

# GROVE CITY COLLEGE

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# JOURNAL OF LAW & PUBLIC POLICY



## ARTICLES

California's Same-sex Marriage Decision:  
How Did We Get Here? ..... *Bradley S. Tupi*

Foreign Public Diplomacy Policy:  
The Rhetorical Turn ..... *Randy E. Cole*

The U.S. Supreme Court During the Progressive  
Era – Unfairly Maligned ..... *Dr. John A. Sparks*

## NOTES

Miller's Ghost: The Importance  
of United States v. Miller  
to District of Columbia v. Heller ..... *Christopher A. Wetzel*

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JOURNAL OF LAW  
& PUBLIC POLICY



Volume 2 Number 2

Fall 2011

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The *Grove City College Journal of Law & Public Policy* invites submissions of unsolicited manuscripts, which should conform to *The Bluebook: A Uniform System of Citation* (18th ed. 2005). Manuscripts should be submitted electronically in Microsoft Word™ format to [LawJournal@gcc.edu](mailto:LawJournal@gcc.edu).

The editors strongly prefer articles under 15,000 words in length, the equivalent of 50 *Journal* pages, including text and footnotes. The *Journal* will not publish articles exceeding 20,000 words, the equivalent of 60 *Journal* pages, except in extraordinary circumstances.

To facilitate our anonymous review process, please confine your name, affiliation, biographical information, and acknowledgements to a separate cover page. Please include the manuscript's title on the first text page.

Please use footnotes rather than endnotes. All citations and formatting should conform to the 18th edition of *The Bluebook*.

Selection takes place on a per-volume basis; thus, a piece is selected for a particular volume, but not necessarily a particular edition. Submissions are reviewed on a rolling basis, beginning in February and concluding when the volume is filled, typically around mid-October.

For additional information about the *Grove City College Journal of Law & Public Policy*, please email us at [LawJournal@gcc.edu](mailto:LawJournal@gcc.edu) or visit us online at [www.gcc.edu/lawjournal](http://www.gcc.edu/lawjournal).

\*The views expressed within these articles are those of the authors and do not necessarily reflect the policies or opinions of the *Journal*, its editors and staff, or Grove City College and its administration.

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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 conception, 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."

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*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

Throughout the course of history, when pen has scratched on paper, the resulting transfer of thoughts to words has been powerful. As Ayn Rand said, "Words are a lens to focus one's mind." The Founders of our great nation took this focus in mind when they hastily signed their names to a document that forthrightly challenged the fiercest nation in the world. Many of those same focused hands would craft the Constitution - a framework that has guided the formation of our great Republic.

Though today's writing is conducted with a keyboard, its produced ideas are just as powerful. It is my greatest pleasure to bring forth this edition of the *Grove City College Journal of Law & Public Policy*. Within these pages are many thoughts and ideas of gifted authors and attorneys who have surveyed and debated the focused words of the Constitution and how it is applied to everyday life, changed for the better or worse, and related to political dialog.

Over the last two years, I have been blessed to work with many gifted individuals on all levels of the Journal organization. The outstanding credentials of the Journal's Editorial Board includes experienced attorneys who have presented before the Supreme Court and in the most prestigious court rooms in the nation, to dynamic professors who have devoted their lives to educate the next generation of litigators, esquires, negotiators, and counselors.

My greatest joy, however, has come from engaging with the students who dedicate precious time and resources to this project. As an undergraduate law review that aims to prepare its staff and authors for the next step in their legal tutelage, the publication has experienced outstanding success. A perusal of previous mastheads reveals the names of students that now sit in the lecture halls of law schools at Harvard, Virginia, Ohio State, Akron, Regent, and many more. One of my favorite stories is that of a former author, who, during an interview for a prestigious legal internship, was asked about the Journal because of its developing reputation; her particular involvement with the publication was not even mentioned. It is our many thanks in return for your work as alumni and friends for spreading the Journal.

From the conception of the Journal, our advisors have encouraged us to prioritize the continuation of the organization. Though this can be quantified through several successful initiatives and progressions, this qualitative element is difficult to harness in words. However, as I move towards graduation and my next steps in life,

I am again reminded of how great writing begins with thoughts. As Lao Tse noted, “Watch your thoughts; they become words. Watch your words; they become actions. Watch your actions; they become habit. Watch your habits; they become character. Watch your character, it becomes your destiny.” It is my hope that the focused thoughts espoused in these pages will influence the character and destiny of many for years to come.

Steven A. Irwin '12

A handwritten signature in black ink, appearing to read "Steven Irwin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Editor-in-Chief

\*Many individuals have made this publication possible, and I wish to thank several of them personally. President Jewell has supported the *Journal* from conception and continues to remain as a consultant and encourager-in-chief. Our faculty advisor, Dr. Sparks has assisted us through many hurdles throughout the editing process and is always available when we need his wisdom and tact. The monetary support from alumni and friends of the College continues to fund this publication, and each gift received is a blessing and encouragement. Mr. Jeff Prokovich in Advancement and Mr. Larry Hardesty of Student Life & Learning continue to provide funding and moral support, as well as organizational development. Much thanks is owed to our Editorial Board, faculty and alumni alike, who take the time to edit, mentor, and advise. Personally, I have been blessed to grow into this leadership role and I graciously thank those individuals who have provided endless encouragement, critiques, and helpful hands along the way. Additionally, thank you to my parents for instilling a love for reading and writing at a young age, as well as for passing along the confidence of Truth and love for organizational management. Among the student staff, a huge thanks to Dorothy Williams, Jared Smith, and Julia Haines. Dorothy, you are the third managing editor that I have had the pleasure of working with and your abilities and skills have astounded me. Jared, you have become a close confidant and I will always appreciate your opinions and strong skills where mine falter. Finally, Julia, thank you for executing an enormous amount of tasks delegated to you outside of your responsibilities – you and several others represent the continuation of the *Journal*, and I know that it will be passed down into very capable hands. Every student who contributed to this organization deserves a large thank-you, and I am proud to celebrate the publication of another successful edition with you. Most of all, I thank the Author of Truth for His blessings bestowed upon each of us.

## FOREWORD

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Dear Reader: This issue of the *Grove City College Journal of Law & Public Policy* contains five timely and carefully considered articles.

First, Brad Tupi explores the traditional importance of religion as a basis for American law and argues that, by diminishing the role of religion in the law, our Supreme Court has unleashed a torrent of sexual immorality on an unwilling populace. In particular the author analyzes the reasoning in *Perry v. Schwarzenegger* and focuses on the way Judge Walker found moral consideration to be impermissible. The author then discusses the Christian influences in the founding, the original meaning of the Establishment Clause and its use throughout America judicial history before analyzing the reinterpretation of the First Amendment as a "wall of separation between church and state." This change in judicial philosophy opened the door for a number of decisions removing religion and morality from public life and opening the door to decisions such as *Lawrence v. Texas* and *Perry v. Schwarzenegger* which disregarded the moral convictions of the majority of Americans.

Next, in a change of pace, Randy Cole makes a case for diplomats and academics using public relations and rhetorical scholarship to inform their understanding of the formation and implementation of foreign public diplomacy policy – that is, the branch of the U.S. diplomacy that communicates directly with foreign publics, not their governments. The article approaches foreign public diplomacy as the practice of public relations. Cole draws on the scholarship in the field. He reviews the advocacy of national interests via a discussion of Machiavelli, Grotius and medieval international law and its role in promoting mutual understanding to aid in the implementation of foreign policy. The article promotes a holistic approach. Based in rhetorical scholarship, he argues that public diplomacy scholarship may be situated in rhetoric and communications just as readily as international relations and law.

Chris Wetzel surveys the Second Amendment by looking at *United States v. Miller* (1939) and *District of Columbia v. Heller* (2008), with special attention given to the historical language of *Miller* that would eventually be applied to the *Heller* ruling. The case notes of *Miller* are outlined, as are the positions taken by Justice McReynolds. In its discussion of *Heller*, the article gives ample treatment to Justice Stevens' dissent, but rebuts with Justice Scalia's majority opinion that upheld the Second Amendment, based upon an historical interpretation of the Second Amendment and *Miller*.

Jared Smith surveys, from an historical perspective, the "wild ride" of the Exclusionary rule, from the Fourth Amendment through *Weeks v. United States* (1914), the Warren Court's interpretation in *Mapp v. Ohio* (1961) to the present. The author takes an interesting look at current Chief Justice Roberts' interactions with it, first as an associate counsel to President Reagan, and then as Chief Justice of the Court in *Herring v. US* and *Hudson v. Michigan*. The article is open-ended, hinting that the "Good Faith Exception" and the "Knock and Announce Rule" have moved to a conservative rollback of the Exclusionary rule.

Dr. John Sparks reviews key decisions by the Fuller Court during the Progressive Era. That court adhered to certain core values foremost among them – individual liberty and the idea of limited government. Though modern commentators have indicted the Court for reining in Progressive legislation, Sparks argues that its decisions on matters of taxation, labor working conditions and interstate commerce were consistent with those of the Founders.

Dr. John A. Sparks  
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