



NCJI
NATIONAL CIVIL
JUSTICE INSTITUTE

SMU
Dedman School of Law

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

An academic Symposium cosponsored by
the National Civil Justice Institute and SMU Dedman School of Law
March 31-April 1, 2023

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 (9:10-10:15)

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

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

BREAK: 10:15 – 10:30

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

The Fundamental Right to Free Movement

Noah Smith-Drelich, Chicago-Kent College of Law

Abortion Speech, Academic Freedom, and Substantive Due Process

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.
Hon. Ken Molberg, Texas Fifth Court of Appeals
Seema Mohapatra, SMU Dedman School of Law

LUNCH: 12:15-1:00

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

State Constitutions, 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

Civil Right to Counsel

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)

The Importance of the SDP Doctrine to Our Democracy

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

BREAK: 11:20-11:30

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

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: F. Paul Bland, Jr., Public Justice
Shelly Skeen, Lambda Legal Education and Defense Fund, Inc.

Closing Remarks (12:45-1:00)