



The Network
for Public Health Law

Ideas. Experience. Practical Answers.

The Role of Law in Defining Your Public Health Job

October 17, 2024 | 1:30 – 3:00pm CT

ACT *for*
**Public
Health**

Moderator



Darlene Huang Briggs, J.D., M.P.H.
Deputy Director of Special Projects,
Network for Public Health Law

Panelists



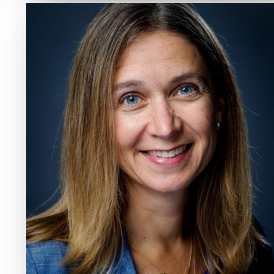
Attica Scott, M.S.
Director of Special Projects,
Forward Justice Action Network
and Former Kentucky State
Representative



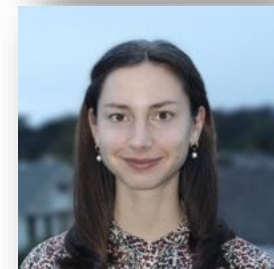
Jason Orcena, Dr.P.H., M.A.
Health Commissioner, Union
County Health Department
(Ohio)



Meghan Senne, M.P.H., C.P.H.
Policy Coordinator,
Jackson County Public Health
(Missouri)



Laurie Forlano, D.O., M.P.H.
State Epidemiologist
Virginia Department of Health



Emma Kaeser, J.D.
Staff Attorney, Mid-States
Region, Network for Public
Health Law

Agenda

- » **Overview**
- » **Civics 101 and Public Health Authority 101**
- » **Meet the Panelists**
- » **Act for Public Health**
- » **Panel Discussion**
- » **Q & A**



The Fine Print

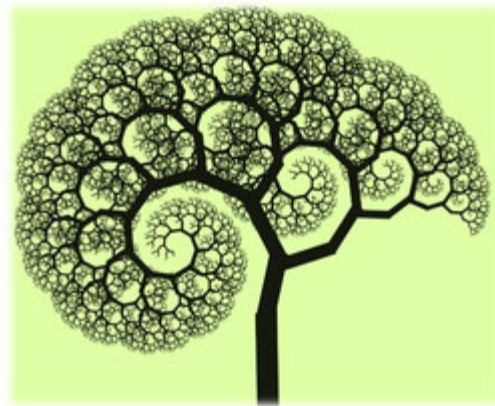


The Network promotes public health and health equity through non-partisan educational resources and technical assistance. Any materials provided in this presentation are intended solely for educational purposes and do not constitute legal advice. The Network's provision of these materials does not create an attorney-client relationship with you or any other person and is subject to the [Network's Disclaimer](#).

For legal advice, attendees should consult with their own counsel.

Learning Objectives

- » **Remind ourselves about principles of democratic governance and sources of law that define how the public health system operates**
- » **Learn about how the law is evolving**
- » **Acknowledge the connections between civic engagement and public health**
- » **Explore ways to effectively navigate an ever-evolving law and policy landscape**



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PUBLIC
health
INCLUDES:

Political adj. – of, relating to, or involving **politics**; pertaining to the conduct of government.

Politics n. – 1. The science of the organization and administration of the state. 2. The activity or profession of engaging in **political** affairs.

Source: Black's Law Dictionary (12th ed. 2024)



ChangeLab Solutions

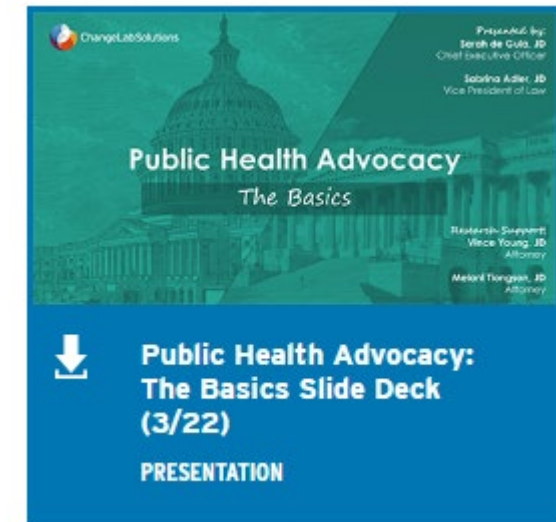
<https://www.changelabsolutions.org/product/public-health-advocacy-basics>

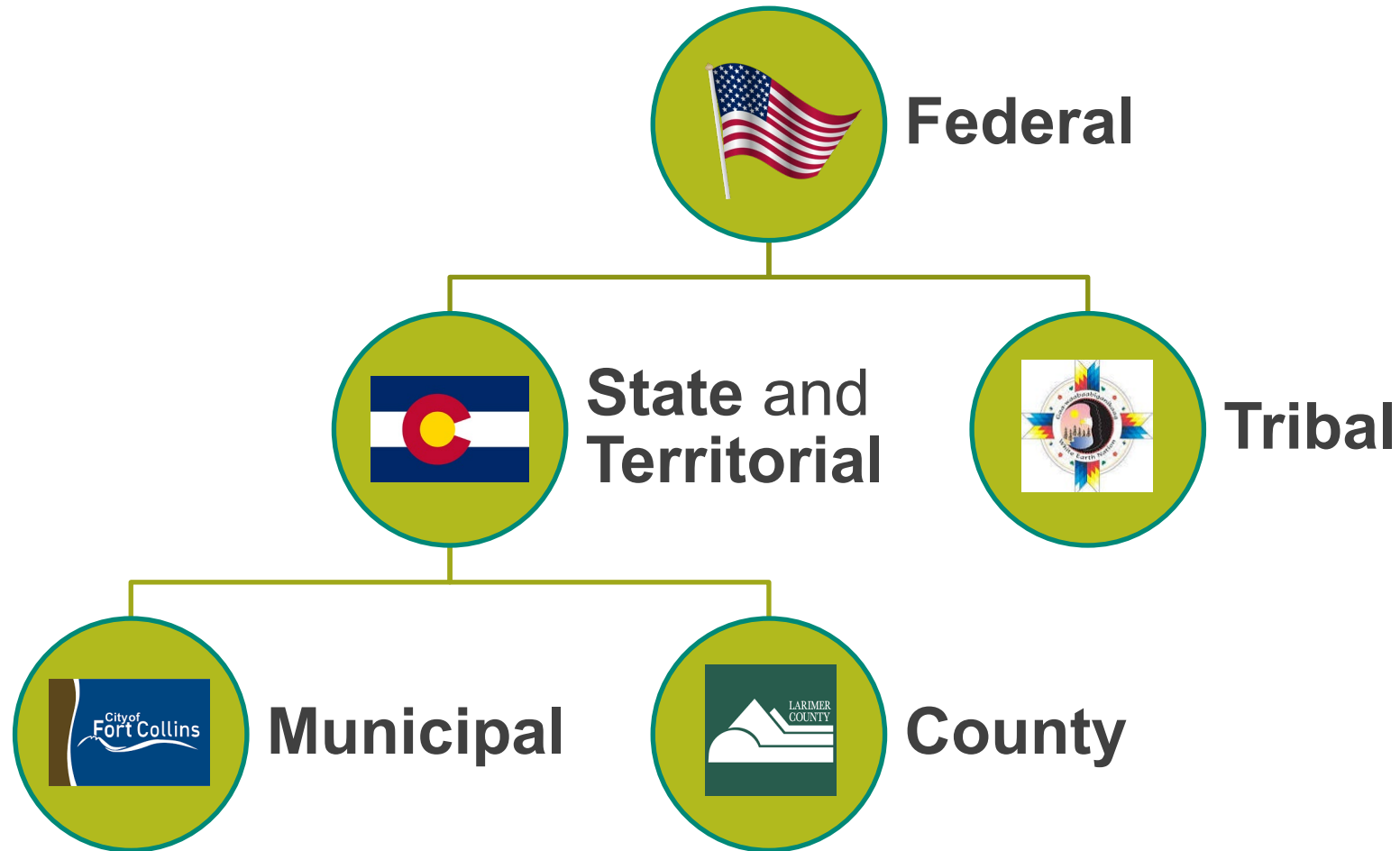
Public Health Advocacy: The Basics

How can public health practitioners engage in advocacy even when faced with restrictions on lobbying?

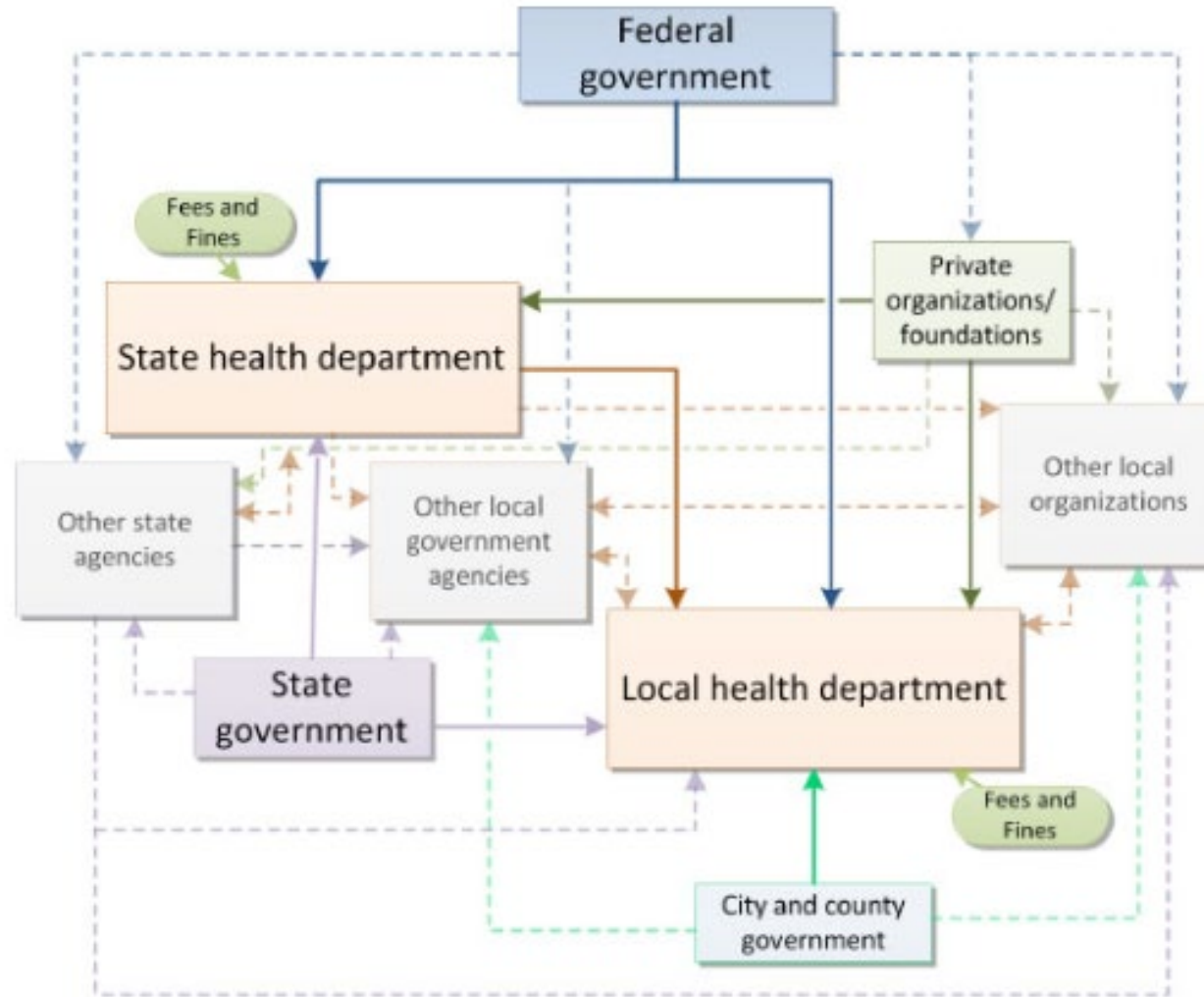
PRESENTATION | GOOD GOVERNANCE

This one-hour webinar, hosted by the American Public Health Association and ChangeLab Solutions, aims to help new and seasoned advocates understand the general ethics and legalities related to lobbying and advocacy.





For more information: [Structure of Government](#), Public Health Law Academy



Source: [Appendix E](#), For the Public's Health: Investing in a Healthier Future (2012)

For more information: [Public Health Law: Past & Present](#), Public Health Law Academy



FIGURE 1 | Models of Public Health Governance

SOURCE: Adapted from <https://astho.org/Research/Data-and-Analysis/State-and-Local-Governance-Classification-Tree/>, with permission.

What is Public Health Authority FAQ

Public health authority refers to a government body's (usually a health or public health department or agency) legal ability to further public health by using tools such as community engagement, data collection, scientific research, laws and regulations, enforcement, and the many methods of sharing information and guidance with those who need it most.

How does limiting public health authority impact the practice of public health?

Rolling back public health authority changes the practice of public health in significant ways, including by wresting control away from the officials closest to the communities they serve, hampering effective responses to rapidly evolving public health emergencies, and elevating politics over public health expertise and evidence-based decision making.

How does limiting public health authority impact the health of our communities and health equity?

By thwarting public health officials' ability to respond quickly and effectively to identified community needs, reactionary rollbacks in public health authority jeopardize the health of our communities and further compound existing community health inequities.



STATE & LOCAL PUBLIC HEALTH: AN OVERVIEW OF REGULATORY AUTHORITY

Public health has been broadly defined as “organized community efforts aimed at the prevention of disease and the promotion of health.”¹ State and local public health agencies² are commonly described as the “backbone” of the public health system.³ Although these agencies, along with local boards of health, are all administrative bodies committed to public health, their roles in the overall governmental infrastructure can seem confusing. Not only do states and localities organize their government public health systems in many different ways, but local boards of health also vary widely in their functions, structure, level and type of regulatory authority.

This publication provides common questions and answers about the role of state and local public health departments and boards of health in public health regulation.⁴ For information about preemption, a critical consideration when exploring the powers of these governing bodies, check out the publications and resources on the Public Health Law Center’s website [here](https://www.publichealthlawcenter.org/resources/state-local-public-health-overview-regulatory-authority).⁵

TOPICS

Local Authority

Separation of Powers

Three Branches of Government		
Legislative Branch	<ul style="list-style-type: none">• Congress/State Legislature	Responsible for creating laws
Executive Branch	<ul style="list-style-type: none">• President/Governor• Administrative agencies	Responsible for implementing and enforcing laws
Judicial Branch	<ul style="list-style-type: none">• Court system	Responsible for interpreting laws

Public Health and The Three Branches

- » Health departments sit within the **executive branch**, which implements public health laws
- » The **legislative branch** passes laws establishing and shaping public health authority
- » The **judicial branch** interprets laws in ways that shape public health authority

For more information: [Structure of Government](#), Public Health Law Academy

Judicial Influence Over Public Health

In some states, courts have restricted health departments' authority to protect public health in their communities.

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

**STATE OF MICHIGAN
COURT OF APPEALS**

T & V ASSOCIATES, INC d/b/a RIVER CREST
CATERING,

Plaintiff-Appellant,

v

DIRECTOR OF HEALTH AND HUMAN
SERVICES,

Defendant-Appellee.

FOR PUBLICATION
June 29, 2023
9:05 a.m.

No. 361727
Court of Claims No.
21-000075-MM

Before: BOONSTRA, P.J., and GADOLA and YATES, JJ.

GADOLA, J.

Plaintiff, T & V Associates, Inc, appeals as of right the order of the Court of Claims granting defendant, Department of Health and Human Services Director Elizabeth Hertel, summary disposition of plaintiff's claim under MCR 2.116(C)(8). We reverse.

I. FACTS AND BACKGROUND

The facts of this case are essentially undisputed. Plaintiff is a corporation that operated a catering service and banquet facility in Oakland County for many years. Its events typically included more than 25 patrons and often more than 100 patrons, and the events usually extended beyond 11:00 p.m.

Beginning in March 2020, Governor Gretchen Whitmer issued a series of executive orders declaring a "state of emergency" and a "state of disaster" in Michigan in response to the outbreak of the acute respiratory disease known as COVID-19. The executive orders were issued by the Governor pursuant to the Emergency Management Act of 1976 (the EMA), MCL 30.401 *et seq.*, and the Emergency Powers of the Governor Act of 1945 (the EPGA), MCL 10.31 *et seq.*¹ *In re Certified Questions From United States Dist Court*, 506 Mich 332, 337-338; 958 NW2d 1 (2020).

¹ Repealed by 77 PA 2021.

E.g., T&V Associates v. Director of Health and Human Services

- Michigan Dep't of Health and Human Services issued emergency order limiting gatherings at food services establishments
- Business challenged provision of Michigan Public Health Code underlying emergency order, MCL 333.2253
- Michigan Court of Appeals found provision to be invalid

Judicial Influence Over Public Health

Key Observations

- » Language in opinions evidencing distrust and skepticism of public health
- » Shifting of power away from executive and legislative branches and to judiciary
- » Decisions emerging as one strand of broader anti-regulatory movement

Meet the Panelists







ACT for Public Health



**Health law partners addressing challenges to
public health authority and infrastructure.**



Perhaps more than at any other time in its history, public health is being directly and significantly impacted by how laws and policies are being implemented—or weakened.



ChangeLab Solutions

<https://www.changelabsolutions.org/product/preserving-local-public-health-powers>

Preserving Local Public Health Powers

How to resist policy efforts to limit public health authority

FACT SHEET | GOOD GOVERNANCE

Public health is best served when decisions are driven by experts and experience rather than politics, but in the wake of COVID-19, some state legislatures continue to propose and pass preemptive bills that limit the authority of local public health officials. To help localities better protect the public's health, ChangeLab Solutions has developed a set of resources for advocates, detailing what public health authority is, how it works, and the types of restrictions that public health departments are facing.

DOWNLOADS



Help Ensure That Public Health Professionals Can Continue to Protect Community Well-Being

How communities can identify, understand, and resist potential legislative and other legal limitations on their traditional public health powers

What do public health professionals do?

We all want to live in communities where **everyone** has what they need to live healthy, happy lives. Public health professionals in state and local agencies use their governmental powers and resources to protect and promote health and well-being for all. This includes **preventing** illnesses like improving to provide safety in our homes and restaurants; **preventing** illnesses through education and services; **preventing** violence; reducing incidents of injury and violence in our neighborhoods; supporting moms and babies in their early days; and countering the harmful influence of commercial tobacco companies on our kids! The public health workforce must also prepare for and respond to **emergencies** that threaten our health and safety, such as natural disasters, security threats, and infectious diseases like COVID-19.

Where do public health powers come from?

Governmental public health powers are rooted in state authority to take actions that will protect residents' health and safety – the police power reserved to them in the US Constitution. Elected officials in state legislatures delegate some of this authority to state and/or local agencies like health departments. These agencies maintain expertise in public health and familiarity with community needs and conditions so that they can respond quickly and flexibly to public health threats. Local health departments are also linked to



Help Ensure That Public Health Professionals Can Continue to Protect Community Well-Being (10/22)

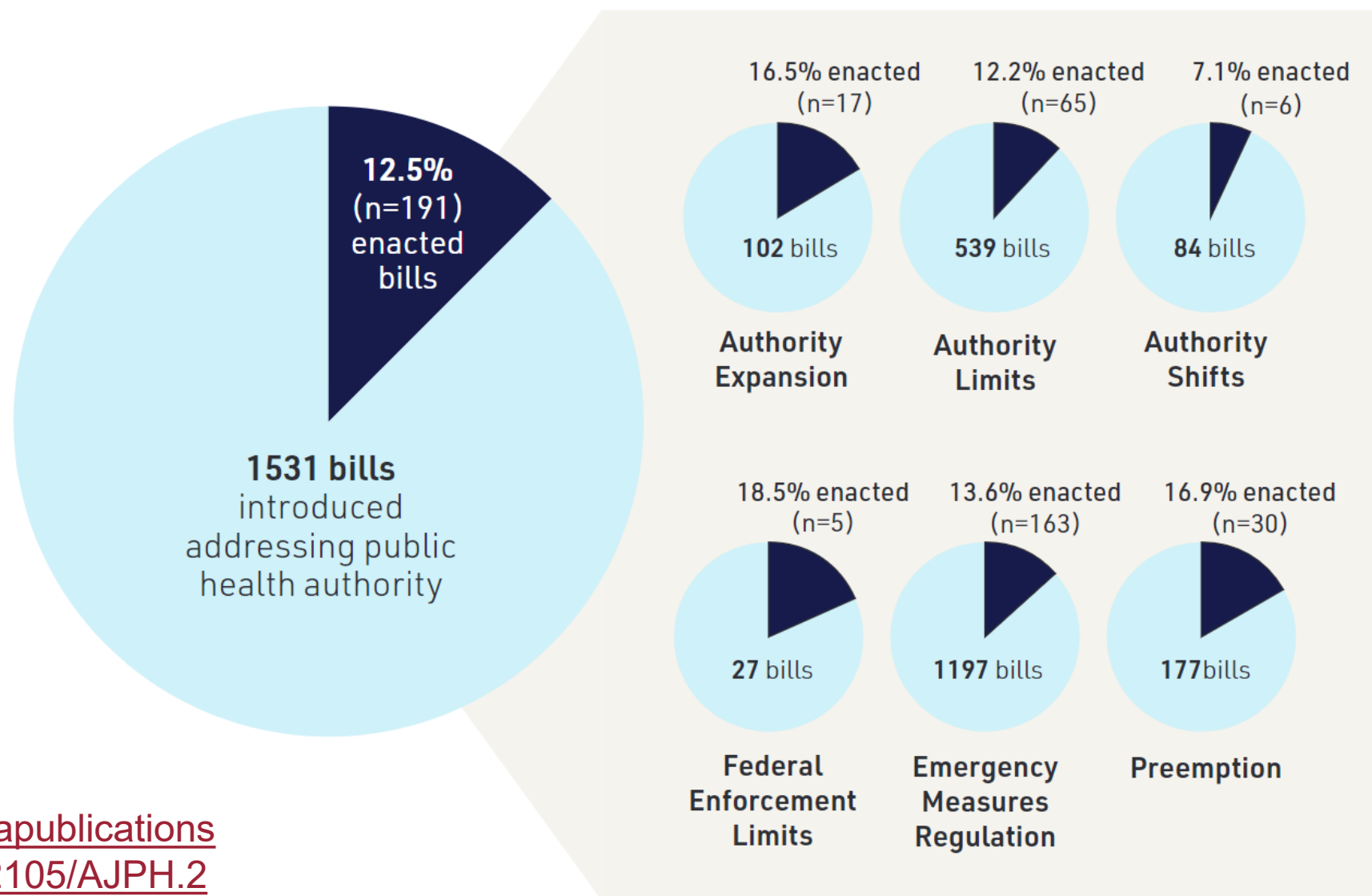
FACT SHEET



Why Keep Public Health Powers Close to Local Communities? (10/22)

FACT SHEET

Introduced and Enacted U.S. State Legislation Addressing Public Health Authority by Type, January 1, 2021-May 20, 2022



<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2022.307214>

*Because bills may address more than one topic, totals reported by topic will not sum to the total number of bills.

Laws Addressing Public Health Authority to Respond to Emergencies (2022-2024)

AREAS MATCHING ANY VARIABLES



1. Has the state enacted a law since May 21, 2022, that addresses authority to respond to public health emergencies? :
Yes

27/ 51



1.1. What type of law? : Strengthening public health authority

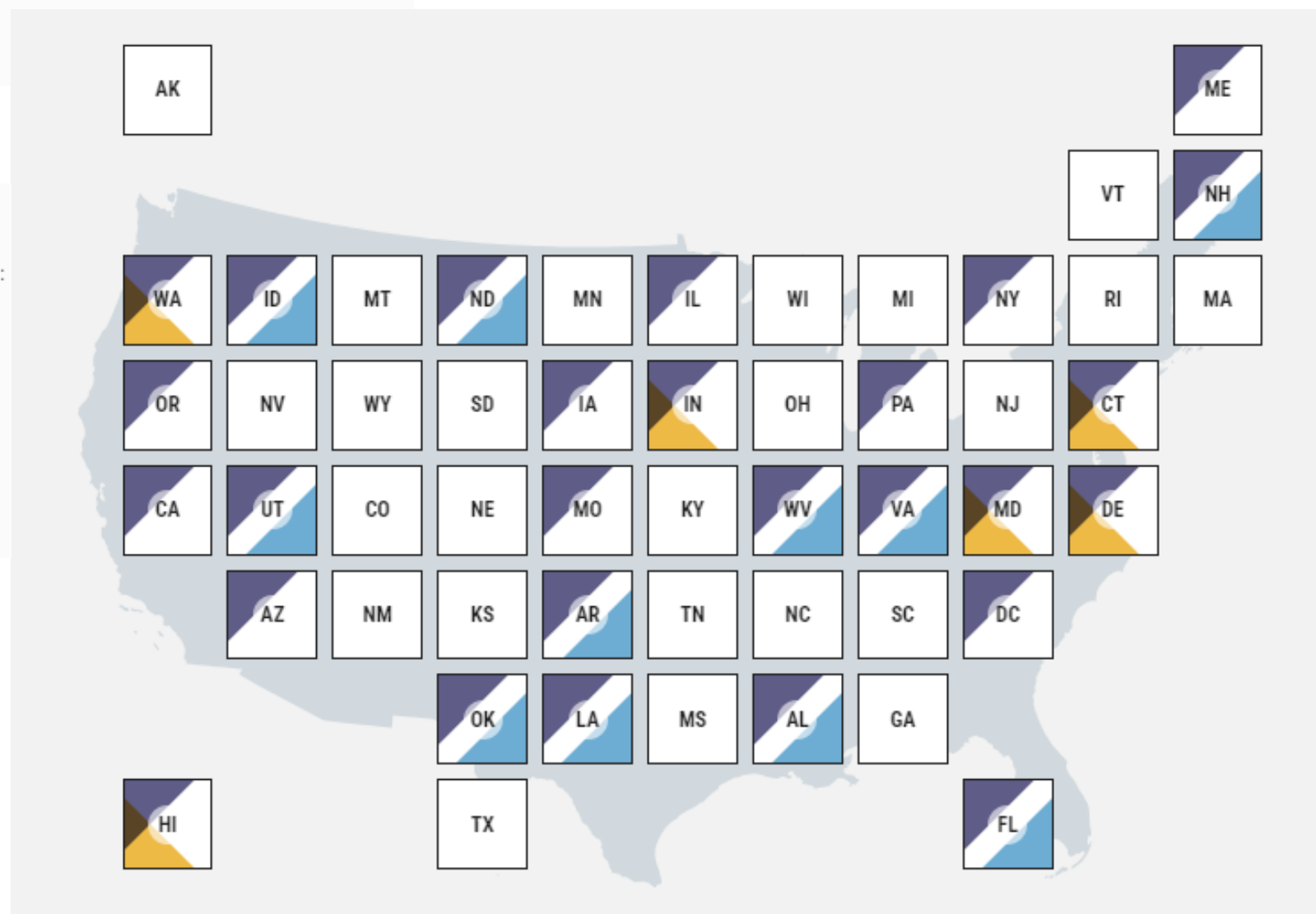
6/ 51



1.1. What type of law? : Limiting public health authority

11/ 51

[https://lawatlas.org/datasets/
laws-addressing-public-
health-authority-to-respond-
to-emergencies](https://lawatlas.org/datasets/laws-addressing-public-health-authority-to-respond-to-emergencies)



Public Health Authority Case Updates

June 28, 2024

Case updates this week:



The Supreme Court denied the plaintiff's petition for certiorari review of the Second Circuit's decision in *We The Patriots USA, Inc., et al. v. Connecticut Office of Early Childhood Development, et al.* In that case, We The Patriots USA, Inc., contended that the Connecticut Office of Early Childhood Development violated their First Amendment rights by removing the religious exemption from school vaccination requirements. Both the District Court and United States Circuit Court of Appeals for the Second Circuit rejected the argument and the Supreme Court declined to hear the case. For a detailed discussion of the Second Circuit decision, see our [August 11, 2023 Spotlight](#).

Tuesday, June 18: The United States Court of Appeals for the Ninth Circuit reversed the District Court for the Eastern District of Washington's decision to grant the Defendants' motion for judgment on the pleadings and remanded the case back to the District Court to give the Plaintiffs leave to amend in *Bacon v. Woodward*. Plaintiffs, a group of firefighters employed by the City of Spokane, Washington (the "City"), contended that, in applying State Governor Inslee's Proclamation requiring state employees to be fully vaccinated against the COVID-19 virus, the City violated their Free Exercise rights under the First Amendment to the Constitution. Plaintiffs requested religious exemptions which the City denied.

Early Warning System



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Mello, Jiang and
Parmet

PUBLIC HEALTH

By Michelle M. Mello, David H. Jiang, and Wendy E. Parmet

Judicial Decisions Constraining Public Health Powers During COVID-19: Implications For Public Health Policy Making

DOI: 10.1377/hlthaff.2024.00073
HEALTH AFFAIRS 43,
NO. 6 (2024): –
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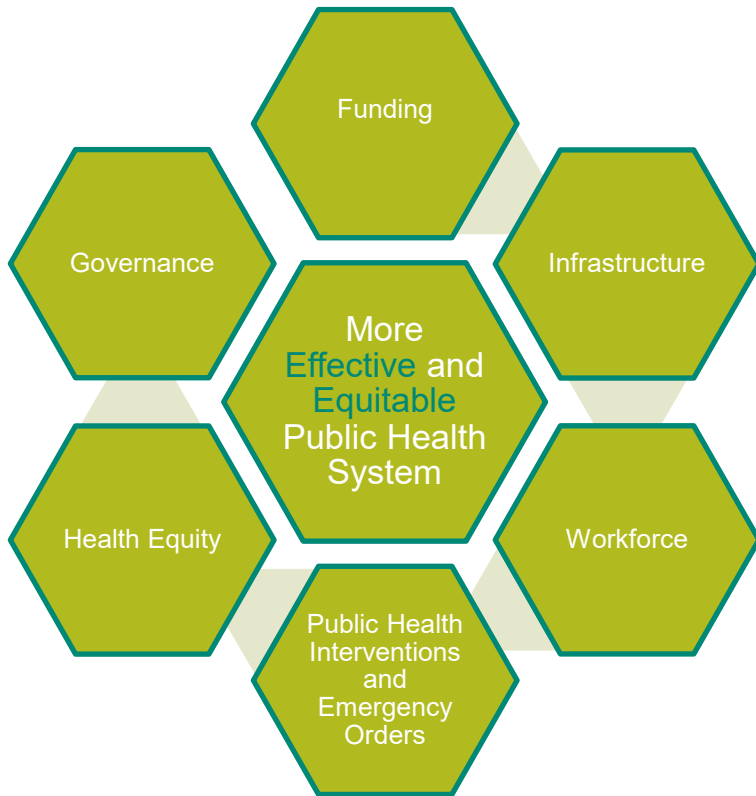
ABSTRACT Public health legal powers are increasingly under pressure from the courts in the United States. During the COVID-19 pandemic, individuals and organizations successfully challenged many community mitigation orders (for example, mask mandates, vaccination mandates, and restrictions on gatherings), demonstrating the legal vulnerability of disease control measures. Analyzing 112 judicial decisions in which the plaintiff prevailed from March 2020 through March 2023, we examined the ways in which courts constrained public health powers during the COVID-19 pandemic. We found that in these 112 decisions, courts shifted how they analyze religious liberty claims and reviewed challenges to the exercise of statutory powers by health officials in novel ways. We discuss implications for public health policy going forward, and we recommend ways in which legislatures and health officials can design policies to maximize their prospects of surviving legal challenges.

Michelle M. Mello (mmello@law.stanford.edu), Stanford University, Stanford, California.

David H. Jiang, Stanford University.

Wendy E. Parmet, Northeastern University, Boston, Massachusetts.

Toward a Coordinated Response



Innovative Laws and Policies for a Post-Pandemic Public Health System

June, 2023



Central Question

What laws, policies, and governance structures are needed to ensure that public health officials and staff can serve the public's health **effectively** and **equitably**, in ways responsive to **community priorities**? Authority to...

- Respond nimbly to public health emergencies;
- Provide stable, day-to-day public health services to all; and
- Facilitate upstream activities that improve public health



ChangeLab Solutions

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**Public
Health**

Legal Framework Core Activities

- Process



- Legal authority can dictate how and with whom things are decided and implemented

- Accountability



- Legal authority can require evidence to justify, guide, and evaluate actions

- Outcomes



- Legal authority can embed public, actionable goals and outcomes



ChangeLab Solutions

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ACT for Public Health



Visit the Act for Public Health Website
actforpublichealth.org



Join the Framework conversation:

<https://forms.office.com/Pages/ResponsePage.aspx?id=wJZZqgTyV0y6tPSZL236khzDI-FBsV1At7RDKi0bkGVUODcxTU9QN01BRVVRV1Y0MjA1QzJKUUNOUC4u>





Webinar

 Making the case for public health: A framing and communication webinar

Frame public health as indispensable

Consider the way fire departments are framed

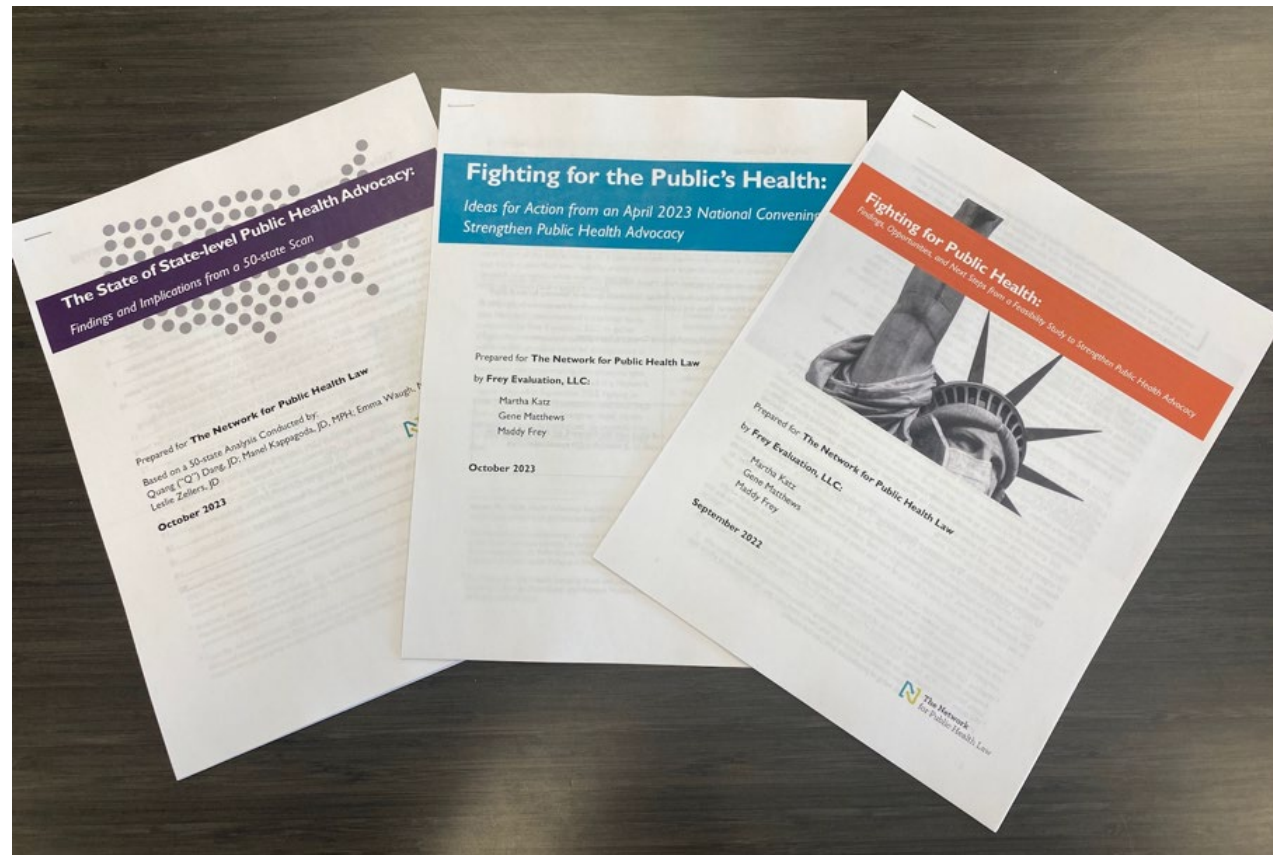




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YouTube

Fighting for the Public's Health





The State of State-level Public Health Advocacy:

Findings and Implications from a 50-state Scan

Prepared for **The Network for Public Health Law**

Based on a 50-state Analysis Conducted by:

Quang (“Q”) Dang, JD; Manel Kappagoda, JD, MPH; Emma Waugh, MPH; and
Leslie Zellers, JD

October 2023



Project Advisors:

Martha Katz

Maddy Frey

Gene Matthews

Dawn Hunter

With funding from:



de Beaumont

50-State Scan of Public Health Advocacy Capacity

March – June 2023

Key informants in all 50 states and DC

- » State and local health department representatives
- » Elected officials
- » Lobbyists
- » Partners in other sectors and organizations

Findings & Opportunities

PH's role and value is often
misunderstood

PH is often reluctant to rely on
lobbying and advocacy

Challenges to PH authority make
advocacy more difficult and essential

Health equity is fundamental and
requires nuanced communication

Public health allies remain
untapped resources

The PH workforce is underfunded

1

Elevate public health's value proposition

2

Encourage strategic advocacy and lobbying

3

Counter challenges to public health authority

4

Fight for health equity

5

Tap the strengths of supportive allies

6

Support the public health workforce

Panel Discussion



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Thank you for attending.

You will receive an email notification when the slides and recording of today's webinar have been posted on the Network website.