

SCOTUS Public Health Law Updates (“PHLU”)

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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 in the [Journal of Law, Medicine & Ethics](#).



ASU Sandra Day O'Connor
College of Law

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Center for Public Health Law & Policy

CASES TO WATCH

PETITION PENDING

L.W. V. SKRMETTI

Three transgender teens and their parents [petitioned](#) the Court on Nov. 1, 2023 to block Tennessee’s SB1, which prohibits the prescription of hormone treatments as gender-affirming care for children. They argue the law violates Equal Protection and parents’ decision-making rights under the 14th Amendment.

PETITION GRANTED

CITY OF GRANTS PASS V. JOHNSON

On January 12, SCOTUS [agreed](#) to consider whether cities can enforce public camping bans when homeless shelters lack adequate bed space. The 9th Circuit determined that an Oregon city’s public camping ban violated the 8th Amendment rights of unsheltered individuals. Localities across the country have [increasingly passed](#) similar bans targeted towards eliminating homeless encampments.

CASE DISMISSED

ACHESON HOTELS V. LAUFER

On January 8, SCOTUS [dismissed](#) a case involving claims that a hotel violated the ADA’s “reservation rule” by failing to list the facility’s accessibility details on the hotel website. The Court heard arguments about whether an individual who does not intend to stay at the hotel has a legal right to sue under the ADA. SCOTUS dismissed the case as moot following the plaintiff’s voluntarily dismissal.

Looking Back: The Center’s Review of the 2022-2023 Term

The Center’s recent [article](#) published in the Journal of Law, Medicine, and Ethics assesses ten public health law themes emerging during the Supreme Court’s turbulent 2022-2023 term, including (1) affirmative action; (2) online misinformation; (3) civil rights and public health authority liability; (4) cyberbullying and protected speech; (5) FDA regulation of mifepristone; (6) emergency powers and student debt; (7) free religious exercise; (8) racial gerrymandering and voting; (9) tribal water rights; and (10) public health emergency powers and immigration.



VACCINE MANDATE INJUNCTIONS VACATED

On December 11, the Court [vacated](#) the Fifth and Sixth Circuits’ injunctions of President Biden’s COVID-19 vaccine mandate for federal employees and service members. In May 2023, following the end of the national COVID-19 Public Health Emergency, President Biden revoked his [executive order](#) requiring federal employee vaccination. The vaccine mandate for military members was [rescinded](#) by Congress in 2022. The federal government filed petitions in both cases arguing that the injunctions were moot because all mandates had been lifted.

Remembering Justice Sandra Day O'Connor

This edition of SCOTUS PHLU is dedicated to the late Justice Sandra Day O'Connor. Justice O'Connor, an Arizona native and the first woman to serve on the Supreme Court, leaves behind a legacy of legal decisions positively impacting public health. Among other opinions, Justice O'Connor joined the majority in *Planned Parenthood v. Casey* (1992), reaffirming *Roe v. Wade* (1973) and recognizing abortion as a fundamental right and private health decision. Justice O'Connor also wrote the majority opinion in *Grutter v. Bollinger* (2003) upholding affirmative action and joined the majority in *Lawrence v. Texas* (2003) in finding that laws prohibiting sexual conduct among persons of the same sex violate the 14th Amendment.



SCOTUS ON ABORTION

SCOTUS has agreed to review two cases involving abortion: *Danco & FDA v. Alliance for Hippocratic Medicine* and *Idaho v. United States*. In the first, SCOTUS will consider whether to overturn a 5th Circuit ruling subverting FDA's approval of mifepristone, a drug used in the majority of medication abortions. FDA and Danco argue that the Alliance lacks standing to challenge FDA's mifepristone approval and subsequent actions and that lower courts exceeded their authority by reversing FDA's scientific determination about the drug's safety and efficacy.

In *Idaho v. United States*, SCOTUS will consider whether EMTALA, the federal law requiring most U.S. hospitals to provide stabilizing treatment to patients in emergencies, supersedes state laws that criminalize abortions. In its January 5 [order](#), SCOTUS temporarily allowed an Idaho abortion ban to go into effect despite lower court determinations that the law conflicts with EMTALA. The case was consolidated with another similar case, *Moyle v. United States*.

“The stakes are enormous in post-*Roe* America. Even those living in states with strong protections for abortion rights could have their ability to access mifepristone severely restricted if the Court rules against the FDA.”

Nancy Northup, President & Chief Executive Officer, Center for Reproductive Rights

RECENT AND UPCOMING ORAL ARGUMENTS

RECAP: HARRINGTON V. PURDUE PHARMA

On December 4, SCOTUS heard arguments about Purdue Pharma's bankruptcy plan which, if approved, would enable members of the Sackler family to avoid future civil lawsuits concerning opioids. The case turns on the Court's specific interpretation of the Bankruptcy Code. During questioning, the Justices expressed concerns about whether the plan adequately compensates opioid victims and their families for their suffering. If SCOTUS sides with Purdue, this case could have widespread implications on the use of bankruptcy law to settle public health mass tort lawsuits.

RECAP: MULDROW V. ST. LOUIS

On December 6, SCOTUS considered whether employment discrimination claims based on job transfers must demonstrate that the discrimination generated a “materially significant disadvantage” for the claimant. Based on the Justices' questioning, the Court appeared to agree that discrimination alone is an injury for purposes of Title VII employment discrimination and that plaintiffs need not also establish resulting significant disadvantage.

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