



# Proceedings

A monthly newsletter from McGraw-Hill Education

September 2018 Volume 10, Issue 2



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## *Dear Professor,*

I hope your new academic year is off to a great start! Welcome to McGraw-Hill Education's September 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, Issue 2 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the September 2018 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A decision by Missouri voters to block the state's "right-to-work" law;
2. A controversial decision by a Cincinnati, Ohio police officer to shock with a Taser an eleven-year-old girl who shoplifted from a Kroger market;
3. A reported effort by Tesla, Inc.'s founder and chief executive officer Elon Musk to privatize the company;
4. Videos related to a) the indictment of New York Congressman Christopher Collins for insider trading and b) the debate surrounding term limits for United States Supreme Court justices;
5. An "ethical dilemma" related to underrepresentation of female executive leadership at S&P 500 companies; and
6. "Teaching tips" related to Article 2 ("Cincinnati Police: 11-Year-Old Girl Stealing from Kroger Market Shocked with Taser") and the Ethical Dilemma ("Just 24 Companies on the S&P 500 Are Led by Female CEOs") of the newsletter.

Here's to an academically enriching and enjoyable Fall Semester 2018!

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## Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) A decision by Missouri voters to block the state's "right-to-work" law;
- 2) A controversial decision by a Cincinnati, Ohio police officer to shock with a Taser an eleven-year-old girl who shoplifted from a Kroger market; and
- 3) A reported effort by Tesla, Inc.'s founder and chief executive officer Elon Musk to privatize the company.

## Hot Topics in Business Law

### **Article 1: "Missouri Voters Blocked the State's 'Right-to-Work' Law in Perhaps the Biggest Electoral Stunner of the Night"**

<https://www.businessinsider.com/missouri-right-to-work-law-vote-results-proposition-a-2018-8>

According to the article, on Election Day, Missouri voters struck down a right-to-work law by a resounding margin, representing a huge victory to the organized labor movement.

In 2017, Missouri passed legislation to ban compulsory union fees for workers who choose not to join, which would have severely limited the influence of the organized labor movement.

Former Governor Eric Greitens signed the bill into law, but union organizers started a petition to stall its implementation, ultimately gathering enough signatures for the law to be put on hold pending a statewide referendum.

In the end, on Proposition A, roughly 67% voted against the keeping the law, while 33% voted in favor of it.

Supporters of right-to-work laws say workers should not be forced to join unions and pay membership fees. But opponents contend these fees are necessary to protect worker's rights, especially given that federal law requires unions to represent all employees — even those who opt out of joining unions.

The Supreme Court in June ruled unions could not require public-sector employees to pay such fees. Twenty-seven states have laws permitting workers in unionized settings to choose not to join and pay membership fees.

In this context, Missouri's union leaders were ecstatic over the referendum result.

Mike Louis, president of the Missouri AFL-CIO — the largest federation of unions in the US — described the result as a "truly historic moment."



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"Tonight we celebrate, but tomorrow we're getting back to work. We're going to take this energy and momentum and build more power for working people across Missouri," Louis said.

About 8.7% of workers in Missouri are union members, compared to 10.7% of workers nationally, according to the Bureau of Labor Statistics.

The right-to-work referendum result in Missouri was also celebrated by progressive politicians like Senator Bernie Sanders.

"I'm glad to hear Prop A was defeated tonight in Missouri. Right-to-work legislation must be defeated nationwide," Sanders tweeted. "We must stand together, beat back union busters, and continue to build and grow the trade union movement in this country."

## Discussion Questions

1. What is a "right-to-work" law?

*In its usual context, the term "right-to-work" refers to the freedom of an employee to either work for an employer or not, as well as the freedom of an employer to fire an employee for any reason or for no reason at all. In the context of the article, "right-to-work" refers to the freedom of an employee to either join a union or not, and if the employee chooses not to join a union, he or she cannot be subject to compulsory union dues.*

2. As the article indicates, the United States Supreme Court recently ruled unions could not require public-sector employees to pay union fees. The article further indicates that twenty-seven (27) states have laws permitting workers in unionized settings to choose not to join and pay membership fees. In your reasoned opinion, should the U.S. Supreme Court address whether private-sector employees who work in a unionized setting and choose not to join the union can be required to pay union fees? Explain your response.

*This is an opinion question, so student responses will likely vary. In your author's opinion, such a case is "ripe" for Supreme Court review.*

3. As the articles indicates, according to the United States Bureau of Labor Statistics, about 8.7% of workers in Missouri are union members, compared to 10.7% of workers nationally. Do these numbers surprise you? Why or why not?

*This is an opinion question, so student responses will likely vary. The numbers come as no surprise to your author, since union membership as a percentage of the overall United States workforce population has been declining steadily since the 1980s.*



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## Article 2: “Cincinnati Police: 11-Year-Old Girl Stealing from Kroger Market Shocked with Taser”

<https://www.cbsnews.com/news/11-year-old-taser-cincinnati-police-girl-stealing-kroger-market/>

*Note: In addition to the article, please see the accompanying video at the above-referenced internet address.*

According to the article, an 11-year-old girl who Cincinnati, Ohio police say was stealing from a supermarket has been shocked with a Taser stun gun. Police say the incident happened recently at a Kroger in Cincinnati.

Authorities say the officer suspected the girl was using a backpack to shoplift when he approached her. Police say the girl resisted and fled before she was shocked.

The girl was then taken to Cincinnati Children's Hospital for evaluation and was released into a guardian's custody, according to local media.

Police have charged the girl with theft and obstruction of justice. She will appear in juvenile court, however a date was not immediately announced.

Cincinnati Police Chief Eliot Isaac has opened an investigation. According to the department's policy, Tasers can be used on people who are at least 7 years old.

"We are extremely concerned when force is used by one of our officers on a child of this age," Isaac said in a statement. "As a result we will be taking a very thorough review of our policies as it relates to using force on juveniles as well as the propriety of the officer's actions."

Vice Mayor Christopher Smitherman says there should be a "complete investigation."

The officer involved has been placed on restricted duty, local media reports, pending an outcome of that investigation.

### Discussion Questions

1. Define “shopkeeper’s privilege.” What legal limitations (if any) are imposed on the shopkeeper’s privilege?

*The term “shopkeeper’s privilege” refers to the right of a store owner, manager, or employee to reasonably detain someone who is suspected of shoplifting. In terms of legal limitations on the shopkeeper’s privilege, “reasonable suspicion” of shoplifting is required, the shopkeeper must use*



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*reasonable force in effecting the detention, and the shopkeeper can only detain the suspected shoplifter for a reasonable period of time.*

2. According to the article, Cincinnati Police Department policy allows Taser use on people who are at least seven (7) years old. Comment on the propriety or impropriety of this policy.

*This is an opinion question, so student responses may vary. In your author's opinion, children under twelve (12) years of age should not be subjected to the use of a Taser, and the use of a Taser should be significantly restricted on children between twelve (12) and eighteen (18) years of age, with a strict burden imposed on law enforcement to demonstrate that use of the Taser was justified under the specific circumstances of the case.*

3. Based on your review of the facts presented in this case, did the office use reasonable force? Explain your response.

*This is an opinion question, so student responses may vary.*

## Article 3: "Tesla Board Says There Are Buyout Talks with Elon Musk"

<https://www.bbc.com/news/business-45118393>

According to the article, Tesla's board of directors has confirmed that it will consider the proposal by chief executive Elon Musk to take it private.

A statement was issued by six members of the electric carmaker's board after Mr. Musk tweeted to say he had the funding to de-list the company.

The board had "met several times over the last week" to discuss going private, the statement said.

They said this "included discussion as to how being private could better serve Tesla's long-term interests".

Mr. Musk said in his tweet that shareholders would be offered \$420 per share, valuing the business at more than \$70 billion.

This would make it the biggest deal of its kind, surpassing the purchase of utility TXU Corp in 2007 for \$44 billion by a consortium.

The brief statement by six of the nine board directors said Mr. Musk had "opened a discussion" about taking the company private last week.

The discussions "addressed the funding for this to occur", the six directors added. They did not include Mr. Musk, his brother Kimbal Musk, and Steve Jurvetson, a venture capitalist.



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The board statement came amid questions about how Mr. Musk opted to disclose the possible delisting to investors.

While companies are allowed to make announcements via social media, typically they also make a simultaneous regulatory filing, said Andrew M Calamari, a partner at the law firm Finn Dixon & Herling and former director of the New York office of the United States Securities and Exchange Commission.

"Just in terms of the style of this, it strikes me as very irregular," Mr. Calamari said.

"It also raises questions about his intent," he added. "Was he in earnest in what he's saying, or does he have some other motive" like influencing the stock price.

Tesla shares reached a peak of \$368 after Mr. Musk's tweets before trading on the stock market was halted.

Trades resumed later that afternoon, after the company published an email from Mr. Musk to employees elaborating on the plans.

Tesla shares surged close to their all-time high of \$385, which they touched almost a year ago, but fluctuated after the board members issued their statement.

In the staff memorandum, Mr. Musk explained why he wanted to take the company private.

"As a public company, we are subject to wild swings in our stock price that can be a major distraction for everyone working at Tesla, all of whom are shareholders," he wrote.

"Being public also subjects us to the quarterly earnings cycle that puts enormous pressure on Tesla to make decisions that may be right for a given quarter, but not necessarily right for the long term," he wrote.

He added that the company was "the most shorted stock in the history of the stock market" - a trading strategy which assumes share prices will fall - so "being public means that there are large numbers of people who have the incentive to attack the company".

Those traders are likely to have lost money when the share price rose on the announcement about a delisting.

Mr. Musk already owns 20% of the company. He said his intention in taking the company private was not to increase his personal holding and his plan would give existing investors the option to retain their shares.



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Regulators are likely to be interested in what evidence exists - such as agreements with investors or banks - for Mr. Musk's claim that funding was "secured", Mr. Calamari said.

The Securities and Exchange Commission has inquired about the issue, according to media.

The structure of the deal also remains ambiguous, said Adam C. Pritchard, professor of securities law at the University of Michigan.

If more than 2,000 investors opt to retain their shares, then the firm would be subject to the disclosure rules of a public company, he added.

"Intuitively it doesn't make sense because it would still be a public entity, and the public entity status is what is apparently objectionable to Musk," Mr. Pritchard said.

Steven Kaplan, a University of Chicago professor who researches private equity, said it would be difficult for Mr. Musk to raise the necessary finance when Tesla has still not made a profit.

"The company is cash-flow negative. How do you use any debt on a company that is cash-flow negative?" he said.

## Discussion Questions

1. In the context of the article, what does it mean to "go private?"

*"Going private" means to make your stock closely held by relatively few investors, with no public trading of the stock. The objective of going private with stock ownership is to provide only a few investors with control of the company.*

2. As the article indicates, Elon Musk tweeted his ruminations regarding taking Tesla private. Comment on the propriety of "managing by tweet."

*It will be interesting to have this discussion with your students! Some may contend that "managing by tweet" provides a quick and direct (and therefore effective) way for the manager to communicate with his or her subordinates, while others may argue that such form of communication is too "off-the-cuff" and informal, and therefore unbecoming of a position of leadership.*

3. Comment on the following quotes from Elon Musk regarding the pressures of being a public company:

"As a public company, we are subject to wild swings in our stock price that can be a major distraction for everyone working at Tesla, all of whom are shareholders.



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"Being public...subjects us to the quarterly earnings cycle that puts enormous pressure on Tesla to make decisions that may be right for a given quarter, but not necessarily right for the long term."

In your reasoned opinion, are the concerns Mr. Musk presents realistic, significant and accurate? Explain your response.

*This is an opinion question, so student responses may vary. In your author's opinion, Elon Musk's concerns regarding the pressures of being a public company are well-founded: a public company can be subject to dramatic swings in stock price based on the whims of investors, and a public company is often (fairly or unfairly) judged on immediate performance. Many investors simply will not tolerate a "buy-and-hold strategy," sacrificing short-term appreciation in stock value, for long-term success.*





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## Video Suggestions

### **Video 1: “New York Congressman Chris Collins Indicted on Insider Trading Charges”**

<https://www.cbsnews.com/news/new-york-congressman-chris-collins-indicted-on-insider-trading-charges/>

*Note: In addition to the video, please see the following article also included at the above-referenced internet address:*

### **“New York Congressman Chris Collins Indicted on Insider Trading Charges”**

According to the article, Representative Christopher Collins of New York has been charged with insider trading. He is accused of using inside information about a biotechnology company to help his son make illicit stock trades. The charges were announced and the indictment was unsealed in New York City recently. The indictment charges Collins, the congressman's son and the father of his son's fiancée with conspiracy, wire fraud and other counts.

Collins and his co-defendants were arraigned in New York City this afternoon. They each pleaded not guilty and were released on a \$500,000 bond. They are due back in court in October.

Geoffrey Berman, the U.S. attorney for the Southern District of New York, outlined the case against Collins at a press conference recently. Berman was appointed interim United States attorney in January, and appointed as attorney by judges of the Federal District Court in Manhattan in April. He was formerly employed by the law firm Greenberg Traurig.

"He placed his family and friends above the public good," Berman said about Collins. "Congressman Collins, who by virtue of his office helps to write the laws of our nation, acted as if the law did not apply to him."

The indictment of Collins comes a few months before the November midterm elections, when he will be facing Nathan McMurray. Berman denied that the upcoming election would affect the case against Collins. "Politics does not enter into our decision-making in charging a case," Berman told reporters. "We are months away from the election, and the concerns do not apply."



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Collins, his son and his fiancée's father are additionally charged with lying to federal agents about allegations of insider trading. The Securities and Exchange Commission is also seeking to prohibit Collins from serving as an officer or director of a public company.

After the indictment was announced, House Speaker Paul Ryan removed Collins from the United States House of Representatives Energy and Commerce Committee while the matter is pending.

"While his guilt or innocence is a question for the courts to settle, the allegations against Representative Collins demand a prompt and thorough investigation by the House Ethics Committee," Ryan said in a statement. "Insider trading is a clear violation of the public trust. Until this matter is settled, Representative Collins will no longer be serving on the House Energy and Commerce Committee."

According to the indictment, the defendants tried to get early word on the results of tests by a pharmaceutical company, Innate Immunotherapeutics Limited. The company developed a drug intended to treat Secondary Progressive Multiple Sclerosis.

Collins has denied any wrongdoing. "We will answer the charges filed against Congressman Collins in Court and will mount a vigorous defense to clear his good name," Collins' attorney said in a statement. "It is notable that even the government does not allege that Congressman Collins traded a single share of Innate Therapeutics stock. We are confident he will be completely vindicated and exonerated."

Collins was already being investigated by the House Ethics for his holdings in Innate and his promotion of the company. When the House Ethics Committee began investigating the stock trades a year ago, his spokeswoman called it a "partisan witch hunt."

Prosecutors say the charges relate to a scheme to gain insider information about a biotechnology company headquartered in Sydney, Australia, that has offices in Auckland, New Zealand. All three defendants were in federal custody Wednesday and were expected to make their initial court appearance in the afternoon.

Collins was a member of Innate's board of directors and held nearly 17 percent of the stock. When the drug trial's failure was announced, Innate's stock price plunged 92 percent.

But the New York lawmaker did not trade the millions of shares he owned before the drug trial's failure was made public, prosecutors noted, for two reasons. He was already under investigation by the House Ethics Committee, for one. But he also couldn't -- Collins' stock was held in the Australian stock exchange (ASX), and before the drug trial's failure was announced, Innate asked the ASX to halt trading of the stock, which the ASX agreed to do, until June 27, 2017, after Innate's announcement that the drug trial had been a complete failure. This did not affect the U.S. over-the-counter market, however, where Collins' son's shares were held. Prosecutors allege that Collins passed along secrets to his son, Cameron Collins, in June 2017.



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On June 22, 2017, Innate's CEO sent an email to the board of directors with the result of the trial. It was a "clinical failure" -- there were "no clinically meaningful or statistically significant differences in (outcomes)" between the drug and the placebo. "No doubt we will want to consider this extremely bad news," he concluded.

## Discussion Questions

1. Define "insider trading."

*"Insider trading" involves using material information not available to the public to make "buy or sell" decisions regarding stock. Insider trading is a crime (a wrong against society) because it diminishes public confidence in the stock market.*

2. Insider trading is a type of "white-collar" crime. Define white-collar crime.

*A "white-collar" crime often occurs in the professional realm (thus the "white-collar" reference.) It often does not involve the use of force, fear or violence, but can still result in significant harm to victims. For example, with regard to the Bernard Madoff Ponzi scheme, the largest scheme of its kind in United States history, investors were defrauded of at least \$20 billion.*

3. As the article indicates, Christopher Collins' attorney stated that "(i)t is notable that even the government does not allege that Congressman Collins traded a single share of Innate Therapeutics stock." Comment on this sufficiency of this defense to the charges of insider trading, conspiracy and wire fraud filed against Representative Collins.

*In your author's opinion, this is an illegitimate defense. If the evidence proves beyond reasonable doubt that Mr. Collins used inside information about Innate Therapeutics to help his son make illicit stock trades, he still committed insider trading even if he did not personally (himself) trade a single share of the biotechnology company's stock.*

## **Video 2: "Commentary: Is It Time for Term Limits on the Supreme Court?"**

<https://www.cbsnews.com/news/commentary-is-it-time-for-term-limits-on-the-supreme-court/>

*Note: Please see the following article, an opinion piece written by Boston Herald columnist Michael Graham, also included at the above-referenced internet address:*

## **"Commentary: Is It Time for Term Limits on the Supreme Court?"**

Assuming Brett Kavanaugh is confirmed for the Supreme Court, which, based on the Left's voluble wailing appears to be a lock, Donald Trump will have appointed two justices before he's even halfway through his first term. And with two liberal justices in their 80s (Justice Ginsburg is 85,



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Justice Breyer turns 80 on August 15), the possibility looms that President Trump could appoint a third of the court's members even if he serves just a single term.

Given the trend of appointing younger and younger justices, it is likely that Trump's judicial legacy will be felt for another 20 or 30 years. Not surprisingly, this has sparked a backlash from the Left: a call for term limits on the Supreme Court.

Though Americans have supported the idea for years, it's never been a cause championed by the Left. Until now.

Ezra Klein at the uber-liberal website Vox.com has discovered the advantages of term limits for the high court.

"Why It's Time to Get Serious About Supreme Court Term Limits" is the headline at the *Washington Post*.

And over on the op-ed pages, Yale University liberals Ian Ayres and John Fabian Witt write that Democrats "ought to consider ending the lifetime terms of Supreme Court justices."

"A statute might designate all future Supreme Court seats as 18-year terms, with justices sitting on the court by designation, followed by life tenure on the lower federal bench. The vagaries of justices' deaths and retirements should not throw American democracy into tumult," they write.

In a recent Chicago Tribune op-ed, liberal attorney and Watergate scholar James Robenalt joined in, bemoaning that "Trump has a solicitous Senate majority and can ram through his nominees... There is effectively no check on what he can do." Therefore Robenalt suggests a wholesale review of service on the highest court.

"Term limits, reconfirmation proceedings every eight years, and age limits — all are viable and rational ideas. It may be time for a constitutional amendment," Robenalt said.

The reaction to all this from the Right is to quote that great American legal scholar, Bruce Willis, from the movie "Die Hard:" "Welcome to the party, pal."

Conservatives have argued in favor of Supreme Court term limits for years, regardless of which party was in power.

In 2006, when Republicans had control of both the White House and Congress, legal scholars Steven Calabresi and James Lindgren released an influential paper entitled "Term Limits for the Supreme Court: Life Tenure Reconsidered."



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Calabresi is a conservative's conservative. He served in the Reagan and Bush administrations and co-founded the Federalist Society, the conservative legal group that's helped guide Trump's judicial appointments.

In their paper, Calabresi and Lindgren report that, from 1789 to 1970, Supreme Court justices served an average of about 15 years and there was a vacancy every two years or so. "For those Justices who have retired since 1970, the average tenure has jumped to 26.1 years," they said. "Because of the long tenure of recent members of the Court, there were no vacancies on the high Court from 1994 to the middle of 2005."

Their suggested solution? Term limits. "A system of staggered, eighteen-year term limits for Supreme Court Justices...whose terms would be staggered such that a vacancy would occur on the Court every two years."

This approach has long had fans on the Right. Texas Governor Rick Perry made it part of his 2012 presidential race platform. Scholars at the conservative American Enterprise Institute like the idea, and conservative media figures like Mike Huckabee and Mark Levin back term limits, too.

However, while the Right and the Left may be on the same page regarding term limits for SCOTUS judges, their motives are miles apart. The argument from the Right has been that the court has too much power and too frequently operates as an unelected legislature. As a result, every appointment is a political fight to the death, focused almost entirely on the ideological impacts of the future, rather than the resume and legal reasoning of the nominee today. Knowing that there will be a new vacancy on the court every two years will reduce the political rancor and, conservatives hope, pare back the politics that have infected the one branch of government that is supposed to be beyond partisanship.

Ending life tenure for SCOTUS justices would also promote the "consent of the governed" many conservatives have advanced, as opposed to the "angels to govern us" approach rejected by Thomas Jefferson as a form of judicial tyranny. Some conservatives like Senator Ted Cruz have even proposed "judicial retention elections" that would allow a popular vote on the performance of each Supreme Court justice.

This is not the view of the newly-minted term-limit fans on the Left. Their support for limiting terms on the court is found in conversations that also include proposals to "pack" the Supreme Court with a new liberal majority when Democrats take power again. In other words, their focus isn't the process, it's the president. Supreme Court term limits are just another part of the Trump #Resistance.

The good news for Americans—who overwhelmingly support term limits for Supreme Court justices today—is that, regardless of their motives, the left and right are in agreement on this fundamental reform. Most scholars agree that imposing these limits would require a Constitutional amendment, a long and arduous process. But with partisans on both sides pushing in the same direction, term limits for the Supreme Court could become the most significant, if unintended, reform of the Trump era.



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## Discussion Questions

1. What does the United States Constitution say about lifetime appointments for U.S. Supreme Court justices?

*The United States Constitution does not specifically state that a U.S. Supreme Court justice is appointed for life. Instead, it says the justices “shall hold their Offices during good Behaviour,” which has always been understood to mean until he or she died, retired, or was impeached for bad “Behaviour.”*

2. Comment on the last paragraph of the article, which reads as follows:

“The good news for Americans—who overwhelmingly support term limits for Supreme Court justices today—is that, regardless of their motives, the left and right are in agreement on this fundamental reform. Most scholars agree that imposing these limits would require a Constitutional amendment, a long and arduous process. But with partisans on both sides pushing in the same direction, term limits for the Supreme Court could become the most significant, if unintended, reform of the Trump era.”

Are you as optimistic as the author appears to be regarding the possibility of bipartisan support for a Constitutional amendment imposing term limits (for example, the 18-year term limit proposal mentioned in the article) on United States Supreme Court justices? Why or why not?

*This is an opinion question, so student responses may vary. In your author’s opinion, bipartisan support for such an amendment is unlikely, particularly given the polar divide that exists between the two major political parties in the United States. Quite simply, one party might perceive such an amendment as benefiting the adversary, and therefore not support it.*

3. As the article indicates, Alaska Senator Ted Cruz has proposed "judicial retention elections" that would allow a popular vote on the performance of each Supreme Court justice. In your reasoned opinion, would such a proposal (if implemented) improve the United States Supreme Court? Why or why not?

*This is an opinion question, so student responses may vary. Your author is reluctant to support the “American Idolization” of the high Court. In your author’s opinion, the more the Supreme Court is subject to the “prevailing winds” of politics, the less likely the Court will be able to make decisions that fairly and objectively support the rule of law. By design, Justice is supposed to be blind.*



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## Of Special Interest

This section of the newsletter addresses underrepresentation of female executive leadership at S&P 500 companies.

## Ethical Dilemma

### “Just 24 Companies on the S&P 500 Are Led by Female CEOs”

<https://www.cbsnews.com/news/just-24-companies-on-the-s-p-500-are-led-by-female-ceos/>

*Note: In addition to the article, please see the accompanying video included at the above-referenced internet address.*

According to the article, Indra Nooyi announced recently she is stepping down as CEO of PepsiCo after 12 years of leading the world's second-largest food and beverage company. Her departure leaves only 24 women as chief executives of S&P 500 companies, or less than 5 percent.

"We're moving in the wrong direction," CBS News financial contributor Mellody Hobson said of the decline. "Let's just think about it from an absolute standpoint. Last year, there were 32 women. Now there are 24. Less than a handful are women of color. This is going backwards. Some have left for performance reasons. But at the end of the day, we're talking about a disappearing act here, a shrinking number of women, and that is not good."

Hobson, who serves as the president of Ariel Investments and sits on the board of Starbucks, said companies need to focus on getting more women in the pipeline for senior roles and creating incentives for diverse leadership teams.

"When you look at the women that are ready to step into that role in senior positions, we just don't have enough women there. And part of that again is just management and boards and leadership have to commit themselves, and I think you get what you want. You have to incentivize people to have diverse teams.

According to research from non-profit organization Catalyst, last year 23 percent of senior positions were held by women. This year, it's 21 percent.

"We are going backward. And so boards have to really, you know, see that and step up," Hobson said.



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## Discussion Questions

1. As the article indicates, with PepsiCo CEO Indra Nooyi's departure, only twenty-four (24) women remain as chief executives of S&P 500 companies, or less than five (5) percent. In your reasoned opinion, is this prima facie evidence of gender discrimination at the chief executive office level of S&P 500 management? Explain your response.

*This is an opinion question, so student responses may vary. In your author's opinion, numbers and statistics can constitute compelling evidence.*

2. Define reverse discrimination.

*Reverse discrimination might affect a group of people that has not been historically victimized by discrimination. For example, some may argue that an organizational affirmative action plan favoring female hires might serve to discriminate against male candidates, and therefore result in reverse discrimination against males.*

3. As the article indicates, Mellody Hobson, who serves as the president of Ariel Investments and sits on the board of Starbucks, said companies need to focus on getting more women in the pipeline for senior roles and creating incentives for diverse leadership teams. In your reasoned opinion, would such initiatives constitute reverse discrimination against male candidates for executive-level leadership positions? Why or why not?

*This is an opinion question, so student responses may vary.*





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## Of Special Interest

This section of the newsletter will assist you in addressing Article 2 (“Cincinnati Police: 11-Year-Old Girl Stealing from Kroger Market Shocked with Taser”) and the Ethical Dilemma (“Just 24 Companies on the S&P 500 Are Led by Female CEOs”) of the newsletter.

## Teaching Tips

### **Teaching Tip 1 (Related to Article 2-“Cincinnati Police: 11-Year-Old Girl Stealing from Kroger Market Shocked with Taser”): “When Apprehending Shoplifters, Excessive Force Is Never an Option”**

For an interesting discussion regarding the limits of the shopkeeper’s, please see the following article:

#### **“When Apprehending Shoplifters, Excessive Force Is Never an Option”**

<https://losspreventionmedia.com/insider/shoplifting-organized-retail-crime/when-apprehending-shoplifters-excessive-force-is-never-an-option/>

According to the article, as part of a 2015 civil lawsuit, an Omaha jury ordered a discount store to pay Richard “Dave” Moore, who was convicted of shoplifting from the retail store, \$750,000 for injuries he received from a loss prevention officer.

According to court records and accounts by Moore’s attorney, Moore was in the store with his girlfriend when loss prevention employees observed him conceal a pair of eyebrow scissors and a pair of nose-hair scissors. Both are roughly the size of tweezers.

Upon leaving the store, he was confronted by two loss prevention employees who requested that he return to the store. While accounts varied from there, the shoplifter refused to return to the store and an altercation ensued.

As a result, a 250-pound loss prevention representative took the 150-pound shoplifter to the ground. In the process, he struck his head on the pavement, suffering several skull fractures, bleeding on the brain and two black eyes. During his stay in the hospital, doctors diagnosed him with a traumatic brain injury—one that he claimed continued to cause problems with his thought process and memory.

Moore pleaded no contest in court to shoplifting and was fined \$50. However, he claimed he hasn’t been able to work since. He said that he has no memory of that day and had been unemployed in the seven years since the incident. His attorney claimed that the reason for bringing the lawsuit was to “try to make sure that this didn’t happen to anybody else...we’re hopeful that this causes loss prevention people to follow their own guidelines. There was no



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need for this to happen. No one deserves to be thrown to the ground, even if you're a shoplifter.”

The former loss prevention employee—who no longer works for the retail company—testified that he acted in self-defense out of fear that Moore, who was resisting, might use the small scissors to stab or gouge him. Moore alleged that the loss prevention employees used excessive force. Attorneys for the company declined to comment following the decision.

An October 2015 *LP Magazine* poll asked: Based on the available information, does the incident involve excessive force, or were the actions of the loss prevention representatives justified?

The question sparked the interest of our readers, with strong participation in the poll and on social media. Based on the limited insights available about the specific case, 21 percent of respondents believed that the shoplifter should have been allowed to leave when he resisted, and the confrontation shouldn't have taken place at all. This is common practice and company policy within many loss prevention departments today, placing an emphasis that nothing in a store is worth the risk of someone being hurt—whether that person is an employee, a customer or bystander, or the shoplifter himself.

On the other hand, 22 percent believe that LP representatives had the right to defend themselves and acted accordingly, believing that the threat of potential harm was sufficient to justify the actions of the LP representative.

However, 49 percent felt that while the employees have a right to defend themselves, excessive force was used in this situation, to the point where several respondents believe that the LP representative should have been terminated and charged with assault.

According to the Loss Prevention Foundation's LPQualified certification course, reasonable force is, “that force necessary and within reason to obtain and maintain control during an apprehension.” The use of force should be considered a measured response in an apprehension situation. We say measured response and not a balanced response because when we talk about the use of force, we do not use the approach of a balance of power and strength—or “an eye for an eye.” The purpose in the use of force is to obtain and maintain control. Excessive force is any force above that which is needed to obtain and maintain control. Excessive force is never justified, regardless of the value of the merchandise or the seriousness of the offense.

Most often when making an apprehension, little or no force is necessary to get shoplifters to comply. Often, that “force” is simply the command in your voice. On rare occasions, it may be necessary to exert some physical force in order to control the situation, subdue the subject, and maintain the safety of everyone involved.

However, the key is control. Maintain control of the situation and yourself. Never escalate your response. Industry best practices indicate that you should only use the amount of force necessary to control the situation. The most effective way to control the situation is to approach and speak with



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confidence and authority, and to remain professional and non-threatening. The goal is to have no physical contact with the shoplifter at all.

If the situation is getting out of control, the best way to diffuse it is to let the shoplifter go without further incident. Nothing in the store is worth someone getting hurt. In the situation described, a man received skull fractures and brain injuries over the theft of tweezers. But regardless of the circumstances, we should never try to match the bad decisions of others with bad decisions of our own.

## **Teaching Tip 2 (Related to the Ethical Dilemma-“Just 24 Companies on the S&P 500 Are Led by Female CEOs”): “The Number of Women CEOs in the Fortune 500 Is At an All-Time High—of 32”**

For additional discussion regarding female leadership of the nation’s largest companies, please see the following article:

### **“The Number of Women CEOs in the Fortune 500 Is At an All-Time High—of 32”**

[https://www.washingtonpost.com/news/on-leadership/wp/2017/06/07/the-number-of-women-ceos-in-the-fortune-500-is-at-an-all-time-high-of-32/?noredirect=on&utm\\_term=.6589fe959d7f](https://www.washingtonpost.com/news/on-leadership/wp/2017/06/07/the-number-of-women-ceos-in-the-fortune-500-is-at-an-all-time-high-of-32/?noredirect=on&utm_term=.6589fe959d7f)

According to the article, the percentage of women running companies in the Fortune 500 is still solidly in the single digits, but the proportion is slowly growing, and just reached an all-time high.

According to Fortune Magazine’s 2017 Fortune 500 list, which ranks major United States companies by their fiscal 2016 revenues, 32 of the companies, or 6.4 percent, were run by female CEOs.

The magazine said that number was the highest proportion yet seen in the 63-year history of the list. Last year, it had just 21 women CEOs on the list, and for the 2014 fiscal year, there were 24. Roughly a third of the women running companies on the list are new to the job: A startling 11 women were named CEO of companies in 2016 or early 2017 that are on this year's Fortune 500 list, including Vicki Hollub at Occidental Petroleum, Tricia Griffith at the insurer Progressive, Shira Goodman at Staples, Margo Georgiadis at Mattel and Michele Buck at Hershey. At Hertz Global Holdings, Kathryn Marinello was named to the top job late last year, as was Anna Manning at Reinsurance Group of America.

That is a significant jump from one year to the next, and comes at a time when more attention is being paid by investors to the value of diversity in the boardroom. Investors are pushing shareholder proposals that urge companies to add diversity among their top ranks, and financial companies are adding products that let investors bet on companies with more women at the top, as research demonstrates a link between diversity and better performance.



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The Fortune 500 list, which includes private and public companies, has more female CEOs than the Standard & Poor's 500-stock index, which had 29 female CEOs as of April, according to a list compiled by the nonprofit firm Catalyst. Though the lists are different, the bumper crop of female CEOs named to run Fortune 500 companies last year is worth noting, given that in the year prior, only one woman was named CEO at an S&P 500 firm.

Women run seven of the country's very largest companies, the Fortune 100, including Mary Barra at General Motors, Ginni Rometty at IBM, and Marillyn Hewson at Lockheed Martin.

That may be one reason executive compensation experts say, that the median female CEO, surprisingly, makes more than her male peer. While the explanation for why is unclear -- it could, of course, simply be due to better performance, or companies could pay a "diversity premium" for a female CEO -- the median female CEO made \$13.1 million in 2016, compared with \$11.4 million for the median male CEO.



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## Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
<b>Barnes et al., Law for Business</b>	Chapters 6, 25 and 31	Chapters 2 and 5	Chapters 3 and 25	Chapters 6 and 25
<b>Bennett-Alexander &amp; Hartman, Employment Law for Business</b>	Chapter 15	N/A	Chapters 3 and 8	Chapters 3 and 8
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 8, 38, 41 and 42	Chapters 3 and 7	Chapters 2 and 43	Chapters 8 and 43
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 7, 23 and 24	Chapters 3 and 6	Chapters 2 and 24	Chapters 7 and 24
<b>Liuzzo, Essentials of Business Law</b>	Chapters 4, 32 and 33	Chapters 1 and 3	Chapters 2 and 33	Chapters 4 and 33
<b>Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 6, 44, 45 and 51	Chapters 2 and 5	Chapters 4 and 51	Chapters 6 and 51
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 7, 9, 12 and 14	Chapter 4	Chapters 2 and 13	Chapters 7 and 13
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 9, 11 and 16	Chapters 3 and 22	Chapters 5 and 12	Chapters 9 and 12
<b>Pagnattaro et al., The Legal and Regulatory Environment of Business</b>	Chapters 10, 17, 21 and 22	Chapters 3 and 13	Chapters 2 and 20	Chapters 10 and 20
<b>Sukys, Brown, Business Law with UCC Applications</b>	Chapters 6, 23, 24 and 28	Chapters 3 and 5	Chapters 1 and 23	Chapters 6 and 23



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## This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 13<sup>th</sup> Edition ©2018 (1259722325)
- Bennett-Alexander et al., Employment Law for Business, 9<sup>th</sup> Edition ©2019 (1259722333) *New edition now available!*
- Kubasek et al., Dynamic Business Law, 4<sup>th</sup> Edition ©2017 (1259723585)
- Kubasek et al., Dynamic Business Law: The Essentials, 4<sup>th</sup> Edition ©2019 (125991710X) *New edition now available!*
- Liuzzo, Essentials of Business Law, 10<sup>th</sup> Edition ©2019 (1259917134) *New edition now available!*
- Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17<sup>th</sup> Edition ©2019 (1259917118) *New edition now available!*
- McAdams et al., Law, Business & Society, 12<sup>th</sup> Edition ©2018 (1259721884)
- Melvin, The Legal Environment of Business: A Managerial Approach, 3<sup>rd</sup> edition ©2018 (1259686205)
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 18<sup>th</sup> Edition ©2019 (1259917126) *New edition now available!*
- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14<sup>th</sup> Edition ©2017 (0077733738)

