

JUDICIAL TRENDS IN PUBLIC HEALTH – FEBRUARY 15, 2024


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 AND SCOPE OF PUBLIC HEALTH LEGAL POWERS

Red River Valley Sugarbeet Growers Association v. Regan (U.S. Court of Appeals for the 8th Circuit, November 2, 2023) The Eight Circuit Court of Appeals found that the Environmental Protection Agency (EPA) exceeded its authority, acting arbitrarily and capriciously in completely eliminating the use of chlorpyrifos on food crops. For more than a decade, EPA had allowed the pesticide to be used in some measure on some crops, called tolerances. After losing a case challenging those tolerances, the EPA passed a regulation allowing no use of the product, even though the Agency had considered revoking most of the tolerances but allowing some high-benefit agricultural uses to continue. The Court disagreed with EPA that the Agency's findings supported only a full ban, finding that the Agency lacked evidence to support the full ban and had less restrictive means available given the potential safe use of the pesticide on some crops. This case is consistent with a trend of courts disagreeing with administrative agency decisions and substituting the court's judgment for that of the agency. [Read the full Opinion here.](#)



Free Oregon, Inc. v. Oregon Health Authority (Oregon Court of Appeals, December 13, 2023) The Oregon Court of Appeals upheld the Oregon Health Authority's since-repealed rules requiring that health care facility and public school staff be vaccinated against COVID-19. The State had sought to have the case dismissed as moot, but the Court found that the issue remained salient for some plaintiffs who were challenging their school employer's decision to place them on unpaid leave while the rules were in effect. The Court found that the Oregon Health Authority had the power to issue the vaccine mandate rules, the rules did not conflict with a state law prohibiting public health officials from interfering with individual's medical decisions; and the Food, Drug, and Cosmetic Act (FDCA) did not preempt the mandate. [Read the full Opinion here.](#)

2. CONSTITUTIONAL RIGHTS AND THE PUBLIC'S HEALTH

Poe v. Labrador (U.S. District Court for Idaho, December 26, 2023) The U.S. District Court for Idaho issued a preliminary injunction prohibiting enforcement of an Idaho law that prohibits health care professionals from providing certain medical treatment to children with gender dysphoria while allowing the same treatment for children with other medical conditions. The Court considered whether the statute violates the 14 Amendment's Equal Protection Clause by treating transgender children differently than other children and whether the statute violates the 14th Amendment's Due Process Clause by interfering with the right of parents of transgender children to make medical decisions for their children. In issuing the injunction, the Court found that the statute failed on both issues. First, the statute discriminates on the basis of sex and transgender status, requiring a strict scrutiny analysis. Second, parents' right to seek appropriate medical care for their children is protected by the Constitution, thereby requiring a strict scrutiny analysis of an interference with that right. The strict scrutiny test requires that there be a compelling government interest and that the state action be narrowly tailored to satisfy that interest. Based significantly on its finding that the prohibited care is medically accepted as safe, effective, and appropriate for children with gender dysphoria, the Court found the statute violates the rights of transgender children and their parents. The statute may not be enforced while the case proceeds to trial. [Read the full Opinion here.](#) On January 30, 2024, the Ninth Circuit Court of Appeals issued an order upholding the district court so that the stay will remain in place. [Read the Order here.](#)

Antonyuk, et al. v. Chiumento, et al. (U.S. Court of Appeals for the 2nd Circuit, December 8, 2023) The Second Circuit Court of Appeals is allowing many provisions in New York's Concealed Carry Improvement Act (CCIA) to remain in effect and paused others while the lower court hears a full challenge to the law. The CCIA was passed in response to the U.S. Supreme Court's decision in *Bruen* striking down New York's stringent concealed carry law and was immediately challenged. The trial court issued an injunction preventing enforcement of some CCIA provisions and allowed others to go into effect. The State's highest court weighed in, finding that three provisions would be stayed pending trial: 1) requiring applicants for a concealed carry permit to list their social media identities; 2) prohibiting firearms at religious institutions; and 3) imposing a default that firearms are prohibited on private property open to the public. The court allowed continued enforcement of: 1) the requirement that an applicant demonstrate good moral character and disclose household and family members on a permit application; 2) the ban on concealed carry in sensitive places, including behavior health centers, public parks, zoos, theaters, conference centers, and places licensed for on-premise alcohol consumption; and 3) requirements for an in-person interview, character references, and 16 hours of training. [Read the full Opinion here.](#)



3. PREVENTING AND TREATING COMMUNICABLE CONDITIONS

Stand up Montana v. Missoula County Public Schools (Supreme Court of Montana, December 12, 2023) The Supreme Court of Montana upheld the Missoula Public School's COVID-19 mask mandate over challenges raised by parents that the mandate violated the parents' state constitutional right to make medical decisions for their children and violated the students' state constitutional rights of privacy and individual dignity. The Court found that masks are not medical treatment or devices such that there was no medical care being provided without the parent's consent and that the case raised no fundamental constitutional rights of students. Applying the rational basis test, the Court found the County had a legitimate interest in preventing the spread of COVID-19 among students and staff and that mandating masks was a reasonable approach to protect that interest. [Read the full Opinion here.](#)

4. SOCIAL DISTANCING MEASURES

5. ADDRESSING CHRONIC CONDITIONS


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

M.N., et al. v. MultiCare Health System (Supreme Court of Washington, January 18, 2024) The Supreme Court of Washington overturned a trial court decision to dismiss claims brought by patients who may have been exposed to Hepatitis C at the defendant's hospital. MultiCare Health employed a nurse who diverted drugs and engaged in conduct that put patients who were treated with narcotics at risk of contracting Hepatitis C. The trial court allowed patients who were treated by the nurse to continue to trial but dismissed claims of patients who were treated with narcotics while the nurse was on duty but who were not treated by the nurse. The hospital informed those patients of the potential exposure and suggested they be tested for Hepatitis B and C and HIV. The Court found that, for medical malpractice claims, plaintiffs seeking emotional damages that involve fear of disease transmission may have a viable cause of action if they can prove they experienced reasonable fear of having contracted a disease by a medically recognized means of transmission. Plaintiffs may recover damages only for the period of time that they experienced the anxiety related to the potential exposure. Because the patients had been made aware of the potential exposure and had to wait for test results, they may be able to prove all elements of the claim; thus, their case was revived. [Read the full Opinion here.](#)

7. PUBLIC HEALTH INFORMATION MANAGEMENT, PRIVACY & SECURITY

8. REGULATING COMMUNICATIONS

Maryland Shall Issue, et al. v. Anne Arundel County, Maryland (U.S. Court of Appeals for the 4th Circuit, January 23, 2024) The Fourth Circuit Court of Appeals upheld a local ordinance passed in Anne Arundel County, Maryland, that requires firearm sellers to make visibly available in their shops and distribute to all customers who purchase a firearm or ammunition a County-provided pamphlet related to gun safety and suicide prevention. Firearms sellers challenged the law arguing that the ordinance required them to engage in compelled speech in violation of their First Amendment right



because the information in the pamphlet is not factual or uncontroversial. The Court disagreed, finding that pamphlet factually informs purchasers of the nature, causes, and risks of suicides and the role that guns play in them and encourages purchasers to store their guns safely to help reduce suicides. The pamphlet neither discourages gun purchases nor indicates that guns cause suicide. Reviewing statistics about gun-related suicide, the Court found that the ordinance is reasonably related to the County's interests in suicide prevention and not unjustified or unduly burdensome. As a result, the Court upheld the ordinance. [Read the full Opinion here.](#)

National Association of Wheat Growers, et al. v. Bonta (U.S. Court of Appeals for the 9th Circuit, November 7, 2023) The Ninth Circuit Court of Appeals struck down a California law requiring a warning label on products containing glyphosate as a violation of companies' First Amendment rights. Glyphosate is commonly used in pesticides and has been found to be "probably carcinogenic" in humans by the International Agency for Research on Cancer. Under California law, a product containing glyphosate must bear a warning about potential cancer risk. The Court found the required warning labels to be compelled speech that violates the First Amendment because there is significant dispute in the scientific community about whether the chemical causes cancer. Without a deeper factual link, the State may not force manufacturers to include a cancer warning on their products. [Read the full Opinion here.](#)

9. MONITORING PROPERTY AND THE BUILT ENVIRONMENT

Held, et al. v. Montana (Supreme Court of Montana, January 16, 2024) The Supreme Court of Montana upheld a trial court decision denying the State's request to stay the trial court's decision that found unconstitutional the Montana Environmental Policy Act. Youth advocating for the environment challenged the Act because it prohibits Montana from considering the climate impacts of energy projects. In a [landmark decision](#), the trial court found that the Montana Constitution provides the right to a "clean and healthful" environment and the prohibition against considering climate impacts interferes with that right. The State sought a stay of the decision, allowing energy projects to proceed without consideration of climate impacts, while the case proceeds on appeal. Finding the State unlikely to prevail on the merits of the case, the lower court refused to issue the stay. The Supreme Court of Montana agreed, allowing the lower court decision to remain in effect while the case proceeds to a full appeal. Montana may not proceed with energy projects without taking climate impacts into consideration. [Read the full Opinion here.](#)

10. PUBLIC HEALTH EMERGENCY: LEGAL PREPAREDNESS AND RESPONSE

Gonzalez v. Inslee, Governor of State of Washington (Supreme Court of Washington, September 28, 2023) The Supreme Court of Washington upheld Governor Jay Inslee's COVID-era ban on evictions in a case landlords brought challenging the Governor's action as outside the scope of his emergency powers as set forth in the Washington Constitution and Code. The landlords argued that the Governor may not waive or suspend application of statutes—here, provisions establishing landlords' eviction powers—but that emergency powers are limited to actions not addressed in existing law. The Court rejected that argument and found that the Governor acted within the scope of his emergency powers, particularly noting that the eviction ban did not eliminate tenants' obligations to pay rent or landlords' power to seek payment without eviction. [Read the full Opinion here.](#)



11. REPRODUCTIVE LIBERTIES AND CARE ACCESS

Ohio, et al. v. Becerra (U.S. Court of Appeals for the 6th Circuit, November 30, 2023) The Sixth Circuit Court of Appeals struck down aspects of the Biden Administration’s regulations related to Title X funding for family planning clinics. Per Congress, Title X funding may not be used for abortion care. The decision, applicable only in Ohio, revives the Trump Administration’s policy requiring clinics to maintain “strict physical and financial separation” if they offer contraception and other services through Title X and also offer abortion care with other funding. That rule requires that the differently funded services be provided in different buildings, by separate staff, and using distinct billing systems. The Court did not strike down the Biden Administration rule that Title X funded clinics refer patients to abortion providers if the patient requests abortion care. [Read the full Opinion here.](#)

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