

The Constitutionalization of Labor and Employment Law?

The Constitutionalization of Labor and Employment Law? is an innovative and timely symposium at the intersection of constitutional law and labor and employment law. Recent U.S. Supreme Court cases have contained much legal discussion at the intersection of constitutional law concepts and the law of the workplace - both in the public-sector workplace where constitutional state action exists and in the private-sector workplace where it does not. Recent cases include: *Garcetti v. Ceballos*, *Christian Legal Society v. Martinez*, *City of Ontario v. Quon*, *NASA v. Nelson*, *Engquist v. Oregon Dept. of Agriculture*, and *Ricci v. DeStefano*.

Through discussion of five separate areas of constitutional law: (1) Freedom of Speech, (2) Freedom of Association, (3) Equal Protection, (4) The 13th Amendment, and (5) Workplace Privacy under the Fourth Amendment, this symposium explores whether constitutional law concepts are infiltrating public and private labor and employment law, and whether this development is beneficial or detrimental to the rights of workers.

Some of the top names in the United States in constitutional, labor, employment, and employment discrimination law will participate in this symposium. Speakers include: Mark Tushnet of Harvard Law School, Dan Kahan of Yale Law School, Samuel Estreicher of New York University Law School, Ken Dau-Schmidt of Indiana University Mauer School of Law, and Kermit Roosevelt of the University of Pennsylvania Law School. These, and the other participating scholars, will produce an exceptional volume of articles on an increasingly important topic for Wisconsin and the United States.

The conference will be held October 28 and 29, 2011, at the University of Wisconsin Law School in Madison, Wisconsin. Panelists and moderators from the UW Law School faculty include: Professors Carin Clauss, David Schwartz, Anuj Desai, Brad Snyder, and Visiting Professor Paul Secunda.

Please join us for this thought-provoking symposium which is part of the reinvigoration of the Labor and Employment Law Program at the University of Wisconsin Law School, which has an illustrious history in this area, and will lead to skill development opportunities with both the local and state bar.

Register online at: <http://law.wisc.edu/laborlawconference/>

Conference Organizers

Professor Emerita Carin Clauss



Professor Carin Clauss is a professor emerita of law at the UW Law School, who held the Nathan P. Feinsinger Chair in Labor Law. Her areas of specialization are labor and employment law, administrative law, and civil procedure.

As U.S. Solicitor of Labor from 1977 to 1981, Professor Clauss was responsible for enforcing the nation's labor laws. She writes extensively on employment law issues, engages in a pro bono law practice specializing in sex discrimination cases, and is a frequent speaker to business, labor, and legal groups.

Prof. Clauss has served as a consultant or member to a number of private and public organizations on a variety of labor and health and safety topics, including comparable worth, health care, safety and health in the workplace, collective bargaining, and union democracy.

Professor Paul M. Secunda



Professor Paul M. Secunda is a visiting professor of law at The University of Wisconsin Law School during the 2011 fall semester. He currently teaches at the Marquette University Law School and previously taught at the University of Mississippi School of Law. Professor Secunda teaches labor law, employee benefits, employment discrimination law, employment law, education law, and civil procedure. He is the program coordinator for the Marquette Labor and Employment Law Program.

Professor Secunda is the author of numerous books, treatises, articles, and shorter writings on labor and employment law and education law. His recent articles appear in the *UCLA*, *Fordham*, *San Diego*, *Hastings*, and *Wisconsin Law Reviews*; his essays have been published in the online journals at *Yale*, *Penn*, and *Northwestern*. Professor Secunda is the immediate past national chair of the Association of American Law Schools (AALS) Section on Employee Benefits and Executive Compensation and also the past chair of both the AALS Section on Labor Relations and Employment Law and Section on Employment Discrimination Law. He is an elected member of the American Law Institute, serving on the Members Consultative Group for the Restatement of Employment Law. A long-time contributing editor to the *Workplace Prof Blog*, Professor Secunda is co-author of numerous amicus briefs in labor and employment law cases (including the amicus brief filed by Civil Procedure Professors in Support of Respondents in *Wal-Mart Stores, Inc. v. Dukes*), and a frequent commentator in the national and Wisconsin media and press on labor, employment, benefit, and education law issues.

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The Constitutionalization of Labor and
Employment Law?
October 28 & 29, 2011

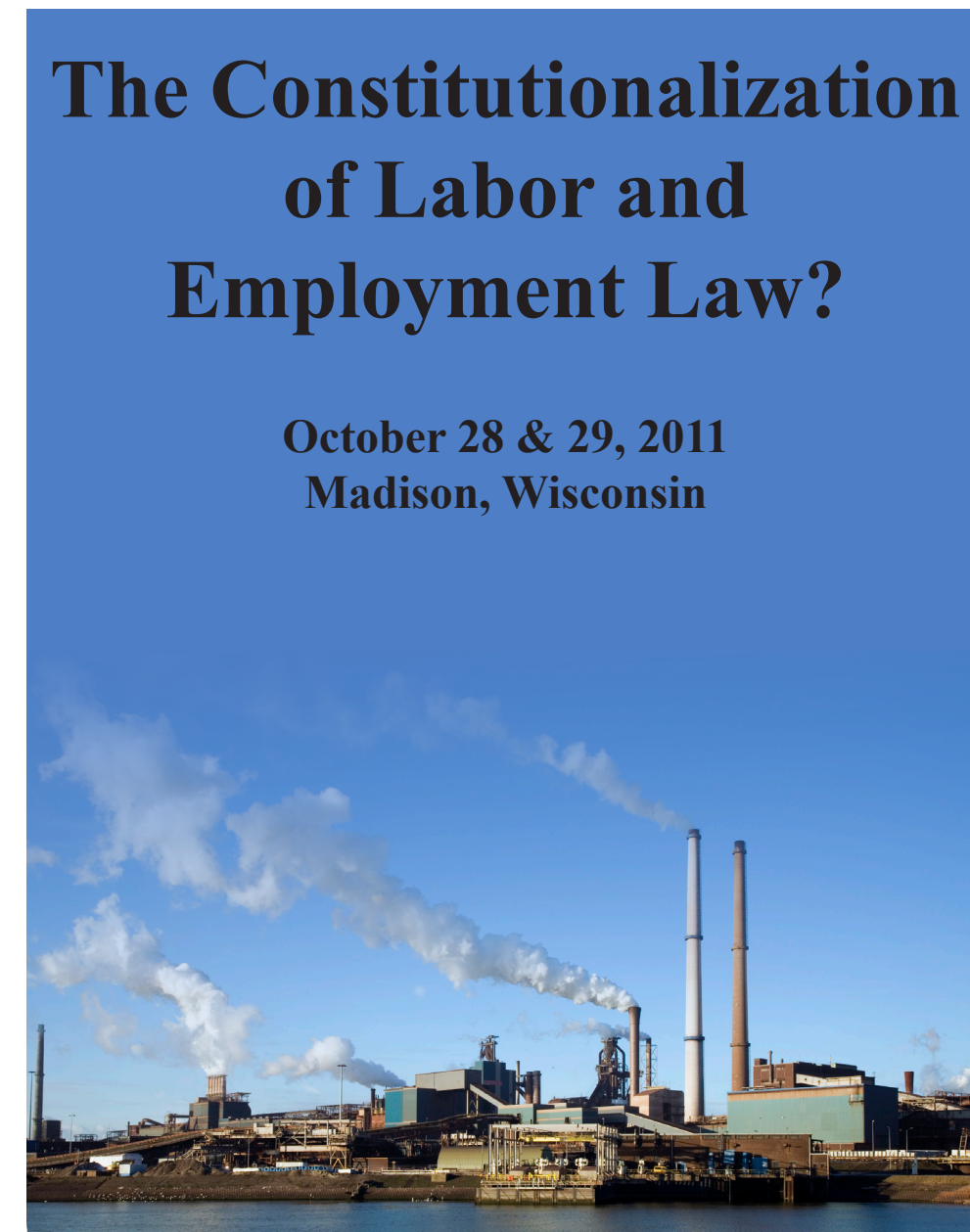
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The University of Wisconsin
Law School
presents

The Constitutionalization of Labor and Employment Law?

October 28 & 29, 2011
Madison, Wisconsin



Schedule

FRIDAY

8:00 - 8:30 a.m. Registration and Continental Breakfast

8:30 - 10:30 Equal Protection Panel

Professors Harris and McCormick will discuss the status of disparate impact law under Title VII of the Civil Rights Act of 1964 post-*Ricci*. Professor Lee will build on her previous work on administrative constitutionalism and will argue that thinking about the constitutionalization of labor and employment law requires asking not only whether to constitutionalize the workplace, but also where to do so.

Moderator: David Schwartz – *University of Wisconsin Law School; Madison*

Panelists: Susan Carle – *American University Washington College of Law; Washington, D.C.*

Cheryl Harris – *UCLA School of Law; Los Angeles*

Sophia Lee – *University of Pennsylvania Law School; Philadelphia*

Marcia McCormick – *Saint Louis University School of Law, St. Louis*

Commentator: Vicki Schultz – *Yale Law School; New Haven*

10:30 - 10:45 Break

10:45 - 12:45 p.m. 13th Amendment Panel

Professors Rutherglen, Pope, Ontiveros, and VanderVelde will examine the language of the 13th Amendment to consider its relevancy to modern workplace regulation. Professor Suk will take a close look at the *Slaughter-House* cases, specifically the United State Supreme Court’s discussion of the relationship of the peasants and nobility in France in interpreting the 13th Amendment.

Ms. Rosenbaum will draw from recent examples where guest workers have publicly claimed 13th Amendment protections and theorize the specific elements that constitute involuntary servitude.

Moderator: Brad Snyder – *University of Wisconsin Law School; Madison*

Panelists: Maria Ontiveros – *University of San Francisco School of Law; San Francisco*

James Pope – *Rutgers School of Law, The State University of New Jersey; Newark*

Jennifer Rosenbaum - *New Orleans Workers' Center for Racial Justice, New Orleans*

George Rutherglen – *University of Virginia School of Law; Charlottesville*

Julie Chi-hye Suk – *Benjamin N. Cardozo School of Law; New York*

Lea VanderVelde – *The University of Iowa College of Law; Iowa City*

1:00 - 2:00 Lunch

2:15 - 4:15 Workplace Privacy Panel

Professors Kim and Secunda will discuss broader questions of how constitutional rights play out in the public-sector (and analogously the private-sector) more generally. Professors Gely and Bierman will discuss the “race to the bottom” aspect of privacy workplace case law, where employers are given incentive to lower the privacy expectations of their employees. Professor Freiwald will consider the implications of the Sixth Circuit’s *Warshak* decision involving the Fourth Amendment and privacy for stored employee email.

Moderator: Carin Clauss – *University of Wisconsin Law School; Madison*

Panelists: Leonard Bierman – *Mays Business School, Texas A&M University; College Station*

Susan Freiwald – *University of San Francisco School of Law; San Francisco*

Rafael Gely – *University of Missouri Columbia School of Law; Columbia*

Pauline Kim – *Washington University in St. Louis School of Law; St. Louis*

Paul M. Secunda – *University of Wisconsin Law School; Madison*

Register online at: <http://law.wisc.edu/laborlawconference/>

4:30 - 5:30 Cocktail Reception
Wisconsin Law Alumni Association Student Commons

5:30 p.m. Dinner
“**Personalizing the Constitutionalizing of Labor and Employment Law – Some of Us Have Been at It for Years**”

Theodore St. Antoine – *University of Michigan School of Law; Ann Arbor*

SATURDAY

8:00 - 8:30 a.m. Continental Breakfast

8:30 - 10:30 Freedom of Association Panel

The Freedom of Association panel will discuss three major issues. First, Professor Adams will look to Canada where the Canadian Constitution has been interpreted to include a right to freedom of association in the workplace. Professor Tushnet will take an historical look at how the United States Supreme Court has tackled workplace freedom of association issues under the Constitution. Professor Dau-Schmidt will discuss a general empirical study on the costs and benefits of public sector collective bargaining. In this regard, he will look at some of the traditional arguments against a constitutional right to collectively bargain. Professor Garcia will discuss how the U.S. Supreme Court’s recent decision in *Borough of Duryea v. Guranieri* further dichotomizes work and citizenship for public employees.

Moderator: Martin Malin – *Chicago-Kent College of Law; Chicago*

Panelists: Roy Adams – *McMaster University; Hamilton, ON, Canada*

Ken Dau-Schmidt – *Indiana University Maurer School of Law; Bloomington*

Ruben Garcia - *William S. Boyd School of Law; University of Nevada, Las Vegas*

Mark Tushnet – *Harvard Law School; Cambridge*

10:30 - 10:45 Break

10:45 - 12:45 p.m. Freedom of Speech Panel

The Freedom of Speech panel first issue will explore the continuing impact of the First Amendment public employee free speech case of *Garcetti v. Ceballos*, which deconstitutionalizes public employee free speech rights when such employees speak pursuant to their job duties. Professors Roosevelt, Bauries, and Kozel will speak on this topic. Professor Harper will address the protection that union publicity and consumer boycotts receive under the First Amendment, and will consider both NLRB and United States Supreme Court decisions in this context.

Moderator: Anuj Desai – *University of Wisconsin Law School; Madison*

Panelists: Scott Bauries – *University of Kentucky College of Law; Lexington*

Michael Harper – *Boston University School of Law; Boston*

Randy Kozel – *Notre Dame Law School, Notre Dame*

Kermit Roosevelt – *University of Pennsylvania Law School; Philadelphia*

1:00 - 2:00 Lunch

2:00 p.m. Adjournment

Register online at: <http://law.wisc.edu/laborlawconference/>

Registration Information

Pre-registration is required for this symposium.

Register at <http://law.wisc.edu/laborlawconference/>

Dates and Times

Friday, October 28, 2011, from 8:30 a.m. – 4:15 p.m. and

Saturday, October 29, 2011, from 8:30 a.m. – 1:00 p.m.

Location

The University of Wisconsin Law School

975 Bascom Mall

Madison, Wisconsin

Toll Free: 1-800-355-5573

Hotel Accommodations

A block of rooms has been reserved for this symposium at the hotels listed below. Hotel accommodations are not included in the symposium fees. Individuals must reserve and pay for their own accommodations. To receive the symposium rate, please refer to the **UW Law School Labor Law Symposium** when making a reservation. Block Release Date: September 28.

• The Madison Concourse Hotel

1 West Dayton Street, Madison, Wisconsin 53703

Toll Free: 800-356-8293

E-mail: info@concoursehotel.com

Website: www.concoursehotel.com

Discounted rate: \$70/Single; \$110/Double; \$120/Triple; \$130/Quad + tax

• DoubleTree by Hilton Hotel Madison

525 W. Johnson Street, Madison, Wisconsin 53703

Phone: 608-251-5511

Website: www.DoubleTreeMadison.com (**group code is LLC**)

Discounted rate: \$129 + tax Flat rate single or double

CLE Credit

Up to **12.0 hours** of CLE credit have been approved in Wisconsin. Up to 10.0 hours of CLE credit have been approved in Illinois. We will provide supplemental materials (brochures) to individuals who wish to apply for CLE accreditation in other jurisdictions. Each participant will receive a certificate of completion.

Materials

All participants will receive a bound book of the speakers’ materials.

The University of Wisconsin provides equal opportunities in employment and programming, including Title IX requirements. Please advise the Law School Events Office at the time of registration if you are handicapped and desire special accommodations. Your request will be kept confidential.

Register online at: <http://law.wisc.edu/laborlawconference/>

Fees and Registration Process

Registration Deadline

October 18, 2011

Symposium Fees

- \$260/participant includes lectures, symposium materials, continental breakfasts, coffee breaks, Friday reception, and lunches on Friday and Saturday.
- \$40/person for the dinner on Friday night.

Registration for this symposium is online at

<http://law.wisc.edu/laborlawconference/>

Upon receipt of your completed form and full symposium fee, we will send an e-mail confirmation of your enrollment.

Cancellation Policy

To receive a refund of the symposium fee, we must receive **written** cancellation by October 20, 2011.

Special Registration for Full-Time Members of Academia

The symposium fee is waived for full-time members of academia; **however, pre-registration is required.** ONLINE Registration at: <http://law.wisc.edu/laborlawconference/> (The complimentary symposium fee does not include travel or accommodation costs.)

Cancellation: If your plans change and you are unable to attend, we ask that you notify us by October 20. We want to avoid incurring additional food service and material duplication costs if you are not attending the symposium.

For more information, please contact:

Lynn F. Thompson, director of events
608-262-4915; E-mail: LFTthomp1@wisc.edu

Kimberly A. Frank, program manager
608-890-0140; E-mail: kafrank2@wisc.edu

Register online at: <http://law.wisc.edu/laborlawconference/>