

WILLAMETTE UNIVERSITY COLLEGE OF LAW

SOCIAL JUSTICE & EQUITY  
LAW JOURNAL



---

VOLUME 3  
ISSUE 2  
SPRING 2020

---

# THE SOCIAL JUSTICE & EQUITY LAW JOURNAL OF WILLAMETTE UNIVERSITY COLLEGE OF LAW

---

Spring 2020

VOLUME 3, ISSUE 2

---

## EDITORIAL BOARD

**MARGARET M. DICK**  
*EDITOR-IN-CHIEF*

**BRIDGET C. LAWSON**  
*BUSINESS & SYMPOSIUM EDITOR*

**BRIDGET C. LAWSON**  
*ARTICLES EDITOR*

**MIKAYLA FREI**  
*SR. EXECUTIVE EDITOR*

**CHRISTINA LUEDTKE**  
*EXECUTIVE EDITOR*

**MATTHEW FLORES**  
*EXECUTIVE EDITOR*

**CHRISTOPHER KILLMER**  
*EXECUTIVE EDITOR*

**MARYSSA FERRIES**  
*NOTES & COMMENTS EDITOR*

**NATHANIEL WOODWARD**  
*SR. NOTES & COMMENTS EDITOR*

**MARK HANSEN**  
*NOTES & COMMENTS EDITOR*

## SOURCE & CITE EDITORS

**HANNAH RULE**

**HANNAH M. FULWILER**

**PROFESSOR STEVEN K. GREEN**  
*FACULTY ADVISOR*

## LETTER FROM THE EDITOR

Dear Reader,

It is my distinct privilege to introduce Issue Two of Volume Three of Willamette University College of Law's Social Justice & Equity Law Journal (the *Journal*). I am grateful to the entire staff of this incredible journal for their hard work making this academic pursuit a reality. During this global pandemic, the staff of this journal was constant in their effort to produce quality work during an unprecedented and trying time, working with authors and each other remotely to produce this issue. I commend them for their efforts and thank them for their diligence. A special thanks goes to Bridget Lawson for her exceptional work selecting the articles and her commitment to excellence throughout the editing process.

The *Journal* was formed with one mission: to create an interdisciplinary academic forum in Oregon for scholars, practitioners, policy makers, and students to contribute to society's understanding of legal and policy issues concerning social justice and equity. It has been my great honor to lead this exceptional group of students who have devoted themselves to the promotion of social justice through the work on this journal.

In our first article, "Reefer Reparations" Professor Jazmin Mize discusses the victimization of the most vulnerable resulting from America's "War on Drugs." She discusses the conflict between state and federal prohibitions on recreational and medical cannabis as well as the way in which the benefits from the legalization of marijuana use are reaped by those not suffering the consequences of its criminalization. She argues that the industry needs to be reshaped to allow those who have been victimized to benefit from the economic opportunities of the industry.

Our second article, by Erin Carman, J.D., and Vanessa Glushefski, CPA, entitled "Ranked Choice Voting Now: A Shift Toward a Better Democracy" addresses the impact of the ranked choice voting election method as it becomes increasingly popular in our local, state and national democracies. They discuss how it contributes to the growth of democracy by eliminating voters' fear of wasting their vote. Carman and Glushefski assess campaign finance reform, multimember districts and ballot access reforms through their research.

In "Paternalistic State-Level Abortion Restrictions," authors Brent L. Pickett, Shelby "Lexi" McRee, Michael McDaniel and Patrick G. Blythe discuss laws that are enacted pursuant to the shared justification that state regulation of abortion is needed to protect women in their decisions regarding abortion. They address the paternalistic approach taken by states, which involves the substitution of the government's judgment for that of the one being targeted by the legislation. They argue that there is a burden of proof that needs to be met including a showing of

permissibility of the state action and a showing that the action is warranted and the legislation is a solution to the problem.

“The Long Row: Examining the Contemporary, Cruel, and Unusual Death Penalty,” by Melissa Fenwick, discusses the heightened scrutiny that has developed in the realm of the death penalty. She addresses the concerns that the extended appeals and stalled proceedings surrounding the death penalty’s imposition potentially create a constitutional claim against its imposition. Her article uses current statistics and cases to discuss whether the decades many prisoners spend on death row constitutes cruel and unusual punishment subject to the Eighth Amendment.

In “Attorney Perspectives on Workplace Sexual Harassment Claims: Lessons Learn from California in the Wake of #MeToo,” Jane Farrell and Hannah Pollack examine the legal system surrounding claims of workplace sexual harassment and the barriers that hinder these claims. The Article explores the features of California law which render California law more amenable to workplace sexual harassment claims. Farrell and Pollack draw from qualitative data, in which they surveyed many attorneys, which suggests California law is more effective than federal law in dealing with these claims.

The *Journal’s* final piece, “#BlackGirlMagic: Due Process and the Disappearance of Black Girls in Public Education” by Erica Young, argues that African American girls are overrepresented in disciplinary procedures in America’s public-school systems, and face discipline rate higher than White girls, which influences their access to education. The essay analyzes their underrepresentation in special education, the impact of discipline on their right of due process, and the growing suspension rates of African American girls and its impact on the school to prison pipeline, as well as addressing the various ways in which quality education for African American girls can be provided moving forward.

The theories and ideas purported by the authors within this publication are not those of the *Journal* or Willamette University College of Law. However, it is our mission to give voice to issues not commonly published by law reviews or other non-special interest journals. It is our hope that this publication will foster discussion of change in the interest of social justice and equity for all and ultimately spur the legal community to action in furtherance of these pursuits.

Sincerely,



Margaret Dick  
Editor-in-Chief

\* \* \*

## ACKNOWLEDGEMENTS

The editorial staff of the Willamette University Social Justice and Equity Law Journal extends their gratitude to Professor Steven K. Green, Fred H. Paulus Professor of Law at Willamette University. In addition to serving as the *Journal's* faculty advisor he continues to participate in and further the *Journal's* mission through his mentorship.

The editorial staff also appreciate the contributions and guidance of Daniel Santos. Mr. Santos is a former Dean of Student Affairs at Willamette University College of Law.

The editorial staff also appreciate Professor W. Warren H. Binford, Director of the Clinical Law Program as a supporter of the *Journal's* mission.

The editorial staff also thank Ms. Galin Brown, Access Services Manager of the Willamette University College of Law Library, and Ms. Mary Rumsey, Reference & Instruction Services Librarian of the Willamette University College of Law Library.

Lastly, the editorial staff thank Felipe Rendon, founding Editor-in-Chief of this journal, without whose efforts this publication would not exist to address legal issues that are often overlooked by mainstream academia.

## LETTER FROM THE EDITOR

Dear Reader,

It is my distinct privilege to introduce Issue Two of Volume Three of Willamette University College of Law's Social Justice & Equity Law Journal (the *Journal*). I am grateful to the entire staff of this incredible journal for their hard work making this academic pursuit a reality. During this global pandemic, the staff of this journal was constant in their effort to produce quality work during an unprecedented and trying time, working with authors and each other remotely to produce this issue. I commend them for their efforts and thank them for their diligence. A special thanks goes to Bridget Lawson for her exceptional work selecting the articles and her commitment to excellence throughout the editing process.

The *Journal* was formed with one mission: to create an interdisciplinary academic forum in Oregon for scholars, practitioners, policy makers, and students to contribute to society's understanding of legal and policy issues concerning social justice and equity. It has been my great honor to lead this exceptional group of students who have devoted themselves to the promotion of social justice through the work on this journal.

In our first article, "Reefer Reparations" Professor Jazmin Mize discusses the victimization of the most vulnerable resulting from America's "War on Drugs." She discusses the conflict between state and federal prohibitions on recreational and medical cannabis as well as the way in which the benefits from the legalization of marijuana use are reaped by those not suffering the consequences of its criminalization. She argues that the industry needs to be reshaped to allow those who have been victimized to benefit from the economic opportunities of the industry.

Our second article, by Erin Carman, J.D., and Vanessa Glushefski, CPA, entitled "Ranked Choice Voting Now: A Shift Toward a Better Democracy" addresses the impact of the ranked choice voting election method as it becomes increasingly popular in our local, state and national democracies. They discuss how it contributes to the growth of democracy by eliminating voters' fear of wasting their vote. Carman and Glushefski assess campaign finance reform, multimember districts and ballot access reforms through their research.

In "Paternalistic State-Level Abortion Restrictions," authors Brent L. Pickett, Shelby "Lexi" McRee, Michael McDaniel and Patrick G. Blythe discuss laws that are enacted pursuant to the shared justification that state regulation of abortion is needed to protect women in their decisions regarding abortion. They address the paternalistic approach taken by states, which involves the substitution of the government's judgment for that of the one being targeted by the legislation. They argue that there is a burden of proof that needs to be met including a showing of

permissibility of the state action and a showing that the action is warranted and the legislation is a solution to the problem.

“The Long Row: Examining the Contemporary, Cruel, and Unusual Death Penalty,” by Melissa Fenwick, discusses the heightened scrutiny that has developed in the realm of the death penalty. She addresses the concerns that the extended appeals and stalled proceedings surrounding the death penalty’s imposition potentially create a constitutional claim against its imposition. Her article uses current statistics and cases to discuss whether the decades many prisoners spend on death row constitutes cruel and unusual punishment subject to the Eighth Amendment.

In “Attorney Perspectives on Workplace Sexual Harassment Claims: Lessons Learn from California in the Wake of #MeToo,” Jane Farrell and Hannah Pollack examine the legal system surrounding claims of workplace sexual harassment and the barriers that hinder these claims. The Article explores the features of California law which render California law more amenable to workplace sexual harassment claims. Farrell and Pollack draw from qualitative data, in which they surveyed many attorneys, which suggests California law is more effective than federal law in dealing with these claims.

The *Journal’s* final piece, “#BlackGirlMagic: Due Process and the Disappearance of Black Girls in Public Education” by Erica Young, argues that African American girls are overrepresented in disciplinary procedures in America’s public-school systems, and face discipline rate higher than White girls, which influences their access to education. The essay analyzes their underrepresentation in special education, the impact of discipline on their right of due process, and the growing suspension rates of African American girls and its impact on the school to prison pipeline, as well as addressing the various ways in which quality education for African American girls can be provided moving forward.

The theories and ideas purported by the authors within this publication are not those of the *Journal* or Willamette University College of Law. However, it is our mission to give voice to issues not commonly published by law reviews or other non-special interest journals. It is our hope that this publication will foster discussion of change in the interest of social justice and equity for all and ultimately spur the legal community to action in furtherance of these pursuits.

Sincerely,



Margaret Dick

Editor-in-Chief

\* \* \*

## ACKNOWLEDGEMENTS

The editorial staff of the Willamette University Social Justice and Equity Law Journal extends their gratitude to Professor Steven K. Green, Fred H. Paulus Professor of Law at Willamette University. In addition to serving as the *Journal's* faculty advisor he continues to participate in and further the *Journal's* mission through his mentorship.

The editorial staff also appreciate the contributions and guidance of Daniel Santos. Mr. Santos is a former Dean of Student Affairs at Willamette University College of Law.

The editorial staff also appreciate Professor W. Warren H. Binford, Director of the Clinical Law Program as a supporter of the *Journal's* mission.

The editorial staff also thank Ms. Galin Brown, Access Services Manager of the Willamette University College of Law Library, and Ms. Mary Rumsey, Reference & Instruction Services Librarian of the Willamette University College of Law Library.

Lastly, the editorial staff thank Felipe Rendon, founding Editor-in-Chief of this journal, without whose efforts this publication would not exist to address legal issues that are often overlooked by mainstream academia.



# TABLE OF CONTENTS

---

SOCIAL JUSTICE & EQUITY LAW JOURNAL VOLUME 3 ISSUE 2

## ARTICLES

### REEFER REPARATIONS

*Jazmin Mize*.....1

### RANKED CHOICE VOTING NOW: A SHIFT TOWARD A BETTER DEMOCRACY

*Erin Carman and Vanessa Glushefski* .....36

### PATERNALISTIC STATE-LEVEL ABORTION RESTRICTIONS

*Brent L. Pickett, Shelby McRee,  
Michael McDaniel, and Patrick G. Blythe*.....75

## NOTES

### THE LONG ROW: EXAMINING THE CONTEMPORARY, CRUEL, AND UNUSUAL DEATH PENALTY

*Melissa Fenwick*.....114

### ATTORNEY PERSPECTIVES ON WORKPLACE SEXUAL HARASSMENT CLAIMS: LESSONS LEARNED FROM CALIFORNIA IN THE WAKE OF #MeToo

*Jane Farrell and Hannah Pollack*.....156

### #BLACKGIRLMAGIC: DUE PROCESS AND THE DISAPPEARANCE OF BLACK GIRLS IN PUBLIC EDUCATION

*Erica Young*.....207