

SCOTUS Public Health Law Updates (“PHLU”)

NOVEMBER 1, 2023

SCOTUS impacts in public health law and policy are diverse and extensive. In each edition of SCOTUS PHLU (pronounced “flu”), the Center selects specific highlights or developments surrounding the Court’s influence in the field, which it annually assesses key updates in the [Journal of Law, Medicine & Ethics](#).



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CASES TO WATCH

PETITION PENDING

CITY OF GRANTS PASS V. JOHNSON

An Oregon city has [asked the Court](#) to review a long-standing Ninth Circuit decision holding that the Eighth Amendment’s prohibition on cruel and unusual punishment prevents cities from enforcing laws against public camping unless there is access to temporary shelter.

PETITION DENIED

CHIP V. CITY OF NEW YORK

On October 2, the Court declined to hear a [challenge](#) filed by a landlord’s association arguing that New York’s Rent Stabilization Law, which imposes strict requirements for eviction and sets maximum rent costs, violates the Fifth Amendment Takings Clause. Two [additional petitions](#) challenging the law are also pending.

PETITION PENDING

FDA V. ALLIANCE FOR HIPPOCRATIC MED.

The U.S. Food & Drug Administration has [asked the Court](#) to overturn a lower court decision blocking FDA’s approval of medication abortion drug mifepristone. In April, the Court stayed the injunction but has yet to resolve the case permanently. Drug manufacturer Danco has [also petitioned](#) the Court.

U.S. v. Missouri: SCOTUS Reviews Missouri’s Second Amendment Preservation Act

On October 20, SCOTUS [denied](#) Missouri’s request to lift an injunction on a state law preventing the enforcement of certain federal gun control laws. A district judge blocked the law, holding that states cannot declare federal laws invalid. Missouri argued that under the Court’s decision in *Whole Women’s Health v. Jackson* (2021), courts cannot block state laws altogether, though they may enjoin officials from acting.



LOOKING AHEAD: U.S. V. RAHIMI

On November 7, SCOTUS will hear arguments over whether a federal law prohibiting people “subject to domestic violence restraining orders” from owning firearms violates the Second Amendment. The [Fifth Circuit reversed](#) Rahimi’s conviction on grounds that the government failed to show the statute aligns with “the Nation’s historical tradition of firearm regulation.” Though this is the Court’s first major gun control case following *NY Rifle v. Bruen* (2022), SCOTUS has affirmed limits on the sale of privately-assembled, untraceable [“ghost guns”](#) twice since August 2023.

On the Shadow Docket

On October 20, in *Murthy v. Missouri*, the [Court granted](#) the Biden administration's emergency request to block a district court order preventing certain federal entities, including the Surgeon General and CDC, from communicating with social media companies to moderate online content. The Court also granted certiorari, so the stay will remain in place until the Court decides the case. For now, this reprieve furthers federal public health officials' abilities to mitigate online misinformation. Justices Alito, Thomas, and Gorsuch dissented, citing the need to curb government censorship of online speech.



SCOTUS RECONSIDERS *CHEVRON*

On October 13, SCOTUS agreed to hear *Relentless Inc. v. Department of Commerce*, the second case on the docket asking the Court to overrule *Chevron v. Natural Resources Defense Counsel* (1984). The case will be heard in tandem with *Loper Bright Enterprises v. Raimondo*, which Justice Jackson recused herself from due to her involvement on the D.C. Circuit.

Chevron directs courts to defer to agencies' reasonable interpretations of unclear or non-specific legislation. Recently, the Court has turned towards the [Major Questions Doctrine](#) to stringently limit agency power. Eliminating or greatly altering *Chevron's* deference may further obfuscate health agency authorities. Oral arguments are scheduled in January 2024.

“[O]verruling *Chevron* would cause [a tremendous disruption] to publicly funded health insurance programs specifically, to the stability of this country's health care system generally, and to the health and wellbeing of the patients and consumers we serve.”

[American Cancer Society Amicus Brief at 3.](#)

RECENT AND UPCOMING ORAL ARGUMENTS

[RECAP: ALEXANDER V. SOUTH CAROLINA CONF. OF NAACP](#)

On October 11, the Court heard [oral arguments](#) to determine whether South Carolina's first congressional district should be invalidated as a racial gerrymander. The state argued that although the senate only used political data to draw the maps, the district court inferred an intent to racially gerrymander. Though there was back-and-forth about expert testimony and applicable standards of review, several of the Justices [seemed receptive](#) to the state's arguments.

[PREVIEW: HARRINGTON V. PURDUE PHARMA L.P.](#)

On December 4, the Court will consider the [legality of Purdue Pharma's bankruptcy plan](#) in oral argument. The plan currently shields the Sackler family from future liability, potentially preventing those harmed by the opioid crisis from recovering monetary relief. [Petitioners argue](#) that the plan could set precedent allowing other corporations to escape liability through bankruptcy.

This edition of SCOTUS “PHLU” was developed by [Jennifer L. Piatt, JD](#), Research Scholar & Faculty Co-Director, [Lauren Krumholz & Mary Saxon](#), Senior Legal Researchers, and [James G. Hodge, Jr., JD, LL.M.](#), Professor & Director, Center for Public Health Law & Policy, ASU Sandra Day O'Connor College of Law.