

Samuel R. Bagenstos

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EMPLOYMENT

University of Michigan Law School, Ann Arbor, MI
Professor of Law (beginning Fall Semester 2009)
Visiting Professor of Law (Fall Semester, 2008)

UCLA School of Law, Los Angeles, CA (Spring Semester, 2009)
Visiting Professor of Law

Washington University School of Law, St. Louis, MO (2004-present)
Associate Dean for Research and Faculty Development (2007-2008)
Professor of Law (2004-present; on leave 2008-2009 school year)

Harvard Law School, Cambridge, MA (1999-2004)
Assistant Professor of Law (2000-2004)
Research Fellow and Lecturer on Law (1999)

Courses Taught at Michigan, UCLA, Washington University, and Harvard:

Civil Rights Litigation, Constitutional Law, Constitutional Litigation, Criminal Law, Criminal Procedure, Disability Rights Law, Employment Discrimination, Labor Law, Public Law Theory

Justice Ruth Bader Ginsburg, United States Supreme Court, Washington, DC (1997-98)
Law clerk to Justice Ginsburg

Civil Rights Division, U.S. Department of Justice, Washington, DC (1994-97)
Attorney, Appellate Section. Briefed and argued cases in the federal courts of appeals involving the full range of federal civil rights issues. Drafted Supreme Court briefs in civil rights cases. Wrote speeches for the Assistant Attorney General for Civil Rights.

Judge Stephen Reinhardt, U.S. Court of Appeals for the Ninth Circuit, Los Angeles, CA (1993-94)
Law clerk to Judge Reinhardt

EDUCATION

Harvard Law School

J.D., *magna cum laude*, June 1993

- Honors: Fay Diploma (awarded to the student who graduates with the highest combined average for three years of study)
 Sears Prize (awarded to the two students with the highest grade averages in the second-year class)
- Activities: Editor, Harvard Law Review (Articles Office Co-Chair, Vol. 106)
 Clinical Externship, U.S. Senate Committee on Labor and Human Resources

University of North Carolina at Chapel Hill

B.A. with Highest Honors and Highest Distinction, Political Science, May 1990

- Honors: Phi Beta Kappa
- Activities: Volunteer, Chapel Hill-Carrboro Head Start
 Board of Directors, student radio station

PUBLICATIONS AND WORKS IN PROGRESS

Articles and Essays

Subordination, Stigma, and "Disability," 86 VA. L. REV. 397 (2000)

- excerpted in FOUNDATIONS OF EMPLOYMENT DISCRIMINATION LAW (John J. Donohue III, ed., 2d ed. 2003)
- cited in *Tennessee v. Lane*, 541 U.S. 509, 536 (2004) (Ginsburg, J., concurring)

The Americans with Disabilities Act as Risk Regulation, 101 COLUM. L. REV. 1479 (2001)

The Americans with Disabilities Act as Welfare Reform, 44 WM. & MARY L. REV. 921 (2003)
(invited paper)

- excerpted in THEODORE EISENBERG, CIVIL RIGHTS LEGISLATION (5th ed. 2004)

"Rational Discrimination," Accommodation, and the Politics of (Disability) Civil Rights,
89 VA. L. REV. 825 (2003)

Justice Ginsburg and the Judicial Role in Expanding "We the People": The Disability Rights Cases, 104 COLUM. L. REV. 49 (2004) (invited paper)

The Supreme Court, the Americans with Disabilities Act, and Rational Discrimination,
55 ALA. L. REV. 923 (2004) (invited paper)

The Future of Disability Law, 114 YALE L.J. 1 (2004)

- selected for presentation in the category of Labor Law and Social Welfare Policy at the 2004 Stanford/Yale Junior Faculty Forum

Articles and Essays, ctd.

Has the Americans with Disabilities Act Reduced Employment for People with Disabilities?, 25 BERKELEY J. EMP. & LAB. L. 527 (2004)

Comparative Disability Employment Law From an American Perspective, 24 COMP. LAB. L. & POL'Y J. 649 (2003) (published 2004) (invited paper)

Trapped in the Feedback Loop: A Response to Professor Days, 49 ST. LOUIS U. L.J. 1007 (2005) (invited paper)

The Promise was Broken: Law as a Negative Force in Bruce Springsteen's Music, 14 WIDENER L.J. 837 (2005) (invited paper)

The Structural Turn and the Limits of Antidiscrimination Law, 94 CAL. L. REV. 1 (2006)
○ reprinted in 22 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK Steven Saltzman, ed., 2006)

Disability, Life, Death, and Choice, 29 HARV. J. L. & GENDER 425 (2006)

Judging the Schiavo Case, 22 CONST. COMMENT. 457 (2005) (published 2006) (invited paper)

The Perversity of Limited Civil Rights Remedies: The Case of "Abusive" ADA Litigation, 54 UCLA L. REV. 1 (2006)
○ cited in *Molski v. M.J. Cable, Inc.*, 481 F.3d 724 (9th Cir. 2007); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007); *Skaff v. Meridien North America Beverly Hills, LLC*, 506 F.3d 832 (9th Cir. 2007); *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031 (9th Cir. 2008); *Angelucci v. Century Supper Club*, 158 P.3d 718 (Cal. 2007); and *Raetano v. Kally K's, Inc.*, 2009 WL 651808 M.D. Fla., Mar. 12, 2009)

Implicit Bias, "Science," and Antidiscrimination Law, 1 HARV. L. & POL'Y REV. 477 (2007)

Mandatory Pro Bono and Private Attorneys General, 101 NW. U. L. REV. 1459 (2007) (invited paper)
○ published in online "Colloquy" and in print edition

Hedonic Damages, Hedonic Adaptation, and Disability, 60 VAND. L. REV. 745 (2007) (with Margo Schlanger)

Abolish the Integration Presumption? Not Yet, 156 U. PA. L. REV. PENNUMBRA 157 (2007) (invited paper), available at <http://www.pennumbra.com/issues/articles/154-4/Bagenstos.pdf>

Articles and Essays, ctd.

Spending Clause Litigation in the Roberts Court, 58 DUKE L.J. 345 (2008)

Books and Book Chapters

LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT (Yale University Press 2009)

US Airways v. Barnett *and the Limits of Disability Accommodation*, in CIVIL RIGHTS STORIES (Myriam Gilles & Risa Goluboff, eds., 2007)

The Judiciary's Now-Limited Role in Special Education, in FROM SCHOOLHOUSE TO COURTHOUSE: THE JUDICIARY'S ROLE IN AMERICAN EDUCATION (Joshua Dunn & Martin West, eds., Brookings Press, forthcoming 2009)

LITIGATION EXPERIENCE

Overview:

- Argued cases in 9 of the 12 regional federal circuit courts of appeals as well as the Supreme Court of the United States
- Extensive experience defending the constitutionality of federal statutes, including the Americans with Disabilities Act and the National Voter Registration Act
- Briefed and argued cases involving virtually all areas of civil rights law, as well as the application of complex federal statutes such as the Medicaid Act

Cases Argued:

United States v. Georgia, 546 U.S. 151 (2006) (for petitioner Tony Goodman) (constitutionality of the Americans with Disabilities Act's abrogation of sovereign immunity)

Chevron U.S.A. Inc. v. Echazabal, 536 U.S. 73 (2002) (for respondent Mario Echazabal) (threat-to-self defense under the Americans with Disabilities Act)

Alaska v. EEOC, 564 F.3d 1062 (9th Cir. 2009) (*en banc*) (for intervenor Margaret Ward) (constitutionality of the Government Employee Rights Act's abrogation of sovereign immunity)

Brown v. Tennessee Dept. of Finance & Administration, 561 F.3d 542 (6th Cir. 2009) (for plaintiffs-appellees Lakersko Brown *et al.*) (validity of Medicaid consent decree)

Cases Argued, ctd.

Missouri Protection & Advocacy Servs. v. Carnahan, 499 F.3d 803 (8th Cir. 2007) (for appellants Missouri Protection & Advocacy Services and Robert Scalletty) (constitutional and statutory challenge to ban on voting by people under guardianship)

Iowa Protection & Advocacy Servs. v. Tanager Place, 427 F.3d 541 (8th Cir. 2005) (for appellee Iowa Protection & Advocacy Services) (Fourth Amendment challenge to Protection and Advocacy for Individuals with Mental Illness Act)

Kiman v. New Hampshire Dep't of Corrections, 332 F.3d 29 (1st Cir. 2003) (*en banc*) (for appellant Matthew Kiman) (constitutionality of Americans with Disabilities Act's abrogation of sovereign immunity)

Volvo GM Heavy Truck Corp. v. U.S. Dept. of Labor, 118 F.3d 205 (4th Cir. 1997) (for appellees U.S. Dept. of Labor *et al.*) (exhaustion of remedies in challenge to proceedings by Office of Federal Contract Compliance Programs)

Paralyzed Veterans of America v. D.C. Arena L.P., 117 F.3d 579 (D.C. Cir. 1997) (for United States as *amicus curiae*) (accessibility of sports arena under Americans with Disabilities Act)

Abbott v. Bragdon, 107 F.3d 934 (1st Cir. 1997) (for United States as *amicus curiae*) (HIV-based discrimination under Americans with Disabilities Act)

Cissell Mfg. Co. v. U.S. Dept. of Labor, 101 F.3d 1132 (6th Cir. 1996) (for appellant U.S. Dept. of Labor) (challenge to agency jurisdiction in Office of Federal Contract Compliance Programs proceedings)

United States v. Ridge, 96 F.3d 1436 (3d Cir. 1996) (for appellant United States) (challenge to conditions in mental retardation facility under Civil Rights of Institutionalized Persons Act)

Bridges v. City of Bossier, 92 F.3d 329 (5th Cir. 1996) (for United States as *amicus curiae*) (definition of disability under Americans with Disabilities Act)

White v. State of Alabama, 74 F.3d 1058 (11th Cir. 1996) (for United States as *amicus curiae*) (validity of settlement of Voting Rights Act challenge to judicial election system)

Voting Rights Coalition v. Wilson, 60 F.3d 1411 (9th Cir. 1995) (for appellees Janet Reno *et al.*) (argued motion for stay and presented subsequent argument on the merits) (constitutionality of the National Voter Registration Act)

Cases Briefed (Selected):

Supreme Court—Merits Stage

Northwest Austin Municipal Utility Dist. No. 1 v. Holder, No. 08-22 (U.S., to be argued Apr. 29, 2009) (for *amici* Nicholas deB. Katzenbach *et al.*) (brief for former Justice Department officials defending constitutionality of 2006 amendments to the Voting Rights Act)

Crawford v. Marion County Election Board, 128 S. Ct. 1610 (2008) (for *amici* R. Michael Alvarez *et al.*) (brief for political scientists supporting challenge to voter identification law)

Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119 (2005) (for petitioners Douglas Spector *et al.*) (application of the Americans with Disabilities Act to cruise ship facilities)

Tennessee v. Lane, 541 U.S. 509 (2004) (for respondents George Lane and Beverly Jones) (constitutionality of the Americans with Disabilities Act's abrogation of sovereign immunity)

Medical Board v. Hason, 538 U.S. 958 (2003) (for *amici* Matthew Kiman and Joseph Popovich) (constitutionality of the Americans with Disabilities Act's abrogation of sovereign immunity)

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) (for *amici* National Assn. of Protection and Advocacy Systems *et al.*) (application of the Americans with Disabilities Act to professional sports)

Reno v. Bossier Parish Sch. Bd., 520 U.S. 471 (1997) (for appellant Janet Reno) (standard for preclearance under Section 5 of the Voting Rights Act)

Young v. Fordice, 520 U.S. 273 (1997) (for *amicus* United States) (determining what is a covered change under Section 5 of the Voting Rights Act)

Schenck v. Pro-Choice Network, 519 U.S. 357 (1997) (for *amicus* United States) (First Amendment limitations on injunction against picketing)

Bush v. Vera, 517 U.S. 952 (1996) (for appellant United States) (application of "racial gerrymandering" doctrine to congressional redistricting)

Morse v. Republican Party of Virginia, 517 U.S. 186 (1996) (for *amicus* United States) (coverage of political parties under Section 5 of the Voting Rights Act)

Supreme Court—Petition Stage

Ruiz-Rivera v. Pfizer Pharmaceuticals LLC., No. 07-1598 (2008) (for petitioner Delia Ruiz Rivera) (Court denied *certiorari*) (proof of “regarded as” disabilities under the Americans with Disabilities Act)

Huber v. Wal-Mart Stores, Inc., 128 S. Ct. 1116 (2008) (for petitioner Pam Huber) (case dismissed on settlement after the Court granted *certiorari*) (reassignment as a reasonable accommodation under the Americans with Disabilities Act)

Irving N. v. Rhode Island Dept. of Children, Youth & Families, 127 S. Ct. 1372 (2007) (for petitioners Irving N. *et al.*) (Court denied *certiorari*) (application of the Americans with Disabilities Act to termination of parental rights proceedings)

Gonzales v. Tchoukhrova, 127 S. Ct. 57 (2006) (for respondents Victoria Tchoukhrova *et al.*) (government granted clients asylum after Court granted *certiorari*, vacated, and remanded) (asylum of parent based on persecution of child with a disability)

United States v. Nebraska Dept. of Health & Human Services Finance & Support, 547 U.S. 1067 (2006) (for respondents Bill M. *et al.* in support of the petition for *certiorari*) (Court granted *certiorari*, vacated, and remanded) (constitutionality of the Americans with Disabilities Act’s abrogation of sovereign immunity)

Guttman v. Khalsa, 546 U.S. 801 (2005) (for petitioner Stuart Guttman) (Court granted *certiorari*, vacated, and remanded) (application of *Rooker-Feldman* doctrine)

Other Courts

Hollonbeck v. United States Olympic Committee, 513 F.3d 1191 (10th Cir. 2008) (for *amici* Disability Rights Educ. & Defense Fund *et al.*) (application of the Rehabilitation Act to decision to provide less support to Paralympic athletes than Olympic athletes)

Sandusky County Democratic Party v. Blackwell, 387 F.3d 565 (6th Cir. 2004) (for plaintiffs-appellees Sandusky County Democratic Party *et al.*) (application of Help America Vote Act’s provisional ballot requirements)

Leibovitz v. New York City Transit Auth., 252 F.3d 179 (2d Cir. 2001) (for *amicus* National Employment Lawyers Assn.) (standards for Title VII claim based on sexual harassment of coworker)

Nelson v. Miller, 170 F.3d 641 (6th Cir. 1999) (for *amicus* United States) (application of Americans with Disabilities Act to voting)

Coalition for Economic Equity v. Wilson, 122 F.3d 692 (9th Cir. 1997) (for *amicus* United States) (constitutionality of California’s Proposition 209)

Other Courts, etd.

Burkhart v. Washington Metropolitan Area Transit Auth., 112 F.3d 1207 (D.C. Cir. 1997) (for *amicus* United States) (application of Americans with Disabilities Act to public transit)

Pro-Choice Network v. Schenck, 67 F.3d 377 (2d Cir. 1995) (for *amicus* United States) (First Amendment limitations on injunction against picketing)

Association of Community Organizations for Reform Now (ACORN) v. Edgar, 56 F.3d 791 (7th Cir. 1995) (for appellee United States) (constitutionality of National Voter Registration Act)

Police Commissioner v. Gows, 705 N.E.2d 1126 (Mass. 1999) (for appellee Sandra Harris Gows) (attorneys' fees for enforcement of court order)

In Re: Zyprexa Products Liability Litig., No. 1:04md01596 (E.D.N.Y.) (for applicants for intervention United States Psychiatric Rehabilitation Association *et al.*) (confidentiality of documents provided in tort litigation discovery)

United States v. City of Columbus, No. C2-99-1097 (S.D. Ohio) (for *amici curiae* John Conyers *et al.*) (standard of municipal liability under federal police misconduct statute, 42 U.S.C. §14141)

TESTIMONY

Determining the Proper Scope of Coverage for the Americans with Disabilities Act, Hearing Before the United States Senate Committee on Health, Education, Labor, and Pensions (July 15, 2008)

The Fair Pay Restoration Act: Ensuring Reasonable Rules in Pay Discrimination Cases, Hearing Before the United States Senate Committee on Health, Education, Labor, and Pensions (Jan. 24, 2008)

Re: Laetitia Burkes, Arbitration Before American Airlines Flight Attendant System Board of Adjustment (July 2007)

AWARDS

Advocacy Award, National Assn. of Protection and Advocacy Systems (2001)

Special Commendation, Civil Rights Division, U.S. Dept. of Justice (1996)

Special Achievement Award, Civil Rights Division, U.S. Dept. of Justice (1995)

SCHOLARLY PRESENTATIONS

Faculty workshops at the University of Virginia, University of Southern California, University of Michigan, Harvard, Cornell, University of Minnesota, University of Texas, Washington University, Loyola (Los Angeles), Seton Hall, Cardozo, University of Missouri, UCLA, Brooklyn, University of Nebraska, Duke, Emory, and Ohio State Law Schools

Presentations at the University of Texas Constitutional and Legal Theory Colloquium, the NYU Labor and Employment Law Colloquium, the Yale Workplace Theory and Policy Seminar, and the University of Chicago Law and Philosophy Seminar

Conference presentations at: the University of Virginia Law School Americans with Disabilities Act Conference (2000); the William and Mary Law School Disability and Identity Symposium (2001); the Columbia Law School Symposium in Celebration of the Tenth Anniversary of Justice Ruth Bader Ginsburg's Appointment to the Supreme Court of the United States (2003); the University of Alabama Law School Disability Law Symposium (2003); the Stanford/Yale Junior Faculty Forum (2004); the Childress Memorial Symposium at St. Louis University (2004); the Widener Law School Bruce Springsteen and the Law Symposium (2005); the NYU Symposium on Empirical Perspectives on the Americans with Disabilities Act (2006); the Emory Law School Symposium on Legal Ethics and Disability (2007); the University of Connecticut Law School Symposium on the Thirtieth Anniversary of *The Id, the Ego, and Equal Protection* (2007); the Stanford Law School Symposium on *The Race Card* (2008); and the Yale Journal of Law and Feminism's Symposium on the 30th Anniversary of the Pregnancy Discrimination Act (2008)

Panel presentations at Annual Meetings of the Association of American Law Schools, the Law and Society Association, and the Society for Disability Studies

LAW SCHOOL AND UNIVERSITY SERVICE

At Washington University:

- Lateral Faculty Appointments (2006-2008)
- Non-Tenured Faculty Appointments (2007-2008)
- Faculty Appointments (chair, 2005-2006)
- Dean's Advisory Workgroup on the Research Environment (chair, 2006)
- Coordinator, Outside Faculty Workshops (2005-2006, 2007-2008)
- University Library Council (2005-2007)
- Ad Hoc Committee on Tenure Standards (2004-2005)
- Judicial Clerkships (2004-2005)

At Harvard:

- First-Year Lawyering Program (2003-2004)
- Public Service Fellowships (2001-2003)

OTHER PROFESSIONAL ACTIVITIES

Legal Working Group, Workplace Flexibility 2010 (2006-2007)

Co-Chair, AALS Section on Disability Issues (2007)

Faculty Advisor, Washington University chapter of the American Constitution Society

Frequently advise civil rights lawyers and organizations on appellate strategy, particularly in opposing *certiorari* petitions in the Supreme Court

Frequently speak at professional conferences, including the American Constitution Society annual conference, the annual meeting of the National Disability Rights Network, etc.

Consulted on and participated in election law litigation for, among others, the Obama and Kerry campaigns and the Missouri Democratic Party