NEW YORK UNIVERSITY

Journal of Legislation & Public Policy

ANNUAL REPORT 2023-2024

Table of Contents

A NOTE FROM OUTGOING EDITOR-IN-CHIEF, ADITYA TRIVEDI 1

I. CITATIONS 2

II. PRINT PUBLICATIONS 2

A. VOLUME 26, ISSUE 1 2
B. VOLUME 26, ISSUE 2 7
C. VOLUME 26, ISSUE 3 10
D. VOLUME 26, ISSUE 4 15

III. *QUORUM*: LEGISLATION'S ONLINE COMPANION 18

IV. INTELLECTUAL LIFE 20

V. LEGISLATION COMPETITION 21

VI. AWARDS & ACHIEVEMENTS 21

VII. JLPP OFF INTO THE WORLD 23

FINAL NOTE FROM INCOMING EDITOR-IN-CHIEF, ANNE MILLS 24

A NOTE FROM OUTGOING EDITOR-IN-CHIEF, ADITYA TRIVEDI

To our Editors:

Thank you for all of the hard work you put into producing the Journal. I am eternally grateful for your dedication and for the strong Journal family you built. This experience has been the greatest honor of my time in law school.

I would like to extend a special thank you to the other members of our Journal's management team: Emma Barudi, Lauren May, and David Rosenstein. Words cannot express my appreciation of our talent, commitment, and contributions this academic year. Without you, the Journal could not have achieved its many accomplishments.

In particular, this past year, the Journal made great strides forward. In addition to our return to a four-issue volume, we brought a sitting United States Senator to campus and renewed the Journal's social media presence. Perhaps most importantly, we selected a capable and diverse team to lead the Journal in the coming academic year. I have no doubt that they will extend the Journal's legacy.

–Aditya Trivedi, Volume 26 Editor-in-Chief

I. CITATIONS

The Journal was cited in three state court opinions from June 1, 2022 to June 1, 2023, including two state supreme court opinions:

- *Martinez v. City of Clovis*, 90 Cal. App. 5th 193, (Cal. Ct. App. 2023), *review denied* (July 19, 2023), citing Robert G. Schemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 709 (2017).

- *TruGreen Ltd. P'ship v. Dep't of Treasury*, 989 N.W.2d 234 (Mich. 2023), citing Craig Hoffman, *Parse the Sentence First: Curbing the Urge to Resort to the Dictionary When Interpreting Legal Texts*, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 401 (2003).

- *Holmes v. Moore*, 383 N.C. 171 (2023), *reh'g granted*, 384 N.C. 16, 882 S.E.2d 552, and *opinion withdrawn and superseded on reh'g*, 384 N.C. 426, 886 S.E.2d 120 (2023), citing Dale E. Ho, *Voting Rights Litigation After* Shelby County: *Mechanics and Standards in Section 2 Vote Denial Claims*, 17 N.Y.U. J. LEGIS. & PUB. POL'Y 675 (2014)

In the same period, the Journal was cited in 289 secondary sources, including 276 citations in law reviews and journals and 7 citations in texts and treatises. The Journal was also cited in eight Supreme Court briefs, five Court of Appeals briefs, and twelve state court briefs.

II. PRINT PUBLICATIONS

A. Volume 26, Issue 1

Issue 26.1 features four full-length scholarly Articles and two student Notes:

<u>Contingency Fee Conflicts: Attorneys Opt for Quick-Kill Settlements when Their Clients Would Be Better Off Going to Trial</u>

Article by Steve P. Calandrillo, Professor of Law, University of Washington School of Law, Chryssa V. Deliganis, Visiting Assistant Professor of Law, Seattle University School of Law, and Neela Brocato, J.D., University of Washington School of Law

Edited by Timothy O'Neill, J.D., N.Y.U School of Law
Abstract

Despite the checkered history of contingency fees in the practice of law, attorneys often claim that such fee arrangements perfectly align the interests of lawyer and client. After all, contingency fee lawyers proclaim in TV ad after TV ad, "we don't get paid unless you win!" That superficial logic does not withstand economic scrutiny. Utilizing a behavioral economics lens, this Article demonstrates that contingency fee arrangements give attorneys excessive incentives to settle cases that their clients would be better off taking all the way through trial. In addition to highlighting this undertheorized problem in law, we offer normative recommendations to help alleviate the conflict. Ultimately, we need to devise a hybrid fee system that provides compensation proportionate to how hard an attorney works, provides incentives for the best possible outcome for her client (whether obtained at trial or via settlement), and ensures that low-income plaintiffs can still obtain access to the doors of justice.

Norm-breakers, Rights-makers: Legislative Norms, Democratization, and the Fight for Civil Rights

Article by Gregory A. Elinson, Assistant Professor of Law, Northern Illinois University School of Law

Edited by Gunnar Stanke, J.D., N.Y.U School of Law

Abstract

Norms, the conventional wisdom goes, help to keep our democracy stable. And breaking norms, scholars believe, puts democracy at risk of backsliding. This Article challenges that consensus. The original historical evidence marshaled here shows that norm-breaking by civil rights reformers in Congress was critical to jumpstarting the democratization of the United States in the mid-twentieth century, ensuring passage of both the Civil Rights Act of 1964 and Voting Rights Act of 1965. Norm-breaking, the Article makes clear, is sometimes essential to democratic reform.

Leveraging these detailed case studies, the Article explains why. In preserving the status quo, norms protect existing power hierarchies. The values, ideas, and institutional arrangements that norms help to entrench are not there by happenstance. They reflect the will of the already powerful—those individuals and interests with sufficient pull to impose their values and preferences on others through institutional practice. When we valorize stability and prescribe norm adherence as a treatment for our democratic ills, we privilege (inadvertently or otherwise) the authority of those at the top over the fate of those at the bottom. In consequence, while norms may aid in protecting whatever level of democracy we have attained, that very quality may render them obstacles to further democratization. Indeed, the more work that norms do to preserve an imperfect status quo, the more likely it is that they will need to be broken to reach a new and better equilibrium. The politics of preserving democracy for some, the Article argues, are quite different from the politics of expanding democracy to others.

For these reasons, reformers today who seek to renew our democracy for a new generation cannot afford to accept the conventional wisdom that flouting norms is bad. They must instead embrace the reality that, as rights-makers, they will need to be norm-breakers. Accordingly, the Article concludes by identifying several specific legislative norms that stand in the way of expanding suffrage—chief among them the "nontalking filibuster" in the Senate and the longstanding tradition of deference to legislative parliamentarians. These practices must be changed if we are to continue to make good on our nation's foundational democratic commitments.

ESG Hypocrisy and Voluntary Disclosure

Article by Lisa M. Fairfax, Presidential Professor, University of Pennsylvania Carey Law School

Edited by Robert McCarthy, J.D., N.Y.U School of Law

Abstract

This Article argues that we must remain vigilant about policing environmental, social and governance ("ESG") hypocrisy in voluntary ESG disclosures. ESG hypocrisy refers to circumstances whereby organizations convey ESG information or commitments inconsistent from their own observed behaviors regarding employees, climate, diversity, and other ESG initiatives. On the one hand, the rise of ESG has sparked considerable backlash, suggesting that any focus on ESG is no longer warranted. However, available evidence indicates that most companies continue to publish ESG disclosure and seek to live up to their ESG commitments, including companies that have shied away from more visible ESG statements. On the other hand, anecdotal and empirical research reveals serious concerns surrounding the accuracy and reliability of voluntary ESG disclosure—suggesting that the existing voluntary disclosure landscape is rife with ESG hypocrisy. These hypocrisy concerns not only have prompted a push for mandatory ESG disclosure, but also have shifted attention away from addressing the accuracy and hypocrisy issues associated with voluntary ESG disclosure. This Article insists that this shift is inappropriate and, given the likelihood that ESG will continue to be a business priority, this Article emphasizes the need to remain attentive to ESG hypocrisy in voluntary disclosures for at least three reasons. First, voluntary ESG disclosures provides important benefits that cannot be replicated by mandatory disclosure but also cannot be harnessed if accuracy problems persist. Second, because corporations have increasingly used voluntary ESG disclosure to enhance their reputation, hypocrisy in voluntary ESG disclosure can generate significant damage to corporate reputation and expose corporations to the financial harms associated with that reputational damage. Third, the connected nature of all public disclosure means that hypocrisy in voluntary ESG disclosure can impact the accuracy and reliability of mandatory ESG disclosures. As a result, even if mandatory disclosure emerges, we must stay the course with respect to reducing ESG hypocrisy in voluntary disclosure. The Article then advances three reforms aimed at ameliorating ESG hypocrisy in voluntary ESG disclosure.

Do Data Breach Notification Laws Work?

Article by Aniket Kesari, Associate Professor, Fordham Law School

Edited by Kelsey Quackenbush, J.D., N.Y.U. School of Law

Abstract

Over 2.8 million Americans have reported being victims of identity theft in recent years, costing the U.S. economy at least thirteen billion dollars in 2020. In response to this growing problem, all fifty states have enacted some form of data breach notification law in the past twenty years. Despite their prevalence, evaluating the efficacy of these laws remains elusive. This Article fills this gap, while further creating a new taxonomy to understand when these laws work and when they do not.

Legal scholars have generally treated data breach notification laws as doing just one thing—disclosing information to consumers. But this approach ignores rich variation: differences in disclosure requirements to regulators and credit monitoring agencies; varied mechanisms for public and private enforcement; and a range of thresholds that define how firms should assess the likelihood that a data breach will ultimately harm consumers.

This Article leverages the Federal Trade Commission's Consumer Sentinel database to build a comprehensive dataset measuring identity theft report rates since 2000. Using staggered adoption synthetic control—a popular method for policy evaluation that has yet to be widely applied in empirical legal studies—this Article finds that whether identity theft laws work depends on which of these different strands of legal provisions are employed. In particular, while baseline disclosure requirements and private rights of action have small effects, requiring firms to notify state regulators reduces identity theft report rates by approximately 10%. And surprisingly, laws that fail to exclude low-risk breaches from reporting requirements are counterproductive, increasing identity theft report rates by 5%.

Due Process Boundaries of U.S. Economic Sanctions

Note by Ian Allen, J.D., N.Y.U. School of Law (2024); B.A., University of Georgia

Edited by the Notes Team, led by Senior Notes Editor Jenny Braverman, J.D., N.Y.U. School of Law

Abstract

Unilateral economic sanctions have become an essential tool in modern foreign policy playbooks. This development was massively emphasized following the 2022 invasion of Ukraine and is particularly prominent in the United States' international strategy. U.S. sanctions hold a unique level of influence over international affairs due to the near-hegemonic reach of the American economy combined with the high functional capabilities of the country's relevant administrative bodies, chiefly the Office of Foreign Assets Control (OFAC). However, the sheer scope of the OFAC sanctions program—which in many areas tends to lack transparency—may give rise to human rights concerns, domestic legal inconsistencies, and direct policy blowback.

This paper examines substantive and procedural safeguards in place against the imposition and maintenance of sanctions designations on both domestic and foreign entities. The paper specifically addresses the functional disparity between procedural avenues to recourse offered to sanctioned parties based on their status as U.S. persons or foreign parties. It seeks to define how domestic law, including the Fifth Amendment, offers judicially protected standards of procedure to sanctioned parties. Ultimately, the paper argues that the Constitution's due process requirements offer U.S. entities balanced procedural rights in consideration of national security interests inherent to OFAC's sanctions program. Additionally, it argues that courts are willing to consider, but have yet to functionally extend, similar procedural standards to foreign parties lacking Fifth Amendment protections as grounded in § 706(2) (D) of the Administrative Procedure Act (APA) and relevant law regulating OFAC's administrative procedures for sanctions designation removal.

Closing the Online Suicide Assistance Loophole: How to Reduce the Harm of Pro-Suicide Websites

Note by Aaron Fisher, J.D., N.Y.U. School of Law (2023). Fisher is an Assistant District Attorney in the New York County District Attorney's Office.

Edited by the Notes Team, led by Senior Notes Editor Jenny Braverman, J.D., N.Y.U. School of Law

Abstract

In late 2021, The New York Times published an extensive investigation into a prominent website whose users encourage one another to take their own lives. While such websites and online forums have existed since the early days of the Internet, the investigation was the frst time many citizens and lawmakers had heard of them. Spiking rates of depression and suicide— especially among teenagers and young adults—have further magnified the scope of this issue. Lawmakers in the U.S. Congress soon introduced bipartisan legislation with the intent of limiting the damage that the prominent website—and others like it—can cause. Yet this legislation closely resembled a number of bills that were periodically introduced in Congress over the past two decades—all of which died before reaching a vote on the House floor.

This Note examines the legal status of online suicide assistance forums and a number of potential avenues lawmakers and attorneys can pursue to reduce the harms these websites cause. While the First Amendment and Section 230 of the Communications Decency Act represent formidable hurdles to banning or criminalizing these websites, various state statutes and court rulings—along with certain foreign countries' related policies and regulations—provide insight into possible reforms. Part I of this Note discusses relevant First Amendment case law and how it would likely be applied in litigation over efforts to ban or criminalize online suicide assistance forums. Part II examines the role that Internet law and Section 230 play in this issue. Part III focuses on possible legislative solutions to the problem of online suicide assistance forums, and Part IV discusses other countries' efforts to combat such websites. Finally, Part V proposes an alternative path forward.

B. Volume 26, Issue 2

Issue 26.2 features three full-length scholarly Articles and two student Notes:

Decay of Precedent in State Supreme Courts

Article by Yun-chien Chang, Jack G. Clarke Professor in East Asian Law & Driector of the Clarke Program in East Asian Law & Culture, Cornell Law School and Geoffrey Miller, Stuyvesant P. Comfort Professor of Law; Co-Director, Center for Civil Justice, New York University School of Law

Edited by Leora Einleger, J.D., N.Y.U. School of Law

Abstract

This Article investigates the decay of precedents in state supreme courts—the speed at which judicial opinions lose precedential force as measured by the rates of subsequent citation. Prior literature has documented the existence of this effect, but to date researchers have not systematically investigated the phenomenon. This Article performs that analysis by examining three unique databases, each consisting of more than a hundred thousand relevant citations. We find that the frequency of citation drops off by a roughly constant ratio with each passing year—a pattern that fts an exponential curve with remarkable precision. The large scale and extended time period of our study suggest that this pattern must result from underlying forces unrelated to circumstances of time or place. The main takeaway is the extraordinary persistence of exponential decay across all of the data. Citations age at different rates across different cuts of the data, but in every case the deterioration of precedents displays an exponential pattern.

Taboo and Technology: Experimental Studies of Data Protection Reform

Article by Aileen Nielsen, Visiting Assistant Professor, Harvard Law School

Edited by Sammy Burton, candidate for J.D., N.Y.U. School of Law, candidate for M.B.A., N.Y.U. Stern

Abstract

Decades after data-driven consumer surveillance and targeted advertising emerged as the economic engine of the internet, data commodification remains controversial. The latest manifestation of its contested status comes in the form of a recent wave of more than a dozen state data protection statutes with a striking point of uniformity: a newly created right to opt out of data sales. But data sales as such aren't economically important to businesses; further, property-like remedies to privacy problems have long and repeatedly been debunked by legal scholars, just as the likelihood of efficient privacy markets has been undercut by an array of experimental findings from behavioral economics. So, why are data sales a dominant point of focus in recent state legislation?

This work proposes a cultural hypothesis for the recent statutory and political focus on data sales and explores this hypothesis with an experimental approach. Inspired by the taboo trade-offs literature, a branch of experimental psychology looking at how people handle morally uncomfortable transactions, this work describes two experiments that explore reactions to data commodification. The experimental results show that selling data is far more contested than selling a traditional commodity good, suggesting that selling data fts within the domain of a taboo transaction. Further, various potential modifications to a data sale are tested, but in each case the initial resistance to the taboo transaction remains.

The experimental results show a robust resistance to data commodification, suggesting that newly enacted state-level sales opt-out rights provide a culturally powerful balm to consumers. The results also suggest a new framework for analyzing economic measurements of privacy preferences, suggesting a new possibility for interpreting those findings in light of the tabooness of data commodification. More broadly, the normative implications of the results suggest the need for culturally-responsive privacy reform while keeping an eye to the possibility for taboos to distort technology policy in ways that ultimately fail to serve consumer protection interests.

Nondelegation’s Two Faces

Article by Adam Littlestone-Luria, Associate, Paul, Weiss, Rifkind, Wharton & Garrison LLP., J.D., N.Y.U. School of Law (2023)

Edited by Emma Barudi, J.D., N.Y.U. School of Law

Abstract

Delegated power is under attack from many sides. From the beginning of the American republic, lawmakers have built institutions with the understanding that they could assign power from one individual or institution to another. This principle has been fundamental to the American system of power in many forms—delegation of legislative, executive, and judicial power—both between branches and within them. Now, this model might be about to transform beyond recognition. Our Supreme Court is feeling its power. Their antidelegation program has many facets. But two have been most prominent in the jurisprudence of the past few years: first, delegation of Article I lawmaking power to administrative agencies and, second, delegation of Article II enforcement power to private litigants. This Article makes the case that the Court’s recent moves in these two domains are part of a unified program. They are twin strands in a broad-based effort to limit the scope and reach of delegated authority. Scholars have long been aware of the growth of both prongs of this analysis. But the doctrine is shifting under our feet, taking on new characteristics, and gaining a new coherence that sometimes even crosses the ideological divide between liberal and conservative jurists. As it takes shape, the Court’s antidelegation jurisprudence threatens to disrupt some of the basic contours of our system of governance. A well-established regime based on delegation may be forced to bow to an idealized and likely ahistorical vision of the past.

High Caliber, Yet Under Fire: The Case for Deference to ATF Rulemaking

Note by Tess Saperstein, J.D., N.Y.U. School of Law (2023), A.B., Harvard University (2018).

Edited by the Notes Team, led by Senior Notes Editor Jenny Braverman, J.D., N.Y.U. School of Law

Abstract

In the wake of the deadliest mass shooting in U.S. history, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") utilized its regulatory power to ban bump stocks. Given its long history of congressional marginalization and political demonization, the ATF has historically been hesitant to engage in binding forms of regulation. However, with the support of the public and a Republican president, the ATF interpreted "machine guns," which were already banned under the National Firearms Act, to include bump stocks. The legal challenges that ensued questioned the ATF's regulatory authority by invoking the rule of lenity. The litigation that has percolated throughout the courts of appeals has distilled into a fundamental question about agency deference: when an agency, such as the ATF, retains both criminal law enforcement and regulatory power, what level of deference should be given to its interpretations of statutes? With the Supreme Court set to hear oral arguments in Garland v. Cargill this term, one of the cases that challenges the ATF's regulatory authority, this Note explores the primary justifications for the rule of lenity and explains why they do not apply when agencies engage in notice and comment rulemaking. Furthermore, this Note argues that, as an agency with technical expertise in an area that experiences rapid technological advancement and is subject to continual political accountability, the ATF presents the prototypical case for agency deference.

Moore to Come: The Impending Independent State Legislature Departure Standard

Note by Blake L. Weiman, LL.M., N.Y.U. School of Law (2023), J.D., University of Toledo College of Law. Blake Weiman is an Attorney at the Federal Election Commission.

Edited by the Notes Team, led by Senior Notes Editor Jenny Braverman, J.D., N.Y.U. School of Law

Abstract

State constitutions have long served as a source of robust protection for the right to vote. However, the Supreme Court's recent decision in Moore v. Harper may substantially disrupt state court application of such constitutional provisions to federal elections. While the Court declined to adopt the Independent State Legislature Theory ("ISLT") in its maximalist form, it did signal an intention to adopt a less stringent variant of the theory that could, in certain instances, constrain state courts. Part V of the Court's opinion announces that state courts may not "transgress the ordinary bounds of judicial review" when applying state constitutional provisions in the context of federal elections. Yet, the Court refrained from developing this vague principle into an intelligible legal standard. This Note posits a potential version of that test—the departure standard—and examines its likely impact on the right to vote under state law.

This Note aims to ascertain how the impending ISLT standard will take shape beyond

Moore and evaluate its anticipated impact on relevant state court decision-making. While the precise application of a standard is far from certain, the Court's opinion and pre-opinion consideration of Moore provide meaningful insight into when a state court might conceivably run afoul of the Elections Clause. As this Note demonstrates, examining existing state court decisions through the prism of *Moore* helps to illustrate what may be potentially fatal deficiencies in analysis, outcome, or both in cases to come.

Finally, this Note advances a series of projections regarding the likely path forward for voting rights-affirming state court constitutional decisions. It argues that application of the ISLT through the departure standard will result in the federal courts stymying the development of state constitutional election law that varies from federal constitutional orthodoxy. Federal courts would be likely to misapprehend the nature and frequency of intra-state disputes giving rise to an ISLT question. Moreover, state lawmaking and judicial review processes would likely be manipulated to evade ISLT under the departure standard. In sum, the Court's seemingly judicious disposition of *Moore* has precipitated even more complex questions that it must answer in the near term in the midst of fraught, highly competitive, partisan federal elections.

C. Volume 26, Issue 3

Issue 26.3 features four full-length scholarly Articles, and two student Notes:

<u>The Impact of Civilian Investigative Agency Resources on the Timeliness of Police Misconduct Investigations</u>

Article by Sharon Fairley, Professor from Practice, University of Chicago Law School

Edited by Gunnar Stanke, J.D., N.Y.U. School of Law

Abstract

As many cities and counties turn to civilian oversight of law enforcement to enhance accountability, resource allocation is a critical issue with which police reform advocates, oversight entity administrators, and political leaders struggle almost every budget cycle. Resources are tremendously important in this context. Historically, lack of resources has been an important, if not the decisive factor leading to an oversight entity's demise.

This Article reports on a unique and newly created dataset composed of case management and budgetary information from civilian oversight entities responsible for independent police misconduct investigations. The data were collected and analyzed to provide greater insight into the resources and staffing afforded to these entities while also assessing caseload management challenges. Interviews with civilian oversight entity administrators were conducted to provide context to the observations made from the data collection. The Article is intended to provide guidance to civilian oversight administrators and city leaders in assessing the resource needs of civilian oversight investigative entities.

Civilian oversight entities continue to face hurdles when seeking the resources necessary to provide effective investigative oversight. Given tight municipal budgets and the political nature

of resources appropriated for public safety needs, once an oversight entity is established at a certain budget level, garnering support for a significant increase in any given budget cycle is an uphill battle. Even entities with statutorily established budgetary minima have difficulty securing the resources they need because city leaders are reluctant to appropriate more than is legally required.

Analog Privilege

Article by Maroussia Lévesque, Doctoral candidate, Harvard Law School

Edited by Robert McCarthy, J.D., N.Y.U. School of Law

Abstract

This Article introduces "analog privilege" to describe how elites avoid artificial intelligence (AI) systems and benefit from special personalized treatment instead. In the register of tailor-made clothes and ordering off menu, analog privilege spares elites from ill-fitting, mass-produced AI products and services.

Our ability to curate our relationship with technology is a measure of our sophistication and, deep down, our power. Analog privilege connects with other instances of elites exercising agency over modernity: homesteading, no-phone teens and the coastal grandmother aesthetic all signal a return to the quaint pre-modern. As AI becomes the default modus operandi in many sectors from customer service to enforcing workplace rules, elites secure a manual override. Analog privilege allows them to escape AI systems that in theory apply to everyone but in practice spare the select few.

The existing literature focuses on whom AI harms, but this Article broadens the conversation to encompass whom it spares. Bringing attention to analog privilege highlights existing inequalities that enable special treatment for elites. This new lens provides a fuller picture of the distributional politics of AI, fostering a more capacious understanding of its social impact, and ultimately of the interconnectedness between precarity and privilege.

Analog privilege matters because it erodes the social fabric. Lending credence to the idea that elites play by different rules, the divide between people subject to and exempt from AI fuels resentment and polarization. Analog privilege is thus part of a larger strain on social peace. By making analog privilege legible, this Article clarifies the diffused sense of injustice that must be rectified if we are to regenerate the connective tissue that feeds our collective sense of belonging.

Once analog privilege comes into focus, the question becomes what to do about it. Legal interventions alone won't cut it. Instead, a multi-prong approach should align legal, technical, and other interventions.

Reconsidering the Ban on Physician-Owned Hospitals to Combat Consolidation

Article by Matthew C. Mandelberg, Attorney, Appellate Section, Antitrust Division, U.S. Department of Justice, Michael H. Smith, Attorney, Technology Enforcement Division, Bureau of Competition, Federal Trade Commission, Dr. Jesse M. Ehrenfeld, M.D., President, American Medical Association, Dr. Brian J. Miller, M.D., Assistant Professor of Medicine at the Johns Hopkis University School of Medicine

Edited by Timothy O'Neill, J.D., N.Y.U. School of Law

Abstract

Ongoing consolidation by hospitals and providers threatens to further reduce competition in U.S. healthcare markets. Physician-owned hospitals (POHs) served as a rare countertrend for many years—a pathway for innovative and efficient alternatives to enter hospital markets and offer a bulwark against this consolidation. However, that countertrend came to an abrupt and enduring halt in 2010, when hospital incumbents leveraged passage of the Affordable Care Act to obtain an ill-conceived and unrelated ban on POHs. While health services researchers have scrutinized the POH ban, this Article analyzes it through a competition lens. It incorporates the growing attention in antitrust to labor markets and explores how physicians, through POHs, are particularly well-positioned to identify market opportunities. In doing so, physicians can defeat the market power possessed by hospital incumbents, upstream against physicians and downstream against payors and patients.

This Article first provides an overview of the seemingly inexorable trends towards further consolidation among healthcare providers and the related competition concerns this consolidation raises. Next, the paper discusses the factors that positioned POHs to counterbalance these consolidation trends as market entrants and innovators, and how, after lobbying by incumbent hospitals and health systems, POHs faced regulatory pushback culminating in a federal ban on further POH growth and expansion. The Article then describes how market power by hospital incumbents in both upstream and downstream markets accentuates the incentives and importance of physicians in identifying opportunities for market entry and innovation. It further discusses how the POH ban affects healthcare competition, identifies the potential benefits of relaxing the ban, and suggests more narrowly tailored policy options that could mitigate policymakers' concerns about POHs—concerns that may not be unique to physician ownership and do not justify depriving the market of POH competition. The Article concludes with our recommendation that Congress remove the ban on POHs and apply more appropriately tailored policies.

<u>The Debt Ceiling Is Constitutional</u>

Article by Lawrence Rosenthal, Professor of Law, Chapman University Dale E. Fowler School of Law

Edited by Kelsey Quackenbush, J.D., N.Y.U. School of Law

Abstract

Pursuant to its power to borrow money on the credit of the United States, Congress has periodically permitted the Executive Branch to incur debt subject to a steadily-increasing statutory limit—the so-called "debt ceiling." As the national debt climbs, bitter debate over whether the statutory ceiling should be raised, with the specter of default looming, has become a recurring phenomenon.

Many scholars of constitutional law think their field of study offers an escape from the debt ceiling, though their proposed solutions vary. There is, at present, no published legal scholarship that defends the constitutionality of the debt ceiling, which could lead policymakers to overestimate the debt ceiling's legal vulnerability. This Article, in contrast, contends that the legal theories for negating the debt ceiling are unconvincing. It proceeds in four parts.

Part I discusses the Fourteenth Amendment's Public Debt Clause. Though that Clause likely prohibits default on the national debt, it requires no more that the President pay the costs of debt service while reducing or halting other spending once the government hits the debt ceiling. Much of the government may shut down, but prioritizing spending on debt service avoids the only thing forbidden by the Public Debt Clause—default. Part II discusses the claim that the President may breach the debt ceiling when necessary to fund appropriations. The President, however, is under a constitutional obligation to faithfully execute the laws. This requires the President to respect, rather than breach, the debt ceiling. It is, after all, one of the "laws" that the President is obligated to faithfully execute. This can be done by treating appropriations laws as contingent on compliance with the debt ceiling, consistent with ordinary rules for statutory interpretation. Part III addresses the exotic options. Issuing a trillion-dollar platinum coin or novel bonds are likely unlawful breaches of the statutory debt ceiling, but, even if not, this gambit would be of no use if Congress and the President cannot reach an agreement on the annual federal budget. At that point, appropriations lapse, and the government must shut down anyway. The exotic options come with considerable legal and financial risk; they buy, at best, a few months to negotiate a budget and ultimately solve nothing. Part IV discusses the implications of the conclusion that the Constitution offers no way around the debt ceiling. What seems like bad news actually is not. Although default is both unconstitutional and unlikely, the quite realistic threat of a government shutdown when the government approaches the debt ceiling usefully forces competing factions to negotiate or face a threat of retribution from the voters at the next election.

This Article concludes with a discussion of a question of constitutional theory which lurks behind the scholarly dispute over the debt ceiling. Any constitutional theory must be able to answer perhaps the most fundamental question in constitutional law—why should policy debate be removed from the realm of ordinary politics and be resolved instead as a matter of constitutional law? The scholarly attacks on the constitutionality of the debt ceiling, however, fail to even consider this question. Debate over whether a statutory debt ceiling should be used to restrain government spending is precisely the sort of debate that belongs in the realm of ordinary politics, not constitutional law.

An Assumed Tradition: How the 3-2 Balance of the NLRB Is More than the Sum of its Appointments and an Argument for its Continuation

Note by Emma Barudi, J.D. Candidate at N.Y.U. School of Law (2024), B.A. University of California, Los Angeles (2021).

Edited by the Notes Team, led by Senior Notes Editor Jenny Braverman, J.D., N.Y.U. School of Law

Abstract

The National Labor Relations Board stands at the center of the conflict between private-sector unions and employers. Appointments to the Board are essential to the contentious, yet the Board has upheld a tradition of 3-2 balance between members of the president's party and the opposition for decades. Scholars have opined that the Board's appointment history is primarily driven by the political branches and their partisan influences, first by the president and currently by the Senate. This Note argues that there is more at play. The Board is unique among federal agencies in having such a bipartisan structure without statutory requirement. This is because of the Board's internal design as a quasi-judicial agency and its position within the American labor-management ecosystem. The counteracting needs of practicing impartiality in adjudication and responding to the public interest on the labor issue results in the 3-2 split. It has been surprisingly stable in the past and will likely continue to be in the future since it benefits both sides of the labor constituency. Institutional actors within the NLRB ecosystem can rely on the Board's relative consistency on most issues due to the constraints of repeat Board interaction while also using their moments in power to push for change on fundamental policies. Meanwhile, those not in power can push for their goals knowing that their time in power will happen in the future. This design pushes the Board towards the center and creates a culture of stability that both pro-labor and pro-management interest groups prefer more than an unbalanced Board.

Anticompetitive Privacy: Taking a Bite out of Apple

Note by Aditya Trivedi, J.D. Candidate at N.Y.U. School of Law (2024).

Edited by the Notes Team, led by Senior Notes Editor Jenny Braverman, J.D., N.Y.U. School of Law

Abstract

Privacy and antitrust are on a collision course. Large firms with monopoly power or near-monopoly power can build products that ostensibly enhance user privacy while raising rivals' costs and allowing monopolist firms to gain footholds in secondary markets. In this Note, I use the example of Apple's privacy changes, the impact these changes had on digital advertising, and Apple's subsequent expansion of its own digital marketing offerings as a motivating example of how current antitrust doctrine is ill-equipped to handle this new form of monopolist behavior. Privacy is the latest example of an "incommensurability" problem in the final stage of the standard rule of reason analysis. Even if a plaintiff can demonstrate competitive harm from privacy-preserving conduct, courts are constrained in what type of relief they can order. Fortunately, one of the main federal antitrust enforcers—the Federal Trade Commission—is also the source of much of federal privacy law. It has the authority and expertise to promulgate rules

pursuant to section 18 of the Federal Trade Commission Act to address anticompetitive privacy and strike the appropriate balance between competition and consumer protection. Much of the Commission's privacy enforcement has reflected the heavily criticized "notice-and-choice" privacy framework. However, the Commission's recent initiation of the Magnusson-Moss rulemaking process signals an opening to not only move beyond this framework, but also to consider both competition and privacy in the formation of any rule regulating technology firms.

D. Volume 26, Issue 4

Issue 26.4 features three full-length scholarly Articles and two student Notes:

Beyond Transsubstantivity

Article by Jonah B. Gelbach, Herman F. Selvin Professor of Law, University of California at Berkeley

Edited by Sammy Burton, candidate for J.D., N.Y.U. School of Law, candidate for M.B.A., N.Y.U. Stern, Isaac Buck, J.D., N.Y.U. School of Law, and Avery Bernstein, J.D., N.Y.U. School of Law

Abstract

This Article uses a massive collection of data to document, for the first time, the interplay between the substantive subject areas, the intensity, and the procedural complexity of federal civil litigation. The results indicate that like substance, intensity and complexity are pivotal features of litigation. These findings suggest that what might be termed "our uniformity"—the de jure uniform applicability of the Federal Rules of Civil Procedure and other procedural law—should be understood as a broader phenomenon than the traditional focus on transsubstantivity.

The Article documents extensive variation in measures of intensity and complexity among cases sharing the same broad substantive legal subject matter, such that intensity and complexity may vary more importantly within than across substantive areas. For example, it is true that patent cases have comparatively high average intensity as measured by their numbers of docket entries, but there are also plenty of patent cases that terminate without having enormous docket activity. It is also true that patent cases are much more likely than, say, contract cases to be extremely intense, but because there are so many more contract than patent cases, my data have nearly twice as many highly intense contract cases as highly intense patent cases. The Article's twin key conclusions are, thus: (1) even for cases in areas thought to be especially intense or complex, there are cases with both high and low intensity and complexity, and (2) intensity and complexity are transsubstantive—e.g., there are highly intense and highly complex cases in most substantive areas of litigation, not just the usual suspects such as patents, antitrust, or securities.

The Article closes by treading gingerly into normative waters. One unavoidable consequence of our uniformity with respect to formal procedural rules is that judges exercise enormous case-level discretion. Further, in part due to legislative forays in the securities and patent arenas, we have some degree of substance-specificity in our procedure. The Article suggests considering formal procedural tracking as an alternative to each of these approaches. That approach, which

has been suggested in the past and is used in some states and other countries, might allow us to break out of some of our ossified debates about matters such as the rancor set off by the pleading revolution the Supreme Court effected a decade and a half ago in Twombly and Iqbal. If the plausibility standard is here to stay because of its role in limiting intense and complex litigation, perhaps it could be revisited in simpler cases that don't pose the challenges the Supreme Court first flagged in Twombly. Whether this is possible depends on our capacity to identify cases' likely intensity and/or complexity early in the litigation life cycle, which is a topic beyond the scope of this Article. Still, we ought to consider the possibility of a certification process for intense, complex cases, like the one we have for class actions, so that procedure might be adjusted where doing so makes sense.

The Article's contributions include its use of docket-level data on more than 500,000 cases whose dockets could be followed for at least seven years. In addition, the Article offers a novel approach to measuring procedural complexity by showing how links between entries in docket reports may be viewed as mathematical networks.

How Free Is Information? Transparency in State Government

Article by Jennifer L. Selin, Associate Professor, Sandra Day O'Connor College of Law, Arizona State University and Jordan M. Butcher, Assistant Professor of Political Science, Arkansas State University

Edited by Leora Einleger, J.D., N.Y.U. School of Law, Don Chen, J.D., N.Y.U. School of Law, and Asher Zlotnik, J.D., N.Y.U. School of Law

Abstract

How transparent are state governments in the United States? This Article explores the functioning of important, but often underappreciated, actors in the American constitutional system – state administrative agencies – and examines variation in the existence and implementation of transparency regimes across and within all 50 states.

This Article first highlights differences that exist among state freedom of information ("FOI") laws, focusing on three components: who can submit requests; the requirements for and exemptions to public release; and the process for appeal of agency decisions not to disclose information. Because FOI laws require the public to request access to information and permit state agencies to refuse release of records, these laws constitute "passive" transparency and have little effect without a strong administrative apparatus to facilitate implementation. Simply, FOI laws rely on administrators to interpret statutory language in ways that provide access to government information.

Because passive transparency regimes like state FOI laws require high-quality administration in order to be effective, this Article presents a novel exploratory field experiment of administrative performance across all 50 states. Specifically, this Article evaluates state implementation of FOI laws using an original empirical study of 248 state agencies' fulfillment of the same FOI request.

This study illustrates that agency-level factors such as administrative function, policy mission, and leadership influence information disclosure.

As a whole, this Article suggests the stringency of transparency law in the states only partially explains government provision of information to the public. Instead, how administrators react to internal and external pressures as they utilize their discretion to fill FOI requests constitutes a key aspect of open government.

Is Your Use of AI Violating the Law? An Overview of the Current Legal Landscape

Article by Miriam Vogel, President and CEO, EqualAI, Jim Wiley, Legal and Research Director, EqualAI. Michael Chertoff, Co-Founder and Executive Chairman, the Chertoff Group, and Rebecca Kahn., candidate for J.D., N.Y.U. School of Law (2025).

Edited by Jake Dow, J.D., N.Y.U. School of Law and Charlotte Kahan, J.D., N.Y.U. School of Law

Abstract

As AI adoption expands, so does the landscape of related legal liability. Lawyers, policymakers, and business executives should become AI-literate with respect to the potential harms and litigation risks associated with this technology as it grows in capabilities and adoption. This Article provides a brief introduction to the legal landscape to consider when developing, licensing, or using AI systems. While the regulatory and legal landscapes are rapidly evolving, this Article aims to provide a foundational understanding to help mitigate liability and avoid the associated harms to companies, individuals, and communities.

New York's Green Amendment Dilemma

Note by Dan Fisher, J.D. Candidate at N.Y.U. School of Law (2025).

Edited by the Notes Team, led by Senior Notes Editor Miranda van Dijk, J.D., N.Y.U. School of Law

Abstract

Article I, Section 19 of the New York State Constitution—often referred to as the Green Amendment—guarantees each New Yorker's right to "clean air and water, and a healthful environment." This Note considers the possibility that Green Amendment litigation will slow the development of renewable energy projects in the state. New Yorkers have long worried about the environmental impact of renewables, and they have frequently used litigation and local politics to delay, modify, or block projects they believe will cause more harm than good. In August 2023, New York saw its first Green Amendment lawsuit over a solar energy facility. There will likely be more. I argue that New York courts should think of Green Amendment cases that pit climate action against fundamental environmentalist values such as community input, process, and conservation as involving conflicts of essentially incommensurate environmental rights, and that

they should leave the question of how to balance them largely to the political branches. In doing so, I demonstrate the Green Amendment can accommodate the environmental tradeoffs that accompany rapid renewables development without reducing the provision to a constitutional triviality, leaving room for the robust judicial enforcement of Green Amendment rights in other cases.

Satellite Internet and Laser Links: Are Universal FSO Standards Needed

Note by Jacob Leiken, J.D. Candidate at N.Y.U. School of Law (2025), Sc.B., Computer Science, Brown University (2020).

Edited by the Notes Team, led by Senior Notes Editor Miranda van Dijk, J.D., N.Y.U. School of Law

Abstract

Satellite Internet constellations ("SICs") promise to connect the world, finally delivering on the promise of global connectivity. This Note explains why SICs will only achieve their maximum potential with the adoption of free space optical ("FSO") communication technologies, which provide massive bandwidth and interference benefits over radio. FSO will yield the greatest possible benefits with standardization through a formal standard development organization. Standardized, with the ability to communicate, collaborate, and consolidate, SICs will provide the greatest coverage and fastest speeds to their consumers. While SIC consolidation will proffer many benefits, it will also bear risks, as large players exert outsized market influence and reduce innovation. Geopolitical competition will make universal standards unlikely, necessitating national and international collaboration.

III. QUORUM: LEGISLATION'S ONLINE COMPANION

Recognizing Legislation's mission to provide timely and practical scholarship on important legal issues, Quorum publishes short pieces online 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 Ian Allen supervised content generation and production, working with five third-year Quorum editors. This year, Quorum continued its focus on highlighting JLPP students and alumni.

During the 2023-2024 school year, Quorum published ten new pieces (including our two legislation competition winners, described below):

- *Rethinking Highway Construction as De Jure Segregation: A Case Study for Equal Protection Lawsuits*
    - Teddy Rube, J.D., N.Y.U. School of Law (2023)

    - Applying constitutional protections against intentional discrimination, Teddy Rube addresses the taint of racism on highway development as used to segregate and destroy historically Black communities in cities like Miami, Florida.

- *The Road to Driving Equality: A Blueprint for Cities to Reduce Traffic Stops*
    - Kate Harris (Associate, Kaplan Hecker & Fink), Sean Hecker (Partner, Kaplan Hecker & Fink), Carmen Iguina González (Counsel, Kaplan Hecker & Fink), and Amit Jain (Associate, Kaplan Hecker & Fink)
    - Analyzing policies and proposals from key municipalities across the country, Kate Harris, Sean Hecker, Carmen Iguina González, and Amit Jain discuss strategies to reduce traffic stops for low-level violations in the context of both police violence and data elucidating racial disparities in traffic stop practices.

- *Updating Circular A–4: How Adding Income Weighting to Decades-Old Guidance Could Make Government Regulations More Rational and Equitable*
    - Kyle McKenny, Candidate for J.D., N.Y.U. School of Law (2024)
    - This piece discusses how the inclusion of income weighting in the recently released draft of Circular A-4 (2023) could improve regulatory analysis within federal agencies and increase the equitability and efficacy of new regulations.

- *Affirmatively Furthering Fair Housing Through State Law*
    - Will Gomberg, Candidate for J.D., N.Y.U. School of Law (2024)
    - This piece studies the necessity and efficacy of state-law approaches to implementing the Fair Housing Act's Affirmatively Furthering Fair Housing mandate.

- *To Advance Reproductive Justice on the Federal Level, Abortion Should Move to the States*
    - Leora Einleger, Candidate for J.D., N.Y.U. School of Law (2024)
    - This piece examines the strengths of a state-law approach to abortion rights in the post-*Dobb*s era.

- *The President's Pardon Power & The Lack of Administration*
    - Lauren May, Candidate for J.D., N.Y.U. School of Law (2024)
    - This piece argues that increased presidential oversight and transparency would ensure a more just administration of the presidential pardon power by the Department of Justice.

- *A Hip Replacement for the Hype House: Potential Reforms to TikTok Content Houses and Their Exploitative Employment Structure*
    - Emma Barudi, Candidate for J.D., N.Y.U. School of Law (2024)
    - This piece analyzes the inherently exploitative structure of TikTok content houses and proposes potential paths toward improving labor rights for and preventing the exploitation of young social media stars.

- *Federalism Constraints on the Treaty Power*
    - Todd Washawsky, Candidate for J.D., N.Y.U. School of Law (2026)
    - This piece discusses the constitutional limits on the Treaty Power shaped by the function of and guidelines for the U.S.'s federalist system

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 2023-2024 school year, the Journal hosted two intellectual life events. Our fall symposium discussed the evolving regulatory regime around telehealth. In the Spring, the Journal hosted Senator Sheldon Whitehouse in conversation with Stephen Gillers, Elihu Root Professor of Law Emeritus, on the recent focus on judicial ethics and reform.

The Journal is appreciative of the leadership of our senior intellectual life editors, Corey Berman and Addison Yang, who helped plan and execute these events with the assistance of three third-year intellectual life editors.

A. FALL 2023

On October 23, 203, the Journal convened a symposium., "The Doctor Will Zoom You Now: The Future of Telehealth," hosted in partnership with the Disability Allied Law Students Association (DALSA), Rights over Tech, and the Health Law & Policy Society. The symposium covered a broad range of topics and featured academics, practitioners, and public servants focused on the telehealth space.

The symposium kicked off with a panel entitled "Changes in Telehealth Policy: Impacts on Patients and Providers." William S. Bernstein, Chairperson of the Board of Manatt, Phelps & Phillips LLP and leader of Manatt Health, moderated the panel. Our distinguished panelists included Kristen Kim, VP, Deputy General Counsel and Chief Regulatory Counsel at the Memorial Sloan Kettering Cancer Center, Christopher Robertson, N. Neal Pike Scholar and Professor of Law at Boston University School of Law, and Carmel Sachar, Assistant Clinical Professor of Law at Harvard Law School. This panel was followed by a networking luncheon.

The symposium continued into the afternoon with a panel entitled "Trust & Safety in the Emerging Telehealth Ecosystem." Aniket Kesari, Associate Professor of Law at Fordham Law School, moderated the panel. Our panelists included Dr. Mark P. Jarrett, M.D., Senior Health Advisor at Northwell Health and Professor of Medicine at the Donald and Barbara Zucker School of Medicine at Hofstra University, Katrice Copeland, Professor of Law at Pennsylvania State University School of Law, Kristin Madison, Professor of Law and Health Sciences at Northeastern University, and Jacqueline Seitz, Deputy Director of Health Privacy at the Legal Action Center.

The symposium then featured a keynote address by Assembly Member Amy Paulin, representing the 88th New York State Assembly District since 2001 and Chair of the Assembly Committee on Health.

The symposium concluded with virtual remarks from William England, a senior advisor and former director of the Office for the Advancement of Telehealth at the Health Resources and Services Administration.

B. SPRING 2024

On March 11, 2024, the Journal invited Senator Sheldon Whitehouse (D-R.I.) to New York University School of Law to discuss judicial ethics and current efforts at ethics reform in an event entitled "The State and Stakes of Judicial Ethics Reform," hosted in partnership with the Supreme Court Forum, Law Women, and the American Constitution Society.

The event began with remarks by Senator Whitehouse on his attempts to pass legislation reforming the judiciary. His remarks were followed by a fireside chat with New York University School of Law's Professor Stephen Gillers. The end of their conversation featured selected questions from student attendees

A networking luncheon followed the discussion.

V. 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 concerned congressional oversight of Unidentified Anomalous Phenomena (UAPs). The prompt asked participants act as a legislative aid advising a member of Congress in determining how to legislate UAP reporting and oversight. The competition received three times as many entries as the 2023 competition and featured a winner and a runner up.

This year's winner, Leo Kim received a cash prize, and was published on *Quorum*, JLPP's online journal. Leo's piece proposes a legislative blueprint that balances transparency and security. This year's runner-up, Charlie Driver, also received a cash prize and publication in *Quorum*. Charlie proposes Congress create an independent agency and fund a UAP-specific SCIF space. Both Leo and Charlie and Juris Doctor candidates in the Class of 2026.

VI. 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.

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. Emma Barudi 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. Aditya Trivedi's note, "Anticompetitive Privacy: Taking a Bite out of Apple" received the award this year. Aditya's piece explores the fascinating intersection between privacy and antitrust law and proposes how the Federal Trade Commission could resolve some of the ways the two legal regimes conflict.

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 jointly to Corey Berman and Addison Yang. Corey and Addison were the first intellectual life editors in the Journal's history to invite a sitting U.S. Senator for an intellectual life event. Additionally, they revamped the award structure of the legislation competition, leading to a 200% increase in submissions.

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 Tim O'Neill. Tim contributions to the Journal have been truly exceptional; as Executive Editor of an academic article in the first Issue, Tim drew on his own academic background by recommending that the authors add an additional explanatory section.

The Article III Standing Award honors a third-year student on the Journal whose contributions were reliable and consistent. The winner of this year's award, Ian Allen, ran *Quorum* effectively and managed difficult authors and busy third-year editors. His editing work was consistently thorough, and he proved he could be trusted to bring his vision to bear on a major portion of the Journal's editing work.

The Invisible Hand Award is awarded to a third-year student whose contributions to the journal were strong despite having conflicts with Board meeting times. This year's winner is Jenny Braverman, our senior notes editor. Jenny did not let conflicting law school obligations stand in the way of managing an expanded notes program. Jenny not only shepherded eight notes through the publication stage—two more than previous years—she also effectively delegated work to the third-year notes editors who were asked to take on additional responsibility as a part of the revamped notes program.

The Letter and Spirit of JLPP awards recognize second-year staff editors with exceptional contributions to the editing work and culture of the Journal, respectively. This year's Letter of JLPP Award winner is Rebecca Kahn. Rebecca (or Becca as we call her) produced consistent, thorough, and error-free citation and substantiation work. The rest of the editorial staff could

readily recognize when a portion of an article had been assigned to Becca due to the high-quality and thoughtful editing that characterized her efforts. This year's Spirit of JLPP award winner is Jake Dow. Jake's passion for the work of the journal was evident from the beginning of his time as an editor on the Journal. He would often speak with fellow Journal members about areas of public policy that interested him. Jake's infectious excitement embodies the spirit of the Journal, and the outgoing board was proud to recognize his contribution.

VII. 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 26 Board will be working:

- Aditya Trivedi (Editor-In-Chief): Associate, Covington & Burling (Washington, DC)
- Emma Barudi (Managing Editor): Honors Attorney, National Labor Relations Board (Washington, DC)
- Lauren May (Managing Editor): Associate, Jenner & Block (New York, NY)
- David Rosenstein (Managing Editor): Associate, Latham & Watkins (New York, NY)
- Sammy Burton (Executive Editor): JD/MBA Candidate, New York University School of Law and Stern School of Business (2025)
- Leora Einleger (Executive Editor): Associate, Arnold & Porter LLP (New York, NY)
- Timothy O'Neill (Executive Editor): Associate, Cravath, Swaine & Moore (New York, NY)
- Robert McCarthy (Executive Editor): LLM Candidate, New York University School of Law (2025)
- Gunnar Stanke (Executive Editor): Associate, Elias Law Group (Washington, DC)
- Kelsey Quackenbush (Executive Editor) (Washington, DC)
- Jenny Braverman (Senior Notes Editor): Associate, Skadden, Arps, Slate, Meagher & Flom LLP (New York, NY)
- Ian Allen (Senior Online Editor): Associate, Freshfields Bruckhaus Deringer (Washington, DC)
- Corey Berman (Senior Intellectual Life Editor): Associate, Goodwin (New York, NY)
- Addison Yang (Senior Intellectual Life Editor): Associate, Morrison & Foerster LLP (New York, NY)
- Jack Bolen (Senior Articles Editor): Law Clerk, Judge Nicole G. Berner, Court of Appeals for the Fourth Circuit (Baltimore, MD)
- Miles McClearn (Membership & Diversity Editor), Army JAG Corp (Washington, DC)

Final Note from Incoming Editor-in-Chief, Anne Mills

Thank you for taking the time to read our annual report. We'd also like to thank Dean McKenzie, Professor Helen Hershkoff, and NYU School of Law for their continued support. As we reach the conclusion of this edition, I want to share a few thoughts about the Journal's future and express my excitement for what lies ahead.

NYU JLPP had an exceptional year, one that was marked by both growth and achievement. I want to begin by expressing my deepest gratitude to the 3Ls for their unwavering dedication and hard work. Their commitment to excellence has been the backbone of this Journal, and their efforts have left a lasting impact. In particular, their work in expanding our publication efforts from three issues to four has set a new standard, one that I am both honored and eager to uphold and build upon. When I was a 1L, I heard glowing reviews about the Journal from your cohort, and now, as Editor-in-Chief, I can confidently say that my high expectations have been fully realized.

As we look ahead, we are thrilled for the upcoming year. Volume 27 is already shaping up to be an exciting and impactful edition. We have some outstanding articles and notes lined up, each offering unique insights and perspectives. Given the current political and legal climate, which is characterized by unprecedented change and challenge within the legal field, it is more important than ever to foster meaningful discourse. We are committed to doing just that through our publications, our symposia, our Quorum, and other endeavors. In Volume 27, I am dedicated to providing our readers with insightful analysis, thoughtful commentary, and a platform for engaging with the most pressing legal issues of our time.

We are not just a Journal; we are a community of passionate individuals who care deeply about legislation, public policy, and the role of law in shaping our society. I am excited to work with this incredible team to continue our tradition of excellence while also exploring new avenues for growth and innovation.

Thank you once again for your continued support and engagement with NYU JLPP. I look forward to sharing our work with you in the year to come.

Warmest regards,
Anne Mills
Incoming Editor-in-Chief
N.Y.U. Journal of Legislation and Public Policy
Volume 27