

NICHOLAS BAGLEY

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ACADEMIC POSITION

UNIVERSITY OF MICHIGAN LAW SCHOOL, Ann Arbor, MI
Thomas G. Long Professor of Law, 2023 - present
Professor of Law, 2015 - 2023
Assistant Professor of Law, 2010 - 2015
Teaching: Civil Procedure, Administrative Law, Legislation and Regulation, Law of Contagion

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW
J.D., *summa cum laude*, May 2005

YALE UNIVERSITY
B.A. in English, May 2000

EXPERIENCE

OFFICE OF LEGAL COUNSEL, EXECUTIVE OFFICE OF THE GOVERNOR, STATE OF MICHIGAN
Chief Legal Counsel to Governor Whitmer, April 2022 - December 2022
Special Counsel, March 2020 - August 2020, January 2022 - March 2022

ORRICK, HERRINGTON & SUTCLIFFE, LLP, SUPREME COURT AND APPELLATE LITIGATION PRACTICE
Associated Law Professor, 2014 - 2021

DEPARTMENT OF JUSTICE, CIVIL DIVISION, APPELLATE STAFF, Washington, DC
Attorney, 2007 - 2010

Lead counsel in more than two dozen civil appeals for the federal government. Argued a dozen cases before the United States Courts of Appeals.

JUSTICE JOHN PAUL STEVENS, UNITED STATES SUPREME COURT
Law Clerk, 2006 - 2007

JUDGE DAVID S. TATEL, UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT Law
Clerk, 2005 - 2006

NEW YORK CITY BOARD OF EDUCATION and TEACH FOR AMERICA, Bronx, NY Eighth-Grade
English Teacher at Intermediate School 158, 2000 - 2002

PUBLICATIONS

- WHY WE CAN'T HAVE NICE THINGS (work in progress, forthcoming from Norton in 2026).
- The State Capacity Crisis*, 66 B.C. L. REV. 2301 (2025) (with David Schleicher).
- HEALTH CARE LAW AND ETHICS (10th ed. 2024) (with Mark Hall, Mary Anne Bobinski, David Orentlicher, and I. Glenn Cohen).
- Delegation at the Founding: A Response to the Critics*, 122 COLUM. L. REV. 2323 (2023) (with Julian D. Mortenson) ([link](#)).
- Constitutional Culture, Partisan Politics, and the Failed Campaign to Topple the Affordable Care Act*, ACS SUPREME COURT REVIEW 2020-2021 ([link](#)).
- Delegation at the Founding*, 121 COLUM. L. REV. 277 (2021) (with Julian D. Mortenson) ([link](#)).
- What's Left of the Affordable Care Act? A Progress Report*, 6 RUSSELL SAGE FOUND. J. SOC. SCI. 42 (with Helen Levy & Andrew Ying 2020) ([link](#)).
- The Coronavirus and the Risks to the Elderly in Long-Term Care*, 32 J. OF AGING & SOC. POL'Y 310 (2020) (with William Gardner & David States).
- Executive Power and the Affordable Care Act*, in THE TRILLION DOLLAR REVOLUTION (eds. Abbe Gluck & Ezekiel Emanuel 2020).
- The Procedure Fetish*, 118 MICH. L. REV. 345 (2019) ([link](#)).
- The Orphan Drug Act at 35: Observations and Outlook for the 21st Century*, 19 INNOVATION POLICY AND THE ECONOMY, NAT'L BUREAU OF ECONOMIC RESEARCH 99 (2019) (with Benjamin Berger, Amitabh Chandra, Craig Garthwaite, and Ariel D. Stern) ([link](#)).
- The Dubious Empirical and Legal Foundations of Workplace Wellness Programs*, 27 HEALTH MATRIX 59 (2017) (with Adrianna McIntyre, Austin Frakt, & Aaron Carroll).
- Remedial Restraint in Administrative Law*, 124 COLUM. L. REV. 253 (2017).
- Federalism and the End of Obamacare*, 127 YALE L.J. F. 1 (2017).
- Legal Limits and the Implementation of the Affordable Care Act*, 164 PENN. L. REV. 1715 (2016).
- Medicine as a Public Calling*, 114 MICH. L. REV. 57 (2015).
- Correcting Signals for Innovation in Health Care*, HAMILTON PROJECT, BROOKINGS INST. (Oct. 2015) (with Amitabh Chandra and Austin B. Frakt).

No Good Options: Picking Up the Pieces After King v. Burwell, 125 YALE L.J. FORUM 13 (2015) (with David K. Jones).

Three Words and the Future of the Affordable Care Act, 40 J. HEALTH POL., POL'Y & L. 589 (2015).

The Puzzling Presumption of Reviewability, 127 HARV. L. REV. 1285 (2014).

Essential Health Benefits and the Affordable Care Act: Law and Process, 39 J. HEALTH POL., POL'Y & L. 441 (2014) (with Helen Levy); also published in *THE FUTURE OF HEALTH CARE REFORM IN THE UNITED STATES* (Michael Schill & Anup Malani, eds. 2016).

Bedside Bureaucrats: Why Medicare Reform Hasn't Worked, 101 GEORGETOWN L.J. 520 (2013).

Agency Hygiene, 89 TEX. L. REV. SEE ALSO 1 (2010).

Centralized Oversight of the Regulatory State, 106 COLUM. L. REV. 1260 (2006) (with Richard Revesz).

SHORTER WORKS

Most-Favored-Nation Drug Pricing – How Courts Could Shape Future Health Regulation, 6 JAMA Health Forum e255440 (2025) (with Craig Garthwaite & Benedic Ippolito).

Preventive Care at the Supreme Court, 393 NEW ENG. J. MED. 729 (2025).

A Texas Judge Just Invalidated the Preventive Services Mandate. What Happens Next?, HEALTH AFFAIRS FOREFRONT, Mar. 30, 2023 (with A. Mark Fendrick) ([link](#)).

The Procedure Fetish, NISKANEN CENTER'S SERIES ON STATE CAPACITY (2021) ([link](#)).

Medicare Coverage of Aducanumab – Implications for State Budgets, 385 NEW ENG. J. MED. 2019 (2021) (with Rachel Sachs).

Is Obamacare Really Unconstitutional?, 382 NEW ENG. J. MED. 2019 (2021).

Ending the Campaign to Undo the ACA in the Courts, 385 NEW ENG. J. MED. 673 (2021).

Importing Prescription Drugs from Canada, 382 NEW ENG. J. MED. 1777 (2020) (with Rachel Sachs).

Medicare Coverage of Aducanumab – Implications for State Budgets, 385 NEW ENG. J. MED. 400 (2021).

It's Time to Reform the Orphan Drug Act, NEW ENG. J. MED. CATALYST, Dec. 19, 2018 (with Amitabh Chandra, Craig Garthwaite, and Ariel D. Stern).

Limiting State Flexibility in Drug Pricing, 379 NEW ENG. J. MED. 1002 (2018) (with Rachel Sachs).

Reform at Risk – Mandating Participation in Alternative Payment Plans, 378 NEW ENG. J. MED. 1663 (2018).

Are Medicaid Work Requirements Legal?, 319 JAMA 763 (2018).

Scientific Trials – In the Laboratories, Not the Courts, 178 JAMA INT. MED. 7 (2018) (with Aaron Carroll & Pieter A. Cohen).

Small Change, Big Consequences – Partial Medicaid Expansions under the ACA, 377 NEW ENG. J. MED. 1004 (2017) (with Adrianna McIntyre & Allan M. Joseph).

Innovative Contracting For Pharmaceuticals and Medicaid’s Best-Price Rule, 43 J. HEALTH POL. POL’Y & L. 5 (2018) (with Rachel Sachs & Darius Lakdawalla).

Transparency and the Supreme Court – Can Employers Refuse to Disclose How Much They Pay for Health Care?, 373 NEW ENG. J. MED. 34 (2016) (with Christopher Koller).

Trouble on the Exchanges – Does the United States Owe Billions to Health Insurers?, 375 NEW ENG. J. MED. 2017 (2016).

A Legal Setback for the Affordable Care Act, 374 NEW ENG. J. MED. 2307 (2016).

Protection or Harm? Suppressing Substance-Use Data, 372 NEW ENG. J. MED. 1879 (2015) (with Austin B. Frakt)

Predicting the Fallout from King v. Burwell, 372 NEW ENG. J. MED. 101 (2015) (with David K. Jones & Timothy Stoltzfus Jost).

What Are The States Doing To Prepare For King v. Burwell? A Three-Part Series, HEALTH AFFAIRS BLOG (June 4, 2015) (with David K. Jones et al.).

The Legality of Delaying Key Elements of the ACA, 370 NEW ENG. J. MED. 1967 (2014).

Why It’s Called the Affordable Care Act, 110 MICH. L. REV. FIRST IMPRESSIONS 1 (2011) (with Jill R. Horwitz).

SELECTED COLUMNS AND OTHER PUBLICATIONS

The Supreme Court Put Nationwide Injunctions to the Torch, THE ATLANTIC (June 28, 2025).

The Supreme Court’s Green Double Standard, THE ATLANTIC (June 2, 2025).

The Birthright-Citizenship Case Isn’t Really About Birthright Citizenship, THE ATLANTIC (May 16, 2025).

What Alito’s Dissent Fails to Understand, THE ATLANTIC (Mar. 6, 2025).

Musk and Ramaswamy Are Making a Big Mistake, THE ATLANTIC (Dec. 3, 2024).

The Big Winners of This Supreme Court Term, THE ATLANTIC (June 29, 2024).

The Plan to Incapacitate the Federal Government, THE ATLANTIC (Jan. 24, 2024).

The Real Reason Drugs Cost So Much – and Do Too Little, POLITICO (Aug. 27, 2023).

How to Fix the Government, THE ATLANTIC (June 12, 2023).

A Single Judge Shouldn't Have This Kind of National Power, THE ATLANTIC (Apr. 14, 2023).

The Fallout of a SCOTUS Health-Care Decision Could Be Quick, Devastating, and Irreversible, THE ATLANTIC (Nov. 10, 2020).

Republicans Don't Know What to Do With Their Bad-Faith ACA Case, THE ATLANTIC (Oct. 24, 2020).

A Warning From Michigan, THE ATLANTIC (Oct. 7, 2020).

America's Health Care Is Under Existential Threat, N.Y. TIMES (Sept. 23, 2020) (with Andy Slavitt).

The Nondelegation Doctrine is a Fable, THE ATLANTIC (with Julian Mortenson) (May 26, 2020).

This Is One Anxiety We Should Eliminate for the Coronavirus Outbreak, N.Y. TIMES (with David Anderson) (Mar. 16, 2020).

Some of Trump's Most Devious Lies are About Health Care, N.Y. TIMES (Nov. 12, 2019).

Most of Government Is Unconstitutional, N.Y. TIMES (June 21, 2019).

The Rise of the Know-Nothing Judge, THE ATLANTIC (July 15, 2019).

Why Trump's New Push to Kill Obamacare Is So Alarming, N.Y. TIMES (Mar. 27, 2019).

The Texans challenging Obamacare have no standing, THE ATLANTIC (Dec. 18, 2018).

Trump's Illegal Sabotage of Obamacare, N.Y. TIMES (Aug. 15, 2018) (with Abbe R. Gluck).

Health insurance is complicated. In many states, it's about to get worse. WALL ST. J. (June 25, 2018).

Michigan's Discriminatory Work Requirements, N.Y. TIMES (May 8, 2018) (with Eli Savit).

Trump's ominous threat to withhold payment from health insurers, explained, VOX (Aug. 2, 2017).

The Republicans' Uncertainty Strategy, N.Y. TIMES (June 29, 2017) (with Craig Garthwaite).

We Will Miss Antibiotics When They Are Gone, N.Y. TIMES (Jan. 18, 2017) (with Kevin Outterson).

The Problem with One-Size-Fits-All Health Insurance, N.Y. TIMES (Dec. 5, 2016) (with Austin Frakt).

Hello, Justices? It's Reality Calling, N.Y. TIMES (Mar. 2, 2015).

SELECTED PRESENTATIONS

Keynote Address at the Yale Workshop on Government and Problem Solving, December 5, 2024.

Lunchtime Address at the American Bar Association's Section on Administrative Law and Regulatory Practice's Spring Conference, 2024.

Presentation before the National Governors Association's Legal Counsel Convening, Nov. 18, 2021, on the state response to COVID-19.

Hearing Before the Senate Judiciary Committee, 116th Cong., Feb. 24, 2020. *Rule by District Judge: The Challenges of Universal Injunctions*.

Faculty Workshop at the University of Chicago Law School, Sept. 2018. Presented *Federalism and the End of Obamacare*.

Faculty Workshop at University of Virginia School of Law, Sept. 2015. Presented *Medicine as a Public Calling*.

Faculty Workshop at Columbia Law School, Feb. 2015. Presented *No Good Options: Picking Up the Pieces After King v. Burwell*.

Faculty Workshop at Vanderbilt University, Oct. 2012. Presented *Bedside Bureaucrats: Why Medicare Reform Hasn't Worked*.

Grand Rounds for the Internal Medicine Department at the University Hospital, Apr. 2012.

Hearing Before the Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee, 110th Cong., Aug. 2010. Presented *Understanding the Threat of Agency Capture*.

AWARDS

Delegation at the Founding was selected as the best article in the field in 2022 by the American Bar Association's Section on Administrative Law and Regulatory Practice.

Received the L. Hart Wright Award for Excellence in Teaching in 2012.

Winner of the Richard D. Cudahy Writing Competition on Regulatory and Administrative Law for *Medicine as a Public Calling*.

Centralized Oversight of the Regulatory State was selected as the best article in the field in 2006 by the American Bar Association's Section on Administrative Law and Regulatory Practice.

MEMBERSHIPS AND AFFILIATIONS

Member, American Law Institute, 2024 to present.

Senior Fellow, Niskanen Institute, 2023 to present.

Senior Fellow, Institute for Progress, 2024 to present.

Public Member, Administrative Conference of the United States, 2023 to present.

Core Advisory Group, Academic Abundance Network, Arnold Ventures, 2023 to present.