



**NCJI**  
NATIONAL CIVIL  
JUSTICE INSTITUTE

**SMU**  
Dedman School of Law

## THE FUTURE OF SUBSTANTIVE DUE PROCESS: WHAT ARE THE STAKES?

An academic Symposium  
March 31-April 1, 2023

All times listed are CDT.

### [Symposium Paper Drafts](#)

#### **Day 1**

##### **Welcome** (9:00-9:10)

Jason P. Nance, Dean, SMU Dedman School of Law  
Christopher T. Nace, President, National Civil Justice Institute

##### **Panel 1: Foundations** (9:10-10:20)

**Moderator:** Christopher T. Nace, Paulson & Nace, PLLP

##### ***The U.S. Constitution Is Not a Code: Unraveling the Idea and the Meaning of Substantive Due Process***

Simona Grossi, Loyola Law School, Los Angeles

##### ***An Originalist Theory of Due Process of Law***

Randy E. Barnett, Georgetown University Law Center

**Discussants:** Thomas M. Melsheimer, Winston & Strawn, LLP  
Ellen Presby, Ferrer Poirot & Wansbrough

**BREAK: 10:20 – 10:30**

##### **Panel 2: Endangered Liberties** (10:30-12:15)

**Moderator:** Thomas Wm. Mayo, SMU Dedman School of Law

##### ***The Fundamental Right to Free Movement***

Noah Smith-Drelich, Chicago-Kent College of Law

##### ***Renewing Educational Autonomy***

Johanna Kalb, Dean, University of Idaho College of Law

##### ***Death After Dobbs***

Kathy Cerminara, Shepard Broad College of Law, Nova Southeast University

**Discussants:** Howard Braswell, Albert Gnaegi Center for Health Care Ethics, Saint Louis Univ.  
Seema Mohapatra, SMU Dedman School of Law  
Hon. Ken Molberg, Texas Fifth Court of Appeals

**LUNCH: 12:15-1:00**

**Panel 3: The Courts** (1:15-3:00)

**Moderator:** Peggy Wedgworth, Milberg Coleman Bryson, PLLC

***State Constitutional Rights, State Courts, and the Future  
of Substantive Due Process Protections***

Jonathan Marshfield, University of Florida Levin College of Law

***Constraining and Licensing Arbitrariness: The Stakes in Debates  
about Substantive-Procedural Due Process***

Judith Resnik, Yale Law School (presenting) and Helen Hershkoff, NYU

***A Civil Right to Counsel: The Protector of Substantive Rights***

John Pollock, National Coalition for a Civil Right to Counsel

**Discussants:** Alicia Bannon, Brennan Center for Justice at NYU Law  
Hon. David C. Godbey, Chief Judge, U.S. District Court, Northern District of Texas  
Hon. Erin A. Nowell, Texas Fifth Court of Appeals

**BREAK: 3:00 – 3:15**

**Keynote Address** (3:15-4:15)

Erwin Chemerinsky, Dean, UC Berkeley School of Law

**RECEPTION: 4:15-5:00**

**Day 2**

**The Supreme Court and SDP** (9:00-9:45)

Jennifer Bennett, Gupta Wessler PLLC

**Panel 4: Democracy** (9:50-11:20)

**Moderator:** Judith Resnik, Yale Law School

***Failures in the Laboratories of Democracy and Substantive Due Process***

F. Paul Bland, Jr. (presenting) and Matthew C. Clifford, Public Justice

***From Liberation to (Re)Criminalization: Dobbs v. Jackson Women’s Health  
Organization, Bodily Autonomy, and the Expansion of State Rights***

Robin Maril, Willamette University College of Law

**Discussants:** Paul Smith, Georgetown University Law Center

Joseph Kobyłka, SMU Department of Political Science  
Alicia Bannon, Brennan Center for Justice at NYU Law

**BREAK: 11:20-11:30**

**Panel 5. Enforcement of SDP Rights** (11:30 – 12:45)

**Moderator:** Elizabeth Thornburg, SMU Dedman School of Law

***Secrecy and Transparency in Substantive Due Process Litigation***

Dustin Benham, Texas Tech University School of Law

***Challenges in Substantive Due Process Litigation***

Nancy Leong, Sturm College of Law, University of Denver

**Discussants:** Jennifer Bennett, Gupta Wessler PLLC  
F. Paul Bland, Jr., Public Justice  
Shelly Skeen, Lambda Legal Education and Defense Fund, Inc.

**Closing Remarks**