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Public Health Law News

September 2022



Public Health Law Program
Center for State, Tribal, Local, and Territorial Support
Centers for Disease Control and Prevention

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Announcements

New Resource | Environmental Justice Index

The Environmental Justice Index (EJI) uses data from the US Census Bureau, Environmental Protection Agency, Mine Safety and Health Administration, and Centers for Disease Control and Prevention (CDC) to rank the cumulative impacts of environmental injustice on health for every census tract. The EJI delivers a single environmental justice score for each community so that public health officials can identify and map areas at risk for the health impacts of environmental burden. [View the resource.](#)

The APHA 2022 Annual Meeting and Expo | Virtual & In-Person Events

Registration is open for the American Public Health Association (APHA) 2022 Annual Meeting and Expo scheduled to be held **in person November 6–9 in Boston**—and **virtually November 14–16**. The theme this year is “150 Years of Creating the Healthiest Nation: Leading the Path Toward Equity.” [Register today](#) and [view the Law Section sessions and events](#).

Job Opening | Attorney/Privacy Officer, Chicago Department of Public Health

The Chicago Department of Public Health (CDPH) is seeking candidates for an attorney/privacy officer position. The attorney/privacy officer will oversee CDPH’s compliance program, develop and oversee data sharing processes and procedures, manage CDPH’s subpoenas and requests for medical information, and more. Applications are open through **September 27**. [Learn more and apply](#).

Job Opening | Professor, Bernard J. Beazley Chair in Health Law and Policy, The Loyola University School of Law

The University of Loyola School of Law is seeking candidates with expertise in public health law for a professor to hold the Bernard J. Beazley Chair in Health Law and Policy position. They are interested in candidates who can assist in fostering interdisciplinary connections with the recently established Parkinson School of Health Sciences and Public Health, including the development of a joint JD/MPH program. [Learn more and apply](#).

Job Opening | Public Health Senior Attorney, The Network for Public Health Law

The Network for Public Health Law is seeking a public health senior attorney to lead and coordinate work in our Act for Public Health (A4PH) initiative, which helps public health departments preserve their authority and powers to protect the health of communities. This position will track and analyze legislation, provide legal technical assistance, conduct training, develop tools and educational materials, and facilitate opportunities for networking and peer assistance. This position will also be the main point of contact and coordinate with A4PH partner organizations. [Learn more and apply](#).

Tribal Announcements

Article | Implications for Coding Race and Ethnicity for American Indian and Alaska Native High School Students in a National Survey

The *Journal of Health Care for the Poor and Underserved* recently published an article titled “Implications for Coding Race and Ethnicity for American Indian and Alaska Native High School Students in a National Survey.” This article was written by Sherry Everett Jones of CDC’s Division of Adolescent and School Health and Delight Satter of CDC’s Public Health Law Program in the Center for State, Tribal, Local, and Territorial Support. The article examines how racial/ethnic coding strategies relate to the estimated prevalence of risk behaviors among American Indian/Alaska Native high school students. [Read the article](#).

Registration Open | National Tribal Health Conference

Registration is open for the National Tribal Health Conference (NTHC), **September 26–28 in Washington, DC**. The NTHC explores health policy and its impact on tribes; advances tribal capacity to expand policy work; and serves as a forum to discuss policy and political work in tribal healthcare, public, behavioral, and environmental health. [Learn more and register](#).

ORISE Opportunity | Enhancing Opportunities for Multi-Sector Collaboration in Healthy Tribes Programs

The Healthy Tribes program includes a portfolio of three programs that aim to strengthen the public health infrastructure, promote cultural and traditional practices that support health and wellness, and integrate evidence-based chronic disease interventions to improve the health of tribal communities. Under the guidance of a mentor, the ORISE participant will learn how to develop program guidance based on examination of practice-based evidence and provide resources and support to recipients from American Indian tribes, Alaska Native villages, tribal organizations, urban Indian organizations, and tribal epidemiology centers addressing social determinants of health and chronic disease prevention via multi-sector strategies. Applications are open through **October 10**. [Learn more and apply](#).

Legal Tools & Training

Reports | Housing Solutions Collaborative, ChangeLab Solutions

ChangeLab Solutions recently released two reports on their Housing Solutions Collaborative (HSC). HSC is a year-long learning cohort that includes eight small- to mid-sized cities across the United States. The goal for these teams is to confront conditions that impede housing equity in their communities. The reports feature stories from [Chesterfield County, Virginia](#) , and [Oakland County, Michigan](#) .

Webinar | Implementing 988 to Strengthen Mental Health and Suicide Prevention: Insight and Lessons Learned So Far

The Network for Public Health Law is hosting a webinar titled “Implementing 988 to Strengthen Mental Health and Suicide Prevention: Insight and Lessons Learned So Far” on **September 22** at 2:00 pm (EDT). This webinar will provide insight into national policy issues affecting 988—the new dialing code that provides direct access to the National Suicide Prevention Lifeline and the Veterans Crisis Line—and information on 988 implementation in Nebraska. [Learn more and register](#) .

Recording | Medicaid’s Early and Periodic Screening, Diagnostic, and Treatment Benefit: A Powerful Tool to Improve Child Health

The Network for Public Health Law recently hosted a webinar titled “Medicaid’s Early and Periodic Screening, Diagnostic, and Treatment Benefit: A Powerful Tool to Improve Child Health.” The speakers discussed the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit, court cases enforcing EPSDT requirements, and federal guidance on implementing the benefit. [Watch the recording](#) .

Top Story

California: [Sweeping children’s online safety bill is passed in California](#) [↗](#)

The New York Times (08/30/2022) Natasha Singer

Story Highlights

California has passed the “California Age-Appropriate Design Code Act,” which is the first statute in the United States requiring apps and sites to install protections for users under 18. This bill aims to protect children online by creating a set of basic safety standards, essentially requiring apps and sites to “install the digital equivalent of seatbelts and airbags.”

Apps and sites have come under scrutiny for recommending explicit content to children, illegally collecting children’s data, exploiting children’s data to target them with ads, and making children’s photos and data public on certain sites by default.

The California bill requires online apps and sites to design their products and features to protect children, mitigating risks like exposing them to explicit content, encouraging them to stay online for hours, etc. It also prohibits apps and sites from collecting children’s locations and requires them to enable the highest level of privacy for children. These apps and sites include gaming platforms, digital toys, voice activated digital assistants, and more.

Opponents argue that the bill is too broad, which might cause problems for businesses, and users will need to submit more data to websites, risking consumer privacy.

This bill goes beyond federal law, the “Children’s Online Privacy Protection Act of 1998,” which narrowly protects users under age 13 when they use online services aimed at children like children’s video apps. These changes will take effect in 2024 and could prompt apps and sites to make nationwide changes, not just California-specific changes.

[Editor’s note: Read [California AB 2273](#) [↗](#) and learn about [adolescent mental health](#).]

Briefly Noted

California: [California approves bill to punish doctors who spread false information](#) [↗](#)

The New York Times (08/29/2022) Steven Lee Myers

[Editor’s note: Read [California AB 2098](#) [↗](#) and learn more [about how to address COVID-19 vaccine misinformation](#).]


Mississippi: [Jackson, Miss., shows how extreme weather can trigger clean-water crisis](#) 

The Washington Post (08/31/2022) Brady Dennis and Sarah Kaplan

[Editor's note: Learn about [racism as a fundamental driver of health disparities](#).]

Montana: [Lawmakers halt Health Department rule to extend religious vaccine exemptions to childcare centers](#) 

Daily Montanan (08/30/2022) Keith Schubert

[Editor's note: Learn more about [vaccination laws](#) and [state school vaccination laws](#)  [PDF – 850 KB].]

Ohio: [Walgreens, CVS, and Walmart ordered to pay \\$650 million in opioid lawsuit](#) 


The Washington Post (08/18/2022) Marina Lopes and Meryl Kornfield

[Editor's note: Learn more about [opioids](#).]

National: [Gender dysphoria covered by disability law, court rules](#) 

Associated Press (08/24/2022) Denise Lavoie

[Editor's note: Learn more about [LGBTQ health](#).]

Tribal: [Cherokee Nation, Indian Health Service partner to bring \\$11.8 million in safe water infrastructure to 1,400 homes](#) 

KFOR-TV Oklahoma City (08/25/2022) Caroline Sellers

[Editor's note: Learn more about [tribal health](#).]

Global Public Health Law News

India: [India's Supreme Court widens definition of 'family'](#) 

The New York Times (08/30/2022) Emily Schmall and Hari Kumar

[Editor's note: Learn more about the [social determinants of health](#).]

Pakistan: [UN seeks \\$160 million in emergency aid for Pakistan floods](#) 

ABC News (08/30/2022) Munir Ahmed

[Editor's note: Learn more about [climate effects on health](#).]

Singapore: [Singapore to decriminalize gay sex, protect marriage law](#) 

Associated Press (08/21/2022) Eileen Ng

[Editor's note: Learn more about [gay and bisexual men's health](#).]

Court Filings & Opinions

Washington

Answering a certified question from the Ninth Circuit, the Washington Supreme Court held that a patient who receives negligent reproductive healthcare may recover extraordinary damages for costs associated with raising a child with birth defects even though the patient did not seek contraception specifically to prevent conceiving a child with birth defects.

In 2011, the plaintiff, Yesenia Pacheco, went to a federally funded community health center called Neighborcare to receive a contraceptive injection. To be effective, the injection must be administered once every eleven to thirteen weeks. A medical student, who failed to confirm the reason for Pacheco's appointment, mistakenly injected her with a flu vaccine instead. Neighborcare did not inform Pacheco of the mistake until she went in for her next appointment three months later. She requested a pregnancy test, and it was positive.

The following year, Pacheco gave birth to a daughter who was diagnosed with perisylvian polymicrogyria (PMG), a congenital defect resulting in permanent disabilities that require ongoing care and evaluations. In 2017, Pacheco sued the United States, seeking damages related to her pregnancy and her daughter's PMG. Following a bench trial, Pacheco

was awarded \$7.5 million in extraordinary damages related to her daughter's PMG. The United States appealed to the Ninth Circuit, which certified the question of extraordinary damages to the Supreme Court of Washington.

The United States argued that all claims arising from provision of negligent reproductive care must be categorized as either "wrongful pregnancy or conception," "wrongful birth," or "wrongful life." The United States argued it was only liable for a "wrongful pregnancy or conception" claim because Pacheco sought contraception only to prevent pregnancy, not specifically to prevent bearing a child with congenital defects. The Supreme Court of Washington rejected these characterizations, finding under Washington law, ordinary negligence law—and not the labeling of claims—controlled. The court held that, as a matter of law, the patient's reason for reproductive healthcare does not limit the scope of a negligent provider's liability, and congenital defects are not unforeseeable consequences of negligent reproductive care.

[Pacheco v. United States](#)  [PDF - 486 KB] 

Supreme Court of Washington

No. 100526-1

Decided August 18, 2022

Opinion by Justice Mary I. Yu

California

In California, the Federal Power Act's (FPA) licensing scheme to facilitate construction and operation of dams and hydroelectric power plants does not categorically preempt application of the California Environmental Quality Act (CEQA) to the state's exercise of authority over a subdivision's license application.

California's Department of Water Resources (DWR) prepared an environmental impact report (EIR) under CEQA to renew a license for a hydroelectric facility in Butte County. The county challenged the sufficiency of the EIR, and after the trial court found it sufficient, the county appealed. The Court of Appeals held that the FPA entirely preempted the county's challenge.

Reversing the Court of Appeals in part, the Supreme Court of California recognized that DWR uses information from the EIR to inform its decisions regarding whether to request certain terms or a reconsideration of terms when seeking a federal license under the FPA. The court held that nothing in the FPA indicated that Congress intended to interfere with the way that states make these decisions. Thus, the FPA did not preempt the state's application of the CEQA to the EIR.

[Cnty. of Butte v. Dep't of Water Res.](#), [PDF - 552 KB] 

Supreme Court of California

No. S258574

Decided August 1, 2022, modified August 24, 2022

Opinion by Associate Justice Goodwin H. Liu

Ohio

The Supreme Court of Ohio held that the Ohio Power Siting Board (Board) properly considered the environmental impact of a proposed wind-powered electric-generation facility near Lake Erie when granting a certificate allowing it to be constructed.

Residents of an area close to the site of the proposed wind farm challenged the Board's decisions to grant a certificate to Icebreaker Windpower, Inc., which allowed the project to move forward. The residents alleged that Icebreaker had not submitted sufficient evidence for the Board to evaluate the environmental impact of the facility. The court noted that the residents' strongest contention was about the facility's potential effects on birds and bats.

The court upheld the Board's decision to grant the certificate, finding that its determinations were "lawful" and "reasonable." In reaching its determination, the Board had considered the migratory patterns of birds near the project site and data from other land-based wind farms in the Great Lakes region. Although the Board found that the facility would affect bats and migrating birds through collision, avoidance, and attraction, the Board ultimately determined through review of "myriad" scientific studies that the wind farm's environmental impact would be reduced due to the project's small scale, its location several miles offshore of Lake Erie, and the flight patterns of migratory birds in the area.

[In re Application of Icebreaker Windpower, Inc.](#)  [PDF – 371 KB] 

Supreme Court of Ohio

No. 2021-0153

Decided August 10, 2022

Opinion by Justice Jennifer Brunner

Pennsylvania

The Supreme Court of Pennsylvania held that the state’s use and control of proceeds from oil and gas leasing on the state’s forest and park lands did not violate the state’s constitution.

The Pennsylvania Environmental Defense Foundation challenged the use, control, and commingling of the oil and gas funds as violative of the Environmental Rights Amendment of the state’s constitution. The court struck down each of these challenges on various grounds. First, the court held that the state’s use of the funds toward the Department of Conservation and Natural Resources’ general operations did not violate the state constitution because the expenses were reasonable costs incurred by the state in acting as a trustee, which is permitted under Pennsylvania law.

Further, the court held that the state’s use of funds for environmental programs not tied to the region from which the oil and gas revenue derived did not violate the state’s constitution because the constitution did not provide any regional segmentation of trust assets. Instead, the constitution speaks in broad terms about “Pennsylvania’s national resources” and encompasses “all the people.” Moreover, the state legislature’s control of the funds did not violate the state constitution because the statute granting control of the funds to the legislature required it to consider trustee duties mandated by the state constitution and did not authorize it to use the funds for non-trust purposes.

[Pa. Env’t Def. Found. v. Commonwealth](#)  [PDF – 407 KB] 

Supreme Court of Pennsylvania

No. 65 MAP 2020

Decided August 5, 2022

Opinion by Chief Justice Max Baer

COVID-19 Court Filings & Opinions

Federal

Executive Order 14042 directs executive agencies to include a clause in procurement agreements requiring federal contractors to comply with workplace safety rules designed to respond to the COVID-19 pandemic. We consider one of those requirements here: a mandate that employees who work on or in connection with a covered contract, or share a workplace with another employee who does, be fully vaccinated against COVID-19.

[Georgia v. President of the United States](#)  [PDF – 300 KB] 

The United States Court of Appeals for the Eleventh Circuit

No. 21-14269

Decided August 26, 2022

Opinion by J. Grant

California

Plaintiffs and appellants Daniel Arche and Lori Arche brought an unlawful detainer action against defendant and respondent James Scallon, and the trial court sustained defendant’s demurrer without leave to amend and entered judgment against plaintiffs. Plaintiffs appeal, contending the court erred in determining the Los Angeles County COVID-19 Eviction Moratorium (L.A. County Ord., as adopted Feb. 23, 2021, § I, et seq. [LACEM]) was not preempted by state law. As discussed below, we affirm.

[Arche v. Scallon](#) 

Superior Court of California, Appellate Division, Los Angeles County

No. BV 033632

Decided August 1, 2022

Opinion by J. Ricciardulli

Quiz Question: September 2022

Question: What is the [Environmental Justice Index](#) ?


Last Month's Quiz Answer

Question: Where is the [APHA 2022 Annual Meeting and Expo](#)  being held?

Answer: Boston

Quote of the Month

"We design playgrounds to be reasonably safe and a lot of fun," said Baroness Kidron, the House of Lords member who spearheaded the "Children's Code" in Britain. "We design medicine to be reasonably safe and appropriate to your size. And we need to design the digital world to be reasonably safe and appropriate to your age any time."

[Editor's note: This quote is from the above article [Sweeping children's online safety bill is passed in California](#) , The New York Times (08/30/2022) Natasha Singer.]

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