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# Public Health Authority Legislative Update

August 2024

## Summer Reading List! Recent Articles Tracking Shifts in Public Health Authority

In this month's [Act for Public Health](#) legislative update, we recap recent topics and publications that have stemmed from our work tracking legislative and litigation efforts to influence public health legal authority, in ways that both hinder or advance public health outcomes. Have a read, [join our list](#), and reach out if you want to get more involved!

### [The \(Un?\)intended Consequences Of COVID-19-Era Judicial Decisions And New Public Health-Related Laws | Health Affairs](#)

*Sabrina Adler, Darlene Huang Briggs, Ross C. Brownson, Scott Burris, Paul C. Erwin, Peter D. Jacobson, Wendy E. Parmet*

"[N]ew state laws and court decisions are apt to have significant consequences for public health officials' abilities to respond to future health emergencies. They may also impede public health officials' capacities to protect the public from more quotidian threats, such as restaurants that spread foodborne illness or tuberculosis patients who are unable or unwilling to take their medication. In this piece, we provide a brief background on the newly altered law and policy landscape, then provide examples in which the consequences have already been felt."

### [Recent State Legislative Attempts to Restructure Public Health Authority: The Good, The Bad, and The Way Forward | Journal of Law & Medical Ethics](#)

*Darlene Huang Briggs, Elizabeth Platt, Leslie Zellers*

"The COVID-19 pandemic spurred legal and policy attacks against foundational public health authorities. Act for Public Health - a partnership of public health law organizations - has tracked legislative activity since January 2021. This article describes that activity, highlighting 2023 bills primarily related to vaccine requirements and policy innovations undertaken in the wake of the pandemic. Finally, we preview a legal framework for more equitable and effective public health authority."

### [Reclaiming Public Health Authority: Toward a Legal Framework that Centers the Public's Health, in the Courts and Beyond | Journal of Law & Medical Ethics](#)

*Sabrina Adler, Wendy E Parmet, Linda Tvrdy, Sara Bartel*

“This paper summarizes key shifts in judicial decisions relating to public health powers during the pandemic and the implications of those decisions for public health practice. Then, it gives a preview and call for partnership in developing a legal framework for authority that guides public health to better activities, processes, and accountability in service of the public's health.”

### **Authority to Improve or Harm Health: The Public Health Front in a Decades-Long Battle Over Governmental Powers | SLU Journal of Health Law & Policy**

*Sabrina Adler, Sara Bartel, Heather Wong*

“Backlash to local, state, and federal responses to combat COVID-19 has resulted in a small but vocal cohort of legislatures and courts trying to change long-settled and foundational principles of public health decision-making. They have shifted authority away from experts and local decision-makers, limiting emergency response in ways that also impact day-to-day public health efforts. Considering some examples of other recent preemption efforts, it is clear that COVID-era backlash is part of a longer-term deregulatory agenda, often framed as an effort to keep “big government” out of people’s lives and to preserve individual freedoms. However, the impact of such deregulation is clear: in the public health sphere, it harms those it purports to protect by limiting access to rights, services, and information that can improve people’s opportunities to live healthy lives. Nonetheless, we now have an opportunity to reinvigorate the public health system such that it better centers the needs of the entire population and serves all it intends to protect.”

### **From Deference to Indifference: Judicial Review of the Scope of Public Health Authority During the COVID-19 Pandemic | SLU Journal of Health Law & Policy**

*Wendy E. Parmet*

“For most of American history, courts have granted public health officials significant deference in construing the scope of their own authority. This changed during the COVID-19 pandemic, especially in the federal courts, where deference was replaced with skepticism as courts used the major questions doctrine to narrow the scope of public health powers. This Article examines this development and considers its implications for public health.”

### **Judicial Decisions Constraining Public Health Powers During COVID-19: Implications for Public Health Policy Making | Health Affairs**

*Michelle M. Mello, David H. Jiang, Wendy E. Parmet*

“Public health legal powers are increasingly under pressure from the courts in the United States. During the COVID-19 pandemic, individuals and organizations successfully challenged many community mitigation orders (for example, mask mandates, vaccination mandates, and restrictions on gatherings), demonstrating the legal vulnerability of disease control measures. Analyzing 112 judicial decisions in which the plaintiff prevailed from March 2020 through March 2023, we examined the ways in which courts constrained public health powers during the COVID-19 pandemic.”



Connect with law and policy colleagues and find additional resources to navigate the legal changes that threaten or advance healthier communities for all.

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for Public Health Law

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**Act for Public Health** is a working group of the **Public Health Law Partnership**.  
Visit the [Act for Public Health](#) website for additional resources  
and information on public health authority.

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