

**NICOLE HUBERFELD**

202 Law Building  
Lexington, KY 40506  
859-257-3281  
nicole.huberfeld@uky.edu

**ACADEMIC EXPERIENCE**

**University of Kentucky College of Law, Lexington, KY**

*Ashland-Spears Distinguished Research Professor*, 2015 - present (5 year award)

*Professor of Law*, 2012 - present

*Associate Professor of Law*, 2008-2012

*Assistant Professor of Law*, 2005 – 2008 (tenured 1 year early, July 2008)

*Bioethics Associate*, College of Medicine, 2006 – present

*Courses*: Law of American Health Care; Healthcare Organizations & Finance; Bioethical Issues in the Law; Health Care Law & Policy Seminar; Constitutional Law I and II

*Honors*: 2008 Duncan Teaching Award (law faculty award for teaching excellence); 2010 Nominee for Great Teacher Award (university-wide award); 2010 Nominee, ALI Young Scholars Medal

*Select Service*: *Associate Dean for Academic Affairs*, Jan. 2016 – present, Faculty Advisor *Kentucky Law Journal* (2006-2015); Executive Committee (2010-12, 2013-14); Chair, Faculty Development Committee (equivalent to Associate Dean for Research) (2012-14)

**Seton Hall Law School, Newark, NJ**

*Health Law Faculty Fellow (visiting assistant professor)*, 2003 – 2005

*Director (and Originator), Health Care Compliance Certification Program*, 2003 – 2005

**NOTABLE CITATIONS**

*Smith v. Mahoney*, No. 642 (Supreme Court of Delaware, Nov. 3, 2016)

*National Federation of Independent Business v. Sebelius*, 567 U.S. \_\_\_, 132 S. Ct. 2566, 2631 n. 13 (2012) (Ginsburg, J., concurring and dissenting)

Brief of Former HHS Officials as Amici Curiae in Support of Respondents at 20 *Armstrong v. Exceptional Child Ctr., Inc.* (2015) (No. 14-15)

Petition for Writ of Certiorari at 14 n. 1 *Sec’y of the Indiana Family and Social Serv. Admin. v. Planned Parenthood of Indiana, Inc.* (2013) (No. 12-1039) 2013 WL 660665

Petition for Writ of Certiorari at 18 n. 1 *Indiana Family and Social Serv. Admin. v. Bontrager* (2013) (No. 12-1037) 2013 WL 660664

Brief of Amici Curiae Health Law & Policy Scholars and Prescription Policy Choices in Support of Respondents on the Constitutional Validity of the Medicaid Expansion at 37 *Florida v. Dept. of Health and Human Serv.*, Docket No. 11-400 (2012)

Brief of Former HHS Officials as Amici Curiae in Support of Respondents at 20 *Douglas v. Indep. Living Ctr. of So. Cal., Inc.*, 132 S. Ct. 1204 (2012) (Nos. 09-958, 09-1158, and 10-283) 2011 WL 3706105

Petition for Writ of Certiorari at 28, 33 n. 3, *Kane v. Grammer* (2009) (No. 09-696) 2009 WL 4875833

**PUBLICATIONS: BOOKS & BOOK CHAPTERS**

Work in progress: THE NEW HEALTH CARE FEDERALISM (with A. Gluck)

THE LAW OF AMERICAN HEALTH CARE (Aspen 2016) (with Elizabeth Weeks and Kevin Outterson)

*Health Care: Legal Issues*, in INT'L ENCYCLOPEDIA OF SOCIAL & BEHAVIORAL SCIENCE (2d ed., 2014)

*Reproductive Rights* (Chapter 14, PROBLEMS IN HEALTH CARE LAW, 10<sup>th</sup> ed., 2013)

*Federal Spending and Compulsory Maternity* (chapter in FEMINIST CONSTITUTIONALISM) (Cambridge University Press 2012)

**PUBLICATIONS: SELECTED ARTICLES & ESSAYS**

Work in Progress: *Instrumental and Transformative Medical Technologies*, VAND. J. ENT. & TECH. L. (forthcoming 2016) (symposium)

Work in Progress: *The New Health Care Federalism* (with A. Gluck), <http://ssrn.com/abstract=2511003>

*Health Care and the Myth of Self-Reliance*, 57 B. C. L. REV. 1 (2016) (with J. Roberts)

*The Supreme Court Ruling that Blocked Providers from Seeking Higher Medicaid Payments also Undercut the Entire Program*, 34 HEALTH AFFAIRS 1156 (2015)

*The Universality of Medicaid at Fifty*, 15 YALE J. HEALTH POL'Y, L. & ETHICS 67 (2015) (symposium)

*An Empirical Perspective on Medicaid as Social Insurance*, 46 U. TOLEDO L. REV. 545 (2015) (with J. Roberts) (symposium)

*Medicaid Expansion as Completion of the Great Society*, 2014 U. ILL. L. REV. SLIP OPINIONS 1 (with J. Roberts), <http://www.illinoislawreview.org/slip-opinions/> (solicited)

*Dynamic Expansion*, available at <http://ssrn.com/abstract=2358641>

*Where There Is a Right, There Must Be a Remedy (Even in Medicaid)*, 102 KY. L.J. 327 (2013) (*Medicaid Matters* symposium)

*With Liberty and Access for Some: The ACA's Disconnect for Women's Health*, 40 FORDHAM URB. L. J. 1357 (2013) (symposium)

*Heed Not the Umpire (Justice Ginsburg Called NFIB)*, 15 U. PA. J. CONST. L. HEIGHT. SCRUTINY 43 (2013) (solicited)

*Plunging into Endless Difficulties: Medicaid and Coercion in National Federation of Independent Business v. Sebelius*, 93 B.U. L. REV. 1 (with Weeks Leonard and Outterson) (2013) (cited by Delaware Supreme Court)

*Post-Reform Medicaid before the Court: Discordant Advocacy Reflects Conflicting Attitudes*, 21 ANNALS OF HEALTH L. 513 (2012) (symposium)

*Challenging the Stakeholders: A Review of Laura Katz Olson*, THE POLITICS OF MEDICAID (2010), 33 J. OF L. MED. 201 (2012) (solicited)

*Federalizing Medicaid*, 14 U. PA. J. CONST. L. 431 (2011) (cited by U.S. Supreme Court in *NFIB v. Sebelius*)

*Conditional Spending and Compulsory Maternity*, 2010 U. ILL. L. REV. 751

*Bizarre Love Triangle: The Spending Clause, Section 1983, and Medicaid Entitlements*, 42 U.C. DAVIS L. REV. 413 (2008)

*Clear Notice for Conditions on Spending, Unclear Implications for States in Federal Healthcare Programs*, 86 N.C. L. REV. 441 (2008)

*Tackling the “Evils” of Interlocking Directorates in Healthcare Nonprofits*, 85 NEB. L. REV. 681 (2007)

*Pharma on the Hot Seat*, 40 J. HEALTH L. 241 (2007)

*Be Not Afraid of Change: Time to Eliminate the Corporate Practice of Medicine Doctrine*, 14 HEALTH MATRIX: JOURNAL OF LAW-MEDICINE 243 (2004)

*Quality Control, Enterprise Liability, and Distintermediation in Managed Care*, J.L. MED. & ETHICS, Volume 29:3 & 4 (2001) (with Jacobi)

*Three Generations of Welfare Mothers Are Enough: A Disturbing Return to Eugenics in the Recent ‘Workfare’ Law*, 9 U.C.L.A. WOMEN’S L.J. 97 (1998)

#### **OTHER WRITING (COMMENTARIES, BLOGS, ETC.)**

*Decoupling Myths about Employment and Health Insurance*, HEALTH AFFAIRS BLOG (Feb. 8, 2016), <http://healthaffairs.org/blog/2016/02/08/decoupling-myths-about-employment-and-health-insurance/>

*“Very Real Consequences” for States, Medicaid and Beyond*, ACS BLOG (April 3, 2015), <http://www.acslaw.org/acsblog/%E2%80%9Cvery-real-consequences%E2%80%9D-for-states-medicaid-and-beyond>

*Medicaid at 50: From Exclusion To Expansion To Universality*, HEALTH AFFAIRS BLOG (Nov. 14, 2014) (Yale Law School Symposium : The Law of Medicare and Medicaid at 50), <http://healthaffairs.org/blog/2014/11/14/medicaid-at-50-from-exclusion-to-expansion-to-universality/>

Contributing Editor, *Jotwell* (2013 – 2016)

- *Addressing the Health Care/Public Health Dichotomy through Justice*, reviewing Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J.L. & PUB. POL’Y 47 (2014), at <http://health.jotwell.com/addressing-the-health-carepublic-health-dichotomy-through-justice/>
- *Finding a Positive Right to Healthcare*, reviewing Edward Rubin, *The Affordable Care Act, The Constitutional Meaning of Statutes, and the Emerging Doctrine of Positive Constitutional Rights*, 53 WM. & MARY L. REV. 1639 (2012), at <http://health.jotwell.com/>
- *Farewell, School House Rock (Understanding Legislative History through the Lens of the ACA)*, reviewing John Cannan, *A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative History*, 105 L. LIBRARY J. 131 (2013), at <http://health.jotwell.com/>

Contributing Editor, HEALTHLAWPROF BLOG, [lawprofessors.typepad.com/healthlawprof\\_blog/](http://lawprofessors.typepad.com/healthlawprof_blog/) (2012 – present)

*Circuit Split in One Day: Tax Credits, Halbig and King (or, The Latest ACA Headache)*, ACSBLOG (July 23, 2014) (solicited commentary), <https://www.acslaw.org/acsblog/circuit-split-in-one-day-tax-credits-halbig-and-king-or-the-latest-aca-headache>

*Federal-State Tensions in Fulfilling the ACA’s Promises*, CONSTITUTION DAILY (solicited commentary), <http://blog.constitutioncenter.org/2013/10/federal-state-tensions-in-fulfilling-the-acas-promises/>

*After the Health Care Ruling: Medicaid but Not Medicaid*, JURIST (July 27, 2012) (invited academic commentary), [www.jurist.org/forum/2012/07/nicole-huberfeld-nfib-medicaid.php](http://www.jurist.org/forum/2012/07/nicole-huberfeld-nfib-medicaid.php)

ACA at the Supreme Court: *Instant Commentaries*, NATIONAL LAW JOURNAL (June 28, 2012) (invited “immediate response” commentary), [www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202546956823](http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202546956823)

*Medicaid in the Supreme Court: Small Errors, Big Problems*, JURIST (April 21, 2012) (invited academic commentary), [www.jurist.org/forum/2012/04/nicole-huberfeld-medicaid.php](http://www.jurist.org/forum/2012/04/nicole-huberfeld-medicaid.php)

*States Seek to Bite the Hand that Funds*, NATIONAL LAW JOURNAL (March 26, 2012) (invited column), [www.law.com/jsp/nlj/legaltimes/PubArticleLT.jsp?id=1202546797117](http://www.law.com/jsp/nlj/legaltimes/PubArticleLT.jsp?id=1202546797117)

Brief of Amici Curiae Health Law & Policy Scholars and Prescription Policy Choices in Support of Respondents on the Constitutional Validity of the Medicaid Expansion, *Florida v. Dept. of Health and Human Services*, Docket No. 11-400 (principal co-author) (filed Feb. 17, 2012)

Guest Blogger, *Concurring Opinions*, [www.concurringopinions.com](http://www.concurringopinions.com)

June 2012; Week of March 26, 2012 (*NFIB v. Sebelius* Oral Arguments); Dec. 2011 – Jan. 2012

- Book Review, Laura Katz Olson, THE POLITICS OF MEDICAID (9/18/11)
- Book Review, Alison L. LaCroix, THE IDEOLOGICAL ORIGINS OF AMERICAN FEDERALISM (7/13/10)

#### **SELECTED SPEAKING ENGAGEMENTS**

- Presenter, *The People’s Constitution: Our 18th Century Constitution in Modern Context*, Filson Historical Society
- Presenter, *Measuring the New Health Care Federalism*, Indiana Health Law Review Symposium: Ideology Meets Reality: What Works and What Doesn’t in Health Law and Policy, Oct. 2016
- Presenter, *Judicial and Political Federalism*, Federalism and Race Discussion Group, Southeastern Association of Law Schools Annual Meeting, Aug. 2016
- Testimony to Legislative Task Force on Vulnerable Kentuckians, *Health Care and the Myth of Self Reliance*, July 2016
- Presenter, *Health Care and the Myth of Self Reliance*, ASLME Health Law Professors Conference, June 2016
- Presenter, *Health Care Federalism after Gobeille*, University of Connecticut School of Law 5th Annual Benefits and Social Insurance Conference, April 2016
- Presenter, Panel on *Whole Women’s Health v. Hellerstedt and the Documentary “Trapped”*, Kentucky Theater, April 2016
- Presenter, *Pursuing Universality: The State of the ACA after King v. Burwell*, AALS Annual Meeting (joint session of Employee Benefits Section and the Section on Law, Medicine & Healthcare), Jan. 2016
- Health Law Grand Rounds Distinguished Speaker, *Pursuing Universality: Taking Stock of the ACA 5 Years In*, Indiana University McKinney School of Law, Sep. 2015
- Presenter, *The New Universality in American Health Care*, International Academy on Law and Mental Health, Vienna, Austria, July 2015
- Presenter, *The Supreme Court Ruling that Blocked Providers from Seeking Higher Medicaid Payments also Undercut the Entire Program*, at *Medicaid’s Evolving Delivery Systems*, Health Affairs Medicaid at 50 Symposium, July 2015
- Panelist, *Health Care Reform and (In)Equality in Health Care*, Plenary Session: Social Safety Net, at AALS Mid-Year Meeting: Workshop on Next Generation Issues Sex, Gender, and the Law, June 2015
- Presenter, *The Universality of Medicaid at 50*, ASLME Health Law Professors Conference, June 2015
- Presenter, *The New Health Care Federalism*, Case Western University School of Law, March 2015
- Presenter and Commenter, *Medicaid and the New Health Care Federalism*, Medicaid Matters, St. Louis University School of Law, Feb. 2015
- Panelist/Presenter, *The Universality of Medicaid*, at *The Law of Medicare and Medicaid at 50*, Yale Law School, Nov. 2014

- Presenter, *Healthcare as a Vehicle for Constitutional Change: The Supreme Court, Conditional Spending & Medicaid*, Constitutionally Speaking, University of New Hampshire College of Law, Nov. 2014
- Panelist, *Medicaid Post-ACA: From Welfare to Universality*, at Scalpel to Gavel: Exploring The Modern State of Health Law, University of Toledo College of Law, Oct. 2014
- Invited Commenter/Mentor, Health Law Scholars Workshop (co-hosted by American Society of Law, Medicine & Ethics and St. Louis University Law School), Sep. 2014
- Presenter, *Dynamic Federalism in Medicaid Expansion*, ACA Implementation – Some Initial Observations and Critiques, Southeastern Association of Law Schools Annual Meeting, Aug. 2014
- Presenter, *Dynamic Federalism in Medicaid Expansion*, ASLME Health Law Professors Conference, June 2014
- Presenter, *Rethinking Health Law Teaching After the ACA*, ASLME Health Law Professors Conference, June 2014
- Presenter, *Dynamic Implementation of the Medicaid Expansion*, Third Annual ERISA, Employee Benefits, and Social Insurance National Conference (Marquette University Law School), March 2014
- Presenter, *Dynamic Implementation after NFIB*, Loyola Chicago Constitutional Law Colloquium, Nov. 2013
- Presenter, *Rights Must Have Remedies*, Labor & Employment Law Discussion Group, Southeastern Association of Law Schools Annual Meeting, Aug. 2013
- Presenter, *Three Theories of the Medicaid Expansion*, Health Law Discussion Group, Southeastern Association of Law Schools Annual Meeting, Aug. 2013
- Presenter, *Healthcare as a Vehicle for Constitutional Change: Take 2*, Plenary Panel: NFIB, Medicaid, and Federalism, ASLME Health Law Professors Conference, June 2013
- Presenter, *Medicaid's Remedy Problem*, Panel: Making a Better Safety Net, ASLME Health Law Professors Conference, June 2013
- Organizer & Presenter, University of Kentucky College of Law Medicaid Matters Workshop, *With Liberty and Access for Some: The ACA's Women's Health Disconnect*, March 2013
- Distinguished Speaker, *Plunging into Endless Difficulties: Medicaid after NFIB*, St. Louis University School of Law, Jan. 2013
- Presenter, *Context for Legislative Barriers to Reproductive Healthcare*, Reproductive Justice Symposium: Race, Reproduction, and Social Justice, Jan. 2013
- Presenter, *Plunging into Endless Difficulties: Medicaid and Coercion in National Federation of Independent Business v. Sebelius*, Hot Topic Panel: The *NFIB* Medicaid Decision: Interpretation and Implications, AALS Annual Meeting (program selected by competition), Jan. 2013
- Presenter, *Plunging into Endless Difficulties: Medicaid and Coercion in the Healthcare Cases*, Loyola Chicago Law School Constitutional Law Colloquium, Nov. 2012
- Health Law Grand Rounds Guest Speaker, *Plunging into Endless Difficulties: The NFIB Aftermath*, Indiana University McKinney School of Law, Oct. 2012
- Presenter, Colloquium: *Plunging into Endless Difficulties: Medicaid and Coercion in the Healthcare Cases*, Temple Law School, Sep. 2012
- Presenter, *Remedies are what's missing in the ACA*, Southeastern Association of Law Schools Annual Meeting, July 2012
- Presenter, *Two Decisions, One Three Ring Circus: Dissonance in Spending*, ACS "Schmooze" with Mark Tushnet (paper selected for presentation), June 2012
- Presenter, *Healthcare as a Vehicle for Constitutional Change*, Panel: Theories of Healthcare Reform in the United States, ASLME Health Law Professors Conference, June 2012
- Presenter and Founder, Medicaid Matters Workshop, St. Louis University School of Law, Feb. 2012
- Presenter, *Federalizing Medicaid: Tension between Reinvention and Path Dependence*, Reinventing Medicaid in a Post-Health Reform America, Loyola University Chicago 5<sup>th</sup> Annual Symposium on Access to Care, Nov. 2011
- Presenter, *The Roberts Court and the False Claims Act*, Loyola University Chicago Constitutional Law Colloquium, Oct. 2011

- Presenter, *No Rights for You: The Surprising Implications of Douglas v. Independent Living Center* Loyola University Chicago Constitutional Law Colloquium, Oct. 2011
- Presenter, *Federal-State Complicity in Violating Constitutional Rights*, Panel: From Reproductive Rights to Reproductive Justice, Women Rethinking Equality AALS Conference, June 2011
- Presenter, *Federalizing Medicaid*; Panel: Implementation of Healthcare Reform, ASLME Health Law Professors Conference, June 2011
- Presenter, *The Health Care Reform Law (Affordable Care Act): What Are Its Constitutional Implications?* A Discussion By The American Constitution Society & The Federalist Society (ACS speaker), April 2011
- Presenter, *Federalizing Medicaid*, University of Cincinnati Faculty Works in Progress Series, Jan. 2011
- Presenter, *The Roberts Court and the False Claims Act*; Panel: Antitrust, Fraud, and Tax Exemption, ASLME Health Law Professors Conference, June 2010
- Federalism Roundtable, Vanderbilt University Law School, Commenter on James Blumstein, *Some Second Thoughts on Cooperative Federalism: the Problem of Displacement of Political Accountability*, Feb. 2010
- Presenter, *Conditional Spending and Compulsory Maternity*, Florida State University College of Law Faculty Enrichment Series, Nov. 2009
- Presenter, *Federal Spending and Compulsory Maternity*, International Conference on Feminist Constitutionalism, Panel: Abortion and Reproductive Rights, Queen's University, Ontario, Feb. 2009
- Presenter, *Spending and Compulsory Maternity*, Washington University School of Law Works-in-Progress Workshop, Feb. 2009
- Presenter, *The Spending Clause, Section 1983, and Medicaid Entitlements*, Panel: Federalism and Government Healthcare Programs, ASLME Health Law Professors Conference, June 2008

## **EDUCATION**

### **Seton Hall Law School**

Juris Doctor, *cum laude*, 1998; Concentration in Health Care Law

*Seton Hall Law Review*, Book Review Editor

*Selected Honors*: National Association of Women Lawyers Award for Outstanding Female Graduate; Raymond DeTufo Constitutional Law Award (highest Constitutional Law GPA)

### **University of Pennsylvania**

Bachelor of Arts in History, 1995

*Selected Honors and Awards*: Award of the Trustees' Council of Penn Women; Friars Senior Honor Society; Order of Omega Honor Society

## **PROFESSIONAL APPOINTMENTS, MEMBERSHIPS, COMMUNITY SERVICE**

Chair of the Board and Member, Child Advocacy Today, 2014 - present

AHLA Best Practices for Health Law Curricula, Steering Committee, 2012-13

American Bar Association: Special Committee on Bioethics and the Law, 2012-13

Southeastern Association of Law Schools: Mentor Committee, 2011-12

Peer Reviewer, *American Journal of Law and Medicine*

Peer Reviewer, *Yale Journal of Health Policy, Law and Ethics*

AALS, Section on Women in the Law; Section on Law, Medicine and Healthcare

American Society of Law, Medicine, and Ethics

American Constitution Society: Member; Host Committee 2012 Convention

## **OTHER PROFESSIONAL EXPERIENCE**

**Wolff & Samson PC**, NJ; NY *Associate, Corporate and Healthcare Group*, 2002 – 2003

**Gibbons PC**, NJ; NY *Associate, Corporate and Healthcare Group*, 2000 – 2002

**Wilentz, Goldman & Spitzer PC**, NJ; NY *Associate, Corporate Team*, 1998 – 2000; *Summer Associate*, 1997

## **BAR ADMISSIONS**

New Jersey, December 1998; District Court of New Jersey, December 1998; New York, March 2000