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### ■ **"Deciphering the Chemical Soup: Using Public Nuisance to Compel Chemical Testing"**

*UC Davis Legal Studies Research Paper No. 162*

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The problem of toxic ignorance plagues modern society. On a daily basis, each of us is exposed to hundreds of chemicals, the vast majority of which have been subject to little or no testing to determine whether they are toxic to humans or the environment. Many of these chemicals may turn out to be harmless. Some, however, may cause cancer, reproductive defects, and other harms. In toto, chemicals are believed to be responsible for tens of thousands of deaths per year. The problem of toxic ignorance is the rational response of chemical manufacturers to marketplace incentives, tort liability rules, and chemical regulatory mechanisms. To address the systematic failure of manufacturers and distributors to test chemical substances, this Article proposes the recognition of a new type of public nuisance to compel chemical testing. In contrast to conventional toxic tort litigation, which requires a showing of physical injury, the failure to test itself would constitute a public nuisance. Inadequate testing puts the public health at risk, and the resultant lack of information undermines the ability of governments and individuals to protect public health. In addition to explaining the basis for applying public nuisance doctrine to the failure to test, the Article also examines practical considerations relating to how courts would enforce the duty to conduct testing.

### ■ **"(In)visible Cities: Three Local Government Models and Immigration Regulation"**

*Oregon Review of International Law, Vol. 10, p. 453, 2008*  
*UC Davis Legal Studies Research Paper No. 168*

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This article looks at the aporetic role of cities in the context of globalization. Cities are legally invisible on both the

international and domestic level, yet they are playing increasingly important roles in areas such as anthropogenic climate change, human rights and immigration. This article looks at ways that cities in the U.S. have undertaken to regulate undocumented immigrants, heightening tensions between the federal government's role in regulating entry and deportation of noncitizens and the ability of state and local governments to specify rules for residents within their boundaries. This article uses three competing and overlapping models of local government power to analyze actions undertaken by the city of Hazleton, Pennsylvania to impose penalties on landlords who don't verify the legal status of tenants they rent to or employers who employ undocumented immigrants. Finally, this article argues that restructuring local government rules to help (rather than hurt) the integration of undocumented immigrants provides a chance for second-order immigration regulations to supplement, rather than thwart, federal immigration objectives.

#### "Four Exceptions in Search of a Theory: *District of Columbia v. Heller* and Judicial *Ipse Dixit*"

*Hastings Law Journal*, Vol. 60, 2009

*UC Davis Legal Studies Research Paper No. 164*

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This Symposium Essay examines the Supreme Court's Second Amendment decision in *District of Columbia v. Heller*. Specifically, the Essay examines four exceptions to the right to bear arms that the Court specifically approved: laws disarming felons; laws disarming the mentally ill; laws prohibiting the possession of firearms in sensitive places; and laws regulating the commercial sale of firearms. The Essay argues that these exceptions cannot be completely justified on originalist grounds, at least under the form of originalism that the Court is likely to employ. The Essay further argues that the exceptions cannot be justified if strict scrutiny is the applicable standard of scrutiny. Accordingly, some lesser standard of review of firearms regulation must apply.

#### "Cooperative Tax Regulation"

*Connecticut Law Review*, Vol. 41, No. 2, 2008

*American University, WCL Research Paper No. 2008-47*

*UC Davis Legal Studies Research Paper No. 163*

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This Article describes a new approach to tax regulation based on cooperation, information sharing, and interest convergence. Currently, tax regulation in the United States relies too heavily on sticks and not enough on carrots. While recognizing that taxpayers will comply with the law in the presence of effective deterrence and enforcement, this Article optimizes the use of penalties as a compliance instrument by, among other things, rewarding compliant taxpayers, engaging taxpayers and their advisors in a participatory process, and appreciating the elegant power of cognitive devices that portray payment of taxes as a bonus rather than nonpayment of taxes as a penalty. Even with optimal penalties, tax officials cannot currently enforce the law effectively due to severe resource and information asymmetries. To overcome these debilitating shortcomings, the government must improve funding, recruiting, training, and retention. It must also partner with taxpayers and practitioners to strengthen detection, enforcement, and prosecution of abusive tax avoidance. Cooperative tax regulation can accomplish a cultural shift not only in taxpaying but also in tax advising and tax administration. Ultimately, it can produce a regulatory environment of collaboration rather than adversity, ex ante resolution rather than ex post controversy, and certainty rather than secrecy.

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