

# JESSICA A. CLARKE

University of Southern California Gould School of Law  
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## ACADEMIC APPOINTMENTS

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**University of Southern California Gould School of Law**, Los Angeles, CA (2023-present)  
*Robert C. and Nanette T. Packard Professor of Law* (2024-present)

Courses: Civil Procedure

Service: Law Review Advisor (2024-); Appointments Committee (2024-25); Admissions Committee (2023-24); Tenure and Promotions Committee (2023-24)

**Vanderbilt University Law School**, Nashville, TN

*Cornelius Vanderbilt Chair in Law* (2022-23); *Professor of Law* (2018-22)

Courses: Civil Procedure; Constitutional Law I; Gender and the Law; Antidiscrimination

Honors: Chancellor's Faculty Fellow (2021-23); Fed-Ex Research Professor (2020-21); Chancellor's Award for Research (2020)

Service: University LGBTQIA Task Force (2023); LGBTQ Policy Lab Executive Committee (2020-23); Provost Sexual Misconduct Prevention Committee (2020-22); Co-Director, George Barrett Social Justice Program (2019-23); Clinical Appointments Committee (Spring 2022); Appointments Committee (2021-22); Anti-Racism Task Force (2020); Committee on Public Policy at Vanderbilt University (2019-20); Curriculum Committee (2018)

**Harvard Law School**, Cambridge, MA

*Bruce Bromley Visiting Professor of Law* (Fall 2022)

Courses: Civil Procedure; Employment Discrimination

**The University of Chicago Law School**, Chicago, IL

*Walter V. Schaefer Visiting Professor of Law* (Fall 2016)

Course: Employment Discrimination

**University of Minnesota Law School**, Minneapolis, MN

*Associate Professor of Law* (2011-18); *tenured in 2016*

*Vance Opperman Research Scholar* (2015-2018)

Courses: Civil Procedure I & II; Constitutional Law I; Employment Discrimination; Statutory Interpretation

Honors: Institute for Advanced Study Fellow (2018); Stanley V. Kinyon Teacher of the Year (2015-16)

Service: Faculty Works In Progress Committee (2017); Dean Search Committee (2016); Admissions Committee (2015); Clerkships Committee (2011-2017); Latino Law Students Association Faculty Advisor (2011-2018)

**Columbia Law School**, New York, NY  
*Associate-in-Law* (2009-2011)  
Course: Legal Research and Writing

## **PUBLICATIONS**

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*Scrutinizing Sex*, 92 UNIVERSITY OF CHICAGO LAW REVIEW (forthcoming January 2025)

*Sex Discrimination Formalism*, 109 VIRGINIA LAW REVIEW 1699 (2023)

- Reviewed by Leah Litman, *Toggle Boggle*, Constitutional Law Jotwell (Nov. 13, 2023), <https://conlaw.jotwell.com/toggle-boggle/>

*A Public Policy Approach to Inequality*, in EXPONENTIAL INEQUALITIES (Shreya Atrey & Sandra Fredman, eds. 2023)

*Sex Assigned at Birth*, 122 COLUMBIA LAW REVIEW 1821 (2022)

*Failed Assignments – Rethinking Sex Designations on Birth Certificates*, 383(25) NEW ENGLAND JOURNAL OF MEDICINE 2399 (Dec. 12, 2020) (with Vadim M. Shteyler and Eli Y. Adashi)

*The #MeToo Movement in the United States: Reckoning with the Law’s Failure*, in THE GLOBAL #METOO MOVEMENT 19 (Ann M. Noel & David B. Oppenheimer, eds. 2020)

*How the First Forty Years of Circuit Precedent Got Title VII’s Sex Discrimination Provision Wrong*, 98 TEXAS LAW REVIEW ONLINE 83 (2019)

*The Rules of #MeToo*, 2019 UNIVERSITY OF CHICAGO LEGAL FORUM 37

*They, Them, and Theirs*, 132 HARVARD LAW REVIEW 894 (2019)

- Winner, Dukeminier Award for Best Sexual Orientation and Gender Identity Law Review Articles
- Cited by Fifth, Ninth, and Tenth Circuit Courts of Appeals, Wisconsin Supreme Court, Supreme Court of Nepal
- Reviewed by Ann Tweedy, *Opening up the Law to Accommodate Non-Binary Genders*, Equality Jotwell (Mar. 22, 2019), <https://equality.jotwell.com/opening-up-the-law-to-accommodate-non-binary-genders/>

*Pregnant People?*, 119 COLUMBIA LAW REVIEW FORUM 173 (2019) (reviewing David Fontana & Naomi Schoenbaum’s *Unsexing Pregnancy*)

*Explicit Bias*, 113 NORTHWESTERN UNIVERSITY LAW REVIEW 505 (2018)

- Selected for Yale-Stanford-Harvard Junior Faculty Forum

*Feminism and the Tournament*, TEXAS LAW REVIEW ONLINE (2018) (reviewing Naomi Cahn, June Carbone, & Nancy Levit's *Gender and the Tournament*)

*Protected Class Gatekeeping*, 92 NEW YORK UNIVERSITY LAW REVIEW 101 (2017)

- Selected for Yale-Stanford-Harvard Junior Faculty Forum

*Frontiers of Sex Discrimination Law*, 113 MICHIGAN LAW REVIEW 809 (2017) (reviewing Kimberly Yuracko's *Gender Nonconformity and the Law*)

*Against Immutability*, 125 YALE LAW JOURNAL 2 (2015)

- Reviewed by Elizabeth Weeks Leonard, *On Health Status, Choice, and Immutability*, Health Law Jotwell (July 22, 2015), <https://health.jotwell.com/on-health-status-choice-and-immutability/>

*Identity and Form*, 103 CALIFORNIA LAW REVIEW 747 (2015)

*Inferring Desire*, 63 DUKE LAW JOURNAL 525 (2013)

- Winner, Dukeminier Award for Best Sexual Orientation and Gender Identity Law Review Articles
- Reviewed by Marcia L. McCormick, *The Trouble with Heuristics in Sexual Harassment Litigation*, Jotwell Work Law (July 30, 2013), <https://worklaw.jotwell.com/the-trouble-with-heuristics-in-sexual-harassment-litigation/>

*Beyond Equality? Against the Universal Turn in Workplace Protections*, 86 INDIANA LAW JOURNAL 1219 (2011)

*Adverse Possession of Identity: Radical Theory, Conventional Practice*, 84 OREGON LAW REVIEW 563 (2005)

## **EDUCATION**

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**Yale Law School**, J.D., 2003

**Whitman College**, B.A. in Politics, *summa cum laude*, Phi Beta Kappa, 2000

## **LEGAL WORK EXPERIENCE**

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**Hon. Rosemary S. Pooler**, U.S. Court of Appeals, Second Circuit, 2008-2009  
*Law Clerk*

**Covington & Burling LLP**, New York, NY, 2006-2008  
*Litigation Associate*

**Hon. Shira A. Scheindlin**, U.S. District Court, Southern District of New York, 2005-2006  
*Law Clerk*

**Cadwalader, Wickersham & Taft LLP**, New York, NY, 2003-2005  
*Bankruptcy Litigation Associate*

**NOW Legal Defense and Education Fund**, New York, NY, Summer 2002  
*Summer Fellow*

**Civil Rights Office, Office for Justice Programs, DOJ**, Washington, DC, Summer 2001  
*Summer Law Clerk*

## **SHORTER WORKS**

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*The DACA Decision is Trouble for Discrimination Law*, TAKE CARE (June 25, 2020)

*Opinion, Past Cases Have Labeled LGBTQ People as Deviants. Will the Supreme Court Move Beyond That Now?*, LOS ANGELES TIMES (Oct. 7, 2019)

*Pregnant Workers and Reproductive Justice*, TAKE CARE (May 21, 2019) (symposium on REPRODUCTIVE RIGHTS AND JUSTICE STORIES by Melissa Murray, Katherine Shaw, and Reva B. Siegel)

*If You Fire Someone for Sexual Harassment, What Do You Say If You're Called for a Reference?*, HARVARD BUSINESS REVIEW (March 27, 2018)

*Should Employers Fire Employees Who Attend White Supremacist Rallies?*, HARVARD BUSINESS REVIEW (Sept. 19, 2017)

## **ADVOCACY**

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Brief Amici Curiae of Legal Scholars and National Women's Law Center in Support of Petitioner and of Respondents in Support of Petitioner, *United States v. Skrmetti*, Nos. 23-477, (September 2024) (U.S. Supreme Court) (with Catherine E. Stetson et al.)

Brief of Anti-Discrimination Scholars as Amici Curiae in Support of the Employees, *Bostock v. Clayton County, Georgia, Altitude Express v. Zarda, R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission*, Nos. 17-1618, 17-1623, 18-107 (July 2019) (U.S. Supreme Court) (with Brian Soucek, Mitchell Reich, and Thomas Schmidt)

Brief of Amici Curiae Anti-Discrimination Scholars in Support of Petitioner, *Evans v. Georgia Regional Hospital*, On Petition for a Writ of Certiorari, No. 17-370 (October 2017) (U.S. Supreme Court) (with Brian Soucek, Mitchell Reich, and Thomas Schmidt)

Letter to Department of Health & Human Services Responding to the Notice of Proposed Rulemaking for the Affordable Care Act's Nondiscrimination Rule, November 8, 2015 (with Elizabeth Sepper, Jessica Roberts, Elizabeth Dervan, and Elizabeth Deutsch)

## **SELECTED ACADEMIC PRESENTATIONS**

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### *Scrutinizing Sex*

- West Coast Gender & Sexuality Workshop, March 23, 2024, Loyola Law School, Los Angeles, CA

### *Sex Discrimination Formalism*

- University of Chicago Constitutional Law Workshop, April 17, 2023, Chicago, IL
- Harvard Law School Public Law Workshop, April 10, 2023, Boston, MA
- Berkeley Law School Faculty Workshop, March 21, 2023, Berkeley, CA
- University of Pittsburgh School of Law, March 14, 2023, Pittsburg, PA

### *Exponential Inequalities: Equality Law in Times of Crisis*

- Society of Legal Scholars Annual Seminar, Beyond Crises: The Future of Equality Law, June 9, 2022, Pembroke College, University of Oxford, Oxford, UK

### *The Right to Nonbinary Gender?*

- Harvard Business School Gender and Work Symposium, May 5, 2022, Boston, MA

### *Sex Assigned at Birth*

- Harvard Law School Faculty Workshop, Nov. 10, 2022, Boston, MA
- Boston College Law School Faculty Workshop, Sept. 29, 2022, Boston, MA
- Boston University Law School Faculty Workshop, Dec. 9, 2021 (virtual)
- Temple University Law School Faculty Workshop, Oct. 27, 2021 (virtual)

### *Overview of Current Issues in Transgender Rights Litigation*

- Presentation to the American Psychiatric Association's Council on Psychiatry and Law and Committee on Judicial Action Joint Session on Transgender Issues, Sept. 23, 2021 (virtual)

### *Gender Reveal?*

- University of Kansas Law School, Feb. 5, 2020, Lawrence, KS

### *The Rules of #MeToo*

- Law & Society Annual Meeting, June 1, 2019, Washington, DC
- University of Arizona Law Faculty Workshop, April 25, 2019, Tucson, AZ

- Hot Topics Panel on the Aftermath of the Kavanaugh Hearings and Confirmation, Annual Meeting of the Association of American Law Schools, Jan. 3, 2019, New Orleans, LA
- University of Chicago Legal Forum Symposium on #MeToo and the Law, November 1, 2018, Chicago, IL

#### *They, Them, and Theirs*

- Harvard Kennedy School Women and Public Policy Program Seminar Series, February 28, 2019, Boston, MA
- University of Chicago Workshop on Regulation of Sex, Gender, and the Family, October 10, 2018, Chicago, IL
- Vanderbilt LGBT Policy Lab, September 17, 2018, Nashville, TN
- University of Florida Faculty Workshop, April 2, 2018, Gainesville, FL
- University of Minnesota Public Law Workshop, November 30, 2017, Minneapolis, MN
- Law & Society Annual Meeting, June 21, 2017, Mexico City, Mexico

#### *Explicit Bias*

- Northwestern Law Review Live, November 12, 2018, Chicago, IL
- Harvard-Yale-Stanford Junior Faculty Forum, June 14, 2018, Cambridge, MA
- Vanderbilt Law School Faculty Workshop, January 30, 2018, Nashville, TN

#### *Frontiers of Sex Discrimination Law*

- Rutgers Center for Gender, Sexuality, Law and Policy, March 8, 2017, Newark, NJ
- Colloquium on Scholarship in Employment & Labor Law, University of Washington, September 12, 2016, Seattle, WA

#### *Protected Class Gatekeeping*

- Brooklyn Law School Faculty Workshop, March 9, 2017, Brooklyn, NY
- University of Chicago Works in Progress Series, November 10, 2016, Chicago, IL
- Yale-Stanford-Harvard Junior Faculty Forum, June 28, 2016, New Haven, CT
- Washington University Law School Faculty Workshop, April 6, 2016, St. Louis, MO
- Marquette Law School Workshop Series, March 30, 2016, Milwaukee, WI
- Colloquium on Scholarship in Employment & Labor Law, Indiana University Maurer School of Law, September 12, 2015, Bloomington, IN

#### *Marriage at Work*

- AALS Midyear Meeting: Workshop on Shifting Foundations: Family Law's Response to Changing Families, June 22, 2015, Orlando, FL

#### *Sexual Exceptionalism*

- Law & Society Annual Meeting, May 29, 2015, Seattle, WA
- AALS Workshop on Next Generation Issues of Sex, Gender and the Law, June 25, 2015, Orlando, FL

- University of Minnesota Law School Squaretable Series, August 19, 2015, Minneapolis, MN

#### *Against Immutability*

- Yale Law Journal Contemporary Legal Scholarship Reading Group, November 16, 2015, New Haven, CT
- Loyola Law New Orleans Faculty Colloquia Series, February 27, 2015, New Orleans, LA
- The Vulnerability and the Human Condition and Feminist Legal Theory Workshop Series on: An Uncomfortable Conversation: The Universal and the Particular, Vulnerability and Identities II, University of Miami School of Law, November 15, 2014, Miami, FL
- Colloquium on Scholarship in Employment & Labor Law, University of Colorado Law School, September 12, 2014, Boulder, CO
- University of Minnesota Law School Squaretable Series, July 30, 2014, Minneapolis, MN
- Law & Society Annual Meeting, May 2014, Minneapolis, MN

#### *Identity and Form*

- Southwestern Law School Outside Speakers Series, April 21, 2014, Los Angeles, CA
- University of Illinois College of Law, Junior Faculty Exchange, April 3, 2014, Champaign, IL
- Eighth Annual Colloquium on Labor and Employment Law, UNLV William S. Boyd School of Law, September 27, 2013, Las Vegas, NV
- MPLS Theory Workshop, University of Minnesota, May 2, 2013, Minneapolis, MN

#### *Inferring Desire*

- Public Symposium, Empirical Critical Race Theory Workshop, University of Denver Sturm College of Law, June 18, 2014, Denver CO
- University of Denver Law Review Symposium: Revisiting Sex: Gender and Sex Discrimination Fifty Years after the Civil Rights Act, January 31, 2014, Denver, CO
- Journal of Law & Inequality Symposium on Civil Rights and Civil Justice: 50 Years Later, October 18, 2013, Minneapolis, MN
- University of Minnesota Law School Squaretable Series, July 24, 2013, Minneapolis, MN
- Annual Meeting of the Association of American Law Schools, January 4, 2013, New Orleans, LA
- Seventh Annual Colloquium on Labor and Employment Law, Northwestern Law School, October 15, 2012, Chicago, IL
- Seton Hall Employment & Labor Law Scholars' Forum, September 5, 2012, Newark, NJ
- Law & Society Annual Meeting, June 6, 2012, Honolulu, HI, 2012
- University of Minnesota Law School Affiliate's Luncheon, April 2, 2012, Minneapolis, MN

*Beyond Equality? Against the Universal Turn in Workplace Protections*

- Law & Society Annual Meeting, May 28, 2010, Chicago, IL
- Columbia Law School Associates' and Fellows' Workshop, October 14, 2009, New York, NY

*Invited Commentator*

- U.S. Supreme Court Term Preview, USC Gould Law School, October 14, 2024, Los Angeles, CA
- Vanderbilt Law School, Panel Discussion on *303 Creative v. Elenis*, November 10, 2023, Nashville, TN (virtual)
- Law & Society Review Empirical Methods and Critical Race Theory Symposium Issue Workshop, August 24, 2023, Irvine, CA
- 13th Annual Supreme Court Term in Review at the UC Irvine Barclay Theater, June 30, 2023, Irvine, CA
- Oxford Union, *Roe v. Wade*, its (Possible) Overturn and the State of the American Constitution, June 8, 2022, University of Oxford, UK
- University of Chicago Workshop on Regulation of Sex, Gender, and the Family, May 5, 2021, Chicago, IL (virtual)
- Biological Binary Sex Essentialism in the Law and Public Policy, April 2, 2021, Harvard University and University of Haifa (virtual)
- Minnesota Law Review Symposium, Glass Ceilings, Glass Walls: Intersections in Legal Gender Equality and Voting Rights 100 Years After the 19<sup>th</sup> Amendment, Gender Equality and LGBTQ+ Rights, April 1, 2021, Minneapolis, MN (virtual)
- Exponential Inequalities: Equality Law in Times of Crisis, Feb. 15, 2021, Oxford Human Rights Hub (virtual)
- Implications of the 2020 Supreme Court Title VII Trilogy: Bostock, Zarda, & Harris Funeral Homes, AALS Annual Meeting, Jan. 9, 2021 (virtual)
- Global Resistance to Sexual Harassment and Violence, June 8-9, 2020 (virtual)
- Culp Colloquium, June 9, 2020, Stanford University (virtual)
- May Gathering, Karsh Center for Law and Democracy, University of Virginia Law School, May 29-30, 2019, Charlottesville, VA
- The Worldwide #MeToo Movement: Global Resistance to Sexual Harassment, Berkeley Comparative Equality & Anti-Discrimination Law Study Group Conference, May 13-15, 2019, Berkeley, CA
- Culp Colloquium, Duke Law School, May 16, 2019, Durham, NC
- Conversations on Lawyering in the Boundaries, Center for Experiential Learning at Boston College Law School, March 15, 2019, Newton Centre, MA
- Socioeconomics Panel: Gender, Race, and Competition in the New Economy, Annual Meeting of the Association of American Law Schools, Jan. 4, 2019, New Orleans, LA
- Discussion Group of the Future of Sexual Harassment Law, Annual Meeting of the Association of American Law Schools, Jan. 3, 2019, New Orleans, LA
- Culp Colloquium, Stanford Law School, June 4, 2018, Palo Alto, CA



- The Globalization of the #MeToo Movement, Berkeley Comparative Equality & Anti-Discrimination Law Study Group Conference, May 14-15, 2018, Berkeley, CA
- Symposium on Animus, Stetson University College of Law, April 20, 2018, Gulfport, FL
- Empirical Critical Race Theory Workshop, Northwestern University, October 21, 2017, Chicago, IL
- Empirical Critical Race Theory Workshop, University of Wisconsin, October 10, 2015, Madison, WI