

ARIZONA

LAW REVIEW

VOLUME 63

2021

NUMBER 2

CONTENTS

ARTICLES

- KEEPING IT *ALL* IN THE GROUND?
Eric Biber & Jordan Diamond 279
- ANTI-LGBT FREE SPEECH AND GROUP
SUBORDINATION
Luke A. Boso 341
- TOWARD TRIBAL REGULATORY SOVEREIGNTY IN
THE WAKE OF THE COVID-19 PANDEMIC
Katherine Florey 399
- THE DIY UNITARY EXECUTIVE
Richard W. Murphy 439

NOTES

NAUTICAL NONSENSE—A SUSTAINABLE AND
EQUITABLE SOLUTION TO ALLOCATE ARCTIC
RESOURCES

Neil Berglund 489

THE CONDEMNATION OF SCOPOPHILIA: HOW THE
FEDERAL SENTENCING GUIDELINES
PERPETUATE RATHER THAN DISCOURAGE
CHILD PORNOGRAPHY OFFENSES

Christina Billhartz 513

ARIZONA

LAW REVIEW

2020–2021

Editor-in-Chief

KATIE DERRIG

Senior Articles Editor

EZEKIEL PETERSON

Senior Managing Editor

CARISSA PRYOR

Senior Note Editor

REYNA ARAIBI

Articles Editors

NEIL BERGLUND
CHRISTIAN BOETTCHER
SETH BRIMLEY
VALORIE DOUGLAS
GARRICK NOWAK
SAMANTHA WALKER

Managing Editors

TIMOTHY DESJARLAIS
LAUREN MCMULLIN
ANDREA SHARP
NIYA TAWACHI

Note Editors

ALEXANDER BACHIK
CHRISTINA BILLHARTZ
CASTILLE COX
GABRIELA ELIZONDO-CRAIG
RAFAELLA SAFARIAN
LUCAS WITMAN

Articles Manager

SAMARA DIAB

Business Manager

JAMES ROLLINS

Online Manager

ALEXANDER BLEDSOE

Marketing Manager

TYLER OBERG

Events Manager

GARRETT HABLE

DARYA ANDERSON
MITCHELL ANDERSON
ANDREW ARMSTRONG
RORY BENNETT
NICHOLAS BENNETT
DANIEL BOWMAN
NEAL BRUBAKER
MEREDITH CARVELL
FABIAN EICHENTOPF
MARK ERCOLANO
BRIDGET FELDMANN
JAMIE FURST

Members

JACOB ISRAELSEN
ZACHARY JARVIS
SAVANNAH KNIGHT
NATALIE LACOURT
LAUREN LOFY
CAITLIN LUJAN
RACHEL MADORE
LIAM MARTIN
JUNO MCCALLUM
ADAM MCGOVERN
GARO MOUGHALIAN
SARAH MYERS

CONNOR NOLAN
ANDREW O'KEEFE
CORY RODAS
AMBER RUDNICK
MARTYNA SAWICKA
PAIGE SCALF
LAUREN SWOL
IAN TIMMONS
GARRETT TOBIN
MAGGIE WAGNER
JACOB WASSENAAR
NAYELLI WOODS

Faculty Advisors

ALBERTINA ANTOGNINI
JASON KREAG

ARIZONA

LAW REVIEW

2021–2022

Editor-in-Chief
ADAM MCGOVERN

Senior Articles Editor
DANIEL BOWMAN

Senior Managing Editor
GARRETT HABLE

Senior Note Editor
LAUREN SWOL

Articles Editors
DARYA ANDERSON
MITCHELL ANDERSON
MARK ERCOLANO
RACHEL MADORE
LIAM MARTIN
JACOB WASSENAAR

Managing Editors
NICHOLAS BENNETT
ALEXANDER BLEDSOE
MEREDITH CARVELL
ZACHARY JARVIS
LAUREN LOFY
GARO MOUGHALIAN

Note Editors
NEAL BRUBAKER
SAMARA DIAB
NATALIE LACOURT
CAITLIN LUJAN
ANDREW O'KEEFE
AMBER RUDNICK

JAMES E. ROGERS COLLEGE OF LAW

THE UNIVERSITY OF ARIZONA

ADMINISTRATION

ROBERT C. ROBBINS, B.S., M.D.	President, The University of Arizona
LIESL FOLKS, B.S., PH.D., M.B.A.	Senior Vice President for Academic Affairs and Provost
MARC L. MILLER, B.A., J.D.	Dean and Ralph W. Bilby Professor of Law
KAREN M. KOWALSKI, B.A., J.D., LL.M.	Associate Dean for Administration and Chief of Staff
KATHERINE BARNES, B.A., M.S., J.D., PH.D.	Associate Dean for Programs & Innovation and Professor of Law
ANDREW COAN, B.A., J.D.	Associate Dean for Research, Director, The William H. Rehnquist Center, and Professor of Law
JASON KREAG, B.A., M.A., J.D.	Associate Dean for Academic Affairs and Professor of Law
TERESA MIGUEL-STEARNES, B.A., M.A., J.D.	Associate Dean, Legal Information Innovation, Director, Law Library, and Professor of Law
MICHAEL BROOKS, B.S., J.D.	Assistant Dean for Academic Affairs and Registrar
CARY CLUCK, B.A., J.D.	Assistant Dean for Admissions and Financial Aid
WILLIE M. JORDAN-CURTIS, B.A., M.A., PH.D., J.D.	Assistant Dean for Student Affairs and Associate Clinical Professor of Law
TRACY MUELLER, B.A.	Assistant Dean for External Communications & Marketing
MICHIKO PINNINGTON, B.A., M.A., C.P.A., C.F.A.	Assistant Dean for Finance and Administration
NANCY A. STANLEY, B.A., J.D.	Assistant Dean for Strategic Relations
SHANNON TREBBE, B.A., J.D.	Assistant Dean for Career Development and Professor of Practice
MICHAEL WAGENHEIM, B.A., M.S.	Assistant Dean of Information Technology and Online Learning
LEAH WON, B.A., J.D.	Assistant Dean for Phoenix Initiatives
VANESSA BUCH, B.A., J.D.	Director, University of Arizona Innocence Project and Clinical Professor
STACY BUTLER, B.A., J.D.	Director, Innovation for Justice and Professor of Practice
AMANDA BYNUM, B.A., J.D.	Director, Bar and Academic Success and Professor of Practice
LAUREN CHESEBRO, B.S., C.P.A.	Director, Finance and Administration
CHRISTOPHER GAST, B.A., J.D.	Director of Special Programs and Professor of Practice
SEANNA HOWARD, B.E.S., LL.B., LL.M.	Director, International Human Rights Advocacy Workshop
GINGER HUNT, B.A., M.E.T.	Senior Director, Online Learning and Instructional Design
KRISTINE HUSKEY, B.A., J.D.	Director, Veterans' Advocacy Clinic and Clinical Professor
NEGAR KATIRAI, B.A., J.D.	Director, Domestic Violence Clinic and Clinical Professor
JENNIFER KOTT, B.A.	Director of Admissions
JOHN LACY, B.A., J.D.	Director, Global Mining Law Center and Professor of Practice
GAVIN MILCZAREK-DESAI, B.A. PH.D., J.D.	Executive Director, Intellectual Property Clinic
SHEFALI MILCZAREK-DESAI, B.A., M.A., J.D.	Co-Director, Immigration Justice Clinic, Director, Workers' Rights Clinic, and Assistant Clinical Professor
MEGAN O'LEARY, B.A.	Director of Development
PRIYA SUNDARESHAN, B.S., M.S., J.D.	Director, Natural Resource Use & Management Clinic
KEITH SWISHER, B.S., J.D., LL.M.	Director, Undergraduate and Master of Legal Studies Programs and Professor of Legal Ethics
CHARLES WANG, LL.B, J.D., LL.M.	Assistant Vice President for China Affairs, Director, China Law Program, and Professor of Practice
HEATHER WHITEMAN RUNS HIM, A.F.A., B.A.F.A., J.D.	Director, IPLP Tribal Justice Clinic and Associate Clinical Professor
AMANDA WOLFE, B.A., M.A.	Director of Global Programs
ROBERT WOODS, B.F.A., M.F.A., J.D.	Director, University of Arizona Law Program, Ocean University

FACULTY

ALBERTINA ANTOGNINI, B.A., J.D.	Professor of Law
DEREK BAMBAUER, B.A., J.D.	Professor of Law
JANE BAMBAUER, B.A., J.D.	Professor of Law
PAUL D. BENNETT, B.A., J.D.	Clinical Professor of Law and Director of Clinics
BARBARA BERGMAN, B.A., J.D.	Professor of Law and Director of Advocacy
ELLEN M. BUBBLICK, B.A., J.D.	Dan B. Dobbs Professor of Law
TESSA DYSART, B.A., J.D.	Clinical Professor of Law and Assistant Director of Legal Writing
KIRSTEN H. ENGEL, B.A., J.D.	Charles E. Ares Professor of Law
ROBERT J. GLENNON, A.B., J.D., M.A., PH.D.	Regents Professor, Morris K. Udall Professor of Law & Public Policy, and Director, Environmental Law, Science & Policy Programs
CHRISTOPHER L. GRIFFIN, JR., B.S., MPHIL, J.D.	Research Professor, Director of Empirical Policy and Research
JOY HERR-CARDILLO, A.B., J.D.	Associate Professor of Legal Writing and Associate Clinical Professor of Law
JAMES C. HOPKINS, B.A., J.D., LL.M.	Associate Clinical Professor of Law
XIAOQIAN HU, LL.B, ML, PH.D., LL.M., S.J.D.	Associate Professor of Law
MONA L. HYMEL, B.A., J.D., C.P.A.	Arthur W. Andrews Professor of Law
EUNICE LEE, B.A., M.A., J.D., PH.D. (Expected 2020)	Associate Professor of Law

SYLVIA LETT, B.A., J.D.	Associate Professor of Legal Writing and Assistant Clinical Professor of Law
BASHAR MALKAWI, LL.B., LL.M., S.J.D.	Global Professor of Practice in Law
LYNN MARCUS, B.A., J.D.	Clinical Professor and Co-Director, Immigration Justice Clinic
TONI M. MASSARO, B.S., J.D.	Regents Professor and Milton O. Riepe Chair in Constitutional Law
ATHANASIOS MIHAKALOS	Global Professor of Practice in Law
ROBERT MUNDHEIM, B.A., J.D.	Professor of Corporate Law and Finance
DIANA NEWMARK, B.A., J.D.	Assistant Clinical Professor of Law
LESLYE AMEDE OBIORA, LL.B., LL.M., J.S.D.	Professor of Law
CATHERINE GAGE O'GRADY, B.B.A., J.D.	Professor of Law
BARAK ORBACH, LL.B., B.A., LL.M., S.J.D.	Professor of Law
JUSTIN PIDOT, B.A., J.D.	Professor of Law and Co-Director of Environmental Law Program
SERGIO PUIG, LL.B., J.S.M., J.S.D.	Professor of Law, Director, International Trade and Business Law Program
SHALEV ROISMAN, B.A., J.D.	Associate Professor of Law
SUSAN SALMON, B.A., J.D.	Clinical Professor of Law and Director of Legal Writing
SIMONE M. SEPE, J.D., LL.M., PH.D, M.Sc., J.S.D.	Professor of Law and Finance
DIANA SIMON, B.A., J.D.	Associate Professor of Legal Writing and Assistant Clinical Professor of Law
WILLIAM K. SJOSTROM, B.S., J.D.	Professor of Law
TARA SKLAR, B.A., M.P.H., J.D.	Professor of Health Law and Director, Health Law and Policy Program
ROY G. SPECE JR., B.A., J.D.	John D. Lyons Professor of Law
JOHN A. SWAIN, A.B., J.D.	Chester H. Smith Professor of Law
MELISSA L. TATUM, B.A., J.D.	Research Professor of Law
REBECCA TSOSIE, B.A., J.D.	Regents Professor of Law and Faculty Co-Chair, Indigenous Peoples Law & Policy Program
TAMMI WALKER, B.B.A., M.Sc., J.D., PH.D.	Associate Professor of Law and Psychology
CAROLYN WILLIAMS, B.A., J.D.	Associate Professor of Legal Writing and Associate Clinical Professor of Law
ROBERT A. WILLIAMS JR., A.B., J.D.	Regents Professor, E. Thomas Sullivan Professor of Law & American Indian Studies, and Faculty Co-Chair, Indigenous Peoples Law & Policy Program
BRENT T. WHITE, B.A., J.D.	Vice Provost, Global Affairs, Dean, Global Locations, CEO, UA Global Operations, and Professor of Law
ANDREW KEANE WOODS, A.B., J.D., PH.D.	Professor of Law

EMERITI FACULTY AND ADMINISTRATION

ARTHUR W. ANDREWS, B.A., LL.B., LL.M.	Rosenstiel Distinguished Professor of Law Emeritus
BARBARA ATWOOD, B.A., J.D.	Mary Anne Richey Professor of Law Emerita
WILLIAM E. BOYD, A.B., J.D., LL.M.	Chester H. Smith Professor of Law Emeritus
MICHAEL G. CHIORAZZI, B.A., J.D., M.L.L.	Beverly & James E. Rogers Professor of Law Emeritus
DAN B. DOBBS, B.A., LL. B., LL.M., J.S.D.	Regents Professor and Rosenstiel Distinguished Professor of Law Emeritus
DAVID A. GANTZ, A.B., J.D., J.S.M.	Samuel M. Fegly Professor of Law Emeritus
ROGER C. HENDERSON, B.B.A., LL.B., LL.M.	Ralph W. Bilby Professor of Law Emeritus
ROBERT ALAN HERSHEY, B.S., J.D.	Clinical Professor of Law Emeritus
KAY KAVANAGH, B.A., J.D.	Professor of Law Emerita
BORIS KOZOLCHYK, D.C.L., LL.B., LL.M., S.J.D.	Evo A. DeConcini Professor of Law Emeritus
THOMAS A. MAUET, A.B., J.D.	Milton O. Riepe Professor of Law Emeritus
SUZANNE M. RABÉ, B.A., J.D.	Clinical Professor of Law Emerita
JAMES R. RATNER, A.B., M.A., J.D.	Professor of Law Emeritus
CAROL M. ROSE, B.A., M.A., PH.D., J.D.	Lohse Chair in Water and Natural Resources Emerita and Professor of Law Emerita
SALLY RIDER, B.A., J.D.	Director Emerita, The William H. Rehnquist Center
THEODORE J. SCHNEYER, A.B., LL.B., J.S.M.	Milton O. Riepe Professor of Law Emeritus
ANDREW SILVERMAN, J.D.	Joseph M. Livermore Professor of Law Emeritus
JOHN STRONG, B.A., J.D.	Rosenstiel Distinguished Professor of Law Emeritus
ELLIOTT J. WEISS, B.A., LL.B.	Charles E. Ares Professor of Law Emeritus
DAVID B. WEXLER, B.A., J.D.	Distinguished Research Professor of Law Emeritus
WINTON D. WOODS, A.B., J.D.	Professor of Law Emeritus
