

CRAIG KONNOTH

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RECENT POSITIONS

University of Colorado Law School

Associate Professor, Director, Health Law Certificate 2017-present.

Courses taught: Health Law, Property Law, Sexuality and the Law.

Additional areas: Health Information Law, Privacy, Administrative Law, Legislation, LGBT Bioethics

University of Pennsylvania Law School

Sharswood Fellow & Lecturer in Law 2014-2017

Courses Taught: Health Law, Health Information Law, LGBT Health Law.

NYU Langone Medical Center, Division of Medical Ethics 2016-2017

Rudin Fellow

Course Taught: LGBT Bioethics.

Office of the Solicitor General, California Department of Justice 2012-2014

Deputy Solicitor General

The Hon. M. Margaret McKeown, Ninth Circuit Court of Appeals 2011-2012

Law Clerk

The Williams Institute for Sexuality, Gender & the Law, UCLA Law School 2010-2011

Scott Hitt Research Fellow

EDUCATION:

Yale Law School, J.D. June 2010

Honors: Parker Prize in Legal History

Activities: *Yale Law Journal, Yale Journal of Law and Feminism*

Student Supervisor: LGBT Litigation Group

Cambridge University, M.Phil., History June 2007

Dissertation: *The Constitutional Innovation of John Milton: Secularization of British Constitutional Theory*

Fordham University, B.A. May 2005

Honors: *Summa cum laude*, Phi Beta Kappa, Alpha Sigma Nu

Majors: Math-Econ. (departmental honors), History (departmental honors)

WORKS IN PROGRESS

Privatization through Preemption

Explains how new regulations shifts control over health data collection networks from states to private firms. Argues that this replacement of federalism with privatization represents a novel intervention in the literature, and explores implications. Early stage draft available for review.

Incentives for a National Health Information Network (with Glenn Cohen)

Sets out incentives that can be used to incentivize providers and payers to join a national network (aimed at a peer reviewed journal).

Concentric Regulation in Health Data Blocking

Uses health data regulation as a case study, to show how the government uses both market power and command and control regulation in interactive ways to achieve regulatory goals.

Law and Medical Metaphors

Examines how different kinds of metaphors (consumerist, civil rights, moralistic, and Parsonian) are embedded in the law, and argues that a “civil rights” metaphor best conforms to basic bioethical principles.

PUBLICATIONS

HEALTH LAW & RIGHTS CLAIMS

Medicalization and the New Civil Rights, 72 STAN. L. REV. (forthcoming 2020).

Argues that medicine should be considered a “civil rights discourse” because it provides legitimation, community, identity, and benefits for individuals who seek medical status. Draft available for review.

The Normative Bases of Medical Civil Rights, in BEYOND DISADVANTAGE: DISABILITY, LAW, AND BIOETHICS (Glenn Cohen et al, eds., (Cambridge Univ. Press, expected publication 2020).

Medical Metaphors: The Suicides of Daniel and Dan, JOURNAL OF HEALTH LAW & POLICY (forthcoming 2020).

Keynote Address: Medical Civil Rights, INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY (forthcoming 2020, with a response).

Rewritten Opinion, Smith v. Rasmussen, in FEMINIST JUDGMENTS: REWRITTEN HEALTH LAW OPINIONS (Seema Mohapatra and Lindsay F. Wiley, eds. (Cambridge Univ. Press, expected publication 2020)).

Rewrites decision involving Medicaid ban on providing gender confirming care.

Drugs' Other Side Effects, 104 IOWA L. REV. (forthcoming 2020).

Suggests that the FDA consider the indirect, third party, and non-physiological effects of drugs in a systematic way. Draft available for review.

Keynote Address: The Public Health of Parenting LGBT Minors, 80 PITT. L. REV. (forthcoming 2019).

Transparency versus Informed Consent: The Patient/Consumer Paradigms, in TRANSPARENCY IN HEALTH AND HEALTH CARE (Barbara Evans et al, eds., Cambridge Univ. Press, forthcoming 2019).

Distinguishes between informed consent that relies on medical discourse implicating of patient support and responsibility, and transparency which relies on consumer/commercial norms.

Ethical Issues in Gender Affirming Care for Youth, 148 PEDIATRICS 213 (2018) (coauthored, peer reviewed).

Religion and Psychiatry in the Sexual Orientation Change Therapy Cases, in LAW, RELIGION, AND HEALTH IN THE UNITED STATES (Glenn Cohen et al, eds., Cambridge Univ. Press, 2017).

Argues that biblical counseling efforts constitute a cooptation of medical discourse. Granting medical licenses to carry out biblical counseling would violate constitutional anti-establishment principles.

Note, *Created in its Image: The Race Analogy, Gay Identity, and Gay Litigation in the 1950s-1970s*, 119 YALE L.J. 316 - 372 (2009) (2008-2009 Yale Law School Parker Prize recipient) ([link](#)).

Explores how LGBT Individuals relied on the race analogy to escape medical models of sexuality and gain civil rights.

HEALTH DATA/PRIVACY LAW

Privatized Preemption, Administrative & Regulatory Law News (Spring 2020, invited).

Regulatory De-Arbitrage in Health Data Regulation, ANNALS OF HEALTH LAW (forthcoming 2020).

Data Collection, EHRs, and Poverty Determinations, 46 J.L. MED. & ETHICS 622 (2018).

Health Information Equity, 164 U. PA. L. REV. 1317 (2017) ([link](#))

Argues that vast pools of health data being created will create greater privacy risks for the disadvantaged. Offers regulatory solutions for addressing the risk.

(Recipient of the 2018 Privacy Papers for Policy Makers Award)

An Expressive Theory of Privacy Intrusions, 102 IOWA L. REV. 1533 (2017) ([link](#)).

Drawing on expressive theories of law, argues that state-inflicted privacy intrusions mark the status of individuals and groups in society.

(Reviewed by Latoya Brisbane Clark, "Who Do You Think I Am?" or What it Means When We Lose Our Privacy, Jotwell, 2019).

Spelling Out Spokeo, co-authored with Seth Kreimer, 164 U. PA. L. REV. ONLINE 47(2016) ([link](#)).

Offers approach to identify current standard for standing in informational harm cases.

Symposium, Beyond IRBs: Designing Ethical Review Processes for Big Data Research, *Classification Standards for Health Information: Ethical and Practical Approaches*, 72 WASH. & LEE L. REV. ONLINE 395 (2016) ([link](#)).

Suggests offering patients a privacy "risk scoring" mechanism regarding their research data.

OTHER JOURNALS PUBLICATIONS

Panel Discussion, How to Become a Full-Time Law Professor, National People of Color Conference 2019, J. OF LEGAL EDUCATION (forthcoming 2020) (with co-panelists).

Revoking Rights, 66 HASTINGS L.J. 1365 (2015) ([link](#)).

Examines the constitutional values courts seek to protect when they scrutinize rights revocation more closely than a failure to grant rights in the first place.

Comment, *Section 5 Constraints on Congress through the Lens of Article III, and the Constitutionality of the Employment Non-Discrimination Act*, 120 YALE L.J. 1263 (2011) ([link](#)).

Suggests offering a mootness approach to doctrine prohibiting Congress from enacting legislation unless states lack legislation already addressing the problem.

Book Note, 33 YALE J. INT'L L. 525 (reviewing DANIEL TERRIS ET AL., THE INTERNATIONAL JUDGE (2007)) (2008).

Botulinum Neurotoxin Type B and Physical Therapy in the Treatment of Piriformis Syndrome: a Dose-Finding Study, 83 AM. J. OF PHY. MED. & REHAB. 42 (2004) (peer reviewed, co-authored) ([link](#)).

SELECTED U.S. SUPREME COURT BRIEFS & REGULATORY COMMENTS

- Counsel of Record, Brief amici curiae of Law & History Professors in Support of Respondents, R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission, (United States Supreme Court 2019).
- Counsel of Record, Brief of Amici Curiae Colorado Organizations and Respondents in Support of Respondents, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (United States Supreme Court 2017).
- Comment on the Confidentiality of Substance Use Disorder Patient Records (81 Federal Register 6987, Docket ID number SAMHSA-4162-20) (2016) (arguing for alignment between these protections and HIPAA rules) ([link](#)).
- Primary Co-Drafter, *Hobby Lobby v. Burwell*, Brief of Amici Curiae, California et al (U.S. Supreme Court, 2013).
- Counsel, *Riley v. California*, Brief of Respondent, (U.S. Supreme Court, 2013).
- Primary Co-drafter, *Northwest Inc. v. Ginsberg*, Brief Amici Curiae of California et al (U.S. Supreme Court, 2012).
- Primary Drafter, *Nat'l Assn. of Optometrists & Opticians v. Harris*, Brief of Respondent in Opposition to Certiorari (U.S. Supreme Court, 2012).

OTHER WORK

- *No Matter how the Masterpiece Cakeshop Case is Decided, Gay Rights Win*, Washington Post, Dec. 6, 2017.
- *The Constitutionality of a Special Health Care Deal For Alaska*, Huffington Post, Sep. 22, 2017.
- *Colbert May Support Gay Rights, but that Doesn't Mean He Gets to Make Gay Jokes*, Washington Post, May 3, 2017.
- The Orlando Shootings and Homophobia in Healthcare ([link](#)) | The Health Care Blog (2016)
- Confusion over HIPAA Causes Grief in Orlando ([link](#)) | The Health Care Blog (2016) (with Arthur Caplan)
- EXTENDING MEDICAID LONG-TERM CARE IMPOVERISHMENT PROTECTIONS TO SAME-SEX COUPLES (2012) (with Jennifer Pizer, Christy Mallory & Brad Sears) ([report](#) to SAGE (Services and Advocacy for GLBT Elders)).
- TESTIMONY ON THE DEMOGRAPHIC CHARACTERISTICS OF GAY, LESBIAN AND BISEXUAL LATINOS AND LATINOS IN SAME-SEX COUPLES (2011) ([link](#)) (testimony to the American Bar Association Commission on Hispanic Rights & Responsibilities).
- NON-CITIZEN, BINATIONAL AND NATURALIZED SAME-SEX COUPLES IN THE UNITED STATES (2011) (primary author, with Gary Gates) ([report](#) to Immigration Equality).
- SPENDING ON WEDDINGS OF SAME-SEX COUPLES IN THE UNITED STATES (2011) (primary author, with Lee Badgett & Brad Sears) ([report](#)).
- THE IMPACT ON RHODE ISLAND'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2011) (primary author, with Jody Herman and Lee Badgett) ([report](#) requested by Rhode Island legislators).
- THE FISCAL IMPACT OF CREATING CIVIL UNIONS ON COLORADO'S BUDGET (2011) (with Jody Herman and Lee Badgett) ([report](#) requested by Colorado legislators).

- THE FISCAL IMPACT OF CREATING CIVIL UNIONS ON DELAWARE'S BUDGET (2011) (with Jody Herman and Lee Badgett) ([report](#) requested by Delaware legislators).
- *Outcome of Attorney General's Race May Affect Gay Marriage Case*, Sacramento Bee, Nov. 9, 2010 at A13.

PRESENTATIONS

PAST AND FUTURE CONFERENCE CONVENING

International Association of Law & Mental Health Preconference, Lyons, 2021.

Co-Convenor, Health Information Technology and the 21st Century Cures Act, Silicon Flatirons Center, University of Colorado Law School (with Polisnelli), 2020.

Co-Convenor, Supporting Data-Driven Health Care Innovation: The Problems and Promise of Networked Health Care, Silicon Flatirons Center, University of Colorado Law School (with Polisnelli), April 4, 2019.

SELECTED PAPER PRESENTATIONS (PAST AND FORTHCOMING)

Comments on Intelligent Social Governance and Health Data, Huazhong University of Science and Technology, WuHan, China, Oct. 2020.

Law & Medical Metaphors, The International Academy of Medical Ethics and Public Health & Charles University, Prague, June 2020.

Houston Law School Faculty Workshop, March 2020.

Ass'n of American Law Schools, January 2020

- Regulatory De-Arbitrage in Health Data Regulation, Biolaw Section (from an open call).
- Building Resilience in LGBT Youth, Law & Mental Disability and Sexual Orientation & Gender Identity Sections (invited).

Brooklyn Law School Faculty Workshop, November, 2019.

Cornell Law School Faculty Workshop, October 2019.

Concentric Regulation

- Wiet Life Sciences Workshop, Loyola Law, Chicago, Sep. 2019 (selected from open call).

Medicalization and the New Civil Rights

- International Association of Law & Mental Health Keynote, Rome, July 2019 (invited).
- University of Utah School of Law Health Law Colloquium, Jan. 2019 (invited).
- Harvard Law School Health Law Colloquium, Nov. 2018 (invited).
- Culp Colloquium, Stanford Law School, June 2018.
- Law & Society Association, Toronto, June 2018.
- Health Law Professors Conference, June 2018.

Privatizing Federalism: The Case of Health Information Collection

- Health Law Professors Conference, June 2019
- Culp Colloquium, Duke Law School, May 2019
- Northeastern Health Law Professors, February 2019

The Public Health of Parenting LGBT Minors

- International Association of Law & Mental Health, Rome, July 2019 (panel).
- Keynote presentation, University of Pittsburgh School of Law, Oct. 2018 (invited).

Rewriting Smith v. Rasmussen

- American Association of Law Schools (Invited), New Orleans, D.C., Jan. 2019

Federalism and Health Data Collection

- Northeastern University School of Law, April 2019 (invited).
- Pepperdine School of Law, Malibu, March 2018 (invited).

Legal Empowerment through Medicalization

- Petrie Flom Annual Conf., Harvard Law School, Cambridge, June 2018 (from open call).

Privacy Papers for Policy Makers Interview on Health Information Equity Paper

- United States Senate, Washington D.C., Feb. 2018.

Drugs' Other Side Effects: FDA Regulation of Drug Externalities

- FDA Conference, American University—Washington School of Law, Nov. 2018.
- Health Law Professors' Conference, Georgia State University, June 2017.
- Culp Colloquium, Duke Law School, May 2017.
- BioLawPalooza, Stanford Law School, April 2017.
- Mid-Atlantic Health Law Conference, Seton Hall Law School, March 2017.

Data Collection, EHRs, and Poverty Determinations

- Medicalization of Poverty Conference, University of Illinois School of Law, Oct. 2017.
- All Data is Health Data Symposium, Indiana University McKinney Sch. of Law, Oct. 2017.

Privacy and Personhood

- Law & Society Association Annual Conference, Mexico City, June 2017

Transparency vs. Informed Consent, and the Consumer/Patient Illness Paradigms

- Petrie Flom Annual Conf., Harvard Law School, Cambridge, May 2017 (from open call).

Privacy Issues in LGBT Health (plenary panel)

- Patient Privacy Rights, Georgetown Law Center, June 2017 (convener, moderator)

Health Information Equity

- SEALS Conference, Florida, 2016 (selected from open call)
- Lavender Law Conference, Washington D.C. (selected from open call)
- Law & Society Association Conference, New Orleans, 2016 (panel organizer).
- Emerging Scholars Colloquium, Duke Law School, Durham, 2016.
- Health Law Professors Conference, Boston University School of Law, 2016.

Governing Health Information

- Department of Bioethics Faculty Workshop, NYU School of Medicine, New York, 2015.
- Law School Faculty Forum, University of Tennessee Law School, Knoxville, 2015.
- American Society of Law, Medicine & Ethics Conference Health Scholars' Workshop, St. Louis University School of Law, St. Louis, 2015 (intensive workshop for junior health scholars; exception made from policy of accepting only tenure-track faculty).

- Bioethics Faculty Workshop, U. Penn. Perelman School of Med., Philadelphia, 2015.
- Amsterdam Privacy Conference, Amsterdam, 2015.
- Privacy Law Scholars Conference, UC Berkeley School of Law, Berkeley, 2015.

An Expressive Theory of Privacy Intrusions

- Privacy Law Scholars Conference, George Washington Sch. of Law, Washington D.C., 2016.
- Faculty Workshop, Loyola Law School, Chicago, 2016.

Reclaiming Biopolitics: Religion and Psychiatry in the Sexual Orientation Change Therapy Cases

- International Association of Law & Psychology Conference, Vienna, 2015.
- Petrie Flom Annual Conference, Harvard Law School, Cambridge, 2015 (from open call).

Origins of HIV Criminalization Laws, Writers Bloc(k) Workshop, Penn Law School, Philadelphia, 2015.

Created in its Image: The Race Analogy, Gay Identity, and Gay Litigation in the 1950s-1970s

- Lavender Law Conference Junior Scholars Panel, New York, 2009.
- Law and Society Association Conference, Denver, 2009.

Developing a Test for Extraterritorial Jurisdiction under the European Convention of Human Rights, Yale Journal of International Law Work in Progress Series, Yale Law School, New Haven, 2009.

OTHER INVITED PRESENTATIONS, SELECTED

Privacy and Data Security Panel, Annual Northeastern Univ. Health Law Conference, Boston, Mar. 2019

Third-party Data Access and Genomic Databases, N.Y. Acad. of Sciences, New York, NY, Oct. 2018.

Supreme Court Review, University of Colorado in Denver, Denver, CO, July 2018.

It's About More Than Cake, OUTSpoken Speaker Series, Denver LGBT Center, May 2018.

Supreme Court Review, American Bar Association Business Section Meeting, Orlando, April 2018.

Assisted Suicide Laws in Colorado, University of Colorado, Department of Philosophy, April 2018.

Commentator, CLIP Faculty Workshop, Fordham Law School, Mar. 2018.

Commentator, North-East Association of Health Law Scholars, Seton Hall Law, Feb. 2018.

Queering Health, American Association of Law Schools, San Francisco, 2017.

Constitutional Privacy & Health Information Exchanges, Health Privacy Summit, Patient Privacy Rights, Georgetown Law Center, Washington D.C., 2016.

After Obergefell: What's Next for the LGBTQ Movement, Annenberg School for Communication, University of Pennsylvania, Philadelphia, 2016.

Governing Open Data, Conference on Responsible Use of Open Data: Government and the Private Sector, NYU Law School, New York, 2015.

Privacy Intrusions and Status, Constitutional Law Colloquium, Loyola Law School, Chicago, 2015.

Surveillance Stigma

- International Association of Law & Mental Health Conference, Vienna, 2015.
- Health Law Professors Conference, St. Louis University School of Law, St. Louis, 2015.
- Law and Society Association Conference, Seattle, 2015.

Evidence Based Employer Wellness Programs, Health Privacy Summit, Patient Privacy Rights, Georgetown Law Center, 2015 (opening plenary panel).

The Ideological Conflicts in Sexual Orientation Change Therapy, Lambda Law Symposium, Penn Law School, Philadelphia, 2014.

Demographic Characteristics of LGBT Latinos, Planned Parenthood, Los Angeles, 2011.

Demographic Distribution of LGBT Individuals, Creating Change Conference, Minneapolis, 2011.

Blinding Justitia: How Discrimination Against Sexual Minorities Destroys their Privacy, Williams Institute Global Arc of Justice Conference, UCLA Law School, Los Angeles, 2009.

RECENT MEDIA

- Channel 9 News, Health Insurance Premiums Stable as Open Enrollment Approaches, Oct. 16, 2018.
- Cathy Cunningham, Help Squad: Health insurers and other corporations analyze our plentiful personal data, then devise ways to profit from findings, Chicago Tribune, Aug. 29, 2018.
- Podcast: Cake Case Leaves Gay Rights Questions Unanswered, CQ on Congress (audio), Jun. 8, 2018.
- In Masterpiece Cake, Anthony Kennedy Uses Liberal Contempt For Bigotry To Authorize Bigotry, Above the Law, Jun. 8, 2018.
- How Does the Supreme Court Ruling Impact Colorado Businesses? 'Status Quo,' Legal Experts Say, The Denver Business Journal, Monday, June 4, 2018
- Madeline St. Amour, Out Boulder County hosting rally tonight in wake Masterpiece Cakeshop ruling, Times Call, June 4, 2018.
- Verify: Is the SCOTUS Ruling a Win for the Cake Shop Baker or Gay Rights? | 9News.com | Monday, June 4, 2018 ([video appearance](#)).
- Andrea Strong, Just Let them Eat Cake, Eater.com, May 15, 2018.
- Lindsey Washington, The Big Debate on Privacy in Big Data, The Diplomatic Courier, Apr. 30, 2018.
- Interview in Richie Bernardo, 2018's Healthiest & Unhealthiest Cities in America, WalletHub.com, Feb 12, 2018 ([link](#)).
- Kimberly Robinson, Are Roberts's Fears On Reach of Cakeshop Case Valid? Perhaps, Bloomberg Law, Dec. 13, 2017 ([link](#)).
- Jacqueline Howard, *No, HIPAA was not Waived in Orlando*, CNN.com, June 14, 2016 ([link](#)).
- Guest, SiriusXM channel 111, Knowledge@Wharton, June 21, 2016 (discussing HIPAA rules).
- Nicole Rubin, *Pa. Governor Issues Executive Order Protecting LGBTQ Rights*, April 14, 2016 ([link](#)).

BAR ADMISSIONS

United States Supreme Court | Ninth Circuit Court of Appeals | New York | California

HONORS/ACTIVITIES

- Privacy Papers for Policy Makers Award, 2018.
- Bar Association of San Francisco Minority Bar Coalition Unity Award 2012
- South Asian Bar Association of Northern California Rising Star Award, 2013

INTERESTS

Certified Spin Instructor | Choral Singing | [Opera Performance](#) | Musical Theater