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With special appreciation to the U.S. District Court for the District of Columbia, the U.S. Court of Appeals for the District of Columbia Circuit, and our individual members for their continuing support of the Society.

The Historical Society of the D.C. Circuit is a 501(c)(3)
non-profit organization independent of the Courts.

The Historical Society of the District of
Columbia Circuit presents:

From *Goldwater* to *Zivotofsky* – The Political Question Doctrine in the D.C. Circuit



March 7, 2018
4:30 p.m.

Ceremonial Courtroom, 6th Floor
E. Barrett Prettyman U.S. Courthouse
3rd & Constitution Avenue, N.W.
Washington, DC

Historical Society Mission

To record, preserve and publicize the life and history of the Courts of the District of Columbia Circuit

What Lies Ahead

Presenting reenactments and panel discussions of cases and legal issues of historic interest litigated in the Courts of the D.C. Circuit

Encouraging and publishing research and writings about the colorful history and judges of the D.C. Circuit Courts

Initiating and publishing oral histories of judges, lawyers, and others who have been significantly involved with the D.C. Circuit Courts

Teaching area high school youth about the courts through mock court programs in which they argue cases before federal judges and programs that explore the constitutional rights of public school students

Assisting judges of the D.C. Circuit Courts in preserving their chambers papers and electronic transmissions

Celebrating present and former law clerks of judges of the D.C. Circuit Courts and involving clerks in Society activities

Recent Activities

Sponsoring the writing of a biography of District Judge William B. Bryant by award-winning author Tonya Bolden

Expanding the Society's publication of articles of historic interest about the D.C. Circuit Courts and the judges who have served on them

Presenting programs on historic cases and issues and the role of judges, including "In re Judith Miller – National Security and the Reporter's Privilege"; "A Conversation on Judging – Then and Now Between Senior District Judge Paul L. Friedman and District Judge Ketanji Brown Jackson"; and "Women in the Life and Law of the District of Columbia Circuit Courts"

Streaming videos of Society programs on the Society's website

Maintaining the Society's website, www.dcchs.org; Facebook page, www.facebook.com/CircuitHistory; and Twitter account, twitter.com/CircuitHistory

Circulating *Calmly to Poise the Scales of Justice: A History of the Courts of the District of Columbia Circuit*

HISTORY IS IMPORTANT

Programs like this depend on the generosity of Society members, law firms, and others. Non-members are invited to join the Society by applying online at <http://dcchs.org/News/join.html>

From *Goldwater* to *Zivotofsky*: The Political Question Doctrine in the D.C. Circuit

In December 1978, President Carter decided to recognize the People's Republic of China, instead of the Republic of China, simultaneously invoking the termination clause of the Mutual Defense Treaty with Taiwan. Senator Goldwater and other members of the Senate and House sued, contending that termination could not be constitutionally effective without concurrence of the entire Congress. D.C. District Judge Oliver Gasch enjoined the Secretary of State from taking action to implement the termination, holding that the U.S. could not terminate the Treaty until the President's actions received the approval of two-thirds of the Senate or a majority of both Houses of Congress. President Carter appealed contending that the case presented a non-justiciable political question that should not be resolved in the courts but rather through give-and-take accommodation of the political process. The D.C. Circuit reversed on the merits, concluding that the President had not exceeded his constitutional authority; no judge would have declined to exercise jurisdiction by reason of the political question doctrine. The Supreme Court reversed without argument and ordered the case dismissed, with a plurality concluding that the case was non-justiciable under the political question doctrine.

The program will include a reenactment of arguments presented to the D.C. Circuit sitting en banc in 1979 on the political question issue in *Goldwater v. Carter*. Professor Stephen Vladeck will set the stage. Catherine Carroll will argue for President Carter; Harold Koh for Senator Goldwater. Senior Circuit Judges Edwards and Williams, who reached opposite conclusions on the political question/justiciability issue in a 1991 case, will preside. Following the reenactment, Paul Smith will moderate a discussion exploring the scope and viability of the political question doctrine today. Panelists will include Professor Vladeck and the advocates Ms. Carroll and Professor Koh, as well as Beth Brinkmann.

Setting the Stage:

Stephen I. Vladeck, A. Dalton Cross Professor, University of Texas School of Law

Reenactment:

For appellants **James Earl Carter**, *et al.*, **Catherine M.A. Carroll**, WilmerHale,

For appellees **Barry Goldwater**, *et al.*, **Harold Hongju Koh**, Sterling Professor, Yale Law School, formerly Legal Adviser, U.S. Department of State

Harry T. Edwards, Senior Judge, U.S. Court of Appeals for the D.C. Circuit

Stephen F. Williams, Senior Judge, U.S. Court of Appeals for the D.C. Circuit

Panel Discussion:

Moderator – **Paul M. Smith**, Vice President, Litigation & Strategy, Campaign Legal Center, formerly with Jenner & Block LLP

Panelists – **Beth Brinkmann**, Covington & Burling, formerly Deputy Assistant Attorney General in charge of appeals, Civil Division, U.S. Department of Justice; **Catherine Carroll**; **Harold Hongju Koh**; and **Stephen I. Vladeck**