

**MARK R. BROWN**

Newton D. Baker/Baker & Hostetler Chair  
Capital University Law School  
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Columbus, OH 43215  
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**EMPLOYMENT**

CAPITAL UNIVERSITY, Newton D. Baker/Baker & Hostetler Chair, 2003-present

FLORIDA STATE UNIVERSITY, Visiting Professor, Summer 2007

THE OHIO STATE UNIVERSITY, Visiting Professor, Fall 1999

UNIVERSITY OF ILLINOIS, Visiting Professor, 1991-1992, 1998-1999, Spring 2003

STETSON UNIVERSITY, Tenured Professor, 1986-2003

SUPREME COURT OF THE UNITED STATES, Judicial Fellow under the Chief Justice, 1993-1994

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Law Clerk to the Honorable Harry W. Wellford, 1984-1985

**EDUCATION**

UNIVERSITY OF ILLINOIS COLLEGE OF LAW, LL.M. (1988)

UNIVERSITY OF LOUISVILLE SCHOOL OF LAW, J.D. (1984)  
Valedictorian; Law Review Editorial Board

UNIVERSITY OF DAYTON, B.S. (Mathematics) (1981)

**PUBLICATIONS**

*Books and Book Chapters*

Brown, Marijuana and Religious Freedom in the United States, in PROHIBITION, RELIGIOUS FREEDOM AND HUMAN RIGHTS: REGULATING TRADITIONAL DRUG USE (Labate & Cavnar, eds., 2014) (Springer).

BROWN & KINPORTS, CONSTITUTIONAL LITIGATION UNDER § 1983 (3d ed. 2013) (Lexis) (with Teacher's Manual and 2020 Supplement).

Brown, A Primer on Attorney's Fees Under § 1988, 22 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Saltzman, ed., 2006).

Brown, Individual Immunity Under Section 1983: Absolute is Constant but Qualified is Divisive, 14 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Saltzman, ed., 1999).

Brown, The Changing Fourth Amendment: An Unfortunate Devolution, CONTROVERSIAL ISSUES IN POLICING (Sewell, ed., 1999).

### ***Law Journals***

Brown, Bruce's "Other" Supreme Court Case, 48 STETSON L. REV. 311 (2019).

Brown, Is Privacy on Life Support?, 44 CAP. U. L. REV. 671 (2016).

Brown, Serving State Officers in Official-Capacity Actions: Is Mail An Option?, 31 ST. LOUIS U. PUB. L. REV. 383 (2012).

Brown, Qualified Immunity and Interlocutory Fact-Finding in the Courts of Appeals, 114 PENN. ST. L. REV. 1317 (2010).

Brown, Structural Limitations on Non-Legislative Regulations of Federal Elections, 7 DARTMOUTH L. J. 260 (2009).

Brown, The Fall and Rise of Qualified Immunity: From Hope to Harris, 9 NEV. L. J. 185 (2008).

Brown, Policing Ballot Access: Lessons From Nader's 2004 Run for President, 35 CAP. U. L. REV. 165 (2006).

Brown, Ballot Fees as Impermissible Qualifications for Federal Office, 54 AM. U. L. REV. 1283 (2005).

Brown, Closing the Crusade: A Brief Response to Professor Woodhouse, 34 CAP. U. L. REV. 331 (2005).

Brown, A Primer on Attorney's Fees Under § 1988, 37 URBAN LAWYER 663 (2005), reprinted in 22 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Saltzman, ed., 2006)

Brown, Rescuing Children from Abusive Parents: The Constitutional Value of Pre-Deprivation Process, 65 OHIO ST. L.J. 913 (2004).

Brown, Affirmative Inaction: Stories from a Small Southern School, 75 TEMPLE L. REV. 201 (2002).

Brown, Deterring Bully Government: A Sovereign Dilemma, 76 TULANE L. REV. 149 (2001).

Brown, Weathering Constitutional Change, 2000 U. ILL. L. REV. 1091.

Brown, The Failure of Fault Under § 1983: Municipal Liability for State Law Enforcement, 84 CORNELL L. REV. 1503 (1999).

Brown, Popularizing Ballot Access: The Front Door to Election Reform, 58 OHIO ST. L.J. 1281 (1997).

Brown, Gender Discrimination in the Supreme Court's Clerkship Selection Process, 75 OREGON L. REV. 59 (1996).

Brown, A Case for Pregnancy-Based Unemployment Insurance, 29 U. MICH. J. L. REF. 41 (1995-1996) (symposium).

Brown, The Demise of Constitutional Prospectivity: New Life for Owen?, 79 IOWA L. REV. 273 (1994).

Brown & Greenberg, On Formally Undecidable Propositions of Law: Legal Indeterminacy and the Implications of Meta-Mathematics, 43 HAST. L.J. 1439 (1992).

Brown, Accountability in Government and Section 1983, 25 U. MICH. J.L. REF. 53 (1991).

Brown, Correlating Municipal Liability and Official Immunity Under Section 1983, 1989 U. ILL. L. REV. 625.

Brown, De-Federalizing Common Law Torts: Empathy for Parratt, Hudson and Daniels, 28 B.C. L. REV. 813 (1987).

Brown, Criminal Law, 11 NOVA L. REV. 1217 (1987).

Brown, The Psychedelic Perspective: The Freedom of Religion Defense, 11 AM. IND. L. REV. 125 (1983).

Note, Whose Life (Insurance) Is It Anyway? Life Insurance and Divorce In America, 22 J.

FAM. L. 95 (1983-1984).

*Mass Media* (select pieces)

Brown, "Do Ohio officials have the authority to order closures and other coronavirus measures?", CLEVELAND PLAIN DEALER, April 19, 2020.

Brown, "Our 'socialist' Founding Fathers just called it good government," CLEVELAND PLAIN DEALER, March 11, 2020.

Brown, "Denying electors their discretion defies founders' intent," COLUMBUS DISPATCH, Sep. 23, 2019.

Brown, "Constitution supports neither choice for bureau," COLUMBUS DISPATCH, Nov. 29, 2017.

Brown, "Proposed independent redistricting commission is unconstitutional," CLEVELAND PLAIN DEALER, Aug. 25, 2012.

Brown, "Warrant Needed Before Taking Children," COLUMBUS DISPATCH, Feb. 19, 2011.

Brown, "Petitioning Privately is Not a Problem," COLUMBUS DISPATCH, April 10, 2010.

Brown, "Bill would make life easier for minor-party candidates," COLUMBUS DISPATCH, November 18, 2009.

Brown, "Why Americans Should Support Third Parties," COLUMBUS DISPATCH, February 12, 2008.

Beattie and Brown, "Ohio Supreme Court Ruling Puts Governor's Veto Power at Risk," CLEVELAND PLAIN DEALER, August 10, 2007.

Brown, "Ganging Up on Ralph Nader," PITTSBURGH TRIBUNE-REVIEW, August 1, 2007.

Brown, "Why the Fifth Circuit Was Wrong About Tom DeLay," JURIST, August 21, 2006 [www.jurist.law.pitt.edu](http://www.jurist.law.pitt.edu).

Brown, "Politics in Pennsylvania: Stifling Ralph Nader and Open Ballots," JURIST, August 25, 2006, [www.jurist.law.pitt.edu](http://www.jurist.law.pitt.edu).

Brown, "Democrats behind Nader campaign 'fraud'," REPUBLICAN-AMERICAN (Waterbury, Conn.), Sept. 4, 2006, at 1A.

Brown, “In Defense of Manual Recounts,” JURIST, November 18, 2002  
[www.jurist.law.pitt.edu](http://www.jurist.law.pitt.edu).

Brown, “A legislative solution will not be immune to challenge,” TALLAHASSEE  
DEMOCRAT, Dec. 8, 2000, 14 A.

Brown, “Legislature has opportunity to be fair to voters and candidates,” ST. PETERSBURG  
TIMES, Dec. 3, 2000, at 7D.

Brown, “High Court May Be Guilty of Hiring Bias,” NAT. L. J., Nov. 30, 1998, at A21.

## **PUBLIC INTEREST LITIGATION** (selected cases)

### ***Supreme Court of the United States***

Filed *amici curiae* brief on behalf of National Association of Criminal Defense Lawyers, New York County Bar Association, and Center for Constitutional Rights in *Camreta v. Greene*, 563 U.S. 692 (2011) (arguing that government should procure warrant before seizing young children who are allegedly abused; Supreme Court ruled that matter was moot).

Filed *amicus curiae* brief on behalf of the American Civil Liberties Union in *Hope v. Pelzer*, 536 U.S. 730 (2002) (successfully arguing that qualified immunity should not turn only on existence of factually similar reported cases).

Filed merits brief on behalf of prisoner in *Parke v. Raley*, 506 U.S. 20 (1992) (unsuccessfully arguing that state should have burden of proving validity of previous convictions used for sentence enhancement).

### ***United States Courts of Appeals***

Lead counsel for plaintiffs in *Thompson v. DeWine*, 461 F. Supp.3d 712 (S.D. Ohio 2020) (enjoining Ohio's enforcement of its ballot access requirements for popular initiatives during the COVID-19 crisis), *stay granted*, 959 F.3d 804 (6th Cir. 2020), *application to vacate stay denied*, 2020 WL 3456705 (U.S., 2020), *reversed*, 976 F.3d 610 (6th Cir. 2020).

Lead counsel for plaintiffs in *Libertarian Party of Illinois v. Pritzker*, 455 F. Supp.3d 738 (N.D. Ill. 2020) (enjoining Illinois's ballot access requirements for minor candidates and minor parties during the COVID-19 crisis), *stay denied sub nom. Libertarian Party of Illinois v. Cadigan*, 820 Fed. Appx. 446 (7th Cir. 2020), *affirmed*, 824 Fed. Appx. 415 (7th Cir. 2020).

Lead counsel for plaintiffs in *Libertarian Party of Pennsylvania v. Wolf*, 2020 WL 3971422 (E.D. Pa. 2020) (refusing to enjoin Pennsylvania's ballot access requirements for minor candidates and minor parties during COVID-19 crisis), *affirmed*, 813 Fed. Appx. 834 (3d Cir. 2020).

Lead counsel for plaintiffs in *Schmitt v. Husted*, 341 F.Supp.3d 784 (2018), *converted to permanent injunction*, 2019 WL 517666 (S. D. Ohio 2019) (enjoining Ohio's law authorizing local elections board's removal of initiative from ballot based on subject of initiative as violating First Amendment), *reversed sub nom.*, *Schmitt v. LaRose*, 933 F.3d 628 (6th Cir. 2019), *cert. denied*, U.S., 140 S. Ct. 2803 (2020).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, 831 F.3d 382 (6th Cir. 2016) (holding that Governor Kasich's campaign and the Ohio Republican Party were not state actors when they surreptitiously removed the Libertarian Party's gubernatorial candidate from the ballot).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, 751 F.3d 403 (6th Cir. 2014) (holding that Ohio's law requiring circulators of candidates' petitions for ballot access disclose on each part-petition who paid them).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, 497 Fed. Appx. 581 (6th Cir. 2012) (vacating and remanding as moot Libertarian Party's successful suit to win ballot access after election and after Ohio repealed law).

Lead counsel for plaintiffs in *Libertarian Party of Louisiana v. Dardenne*, 595 F.3d 215 (5th Cir. 2010) (unsuccessfully arguing that election law challenge based on Hurricane Gustav's closing Secretary of State's office during qualifying period was not rendered moot by election) (oral argument available at <http://www.ca5.uscourts.gov/OralArgumentRecordings.aspx> under Case No. 09-30307).

Lead counsel for plaintiffs in *Moore v. Hosemann*, 591 F.3d 741 (5th Cir. 2009) (successfully arguing that election law challenge based on Secretary of State's refusal to keep statutorily prescribed office hours was not rendered moot by election) (oral argument available at <http://www.ca5.uscourts.gov/OralArgumentRecordings.aspx> under Case No. 09-60272).

Lead counsel for plaintiff in *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008) (successfully arguing that Ohio's residence requirement for circulators of candidates' petitions violated the First Amendment).

Lead counsel for plaintiff in *Stevo v. Keith*, 546 F.3d 405 (7th Cir. 2008) (unsuccessfully arguing that Illinois's signature requirement for independent congressional candidates violated the First Amendment) (oral argument available under Case No. 08-3218 at [http://media.ca7.uscourts.gov/sound/2008/migrated.orig.08-3218\\_09\\_25\\_2008.mp3](http://media.ca7.uscourts.gov/sound/2008/migrated.orig.08-3218_09_25_2008.mp3)).

Lead counsel for plaintiffs in *Blankenship v. Blackwell*, 429 F.3d 254 (6th Cir. 2005) (unsuccessfully arguing that Ohio's exclusion of Ralph Nader from its presidential ballot was not mooted by election).

Counsel for *amicus curiae*, American Center for Law & Justice, in *Evans v. Stephens*, 407 F.3d 1272 (11th Cir. 2005) (en banc) (successfully arguing that strip search of a pre-trial detainee accused of minor, non-drug-related offense violated the Fourth Amendment).

Counsel for *amicus curiae*, American Civil Liberties Union of Florida, Inc., in *Durruthy v. Pastor*, 351 F.3d 1080 (11th Cir. 2003) (unsuccessfully arguing that arrest of news reporter who was filming police violated Fourth Amendment and should not be protected by qualified immunity).

Lead counsel for plaintiff in *Doe v. Kearney*, 329 F.3d 1286 (11th Cir. 2003) (unsuccessfully arguing that Florida's practice of removing children from their homes without warrants violated the Fourth and Fourteenth Amendments).

Lead counsel for plaintiff in *Green v. Mortham*, 155 F.3d 1332 (11th Cir. 1998) (unsuccessfully arguing that Florida's \$10,000 filing fee for congressional office violated the First Amendment).

Counsel for *amicus curiae*, American Civil Liberties Union of Florida, Inc., in *Cafe 207, Inc. v. St. Johns County*, 66 F.3d 272 (11th Cir. 1995), and 989 F.2d 1136 (1993) (unsuccessfully arguing that county's ban on nearly-nude dancing violated the First Amendment).

#### ***United States District Courts***

Lead counsel for plaintiffs in *Hyman v. City of Salem*, 396 F. Supp. 3d (N.D. W. Va. 2019) (preliminarily enjoining City under First Amendment from removing initiative from ballot based on its believed conflict with state and federal law).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, 2017 WL 2544084 (S.D. Ohio 2017) (ordering that opposing law firm representing Republican Party be monetarily sanctioned for abusive discovery tactics in ballot access case involving Republican Party's heavily monetized effort to remove minor candidate from gubernatorial ballot).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, 2014 WL 3928293 (S.D. Ohio 2014) (ordering that party who challenged Libertarian Party gubernatorial candidate and who denied knowing who was paying his lawyers produce invoice(s) establishing who was actually paying his lawyers).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, 302 F.R.D. 472 (S.D. Ohio 2014) (ordering that the individual who challenged the Libertarian Party gubernatorial candidate and who denied knowing who was paying his lawyers sit for a deposition).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, 33 F. Supp.2d 914 (S.D. Ohio 2014) (ordering that the Ohio Secretary of State present its officials for depositions and rejecting claim that deliberative process privilege shielded them).

Lead counsel for plaintiffs in *Libertarian Party of Ohio v. Husted*, No. 13-953 (S.D. Ohio 2013) (winning preliminary injunction preventing Ohio from enforcing its new residence requirement for circulators of candidates' petitions (under First and Fourteenth Amendments) and winning second preliminary injunction preventing Ohio from applying its new minor-party ballot access requirements to 2014 election (under First and Fourteenth Amendments)).

Lead counsel for plaintiff in *LaBotz v. Federal Election Commission*, 61 F. Supp.2d 21 (D.D.C. 2013) (unsuccessfully arguing that FEC's dismissal on remand from District Court of Socialist Party candidates complaint against Ohio's newspapers based on their exclusion of him from debates violated federal campaign finance laws).

Lead counsel for plaintiff in *LaBotz v. Federal Election Commission*, 889 F. Supp.2d 51 (D.D.C. 2012) (reversing FEC decision that Ohio newspapers did not violate the Federal Election Campaign Act by choosing only the top-two, major-party candidates to engage in a debate for an open seat in the U.S. Senate).

Lead counsel for plaintiff in *Libertarian Party of Ohio v. Husted*, No. 11-722 (S.D. Ohio 2011) (successfully arguing that Ohio's exclusion of Libertarian Party from 2011 and 2012 ballots violated First and Fourteenth Amendments), *vacated as moot*, 497 Fed. Appx. 581 (6th Cir. 2012).

Lead counsel for plaintiff in *Moore v. Brunner*, 2008 WL 3887639 (S.D. Ohio 2008) (successfully arguing that Ohio's exclusion of Socialist Party presidential candidate from ballot violated First Amendment and Article II of the Constitution).

Lead counsel for plaintiff in *Libertarian Party of Ohio v. Brunner*, 567 F. Supp.2d 1006 (S.D. Ohio 2008) (successfully arguing that Ohio's exclusion of Libertarian Party presidential candidate from ballot violated First Amendment and Article II of the Constitution).

Lead counsel for plaintiff in *Moore v. Brunner*, 2008 WL 2323530 (S.D. Ohio 2008) (successfully arguing that Ohio's voter registration and residence requirements for circulators of presidential candidate's petitions violated First Amendment).

Co-counsel for plaintiff in *Speak Up Tampa Bay Public Access Television, Inc. v. Board of Hillsborough County Commissioners*, 2002 WL 32107639 (M.D. Fla. 2002) (successfully arguing that county violated First Amendment by terminating public access producer's contract based on the content of its speech).

Co-counsel for plaintiff in *Florida State Conference of NAACP Branches v. City of Daytona Beach*, 54 F. Supp.2d 1283 (M.D. Fla. 1999) (successfully arguing that city violated the Dormant Commerce Clause and the fundamental right to travel by closing beach access to participants in Black College Reunion).

Lead counsel for plaintiff in *Beattie v. City of St. Petersburg Beach*, 733 F. Supp. 1455 (M.D. Fla. 1990) (successfully arguing that city's mandatory drug-testing policy for firefighters violated the Fourth Amendment).

### ***State Courts***

Lead counsel for relator in *State ex rel. Bender v. Franklin County Board of Elections*, 157 Ohio St.3d 120, 132 N.E.3d 664 (2019) (holding that local election board's belated removal of Libertarian candidate violated Ohio election laws and constitutional rule prohibiting application of irrebuttable presumptions).

Lead counsel for relator in *State ex rel. Fockler v. Husted*, 150 Ohio St.3d 422, 82 N.E.3d 1135 (2017) (holding that Ohio's vote test requirement for maintaining political party status did not apply to a group of voters that had sponsored an independent candidate (Gary Johnson) who had satisfied the vote-test requirement).

*Amicus curiae* in support of adoptive parents in *Embry v. Ryan*, 11 So. 3d 408 (Fla. App. 2009) (holding that Florida courts must give full faith and credit to homosexual adoption legalized in another state).

Co-counsel for plaintiffs in *Blankenship v. Blackwell*, 817 N.E.2d 382 (Ohio 2004) (unsuccessfully arguing that Ohio's exclusion of Ralph Nader from its presidential ballot violated the First Amendment).

Counsel for *amicus curiae*, American Civil Liberties Union of Florida, Inc., in *Tobin v. Damian*, 772 So.2d 13 (Fla. App. 2000) (unsuccessfully arguing that incest victim's cause of action against her father's estate was not time-barred).

Counsel for *amicus curiae*, American Civil Liberties Union of Florida, Inc., in *Recchi America, Inc. v. Hall*, 692 So. 2d 153 (Fla. 1997) (successfully arguing that Florida's irrebuttable presumption that worker who tested positive for drug use caused his own injury and could not recover benefits violated Due Process).

Counsel for *amicus curiae*, American Civil Liberties Union of Florida, Inc., in *E.L. v. State*, 619 So. 2d 252 (Fla. 1993) (successfully arguing that Florida law making it criminal to loiter under circumstances manifesting an intent to engage in drug-related activity violated Due Process).

### **PROFESSIONAL**

Chair, 2002, AALS Section on Civil Rights.

Chair, 2001-2003, ABA Section on Litigation Subcommittee on § 1983 Litigation.

Board of Directors, ACLU Foundation of Florida, Inc., 1992-1993.

Board of Directors, ACLU of Ohio Foundation, Inc., 2003-2004.

Member: Ohio and Kentucky Bars; Bar of the Supreme Court of the United States; Bars of the United States Courts of Appeals for the Third, Fifth, Sixth, Seventh and Eleventh Circuits; Bars of the United States District Courts for the Western District of Kentucky, Central District of Illinois, and Southern District of Ohio.

### **PERSONAL**

Enjoy running (sometimes), cycling (much of the time), hiking (as much as possible as long as the Earth still exists), and climbing (when body allows it (which is not as much anymore) and the Earth still exists). Qualified for Boston Marathon four times (1987, 1988, 1989, 1990); lost Boston Marathon three times (to Seko in 1987, Hussein in 1988, and Mekonnen in 1989). Had I not been injured in 1990 I would have certainly beat Bordin that year. Lost in the finals of the city Little League baseball tournament in Louisville, Kentucky when I was 12-years-old (when my team was one strike away from victory), which still leaves an emotional scar (and probably led indirectly to my dependency on the Chicago Cubs for the last 40 years).