

**National University of Ireland, Maynooth**

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**From the Selected Works of Seth Barrett Tillman**

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February 14, 2013

Extract from D. Theodore Rave, *Politicians as Fiduciaries*, *Harvard Law Review* (2013), citing Tillman's *Citizens United and the Scope of Professor Teachout's Anti-Corruption Principle*

Seth Barrett Tillman



Available at: [https://works.bepress.com/seth\\_barrett\\_tillman/305/](https://works.bepress.com/seth_barrett_tillman/305/)

D. Theodore Rave, *Politicians as Fiduciaries*, 126 HARV. L. REV. 671, 671 n.\*, 721 n.288 (2013), available at [http://works.bepress.com/seth\\_barrett\\_tillman/305/](http://works.bepress.com/seth_barrett_tillman/305/), available at <http://ssrn.com/abstract=2019159>.

The Constitution is strikingly silent on many issues central to the structure of the democratic process; yet that silence has not stopped courts from intervening in the reapportionment or racial-gerrymandering contexts.<sup>285</sup> In much the same way that the Supreme Court has given force to structural values in the Constitution such as [\*721] federalism<sup>286</sup> and the separation of powers,<sup>287</sup> the Court could recognize the structural commitment to fiduciary government as the basis for judicial review of incumbent self-dealing.<sup>288</sup>

**n.288:** Cf. Pildes, Foreword, *supra* note 67, at 41-47 (arguing that courts should recognize a structural commitment to political competition); Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 343, 397-405 (2009) (arguing that courts should recognize a structural anticorruption principle in the Constitution); Seth Barrett Tillman, *Citizens United and the Scope of Professor Teachout's Anti-Corruption Principle*, 107 Nw. U. L. Rev. Colloquy 1, 20-22 (2012), available at <http://www.law.northwestern.edu/lawreview/colloquy/2012/7/LRColl2012n7Tillman.pdf> (arguing that the structural anticorruption principle is actually an extension of the constitutional commitment to fiduciary government).