

# GROVE CITY COLLEGE

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## JOURNAL OF LAW & PUBLIC POLICY

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# GROVE CITY COLLEGE

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Grove City College was founded in 1876 in Grove City, Pennsylvania. The College is dedicated to providing high quality liberal arts and professional education in a Christian environment at an affordable cost. Nationally accredited and globally acclaimed, Grove City College educates students through the advancement of free enterprise, civil and religious liberty, representative government, arts and letters, and science and technology. True to its founding, the College strives to develop young leaders in areas of intellect, morality, spirituality, and society through intellectual inquiry, extensive study of the humanities, and the ethical absolutes of the Ten Commandments, and Christ's moral teachings. The College advocates independence in higher education and actively demonstrates that conviction by exemplifying the American ideals of individual liberty and responsibility.

Since its inception, Grove City College has consistently been ranked among the best colleges and universities in the nation. Recent accolades include: The Princeton Review's "America's Best Value Colleges," Young America's Foundation "Top Conservative College," and U.S. News & World Report's "America's Best Colleges."

*GROVE CITY COLLEGE*  
*JOURNAL OF LAW & PUBLIC POLICY*

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The *Grove City College Journal of Law & Public Policy* was organized in the fall of 2009 and is devoted to the academic discussion of law and public policy and the pursuit of scholarly research. Organized by co-founders James Van Eerden '12, Kevin Hoffman '11, and Steven Irwin '12, the *Journal* was originally sponsored by the Grove City College Law Society. The unique, close-knit nature of the College's community allows the *Journal* to feature the work of undergraduates, faculty, and alumni, together in one publication.

Nearly entirely student-managed, the *Journal* serves as an educational tool for undergraduate students to gain invaluable experience that will be helpful in graduate school and their future careers. The participation of alumni and faculty editors and the inclusion of alumni and faculty submissions add credence to the publication and allow for natural mentoring to take place. The *Journal* continues to impact educational communities around the country and can now be found in the law libraries of Akron University, Regent University, Duquesne University, the University of Pittsburgh, and Pennsylvania State University. The *Journal* has been featured by the Heritage Foundation and continues to be supported by a myriad of law schools, law firms, and think tanks around the nation.



## EDITOR'S PREFACE

Dear Esteemed Reader,

This volume of the *Grove City College Journal of Law & Public Policy* is the tenth we have published since our inception nearly ten years ago in the spring of 2010. The *Journal* has always been and always will be an entirely student-led publication. This is both a distinctive of our organization and a great challenge. As one of the only student-led undergraduate law journals in the nation, we must contend with a rapid rate of turnover amongst our staff. Most executive editors are on the board for two to three years at most before they graduate. This year, all the executive editors working for the *Journal* undertook new roles.

This publication you are holding in your hands is the result of countless hours of hard work throughout the last fifteen weeks of this semester from our team of twenty-five student editors and our array of authors. Since the start of the spring semester this January, we have been working feverishly to solicit and edit high-caliber articles for Volume 10.

This volume marks the second edition we have published and disseminated during my first year as the Editor-in-Chief. After numerous production delays last semester, due in part to the staffing changes of our organization, we finished the production of Volume 9. That volume was an opportunity for us to learn and grow as a team as we considered our plans for finishing and releasing Volume 10 on time. I hope to codify much of what we have learned this year so the future leaders of the *Journal* can begin each publication cycle with confidence and direction.

Learning from the past is an integral part of progressing as a civilized society. Prominent British author and Christian apologist, C.S. Lewis, cautioned against chronological snobbery: “the uncritical acceptance of the intellectual climate common to our own age and the assumption that whatever has gone out of date is on that account discredited.” It is important

for thoughtful reflection on the past, to accept the good and learn from the bad as generations come and go. To that end, we have decided to theme this edition “In Retrospect.” As such, the articles we selected to publish reflect on past policies, look at precedent established by the Court, consider the shift in the way our culture views the executive branch, and theoretically examine the economics of autocracy.

Beginning with this volume, we chose to establish an overarching theme for the content in each edition that we hope will interest our readers. Our move in this direction is a result of conversations among the current executive board members, as well as with Mr. Jeff Prokovich ’89, Mr. Adam Nowland ’07, and Grove City College’s ninth president, the Honorable Paul J. McNulty ’80. As we reflect on our organization and evaluate our goal, we feel this move will allow the *Journal* to more effectively serve as a resource and reference to you, our readers, donors, and supporters.

In addition to publishing two volumes this year and implementing the concept of themed publications, we also decided to reestablish our release presentation at the annual Institute for Faith & Freedom Conference (formerly Center for Vision & Values) this past April. Following introductions by myself and our faculty advisor, Dr. Caleb Verbois, Luke Leone ’18 presented his article, “Compact Theory & Modern Nullification,” from the previous volume. President McNulty ’80 concluded the presentation with an introduction to his article, which you will read in the proceeding pages of this publication.

As I reflect on our work this year, I am encouraged by the positive progress we have made and look forward to spending my fourth and final year with the organization solidifying the publication process and working toward our next edition. On behalf of our entire editorial team, I would like to thank everyone who has played a role in the success of this publication—our associate editors, our faculty advisor, our authors, the administrators

in the Office of Institutional Advancement, the staff from the Institute for Faith & Freedom, the staff in Print Production & Mail Services, and most importantly you, our donors and valued supporters. Without your continued support of undergraduate research and scholarship in the form of financial contributions, our organization would not exist. We would ask that you consider making a gift to Grove City College, designated for the *Journal*, using the enclosed envelope or online at <http://giving.gcc.edu/>. Your generosity makes our efforts possible.

To make a financial gift, subscribe to the *Journal*, request print copies of past editions, or submit an article, please email us at [LawJournal@gcc.edu](mailto:LawJournal@gcc.edu) or visit our website at [www2.gcc.edu/orgs/GCLawJournal/](http://www2.gcc.edu/orgs/GCLawJournal/). Electronic copies of all previous editions are archived in the HeinOnline database, which maintains over 2,600 law-related periodicals. Again, thank you for your readership and continued support of the *Grove City College Journal of Law & Public Policy*.

A handwritten signature in black ink, reading "Falco Anthony Muscante II". The signature is written in a cursive, flowing style with a large, prominent "F" and "M".

Falco Anthony Muscante II '20

*Editor-in-Chief*

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FOREWORD

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Dear Reader,

It is a pleasure to have been asked to write this modest foreword to the latest edition of the *Grove City College Journal of Law & Public Policy*. I arrived at Grove City College in the fall of 1997. It is hard to believe that I have been here over for 20 years. I have seen great things happen here, and met many wonderful faces, students and faculty alike, who have come and gone. One of the most edifying developments on campus during that time was the creation of this special journal, so unique among undergraduate institutions. It is gratifying to see students and faculty alike come together to contribute to the pages of this publication—a testimony to the caliber of people at Grove City College, the camaraderie, and the harmony between students and faculty.

This current issue of the journal features essays by three student contributors—Hannah Schuller, Tegan Truitt, and Tyler Gustafson—plus one faculty member, Professor Richard Snyder, and our president, Paul J. McNulty. Hannah Schuller provides a timely review of U.S. Supreme Court rulings concerning affirmative action in higher education, from the historic Bakke decision to the recent case involving Harvard University. Tyler Gustafson looks at the American presidency today and over time, pondering whether the executive branch and bureaucracy is something altogether completely different from what the American founders envisioned. Has the executive branch really changed all that much? In a departure, Tegan Truitt examines the relationship between democracies and free markets, and challenges the consensus that insists that the two always go hand in hand. He writes on the political economy of “autocratic legislation.”

Richard Snyder has contributed a fine essay on tax law, a subject he knows inside and out, as both a practitioner and a professor. We are grateful that he has taken time to illuminate us on the latest machinations involving

the current tax code, particularly the changes under President Trump in the Tax Cuts and Jobs Act of 2017. And finally, Paul McNulty has written on the remarkable moment in history known as the impeachment of President William Jefferson Clinton, a subject he knows inside and out. He was an eyewitness to that extraordinary event, from the impeachment by the House of Representatives in December 1998 to the vote in the U.S. Senate in January 1999, which occurred 20 years ago. I remember lecturing on the Clinton impeachment in my Intro to Politics course here at Grove City College. I was a mere outside observer, with not even a ringside seat. McNulty was inside the ring. This journal today, in the spring of 2019, benefits from his witness testimony.

Given that one of my unintended themes here seems to be 20th-anniversary markers, I will conclude with this thought: Some 20 years before McNulty lived that special history on Capitol Hill, he was an undergrad at Grove City College—like Hannah, Tegan, and Tyler, like Falco Muscante, editor-in-chief of this journal, like Emma Nitzsche, executive articles editor, and like the many fine students on this journal’s current editorial board or who have contributed to its pages since its inception a decade ago. One wonders which (or how many) of them will go on to play their own remarkable roles in the history of this country 20 years from now. Which of them may be writing for this journal in the year 2039? What will they see? Truly only Heaven knows.

Until then, we hope you enjoy these essays and this latest edition of the *Grove City College Journal of Law & Public Policy*.

A handwritten signature in black ink, appearing to read 'Paul Kengor', with a long horizontal flourish extending to the right.

Paul Kengor, Ph.D.  
Professor of Political Science  
Chief Academic Fellow, the Institute for Faith & Freedom

