

# Public Health Law & Racial Equity: Bridging Theory, Practice, and Collaborative Change

RHE CFA Virtual Training | February 11 | 1:30 PM – 3:00 PM CT

Presented by Sara Rogers, Kathleen Hoke, April Shaw and Susan Fleurant

# Welcome!

## Please add to the chat

- **Name**
- **Location**
- **Organization**
- **What are you looking forward to this week?**

## Speakers



**Sara Rogers, MPH**  
Senior Policy Analyst, Health Equity



**April Shaw, PhD, JD**  
Deputy Director, Health Equity



**Kathi Hoke, JD**  
Director, Eastern Region,



**Susan Fleurant, JD, MPH**  
Staff Attorney, Mid-States Region

## The Network's Racial Health Equity CFA Initiative

Create better connection between public health and community needs with law and policy solutions that advance racial health equity

### The 2024-2025 Cohort

- 17 organizations and their partners
- AZ, AR, CA, CT, IL, MI, MN, NJ, OH, PA, TX, and WA
- Local and state health departments, community-based organizations, advocacy groups, professional associations, and others
- Issue areas: food security, overdose prevention sites, climate/worker protections, maternal and child health, disaggregation of public health data, housing, advocacy, and more

# Today's Agenda

**Welcome & Overview**

**Presentations**

**Breakout Session**

**Next Steps**



## Why is law important to public health?

Laws play a significant role in public health in a variety of ways:

- **Laws define the scope of power and responsibility of public health boards and officials (infrastructural);**
- **Laws set parameters for partnerships and collaborations;**
- **Laws prohibit, require or regulate behavior to reduce morbidity and mortality (interventional);**
- **Laws provide for public benefits to encourage behavior or provide for necessities (health care, housing, food);**
- **Laws dictate powers among various levels of government.**

## PUBLIC HEALTH POWER IS SHARED . . .

*Across levels of government . . .*

FEDERAL

LOCAL

TRIBAL

STATE

# The U.S. Constitution

## Federal Public Health Powers are Limited

Federal government has **no general public health powers** (or “police” powers)

### COMMON CONSTITUTIONAL SOURCES:

- ✓ **Commerce Clause:** To regulate interstate commerce, construed broadly but there are limits.



**Tobacco Regulation v. ~~Gun-Free School Zones~~**

- ✓ **Tax:** To incentivize or discourage behavior and secure funds for public health purposes.

**Affordable Care Act**

- ✓ **Spend:** The power of the purse! Feds give with conditions to indirectly achieve public health goals.





## The U.S. Constitution State Public Health Powers are Plenary

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, **are reserved to the States** respectively, or to the people.

*10<sup>th</sup> Amendment*

*Buttressed by Jacobson v. MA (1905)*

- ✓ ***Examine state constitution.***
- ✓ ***Local public health powers flow from the state through legislation.***

## Tribal Public Health Powers\*

*Tribal governments possess independent public health powers.*

- ✓ 573 federally recognized American Indian and Alaska Native tribes and villages in the United States.
- ✓ Tribes are **sovereign nations** that maintain a government-to-government relationship with the U.S. and have the **inherent powers of self-government**.
- ✓ As sovereign nations, tribes are uniquely situated to **use law as a public health tool to promote the health and well-being of their communities**.
- ✓ Federal law creates a framework that governs the relationships among tribes, states, and the federal government that can affect tribal public health.

*\*I acknowledge my limited knowledge in this space.*

# PUBLIC HEALTH POWER IS SHARED . . .

Across branches of government . . .



## EXECUTIVE BRANCH

Power vested in:

***POTUS, Governor, County Executive, Mayor***

**Source: Federal or State Constitution or Local Charter**

***Executive Agencies, including Boards of Health***

**Source: Federal, State, or Local “Enabling” Statutes**

Power exercised via:

- ✓ ***Executive orders***
- ✓ ***Administrative regulations***
- ✓ ***Policy/Guidance***
- ✓ ***Enforcement of statutes***
- ✓ ***Budget control (if any) and use of funding***

## LEGISLATIVE BRANCH

**Power vested in:**

***Congress, State or local legislature***

**Source: Federal or state constitution; state code and local charter**

**Power exercised via:**

- ✓ ***Legislation***
- ✓ ***Budget control***



## JUDICIAL BRANCH

*Interprets and applies the law, including whether executive or legislative branch had power to act—often assesses scope of public health authority*

*Creates “common law”*



## SCOPE OF PUBLIC HEALTH POWERS

*Impacted by:*

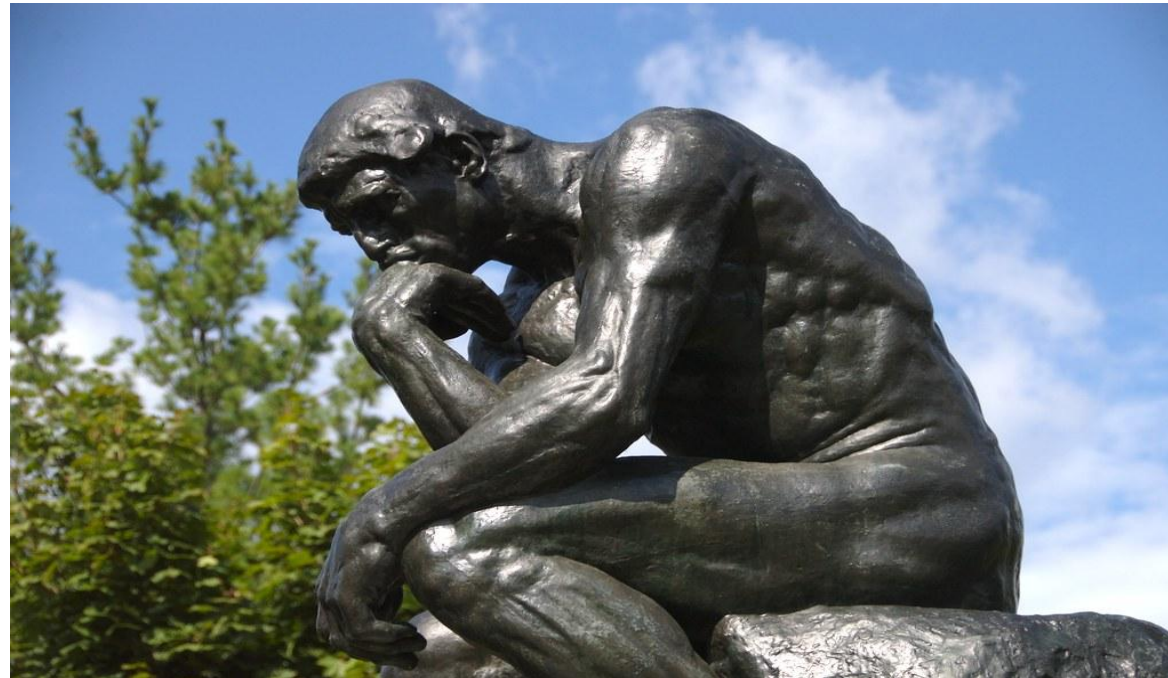
- ✓ **Constitutional constraints**
- ✓ **Preemption**

# PURSUING LAW CHANGE

## Questions to Consider:

- Why is a policy change needed/what issue or problem are you trying to address?
- What type of policy is needed?
  - What jurisdictions or entities are most effectively addressing this issue? How?
- What is the evidence base for such policy?
  - Have other jurisdictions or entities adopted similar laws or policies? Result?
- Who has the authority/responsibility to impose law?
  - Is there federal/state preemption?
- Who will enforce the law and how?
- To whom will the law apply and what will be the requirements, prohibitions and penalties?
- What legal or policy limitations exist for those seeking law change (i.e., lobbying restrictions for 501(c)(3) organizations; government employees)?

## Question: What Worries You About Doing Racial Health Equity Work?



# The Persistence of Structural Racism

SECTION 504 OF THE CIVIL RIGHTS ACT OF 1964  
 TITLE II OF THE CIVIL RIGHTS ACT OF 1964  
 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964  
 THE CIVIL RIGHTS ACT OF 1968  
 THE CIVIL RIGHTS ACT OF 1991  
 THE CIVIL RIGHTS ACT OF 2001  
 THE CIVIL RIGHTS ACT OF 2009  
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 THE CIVIL RIGHTS ACT OF 2019  
 THE CIVIL RIGHTS ACT OF 2020  
 THE CIVIL RIGHTS ACT OF 2021  
 THE CIVIL RIGHTS ACT OF 2022  
 THE CIVIL RIGHTS ACT OF 2023  
 THE CIVIL RIGHTS ACT OF 2024  
 THE CIVIL RIGHTS ACT OF 2025

Legislature



Executive Powers



Courts

h Carolina system  
 tem to eliminate di  
 spending. It's anot  
 become a defining  
 Texas and Florida  
 the decision in No  
 erving board.

Formal & Informal  
 Actions



*Narrative*



## What's Different?

- **Increase in overt racism**
- **The legal landscape**
- **Aggressive elimination of anti-racist governmental work**

**Race \**Neutral*\***

**Race-based**



Race \**Neutral*\*

**Race-based**

Race \**Neutral*\*

## Some Key Legal Definitions

### Race-based classifications

- **Strict scrutiny review**
- **Most difficult legal challenge for a government to overcome**

**ex: race-conscious affirmative action**

### Race-neutral classifications

- **Rational basis review**
- **Easiest legal challenge for the government to overcome**

**ex: income-based affirmative action**



# The Social Determinants of Health

- The problem with race-neutral classifications
- The problem with race-based classifications





## Question: What Are You Optimistic About?





# *Opportunities for Continued Partnerships*

## Breakout Session

### Two groups

- Group 1 | Kathi & Sara
- Group 2 | April & Susan

» *What's said here stays here, what's learned here leaves here*

» *Be present; Listen intently; Ask questions*

» *Practice self-care and community-care as needed*

## Next Steps

### Take our survey!

Your experience is important to us! Please take our survey to share feedback about this event and to help inform future planning.



### Upcoming Dates

**April 2025, TBD: Guided virtual facilitated discussion**

**April 30, 2025: Legal and policy technical assistance ends**

**May - June 15, 2025: Project evaluation concludes**

## Thank you!

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