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Forward

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Foreword

This year's symposium examined the enormously important issue of health care. The stakes involved in getting health care right in this country are enormous. The health care sector accounted for 17.8% of the United States economy in 2015.¹ In 2016, 26% of federal spending was allocated to health care.² In spite of the private and public expenditures which make the United States health care system the most expensive in the world³, its overall health outcomes are mediocre compared to other advanced economies.⁴ Our health care system is also troubled by continuing disparities in health care based upon income and race, among other factors.⁵

Americans are deeply concerned about the state of health care. A recent poll found that health care topped the list of issues of concern to voters.⁶ And

1. Kimberly Leonard, *U.S. Sees Historic Jump in Health Care's Share of the Economy*, U.S. NEWS (Dec. 2, 2016), <https://www.usnews.com/news/articles/2016-12-02/us-sees-historic-jump-in-health-cares-share-of-the-economy> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

2. Twenty-six percent is actually a conservative figure. It does not include spending on health care by the defense and veterans affairs departments. Nor does it include federal spending on medical research. And of course, state and local governments also spend considerable percentages of their budgets on health care. CTR. FOR BUDGET & POLICY PRIORITIES, *Policy Basics: Where do our Federal Tax Dollars Go?* <https://www.cbpp.org/research/federal-budget/policy-basics-where-do-our-federal-tax-dollars-go> (last updated Oct. 4, 2017) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

3. PETERSON-KAISER HEALTH-SYSTEM TRACKER, HOW DOES HEALTH SPENDING IN THE U.S. COMPARE TO OTHER COUNTRIES?, https://www.healthsystemtracker.org/chart-collection/health-spending-u-s-compare-countries/?_sf_s=health+spending#item-relative-size-wealth-u-s-spends-disproportionate-amount-health (last visited Apr. 30, 2018) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

4. Eric C. Schneider et al., *Mirror Mirror 2017: International Comparison Reflects Flaws and Opportunities for Better U.S. Health Care*, COMMONWEALTH FUND (July 2017), <http://www.commonwealthfund.org/Publications/Fund-Reports/2017/Jul/Mirror-Mirror-International-Comparisons-2017> (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

5. AGENCY FOR HEALTHCARE RESEARCH & QUALITY, 2016 NATIONAL HEALTHCARE QUALITY & DISPARITIES REPORT (July 2017), <https://www.ahrq.gov/research/findings/nhqdr/nhqdr16/summary.html> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

6. Ashley Kirzinger et al., *Kaiser Health Tracking Poll—January 2018: The Public's Priorities and Next Steps for the Affordable Care Act*, KAISER FAMILY FOUNDATION (Jan. 26, 2018), <https://www.kff.org/health-reform/poll-finding/kaiser-health-tracking-poll-january-2018-publics-priorities-next-steps->

of course, this concern is not new. Debates about the federal government's role in reforming health care dominated much of President Obama's presidency and the early months of President Trump's. Issues have included the role of the public and private sectors in the provision and financing of health care, methods of cost control, and the relative responsibility of federal, state, and local governments in responding to the need for reform in health care.

Beyond the enormous issues of cost and access, biomedical research has ushered in an era in which extraordinary interventions into human life are possible. They carry great promise but can pose difficult ethical questions for medical personnel and for patients and their families.

On November 9 and 10, 2017, the *Washington and Lee Journal of Civil Rights and Social Justice's* symposium, *Taking the Pulse: Understanding the Complexities of Healthcare Law*, was held in Sydney Lewis Hall. Speakers included law professors and practitioners. Speakers from other disciplines included a sociologist and a philosopher.

The speakers addressed a wide range of topics including issues of bioethics, access to health care, the administration of federal health care programs, and the ongoing debates about the Affordable Care Act and its implementation. The *Journal* was fortunate to have the guidance of Professor of Law Emerita Ann McLean Massie in planning and organizing the Symposium. Timothy S. Jost, Robert L. Willett Family Professor of Law Emeritus, nationally known for his work on the Affordable Care Act and its implementation, returned to Lewis Hall to deliver one of the Keynote Addresses for the Symposium.

This issue of the *Journal* gives readers in-depth analyses of some of the issues examined at the Symposium. Professor Naomi Cahn addresses health care disparity in the context of contraception in her article *Contraception Matters: Rights, Class, and Context*. As she points out, not only are existing disparities in access to contraception unjust in and of themselves, but lack of access to contraception can lead to deeper disparities by making it far more difficult for women and their families to escape poverty.

Mr. Zachary Shapiro's article addresses a compelling bioethics issue arising from advances in genetics and obstetrics—the “savior sibling”. As he explains, savior siblings are “created for the purpose of providing biological material that can help treat or cure an existing terminally ill child.”⁷ Mr.

affordable-care-act/ (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

7. Kirsty Horsey, *US 'Savior Siblings' Spark Debate*, IVF.NET (May 5, 2004), <https://ivf.net/ivf/us-saviour-siblings-spark-debate-0299.html> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

Shapiro's article is a thoughtful and thorough discussion of the very difficult issues raised by this phenomenon.

This issue included two pieces on federal health care regulation. The first, from Professor Rachel Suddarth, is *The Burden of a Good Idea: Examining the Impact of Unfunded Regulatory Mandates on Medicare Participating Hospitals*. The second is a note by Journal member Joshua Kaplan, *Battle of the Backlog: How Congressional Inaction Threatens the Integrity of Medicare*. Both pieces demonstrate how complex and interdependent the private and public facets of the health care system are and how difficult it is to regulate fairly and efficiently.

The Symposium and this issue of the Journal make important contributions to the critical ongoing debate about health care in America. I applaud the *Journal* staff for the success of both. On behalf of the staff, I extend our thanks and appreciation to the Symposium participants and the authors of the articles published in this volume.

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