

**MARK SEIDENFELD
CURRICULUM VITA**

Florida State University
College of Law
Tallahassee, FL 32306

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EDUCATION:

J.D., **Stanford Law School**, 1983 (Order of the Coif; Senior Articles Editor, Stanford Law Review)

M.A., **Brandeis University**, Theoretical Physics, 1979

B.A., **Reed College**, 1975 (Phi Beta Kappa)

LEGAL WORK EXPERIENCE:

Professor, **Florida State University College of Law** (Patricia A. Dore Professor of Administrative Law; 2002-present; Full Prof. 1997-2002; Assoc. Prof. 1992-1997; Ass't. Prof. 1987-1992)

Visiting Scholar, **University of Minnesota Law School** (spring 1994)

Visiting Professor, **William Mitchell College of Law** (1991-1992)

Assistant Counsel, **New York State Public Service Commission** (1984-1987)

Judicial Clerk, **The Honorable Patricia M. Wald**, United States Court of Appeals for the D.C. Circuit (1983-1984)

Summer Clerk, **Morrison & Foerster**, San Francisco, CA (1983)

Summer Clerk, **Wickwire, Lewis, Goldmark & Schorr**, Seattle, WA (1982)

Summer Clerk, **Sutherland, Asbill & Brennan**, Washington, DC (1981)

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OTHER WORK EXPERIENCE:

Research Physicist & Engineer, **Intel Corp.**, Aloha, OR (1978-1980) (received patent for high speed, low power computer chip technology on which Intel built the 80286 microprocessor)

Instructor of Physics, **Brandeis University** (1975-1978)

BOOKS:

MARK SEIDENFELD, MICROECONOMIC PREDICATES TO LAW AND ECONOMICS (Anderson Publishing Co. 1996)

ARTICLES:

Mark Seidenfeld, *The Bounds of Congress's Spending Power*, ___ Ariz. L. Rev. ___ (forthcoming, 2019)

Mark Seidenfeld, *Revisiting Congressional Delegation of Interpretive Primacy as Foundation for Chevron Deference*, 24 SUP. CT. ECON. REV. 3 (2018) (invited paper for Searle Roundtable on "Judicial Review of Regulatory Evidence").

Mark Seidenfeld, *The Long Shadow of Judicial Review*, 32 J. LAND USE & ENV. L. 579 (2017) (invited paper for Symposium on "Environmental Law without Courts")

Mark Seidenfeld & Allie Akre, *Standing in the Wake of Statutes*, 57 ARIZ. L. REV. 745 (2015)

Mark Seidenfeld, *Tax Credits on Federal Exchanges: Lessons from the Legislative Process Failure Theory of Statutory Interpretation*, MINN. L. REV. HEADNOTES, available at http://www.minnesotalawreview.org/wp-content/uploads/2015/02/Seidenfeld_1fmt.pdf (Feb. 24, 2015)

Mark Seidenfeld & Murat Mungan, *Duress as Rent Seeking*, 99 MINN. L. REV. 1423 (2015)

Mark Seidenfeld, *A Process Failure Theory of Statutory Interpretation*, 56 WM. & MARY L. REV. 467 (2014)

Mark Seidenfeld & Joshua Hawkes, *A Positive Defense of Administrative Preemption*, 22 GEO. MASON L. REV. 63 (2014)

Mark Seidenfeld, *Foreword to the Annual Review of Administrative Law: The Role of Politics in a Deliberative Administrative State*, 81 GEO. WASH. L. REV. 1397 (2013)

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Mark Seidenfeld, *The Irrelevance of Politics for Arbitrary and Capricious Review*, 90 WASH. U. L. REV. 141 (2012)

Mark Seidenfeld, *Substituting Substantive for Procedural Review of Guidance Documents*, 90 TEX. L. REV. 331 (2011)

Mark Seidenfeld, *Chevron's Foundation*, 86 NOTRE DAME L. REV. 273 (2011)

Mark Seidenfeld, *Who Decides Who Decides: Federal Regulatory Preemption of State Tort Law*, 65 NYU ANN. SURVEY AM. L. 611 (2010) (invited paper)

Mark Seidenfeld, *Why Agencies Act: A Reassessment of the Ossification Critique of Judicial Review*, 70 OHIO ST. L.J.251 (2009)

Brian Galle & Mark Seidenfeld, *Administrative Law's Federalism: Preemption, Delegation and Agencies at the Edge of Federal Power*, 57 DUKE L.J.1933 (2008) (competitively chosen paper for a symposium).

Mark Seidenfeld, *In Search of Robin Hood: Suggested Legislative Responses to Kelo*, 23 J. LAND USE & ENVTL. L. 305 (2008)

Mark Seidenfeld, *The Quixotic Quest for a "Unified" Theory of the Administrative State*, ISSUES IN LEGAL SCHOLARSHIP: THE REFORMATION OF AMERICAN ADMINISTRATIVE LAW available at <http://www.bepress.com/ils/iss6/> (2005)

Mark Seidenfeld & Janna Satz Nugent, *The Friendship of the People: Citizen Participation in Environmental Enforcement*, 73 GEO. WASH. L. REV. 269 (2005)

Mark Seidenfeld, *Pyrrhic Political Penalties: Why the Public Would Lose Under the "Penalty Default Canon"*, 72 GEO. WASH. L. REV. 724 (2004)

Mark Seidenfeld, *Cognitive Loafing, Social Conformity, and Judicial Review of Agency Rulemaking*, 87 CORNELL L. REV. 486 (2002) (invited paper)

Mark Seidenfeld, *The Psychology of Accountability and Political Review of Agency Rules*, 51 DUKE L.J. 1059 (2001) (invited paper)

Mark Seidenfeld, *An Apology for Administrative Law in A Contracting State*, 28 FLA. ST. U. L. REV. 215 (2000) (invited paper)

Mark Seidenfeld & Jim Rossi, *The False Promise of The New Nondelegation Doctrine*, 76 NOTRE DAME L. REV. 1 (2000)

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Mark Seidenfeld, *Empowering Stakeholders: Limits on Collaboration as the Basis for Flexible Regulation*, 41 WM. & MARY L. REV. 411 (2000)

Mark Seidenfeld, *Bending the Rules: Flexible Regulation and Constraints on Agency Discretion*: 51 ADMIN. L. REV. 429 (1999)

Mark Seidenfeld, *Hard Look Review in a World of Techno-Bureaucratic Decisionmaking: A Reply to Professor McGarity*, 75 TEX. L. REV. 559 (1997)

Mark Seidenfeld, *Playing Games with the Timing of Judicial Review: An Evaluation of Proposals to Restrict Pre-Enforcement Review of Agency Rules*, 58 OHIO ST. L.J. 85 (1997)

Mark Seidenfeld, *Demystifying Deossification: Rethinking Recent Proposals to Modify Judicial Review of Notice and Comment Rulemaking*, 75 TEX. L. REV. 483 (1997)

Mark Seidenfeld, *A Big Picture Approach to Presidential Influence of Agency Policy Making*, 80 IOWA L. REV. 1 (1994)

Mark Seidenfeld, *A Syncopated Chevron: Emphasizing Reasoned Decision-Making in Reviewing Agency Interpretations of Statutes* 73 TEX. L. REV. 83 (1994)

Mark Seidenfeld, *A Civic Republican Justification for the Bureaucratic State*, 105 HARV. L. REV. 1511 (1992)

Mark Seidenfeld, *Some Jurisprudential Perspectives on Employment Sex Discrimination Law and Comparable Worth*, 21 RUTGERS L.J. 269 (1990)

Mark Seidenfeld, Note, *Sex-Based Wage Discrimination Under the Title VII Disparate Impact Doctrine*, 34 STAN. L. REV. 1083 (1982)

BOOK CHAPTERS & OTHER SHORT PUBLICATIONS:

Mark Seidenfeld, *A Process Based Approach to Presidential Exit*, 67 DUKE L.J. 1775 (2018) (invited comment for symposium on “Regulatory Exit”)

Murat Mungan & Mark Seidenfeld, *Ex-Ante Investments to Make Threats Credible*, 23 SUP. CT. ECON. REV. 341 (2016)

Mark Seidenfeld, *The Place of Permits in the Quiver of Administrative Action*, JOTWELL: ADMINISTRATIVE LAW (April 9, 2015) available at: <http://adlaw.jotwell.com/>

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Mark Seidenfeld, *The Role of Agencies in Private Regulatory Enforcement*, JOTWELL: ADMINISTRATIVE LAW, (April 16, 2014) available at <http://adlaw.jotwell.com>.

Mark Seidenfeld, *Courts Should Ensure a Deliberative and Transparent Administrative State*, Liberty Forum, available at <http://www.libertylawsite.org/liberty-forum/courts-should-ensure-a-deliberative-and-transparent-administrative-state/> (Aug. 1, 2013)

Mark Seidenfeld, *Strategic Interactions between Administrative Agencies and the White House: A Welcome Look into the Black Box of the Executive Branch*, JOTWELL: ADMINISTRATIVE LAW, (March 6, 2013) available at <http://adlaw.jotwell.com>

Mark Seidenfeld, *In Praise of a Comparativist Rubrik for Administrative Law*, JOTWELL, ADMINISTRATIVE LAW, available at <http://adlaw.jotwell.com>, (March 21, 2012).

Brian Galle & Mark Seidenfeld, *Preemption and Federal Administrative Law*, 34 ADMIN. & REG. L. NEWS, Winter 2009 at 5

Mark Seidenfeld, Jim Rossi and Keith Rizzardi, *Judicial Review*, in RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW (J. Lubbers, ed., 2004) (book chapter)

Elizabeth Magill & Mark Seidenfeld, *Judicial Review*, in RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW (J. Lubbers, ed., 2003) (book chapter)

William S. Jordan, III, Jim Rossi & Mark Seidenfeld, *Judicial Review*, in RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW (J. Lubbers, ed., 2002) (book chapter)

William S. Jordan, III & Mark Seidenfeld, *Judicial Review*, in RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW (J. Lubbers, ed., 2001) (book chapter)

Mark Seidenfeld, *Rulemaking*, in RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW (J. Lubbers, ed. 2000) (book chapter)

Mark Seidenfeld, *The Challenge of Teaching Administrative Law*, 38 BRANDEIS L.J. 293 (2000) (invited essay)

Mark Seidenfeld, *Requirements for Administrative Rulemaking*, 27 FLA. ST. U.L. REV. 533 (2000) (chart describing federal rulemaking requirements)

PRESENTATIONS:

A Process Based Approach to Presidential Exit, Symposium on Regulatory Exit, Duke Law School (February, 2018)

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Chevron's Foundation: Congressional Delegation of Interpretive Primacy, Federalist Society Teleforum (June 2017).

The *Chevron* Doctrine: Past, Present & Future, 2017 Advanced Topics in Administrative, Environmental & Governmental Law, Florida Bar CLE Committee, Tallahassee, FL (April 2017)

Unorthodox Rulemaking in Federal Administrative Law, 2017 Advanced Topics in Administrative, Environmental & Governmental Law, Florida Bar CLE Committee Tallahassee, FL (April 2017)

New Faces in Administrative Law, Panel of Junior and Senior Scholars, Annual Meeting of the AALS, New York, NY (January 2017)

The Administrative State in American Deliberative Democracy, Faculty Workshop, Antonin Scalia Law School, Arlington, VA (January 2017)

Revisiting Congressional Delegation of Interpretive Primacy as Foundation for Chevron Deference, Searle Roundtable on Judicial Review of Regulatory Evidence, Antonin Scalia Law School, Arlington VA (Nov. 2016)

The Long Shadow of Judicial Review, Symposium on Environmental Law without Courts, FSU College of Law, Tallahassee, FL (Oct. 2016)

Guidance Documents in Federal Administrative Law, 2016 Advanced Topics in Administrative, Environmental & Governmental Law, Florida Bar CLE Committee Tallahassee, FL (April 2016)

New Faces in Administrative Law, Panel of Junior and Senior Scholars, Annual Meeting of the AALS, New York, NY (January 2016)

Judicial Review of Federal Rules, CLE, Administrative and Environmental Law Section of the Florida Bar CLE, Tallahassee, FL (April 2015)

Some Musings about Guidance Documents, Annual Meeting of the ABA Section on Administrative and Regulatory Law, Washington DC (October 2014)

A Process Failure Theory of Statutory Interpretation, Faculty Workshop, Walter F. George School of Law, Mercer University, Macon, GA (March 2014)

New Faces in Administrative Law, Panel of Junior and Senior Scholars, Annual Meeting of the AALS, New York, NY (January 2014)

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Step Two of *Chevron* in the Federal Courts of Appeal, Administrative Law Discussion Forum, University of Louisville, Louisville KY (December 2013)

Implications of National Federation of Independent Business v. Sebelius, Florida Health Care Reform: Legal and Ethical Questions About Where We Go from Here, Tallahassee, FL (February 2013)

New Faces in Administrative Law, Panel of Junior and Senior Scholars, Annual Meeting of the AALS, New Orleans, LA (January 2013)

The Role of Politics in a Deliberative Administrative State, Annual Meeting of the ABA Section on Administrative and Regulatory Law, Washington DC (October 2012)

The Irrelevance of Politics for Arbitrary and Capricious Review, Faculty workshop, Loyola (LA) Law School (January 2012)

The Irrelevance of Politics for Arbitrary and Capricious Review, Faculty workshop, Emory Law School (January 2012)

The Legal Implications of Supreme Court Review of the Patient Protection and Affordable Care Act, National Conference of State Legislatures, Tampa FL (November 2011)

Chevron's Foundation, Faculty workshop at University of Tulsa College of Law (October 2009)

Who Decides Who Decides: Federal Regulatory Preemption of State Tort Law, Faculty workshop at University of Richmond School of Law (October 2009)

Who Decides Who Decides: An Institutional Analysis of Regulatory Preemption of Tort Law, Symposium on Preemption of Tort Law, NYU Law School (February, 2009)

Administrative Law's Federalism, Symposium on Federalism and Administrative Law, Duke Law School (March, 2008)

Why Agencies Act?, Faculty workshop at University of Missouri School of Law (October, 2007)

A Review of Federal Administrative Law, State and Federal Government Administrative Practice Certification Review Course, Florida Bar, Administrative Practice, Environmental and Land Use, and Government Lawyers Sections (August, 2007).

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PAGE EIGHT

A Qualified Defense of Kelo, Florida State University Devoe L. Moore Center, Symposium on “Takings: The Uses and Abuses of Eminent Domain and Land Use Regulation” (April, 2007)

Overview of Federal Administrative Law, CLE conference on Administrative Law, Florida Bar, Government Lawyers Section (April 2007)

Agency Decisions Whether to Regulate, Faculty Workshop, Southern Methodist University (October, 2006)

Comments on Common Law Remedies and Public Law Enforcement, “Symposium on the Law and Policy of Ecosystem Services,” at Florida State University College of Law, (April, 2006)

A Qualified Defense of Kelo: An Economic Analysis of Use of Eminent Domain to Transfer Property from One Private Entity to Another, “Forum on Eminent Domain in Florida after *Kelo v City of New London* - Property Rights vs. Community Development,” Florida State University College of Law (November, 2005)

Agency Decisions to Act, conference on “Administrative Law and Process in the U.S. and Abroad: Cross-Disciplinary Perspectives,” University of San Diego School of Law and the University of California San Diego Department of Political Science and Graduate School of International Relations and Pacific Studies (January, 2005)

Agency Decisions to Act, Symposium on Behavioral Law & Economics, Florida State University College of Law (March, 2004)

Legislative Oversight of Administrative Agencies, (Panel Moderator) AALS Annual Meeting, Atlanta (January, 2004)

Citizen Participation in Environmental Enforcement, Faculty Workshop, American University Law School (November, 2003)

An Overview of Federal Administrative Law and Practice, CLE Program, Florida Bar Section on Administrative Law (June, 2003)

A Federal Perspective on Administrative Law, Pat Dore Conference on Florida Administrative Law, Florida Bar Section on Administrative Law (October, 2002)

Recent Developments in Judicial Review, 2002 Administrative Law Conference, ABA Section on Administrative Law and Regulatory Practice (October, 2002)

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Microeconomics as a Means of Evaluating Legal Rules, Annual Education Meeting Florida Circuit Judges Conference (September, 2002.)

Making Sense of *Mead*, Fall Meeting of the ABA Section on Administrative Law and Regulatory Practice (November, 2001)

Cognitive Loafing, Social Conformity, and Judicial Review of Agency Rulemaking, Faculty Workshop, University of San Diego Law School (April, 2001)

Expert Group Decisionmaking and Judicial Review, Symposium at Cornell Law School on "Getting Beyond Cynicism: New Theories of the Regulatory State" (March, 2001)

The Psychology of Accountability and Political Review of Agency Rules, Duke Law School Administrative Law Conference on "Politics and Agency Rulemaking" (March, 2001)

A Coherent Approach to Less than Informal Rulemaking, Administrative Law Section of the AALS Annual Meeting (January, 2001)

Interest Group Dynamics and Collaborative Environmental Regulation, Environmental Workshop, Environmental and Natural Resources Law and Policy Program, Stanford Law School (March, 2000)

Comments on "The Contracting State," an invited response to Jody Freeman at the FSU College of Law Symposium on "Regulatory Theory and Administrative Law" (February, 2000)

Recent Developments on Rulemaking, 1999 Administrative Law Conference, ABA Section on Administrative Law and Regulatory Practice (October, 1999)

Limits on Collaboration as the Basis for Flexible Regulation, Invited Paper presented at the Southeast American Association of Law Schools Conference (July, 1999)

Demystifying Deossification: The Flight from Hard Look Review, Faculty Workshop, University of Florida College of Law (September, 1996)

A Syncopated Chevron, Invited Paper presented at the Administrative Law Section of the AALS Annual Meeting (January, 1994)

Reasoned Decision-Making and Judicial Review of Agency Statutory Interpretation, Faculty Workshop at Florida State University College of Law (March, 1993)

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Presidential Control of Agency Policy, Legal Studies Seminar at Florida State University
College of Law (October, 1992)

Presidential Review of Agency Rulemaking, Faculty Workshop at William Mitchell
College of Law (March, 1992)

HONORS & AWARDS:

Teaching Incentive Program Award, Florida State University-wide award for excellence in
teaching (1996)

COURSES TAUGHT:

Administrative Law (1987 - present)

Administrative Law Seminar (2001 - 2002)

Antitrust (1990)

Constitutional Law I (Powers) (1991, 1996 - present)

Constitutional Law II (Liberties) (1992, 2015)

Contracts II (Remedies, Conditions and Defenses) (2008 - 2010)

Economic Regulation of Business (1991, 1993, 1996-98)

Energy Law (2016)

Energy Law Seminar (2011)

Environmental Law (1992 - 2002)

Federal Indian Law (1999)

Health Care Law & Policy (2014)

Law & Economics (1988-92, 1995, 1997, 2003, 2007-08, 2017)

Legislation (2004)

Legislation and Regulation – An Introduction (2011 – present)

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Mass Media Law (1988-1991, 1993, 1995)

Regulation of Utilities (1988-89)

Telecommunications Law (2003 – 2005, 2009)

SERVICE:

Chair, ABA Section of Administrative Law and Regulatory Practice, Committee on Judicial Review (2000 - 2004)

Vice Chair, ABA Section of Administrative Law and Regulatory Practice, Committee on Rulemaking (1997 - 1999)

Member, ABA Section of Administrative Law and Regulatory Practice, Scholarship Award Committee (2014 - 2017).

Member of ABA Accreditation Site Visit Teams (Reported on Pace University School of Law Faculty and AALS Reporter, fall 2014); (Reported on University of Arkansas Law School, Fayetteville, Faculty and Program of Study, fall 2006)

Member of the Executive Committee, AALS Section on Administrative Law (1999-2004)

Organizer of an Academic Conference on “Regulatory Theory and Administrative Law”, at FSU College of Law (Feb. 2000)

Member, Florida Bar Section on Administrative Law Drafting Committee for Administrative Law Specialty Certification Exam (2007 -2008)

Associate Dean for Research, FSU College of Law (May, 2012 – 2016, 2018 - present)

Associate Dean for Academic Affairs, FSU College of Law (May, 2002 – August, 2003; May, 2005 – August 2007)

Chair, FSU College of Law ABA Self Study Committee (2007-08)

Chair, FSU College of Law Faculty Appointments Committee (2003-04, 2008-09)

Chair, FSU College of Law Promotion and Tenure Committee (2001-02, 2004-05, 2017-18)

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Chair, FSU College of Law Curriculum Committee (2004-05, 2014)

Chair, FSU College of Law Admissions Committee (2000-01)

Chair, FSU College of Law Academic Enrichment (Speakers) Committee (1990-91, 1996-98, 2012-13, 2015-16, 2108-present)

SIGNIFICANT NON-LEGAL SERVICE

Member of the Board of Directors, Southern Shakespeare Festival (2014 – present, Chair 2018 - present)

ONGOING RESEARCH PROJECTS:

Currently I am researching: (i) the concept of state sovereignty and limitations on the powers of the federal government; (ii) how courts should review agency invocation of the good cause exception to notice and comment rulemaking, with special attention to issuance of “interim final rules”; (iii) theoretical perspectives on Textualist interpretation; (iv) procedural requirements for adjudication when the authorizing statute requires a hearing, with no mention of “on the record’ or the equivalent.