

## **ALAN K. CHEN**

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### **ACADEMIC APPOINTMENT**

#### **PROFESSOR OF LAW**

**UNIVERSITY OF DENVER STURM COLLEGE OF LAW**, Denver, Colorado

*University Lecturer, University of Denver, 2017-2018*

*William M. Beaney Memorial Research Chair, 2014-2017*

*Associate Dean for Faculty Scholarship, 2008-2014*

*Visiting Research Fellow, Queen Mary & Westfield College, University of London, London, England, on sabbatical leave Fall 1999*

*Courses: Constitutional Law, First Amendment, Federal Courts, Public Interest Lawyering Lab, Social Change Lawyering*

### **OTHER PROFESSIONAL EXPERIENCE**

**STAFF COUNSEL, ROGER BALDWIN FOUNDATION OF ACLU, INC.**, Chicago, Illinois

*Supervised and conducted civil rights and civil liberties litigation in federal and state courts at both trial and appellate level. Emphasis on Fourth Amendment, privacy, and First Amendment litigation (Sept. 1987-June 1992).*

**LAW CLERK, HONORABLE MARVIN E. ASPEN**, Chicago, Illinois

*United States District Court Judge for the Northern District of Illinois (Sept. 1985-August 1987)*

### **EDUCATION**

**STANFORD LAW SCHOOL**, Stanford, California

J.D., 1985

*Hilmer Oehlmann, Jr. Award for Excellence in First Year Legal Research and Writing  
Best Brief, Marion Rice Kirkwood Moot Court Competition*

**CASE WESTERN RESERVE UNIVERSITY**, Cleveland, Ohio

B.A., Political Science, 1982, *summa cum laude*

*Graduation with Honors in Political Science*

*Madge McKinney Award for Excellence in Political Science*

*Mather Alumnae Award for Excellence in Political Science*

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## **SCHOLARSHIP**

### ***Books***

FREE SPEECH BEYOND WORDS: THE SURPRISING REACH OF THE FIRST AMENDMENT (NYU Press 2017) (with Mark V. Tushnet and Joseph Blocher)

LAW, LAWYERING, AND SOCIAL CHANGE (Wolters Kluwer Law & Business 2013) (with Scott L. Cummings)

TEACHER'S MANUAL FOR LAW, LAWYERING, AND SOCIAL CHANGE (Wolters Kluwer Law & Business 2014) (with Scott L. Cummings)

### ***Articles***

*Advising Activists and Journalists in Investigations as a First Amendment Right* (work in progress) (with Rebecca Aviel)

*Free Speech, Rational Deliberation, and Some Truths About Lies* (work in progress)

*The Intractability of Qualified Immunity*, 93 NOTRE DAME L. REV. 1937 (2018)

*Developing a Taxonomy of Lies Under the First Amendment*, 89 U. COLO. L. REV. 655 (2018)

*Free Speech and the Confluence of National Security and Internet Exceptionalism*, 86 FORDHAM L. REV. 379 (2017)

*Free Speech and Democracy in the Video Age*, 116 COLUM. L. REV. 991 (2016) (with Justin Marceau)

*High Value Lies, Ugly Truths, and the First Amendment*, 69 VAND. L. REV. 1435 (2015) (with Justin Marceau)

*Instrumental Music and the First Amendment*, 66 HASTINGS L.J. 381 (2015)

*Rights Lawyer Essentialism and the Next Generation of Rights Critics*, 111 MICH. L. REV. 903 (2013)

*Right Labels, Wrong Categories: Some Comments on Steven D. Smith's, Why is Government Speech Problematic?*, (response to paper presented at the 17th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law) (DENV. U. L. REV. ONLINE) (2010)

*Rosy Pictures and Renegade Officials: The Slow Death of Monroe v. Pape*, 78 UMKC L. REV. 889 (2010)

*Bureaucracy and Distrust: Germaneness and the Paradoxes of Academic Freedom Doctrine*, 77 U. COLO. L. REV. 955 (2006)

*The Facts About Qualified Immunity*, 55 EMORY L. J. 229 (2006) (reprinted in 22 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Thomson West 2006))

*Forced Patriot Acts*, 81 DENV. U. L. REV. 703 (2004)

*Foreword: Bill Beaney's Continuing Relevance*, 81 DENV. U. L. REV. 217 (2003)

*Statutory Speech Bubbles, First Amendment Overbreadth, and Improper Legislative Purpose*, 38 HARV. C.R.-C.L. L. REV. 31 (2003)

*Shadow Law: Reasonable Unreasonableness, Habeas Theory, and the Nature of Legal Rules*, 2 BUFF. CRIM. L. REV. 535 (1999)

*The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law*, 47 AM. U. L. REV. 1 (1997)

"Meet the New Boss . . . .," 73 DENV. U. L. REV. 1253 (1996)

*The Ultimate Standard: Qualified Immunity in the Age of Constitutional Balancing Tests*, 81 IOWA L. REV. 261 (1995)

*Due Process as Consumer Protection: State Remedies for Distant Forum Abuse*, 20 AKRON L. REV. 9 (1986)

## **OPINION/COMMENTARY**

*Judge Gorsuch and the Role of Public Interest Litigation in Our Democracy*, Dorf on Law, <http://www.dorfonlaw.org/2017/03/judge-gorsuch-and-role-of-public.html> (reposted at ACS Blog: [https://www.acslaw.org/acsblog/judge-gorsuch-and-the-role-of-public-interest-litigation-in-our-democracy?utm\\_content=buffer9462&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.acslaw.org/acsblog/judge-gorsuch-and-the-role-of-public-interest-litigation-in-our-democracy?utm_content=buffer9462&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer))

*Arkansas's Reckless Rush to the Execution Chamber* (with Justin Marceau), Dorf on Law, <http://www.dorfonlaw.org/2017/03/arkansas-reckless-rush-to-execution.html> (reposted at NEWSWEEK: <http://www.newsweek.com/why-arkansas-rush-execute-eight-prisoners-567836>)

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*Senate Should Not Delay Obama's Supreme Court Nomination*, DENVER POST, <http://www.denverpost.com/2016/02/19/senate-should-not-delay-obamas-supreme-court-nomination/>

*The Continuing Problems with Lethal Injection* (with Justin Marceau), Huffington Post Blog, [http://www.huffingtonpost.com/justin-marceau/problems-with-lethal-injection\\_b\\_5626764.html](http://www.huffingtonpost.com/justin-marceau/problems-with-lethal-injection_b_5626764.html)

Promoted Commenter on *United States v. Alvarez* (First Amendment challenge to Stolen Valor Act), SCOTUS Blog, <http://www.scotusblog.com/community/the-stolen-valor-act/#comment-17464>

*Protecting Words That Hurt*, THE NEW YORK TIMES, Room for Debate, <http://www.nytimes.com/roomfordebate/2010/10/06/free-speech-and-picketing-funerals/theperils-of-censorship>

## **OTHER PUBLICATIONS**

*Qualified Immunity Limiting Access to Justice and Impeding Development of the Law*, ABA HUMAN RIGHTS (July 2015)

*Legislation Restricting Access to Indoor Tanning Throughout the World*, ARCHIVES OF DERMATOLOGY Online First (July 2012) (with M. Pawlak, M. Bui, M. Amir, D. Burkhardt, and R. Dellavalle)

*Teens in the UV Tanning Booth? Tax the Tan*, (co-authored with Dellavalle, RP, Schilling, LM, Hester, EJ), ARCHIVES OF PEDIATRIC AND ADOLESCENT MEDICINE 2003, 157: 845-846

*Youth Access Laws: In the Dark at the Tanning Parlor*, (co-authored with Dellavalle, Parker, Cersonsky, Hemme, Burkhardt, and Schilling), 139 ARCHIVES OF DERMATOLOGY 443 (April 2003)

*Liability of Private Firms Performing Public Functions*, TRIAL, Oct. 1999, at 60.  
*Constitutional Law*, in 1997 ANNUAL SURVEY OF COLORADO LAW (1997)

*Burns v. Reed – Narrowing the Prosecutor's Protection From Liability for Unconstitutional Conduct*, 3 POLICE MISCONDUCT AND CIVIL RIGHTS LAW REPORT 121 (1991)

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## **RECENT ACADEMIC PRESENTATIONS**

*Advising Activists and Journalists in Investigations as a First Amendment Right*, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 27, 2019

*Current Issues in Free Speech Before the Supreme Court*, Constitutional Rights & Remedies Program, University of Denver Sturm College of Law, March 21, 2019

*Free Speech Issues on College Campuses*, at Summit of University and College Presidents, Colorado Springs, Colorado, July 13, 2018

*Reviewing The Supreme Court's 2017/18 Term: A Panel Discussion*, The Federalist Society, Colorado Lawyers Chapter, Denver, Colorado, July 10, 2018.

*Free Speech, Rational Deliberation, and Some Truths About Lies*, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 28, 2018

*Preview of the United States Supreme Court, October 2017 Term*, at Holland & Hart LLP, Denver, Colorado, & University of Colorado School of Law, Boulder, Colorado, October 3 & 4, 2017

*Free Speech, Rational Deliberation, and Some Truths About Lies*, Stanford Law School Faculty Workshop, May 10, 2017

*Developing a Taxonomy of Lies under the First Amendment*, Freedom of Expression Scholars Conference, Yale Law School Information Society Project, April 29, 2017

*Free Speech and the Supreme Court*, Constitutional Rights & Remedies Program, University of Denver Sturm College of Law, April 24, 2017

*Developing a Taxonomy of Lies under the First Amendment*, 25th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law, University of Colorado School of Law, April 14, 2017.

*Free Speech and the Confluence of National Security and Internet Exceptionalism*, Fordham Law Review Symposium on Terrorist Incitement on the Internet, Fordham Law School, April 7, 2017.

*Some Remarks on First Amendment Coverage and New Technologies*, Oklahoma City University School of Law Symposium, March 24, 2017.

*Ag-Gag Legislation: The First Amendment and Animal Agriculture*, Duke Law School Chapter, Student Animal Legal Defense Fund, February 27, 2017

*SCOTUS Takes on "The Slants" and the Slurs: Free Speech and Offensive Trademarks*, University of Denver Chapter of the Federalist Society, January 17, 2017

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*Preview of the United States Supreme Court, October 2016 Term*, at Holland & Hart LLP, Denver, Colorado, & University of Colorado School of Law, Boulder, Colorado, September 26 & 28, 2016

*Integration of New Teaching Materials on Social Justice and Community into the Clinical Curriculum*, AALS Conference on Clinical Legal Education, Baltimore, Maryland, May 2, 2016

## **AWARDS**

University of Denver, University Lecturer Award, 2017-2018

PETA Justice for Animals Award, 2018

Robert B. Yegge Excellence in Teaching Award, 2011

Outstanding Faculty Member, University of Denver Sturm College of Law, 2007-08, awarded by Student Bar Association

Denver University Law Review Faculty Appreciation Award, 2004

Professor of the Year, University of Denver College of Law, 1998-99. Co-recipient selected by students for excellence in law teaching

Colorado Trial Lawyers Association Award for the Outstanding Brief of 1997, *Williams v. City and County of Denver*

American Civil Liberties Union of Colorado, Edward Sherman Award for Outstanding Cooperating Attorney, 1997

## **PROFESSIONAL AFFILIATIONS**

Association of American Law Schools

AALS Scholarly Papers Committee, 2011-12 (appointed to committee to select winner of the annual scholarly paper competition)

Chair, Civil Rights Section 1998-99

Executive Committee Member, Civil Rights Section (1994-2001) and Federal Courts Section, 2000-2001

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Member, Board of Directors and Legal Panel, Civil Rights Education and Enforcement Center

Member, Board of Advisors, American Constitution Society, Colorado Lawyers Chapter

Member, American Civil Liberties Union of Colorado Legal Panel

**SUPREME COURT AND FEDERAL COURT OF APPEALS LITIGATION (in capacity as legal scholar amicus curiae)**

*Walker v. Farnan*, No. 17-53, Brief for Professors of Constitutional Law, Federal Courts, Criminal Procedure, and Criminal Law as Amici Curiae Supporting Petitioner

*People for the Ethical Treatment of Animals, Inc. v. Stein*, 737 Fed.Appx. 122 (4th Cir. 2017), Brief of Professors Alan Chen, Erwin Chemerinsky, Eric Fink, Justin Pidot, John F. Preis, & Alexander A. Reinert As Amici Curiae in Support of Plaintiffs-Appellants

*Hernandez v. Mesa*, No. 15-118, Brief of Eleven Law Professors as Amicus Curiae in Support of Petitioner

*Fields v. City of Philadelphia*, Third Circuit. Brief of First Amendment Law Professors in Support of Plaintiff-Appellant, 862 F.3d 353 (3d. Cir 2017).

*Lane v. Franks*, No. 13-483, Brief of Law Professors as Amicus Curiae in Support of Petitioner

*McCullen v. Coakley*, No. 12-1168, Brief of Eugene Volokh, Richard W. Garnett, Michael Stokes Paulsen, Timothy Zick, William E. Lee, Alan K. Chen, & Ronald J. Krotoszynski, Jr. as Amici Curiae in Support of Petitioners

*Ashcroft v. Al-Kidd*, No. 10-98, Brief of Legal Scholars as Amici Curiae in Support of Respondent

*Snyder v. Phelps*, No. 09-751, Brief of Amici Curiae Scholars of First Amendment Law in Support of Respondent Phelps

**SELECTED LITIGATION (as legal counsel)**

**United States Supreme Court and Federal Courts of Appeals**

*Colorado Independent v. District Court for the Eighteenth Judicial Dist. of Colorado*, (U.S. 2018), Brief of Scholars of Law and Journalism as Amici Curiae in Support of Petitioner.

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*Animal Legal Defense Fund v. Wasden*, 878 F.3d 1184 (9th Cir. 2018). Successful challenge to Idaho “ag-gag” law as violation of First and Fourteenth Amendments.

*Lockett v. Fallin*, 841 F.3d 1098 (10th Cir. 2016) (argued), *cert. denied* 137 S.Ct. 2298 (2017). Civil rights claim on behalf of inmate challenging lethal injection execution as violation of Eighth Amendment.

*Western Watersheds Project v. Michael*, 869 F.3d 1189 (10th Cir. 2017). Principal Author of Brief of Amici Curiae First Amendment Legal Scholars in Support of Plaintiffs-Appellants and Supporting Reversal.

*Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185 (9th Cir. 2000), *cert. granted, judgment vacated and remanded for reconsideration*, 534 U.S. 801 (2001), *amended opinion reinstating judgment*, 276 F.3d 1125 (9th Cir.), *cert. denied*, 537 U.S. 1000 (2002). Civil rights action against police officers who used pepper spray on peaceful, political protestors as violation of Fourth Amendment.

*Williams v. City and County of Denver*, 99 F.3d 1009 (10th Cir. 1996). Amicus brief for Colorado Trial Lawyers Association in case claiming violations of Due Process Clause by police officer and municipality for death of innocent bystander during officer’s high speed chase.

*University of Colorado v. Derdeyn*, 863 P.2d 929 (Colo. 1993), *cert. denied*, 511 U.S. 1070 (1994). Opposition to state’s petition for certiorari in U.S. Supreme Court in successful class action Fourth Amendment challenge to state university random urine testing program for student athletes and cheerleaders.

*Dimeo v. Griffin*, 924 F.2d 664 (7th Cir. 1991) (argued), *rev'd en banc*, 943 F.2d 679 (7th Cir. 1991). Class action Fourth Amendment challenge to state regulation requiring random urine testing regulations for licensed horse racing professionals.

## **Federal District Courts**

*Animal Legal Defense Fund v. Kelly*, No. 18-2657-KHV-JPO (D. Kansas). Pending challenge to Kansas “ag-gag” law as violation of First and Fourteenth Amendments.

*Animal Legal Defense Fund v. Reynolds*, No. 4:19-cv-124 (S.D. Iowa). Pending challenge to second Iowa “ag-gag” law as violation of First and Fourteenth Amendments.

*Animal Legal Defense Fund v. Reynolds*, 353 F.Supp.3d 812 (S.D. Iowa 2019). Successful challenge to Iowa “ag-gag” law as violation of First and Fourteenth Amendments (currently on appeal to the Eighth Circuit).



*Animal Legal Defense Fund v. Herbert*, 263 F.Supp.3d 1193 (D. Utah 2017). Successful challenge to Utah “ag-gag” law as violation of First and Fourteenth Amendments.

*Ketcham v. National Park Service*, 2016 WL 4269037 (D. Wyo.). Challenge to federal agency’s denial of public and media access to observe culling of bison as violation of First Amendment.

*Lane v. Owens*, No. 03-B-1544 (PAC) (D. Colo. 2004). Civil rights action on behalf of public school students and teachers in Colorado challenging Colorado law requiring daily recitation of Pledge of Allegiance in all public schools as violation of First Amendment.

*Henry v. Ryan*, 775 F. Supp. 247 (N.D. Ill. 1991). Civil right claim contesting county policy of suspicionless blood and saliva testing for DNA codes of citizens without probable cause or reasonable individualized suspicion as violation of Fourth Amendment.

*Nelson v. Streeter*, 16 F.3d 145 (7th Cir. 1994). Suit against local government officials for physical seizure and censorship of painting depicting late Mayor Harold Washington in women’s undergarments from private art school exhibition.

*Summeries v. Chicago Housing Authority*, (N.D. Ill.). Class action suit on behalf of 150,000 public housing tenants and their invited guests challenging sweep inspections and searches of tenants, their guests and their personal effects, and ban on consensual overnight visitation.

*Doe v. Belleville Public School District No. 118*, 672 F. Supp. 341 (S.D. Ill. 1987). Challenge to exclusion of child with AIDS from public school classroom.

## **State Courts**

*Hickenlooper v. Freedom from Religion Foundation, Inc.*, Colorado Supreme Court. Principal author of amicus curiae brief for the American Civil Liberties Union, the ACLU of Colorado, and Americans United for Separation of Church and State before the Colorado Supreme Court. 338 P.2d 1002 (Colo. 2014).

*Churchill v. University of Colorado*, Colorado Supreme Court. Principal author of amicus curiae brief for the American Civil Liberties Union and the ACLU of Colorado before the Colorado Supreme Court. 285 P.3d 986 (Colo. 2012).

*Aubin v. City of Chicago*, Cook County Circuit Court. Class action suit raising facial and as applied First Amendment challenge to Chicago flag desecration ordinance on behalf of artists who desired to use flags or images of flags in their artistic expression.

## **BAR ADMISSIONS**

Admitted California (1985), Illinois (1988)

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United States Supreme Court, United States Court of Appeals for the Seventh, Ninth, and Tenth Circuits, United States District Court for the Northern District of Illinois, United States District Court for the Northern District of California, United District Court for the District of Colorado

[Last updated 5/19]