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ANNUAL REPORT 2020-2021

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A NOTE FROM OUTGOING EDITOR-IN-CHIEF, CHRIS SHENTON

There is no other way to say it: this was an extraordinarily challenging year in every way. A deadly global pandemic upending all aspects of everyday life, an extremely important presidential election unlike any before, an inability to gather in person at the law school for the entire school year. The pandemic taxed us all in unprecedented ways, and *Legislation* was not immune. It wasn’t the year any of us imagined, in any way. I’m not sure any of us expected the last time we’d get together in person would be our incoming Board’s orientation!

But against a sea of doubt, the staff of the Journal shined. Despite a year of endless Zoom meetings, check-ins, the traditional suite of administrative and editorial problem solving that comes with running a law school journal, and plain exhaustion in the face of uncertainty,

Legislation continued to produce incredible work, build an incredible community, and play our part in turning out incisive, important scholarship in law and public policy. Volume 23 of the Journal was the best of what legal scholarship can be, publishing insightful, timely work in a variety of topic areas, centering underrepresented voices in our public-facing programming, vastly expanding the Journal's online footprint, and doing it all while maintaining a sense of community and camaraderie through the computer screen. Every single staff member contributed in an irreplaceable way to that work, and frankly, I can't believe how much we did this year, and how good it all was. That is the direct result of a staff that is as good as it gets.

I'm so thankful to have gotten the chance to know you all, to work closely with you, and to build something worth doing. Thank you, for everything you put into this community, and everything you've brought of yourselves in a time where everyone is stretched to their limits. These friendships are ones I will treasure forever, and I hope this time has meant something to you all as well.

I know this group will go on to do great things, and I am incredibly proud to have played a role on this exceptional staff, despite such difficult circumstances. Below is a brief summary of the impressive work *Legislation* did in 2020–21.

We've come a long way, and there's so much more to rise to. I can't wait to cheer you all on in your next endeavors. I'm so honored and proud to have spent this time with you all. Hats off to you, Volume 23; Volume 24, the floor is yours. We can't wait to see where you and *Legislation* go next.

—Chris, Volume 23 Editor-in-Chief

I. CITATIONS

Legislation was cited in two federal court opinions from May 2020 to May 2021:

- *River Cross Land Co. v. Seminole County*, 2021 WL 3025334, 2021 U.S. Dist. LEXIS 140243 (M.D. Fla. Jan. 26, 2021): granting a motion to reopen and lift stay in a case centered on a Fair Housing Act segregative effects claim in Seminole County. The court cited Robert Schwemm, *Segregative Effect Claims Under the Fair Housing Act*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 709, 736 (2017).
- *Lopez-Motherway v. City of Long Beach*, 2021 WL 965158, 2021 U.S. Dist. LEXIS 48597 (E.D.N.Y. Mar. 15, 2021): granting in part and denying in part City of Long Beach's motion to dismiss Lopez-Motherway's civil rights claims stemming from an arrest and ultimately unsuccessful prosecution. The court cited Mark C. Dillon, *An Overview of Tolls of Statutes of Limitations on Account of War: Are They Current and Relevant in the Post-September 11th Era?*, 13 N.Y.U. J. LEGIS. & PUB. POL'Y 315, 354 (2010).

The Journal also continues to be cited widely in scholarship and advocacy. To date, *Legislation* has been cited in 3,123 secondary sources. The Journal has been frequently cited in the top

journals in legal academia while expanding its broader impact: in addition to citations in the Yale Law Journal, Harvard Law Review, NYU Law Review, Columbia Law Review, and other top journals, *Legislation* received citations in outlets like the Harvard Business Review and the Washington Post. *Legislation* has also been cited in 513 federal and state regulations to date. The Journal continues to impact scholarly debate and advocacy as well, having been cited in five Supreme Court briefs in 2021 alone.

II. PRINT PUBLICATIONS

A. Volume 23, Issue 1

Issue 23.1 features four full-length scholarly Articles and two student Notes:

The COVID-19 Pandemic and Federalism: Who Decides?

Article by Nancy Knauer, Sheller Professor of Public Interest Law and Director of Law and Public Policy Programs, Temple University, Beasley School of Law

Edited by Siena Cornacchini, J.D. NYU Law

This Article discusses the way the United States' unique structure of federalism affected the early days of the governmental and social response to the COVID-19 pandemic. Using the tools of comparative institutional analysis, the Article explores the dangers that arise when disaster relief is politicized and proposes failsafe mechanisms to prevent key institutions from abdicating their responsibility to the American people.

The Impossibility of TLAC

Article by Stephen Lubben, Harvey Washington Wiley Chair in Corporate Governance and Business Ethics, Seton Hall University School of Law

Edited by Jason Kelly, J.D. NYU Law

This Article analyzes the feasibility of the TLAC (total loss-absorbing capacity) debt standard, a key innovation at the center of the regulatory response to the 2008 financial crisis. The Article argues that there is an inherent contradiction at the heart of TLAC, where buyers are acquiring TLAC debt as though it were regular debt, without fully internalizing that TLAC debt is designed to be written off or converted to equity in the event that the financial institution fails. The Article concludes by positing that the TLAC system of bail-in debt will not work as designed in the event of a new financial crisis without increased clarity and disclosure regarding TLAC in financial markets.

The Common Law Powers of the New York State Attorney General

Article by Bennett Liebman, Government Lawyer in Residence at Albany Law School

Edited by Josh Moses, J.D. NYU Law

This Article traces the constitutional and historical development of the Attorney General in New York State, arguing that the office retains a significant body of common law powers, many of which are underutilized. The Article conducts an exhaustive study of the origins of these powers and concludes with a discussion of how these powers might influence the actions of the Attorney General in the future.

The Laws of Public Higher Education Retrenchment

Article by Jeremy Pilaar, J.D., Yale Law School, M.Phil, University of Oxford, B.A., University of California, Berkeley

Edited by Michael Kalman, J.D. NYU Law

This Article investigates American states' systemic underinvestment in public higher education over the past few decades, arguing that in order to understand this retrenchment in higher education funding, scholars must scrutinize the laws that shape legislators' budget choices. Through original interviews with state policymakers, comparative historical studies of California and Virginia, and quantitative budget analysis, the Article demonstrates that decreased funding for public colleges can be traced to three legal constructs: competing health, K-12 education, and prison expenditure mandates; outdated and inefficient tax systems; and campaign finance and lobbying rules that have allowed wealthy interests to overwhelm college advocates' voices.

Fixing PPD-28: Implementation Issues and Proposed Revisions for Signals Intelligence

Note by Peter Machtiger, J.D. NYU Law

Edited by Adam George, J.D. NYU Law

This Note examines PPD-28, a signals intelligence policy directive initially issued by President Obama granting foreign individuals some privacy protections in the conduct of signals intelligence. The Note examines the implementation of PPD-28 as a window into the complexities of signals intelligence oversight, proposing some modest revisions that the U.S. government could embrace to make PPD-28 easier to implement and to oversee, while also rendering it a more effective act of foreign policy.

Manufactured Emergencies: The Crisis at the Core of the National Emergencies Act

Note by Rachel Riegelhaupt, J.D. NYU Law

Edited by Eli Goldman, J.D. NYU Law

This Note examines President Trump's declaration of a national emergency in order to redirect military funding toward the construction of a wall at the U.S.-Mexico border, after Congress

refused to appropriate funds to do so. The Note asserts that while President Trump lacked genuine authority to declare such a pretextual emergency, the federal court system failed to offer a realistic path to challenge the border emergency declaration, on account of a tradition of judicial deference to the executive in the politically charged areas of national security, military necessity, foreign affairs, and immigration. The Note proposes both judicial and legislative solutions to address the flaws in the current emergency powers regime.

B. Volume 23, Issue 2

Issue 23.2 features five full-length scholarly Articles and one student Note:

Courts and Civil Justice in the Time of COVID: Emerging Trends and Questions to Ask

Article by Helen Hershkoff, Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties at New York University School of Law; Arthur R. Miller, University Professor and Warren E. Burger Professor of Constitutional Law and the Courts

Edited by Eli Goldman, J.D. NYU Law

This Article focuses on how state and federal courts in the United States have so far adapted to the COVID-19 pandemic, arguing that the judiciary's initial responses were constrained by political decisions by the President and Congress that tended to magnify, not mitigate, some of the pandemic's worst effects. The Article further argues that while the flexibility and alternative measures embraced by courts have been impressive, but should not form a blueprint for future judicial reforms due to the public, democratic values that may be sacrificed by making them permanent.

Presidential Pardons and the Problem of Impunity

Article by Frank O. Bowman, III, University of Missouri Curators' Distinguished Professor, Floyd R. Gibson Missouri Endowed Professor of Law, University of Missouri School of Law, and Dean's Visiting Scholar, Georgetown University Law Center

Edited by Adam George, J.D. NYU Law

This Article considers the reach of the president's pardon power and its potential employment as one means of creating legal impunity for a president and his personal and political associates. Via a thorough review of the constitutional origins of the federal pardon power and the law and practice of its use since the Founding era, the Article concludes that a president cannot constitutionally pardon himself, but can almost certainly irrevocably pardon anyone but themselves. However, such a pardon issued corruptly might itself constitute a crime that could not be pardoned. The Article also examines the possible impact of such pardons on effective oversight and investigation of a former president and their associates, concluding that such pardons are unlikely to prevent such investigations.

Beyond *Bostock*: Employment Protections for LGBTQ Workers Not Covered by Title VII

Article by Alex Reed, Associate Professor of Legal Studies, Terry College of Business, University of Georgia

Edited by Josh Moses, J.D. NYU Law

This Article discusses the impacts of the Supreme Court's decision extending Title VII's antidiscrimination protections to LGBTQ employees in *Bostock v. Clayton County* on employees not covered by Title VII, namely employees in firms with fewer than fifteen employees. For these employees, state law provides the exclusive means of redressing workplace bias, yet only twenty-two states prohibit discrimination on the basis of sexual orientation and gender identity. The Article examines a subset of the states lacking LGBTQ-inclusive employment protections, and demonstrates that, to varying degrees, these states would be justified in construing their states' existing bans on sex discrimination to protect LGBTQ workers.

The Ignominious Life of the Paycheck Protection Program

Article by Ilya Beylin, Associate Professor of Law at Seton Hall Law School, B.A.S. Stanford University, J.D. University of Chicago Law School

Edited by Jason Kelly, J.D. NYU Law

This Article analyzes how the Paycheck Protection Program's design and implementation served the political goals that the Program was aimed at solving in the early days of the COVID-19 pandemic, conducting a detailed exploration of the statutory and regulatory structure and comparing that to popular political and social understandings of the Program's purpose and effectiveness.

The Error Cost of Marriage

Article by Orli Oren-Kolbinger, Assistant Professor, Sapir College School of Law, Visiting Assistant Professor, Villanova University Charles Widger School of Law

Edited by Siena Cornacchini, J.D. NYU Law

This Article examines the overlooked problem of asymmetric treatment of married taxpayers who wish to amend their initial filing status election on their income taxes. Married taxpayers filing separately can retroactively amend their filing status for a previous year to joint filing under certain circumstances at no cost, whereas joint filers do not enjoy this opportunity in any circumstance. After identifying and explaining this puzzling problem, the Article proposes an elegant solution: a Pigouvian rule enabling all married taxpayers to amend, but requiring them to internalize all the associated administrative costs through a reduced tax refund.

Trade and Wars: Checking the President's Overbroad Trade Sanction Authority

Note by Patrick Corcoran, J.D. New York University School of Law

Edited by Michael Kalman, J.D. NYU Law

This Note traces the scope of the President's tariff authority to the over-expansive definitions of national security and national emergencies in the current statutory scheme for tariffs. Considering the breadth of the President's trade sanction authority in relation to the World Trade Organization General Agreement on Tariffs and Trade's national security exception, the Note recommends amendments to the U.S. statutory scheme that would hold the President more accountable to the intended purpose of those statutes, to the electorate, and to the United States' international trade agreements, while still allowing the President the flexibility to use tariffs to address ever-evolving security threats.

C. Volume 23, Issue 3

Issue 22.3 features three full-length scholarly Articles and three student Notes:

Survey Says: Powerful Sheriffs Successfully Limit the Rise of Civilian Oversight

Article by Sharon Fairley, Professor from Practice, University of Chicago Law School, former federal prosecutor, and former Chief Administrator, City of Chicago Independent Police Review Authority and Civilian Office of Police Accountability

Edited by Adam George, J.D. NYU Law

This Article summarizes the scope and powers of government entities that have been established to oversee county-wide police departments and sheriff's offices. The Article also explores where and why civilian oversight mechanisms have either been rejected or failed to garner sufficient political support. The Article highlights the most potent political factors that have prevented civilian oversight from gaining traction at the county level. The Article is intended to serve as a resource for civilian oversight professionals as well as government leaders and community members who are advocating for new or revised oversight systems at the county level.

Commercial Rent Stabilization: One Local Response to Skyrocketing Rents

Article by Julian M. Hill, Graduate Teaching Fellow, Social Enterprise & Nonprofit Law Clinic at Georgetown University Law Center

Edited by Josh Moses, J.D. NYU Law

This Article uses the commercial rent stabilization bill introduced in New York City in 2019, with some modifications, as a case study to argue that commercial rent control can advance worthwhile, interim goals in New York City and, potentially, elsewhere. Commercial rent control would help level the exploitative landlord-tenant playing field, increasing the predictability that Black and immigrant small business and nonprofit leaders need to keep

themselves and their employees from sliding into poverty and provide communities often culturally relevant goods and services, safe spaces and relationships key to maintaining communal bonds amidst rampant displacement resulting from gentrification. This Article contributes to the commercial rent control scholarship by advancing its policy advantages for small, Black- and immigrant-led commercial tenants and pushing against mischaracterizations of both (1) New York State municipal home rule law as restricting New York City from enacting commercial rent control and (2) federal jurisprudence as not repeatedly finding commercial rent control bills, like that proposed by New York City, constitutional.

Mandating Disclosure of Climate-Related Financial Risk

Article by Madison Condon, Associate Professor of Law at Boston University School of Law, Affiliate Scholar at Institute for Policy Integrity at NYU School of Law; Sarah Ladin, Attorney, Environmental Defense Fund; Jack Lienke, Regulatory Policy Director at the Institute for Policy Integrity; Michael Panfil, Senior Attorney and Director of Federal Energy Policy, Environmental Defense Fund; & Alexander Song, Legal Fellow, Institute for Policy Integrity

Edited by Jason Kelly, J.D. NYU Law

This Article analyzes how the Paycheck Protection Program’s design and implementation served the political goals that the Program was aimed at solving in the early days of the COVID-19 pandemic, conducting a detailed exploration of the statutory and regulatory structure and comparing that to popular political and social understandings of the Program’s purpose and effectiveness.

Restraining the Uber Model: State Antitrust Regulation of the Gig Economy in New York and California

Note by Terry Buck, J.D. New York University School of Law

Edited by Siena Cornacchini, J.D. NYU Law

This Note addresses how state-level antitrust law can challenge new developments in the gig economy that have been to the detriment of workers, and provide a laboratory to trial a legal regime that combines labor law’s worker-empowering ethos with antitrust law’s aversion to coercive corporate concentration. The Note limits its review to New York and California for several reasons, but its analysis of state-level antitrust law is broadly applicable across the other 48 states, and any state could adopt its concluding proposal.

Milling the Floss: Export Controls, Free and Open Source Software, and the Regulatory Future of the Internet

Note by Stav Zeitouni, J.S.D. Candidate, New York University School of Law

Edited by Michael Kalman, J.D. NYU Law

This Note investigates U.S. export controls as they relate to free and open source software (FOSS), arguing that the U.S. government has responded to the challenges of modern software by attempting to force an ill-fitting framework to accommodate FOSS. The Note does not ultimately argue for stronger export restrictions on FOSS, instead demonstrating that current regulation does not comprehensively control FOSS and allowing for a deeper examination of the nuanced ways in which FOSS has altered the form and function of export controls and the ways these have altered the development of FOSS in turn.

The Madisonian Case for Ranked Choice Voting: *Federalist 10*, Preferential Voting, and the American Democratic Tradition

Note by Lisa Femia, J.D. New York University School of Law

Edited by Jason Kelly, J.D. NYU Law

This Note examines ranked choice voting as a democratic innovation in the American system, and responds to critics who argue that it is foreign to the American understanding of democracy by relying on Madison's famous *Federalist 10*. By linking ranked choice voting to Madison's argument against faction, the Note situates ranked choice voting systems firmly in the American constitutional system and demonstrates how *Federalist 10* may be used to dispel general public misgivings about the foreignness of ranked choice voting, persuade constitutional traditionalist judges in court, and appeal specifically to conservative skeptics.

III. *QUORUM*: LEGISLATION'S ONLINE COMPANION

This year's staff made it a major priority to expand both *Legislation*'s online presence and *Legislation*'s participation in timely policy debates; to accomplish both of these goals, *Quorum* was revamped to cultivate new submission and solicitation pipelines, as well as ensure that the outlet remained open and available to student scholarship and submissions. Continuing to build on the 2019–20 staff's efforts to expand *Quorum*, Editor-in-Chief Chris Shenton and Senior Quorum Editor Thomas McBrien worked to solicit pieces from experts in a wide variety of fields and specialties, keeping abreast of current developments in the news to solicit views of scholars and practitioners whose work would be a good fit for *Quorum*. This led to the Journal's most robust year of outside scholarship yet, resulting in mainstream citations in outlets like the Washington Post, and the beginnings of an institutional relationship with the Federation of American Scientists, whose members *Quorum* published multiple times this year and has already agreed to publish again in the 2021–22 cycle. We hope the relationship continues to blossom and continue to entrench *Quorum* as a go-to outlet for interesting research and scholarship from groups like FAS.

To facilitate this growth in outside work, Chris and Tom worked to recalibrate the division of labor for Quorum Editors. Whereas in previous years, Quorum Editors would all be required to publish at least one piece in *Quorum* at some point during the year, 2020–21 Quorum Editors had the option of working to edit more pieces from outside *Legislation* and forego writing their

own piece. The option to do more editing work and less original writing was completely voluntary, in order to protect *Quorum*'s status as an outlet for student work, and the student work published in 2020–21 continued to be of high quality. But for those editors who were interested in primarily editing work, this shift allowed *Quorum* to handle the increase in submissions and publications.

For the first time in its history, *Quorum* was also indexed on Westlaw in addition to LexisNexis, expanding the outlet's audience in the legal field.

From May 2020 to May 2021, *Quorum* published twenty-two new pieces, an increase of six from 2019–20:

- ***The Need for a Federal Anti-SLAPP Law***
 - Daniel A. Horwitz, First Amendment lawyer in Nashville, Tennessee.
 - <https://nyujlpp.org/quorum/the-need-for-a-federal-anti-slapp-law/>
 - The article details the rapid proliferation of SLAPP suits (Strategic Lawsuits Against Public Participation) in recent years, the treatment of such suits in federal courts, the gaps in existing state-level regulation aimed at such suits, and makes the case for a federal Anti-SLAPP statute.

- ***The Case of the Insolvent Federal Agency: A Forensic Analysis of Public Data on U.S. Citizenship & Immigration Services***
 - Doug Rand, Senior Fellow & Director of the Technology and Innovation Initiative at the Federation of American Scientists, & Lindsay Milliken, Research Assistant for Science, Technology, and Information Policy at the Federation of American Scientists
 - <https://nyujlpp.org/quorum/the-case-of-the-insolvent-federal-agency-a-forensic-analysis-of-public-data-on-u-s-citizenship-immigration-services/>
 - Doug Rand and Lindsay Milliken of the Federation of American Scientists investigate the USCIS emergency budget request and find that ideologically-motivated administrative burdens and enforcement priorities are to blame for the agency's budget shortfall, rather than COVID-induced reductions in demand.

- ***The Moral Mathematics and Responsibilities of Financial Crises***
 - Kathryn E. Ghotbi, J.D. NYU Law '20
 - <https://nyujlpp.org/quorum/ghotbi-moral-mathematics-responsibilities-financial-crises/>
 - Kathryn Ghotbi uses an analytical philosophy lens to explore the moral validity of holding individuals criminally responsible for financial crises, using the 2008 Financial Crisis as a case study.

- ***Regulatory Authority in a Crisis: The Limits of the CDC's Eviction Moratorium***
 - Roderick M. Hills, William T. Comfort III Professor of Law at NYU School of Law
 - <https://nyujlpp.org/quorum/regulatory-authority-in-a-crisis-the-limits-of-the-cdcs-eviction-moratorium/>

- Roderick Hills analyzes the statutory and regulatory authority of the CDC to issue an eviction moratorium during the COVID-19 pandemic, arguing that although the legal authority asserted is tenuous, the order may resist challenge due to its broad public support.
- ***Left Out in the Cold: The Eviction Moratorium’s Deficiencies and Implications for the Administrative State***
 - Margaret Shields, J.D. ’22, Staff Editor
 - <https://nyujlpp.org/quorum/shields-left-out-cold-eviction-moratorium/>
 - Margaret Shields assesses the implications of the process and aims of the CDC’s eviction moratorium for the future of the administrative state, arguing that there will be profound consequences for the democratic legitimacy of the administrative state due to the legal design and implementation of the order.
- ***The Posse Comitatus Act: Enduring Policy Against Direct Military Law Enforcement***
 - Robert Klein, J.D. ’21, *Quorum* Editor
 - <https://nyujlpp.org/quorum/quorum-klein-posse-comitatus-act-enduring-policy/>
 - Robert Klein examines the history and structure of the Posse Comitatus Act, which was passed to establish a barrier between the military and police. Klein argues that the Act has served as a useful prophylactic. While military and police forces have grown closer over time, they have not crossed the lines established by the Act.
- ***Reducing the Power of the Supreme Court: Neither Liberal Nor Conservative but Necessary (and Possible)***
 - Eric J. Segall, Professor of Law, Georgia State University College of Law; & Christopher Jon Sprigman, Professor of Law, New York University School of Law
 - <https://nyujlpp.org/quorum/segall-sprigman-reducing-power-supreme-court/>
 - Eric Segall and Christopher Sprigman analyze the history and Founders’ conception of the Supreme Court, arguing that it has gained an outsized influence over political questions. Segall and Sprigman contend that liberals and conservatives should be equally disturbed by this trend, and the authors suggest that Congress should strip the Court’s jurisdiction over important political questions.
- ***Under One Roof: Building an Abolitionist Approach to Housing Justice***
 - Sophie House, Legal Fellow, NYU Furman Center for Real Estate and Urban Policy; & Krystle Okafor, J.D. ’22 NYU Law
 - <https://nyujlpp.org/quorum/house-okafor-building-abolitionist-approach-housing/>
 - Sophie House and Krystle Okafor provide an overview of the modern abolition movement and discuss how its principles and frameworks can be applied to address housing issues.
- ***Fact-Checking Trump’s Federal Bench Fabrications in the First Debate***
 - Carl Tobias, Williams Chair in Law, University of Richmond School of Law

- <https://nyujlpp.org/quorum/fact-checking-trumps-federal-bench-fabrications-in-the-first-debate/>
- Carl Tobias examines President Trump’s continued misrepresentations and exaggerations regarding the federal courts in the first debate.
- ***Banning Congressmembers from Buying Individual Stocks Does Not Go Far Enough***
 - Brian Canfield, J.D. ’22, Staff Editor
 - <https://nyujlpp.org/quorum/canfield-banning-congressmembers-buying-individual-stocks/>
 - Brian Canfield argues that banning Congressmembers from owning individual stocks, while helpful, is insufficient to address the misaligned incentives that occur when they can still own other investment instruments.
- ***The Future of California’s Privacy Laws: Proposition 24***
 - Santana Jackson, J.D. ’21, *Quorum* Editor
 - <https://nyujlpp.org/quorum/jackson-future-californias-privacy-laws/>
 - Santana Jackson examines arguments for and against Proposition 24, which recently passed to amend California’s Consumer Privacy Act. She concludes that, while the Proposition will strengthen some important consumer privacy rights, it may also weaken other rights and was passed before CCPA’s impact could be fully understood.
- ***Does Freedom of Information Mean “Free?” How the Hidden Costs of FOIA and Open Records Laws Impact the Public’s Ability to Request Government Documents***
 - Kelly Cox, General Counsel, Miami Waterkeeper, Adjunct Faculty Member at the University of Miami Rosentiel School of Marine & Atmospheric Science; & Matthew Haber, J.D. ’13 Duke University
 - <https://nyujlpp.org/quorum/cox-haber-does-freedom-of-information-mean-free/>
 - Kelly Cox and Matthew Haber reviewed public records laws across the United States and in Florida specifically to determine how public interest fee waivers for government documents affect the public’s ability to access information. They propose that state and local governments implement policies for reviewing records requests and granting waivers to entities and individuals pursuing documents in the public interest.
- ***Transparency as a First Step to Regulating Data Brokers***
 - Dillon Kraus, J.D. ’21, *Quorum* Editor
 - <https://nyujlpp.org/quorum/kraus-transparency-first-step-regulating-data/>
 - Dillon Kraus examines what data brokers are, why privacy advocates and legislators are concerned about their practices, and how some jurisdictions have focused on transparency as a way to begin regulating brokers’ buying and selling of people’s personal data.
- ***Nondisclosure Agreements in the Trump White House***
 - Tyler Valeska, Michael Mills, Melissa Muse & Anna Whistler, Cornell Law School First Amendment Clinic

- <https://nyujlpp.org/quorum/nondisclosure-agreements-trump-white-house/>
- The authors examine the Trump White House’s unprecedented use of nondisclosure agreements through a First Amendment lens.
- ***Inclusion Is Not Enough: An Open Letter to the NYU Law American Constitution Society***
 - Krystle Okafor, J.D. ’22 NYU Law, Root-Tilden-Kern Scholar, and Moelis Urban Law and Public Affairs Fellow
 - <https://nyujlpp.org/quorum/okafor-inclusion-not-enough/>
 - Krystle Okafor responds to a recent letter sent to the NYU Law community from the American Constitution Society regarding the Capitol riot on January 6, 2021. She argues that the group’s focus on inclusive constitutionalism does not appropriately center the history and present reality of anti-Black racism. Doing so, she argues, requires calls for more fundamental rebuilding of our civic idea and institutions.
- ***From Fearful to Powerful: Rethinking Austerity and City Governance in the COVID-19 Era***
 - Jordan Fraade, an urban planner who lives in New York City
 - <https://nyujlpp.org/quorum/from-fearful-to-powerful-rethinking-austerity-and-city-governance-in-the-covid-19-era/>
 - Jordan Fraade reviews two recent books, *Fear City* by Kim Phillips-Fein and *City Power* by Richard Schragger. He applies the lessons of Phillips-Fein’s account of the 1970s New York City fiscal crisis and Schragger’s theory of urban political power to argue against the conventional wisdom of austerity, and to highlight the urgent need for a new approach in the face of the extraordinary challenges of the COVID-19 pandemic.
- ***The Filibuster: An Asymmetric Tool***
 - Paul-Winston Cange, J.D. ’21, *Quorum* Editor
 - <https://nyujlpp.org/quorum/cange-filibuster-asymmetrical-tool>
 - Paul-Winston Cange argues that Democrats should not fear abolishing the Senate filibuster because the filibuster inherently works to stop legislation, which disproportionately harms Democrats and their voters compared to Republicans.
- ***Should Employers Require That Employees Receive a COVID-19 Vaccination as a Condition of Employment?***
 - Karen Zwickel, J.D. ’21, *Quorum* Editor
 - <https://nyujlpp.org/quorum/zwickel-should-employers-require-employees-receive-vaccination/>
 - Karen Zwickel examines the difficult choices many businesses must make in deciding whether to require employees to get a COVID-19 vaccination as a condition of employment, and whether such a requirement would violate the Americans with Disabilities Act.
- ***Journal of Legislation and Public Policy Legislation Competition Runner-Up***
 - Alex Jonlin, J.D. ’23, NYU Law

- <https://nyujlpp.org/quorum/jlpp-2021-legislation-competition-runner-up/>
- Alex Jonlin’s entry analyzing Representative Katie Porter’s Help America Run Act, which won second place in *Legislation*’s annual Legislation Competition.
- ***Journal of Legislation and Public Policy Legislation Competition Winner***
 - Aaditya, Tolappa, J.D. ’22 NYU Law, Margaret Shields, J.D. ’22 and incoming *Legislation* Executive Editor, Samantha Yi, J.D. ’22 and incoming *Legislation* Senior Articles Editor
 - <https://nyujlpp.org/quorum/jlpp-2021-legislation-competition-winner/>
 - Aaditya Tolappa, Margaret Shields, and Samantha Yi’s entry analyzing Representative Katie Porter’s Help America Run Act, which won second place in *Legislation*’s annual Legislation Competition.
- ***Winning the Global Race for Artificial Intelligence Expertise: How the Executive Branch Can Streamline U.S. Immigration Options for AI Talent***
 - Doug Rand, Senior Fellow & Director of the Technology and Innovation Initiative at the Federation of American Scientists, & Lindsay Milliken, Research Assistant for Science, Technology, and Information Policy at the Federation of American Scientists
 - <https://nyujlpp.org/quorum/rand-milliken-winning-global-race-artificial-intelligence/>
 - The authors explain changes and clarifications that immigration authorities could make to immigration policy in order to create better pathways for AI experts to become green card holders.
- ***Sex Trafficking as Domestic Violence***
 - Asha McLachlan, J.D. ’22, incoming *Legislation* Senior Intellectual Life Editor
 - <https://nyujlpp.org/quorum/mclachlan-sex-trafficking-as-domestic-violence/>
 - Asha McLachlan examines sex work under the lens of domestic violence and argues for the provision of comparable resources to domestic violence victims and sex workers alike as well as the legalization of sex work.

IV. SYMPOSIA

Every year, the Journal provides a forum for engaging students, academics, and legal practitioners in thoughtful research and frank discussion of current legislative issues and public policy challenges. Above all, we aim to generate practical solutions for major national, state and municipal problems. During the 2020–21 school year, the Journal hosted two symposia, one in the fall and one in the spring. These symposia were put together by Senior Intellectual Life Editors Arianne Connell and Jennifer Thompson, as well as Intellectual Life Editors Amanda Gavcovich and Naomi Wossen.

A. FALL

In November 2020, the Journal and the Furman Center co-hosted a symposium entitled “Under One Roof: Building an Abolitionist Approach to Housing Justice.” The symposium was the Journal’s largest event ever, with over 600 unique participants joining for at least part of the event.

The symposium began with acknowledgements and framing remarks from Editor-in-Chief and NYU Furman Research Assistant Chris Shenton. Chris elaborated on how the legacy of housing policy in the United States is undeniably fraught with discriminatory measures such as segregated public housing, redlining, urban renewal, and more. In light of these factors and the current COVID-19 pandemic, Chris invited participants to consider how these methods of racial exclusion are exposed in housing policy and decision-making.

Panel 1: Overview of Abolitionist Frameworks

The first panel discussion provided an overview of abolitionist frameworks, and was moderated by **Sheryll Cashin**, Carmack Waterhouse Professor of Law, Civil Rights and Social Justice at Georgetown University. Panelists: **Jacob Faber** – Associate Professor, New York University’s Wagner School of Public Service and Department of Sociology; **Hilary Malson** – Urban Planning Doctoral Student, UCLA Luskin School of Public Affairs; **Rasheedah Phillips** – Managing Attorney for Housing Policy, Community Legal Services of Philadelphia

In response to Cashin’s initial question of what abolition meant to them personally, Jacob Faber answered that abolition means “breaking the link between geography and life outcomes,” Hilary Malson responded that abolition starts with a “freedom dream that requires visioning beyond what is already present,” and Rasheedah Phillips emphasized that there is a temporal dimension to abolition, as it looks forward and backward simultaneously to correct and repair the past while also creating a new future. The conversation then moved to housing policy through an abolitionist lens. Faber touched on how New Deal housing policies were pivotal in the creation of the segregation that abolition hopes to dismantle. Cashin interjected to ensure there was clarity on what exactly is meant by abolition, saying that “to use this great, aspirational word ‘abolition’ is a plea for something transformative” and how in housing, there is a tension between “radical transformative thinking and data-driven incrementalism.”

Malson and Phillips provided the example of community land trusts as a tangible practice that employs abolitionist principles by decentering private land ownership and focusing on collective community-building. In response to Cashin’s question about their hopes for an abolitionist view of housing going forward, Faber asserted that “the goal should be a society where geography is not destiny” and that different models of understanding property must be employed. Phillips explained the hope she has based on the shifts she’s seen happen on the ground regarding the nuance in conversations about housing and eviction that are happening in the media and in policy.

To conclude the discussion, the audience asked questions on the difference between abolition and anti-racism, whether abolition is at odds with consensus-building, and of the idea of community land trusts as a second-class version of home ownership.

Panel 2: Housing Policy Through the Lens of Abolition

The second panel considered what it might mean to take an abolitionist lens to housing policy, research, and advocacy, moderated by **Justin Steil**, Associate Professor of Law and Urban Planning, Massachusetts Institute of Technology. Panelists: **Amanda Andere** – CEO, Funders Together to End Homelessness; **Monica Bell** – Associate Professor of Law and Associate Professor of Sociology, Yale University; **Tara Raghuvver** – Director, KC Tenants; **Barika Williams** – Executive Director, Association for Neighborhood and Housing Development

Monica Bell discussed that key aspects of abolition democracy involve a capacious vision of what it takes to complete the project of the abolition of slavery. Amanda Andere elaborated on these points as she defined housing justice, saying that there needs to be repair of the trauma that unhoused populations and other groups marginalized by the housing system have experienced.

In discussing the foundational conditions necessary to achieve housing justice, Tara Raghuvver highlighted a quote from her maternal grandfather: “Housing shortage is no accident. It’s a necessary part of a social order where private splendor and public squalor is the order of the day. Only forcible overthrow of all existing social conditions will enable us to solve this problem.” For Raghuvver, this quote demonstrated how her definition of abolition democracy is a complete and total end to racial capitalism through the dismantling of oppressive structures and systems.

Barika Williams added that the reformist lens has been too focused on the things “moving around” in the water while an abolitionist lens is more concerned with the eradication of the water itself. She asserted that “housing justice is economic justice is racial justice” and that it can’t be accomplished through an incrementalist approach.

When asked about what inspires and gives hope, Andere responded “the streets being louder than the gatekeepers,” Bell talked about the power she’s seeing in organizing, Raghuvver highlighted James Baldwin’s line that “hope is invented every day” as a source of inspiration, and Williams found hope “both in our ancestors and in our future.”

To read more about the event, watch recordings of each panel, or review the symposium reading materials, visit furmancenter.org/abolition.

B. SPRING

In March 2021, the Journal hosted a half-day conference with the Birnbaum Women’s Leadership Network on “Politics, Power, and Women’s Leadership.” The half-day symposium explored how 2020’s historic levels of civic engagement can be transformed into long-term gains through sustained work in the political and legal spheres.

The Journal again saw record-setting attendance, with over 700 attendees joining for all or part of the day's presentations. The symposium highlighted policies and legislation to support and help return women to the workforce as we build back better from this "She-cession" posed by the unequally gendered burdens of the pandemic, as well as discussing the wide range of ways to sustain and deepen civic engagement in the coming years.

The first panel of the event focused on "Rebuilding Together: Working Together to Strengthen the Social Safety Net & Return Women to the Workforce." The panel was moderated by **Sylvia Law**, Elizabeth K. Dollard Professor of Law, Medicine, and Psychiatry Emerita, NYU School of Law. The panelists were **Melissa Boteach**, Vice President of Child Care and Early Learning, National Women's Law Center; **Maribel Hernández Rivera**, District Director, Representative Alexandria Ocasio-Cortez; **Ann O'Leary**, Former Chief of Staff, Office of the Governor of California; and **Brittney Saunders**, Deputy Commissioner for Strategic Initiatives, New York City Commission for Human Rights.

The second panel of the symposium dealt with "Maintaining Momentum: Harnessing Women's Civic Engagement into 2021 and Beyond." The panel was moderated by **Kelly Dittmar**, PhD, Associate Professor of Political Science, Rutgers-Camden & Director of Research and Scholar, Center for American Women and Politics, Rutgers-New Brunswick. The panelists were **Amanda Brown Lierman**, Executive Director, Supermajority; **Emily Cain**, Executive Director, EMILY's List; **Nsé Ufot**, Chief Executive Officer, New Georgia Project; and **Lala Wu**, Co-Founder and Incoming Executive Director, Sister District.

The event concluded with the keynote conversation "Being the Leader You Want to See in the World," featuring **Representative Katie Porter** (CA-45) in conversation with **Melissa Murray**, Frederick I. and Grace Stokes Professor of Law & Faculty Director, Birnbaum Women's Leadership Network, NYU School of Law.

In addition to her keynote conversation with Representative Porter, Professor Murray also presented the awards for the winner and runner-up of the Legislation Competition. The Legislation Competition was paired with the spring symposium again this year, with competitors asked to analyze Representative Porter's Help America Run Act proposal. Winners received a cash prize as well as the opportunity to discuss their proposal with Representative Porter and her staff.

V. PODCAST

Legislation continued to build out *LawsFlaws*, the podcast launched by the Volume 22 Board. The Journal continued to bring exciting new guests to the podcast and look forward to it being a mainstay of the Journal's programming. In addition, the Journal added a new staff position of Intellectual Life Editor, whose role was to provide focused support for *Legislation's* symposia and podcast going forward, so that it could continue to grow into a regular offering of the Journal's intellectual environment. Senior Executive Editor Patrick Derocher deserves special credit for his thorough and exhaustive work heading the podcast team this year.

The Journal produced three episodes this year. “Black Lives Matter and the Fight for Racial Justice” hosted Professors **Kim Taylor-Thompson** and **Anthony Thompson** discussing a deceptively simple question: why are Black Lives Matter and its advocacy goals gaining momentum now? In a wide-ranging conversation, the professors touch on racial biases in policing and education, the coronavirus pandemic, the movement to defund the police, and concrete steps that can be taken to address systemic racism.

“The Path Forward for Democracy at Home and Abroad: A Conversation with Representative David Price” hosted a conversation with **Representative David Price** (NC-04) to discuss his work on H.R. 1, the omnibus election reform bill in Congress, rising attempts to delegitimize democracy at home and abroad, and how the structure of Congress has responded to growing political polarization. Representative Price also discussed the new edition of his book *The Congressional Experience (Transforming American Politics)*, analyzing Congress’ structure.

“The Big Lie, Building Back Better, and Making Racial Justice Real” hosted a conversation between Professor **Deborah Archer**, Associate Professor of Clinical Law at NYU, and Faculty Co-Director of the Center on Race, Inequality, and the Law, and **Vincent Southerland**, Executive Director of the Center on Race, Inequality, and the Law. In this episode, they discussed the Center on Race, Inequality, and the Law’s work in the evolving mission fighting for community justice, how infrastructure and justice shape each other, and the white supremacist underpinnings of the Capitol Insurrection.

VI. LEGISLATION COMPETITION

The Journal hosts an annual Legislation Competition open to NYU Law students. The competition promotes the intersection of law and legislation and encourages students to contribute scholarship that may affect policy change. This year, the Competition was again held alongside the Journal’s spring symposium. The competition centered on Representative Katie Porter’s “Help America Run Act.” Entrants were asked to analyze HARA, evaluating its strengths and weaknesses, and identifying and justifying any changes they believed were necessary. Two winners were selected and received a cash prize and recognition at the Journal’s spring symposium. Their submissions were also published in *Quorum*, the Journal’s online companion. The winners were also invited to meet with Representative Porter and her staff to discuss their proposals.

The 2021 winners were Alex Jonlin, a 1L, and a joint entry from Aaditya Tolappa, J.D. ’22 NYU Law, Margaret Shields, J.D. ’22 and incoming *Legislation* Executive Editor, and Samantha Yi, J.D. ’22 and incoming *Legislation* Senior Articles Editor.

VII. PRODUCTION PROCESS – UPDATES AND NEW DEVELOPMENTS

This section briefly discusses changes made to the Journal’s production process in 2020–21.

The article selection process remained similar as in years past, with the addition of an article transition process designed to streamline the handoff from selection to production. Editor-in-Chief Chris Shenton and Senior Articles Editor Rachel Baron developed an article transition memo process, designed to give the Executive Editor and Senior Executive Editor/Managing Editor of Production in charge of the piece a sense of who the author is and provide their contact information, a brief synopsis of the piece’s argument, an overview of why the piece was selected for publication in the Journal, and thoughts about what areas of the article would need the most attention in the editing process. These memos were produced ahead of an article transition meeting, hosted between the EIC, SAE (or SNE for Notes), and production Board members on that piece, to discuss the contents of the memo, the piece generally, and any other questions or unique circumstances regarding that author and piece. These memos and transition meetings served to streamline the transition between selection and production, and will hopefully provide a baseline for further improvements to that process going forward.

The major change to the article production process in 2020–21 was splitting the C&S process into two stages. These changes, led by Managing Editor of Production Julia Goldsmith-Pinkham, led to ever-increasing quality in the editorial work produced by *Legislation* staff. Senior Executive Editor Jessica Graber’s work was also essential in helping Staff Editors learn the process and improve their Bluebooking work. Previously, Staff Editors had undertaken all aspects of the C&S process—tracking down sources, uploading them to Sharepoint, substantiating the point for which they were cited in the article, Bluebooking the source, putting it into the source chart, and updating the citations for each reference to that source in the article—in one phase, with a longer time period to complete the full C&S task for each Staff Editor’s assigned sources. This year, the C&S process was split into two stages: a source pull and Bluebooking Phase 1, and a substantiation and in-line correction Phase 2. This split in the process necessitated taking a bit longer with the full C&S, since each phase needed to be checked and reviewed, and two deadlines were more difficult to balance than one, but it produced more thorough Staff Editor work and gave Staff Editors an opportunity to engage in substantive edits to the pieces at Phase 2. This change produced multiple thoughtful, compelling, important edits and suggestions for each issue in Volume 23.

The Notes Program continued to undergo impressive additions in 2020–21 as it develops into a full-fledged *Legislation* mainstay. The Notes team, led by Senior Notes Editor Lilly Hecht, published six Notes in Volume 23. Beyond the six notes that JLPP published, the Notes team also reviewed many other submissions and substantively edited six, some of which the incoming Volume 24 Notes team will inherit. All of these six papers went through the initial, "zero-line" round of edits (5 of those with supplemental, targeted feedback), four went through another round of edits beyond that, and another two received even more rounds of edits.

In addition to all of their editing, the Notes team also created two guidance documents this year. The first, the "Zero-Line Edits" document, sets out a list of preliminary edits that we compiled based on our experiences reading and editing the submissions we received this year. We designed it so that it enumerates all of the edits that authors are best positioned to implement, making it much easier to review and edit a piece in a meaningful, more substantive way. The "Zero-Line Edits" document establishes a rebuttable presumption: it presumes the author will implement each edit listed, such that, to have her Note entered into the Notes Pipeline, the author must either (1) implement all of the suggested edits or (2) explain, in a comment on her submitted paper, why a suggested edit does not apply in a particular instance. The "Zero-Line Edits" stage has consistently helped streamline the editing process and get all papers up to speed upon entry into the Notes Pipeline, and we hope the incoming Notes team refines the document even further. Special thanks are due to past Editor-in-Chief Dani Schulkin '20 for her insight and for helping conceive of the edits as divided roughly into substantive, structural, and stylistic, and to Faculty Advisor Professor Helen Hershkoff for her feedback on an initial draft of the document.

The second document created this year was for internal guidance: the Preemption Check Guide sets out the goals, considerations, and procedures behind making sure each note we edit cites/incorporates all relevant sources and proffers a novel, original argument/addition to existing scholarship. This document will hopefully not only make the preemption check process easier and clearer for all future Notes Editors to learn, but – by documenting the procedures we used this year – will also help future Notes Editors improve upon what previous generations have done.

VIII. JOURNAL DEVELOPMENT – UPDATES AND NEW INITIATIVES

The Journal also took on a host of new development initiatives this year, which are briefly described in this section.

The biggest challenge of the 2020–21 year involved configuring all non-production-related journal operations, including journal orientation, onboarding, and social events, for online implementation in the midst of the COVID-19 pandemic. Managing Editor of Development Serena Warner led *Legislation* in prioritizing retaining institutional knowledge within the Journal by creating a new database to collect and store member information, and substantially added to the database by filling in gaps in prior class years. The streamlined process will help *Legislation* maintain connections with alumni and current members by having up-to-date contact information for invitations to symposiums and panels. Additionally, a new LinkedIn group was created to provide alumni with a way to stay in touch with their fellow members.

The Journal also saw a completely new writing competition process for recruiting new Staff Editors. The Board, led by Serena, managed 171 applications to the journal and expanded admissions by reviewing our process and implementing more holistic grading criteria. The journal admitted a total of 36 applicants, including two LLM students, for the 2020–2021 year.

The Journal also continued to work on writing competition reform, working with other journals to pursue increased access and opportunity to serve on journals school-wide.

As we transitioned our social connections to entirely virtual, the Journal community moved online as well. *Legislation* hosted a well-attended trivia night, a PowerPoint party, and the annual banquet. We expanded institutional knowledge by hosting a Winter Interview Program (the EIW replacement during the pandemic, hosted after winter break) Q&A panel for current members undergoing the campus interview process on an entirely new schedule. Additionally, we organized a clerkship panel for the first time in Journal history, composed of Paul Brachman '13, Max Sarinsky '15, Sacha Baniel-Stark '16, and Manny Antunes '16, who spoke to current students about their experience applying, interviewing, and working for a judge.

IX. AWARDS & ACHIEVEMENTS

Each year, the Journal formally honors members of its staff for their outstanding contributions during the year.

The Helen Hershkoff Visionary Award is awarded to the graduating student who made an outstanding new and creative contribution to the Journal. This year's saw three recipients for the award, in an exact tie: Thomas McBrien, our Senior Quorum Editor, for his outstanding work in developing the work of *Quorum*, and Arianne Connell and Jennifer Thompson, our Senior Intellectual Life Editors, for their hard work in producing two major, outstanding symposia for the Journal and law school community.

The Thomas Stoddard Award is awarded to the third-year editor who made the greatest contribution to the Journal. This year's recipients were Patrick Derocher and Jessica Graber, our Senior Executive Editors. Patrick and Jessie were the glue that made an extraordinarily difficult year of production go, and the Journal would simply not have been able to function without their extraordinary efforts. They were the Board's unanimous selection for the Award.

The Flora S. and Jacob L. Newman Prize is awarded to the graduating student who has written the most outstanding Note for the Journal. This year's recipient was Peter Machtiger, for his Note "Fixing PPD-28: Implementation Issues and Proposed Revisions for Signals Intelligence," published in Issue 23.1.

The Editor of the Year Award is awarded to a graduating student who made exceptional and substantive contributions to any part of our production process. This year's recipient was Lilly Hecht, Senior Notes Editor. Lilly revamped the Notes Program into a force, expanding its editing capabilities, recruiting Notes from outside the Journal, and leaving the Notes Pipeline in a very strong position moving forward, all while being one of the most pleasant people on the Journal.

The Staff Editor of the Year Award is awarded to a second-year student who made an outstanding contribution as a staff editor on the Journal. This year's recipients were Dan Lipkowitz and Samantha Yi. Dan went above and beyond in recruiting opportunities for the Journal, pitching in on special projects, and generally being available for whatever work the Journal needed to be done. Samantha received recognition for her outstanding contributions to

multiple program areas, particularly article selection and writing competition reform, as well as her outstanding editorial work. *Legislation* is fortunate to have both Dan and Samantha continuing in Board roles for Volume 24.

X. FINAL NOTE FROM INCOMING EDITOR-IN-CHIEF, ALISON GE

To the Board of Volume 23 – thank you so much for your leadership, mentorship, and for all the incredible work you’ve done on the Journal. The past year has been challenging, tumultuous, and unpredictable, and you’ve guided the Journal through so much, figuring out how to shift the Journal entirely remotely, selecting and publishing the most incredible pieces, running two thought-provoking symposia with fantastic panels of speakers, and building such an incredible community despite all the enormous challenges of this year. Thank you so much for all your hard work, dedication, and contributions to JLPP. What you have built is tough to follow, but we the Board of Volume 24 are excited to carry on and hopefully build on all the incredible work you’ve done.

To the Class of 2021 – we’re so grateful to have had the opportunity to work with and learn from everyone. Congratulations, and we’re so excited to see what everyone goes on to accomplish. Keep us updated – once you’re in the JLPP community, you’ll always be in the JLPP community.

–Alison, Volume 24 Editor-in-Chief