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JOURNAL OF LAW & PUBLIC POLICY

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GROVE CITY COLLEGE

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

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,

As I write this preface from my desk at home in the midst of my final semester as a Grove City College student, I cannot help but reflect on the four years I have spent with the *Grove City College Journal of Law & Public Policy* and on all our team has accomplished in the last few years. Our student-led organization was founded in the spring of 2010 with a vision that we would exist as a premier publication on Grove City College's campus and as one of only a few entirely student-led undergraduate law journals in the nation. I will avoid the clichés, but ten years later in 2020—especially during an unprecedented worldwide pandemic—we hold true to that vision and move forward stronger than ever.

After production delays in 2018 resulted in the postponement of Volume 9's scheduled release, our team worked tirelessly to complete that volume of the *Journal* and see that volume 10 was released on time. When I assumed the role of Editor-in-Chief in 2018, my vision for our team was to gain a deeper understanding of the unique obstacles facing our organization each year and develop a clear strategy to mitigate some of those challenges. My hope is that some of the changes we have implemented will ensure future editors begin each publication cycle with the confidence and direction necessary to secure the timely release of a quality annual publication.

Throughout the last two semesters, our team has spent significant

time refining the workflow of our editing process, creating a new organizational system for article submissions, and significantly amending our institutional constitution to codify the succession plan for each year. We began implementing these changes in our organization concurrently as we began working on volume 11 of the *Journal*.

We were on par to release this volume well before the end of the semester when the worldwide novel coronavirus pandemic caused an unexpected ripple in our newfound processes and systems. As Grove City College took action to ensure the health and safety of all students by moving classes online and asking students to vacate campus, we postponed work on volume 11 for a few weeks while students adjusted to the changes. Nonetheless, the continual stewardship of the resources and time that had already been invested in releasing this volume remained a top priority.

On behalf of our executive editorial team, I would like to thank our associate editors for their flexibility as we worked through internal changes to the organization and the changes resulting from the coronavirus epidemic, our faculty advisor Dr. Verbois for working with us to amend the constitution, President McNulty and the Administrative Council who reviewed and approved the amendments to our constitution, our authors for their communication and diligence in working with our editors, the administrators and staff in the Office of Institutional Advancement for assisting us with our finances and distribution, the staff in Print Production

& Mail Services for printing and mailing our journals, and of course *you*, our donors and valued supporters.

As I graduate from Grove City College and matriculate at the Duquesne University School of Law in Pittsburgh, Pennsylvania, I will not forget the men and women with whom I have had the privilege of working through my time serving on the editorial board of the *Journal*. This organization operates as a microcosm of the values deeply embedded in the culture of Grove City College. One of those values is community, and your support of our organization allows over twenty-five undergraduate students to experience the community forged among students, faculty, staff, distinguished alumni, and scholars invested in the mission of the College each and every year. We offer this publication free of charge, and your voluntary financial support of our organization ensures that we not only remain faithful to that same vision established ten years ago, but also that future undergraduate editors have the same opportunities to learn about how a law journal works firsthand.

To that end, consider making a financial gift, subscribing to the *Journal*, requesting print copies of past editions, or submitting an article by emailing us at LawJournal@gcc.edu or visiting our website at www2.gcc.edu/orgs/GCLawJournal. We look forward to hearing from you. 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*

A handwritten signature in black ink that reads "Falco Anthony Muscante II". The signature is written in a cursive style with a large, stylized initial 'F' and a distinct 'II' at the end.

Falco Anthony Muscante II '20

Editor-in-Chief

FOREWORD

Dear Reader,

I am pleased to introduce Volume 11 of the *Grove City College Journal of Law and Public Policy*. Being asked to contribute this short foreword is particularly meaningful to me because I got my first taste of publication when I wrote for this journal, while a student at Grove City College, where I'm now privileged to teach. It is thus with great excitement that I draw your attention to this edition's thoughtful commentary provided by five current Grove City College students: Stefanie Klaves, Luke Mason, Alexis Pavlinich, Brendan John, and Timothy Horswill. Additionally, I'm particularly pleased to present a short piece from the prolific pen of Dr. Peter Boettke, University Professor of Economics and Philosophy at George Mason University, Grove City College class of 1983, and an indefatigable contributor to my own doctoral dissertation. As always, we're also eager to welcome new members to the Grove City College community and do so in this edition by presenting the work of current law clerk, Aaron Walayat.

This edition of the *Journal* showcases essays that grapple with one of the most contentious battlegrounds of our times: rights.

Peter Boettke opens the *Journal* by directing his readers' attention to the institutional prerequisites of a free, open, and prosperous society: private property rights. Boettke has dedicated his life's scholarly work to exploring how a regime of "property, contract, and consent" (to use Hume's

felicitous turn of phrase) provides the necessary feedback for individuals to adjust their activities in a way that facilitates social coordination and cooperation, rather than chaos and conflict. I can well attest to the fact that when Boettke gives you a reading assignment, as he does in this essay, you'll only be a better thinker for heeding his advice!

Stefanie Klaves and Luke Mason draw on economic theory to examine the consequences of a wealth tax, which necessarily curtails the property rights a person holds in his or her assets. Their essay is timely, as populist political figures increasingly laud the wealth tax with the support of top public finance economists like Emmanuel Saez and Gabriel Zucman. Unlike so many milquetoast discussions of the wealth tax, which typically devolve into discussions about its optimal rate, Klaves and Mason focus on the oft-overlooked but fundamental question: is the wealth tax even a suitable means of achieving the ends that its advocates champion?

In the third contribution, Alexis Pavlinich explores the age-old question of states' rights *vis-à-vis* the federal government in her piece, "The Problems Inherent in the Court's Broad Construction of the 14th Amendment." Examining one of the most frequently litigated parts of the Constitution, Pavlinich identifies *Duncan v. Louisiana* as a watershed case that led to a federal power grab over states' rights to determine due process. She deploys this interpretation to shed light on the Supreme Court's decision in the landmark *Obergefell v. Hodges*.

The fourth essay, by Brendan John and Timothy Horswill, examines

another sort of right: that of innovators to exclude imitative producers from selling identical or similar products. While many defend patents on the grounds that they foster innovation, John and Horswill draw on theoretical arguments from economics and empirical evidence from the pharmaceutical industry—the very context typically advanced as the *raison d’etre* for a robust intellectual property system—in order to question this conventional wisdom.

Walayat closes this edition of the *Journal* with an investigation of how “American” and “international” “human rights” conceptions tend to clash. He explores these competing perspectives by examining their alternative approaches to defamatory speech against religion.

Rooted in a variety of perspectives and leaning on diverse disciplines to make their arguments, these contributions promise to stimulate thought on issues that are both highly substantive and imminently relevant.

As always, we hope you will enjoy and profit from considering these essays.

A handwritten signature in black ink that reads "Caleb S. Fuller". The signature is written in a cursive, flowing style.

Dr. Caleb Fuller '13
Assistant Professor of Economics
Grove City College

