on both my pro-bono work and my scholarly work.)

1997: Student bar Excellence in Teaching Award.

1999: Joseph Branch Excellence in Teaching Award.

2000: Awards for *Free Speech*.

2002: Named Donald L. Smith Professor of Constitutional and Public Law, Wake Forest University



### **Appendix 1:**

#### **Law Review Articles and books in Chronological Order (does not include book reviews, or encyclopedia articles, but does include a review essay).**

*“Using the Voting Rights Act to Discriminate, Act II: Racial Gerrymanders, Two Racial Quotas, Safe Harbors, Shields, and Inoculations To Undermine Multiracial Coalitions and Black Political Power,* 51 Wake Forest Law Review 421 (Summer, 2016) .] By invitation.

*“Race as a Tool in the Struggle for Political Mastery: North Carolina’s ‘Redemption’ Revisited 1870-1905 and 2011-2013,* XXXIII Law and Inequality, 53-142 (2015).

Michael Kent Curtis and Eugene Mazo, Campaign Finance and the Ecology of Democratic Speech, 103 Ky L. J. 529 (2015).

Book chapter: “Lincoln and Executive Power During the Civil War: An Examination of One Case. Constitutional Power or, In Effect, An Exercise of Prerogative Power” in *Extra Legal Power and Legitimacy: Perspectives on Prerogative* (Oxford Press 2013).

“Reflections on Albion Tourgée’s 1896 View of the Supreme Court: A ‘consistent enemy of personal liberty and equal right’?”, 5 Elon L. Rev. 19 (2013) In the symposium on A Radical Notion of Democracy: Law, Race, and Albion Tourgée , sponsored by the UNC Center for Southern Studies, UNC Law School, Elon Law School and others.

Michael Kent Curtis, J. Wilson Parker, Davison Douglas, and Paul Finkelman, and William Ross *Constitutional Law in Context* (Carolina Academic Press, 3<sup>rd</sup> ed. 2011), a two volume constitutional law casebook with additional historical context, explanations of constitutional analysis with charts, and a timeline of American history. Supplement 2012 and 2013.

A Unique Religious Exemption from Anti-Discrimination Laws in the Case of Gays....., 47 Wake Forest Law Review, 173 (2012).

“The Fraying Fabric of Freedom,” 44Texas Tech Law Review 89 (Fall, 2011) (part of symposium on Criminal law and the First Amendment (published in 2012).

Review Essay: “Constitutional Law of Speech and Press: Politics, Dialogue, and Rhetoric,” an extended review of Robert Tsai, *Eloquence and Reason: Creating A First Amendment Culture,*” 103 Nw. Univ. L. Rev. 1863 (2009) [2010?].\*

“The Bill of Rights and the States: An Overview from One Perspective,” 18 J. of Contemporary Legal Issues (2009).

“The Klan, The Congress, and the Court: Congressional Enforcement of the Fourteenth and Fifteenth Amendments & the State Action Syllogism, A Brief Historical Overview,” 11 U. of Pa. J. of Constitutional Law 1381 (2009).

“The Bill of Rights and the States Revisited After *Heller*,” 60 *Hastings L. J.* 1445 (2009).

“Be Careful What You Wish For: Gays, Dueling High School T-Shirts and the Perils of Suppression,” 44 *Wake Forest L. Rev.* 431 (2009) (Symposium on Equality Based Perspectives on Free Speech).

“The Fourteenth Amendment: Recalling What the Court Forgot,” 56 *Drake L. Rev.* 911 (2008) (Drake Constitutional Law Symposium on Forgotten Constitutional Provisions).

“Transforming Teenagers Into Oral Sex Felons: The Persistence of the ‘Crime Against Nature’ After *Lawrence v. Texas*” by Michael Curtis and Shannon Gilreath (*Wake Forest Law Review* March 2008).

“Lincoln, The Constitution of Necessity, and the Necessity of Constitutions: A Reply to Professor Paulsen,” 59 *Maine L. Rev.* 1 (2007).

Michael Kent Curtis, J. Wilson Parker, Davison Douglas, and Paul Finkelman, *Constitutional Law in Context* (Carolina Academic Press, 2<sup>nd</sup> ed. 2006), a constitutional law casebook with additional historical context.

Supplements to *Constitutional Law in Context*: 2007, 2008, and 2009.

“St. George Tucker and the Legacy of Slavery,” 47 *Wm. & Mary L. Rev.* 1157 (2006). (William and Mary Symposium on St. George Tucker)

“Democratic Ideals and Media Realities: A Puzzling Free Press Paradox,” 21 *Social Philosophy and Policy* 385 (2004).

“Judicial Review and Populism,” 38 *Wake Forest L. Rev.* 313 (2003) (Wake Law Review symposium on the 200<sup>th</sup> Anniversary of *Marbury v. Madison*).

Michael Kent Curtis, J. Wilson Parker, Davison Douglas, and Paul Finkelman, *Constitutional Law in Context* (Carolina Academic Press, 1<sup>st</sup> ed. 2003), a constitutional law casebook with additional historical context.

“John A. Bingham and the Story of American Liberty,” 36 *U. Akron L. Rev.* 617 (2003) (contribution to Akron Law School symposium on John A. Bingham, the main drafter of section 1 of the 14<sup>th</sup> Amendment. Bingham should be added to the pantheon of framers of the Constitution.)

*Free Speech: The People’s Darling Privilege: Struggles for Freedom of Expression in American History* (Duke Univ. Press, Nov. 2000).

“Historical Linguistics, Inkblots, and Life After Death: The Privileges or Immunities Clause of the Fourteenth Amendment,” 78 *North Carolina Law Review* 1071 (2000).

“Lincoln, Vallandigham, and Anti-War Speech in the Civil War,” 7 *William and Mary Bill of Rights Journal* 105 (1998).

“The 1837 Killing of Elijah Lovejoy by an Anti-Abolition Mob: Free Speech, Mobs, Republican Government, and the Privileges of American Citizens,” 44 *University of California at Los Angeles Law Review* 1109 (1997).

“Free Speech and Its Discontents: The Rebellion against General Propositions and the Danger of Discretion,” 31 *Wake Forest Law Review* 419 (1996) -- comment on Oliver Wendell Holmes devise lecture by Professor Sunstein.

“Resurrecting the Privileges or Immunities Clause and Revising the Slaughter-House Cases Without Exhuming Lochner: Individual Rights and the Fourteenth Amendment,” 38 *Boston College Law Review* (1996).

“Remembering Albion Tourgee on the 100th Anniversary of *Plessy v. Ferguson*,” 13 *Constitutional Commentary* 187 (1996).

“The Curious History of Attempts to Suppress Anti-slavery Speech, Press, and Petition in 1835-1837,” 89 *Northwestern University Law Review* 785 (1995).

“Monkey Trials: Science Defamation, and the Suppression of Dissent,” 4 *William and Mary Bill of Rights Journal* 507 (1995). An article about a libel suit based on a *Rolling Stone* article reporting a hypothesis on the possible origin of AIDS.

“The Critics of Free Speech and the Uses of the Past,” 12 *Constitutional Commentary* 29 (1995).

“Free Speech and the Uses of the Past,” 12 *Const. Commentary*, 29 (1995)

“The 1859 Crisis over Hinton Helper’s Book *The Impending Crisis: Slavery, Free Speech, and the Meaning of the First Section of the Fourteenth Amendment*,” 68 *Chicago Kent Law Review* 1113 (Symposium on Law and Slavery) (1993)

*Editor, The Constitution and the Flag: Vol. 1, The Flag Salute Cases, Vol. 2, Flag Burning* (Garland Press 1993). (Articles, Cases, and Materials on the flag salute and flag burning controversies with an extended introduction by Michael Kent Curtis.)

“In Pursuit of Liberty: The Levellers and the American Bill of Rights,” 8 *Const. Commentary* 359 (1991)

“Privileges or Immunities, Individual Rights and Federalism,” 12 *Harvard Journal of Law and Public Policy* 53 (1989), (symposium article, originally presented at a Federalist Society conference)

“Conceived in Liberty: The Fourteenth Amendment and The Bill of Rights,” 65 *North Carolina Law Review* 889 (1987), originally presented at a symposium on the bicentennial of the Constitution sponsored by the University of North Carolina at Chapel Hill.

*No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights* (1986), second hardback printing 1987, first paperback printing 1990, second paperback printing 1994.

“Still Further Adventures of the Nine Lived Cat: A Rebuttal to Raoul Berger’s Reply on Application of the Bill of Rights to the States,” 62 *North Carolina Law Review* 517 (1984).

“Judge Hand's History: An Analysis of History and Method in *Jaffree v. Board of School Commissioners*,” 86 *West Virginia Law Review* 109 (1983).

“The Fourteenth Amendment and The Bill of Rights,” 14 *Connecticut Law Review* 237 (1982).

“Further Adventures of the Nine Lived Cat: A Response to Mr Berger on Incorporation of the Bill of Rights,” 43 *Ohio State Law Journal* 89 (1982).

“The Bill of Rights as a Limitation on State Authority: A Reply to Professor Berger,” 16 *Wake Forest Law Review* 45, (1980).

Student law review case notes including “Ads on Buses,” 46 *North Carolina Law Review* 900, 1968.