

---

NORTHERN ILLINOIS UNIVERSITY  
LAW REVIEW

---

VOLUME 42

FALL 2021

NUMBER 1

---

C O N T E N T S

ARTICLES

The Helms-Burton Act Backfires: Surprising Litigation Trends Following Title III’s Long-Feared Activation

Gergana S. Sivrieva ..... 1

*On May 2, 2019, the Trump Administration made the historic decision to lift the suspension of Title III of the Helms-Burton Act for the first time since its enactment in 1996. Title III allows US nationals whose property was confiscated by the Cuban government to sue entities and individuals who now “traffic” in that property. Legal scholars believed this activation would trigger an avalanche of lawsuits; however, after two years of the law’s operation, only forty-some suits were filed, many by the same plaintiffs. Even more surprising is that instead of exposing foreign corporations that derive substantial benefits from the expropriated properties to liability, Title III is largely being used to target American businesses that have attenuated connections to the properties, at best. This Article explores the surprising trends born from the parties’ filings and the opinions issued by federal courts in leading Title III cases, and argues that the statute’s violation of international legal norms, failure to secure compensation for US claimants, and unforeseen targeting of domestic companies is ample rationale for the newly elected Biden Administration to urge Congress to repeal the Helms-Burton Act, which has gained the reputation of being one of the most ill-advised foreign policies of the US for a quarter century.*

The Case for the Inclusion of Employee Relations Matters in Mandatory Disclosure and Reporting Requirements for Public Corporations

Derek J. Illar.....87

*Public companies have no obligation to disclose and to report matters that pertain to equality in the workplace, the payment of wages and benefits, and health and safety issues—“employee relations matters”—under the current statutory and regulatory framework for the capital markets. The absence of this obligation significantly and glaringly handicaps shareholders and other market participants insofar as they are investing in public companies with a limited and distorted understanding of their operations that belies the historical and analytical justifications for mandatory disclosures and reporting. This Article posits that public corporations should publish information about employee relations matters because certain disclosure and reporting requirements already impliedly contemplate their publicization, it promotes the policy objectives that underlie these requirements, and it empowers shareholders and other market participants to make more fully informed decisions with respect to their investment activities.*

## Tattoo Recognition Technology is Gaining Acceptance as a Crime-Solving Technique

Samuel D. Hodge, Jr. and John Meehan..... 125

*Tattoos offer a wealth of information gleaned through a simple visual examination. This visualization can help police evaluate the tattoo's location, design, colors, and any other physical characteristics to identify the person captured on video surveillance. Tattoos are also helpful in identifying a corpse where more traditional tools such as facial features or fingerprints are unsuitable. Conventional databases, such as fingerprints, facial images, DNA profiles, and dental records, are of limited use if the victim or culprit does not have a profile on record. A person's tattoos, however, are frequently recognized by many people, whether a family member, acquaintance, co-worker, or tattoo artist.*

*Tattoos provide helpful information, such as gang affiliation, religious beliefs, prior convictions, and years spent in jail. Digital technology now provides the police with the ability to identify individuals by taking an image of their tattoos and identifying groups of people from others who have the same body art. This method is dubbed "Tattoo Recognition Technology" ("TRT"), and it is an "emerging field in biometrics." The process works similarly to facial recognition technology. The first step is to capture a picture of the tattoo. This depiction is then processed in the computer system, where the recognition software creates a mathematical representation of the inking. This depiction is compared to the images in the database for a match.*

*This Article will explain the growing use of biometrics in law enforcement with a detailed examination of one of the least known techniques, tattoo recognition technology. A history of this body art form will be presented along with an explanation of the tattoo process. The science behind how tattoos can lead to a person's identification will be explored. The last section will discuss the various legal issues that arise involving tattoos, from employment discrimination to whether tattoo recognition software violates a person's constitutional rights.*

## COMMENT

### Online and Off-Label: Closing the Regulatory Gap in Online Direct-to-Consumer Drug Promotion and Prescribing

Kristina L. Bitzer .....164

*The advent of telemedicine led to an evolution in healthcare delivery, making it possible for healthcare professionals to provide remote patient care, thus minimizing or eliminating the need for the patient to visit a physician’s office. Recently, online telemedicine has gained significant popularity, especially in light of the COVID-19 pandemic. This Comment focuses upon online direct-to-consumer telemedicine platforms and their modern usage as one-stop-shops for acquisition of medical advice and medication. Specifically, this Comment explores prescription promotion and prescribing as done through these platforms with a special examination of off-label prescriptions. Several modern online direct-to-consumer telemedicine platforms offer prescription medications directly to the patients who visit their websites. The platforms advertise these prescriptions on both their individual websites as well as through social media. Some of the medications offered and promoted by these platforms are not FDA approved for the conditions that they are advertised to treat. This Comment explores regulations and liability considerations surrounding prescription advertising and prescribing, specifically as they relate to online direct-to-consumer telemedicine platforms. Because these platforms claim to be neither medical providers, pharmaceutical companies, nor online pharmacies, they fall into a regulatory gap. This Comment concludes by suggesting that federal legislation or regulations should be promulgated accordingly to bridge this gap, particularly given increased dependence upon these platforms in light of the COVID-19 pandemic.*

---

NORTHERN ILLINOIS UNIVERSITY  
**LAW REVIEW**

VOLUME 42

Fall 2021

NUMBER 1

---

**BOARD OF EDITORS**

Kristina L. Bitzer  
*EDITOR-IN-CHIEF*

Travis Gotchie  
*MANAGING EDITOR*

G. Connor Wills  
*RESEARCH EDITOR*

Rachel Roling  
*SYMPOSIUM EDITOR*

Julia Lobo  
Katie Goldsmith  
*LEAD ARTICLES EDITORS*

Abigail Cabanin  
Shannon Cervantes  
Andrew Foy  
Biljana Mora  
*NOTES AND COMMENTS EDITORS*

**ASSOCIATE EDITORS**

Derek Bushman  
Hayden Eddings  
Megan Fitzgerald  
Sarah Freund\*

Austin Kelley  
Madisson MacIsaac  
Shannon McEachern  
Taylor Munro\*

Will Owens  
Hannah Rodgers  
Lane Skuteris  
Sean Thompson

**STAFF EDITORS**

Annie DeCero  
Sarah Farwick\*  
Erica Franklin  
Joseph Gabris  
Izabella Kanoza

Andrew Kluge  
Robert Kudlicki\*  
Adam Kwiatkowski  
Matthew Moustis\*

Adedayo Oladele-Ajose  
Alexandria Short  
Audrey Tobyas\*  
Michael Vega\*  
Ashleigh Zurek\*

\*Sarah Farwick, Sarah Freund, Robert Kudlicki, Matthew Moustis, Taylor Munro, Audrey Tobyas, Michael Vega, and Ashleigh Zurek are hereby recognized for their superb performance in the editing process. Each has earned recognition as Best Cite Check Performer for Volume 42, Number 1.

**FACULTY ADVISOR**  
Professor Michael M. Oswalt

---

*We extend a special thanks to Professor Therese A. Clarke Arado.  
You are pivotal to our continued success.*