Northern Illinois University Law Review

Volume 33 | Issue 1 Article 7

9-1-2012

Vol. 33, no. 1, Fall 2012: Table of Contents

Northern Illinois University Law Review

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Recommended Citation

Northern Illinois University Law Review (2012) "Vol. 33, no. 1, Fall 2012: Table of Contents," *Northern Illinois University Law Review*: Vol. 33: Iss. 1, Article 7.
Available at: https://huskiecommons.lib.niu.edu/niulr/vol33/iss1/7

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Northern Illinois University
Law Review

Volume 33 | Fall 2012 | Number 1

ARTICLES

Religion / State: Where the Separation Lies
Vincent J. Samar 1

Recent U.S. Supreme Court decisions regarding the scope of the Establishment Clause have failed to provide a clear framework for determining what government actions are prohibited. Part of the problem concerns what kinds of actions constitute an establishment of religion. What criteria should determine the boundaries of an establishment challenge? Are governmental actions that may only indirectly affect religion (either positively or negatively) prohibited? This article aims to provide a coherent and normatively justified understanding of the Establishment Clause to help answer these questions by considering not just the history of the Clause or the cases the Court has decided under it, but also considering overlaps from various philosophical justifications for the Clause—including justifications from rights theory, political liberalism, utilitarianism, and communitarianism. In the process, the article eliminates from consideration the Supreme Court's so-called "accommodationist" approach and presents a new understanding of the neutrality test that anchors itself between strict separation and the current neutrality approaches. This it does by also taking into account what in moral theory is known as the doctrine of double effect and by showing how the doctrine further limits the various judicial views to just neutrality in the new sense I suggest, while also providing both clearer and firmer conditions for how government should operate to insure its own neutrality.

Substantive Reasonableness Review of Federal Criminal Sentences: A Proposed Standard
Tim Cone..65

After the United States Supreme Court announced in United States v. Booker that, henceforth, federal criminal sentences would be reviewed for "reasonableness," it instructed that appellate courts could review sentences for "substantive reasonableness." However, its observations about "substantive reasonableness" review have not congealed into concrete parameters. As a result, a circuit conflict exists regarding "substantive reasonableness" review, some circuits holding that the re-weighing of sentencing factors is a legitimate part of substantive reasonableness review, while others holding it is not. This Article argues the re-weighing of sentencing factors should not be a part of substantive reasonableness review. It proposes that substantive reasonableness review should focus on the soundness of a sentencing court's reasoning and should, therefore, be limited to

reviewing whether a sentence is arbitrary, or based on impermissible factors.

The Forgotten Jurisdiction
John Massaro 83
This article is the first exclusively devoted to analyzing nine overlooked words in Article III of the Constitution. While there has been extensive mining of most of the three sentences in Article III that the framers used to describe the role and jurisdiction of the federal courts, little, if any, attention has previously been given to the "affecting jurisdiction," which is the second of the nine heads of jurisdiction and the first of the two forms of Supreme Court original jurisdiction. Examining the language and structure of Article III, the proceedings at the constitutional convention, the ratification debates, and the early post-ratification legislation and court decisions, this article concludes that the affecting jurisdiction was intended to be a central part of Article III and to play a role significantly greater than the one it plays today. Applying this new vision of the affecting jurisdiction to today's debates, this article draws a number of conclusions about the ability of Congress to affect Supreme Court original jurisdiction, the scope of the federal question jurisdiction, and the propriety of the existing standing requirements for federal courts.

Declaratory Judgment Before Exhausting Administrative Remedies Under Illinois Law
Brian Neuffer & Deborah A. Ostvig 143
Government agencies increasingly are pursing enforcement actions and litigation against companies they believe have violated laws and the agency's regulations. News reports of multimillion-dollar settlements with government agencies are commonplace. Companies targeted by government agencies often feel powerless because the agency has its own administrative review procedure for challenging its enforcement actions, and that process is usually time consuming and futile. However, from our nation's founding, the judicial branch has been the primary check on government agencies. This Article explores how the declaratory judgment procedure in Illinois may be used to test the validity of agency actions in the courts before exhausting administrative remedies. This Article first describes the doctrine of exhaustion of administrative remedies and the related primary jurisdiction doctrine. It then overviews the Illinois declaratory judgment statute and summarizes cases illustrating exceptions to the exhaustion doctrine. The article concludes with strategic practice considerations for using the declaratory judgments to challenge improper agency actions.

COMMENTS

Eenie, Meenie, Miney, Mo: The Cost of Not Including Domestic Violence Shelters Within the Definition of Dwelling
Arielle Denis 157
As the law currently stands, domestic violence shelters are not included in the definition of a "dwelling" in Title VIII of the Civil Rights Act of 1968 and, therefore, these shelters can turn away any

protected class. This Comment argues domestic violence shelters must be considered a "dwelling" within Title VIII before a 2010 amendment to the Illinois Human Rights Act, adding "order of protection status" as a protected class, can be effective.

Pa-'trolling' the False Marking Frontier: Giving Section 292 the Proper Makeover in Wake of the America Invents Act
Kevin Zickterman 187
Prohibiting false patent marking on various products and goods is not a new concept in intellectual property law. For the last 170 years, laws have been on the books to prevent individuals and manufacturers from deceiving the public, inventors, and other manufacturers into believing that an item or its design retains certain patent rights by law. But in passing the Leahy-Smith America Invents Act, a monumental piece of patent legislation on numerous levels, sweeping changes were made to long-standing false marking law and its concepts. This Comment takes a step back to explore the recent explosion of false marking litigation after the Court of Appeals for the Federal Circuit interpreted these long-standing principles of false patent marking law prior to the passing of the America Invents Act, which triggered a massive "false marking troll" revolution of sorts. It sorts out how this explosion of litigation came to be and analyzes these principles in conjunction with the constitutional provisions in which they were subsequently challenged by those warding off the trolls. With this background in mind, this piece then dives into the sweeping changes of false marking law that Congress invoked in passing the America Invents Act with an edge toward highlighting the caveats of these changes in relation to the act's original and historical purposes. This Comment then attempts to provide the reader with additional fixes to current false marking law under the America Invents Act to address the law's shortcomings, keeping in mind both the potential for future troll problems and the original purposes of the act. Overall, this writing looks to provide, if not concrete solutions to the law's shortcomings in the false marking context, food for thought in the false patent marking arena and the new patent law reform paradigm.