

# Public Health Law



# Public Health Law

THIRD EDITION

**Wendy K. Mariner**

EDWARD R. UTLEY PROFESSOR OF HEALTH LAW  
BOSTON UNIVERSITY SCHOOL OF PUBLIC HEALTH,  
SCHOOL OF LAW & SCHOOL OF MEDICINE

**George J. Annas**

WILLIAM FAIRFIELD WARREN DISTINGUISHED PROFESSOR  
DIRECTOR, CENTER FOR HEALTH LAW, ETHICS & HUMAN RIGHTS  
BOSTON UNIVERSITY SCHOOL OF PUBLIC HEALTH,  
SCHOOL OF LAW & SCHOOL OF MEDICINE

**Nicole Huberfeld**

PROFESSOR OF HEALTH LAW, ETHICS & HUMAN RIGHTS  
BOSTON UNIVERSITY SCHOOL OF PUBLIC HEALTH  
PROFESSOR OF LAW  
BOSTON UNIVERSITY SCHOOL OF LAW

**Michael R. Ulrich**

ASSISTANT PROFESSOR OF HEALTH LAW, ETHICS & HUMAN RIGHTS  
BOSTON UNIVERSITY SCHOOL OF PUBLIC HEALTH



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2019  
Carolina Academic Press, LLC  
All Rights Reserved

ISBN 978-1-5310-1353-0  
eISBN 978-1-5310-1354-7  
LCCN 2019941690

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Contents

---

Preface to the Third Edition	xxi
Acknowledgements	xxiii
Table of Cases	xxv
Table of Statutes	xxx
<b>Chapter 1 · Introduction to Public Health in the United States</b>	<b>3</b>
A. Introduction	3
B. What Is Public Health?	4
Wendy K. Mariner, <i>Law and Public Health: Beyond         Emergency Preparedness</i>	6
Sandro Galea & George J. Annas, <i>Aspirations and Strategies for         Public Health</i>	13
Notes and Questions	17
1. Defining public health	17
2. Public health and law	18
3. Social determinants of health	20
4. Common-sense public health	21
5. Public health activities	22
6. Does public health receive too little attention?	23
C. Causes of Death	24
Notes and Questions	27
1. Presenting information on risks	27
2. Education and advocacy	27
3. Correlation and causation	28
D. Defining Risks to Public Health	29
<i>Christ's Bride Ministries, Inc. v. Southeastern Pennsylvania         Transportation Authority</i>	29
Notes and Questions	33
1. Relative risk perceptions	33
2. Tobacco and relative risks	34
E. Risk Perception	35
DANIEL KAHNEMAN, THINKING, FAST AND SLOW	35
Notes and Questions	38
1. Analytic versus automatic thinking	38
2. Framing risk information	39
3. Fooling experts	39

4. Artificial intelligence	40
NASSIM NICHOLAS TALEB, THE BLACK SWAN—THE IMPACT OF THE HIGHLY IMPROBABLE	40
Notes and Questions	42
5. Risk perception	42
6. Factors affecting risk perception	43
7. Black swans, hedgehogs, and foxes	44
8. Regression to the mean	44
F. Prevention and Screening	45
H. GILBERT WELCH, OVERDIAGNOSED—MAKING PEOPLE SICK IN THE PURSUIT OF HEALTH	45
Notes and Questions	49
1. When is screening beneficial?	49
2. Breast cancer screening	50
3. Levels of prevention and cost/benefit analysis	51
G. Human Rights and Health	52
Universal Declaration of Human Rights	52
International Covenant on Civil and Political Rights	57
International Covenant on Economic, Social and Cultural Rights	58
Notes and Questions	59
1. The United Nations	59
2. The Universal Declaration of Human Rights	59
3. International covenants	60
4. Human rights	61
<b>Chapter 2 · State Authority to Regulate for Public Health, Safety, and Welfare</b>	63
A. Introduction	63
B. Distinguishing State and Federal Jurisdiction	64
<i>Compagnie Française de Navigation à Vapeur v. Louisiana State         Board of Health</i>	64
Notes and Questions	67
1. Federalism and boundaries between state and federal regulation	67
2. State authority and the Tenth Amendment	67
C. State Regulation and Contagious Diseases	68
<i>Jacobson v. Massachusetts</i>	68
Notes and Questions	74
1. <i>Jacobson</i> in context	74
2. Defining the police power	75
3. Exploring judicial review	76
4. Delegation of power	77
5. <i>Jacobson</i> 's claims	77
6. State interests	78
7. Enforcement	79

8. Rights as a limitation of police power	79
9. Vaccine exemptions	80
D. Civil Commitment	81
<i>Greene v. Edwards</i>	82
<i>City of Newark v. J.S.</i>	84
<i>City of Milwaukee v. Washington</i>	92
Notes and Questions	98
1. Tuberculosis—the disease	98
2. Substantive due process and civil commitment of persons with contagious diseases	99
3. Characteristics of the disease	101
4. Civil commitment for mental illness and dangerousness as precedent	101
5. Civil commitment of sexual predators	103
6. Substantive due process, informed consent, and involuntary treatment	104
7. Procedural due process and civil commitment of persons with contagious diseases	105
8. Civil commitment of noncontagious patients to complete treatment	106
9. The least restrictive alternative and the place of confinement	106
10. TB and homelessness	107
E. The Scope of Police Power	107
<i>Muller v. Oregon</i>	107
Notes and Questions	109
1. Historical notes	109
2. <i>Muller</i> and the Brandeis Brief	110
<i>ABATE of Georgia v. Georgia</i>	111
Notes and Questions	114
3. Motorcycle helmet laws	114
4. What is the state's interest?	115
5. Seat belt requirements	116
6. Alternative regulatory measures	117
7. Regulation of people versus things	117
<i>Guertin v. State of Michigan</i>	117
Notes and Questions	126
8. Government interest	126
9. Negative and positive rights	126
10. Fluoridation of the water supply	126
<b>Chapter 3 · Federal Power: Constitutional Principles Applicable to Public Health</b>	129
A. Introduction	129
B. Direct Federal Regulation	130

<i>United States v. Lopez</i>	131
<i>Gonzales v. Raich</i>	134
Notes and Questions	141
1. Federal regulation of controlled substances	141
2. Cannabis and federalism	142
3. Deciphering regulatory differences	143
<i>Hodel v. Virginia Surface Mining &amp; Reclamation Association</i>	143
Notes and Questions	146
4. Environmental health and governance choices	146
5. The “Dormant” Commerce Clause	147
<i>National Federation of Independent Business, Inc. v. Sebelius</i>	148
Notes and Questions	156
6. Federalism and boundaries between state and federal regulation	156
7. Preserving states’ police power through the dual sovereignty approach to federal and state power	157
<i>United States v. Graydon Earl Comstock, Jr.</i>	158
Notes and Questions	163
8. What is necessary and proper?	163
C. Indirect Federal Regulation	164
<i>South Dakota v. Dole</i>	165
<i>Harris v. McRae</i>	168
<i>National Federation of Independent Business, Inc. v. Sebelius</i>	173
Notes and Questions	182
1. <i>Dole’s</i> four-part test	182
2. Broad reach of federal spending for health	183
3. Federal funding before <i>South Dakota v. Dole</i>	184
4. <i>NFIB</i> , coercion, and the <i>Dole</i> test	185
<i>Rust v. Sullivan</i>	186
<i>United States Agency for International Development v. Alliance for Open Society International, Inc.</i>	189
Notes and Questions	192
5. Private entities versus states as grant recipients	192
6. Unconstitutional conditions	192
<b>Chapter 4 • Civil Liberties, Equality, and Individual Rights</b>	195
A. Introduction	195
B. Constitutionally Protected Rights	196
<i>Estelle v. Gamble</i>	197
Notes and Questions	200
1. A very limited right to medical care	200
2. Implications of <i>Estelle</i>	201
<i>Meyer v. Nebraska</i>	201
<i>Pierce v. Society of Sisters</i>	203



Notes and Questions	204
3. Early liberty interests	204
4. The right to raise children versus the state interest in protecting children	204
<i>Loving v. Virginia</i>	205
Notes and Questions	208
5. A progression of court-recognized rights	208
6. Heightened scrutiny for laws that discriminate	208
7. “Persons” in the United States	209
<i>City of Cleburne v. Cleburne Living Center</i>	209
Notes and Questions	211
8. Rational basis with teeth	211
9. Liberty and equality as two sides of one coin	211
<i>Cruzan v. Director, Missouri Department of Health</i>	212
<i>Washington v. Glucksberg</i>	218
<i>Vacco v. Quill</i>	222
Notes and Questions	224
10. The right to refuse treatment	224
11. Balancing civil rights with acknowledged state interests	225
12. Clear and convincing evidence of patient wishes	225
13. Framing the right at stake	226
<i>New York City Friends of Ferrets v. City of New York</i>	227
Notes and Questions	232
14. Unsuccessful assertion of civil liberties	232
15. Defining public health threats	232
16. Federal influence and state public health laws	232
C. Statutory Protections	233
Civil Rights Act of 1964	234
Notes and Questions	236
1. The nature of public accommodations and importance of federal spending	236
2. Broad legislation	237
<i>Heart of Atlanta Motel, Inc. v. United States</i>	237
Notes and Questions	244
3. A different take on rights	244
The Pregnancy Discrimination Act of 1978	244
Notes and Questions	245
4. Equal Employment Opportunity	245
5. Interplay between branches of government	246
6. Sex discrimination and health	246
7. Protecting other vulnerable populations	246
Americans with Disabilities Act	247
Notes and Questions	251
8. Attempting to define disability	251

9. Civil rights for those with disabilities	251
10. The reach of statutory rights under the ADA	252
11. Protecting the disabled and the terminally ill	253
D. International Human Rights	253
CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (ART. 12)	255
Notes and Questions	257
1. Right to health	257
2. International versus domestic standards	257
3. Determinants of health	258
4. Prioritizing a right to health?	258
5. The duty to respect, protect, and fulfill the right to health	258
<b>Chapter 5 · Public Health in Practice</b>	259
A. Introduction	259
B. Drugs	260
<i>Robinson v. California</i>	260
Notes and Questions	262
1. Use of narcotics	262
2. Status is not a crime	262
3. <i>Powell v. Texas</i>	263
4. Two lawful acts can comprise a crime	265
5. Vagrancy	265
<i>Regina Kilmon v. Maryland, Kelly Lynn Cruz v. Maryland</i>	266
Notes and Questions	271
6. Drug use by pregnant women	271
7. The South Carolina exception	271
8. The effects of drug use in pregnancy	273
9. Marijuana	274
Commitment of Alcoholics or Substance Abusers	275
Notes and Questions	275
10. Civil commitment for substance use disorder	275
11. Substantive and procedural due process	276
C. Tobacco, Electronic Cigarettes, and Vaping	277
Notes and Questions	279
1. Secondhand smoke or environmental tobacco smoke	279
2. Smoking cessation measures	280
<i>Lorillard Tobacco v. Reilly</i>	281
Notes and Questions	285
3. Preemption	285
4. Advertising restrictions under the First Amendment	286
Family Smoking Prevention and Tobacco Control Act	286
Notes and Questions	289
5. The Tobacco Control Act	289

6. Electronic cigarettes	290
7. FDA regulation of e-cigarettes	290
8. Is vaping harm reduction or a gateway to tobacco?	291
<i>City of North Miami, Florida v. Kurtz</i>	292
Notes and Questions	295
9. Privacy claims	295
10. From smoke-free to smoker-free workplaces	296
11. Employer prerogatives	296
12. Discrimination in employment	296
D. Weight and Health	297
ABIGAIL C. SAGUY, WHAT'S WRONG WITH FAT?	297
Notes and Questions	300
1. Framing the problem	300
2. Cultural frames	300
3. Financial frames	300
4. An epidemic of obesity	301
5. Body Mass Index (BMI)	302
6. Weight and mortality	303
Paul Campos, Abigail Saguy, Paul Ernsberger, Eric Oliver & Glenn Gaesser, <i>The Epidemiology of Overweight and Obesity: Public Health Crisis or Moral Panic?</i>	304
Notes and Questions	306
7. Reframing the problem	306
8. What about genetics or biology?	307
<i>Ronald Shell v. Burlington Northern Santa Fe Railway</i>	307
Notes and Questions	312
9. Is obesity a disease or disability?	312
10. ADA claims	313
11. General discrimination against overweight	313
<i>In re: Brittany T.</i>	314
Notes and Questions	316
12. Denormalization or shaming	316
13. Parental and state responsibilities	316
14. Normal BMI as a prerequisite for care	317
15. Personal responsibility versus collective social responsibility	317
Eric A. Finkelstein & Kiersten L. Strombotne, <i>The Economics of Obesity</i>	318
Notes and Questions	321
16. Sugar or fat?	321
17. An obesity-promoting environment	323
<i>New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Department of Health and Mental Hygiene</i>	323
Notes and Questions	328
18. Separation of powers and administrative authority	328

19. Power and policy	329
20. Constitutional and legislative sources of administrative authority	330
<b>Chapter 6 · Reproductive Health</b>	<b>331</b>
A. Introduction	331
B. Health Care and the Right to Privacy	332
<i>Buck v. Bell</i>	332
<i>Skinner v. Oklahoma</i>	334
Notes and Questions	336
1. Public welfare and involuntary medical procedures	336
2. The beginning of fundamental rights	336
3. The real Carrie Buck	337
4. Foundations of modern rights	337
<i>Griswold v. Connecticut</i>	337
<i>Eisenstadt v. Baird</i>	341
<i>Roe v. Wade</i>	343
<i>Doe v. Bolton</i>	354
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i>	355
Notes and Questions	363
5. Medical procedures and the Supreme Court	363
6. Continuous scrutiny	364
7. Restrictions versus prohibitions	364
<i>Gonzales v. Carhart</i>	365
<i>Whole Women's Health v. Hellerstedt</i>	373
Notes and Questions	382
8. <i>Gonzales v. Carhart</i> and the medical profession	382
9. A speedy reversal	382
10. The meaning of <i>Gonzales v. Carhart</i>	383
11. Protecting “health” and regulating abortion	383
12. The substantial obstacle of distance	384
13. Continued state challenges to <i>Roe</i> and <i>Casey</i>	384
14. Regulating the speech of providers	384
C. Public Health and Regulating Intimate Relations	385
<i>Lawrence v. Texas</i>	385
<i>United States v. Windsor</i>	388
<i>Obergefell v. Hodges</i>	392
Notes and Questions	401
1. Privacy in intimate decisions	401
2. Morality and regulation of intimate relationships	402
3. Public morals as a state interest in regulating other matters	402
4. Deciphering the rights at stake in same-sex marriage	403
5. Future federalism implications	404
6. Wedding cake and fundamental rights	404

<b>Chapter 7 · Health and Safety Regulation Affecting Speech under the First Amendment</b>	405
A. Introduction	405
B. Public Safety Regulations	406
<i>McCullen v. Coakley</i>	406
Notes and Questions	412
1. Time, place, and manner laws and content neutrality	412
2. Heightened scrutiny for content-neutral laws	413
3. <i>Reed</i> : Content-based time, place, and manner laws	414
C. Banning Advertising	414
<i>44 Liquormart, Inc. v. Rhode Island</i>	416
Notes and Questions	425
1. Commercial harms	425
2. Non-commercial-harm purposes	425
3. <i>Central Hudson</i> review	426
4. Greater and lesser powers	427
<i>Lorillard Tobacco v. Reilly</i>	427
Notes and Questions	435
5. Tobacco marketing	435
<i>Sorrell v. IMS Health Inc.</i>	436
Notes and Questions	445
6. What counts as speech?	445
7. What standard of review?	445
8. Whose privacy is protected?	445
D. Truth in Advertising and Compelled Speech	446
<i>Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio</i>	446
<i>Ocheese Creamery v. Putnam</i>	448
Notes and Questions	450
1. <i>Zauderer</i> , compelled speech, and consumer protection disclosures	450
2. Labeling definitions	451
3. What counts as purely factual and uncontroversial?	451
<i>R.J. Reynolds Tobacco Company v. Food &amp; Drug Administration</i>	452
Notes and Questions	460
4. FDA regulation of tobacco and graphic images	460
5. The effect of graphic warnings	461
6. Fair labeling, warnings, and products liability	461
E. Professional Speech and Consumer Protection	462
<i>National Institute of Family and Life Advocates v. Becerra</i>	462
Notes and Questions	469
1. Content-based compelled disclosures	469
2. Standard of review	469
3. Professional speech and informed consent	470
4. Is it speech or religious belief?	471

5. Regulation affecting speech is everywhere	472
<i>Wollschlaeger v. Governor, State of Florida</i>	473
Notes and Questions	479
6. What is the standard of review?	479
7. Licensure and professional speech	480
8. Alternative theories of freedom of speech	481
<b>Chapter 8 · Public Health and Religion</b>	<b>483</b>
A. Introduction	483
B. Free Exercise of Religion in the Context of Public Health Regulation	484
<i>Curtis v. School Committee of Falmouth et al.</i>	484
<i>Employment Division, Dep't of Human Resources of Oregon v. Smith</i>	487
Notes and Questions	491
1. Neutral laws of general applicability	491
2. Reaction to <i>Smith</i>	491
3. Prohibitions versus eligibility for government benefits	491
<i>Church of the Lukumi Babalu Aye v. City of Hialeah</i>	492
Notes and Questions	498
4. Discrimination against religion	498
5. Dangerous practices	499
C. Protection for Religious Beliefs	501
Religious Freedom Restoration Act of 1993, as amended	501
Notes and Questions	503
1. The Religious Freedom Restoration Act and strict scrutiny	503
2. RFRA, state law, and <i>City of Boerne</i>	504
3. State RFRA statutes	505
<i>Gonzales v. O Centro Espirita Beneficente União do Vegetal</i>	505
Notes and Questions	508
4. RFRA and federal laws	508
D. Commercial Enterprises and Free Exercise	509
<i>Burwell v. Hobby Lobby Stores, Inc.</i>	509
Notes and Questions	518
1. For-profit corporations and religious beliefs	518
2. Framing the issue	519
3. What is a substantial burden?	519
4. The least restrictive alternative	520
5. <i>Hobby Lobby</i> sequelae: religious and moral exemptions	520
<i>Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission</i>	521
Notes and Questions	530
6. Religion or speech?	530
7. Hostility and neutrality toward religion	531
8. Discrimination on the basis of status or conduct?	532
9. Health implications	532

10. Religious freedom to access health services	532
11. Bigamy, polygamy, and other marital combinations	533
E. Conscience Clauses: Statutory Exemptions	533
Idaho Code § 18-611	534
Cal. Bus. & Prof. Code § 733 (2012)	535
Notes and Questions	536
1. Federal conscience clauses	536
2. Emergency contraception and conscience clauses	538
3. Religious objections to autopsies	539
<i>Phillips v. City of New York</i>	540
Notes and Questions	543
4. Religious objections to immunization	543
5. Personal philosophy exemptions	543
6. Statutory variations in immunization exemptions	544
7. Vaccine controversies	544
F. Religious Objections to Medical Care and the Establishment Clause	545
<b>Chapter 9 · Firearms and the Second Amendment</b>	549
A. Introduction	549
B. The Second Amendment as an Individual Right	550
<i>District of Columbia v. Heller</i>	551
Notes and Questions	559
1. A fundamental right	559
2. The role of the historical analysis	560
3. Justice Breyer's <i>Heller</i> dissent	561
4. State constitutional provisions	562
C. Authority to Regulate Firearms and Interpreting the Scope of the Individual Right	562
<i>Heller v. District of Columbia</i>	563
<i>Tyler v. Hillsdale County Sheriff's Department</i>	574
Notes and Questions	585
1. Who, what, when, where	585
2. What is protected?	586
3. Kavanaugh's <i>Heller II</i> dissent	586
4. Mental illness and the limitations of historical analysis	587
5. Permanent bans	587
<i>Moore v. Madigan</i>	587
<i>Gould v. Morgan</i>	591
Notes and Questions	598
6. Circuit split on "good-reason" carry restrictions	598
7. The core of the Second Amendment	599
8. Standards of review and empirical evidence	599
9. Burden of proof	599
D. Firearms Legislation	600

Summary of Key Provisions of the Gun Control Act of 1968, as amended	600
Florida “Stand Your Ground Law”	602
Notes and Questions	603
1. The “Who” of the Gun Control Act	603
2. The “What” of the Gun Control Act	605
3. The Brady Act	605
4. Florida’s “Stand Your Ground” law	606
5. Alternative regulatory approaches	606
6. When may a teacher shoot a student?	607
E. The Role of Litigation in Determining Public Policy on Gun Ownership and Use	607
Protection of Lawful Commerce in Arms Act	607
<i>Adames v. Sheahan</i>	610
Notes and Questions	617
1. Litigation by state and local governments	617
2. The Protection of Lawful Commerce in Arms Act (PCLAA)	618
3. Private claims of products liability and negligence	619
4. What causes of action are left?	619
<b>Chapter 10 · Testing, Screening, and Searching for Health Risks</b>	621
A. Introduction	621
B. Searches and Seizures in Civil Law	622
C. Administrative Searches and Big Data	625
Wendy K. Mariner, <i>Reconsidering Constitutional Protection for Health Information Privacy</i>	625
<i>United States v. Westinghouse Electric Corp.</i>	629
Notes and Questions	634
1. Investigation, research, or surveillance?	634
2. Subpoenas, warrants, or requests?	635
3. Who represents worker privacy interests?	635
4. A balancing test	635
<i>Pyle v. Woods</i>	636
Notes and Questions	638
5. DEA preemption of state warrant requirements	638
6. Variation in state PDMPs	639
7. Purposes of PDMPs	640
8. Do PDMPs reduce opioid use or overdose deaths?	640
9. Substance use disorder as a disease of despair	641
10. Civil commitment for alcohol or substance use disorder	641
D. Testing People and the Special Needs Exception	642
<i>Ferguson v. City of Charleston</i>	642
Notes and Questions	648
1. Government’s special needs	648



2. <i>Ferguson</i> : special needs versus law enforcement	648
3. Is reporting medical information a search or seizure?	649
<i>Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls</i>	650
Notes and Questions	659
4. <i>Earls</i> and the expansion of special needs	659
5. Drug testing proliferates	660
6. Drug testing recipients of government benefits	660
7. Highway checkpoints	661
E. Screening: Searching for Health Risks	662
<i>Anderson v. City of Taylor</i>	662
Notes and Questions	666
1. Programs for public employees	666
2. The ACA and wellness programs	667
3. Do wellness programs work?	667
4. Who might object to health assessments?	668
5. Health promotion and health care costs	668
Affordable Care Act, Wellness Programs	669
<i>AARP v. United States Equal Employment Opportunity Commission</i>	672
Notes and Questions	682
7. New EEOC Regulations	682
8. Health behaviors as a condition of employment	682
9. Adopting corporate values as a condition of employment	682
<b>Chapter 11 · Privacy, Confidentiality, and Surveillance</b>	685
A. Introduction	685
B. Privacy and Confidentiality	686
Nicolas P. Terry, <i>What's Wrong with Health Privacy?</i>	686
Notes and Questions	691
1. Distinguishing privacy, confidentiality, and privilege	691
2. Approaches to privacy law	691
Marc Rotenberg, <i>Fair Information Practices and the Architecture of Privacy (What Larry Doesn't Get)</i>	691
3. Medical information is a valuable commodity	692
4. Artificial intelligence and the Black Box society	693
5. Theories of privacy	694
C. Information Privacy Laws	694
<i>Emily Byrne v. Avery Center for Obstetrics and Gynecology, P.C.</i>	698
Notes and Questions	704
1. Subpoenas for medical records	704
2. Permissible subpoenas for medical records	705
D. Access to Medical Records	705
<i>FAA v. Cooper</i>	705
Notes and Questions	708

1. Remedies for violations of privacy	708
<i>In the Matter of Miguel M.</i>	709
Health Insurance Portability and Accountability Act (HIPAA):	
Standards for Privacy of Individually Identifiable Health Information	713
Notes and Questions	718
2. The HIPAA Privacy Rule	718
3. The “public health exception”	719
<i>Northwestern Memorial Hospital v. Ashcroft</i>	720
Notes and Questions	724
4. The HIPAA Privacy Rule and state law	724
5. What information is identifiable?	725
6. How medical information is shared and identified	725
E. Compulsory Reporting of Medical Information	726
<i>Whalen v. Roe</i>	726
Notes and Questions	730
1. <i>Whalen’s</i> meaning	730
2. Collection versus disclosure	731
<i>Planned Parenthood v. Danforth</i>	732
<i>Thornburgh v. American College of Obstetricians and Gynecologists</i>	733
Notes and Questions	735
3. Heightened scrutiny of information concerning the exercise of constitutional rights	735
4. Public records	735
<i>Aid for Women v. Foulston</i>	737
Notes and Questions	741
5. Alternative uses of reporting laws	741
F. Public Health Surveillance and Research	741
Wendy K. Mariner, <i>Mission Creep: Public Health Surveillance and Medical Privacy</i>	743
Notes and Questions	748
1. Case reporting: expanding reportable conditions	748
2. Outbreak investigation, contact tracing, and partner notification	749
3. Justifications for mandatory reporting	749
4. Reporting patients by name	750
5. Research versus practice	750
National Program of Cancer Registries	751
Notes and Questions	753
6. Cancer registries	753
7. Public access to registry information	754
8. Immunization registries	755
G. International Approaches to Privacy Protection	755

<b>Chapter 12 · Emergency Preparedness and Bioterrorism</b>	<b>761</b>
A. Introduction	761
B. 9/11	763
National Commission on Terrorist Attacks Upon the U.S., 9/11 Commission Report	763
National Security Preparedness Group, Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations	765
Notes and Questions	767
1. The 9/11 Commission	767
2. 9/11 Commission findings	767
3. Globalization	767
4. The Geneva Conventions	768
C. Public Health Emergency Preparedness	769
1. Planning for Public Health Emergencies	769
Notes and Questions	770
1. TOPOFF and the “inclination to quarantine”	770
2. The Stafford Disaster Assistance and Emergency Relief Act	770
3. Federal versus state power	771
Anthony Moulton et al., <i>What Is Public Health         Legal Preparedness?</i>	771
2. Overreactions and Misusing Public Health to Promote a Security Approach	771
<i>Florence v. Board of Chosen Freeholders of The County of Burlington</i>	771
Notes and Questions	776
4. Searches in America	776
5. Using a public health rationale	776
6. 9/11 and strip searches	776
7. Physicians as prison guards	776
3. The Threat of an Improvised Nuclear Device Explosion	777
Institute of Medicine, Committee on Medical Preparedness for a Terrorist Nuclear Event, Assessing Medical Preparedness to Respond to a Terrorist Nuclear Event: Workshop Report	777
D. Influenza	780
John M. Barry, <i>The Great Influenza: The Epic Story of the     Deadliest Plague in History</i>	780
Department of Health and Human Services Pandemic Influenza Plan	782
Notes and Questions	785
1. Yearly outbreaks of influenza	785
2. Influenza virus types	785
3. Novel strains of influenza	786
4. John Warner National Defense Authorization Act	786

Pandemic Preparedness: Protecting Public Health and Civil Liberties	788
Notes and Questions	792
5. The anthrax attacks	792
6. Anthrax lessons	792
7. The first bioterrorist attack	793
E. The Smallpox Threat	793
Institute of Medicine, Committee on Smallpox, Vaccination Program Implementation, The Smallpox Vaccination Program: Public Health in an Age of Terrorism	793
Notes and Questions	796
1. IOM committee report	796
2. Mandatory versus voluntary vaccination	797
3. Failure of the vaccination program	797
4. Effects of anthrax and smallpox responses on public health	798
F. SARS	799
CDC, Fact Sheet: Basic Information About Sars	799
Mark A. Rothstein et al., Quarantine and Isolation: Lessons Learned from SARS, A Report to Centers for Disease Control and Prevention	799
George J. Annas, <i>The Statue of Security: Human Rights and Post-9/11 Epidemics</i>	805
Notes and Questions	809
1. Is SARS unique?	809
2. Other infectious threats	809
G. Ebola	810
George J. Annas, <i>Ebola and Human Rights: Post-9/11 Public Health and Safety in Epidemics</i>	810
Notes and Questions	819
1. Ebola and the notorious case of Kaci Hickox	819
2. Bioterror preparedness and research	820
3. Categorizing biological weapons	821
4. Fiction and bioterror	822
George J. Annas, <i>The Statue of Security: Human Rights and Post-9/11 Epidemics</i>	822
Notes and Questions	825
5. Planning	825
6. Hurricane Katrina	825
7. Public Health and Security	825
8. Public health as counter-terrorism	826
9. Public health and worldwide threats	826
Index	829

# Preface to the Third Edition

---

Public health is vital to our lives, as evidenced by headline news every day: mass shootings; drug overdoses; disease epidemics; obesity; data mining and data breaches; insurance coverage and access to care; immunizations; family planning; contaminated food and water; electronic cigarettes; climate change. These examples, and hundreds like them, present major legal and policy questions, the answers to which can make human lives better or worse. While individual medical care attracts most of the public attention and money, some of the most dramatic improvements in health and longevity have occurred through public health measures—for example, public health measures have added more than 30 years to the average life expectancy of Americans since 1900. Public health often is invisible, but it affects everyone.

Public health refers to federal, state, local, and tribal governmental efforts to maintain and protect the health and safety of the general population, and public health law is the broad field of ensuring that the law appropriately protects public health, safety, and welfare, as well as human rights. Public health law offers students opportunities for both theoretical thinking and real-world legal problem solving. Laws governing public health span all forms of legal authority—from constitutional to statutory to administrative to common law to international treaties—and solving public health problems requires using all of these tools.

The Third Edition offers a fresh take on this rapidly evolving field. To accommodate the shifting terrain, we begin by grounding students in foundational thematic concepts—what counts as a public health issue, choosing among multiple legal options, the changing scope and limits of government power, and ensuring justice and fairness. We examine major shifts in constitutional doctrine, including state and federal power, federalism, speech, religion, reproductive rights, firearms, and privacy, as well as human rights at the global level. The cases and materials critically examine how these concepts apply to contemporary and future topics, including substance use disorders, firearms regulations, health insurance coverage, food supply, big data, surveillance, employment, epidemics, and disaster preparedness. The themes and the topics covered provide a useful framework for analyzing competing interests among governments, private entities, and individuals in multiple contexts and as the law changes.

The new edition is designed not only for law students studying public health law, but also for students in other areas of law and public policy, including graduate students in public health, public policy, and medicine. Courses in public health law have been offered as a stand-alone course and as a supplement or alternative to

courses in health law, law and medicine, or law and bioethics. This book can be used in any such courses. The first chapter introduces the broad fields of public health and public health law. Chapters 2–5 provide the foundation for examining government power and policies affecting public health, recognizing constitutional protections for individual rights that create limitations on policy options, and applying these ideas to some of the most common and persistent public health issues. Chapters 6–12 study more complex aspects of public health topics. Each of these chapters provides examples of different constitutional principles, laws, and policies to address each problem. Since public health is a global concern, examples of human rights are threaded through the materials.

Much has changed since the first and second editions of *Public Health Law* were published and a substantial portion of the materials in this third edition are new. The most recent Supreme Court decisions on public health issues are included. At the same time, we have retained many of the foundational decisions concerning the state's police power to protect public health and federal powers to regulate health-related matters. The Notes and Questions continue to provide context, background, and explanation of many of the court decisions. They also include citations to basic reference materials. The Notes also offer examples of current issues to which the materials may apply. We have grouped notes and questions to follow the material to which they refer, for ease of reference. To locate a specific topic, the Table of Contents lists each Note and its subject matter.

## Our First Edition Co-Authors

Professor Ken Wing, of Seattle University School of Law, who inspired the Ken Wing Fun Run held annually at the Health Law Professors Conference, led the writing of the first edition of PUBLIC HEALTH LAW. He greatly disappointed us by retiring, but was generous in encouraging us to go forward with new editions.

Professor Dan Strouse was taken from us too soon. We are pleased that the Center for the Study of Law, Science & Technology, of which Dan was Director, at Arizona State University Sandra Day O'Connor College of Law, established the Daniel Strouse Prize in his memory.

WENDY MARINER  
GEORGE ANNAS  
NICOLE HUBERFELD  
MICHAEL ULRICH

*Boston University*  
*Boston, Massachusetts*

# Acknowledgements

---

Annas, George J., *Ebola and Human Rights: Post-9/11 Public Health and Safety in Epidemics*, 42 AM. J. LAW & MED. 334 (2016). Copyright © 2016 by George J. Annas. Reprinted with permission.

Annas, George J., Mariner, Wendy K. & Parmet, Wendy, PANDEMIC PREPAREDNESS: PROTECTING PUBLIC HEALTH AND CIVIL LIBERTIES (A report prepared for the American Civil Liberties Union, 2008). Copyright © 2008. Reprinted with permission.

Annas, George J., *The Statue of Security: Human Rights and Post-9/11 Epidemics*, 38 HEALTH L. 319 (2005). Copyright © 2005 George J. Annas. Reprinted with permission.

BARRY, JOHN M., THE GREAT INFLUENZA: THE EPIC STORY OF THE DEADLIEST PLAGUE IN HISTORY 2 (2004). Copyright © 2004 John M. Barry. Reprinted with permission.

Campos, Paul, et al., *The Epidemiology of Overweight and Obesity: Public Health Crisis or Moral Panic?*, 35 INTERNATIONAL JOURNAL OF EPIDEMIOLOGY 55 (2006). Copyright © 2006. Reprinted with permission.

Finkelstein Eric A. & Strombotne, Kiersten L., *The Economics of Obesity*, 91(suppl.) THE AMERICAN JOURNAL OF CLINICAL NUTRITION 1520s (2010). Copyright © 2010. Reprinted with permission.

Galea, Sandro & Annas, George J., *An Argument for a Common-Sense Global Public Health Agenda*, 2 THE LANCET 445 (2017). Copyright © 2017. Reprinted with permission.

Galea, Sandro & Annas, George J., *Aspirations and Strategies for Public Health*, 315 JAMA 655 (2016). Copyright © 2016. Reprinted with permission.

KAHNEMAN, DANIEL, THINKING, FAST AND SLOW 20 (2012). Copyright © 2012. Reprinted with permission.

Mariner, Wendy K., *Law and Public Health: Beyond Emergency Preparedness*, 38 JOURNAL OF HEALTH LAW 251 (2005). Copyright © 2005. Reprinted with permission.

Mariner, Wendy K., *Reconsidering Constitutional Protection for Health Information Privacy*, 18 JOURNAL OF CONSTITUTIONAL LAW 975 (2016). Copyright © 2016 Wendy K. Mariner. Reprinted with permission.

Mariner, Wendy K., *Mission Creep: Public Health Surveillance and Medical Privacy*, 87 BOSTON UNIVERSITY LAW REVIEW 347 (2007). Copyright © 2007. Reprinted with permission.

SAGUY, ABIGAIL C., WHAT'S WRONG WITH FAT? 10 (2013). Copyright © 2013 Abigail C. Saguy. Reprinted with permission.

TALEB, NASSIM N., THE BLACK SWAN—THE IMPACT OF THE HIGHLY IMPROBABLE xxi (2d ed., 2010). Copyright © 2010. Reprinted with permission.

Terry, Nicolas P., *What's Wrong with Health Privacy?*, 5 JOURNAL OF HEALTH & BIOMEDICAL LAW 1 (2009). Copyright © 2008 Nicolas P. Terry. Reprinted with permission.

WELCH, H. GILBERT, OVERDIAGNOSED—MAKING PEOPLE SICK IN THE PURSUIT OF HEALTH 11 (2011). Copyright © 2011 Dr. H. Gilbert Welch. Reprinted with permission.



# Table of Cases

---

- 44 Liquormart, Inc. v. Rhode Island, 416  
AARP v. United States Equal Employment Opportunity Commission, 672, 682  
ABATE of Georgia v. Georgia, 111  
Adames v. Sheahan, 610  
Addington v. Texas, 88  
Adrian v. Poucher, 115  
Aid for Women v. Foulston, 737, 741  
Akron v. Akron Center for Reproductive Health, Inc., 188  
Alberts v. Devine, 702  
Alfonso v. Fernandez, 486  
Allgeyer v. Louisiana, 108  
American Beverage Association v. City and County of San Francisco, 462  
American Library Assn., Inc., United States v., 190  
Anderson v. City of Taylor, 662, 667  
Arlington Central School District Board of Education v. Murphy, 182  
Ashcroft v. al-Kidd, 119  
Ass'n of Indep. Sch. of Greater Washington v. District of Columbia, 660  
Atwater v. City of Lago Vista, 116, 774  
Austin v. Tennessee, 110  
Bellotti v. Baird, 734  
Benning v. Vermont, 114, 115  
Big Ridge, Inc. v. Federal Mine Safety and Health Review Commission, 628  
Bigelow v. Virginia, 414, 418  
Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 650  
Boerne, City of v. Flores, 252  
Boone v. Boozman, 79, 543  
Boreali v. Axelrod, 324  
Bragdon v. Abbott, 251  
Bratt v. International Business Machines Corp., 700  
Braunfeld v. Brown, 520  
Breithaupt v. Abram, 214  
Brittany T., In re, 314  
Brown v. Board of Education I, 208  
Brown v. Smith, 544  
Brown v. Stone, 80, 543  
Buck v. Bell, 332  
Buhl v. Hannigan, 114  
Burwell v. Hobby Lobby Stores, Inc., 509  
Butler, United States v., 165  
Byrd v. United States, 625  
Caetano v. Massachusetts, 586  
California v. Azar, 521  
Camara v. Municipal Court of City and County of San Francisco, 623, 648  
Cantwell v. Connecticut, 541  
Capua v. City of Plainfield, 660  
Carpenter v. United States, 624, 625  
Castleman, United States v., 604  
Catholic Charities of Sacramento, Inc. v. Superior Court, 518  
Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 419, 426, 429  
Chaidez, United States v., 641  
Chandler v. Miller, 645, 648, 664  
Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 675

- Chicago, City of v. Beretta U.S.A. Corp., 618
- Christ's Bride Ministries, Inc. v. Southeastern Pennsylvania Transportation Authority, 29, 33
- Church of the Lukumi Babalu Aye v. City of Hialeah, 492
- Cincinnati Radiation Litigation, In re, 120
- Cipollone v. Liggett Group, 286
- Citizens for Health v. Leavitt, 719
- Citizens United v. Federal Election Comm'n, 445
- City of (see name of city)
- City of Detroit, In re, 121
- Civil Rights Cases, 237
- Cleburne, City of v. Cleburne Living Center, 209
- Collins v. Harker Heights, 219
- Commonwealth v. (see name of defendant)
- Compagnie Française de Navigation à Vapeur v. Louisiana State Board of Health, 64
- Conant v. Walters, 475
- Cooksey v. Futrell, 480, 481
- Coshov v. City of Escondido, 121
- Covington v. Harris, 88
- Craig v. Boren, 209
- Crowley v. Christensen, 70
- Cruzan v. Director, Missouri Department of Health, 78, 212, 220
- Curtis v. School Committee of Falmouth, 484
- Cutter v. Wilkinson, 548
- Dent v. West Virginia, 110
- DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 119
- Dist. of Columbia v. Beretta U.S.A. Corp., 618
- District of Columbia v. Heller, 551, 561, 562, 567, 588
- Doe v. Bolton, 354
- Dorsey v. State, 606
- Douglas v. Dobbs, 637
- Downer v. Veilleux, 218
- Edenfield v. Fane, 477
- Edge Broadcasting Co., United States v., 423
- EEOC v. Amsted Rail Co., 311
- EEOC v. Texas Bus Lines, 310
- Eisenstadt v. Baird, 220, 341
- Elane Photography v. Willock, 532
- Emily Byrne v. Avery Center for Obstetrics and Gynecology, P.C., 698
- Employment Division, Dep't of Human Resources of Oregon v. Smith, 487, 502, 505, 518
- Estelle v. Gamble, 197
- Everson v. Board of Education, 546
- Ex parte (see name of party)
- FAA v. Cooper, 705, 709
- FDA v. Brown & Williamson Tobacco Corp., 289
- Ferguson v. City of Charleston, 642, 649
- Firearms, In re, 617
- Flint Water Cases, 118
- Florence v. Board of Chosen Freeholders of The County of Burlington, 771
- Florida v. Jardines, 623
- Flue-Cured Tobacco Cooperative Stabilization Corp. v. U.S. Environmental Protection Agency, 34, 39, 40
- Foucha v. Louisiana, 102
- Fowler v. Rhode Island, 499
- Frontiero v. Richardson, 210
- Gallagher v. Crown Kasher Super Market of Mass., Inc., 520
- Gary, City of v. Smith & Wesson Corp., 618
- Geduldig v. Aiello, 244
- General Electric Co. v. Gilbert, 246
- Gibbons v. Ogden, 66, 75, 87
- Gonzales v. Carhart, 365, 725
- Gonzales v. O Centro Espírita Beneficente União do Vegetal, 505
- Gonzales v. Raich, 67, 134
- Gould v. Morgan, 591
- Grady v. North Carolina, 622
- Graham v. Richardson, 209

- Graydon Earl Comstock, Jr., United States v., 158
- Greeno, United States v., 576
- Gregory v. Ashcroft, 131, 132
- Gregory v. City of Chicago, 412
- Griswold v. Connecticut, 220, 337
- Hague v. Williams, 700
- Harper v. Virginia State Board of Elections, 233
- Harris v. McRae, 168, 187
- Hartog, State v., 116
- Hastings College of the Law v. Martinez, 532
- Heart of Atlanta Motel v. U.S., 130, 144, 237
- Heller v. District of Columbia, 563
- Henderson v. The Mayor, 66
- Hershberger, State v., 116
- Hirabayashi v. United States, 207
- Hodel v. Virginia Surface Mining & Reclamation Association, 143
- Holbrook v. State, 267
- Holden v. Hardy, 108, 111
- Holder v. Humanitarian Law Project, 470
- Hollingsworth v. Perry, 404
- Holt v. Hobbs, 504
- Horsemen's Benevolent Association v. State Racing Commission, 660
- Ileto v. Glock, Inc., 618
- Illinois v. Lidster, 661
- In re (see name of party)
- Indianapolis, City of v. Edmond, 661, 662
- Ingraham v. Wright, 262
- Jackson v. Indiana, 102
- Jacobson v. Massachusetts, 68, 79, 214, 333
- Janus v. American Federation of State, County, and Municipal Employees, 472, 473
- Jarmie v. Troncale, 700
- Jenkins v. C.I.R., 542
- Joel v. City of Orlando, 265
- Johnson v. Levy, 539
- Jones, United States v., 623, 624
- Kachalsky v. County of Westchester, 562, 597
- Kansas v. Crane, 104
- Kansas v. Hendricks, 103, 104
- Karstendick, Ex parte, 160
- Katz v. United States, 623, 694
- Kiryas Joel Village School District v. Grumet, 546, 547
- Kittle-Aikeley v. Strong, 660
- Kleindienst v. Mandel, 415, 416
- Knights of Columbus, Council No. 94 v. Town of Lexington, 413
- Korematsu v. United States, 207, 209
- Krommenhock v. Post Foods, 462
- Lake v. City of Southgate, 121
- Lawrence v. Texas, 385, 402, 532
- Lawton v. Steele, 110
- Lebron v. Fla. Dept. of Children & Families, 661
- Lebron v. Wilkins, 661
- Lee, United States v., 489, 519
- Legal Services Corporation v. Velazquez, 191, 193, 194, 476
- Lemon v. Kurtzman, 546
- Lepage v. State, 544
- Lessard v. Schmidt, 105
- Levin v. Adalberto M., 106
- Little v. State, 606
- Lochner v. New York, 108, 110, 728
- Lopez and United States v. Morrison, 141, 157
- Lopez, United States v., 131, 600
- Lorillard Tobacco v. Reilly, 281, 427
- Los Angeles Police Dept. v. United Reporting Publishing Corp., 440
- Los Angeles v. Patel, 628
- Louisiana v. Texas, 66
- Loving v. Virginia, 205
- Lowe v. S.E.C., 475
- Lyng v. Northwestern Indian Cemetery Protective Ass'n, 487
- Maher v. Roe, 187
- March v. Mills, 413
- Marchwinski v. Howard, 660

- Marshall v. Barlow's, 648  
 Martin v. City of Boise, 265  
 Massachusetts v. Environmental Protection Agency, 146  
 Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission, 404, 521  
 Mathews v. Eldridge, 88, 105  
 Mathews v. Lucas, 210  
 Matter of (see name of party)  
 Matter of Christine M., 544  
 Matter of G.P., 276, 277  
 Maynard v. Hill, 206  
 Mays v. Snyder, 118  
 McCauley, Matter of, 204  
 McCullen v. Coakley, 406  
 McCulloch v. Maryland, 159  
 McDaniel v. Paty, 499  
 McDonald v. Chicago, 559, 560, 561, 588  
 McDonnell-Douglas Corp. v. Green, 313  
 McIntyre v. Ohio Elections Comm'n, 695  
 Meyer v. Nebraska, 201, 206  
 Michigan Department of State Police v. Sitz, 661  
 Miguel M., Matter of, 709  
 Miller, State v., 116  
 Miller, United States v., 553, 623  
 Mills v. Rogers, 217  
 Milwaukee, City of v. Washington, 92  
 Minor v. State, 267  
 Mobley v. State, 606  
 Moore v. Madigan, 587, 597, 599  
 Morgan Steamship Company v. Louisiana Board of Health, 65  
 Morriss v. BNSF Ry. Co., 310  
 Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Co., 117  
 Mullane v. Central Hanover Trust Co., 88  
 Muller v. Oregon, 107, 111  
 N.A.A.C.P. v. Button, 476  
 NAACP v. Alabama, 695  
 Nat'l Inst. of Family & Life Advocates v. Becerra, 384, 462, 470  
 National Association of Wheat Growers v. Zeise, 451  
 National Federation of Independent Business v. Sebelius, 67, 148, 173, 186, 192,  
 National Restaurant Association v. New York City Dep't of Health & Mental Hygiene, 451  
 Network, 538  
 New Orleans Gas Co. v. Louisiana Light Co., 66  
 New State Ice Co. v. Liebmann, 141, 217  
 New York City Friends of Ferrets v. City of New York, 227  
 New York City Transit Authority v. Beazer, 232  
 New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Department of Health and Mental Hygiene, 323  
 New York v. Burger, 627  
 New York, City of v. Beretta U.S.A. Corp., 618  
 New York, City of v. Bob Moates' Sport Shop, Inc., 618  
 Newark, City of v. J.S., 84  
 Newman v. Piggie Park Enterprises, 531  
 Nikolao v. Lyon, 544  
 North Miami, Florida, City of v. Kurtz, 292  
 Northwestern Memorial Hospital v. Ashcroft, 720, 725  
 Nunn v. State, 555  
 O'Brien, United States v., 434  
 O'Connor v. Donaldson, 88, 102, 103  
 Obergefell v. Hodges, 392  
 Ocheesee Creamery v. Putnam, 448  
 Olmstead v. L.C., 252  
 Olmstead v. United States, 664, 665, 685, 694  
 Oregon Prescription Drug Monitoring Program v. U.S. DEA, 639

- Oyama v. California, 209  
Packingham v. North Carolina, 413, 472  
Pagotto, State v., 268  
Pear, Commonwealth v., 77  
Pellman v. McDonalds Corp., 462  
Perricone, State v., 204  
Petersen v. City of Mesa, 660  
Philadelphia, City of v. Beretta U.S.A. Corp., 618  
Philip Morris, United States v., 451  
Phillips v. City of New York, 540  
Pickup v. Brown, 479  
Pierce v. Society of Sisters, 203  
Planned Parenthood of Central Missouri v. Danforth, 364  
Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 374, 375  
Planned Parenthood of Minn. v. Rounds, 471  
Planned Parenthood of Southeastern Pennsylvania v. Casey, 355  
Planned Parenthood v. Danforth, 732, 735  
Plumhoff v. Rickard, 124  
Posadas de Puerto Rico Associates v. Tourism Co. of P.R., 423  
Powell v. Texas, 263, 264  
Prince v. Massachusetts, 79, 204, 340, 542  
Printz v. United States, 174, 606  
Pyle v. Woods, 636  
R.A.V. v. City of St. Paul, 414  
R.J. Reynolds Tobacco Company v. Food & Drug Administration, 452, 455  
Reed v. Town of Gilbert, Arizona, 414, 465  
Regina Kilmon v. Maryland Kelly Lynn Cruz v. Maryland, 266  
Reno v. Flores, 209  
Retail Digital Network v. Prieto, 445  
Reynolds v. United States, 489, 533  
Riley v. California, 624  
Robinson v. California, 260  
Rochin v. California, 220  
Rocky Mountain Farmers Union v. Corey, 146  
Rodrigues v. EG Sys., 296  
Roe v. Wade, 343  
Romer v. Evans, 387  
Ronald Shell v. Burlington Northern Santa Fe Railway, 307  
Roseman v. Markham, 481, 482  
Rosenfield v. Rogin, Nassau, Caplan, Lassman & Hirtle, 700  
Rubin v. Coors Brewing Co., 416, 427  
Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 190  
Rush Limbaugh v. Florida, 705  
Schachter v. Whalen, 705  
Schroder v. City of Fort Thomas, 122  
Seeger, United States v., 504  
Shain v. Ellison, 775, 777, 786  
Shelton v. Tucker, 88  
Sherbert v. Verner, 490, 491, 502  
Sherr v. Northport-East Northport Union Free School Dist., 80  
Silveira v. Lockyer, 312, 550  
Skinner v. Railway Labor Executives' Ass'n, 645, 663  
Skinner v. State of Oklahoma, 206, 220, 334  
Smith & Wesson Corp. v. City of Cary, Indiana, 618  
Smith v. Maryland, 623  
Snyder v. Phelps, 472  
Sorensen v. Barbuto, 697  
Sorrell v. IMS Health Inc., 436, 477  
South Dakota v. Dole, 148, 165  
Southern Illinoisan v. Illinois Dep't of Public Health, 754  
Souvannarath v. Hadden, 106  
Staples v. United States, 567  
State v. (see name of defendant)  
Stempler v. Speidell, 701  
Stenberg v. Carhart, 366, 372, 382  
Stone v. Allen, 539  
Stuart v. Camnitz, 471, 476

- Swann v. Pack, 499
- Tex. Med. Providers Performing Abortion Services v. Lakey, 471
- Texas v. United States, 157
- Thomas v. Morris, 736
- Thompson v. Western States Medical Center, 427
- Thornburgh v. American College of Obstetricians and Gynecologists, 188, 733
- Thorton v. Caldor, 548
- Torcaso v. Watkins, 504, 546
- Town of Creece v. Galloway, 546
- Traditionalist American Knights of the Ku Klux Klan v. City of Desloge, Missouri, 413
- Treasury Employees v. Von Raab, 645
- Trimble v. Gordon, 209
- Tucson Woman's Clinic v. Eden, 732
- Tummino v. Hamburg, 539
- Tune v. Walter Reed Army Medical Hospital, 218
- Turner v. Safley, 396
- Tyler v. Hillsdale County Sheriff's Department, 574
- U.S. Dep't of Justice v. Utah Dep't of Commerce, 638
- Union Pac. Ry. Co. v. Botsford, 120, 213
- United States Agency for International Development v. Alliance for Open Society International, Inc., 189
- United States v. (see name of defendant)
- Vacco v. Quill, 222
- Van Orden v. Perry, 546
- Vandersand v. Wal-Mart Stores, Inc., 538
- Vernonia School Dist. 47J v. Acton, 645, 650, 655
- Viemeister v. White, 72
- Villanova v. Abrams, 641, 642
- Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 406, 415, 418
- Vitek v. Jones, 214
- Ward v. Rock Against Racism, 408
- Washington v. Glucksberg, 218, 369
- Washington v. Harper, 214
- Watsonville, City of v. State Dept. of Health Services, 126
- West Coast Hotel Co. v. Parrish, 110
- West Virginia State Board of Education v. Barnette, 450
- Westinghouse, United States v., 629, 705
- Whalen v. Roe, 695, 726, 731
- Whipple v. Martinson, 261
- White, State v., 700
- Whitner v. State, 271
- Whole Women's Health v. Hellerstedt, 373
- Wickard v. Filburn, 138, 323
- Williams v. Alabama, 403
- Williamson v. Lee Optical, 232
- Windsor, United States v. 570 U.S. 744 (2013), 388
- Wisconsin v. Yoder, 485, 491, 502
- Wollschlaeger v. Governor of Florida, 466, 473
- Women's Health Ctr., Inc., 413
- Wooley v. Maynard, 450
- Wrenn v. District of Columbia, 598, 599
- You Vang Yang v. Sturner, 539
- Young v. Board of Health of Somerville, 126
- Youngberg v. Romeo, 103, 215
- Zablocki v. Redhail, 396
- Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 446, 470
- Zubik v. Burwell, 520
- Zucht v. King, 79

# Table of Statutes

---

[References are to pages.]

<b>Alabama</b>			<b>Florida Statutes</b>	
	<b>Alabama Code</b>		<b>Sec.</b>	<b>Page</b>
Sec.		Page	381.026	474
13A-12-200.2		403	456.072	474
			502.091	448, 449
	<b>California</b>		766.013	602
	<b>California Government Code</b>		776.013	602
Sec.		Page	790.338	474
12940		536	790.338(1)	474
			790.338(2)	474
	<b>California Health &amp; Safety Code</b>		790.338(5)	474, 479
Sec.		Page	790.338(6)	474, 475
123470		462	828.12	493, 495
123471(a)		463		
123472(a)		463		
	<b>California Business &amp; Professions Code</b>		<b>Sec.</b>	<b>Page</b>
Sec.		Page	40-6-315	112, 113, 114
733		535		
4019		535		
4024		535		
	<b>District of Columbia</b>		<b>Sec.</b>	<b>Page</b>
	<b>Firearms Registration Amendment Act</b>		18-604	534
			18-611	534
Sec.		Page	39-4513(2)	535
7-2506.01(b)		563		
	<b>Florida</b>		<b>Illinois</b>	
	<b>Florida Constitution</b>		<b>Illinois Supreme Court Rules</b>	
Art.:Sec.		Page	<b>Rule</b>	<b>Page</b>
I:23		292	23	615

<b>Kansas</b>		<b>Oregon</b>	
<b>Kansas Statutes</b>		<b>Oregon Revised Statutes</b>	
Sec.	Page	Sec.	Page
38-1522	737	127.800	253
		127.897	253
		431.966(2)	639, 640
<b>Maryland</b>			
<b>Maryland Code</b>			
Sec.	Page	<b>Rhode Island</b>	
3-204	267	<b>Rhode Island General Laws</b>	
3-204(a)	267, 268, 269, 270, 271	Sec.	Page
3-204(a)(1)	266	3-8-7	425
		3-8-8.1	425
<b>Massachusetts</b>			
<b>Massachusetts General Laws</b>		<b>South Carolina</b>	
Chap.:Sec.	Page	<b>South Carolina Code</b>	
123:35	275	Sec.	Page
266:120E½(a)	406	20-7-30(1)	272
266:120E½(b)	406	20-7-50	272
		20-7-490	272
<b>New Jersey</b>			
<b>New Jersey Statutes</b>		<b>South Dakota</b>	
Sec.	Page	<b>South Dakota Codified Laws</b>	
30:9-57	87, 90, 91	Sec.	Page
		35-6-27	165
<b>New York</b>			
<b>New York Codes, Rules, and Regulations</b>		<b>Tennessee</b>	
Title:Sec.	Page	<b>Tennessee Code</b>	
10:66-1.10	540	Sec.	Page
		4-1-407	539
		39-2208	499
<b>New York Family Court Act</b>			
Sec.	Page	<b>Texas</b>	
1012(f)	315	<b>Texas Administrative Code</b>	
		Title:Sec.	Page
<b>New York Public Health Law</b>		25:139.56	
Sec.	Page	<b>Texas Health &amp; Safety Code</b>	
2164(7)(a)	540	Sec.	Page
2164(8)	540	171.0031(a)	377
2164(9)	540	245.010(a)	374
<b>Ohio</b>			
<b>Ohio Revised Code</b>			
Sec.	Page		
313.131	539		



	<b>Utah</b>	252.07(9)	92, 93, 94, 95, 96,
	<b>Utah Code</b>		97, 98, 99
Sec.		Page 252.07(9)(a)	94, 95
58-37f-101		636 252.07(9)(a)3	96
58-37f-201		636 785.04(1)	98
58-37f-301(2)(k)		638	
		<b>Federal Statutes, Rules, and Regulations</b>	
	<b>Vermont</b>		
	<b>Vermont Statutes</b>		<b>United States Constitution</b>
Sec.		Page	Amend./Art. Page
4622(a)		437	amend.: II 550, 553
4631(d)	436, 437, 438, 439,		amend.: V 196
	440, 441, 442, 443		amend.: 14 218, 227
			amend.: XIV:1 196, 209, 237
			amend.: 21 165
	<b>Virginia</b>		art.: I:7 254
	<b>Virginia Code</b>		art.: I:8 12, 13, 14, 132, 134, 148,
Sec.		Page	149, 159, 160, 164, 254
20-59		205	art.: III:3 160
	<b>Washington</b>		
	<b>Washington Constitution</b>		<b>United States Code</b>
Art.:Sec.		Page	Title:Sec. Page
1:24		562	1:1 518
			1:7 389, 395
	<b>Washington Administrative Code</b>		5:552 696
Sec.		Page	5:552(a) 735
246-869		538	5:552(b)(4) 289
			5:552(b)(6) 631
	<b>Washington Revised Code</b>		5:552a 696, 705
Sec.		Page	5:552a(b) 708
9A.20.021(1)(c)		218	5:552a(g)(1)(D) 705
9A.36.060(1)	218, 219, 222		5:552a(g)(4)(A) 706
9A.36.060(2)		218	5:552a(m) 633
70.122.070(1)		218	10:333 786
			15:1333(d) 460
	<b>West Virginia</b>		15:1334(b) 285
	<b>West Virginia Code</b>		15:1681 696
Sec.		Page	15:6501 696
265A1		82	15:6506 696
265A5		83, 84	15:7901 607
			15:7901(a)(6) 618
	<b>Wisconsin</b>		15:7902 607
	<b>Wisconsin Statutes</b>		15:7903 608
Sec.		Page	15:7903(5)(A) 615, 616, 617
252.07(8)		96	15:7903(5)(A)(i) 615

15:7903(5)(A)(v)	614, 616, 617	21:387p	288
15:7903	607	21:503(g)	286
18:921	600, 605	21:801	135
18:921(a)	608	21:822(d)	507
18:922(a)	600, 601	21:841(a)	262
18:922(a)(3)	601	21:841(b)	262
18:922(b)	600	21:844(a)	262
18:922(g)	578, 579, 580, 582, 584, 600, 609	21:876 21:1333	638 282
18:922(g)(1)	577, 579, 584, 585	21:1334	282
18:922(g)(3)	579	22:7601	189
18:922(g)(4)	574, 576, 577, 578, 579, 580, 581, 582, 584, 585	22:7631(e) 22:7631(f)	189 189
18:922(g)(8)	581	23:158	165, 166, 167, 168
18:922(g)(9)	578	26:4980D	509
18:922(q)	132, 133, 134	26:4980H(a)	509
18:922(q)(1)(A)	14	26:4980H(c)	509
18:922(t)	601	26:5000A	151
18:922(z)(1)	600	26:5000A(b)	151
18:923	600	26:5000A(b)(1)	149
18:927	602	26:5000A(c)	149
18:992(z)(3)	602	26:5000A(f)(2)	509
18:1001	706	26:5000A(g)(1)	149
18:1531	365	26:5801	609
18:2721	696	28:1738C	389
18:2725	696	29:651	629
18:4246	161	29:669(a)(6)	629
18:4247(a)(5)	158	29:1182	297
18:4247(a)(6)	158	29:2001	696
18:4247(d)	158	29:2009	696
18:4248	158, 159, 161, 162, 163	30:501(a)	144
18:4248(c)	158	30:502(c)	144
18:4248(d)	158	30:503	144
18:4248(d)(1)	158, 164	30:503(b)	144
18:4248(d)(2)	159	30:503(c)	144
20:1221	696	30:504	144
20:7906	13	30:515(b)	144
21:301	696	30:1201	143
21:321	286	30:1201(c)	145
21:351	286	42:238n	538
21:387	286	42:242m	695
21:387a	286	42:280e	751
21:387f	286	42:300(a)	186
21:387g	287	42:300a-4(a)	186
21:387k	286	42:300a-6	186

42:300a-7	536	42:12102(1)	309
42:300ff-1	13	42:12102(3)	309
42:300gg-4	667, 669	42:12112	249
42:300gg-13(a)(4)	510	42:12112(a)	309
42:401	706	42:12112(b)(6)	309
42:1303	176	42:12112(d)(4)(A)	673
42:1304	175	42:12112(d)(4)(B)	673
42:1320d	718	42:18022(b)	174
42:1320d(4)	719	42:18023	536
42:1320d(6)		42:18113	536
42:1320d(7)(a)(2)(B)	724	50:1541	788
42:1320d-7(b)	720	50:1548	788
42:1395	183, 184, 186, 193		
42:1395w-22(j)(3)(B)	536	<b>Code of Federal Regulations</b>	
42:1395cc(f)	226	Title:Sec./Part	Page
42:1395lll	183, 184, 186, 193	21:50	751
42:1396a(a)(10)	173	21:56	751
42:1396a(a)(10)(A)(i)	174	21:1100	290
42:1396a(k)(1)	174	21:1140	290
42:1396a(w)	226	21:1143	290
42:1396c	173, 175, 176	21:1307.31	507
42:1396d(y)(1)	174	29:1630 App.	310
42:1396u-2(b)(3)(B)	536	29:1630.2(h)	310
42:1396u-7(b)(5)	174	29:2590.715-2713A	521
42:1971	234, 245	40:141.208	127
42:1983	111, 197, 198, 200, 637, 650, 737	42:59.8(a)	186
		42:160	696
42:1996a(b)(1)	507	42:164	696
42:2000e	244, 245, 297	42:164.512(i)	751
42:2000e-2(a)	245	45:89.1(b)	190
42:2000e-2(h)	245	45:147.130	521
42:2000bb	501	45:147.131(a)	510
42:2000bb-1	502, 503	45:147.131(b)	510
42:2000bb-2	502	45:147.131(c)	510
42:2000bb-3	503	45:147.133	521
42:2000bb-4	503	45:160.103	719
42:2000cc-5	503	45:160.104	719
42:2000ff-1(b)	673	45:160.203(b)	710
42:5121	770	45:164.501	711
42:7521(a)(1)	147	45:164.502(a)	713
42:7602(g)	147	45:164.506	713
42:7607(d)(9)(A)	147	45:164.506(c)(2)	711
42:12012(2)(A)	311	45:164.508	713
42:12101	247, 297, 696, 718	45:164.508(a)	713
42:12102	248	45:164.508(a)(1)	710

		<b>Federal Rules of Evidence</b>		
		Rule		Page
45:164.510	713			
45:164.512	713, 718, 751			
45:164.512(a)	720	501		721
45:164.512(b)(1)(i)	710			
45:164.512(e)(1)	705			
45:164.514	719			
 <b>Federal Rules of Civil Procedure</b>				
Rule				Page
45(c)	723, 724			
45(c)(3)(A)(iv)	721			