

*When the facts come out, the truth will be known.*

## **THE RED HERRING**

*Newsletter of the AALS Section on Business Associations (SOBA)*

Chartered January 1, 1973

Volume XXXIX – Fall 2019

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### **2020 ANNUAL MEETING – WASHINGTON**

## **Rising Tensions Among Corporate Stakeholders**

**January 2, 2020**

**3:30 PM to 5:15 PM**

**Delaware Suite A (Lobby Level)**

According to folks familiar with the facts (FFFs), the program can be described as follows:

Tensions among corporate stakeholders are rising. Managers and shareholders continue to battle for primacy as power tilts toward shareholders with the ongoing rise of institutional investors. Formerly passive investors are choosing voice over exit more often than ever before. Proxy advisory firms are influencing shareholder voting, attracting opposition from corporate lobbyists. Other stakeholders seek greater influence too. Amazon's dust-up in New York City shows the influence of communities and the resurgence of popular movements. Exxon's recent experience over climate change illustrates the power of environmental concerns even for investors in traditional energy companies. Labor is flexing its muscles through pension funds. Technology provides new ways for stakeholders to coordinate their activities and increase their influence. This panel explores the resulting tensions, their implications for corporate governance, and the mechanisms for mediating them.

Note that the program is co-sponsored by the Sections on Agency, Partnership, LLC's and Unincorporated Associations, the Section on Contracts, the Section on Securities Regulation, and the Section on Transactional Law & Skills – in other words pretty much everyone who matters.

The program will feature paper presentations by Sean J. Griffith, Fordham, and Sung Eun (Summer) Kim, Irvine, both of which/whom were selected from a call for papers. Speakers also include Stephen Bainbridge, UCLA, David Webber, Boston University, and Cynthia Williams,

Osgoode Hall. The program will be moderated by Andrew Tuch, Washington University (St. Louis).

Abstracts for the papers to be presented follow below.

As for the much anticipated and always exciting business meeting, you should have received a message from our fearless leader naming the nominees who have now been elected.

The nominated and now elected chair-elect is Jessica Erickson, Richmond.

The nominated and now elected new members of the Executive Committee (whose terms will expire as of the 2023 annual meeting) are:

- Gina-Gail Fletcher, Indiana
- Manning Warren III, Louisville

In addition, Afra Afsharipour, UC Davis, whose current term expires at the 2020 meeting was elected to serve out the term of Benjamin Means, South Carolina, through the 2021 meeting.

Note that the leadership roster that follows does not reflect the results of the recent virtual business meeting. Rather, roster is current as of going to press. We here at The Red Herring are not sure whether terms expire at the beginning or end of the annual meeting. We presume they expire at the end of the meeting since the tradition until recently was to hold a live business meeting at the end of the program. (Admittedly, one business meeting was held at the beginning of an annual meeting to avoid a looming contest.) We are also a bit confused about how the Executive Committee has grown from the traditional ten members with staggered three-year terms to the apparent eleven members now. Just sayin'.

In addition to the regular annual meeting, SOBA will sponsor *New Voices in Business Law* on Friday, January 3 from 3:30 PM to 5:15 PM. This program is co-sponsored with the Section on Financial Institutions & Consumer Financial Services and the Section on Securities Regulation and will feature works in progress from junior scholars selected from calls for papers. Authors include Will Clayton, Mihailis Diamantis, Cathy Hwang (with Michael Jennejohn), Manesh Patel, Will Moon, and Gregory Shill. The program will be moderated by Andrew Verstein, Wake Forest and will feature numerous senior commentators as described more fully below.

Other programs co-sponsored by SOBA include: *Immediate Challenges in Consumer Financial Protection*, Thursday, January 2 from 1:30 PM to 3:15 PM (with the Section on Financial Institutions and Consumer Financial Services, the Section on Commercial & Consumer Law, the Section on Securities Regulation, and the Section on Transactional Law and Skills), and *Markets and Regulation: The Shifting Context of Transactional Practice*, Saturday, January 4 from 8:30 AM to 10:15 AM (with the Section on Transactional Law & Skills and the Section on Securities Regulation). Descriptions of both programs are included below.

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Information relating to other programs and panels of interest follows beginning on page 5 – together with the official catalog entry for the SOBA program – all in convenient chronological order.

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## **ABSTRACTS FOR PAPER PRESENTATIONS**

### **Opt-In Stewardship: Toward an Optimal Delegation of Mutual Fund Voting Authority**

**Sean Griffith**

This article offers a theory of mutual fund voting to answer when mutual funds should vote on behalf of their investors and when they should not. It argues that voting authority for mutual funds ought to depend upon: (1) whether the fund possesses a comparative information advantage, and (2) the ability of the fund to assume a common investor purpose. The strongest case for mutual fund voting is one in which high-quality information is produced and the fund is able to assume a common investor purpose. The case for mutual fund voting is weaker when low quality information is produced or where funds cannot assume a common investor purpose.

Applying this theory answers whether and how mutual funds should vote on recurring issues. Mutual funds ought to vote on "contests" — that is, proxy fights and M&A — because meaningful information is produced and because the fund can assume a common interest on the part of its investors. By the same token, funds ought not to exercise voting discretion over environmental, social and governance issues. With respect to environmental and social issues, meaningful information is not produced nor can mutual funds assume a common investor purpose. With respect to governance issues, although funds can assume a unified investor purpose, they do not have adequate information to decide the matter. As a result, mutual funds should follow the voting recommendations of unconflicted managers, as will typically be the case with regard to environmental and social proposals. However, when management is conflicted, as will often be the case with regard to governance proposals, funds should abstain from voting altogether.

This analysis provides a clear rubric for ensuring that mutual fund voting serves investor interests. However, the possibility remains that mutual funds may use voting to pursue their own interests rather than those of their investors. Regulators should therefore act to reset the default allocations of voting authority between mutual funds and their investors.

## Consumer Primary Alternative

### Summer Kim

The doctrine of shareholder value provides that the purpose of public corporations is to maximize shareholder wealth. This Article challenges the doctrine of shareholder value by identifying a growing subset of contemporary firms for which a consumer primacy alternative (i.e., the view that the primary purpose of the firm is to ensure consumer satisfaction, rather than shareholder wealth) is more appropriate. These firms are referred to here as “high consumer orientation firms” and are firms whose consumers provide the critical inputs and whose consumers’ interests are most aligned with maximizing the long-term value of the firm. As an example, a consumer of a crowdfunded product does not take shares but provides capital and product design advice during the early and critical stages of the product’s development. A consumer using a ride share app makes significant contributions to building the platform and provides real-time ratings and feedback regarding their experience which is used to incentivize desirable behavior within the platform. A purchaser of a token in an initial coin offering (ICO) purchases a medium of exchange that can only be used on a particular network, with the value of the token determined by the network’s ultimate success. In each of these examples, consumers take on roles which are the functional equivalents of the characteristics that the doctrine of shareholder value has relied upon to justify the law’s treatment of shareholders as insiders, owners, and principals of firms. Based on this observation, I argue that the legal status of consumers in high consumer orientation firms should be adjusted to provide their consumers with rights and obligations (such as the right to vote, standing to sue, and participation rights) that are more commensurate with their contributions. This consumer-oriented approach to corporate governance for high consumer orientation firms is expected to produce extra outputs and outcomes that are not achievable under the doctrine of shareholder value.

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### OUR MISSION (SHOULD WE DECIDE TO ACCEPT IT)

For the record, the AALS website includes the following statement of purpose:

The Section on Business Associations promotes the communication of ideas, interests, and activities among members and makes recommendations on matters of interest in the teaching and improvement of the law relating to business associations.

The website address is: <https://connect.aals.org/businessassociations>

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## AALS SECTION ON BUSINESS ASSOCIATIONS

### EXECUTIVE COMMITTEE & OFFICERS

#### *Term Expiring at the 2020 Annual Meeting*

Afra Afsharipour, UC Davis  
Jessica Erickson, Richmond  
Mohsen Manesh, Oregon

#### *Term Expiring at the 2021 Annual Meeting*

Tamara Belinfanti, NYLS  
Tom Lin, Temple  
Benjamin Means, South Carolina  
Megan Shaner, Oklahoma

#### *Term Expiring at the 2022 Annual Meeting*

Dana Brackman Reiser, Brooklyn  
Mira Ganor, Texas  
Matt Jennejohn, BYU  
James J. Park, UCLA  
Andrew Verstein, Wake Forest

#### *Fearless Leaders*

Anne Tucker, Georgia State – Chair  
Andrew Tuch, Washington (St. Louis) – Chair-Elect  
Matthew Bodie, Saint Louis – Immediate Past Chair

#### *Fearless Editor*

Richard Booth, Villanova

#### *Formerly Fearless Editors*

John Coffee, Columbia 1981-1982  
Robert Thompson, Georgetown 1982-1984

## Immediate Challenges in Consumer Financial Protection

Financial Institutions and Consumer Financial Services, Co-Sponsored by Business Associations, Commercial & Consumer Law, Securities Regulation and Transactional Law and Skills

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### Sessions Information

**January 2, 2020**  
1:30 pm - 3:15 pm  
pm

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Delaware Suite A](#)  
Floor: [Lobby Level](#)

This program considers immediate challenges in consumer financial protection and how best to meet them. Topics may include challenges that could lead to financial crises, result in consumer harm, or curb economic growth. The program spans banking, securities, fintech, and insurance. Themes may include behavioral and other justifications for regulation, regulatory tools and techniques, consumer remedies, and measures of regulatory impact. The program offers a chance for scholars and practitioners of consumer financial protection, whatever their economic, political, or philosophical views, to share their work and ideas at a time of significant change.

The Section held a virtual business meeting prior to the Annual Meeting.

### Session Speakers

[Nakita Cuttino](#)  
Organization: [Duke University School of Law](#)  
Speaker from a Call for Papers

[Mr. Mark L. Egan](#)  
Organization: [Harvard Business School](#)  
Speaker

[Howell Edmunds Jackson](#)  
Organization: [Harvard Law School](#)  
Speaker

[Patricia A. McCoy](#)  
Organization: [Boston College Law School](#)  
Speaker

[Andrew Tuch](#)  
Organization: [Washington University in St. Louis School of Law](#)  
Moderator

[Arthur E. Wilmarth, Jr.](#)  
Organization: [The George Washington University Law School](#)  
Speaker from a Call for Papers

## Democracy and Democratic Deficits in Economic Globalization and Governance

### Economic Globalization and Governance

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#### Sessions Information

**January 2, 2020**  
1:30 pm - 3:15 pm

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
Session Capacity: *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Roosevelt 2](#)  
Floor: [Exhibition Level](#)

Economic globalization has brought in its wake a movement toward the privatization of governance and the governmentalization of key factors in transnational global production. States project authority in markets through state owned enterprises, sovereign wealth funds, and development facilities. Enterprises and civil society have undertaken greater responsibility for the human rights and sustainability impacts of their operations as international soft law regimes have blossomed. This panel considers the applicability of the three pillars of democracy—law, representation, and knowledge—to globalization and governance from a rights holder perspective. Should governmentalization of economic activity also bring the protections of democratic structures and principles? How might those be incorporated within the transnational or supranational space where these activities are undertaken? Should the increasing focus on the rights holder in current efforts to manage substantive rights and remedial mechanisms give rise to a duty to faithfully represent?

Business meeting at program conclusion.

#### Session Speakers

[Karen E. Bravo](#)  
Organization: [Indiana University Robert H. McKinney School of Law](#)  
Speaker

[Larry Cata Backer](#)  
Organization: [The Pennsylvania State University – Penn State Law](#)  
Moderator and Speaker

[Jena Martin](#)  
Organization: [West Virginia University College of Law](#)  
Speaker

## Rising Tensions Among Corporate Stakeholders

Business Associations, Co-Sponsored by Financial Institutions and Consumer Financial Services, Securities Regulation, and Transactional Law and Skills

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### Sessions Information

**January 2, 2020** Event: [2020 Annual Meeting](#)  
3:30 pm - 5:15 pm **Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Delaware Suite A](#)  
Floor: [Lobby Level](#)

Tensions among corporate stakeholders are rising. Managers and shareholders continue to battle for primacy as power tilts toward shareholders with the ongoing rise of institutional investors. Formerly passive investors are choosing voice over exit more often than ever before. Proxy advisory firms are influencing shareholder voting, attracting opposition from corporate lobbyists. Other stakeholders seek greater influence too. Amazon's dust-up in New York City shows the influence of communities and the resurgence of popular movements. Exxon's recent experience over climate change illustrates the power of environmental concerns even for investors in traditional energy companies. Labor is flexing its muscles through pension funds. Technology provides new ways for stakeholders to coordinate their activities and increase their influence. This panel explores the resulting tensions, their implications for corporate governance, and the mechanisms for mediating them.

The Section held a virtual business meeting prior to the Annual Meeting.

### Session Speakers

[Stephen M. Bainbridge](#)  
Organization: [University of California, Los Angeles School of Law](#)  
Speaker

[Sean J. Griffith](#)  
Organization: [Fordham University School of Law](#)  
Speaker from a Call for Papers

[Sung Eun \(Summer\) Kim](#)  
Organization: [University of California, Irvine School of Law](#)  
Speaker from a Call for Papers

[Andrew Tuch](#)  
Organization: [Washington University in St. Louis School of Law](#)  
Moderator

[David H. Webber](#)  
Organization: [Boston University School of Law](#)  
Speaker

[Cynthia A. Williams](#)  
Organization: [Osgoode Hall Law School York University](#)  
Speaker



## Sessions Information

**January 2, 2020**  
**1:30 pm - 3:15 pm**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
**Hotel:** [Washington Marriott Wardman Park Hotel](#)  
**Room:** [Roosevelt 2](#)  
**Floor:** [Exhibition Level](#)

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[Larry Cata Backer](#)  
Organization: [The Pennsylvania State University – Penn State Law](#)  
Moderator and Speaker

[Jena Martin](#)  
Organization: [West Virginia University College of Law](#)  
Speaker

# Financial Institutions and Consumer Financial Services, Co-Sponsored by Business Associations, Commercial & Consumer Law, Securities Regulation and Transactional Law and Skills

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## Sessions Information

**January 2, 2020**  
**1:30 pm - 3:15 pm**  
**pm**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
**Hotel:** [Washington Marriott Wardman Park Hotel](#)  
**Room:** [Delaware Suite A](#)  
**Floor:** [Lobby Level](#)

This program considers immediate challenges in consumer financial protection and how best to meet them. Topics may include challenges that could lead to financial crises, result in consumer harm, or curb economic growth. The program spans banking, securities, fintech, and insurance. Themes may include behavioral and other justifications for regulation, regulatory tools and techniques, consumer remedies, and measures of regulatory impact. The program offers a chance for scholars and practitioners of consumer financial protection, whatever their economic, political, or philosophical views, to share their work and ideas at a time of significant change.

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Organization: [Harvard Law School](#)  
Speaker

[Patricia A. McCoy](#)  
Organization: [Boston College Law School](#)  
Speaker

[Andrew Tuch](#)  
Organization: [Washington University in St. Louis School of Law](#)  
Moderator

[Arthur E. Wilmarth, Jr.](#)  
Organization: [The George Washington University Law School](#)  
Speaker from a Call for Papers

## Sessions Information

**January 3, 2020**  
**8:30 am - 10:15 am**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
**Hotel:** [Washington Marriott Wardman Park Hotel](#)  
**Room:** [Washington 1](#)  
**Floor:** [Exhibition Level](#)

In late 2017, Congress passed a major piece of tax legislation. Since then, the Treasury Department and IRS worked to implement this legislation, and in 2019, individual taxpayers went through the first filing season under the new law. This program will draw on experiences and discuss issues related to the new law's implementation and administration. The panel includes people who played key roles in the IRS's Tax Reform Implementation Office, IRS Office of Chief Counsel, OIRA, and Taxpayer Advocate Service. Topics discussed will include the roles of different government players; process for promulgating regulations; decisions along the way, including the prioritization of topics for guidance; questions that remain unresolved; how the administration of the new law impacted taxpayers; obstacles faced during the first filing season; opportunities for improving the new law's administration; and what to expect moving forward.

Business meeting at program conclusion.

## Session Speakers

[Heather M. Field](#)  
Organization: [University of California, Hastings College of the Law](#)  
Moderator

[Kristin E. Hickman](#)  
Organization: [University of Minnesota Law School](#)  
Speaker

[Mr. Philip Lindenmuth, Esq.](#)  
Organization: [Internal Revenue Service](#)  
Speaker

[Ms. Sunita Lough](#)  
Organization: [Internal Revenue Service](#)  
Speaker

[Ms. Nina E. Olson](#)  
Speaker

# New Voices in Business Law

## Business Associations, Co-Sponsored by Financial Institutions & Consumer Financial Services and Securities Regulation

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### Sessions Information

**January 3, 2020** Event: [2020 Annual Meeting](#)  
3:30 pm - 5:15 pm **Session Type:** [Section Works-in-Progress](#)  
Session Capacity: [N/A](#)  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Roosevelt 3](#)  
Floor: [Exhibition Level](#)

This works-in-progress program will bring together junior and senior scholars in the field of business law to provide junior scholars with feedback and guidance on their draft articles.

### Session Speakers

[Afra Afsharipour](#)  
Organization: [University of California, Davis, School of Law](#)  
Commentator

[Shawn Bayern](#)  
Organization: [Florida State University College of Law](#)  
Commentator

[William W. Clayton](#)  
Organization: [Brigham Young University, J. Reuben Clark Law School](#)  
Works-in-Progress  
Presenter

[Mihailis Diamantis](#)  
Organization: [University of Iowa College of Law](#)  
Works-in-Progress  
Presenter

[Franklin A. Gevurtz](#)  
Organization: [University of the Pacific, McGeorge School of Law](#)  
Commentator

[Andrew S. Gold](#)  
Organization: [Brooklyn Law School](#)  
Commentator

[Cathy Hwang](#)  
Organization: [University of Utah, S. J. Quinney College of Law](#)  
Works-in-Progress  
Presenter

[Matt Jennejohn](#)  
Organization: [Brigham Young University, J. Reuben Clark Law School](#)  
Works-in-Progress  
Presenter

[Jeffrey M. Lipshaw](#)  
Organization: [Suffolk University Law School](#)  
Commentator

[Benjamin Means](#)  
Organization: [University of South Carolina School of Law](#)  
Commentator

[William J. Moon](#)  
Organization: [University of Maryland Francis King Carey School of Law](#)  
Works-in-Progress  
Presenter

[Alan R. Palmiter](#)  
Organization: [Wake Forest University School of Law](#)  
Commentator

[Kish Parella](#)  
Organization: [Washington and Lee University School of Law](#)  
Commentator

[James J. Park](#)  
Organization: [University of California, Los Angeles School of Law](#)  
Commentator

[Menesh Patel](#)  
Organization: [University of California, Davis, School of Law](#)  
Works-in-Progress  
Presenter

[Marc Roark](#)  
Organization: [Southern University Law Center](#)  
Commentator

[Usha R. Rodrigues](#)  
Organization: [University of Georgia School of Law](#)  
Commentator

[Darren Rosenblum](#)  
Organization: [Pace University Elisabeth Haub School of Law](#)  
Commentator

[Gregory H. Shill](#)  
Organization: [University of Iowa College of Law](#)  
Works-in-Progress  
Presenter

[Andrew Verstein](#)  
Organization: [Wake Forest University School of Law](#)  
Moderator

## Markets and Regulation: The Shifting Context of Transactional Practice

### Transactional Law and Skills, Co-Sponsored by Business Associations and Securities Regulation

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#### Sessions Information

**January 4, 2020**  
8:30 am - 10:15 am  
Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
Session Capacity: *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Virginia Suite B](#)  
Floor: [Lobby Level](#)

This session will explore the changing regulatory context of transactional legal practice, which is rapidly evolving in response to new innovations and challenges across a range of markets. Emerging issues range from privacy law and cybersecurity, to national security concerns, antitrust, and international trade and investment, to the prospect of new regulatory responses to climate change and other environmental threats. The forms these regulatory responses take are also diverse, including not only traditional public regulation, but also private governance, which draws upon the efforts of NGOs, trade associations, and international organizations. In addition to paper presentations, the program will feature a panel focusing on how to incorporate regulatory concepts and issues across the transactional curriculum, including in clinics and other experiential courses, as well as in doctrinal courses.

The Section held a virtual business meeting prior to the Annual Meeting.

#### Session Speakers

[Curtis B. Anderson](#)  
Organization: [Brigham Young University, J. Reuben Clark Law School](#)  
Speaker

[Anne Choike](#)  
Organization: [Wayne State University Law School](#)  
Speaker

[William W. Clayton](#)  
Organization: [Brigham Young University, J. Reuben Clark Law School](#)  
Speaker from a Call for Papers

[Virginia Harper Ho](#)  
Organization: [University of Kansas School of Law](#)  
Moderator

[Joan M. Heminway](#)  
Organization: [University of Tennessee College of Law](#)  
Speaker

[Matt Jennejohn](#)  
Organization: [Brigham Young University, J. Reuben Clark Law School](#)  
Moderator

[Kish Parella](#)  
Organization: [Washington and Lee University School of Law](#)  
Speaker from a Call for Papers

# Economics of Consumer Protection

## Law and Economics

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### Sessions Information

**January 4, 2020**  
**8:30 am - 10:15**  
**am**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
**Hotel:** [Washington Marriott Wardman Park Hotel](#)  
**Room:** [Maryland Suite A](#)  
**Floor:** [Lobby Level](#)

Under the Trump administration, regulatory agencies have increasingly relied on economics to provide guidance on consumer protection policies. The dominance of Republican Attorneys General have reinforced that tendency at the state level. At the same time, behavioral economics has bid for greater influence over consumer protection policy versus traditional economic approaches. In addition, new forms of communication have challenged traditional rationales for consumer protection by reducing traditional information asymmetries and credence goods (such as traditionally justified practices like occupational licensing), while revealing rent-seeking motivations behind many purported consumer protection laws. This session will review economic approaches to consumer protection as well as examine behavioral law and economics as an alternative approach. Topics will include consumer credit regulation, advertising, licensing, and FinTech innovation.

Business meeting at program conclusion.

### Session Speakers

[James C. Cooper](#)  
Organization: [Antonin Scalia Law School at George Mason University](#)  
Speaker

[Dr. Tom Miller, Ph.D.](#)  
Organization: [Mississippi State University College of Business](#)  
Speaker

[Mr. Christopher Mufarrige, Esq.](#)  
Organization: [Consumer Financial Protection Bureau](#)  
Moderator and Speaker

[Joshua Wright](#)  
Organization: [Antonin Scalia Law School at George Mason University](#)  
Speaker

[Todd J. Zywicki](#)  
Organization: [Antonin Scalia Law School at George Mason University](#)  
Speaker

# Are Intellectual Property Rights Still Torts?

## Intellectual Property

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### Sessions Information

**January 4, 2020**  
9:00 am - 12:00 pm  
Event: [2020 Annual Meeting](#)  
*Session Type: Section Programs*  
Session Capacity: *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Roosevelt 5](#)  
Floor: [Exhibition Level](#)

Legal rules that create private causes of actions can be sorted into two kinds: rules that entitle the claimant to an injunction and rules that entitle the claimant to damages. The first kind of rule is associated with property rights and hence is called "property rules." The second is associated with tort liability or contractual liability and is called "liability rules." This panel discussion focuses on whether the core intellectual property law areas, Copyrights, Patents, Trademarks, and Trade Secrets, are correctly conceived of as Tort/Law regimes and what it means to conceive acts of infringement as strict liability torts.

The Section held a virtual business meeting prior to the Annual Meeting.

### Session Speakers

[Shyamkrishna Balganes](#)  
Organization: [University of Pennsylvania Carey Law School](#)  
Speaker

[Dmitry Karshtedt](#)  
Organization: [The George Washington University Law School](#)  
Speaker

[Amy Landers](#)  
Organization: [Drexel University Thomas R. Kline School of Law](#)  
Speaker

[Irina Manta](#)  
Organization: [Maurice A. Deane School of Law at Hofstra University](#)  
Speaker

[Saurabh Vishnubhakat](#)  
Organization: [Texas A&M University School of Law](#)  
Moderator

[Alfred C. Yen](#)  
Organization: [Boston College Law School](#)  
Speaker

## Federalist Society Annual Faculty Conference Discussion Panel 2: Governance by Index: Mutual Fund Involvement in Corporate Governance

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### Sessions Information

**January 4, 2020**  
**9:15 am - 10:45**  
**am**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Other Organization Events*  
**Session Capacity:** *N/A*  
**Hotel:** *N/A*  
**Room:** [Hampton Ballroom](#)  
**Floor:** [Lobby Level](#)

Mutual funds, particularly index funds, increasingly find themselves in a position to influence the governance of the companies in which they invest. Accordingly, campaigners of every sort—from hedge fund activists to advocates for environmental and social causes—now lobby mutual funds for voting support. But how should mutual funds wield their power in corporate governance? This panel will discuss the nature of mutual fund investing, the shift to indexing, its impact on the market, and how mutual funds ought to exercise their influence over the companies in which they invest.

### Session Speakers

[Sean J. Griffith](#)  
Organization: [Fordham University School of Law](#)  
Panelist

[M. Todd Henderson](#)  
Organization: [The University of Chicago, The Law School](#)  
Moderator

[Ann M. Lipton](#)  
Organization: [Tulane University Law School](#)  
Panelist

[Adriana Z. Robertson](#)  
Organization: [University of Toronto Faculty of Law](#)  
Presenter



## Entity Selection in the 21st Century

Agency, Partnership, LLC's and Unincorporated Associations

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### Sessions Information

**January 4, 2020** Event: [2020 Annual Meeting](#)  
10:30 am - 12:15 pm **Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Maryland Suite C](#)  
Floor: [Lobby Level](#)

This program will explore decisions and strategies for choice of business entity. As unincorporated business entities have matured and those who use them have learned their advantages and disadvantages, key decisions about choice of entity have changed in important and interesting ways. In addition, accelerating advances in technology promise to play surprising roles in the formation and operation of unincorporated firms.

The Section held a virtual business meeting prior to the Annual Meeting.

### Session Speakers

[Shawn Bayern](#)  
Organization: [Florida State University College of Law](#)  
Speaker

[Carol R. Goforth](#)  
Organization: [University of Arkansas, Fayetteville, Robert A. Leflar Law Center](#)  
Speaker

[Joseph K. Leahy](#)  
Organization: [South Texas College of Law Houston](#)  
Speaker from a Call for Papers

[Lynn M. Lopucki](#)  
Organization: [University of California, Los Angeles School of Law](#)  
Speaker

[Carla L. Reyes](#)  
Organization: [Michigan State University College of Law](#)  
Speaker

[Etienne C. Toussaint](#)  
Organization: [University of the District of Columbia, David A. Clarke School of Law](#)  
Speaker

[Kelli A. Williams](#)  
Organization: [Florida State University College of Law](#)  
Moderator

# Regulating the Insurance Industry: Federal, State, and Private Approaches

## Insurance Law

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### Sessions Information

**January 4, 2020**  
**1:30 pm - 3:15 pm**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
Session Capacity: *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Washington 2](#)  
Floor: [Exhibition Level](#)

This program will be focused on debating the efficacy of federal, state, and private approaches to the regulation of the insurance industry. A panel of leading insurance scholars will present results from their recent work, and there will be an open Q&A session after all of the presentations.

Business meeting at program conclusion.

### Session Speakers

[Dr. Patricia Born, Ph.D.](#)  
Organization: [Florida State University](#)  
Speaker

[Christopher C. French](#)  
Organization: [The Pennsylvania State University – Penn State Law](#)  
Speaker

[Max Helveston](#)  
Organization: [DePaul University College of Law](#)  
Moderator

[Daniel Schwarcz](#)  
Organization: [University of Minnesota Law School](#)  
Speaker

[Mr. David Zaring](#)  
Organization: [The Wharton School University of Pennsylvania Legal Studies and Business Ethics Department](#)  
Speaker

# The United States Securities and Exchange Commission

## Securities Regulation

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### Sessions Information

**January 4, 2020**  
**1:30 pm - 3:15 pm**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
**Session Capacity:** *N/A*  
**Hotel:** [Washington Marriott Wardman Park Hotel](#)  
**Room:** [Maryland Suite B](#)  
**Floor:** [Lobby Level](#)

Since its creation in 1934, the United States Securities and Exchange Commission has played a leading role in regulating the capital markets and providing investor protection. This panel will explore the state of the SEC by examining its current regulatory and enforcement efforts and by discussing the policies that underlie them.

The Section held a virtual business meeting prior to the Annual Meeting.

### Session Speakers

[Hilary J. Allen](#)  
Organization: [American University, Washington College of Law](#)  
Speaker

[Eric C. Chaffee](#)  
Organization: [University of Toledo College of Law](#)  
Moderator

[Robert J. Jackson, Jr.](#)  
Organization: [U.S. Securities and Exchange Commission](#)  
Speaker

[Arthur B. Laby](#)  
Organization: [Rutgers Law School](#)  
Speaker

# New Voices in Intellectual Property Scholarship

## Intellectual Property

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### Sessions Information

**January 4, 2020** Event: [2020 Annual Meeting](#)  
**3:30 pm - 5:15 pm** **Session Type:** *Section Works-in-Progress*  
Session Capacity: *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Washington 3](#)  
Floor: [Exhibition Level](#)

This program will feature presentations of new legal scholarship by junior faculty members selected via a call for papers. Senior legal scholars in the field will have the opportunity to give their commentary on the scholarship.

### Session Speakers

**Dan L. Burk**  
Organization: [University of California, Irvine School of Law](#)  
Commentator

**Lolita Darden**  
Organization: [Suffolk University Law School](#)  
Works-in-Progress  
Presenter

**Tabrez Ebrahim**  
Organization: [California Western School of Law](#)  
Works-in-Progress  
Presenter

**Janet Freilich**  
Organization: [Fordham University School of Law](#)  
Works-in-Progress  
Presenter

**Aman K. Gebru**  
Organization: [Duquesne University School of Law](#)  
Works-in-Progress  
Presenter

**Eric Goldman**  
Organization: [Santa Clara University School of Law](#)  
Commentator

**Jake Linford**  
Organization: [Florida State University College of Law](#)  
Moderator and Commentator

**Andrew C. Michaels**  
Organization: [University of Houston Law Center](#)  
Works-in-Progress  
Presenter

**Joe Miller**  
Organization: [University of Georgia School of Law](#)  
Commentator

**Lucas Osborn**  
Organization: [Campbell University Norman Adrian Wiggins School of Law](#)  
Commentator

**Trevor Reed**  
Organization: [Arizona State University Sandra Day O'Connor College of Law](#)  
Works-in-Progress  
Presenter

**Guy A. Rub**  
Organization: [The Ohio State University, Michael E. Moritz College of Law](#)  
Commentator

**Jeremy N. Sheff**  
Organization: [St. John's University School of Law](#)  
Commentator

**Charlotte A. Tschider**  
Organization: [University of Nebraska College of Law](#)  
Works-in-Progress  
Presenter

# Emerging Voices in Securities Regulation

## Securities Regulation

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### Sessions Information

**January 4, 2020**  
**3:30 pm - 5:15**  
**pm**

Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Works-in-Progress*  
**Session Capacity:** *N/A*  
**Hotel:** [Washington Marriott Wardman Park Hotel](#)  
**Room:** [Madison A](#)  
**Floor:** [Mezzanine Level](#)

This program will bring together junior and senior securities regulation scholars for the purpose of giving junior scholars feedback on their scholarship and helping them prepare their work for submission for publication. Junior scholars' presentations of their drafts will be followed by comments from senior scholars and further discussion. The Section welcomes anyone interested in securities regulation topics to attend and participate in the discussions.

### Session Speakers

[John P. Anderson](#)  
Organization: [Mississippi College School of Law](#)  
Commentator

[Anat Beck](#)  
Organization: [Case Western Reserve University School of Law](#)  
Works-in-Progress  
Presenter

[Eric C. Chaffee](#)  
Organization: [University of Toledo College of Law](#)  
Moderator and  
Commentator

[Wendy G. Couture](#)  
Organization: [University of Idaho College of Law](#)  
Commentator

[George S. Georgiev](#)  
Organization: [Emory University School of Law](#)  
Works-in-Progress  
Presenter

[Franklin A. Gevurtz](#)  
Organization: [University of the Pacific, McGeorge School of Law](#)  
Commentator

[Yuliya Guseva](#)  
Organization: [Rutgers Law School](#)  
Commentator

[Michael D. Guttentag](#)  
Organization: [Loyola Law School, Los Angeles](#)  
Commentator

[Joan M. Hemmway](#)  
Organization: [University of Tennessee College of Law](#)  
Commentator

[Donna M. Nagy](#)  
Organization: [Indiana University Maurer School of Law](#)  
Commentator

[Josephine Sandler Nelson](#)  
Organization: [Villanova University Charles Widger School of Law](#)  
Works-in-Progress  
Presenter

[Carla L. Reyes](#)  
Organization: [Michigan State University College of Law](#)  
Works-in-Progress  
Presenter

[Paolo Saguato](#)  
Organization: [Antonin Scalia Law School at George Mason University](#)  
Works-in-Progress  
Presenter

[Karen Woody](#)  
Organization: [Washington and Lee University School of Law](#)  
Works-in-Progress  
Presenter

# Antitrust Reform

## Antitrust and Economic Regulation

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### Sessions Information

**January 5, 2020**  
**8:30 am - 10:15 am**  
Event: [2020 Annual Meeting](#)  
**Session Type:** *Section Programs*  
Session Capacity: *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Virginia Suite B](#)  
Floor: [Lobby Level](#)

Is it time to reform the antitrust laws? If so, how should they be changed? If not, what is wrong with the major reform proposals?

The Section held a virtual business meeting prior to the Annual Meeting.

### Session Speakers

[Jonathan B. Baker](#)  
Organization: [American University, Washington College of Law](#)  
Speaker

[Aaron S. Edlin](#)  
Organization: [University of California, Berkeley School of Law](#)  
Moderator

[Lina Khan](#)  
Organization: [Columbia Law School](#)  
Speaker

[John B. Kirkwood](#)  
Organization: [Seattle University School of Law](#)  
Speaker

[Barak Orbach](#)  
Organization: [The University of Arizona James E. Rogers College of Law](#)  
Speaker

# Empirical Research in Business Law Works in Progress

## Law & the Social Sciences

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### Sessions Information

**January 5, 2020**    Event: [2020 Annual Meeting](#)  
**8:30 am - 10:15 am**    **Session Type:** *Section Works-in-Progress*  
Session Capacity: *N/A*  
Hotel: [Washington Marriott Wardman Park Hotel](#)  
Room: [Roosevelt 1](#)  
Floor: [Exhibition Level](#)

The speakers will discuss various empirical research projects concerning business law. These projects include early stage proposals and work that already has some results.

### Session Speakers

[John P. Anderson](#)  
Organization: [Mississippi College School of Law](#)  
Speaker

[Robert Anderson](#)  
Organization: [Pepperdine University, Rick J. Caruso School of Law](#)  
Speaker

[Christopher G. Bradley](#)  
Organization: [University of Kentucky College of Law](#)  
Speaker

[Pamela Foohey](#)  
Organization: [Indiana University Maurer School of Law](#)  
Speaker

[Joan M. Heminway](#)  
Organization: [University of Tennessee College of Law](#)  
Speaker

[David Y. Kwok](#)  
Organization: [University of Houston Law Center](#)  
Moderator

[Jeremy McClane](#)  
Organization: [University of Illinois College of Law](#)  
Speaker