

JUDICIAL TRENDS IN PUBLIC HEALTH – FEBRUARY 18, 2025


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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11. REPRODUCTIVE LIBERTIES & CARE ACCESS ([1 Case](#))

1. SOURCE AND SCOPE OF PUBLIC HEALTH LEGAL POWERS

T&V Associates, Inc. v. Director of Health and Human Services (Michigan Supreme Court, November 1, 2024): The Michigan Supreme Court held that a challenge to the State's epidemic emergency powers act is moot and vacated the lower court's finding that the act is unconstitutional. A catering service and banquet facility challenged the statute under which the Michigan Director of Health and Human Services issued a COVID-19 emergency order limiting gatherings at food service establishments. The challenged statute authorizes the Director to issue an emergency order prohibiting gatherings and establishes procedures to follow upon determination "that control of an epidemic is necessary to protect the public health." The State argued that the case was moot as the challenged order was no longer in effect. The intermediate appellate court rejected the mootness argument and found that the statute was an "essentially unlimited" grant of authority and thus an unconstitutional delegation of legislative authority to the executive branch. The Supreme Court reversed its holding that the case is moot, vacating the lower court's finding of unconstitutionality, and




not addressing the merits of the challenge. As a result, the statute remains in effect. [Read the full opinion here.](#)

2. CONSTITUTIONAL RIGHTS AND THE PUBLIC'S HEALTH

CompassCare v. Hochul (2nd Cir., January 2, 2025): The Second Circuit Court of Appeals revived one claim made by religious employers and related crisis pregnancy centers who challenged a New York law that prohibits employment discrimination or retaliation based on employees' reproductive health decision-making. The employers alleged the statute violates various First Amendment rights, including free speech, free exercise, religious autonomy, and expressive association; the district court dismissed all claims. On appeal, the Second Circuit revived only the expressive association claim, finding that the statute could violate an employer's expressive association rights if it requires the employer to hire or retain individuals who act or have acted against the employer's core mission. This decision remands the case to the lower court to determine whether any of the plaintiff-employers can prove that being required to hire or retain individuals who engage in specific reproductive health care threatens the employer's core mission. [Read the full opinion here.](#)

Reese v. Bureau of Alcohol, Tobacco, Firearms, and Explosives (5th Cir., January 30, 2025): The Fifth Circuit Court of Appeals held that federal laws prohibiting the sale of handguns by federally licensed sellers to individuals under 21 are unconstitutional and reversed the lower court's holding that such challenged laws are consistent with the nation's historical tradition of firearm regulation. Pro-gun rights organizations and two Louisiana residents aged 18–20 challenged the federal laws under the Second Amendment, which protects the right of the people to keep and bear arms. The lower court held in favor of the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) concluding the laws satisfied the *Bruen* test requiring historic precedent, citing 19th century laws restricting firearm sales to minors and pre-*Bruen* Fifth Circuit analysis in *NRA v. ATF*. The appellate court reversed this decision, rejecting the comparison to 19th century firearm laws because *Bruen* seeks to reflect the intentions of the Founders. As a result, the federal prohibition was found unconstitutional. [Read the full opinion here.](#)

Johnson v. Sanders (10th Cir., November 5, 2024): The Tenth Circuit Court of Appeals held against an incarcerated transgender woman whose hormone replacement therapy (HRT) was discontinued by staff upon her transfer to a new carceral facility in Oklahoma. The inmate was originally diagnosed with gender dysphoria and prescribed HRT while detained at the county jail and she continued this treatment when she initially transferred facilities. After subsequent transfers, however, the inmate had her diagnosis reversed by a prison psychologist and had her HRT treatment discontinued against her wishes. She brought a deliberate indifference claim under the Eighth Amendment's prohibition on cruel and unusual punishment against staff for discontinuing her HRT treatment. The district court held that prison staff did not act with deliberate indifference to the inmate's serious medical needs and the appellate court affirmed. Transgender women's access to medical care and safe facilities faces heightened uncertainty as a recent Executive Order by President Trump directs federal prisons to house transgender women in men's prisons and ceases funding for any gender-affirming medical care for federal inmates. This Executive Order has been temporarily blocked after transgender inmates brought suit, but the case remains to be heard in federal court. [Read the full 10th Circuit opinion in *Johnson* here.](#) [Read the District Court ruling on the Executive Order here.](#)



Held v. Montana (Montana Supreme Court, December 18, 2024): The Montana Supreme Court upheld the right to a clean and healthful environment under the Montana Constitution, affirming the trial court’s decision and rejecting the State’s contentions that the framers did not intend to encompass environmental degradation resulting from climate change. A group of youths challenged a provision of the Montana Environmental Policy Act (MEPA) which restricts the consideration of greenhouse gas emissions in environmental reviews. The court cited precedent describing the constitutional right as “forward-looking and preventative” from the 1972 Montana Constitutional Convention and exercised strict scrutiny over the MEPA prohibition. Upholding the constitutional right resulted in striking down the statute. [Read the full Opinion here.](#)

3. PREVENTING AND TREATING COMMUNICABLE CONDITIONS

4. SOCIAL DISTANCING MEASURES

5. ADDRESSING CHRONIC CONDITIONS

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


In re National Prescription Opiate Litigation (Ohio Supreme Court, December 10, 2024): The Ohio Supreme Court ruled in favor of Walgreens, CVS, and Walmart on a certified question before the Sixth Circuit, clarifying that the litigation before the circuit court concerns state product liability laws rather than common law principles. The court held that the Ohio Product Liability Act (OPLA) repealed common law for product liability when enacted, invalidating common-law public-nuisance claims brought by two northeast Ohio counties against pharmacies for their roles in perpetuating the opioid epidemic by filling prescriptions without proper controls in place. The district court previously ruled against the pharmacies that sought dismissal, and now the case may continue at the appellate level. If the Sixth Circuit subsequently concludes the counties cannot make a claim within the confines of OPLA, massive opioid judgments could be in jeopardy. [Read the full opinion here.](#)

7. PUBLIC HEALTH INFORMATION MANAGEMENT, PRIVACY & SECURITY

8. REGULATING COMMUNICATIONS

Cocroft v. Graham (5th Cir., November 22, 2024): The Fifth Circuit Court of Appeals held that marijuana dispensaries seeking to advertise lack protections under the First Amendment because federal law prohibits marijuana dispensing. Dispensaries in the State challenged the Mississippi law prohibiting advertisement in media and in public spaces that was enacted when the State legalized medical marijuana in 2022. The court cited the U.S. Supreme Court’s *Central Hudson* test, which provides that commercial speech must be for lawful activity to be protected under the First Amendment. Although Mississippi law permits the sale of medical marijuana, the fact that federal law prohibits marijuana sales renders the dispensing of marijuana in Mississippi unlawful activity for First Amendment purposes. Because the First Amendment was not applicable, the advertising restrictions were upheld. [Read the full opinion here.](#)

9. MONITORING PROPERTY AND THE BUILT ENVIRONMENT



Singer v. City of Orange City (Iowa Supreme Court, December 20, 2024): The Iowa Supreme Court upheld a city ordinance authorizing the city inspector to seek legal remedies if refused entry to a rental property during the course of inspection, to include obtaining an administrative search warrant. A group of owners and renters of rental units challenged the ordinance on grounds that the law violates the state constitution because the City could seek warrants without needing to show probable cause. The court rejected this challenge as facial because the ordinance could operate without violating the state constitution, at least in some circumstances. [Read the full opinion here.](#)

Attorney General v. Milton (Supreme Judicial Court for Suffolk County, January 8, 2025): The Supreme Judicial Court for Suffolk County upheld the statewide Massachusetts Bay Transportation Authority (MBTA) Communities Act, which requires municipalities with MBTA public transit services to adopt zoning laws that provide for at least one district of multifamily housing near MBTA facilities. The town of Milton ultimately voted against a local proposed zoning law that would have brought the town into compliance. Milton sought to be considered in interim compliance, but the State began enforcement proceedings and brought this case. Although the court found the Act constitutional, enforcement against Milton was reversed because the administrative agency that set guidelines for compliance with the Act failed to follow proper procedures in doing so. [Read the full opinion here.](#)

10. PUBLIC HEALTH EMERGENCY: LEGAL PREPAREDNESS AND RESPONSE

11. REPRODUCTIVE LIBERTIES AND CARE ACCESS

State ex rel. Torrez v. Board of County Commissioners for Lea County (New Mexico Supreme Court, January 9, 2025): The New Mexico Supreme Court struck down local ordinances across several counties and cities in the State that would have banned abortions in violation of the state constitution. The New Mexico Constitution includes an Equal Rights Amendment, guarantees of liberty and due process including privacy and bodily autonomy, and protections of inherent rights. The New Mexico Supreme Court had previously blocked the ordinances pending a decision on the merits. In addition to finding the ordinances unconstitutional, the court held that the ordinances violated state laws governing the practice and licensure of medicine, malpractice, healthcare codes, and the right to reproductive and gender-affirming care. [Read the full opinion here.](#)

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