

Written Testimony of  
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Before the  
United States House of Representatives  
Committee on the Judiciary  
Subcommittee on Intellectual Property, Competition and the Internet

Hearing on  
“H.R. 1946, the Preserving Our Hometown Independent  
Pharmacies Act of 2011”

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Mr. Chairman and Members of the Subcommittee – thank you for the opportunity to testify before you today. My name is Joshua D. Wright. I am a Professor of Law at the George Mason University School of Law. I also hold a courtesy appointment in the Department of Economics. I received a J.D. from UCLA in 2002 and a Ph.D. in economics in 2003. I was the inaugural Scholar-in-Residence at the Federal Trade Commission from 2007 to 2008 and have also served as a consultant to the Federal Trade Commission on a number of issues. My research focuses upon antitrust law and analyzing the competitive effects of regulation in a variety of industries, including health care. I represent myself solely at this hearing and I have received no financial support for this testimony.

I am here today to discuss H.R. 1946, a proposed exemption from the antitrust laws that would allow independent pharmacies to collectively negotiate with health plans on pricing provisions and other contract terms. It is my view that the proposed legislation is likely to harm consumers and should be opposed on those grounds. Local pharmacists striving to provide quality care for patients undoubtedly face significant economic pressures from both changes in the health care market and vigorous competition. While identifying ways to reduce costs in complex and dynamic health care markets is a critical policy objective, an antitrust exemption for independent pharmacies is likely to undermine that goal.

## I. ANTITRUST EXEMPTIONS ARE DISFAVORED

The purpose of H.R. 1946 is to ensure safety, quality care, and a competitive marketplace. The overarching goal of the antitrust laws is to foster competition and thereby maximize consumer welfare.<sup>1</sup> This goal is rarely, if ever, served by antitrust exemptions; indeed, the consensus view is that such exemptions are much more likely to reduce consumer welfare than to enhance it. The Antitrust Modernization Commission has explained, “A proposed exemption should be recognized as a decision to sacrifice competition and consumer welfare . . . .”<sup>2</sup> It is widely recognized that antitrust exemptions benefit small, concentrated interest groups while imposing costs broadly upon consumers at large.<sup>3</sup> These costs generally take the form of “higher prices, reduced output, lower quality, and reduced innovation.”<sup>4</sup>

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<sup>1</sup> See *NCAA v. Bd. of Regents*, 468 U.S. 85, 107 (1984) (“Congress designed the Sherman Act as a consumer welfare prescription.” (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979))).

<sup>2</sup> ANTITRUST MODERNIZATION COMM’N, REPORT AND RECOMMENDATIONS 350 (2007), available at [http://govinfo.library.unt.edu/amc/report\\_recommendation/amc\\_final\\_report.pdf](http://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf); see also Letter from Antitrust Section, Am. Bar Ass’n, to Antitrust Modernization Comm’n 2 (Nov. 30, 2005) [hereinafter Letter from ABA to AMC], available at [http://govinfo.library.unt.edu/amc/public\\_studies\\_fr28902/immunities\\_exemptions\\_pdf/061024\\_ABA-Shipping-Act.pdf](http://govinfo.library.unt.edu/amc/public_studies_fr28902/immunities_exemptions_pdf/061024_ABA-Shipping-Act.pdf) (“Whether justified or not, broad exemptions and immunities from antitrust laws are harmful to consumer welfare almost by their very definition.”). The American Antitrust Institute has also weighed in on the competitive effects of antitrust exemptions, finding they “may be not only unnecessary but harmful to competition and the values that it serves.” Letter from Working Grp. on Immunities & Exemptions, Am. Antitrust Inst., to Antitrust Modernization Comm’n 2 (July 15, 2005) [hereinafter Letter from AAI to AMC], available at <http://www.antitrustinstitute.org/files/433.pdf>.

<sup>3</sup> See *The Community Pharmacy Fairness Act of 2007: Hearing on H.R. 971 Before the Antitrust Task Force of the H. Comm. on the Judiciary*, 110th Cong. 3 2007 (statement of David Wales, Deputy Dir., Fed. Trade Comm’n); ANTITRUST MODERNIZATION COMM’N, *supra* note 2, at 335; Letter from AAI to AMC, *supra* note 2, at 4; Letter from ABA to AMC, *supra* note 2, at 4.

<sup>4</sup> ANTITRUST MODERNIZATION COMM’N, *supra* note 2, at 335.

Because antitrust exemptions are likely to harm competition and reduce consumer welfare in order to provide benefits to these small, concentrated interest groups, they are disfavored. The Antitrust Modernization Committee, echoing this sentiment, concluded that exemptions should “rarely” be granted and only when proponents have successfully demonstrated that permitting unlawful and anticompetitive conduct is “necessary to satisfy a specific societal goal that trumps the benefit of a free market to consumers and the U.S. economy in general.”<sup>5</sup> In other words, the burden of justifying the social value of an antitrust exemption lies with the party seeking its protection.<sup>6</sup> This burden should not be taken lightly; the Sherman Act has been described as “the Magna Carta of free enterprise”<sup>7</sup> precisely because it was designed to enhance economic liberties promoted by competition.<sup>8</sup>

The danger of antitrust exemptions to consumers is particularly acute when they permit coordination among rivals. Such exemptions are likely to stifle competition by reducing the incentive for competitors to innovate to attract customers. Therefore,

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<sup>5</sup> ANTITRUST MODERNIZATION COMM’N, *supra* note 2, at 335.

<sup>6</sup> *Id.* at 354 (“Congress should require proponents of an immunity to submit evidence demonstrating that the benefits of competition are less important than the societal value promoted by the immunity under consideration, and that the proposed immunity is the least restrictive means to achieve that value. . . . The burden of justifying any immunity should fall on the proponents of that immunity because they are in an inherently unique position to provide that information as to the relative merits of the immunity.” (internal quotation marks omitted)).

<sup>7</sup> *United States v. Topco Assoc.*, 405 U.S. 596, 610 (1972) (“Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise.”).

<sup>8</sup> *See also* *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1956) (“The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.”); *United States v. Socony Vacuum Oil Co.*, 310 U.S. 150, 221 (1940) (characterizing Sherman Act as a “charter of freedom”); *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 359 (1933) (same).

claims that an exemption is necessary to protect competition are insufficient to satisfy the burden of proving its necessity.<sup>9</sup> Similarly, because competition enhances incentives to reduce cost and increase quality, antitrust exemptions are rarely appropriate means to achieve those ends.<sup>10</sup>

Antitrust exemptions not only pose a risk to consumers, they also are generally unnecessary to achieve legitimate, procompetitive ends. The antitrust laws permit cooperation achieving procompetitive objectives, rendering an exemption for such activities unnecessary. The increased incorporation of economic thinking into antitrust analysis has endowed the antitrust laws with sufficient flexibility to permit such procompetitive collaboration while condemning horizontal arrangements likely to reduce competition.<sup>11</sup> Exemptions are simply unnecessary, as a matter of antitrust law, to protect parties from procompetitive coordination.<sup>12</sup>

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<sup>9</sup> Letter from ABA to AMC, *supra* note 2, at 3.

<sup>10</sup> See Timothy J. Muris, Chairman, Fed. Trade Comm'n, Looking Forward: The Federal Trade Commission and the Future Development of U.S. Competition Policy 4 (Dec. 10, 2002) ("Proponents [of antitrust exemptions] often claim to justify [their] proposals by considerations that, supposedly, cannot be addressed by the market—e.g., 'quality of care' issues in the case of antitrust immunity for doctors. Such claims usually cannot withstand scrutiny."), available at [http://www.law.gmu.edu/assets/files/publications/working\\_papers/04-21.pdf](http://www.law.gmu.edu/assets/files/publications/working_papers/04-21.pdf); see also *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 695-96 (rejecting a proffered defense that coordination was necessary to preserve the quality of large-scale engineering projects affecting the public safety).

<sup>11</sup> *Health Care Cost Containment Act of 1984: Hearing on S. 2051 Before the S. Comm. on the Judiciary*, 98th Cong. 3 (1984) (statement of Timothy J. Muris, Dir., Bureau of Competition, Fed. Trade Comm'n).

<sup>12</sup> For example, one recent study of antitrust exemptions in the transportation industries found that "[t]he great bulk of agreements and combinations that benefit from antitrust immunity have no absolute need for such an entitlement. . . . [A] majority of the joint venture agreements seem[ed] to present little risk of any antitrust liability." Peter C. Carstensen, *Replacing Antitrust Exemptions for Transportation Industries: The Potential for a "Robust Business Review Clearance"*, 89 OR. L. REV. 1059, 1095-96 (2011).

Antitrust exemptions are equally unnecessary in the health care context. There, the antitrust agencies have actively provided guidance to pharmacies and other health care providers distinguishing lawful from unlawful conduct under antitrust laws. The Federal Trade Commission (FTC) issues advisory opinions to market participants seeking to compete more aggressively by means of limited coordination. The agency has advised many of those market participants that it would not challenge their coordinated efforts. For example, in 2009, TriState Health Partners, Inc., a physician-hospital organization, sought the agency's advice on its proposed joint venture.<sup>13</sup> The joint venture involved clinical integration of its members and creation of a program to provide medical and other health care services to those covered under certain health benefits programs in TriState's service area.<sup>14</sup> The FTC determined the program was likely to result in significant efficiencies in the provision of health care services and advised TriState that it would not recommend that the Commission challenge the described program.<sup>15</sup> The FTC similarly advised a physicians' association in 2007 that it would not challenge an agreement for the association to "negotiate contracts, including price terms, with payers on behalf of its physician members."<sup>16</sup> The FTC's extensive

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<sup>13</sup> See Letter from Health Care Div., Bureau of Competition, Fed. Trade Comm'n, to Christi J. Braun, Esq. (Apr. 13, 2009) [hereinafter TriState Letter], available at <http://www.ftc.gov/os/closings/staff/090413tristatealetter.pdf>.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 1.

<sup>16</sup> Letter from Health Care Div., Bureau of Competition, Fed. Trade Comm'n, to Christi J. Braun, Esq., & John J. Miles, Esq. (Sept. 17, 2007) [hereinafter GRIPA Letter], available at <http://www.ftc.gov/bc/adops/gripa.pdf>.

experience assessing competition in the health care industry permits it to evaluate proposed coordinated efforts and advise industry participants on the competitive merits of their proposals, thus eliminating the necessity for a broad exemption from the antitrust laws for such conduct. The Antitrust Division also actively – and in concert with the FTC – provides similar guidance to health care providers. Most recently, the FTC and DOJ issued a policy statement explaining how the agencies will apply the antitrust laws to Accountable Care Organizations.<sup>17</sup>

## II. THE PROPOSED EXEMPTION: H.R. 1946

The stated purpose of the Preserving Our Hometown Independent Pharmacies Act of 2011 (the Act) is “[t]o ensure and foster continued safety and quality of care and a competitive marketplace by exempting independent pharmacies from the antitrust laws” when they negotiate with health plans and health insurers. It applies only to independent pharmacies, which the Act defines as pharmacies with a market share of less than 10 percent in any prescription drug plan (PDP) region (as defined by the Social Security Act) and less than 1 percent in the United States.

The exemption would permit independent pharmacies to collectively negotiate with health plans concerning payment rates. It would operate by requiring that independent pharmacies be “treated under the antitrust laws as employees engaged in concerted activities rather than as employers, independent contractors, managerial

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<sup>17</sup> Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program, 76 Fed. Reg. 67026 (Oct. 28, 2011).

employees, or supervisor.” The Act limits the exemption two ways. The scope of the exemption is limited to price fixing and does not apply to boycotts, market allocation, unlawful tying arrangements, or monopolization. The exemption also limits the permissible market share for an organization of independent pharmacies at 25 percent share of a given PDP (measured by pharmacy licenses).

### III. THE LIKELY EFFECTS OF H.R. 1946

The proposed exemption will likely increase healthcare costs. The exemption is designed to allow coordinated activities among pharmacies that both basic economic theory and experience indicate will likely result in higher prices faced by health plans.<sup>18</sup> H.R. 1946 states that one of its objectives is to foster “a competitive marketplace by exempting independent pharmacies from the antitrust laws.” That purpose ultimately cannot be reconciled with the fact that H.R. 1946 ultimately exempts unambiguously anticompetitive conduct from antitrust scrutiny.

Economic theory unequivocally predicts at least some of the collective negotiations exempted will raise costs that will, in turn, be passed on in the form of higher prices paid by consumers. For example, one obvious implication of the antitrust

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<sup>18</sup> The Federal Trade Commission has successfully challenged collective negotiations by health care professionals who have successfully imposed significant price increases. *See, e.g.*, Advocate Health Care Partners et al., No. C-4184, 2007 WL 643035 (F.T.C. Feb. 27, 2007) (consent order); Health Care Alliance of Laredo, No. C-4158, 2006 WL 848593 (F.T.C. Mar. 23, 2006) (consent order); Asociation de Farmacias Region de Arecibo, 127 F.T.C. 266 (1999) (consent order).

exemption is higher reimbursements.<sup>19</sup> One recent study estimates the increase health care costs associated with higher reimbursements will range from \$9.2 billion to \$29.6 billion over five years after implementation of an exemption.<sup>20</sup> Further, to the extent the exemption interferes with negotiations between pharmacies and pharmacy benefit managers (PBMs), one can expect further increases in costs. There is substantial empirical evidence that PBMs – who enter contracts with plan sponsors such as health insurers, unions, or self-insured employers – significantly reduce costs. For example, PBMs use of selective contracting has been demonstrated to significantly reduce costs.<sup>21</sup>

As discussed, the dangers that antitrust exemptions pose to competition and consumer welfare are well-recognized.<sup>22</sup> There is no serious debate that an exemption such as H.R. 1946 will result in a greater incidence of anticompetitive conduct. Would such an exemption provide any offsetting benefits for consumers? The answer provided by existing antitrust law and economic analysis is “no.” The most critical point is that current federal antitrust law already permits collective activity by pharmacies and other health care providers that benefits consumers. The antitrust

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<sup>19</sup> See *Quality Health-Care Coalition Act of 1999: Hearing on H.R. 1304 Before the H. Comm. of the Judiciary*, 106th Cong. (June 22, 1999) (statement of Robert Pitofsky, Chairman, Fed. Trade Comm’n); Peter J. Rankin et al., *The Cost of Independent Pharmacy Antitrust Exemptions* (May 2007), available at [http://heartland.org/sites/all/modules/custom/heartland\\_migration/files/pdfs/22537.pdf](http://heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/22537.pdf).

<sup>20</sup> See *id.* at 21.

<sup>21</sup> See Christine Piette Durrance, *The Impact of Pharmacy-Specific Any-Willing-Provider Legislation on Prescription Drug Expenditures*, 37 ATLANTIC ECON. J. 409 (2009); Kenneth G. Elzinga & David E. Mills, *The Distribution and Pricing of Prescription Drugs*, 4 INT’L J. ECON. BUS. 287 (1997) (explaining the competition-enhancing effects of exclusive provision of prescription drugs); Michael G. Vita, *Regulatory Restrictions on Selective Contracting: An Empirical Analysis of “Any Willing Provider” Regulations*, 20 J. HEALTH ECON. 955 (2001).

<sup>22</sup> See *supra* Part I.

agencies have consistently provided guidance indicating agreements reducing costs or increasing the quality of health care provided to patients are lawful.<sup>23</sup> Indeed, pharmacies take advantage of many of these opportunities. For example, independent pharmacies employ Pharmacy Service Administrative Organizations (PSAOs), which represent collections of pharmacies in order to take advantage of economies of scale and negotiate with PBMs. To the extent the exemption makes available easier but less consumer-friendly means of coordinated action, pharmacies' incentives to enter into beneficial forms of cooperation will be reduced.

Proponents of the exemption undoubtedly seek to facilitate cost reduction by giving independent pharmacies greater leverage in negotiations with health care providers. This approach is misguided for a number of reasons. As discussed, pharmacies can coordinate for procompetitive purposes without running afoul of the antitrust laws. Further, the much more likely competitive outcome is to dampen the incentives of those providers to encourage providers to reduce the costs of their services. The antitrust laws stand on the proposition that competition – not cartel or

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<sup>23</sup> See, e.g., Letter from Richard A. Feinstein, Assistant Dir., Health Care Div., Fed. Trade Comm'n, to Paul E. Levenson (July 27, 2000) (network of independent pharmacies in Massachusetts and Connecticut offering package of medication-related patient care services to physician groups), *available at* <http://www.ftc.gov/bc/adops/neletfi5.htm>; Letter from Richard A. Feinstein, Assistant Dir., Health Care Div., Fed. Trade Comm'n, to John A. Cronin (May 19, 1999) (network of retail pharmacies and pharmacists offering drug product distribution and disease management services), *available at* <http://www.ftc.gov/bc/adops/openadop.htm>; GRIPA Letter, *supra* note 16; TriState Letter, *supra* note 13; Letter from Michael D. McNeely, Assistant Dir., Health Care Div., Fed. Trade Comm'n, to Allen Nichol (Aug. 12, 1997) (pharmacist network offering health education and monitoring services to diabetes and asthma patients), *available at* <http://www.ftc.gov/os/1997/08/newjerad.htm>.

monopoly – is the superior method of achieving H.R. 1946’s goals of quality care and a competitive marketplace.

#### IV. CONCLUSION

The high costs of health care are a serious concern. Identifying new and effective methods of reducing those costs is among the most important priorities facing the country. Antitrust enforcement in the health care sector continues to play an important role in this marketplace. Granting certain pharmacies a right to engage in anticompetitive price-fixing in the name of extracting greater payments from third-party payers would result in greater costs, less competition, and reduced consumer welfare.

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- Courses: Contracts I, Contracts II, Economic Foundations of Legal Studies, Antitrust, Advanced Antitrust, Intellectual Property and Antitrust

Associate Professor, George Mason University School of Law (August 2010-May 2011)

Professor (Courtesy), George Mason University Department of Economics (2009-Present)

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- Courses in microeconomics and quantitative methods to state and federal judges
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- Co-Organizer and Instructor, American Bar Association & Mason Judicial Education Program Institute on Antitrust Law and Economics
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Assistant Professor, George Mason University School of Law (January 2005-August 2010)

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*The Antitrust-Consumer Protection Paradox: Two Policies At War With Each Other*, forthcoming YALE LAW JOURNAL (2012)

*Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty* (with Douglas H. Ginsburg), forthcoming 106 (3) NORTHWESTERN LAW REVIEW (2012)

*Dynamic Competition and the Limits of Antitrust Institutions* (with Douglas H. Ginsburg), forthcoming 78 (1) ANTITRUST LAW JOURNAL (2012)

*The Limits of Antitrust and Patent Holdup: A Reply to Cary et al.* (with Bruce H. Kobayashi), forthcoming 78 (2) ANTITRUST LAW JOURNAL (2012)

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## **PUBLICATIONS**

### **BOOKS AND BOOK CHAPTERS**

ANTITRUST LAW IN PERSPECTIVE: CASES, CONCEPTS, AND PROBLEMS IN COMPETITION POLICY (forthcoming 3rd Edition) (with Andrew I. Gavil, William E. Kovacic, and Jonathan B. Baker)

Co-Editor, PIONEERS IN LAW AND ECONOMICS (with Lloyd R. Cohen) (2009)

Co-Editor, RESEARCH HANDBOOK IN THE LAW AND ECONOMICS OF THE FAMILY AND SOCIAL INSTITUTIONS (with Lloyd R. Cohen) (2011)

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*Intellectual Property and Standard Setting* (with Bruce H. Kobayashi), in the American Bar Association HANDBOOK ON ANTITRUST ASPECTS STANDARD SETTING (2010)

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*State Regulation of Alcohol Distribution: The Effects of Post and Hold Laws on Output and Social Harms* (with James C. Cooper) (under review at Journal of Legal Studies)

*The Economics of Slotting Contracts* (with Benjamin Klein), 50 JOURNAL OF LAW AND ECONOMICS 421 (2007)

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*The Antitrust-Consumer Protection Paradox: Two Policies At War With Each Other*, forthcoming YALE LAW JOURNAL (2012)

*Dynamic Competition and the Limits of Antitrust Institutions* (with Douglas H. Ginsburg), forthcoming 78 (1) ANTITRUST LAW JOURNAL (2012)

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*The Constitutional Failure of Gang Databases*, 2 STANFORD JOURNAL OF CIVIL RIGHTS AND  
CIVIL LIBERTIES 115 (2006)

### **Commentary**

*Hell No, Don't Let Them Go!*, CHICAGO TRIBUNE (May 8, 2008) (with Thomas W. Hazlett)

*U.S. Antitrust Becomes More European*, FORBES.COM (May 18, 2009) (with Keith N. Hylton and  
Geoffrey A. Manne)

*The Return of "Big is Bad,"* THE DEAL MAGAZINE (May 26, 2009) (with Keith N. Hylton and  
Geoffrey A. Manne)

### **WORKING PAPERS**

*Tastes Great, Less Filling: The Effects of Contract Regulation on Beer Consumption* (with Jon Klick)

*Do Expert Agencies Perform Better Than Generalist Judges? Evidence from the Federal Trade  
Commission*

*Antitrust Analysis of Exclusionary Agreements and But-For Foreclosure*

## **RESEARCH PROJECTS IN PROGRESS**

*Antitrust Settlements and the Goals of Antitrust* (with Douglas H. Ginsburg)

*An Economic Test for Anticompetitive Reverse Payment Settlements* (with Murat Mungan)

*Inference from Antitrust Event Studies* (with Jonah Gelbach and Jonathan Klick)

*The Impact of Twombly in Antitrust Cases* (with Jonah Gelbach)

## **ACADEMIC PRESENTATIONS**

*Do Expert Agencies Perform Better Than Generalist Judges? Evidence from the Federal Trade Commission*

George Mason University School of Law (October 2011)  
Law & Society Annual Meeting (June 2012)

*State Regulation of Alcohol Distribution: The Effects of Post and Hold Laws on Output and Social Harms*

George Washington University Department of Economics  
American Law and Economics Association Annual Meeting (May 2011) United States  
Department of Justice Antitrust Division (October 2010)  
George Mason University School of Law Levy Workshop (September 2010)  
Washington University at St. Louis Law and Economics Workshop (September 2010)  
Conference on Empirical Legal Studies (November 2010)

*Behavioral Economics, Law, and Liberty*

George Mason University School of Law (September 2010)  
Mont Pelerin Society Annual Meetings (October 2010)

*Misbehavioral Economics: The Case Against Behavioral Antitrust*

Canadian Law and Economics Association Annual Meeting (October 2010)  
AALS Annual Meeting (January 2012)

*Antitrust Sanctions*

American Law and Economics Association Annual Meeting (May 2010)

*Is Antitrust Too Complicated for Generalist Judges? The Impact of Economic Complexity and Judicial Training on Appeals*

Southern Economic Association Annual Meeting (November 2010)  
Georgetown University Law and Economics Workshop (October 2009)  
Washington University at St. Louis Law and Economics Workshop (October 2009)  
UCLA Law and Economics Workshop (September 2008)  
Northwestern University Law and Economics Workshop (September 2008)  
Stanford Law and Economics Workshop (January 2009)  
University of Texas Law and Economics Workshop (December 2008)  
George Mason University Economics Department Public Choice Seminar (April 2009)  
American Law and Economics Association Meetings (May 2009)

*Federalism, Substantive Preemption, and Limits on Antitrust: An Application to Patent Holdup*

Duke University Law School Intellectual Property Symposium (February 2008)  
George Mason/ Microsoft Conference on the Law and Economics of Innovation (2008)  
Tilburg Law and Economics Center (December 2008)

*The Effects of Contract Regulation in the Alcoholic Beverage Industry*

Southern Economic Association Annual Meeting (November 2007)

*Antitrust, Multi-Dimensional Competition, and Innovation: Do We Have An Antitrust Relevant Theory of Competition Now?*

George Mason/ Microsoft Conference on the Law and Economics of Innovation (May 2007)

*The Antitrust Law and Economics of Category Management*

American Law & Economics Association 2004 Annual Meeting

*The Economics of Slotting Contracts*

Silicon Flatirons New Institutional Economics Conference (June 2009)  
Peking University Conference on Chinese Anti-Monopoly Law (October 2007)  
American Law & Economics Association 2005 Annual Meeting  
International Society of New Institutional Economics 2004 Annual Meeting  
George Mason University Law School Levy Workshop (March 2004)

*Slotting Contracts and Consumer Welfare*

George Mason University Law School Levy Workshop (March 2006)

University of Texas Law School Center for Law, Business, and Economics (January 2006)  
International Industrial Organization Conference (April 2006)  
American Law & Economics Association 2006 Annual Meeting (May 2006)  
Southeastern Association of Law Schools Annual Meeting (July 2006)  
Southern Economic Association Annual Meeting (September 2006)  
First Annual Conference on Empirical Legal Studies (October 2006)

*Behavioral Law and Economics, Paternalism, and Consumer Contracts: An Empirical Perspective*

NYU Journal of Law and Liberty Symposium (October 2006)

*The Roberts Court and the Chicago School of Antitrust: The 2006 Term and Beyond*

University of Missouri-Columbia School of Law (February 2008)  
William S. Boyd School of Law, UNLV (April 2008)

#### **CONFERENCES AND TESTIMONY**

Panelist, United States House of Representatives Committee on the Judiciary Subcommittee on Intellectual Property, Competition and the Internet Hearing on "How Will the Proposed Merger Between AT&T and T-Mobile Affect Wireless Telecommunications Competition?" (May 2011)

Panelist, George Mason University Law and Economics Center Conference on The Law and Economics of Search Engines and Online Advertising (June 2011)

Panelist, The FCC's Wireless Competition Report: A Preview (May 2011)

Panelist, George Mason University Law and Economics Center Conference on Behavioral Economics and the Consumer Financial Protection Bureau (March 2011)

Panelist, The Federalist Society Program on the FTC and The Internet (January 2011)

Panelist, The Federalist Society Program on Regulation of the Internet (December 2010)

Panelist, Stanford/ Hoover Institute Conference on Patents, Innovation and Business (June 2010)

Panelist, DOJ/FTC Proposed Merger Guidelines Workshop (January 2010)

Panelist, LECG Consumer Protection and Antitrust Conference (October 2009)

Panelist, Technology Policy Institute Conference on High-Tech Antitrust (October 2009)

Panelist, SEALS Empirical Legal Research Workshop (August 2009)

Panelist, ICANN Workshop on Economic Analysis of Vertical Separation for New gTLDs (June 2009)

Panelist, Cato Institute Program on Antitrust in the New Administration (June 2009)

Panelist, FTC Workshop on Resale Price Maintenance (May 2009)

Panelist, Searle Center Conference on Antitrust Law and Economics (September 2008)

Panelist, FTC at 100 Conference (September 2008)

Panelist, Federalist Society Conference on Intellectual Property (July 2008)

Panelist, SIEPR/ Hoover Institution Conference on the Modernization of Antitrust (May 2008)

Panelist, Searle Center Research Roundtable on the Theory of the Firm (March 2008)

Panelist, Searle Center Research Roundtable on the Law and Economics of Innovation

Panelist, Searle Center Conference on The End of the Microsoft Consent Decree

Panelist, DOJ/FTC Hearings on Sherman Act Section 2 and Single Firm Conduct

Panelist, George Mason Law Review Fall 2006 Antitrust Symposium

### **PROFESSIONAL ACTIVITIES**

Co-Director, Robert A. Levy Fellowship in Law & Liberty at George Mason University School of Law

Director of Research, International Center for Law and Economics in Honor of Armen Alchian

Research Director, Searle Civil Justice Institute, George Mason Law and Economics Center

Member, National Science Foundation Law and Social Science Advisory Panel

Co-Editor, Supreme Court Economic Review (Volume 20-present)

Editorial Board, *Antitrust Law Journal*

Referee, *Journal of Law and Economics*, *Review of Law and Economics*; *Supreme Court Economic Review*, *Review of Industrial Organization*, *Journal of Legal Studies*, *Yale Law Journal*, *Harvard Law Review*

Contributor, *Truth on the Market* (a blog dedicated to academic commentary on law, business, and economics)

Co-Founder, Microsoft and George Mason Conference Series on the Law and Economics of Innovation

Conference Organizer, Merger Analysis in High Technology Markets (Feb. 1, 2008)

Conference Organizer, The Law and Economics of Search Engines and Online Advertising (June 2011)

### **PROFESSIONAL EXPERIENCE**

Senior Consultant, Charles Rivers Associates, Inc. (October 2009 – Present)

Consultant, Federal Trade Commission (July 2008-April 2009)

Law Clerk to the Honorable James V. Selna, U.S. District Court for the Central District of California (2003-2004)

Consultant, Economic Analysis, LLC (1998-2002)

Summer Associate, Latham and Watkins (2001)

Summer Associate, Jones Day Reavis & Pogue (2000-01)

Honors Paralegal, Federal Trade Commission, Bureau of Competition (1998)

Intern, Federal Trade Commission, Bureau of Economics (1997)

### **AFFILIATIONS AND MEMBERSHIPS**

International Industrial Organization Society

American Economics Association

Southern Economic Association

International Society of New Institutional Economics

American Law and Economics Association

Federalist Society

California Bar Association

American Bar Association Antitrust Section