

SCOTUS Public Health Law Updates (“PHLU”)

DECEMBER 1, 2023

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



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CASES TO WATCH

PETITION GRANTED

BECERRA V. SAN CARLOS APACHE & NORTHERN ARAPAHO TRIBES

On November 20, the Court [accepted](#) challenges to [Tenth](#) and [Ninth](#) Circuit orders requiring the Indian Health Service (IHS) to reimburse \$4.5 million in administrative costs to tribes providing their own health care.

A [circuit split](#) had developed regarding what IHS is required to pay tribes for tribal-managed health care.

PETITION DENIED

LOWE V. MILLS

On October 30, the Court [declined](#) to hear a [challenge](#) by Maine health care workers arguing they were fired for refusing to comply with a COVID-19 vaccine mandate in violation of Title VII of the Civil Rights Act. The First Circuit [held](#) that continued employment without vaccination would cause “undue hardship” to hospital employers, enabling termination.

PETITION GRANTED

GARLAND V. CARGILL

On November 3, the Court [accepted](#) a challenge to a federal regulation classifying “bump-stocks” as machineguns. A circuit split had developed over whether the regulation properly interpreted the term “machinegun” pursuant to federal firearm laws. The Biden administration [asked](#) the Court to take the case.

NRA v. Vullo: SCOTUS Reviews NRA First Amendment Case Against NY State Official

On November 3, SCOTUS [granted](#) the National Rifle Association’s (NRA) request to consider whether the First Amendment allows government to threaten adverse regulatory action against entities doing business with controversial organizations. After the Parkland shooting, a former head of New York’s Department of Financial Services issued guidance that New York banks and insurance companies should consider “reputational risks” of doing business with the NRA, spurring the underlying lawsuit.



UPCOMING BEFORE THE COURT: HARRINGTON V. PURDUE PHARMA, L.P.

On Dec. 4, SCOTUS will hear arguments over Purdue Pharma’s bankruptcy plan, which fully releases the Sackler family from civil opioid-related claims. The Court will consider whether the U.S. Bankruptcy Code authorizes this broad release of nonconsenting third parties’ claims. After the Bankruptcy Court’s initial approval of the plan, a district court rejected it, but the Second Circuit reinstated the plan. [Amici in support](#) of Petitioners stress that plans like this conflict with the purpose of bankruptcy proceedings and will “silence” victims of mass torts.

The Future of Medication Abortion

SCOTUS has not yet announced whether it will hear appeals of a [Fifth Circuit decision](#) invalidating Food and Drug Administration (FDA) action related to medication abortion drug Mifepristone. The Fifth Circuit's decision would overturn key FDA determinations relating to the drug, altering its accessibility. Both [FDA](#) and drug manufacturer, [Danco](#), have petitioned the Court to intervene. In addition to questions of standing, the federal government characterizes the Fifth Circuit's decision as unprecedented, underscoring the importance of FDA's scientific expertise. Danco notes disruptive effects of the decision on the Rx industry.



SCOTUS ON GUN CONTROL

In addition to the *Cargill* and *Vullo* cases, above, the Court is considering 2 other major gun-related issues this term. On November 7, the Court heard [oral arguments in *U.S. v. Rahimi*](#), challenging a federal law prohibiting those with domestic violence restraining orders from possessing firearms. The Justices seemed skeptical about invalidating the law. Justice Jackson questioned the applicability of the history and tradition test used in *NY Rifle v. Bruen* to restrictions based on domestic violence charges.

In October, the Court unanimously ordered ghost gun manufacturers (e.g., untraceable guns lacking serial numbers) to comply with new federal regulations requiring serial numbers on gun parts and background checks by gun sellers. The Court's order in [Garland v. Blackhawk Manufacturing Group](#) reversed a Texas district court's injunction against the rule. The district court order came after SCOTUS [previously upheld the rule](#) in August.

“[F]or many abuse victims - and their family members, friends, and neighbors, as well as law enforcement officers - Section 922(g)(8) literally means the difference between life or death.”

[Amicus Brief, Public Health Researchers and Lawyers at 8 \(in the *Rahimi* case\).](#)

RECENT AND UPCOMING ORAL ARGUMENTS

[RECAP: LINDKE V. FREED](#)

On October 31, the Court heard [oral arguments](#) to determine whether Freed, a city manager, who blocked a critic, Lindke, from his Facebook page over disparaging comments about the city's handling of the COVID-19 pandemic was acting on behalf of the government for First Amendment purposes. Lindke [argued](#) that the test should be whether the official created a “channel for communicating with constituents;” the government argued that the test should be whether the account is private or government property. While some Justices seemed dismissive of the private property test, it remains [unclear](#) how the Court will render judgment.

[PREVIEW: LOPER BRIGHT & RELENTLESS INC.](#)

On January 17, 2024, the Court will hear arguments in 2 cases seeking to overrule *Chevron v. Natural Resources Defense Council*, which established judicial deference to agency decision-making under unclear grants of authority. A decision to overrule *Chevron* could undermine federal agency powers, including public health authorities.