

# Michigan Law Review

---

Volume 120 | Issue 8

---

2022

## Front Matter

Michigan Law Review

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

---

### Recommended Citation

Michigan Law Review, *Front Matter*, 120 MICH. L. REV. i (2022).  
Available at: <https://repository.law.umich.edu/mlr/vol120/iss8/1>

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. 120, No. 8

June 2022

## CONTENTS

### COLLOQUIUM NEW VISIONS OF CIVIL RIGHTS LAWYERING

#### FOREWORD

CIVIL RIGHTS IN TIMES OF UNCERTAINTY  
(THE ANTHROPOCENE) . . . . . *Jeffrey Omari* 1571

#### ARTICLES

AN ARGUMENT AGAINST UNBOUNDED  
ARREST POWER: THE EXPRESSIVE FOURTH  
AMENDMENT AND PROTESTING WHILE BLACK . . . *Karen J. Pita Loor* 1581

MOST FAVORED RACIAL HIERARCHY:  
THE EVER-EVOLVING WAYS OF THE SUPREME COURT'S  
SUPERORDINATION OF WHITENESS . . . . . *David Simson* 1629

ENDURING EXCLUSION . . . . . *Daiquiri J. Steele* 1667

RACIAL TRAUMA IN  
CIVIL RIGHTS REPRESENTATION . . . . . *Angela Onwuachi-Willig*  
*Anthony V. Alfieri* 1701

LAWYERING THE INDIAN  
CHILD WELFARE ACT . . . . . *Matthew L.M. Fletcher*  
*Wenona T. Singel* 1755

---

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).

NEW FROM BRANDEIS UNIVERSITY PRESS

# When Freedom Speaks

The Boundaries and the Boundlessness of Our  
First Amendment Right

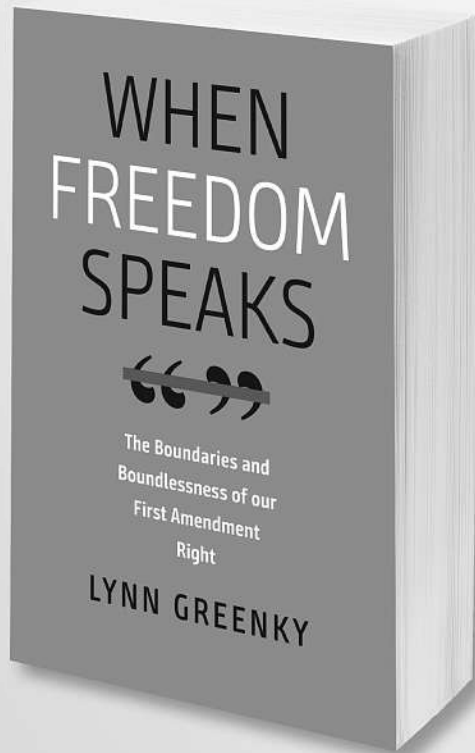
**LYNN GREENKY**

“An accessible guide to the past, present, and future of free speech in the United States.”—David Cole, National Legal Director, ACLU, George Mitchell Professor in Law and Public Policy at Georgetown University

“*When Freedom Speaks* serves as a reminder that the First Amendment is a living, breathing structure that continues to both challenge and reinforce our country’s definition of free speech. Greenky takes us on a thorough journey through all the trials and tribulations it has faced. Anyone with any opinion will benefit from reading this timely road map on the cornerstone of our Constitution.”

—Lauren Tousignant, Associate Digital Editor, *New York Post*

Brandeis Series in Law and Society  
Paper \$27.95



**Brandeis** | UNIVERSITY  
PRESS

[www.brandeisuniversitypress.com](http://www.brandeisuniversitypress.com)

Distributed by the University of Chicago Press

# UNIVERSITY OF MICHIGAN LAW SCHOOL

## *Administrative Officers*

Mary Sue Coleman, B.A., Ph.D., *President of the University*  
Susan M. Collins, B.A., 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., *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 for 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*  
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*  
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*  
Suelyn 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*

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*  
Richard D. Friedman, B.A., J.D., D.Phil.,  
*Alene and Allan F. Smith Professor of Law*  
Bruce W. Frier, B.A., Ph.D.,  
*John and Teresa D'Arms Distinguished University Professor of Classics and Roman Law*  
Monica Hakimi, B.A., J.D., *James V. Campbell Professor of Law*  
Daniel Halberstam, B.A., J.D., *Eric Stein Collegiate Professor of Law*  
James C. Hathaway, LL.B., LL.M., J.S.D.,  
*James E. and Sarah A. Degan 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*  
Jessica D. Litman, B.A., M.F.A., J.D.,  
*John F. Nickoll Professor of Law*  
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. Phillipp Professor of Law*  
William Novak, B.A., M.A., Ph.D.  
*Charles F. and Edith J. Clyne 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*  
Bruno Simma, Doctorate 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  
Leah Litman, A.B., J.D.

Emily Prifogle, B.A., M.Sc., J.D., M.A., Ph.D.  
Roseanna Sommers, B.A., J.D., Ph.D.

#### *Clinical Professors of Law*

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.  
Nancy Vettorello, B.A., M.U.P., J.D.  
Beth H. Wilensky, B.A., J.D.

#### *Clinical Assistant Professors of Law*

Matthew Andres, B.A., J.D.  
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.  
Jessica Lefort, B.A., J.D.  
Tifani Sadek, B.S., J.D.  
Amy Sankaran, B.A., J.D.  
Imran Syed, A.B., 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.  
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. 120, No. 8

June 2022

## EDITORIAL BOARD

### *Editor-in-Chief*

AHMED RIZK, *of Michigan*

### *Managing Editor*

JULIANNA R. ST. ONGE, *of New Jersey*

*Executive Production Editor*  
EMILY M. STATHAM, *of Texas*

*Executive Development Editor*  
SHANA TOOR, *of Michigan*

*Executive Articles Editor*  
LATAZIA R. CARTER, *of Tennessee*

*Executive Notes Editor*  
HANNAH BERL HOFFMAN, *of New York*

*Senior Executive Editor*  
KEVIN J. DECKER, *of New Jersey*

### *Articles Editors*

RUBY EMBERLING, *of Michigan*  
KACYN H. FUJII, *of California*  
JUSTIN R. HILL, *of Indiana*  
KELLY RECKER, *of California*  
PHOEBE K. ROQUE, *of Massachusetts*

### *Notes Editors*

HYE-JIN KIM, *of New Jersey*  
HANNAH E. PATON, *of New York*  
SOFIA SQUATRITI, *of Michigan*  
BAILEY C. TULLOCH, *of Kansas*  
ERIN P. WOODRUFF, *of Georgia*

### *Executive Editors*

KATELYN R. ASMUS, *of Iowa*  
JANE E. FISHER, *of Michigan*  
ALEXANDRA HUDON, *of Canada*  
JESSICA M. PADUGANAN, *of Arizona*  
STEVEN VAN IWAARDEN, *of Michigan*

### *Managing Online Editor*

JESS DAVIS, *of California*

### *Executive Online Editors*

CHARLOTTE BOGHOSSIAN, *of Massachusetts*  
MATTHEW P. GUIANG, *of Minnesota*

KATIE MOE, *of Wisconsin*  
LILY SAWYER-KAPLAN, *of Connecticut*

### *Book Review Editors*

BROOKE K. SIMONE, *of Pennsylvania*  
ADITYA VEDAPUDI, *of Michigan*

### *Senior Editors*

BRENDON J. ANDERSON, *of New York*  
CHARLES P. BALAAN, *of Pennsylvania*  
VICTORIA I. CLARK, *of Colorado*  
SAMUEL A. CRIMMINS, *of Massachusetts*  
SARA EL SOUKI, *of Michigan*  
ELIZABETH FAKHOURY, *of Michigan*  
MATTHEW FOLENSBEE, *of Texas*  
BRYAN T. FREDERICK, *of Michigan*  
JOHN FRIESS, *of Ohio*  
SAMANTHA J. GOWING, *of Georgia*  
CHRISTIANA G. JOHNSON, *of New York*  
RANDALL F. KHALIL, *of California*  
CAITLIN A. KIERUM, *of Washington*  
COLTON R. LACY, *of Colorado*

DENISE R. LASPINA, *of New York*  
STEPHAN DAVID LLERENA, *of California*  
MATTHEW D. LUSTBADER, *of Illinois*  
JOVIAN NIKO SALVANERA MARCELO, *of California*  
ERIN A. MONTERA, *of New York*  
ALAINA M. RICHERT, *of Indiana*  
KATHRYN C. SCULLY, *of Virginia*  
SARAH I. SIEGEL, *of Oregon*  
K. JEFF WANG, *of Connecticut*  
TYLER J. WASHINGTON, *of Illinois*  
CHARLIE M. WATHIEU, *of Maryland*  
ELIZABETH K. WEI, *of Maryland*  
KURT J. WOHLERS, *of Washington*

### *Associate Editors*

JACOB I. ABUDARAM, *of New York*  
ROBERTO V. ARZA, *of Florida*  
ANJALI L. BALIGA, *of New Jersey*  
VICTORIA BASEDOW, *of Australia*  
RICHA BIJLANI, *of Michigan*  
ERIK R. BUBOLZ, *of Michigan*  
GABRIEL E. CHESS, *of North Carolina*  
SHAY M. COLLINS, *of New York*  
DARYL T. DIETSCH, *of Minnesota*  
WILLIAM W. ELLIS II, *of Maine*  
MATTHEW D. FENG, *of Texas*  
REBECCA C. FISHER, *of New Jersey*  
DASHAYA J. FOREMAN, *of Pennsylvania*  
KIARA D. GOODWINE, *of Indiana*  
WILLIAM HANNA, *of Pennsylvania*  
RACHEL A. HARRINGTON, *of Washington*  
NOAH P. HARRISON, *of Colorado*  
WILLIAM S. JANKOWSKI, *of Connecticut*  
AMY W. JIANG, *of Texas*  
LAUREN E. KIMMEL, *of Michigan*  
ALEX W. KORNFELD, *of New Jersey*  
ALLY KRENOS, *of Nevada*  
EUGENE LEE, *of Washington*  
REBECCA LOWY, *of New York*  
SCOTT T. MACGUIDWIN, *of Michigan*  
PHILIP E. MANNING, *of Michigan*  
ELIZABETH R. MANSOUR, *of Michigan*  
SETH MAYER, *of Pennsylvania*  
ELENA S. METH, *of Pennsylvania*

HANK MINOR, *of Michigan*  
HIMANI NADGAUDA, *of California*  
ALEXANDER J. NORONHA, *of California*  
ALEXIS OH, *of Pennsylvania*  
MICHAELA OLSON, *of the District of Columbia*  
ANDREW M. PARKS, *of Michigan*  
ZOFIA A. PEACH, *of Massachusetts*  
ALEXANDRA ROGEL, *of New York*  
MARK RUCCI, *of New Jersey*  
JOHN P. RYAN, *of California*  
LARA C. RYAN, *of Ireland*  
ANNIE SCHUVER, *of Missouri*  
MEGAN M. SHANKLIN, *of Ohio*  
Y. SEAN SHIH, *of Virginia*  
GABRIELLE E. SIMECK, *of Michigan*  
GRANT SIMON, *of Michigan*  
ROSHNI JAMSHED SOPARIWALLA, *of California*  
JULIA L. SUTHERLAND, *of North Carolina*  
MAUREEN V. TABET, *of Illinois*  
JOSE L. URTEAGA, *of Arizona*  
AMULYA VADAPALLI, *of India*  
CHRISTINA VAN WAGENEN, *of Colorado*  
NIA C. VOGEL, *of New York*  
LAUREN ASHLEY WEEK, *of California*  
KATHERINE M. WELTY, *of Arizona*  
JACKMAN L. WILSON, *of Oregon*  
TAYLOR J. WILSON, *of Missouri*  
JEN XUE, *of Illinois*  
LAUREN J. YU, *of Ohio*

### *Manager*

JESSICA L. PASQUALE

### *Editorial Assistant*

CONNIE M. SWINDLE