

Curriculum Vitae

THOMAS O. MCGARITY

Education

Undergraduate	Rice University (B.A. 1971) Physics Major Instrument Society of America Scholar (Junior and Senior years)
Law School	University of Texas (J.D. magna cum laude 1974) Articles Editor, Texas Law Review Order of the Coif Chancellors (top 2% of graduating class)

Employment

Law Clerk to Judge William E. Doyle (1974-75)
United States Court of Appeals
Tenth Judicial Circuit
Denver, Colorado

Attorney Advisor (1975-77)
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, D.C.

Associate Professor of Law (1977-1980)
University of Kansas School of Law
Lawrence, Kansas

Professor of Law (1980-1985)
University of Texas School of Law
Austin, Texas

Cooper K. Ragan Professor of Law (1985-1986)
University of Texas School of Law
Austin, Texas

William Stamps Farish Professor of Law
(1986-1995)

University of Texas School of Law
Austin, Texas

W. James Kronzer Chair in Trial and Appellate Advocacy
(1995-2006)
University of Texas School of Law
Austin, Texas

Joe R. and Teresa Lozano Long Endowed Chair in
Administrative Law
(2006 - present)
University of Texas School of Law
Austin, Texas

William Powers, Jr. and Kim L. Heilbrun Chair in Tort Law
(2020 – present)
University of Texas School of Law
Austin, Texas

Publications

Books

The Law of Environmental Protection (West Pub. Co. 2ed.
1992) (with John Bonine)

Reinventing Rationality (Cambridge Univ. Press 1991)

Workers at Risk (Praeger Press 1993) (with Sidney A.
Shapiro)

Sophisticated Sabotage (Environmental Law Institute 2004)
(with Sidney A. Shapiro and David Bollier)

Bending Science (Harvard Univ. Press 2008)
(with Wendy Wagner)

The Preemption War (Yale Univ. Press 2008)

Freedom to Harm (Yale Univ. Press 2013)

Pollution, Politics and Power (Harvard Univ. Press 2019)

Articles

The Courts, the Agencies, and National Environmental
Policy Act Threshold Issues, 55 Texas Law Review 801-887
(1977)

Substantive and Procedural Discretion in Administrative Resolution of Science Policy Questions: Regulating Carcinogens in EPA and OSHA, 67 Georgetown Law Journal 729-810 (1979)

The Death and Transfiguration of Mirex: An Examination of the Integrity of Settlements Under FIFRA, 3 Harvard Environmental Law Review 112-135 (1979)

Judicial Review of Technological Standards Under the Clean Water Act, Water-1978 (American Institute of Chemical Engineers 1979) (with George Coggins).

The Trade Secret Status of Health and Safety Testing Information: Reforming Agency Disclosure Policies, 93 Harvard Law Review 837 (1980) (with Sidney A. Shaprio)

Contending Approaches to Regulating Laboratory Safety, 28 Kan. L. Rev. 183 (1980)

Multi-Party Forum Shopping for Appellate Review of Administrative Action, 129 U. Pa. L. Rev. 302 (1980)

Risk-Oriented Employment Screens, 59 Tex. L. Rev. 999 (1981) (with Elinor P. Schroeder)

Public Regulation of Recombinant DNA Gene Therapy, 3 J. Legal Medicine 185 (1982) (with Sidney A. Shapiro)

OSHA's Generic Carcinogen Policy: Rule Making Under Scientific and Legal Uncertainty, Chapter 5 of Law and Science in Collaboration (J.D. Nyhart & M. M. Carrow eds. 1983)

Federal Regulation of Emerging Genetic Technologies, 31 Vanderbilt L. Rev. 1 (1983) (with Karl O. Bayer)

Media Quality, Technology and Cost-Benefit Balancing Strategies for Health and Environmental Regulation 46 Law & Contemp. Prob. 159 (1983)

Judicial Review of Scientific Rulemaking, 9 Science Technology and Human Values 97 (1984)

OSHA and the Worker's Right to Know, 14 Hastings Center Report, No. 4, 38 (Aug. 1984)

Regulating Biotechnology, 1 Issues in Science and Technology 40 (1985)

Governmental Regulation of Recombinant DNA Research and Manufacturing Processes, Chapter 31 in Comprehensive Biotechnology (Moo-Young, ed. 1985) (with Karl O. Bayer)

Bhopal and the Export of Hazardous Technologies, 20 Tex. International L. J. 333 (1985)

Risk and Trust: The Role of Regulatory Agencies, in Dealing With Risks: The Courts, the Agencies, and Congress (1986)

Regulatory Reform in the Reagan Era, 45 Md. L. Rev. 253 (1986)

Regulatory Reform and the Positive State: An Historical Overview, 38 Ad. L. Rev. 399 (1986)

Beyond the Hard Look: A New Standard for Judicial Review? 2 Nat. Res. & Env. 32 (1986)

Presidential Control of Regulatory Agency Decisionmaking, 36 Am. U. L. Rev. 443 (1987)

Regulatory Analysis and Regulatory Reform, 65 Tex. L. Rev. 1243 (1987)

Federal Regulation of Agricultural Biotechnologies, 20 U. Mich. J. L. Ref. 1089 (1987)

Reorienting OSHA: Regulatory Alternatives and Legislative Reform, 6 Yale J. on Regulation 1 (1989)(with Sidney A. Shapiro)

Public Participation in Risk Regulation, 1 Risk 103 (1990)

Judicial Enforcement of NEPA-Inspired Promises, 20 Env. L. 569 (1990)

The Internal Structure of EPA Rulemaking, 54 L. & Contemp. Prob. 57 (1991)

Not So Paradoxical: The Rationale for Technology-Based Regulation, 1991 Duke L. J. 729 (1991) (with Sidney A. Shapiro)

Poverty and the Politics of Occupational Safety and Health, 1 Kan. J. L. & Pub. Policy 129 (1991)

Regulating Biotechnology, in Regulating for the Future: The Creative Balance 51 (C. Foreman, ed. 1991)

International Regulation of Deliberate Release Biotechnologies, 26 Tex. Int'l. L. J. 423 (1991)

International Regulation of Deliberate Release Biotechnologies, in International Responsibility for Environmental Harm 319 (F. Francioni & T. Scovazzi, eds. 1991)

Some Thoughts on Deossifying the Rulemaking Process, 41 Duke L. J. 1385 (1992)

Radical Technology-Forcing in Environmental Regulation, 27 Loyola of L.A. L. Rev. 943 (1994)

Peer Review in Awarding Federal Grants in the Arts and Sciences, 9 High Technology L. J. 1 (1994)

On Making Judges Do the Right Thing, 44 Duke L. J. 1104 (1995)

Paralysis by Analysis, The American Prospect, Summer, 1995, at 78 (with David C. Vladeck)

The Expanded Debate over the Future of the Regulatory State, 63 U. Chi. L. Rev. 1463 (1996)

OSHA's Critics and Regulatory Reform, 31 Wake Forest L. Rev. 587 (1996)

Regulating Commuters to Clear the Air: Some Difficulties in Implementing a National Program at the Local Level, 27 Pacific L. J. 1521 (1996)

The Courts and the Ossification of Rulemaking: A Response to Professor Seidenfeld, 75 Tex. L. Rev. 525 (1997)

A Cost-Benefit State, 50 Ad. L. Rev. 7 (1998)

The Role of Government Attorneys in Regulatory Agency Rulemaking, 61 L. & Contemp. Prob. 19 (1998)

Missing Milestones: A Critical Look at the Clean Air Act's VOC Emissions Reduction Program in Nonattainment Areas, 18 Va. Env. L. J. 41 (1999)

The Clean Air Act at a Crossroads: Statutory Interpretation and Longstanding Administrative Practice in the Shadow of the Delegation Doctrine, 9 N.Y.U. Env. L. J. 1 (2000)

Politics by Other Means: Law, Science, and Policy in EPA's Implementation of the Food Quality Protection Act, 53 Ad. L. Rev. 103 (2001)

Deflecting the Assault: How EPA Survived a "Disorganized Revolution" by "Reinventing" Itself a Bit, 31 Env. L. Rep. 11249 (2001)

A Proposal for Linking Culpability and Causation to Ensure Corporate Accountability for Toxic Risks, 26 William & Mary Env. L. & Pol. Rev. 1 (2001)

Beyond Buckman: Wrongful Manipulation of the Regulatory Process in the Law of Torts, 41 Washburn L. J. 549 (2002)

Jogging in Place: The Bush Administration's Freshman Year Environmental Record, 32 Env. L. Rep. 10633 (2002)

Seeds of Distrust: Federal Regulation of Genetically Modified Foods, 35 U. Mich. J. L. Ref. 403 (2002)

Counting the Cost of Health, Safety and Environmental Regulation, 80 Tex. L. Rev. 1997 (2002) (with Ruth Ruttenberg)

Professor Sunstein's Fuzzy Math, 90 Geo. L. J. 2341 (2002)

Beyond the Dirty Dozen: The Bush Administration's Cautious Approach to Listing New Persistent Organic Pollutants and the Future of the Stockholm Convention, 28 W & M Env. L. & Policy Rev. 1 (2003) (with Pep Fuller)

Legal Aspects of the Regulatory Use of Environmental Modeling, 33 *Env. L. Rept.* 10751 (2003) (with Wendy E. Wagner)

On the Prospect of “Daubertizing” Judicial Review of Risk Assessment, 66 *L. & Contemp. Prob.* 155 (2003)

The Goals of Environmental Legislation, 31 *Boston College Env. Aff. L. Rev.* 529 (2004)

MTBE: A Precautionary Tale, 28 *Harv. Env. L. Rev.* 281 (2004)

Our Science is Sound Science and Their Science is Junk Science: Science-Based Strategies for Avoiding Accountability and Responsibility for Risk-Producing Products and Activities, 52 *Kan. L. Rev.* 897 (2004)

The Story of the Benzene Case: Judicially Imposed Regulatory Reform Through Risk Assessment,” in *Environmental Law Stories* (R. Lazarus & O. Houck, eds. 2005)

Legislating ‘Sound Science’: The Role of the Tobacco Industry,” 95 *Am. J. Pub. Health* S. 20 (2005) (with A. Baba, D. M. Cook, & L. A. Bero)

Daubert and the Proper Role for the Courts in Health, Safety and Environmental Regulation, 95 *Am. J. Pub. Health* S. 92 (2005)

Federal Regulation of Mad Cow Disease Risks, 57 *Ad. L. Rev.* 289 (2005)

Regulation and Litigation, Complementary Tools for Environmental Protection, 30 *Colum. J. Env. L.* 371 (2005)

Medical Malpractice Myths and Realities: Why an Insurance Crisis is Not a Lawsuit Crisis, 39 *Loyola of L.A. L. Rev.* 785 (2006) (with Douglas A. Kysar and Karen Sokol)

Resisting Regulation with Blue Ribbon Panels, 33 *Fordham Urban L. J.* 1157 (2006)

Defending Clean Science from Dirty Politics, in *Rescuing Science from Politics* (R. Steinzor & W. Wagner, eds. 2006)

Did NEPA Drown New Orleans? The Levees, The Blame Game, and the Hazards of Hindsight, 56 Duke L. J. 179 (2006) (with Douglas A. Kysar)

The Complementary Roles of Common Law Courts and Federal Agencies in Producing and Using Policy-Relevant Scientific Information, 37 Env. Law 1027 (2007)

Frankenfood Free: Consumer Sovereignty, Federal Regulation, and Industry Control in Marketing and Choosing Food in the United States, in Labeling Genetically Modified Food (P. Weirich, ed. 2007)

Hazardous Air Pollutants, Migrating Hot Spots, and the Prospect of Data-Driven Regulation of Complex Industrial Complexes, 86 Tex. L. Rev. 1445 (2008) (with Wendy Wagner)

The Perils of Preemption, Trial, September, 2008, at 20.

Corporate Accountability for Scientific Fraud: Ketek and the Perils of Aggressive Agency Preemption, 58 Emory L. J. 287 (2008)

The Regulation-Common Law Feedback Loop in Nonpreemptive Regimes in Preemption Choices (W. Buzbee, ed 2008)

The Cost of Greenhouse Gas Reductions, in Economic Thought and U.S. Climate Policy (D. Driesen, ed. 2010)

A Movement, A Lawsuit, and the Integrity of Sponsored Law and Economics Research, 21 Stan. L. & Policy Rev. 51 (2010)

Deregulatory Riders Redux, 1 U. Mich. J. Env. & Admin. L. 33 (2012)

Administrative Law as Blood Sport, 61 Duke L. J. 1671 (2012)

The End Game of Regulation: Myopic Risk Management and the Next Catastrophe, 23 Duke Env. L. & Policy F. 93 (2012) (with Rena Steinzor)

Regulatory Science in Rulemaking and Tort: Unifying the Weight of the Evidence Approach, 3 Wake Forest J. L. & Policy 65 (2013) (with Sidney A. Shapiro)

EPA at Helm's Deep: Surviving the Fourth Attack on Environmental Law, 24 Fordham Env. L. Rev. 205 (2013)

When Strong Enforcement Works Better Than Weak Regulation: The EPA/DOJ New Source Review Enforcement Initiative, 72 Md. L. Rev. 1204 (2013)

Still Free to Harm: A Response to Professor Farber, 92 Tex. L. Rev. 1629 (2014)

The Disruptive Politics of Climate Disruption, 38 Nova L. Rev. 393 (2014)

But What About Texas? Climate Disruption in Recalcitrant States, 39 Harv. Env. L. Rev. 79 (2015)

Science and Policy in Setting National Ambient Air Quality Standards: Resolving the Ozone Enigma, 93 Tex. L. Rev. 1783 (2015)

Avoiding Gridlock Through Unilateral Executive Action: The Obama Administration's Clean Power Plan, 7 Wake Forest J. L. & Policy 141 (2017)

Dynamic Rulemaking, 92 N.Y.U. L. Rev. 183 (2017) (with Wendy Wagner, William West and Lisa Peters)

Trumping State Regulators and Juries, American Prospect, Spring 2017, at 77

The Trump Effect on Power Plant Carbon Dioxide Emissions, 9 San Diego J. of Climate & Energy L. 151 (2018)

The Congressional Review Act: A Damage Assessment, American Prospect, Winter 2018, at 94-99

Deregulation Using Stealth "Science" Strategies, 68 Duke. L. J. 1719 (2019) (with Wendy Wagner)

Supplemental Environmental Projects in Complex Environmental Litigation, 98 Tex. L. Rev. 1405 (2020)

Deliberative Rulemaking: An Empirical Study of Participation in Three Agency Programs, 73 Ad. L. Rev. 609 (2021) (with Wendy Wagner, William West and Lisa Peters)

Advisory Committees, Etc.

Consultant, Administrative Conference of the United States, 1979-80 (project on races to the courthouse)

Member, Advisory Panel on Occupational Genetic Testing, Office of Technology Assessment, United States Congress, 1981-82

Consultant, Administrative Conference of the United States, 1983-85 (project on regulatory impact assessment in the federal government)

Member, Committee on Multimedia Approaches to Pollution Control, National Research Council, National Academy of Sciences, 1985-87

Consultant, Administrative Conference of the United States, 1986-88 (project on Occupational Safety and Health Administration Decisionmaking)

Consultant, Administrative Conference of the United States, 1989-93 (project on approaches to reducing bias in awarding discretionary grants)

Consultant, Administrative Conference of the United States, 1991-94 (project on implementation of the HUD Reform Act)

Member, Advisory Panel on Costs of Occupational Safety and Health Regulation, Office of Technology Assessment, United States Congress, 1993-95

Member, Committee on Air Quality Management in the United States, National Research Council, National Academy of Sciences, 2001-2004

Member, Committee on Assuring the Integrity of Research Data in an Era of E-Sciences, National Research Council, National Academy of Sciences, 2007-09

President, Center for Progressive Reform, 2002-2007. Board of Directors, 2002 - present.