

JUDICIAL TRENDS IN PUBLIC HEALTH – MAY 16, 2023

The Network for Public Health Law monitors key court cases and relevant judicial trends in public health. The Network's quarterly reporter, **Judicial Trends in Public Health (JTPH)**, highlights select, recently-published cases in public health law and policy from the prior 3 months. Case abstracts are organized within 11 key topics (adapted from JAMES G. HODGE, JR., PUBLIC HEALTH LAW IN A NUTSHELL, 4TH ED. (2021)), including hyperlinks to the full decisions (where available). Contact the [Network](#) for more information, questions, or comments.

JTPH TOPIC DIGEST

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1. SOURCE & SCOPE OF PUBLIC HEALTH LEGAL POWERS

Mo Cann Do Inc. v. Missouri Dept. of Health and Senior Services (Mo. Ct. App., Feb. 28, 2023): After the Missouri Department of Health and Senior Services (DHSS) denied Mo Cann Do Inc.'s (MCD) application for a medical marijuana cultivation facility license, MCD appealed. DHSS had denied the license because MCD failed to include a certificate of good standing from the Missouri Secretary of State with its application, a requirement for licensure in Missouri. MCD argued that the denial was unauthorized by law because DHSS' deficiency letter to MCD only generally noted that the application was incomplete, and failed to specifically notify MCD that the initial application did not include the requisite certificate. The Missouri Court of Appeals held that the license denial was unauthorized because DHSS violated its own regulations in failing to notify the facility that its application was missing the certificate. [Read the full decision here.](#)

2. CONSTITUTIONAL RIGHTS & THE PUBLIC'S HEALTH

Kluge v. Brownsburg Community School Corp. (U.S. Court of Appeals, 7th Cir., Apr. 7, 2023): Kluge, a teacher, brought a Title VII religious discrimination and retaliation action against Brownsburg Community School Corporation after being fired for refusing to refer to transgender students by their names as registered in the school's official database. Kluge alleged that the names were not consistent with the transgender students' sex recorded at birth and that using those names would



infringe upon his religious beliefs. The school initially implemented an accommodation allowing Kluge to call the transgender students by their last names. This accommodation was later rescinded when it was determined that the practice was harming students and negatively impacting the learning environment for transgender students and the school in general. A federal district court rejected Kluge's retaliation claim, reasoning that the school was not required to accommodate Kluge's religious beliefs because doing so would impose an undue hardship on Brownsburg's ability to meet its educational mission. The Seventh Circuit affirmed, reasoning that "Kluge's accommodation harmed students and disrupted the learning environment." [Read the full decision here.](#)

3. PREVENTING & TREATING COMMUNICABLE CONDITIONS

Feds for Medical Freedom v. Biden (U.S. Court of Appeals, 5th Cir., Mar. 23, 2023): Feds for Medical Freedom, a non-profit organization comprised of various federal agency employees, challenged two Presidential Executive Orders on COVID-19 vaccination. One order required all federal employees to be vaccinated, with those failing to comply facing termination, while the other imposed the same requirements and potential consequences on federal contractors. Feds alleged that both mandates were arbitrary and violated the Administrative Procedure Act. A federal district court refused to block the contractor mandate, as it had already been blocked nationally in separate litigation, but did block the federal employee mandate. The Biden administration appealed, arguing that federal courts do not have jurisdiction to hear these challenges because of exclusive procedures and remedies available to federal employees under the Civil Service Reform Act (CSRA). The full Fifth Circuit judicial panel upheld the district court's order, finding the CSRA does not prevent federal employees from challenging a federal law on the grounds that the law was passed without authority or is otherwise unconstitutional. CSRA exclusivity applies only where an employee is challenging a negative employment action already taken. [Read the full decision here.](#)

4. SOCIAL DISTANCING MEASURES

5. ADDRESSING CHRONIC CONDITIONS

Klossner v. IADU Table Mound MHP, LLC (U.S. Court of Appeals, 8th Cir., Apr. 10, 2023): The Eighth Circuit held that landlords are not required to accept housing vouchers as a reasonable accommodation for low-income disabled tenants under the Fair Housing Amendments Act (FHAA). The FHAA requires that landlords make reasonable accommodations for tenants' disabilities. Federal law does not require landlords to accept housing vouchers, though some states prohibit source of income discrimination against tenants. Klossner, a tenant in an Iowa mobile home park, is disabled and receives certain government supports. As Klossner's rent increased, she sought to use housing vouchers to cover the additional rent. The mobile home park owner refused to accept the vouchers, consistent with their policy of only accepting vouchers when required by state law; Iowa law does not require landlords to accept vouchers. The court held that a landlord's obligation under the FHAA to make reasonable accommodations includes only those that directly ameliorate disabilities and does not include an obligation to accommodate a tenant's lack of money. [Read the full decision here.](#)

Braidwood Management Inc. v. Becerra (N.D. Tex., Mar. 30, 2023): A Texas federal district court judge held that the Affordable Care Act (ACA) PrEP coverage mandate, which requires insurance coverage for medication that helps prevent HIV transmission, violates the Religious Freedom Restoration Act (RFRA). Braidwood Management Inc., the challenging company, argued that its primary owner holds a sincere religious belief that homosexual sex and sex outside of marriage are immoral. Braidwood further alleged that requiring the company to offer employee health insurance



that includes PrEP increases the likelihood that Braidwood employees will engage in homosexual sex or sex outside of marriage, and makes the Braidwood owner complicit in sexual conduct that violates his religious beliefs. Braidwood simultaneously argued that all ACA mandatory coverage requirements for preventive care services based on determinations by the U.S. Preventive Services Task Force (PSTF) are void because PSTF members were not appointed in accordance with the Constitution's Appointments Clause. The court agreed, (1) finding that Braidwood cannot be required to offer insurance covering PrEP and (2) blocking enforcement of the ACA's mandated preventive care services based on the PSTF recommendations. [Read the full decision here.](#) Defendants filed a [notice of appeal](#) on March 31, 2023, and on May 15, the Fifth Circuit Court of Appeals [issued a stay](#) of the district court order while the appeal is considered.

6. MITIGATING THE INCIDENCE & SEVERITY OF INJURIES & OTHER HARMS

U.S. v. Rahimi (U.S. Court of Appeals, 5th Cir. Feb. 2, 2023): The Fifth Circuit found unconstitutional a federal law prohibiting firearm possession by persons subject to domestic violence protection orders. Defendant Rahimi was under a civil protective order because of an alleged assault on his girlfriend. While subject to the order, Rahimi was involved in five different shootings in Texas and was charged with a violation of 18 U.S.C. § 922(g)(8), a federal criminal law prohibiting the distribution to or possession of firearms by persons subject to domestic violence protection orders. Rahimi challenged the constitutionality of § 922. Applying the historical analogue test set out by the Supreme Court in 2022 in [N.Y. State Rifle and Pistol Association v. Bruen](#), the Fifth Circuit found that the government failed to show that § 922(g)(8)'s restrictions fit within the country's history of firearm regulation, making § 922(g)(8) an unconstitutional restriction on Second Amendment rights. As a result, Rahimi's conviction was vacated. [Read the full decision here.](#) The Department of Justice [has asked the Supreme Court](#) to hear the case.

National Rifle Association v. Bondi (U.S. Court of Appeals, 11th Cir., Mar. 9, 2023): The National Rifle Association (NRA) challenged the constitutionality of Florida's Marjory Stoneman Douglas High School Public Safety Act, alleging that the Act violated the Second Amendment. The Florida Legislature passed the Act in response to a 19-year-old man shooting and killing 17 people at Marjory Stoneman Douglas High School. The purpose of the Act was to ban the sale of firearms to 18 to 20 year-old people "to comprehensively address the crisis of gun violence, including but not limited to, gun violence on school campuses." The district court found no constitutional issue with the law, and the NRA appealed. The Eleventh Circuit conducted the historical analysis spelled out by the Supreme Court in [N.Y. State Rifle and Pistol Association v. Bruen](#) and affirmed the district court's decision, explaining that the Act paralleled the adoption of firearm restrictions for 18 to 20 year-old people in several states during the U.S. Reconstruction Era. Listing the historical analogues in an Appendix, the court found no Second Amendment violation. [Read the full decision here.](#)

7. PUBLIC HEALTH INFORMATION MANAGEMENT, PRIVACY & SECURITY

8. REGULATING COMMUNICATIONS

Center for Environmental Health v. Perrigo Company (Cal. Ct. App., Mar. 9, 2023): A California appellate court affirmed the dismissal of failure-to-warn claims against generic drug manufacturers because it was impossible for the defendants to comply with state labeling requirements regarding known carcinogens while complying with the federal requirement that generic drugs have the same labeling as their brand-name equivalents. Under Proposition 65, which was passed in California in 1986, California requires products containing certain carcinogens to carry label warnings about those carcinogens. The Center for Environmental Health alleged that manufacturers of certain generic



drugs were violating Proposition 65 by not labeling the drugs with known carcinogen warnings, but also that adding the required Proposition 65 warnings to drug labels would cause the companies to be in violation of federal law, which severely restricts permissible content on generic drug labels so that those labels are as similar as possible to the labels on brand name equivalent drugs. When the case was filed, the brand name drug labels did not include the Proposition 65 warnings. The court agreed with the manufacturers, finding that federal drug labeling laws preempted the state's known carcinogen labeling requirement. [Read the full decision here.](#)

9. MONITORING PROPERTY & THE BUILT ENVIRONMENT

In re Hawai'i Elec. Light Co. (Haw., Mar. 13, 2023): The Hawai'i Supreme Court affirmed the state Public Utility Commission's rejection of a power purchase agreement that proposed burning trees to produce energy. The Hawai'i Electric Light Company proposed to purchase energy from Hu Honua Bioenergy; that energy would be produced by burning trees and other biomass. Life of the Land, a community-based organization, opposed the proposal, arguing that the biomass burning would increase greenhouse gases (GHG) beyond the current Hawai'ian plan for zero GHG emissions. In its opinion, the court acknowledged that the people of Hawai'i have declared a climate emergency, citing 2021 legislation, and recognized that the right to a clean and healthful environment under the Hawai'i Constitution includes "the right to a life-sustaining climate system." The court upheld the Commission's rejection of the proposal, ruling that state regulators fulfilled a "public interest-minded mission" in rejecting the agreement based on the power project's environmental repercussions. [Read the full decision here.](#)

10. PUBLIC HEALTH EMERGENCY: LEGAL PREPAREDNESS & RESPONSE

11. REPRODUCTIVE LIBERTIES & CARE ACCESS

Oklahoma Call for Reproductive Justice v. Drummond (Okla., Mar. 21, 2023): A group of abortion care provider organizations petitioned the Oklahoma Supreme Court to find state laws that criminalize abortion unconstitutional, arguing the laws violate Oklahoma constitutional protections of inalienable rights and substantive due process, independent of federal law. The Oklahoma Supreme Court ruled that the state constitution protects a limited right to abortion in life-threatening situations but declined to rule on whether it protects a broader right to abortion. The Court recognized that the Oklahoma Constitution "creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life" and that doctors may use their individual medical judgment to determine if an abortion is required pursuant to life-threatening circumstances presenting or likely to present during a pregnancy. [Read the full decision here.](#)

JTPH is a collaboration of the Network's Western and Eastern Region Offices led by Editor-in Chief, Jennifer Piatt, JD, Deputy Director, Western Region Office. Additional Western Region contributors include James G. Hodge, Jr., JD, LLM, Erica N. White, JD, Madisyn Puchebner, and Lauren Krumholz. Eastern Region contributors include Kathi Hoke, JD.

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