

Public Health Law: Past & Present

Facilitator's Guide



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Table of Contents

Training Overview	3
About This Training	3
Target Audience	3
Learning Objectives	3
Materials	3
Equipment	3
Instructions for Facilitators	4
Prepare for the Presentation	4
Before Starting the Presentation	4
During the Presentation	4
After the Presentation	4
Training Agenda	5
Additional Resources	8
Organizations	8
Background Reading and References	9
Relevant Cases	10
Welcome Activity - The Q&A Handout	13
Pre- and Post-Training Surveys	20

Who Should Use Our Facilitator's Guides?

Our facilitator's guides are intended for anyone who needs to provide training to public health practitioners about our legal system and its role in improving population outcomes. Public health practitioners may include health department staff, public health lawyers, public health nurses, public health educators, public health advocates, and public health faculty and students in graduate and undergraduate programs. To access facilitator's guides for our other trainings, visit www.publichealthlawacademy.org.

Training Overview

About This Training

Public health law has important implications for protecting the public's health. However, the need to protect the public's health must be balanced against the rights of affected individuals. Accordingly, public health officials must understand the power and limitations of their authority. Understanding these critical concepts helps public health leaders ensure their policies are constitutionally permissible and capable of withstanding legal challenge.

The goal of this training, Public Health Law: Past & Present, is to teach public health officials how to use the tools of law and policy most effectively – within the parameters of the U.S. Constitution – to achieve their public health goals.

This public health law “101” training starts by looking at the legal history that provides the origins of, and foundation for, the practice of public health law today.

It next discusses how this history shapes the government's modern day authority by exploring the parameters of the government's public health powers.

Finally, it examines the constitutional limitations on the government's ability to enact public health regulations.

Target Audience

This training has been developed with entry-level and mid-tier public health practitioners in mind. No legal background is necessary.

Learning Objectives

- Name two historical events that helped shape the practice of public health law today.
- Identify an example of how this history shapes the government's modern day authority.
- Identify two constitutional limitations on the ability of the government to enact public health regulations.
- Name the two things that the government must balance when creating public health laws and policies.

Materials

- Facilitator's Guide – This document can be adapted to provide a training that is customized for your community.
- Slide Presentation & Script – Separate files, the slides and script can be modified to reflect your audience, training content, and speakers.
- Facilitator's Checklist – This is a separate file that will prepare you to deliver any training offered by the [Public Health Law Academy](http://www.publichealthlawacademy.org).

Equipment

- Laptop
- Projector

Instructions for Facilitators

Before starting, we recommend that you download the [Facilitator's Checklist](#), which is intended to prepare you to deliver any training offered by the [Public Health Law Academy](#). Below we have identified options for tailoring this training, [Public Health Law: Past & Present](#), for your audience and venue.

Prepare for the presentation

As the facilitator, you should first go through the materials to familiarize yourself with the content. We recommend that you watch the entire [Public Health Law: Past & Present training](#). Once you are familiar with it, you can modify the content and length to suit your audience, available time, and venue.

Before starting the presentation

We suggest that you have participants complete the following:

- *The Q&A Handout – TRUE or FALSE found on page 14 of this guide.* The Q&A Handout will help participants assess their knowledge before and after the training. An answer key for the Q&A is also provided (pp. 15–19).
- *The Pre-Training Survey included in this guide on page 21.* The Pre-Training Survey will provide information about the quality of the session.

If you are not giving the presentation in person, you could distribute these handouts electronically prior to the training (and distribute the answer sheet electronically after the training).

During the presentation

Depending on the length of your presentation, you'll want to decide how to engage participants using the *Q&A Handout – TRUE or FALSE*. Below is a summary of two options. These approaches not only re-emphasize key points but also create a more interactive experience.

- *Option 1: Poll the Room*
One approach is to weave the questions throughout the presentation. You can stop after each question and ask the audience to answer it before moving to the next appropriate slide.
- *Option 2: Discussion Activity*
You can save all the answers for a longer discussion at the end of the presentation. This can either be done as a full group or in small groups.

Similarly, depending on the length and format of the presentation, you should determine whether to allow the audience to ask questions during the training or save them until the end. Our sample agenda suggests allowing 10 minutes at the end of the presentation for closing remarks and general questions. However, this time can be adjusted to suit the needs of the presentation setting and your audience.

After the presentation

When the presentation is complete, participants should fill out the post-training survey (pp. 22–23).

Finally, we are interested in your experience using this curriculum. Please let us know if you have any questions or feedback on how to improve these materials at PHLAcademy@changelabsolutions.org.

Training Agenda

PRE-TRAINING SURVEY AND Q&A ACTIVITY

10 MIN*

OBJECTIVES

- Have participants complete the pre-training survey and answer the questions in the Q&A Handout – TRUE or FALSE.

RESOURCES

- Pre-training survey (p. 21 of this guide)
- Q&A Handout – TRUE or FALSE (p. 14 of this guide)

LEGAL COMPETENCIES FOR PUBLIC HEALTH PRACTITIONERS ADDRESSED

- [Public Health Law Competency Model](#) 1:1, 1:2, and 2:3

INTRODUCTION AND PRESENTATION OVERVIEW

7 MIN*

OBJECTIVES

- Describe the goals for the session and road map.
- Provide any additional high-level introductory comments.

RESOURCES

- Slide presentation (slides 1–3)

LEGAL COMPETENCIES FOR PUBLIC HEALTH PRACTITIONERS ADDRESSED

- [Public Health Law Competency Model](#) Domains 1 and 2

HISTORY OF PUBLIC HEALTH LAW AND POLICY

7 MIN*

OBJECTIVES

- Discuss several examples of historical events that helped shape the practice of public health law today (e.g., the Mayflower Compact and early public health efforts in London and New York to stop the spread of disease).
- Present the landmark case *Jacobson v. Massachusetts*, which introduces the recurring theme of the presentation: balancing public health and the common good against individual freedoms.

RESOURCES

- Slide presentation (slides 4–12)

LEGAL COMPETENCIES FOR PUBLIC HEALTH PRACTITIONERS ADDRESSED

- [Public Health Law Competency Model](#) 1:1

**HOW HISTORY FORMS THE FOUNDATION FOR
PUBLIC HEALTH LAW TODAY****10 MIN*****OBJECTIVES**

- Highlight examples of how legal history shapes the role of law and policy in modern day public health. Examples include tobacco control, transportation, housing, food access and safety, and emergency preparedness.

RESOURCES

- Slide presentation (slides 12–16)

LEGAL COMPETENCIES FOR PUBLIC HEALTH PRACTITIONERS ADDRESSED

- [Public Health Law Competency Model](#) 1:1
-

**WHO HAS THE POWER TO SHAPE PUBLIC POLICY
TO IMPROVE PUBLIC HEALTH****10 MIN*****OBJECTIVES**

- Describe how history shapes who has the authority to create public policy to improve health.
- Explore the U.S. Constitution, which distributes power among the different levels of government (federal, state, and local), and discuss the ways each level of government uses its power to shape public health law and policy.

RESOURCES

- Slide presentation (slides 17–26)

LEGAL COMPETENCIES FOR PUBLIC HEALTH PRACTITIONERS ADDRESSED

- [Public Health Law Competency Model](#) 1:1, 1:2, and 2:2
-

LIMITATIONS ON THIS POWER**14 MIN*****OBJECTIVES**

- Discuss how the government's ability to enact public health regulations is subject to the right not to be deprived of life, liberty, or property without due process of the law (under the 5th and 14th Amendments), and the right not to be denied equal protection of the law (also under the 5th and 14th Amendments).
- Explain how the limitations on government authority are greater when the individual interest at stake is more significant.

RESOURCES

- Slide presentation (slides 27–62)

LEGAL COMPETENCIES FOR PUBLIC HEALTH PRACTITIONERS ADDRESSED

- [Public Health Law Competency Model](#) 2:3

OPTIONAL: Q&A DISCUSSION**20 MIN*****OBJECTIVES**

- Have participants discuss as a full group or in small groups answers to the questions in the Q&A Handout – TRUE or FALSE.
- Provide answers to Q&A Handout – TRUE or FALSE.

RESOURCES

- Q&A Answer Key (pp. 15–19 of this guide)

LEGAL COMPETENCIES FOR PUBLIC HEALTH PRACTITIONERS ADDRESSED

- [Public Health Law Competency Model](#) 1:1, 1:2, and 2:3

WRAP-UP AND QUESTIONS**12 MIN*****OBJECTIVES**

- Allow participants to ask general questions.
- Provide concluding remarks and have participants complete the post-training survey.

RESOURCES

- Slide presentation (slides 63–65)
- Post-training survey (pp. 22–23 of this guide)

** All times are approximate; total training time is about 90 minutes.*

Additional Resources

As you prepare to tailor content from [Public Health Law: Past & Present](#), we recommend familiarizing yourself with the following list of resources. These resources informed the development of the content found in this training. They can provide additional background information as you prepare to tailor content for your presentation. Finally, as questions arise from the audience during and after the training, you can refer audience members to these resources for additional information.

ORGANIZATIONS

CDC, Public Health Law Program

www.cdc.gov/phlp

The Public Health Law Program (PHLP) – part of the CDC’s Center for State, Tribal, Local and Territorial Support – works to improve the health of the public by developing law-related tools and providing legal technical assistance to public health practitioners and policymakers.

ChangeLab Solutions

www.changelabsolutions.org

ChangeLab Solutions works across the nation to advance equitable laws and policies that ensure healthy lives for all. Their interdisciplinary team of lawyers, planners, policy analysts, and more, works with neighborhoods, cities, and states to create thriving communities. ChangeLab provides technical assistance and resources on various subtopics discussed in this training, such as:

- [Preemption](#)
- [Tobacco Prevention](#)
- [Healthy Housing](#)
- [Tobacco FAQs: secondhand smoke, retail licensing, and more](#)

The Network for Public Health Law

www.networkforphl.org

A national organization with five regional centers, the Network for Public Health Law provides legal technical assistance, resources, and opportunities to build connections for local, tribal, state, and federal officials; public health practitioners; attorneys; and advocates.

BACKGROUND READING AND REFERENCES

For facilitators who seek additional information or wish to learn more about the legal issues discussed in this training, see the list of resources below as well as those cited in the Answer Key for the Q&A Activity (on pages 13–19 of this guide).

- Fairchild AL, Rosner D, Colgrove J, Bayer R, Fried LP. The EXODUS of public health. What history can tell us about the future. *Am J Public Health*. 2010;100(1):54–63. doi:10.2105/AJPH.2009.163956
- Frieden TR. A framework for public health action: The health impact pyramid. *American Journal of Public Health*. 2010; 100(4):590–595.
- Gostin LO. A theory and definition of public health law. Georgetown University Law Center (2008).
- Gostin LO. General justifications for public health regulation. *Public Health*. 2007; 121(11):829–834. doi: <http://dx.doi.org/10.1016/j.puhe.2007.07.013>.
- Institute of Medicine. *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges*. The National Academies Press. www.nationalacademies.org/hmd/Reports/2011/For-the-Publics-Health-Revitalizing-Law-and-Policy-to-Meet-New-Challenges.aspx. 2011.
- Johnson S. *The Ghost Map: The Story of London's Most Terrifying Epidemic – And How It Changed Science, Cities, and the Modern World*. Reprint Edition. New York: Riverhead Books; 2007.
- Krieger J, Higgins DL. Housing and health: Time again for public health action. *Am J Public Health*. 2002;92(5):758–768. doi:10.2105/ajph.92.5.758
- Lightwood JM, Dinno A, Glantz SA. Effect of the California tobacco control program on personal health care expenditures. *PLoS Medicine*. 2008; 5(8). doi:10.1371/journal.pmed.0050178.

RELEVANT CASES

PUBLIC HEALTH AUTHORITY

[Jacobson v. Massachusetts, 197 U.S. 11 \(1905\)](#)

SUMMARY: During an outbreak of smallpox in 1902, defendant Jacobson refused to comply with Massachusetts' mandatory vaccination law. He refused to pay the \$5 fine (approximately \$130 today) and challenged the constitutionality of the law in court. The U.S. Supreme Court upheld the mandatory vaccination law, asserting that "there are manifold restraints to which every person is necessarily subject for the common good." It explained that police power embraces "reasonable regulations" to protect public health and safety.

TAKEAWAYS: Jacobson represents the balancing of collective actions for the common good with individual liberty rights. This was a landmark decision on the constitutionality of mandatory public health control measures. Although this is a mandatory vaccination case, it articulates the principles and authority behind the basic use of state police power in other public health control situations – such as quarantine, isolation, or closure of facilities – during emergency situations.

FEDERAL GOVERNMENT INCENTIVIZING LOCAL ACTION

[South Dakota v. Dole, 483 U.S. 203 \(1987\)](#)

SUMMARY: In 1984, Congress passed the National Minimum Drinking Age Act, which withheld 10% of federal highway funding from states that did not maintain a minimum drinking age of 21. The law was challenged by the state of South Dakota but upheld by the Supreme Court in 1987. The court explained that Congress had validly exercised its authority – under the Spending Clause – and therefore did not infringe upon the rights of the states.

TAKEAWAY: The federal government may use its enumerated powers to shape public health in other indirect ways.

DUE PROCESS

[Obergefell v. Hodges \(2015\)](#)

SUMMARY: Fourteen same-sex couples from Ohio, Kentucky, Michigan, and Tennessee sued their relevant state agencies after those states had banned, or had refused to recognize the legality of, same-sex marriages lawfully performed and fully recognized outside their state. The plaintiffs argued that state officials, by banning or refusing to recognize same-sex marriages, violated the Due Process Clause of the 14th Amendment. The Supreme Court held that the 14th Amendment requires states to license same-sex marriages and to recognize lawfully licensed out-of-state, same-sex marriages.

TAKEAWAYS: The Due Process Clause has long guaranteed the right to marry as a fundamental liberty, and in this case, the court held that the fundamental liberty of marriage extends to same-sex couples and opposite-sex couples alike. The court reasoned that it is

the judiciary's duty to identify and protect fundamental rights, and that there is no formula in identifying such rights. Rather, the process of identifying fundamental liberties is a process that evolves over time based on the changing norms of the country, and is not limited by history and tradition.

Loving v. Virginia (1965)

SUMMARY: The Lovings, an interracial couple, married in the District of Columbia. When they returned to Virginia, they were charged with violating the state's antimiscegenation law and sentenced to a year in jail.

The Supreme Court invalidated Virginia's ban on interracial marriages because it violated the Due Process Clause of the 14th Amendment. As the court explained: "the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State."

TAKEAWAYS: The freedom to marry (along with the institution of marriage) is a basic civil right, "fundamental to our very existence and survival." Moreover, the court reasoned that the 14th Amendment requires that the freedom to marry may not be restricted "by invidious racial discriminations."

Griswold v. Connecticut (1965)

SUMMARY: Plaintiff Griswold was the executive director of the Planned Parenthood League of Connecticut. She and the medical director provided married couples with information and advice regarding birth control. They were convicted under a Connecticut law that criminalized providing birth control counseling to married couples. The Supreme Court declared that the Constitution contains a "penumbra" (or zones) of rights that includes a "marital right to privacy" and invalidated the Connecticut law for conflicting with this right.

TAKEAWAY: Although the Constitution does not explicitly contain a right to privacy provision, the court held that the Bill of Rights, through the 1st, 3rd, 4th, and 9th Amendments, creates a right to privacy in marital relationships.

Pierce v. Society of Sisters (1923)

SUMMARY: After World War I, anti-immigrant sentiments led some states to control the education of children to ensure American values were taught. To do so, the state of Oregon required parents to send their children to public schools, thereby eliminating parochial and other private schools where the state did not control the curriculum. The Supreme Court, however, determined that this violated the 14th Amendment, and invalidated Oregon's law.

TAKEAWAY: The decision became known for its protection of the rights of parents to educate their children according to family values and priorities.

EQUAL PROTECTION**Jew Ho v. Williamson, 103 F.10 (C.C.N.D. Cal. 1900)**

SUMMARY: In response to the bubonic plague outbreak (in 1900) in San Francisco, the City Board of Health issued a quarantine covering 12 city blocks in the Chinatown district, prohibiting movement into, or out of, the area. The federal district court overturned the quarantine on the grounds that 1) it was racially motivated and 2) not a reasonable regulation for preventing the spread of the disease.

TAKEAWAY: Government police power to control disease is not unlimited. Quarantines must be reasonable (effective in preventing the spread of disease) and cannot impinge on individual constitutional liberties.

Walgreen Co. v. City and County of San Francisco, 185 Cal. App. 4th 424, 443-44 (2010)

SUMMARY: San Francisco passed an ordinance in 2008 prohibiting the sale of tobacco products at most pharmacies in the city and county of San Francisco. The law initially exempted grocery stores and big box stores with pharmacies. The court held that, even under the deferential rational basis test, the ordinance's distinction between drugstores and other stores containing pharmacies could be unconstitutional. The court reasoned: "There is no rational basis to believe the supposed implied message conveyed by selling tobacco products at a Walgreens that has a licensed pharmacy in the back of the store is different in any meaningful way from the implied message conveyed by selling such products at a supermarket or big box store that contains a licensed pharmacy."

TAKEAWAY: Even though a law may be based on a legitimate government interest (e.g., discouraging smoking), it must have a rational justification if it applies only to some entities and not to others.

Safeway, Inc. v. City and County of San Francisco, 797 F. Supp. 2d 964, 973 (N.D. Cal. 2011)

SUMMARY: In response to the Walgreen case, San Francisco amended its law to remove the exemptions so it applied to all retailers that contained pharmacies. Safeway challenged the newly revised ban on the sale of tobacco in pharmacies, claiming that the law unfairly allows other retailers that don't have pharmacies to sell tobacco, whereas Safeway may not. Safeway argued that this distinction violated the U.S. and California constitutions' equal protection guarantees.

The court held the ordinance did not deny Safeway equal protection. The court reasoned that even if Safeway is similarly situated to other groceries, the city had shown that the amended ordinance is rationally related to a legitimate government interest – that rational interest being "to promote the public health by preventing people from becoming addicted to tobacco and by helping those already addicted to stop smoking." Accordingly, the law was a reasonable and permissible use of San Francisco's regulatory power.

TAKEAWAY: Local governments in California have the legal authority to ban tobacco sales in pharmacies.

Welcome Activity–The Q&A Handout

Expected time: 30 minutes total (approximately 10 minutes before the presentation and 20 minutes during or after the presentation)

INSTRUCTIONS FOR FACILITATORS

Key points:

- Welcome the participants and introduce yourself.
- Explain housekeeping items, such as estimated length of the training, break times, and restroom locations.
- Ask participants to complete the **Q&A Handout – TRUE or FALSE**. Remind participants that they are not expected to know all of the answers to all of the questions. Encourage them to do their best and explain that some of the answers to the questions will be addressed throughout the presentation.
- Where applicable, the Answer Key (starting on p. 10) references the slide(s) in the presentation where each of these concepts is expressly addressed or implied.
- Review answers to the questions in the **Q&A Handout – TRUE or FALSE** by either:
 - Weaving the questions throughout the presentation and stopping after each question to ask the audience for the answer before moving to the next slide.
 - At the end of the presentation, having participants discuss the questions as a group or in small groups.

Public Health Law: Past & Present

Q&A HANDOUT - TRUE OR FALSE?

Instructions: Individually, circle the correct choice for each of the following statements.

Preemption

1. **TRUE or FALSE:** Local governments have legislative independence apart from states.
2. **TRUE or FALSE:** The federal government can control all aspects of state and local laws.

Due Process

3. **TRUE or FALSE:** A state can remove a child from his or her home to protect the child from a neglectful or abusive parent.
4. **TRUE or FALSE:** To protect the public's health, a state may quarantine a large number of individuals who have been exposed to a flu virus (e.g., avian flu or swine flu/H1N1).
5. **TRUE or FALSE:** A municipality can require parents or guardians to serve their children at least five fruits or vegetables each day.
6. **TRUE or FALSE:** A municipality can require all residents to install four-sided fences around their home swimming pools.
7. **TRUE or FALSE:** A state may require a child to receive mandatory treatment for communicable disease, even against the parents' will.
8. **TRUE or FALSE:** A state government can require parents or guardians to smoke outside their home if a child has asthma.

Equal Protection

9. **TRUE or FALSE:** Zoning codes can restrict fast food restaurants or tobacco sales in certain racial or ethnic communities because those communities have disproportionate rates of chronic diseases.
10. **TRUE or FALSE:** A state can require motorcyclists to wear helmets, but can exempt bicyclists from this requirement.
11. **TRUE or FALSE:** The government may quarantine South Korean citizens suspected of being exposed to Middle East Respiratory Syndrome (MERS) virus if they come to the United States.
12. **TRUE or FALSE:** A municipality can prohibit the sales of tobacco products at stores that also sell prescription pharmaceuticals.
13. **TRUE or FALSE:** A state can prohibit the sale of alcohol in gas station mini-marts and grocery stores, but can allow such sales in corner stores without gas stations.
14. **TRUE or FALSE:** A state can require fast food restaurants with more than 10 locations in the state to have healthy meal offerings if they give away toys as an incentive item, but restaurants with fewer locations could be exempt from this requirement.

Public Health Law: Past & Present

Q&A HANDOUT - TRUE OR FALSE?

ANSWER KEY

Preemption

1. TRUE or FALSE: Local governments have legislative independence apart from states.

A: False. Local governments generally act within the authority delegated to them by states. Although some states grant local governments extensive authority (called “home rule authority”) to act independently, others greatly limit local governments’ powers. The extent of this authority is typically outlined in the state’s constitution.

➤ This content is discussed on slide 44.

2. TRUE or FALSE: The federal government can control all aspects of state and local laws.

A: False. The U.S. Constitution divides control between the federal and state governments. The federal government may exercise only that authority specifically assigned to it by the constitution. All other powers are reserved for the states (or local governments). For example, states have the primary authority to regulate the general health, safety, and welfare of their citizens – known as their *police power*. They may then share this power with, or delegate it to, local governments.

➤ This content is discussed on slide 30.

Due Process

3. TRUE or FALSE: A state can remove a child from his or her home to protect the child from a neglectful or abusive parent.

A: True, if the neglect or abuse imperils the child’s life or safety. Although the Supreme Court has long recognized that parents’ right to raise their children without government interference is a fundamental liberty interest, this right is not absolute. The government has a compelling interest in ensuring the safety and well-being of children and may take the steps necessary to protect them from harm resulting from parental decisions about their medical care, education, or general upbringing.

➤ Slide 51 walks through this analysis for a similar scenario (whether the government can require parents to vaccinate their children).

➤ See the example *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (categorizing parents’ care over their children as “perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court”).

➤ See Garrison M. Why terminate parental rights? *Stanford Law Review*, 35(3):423–496, 1983.

4. TRUE or FALSE: To protect the public's health, a state may quarantine a large number of individuals who have been exposed to a flu virus (e.g., avian flu or swine flu/H1N1).

A: False. Although states have the power to quarantine and isolate potentially infected or infected individuals to prevent the spread of communicable and dangerous diseases, this power is not limitless. Due process requires that quarantine and isolation orders be reasonable and use the least restrictive means possible. The mass quarantine in this example is neither reasonable nor the least restrictive means to prevent the spread of disease. First, there are other forms of containment that are less restrictive (e.g., requesting that affected individuals voluntarily isolate themselves in their own homes). And second, the mass quarantine described in this example would likely do more harm than good. Instead of preventing the spread of disease, crowding a large number of possibly infected individuals into the same place could *increase* the virulence of the influenza strain.

- Slide 60 walks through this analysis for a similar scenario (whether the government can quarantine an individual patient with a communicable disease).
- Pope S, Sherry N, Webster E. Protecting civil liberties during quarantine and isolation in public health emergencies. *Law Practice Today*, April 2011. Available at www.americanbar.org/publications/law_practice_today_home/law_practice_today_archive/april11/protecting_civil_liberties_during_quarantine_and_isolation_in_public_health_emergencies.html.
- See *Jew Ho v. Williamson*, 103 F.10 (1900).

5. TRUE or FALSE: A municipality can require parents or guardians to serve their children at least five fruits or vegetables each day.

A: False. The Supreme Court has long recognized that parents' right to raise their children without government interference is a fundamental liberty interest. Moreover, the home is a place where courts have been particularly reluctant to allow government interference. Consequently, the government may not impinge on people's liberty interests inside their homes without a compelling reason, such as one based on the life or safety of the child (e.g., a lifesaving treatment for a disease).

- See slides 43 and 51 for discussion of fundamental liberty interests.
- See example, *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (categorizing parents' care over their children as "perhaps the oldest fundamental liberty interests recognized by [the Supreme] Court").

6. TRUE or FALSE: A municipality can require all residents to install four-sided fences around their home swimming pools.

A: True. The home is a place where courts have been particularly reluctant to allow government interference; however, in this example the government most likely could demonstrate that such a requirement is the least restrictive way to achieve a compelling goal: protecting children from drowning (the second-leading cause of death among children aged 1 to 4 years). Drowning prevention efforts, such as installing a fence around the pool, far outweigh any costs – whether monetary or aesthetic – to the pool owner.

- See slide 47 for a discussion of the strict scrutiny test (the analysis courts would use in the above scenario).
- CDC. *Unintentional Drowning: Get the Facts*. Available at www.cdc.gov/HomeandRecreationalSafety/Water-Safety/waterinjuries-factsheet.html.

7. **TRUE or FALSE: A state may require a child to receive mandatory treatment for communicable disease, even against the parents' will.**

A: True. Although “the custody, care and nurture of the child reside first in the parents,” the government may step in and require mandatory vaccination in order to protect the child or the broader community from infectious disease or death. Under its police powers, states have the authority to require children to undergo mandatory treatment or vaccination, even in the absence of a public health emergency or pandemic. For example, all 50 states have state immunizations laws requiring students to receive a standard set of vaccines prior to entering school.

Similarly, states have the power to carve out exceptions to vaccine requirements. For example, all 50 states exempt children who have a medical condition that prevents them from being able to receive specific vaccines; almost all (47 states) grant religious exemptions for children with parents who have religious beliefs against immunizations; and 18 states (as of February 2017) allow philosophical exemptions for children with parents who object on personal or moral grounds.

During an outbreak or emergency, some states expressly allow for the mandatory exclusion of students with vaccination exemptions. In Georgia, for example, unvaccinated children are excluded from the school facility until they undergo immunization or until the epidemic or threat “no longer constitutes a significant public health danger.”

- This content is discussed on slides 49–51 based on this scenario.
- *Prince v. Massachusetts*, 321 U.S. 158 (1944).
- Ga. Code Ann. § 20-2-771(f).
- CDC. *State School Immunization Requirement and Vaccine Exemption Laws*. 2015. Available at www.cdc.gov/phlp/docs/school-vaccinations.pdf.
- National Conference of State Legislatures. *States with Religious and Philosophical Exemptions from Immunization Requirements*, August 23, 2016. Available at www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx.

8. **TRUE or FALSE: A state government can require parents or guardians to smoke outside their home if a child has asthma.**

A: True, but states might be reluctant to enact (and courts reluctant to allow) regulations interfering with private activities inside the home, where an individual’s fundamental privacy interest is strongest. This right to privacy, however, is not absolute – it does not permit one to harm children. Nor is smoking a fundamental right with which the government cannot interfere. Although an attempt to restrict private activities within the home would face rigorous legal review, the government could argue that such a restriction is the least restrictive way to achieve a compelling goal: protecting a child with asthma from harmful toxins and carcinogens in secondhand smoke.

- See slide 47 for a discussion of the strict scrutiny test (the analysis courts would use in the above scenario).
- See *In re Julie Annie*, 780 N.E. 2d 635, 659 (Ohio Comm. P1.2002) (banning an 8-year-old girl’s parents from smoking in her presence and explaining that the fundamental right to privacy “does not include the right to inflict health-destructive secondhand smoke upon other persons, especially children who have no choice in the matter”).
- See also Graff S. *There Is No Constitutional Right to Smoke: 2008*. Tobacco Control Legal Consortium, 2008. Available at www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008.pdf.

Equal Protection

9. TRUE or FALSE: Zoning codes can restrict fast food restaurants or tobacco sales in certain racial or ethnic communities because those communities have disproportionate rates of chronic diseases.

A: False. When enacting any law, the government should avoid making race-based distinctions, which raise serious constitutional concerns and would be subject to more exacting review. It is always problematic to use race, national origin, or ethnicity as a classification, even in the instance of a well-intentioned goal, such as reducing health disparities. A better way to tackle the same problem is to write a law that singles out the neighborhood by epidemiological data on chronic disease rates regardless of race.

➤ A similar scenario is discussed on slide 58.

10. TRUE or FALSE: A state can require motorcyclists to wear helmets, but can exempt bicyclists from this requirement.

A: True. Unlike distinctions based on race, motorcyclists do not receive special protection under the Equal Protection Clause. Therefore, laws that treat them differently from pedestrians, automobilists, or bicyclists need only be reasonably related to a legitimate government goal.

Courts have recognized the reasonable distinction between motorcycles and bicycles when reviewing helmet laws. Because of their vehicles' mobility, power, and speed – and the greater likelihood of using main highways, motorcyclists are not only subjected to a greater risk of bodily injury than bicyclists, they also are more likely than bicyclists to injure others. The particular dangers associated with motorcycles, therefore, constitute a reasonable basis for the requirement of helmets for all motorcyclists and the lack of requirement of protective headgear for bicyclists (though numerous jurisdictions extend helmet requirements to some or all bicyclists as well).

➤ See slides 53 and 54 for more information on nonprotected classifications and the corresponding rational basis test of review.

➤ See example, *State v. Cushman*, 451 S.W.2d 17 (Mo. 1970).

➤ See Insurance Institute for Highway Safety. *Bicycle Helmet Use*. 2014. Available at www.iihs.org/iihs/topics/laws/bicycle-laws (for a map of states with bicycle helmet use laws).

11. TRUE or FALSE: The government may quarantine South Korean citizens suspected of being exposed to Middle East Respiratory Syndrome (MERS) virus if they come to the United States.

A: False. Equal protection prohibits discrimination against someone because that person belongs to a particular group. The government must have a valid justification for distinguishing between members of certain protected categories, such as race or national origin. Since anyone traveling to, or living in, South Korea during the MERS outbreak could have just as likely contracted MERS (regardless of his or her race or national origin), the quarantine cannot unjustifiably single out South Korean citizens.

➤ This content is discussed on slides on slide 60.

➤ See *Jew Ho v. Williamson*, 103 F.10 (1900).

12. TRUE or FALSE: A municipality can prohibit the sales of tobacco products at stores that also sell prescription pharmaceuticals.

A: True. As long as the local government is not preempted by state law and applies the prohibition equally – that is, to all retailers that sell prescription pharmaceuticals – a city or county may impose such a ban. In 2010, San Francisco’s tobacco retailer licensing program was struck down because it originally prohibited pharmacies from selling tobacco, but exempted grocery stores and big box stores with pharmacies. As a result, San Francisco amended its ordinance and removed the exemptions, thus allowing it to prevail in subsequent equal protection challenges.

- This content is discussed on slides 76–79.
- *Walgreen Co. v. City and County of San Francisco*, 185 Cal. App. 4th 424, 443-44 (2010).
- *Safeway, Inc. v. City and County of San Francisco*, 797 F. Supp. 2d 964, 973 (N.D. Cal. 2011).

13. TRUE or FALSE: A state can prohibit the sale of alcohol in gas station mini-marts and grocery stores, but can allow such sales in corner stores without gas stations.

A: True. In this example, the state has a legitimate interest in reducing access to products with high alcohol content. Therefore, limiting the sale of alcohol in stores that consumers are most likely to frequent—grocery stores (for sustenance) and gas stations (for transportation)—is reasonably related to achieving that goal, even if corner stores are not included in the prohibition. The state could also argue that regulating the sale of alcohol at gas stations is an important state interest because such sales could lead to a higher incidence of drunk driving.

- See slides 54–56.
- *Maxwell’s Pic-Pac, Inc. v. Dehner*, 739 F.3d 936 (6th Cir. 2014) (concluding that a law prohibiting businesses that sell a “substantial amount”—at least 10% of gross monthly sales—of groceries or gasoline from applying for a license to sell wine and liquor did not violate the Equal Protection Clause).
- See also Mosher, J. *Local Control of Alcohol Availability in Nebraska: A Legal Analysis*. Omaha: Project Extra Mile, 2011. Available at www.alcoholpolicyconsultations.com/storage/Nebraska%20preemption%20state%20analysis%202010.pdf (explaining why a Nebraska law—attempting to regulate alcohol outlets – failed and why the related cases have no, or only limited, applicability today).

14. TRUE or FALSE: A state can require fast food restaurants with more than 10 locations in the state to have healthy meal offerings if they give away toys as an incentive item, but restaurants with fewer locations could be exempt from this requirement.

A: True. Chain restaurants’ ubiquity and greater impact on public health warrant different treatment under the Equal Protection Clause. A law that applies to large chains but not to small ones, therefore, need only be reasonably related to a legitimate government goal. In this example, a state could point to the empirical evidence showing that children are more likely to choose a healthier meal paired with a toy over less healthy meals not accompanied by a toy. Therefore, a regulation requiring fast food restaurants to provide healthy meal offerings if they give away toys as an incentive item is rationally related to a legitimate government goal: promoting children’s health by reducing diet-related diseases and encouraging healthier eating.

- See slides 54–56.
- Pomeranz J, Brownell K. Legal and public health considerations affecting the success, reach, and impact of menu-labeling laws. *American Journal of Public Health*, 98(9) 1578–1583, 2008. Available at www.ncbi.nlm.nih.gov/pmc/articles/PMC2509596/.
- See also Mermin S, Graff S. A legal primer for the obesity prevention movement. *American Journal of Public Health*, 99(10) 1799–1805, 2009. Available at www.changelabsolutions.org/product/legal-primer-obesity-prevention-movement.

Pre- and Post-Training Surveys

INSTRUCTIONS FOR FACILITATORS

Key points:

- Below are two sample surveys (pre- and post-training evaluation tools*) that you can use to gather feedback on the content and quality of the presentation.
- Depending on the format of your presentation (in person or online), you may provide hard copies at the presentation or make these surveys available electronically.
- Please update the pre-and post-training surveys with the training date and facilitator's organization.

* Please note before asking participants to complete the pre- and post-training surveys, the Paperwork Reduction Act has specific requirements for federal agencies with regard to the collection and housing of data and may require permission from the Office of Management and Budget before collecting information from 10 or more members of the public.

Public Health Law: Past & Present

PRE-TRAINING SURVEY

Thank you for completing the following survey!

Learning objectives:

Please indicate your current confidence level for each of the following learning objectives.

1. I can name two historical events that helped shape the practice of public health law today.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident

2. I can identify an example of how this history shapes the government's modern-day authority.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident

3. I can identify two constitutional limitations on the ability of the government to enact public health regulations.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident

4. I can name the two things that the government must balance when creating public health laws and policies.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident

Additional feedback:

5. What questions do you have about the history or modern-day practice of public health law?

Thank you for your feedback!

Public Health Law: Past & Present

POST-TRAINING SURVEY

Thank you for completing the following Survey!

Learning objectives:

As a result of attending the session, Public Health Law: Past and Present, please indicate your current confidence level for each of the following course learning objectives:

1. I can name two historical events that helped shape the practice of public health law today.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident
2. I can identify an example of how this history shapes the government's modern-day authority.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident
3. I can identify two constitutional limitations on the ability of the government to enact public health regulations.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident
4. I can name the two things that the government must balance when creating public health laws and policies.
 - a. Not confident
 - b. Somewhat confident
 - c. Confident
 - d. Very confident

Overall impression:

Please rate your level of agreement with the following statements regarding the session, Public Health Law: Past & Present.

5. How would you rate the overall session?
 - a. Poor
 - b. Fair
 - c. Good
 - d. Very good
 - e. Excellent

6. I would recommend this session to others.
 - a. Disagree
 - b. Somewhat disagree
 - c. Neither agree nor disagree
 - d. Somewhat agree
 - e. Agree

Additional feedback:

7. What was the most valuable part of the session?

8. How could this session be improved?

9. What topics would you like to see addressed in future sessions on public health law?

Thank you for your feedback!