

**ANNUAL
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**NEW YORK UNIVERSITY
JOURNAL OF LEGISLATION
& PUBLIC POLICY**

NEW YORK UNIVERSITY

JOURNAL OF LEGISLATION AND PUBLIC POLICY

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Dear Friends,

As we enter our sixteenth year, I am happy to report to you on the activities and accomplishments of the *New York University Journal of Legislation and Public Policy*. In keeping with tradition, this year's Annual Report reflects on the achievements of the last year and looks forward to exciting future developments.

Last year, *Legislation* continued to build on its growing reputation. Led by Alex Kohen and an extraordinarily talented Executive Board, the Journal published three issues containing twenty-three pieces of scholarship on a variety of interesting topics including the Triangle Shirtwaist Factory fire and the aftermath of the Supreme Court's decision in *Citizens United v. Federal Election Commission*. Thanks to the indefatigable Lynn Eisenberg and the members of last year's Symposium Committee, we also hosted two events which helped to foster academic dialog on emerging and pressing issues of law and policy. At the first, on October 24, 2011, the Journal in conjunction with the Arthur Garfield Hays Civil Liberties Program welcomed New York State Court of Appeals Chief Judge Jonathan Lippman (NYU Law, '68) back to the law school for "An Evening Discussing Access to Justice" moderated by Dean Richard Revesz.

In the coming year, we will continue to focus on the critical issue of improving access to justice. Volume 15, Issue 3 will contain remarks from The Honorable Robert Katzmann of the United States Court of Appeals for the Second Circuit on the unmet legal needs of immigrants. The issue will also include articles on legal education reform and on funding for civil legal services authored by NYU Law professors Samuel Estreicher and Martin Guggenheim. The Journal will also once again host two events at the law school. In March, *Legislation* will pair with the Institute for Judicial Administration to host a discussion led by The Honorable Jack Weinstein on the history, impact, and future of the New York Civil Practice Rules. Later in the Spring, we will invite a panel of scholars to discuss the impact and importance of the Seventeenth Amendment.

As the Journal continues to thrive, I am pleased to report that our members do as well. This year, members from the classes of 2011 and 2012 secured highly competitive positions with the federal Department of Justice, Department of Transportation, Department of Housing and Urban Development, and as clerks in the federal judicial system.

As you look through this Annual Report, I hope you will see the steps we are taking to build the Journal into a premier publication on the issues of legislation and public policy. We appreciate your continued interest in *Legislation* and hope that you will remain involved in the life of the Journal for many years to come!

On behalf of the Executive Board,

Paul D. Brachman
New York City
November 2012

LOOKING BACK—REVIEWING THE 2011–2012 ACADEMIC YEAR

Governance & Membership

As in past years, the Journal was led during the 2011–12 academic year by a thirteen-member Executive Board comprised of third-year members. An additional thirteen third-year students served as Articles Editors, and thirteen more third-year members served as Notes Editors. Forty-six talented second-year students earned memberships on the Journal and served as Staff Editors throughout the year. Professor Helen Hershkoff and Sara Silverstein (NYU Law, '11; Editor-in-Chief, '10-'11) provided invaluable advice as the Journal's Faculty Advisor and Alumni Advisor, respectively.

Publications

Student Notes

Legislation published five student Notes in the past academic year. In keeping with the mission of the Journal, the Notes spanned a broad range of topics while addressing contemporary issues in legislation and public policy.

Student Notes published in 2011–2012:

- Molly Greer, *Suggestions to Solve the Injustices of the New York State Central Register for Abuse and Maltreatment*, 14 N.Y.U. J. Legis. & Pub. Pol'y 729 (2011).

Molly is a graduate of the Class of 2012, and served as an Articles Editor during the 2011–2012 year. She was awarded the Flora S. and Jacob L. Newman Prize for the most outstanding Note published in *Legislation*.

- Andrea Lofgren, *A Sign of Things to Come? Drug Policy Reforms in Arizona, California, and New York*, 14 N.Y.U. J. Legis. & Pub. Pol'y 773 (2011).

Andrea is a graduate of the Class of 2011, and served as a Senior Notes Editor during the 2010–2011 year.

- Justin Weitz, *The Devil is in the Details: 18 U.S.C. § 666 After Skilling v. United States*, 14 N.Y.U. J. Legis. & Pub. Pol'y 805 (2011).

Justin is a graduate of the Class of 2011, and served as an Articles Editor during the 2010–2011 year.

- Jamisen Etzel, *The House of Cards is Falling: Why States Should Cooperate on Legal Gambling*, 15 N.Y.U. J. Legis. & Pub. Pol'y 199 (2012).

Jamisen is a graduate of the Class of 2011, and served as a Managing Editor during the 2010–2011 year.

- Lynn Eisenberg, *States as Laboratories for Federal Reform: Case Studies in Felon Disenfranchisement Law*, 15 N.Y.U. J. Legis. & Pub. Pol’y 539 (2012).

Lynn is a graduate of the class of 2012, and served as the Senior Symposium Editor during the 2011–2012 year.

Articles

Over the course of the last year, the Journal published a total of eighteen articles, essays, and remarks on a wide range of topics.

Volume 14, Issue 3

Volume 14, Issue 3 opened with remarks from United States Supreme Court Justice **Stephen G. Breyer** on the experience of working on the legislative staff of Senator Edward M. Kennedy. Justice Breyer’s remarks were delivered at an event held at the law school on February 1, 2011, “Dedication to the Legislative Legacy of Senator Edward Kennedy,” honoring the Senator’s innumerable legislative and public policy accomplishments.

The remainder of the issue commemorated the 100-year anniversary of the Triangle Shirtwaist Factory fire. The goal of the issue was to remember the historic tragedy—which occurred only yards away from the law school—and to address a variety of modern legislative issues related to labor and work conditions. Publications included:

- *Working on the Staff of Senator Ted Kennedy*, by **The Honorable Stephen G. Breyer**.
- *Remember the Triangle Fire Coalition*, an essay discussing contemporary community efforts to remember the fire by **Ruth Sergel**, the Founder of the Remember the Triangle Fire Coalition, discussing contemporary community efforts to remember the fire.
- *From Triangle Shirtwaist to Windows on the World: Restaurants as the New Sweatshops*, an article analyzing the statutory reforms that emerged in the aftermath of the Triangle Shirtwaist fire and assessing the possibility for similar reforms in the restaurant industry by **Saru Jayaraman**, co-founder of the Restaurant Opportunities Centers United.
- *Consensus, Dissensus, and Enforcement: Legal Protection of Working Women from the Time of the Triangle Shirtwaist Factory Fire to Today*, an article analyzing the unique status of women in the history of labor reform from the time of the fire through the present day by **Marcia L. McCormick**, Associate Professor at St. Louis University School of Law.
- *Does Unionization Strengthen Regulatory Enforcement? An Empirical Study of the Mine Safety and Health Administration*, an article providing empirical analysis of the role that unions play in achieving compliance with health and safety regulations by **Alison Morantz**, Professor of Law and John A. Wilson Distinguished Faculty Scholar at Stanford Law School.

Volume 15, Issue 1

Volume 15, Issue 1 included four articles covering a range of topics. Publications included:

- *Should Size Matter When Regulating Firms? Implications from Backdating of Executive Options*, an article providing empirical analysis of the prevalence of options backdating by small firms and the comparative under-enforcement of laws prohibiting the practice by **Deniz Anginer**, a member of the Development Research Group at The World Bank, **M.P. Narayanan**, the Robert Morrison Hoffer Professor of Business Administration at the University of Michigan Stephen M. Ross School of Business, **Cindy A. Schipani**, Professor of Business Law at the University of Michigan Stephen M. Ross School of Business, and **H. Nejat Seyhun**, the Jerome B. & Eilene M. York Professor of Business Administration at the University of Michigan Stephen M. Ross School of Business.
- *Principles-Based Regulation and Legislative Congruence*, an article by **Vincent Di Lorenzo**, Professor of Law at St. John's University School of Law, arguing that, to be effective, rules-based and principles-based regulatory structures both require harsh sanctions and robust enforcement.
- *Cutting Municipal Services During Fiscal Crisis: Lessons Learned from the Denial of Services to Condominium and Homeowner Association Owners*, an article discussing the legal ramifications of the difficult expenditure, taxation, and policy choices that local governments make when they withhold public services from condominium owners and members of homeowners associations by **Gerald Korngold**, Professor of Law at New York Law School.
- *Federalism and the Question of Uniform Laws: The Case of Third Party "Standing" Provisions*, in which **Lawrence Schlam**, Professor of Law at Northern Illinois University, argues that attempts at creating national uniformity in family law are inappropriate and counterproductive.

Volume 15, Issue 2

Volume 15, Issue 2 contained the fruits of two important events with which the Journal was associated during the 2011–2012 academic year. The issue opens with remarks from New York Court of Appeals **Chief Judge Jonathan Lippman** (NYU Law, '68) and **Helaine Barnett** (NYU Law, '64) the former President of the Legal Services Corporation. These remarks were delivered at "An Evening Discussing Access to Justice"—a panel discussion co-hosted by *Legislation* and the Arthur Garfield Hays Civil Liberties Program, and moderated by **Dean Richard Revesz**. In addition to Chief Judge Lippman and Professor Barnett, the panel also included **The Honorable Robert Katzmann** of the Second Circuit Court of Appeals of the United States, and **Alan Levine** (NYU Law '73), a partner at Cooley LLP and former Chairman of The Legal Aid Society.

The remainder of the issue features an assortment of articles discussing the United States Supreme Court's decision in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010). The articles are a byproduct of the Brennan Center's April 29, 2011 event entitled "Accountability after Citizens United." The event featured many notable speakers, including a keynote address delivered by **Cynthia Bauerly**, Chair of the Federal Election Commission, whose written work was also included in the issue. The issue received attention from Professor Rick Hasen's popular legal blog, **Election Law Blog** on May 2, 2012 (<http://electionlawblog.org/?p=33746>). Publications included:

- *Equal Justice at Risk: Confronting the Crisis in Civil Legal Services*, in which **The Honorable Jonathan Lippman** explains the growing crisis in civil legal services and the steps that the New York State judiciary has taken to try to reduce the justice gap.
- *A National Perspective on New York State Chief Judge Jonathan Lippman's Initiative*, in which **Helaine Barnett** praises efforts spearheaded by Chief Judge Lippman to address the justice gap in New York, and urges chief judges in other states to take up the cause of access to justice.
- *Recovering the Individual in Politics*, an essay by **Daniel R. Ortiz**, the Michael J. and Jane R. Horvitz Distinguished Professor of Law at the University of Virginia School of Law, which argues that the Supreme Court has increasingly adopted a structural vision of the First Amendment at the expense of individual interests in expression and participation in government.
- *Once and Future Gift Taxation of Transfers to Section 501(c)(4) Organizations: Current Law, Constitutional Issues, and Policy Considerations*, an article by **Ellen P. Aprill**, the John E. Anderson Professor of Tax Law at Loyola Law School, which argues that although application of the gift tax to transfers to 501(c)(4) organizations would be constitutionally permissible, Congress should enact a statute exempting such transfers for policy reasons.
- *Square Pegs: The Challenges for Existing Federal Campaign Finance Disclosure Laws in the Age of the Super PAC*, an article analyzing the ways in which *Citizens United* and its progeny may impact disclosure of information about the source of campaign donations, by **Cynthia L. Bauerly**, a Commissioner of the United States Federal Election Commission and **Eric C. Hallstrom**, Chief Counsel to Commissioner Bauerly.
- *Speaking Truth to the Power that Funds Them: A Jurisprudence of Association for Advocacy Organizations Financially Dependent on Government Grants and Contracts*, an article by **Frances R. Hill**, Professor of Law at the University of Miami School of Law, which analyzes how government funding affects the ability of associations to engage in advocacy regarding government policies.
- *NAACP v. Alabama and False Symmetry in the Disclosure Debate*, an article by **Dale E. Ho**, Assistant Counsel, NAACP Legal Defense & Education Fund, Inc., which argues that in the debate over disclosure requirements, courts are sensitive to context and apply an “anti-suppression” principle to protect vulnerable minorities from repression.
- *Money Managers in the Middle: Seeing and Sanctioning Political Spending after Citizens United*, an article by **Jennifer S. Taub**, Associate Professor of Law at Vermont Law School, which argues that proposals to regulate corporate spending through consent and disclosure requirements will only shift decision-making power to money managers and are not adequate to protect the interests of individual investors.
- *The \$500 Million Question: Are the Democratic and Republican Governors Associations Really PACs under Buckley's Major Purpose Test?*, an article by **Ciara Torres-Spelliscy**, Assistant Professor of Law at Stetson University College of Law, which examines the Democratic and Republican Governors Associations and their role as political donors.

Events and Symposia

An Evening Discussing Access to Justice

On Monday, October 24, 2011, the Journal in conjunction with the Arthur Garfield Hays Civil Liberties Program co-hosted “An Evening Discussing Access to Justice.” The event featured a key-note address from Jonathan Lippman (NYU Law ’68), Chief Judge of the New York State Court of Appeals and Chief Judge of the State of New York. The Chief Judge’s remarks focused on the growing crisis in access to



(L to R) Honorable Jonathan Lippman, Professor Helaine Barnett, Honorable Robert Katzmann, Dean Richard Revesz, Professor Norman Dorsen, Professor Helen Hershkoff

civil legal services for poor and working class litigants, and recent efforts taken in New York to combat the problem. A panel including Professor Helaine Barnett (NYU Law ’64), Alan Levine, a Partner at Cooley LLP (NYU Law ’73), and the Honorable Robert Katzmann of the U.S. Court of Appeals for the Second Circuit contributed additional remarks and discussion on the topic.

The panel discussion was moderated by NYU School of Law Dean Richard Revesz, and over 400 individuals attended the event. Guests included students, practitioners, and judges including the Honorable Robert S. Smith of the New York Court of Appeals, the Honorable Carmen Beauchamp Ciparick of the New York Court of Appeals, and the Honorable Theodore Jones of the New York Court of Appeals.

No Strings Attached: U.S. Internet Governance in an Increasingly Global World

The Journal co-hosted a full-day symposium with the Journal of Law and Liberty on the future of Internet governance. The event, “No Strings Attached: U.S. Internet Governance in an Increasingly Global World” was held on February 24, 2012. The event was structured into three panel discussions on topics including how legislation and federal regulation can increase access to the internet; whether the government should regulate content and safety online; and whether private market solutions offer a more promising alternative to government regulation. Panelists included Vinton Cerf, Vice-President and Chief Internet Evangelist at Google, and Lee Tien, Senior Staff Attorney at the Electronic Frontier Foundation, among many others.

Member Accomplishments

In addition to making outstanding contributions to the Journal, several members of *Legislation* achieved personal successes throughout the year.



Megan Brown '12 was one of nine new attorneys hired by the U.S. Department of Transportation through its Office of the General Counsel Honors Attorney Program, out of a total of 2,300 applicants. Megan served as an Executive Editor during the 2011–12 academic year, and was responsible for shepherding several articles through the production process.



Lucy Joffe '12 was one of roughly a dozen attorneys hired out of 800 applicants by the U.S. Department of Housing and Urban Development's Office of General Counsel Legal Honors Program. Lucy served as a Notes Editor during the 2011–12 academic year.



Justin Weitz '11, was selected to join the Public Integrity Section of the U.S. Department of Justice through the Attorney General's Honors Program. The Honors Program is the Justice Department's highly competitive entry level hiring pathway. Justin served as a Notes Editor during the 2010–11 academic year, and his Note, *The Devil is in the Details: 18 U.S.C. § 666 After Skilling v. United States*, was published in Volume 14, Issue 3 of the Journal. Justin clerks for the Honorable R. Barclay Surrick of the U.S. District Court for the Eastern District of Pennsylvania during the 2011–12 year.

Several members of the class of 2012 also earned awards at Commencement.

Vanderbilt Medals "For outstanding contributions to the School of Law":

Lynn D. Eisenberg
Alex Kohen
Matthew N. Robinson

Christian Jarecki Memorial Prize
"For outstanding work and commitment in a law clinic":

Molly Greer

The Journal was also honored to bestow convocation awards upon two of our graduating members:

- Molly Greer was awarded the *Flora S. and Jacob L. Newman Prize* for the most outstanding Note in the Journal of Legislation and Public Policy, as voted by the Journal's membership.
- Lynn D. Eisenberg was awarded the *Thomas Stoddard Award* for making the greatest contribution by a third-year editor the Journal of Legislation and Public Policy, as voted by the Journal's membership.

Editor-in-Chief's Post Graduation Plans

2011–2012 Editor-in-Chief Alex Kohen will be starting in November of 2012 at Davis Polk & Wardwell LLP in New York City.

LOOKING AHEAD—PREVIEWING THE 2012–2013 ACADEMIC YEAR

Governance & Membership

The 2012–2013 Executive Board was selected in February of 2012 by a vote of the 2011–2012 Board. As in past years, the current Board is comprised of thirteen third-year students. Seventeen third-year students were elected to serve as Articles Editors, and fourteen more were chosen as Notes editors. The rising third-year staff began working on this year’s coming issues over the summer, and production work is now well under way. With the assistance of our forty-five 2L Staff Editors, we hope to be able to carry forward the excellent momentum generated during the past several years.

In addition to the primary tasks of editing publications and planning and hosting events, we are also working on several projects that we hope will not only enhance the reputation of the Journal, but also improve the experience of being a Journal member.

Collaborative Relationships

The Journal continues to honor our relationship with the Brennan Center for Justice. This Fall, the Brennan Center hosted a three-day convening on the issue of racial disparities in the criminal justice system. Scholarly articles proposing solutions to this issue will be featured in Volume 16, Issue 3 (forthcoming December 2013).

We are also continuing to build our relationship with the Dwight D. Opperman Institute of Judicial Administration (IJA). Last year’s Executive Board worked closely with Professor Samuel Estreicher, one of the IJA’s faculty Co-Directors, to solicit content for Volume 15, Issue 3. This year, we have continued to work closely with Professor Estreicher and his Co-Director, Professor Oscar Chase. Together, the Journal and IJA will co-host a panel discussion on the New York Civil Practice Rules during the Spring semester. The event will feature remarks from the **Honorable Jack B. Weinstein**, of the U.S. District Court for the Eastern District of New York.

Website Redesign

Robert Dahnke (Senior Symposium Editor ‘12–’13) and Niral Shah (Executive Editor ‘12–’13) are spearheading an effort to modernize and upgrade *Legislation*’s web presence. Our goal is to begin to build an online brand that distinguishes the Journal from NYU’s many other fine student journals. A secondary, but important, goal is to create a platform that makes our archived content more sensitive to search engines such as Google. Finally, we hope to create a flexible template that will allow us to begin soliciting and posting online only content, such as responses and reactions to our print publications from professors, practitioners, and judges. We hope to launch the new website with Volume 16 in 2013.

Note Writing Program

Eli Fuchsberg (Senior Notes Editor ‘12–’13) and Tamara Marshall (Senior Notes Editor ‘12–’13) are the organizing force behind a new initiative to increase student writing on the Journal. The Note Writing Program that they have implemented is designed to bring would-be student authors together for a series of

meetings throughout the Fall semester, each of which focuses on a particular step in the Note writing process. Topics covered will include: Topic Selection; Preemption Checking; Researching and Research Outlining; and Drafting. Through these meetings we hope to demystify the writing process, connect students with resources available through the law school, and ultimately get students started on writing Notes that may appear in the Journal. The program is designed to complement our existing Notes Workshops which provide students with guidance and editorial feedback after work has been substantially completed.

Committees

Last year, Lynn Eisenberg (NYU Law '12, Senior Symposium Editor '11-'12) led a Symposium Committee comprised of second and third-year students. Members of the Committee helped plan both of the Journal's successful events last year, and were instrumental in preparing the Journal's successful 2012–2013 symposium funding application. We will continue to utilize the committee system to help involve second-year students in the planning of this year's events, and the Symposium Committee members will also help next year's Executive Board prepare and submit a funding application for the 2013–2014 school year.

In addition to the Symposium Committee, this year we are also forming a Content Committee which will be led by Phillip Harmonick (NYU Law '13, Senior Articles Editor '12-'13). The Committee will introduce second-year students to the process of reviewing submissions and navigating the content selection process.

Planned Issues

In keeping with recent tradition, the Journal plans to publish three issues during this academic year.

Volume 15, Issue 3

Volume 15, Issue 3 is a continuation of the conversation that began at last year's event, "An Evening Discussing Access to Justice." Following that event, the 2011–2012 Executive Board worked with Professor Samuel Estreicher to solicit scholarly work on the topic of access to justice.

The issue will include: remarks from the **Honorable Robert Katzmann** of the U.S. Court of Appeals for the Second Circuit on the unmet legal needs of immigrants; an article by **NYU Law Professor Samuel Estreicher** proposing that students be permitted to join the Bar after two years of law school; an article by **NYU Law Professor Martin Guggenheim** and **Julian Darwall** (NYU Law '12, Articles Editor '11-'12) on strategies for funding legal services for the poor; an article by **Michael Wolf**, Senior Dispute Resolution Specialist at the Federal Labor Relations Authority, analyzing the ways in which technology can improve access to justice; an article analyzing the underrepresentation of African Americans in employment discrimination complaints by **Robert Nelson**, Professor of Sociology at Northwestern University, **Laura Beth Nielsen**, Professor and Director of Legal Studies at Northwestern University, and **Amy Myrick**; and an article by **Glenn D. Magpantay**, Staff Attorney at the Asian American Legal Defense Fund, discussing voting discrimination against Asian Americans and arguing in favor of more relaxed organizational standing requirements.

The issue will also include two student Notes:

- *Doomed to Repeat: Why Sequestration and the Budget Control Act of 2011 are Unlikely to Solve our Solvency Woes*, by **Christopher Dodge** (NYU Law '13, Articles Editor '12-'13)
- *Seeking Justice for America's Forgotten Victims: Reforming the Foreign Sovereign Immunities Act Terrorism Exception*, by **Ilana Arnowitz Drescher**, (NYU Law '12, Senior Notes Editor '11-'12)

Volume 16, Issue 1

Volume 16, Issue 1 is an un-themed issue that will include publications on a variety of topics. The issue will include: two articles analyzing the constitutionality and policy merits of the proposed Regulations from the Executive in Need of Scrutiny Act of 2011 (REINS Act) by **Jonathan Adler**, the Johan Verheij Memorial Professor of Law at the Case Western Reserve University School of Law, and **Jonathan Siegel**, the Elwood P. Davis Research Professor of Law at the George Washington University Law School; an article calling for a uniform statutory solution to the rule against perpetuities by **Scott Shepard**, Assistant Professor at the John Marshall Law School; an article calling for an international currency clearinghouse by **Robert C. Hockett**, Professor of Law at Cornell University Law School; an article by **Margaret Thomas**, Assistant Professor of Law at the Louisiana State University Law Center, analyzing the interplay between federalism doctrines and the Federal Rules of Civil Procedure; and an article analyzing the Class Action Fairness Act's "mass action" exception by **Enrique Schaerer**, a litigation associate at Munger, Tolles & Olson LLP.

The issue will also include one student Note:

- *Outlawing Honest Graft*, by **Paul Brachman** (NYU Law '13, Editor-in-Chief '12-'13)

Volume 16, Issue 2

Volume 16, Issue 2 will contain articles on a variety of topics related to labor law, and portions of remarks from **Marvin Miller**, former Executive Director of the Major League Baseball Players Association.

The issue will include two student Notes:

- *Deferring to Congressional Interpretations of Ambiguous Statutory Provisions*, by **Matthew Robinson** (NYU Law '12, Senior Articles Editor '11-'12)
- *Vaccination Vexation: Does Limited Procedure in the Vaccine Injury Compensation Program Affect Injured Claimant's Capacity to Prove Causation?*, by **Justin Roller** (NYU Law '13)

Planned Events

The Journal is planning two events for the 2012–2013 academic year.

On March 12, 2013, the Journal will co-host a panel discussion on the New York Civil Practice Rules with the Dwight D. Opperman Institute for Judicial Administration. The **Honorable Jack B. Weinstein** of the U.S. District Court for the Eastern District of New York will offer his thoughts on the drafting and

adoption of the Rules—events in which Judge Weinstein played a crucial role. The panel will then engage in additional discussion about the legislative process that led to the adoption of the Rules, the impact of the Rules, and the potential for future reforms to the Rules.

On April 12, 2013, the Journal will host a panel discussion on the 17th Amendment. Topics for discussion will include the history and impact of the Amendment's adoption; recent suggestions that the Amendment should be repealed; and a broader discussion on the democratic merits of popular elections.