

GAIL HERIOT

Office Address: University of San Diego School of Law
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EXPERIENCE:

Professor of Law, *University of San Diego School of Law*
1989 - present (promoted to full professor in 1993)

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

Commissioner, *United States Commission on Civil Rights*
2007 - present

Associate Dean for Academic Affairs & Professor of Law, *George Mason University School of Law* 1998 - 1999
Duties: Faculty administrator in charge of faculty and academic programs.
(Held position while on leave from the University of San Diego).

Counsel, *United States Senate Committee on the Judiciary*
Spring Semester 1998
Duties: Advised Committee Chairman Senator Orrin G. Hatch on civil rights issues and judicial nominations.
(Held position while on leave from the University of San Diego).

Associate, *Hogan & Hartson*, Washington, D.C.
1984-1989
Duties: Litigated pharmaceutical products liability, securities, and intellectual property cases in federal and state courts at trial and appellate levels.

Associate, *Mayer, Brown & Platt*, Chicago, Illinois
1982- 1983
Duties: General litigation and commercial practice.

Law Clerk, *The Honorable Seymour F. Simon*, Supreme Court of Illinois
1981 – 1982

SELECTED ACADEMIC & PROFESSIONAL PUBLICATIONS:

A Dubious Expediency: How Race-Preferential Admissions Policies Hurt Minority Students, Heritage Foundation White Paper (forthcoming 2015).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SELECTED TESTIMONY BEFORE GOVERNMENTAL BODIES:

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

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

Testimony on the Fiftieth Anniversary of the Civil Rights Act of 1957 and Its Continuing Importance Before the Senate Committee on the Judiciary, September 5, 2009.

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

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

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

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

SELECTED COMMISSIONER STATEMENTS IN REPORTS OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS:

Patient Dumping 59 (September 2014)

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

Criminal Background Checks and Disparate Impact 308 (December 2013)

Sexual Assault in the Military 161 (September 2013)

School Discipline and Disparate Impact 97 (April 2012).

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

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

Healthcare Disparities 87 (December 2010).

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

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

Minorities in Special Education 103 (April 2009).

Enforcing Religious Freedom in Prison 118 (September 2008)

Affirmative Action in Law Schools 148 (April 2007).

SELECTED NEWSPAPER AND MAGAZINE OPINION ESSAYS (LAST EIGHT YEARS):

Harassing the Military, The Weekly Standard (July 8, 2013).

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

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

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

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

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

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

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

SELECTED ACADEMIC AND PROFESSIONAL SPEECHES AND DISCUSSIONS (LAST EIGHT YEARS):

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

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

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

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

Speaker, Panel on Affirmative Action, National Convention, American Constitution Society, Washington, D.C. (June 20, 2014).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SELECTED AMICUS BRIEFS (LAST FOUR YEARS):

Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc. (U.S. Sup. Ct. 2014)(on behalf of Gail Heriot & Peter Kirsanow)(merits stage).

Cannon v. United States (U.S. Sup. Ct. 2014)(on behalf of Gail Heriot & Peter Kirsanow)(cert stage).

Fisher v. University of Texas (5th Cir. 2013)(on behalf of Gail Heriot, Peter Kirsanow & Todd Gaziano)(on remand).

Mount Holly v. Mount Holly Gardens Citizens in Action, Inc. (U.S. Sup. Ct. 2013)(on behalf of Gail Heriot, Peter Kirsanow & Todd Gaziano)(merits stage).

Hatch v. United States (U.S. Sup. Ct. 2013)(on behalf of Gail Heriot, Todd Gaziano & Peter Kirsanow)(petition stage).

Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (U.S. Sup. Ct. 2012, 2013)(on behalf of the California Association of Scholars, et al.)(petition and merits stages).

United States v. Cannon (5th Cir. 2013)(on behalf of Todd Gaziano, Gail Heriot & Peter Kirsanow).

Fisher v. University of Texas (U.S. Sup. Ct 2011, 2012)(on behalf of Gail Heriot, Peter Kirsanow & Todd Gaziano)(petition and merits stages).

OTHER ACTIVITIES:

Chair, Executive Committee on Civil Rights, Federalist Society (since 2005).

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

Board of Directors, National Association of Scholars (since1997).

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

Statewide Co-Chair, Proposition 209 Campaign (1996).

EDUCATION:

University of Chicago Law School–J.D. 1981 *cum laude*
(In 1981, *cum laude* was awarded to the top 9% of the class.)

Honors: Order of the Coif, Associate Editor, University of Chicago Law Review.
Comment: Civil Discovery of Grand Jury Documents, 46 U. Chi. L. Rev. 604 (1980)

Northwestern University–B.A. 1978 with highest distinction
(In 1978, highest distinction was awarded to the top 1% or 2% of the class.)
Major: Political Science with minor concentrations in economics and art history.

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