**Poverty Law**

**University of Florida Levin College of Law**

**Fall 2021 Syllabus**

Law 6936 Professor Andrew Hammond

Bruton-Geer 136 Holland Hall 312K/(352) 273-0961

Wednesday 2:30 pm to 4:30 pm hammond@law.ufl.edu

 Office Hours: Monday 3:30 pm to 4:30 pm

 Friday 1:30 pm to 2:30 pm

**Course Description:** This seminar offers an introduction to the substantive law and procedure of public benefit programs in the United States. The seminar will identify persistent controversies in poverty law, including means-test design, funding structure, federalism issues, and behavioral rules, as well as how poverty law interacts with other areas of law including immigration law and disability law. Throughout, we will examine to what extent the agencies that administer these public benefits are vulnerable to federal litigation and what remedies may result from such litigation.

**Course Objectives & Student Learning Outcomes:** After completing this course, students should be able to:

1. Describe the basic contours of American welfare programs as well as how those programs vary among states, tribes, and territories;
2. Identify the legal sources of and recent controversies over public benefits in the United States;
3. Apply doctrinal, strategic, and practical considerations to the process of litigating both against and on behalf of welfare agencies in federal and state court; and
4. Demonstrate an understanding of the origins, opportunities, obstacles, and lacunae of legal aid and public interest practice.

**Required Course Materials & Workload:** There is no casebook for this course. Instead, all required readings are posted on Canvas. In accordance with Standard 310 of the American Bar Association’s (ABA) standards for law schools, students are expected to devote 2 hours of out-of-class preparation for every 1 credit hour of in-class instruction. Because this course has 2 credit hours of in-class instruction weekly, you should expect to spend approximately 4 hours outside of class reading, preparing, and reviewing the material for our class meetings each week. This is independent of the time spent completing the writing assignments.

**Attendance:** Attendance is mandatory and an essential part of the course. In accordance with ABA guidance, you are allowed a total of two absences from class, for any reason (including for illness, medical appointments, job interviews, school activities, work tasks, family obligations, and the like). For ease of administration and to respect your privacy, I do not differentiate between “excused” or “unexcused” absences. As a result, there is no need to tell me why you will be or were absent from class, so long as you have no more than two absences total. Only observance of a University-recognized religious holiday does not count toward your two absences, but you must notify me in advance of those religious observance-related absences. More than two absences could result in a reduction of your final grade or even failing the course. Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class and mute other devices, including your laptop.

**Office Hours:** My office hours this semester will be on Mondays from 3:30 to 4:30 pm and on Fridays from 1:30 pm to 2:30 pm. I will keep the first thirty minutes on Monday open for students who want to drop in. For the other times, you can sign up for a 15-minute slot on Canvas. While I love talking about poverty law and the law more generally, I am happy to talk about whatever you’d like. You do not need to prepare for office hours.

**Grades and Advanced Writing Requirements:**

Regular attendance, preparation, and active participation in classroom discussion are required. Your course in the grade will be based on your paper(s), with potential adjustment based on your attendance and participation.

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. Students receive grade points according to the following scale:

Grade Points Grade Points Grade Points

A (Excellent) 4.00 C+ 2.33 D- 0.67

A- 3.67 C (Satisfactory) 2.00 E (Failure) 0.00

B+ 3.33 C- 1.67

B (Good) 3.00 D+ 1.33

B- 2.67 D (Poor) 1.00

This seminar is structured in such a way as to satisfy the College of Law’s Advanced Writing Requirement. According to the Faculty Handbook,

All J.D. candidates must complete—under close faculty supervision—a major, written product that shows evidence of original scholarship based on individual research. Students often satisfy this requirement in a seminar course…If fulfilled in an advanced course, the required writing may take the form of one or a number of finished written products that together demonstrate these qualities. The general standard for fulfillment of the advanced writing requirement is one or more papers that are cumulatively at least 25 pages of double-spaced, 12-point text or the equivalent.

As a result, in this seminar, students must choose to either submit three reaction papers or a longer, research paper. Both will satisfy the College of Law’s Advanced Writing Requirement. I lay out the two options in detail below:

**Option #1: Three Reaction Papers:** Students will write three papers (8-10 pages) during the course of the term, each on a topic related to that week’s readings. This will help us focus discussion for that week. I ask that you sign up for weeks on Canvas, post your papers to Canvas so we can all learn from them for discussion, and that each of you submit one of your reaction papers by September 15th. To receive credit for a reaction paper to count, you must submit it by 8 pm on the relevant Tuesday (i.e. the night before class).

Each will be given equal weight in calculating your grade. Each submission should be (roughly 8 to 10 pages, 12 point font, double spaced). Each paper should relate to the ideas or issues raised in the readings for a given week. You should incorporate outside research. You can choose the sessions for which you will write papers, although you are strongly encouraged to write your first paper for one of the first four class sessions. Please email me each paper by 8 pm on the Tuesday before the relevant class meeting. Any paper submitted after that time will be considered late. Any student who has not submitted their final reaction paper needs to do so by Tuesday, November 16th by 8 pm.

**Option #2: Research Paper:** Students have the option of writing a more significant paper, but you must get approval from me by September 15th. I am more than happy to meet with any student interested in writing a paper to discuss topics – even if students do not start out with any sense of what they wish to write. The paper will need to be at least 25 pages of double-spaced, 12-point text or the equivalent and based on your own research. The final research papers are due by 8 pm on Wednesday, December 1st to receive credit in the course.

**Other General Information**

Policy related to make-up exams or other work: The law school policy on delay in taking exams or other work is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Statement related to accommodations for students with disabilities: This class will be accessible to all members of our law school community. Students requesting accommodations for disabilities must first register with the Disability Resource Center (https://disability.ufl.edu/). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.”

Student course evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

Compliance with UF Honor Code

Academic honesty and integrity are fundamental values of the UF Law School community. Students are expected to understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School’s application of it, information available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

Health and Wellness Resources:

Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs.  If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

* *U Matter, We Care*: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.
* *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.
* *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](https://shcc.ufl.edu/).
* *University Police Department*: [Visit UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).
* *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

Readings

I will post all materials to Canvas at least one week before we are scheduled to meet. Please note that the readings listed below—the cases and the scholarship—are all excerpted.

We lack the time to survey all or even most of the public benefit programs available to low-income people. Instead, a major goal of the course is to help students identify recurrent themes in welfare litigation as they arise in superficially disparate doctrinal contexts and to analyze the factors that lead to similar or differing results. To that end, although most readings involve the following programs: (1) the now-defunct Aid to Families with Dependent Children (AFDC), (2) Temporary Assistance to Needy Families (TANF) (3) the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program), (4) Medicaid, (5) Supplemental Security Income (SSI), and to a lesser extent (6) tax expenditure programs like the Child Tax Credit and the Earned Income Tax Credit.

However, these readings have been selected more to illustrate broader theoretical problems in public benefits law than to convey a detailed understanding of any one program. They were also selected to allow us to explore both aspects continuity and change over the last sixty years of poverty law.

**Week 1: August 25th – Introduction**

* Martha F. Davis, *Southern Strategy* fromBrutal Need: Lawyers and the Welfare Rights Movement, 1960-1973 (1993)
* *King v. Smith*, 392 U.S. 309 (1968)
* Hammond, *Litigating Welfare Rights*
* *D.C. v. U.S. Dep't of Agric.*, 444 F. Supp. 3d 1 (D.D.C. 2020).

**Week 2: September 1st – Federalism and Funding**

* *Shapiro v. Thompson*, 394 U.S. 618 (1969)
* Hammond, *Welfare and Federalism’s Peril*
* *NFIB v. Sebelius,* 567 U.S. 519 (2012).
* David A. Super, *Rethinking Fiscal Federalism*, 118 Harv. L. Rev. 2544 (2005).

**Week 3: September 8th – Means Tests and Family Income**

* **Dandridge v. Williams, 397 U.S. 471 (1970)**
* Karen Tani, *Administrative Equal Protection: Federalism, the Fourteenth Amendment, and the Rights of the Poor*, 100 Cornell L. Rev. 825 (2015)
* *Hendrick v. Dep’t of Health and Human Servs.*, No. 2015-0442 (N.H. Sup. Ct. Aug. 2, 2016)
* Virginia Eubanks, *Automating Eligibility in the Heartland* fromAutomating Inequality (2018)

**Week 4: September 15th – Work Requirements**

* Noah Zatz, *What Welfare Expects from Work*, 54 UCLA L. Rev. 373 (2006)
* Hammond, *Litigating Welfare Rights*
* *Gresham v. Azar*, 950 F.3d 93, 95-96 (D.C. Cir. 2020)
* (Review) *D.C. v. U.S. Dep't of Agric.*, 444 F. Supp. 3d 1 (D.D.C. 2020).

**Week 5: September 22nd – Privacy Rights in Poverty Law**

* *Wyman v. James*, 400 U.S. 309 (1971)
* *Lebron v. Sec'y of Florida Dep't of Children & Families*, 772 F.3d 1352 (11th Cir. 2014)
* Khiara M. Bridges, *Privacy Rights and Public Families*, 34 Harv. J. L. & Gender 113 (2011)

**Week 6: September 29th – Aggregate Litigation and Remedies in Poverty Law**

* Hammond, *Litigating Welfare Rights*
* *Briggs v. Bremby*, 792 F.3d 239 (2d Cir. 2015)
* Opinion on Class Certification and Preliminary Injunction, *Brooks v. Roberts*, No. 16-cv-1025 (N.D.N.Y. May 5, 2017)
* Jason Parkin, *Aging Injunctions and the Legacy of Institutional Reform Litigation*, 70 Vand. L. Rev. 167 (2017)

**Week 7: October 13th – October 13th – Poverty Law Outside the States: Territories & Tribes**

* Hammond, *Territorial Exceptionalism and the American Welfare State*
* United States v. Vaello-Madero, 956 F.3d 12 (1st Cir. 2020)
* Hammond, *Tribal Welfare Administration*
* CMS, Dear Tribal Leader Letter (Jan. 17, 2018) and corresponding materials

**Week 8: October 6th – Poverty Law as Immigration Law**

* Hammond, *The Immigration-Welfare Nexus in a New Era?*
* *Bruns v. Mayhew*, 750 F.3d 61 (1st Cir. 2014)
* *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 229 (4th Cir.), reh'g en banc granted, 981 F.3d 311 (4th Cir. 2020) OR *Cook Cty., Illinois v. Wolf,* 962 F.3d 208, 214 (7th Cir. 2020)
* *City & Cty. of San Fran. v. USCIS*, 992 F.3d 742, 743 (9th Cir. 2021)

**Week 9: October 20th – Poverty Law as Disability Law**

* Ctr. on Budget & Pol’y Priorities, Policy Basics: Supplemental Security Income (Feb. 8, 2021).
* Doron Dorfman, *Disability Identity in Conflict: Performativity in the U.S. Social Security Benefits System*, 38 Thom. Jeff. L. Rev. 47 (2015).
* *Boatner v. Berryhill*, 2018 WL 2191804 (S.D. Miss. May 11, 2018).
* *Steimel v. Weinert*, 823 F.3d 902 (7th Cir. 2016)

**Week 10: October 27th – Poverty Law as Tax Law**

* Ctr. on Budget & Pol’y Priorities, Policy Basics: The Earned Income Tax Credit (Dec. 10, 2019).
* Sara Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 NYU L. Rev. 515 (2013).
* Ariel Jurow Kleiman, *Impoverishment by Taxation*, 170 U. Pa. L. Rev. (forthcoming 2022).

**Week 11: November 3rd – Poverty Law and the COVID-19 Pandemic**

* Hammond, Kleiman, and Scheffler, *How the COVID-19 Pandemic Has and Should Reshape the American Safety Net*
* *Plaisance v. Louisiana*, 2021 WL 2046699 (M.D. La., May 21, 2021)
* Jason DeParle, *Pandemic Aid Programs Spur a Record Drop in Poverty,*N.Y. Times (July 28, 2021).

**Week 12: November 10th – Poverty Law and the Climate Crisis**

* Hammond, *On Fires, Floods, and Federalism*
* *Toney-Dick v. Doar*, 2013 WL 1314954 (S.D.N.Y. Mar. 18, 2013)
* Complaint, *Miami Workers Ctr. et al. v. Carroll et al.*, 17-cv-24047(S.D. Fl. Nov. 2, 2017)

**Week 13: November 17th – The Future of Poverty Law?**

* Jason DeParle, *Monthly Payments to Families With Children to Begin,*N.Y. Times
* Aaron Kaufman et al., *Universal Basic Income After COVID-19,* The Regulatory Review (May 2, 2020) (also read one scholarly article discussed here)
* Ctr. on Budget & Pol’y Priorities, The Federal Job Guarantee (Policy Futures Series) (March 9, 2018).

**\*\*\*Any student who has not submitted their final reaction paper needs to do so by Tuesday, November 16th by 8 pm.\*\*\***

**\*\*\*All research papers are due by 8 pm on Wednesday, December 1st\*\*\***