

Denver Law Review

Volume 72
Issue 4 *Symposium - Doctrine of
Unconstitutional Conditions*

Article 3

January 2021

Editor's Note

Lisa J. Banks

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Lisa J. Banks, Editor's Note, 72 Denv. U. L. Rev. 857 (1995).

This Front Matter is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

EDITOR'S NOTE

In our modern administrative state, where government increasingly attempts to attach “strings” to the benefits we receive, the doctrine of unconstitutional conditions appears on its face to be an effective tool to constrain government attempts to do indirectly what it cannot do directly. Instances of unconstitutional government conditions, to which the doctrine might properly be applied, arise in numerous and diverse contexts. And yet, despite its ubiquitous nature, no consensus has emerged for a coherent analytical framework or unifying theory that would explain and predict the courts’ utilization of the doctrine. Thus, as evidenced by its limited and inconsistent application by the courts, and the frustrated writings of legal scholars, including those participating in this symposium, the doctrine of unconstitutional conditions remains an enigma.

In light of the far reaching effects of the doctrine, we designed the symposium to bring together a small group of scholars from different areas of legal study to consider and compare its application within various contexts. This symposium issue is therefore divided into four distinct sections, each representing a particular discipline or point of view. The first section offers unique perspectives on the doctrine of unconstitutional conditions in the context of property. The second section provides one commentator’s view of the doctrine as it relates to religion. The third section contains intriguing thoughts on the doctrine within the contexts of welfare and reproductive rights. The fourth and final section entertains the pessimistic but perhaps realistic view that the doctrine is “too hard,” and therefore deserves no consideration at all. Although the symposium provided no solutions to the unconstitutional conditions conundrum, it did allow for provocative ideas, a lively debate, and insightful commentary, all of which is (hopefully) reflected in this issue.

I thank Dean Dennis Lynch and the participating faculty at the University of Denver College of Law, particularly Alan Chen, Roberto Corrada, Nancy Ehrenreich, Martha Ertman, and Julie Nice. Their energy and commitment to this symposium prompted what I hope to be a long tradition of inspired intellectual debate at the University of Denver and in the pages of the *Law Review*. I also thank Bart Johnson, Kelly Elefant, Brent Warkentine, and the editors and staff of the *Denver University Law Review*. Finally, I would like to thank Sue Chrisman, without whom my law school career might never have ended.

Lisa J. Banks, Editor

THE SYMPOSIUM ON THE UNCONSTITUTIONAL CONDITIONS DOCTRINE

