



## Public Health Professionals Gateway

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# Public Health Law News

August 2022



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


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### Announcements


#### 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](#) .

#### The 2022 Public Health Law Summit | In-Person Event


Registration is open for the 2022 Public Health Law Summit, organized by The Network for Public Health Law. The theme is “Navigating the Fast-Changing Landscape of Equity and Cannabis Law and Policy.” The event is scheduled to be held **in person September 13–14 in Baltimore**. [Register today](#) .

#### Job Opening | National Director, The Network for Public Health Law

The Network for Public Health Law is seeking an experienced nonprofit leader with deep knowledge of the public health field to increase the reach and impact of public health law. The national director serves as a leader to the national public health community by developing and overseeing a strategic plan and diversifying funding sources. [Learn more and apply](#) .


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### Job Opening | Executive Director, The Public Health Law Center

The Public Health Law Center is seeking nominations and applications for its next executive director. Founded in 2000, the center partners with tribal health leaders, federal agencies, national health advocacy organizations, state and local governments, planners, researchers, attorneys, community coalitions, and individuals working on public health issues to create healthier and more equitable communities across the country. [Learn more and apply](#) .

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### Job Opening | Staff Attorney/Senior Staff Attorney—Commercial Tobacco Control Program, Public Health Law Center


The Public Health Law Center is seeking to hire multiple staff attorneys/senior staff attorneys who have a passion for working for the social good and who share the center's commitment to advancing racial and social justice, including the social determinants of health, implicit bias, and systemic health problems. The attorney will be responsible for providing legal technical assistance to tribal public health advocates, community groups, and state and local health officials to advance public health and health equity through law and policy. [Learn more and apply](#) .

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## Tribal Announcements

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### Call for Nominations | National Indian Health Board 2022 Outstanding Service Awards

The National Indian Health Board is accepting nominations for its 2022 Outstanding Service Awards. These awards recognize excellence, achievement, and contributions that go “above and beyond” the call of service and honors efforts made by individuals, organizations, and programs that have enriched and improved American Indian/Alaska Native health, health systems, or policy. Deadline for nominations is **August 23**. [Learn more and submit a nomination](#) .

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### 2022 Southeast Environmental Conference | In-Person Event

Registration is open for the 2022 Southeast Environmental Conference to be held from **August 29–September 2** in **Juneau, Alaska**. The Southeast Environmental Conference brings together Southeast Alaska tribes, natural resource professionals, agencies, and regional organizations to learn about and address common environmental priorities. Email [tpeters@ccthita-nsn.gov](mailto:tpeters@ccthita-nsn.gov) for more information.

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### Tlingit-Haida Regional Housing Authority's Board of Commissioners Solicitation Notice


The Central Council of Tlingit & Haida Indian Tribes of Alaska is seeking candidates to fill two seats on the Tlingit-Haida Regional Housing Authority's (THRHA) Board of Commissioners. Candidates are being sought from all Tlingit and Haida communities that have designated THRHA as their tribally designated housing entity under the Native American Housing Assistance and Self Determination Act or those that have THRHA Housing Inventory in their community. Commissioners will serve a three-year term. Deadline is **August 19**. [Learn more](#)  [PDF – 1.6 MB] .

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## Legal Tools & Training

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### Recording | Ensuring a Just Transition in All Aspects of Climate Action

The Network for Public Health Law hosted a webinar about the disproportionate effects of climate change, law and policy approaches to environmental justice, and a just transitions framework that equitably distributes the costs and benefits of climate action. [View the webinar and slides](#) .

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## Top Story

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### National: [Covid, Tobacco Policy at Risk After High Court Emissions Ruling](#)

Bloomberg Law (07/1/2022) Allie Reed, Celine Castronuovo

### Story Highlights

The United States Supreme Court blocked the Environmental Protection Agency from curbing power plant emissions. This is a precedent-setting ruling that uses a legal approach called the “major questions doctrine.” This requires government agencies to seek congressional authorization to address issues “of major financial or political importance in novel ways.”

Katie Keith, Director of the Health Policy and the Law Initiative at Georgetown Law's O'Neill Institute, says that due to this ruling the Department of Health and Human Services will have "a much more narrow scope to work within." This will make it more difficult for Health and Human Services to respond to public health threats.

Healthcare scholars and lawyers warn that this decision will have implications for COVID-19 public health regulations, the Food and Drug Administration's attempts to ban menthol from cigarettes, and the Biden administration's efforts to protect LGBTQ and reproductive rights.

Lindsey Wiley, a professor at UCLA Law School, said that "there's almost nothing you could think of for which this wouldn't have some implication" and that this decision will be considered in "any situation where an administrative agency is trying to solve a problem using authority given by Congress in more general terms."

[Editor's note: Read the [West Virginia et al. v. Environmental Protection Agency, et al.](#)  [PDF – 1.6 MB]  and learn more about [power plant solutions and case studies](#)  [PDF – 1.4 MB] .

## Briefly Noted

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**Alabama:** [988 suicide and crisis lifeline number brings additional access to mental health help in Alabama](#) 

WBRC (07/19/2022) Gillian Brooks

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

**Connecticut:** [Lamont announces new climate bill with plans to create zero-emission school buses](#) 

FOX 61 (07/22/2022) Molly Lamendola

[Editor's note: Read the [press release](#) . Learn more about [climate change](#).]

**New York:** [New York Gov. Kathy Hochul signs law banning smoking at state beaches, parks, boardwalks](#) 

ABC7 (07/15/2022) Dondre Lemon

[Editor's note: Learn more about [tobacco legislation in the United States](#).]

**Tennessee:** [Tennessee sues Walgreens over opioid prescription onslaught](#) 

U.S. News (08/03/2022) John Raby

[Editor's note: Learn more about [opioid overdose prevention](#).]

**National:** [More states are forgoing extra federal food aid](#) 

PEW (07/19/2022) Kristian Hernández

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

**National:** [Monkeypox is 'a public health emergency,' U.S. health secretary declares](#) 

The Washington Post (08/04/2022) Dan Diamond

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

## Global Public Health Law News

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**New Zealand:** [New Zealand moves ahead with world-first tobacco laws in bid to create smoke-free generation](#) 

The Guardian (07/26/2022) Tess McClure

[Editor's Note: Learn more about [smoking and tobacco use](#)]

## Court Filings & Opinions

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### Federal

The Ninth Circuit Court of Appeals affirmed a district court decision finding that climate-related claims against numerous oil and gas companies could not show federal jurisdiction and must remain in state court.

The plaintiffs, the city and county of Honolulu and Maui County, claim that the fossil fuel companies understood the danger of energy exploration and extraction to the environment and failed to warn the public. They further allege that this deception caused damage to the islands due to extreme weather and land encroachment. Some of the defendant companies include Chevron, Exxon Mobil, and Shell. At center of the appeals case is the defendants alleging three different jurisdictions that warrant removal to federal court: federal officer, federal enclave, and Outer Continental Shelf Lands Act (OCSLA).

The defendants alleged that the government's oversight qualifies for federal jurisdiction under a federal officer. The federal officer jurisdiction requires defendants to show "they were 'acting under' federal officers, they can assert a colorable federal defense, and Plaintiffs' injuries were for or relating to the Defendant's actions." The court found the defendants did not meet this burden because they failed to satisfy the prong of asserting a "colorable federal defense." Either the defenses "did not arise from official duties" or were not deemed colorable by the court to allow the case to be removed to federal court under federal officer jurisdiction.

The states that unless a narrow exception applies, federal law governs when the federal government buys state land and allows for federal question jurisdiction. The court found that the claims were not about the defendant's activities on the federal enclaves and were too removed from the plaintiffs' injuries to meet this jurisdiction.

Finally, the defendants tried to receive federal jurisdiction under OCSLA. The OCSLA "permits federal jurisdiction over actions 'arising out of, or in connection with' operations on the Outer Continental Shelf (OCS) 'involving exploration, development, or production.'" The court states more than a but-for cause is required and simply because the companies may engage in oil and gas operations—which might include exploration, development, and production on OCS—this does not mean those activities caused the plaintiff's harm. Here, the issue was deceptive practices unrelated to OCS operations and therefore, the connection would be too far for the court to find federal jurisdiction under OCSLA.

[City & Cty. of Honolulu v. Sunoco](#)  [PDF – 190 KB] 

United States Court of Appeals for the Ninth Circuit

No. 21-15318

Decided July 7, 2022

Opinion by Judge R. Nelson

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## Federal

The United States District Court for the Southern District of West Virginia ruled in favor of three main American drug distributors accused of creating an opioid epidemic and public nuisance.

The plaintiffs, a West Virginia city and county, believe that the wholesale distribution of prescription opioids in Huntington and Cabell County caused a health crisis in their communities. They believe that the defendants caused a "public nuisance" and sought relief in the form of abatement to reduce opioid disorders, deaths, and overdoses. The plaintiffs alleged that the distributors were responsible for sending millions of prescription pain pills to a community struck hard with the opioid epidemic in an unreasonable and reckless manner for the public's wellbeing.

Both parties agreed there is an opioid epidemic and that this epidemic was partially fueled by prescription opioids. However, the court found that the state's law against public nuisance has never been applied to the sale or distribution of a product, stating that "the extension of the law of nuisance to cover the marketing and sale of opioids is inconsistent with the history and traditional notions of nuisance" that typically apply to public property. Specifically, the plaintiffs' claims centered on the idea that the nuisance was a result of distributors' oversupply and "diversion of opioids from their legitimate channels"; however, the court notes that the oversupply and diversion was beyond their control and moreso the result of intervening steps of "overprescribing by doctors, dispensing by pharmacists of the excessive prescriptions, and diversion of the drugs to illegal usage." Thus, the court concluded that the plaintiffs could not prove a proximate cause between the drug distributors' conduct and the harm caused to the communities.

[City of Huntington v. AmerisourceBergen Drug Corp.](#)  [PDF – 526 KB] , et al.

United States District Court, Southern District of West Virginia

No. 3:17-01362, No. 3:17-01665

Decided July 4, 2022

Opinion by Judge D. Faber

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## Federal

The US Court of Appeals, Fourth Circuit, revived a federal lawsuit after a US district court had granted the defendant's motion to dismiss for reason that a state court has jurisdiction over child welfare cases.

The district court reasoned because the state retains jurisdiction over foster children "until they leave state custody," federal intervention would "reflect negatively upon the state court's ability to enforce constitutional principles." The appeals court reversed, as the plaintiffs brought federal claims, and stated that "federal courts 'are obliged to decide' them in all but 'exceptional' circumstances." Here, the plaintiffs are challenging the West Virginia Department of Health and Human Resources's practices that resulted in delays, issues with care, and abuse in violation of many federal rights including the Due Process Clause and the First Amendment "right to familiar association."

In addition, the court discussed the state's history of shuffling money and staff around until foster-care orders from state hearings run out; therefore forcing plaintiffs to continue to bring cases in state "would get federalism exactly backward." Therefore, the court supported the plaintiffs' need for a federal class action case to lead to effective relief regarding child welfare beyond the ineffective "piecemeal" state hearings.

[Jonathan R. by Dixon, et al. v. Justice, et al.](#)  [PDF – 1.4 MB] 

United States Court of Appeals for the Fourth Circuit

No. 21-1868

Decided July 20, 2022

Opinion by J. Floyd

## COVID-19 Court Filings & Opinions

### Wisconsin

We resolve whether local health officers may lawfully issue public health orders. This suit arises from a challenge to a local health officer's issuance of public health orders to prevent, suppress, and control a communicable coronavirus disease commonly referred to as COVID-19. The case before us does not challenge the wisdom or legality of any particular measure taken in these orders. The challenge instead raises more general statutory and constitutional questions about the local health officer's authority to issue an order at all, regardless of the measures it promulgates.

[Becker v. Dane County](#)  [PDF – 1.5 MB] 

Supreme Court of Wisconsin

No. 2021AP1343 & 2021AP1382

Decided July 8, 2022

Opinion by J. Karofsky

## Quiz Question: August 2022

**Question:** Where is the APHA 2022 Annual Meeting and Expo being held?

## Last Month's Quiz Answer

**Question:** Who are the hosts of the [Public Health Law Practitioners Convening](#)  ?

**Answer:** The National Association of County and City Health Officials and CDC

## Quote of the Month

"Walgreens did not flood the State of Tennessee with opioids by accident," [Attorney General Herbert H.] Slatery said in a statement. "Rather, the fuel that Walgreens added to the fire of the opioid epidemic was the result of knowing—or willfully ignorant—corporate decisions. Walgreens ignored numerous red flags and failed to detect and prevent the abuse and diversion of dangerous narcotics."

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