

**DUKE LAW JOURNAL'S 47TH ANNUAL ADMINISTRATIVE LAW SYMPOSIUM:  
EXCLUSION, INCLUSION, AND THE ADMINISTRATIVE STATE**

**Agenda**

8:30–9:00: Breakfast and Registration

9:00–9:20: Introductory Remarks by **Matthew Adler**

**SESSION ONE: AGENCY PRACTICE AND INEQUALITY: VIEWS FROM THE INSIDE**

9:20–10:50: Presenters **Olatunde Johnson** and **Kris Collins**; Commentators **Nina Mendelson** and **Kerry Abrams**; Moderator **Guy-Uriel Charles**

The day's first session will explore how agency structure and the mode or form of regulatory interventions can operate to promote or undermine civil rights and equality. Professor Olatunde Johnson will explore the new "inclusive regulation," the use of grant-making, collaboration, and public participation through which agencies are incentivizing and promoting civil rights and inclusion of economically and socially disadvantaged communities. Professor Kris Collins will discuss gender discrimination in U.S. citizenship and immigration law—an issue that is once again before the Supreme Court in *Lynch v. Morales-Santana*. Professor Collins will reconstruct the origins of the challenged statute, examining the central role played by middle-level administrators and executive branch officials in the provision's development and entrenchment over time.

10:50–11:00: Break

**SESSION TWO: EQUALITY, RIGHTS, AND ADMINISTRATIVE AGENCIES**

11:00–12:30: Presenters **Bertrall Ross** and **Mila Sohoni**; Commentators **Gillian Metzger** and **Sam Bagenstos**; Moderator **Maggie Lemos**

The day's second session will explore the relationship between administrative agencies and the courts in addressing inequality and in securing rights. Professor Bertrall Ross will assess the role that agencies play in the recognition of suspect classes—a function that the Supreme Court has not performed in forty years. Professor Ross argues that the Court's refusal to recognize suspect classes has been driven by institutional concerns about judicial role and not by substantive determinations about what the Equal Protection Clause requires. This justification has left space for other institutions, specifically administrative agencies, to protect suspect classes as a means to enforce the Equal Protection Clause. Professor Mila Sohoni will examine recent examples of agencies taking measures to protect economic rights that federal courts have been unwilling to shield. By leveraging the tools of statutory interpretation and discretionary policymaking, agencies have dedicated sizable sums of government money to underwriting broad-scale economic entitlements to affordable health insurance and affordable higher education. Professor Sohoni contends that this form of agency action presents special risks and distinctive concerns that should prompt us to question whether it will be adequately cabined or checked by the ordinary framework of administrative law.

12:30–12:45: Break

### **KEYNOTE ADDRESS AND LUNCH**

12:45–1:45: Lunchtime Remarks by **EEOC Commissioner Chai Feldblum**

1:45–2:00: Break

### **SESSION THREE: INCENTIVIZING EQUALITY THROUGH ADMINISTRATIVE LAW**

2:00–3:00: Presenter **Karen Tani**; Commentator **Eloise Pasachoff**; Moderator **Neil Siegel**

The day's third session will examine a topic that has been much in the news: the use by federal agencies of the carrots of federal funds—and the sticks of the threatened withdrawal of those funds—to enforce relatively old anti-discrimination laws in bold new ways. Professor Karen Tani will explore a prominent example: the Department of Education's Title IX campaign against sexual assault on college campuses. Although this campaign is ostensibly about educational equality, Professor Tani connects it to longstanding efforts by feminist organizers and advocates to make freedom from sexual violence a national civil right. Professor Tani also situates this campaign within a broader history of the modern administrative state, in which various agencies have served as conduits for aspirational rights claims. This broader comparative and historical perspective provides the launching pad for a consideration of several under-explored aspects of the Department's Title IX enforcement campaign, such as the risk of facilitating “symbolic compliance” on the part of universities and the possibility of creating a “dual system” of sexual assault law.

3:00–3:15: Break

3:15–3:30: Closing Remarks by **Stuart Benjamin**