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ANNUAL REPORT 2022-2023

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A NOTE FROM OUTGOING EDITOR-IN-CHIEF, LAURA R. BRAWLEY

To our Editors:

Thank you for all of the hard work you put into producing the Journal. I am eternally grateful for all of your hard work and for the strong Journal family you built. Certainly, this experience has positively impacted and defined my law school career.

I also would like to extend a special thank you to the other members of our Journal's management team: Leni Kagan, Amanda Ikard, and Michael Beckwith. Without you, there would have been no N.Y.U. Journal of Legislation and Public Policy.

—Laura R. Brawley, Volume 25 Editor-in-Chief

I. CITATIONS

Over the last year, *Legislation* was cited in five federal court and two state court opinions:

- *United States v. Bell*, No. 3:19-CR-31-CWR-LGI-1, 2022 WL 2541280 (S.D. Miss. July 7, 2022), citing Angela J. Davis, *In Search of Racial Justice: The Role of the Prosecutor*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 821, 832 (2013).
- *Labega v. Joshi*, 270 A.3d 378 (N.J. Super. Ct. App. Div. 2022), citing Barry L. Johnson, *Why Negligence Per Se Should Be Abandoned*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 247, 249 (2017).
- *M.W. through Moore-Watson v. Rankin Cnty. Pub. Sch. Dist.*, No. 3:19-CV-107 HTW-LGI, 2022 WL 340688 (S.D. Miss. Jan. 5, 2022), citing William Moran, *The Idea Demands More: A Review of FAPE Litigation After Endrew F.*, 22 N.Y.U. J. LEGIS. & PUB. POL'Y 495, 500–01 (2020).
- *State v. Wood*, 310 Neb. 391 (2021), citing Emily J. Groendyke, *Ake v. Oklahoma: Proposals for Making the Right a Reality*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 367 (2007).
- *Sw. Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.*, 17 F.4th 950 (9th Cir. 2021), citing Robert G. Schwemm & Calvin Bradford, *Proving Disparate Impact in Fair Housing Cases After Inclusive Communities*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 685, 698–99, 703–06 (2016).
- *Sw. Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.*, 9 F.4th 1177 (9th Cir.), *withdrawn and superseded on denial of reh'g en banc*, 17 F.4th 950 (9th Cir. 2021), citing Robert G. Schwemm & Calvin Bradford, *Proving Disparate Impact in Fair Housing Cases After Inclusive Communities*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 685, 698–99, 703–06 (2016).
- *River Cross Land Co., LLC v. Seminole Cnty.*, No. 6:18-CV-1646-ACC-LRH, 2021 WL 2291344 (M.D. Fla. June 4, 2021), citing Robert G. Schwemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 709, 712-13 & n. 16 (2017).

Legislation was cited in 329 secondary sources from June 2021 until June 2022, including 277 citations in law reviews and journals and 50 citations in texts and treatises. *Legislation* was also cited in eleven Supreme Court briefs, fifteen Court of Appeals briefs, and seven State court briefs.

II. PRINT PUBLICATIONS

A. Volume 25, Issue 1

Issue 25.1 features three full-length scholarly Articles and two student Notes:

Beyond Compulsory Licensing: Pfizer Shares Its COVID-19 Medicines with the Patent Pool

Article by Chenglin Liu, Professor of Law, St. Mary's University School of Law, San Antonio

Edited by Lara Fishbane, J.D. NYU Law

In this Article, Liu explores the Medicines Patent Pool (MPP) as an alternative to waivers of intellectual property rights to promote equitable access to medications while balancing the need for IP protection to promote innovation. The Article relies on Pfizer's voluntary agreement with the MPP to share the IP rights for Pfizer's highly effective COVID-19 treatment (Paxlovid) as a model. The Article compares the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement and the MPP and examines the impact of activist shareholders seeking to promote global health outcomes. Liu concludes that in order to maximize access in low- and middle-income countries, the world must rely on a combination of TRIPS, MPP, and the social responsibility impulses of pharmaceutical companies.

How Biden Can Continue Making the Federal Courts Better

Article by Carl Tobias, Williams Chair in Law, University of Richmond School of Law

Edited by Rachel Baruch, J.D. NYU Law

This Article reviews the recent historical and political context of judicial nominations and confirmations for the Article III courts. Specifically, it examines the nomination and confirmation processes in the 115th and 116th Congress (under President Donald Trump) and contrasts these with the processes that have been employed thus far by the Biden Administration, which have emphasized appellate nominations and intentionally consider several dimensions of diversity. The quintessential illustration is the confirmation of the first Black woman to the Supreme Court, Justice Ketanji Brown Jackson. The Article proffers both short-term and long-term suggestions respecting how the Biden Administration might continue to improve the judicial selection process and the courts. Short-term suggestions include elevating magistrate, state-level, and district court judges; renaming qualified Obama nominees whom the Senate did not confirm; and maintaining or expanding the blue slip exception for the time being. Long-term suggestions include clarifying and codifying the Leahy Rule and instituting a bipartisan judiciary.

The Perceptual Gap: Rethinking 'The Migrant Threat'

Article by J. Mauricio Gaona, Ph.D., LL.M., M2, LL.B., O'Brien Fellow at McGill University's Center for Human Rights, Oppenheimer Scholar, and former Vanier Canada Scholar

Edited by Rachel Harrington, J.D. NYU Law

This Article explores the perception of immigrants as threats and the rationale behind institutional responses to immigration. Drawing on an interdisciplinary analysis, it presents the perceptions and distortions of reality that lead to the distrust, dehumanization, discrimination, and criminalization of migrants, a phenomenon the article labels “the migrant threat.” The Article theorizes that the “perceptual gap” between the perception of migrants as threats and their reality as victims can be explained through a novel perception-conceptualization approach. The Article argues that this approach is critical to redressing current patterns of dehumanization, criminalization, and segregation of migrants across the world.

The Twenty-Sixth Amendment and Protecting the Youth Vote

Note by Alison (Qizhou) Ge, J.D., NYU Law (2022); M.A. & B.A., Stanford University. Alison is a litigation associate at the Elias Law Group.

Edited by Alex Jonlin, J.D. NYU Law

This Note explores the potential for legal challenges under the Twenty-Sixth Amendment to state voting restrictions that particularly affect young people. It discusses the history of litigation under the Amendment and lays out a framework for litigation, as well as proposed legislation to implement the Amendment.

Aftermarket Theory in Digital Markets

Note by Matthew Rosenthal, J.D., NYU Law (2022). Matthew is an associate at Cleary Gottlieb Steen & Hamilton LLP.

Edited by Jamie DiMario, J.D., NYU Law

This Note examines how an antitrust theory involving “aftermarkets” could be used to regulate digital platforms. The Note discusses the doctrinal and economic support for antitrust aftermarket theories, focusing on the landmark Supreme Court case, *Eastman Kodak Co. v. Image Technical Services, Inc.* The Note then applies the doctrine to specific digital platform industries. It argues that aftermarket theories can be used to demonstrate large tech companies’ market power and bring them within the reach of existing U.S. antitrust laws.

B. Volume 25, Issue 2

Issue 25.2 features four full-length scholarly Articles and three student Notes:

Masks, Mayhem, and the Future of Disability Rights in Schools

Article by Claire Raj, Associate Professor at University of South Carolina School of Law, & Crystal Grant, Clinical Professor at Duke University School of Law

Edited by Jamie DiMario J.D. NYU Law

This Article explores flaws in the application of disability- discrimination doctrine to issues arising in K-12 schools. The Article begins by introducing the relevant disability law statutes (Section 504 of the Rehabilitation Act, Title II of the ADA, and the IDEA) and describes how agencies and the Supreme Court have interpreted their language. The Article then identifies how courts and agencies have improperly applied precedent interpreting these laws in the higher education context to K-12 disability discrimination claims, resulting in the dismissal of legitimate claims. It then describes how the litigation involving mask mandates in response to the COVID-19 pandemic has exacerbated these issues. The Article concludes by proposing statutory amendments, agency guidance, and alternative frameworks for interpreting disability rights laws in K-12 schools.

“You’re Fired”: Criminal Use of Presidential Removal Power

Article by Claire O. Finkelstein, Algernon Biddle Professor of Law and Professor of Philosophy; Faculty Director of the Center for Ethics and the Rule of Law, University of Pennsylvania; and Richard W. Painter, S. Walter Richey Professor of Corporate Law, University of Minnesota; Former Associate Counsel to the President and chief ethics lawyer in the White House Counsel’s Office from 2005 to 2007

Edited by Rachel Harrington, J.D. NYU Law

This Article addresses the intersection and potential tension between the President’s power to remove Executive branch officers and the need to ensure that members of the Executive branch, including the President, are held accountable to the law. In doing so, the Article addresses the “unitary executive theory,” the view that the President has unlimited power to remove officers for any reason, even if done in the furtherance of a crime. The Article examines the historical and constitutional basis for this theory and discusses the practical implications of such an expansive approach to presidential removal powers. It further discusses the circumstances in which this question becomes relevant, showing that unlimited presidential removal power would critically impede the separation of powers and the rule of law.

The Values-Based Trade Agenda

Article by Michelle Egan, Professor, American University School of International Service, Global Fellow, Woodrow Wilson Center and Co-Director of the AU Transatlantic Policy Center, A Jean Monnet Center of Excellence, and Fernanda G. Nicola, Professor, American University Washington College of Law, Director of the Program on International Organizations, Law and Development and permanent visiting Professor at iCourts, University of Copenhagen

Edited by Rachel Baruck, J.D. NYU Law

This Article argues that there has been a fundamental shift in the international trade goals of the United States and the European Union towards a values-based trade agenda. Instead of merely

focusing on free trade based on efficiency and market access, trade regulators on both sides of the Atlantic have independently pursued measures designed to address environmental sustainability and social equity. Though these policies resonate with their domestic constituencies and allows them to promote their values along global supply chains, they are likely to create new trade conflicts. This is due in part to the fact that the transatlantic trade relationship remains embedded in international regulatory frameworks predominantly focused on efficiency gains and cutting red tape to ease the flow of products and services. The Article explores two comparative case studies on cosmetics and medical devices and highlights how the promotion of competitive liberalization in transatlantic trade has created social and environmental inequities. The Article concludes that incorporating social and environmental equity adjustments for vulnerable and marginalized communities requires an assessment of the ex ante distributive effects in regulatory cooperation and the ex post enforcement tools of regulation.

Deliberate Indifference: Respondeat Superior Liability for Municipalities in Civil Rights Cases as an Alternative to Qualified Immunity Reform

Article by Mark C. Niles, Professor of Law at St. John's University

Edited by Alex Jonlin, J.D. NYU Law

This Article proposes that police reform advocates focus on applying respondeat superior liability to municipalities in addition to eliminating qualified immunity for law enforcement officers. It discusses the history of the Supreme Court's rejection of the application of respondeat superior doctrine to municipalities in lawsuits over police violations of people's rights and suggests that restoring the doctrine would incentivize municipalities to take greater care in ensuring their police officers act lawfully.

Preserving Democratic Legitimacy in the Application of A.I. to Notice-And-Comment Rulemaking

Article by Patrick Corcoran, J.D. 2021, NYU Law.

Edited by Laura Brawley, J.D. NYU Law, B.A., University of Chicago.

This Article explores Alternative Intelligence (A.I.) as a potential solution to combat the thousands of comments agencies receive following the implementation of e-rulemaking and the rise of mass comment campaigns. It evaluates the effect A.I. processing of comments on four functions of the notice-and-comment process: accuracy, accountability and judicial review, democratic legitimacy, and the "right to be taken seriously." The Article concludes that the implementation of A.I. processing can benefit from best practices developed to preserve democratic ideals in agencies' use of cost-benefit analysis.

Surging Towards Ransomware: Does the Department of Defense Have the Legal Authority to Leverage Cryptocurrency and Combat Cyber Threats?

Note by Mari Dugas, J.D. 2022, NYU Law

Edited by Lara Fishbane J.D. NYU Law

This Note explores whether the Department of Defense (DOD) has legal authority to combat the threat of ransomware. DOD is generally limited in any action it takes by provisions of international law that the U.S. follows, domestic law, and its own internal policies. The Note discusses the domestic legal limits imposed by the Constitution and statutory law that may place restrictions on DOD's ability to target ransomware actors and the international legal limits on potential DOD actions against ransomware actors. The Note concludes that DOD's ability to target ransomware actors exists in a legal grey area that would benefit from explicit congressional authorizations to the executive branch.

Investing, But Better: Reforming the Investing in Opportunity Act

Note by Travis Corbin, J.D., 2023, J. Reuben Clark Law School; and Matthew S. Johnson, J.D. and M.Acc, 2023, J. Reuben Clark Law School

Edited by Jason Claman, J.D. NYU Law

This Note evaluates and critiques the Investing in Opportunity Act ("Opportunity Act"), a 2019 federal tax law that created incentives to draw investment into America's most economically distressed communities. Though the Opportunity Act was ideologically bipartisan and innovative, this Note finds it has failed to effectively provide relief to the communities it was intended to benefit. Some of the inefficiencies and negative externalities that are discussed include the availability of tax breaks for investing as little as forty cents for every qualifying dollar into low-income communities, and the lack of safeguards to guarantee that these investments will benefit the residents of such communities. Finally, this Note advances an original solution that aligns investors' and low-income communities' incentives, arguing for a greater focus on America's poorest communities, collaboration with local leaders, and additional tax benefits for non-real estate projects.

C. Volume 25, Issue 3

Issue 25.3 features four full-length scholarly Articles, and two student Notes:

Commercial Rent Stabilization: One Local Response to Skyrocketing Rents

Article by Julian M. Hill, Assistant Professor of Law, Georgia State University College of Law

Edited by Jason Claman, J.D., NYU Law

This Article presents a case study of the commercial rent stabilization bill introduced in New York City in 2019, and argues that commercial rent stabilization can advance worthwhile interim goals in New York City and elsewhere. Specifically, the Article posits that commercial

rent control could limit the power of exploitative landlords, which would allow more predictability and stability for tenants. Black and immigrant-led business-tenants would benefit from this increased power vis-a-vis their landlords, and stronger minority-owned business tenants would in turn help diverse communities in the city thrive. This Article contributes to the commercial rent regulation scholarship by discussing its policy advantages for small, Black- and immigrant-led commercial tenants, as well as responding to the common mischaracterization of state and federal law that views them as obstacles to commercial rent control.

The Dangers of Facial Recognition Technology in Subsidized Housing

Article by Michelle Y. Ewert, Associate Professor of Law, Washburn University

Edited by Alex Jonlin, J.D. NYU Law

This Article discusses the potential for artificial intelligence and associated facial recognition technology to harm tenants in public housing. It outlines recent developments in the field and proposes legislative and regulatory changes at the federal, state, and local levels to prohibit or restrict harmful uses of the technology.

Why Professor Rebecca Wexler is Wrong About Privacy as Privilege

Article by Vikas K. Didwania, Lecturer in Law, University of Chicago Law School; Assistant United States Attorney, United States Attorney's Office, Northern District of Illinois

Edited by Rachel Harrington, J.D. NYU Law

This Article responds to the argument made by Professor Rebecca Wexler in the Harvard Law Review that federal privilege law mandates allowing criminal defendants to subpoena user content from social media companies. This Article takes the opposite view, using statutory interpretation, court precedent, and legislative history to argue that the Stored Communications Act (SCA) definitively bans defendants from obtaining such content. This Article further examines the consequences of accepting Professor Wexler's theory, showing how her interpretation would disrupt a carefully constructed statutory scheme, require courts to become policy decision makers, and jeopardize the privacy of millions of social media users. Finally, the Article identifies methods that defendants can use to obtain the evidence they seek either through the government, individual witnesses, or the exceptions specified in the SCA.

The Slogans and Goals of Antitrust Law

Article by Herbert Hovenkamp, James G. Dinan University Professor, University of Pennsylvania Carey Law School and the Wharton School

Edited by Jamie DiMario, J.D. NYU Law

This Article evaluates three commonly used expressions about the purpose of antitrust law, categorizing them as either legitimate antitrust goals, “slogans” that only have rhetorical appeal, or neither. The Article begins by exploring the history behind the first expression of purpose: that antitrust law should control the “bigness” of businesses. The Article discusses the contemporary objections to bigness as a goal, concluding that it fails as such. Next, the Article examines the second expression of purpose, which is that antitrust law should be concerned with “protection of the competitive process.” It again concludes that this fails as an antitrust goal but operates as a slogan. Finally, the Article explores the third expression of purpose, which is that antitrust law should be concerned with some conception of welfare. It concludes that although welfare faces some definitional problems and can be subject to ideological abuse, it is the most feasible goal of antitrust law.

Cutting the Curb: Driveways and the Right of Access

Note by Alex Jonlin, J.D. Candidate at NYU School of Law, Class of 2023. B.A. in Urban Studies from U.C. Berkeley, Class of 2015

Edited by Lara Fishbane, J.D. NYU Law

This Note explores local governments’ authority to regulate driveways. Courts have long held that property owners have a right of access between their property and the street. At the same time, local governments exercise the police power to regulate traffic. When a driveway adversely affects safety or other public interests, which the Note suggests is a frequent occurrence, the right of access and the police power come into conflict. The Note argues that state and federal case law supports local governments’ right to withhold driveway permits or revoke existing driveways when clear standards and procedures are provided. As cities work to reduce dependence on cars, the Note argues that they should establish procedures for the denial of future driveway permits and the revocation of existing ones when a driveway has an adverse impact on the public and alternative, non-automobile means of access are available.

The Electric Vehicles Dilemma: The Inflation Reduction Act, International Trade Law, and U.S.-Korea Economic Diplomacy

Note by Mark Kim, New York University School of Law 2024; B.A, University of Pennsylvania, 2020 (Political Science)

Edited by Rachel Baruck, J.D. NYU Law

This Note examines the electric vehicle (EV) tax provisions in President Biden’s signature Inflation Reduction Act (IRA) and the heavy production requirements the law places on foreign auto manufacturers. The Note focuses on South Korean auto companies and the roles that both the U.S. rulemaking process and Korean politics have played and will continue to play in the implementation of the IRA’s EV provisions. Ultimately, the Note argues that U.S. policymakers must take note of international reaction to the IRA to avoid further alienating international allies and trade partners in the future.

III. *QUORUM*: LEGISLATION’S ONLINE COMPANION

To continue Legislation’s mission to provide timely and practical scholarship on important legal issues, Quorum publishes short pieces on a variety of topics from differing viewpoints. Quorum focuses on scholarship by JLPP editors and alumni, but accepts submissions from scholars, students, practitioners, and advocates outside of the NYU Law community.

Senior Quorum Editor Teddy Rube supervised content generation and production, working with six third-year Quorum editors. Teddy collaborated with the Senior Articles Editor and Senior Notes Editor to offer publication on Quorum to pieces that for space reasons could not be included in the print edition. This year, Quorum continued its focus on highlighting JLPP students and alumni.

This year Quorum also introduced a new feature: two individual “series” that focused on current, developing issues of pressing importance in the public policy space.

The first series, “Life After Roe: Grappling with the New Abortion Rights Reality,” addressed the complexity and dangers that the Supreme Court’s *Dobbs* opinion unleashed for individuals and our legal and political system by eliminating the constitutional right to abortion.

The second series, “The Promise of an Amendable Constitution in an Uncertain Era,” marked a partnership with the Brennan Center for Justice which in February 2023 convened a symposium, “Constitutional Amendments: Time to Rethink?” addressing the merits and mechanisms of amending the Constitution. Quorum continued the conversation with ten pieces, offering a vigorous and lively debate over whether and how to amend the Constitution. The series included pieces by prominent constitutional law scholars, leading activists in the field of democracy reform, policymakers. U.S. Representative Jamie Raskin kicked off the discussion with as part of this conversation.

During the 2022-2023 school year, Quorum published eighteen new pieces:

- *The Democratic Meaning of the American Constitution*
 - U.S. Representative Jamie Raskin
 - Representative Raskin kicks off our series on amending the Constitution by explaining how our history of Constitution amendments is a “thrilling chronicle” of the struggle to expand our democratic rights, and urges readers to consider the prospect of amending the Constitution not with fear, but with optimism given the amendment process’s potential to realize the Constitution’s democratic vision.
- *How to Improve the Federal Amendment Process Without Formally Amending the Constitution*
 - Ethan Herenstein (Brennan Center for Justice)
 - The piece argues that although Article V sets high barriers for amending, these barriers are artificially high because of a poorly-reasoned Supreme Court precedent, *Hawke v. Smith*, and explains how overruling this case could make it easier to amend the Constitution and would let the people play a leading role in this process.

- *A Skeptic Asks: Is It Possible to Stop Worrying and Love the Article V Convention?*
 - John F. Kowal (Brennan Center for Justice)
 - This piece responds to skeptics and supporters of an Article V convention, and offers reasons that constitutional reformers should cautiously embrace a progressive movement for a constitutional convention.
- *Constitutional Amendments: Time to Rethink - and to Act*
 - Jeff Clements (American Promise)
 - This piece argues that a bipartisan movement is close to triggering the Article V process to add a constitutional amendment expanding the power to regulate money in politics.
- *Move to Amend*
 - Professor Wilfred U. Codrington III (Brooklyn Law School)
 - This piece draws from a cyclical history of amendments to the Constitution, and describes the conditions for social-movement driven constitutional change, arguing that the United States is in a moment of change now.
- *Learning from State Constitutional Amendments*
 - Alicia Bannon (Brennan Center for Justice)
 - This piece offers an overview of state constitutions, and reflects on how they can inform and be in conversation with movements to amend the federal Constitution.
- *Article V: A Still Viable Means of Exercising Tempered Popular Sovereignty*
 - Professor John R. Vile (Middle Tennessee State University)
 - This piece argues that the federal Constitution’s amendment process, although cumbersome, makes constitutional development possible while retaining procedural protections and consensus-building mechanisms that help guide the polity to well-considered changes.
- *“We the People” Can Fix What’s Broken – If We Try*
 - Caroline Fredrickson (Georgetown University Law Center and Brennan Center for Justice)
 - This piece responds to arguments that political polarization means the Constitution cannot be amended,. Professor Fredrickson reflects on her experience participating in the National Constitution Center’s “Constitution Drafting Project,” and explains how divergent groups might find common ground through the amendment process.
- *The Constructive Unamendability of the U.S. Constitution*
 - Professor Richard Albert (University of Texas at Austin)
 - This piece explores the three ways a constitution can be unamendable—formally, interpretively, or constructively because of political realities—and explains that while a combination of structure and politics makes the U.S. Constitution impossible to amend today, it does not have to stay that way.
- *Bring On a New Constitutional Convention!*
 - Professor and Chair in Law Sanford Levinson (University of Texas at Austin)
 - This piece responds to liberal critics who oppose calls for a new constitutional convention, and sets out why progressives should embrace the idea of a convention as the only effective way to reimagine our 18th-century charter for 21st-century realities.

Quorum also published the following pieces:

- *Back to the Future . . . of Competition*
 - James J. Bernstein (Georgetown University Law Center '24)
 - This piece explains how the Federal Trade Commission—which faces threats to its adjudicative powers from pending Supreme Court decisions—can re-vitalize a horizontal merger jurisprudence that encourages start-ups and enhances competition in the tech space.
- *The Impact of the Post-Dobbs Criminalization of Abortion on the Cybersecurity Ecosystem in the United States*
 - Rebecca Saber (NYU Law'23)
 - This piece explores how law enforcement officials in states that criminalize abortion are using digital data to prosecute pregnant people, examines attempts to protect data privacy at the federal and state levels, and offers a sobering assessment of best practices to protect reproductive health data.
- *Pregnancy Classifications are Sex-Based Classifications: A Proposal to Overrule Geduldig*
 - Isabel Gutenplan (NYU Law'23)
 - This piece argues that *Geduldig v. Aiello*, a controversial Supreme Court precedent that enables discrimination against pregnant people, should be overturned based on the stare decisis logic in *Dobbs v. Jackson Women's Health Organization*.
- *Gig Companies Are Manipulating Their Workers. Dark Patterns Laws Should Step In*
 - Kathryn Taylor (NYU Law'23)
 - This piece analyzes how algorithmic wage discrimination by gig companies should be understood as exploitative “dark patterns,” and addresses how legislative protections against dark patterns in the consumer space should be extended to protect employees from employer manipulation.
- *Free Speech Post-Dobbs: The Constitutionality of State and Federal Restrictions on the Dissemination of Abortion-Related Information*
 - Dessie Otachliska (Harvard Law School '21)
 - This piece explores the level of First Amendment protection that ought to be afforded to abortion-related speech, given the rise of restrictions on such speech in the wake of the overturn of *Roe v. Wade*. It addresses whether laws restricting abortion-related would survive constitutional scrutiny.
- *LLCs, Luxury Real Estate and Secrecy: A Survey of Efforts to Increase Shell Company Transparency*
 - Alex Jonlin (NYU Law'23)
 - This piece explains the rise of the anonymous LLC as one of the premier methods for hiding money and dodging taxes discreetly, and explores how new efforts in New York State and Congress could possibly bring this era of secrecy to an end.
- *The Role of the Attorney General in Reforming Social Media for Children*
 - Matthew Lewis (NYU Law'22)
 - This piece examines the unique harm that social media poses to children, and argues that in the face of Congressional inaction state attorneys general should

step in with their own broad investigatory and advocacy powers to investigate how social media firms target children.

IV. INTELLECTUAL LIFE

Twice a year, the Journal brings together leading academics, legal practitioners, and students to discuss a current cutting-edge issue in the law. During the 2022-2023 school year, the Journal hosted two intellectual life events. Our fall panel discussed the fading Establishment Clause. Our spring symposium focused on the surveillance state and its particular impact on vulnerable groups

The Journal is appreciative of the leadership of our senior intellectual life editors, Jeryne Fish and Ben Kaminoff, who helped plan and execute the symposia. We are also immensely grateful for the work of our intellectual life editors.

A. FALL 2022

On November 14, 2022, the Journal convened a panel discussion., “The Fading Establishment Clause: What Happened to the Separation of Church and State,” hosted in partnership with the Meltzer Center for Diversity, Inclusion, and Belonging, the Jewish Law Students Association, the American Constitution Society, If/When/How, the Law Alumni Association, the Latinx Law Students Association, the Public Interest Law Students Association, the Supreme Court Forum, and OUTLaw. Professor Katherine Franke of the Columbia University School of Law moderated the panel, which featured several legal experts in the field, including Professor Liz Sepper of the University of Texas at Austin School of Law, Professor David Cruz of the University of Southern California School of Law, and Adjunct Professor Zalman Rothschild, NYU Law. The discussion was followed by a cocktail reception.

B. SPRING 2022

On April 12, 2023, the Journal convened a symposium, “The Surveillance State: How America Spies on its Most Vulnerable Persons,” hosted in partnership with the NYU Center on Race, Inequality, and the Law, the Birnbaum Women’s Leadership Network, the Brennan Center for Justice, the Center on Privacy and Technology at Georgetown Law, OUTLaw, and NYU Law Women.

The symposium featured a keynote address by Hamid Khan, an activist and coordinator at the Stop LAPD Spying Coalition.

Following the keynote, the first panel, “Poor and Monitored,” explored the impact of the surveillance state on law-income individuals. The panel included Mr. Khan and Mizue Aizeki, the Executive Director and founder of the Surveillance Resistance Lab. The panel was moderated by NYU Law’s own Jeryne Fish ‘23.

The second panel, “The Surveillance Attack on Reproductive Rights Post-Dobbs,” examined the impact of the surveillance state in a world where the right to abortion care is not constitutionally protected. The panel was moderated by Linnea D. Pittman ‘20, a 3rd year associate at Morrison & Foerster and NYU alum. The panelists included Jennifer Weiss-Wolf, the Executive Director of the Birnbaum Women’s Leadership Network, and Faiza Patel, the Senior Director of the Brennan Center for Justice’s Liberty and National Security Program.

V. PODCAST

This past year, the Journal continued the *LawsFlaws* podcast, which provides an additional venue for analysis of contemporary, fast-changing legal and policy questions, and doing so through the popular and accessible mode of audio recordings and interviews. The podcast complements scholarship published in the Journal and *Quorum* and spotlights symposia speakers and other contributors. Through the podcast, editors were able to build on scholarship in our established programs and pursue more in-depth analysis and discussions with experts whose presence was well-suited to the interview setting.

The episode “Dismantling the Myth of the Untouchable Judge,” put advocate Aliza Shatzman in conversation with three Quorum Editors—former Senior Quorum Editor Sophia Mietus ‘22, Managing Editor Michael Beckwith ‘23, and Senior Quorum Editor Teddy Rube ‘23—to discuss the difficulties in holding federal judges accountable for harassment and abuse of their law clerks. They also discussed a possible legislative solution in Congress: the Judicial Accountability Act. Drawing from her own harrowing experience in the federal judiciary, Shatzman deconstructed the power structures that keep clerks, professors, and students from discussing federal abuses who are abusing their authority. The group discussed how federal legislation extending Title VII to the judiciary could provide protections for clerks and create a stronger culture for judges and clerks alike, and explored potential objections and responses to the legislation.

The episode “Perceptual Gaps, Migration, and Human Rights,” featured Professor J. Mauricio Gaona, the author of *The Perceptual Gap: Rethinking ‘The Migrant Threat’* in JLPP’s issue 25.1, in conversation with Senior Quorum Editor Teddy Rube and 2L editor and incoming Senior Quorum Editor Ian Allen. The group discussed Professor Gaona’s interdisciplinary approach—combining physics, neuroscience, and philosophy—and explained why wealthy nations like the United States treat certain immigrants like threats instead of with compassion. Professor Gaona argued that a reorientation of how our legal system assesses threats and the “other” is critical to creating a more realistic, more efficient, and more compassionate system of migrant support that will benefit migrants themselves and the countries receiving them. Along the way, he spoke powerfully about his career-long work in human rights and how his roots in Colombia have inspired his work.

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 held alongside the Journal's Spring symposium. The competition asked participants to evaluate a recently-introduced piece of legislation entitled "The Banning Surveillance Advertising Act." The legislation prohibits the use of personal data in targeted advertising and aims to prevent advertisers from purchasing data on consumers' online behavior and targeting advertisements based on protected class status. Competition participants were asked to imagine that they were policy analysts tasked with evaluating how the proposed bill would achieve its policy ends.

This year's winner, Charlotte Kahan, was recognized at the Spring symposium, received a cash prize, and was published on *Quorum*, JLPP's online journal. Charlotte's piece analyzes the strengths and weaknesses of the Banning Surveillance Advertising Act (H.R. 6416), and proposes changes to the "close proximity" and "recognized place" coverage in the bill.

VII. AWARDS & ACHIEVEMENTS

Each year, the Journal recognizes the contributions of our members at our annual end of year celebration. We gather together as a community to celebrate our achievements over the last year with good food and comradery. We also celebrate our Journal members who really went above and beyond the call of duty to help make our publication and intellectual community something special. This year in order to better recognize the contributions of our third year students, we added two new awards: the Sixth Woman of the Year and the JLPP Stewardship Award.

The Thomas Stoddard Award is awarded to the third-year editor who made the greatest contribution to the Journal. This award is a convocation award and is decided by all members of the Journal. Laura R. Brawley was this year's recipient.

The Flora S. and Jacob L. Newman Prize is awarded to the graduating student who has written the most outstanding Note for the Journal. Alex Jonlin's note, "Cutting the Curb: Driveways and the Right of Access" received the award this year. Alex's piece explores the fascinating land use regulation regime that governs driveways and how those rules effect property rights and climate change.

The Helen Hershkoff Visionary Award is awarded to the graduating student who made an outstanding new and creative contribution to the Journal. This award is decided by all members of the Journal. This year we are pleased to give this award to Elena Kagan. Leni (as we call her) really drove the Journal to recommit to a robust proofing process. Her experience working professionally on Journal's prior to law school helped make our books better. Leni also has served as a mentor, sounding board, and true friend to so many in the Journal community. She really is our guiding star and our mother hen.

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 award is decided by all members of the Journal. This year's recipient was Amanda Ikard. Amanda's contributions to the Journal have been truly exceptional. She played a pivotal role in ensuring our Blue Booking was accurate and helped keep our publication schedule on track.

The JLPP Stewardship Award honors third-year students on the Journal who are not on our Board. These students put in extra effort to ensure the Journal's success. This year, the Board is delighted to recognize the contributions of articles editors Blaine Elias, Antara Joardar, and Natali Rey as well as intellectual life editors Julia Burns and Daniela Czemerinski.

The Staff Editor of the Year Award is awarded to second-year students who made an outstanding contribution as a staff editor on the Journal. This award is decided by the outgoing board. This year's board chose to honor five staff editors for their contributions to the Journal's community and our publication process: Jack Bolen, Yvonne Diane, Sam Heyward, Gunnar Stanke, and Addison Yang.

VIII. JLPP OFF INTO THE WORLD

After graduation, Journal members go on to fill exciting roles at law firms, clerkships, government entities, public interest organizations, and much more. This is where the Editors on the Volume 25 Board will be working:

- Laura R. Brawley (Editor-In-Chief): Associate, Fried, Frank, Harris, Shriver, & Jacobson
- Elena Kagan (Managing Editor): Appellate Attorney, Virginia Indigent Defense Commission
- Amanda Ikard (Managing Editor): Assistant Corporation Counsel, New York City Law Department
- Michael Beckwith (Managing Editor): Litigation Associate, Proskauer Rose
- Jamie DiMario (Executive Editor): Antitrust & Competition Associate, Kirkland & Ellis LLP
- Rachel Harrington (Executive Editor): Litigation Associate, Quinn Emanuel Urquhart & Sullivan, LLP
- Lara Fishbane (Executive Editor): Litigation Associate, Simpson, Thacher, & Bartlett, LLP
- Jason Claman (Executive Editor): Associate, Ropes & Grey, LLP
- Alex Jonlin (Executive Editor): Assistant Corporation Counsel, New York City Law Department
- Aaron Fisher (Senior Notes Editor): Assistant District Attorney
- Teddy Rube (Senior Quorum Editor): Litigation Associate, Gibson, Dunn & Crutcher LLP
- Jeryne Fish (Senior Intellectual Life Editor): Associate, Cravath Swaine & Moore, LLP
- Ben Kaminoff (Senior Intellectual Life Editor): Associate, Simpson Thacher & Bartlett, LLP
- Rebecca Saber (Senior Articles Editor): Associate, Simpson, Thacher, & Bartlett, LLP

FINAL NOTE FROM INCOMING EDITOR-IN-CHIEF, ADITYA TRIVEDI

Thank you for reading our annual report. As we reach the end, I want to share a brief word about the future of the Journal.

NYU JLPP had a great year. The new Board is incredibly thankful for our outgoing Board for not only their editorial prowess, but also their sincere efforts to build a strong community within the law school as life returns to normal following the worst phases of the COVID-19 pandemic. Through this difficult time, the Journal has been able to continue our strong tradition of working closely with authors to produce high-quality scholarship.

Moving forward, we will expand our publication efforts and will be moving from three issues to four. The Journal has historically produced four issues, and a return to this practice will allow us to publish more articles covering a broader spectrum of scholars and scholarship. It will additionally produce more opportunities for our student authors to publish their high-quality work.

This change is largely possible because of the diligent efforts of the outgoing Board to move the Board transition earlier. This change allowed the incoming Board to move into their new roles earlier and sets the stage to begin publication work earlier than in previous years. We will continue this practice and select the 2024-2025 Board in a similar time frame.

Finally, we will continue to ensure that the Journal remains not just a publication organization, but a community of engaged and enthusiastic students who deeply care about legislation and public policy. The incoming Board strongly believes that the strength of a publication comes from an invested group of editors. The Journal has traditionally recruited a class of editors who are excited by the opportunity to work on issues that are at the core as well as the cutting edge, and that range from health care, to free speech, to elections, and more.

We will provide our staff editors with more opportunities to engage with our area of scholarship. The Journal already has a strong history of hosting symposia, supplementing our print edition with an online publication, and using tools like podcasts to make new legal ideas more accessible. Harnessing our staff editors to work on these areas will not only allow the Journal to expand its reach, but also provide incoming editors with a chance to see what future involvement with the journal could look like.

In sum, we remain committed to making NYU JLPP a great Journal for authors and students. I am excited for our future and look forward to working with both groups during my tenure.

Warmest regards,
Aditya Trivedi

Incoming Editor-in-Chief
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