

# SCOTUS Public Health Law Updates (“PHLU”)

MARCH 15, 2024

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

Arizona State University

Center for Public Health Law & Policy

## CASE UPDATES

### PETITION DENIED

#### COAL. FOR TJ V. FAIRFAX COUNTY SCHOOL BOARD

On February 20, SCOTUS denied a [challenge](#) to the race-neutral admissions policy of an elite Virginia high school which had been upheld by the 4<sup>th</sup> Circuit.

The policy considers socio-economic factors like eligibility for free school lunches, attendance at underrepresented public middle schools, and speaking English as a second language.

### STAY DENIED

#### LUJAN CLAIMANTS V. BOY SCOUTS OF AMERICA

On February 24, SCOTUS denied an [emergency application](#) to stay the Boy Scouts of America’s Chapter 11 bankruptcy plan releasing third-parties from potential sexual abuse liability. The victims of sexual abuse claimed that the settlement should be stayed while the Court considers [Harrington v. Purdue Pharma](#).

### PETITION DENIED

#### 74 PINEHURST LLC & 335-7 LLC V. NEW YORK

On February 20, SCOTUS [denied](#) petitions by 2 groups of landlords seeking to invalidate NYC’s rent stabilization laws.

These laws capping the amounts that landlords can charge and raise rents apply to nearly half of the apartments in NYC.

SCOTUS previously [denied](#) 2 additional petitions in October concerning these NYC laws.

## Will SCOTUS tackle gender-affirming care?

In [L.W. v. Skrametti](#) and [Jane Doe v. Kentucky](#), families of transgender children asked SCOTUS to consider whether state laws banning gender-affirming care violate the 14<sup>th</sup> Amendment. Laws in Tennessee and Kentucky ban minors from accessing medical care (i.e., hormone therapies and puberty blockers) that is “inconsistent” with their assigned sex at birth. Since 2021, 21 states have passed similar restrictions, resulting in a split between the 6<sup>th</sup>, 8<sup>th</sup> and 11<sup>th</sup> Circuits. In 2023, the 6<sup>th</sup> Circuit found that the Tennessee and Kentucky laws do not discriminate on the basis of sex since they apply equally against all minors seeking gender-affirming care. Even if they are discriminatory, assessed the court, state interests in controlling medical intervention into childhood development rationally support the restrictions. SCOTUS is considering these petitions at its conference on March 15.



### SCOTUS ON GUNS

On February 27, the Court heard arguments in [Cargill v. Garland](#), a case considering whether bump-stocks should be classified as machineguns under federal firearm regulations. Bump-stock attachments allow semiautomatic rifles to fire at a rate similar to a machinegun. The Trump Administration [banned](#) bump-stocks following the 2017 Las Vegas shooting and a circuit split over the ban developed between the 5<sup>th</sup> and 6<sup>th</sup> Circuits and D.C. Circuit.

During questioning, the Justices focused on the similarities between the firing functions of rifles with bump-stocks and automatic machineguns. Some Justices expressed concern over criminal liability that may impact individuals who purchased bump-stocks when they were legal. They also expressed concerns over the rapid-fire capabilities of bump-stock-equipped rifles.

## Justice Alito Renews *Obergefell* Criticisms

In *Missouri Dep't of Corrections v. Finney*, SCOTUS declined to consider whether the 14<sup>th</sup> Amendment prohibits the striking of jurors who have religious objections to same-sex relationships. In the denial, Justice Samuel Alito renewed ongoing criticisms of the Court's 2015 decision, *Obergefell v. Hodges*, providing a right to same-sex marriage. As per Justice Alito's comments, "[the holding in *Finney*] exemplifies the danger that I anticipated in *Obergefell* . . . that Americans who do not hide their adherence to traditional religious beliefs about homosexual conduct will be 'labeled as bigots and treated as such' by the government."

Justice Alito is not the only Justice to signal discontent with *Obergefell*. Justice Clarence Thomas also criticized the decision in his concurrence in *Dobbs v. Jackson Women's Health Organization* (2022).



Justice Samuel Alito

## SCOTUS ON THE ADMINISTRATIVE STATE

On February 20, SCOTUS heard oral arguments in yet another case addressing agency power. In *Corner Post Inc. v. Board of Governors*, SCOTUS is considering whether the Administrative Procedure Act's 6-year statute of limitations period to challenge federal regulations begins when (1) an agency takes final action or (2) the injury occurs. The plaintiff's business opened more than 6 years after the applicable federal regulation was finalized, but argued that their challenge of a federal reserve rule regarding debit transaction fees should not be barred because the injury had not yet occurred when the statute of limitations tolled.

If the Court agrees, a flurry of lawsuits challenging decades-old regulations may unfold, including those grounded in public health and safety. During questioning, Justices Kagan and Jackson considered how this case may interact with *Chevron*, which the Court is considering overturning in *Loper* and *Relentless*.

"[A] decision for Petitioner here would magnify the effect of any other decisions changing the way that this Court or other courts have approached administrative law questions, because it would . . . potentially mean that those changes would then be applied retroactively to every regulation that an agency has adopted in the last, I don't know, 75 years . . . ."

-Benjamin Snyder, Assistant to the Solicitor General of the United States

## RECENT AND UPCOMING ORAL ARGUMENTS

### RECAP: MOODY V. NETCHOICE; NETCHOICE V. PAXTON

On February 26, the Court heard oral arguments regarding whether states like Florida and Texas can pass laws banning social media platforms from employing content moderation policies. The Justices appeared hesitant to overturn the laws but expressed concern about resulting, unintended consequences if platforms are restricted in their ability to take down content, like hate speech or misinformation. Justice Barrett commented specifically that the case could unleash "a bunch of land mines."

### UPCOMING:

**3/18** - *Murthy v. Missouri* (addressing misinformation and free speech); *NRA v. Vullo* (addressing free speech); **3/25** - *Becerra v. San Carlos & Northern Arapaho Tribe* (addressing funding for tribal health care programs); **3/26** - *FDA & Danco v. All. for Hippocratic Medicine* (addressing FDA approval of Mifepristone).

This edition of SCOTUS PHLU was developed by **Jennifer L. Piatt, JD**, Research Scholar & Faculty Co-Director, **Mary Saxon**, Senior Legal Researcher, and **James G. Hodge, Jr., JD, LL.M.**, Professor & Director, Center for Public Health Law & Policy, ASU Sandra Day O'Connor College of Law.