ValpoScholar Valparaiso University Law Review

Volume 51 Number 2 Symposium: Continuing to Fight Today's Environmental Challenges: Climate Change, Health Concerns, Energy, and Food Supply

Symposium: Continuing to Fight Today's Environmental Challenges: Climate Change, Health Concerns, Energy, and Food Supply

Front Matter

Follow this and additional works at: https://scholar.valpo.edu/vulr

Part of the Law Commons

Recommended Citation

Front Matter, 51 Val. U. L. Rev. (2017). Available at: https://scholar.valpo.edu/vulr/vol51/iss2/1

This Front Matter is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



VALPARAISO UNIVERSITY LAW REVIEW

VOLUME 51 Winter Issue 2017

VALPARAISO UNIVERSITY LAW SCHOOL VALPARAISO, INDIANA 2017

Produced by The Berkeley Electronic Press, 2017

VALPARAISO UNIVERSITY LAW REVIEW

LIFE PATRONS

DAVID & JOAN BAHLMANN Muncie, Indiana ROBERT A. BEER Cummings & Lockwood Newtown, Connecticut EUGENE E. BRASSFIELD Brassfield, Cowan & Howard Rockford, Illinois MARK J. BREMER Kohn, Shands, Elbert, Gianoulakis & Giljum St. Louis, Missouri KENNETH R. BRUCE Babst, Calland, Clements & Zomnir Pittsburgh, Pennsylvania DAVID G. CLARK Valparaiso, Indiana RICHARD W. DUESENBERG Monsanto Company St. Louis, Missouri ROBERT H. DUESENBERG Oakton, Virginia JEFFREY J. DYWAN Dver, Indiana THE HONORABLE HERBERT H. FREISE Seattle, Washington GENE H. HENNIG Gray Plant Mooty Minneapolis, Minnesota JAYME WALKER HOLCOMB Woodbridge, Virginia JAY C. JOHNSON Texas Instruments, Inc. Plano, Texas

CURTIS T. JONES Bose, McKinney & Evans, L.L.P. Indianapolis, Indiana ALFRED Y. KIRKLAND, JR. Brady & Jensen Elgin, Illinois WILLIAM P. KRATZKE Memphis, Tennessee ALLEN L. LANDMEIER St. Charles, Illinois PROFESSOR TERRY L. LANTRY Colorado State University College of Business Fort Collins, Colorado FRANK LATTAL ACE Bermuda Insurance Ltd. Hamilton, Bermuda JACK W. LAWSON Fort Wayne, Indiana STEPHEN E. LEWIS Haller & Colvin Fort Wayne, Indiana MARY ANN LINK Richmond, Virginia THOMAS H. NELSON Portland, Oregon EILEEN J. NEWHOUSE Owatonna, Minnesota WADE R. NICHOLS Fishers, Indiana GEORGE C. PATRICK George C. Patrick & Associates, P.C. Crown Point, Indiana JOHN R. PERA Crown Point, Indiana

DONALD E. PREVALLET Reid, Burge, Prevallet & Coleman Blytheville, Arkansas DONALD E. SCHLYER Valparaiso, Indiana THE HONORABLE LOREN E. SCHNACK Quincy, Illinois ROBERT E.W. SCHNOOR Grand Rapids, Michigan EUGENE A. SCHOON Sidlev Austin, L.L.P. Chicago, Illinois ROBERT A. SEIDEL Lake Forest, Illinois GARY M. SELIG Indianapolis, Indiana MICHAEL I. SWYGERT St. Petersburg, Florida MATTHEW S. TARKINGTON Lewis & Kappes, P.C. Indianapolis, Indiana NICK J. THIROS Cohen & Thiros Merrillville, Indiana JEFFREY E. WALLACE Wyatt, Tarrant & Combs Louisville, Kentucky JOHN W. YAKIMOW Synnestvedt Lechner & Woodbridge, L.L.P. Marshall, Michigan GERI & RON YONOVER Chicago, Illinois JAMES W. ZERRENNER Grand Rapids, Michigan

BENEFACTORS

PETER L. KRENTZ Krentz & Salfisberg, Swanson, Haggard, P.C. Plano, Illinois THE HONORABLE ROBERT C. PROBST Kendallville, Indiana

CONTRIBUTING PATRONS

RICHARD S. EYNON Columbus, Indiana THOMAS K. HOFFMAN Merrillville, Indiana

SUPPORTING PATRONS

JOHN J. HORELED Crystal Lake, Illinois RALPH R. HUFF Jones Huff & Jones Plymouth, Indiana DANIEL J. KOZERA, JR. Kozera & Associates, P.C. Grand Rapids, Michigan LINDSAY OGLE Columbus, Nebraska STEVEN E. WERMCRANTZ Springfield, Illinois PETER K. WILSON, JR. Aurora, Illinois

The following published contributions reflect the views of the individual authors and do not necessarily represent the views of the *Valparaiso University Law Review*, its editors, or Valparaiso University.

Cite as 51 VAL. U. L. REV. 000

Copyright © 2017 by Valparaiso University Law Review Except as otherwise expressly provided, the Valparaiso University Law Review has provided permission for copies of any article in this volume to be made and used by nonprofit educational institutions, provided that copies are distributed at or below cost, author and journal are identified, and proper notice of copyright is affixed to each copy. ISSN 0042-2363

VALPARAISO UNIVERSITY LAW SCHOOL

UNIVERSITY OFFICERS

MARK A. HECKLER, M.F.A., PH.D.	President
MARK L. BIERMANN, PH.D Pr	ovost and Executive Vice President for Academic Affairs
DARRON FARHA, B.A., M.B.A., J.D.	
SUSAN SCROGGINS, M.B.A	Vice President for Finance and Administration
LISA HOLLANDER, B.A.	Vice President for Advancement
BONNIE L. HUNTER, M.B.A.	Vice President for Student Affairs
MICHAEL JOSEPH, B.A., M.A.	Vice President for Enrollment Management
ANDREA D. LYON, B.A., J.D	Dean of the Law School
DAVID R. CLEVELAND, J.D.	Associate Dean for Academic Affairs of the Law School
EMILY JANOSKI-HAEHLEN, J.D., M.S.L.S	Associate Dean for Library Services of the Law School
DERRICK HOWARD, B.A., J.D.	Associate Dean for Experiential Learning
STEVEN R. PROBST, B.A., J.D., M.L.I.S.	Assistant Dean for Students of the Law School

THE LAW SCHOOL

FACULTY-2016-2017

NATALIE M. BANTA, Assistant Professor of Law Brigham Young University (B.S., 2006; J.D., 2009). BRUCE G. BERNER, Professor Emeritus of Law Valparaiso University (B.A., 1965; LL.B., 1967); Yale Law School (LL.M., 1978). ROBERT F. BLOMQUIST, Professor of Law University of Pennsylvania (B.S., 1973); Cornell University (J.D., 1977). IVAN E. BODENSTEINER, Professor Emeritus of Law Loras College (B.A., 1965); University of Notre Dame (J.D., 1968). PHILIPP L. BROCKINGTON, Professor Emeritus of Law Amherst College (B.A., 1962); Harvard University (J.D., 1965). GENEVA BROWN, Professor of Law University of Wisconsin (B.A., 1988; J.D., 1993); University of Illinois-Chicago (M.A., 2004). DERRICK AUGUSTUS CARTER, Associate Professor of Law Eastern Michigan University (B.S., 1972); Valparaiso University (J.D., 1975). CURTIS W. CICHOWSKI, Professor of Law Carroll College (B.A., 1978); Valparaiso University (J.D., 1981). DAVID R. CLEVELAND, Associate Dean for Academic Affairs, Professor of Law, and Director of Legal Writing Western Michigan University (B.A., 1998); Georgetown University Law Center (J.D., 2002). LAURA GASTON DOOLEY, Professor of Law University of Arkansas (B.A., 1982); Washington University (J.D., 1986). CHARLES A. EHREN, JR., Professor Emeritus of Law Columbia University (A.B., 1954; J.D., 1956). EDWARD MCGLYNN GAFFNEY, JR., Senior Research Professor of Law St. Patrick's College (B.A., 1963); Gregorian University (S.T.L., 1967); Catholic University of America (J.D., 1974; M.A., 1975); Harvard University (LL.M., 1976). MARCIA L. GIENAPP, Professor Emerita of Law Valparaiso University (B.A., 1973; J.D., 1977). GEOFFREY HEEREN, Associate Professor of Law and Michael and Dianne Swygert Teaching Fellow University of Chicago (B.A., 1996); New York University (J.D., 2000).

DAVID HERZIG, Professor of Law and Michael and Dianne Swygert Research Fellow University of Louisville (B.A., 1993); University of Kentucky (J.D., 1997). DERRICK HOWARD, Associate Dean for Experiential Learning and Associate Professor of Law University of Pittsburgh (B.A., 1987; J.D., 1990). REBECCA J. HUSS, Professor of Law and Phyllis and Richard Duesenberg Chair in Law University of Northern Iowa (B.A., 1989); University of Richmond (J.D., 1992); University of Iowa (LL.M., 1995). EMILY JANOSKI-HAEHLEN, Associate Dean for Law Library Services, Assistant Professor of Law, and Jack Hiller Distinguished Faculty Award Recipient University of Kentucky (B.S., 2002); Salmon P. Chase College of Law, Northern Kentucky University (J.D., 2005); University of Kentucky (M.S.L.S., 2007). ROBERT H. KNOWLES, Associate Professor of Law St. Olaf College (B.A., 1993); Northwestern University School of Law (J.D., 2001). PAUL M. KOHLHOFF, Professor Emeritus of Law Purdue University (B.S., 1981); Valparaiso University (J.D., 1986). FAISAL KUTTY, Associate Professor of Law and Director of the International LL.M. Program University of Ottawa (J.D., 1994); Osgoode Hall Law School (LL.M., 2006); Osgoode Hall Law School (Cand. Ph.D.). ROSALIE B. LEVINSON, Senior Research Professor of Law Indiana University (B.A., 1969; M.A., 1970); Valparaiso University (J.D., 1973). JOELLEN L. LIND, Professor Emerita of Law Stanford University (A.B., 1972); University of California–Los Angeles (J.D., 1975); University of Utah (Cand. Ph.D.). SEYMOUR MOSKOWITZ, Senior Research Professor of Law Columbia University (B.A., 1963); Harvard University (J.D., 1966). DAVID A. MYERS, Professor Emeritus of Law Drake University (B.A., 1973); University of Illinois (J.D., 1976). CLARE KRAEGEL NUECHTERLEIN, Distinguished Practitioner Emerita of Law Valparaiso University (B.A., 1972; M.A.L.S., 1975; J.D., 1979). MARY G. PERSYN, Associate Professor Emerita of Law Creighton University (A.B., 1967); University of Oregon (M.L.S., 1969); University of Notre Dame (J.D., 1982). JOHN J. POTTS, Professor Emeritus of Law University of New Mexico (B.A., 1969); Boston College (J.D., 1974); Northeastern University (M.S., 1975). BARBARA A. SCHMIDT, Professor Emerita of Law Valparaiso University (B.A., 1970; J.D., 1973). RICHARD T. STITH III, Senior Research Professor of Law Harvard University (A.B., 1965); University of California, Berkeley (M.A., 1967); Yale University (M. Phil., 1971; Ph.D., 1973; J.D., 1973). MICHAEL S. STRAUBEL, Professor of Law Western Michigan University (B.S., 1979); Marquette University (J.D., 1982); McGill University (LL.M., 1989). SUSAN P. STUART, Professor Emerita of Law DePauw University (B.A., 1973); Valparaiso University (M.Ed., 1976); Indiana University-McKinney School of Law (J.D., 1982). MARY C. SZTO, Associate Professor of Law Wellesley College (B.A, 1981); Westminster Theological Seminary (M.A., 1983); Columbia University School of Law (J.D., 1986). D. A. JEREMY TELMAN, Professor of Law Columbia University (B.A., 1985); Cornell University (M.A., 1989; Ph.D., 1993); New York University (J.D., 1999). BERNARD TRUJILLO, Professor of Law Princeton University (A.B., 1988); Yale Law School (J.D., 1992).

RUTH C. VANCE, Professor Emerita of Law Olivet College (B.A., 1979); Valparaiso University (J.D., 1982). DAVID E. VANDERCOY, Professor Emeritus of Law Pennsylvania State University (B.A., 1971); Dickinson School of Law (J.D., 1974); New York University (LL.M., 1980). DAVID WELTER, Professor of Law Valparaiso University (B.A., 1983; J.D., 1990). LINDA S. WHITTON, Professor Emerita of Law Valparaiso University (B.A., 1979; J.D., 1986). STEPHEN WILKS, Associate Professor of Law Queens University (B.A., 1994, J.D., 1999); University of Toronto (M.S.W., 1996); Osgoode Hall Law School (LL.M., 2007; Ph.D., 2011). DEL WRIGHT JR., Associate Professor of Law University of Maryland (B.S., 1992); University of Chicago (J.D., 1996); Harvard University (M.P.P., 1997). GERI J. YONOVER, Professor Emerita of Law University of Chicago (B.A., 1964); IIT Chicago-Kent College of Law (J.D., 1983).

ADJUNCT FACULTY

CONNIE L. BAUSWELL, Adjunct Professor of Law University of Dallas (B.A. 1993); Indiana University-Mauer School of Law (J.D., 1996). SHELBIE BYERS, Adjunct Professor of Law Indiana University (B.S., 2005); Valparaiso University (J.D., 2008). PHILIP BRZOZOWSKI, Adjunct Professor of Law Illinois Institute of Technology (B.S., 2001); The John Marshall Law School (J.D., 2008). JEANENE E. CALABRESE, Adjunct Professor of Law St. Mary of the Woods College (B.S., 1984); Valparaiso University (J.D., 1990). KEVIN CAMDEN, Adjunct Professor of Law Northern Illinois University (B.A., 1994); John Marshall Law School (J.D., 1997). PAUL CHERRY, Adjunct Professor of Law Huntington College (B.A., 1973); Ohio Northern University (J.D., 1977). JEFF CLYMER, Adjunct Professor of Law Kalamazoo College (B.A., 1983); Valparaiso University (J.D., 1992). SUSAN COLLINS, Adjunct Professor of Law DePauw University (B.A., 1983); Drake University (J.D., 1986). JAMES DILLON, Adjunct Professor of Law Indiana University (B.G.S., 2007); Valparaiso University (J.D., 2013). ELIZABETH FLORES, Adjunct Professor of Law Purdue University (B.A., 1987); Valparaiso University (J.D., 1991). DANIEL A. GIOIA, Adjunct Professor of Law Georgetown University (B.A., 1972); American University Law School (J.D., 1975). ALICIA HILTON, Adjunct Professor of Law University of California at Berkeley (B.A., 1988); University of Chicago (J.D., 1997; M.A., 2009). DAVID L. HOLLENBECK, Adjunct Professor of Law Valparaiso University (B.A., 1969; J.D., 1974). JAMES HOUGH, Adjunct Professor of Law Grand Rapids Baptist College (B.A., 1994); Valparaiso University (J.D., 1998). ASHLEY HUEBNER, Adjunct Professor of Law Marquette University (B.A., 2004); Boston University School of Law (J.D., 2007). HEIDI L. KEENAN, Adjunct Professor of Law North Dakota State University (B.S., 1991); Valparaiso University (J.D., 2004). ROXANNE MELENDEZ-JOHNSON, Adjunct Professor of Law University of Notre Dame (B.A., 1993); University of Arizona College of Law (J.D., 1999).

ELIZABETH ADAMEC MOORE, Adjunct Professor of Law Valparaiso University (B.A., 1999; J.D., 2007). LAKEISHA MURDAUAGH, Adjunct Professor of Law Illinois State University (B.S., 1998); Valparaiso University (J.D., 2012). KERRY PANGERE, Adjunct Professor of Law Purdue University (B.A., 1990); Valparaiso University (J.D., 1999). ROBERT F. PARKER, Adjunct Professor of Law University of Notre Dame (B.A., 1974); Indiana University (J.D., 1977). JOHN SHANAHAN, Adjunct Professor of Law Indiana University (B.A., 1977); Valparaiso University (J.D., 1985). MORRIS A. SUNKEL, Adjunct Professor of Law University of Illinois (B.S., 1970); Valparaiso University (J.D., 1974); The John Marshall Law School (LL.M., 1996). ADAM SWORDEN, Adjunct Professor of Law Iowa State University (B.S., 2005); Valparaiso University (J.D., 2011). MICHAEL TOLBERT, Adjunct Professor of Law Valparaiso University (B.A., 1997; J.D., 2000). SHELICE R. TOLBERT, Adjunct Professor of Law Wittenberg University (B.A., 1997); Valparaiso University (J.D., 2000). SCOTT WAGENBLAST, Adjunct Professor of Law Indiana University (B.M., 1989); Valparaiso University (J.D., 1993). KATHARINE E. WEHLING, Visiting Assistant Professor of Law Arizona State University (B.A., 1979); Valparaiso University (J.D., 1983).

LIBRARIANS

MICHAEL J. BUSHBAUM, Associate Law Librarian for Access Services and Associate Professor University of Nevada, Reno (B.S., 1990); Northwestern School of Law of Lewis and Clark College (J.D., 1993); University of Washington (M. Libr., 1994).

DEBRA L. DENSLAW, Faculty Services Librarian and Associate Professor

Franklin College (B.A., 1979); Valparaiso University (J.D., 1989);

University of Illinois (M.S.L.I.S., 2003).

NAOMI J. GOODMAN, Associate Professor Emerita

University of Queensland (B.A., 1968); University of New South Wales (Dip. L., 1969). SARAH G. HOLTERHOFF, Associate Professor Emerita of Law Librarianship

Ohio State University (B.S., 1970); University of Wisconsin-Milwaukee (M.A.L.S., 1975).

EMILY JANOSKI-HAEHLEN, Associate Dean for Library Services and Assistant Professor of Law University of Kentucky (B.S., 2002); Northern Kentucky University, Salmon P. Chase

College of Law (J.D., 2005); University of Kentucky (M.S.L.S., 2007).

STEVEN R. PROBST, Assistant Dean for Students, Educational Services Librarian, and Associate Professor

Valparaiso University (B.A., 1990; J.D., 2002); Dominican University (M.L.I.S., 2005).

LARISSA SULLIVANT, Cataloging and Acquisitions Librarian and Associate Professor

Moscow State Linguistic University (B.A., 1984); Moscow State Institute for Foreign Tourism (M.A., 1986); Wayne State University (M.L.I.S., 2000).

Valparaiso University Law Review, Vol. 51, No. 2 [2017], Art. 1

VALPARAISO UNIVERSITY LAW REVIEW

VOLUME 51

WINTER 2017

NUMBER 2

EDITORIAL BOARD

Editor in Chief KIRSTEN Z. MYERS

Associate Editor in Chief NATALIE HOCH

Executive Managing Editor BRIAN TUINENGA Executive Editor of Lectures & Symposia CALEB DETWEILER

Executive Editor of Student Writing CATHERINE CATES

> Executive Articles Editor KATHERINE HAGANMAN

Executive Editor of Publication KATLYN KRANIK

Executive Articles Editor CHELSEA HILLMAN

ASSOCIATE EDITORS

Abby Scott Busler Manuela Cabal Carmona Nicholas S. Demario Danielle Dobry Travis Garner TALISHA GRIFFIN JESS HUNTER-BOWMAN THOMAS J. LYONS ANDREW PAPPAS IRENA STEFANOVSKI MATTHEW S. THOR

FACULTY ADVISORS

Emily Janoski-Haehlen Natalie M. Banta

LIBRARY LIAISON

STEVEN R. PROBST

PUBLICATION ADMINISTRATOR

KAREN L. KOELEMEYER

NOTEWRITERS

Jennifer L. Cassidy Donald A. Dechert III Matthew D. Hebert Katie Kopf Elizabeth Lewandowski GREGORY MALESKA YASMEEN NAOUM BRANDON NIEZGODSKI ERIC OPPLIGER STEVEN PAKU

> Member, National Conference of Law Reviews

Valparaiso University Law Review, Vol. 51, No. 2 [2017], Art. 1

VALPARAISO UNIVERSITY LAW REVIEW

VOLUME 51

WINTER 2017

NUMBER 2

CONTENTS

SYMPOSIUM:

CONTINUING TO FIGHT TODAY'S ENVIRONMENTAL CHALLENGES: CLIMATE CHANGE, HEALTH CONCERNS, ENERGY, AND FOOD SUPPLY

ARTICLES

VAPOR INTRUSION UNDER JUDICIAL SCRUTINY: A LOOK AT EXPERT TESTIMONY IN RECENT OPINIONS

Matthew Cohn & Elizabeth Austermuehle 339

THE GIFT THAT KEEPS ON GIVING: PRICE OVERHANG DAMAGES IN COMMODITY CROP CASES

Adam J. Levitt and Russell L. Lamb 375

THE CLEAN ENERGY INCENTIVE PROGRAM: A (STAYED) INVITATION TO TECHNOLOGICAL INNOVATION AND MARKET TRANSFORMATION IN THE ELECTRIC ENERGY INDUSTRY

Michael A. Mullett 405

EXPOSING THE INVISIBLE COSTS OF COMMERCIAL AGRICULTURE: SHAPING POLICIES WITH TRUE COSTS ACCOUNTING TO CREATE A SUSTAINABLE FOOD FUTURE

Nicole E. Negowetti 447

THE FAILURE OF FEDERAL BIOTECHNOLOGY REGULATION

Alison Peck 483

CALIFORNIA ADAPTS TO PROLONGED DROUGHT: ANY LESSONS FOR THE HUMID MIDWEST?

Dan Tarlock 519

Valparaiso University Law Review, Vol. 51, No. 2 [2017], Art. 1