

# Michigan Law Review

2  
95

## ARTICLES

Policy Distortion and Democratic Debilitation:  
Comparative Illumination of the  
Countermajoritarian Difficulty

*Mark Tushnet*

Back to the Briarpatch: An Argument in  
Favor of Constitutional Meta-Analysis in  
State Action Determinations

*Ronald J. Krotoszynski, Jr.*

## ESSAYS

Radically Subversive Speech and the Authority  
of Law

*Steven D. Smith*

Homologizing Pregnancy and Motherhood:  
A Consideration of Abortion

*Julia E. Hanigsberg*

## CORRESPONDENCE

Conditional Probative Value and the  
Reconstruction of the Federal Rules  
of Evidence

*Dale A. Nance*

Reply:  
Refining Conditional Probative Value

*Richard D. Friedman*

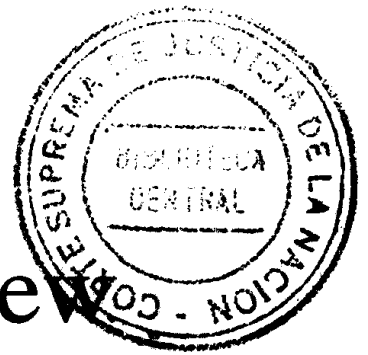
## NOTES

Due Process Review Under the Railway  
Labor Act

True Lies: The Role of Pretext Evidence  
Under *Batson v. Kentucky* in the Wake of  
*St. Mary's Honor Center v. Hicks*

The Applicability of Section 2462's Statute of  
Limitations to SEC Enforcement Suits in  
Light of the Remedies Act of 1990

CARDEX	✓
VOCES	
B. DATOS	
OK	



# Michigan Law Review

Vol. 94, No. 2

November 1995

## CONTENTS

### ARTICLES

POLICY DISTORTION AND DEMOCRATIC DEBILITATION:  
 COMPARATIVE ILLUMINATION OF THE  
 COUNTERMAJORITARIAN DIFFICULTY ..... *Mark Tushnet* 245

BACK TO THE BRIARPATCH: AN ARGUMENT  
 IN FAVOR OF CONSTITUTIONAL  
 META-ANALYSIS IN STATE ACTION  
 DETERMINATIONS ..... *Ronald J. Krotoszynski, Jr.* 302

### ESSAYS

RADICALLY SUBVERSIVE SPEECH AND THE  
 AUTHORITY OF LAW ..... *Steven D. Smith* 348

HOMOLOGIZING PREGNANCY AND MOTHERHOOD:  
 A CONSIDERATION OF ABORTION ..... *Julia E. Hanigsberg* 371

### CORRESPONDENCE

CONDITIONAL PROBATIVE VALUE AND THE  
 RECONSTRUCTION OF THE FEDERAL  
 RULES OF EVIDENCE ..... *Dale A. Nance* 419

REPLY:  
 REFINING CONDITIONAL PROBATIVE  
 VALUE ..... *Richard D. Friedman* 457

Ubicación

2-7

## NOTES

DUE PROCESS REVIEW UNDER THE  
RAILWAY LABOR ACT ..... *Christopher L. Sagers* 466

TRUE LIES: THE ROLE OF PRETEXT EVIDENCE  
UNDER *BATSON V. KENTUCKY*  
IN THE WAKE OF *ST. MARY'S*  
*HONOR CENTER V. HICKS*..... *David A. Sutphen* 488

THE APPLICABILITY OF SECTION 2462'S STATUTE OF  
LIMITATIONS TO SEC ENFORCEMENT SUITS IN  
LIGHT OF THE REMEDIES ACT OF 1990.... *Catherine E. Maxson* 512

## RECENT BOOKS

BOOKS RECEIVED ..... 530

---

Copyright © 1995 by the Michigan Law Review Association. Except where otherwise expressly provided, the author of each article and Note in this issue has granted permission for copies of that article or Note to be made for educational use, provided that (i) copies are distributed at or below cost; (ii) the author and the *Michigan Law Review* are identified; (iii) prior written notice of the use is given to the Michigan Law Review Association; and (iv) proper notice of copyright is affixed to each copy.

The design on the cover is taken from an etching of The University of Michigan Legal Research Building.

*Michigan Law Review* (ISSN 0026-2234) is published monthly in October, November, December, February, March, May, June, and August. Subscriptions: United States, \$40 per year in advance, eight numbers; Foreign, \$46. Editorial and Business Offices: Hutchins Hall, Ann Arbor, Michigan 48109-1215; 313-764-0542 (Editorial); 313-763-5870 (Business); 313-764-8309 (Fax). Second-class postage paid at Ann Arbor, Michigan, and additional mailing offices. POSTMASTER: send address changes to Michigan Law Review, Hutchins Hall, Ann Arbor, Michigan 48109-1215.

Printed at Joe Christensen, Inc., Lincoln, Nebraska 68521.

Recent Volumes: Single Issues \$8, Book Review \$14, and Special Issues \$10, postpaid, at Editorial and Business Offices.

Back issues and volumes (before November 1987) available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209.

Because back stock of the *Review* is turned over to a dealer, back numbers are available to the *Review* for a short time only. We must therefore ask that subscribers report the nonreceipt of copies within six months of the mailing date.

We gladly consider unsolicited manuscripts for publication. Citations in manuscripts should follow the form prescribed in *The Bluebook: A Uniform System of Citation* (15th ed. 1991) and *The Chicago Manual of Style* (14th ed. 1993). We regret that we can return only those manuscripts for which we receive postage and handling fees of \$3.50 for first-class and \$1.50 for special fourth-class mail.