

JUDICIAL TRENDS IN PUBLIC HEALTH – AUGUST 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

Snell v. Walz (Supreme Court of Minnesota, May 10, 2024) The Supreme Court of Minnesota affirmed dismissal of a challenge to the Governor of Minnesota’s power to declare a peacetime emergency due to the COVID-19 pandemic under the State’s Emergency Management Act. The case had been presented to the State’s highest court previously, after most of the claims had been dismissed as moot because the period of peacetime emergency had ended. At that time, the Court remanded the case for substantive determination because the issue presented was “functionally justiciable” and “of statewide importance.” On remand, the lower courts held that the Act authorized the Governor’s emergency declaration. The Supreme Court of Minnesota affirmed, finding that the Act generally authorizes the Governor to declare a peacetime emergency in response to “a public health crisis such as a pandemic.” The Court considered the plaintiff’s argument that the Act was prohibited by the nondelegation doctrine, but rejected this argument because Minnesota’s statutes are “presumed constitutional,” and because the Act contains limitations and “non-illusory checks” on its powers and strikes a balance between “government overreach and emergent threats.” In a




concurrency, Justice Anderson addressed “serious concerns” related to “executive branch emergency orders issued over extended periods of time,” but concluded that it is the Legislature’s role to assign powers and to design oversight systems to keep those powers in check. [Read the full opinion here.](#)

Carland v Cargill (U.S. Supreme Court, June 14, 2024) By a 6-3 vote, the Supreme Court invalidated the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) rule that classified bump stocks as “machine guns” for purposes of the National Firearms Act, which would have essentially prohibited ownership of the devices. The Court held that “a bump stock—an accessory for a semi-automatic rifle that allows the shooter to rapidly reengage the trigger (and therefore achieve a high rate of fire)” — does not turn the rifle into a machine gun as defined by federal law. The decision was not based on the Second Amendment and did not apply the Bruen test; rather, the opinion is solely based on the Court’s interpretation of the National Firearms Act’s definition of machine gun. The Court drew the distinction between the definition of machine gun, automatically firing more than one shot by a single function of the trigger, and how a bump stocks work on semi-automatic rifles, using the gun’s recoil to help rapidly and repeatedly pull the gun trigger. Because ATF based its rule on the Agency’s statutory authority to regulate machine guns, the Court concluded ATF exceeded its statutory authority and invalidated the rule. [Read the full opinion here.](#)

2. CONSTITUTIONAL RIGHTS AND THE PUBLIC’S HEALTH

U.S. v. Scheidt (U.S. Court of Appeals for the 7th Circuit, June 7, 2024) The Seventh Circuit Court of Appeals held that the Bruen Supreme Court ruling does not compel the Court to undergo a Second Amendment review of historical gun registration requirements because requirements for transaction records are not unconstitutional. The case concerned criminal charges based on a federal criminal statute, 18 U.S.C. § 922(a)(6), which prohibits any person from knowingly making a false oral or written statement on a fact material to a gun purchase transaction. The defendant was indicted and pled guilty to making false written statements likely to deceive a firearms dealer, and admitted to selling firearms to a man she believed was affiliated with a Mexican drug cartel. On appeal, the defendant argued that the prohibition on falsifying information on a Firearms Transaction Record was a violation of the Second Amendment. The Court affirmed the conviction without performing an historical analysis of gun registration forms because the Second Amendment does not cover Scheidt’s conduct. The Court held that the criminal statute “restricts fraudulent statements, not firearm purchases.” Instead of performing a Second Amendment analysis, the Court concluded that “[o]rdinary information-providing requirements ... do ‘not infringe’ the right to keep and bear arms,” making the Bruen historical analysis framework inapplicable. [Read the full opinion here.](#)

Vaugh v Bassett, et al. (U.S. Court of Appeals for the 5th Circuit, June 10, 2024) The Fifth Circuit Court of Appeals reversed a lower court’s dismissal of inmate Vaughn’s Bivens claim that the warden and others violated the Eighth Amendment by denying him access to necessary medical care. Vaughn, representing himself pro se and in forma pauperis, was injured when he collided with another inmate during a softball game, leaving his nose bleeding and his face “visibly caved in.” Although Vaughn promptly requested medical attention, defendant Bassett ordered him back to his room and did not arrange transportation to a hospital. Vaughn was evaluated at a hospital the following day, but defendants Crnkovich and Pence prevented him from following up appropriately, including by neglecting to provide Vaughn’s facial surgeon with his CT images. Despite Vaughn’s repeated




requests and urgent need for surgery, defendants Crnkovich and Pence failed to provide him with pain medication and delayed his medical follow up for six weeks, until after his bones had healed, resulting in permanent disfiguration of Vaughn's face. Without commenting on the merits of his claims, the Court held that Vaughn had properly pled an Eighth Amendment claim for deliberate indifference—a very difficult standard for inmates to meet--because he properly alleged that he sustained a serious injury, that the defendants were aware of his injury, and that had subsequently received delayed and inadequate treatment. [Read the full opinion here.](#)

Kindschy v. Aish (Supreme Court of Wisconsin, June 27, 2024): The Supreme Court of Wisconsin struck down a civil harassment injunction against an anti-abortion protester because it violated the First Amendment. The Court explained that in a criminal prosecution for harassment premised on true threats, the government must prove at a minimum that the defendant “consciously disregarded a substantial risk that his communications would be viewed as threatening violence.” Citing the recent U.S. Supreme Court decision in *Counterman v. Colorado*, the Court found that the defendant's repeated comments to Kindschy, an abortion clinic worker, did not constitute “true threats,” and therefore were protected by the First Amendment. Kindschy had obtained a civil harassment injunction after the defendant repeatedly made intimidating comments urging her to repent, including statements that she would be “lucky” if she made it safely to her home that night, and that “bad things are going to start happening to you and your family.” The Court held that these statements “cannot be interpreted as true threats” because the defendant did not threaten violence or allude to any “recent, or well-known, real-world acts of violence,” and because they came from “a place of love or nonaggression.” Because the respondent's statements were considered protected speech, the Court applied strict scrutiny and overturned the harassment injunction. The Court held that the injunction did not pass the “high bar” required by strict scrutiny because it “burdens significantly more speech than is necessary,” including by effectively preventing the defendant from speaking with other workers at the clinic. [Read the full opinion here.](#)

3. PREVENTING AND TREATING COMMUNICABLE CONDITIONS

MacDonald v. Oregon Health & Science University (U.S. District Court for Oregon, July 5, 2024) The U.S. District Court for Oregon granted summary judgment to Oregon Health & Science University (OHSU), rejecting MacDonald's prima facie Title VII claim because her religious accommodation request to remain unvaccinated would have caused undue hardship to OHSU. OHSU is the largest public hospital system in Oregon, and MacDonald worked as a registered nurse in their Children's Hospital's Mother and Baby unit. MacDonald was denied a religious accommodation to remain unvaccinated against COVID-19, and she was subsequently fired after she continued to decline vaccination. OHSU's lawyers conceded that MacDonald had established a prima facie case of Title VII discrimination, but the Court granted summary judgment because OHSU demonstrated that the requested accommodation would have caused undue hardship to the hospital. OHSU established this affirmative defense with declarations from hospital administrators to describe the anticipated impact of the accommodation, and an expert report that documented the known threat of COVID-19 and the unique efficacy of vaccines. By contrast, MacDonald's case was weakened by “redundant or inappropriate” arguments,” and by the exclusion of much of her evidence as hearsay, or due to errors in submission. In granting summary judgment, the Court notes that the Defendant's undue hardship defense would not depend on the efficacy of the required vaccine, but on the Defendant's “assessment of undue hardship at the time it denied Plaintiff's exemption.” Despite conceding a prima



facie Title VII violation, OHSU convinced the Court that accommodating MacDonald would have “undermined Defendant’s legitimate mission, creating a substantial increased cost and, hence, an undue hardship,” so the Court granted the OHSU’s motion for summary judgment. [Read the full opinion here.](#)

4. SOCIAL DISTANCING MEASURES

5. ADDRESSING CHRONIC CONDITIONS

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

7. PUBLIC HEALTH INFORMATION MANAGEMENT, PRIVACY & SECURITY


8. REGULATING COMMUNICATIONS

9. MONITORING PROPERTY AND THE BUILT ENVIRONMENT

Hobby Distillers Ass’n v. Alcohol and Tobacco Tax & Trade Bureau (U.S. District Court for the Northern District of Texas, July 10, 2024) The U.S. District Court for the Northern District of Texas granted summary judgment to overturn two regulations restricting the possession and placement of distilled spirits grains and distilling equipment, holding that the restrictions were a Congressional overstep not authorized by the Tax or Commerce powers. Although the government described the overturned regulations as taxes, the Court held that they were not authorized by the Tax Power because they did not generate revenue and they lacked the essential features of a tax. The Court also evaluated whether the Commerce Clause might justify the regulations but held that the federal regulation of alcohol was insufficiently comprehensive to extend to the regulation of personal production. Comprehensive regulatory schemes, like those for marijuana (*Gonzales v. Raich*) or wheat (*Wickard v. Filburn*), “justif[y] Congressional regulation of local behavior.” By contrast, federal alcohol regulations only address interstate activity, leaving substantial control over production, distribution, and consumption to the states. The Court also held that the overturned regulations were not “necessary and proper” because the regulations lacked a “sufficiently clear corollary” connecting them to either the Tax or Commerce Powers. The Court struck down both contested regulations as unconstitutional overreaches of Congress’s enumerated powers. [Read the full opinion here.](#)

10. PUBLIC HEALTH EMERGENCY: LEGAL PREPAREDNESS AND RESPONSE

Redd v. Amazon.com, Inc., et al. (U.S. District Court for Northern Illinois, June 4, 2024) The U.S. District Court for Northern Illinois granted summary judgment to defendant Amazon for alleged violations of the Biometric Information Protection Act (BIPA) because the contested actions are covered countermeasures protected by the Public Readiness and Emergency Response Act (PREP). Following the federal declaration of a public health emergency due to COVID-19, Amazon used thermal cameras in high-traffic warehouses to screen the temperatures of employees for the purpose of reducing the spread of COVID-19. Amazon employee Redd alleged that Amazon used the thermal sensors to check her temperature without her knowledge or consent. Redd also alleged that Amazon collected additional biometric data, such as facial geometry scans, and shared this data with device and software vendors and other third parties. Although there was no dispute that



Amazon's temperature monitoring was a covered countermeasure under PREP, Redd argued that Amazon's failure to obtain consent had separately violated BIPA. The Court limited its analysis to the plain language of the PREP Act, which provides immunity for all federal and state claims against losses caused by or arising from the use of countermeasures covered by the PREP Act. The Court determined that Redd's claims had arisen from the protected use and administration of thermal cameras, and granted Amazon summary judgment. [Read the full opinion here.](#)

11. REPRODUCTIVE LIBERTIES AND CARE ACCESS

Roman Catholic Diocese of Albany v. Vullo (New York Court of Appeals, May 21, 2024): The New York Court of Appeals upheld a mandate for insurance coverage of medically necessary abortions, holding that the mandate does not violate the Free Exercise Clause because its "religious employer" exemption was generally applicable. Plaintiffs had challenged the religious employer exemption as too narrow, violating the First Amendment rights of some religious employers who did not meet exemption criteria. This case was initially dismissed because it was substantially similar to *Catholic Charities of Diocese of Albany v. Serio*, which held that a requirement for insurance to cover contraception did not violate the Free Exercise Clause because it was "neutral and generally applicable." The Court vacated its dismissal after the U.S. Supreme Court decided *Fulton v. Philadelphia*, which focused solely on "general applicability," to evaluate whether *Fulton* had changed the controlling precedent for Free Exercise claims. The *Vullo* Court held that the insurance mandate is still "generally applicable" under *Fulton* because its determination of "religious employer" status relies on enumerated factors and objective criteria, rather than individual discretion. In addition, the Court held that the insurance mandate did not treat secular conduct more favorably than religious conduct. After establishing that the insurance mandate qualified as "generally applicable," the Court declined to apply strict scrutiny and affirmed the Appellate Division's dismissal of the case. [Read the full opinion here.](#)

Planned Parenthood of the Heartlands, et al. v. Reynolds, et al. (Supreme Court of Iowa, July 28, 2024) The Supreme Court of Iowa reversed the district court and overturned a temporary injunction against a fetal heartbeat law, declaring that abortion is not a fundamental right in Iowa and that abortion restrictions need only be rationally related to legitimate state interests. The district court had upheld the injunction, applying the "undue burden" test, but its analysis reflected the "unsettled terrain regarding the level of scrutiny to apply in this case." The district court relied heavily on precedent from before *Dobbs*, especially an Iowa Supreme Court case that had established that abortion was not a fundamental right in Iowa but had failed to form a majority regarding how abortion regulations should be scrutinized. Reevaluating this question after *Dobbs*, the Supreme Court of Iowa decided 4-3 that abortion regulations in Iowa should instead be evaluated under the rational basis test, a low burden for restrictions to meet. Applying this reduced scrutiny, the Court held that the fetal heartbeat law is rationally related to the legitimate state interest of protecting unborn life and reversed the temporary injunction to enable the fetal heartbeat law to take effect. [Read the full opinion here.](#)

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