

**TOBIAS BARRINGTON WOLFF**  
University of Pennsylvania Law School  
3501 Sansom Street, Philadelphia, PA 19104

CURRENT POSITION: University of Pennsylvania Law School  
Jefferson Barnes Fordham Professor of Law *May 2019 – present*  
Deputy Dean for Equity and Inclusion *July 2018 – present*  
Professor of Law *July 2007 – May 2019*  
Visiting Professor of Law *July 2006 – December 2006*

FORMER ACADEMIC POSITIONS:

NYU School of Law  
Visiting Professor of Law *January 2010 – June 2010*

Harvard Law School  
Jesse Climenko Visiting Professor of Law *July 2009 – December 2009*

Northwestern University Law School  
Visiting Professor of Law *July 2005 – December 2005*

Stanford Law School  
Visiting Professor of Law *July 2003 – June 2004*

University of California, Davis Law School  
Professor of Law *November 2004 – July 2007*  
Assistant Professor of Law *July 2000 – November 2004*

PRINCIPAL FIELDS OF RESEARCH: Civil Procedure – class actions; complex litigation; federal jurisdiction; conflict of laws.  
Constitutional Law – free speech and the First Amendment; equal protection.  
Civil Rights, Law and Sexuality – the rights of lesbian, gay, bisexual and transgender people.

EDUCATION: Yale Law School *J.D., 1997*  
Articles Editor, *The Yale Law Journal* (1996–97); Coker Teaching Fellow (1996–97).

New York University School of Law *J.D. candidate, 1994–95*  
Editor-elect, *NYU Law Review*.

Yale University *B.A., English & American literature, 1992*  
B.A. with Distinction; first-place winner, 1992 Yale Adams Cup Debate Tournament.

JUDICIAL CLERKSHIPS: Hon. Betty Binns Fletcher, Ninth Circuit Court of Appeals, *September 1997 – June 1998*.  
Hon. William A. Norris, Ninth Circuit Court of Appeals, *June 1997 – September 1997*.

PUBLICATIONS: Books

LINDA SILBERMAN, ALLAN STEIN, TOBIAS BARRINGTON WOLFF & AARON D. SIMOWITZ, CIVIL PROCEDURE: THEORY AND PRACTICE (Aspen, 6th ed. 2022 & Supp. 2022).

PUBLICATIONS (CONT.): Articles, Essays and Book Chapters

*Choice of Law and the Federal-State System*, 55 NYU J. Int'l L & Pol. \_\_\_\_ (forthcoming 2023).

*Consent Decrees and Federal Jurisdiction*, 84 U. Pitt. L. Rev. \_\_\_\_ (forthcoming 2023).

*Class Actions, Statutes of Limitations and Repose, and Federal Common Law*, with Stephen B. Burbank, 167 U. Penn. L. Rev. 1 (2018).

*Choice of Law and Jurisdictional Policy in the Federal Courts*, 165 U. Penn L. Rev. 1847 (2017).

*Scott v. Harris and the Future of Summary Judgment*, 15 Nev. L. Rev. 1351 (2015).

*Multiple Attempts at Class Certification*, 99 Iowa L. Rev. Bull. 137 (2014).

*Discretion in Class Certification*, 162 U. Penn. L. Rev. 1897 (2014).

*Managerial Judging and Substantive Law*, 90 Wash. U. St. Louis L. Rev. 1027 (2013)

*Collegiality and Individual Dignity*, 81 Fordham L. Rev. 829 (2012)

*Civil Rights Reform and the Body*, 6 Harv L. & Pol. Rev. 201 (2012)

*Redeeming the Missed Opportunities of Shady Grove*, with Stephen B. Burbank, 159 U. Penn. L. Rev. 17 (2010)

*Geoffrey C. Hazard, Jr., and the Lessons of History*, 158 U. Penn. L. Rev. 1323 (2010)

*Remembering Ed Baker*, 12 U. Penn. J. Const. L. 965 (2010).

*Ruth Bader Ginsburg and Sensible Pragmatism in Federal Jurisdictional Policy*, 70 Ohio St. L.J. 839 (2010)

*Compelled Speech and Expressive Association: The Case of the Solomon Amendment*, in ANDREW KOPPELMAN (WITH TOBIAS BARRINGTON WOLFF), A RIGHT TO DISCRIMINATE? HOW THE CASE OF *BOY SCOUTS OF AMERICA V. JAMES DALE* WARPED THE LAW OF FREE ASSOCIATION (Yale Univ. Press, 2009)

*Expressive Association and the Ideal of the University in the Solomon Amendment Litigation*, with A. Koppelman, 25 Soc. Phil. & Pol. 92 (2008)

*Federal Jurisdiction and Due Process in the Era of the Nationwide Class Action*, 156 U. Penn. L. Rev. 2035 (2008)

*Book Review: Ask & Tell: Gay and Lesbian Veterans Speak Out*, Int'l Hist. Rev. (March 2008)

*Preclusion in Class Action Litigation*, 105 Colum. L. Rev. 717 (2005)

*Interest Analysis in Interjurisdictional Marriage Disputes*, 153 U. Penn. L. Rev. 2215 (2005)

*The Pimple on Adonis's Nose: A Dialogue on the Concept of Merit in the Affirmative Action Debate* (with Robert Paul Wolff), 56 Hastings L.J. 379 (2005)

PUBLICATIONS (CONT.): *Political Representation and Accountability Under Don't Ask, Don't Tell*, 89 Iowa L. Rev. 1633 (2004)

*The Thirteenth Amendment and Slavery in the Global Economy*, 102 Colum. L. Rev. 973 (2002)

*Compelled Affirmations, Free Speech, and the U.S. Military's Don't Ask, Don't Tell Policy*, 63 Brook. L. Rev. 1141 (1997)

*Principled Silence*, 106 Yale L.J. 247 (1997) (Case Note, *Romer v. Evans*, 517 U.S. 620 (1996))

SELECTED EDITORIALS  
& PERIODICALS:

“Constitutional Commitments to Aspirational Principles,” *The Regulatory Review* (July 11, 2022), <https://www.thereview.org/2022/07/11/wolff-constitutional-commitments-to-aspirational-principles/>

“Measuring Bias in the Administration of Justice,” *The Regulatory Review* (July 16, 2018), <https://www.thereview.org/2018/07/16/wolff-measuring-bias-administration-justice/>

“The Provocateur’s Toolbox,” *The Faculty Lounge* (March 11, 2018), <http://www.thefacultyounge.org/2018/03/guest-post-by-tobias-barrington-wolff-the-provocateurs-toolbox.html>

“Anti-discrimination laws do not compel commercial merchant speech,” *SCOTUSBlog* (Sept. 14, 2017), <http://www.scotusblog.com/2017/09/symposium-anti-discrimination-laws-not-compel-commercial-merchant-speech/>

“Notions of ‘bourgeois’ cultural superiority are based on bad history” (with Sally Gordon, Sophia Lee, Serena Mayeri and Dorothy Roberts), *The Daily Pennsylvanian* (Aug. 20, 2017), <http://www.thedp.com/article/2017/08/guest-column-bourgeois-bad-history>

“What Comes After a Trump Presidency,” *DAME Magazine* (June 20, 2017), <https://www.damemagazine.com/2017/06/20/what-comes-after-trump-presidency>

“The Ugly Fantasy at the Heart of Anti-Trans Bathroom Bills,” *The Nation* (May 25, 2016), <https://www.thenation.com/article/the-ugly-fantasy-at-the-heart-of-anti-trans-bathroom-bills/>

“How ENDA Still Allows Discrimination Against LGBT Workers,” *The Nation* (June 21, 2014), at <http://www.thenation.com/article/180358/how-enda-still-allows-discrimination-against-lgbt-workers#>

Review: *Forcing the Spring*, *The New Republic* (April 29, 2014), <http://www.newrepublic.com/article/117560/jo-beckers-forcing-spring-experiment-borat-style-journalism>

“Has Justice Scalia Inadvertently Paved the Way for Marriage Equality,” *Dame Magazine* (Feb. 19, 2014), <http://www.damemagazine.com/2014/02/19/has-scalia-inadvertently-paved-way-marriage-equality>

“Dear Mr. President: Please admit it — you’re a Jedi,” *Salon.com* (Nov. 16, 2012), [http://www.salon.com/2012/11/16/dear\\_mr\\_president\\_please\\_admit\\_it\\_youre\\_a\\_jedi/](http://www.salon.com/2012/11/16/dear_mr_president_please_admit_it_youre_a_jedi/)

“The Virtue of Selfishness: Romney, Ryan and Rand,” *Huffington Post* (Aug. 14, 2012), [http://www.huffingtonpost.com/tobias-barrington-wolff/the-virtue-of-selfishness\\_b\\_1774931.html](http://www.huffingtonpost.com/tobias-barrington-wolff/the-virtue-of-selfishness_b_1774931.html)

EDITORIALS &

- PERIODICALS (CONT.): “Mitt Romney: No Good Reason for Refusing to Release Tax Returns,” Huffington Post (July 16, 2012), [http://www.huffingtonpost.com/tobias-barrington-wolff/mitt-romney-tax-returns\\_b\\_1677027.html](http://www.huffingtonpost.com/tobias-barrington-wolff/mitt-romney-tax-returns_b_1677027.html)
- “The Republican War on Women: Invading the Vagina in Virginia,” Huffington Post (Feb. 15, 2012), [http://www.huffingtonpost.com/tobias-barrington-wolff/virginia-ultrasound-bill\\_b\\_1278832.html](http://www.huffingtonpost.com/tobias-barrington-wolff/virginia-ultrasound-bill_b_1278832.html)
- “Labor and the LGBT Community,” Huffington Post (April 4, 2011), [http://www.huffingtonpost.com/tobias-barrington-wolff/labor-and-the-lgbt-commun\\_b\\_844111.html](http://www.huffingtonpost.com/tobias-barrington-wolff/labor-and-the-lgbt-commun_b_844111.html)
- “The DADT Appeal and the District Court’s Worldwide Injunction,” Huffington Post (Oct. 24, 2010), [http://www.huffingtonpost.com/tobias-barrington-wolff/the-dadt-appeal-and-the-d\\_b\\_772962.html](http://www.huffingtonpost.com/tobias-barrington-wolff/the-dadt-appeal-and-the-d_b_772962.html)
- “Are Liberties Subject to Majority Vote?” San Francisco Chronicle (Mar. 10, 2009)
- “Discrimination Foothold,” Riverside Press Enterprise (Feb. 24, 2009)
- “The Voice that Will Inspire,” Huffington Post (Dec. 28, 2008), [http://www.huffingtonpost.com/tobias-barrington-wolff/the-voice-that-will-inspi\\_b\\_153817.html](http://www.huffingtonpost.com/tobias-barrington-wolff/the-voice-that-will-inspi_b_153817.html)
- “Gay Rights Needs a Galvanizing Moment,” Chicago Sun-Times (Aug. 27, 2008)
- “A True Vision of Change,” Washington Blade (Feb. 15, 2008)
- “Marrying the Law and Leadership,” Los Angeles Times (Sept. 9, 2005)
- “‘Don’t Ask, Don’t Tell’ Harms the Constitution, but So Does this Cure,” Los Angeles Times (May 15, 2005)
- “Different Battle, Same Struggle,” Los Angeles Times (March 16, 2005)
- “Gays in the Military: ‘Don’t Ask, Don’t Tell’ 10 Years and 10,000 Discharges Later” (with Aaron Belkin), San Francisco Chronicle (Nov. 30, 2003)
- “Pentagon Should Take a Cue from Wal-Mart,” San Jose Mercury News (Aug. 6, 2003)
- “The Sniper Killings and the Calls for Execution,” FindLaw.com (Nov. 7, 2002), at [http://writ.news.findlaw.com/commentary/20021107\\_wolff.html](http://writ.news.findlaw.com/commentary/20021107_wolff.html)
- “What the Recent Pledge of Allegiance Decision Really Means,” FindLaw.com (Jul 2, 2002), at [http://writ.news.findlaw.com/commentary/20020702\\_wolff.html](http://writ.news.findlaw.com/commentary/20020702_wolff.html)
- “Rights for Gay and Lesbian Couples,” FindLaw.com (Dec. 6, 2001), at [http://writ.news.findlaw.com/commentary/20011206\\_wolff.html](http://writ.news.findlaw.com/commentary/20011206_wolff.html)
- “‘Don’t Ask, Don’t Tell’ Hits Home,” FindLaw.com (Oct. 9, 2001), at [http://writ.news.findlaw.com/commentary/20011009\\_wolff.html](http://writ.news.findlaw.com/commentary/20011009_wolff.html)
- “Why We Are Here,” FindLaw.com (Sept. 17, 2001), at [http://writ.news.findlaw.com/commentary/20010917\\_wolff.html](http://writ.news.findlaw.com/commentary/20010917_wolff.html)

SELECTED HONORS  
AND AWARDS:

Teaching and Service

Beacon Award for Faculty Service, Toll Public Interest Center, Penn Law School, 2013  
A. Leo Levin Award, Teaching Excellence in the 1L Curriculum, Penn Law School, 2008–09  
Outstanding First-Year Course Professor Award, Northwestern Law School, 2005–06  
Faculty Appreciation Award (co-recipient), Northwestern Law School, 2005–06  
Faculty Commencement Speaker, U.C. Davis Law School, May 2003.

Scholarship

Dukeminier Award, The Williams Institute at UCLA Law School, 2005–06, for *Interest Analysis in Interjurisdictional Marriage Disputes*.

Faculty Scholarship Grant, U.C. Davis Law School, 2005.

Stanford / Yale Junior Faculty Forum, Yale Law School, 2002 — for *The Thirteenth Amendment and Slavery in the Global Economy* in the category of Constitutional Theory.

DIRECTORSHIPS AND  
POSITIONS OF TRUST:

The Equal Justice Society (San Francisco, CA), Founding Board Member and Secretary to the Executive Committee of the Board of Directors, 2003 – 2013.

LITIGATION:

Civil Rights Litigation and Pro Bono Work — Representative Cases

303 Creative v. Elenis (2022): Wrote *amicus curiae* brief to the Supreme Court of the United States on compelled speech and anti-discrimination laws.

Elisa W. v. City of New York (2d Cir. 2022): Co-wrote *amicus curiae* brief with Prof. David Marcus on class actions and the requirement of commonality in institutional reform cases.

E.O.H.C. v. Secretary, U.S. Dep’t of Homeland Security, 950 F.3d 177 (3d Cir. 2020) (argued): Co-lead appellate counsel on behalf of migrant child and her father seeking access to federal court to obtain protection from mistreatment in the federal detention during asylum proceedings.

Kashef v. BNP Paribas, 925 F.3d 53 (2d Cir. 2019) (argued): Lead appellate counsel on behalf of plaintiffs in human rights suit against bank that conspired with genocidal regime to violate U.S. sanctions and New York law.

Masterpiece Cakeshop v. Colorado Civil Rights Comm’n, 583 U.S. \_\_\_ (2018): Wrote *amicus curiae* brief to the Supreme Court of the United States on compelled speech and anti-discrimination laws.

Matal v. Tam, 137 S. Ct. 1744 (2017). Co-author of *amicus curiae* brief for Dykes on Bikes arguing that the Disparagement Clause of the Lanham Act violates the First Amendment.

State v. Arlene’s Flowers, 187 Wash.2d 804 (2017) (*en banc*). Author of *amicus curiae* brief addressing the Speech Clause of the First Amendment and public accommodations laws.

V.L. v. E.L., 136 S. Ct. 1017 (2016). Author of *amicus curiae* brief for Conflict of Laws scholars addressing the entitled of adoption decrees to full faith and credit.

Obergefell v. Hodges, 135 S. Ct. 2071 (2015). Author of *amicus curiae* brief for Conflict of Laws scholars addressing choice of law and the Fourteenth Amendment in marriage equality.

LITIGATION (CONT.): Kosilek v. O'Brien, 774 F.3d 63 (1st Cir. 2014) (*en banc*), *cert denied*, May 4, 2015. Author of *amicus curiae* brief for Civil Procedure scholars in civil rights standard of review case.

Elane Photography v. Willock, 309 P.3d 53 (NM 2013) (argued), *cert. denied*, 572 U.S. 1046 (2014). Appellate counsel representing lesbian denied services by commercial photographer.

Godfrey v. Spano, 13 N.Y.3d 358 (2009). Author of *amicus curiae* brief for Conflict of Laws scholars addressing choice-of-law, marriage and same-sex couples.

Perry v. Schwarzenegger, 704 F. Supp. 2d 921 (N.D. Cal. 2010). Author of *amicus curiae* brief for EQCA in federal constitutional challenge to California Proposition 8.

Strauss v. Horton 46 Cal. 4th 364 (2009): Co-counsel for petitioners / *amicus curiae* civil rights organizations in challenge to ballot initiative depriving same-sex couples of the right to marry.

Cook v. Gates, 528 F.3d 42 (1<sup>st</sup> Cir. 2008): Author of *amicus curiae* brief on behalf of First Amendment scholars in challenge to the U.S. military's Don't Ask, Don't Tell policy.

Alaska Civil Liberties Union v. State of Alaska, 122 P.3d 781 (Alaska 2005): Co-counsel in litigation on behalf of gay Alaska state and municipal employees and their partners.

In re Marriage Cases, 183 P.3d 384 (Cal. 2008): Author of *amicus curiae* brief on behalf of the Equal Justice Society in support of equal marriage rights for gay and lesbian couples.

Varnum v. Brien, 763 N.W. 862 (Iowa 2009): Author of *amicus curiae* brief on behalf of civil rights organizations in support of equal marriage rights for gay and lesbian couples.

Planned Parenthood v. American Coalition of Life Activists, 290 F.3d 1058 (9<sup>th</sup> Cir. 2002) (*en banc*): Co-author of *amicus* brief for AMA in case re threats toward doctors.

Joel A. v. Giuliani, 218 F.3d 132 (2d Cir. 2000): Co-counsel (as an associate at Paul, Weiss) representing a class of LGBT youth in the New York City foster care system.

Baehr v. Mi'ike, 994 P.2d 566 (Hawai'i 1999): Author of *amicus curiae* brief for national ACLU in final disposition of Hawai'i marriage equality litigation.

People v. Dwight, 266 A.D.2d 402 (N.Y. App. Div. 2d Dept. 1999) (argued): Represented criminal defendant in unsuccessful appeal of conviction based on *Batson* violations.

#### Commercial Litigation

Paul, Weiss, Rifkind, Wharton & Garrison (New York, NY): Litigation associate, *September 1998 – June 2000*.

#### BAR MEMBERSHIPS: State Bar Memberships

New York (Bar No. 2948057; admitted January 1999)

Pennsylvania (Bar No. 207270; admitted January 2008)

#### Federal Bar Memberships

Supreme Court of the United States (admitted September 2012)

U.S. Court of Appeals for the First Circuit (admitted November 2006)

U.S. Court of Appeals for the Second Circuit (admitted June 2018)

U.S. Court of Appeals for the Third Circuit (admitted September 2018)

Eastern District of Pennsylvania (admitted January 2017)

Southern District of California (admitted May 2006)

Southern District of New York (admitted February 1999)

Eastern District of New York (admitted February 1999)

PROFESSIONAL AND

COMMUNITY SERVICE: American Law Institute: Member, 2007 – present.

City of Palm Springs Election Reform Task Force, March 2016 – December 2018.

AALS Section, Conflict of Laws: January 2006 – present; Chair, January 2012 – January 2013.

Civil Rules Restyling Project Blue-Ribbon Review Committee, May – November 2005.

SELECTED CONSULTATION

AND EXPERT WORK:

NFL Concussive Injury Litigation: Consultant and appellate counsel for attorneys representing plaintiff NFL football players who have suffered concussive head injuries in multidistrict class action proceeding, February 2012 – May 2020.

U.S. et al. ex rel Hendrix v. J-M Manuf.: Consultant on preclusion and complex litigation matters for plaintiffs in False Claims Act suit against manufacturer of PVC pipe, 2015 – 2017.

Bayer v. Smith: Consultant on class certification, preclusion doctrine and the Federal Anti-Suit Injunction Act for attorneys representing defendants in multidistrict proceeding, 2010 – 2011.

In re Terrorist Attacks on September 11, 2001: Assisted in preparation for oral argument in suit against the Saudi government and officials, 2008.

Barbara's Sales v. Intel: Retained with Linda Silberman by Chamber of Commerce to opine on choice of law in proposed nationwide consumer fraud class action in Madison County, Illinois, Barbara's Sales, Inc. et al. v. Intel Corp. et al. (Law No. 02-L-788, 5<sup>th</sup> Dist. Ct. App. Ill.), 2005.

In re Diet Drugs Products Liability Litigation: Consultant on class action issues for attorneys representing individual claimants, In re Diet Drugs Products Liability Litigation (Civ. 99-20593; MDL No. 1203, E.D. Pa.), 2002 – 2004.

University of California, Riverside – Office of the Executive Vice Chancellor: External fact finder in personnel dispute, 2002.

UNIVERSITY

COMMITTEE SERVICE: Faculty Hearing Panel Member for Resolving Complaints of Sexual Assault, Sexual Violence, Relationship Violence and Stalking, July 2016 – present.

Provost's Academic Planning and Budget Committee, July 2012 – June 2015.

Faculty Senate Executive Committee, Law School Representative, July 2011 – June 2015.

Senate Committee on Faculty Development, Diversity & Equity, July 2014 – June 2015.

Chair, Committee on Committees of the Faculty Senate, spring 2012 & spring 2014.

Senate Committee on Academic Freedom and Responsibility, July 2013 – June 2014.

Social Responsibility Advisory Committee, July 2010 – June 2012.

LEGISLATIVE TESTIMONY

AND SUBMISSIONS: United States Senate, Judiciary Committee: Submitted letter in support of legislation proposed to restore federal pleading standards, *December 2009*.

Pennsylvania Senate — Judiciary Committee: Gave expert testimony in opposition to proposed amendment to the Pennsylvania Constitution concerning same-sex couples, *March 2008*.

PUBLIC POLICY: DNC Platform Committee: Member, Democratic Party Platform Committee, *June – Sept. 2012*.

Obama for America '08: Co-Chair (with U.S. Rep. Tammy Baldwin), National LGBT Steering & Policy Committee. Served as chief LGBT advisor and policy surrogate to Senator Barack Obama and OFA '08. *June 2007 – Nov. 2008*.

Kerry for President '04: Member, LGBT policy advisory group for presidential candidate and Senator John Kerry. *Oct. 2003 – Nov. 2004*.