

VERMONT LAW REVIEW

VOLUME 46 NUMBER 2

WINTER 2021

ARTICLES

Introduction, After NAFTA: The United States-
Mexico-Canada Agreement and Sustainability

*L. Kinvin Wroth
Hoi L. Kong*

Looking at NAFTA's Replacement Through the
Lens of Ecological Law

*Geoffrey Garver
Carla Sbert*

Saved by Silence: Climate Change, Treaty
Lacunae, and the U.S.-Mexico-Canada Agreement

Tracy D. Hester

The Submissions on Enforcement Matters Process:
Changes in Law and Theory

Hoi L. Kong

The Investment-Sustainability Conundrum Under
the USMCA: An Evolution?

*Avidan Kent
Valentine Kumuji*



VERMONT LAW REVIEW

VOLUME 46 NUMBER 2

WINTER 2021

ARTICLES

- | | | |
|---|---|-----|
| Introduction, After NAFTA: The United States-Mexico-Canada Agreement and Sustainability | <i>L. Kinvin Wroth</i>
<i>Hoi L. Kong</i> | 188 |
| Looking at NAFTA's Replacement Through the Lens of Ecological Law | <i>Geoffrey Garver</i>
<i>Carla Sbert</i> | 200 |
| Saved by Silence: Climate Change, Treaty Lacunae, and the U.S.-Mexico-Canada Agreement | <i>Tracy D. Hester</i> | 240 |
| The Submissions on Enforcement Matters Process: Changes in Law and Theory | <i>Hoi L. Kong</i> | 265 |
| The Investment-Sustainability Conundrum Under the USMCA: An Evolution? | <i>Avidan Kent</i>
<i>Valentine Kunuji</i> | 291 |



VERMONT LAW REVIEW

VOLUME 46 NUMBER 2

WINTER 2021

Editor-in-Chief
DIARRA A. RAYMOND

Senior Managing Editor
LORENTZ HANSEN

Senior Articles Editor
SIMEON BROWN

Senior Notes Editor
HEATHER A. FRANCIS

Business Manager
JAKE EVANS

Managing Editors
MARY FRANCO
NOY S. KRUVI
KIJANA E. PLENDERLEITH

Articles Editors
JOSEPH COFFEY
BENJAMIN FULLER
MADISON P. PROKOTT
PATRICK RAYA
BRANDON SHEFFERT
MICHAEL TADDONIO

Head Notes Editors
ROBERT BAKER
HEIDI M. GUENTHER
ASHELY MONTI

Vermont Editor
JAMES MULHALL III

Symposium Editor
MARIAH HARROD

Alumni Editor
CALUM DIXON

Technology Editor
CHRISTOPHER J. DAVIS

Editor
STEVE WENG

SARA BABCOCK
JORDAN M. BARKER
STEPHANIE BING
JAMES BRIEN
CAITLIN CARROLL
CLELIA CASCIOLA
BROOKE CATALANO
ELIZABETH CAVE
BROOKE CHMURA

Staff Editors
EMILY DAVIS
ALEXANDER MASON FAGOTTI
MADISON GAFFNEY
LUIS GONZÁLEZ
HEIDI JOHNSON
MEG KIRBY
ELSA LARSEN

SARAH LOTTMAN
KAELIN ELIZABETH MACKEY
ERIN MCCLELLAND
ISABELLA MONTOYA
STEPHANIE NHAM
DAVID HAMILTON OLSON
LINDSAY ROSTRON
NINA VANDERZANDEN
MORGAN ZIELINSKI

Faculty Advisor
PROF. CATHERINE FREGOSI

Vermont Law Review is published four times per academic year: Fall, Winter, Spring, and Summer. *Vermont Law Review's* mailing address is: *Vermont Law Review*, Vermont Law School, P.O. Box 96, South Royalton, VT 05068. *Vermont Law Review* can be found online at <http://lawreview.vermontlaw.edu>. E-mail: lawreview@vermontlaw.edu.

Subscriptions: Subscriptions are \$35.00 (domestic) and \$40.00 (foreign) per year, payable in advance. All subscriptions will be renewed automatically unless the subscriber provides timely notice of cancellation. Address changes must be made at least one month before the publication date to ensure proper delivery. Please provide the account number, the old address, and the new address, including zip codes. Please address all correspondence regarding address changes or other requests for subscription information to the Business Manager at lawreview@vermontlaw.edu.

Single and Back Issues: Books from current volumes can be purchased for \$10.00 from *Vermont Law Review*. For back issues, contact *Vermont Law Review* or William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209-1987. For an inclusive index of prior volumes, please contact *Vermont Law Review*.

Manuscripts: *Vermont Law Review* welcomes the submission of unsolicited articles, comments, essays, and book reviews. Submissions may be submitted through the mail or electronically. Manuscripts cannot be returned unless accompanied by a self-addressed, stamped, postage-paid envelope.

Copyright: © 2021 by Vermont Law School. The copyright in each article is owned by the respective author. All rights reserved. Except as otherwise provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use, provided that: (1) copies are distributed at or below cost; (2) the author and *Vermont Law Review* are identified on the copied materials; (3) each copy bears the proper notice of copyright; and (4) *Vermont Law Review* is notified in writing of the use of the material(s).

Production: *Vermont Law Review* is printed in Times New Roman scalable font by The Sheridan Press, 450 Fame Avenue, Hanover, PA 17331.

VERMONT LAW SCHOOL

2021-2022

ADMINISTRATION

Beth McCormack, A.B., J.D., Interim President and Dean and Professor
Cynthia W. Lewis, B.A., J.D., M.L.I.S., Vice Dean for Faculty and Professor
Joseph Brennan, B.A., J.D., Vice Dean for Students and Professor
Shirley A. Jefferson, B.S., J.D., Associate Dean for Student Affairs and Diversity and
Associate Professor
Jennifer K. Rushlow, B.A., M.P.H., J.D., Associate Dean for Environmental Programs, Director of the
Environmental Law Center, and Professor

FACULTY

Abigail Andre, B.F.A., J.D., Staff Attorney at the Environmental Advocacy Clinic, Assistant Professor
Susan B. Apel, B.A., J.D., Professor Emerita
Margaret Martin Barry, B.A., J.D., Professor Emerita
Matthew Bernstein, B.A., M.A., J.D., Assistant Professor
Laurie J. Beyranevand, B.A., J.D., Director of the Center for Agriculture and Food Systems and Professor
Richard O. Brooks, B.A., M.A., LL.B., Ph.D., Professor Emeritus
Amy Laura Cahn, B.A., J.D., Director of the Environmental Justice Clinic and Visiting Professor
Jared Carter, B.A., J.D., Assistant Professor
Stephanie Clark, B.A., J.D., Director of the Center for Justice Reform and Assistant Professor
Liz Ryan Cole, B.A., J.D., Professor Emerita
Michelle Donnelly, B.A., J.D., Staff Attorney at the South Royalton Legal Clinic and Professor
Michael Dworkin, B.A., J.D., Professor Emeritus
Stephen Dycus, B.A., LL.B., LL.M., Professor Emeritus
John Echeverria, B.A., M.F.S., J.D., Professor
Jeannette Eicks, B.A., J.D., Director of the Center for Legal Innovation and Research Professor
Paul S. Ferber, B.A., J.D., Professor Emeritus
David B. Firestone, B.S., J.D., Professor
Catherine Fregosi, B.A., J.D., Assistant Professor
Clara Gimenez, J.D., Associate Professor
Oliver R. Goodenough, B.A., J.D., Research Professor
Donald Hayes, J.D., Director of the General Practice Program, Staff Attorney at the South Royalton
Legal Clinic, and Assistant Professor
Hillary Hoffmann, B.A., J.D., Professor
Erin Jacobsen, B.A., J.D., Director of the South Royalton Legal Clinic and Professor
Greg Johnson, B.A., J.D., Director of the Legal Writing Program and Professor
Kevin Jones, B.S., M., Ph.D., Director of the Institute for Energy and the Environment and Professor
Nicole Killoran, B.S., J.D., Professor
Kenneth R. Kreiling, B.A., M.A., J.D., LL.M., Professor Emeritus
Sophia Kruszewski, B.S., J.D., Clinic Director of the Center for Agriculture and Food Systems and
Assistant Professor
Siu Tip Lam, B.A., J.D., Director of the U.S.-Asia Partnerships for Environmental Law and
Associate Professor
Mark Latham, B.S.N., J.D., Professor Emeritus
Yanmei Lin, B.A., M.A., LL.M., Associate Director of the U.S.-Asia Partnerships for Environmental
Law and Associate Professor
Beth Locker, A.B., J.D., Professor
Reed Elizabeth Loder, A.B., M.A., Ph.D., J.D., Professor
James C. May, B.A., M.A., J.D., Professor Emeritus
Philip Meyer, B.A., M.F.A., J.D., LL.M., Professor
Marc Mihaly, B.A., J.D., Professor Emeritus
Janet Milne, B.A., J.D., Director of the Environmental Tax Policy Institute and Professor
Jim Murphy, B.A., J.D., LL.M., Director of the Environmental Advocacy Clinic and Assistant Professor
Jeannie Oliver, B.A., B.L., J.D., Staff Attorney at the Institute for Energy and the Environment and
Professor

Margaret Olnek, B.A., J.D., Assistant Professor
Mason Overstreet, B.S., J.D., Staff Attorney at the Environmental Advocacy Clinic and Assistant Professor
Patrick Parenteau, B.S., J.D., LL.M., Senior Counsel to the Environmental Advocacy Clinic, Senior Counsel to the Institute for Energy and the Environment, and Professor
Lindsey Pointer, B.A., Ph.D., Assistant Director of the National Center on Restorative Justice and Assistant Professor
Brian Porto, B.A., Ph.D., J.D., Assistant Director of the Legal Writing Program and Professor
Sarah M. Reiter, B.S., M.S., J.D., Assistant Professor
Jonathan Rosenbloom, B.Arch and B.F.A., J.D., LL.M., Professor
Jillian Rudge, B.A., J.D., Immigration Staff Attorney and Assistant Professor
Christine Ryan, B.A., M.S., M.A., Environmental Law Librarian and Associate Professor
Richard Sala, B.A., M.E.L.P., M.B.A., J.D., Director of the Online Learning Program and Assistant Professor
Robert L. Sand, B.A., J.D., Founding Director of the Center for Justice Reform and Professor
Linda O. Smiddy, B.A., M.A.T., J.D., LL.M., Professor Emerita
Emily Spiegel, B.S., J.D., Senior Fellow of the Center for Agriculture and Food Systems and Assistant Professor
Pamela J. Stephens, B.A., J.D., Professor Emerita
Rachel Stevens, B.A., M.E.L.P., J.D., LL.M., Staff Attorney at the Environmental Advocacy Clinic, Staff Attorney at the Environmental Justice Clinic, and Professor
Peter R. Teachout, B.A., M.A., J.D., Professor
Pamela Vesilind, B.A., J.D., LL.M., Assistant Professor
Joan E. Vogel, B.A., M.A., J.D., Professor
Stephanie J. Willbanks, B.A., J.D., Professor
Jane Woldow, B.S., J.D., M.L.S., Director of the Julien and Virginia Cornell Library and Professor
L. Kinvin Wroth, B.A., LL.B., Professor Emeritus
Margaret York, B.A., J.D., Staff Attorney at the South Royalton Legal Clinic and Assistant Professor

VERMONT LAW SCHOOL

**BOARD OF TRUSTEES
2021–2022**

OFFICERS

Interim President and Dean
Beth McCormack

Chair
Glenn Berger '78

Vice-Chair
Constance J. Neary '89

Secretary
Sheppard A. Guryan

Treasurer
Scott M. Cullen '97

MEMBERS

Richard E. Ayres
Stephen F.W. Ball, Jr. '07
Olaseni A. Bello, Jr. '06
Caryn J. Clayman '83
Amy M. Davenport
Charles E. DiLeva '78
Brian S. Dunkiel '96
Janice Forgays '85
Marion McCollom Hampton
J.B. Kittredge
Catherine MacKenzie
Jessica L. Olson '07
Jill Pfenning '07
Mark Sciarrotta '96

Alumni Trustees
Richard Johnson '97
J. Patrick Kennedy '93

Student Trustees
Fito Andre '22
James Brien '23

Faculty Representative
Jeannie Oliver

Staff Representative
Katie Merrill

Trustees Emeriti
J. Scott Cameron '80
Ann T. Debevoise
R. Allan Paul
Rick Shafer '77



VERMONT LAW REVIEW

SUBSCRIPTIONS

Vermont Law Review is published quarterly each academic year: Fall, Winter, Spring, and Summer. If you wish to order a yearly subscription to *Vermont Law Review*, please complete and mail the form below or call *Vermont Law Review* at (802) 831-1253.

Vermont Law Review
Subscription Order Form

Mail subscription to:

Name (firm or individual) _____

Address _____

Check (payable to Vermont Law School) enclosed for:

_____ \$35.00 (domestic)

_____ \$40.00 (foreign)

Vermont Law Review
Vermont Law School
P.O. Box 96
South Royalton, Vermont 05068



VERMONT LAW REVIEW

CALL FOR ARTICLES

Vermont Law Review seeks articles, commentaries, essays, and book reviews concerning recent developments in state, federal, Native American, or international law. Interested authors are encouraged to forward their submissions to:

Vermont Law Review
Vermont Law School
Attn: Senior Articles Editor
P.O. Box 96
South Royalton, Vermont 05068

For electronic submissions or submissions questions, please e-mail our Senior Articles Editor for 2021–2022, Simeon Brown, at VLRSeniorArticlesEditor@vermontlaw.edu, or call the *Vermont Law Review* at (802)-831-1253. *Vermont Law Review* encourages double-sided printing of mailed submissions when possible.