

# **Case Western Reserve Law Review**

Volume 67 | Issue 2

2016

# Volume 67 Issue 1 (2016)

Case Western Reserve University Law Review

 $Follow\ this\ and\ additional\ works\ at:\ http://scholarlycommons.law.case.edu/caselrev$ 



Part of the Law Commons

#### Recommended Citation

Case Western Reserve University Law Review, Volume 67 Issue 1 (2016), 67(1) Case W. Res. L. Rev. Front Matter (2016) Available at: http://scholarlycommons.law.case.edu/caselrev/vol67/iss2/2

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

# Case Western Reserve Law Review

Volume 67, Issue 2 Winter 2016



The Case Western Reserve Law Review (ISSN 0008-7262), formerly the Western Reserve Law Review, is published quarterly by the students of Case Western Reserve University School of Law. Postage paid at Cleveland, Ohio and at additional mailing offices. Editorial and business offices are located at Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, Ohio 44106. Contact the Review by e-mail: lawreview@case.edu or telephone: (216) 368-3312.

The Case Western Reserve Law Review published this issue in print and online in March 2017.

The submission of unsolicited manuscripts is invited.

Subscriptions are entered for the entire volume for \$34.00 per year (\$36.00 outside the United States). Single issues of the current and previous volumes are available from the Case Western Reserve Law Review for \$16.00 each, plus shipping and handling. To order, contact:

Case Western Reserve University School of Law Attn: Sabira Mustaquim 11075 East Boulevard Cleveland, Ohio 44106 Phone: (216) 368-6350

Facsimile: (216) 368-3285 E-mail: sxm28@case.edu

Back issues from earlier volumes are available from William S. Hein & Co., Inc., 24 East Ferry Road, Buffalo, New York 14209, or online: www.wshein.com/catalog/101440. Back issues are also available in electronic format at heinonline.org.

Citations conform to *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass'n et al. eds., 20th ed. 2015). Style conforms generally to *The Chicago Manual of Style* (16th ed. 2010).

For all photocopy or republication requests, please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, Massachusetts 01923, by phone: (855) 239-3415, by fax: (978) 646-8600, by e-mail: info@copyright.com, or online: www.copyright.com.

# CASE WESTERN RESERVE LAW REVIEW

Volume 67 Winter 2016 Issue 2

#### Editor in Chief SEAN SWEENEY

Managing Editor SARAH SIEDLAK

ROBERT HARMS

Morgan Helgreen

 $\begin{array}{c} Publisher \\ \text{Teresa Manion} \end{array}$ 

Brandon Wojtasik

Daniel Wolfe

Executive Articles Editors SETH GARFINKEL Executive Notes Editor Executive Symposium Editor Santiago Z. Reich ANDREW PETERSON CHAD ARONSON Executive Contributing Editor Administrative Director Eric Connon ELIZABETH ARONSON Contributing Editors Kristina Moore FALLON McNally James Walsh Senior Editors Caitlin Grimes GALEN BAYNES Jeradon Mura SETH OSNOWITZ Brian Browne JORDAN O'CONNELL KEVIN VOGEL Associate Editors BRIAN BARDWELL NICHOLAS HOLLAND MICHAEL SILVERSTEIN James Bedell Lidia Mowad LEAH SLYDER James Oliver Holger Sonntag Janine Cerny Brittany Chojnowski KATLYN PATTON STEPHANIE STAREK DANIEL SCHIAU Kristi Winner OWEN DOHERTY

Faculty Advisor
JONATHAN ENTIN

#### CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW FACULTY

#### Administrative Officers

Deans
Jessica Wilen Berg, B.A., J.D., M.P.H.
Michael P. Scharf, A.B., J.D.

Associate Dean for Academic Affairs B. Jessie Hill, A.B., J.D.

Associate Dean for Experiential Education JUDITH P. LIPTON, B.S., M.S.S.W., J.D.

Assoicate Dean of Institutional Diversity and Inclusiveness RUQAIIJAH A. YEARBY, B.S., M.P.H., J.D.

Associate Dean for Enrollment Planning and Strategic Initiatives Alyson S. Alber, B.S., J.D.

Associate Dean for Student Services SARAH MCFARLANE POLLY, B.A., J.D.

Assistant Dean of Admissions Kelli C. Curtis, B.A., J.D.

Assistant Dean of Career Development Mary Beth Moore, B.A., J.D.

Assistant Dean of Development and Alumni Relations James M. Pasch, B.A, J.D.

#### Professors of Law

JONATHAN H. ADLER, B.A., J.D.

Johan Verheij Memorial Professor and Director, Center for Business Law and Regulation

JESSICA WILEN BERG, B.A., J.D., M.P.H.

Tom J.E. and Bette Lou Walker Professor; Professor of Bioethics and Public Health

DAVID J. CARNEY, B.A., J.D.

JUSCELINO F. COLARES, LL.B., M.A., PH.D., J.D.

Schott-van den Eynden Professor and Associate Director, Frederick K. Cox International Law Center

GEORGE W. DENT, JR., B.A., J.D., LL.M.

Associate Director, Center for Business Law and Regulation

Peter M. Gerhart, B.A., J.D.

PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M.

Distinguished University Professor and Albert J. Weatherhead III  $\mathcal E$  Richard W. Weatherhead Professor

JONATHAN C. GORDON, B.A., J.D.

RICHARD K. GORDON, B.A., J.D.

Director of Financial Integrity Programs; Associate Director, Frederick K. Cox International Law Center

Maureen Guirguis (Kenny), B.A., J.D.

B. Jessie Hill, A.B., J.D.

Judge Ben C. Green Professor

Sharona Hoffman, B.A., J.D., LL.M.

Edgar A. Hahn Professor; Professor of Bioethics; and Co-Director, Law-Medicine Center

Daniel A. Jaffe, B.A., J.D.

LEWIS R. KATZ, A.B., J.D.

John C. Hutchins Professor and Director, Graduate Legal Studies

Juliet P. Kostritsky, A.B., J.D.

Everett D. & Eugenia S. McCurdy Professor

RAYMOND SHIH RAY KU, A.B., J.D.

Director, Center for Cyberspace Law and Policy

JUDITH P. LIPTON, B.S., M.S.S.W., J.D.

Honorable Blanche E. Krupansky and Frank W. Vargo, Jr. Professor

KEVIN C. McMunigal, B.A., J.D.

Laura E. McNally-Levine, B.A., J.D.

Co-Director, Milton A. Kramer Law Clinic Center

MAXWELL J. MEHLMAN, B.A., J.D.

Distinguished University Professor and Arthur E. Petersilge Professor;

Professor of Bioethics; and Co-Director, Law-Medicine Center

KATHRYN S. MERCER, A.B., M.S.S.A., J.D., PH.D.

Dale A. Nance, B.A., J.D., M.A. John Homer Kapp Professor

CRAIG ALLEN NARD, B.A., J.D., LL.M., J.S.D.

Galen J. Roush Professor and Director, Spangenberg Center for Law,

Technology, and the Arts and the FUSION Certificate Program in Design,

Innovation & IP Management

AARON K. PERZANOWSKI, A.B., J.D.

Andrew S. Pollis, A.B., J.D.

CASSANDRA BURKE ROBERTSON, B.A., M.A., M.P.Aff., J.D. Laura B. Chisolm Distinguished Research Scholar and Director, Center for Professional Ethics

MATTHEW J. ROSSMAN, B.A., J.D. Co-Director, Milton A. Kramer Law Clinic Center

MICHAEL P. Scharf, A.B., J.D.

Joseph C. Hostetler-BakerHostetler Professor; Director, Frederick K.

Cox International Law Center; and Director, Henry T. King, Jr. War

Crimes Research Office

BARBARA R. SNYDER, B.A., J.D. President of the University

Theodore L. Steinberg, B.A., Ph.D.

Adeline Barry Davee Distinguished Professor of History and Professor of Law

Robert N. Strassfeld, B.A., M.A., J.D.

MARTHA A. WOODMANSEE, B.A., M.A., Ph.D. Professor of English and Law

Ruqaiijah A. Yearby, B.S., M.P.H., J.D. Oliver C. Schroeder, Jr. Distinguished Research Scholar and Associate Director, Law-Medicine Center

#### Associate Professors of Law

AVIDAN Y. COVER, B.A., J.D. Director, Institute for Global Security Law and Policy

JOSEPH A. CUSTER, B.A., J.D., M.B.A., M.L.S. Director, Law Library

Shannon E. French, B.A., Ph.D. Inamori Professor of Ethics; Associate Professor of Law; and Director, Inamori International Center for Ethics and Excellence

BRIAN K. GRAN, B.A., J.D., Ph.D. Associate Professor of Sociology and Law

Charles R. Korsmo, S.B., J.D.

KENNETH F. LEDFORD, B.A., J.D., M.A., Ph.D. Associate Professor of History and Law

### Assistant Professors of Law

Jaime Bouvier, B.A., J.D.

AYESHA B. HARDAWAY, B.A., J.D.

JEAN M. McQuillan, B.A., J.D.

JACK TURNER II, B.A., J.D.

Associate Director, Foreign Graduate LL.M. Program

Timothy Webster, B.A., M.A., J.D., LL.M.

Director, East Asian Legal Studies

LISA M. WOOD, B.A., J.D.

#### Senior Instructors in Law

MICHAEL J. BENZA, B.A., M.A., J.D.

CAROL T. FOX, B.A., M.A., PH.D., J.D.

CARMEN NASO, B.A., J.D.

## Visiting Faculty

TIMOTHY J. DUFF, B.A., J.D.

Dalindyboe B. Shabalala, B.A., J.D., P.H.D.

#### Professors Emeriti

ARTHUR D. AUSTIN II, B.A., J.D. Edgar A. Hahn Professor Emeritus

RONALD J. COFFEY, A.B., LL.B., LL.M.

MELVYN R. DURCHSLAG, B.S., J.D.

Jonathan L. Entin, A.B., J.D.

David L. Brennan Professor Emeritus of Law and Political Science

LEON GABINET, Ph.B., J.D. Coleman P. Burke Professor Emeritus

Erik M. Jensen, S.B., M.A., J.D. Coleman P. Burke Professor Emeritus

ROBERT P. LAWRY, B.A., J.D., DIP. LAW Director Emeritus, Center for Professional Ethics

WILBUR C. LEATHERBERRY, A.B., J.D.

Kenneth R. Margolis, B.A., J.D.

James W. McElhaney, A.B., LL.B. Joseph C. Hostetler Professor Emeritus of Trial Practice and Advocacy

LOUISE W. MCKINNEY, B.A., J.D.

Spencer Neth, B.A., J.D., LL.M.

SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.

Morris G. Shanker, B.S.E.E., M.B.A., J.D. John Homer Kapp Professor Emeritus

Calvin William Sharpe, B.A., M.A., J.D. Galen J. Roush Professor Emeritus

# Case Western Reserve Law Review

Volume 67 Winter 2016 Issue 2

#### ARTICLES

- The Economic/Noneconomic Activity Distinction Under the 337 Commerce Clause  $David\ M.\ Driesen$
- VAWA 2013's Right to Appointed Counsel in Tribal Court

  Proceedings—A Rising Tide That Lifts All Boats or a Procedural

  Windfall for Non-Indian Defendants?

  Jordan Gross
- Personhood Amendments After Whole Woman's Health v. Hellerstedt 447

  Steven R. Morrison
  - Braking the Rules: Why State Courts Should Not Replicate 501
    Amendments to the Federal Rules of Civil Procedure
    Stephen N. Subrin & Thomas O. Main

#### NOTES

- The Third Amendment Incorporated: "Soldiers" and Domestic 537 Law Enforcement  $Chad\ Aronson$
- "Tis the Time's Plague When Madmen Lead the Blind": How the IRS 577 Can Prevent Pyramid-Scheme Formation (and Why It Should)

  James Walsh

#### COMMENT

The Future of Class-Action Waivers in Consumer Contract Arbitration 611
Agreements after DIRECTV, Inc. v. Imburgia
Kristina Moore