

NOTE FROM THE EDITOR

The *Alaska Law Review* is pleased to present our June 2023 issue, the first in our fortieth volume. In forty years, the *Alaska Law Review* has grown and changed in many new and unexpected ways, much like Alaska itself. I could not be more proud of what the *Alaska Law Review* has achieved and all of the amazing editors who have dedicated so much of their time in law school to helping continue its mission. I am also thankful to you, our readers, for your support, your submissions, and your contributions to Alaska's legal discourse.

I am also proud of the hard work our staff has dedicated to this issue in particular. This issue features one article, four student notes, and one case comment. These pieces discuss a wide variety of significant and timely topics relevant to Alaska's modern legal landscape.

In *Issues in Implementing Special Domestic Violence Criminal Jurisdiction in Alaska's Tribal Courts*, author Danika Watson writes about the 2022 Violence Against Women Act reauthorization, which applied the act's special domestic violence criminal jurisdiction to 229 Alaska tribes for the first time. This gives tribal courts new tools to deal with the high rates of violence against women in Alaska Native communities. Ms. Watson begins by discussing the history of VAWA as it relates to Native Americans focusing on lessons from the 2013 reauthorization which applied mainly to Native communities outside Alaska. She then maps out issues that communities in Alaska may face with implementing the new programs. Ms. Watson incorporates and expands on guidance provided by non-Alaskan tribes who have spent the past decade evaluating what works. She concludes by acknowledging that, while there are clear paths forward, many new challenges lie ahead.

Our first student note, written by *Alaska Law Review* Executive Editor Adam Beyer, is titled *The Unique Promise of the Alaska Constitution: The Right to Rehabilitation*. He begins by discussing *Abraham v. State*, where the Alaska Supreme Court recognized the state constitutional "right to rehabilitation" for criminal offenders. Mr. Beyer then walks through how the doctrine has developed in the last forty-five years, explaining that it has mainly limited the state's ability to revoke inmates' rehabilitative programming. However, he argues that this principle ought to be expanded to initial sentencing, too, where individuals should have the opportunity to challenge sentencing schemes or even individual sentences for not providing for rehabilitation.

Our second student note, *Indian Child Welfare Act: A Roadblock in a Native Child's Pathway to Permanency*, written by Alaska Law Review Executive Editor Melissa Gustafson, discusses one area of controversy surrounding the Indian Child Welfare Act (ICWA). In parental termination hearings, Ms. Gustafson explains, publication of the 2016 Regulations shifted the focus of qualified expert witnesses from knowledge of Native tribes' childrearing norms and practices to the mental, emotional, and physical wellbeing of children. Without the tribal focus, many more cases have been appealed and overturned. In light of the recent Alaska Supreme Court decision in *State v. Cissy A.* and the impending U.S. Supreme Court decision in *Haaland v. Brackeen*, Ms. Gustafson argues that the Alaska legislature could most effectively ensure the best outcomes for Alaska Native children by creating a state version of ICWA.

Our third student note, authored by Alaska Law Review Lead Editor Hannah Rogers, is called *Law Thrown Overboard: Direct Democracy and the Alaska Ocean Rangers*. She highlights the massive amount of waste produced by Alaska's many cruise ships and describes how the Ocean Rangers program, created by a 2006 ballot measure, helped ensure regulatory compliance. Ms. Rogers then explains that, in 2019, the Alaska Governor line-item vetoed the Ocean Ranger program's budget, effectively ending it. Interpreting the Alaska Constitution, Ms. Rogers argues that the veto was unconstitutional because voter-backed initiatives are granted additional constitutional protections, unlike other forms of legislation. She concludes by suggesting how a plaintiff attempting to challenge the governor's action could establish sufficient standing for their claim using Alaska's citizen-taxpayer theory.

Our fourth and final student note, *Fishing in the Desert: Modernizing Alaskan Salmon Management to Protect Fisheries and Preserve Fishers' Livelihoods*, written by incoming Alaska Law Review Executive Development Editor Connor Sakati, details the salmon fishery crisis in Alaska. Mr. Sakati argues that the traditional tools associated with fisheries management, which focus on emergency closures, are both inadequate to respond to climate change and tend to most heavily burden subsistence fishers. After analyzing the weaknesses in the current regulatory framework, he proposes a set of reforms—which include dynamic controls and additional opportunities for local input—to best respond to the challenges posed by climate change in Alaska.

Our final piece is a student case comment by Mitchell Forbes from the University of Michigan School of Law titled *Beyond Indian Country: The Sovereign Powers of Alaska Tribes Without Reservations*. Mr. Forbes begins by outlining the seismic shift in Alaska Native land ownership following the passage of the Alaska Native Claims Settlement Act

(ANCSA). He then discusses the slow history of recognizing Alaskan tribal sovereignty since ANCSA's adoption, focusing on the 1998 U.S. Supreme Court decision in *Venette II* and several Alaska Supreme Court cases in the ensuing years, namely *John v. Baker*. Mr. Forbes concludes by explaining how this case law firmly establishes an Alaska tribal right to exclude nonmembers from tribal villages.

This issue of the *Alaska Law Review*, in addition to each of our previous issues, is available on our website, alr.law.duke.edu. There, anyone can access PDFs of our volumes, which are easily printable and searchable. Our website also houses our "Year-in-Reviews"—summaries of important cases decided by the Alaska Court of Appeals, the Alaska Supreme Court, the U.S. District Court of Alaska, and the U.S. Court of Appeals for the Ninth Circuit each year. We hope that you will visit our website and continue engaging with *ALR* as we strive to serve the Alaska legal community. We welcome your comments, responses, and feedback at alr@law.duke.edu.

On behalf of the editorial staff, I hope you find this issue thought-provoking, useful, and enjoyable. We are grateful to the Alaska Bar Association for the privilege of publishing the *Alaska Law Review* and its continued support. We thank Duke University School of Law for its

institutional support. Lastly, and most importantly, we thank you for your interest in the scholarship of our published authors. We look forward to future collaboration with the Alaska legal community in the months and years to come.

Sasha Kahn,
Editor-in-Chief, 2022–23