



Association of American Law Schools

SECTION ON STATE AND LOCAL GOVERNMENT LAW

NEWSLETTER

Volume XXI, Number 1

October, 2010

Section Officers

Professor Patricia Salkin, Chair
Professor Kenneth Murchison Chair-Elect
Professor Rick Su, Secretary
Professor Sheila Foster, Treasurer

Newsletter Editor

Professor Joel A. Mintz

Executive Committee

Professor Michele Wilde Anderson

Table of Contents

	<u>Page</u>
An Announcement Regarding the 2011 Annual Meeting Program by Professor Patricia E. Salkin	2
Chair's Column by Professor Richard Briffault	4
A Message From the ABA Section of State and Local Government Law by Professor Janice Griffith	5
Summary of United States Supreme Court Cases in State and Local Government Law by Professor John Martinez	6
Bibliography of Recent Section Member Publications by Professor J. Clark Kelso	13

AALS ANNUAL MEETING PROGRAM
**Climate Change, the "Green Building" Movement, and Renewable
Energy Sources: Transactional and Policy Implications**
**Joint Program of the State and Local Government Law Section
And the Real Estate Transactions Section**
January 6, 2011 (2:00 pm)

**by Professor Patricia E. Salkin
Albany Law School**

Increased awareness of and sensitivity to climate change has produced dramatic changes, both from market actors and from government policymakers. For example, concern about climate change has generated substantial interest in energy-efficient building standards for homes and workplaces. The marketplace has developed ostensible solutions, such as the LEED green building rating system, designed to promote design and construction practices that increase profitability while reducing the negative environmental impacts of buildings. Increasingly, local governments are adopting (or considering the adoption of) LEED and other trade-group-developed standards into their permitting processes. Federal and state governments bestow tax advantages to property owners who develop or retrofit green buildings. Many corporate entities are demanding that their leases be "green," that properties they buy be "green," etc. — raising new and unanswered negotiation and documentation questions.

Likewise, appreciation of the environmental impact of fossil fuel use has produced renewed emphasis upon the development of renewable energy sources (such as wind and solar). Again, federal and state governments have bestowed significant tax advantages to property owners that install renewable energy production equipment (even on a small-scale). As more property owners implement such technology, issues of private and municipal land use control will assume increasing importance.

This joint half-day program will include two panels and presentations by:

- Carl Circo (Arkansas), *Allocating Green Building Risks in Construction and Design Contracts*. Using the lens of design and construction law theory, Prof. Circo will examine project structures and contract provisions being used or proposed in the design and construction industry to allocate the special risks associated with green building standards and objectives, with a special focus upon how well some leading proposals adhere to the principle that contractual responsibility should generally be allocated to the contracting party most able to manage the associated risks.

- Jim Smith (Georgia), *The Green Home Movement: How Should We Define and Regulate "Green Homes," Encourage Their Production, and Protect Purchasers and Residents?* Prof. Smith's paper will provide an overview of major issues of

importance for green homes, including: How should we define "green homes"? Should the standards be national, regional, or local, and established by government or trade groups? Should standards vary based upon the type of housing? Do municipal regulations facilitate or inhibit the development of green homes? What construction materials are appropriate for green homes? What is the relationship between the "green home" movement and affordable housing, and what is the role of manufactured housing in this movement? What landscaping features make a home "green"? Are there adequate protections for purchasers/tenants of properties being marketed as "green"?

- Ngai Pindell (UNLV) Prof. Pindell's paper will focus upon the March 2010 decision in *Urban Habitat Program v. City of Pleasanton* as a means to illustrate the interaction between climate change policy and affordable housing policy, with an emphasis on how laws and policies addressing climate change can either frustrate or support affordable housing efforts. In the dispute, the City of Pleasanton enacted a housing cap limiting the number of residential building permits to be issued each year, placing the city in conflict with California's planning law, which requires cities to make available for residential development sufficient suitable land to accommodate its share of the region's housing needs. The state attorney general intervened on the plaintiff's behalf to enforce state planning laws, and also to promote the state's interest in the state's greenhouse gas emission legislation, the Global Warming Solutions Act of 2006, which sought to reduce California's carbon footprint by, among other means, reducing vehicle miles traveled.
- Michael Wolf (Florida), *Incorporating Green Building Standards into Local Land Use Regulations: A Word (or Two) of Caution About "Green Zoning."* Prof. Wolf will argue that while local officials are to be commended for thinking "green," standards developed by the building industry such as LEED and Green Globes were not designed to perform a public regulatory function and are far from ideal as a foundation for sensible, objective land use regulations. His paper will explore the following questions: the delegation problem (can and should local laws be based upon standards that are a moving target?); the compatibility problem (are green building standards inconsistent with good planning practices?); the expertise problem (are local officials up to the task of administering green zoning?); the eco-political problem (how or should local officials factor in the battles waged over green building standards?); the laboratory problem (do state standards make sense, or are variations among localities a good idea?); and the philosophical problem (what role should builders, architects, and industry experts play in shaping zoning ordinances?).
- Sara Bronin (Connecticut), *Fighting Energy Sprawl with Microgrids.* Prof. Bronin's paper focuses upon "energy sprawl," which is the phenomenon of increasing consumption of land for the siting of energy generation facilities. Prof. Bronin argues that a multi-faceted approach to the problem of energy sprawl must include the

alternative energy microgrid, or small-scale distributed generation between neighbors for energy derived from solar collectors, wind power systems, microturbines, geothermal wells, and fuel cells. The paper will focus upon the existing regulatory, political, and economic barriers to microgrid development.

- Ron Rosenberg (William and Mary) Prof. Rosenberg's paper will identify a series of communities that were approved for the construction of wind energy plants in the past decade, in an attempt to evaluate (a) how effective the siting was in predicting likely harmful/beneficial effects, (b) how proponents/opponents view the siting decision in retrospect, and (c) how much (if any) follow-up impact assessment was done by regulatory bodies to mitigate any harms that have arisen.
- Troy Rule (Missouri), *Airspace Rights in a Green Economy*. Prof. Rule's paper will describe the ways in which some renewable energy and green building policies are undermining existing airspace rights. He will argue that sustainable land use and renewable energy policies will be more equitable and efficient if they respect landowners' established rights and expectations regarding airspace. His paper will address the contexts in which the balancing of existing airspace interests with the furthering of sustainability goals would be better advanced through either injunctive relief, damages awards, and/or differential taxation.

We are especially pleased that *The Urban Lawyer*, which is the journal of the ABA Section on State and Local Government, has agreed to publish these papers in its Spring 2011 issue. Thank you to Julie Cheslik (UMKC Law School).

CHAIR'S COLUMN

by

**Professor Patricia E. Salkin
Albany Law School**

There has perhaps been no more challenging a time for state and local governments than the present. Trying to deliver basic government services while maintaining the public sector work force and keeping tax increases to a minimum, given the economic climate, has presented many interesting questions for government lawyers and academics. Ensuring sustainable communities, including addressing climate change and issues surrounding housing affordability, is also on the minds of public sector lawyers. Further, it seems as though public corruption is becoming more pervasive and government ethics is again front and center in newspaper headlines across the country. The use of social networking sites by public agencies and their employees and officers is demanding new critiques of open meetings laws, ex parte communications, records retention requirements, and other legal issues. With scarce public fiscal resources, many states are examining anew opportunities for government consolidations, as well as the appropriate role of public authorities and

special assessment districts.

Please plan to join us in San Francisco on January 6, 2011 for our Section's annual breakfast and program. The ticketed breakfast is where we have a chance to network, introduce ourselves to each other, find out what colleagues are working on, and make plans for future Section initiatives and programs. It is well worth the money to attend. In the afternoon we have a fantastic co-sponsored program on green development with the Real Estate Transactions Section. The details of this program, including speakers and topics, appears in this newsletter. Special thanks to Professor Wilson Freyermuth of the Real Estate Transactions Section for working with us on this initiative.

With changes in legal education on the horizon – including outcomes and assessments, and context based learning – this is a good time for our Section to consider what this means for our courses, our teaching and our scholarship. It has been more than two years since our State and Local Government Law Professor Blog ceased to offer new postings. Perhaps in San Francisco we can discuss ways in which we can organize shared responsibility for posting and exchanging information. In the past we have discussed possible teaching workshops, mentoring programs for newer colleagues in the field, and ways in which we might create a more active list serve. These are all items for the agenda when we meet in January. Please do not hesitate to email me if you have additional ideas and suggestions for discussion (psalk@albanylaw.edu).

I look forward to seeing you.

A Message From the ABA Section of State and Local Government Law
by
Professor Janice Griffith
Suffolk University School of Law

The American Bar Association's Section of State and Local Government Law wants law school professors to be actively involved in its activities and educational outreach. Of the three priorities set for the 2010-2011 year by the Section Chair, Dwight Merriam, one focuses on strengthening and expanding the Section's relationships with other similar organizations, including the AALS Section on State and Local Government Law.

At our Section's annual breakfast meeting on January 6, 2011, various A.B.A. Section activities that may be of interest to you will be discussed. Please visit the Section's home page at <http://new.abanet.org/sections/statelocal/Pages/default.aspx> to learn more. Please note the diverse range of activities in which you could be involved. Law professors write articles for *The Urban Lawyer* and the *ABA Government Law News*. The Section also has successfully marketed and published a number of books authored or edited by law school professors. At the last A.B.A. Section meeting, held on September 30-October 3, 2010, in

Providence, Rhode Island, Sean Nolan, of the Vermont Law School, was a Keynote Speaker.

I draw your attention to the Spring A.B.A. Section of State and Local Government Law meeting to be held in Portland, Oregon on May 12-15, 2011. This meeting will feature programs on land use, growth management, and regionalism with a focus on Portland's Metro's experience. The meeting will also cover topics on government operations, ethics, emergency management, and environmental issues. Please note that the A.B.A. Section has standing committees on Condemnation Law, Environmental Law, Ethics, Government Operations and Liability, Emergency Management/Homeland Security, Land Use Planning and Zoning, Public Education, and Public Finance. If you have interest in one or more of these areas, the Section welcomes you to join and share your expertise. For more information on the committees, see <http://new.abanet.org/sections/statelocal/Pages/committees.aspx>.

SUMMARY OF UNITED STATES SUPREME COURT CASES
IN STATE AND LOCAL GOVERNMENT LAW:
THE 2009-2010 TERM

by
Professor John Martinez*
Professor of Law, S.I. Quinney
College of Law, University of Utah

During the 2009-2010 Term the United States Supreme Court addressed several issues in state and local government law, including:

1. **Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez, 2010 WL 2555187 (2010).**

Public school may condition official recognition of student organizations on their acceptance of "accept-all-comers" policy, whereby membership and leadership in the organizations is open to all students

In a five to four decision, through an opinion written by Justice Ginsburg, joined by Justices Stevens, Kennedy, Breyer and Sotomayor, the Court held that a public school may condition its official recognition of a student organization--and thereby the use of school funds and facilities--on the group's agreement to the school's "accept-all-comers" policy whereby the organization will open eligibility for membership and leadership in the

*Professor Martinez is the author of LOCAL GOVERNMENT LAW (4 volumes, originally written by C. Dallas Sands & Michael E. Libonati, published by Thomson-West Publishing Company); John Martinez & Michael E. Libonati, STATE & LOCAL GOVERNMENT LAW – A TRANSACTIONAL APPROACH (Anderson Publishing Company, 2000); and John Martinez, GOVERNMENT TAKINGS (Thomson-West Publishing Company, 2006).

organization to all students. The Christian Legal Society of the University of California, Hastings College of the Law (CLS) excluded students who engaged in "unrepentant homosexual conduct," and its application to become a Registered Student Organization (RSO) was rejected by the Hastings College of Law because the organization did not comply with the "accept-all-comers" policy. However, the school allowed CLS to operate outside the RSO program, and provided CLS with the use of Hastings facilities for its meeting and activities, as well as access to chalkboards and generally available campus bulletin boards to announce the CLS events.

The CLS had stipulated at the summary judgment stage that the Hastings College of Law required that RSO's allow any student to participate regardless of their status or beliefs. Accordingly, the Court refused to allow the CLS to shift its argument to urge the Court to consider whether the Hastings College of Law's Nondiscrimination Policy as written--prohibiting discrimination on enumerated bases, including religion and sexual orientation--unconstitutionally targeted only those groups that organize around religious beliefs or that disapprove of particular sexual behavior. The Court rejected "CLS's unseemly attempt to escape from the stipulation and shift its target to Hastings' policy as written."

The parties agreed that Hastings through its RSO program established a limited public forum. In such settings, the applicable standard of judicial review is that a governmental entity may impose restrictions on speech that are reasonable and viewpoint-neutral. In addition to that free speech line of cases, however, CLS urged the Court to independently apply the expressive association line of decisions which rigorously review laws and regulations that constrain associational freedom, and in which the standard of judicial review is close scrutiny: a governmental entity may impose such restrictions only if they serve compelling state interests that are unrelated to suppression of ideas, and if such interests cannot be advanced through significantly less restrictive means. The Court held, however, that CLS's expressive-association and free-speech arguments merged: "*Who* speaks on its behalf...colors *what* concept is conveyed." Thus, the Court concluded that limited-public-forum precedents supplied the appropriate analytical framework for assessing both CLS's speech and association rights.

The Court concluded that Hastings' all-comers policy was a reasonable, viewpoint-neutral condition on access to the student-organization limited public forum. The Court considered significant, and viewed Hastings' policy as "all the more creditworthy," because Hastings offered CLS substantial alternative channels to allow CLS to operate outside the RSO program. The Court concluded that CLS did not seek parity with other organizations, but a preferential exemption from Hastings' policy; "CLS enjoys no constitutional right to state subvention of its selectivity." In passing, the Court also rejected CLS's brief Free Exercise argument, holding that the Hastings' all-comers policy was a valid regulation of general application that incidentally burdened religious conduct.

In a dissenting opinion written by Justice Alito, joined by Chief Justice Roberts and

Justices Scalia and Thomas, the dissenters argued that the focus of the case should have been on Hastings' Nondiscrimination Policy as written--prohibiting discrimination on enumerated bases, including religion and sexual orientation--and not on Hastings' interpretation of that written policy in the RSO setting to require acceptance of all comers. The dissenters disagreed with the majority that CLS's stipulation at the summary judgment stage waived its right to challenge the written Nondiscrimination Policy.

2. John Doe No. 1 v. Reed, 2010 WL 2518466 (2010).

State Public Records Act authorizing disclosure of referendum petition signers' names and addresses did not violate signers' First Amendment right; case remanded for consideration of disclosure in regard to particular referendum

In an opinion for the court written by Chief Justice Roberts joined by Justices Kennedy, Ginsburg, Breyer, Alito and Sotomayor, the Court held that a state Public Records Act authorizing private parties to obtain copies of referendum petitions which included the names and addresses of petition signers did not violate the petition signers' First Amendment right to political expression because the disclosure requirement bore a "substantial relation" to "sufficiently important governmental interests," including preserving the integrity of the referendum process by rooting out fraudulent signatures, ferreting out invalid signatures caused by simple mistake, and promoting transparency and accountability in the referendum process. However, the Court remanded the case for consideration of the petition signers' more focused claim that disclosure of the names and addresses of the petition signers in regard to the particular referendum, seeking to subject a statute extending certain benefits to same-sex couples to popular vote, violated the referendum petition signers' First Amendment right to political expression.

3. Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, 2010 WL 2400086 (2010).

Beachfront littoral landowners had no property right under state law to additions to their lands from accretions or relictions nor to have their lands touch the water, hence were not subjected to unconstitutional takings by beach restoration project

In an opinion by Justice Scalia announcing the judgment of the Court, joined with respect to Parts I, IV and V by Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Breyer, Alito and Sotomayor, the Court held that Florida beachfront landowners had no established property right under Florida law--to additions to their lands resulting from accretions (the slow, gradual and imperceptible deposit of additional sand, sediment or other deposits) and relictions (the exposure of land resulting from receding of water), nor to have their lands touch the water--superior to the State's right to fill in its submerged land.

The 1961 Florida Beach and Shore Preservation Act, Fla. Stat. §§ 161.011-161.45, established procedures for beach restoration and nourishment projects. In 2003, the city of Destin and Walton County obtained permits to restore 6.9 miles of beach within their jurisdictions that had been eroded by several hurricanes. The project would add about 75 feet of dry sand seaward of an "erosion control line" (ECL)--which in this case was established to coincide with the mean high-water line. However, once the ECL was established, the littoral landowners' lands no longer would benefit from accretions or relictions seaward of the ECL, and their lands would no longer touch the water. Littoral landowners administratively challenged the project and appealed the adverse administrative determination to the state courts. The Florida Supreme Court held that the project did not effect an unconstitutional taking. Although the state court's decision focused on the state constitution, and the federal constitutional question was not raised until a petition for rehearing which was denied, the United States Supreme nevertheless held that the federal constitutional question was properly presented.

The United States Supreme Court held that two principles of Florida property law intersected in the case: First, the State as owner of submerged land adjacent to beachfront (or "littoral") land has the right to fill its land so long as it does not interfere with the rights of the public or those of the littoral landowners; second, if an avulsion (a sudden or perceptible addition of land by the action of the water) exposes land seaward of the littoral lands which had previously been submerged, that newly-exposed land belongs to the State even if the State interrupts the littoral owner's contact with the water. The issue, therefore, became whether there was an exception to the second principle when the State itself was the cause of the avulsion.

The Court cited two Florida state cases suggesting that no such exception existed: Martin v. Busch, 93 Fla. 535, 112 So. 274 (1927) held that when the State drained water from a lakebed belonging to the State, the land below the high-water line thereby exposed continued to belong to the State. Bryant v. Peppe, 238 So.2d 836, 838-39 (Fla.1970) analogized the situation in Martin to an avulsion, and also confirmed that the doctrines of accretion and reliction did not apply to the (formerly) littoral lands. The United States Supreme Court noted that this was not surprising, since there could be no accretions or relictions with respect to land that no longer abutted the water.

Accordingly, the Court held that since Florida law prior to the events involved in this case allowed the State to fill in its own seabed, with the resulting sudden exposure of previously submerged land treated like an avulsion whereby the newly-exposed land belonged to the State, therefore the littoral landowners here had no protectable property right to accretions or relictions under Florida law in the circumstances.

With respect to the littoral landowners' claim that they had a property right to maintain contact with the water, the Court emphasized--and the parties agreed--that the ECL line here was established to coincide with the existing mean high-water line. Indeed,

the State conceded that if the ECL had been established landward of the mean high-water line, "the State would have taken property." However, the Court quoted Board of Trustees of the Internal Imp. Trust Fund v. Sand Key Associates, Ltd., 512 So.2d 934, 936 (1987), which stated that a littoral landowner has "no independent right of contact with the water," but only a "right of access to the water." Thus, the littoral landowners continued to have what they previously had.

In Parts II and III of Justice Scalia's opinion, joined by Chief Justice Roberts and Justices Thomas and Alito, he declared that unconstitutional takings of private property in violation of the Just Compensation Clause may arise in the "judicial takings" setting, in which a court declares that what was once an established right of private property no longer exists. In a separate opinion by Justice Kennedy, joined by Justice Sotomayor, as well as in a separate opinion by Justice Breyer, joined by Justice Ginsburg, those justices refused to go along with Parts II and III of Justice Scalia's opinion because they concluded that the issue of judicial takings was not posed, and hence should not be addressed, in this case.

Justice Stevens did not participate in the case.

4. Hemi Group, LLC v. City of New York, 130 S. Ct. 983 (2010).

City failed to state claim under RICO because alleged connection between city's loss of excise tax revenue and out-of-state Internet cigarette vendor's Jenkins Act violation was too remote, ergo not proximate cause of city's loss

In an opinion by Chief Justice Roberts for a plurality of the Court, in which Justices Scalia, Thomas and Alito joined, the Court held that the city had failed to state a claim under RICO because the alleged connection between the city's loss of excise tax revenue and an out-of-state Internet cigarette vendor's Jenkins Act violation was too remote, ergo not the proximate cause of the city's loss. The city had asserted a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO)(18 U.S.C. § 1964(c)) that the Internet vendor's failure to file with the State a list of in-state buyers of cigarettes from the vendor as required by the Jenkins Act (15 U.S.C. §§ 375-78) constituted mail or wire fraud that cost the city millions of dollars in cigarette excise tax revenue. The Court plurality held that the city had failed to state a claim under RICO because the alleged connection between city's loss of revenue and the Jenkins Act violation was too remote, so the loss was not "by reason of" the violation of Jenkins Act, and thus failed to satisfy RICO's "direct relationship" proximate cause requirement. Justice Ginsburg, concurring separately, did not subscribe to the plurality's proximate cause analysis, and concluded instead that the city's failure to allege a separate Jenkins Act claim effectively admitted that its claim was "outside the scope of the very statute on which it builds its RICO suit."

5. Graham v. Florida, 2010 WL 194731 (2010).

The "cruel and unusual punishment" clause of the Eighth Amendment prohibits a juvenile offender from being sentenced to life without parole for a nonhomicide offense

In an opinion for the court written by Justice Kennedy joined by Justices Stevens, Ginsburg, Breyer and Sotomayor, the Court held that the Eighth Amendment's "cruel and unusual punishment" clause prohibits the State from sentencing a juvenile offender to life in prison without possibility of parole for a nonhomicide offense. Justice Stevens filed a separate concurring opinion in which Justices Ginsburg and Sotomayor joined. Chief Justice Roberts filed an opinion concurring in the judgment.

Terrance Jamar Graham, then 16 years old, was charged with armed burglary or battery and attempted armed robbery. He pleaded guilty and was sentenced to three years' probation and 12 months in the county jail. Six months after his release, he was charged with armed home invasion robbery and other offenses, his probation was revoked, and he was sentenced to life in prison without parole. He was 19 years old when sentenced.

Justice Kennedy for the majority held that Eighth Amendment challenges fall into two categories: those in which the Court examines the length of sentences to determine whether they are excessive, and those involving categorical situations in which the Court applies a two-part test: (a) whether there exists a national consensus against the sentence and (b) whether the Court, in its independent judgment, determines whether the sentence is unconstitutional. This case involved the second, categorical, setting.

In regard to the first part of the test, the majority found that although 37 states the District of Columbia, and federal law permitted such sentences, actual sentences imposed on nonhomicide juvenile criminals indicated a consensus against the sentence. Thus, the majority noted that only 12 jurisdictions imposed such sentences, and that those jurisdictions imposed such sentences rarely.

Moving to the second part of the test, the majority explained that the Court's "independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." In that inquiry, the Court "also considers whether the challenged sentencing practice serves legitimate penological goals." In regard to the first point, the Court noted that juveniles lack the maturity and have an underdeveloped sense of responsibility, and thus that juvenile transgression is not as morally reprehensible as that of an adult. In regard to the second point, the Court concluded that no legitimate penological goal, such as retribution, deterrence, incapacitation, and rehabilitation, justified life without parole for a juvenile nonhomicide offender.

The majority therefore overturned the practice of sentencing juvenile nonhomicide offenders to life without parole. The Court noted, however, that this did not require such offenders to be guaranteed eventual freedom, but that the State must give them "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."

Chief Justice Roberts concurred that Graham's sentence was "cruel and unusual," but disagreed with the majority's conclusion that the practice of sentencing juvenile

nonhomicide offenders to life without parole in general was "cruel and unusual."

Justice Thomas filed a dissenting opinion joined by Justices Scalia and Alito, arguing that the Court should have deferred to the legislative branches, judges and juries.

6. Lewis v. City of Chicago, 2010 WL 2025206 (2010).

Title VII employment discrimination claim can be based on *adoption* of an unlawful employment practice and, independently, on the *application* of that practice

In an opinion for a unanimous court written by Justice Scalia, the Court held that a Title VII employment discrimination claim can be based on *adoption* of an unlawful employment practice--such as the city's adoption of an eligibility list excluding applicants below a certain score on an examination here--and, independently, on the *application* of that practice--such as the city's subsequent selection of applicants off the eligibility list (which embodied the score cutoffs).

In 1995, the City of Chicago administered an exam for firefighter positions. In January 1996, the City adopted an eligibility list embodying cutoffs whereby those who scored 89 and above were deemed "well qualified," those who scored 65-88 were deemed "qualified," and those who scored below 65 were deemed to have failed exam. It also announced it would only select from the top tier of scorers for those who would proceed to the next phase of hurdles--physical abilities test, background check, and the like--toward being hired as firefighters. Those in the second tier were told they probably would not be selected, but would be kept on the list in case more firefighters than anticipated might be needed. Those in the lowest tier were told they failed.

The City then selected applicants from the list over the next few years. In March 1997, Crawford M. Smith, an African-American applicant, and others who scored in the "qualified" range, filed charges of discrimination with the EEOC, and subsequently were issued right-to-sue letters.

The Court held that under 42 U.S.C. § 2000e-2(k), a plaintiff establishes a prima facie disparate-impact claim by showing the employer "**uses** a particular employment practice that causes a disparate impact" on one of the prohibited bases, that the City's adoption of the eligibility list embodying the cutoffs was a "use" of an employment practice upon which suit might be founded, but that in addition, the City's subsequent draws from the eligibility list constituted a separate and independent "use" of an employment practice upon which suit could be founded as well. Accordingly, the Court reversed the Seventh Circuit's conclusion that the plaintiff's suit was untimely on the ground that the EEOC charge had been filed more than 300 days after the adoption of the eligibility list.

7. Citizens United v. Federal Election Com'n, 130 S.Ct. 876 (2010).

Government may not suppress political speech based on the speaker's corporate identity

In an opinion for the court written by Justice Kennedy joined by Chief Justice Roberts and Justices Scalia and Alito, and in which Justices Thomas, Stevens, Ginsburg, Breyer and Sotomayor joined in part, the Court held that the government may not suppress political speech based on the speaker's corporate identity, overruling Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). The Court further held that the prohibition in the federal Bipartisan Campaign Reform Act of 2002 on corporate expenditures for "electioneering communications," or for speech expressly advocating the election or defeat of a candidate (2 U.S.C. § 441b), violated the corporations' free speech rights, overruling McConnell v. Federal Election Com'n, 540 U.S. 93 (2003). The Court noted that the government may regulate corporate political speech through disclaimer and disclosure requirements, but may not suppress such speech altogether.

**BIBLIOGRAPHY OF SECTION MEMBER PUBLICATIONS
(2009 – 2010)**

by

Professor J. Clark Kelso

**Senior Counsel, Capital Center for Government Law and Policy
University of the Pacific, McGeorge School of Law**

Alton, Stephen R., *Roll Over Langdell, Tell Llewellyn the News: A Brief History of American Legal Education*, 35 Okla. City U. L. Rev. 339 (2010).

Anderson, Michelle Wilde, *Mapped Out of Local Democracy*, 62 Stan. L. Rev. 931 (2010).

Aoki, Keith, *Half-Full, Half-Empty? Asian American Electoral "Presence"*, 86 Denv. U. L. Rev. 565 (2009).

ARNOLD, TONY; RABIN, KWALL, KWALL, AND ARNOLD, FUNDAMENTALS OF MODERN PROPERTY LAW, SIXTH EDITION (Foundation Press, forthcoming 2011) (co-authors: Edward H. Rabin, Roberta Rosenthal Kwall, and Jeffrey L. Kwall).

ARNOLD, TONY, KENTUCKY WET GROWTH TOOLS FOR SUSTAINABLE DEVELOPMENT : A HANDBOOK ON LAND USE AND WATER FOR KENTUCKY COMMUNITIES (2009) (co-authors: Carol Norton and Dustin Wallen) (700+ page book on integrating water quality, water supply/conservation, and watershed health into land use, funded by U.S. EPA grant; aimed at Kentucky communities but used nationwide).

Arnold, Tony, *Legal Castles in the Sand: The Evolution of Property Law, Culture, and Ecology in Coastal Lands*, 61(2) SYRACUSE LAW REVIEW ____ (forthcoming 2010-11).

Arnold, Tony, *Adaptive Watershed Planning and Climate Change*, 5 ENVIRONMENTAL AND ENERGY LAW AND POLICY JOURNAL ____ (forthcoming 2010).

Arnold, Tony, *Law's Adaptive Capacity and Climate Change's Impacts on Water*, 5 ENVIRONMENTAL AND ENERGY LAW AND POLICY JOURNAL ____ (forthcoming 2010).

Arnold, Tony, *Exemplary Research in Environmentally Responsible Land Use*, 22 SUSTAIN: A JOURNAL OF ENVIRONMENTAL AND SUSTAINABILITY ISSUES 2 (2010).

Arnold, Tony, *The Structure of the Land Use Regulatory System in the United States*, 22 SUSTAIN: A JOURNAL OF ENVIRONMENTAL AND SUSTAINABILITY ISSUES 36 (2010) (edited and revised excerpt of prior work published in anthology of exemplary scholarship on environmentally responsible land use).

Arnold, Tony, *A Voice Is A Terrible Thing to Waste: People Working for Environmental Justice in Their Backyards Speak for Themselves*, PLANNING 39 (Aug./Sept. 2010) (co-author: Carol Norton).

Arnold, Tony, *Water Privatization Trends in the United States: Human Rights, National Security, and Public Stewardship*, 33(3) WILLIAM AND MARY ENVIRONMENTAL LAW AND POLICY REVIEW 785 (2009).

Baker, Cynthia A., *What Do We Expect?: An Introduction to the Law, Money and Results of State Educational Systems*, 42 Ind. L. Rev. 317 (2009).

Baker, Lynn A., *Constitutional Home Rule and Judicial Scrutiny*, 86 Denv. U. L. Rev. 1337 (2009).

Beermann, Jack M., *Qualified Immunity and Constitutional Avoidance*, 2009 Sup. Ct. Rev. 139.

Brauneis, Robert, *The Transformation of Originality in the Progressive-ERA Debate Over Copyright in News*, 27 Cardozo Arts. & Ent. L.J. 321 (2009).

Briffault, Richard, *State and Local Government Law*, 7th Edition, with Laurie Reynolds (West 2009) [casebook, new edition].

Briffault, Richard, *The Business Improvement District Comes of Age*, 3 Drexel L. Rev. ____ (2011) (forthcoming).

Briffault, Richard, *Skelos v. Paterson: The Surprisingly Strong Case for the Governor's Surprising Power to Appoint a Lieutenant Governor*, 73 Alb. L. Rev. 675 (2010).

Briffault, Richard, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. Chi. L. Rev. 65 (2010).

Briffault, Richard, *Town of Telluride v. San Miguel Valley Corp.: Extraterritoriality and Local Autonomy*, 86 Denver U. L. Rev. 1311 (2009).

Briffault, Richard, *Campaign Finance Disclosure 2.0*, 9 Election L.J. 273 (2010).

Briffault, Richard, *Davis v. FEC: The Roberts Court's Continuing Attack on Campaign Finance Reform*, 44 Tulsa L. Rev. 475 (2009).

Briffault, Richard, *Life of the Parties? Money, Politics and Campaign Finance Reform*, 8 Election L. J. 207 (2009).

- Bronin, Sara, *Modern Lights*, 80 Colorado Law Review 881 (2009) (lead article).
- Bronin, Sara, *Solar Rights*, 89 Boston University Law Review 1217 (2009) (reprinted in the 2010 Planning & Zoning Handbook, Patricia E. Salkin, ed. (2010); to be reprinted in K.K. Duvivier, Renewable Energy Reader (forthcoming 2011)).
- Bronin, Sara, *Curbing Energy Sprawl*, 43 Connecticut Law Review (forthcoming December 2010).
- Brownstein, Alan, *Why Conservatives, and Others, Have Trouble Supporting the Meaningful Enforcement of Free Exercise Rights*, 33 Harv. J.L. & Pub. Pol'y 925 (2010).
- Brownstein, Alan, *The Reasons Why Originalism Provides A Weak Foundation For Interpreting Constitutional Provisions Relating to Religion*, 2009 Cardozo L. Rev. de novo 196.
- Brunner, Barbara J., *Before They Even Start: Hope and Incoming 1Ls*, 48 Duq. L. Rev. 473 (2010).
- Buzbee, William W., *Preemption Choice: The Theory, Law & Reality of Federalism's Core Question* (William W. Buzbee, editor) (Cambridge University Press 2009), author of Introduction, Chapter 5 ("Federal Floors, Ceilings, and the Benefits of Federalism's Institutional Diversity"), Conclusion.
- Buzbee, William W., *Environmental Protection: Law and Policy* (6th ed. Aspen forthcoming 2011) and Teachers' Manual (with co-authors Robert Glicksman, David Markell, Daniel Mandelker, Daniel Bodansky).
- Buzbee, William W., *State Greenhouse Gas Regulation, Federal Climate Change Legislation, and the Preemption Sword*, 1 San Diego J. of Climate and Energy Law 23 (2010).
- Buzbee, William W., *Clean Air Act Dynamism and Disappointments: Lessons for Climate Legislation to Prompt Innovation and Discourage Inertia*, 32 Wash. U. J. of Law and Pol'y 33 (2010).
- Buzbee, William W., *Preemption Hard Look Review, Regulatory Interaction, and the Quest for Stewardship and Intergenerational Equity*, 77 Geo. Wash. L. Rev. 1521 (2009).
- Camacho, Alejandro E., *Assisted Migration: Redefining Nature and Natural Resource Law Under Climate Change*, 27 Yale J. on Reg. 171 (2010).
- Camacho, Alejandro E., *Adapting Governance to Climate Change: Managing Uncertainty through a Learning Infrastructure*, 59 Emory L.J. 1 (2009).
- Camacho, Alejandro E., Lawrence Susskind & Todd Schenk, *Collaborative Planning and Adaptive Management in Glen Canyon: A Cautionary Tale*, 35 Colum. J. Envtl. L. 1 (2010).
- Chestek, Kenneth D., *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. Ass'n Legal Writing Directors 1 (2010).

Collins, Richard B., *Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity*, 86 Denv. U. L. Rev. 1433 (2009).

Collins, Richard B., Book Review: *David J. Bederman, The Classical Foundations of the American Constitution: Prevailing Wisdom (New York: Cambridge University Press 2008)*, 50 Am. J. Legal Hist. 105 (2010).

Collins, Richard B., *Propaganda for War and Transparency*, 87 Denv. U.L. Rev. 819 (2010).

Crane, Charlotte, *Pollock, Macomber and the Role of the Federal Courts in the Development of the Income Tax in the United States*, 73 Law & Contemp. Probs. 1 (2010).

Crawford, Colin, *Defending Public Prosecutors and Defining Brazil's Environmental "Public Interest": A Review of Lesley McAllister's Making Law Matter: Environmental Protection and Legal Institutions In Brazil*, 40 Geo. Wash. Int'l L. Rev. 619 (2009).

Crawford, Colin, *A Response to Professor McAllister's Reply to My Review of Making Law Matter*, 40 Geo. Wash. Int'l L. Rev. 687 (2009).

Crowder, Patience A., *More Than Merely Incidental: Third-Party Beneficiary Rights in Urban Redevelopment Contracts*, 17 Geo. J. on Poverty L. & Pol'y 287 (2010).

Davidson, Nestor, *Leaps and Bounds*, 108 Mich. L. Rev. 957 (2010).

Davidson, Nestor, *Property in Crisis*, 78 Fordham L. Rev. 1607 (2010).

Davidson, Nestor, *Vertical Learning: On Baker and Rodriguez's "Constitutional Home Rule and Judicial Scrutiny"*, 86 Denv. U. L. Rev. 1425 (2009).

Daye, Charles & Aden, Leah, *The Future is Now: Legal and Policy Options for Racially Integrated Education*, 88 N.C. L. Rev. 713 (2010).

Delogu, Orlando E., *Funding the Judicial Department at a Level the Supreme Judicial Court Deems "Essential to its Existence and Functioning As a Court" Is Required by Doctrines of Comity and Duties Imposed by Maine's Constitution*, 62 Me. L. Rev. 453 (2010).

Ellickson, Robert C., *The False Promise of the Mixed-Income Housing Project*, 57 UCLA L. Rev. 983 (2010).

Fennell, Lee Anne, *The Unbounded Home: Property Values Beyond Property Lines* (Yale UP 2009).

Fennell, Lee Anne, *Willpower and Legal Policy*, 5 ANN. REV. OF LAW & SOCIAL SCIENCE 91 (2009).

Fennell, Lee Anne, *Odds and Ends: An Epstein-Inspired Look at Luck*, 44 TULSA LAW REVIEW 779 (2009).

Fennell, Lee Anne, *Scaling Property with Professor Ellickson*, 18 WM & MARY BILL OF

RIGHTS J. 173 (2009)
Fennell, Lee Anne & Julie Roin, *Controlling Residential Stakes*, 77 U. CHI. L. REV. 143 (2010)

Fenster, Mark, *Seeing the State: Transparency as Metaphor*, 62 Administrative Law Review 617 (2010).

Ferguson, Cleveland, *International Human Rights*, 44 Int'l Law. 473 (2010).

Freilich, Robert H., *The Umbrella of Sustainability: Smart Growth, New Urbanism, Renewable Energy and Green Development in the 21st Century*, 42 Urb. Law. 1 (2010).

Freilich, Robert H., Book Review: *Zoning and Planning Law Handbook*. Patricia E. Salkin Ed., 29th Ed., 42 Urb. Law. 205 (2009).

Friedman, Lawrence, *Emphasizing Privacy of the Home and Limiting Third Party Consent Under the State Constitution: Commonwealth v. Porter P.*, 93 MASSACHUSETTS LAW REVIEW __ (2010) (with David Siegel).

Frug, Jerry (with David Frisby, Richard Sennett, & Fran Tonkiss), *Writing Cities: A Roundtable*, in Suzanne Hall, Melissa Fernandez Arrigotia, & Cecila Dinardi (eds.), "Writing Cities: Working Papers," Volume 1, Cities Programme (London School of Economics and Political Science 2010).

Frug, Jerry, *Governing the Ecological City*, in Mohsen Mostafavi (ed.), *Ecological Urbanism* (2010).

Frug, Jerry, *Empowering the City: London / New York*, Urban Omnibus 2/17/2010, urbanomnibus.net.

Frug, Jerry, *Annexation*, Encyclopedia of Urban Studies, (Ray Hutchison ed. 2009).

Frug, Jerry, *Local Government Law* (5th ed. West Publishing Co. 2009) (with Richard Ford and David Barron).

Frug, Jerry, *Local Government Law*, Oxford International Encyclopedia of Legal History (Stanley Katz ed., Oxford University Press 2009).

Frug, Jerry, *Legalizing Openness*, in Kees Christiaanse, Tim Rieniets & Jennifer Sigler (eds), *Open City: Designing Coexistence* (2009).

Gardner, James A., *The Dignity of Voters—A Dissent*, 64 U. Miami L. Rev. 435 (2010).

Garnett, Richard W., *Religious Freedom, Church Autonomy and Constitutionalism*, 57 Drake L. Rev. 901 (2009).

Garnett, Richard W., *Standing, Spending, and Separation: How the No-Establishment Rule Does (And Does Not) Protect Conscience*, 54 Vill. L. Rev. 655 (2009).

Gillette, Clayton P., *Who Should Authorize a Commuter Tax?*, 77 U. Chi. L. Rev. 223

(2010).

Gillette, Clayton P., *Fiscal Home Rule*, 86 Denv. U. L. Rev. 1241 (2009).

Hirokawa, Keith H. & Salkin, Patricia, *Can Urban University Expansion and Sustainable Development Co-Exist?: A Case Study in Progress on Columbia University*, 37 Fordham Urb. L.J. 637 (2010).

Hirokawa, Keith H., *A Challenge to Sustainable Governments?*, 87 Wash. U. L. Rev. 203 (2009).

Jung, David (and Steven Bonorris), *Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases* (2010).

Kahng, Lily, *One is the Loneliest Number: The Single Taxpayer in a Joint Return World*, 61 Hastings L.J. 651 (2010).

Kahng, Lily, *Investment Income Withholding in the United States and Germany*, 10 Fla. Tax Rev. 315 (2010).

Kaswan, Alice, *Decentralizing Cap-and-Trade? State Controls Within a Federal Greenhouse Gas Cap-and-Trade Program*, 28 Va. Envtl. L.J. 343 (2010).

Katz, Ellen D., *From Bush v. Gore to Namudo: A Response to Professor Amar*, 61 Fla. L. Rev. 911 (2009).

Katz, Ellen D., *Barack Obama, Margarit Lopez Torres and the Path to Nomination*, 8 Election L.J. 369 (2009).

Kelly, James J., *Homes Affordable for Good: Covenants and Ground Leases as Long-Term Resale-Restriction Devices*, 29 St. Louis U. Pub. L. Rev. 9 (2009).

Kinkopf, Neil, *Is It Better to be Loved or Feared? Some Thoughts on Lesson Learned from the Presidency of George W. Bush*, 4 Duke J. Const. L. & Pub. Pol'y 45 (2009).

Kramer, Bruce M., *Keeping Leases Alive in the Era of Horizontal Drilling and Hydraulic Fracturing: Are the Old Workhorses (Shut-In, Continuous Operations, and Pooling Provisions) Up to the Task?*, 49 Washburn L.J. 283 (2010).

Landsberg, Brian K., *Symposium on Experiential Education in China: Curricular Reform, the Role of the Lawyer and the Rule of Law*, Introduction, 22 Pac. McGeorge Global Bus. & Dev. L.J. 1 (2009).

Landsberg, Brian K., *Strategies to Increase the Availability of Skills Education in China*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 45 (2009).

Levi, Jennifer L., *Marriage Equality for Same-Sex Couples: Where We Are and Where We Are Going*, 22 J. Am. Acad. Matrim. Law. 55 (2009).

Lewyn, Michael, *Character Counts: The "Character of the Government Action" in Regulatory Takings Actions*, 40 Seton Hall Law Review 597 (2010).

Lewyn, Michael, *Sprawl in Europe and America*, 46 San Diego L. Rev. (2009).

Lewyn, Michael, *Why Pedestrian-Friendly Street Design is Not Negligent*, 47 U. Louisville L. Rev. 339 (2008).

Mandelker, Daniel, *The National Environmental Policy Act: A Review of Its Experience and Problems*, 32 Wash. U. J.L. & Pol'y 293 (2010).

Mandelker, Daniel, *Designing Planned Communities* (book downloadable from law.wustl.edu/landuselaw).

Martin, Robert J., *Killing Capital Punishment in New Jersey: The First State in Modern History to Repeal Its Death Penalty Statute*, 41 U. Tol. L. Rev. 85 (2010).

Martinez, John, *Getting Back the Public's Money: The Anti-Favoritism Norm in American Property Law*, 58 Buff. L. Rev. 619 (2010).

Martinez, John, *A Proposal for Establishing Specialized Federal and State "Takings Courts"*, 61 Me. L. Rev. 467 (2009).

Michelman, Frank I., *Legitimation by Constitution (And the News from South Africa)*, 44 Val. U. L. Rev. 1015 (2010).

Michelman, Frank I., *Foxy Freedom?*, 90 B.U. L. Rev. 949 (2010).

Michelman, Frank I., *"The Full Person As reason-Giver": The Liberal Constitutional Conception of C. Edwin Baker*, 12 U. Pa. J. Const. L. 949 (2010).

Mills, Jon, *Whither Communism: A Comparative Perspective on Constitutionalism in a Postsocialist Cuba*, 40 Geo. Wash. Int'l L. Rev. 1219 (2009).

Milne, Janet E., *Watersheds: Runoff from the Tax Code*, 34 Vt. L. Rev. 883 (2010).

Mintz, Joel A., *Review of Large-Scale Ecosystem Restoration: Five Case Studies from the United States*, 40 Envtl. L. 335 (2010).

Mintz, Joel A., *Book Review: Karl Boyd Brooks. Before Earth Day: The Origins of American Environmental Law, 1945-1970. Lawrence: University Press of Kansas*, 50 Am. J. Legal Hist. 107 (2010).

Mintz, Joel A. (with Ronald M. Rosenberg and Larry A. Bakken), *FUNDAMENTALS OF MUNICIPAL FINANCE* (American Bar Association 2010).

Mintz, Joel A., 2009 Update to JOEL A. MINTZ, *STATE AND LOCAL GOVERNMENT ENVIRONMENTAL LIABILITY* (1994, Thomson-West Publishing Company).

Morrison, Fred L., *The Protection of Foreign Investment in the United States of America*, 58 Am. J. Comp. L. 437 (2010).

Mudd, Michelle Bryan, *The Role of Fish and Wildlife Evidence in Local Land Use Regulation*, 30 Pub. Land & Resources L. Rev. 107 (2009).

Nicola, Fernanda G., *Promises of Accession: Reassessing the Trade Relationship Between Turkey and the European Union*, 24 Am. U. Int'l L. Rev. 739 (2009).

Nolon, John R., *The Land Use Stabilization Wedge Strategy: Shifting Ground to Mitigate Climate Change*, 34 WM. & MARY ENVTL. L. POL'Y REV. (Dec. 2009).

Nolon, John R., *Walton County v. Stop the Beach Renourishment, Inc.: Rising Tides-Changing Title*, 37 Real Estate Law Journal (Dec. 2009) (with Kristen Grzan).

Nolon, John R., *Changing Times—Changing Practice: New Roles for Lawyers in Resolving Complex Land Use and Environmental Disputes*, PACE ENVTL. L. R. (Dec. 2009) (with Jessica Bacher).

Nolon, John R., *Climate Change and Sustainable Development: The Quest for Green Communities, Part II*, PLAN. & ENVTL. L., (Nov. 2009), at 3.

Nolon, John R., *Climate Change and Sustainable Development: The Quest for Green Communities, Part I*, PLAN. & ENVTL. L., (Oct. 2009), at 3.

Nolon, John R., CLIMATE CHANGE AND SUSTAINABLE DEVELOPMENT LAW IN A NUTSHELL, with Patricia E. Salkin (Thomson-West, December, 2010).

Orfield, Myron, Margaret Hobday & Geneva Finn, *A Missed Opportunity: Minnesota's Failed Experiment with Choice-Based Integration*, 35 Wm. Mitchell L. Rev. 936 (2009).

Parlow, Matthew J., *The NBA and the Great Recession: Implications for the Upcoming Collective Bargaining Agreement Renegotiation*, 6 DePaul J. Sports L. & Contemp. Probs. 195 (2010).

Parlow, Matthew J., *Professional Sports League Commissioners' Authority and Collective Bargaining*, 11 Tex. Rev. Ent. & Sports L. 179 (2010).

Pfaff, John F., *The Future of Appellate Sentencing Review: Booker in the States*, 93 Marq. L. Rev. 683 (2009).

Pindell, Ngai, *Planning for Housing Requirements, in The Legal Guide To Affordable Housing Development* (Tim Iglesias & Rochelle E. Lento eds. forthcoming 2010-2011).

Pindell, Ngai, *Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability*, 29 St. Louis U. Pub. L. Rev. 41 (2009).

Pindell, Ngai, *The Fair Housing Act at Forty: Predatory Lending and the City as Plaintiff*, 18 J. Affordable Housing & Community Dev. L. 169 (2009).

Power, Robert C., *"Intelligence" Searches and Purpose: A Significant Mismatch Between Constitutional Criminal Procedure and the Law of Intelligence-Gathering*, 30 Pace L. Rev. 620 (2010).

- Power, Robert C., *Lawyers and the War*, 34 J. Legal Prof. 39 (2009).
- Reiss, David J., *Ratings Failure: The Need for a Consumer Protection Agenda in Rating Agency Regulation*, 28 No. 11 Banking & Fin. Services Pol'y Rep. 12 (2009).
- Reuben, Richard C., *ADR and the Rule of Law Making the Connection*, 16 No. 4 Disp. Resol. Mag. 4 (2010).
- Reynolds, Laurie, *Home Rule, Extraterritorial Impact and the Region*, 86 Denv. U. L. Rev. 1271 (2009).
- Ricks, Sarah E. (with contributions by Evelyn Tenenbaum), *Current Issues in Constitutional Litigation: A Context and Practice Casebook* (Carolina Academic Press, forthcoming December 2010).
- Ricks, Sarah E., *The Yale Journal of Law and Feminism Twenty Years Ago: Reflections From Our Founding Members*, 20 Yale J.L. & Feminism 248 (2009).
- Romero, Alan, *Local Regulation of Mineral Development in Wyoming*, 10 Wyo. L. Rev. 463 (2010).
- Rosen, Mark D., *State Extraterritorial Powers Reconsidered*, 85 Notre Dame L. Rev. 1133 (2010).
- Rosenberg, Ron, *Fundamentals of Municipal Finance* (ABA Publishing)(with Mintz & Bakken).
- Rosenberg, Ron, *Harmonious Federalism in Support of National Energy Goals-Increased Wind Renewable Energy*, 85 N.D. L.Rev. 781 (2009).
- Salkin, Patricia & Lavine, A., *Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power*, 18 Brooklyn L. Rev. 157 (2009).
- Salkin, Patricia, & Ostrow, A., *Cooperative Federalism and Wind: A New Framework for Achieving Sustainability*, 37 Hofstra L. Rev.1049 (2009).
- Salkin, Patricia, *New York Climate Change Report Card: Improvement Needed for More Effective Leadership and Overall Coordination with Local Government*, 80 Univ. of Colorado L. Rev. 921 (2009).
- Salkin, Patricia, *Can You Hear Me Up There? Giving Voice to Local Communities Imperative for Achieving Sustainability*, 4 Houston Env'tl Energy Law & Policy J 256 (2009).
- Salkin, Patricia, *Sustainability and Land Use Planning: Greening State and Local Land Use Plans and Regulations to Address Climate Change Challenges and Preserve Resources for Future Generations*, 34 William and Mary Environmental Law and Policy Review 121 (2009).
- Salkin, Patricia, 2009 Ethical Considerations in Land Use, 41 *The Urban Lawyer* 527

(Summer 2009) reprinted in Merriam, ed., *AT THE CUTTING EDGE 2009* (American Bar Association 2010).

Salkin, Patricia, & Lavine, A., *God and the Land: A Holy War Between Religious Exercise and Community Planning and Development*, 2 Albany Gov't L. Rev. 355 (2009).

Salkin, Patricia, *A Quiet Crisis in America: Meeting the Affordable Housing Needs of the Invisible Low-Income Seniors*, 16 Georgetown J. on Poverty L. & Pol'y 285 (2009).

Salkin, Patricia, *Abandonment, Discontinuance and Amortization of Nonconforming Uses: Lessons for Drafters of Zoning Regulations*, 38 Real Estate L.J. 482 (Spring 2010).

Salkin, Patricia, & Lavine, A., *Site Selection and Land Use Planning*, in Gerrard, Howe and Fucci, *THE LAW OF GREEN BUILDINGS*(ABA Press 2010).

Salkin, Patricia, *Sustainable Development, Climate Change and Land Use for New York Local Governments*, New York Zoning Law and Practice Report (September/October 2010).

Salkin, Patricia, & Kznsler, Z., *Medical Marijuana Meets Zoning: Can You Grow, Sell and Smoke that Here?*, 62 Planning & Environmental Law 3 (August 2010).

Salkin, Patricia, *Environmental Justice and Land Use Planning*, PAS Quick Notes 26 (American Planning Association, June 2010).

Salkin, Patricia, *Cooperative Federalism and Climate Change: New Meaning to "Think Globally, Act Locally,"* 40 Envtl. L.Rptr.10562 (June 2010).

Salkin, Patricia, *The Tables Turn: Ethical Checks on the Public*, 32 Zoning and Planning Law Report 1 (September 2009).

Salsich, Peter W., *Symposium on Property Ownership and Economic Stability: A Necessary Relationship?* Introduction, 29 St. Louis U. Pub. L. Rev. 5 (2009).

Saxer, Shelley, *The Fluid Nature of Property Rights in Water* (forthcoming publication in Duke Envtl. L. & Pol'y F. 2010).

Saxer, Shelley, *Banishment of Sex Offenders: Liberty, Protectionism, Justice, and Alternatives*, 86 Wash. U. L. Rev. 1397 (2009).

Saxer, Shelley, *Assessing RLUIPA's Application to Building Codes and Aesthetic Land Use Regulation*, 2 Albany Gov't L. Rev. 623 (2009).

Schapiro, Robert, *Intersystemic Remedies for Governmental Wrongs*, 41 University of Toledo L. Rev. 153 (2009).

Schragger, Richard C., *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 Harv. L. Rev. 482 (2009).

Schragger, Richard C., *Rethinking the Theory and Practice of Local Economic Development*, 77 Chi. L. Rev. 311 (2010).

Schutz, Anthony B., *Article 7: Documents of Title*, 65 Bus. Law. 1279 (2010).

Smith, Damon Y., *Participatory Planning and Procedural Protections: The Case for*

Deeper Public Participation in Urban Redevelopment, 29 St. Louis U. Pub. L. Rev. 243 (2009).

Spiropoulos, Andrew C., *Rights Done Right: A Critique of Libertarian Originalism*, 78 UMKC L. Rev. 661 (2010).

Spiropoulos, Andrew C., *Just Not Who We Are: A Critique of Common Law Constitutionalism*, 54 Vill. L. Rev. 181 (2009).

Stein, Gregory M., *Commercial Leasing in China: An Overview*, 8 CORNELL REAL ESTATE REVIEW 26 (2010).

Stein, Gregory M., *Property Law*, in 4 BERKSHIRE ENCYCLOPEDIA OF CHINA 1797 (Linsun Cheng et al. eds., 2009).

Su, Rick, *Immigration as Urban Policy*, 38 Fordham Urb. L. Rev. __ (forthcoming 2010).

Su, Rick, *Local Fragmentation as Immigration Regulation*, 47 Houton L. Rev. 367 (2010).

Su, Rick, *The Overlooked Significance of Arizona's New Immigration Law*, 108 Mich. L. Rev. First Impressions 76 (2010).

Super, David A., *From the Greenhouse to the Poorhouse: Carbon-Emissions Control and the Rules of Legislative Joinder*, 158 U. Pa. L. Rev. 1093 (2010).

Wallerstein, Carol L., *Autonomy Support 101: How Using Proven Autonomy Support Techniques Can Increase Law Student Autonomy, Engender Hope and Improve Outcomes*, 48 Duq. L. Rev. 385 (2010).

Wendel, Peter T., *The Succession Rights of Adopted Adults: Trying to Fit a Square Peg Into a Round Hole*, 43 Creighton L. Rev. 815 (2010).

Worthen, Kevin J., *The NCAA and Religion: Insights About Non-State Governance From Sunday Play and End Zone Celebrations*, 2010 Utah L. Rev. 123 (2010).