Washington Law Review

Volume 93 | Number 4

12-1-2018

Contents

anon

Follow this and additional works at: https://digitalcommons.law.uw.edu/wlr

Recommended Citation

anon, Table of Contents, *Contents*, 93 Wash. L. Rev. i (2018). Available at: https://digitalcommons.law.uw.edu/wlr/vol93/iss4/1

This Table of Contents is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

WASHINGTON LAW REVIEW

VOLUME 93, NUMBER 4, DECEMBER 2018

Published by Students of the University of Washington School of Law

CONTENTS

ARTICLES

Reversing the Reliance Revolution in Contract

Eric Alden 1609

Stop and Frisk in a Concealed Carry World

Shawn E. Fields 1675

Danger Ahead: Risk Assessment and the Future of Bail Reform

John Logan Koepke & David G. Robinson 1725

Finality, Appealability, and the Scope of Interlocutory Review

Bryan Lammon 1809

Market Segmentation vs. Subsidization: Clean Energy Credits and the Commerce Clause's Economic Wisdom

Felix Mormann 1853

The Multiple Justifications of Occupational Licensing

Nick Robinson 1903

Privacy Localism

Ira S. Rubinstein 1961

Privacy's Double Standards

Scott Skinner-Thompson 2051

COMMENTS

To Withdraw or Not to Withdraw: Reviewability of an Agency's Withdrawn Proposed Rule

Jane E. Carmody 2107

Remaining Silent in Indian Country: Self-Incrimination and Grants of Immunity for Tribal Court Defendants

Philipp C. Kunze 2139

Unrealistic Expectations: The Federal Government's Unachievable Mandate for State Cannabis Regulation

Rebecca Sweeney 2175

Head in the Clouds, Head in the Sand: Federal Failure to Update Guidance on Computer Transactions in an International Context

Logan S. Weaver 2213

Copyright © 2018, Washington Law Review Association. Except as otherwise provided, the author of each Article in this issue has granted permission for copies of that Article to be made for classroom use, provided that (1) copies are distributed at or below cost, (2) the author and journal are identified, (3) proper notice of copyright is affixed to each copy, and (4) the Washington Law Review Association is notified of the use.

WASHINGTON LAW REVIEW (ISSN 0043-0617) is published quarterly by students of the University of Washington School of Law. Periodicals postage paid at Seattle, Washington, and additional mailing offices.

POSTMASTER: Send address changes to:

Washington Law Review University of Washington Gallagher Law Library William H. Gates Hall Box 353025 Seattle, Washington 98195 email: editor@washlrev.org

SUBSCRIPTION INFORMATION: Subscription price for Vol. 93: \$41.06 per year in Washington State (tax included), \$37.50 per year in the United States, and \$47.50 elsewhere. Single issue: \$12.00 (order directly from WASHINGTON LAW REVIEW Business Office). Subscriptions are renewed automatically unless the business office is notified of cancellation. No refunds will be issued.

BACK ISSUES: See advertisement at the back of this issue.

SUBSCRIPTION & BACK ISSUE CORRESPONDENCE: Washington Law Review University of Washington Calleabor Law Library

Gallagher Law Library William H. Gates Hall Box 353025 Seattle, Washington 98195 email: editor@washlrev.org

MANUSCRIPTS: WASHINGTON LAW REVIEW invites the submission of legal scholarship on all topics for publication.

CITATION FORM: For Volume 93, WASHINGTON LAW REVIEW adopts the citation form of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (20th ed. 2015).

EDITORIAL CORRESPONDENCE:

Editor-in-Chief Washington Law Review University of Washington School of Law William H. Gates Hall Box 353025 Seattle, Washington 98195 email: editor@washlrev.org

Member, National Conference of Law Reviews

WEBSITE: www.washingtonlawreview.org

WASHINGTON LAW REVIEW

VOLUME 93 2018

2017–2018 EDITORIAL BOARD

Editor-in-Chief ALEX D. PEARSON

Associate Editor-in-Chief SARAH AITCHISON Associate Editor-in-Chief MARICARMEN PEREZ-VARGAS Chief Managing Editor

Chief Articles Editor ERIC KOHAN

Chief Online Editor GAVIN KEENE ANNE PFEIFLE Chief Notes & Comments Editor CARL RUBINSTEIN

Executive Articles Editor JAKE DINI Executive Managing Editor GABRIELLE HANNA

Managing Editors

Articles Editors Brent Droze Jake Gober Madeline Lamo Katherine Shattuck Nicholas Valera

BRITTANY ADAMS Allexia Bowman Arnold Laura Robinett Barnes Seth W. R. Brickey Jane Carmody Connie Cheng Stella Chung Nicholas Cody Chris Furman ALEXANDER ARKFELD ALEXANDRA BURTON JOSHUA CHANG JOHN DELANEY EVAN DOBBS SARAH HENDRICK ERIK MARTES MICHAEL COHODES PAYANT SAMANTHA PITSCH MARKUS SURRATT

EDITORIAL STAFF

MARTHA GEYER SERENA HAMANN NATHAN HICKNER BLAKE HOLBROOK BETSY ISACKES MARTEN KING PHILIPP C. KUNZE SARA LEONETTI MIKAELA L. J. LOUIE Executive Notes & Comments Editor KATELYN FULTON

Notes & Comments Editors TEVON EDWARDS DAVID MATSUMOTO JAMES SATTERBERG

Executive Online Editor SARAH H. ASHMORE

KAYLAN LOVROVICH BEN MOORE SANDRA PATLAN SARAH E. SMITH CHASE STEWART MIRIAM R. STIEFEL REBECCA SWEENEY LOGAN S. WEAVER NICHOLAS S. WEGLEY

WASHINGTON LAW REVIEW ASSOCIATION FACULTY BOARD

KAREN BOXX

KATHY MCGINNIS

LAUREN SANCKEN

BUSINESS STAFF

Faculty Business Manager PENNY HAZELTON Faculty Advisor ROBERT GOMULKIEWICZ Business Office Jonathan Franklin

2018–2019 EDITORIAL BOARD

Editor-in-Chief MIRIAM R. STIEFEL

Chief Managing Editor

BLAKE HOLBROOK

Associate Managing Editors

KAYLAN LOVROVICH

Associate Editor-in-Chief JANE CARMODY Associate Editor-in-Chief SETH W. R. BRICKEY

Chief Articles Editor LOGAN S. WEAVER

Associate Articles Editors Allexia Bowman Arnold Sarah E. Smith

> Articles Editors Connie Cheng Nicholas Cody Martha Geyer Marten King Sara Leonetti

BEN MOORE Managing Editors BRITTANY ADAMS ALEX AVAKIANTZ LAURA ROBINETT BARNES SERENA HAMANN NATHAN HICKNER CHRIS FURMAN PHILIPP C. KUNZE SANDRA PATLAN

EDITORIAL STAFF

GABRIELLE SISCO CHASE STEWART

JENNIFER ARONSON RACHAEL CLARK JOHN O. CURRY SARAH DESAUTELS MARIA Y. HODGINS LAINA D. JOHNSON RIA KURUVILLA KENZIE E. LEGG GABRIELLE LINDQUIST ERIC ZHENGCHAO LIU KINGSLY ALEC MCCONNELL MALORI MAE MCGILL PATRICK MEDLEY JACK N. MILLER AUDREY AIRUT MURPHY TIA NGUYEN EMILY PARSONS Chief Notes & Comments Editor BETSY ISACKES

Associate Notes & Comments Editor MIKAELA L. J. LOUIE

Notes & Comments Editors Stella Chung Rebecca Sweeney Nicholas S. Wegley

MAYA L. RAMAKRISHNAN SAYER RIPPEY CONNOR ROWINSKI EVA SHARF ANDY SO KATIE VAIL DAVID WANG MARGARET WYKOWSKI BEN ZISK

* WASHINGTON LAW REVIEW issues are produced on a calendar-year schedule; the Editorial Board's term of office, however, corresponds to the school year. Accordingly, editorial responsibilities for the October and December issues are apportioned between consecutive Boards.

University of Washington School of Law 2018–2019

OFFICERS OF ADMINISTRATION

Christina Arteaga, B.A., M.Ed., Interim Assistant Dean of Admissions & Financial Aid

Mario Barnes, B.A., J.D., L.L.M., Toni Rembe Dean, Professor of Law

Melissa Berry, B.A., J.D., Assistant Dean for Student & Career Services

Jessica Brase, M.P.A, Assistant Dean for Finance & Operations

Christine Cimini, B.A., J.D., Associate Dean for Experiential Education, Professor of Law

Jonathan Franklin, A.B., A.M., J.D., M.Libr., Associate Dean for Library & Information Systems

Mary Hotchkiss, B.A., M.S.L.S., J.D., Interim Associate Dean for Students, Principal Law Lecturer

Lisa Marshall Manheim, B.A., J.D., Associate Dean for Research & Faculty Development, Associate Professor of Law

Pontus Niklasson, B.A., M.A, Assistant Dean for Academic Services & Registrar

Scott Schumacher, B.A., J.D., LL.M., Associate Dean for Academic Administration, Director of Federal Tax Clinic, Director of Graduate Program in Taxation, Professor of Law

Craig Wright, B.A., J.D., Assistant Dean for Advancement

FACULTY EMERITI

William R. Andersen, B.S.L., LL.B., LL.M. Thomas R. Andrews, B.A., M.A., J.D.

Robert H. Aronson, B.A., J.D.

Julia Gold, B.A., J.D.

James H. Hardisty, B.A., LL.B.

Penny Hazelton, B.A., J.D., M.L.L.

Roland Hjorth, A.B., L.L.B.

Linda S. Hume, B.A., J.D.

John Huston, B.A., J.D., LL.M.

Stewart Jay, A.B., J.D

John M. Junker, B.A., J.D.

Deborah Maranville, B.A., J.D.

Kathleen O'Neill, B.A., J.D.

John R. Price, A.B., LL.B.

William H. Rodgers, B.A., J.D.

Frank W. Smith, B.A., J.D., LL.M.

Louis E. Wolcher, B.A., J.D.

FACULTY OF LAW

Craig H. Allen, B.S., J.D., LL.M., Dipl., Judson Falknor Professor of Law

Kimberly D. Ambrose, B.A., J.D., Senior Law Lecturer

Helen A. Anderson, B.A., J.D., Professor of Law

Robert Anderson, B.A., J.D., Professor of Law, Director of Native American Law Center

William Bailey, B.A., J.D., Professor from Practice, Director of Trial Advocacy

Elizabeth Baldwin, B.A., M.A., J.D., Law Lecturer, Co-Director of Transnational Institute

Lance W. Behnke, B.S., J.D., LL.M., Law Lecturer

Anna B. Bosch, B.S.J., J.D., LL.M., Ph.D., John O. Haley Fellow

Karen E. Boxx, B.A., J.D., Professor of Law

Steve P. Calandrillo, B.A., J.D., Jeffrey & Susan Brotman Professor of Law

Ryan Calo, B.A., J.D., Associate Professor of Law, Co-Director of the Center for Advanced Study & Research on Intellectual Property

Angélica Cházaro B.A. J.D., Assistant Professor of Law

John Clynch B.A., J.D., LL.M., Senior Law Lecturer, Managing Director of the Federal Tax Clinic

Thomas D. Cobb, B.A., M.A., M.A., J.D., Senior Law Lecturer

Molly M. Cohan, B.A., J.D., Law Lecturer, Co-Director of Tribal Court Public Defense Clinic

Ronald K.L. Collins, B.A., J.D., Harold S. Shefelman Scholar

William Covington, B.A., J.D., Senior Law Lecturer, Director of Technology Law & Public Policy Clinic

Eric Eberhard, B.A., J.D., LL.M, Affiliate Professor of Law

Jonathan A. Eddy, B.A., J.D., Professor of Law, Academic Director of Legal Education Support Program-Afghanistan

Jennifer S. Fan, A.B., J.D., Assistant Professor of Law, Director of Entrepreneurial Law Clinic

Mary D. Fan, B.A., J.D., M.Phil., Henry M. Jackson Professor of Law

Jeffrey M. Feldman, B.S., J.D., Professor of Law

Trevor Gardner, B.A., J.D., Ph.D., Assistant Professor of Law

Robert W. Gomulkiewicz, B.A., M.A., J.D., UW Law Foundation Professor of Law, Faculty Director of IP LL.M.,

Co-Director of the Center for Advanced Study & Research on Intellectual Property

Alejandra Gonza, LL.B., M.A., Law Lecturer, Director of International Human Rights Clinic

Benjamin S. Halasz, B.A., J.D., Law Lecturer

John Hart, B.A., J.D., Law Lecturer

Michael Hatfield, B.A., M.A., J.D., Professor of Law

Gregory A. Hicks, B.A., J.D., UW Law Foundation Professor of Law

Maureen A. Howard, B.A., J.D., Professor of Law

- Lisa Kelly, B.A., J.D., Bobbe & Jon Bridge Endowed Professorship in Child Advocacy, Director of Children & Youth Advocacy Clinic
- Alan Kirtley, B.A., J.D., Emeritus Associate Professor of Law
- Sanne Knudsen, B.A., M.S., J.D., Associate Professor of Law
- Anita K. Krug, B.A., M.A., J.D., Ph.D., D. Wayne & Anne Gittinger Professor of Law
- Patricia C. Kuszler, B.A., M.D., J.D., Charles I. Stone Professor of Law, Director of Graduate Program in Health Law, Director of Center for Law, Science & Global Health, Director of Master of Jurisprudence Program
- Jennifer Lenga-Long, B.A., J.D., Associate Director of Sustainable International Development Program
- Clark B. Lombardi, B.A., M.A., J.D., Ph.D., Professor of Law, Director of Islamic Legal Studies
- Anna C. Mastroianni, B.S., B.A., J.D., M.P.H., Professor of Law
- Shannon Weeks McCormack, B.A., J.D., LL.M, Garvey Schubert Barer Professor of Law
- Kathleen M. McGinnis, B.A., J.D., Principal Lecturer of Law
- Jacqueline McMurtrie, B.G.S., J.D., Professor of Law, Director of Innocence Project Northwest
- Theodore A. Myhre, B.A., M.A., M.A., J.D., Senior Law Lecturer
- Peter Nicolas, B.A., M.P.P., J.D., Professor of Law
- Sean O'Connor, B.A., M.A., J.D., Professor of Law, Boeing International Professor
- Elizabeth Porter, B.A., M.Ed., M.A., J.D., Charles I. Stone Professor of Law
- Terry Price, B.A., M.S.W., J.D., Executive Director of the Center for Law, Science & Global Health, Asian Law Center, and Visiting Scholars Program
- Dana Raigrodski, Law Lecturer, Director of General Law LL.M. Program
- Anita Ramasastry, B.A., M.A., J.D., Roland Hjorth Dean Emeritus Professor of Law, Director of Graduate Program on Sustainable International Development, Faculty Director of International, Comparative & Transnational Programs
- Jeffrey Riedinger, B.A., J.D., M.A., Ph.D., Professor of Law, Vice Provost for Global Affairs
- Zahr Said, B.A., J.D., Ph.D., Associate Professor of Law, Director of the Center for Advanced Study & Research on Intellectual Property
- Lauren Sancken, B.A., J.D., Law Lecturer
- Sallie Thieme Sanford, B.A., J.D., Associate Professor of Law
- Eric Schnapper, B.A., M.A., B.Phil., LL.B., Professor of Law
- Thomas Schoenbaum, B.A., J.D., Harold S. Shefelman Professor of Law
- Hugh D. Spitzer, B.A., J.D., LL.M., Professor of Law
- Toshiko Takenaka, LL.B., LL.M., Ph.D., Professor of Law
- Kellye Y. Testy, B.A., J.D., Professor of Law, Former Toni Rembe Dean
- Michael E. Townsend, B.A., M.A., Ph.D., J.D., Associate Professor of Law, Faculty Director of the Ph.D. Program Lea B. Vaughn, A.B., J.D., Professor of Law
- Walter J. Walsh, B.C.L., LL.M., S.J.D., Associate Professor of Law
- Kathryn A. Watts, B.S., J.D., Professor of Law, Jack R. MacDonald Endowed Chair
- Todd Wildermuth, B.S., M.S., Ph.D., Law Lecturer, Policy Director of Regulatory Environmental Law & Policy Clinic
- Brenda Williams, B.A., M.P.A., J.D., Law Lecturer, Co-Director of Tribal Court Public Defense Clinic
- Jane K. Winn, B.Sc., J.D., Professor of Law, Co-Director of the Center for Advanced Study & Research on Intellectual Property
- Jeffrey Wool, B.A., J.D., Co-Director of Global Business Law Institute, Condon-Falknor Professor of Global Business Law
- Dongsheng Zang, LL.B., LL.M., LL.M., S.J.D., Associate Professor of Law, Director of Asian Law Center & Visiting Scholars Program, Director of the Graduate Program in Asian & Comparative Law, Director of the Graduate Program in Global Business Law
- Lara Zarowsky, B.A., J.D., Law Lecturer, Director of Legislative Advocacy Clinic, Policy Director of Innocence Project Northwest
- David Ziff, A.B., J.D., Senior Law Lecturer, Director of Legal Writing Program
- ADJUNCT AND VISITING FACULTY

Judith Andrews, B.A., J.D., Affiliate Instructor

- Sharan E. Brown, B.A., M.A., J.D., Ed.D., Adjunct Research Associate Professor of Law
- Heath Dixon, Affiliate Instructor
- Denise Dudzinski, Ph.D., MTS, Adjunct Professor, Bioethics & Humanities
- Magali Eaton, Affiliate Instructor
- Daniel Foote, A.B., J.D., Adjunct Professor of Law
- Elizabeth Ford, Affiliate Instructor
- Benjamin H. Glastein, Affiliate Instructor
- John O. Haley, A.B., LL.B., LL.M., Visiting Professor of Law
- Leslie Hannay, Affiliate Instructor

Thomas Hazlet, B.S., Pharm.D., Dr.P.H., Adjunct Associate Professor, Pharmacy

Randi Hedin, Affiliate Instructor

Nancy S. Jecker, B.A., M.A., M.A., Ph.D., Adjunct Professor of Law

Jeffrey Kadet, Affiliate Instructor

Yong-Sung Kang, B.A., J.D., Affiliate Professor of Law

Sylvia Kang'ara, L.L.B., L.L.M., S.J.D., Affiliate Professor of Law

Dan Laster, B.A., J.D., Affiliate Professor of Law

Todd Maybrown, Affiliate Instructor Michael McCann, B.A., M.A., Ph.D., Adjunct Professor of Law Allison McCarty, Affiliate Instructor Joel Ngugi, LL.B., LL.M., S.J.D., Affiliate Professor of Law Saadia Pekkanen, B.A., M.I.A., Ph.D., M.S.L., Adjunct Associate Professor of Law Tony Quang, B.A., M.D., J.D., Adjunct Associate Professor Veronica Quinonez, Affiliate Instructor Roger Rogoff, Affiliate Instructor

Renee Ryan, Affiliate Instructor

Christopher Strawn, B.A., J.D., Affiliate Instructor, Director of Immigration Law Clinic

Jessica West, B.A., J.D., Visiting Associate Professor

Susan Whiting, B.A., Ph.D., Adjunct Associate Professor of Law

Richard O. Zerbe, Jr., A.B., Ph.D., Adjunct Professor of Law

GALLAGHER LAW LIBRARY STAFF

Crystal Alberthal, B.A., M.L.I.S., Librarian, Serials & Research Services

Karen Ballard, B.A., Library Specialist, Cataloging

Rob Britt, B.A., M.A., M.A., East Asian Law Library Services Coordinator

Judy Davis, B.A., M.L.I.S., Librarian, Access & Resource Sharing & Reference

Anna Endter, B.S., J.D., M.L.I.S., Librarian, Head of Research Services

Peggy Jarrett, B.A., M.S.L.I.S., Librarian, Head of Collection Development

Kaden Mack, B.A., Library Technician, Circulation

Perry Maybrown, B.A., Library Technician, Circulation

Pearl McCrea, B.A., Library Specialist, Acquisitions

Ann Nez, B.A., M.L.I.S., Librarian, Technical Services Coordinator

Cheryl Nyberg, B.A., M.S.L.I.S., Librarian, Digital Innovation & Reference

Nikki Pike, Program Operations Specialist, CILP

Marissa Rydzewski, B.A., Library Technician, Circulation

Caitlyn Stephens, B.A., M.L.I.S., Assistant Librarian, Cataloging/Metadata & Resource Sharing

Maya Swanes, B.S., J.D., M.L.I.S., Assistant Librarian, Research Services

Reba Turnquist, B.A., M.L.I.S., Librarian, Collection Development

Mary Whisner, B.A., J.D., M.L.I.S., Librarian, Research Services

Alena Wolotira, B.A., J.D., M.L.I.S., Librarian, Research Services & Circulation; CILP Exec. Editor