Georgia Law Review

Volume 45 | Number 1 Article 1

2010

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GEORGIA LAW REVIEW

VOLUME 45 FALL 2010 NUMBER 1

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Limiting Article III Standing to "Accidental" Plaintiffs: Lessons from Environmental and Animal Law Cases ..... *Robert J. Pushaw, Jr.* 1

According to the Supreme Court, Article III's extension of "judicial Power" to "Cases" and "Controversies" limits standing to plaintiffs who can demonstrate an individualized "injury in fact" that was caused by the defendant and that is judicially redressable. Article III's text and history, however, do not mention "injury," "causation," or "redressability."

Furthermore, these standards are malleable and have been applied to achieve ideological goals, especially in cases involving environmental and animal-welfare laws. Most notably, the Court has recognized an "injury in fact" to one's aesthetic enjoyment of nature, but determining such an injury is arbitrary because "aesthetics" is a matter of personal taste. Judges have exercised similar unbridled discretion in ascertaining causation and redressability. The result has often been a judicial takeover of important policy issues.

Standing decisions are so inconsistent and politicized that most scholars have recommended abandoning the doctrine. However, stare decisis will prevent such a radical change. Therefore, I offer a more realistic approach that retains the existing standing framework but modifies its elements. My touchstone is the historical meaning of an Article III "case," which restricts court access to plaintiffs whose legal rights have been invaded fortuitously because of a chance event beyond their control.

Applying this test, courts would find an "injury in fact" only when it befell a plaintiff by accident, not when someone manufactured a lawsuit by claiming "aesthetic" harm. Insisting on a fortuitous injury would also make it

far easier to determine who caused it and whether the remedy requested would redress it.

Defense Against Outrage and the Perils of Parasitic Torts ..... *Geoffrey Christopher Rapp* 107

Two prominent narratives in tort law scholarship address the increasing recognition of claims for loss of emotional tranquility and the expanding privilege to use force in defense of self and others. This Article explores a puzzle in tort law that challenges these traditional accounts. Can force be used to defend against intentional extreme or outrageous conduct threatening a person with severe emotional distress? The answer in the case law and articulated doctrine appears to be "no." The law permits the use of force to protect dignitary interests, in the case of offensive battery and assault, but seems to deny the use of force to protect against IIED. No basis for this distinction appears in the leading theoretical accounts of tort law—economics, corrective justice, and civil recourse theory. Rather, the basis of the rules seems to be the childhood maxim, "Sticks and stones . . .," without strong theoretical or policy justification.

Two implications arise. First, the law continues to privilege physical security above emotional well-being. Second, although it is arguably the most successful "new" tort of the twentieth century, IIED remains a tort whose boundaries are murky and whose place in tort doctrine is unclear. The parasitic nature of IIED has complicated the effort to build clear doctrine around all but the most essential elements of the claim.

Congressional End-Run: The Ignored Constraint on Judicial Review ..... *Luke M. Milligan* 211

This Article identifies an untended connection between the research of legal academics and political scientists. It explains how recent developments in constitutional theory, when read in good light, expose a gap in the judicial politics literature on Supreme Court decisionmaking. The gap is the "congressional end-run."

End-runs occur when Congress mitigates the policy cost of adverse judicial review through neither formal limits on the Court's autonomy nor substitution of its constitutional

interpretation for that of the Court, but through a different decision which cannot, as a practical if not legal matter, be invalidated by the Court. End-runs come in several forms, including congressional decisions to grant authority to the Executive Branch, to adjust appropriations, to modify certain contingent laws, and to reorient legislation in alternate constitutional clauses. Ignored by political scientists, end-runs undoubtedly constrain the judicial decisionmaking of the strategic Justices assumed by judicial politics scholars.

This Article calls on judicial politics scholars to incorporate the end-run into their formal SOP models and related empirical studies. Such incorporation promises to give political scientists a fuller sense of how their strategic Justices interact with Congress in our constitutional democracy.

NOTES

State of Emergency: Why Georgia's Standard of Care in Emergency Rooms is Harmful to Your Health.....*Jason R. Graves* 275

Patients injured by medical negligence have historically been able to recover for the injuries they sustained. In 2005, however, the Georgia General Assembly passed Georgia Senate Bill 3, which gave virtual immunity to emergency room doctors and those practicing in obstetrics wards. The Bill requires a showing of gross negligence by clear and convincing evidence to prevail on a medical malpractice claim against those protected by the statute. The law prevents injured patients who cannot meet this standard from recovering any damages, even compensation for medical bills arising from the negligent act. The legislature enacted the Bill in an effort to address physician shortages and rising medical malpractice insurance premiums. In March 2010, the Georgia Supreme Court upheld the statute's constitutionality in Gliemmo v. Cousineau.

This Note explores the enactment of the Bill, the controversy surrounding its passage, and the cause of rising medical malpractice insurance premiums. This Note argues that the supreme court's decision was

mistaken and relied on faulty precedent. Accordingly, this Note calls on the Georgia Supreme Court to revisit the constitutionality of the statute, or alternatively, urges the Georgia General Assembly to repeal the law and address malpractice insurance premiums by other means.

Waiving Good-bye to Inconsistency: Factual Basis Challenges to Guilty Pleas in Federal Courts ..... *William T. Stone, Jr.* 311

Rule 11(b)(3) of the Federal Rules of Criminal Procedure requires courts to determine that criminal defendants' guilty pleas have a factual basis. Once a district court accepts a guilty plea, appellate courts diverge in their willingness to review challenges to the sufficiency of the plea's factual basis. Some federal circuits hold that a factual basis challenge is waived by the guilty plea. Other jurisdictions will review a defendant's factual basis challenge on appeal. Despite the lack of clarity on this point, the Supreme Court has not yet provided guidance and the federal circuit courts have not offered a great deal of reasoning behind their treatment of the factual basis challenge.

This Note argues that a challenge to the factual basis for a guilty plea should be waived by the plea. This position comports with the substantial policy interest in the efficacy and finality of guilty pleas. Other forms of relief available to defendants who plead guilty make factual basis challenges otiose in this context. This Note then addresses the practical problems attendant to an appellate review of a guilty plea's factual basis. Finally, it draws a meaningful distinction between compliance with the procedural requirements of Rule 11 and the findings of fact made by a district court during the guilty plea hearing.

VOLUME 45 FALL 2010 NUMBER 1
GEORGIA LAW REVIEW ASSOCIATION, INC.