w02\_TOC.doc 12/18/2017 10:07 PM

# WAKE FOREST LAW REVIEW

VOLUME 52	2017	NUMBER 5	_
Copyri	ight © 2017 by Wake Forest U		_
ARTICLES			
CONTRACTING FOR T	ORTS $J$	. Shahar Dillbary	1057
LET PROHETS BE (N	on) Profits		
	David J. Herzig & So		1111
	ARKS		
		Justin Hughes	1163
	IS REA AND THE FUTURE		1201
CODE REFORM		Michael Selvia	1201
	NEW ERA OF ABORTION EALTH		1231
<b>N</b> .		, o	
NOTE			
"FIGHTING WORDS"	R Snapchat Images Qu. under <i>Chaplinsky v. N</i> ss Americans' Evolvin	<i>NEW HAMPSHIRE</i>	
			1285
COMMENT			
WON'T BELIEVE!: "FA	CASHES BOMBSHELL ALL AKE NEWS" AS COMMERC	CIAL SPEECH	
	J	ohn Allen Riggins	1311

W02 TOC.DOC 12/18/2017 10:07 PM

The Wake Forest Law Review (ISSN 0043-003X) is published five times a year in April, May, September, November, and December by the Wake Forest Law Review, Wake Forest University School of Law, Post Office Box 7206, Winston-Salem, North Carolina 27109-7206. The telephone number of the Wake Forest Law Review is (336) 758-5706. The website for the Wake Forest Law Review is http://www.wakeforestlawreview.com. The Wake Forest Law Review offices are located in Suites 2205 and 2206 of the Worrell Professional Center at Wake Forest University.

Subscriptions in the United States and Canada are \$35.00 per year, payable in advance (North Carolina residents add 7.75% sales tax); international subscriptions are \$45.00 per year. Subscriptions are renewed automatically unless notice to the contrary is received. Address changes or other requests regarding subscription information should be directed to Ben Westcott, Business Editor, (336) 758-5706 or businesseditor@wakeforestlawreview.com.

Back issues may be obtained from William S. Hein & Co., Inc., 2350 North Forest Rd., Getzville, New York 14068. The telephone number is (716) 882-2600. Prices are available upon request. Back issues may also be found in electronic format at http://www.heinonline.org.

The Wake Forest Law Review invites the submission of unsolicited manuscripts either through the mail or electronically. Directions for electronic submission can be found on the website. Manuscripts should be sent to the attention of the Senior Articles Editor. Manuscripts submitted through the mail cannot be returned unless a self-addressed, postage-paid envelope is submitted with the manuscript. The Wake Forest Law Review requests that contributing authors disclose any economic interests and affiliations that may influence the views expressed in submissions.

The citations in the Wake Forest Law Review conform to The Bluebook: A Uniform System of Citation (20th ed. 2015) and The Chicago Manual of Style (17th ed. 2017). The Wake Forest Law Review is available on Westlaw and LEXIS and is indexed in the Index to Legal Periodicals and Current Law Index.

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) such copies are distributed at or below cost, (2) each copy clearly and conspicuously identifies the author and the *Wake Forest Law Review* as the journal of first publication, (3) proper notice of copyright is affixed to each copy, and (4) the user first obtains permission from the *Wake Forest Law Review* to make such copies.

The views expressed in the Wake Forest Law Review are those of the authors and do not necessarily reflect the policies or opinions of the Wake Forest Law Review, the Wake Forest University School of Law, or Wake Forest University.

Periodicals postage is paid at Winston-Salem, North Carolina, and additional mailing offices. POSTMASTER: Send address changes to *Wake Forest Law Review*, Wake Forest University School of Law, Post Office Box 7206, Winston-Salem, North Carolina 27109-7206.

W02\_TOC.doc 12/18/2017 10:07 PM

# WAKE FOREST LAW REVIEW

### **VOLUME 52**

# 2017–2018 BOARD OF EDITORS

NUMBER 5

 $\begin{tabular}{ll} $Editor-in-Chief \\ MICHAEL H. HERMAN \end{tabular}$ 

Managing Editor
ALEXANDRA M. EDGE

Executive Editors
NICHOLAS A. BEDO
KELSEY M. HYDE
KELSEY M. MELLAN
MIKE J. STEPHENS
EVAN W. WELTGE

Executive Online Editors
MARY A. CLAYTON
KRISTINA M. WILSON

Senior Notes/Comments Editor
ALI M. FENNO

Notes/Comments Editors
ZACHARY L. MCCAMEY
DANIEL D. MCCLURG
JOHN R. VAN SWEARINGEN

Research Editor
MALCOLM S. BOYD

 $Business\ Editor$  Benjamin R. Westcott

MATTHEW B. HOYT MORGAN K. MAYES KEVIN S. RICE

Senior Articles Editor

JOHN ALLEN RIGGINS

Articles Editors

SOPHIA V. BLAIR

Symposium Editors
CATHERINE M. BAIOCCHI
ASHLEY E. BARTON

#### **EDITORIAL STAFF**

LUIS F. BENAVIDES HUSTON A. FIRMENT KYLE F. HEUSER SPENCER A. LEE PATRICK A. O'CONNOR SABRINA C. RODRIGUES

HAILEY M. CLEEK
ASHLEY K. COLLETTE
TIMOTHY F. DAY
MICHAEL P. DIVEN
JOSEPHINE M. FINA
MIKE GARRIGAN
MARY KATE GLADSTONE
GRANT K. HANCOCK
JONATHAN R. HILLIARD
CALEB M. HODGE

# **STAFF**

HOLLY R. INGRAM
LOGAN T. JUDY
CARA A. KATRINAK
RAQUEL A. MACGREGOR
JACLYN N. MALMED
TYLER L. MARTIN
SARA KATHRYN MAYSON
ADAM B. MCCOY
HANNA E. MONSON
SHAWN A. NAMET

JOSEY NEWMAN
PATRICK EV ALGENEYB
GILBERT F. ESMOE BYSE
SARAH J. SHARN ENGURS
SABRINA AR AR P. BYRNEE
EHASE H. SEFEVENS
JOHN ROBEN FWETT FOED
MAFYARWM. WELTER
RENYARRIE EV WENGER
KRISTEVE AR. WIESPE

# **FACULTY ADVISORS**

RUSSELL M. GOLD TANYA D. MARSH

Law Review Secretary SONYA A. CASSTEVENS W02\_TOC.doc 12/18/2017 10:07 PM

### ADMINISTRATIVE OFFICERS

NATHAN O. HATCH, President, Wake Forest University

Suzanne Reynolds, Dean, School of Law and Professor of Law

W. JONATHAN CARDI, Executive Associate Dean for Academic Affairs and Professor of Law

Kami N. Chavis, Associate Provost for Academic Initiatives, Director of the Criminal Justice Program, and Professor of Law

Tracey Coan, Assistant Dean for Academic Engagement and Associate Professor of Legal Practice

Ann Setien Gibbs, Associate Dean for Administrative and Student Services

Christopher A. Knott, Associate Dean for Information Services and Technology and Professor of Law

M. Ellen Murphy, Associate Dean of Instructional Technologies and Design and Interim Director, Master of Studies in Law

ALAN R. PALMITER, Associate Dean of Graduate Programs and William T. Wilson, III
Presidential Chair for Business Law

Gregory S. Parks, Assistant Dean of Research, Public Engagement, and Faculty Development and Professor of Law

SIMONE A. ROSE, Associate Dean for Innovation and Entrepreneurship and Professor of Law

RICHARD C. SCHNEIDER, JR., Associate Dean for International Affairs and Professor of Law

### **FACULTY**

Carol B. Anderson, Director of Trial Practice and the Litigation Clinic and Clinical Professor of Law

CHRISTINE NERO COUGHLIN, Professor of Legal Analysis and Writing

LUELLEN CURRY, Associate Professor of Legal Analysis and Writing

MICHAEL K. CURTIS, Judge Donald L. Smith Professor in Constitutional and Public Law

TIMOTHY DAVIS, John W. and Ruth H. Turnage Professor of Law

 ${\tt MAUREEN\ EGGERT}, Associate\ Director\ of\ Student\ and\ Instructional\ Services$ 

H. MILES FOY III, Professor of Law

STEVEN C. GARLAND, Professor of Practice

Shannon D. Gilreath, Professor of Law and Professor of Women's, Gender, and Sexuality Studies

 ${\tt JAYASHREE\ B.\ GOKHALE}, Professor\ of\ Practice$ 

RUSSELL M. GOLD, Associate Professor of Legal Analysis, Writing and Research

David Gottlieb, Director, Washington Program

Laura P. Graham, Director of Legal Analysis, Writing, and Research and Professor of Legal Writing

SUSAN K. GREBELDINGER, Professor of Law

MICHAEL D. GREEN, Bess and Walter Williams Distinguished Chair in Law

MARK A. HALL, Director of Health Law and Policy Program and Fred D. and Elizabeth L. Turnage Professor of Law

Sally Irvin, Associate Director for Faculty and Technology Services

 ${\it Kate Inwin-Smiler}, {\it Reference Librarian and Associate Professor of Legal Research}$ 

 $\label{local_equation} \mbox{Elizabeth McCurry Johnson}, Reference\ Librarian\ and\ Associate\ Professor\ of\ Legal\ Research$ 

JOHN H. KNOX, Henry C. Lauerman Professor of International Law and United Nations Special Rapporteur on the issue of human rights and the environment

JOHN J. KORZEN, Director of the Appellate Advocacy Clinic and Associate Professor of Legal Analysis and Writing

Barbara Lentz, Associate Professor of Legal Analysis and Writing

Harold Lloyd, Associate Professor of Legal Analysis and Writing

TANYA D. MARSH, Professor of Law

 $\label{lem:condition} \mbox{Christopher Meazell}, \mbox{\it Director of Law Graduate Programs and Professor of Legal} \\ \mbox{\it Studies}$ 

W02 TOC.DOC 12/18/2017 10:07 PM

KATE MEWHINNEY, Clinical Professor and Managing Attorney, Elder Law Clinic

Rebecca Morrow, Associate Professor of Law

STEVE H. NICKLES, C.C. Hope Chair in Law and Management

J. WILSON PARKER, Professor of Law

Wendy Parker, James A. Webster Professor of Public Law

RALPH A. PEEPLES, Professor of Law

ABIGAIL PERDUE, Associate Professor of Legal Analysis and Writing and Director of the Washington Summer Judicial Externship Program

S. Mark Rabil, Director of the Innocence and Justice Clinic and Associate Clinical Professor of Law

Charles P. Rose, Jr., Professor of Law

SIDNEY A. SHAPIRO, Frank U. Fletcher Chair of Administrative Law

OMARI S. SIMMONS, Director of the Business Law Program and Howard L. Oleck Professor of Business Law

IRIS SUNSHINE, Director of the Child Advocacy Clinic

MARGARET H. TAYLOR, Professor of Law

 ${\tt ANDREW\,VERSTEIN}, Associate\,Professor\,of\,Law$ 

STEVEN VIRGIL, Executive Director of Experiential Education and Clinical Professor of Law

George K. Walker, Dean's Research Professor of Admiralty and International Law

Robert K. Walsh, Professor of Law and Dean Emeritus

RONALD F. WRIGHT, Needham Y. Gulley Professor of Criminal Law

Vanessa Zboreak, Professor of the Practice

#### **EMERITI**

MIRIAM E. FELSENBURG, Professor Emeritus of Legal Analysis and Writing

Joel Newman, Professor Emeritus of Law

Patricia J. Roberts, Professor Emeritus of Law

Thomas E. Roberts,  $Professor\ Emeritus\ of\ Law$ 

 ${\tt DAVID\ F.\ Shores}, Professor\ Emeritus\ of\ Law$ 

 ${\tt Kenneth \ A. \ Zick \ II}, \textit{Professor Emeritus of Law}$ 

# EXTENDED FACULTY

Mary Adams, Adjunct Professor of Law

 ${\it ASHARD AHMED}, Adjunct\ Professor\ of\ Law$ 

 ${\tt JESSE\,ANDERSON}, Adjunct\,Professor\,of\,Law$ 

Joseph Anderson, Adjunct Professor of Law

BRYAN ARKWRIGHT, Adjunct Professor of Law

 ${\tt JOHN~BABCOCK}, Adjunct~Professor~of~Law$ 

CLIFTON T. BARRETT, Adjunct Professor of Law

Jagdeep Bhandari, Visiting Professor of Law

MEGHAN M. BOONE, Visiting Assistant Professor of Law

Mark Boynton, Adjunct Professor of Law

Bruce Brandon,  $Adjunct\ Professor\ of\ Law$ 

 ${\tt MATTHEW\ H.\ BREEDING,}\ Adjunct\ Professor\ of\ Law$ 

 ${\it Tomi Bryan}, Adjunct\ Professor\ of\ Law$ 

JOHN D. BRYSON, Adjunct Professor of Law

MARGARET BURNHAM, Adjunct Professor of Law

KENNETH P. CARLSON, JR., Adjunct Professor of Law

MIREILLE CLOUGH, Adjunct Professor of Law

Seth R. Cohen,  $Adjunct\ Professor\ of\ Law$ 

HON. ROBERT CONRAD, Adjunct Professor of Law and Chief Judge of the United States
District Court for the Western District of North Carolina

LISA COSTNER, Adjunct Professor of Law

 ${\tt DAVID\ L.\ CRAVEN}, Adjunct\ Professor\ of\ Law$ 

W02\_TOC.DOC 12/18/2017 10:07 PM

Camille Davidson, Adjunct Professor of Law

HARRY DAVIS, Adjunct Professor of Law

James Dean, Adjunct Professor of Law

EDWARD ERGENZINGER, Adjunct Professor of Law

JASON EVANS, Adjunct Professor of Law

Hon. Larry Fine, Adjunct Professor of Law and District Court Judge for the 21st Judicial District of North Carolina

Randall Galyon, Adjunct Professor of Law

Christopher Geis, Adjunct Professor of Law

ELLEN R. GELBIN, Adjunct Professor of Law and Forysth County District Court Arbitrator and Mediator

ISRAEL GILEAD, Adjunct Professor of Law

Bradley Grider, Adjunct Professor of Law

Christopher Gyves, Adjunct Professor of Law

CHRISTOPHER T. HAIRSTON, Associate Athletic Director and Adjunct Professor of Law

Raina Haque,  $Adjunct\ Professor\ of\ Law$ 

Nate Harrill,  $Adjunct\ Professor\ of\ Law$ 

DAVID HARRISON, Adjunct Professor of Law

James Hickmon, Adjunct Professor of Law

BETH HOPKINS, Adjunct Professor of Law

Quentin Huff, Assistant Director of Bar Success and Adjunct Professor of Law

Hon. Robert Hunter, Adjunct Professor of Law and Judge of the North Carolina Court of Appeals

ABRAR HUSSAIN, Adjunct Professor of Law

DONALD JODREY, Visiting Professor of Practice

 ${\tt KATIE\ KING}, Adjunct\ Professor\ of\ Law$ 

Steven Lauer, Adjunct Professor of Law

 ${\tt FRANK\ LEAK}, Adjunct\ Professor\ of\ Law$ 

DAVID LEVINE, Adjunct Professor of Law

 ${\tt AARON\,LONGO}, Adjunct\, Professor\, of\, Law$ 

DICKSON M. LUPO, Adjunct Professor of Law

Jon Mayhugh, Adjunct Professor of Law

WILLIAM J. MCMAHON, IV, Adjunct Professor of Law

KEVIN MILLER, Adjunct Professor of Law

 ${\it J. GRIFFIN MORGAN}, Adjunct\ Professor\ of\ Law$ 

Ruth Morton,  $Visiting\ Assistant\ Professor$ 

 ${\tt MICHAEL~G.~OKUN}, Adjunct~Professor~of~Law$ 

 ${\it HELEN PARSONAGE}, Adjunct\ Professor\ of\ Law$ 

 ${\tt ANDREW\ PENRY}, Adjunct\ Professor\ of\ Law$ 

DONALD R. POCOCK, Adjunct Professor of Law

Coe Ramsey, Adjunct Professor of Law

Stephanie Reese, Adjunct Professor of Law

 ${\tt ROBERT~REHM}, Adjunct~Professor~of~Law$ 

RICHARD RICE,  $Adjunct\ Professor\ of\ Law$ 

STACEY RUBAIN, Adjunct Professor of Law

 ${\tt JOHN\,SARRATT}, Adjunct\ Professor\ of\ Law$ 

KAREN SCHAEDE, Adjunct Professor of Law

WILL SCOTT, Adjunct Professor of Law

DAVID A. SENTER, Adjunct Professor of Law

Andrew Smith, Adjunct Professor of Law

Anna Richardson Smith,  $Adjunct\ Professor\ of\ Law$ 

 ${\tt DAVID~C.~SMITH}, Adjunct~Professor~of~Law$ 

Rebecca Smitherman,  $Adjunct\ Professor\ of\ Law$ 

Lyioloa Solanke,  $Adjunct\ Professor\ of\ Law$ 

Bettie Sousa, Visiting Professor of Law

Jane Thompson, Adjunct Professor of Law

W02\_TOC.doc 12/18/2017 10:07 PM

BRUCE THOMPSON, Adjunct Professor of Law
ALI TOMBERLIN, Adjunct Professor of Law
DON VAUGHAN, Adjunct Professor of Law
NORM VEASEY, Adjunct Professor of Law
JOHN VERMITSKY, Adjunct Professor of Law
ELISE WHITLEY, Adjunct Professor of Law
GORDON WIDENHOUSE, Visiting Professor of Practice