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September Boston College Law Review Issue Released

Boston College Law School

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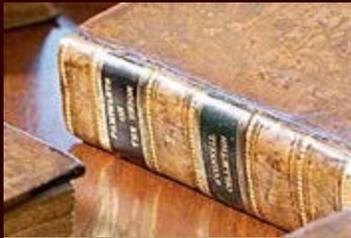


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2015 NEWS ARCHIVE

10/01/15

The September issue of *Boston College Law Review*, the first of five issues of the *Review* to be published in the 2015-2016 academic year, is now available. The September issue features four articles by outside authors, as well as four student notes. Summaries of the pieces are included below. The full texts can be found on the [BCLR website](#).

Dan T. Coenen, [Two-Time Presidents and the Vice-Presidency](#)

In *Two-Time Presidents and the Vice-Presidency*, Professor Dan Coenen of the University of Georgia School of Law examines whether the Constitution limits the ability of a twice-before-elected President to serve as Vice-President. Although some analysts have argued that the Constitution forecloses the possibility that a twice-before-elected President can hold the vice-presidential office, Professor Coenen argues that the text and history of the relevant constitutional provisions---Article II's enumeration of presidential qualifications, the Twelfth Amendment's treatment of qualifications for the vice-presidency, and the post-service limitations placed on two-term Presidents by the Twenty-Second Amendment---do no such thing. Professor Coenen works through a series of separate constitutional sub-inquiries to arrive at his conclusion that that a twice-before-elected President may become Vice-President, either through appointment or through election, and thereafter succeed from that office to the presidency for the full remainder of the pending term.

Miranda Perry Fleischer, [Libertarianism and the Charitable Tax Subsidies](#)

In *Libertarianism and the Charitable Tax Subsidies*, Professor Miranda Perry Fleischer of the University of San Diego School of Law rounds out her series of articles examining what each theory of distributive justice common to legal scholarship suggests for the charitable tax subsidies. This article mines different strands of libertarian theory for insights, in order to fill a gap in tax scholarship regarding the interaction between libertarian principles and the structure of our tax system. Professor Fleischer discusses how although one strand of libertarianism suggests that charitable tax subsidies are in and of themselves illegitimate, several other understandings of libertarianism see a role for the state to engage in a varying amount of redistribution or to provide varying amounts of public goods. Surprisingly, some readings even lend weight to the common criticism that the charitable tax subsidies do not do enough to assist the poor and disadvantaged. Professor Fleischer demonstrates that only a lenient interpretation of classical liberalism and an expansive reading of left-libertarianism support our current tax structure.

Mark C. Weber, [Accidentally on Purpose: Intent in Disability Discrimination Law](#)

In *Accidentally on Purpose: Intent in Disability Discrimination Law*, Professor Mark Weber of DePaul University College of Law argues that section 504 and Americans with Disabilities Act (ADA) claimants should not be required to prove intent in their disability discrimination lawsuits. Professor Weber discusses how disability discrimination laws and regulations contain few intent requirements, yet courts continue to demand showings of intent. Professor Weber explains how such intent requirements arose from a false statutory analogy to case law under Title VI and Title IX of the Civil Rights Act; the reliance on obsolete judicial

language; and a doctrine developed to avoid a non-existent conflict of laws. He then provides reasons not to impose intent requirements for liability or monetary relief in section 504 and ADA cases concerning reasonable accommodations.

Fredrick Vars, [*Self-Defense Against Gun Suicide*](#)

In *Self-Defense Against Gun Suicide*, Professor Fredrick Vars of University of Alabama School of Law proposes adding a precommitment against suicide (PAS) option to our federal National Instant Criminal Background Check System for firearms sales, in order to reduce suicides by firearms. The PAS option would allow individuals to confidentially put their names into the existing background check system to prevent or delay their own future firearm purchases. This restriction would be temporary, as it would be revocable upon a seven-day waiting period. Professor Vars argues that empowering people to restrict their own access to guns in this way has the potential to save many lives, is supported by other self-binding regimes, and poses no serious constitutional concerns.

Emily W. Andersen, Note, [*"Not Ordinarily Relevant": Bringing Family Responsibilities to the Federal Sentencing Table*](#)

In her Note, Emily W. Andersen explores the possibility of revising federal sentencing procedures in order to mitigate the impact of incarceration on inmates' families. Incarceration results in negative social, psychological, and economic impacts on an inmate's family and dependents. Federal statutes require courts to consider a defendant's individual characteristics while calculating a sentence, including a defendant's family ties and responsibilities. Yet the Federal Sentencing Guidelines significantly limit the extent to which courts can use family ties and responsibilities to reduce or alter a defendant's sentence. Andersen argues that the Guidelines should be amended to indicate that courts can consider family ties and responsibilities when determining a sentence. In addition, Andersen argues that Rule 32 of the Federal Rules of Criminal Procedure should be amended to require that a family impact assessment be incorporated into each presentence investigation report to provide courts with information about a defendant's family ties and responsibilities.

Gregory DiCiancia, Note, [*Limiting Frivolous Shareholder Lawsuits Via Fee-shifting Bylaws: A Call for Delaware to Overturn and Revise its Fee-shifting Bylaw Statute*](#)

In his Note, Gregory DiCiancia examines Delaware's allowance, and subsequent prohibition, of fee-shifting bylaws. In 2014, in *ATP Tour, Inc. v. Deutscher Tennis Bund*, the Delaware Supreme Court held that Delaware corporations could adopt fee-shifting bylaws. Subsequently, in 2015, the Delaware State Legislature statutorily prohibited fee-shifting bylaws. The ambiguity of this statute, however, may allow fee-shifting bylaws in securities class action lawsuits. DiCiancia proposes that corporations should be statutorily allowed to adopt fee-shifting bylaws subject to shareholder approval and a maximum relief standard. With minimal chance that the Delaware legislature will immediately overturn its legislation, DiCiancia argues alternatively that the Delaware courts should narrowly interpret the current statute so as not to apply to securities class action lawsuits.

Sarah Smith, Note, [*Claiming a Cell Reset Button: Induced Pluripotent Stem Cells and Preparation Methods as Patentable Subject Matter*](#)

In her Note, Sarah Smith examines whether induced pluripotent stem cells, or bodily cells that have been genetically reprogrammed to resemble embryonic stem cells, would be considered patentable subject matter under the current standard for patentability. Although the Supreme Court has previously found non-naturally occurring organisms and man-made DNA constructs to be patentable subject matter, a bright-line test defining what constitutes patentable subject matter in the context of the life sciences has not been articulated. Smith proposes a standard of evaluating patentable subject matter based on whether the invention at issue possesses markedly different characteristics from the natural product from which the invention is derived.

Maggie Strauss, Note, [*Too Early or Too Late: U.S. Supreme Court Should Rule Constructive*](#)

[Discharge Claims Accrue Upon Resignation](#)

In her Note, Maggie Strauss examines a circuit split regarding when an employee's Title VII constructive discharge claim begins to accrue. The First, Second, Fourth, Eighth, and Ninth Circuits have held that the claim begins to accrue when the employee resigns. The Seventh, Tenth, and District of Columbia Circuits have held that constructive discharge claims begin to accrue at the time of the employer's last discriminatory act. In April 2015, the Supreme Court granted certiorari in *Green v. Donahoe*, a 2014 Tenth Circuit decision that deepened the circuit split. Strauss argues that the Supreme Court should resolve this circuit split by overturning the Tenth Circuit's 2014 decision in *Green v. Donahoe* because accrual upon resignation is more administratively efficient, intuitive for employees, and consistent with Title VII's purpose.