

Public Health Law in 2025: Updates in a Time of Rapid Change

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Road map

The distinctive nature of public health law

Public health law and the US Constitution

Administrative law and public health

Executive actions and public health in 2025

The road ahead



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What makes public health law a distinct area of focus?

Public health law focuses on:

Health of ***populations***, not just individuals

Creating the ***conditions*** in which people can be healthy

Role of ***government*** in creating those conditions

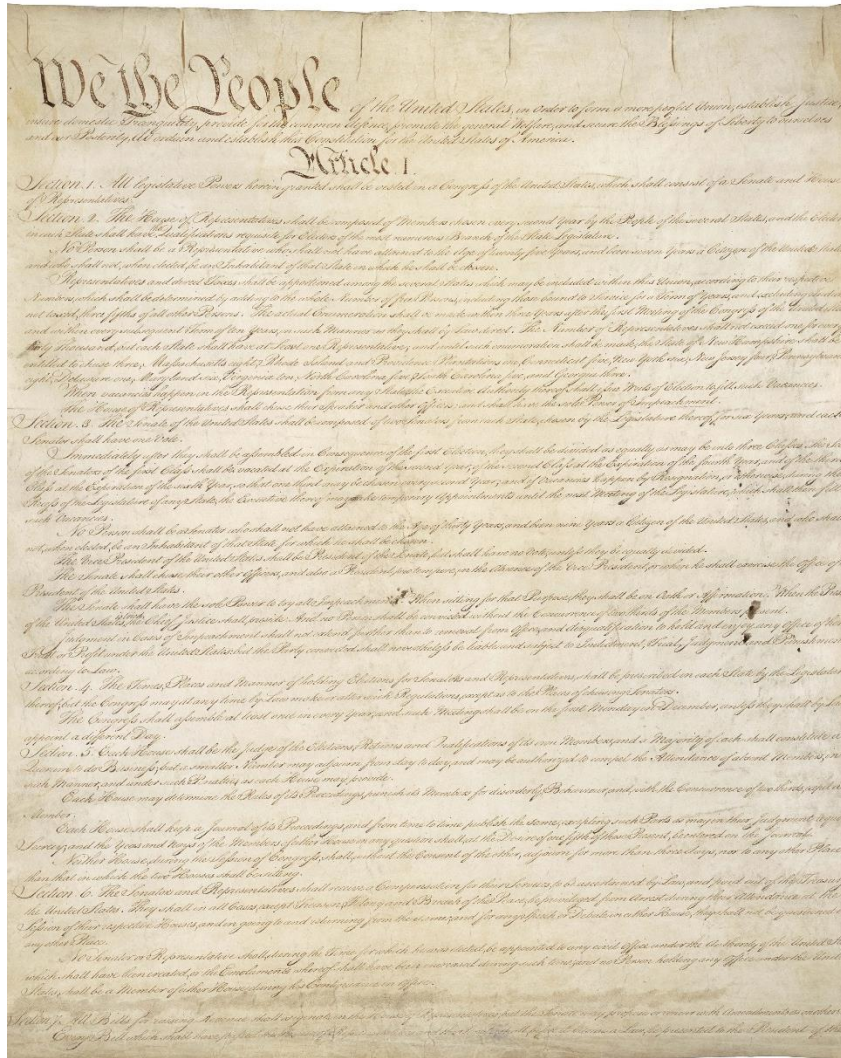


Image source: US National Archives

Public health law and the US Constitution



Image source: New England Historical Society

Jacobson v. Massachusetts, 197 U.S. 11 (1905)

A Massachusetts statute authorized local boards of health to impose vaccination requirements. During an outbreak of smallpox, the board of health for Cambridge, Mass., required town residents to be vaccinated or face criminal charges. Reverend Henning Jacobson refused to be vaccinated. He was convicted and fined \$5.00. He appealed within the state court system and then to the U.S. Supreme Court.

Issue: Did the vaccination requirement violate Jacobson's rights under the 14th amendment's due process clause, which prohibits the state from depriving a person of life, liberty, or property without due process of law?

Holding: Vaccination requirement impinged on Jacobson's liberty interests, but it was not an *unconstitutional* impingement. The vaccination requirement was a reasonable exercise of the government's "police power" —the power to adopt laws and take actions to protect the health, safety, and welfare of the public.



What has changed since *Jacobson*?

Medicine: antibiotics, antivirals, supportive treatment

Media/information: 24/7 news cycles, social media, media silos

Public health law: more attention to individual rights, more demand for tailoring public health interventions to the specific risk, less deference to public health officials

Left: Ruins of Smallpox Hospital, Roosevelt Island, New York City (Photo by Jill Moore)

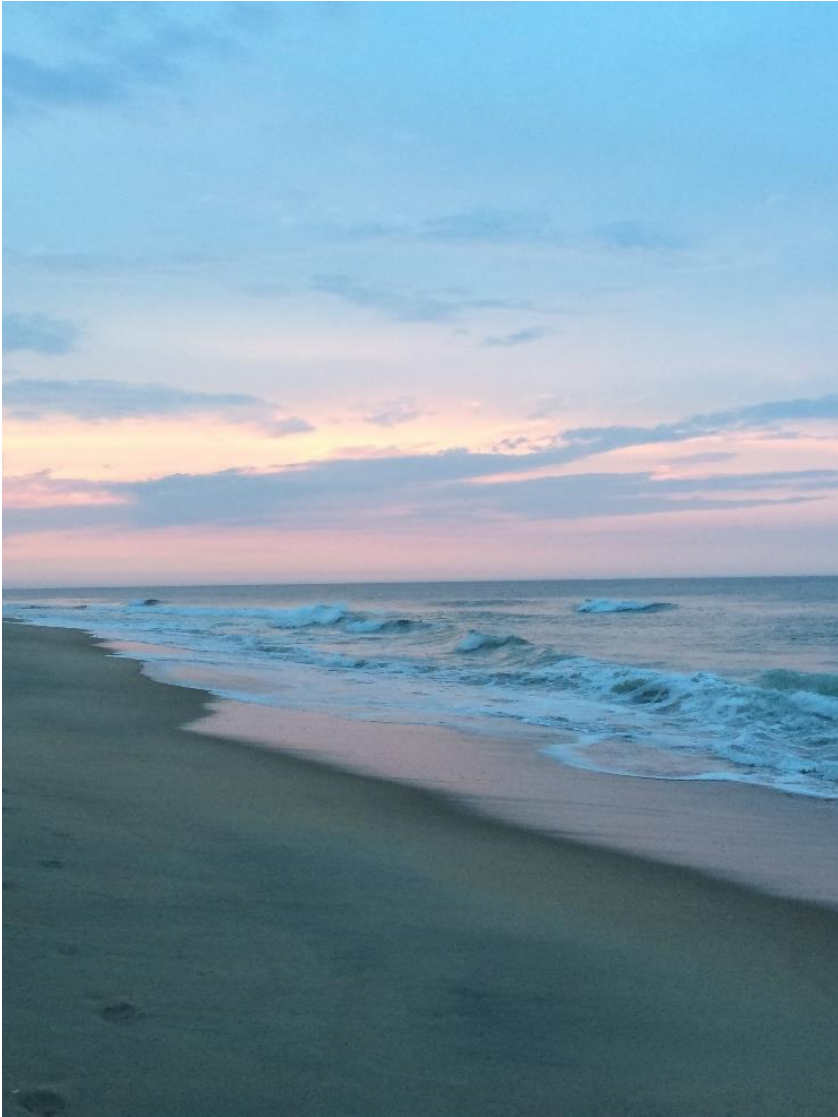


Photo by Jill Moore

Are the constitutional tides shifting?

Jacobson has not been overruled, but has it been sidelined?

How constrained is public health authority when it affects the free exercise of religion, the parent-child relationship, or other constitutionally protected interests?

- See *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam).

What is the authority of the executive branch and administrative agencies versus the legislative and judicial branches?

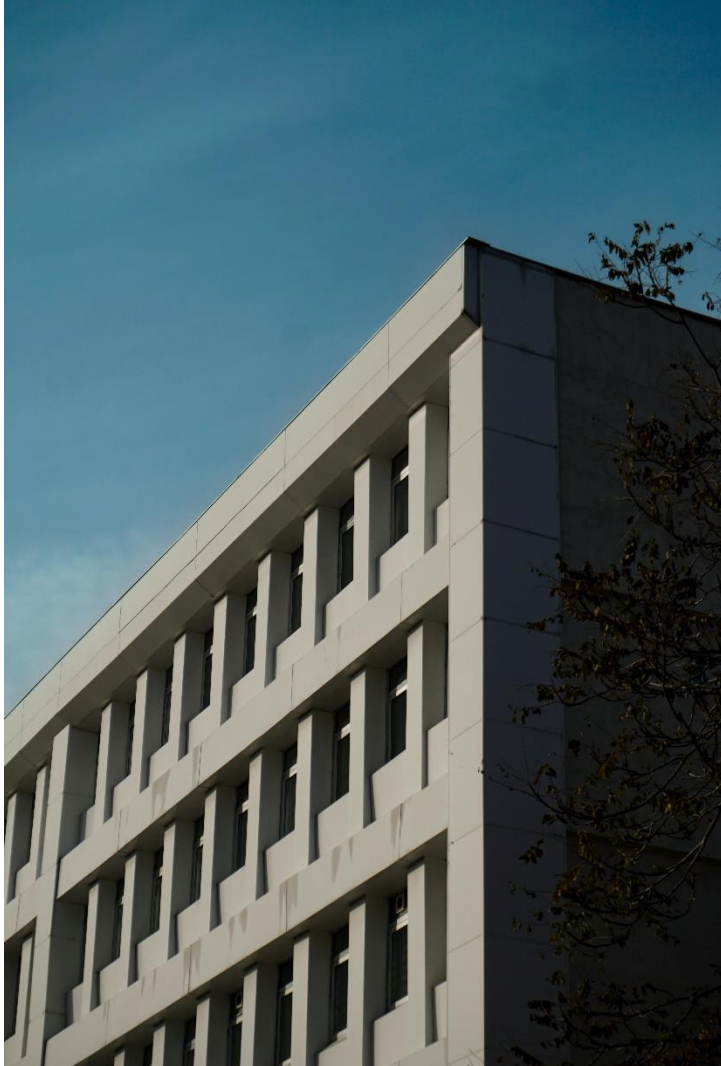


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Administrative law & public health

The legal authority of federal agencies



Legislative



Executive



Judicial

Source of images: pexels.com

Congress enacts laws and may authorize federal agencies to take certain actions or adopt regulations

Federal agencies implement laws and may adopt regulations when authorized by Congress

Courts interpret laws and can overrule agency actions or regulations that are outside the scope of the agency's authority



Image source: PowerPoint stock images

The major questions doctrine

An administrative agency may not adopt regulations or take actions that implicate major questions of policy or economics without clear Congressional authorization.

West Virginia v. EPA, 597 U.S. 697 (2022).

What is a “major question”?

- Politically significant or controversial
- Novel idea lacking historical precedent
- Claim of broad authority with potential implications for other agency actions

National Federation of Independent Business v. OSHA, 595 U.S. 109 (2022) (per curiam).

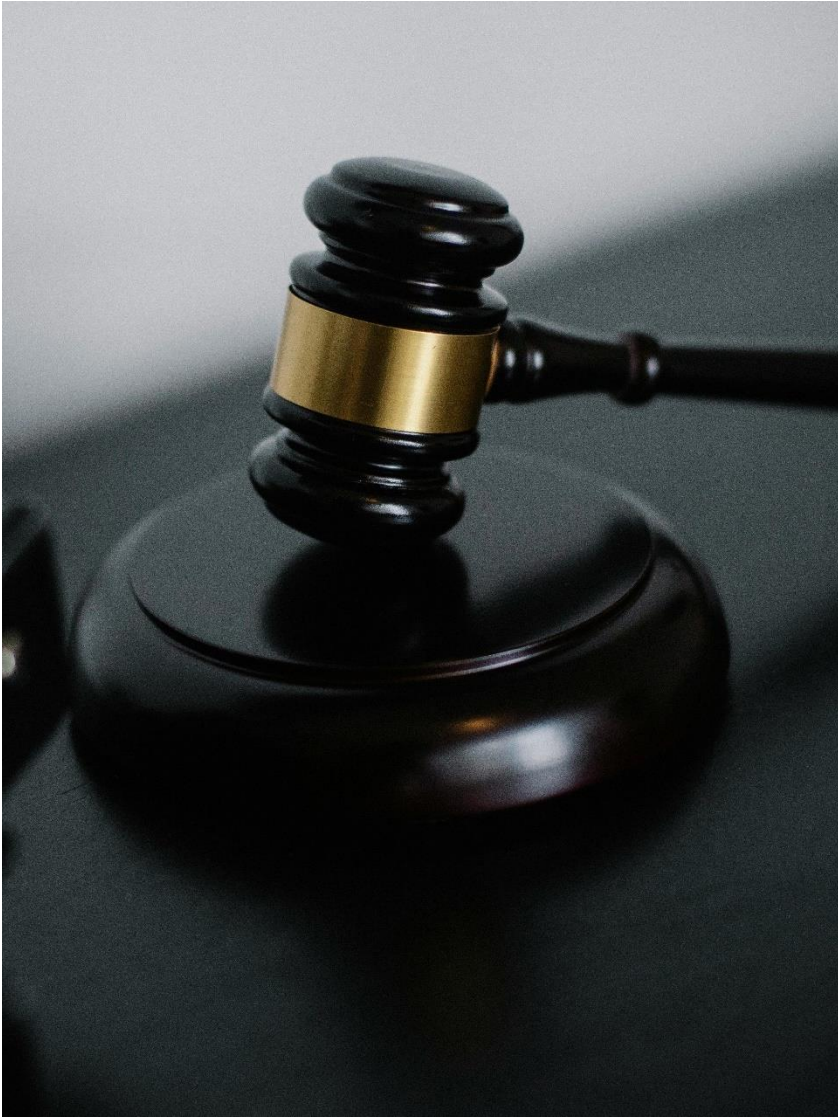


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The end of the *Chevron* doctrine

In 2024, the US Supreme Court overruled the *Chevron* doctrine, a rule of statutory interpretation that directed courts to defer to an administrative agency's interpretation of an ambiguous statute, so long as the agency's interpretation was reasonable.

The courts are no longer required to defer to agency interpretations, but instead “must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.”

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).

What are the implications for public health?

The scope of federal agencies' authority may be narrower than previously believed, especially when underlying statutes are ambiguous or grant authority in broad, non-specific terms.



What do federal administrative law changes mean for North Carolina?

The federal cases discussed do not change anything about how state rules are adopted or interpreted in North Carolina. Their direct effect is on the adoption and interpretation of federal regulations only.

The federal cases are relevant because North Carolina health departments are subject to many federal regulations, and federal regulations may affect the health of people in North Carolina.



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Executive actions and public health



Image source: pixabay.com

Executive orders (EOs)

What is an executive order?

- An order directed to one or more federal government agencies or officials, requiring that specific actions be taken to ensure that the laws are faithfully executed.

What can an executive order do?

- An EO can order federal agencies or officials to take specific actions to implement federal laws, and/or set priorities for the enforcement of federal laws.
- An EO cannot override federal law or overrule actions taken by one of the other branches of government.

Recent EOs affecting public health

Health topic

EO 14155: Withdrawing the US from the World Health Organization (January 20, 2025)

EO 14182: Enforcing the Hyde Amendment (January 24, 2025)

- Among other things, revoked EO 14076 (July 8, 2022) which required US DHHS to strengthen protections for the privacy of reproductive health care information

EO 14212: Establishing the President's Make America Healthy Again Commission (February 13, 2025)

- Establishes multi-agency commission and directs it to study and advise the president on chronic diseases in childhood and potential contributing factors. Commission must produce a strategy within 180 days.

Recent EOs affecting public health

Other topics with potential to affect public health

Diversity, Equity, Inclusion, and Accessibility

EO 14151: Ending Radical and Wasteful Government DEI Programs and Preferencing (January 20, 2025) – directs federal agencies to eliminate all DEI, DEIA, and environmental justice offices and positions.

EO 14168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (January 20, 2025) – among other things, requires federal agencies to examine each grant to assure it does not promote gender ideology.

EO 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity (January 21, 2025) – among other things, federal contracts and grants must include terms making funding contingent upon the cessation of DEI programs that violate federal anti-discrimination laws.

Recent EOs affecting public health

Other topics with potential to affect public health (cont.)

Immigration and Citizenship

EO 14160: Protecting the Meaning and Value of American Citizenship (January 20, 2025) – directs federal agencies not to issue documents recognizing citizenship to persons who, at birth, had a mother who was not lawfully present or whose lawful presence was temporary and whose father was neither a US citizen or lawful permanent resident.

EO 14218: Ending Taxpayer Subsidization of Open Borders (February 19, 2025) – directs federal agencies to identify federal benefits that are provided to illegal aliens and to “take appropriate actions to align such programs with this order and federal law.”

Schools

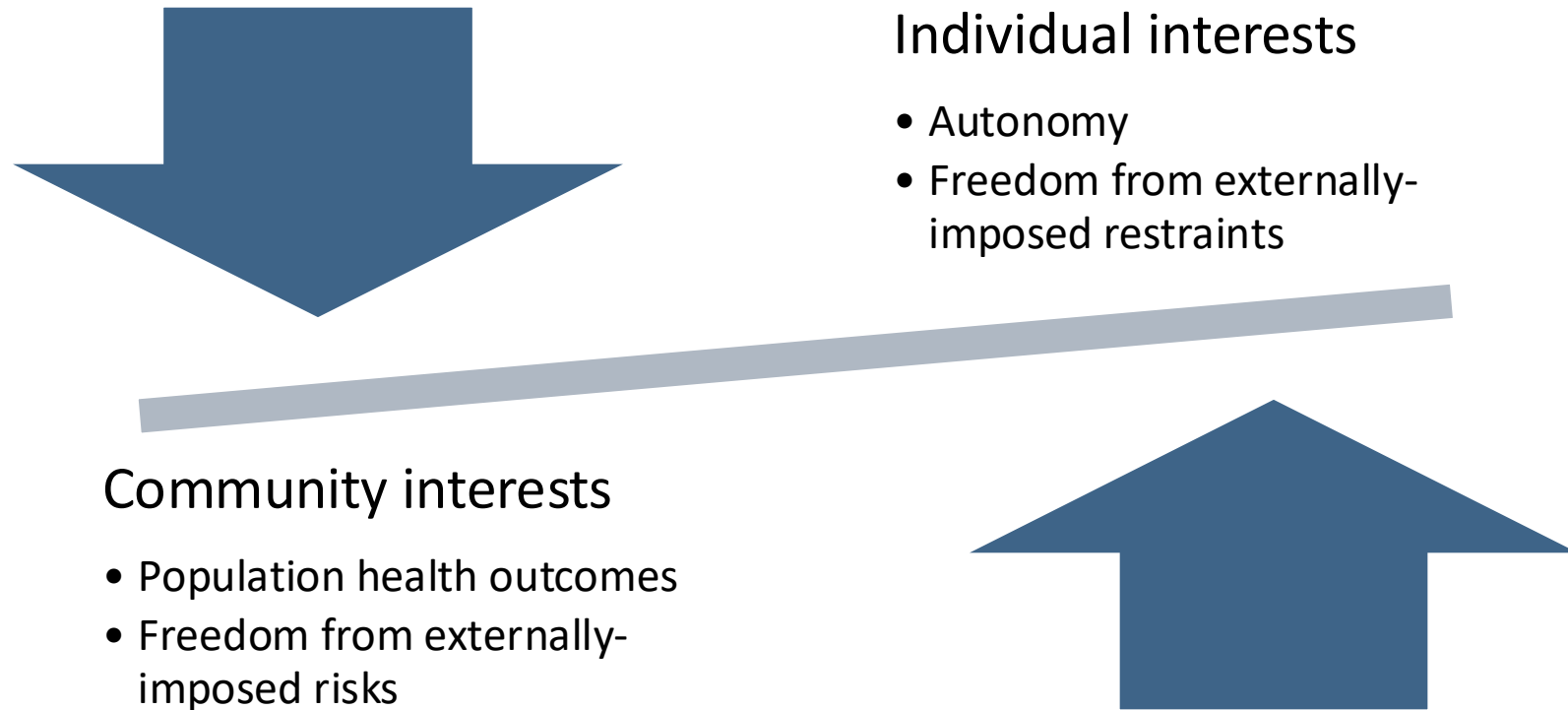
EO 14214: Keeping Education Accessible and Ending COVID-19 Vaccine Mandates in Schools



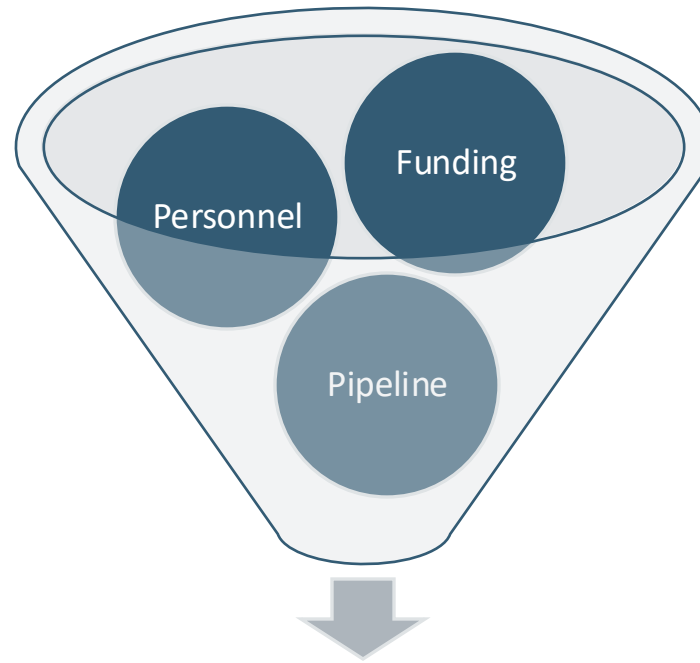
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The road ahead

Public health's balancing act



Contraction of resources



Feeling the squeeze

Collaboration



References

Cases

Jacobson v. Massachusetts, 197 U.S. 11 (1905).

Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020) (per curiam).

National Federation of Independent Business v. Department of Labor, Occupational Safety & Health Administration, 595 U.S. 109 (2022) (per curiam).

West Virginia v. Environmental Protection Agency, 597 U.S. 697 (2022).

Health Freedom Defense Fund v. Biden, 599 F.Supp.3d 1144 (2022), vacated as moot, 71 F.4th 888 (11th Cir. 2023).

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).

Executive Orders

All executive orders mentioned in this presentation are available at
<https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025>.

References

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American Bar Association, What is an Executive Order? (January 25, 2021). At https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-an-executive-order/ (accessed April 7, 2025).

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