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1 Corporate Law After Hobby Lobby
Lyman Johnson and David Millon
We evaluate the U.S. Supreme Court's controversial decision in the Hobby Lobby case from the perspective of state corporate law. We argue that the Court is correct in holding that corporate law does not mandate that business corporations limit themselves to pursuit of profit. Rather, state law allows incorporation for any lawful purpose. We elaborate on this important point and also explain what it means for a corporation to "exercise religion." In addition, we address the larger implications of the Court's analysis for an accurate understanding both of state law's essentially agnostic stance on the question of corporate purpose and also of the broad scope of managerial discretion.

33 The Rights and Duties of Blockholder Directors
J. Travis Laster and John Mark Zeberkiewicz
Delaware corporate law embraces a "board-centric" model of governance contemplating that, as a general matter, all directors will participate in a collective and deliberative decision-making process. Rather than serving as a justification for a board majority to disempower directors elected or appointed by or at the direction of a particular class or series of stock or an insurgent group—which we refer to as "blockholder" directors—this system recognizes the need for a balancing of both majority and minority rights. In this article, we review the rights and duties of all directors and highlight cases where both board majorities and blockholder directors have overstepped their bounds. We caution that board majorities should deliberate carefully before taking action that limits a blockholder director's rights or excludes the blockholder director from participation in fundamental corporate matters. At the same time, we caution that blockholder directors should take care when exercising their rights, given that their affiliation with investors may make them vulnerable to duty of loyalty claims. We urge both sides to proceed with a sense of empathy toward the other and seek to make reasonable accommodations, and we emphasize the role that experienced corporate counsel can play in mediating disputes, resolving tensions, and striking the appropriate balance in the boardroom.
The Effect of Deferred and Non-Prosecution Agreements on Corporate Governance: Evidence from 1993–2013

Wulf A. Kaal and Timothy A. Lacine

Non- and Deferred Prosecution Agreements (N/DPAs) are controversial because prosecutors, not judges or the legislature, are changing the governance of leading public corporations and entire industries. To analyze N/DPAs' corporate governance implications and provide policy makers with guidance, we code all publicly available N/DPAs (N=271) from 1993 to 2013, identifying 215 governance categories and subcategories. We find evidence that the execution of N/DPAs is associated with significant corporate governance changes. The study categorizes mandated corporate governance changes for entities that executed an NIDPA as follows: (1) Business Changes, (2) Board Changes, (3) Senior Management, (4) Monitoring, (5) Cooperation, (6) Compliance Program, and (7) Waiver of Rights. We supplement the analysis of governance changes in these categories with a more in depth evaluation of the respective subcategories of governance changes. We also code and analyze preemptive remedial measures, designed by corporations to preempt the execution of an NIDPA or corporate criminal indictment. The article evaluates the implications of the empirical evidence for boards, management, and legal practitioners.

Common Qualifications to a Remedies Opinion in U.S. Commercial Loan Transactions


As a condition to the closing of many types of business transactions, one or more of the parties may be required to provide written opinion letters of counsel for the benefit of other parties to the transaction. These opinions are often referred to as "third-party" opinions because the opinion giver renders them to a party or parties other than the opinion giver's own client. These opinions may cover a range of issues, including, among others, the entity status and power of, the due authorization, execution, and delivery of the transaction documents by, and the enforceability of those documents against, the opinion giver's own client in the transaction. Oftentimes the discussions regarding the scope of these opinions and the extent to which they will be qualified are time-consuming, and the resulting costs, borne by the client whose counsel is asked to render the opinions, increase substantially as negotiations proceed. This article, focusing on third-party opinions rendered in the context of U.S. commercial loan transactions, considers a number of qualifications that for various reasons, in the experience of the authors, opinion givers commonly include and opinion recipients and their counsel commonly accept. The authors believe that the identification of commonly used qualifications in many transactions market can be valuable.
the identification of commonly used and accepted qualifications in the U.S. commercial loan market can help to streamline the opinion process in many transactions.

**ESSAY**

161 **Consent in Corporate Law**  
_Lawrence A. Hamermesh_  

Recent Delaware case law explores and extends what the author describes as the "doctrine of corporate consent," under which a stockholder is deemed to consent to changes in the corporate relationship that are adopted pursuant to statutory authority (such as by directors adopting bylaws). This essay examines whether and to what extent there may be limits on the application of the doctrine of corporate consent and whether fee-shifting bylaws exceed those limits.

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253 **European Union Data Privacy Law Developments**  
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We evaluate the U.S. Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc.* from the perspective of state corporate law. Previous analyses have concluded that corporate law does not mandate that businesses be nonprofit. Rather, state law allows incorporation for profit. We address this important point and also explain what it means in the context of the court's decision in *Burwell v. Hobby Lobby Stores, Inc.*

In addition, we address the larger implications of the court's decision for understanding both state law's essential autonomy and also of the broad scope of management discretion.

I. INTRODUCTION

In a landmark June 30, 2014 ruling, the U.S. Supreme Court spoke in unprecedented terms regarding the question of corporate religious freedom. Two important federal statutes—the Patient Protection and Affordable Care Act (“ACA”) and the Religious Freedom Restoration Act—rattled the very heart of state corporate law for decades. Rejecting the federal government’s argument that corporations cannot “exercise religious beliefs,” the Court in *Burwell v. Hobby Lobby Stores, Inc.* concluded that corporate law as permitting a broad array of religious beliefs in business, the Court reasoned, business corporations cannot “exercise religious beliefs.”

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1. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014); Conestoga Wood Specialties Corp. v. Burwell, 760 F.3d 535 (3d Cir. 2013). The two cases were consolidated after the U.S. Supreme Court granted certiorari in each case on March 12, 2014.
2. See Hobby Lobby, 134 S. Ct. at 2766–76; see infra Part III.
5. See infra Part III.
6. Hobby Lobby, 134 S. Ct. at 2769.
7. Id.