The Network for Public Health Law

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JUDICIAL TRENDS IN PUBLIC HEALTH – NOVEMBER 18, 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

1. SOURCE AND SCOPE OF PUBLIC HEALTH LEGAL POWERS

2. CONSTITUTIONAL RIGHTS AND THE PUBLIC'S HEALTH

A.M.C. v. Smith, (U.S. District Court for the Middle District of Tennessee, August 26, 2024): In a class action case brought on behalf of thousands of plaintiffs, the U.S. District Court for the Middle District of Tennessee found that TennCare, Tennessee's Medicaid program, violated federal statutes and the Constitution in terminating or wrongly denying coverage to Medicaid beneficiaries and applicants. The Court ruled in favor of the class on myriad issues, including that TennCare 1) failed to determine applicants' eligibility for different categories in Medicaid before terminating them; 2) did not provide applicants with required notice about their eligibility results or provided misleading notice; 3) denied applicants the opportunity to contest eligibility determinations; and 4) discriminated on the basis of disability. The first three findings are based on federal law and the Due Process Clause of the Constitution, and the fourth finding is based on the Americans with Disabilities Act. With these

legal findings, the Court will now shift to determining the remedy for the statutory and constitutional violations that harmed thousands of Tennesseans for many years.
Read the full Opinion here.

The Catholic Benefits Association, et al. v. Equal Employment Opportunities Commission, (U.S. District Court for the District of North Dakota, September 23, 2024): The U.S. District Court for the District of North Dakota issued a preliminary injunction prohibiting the Equal Employment Opportunity Commission (EEOC) from enforcing certain provisions of the federal Pregnant Workers Fairness Act (PWFA) against certain Catholic employers across the country. The PWFA protects employees from discrimination based on pregnancy, childbirth, or related medical conditions. The EEOC interprets the PWFA as including protections for employees seeking abortion care or fertility treatments, like IVF. Employers are not required to provide medical care coverage for abortion care or fertility treatments but may not discriminate against an employee with regard to using medical or other leave for those purposes. The Catholic employers deem abortion and fertility treatment immoral and argued that applying the law to them would violate the Religious Freedom Restoration Act (RFRA) designed to protect religious liberty. The Court was persuaded by the argument and found that the PWFA likely violates RFRA. Read the full Opinion here.

U.S. v. Connelly, (U.S. Court of Appeals for the 5th Circuit, August 28, 2024): The U.S. Court of Appeals for the Fifth Circuit found unconstitutional a federal law that prohibits an unlawful user of controlled substances from possessing a firearm. Police responded to a call about gunshots being fired at a home where Paola Connelly lived. When police arrived, Connelly acknowledged to police that she possessed a firearm and that she occasionally used marijuana. Although Connelly had not engaged in violent behavior and was not intoxicated at the time, police charged her with violating 18 U.S.C. §922(g)(3), which prohibits possession of a firearm by one who unlawfully uses controlled substances. Applying the Bruen test, the Fifth Circuit found that “our history and tradition may support some limits on a presently intoxicated person's right to carry a weapon… but they do not support disarming a sober person based solely on past substance usage.” As a result, the federal prohibition was found unconstitutional. Read the full Opinion here.

3. PREVENTING AND TREATING COMMUNICABLE CONDITIONS

4. SOCIAL DISTANCING MEASURES

5. ADDRESSING CHRONIC CONDITIONS

Food and Water Watch, et al. v. U.S. Environmental Protection Agency, (U.S. District Court for the Northern District of California, September 24, 2024): The U.S. District Court for the Northern District of California found that the current "optimal" level of fluoride in drinking water set by the Environmental Protection Agency (EPA) presents an unreasonable risk of lowering children's IQ. For generations, the majority of local jurisdictions across the country have added fluoride to drinking water supplies, most commonly at the level recommended as optimal by the EPA, though no federal law requires water fluoridation by these local governments. Groups challenging the EPA’s establishment of an optimal level asked the Court to order the EPA to reverse course, retracting the recommendation and prohibiting the use of fluoride in drinking water pursuant to the Toxic Substances Control Act (TSCA). While the Court found that the EPA failed to consider evidence of harm from water

fluoridation and directed the Agency to take action under TSCA, the decision does not indicate what specific action the Agency must take. Read the full Opinion here.

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

In re Fosamax (alendronate sodium) Products Liability Litigation, (U.S. Court of Appeals for the 3rd Circuit, September 20, 2024): The U.S. Court of Appeals for the Third Circuit found that the federal Food, Drug, and Cosmetic Act (FDCA) that gives the Food and Drug Administration (FDA) power to regulate the labeling of drugs does not preempt failure-to-warn claims made under state law. Nationally more than 3,000 cases have been filed against Merck, the manufacturer of Fosamax, an osteoporosis drug. Plaintiffs allege that Merck was aware that the drug created a risk of thigh bone fractures but failed to warn about that risk. Merck claimed that the warnings on the drug were approved by the FDA, that the company sought but was denied approval for relevant changes to the FDA-approved warnings, and that this federal process preempts any failure-to-warn claims based on state law. The parties have litigated this issue for more than 10 years, with several court decisions and reversals over that time. Although Fosamax now carries the thigh bone fracture warning,as a result of the Court's decision, those injured prior to the warnings are able to proceed to trial on their state law claims. Read the full Opinion here.

Does v. Broadbent, et al., (Supreme Court of Utah, August 8, 2024): The Supreme Court of Utah held that the state's Health Care Malpractice Act did not apply to plaintiffs' claims of sexual battery, sexual assault, and intentional infliction of emotional distress against their former health care provider, obstetrician-gynecologist Dr. Broadbent. The Malpractice Act applies to claims alleging "personal injuries relating to or arising out of health care rendered." The plaintiffs allege that Dr. Broadbent engaged in inappropriate conduct during medical appointments under the guise of providing medical care. The trial court had dismissed the plaintiffs' claims, concluding that the Malpractice Act applied and that the plaintiffs failed to take required pre-litigation steps prior to filing suit. The Supreme Court reversed, holding that the Malpractice Act did not apply because the alleged acts served no medical purpose and could not be considered medical treatment, even though they occurred during medical appointments. As a result, the plaintiffs were not required to meet the requirements of the Malpractice Act. Read the full Opinion here.

7. PUBLIC HEALTH INFORMATION MANAGEMENT, PRIVACY & SECURITY

Vita v. New England Baptist Hospital, (Supreme Judicial Court of Massachusetts, October 24, 2024): The Supreme Judicial Court of Massachusetts held that two hospitals did not violate Massachusetts' wiretap law when they captured Vita's personal information as she browsed the hospitals' websites searching for health care providers to treat certain medical conditions. Although the hospitals did not collect personal medical information protected by federal and state privacy laws, they did collect information about the types of medical professionals Vita researched and they sold that information to third parties. The case turned on whether web browsing activity constitutes "communication" under the wiretap law. The Court found the statute ambiguous on that question and examined legislative history, which revealed that the law is intended to apply to covert interception of private, person-to-person conversations. Applying the "rule of lenity" that a criminal statute should be narrowly construed in favor of the accused, the Court dismissed Vita's claims, holding that the wiretap law does not apply to intercepting web-browsing activity. Read the full Opinion here.

8. REGULATING COMMUNICATIONS

Bates v. Oregon Health Authority, (Court of Appeals of Oregon, October 16, 2024): The Court of Appeals of Oregon found that a state law prohibiting packaging of tobacco and cannabis vape products that is attractive to minors violates vape manufacturers' free speech rights under the Oregon Constitution. Regulations adopted under the law prohibited vape product packaging using cartoons, celebrity endorsements, and fruit flavors and descriptors for other flavors likely to appeal to minors. The Court found these restrictions not focused on the sale of vape products to underage consumers but rather restraints on speech. Given the broad protection of speech in the Oregon Constitution, the statute and regulations were struck down as unconstitutional. Read the full Opinion here.

9. MONITORING PROPERTY AND THE BUILT ENVIRONMENT

King County v. Friends of Sammamish Valley, (Supreme Court of Washington, September 19, 2024): The Supreme Court of Washington found that King County failed to properly consider the environmental impacts of changes made to zoning laws designed to support certain types of businesses–wineries, breweries, and distilleries in rural areas. Washington's State Environmental Protection Act (SEPA) requires significant analysis of the environmental impacts of development projects. King County passed zoning changes that would allow for expanded operations at certain alcohol businesses, including permitting remote tasting rooms, large events, and paved parking areas to accommodate the changes. These changes would apply in rural and agricultural communities. The County argued that it was not required to conduct the full SEPA analysis of environmental impacts. The Court rejected that argument, finding SEPA applicable and the County's environmental assessment inadequate. Read the full Opinion here.

10. PUBLIC HEALTH EMERGENCY: LEGAL PREPAREDNESS AND RESPONSE

11. REPRODUCTIVE LIBERTIES AND CARE ACCESS

Oklahoma v. Department of Health and Human Services, (U.S. Supreme Court, September 3, 2024): The Supreme Court of the United States refused to consider a case in which the U.S. Circuit Court of Appeals for the 10th Circuit allowed the U.S. Department of Health and Human Services to withhold approximately $4 million in Title X funding from the state of Oklahoma. Title X rules require that recipient states counsel pregnant people who use federally funded family planning centers about all options, including abortion care. Oklahoma refused to do so arguing that state law bans abortion in almost all circumstances. The trial court found for Oklahoma and the appellate court reversed; the Supreme Court allowed that decision to stand. Under the first Trump Administration, Title X rules did not require this counseling; the Biden Administration changed the rule to require counseling on all options. For more on the history of this issue, read our Law and Policy Insight here. Read the full Opinion of the 10th Circuit here and the notice of the Supreme Court's refusal to hear the case here.

Judicial Trends in Public Health is published quarterly by the Network for Public Health Law. If you have questions about any of the covered cases, please contact the Network here.