

STATE OF MICHIGAN
IN THE COURT OF APPEALS

ROBERT DAVIS,
Plaintiff-Appellant,

Court of Appeals Docket
368615 and 368628

v.

WAYNE COUNTY ELECTION COMMISSION,
Defendant-Appellee.

Court of Claims Nos
23-012484-AW and
23-000137-MZ

ROBERT LaBRANT et al.,
Plaintiffs-Appellants,

v.

JOCELYN BENSON,
in her official capacity as Secretary of State
Defendant-Appellee.

**MOTION BY PROFESSOR SETH BARRETT TILLMAN FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT-
APPELLEE SECRETARY OF STATE JOCELYN BENSON AND IN
SUPPORT OF AFFIRMANCE OF THE COURT OF CLAIMS' ORDER
DENYING PLAINTIFFS' PRAYER FOR RELIEF**

Professor Seth Barrett Tillman,¹ through his undersigned counsel, respectfully requests leave to file an *Amicus Curiae* brief, in support of Defendant-Appellee Secretary of State Jocelyn Benson and in support of affirmance of the Court of

¹ Counsel for a party did not author this motion in whole or in part, and no one except the *Amicus* and his counsel made a monetary contribution intended to fund the preparation or submission of the motion.

Claims’ order denying Plaintiffs-Appellants Robert LaBrant et al.’s prayer for relief, in the form attached as Exhibit 1.

As grounds in support of this motion, *Amicus* states as follows.

INTRODUCTION

Plaintiffs-Appellants Robert LaBrant et al. ask this Court to hold that Section 3 of the Fourteenth Amendment of the United States Constitution disqualifies Donald J. Trump from holding the office of President of the United States and that Trump, therefore, must be excluded from the ballot in the State of Michigan for the 2024 presidential nomination primary ballot, from the general election ballot, and, perhaps, from consideration during the Joint Session of Congress on January 6, 2025.

Amicus seeks leave of court to file this brief in support of Defendant-Appellee Secretary of State Jocelyn Benson to address two primary issues:

[Question 1] *Whether the President is or is not an “Officer of the United States” for purposes of Section 3? (answer: the President is not an “Officer of the United States”); and,*

[Question 2] *Whether Section 3 is or is not self-executing? (answer: Section 3 is not self-executing).*

If the answer to either Question 1 or Question 2 is *no*, then Plaintiffs-Appellants Robert LaBrant et al.’s lawsuit must be dismissed and the Michigan Court of Claims’ final order must be affirmed.

INTEREST OF AMICUS CURIAE

Professor Seth Barrett Tillman, an American national, is a member of the regular full-time faculty in the Maynooth University School of Law and Criminology, Ireland / Scoil an Dlí agus na Coireolaíochta Ollscoil Mhá Nuad. Professor Tillman’s *curriculum vitae* is attached as Exhibit 2.

Amicus submits this brief to bring to the Court’s attention two primary arguments. First, Section 3 requires **federal** enforcement legislation. Under Chief Justice Chase’s decision in *Griffin’s Case* (1869), state law seeking to implement Section 3 cannot provide a cause of action to remove a candidate from the ballot. Professor Tillman co-authored a full-length article, and another publication, concluding that Section 3 is not self-executing.²

Second, this brief will show that the phrase “Officer of the United States,” as that language is used in the Constitution of 1788 and in Section 3 of the Fourteenth Amendment (1868), does not encompass the presidency. Tillman is one of a very small handful of academics who has written extensively on the Constitution’s “office”- and “officer”-language. Since 2008, Tillman has consistently written that the phrase “Officer of the United States” does not encompass the presidency. Professor Tillman has authored and co-authored many articles over the past fifteen years on the “office”- and “officer”-language in the Constitution of 1788.³ Tillman

² Josh Blackman & Seth Barrett Tillman, *Sweeping and Forcing the President into Section 3*, 28(2) *Tex Rev L & Pol* (forth Mar. 2024), <https://ssrn.com/abstract=4568771>; see also Josh Blackman and S. B. Tillman, Opinion Editorial, ‘Only the Feds Could Disqualify Madison Cawthorn and Marjorie Taylor Greene,’ *The New York Times*, Apr 20, 2022, 5:00 AM ET, <<https://tinyurl.com/2hydyz93>>.

³ This footnote includes only a sampling of Professor Tillman’s relevant publications. See Seth Barrett Tillman & Steven G. Calabresi, Debate, *The Great Divorce: The Current Understanding of Separation of Powers and the Original Meaning of the Incompatibility Clause*, 157 *U Pa L Rev PENNUmbra* 134 (2008); Seth Barrett Tillman, *Why Our Next President May Keep His or Her Senate Seat: A Conjecture on the Constitution’s Incompatibility Clause*, 4 *Duke J Const L & Pub Pol’y* 107 (2009); Seth Barrett Tillman, *Opening Statement, Citizens United and the Scope of Professor Teachout’s Anti-Corruption Principle*, 107 *Nw U L Rev* 399 (2012); Seth Barrett Tillman, *The Original Public Meaning of the Foreign Emoluments Clause: A Reply to Professor Zephyr Teachout*, 107 *Nw U L Rev Colloquy* 180 (2013); Seth Barrett Tillman, *Originalism & The Scope of the Constitution’s Disqualification Clause*, 33 *Quinnipiac L Rev* 59 (2014); Seth Barrett Tillman, *Who Can Be President of the United States?: Candidate Hillary Clinton and the Problem of Statutory Qualifications*, 5 *Br J Am Leg Studies* 95 (2016) (peer reviewed); Seth Barrett Tillman, *The Foreign Emoluments Clause—Where the Bodies are Buried: “Idiosyncratic” Legal Positions*, 59 *S Tex L Rev* 237 (2017); Seth Barrett Tillman & Josh Blackman, *Offices and*

has also authored and co-authored publications on or concerning the “office”- and “officer”-language in Section 3 of the Fourteenth Amendment.⁴

Should the Court adopt either (or both) positions supported by Professor Tillman, this Court will have sufficient reason to affirm the decision of the Michigan Court of Claims, and this Court will have no further need to address any other issues.

CONCLUSION

WHEREFORE, for the reasons stated above, Professor Seth Barrett Tillman respectfully requests that this Court grant him leave to proceed as *Amicus Curiae* and accept the Brief *Amicus Curiae* attached as Exhibit 1.

Officers of the Constitution, Part I: An Introduction, 61 S Tex L Rev 309 (2021); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part II: The Four Approaches*, 61 S Tex L Rev 321 (2021); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution: Part III, The Appointments, Impeachment, Commissions, and Oath or Affirmation Clauses*, 62 S Tex L Rev 349 (2023); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part IV: The ‘Office . . . under the United States’ Drafting Convention*, 62 S Tex L Rev 455 (2023); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part V: The Elector Incompatibility, Impeachment Disqualification, Foreign Emoluments, and Incompatibility Clauses*, 63 S Tex L Rev (forth 2024); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part VI: The Ineligibility Clause*, 63 S Tex L Rev (forth 2024).

⁴ See Seth Barrett Tillman & Josh Blackman, *Is the President an ‘officer of the United States’ for Purposes of Section 3 of the Fourteenth Amendment*, 15 NYU J of Law & Lib 1 (2021); Seth Barrett Tillman & Josh Blackman, *What Happens if the Biden Administration Prosecutes and Convicts Donald Trump of Violating 18 USC § 2383?*, 2021 U Ill L Rev Online 190 (2021); Josh Blackman & Seth Barrett Tillman, *Sweeping and Forcing the President into Section 3*, 28(2) Tex Rev L & Pol (forth Mar. 2024), <https://ssrn.com/abstract=4568771>; see also Seth Barrett Tillman, *Either/Or: Professors Zephyr Rain Teachout and Akhil Reed Amar—Contradictions and Reconciliation* 1–110 (2012), <https://ssrn.com/abstract=1970909>.

Respectfully submitted,
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Dated: December 6, 2023

PROOF OF SERVICE

Amy Zielinski states that on December 6, 2023 she electronically filed the MOTION BY PROFESSOR SETH BARRETT TILLMAN FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLEE SECRETARY OF STATE JOCELYN BENSON AND IN SUPPORT OF AFFIRMANCE OF THE COURT OF CLAIMS' ORDER DENYING PLAINTIFFS' PRAYER FOR RELIEF using the MIFile system, which will send electronic notification of all counsel of record

/s/ Amy Zielinski

Exhibit 1

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INTEREST OF AMICUS CURIAE¹

Professor Seth Barrett Tillman, an American national, is a member of the regular full-time faculty in the Maynooth University School of Law and Criminology, Ireland / Scoil an Dlí agus na Coireolaíochta Ollscoil Mhá Nuad. Professor Tillman's *curriculum vitae* is attached as Exhibit A.

Amicus submits this brief to bring to the Court's attention two primary arguments. First, Section 3 requires federal enforcement legislation. Under Chief Justice Chase's decision in *Griffin's Case* (1869), state law seeking to implement Section 3 cannot provide a cause of action to remove a candidate from the ballot. Professor Tillman co-authored a full-length article, and another publication, concluding that Section 3 is not self-executing.²

Second, this brief will show that the phrase "Officer of the United States," as that language is used in the Constitution of 1788 and in Section 3 of the Fourteenth Amendment (1868), does not encompass the presidency. Tillman is one of a very small handful of academics who has written extensively on the Constitution's "office"- and "officer"-language. Since 2008, Tillman has consistently written that the phrase "Officer of the United States" does not encompass the presidency. Professor Tillman has authored and co-authored many articles over the past fifteen

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years on the “office”- and “officer”-language in the Constitution of 1788.³ Tillman has also authored and co-authored publications on or concerning the “office”- and “officer”-language in Section 3 of the Fourteenth Amendment.⁴

Should the Court adopt either or both positions supported by Professor

³ This footnote includes only a sampling of Professor Tillman’s relevant publications. See Seth Barrett Tillman & Steven G. Calabresi, Debate, *The Great Divorce: The Current Understanding of Separation of Powers and the Original Meaning of the Incompatibility Clause*, 157 U Pa L Rev. PENNUMBRA 134 (2008); Seth Barrett Tillman, *Why Our Next President May Keep His or Her Senate Seat: A Conjecture on the Constitution’s Incompatibility Clause*, 4 Duke J Const L & Pub Pol’y 107 (2009); Seth Barrett Tillman, Opening Statement, *Citizens United and the Scope of Professor Teachout’s Anti-Corruption Principle*, 107 Nw U L Rev 399 (2012); Seth Barrett Tillman, *The Original Public Meaning of the Foreign Emoluments Clause: A Reply to Professor Zephyr Teachout*, 107 Nw U L Rev Colloquy 180 (2013); Seth Barrett Tillman, *Originalism & The Scope of the Constitution’s Disqualification Clause*, 33 Quinnipiac L Rev 59 (2014); Seth Barrett Tillman, *Who Can Be President of the United States?: Candidate Hillary Clinton and the Problem of Statutory Qualifications*, 5 Br J Am Leg Studies 95 (2016) (peer reviewed); Seth Barrett Tillman, *The Foreign Emoluments Clause—Where the Bodies are Buried: “Idiosyncratic” Legal Positions*, 59 S Tex L Rev 237 (2017); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part I: An Introduction*, 61 S Tex L Rev 309 (2021); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part II: The Four Approaches*, 61 S Tex L Rev 321 (2021); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution: Part III, The Appointments, Impeachment, Commissions, and Oath or Affirmation Clauses*, 62 S Tex L Rev 349 (2023); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part IV: The ‘Office . . . under the United States’ Drafting Convention*, 62 S Tex L Rev 455 (2023); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part V: The Elector Incompatibility, Impeachment Disqualification, Foreign Emoluments, and Incompatibility Clauses*, 63 S Tex L Rev (forth. 2024); Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part VI: The Ineligibility Clause*, 63 S Tex L Rev (forth 2024).

⁴ See Seth Barrett Tillman & Josh Blackman, *Is the President an ‘officer of the United States’ for Purposes of Section 3 of the Fourteenth Amendment*, 15 NYU J of Law & Lib 1 (2021); Seth Barrett Tillman & Josh Blackman, *What Happens if the Biden Administration Prosecutes and Convicts Donald Trump of Violating 18 U.S.C. § 2383?*, 2021 U Ill L Rev Online 190 (2021); Josh Blackman & Seth Barrett Tillman, *Sweeping and Forcing the President into Section 3*, 28(2) Tex Rev L & Pol (forth Mar. 2024), <https://ssrn.com/abstract=4568771>; see also Seth Barrett Tillman, *Either/Or: Professors Zephyr Rain Teachout and Akhil Reed Amar—Contradictions and Reconciliation* 1–110 (2012), <https://ssrn.com/abstract=1970909>.

Tillman, this Court will have sufficient reason to affirm the decision of the Michigan Court of Claims, and this Court will have no further need to address any other issues.

INTRODUCTION

LaBrant v Benson raises two pure legal issues or questions regarding Section 3 of the Fourteenth Amendment. They are:

Question 1: *Whether the President is or is not an “Officer of the United States” for purposes of Section 3? (answer: the President is not an “Officer of the United States”); and,*

Questions 2: *Whether Section 3 is or is not self-executing? (answer: Section 3 is not self-executing).*

If the answer to either Question 1 or Question 2 is *no*, then Plaintiffs-Appellants Robert LaBrant et al’s lawsuit must be dismissed and the Michigan Court of Claims’ final order must be affirmed.

The Court of Claims did not squarely address either question. For example, the Court of Claims failed to address the landmark decision on Section 3: Chief Justice Salmon P. Chase’s ruling in *Griffin’s Case*, 11 F Cas 7 (CCD Va 1869).⁵ This decision, rendered within a year of Section 3’s ratification, held that Section 3 is *not* self-executing, and that Section 3’s enforcement requires a federal statute. Under Chase’s opinion, state law is insufficient to enforce Section 3’s disqualification provision. Moreover, *Griffin’s Case*, and subsequent authorities, liquidated⁶ the meaning of Section 3. And *Griffin’s Case* is consistent with a core premise of Reconstruction: *Section 3 empowered the federal government to control state elections and office-holding, not the other way around*. On appeal, this Court

⁵ *Griffin’s Case* was a federal court habeas corpus proceeding testing the validity of a conviction before a state court.

⁶ The specialized meaning of liquidation in this context is explained at Part I[A], *infra*.

should follow *Griffin's Case*.

The second threshold question is whether the President is an “Officer of the United States.” The answer to this question was *no* in 1788, was *no* in 1868, and is *no* today. In the Constitution of 1788, the phrase “Officers of the United States” was used in the Appointments Clause, the Commissions Clause, the Oath or Affirmation Clause, and the Impeachment Clause. In none of these clauses is the President an “Officer of the United States.” The President does not appoint himself, does not commission himself, and does not take the Article VI oath applicable to “officers of the United States.” Rather, the President takes his own unique Article II oath. Finally, the Impeachment Clause expressly distinguishes between the President and the “Officers of the United States.”

Justice Joseph Story’s celebrated *Commentaries on the Constitution* in 1833 reaffirmed that the President is not an “Officer of the United States.” Between 1866 and 1868, there were extensive debates in Congress and in the States about Section 3 of the Fourteenth Amendment. To date, no one has located *any* record of anyone stating that the President is an “Officer of the United States” for purposes of Section 3. None. But there is contemporaneous evidence saying the opposite.

In the years, decades, and sesquicentennial following 1868, there has been a constant stream of authorities—Supreme Court decisions, Attorney General opinions, scholarship, and more—that support the same conclusion: the President is not an “Officer of the United States.”

The *LaBrant* Plaintiffs do not meaningfully attempt to rebut this 150+ years of history. Rather, they make three interpretive moves. First, they insist that the actual language used in the Constitution is irrelevant, and there is no difference between an “office,” an “officer,” an “officer of the United States” and an “office . .

. under the United States.” *Potato, potahto, tomato, tomahto, let’s call the whole thing off*. And nearly all of their arguments flow from this flawed assumption. Second, the *LaBrant* Plaintiffs disregard evidence from 1788 through 1866, and from 1868 through the present day, as if the continuous tradition of meaning that came before and after the 39th Congress, which proposed the Fourteenth Amendment, is irrelevant. And third, the *LaBrant* Plaintiffs hyper-focus on the intentions and expected applications of members of Congress at the time Section 3 was enacted, even though those framers had no reason (grounded in prior experience) to be concerned with a future insurrection involving a former President who had only taken one oath of office—the Article II presidential oath of office—and attempted to run for re-election. Trump is unique in that way—the first elected President never to have held a high state or federal, civilian or military, position covered by Section 3 prior to his becoming President.

The Court of Claims was correct to dismiss this action. This Court should affirm the Court of Claims’ ruling based on the text, history, and tradition of Section 3.

I. Plaintiffs’ Requested Relief is Barred by *Griffin’s Case* (1869)

In *Griffin’s Case*, 11 F Cas 7 (CCD Va 1869),⁷ Chief Justice Chase held that Section 3 is *not* self-executing. Moreover, Chase held that Section 3 could *only* be put into effect on behalf of a party seeking affirmative relief against the government,

⁷ Plaintiffs Brief asserts that Chief Justice Chase presided over a “two-judge panel” in *Griffin’s Case*. *LaBrant Plts.’ Br.* at 23. This claim is incorrect. Chase ruled alone in the federal Circuit Court, and he reversed Judge Underwood’s decision for the federal district court below.

e.g., a party seeking habeas relief, if that relief was authorized by a federal statute.⁸ Under *Griffin's Case*, the relief sought by the *LaBrant* Plaintiffs is barred precisely because they are seeking affirmative relief against the government to enforce Section 3 without authorization from federal enforcement legislation. To the extent that Plaintiffs-Appellants' relief contemplates using a state law procedure or a state law cause of action to put Section 3 into effect, that position cannot be harmonized with the Chief Justice's 1869 holding.

On appeal, this Court should follow *Griffin's Case*. This decision, and subsequent authorities, liquidated the meaning of Section 3. Moreover, post-2020 critical commentary about *Griffin's Case* is deeply flawed. It is *Griffin's Case*, as opposed to the positions put forward by recent plaintiffs in this and other Section 3 actions, which is consistent with a core premise of Reconstruction: Congress, and not the distrusted states, was empowered to enforce Section 3.

A. *Griffin's Case*, and Subsequent Authority, Liquidated the Meaning of Section 3

The Chief Justice of the United States supported *Griffin's Case*. So did *all* his colleagues on the Supreme Court. *Griffin's Case*, 11 F Cas 27 (“I am authorized to

⁸ *Griffin's Case*, and the doctrine of self-execution, is discussed in some detail in Parts I and II of Josh Blackman & Seth Barrett Tillman, *Sweeping and Forcing the President into Section 3*, 28(2) *Tex Rev L & Pol* (forth 2024), <https://ssrn.com/abstract=4568771> (hereinafter “*Sweeping and Forcing*”). See also Horace Edgar Flack, *The Adoption of the Fourteenth Amendment* 131 (Baltimore, Johns Hopkins Press 1908) (“He [Thaddeus Stevens] admitted, however, that Congress would have to pass registry law and other laws to enforce it [the preliminary version of Section 3], *just as would have to be done in regard to the other sections*. This is probably the most important statement made in regard to the third section, since it shows very clearly that he thought congressional legislation was necessary to make the first section effective.” (emphasis added)).

say that they unanimously concur in the opinion . . .”). A full thirty years later, in *Ex parte Ward*, 173 US 452, 454–55 (1899), Chief Justice Fuller, for a unanimous Court, cited *Griffin’s Case* favorably, on-point, and as good law. There is no hint in *Ward* that *Griffin’s Case* is anything but settled law.

Lower federal courts, state courts, and executive branch opinions have expressly adopted *Griffin’s Case* as mandating federal legislation in order to enforce the Fourteenth Amendment.⁹ There is no hint that any court thought *Griffin’s Case’s* central holding was anything but settled law. Likewise, after 1869, courts—federal state, and foreign—continued to cite *Griffin’s Case* favorably for other propositions of law.¹⁰ Post-1869 scholarly commentary has consistently described *Griffin’s Case* as established law, absent any criticism, if not putting forth substantial praise.¹¹

What is the significance of such near-universal acceptance over the course of 150 years? In *Federalist No. 37*, James Madison explained “All new laws . . . are considered as more or less obscure and equivocal, until their meaning be *liquidated*

⁹ See *Cale v City of Covington*, 586 F2d 311, 316 (4th Cir 1978); *Woodland v Newhall’s Adm’r*, 31 F 434, 439 (CCWD Va 1887); *In re Brosnahan*, 18 F 62, 81 n 73 (CCWD Mo 1883) (McCrary, concurring); *State v Buckley*, 54 Ala 599, 616 (1875); Va Op Att’y Gen No 21-003, at 3 (2021).

¹⁰ See *Head-Money Cases*, 18 F 135, 143 n 26 (CCED NY 1883) (Blatchford, Justice); *Commonwealth v Chalkley*, 20 Gratt 404, 409 (Va 1871); *In re Sheehan*, 122 Mass 445, 449 (1877) (Gray, CJ); *Sartain v State*, 10 Tex Ct App 651, 654 (1881) (White, PJ); *Daniels v Towers*, 7 SE 120, 121–22 (Ga 1887) (Bleckley, CJ); *Brooke v Turner*, 30 SE 55, 56 (Va 1898); *McGovern v Mitchell*, 63 A 433 *passim* (Conn 1906); *Coyle v Smith*, 113 P 944, 948 (Okla 1911); *Ex parte Klune*, 240 P 286, 287 (Mont 1925) (Callaway, CJ); *Duane v Philadelphia*, 185 A 401, 403 (Pa 1936) (Klephart, CJ); *Calcutt v FDIC*, 37 F4th 293, 343 (6th Cir 2022) (Murphy, J, dissenting), rev’d on other grounds, 598 US 623 (2023); *In re Gunn*, 32 P 948, 955 (Kan 1893) (Allen, J, dissenting); *Deaney v Linen Thread*, 118 A2d 28, 36 (NJ 1955) (Heher, J, dissenting); *State v Stephens*, 664 SW3d 293, 304 n 46 (Tex Crim App 2022) (Slaughter, J, dissenting); see also *Toronto R. Co.* (1918) 46 DLR 547 (Ontario CA) (Meredith, CJO), rev’d on other grounds, *Toronto R. v Toronto*, 51 DLR 69 (JCPC 1920).

¹¹ Charles Fairman, *Reconstruction and Reunion 1864–1868*, at 602–07 (1971).

and ascertained by a series of particular discussions and adjudications.” Professor Baude explains that Madisonian “Liquidation was a specific way of looking at post-Founding practice to settle constitutional disputes” William Baude, *Constitutional Liquidation*, 71 *Stan L Rev* 1, 4 (2019). In 1857, in his *Speech on Dred Scott Decision*, Abraham Lincoln explained that precedents should be adhered to when: a “decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history”

This liquidation principle applies to the Constitution of 1788, as well as to the Reconstruction Amendments. The meaning of Section 3 was liquidated by *Griffin’s Case* and by a long history of precedent and other authorities citing *Griffin’s Case* favorably—all absent any indication that the law remained unclear or, even, unsettled. *Griffin’s Case* is not, as Professors Baude and Paulsen wrote, an “appalling” decision that is comparable to *Dred Scott*. See William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 *U Pa L Rev* (forthcoming 2024). Rather, *Griffin’s Case* is the fountainhead of Section 3 jurisprudence and ought to control this case.

To summon disbelief that *Griffin’s Case’s* central holding is anything but settled, the *LaBrant* Plaintiffs point to two decisions of the Louisiana Supreme Court. The two decisions—*Downes v Townes* and *Sandlin v Watkins*—were both decided in 1869—and both were decided some several months after *Griffin’s Case*. *LaBrant Plts.’ Br.* at 22, 25–27. Neither *Downes* nor *Sandlin* cite to *Griffin’s Case*. Neither *Downes* nor *Sandlin* distinguishes its particular facts from *Griffin’s Case*. And neither explains why its (purported contrary) holding is *correct*, and why

Griffin’s Case is wrong. Between 1869 and 2020, according to Westlaw’s “Citing References,” these two cases were only cited a total of ten times in Louisiana state courts, and only one time in another jurisdiction—in Mississippi for an unrelated point of law. Then starting in 2020, these two Louisiana cases have been continually misreported in Section 3 litigation around the United States. And for what it is worth, *Griffin’s Case* was decided by Chief Justice Chase—a leading light of antebellum anti-slavery litigation, governor, senator, member of Lincoln’s wartime cabinet, and Chief Justice of the United States. By contrast, *Sandlin* was decided by Judge Taliaferro. Taliaferro owned 4, 13, and 27 slaves in 1840, 1850, and 1860, respectively. Taliaferro sat out the Civil War, kept a deer as a pet, and after the war ran for Lieutenant Governor of Louisiana on an overtly racist platform—i.e., against political equality and suffrage for freedmen.¹²

The *LaBrant* Plaintiffs assert that *Sandlin v Watkins* stands for the proposition that Section 3 is self-executing and quote the Louisiana Supreme Court as stating: “we are far from assenting to’ the proposition that Section 3 required federal legislation” *LaBrant Plts.’ Br.* at 25. This is what the Louisiana Supreme Court actually stated:

What are the impediments in the way of the defendant’s holding the office? He contends that the fourteenth article of the amendments to the Constitution does not affect him because it was not adopted until after he became entitled to his office; that it is prospective only in its effect; that it is not self-enforcing, and before it can have effect it requires legislation by Congress. These positions we are far from assenting to; *but without considering them*, there is a part of the supreme law of the land bearing upon the case before us which cannot have a retrospective

¹² See *Platform of the National Conservative Union Party*, *The New Orleans Times*, Oct 17, 1865, at 2; Wynona Gillmore Mills, *James Govan Taliaferro (1798–1876)* at 8, 25–46, 48, 52 (Master’s Thesis, Dep’t of History, Louisiana State University 1965), <<https://tinyurl.com/2b3u5fum>>.

effect upon it, for the reason that it was in force before the defendant was commissioned as Judge of the Eleventh District. *We refer to the act of Congress before mentioned, passed on the twenty-fifth June, 1868.* The observance of this law was expressly made a condition on which Louisiana was re-admitted to the Union.¹³

In short, the part of the case relied upon by the *LaBrant* Plaintiffs was entirely dicta, and not just dicta, but dicta the court *expressly* stated it was not “considering.” Instead, the entire holding actually relied upon a federal enforcement statute, and not just any act of Congress, but one whose observance was mandated as a condition of Louisiana’s being reconstructed. No *Ifs*, *ANDs*, or *BUTs*—*Sandlin* is 100% consistent with *Griffin’s Case*.

As for *Downes*, *LaBrant* Plaintiffs characterize that case as “adjudicating [a] section 3 claim on the merits.” *LaBrant Plts.’ Br.* at 26. This is what the Louisiana Supreme Court actually stated: “Holding a [state] constitutional office he could be removed by impeachment or address of the [state] Legislature, or by proceedings under the [state] act commonly known as the ‘Intrusion Act,’ *if it should be judicially ascertained that he is disqualified by the constitution of this State or of the United States.*”¹⁴ In *Downes*, there was a coordinate state statute which applied state grounds for effecting removals based on disqualification. That statute was held unconstitutional on state constitutional law grounds. There was no Section 3 federal enforcement statute to apply, and there is not a hint that the court even considered creating some Section 3 enforcement procedure on its own authority. In short, the

¹³ *State ex rel Sandlin v Watkins*, 21 La Ann 631, 633 (1869) (emphases added). One must recognize the possibility that the *Sandlin* court and the *Downes* court were simply unaware of the prior decision in *Griffin’s Case*, which was then only some several months old.

¹⁴ *State ex rel Downes v Townes*, 21 La Ann 490 (1869) (emphasis added); see also *supra* note 13.

court never reached any Section 3 merits issue at all. Nothing in *Downes* impliedly or expressly contradicts *Griffin's Case*.

B. The Most Significant Post-2020 Commentary Criticizing *Griffin's Case* is Deeply Flawed

In the wake of Chief Justice Chase's decision, *Amicus* has found no opposition to *Griffin's Case* from members of Congress—even among the Radical Republicans that sought vigorous enforcement of Section 3. Even if there were a few members of Congress or Section 3 ratifiers who had previously contended that Section 3 did not require federal enforcement legislation, Chief Justice Chase's decision promptly settled the matter.

About one year after *Griffin's Case*, Congress enacted the Enforcement Act of 1870, ch 114, 16 Stat 140, 141. This statute created a *quo warranto* mechanism whereby *federal* prosecutors in *federal* courts could remove Section-3-listed office-holders following a defined procedure to determine if such defendants were disqualified by Section 3. The *Amicus* has found no congressional debate suggesting that those who framed the Enforcement Act of 1870 thought Chief Justice Chase's decision was *wrong*. The *Amicus* has found no move in Congress to chastise Chase politically or congressional calls for his impeachment. To the contrary, Congress took the precise action that would be expected by those who believed that Chase decided the self-execution issue *correctly*: enacting federal enforcement legislation to remove individuals subject to Section 3 disqualification. Moreover, many Northern and Southern newspapers alike praised Chase's decision.¹⁵ To be sure, there may have been some critical press accounts, but in rapid order *Griffin's Case*

¹⁵ *Sweeping and Forcing*, *supra* note 8, at Part II.B.6.d.

became the definitive understanding of Section 3.

It was not until circa 2020 that jurists and commentators discovered that *Griffin's Case* was deeply flawed. Advocates now argue that *Griffin's Case* cannot be reconciled with Chase's earlier decision in the *Case of Jefferson Davis*, 7 F Cas 63 (CCD Va 1868): a federal treason prosecution.¹⁶ Indeed, critics charge that Chief Justice Chase was ruling in a partisan fashion to pave the way for a future presidential run. This is not usually how courts view decisions written by Supreme Court Justices. If psychological projection is now the standard, there are many other decisions that could be tossed onto the Article III ash heap.

More importantly, there is a simple way to reconcile these cases. Griffin, the habeas applicant, sought to use Section 3 as a *sword*—i.e., *offensively as a cause of action supporting affirmative relief against the government*, but he could not do so without enforcement legislation. By contrast, Davis sought to use Section 3 as a *shield*—i.e., as a defense in a criminal prosecution in the sense that Section 3 displaced all other punishments and sanctions, and he could do so without enforcement legislation. *Cale v Covington*, decided by the Fourth Circuit Court of Appeals more than a century later, explained this understanding of *Griffin's Case*. The Fourth Circuit held “that the Congress and Supreme Court of the time were in agreement [with Chief Justice Chase] that *affirmative relief* under [Section 3 of] the amendment should come from Congress.” *Cale v City of Covington*, 586 F2d 311, 316 (4th Cir 1978) (emphasis added). By contrast, the court observed, the “Fourteenth Amendment provide[s] of its own force as a *shield* under the doctrine

¹⁶ *Griffin's Case* is discussed at length in Part III of *Sweeping and Forcing*, *supra* note 8.

of judicial review.” *Id.* (emphasis added).¹⁷ The sword-shield distinction is well established in the case law. See *Mich Corr Org v Mich Dep’t of Corr*, 774 F3d 895, 906 (6th Cir 2014) (Sutton, J).

The *LaBrant* Plaintiffs have no answer for *Cale*, *Mich Corr Org*, and related cases. They do not even cite these cases. Instead, the *LaBrant* Plaintiffs merely characterize the sword-shield distinction as post-hoc, and support that characterization by stating “Neither the ex-Confederates who petitioned Congress for amnesty nor the members of Congress who considered their requests ever recognized this theoretical distinction.” *LaBrant Plts.’ Br.* at 25 n 18. Of course, the ex-Confederates were *defendants* in Section 3 litigation. As such, they were generally using the Constitution as a shield. They did not need enforcement legislation, and enforcement legislation would make their lives worse, not better. So it is hardly a surprise that their publications and petitions did not draw attention to this issue. What could be more plain?

C. Section 3 Empowered the Federal Government to Control State Elections, and not the Other Way Around

In light of *Griffin’s Case*, the States have no role in enforcing Section 3—that is, no role absent congressional authorization.

This position is supported by a core premise of the Reconstruction Amendments. The idea that the Fourteenth Amendment, absent express federal statutory authorization, allowed the States to implement Section 3 only makes sense

¹⁷ A recent Fourth Circuit concurrence criticized Chase, but did not acknowledge this circuit precedent. *Cawthorn v Amalfi*, 35 F4th 245, 278 n 16 (4th Cir 2022) (Richardson, J, concurring).

if state governments could be trusted. But the Fourteenth Amendment and enforcement legislation were enacted precisely because state institutions, state officials, and *even* state courts were *not* considered entirely trustworthy by the national government.¹⁸ Indeed, the idea that Section 3 permitted *States*, via ballot control, to limit voter and candidate participation for *federal* positions and to do so absent express federal authorization seems novel and ahistorical. In fact, the Section 3 cases that have been cited between 1868 and 1870 concerned *state* positions, and not *federal* positions. Section 3 empowered the *federal* government to control *state* elections and state office-holding, not the other way around.

D. The Application of the Political Question Doctrine and the Self-Execution Issue are Rooted in Similar Policy Concerns.

The Court of Claims ruled against Plaintiffs based, in part, on the application of the Political Question Doctrine. One of the *Baker v Carr*, 369 US 186 (1962), factors is a “lack of discoverable and manageable standards.” *Id.* at 217. This is akin to the problems pointed out by Chief Justice in *Griffin’s Case*—that is, enforcement of Section 3 requires a federal statute. For example, what does Section 3 mean by an “insurrection”? Does it refer to some common law background understanding of insurrection? Does it refer to the then in-force Insurrection Act of 1862? And if the latter, does Section 3 also require a federal prosecution brought by a federal prosecutor in a federal court? Should a modern court incorporate the elements of today’s Insurrection Act, as opposed to the 1862 Act? What’s the burden of proof? Is there a right to a jury trial?

¹⁸ See *Ex parte Milligan*, 71 US 2 (1866) (Chase, CJ, concurring) (“In times of rebellion and civil war it may often happen, indeed, that judges and marshals will be in active sympathy with the rebels, and courts their most efficient allies.”).

These questions do not answer themselves, and allowing state judges in the 51 jurisdictions which appoint presidential electors to make this call risks national uniformity precisely where such uniformity is most needed.

II. The President is not an “Officer of the United States”

The second threshold question presented in this case is whether the President is an “Officer of the United States.” The Court of Claims did not substantively address this issue, but this Court may affirm a trial court decision on alternate grounds. See, e.g., *Detroit Int’l Bridge Co v Commodities Export Co*, 279 Mich App 662, 668; 760 NW2d 565 (2008).

This Court should affirm the Court of Claims’ decision on the alternative ground that the President is not an “Officer of the United States” for three reasons: text, history, and tradition. First, the text: the phrase “Officer of the United States” in the Constitution of 1788 and Section 3 does not refer to the President. Second, the history: since the framing, prominent jurists have maintained that the phrase “Officer of the United States” does not refer to the President. Third, the tradition: there is a constant stream of authority—from courts, executive branch opinions, and scholarship—that supports these textual and history-based positions. The President is not an “officer of the United States.”

Finally, one court of record has squarely held that the President is not an “officer of the United States” under Section 3. See *Anderson v Griswold, Colo Sec of State and Intervenors Republican State Central Cmt*, Case No 2023CV32577, 2023 WL 8006216 (Dist Ct, City and County of Denver, Colo, Nov 17, 2023) (Wallace, J), slip op at 95–102, appeal filed (Colo) (hereinafter “Colo Trial Ct” or “Colorado Trial Court”).

A. Text: In 1788, 1868, and Today, the President is not an “Officer of the United States”

The Constitution’s original seven articles include twenty-two provisions that refer to “offices” and “officers.”¹⁹ Some clauses use the words “office” or “officer,” standing alone and unmodified. Other clauses use the word “office” or “officer” followed by a modifier, such as “of the United States” or “under the United States.” The presumption should be that where the Framers used different office- and officer-language, they conveyed different meanings. These phrases are not interchangeable.

Four provisions of the Constitution of 1788 use the phrase “Officers of the United States.” The Colorado Trial Court concluded that these four provisions “lead towards the same conclusion—that the drafters of Section Three of the Fourteenth Amendment did not intend to include the President as ‘an officer of the United States.’” Colo Trial Ct at ¶311. Rather, this language referred to appointed positions. Presidents are not appointed; they are elected.

First, the Colorado Trial Court held that the Appointments Clause “distinguishes between the ‘President’ and ‘officers of the United States’.” Colo Trial Ct at ¶311 (inner quotation marks added). Under the Appointments Clause, the President can appoint “Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States”²⁰ All of the enumerated positions are *appointed*. Moreover, these positions must be “established

¹⁹ See Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution, Part II: The Four Approaches*, 61 S Tex L Rev 321 (2022).

²⁰ The drafting history of the Appointments Clause is discussed in Seth Barrett Tillman & Josh Blackman, *Offices and Officers of the Constitution: Part III, The Appointments, Impeachment, Commissions, and Oath or Affirmation Clauses*, 62 S Tex L Rev 349, 387–390 (2023) (hereinafter “Part III”).

by Law”—that is created by statute. The reference to “all other Officers of the United States” should be understood in a similar fashion as the expressly enumerated positions: appointed positions that are created by statute.

Therefore, the text of the Appointments Clause demonstrates that although the President holds an “office,” he is not an “Officer of the United States” as that phrase is used in the Appointments Clause and the other provisions in the Constitution.

Second, the Colorado Trial Court held that the Impeachment Clause “separates” the President and Vice President “from the category” of “all civil Officers of the United States.” Colo Trial Ct at ¶311. While the Appointments Clause refers to “all *other* Officers of the United States,” the Impeachment Clause refers only to “all civil Officers of the United States.” Justice Story observed that the absence of the word *other* in the Impeachment Clause “lead[s] to the conclusion” that the President is not “included in the description of civil officers of the United States.” 2 Joseph Story, Commentaries on the Constitution of the United States § 791 (1833), <https://perma.cc/R2GB-ULUW>. Moreover, Story’s conclusion is consistent with the drafting history of the Impeachment Clause. Early drafts of the Impeachment Clause included the word “other” at precisely this location, but that word was subsequently removed.²¹

It has been argued that the President is listed separately from “civil Officers of the United States” because he is “both a military and civil officer.” Those who have made this argument provide no support for this claim. To the contrary, Justice Story maintained that the President, even as Commander in Chief, is still a civilian

²¹ *Part III, supra* note 20, at 399–400.

officer. See 2 Story, *supra*, at § 791. This principle was true in the time of George Washington²² and in modern times.²³

Third, the Colorado Trial Court pointed to the Commissions Clause, which provides that the President “shall Commission *all* the Officers of the United States.” Colo Trial Ct at ¶311 (emphasis added). Obviously, the President does not commission himself.²⁴ If the President must commission *all* the “officers of the United States,” and the President does not commission himself, then the President cannot be included in the category of “*all* the officers of the United States.” *All* means *All*.

Fourth, the Colorado Trial Court observed that in the Article VI Oath or Affirmation Clause, “the President is explicitly absent from the enumerated list of persons the clause requires to take an oath to support the Constitution.” Colo Trial Ct at ¶311. The President would only be covered by the Article VI Oath or Affirmation Clause if he is an “Officer of the United States.” However, the Colorado Trial Court recognized that the President’s separate Article II oath “provides further support for distinguishing the President from ‘Officers of the United States’” in Article VI. Colo Trial Ct at ¶311. In addition to the different wording between the Article II and Article VI oaths, this distinction is further supported by the different oaths administered to President George Washington and Vice President John Adams

²² Alexander Hamilton’s Treasury Department prepared rolls of federal officials and officers with their compensation. The President was included in the “civil list” and not in the military list. See, e.g., *Report on the Estimate of the Expenditure for the Civil List and the War Department to the End of the Present Year* (Sept. 19, 1789), Founders Online, <https://perma.cc/EY2C-867F>.

²³ *Roosevelt Is Held Civilian At Death*, New York Times (July 26, 1950) (citing Surrogacy Court).

²⁴ *Part III*, *supra* note 20, at 416–418.

(as President of the Senate), nearly two months apart in 1789.²⁵ The Colorado Trial Court rightly observed that the “class of officers to whom Section Three applies” is the same “Officers of the United States” in Article VI, which does not include the President. Colo Trial Ct at ¶313 n 19. In 1876, less than a decade after ratification of the Fourteenth Amendment, George Washington Paschal, a Southern Unionist, published the second edition of his treatise on constitutional law. Paschal stated directly that the Article VI oath and Section 3 apply to “*precisely* the same class of officers.”²⁶ And that class of positions does not include the President.

It is also worth pointing out that Section 3 applies to positions which took an oath to “support” the Constitution. The language of “support” is expressly used in the Article VI Oath or Affirmation Clause (which does not extend to the presidency). That language of “support” is not expressly used in the President’s Article II oath. Thus, the use of “support”-language in Section 3 links Section 3 back to the positions covered by Article VI, and not to Article II which covers only the presidency.

The Colorado Trial Court was correct to conclude that these four constitutional provisions “lead towards the same conclusion—that the drafters of the Section Three of the Fourteenth Amendment did not . . . include the President as ‘an officer of the United States.’” Colo Trial Ct at ¶311.

²⁵ *Part III, supra* note 20, at 423–433.

²⁶ George W. Paschal, *The Constitution of the United States: Defined and Carefully Annotated* xxxviii (2d ed. 1876) (emphasis added), <https://bit.ly/3SXDg5K>. See generally George Washington Paschal, *The Constitution of the United States Defined And Carefully Annotated* 250 n 42 (1868), <https://bit.ly/3SXvTvm>.

B. History: Contemporaneous Sources Recognized that the President was not an “Officer of the United States”

In 1876, the House of Representatives impeached Secretary of War William Belknap. During the trial, Senator Newton Booth from California observed, “the President is not an officer of the United States.” Proceedings of the Senate Sitting for the Trial of William W. Belknap at 145. Instead, Booth stated, the President is “part of the Government.” *Id.*²⁷

Two years later, David McKnight wrote an influential treatise on the American electoral system. He reached a similar conclusion. McKnight wrote that “[i]t is obvious that . . . the President is not regarded as ‘an officer of, or under, the United States,’ but as one branch of ‘the Government.’” David A. McKnight, *The Electoral System of the United States* 346 (1878). This contemporaneous evidence supports the Colorado Trial Court’s conclusion that the President is not an “Officer of the United States.”

Plaintiffs cite a slew of statements from the nineteenth century in which the President is referred to as an “officer,” the “the chief constitutional officer of the United States,” and more. None of these exchanges were made in the context of Section 3. These references to the President may have been made in a more colloquial sense, but they did not state the President was an “Officer of the United States” for purposes of Section 3, or for purposes of *any* provision of the Constitution of 1788. Plaintiffs have yet to point to a single statement, circa 1866–1868, in which

²⁷ See generally Josh Blackman & Seth Barrett Tillman, *Is the President an ‘Officer of the United States’ for Purposes of Section 3 of the Fourteenth Amendment*, 15 NYU J of Law & Lib 1 (2021) (hereinafter “*Is the President?*”).

anyone argued that the President is an “Officer of the United States” for purposes of Section 3’s triggering or jurisdictional clause. Not one.²⁸

And there is a good reason why no such evidence has been found. As the Colorado Trial Court acknowledged, President Trump was “the first President of the United States who had not previously taken an oath of office.” Colo Trial Ct at ¶313 n 20. All prior Presidents had taken some *other* oath. There would have been no reason for those who framed and ratified the Fourteenth Amendment to discuss a person who (1) was elected as President, (2) but had never before taken any *other* constitutional oath, (3) and then is alleged to have engaged in insurrection, (4) and then sought re-election. Such a person was not within their experience, and so not foreseen. The Colorado Trial Court concluded that “For whatever reason the drafters of Section Three did not . . . include a person who had only taken the Presidential Oath.” Colo Trial Ct at ¶313. It is the meaning of the ratified text which controls, and not speculations about unexpressed intentions. *E.g.*, Antonin Scalia, A Matter of Interpretation 38 (1997) (“What I look for in the Constitution is precisely what I look for in a statute: the original meaning of the text, not what the original draftsmen intended.”).

Indeed, it is not difficult to understand why the drafters of Section 3 left out language that would apply to a person in Trump’s situation. As explained above, Trump is unique. Likewise, the most famous Confederates, who were alive in 1866 when the Fourteenth Amendment was proposed, were former U.S. Representatives,

²⁸ Undoubtedly, any number of statutes, federal regulations, and rules of court may use the language of “Officer of the United States” for the President, but such usage does not and has never controlled how the provisions of the Constitution are understood. Indeed, any such usage in a statute is a departure from the default constitutional meaning or standard usage. Such a departure must be established by evidence.

U.S. Senators, U.S. cabinet members and diplomats, and U.S. military officers. Jefferson Davis, for example, was a former U.S. Senator and a former U.S. cabinet member. There was no reason to cover a person who took one oath, and *only* one oath as President, and Section 3’s drafters did not cover such a person.

Nor was this lack of coverage exceptional. There were any number of other positions which Section 3’s jurisdictional or triggering clause did not reach.²⁹ It did not reach members of state constitutional conventions to amend the state constitution or to ratify proposed Article V amendments to the federal Constitution. It did not include members of state secession conventions. It did not include state militia officers.³⁰ It did not include presidential electors. And it did not include non-member officers appointed to state and federal legislative positions, such as the Secretary of the Senate and the Clerk of the House. So Section 3’s triggering clause did not cover the presidency—but it, likewise, did not cover many other important state and federal positions. Indeed, secession conventions were the immediate cause which put secession and civil war into motion, and state constitutional conventions were the engines which purported to legally sustain secession and the war itself. And circa 1866–1868, when the Fourteenth Amendment was drafted, proposed, and ratified, state constitutional conventions played an essential role towards reconstructing the former confederate states. The drafters of Section 3 could have chosen language which extended to all federal and state positions which took a state or federal oath or affirmation to the United States or to any state constitution. Instead, Section 3’s drafters made use of the extant language from Article VI, and that language had

²⁹ *Sweeping and Forcing*, *supra* note 8, at Part V.F.[1]–[4].

³⁰ See *The Reconstruction Acts*, 12 Op Att’y Gen 141, 151 (1867) (Stanbery, AG).

inherent limits. It did not reach many state and federal positions—including the presidency.

It might be argued that this interpretation is belied by the fact that more than a handful of persons circa 1868 believed Section 3 barred Jefferson Davis and other high ranking former confederates from the U.S. presidency. Whether Davis and others were so barred depends on the scope of Section 3’s “Office . . . under the United States”-language, and not on the scope of Section 3’s “officer of the United States”-language.

Since 2011, the *Amicus* has expressly eschewed opining on the scope of Section 3’s “Office . . . under the United States”-language.³¹ Likewise, if this Court determines that the presidency is not an “officer of the United States,” then it has no reason to address the scope of Section 3’s “office . . . under the United States”-language.

C. Tradition: There is a Constant Stream of Authority from the Judicial and Executive Branches That Supports the Court of Claims’ Holding

In addition to the text and history of Section 3, there is a constant stream of authority from the Supreme Court and the Executive Branch that supports the conclusion explained by the *Amicus* in his publications and adopted by the Colorado Trial Court: the President is not an “officer of the United States.”³²

- *United States v Hartwell* stated that “[a]n office is a public station, or employment, conferred by the *appointment of government.*” 73 US 385, 393

³¹ Seth Barrett Tillman, *Either/Or: Professors Zephyr Rain Teachout and Akhil Reed Amar—Contradictions and Reconciliation* 119 n 69 (2012), <https://ssrn.com/abstract=1970909> (discussing linguistic slippage).

³² This tradition is discussed at length in *Is the President?*, *supra* note 27, at 24–33.

(1867) (emphasis added). Presidents are not “appointed” by the “government.” Rather, Article II describes the President as an “elected” position in several clauses.

- In 1882, Attorney General Brewster, citing Justice Story, stated that the phrase “Officers of the United States” in the Appointments Clause *and* in Section 3 should be read in a similar fashion. Member of Cong., 17 US Op Att’y Gen 419, 420 (1882). As discussed above, Story contended that the phrase “officer of the United States” did not extend to the presidency.
- *United States v Mouat*, decided two decades after ratification of the Fourteenth Amendment, interpreted a statute that used the phrase “officers of the United States.” 124 US 303 (1888). The Court observed that a person is “not strictly speaking, an officer of the United States” unless he “holds his place by virtue of an appointment by the president or of one of the courts of justice or heads of departments” *Id.* at 307.
- In 1918, Attorney General Gregory wrote an opinion that distinguished between elected officials and “officers of the United States.” Emps. Comp. Act—Assistant United States Att’y, 31 US Op Att’y Gen 201, 202 (1918), <https://tinyurl.com/bdesdrk>; see also *Prosecution of Claims by Members of War Price and Rationing Boards*, 40 US Op Att’y Gen 294, 296 (1943) (Biddle, A.G.).
- In 1969, future-Chief Justice William H. Rehnquist observed that federal courts do not extend general “officer”-language in statutes to the President, “unless there is a specific indication that Congress intended to cover the Chief Executive.” Memorandum from William H. Rehnquist, Asst Att’y Gen, to the Honorable Egil Krogh, Re: Closing of Government Offices in Memory of

Former President Eisenhower (Apr. 1, 1969), <https://perma.cc/P229-BAKL>; see also Memorandum from Antonin Scalia, Asst Att’y Gen, to Honorable Kenneth A. Lazarus, Re: Applicability of 3 CFR Part 100 to the Pres and VP (Dec 19, 1974), <https://perma.cc/GQA4-PJNN>.

- In *Free Enter Fund v Pub Co Accounting Oversight Bd*, Chief Justice Roberts wrote, “[t]he people do not vote for the ‘Officers of the United States.’” 561 US 477, 497–98 (2010). To be sure, *Free Enter Fund* was not about whether the President was an “Officer of the United States.” But *Amicus* has found no indication that anyone cast doubt on the correctness of this statement.

This tradition long predates the ratification of the Fourteenth Amendment. On the meaning of the Constitution’s “officers of the United States”-language, the very first case cited by *LaBrant* Plaintiffs’ Brief was Chief Justice Marshall’s decision in *United States v Maurice*, 26 F Cas 1211, 1214 (CCD Va 1823). The Plaintiffs quote Chief Justice Marshall for the proposition: “[H]e who performs the duties of the office, is an officer. If employed on the part of the United States, he is an officer of the United States.” *LaBrant* Plts. Br. at 2–3. But this is what Chief Justice Marshall actually stated:

An office is defined to be ‘a public charge or employment,’ and he who performs the duties of the office, is an officer. If employed on the part of the United States, he is an officer of the United States. Although an office is ‘an employment,’ it does not follow that every employment is an office. A man may certainly be employed under a contract, express or implied, to do an act, or perform a service, without becoming an officer. But if a duty be a continuing one, which is defined by rules prescribed by the government, and not by contract, *which an individual is appointed by government to perform*, who enters on the duties appertaining to his station, without any contract defining them, if those duties continue, though the person be changed; it seems very difficult to distinguish such a charge or employment from an office, or the

person who performs the duties from an officer.

Id. at 1214 (emphasis added). In defining an “officer” and in distinguishing it from a mere “employment,” Marshall specifically notes that the former is “appointed by government.” *Id.* Presidents are not “appointed by government.” Presidents are elected. It follows that the President is not an “officer of the United States.”

All of this evidence suggests that the meaning of “officer of the United States” was part of a continuous, widely understood legal tradition, starting in 1788, and extending forward into Reconstruction and beyond. Plaintiffs make no effort to address this long-standing tradition.

CONCLUSION

For all the reasons elaborated above, the Court should hold that Section 3 is not self-executing. Rather, it requires federal legislation to put into effect, and if such federal legislation is absent, no private party can assert Section 3 as a cause of action against the government (state or federal) when seeking affirmative relief. Additionally, the Court should hold that the President of the United States is not an “officer of the United States” as that phrase is used in Section 3. Finally, the Court should affirm the final order of the Court of Claims and deny the Plaintiffs-Appellants Robert LaBrant et al all relief.

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WORD COUNT CERTIFICATION

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Exhibit A

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AWARD(S)

North Carolina Society of Historians: 2021 Award of Excellence for Outstanding Contribution to the Preservation and Perpetuation of North Carolina History and Heritage
Nov. 5, 2022

EDUCATION

Harvard Law School, J.D., *cum laude* 1997–2000
Harvard Journal on Legislation, First Year Editor

University of Chicago, B.A. (economics major with departmental honors) 1981–1984
Phi Beta Kappa
Speaker and Gavel Award from Parliamentary Debate Society

JUDICIAL EXPERIENCE

Career Federal Law Clerk to the Honorable William J. Martini (trial court)
U.S. District Judge for the District of New Jersey September 2009–August 2011

Law Clerk to the Honorable Malachy E. Mannion (trial court)
U.S. Magistrate Judge for the Middle District of Penn. September 2008–September 2009

Law Clerk to the Honorable Jane R. Roth (appellate court)
United States Court of Appeals for the Third Circuit September 2004–August 2005

Law Clerk to the Honorable William J. Martini (trial court)
United States District Judge for the District of New Jersey September 2003–August 2004

Temporary Law Clerk to the Honorable Mark E. Fuller (trial court)
United States District Judge for the Middle District of Alabama March 2003–June 2003

TEACHING EXPERIENCE

- Equity and the Law of Trusts II (w/tutorials) (LW351x) Feb. 2024–May 2024
Equity and the Law of Trusts II (w/tutorials) (LW391x) Feb. 2024–May 2024
Equity and the Law of Trusts I (w/tutorials) (LW351w) Sept. 2023–Jan. 2024
Equity and the Law of Trusts I (w/tutorials) (LW391w) Sept. 2023–Jan. 2024
LW690 LLM Master’s Thesis: mark moderator for t/b/d during 2023
- Equity and the Law of Trusts II (w/tutorials) (LW351) Feb. 2023–May 2023
Irish Constitutional Law (w/tutorials) (LW253)
- Equity and the Law of Trusts I (w/tutorials) (LW351) Sept. 2022–Jan. 2023
Introduction to American Law (LW264)
LW690 LLM Master’s Thesis: supervisor during 2022-2023 (1 student)
LW690 LLM Master’s Thesis: mark moderator for 4 students during 2022
- Laureate Programme, Presentation for Undergraduates on Deontological Arguments in
Legal Scholarship Dec. 7, 2021
- Courses: Equity and the Law of Trusts II (w/tutorials) (LW351) Feb. 2022–May 2022
Irish Constitutional Law (w/tutorials) (LW253)
Placement Module: Supervisor (LW693): 1 student at Transparency
International
Equity and the Law of Trusts I (w/tutorials) (LW351) Sept. 2021–Jan. 2022
Introduction to American Law (LW264)
- Sabbatical: no regular teaching duties Aug. 2020-Sept. 2021
- Courses: Equity and the Law of Trusts II (w/tutorials) Feb. 2020–May 2020
Irish Constitutional Law (w/tutorials)
Departmental Undergraduate Research Project (year-long module)
Equity and the Law of Trusts I (w/tutorials) Sept. 2019–Jan. 2020
- Courses: Equity and the Law of Trusts II (w/tutorials) Jan. 2019–May 2019
Irish Constitutional Law (w/tutorials)
Departmental Undergraduate Research Project (year-long module)
Equity and the Law of Trusts I (w/tutorials) Sept. 2018–Jan. 2019
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Irish Constitutional Law (w/tutorials)
Departmental Master’s Theses Moderator
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Introduction to American Law
- Legal Research Methodologies Module: Legal History Lecture Dec. 1, 2016

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Courses: Equity and the Law of Trusts II (w/tutorials) Jan. 2017–May 2017
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Equity and the Law of Trusts I (w/tutorials) Sept. 2016–Jan. 2017
Introduction to American Law
Law for Accountants

Law & Society Lectures: *We, The People* 2015
Occasional lectures

Courses: Equity and the Law of Trusts II (w/tutorials) Feb. 2016–May 2016
Equity and the Law of Trusts I (w/tutorials) Sept. 2015–Jan. 2016
Introduction to American Law
Global Constitutional Principles (master’s level)

Legal Research Methodologies Module: Legal History Lecture February 18, 2015

Courses: Introduction to American Law Feb. 2015–May 2015
Law & Religion (master’s level)

Equity and the Law of Trusts I (w/tutorials) Sept. 2014–Jan. 2015
Global Constitutional Principles (master’s level)

Courses: Legal Writing & Advocacy (master’s level) Feb. 2014–May 2014
Equity and the Law of Trusts (w/tutorials) Sept. 2013–Jan. 2014
Equity and the Law of Trusts Workshop (with separate registration)
Constitutional Law I (w/tutorials)
Constitutional Law I Workshop

Courses: Equity and the Law of Trusts I and II (w/tutorials & workshop) 2012–2013
Legal Writing I and II (undergraduate and master’s level)

Courses: Equity and the Law of Trusts I and II (w/tutorials) 2011–2012
Legal Writing I and II (undergraduate and master’s level)

Rutgers School of Law-Newark, Lecturer, Constitutional Law II Spring 2010

PERSONAL AND PUBLICATION PROFILES

University Profile

Department Profile

Social Science Research Network (departmental and personal rankings)

Berkeley Electronic Press

Academia.edu

Research Gate

Google Scholar

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TESTIMONY AND STATEMENTS

Personal Statement of Seth Barrett Tillman on Congressional Continuity, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3585902>, in Continuity of Senate Operations and Remote Voting in Times of Crisis, S. Hrg. 116–297, 116 Cong., 2d Sess. 90–93 (Apr. 30, 2020) (Roundtable before the Permanent Senate Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs), <<https://tinyurl.com/y23s7obp>>, <https://www.hsgac.senate.gov/subcommittees/investigations/hearings/roundtable_-continuity-of-senate-operations-and-remote-voting-in-times-of-crisis> (reproducing Tillman’s personal statement);

Interview by staff for U.S. Senator Portman and U.S. Senator Carper Apr. 17, 2020

Invited to Testify to Hearing: Presidential Corruption: Emoluments and Profiting Off the Presidency, Subcommittee on the Constitution, Civil Rights, and Civil Liberties (House Committee on the Judiciary), Sept. 23, 2019, 2:00 PM <<https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109974>> (called off because of death of majority whip’s spouse).

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Appellant's submission in *Seth Barrett Tillman v Paddy Power*, Dispute Number 0088373 (Independent Betting Adjudication Service [IBAS], filed 16 May 2023), <<https://ssrn.com/abstract=4451905>>.

District of Columbia and Maryland v. Trump

Motion for Leave to File Brief and Brief for Scholar Seth Barrett Tillman and the Judicial Education Project as *Amici Curiae* Supporting Petitioner, In re Donald J. Trump (Trump v. District of Columbia), Sup. Ct. No. 20-331 (U.S. Oct. 14, 2020) (filed by Josh Blackman et al.), 2020 WL 6264498, <<https://ssrn.com/abstract=3690837>>, <<https://tinyurl.com/yxpyg5yo>>. –

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Corrected Response [Brief] of Scholar Seth Barrett Tillman and the Judicial Education Project as *Amici Curiae* in Support of the Defendant, District of Columbia & State of Maryland v. Donald J. Trump, in his official capacity as President of the United States of America, Civ. A. No. 8:17-cv-01596-PJM (D. Md. Dec. 31, 2017) (Messitte, J.) (filed by Josh Blackman et al.), ECF No. 77, 2017 WL 6880026, 2017 U.S. Dist. Ct. Motions LEXIS 466, <<https://ssrn.com/abstract=3089868>>.

Motion for Clarification [for Seth Barrett Tillman and the Judicial Education Project as *Amici Curiae*], District of Columbia & State of Maryland v. Donald J. Trump, in his official capacity as President of the United States of America, Civ. A. No. 8:17-cv-01596-PJM (D. Md. Dec. 11, 2017) (Messitte, J.) (filed by Josh Blackman et al.), ECF No. 71, <<https://ssrn.com/abstract=3376159>>.

Motion and Brief for Scholar Seth Barrett Tillman and the Judicial Education Project as *Amici Curiae* in Support of the Defendant, District of Columbia & Maryland v. Donald J. Trump, in his official capacity as President of the United States of America, Civ. A. No. 8:17-cv-01596-PJM (D. Md. Oct. 6, 2017) (Messitte, J.) (filed by Josh Blackman et al.), ECF No. 27-1, 2017 WL 4685826, 2017 U.S. Dist. Ct. Briefs LEXIS 410, <<https://ssrn.com/abstract=2996355>>.

Blumenthal v. Trump

Amicus Brief of Scholar Seth Barrett Tillman and the Judicial Education Project in Support of Defendant-Appellant and Reversal, Blumenthal v. Trump, President of the United States, in his official capacity, App. No. 19-5237 (D.C. Cir. Oct. 8, 2019) (filed by Josh Blackman et al.), Document #1810043, 2019 WL 5064977, <<https://ssrn.com/abstract=3340970>>.

Motion of Scholar Seth Barrett Tillman and the Judicial Education Project for Appointment As *Amici Curiae* in Support of Appellant, or in the Alternative, Motion For Leave To Participate at Oral Argument, Blumenthal v. Trump, App. No. 19-5237 (D.C. Cir. Oct. 7, 2019) (filed by Josh Blackman et al.), Document #1809824, 2019 WL 5098920, <<https://ssrn.com/abstract=3463343>>.

Brief of Scholar Seth Barrett Tillman and Judicial Education Project as *Amici Curiae* in Support of the Defendant's Supplemental Brief in Support of his Motion Pursuant to 28 U.S.C. § 1292(b) for Certification of the Court's Denial of Motion to Dismiss and Defendant's Motion to Stay, Senator Richard Blumenthal v. Donald J. Trump, in his official capacity as President of the United States of America, Civ. A. No. 1:17-cv-01154-EGS (D.D.C. May 21, 2019) (Sullivan, J.) (filed by Josh Blackman et al.), ECF No. 73-1, 2019 WL 2202704, <<https://ssrn.com/abstract=3381838>>.

Motion for Leave of *Amici Curiae* Scholar Seth Barrett Tillman and the Judicial Education Project to be Heard at Oral Argument, Senator Richard Blumenthal v. Donald J. Trump, in his official capacity as President of the United States of America, Civ. A. No. 1:17-cv-01154-EGS (D.D.C. May 21, 2018) (Sullivan, J.) (filed by Josh Blackman et al.), ECF No. 52, 2018 WL 2321735, 2018 U.S. Dist. Ct. Motions LEXIS 46, <<https://ssrn.com/abstract=3177824>>.

Motion for Clarification by *Amici Curiae* Scholar Seth Barrett Tillman and the Judicial Education Project, Senator Richard Blumenthal v. Donald J. Trump, in his official capacity as President of the USA, No. 1:17-cv-01154-EGS (D.D.C. April 13, 2018) (Sullivan, J.) (filed by Josh Blackman et al.), ECF No. 48, <<https://ssrn.com/abstract=3376164>>.

Brief for Scholar Seth Barrett Tillman and the Judicial Education Project as *Amici Curiae* in Support of the Defendant, Senator Richard Blumenthal v. Donald J. Trump, in his official capacity as President of the United States of America, Civ. A. No. 1:17-cv-01154-EGS (D.D.C. Sept. 19, 2017) (Sullivan, J.) (filed by Josh Blackman et al.), ECF No. 16-1 (redocketed at ECF No. 40), 2017 WL 4230605, 2017 U.S. Dist. Ct. Briefs LEXIS 30, <<https://ssrn.com/abstract=2996384>>.

Citizens for Responsibility and Ethics in Washington ("CREW") v. Trump

Motion for Leave to File Brief and Brief for Scholar Seth Barrett Tillman and the Judicial Education Project as *Amici Curiae* Supporting Petitioner, Trump v. Citizens for Responsibility and Ethics in Washington, Sup. Ct. No. 20-330 (U.S. Oct. 14, 2020) (filed by Josh Blackman et al.), 2020 WL 6150339, <<https://ssrn.com/abstract=3690841>>, <<https://tinyurl.com/y3mp622c>>.

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Blogging on Professor Lessig's *McCutcheon v. FEC* Amicus Brief

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Invitation extended by Professor Ethan Leib

Blogging on the unitary theory of the executive

November 5, 2012–November 8, 2012

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Seth Barrett Tillman, Letter to the Editor, Submitted to *The Telegraph*, on the Goya Foods Boycott (July 20, 2020), <<https://reformclub.blogspot.com/2020/07/letter-to-telegraph-on-goya-foods.html>>.

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Josh Blackman & Seth Barrett Tillman, *Offices and Officers of the Constitution* (Mar. 18, 2020), <<https://ssrn.com/abstract=3556427>>.

Seth Barrett Tillman, *The 1792 Madison-to-Pendleton Letter: A Time for Reconsideration, Reflection, and Response?* 1–25 (Feb. 14, 2020), <<https://ssrn.com/abstract=3531075>>.

Seth Barrett Tillman, *Why A Slow-Moving Bureaucracy May Look Like The Deep State To The Reasonable Observer: A Letter to Carol Fotine Ochoa, Inspector General, U.S. General Services Administration* (Apr. 8, 2019), <<https://ssrn.com/abstract=3379252>>.

Seth Barrett Tillman, *The Jefferson Gifts: A Response to Dr. Andrew Fagal* (Feb. 23, 2019), <<https://ssrn.com/abstract=3311186>>.

Seth Barrett Tillman, Part I, *Understanding the Jefferson Diplomatic Gifts: A Response to Dr. Andrew Fagal* (Feb. 14, 2019), <<https://ssrn.com/abstract=3311186>>.

Seth Barrett Tillman, *Productivity Benchmarks and Law Journal Rankings* (Feb. 7, 2019), <<https://ssrn.com/abstract=3330627>>.

Seth Barrett Tillman, Letter to the Editor, *Responding to George F. Will*, Submitted to INVESTOR'S BUSINESS DAILY (Jan. 13, 2019), <<https://reformclub.blogspot.com/2019/01/a-letter-to-george-f-will.html>>.

Seth Barrett Tillman, Letter to the Editor, *Responding to Professor John McWhorter*, Submitted to THE ATLANTIC (Jan. 13, 2019), <<https://tinyurl.com/yak58zs8>>.

Seth Barrett Tillman, *Presidential Electors and the Brief of the Legal Historians in CREW v. Trump* (Feb. 22, 2018), <<https://ssrn.com/abstract=3128087>>.

Seth Barrett Tillman, *The Foreign Emoluments Clause, the Teachings of the American Civil War, and a Response to Mike Stern: The Aftermath of the Hamilton Documents Imbroglio* (Feb. 21, 2018), <<https://ssrn.com/abstract=3126689>>.

Seth Barrett Tillman, *A Response to Professor Victoria F. Nourse's Reclaiming the Constitutional Text from Originalism: The Case of the Foreign Emoluments Clause* (Feb. 18, 2018), <<https://ssrn.com/abstract=3125806>>.

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Seth Barrett Tillman, *Letter to a Young Social Justice Warrior 1–3* (July 23, 2015), <<http://ssrn.com/abstract=2635009>>. My paper was listed as #7 of the top 10 papers by the Social Science Research Network Top Papers of 2015 (ranked by download count, and competing against more than 63,000 papers, in all categories, not just law) (over 10,000 SSRN downloads, but not listed among by “Scholarly Papers”), <<http://ssrnblog.com/2015/12/29/ssrn-top-papers-of-2015/>>, <<https://www.facebook.com/MaynoothLaw/posts/research-newsseth-barrett-tillmans-article-letter-to-a-young-social-justice-warr/943867609000695/>>.

Letter from Seth Barrett Tillman to John Stewart Agnew, MEP, and Members of the UKIP National Executive Committee in Regard to UKIP's Supporting the British Veterinary Association ('BVA') and Royal Society for the Prevention of Cruelty to Animals ('RSPCA') in Calling for a Ban on Non-Stun Slaughter 1–5 (Mar. 7, 2015), <<https://ssrn.com/abstract=2575177>>.

Letter from Seth Barrett Tillman to Jimmy Y T MA, Counsel to the Legislature, Hong Kong Special Administrative Region of the People's Republic of China, Counting Quorums (July 13, 2014), <http://works.bepress.com/seth_barrett_tillman/498/>, <<http://ssrn.com/abstract=2465548>>.

Letter from Seth Barrett Tillman to Professor Anonymous, The Quorum Clause (July 2, 2014), <http://works.bepress.com/seth_barrett_tillman/492/>, <<http://ssrn.com/abstract=2462012>>.

Seth Barrett Tillman, Are Supreme Court Justices 'Officers of and under the United States'? A Proposed Answer for Professor Blackman 1–5 (2013), <<https://ssrn.com/abstract=2274039>>.

Seth Barrett Tillman, Model Legislative Veto Act (National University of Ireland Maynooth Legal Studies Research Paper Series No. 2013-12-05).

Seth Barrett Tillman, Six Puzzles for Professor Akhil Amar, 1–30 (2013), <<https://ssrn.com/abstract=2173899>>.

Seth Barrett Tillman, Either/Or: Professors Zephyr Rain Teachout and Akhil Reed Amar—Contradictions and Reconciliation 1–110 (2012) (unpublished manuscript, on file with author), <<https://ssrn.com/abstract=1970909>>.

Seth Barrett Tillman, *The Annals of Congress*, the Original Public Meaning of the Succession Clause, and the Problem of Constitutional Memory 1–26 (Dec. 18, 2009) (unpublished manuscript, on file with author), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1524008>.

Seth Barrett Tillman, Legislative Officer Succession to the Presidency 1–28 (April 6, 2007) (unpublished manuscript, on file with author), <<http://tinyurl.com/pcqdp3>> (parts I & II), <<http://tinyurl.com/qmzu26>> (part III).

Seth Barrett Tillman, Secretary Clinton Can Relax Because Section 2071 Disqualification Does Not Apply to the Presidency: A Response to Attorney General Michael B. Mukasey and Cause of Action (with a Short Reply from Attorney General Mukasey) 1–10 (2015), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2650328>.

VISITORSHIPS, CONFERENCES, PRESENTATIONS, LECTURES

Submission of Conference Paper Proposal to be Presented by Co-author: Josh Blackman

Seth Barrett Tillman and Josh Blackman, 'Salmon Chase, Jefferson Davis, and Caesar Griffin: Is Section 3 of the Fourteenth Amendment Self Executing,' The Federalist Society for Law & Public Policy Studies, 24th Annual Faculty Works-in-Progress Conference, San Diego, California (selected by competition) (presented by co-author) Jan. 5, 2024

Prior Conferences and Guest Lectures—in person and remote

Jacob Henry: *Rethinking*, Guest Lecture, Irish Jewish Museum (applied; invitation from Edwin Alkin, President; accepted, spoke to visiting delegation of NY State judges)

June 28, 2023

Seth Barrett Tillman

24/11/2023

New Thinking on Jacob Henry, Southern Jewish Historical Society Annual Conference, Charleston, South Carolina (invitation from Prof. Ashley Walters), <<https://jhssc.org/events/conference/>> (in person) Oct. 21, 2022

Tenuous Futures in the turn of the 20th Century, Panel Chair, American Jewish Historical Society Biennial Conference, Tulane University May 17, 2022

Jacob Henry, A Flyleaf Interview, North Carolina Historical Research and Publications Office, Video Conference, Youtube, <<https://www.youtube.com/watch?v=o65OZvskcSw>> May 11, 2022

New Thinking on Jacob Henry, Guest Lecture, Museum of the North Carolina State Capitol, with co-sponsor Jewish Heritage North Carolina (invitation from Kara E. Deadmon, curator), <<https://www.youtube.com/watch?v=XUaJcx9EzZo>> May 5, 2022

Defense of the Legislative Succession Provisions, Conference, The Presidential Succession Act at 75 / Praise It or Bury It?, Fordham University Law School (participation by invitation from Dean John D. Feerick), <<https://vimeo.com/701423128>> Apr. 6, 2022

Eleventh Annual Originalism: Works-in-Progress Conference Feb. 21, 2020
San Diego, California (participation by competitive application)

Josh Blackman & Seth Barrett Tillman, *Offices, Officers, and the Constitution*, Eleventh Annual Originalism Works-in-Progress Conference (San Diego Feb. 21, 2020, 2:45–4:00 PM), <<https://www.youtube.com/watch?v=DhjzwiF4IQE&feature=youtu.be>>, <<https://www.youtube.com/watch?v=HDX9XOjTv9A&feature=youtu.be>>, <https://www.youtube.com/watch?v=M7OxaFprc_s>

Second Joint Modena/Maynooth Law Department Research Symposium, Modena, Italy (participation by application) <<https://tinyurl.com/y8shjoxo>>. Jan. 30, 2020

Speaker: Seth Barrett Tillman Nov. 26, 2017
Irish Association of Law Teachers Conference 2017 (Dunboyne Castle)
The Court of Appeals: The Academy and the Organisation of the Irish Judicial System

Tillman on Panel: Oct. 25, 2017
The Institute of International and European Affairs: The US Presidential Elections: One Year On, <<http://tinyurl.com/ybndoega>>, <http://www.iiea.com/ftp/Podcasts/2017/US_Seminar_Session_2.mp3> (at 5:59ff, 20:30ff, 31:10ff, 46:39ff, 52:00ff, 56:15ff), <<http://www.iiea.com/events/the-us-presidential-elections-one-year-on>>, <https://www.youtube.com/watch?v=JVn1_XBGy8U> (5:53ff, 20:10ff, 31:00ff, 46:18ff, 51:00ff, 55:58ff).

South Texas College Law Review Symposium: The Foreign Emoluments Clause: From President Washington to President Trump (participation by invitation)

Conference Paper: Karl Popper's Falsifiability: The Foreign Emoluments Clause—A Debate Between Constitutional Eloi & Morlocks (SSRN) (YouTube) (YouTube 44:00ff) (especially 46:40–47:20)

Invited Speaker: Seth Barrett Tillman Sept. 8, 2017

Irish Association of Law Teachers Conference 2016 (Waterford)

The Court of Appeals: The Academy and the Organisation of the Irish Judicial System

Speaker: Seth Barrett Tillman Nov. 20, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Sibio Banda April 20, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Diarmuid Griffin, NUIG April 13, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Professor Michael B. Doherty April 6, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Brian McKenzie, Centre for Teaching and Learning, NUIM March 2, 2016

Speaker at Georgetown University Law Fellows Colloquium

Invitation extended by Professor Randy Barnett (on Jan. 8, 2016)

The Federalist Society for Law & Public Policy Studies

18th Annual Faculty Conference, NYC

Panel Speaker: Works-in-Progress (selected by competition) Jan. 8, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Maria Murphy Dec. 9, 2015

Capital Punishment & Clemency in Ireland, Bar of Ireland (attended only) Dec. 1, 2015

Direct Democracy Conference at UCD (attended only) Nov. 30, 2015

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Fulvia Staiano Nov. 25, 2015

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Fergus Ryan Oct. 21, 2015

- Privacy: Gathering Insights from Lawyers and Technologists (attended only)
In attendance: Seth Barrett Tillman
Organizer: Dr Maria Murphy July 1, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr John Reynolds May 6, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Cliodhna Murphy April 22, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Brian Flanagan March 4, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Neil Maddox Feb. 4, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Noelle Higgins Dec. 10, 2014
- Focus Group on Anti-Semitism in Ireland & the European Union
Organised: Jewish Representative Council of Ireland
Led by: John Mann, United Kingdom MP (Bassetlaw)
In attendance Alan Shatter, TD (Dublin South), and others
Participant: Seth Barrett Tillman Nov. 23, 2014
- Visitorship: Newcastle University Law School, Australia
Invitation: Dean and Professor Sandeep Gopalan
- National University of Ireland Maynooth, Law Faculty Presentation
Attended: Seth Barrett Tillman
Speaker: Dr Elizabeth Oliver (University of Leeds) June 10, 2014
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Eva Barrett on *Application of the SEA Directive* April 1, 2014
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr. Neil Maddox on *Failure of Expressive Law* March 25, 2014
- University of Chicago Law School, Legal Scholarship Workshop
Invitation: Professor Lisa Bernstein
Speaker: Seth Barrett Tillman on *Six Puzzles for Professor Amar* November 11, 2013

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- Northwestern University School of Law (Chicago, IL), Legal Scholarship Workshop
Invitation: Professor James Lindgren
Speaker: Seth Barrett Tillman on *Six Puzzles for Professor Amar* November 5, 2013
- Loyola University of Chicago Law School, Fourth Annual Constitutional Law Colloquium
Invitation: Professor Michael J. Zimmer & peer reviewed conference paper
Speaker: Seth Barrett Tillman on *Six Puzzles for Professor Amar* November 1, 2013
(posted: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2173899>)
- Int'l Commission for the History of Representative & Parliamentary Institutions (Dublin)
Invitation: Dr Coleman A. Dennehy & peer reviewed conference paper
Speaker: Seth Barrett Tillman on *Comparative Parliamentary Materials* Sept. 4, 2013
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr. Roslyn Fuller on *Shaming and International Law* April 10, 2013
- Catholic University of America School of Law, U.S., Constitutional Law class
Invitation: Professor Robert A. Destro
Speaker: Seth Barrett Tillman on *Office & Officer in the U.S. Constitution* Jan. 24, 2013
- National University of Ireland Maynooth, Legal Writing class & Faculty Colloquium
Invitation: Seth Barrett Tillman
Speaker: Justice John Mac Menamin, Supreme Court of Ireland December 6, 2012
- The Federalist Society
Exchange between Professor Brian C. Kalt and Seth Barrett Tillman, Podcast
Podcast on Brian C. Kalt, *Constitutional Cliffhangers* (Yale 2012) June 15, 2012
<<https://fedsoc.org/commentary/podcasts/constitutional-cliffhangers-faculty-book-podcast>>
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Professor Kevin Saunders, Michigan State University April 26, 2012
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Dr. Sibio Banda
Speaker: Seth Barrett Tillman on *Office & Officer in the U.S. Constitution* Nov. 23, 2011
- New York University Journal of Law & Liberty* lecture
Moderator: Professor Samuel Estreicher
Speaker: Seth Barrett Tillman on *A Textualist Defense* March 21, 2005
- Widener Law School, Delaware, Faculty Lecture Series
Faculty Invitation
Speaker: Seth Barrett Tillman on *A Textualist Defense* February 22, 2005

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POPULAR MEDIA: INTERVIEWS, ETC.

Andrew Torrez, Podcast, ‘OA836: Yes, A Court Found That Trump “Incited An Insurrection” – Now What? (feat. Seth Barrett Tillman),’ OPENING ARGUMENTS (Nov. 23, 2023), <<https://openargs.com/oa836-yes-a-court-found-that-trump-incited-an-insurrection-now-what-feat-seth-barrett-tillman/>>.

Ciara Kelly, *Newstalk Breakfast*, NEWSTALK.COM 106–108FM (July 26, 2023, 8:15 AM), <<https://www.newstalk.com/listen-back/>>, <<https://podcasts.apple.com/ie/podcast/newstalk-breakfast-highlights/id92316752>>, <<https://open.spotify.com/episode/1mIwplp9GZArqQwZmZzjGH>> (interviewing Tillman on the U.S. embassy’s statement on crime in Dublin).

Andrew Torrez & Liz Dye, Podcast, ‘OA735: Will a Plea Bargain Keep Trump Out of the White House? (feat. Seth Barrett Tillman),’ OPENING ARGUMENTS (May 2, 2023) (interviewing Tillman), <<https://tinyurl.com/mwxfwm6e>>, <<https://openargs.com/oa735-will-a-plea-bargain-keep-trump-out-of-the-white-house/>>.

Rafael Hoffman, ‘Stepping into the Next Storm,’ HAMODIA PRIME: NEWS MAGAZINE, Dec. 19, 2022 / 25 Kislev 5783, at 26, 28–29, 31 (interviewing Tillman on litigation risk faced by Trump), <<https://hamodia.com/prime/stepping-into-the-next-storm/>>.

Jack Phillips, *Trump Lawyers Fire Back After DOJ Asks to Continue Review of Documents Seized by FBI*, NTD (Sept. 12, 2022) (interviewed Tillman for story on dispute about Judge Cannon’s appointment of a special master involving the documents seized at Trump’s Mar-a-Lago estate) <https://www.ntd.com/trump-fights-back-against-doj-asks-judge-to-reject-review-of-mar-a-lago-documents_839355.html> (at 1:00–2:40).

Arlene Richards, *NTD Television Network* (Sept. 12, 2022) (interviewed Tillman for story on dispute about Judge Cannon’s appointment of a special master involving the documents seized at Trump’s Mar-a-Lago estate) (https://www.ntd.com/ntd-evening-news-full-broadcast-sept-12_839499.html) (at 6:30–8:05).

Bryan Dobson, *News At One*, RTÉ Radio 1 (Aug. 9, 2022, 1:00 PM to 1:45 PM) (interviewing Tillman on the possibility of Trump’s being disqualified from holding elected federal positions in relation to allegations he wrongfully took possession of White House documents), <<https://tinyurl.com/26t94smv>> (at 9:00–20:45), <<https://www.rte.ie/radio/radio1/clips/22130865/>>.

Mark Tighe, *Justice Delayed: call to curb long trials*, THE SUNDAY TIMES (Ireland edn) (May 8, 2022, 12:01 BST), News at 4 (interviewing and quoting Tillman), <<https://www.thetimes.co.uk/article/justice-delayed-call-to-curb-long-trials-6qxxshdf8>>.

Opinion Editorial, *Court costs too much time and money, so trial some solutions*, THE SUNDAY TIMES (Ireland edn) (May 8, 2022, 12:01 BST), News at 14 (quoting Tillman’s article in the *Gazette of the Law Society of Ireland*), <<https://www.thetimes.co.uk/article/the-sunday-times-view-court-costs-time-money-solutions-comment-d2mwtskrv>>.

Gavan Reilly, *On the Record with Gavan Reilly*, NEWSTALK.COM 106–108FM (Apr. 3, 2022, 11:00 AM to 1:00 PM, at 11:45 AM), <<https://tinyurl.com/psu9s3zk>>, <<https://www.newstalk.com/podcasts/on-the-record-with-gavan-reilly/on-the-record->

newspaper-panel-april-3rd> (at 36:25–43:45) (interviewing Tillman on President Biden and the Democrats’ mid-term weakness).

Ian J. Drake interviewing Seth Barrett Tillman, Podcast, *What Oath (if any) did Jacob Henry take in 1809? / Deconstructing the Historical Myths*, NEW BOOKS NETWORK: POLITICS & SOCIETY (Dec. 23, 2021), <<https://tinyurl.com/3svvepu3>>, <<https://megaphone.link/NBN5756928637>> (citing Tillman’s publications in: [i] *NCHR*, and [ii] *AJLH*).

John Burns and Sam Starkey, *Biden is Proud to be Irish—or is that Oirish?*, THE SUNDAY TIMES (Ireland edn), Nov. 7, 2021, News at 20 (also U.K. edition: *Irish Joe is more cringe than craic*), <<https://www.thetimes.co.uk/article/irish-joe-is-more-cringe-than-craic-7qfmjzk93>> (quoting Tillman).

Brad Kutner, AGs Prod Fourth Circuit Over Trump Emoluments Rulings, COURTHOUSE NEWS SERVICE (Mar. 19, 2021), <<https://www.courthousenews.com/ags-prod-fourth-circuit-over-trump-emoluments-rulings/>> (quoting Tillman on Emoluments Clauses cases filings by AGs).

Rafael Hoffman, *Turning down the heat on Impeachment*, HAMODIA PRIME: NEWS MAGAZINE, Feb. 17, 2021/5 Adar 5781, at 28, 30, 31, 33 (interviewing Tillman on Trump’s impeachment), <<https://hamodia.com/prime/turning-heat-impeachment/>>.

Mike Slater, *The First TV* (Feb. 8, 2021, 11:00 AM EST) (U.S. live-streaming television show interviewing Tillman on Trump impeachment, and the Disqualification Clause).

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Jan. 21, 2021, 11:20 AM), <<https://www.newstalk.com/listen-back/>> (drop down “21 January 2021” click right arrow for “The Pat Kenny Show”) (interviewing Tillman on 2021 Biden-Harris inauguration).

Ciara Kelly, *Newstalk Breakfast*, NEWSTALK.COM 106–108FM (Dec. 15, 2020, 8:45 AM), <<https://www.newstalk.com/listen-back/>>, <<https://tinyurl.com/y9hph4a6>> (interviewing Tillman on Trump’s four years).

Michael Dwyer, Podcast, FAMILY & LIFE (Dec. 1, 2020) (interviewing Tillman on U.S. politics), <<https://www.youtube.com/watch?v=gfgbzgEOALE>>, <<https://www.youtube.com/embed/gfgbzgEOALE>>.

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Nov. 6, 2020, 10:00 AM), <<https://www.newstalk.com/listen-back/>> (drop down “6 November 2020” click right arrow for “The Pat Kenny Show”) (interviewing Tillman on the 2020 U.S. presidential election), and podcast <<https://tinyurl.com/y2v2vtoy>>.

Niall Boylan, *The Niall Boylan Show*, CLASSIC HITS 94–105FM (Nov. 5, 2020, 12:05 PM), <<https://www.classichits.ie/the-niall-boylan-show/>> (interviewing Tillman on the 2020 U.S. presidential election).

Matt Cooper, *The Tonight Show*, VIRGIN MEDIA TELEVISION (Nov. 4, 2020, 10:00 PM), <<https://www.virginmediatelevision.ie/player/show/1294>> (interviewing Tillman on the 2020 U.S. presidential election).

Shane Coleman, *Newstalk Breakfast*, NEWSTALK.COM 106–108FM (Nov. 4, 2020, 8:05 AM), <<https://www.newstalk.com/listen-back/>> (interviewing Tillman on the 2020 U.S. presidential election).

Law Society, University College Dublin, Debate Oct. 20, 2020

Tommy Bowe, *Ireland AM*, VIRGIN MEDIA TELEVISION (Oct. 8, 2020, 8:00 AM–8:15 AM), <<https://www.virginmediatelevision.ie/shows/irelandam>> (interviewing Tillman on the vice presidential debate).

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Sept. 30, 2020, 9:00:00–9:30:00 AM), <<https://www.newstalk.com/listen-back/>> (drop down “30 September 2020” click right arrow for “The Pat Kenny Show”) (interviewing Tillman on presidential debate).

Mick Clifford, Podcast, *SETH BARRETT TILLMAN: Can Trump win again?*, IRISH EXAMINER (Sept. 18, 2020) (interviewing Tillman), <<https://tinyurl.com/yxd57tms>>.

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Sept. 17, 2020, 9:32:00–9:44:35 AM), <<https://www.newstalk.com/listen-back/>> (drop down “17 September 2020” click right arrow for “The Pat Kenny Show”) (interviewing Tillman on Trump).

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (May 27, 2020, 9:02:35–9:26:15 AM), <<https://tinyurl.com/ycjmrwuz>>, <<https://www.newstalk.com/listen-back/>> (drop down “27 May 2020” click right arrow for “The Pat Kenny Show”) (interviewing Tillman on Trump).

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Feb. 6, 2020, 9:41:15–9:57:15 AM), <<https://www.newstalk.com/listen-back/>> (drop down “6 February 2020” click right arrow for “The Pat Kenny Show”) (interviewing Professor Harry Browne and Tillman on Trump’s first term).

Brian L. Frye, Podcast, *A Religious Test in America?—The Motion to Vacate Jacob Henry’s Legislative Seat*, IPSE DIXIT (Dec. 4, 2019) (interviewing Tillman), <<https://shows.acast.com/ipse-dixit/episodes/seth-barrett-tillman-on-the-jacob-henry-and-the-meaning-of-o>> (citing Tillman on Jacob Henry in *NCHR*).

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Dec. 4, 2019, 11:38 AM) (at 02:38:30), <<https://www.newstalk.com/listen-back/>> (drop down “4 December 2019” click right arrow for “The Pat Kenny Show”) (interviewing Tillman on President Trump, Ukraine, and Biden).

Vincent Boland, *Once More Unto the Impeach*, SUNDAY BUSINESS POST (Sept. 29, 2019), PostPlus at 1, 2 (quoting Tillman on impending Trump impeachment).

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Sept. 27, 2019, 9:00 AM) (at 3:45–20:35), <<https://www.newstalk.com/listen-back/>> (click “27 September 2019” and “Pat Kenny Show”) (interviewing Tillman on President Trump, Ukraine, and Biden).

RTÉ ONE: NEWS SPECIAL (June 5, 2019, 4:30–5:30 PM) (panel on Trump’s visit to Ireland), <<https://tinyurl.com/yy6g52pz>>.

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (June 5, 2019, 9:00 AM) (at 00:19:15ff), <<https://www.newstalk.com/listen-back/>> (click “5 June 2019” and “The

Pat Kenny Show 09.00-12.00”) (interviewing Tillman on President Trump’s meeting the Taoiseach and his visit to Ireland).

Kayle Crosson, *Trump’s Irish visit: ‘I don’t understand what he hopes to accomplish here,’* THE IRISH TIMES (June 4, 2019) (quoting Tillman following interview), <<https://www.irishtimes.com/news/politics/trump-s-irish-visit-i-don-t-understand-what-he-hopes-to-accomplish-here-1.3913673>>.

Matt Cooper & Ivan Yates, *The Tonight Show*, VIRGIN MEDIA TELEVISION (May 16, 2019, 11:00 PM), <<https://www.virginmediatelevision.ie/player/show/1294/0/The-Tonight-Show>> (at 10:55–18:30) (Tillman on panel discussing Trump’s visiting Ireland).

David McCullagh, *Prime Time*, RTÉ (May 14, 2019, 10:00 PM), <<https://www.rte.ie/news/player/prime-time/2019/0516/>>, <<https://tinyurl.com/y6des7v6>> (click link to “Tuesday, 14 May 2019”) (at 15:45–27:36) (interviewing Tillman and Brid Smith, TD, on Trump’s visiting Ireland).

Pat Kenny, *The Pat Kenny Show*, NEWSTALK.COM 106–108FM (Mar. 26, 2019, 9:00 AM), <<https://www.newstalk.com/listen-back/>> (select: 26 March 2019, The Pat Kenny Show, at 00:42:04-00:56:35) (interviewing Seth Barrett Tillman on Mueller report).

Faculty & Student Interviewers from Fordham Law School’s Democracy and Constitution Clinic (Mar. 15, 2019, 3:00 PM) (Dean Feerick, John Rogan, Lecturer, and students interviewing Tillman), <https://www.fordham.edu/info/28339/democracy_and_the_constitution>.

Today with Sean O’Rourke, RTÉ Radio 1 (Feb. 15, 2019, 10:00 AM) (00:30-12:50ff) <<http://tinyurl.com/y2nutem9>> (Tillman on panel discussing Trump’s plan to a build a border wall absent express budgetary authorities from Congress).

Paddy Manning, Podcast, *Interview—Seth Barrett Tillman—Justice and the Courts*, THE RIGHT SIDE: NEWS & POLITICS PODCASTS (Jan. 30, 2019) (interviewing Tillman on U.S. politics and an immigrants’ point of view on life in modern Ireland), <<https://tinyurl.com/yaekzzf2>>, <<https://tinyurl.com/ybsectmd>>.

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David McCullagh, *Prime Time*, RTÉ (Sept. 6, 2018, 9:30 PM), <<https://tinyurl.com/y9ymx29w>> (at 13:45-23:15) (interviewing Tillman and Professor Scott Lucas, University of Birmingham, on Trump).

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Mark Tighe, *Flanagan sees the appeal of more judges*, THE SUNDAY TIMES (Ireland edn), July 22, 2018, at 8, <<https://www.thetimes.co.uk/edition/ireland/flanagan-sees-the-appeal-of-more-judges-rbxgbdpxs>> (quoting Tillman).

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Declan Lynch, *Foresight beats hindsight in any race*, THE SUNDAY INDEPENDENT, Oct. 13, 2013, at 14, <http://works.bepress.com/seth_barrett_tillman/429/> (quoting Tillman) (available on Nexis).

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Mark Tighe, *Jobs For The Boys? The imminent referendum on whether to establish an appeal court has sparked fears the Justice Minister will put supporters on the bench*, THE SUNDAY TIMES, Sept. 22, 2013, at 10, <http://works.bepress.com/seth_barrett_tillman/432/> (quoting Tillman) (available on Nexis).

Orla O'Donnell, Interview, *Six One News*, RTÉ (Sept. 19, 2013) (television).

Tanya Sillem, Interview, *Prime Time*, RTÉ (Sept. 19, 2013) (television), <<https://www.rte.ie/news/player/prime-time/2013/0919/>> (at 27:44ff, and 30:05ff).

Matt Cooper, Interview, *The Last Word with Matt Cooper*, Today FM (Sept. 16, 2013).

Ruadhan Mac Cormaic, *Shatter arguments for Court of Appeal 'incoherent', says law lecturer*, THE IRISH TIMES, Sept. 16, 2013, at 6, <<http://tinyurl.com/mqcxqp9>>, <<http://ssrn.com/abstract=2326071>>, <http://works.bepress.com/seth_barrett_tillman/417/> (interviewing and quoting Tillman) (available on Nexis).

Kieron Wood, Business of Law, *Open Democracy Requires Free Media Access to Court Documents*, THE SUNDAY BUSINESS POST, July 14, 2013, at n21, <http://works.bepress.com/seth_barrett_tillman/405/> (interviewing and quoting Tillman) (available on Nexis).

Ciara Doherty, Interview, *Midweek*, TV3 (Feb. 27, 2013), <<http://www.tv3.ie/3player/show/192/59772/1/MidWeek>> (at 25:25).

Exhibit 2

SETH BARRETT TILLMAN
Associate Professor (2021-Present)
Lecturer (2011–2021)

Maynooth University
School of Law and Criminology
Scoil an Dlí agus na Coireolaíochta Ollscoil Mhá Nuad
New House (#53)
Maynooth
County Kildare W23 F2H6
Ireland

AWARD(S)

North Carolina Society of Historians: 2021 Award of Excellence for Outstanding Contribution to the Preservation and Perpetuation of North Carolina History and Heritage
Nov. 5, 2022

EDUCATION

Harvard Law School, J.D., *cum laude* 1997–2000
Harvard Journal on Legislation, First Year Editor

University of Chicago, B.A. (economics major with departmental honors) 1981–1984
Phi Beta Kappa
Speaker and Gavel Award from Parliamentary Debate Society

JUDICIAL EXPERIENCE

Career Federal Law Clerk to the Honorable William J. Martini (trial court)
U.S. District Judge for the District of New Jersey September 2009–August 2011

Law Clerk to the Honorable Malachy E. Mannion (trial court)
U.S. Magistrate Judge for the Middle District of Penn. September 2008–September 2009

Law Clerk to the Honorable Jane R. Roth (appellate court)
United States Court of Appeals for the Third Circuit September 2004–August 2005

Law Clerk to the Honorable William J. Martini (trial court)
United States District Judge for the District of New Jersey September 2003–August 2004

Temporary Law Clerk to the Honorable Mark E. Fuller (trial court)
United States District Judge for the Middle District of Alabama March 2003–June 2003

TEACHING EXPERIENCE

Equity and the Law of Trusts II (w/tutorials) (LW351x) Feb. 2024–May 2024
Equity and the Law of Trusts II (w/tutorials) (LW391x) Feb. 2024–May 2024

Equity and the Law of Trusts I (w/tutorials) (LW351w) Sept. 2023–Jan. 2024
Equity and the Law of Trusts I (w/tutorials) (LW391w) Sept. 2023–Jan. 2024
LW690 LLM Master’s Thesis: mark moderator for t/b/d during 2023

Equity and the Law of Trusts II (w/tutorials) (LW351) Feb. 2023–May 2023
Irish Constitutional Law (w/tutorials) (LW253)

Equity and the Law of Trusts I (w/tutorials) (LW351) Sept. 2022–Jan. 2023
Introduction to American Law (LW264)
LW690 LLM Master’s Thesis: supervisor during 2022-2023 (1 student)
LW690 LLM Master’s Thesis: mark moderator for 4 students during 2022

Laureate Programme, Presentation for Undergraduates on Deontological Arguments in
Legal Scholarship Dec. 7, 2021

Courses: Equity and the Law of Trusts II (w/tutorials) (LW351) Feb. 2022–May 2022
Irish Constitutional Law (w/tutorials) (LW253)
Placement Module: Supervisor (LW693): 1 student at Transparency
International
Equity and the Law of Trusts I (w/tutorials) (LW351) Sept. 2021–Jan. 2022
Introduction to American Law (LW264)

Sabbatical: no regular teaching duties Aug. 2020-Sept. 2021

Courses: Equity and the Law of Trusts II (w/tutorials) Feb. 2020–May 2020
Irish Constitutional Law (w/tutorials)
Departmental Undergraduate Research Project (year-long module)

Equity and the Law of Trusts I (w/tutorials) Sept. 2019–Jan. 2020

Courses: Equity and the Law of Trusts II (w/tutorials) Jan. 2019–May 2019
Irish Constitutional Law (w/tutorials)
Departmental Undergraduate Research Project (year-long module)

Equity and the Law of Trusts I (w/tutorials) Sept. 2018–Jan. 2019
Introduction to American Law

Courses: Equity and the Law of Trusts II (w/tutorials) Jan. 2018–May 2018
Irish Constitutional Law (w/tutorials)
Departmental Master’s Theses Moderator
Departmental Undergraduate Research Project (year-long module)

Equity and the Law of Trusts I (w/tutorials) Sept. 2017–Jan. 2018
Introduction to American Law

Legal Research Methodologies Module: Legal History Lecture Dec. 1, 2016

Seth Barrett Tillman
24/11/2023

Courses: Equity and the Law of Trusts II (w/tutorials) Jan. 2017–May 2017
Departmental Master’s Theses Moderator

Equity and the Law of Trusts I (w/tutorials) Sept. 2016–Jan. 2017
Introduction to American Law
Law for Accountants

Law & Society Lectures: *We, The People* 2015
Occasional lectures

Courses: Equity and the Law of Trusts II (w/tutorials) Feb. 2016–May 2016
Equity and the Law of Trusts I (w/tutorials) Sept. 2015–Jan. 2016
Introduction to American Law
Global Constitutional Principles (master’s level)

Legal Research Methodologies Module: Legal History Lecture February 18, 2015

Courses: Introduction to American Law Feb. 2015–May 2015
Law & Religion (master’s level)

Equity and the Law of Trusts I (w/tutorials) Sept. 2014–Jan. 2015
Global Constitutional Principles (master’s level)

Courses: Legal Writing & Advocacy (master’s level) Feb. 2014–May 2014
Equity and the Law of Trusts (w/tutorials) Sept. 2013–Jan. 2014
Equity and the Law of Trusts Workshop (with separate registration)
Constitutional Law I (w/tutorials)
Constitutional Law I Workshop

Courses: Equity and the Law of Trusts I and II (w/tutorials & workshop) 2012–2013
Legal Writing I and II (undergraduate and master’s level)

Courses: Equity and the Law of Trusts I and II (w/tutorials) 2011–2012
Legal Writing I and II (undergraduate and master’s level)

Rutgers School of Law-Newark, Lecturer, Constitutional Law II Spring 2010

PERSONAL AND PUBLICATION PROFILES

University Profile

Department Profile

Social Science Research Network (departmental and personal rankings)

Berkeley Electronic Press

Academia.edu

Research Gate

Google Scholar

Web of Science Researcher ID: G-4819-2015

Orcid ID: <<http://orcid.org/0000-0003-3177-1329>>

Twitter: <<https://twitter.com/SethBTillman>>

TESTIMONY AND STATEMENTS

Personal Statement of Seth Barrett Tillman on Congressional Continuity, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3585902>, in Continuity of Senate Operations and Remote Voting in Times of Crisis, S. Hrg. 116–297, 116 Cong., 2d Sess. 90–93 (Apr. 30, 2020) (Roundtable before the Permanent Senate Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs), <<https://tinyurl.com/y23s7obp>>, <https://www.hsgac.senate.gov/subcommittees/investigations/hearings/roundtable_-continuity-of-senate-operations-and-remote-voting-in-times-of-crisis> (reproducing Tillman’s personal statement);

Interview by staff for U.S. Senator Portman and U.S. Senator Carper Apr. 17, 2020

Invited to Testify to Hearing: Presidential Corruption: Emoluments and Profiting Off the Presidency, Subcommittee on the Constitution, Civil Rights, and Civil Liberties (House Committee on the Judiciary), Sept. 23, 2019, 2:00 PM <<https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109974>> (called off because of death of majority whip’s spouse).

Joint Written Statement, Professor Josh Blackman & Seth Barrett Tillman, Lecturer on Presidential Emoluments, <<https://ssrn.com/abstract=3461050>>, Submitted to Hearing: “Landlord and Tenant: The Trump Administration’s Oversight of the Trump International Hotel Lease,” Subcommittee on Economic Development, Public Buildings, and Emergency Management (House Committee on Transportation and Infrastructure), Sept. 25, 2019, 10:00 AM (discussing Tillman’s scholarship at 0:19:20ff, 1:22:00ff, 2:04:40ff, and 2:36:10ff) <https://transportation.house.gov/committee-activity/hearings/the-subcommittee-on-economic-development-public-buildings-and-emergency-management-hearing-on_-landlord-and-tenant-the-trump-administrations-oversight-of-the-trump-international-hotel-lease>, <https://www.youtube.com/watch?v=eh_YdgkchtU>, <<https://www.youtube.com/watch?v=E65rM4G9ruc&feature=youtu.be>> (submission of written statement in lieu of personal appearance, and ranking member Mark Meadows discussed Tillman’s submission and entered my publications in the record) (also reported on *CQ-Roll Call* available on Lexis Library);

AMICUS FILINGS AND OTHER JUDICIAL SUBMISSIONS

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New Reform Club

Contributor Sept. 26, 2015–Present

The Originalism Blog

Invitation extended by Professor Michael Ramsey 2012 & 2016

Constitution Daily (Blog of the National Constitution Center)

Invitation extended by Scott Bomboy, Editor-in-Chief
Blogging on Professor Lessig's *McCutcheon v. FEC* Amicus Brief Oct. 23, 2013

Point of Order Blog

Exchange on *Six Puzzles for Professor Akhil Amar* March 7, 2013–March 10, 2013

Point of Order Blog

Exchange on the Foreign Emoluments Clause November 8, 2012–November 9, 2012

PrawfsBlawg

Invitation extended by Professor Ethan Leib
Blogging on the unitary theory of the executive November 5, 2012–November 8, 2012

Dorf on Law (available on Nexis)

Invitation extended by Professor Michael Dorf
Blogging on dual office-holding August 20, 2012–August 23, 2012

Conlawprof (a listserv)

Exchange on dual office-holding August 12, 2012–August 17, 2012

WORKING PAPERS AND MISC. DOCUMENTS

Josh Blackman & Seth Barrett Tillman, Sweeping and Forcing the President into Section 3: A Response to William Baude and Michael Stokes Paulsen (Sept. 12, 2023), <<https://ssrn.com/abstract=4568771>>.

Letter to the Editor, ‘Responding to Matthew Parris’s *The Hypocrisy of the Farage Outcry*,’ *The Spectator* (U.K.) (submitted Aug 20, 2023).

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Seth Barrett Tillman, A Letter submitted to *Politico* (Mar. 26, 2021), <<https://reformclub.blogspot.com/2021/03/a-letter-to-politico.html>>.

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Seth Barrett Tillman, Letter to the Editor, *Responding to Ms Jane Chong*, Submitted to THE ATLANTIC’S *Battle for the Constitution* (May 26, 2020), <<https://reformclub.blogspot.com/2017/07/a-response-to-jane-chongs-reading.html>>.

Josh Blackman & Seth Barrett Tillman, *Offices and Officers of the Constitution* (Mar. 18, 2020), <<https://ssrn.com/abstract=3556427>>.

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Letter from Seth Barrett Tillman to Jimmy Y T MA, Counsel to the Legislature, Hong Kong Special Administrative Region of the People's Republic of China, Counting Quorums (July 13, 2014), <http://works.bepress.com/seth_barrett_tillman/498/>, <<http://ssrn.com/abstract=2465548>>.

Letter from Seth Barrett Tillman to Professor Anonymous, The Quorum Clause (July 2, 2014), <http://works.bepress.com/seth_barrett_tillman/492/>, <<http://ssrn.com/abstract=2462012>>.

Seth Barrett Tillman, Are Supreme Court Justices 'Officers of and under the United States'?: A Proposed Answer for Professor Blackman 1–5 (2013), <<https://ssrn.com/abstract=2274039>>.

Seth Barrett Tillman, Model Legislative Veto Act (National University of Ireland Maynooth Legal Studies Research Paper Series No. 2013-12-05).

Seth Barrett Tillman, Six Puzzles for Professor Akhil Amar, 1–30 (2013), <<https://ssrn.com/abstract=2173899>>.

Seth Barrett Tillman, Either/Or: Professors Zephyr Rain Teachout and Akhil Reed Amar—Contradictions and Reconciliation 1–110 (2012) (unpublished manuscript, on file with author), <<https://ssrn.com/abstract=1970909>>.

Seth Barrett Tillman, *The Annals of Congress*, the Original Public Meaning of the Succession Clause, and the Problem of Constitutional Memory 1–26 (Dec. 18, 2009) (unpublished manuscript, on file with author), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1524008>.

Seth Barrett Tillman, Legislative Officer Succession to the Presidency 1–28 (April 6, 2007) (unpublished manuscript, on file with author), <<http://tinyurl.com/pcqdp3>> (parts I & II), <<http://tinyurl.com/qmzu26>> (part III).

Seth Barrett Tillman, Secretary Clinton Can Relax Because Section 2071 Disqualification Does Not Apply to the Presidency: A Response to Attorney General Michael B. Mukasey and Cause of Action (with a Short Reply from Attorney General Mukasey) 1–10 (2015), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2650328>.

VISITORSHIPS, CONFERENCES, PRESENTATIONS, LECTURES

Submission of Conference Paper Proposal to be Presented by Co-author: Josh Blackman

Seth Barrett Tillman and Josh Blackman, 'Salmon Chase, Jefferson Davis, and Caesar Griffin: Is Section 3 of the Fourteenth Amendment Self Executing,' The Federalist Society for Law & Public Policy Studies, 24th Annual Faculty Works-in-Progress Conference, San Diego, California (selected by competition) (presented by co-author) Jan. 5, 2024

Prior Conferences and Guest Lectures—in person and remote

Jacob Henry: *Rethinking*, Guest Lecture, Irish Jewish Museum (applied; invitation from Edwin Alkin, President; accepted, spoke to visiting delegation of NY State judges)

June 28, 2023

Seth Barrett Tillman

24/11/2023

New Thinking on Jacob Henry, Southern Jewish Historical Society Annual Conference, Charleston, South Carolina (invitation from Prof. Ashley Walters), <<https://jhssc.org/events/conference/>> (in person) Oct. 21, 2022

Tenuous Futures in the turn of the 20th Century, Panel Chair, American Jewish Historical Society Biennial Conference, Tulane University May 17, 2022

Jacob Henry, A Flyleaf Interview, North Carolina Historical Research and Publications Office, Video Conference, Youtube, <<https://www.youtube.com/watch?v=o65OZvskcSw>> May 11, 2022

New Thinking on Jacob Henry, Guest Lecture, Museum of the North Carolina State Capitol, with co-sponsor Jewish Heritage North Carolina (invitation from Kara E. Deadmon, curator), <<https://www.youtube.com/watch?v=XUaJcx9EzZo>> May 5, 2022

Defense of the Legislative Succession Provisions, Conference, The Presidential Succession Act at 75 / Praise It or Bury It?, Fordham University Law School (participation by invitation from Dean John D. Feerick), <<https://vimeo.com/701423128>> Apr. 6, 2022

Eleventh Annual Originalism: Works-in-Progress Conference Feb. 21, 2020
San Diego, California (participation by competitive application)

Josh Blackman & Seth Barrett Tillman, *Offices, Officers, and the Constitution*, Eleventh Annual Originalism Works-in-Progress Conference (San Diego Feb. 21, 2020, 2:45–4:00 PM), <<https://www.youtube.com/watch?v=DhjzwiF4IQE&feature=youtu.be>>, <<https://www.youtube.com/watch?v=HDX9XOjTv9A&feature=youtu.be>>, <https://www.youtube.com/watch?v=M7OxaFprc_s>

Second Joint Modena/Maynooth Law Department Research Symposium, Modena, Italy (participation by application) <<https://tinyurl.com/y8shjoxo>>. Jan. 30, 2020

Speaker: Seth Barrett Tillman Nov. 26, 2017
Irish Association of Law Teachers Conference 2017 (Dunboyne Castle)
The Court of Appeals: The Academy and the Organisation of the Irish Judicial System

Tillman on Panel: Oct. 25, 2017
The Institute of International and European Affairs: The US Presidential Elections: One Year On, <<http://tinyurl.com/ybndoega>>, <http://www.iiea.com/ftp/Podcasts/2017/US_Seminar_Session_2.mp3> (at 5:59ff, 20:30ff, 31:10ff, 46:39ff, 52:00ff, 56:15ff), <<http://www.iiea.com/events/the-us-presidential-elections-one-year-on>>, <https://www.youtube.com/watch?v=JVn1_XBGy8U> (5:53ff, 20:10ff, 31:00ff, 46:18ff, 51:00ff, 55:58ff).

South Texas College Law Review Symposium: The Foreign Emoluments Clause: From President Washington to President Trump (participation by invitation)

Conference Paper: Karl Popper's Falsifiability: The Foreign Emoluments Clause—A Debate Between Constitutional Eloi & Morlocks (SSRN) (YouTube) (YouTube 44:00ff) (especially 46:40–47:20)

Invited Speaker: Seth Barrett Tillman Sept. 8, 2017

Irish Association of Law Teachers Conference 2016 (Waterford)

The Court of Appeals: The Academy and the Organisation of the Irish Judicial System

Speaker: Seth Barrett Tillman Nov. 20, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Sibio Banda April 20, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Diarmuid Griffin, NUIG April 13, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Professor Michael B. Doherty April 6, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Brian McKenzie, Centre for Teaching and Learning, NUIM March 2, 2016

Speaker at Georgetown University Law Fellows Colloquium

Invitation extended by Professor Randy Barnett (on Jan. 8, 2016)

The Federalist Society for Law & Public Policy Studies

18th Annual Faculty Conference, NYC

Panel Speaker: Works-in-Progress (selected by competition) Jan. 8, 2016

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Maria Murphy Dec. 9, 2015

Capital Punishment & Clemency in Ireland, Bar of Ireland (attended only) Dec. 1, 2015

Direct Democracy Conference at UCD (attended only) Nov. 30, 2015

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Fulvia Staiano Nov. 25, 2015

National University of Ireland Maynooth, Law Faculty Colloquium Series

Moderator: Seth Barrett Tillman

Speaker: Dr Fergus Ryan Oct. 21, 2015

- Privacy: Gathering Insights from Lawyers and Technologists (attended only)
In attendance: Seth Barrett Tillman
Organizer: Dr Maria Murphy July 1, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr John Reynolds May 6, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Cliodhna Murphy April 22, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Brian Flanagan March 4, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Neil Maddox Feb. 4, 2015
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr Noelle Higgins Dec. 10, 2014
- Focus Group on Anti-Semitism in Ireland & the European Union
Organised: Jewish Representative Council of Ireland
Led by: John Mann, United Kingdom MP (Bassetlaw)
In attendance Alan Shatter, TD (Dublin South), and others
Participant: Seth Barrett Tillman Nov. 23, 2014
- Visitorship: Newcastle University Law School, Australia
Invitation: Dean and Professor Sandeep Gopalan
- National University of Ireland Maynooth, Law Faculty Presentation
Attended: Seth Barrett Tillman
Speaker: Dr Elizabeth Oliver (University of Leeds) June 10, 2014
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Eva Barrett on *Application of the SEA Directive* April 1, 2014
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr. Neil Maddox on *Failure of Expressive Law* March 25, 2014
- University of Chicago Law School, Legal Scholarship Workshop
Invitation: Professor Lisa Bernstein
Speaker: Seth Barrett Tillman on *Six Puzzles for Professor Amar* November 11, 2013

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- Northwestern University School of Law (Chicago, IL), Legal Scholarship Workshop
Invitation: Professor James Lindgren
Speaker: Seth Barrett Tillman on *Six Puzzles for Professor Amar* November 5, 2013
- Loyola University of Chicago Law School, Fourth Annual Constitutional Law Colloquium
Invitation: Professor Michael J. Zimmer & peer reviewed conference paper
Speaker: Seth Barrett Tillman on *Six Puzzles for Professor Amar* November 1, 2013
(posted: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2173899>)
- Int'l Commission for the History of Representative & Parliamentary Institutions (Dublin)
Invitation: Dr Coleman A. Dennehy & peer reviewed conference paper
Speaker: Seth Barrett Tillman on *Comparative Parliamentary Materials* Sept. 4, 2013
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Dr. Roslyn Fuller on *Shaming and International Law* April 10, 2013
- Catholic University of America School of Law, U.S., Constitutional Law class
Invitation: Professor Robert A. Destro
Speaker: Seth Barrett Tillman on *Office & Officer in the U.S. Constitution* Jan. 24, 2013
- National University of Ireland Maynooth, Legal Writing class & Faculty Colloquium
Invitation: Seth Barrett Tillman
Speaker: Justice John Mac Menamin, Supreme Court of Ireland December 6, 2012
- The Federalist Society
Exchange between Professor Brian C. Kalt and Seth Barrett Tillman, Podcast
Podcast on Brian C. Kalt, *Constitutional Cliffhangers* (Yale 2012) June 15, 2012
<<https://fedsoc.org/commentary/podcasts/constitutional-cliffhangers-faculty-book-podcast>>
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Seth Barrett Tillman
Speaker: Professor Kevin Saunders, Michigan State University April 26, 2012
- National University of Ireland Maynooth, Law Faculty Colloquium Series
Moderator: Dr. Sibio Banda
Speaker: Seth Barrett Tillman on *Office & Officer in the U.S. Constitution* Nov. 23, 2011
- New York University Journal of Law & Liberty* lecture
Moderator: Professor Samuel Estreicher
Speaker: Seth Barrett Tillman on *A Textualist Defense* March 21, 2005
- Widener Law School, Delaware, Faculty Lecture Series
Faculty Invitation
Speaker: Seth Barrett Tillman on *A Textualist Defense* February 22, 2005

POPULAR MEDIA: INTERVIEWS, ETC.

Andrew Torrez, Podcast, ‘OA836: Yes, A Court Found That Trump “Incited An Insurrection” – Now What? (feat. Seth Barrett Tillman),’ OPENING ARGUMENTS (Nov. 23, 2023), <<https://openargs.com/oa836-yes-a-court-found-that-trump-incited-an-insurrection-now-what-feat-seth-barrett-tillman/>>.

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