

JAMES F. BLUMSTEIN
2113 Hampton Avenue
Nashville, Tennessee 37215
(615) 385-2875 (Home)
(615) 343-3939 (Office)

June, 2022

EDUCATIONAL BACKGROUND

LLB. Yale Law School (1970)
Editor, Yale Law Journal

M.A. (Economics), Yale University (1970)

B.A. (Economics), Yale College (1966)

MAJOR EMPLOYMENT

1. University Professor of Constitutional Law and Health Law and Policy, Vanderbilt Law School and Vanderbilt University School of Medicine, 2003-.
2. Centennial Professor of Law, Vanderbilt Law School, 1999-2003.
3. Professor of Management, Owen Graduate School of Management (secondary appointment), 2014-
4. Director, Health Policy Center, Vanderbilt Law School.
5. Inaugural Scholar-in-Residence and Visiting Professor, Robert Wood Johnson Health Policy Center, Meharry Medical College, 2010-11.
6. Nominated, Administrator, Office of Information and Regulatory Affairs [OIRA], Office of Management and Budget [withdrew].
7. John M. Olin Visiting Professor of Law, University of Pennsylvania Law School, Spring 1989.
8. Senior Fellow, Vanderbilt Institute for Public Policy Studies.

9. Adjunct Professor of Health Law, Dartmouth Medical School (for over 40 years).
10. Special Advisor to the Chancellor for Academic Affairs, Vanderbilt University, January 1984-September 1985.
11. Visiting Associate Professor of Law and Policy Sciences, Duke Law School and Duke Institute of Policy Sciences and Public Affairs, 1974-75.
12. Director, Vanderbilt Urban and Regional Development Center, 1972-74.

SELECTED ADMINISTRATIVE

1. Director, Health Policy Center, Vanderbilt Law School, 2009 - ;
Director, Health Policy Center, Vanderbilt Institute for Public Policy Studies, 1995—2009;
2. Chair, Vanderbilt University Faculty Senate, 2001-02.
3. Chair, Professional Ethics and Academic Freedom Committee, Vanderbilt University Faculty Senate, 2000-2001.
4. Special Advisor to the Chancellor for Academic Affairs, Vanderbilt University, January 1984 - September 1985.
5. Chair, Ad Hoc University Committee on Appointments, Renewal and Tenure, 1983-85 (University-wide committee appointed by Chancellor to review and make recommendations concerning faculty personnel policies) (report reprinted in Minerva: A Review of Science, Learning and Policy, volume XXI, pp. 415-43 (Winter 1983)).
6. Director, Vanderbilt Urban and Regional Development Center, 1972-74 (helped secure commitment of \$1 million University funding

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support for ten years and expansion of mission. Renamed Vanderbilt Institute for Public Policy Studies).

7. Chair, Vanderbilt Law School Faculty Selection Committee, 1975-79.

PROFESSIONAL ASSOCIATION POSITIONS

1. Chair, Section of Law, Medicine, and Health Care, Association of American Law Schools, 1987-88. Member of Section Executive Committee, 1988-91.
2. Member, Accreditation Committee, American Bar Association Section of Legal Education and Admissions to the Bar, 1983-89.
3. Secretary, American Bar Association Section of Legal Education and Admissions to the Bar, 1982-83.
4. Member, Committee on Sections and Annual Meeting, Association of American Law Schools, 1988-91.
5. Chair, Subcommittee on State and Local Taxation, Committee on Taxation, American Bar Association Section on Business Law, 1983-2004.
6. Council member, Section of Local Government Law, Association of American Law Schools, 1985-87.
7. Member, Committee on State and Local Taxes, American Bar Association Section of Taxation (1983 & Misc. years).

AWARDS

1. McDonald-Merrill-Ketcham Memorial Award for Excellence in Law and Medicine, 2007 ("For Furthering Greater Understanding Between the Professions of Law and Medicine") (Indiana University).

2. Earl Sutherland Prize for Achievement in Research, Vanderbilt University [university-wide career research award].
3. Elected Member, National Academy of Medicine (formerly Institute of Medicine), National Academy of Sciences.
4. President's Award, Tennessee Bar Association
5. Liberty Bell Award, Nashville Bar Association.
6. Paul J. Hartman Award for Outstanding Professor [law school outstanding teaching award].
7. Hall-Hartman Award for Outstanding Professor [law school outstanding teaching award]

GRANTS

1. Co-Principal Investigator (with Dr. Alan Storrow, VUMC), Safely Improving Emergency Diagnostic Testing Through Clinical Safe Harbors, five-year federal agency grant (about \$1.7 million from Agency for Healthcare Research and Quality [AHRQ]), 2019-24.
2. Organized and secured external funding from Roscoe Pound Institute (\$94,000) for October 2005 conference on issues in medical malpractice; symposium articles published in May 2006 *Vanderbilt Law Review* (2005-06)[NB: My article in this symposium was the foundation for the subsequent safe harbor grant from AHRQ].
3. Principal Investigator, Evolving Roles for Hospital Management -- Prospects and Pitfalls: A Legal and Policy Analysis, Robert Wood Johnson Foundation, 1994-99 (approx. \$185,000).
4. Legal and Institutional Issues in TennCare, Robert Wood Johnson Foundation, 1996-2000 (approx. \$166,000) [subcontract with Duke University].

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5. Principal Investigator, Health Care Regulation and Medical Malpractice Seminars for State Supreme Court Justices, State Justice Institute, 1997-2001 (approx. \$143,500) [supplemental funding provided by Frist Foundation].
6. Principal Investigator, Health Care Regulation and Medical Malpractice Seminars for State Supreme Court Justices, State Justice Institute, 1995-97 [supplemental funding provided by Agency for Health Care Policy and Research of the U.S. Department of Health and Human Services] (approx. \$195,000).
7. Principal Investigator, Medical Malpractice Seminars for State Supreme Court Justices, State Justice Institute, 1993-94 [supplemental funding provided by Agency for Health Care Policy and Research of the U.S. Department of Health and Human Services] (approx. \$90,000).
8. Co-Principal Investigator, Medical Malpractice Seminars for State Supreme Court Justices, State Justice Institute, 1991-93 (approx. \$185,000).
9. Co-Principal Investigator, Health Policy Project Grant, 1986-89, HCA Foundation (\$450,000).
10. Co-Principal Investigator, Health Forum Series, 1983-86, HCA (\$150,000).

SELECTED OTHER POSITIONS/ACTIVITIES

1. Ann F. Baum Lecture, University of Illinois College of Law, “Ways of Thinking About Medical Care: Alternative Models and Structures and Their Policy Significance,” March 10, 2021
2. Virtual guest speaker for League of Women Voters, “Presidential Powers and the Constitution,” December 4, 2020
3. Virtual guest speaker at Dartmouth (Tuck School and Medical School), “Current Legal Challenges to the ACA,” October 28, 2020

4. Virtual guest speaker at Duke Law School, “Challenging the Medicaid Expansion Component of the ACA: Developing a Strategic Approach,” September 16, 2020
5. Invited lecture, “Developing Strategy and Legal Theory for the Successful Challenge to the Expanded Medicaid Component of the ACA,” Duke Law School, September 18, 2019
6. Invited speaker, Hearing of United States House of Representatives, Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Memphis, TN, September 5, 2019 (panel presentation on voting rights and *Dunn v. Blumstein*)
7. Invited speaker, Workshop Framing Presentation (Invited by FTC workshop organizers), “Historical Context for COPAs: Ways of Thinking about Medical Care and Federalism,” Federal Trade Commission, Washington, DC, June 18, 2019 (framing presentation for FTC workshop on Certificates of Public Advantage)
8. Invited speaker, “Sense and severability: If one part of the Affordable Care Act is ruled unconstitutional, what is the proper remedy or resolution?,” American Enterprise Institute, Washington, DC, February 15, 2019 (panel presentation)
9. Invited Lecture, “Ways of Thinking About Medical Care,” Dartmouth College (Medical School and Amos Tuck School of Business), October 25, 2018
10. Invited Speaker, “Ways of Thinking about Medical Care and Their Analytical Significance,” American Health Lawyers Association Annual Meeting, Panel Presentation, June 26, 2018
11. Invited Speaker, “Top 5 Things You Would Change in Healthcare,” National Association of Attorneys General 2018 Southern Region Meeting, Panel Presentation, Nashville, TN, April 10, 2018
12. Invited Speaker, “New Wine in Old Bottles: Title IX and Transgender Issues,” University of Tennessee Law School, Thursday, September 21, 2017

13. Invited panelist, “Transgender Litigation and Administrative Law Panel,” Yale Law School, November 10, 2016
14. Invited speaker, “Title IX and Transgender and Identity Issues,” University of Pennsylvania Law School, October 26, 2016
15. Invited panelist, “The Role of Financial Incentives in Medical Decision-Making,” University of Tennessee Medical School at Chattanooga, September 28, 2016
16. Invited Panelist, Healthcare Reform, Bernard Health, August, 2016
17. “Supreme Court (P)review,” Vanderbilt University, September 29, 2015
18. “Policy, Politics, and the Affordable Care Act: A Look at Structure and Implementation,” Dartmouth College, October 29, 2015
19. Invited Presentation, “Federalism and the ACA: *King v. Burwell* and its Potential Impact,” Memphis Lawyers Chapter of the Federalist Society, Memphis, Tennessee, April 2015
20. “*King v. Burwell*: Prospects and Potential Implications,” Vanderbilt Law School, March 11, 2015
21. Invited Presentation, “The 50th Anniversary of the Voting Rights Act,” Harry Phillips American Inn of Court, Nashville, Tennessee, January 2015
22. Invited Presentation, “The Challenge to Expanded Medicaid Under the Affordable Care Act,” University of New Hampshire School of Law, Warren B. Rudman Center for Justice, Leadership, and Public Policy, Concord, New Hampshire, November 2014
23. Invited Panelist, “The *Hobby Lobby* Case,” Vanderbilt Law School, October 30, 2014.

24. Invited Panelist, “What Is the Law, and on Which Side Is the IRS?” Cato Institute Conference on “*Pruitt, Halbig, King & Indiana: Is ObamaCare Once Again Headed to the Supreme Court?*” Washington, D.C., October 30, 2014
25. Invited Presentation, “Racial Gerrymandering Revisited: The Pending Alabama Legislative Redistricting Case,” University of Alabama School of Law, Tuscaloosa, Alabama, September 2014
26. Invited Presentation, “Liability Protection for Emergency Care: Medical Malpractice Safe Harbors,” American College of Emergency Physicians 2014 Leadership and Advocacy Conference, Washington, D.C., May 2014
27. Invited Presentation, “Healthcare in the Current Environment,” Phi Beta Kappa Association of Nashville, Tennessee, December 2013
28. Invited Lead Presentation, “*NFIB v. Sebelius* and the ACA,” Harry Phillips American Inn of Court, Nashville, Tennessee, November 2013 Vanderbilt Law School Supreme Court Panel, November 2013 (with Barry Friedman and Suzanna Sherry and moderated by Rob Mikos)
29. Invited Presentation, “*Shelby County v. Holder*: It’s Rationale and Its Implications,” League of Women Voters Hot Topics Luncheon, Nashville, Tennessee, September 2013
30. Invited Panelist, “The Supreme Court’s *Phoebe Putney* Decision and Antitrust State Action Immunity: Doctrinal and Policy Implications for the Future,” Panel Program on the *Phoebe Putney* case, Georgia State University College of Law, September 2013
31. Invited Presentation, “The Supreme Court Decision in *Fisher v. University of Texas*: Implications for the Future,” University of Georgia School of Law, September 2013
32. Invited Lecture, “Student Body Diversity vs. Racial Diversity in

- Higher Education After *Fisher*,” Conference on Debating Racial Reality, Vanderbilt Law School, September 2013
33. Invited Presentation, Bernard Health Annual Health Care Reform Breakfast, Hilton Garden Inn, Nashville, August 2013
 34. Invited Panel Presentation, “Medical Malpractice Safe Harbors,” Urgent Matters – sponsored Webinar on “Federal Liability Protection for Emergency Care,” August 2013 (organized by Urgent Matters, a leading public policy program on emergency medicine issues)
 35. Invited Keynote Presentation on *NFIB v. Sebelius*, Program on “Tennessee as a Case Study in Modern Federalist Tensions,” Lincoln Memorial University 2013 Law Review Symposium, April 2013
 36. Carr Treherne, Sr., M.D., Memorial Lecture (Invited Lecturer), “Women and the ACA,” 25th Annual W.F.B. James, M.D., Symposium, Meharry Medical College, April 2013
 37. Invited Lecture, “The Affordable Care Act: *NFIB v. Sebelius* and Its Implications,” Office of Attorney General Robert Cooper, Nashville, TN., April 2013
 38. “First Principles of American Conservatism,” Office of the Dean, Vanderbilt Commons Lecture Series, March 2013
 39. Invited Lecture, “Ways of Thinking About Medical Care and Their Analytical Significance,” Vanderbilt University Medical Center M.D.-Ph.D. Seminar Series, March 2013
 40. Invited Panelist, “An Inside Look at the Challenge to the Affordable Care Act,” Vanderbilt Law School Federalist Society, February 2013
 41. Invited Lecture, “*Fisher v. University of Texas*,” Emory School of Law, Atlanta, GA., February 2013

42. Flexner Dean's Lecture (Invited Lecture), "Issues in Implementing the Affordable Care Act," Vanderbilt University Medical Center Flexner Dean's Lecture Series, January 2013
43. Invited Lecture, "Implementing the Affordable Care Act," National Scholars' Current Issues in Health Policy Seminar, Robert Wood Johnson Foundation Center for Health Policy, Meharry Medical College, January 2013
44. Member, National Legal Committee, American Jewish Committee, 2012 to present
45. Invited Presentation, "*Fisher v. University of Texas*," University of Louisville Brandeis School of Law, November 2012
46. Invited Panelist, "*NFIB v. Sebelius: Looking Forward, Who Won?*" at American Bar Association Administrative Law Section Fall Conference, Washington, D.C., October 2012
47. Invited Panelist and Program Facilitator, "21st Century Health Care Management Education: Confronting Challenges for Innovation Within a Modern Curriculum," Harvard Business School, October 2012 (Regina Herzlinger)
48. Invited Panelist, "The Justices on Medicaid and on Taxation," at "Health Care and the Constitution: A Forum on the Supreme Court's Affordable Care Act Decision," Fordham Law School, October 2012
49. "*NFIB v. Sebelius*," with Dean Kevin Stack, co-sponsored by the American Constitution Society, the Health Law Society, and the Federalist Society, Vanderbilt Law School, September 2012
50. Invited Panelist, "ObamaCare and Enumerated Powers," at "The Supreme Court: Past and Prologue, A Look at the October 2011 and 2012 Terms," The Cato Institute, Washington, D.C., September 2012

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51. Testimony, House Ways and Means Subcommittee on Health, September 2012 (on issue whether subsidies can accrue under the ACA for income-qualified persons who purchase medical insurance policies on federally-facilitated health exchanges)
52. Invited Panelist, “*NFIB v. Sebelius*,” Lawyers’ Association for Women, Nashville, TN., August 2012
53. Invited Panelist, “The Medicaid Reform Dilemma: What Should States Do Next?” American Enterprise Institute, Washington, D.C., July 2012
54. Invited Lecturer (Solo Presenter), Nashville Bar Association CLE Seminar on *NFIB v. Sebelius*, July 2012
55. Invited Panelist, “Threats to Religious Liberty: On Campuses and Across the Nation,” Vanderbilt Law School, March 2012
56. Invited Keynote Presentation on then-pending *NFIB v. Sebelius*, Supreme Court Keynote Lunch, Citi’s 2012 Global Health Care Conference, Waldorf-Astoria Hotel, New York, NY, February 2012
57. Invited Presentation, “Challenges to the Expanded Medicaid Provision of the Affordable Care Act,” University of Tulsa School of Law, February 2012
58. Invited Presentation, “Challenges to the Expanded Medicaid Provision of the Affordable Care Act,” University of Louisville Brandeis School of Law, February 2012

59. Lecture, “State Challenges to the Affordable Care Act: The Expanded Medicaid Mandate” at Harvard University Law School (Petrie-Flom Center), October 2011
60. Invited Presentation, “State Challenges to the Affordable Care Act: The Expanded Medicaid Mandate” American Enterprise Institute, September 2011
61. Invited Presentation (Plenary), “Constitutional Challenges to Health Reform” at the American Association of Public Welfare Attorneys annual conference, Oklahoma City, September 2011
62. Invited Presentation, National Conference of State Legislators Webinar, “Medical Liability: State Legislative Experiences” September 2011
63. Invited Presentation, Council of State Governments Federalism Webinar, “On Cooperative Federalism,” April 2011
64. Invited Presentation, “Constitutional Challenges to Health Reform: The Expanded Medicaid Mandate,” at “Who’s In Charge? More Legal Challenges to the Patient Protection and Affordable Care Act,” American Enterprise Institute, Washington, D.C., December 2010
65. Scholar-in-Residence School-wide Lecture, “Ways of Thinking About Medical Care and Their Analytical Significance,” Meharry Medical College, Robert Wood Johnson Foundation Center for Health Policy, October 2010
66. Moderator, “National Healthcare Reform and Nashville: A Conversation about Accessibility, Affordability and Quality,” Vanderbilt Center for Nashville Studies, October 2010
67. Invited Lecture, “Health Care Reform Act,” Innovation, Business & Law Colloquium, University of Iowa College of Law, September 2010

68. Invited Presenter, “State Challenges to Health Reform: A Look at the Constitutional Issues,” National Conference of State Legislatures 2010 Legislative Summit (NCSL Annual Meeting), Louisville, Kentucky, July 2010
69. Roundtable Participant, Synthesis Workshop, FRESH-Thinking (Focused Research on Efficient, Secure Healthcare), a special project of the Center for Advanced Study in the Behavioral Sciences, Stanford University, November 2008 (organized by Victor Fuchs and Ezekiel Emanuel)
70. Invited Presentation, “Doctors and Hospitals,” at Conference on “Our Fragmented Health Care System: Causes and Solutions,” Harvard Law School, Cambridge, Massachusetts, June 2008 [reprinted as chapter from conference in book edited by Einer Elhauge and published by Oxford University Press]
71. Invited Roundtable Participant (legal and regulatory issues), FRESH-Thinking (Focused Research on Efficient, Secure Healthcare), a special project of the Center for Advanced Study in the Behavioral Sciences, Stanford University, May 2008 (organized by Victor Fuchs and Ezekiel Emanuel)
72. Legal Consultant, State of Tennessee (Office of the Governor [Bredesen]), 2004- 2007 (TennCare reform initiative)
73. Board of Directors, NFIB Legal Foundation, 2003- 11
74. Board of Directors (and Grants Committee), St. Thomas Health System Foundation, 1998 - 2007.
75. Board, Alive Hospice, 2005 - 2011
76. Long-range planning consultant, Academy of Country Music, 2005
77. Faculty Adviser, Vanderbilt Law School Health Law Society

78. Court-appointed *amicus curiae*, State of Tennessee *ex rel.* Pope v. Xantus Healthplan of Tennessee, Inc., 2000 Tenn. App. LEXIS 319 (Tenn. Ct. App. 2000).
79. Member, Advisory Committee on the Records of Congress, 1997-99.
80. Member, Institute of Medicine Committee on the Adequacy of Nurse Staffing, 1994-96.
81. Member, Tennessee Governor's Task Force on Medicaid Reform, 1992-94.
82. Member, Advisory Panel, Study of Defensive Medicine and the Use of Medical Technology, Office of Technology Assessment, 1992-94.
83. Chair, Task Force on Cost Containment and Medical Malpractice, Rand Corporation, 1991-92.
84. Chair, Tennessee State Advisory Committee to the United States Commission on Civil Rights, 1985-91; Member, 1991-97.
85. Secretary, Martin Luther King, Jr. Holiday Committee, State of Tennessee, 1985-87.
86. Consumer Member, Tennessee Motor Vehicle Commission, 1986-87.
87. Executive Committee, Yale Law School Alumni Association, 1985-88.
88. Representative, Association of Yale Alumni, 1985-88.
89. Chair, Yale Alumni Schools Committee, Nashville and Middle Tennessee, 1983--2018.
90. Senior Pre-law Adviser, Office of Yale College Dean, 1969-70.

91. Assistant in Instruction, Yale Law School, 1969-70 (under Prof. Charles L. Black, Jr.).
92. Bates Junior Fellow, Jonathan Edwards College, Yale University, 1968-69.
93. Listed, Who's Who in the World; Who's Who in America; Who's Who's Who in the South and Southwest; Who's Who in American Law; Who's Who in Medicine and Healthcare; Who's Who in American Education; Who's Who of Emerging Leaders in America; International Who's Who in Education; International Who's Who of Intellectuals; Directory of American Scholars; Men of Achievement, Ninth Edition (1982); Two Thousand Notable Americans; Personalities of America; Outstanding Young Man of the Year, 1971; Community Leaders of the World; International Who's Who of Contemporary Achievement; Dictionary of International Biography (Vol. XIX).

TEACHING

Areas of Instruction: Constitutional Law; Health Policy and Law

PUBLICATIONS: ARTICLES

1. *“Ways of Thinking About Medical Care: Alternative Models and Structures and Their Policy Significance,”* 30 Elder Law Journal 85 (2022)(derived from 2021 Ann F. Baum Lecture)
2. *“Judicial Retention Elections for State Appellate Judges: The Implications of the Ballot-Access Cases,”* 17 Duke Journal of Constitutional Law and Public Policy 97 (2022)
3. *“Constraints on Medical Liability Through Malpractice Safe Harbors”* (with Benjamin McMichael and Alan Storrow, M.D.), JAMA Health Forum – Insights, August 14, 2020
4. *The Current Constitutional Challenge to the Affordable Care Act,”* JAMA Health Forum – Insights, February 21, 2020
5. *“State Empowerment and the Compact Clause”* (with Thomas Cheeseman), 27 William & Mary Bill of Rights Journal 775 (2019)
6. *“Mistaken Paradigms and Interpreting Dreams: Some Reflections on King v. Burwell,”* 2015 Cato Supreme Court Review 79 (2015)
7. *“Understanding the Faulty Predictions Regarding the Challenges to Health Reform,”* U. Ill. L. Rev. 1251 (2014)
8. *“NFIB v. Sebelius and Enforceable Limits on Federal Leveraging: The Contract Paradigm, the Clear Notice Rule, and the Coercion Principle,”* 6 J. Health & Life Sci. L. 123 (2013)
9. *“Grutter and Fisher: A Reassessment and a Preview,”* 65 Vand. L. Rev. En Banc 57 (2012)

10. “Enforcing Limits on the Affordable Care Act’s Mandated Medicaid Expansion: The Coercion Principle and the Clear Notice Rule,” in 2011-12 Cato Supreme Court Review 67 (2012)
11. “The Constitutionality of the ACA’s Medicaid Expansion Mandate,” New England Journal of Medicine, December 8, 2011 Online First, 366 N. Eng. J. Med. 103 (2012) (with I. Glenn Cohen).
12. “Of Doctors and Hospitals: Setting the Analytical Framework for Managing and Regulating the Relationship,” in The Fragmentation of U.S. Health Care 135 (Einer Elhauge ed. 2010 (Oxford University Press)) (derived from the McDonald-Merrill-Ketcham Memorial lecture, delivered in 2007 at Indiana University and appearing at 4 Ind. Health Law Review 209 (2007))
13. “Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons,” 15 Virginia J. of Social Policy & the Law 446 (Spring 2008) (with Mark A. Cohen and Seth Suman)
14. “Antitrust Enforcement in the Health Care Industry: A Battleground of Competing Paradigms,” 156 Univ. of Penn. L. Rev. (PENNumbra) 421 (2008)
15. “Medical Malpractice Standard-Setting: Developing Malpractice ‘Safe Harbors’ as a New Role for QIOs?,” 59 Vand. L. Rev. 1017 (2006)
16. “Making the System Work Better: Improving the Process for Determination of Noneconomic Loss,” 35 N. Mex. L. Rev. 401 (2005) (symposium issue)
17. Monopsony Tying: The TennCare Cram-Down as a Case Study [Robert Wood Johnson Foundation grant project] (VIPPS working paper and available on SSRN)
18. “Health Care Law and Policy: Whence and Whither?,” 14 Health Matrix 35 (Winter 2004).

19. “The Legal Liability Regime: How Well Is It Doing in Assuring Quality, Accounting for Costs, and Coping with an Evolving Reality in the Health Care Marketplace?,” 11 Annals of Health Law 125 (2002).
20. “Regulatory Review by the Executive Office of the President: An Overview and Policy Analysis of Current Issues,” 51 Duke L.J. 851 (2001).
21. “Health Care Reform Through Medicaid Managed Care: Tennessee (TennCare) as a Case Study and a Paradigm,” 53 Vand. L. Rev. 125 (2000) (with Frank Sloan).
22. “The Application of Antitrust Doctrine to the Healthcare Industry: The Interweaving of Empirical and Normative Issues,” 31 Indiana Law Review 91 (1998).
23. “The Oregon Experiment: The Role of Cost-Benefit Analysis in the Allocation of Medicaid Funds,” 45 Social Science and Medicine 545 (1997) [presented at an international conference at Duke University on cost effectiveness analysis in decision-making].
24. “A Perspective on Federalism and Medical Malpractice,” Yale Journal on Regulation 411 (Symposium Issue, 1996).
25. “Rationalizing the Fraud and Abuse Statute,” 15 Health Affairs 118 (Winter 1996).
26. “Legalizing Payment for Transplantable Cadaveric Organs,” pp. 119132 in Birth to Death: Biology, Science, and Bioethics (T. Kushner & D. Thomasma, eds.) (Cambridge University Press, 1996).
27. “The Fraud and Abuse Statute in an Evolving Healthcare Marketplace: Life in the Healthcare Speakeasy,” 22 American Journal of Law and Medicine 205 (1996).
28. “Assessing Hospital Cooperation Laws,” 8 Loyola Consumer Law Reporter 248 (1996) (prepared for symposium issue).

29. "Racial Gerrymandering and Vote Dilution: *Shaw v. Reno* in Doctrinal Context," 26 Rutgers Law Journal 517 (1995).
30. "Federalism and Civil Rights: Complementary and Competing Paradigms," 47 Vanderbilt Law Review 1251 (1994).
31. "Health Care Reform and Competing Visions of Medical Care: Antitrust and State Provider Cooperation Legislation," 79 Cornell Law Review 1459 (1994).
32. "Health Care Reform: The Policy Context," 29 Wake Forest Law Review 15 (Spring 1994) (symposium), reprinted in 7 National Insurance Law Review 233 (1994).
33. "Medical Care Cost Containment and Medical Malpractice," in Health Care Delivery and Tort: Systems on a Collision Course? (E. Rolph ed.) (Rand Corporation 1993), originally presented at Rand Institute for Civil Justice Conference, Dallas, Texas, June 1991.
34. "The Use of Financial Incentives in Medical Care: The Case of Commerce in Transplantable Organs," 3 Health Matrix 1 (Spring 1993).
35. "The Case for Commerce in Organ Transplantation," 24 Transplant Proceedings 2190 (Oct. 1992).
36. "Beyond Tort Reform: Developing Better Tools for Assessing Damages for Personal Injury," 8 Yale Journal on Regulation 171-212 (Winter 1991) (with Randall Bovbjerg and Frank Sloan).
37. "Valuing Life and Limb in Tort: Scheduling 'Pain and Suffering,'" 83 Northwestern University Law Review 908-76 (1989) (with Randall Bovbjerg and Frank Sloan).

38. "Antitrust and Hospital Peer Review," 51 Law and Contemporary Problems 7-92 (Spring 1988) (publication date: September, 1989) (with Frank Sloan).
39. "Government's Role in Organ Transplantation Policy," 14 Journal of Health Politics, Policy and Law 5-39 (Spring 1989), reprinted in slightly altered form as "Federal Organ Transplantation Policy: A Time for Reassessment?," 22 University of California (Davis) Law Review 451-497 (Winter, 1989); reprinted in Organ Transplantation Policy: Issues and Prospects (J. Blumstein and F. Sloan eds.) (Duke University Press 1989).
40. "Effective Health Planning in a Competitive Environment," pp. 21- 43 in Cost, Quality, and Access in Health Care: New Roles for Health Planning in a Competitive Environment (F. Sloan, J. Blumstein, and J. Perrin eds. 1988).
41. "Providing Hospital Care to Indigent Patients: Hill-Burton as a Case Study and a Paradigm," pp. 94-107 in Uncompensated Hospital Care: Rights and Responsibilities (F. Sloan, J. Blumstein, and J. Perrin eds.) (Johns Hopkins University Press 1986).
42. "Court Action, Agency Reaction: The Hill-Burton Act as a Case Study," 69 Iowa Law Review 1227-1261 (1984) (health policy symposium).
43. "Defining and Proving Race Discrimination: Perspectives on the Purpose vs. Results Approach from the Voting Rights Act," 69 Virginia Law Review 633-714 (1983).
44. "Distinguishing Government's Responsibility in Rationing Public and Private Medical Resources," 60 Texas Law Review 899-918 (1982).
45. "Responsibility and Accountability in Provider-Patient Relationships," 66 Circulation III - 91 (November 1982 Supp. III) (Journal of the American Heart Association).
46. "Rationing Medical Resources: A Constitutional, Legal and Policy Analysis," 59 Texas Law Review 1345-1400 (1981), reprinted in Securing Access to Health Care: The Ethical Implications of

Differences in the Availability of Health Services, pp. 350-394 (President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research).

47. "Redefining Government's Role in Health Care: Is a Dose of Competition What the Doctor Should Order?," 34 Vanderbilt Law Review 849-926 (1981) (with Frank A. Sloan) (summarized in Regulation 50, November-December, 1981; National Law Journal 44, March 29, 1982).
48. "A Prolegomenon to Growth Management and Exclusionary Zoning Issues," 43 Law and Contemporary Problems 5-110 (Spring 1979), reprinted in Land Use & Environmental Law Review - 1981 (D. Hagman ed.).
49. "Public Choice in Health: Problems, Politics and Perspectives on Formulating National Health Policy," 4 Journal of Health Politics, Policy and Law 382-412 (Fall 1979) (with Michael Zubkoff).
50. "State Action as a Shield and a Sword in a Medical Services Antitrust Context: Parker v. Brown in Constitutional Perspective," 1978 Duke Law Journal 389-441 (with Terry Calvani) (summarized in Regulation 57, July-August, 1979; reprinted in 10 Journal of Reprints for Antitrust Law and Economics 913 (1980)).
51. "Some Intersections of the Negative Commerce Clause and the New Federalism: The Case of Discriminatory State Income Tax Treatment of Out-of-State Tax-Exempt Bonds," 31 Vanderbilt Law Review 473-573 (1978), reprinted in part with an introduction and brief update in 15 Municipal Finance Journal 53 (Fall 1994).
52. "The Medical Marketplace: Health Policy Formulation in Consideration of Economic Structure," pp. 73-116 in National Commission on the Cost of Medical Care, 1976-77, vol. 2 (American Medical Ass'n 1978) (with Michael Zubkoff).
53. "Health Planning and Regulation Through Certificate of Need: An Overview," 1978 Utah Law Review 3-37 (with Frank A. Sloan)

(health policy symposium), reprinted in Public Health and the Law: Issues and Trends 15 (L. Hogue ed. 1980).

54. "The Role of PSROs in Hospital Cost Containment," pp. 461-85 in Hospital Cost Containment: Selected Notes for Future Policy (Michael Zubkoff, Ira E. Raskin, and Ruth S. Hanft eds.) (1978), reprinted in Economics and Health Care 324 (J. McKinlay ed. 1981), reprinted in Issues in Hospital Administration 280 (J. McKinlay ed. 1982).
55. "Strategies in Underwriting the Costs of Catastrophic Disease," 40 Law and Contemporary Problems 122-95 (Autumn 1976) (with Clark C. Havighurst and Randall Bovbjerg).
56. "Constitutional Perspectives on Governmental Decisions Affecting Human Life and Health," 40 Law and Contemporary Problems 231-305 (Autumn 1976).
57. "Inflation and Quality: The Case of PSROs," pp. 245-95, 375-80 in Health: A Victim or Cause of Inflation? (Michael Zubkoff ed.) (1976).
58. "Coping with Quality/Cost Trade-Offs in Medical Care: The Role of PSROs," 70 Northwestern University Law Review 6-68 (1975) (with Clark C. Havighurst).
59. "The Supreme Court and Voter Eligibility," in Issues of Electoral Reform 33-48 (Richard Carlson ed.) (National Municipal League) (1974).
60. "Foundations of Federal Fertility Policy," 52 Milbank Memorial Fund Quarterly: Health and Society 131-168 (Spring 1974).
61. "The Supreme Court's Jurisdiction -- Reform Proposals, Discretionary Review, and Writ Dismissals," 26 Vanderbilt Law Review 895-938 (1973).
62. "Perspectives on Government Policy in the Health Sector," (with

Michael Zubkoff), 51 Milbank Memorial Fund Quarterly: Health and Society 395-431 (Summer 1973), reprinted in Politics and Health Care 55 (J. McKinlay ed. 1981).

63. “Party Reform, the Winner-Take-All Primary, and the California Delegate Challenge: The Gold Rush Revisited,” 25 Vanderbilt Law Review 975-1021 (1972).
64. “Constitutional Safeguards in the Selection of Delegates to Presidential Nominating Conventions,” 78 Yale Law Journal 1228- 52 (1969).

PUBLICATIONS: BOOKS AND SYMPOSIA

1. Symposium Editor, Medical Malpractice Symposium (59 Vand. L. Rev. 1015-1381 (May 2006)).
2. Health Care Law and Policy: Readings, Notes, and Questions (ed. with Clark C. Havighurst and Troyen A. Brennan) (Foundation Press 1998 and 2007 Supplement).
3. Antitrust and Health Care (Law and Contemporary Problems Symposium) (J. Blumstein and F. Sloan, eds.) (1989).
4. Organ Transplantation Policy: Issues and Prospects (J. Blumstein and F. Sloan eds.) (Duke University Press 1989), reprinting with modification, Organ Transplantation Policy (Journal of Health Politics, Policy and Law Symposium, Vol. 14, No. 1 (Spring 1989) (J. Blumstein and F. Sloan eds.)).
5. Cost, Quality and Access in Health Care: New Roles for Health Planning in a Competitive Environment (ed. with Frank A. Sloan and James M. Perrin) (1988).
6. Uncompensated Hospital Care: Rights and Responsibilities (ed. with Frank A. Sloan and James M. Perrin) (Johns Hopkins University Press 1986).

7. Growth Policy in the Eighties (Law and Contemporary Problems Symposium) (ed. with Lester Salamon) (1979).
8. Growing Metropolis: Aspects of Development in Nashville (ed. with Benjamin Walter) (1975).
9. The Urban Scene in the Seventies (ed. with Eddie J. Martin) (1974).

PUBLICATIONS: SELECTED OTHER ARTICLES, REPORTS ET AL

1. “Supreme Court Litigation: *Dunn v. Blumstein* and *Brentwood Academy* Cases,” Harry Philips Inn of Court, October 17, 2017
2. “How to End ObamaCare in Two Pages,” Wall Street Journal (September 18, 2017)
3. “On Accepting Election Outcomes,” Laffer Associates (Newsletter Nov. 4, 2016) (short opinion piece before election)
4. Brief *amicus curiae* in Supreme Court in *Fisher v. University of Texas* (Fisher II), 136 S. Ct. 2198 (2016)
5. “James Blumstein on *King v. Burwell* Oral Arguments” Washington Post, March 5, 2015, <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/05/james-blumstein-on-the-king-oral-argument/>
6. “James Blumstein on the Administration, the IRS, and the ACA: Will the Courts Rein in the President’s Pen?” <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/02/27/the-administration-the-irs-and-the-aca-will-the-courts-rein-in-the-presidents-pen/>
7. “Why President Obama Can Break the Law with Impunity,” *Forbes*, April 30, 2014 (with Alex Tolbert),

<http://www.forbes.com/sites/theapothecary/2014/04/30/why-president-obama-can-break-the-law-with-impunity/>

8. “James Blumstein on *Halbig v. Sebelius*” Washington Post, March 19, 2014, <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/19/professor-james-blumstein-on-halbig-v-sebelius/> (cited in *Oklahoma ex rel Pruitt v. Burwell*, 2014 U.S. Dist. LEXIS 139501, at *26, n. 24)
9. Amicus Curiae Brief in Support of Florida et al, Florida v. United States Department of Health and Human Services, United States Supreme Court, January 2012 (No. 11-400) (Medicaid Issue).
10. Amicus Curiae Brief in Support of Florida et al, Florida v. United States Department of Health and Human Services, United States Court of Appeals for the Eleventh Circuit, May 2011 (No. 11-11067) (Medicaid Issue).
11. Rule of Law Column, “Guess Who’s Coming to Study,” The Wall Street Journal, June 5, 2003.
12. Framing Presentation, “Perspectives on Competition Policy and the Health Care Marketplace,” February 2003, Washington, D.C. (lead-off hearing of initiative on competition policy and health care jointly sponsored by Federal Trade Commission and Department of Justice Antitrust Division)
13. “Medicine Isn’t an Economics-Free Zone,” The Wall Street Journal, June 22, 2001.
14. Rule of Law Column, “Football and Federalism,” The Wall Street Journal, Jan. 10, 2000.
15. Rule of Law Column, “A Land-Mine on the Path from First Lady to Senator,” The Wall Street Journal, June 7, 1999.
16. Rule of Law Column, “What Precisely is ‘Fraud’ in the Health Care Industry?” The Wall Street Journal, December 8, 1997.

17. "Any Willing Provider," 1:6 Georgia HealthWatch 5 (September-October, 1997).
18. Report of the Committee on the Adequacy of Nurse Staffing in Hospitals and Nursing Homes, Nursing Staff in Hospitals and Nursing Homes: Is It Adequate? (Institute of Medicine, 1996) (partial dissenting statement).
19. "Reform Legislation Eases Fraud-and-Abuse Squeeze," 26:38 Modern Healthcare 26 (Sept. 16, 1996).
20. "Shaw v. Reno and Miller v. Johnson: Where We Are and Where We Are Headed," 26 Cumberland Law Review 503 (1995-1996).
21. "On Prudence in Health Care Reform," 4 Cornell Journal of Law and Public Policy 422 (1995).
22. "The Clinton Administration's Health Insurance Proposals," 3 Kansas Journal of Law & Public Policy 120 (Winter 1993-94).
23. "The Clinton Administration Health Care Reform Plan: Some Preliminary Thoughts," 19 Journal of Health Politics, Policy and Law 201 (Spring 1994).
24. "The Health Care Headache: Cost Containment is a High Priority," 23 The Vanderbilt Lawyer 8 (1993).
25. "Live-Donor Liver Transplants," 1 Cambridge Quarterly of Healthcare Ethics 307 (Fall 1992).
26. "Medical Malpractice: Thinking About the Federal Role," 12 Journal of Health and Human Resources Administration 149 (Summer 1989).
27. "Age-Based Rationing of Medical Care: A Legal and Policy Critique," 33 St. Louis University Law Journal 693 (1989).
28. "Thinking About Government's Role in Medical Care," 32 St. Louis University Law Journal 853-867 (1988).
29. "Financing Uncompensated Care: An Approach to the Issues," 38 Journal of Legal Education 511-524 (December, 1988).

30. "Providing Access to Medical Care: The Public Role," State Government News, Vol. 30, no. 8, pp. 14-16 (August 1987) (Council of State Governments).
31. Commentary, 36 Case Western Reserve Law Review 1099-1106 (1986) (Health Policy Symposium).
32. "Constitutional Attacks on Medical Malpractice Laws" (with David Smith), pp. 167-87 in Legal Liability and Quality Assurance in Newborn Screening (L. Andrews ed.) (American Bar Foundation 1985).
33. "Defining 'Discrimination' -- Intent vs. Impact," 16 New Perspectives 29-33 (Summer 1984) (publication of U.S. Commission on Civil Rights).
34. "Right to Medical Care: Rethinking Both the Nature and the Scope of Public Responsibility," 16 Review 44 (November/December, 1983).
35. "Certificate-of-Need in an Antitrust Context," 8 Journal of Health Politics, Policy and Law 314 (1983) (with A. Everette James, Jr., M.D., Frank A. Sloan, Alan C. Winfield, M.D., and Henry Pendergrass, M.D.).
36. "On the Other Hand: Some Comments on Sigelman's Palmistry," 6 Journal of Health Politics, Policy and Law 621 (1982).

SELECTED LITIGATION

1. Tennessee Secondary School Athletic Ass'n (TSSAA) v. Brentwood Academy, 551 U.S. 291 (2007) (First Amendment and due process challenge to disciplinary action of high school athletic regulatory entity for violation of recruiting rule; reversing Court of Appeals, Supreme Court found no constitutional violation) [briefed and argued in Supreme Court on behalf of unsuccessful Respondent].
2. Brentwood Academy v. TSSAA, 531 U.S. 288 (2001) (First Amendment challenge to high school athletic association recruiting rule; Supreme Court held association's regulatory conduct to be state

action) [briefed and argued in Supreme Court on behalf of prevailing Petitioner].

3. Dunn v. Blumstein, 405 U.S. 330 (1972) (durational residency requirement for voting held a violation of equal protection) [briefed and argued *pro se* on behalf of prevailing Appellee].
4. Allenberg Cotton Co. v. Pittman, 419 U.S. 20 (1974) (*amicus* brief on behalf of prevailing appellant) (refusal of state court to enforce contract made in interstate commerce violates commerce clause).
5. Quill v. North Dakota, 504 U.S. 298 (1992) (*amicus* brief on behalf of prevailing Petitioner in support of retaining physical presence rule in state use taxation of catalogue sales).
6. Shaw v. Hunt, 517 U.S. 899 (1996) [Shaw II] [of counsel role on behalf of prevailing Appellant]
7. Expert Report, Human Rights Division, The Academic College of Law v. The Minister of Finance (Israeli Supreme Court prison privatization case) (Expert Report regarding constitutional status of privately operated prisons in the United States presented to and filed with Israeli Supreme Court 2006).
8. Doe v. Briley, 2011 U.S. Dist. LEXIS 4130 (January 14, 2011) (upholding ongoing validity of 1973 consent decree that limited local government's ability to inquire about or use raw arrest records in employment decision-making, modifying portions of the decree because of changed factual circumstances, and finding Metro Nashville in contempt for violation of consent decree).
9. Doe v. Briley, 562 F.3d 777 (6th Cir. 2009) (involving enforcement of 1974 consent decree that limited dissemination of raw arrest data solely to designated law enforcement agencies for law enforcement purposes; consent decree dissolved because of change in law since its entry).
10. Tennessee Scrap Recyclers Ass'n. v. Bredesen, 556 F.3d 442 (6th Cir. 2009) (Commerce Clause challenge to scrap metal "tag and hold" legislation) [briefed and argued for unsuccessful appellant]

11. Bridgeport Music, Inc. v. No Limit Films, LLC, 410 F.3d 792 (6th Cir. 2005) (holding for first time in case of national first impression that digital “sampling” of sound recordings violates copyright law and “de minimis” doctrine does not apply to digital copying of sound recordings)[brief for prevailing appellant]
12. Bowman v. Corrections Corp. of America, 350 F.3d 537 (6th Cir. 2003) (reversing injunction against prison managed care contract) [briefed and argued on behalf of prevailing appellant].
13. Stout v. Whiteaker, 379 F.Supp. 218 (M.D. Tenn. 1973) (tenured high school teacher held entitled to notice and hearing prior to being terminated; represented prevailing plaintiff).
14. Franklin v. Collins, (M.D. Tenn.) (successful housing discrimination lawsuit on behalf of black Vanderbilt law student) (with Jonathan Charney).
15. Cone Mills, Inc. v. Hurdle, 369 F.Supp. 426 (N.D. Miss. 1974). (*amicus* brief on behalf of prevailing plaintiff) (denied defendants' motion to dismiss, which was based on plaintiff's failure as a foreign corporation to qualify to do business in Mississippi).
16. Newsom v. Vanderbilt University, 653 F.2d 1100 (6th Cir. 1981) (brief in support of prevailing Vanderbilt University Hospital in Hill-Burton free care suit) (no individual indigent patient has entitlement to care under hospital's Hill-Burton free-care program, and therefore no due process rights are implicated or violated).
17. League of Women Voters v. Collins, (M.D. Tenn., October 1980) (represented prevailing plaintiff; absentee ballot provisions of Tennessee voting law held unconstitutional).
18. Leader v. Tennessee Public Service Commission, (M.D. Tenn. 1983) (preliminary injunction issued ordering a hearing prior to dismissal of government employee; represented prevailing plaintiff).

19. Bredesen v. Election Commission (Davidson County Chancery Court 1987) (change in date for mayoral election held unconstitutional; represented prevailing plaintiff with Bill Harbison).
20. Cash America Investments, Inc. of Tennessee v. Ned McWherter (M.D. Tenn. 1988) (discriminatory residency requirement for licensure violates Commerce Clause; represented prevailing plaintiff in consent settlement declaring law unconstitutional).
21. Student Coalition for Gay Rights v. Austin Peay State University, 477 F. Supp. 1267 (M.D. Tenn. 1979) (represented prevailing student organization in First-Amendment access-to-campus- recognition lawsuit) (with Gary Crawford).

SELECTED PAST AND CURRENT COMMUNITY ACTIVITIES

1. “Antitrust Issues and Health Care Reform,” Fifth Annual Health Care Law Forum, Tennessee Bar Association, Nashville, Tennessee.
2. Member, Publisher's Advisory Board, Nashville Banner.
3. Consultant, Leadership Nashville, 1977-- 2021.
4. Consultant, Leadership Music, 1989-- 2002.
5. Moderator, "Blacks/Whites: Are We Listening to Each Other?" Nashville Network (National Conference of Christians and Jews).
6. Member, Mayor's Commission on Crime.
7. Advisory Board, League of Women Voters.
8. Speaker, Conference on the Future of Nashville, League of Women Voters.
9. Member, Health Economics Task Force, Middle Tennessee Health Systems Agency.
10. Lecture Series, Junior League of Nashville.

MISCELLANEOUS PROFESSIONAL ACTIVITIES

1. Member of Board, VUMC Center for Health Services (renamed Center for Community Health Solutions), 2010-13; Chair, Long-range Planning Committee, 2012-13; Member Executive Committee, 2012-13.
2. Member, National Advisory Board, Robert Wood Johnson Foundation Center for Health Policy at Meharry Medical College.
3. Helped initiate and organize Cooper Health Policy Lecture, November 2007 (inaugural Lecture title: “Health Reform: From the Managed Competition Act of 1992 to the Campaigns of 2008”) (presentation by Alain Enthoven, Marriner S. Eccles Professor of Public and Private Management, Emeritus, Graduate School of Business, Stanford University).
4. Steering Committee, Tennessee Bar Association Leadership Law Project (past recipient of 2004 President’s Award, Tennessee Bar Association, for role in developing and implementing TBA’s Leadership Law program)
5. Editorial Board, Journal of Health Care for the Poor and Underserved, 2004 – [edited at Meharry Medical College].
6. Editorial Board, Journal of Health Politics, Policy and Law, 1981-2000.
7. Second Level Review Board, Land Use & Environmental Law Review, 1983-94.