

# Michigan Law Review

---

Volume 121 | Issue 4

---

2023

## Front Matter

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>

---

### Recommended Citation

Michigan Law Review, *Front Matter*, 121 MICH. L. REV. i (2023).  
Available at: <https://repository.law.umich.edu/mlr/vol121/iss4/1>

This Front Matter is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

# MICHIGAN LAW REVIEW

---

Vol. 121, No. 4

February 2023

## CONTENTS

### ARTICLES

RACE-ING ANTITRUST .....	<i>Bennett Capers</i> <i>Gregory Day</i>	523
REPUGNANT PRECEDENTS AND THE COURT OF HISTORY .....	<i>Daniel B. Rice</i>	577

### NOTES

MOOTING UNILATERAL MOOTNESS .....	<i>Scott T. MacGuidwin</i>	641
RECOGNIZING THE RIGHT TO FAMILY UNITY IN IMMIGRATION LAW .....	<i>Eugene Lee</i>	676

---

Except where otherwise expressly provided, the author of each Article, Essay, and Note in this issue has granted permission for copies of that Article, Essay, or Note to be made for educational use, provided that (i) copies are distributed at or below cost; (ii) copies identify the author, the *Michigan Law Review*, the volume, the number of the first page, and the year of the publication; and (iii) proper notice of copyright is affixed to each copy, attributing copyright to the author.

*Michigan Law Review* (ISSN 0026-2234) is published in October, November, December, February, March, April, May, and June. Subscriptions: United States, \$60 per year in advance, eight numbers; Foreign, \$70. Editorial and Business Offices: University of Michigan Law Library, 801 Monroe St., Ann Arbor, Michigan 48109-1210; MLR-business@umich.edu (Business); (734) 647-5817 (Fax). Website: <https://www.michiganlawreview.org>. Periodicals postage paid at Ann Arbor, Michigan and additional mailing offices. POSTMASTER: Send address changes to University of Michigan Law Library, 801 Monroe St., Ann Arbor, Michigan 48109-1210.

Printed by Sheridan, Hanover, PA 17331.

Recent Volumes: Single Issues \$10, Book Review \$16, and Special Issues \$12, postpaid, at Editorial and Business Offices.

Back issues in complete sets, volumes, or single issues may be obtained from William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, New York 14068; (800) 828-7571 (outside the United States: (716) 882-2600). Back issues are also available in PDF format through HeinOnline: <https://heinonline.org>. All issues are freely available in electronic format at the University of Michigan Law School Scholarship Repository: <https://repository.law.umich.edu/journals>.

Because back stock of the *Review* is turned over to a dealer, back numbers are available to the *Review* for a short time only. We must therefore ask that subscribers report the nonreceipt of copies within six months of the mailing date.

We gladly consider unsolicited manuscripts for publication via Scholastica. Citations in manuscripts should follow the form prescribed in *The Bluebook: A Uniform System of Citation* (21st ed. 2020) and *The Chicago Manual of Style* (17th ed. 2017). Please see our website for submission instructions.

# MICHIGAN LAW REVIEW ONLINE

The Online Companion of the *Michigan Law Review*

## Call for Submissions

The editors of the *Michigan Law Review* invite essay submissions on current areas of legal thought and research for the *Michigan Law Review Online*.

*Michigan Law Review Online* publishes short articles and op-ed style pieces by academics, judges, practitioners, and law students, as well as timely responses to articles in the print journal of the *Michigan Law Review*. Our online companion quickly disseminates the legal community's initial impressions of important judicial decisions and legislative developments.

*Michigan Law Review Online* prefers submissions under 6,000 words inclusive of footnotes and can only very rarely accept longer pieces. Submissions should be written in a style accessible to a general audience of practitioners and policymakers. Pieces will be published on an expedited production schedule.

Visit *Michigan Law Review Online* at  
[www.michiganlawreview.org](http://www.michiganlawreview.org).

Please send questions and comments to the  
Executive Online Editors at  
[mlr.online@umich.edu](mailto:mlr.online@umich.edu)

The editors of the *Michigan Law Review*  
are pleased to announce

2023 SURVEY OF BOOKS  
RELATING TO THE LAW  
published April 2023

The 2023 Survey presents reviews of law-related  
books published in 2020, 2021, and 2022.

Please address inquiries to:

Michigan Law Review  
University of Michigan Law School  
Attn: Book Review Editors  
801 Monroe Street  
Ann Arbor, MI 48109-1210

Visit our website at  
[www.michiganlawreview.org](http://www.michiganlawreview.org).

# UNIVERSITY OF MICHIGAN LAW SCHOOL

## *Administrative Officers*

Santa J. Ono, B.A., Ph.D., *President of the University*  
Laurie McCauley, B.S., D.D.S., M.S., Ph.D., *Provost and Executive Vice President for Academic Affairs*  
Mark D. West, B.A., J.D., *Nippon Life Professor of Law, David A. Branch Dean of Law*  
Debra Chopp, B.A., J.D., *Clinical Professor of Law, Associate Dean for Experiential Education*  
Kristina Daugirdas, A.B., J.D., *Professor of Law, Associate Dean for Academic Programming*  
Kyle D. Logue, B.A., J.D., *Douglas A. Kahn Collegiate Professor of Law, Associate Dean for Faculty and Research*  
Kimberly L. D'Haene, B.A., J.D., *Assistant Dean of Student Services*  
Michael Dubin, B.S., M.A., *Assistant Dean for Development and Alumni Relations*  
Ramji Kaul, B.A., J.D., *Assistant Dean for Career Planning*  
Lindsey Stetson, B.A., J.D., *Assistant Dean for Student Life*  
Sarah C. Zearfoss, B.A., J.D., *Senior Assistant Dean for Admissions and Financial Aid*

## *Professors Emeriti of Law*

David L. Chambers, A.B., LL.B.,  
*Wade H. McCree, Jr. Collegiate Professor of Law*  
Edward H. Cooper, A.B., LL.B.,  
*Thomas M. Cooley Professor of Law*  
Donald N. Duquette, B.A., J.D.  
*Clinical Professor of Law*  
Phoebe C. Ellsworth, A.B., Ph.D.,  
*Frank Murphy Distinguished Professor of Law and Psychology*  
Bruce W. Frier, B.A., Ph.D.,  
*John and Teresa D'Arms Distinguished University Professor of Classics and Roman Law*  
Philip M. Frost, B.A., J.D.  
*Clinical Professor of Law*  
Thomas A. Green, B.A., Ph.D., J.D.,  
*John Philip Dawson Collegiate Professor of Law*  
Samuel R. Gross, A.B., J.D.,  
*Thomas and Mabel Long Professor of Law*  
James C. Hathaway, LL.B., LL.M., J.S.D.,  
*James E. and Sarah A. Degan Professor of Law*  
Jerold H. Israel, B.B.A., LL.B.,  
*Alene and Allan F. Smith Professor of Law*  
Thomas E. Kauper, A.B., J.D.,  
*Henry M. Butzel Professor of Law*  
James E. Krier, B.S., J.D.,  
*Earl Warren DeLano Professor of Law*  
Richard O. Lempert, A.B., J.D., Ph.D.,  
*Eric Stein Distinguished University Professor of Law and Sociology*  
William I. Miller, B.A., Ph.D., J.D.,  
*Thomas G. Long Professor of Law*  
Sallyanne Payton, B.A., LL.B.,  
*L. Bates Lea Professor of Law*  
Margaret Jane Radin, A.B., M.F.A., J.D., LL.D.,  
*Henry King Ransom Professor of Law*  
Paul D. Reingold, B.A., J.D.  
*Clinical Professor of Law*  
Nicholas J. Rine, B.A., J.D.  
*Clinical Professor of Law*  
Suellyn Scamecchia, B.A., J.D.  
*Clinical Professor of Law*  
E. Philip Soper, B.A., M.A., J.D., Ph.D.,  
*James V. Campbell Professor of Law*  
Theodore J. St. Antoine, A.B., J.D.,  
*James E. and Sarah A. Degan Professor of Law*  
Joseph Vining, B.A., M.A., J.D.,  
*Harry Burns Hutchins Collegiate Professor of Law*  
Lawrence W. Waggoner, B.B.A., J.D., D.Phil.,  
*Lewis M. Simes Professor of Law*  
Peter K. Westen, B.A., J.D.,  
*Frank G. Millard Professor of Law*  
James Boyd White, A.B., A.M., LL.B.,  
*L. Hart Wright Collegiate Professor of Law*  
James J. White, B.A., J.D.,  
*Robert A. Sullivan Professor of Law*  
Christina B. Whitman, A.B., M.A., J.D.,  
*Francis A. Allen Collegiate Professor of Law*

## *Professors of Law*

Michelle Adams, B.A., J.D., LL.M., *Henry M. Butzel Professor of Law*  
Julian Arato, B.A., M. Phil., J.D., LL.M., J.S.D.  
Reuven S. Avi-Yonah, B.A., A.M., Ph.D., J.D.,  
*Irwin I. Cohn Professor of Law*  
Samuel Bagenstos, B.A., J.D.,  
*Frank G. Millard Professor of Law*  
Michael S. Barr, B.A., M.Phil., J.D., *Roy F. and Jean Humphrey Proffitt Professor of Law*  
Laura N. Beny, B.A., M.A., J.D., Ph.D.,  
*Earl Warren DeLano Professor of Law*  
Evan H. Caminker, B.A., J.D.,  
*Branch Rickey Collegiate Professor of Law*  
Maureen Carroll, B.S., J.D.  
Albert Choi, B.A., J.D., Ph.D.,  
*Paul G. Kauper Professor of Law*  
Sherman J. Clark, B.S., J.D.,  
*Kirkland and Ellis Professor of Law*  
Nicolas Cornell, A.B., Ph.D., J.D.  
Daniel Crane, B.A., J.D., *Frederick Paul Furth Sr. Professor of Law*  
Alicia Davis, B.S., M.B.A., J.D.  
Rebecca S. Eisenberg, B.A., J.D.,  
*Robert and Barbara Luciano Professor of Law*  
Sam Erman, A.B., J.D., Ph.D.  
Matthew L.M. Fletcher, *Harry Burns Hutchins Professor of Law*  
Richard D. Friedman, B.A., J.D., D.Phil.,  
*Alene and Allan F. Smith Professor of Law*  
Daniel Halberstam, B.A., J.D., *Eric Stein Collegiate Professor of Law*  
Scott Hershovitz, A.B., M.A., D.Phil., J.D., *Thomas G. and Mabel Long Professor of Law*  
Donald J. Herzog, A.B., A.M., Ph.D.,  
*Edson R. Sunderland Professor of Law*  
James Hines Jr., B.A., M.A., Ph.D.,  
*L. Hart Wright Collegiate Professor of Law*  
Nicholas C. Howson, B.A., J.D.,  
*Pao Li Tsiang Professor of Law*  
Ellen D. Katz, B.A., J.D.,  
*Ralph W. Aigler Professor of Law*  
Vikramaditya S. Khanna, B.C.A., LL.B., S.J.D.,  
*William W. Cook Professor of Law*  
Alexandra Klass, A.B., J.D., *James G. Degnan Professor of Law*  
Jessica D. Litman, B.A., M.F.A., J.D.,  
*John F. Nickoll Professor of Law*  
Leah Litman, A.B., J.D.  
Catharine A. MacKinnon, B.A., J.D., Ph.D.,  
*Elizabeth A. Long Professor of Law*

Nina A. Mendelson, A.B., J.D.,  
*Joseph L. Sax Collegiate Professor of Law*  
Gabriel Mendlow, A.B., Ph.D., J.D.  
Julian Davis Mortenson, A.B., J.D., *James G. Philipp Professor of Law*  
William Novak, B.A., M.A., Ph.D.  
*Charles F. and Edith J. Clyne Professor of Law*  
Sanjukta Paul, A.B., M.A., J.D.  
Aaron Perzanowski, A.B., J.D., *Thomas W. Lacchia Professor of Law*  
John A.E. Pottow, A.B., J.D.  
*John Philip Dawson Collegiate Professor of Law*  
James J. Prescott, B.A., J.D., Ph.D.,  
*Henry King Ransom Professor of Law*  
W. Nicholson Price, II, A.B., J.D., Ph.D.  
Eve Brensike Primus, B.A., J.D., *Yale Kamisar Collegiate Professor of Law*  
Richard A. Primus, A.B., D.Phil., J.D.  
*Theodore J. St. Antoine Collegiate Professor of Law*

Adam C. Pritchard, B.A., M.P.P., J.D.  
*Frances and George Skestos Professor of Law*  
Steven R. Ratner, A.B., M.A., J.D.,  
*Bruno Simma Collegiate Professor of Law*  
Gabriel Rauterberg, B.S., J.D.  
Donald H. Regan, A.B., LL.B., B.Phil., Ph.D.,  
*William W. Bishop, Jr. Collegiate Professor of Law*  
Mathias W. Reimann, Dr.Iur., LL.M.,  
*Hessel E. Yntema Professor of Law*  
Veronica Santarosa, LL.B., B.A., M.A., LL.M., Ph.D.  
Margo Schlanger, B.A., J.D.  
*Wade H. and Doris M. McCree Collegiate Professor of Law*  
Carl E. Schneider, A.B., J.D.,  
*Chauncey Stillman Professor of Law*  
Rebecca J. Scott, A.B., M.Phil., Ph.D.,  
*Charles Gibson Distinguished University Professor of History*  
Gil Seinfeld, A.B., J.D., *Robert A. Sullivan Professor of Law*  
Christopher Walker, A.B., M.P.P., J.D.  
Ekow Yankah, A.B., J.D., B.C.L., *Thomas M. Cooley Professor of Law*

#### *Assistant Professors of Law*

Edward Fox, B.A., J.D., Ph.D.  
Daniel Fryer, B.S., M.A., J.D., Ph.D., ABD  
Noah Kazis, A.B., J.D.  
Emily Prifogle, B.A., M.Sc., J.D., M.A., Ph.D.  
Rachel Rothschild, A.B., J.D., M.A., M.Phil., Ph.D.

Steven R. Schaus, A.B., Ph.D., J.D.  
Roseanna Sommers, B.A., J.D., Ph.D.  
Salomé Viljoen, A.B., M.Sc., J.D.  
Jeff Zhang, A.B., J.D., Ph.D.

#### *Clinical Professors of Law*

Matthew Andres, B.A., J.D.  
Nicole Appleberry, A.B., J.D., LL.M.  
Edward R. Becker, B.A., J.D.  
Howard Bromberg, B.A., J.D., J.S.M.  
Bridgette Carr, B.A., J.D.  
Margaret Hannon, B.A., J.D.  
Joshua Kay, B.A., M.A., Ph.D., J.D.  
David A. Moran, B.S., B.A., M.A., M.S., J.D.

Mark K. Osbeck, A.B., M.A., J.D.  
Timothy Pinto, B.A., J.D.  
Vivek Sankaran, B.A., J.D.  
David Santacroce, B.A., J.D., LL.M.  
Kimberly A. Thomas, B.S., J.D.  
Dana Thompson, B.S., J.D.  
Frank E. Vandervort, B.A., J.D.  
Beth H. Wilensky, B.A., J.D.

#### *Clinical Assistant Professors of Law*

Patrick Barry, B.A., J.D., Ph.D.  
Elizabeth Campbell, B.A., J.D.  
Mira Edmonds, B.A., J.D.  
David Guenther, B.A., M.A., J.D.  
Kerry Kornblatt, B.A., J.D.  
Christopher Knight, B.S., J.D.  
Julianna Lee, A.B., M.A., J.D.

Jessica Lefort, B.A., J.D.  
Tifani Sadek, B.S., J.D.  
Oday Salim, M.A., J.D., LL.M.  
Amy Sankaran, B.A., J.D.  
Imran Syed, A.B., J.D.  
Kristen Wolff, B.S., M.S., J.D.

#### *Professors from Practice*

J. Phillip Adams, B.A., J.D., LL.M.  
Luis C. deBaca, B.A., J.D.  
Timothy L. Dickinson, B.A., J.D., LL.M.  
Jennifer Haverkamp, B.A., M.A., J.D.  
Robert Hirshon, B.A., J.D.  
*Frank G. Millard Professor from Practice*  
Barbara McQuade, B.A., J.D.

Chavi Keeney Nana, B.A., M.Phil., J.D.  
Leonard Niehoff, A.B., J.D.  
Susan Page, A.B., J.D.  
Michael Steinberg, B.A., J.D.  
David Uhlmann, B.A., J.D.,  
*Jeffrey F. Liss Professor from Practice*

#### *L. Bates Lea Global Professors of Law*

Susanne Baer, LL.M.  
Paul Brand, B.A., M.A., D.Phil  
Christine Chinkin, LL.B., LL.M., Ph.D.  
John G. H. Hudson, M.A., D.Phil

Caroline Humfress, B.A., M.A., Ph.D.  
Haw-Jin Kim, B.S., Dr. Jur., LL.M.  
J. Christopher McCrudden, LL.B., LL.M., D.Phil  
Anne Peters, LL.M.

# MICHIGAN LAW REVIEW

Vol. 121, No. 4

February 2023

## EDITORIAL BOARD

### *Editor-in-Chief*

DASHAYA J. FOREMAN, *of Pennsylvania*

### *Managing Editor*

NIA C. VOGEL, *of New York*

### *Executive Development Editor*

MATTHEW D FENG, *of Texas*

### *Executive Production Editor*

MICHAELA OLSON, *of the District of Columbia*

### *Executive Articles Editor*

TAYLOR J. WILSON, *of Missouri*

### *Executive Notes Editor*

ANNIE SCHUVER, *of Missouri*

### *Senior Executive Editor*

PHILIP E. MANNING, *of Michigan*

### *Articles Editors*

WILLIAM W. ELLIS II, *of Maine*

EUGENE LEE, *of Washington*

SCOTT T. MACGUIDWIN, *of Michigan*

SETH MAYER, *of Pennsylvania*

CHRISTINA VAN WAGENEN, *of Colorado*

### *Notes Editors*

WILLIAM HANNA, *of Pennsylvania*

NOAH P. HARRISON, *of Colorado*

HANK MINOR, *of Michigan*

ALEXANDER J. NORONHA, *of California*

LARA C. RYAN, *of Ireland*

### *Executive Editors*

JACOB I. ABUDARAM, *of New York*

ERIK R. BUBOLZ, *of Michigan*

DARYL T. DIETSCHKE, *of Minnesota*

WILLIAM S. JANKOWSKI, *of Connecticut*

ROSHNI JAMSHED SOPARIWALLA, *of California*

LAUREN J. YU, *of Ohio*

### *Managing Online Editor*

ZOFIA A. PEACH, *of Massachusetts*

### *Executive Online Editors*

GRANT SIMON, *of Michigan*

JOSÉ L. URTEAGA, *of Arizona*

AMULYA VADAPALLI, *of India*

JEN XUE, *of Illinois*

### *Book Review Editors*

GABRIEL E. CHESS, *of North Carolina*

ELENA S. METH, *of Pennsylvania*

### *Senior Editors*

ROBERTO V. ARZA, *of Florida*

ANJALI L. BALIGA, *of New Jersey*

VICTORIA BASEDOW, *of Australia*

SHAY M. COLLINS, *of New York*

REBECCA C. FISHER, *of New Jersey*

KIARA D. GOODWINE, *of Indiana*

RACHEL A. HARRINGTON, *of Washington*

AMY W. JIANG, *of Texas*

LAUREN E. KIMMEL, *of Michigan*

ALEX W. KORNFELD, *of New Jersey*

ALLY KRENOS, *of Nevada*

REBECCA LOWY, *of New York*

ELIZABETH R. MANSOUR, *of Michigan*

HIMANI NADGAUDA, *of California*

ALEXIS OH, *of Pennsylvania*

ALEXANDRA ROGEL, *of New York*

MARK RUCCI, *of New Jersey*

JOHN P. RYAN, *of California*

MEGAN M. SHANKLIN, *of Ohio*

Y. SEAN SHIH, *of Virginia*

GABRIELLE E. SIMECK, *of Michigan*

JULIA L. SUTHERLAND, *of North Carolina*

MAUREEN V. TABET, *of Illinois*

LAUREN ASHLEY WEEK, *of California*

KATHERINE M. WELTY, *of Arizona*

JACKMAN L. WILSON, *of Oregon*

### *Associate Editors*

HALLE E. ALITZ, *of Massachusetts*

BRILLIAN W. BAO, *of New Jersey*

DELANEY BATTLE, *of Illinois*

SARAH M.L. BENDER, *of Alabama*

MEGAN R. BEYER, *of Ohio*

WILLIAM BOCK, IV, *of Indiana*

CARTER E. BRACE, *of the United Kingdom*

ROBERT N. BREWER, *of Michigan*

CHARLES L. BROWN, *of Missouri*

SOPHIA G. BUCCI, *of Massachusetts*

KATHRYN E.T. BUGGS, *of Wisconsin*

STEPHANIE L. CHIN, *of Massachusetts*

WESLEY S. CHRISTMANN, *of New Jersey*

COLLIN D. CHRISTNER, *of Missouri*

HANNAH A. COHEN SMITH, *of Florida*

CASEY M. COUSINEAU, *of California*

AARON COX, *of Indiana*

AVIVA K. DIAMOND, *of Oregon*

JACQUELINE E. DIGGS, *of Michigan*

SOPHIA DILLON-DAVIDSON, *of Massachusetts*

RITA ELFAISSI, *of California*

JAMES "TRE" W. FITTS III, *of California*

KASSANDRA S. FOTIADIS, *of New Jersey*

ALLISON M. GOLDMAN, *of Illinois*

JOHN E. GROSBOLL, *of Illinois*

ETHAN HAUGHIE, *of Michigan*

GRAHAM K. HEISE, *of Illinois*

DAVID M. HOLMES, *of New York*

NICHOLAS GADOLA HOLMES, *of Michigan*

HANNAH M.S. JUGE, *of California*

LAUREN JUNG, *of Washington*

CALVIN CHANGYOUNG KIM, *of New York*

MARGARET R. LARIN, *of Michigan*

CARLOS A. LARRAURI, *of Florida*

LOUISA R. LENNON, *of New York*

ALEXANDER LEVIN, *of California*

MARGOT A. LIBERTINI, *of Michigan*

BENJAMIN D. MARVIN-VANDERRYN, *of Colorado*

GRAYSON M. METZGER, *of Maryland*

ASHLEY N. MUNGER, *of Michigan*

ADINA NADLER, *of Michigan*

ELIZABETH L. MUNOZ-SMITH, *of Michigan*

MADELEINE NAGLE, *of California*

KATHERINE M. OSBORN, *of California*

EDWARD WEBRE PLAUT, *of Texas*

ROSS HASTINGS POLLACK, *of New Jersey*

NETHRA K. RAMAN, *of California*

JORDAN A. SCHULER, *of North Carolina*

FRANCIS H. SCHULZE, *of Massachusetts*

JACLYN A. SCHULZE, *of New York*

BRANDON A. SPLITTER, *of Missouri*

THEODORE L. STEINBERG, *of Massachusetts*

NICHOLAS A. SWEENEY, *of Ohio*

MAX TOTSKY, *of Michigan*

ERIC M. WALKER, *of Idaho*

MUIZ K. WANI, *of Georgia*

BRITTANY WARREN, *of Florida*

MATTHEW D. WEINER, *of Michigan*

TALLULAH D. WICK, *of New York*

PETER C. WOITAL, *of New Jersey*

MICHELE A. WOLK, *of New York*

DEREK ZEIGLER, *of Virginia*

### *Editorial Assistant*

CONNIE M. SWINDLE

### *Manager*

JESSICA L. PASQUALE



