

OHIO STATE LAW JOURNAL

Volume 74, Number 5, 2013

Articles

The New Immigration Federalism
Stella Burch Elias 703

A Case for the Public Domain
Clark D. Asay 753

Note

The Good-Faith Exception and Unsettled Law: A Study of GPS Tracking
Cases After *United States v. Jones*
David J. Twombly 807



Cite as 74 OHIO ST. L.J. ____ (2013)

Copyright © 2013 by The Ohio State University

The *Ohio State Law Journal* (ISSN 0048-1572) is published six times a year in Columbus, Ohio. The *Journal* Editorial and General Offices are located at 55 West 12th Avenue, Columbus, Ohio 43210-1391.

Subscriptions: Domestic, \$45.00 per volume; \$9.00 per regular issue; \$10.00 per symposium issue. Foreign, \$55.00 per volume; \$10.00 per regular issue; \$11.00 per symposium issue. Please enclose check with order. For further information, see <http://moritzlaw.osu.edu/students/groups/oslj/>. Back stock, reprint, and microform editions of the *Journal* are available through William S. Hein & Co., Inc., 1285 Main St., Buffalo, N.Y. 14209-1987. Back issues of the *Journal* may also be obtained through HeinOnline at <http://www.heinonline.org>.

The *Journal* assumes that each subscriber desires to renew its subscription unless the subscriber notifies the *Journal* otherwise before the subscription expires. Change of address notice should be received at least thirty days prior to the date of the issue with which that change is to take effect.

The *Journal* welcomes the submission of unsolicited manuscripts for possible publication in print or online. The text and footnotes of all manuscripts should be double spaced, with the text and footnotes on the same page. The *Journal* prefers submissions through ExpressO but accepts submissions by email attachment. You may submit manuscripts and correspond with the *Journal* at lawjml@osu.edu. For further information, see <http://moritzlaw.osu.edu/students/groups/oslj/>.

Postmaster: Please send address changes to the *Ohio State Law Journal*, 55 West 12th Avenue, Columbus, Ohio 43210-1391.

OHIO STATE LAW JOURNAL

2013–2014

EDITOR IN CHIEF

David J. Twombly

EXECUTIVE EDITOR

Cheyenne N. Chambers

**CHIEF ARTICLES
EDITOR**

Jim Saywell

NOTE EDITOR

Matthew L. Strayer

SYMPOSIUM EDITOR

Adam Philipp

**CHIEF MANAGING
EDITOR**

Elizabeth B. Howard

ARTICLES EDITORS

Matthew Brady
Elizabeth R. Gorman
Lisa M. Herman
Colin J. Kalvas
Mariam Keramati
Chris Matgouranis
Scott Mayland
Jonathan Olivito
Syane Roy
Brendan J. Schlauch
Kyle Shelton
Catherine Sturik
Megan E. Walker

**FURTHERMORE
EDITOR**

Alexis Cole

**TECHNOLOGY
EDITOR**

David N. Sutton

MANAGING EDITORS

Matt Borden
Whitney Braunlin
Jourdan Day
Amanda Gillen
Joshua Grossman
Jocelyn M. Harrington
Andrew Hartman
Natalie Holzaepfel
Alyson Letsky
Kelsey Mehaffie
Andrew Peiffer
Kyle Schrodi
Jana Willsey

BUSINESS EDITOR

Kristine Missall

EVENTS EDITOR

Meaghan FitzGerald

ASSOCIATE EDITORS

Abigail Brothers
Casey Cross
Michael Dallaire

Ryan Duerring
Meghan Mannion
Christopher Pendleton
Joshua Snowden

STAFF

Jonathan D. Allan
Ina Avalon
Megan Bracher
Amable Njodzeka Bunry
Xiaole Chen
Arryn K. Cole
Kory G. Decker
Adam Doane
Robert K. Dodson
Deborah A. Enck
Collin R. Flake

Jackson Froliklong
Matthew J. Gherlein
Russell L. Gray
James M. Hafner, Jr.
M. Ryan Harmanis
Jared P. Hasson
Thomas R. Irwin
Brian F. Jordan
Lindsey M. Jump
Calland M. Kluchar
Christopher LaRocco

Tara E. Maine
Katherine M. Maskell
Michael G. Matthews
William S. McCoy
Mikaela R. Mitchell
Matthew P. Navarre
Justin P. Nelson
Christina M. Otero
Channing M. Pepper
Joseph D. Perruzzi
Dilynn Roettker

Emily C. Rotella
Liane H. Rousseau
Melissa A. Schaub
Avery Schumacher
Tom Shafirstein
Sam Skubak
Heather L. Spangler
Janet R. Stewart
Jordan E. Watrous
W. Hunter West
Laura W. Willis
Christopher D. Woeste

FACULTY ADVISORS

Garry W. Jenkins
Deborah Jones Merritt

ADMINISTRATIVE ASSISTANT

Dawn Parker

Published Six Times a Year by Students of The Ohio State University Moritz College of Law

THE OHIO STATE UNIVERSITY MORITZ COLLEGE OF LAW

OFFICERS OF ADMINISTRATION

Joseph A. Alutto, B.A., M.A., Ph.D., *Interim President of the University*
Joseph E. Steinmetz, B.A., M.A., Ph.D., *Executive Vice President and Provost of the University*
Alan C. Michaels, A.B., J.D., *Dean of the College and Edwin M. Cooperman Prof. of Law*
Gary W. Jenkins, B.A., M.P.P., J.D., *Assoc. Dean for Academic Affairs and Prof. of Law*
Christopher M. Fairman, B.A., J.D., *Assoc. Dean for Faculty and Alumni Society Designated Prof. of Law*
Bruce S. Johnson, B.A., J.D., M.L.S., *Assoc. Dean for Information Services and Thomas J. and Mary E. Heck and Leo H. Faust Memorial Designated Prof. of Law*
Kathy S. Northern, B.A., J.D., *Assoc. Dean for Admissions and Assoc. Prof. of Law*
Laura Fernandez, B.S., J.D., *Assist. Dean for International and Graduate Affairs and Adjunct Prof.*
Monte Smith, B.A., J.D., *Assist. Dean for Academic Affairs and Adjunct Prof.*
Robert L. Solomon, II, B.A., J.D., *Assist. Dean for Admissions & Financial Aid, Director of Minority Affairs and Adjunct Prof.*

FACULTY EMERITI

Francis X. Beytagh, B.A., J.D.
Michael Braunstein, B.A., J.D.
Albert L. Clovis, B.A., M.A., LL.B.
Howard P. Fink, B.A., LL.B.
David A. Goldberger, B.A., J.D.
Sheldon W. Halpern, B.A., LL.B.
Lawrence R. Herman, A.B., LL.B.
Louis A. Jacobs, A.B., J.D., LL.M.
Michael Kindred, B.A., J.D., M.C.L., D.E.S.
Joan M. Krauskopf, A.B., J.D.
Stanley K. Laughlin, Jr., B.A., J.D.

James E. Meeks, A.B., J.D.
John B. Quigley, A.B., M.A., LL.B.
Rhonda R. Rivera, B.A., M.P.A., J.D.
Nancy H. Rogers, B.A., J.D.
Michael D. Rose, B.A., J.D., LL.M.
Allan J. Samansky, B.A., M.A., J.D.
Philip C. Sorensen, B.S., J.D.
Gregory M. Travaglio, B.A., J.D., LL.M.
Vincene F. Verdun, B.A., J.D.
Douglas J. Whaley, B.A., J.D.
Charles E. Wilson, B.S., J.D.

FACULTY

Amna Akbar, B.A., J.D., *Visiting Assist. Prof. of Law*
Michelle Alexander, B.A., J.D., *Assoc. Prof. of Law*
Erin Archerd, B.A., J.D., *Langdon Fellow in Dispute Resolution*
Mary Beth Beazley, B.A., J.D., *Assoc. Prof. of Law and Director of Legal Writing*
Douglas A. Berman, A.B., J.D., *Robert J. Watkins/Procter & Gamble Prof. of Law*
Micah Berman, B.A., J.D., *Assist. Prof. of Public Health and Assist. Prof. of Law*
Gregory A. Caldeira, B.A., A.M., Ph.D., *Distinguished Univ. Prof. and Prof. of Law*
Cinnamon Carlame, B.A., B.C.L., M.S., J.D., *Assoc. Prof. of Law*
Sanford N. Caust-Ellenbogen, B.A., M.C.R.P., J.D., *Assoc. Prof. of Law*
Martha Chamallas, B.A., J.D., *Robert D. Lynn Chair in Law*
Daniel C.K. Chow, B.A., J.D., *Joseph S. Platt-Porter Wright Morris & Arthur Prof. of Law*
Amy J. Cohen, B.A., J.D., *Prof. of Law*
Sarah Rudolph Cole, B.A., J.D., *John W. Bricker Prof. of Law and Director of Prog. on Dispute Resolution*
Ruth Colker, A.B., J.D., *Distinguished Univ. Prof. and Grace Fern Heck Faust Chair in Constitutional Law*
Elizabeth Ilgen Cooke, B.A., J.D., *Clinical Prof. of Law*
Richard C. Daley, B.A., J.D., *Senior Lecturer in Law*
Steven M. Davidoff, B.A., M.S., J.D., *Prof. of Law*
Sharon L. Davies, B.A., J.D., *Gregory H. Williams Chair in Civil Rights and Civil Liberties and Executive Director of the William E. Kirwan Institute for the Study of Race and Ethnicity*
Ellen E. Deason, B.A., J.D., *Joanne W. Murphy/Classes of 1965 and 1972 Prof. of Law*
Joshua Dressler, B.A., J.D., *Frank R. Strong Chair in Law*
Terri L. Enns, B.A., J.D., *Clinical Prof. of Law*
Katherine Hunt Federle, B.A., J.D., LL.M., *Prof. of Law and Director of the Center for Interdisciplinary Law and Policy Studies*
Edward B. Foley, B.A., J.D., *Chief Justice Thomas J. Moyer Prof. for the Administration of Justice and the Rule of Law*
Larry T. Garvin, B.A., B.S., M.S., J.D., *Lawrence D. Stanley Prof. of Law*

E. Gordon Gee, B.A., J.D., Ed.D., *Prof. of Law and President Emeritus*
Arthur F. Greenbaum, B.A., J.D., *James W. Shocknessy Prof. of Law*
L. Camille Hébert, B.A., J.D., *Carter C. Kissell Prof. of Law*
Stephanie R. Hoffer, B.S., J.D., LL.M., *Assoc. Prof. of Law*
Steven F. Huefner, A.B., J.D., *Prof. of Law and Director of Clinical Prof.*
Creola Johnson, B.S., J.D., *Prof. of Law*
Kimberly Jordan, B.S., J.D., *Assist. Clinical Prof. of Law*
Katherine S. Kelly, B.A., M.A., J.D., *Assist. Clinical Prof. of Law*
Robert M. Krivoshey, B.A., M.A., Ph.D., J.D., *Clinical Prof. of Law*
Katrina J. Lee, B.A., J.D., *Assist. Clinical Prof. of Law*
Deborah Jones Merritt, A.B., J.D., *John Deaver Drinko-Baker and Hostetler Chair in Law*
Dale A. Oesterle, B.A., M.P.P., J.D., *J. Gilbert Reese Chair in Contract Law*
Efthimios Parasidis, B.A., M.B.E., J.D., *Assist. Prof. of Law and Assist. Prof. of Public Health*
Anne Ralph, B.A., J.D., *Assist. Clinical Prof. of Law*
Paul Rose, B.A., J.D., *Assoc. Prof. of Law*
Guy A. Rub, LL.B., M.A., LL.M., *Assist. Prof. of Law*
Dakota Rudesill, B.A., J.D., *Assist. Prof. of Law*
Peter M. Shane, A.B., J.D., *Jacob E. Davis & Jacob E. Davis II Chair in Law*
Ric Simmons, B.A., M.A., J.D., *Prof. of Law*
Marc S. Spindelman, B.A., J.D., *Isadore and Ida Topper Prof. of Law*
Todd A. Starker, B.A., M.B.A., J.D., *Assist. Clinical Prof. of Law*
David Stebenne, B.A., J.D., Ph.D., *Prof. of History and Prof. of Law*
Joseph B. Stulberg, B.A., J.D., M.A., Ph.D., *Michael E. Moritz Chair in Alternative Dispute Resolution*
C. Lee Thomason, B.A., J.D., *Assist. Clinical Prof. of Law*
Donald B. Tobin, B.A., J.D., *Frank E. & Virginia H. Bazler Designated Prof. in Business Law*
Daniel P. Tokaji, A.B., J.D., *Robert M. Duncan/Jones Day Designated Prof. of Law*
Christopher J. Walker, B.A., M.P.P., J.D., *Assist. Prof. of Law*

ADJUNCT FACULTY

Sandra J. Anderson
Elizabeth L. Anstaett
Susan Azyndar
David Ball
David S. Bloomfield
Joseph M. Caliguri
Hon. William B. Chandler
Hon. R. Guy Cole
Matt Cooper
Jonathan E. Coughlan
James E. Davidson
April Opper Davis
Hon. Gregory Frost
Gates Garrity-Rokous

Todd G. Guttman
David W. Hardymon
Gail Block Harris
Patricia Hatler
Kimberly Weber Herlihy
Hon. John E. Hoffman Jr.
Barton Hubbard
Junxia Tang Jernejcic
James Johnson
Shawn Judge
Hon. Terrence P. Kemp
Hon. Norah McCann King
Greg Kirstein
Marya C. Colman

James K.L. Lawrence
Sherri B. Lazear
Hon. Algenon Marbley
Ingrid Mattson
Hon. Stephen McIntosh
Richard M. Mescher
Robert J. Miller
Karen M. Moore
Tanya J. Poteet
Ted L. Ramirez
Frank A. Ray
Douglas Rogers
Dan D. Sandman
Hon. Edmund A. Sargus

Hon. Jennifer Sargus
Edward M. Segelken
Elizabeth Sherowski
Kimberly Shumate
Scott V. Simpson
Douglas Squires
Hon. Jeffrey S. Sutton
Mark R. Weaver
Robert Weiler
Reid Wilson
Stephanie Ziegler