

Supreme Court Impacts in Public Health Law: 2023-2024

Public Health and the Law

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Abstract: In a “mixed bag” 2023-2024 session, the U.S. Supreme Court issued a series of decisions both favorable and antithetical to public health and safety. Taking on tough constitutional issues implicating gun control, misinformation, and homelessness, the Court also avoided substantive reviews in favor of procedural dismissals in key cases involving reproductive rights and government censorship.

Following two tumultuous terms featuring decisions significantly impacting the public’s health, the U.S. Supreme Court (SCOTUS) almost seemed poised for judicial reticence in its 2023-2024 term. Facing widespread public disapproval¹ and controversies surrounding specific Justices’ outside comments² and influences,³ the Court offered new approaches on several key public health cases. As per analyses below, it (1) preserved access to the medication abortion drug mifepristone, (2) temporarily disallowed a state law banning abortions in specific emergency circumstances, (3) enhanced workers’ discrimination claims, (4) denied firearms to dangerous persons under domestic violence restraining orders,

(5) disbanded a national opioid settlement that would have left thousands without legal recourse, and (6) dismissed claims of government censorship of public health misinformation. Protecting the public’s health was likely not at the forefront of the Court’s objectives, but these decisions still reached a desired end.

Conversely, the Justices, often deeply divided, issued a series of opinions threatening the core foundations of communal health law and policies. Expression of specific public health messaging via state agents, the Court found, may comprise coercive suppression in violation of the First Amendment. States’ re-districting efforts to limit minority votes may constitute political (versus racial) gerrymandering despite impacts on social determinants of health. Homeless camping or loitering on public property may be prohibited without infringing Eighth Amendment rights against cruel and unusual punishments. And, in yet another SCOTUS decision toppling longstanding precedent, deference to federal agencies’ regulatory authorities was upended. In a term of mixed outcomes, these profound decisions by the Court continue its streak of substantially re-writing constitutional (and other) laws challenging the future of public health policy.

Medication Abortion

In its first abortion-related decision since *Dobbs*⁴ (2022), SCOTUS dismissed challenges to federal regulation of mifepristone in *FDA v. Alliance for Hippocratic Medicine*.⁵

About This Column

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With over 60% of U.S. abortions currently performed through medication,⁶ assuring access to mifepristone is key to reproductive health. Yet, anti-abortion advocates successfully argued before lower courts⁷ that FDA unlawfully loosened restrictions on the drug in 2016 and 2021. Justice Kavanaugh, writing for a unanimous Court, found the plaintiff doctors and medical associations lacked standing to raise their claims on several grounds.⁸ First, doctors' alleged conscience injuries failed as existing federal protections already allow them to avoid abortion treatments. Second, their purported economic injuries in diverting resources to mifepristone-

per *FDA v. Alliance*, the Court's decision preserved one route to abortion access, but for how long? Justices Kagan, Sotomayor, and Jackson all agreed that EMTALA preempts Idaho's law, although Jackson was ready to decide the cases on the merits. Justices Barrett, Kavanaugh, and Chief Justice Roberts were content to allow lower courts to resolve the developing issues. Justices Alito, Thomas, and Gorsuch demurred, suggesting Idaho's restriction was lawful. Notably, the Court's conservative members intimated that EMTALA may not preempt state laws under an eviscerating view of the supremacy of federal spending powers.

Gun Control

In 2023, a lower appellate court found unconstitutional a 30-year-old federal law¹⁷ prohibiting individuals under domestic violence protection orders from possessing guns because it was "inconsistent with historical tradition."¹⁸ In an 8-1 decision, SCOTUS reversed in *U.S. v. Rahimi*.¹⁹ "Our tradition of firearm regulation," noted Chief Justice Roberts, "allows the Government to disarm individuals who present a credible threat to the physical safety of others." Research indicates these types of laws are significant. One 2018 study found a 12% reduction in intimate partner violence tied to firearm relinquishment laws.²⁰ *Rahimi* provided the first application of a befuddling Second Amendment test outlined by the Court two years ago in *Bruen*.²¹ With only Justice Thomas dissenting in *Rahimi*, additional laws prohibiting gun possession among dangerous actors or in specific situations may perhaps survive muster in the midst of what U.S. Surgeon General Vivek Murthy termed a public health crisis of gun violence on June 25.²²

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impacted patients were too attenuated from FDA's actions. Finding otherwise would allow physicians to challenge "almost any policy affecting public health."⁹ Third, medical associations had no basis to sue on grounds that they were "forced" to increase spending to object to federal policies. Despite the Court's favorable decision, these arguments may resurface from states or other challengers in future cases.¹⁰

Emergency Abortion Access

The federal Emergency Medical Treatment and Active Labor Act (EMTALA)¹¹ requires stabilizing treatments among hospital patients presenting with health- or life-threatening circumstances. At question in *Moyle v. U.S.* and *Idaho v. U.S.*¹² was whether an Idaho law allowing only *lifesaving* abortions was preempted by EMTALA. Dismissing both cases on procedural grounds, the Court reinstated a district court order¹³ that concluded EMTALA preempts Idaho's emergency abortion law.¹⁴ As

Employment Discrimination

In *Muldrow v. City of St. Louis*,¹⁵ the Court held that employees challenging job transfers under Title VII of the federal Civil Rights Act do not have to show "significant" harms to establish discrimination claims. SCOTUS vacated lower courts' findings limiting Muldrow's recovery for an alleged sex-based discriminatory job transfer via the St. Louis Police Department because she did not suffer a materially adverse action. She experienced a demotion in job status, but not a loss of salary or all benefits. Prior courts split regarding whether the City's actions violated Title VII requirements, ultimately allowing claims in cases where employees experienced "significant" disadvantages or harms.¹⁶ That is wrong, according to Justice Kagan for the majority. It is enough that plaintiffs demonstrate some harm related to identifiable terms or conditions of employment. Consequently, Title VII allows recovery in more suits alleging workplace discrimination based on sex and other protected claims.

Mass Injury Settlements

Purdue Pharma, owned by the multi-billionaire Sackler family, began marketing the opioid pain reliever OxyContin in the mid-1990s. After opioid overdose deaths reached epidemic levels, Purdue faced extensive litigation nationally. It filed for bankruptcy in 2019 after the Sacklers started draining company assets.²³ As part of Purdue's bankruptcy proceedings, the family proposed to return company funds to settle cases provided they were released from all current and future opioid-related claims. A deal seemed imminent. That is, until Justice Gorsuch determined in a 5-4 decision in *Harrington v. Purdue Pharma, LP*²⁴ that U.S. bankruptcy law does not expressly authorize such extensive releases from liability. Justice Kavanaugh focused on the short-term impacts of the Court's reasoning, dissenting that "opioid victims are now deprived of ... substantial monetary recovery."²⁵ Conversely, *Harrington* preserves opportunities

for affected victims to bring future fraud or injury claims against culpable parties irrespective of settlements with others.

Public Health Misinformation

Misinformation spread via social media platforms presents “serious threats” to public health,²⁶ fueling vaccine hesitancy and perpetuating non-efficacious medical interventions.²⁷ During the COVID-19 pandemic, multiple federal agencies and officials urged these platforms to remove misleading or false content.²⁸ Missouri, Louisiana, and other parties alleged that government “pressure” amounted to censorship in violation of First Amendment expressive freedoms.²⁹ In October 2023, SCOTUS initially permitted federal content moderation policies to continue as litigation ensued.³⁰ On June 26, 2024, however, the Court dismissed the litigation altogether in *Murthy v. Missouri*.³¹ As per *FDA v. Alliance*, above, Justice Barrett for the majority determined that states and other claimants lacked standing in failing to demonstrate any current or future injuries tied to alleged federal “censorship.” Avoiding key substantive questions, the Court tentatively allowed federal efforts to limit misinformation harmful to the public’s health, even as it struck down appellate court decisions blocking state social media content moderation laws.³²

Governmental Suppression

Not all governmental speech evaded the Court’s purview, however. In *National Rifle Association (NRA) v. Vullo*,³³ the Justices unanimously determined that NRA had a First Amendment claim against Maria Vullo, then-superintendent of the New York Department of Financial Services. While investigating whether NRA improperly promoted specific insurance, Vullo allegedly stated that she would overlook other underwriting companies’ infractions if they stopped conducting gun-related business with NRA. As Justice Sotomayor clarified for the Court, Vullo’s statements plausibly constituted unwarranted government coercion to the

extent she attempted to “[wield her] power selectively to punish or suppress speech through private intermediaries.”³⁴ Ascertaining the First Amendment line between lawful governmental efforts to limit misinformation in *Murthy* and unconstitutional attempts to suppress unfavorable views in *Vullo* is murky. What is clear is that governmental urgings to limit falsehoods in commercial settings are distinct from punishments tied to coercion irrespective of the public health objectives.

Voting Rights

After South Carolina’s 2022 redistricting map maintained the same Black Voting Age Population in a key district near Charleston despite moving nearly a quarter of the district’s total population, NAACP argued the map constituted racial gerrymandering in violation of the Equal Protection Clause. SCOTUS did not agree in a 6-3 decision penned by Justice Alito.³⁵ As per the Court, two components are critical for determining if race was a “predominant factor” in redistricting decisions. First, the legislature is entitled to a “presumption of ... good faith” against unlawful gerrymandering. Second, challengers that fail to submit alternative maps sufficiently achieving the legislature’s stated political goals, as in this case, may be viewed adversely. Finding in favor of the South Carolina legislature, SCOTUS raised the bar for proving unconstitutional racial gerrymandering. The decision contravenes affirmative voting rights as a key health determinant among minority populations. Collateral consequences lie ahead in a Louisiana case prospectively set for the next term.³⁶

Homelessness and Public Places

In *Grants Pass v. Johnson*,³⁷ Justice Gorsuch reasoned for a 6-3 majority that anti-camping and loitering ordinances targeting homeless populations did not violate Eighth Amendment rights against cruel and unusual punishments. With over 650,000 Americans experiencing homelessness nationally in late 2023,³⁸ state and local governments have sought

to address significant public health repercussions of widespread encampments and related harms. Citing Eighth Amendment violations, the Ninth Circuit Court of Appeals previously limited application of anti-camping laws to homeless persons lacking shelter.³⁹ This approach, concluded Justice Gorsuch, was inherently flawed. Anti-camping laws do not criminalize the mere status of being homeless. In a scathing dissent, Justice Sotomayor asserted that the City of Grants Pass (OR) clearly targeted persons experiencing homelessness via its ordinance. Elimination of Eighth Amendment protections for homeless populations raises substantial legal uncertainties over the scope of state and local interventions restricting access to public spaces among those exercising basic human necessities.

Administrative Regulatory Review

Since 1984, SCOTUS’ crafting of *Chevron* deference has guided judicial evaluations of federal agency interpretations of abstruse statutory provisions outlining duties or powers.⁴⁰ Though not consistently applied, courts typically deferred to “reasonable” agency interpretations involving complex regulatory programs. In *Loper Bright and Relentless* the Supreme Court upended *Chevron*, holding that courts “may not” defer outright to agencies’ interpretations of ambiguous statutes.⁴¹ Rather, courts must exercise independent judgment in determining the scope of authorities. Abandoning *Chevron* deference carries profound consequences for federal health and environmental regulations as per Justice Kagan’s dissent. Furthering the Court’s push toward administrative deregulation in line with agency’s responses to “significant” public health threats curtailed under the “major questions doctrine,”⁴² federal courts take on even greater roles as public policy decision-makers (despite lacking subject-matter expertise). Coupled with greater time periods for lawsuits against agencies,⁴³ and limited jurisdiction for administrative law judges in disputes,⁴⁴ the Court’s overhaul of

administrative law pursuant to separation of powers principles may not have reached its zenith. Pending environmental⁴⁵ and firearm⁴⁶ cases are already slated for the next term.

Note

The authors have no conflicts of interest to disclose.

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