# WAKE FOREST LAW REVIEW

VOLUME 59	2024	NUMBER 2	
Copyi	right © 2024 by Wake Forest Univ	versity	
ARTICLES			
	CONCURRENCE IN ROMER V		351
	LENGE TO THE ANTITRUST		399
THE UNITARY EXEC	CUTIVE IN THE AGE OF AMER	RICAN	
	Martin H. Redish & De	avid M. Epstein	451
	ASK V. THE ARTICLE III REA		501
COMMENT			
FOR A SIMPLER APP	AND BONUS DEDUCTIONS: A PROACH TO CONSERVATION I		
		Allison Lizotte	537

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 Luke Shapiro, Business Editor 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 Wake Forest Law Review conforms to The Bluebook: A Uniform System of Citation (21st ed. 2020) 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.

## WAKE FOREST LAW REVIEW

### 2023-2024 BOARD OF EDITORS

Editor-in-Chief Haley K. Hurst

Managing Editor
IVEY FIDELIBUS

 $Executive\ Editors$ 

Senior Articles Editor C. ISAAC HOPKIN

Articles Editors
KENDALL CARTER
LUCAS TAPPA
ALEXANDER VAN ZIJL
LANE WILSON

Symposium Editors Grace Genereaux Gabby Korb MAXWELL ANTHONY
LUUL Y. LAMPKINS
Senior Notes / Comments Editor
SAM KIEHL

ALLISON LIZOTTE
NICK TREMPS
CAROLINE WILLCOX
STEPHANIE FLYNN
MADELYN HAPP
Senior Online Editor
DYLAN ELLIS
MARGUERITE M. MITCHELL

Online Editors

KEEGAN J. HICKS

WILLIAM MCEWAN

JENNA WHITE

Business Editor

LUKE SHAPIRO

#### **EDITORIAL STAFF**

SUMMER ALLEN AMANDA G. HULL HANNAH E. SHIRAR
JOSEPH L. BRZOZOWSKI GRACE KINLEY KRISTEN L. TIEMAN
MATTHEW GOLDSTEIN NICHOLAS MONTGOMERY TRENT N. TURK
JULIA GUARNERI LUKE NELSON BENJAMIN WOESSNER
MOLLIE PINION

#### **STAFF**

SHERIDAN ECKER TED ORR TAMARA ALLEN MARIN BENNEROTTE WILLIAM GILCHRIST KATIE PALMER Daria Brown MEREDITH GILLESPIE NICHOLAS RADER TOMASZ BUDZYN J. STILLMAN HANSON, JR. COLIN RIDGELL JORDAN CARLSON MAEVE HICKEY CLAYTON SHUPAK TRINITY CHAPMAN JASMINE JAFFE MADELYN STROHM WILLIAM COLTZER RYAN KAINZ RYAN VALERIO MADISON CONE MARK LEE MICHAEL VERMEULEN HANNAH DOHERTY CAITLIN MAGUIRE NICHOLAS WALTERS MIRIAM FUNK DRAPER NOAH MCDUFF THOMAS WARD NATHANIEL DRUM MAE ZEITOUNI

#### FACULTY ADVISORS

TANYA D. MARSH

Lead Administrative Professional SONYA A. CASSTEVENS

#### ADMINISTRATIVE OFFICERS

Susan R. Wente, President, Wake Forest University

Andrew Klein, Dean and Professor of Law

Aurora Edenhart-Pepe, Chief Administrative Officer

EVAN G. DIDIER, Assistant Dean of Admissions & Financial Aid

ALLYSON E. GOLD, Associate Dean of Experiential Learning, Professor of Law, and Director of Medical-Legal Partnership Clinic

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

Tanya Marsh, Associate Dean for Academic Affairs

Branden M. Nicholson, Interim Assistant Dean of Student Affairs and Executive Strategy

LOGAN ROACH, Assistant Dean of Development

KEITH ROBINSON, Associate Dean for Research and Professor of Law

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

Francie Scott, Assistant Dean of the Office of Career & Professional Development

CHRIS MARTIN, Assistant Dean for Academic Affairs

#### FACULTY

Jane Aiken, University Distinguished Professor

Alyse Bertenthal, Associate Professor of Law

MEGHAN BOONE, Associate Professor of Law

LANCE BURKE, Law Librarian

MARGARET BURNHAM, Teaching Professor

W. Jonathan Cardi, Professor of Law

CHRISTINE NERO COUGHLIN, Professor of Law

TIMOTHY DAVIS, Bess and Walter Williams Professor of Law

Marie-Amélie George, Associate Professor of Law

Brenda Gibson, Associate Professor of Legal Writing

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

LAURA P. GRAHAM, Director of Legal Analysis, Writing, and Research and Professor of Legal Writing

Heather Gram, Teaching Professor

Susan K. Grebeldinger, Professor of Law

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

RAINA HAQUE, Professor of Practice

Sally Irvin, Law Librarian

Kate Irwin-Smiler, Reference Librarian and Government Documents Librarian

JOHN H. KNOX, Henry C. Lauerman Professor of International Law and Former 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 Writing

HAROLD ANTHONY LLOYD, Professor of Law

MARY SUSAN LUCAS, Reference Librarian

CHRISTOPHER MEAZELL, Professor of Practice

Eleanor Morales, Director of Veterans Legal Clinic and Assistant Clinical Professor of Law

SARAH J. MORATH, Associate Dean for International Affairs and Professor of Law

Rebecca Morrow, Professor of Law

M. ELLEN MURPHY, Professor of Practice

Steve H. Nickles, C.C. Hope Chair in Law and Management and Professor of Law

 $\hbox{Alan R. Palmiter, $William T. Wilson, III Presidential Chair for Business Law and }$ 

Professor of Law

WENDY PARKER, Research Professor of Law

J. WILSON PARKER, Professor of Law

Gregory Parks, Professor of Law

ABIGAIL PERDUE, Founding Director of the D.C. Summer Judicial Externship Program and Professor of Law

JASMINE PLOTT, Law Librarian

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

SIMONE A. ROSE, Professor of Law

AUDRA SAVAGE, Assistant Professor of Law

Scott Schang, Director of the Environmental Law and Policy Clinic and Professor of Practice

DICK SCHNEIDER, Professor of Law

Sidney A. Shapiro, Frank U. Fletcher Chair in Administrative Law and Professor of Law Margaret H. Taylor, Professor of Law

Kenneth Townsend, Director of Leadership and Character in the Professional Schools and Teaching Professor

Steven Virgil,  $Clinical\ Professor\ of\ Law$ 

RONALD WRIGHT, Needham Yancey Gulley Professor of Criminal Law

#### EMERITI FACULTY

CAROL B. ANDERSON, Professor Emeritus of Law

BUTCH COVINGTON, Professor Emeritus of Law

MICHAEL K. CURTIS, Professor Emeritus of Law

H. MILES FOY III, Professor Emeritus of Law

Kate Mewhinney, Professor Emeritus of Law

Joel Newman, Professor Emeritus of Law

Suzanne Reynolds, Dean Emerita and Professor Emerita of Law

Patricia J. Roberts, Professor Emeritus of Law

THOMAS E. ROBERTS, Professor Emeritus of Law

Charles P. Rose, Jr., Professor Emeritus of Law

George K. Walker, Professor Emeritus of Law

 ${\it ROBERT~K.~WALSH,~Dean~Emeritus~and~Professor~Emeritus~of~Law}$ 

KENNETH A. ZICK II, Professor Emeritus of Law

#### EXTENDED FACULTY

Bryan Arkwright,  $Adjunct\ Professor\ of\ Law$ 

 ${\tt Enrique \ Armijo}, Adjunct \ Professor \ of \ Law$ 

JOHN BABCOCK, Adjunct Professor of Law and Partner at Wall, Esleeck, Babcock, L.L.P.

CLIFTON T. BARRETT, Adjunct Professor of Law and Instructor for the Department of

Justice Criminal Trial Advocacy Course

Neil Bloomfield, Adjunct Professor of Law

MARK BOYNTON, Adjunct Professor of Law and Counsel at Kilpatrick Townsend

MATTHEW H. BREEDING, Adjunct Professor of Law

MATTHEW BRYANT, Adjunct Professor of Law

JOHN D. BRYSON, Adjunct Professor of Law and Partner at Wyatt Early Harris Wheeler L.L.P.

KENNETH P. CARLSON, JR., Adjunct Professor of Law and Partner at Constangy, Brooks, and Smith L.L.P.

 ${\rm A.J.\ CEBERIO}, Adjunct\ Professor\ of\ Law$ 

MIREILLE CLOUGH, Adjunct Professor of Law

SETH COHEN, Adjunct Professor of Law

MARNE COIT, Adjunct Professor of Law

JOHN COMEGNO, Adjunct Professor of Law

LISA COSTNER,  $Adjunct\ Professor\ of\ Law$ 

ERIC DASHNER, Adjunct Professor of Law

COLLEEN DENOTO, Adjunct Professor

ASHLEY DIMUZIO, Adjunct Professor of Law

JASON EVANS, Adjunct Professor of Law and Partner at Troutman Sanders L.L.P.

STEVE FRIEDLAND, Adjunct Professor of Law

MICHAEL FULKS, Adjunct Professor

RANDALL GALYON, Adjunct Professor of Law

Jaime Garcia, Adjunct Professor of Law

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

Beth Gianopulos, Adjunct Professor of Law

CLARK GOODMAN, Adjunct Professor of Law

ELIZABETH GOODWIN, Adjunct Professor of Law

Bradley Grider, Adjunct Professor of Law

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

TODD HAIRSTON, Adjunct Professor of Law

CATHERINE HAMMACK-AVIRAN, Adjunct Assistant Professor of Law

CHAD HANSEN, Adjunct Professor of Law

DAVID HARRISON, Adjunct Professor of Law

Denise Hartsfield, Adjunct Professor of Law

SONNY HAYNES, Adjunct Professor of Law

Katie Heath, Adjunct Professor of Law

James Hickmon, Adjunct Professor of Law

Erin Illman, Adjunct Professor of Law

James Jansen, Adjunct Professor of Law

PATRICK KANE, Adjunct Professor of Law

JOSEPH KANNAN, Adjunct Professor of Law

MICHAEL KNAPP, Adjunct Professor of Law

Allison Levene, Adjunct Professor of Law

Deanna Lindquist, Adjunct Professor of Law

Kurt Lindquist, Adjunct Professor of Law

NICOLE LITTLE, Adjunct Professor of Law

AARON LONGO, Adjunct Assistant Professor

WILLIAM J. MCMAHON, IV, Adjunct Professor of Law and Partner at Constangy, Brooks, and Smith L.L.P.

 ${\tt GIL\ MIDDLE BROOKS}, Adjunct\ Professor\ of\ Law$ 

MEGAN MONROE, Adjunct Professor of Law

BAHATI MUTISYA, Adjunct Professor of Law

RYAN NILAND, Adjunct Professor of Law

MICHAEL G. OKUN, Adjunct Professor of Law and Partner at Patterson Harkavy L.L.P.

 ${\it Mark Parent}, {\it Adjunct Professor of Law}$ 

David Pishko, Adjunct Professor of Law

DONALD R. POCOCK, Adjunct Professor of Law and Partner at Nelson Mullins Riley and Scarborough L.L.P.

 ${\tt CRAIG\ PRINCIPE}, Adjunct\ Professor$ 

Stephanie Reese, Adjunct Professor of Law

 $\label{thm:local_cont} \mbox{Hon. Michael L. Robinson, } \mbox{Special Superior Court Judge for Complex Business Cases} \\ \mbox{and Adjunct Professor of Law}$ 

Brad Roehrenbeck, Adjunct Professor of Law

JOHN I. SANDERS, Adjunct Professor of Law

DAVID SENTER, Adjunct Professor of Law and Member, Nexsen Pruet, LLC

JEFFREY SKINNER, Adjunct Professor of Law

Andrew Smith, Adjunct Professor of Law

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

JEANNE SOMMA, Adjunct Professor of Law

Brittany Speas,  $Adjunct\ Professor\ of\ Law$ 

YOLANDA TAYLOR, Adjunct Professor of Law

Bruce Thompson, Adjunct Professor of Law

Jane Thompson, Adjunct Professor of Law

DONALD R. VAUGHAN, Adjunct Professor of Law and Attorney and Counselor at Law at Donald R. Vaughan and Associates

 $\label{thm:local_continuity} \mbox{John Vermitsky}, Adjunct\ Professor\ of\ Law\ and\ Partner\ at\ Morrow,\ Porter,\ Vermitsky\ \&\ Taylor,\ P.L.L.C.$ 

Shantel Walker,  $Adjunct\ Professor\ of\ Law$ 

 ${\tt ROB\,Wall}, Adjunct\ Professor\ of\ Law$ 

 ${\it Ward Wellman}, Adjunct\ Professor\ of\ Law$ 

ELISE WHITLEY,  $Adjunct\ Professor\ of\ Law$ 

Reid Whitten,  $Adjunct\ Professor\ of\ Law$ 

 ${\tt BEN\,WINIKOFF}, Adjunct\, Professor\,\, of\, Law$ 

 ${\it William \, Zoffer}, Adjunct \, Professor \, of \, Law$