

# Washington Law Review

---

Volume 83 | Number 3

---

8-1-2008

## Contents

anon

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

---

### Recommended Citation

anon, Table of Contents, *Contents*, 83 Wash. L. Rev. i (2008).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol83/iss3/1>

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](mailto:lawref@uw.edu).

# WASHINGTON LAW REVIEW

VOLUME 83, NUMBER 3, AUGUST 2008

---

Published by Students of the  
University of Washington School of Law

---

---

## CONTENTS

### ARTICLE

Reading Too Much Into What the Court *Doesn't* Write: How  
Some Federal Courts Have Limited Title VII's Participation  
Clause's Protections After *Clark County School District v.*  
*Breeden*

*Lawrence D. Rosenthal* 345

### COMMENT

It's Not Too Late: Applying Continuing-Violation Theory to the  
Designation of Critical Habitat Under the ESA

*Amelia Boone* 403

Copyright © 2008, 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:

Frances Johnson  
Washington Law Review  
University of Washington  
Gallagher Law Library  
William H. Gates Hall  
Box 353025  
Seattle, Washington 98195

SUBSCRIPTION INFORMATION: Subscription price for Vol. 83: \$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:

Frances Johnson  
Washington Law Review  
University of Washington  
Gallagher Law Library  
William H. Gates Hall  
Box 353025  
Seattle, Washington 98195  
e-mail: [fran@u.washington.edu](mailto:fran@u.washington.edu)

MANUSCRIPTS: WASHINGTON LAW REVIEW invites the submission of unsolicited manuscripts. Manuscripts should be double-spaced with double-spaced footnotes. The WASHINGTON LAW REVIEW prefers the use of gender-neutral language.

CITATION FORM: With Volume 83, WASHINGTON LAW REVIEW adopts the citation form of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (18th ed. 2005).

EDITORIAL CORRESPONDENCE: Editor-in-Chief  
Washington Law Review  
University of Washington  
School of Law  
William H. Gates Hall  
Box 353025  
Seattle, Washington 98195  
e-mail: [wlr@u.washington.edu](mailto:wlr@u.washington.edu)

Member, National Conference of Law Reviews

WORLD WIDE WEB HOME PAGE: <http://www.law.washington.edu/WLR>

# WASHINGTON LAW REVIEW

VOLUME 83  
2008

---

## 2007–2008 EDITORIAL BOARD

### *Editor-in-Chief*

CHRISTIE JOHNSON FIX

### *Managing Editors*

ANDY ALEY  
REBECCA BLASCO  
ALEX CHAN  
ERIN L. LENNON  
JONATHAN LEPTICH  
NICOLE TADANO

### *Associate Editors-in-Chief*

LAUREN HEMINGWAY  
ANTHONY KAPPUS

### *Executive Notes and Comments Editors*

JERRY CHIANG  
MICHAEL J. GELARDI  
LE'A KENT

### *Notes and Comments Editors*

AMY KAUPPILA  
PETER MORENO  
KELLY SEABURG  
CANDICE TEWELL  
SCOTT WONG  
TIFFANY ZINTER

### *Executive Articles Editors*

ADAM GLANT  
LAEL HARRISON

### *Articles Editors*

JOHN GOLDMARK  
JULIAN HURST  
BENJAMIN JUHN  
ERIC WITT  
ANNE WOODWARD

*Symposium Editor*  
CHRIS HENDERSON

## EDITORIAL STAFF

KELSEY BECKNER  
CLAIRE BEEN  
AMELIA BOONE  
DANIEL BUGBEE  
AMANDA CARMANY-RAMPEY  
RACHELLE CELEBREZZE  
MICHELLE DELAPPE  
KARA DUNN

ALICIA FEICHTMEIR  
CAMILLE FISHER  
STEVEN GARDINER  
DAVID HANCOCK  
NICK HESTERBERG  
JON HOMMER  
NICOLE JABAILY  
KEREM MURAT LEVITAS

LILIA LIM  
BRENDAN R. MCNAMARA  
COLLEEN MELODY  
JESSICA MURPHY  
MATT OSBORNE  
BRIAN PETERSON  
RUSSELL TERRY  
PAUL WEIDEMAN

## BUSINESS STAFF

*Faculty Business Manager*  
PENNY HAZELTON

*Faculty Adviser*  
STEVE CALANDRILLO

*Business Office*  
JONATHAN FRANKLIN  
FRAN JOHNSON

## University of Washington School of Law 2007–2008

### OFFICERS OF ADMINISTRATION

Mark A. Emmert, B.A., Ph.D., President of the University  
Gregory A. Hicks, B.A., J.D., Interim Dean, Professor of Law  
Penny A. Hazelton, B.A., J.D., M.L.L., Associate Dean for Library and Computing Services, Professor of Law  
Lisa Ann Kelly, B.A., J.D., Associate Dean, Bobbe & Jon Bridge Professor of Child Advocacy  
Lea B. Vaughn, A.B., J.D., Associate Dean  
Sandra E. Madrid, B.S., Ph.D., Assistant Dean for Students and Community Relations  
Stephanie Cox, B.A., Interim Assistant Dean for Development and External Relations  
Naomi Sanchez, B.S., M.S.W., Ed.D., Assistant Dean for Career Services

### FACULTY EMERITI

William R. Andersen, B.S.L., LL.B., LL.M.  
G. Meade Emory, B.A., J.D., LL.M.  
Robert L. Fletcher, A.B., LL.B.  
John Huston, B.A., J.D., LL.M.  
Arval Morris, B.A., M.A., J.D., LL.M., LL.D.  
Cornelius J. Peck, B.S., LL.B.  
John R. Price, A.B., LL.B.  
Roy L. Prosterman, A.B., LL.B.  
Marjorie D. Rombauer, B.A., J.D.  
Charles Z. Smith, B.S., J.D.  
Frank W. Smith, Jr., B.A., J.D., LL.M.  
William B. Stoebeck, B.A., M.A., J.D., S.J.D.  
Philip A. Trautman, B.A., J.D.

### FACULTY OF LAW

Craig H. Allen, B.S., J.D., Professor of Law  
Kimberly Ambrose, B.A., J.D., Lecturer  
Helen A. Anderson, B.A., J.D., Assistant Professor of Law  
Robert T. Anderson, B.A., J.D., Associate Professor of Law, Director of Native American Law Center  
David F. Andrade, B.A., M.A., Ph.D., Assistant Professor of Law  
Thomas R. Andrews, B.A., M.A., J.D., Professor of Law  
Robert H. Aronson, B.A., J.D., Professor of Law  
Karen Boxx, B.A., J.D., Associate Professor of Law  
Steve P. Calandrillo, B.A., J.D., Professor of Law  
Thomas Cobb, B.A., M.A., M.A., J.D., Lecturer  
William Covington, B.A., J.D., Assistant Professor of Law  
Sam A. Donaldson, B.A., J.D., LL.M., Associate Professor of Law, Director of Graduate Program in Taxation  
Dwight J. Drake, B.S., J.D., Associate Professor of Law  
Jon Eddy, B.A., J.D., Professor of Law  
Julia Gold, B.A., J.D., Senior Lecturer  
Robert W. Gomulkiewicz, B.A., M.A., J.D., Professor of Law, Director of Graduate Program of Intellectual Property Law & Policy  
James H. Hardisty, A.B., LL.B., Professor of Law  
Gregory A. Hicks, B.A., J.D., Professor of Law  
Roland L. Hjorth, A.B., LL.B., Dean Emeritus, Garvey, Schubert & Barer Professor of Law  
Mary A. Hotchkiss, B.A., M.S.L.S., J.D., LL.M., Senior Lecturer  
Maureen Howard, B.A., J.D., Assistant Professor  
Linda S. Hume, B.A., J.D., Professor of Law  
Stewart M. Jay, A.B., J.D., William L. Dwyer Professor of Law  
John M. Junker, B.A., J.D., Professor of Law  
Sarah Kaltsounis, B.S., M.Ed., J.D., Lecturer  
Yong-Sung (Jonathan) Kang, B.A., J.D., Assistant Professor of Law  
Sylvia Kang'ara, LL.B., LL.M., Assistant Professor of Law  
Lisa Kelly, B.A., J.D., Bobbe & Jonathan Bridge Professor of Law, Director of Children and Youth Advocacy Clinic  
Alan Kirtley, B.A., J.D., Associate Professor of Law, Director of Clinics  
Richard O. Kummert, B.S., M.B.A., LL.B., D. Wayne & Anne Gittinger Professor of Law  
Patricia C. Kuszler, M.D., J.D., Charles I. Stone Professor of Law  
Daniel Laster, B.A., J.D., Assistant Professor of Law  
Clark B. Lombardi, B.A., J.D., Ph.D., Assistant Professor of Law  
Deborah Maranville, B.A., J.D., Professor of Law  
Anna Mastroianni, B.S./B.A., J.D., M.P.H., Assistant Professor of Law  
Kathleen M. McGinnis, B.A., J.D., Senior Lecturer  
Jacqueline McMurtrie, B.G.S., J.D., Assistant Professor of Law  
Paul S. Miller, B.A., J.D., Henry M. Jackson Professor of Law  
Theodore Myhre, B.A., M.A., M.A., J.D., Lecturer  
Joel M. Ngugi, LL.B., LL.M., S.J.D., Assistant Professor of Law  
Peter Nicolas, B.A., M.P.P., J.D., Jeffrey & Susan Brotman Professor of Law  
Sean O'Connor, B.A., M.A., J.D., Associate Professor of Law  
Kathleen O'Neill, B.A., J.D., Associate Professor of Law, Director of Legal Research and Writing  
Anita Ramasastry, B.A., M.A., J.D., Associate Professor of Law

Beth Rivin, B.A., M.D., M.P.H., Research Associate Professor of Law  
Michael Robinson-Dorn, B.A., J.D., Assistant Professor of Law, Director of Kathy and Steve Berman  
Environmental Law Clinic  
William H. Rodgers, Jr., B.A., LL.B., Stimson Bullitt Professor of Environmental Law  
Eric Schnapper, B.A., M.A., B.Phil., LL.B., Pendleton Miller Professor of Law  
Scott A. Schumacher, B.A., J.D., Assistant Professor of Law  
Toshiko Takenaka, B.A., LL.M., Ph.D., W. Hunter Simpson Professor of Technology Law, Director of CASRIP  
Veronica L. Taylor, LL.B., B.A., LL.M., Dan Fenno Henderson Professor of Law, Director of Asian Law Program  
Michael E. Townsend, B.A., M.A., Ph.D., J.D., Associate Professor of Law  
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 Watts, B.S., J.D., Assistant Professor of Law  
Ron J. Whitener, B.A., J.D., Assistant Professor of Law  
Jane K. Winn, B.Sc., J.D., Charles I. Stone Professor of Law  
Louis E. Wolcher, B.A., J.D., Charles I. Stone Professor of Law  
Dongsheng Zang, LL.B., LL.M., LL.M., S.J.D., Assistant Professor of Law

#### ADJUNCT, AFFILIATE, AND VISITING FACULTY

Gad Barzilai, B.A., LL.S., LL.B., M.A., Ph.D., Adjunct Professor of Law  
G. Andrew H. Benjamin, B.A., M.A., J.D., Ph.D., Affiliate Professor of Law  
David Bledsoe, B.A., J.D., LL.M., Affiliate Assistant Professor of Law  
Daniel M. Bodansky, A.B., M.Phil., J.D., Affiliate Professor of Law  
Sharan E. Brown, B.A., M.A., J.D., Ed.D., Adjunct Research Associate Professor of Law  
Mark Cammack, B.A., J.D., Affiliate Professor of Law  
Donald Clark, A.B., M.Sc., J.D., Affiliate Professor of Law  
Daniel H. Foote, A.B., J.D., Affiliate Professor of Law  
John O. Haley, A.B., LL.B., LL.M., Affiliate Professor of Law  
Tim Hanstad, B.A., J.D., LL.M., Affiliate Associate Professor of Law  
Andrew Harding, M.A., Solicitor, LL.M., Ph.D., Affiliate Professor of Law  
Marc J. Hershman, A.B., J.D., Adjunct Professor of Law  
Nancy S. Jecker, B.A., M.A., M.A., Ph.D., Adjunct Associate Professor of Law  
David M. Keepnews, B.S., M.P.H., J.D., Ph.D., Affiliate Associate Professor of Law  
Mina Titi Liu, A.B., J.D., Affiliate Professor of Law  
Elizabeth F. Loftus, B.A., M.A., Ph.D., Affiliate Professor of Law  
Michael McCann, B.A., M.A., Ph.D., Adjunct Professor of Law  
Robert Mitchell, B.A., J.D., LL.M., Affiliate Assistant Professor of Law  
Steven G. Olswang, B.A., J.D., Ph.D., Adjunct Professor of Law  
Andrew Pardieck, B.A., J.D., Ph.D., Affiliate Professor of Law  
Saadia Pekkanen, B.A., M.I.A., Ph.D., M.S.L., Adjunct Associate Professor of Law  
Carolyn Plumb, B.A., M.A., M.S., Ph.D., Affiliate Instructor of Law  
Leonard Rolfes, Jr., B.A., J.D., Affiliate Assistant Professor of Law  
Yasunobu Sato, B.A., LL.M., Ph.D., Affiliate Professor of Law  
Hugh D. Spitzer, B.A., J.D., LL.M., Affiliate Professor of Law  
Susan Whiting, B.A., Ph.D., Adjunct Associate Professor of Law  
Richard O. Zerbe, Jr., A.B., Ph.D., Adjunct Professor of Law

