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From the SelectedWorks of Seth Barrett Tillman

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



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Available at: http://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/, 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.²⁸⁵ In much the same way that the Supreme Court has given force to structural values in the Constitution such as [*721] federalism²⁸⁶ and the separation of powers,²⁸⁷ the Court could recognize the structural commitment to fiduciary government as the basis for judicial review of incumbent self-dealing.²⁸⁸

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).