

CURRICULUM VITAE

THOMAS B. MCAFFEE

EDUCATION

B.S., Philosophy, University of Utah, May 1976
Phi Kappa Phi; Phi Beta Kappa; Magna cum laude

J.D. University of Utah, College of Law, May 1979
Utah Law Review, Articles Editor, 1978-79
Order of the Coif; Graduated third in class

EMPLOYMENT

William S. Boyd Professor of Law, University of Nevada at Las Vegas

Professor of Law, University of Nevada at Las Vegas, 1998-2011
(On medical leave in 1998-1999)

Professor of Law, Southern Illinois University, School of Law, 1994-1998
Award for outstanding research and scholarship, 1997.

Associate Professor of Law, Southern Illinois University, School of Law, 1985-1994

Assistant Professor of Law, Southern Illinois University, School of Law, 1982-1985

Visiting Professor of Law, University of Utah College of Law, Summer 1986

Associate in Labor Department, Gray, Cary, Ames & Frye, San Diego, California, 1980-82

Law Clerk to Honorable J. Clifford Wallace, U.S. Court of Appeals, Ninth Circuit, San Diego, California, 1979-1980

PUBLICATIONS

BOOKS

Powers Reserved for the People and the States: A History of the Ninth and Tenth Amendments, with Jay S. Bybee and A. Christopher Bryant (Praeger Publishing, 2006).

Inherent Rights, The Written Constitution, and Popular Sovereignty—The Founders' Understanding (Greenwood Publishing Group, Inc., 2000).

ARTICLES

SETTING US UP FOR DISASTER: THE SUPREME COURT'S DECISION IN *TERRY V. OHIO*

*Setting Us Up for Disaster: The Supreme Court's Decision in *Terry v. Ohio**, forthcoming in 11 Nev. L.J. ____ (2011).

The Automobile Exception in Nevada: A Critique of the Harnisch Cases, (with John P. Lukens & Thaddeus J. Yurek III), 8 Nev. L.J. 622 (2008).

Overcoming Lochner in the Twenty-First Century: Taking Both Rights and Popular Sovereignty Seriously as We Seek to Secure Equal Citizenship and Promote the Public Good, 42 U. Richmond L. Rev. 597 (2008).

Restoring the Lost World of Classical Legal Thought: The Presumption in Favor of Liberty Over Law and the Court Over the Constitution, 75 U. Cinc. L. Rev. 101 (2007).

Courts Over Constitutions Revisited: Unwritten Constitutionalism in the States, (with Nathan N. Frost & Rachel Beth Klein-Levine), 2004 Utah L. Rev. 333.

The Constitution as Based on the Consent of the Governed—Or, Should We Have an Unwritten Constitution?, 80 Ore. L. Rev. 1245 (2001).

Inalienable Rights, Legal Enforceability, and American Constitutions: The Fourteenth Amendment and the Concept of Unenumerated Rights, 36 Wake Forest L. Rev. 747 (2001).

The Federal System as Bill of Rights: Original Understandings, Modern Misreadings, 43 Vill. L. Rev. 17 (1998).

Bringing Forward the Right to Keep and Bear Arms: Do Text, History, or Precedent Stand in the Way? (With Michael J. Quinlan), 75 No. Carol. L. Rev. 783 (1997).

Constitutional Limits on Regulating Private Militia Groups, 58 Mont. L. Rev. 45 (1997).

Substance Above All: The Utopian Vision of Modern Natural Law Constitutionalists, 4 So. Cal. Interdisciplinary J. 501 (1996).

The Augustan Constitution and Our Natural Rights Tradition: Is There a Conflict? 4 So. Cal. Interdisciplinary J. 653 (1996).

- A Critical Guide to the Ninth Amendment*, 69 Temple L. Rev. 61 (1996).
- Federalism and the Protection of Rights: The Modern Ninth Amendment =s Spreading Confusion*, 1996 B.Y.U. L. Rev. 351 (1996).
- Originalism and Indeterminacy*, 19 Harv. J. L. & Public Policy 429 (1996).
- Brown and the Doctrine of Precedent: A Concurring Opinion*, 20 S.I.U. L.J. 99 (1995).
- Prolegomena to a Meaningful Debate of the AUnwritten Constitution @ Thesis*, 61 U. Cinc. L. Rev. 1201 (1992).
- Reed Dickerson =s Originalism--What It Contributes to Contemporary Constitutional Debate*, 18 S.I.U. L.J. 617 (1992).
- The Bill of Rights, Social Contract Theory, and the Rights ARetained @ by the People*, 16 S.I.U. L.J. 267 (1992).
- The Role of Legal Scholars in the Confirmation Hearings for Supreme Court Nominees--Some Reflections*, 7 St. John =s J. Legal Commentary 211 (1991).
- Response [to Kathryn Abrams, Hiring Woman]*, 14 S. ILL. U. L.J. 498-504 (1990).
- The Original Meaning of the Ninth Amendment*, 90 Colum. L. Rev. 1215 (1990).
- The Illinois Bill of Rights and Our Independent Legal Tradition: A Critique of the Illinois Lockstep Doctrine*, 1987 S.I.U. L.J. 1.
- Shelley v. Kraemer: Herald of Social Progress and of the Coming Debate Over the Limits of Constitutional Change*, 34 St. Louis B.J. 14 (1987).
- Constitutional Interpretation and the American Tradition of Individual Rights*, 27 B.Y.U. Studies 139 (1987).
- Constitutional Interpretation--The Uses and Limitations of Original Intent*, 12 U. Dayton L. Rev. 275 (1986).
- Berger v. The Supreme Court--The Implications of His Exceptions-Clause Odyssey*, 9 U. Dayton L. Rev. 219 (1984).

Book Chapter:

The Legal Protection of Constitutional Rights, in M. Frankowska and A. Melone eds., *The Legal System and American Constitutional Democracy* 132-44 (Sofia, Bulgaria: St. Kliment Oridski University Press, 1993).

Book Reviews:

Book Review (of Kurt T. Lash, *The Lost History of the Ninth Amendment* (2009)), 28 *Law and History Review* 1099 (2010).

The “Foundations” of Anti-Foundationalism—Or, Taking the Ninth Amendment Lightly: A Comment on Daniel A. Farber’s Book on the Ninth Amendment, 9 *Nev. L.J.* 226 (2008) (reviewing Daniel A. Farber, *Retained by the People: The “Silent” Ninth Amendment and the Rights Most Americans Don’t Know They Have* (2007)).

Does the Federal Constitution Incorporate the Declaration of Independence? 1 *Nev. L.J.* 138 (2001) (reviewing *The American Constitutional Order: History, Cases, and Philosophy* (1998)).

Book Review, 36 *Am J. Legal History* 399-401 (1992) (reviewing Robert Lowry Clinton, *Marbury v. Madison and Judicial Review* (1989)).

Lawyers and the Abortion Debate: Presenting a Balanced View, 48 *Mo. L. Rev.* 284 (1983) (reviewing Lynn D. Wardle & Mary A. Wood, *A Lawyer Looks at Abortion* (1982)).

Student Work:

Note, *A Dialogue on the Political Question Doctrine*, 1978 *Utah L. Rev.* 523.

PERSONAL

Born: July 5, 1952. Married to Lynda McAfee. Four children, six grandchildren. Interests: reading, writing, golf.