



2018 Convention Panel Descriptions

Plenaries

Defending the Third Branch

Friday, June 8, 9:15 a.m. to 11:15 a.m.

From the far-reaching “court-packing” plan proposed by Federalist Society founder Steven Calabrese, to attempts in North Carolina to place control of the courts in the hands of a diminishing conservative legislative majority, to the effective end of the blue slip practice in federal judicial nominations, the third branch is in danger of being reshaped in ways that affect hard-won gains in civil and human rights, economic and criminal justice, and basic access to a fair and impartial justice system, for generations to come. These efforts to remake the judiciary occur at a time when we face critical challenges to the very rule of law; when the courts’ ability to protect rights and act as an independent instrument for government accountability are of paramount importance and increasingly under attack. What can be learned from other democracy’s experience with attacks on the judiciary? How should courts defenders think—and speak—differently in the courts’ defense in order to help the public understand what is at stake, and to stand up accordingly?

#Metoo, Ustoo. Can Lawyers Take the Lead?

Friday, June 8, 4:15 p.m. to 6:00 p.m.

The impact of the viral #MeToo campaign has revealed the pervasiveness of sexual assault, harassment, and misconduct on campuses, in the media, and in every workplace, including the legal profession. This movement has brought the “silence breakers” into the forefront of the discussion of how secrecy has enabled this culture to fester and what we can do to prevent and end it. Panelists will reflect on how the movement has empowered women and others vulnerable to this type of abuse to come forward and share their stories. The panel will also discuss concerns about visibility and retaliation, how the legal profession can take a leadership role in enacting change, and the challenges that remain.

Reclaiming the Legacy of Martin Luther King, Jr.

Saturday, June 9, 9:15 a.m. to 11:00 a.m.

In the fifty years since his assassination in Memphis, Dr. King’s radical message of racial and economic justice has too often been reduced to a simple call for harmony between black and white Americans. Dr. King sought not only to dismantle the Jim Crow laws that perpetuated racial segregation and debasement in the South, but to upend institutionalized racism throughout the country, assemble a “multiracial army of the poor,” and help workers of all colors organize against unjust labor practices. Today, his heirs seek foundational changes to policing and criminal justice. They seek clean drinking water and environmental justice in Flint, Michigan and other forgotten communities. They seek to protect and strengthen workers’ rights through more robust labor unions and create economic opportunity for the poor through more equitable economic policies. More than a half century after his work began, what does it look like to truly honor Dr. King’s legacy and move closer to the just society envisioned by the Civil Rights Movement?

Breakouts

Friday, June 8, 11:15 a.m. to 12:45 p.m.

Making Census of the Population and Redistricting

The nation is fast approaching the next census and round of redistricting. 2020 could be a chance to undo the distortive gerrymandering of the past decade, or it could see a doubling down on manipulation and entrenchment. There are already troubling signs that the census itself may be politicized to an unprecedented degree, and that it will result in a significant undercount that penalizes minority communities and those with high immigrant populations, among others. The next redistricting cycle will take place with a very different Supreme Court, with open questions about whether the traditional remedies relied upon by voting rights advocates will continue to be viable. On the other hand, there are encouraging signals that the Supreme Court may finally be willing to wade into the question of partisan gerrymandering. This panel will preview the 2020 redistricting and the battles ahead of us. What risks are there to a full and accurate census count? What challenges

will communities of color likely face in ensuring fair representation? How is redistricting jurisprudence likely to be different in the next cycle?

Deregulation, Defunding, and Deference: The Administrative State in the Age of Trump

The Trump Administration has made rolling back regulations and reducing funding for federal agencies like the National Labor Relations Board and the Environmental Protection Agency a priority. In the case of the Consumer Financial Protection Board, its Acting Director recently issued a strategic plan designed to limit the agency's role, with a stated objective of "reduc[ing] unwarranted regulatory burdens." Congress has stepped into the fray by reinvigorating – and in the eyes of some critics reinventing – the Congressional Review Act, which essentially allows the legislature to repeal federal regulations. At a moment when the power and possibilities of federal agencies are being redefined, what options are being considered by those who oppose this tide of deregulation? Can Congress play a constructive role in protecting the vitality of the federal workforce? Are lawsuits by state attorneys general and others an effective way to challenge regulatory rollbacks? And what potential reforms to the Administrative Procedure Act would protect and strengthen the administrative state moving forward?

Safeguarding the Rule of Law

Among the principles of governance central to sustaining the rule of law within the U.S. constitutional system are separation of powers, democratic accountability, transparency, and norms that guide officials in their use of political power. Critics contend that the United States is currently being led by an executive who demonstrates autocratic tendencies, with a record of ignoring established legal processes, dismantling democratic conventions, and flouting norms that help preserve a stable, reliable government. Are alleged violations of the Emoluments Clauses; attacks on the Mueller investigation, the Justice Department, the judiciary, and the press; and the abandoning of established norms challenging the vitality of the rule of law? If so, what can be done in response?

Under Pressure: Immigrants and the Trump Administration

The Trump Administration made immigrants and immigration policy a central focus of its agenda on day one when it issued its first executive order barring admission into the U. S. from certain predominantly Muslim countries and suspending all refugee admissions. As that order and its successors have made their way to the Supreme Court for review this Term, the administration has also brought litigation against sanctuary states, rescinded the Deferred Action for Childhood Arrivals program, increased ICE enforcement activities at courthouses and sensitive locations, and talked about reshaping our immigrant admissions system to prioritize "merit" over family ties. State and local actors have stepped in to try to ameliorate the situation, ratcheting up debates about federalism, preemption and standing. What are the key law and policy arguments underpinning these developments? How can progressives reconcile previous positions taken on immigration and federal power? And how can advocates best protect immigrants in the current environment?

Breakouts

Friday, June 8, 2:30 p.m. to 4:00 p.m.

The Constitutional Dilemmas of Big Tech

As we near the end of the 21st century's second decade, it is beyond cliché to say that the law has trouble keeping up with the rapid pace of technological development. Whether in the context of the Fourth Amendment rights implicated in the *United States v. Microsoft* case where the Supreme Court must apply a statute written before there even was a global Internet, the challenges of analyzing under a First Amendment rubric the hateful expression increasingly found on platforms like Twitter and Facebook when the amendment only limits the actions of government entities, or attacks on our democracy launched by Russian bots using social media platforms, the ubiquity of technology presents confounding legal questions for industry, law enforcement, and consumers alike. What are and should be the obligations of tech companies to their customers when law enforcement seeks user content, and should liability result when they make the wrong call? What remedies are available to industry when the government seeks to tie its hands through gag orders that prevent it from making customers aware of government surveillance? And how should these companies, who seek to provide expressive fora, navigate the problem of online hate speech? What should be the rules of the road for all the stakeholders?

Blue Cities, Red States: The Troubling Turn in State Preemption

Increasingly, states are attempting to shut down local innovation through preemptive legislation that overrides local lawmaking—threatening to withhold state funding from sanctuary cities, precluding civil rights protections for LGBT citizens, prohibiting cities from raising the minimum wage for their workers, and blocking gun violence prevention laws. Critics argue that these efforts are stifling local democracy. In some cases, preemption efforts have even gone so far as to impose criminal liability on city officials who merely vote for progressive legal reforms. How widespread is this aggressive campaign of state preemption and what legal strategies are available to cities to fight back?

Religious Freedom v. Anti-Discrimination Laws: Can Rights Be Reconciled?

Increasingly, religious liberty claims seem in conflict with reproductive and LGTBQ rights, and these conflicts are being litigated in courthouses, legislatures, and the public discourse. While courts have generally rejected religious liberty challenges to laws protecting LGBTQ rights, the country still awaits the Supreme Court's decision in *Masterpiece Cakeshop*. And, as Hobby Lobby illustrates, the Court has already accepted religious liberty challenges to laws protecting women's reproductive rights. When the Religious Freedom Restoration Act was enacted in 1993, it was supported by a coalition of civil rights groups that included those advocating for the rights of women and LGBTQ Americans. But now it seems those alliances have broken down, as RFRA and its state counterparts are used to seek exemptions from anti-discrimination laws based on religious objectors' assertions that compliance with the law would make them complicit in what they view as the sinful conduct of other citizens. What are the contours of the asserted rights at stake, and can—or should—we attempt

to reconcile them? If exemptions are to be available to those who object to abortion, contraception, and marriage equality, on what principle would exemption claims based on beliefs about race be distinguished from claims based on beliefs about sexuality and gender? Is there a constructive way through this thicket?

To Amend or Not to Amend: What Path to Keeping Money Out of Politics?

Even before the Supreme Court's 2010 *Citizens United* decision striking down the McCain-Feingold campaign finance regulations on the grounds that corporations and unions have a First Amendment right to spend money on political speech, some in the progressive community were advocating for a constitutional amendment that would limit political spending, and thus the influence of money on our democracy. Equally passionate are those progressives concerned with the current campaign to call an Article V Constitutional Convention, which they note is being driven by conservative political forces such as the American Legislative Exchange Council (ALEC). What might a 28th Amendment limiting political spending actually say, and what are the disputes within the progressive community about the language? What are the risks of convening a new constitutional convention, and what is the likelihood that a 28th Amendment could pass without it?

Workshops

Saturday, June 9, 11:00 a.m. to 1:00 p.m.

Become a Voting Rights Advocate

This session will address how ACS members can become advocates for the right to vote in their own communities. It will cover the election administration landscape, best practices for working with state and local election officials, how to become an election official, and common obstacles to the right to vote, particularly for students.

Enhancing Justice by Reducing Implicit Bias: Strategies for Becoming a Bias Disrupter

Studies continue to show that too many Americans lack confidence in the fairness of outcomes in our judicial system, and developing research continues to demonstrate that implicit bias is often a barrier to fair and unbiased outcomes at virtually every juncture of the process. This session will provide an overview of the concept and science of implicit bias and will address how such biases manifest themselves in unintended behavior and decision-making that can produce differential treatment in the judicial system and in legal and other venues more broadly. Specific strategies to interrupt such biases will be discussed and practiced that can be adapted for use by attendees.

Mindfulness for Lawyers

Law school and the practice of law can be stress-inducing even without the added strain of the current historical moment. This session will introduce attendees to the basics of mindfulness practice, which according to the Mindfulness in Law Society "cultivates many skills and mental qualities that can be helpful to those in the legal profession, including the ability to focus and concentrate,

recognize and let go of distractions, and accept oneself and others openly and compassionately.” Resources will be provided for subsequent use by attendees.

Welcoming the Stranger: An Immigration Law Training for the Beginner

This workshop will provide a crash course for those interested in working on a pro bono basis with refugees, asylees, and unaccompanied children in immigration matters. Attorneys from Catholic Legal Immigration Network, Inc. (CLINIC) and Kids in Need of Defense (KIND) will lead a training that reviews the law in this area, the cases they typically handle, and the kind of help they need. Attendees will break into groups to work on practice scenarios.