

Protecting and Improving Local Public Health Authority to Advance our Collective Health

July 11, 2024 | 1:30 – 3:00 p.m. 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



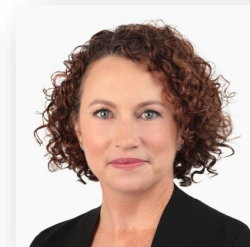
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Executive Director,
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Collaboration



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Agenda

- » **Background and Act for Public Health Overview**
- » **NACCHO's Public Health Authority Policy Statement**
- » **The Oregon Story – Oregon Coalition of Local Health Officials**
Local public health system improvements resulting from statewide public health system modernization
- » **The North Carolina Story – North Carolina Public Health Collaboration**
Local public health advocacy in the courts
- » **The Commercial Tobacco Control Story – Public Health Law Center**
Protecting local control and prioritizing health and racial equity
- » **Q & A**

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



ACT for Public Health

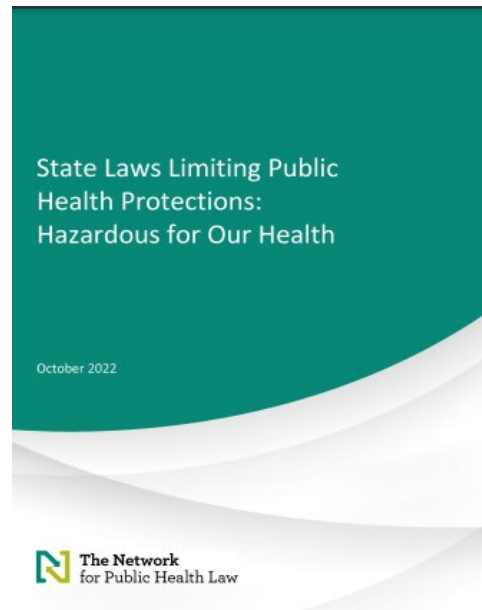
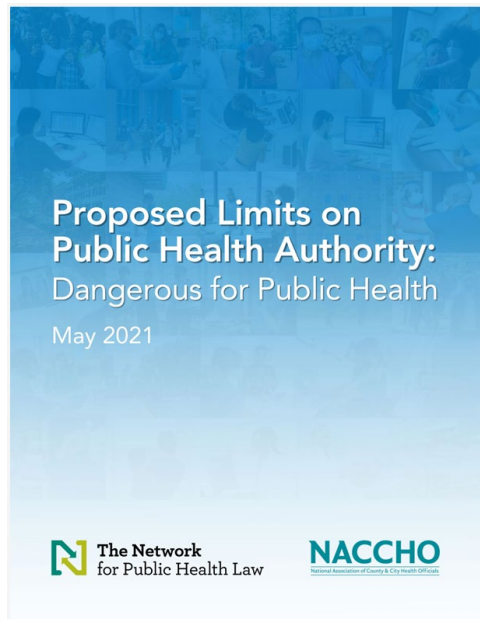


**Health law partners addressing challenges to
public health authority and infrastructure.**



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.

Coordinated backlash



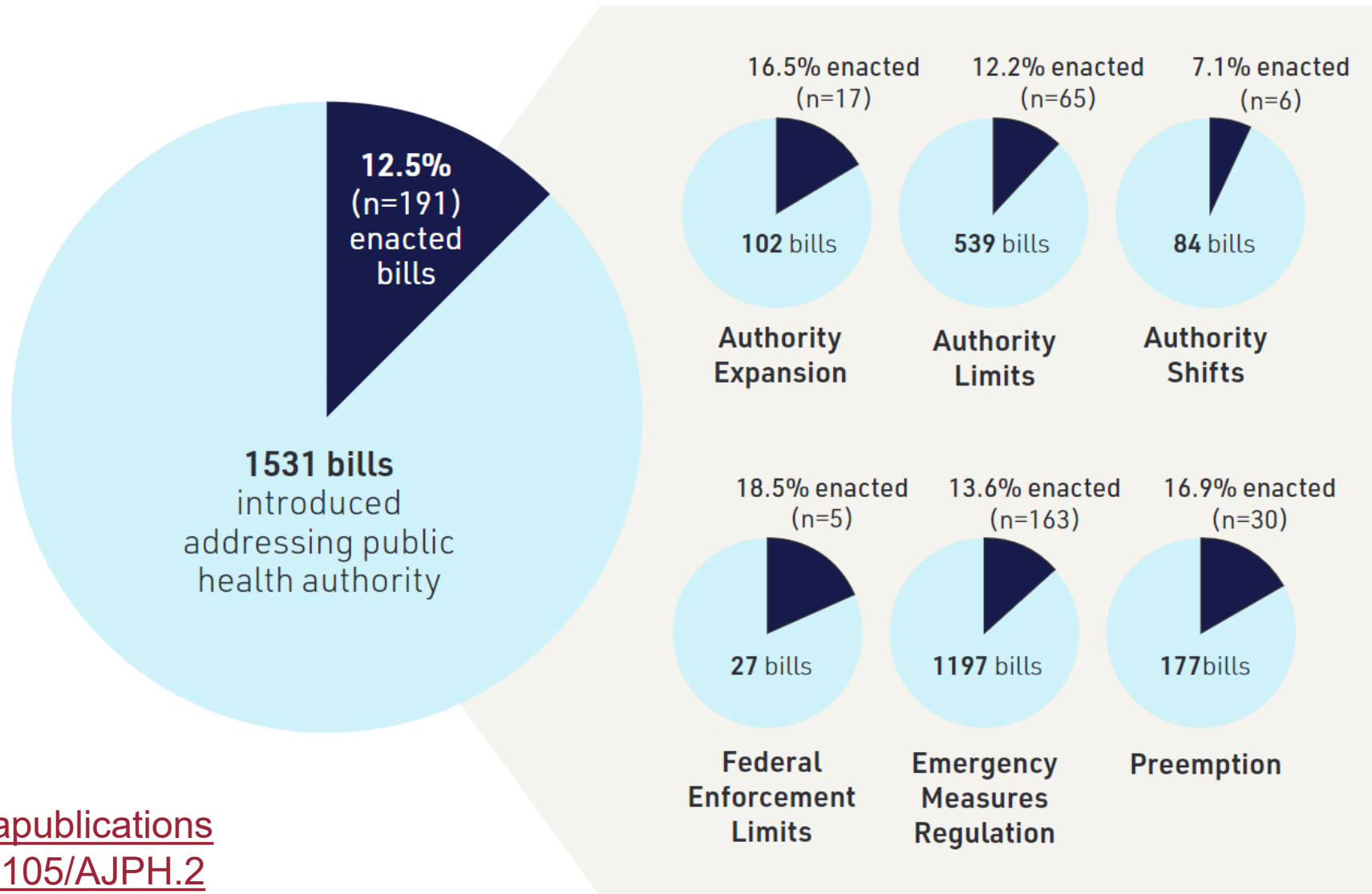
Prohibitions on Public Health Interventions

Shifts in Authority

Limitations on Public Health Orders

Elevation of Individual Rights Over the Common Good

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.

Dataset Live on LawAtlas.org now!



State Bills Relating to Vaccines in Schools and Provider Scopes of Practice

All 50 states and the District of Columbia require vaccinations for school entry. Since the emergence of the COVID-19 vaccine, a debate has emerged around compulsory vaccinations for school-age children and parental rights. In some states, COVID-19 vaccines became the newest battleground for anti-vaccine efforts more broadly, leading to the introduction of bills during the 2023 legislative session seeking to restrict the use of — or expand exemptions to — school requirements. At the same time, state legislatures continued to introduce bills expanding vaccination access by changing the scope of practice for providers like midwives, pharmacists, dentists and dental hygienists, and others to allow them to administer vaccinations.




This longitudinal dataset captures legislation addressing school entry vaccination requirements, non-medical exemptions to school vaccination requirements, the reallocation of authority to determine vaccination requirements for schools, and expansions to provider scope of practice to administer vaccines between January 1, 2023, and May 22, 2023, in all 50 US states and the District of Columbia.

CREATED BY: Center for Public Health Law Research Staff

MAINTAINED BY: Center for Public Health Law Research Staff

VALID FROM: January 1, 2023

UPDATED THROUGH: May 22, 2023

 Data  Codebook  Protocol

 See all related maps

<https://legacy.lawatlas.org/datasets/act-for-public-health-vaccine-bills>

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.

COVID-19 Litigation Studies

- March 20, 2020 – May 29, 2020:
53 decisions citing *Jacobson*
- March 1, 2020 – July 1, 2022:
1,069 public health authority decisions*
- July 1, 2022 – July 17, 2023: Review of
189 vaccine mandate cases

*Not included: contract claims, tort claims, detention claims, ADA claims, Title VII and labor law claims, tribal cases

ANALYTIC ESSAY **AJPH**

Judicial Review of Public Health Powers Since the Start of the COVID-19 Pandemic: Trends and Implications

Wendy E. Parmet, JD, and Faith Khalik, JD

During the COVID-19 pandemic, officials in the United States at all levels of government utilized their legal authorities to impose a wide range of measures designed to control the spread of SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2; the causative agent of COVID-19), including shutting down businesses, limiting the size of gatherings, requiring masking, and mandating vaccination.

These orders and regulations were challenged in court cases that resulted in more than 1000 judicial decisions. Common claims were based on alleged procedural and substantive due process violations, violations of religious liberty, and violations of officials' scope of authority. In more than three fourths of the decisions, the court refused to grant the plaintiffs the relief sought. However, plaintiffs found success in several notable cases, especially in federal court.

These recent decisions, as well as broader prepandemic trends, have important implications for public health officials' exercise of their public health powers, especially when those exercises implicate religious liberty. In this legal environment, officials may need to rely more on the powers of persuasion than on their legal authority alone. (*Am J Public Health*. Published online ahead of print January 19, 2023:e1–e8. <https://doi.org/10.2105/AJPH.2022.307181>)

AJPH
Published online ahead of print





ChangeLab Solutions

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.

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

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 **reduce violence** (for example by promoting safety in our homes and restaurants); **preventing illnesses** through education and services; **providing vaccines**; **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 kind to be



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

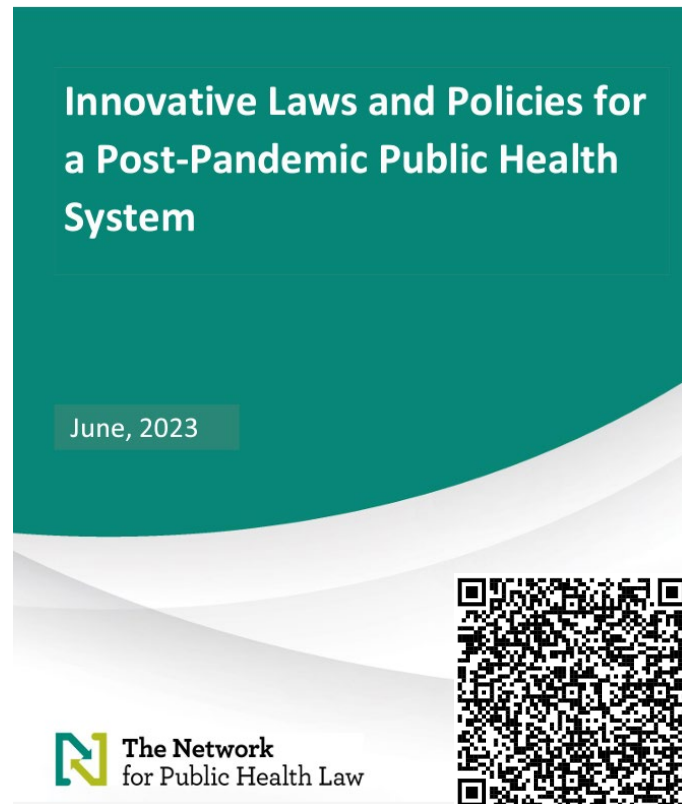
FACT SHEET



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

FACT SHEET

Toward a Coordinated Response and Framework for “Good” Public Health Authority





ACT for Public Health



Visit the Act for Public Health Website
actforpublichealth.org

- Request assistance
- Join the email list
- View resources
- Sign up for events



NACCHO Public Health Authorities Policy Statement: Supporting Public Health at a Critical Time

July 11, 2024

NACCHO
National Association of County & City Health Officials

Presentation Outline

Who is NACCHO?



NACCHO's Policy and Advocacy Work















Summary of Policy Statement

Who is NACCHO?

Our Focus

NACCHO is comprised of over **3,100 local health departments** across the United States. Our mission is to improve the health of communities by **strengthening** and **advocating for** local health departments.

Our Work

-   Advocacy
-   Partnerships
-   Funding
-   Training and education
-   Networking
-   Resources, tools, and technical assistance

NACCHO Policy and Advocacy

Voice of Local Public Health

2024 Legislative Priorities:

- Strengthen and support the **public health workforce**
- Bolster and improve access to **federal public health funding**, including resources to support **public health infrastructure** and **data modernization** at the local health department level
- Ensure **federal public health funding flows** from the federal level to states and local communities quickly and equitably
- **Address wide range of public health concerns** through work in coalition with partners



NACCHO Policy Statements

What is a NACCHO Policy Statement?

- Concise statement of NACCHO's stance on an issue
- Serves as call to action that describes, justifies, and endorses a defined course for NACCHO and its members

How do we develop Policy Statements?

- Created and modified (every three years) by NACCHO advisory groups and staff
- Approved by NACCHO Board of Directors

How do we use Policy Statements?

- NACCHO uses its policy statements to inform policymakers on various public health issues
- Local Health Departments have used NACCHO policy statements to educate, communicate about public health issues, and promote policy at the local level



Summary of Public Health Authority Policy Statement

Public Health Authority Policy Statement: Positions



NACCHO supports policies that allow public health officials to protect their communities

NACCHO supports legislation which affirms that public health authority is granted to public health officials

Public Health Authority Policy Statement: Position Justification

Authority allows for
preparedness in the
face of crisis

Public Health Authority Policy Statement: Position Justification

Authority allows
public health to
reduce preventable
deaths

Public Health Authority Policy Statement: Position Justification

Authority enhances
access and equity in
healthcare

Public Health Authority Policy Statement: Position Justification

Local health officials should be able to perform their roles without fear of harassment or other unwarranted ramifications

Public Health Authority Policy Statement: Position Justification

Public health decisions
should be evidence-
informed and free
from political pressure

Presentation Overview

Who is NACCHO?



NACCHO's Policy and Advocacy Work



Summary of Policy Statement

Thank you

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NACCHO
National Association of County & City Health Officials

Oregon's Big Experiment

Sarah Lochner, MA

Executive Director, Oregon Coalition of Local Health Officials (CLHO)

Background / Oregon Context

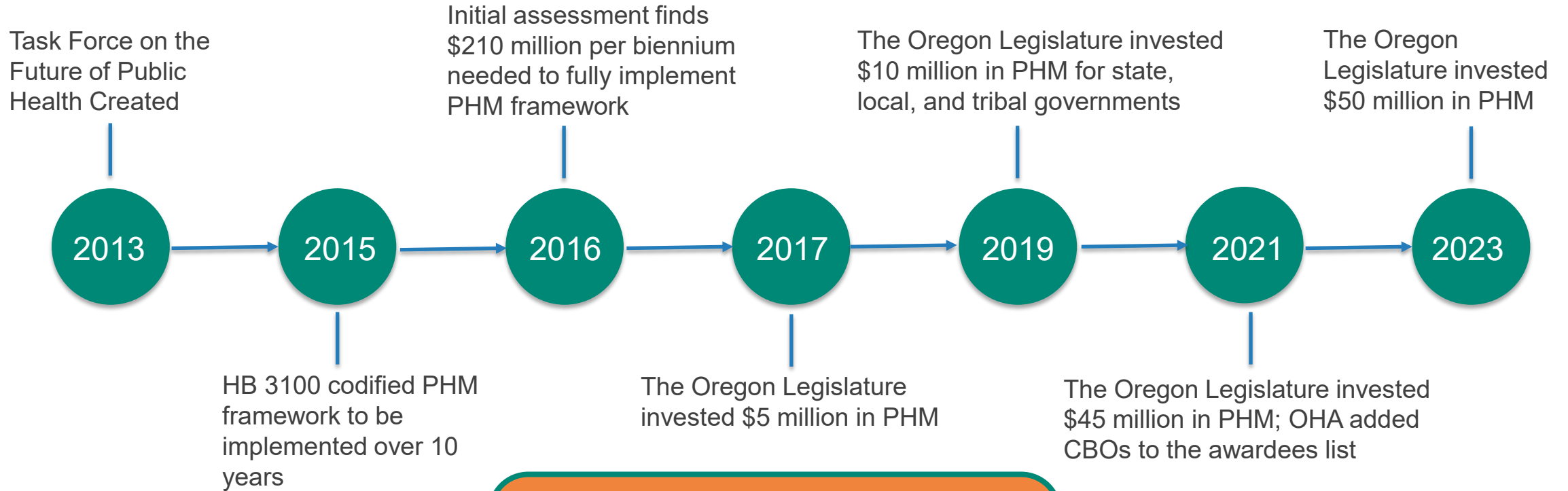
- Decentralized Public Health System
- Challenging Geography
- Biennial State Budget Process
- Modernization / Transformation Early Adopters

Acronyms:

- LPHAs – Local Public Health Authorities
- OHA – Oregon Health Authority (state agency)
- CBOs – Community Based Organizations (501c(3)s)
- CLHO – Coalition of Local Health Officials (SACCHO)



History of Public Health Modernization - Oregon



Current total biennial investment:

\$110 million

\$50 million to LPHAs

Oregon's Big Experiment

OHA directly funded CBOs via a grant process using PHM funds, beginning in 2021.

Bypassed LPHAs input / coordination

LPHAs have historically contracted with CBOs

Community Partnership Development is a foundational capability for LPHAs in statute

How we got here

- Pandemic
- Lack of capacity for stakeholder engagement process
- Impossible for OHA to know every community's details
- Urban focus
- Good intentions / Focus on health equity

Oregon's Big Experiment

Progress Made To Improve Process & Distribution of CBO Funds for 2023-25

- LPHA input into application requirements
- LPHAs included in application review process
- Focus on Local CBOs
- Funding formula utilized to establish fair distribution targets
- Encourage collaboration between CBOs and LPHAs
- Improve coordination through workplan sharing
- Technical assistance & trainings

Oregon's Big Experiment

Challenges Remain / The Work Continues

- 8 / 33 LPHAs were still underfunded in 2023-25 due to lack of qualified CBO applicants
- How to measure CBO success / health equity outcomes / accountability metrics?
- Improved collaboration between OHA, CLHO, LPHAs
- Will continue to iterate / push for improvements / geographic equity

Oregon's Big Experiment

Success Stories

- [Public Health Modernization Builds Trust and Addresses Micronesian Islander Community Health Needs in Union County](#)
- [Public Health Modernization Funding Supports Disaster Preparedness in Clackamas County](#)
- [Looking to the Future, Lincoln County Public Health and Olalla Center Build Resiliency in Youth](#)

North Carolina Advocacy at the State Supreme Court

Patrick Brown, PharmD

Executive Director, North Carolina Public Health Collaboration

Kinsley v. Ace Speedway Racing Ltd.

The case in question centers around ACE Speedway – an outdoor race track in Alamance County North Carolina.

- » **During early days of COVID, Ace Speedway continued plans to operate mass gatherings via outdoor race events**
- » **NCDHHS Secretary Mandy Cohen issued an abatement order and won court orders to shut down operations not in compliance with the abatement order**
- » **Ace Speedway challenged NCDHHS claiming the Secretary's actions violated its rights to earn a living and equal protection**
- » **Arguments were heard by the NC Supreme Court on November 7th, 2023**

Our Action

NCALHD Filed an [Amicus Brief](#) in support of Secretary Kinsley regarding this case

- » NCDHHS approached NCALHD regarding this case in late March 2023
- » NCALHD engaged with the law firm Teague Campbell in early April 2023 regarding support for filing the brief
- » Brief was filed on May 3, 2023

Amicus Curiae

- » Amicus Curiae literally translated from Latin is "friend of the court."
- » Generally, it is referencing a person or group who is not a party to an action, but has a strong interest in the matter. This person or group will petition the court for permission to submit a brief in the action intending to influence the court's decision. Such briefs are called "amicus briefs."
- » Reference: https://www.law.cornell.edu/wex/amicus_curiae

Future Considerations

Recommendations from NC Experience

- » **Consider if this is a type of advocacy that your organization would want to take up**
- » **Decide if you want to establish a legal reserve fund**
- » **Know who your *pro bono* partners might be**
- » **Keep an eye out for emerging legal issues**

Stay in touch!

- » **Patrick Brown, PharmD
Executive Director, North Carolina Public Health Collaboration**
- » **pbrown@ncapha.org | 984-275-7479**



THE IMPORTANCE OF LOCAL AUTHORITY: LESSONS FROM COMMERCIAL TOBACCO



**PUBLIC HEALTH
LAW CENTER**
at Mitchell Hamline School of Law

THE PUBLIC HEALTH LAW CENTER



WHAT WE DO



Improving health through the power of law:

- Eliminate commercial tobacco
- Promote healthy food & physical activity
- Support Tribal public health policy
- Advance climate justice

EQUALITY:

Everyone gets the same – regardless if it's needed or right for them.



EQUITY:

Everyone gets what they need – understanding the barriers, circumstances, and conditions.



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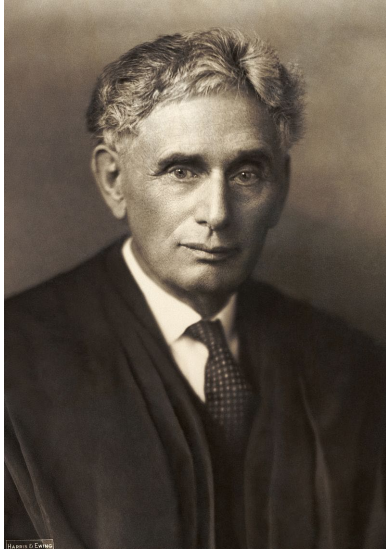
WHAT IS PREEMPTION?

- Supremacy Clause of U.S. Constitution
- “Higher” level of government
 - Legislative or regulatory action
 - Eliminates or reduces authority of a “lower” level of government



grassrootschange.net

WHY DO WE CARE? IT SHUTS DOWN THE LABORATORIES



- “[S]erve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*
- “State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.” *Pres. Obama, May 2009*

WHY DO WE CARE? CHILLS LOCAL ACTIVITY

“[A]ll public health is local – it’s got to start and be sustained at the local level.” *Howard Koh, Asst. Secretary for HHS, July 2009*

“Eliminate State laws that preempt stronger local tobacco control laws.” *Tobacco Use Objective 16, Healthy People 2020 Initiative*



WHY DO WE CARE? **REDUCE DISPARITIES**



BIG TOBACCO'S PREEMPTION STRATEGY IN THEIR OWN WORDS



Industry leaders have recognized that state laws which preempt local anti-tobacco ordinances are the most effective means to counter local challenges.

Kurt Malmgren, R.J. Reynolds, 1992.

While we're not married to any particular form of pre-emption language, we're dead serious about achieving pre-emption in all 50 states.

Tina Walls, Philip Morris, 1994.

IMPORTANCE OF LOCAL CONTROL

FLAVORED TOBACCO PRODUCT EXAMPLES



Federal preemption

- Tobacco Control Act
- Extensive litigation



State preemption

- Ohio example

CONTACT US



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