

# JOSHUA E. WEISHART (he/him/his)

Thomas R. Goodwin Professor of Law

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## ACADEMIC APPOINTMENTS

West Virginia University College of Law  
*Thomas R. Goodwin Professor of Law* (2023–Present)  
*Professor of Law* (2020–2023)

West Virginia University College of Law &  
John D. Rockefeller IV School of Policy and Politics  
*Professor of Law and Policy* (2019–2020)  
*Associate Professor of Law and Policy* (2016–2019)

West Virginia University College of Law  
*Visiting Associate Professor* (2014–2016)  
*Visiting Assistant Professor* (2012–2014)

## EDUCATION

University of California, Berkeley School of Law  
J.D., 2006

University of Cambridge, Robinson College  
M.Phil., Philosophy, 2003  
Dissertation Advisors: Serena Olsaretti and Hallvard Lillehammer

West Virginia University  
B.A., *summa cum laude*, Political Science & Philosophy, 2001

## PROFESSIONAL EXPERIENCE

Hon. Robert B. King, U.S. Court of Appeals for the Fourth Circuit  
Law Clerk, Charleston, WV (2011–2012)

Severson & Werson, P.C.  
Associate, Financial Service Group, San Francisco, CA (Sept. 2006–July 2011)

Hon. Claudia Wilken, U.S. District Court, Northern District of California  
Extern, Oakland, CA, (Aug–Dec. 2005)

U.S. Postal Service Law Department  
Law Clerk, Employment & Labor Law, San Francisco, CA (May–Aug. 2005)

Coro Fellowship in Public Affairs  
Fellow, H. John Heinz School of Public Policy, Pittsburgh, PA (2001–2002)

U.S. Department of Justice  
Intern, Office of Legal Policy, Washington, D.C. (June–July 2001)

ACLU of West Virginia  
Intern, Charleston, WV (June–Aug. 2000)

## ARTICLES

*The Right to Teach*, 56 U.C. Davis Law Review 817 (2022)

*Separate But Free*, 73 Florida Law Review 1139 (2021)

*Democratizing Education Rights*, 29 William & Mary Bill of Rights J. 1 (2020)

*The Compromised Right to Education?*, 71 Stanford Law Rev. Online 123 (2018)

*Equal Liberty in Proportion*, 59 William & Mary Law Review 215 (2017)

*Reconstituting the Right to Education*, 67 Alabama Law Review 915 (2016)

*Transcending Equality Versus Adequacy*, 66 Stanford Law Review 477 (2014)

## CHAPTERS

*The Constitutionally Anomalous Right to Education*, in OXFORD HANDBOOK OF U.S. EDUCATION LAW (Kristi Bowman, ed., Oxford University Press, 2021)

*Protecting a Federal Right to Educational Equality and Adequacy in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY* (Kimberly Jenkins Robinson, ed., NYU Press, 2019)

## INVITED ESSAYS

Book Review *Flunking Democracy: Schools, Courts, and Civic Participation*, 126 American Journal of Education 329 (2020)

*Rethinking Constitutionality in Education Rights Cases*, 71 Arkansas Law Rev. 491 (2019) (Symposium: “Hiding in Plain Sight: What Education Reform Needs”)

*Aligning Education Rights and Remedies*, 27 Kansas J. Law & Public Policy 346 (2018) (Symposium: “Public Education Policy in the 21<sup>st</sup> Century: Challenges and Opportunities”)

*Justice Scalia’s Terribly Few Words on Education Rights*, Oxford Human Rights HUB Journal (2016)

## AMICUS BRIEF

Brief of Amici Curiae Constitution and Education Law Scholars in Support of Respondents in *West Virginia v. Beaver* (Sept. 2022)

## POLICY BRIEF

*Thought Policing Schools: How Discriminatory Censorship Subverts Education and How Educators Can Respond*, NEPC Policy Brief (with Jonathan Feingold) (forthcoming 2023)

## PUBLIC COMMENT

Second Public Comment on Proposed BOG Rule 1.4 (as revised) by Faculty Members of the WVU College of Law (Oct. 2022)

Public Comment on Proposed BOG Rule 1.4 by Faculty Members of the WVU College of Law (July 2022)

## COMMENTARIES

*Don’t Overlook State Constitutions in Education Culture Wars*, Brennan Center for Justice (Mar. 6, 2023)

*The Basic Rights Teachers Don’t Have*, The Washington Post (Jan. 26, 2023)

*Three Takeaways from Hope Scholarship Ruling*, Charleston Gazette-Mail (Nov. 26, 2022)

*What the Law Says About Parents’ Rights Over Schooling*, EducationWeek (Nov. 29, 2021)

*Making Masks Optional is No Option At All*, Charleston Gazette-Mail (Jul. 28, 2021)

*Remote Learning Highlights Inequities in Public Education. But A Premature Return to In-Person Learning Could Be Worse*, 100 Days in Appalachia (Jan. 14, 2021)

*Teachers Across America Are Striking Because Courts Are Shrinking from the School Funding Fight*, Los Angeles Times (Apr. 8, 2018), republished in ACSblog

*Focusing on the ‘Unlawful’ Teacher Strike is Missing the Point*, Charleston Gazette-Mail (Mar. 2, 2018)

## WHITE PAPER

*Long Overdue: An Adequacy Cost Study for West Virginia* (2019)

## WV ED LAW BLOG

*Constitution & Education Law Scholars: WV Voucher Law Unconstitutional* (Sept. 24, 2022)

*A New Year, Another Cruel Irony* (Jan. 1, 2021)

*Stop Stonewalling Progress on Charleston's West Side* (June 23, 2020)

*"Illegal" Best Describes Punitive Anti-Strike Bill, Not Teacher Activism* (June 14, 2019), republished in *Charleston Gazette-Mail* (June 19, 2019)

*The 2019 WV Teacher Strike: Educational Equality and Liberty* (Feb. 19, 2019)

*The Real "School Choice" under SB451: Higher School Taxes or Drastic School Cuts & Consolidations* (Feb. 13, 2019)

*Charter School Bill Likely Unconstitutional* (Feb. 5, 2019)

*An Adequacy Cost Study: The First Constitutional Priority for West Virginia Public Schools* (Jan. 31, 2019)

*Charters and Vouchers Are Diversions, Follow the Money* (Jan. 30, 2019)

*After the Strike, What Now for West Virginia Teachers?* (Mar. 8, 2018)

*You Say You Want An Injunction* (Mar. 2, 2018)

*On the Legality of the Teacher Strike* (Mar. 1, 2018)

*The Legacy of Pauley v. Kelly* (Feb. 23, 2018)

## TEACHING

Torts I: Fall 2013–23

Federal Courts: Spring 2019–22

Schools, Race, Money, & More Fall 2018, Spring 2020–22, Fall 2022

Professional Responsibility: Spring 2015–17, Summer 2017, Fall 2020, 2023

Consumer Law: Spring 2015

Employment Law: Spring 2016

Federal Agency/Judicial Externship Seminar: Spring 2017

Legal Reasoning, Research, and Writing: Fall 2012–13; Spring 2013–14

## SERVICE

### **West Virginia**

*Blair v. W. Va. Professional Charter School Board* (2022–present)  
(Not credited as service, WVU BOG Rule 1.4)

[WV Advisory Committee](#), U.S. Commission on Civil Rights, Member (2019–2023)

U.S. Fourth Circuit Essay Contest, WV representative (2018–19)

State Bar Task Force on Future of Law (2017–2019)

### **West Virginia University**

Harry S. Truman Scholarship, Nominating Committee (2012–Present)

Phi Beta Kappa Committee (2020–Present)

College of Law Dean Search Committee (2020)

Graduate Council (2016–2018)

WVU Graduate Fellowship Competition, Reviewer (2017–18)

WVU Foundation Scholarships, Reviewer (2017)

## SERVICE (CONT.)

Rockefeller School: MITRE/MPOWER Hackathon, Success in the Classroom: Linking Education Spending and Performance Beyond Test Scores (2017)

### College of Law

Standing Committees: Faculty Appointments (2016–17) (2019–20, 2022, Co-Chair), Career Services (2018–19, Co-Chair), Faculty Development Scholarship & Teaching (2014–present) (2020–2021, Chair), Promotion & Annual Review of Teaching Professors (2017–18, 2021–22), Academic Planning (2015–17), Diversity & Inclusion (2013–14), Awards Committee (2019–20), Academic Standards (2020–21)

Ad Hoc Committees: Dean Gregory Bowman’s Five-Year Review Committee (2020), Faculty Scholarship Prize Award Committee (2015, 2019), Assistant Dean for Student Life Search Committee (2016), Faculty Workflow Committee (2018–2021)

Faculty Advisor, West Virginia Association for Justice Student Chapter (2015–Present), *West Virginia Law Review* (2019–Present)

Academic Advisor (2014–Present)

Academic Excellence Center, Acting Director (Fall 2021)

Organizer/Moderator, *W.Va. Law Review* “Pauley at 40: Education Law Symposium” (2018–19)

Coach: *American Association for Justice Student Trial Advocacy Competition* (2016), *Cyber Crime Moot Court Competition* (2016)

Judge: *National Moot Court Competition Team* (2012–13, 16–17), *Baker Cup Competition* (2014–17, 2021), *Lugar Trial Competition* (2015–16, 2020), *Appellate Advocacy* (2015–16), *Wagner Labor & Employment Moot Court Competition* (2016), *National Health Law Moot Court Competition* (2016), *National Energy & Sustainability Moot Court Competition* (2017, 20–21), William B. Spong Tournament (2020)

## SELECTED HONORS

Faculty Significant Scholarship Award (2023) - *The Right to Teach*

WV Lawyers & Leaders (Class of 2019)

Faculty Significant Scholarship Award (2018) - *Equal Liberty in Proportion*

WVU Foundation Outstanding Teaching Award (2017)

Law Professor of the Year (2016)

Harry S. Truman Scholarship (2000)

## MEDIA

### The LA Times

*Soaring Healthcare Costs Drove West Virginia Teachers to Go on Their (Possibly Illegal) Statewide Strike*

### The Atlantic

*The Larger Concerns Behind the Teachers’ Strikes*

*The Ripple Effect of the West Virginia Teachers’ Strike*

### New York Magazine

*Revenge of The Pod Parents A Temporary Solution To School Closures Finds New Life As An Ideological Safe Space*

**MEDIA  
(CONT.)**

**Associated Press**

*Explainer: The History Behind 'Parents' Rights' in Schools*

*Win In Court Doesn't Assure More Pennsylvania School Funding*

**Forbes**

*Teaching Is In Crisis. Graduate Schools Of Education Can Help*

**EdWeek**

*Voucher Programs Gain Strength With Help From the Courts, An Expert Says*

**Chalkbeat**

*Biden Is Pressuring States to Drop Bans on Mask Mandates. Will It Work?*

**KCBS San Francisco**

*Interview re LA Times Op-Ed*

**WVPB Legislature Today**

*Interview Constitutionality of Charter Provisions in SB451*

**Charleston Gazette-Mail**

*Amendment 4 Would Give Legislature Final Say Over Education Policy, Including What Students Must Learn*

*WV Hasn't Studied What 'Thorough, Efficient Education' Costs*

*While The Governor Isn't Mandating Student, Teacher COVID-19 Vaccines, Can School Boards Do It?*

*Kanawha Classrooms Reopening 5 Days A Week Monday*

*WV School Officials Mulling Options on Governor's Call to Reopen*

*Why Is the Governor Deciding On Schools? WV County Superintendents, Despite Denying It, Likely Have the Power To Keep Classrooms Closed*

*House Finance Push to Return Vouchers, Increase Charters Rejected*

**WVNews**

*Law Professor Is Doubtful About Legal Challenge to Omnibus Education Bill*

**Oral Argument Podcast**

*Episode 89 Adequacy (Guest Josh Weishart)*

**Legal Theory Blog**

Weishart on (1) *the Right to Education*, (2) "The Constitutional Compromise to Guarantee Education" by Black, (3) *Constitutional Right to Education*, (4) *Segregation & School Choice*, (5) *State Constitutional Right Against State Interference with the Student-Teacher Relationship in Public Schools*

**Education Law Prof Blog**

(1) *Transcending Equality Versus Adequacy*, (2) *Reconstituting the Right to Education*, (3) *Reconciling Equality and Liberty Interests in Education Case*

**Public Funds Public Schools**

*Private School Vouchers: The Impact of Educator Activism in West Virginia and Kentucky*

## PRESENTATIONS

*San Antonio Independent School District v. Rodriguez at 50: Lessons Learned and the Path Forward*, panelist (with Scott Bauries, Janel George, Kimberly Robinson, Danielle Wingfield, Erika Wilson) (July 23, 2023)

*NextGen Education Rights in the Choice & Anti-Choice Era*, panelist (with Derek W. Black, Osamudia James, Caitlin Milat) Education Law Association Conference (Nov. 4, 2022)

*On Educational Freedom*, virtual presenter, Oklahoma Center for Humanities Fellows 2022-23 at Tulsa University (Oct. 18, 2022)

*Privatization and the Stability of Public Education*, panelist (with Preston Green, Osamudia James, David Sciarra), inaugural [William Hubbard Conference on Law & Education](#), University of South Carolina School of Law (Feb. 25, 2022)

*The Rights of Teachers in Responding to Issues of Social Justice*, panelist (with Mara Tieken, Beth Toren, Ben Hodge, Patty Jackson, Lindsey Jacobs), WVU College of Education & Human Services (Dec. 6, 2021)

*IEPs for All: A Democratic, Equitable, & Respectful Remedy*, symposium speaker, [National Education Finance Academy Annual Conference](#) (Apr. 8, 2021)

*Fundamental Questions for Our Democracy Regarding a Federal Right to Education*, panelist (with Derek W. Black, Carmel Martin, Rachel Moran, Kimberly J. Robinson, and Martha Minow, moderating) University of Virginia School of Law (Nov. 9, 2020)

*Fault Lines in the Constitution: Sources of Affirmative Rights*, panelist (with Smita Narula, Cynthia Soohoo, Eric Tars), [Cardozo Law Review Symposium Series](#) (Sept. 29, 2020)

*Workshop on Constitutional Law: Lessons from School Finance Litigation*, panelist (with Scott Bauries, Kristine Bowman, Preston Green, Kimberly Jenkins Robinson), [Southeastern Association of Law Schools Annual Conference](#) (Aug. 1, 2020)

*Learning from the Field: Education Equity Issues on the Legal Horizon*, presenter (with Katherine Dunn, Preston Green, Jessica Levin, Julie Mead), [National Education Policy Center 2019 Fellows Meeting](#) (Sept. 28, 2019)

*West Virginia Public Education Reform: The Constitutional and Statutory Perspective*, presenter, [West Virginia School Board Association Conference '19](#) (Sept. 13, 2019)

*Careers for Philosophy Majors*, panelist, [West Virginia University Department of Philosophy Alumni Reunion](#) (Sept. 6, 2019)

*Discussion Group: State Constitutional Law*, discussant, [Southeastern Association of Law Schools Annual Conference](#) (Aug. 1, 2019)

*Equality, Equity, and Adequacy in Education: Critiquing Federal and State Definitions*, panelist (with Stacy Hawkins, Areto Imoukhuede, Kimberly Robinson, Kimberly West-Faulcon), [Southeastern Association of Law Schools Annual Conference](#) (July 28, 2019)

*Pauley's Legacy and Recent Trends in State Education Rights Litigation*, moderator (with David Sciarra, Mark Dorosin, Zoe Savitsky, Scott Bauries), [West Virginia Law Review Symposium](#) (Feb. 22, 2019)

*The Lasting Influence of Pauley and the "Recht Decision" on WV Education Law and Policy*, moderator (with Kelli Talbott, Sam Petsonk, Mary Catherine Tuckwiller), [West Virginia Law Review Symposium](#) (Feb. 21, 2019)

*Hiding in Plain Sight: What Education Reform Needs*, panelist (with Scott Bauries, Areto Imoukhuede, Twinette Johnson), [Arkansas Law Review symposium](#) (Nov. 2, 2018)

*Symposium: What We All Can Learn from the 2018 Educator Walkouts*, discussant, [Harvard Law School Labor and Work Life Program and NEA](#) (Sept. 17, 2018)

## PRESENTATIONS

(CONT.)

*Teacher Strike Teach In*, panelist (with Anne Lofaso, William Gorby, et al.) WVU English and Curriculum & Instruction Departments (Feb. 28, 2018)

*The Legacy of Pauley v. Kelly*, panelist (with Robert Bastress, Trey Kay, Bren Pomponio), West Virginia Law Review's "Appalachian Justice Symposium" (Feb. 23, 2018)

*Public Education Policy in the 21<sup>st</sup> Century: Challenges and Opportunities*, speaker, Kansas Journal of Law & Public Policy Symposium (Feb. 16, 2018)

*A State Constitutional Right to an Integrated K-12 Education?*, presenter, ACS Lunch Presentation, WVU College of Law (Sept. 27, 2017)

*WVU Honors College Medallion Ceremony*, keynote speaker (May 2017)

*Outstanding Tips from Outstanding Teachers*, panelist (with Lori Sherlock and Lizzie Santiago) WVU Celebrate Event (May 2017)

*WVU College of Law Commencement*, commencement speaker (May 2016)

*Legislative Panel on West Virginia Tort Reform*, moderator (with State Senators Jeff Kessler, Daniel Hall, Chris Wallace, and Delegate Tim Manchin) WVU College of Law (Nov. 2015)

*New Legal Avenues for Advancing Educational Opportunity*, invited panelist (with Derek Black, Osamudia James, and Kimberly Robinson) Southeastern Association of Law Schools Annual Conference (July 2015)

*Nominal claim-rights: Do they exist? If so, what good are they?*, WVU Department of Philosophy Coffee Hour presentation (Feb. 2015)

*O'Bannon v. NCAA*, panel member (with Oliver Luck) CPASS Building Dedication (Oct. 2014)

## PROFESSIONAL AFFILIATIONS

### **Bar Admission**

West Virginia (No. 12639)

California (No. 244900)

### **Court Admission**

U.S. Court of Appeals for the Fourth and Ninth Circuits, U.S. District Court for the Northern, Eastern, Central, and Southern Districts of California

### **American Bar Association**

### **Education Law Association**