

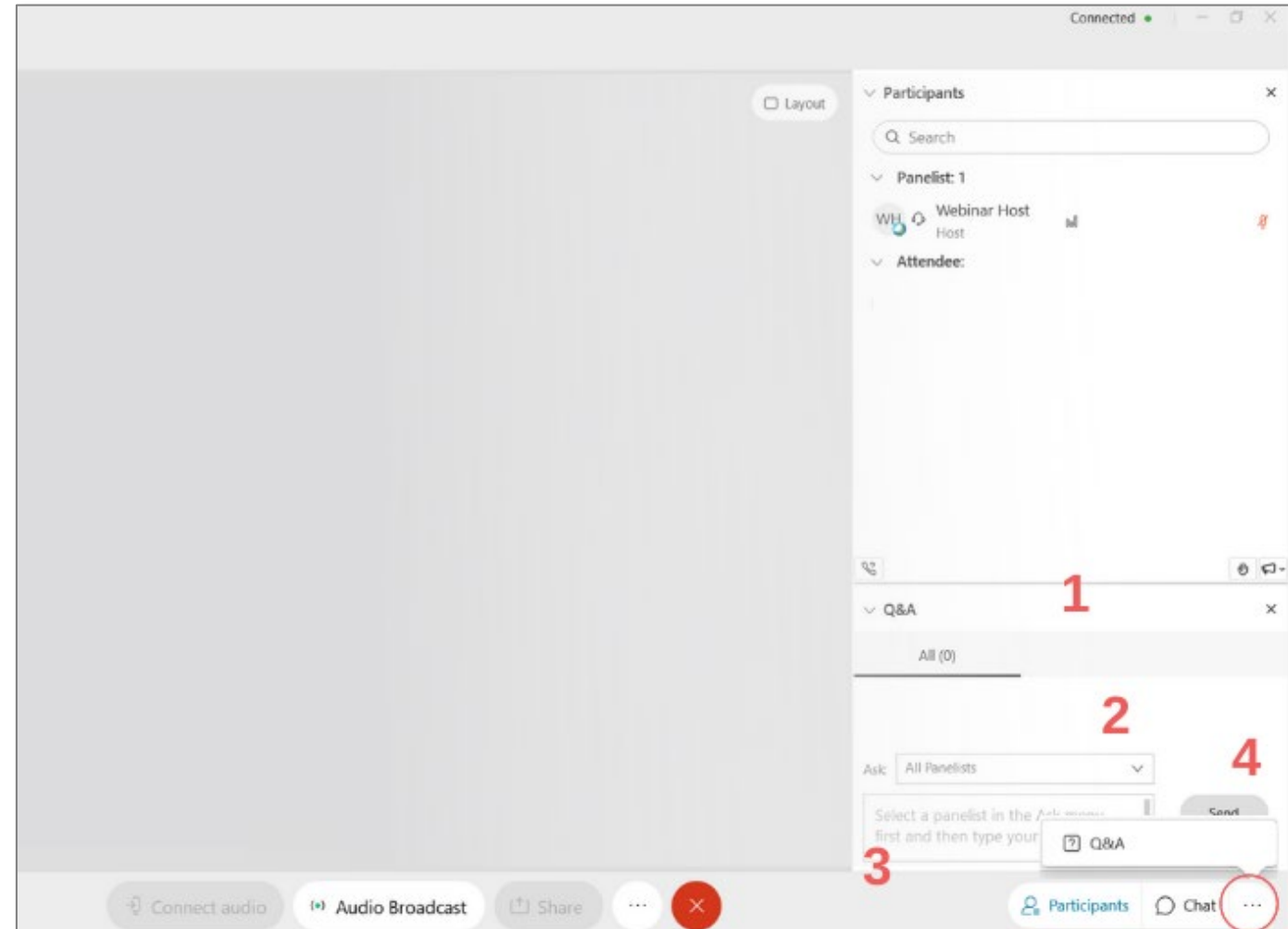
Judicial Trends in Public Health 2020: Year in Review

January 19, 2021

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Judicial Trends in Public Health

2020

YEAR IN REVIEW

JANUARY

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Judicial Trends: Briefly



The Network for Public Health Law monitors key court cases and relevant judicial trends in public health. The Network's monthly reporter, Judicial Trends in Public Health (JTPH), highlights select published cases in public health law and policy from the prior three months. These cases are organized below by name, issuing court, date of issuance, along with a brief synopsis, and include link to the case abstract and hyperlink to the full decisions (when publicly available). For more information, including a topic digest of these and other cases, see below. Questions, comments, thoughts? Contact the [Network](#) for more information.

JTPH CASE HIGHLIGHTS – January 15, 2021

Planned Parenthood of Greater Texas Family Planning and Preventative Health Services, Inc. et al. v. Kauffman et al. (U.S. Court of Appeals, 5th Circuit, November 23, 2020): In a split decision, the 5th Circuit concluded that Texas and Louisiana can cut Medicaid funding for Planned Parenthood, holding that patients do not have an unambiguous right to challenge a state determination that a provider is not "qualified." [Read the abstract here.](#)

Judicial Trends: Briefly

- Network's "Judicial Trends in Public Health" (JTPH) monitors relevant court cases & trends in public health
- [Subscribe](#) via the Network to receive monthly JTPH notices and occasional "blasts"
- Next edition is forthcoming on February 15
- [2019-20 Archive](#) includes 200+ cases

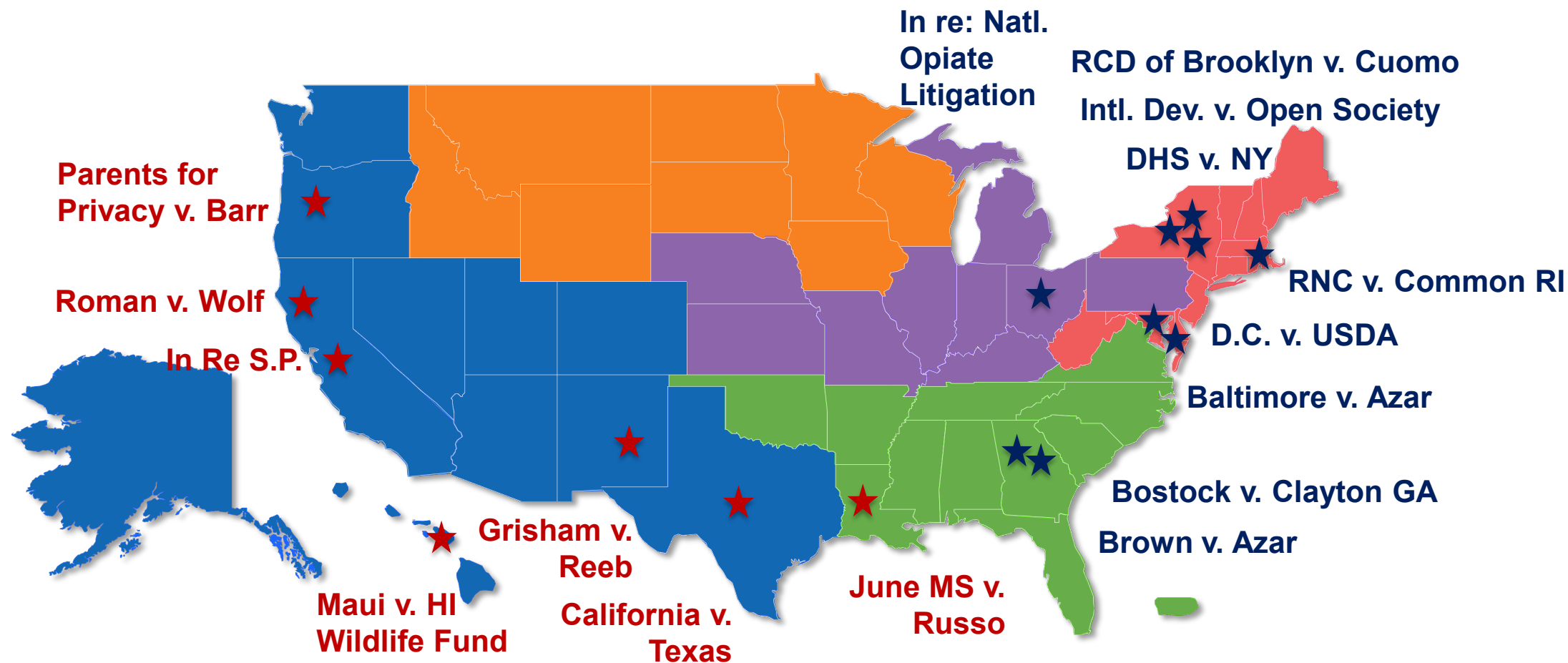
Judicial Trends: Topics

- 1) SOURCE & SCOPE OF PUBLIC HEALTH LEGAL POWERS**
- 2) CONSTITUTIONAL RIGHTS & THE PUBLIC'S HEALTH**
- 3) PREVENTING & TREATING COMMUNICABLE CONDITIONS**
- 4) SOCIAL DISTANCING MEASURES**
- 5) ADDRESSING CHRONIC CONDITIONS**
- 6) MITIGATING THE INCIDENCE & SEVERITY OF INJURIES & OTHER HARMS**
- 7) PUBLIC HEALTH INFORMATION MANAGEMENT, PRIVACY & SECURITY**
- 8) REGULATING COMMUNICATIONS**
- 9) MONITORING PROPERTY & THE BUILT ENVIRONMENT**
- 10) PUBLIC HEALTH EMERGENCY: LEGAL PREPAREDNESS & RESPONSE**

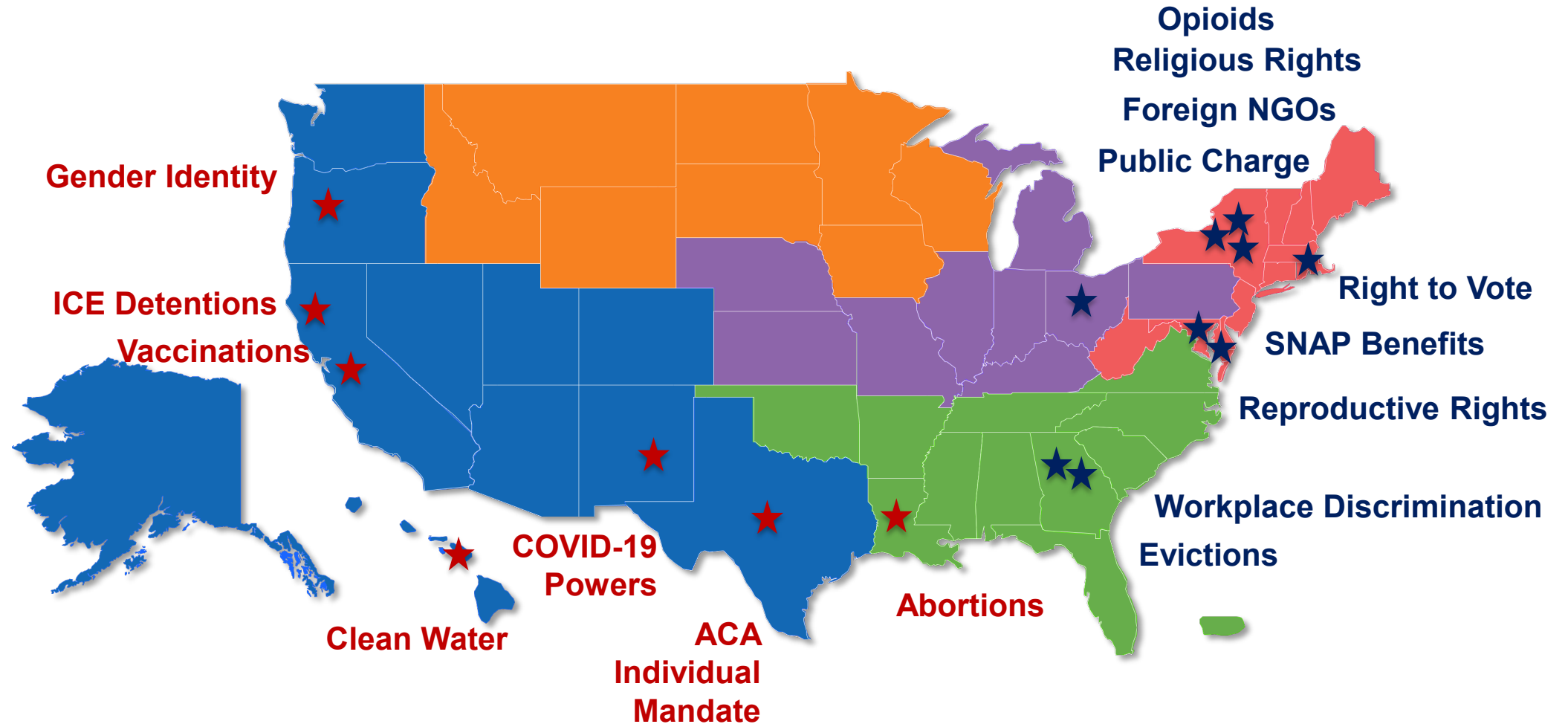


- **Assessment of 16 pivotal cases selected by our presenters**
 - Facts/Issues
 - Major Holding
 - Public Health Impact
- **“1 Minute” Lightning Round – 2021 Key Judicial Projections**
- **Questions/comments**

2020 Year in Review Cases



2020 Year in Review Topics



Western Region Presenters

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Brooke Torton, JD

Senior Staff Attorney, Eastern Region Office; Deputy Director, Legal Resource Center for Public Health Policy



California v. Texas



Court: U.S. Supreme Court

Status: Oral Arguments: 11/20/20



- **Facts/Issues:** In 2019, Texas and multiple other states sought to declare the ACA's individual mandate provision unconstitutional and void the entire Act as non-severable from the mandate.
- **Major Holding:** Lower courts in Texas and the 5th Cir. Ct. Appeals found the mandate was unconstitutional, but diverged on the severability of the remainder of the ACA.
- **Public Health Impact:** Extensive, seminal public health benefits and health care access provisions of the ACA hang in the balance of SCOTUS' decision later in 2021.

Grisham v. Reeb



Court: New Mexico Sup. Ct.

Status: Decided: 11/5/20



- **Facts/Issues:** Multiple businesses challenged state public health emergency (PHE) authorities to close businesses & penalize offenders during the COVID-19 pandemic absent explicit provisions allowing such responses.
- **Major Holding:** NM Public Health Emergency Response Act's (PHERA) civil penalty provisions may be applied to enforce business restrictions and closures via the Secretary of Health's COVID-19 emergency orders.
- **Public Health Impact:** Expansive interpretations of PHE powers provide essential flexibility for state/local real-time response efforts.

Republican Nat. Comm. v. Common Cause Rhode Island



Court: U.S. Supreme Court

Status: Decided: 8/13/20



- **Facts/Issues:** The Republican National Committee and RI's Republican Party challenged a consent decree that suspended the state's requirement that 2 witnesses sign an absentee ballot.
- **Major Holding:** SCOTUS agreed with the lower court that granted the consent decree and the appellate court that the 2-witness requirement unconstitutionally burdened the right to vote during the COVID-19 pandemic.
- **Public Health Impact:** Voting is a public health issue because it helps to shape "the conditions in which people can be healthy." Civic engagement=healthier communities.

Brown v. Azar



Court: U.S. D. Ct. N.D. GA

Status: Decided: 10/29/20



- **Facts/Issues:** Property owners sought an injunction to invalidate the CDC's eviction "moratorium" on several grounds and prevent CDC from enforcing its Order.
- **Major Holding:** The court denied request for preliminary injunction, affirming CDC authority to issue the Order and allowing it to stand as an "effective public health measure that prevents the spread of communicable diseases."
- **Public Health Impact:** Preventing disruptive displacement allows compliance with SAH and SD directives and prevents communal living situations. Long-term: Stable housing disrupts cycle of poverty and leads to reductions in chronic disease, injury, stress, and diseases of despair.

DHS v. New York



Court: U.S. Supreme Court
Status: Decided: 1/27/20



- **Facts/Issues:** The Department of Homeland Security's (DHS) final public charge rule allows the federal government to deny green cards to individuals found likely to become a "public charge." A NY federal district court issued a national injunction, thus preventing the rule from being implemented or enforced.
- **Major Holding:** SCOTUS stayed the national injunction preventing enforcement of the DHS' final public charge rule. DHS can pursue the policy (except in Illinois).
- **Public Health Impact:** Utilization of key federal assistance programs (e.g., Medicaid, SNAP) will be limited.



Court: California Ct. Appeals

Status: Decided: 8/6/20



- **Facts/Issues:** Parents objected to their children's vaccination and argued the juvenile court rejected prior vaccination exemptions. Children were under the custody and control of the county's Department of Social Services.
- **Major Holding:** California appellate court ruled that a juvenile court can order vaccinations, and the court had valid reasons to reject the prior vaccine exemption letter.
- **Public Health Impact:** A juvenile court having the authority to order vaccinations could result in more children receiving recommended vaccines for the prevention of communicable diseases.

Bostock v. Clayton County (GA)



Court: U.S. Supreme Court

Status: Decided: 6/15/20



- **Facts/Issues:** Three separate cases, in different federal circuits, alleged that employers had violated Title VII of the Civil Rights Act by firing employees for being homosexual or transgender. The cases were consolidated and heard by the U.S. Supreme Court.
- **Major Holding:** Firing an employee for being homosexual or transgender violates Title VII which prohibits discrimination based on sex.
- **Public Health Impact:** May result in increased job security and access to health care and a decrease in the negative health outcomes associated with discrimination.

District of Columbia v. USDA



Court: U.S. D. Ct. D.C.

Status: Decided: 10/18/20



- **Facts/Issues:** USDA issued regulations that restricted a state's ability to provide SNAP benefits to Able-Bodied Adults without Dependents (ABAWDs). A group of states and cities challenged these rules as an invalid use of agency power.
- **Major Holding:** The court vacated USDA's regulations because (1) procedural deficiencies denied the public a right to comment on the changes and (2) the agency's actions were "arbitrary and capricious" because they ignored local labor markets & were not based on evidence.
- **Public Health Impact:** Protects the food security of an estimated 700,000 people who would have lost SNAP under these regulations.

County of Maui v. Hawaii Wildlife Fund



Court: U.S. Supreme Court

Status: Decided: 4/23/20



- **Facts/Issues:** The Lahaina Wastewater Reclamation Facility discharged wastewater into wells that eventually reached the ocean through groundwater transport. HWF alleged that since the discharges ultimately entered navigable waters, Clean Water Act permits were required.
- **Major Holding:** CWA requires a permit when there is a direct discharge from a point source into navigable waters or when there is the “functional equivalent” of a direct discharge.
- **Public Health Impact:** The decision closes a CWA loophole to prevent facilities’ unregulated discharges that can pollute oceans, rivers and lakes.

Roman v. Wolf



Court: U.S. Ct. App. - 9th Circ.

Status: September 23, 2020



- **Facts/Issues:** Detainees brought a class action on behalf of noncitizens held at the Adelanto ICE Processing Center, arguing that conditions violated detainee's 5th Amendment due process rights. Conditions included crowded cells & dining spaces, and sharing of toilets, sinks & showers without disinfecting between uses.
- **Major Holding:** Failure to implement social distancing efforts, sanitation measures, and sufficient masks and soap at ICE detention facility placed detainees at unconstitutional risk of contracting COVID-19.
- **Public Health Impact:** Legal protections for detainees at correctional/detention facilities could prevent rampant spread of infectious diseases at these sites.

Agency for Intl. Dev. v. Alliance for Open Society Intl. Inc.



Court: U.S. Supreme Court

Status: Decided: 6/29/20



- **Facts/Issues:** Whether a funding requirement created by the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act, necessitating that foreign NGOs adopt policies opposing prostitution and sex trafficking, violated 1st Amendment rights.
- **Major Holding:** Funding restrictions requiring foreign NGOs to have an official stance condemning prostitution were found constitutional.
- **Public Health Impact:** U.S. may continue to exert influence over policies adopted by foreign NGOs.

Mayor & City Council of Baltimore v. Azar



Court: U.S. Ct. App. – 4th Circ.

Status: Decided: 9/30/20



- **Facts/Issues:** An HHS rule prohibited federally-funded health care providers from referring patients for abortion, requiring prenatal care referrals instead. It also required entities providing abortion services to physically separate those services from federally-funded ones.
- **Major Holding:** The court blocked the rule because it was promulgated in an arbitrary and capricious manner and contravenes a mandate barring HHS from placing “unreasonable barriers” between patients and health care.
- **Public Health Impact:** Federally-funded health care providers may continue to refer patients for abortion.



Court: U.S. Supreme Court

Status: Decided: 6/29/20



- **Facts/Issues:** Several abortion clinics and doctors challenged a Louisiana law requiring doctors to have admitting privileges at a hospital within 30 miles of a clinic where an abortion is performed.
- **Major Holding:** In a 5-4 decision the Supreme Court held the Louisiana law unconstitutional under the Court's precedent in *Whole Woman's Health v. Hellerstedt* (2016).
- **Public Health Impact:** Indicates then-Court's posture with respect to striking down "substantial obstacles" to abortion; impacts of Justice Barret's confirmation to be determined.

Parents for Privacy v. Barr



Court: U.S. Ct. App. - 9th Circ.

Status: Decided: 2/12/20



- **Facts/Issues:** Parents and students alleged a school district's policy permitting students to use facilities matching their gender identity violated the Constitution and Title IX federal civil rights protections.
- **Major Holding:** 9th Circuit affirmed trial court's dismissal of the suit, holding plaintiff's claims were non-cognizable; on Dec. 7, 2020, the Supreme Court denied cert.
- **Public Health Impact:** Protects against negative health effects transgender students might experience from being unable to use facilities matching gender identity.

Roman Catholic Diocese of Brooklyn v. Cuomo



Court: U.S. Supreme Court

Status: Decided: 11/25/20



- **Facts/Issues:** NY designated areas as yellow/orange/red based on COVID-19 risk. Attendance at houses of worship was specifically limited based on zone. Comparable secular indoor gatherings were treated the same or more restricted. Less restrictive provisions applied to public businesses.
- **Major Holding:** Restrictions specifically applicable to houses of worship violated 1st Amendment.
- **Public Health Impact:** May result in impediments to public health regulation of religious institutions; regulation should be comprehensive, not directly address religious entities.

In re: National Prescription Opiate Litigation



Court: U.S. Ct. App. - 6th Circ.

Status: Decided: 4/15/20



- **Facts/Issues:** Whether court could certify a “negotiation class” representing cities/towns/counties to negotiate and vote on settlements with drug manufacturers; class would bind municipalities that had not yet filed a lawsuit.
- **Major Holding:** Federal Rules of Civil Procedure do not allow for class formation that would bind all municipalities to a settlement before terms are available or suit is filed.
- **Public Health Impact:** May impede or delay settlement in opioid litigation, delaying funds for SUD remediation.

1 Minute Lightning Round - 2021 Key Judicial Projections



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Questions & Comments



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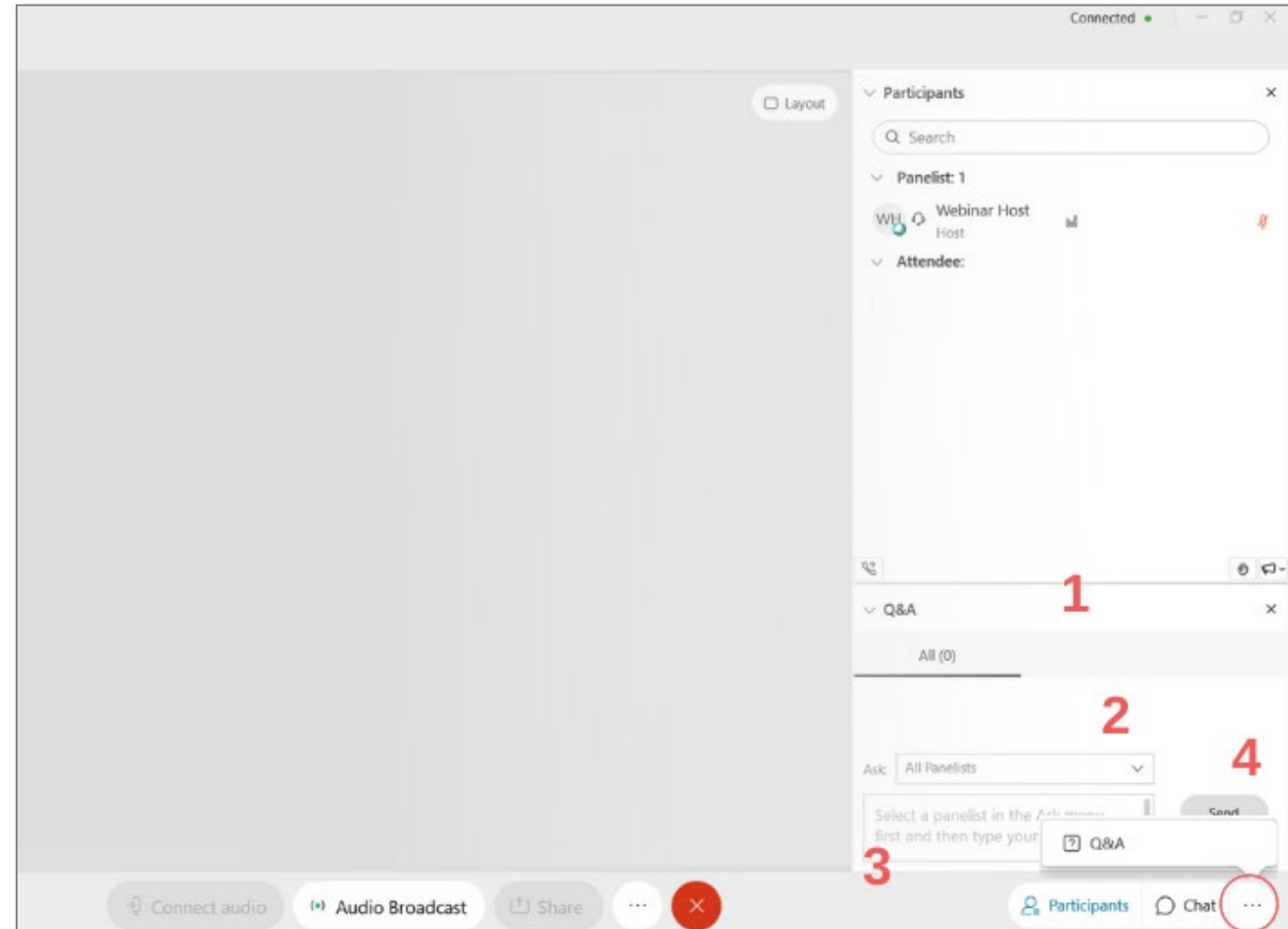
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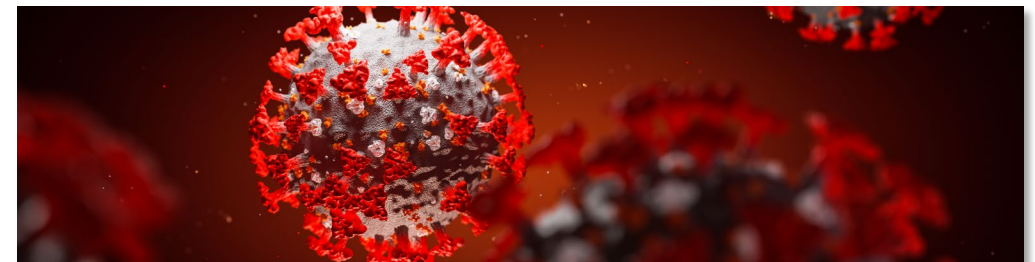
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**Declarations of Racism as a Public Health Crisis:
Utilizing Declarations to Address Health Inequities**


1:00 – 2:30 p.m. ET, January 21, 2021



You may qualify for CLE credit. All webinar attendees will receive an email from ASLME, an approved provider of continuing legal education credits, with information on applying for CLE credit for this webinar.



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Emergency Legal Preparedness and Response

COVID-19

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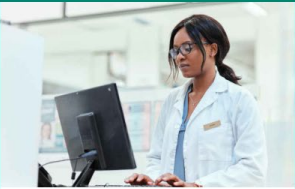


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