

## **Aaron L. Nielson**

Associate Professor Law

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### **Current Professional Positions**

Associate Professor, J. Reuben Clark Law School, Brigham Young University, Provo, UT (2013-present), Member of Appointments Committee and Chair of Clerkships Committee

Co-Chair, Rulemaking Committee, American Bar Association's Section of Administrative Law & Regulatory Practice, Washington, D.C. (2015-present)

Of Counsel, Kirkland & Ellis, LLP, Washington, D.C. (2013-2014, 2015-present)

Permanent Commentator, *Notice & Comment*, Yale Journal on Regulation (2015-present)

### **Education**

Harvard Law School, J.D., *magna cum laude*, 2007

Harvard Law School Post-Graduate Research Fellowship

National Editor, Harvard Journal of Law & Public Policy

University of Cambridge Faculty of Law, LL.M., *with First Class Honors*, 2006

Elected a Bateman Scholar of Trinity Hall

University of Pennsylvania, B.A. in Economics & Political Science, *summa cum laude*, 2003

Robert Holtz Memorial Award as Most Outstanding Political Science Graduate

John Hope Franklin & Henry Louis Gates, Jr. Awards, W.E.B. Du Bois College House

### **Judicial Clerkships**

Law Clerk, Justice Samuel A. Alito, Jr., United States Supreme Court (OT 2014)

Law Clerk, Judge Janice Rogers Brown, U.S. Court of Appeals for the D.C. Circuit (2008-09)

Law Clerk, Judge Jerry E. Smith, U.S. Court of Appeals for the Fifth Circuit (2007-08)

### **Law Review Articles (Submitted)**

*Beyond Seminole Rock*, 105 GEORGETOWN LAW JOURNAL \_\_ (2017) (forthcoming)

*Strategic Immunity*, 66 EMORY LAW JOURNAL \_\_ (2016) (forthcoming)

(with Christopher Walker)

*The New Qualified Immunity*, 89 SOUTHERN CALIFORNIA LAW REVIEW 1 (2015)

(with Christopher Walker)

*Visualizing Change in Administrative Law*, 49 GEORGIA LAW REVIEW 757 (2015)

*In Defense of Formal Rulemaking*, 75 OHIO STATE LAW JOURNAL 237 (2014)

*Reflections on the End of the Federal Law Clerks Hiring Plan*,

112 MICHIGAN LAW REVIEW FIRST IMPRESSIONS 22 (2013)

*Erie as Nondelegation*, 72 OHIO STATE LAW JOURNAL 239 (2011)

*Hiding Nondelegation in Mouseholes*, 62 ADMINISTRATIVE LAW REVIEW 19 (2010)  
(with Jacob Loshin)

### **Law Review Articles (Solicited)**

*The Future of Law Clerk Hiring*, 98 MARQUETTE LAW REVIEW 181 (2014)

*The Death of the Supreme Court's Certified Question Jurisdiction*,  
59 CATHOLIC UNIVERSITY LAW REVIEW 483 (2010)

### **Other Publications**

*Developments in Administrative Law & Regulatory Practice 2014: Antitrust*,  
American Bar Association (2015) (with Marin Boney & Varnitha Siva)

*Rethinking Formal Rulemaking*, MERCATUS RESEARCH PAPER (May 2014) (peer reviewed)

*Developments in Administrative Law & Regulatory Practice 2014: Antitrust*,  
American Bar Association (2014) (with Marin Boney & Brad Masters)

*The Law Clerk Hiring Plan is Dead*, NATIONAL LAW JOURNAL (Feb. 11, 2013)

*Whither Harmonization? India's Draft Combination Regulations*,  
CPI ANTITRUST CHRONICLE (2011) (with Christine Wilson & Ellen M. Jakovic)

*An Indirect Argument for Limiting Domestic Presidential Power*,  
30 HARV. J.L. & PUB. POL'Y 727 (2007) (student book review)

*Granholt v. Heald, Good History, Good Law (and by Coincidence Good Policy Too)*,  
29 HARV. J.L. & PUB. POL'Y 743 (2006) (student comment)

*No More 'Cherry-Picking': The Real History of the Twenty-first Amendment*,  
28 HARV. J.L. & PUB. POL'Y 281 (2004) (student note)

*Economic Globalization's Two-Part Impact on Federalist Nations: An Investigation  
Into Central-Regional Dynamics*, IX SOUND POLITICKS 3 (2003) (thesis excerpt)

### **Works in Progress**

*The Gray Brief* (analysis of the role of the Solicitor General at the Supreme Court)  
*Chevron Step 1½* (with Daniel Hemel) (analyzing agency interpretation of ambiguity)

### **Research Interests**

Administrative law concepts applied in non-administrative law contexts, especially federal courts, civil procedure, and antitrust. Regulatory design and the substantive effects of constitutional, statutory, and regulatory procedure.

### **Teaching Experience**

Administrative Law (2014, 2015)

Civil Procedure (2013, 2014, 2016)

Federal Courts (2013, 2016)

## Presentations

Presenter, “Beyond *Seminole Rock*,” First Annual Administrative Law Junior Scholars Panel, Michigan State University College of Law, East Lansing, Michigan, June 2016.

Presenter, “Beyond *Seminole Rock*,” 2016 Center for the Study of the Administrative State’s Public Policy Conference on Rethinking Judicial Deference: History, Structure, and Accountability, George Mason University School of Law, Arlington, Virginia, June 2016.

Moderator, “New Life for the Congressional Review Act?,” American Bar Association Section of Administrative Law and Regulatory Practice, National Teleforum, May 2016.

Presenter, “Beyond *Seminole Rock*,” 2016 Center for the Study of the Administrative State’s Research Roundtable on Rethinking Judicial Deference: History, Structure, and Accountability, George Mason University School of Law, Arlington, Virginia, March 2016.

Presenter, “Beyond *Seminole Rock*,” 2016 Center for the Study of the Administrative State’s Research Roundtable on Revisiting Judicial Deference: History, Structure, and Accountability, George Mason University School of Law, Arlington, Virginia, March 2016.

Presenter, “Strategic Immunity,” 2016 Association of American Law Schools Annual Meeting: New Voices Program, New York City, New York, January 2016.

Presenter, “Strategic Immunity,” 2016 J. Reuben Clark Law Society, New York City, New York, January 2016.

Moderator, “The Real OIRA: Understanding the White House’s Office of Information and Regulatory Affairs,” American Bar Association Section of Administrative Law and Regulatory Practice, National Teleforum, November 2015.

Presenter, “In Defense of Formal Rulemaking,” 2015 American Bar Association Section of Administrative Law and Regulatory Practice’s Annual Administrative Law Conference, Washington, D.C., October 2015.

Presenter, “Strategic Immunity,” 2015 Rocky Mountain Junior Scholars Forum, BYU Law School, Provo, Utah, September 2015.

Presenter, “The New Qualified Immunity,” 2015 Federalist Society Faculty Conference: Work In Progress Series, Washington, D.C., January 2015.

Presenter, “The Rise and Inevitable Fall of the Federal Law Clerk Hiring Plan,” 2014 Annual Utah Appellate Court Retreat, Park City, Utah, May 2014

Presenter, “The Past and Future of Administrative Law,” 2014 Annual Utah Administrative Law Judge Conference, Salt Lake City, Utah, May 2014.

Discussant, Conference on Administrative Discretion, George Mason University School of Law, Arlington, Virginia, May 2014.

Presenter, “Future of Law Clerk Hiring,” Marquette Law Review Symposium: Judicial Assistants or Junior Judges: The Hiring, Utilization, and Influence of Law Clerks, Marquette University Law School, Milwaukee, Wisconsin, April 2014.

Presenter, “The New Qualified Immunity,” Junior Scholars Retreat, University of Utah and Brigham Young University School, Draper, Utah, April 2014.

Presenter, “In Defense of Formal Rulemaking,” 2014 Association of American Law Schools Annual Meeting: New Voices Program, New York City, New York, January 2014.

Presenter, “In Defense of Formal Rulemaking,” 2014 Federalist Society Faculty Conference: New Scholars Program, New York City, New York, January 2014.

Presenter, “Visualizing Change in Administrative Law,” 2013 Rocky Mountain Junior Scholars Forum, BYU Law School, Provo, Utah, November 2013.

Presenter, “In Defense of Formal Rulemaking,” Junior Scholars Workshop, University of Iowa College of Law, Iowa City, Iowa, August 2013.

## **Other Past Professional Experience**

Litigation Partner, Kirkland & Ellis, LLP, Washington, D.C., 2007, 2009 to 2012 (partner in 2012)

Chair, Antitrust & Trade Regulation, American Bar Association’s Section of Administrative Law & Regulatory Practice, Washington, D.C., 2013 to 2015

Member, Department & Agency Review, Romney/Ryan Transition Team, Washington, D.C., 2012

Visiting Attorney, The Church of Jesus Christ of Latter-day Saints, General Counsel, Fall 2009

Law Clerk, U.S. Attorney’s Office for the District of Arizona, Summer 2006

Law Clerk, U.S. Senate Judiciary Committee, Washington, D.C., Summer 2006

Law Clerk, U.S. Department of Justice, Office of Legal Policy, Washington, D.C., Winter 2005

Intern, Office of Counsel to the President, Washington, D.C., Summer 2005

Law Clerk, Federal Trade Commission, Office of Policy Planning, Washington, D.C., Summer 2004

Special Assistant, The Better Business Bureau of Central, Northern & Western Arizona, Phoenix, AZ Summer 2003; Summer 2002 (intern)

## **Significant Litigation Events**

*Horne v. Dep’t of Agriculture*, 133 S. Ct. 2053 (2013): obtained unanimous decision allowing raisin farmers to challenge the constitutionality of a federal marketing order

*Compucredit Corp. v. Greenwood*, 132 S. Ct. 665 (2012): secured decision upholding enforceability of arbitration clauses for claims brought under the Credit Repair Organizations Act

*PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011): obtained decision holding that the Hatch-Waxman Act preempts state-law tort claims targeting generic pharmaceutical products

*Dow AgroSciences LLC v. National Marine Fisheries Serv.*, 707 F.3d 462 (4th Cir. 2013): secured decision vacating an agency’s Biological Opinion as arbitrary and capricious

*Dow AgroSciences LLC v. National Marine Fisheries Serv.*, 637 F.3d 259 (4th Cir. 2011): obtained reversal of district court decision refusing to exercise jurisdiction

*Apotex, Inc. v. Sebelius*, 384 Fed. App’x 4 (D.C. Cir. 2010), cert. denied. (Jan. 18, 2011): intervened and defended 180-day marketing exclusivity under the Hatch-Waxman Act

*Teva Pharms. USA, Inc. v. Sebelius*, 595 F.3d 1303 (D.C. Cir. 2010): obtained pre-enforcement review and secured injunctive relief precluding FDA from denying 180-day exclusivity

*Silvious v. Chiquita Brands Int'l, Inc.*, (D.D.C 2010): secured dismissal with prejudice of removed putative representative action alleging price-fixing

## **Miscellaneous**

Conversational Tagalog (Philippines)

Security Clearance with FBI Background Check (2008)

Member of the bars of Arizona, the District of Columbia, Utah, the U.S. Supreme Court, and the U.S. Court of Appeals for the Fourth, Fifth, Sixth, and D.C. Circuits

Member of the American Bar Association.