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To Whom It May Concern:

Please consider my Article, *A Manageable Constitution*, for the ACS Constitutional Law Scholars Forum.

ABSTRACT

The political question doctrine posits that the Supreme Court should not attempt to answer questions for which no “manageable” test has emerged. But in recent years that manageability requirement, amorphous in itself, has grown nebulous tentacles in many other areas, including abortion rights, Fourth Amendment search and seizure doctrine, and Eighth Amendment cruel and unusual punishment jurisprudence. Such a broad, generally-applicable manageability requirement could preclude the Court from answering many pressing constitutional issues.

This Article argues that manageability should not be a catch-all term that renders more and more cases non-justiciable. First, the Court should not allow manageability to work as an *ex ante* requirement that legal tests are workable—which is already an *ex post* requirement imposed by the Court’s *stare decisis* doctrine. Instead, the Court should make its best effort to create determinate legal tests and adjust course later if, as often happens when legal tests age, they prove unworkable in the modern context. Second, any general manageability standard in constitutional jurisprudence should be limited to classical political question cases where the issue has been clearly committed to another branch as a matter of text or constitutional structure. Even then, Justices should define manageability using factors that any interpretive method could support, such as whether lower courts can use the test to consistently produce some clear result and allow a meaningful chance of success for litigants on either side of the issue.

Manageability may be here to stay, but it should be cabined and defined narrowly. It should not become a dominant factor shaping the Court’s docket.

BIOGRAPHY

Michael Gentithes is an Associate Professor of law at the University of Akron College of Law. Professor Gentithes’s teaching and research focuses on constitutional law, criminal procedure, and legal theory. His articles have been published in law reviews across the country, including the Iowa Law Review, Harvard Civil Rights-Civil Liberties Law Review, William & Mary Law Review, Georgia Law Review, Houston Law Review, Missouri Law Review, Tennessee Law Review, and Washburn Law Journal. He makes frequent presentations to bar associations on topics in constitutional law, criminal law, and appellate practice. He previously served as an appellate defender in the Office of the State Appellate Defender, where he represented indigent clients in criminal appeals throughout state and federal courts. Professor Gentithes earned an LL.M. in legal theory from New York University School of Law, his J.D. from DePaul University College of Law, and his B.A. from Colgate University.



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KEY WORDS

Political Question Doctrine, Stare Decisis, Manageability, Jurisprudence, Supreme Court, Individual Rights, Separation of Powers