

## **Elysa M. Dishman**

Elysa Dishman is a Visiting Assistant Professor at BYU Law. She teaches Business Organizations and Professional Responsibility. Her research currently focuses on civil enforcement and corporations. Her other research interests include corporate governance, director and officer liability, ethics, and white collar crime. Prior to joining BYU Law, she practiced real estate law at Kirton McConkie PC in Salt Lake City and was a Senior Associate in the litigation group at Baker Botts LLP in Washington, DC. She has a J.D. from the University of Virginia School of Law and an undergraduate degree from Brigham Young University.

## **The Generals and the Company**

*In a multienforcer system of federal agencies, state enforcers, and private litigants, state attorneys general (AGs) are emerging as potent enforcers and regulators of corporations through multistate enforcement actions. These actions often result in settlements with historically high dollar amounts and expansive regulatory provisions. While many states may participate in these actions, only a handful of AGs consistently lead or coordinate them. This leadership enables other states to free ride on the enforcement resources and efforts of a few leading states. This Article is the first to identify the phenomenon of state enforcement free riding and comprehensively theorize about when and why states free ride on other states.*

*This Article explores the political and financial incentives of AGs to be enforcement leaders or free riders. It also develops the contours of state enforcement free riding through examples of multistate actions brought by AGs during and in the wake of the Great Recession. By analyzing these examples, this Article identifies factors that increase the likelihood that states will free ride on the enforcement actions of other states against corporations.*

*State enforcement free riding may give rise to an enforcement free-rider problem, whereby AGs may be disincentivized from pursuing enforcement actions if other states can reap the benefits of settlements, without committing the same level of resources to enforcement. However, if AGs are incentivized to encourage or at least tolerate free riding, this Article argues that free riding may offer some solutions to challenges that arise in state enforcement by increasing resource efficiency and internalizing negative externalities.*