



Call For Papers

DUE PROCESS DEFICITS IN REGULATORY ENFORCEMENT AND ADJUDICATION

Pacific Legal Foundation's Center for the Separation of Powers, The Center for Growth and Opportunity, and George Mason University's Law & Economics Center seek papers for a research roundtable on due process deficits in regulatory agencies' enforcement and adjudication practices, to be held in October 28, 2022, at the Scalia Law School.

A constellation of distinct but interrelated due process deficits has arisen as the regulatory state has grown larger and gradually supplanted courts' traditional role in resolving disputes. Among the most important of these deficits are lack of notice to affected persons, delay or denial of access to court, lack of impartial adjudicators, agency failure to respond promptly to allegations of wrongdoing, disproportionate and unfair penalties, and lack of democratic accountability. Many regulatory agencies employ practices that skirt the most basic due process protections. These deficits not only have adverse legal effects and raise serious Rule of Law concerns, they also often bring significant economic concerns from lack of predictability, inefficiencies associated with underinformed regulators, and inadequately reasoned or arbitrarily identified compliance costs.

We seek papers that address this subject from numerous legal, economic, and related perspectives, including empirical and nonempirical approaches, on topics such as:

1. What notice is adequate when the FTC applies decades-old orders to new technology?
2. What reforms should agencies make to their adjudicatory process to better ensure due process for enforcement targets?
3. What percentage of parties settle instead of challenging a complaint in an administrative adjudication?
4. There has been some analysis of FTC and SEC win rates, but how often do agencies prevail in in-house adjudication?
5. What is the motion win rate in agency adjudication? Some agencies have rules allowing for the summary judgment equivalent, but do parties ever prevail on that rule in agency adjudication?

6. What is the reversal/affirmance rate when an administrative law judge's (ALJ) ruling is appealed within the agency? Does that correlate to win-loss in front of the ALJ? For example, if an ALJ ruled against the FTC, how often did the FTC reverse?
7. What is the agency's win rate when a decision is appealed to an Article III court?
8. Compare the win rates at agencies where there's a choice between agency adjudication or federal court proceeding.
9. What does the right to a jury trial and due process of law mean for standards of review that essentially require courts to accept agency findings of fact?
10. How many investigations do the major agencies (SEC, FTC, CFPB, etc.) initiate every year? And of those investigations, how many result in settlements? How do agencies use non-public investigations and threats of either administrative or judicial actions to coerce settlements?
11. How much do agency investigations cost the companies being investigated? What are those costs compared to the (alleged) benefits to the public at large (e.g., for the FTC, fewer deceptive ads)?

Research Proposal Submission Details

Please submit a brief research proposal that describes your thesis or research question(s) and intended methodology and how your research will contribute to the legal discussion of ensuring agency practices comport with adequate due process protections.

Proposals should be submitted by May 1, 2022, to Alison Somin at asomin@pacificlegal.org. Early proposal submission is encouraged, as proposals will be reviewed on a rolling basis, and approvals will allow authors to begin work early. Submissions after May 1, 2022, may be accepted if space at the roundtable and budget permit.

Honorarium and Other Support

Authors of accepted papers will receive a \$2,500 honorarium. Authors will benefit from robust feedback on their research, including peer-review at the research roundtable and copyediting assistance for the revised paper after the roundtable. The sponsors will advise authors on securing publication in an academic journal.

In addition, papers will be published as a working paper series on one or more sponsor websites. PLF, CGO, and LEC will also provide additional outreach and marketing support for the working paper series to maximize the reach and impact of all research findings. If requested during the initial proposal period or soon thereafter, we also will try to connect potential coauthors with different legal and empirical expertise.

Research Roundtable

Completed paper drafts are due by October 1, 2022, **but need not be in polished or publishable form**. Authors will present their papers at a research roundtable co-hosted by PLF, CGO, and LEC. Each paper author will be expected to formally comment on others' papers, and a set of separate expert commentators will also be present at the research roundtable to provide critical feedback on the drafts. The roundtable is tentatively scheduled for October 28, 2022, in Arlington, Virginia, at the Antonin Scalia

Law School at George Mason University and will provide authors the opportunity to get feedback from other legal and academic experts. We will cover the cost of hotel accommodation and reasonable travel expenses to the roundtable.

Contact Information

For questions regarding the call for papers, please contact Alison Somin at asomin@pacificlegal.org.

2022				2023
May 1	October 1	October 28	December 15	March
Submission deadline for paper proposals. Proposals will be reviewed on a rolling basis. Authors are encouraged to apply early to ensure honoraria for their paper are still available.	Deadline for draft papers, to be circulated to roundtable participants.	Presentation of the papers at the roundtable.	Deadline for paper revisions and submission of final papers.	Target for copyedit review and posting of final papers online.