

HEALTH REFORM AND ITS LEGAL CONTROVERSIES

Professor Bagley – Fall Term 2015

Class Sessions

The class will meet on Thursdays from 4:10 to 6:10 in Room 0220 in South Hall. Laptops and tablets are not permitted in class. My office is in Room 3238 in South Hall, and my office hours will be every Friday from 3:00-5:00 or by appointment. You can reach me at nbagley@umich.edu.

Every student should be prepared to discuss all of the assigned reading for each class meeting. A class of this size cannot function without your well-informed and active participation.

On October 1, we will not be holding a typical seminar session. Instead, I am asking you to attend the “Vested Interests Conference” on October 1 from 3:00 to 5:00 at the Rackham Assembly Hall, where I and a handful of the authors you’ll be reading will be speaking about the Affordable Care Act. (You will still have reading for this non-class session.)

Reading Assignments

Some of the reading will come from JOHN McDONOUGH, *INSIDE NATIONAL HEALTH REFORM* (2011), which I expect you to purchase. Otherwise, the readings can be found on the class’s Canvas website.

Grading

Grades in this course will be determined by your participation in class and the quality of your six, bi-weekly response papers. There will be no final paper.

Response Papers

You must write a response paper to the reading for the upcoming class once every two weeks. The papers should be roughly 1,500 words in length and will be judged on their quality.

Beyond the formalities, the assignment is open-ended. You might explain why you (dis)agree with the outcome of a case or with the author of an article. You might draw connections between readings, highlight important but unanswered questions, or explore how the reasoning of a case might apply in other situations.

Whatever you write, you should demonstrate that you have engaged with the week’s readings. I’ll be looking at the papers to find ideas, arguments, and questions to frame our in-class discussions. Occasionally, I may ask a student to present her reaction paper at the beginning of class, or I may present one or more of the reaction papers to get a conversation started.

Students should email me their papers as an attachment by **midnight on the day before the relevant class**. The schedule is as follows:

Response paper	Due by midnight on
#1	9/9 or 9/16
#2	9/23 or 9/30
#3	10/7 or 10/14
#4	10/21 or 10/28
#5	11/4 or 11/11
#6	11/18, or 12/2

SEPTEMBER 3. ENACTMENT.

Pages 19-49 and 101-54 in JOHN McDONOUGH, *INSIDE NATIONAL HEALTH REFORM*.

Harold Pollack, Bill Gardner & Timothy Jost, *Valuing Medicaid*, THE AMERICAN PROSPECT, July 26, 2015.

SEPTEMBER 10: THE INDIVIDUAL MANDATE.

Excerpt from *NFIB v. Sebelius*.

Jack M. Balkin, *From Off the Wall to On the Wall: How the Mandate Challenge Went Mainstream*, THE ATLANTIC, June 4, 2012.

Paul Starr, *The Mandate Miscalculation*, THE NEW REPUBLIC, Dec. 14, 2011.

Jonathan Cohn, *Was the Mandate a Mistake?*, THE NEW REPUBLIC, Dec. 26, 2011.

Paul Starr, *The Health Care Mandate Really Was a Mistake*, THE NEW REPUBLIC, Jan. 2, 2012.

SEPTEMBER 17: THE MEDICAID EXPANSION.

Excerpt from *NFIB v. Sebelius*.

Excerpt from *Mayhew v. Burwell* (1st Cir. 2014).

Sarah Varney, *How Obamacare Went South in Mississippi*, THE ATLANTIC, Nov. 4, 2012.

John Ayanian, *Michigan's Approach to Medicaid Expansion and Reform*, NEW ENGLAND JOURNAL OF MEDICINE, Nov. 7, 2013.

SEPTEMBER 24. HOBBY LOBBY AND ITS AFTERMATH.

Excerpt of *Hobby Lobby v. Burwell*.

Wheaton College v. Burwell (7th Cir. 2015).

Excerpt from NAT'L WOMEN'S LAW CENTER, STATE OF WOMEN'S COVERAGE: HEALTH PLAN VIOLATIONS OF THE AFFORDABLE CARE ACT (2015).

OCTOBER 1. POLITICS AND SPECIAL INTERESTS.

Pages 50-99 in JOHN McDONOUGH, INSIDE NATIONAL HEALTH REFORM.

Watch OBAMA'S DEAL, FRONTLINE

<http://www.thirteen.org/programs/frontline/obamas-deal/>

OCTOBER 8: KING V. BURWELL, PART 1.

King v. Burwell.

26 U.S.C. 36B and 42 U.S.C. 18041.

OCTOBER 15: KING V. BURWELL, PART 2.

Excerpt of Virginia's amicus brief in *King v. Burwell*.

Excerpt of Brief of Former Government Officials in *King v. Burwell*.

Jonathan Adler & Michael Cannon, *Another ObamaCare Glitch*, WALL ST. J., Nov. 16, 2011.

Robert Pear, *Four Words that Imperil Health Care Law Were All a Mistake*, N.Y. TIMES, May 25, 2015.

OCTOBER 22: ADMINISTRATIVE DELAYS

Nicholas Bagley, *The Legality of Delaying Key Elements of the ACA*, 370 NEW ENG. J. MED. 1967 (2015).

Timothy Stoltzfus Jost & Simon Lazarus, *Obama's ACA Delays – Breaking the Law or Making It Work?*, 370 NEW ENG. J. MED. 370 (2014).

Excerpt of Zachary Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671 (2014).

Excerpt of Office of Legal Counsel, *DHS's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (2014).

OCTOBER 29: HOUSE V. BURWELL

Government's supplemental memorandum in support of its motion to dismiss, *House v. Burwell*, No. 14-1967 (July 1, 2015).

House's supplemental memorandum concerning the government's motion to do dismiss, *House v. Burwell*, No. 14-1967 (July 1, 2015).

Government's supplemental reply memorandum in support of its motion to dismiss in *House v. Burwell*, No. 14-1967 (July 17, 2015).

Order on motion to dismiss in *House v. Burwell*, No. 14-1967 (D.D.C. 2014) (if it's out).

31 U.S.C. §1324.

NOVEMBER 5: THE ORIGINATION CLAUSE

Sissel v. HHS, 760 F.3d 1 (2014).

Judge Kavanaugh's dissent from the denial of rehearing en banc, *Sissel v. HHS*.

NOVEMBER 12: WELLNESS PROGRAMS

Pages 192-94 in JOHN MCDONOUGH, *INSIDE NATIONAL HEALTH REFORM*.

Austin Frakt & Aaron E. Carroll, *Do Workplace Wellness Programs Work? Usually Not*, N.Y. TIMES, Sept. 11, 2014.

Anna Kirkland, *Critical Perspectives on Wellness*, 39 J. HEALTH POL. POL'Y & LAW 971 (2014).

Judith Feder & Samuel R. Bagenstos, *Beware: 'Wellness' May Be Hazardous to Your Health*, HUFFINGTON POST, Mar. 11, 2015.

EEOC's Notice of Proposed Rulemaking on Wellness Programs, 80 FED. REG. 21659 (2015).

NOVEMBER 19: THE ACA AND THE NONDELEGATION DOCTRINE

Timothy Stoltzfus Jost, *The Real Constitutional Problem with the Affordable Care Act*, 36 J. HEALTH POL. POL'Y & LAW 501 (2011).

Excerpt of *Coons v. Lew*, 762 F.3d 891 (9th Cir. 2014).

Excerpt of David Barron & Todd D. Rakoff, *In Defense of Big Waiver*, 113 COLUM. L. REV. 265 (2013).

Excerpt of Michael S. Greve & Ashley C. Parrish, *Administrative Law Without Congress*, 22 GEO. MASON L. REV. 501 (2015).

DECEMBER 3: INDUSTRY CONSOLIDATION AND THE FUTURE OF THE ACA

Katherine Baicker & Helen Levy, *Coordination Versus Competition in Health Care Reform*, 369 NEW ENG. J. MED. 789 (2013).

Thomas C. Tsai & Ashish K. Jha, *Hospital Consolidation, Competition, and Quality: Is Bigger Necessarily Better?*, 312 J. AM. MED. ASS'N 29 (2014).

Excerpt of Nicholas Bagley, *Medicine as a Public Calling*, 114 MICH. L. REV. __ (2015).