# Tulane Law Review



Devoted to the Civil Law, Comparative Law and Codification

## SYMPOSIUM ON PRESIDENTIAL INTERVENTION IN ADMINISTRATIVE RULEMAKING

Paul R. Verkuil
Joan Z. Bernstein
Lloyd N. Cutler
Kenneth Culp Davis
C. Boyden Gray
Alan B. Morrison

#### **ARTICLES**

RECOVERING ATTORNEYS' FEES FROM THE GOVERNMENT UNDER THE EQUAL ACCESS TO JUSTICE ACT

Reuben B. Robertson Mary Candace Fowler

A BRIEF HISTORY OF THE FIFTH CIRCUIT COURT OF APPEALS

Harvey Couch

### COMMENTS

What Will We Tell the Children? A Discussion of Current Judicial Opinion on the Scope of Ideas Acceptable for Presentation in Primary and Secondary Education

Conflicting Interests in Southern Louisiana's Wetlands: Private Developers Versus Conservationists, and the State and Federal Regulatory Roles

Review by Robert J. Cottrol & Raymond T. Diamond

## TULANE LAW REVIEW

VOLUME 56

**APRIL 1982** 

NUMBER 3

## **CONTENTS**

SYMPOSIUM: PRESIDENTIAL INTERVENTION IN ADMINISTRATIVE RULEMAKING	
Symposium on Presidential Control of Rulemaking: An Introduction	811
THE PRESIDENTIAL ROLE IN ADMINISTRATIVE RULEMAKING: IMPROVING POLICY DIRECTIVES: ONE VOTE FOR NOT TYING THE PRESIDENT'S HANDS  Joan Z. Bernstein	
THE CASE FOR PRESIDENTIAL INTERVENTION IN REGULATORY RULEMAKING BY THE EXECUTIVE BRANCH Lloyd N. Cutler	
Presidential Control of Rulemaking	
Presidential Involvement in Informal Rulemaking	
Presidential Intervention in Informal Rulemaking: Striking the Proper	
BALANCE	879
RECOVERING ATTORNEYS' FEES FROM THE GOVERNMENT UNDER THE EQUAL ACCESS TO JUSTICE ACT	903
A BRIEF HISTORY OF THE FIFTH CIRCUIT COURT OF APPEALS	
COMMENTS	
WHAT WILL WE TELL THE CHILDREN? A DISCUSSION OF CURRENT JUDICIAL OPINION ON THE SCOPE OF IDEAS ACCEPTABLE FOR PRESENTATION IN PRIMARY AND SECONDARY EDUCATION	960
Conflicting Interests in Southern Louisiana's Wetlands: Private Developers Versus Conservationists, and the State and Federal Regulatory Roles  Julie Durel Livaudais	
NOTES	
CIVIL PROCEDURE—Interlocutory Appeals: Orders  Denying Disqualification of Counsel Are Not Appealable  Pursuant to the Collateral Order Exception	1035
COMMUNITY PROPERTY—Characterization of Credit Purchases and the Effects of Estoppel by Deed Catherine N. Garvey	
Table 11. Garbey	-001

LABOR LAW—An Employer's Decision to  Terminate Partially a Business Operation Is Not a Mandatory Subject of Bargaining
Taxation—Percentage Depletion Not Available with Regard to Advance Royalties Received on Non-Producing Oil and Gas Lease  John D. Edgcomb 1082
REVIEW
HIGGINBOTHAM: IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD Robert J. Cottrol 1107  Raymond T. Diamond

### TULANE LAW REVIEW

(ISSN: 0041-3992) Current Prices Subscription \$17.00 a Year Foreign Subscription \$19.50 a Year Single Copy \$6.50; Admiralty issue \$7.00 Plus postage and handling

Published by Tulane Law Review Association in December, February, April, and June

Total paid circulation-2,349

Second-class postage paid at New Orleans, Louisiana and additional mailing offices

Copyright 1982 by: Tulane Law Review Association

Joseph Merrick Jones Hall Tulane University Station New Orleans, Louisiana 70118

Postmaster: Send address changes to: Tulane Law Review Association

Joseph Merrick Jones Hall Tulane University Station New Orleans, Louisiana 70118

## Tulane Law Review



Vol. 56, No. 3 April 1982

Devoted to the Civil Law, Comparative Law and Codification

### SYMPOSIUM ON PRESIDENTIAL INTERVENTION IN ADMINISTRATIVE RULEMAKING

Paul R. Verkuil
Joan Z. Bernstein
Lloyd N. Cutler
Kenneth Culp Davis
C. Boyden Gray
Alan B. Morrison

#### **ARTICLES**

RECOVERING ATTORNEYS' FEES FROM THE GOVERNMENT UNDER THE EQUAL ACCESS TO JUSTICE ACT

Reuben B. Robertson Mary Candace Fowler

A BRIEF HISTORY OF THE FIFTH CIRCUIT COURT OF APPEALS

**Harvey Couch** 

### COMMENTS

What Will We Tell the Children? A Discussion of Current Judicial Opinion on the Scope of Ideas Acceptable for Presentation in Primary and Secondary Education

Conflicting Interests in Southern Louisiana's Wetlands: Private Developers Versus Conservationists, and the State and Federal Regulatory Roles

Review by Robert J. Cottrol & Raymond T. Diamond

### TULANE LAW REVIEW

Volume 56

**APRIL 1982** 

Number 3

### **CONTENTS**

SYMPOSIUM: P <b>RESIDENTIAL INTERVENTION IN</b> ADMINISTRATI <b>VE RULEMAKING</b>	
Symposium on Presidential Control of Rulemaking: An Introduction	811
The Presidential Role in Administrative Rulemaking: Improving Policy Directives: One Vote for Not Tying the President's Hands Joan Z. Bernstein	
THE CASE FOR PRESIDENTIAL INTERVENTION  N REGULATORY RULEMAKING BY THE EXECUTIVE BRANCH Lloyd N. Cutler	
Presidential Control of	
Rulemaking Kenneth Culp Davis	849
PRESIDENTIAL INVOLVEMENT IN INFORMAL	
RULEMAKING	863
Presidential Intervention in Informal Rulemaking: Striking the Proper	
BALANCE Alan B. Morrison	879
ARTICLES	
RECOVERING ATTORNEYS' FEES FROM THE GOVERNMENT UNDER THE EQUAL ACCESS TO	
TUSTICE ACT Reuben B. Robertson  Mary Candace Fowler	903
A Brief History of the Fifth Circuit Ourt of Appeals	040
OMMENTS	340
WHAT WILL WE TELL THE CHILDREN? A DISCUSSION OF CURRENT JUDICIAL OPINION ON THE SCOPE OF DEAS ACCEPTABLE FOR PRESENTATION IN PRIMARY	
ND SECONDARY EDUCATION	960
CONFLICTING INTERESTS IN SOUTHERN LOUISIANA'S VETLANDS: PRIVATE DEVELOPERS VERSUS CONSERVATIONISTS, AND THE STATE AND FEDERAL REGULATORY ROLES Julie Durel Livaudais	1006
NOTES	
Civil. Procedure—Interlocutory Appeals: Orders Denying Disqualification of Counsel Are Not Appealable Cursuant to the Collateral Order Exception	1035
OMMUNITY PROPERTY—Characterization of Credit	

Catherine N. Garvey 1051

### TULANE LAW REVIEW

(ISSN: 0041-3992) Current Prices Subscription \$17.00 a Year Foreign Subscription \$19.50 a Year Single Copy \$6.50; Admiralty issue \$7.00 Plus postage and handling

Published by Tulane Law Review Association in December, February, April, and June

Total paid circulation-2,349

Second-class postage paid at New Orleans, Louisiana and additional mailing offices

Copyright 1982 by: Tulane Law Review Association

Joseph Merrick Jones Hall Tulane University Station New Orleans, Louisiana 70118

Postmaster: Send address changes to: Tulane Law Review Association

Joseph Merrick Jones Hall Tulane University Station New Orleans, Louisiana 70118