



Elizabeth Price Foley

Partner

Elizabeth Price Foley is a partner at Holtzman Vogel and has extensive experience in constitutional law, appellate law, and congressional and state legislative investigations. She litigates a wide range of issues relating to limits on governmental and administrative power, including immunities, jurisdiction, redistricting, preemption, displacement, standing, and federalism-based limitations such as anti-commandeering and anti-coercion. She also litigates complex individual rights issues, including First Amendment, Second Amendment, due process, takings, and equal protection.

Elizabeth is also a tenured Professor of Law at Florida International University College of Law, where she teaches Constitutional Law, Separation of Powers, and Civil Procedure. She has also taught health law and food and drug law. Prior to joining the firm, Elizabeth practiced law at an AmLaw 100 firm and a constitutional law boutique and was the Executive Director for the Florida Chapter of the Institute for Justice.

Elizabeth is a frequent writer and speaker, with op-eds regularly appearing in the *Wall Street Journal* and other national outlets. She has testified numerous times before Congress on constitutional issues such as legislative standing, congressional subpoena power, the president's duty to faithfully execute the law, due process, congressional authority over federal courts, and the ratification and recission of constitutional amendments. She is also the author of three books on constitutional law published by Yale, Harvard and Cambridge University Presses, and is consistently called upon by the broadcast media to speak on news of the day related to her experience.

Education

- Harvard Law School, LL.M.
- University of Tennessee College of Law, J.D., *summa cum laude*
 - Order of the Coif
 - Class Valedictorian
 - Articles Editor, *Tennessee Law Review*
- Emory University, B.A., History
 - Outstanding Young Businesswoman, Junior Achievement of Greater Atlanta (scholarship)

Bar & Court Admissions

- The Florida Bar
- District of Columbia Bar
- Texas Bar
- U.S. Supreme Court
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit

- U.S. District Court for the Southern District of Florida
- U.S. District Court for the Northern District of Florida

Clerkship/Government Experience

- Law Clerk, the Honorable Carolyn Dineen King, U.S. Court of Appeals for the Fifth Circuit
- Senior Legislative Aide, U.S. Congressman Ron Wyden (health policy)
- Legislative Aide, U.S. Congressman Michael A. Andrews

Representative Matters

Representative Matters*

- Obtained stay in *Naples Pride, Inc. v. City of Naples* (11th Cir. 2025), on behalf of municipality seeking to impose age and place restrictions on use of public park, consistent with First Amendment.
- Advised State client on First Amendment implications of law regulating ability of social media platforms to contract with minors.
- Successfully defended client against subpoena issued by U.S. Senate Judiciary Committee on basis that it lacked a valid legislative purpose and violated separation of powers, the First Amendment, equal protection, and Senate rules.
- Advised client regarding potential exposure to executive branch prosecution for criminal contempt of Congress pursuant to 2 U.S.C. §§ 192, 194.
- Successfully defended client against subpoena issued by D.C. Attorney General on basis that the AG lacked visitorial power to issue, and constitutional standing to enforce, a subpoena seeking information from an entity organized under the laws of another State.
- Won appeal in *Bartlett v. Baasiri* (2d Cir. 2023), which recognized foreign bank liquidator's claim of sovereign immunity. The Second Circuit held that the "time of filing" rule pronounced by the Supreme Court in *Dole Food Co. v. Patrickson* (U.S. 2003) did not apply to a bank's post-filing entry into foreign liquidation. The case also involved litigating issues relating to intervention and substitution.
- Represented high-profile client in assertion of diplomatic immunity (lack of subject matter jurisdiction) before U.S. District Court and U.S. Court of Appeals for the Eleventh Circuit (dismissed due to presidential pardon).
- Advised client on applicability of preemption and displacement doctrines relating to State law claims against fossil fuel producers.
- Principal architect of successful separation-of-powers lawsuit challenging Executive Branch implementation of the Affordable Care Act which usurped congressional power under the Appropriations Clause. The suit also successfully argued that the U.S. House of Representatives had legislative standing to bring the suit.
- Advised client on First Amendment implications of federal TikTok law (Protecting Americans from Foreign Adversary Controlled Applications Act).
- Represented large foreign television network accused of defamation in U.S. District Court and U.S. Court of Appeals for the Second Circuit, raising First Amendment (actual malice), *forum non conveniens*, venue, and personal jurisdiction defenses.
- Represented client in civil forfeiture action raising due process-based objection to personal jurisdiction before the U.S. District Court and obtaining interlocutory appeal by certification to, and stay pending

disposition by, the U.S. Court of Appeals for the Ninth Circuit. Filed petition for writ of certiorari with the U.S. Supreme Court.

- Advised State clients regarding anti-commandeering and anti-coercion (vertical separation of powers) challenges to EPA's Clean Power Plan.
- Advised client regarding potential violations of various national security-based executive orders relating to corporation's relationship to Chinese government.
- Advised large energy client on preemption, abstention, subject matter jurisdiction, due process and other defenses for land-loss suits in state courts.
- Drafted ethics complaint against U.S. Senator based on Senate conflict-of-interest rules.
- Represented energy company in removal of state-law class action suit and motion to dismiss in federal court based on lack of Article III standing and failure to state a claim.
- Represented creditors' committee of bankrupt utility on claims relating to due process and inverse condemnation under federal and state constitutions.
- Advised State official on constitutional claims stemming from improper conduct by other State officials, including First Amendment retaliation, due process, and defenses of qualified immunity.
- Advised foreign business owner on domestic and international law claims against foreign bank and government of Croatia, arising from expropriation of business.

* Includes matters before joining Holtzman Vogel.

News & Insights

- Holtzman Vogel Files Amici Brief Challenging UNRWA Immunity on Behalf of Three Former U.S. Attorneys General and Prominent National Security Officials
- Disparate-Impact Theory Is Unconstitutional
- Sullivan's Reckoning: Why It's Time to Overturn America's Defamation Shield
- Growing Stress Fractures in Our Republic
- Holtzman Vogel Files Supreme Court Amicus Brief on Behalf of Fourteen Constitutional Law Scholars Supporting Religious Freedom
- The Judicial Insubordination Crisis
- In Solidly Red Florida, these Republican-Leaning Firms Are Having a Moment
- Holtzman Vogel Adds Constitutional Law Pro in DC and Miami
- Holtzman Vogel Expands New Miami and DC Offices with Addition of Constitutional Law Expert Elizabeth Price Foley

Community Involvement

- Professor of Law, Florida International University of Law, Aug. 2002 to present
- Federalist Society member
- Research Advisory Council, James Madison Institute (current)
- Editorial Board, *Supreme Court Review*, Cato Institute (current)
- Clinical Adjunct Professor, Herbert Wertheim College of Medicine, Florida International University, Miami, Florida. Aug. 2010 to Aug. 2014

- Professor of Law (tenured), Michigan State University College of Law, East Lansing, Michigan. June 2000 to July 2002. Associate Professor of Law (untenured) from June 1996 to June 2000.
- Adjunct Professor, College of Human Medicine, Center for Ethics and Humanities, Michigan State University, Sept. 1997 to May 2002
- Visiting Lecturer, Bosphorus University, Istanbul, Turkey (lectured on bioethics and alternative dispute resolution)
- Visiting Professor of Law, Vytautas Magnus University, Kaunas, Lithuania, (taught medical malpractice)
- Member, U.S. Commission on Civil Rights, Florida State Advisory Committee, 2013-2020, Chair from 2017-2018
- Member, Institutional Review Board (IRB), Florida International University, July 2008 to Aug. 2014
- Member, National Academy of Sciences, Committee on Embryonic Stem Cell Research Guidelines (appointed by NAS Director to serve on committee charged with devising national guidelines for stem cell research)

Publications

- Disparate-Impact Theory Is Unconstitutional
- Sullivan's Reckoning: Why It's Time to Overturn America's Defamation Shield
- Growing Stress Fractures in Our Republic
- The Judicial Insubordination Crisis

Published Books:

- THE TEA PARTY: THREE PRINCIPLES (Cambridge Univ. Press 2012)
- THE LAW OF LIFE AND DEATH (Harvard Univ. Press 2011)
- LIBERTY FOR ALL: RECLAIMING INDIVIDUAL PRIVACY IN A NEW ERA OF PUBLIC MORALITY (Yale Univ. Press 2006)

Other Notable Writings:

- Testimony before the U.S. House Judiciary Committee, Subcommittee on the Constitution, *Hearing on Legislative Reforms to End Lawfare by State & Local Prosecutors*, Washington, D.C., Mar. 4, 2025 (discussing legislative reforms to discourage lawfare by State prosecutors, including reorganization of lower federal courts and amendments to the federal officer removal statute).
- *Dobbs and the Future of Substantive Liberty*, 64 SANTA CLARA L. REV. 159 (2024)
- Testimony before the U.S. House Judiciary Committee, *Hearing on the Manhattan District Attorney's Office*, June 13, 2024 (analyzing due process requirements for criminal cases including notice, opportunity to be heard, and juror unanimity)
- Testimony before the U.S. Senate Judiciary Committee, *Hearing on the Equal Rights Amendment*, Feb. 28, 2023 (analyzing Congress's role in the Article V amendment process and the constitutionality of State recissions)
- Testimony before the U.S. House Judiciary Committee, *Hearing on the Equal Rights Amendment*, Apr. 30, 2019 (analyzing congressional power to impose ratification deadlines for constitutional amendments)
- *Bias, Corruption & Obstruction, Oh My!: The Due Process "Shocks the Conscience" Limit on Investigative & Prosecutorial Conduct*, 66 Drake L. Rev. 787 (2018) (examining the due process limitations on prosecutorial and

investigative misconduct and those limitations' application to the Special Counsel's Russia collusion investigation of President Trump).

- Testimony before the U.S. House Committee on Space, Science & Technology, *Hearing on Affirming Congress' Constitutional Oversight Responsibilities: Subpoena Authority and Recourse for Failure to Comply with Lawfully Issued Subpoenas*, Sept. 14, 2016 (analyzing scope of congressional subpoena authority and constitutionality of inherent contempt).
- Testimony before the U.S. House Judiciary Committee, *Hearing on the Unconstitutionality of Obama's Executive Actions on Immigration*, Feb. 25, 2015 (analyzing the scope of the President's duty under the Take Care Clause and limits to prosecutorial discretion).
- Testimony before the U.S. House Rules Committee, Hearing on H. Res. 676, *Providing Authority to Initiate Litigation for Actions by the President Inconsistent with his Duties under the Constitution of the United States*, July 16, 2014 (analyzing the constitutionality of legislative standing under Article III).
- Testimony before the U.S. House Judiciary Committee, *Hearing on Enforcing the President's Constitutional Duty to Faithfully Execute the Laws*, Feb. 26, 2014 (analyzing presidential power to suspend laws and related Article III standing issues).
- U.S. Supreme Court, Brief of Amicus Curiae Institute for Justice In Support of Respondents, Feb. 2012 (arguing that Affordable Care Act's individual mandate is unconstitutional). This brief was the focus of George Will's syndicated column (
https://www.washingtonpost.com/opinions/obamacare-rewriting-of-contract-law/2012/03/23/gIQAVuFmWS_story.html) and named one of the "Four Best Legal Arguments Against Obamacare" by *Reason Magazine* (
<http://reason.com/archives/2012/03/24/4-best-legal-arguments-against-obamacare/singlepage>).

Recent Articles/Op-Eds:

- *A Supreme Court Remedy for Nationwide Injunctions*, WALL STREET JOURNAL, Mar. 25, 2025
- *Foley Replies to Yoo on Trump's TikTok Pause*, WALL STREET JOURNAL, Feb. 4, 2025
- *Trump's Reprieve for TikTok Is Legitimate*, WALL STREET JOURNAL, Jan. 25, 2025
- *What Jack Smith Gets Wrong About Immunity*, WALL STREET JOURNAL, Oct. 15, 2024 (with David B. Rivkin, Jr.)
- *Why Trump's Conviction Can't Stand*, WALL STREET JOURNAL, Sept. 8, 2024 (with David B. Rivkin, Jr.)
- *America Depends on Presidential Immunity*, WALL STREET JOURNAL, July 1, 2024 (with David B. Rivkin, Jr.)
- *Trump's Trial Violated Due Process*, WALL STREET JOURNAL, June 5, 2024 (with David B. Rivkin, Jr.)
- *What's at Stake in the Trump Immunity Case*, WALL STREET JOURNAL, Apr. 24, 2024 (with David B. Rivkin, Jr.)
- *Why the Supreme Court Had to Hear Trump's Case*, WALL STREET JOURNAL, Feb. 29, 2024 (with David B. Rivkin, Jr.)
- *The Senate Knows Enough to Acquit Trump*, WALL STREET JOURNAL, Jan. 5, 2020 (with David B. Rivkin, Jr)

- *This Impeachment Subverts the Constitution*, WALL STREET JOURNAL, Oct. 25, 2019 (with David B. Rivkin, Jr.)
- *Congress Can't Outsource Impeachment*, WALL STREET JOURNAL, May 31, 2019 (with David B. Rivkin, Jr.)
- *Stop the Impeachment Fishing Expedition*, WALL STREET JOURNAL, Feb. 14, 2019 (with David B. Rivkin, Jr.) (op-ed on separation of powers concerns with investigation of pre-presidential conduct).
- *Dems Can't "Bork" Kavanaugh, and Have Only Themselves to Blame*, THE HILL, Sept. 4, 2018
- *Mueller's Fruit of the Poisonous Tree*, WALL STREET JOURNAL, June 23, 2018 (with David B. Rivkin, Jr.)
- *Those Who Tout Trump's Obstruction Misrepresent the Concept*, THE HILL, June 11, 2018
- *Mueller's Jurisdiction Must Be Limited*, THE HILL, May 6, 2018
- *Trump's Statements Are Not an Obstruction of Justice*, NEW YORK TIMES, May 17, 2017
- *Trump Can't Withhold Funds from Sanctuary Cities*, NEW YORK TIMES, Apr. 28, 2017
- *The Court Needs Another Clarence Thomas, Not a Scalia*, NEW YORK TIMES, Jan. 20, 2017
- *Five Ways to Restore the Separation of Powers*, WALL STREET JOURNAL, Dec. 19, 2016 (with David B. Rivkin, Jr.)

Speaking Engagements

- Debate (with Prof. James Weinstein) on the Legality of President Trump's Executive Orders, Arizona State University, Sandra Day O'Connor College of Law, Phoenix, AZ, Feb. 6, 2025
- Debate (with journalist/attorney Glenn Greenwald) on Presidential Immunity, SoHo Forum (Reason Foundation), New York, NY, Dec. 11, 2024
- Speech, "Presidential Immunity," Middle Keys Republican Club, Marathon, FL, October 2, 2024
- Panelist, "Supreme Court Roundup," Florida International University College of Law, Miami, FL, Oct. 1, 2024
- Panelist, "SCOTUS 2021 Term," Federalist Society, Florida International University College of Law, Miami, FL Sept. 30, 2022
- Debate (with Prof. Howard Wasserman), "Abortion in the News: *Roe v. Wade* and Related Legal Matters," Federalist Society, Florida International University College of Law, Miami, FL, Oct. 5, 2021
- Speech, "Corrupt Cops: Due Process Remedies," Columbia University Law School, New York, NY, October 31, 2018
- Speech, "Due Process, Corruption & Democracy," Drake University Law School, Annual Constitutional Law Symposium, Des Moines, IA, Apr. 14, 2018

Awards and Honors

- Fulbright Scholar, National University of Ireland, Galway, spring 2011
- First Runner-up. "Worlds Ahead" Faculty Award, Florida International University, 2012
- Professor of the Year, Florida International University College of Law, 2010