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Foreword

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Co-Editor in Chiefs' Foreword

It is our pleasure to present to you Issue 2 of Hastings Constitutional Law Quarterly (HCLQ)'s Volume 49. When we first sent out offers to publish the articles in Issue 2, we had no idea how current events would inform each and every one of the articles. The articles in Issue 2 reflect the chaotic times we are living in:

As the two-year anniversary of George Floyd's death passes, Professor Dery's article reminds us how important Fourth Amendment law is and that it must change in a way that values and prioritizes Black lives.

In light of the recent draft opinion in *Dobbs*, Justice Kafker's article has only become timelier and provides state constitutional law as a solution to the erosion of fundamental, constitutional rights.

With the recent mass shooting in Uvalde, Professor Cornell's article reminds us of the dangers of allowing the past to unduly inform the present: a society where assault rifles are too "new" and commonly owned to be regulated.

While the pandemic encouraged an influx in domestic violence, Harris's note highlights a rare, potential benefit of the pandemic and encourages us to act.

We open up this issue with Professor George Dery's article *Unintentional Destruction: Torres v. Madrid, in Defining a Fourth Amendment Seizure of the Person as a Common Law Arrest, Turned Terry v. Ohio into Collateral Damage*, analyzing the logical implications of the Supreme Court reasoning in *Torres v. Madrid*, where the Court ruled an officer seized a person when he shot her, even though the suspect temporarily eluded capture after the shooting. Dery points out that Torres equated a Fourth Amendment seizure of the person with a common law arrest and defined an arrest to include an officer's slightest touching of a person, even with only a finger. Dery asserts that the force of Torres's logic has elevated the Terry stop-and-frisk to a full arrest because Terry's intrusion involves official touching and control beyond Torres's common law minimum. Dery's scholarship also suggests that, with the dramatic changes in policing and society occurring since the common law era, true fealty to Fourth Amendment values requires, the Court broaden its approach while respecting the precedent of the last fifty years.

Justice Kafker's article examines how reshaping of federal constitutional law will impact state constitutional law. Justice Kafker's

article proposes that state constitutional law reaction will be reminiscent of, but should be different from, the first surge in state constitutional interpretation stimulated by Justice Brennan at the onset of the Burger Court, which resulted in an evolving hodge-podge of state constitutional decision-making. In this article, Justice Kafker also seeks to explain why an independent approach from state courts is not only consistent with the design of federalism but how it ensures a government based on well-considered and continually tested and retested American constitutional principles and enriches the country's conception of these constitutional principles through comparative analysis. Justice Kafker cautions that if state courts do not perform this non-deferential, independent review of state constitutional law, they are not fulfilling their duties as shared guardians of American constitutional rights.

Professor Saul Cornell's article analyzes the arguments in one of the most watched cases on the Supreme Court's docket this term, *NYSRPA v. Bruen*. Highly anticipated, the case is the first major Second Amendment case in over a decade, and with that, a drastically different, conservative majority has an opportunity to dangerously rewrite Second Amendment jurisprudence. We are proud to feature an article by Saul Cornell, one of the nation's leading experts on Second Amendment history who co-authored the historians' amicus brief in *District of Columbia v. Heller*. Cornell addresses the arguments made in *Bruen* and how they differ drastically from what history tells us: firearm regulation was robust and commonplace throughout our nation's history.

This issue closes with a student note contributed by our Executive Managing Editor Rachel Harris, which explores the implementation of critical changes incorporating remote testimony for civil domestic violence proceedings and e-filing procedures for civil protective order proceedings for survivors of domestic violence in response to the COVID-19 pandemic. Harris advocates for expanded access to remote testimony and e-filing options for survivors of domestic violence to increase access, mitigate the risk of witness intimidation, and amplify survivors' willingness to participate in proceedings. Harris argues that remote testimony would not violate the limited confrontation and cross-examination right guaranteed by the Due Process Clause. Harris discusses the avenues through which courts may implement e-filings and remote testimony either through state and federal legislation or modification of state court's rules regarding the practice of remote testimony.

We would be remiss not to recognize our wonderful authors for their scholarship and immense flexibility and support throughout the editing process. It was an absolute pleasure to work with each of you.

We thank our editorial team for their hard work and enthusiasm to bring Issue 2 to publication.

To our readers, we invite you to engage in these articles and understand that they address complicated, current issues that often feel out of our control. By engaging with these articles and disseminating the ideas within, we are confident that these issues will feel within your sphere of influence.

Sincerely,

Handwritten signatures of Katrina Uyehara and Meron Wendwesen in blue ink.

Meron Wendwesen and Katrina Uyehara
Co-Editor in Chiefs, Volume 49
Hastings Constitutional Law Quarterly
