

Professor Kathryn E. Kovacs

Rutgers Law School
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Academic

Appointments: **Rutgers Law School**, Camden, New Jersey. 2011-present.

Professor. Teaching Administrative Law, Natural Resources Law, Environmental Law, and Property. New Full Time Professor of the Year (2012).

Chancellor's Award for Teaching Excellence (2019).

Senator-At-Large, Rutgers University Senate (2019-present).

Chair of the Faculty Development Committee (2017-2018, 2019-2020).

Chair of the Career Services, Clerkships, and Professionalism Committee (2012-2014).

University of Iowa College of Law, Iowa City, Iowa. Fall 2015.

Visiting Associate Professor. Taught Administrative Law and Natural Resources Law.

University of Cambridge, United Kingdom. January-February 2019.

Visitor to the Faculty of Law. Lectured on U.S. separation of powers.

Articles: *If It Quacks Like a Duck: Treating the President Like an Agency* (in progress).

Shifting Powers in the United States Government, **PUBLIC LAW** (peer reviewed) (forthcoming).

Rules About Rulemaking and the Rise of the Unitary Executive, 70 **ADMIN. L. REV.** 515 (2018).

Scalia's Bargain, 77 **OHIO ST. L.J.** 1155 (2016), reviewed by Chris Walker, *Kovacs on the APA's Waiver of Sovereign Immunity Puzzle*, NOTICE AND COMMENT (Oct. 28, 2016), <http://yalejreg.com/nc/kovacs-on-the-apas-waiver-of-sovereign-immunity-puzzle-adlaw-bridge-series/>.

Pixelating Administrative Common Law in Perez v. Mortgage Bankers Association, 124 **YALE L.J. F.** 31 (2015).

Superstatute Theory and Administrative Common Law, 90 **INDIANA L.J.** 1207 (2015), reviewed by William Funk, *The APA as "Superstatute" and What Does That Mean?*, JOTWELL: THE JOURNAL OF THINGS WE LIKE (LOTS) (May 16, 2014), <http://adlaw.jotwell.com/the-apa-as-superstatute-and-what-does-that-mean/>.

Abandoning Administrative Common Law in Mortgage Bankers, 95 **B.U. L. REV. ANNEX** 1 (2015), available at <http://www.bu.edu/bulawreview/files/2015/01/KOVACS.pdf>.

Hobby Lobby and the Zero-Sum Game, 92 **WASH. U. L. REV.** 255 (2014).

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Eagles, Indian Tribes, and the Free Exercise of Religion, 47 **LOYOLA L.A. L. REV.** 53 (2013).

Leveling the Deference Playing Field, 90 **OREGON L. REV.** 583 (2011).

A History of the Military Authority Exception in the Administrative Procedure Act, 62 **ADMIN. L. REV.** 673 (2010).

Revealing Redundancy: The Collision Between Federal Sovereign Immunity and Nonstatutory Review, 54 **DRAKE L. REV.** 77 (Fall 2005), republished in Chinese in 29 **ADMIN. ACTION AND ADMIN. LITIG.** 510 (2008).

Accepting the Relegation of Taking Claims to State Courts: The Federal Courts' Misguided Attempts to Avoid Preclusion under Williamson County, 26 **ECOLOGY LAW QUARTERLY** 1 (1999).

Recognizing Gay and Lesbian Families: Marriage and Parental Rights, 5 **TULANE JOURNAL OF LAW AND SEXUALITY** 513 (1995).

Other

Publications: *Fomenting Authoritarianism Through Rules About Rulemaking*, in **THE FRONTIERS OF PUBLIC LAW** (forthcoming).

Goldberg v. Kelly, in **LEADING CASES IN ADMINISTRATIVE LAW** (forthcoming).

Did the Dissent in Gundy v. United States Open Up a Can of Worms? **AMERICAN CONSTITUTION SOCIETY BLOG** (June 24, 2019), <https://www.acslaw.org/expertforum/did-the-dissent-in-gundy-v-united-states-open-up-a-can-of-worms/>.

Climate Change is the Most Important Issue in Administrative Law, 36 **YALE J. ON REG.: NOTICE & COMMENT** (June 19, 2019), <http://yalejreg.com/nc/climate-change-is-the-most-important-issue-in-administrative-law-by-kathryn-e-kovacs/>.

In the Supreme Court: Deference to Agency Interpretations of Their Own Rules, **AMERICAN CONSTITUTION SOCIETY BLOG** (March 19, 2019), <https://www.acslaw.org/acsblog/in-the-supreme-court-deference-to-agency-interpretations-of-their-own-rules/>.

A Day in the Life of an Administrative Law Nerd, 36 **YALE J. ON REG.: NOTICE & COMMENT** (Oct. 29, 2018), <http://yalejreg.com/nc/a-day-in-the-life-of-an-administrative-law-nerd-by-kathryn-e-kovacs/>.

Getting Agencies Back Into the Game, **THE REGULATORY REVIEW** (Oct. 29, 2018), <https://www.theregreview.org/2018/10/29/kovacs-getting-agencies-game/>.

Brief of *Amici Curiae* Takings and Federal Courts Scholars in Support of Respondents, *Knick v. Township of Scott*, No. 17-647 (U.S. Aug. 6, 2018).

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Trump v. Hawaii: *A Run of the Mill Administrative Law Case*, 36 **YALE J. ON REG.: NOTICE & COMMENT** (May 3, 2018), <http://yalejreg.com/nc/trump-v-hawaii-a-run-of-the-mill-administrative-law-case-by-kathryn-e-kovacs/>.

Getting Back to the Basics with Agency Rulemaking, **THE REGULATORY REVIEW** (Nov. 13, 2017), <https://www.theregreview.org/2017/11/13/kovacs-basics-agency-rulemaking/>.

A Wolf in Sheep's Skin, **THE REGULATORY REVIEW** (June 8, 2017), <https://www.theregreview.org/2017/06/08/kovacs-wolf-sheeps-skin/>.

Education: **Georgetown University Law Center**, Washington, D.C.
J.D. *cum laude*, 1995. Dean's List Second and Third Years.

Yale University, New Haven, Connecticut.
B.A. *cum laude* in Psychology, 1990. Distinction in Psychology.

Academic Service: Council Member, American Bar Association, Section of Administrative Law and Regulatory Practice. 2017-present.

Executive Committee Member, Association of American Law Schools, Section on Administrative Law. 2017-present.

Professional Experience: **United States Department of the Interior**, Washington, D.C. 2016.
Senior Advisor to the Director of the Bureau of Land Management (political appointment). Managed a rulemaking and production of guidance documents, reports, and memoranda of understanding on a variety of issues including land use planning, mitigation, North Slope oil and gas development, and sage grouse. Coordinated all litigation for the agency. Met with congressional and White House staff. Drafted correspondence and communications materials.

United States Department of Justice, Washington, D.C. 1999-2011.
Attorney in Appellate Section of Environment & Natural Resources Division. Wrote more than one hundred appellate briefs and presented more than sixty oral arguments in three state supreme courts, two state appellate courts, and thirteen federal courts of appeals, twice *en banc*, in a wide range of areas, including environmental, administrative, and constitutional law, both civil and criminal. Drafted briefs for filing in the Supreme Court. Prepared memoranda for the Solicitor General recommending appellate action. Advised attorneys in trial sections and agencies. Reviewed briefs by other attorneys. Mentored new attorneys and supervised summer interns.

Baltimore City Department of Law, Baltimore, Maryland. 1996-1999.
Assistant Solicitor. Litigated primarily Section 1983 cases raising constitutional issues in federal trial and appellate courts. Advised City agencies on constitutional and administrative law issues.

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Connecticut Council on Environmental Quality, Hartford, Connecticut. 1990-1992. Sole assistant to Executive Director of advisory state agency. Analyzed and prepared reports on state environmental policies. Mediated disputes between citizens and state agencies. Participated in negotiations on environmental legislation.

Clerkship: **Chief Judge Robert C. Murphy**, Court of Appeals of Maryland, Annapolis, Maryland. 1995-1996.

Presentations: *If It Quacks Like a Duck: Treating the President Like an Agency*, Administrative Law New Scholarship Roundtable, Madison, WI (2019).

Recent and Upcoming Federal Court Decisions That May Impact the NRC's Regulatory Program: The National Environmental Policy Act and Administrative Records, U.S. Nuclear Regulatory Commission, Regulatory Information Conference, Bethesda, MD, 2019 (panelist).

Is There a Constitutional Right to a Clean Environment?: Barriers to Judicial Review, Penn Program on Regulation, Environmental Law Project, Philadelphia, 2019 (panelist).

Those Crazy Colonists! Separation of Powers in the U.S., University of Cambridge Law Society and Centre for Public Law, 2019 (lecture).

Presidential Control of Administrative Agencies, Association of American Law Schools Annual Meeting, New Orleans, 2019 (panelist).

Congressional Administration of Foreign Policy, New Voices in Administrative Law, Association of American Law Schools Annual Meeting, New Orleans, 2019 (commentator).

Showcase Panel I: What is Regulation For? The Federalist Society National Lawyer's Convention, Washington, D.C., 2018 (panelist). To be published as Richard A. Epstein, Philip A. Hamburger, Kathryn E. Kovacs, Jon D. Michaels, and Britt Grant, *What is Regulation For?*, 98 NEB. L. REV. __ (forthcoming).

Fomenting Authoritarianism Through Rules About Rulemaking, Public Law Conference, University of Melbourne, 2018; Notre Dame Law School Faculty Colloquium, 2018; University of Cambridge Centre for Public Law seminar, 2019.

The Burden of Unburdening: Administrative Law of Deregulation, Environmental Law Institute Seminar, 2018 (panelist), *proceedings published at* 48 ENVTL. L. REP. 10,767.

New Jersey Public Trust Doctrine: a Tool and a Warning, Workshop on Sea Level Rise, Adaptation, and the New Jersey Public Trust, New Brunswick, NJ, 2018 (speaker and moderator).

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Reform Proposals for the Administrative State, Federalist Society Faculty Conference, San Diego, 2018 (panelist).

Administrative Common Law and Agency Exceptionalism, New Voices in Administrative Law, Association of American Law Schools Annual Meeting, San Diego, 2018 (commentator).

Rules or Rulers? The Rise of the Unitary Executive, Climate Change Works in Progress Conference, University of Oregon, 2017.

Trump's Administrative Abuse and the LGBTQ Community, Human Rights Campaign Briefing, House of Representatives, 2017 (panelist).

Managing Our Public Lands for Extractive Uses, The Federal Land Policy and Management Act Turns 40 Symposium, University of Colorado School of Law, 2016 (panelist).

Scalia's Bargain, Big Ten Junior Scholars Conference, Indiana University Maurer School of Law, 2015; Ohio State Faculty Summer Workshop, Moritz College of Law, 2015; Legislation: New Voices, Association of American Law Schools Annual Meeting, New York City, 2016; Rutgers Law Junior Faculty Colloquium, 2016.

Mortgage Bankers: Implications for the Future, ABA Administrative Law Conference, Washington, D.C. 2015 (panel organizer and moderator).

Differential Deference, ABA Administrative Law Conference, Washington, D.C. 2015 (panel organizer and moderator).

Perez v. Mortgage Bankers Roundtable, Department of Homeland Security, Regulatory Affairs Practice Group, Washington, D.C., 2015 (panelist).

Perez v. Mortgage Bankers: The Justices Answer One Question But Ask Another, ABA Administrative Law & Regulatory Practice Institute, Washington, D.C. 2015 (panelist).

Religious Freedoms of Native Americans Following the Supreme Court's Hobby Lobby Decision, D.C. Bar Event, Washington, D.C. 2014 (panelist).

Interpreting the APA—Text and Common Law, ABA Administrative Law Conference, Washington, D.C. 2014 (panel organizer and discussant).

Hobby Lobby and the Zero-Sum Game, Junior Environmental Law Professor Workshop, American University Washington College of Law, 2014.

Superstatute Theory and Administrative Common Law, NYC-Area Junior Faculty Colloquium, Fordham Law School, 2012; Rutgers Law Junior Faculty Colloquium, 2013; Developing Ideas Workshop, University of Kentucky College of Law, 2013; Junior Environmental Law Professor Workshop, American University Washington College of

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Law, 2013; New Voices in Administrative Law, Association of American Law Schools Annual Meeting, New York City, 2014; Environmental Law Workshop, University of Denver Sturm College of Law, 2014.

Eagles, Indian Tribes, and the Free Exercise of Religion, Junior Environmental Law Professor Workshop, American University Washington College of Law, 2012; New Scholars Workshop, Southeast Association of Law Schools Annual Conference, Amelia Island, Florida, 2012; Colloquium on Environmental Scholarship, Vermont Law School, 2012; Mid-Atlantic Law and Society Association Conference, Philadelphia, 2012; New Voices in Administrative Law, Association of American Law Schools Annual Meeting, New Orleans, 2013; Chancellor's Faculty Research Day, Rutgers University, Camden, 2014; Rutgers Department of Human Ecology Speaker Series, 2014.

Eagles and Religion, N.Y.U. First Amendment and Animal Law Workshop, 2010.

Strategic Environmental Planning for the Department of Defense, U.S. Navy Advanced Environmental Law course, Washington, D.C., 2005.

Federal Sovereign Immunity, Marine Corps Environmental Conference, San Diego, 2005.

Non-human Rights and Biological Diversity, Georgetown University Law Center Environmental Research Workshop, Washington, D.C., 2002 (commentator).

Jurisdictional Issues in Takings Litigation, Georgetown University Law Center Conference on Litigating Regulatory Takings Claims, Miami, 2001.

Awards: Fellow, American Bar Foundation (elected 2019).
U.S. Department of the Interior, Secretary's Outstanding Service Award, 2016.
U.S. Department of Justice, Special Commendation for Outstanding Service, 2001, 2004.
U.S. Department of Justice, Special Achievement Award, 2002, 2005.
U.S. Department of Justice, Outstanding Performance Rating, 2006, 2008, 2009.
American Bar Association Section of Urban, State and Local Government Law,
Certificate of Recognition for Outstanding Performance in Land Use Law, 1995.

Admitted to practice in Maryland, the District of Columbia,
and the United States Supreme Court.