Northern Illinois University Law Review

Volume 37 | Issue 2 Article 6

4-1-2017

Vol. 37, no. 2, Spring 2017: Table of Contents and Masthead

Northern Illinois University Law Review

Northern Illinois University
Law Review

Volume 37 Spring 2017 Number 2

ARTICLES

Policing Boilerplate: Reckoning and Reforming Rule 34's Popular—yet Problematic—Construction

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At the beginning, the Federal Rules of Civil Procedure created a most liberal regime for the discovery of facts and winnowing of issues, awarding parties such essential tools as interrogatories, as set forth in Rule 33, and requests for production, governed by Rule 34. In the last two decades, in response to the seeming failure of this construct to achieve an efficient and just determination of every action, courts have begun to police the use of boilerplate objections to requests for production. Recognizing no distinction between types of boilerplate and acknowledging neither the textual differences within the rules nor the asymmetries too often implicated, judge after judge has found waiver to be the proper penalty for boilerplate's utilization. Unfortunately, in so doing, an apparent juridical majority has run afoul of those well-established principles of construction from which no court may deviate. As a result, the existing jurisprudence is quite a muddle, a perpetual and indeterminate clash of prose and precept, rife with both laudatory notions and cloaked defects.

This article not only traces the history and details the provisions involved in this hushed yet weighty controversy, including Rules 1, 26, 33, 34, and 37, but also delineates precisely where and how so many have erred. Having pinpointed their mistakes, this article then goes farther. In its final section, it tentatively proposes emendations to certain rules that would permit waiver's finding upon boilerplate's use in responses to requests for production.

A historical account, a snapshot of every relevant rule, an explanation of those few controlling principles of construction, and a theory of law and policy—all these things appear within, a guide to more than just Rule 34.

Administrative Leave as an Adverse Action for Title VII Retaliation: New Principles for Liability Call for New Updates to Policy

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The time has come for employers and their attorneys to recognize that placing an employee on paid administrative leave, pending an investigation (or otherwise), has become a riskier proposition under Title VII of the Civil Rights Act of 1964. Numerous courts have held that a paid administrative leave, in most cases, will not constitute an "adverse employment action" as required by Title VII's discrimination provision. But herein lies the danger for employers making the decision on a paid administrative leave – such relative security no longer applies to retaliation claims under Title VII. The warnings from federal circuit courts over the past decade of using broad principles to find that a paid administrative leave is a sufficient adverse action under the

retaliation provision of Title VII have recently been confirmed by the Ninth Circuit in Dahlia v. Rodriguez, 735 F.3d 1060 (9th Cir. 2013) and by other district courts. Employers must respond accordingly and incorporate modern principles regarding administrative leave into their policies and decision making processes.

The current danger is that many employers may still view the potential liability, which comes from placing an employee on paid administrative leave within the relative security that has come from the vast majority of courts finding that such leave does not constitute an ad-verse employment action for Title VII discrimination claims. Dahlia is a wake-up call for employers. Employers and their attorneys must acknowledge the much different (and in many senses lower) standard for finding a sufficient adverse action in a Title VII retaliation claim involving paid administrative leave. This Article will explain the ad-verse action standard established by the Supreme Court in Burlington Northern, 548 U.S. 53 (2006) for retaliation claims under Title VII. This Article will then explore the various factors of an administrative leave which federal circuit and district courts have found are more likely to justify a sufficient adverse action for a retaliation claim. Based upon such case law, this Article will conclude with recommendations regarding how employers should incorporate modern principles regarding administrative leave into their policies and decision making processes.

Unilateral Executive Power ENSHRINED in Law: The Zivotofsky Court Stays the Course

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Zivotofsky v. Kerry (2015) is the most recent challenge to presidential prerogatives, and while the Supreme Court addresses the erroneous mistake espoused by Justice Sutherland in 1936, the Court ultimately fails to harness the unbridled powers of the Executive in the area of foreign affairs. The Court establishes a new standard for presidential ascendancy, which leaves the imperial president largely intact. This Article shows that a dynamic and fluid institutional relationship exists between the executive branch and the Court; the Court affects constitutional and political development by taking a leading role in interpreting presidential decision-making in the area of foreign affairs since 1936. Examining key cases and controversies in foreign policy-making, this Article exposes patterns of regime building by the Court, highlights feedback loops, and examines the long-term effect on presidential politics. Presidents are not bound by their position in the regime. In the area of foreign affairs, presidents, because of the dynamic nature of the Court, are unconstrained by the institutional context of their leadership efforts based on their predecessors.

NOTES AND COMMENTS

Ready to Re-Launch: Fixing the Pitch for the Social Enterprise

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Corporate misfeasance places headlines of economic fraud and shareholder suits above the fold in today's changing marketplace. Corporate response directly appealing to the socially charged agenda of the incoming Millennial generation continues to fall short of marketplace expectations among buyers focused on genuine action and real-time transparency. Individual states have passed legislation to support development of social value on the corporate

agenda using tax credits, most have been met with variable results. The international playing field enjoys aggressively growing support in recognition of social value creation and capture. The United States drags its heels bound by the stiff structures of corporate law, taxation, and questions left unexamined due to a muddled landscape of various social issues, terms and agendas.

This Comment uses Illinois's Benefit Corporation Act and its efficacy to date as a "stuck in the middle" scapegoat against the back-drop of America's evolving marketplace. Factors mitigating an evolving ecosystem reallocate the weight given to traditional supply and demand factors. Rising in power among management teams and representing growing market value, millennial buyers choose to place emphasis on new factors placing social and monetary objectives on opposite sides of the scales that balance America's corporate industry.

Culminating in a comprehensive sweep of novel and timeless is-sues facing social value enterprises, such as enforcement and measurement, this Comment enlivens discussion of collaboration, con-science, and evolution of law as diversity in thinking, individual value and social factors are in vogue among legislating states, enforcing courts and agency authorities.

Cowboys Gone Rogue: The Bureau of Land Management's Mismanagement of Wild Horses in Light of its Removal Procedures of 'Excess' Wild Horses

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In 1971, Congress passed the Wild Free-Roaming Horses and Burros Act ("the Act"), which made the Bureau of Land Management ("BLM") responsible for managing and protecting the free-ranging wild horses and burros on federal public land in the western United States. As the Act permits, the BLM has been removing wild horses from the public range when the BLM determines that an overpopulation of wild horses exists. The excess wild horses are then managed by the BLM in holding facilities for an indefinite period of time. This management practice is unsustainable because the BLM spends nearly two-thirds of their annual budget to manage the horses in the holding facilities. Due to the excessive removal practices as the main form of population control and the ever-increasing reproduction rates of the wild horse herds on the range, the BLM's Wild Horse and Burro Program has become unsustainable.

This Article explores the fiscal, ethical, and legal complications that the BLM faces as they manage the Wild Horse and Burro Program and summarizes various alternative management strategies that the BLM could implement to more effectively manage the wild horse herds on the public range. This Article argues that the courts should not grant deference to the BLM when they propose removal plans that are not supported by the Act; and specifically analyzes that the management practice of removing non-excess wild horses is not supported by the Act. Additionally, this Article analyzes the statutory duties that the BLM is required to follow, such as the "order and priority" for removing the wild horses from the range. The intent of this Article is to show that if the BLM were to follow the strict removal procedures as man-dated by the Act, the BLM is more likely to follow the "minimal feasible level" management, which would ultimately make it more feasible that the wild horses and burros remain wild and free on the range

NORTHERN ILLINOIS UNIVERSITY
LAW REVIEW

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From all the members of the Law Review, thank you to all College of Law Faculty and Staff for your knowledge, support, and guidance.

The NORTHERN ILLINOIS UNIVERSITY LAW REVIEW (ISSN 0734-1490) is published tri-annually by the students of the Northern Illinois University College of Law, DeKalb, Illinois 60115-2854.

Manuscripts offered for publication in the Northern Illinois University Law Review must be typed and double-spaced with footnotes. All citations must conform to The Bluebook: A Uniform System of Citation (20th ed. 2015), a Harvard Law Review publication. Manuscripts should be sent to the attention of the Editor-in-Chief, Northern Illinois University Law Review, DeKalb, Illinois 60115-2854. Manuscripts will not be returned unless specifically requested.

Comments and suggestions regarding the content of this publication are invited.

Cite as N. ILL. U. L. REV. (2017)

Subscriptions are considered to be continuous and, absent receipt of notice to the contrary, will be renewed automatically each year. Law Review subscription price: $28.00 per volume; $9.00 per Fall Issue; $9.00 per Spring Issue; $10.00 per Symposium Issue. Correspondence related to subscriptions should be addressed to:

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2350 North Forest Road
Getzville, NY 14068

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