

# ABIGAIL R. MONCRIEFF

• 6813 Estana Lane • Austin, TX 78739 • amoncrieff@utexas.edu • (773) 350-6062 •

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## EDUCATION

### University of Texas at Austin, Dept. of Government

Austin, TX

Ph.D. Expected May 2022

- Dissertation: *Constitutional Technocracy: Part I*
- Provost's Graduate Excellence Fellowship

### University of Chicago Law School

Chicago, IL

J.D. with honors, 2006

- *The University of Chicago Law Review*
- Casper Platt Award for Outstanding Paper
- Beale Prize for Legal Research and Writing
- Bell, Boyd & Lloyd Prize for Outstanding Brief

### Fulbright Scholar

Geneva, Switzerland

2002–2003

- Conducted nine-month research project on comparative healthcare policy in affiliation with the Graduate Institute for International Studies (IUHEI) at the University of Geneva

### Wellesley College

Wellesley, MA

B.A. cum laude, in English and Political Science, 2002

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## TEACHING INTERESTS

**Primary:** Constitutional Law, Administrative Law, Health Law

**Secondary:** Legislation and Regulation, Torts, Contracts

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## PUBLICATIONS

*Statutory Realism: The Jurisprudential Ambivalence of Interpretive Theory*, 72 RUTGERS UNIV. L. REV. 39 (2020).

*Healthcare Federalism*, in I. Glenn Cohen, Allison K. Hoffman & William M. Sage, eds., THE OXFORD HANDBOOK OF U.S. HEALTHCARE LAW (Oxford University Press) (2016), with Joseph Lawless.

*Measuring the Welfare Effects of a Nudge: A Different Approach to Evaluating the Individual Mandate*, in BEHAVIORAL ECONOMICS, LAW & HEALTH POLICY (Johns Hopkins University Press) (2016), with Manisha Padi.

King, Chevron, and the Age of Textualism, 95 B.U. L. REV. ANNEX 1 (2015).

Will Uncooperative Federalism Survive NFIB?, 76 MONT. L. REV. 75 (2015), with Jonathan Dinerstein.

*Beyond Payment and Delivery Reform: The Individual Mandate's Cost-Control Potential*, 40 AM. J.L. & MED. 185 (2014), with Manisha Padi.

*The Individual Mandate as Health Care Regulation: What the Obama Administration Should Have Said in NFIB v. Sebelius*, 39 AM. J.L. & MED. 539 (2013).

*Will My Job Be Safe if I Defend My Patients?: When Patient Advocacy Collides with Employment Law*, 144 CHEST 1106 (2013) (peer reviewed), with Constantine A. Manthous.

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

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

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

*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*, 38 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).

### Other Legal Writing

*The Argument That Wasn't*, HEALTH AFFAIRS BLOG (July 2, 2015).

*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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### **WORKS IN PROGRESS**

*Constitutional Technocracy*, book manuscript in progress (Introduction and Part I available by request).

*Judicial Review in a Technocratic State*

*Aristocracy in America: Tocqueville, Trump, and the Common Law Baseline*

*Individual Substantive Rights in a Constitutional Technocracy*, available [on SSRN](#).

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## EXPERIENCE

<b>University of Texas at Austin School of Law</b> <i>Visiting Scholar</i>	Austin, TX 2017-present
<b>St. John's University School of Law</b> <i>Adjunct Professor of Law</i>	via Zoom Spring 2021
<b>New York University School of Law</b> <i>Scholar in Residence</i>	New York, NY Fall 2018
<b>Boston University School of Law</b> <i>Associate Professor of Law</i> <i>Peter Paul Career Development Professor</i>	Boston, MA 2009–2017 2009–2012
<b>Harvard Law School</b> <i>Visiting Associate Professor of Law</i> <i>Academic Fellow, Petrie-Flom Center</i>	Cambridge, MA Spring 2017 2007–2009
<b>University of Pennsylvania Law School</b> <i>Visiting Associate Professor of Law</i>	Philadelphia, PA Fall 2012
<b>Hon. Sidney R. Thomas</b> <i>Clerk, United States Court of Appeals for the Ninth Circuit</i>	Billings, MT 2006–2007

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## COURSES TAUGHT

Administrative Law (F11, F14–15, S16, S21 (at St. John's))  
American Government I (TA F20)  
Constitutional Healthcare Litigation (S) (AY11–12)  
Health Care Reform and the Constitution (S) (F09, S11, S14–15, S17 (at HLS))  
Health Law (F12 (at Penn), F15, S17 (at HLS), F18 (at NYU))  
Issues & Policies in American Government: The Concept of Freedom (F21)  
Legislation (S10–12, S14–15)  
Seeking Justice in the Constitution (TA S21)

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## PRESENTATIONS

*Health Law Year in P/Review*, Invited Panelist, Harvard Law School, January 23, 2017.  
*Nudging Health Book Talk*, Invited Panelist, Harvard Law School, November 16, 2016.  
*Petrie-Flom Center's 10<sup>th</sup> Anniversary Conference Celebration: The Future of Health Law and Policy*,  
Invited Panelist, "Health Care Coverage, Costs, and Fragmentation," Harvard Law School, March  
29, 2016.  
*2016 Health Law Year in P/Review*, Invited Speaker, "The Current State of Health Care Reform,"  
Harvard Law School, January 29, 2016.  
*Constitutional Federalism and Obamacare*, Guest Speaker, Academic Affairs Committee, Boston  
University Board of Trustees, September 16, 2015.  
King v. Burwell, South-Eastern Association of Law Schools (SEALS) Annual Meeting, Invited  
Discussant, July 27, 2015.

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*King v. Burwell and the Future of the Affordable Care Act*, Invited Panelist, Harvard Law School, April 1, 2015.

*The State of Medicaid*, Invited Panelist, Conference on “The Law of Medicare and Medicaid at 50,” Yale Law School, November 6-7, 2014.

*Will Uncooperative Federalism Survive NFIB?*, Invited Panelist, The 2014 Honorable James R. Browning Symposium on “The Future of Federalism: What will be retained, and what surrendered?,” University of Montana Law School, October 2-3, 2014.

*Obamacare Litigation in 2014-15*, Invited Panelist, 37th Annual Health Law Professors Conference, Plenary Panel: ACA Update, UC Hastings Law School, June 6, 2014.

*Libertarians, Cognitive Failures, and Transaction Costs: The Behavioral Case for the Individual Mandate*, Panelist, Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, Conference on “Behavioral Economics, Law, & Health Policy,” Harvard Law School, May 3, 2014.

*Health Law Year in P/Review*, Invited Panelist, Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics and New England Journal of Medicine, Harvard Law School, January 31, 2014.

*The Individual Mandate as Health Care Regulation: What the Obama Administration Should Have Said in NFIB v. Sebelius*, Invited Speaker, Northwestern University School of Law, November 21, 2013.

*Cost-Benefit Federalism*, Invited Panelist, *B.U. L. Rev.* Symposium on “America’s Political Dysfunction: Constitutional Connections, Causes, and Cures,” Boston University School of Law, November 16, 2013.

*A Negative Theory of “Positive” Rights*, Boston University School of Law Faculty Workshop, November 14, 2013.

*Substance as Structure: The Problem with Fundamental Rights Theory*, Invited Speaker, University of Virginia Faculty Workshop, October 25, 2013.

*Debate on Halbig v. Sebelius*, Invited Speaker, University of Pennsylvania Law School Federalist Society, October 23, 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 School of Law 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.

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- 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 School of Law 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.
- 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.

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*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.

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### REFERENCES

#### **H.W. Perry**

##### **Dissertation Committee Chair**

Associate Professor of Law and Government  
University of Texas at Austin School of Law  
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#### **Sanford V. Levinson**

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#### **I. Glenn Cohen**

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