

ABIGAIL R. MONCRIEFF

• Boston University School of Law • Office 1170D • 765 Commonwealth Ave. • Boston, MA 02215 •
• arm11@bu.edu • (617) 353-2212 •

EXPERIENCE

Boston University School of Law <i>Associate Professor of Law</i> <i>Peter Paul Career Development Professor</i>	Boston, MA 2009–Present 2009–2012
University of Pennsylvania Law School <i>Visiting Associate Professor of Law</i>	Philadelphia, PA Fall 2012
State of Mass., Health Information Technology Council <i>Gubernatorial Appointee, Law Advisor</i>	Boston, MA 2011–2013
Harvard Law School <i>Academic Fellow, Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics</i>	Cambridge, MA 2007–2009
Hon. Sidney R. Thomas <i>Clerk, United States Court of Appeals for the Ninth Circuit</i>	Billings, MT 2006–2007

EDUCATION

University of Chicago Law School <i>J.D. with honors, 2006</i> <ul style="list-style-type: none">• <i>The University of Chicago Law Review</i>• Casper Platt Award for Outstanding Paper by a Law Student (sole recipient)• Joseph Henry Beale Prize for Legal Research and Writing (one of six recipients)• Bell, Boyd & Lloyd Prize for Outstanding Brief in the Bigelow Moot Court Competition (one of eight recipients)	Chicago, IL
Fulbright Scholar 2002–2003 <ul style="list-style-type: none">• Conducted nine-month research project on comparative healthcare policy in affiliation with the Graduate Institute for International Studies (IUHEI) at the University of Geneva	Geneva, Switzerland
Wellesley College <i>B.A. cum laude, in English and Political Science, 2002</i>	Wellesley, MA

COURSES

Health Law (F12)
Legislation (S10–14)
Administrative Law (F11)
Health Care Reform and the Constitution (S) (F09, S11, S14)
Constitutional Healthcare Litigation (S) (AY11–12)

PUBLICATIONS AND WORKS IN PROGRESS

Articles

Substantive Rights in a Constitutional Technocracy (article manuscript in progress).

The Individual Mandate as Health Care Regulation: What the Obama Administration Should Have Said in NFIB v. Sebelius, 39 AM. J.L. & MED. (forthcoming 2013).

Is the First Amendment Important to Your Practice?, 143 CHEST (forthcoming 2013) (peer reviewed), with Constantine A. Manthous.

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Understanding the Failure of Health-care Exceptionalism in the Supreme Court's Obamacare Decision, 142 CHEST 559 (2012) (peer reviewed).

Common Law Constitutionalism, the Constitutional Common Law, and the Validity of the Individual Mandate, 92 B.U. L. REV. 1245 (2012).

Obamacare's (3) Day(s) in Court, 141 CHEST 1389 (2012) (peer reviewed).

Safeguarding the Safeguards: The ACA Litigation and the Extension of Structural Protection to Non-Fundamental Liberties, 64 FLA. L. REV. 639 (2012).

Cost-Benefit Federalism: Reconciling Collective Action Federalism and Libertarian Federalism in the Obamacare Litigation and Beyond, 37 AM. J.L. & MED. 288 (2012).

The Freedom of Health, 159 U. PA. L. REV. 2209 (2011).

The Positive Case for Centralization in Health Care Regulation: The Federalism Failures of the ACA, 20 KANS. J.L. & PUB. POL'Y 266 (2011), with Eric Lee.

The Supreme Court's Assault on Litigation: Why (and How) It Could Be Good for Health Law, 90 B.U. L. REV. 2323 (2010).

A Closer Look at the Federalization Snowball, 109 COLUM. L. REV. SIDEBAR 73 (2009).

Federalization Snowballs: The Need for National Action in Medical Malpractice Reform, 109 COLUM. L. REV. 844 (2009).

Reincarnating the "Major Questions" Exception to Chevron Deference as a Doctrine of Non-Interference (Or Why Massachusetts v. EPA Got It Wrong), 60 ADMIN. L. REV. 593 (2008).

Payments to Medicaid Doctors: Interpreting the "Equal Access" Provision, 73 U. CHI. L. REV. 673 (2006).

Briefs

Brief of Amici Curiae Jewish Alliance for Law & Social Action (JALSA), Jewish Council on Urban Affairs (JCUA), Jewish Social Policy Action Network (JSPAN), New England Jewish Labor Committee (JLC), and Professor Abigail R. Moncrieff in Support of Petitioners on the Individual Liberty Implications of the Minimum Coverage Provision, *Florida v. Dept. of Health & Human Svcs.*, No. 11-398, 2012 WL 160243 (Jan. 13, 2012) (principal author under supervision of attorney Andrew M. Fischer and with students Zoë Sajor, Rachel Smit, and Emily Westfall).

Brief of Amici Curiae Prescription Policy Choices, Professors of Law, and Professors of Health Policy in Support of Petitioners on the Minimum Coverage Provision, *Florida v. Dept. of Health & Human Svcs.*, No. 11-398, 2012 WL 160229 (Jan. 13, 2012) (principal author under supervision of Professor M. Kevin Outterson and with students David J. Arnold, Julia G. Mirabella, Kyle Thomson, and Hao Wang).

Other

Obamacare and the Competing Conceptions of Insurance, JOTWELL (January 14, 2013), <http://health.jotwell.com/obamacare-and-the-competing-conceptions-of-insurance/>

Transcript: The Case for National Political (Rather than State or Judicial) Regulation of Healthcare, 36 VT. L. REV. 823 (2012).

Comments on Rick Hills, *Healthcare and Federalism: Should Courts Strictly Scrutinize Federal Regulation of Medical Services?*, reprinted from PrawfsBlawg in 1 GREENBAG J.L. 401 (2012).

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PRESENTATIONS

- Substance as Structure: The Problem with Fundamental Rights Theory*, Invited Speaker, University of Virginia Faculty Workshop, October 25, 2013.
- Elhauge, Originalism, and the ACA: The Trouble with Popular Constitutionalism*, Invited Panelist, Tulsa Law Review Symposium Honoring Einer Elhauge, October 4, 2013.
- When the Tenth Justice Doesn't Bark: The Unspoken Freedom of Health Holding in NFIB v. Sebelius*, Boston University Faculty Workshop, April 25, 2013.
- Health Insurance as Health Care Regulation: Why the Regulatory Nature of Insurance Should Have Mattered, But Didn't, in the Obamacare Litigation*, Invited Lecture, Boston University School of Management and Health Policy Institute, November 15, 2012.
- The Obamacare Litigation and the Intersection of Liberty, Federalism, and Democracy*, Invited Speaker, Indiana University-Indianapolis Law School, Grand Rounds, November 7-8, 2012.
- Einer Elhauge's Obamacare on Trial*, Invited Panelist, Harvard Law School, November 1, 2012.
- When the Tenth Justice Doesn't Bark: The Unspoken Freedom of Health Holding in NFIB v. Sebelius*, University of Pennsylvania Law School Faculty Ad Hoc, October 1, 2012.
- Race, Genomic Science, and the Disciplinary Battle for the Meaning of Humanity* by Dorothy Roberts, Commentator, University of Pennsylvania Law School Faculty Retreat, September 24, 2012.
- Substantive Rights in a Constitutional Technocracy*, Invited Speaker, UCLA Law School Faculty Colloquium Series, September 14, 2012.
- Healthcare Federalism, Healthcare Rights, and the ACA*, Selected Panelist, ALSME Health Law Professors Conference, June 8, 2012.
- Cost-Benefit Federalism*, Panelist, *Am. J.L. & Med.* Symposium on "The American Right to Health: Constitutional, Statutory, and Contractual Healthcare Rights in the United States," Boston University School of Law, January 28, 2012.
- Common Law Constitutionalism, the Constitutional Common Law, and the Validity of the Individual Mandate*, Invited Panelist, *B.U. L. Rev.* Symposium on "Originalism And Living Constitutionalism: A Symposium on Jack Balkin's *Living Originalism* & David Strauss's *The Living Constitution*," Boston University School of Law, November 3, 2011.
- Safeguarding the Safeguards: The ACA Litigation and the Extension of Structural Protection to Non-Fundamental Liberties*, Boston University Faculty Workshop, October 24, 2011.
- Federalism & State Regulation of Health Care*, Invited Panelist, Joint *UNH L. Rev.* and *Vermont L. Rev.* Symposium on "Constitutional Constraints on State Health Care & Privacy Regulation after *Sorrell v. IMS Health*," University of New Hampshire Law School, October 14, 2011.
- Enduring Problems with the American Healthcare System*, Invited Panelist, *L. & Contemp. Probs.* Symposium on "The Constitutionality of the Affordable Care Act: Ideas from the Academy," Duke Law School, September 16, 2011.

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The Positive Case for Centralization in Healthcare Regulation, Invited Panelist, *Kansas J.L. & Pub. Pol'y* Symposium on “The Role of States in Federal Health Care Reform,” University of Kansas Law School, February 11, 2011.

The Freedom of Health, Invited Panelist, *University of Pennsylvania Law Review* Symposium on “The Design of the New American Healthcare System,” University of Pennsylvania Law School, October 28–29, 2010.

Rights in Technocracy, Boston University School of Law Faculty Workshop, November 4, 2010.

Rights and Regulation: The Freedom of Health in Economic Perspective, Invited Speaker, Health Law & Policy Workshop, Harvard Law School, September 13, 2010.

Is Contemporary Abortion Jurisprudence Sexist?, Commentator, Boston University School of Law, January 21, 2010.

Let Me Decide: Health Care Reform Debate, Debate with Dr. Alexander Vuckovic of Harvard Medical School, Wellesley College, November 18, 2009.

Health Reform Debate: Federalist Society v. American Constitution Society, Debate with Professor David Hyman of University of Illinois Law School, Boston University School of Law, November 10, 2009.

Uses of Patient Data for Quality of Care, Panel Moderator, Pike Conference at Boston University School of Law, October 24, 2009.

Federalization Snowballs, Invited Lecture, University of Chicago Law School, October 13, 2009.

The Supreme Court's Assault on Litigation, Faculty Workshop, Boston University School of Law, October 1, 2009.

Federalization Snowballs: The Need for National Action in Medical Malpractice Reform, Health Law Policy, Biotechnology, and Bioethics Workshop, Harvard Law School, September 11, 2008.