

JAY B KESTEN

ACADEMIC EMPLOYMENT

Florida State University College of Law

Associate Professor (with tenure) 2017 - Present

Assistant Professor 2011 – 2017

- Courses: Advanced Topics in Corporate Governance, Corporations, Corporate Finance, Corporate Law and Finance Seminar, Financial Crisis Seminar, Mergers and Acquisitions, Securities Regulation
- Committee Assignments: Academic Enrichment (2011-2012; 2015-2016), Academic Waivers (2019-present); Admissions & Recruitment (2012-2013; 2014-2015; 2017-2018; 2019-2023; 2025-present), Business Law Programs (2011-2016; 2025-present), Curriculum (2013-2014; 2018-2019), Faculty Senate (2014-2016); Judicial Clerkships (2016-2017; chair 2017-2018; 2023-present), Student Affairs (2011).
- Coach – Kaufman Memorial Securities Law Moot Court Competition (2012-2019; 2024-2025)
- Faculty Advisor – Business Law Society (student group) (2011 – 2015; 2025-present)
- Faculty Advisor – FSU Fencing Club (2011 – 2019)

Wake Forest University School of Law

Visiting Assistant Professor 2009 – 2011

Courses: Business Organizations, Securities Regulation, International Business Transactions

Wake Forest University Schools of Business

Guest Lecturer 2009

SCHOLARSHIP

Publications and Works-In-Progress:

Local Politics and the Going-Public Decision (work-in-progress, with Mityakov and Portnykh)

The Ouroboros of Shareholder Power (work-in-progress)

Third Wave Corporate Law (work-in-progress)

Principles Over Mechanics: Why Coster Failed to Fix Blasius, 27 Transactions: Tenn. J. Bus. L. ____ (forthcoming 2026, with Lucy Heady)

Blasius: A Systematic Empirical Analysis, 1 Independent L. J. ____ (forthcoming 2026, with Browne and Mauro)

Presidential Immunity: A Lesson from Corporate Law, ____ Ga. St. L. Rev. ____ (forthcoming 2026)

Corporate Governance in the Shadow of the Culture Wars (invited symposium paper), ____ Fla. St. U. Bus. Rev. ____ (forthcoming 2026)

Of Convergence and Contingency: Some Thoughts on Public Firm Fiduciary Duties, 68 Fla. L. Rev. F. 136 (2024)

- Featured on Private Law Theory Blog (July 29, 2024) (<https://www.private-law-theory.org/2024/07/29/jay-kesten-of-convergence-and-contingency-some-thoughts-on-public-firm-fiduciary-duties/>)

The Law and Economics of the Going-Public Decision, in *The Oxford Handbook of IPOs* (Douglas Cumming & Sofia Johan eds., Oxford University Press 2019)

- Featured on Lawrence Solum's Legal Theory Blog (Sep. 19, 2018) (<https://lsolum.typepad.com/legaltheory/2018/09/kesten-on-the-law-economics-of-going-public.html>)

The Uncertain Case for Appraisal Arbitrage, 52 Wake Forest L. Rev. 89 (2017)

Shareholder Political Primacy, 10 Va. L. & Bus. Rev. 161 (2016)

- Discussed in "Why corporate political spending should be a board prerogative," ProfessorBainbridge.com (May 1, 2013) (<https://www.professorbainbridge.com/professorbainbridgecom/2013/05/why-corporate-political-spending-should-be-a-board-prerogative.html>)
- Featured on Concurring Opinions (www.concurringopinions.com) (March-April 2013)

Political Uncertainty and the Market for IPOs (with Murat C. Mungan), 41 J. Corp. L. 431 (2015)

- Featured in the Securities Law Review § 1:2. Disclosure and general regulatory issues (Donald C. Langevoort ed., July 2018)

Adjudicating Corporate Auctions, 32 Yale J. on Reg. 45 (2015)

- Featured on the Columbia Law School's Blog on Corporations and the Capital Markets (July 28, 2015) (<https://clsbluesky.law.columbia.edu/2015/07/28/adjudicating-corporate-auctions/>)
- Cited by Defendants in *Kuebler v. Vectren Corp.*, 2018 WL 4214448 (S.D. Ind. Aug. 15, 2018)

Towards A Moral Agency Theory of the Shareholder Bylaw Power, 85 Temp. L. Rev. 485 (2013)

Managerial Entrenchment and Shareholder Wealth Revisited: Theory and Evidence From a Recessionary Market, 2010 B.Y.U. L. Rev. 1609 (2010)

- Cited by Plaintiffs in *Cumming v. Edens*, 2019 WL 3305214 (Del. Ch. Jul. 17, 2019)

The Story of Francis v. United Jersey Bank: When A Good Story Makes Bad Law, in *CORPORATE LAW STORIES* (J. Mark Ramseyer ed., Foundation Press 2009) (with Reinier Kraakman)

- Excerpted at length in the leading Business Associations casebook (Allen et al., *Commentary and Cases on the Law of Business Organizations*, 4th ed (2012); 5th ed. (2016); 6th ed. (2021))
- Discussed in “Comment from the Student Archives - the Real Housewives Make an Appearance in Business Associations” Business Law Prof Blog (Oct. 16, 2014) (https://lawprofessors.typepad.com/business_law/2014/10/comment-from-the-student-archives-the-real-hou-+3981\\?sewives-make-an-appearance-in-business-associations.html)

Presentations and Conferences:

Corporate Governance in the Shadow of the Culture Wars, Behavioral Perspectives on Business Law (Tallahassee, FL – March 2026).

The Illusion of Objectivity: Anti-Gang Political Opinions in Humanitarian Protection Claims (Mentor/Discussant), Southeastern Association of Laws Schools Annual Conference (Ft. Lauderdale, FL – July 2024)

Local Politics and the Going-Public Decision, Florida State University College of Law Faculty Summer Workshop Series (Tallahassee, FL – June 2024)

Tom C.W. Lin’s *The Capitalist and the Activist: Corporate Social Activism and the New Business of Change* (Author-Meets-Reader Discussant), National Business Law Scholars Conference (Norman, OK – June 2022)

Shareholder Activism and the Hollowing of Public Equity Markets, National Business Law Scholars Conference (Virtual – June 2021)

Initial Public Offerings (Moderator/Discussant), National Business Law Scholars Conference (Virtual – June 2021)

Shareholder Activism and Disappearance of Initial Public Offerings, Law and Entrepreneurship Association Annual Conference (featured paper) (Chapel Hill, NC – March 2020; cancelled due to COVID-19)

The New Political Economy of Corporations, Florida State University College of Law Faculty Summer Workshop Series (Tallahassee, FL – June 2019)

The Law and Economics of the Going-Public Decision, National Business Law Scholars Conference (Salt Lake City, UT – June 2017)

Exploring Corporate Governance (Moderator/Discussant), National Business Law Scholars Conference (Salt Lake City, UT – June 2017)

Regulating Appraisal Arbitrage, National Business Law Scholars Conference (Chicago, IL - June 2016)

Risk Regulation (Moderator/Discussant), National Business Law Scholars Conference (Chicago, IL – June 2016)

IPO Cycles, Innovation and Shareholder Activism, Florida State University College of Law Faculty Summer Workshop Series (Tallahassee, FL – June 2016).

Regulating Appraisal Arbitrage, University of Florida Law School Faculty Workshop Series (Gainesville, FL – April 2016)

Political Uncertainty and the Market for IPOs, Canadian Law and Economics Association Conference (Toronto, Canada – September 2015)

Political Uncertainty and the Market for IPOs, National Business Law Scholars Conference (Newark, NJ – June 2015).

Shareholder Political Primacy, National Business Law Scholars Conference (Newark, NJ – June 2015).

Exploring Corporate Governance (Moderator/Discussant), National Business Law Scholars Conference (Newark, NJ – June 2015).

Pathologies of the Modern Appraisal Remedy, Florida State University College of Law Faculty Summer Workshop Series (Tallahassee, FL – June 2015).

Adjudicating Corporate Auctions, Canadian Law and Economics Association Conference (Toronto, Canada – September 2014)

Adjudicating Corporate Auctions, Southeastern Association of Law Schools Annual Conference (Amelia Island, FL - August 2014).

Adjudicating Corporate Auctions, National Business Law Scholars Conference (Los Angeles, CA - June 2014).

Emerging Issues in Business Finance (Moderator/Discussant), National Business Law Scholars Conference (Los Angeles, CA - June 2014).

Adjudicating Corporate Auctions, Florida State University College of Law Junior Faculty Workshop Series (Tallahassee, FL - February 2014).

Adjudicating Corporate Auctions, Emory University Law School (Atlanta, GA - November 2013).

Three Theories of Shareholder-Regulated Corporate Political Activity, Florida State University College of Law Faculty Summer Workshop Series (Tallahassee, FL – June 2012).

Corporate Governance and Corporate Volatility, Florida State University College of Law Faculty Summer Workshop Series (Tallahassee, FL – June 2012).

A Moral Agency Theory of the Shareholder Bylaw Power, Florida State University College of Law Junior Faculty Workshop Series (Tallahassee, FL - February 2012).

Managerial Entrenchment and Shareholder Wealth Revisited: Theory and Evidence From a Recessionary Market, Wake Forest University School of Law Faculty Workshop Series (Winston-Salem, NC - November 2010).

EDITORIAL OVERSIGHT / PROFESSIONAL SERVICE

Invited Academic Peer Reviewer:

Yale University Press, Oxford University Press, Carolina Academic Press, Aspen Publishing, International Journal of Corporate Governance, American Journal of Business Law

National Committee Work:

AALS Section on Transactional Law & Skills, Executive Committee (2019-present)

University-Wide Committee Work:

Graduate Policy Committee (2016-2019)

MEDIA APPEARANCES AND BRIEFS AMICUS CURIAE:

UAV CEO Pledges ‘The Future Is Bright’, THE PORT ST. JOE STAR (Mar. 3, 2025)
(<https://gulfcounty.news/2025/03/03/uav-ceo-pledges-the-future-is-bright/>)

Lawsuits involving DOGE and the Trump administration that corporate America may want to watch, BUSINESS INSIDER (Feb. 28, 2025)
(<https://www.businessinsider.com/doge-trump-admin-related-lawsuits-biz-world-may-want-watch-2025-2>)

Trump Family’s New DeFi Project Faces Scrutiny, BE(IN)CRYPTO (Sep. 16, 2024)
(<https://beincrypto.com/donald-trump-launch-date-new-defi-project/>)

Trump-Linked Crypto Venture Uses Web Privacy Service Linked to Russian Hackers, NEWSWEEK (Sep. 12, 2024) (<https://www.newsweek.com/donald-trump-crypto-world-liberty-financial-scam-1949738>)

Poll: Pennsylvanians from both sides strongly disapprove government officials buying stocks, PITTSBURGH POST-GAZETTE (Aug. 8, 2024) (<https://www.post-gazette.com/business/money/2024/08/08/swing-state-voters-government-stock-trades/stories/202408090018>)

When A Spinoff Act Like a Share Buyback, YAHOO FINANCE (Mar. 22, 2024)
(<https://finance.yahoo.com/news/bosch-revx-rolls-available-spot-150000313.html>)

Surveying the Aftermath: 1 Month After An Ohio Train Disaster, LAW360 (Mar 3, 2023)
(<https://www.law360.com/articles/1581960/surveying-the-aftermath-1-month-after-an-ohio-train-disaster>)

Space Coast rocket startup Vaya replaces CEO under SEC investigation, ORLANDO BUSINESS JOURNAL (Jan. 27, 2023)
(<https://www.bizjournals.com/orlando/inno/stories/news/2023/01/27/florida-2023-ceo-space-tech-sec-lawsuit-rocket.html>)

As layoffs loom, TuSimple CEO protected by \$15M in severance cash, FREIGHTWAVES (Dec. 20, 2022) (<https://www.freightwaves.com/news/as-layoffs-loom-tusimple-ceo-protected-by-15m-in-severance-cash>)

Daily stock sales cut short Nikola CEO’s tenure, FREIGHTWAVES (Nov. 8, 2022)
(<https://www.freightwaves.com/news/exclusive-daily-stock-sales-cut-short-nikola-ceos-tenure>)

Takin’ Care of Business Podcast, Episode 12 (Sep. 8, 2022)
(<https://podcasters.spotify.com/pod/show/fsulaw/episodes/Takin-Care-of-Business---Episode-12---Jay-Kesten-e1ni4uk>)

Nikola’s proxy pursuit to raise share count gets harder, FREIGHTWAVES (Jul. 22, 2022)
(<https://www.freightwaves.com/news/truck-tech-nikolas-crucible-edition>)

- Featured on FWNOW TV (July 22, 2022) (<https://youtu.be/2n3fA7gxBlS>)

Nikola falls short again in proxy fight to increase share count, FREIGHTWAVES (Jul. 18, 2022) (<https://www.freightwaves.com/news/nikola-falls-short-again-in-bid-to-increase-share-count>)

Indicted Nikola founder votes against proposal that could dilute his stake, FREIGHTWAVES (June 2, 2022) (<https://www.freightwaves.com/news/nikola-investors-balk-at-raising-share-count>)

Electric truck startup Atlys nears public listing with \$32.6M crowdfunded raise, FREIGHTWAVES, (May 18, 2022) (<https://www.freightwaves.com/news/electric-work-truck-startup-taps-small-investors-for-32-6m>)

FSU Professors Weigh In: Under Musk, Where Does Twitter Go From Here?, FSUNews (Apr. 27, 2022) (<https://www.fsunews.com/story/news/2022/04/27/fsu-professors-weigh-in-under-musk-where-does-twitter-go-here/9545327002/>)

Self-driving startup Aurora Innovation trades 14.67% lower in public trading debut, FREIGHTWAVES (Nov. 2, 2021) (<https://www.freightwaves.com/news/spac-shareholders-approve-public-debut-for-self-driving-startup-aurora-innovation>)

Nikola Restates SPAC Stock Warrants Following new SEC Guidance, FREIGHTWAVES (May 5, 2021) (<https://www.freightwaves.com/news/nikola-restates-spac-stock-warrants-following-new-sec-guidance>)

Lyft's Fast-Slumping Stock Quickly Leads to Investor Lawsuits, BLOOMBERG NEWS (Apr. 20, 2019) (<https://www.bloomberg.com/news/articles/2019-04-20/lyft-s-fast-slumping-stock-quickly-leads-to-investor-lawsuits>)

Uber, Lyft, Other Tech Unicorn IPOs Dotted With Legal Risks, BLOOMBERG LAW (Jan. 24, 2019) (<https://news.bloomberglaw.com/business-and-practice/uber-lyft-other-tech-unicorn-ipos-dotted-with-legal-risks-1>)

Brief Amici Curiae of Corporate Law Professors, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (signatory – filed Oct. 30, 2017)

Selected Media Coverage of Brief:

- *Using Free Speech to Trump Civil Rights*, THE ATLANTIC (Nov. 30, 2017) (<https://www.theatlantic.com/politics/archive/2017/11/whats-new-about-sessions-defense-of-discrimination/547043/>);
- *Why the 'Gay Wedding Cake' Supreme Court Case is Really About Corporate Governance*, YAHOO FINANCE (Dec. 4, 2017) (<https://finance.yahoo.com/news/gay-wedding-cake-supreme-court-case-really-corporate-governance-142719998.html>);
- *Supreme Court Weighs 'Wedding Cake' Case*, THE TAKE ON NECN (Dec. 11, 2017) (https://www.necn.com/on-air/as-seen-on/WEB-Take-B-Block_NECN-463508343.html).

Feds Loosen Requirements on Selling AAF Bonds, But Railroad Still Faces Jittery Market, Skeptical Investors, TCPALM (Feb. 26, 2016) (<http://www.tcpalm.com/news/shaping-our-future/all-aboard-florida/feds-loosen-requirements-on-selling-aaf-bonds-but-railroad-still-faces-jittery-markets-skeptical-i-2-370318401.html>)

Columbia Blue Sky Blog on Corporations and the Capital Markets, *Adjudicating Corporate Auctions* (July 28, 2015) (<http://clsbluesky.law.columbia.edu/2015/07/28/adjudicating-corporate-auctions/>)

Concurring Opinions (www.concurringopinions.com), Invited Guest Blogger (March-April 2013).

Between Banks and Venture Capital, Some Start-ups Look to a Pay-As-You-Go Model, WASH. POST (Apr. 5, 2012).

STUDENT SUPERVISION:

Published Papers/Contest Winners

Grant Haas, COVID-19's Careless Whisper: The Timely Resurgence of the Caremark Standard, 21 Fla. St. U. Bus. Rev. 1 (2022)

Eisele Ibarra, Tighten the Line for Caremark Claims, 20 Fla. St. U. Bus. Rev. 115 (2021)

Daniel Buchholz, Eliminating Fiduciary Duties in Delaware LLCs: A Process Focused Approach to the Analysis of Waiver Provisions, 16 Fla. St. U. Bus. Rev. 153 (2017)

Barron Dickinson, Non-Lawyer Ownership of Law Firms in Florida: Issues with Corporate Governance, 16 Fla. St. U. Bus. Rev. 99 (2017)

Zachary L. Pechter, The Case for A Uniform Definition of A Leveraged Loan, 43 Fla. St. U. L. Rev. 1409 (2016)

Taylor G. Sachs, Loyalty & Cannabis: Navigating Fiduciary Duties in A Budding Industry, 15 Fla. St. U. Bus. Rev. 99 (2016)

Eli DuBosar, Separate CEO and Chairman Roles: A Biennial Determination Shareholders Should Be Empowered to Make, 13 Fla. St. U. Bus. Rev. 157 (2014)

P. Alexander Quimby, Addressing Corporate Short-Termism Through Loyalty Shares, 40 Fla. St. U. L. Rev. 389 (2013)

Charles Abrams, FASB's Failure to Regulate Off-Balance Sheet Special Purpose Entities and the Downfall of Securitization 12 Asper Rev. Int'l Bus. & Trade L. 39 (2012)

Ricky Hearn, How New Swap Regulations Mandated by the Dodd-Frank Act Could Help Stabilize the Repo Market, Winner of the James E. Beckly Student Writing Competition, Public Investors Arbitration Bar Association (2012)

Jason P. Rudderman, Major Violations for the NCAA: How the NCAA Can Apply the Dodd-Frank Act to Reform Its Own Corporate Governance Scheme, 23 Marq. Sports L. Rev. 103 (2012)

Unpublished Student Notes and Directed Studies

Zachary Fine, [Untitled – Tokenized Real Estate Transactions] (2025)

Francesca Cuttitta, The Mission: Determine the Extent of the Mission Critical Standard (2024)

Kevin Peter, Corporate Compensation Conundrum: Empowering Shareholders Instead of Judicial Interference (2024)

Sophie Hecker, Corporation Shareholder Clout is Up for Grabs: Analysis of the Current Circuit Split on Corporation Forum-Selection Clauses, Derivative Actions, and the Interconnection with the Exchange Act (2023)

Brittney Downing, Does the Sarbanes-Oxley Act's Antiretaliation Provision Require a Whistleblower-employee to Prove Retaliatory Intent? (2023)

Eleonora Silaeva, Mandatory Quotas Negatively Impact Corporate Boards and Shareholders (2022)

Victoria Scotti, Corporate Investigations: How the Current Process Can be Improved by Government Involvement (2021)

Maryana Curci, Special Purpose Acquisition Corporations: A Stroke of Genius or a Short-Lived Phenomenon? (2021)

Samantha Kunin, The Role of the SEC in the Courtroom: Navigating ESG and Shareholder Proposals (2021)

Daniel Kerwin, Third-Party Financing of Commercial Litigation & Its Implications (2020)

Amanda Lowe, Are More Regulations Needed? An Overview of the Recent Amendments to the Federal Proxy Rules (2020)

Kelly Wilson, The Extraterritorial Scope of Section 10(b) of the Securities Exchange Act of 1934: Risking International Comity in a Globalized Market (2019)

R. Joel Todd, Resolving the Section 14(e) Liability Standard Circuit Split (2018)

Daniel Buchholz, Limited Liability Companies and Voluntary Creditors: Reexamining the Abolishment of Veil Piercing (2017)

Chris Seifter, Pushing Tippee Liability One Step Further After *Salman v. United States* (2016)

Jeremy Cohen, Large-Scale Municipal Finance Disruption: Are We Closer Than We Think and What Can We Do About It? (2013)

Tanya Lambrechts, Civil Shaming by Settlement Admissions: The SEC's New Settlement Policy Bruises More Than Corporate Ego (2013)

Internships/Externships Supervised

R. Joel Todd, Greenberg Traurig [was to be Securities and Exchange Commission, but interrupted by government shutdown] (2019)

Nicola Pappas, Digital Risk LLC (2015)

Zachary Pechter, Securities and Exchange Commission (2015)

Jonathan Martin, Securities and Exchange Commission (2014)

EDUCATION

Harvard Law School
Master of Laws

University of British Columbia

Bachelor of Laws		2002
▪ <i>Awards: Bull, Housser & Tupper Prize in Business Law (2002), Panvini Scholarship in Law (2001, 2002), Graduating Class of Law '53 Scholarship (2001)</i>		
▪ <i>Canadian National Corporate/Securities Moot – First Place</i>		2001
Bachelor of Arts (History)		1999
▪ <i>Class 2 Honours -- Emphasis on Medieval and European History</i>		

PRIOR LEGAL EXPERIENCE

Cooley Godward Kronish LLP Boston, MA	<i>Litigation Associate</i>	2007 – 2008
Seyfarth Shaw LLP Boston, MA	<i>Litigation Associate</i>	2005 – 2007
Testa, Hurwitz & Thibault, LLP Boston, MA	<i>Litigation Associate</i> <i>Summer Associate</i>	2003 – 2005 2001
▪ Practice focused primarily on intra- and inter-corporate and securities cases, including securities fraud class actions, breach of fiduciary duty, corporate waste, fraudulent transfer claims, and complex contractual disputes.		
▪ Named “Rising Star” in the areas of corporate and securities litigation by Massachusetts Lawyers Weekly (2006), based on a survey of peers.		
Supreme Court of British Columbia Vancouver, British Columbia, Canada	<i>Law Clerk</i>	2002 – 2003

MEMBERSHIPS

Bar Admissions: Massachusetts (2003); District of Massachusetts (2004)