

ARIZONA

LAW REVIEW

VOLUME 63

2021

NUMBER 3

CONTENTS

ARTICLES

LIMITING THE PARDON POWER

Albert W. Alschuler 545

STATE ADMINISTRATIVE REVIEW OF LOCAL
CONSTRAINTS ON HOUSING DEVELOPMENT:
IMPROVING THE CALIFORNIA MODEL

*Christopher S. Elmendorf, Eric Biber,
Paavo Monkkonen, & Moira O'Neill* 609

ASHES TO ASHES: A WAY HOME FOR CLIMATE
CHANGE SURVIVORS

Kenneth S. Klein 679

ANIMAL RIGHTS AND THE VICTIMHOOD TRAP

Justin Marceau 731

NOTES

THE RIGHT TO TRAVEL DURING THE COVID-19
PANDEMIC

Zachary Jarvis 789

RECONSTRUCTING CLAIM CONSTRUCTION: HOW
THE COURT OF APPEALS FOR THE FEDERAL
CIRCUIT DISMANTLED FUNCTIONAL CLAIMING,
AND HOW TO BRING IT BACK

James Rollins 813

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

Articles Manager
ROSE MELTZER

Business Manager
BLAIZE BOLES

Online Manager
DOUGLAS WYKSTRA

Marketing Manager
KYLE LOCHNER

Events Manager
J. PAIGE RICKS

KRISTA AVENENTI
DIRK BERNHARDT
JAMES CERASIA
GAYANE CHICHAKYAN
THOMAS CORRIGAN
RACHEL CRISLER
PEARL DIXON
ISAI ESTEVEZ
GLORIA FARRISI
BRIDGET FELDMAN
MARLEY GROSSKOPF

Members
ELIZABETH HANNAH
JACOB ISRAELSEN
KEVIN KENT
ANGELA KIM
SAVANNAH KNIGHT
GABRIELLE MARTIN
JUNO MCCALLUM
DREW MINNICK
CONNOR NOLAN
TYLER OBERG
AUSTIN QUICK
SIERRA RHODES

CORY RODAS
JAMES ROLLINS
JOSEPH ROUSOS-HAMMOND
MARTYNA SAWICKA
AMBER SHEPARD
ISABELLA STOUTENBURG
ROBERT TEUTON
EMILY THOMASON
VINNY VENKAT
BRYN WELLS-EDWARDS
AUBREY ZIMMERLING

Faculty Advisors
ALBERTINA ANTOGNINI
JASON KREAG

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,
 Professor of Law, and Associate Professor of Economics
 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., J.D., M.A. 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
 Clinical Professor of Law
 TRACY MUELLER, B.A. Assistant Dean for External Communications & Marketing
 GAIL NAZARENKO, B.M.E., M.B.A., C.M.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 and
 Professor of Practice
 PAUL D. BENNETT, B.A., J.D. Director, Child and Family Law Clinic, Co-Director of Clinics and
 Clinical Professor
 ALI BRIDGES, B.A., M.P.A. Director, Communications
 VANESSA BUCH, B.A., J.D. Director, University of Arizona Innocence Project and Clinical Professor
 STACY RUPPRECHT BUTLER, B.A., J.D. Director, Innovation for Justice and Professor of Practice
 LAUREN CHESBRO, 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 and
 Professor of Practice
 GINGER HUNT, B.A., M.E.T. Senior Director, Online Learning and Instructional Design
 KRISTINE HUSKEY, B.A., J.D. Director, Veterans' Advocacy Clinic, Co-Director of Clinics and
 Clinical Professor
 NEGAR KATIRAI, B.A., J.D. Director, Domestic Violence Clinic and Clinical Professor
 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 and
 Professor of Practice
 SHEFALI MILCZAREK-DESAI, B.A., M.A., J.D. Director, Workers' Rights Clinic and
 Assistant Clinical Professor
 MEGAN O'LEARY, B.A. Senior Director of Development
 JONATHAN ROTHSCHILD, B.A., J.D. Director, Democracy and Leadership Initiative and Professor of Practice
 TARA SKLAR, B.A., M.P.H., J.D. Director, Graduate Health Sciences Programs and
 Professor of Health Law
 PRIYA SUNDARESHAN, B.S., M.S., J.D. Director, Natural Resource Use & Management Clinic and
 Professor of Practice
 KEITH SWISHER, B.S., J.D., LL.M. Director, Undergraduate and Master of Legal Studies Programs and
 Professor of Legal Ethics
 SHANNON WALKER, B.A., M.P.A. Senior Director, Career Development Office
 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. Senior Director of Global Programs
 ROBERT WOODS, B.F.A., M.F.A., J.D. Director, University of Arizona Law Program, Ocean University and
 Professor of Practice

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
 BARBARA BERGMAN, B.A., J.D. Professor of Law and Director of Advocacy
 ELLEN M. BUBLICK, B.A., J.D. Dan B. Dobbs Professor of Law
 JOSÉ FRANCISCO CALÍ TZAY, B.A. Law Lecturer; Associate Director, Indigenous Peoples Law and Policy
 Human Rights Programs
 TESSA DYSART, B.A., J.D. Clinical Professor of Law and Assistant Director of Legal Writing
 KRISTEN H. ENGEL, B.A., J.D. Charles E. Ares Professor of Law and Director, Environmental Law,
 Science and Policy
 CHRISTOPHER L. GRIFFIN, JR., B.S., M.PHIL, 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., LL.B., LL.M./I.T.P.	Associate Clinical Professor of Law
XIAOQIAN HU, LL.B, M.L., 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.	Associate Professor of Law
SYLVIA LETT, B.A., J.D.	Associate Professor of Legal Writing and Assistant Clinical Professor of Law
LYNN MARCUS, B.A., J.D.	Clinical Professor and Director, Immigration Law Clinic
TONI M. MASSARO, B.S., J.D.	Regents Professor, Milton O. Riepe Chair in Constitutional Law, and Dean Emerita
SARAH MAUET, B.S., M.S.	Professor of Practice
ATHANASIOS MIHAKALOS, B.S., J.D., LL.M.	Global Professor of Practice in Law
ROBERT MUNDHEIM, B.A., LL.B., M.A.	Professor, 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, B.A., LL.B., LL.M., S.J.D.	Professor of Law
JUSTIN PIDOT, B.A., J.D.	Professor of Law
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
MICHAEL SAYLE, B.A., M.A.	Global Professor
SIMONE M. SEPE, J.D., LL.M., PH.D., M.Sc., J.S.D.	Professor of Law and Finance
ANDREW SHEPHERD, B.A., J.D.	Professor of Practice, Global Law, Deputy Director, Global Faculty
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
ROY G. SPECE JR., B.A., J.D.	John D. Lyons Professor of Law
BRIAN SWANSON, B.A., J.D.	Global Professor of Practice in 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
BRENT T. WHITE, B.A., J.D.	Vice Provost, Global Affairs, Dean, Global Locations, CEO, UA Global Operations, and Professor of Law
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
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. Fegty Professor of Law Emeritus
ROBERT J. GLENNON, A.B., J.D., M.A., PH.D.	Regents Professor and Morris K. Udall Professor of Law & Public Policy 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.	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
JOHN A. SWAIN, A.B., J.D.	Chester H. Smith 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