

Public Health Law 224.23 – Course Syllabus

Texts (all available electronically):

All educational materials are available online and/or on reserve in the library and without cost to the student.

Assignments

- See class descriptions below related to preparation for in-class discussions and debates.
- See Appendix A for information on the for Draft and Final research papers.

Part I: Introduction to Public Health and Public Health Law

1. What Is Public Health? What Is Public Health Law?

We start the class looking at broad concepts related to public health in general and public health law in particular. We will start with a discussion of *Plague at the Golden Gate* which provides an excellent lesson about the interplay of how uncertain science and political/economic power interact with rank racism to shape a public health response. We'll engage in some warm-up exercises, class discussions about the reading materials, and review the various graded and ungraded class assignments throughout the semester.

Viewing Assignment

- [Video \(1:52\): PBS, American Experience: *Plague at the Golden Gate*](#)
- Video (3 minutes): American Public Health Association, [What Is Public Health?](#)

Reading Assignment

- ***Jew Ho v. Williamson***, 103 F. 10 (C.C.N.D. California 1900). This case is one of two cases mentioned in the *Plague at the Golden Gate* video and the first articulations of what will become a modern-day interpretation of the equal protection doctrine. Note that this case was decided shortly after *Plessy v. Ferguson* (1896) which upheld the separate but equal doctrine.
- Scott Burris, Marice Ashe et al. **Better Health Faster: The 5 Essential Public Health Law Services**. 131 Public Health Reports 747 (2016).

Questions to think about

- How does political and economic power affect health outcomes?
- How did the Chinese community in San Francisco protect its interests?
- What is public health? How is it different than medical care delivery?
- What are the roles of lawyers in public health practice?

2. What Determines Health Outcomes? Part 1: The Social Determinants of Health

This class is the first of a 3-part series focused on what determines health outcomes. This class is dedicated to exploring the root causes of poor health from the perspective of the *social* determinants of health and structural inequities including economic inequality, disparities in educational attainment, and behavioral justice. The assignments include several short video presentations and a Centers for Disease Control (CDC) website on core concepts related to Adverse Childhood Experiences (ACEs). It is expected that you will explore the websites with care and be prepared for in-class discussions illuminating the content.

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Viewing Assignment

- Videos: PBS NewsHour, *Invisible Scars*. View three segments which are each 10 minutes.
 - [Childhood trauma impacts millions of Americans](#)
 - [Breaking the cycle of childhood trauma in rural Montana](#)
 - [The overwhelming impact of childhood trauma on Chicago’s West Side](#)

Website Assignment

- Centers for Disease Control, *Social Determinants of Health*.
- Centers for Disease Control, [Preventing ACEs](#). (2019). Read only pages 8-21.

Reading Assignment

- Adler NE, Stewart J. *Reducing obesity: motivating action while not blaming the victim*. Milbank Q. 2009 Mar;87(1):49-70. Be ready to discuss what “blaming the victim” has to do with the law, and what the authors mean by a “behavioral justice” approach to disease prevention.

Questions to think about

- What are the “social determinants of health” (SDOH)?
- What are Adverse Childhood Experiences (ACEs)?
- How can law and policy help to prevent ACEs and address the SDOH?
- What are some examples of “blaming the victim” in social policy? What does public health or law have to do with that concept?

3. What Determines Health Outcomes? Part 2: Racism as a Public Health Crisis

The public health literature documents what many communities have known for years: racism kills. This class delves into recent literature which should be read while reflecting on the lived experiences of communities living with historic injustices over multiple generations.

Listening Assignment

- Podcast: University of California, Hastings School of Law, **Contraindicated: Rethinking the Systems that Perpetuate Health Injustice, Episode 1: What is Health Justice and What’s Law Got to Do with It?** (2022). 37 minutes.

Reading Assignment

- Paula Braveman, Elaine Arkin, et al, *Systemic and Structural Racism: Definitions, Examples, Health Damages, and Approaches to Dismantling*. Health Affairs, 41:2, 171-78 (February 2022). Read the main text plus the appendices.
- Ruqaiijah Yearby & Seema Mohapatra, *Law, structural racism, and the COVID-19 pandemic*. J Law Biosci. 2020 Jun 29;7(1). Read pages 16-20.

Questions to think about

- Why might it matter to talk about “justice” rather than “equity”? What is “health injustice”?
- Can you identify examples of structural racism that your parents may have noticed in their lives, if any? What about what you noticed in your youth? And, in your current life? Have things changed for the better or worse, or are things about the same?
- How does structural racism affect health?
- How can law affect structural racism?

4. What Determines Health Outcomes? Part 3: The Political Determinants of Health

Civic engagement and voting are now recognized as primary *political* determinants of health. This new area of study is particularly timely given recent state electoral reforms and a long history of gerrymandering throughout the country.

Listening Assignment

- Ed Yong, *We Are Already Barreling Towards the Next Pandemic*, The Atlantic, September 29, 2021. Your choice: read the article or listen to the podcast.

Reading Assignment

- Daniel Dawes, *The Political Determinants of Health*, Johns Hopkins Press: Baltimore, 2020. Read Chapter 3: The Political Determinants of Health Model. Dawes' analysis is creating a lot of buzz in public health circles. Be ready to critique his model and discuss whether it captures how politics and law can impact health outcomes.
- Anita Shreedhar and Anand Gopal, *Behind Low Vaccine Rates Lurks a More Profound Social Weakness*, NYT, Dec. 3, 2021.
- Network for Public Health Law, *Law and Policy Pathways to Civic Engagement*. 2021. 1-pager.

Website Activity

- *Health and Democracy Index*. Scroll through this entire website then choose two states to explore in more depth.

Questions to think about

- What is the difference between the social determinants of health, racism as a determinant of health and the political determinants of health? Is this just semantics or are there important distinctions?
- Do you agree with Yong that we are barreling towards the next pandemic? Why?
- What did you learn by comparing two states in the *Health and Democracy Index*? The data portrayed in the website shows correlations not causation. Does this matter? Why?
- What do you make of the 1-pager, *Law and Policy Pathways to Civic Engagement*? Who is the target audience? Does it capture all we need to know for civic participation?
- Is civic engagement really that important of driver of health outcomes? Perhaps it is just window dressing without impact. What do you think?

Part II. Practice Models and Finding Solutions

5. Models of Public Health Practice

We will explore just a few models of public health practice in this class, but there are many others. Perhaps you have studied other models for health improvement, social change or justice lawyering that you can compare or contrast to the models below.

Viewing Assignment

- [Watch this 1-minute video](#) about the *Blueprint for Changemakers*, then read: ChangeLab Solutions, *Blueprint for Changemakers* (2019). Focus only on The Fundamental Drivers of Health Inequity on pages 9 and 10.
- ChangeLab Solutions. *From Start to Finish: How to Permanently Improve Government through Health in All Policies*. (2015). (3 minutes)

Reading Assignment

- C. West Churchman, (December 1967). ***Wicked Problems***, 14(4) Management Science. B-141–B-146. Read pages B-141 – B-142 only. This short piece isn't a model, per se, but it introduces the concept of “wicked problems” as a way to conceptualized complex social phenomenon.
- All Youth Access and National Association of City and County Health Officials, ***Understanding Adverse Childhood Experiences (ACES) in Context: Mapping Adversity Across the Socioecological Model*** (2022). The socioecological model is a classic approach to understanding public health problems. There is a lot to unpack in this paper, so spend some time linking what we learned about ACES in class 2 with the solutions/ intervention-oriented approaches outlined in this document.
- Thomas Frieden, ***A Framework for Public Health Action: The Health Impact Pyramid***, 10:4 Am J of Public Health, 590 (April 2010). Frieden was the former health commissioner for the NYC Department of Health and Mental Hygiene and later the director of the CDC in the Obama administration. How does this model align with the social and political determinants of health discussed in previous classes?
- Public Health Accreditation Board, ***Ten Essential Public Health Services*** (2020). Review each element, but pay special attention to Essential Public Health Service #5: Create, champion, and implement policies, plans, and laws that impact health and #6: Utilize legal and regulatory actions designed to improve and protect the public's health.

Questions to think about

- Why are practice models important?
- How are these models similar and different?
- Is anything missing from these models?
- Which models best address how the law and policy can be used to improve health outcomes? Why?

6. Data, Data, Data!!

Strong data is the bedrock of public health practice. And, as we will explore in more depth throughout the semester, legal strategies must pass at least the *rational basis test* for routine government action (is the problem a legitimate government interest and is there a rational connection between the problem and solution proposed?) if not the *strict scrutiny test* for government action affecting fundamental liberties or protected classifications (is the problem a compelling government interest and is the proposed solution narrowly tailored and/or the least restrictive alternative?). Data is essential to either test.

In this class we will explore sources of quality data that are readily accessible on publicly available websites. In addition to the sites below, students will be provided a 1-pager with links to peer reviewed journals and other resources that can be used to both describe a public health problem and to justify a proposed solution.

What, if anything, can you learn about the topic of your choice on these websites? What does it mean if there is no data available on the topic of your choice? To answer these questions, check-out the websites below.

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Viewing Assignment

- OPTIONAL: Given the importance of good science and the critical reading of science, [this clip from Last Week Tonight](#) with John Oliver provides a funny but pointed overview of ways science can go bad (about 20 minutes).

Reading Assignment

- **Burris, Chapter 5 and 7.** The purpose of reading Chapter 5 is to become familiar with key terms used in epidemiology. This is a glossary of sorts to help you sort through public health data. The purpose of reading Chapter 7 is to become familiar with different types of public health studies - many of which are reflected in the datasets below.

Activity

Peer Reviewed Data and Interactive Data Sets: You will be assigned *one or two* of the data sets below to present in class. Be ready to answer the questions below so you can guide your fellow students on how best to approach data for whatever topics they are considering for their writing assignments.

- [Cochrane Collaboration \(Links to an external site.\)](#). Read through Modules 1-3 for an orientation to the Cochrane Collaboration. You do not need to do the suggested exercises, simply become familiar with the materials.
- [Community Guide to Preventive Services \(Links to an external site.\)](#) and the [Community Preventive Services Task Force Findings \(Links to an external site.\)](#). Only the strategies with the best available science are reflected on this site organized by the CDC.
- CDC: Sources of Data on the Social Determinants of Health
- [Healthy People 2030 \(Links to an external site.\)](#). Become familiar with the overall organization of this site, then explore the [Browse Objectives \(Links to an external site.\)](#) link to learn more about your topic.
- Center for Public Health Law Research/ Policy Surveillance Program, [Law Atlas \(Links to an external site.\)](#). See if there is an existing 50-state data set on your topic and proposed solution.
- University of Wisconsin Population Health Institute, [The County Health Rankings Model – What Works for America’s Health? \(Links to an external site.\)](#). See if the topic you want to explore is addressed in one of these reports.
- [CityHealth \(Links to an external site.\)](#). This website is essential if you propose to work in one of the 40 largest cities in the nation.
- [Big Cities Health Coalition \(Links to an external site.\)](#). More data, evidence, charts and links for local level strategies.
- Centers for Disease Control, PLACES: Local Data for Better Health. *Be sure to review the short video on how to use this data set.*
- State health departments. The state health agency website should be explored for detailed data on whatever issue you chose.

Questions to think about

- What sorts of data are available in this dataset you are assigned?
- What are the strengths/weaknesses of these data?
- Why would you use each data set?
- How does it compare to the others you reviewed?

7. Identifying Public Health Problems and Choosing a Legal Approach: Direct and Indirect Regulation

With this class we will begin to zero-in on what actions can be taken to address public health problems. You are now encouraged to begin deep thinking about what public health topic you want to address in your final paper, and what legal, policy or regulatory solution/strategy you want to propose to address the topic. This is a time to think creatively about what interests or motivates you and to begin to commit to the nitty-gritty legal analysis that we will explore throughout the rest of the semester.

Reading Assignment

- David Williams and Lisa Cooper, *Reducing Racial Inequities in Health: Using What We Already Know to Take Action*, 16 Int J Env Res Public Health, 606 (2019). Williams is one of the leading scholars on the link between racism and poor health.
- ChangeLab Solutions, *Blueprint for Changemakers* (2019). Focus only on:
 - Designing Specific Strategies to Address the Fundamental Drivers of Health Inequity, Pages 22 – 41
 - The Appendix.

Activity

Based on the public health topic you expect to explore in your research paper, identify as many legal, policy or regulatory strategies that you can think of to address the topic at each level of government (i.e., federal, state and local levels). You should work quickly in a brainstorming mode so as to generate as many ideas as you can within *15 minutes*.

Questions to think about

- What is the difference between direct and indirect regulations?
- Which of the recommendations in the Williams & Cooper paper best align with legal tools to address health inequalities?
- How can you use law and policy to create efficiencies of scale when addressing health and social problems?
- What kinds of push-back or resistance do you expect when trying to pass or implement some of the recommendations in these articles?

Part III. Constitutional Basis for Public Health Practice

8. The Structure of Government and Federalism

We will place public health practice within the constitutional authority of the federal, state and local governments to protect population health. Special emphasis will be placed on the enumerated powers of the federal government and the plenary powers of state governments. We seek to understand how federalism (i.e., the shared power between the federal and state governments) is deployed (or not) to achieve national health priorities. We will pay particular attention to several new Supreme Court decisions related to workplace COVID vaccine-or-test requirements, religious liberties and reproductive rights.

Viewing Assignment

- ChangeLab Solutions & CDC Public Health Law Program, *Public Health Law Academy: Structure of Government*. Scroll through the link until you find the Structure of Government training. View only the section on Government Public Health Authority starting at 40.00 – 52.00 on the timer.

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(Note that part of this training discusses the Ten Essential Public Health Services. These services have been updated since the training was developed and we have reviewed the updated services in class.)

Reading Assignment

- ***South Dakota v. Dole***, 483 U.S. 203 (1987). This is a classic case that focuses on the spending powers of the federal government to compel state action.
- ***National Federation of Independent Businesses v. Sebelius***, 132 S. Ct. 2566 (2012). Identify which federal powers are discussed in this case. What do you make of this decision? How does it compare to *South Dakota v. Dole*?
- ***National Federation of Independent Businesses v. Dept. of Labor, OSHA***, 595 U.S. ___ (2022). This is one of the Supreme Court cases related to workplace vaccine or test/mask mandates. It upturns generations of precedent giving federal agencies broad authority and flexibility to regulate within the scope of Congressional delegation of authority. It foreshadows a risk that federal agency authority will be significantly different in the near future with unknown ripple effects and consequences.
- Gostin, L, ***The Supreme Court Threatens the Federal Government's Ability to Protect Public Health***, Forbes, January 19, 2022. This is recent commentary from a leading public health law scholar in the *NFIB v. DOL, OSHA* decision.

Questions to think about

- What are some pros and some cons of our federalist system of government?
- What are the strengths and weaknesses of the separation of powers between the legislative, executive, and judicial branches of government?
- Gostin says that the Supreme Court is threatening public health. Do you agree? Why?

9. Police Power Authorities of State and Local Governments

The Tenth Amendment reserves plenary policy powers to state governments, and depending on the state, these powers can be delegated to local governments. We will look at delegated powers and discuss the limits of governmental duties to protect the public's health. As we start our section on constitutional law, we will address two distinct but related questions: Is there the authority to protect health? Is there the duty to protect health?

Viewing Assignment

- Video: ChangeLab Solutions & CDC Public Health Law Program, Public Health Law Academy: [Public Health Threats & the US Constitution](#). Start listening to this video at 11:15 on the timer. It provides an overview of constitutional standards for communicable disease control. The content goes far beyond what we will cover in this specific class, but the video provides the groundwork for what we will be learning over the next few weeks.

Reaching Assignment:

- ***Jacobson v. Massachusetts***, 197 U.S. 11 (1905). *Jacobson* is the bedrock U.S. Supreme Court decision upon which most current public health practice relies. The case competes communitarian values to be protected from smallpox above individual liberties to avoid vaccination. In *Jacobson*, we see delegated police power authority, a reliance on the rational basis test, and strategies for protecting individual liberties despite the government's broad authority to regulate.

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- ***DeShaney v. Winnebago Cty. Dep’t of Soc. Servs***, 489 U.S. 189 (1989). *DeShaney* is classic case that explores limits of the government’s duty to protect health.
- ***Arnie’s Saloon v. Toledo-Lucas County Bd of Health***, 96 Ohio St. 3d 250 (2002). Depending on the circumstances, broad delegations of authority do not necessarily convey an ability to pass legislation even on something as basic as tobacco control and clean indoor air.

Questions to think about

- How do the state and local police powers interact with federalism?
- If *Jacobson v. Massachusetts* supports broad public health authority to protect health and safety, *DeShaney v. Winnebago* seems step backwards and infers that government has no responsibility to protect even one child’s health and safety let alone that of a whole community. How do we reconcile this?
- What does it take for state and local governments to embrace broad visions for health justice? Do they have the authority or resources to achieve such a vision?
- Do you think the court got it right in *Arnie’s Saloon*? Can you make a different argument that would uphold local police power authorities to regulate clean indoor air?

10. Emergency Power Authorities

The eviction moratorium instituted by the Centers for Disease control has been invalidated by the US Supreme Court. States across the nation are reevaluating their statutes related to governors’ and state health officers’ emergency powers. Local governments are defying state orders related to vaccine and mask mandates in K-12 schools. There’s a lot going on and in this class, we’ll begin to dissect the issues and parse the law.

Reading Assignment

- Rebecca Haffajee, Wendy Parmet et al. ***What is a Public Health Emergency?*** 371 N Eng J Med 11, (Sept. 11, 2014). This pre-pandemic article lays-out criteria for what constitutes an emergency justifying the use of emergency powers.
- Lawrence Gostin & Lindsay Wiley. ***Governmental Public Health Powers During the COVID-19 Pandemic: Stay-at-home Orders, Business Closures, and Travel Restrictions***, JAMA Network, April 2, 2020. This article was written when the pandemic was fairly new and public health authorities were still largely untested. It outlines typical emergency response actions taken by federal, state and local governments and ends on a positive note, “When this national emergency ends, the US must emerge stronger with the values of human rights, social justice, and the rule of law intact.” History is still being written, but this conclusion is ripe for debate.
- *Congressional Research Services, The Scope of CDC Authority Under Section 361 of the Public Health Services Act (PHSA)* (April 13, 2021). Read pages 1-6 only. <https://crsreports.congress.gov/product/pdf/R/R46758/1>
- ***Alabama Association of Realtors v Dept of Health and Human Services***, 594 U.S. ____ (2021). This is the Supreme Court’s second shadow docket opinion invalidating CDC’s eviction moratorium.
- The Network for Public Health Law, ***Proposed Limits on Public Health Authority: Dangerous for Public Health*** (May 2021). You are not expected to grapple with the full range of changes in specific states as outlined in this document, but be ready to debate the pros/cons of limiting public health authorities in times of emergency.

Questions to think about

- How do emergency powers differ from routine police power authorities?

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- What accountability mechanisms ought to be in place for the wielding of emergency powers?
- Ought individual liberties be protected during emergencies? Why?

11. Case Study: Executive Decision-making During the Flint Water Crisis

When push comes to shove – and especially during times of emergency – executive decision-making is fraught with peril as decisions often must be made without complete information and in the face of intense opposition or extraordinary expense to under-resourced municipalities. We will explore the Flint water crisis as a case study in executive decision-making, then work in small groups to consult with each other on what legal authority are you relying upon to take the action you are proposing in your final paper.

Reading Assignment

- Anna Clark, *The Unfinished Business of Flint’s Water Crisis*. Propublica. January 22, 2021. This brief article provides a succinct overview of the water contamination in Flint, MI.
- Peter Jacobson, Colleen H. Boufides, et al., *The Role of the Legal System in the Flint Water Crisis*, 98 *The Milbank Quarterly* 2, 554-580 (2020).
- Lance Gable and James Buehler. *Criticized, Fired, Sued or Prosecuted: Hindsight and Public Health Accountability*. [Public Health Rep.](#) Nov-Dec; 132(6): 676–678. (2017). As we see so clearly in COVID, government decisions (or lack thereof) to protect (or not) the public’s health can be fraught with controversy. This article raises questions about the right approach to hold government accountable when decision-making goes wrong.
- *Guertin v. Michigan*, 912 F.3d 907 (6th Cir 2019).

Questions to think about

- What are the pros and cons of holding government officials liable for making bad decisions during an emergency?
- Did the 6th Circuit get it right in *Guertin v Michigan*? How does the decision compare to *DeShaney v. Winnebago*? Why a difference?
- How do you think the Flint situation compares to the failure of the municipal water system in Jackson, Mississippi in 2022? What about the ongoing failure to provide potable water to communities throughout California’s Central Valley?

12. Preemption

Preemption – the invalidation of a law by a higher level of government – is a growing problem especially as local governments adopt innovative laws to address public health and social justice concerns ignored by state or federal governments. It is critical that public health lawyers and advocates have a sophisticated understanding about preemption and that they develop strategies to anticipate, avoid and/or un-reverse preemptive statutes if they hinder public health practice.

Viewing Assignment

- Public Health Law Academy: *Preemption & Public Health*. Scroll down the webpage until you find the Preemption & Health webinar. It lasts about 40 minutes.

Reading Assignment

- Jennifer Pomeranz and Mark Pertschuk. *State Preemption: A Significant and Quiet Threat to Public Health in the United States*. 107 *AJPH* 900 (2017). When reading this short piece, focus on the current risks to public health legislation, policies and regulation posed by preemption.

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- ***US Smokeless Tobacco Manufacturing Co v City of New York***. 703 F. Supp. 329 (2010). Excerpt. This case highlights how important it is to read statutes carefully when determining whether they preempt action by lower levels of government.
- ChangeLab Solutions, ***Assessing & Addressing Preemption: A Toolkit for Local Policy Campaigns*** (2020). This resource highlights many of the legal challenges and strategies that lawyers and advocates need to have in their armamentarium when taking-on controversial issues that have politically and economically powerful opponents. The perspectives offered in the resource are a lot to take-in with a single read and it is best used when in the midst of developing or promoting specific legislation or regulations. You should use this resource if you find the issue for your final paper is preempted.

Website Activity

Websites: review these websites for basic familiarity. We will use them during an in-class exercise.

- Partnership for Working Families
- Grassroots Change
- Local Solutions Support Center
- 'Home Rule in the 50 States' Memos Examine the Nature and Scope of Local Authority.
- State preemption laws data set

Questions to think about

- What is the home rule authority in the state in which your solution will take place?
- Which websites, if any, cover the issue your paper is addressing?
- Is your issue preempted in your state? Do any states preempt it? If yes, which ones?
- If you are preempted, use the ChangeLab Solutions resource to design a strategy OR move onto a new issue.
- If you are not preempted or these websites do not cover your issue, can you find the specific authority/ies you need to determine that you have the ability to act?

13. Procedural Due Process #1: *Buck v. Bell* and Modern-day Eugenics

In this class we will delve into the protections granted by the due process and equal protection provisions of the 5th and 14th amendments. We start with *Buck v. Bell* which is the Supreme Court's articulation of gross racial and ethnic stereotypes regarding immigrants and the poor; shoddy science; and the clearly unethical practice of law. Note that the case was used by the Nazi's as defense in the Nuremberg trials and it has not been formally overturned to this day. It sets a stark example of how public health and legal authorities combined forces to deprive vulnerable populations of basic due process rights.

Viewing Assignment

These are short videos framing the Supreme Court decision *Buck v. Bell*.

- PBS Learning Media, The American Experience, [Who Was Carrie Buck?](#)
- PBS Learning Media, The American Experience, [The Supreme Court Decision.](#)

Listening Assignment

- National Public Radio, ***Imbeciles – Adam Cohen interview Terry Gross on Fresh Air***, 2016. This podcast is 37 minutes long.

Reading Assignment

- ***Buck v. Bell***, 274 U.S. 200 (1927). At just 8 paragraphs long, we are reading the entire case.
- Cory Brosnahan, [Finding Carrie Buck](#), The American Experience (November 2018). This is a quick read with some additional background material about Carrie, her family of origin, marriages and later life. The three audio files are 10 – 30 seconds long.
- Alexandra Minna Stern, ***When California Sterilized 20,000 of its Citizens***, Zocalo, January 6, 2016. This article brings eugenics practices home to relatively recent California history.
- Jacqueline Fox, ***Current COVID-19 Surge, Eugenics and Health-Based Discrimination***, Petri-Flom Center, Harvard Law, July 23, 2021. Is our collective response to COVID reminiscent of the ugly history of eugenics?

Questions to think about

- What does *Buck v. Bell* say about public health practice – both historically and in current times? Was there informed consent? Did Buck’s physicians act with her best interests in mind?
- Explore the case from what you expect from the law. Did her lawyer act with her best interests in mind? Did Carrie Buck receive a fair trial? Why?

14. Procedural Due Process #2: Classic Cases and Managing Disease Outbreaks

Having demonstrated how legal proceedings can be subverted to actually *deprive* the due process of law, in this class we will build and more modern understanding of due process protections. We will stress-test what we learn against three infectious diseases with differing modes of transmission: Tuberculosis, Ebola and COVID-19.

Viewing Assignment

- Video: ChangeLab Solutions & CDC Public Health Law Program, Public Health Law Academy: ***Public Health Threats & the US Constitution***. It provides an overview of constitutional standards for communicable disease control.

Reading Assignment

- ***Goldberg v. Kelly***, 397 U.S. 254 (1970). Excerpts.
- ***Mathews v. Eldridge***, 424 U.S. 319 (1976). Excerpts.

Activity

Read these short pieces for an in-class exercise on how to shape procedural due process protections vis-à-vis varying levels of communicability and risk:

- **Tuberculosis: *City of Newark v. J.S.***, 652 A.2d 265 (N.J. Super. Ct. 1993). Excerpts.
- **Ebola: ACLU-Yale Law School, *FEAR, POLITICS, AND EBOLA: How Quarantines Hurt the Fight Against Ebola and Violate the Constitution*** (2015). Focus on:
 - How Ebola Spreads: pages 11 – 14 and
 - Ebola Quarantines Violated the Constitution: pages 35 – 42.
- **Covid 19: KGET News, *CDC: Most COVID-19 transmissions come from people with no symptoms***, January 8, 2021. The video is 2.40 minutes long.

Questions to think about

- How would the *Goldberg v. Kelly* or *Mathews v. Eldridge* standards apply to requiring masks at schools or workplaces for the common cold?
- What about “red flagging” someone with mental health distress so they can’t purchase a gun?

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- What about forced commitment to a drug rehabilitation program?

15. Substantive Due Process #1: Classic Cases – What Are Fundamental Liberties?

We will read excerpts from a series of classic cases to deepen our understanding of fundamental liberties underlying substantive due process doctrine. Every post-*Lockner* case seems to be at risk given the recent *Dobbs* decision which we will read in the near future.

Reading Assignment

- ***Lochner v. New York***, 198 U.S. 45 (1906). Note: This case was overturned by ***West Coast Hotel Co. v. Parrish*** (1937) which held that the majority ruled that the state may use its police power to restrict the individual freedom to contract. The decision marked the Court's departure from the expansive view of the freedom to contract. The decision is generally regarded as having ended the so-called "*Lochner* Era, a period in American legal history in which the Supreme Court tended to invalidate legislation aimed at regulating business.
- ***Pierce v. Society of Sisters***, 268 U.S. 510 (1925). This is a classic case identify parental rights as a fundamental liberty.
- ***Griswold v Connecticut***, 381 U.S. 479 (1965). The holding outlines the rights to marital privacy and the use of birth control.
- ***Washington v. Glucksberg***, 521 U.S. 702 (1997). We are reading this case to gain insight into how the court identifies the lack of a fundamental liberty for assisted suicide.
- ***Lawrence v Texas***, 539 U.S. 558 (2003). In this case, we see the Court extend substantive due process protections to intimate sexual encounters between consenting same sex partners thereby overturning *Bowers v. Hardwick*.
- ***Obergefell v. Hodges***, 576 U.S. 644 (2015). This case sets-out four principles upholding the right to same-sex marriages. Think about how these principles might be argued to be applicable to other claims of fundamental liberties.
- ***Brach v. Newsom***, 9th No 20-5629 (July 23, 2021). Excerpts. Brach is a COVID case that explores distinctions between restrictions on attending public schools subject to the rational basis test and private schools subject to strict scrutiny.

Questions to think about

- What constitutes a fundamental liberty?
- How do you distinguish *Washington v. Glucksburg* from the other cases?
- How can it be that the courts use the rational basis test related to public schools, but strict scrutiny related to private schools? Is this right? Why?
- Why aren't essential public goods (e.g., quality education, housing, health care) fundamental liberties?

16. Substantive Due Process #2: Religious Liberties

In this class we'll explore how public health protections are butting against religious liberties and discuss what might be next in Supreme Court jurisprudence in light of its recent cases related to COVID-19 restrictions.

Listening Assignment

- Michelle Mello & Wendy Parmet, ***Public Health Law after Covid-19***, N Engl J Med 2021; 385:1153-1155. Start with the 10-minute interview with Michelle Mello (Stanford University law

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and medical schools) that is linked to the article. The short journal article provides a quick summary of the cases we will read.

Reading Assignment

Excerpts from the following readings and cases. Note that all of the Covid-era cases were decided as part of the "shadow docket" without any warning or extensive arguments on the merits by the parties. See the optional article by Steve Vladek about this trend by this Court.

- ***Employment Division v. Smith***, 494 U.S. 872 (1990). This classic case set the longstanding standard that religious rights may not supersede neutral laws of general applicability. In other words, an individual's religious beliefs do not excuse him from compliance with an otherwise valid law prohibiting conduct that government is free to regulate so long as the government doesn't impermissibly burden religion as compared to other secular activities.
- ***Roman Catholic Diocese of Brooklyn v. Cuomo***, 592 U.S. ___ (2020). This case, argued after Ginsberg's death and with Barrett as a new Justice, begins a new articulation of when to apply strict scrutiny in relation to public health regulations affecting religious worship. Compare the *per curiam* decision with Sotomayor's dissent.
- ***South Bay United Pentecostal Church v. Newsom***, 592 U.S. ___ (2021). This is referred to as "South Bay II".
- ***Tandon v. Newsom***, 593 U.S. ___ (2021). This is the latest ruling by the U.S. Supreme Court regarding strict scrutiny, narrow tailoring and the First Amendment's free exercise clause.
- ***Braidwood Management v. Becerra***, [citation], https://s3.documentcloud.org/documents/22276124/govuscourtstxnd330381920_2.pdf
- Steve Vladek, ***Opinion: The Supreme Court Is Making New Laws in the Shadows***, NYT, April 25, 2021.

Questions to think about

- How does one square *Employment Division v. Smith* with the subsequent cases?
- Do you think courts will approve vaccine mandates without religious exemptions?
- The *Braidwood* decision is sure to be appealed to the Supreme Court. How do you think the Court would rule if they accept cert?

17. Substantive Due Process #3: Reproductive Rights

The *Dobbs v. Jackson Women's Health Center* decision has created a seismic shift to jurisprudence even beyond reproductive rights. We'll keep our focus on reproductive rights in this class, but we'll be forced to reconsider everything we've just learned related to fundamental liberties, too.

Reading Assignment

- ***Curtis v. School Committee of Falmouth***, 652 N.W.2d 580 (Mass. 1995). Curtis brings the issue of parental rights into more modern times as it grapples with whether students' access to condoms in public high schools without advanced parental permissions violates *Pierce v. Society of Sisters*.
- ***Dobbs v. Jackson Women's Health Center***, 597 U.S. ___ (2022). We will read this case to understand the current Supreme Court's views on fundamental liberties.

Website Activity

- Review this website and learn all you can about legal issues related to obtaining an abortion: **Guttmacher Institute:** <https://www.guttmacher.org/state-policy>. Identify trends, barriers to care, workarounds that may be available, etc.

Questions to think about

- What are the implications of *Dobbs* for reproductive rights beyond access to abortion and other fundamental liberties?
- How secure do you feel about the future existence of other fundamental liberties post *Dobbs*?
- How can we make sense of having different fundamental liberties in different parts of the “United” States? What unifies our nation?
- Can fundamental liberties truly exist given recent U.S. Supreme Court decisions related to religious liberties – especially the “most favored nation” status of religious rights?

18. Equal Protection #1: Classic Cases and Different Contexts

We will be reading mostly classic cases exploring the development of the Equal Protection doctrine since the 1900s. We also will read a short piece about how the Equal Protection doctrine is implicated in local policies to limit the sales of tobacco products in pharmacies. We’ll end with a thought piece, *Fostering the Civil Rights of Health*, which challenges us to rethink Equal Projection jurisprudence in our current post-civil rights era.

Reading Assignment

- ***Jew Ho v. Williamson***, 103 F. 10 (C.C.N.D. California 1900). Review this case which we already read for the first class of the semester.
- ***Brown v. Board of Education***, 347 U.S. 483 (1954). This case overturned *Plessy v. Ferguson*.
- ***USDA v. Moreno***, 413 U.S. 528 (1973). This case applies the equal protection doctrine to the right to receive food stamps.
- ***Lawrence v. Texas***, 123 S.Ct. 2472 (2003). We will read Justice O’Connor’s concurrence in this case which is based on an equal protection analysis so we can compare and contrast it to Justice Kennedy’s majority opinion based on a substantive due process analysis.
- ***Walgreen v. San Francisco***, 185 Cal.App.4th 424 (2010). This case applies the equal protection doctrine to business interests.
- Angela Harris and Aysha Pamukcu, ***Fostering the Civil Rights of Health*** (July 31, 2020) in Burris, S., de Guia, S., Gable, L., Levin, D.E., Parmet, W.E., Terry, N.P. (Eds.) (2020) *Assessing Legal Responses to COVID-19*. Boston: Public Health Law Watch.

Questions to think about

- What criteria do courts use to determine what “similarly situated” means in practice?
- How does equal protection doctrine influence statutory interpretation?
- Is the concept of the “civil rights of health” likely to have traction with the courts?

19. Equal Protection #2: In-class Debate

Below are two competing models for exercising emergency powers by state and local governments. We will organize a class debate to untangle the nuances.

Reading Assignment

- American Legislative Exchange Council, ***Model emergency power ordinance***

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- Lindsay Wiley, *Public Health Emergency Reform is Coming – 6 Principles*, Health Affairs Blog, January 12, 2021.

Questions to think about

- Instructions will be provided to guide small teams in debate preparation.

20. First Amendment #1: Restrictions on Commercial Speech

- *Lorillard v. Reilly*
- *Sorrell v. IMS Health*
- *Bolger v. Youngs Drug Products, Inc.*

Questions to think about

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21. First Amendment #2: Compelled Commercial Speech

- *NYSRA v. NYC Board of Health*
- *RJR Tobacco v. FDA*
- *Discount Tobacco v. US*
- *NIFLA v. Becerra*
- *Johanns v. Livestock Marketing*

Questions to think about

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PART IV. Public Health Law in Action

22. Administrative Law #1: Introduction to Rulemaking

Anyone contemplating a career in public health law should take a full course in Administrative Law. Short of that, the next three classes will provide introductory information, a case study and an exercise to help us explore Notice and Comment Rulemaking.

Viewing Assignment

- Video: ChangeLab Solutions and CDC Public Health Law Program, *Public Health Law Academy - How Do Health Departments Create Regulations?* View these sections:
 - What Are Regulations at 13:15 - 27:14 on the timer
 - Rulemaking at 27:14 - 43:06 on the timer
 - Legal Challenges at 45:00 - 55:15 on the timer
- Before reading the *FDA v. Brown & Williamson* case below, view [this very short video](#) of the (in)famous 1994 hearing in which tobacco industry executives denied that nicotine was addictive. This hearing helped put pressure on the FDA to adopt rules regulating tobacco, which it did in 1996. The rule asserted the FDA's authority over tobacco products and adopted a number of measures intended to reduce youth tobacco use. The FDA rule was immediately challenged by the tobacco industry and litigated up to the Supreme Court. See *FDA v. Brown & Williamson* below.

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Reading Assignment

- ***FDA v. Brown & Williamson***, 120 S.Ct. 1291 (2000). Note this case preceded the passage of the [Family Smoking Prevention and Tobacco Control Act](#) in 2009.
- ***Western States Petroleum v. State Dept. of Health Services***, 122 Cal. Rptr.2d 117 (2002).
- ***NFIB v. DOL-OSHA***, 595 U. S. ____ (2022). We read this case earlier in the semester.

Website Activity

Prepare for an in-class regulatory process exercise by going to the [regulation.gov](https://www.regulation.gov) website. Answer the questions below to discuss in a small group exercise:

- Identify a pending rule related to public health that is open for public comment.
- Summarize the main provisions of the proposed rule.
- What people or entities have already filed comments? What did they say?
- How would you file a comment?

Questions to think about

- Cigarettes kill more people annually than any other consumer product. How can it be that the FDA isn't able to regulate these products to save lives?
- Think about how out of sync *NFIB v. DOL-OSHA* seemed earlier in the semester when we considered years of jurisprudence regarding the enumerated powers of the federal government. How does this case align with *FDA v. B&W*?
- What can Congress do to address the challenge to the authority of administrative agencies?

23. Administrative Law #2: Case Study – Menu Labelling

In this class we'll do a deep dive on how the FDA regulated the posting of calories on restaurant menus. This effort spanned approximately 15 years and ultimately succeeded on a national level through insertion into the Affordable Care Act signed by President Obama. Sadly, a vibrant grassroots campaign to promote menu labeling in communities across the nation was preempted by the success at the national level. We'll try to unpack all of this in class discussion.

Reading Assignment

The Early Years of Menu Labeling (all *super quick* readings designed to set the context)

- Center for Science in the Public Interest. ***From Wallet to Waistline: The Hidden Cost of Supersizing*** (2002).
- ***Parks and Recreation: Soda Taxes***. 1+ minute video.
- California Center for Public Health Advocacy. ***Making the case for putting calorie information on a menu board*** (what advocates wanted) rather than in a brochure (what industry wanted). 1+ minute video.
- Center for Science in the Public Interest, ***Menu Labeling***. Check-out the regulatory resources and especially the Menu Labeling Policy Map. What story does it tell?

Legislation/ Regulation/ Litigation:

- ***New York State Restaurant Association v. NYC Bd of Health***, 556 F.3d 114 (2d Cir 2009). Excerpts. You've seen this case before in the class on the First Amendment/ commercial speech. This time we are reading it both for its history related to the menu labeling effort and its relation to the whether the Nutrition Labeling and Education Act of 1990 preempts NYC's efforts.
- ***The Final Rule: Part II Department of Health and Human Services Food and Drug Administration 21 CFR Parts 11 and 101 Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Calorie Labeling of Articles of Food in Vending Machines; Final Rule***. 79 Fed. Reg 71156. December 1, 2014. Read just the

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Executive Summary and sections I – III (about 6 pages). We will explore this document in more depth during in-class activities, so have the entire document available during class.

- **COMMENTS OF THE CENTER FOR SCIENCE IN THE PUBLIC INTEREST to THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES FOOD AND DRUG ADMINISTRATION Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments Docket No. FDA–2011–F–0172.** August 2, 2017. Do you agree about the risk of industry capture?
- Preemption: ChangeLab Solutions. **What Can States and Local Governments Do About Menu Labeling?** (2016-18).

Questions to think about

- What are some efficient ways to approach Federal Register notices?
- How does can a lawyer engage with Notice & Comment rulemaking using non-legal advocacy skills (e.g., media advocacy, mobilization of advocacy organizations, etc.)?

24. Administrative Law #3: Finding Statutes and Regulations

We will use this class to help trace the authority to take action related to your research topic.

Website Activity

- Complete the **Statutory Law Worksheet** as an example of tracing statutory authority to take action.

Questions to think about

- How can you leverage legislative committee reports as an attorney: in litigation? In advocacy? For other purposes?
- Can you trace the law related to your research topic from the U.S. Constitution through state or local statutes and regulations?
- Be prepared to bring questions and challenges to class for discussion.

25. Vaccination Law

We will be reading *Wong Wai v. Williamson*, a mandatory vaccine case from the bubonic plague outbreak in San Francisco at the turn of the last century. In addition to two cases we've already read, *Jacobson v. Massachusetts* and *NFIB v. DOL-OSHA*, we will read two COVID-related cases, *Biden v. Missouri* (decided on the same day as *NFIB v. DOL-OSHA*) and *Does v. Mills*, a 1st Circuit case regarding vaccine mandates that was denied cert by the Supreme Court.

Reading Assignment

- Erwin Chemerinsky and Michele Goodwin, **Compulsory Vaccination Laws are Constitutional**, 110 NW. U. L. REV. 589 (2016). This is a great summary of vaccination law pre-COVID-19. Focus on pages 603 - 614.
- **Wong Wai v. Williamson**, 103 F 1 (1900). This is the companion case to *Jew Ho v. Williamson* which we read for the first class. *Wong Wai* looks at a Board of Health requirement that only Chinese residents be subject to mandatory vaccinations.
- **Jacobson v. Massachusetts**, 197 U.S. 11 (1905). We read this case early in the semester to focus on the plenary police powers reserved for the states in the constitution. Review it this week as we revisit a discussion about individual liberties versus the common good.
- **NFIB v. DOL-OHSA**, 595 U. S. ____ (2022). Review this case yet again.

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- ***Biden v. Missouri***, 595 U. S. _____ (2022). This is a companion case to *NFIB v. DOL-OSHA* upholding vaccine mandates for healthcare workers.
- ***Does v. Mills***, No. 21-1826 (1st Cir. 2021). This case from Maine supports a state-specific upholding a vaccine mandate for health care workers that does not include a religious exemption. The case was denied certiorari by the U.S. Supreme Court and therefore *may* be a harbinger of things to come in terms of state police powers and vaccination law.
- **OPTIONAL: 50-state Vaccination Laws**: This newly updated resource from the CDC’s Public Health Law Program is attached as an optional reading. You can expect this resource to be kept up to date and can therefore use it as a reference tool in the years ahead if your legal or public health practice requires access to a comprehensive database on vaccination laws.

Questions to think about

- How do individual liberties square with the common good?
- How do *Wong Wai* and *Jacobson* relate to *Biden v. Missouri*?
- How does *Biden v. Missouri* related to *NFIB v. Biden* which we read earlier in the semester?
- Why do you think the Supreme Court denied cert to *Does v. Mills*?

26. Environmental Justice

This session will use a case study approach to explore overlap and distinctions between “environmental health” (EH) and “environmental justice” (EJ). We’ll start by discussing the principles that animate each field, then take an in-depth look at childhood exposure to lead paint, how EH and EJ practitioners have framed this problem and its possible solutions.

Reading Assignment: Please review the diagram of the principles of public health and the description of the principles of environmental justice. We will use these pieces to explore and critique two student-directed research related to EJ and lead paint respectively.

- Larry Gostin, ***Principles of Public Health***
- First National People of Color Environmental Leadership Summit, ***Principles of Environmental Justice*** (1991).
- Candice Youngblood, ***Put Your Money Where Your Mouth Is***, 46 *ELQ* 455 (2019).
- Anonymous, ***Lead Paint Policy for Philadelphia*** (2021).

Questions to think about

- What distinctions can you make between EH and EJ? What are some strengths and limitations of each field? Can they be synergistic? How?
- What challenges does the Youngblood article pose to lawyers? To public health professionals?

27. Equitable Enforcement of the Law

As we wind-down the semester, we’ll visit various models of how to enforce public health laws. Based on the readings/websites below, we will engage in a class exercise that teases-out the power and limitations of the various models. Be prepared to discuss your research/writing topic in light of the readings below.

Viewing Assignment

- John Braithwaite, ***Responsive Regulation***, (date?). Scroll through just the beginning of this website for updated models for responsive with related discussion.

Reading Assignment

- John Braithwaite, *Types of Responsiveness*, from *Regulatory Theory*, Ed. Peter Drahos. Australian National University Press (2017). We are reading just one chapter in this book produced by regulatory scholars in Australia. I strongly recommend that you avail yourself of this *fantastic free textbook* if regulation, remedies and enforcement are areas of interest or future practice <https://press.anu.edu.au/publications/regulatory-theory> (Links to an external site.). It covers a huge range of topics.
- Bechara Choucair, Jay Bhatt, et al, *How Cities Are Using Analytics to Improve Health*, *Harvard Business Review* (September 15, 2014). At the time of this writing, Choucair and Bhatt were, respectively, the health commissioner and chief innovation officer for the Chicago Department of Public Health.
- ChangeLab Solutions, *Equitable Enforcement to Achieve Health Equity*, (2020). This is both a quick read and jam-packed with information. Read pages 11 – 36.

Questions to think about

- What mode of enforcement will you recommend for your research project?
- What enforcement mechanisms ought to replace fees and penalties in low income communities?
- What is an equitable way to finance municipal services?

28. Community Organizing and Movement Building

We wrap-up the semester with a deep dive into community organizing and movement building. At the end of the day, good ideas and strong science alone are not sufficient to win battles to improve the public's health. Grassroots movements are needed to push down barriers and to open windows for political success. We will be probing questions about what the LAW has to do with any of this.

Viewing Assignment

- Video: *Michael Moore's The Awful Truth: HMO Funeral*. YouTube, 2017. This is a short video showing Michael Moore doing what Michael Moore does best: exposing hypocrisy amongst the powerful. Be ready to discuss the pros/cons of his approach.

Listening Assignment

- Podcast: It's Been a Minute with Sam Sanders, NPR, *ACT UP: A History of AIDS/HIV Activism*, June 18, 2021. This is a 50-minute podcast that walks through the strategy employed by ACT UP and allies to change the narrative and governmental action related to the AIDS epidemic. It paints a replicable model for coalition politics and political action that can be used on any issue. We will focus most of the class discussion on what we can glean from this podcast.

Reading Assignment

- Jill Lepore, *The Lie Factory: How politics became a business*. The New Yorker, September 24, 2012. This is an historic view of the emergence of political lobbying as a specialty niche. It sets a context for the successive readings.
- Mary Anne Morgan and Jennifer Lifshay, *Community Engagement in Public Health*, Contra Costa County Health Dept. (undated). This article describes the Ladder of Community Participation as a model for how government can engage community stakeholders.

If your research project will be based internationally, please read this document, too:

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- International Accountability Project, ***A Community Action Guide on Community-led Research*** (2018). Read through the entire document quickly by skimming the headlines and going deeper on areas that will be beneficial to your writing project. Be ready to discuss how community organizing campaigns may differ depending upon the political context of a region.

Questions to think about

- What are the pros and cons of the various strategies outlined in the viewing/listening/reading assignment?
- What does the *Act Up* podcast mean when it calls for advocacy campaigns that are *reasonable, winnable and doable*?
- How will you build political will for the legal or policy strategy at the heart of your research paper?

Appendix A Draft and Final Papers

The first draft of the final paper is due on [date] and a **final memo that builds on that analysis is due on the last day of the exam period [date]**. The writing assignments are described more fully below and together they satisfy the Option 1 writing requirement.

The writing assignment/final paper can be on any public health topic of your choice that is preapproved by the instructor. **First**, select a geographic area that you want to study that corresponds to a specific political jurisdiction (state, tribe, county, city/town). **Second**, select a specific preventable disease such as COVID-19, heart disease, diabetes, asthma, lead poisoning, etc. or a preventable injury such as gun violence, domestic violence, or any of the issues related to Adverse Childhood Experiences (ACEs). **Third**, identify one or more social/political/ commercial determinants of health such as housing, transportation, income inequality, education, voting rights, etc. that, if addressed, will help to prevent that disease. **Fourth**, make a recommendations using legal or policy tool that lends itself to an advocacy campaign that is reasonable, winnable and doable.

The paper will be a memo addressed to a policy maker (e.g., elected official or government agency director) **or the executive director of a community-based advocacy organization** (e.g., legal aid, community development finance institution, a local chapter of a national civil rights organization, grassroots neighborhood group, etc.) who wants **to use legal and policy tools** to address health inequities in the jurisdiction. Be specific, name the exact person to whom you are writing. In addition, clearly identify who you are - e.g., an attorney for x community-based organization, labor union or Medical-Legal Partnership, the legal research associate for a state senate committee with authority over the issue of concern; or any other role you think would help **give a persuasive voice to your writing**. You are expected to take a stand and have a clear opinion that is backed-up with quality public health data and relevant law.

The first draft of the memo should be approximately 8-10 pages (not including endnotes), double spaced, 12-point font, 1-inch margins. It will be **due immediately after Spring Break** and you will receive feedback on the memo as soon as possible thereafter. It will be ungraded as the course will not yet have covered all of the issues you will address in the final memo. Failure to submit the first memo will result in a deduction of 5% off the final grade.

The final memo will be 12-15 pages (not including endnotes), double spaced, 12-point font, 1-inch margins. It will constitute 80% of the final grade and will be evaluated as follows:

Public health data: 20%

- Use one or more sources of online public health data to **describe and define the health inequities based on race, ethnicity, gender, income, etc. in the jurisdiction you have chosen**. Peer-reviewed journal articles and/or other high quality data sources should also be cited.
- Make the case for a **specific legal or policy strategy** to address the inequities and thereby prevent disease.

Legal analysis: 50%. Note that we will continue studying key aspects of the law that you might use in your legal analysis after Spring Break.

- If you are writing to a policy maker, discuss his/her/their **specific legal authority(ies)** permitting/mandating the jurisdiction to act. If you are writing to a nonprofit executive director,

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discuss the **specific legal basis for the action you are proposing** the nonprofit support. For example, if you propose a litigation strategy to force agency action, discuss the legal mandate for the agency that you intend to enforce. While not mandatory, you may use the “Can I? Must I? Should I?” rubric discussed in class to guide your analysis.

- **Identify and discuss at least 3 legal challenges** (e.g., any combination of constitutional challenges, administrative law hurdles, enforcement problems, other issues) that can be anticipated as the policy strategies are politically advanced in the jurisdiction. The strongest papers will discuss the potential challenge and offer advice on how to mitigate or avoid the risks posed by the challenge.

Community engagement and building political will: 10%. Note that we will continue studying key aspects of the community engagement that you might use in your legal analysis after Spring Break.

- **Make specific recommendations on how to build the political will** needed to ensure enactment of the policy or legal strategy. The recommendations should be appropriate to the role/position of the person to whom the memo is addressed.
- **Demonstrate understanding of systems theory** by discussing how political success in enacting the policy or legal is linked to broad health outcomes.