Constitutional Foundations for Public Health Practice

Key Terms and Principles

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Learning Objectives

By the end of this chapter, the reader will be able to:

- Distinguish how the government is structured between the federal, state, and local governments.
- Explain the systems of checks and balances between the legislative, executive, and judicial branches of government.
- Analyze the power of the government to protect the public's health and the limits on that power as outlined in the U.S. Constitution.

Key Terminology

Cooperative Federalism: Cooperative federalism is a form of government in which federal, state, and local governments interact cooperatively and collectively to solve common problems.

Delegation of Authority: Delegation of authority means division of authority and powers downward to the subordinate levels of government.

Enumerated Powers: Enumerated powers are specific powers granted to Congress by the United States Constitution.

Equal Protection: Equal Protection means that the government must treat an individual in the same manner as others in similar conditions and circumstances.

Immutable Characteristic: An immutable characteristic is a physical attribute that is perceived as being unchangeable, entrenched, and innate.

Police Powers: Police powers are the intrinsic authority to exercise reasonable control over persons and property to promote the health, safety, welfare, and morals of the public.

Procedural Due Process: Procedural due process is the constitutional requirement that when the government acts in such a way that denies a person a life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision about the denial must be made by a neutral decision-maker.

Separation of Powers: Separation of powers means vesting the legislative, executive, and judicial powers of government in separate bodies.

Substantive Due Process: Substantive due process is the notion that due process not only protects certain legal procedures, but also protects certain fundamental human rights.

Public Health Law Competencies

This chapter addresses the following competencies from the Public Health Law Competency Model (PHLCM; Ransom, 2016).

- 1.1 Define basic constitutional concepts and legal principles framing the practice of public health across relevant jurisdictions.
- 2.3 Recognize the legal authority and limits of critical system partners and others who influence health outcomes.

Spark Questions

1. Suppose an incoming president or governor announces an ambitious plan to change how health-care is delivered—how might separation of powers limit the executive branch’s ability to carry out this initiative? (*N.F.I.B. v. Sebelius*, 2012).
2. Many states have passed laws that allow for the sale and possession of marijuana, but this substance is still classified as an illegal drug under the federal Controlled Substances Act. If a marijuana dispensary is operating legally under state law (e.g., Colorado), does this business have legal protection from being prosecuted by the federal government? (*Gonzales v. Raich*, 2005).
3. Should states use their police powers to prohibit activities that pose the threat of self-endangerment, but not any harm to third parties? (*Swann v. Pack*, 1975; *Washington v. Glucksberg*, 1997).
4. The COVID-19 outbreak, some states declared gun shops to be essential businesses allowed to remain open while other states did not list gun shops as essential businesses and they had to close. Do you think this inconsistency should be allowed under the 14th Amendment?
5. The U.S. Constitution protects the rights of individuals to practice religion without government interference, but during the COVID-19 outbreak, religious congregations had to close their doors to large gatherings and regular services. Do you think these public health orders violate Constitutional protections? (*Roman Catholic Diocese of Brooklyn v. Cuomo*, 2020; *South Bay United Pentecostal Church v. Newsom*, 2020).

INTRODUCTION

This chapter introduces the structure of the government in the United States and the concept of **separation of powers** among the federal, state, and local governments. Core legal principles are introduced from the U.S. Constitution that frame the authority of the government to enact and enforce laws to protect and promote the public’s health. These Constitutional principles are essential for the health advocate and leader to understand because every federal, state, and local law must comply with them. The core principles include the **enumerated powers** of the federal government and the broad plenary powers of state and local governments—which we call **police powers**—to promote and protect the health, safety, and welfare of the population. The principles also include the limits on this government authority—through the Constitutional doctrines of due process and **equal protection**—that ensure individual liberties such as right to travel and freely associate with other persons, the right to practice religion as one

chooses, and the right to not be discriminated against) are protected. Throughout this chapter, we explore how these Constitutional principles affect healthy equity and the social determinants of health by analyzing landmark legal decisions that explain how the law ensures basic notions of justice and fairness for all people.

Structure of Government

The structure of the federal government consists of three main branches: executive, legislative, and judicial. State governments mirror the federal structure; however, states have their own individual constitutions and reserve the right to organize in any manner they choose. States delegate some of their power to lower levels of government such as counties, and cities. Local governments typically take responsibility for police and fire protection, housing services, emergency medical services, transportation, and public works (sanitation, streets, water, etc.).

The head of the executive branch is the president at the federal level and the governor at the state and/or Tribal level, and their primary function is to carry out the laws. At both federal and state levels, the executive branch is the largest of the three as it contains all the administrative agencies (e.g., health, education, transportation, military/national guard, social services, environmental protection). Federal administrative agencies are implicitly authorized by the U.S. Constitution and are created by Congressional legislation (e.g., the Food, Drug, and Cosmetics Act of 1939 created the Federal Drug Administration [FDA]) to enforce these statutes and develop regulations and policies that further the purpose of the statute. States follow a similar process in the creation of their administrative agencies. The legislative branch is made up of elected representatives and its role is to consider matters brought forth by the executive branch or introduced by its own members to create legislation that becomes law. With the exception of Nebraska, all states have a bicameral legislature made up of two chambers: the smaller upper house is called the Senate and the larger lower chamber is often known as the House of Representatives, the Assembly, or House of Delegates.

As in the federal judicial system, state judicial branches are led by the state supreme court, which hears appeals from lower-level district trial and appellate courts. Rulings made in the supreme court become binding law.

Separation of Powers

The “separation of powers” doctrine describes the functions of the three main branches of government (executive, legislative, and judicial branches) and how the Constitution ensures an interlocking system of “checks and balances” so that no one branch can exceed its Constitutional authority. Thus, an individual can challenge a law enacted by the legislature and enforced by the executive branch by asking the courts (judiciary) to review the legality of a law (legislature) or a government’s action (executive).

Delegation of Authority

Both the federal and state governments delegate authority either to lower levels of government (i.e., federal to state government, or state to local government) or to administrative agencies. States vary widely in what powers they delegate to local governments. At one end of a continuum, the home rule states delegate all powers vested in the state to local governments, while Dillon rule states delegate no state powers to local governments. Most states are arrayed across

this continuum, so local governments in every state have varying authorities to protect public health. For example, during the COVID-19 outbreak, six health departments in the San Francisco Bay Area, which enjoy broad public health authority, declared public health emergencies before the state of California. In other regions of the country, local health agencies had to wait for state declarations of emergency before they could issue stay-at-home orders.

The U.S. Supreme Court case *Jacobson v. Massachusetts* discussed throughout this chapter demonstrates the concept of the statutory **delegation of authority** (*Jacobson v. Massachusetts*, 1905). In this case, the Massachusetts state legislature passed a law that delegated the authority to issue mandatory vaccination orders to local boards of health. Thus, the Massachusetts law did not directly require residents to be vaccinated but gave local boards of health—in this instance, it was the Cambridge board of health—the authority to issue vaccination orders for its residents.

This legislative delegation of authority and discretion to an administrative agency is a common feature of public health laws. In modern times, for reasons related to efficiency, practicality, and insufficient subject matter expertise, legislatures also typically do not pass laws that dictate specific courses of action for most public policy issues. Instead, legislatures approve general laws that state a policy goal (e.g., reduce pollution emissions from cars) and then delegate to an administrative body (e.g., the Environmental Protection Agency) the authority to create more detailed regulatory standards and the discretion to take specific enforcement actions pursuant to such regulations.

Cooperative Federalism

Oftentimes, legal conflicts arise between Tribal nations, states, and the federal government about which level of government has authority on different matters. In general, the federal, state, Tribal, and local levels of governments try to cooperate with each other whenever possible. **Cooperative federalism** is the term used to describe the political relationship between the federal government, the fifty states, and more than 570 Tribal nations to solve common problems. Here are some examples of cooperative federalism in practice:

- Congress appropriates more than \$200 million per year to the Centers for Disease Control and Prevention (CDC) to prevent and control the use of tobacco products. The CDC sends almost \$75 million of this funding to states and Tribal nations to implement the CDC's tobacco control goals within their jurisdiction (CDC, Office on Smoking and Health, 2019). The states and Tribal nations regrant some of the funding to cities or counties to implement the CDC's goals at the local level.
- The National Highway Traffic Safety Administration does not regulate whether motorcycle helmets must be worn anywhere in the United States; it leaves that decision to the discretion of the states. However, it has issued regulations detailing the minimum performance requirements for any motorcycle helmet allowed to be sold in the United States. So, while the federal government does not regulate whether a motorcycle helmet must be worn, if a state law requires helmets to be worn, those helmets must meet the federal safety standards (<https://one.nhtsa.gov/people/injury/pedbimot/NoMigrate/fmvss218.htm>).

However, under the Supremacy Clause of the U.S. Constitution, if there is a conflict between a federal law and a state law, the federal law will preempt or supersede the state law regardless of the Tribal or state sovereignty. Likewise, state constitutions have their own version of a supremacy clause and states can preempt the authority of lower levels of government like cities and counties within their jurisdiction. See Chapter 3 for a more detailed discussion about preemption.

Police Power: The Basis of State Public Health Authority

When Europeans traveled to the New World, they, too, created a governance process to order society and protect the common good of the community. An early example is the Mayflower Compact, which was signed by Pilgrim leaders to “enact, constitute, and frame, such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony.” Eventually, each of the original 13 colonies and all the cities and towns within them had some form of government in place such as an executive (e.g., a governor or a mayor), legislatures (e.g., state legislatures and city councils) composed of elected individuals that passed laws, and a judicial system that interpreted the laws and settled disputes.

When the U.S. Constitution was debated, drafted, and signed, colonial leadership necessarily voided any loyalty or obligations they had to Europe, called themselves “states” rather than “colonies,” and voted to give some of their sovereign authority to the newly formed federal government they called the “United States.” The new states did not give this new federal government complete power over the states, rather they created a list of limited or “enumerated powers” for the federal government. For example, Article I, Section 8 of the U.S. Constitution gives Congress the power to tax and to spend the money raised by taxes, to provide for the nation’s defense and general welfare, and to regulate commerce between the states and with foreign governments.

Any power that was not listed in the Constitution as being given to the federal government was reserved by the new states who retained all the rest of governmental authority to themselves. The states further protected their authority through the 10th Amendment to the Constitution, which says, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States by it, or the people.” The 10th Amendment essentially means that when the original 13 colonies became states by joining the United States, they retained—on a state by state basis—a significant degree of sovereignty to enact and enforce laws that each state independently determined would further the health and welfare its residents. Each of the 37 other states that eventually joined the United States also enjoys such authority.

We call the authority of the individual states to pass and enforce the laws and regulations to promote the health, safety, and welfare of their residents the “police power” of that state. In *Jacobson v. Massachusetts*, the Court discussed the scope of a state’s police power authority to regulate individual behavior to protect public health. In this case, Reverend Henning Jacobson challenged the constitutionality of a Massachusetts law that authorized local boards of health to order all residents to receive smallpox vaccinations. He argued that the Cambridge law—derived from the state’s police power authority—violated his individual liberty rights and that he was being forced to submit to an unsafe medical practice. The Court’s opinion highlights several key legal issues that are critical to understanding the broad scope of a state’s authority to compel individuals to take unwanted action in order to protect community health.

The authority of the State to enact this statute is to be referred to what is commonly called the police power—a power which the State did not surrender when becoming a member of the Union under the Constitution. According to settled principles, the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.

Reverend Jacobson claimed that the law, which required him to pay a fine or face imprisonment for refusing a vaccination, was, in effect, equivalent to a state-sanctioned assault that he would be punished for resisting. The Court’s powerful rejection of Jacobson’s claim and support for the Massachusetts law forms the bedrock of public health law ever since.

[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.

Today, states use their police power to address a broad array of public health issues, from laws requiring vaccinations and motorcycle helmets, to laws regulating access to abortion or how much pollution a car can emit, to laws closing or opening businesses during the COVID-19 outbreak. And, because each of the 50 states retain sovereignty within a federal system, they often exercise their own judgment on how to exercise their police powers. Thus, there is significant variation in public health laws across the nation. Here are some examples of how states differ in their exercising of police power authorities:

- *School vaccination laws*: Alabama allows for religious exemptions from school vaccination laws, but Arkansas does not (Public Health Law, 2015).
- *Motorcycle helmet laws*: California requires all riders to wear helmets, Texas requires riders 20 years of age and younger to wear a helmet, and three states—Illinois, Iowa, and New Hampshire—have no requirements for any riders to wear helmets (National Conference of State Legislatures, 2018).
- *Tobacco control laws*: As of August 2019, 29 states already raised the legal age to smoke tobacco products to 21 years old (Preventing Tobacco Addiction Foundation, 2019). Then in December 2019, the Congress followed the states' lead and passed legislation increasing the legal age to smoke to 21 years throughout the U.S. (Food & Drug Administration, 2020).

CONSTITUTIONAL REQUIREMENTS TO PROTECT INDIVIDUAL LIBERTIES

While the government has extensive power to regulate individuals, property, and businesses to protect the public's health, government power has meaningful limits on its reach. The Due Process and Equal Protection clauses derive from the Fifth Amendment (which applies to the federal government) and Fourteenth Amendment (which applies to state governments) to the Constitution. These amendments protect individuals from discrimination and unreasonable intrusions into their personal liberty guaranteed by the Constitution.

Due Process

The Fifth and Fourteenth Amendments to the U.S. Constitution state that the government shall not take a person's life, liberty, or property without "due process" of the law. Conceptually, due process has two major components: **procedural due process** and **substantive due process**.

Procedural Due Process

Procedural due process requires the government be fair in the methods used to deprive someone of life, liberty, or property. This requires that the government give a person adequate notice of a proposed government action against that person's liberty and give the person an opportunity to be heard at an official hearing before the government action.

Due process applies to a wide variety of government actions, including both criminal and civil hearings. For example, in *Greene v. Edwards* (1980), the public health authority confined Greene involuntarily to a hospital for treatment of active tuberculosis (TB) under West Virginia's TB Control Act. Greene successfully argued that the TB Control Act violated procedural due process because the law deprived him of significant personal liberty without offering the following procedural safeguards.

(1) an adequate written notice detailing the grounds and underlying facts on which commitment is sought; (2) the right to legal counsel; (3) the right to be present, cross-examine, confront and present witnesses; (4) the standard of proof to warrant commitment to be by clear, cogent, and convincing evidence; and (5) the right to a verbatim transcript of the proceeding for purposes of appeal...

Other examples of procedural due process requirements include: disallowing involuntary confinement of a mentally ill person without convincing evidence that the person poses a threat to themselves or others, ensuring that tobacco or alcohol retailers who allegedly sell products to minors can present exculpatory evidence at an administrative hearing before their retail license is rescinded, allowing drivers to present evidence to a court about why they should not have to pay a ticket for a traffic violation. In short, any time the government takes action to deprive a person of life, liberty, or property, the government must follow the five-step process outlined in the *Greene* case. However, note that during a declared public health emergency like COVID-19, the government can issue stay at home orders, close businesses and ration property (like personal protective equipment) without any advanced public hearings or other due process protections.

Substantive Due Process

"Substantive due process" protects certain fundamental rights from government interference. The U.S. Supreme Court identified fundamental rights that are so "implicit in the concept of ordered liberty" and "deeply rooted" in American history and tradition that any government action infringing on these rights is assumed to be invalid unless proven otherwise.

In applying a substantive due process analysis, the Court will first identify whether an asserted right is a "fundamental right" by analyzing whether it is deeply rooted in American history and traditions. The Court first looks to the Bill of Rights (the first 10 Amendments to the Constitution) to identify fundamental rights. For example, in *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Court shed a new light on the scope of police powers, especially in regard to religious liberties protected under the First Amendment to the constitution. To withstand judicial scrutiny, "emergency orders must now describe gatherings to which they apply and the capacity limits they impose in terms that are tailored to specific risks, rather than imposing location- or purpose-specific restrictions on houses of worship or religious services." (Wiley, 2020)

The Court also recognizes several fundamental rights not specifically enumerated in the Constitution, including but not limited to:

- The right to interstate travel: *Crandall v. Nevada* (1868)
- The right to parent one's children: *Pierce v. Society of Sisters* (1925)
- The right to privacy: *Griswold v. Connecticut* (1965), *Roe v. Wade* (1973), and *Lawrence v. Texas* (2003)
- The right to marriage: *Loving v. Virginia* (1967) and *Obergefell v. Hodges* (2015).

For example, in *Bowers v. Hardwick* (1986), the U.S. Supreme Court upheld the constitutionality of a Georgia "anti-sodomy" law which criminalized oral and anal sex between consenting adults. The majority opinion stated that nowhere in the Constitution is there a "fundamental right to engage in homosexual sodomy" so states such as Georgia were free to prohibit such conduct. But 17 years later, in *Lawrence v. Texas*, the Court invalidated a Texas law (along with

13 other similar state laws) that criminalized homosexual conduct on the grounds that the laws violated the fundamental liberty interests of consenting adults who have the right to be free from government interference in choosing how they have intimate sexual relations. In other words, because U.S. Supreme Court decisions can supersede or preempt state laws, if a state law is found to be in conflict with the U.S. Constitution, the state law is invalid.

Despite the core Constitutional principle of protecting fundamental rights, courts recognize during public health emergencies like the COVID-19 outbreak, the government can restrain the expression of individual liberties. For example, stay at home orders infringed on the right to travel and the right to freely associate with others, the prohibition on holding large events infringed on the right to the free exercise of religion, and the business closures infringed on the right to earn a living and care for one's family. But, as mentioned above, the Court has rejected some limits on holding religious services during the COVID-19 pandemic deeming them too restrictive to pass constitutional muster.

Equal Protection

The Fifth and Fourteenth Amendments to the U.S. Constitution also state that the government shall not deprive any person the "equal protection" of the laws. The Equal Protection doctrine requires that all laws are applied equally and do not discriminate against individuals because of gender, race, religion, nationality, and physical ability. This means that laws must be both written and applied in a manner that does not discriminate against certain groups without a good reason or what courts call a "rational basis." For instance, all states have laws allowing for the isolation of individuals known to have dangerous contagious diseases and for the quarantine of those known to have been exposed to infected persons. The *Jacobson* case describes such a law. These laws enable a form of government "discrimination" based on disease status or exposure during an outbreak, but they are constitutionally permissible because there is a "rational basis" or good reason to separate such people from those who have not been exposed in order to protect the general population.

But, if a law discriminates against an individual based on an **immutable characteristic** where there has been a history of past wrongful discrimination—such as gender, race, religion, nationality, and physical ability—the government must meet a higher burden of "heightened or strict scrutiny" to justify its actions.

The case of *Jew Ho v. Williamson* (1900) was one of the first federal court decisions to limit the authority of government agencies to infringe on individual liberties of U.S. residents because of racial or ethnic discrimination. In response to nine deaths that San Francisco city officials credited to the bubonic plague, in May of 1900, the local board of health adopted a quarantine order that roughly covered the twelve blocks of the affected Chinatown neighborhood to isolate people who may have been exposed to the plague. The quarantine order did not single out any specific group of people based on race or ethnicity. However, the order was highly discriminatory because it was enforced only against ethnic Chinese homes and businesses but not people of European descent even if they lived in the Chinatown neighborhood.

The federal district court stated,

[T]his court will, of course, uphold any reasonable regulation that may be imposed for the purpose of protecting the people of the city from the invasion of epidemic disease. In the presence of a great calamity, the court will go to the greatest extent, and give the widest discretion, in construing the regulations that may be adopted by the board of health or the board of supervisors. But is the regulation in this case a reasonable one?...

The court cannot but see the practical question that is presented to it as to the ineffectiveness of this method of quarantine against such a disease as this. So, upon that ground, the court must hold that this quarantine is not a reasonable regulation to accomplish the purposes sought. ... But there is still another feature of this case that has been called to the

attention of the court, and that is its discriminating character; that is to say, it is said that this quarantine discriminates against the Chinese population of this city, and in favor of the people of other races....

Therefore the court must hold that this ordinance is invalid and cannot be maintained, that it is contrary to the provisions of the fourteenth amendment of the constitution of the United States, and that the board of health has no authority or right to enforce any ordinance in this city that shall discriminate against any class of persons in favor of another.

It also was due to the equal protection doctrine that the Supreme Court invalidated laws that mandated racially segregated public schools. In *Brown v. Board of Education* (1954), the Court stated,

We conclude that, in the field of public education, the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Although it has been over six decades since *Brown*, and five decades since the passage of the Civil Rights Act of 1964, in recent years marginalized groups and individuals have continued to challenge what they see as discriminatory exercises of the government’s police powers. In *Church of the Lukumi Bababalu Aye v. City of Hialeah* (1993), the U.S. Supreme Court heard a challenge to three city ordinances that banned “animal sacrifice” within city limits under the guise of protecting public health. Since animal sacrifice is an important religious rite in the Santeria faith, members of a Santeria church in this South Florida city argued that the city violated their Constitutional rights by infringing upon their freedom to practice their religious faith.

BOX 2.1 HEALTH EQUITY

The Due Process and Equal Protection clauses found in the Fifth and Fourteenth Amendments to the U.S. Constitution provide a strong theoretical basis to redress health inequities if the inequities are rooted in the restriction of a fundamental liberty or if the inequities are caused by discrimination related to an immutable characteristic. But as we see in the *Trump v. Hawaii* case, we cannot always count on the courts to interpret Constitutional guarantees in a consistent manner. Public health leaders and advocates can find themselves on the front lines of ensuring all people are protected from discrimination regardless of who they love or whatever their gender, race, or religion. For more on this subject, see Harris, A. and Pamukcu, A. (2019, March 11). The civil rights of health: A new approach to challenging structural inequality. *UCLA Law Review*, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3350597>

Like in the *Jew Ho* case, the city argued that ordinances were not discriminatory as they did not reference the Santeria faith and it was incidental that these regulations prevented their religious rites. However, the Court disagreed and showed evidence of official discriminatory intent by city officials against the Santeria Church through numerous hostile statements they made in public meetings. For example, during one public hearing, a city official stated that followers of Santeria “are in violation of everything this country stands for,” and the President of the City Council asked other members what the city could do to “prevent the Church from opening.” Thus, in *Lukumi* the Court said that blatantly discriminatory statements against minority groups by political office holders can be used as evidence of unconstitutional discriminatory intent.

However, public health necessity may permit some forms of discrimination without violating the Equal Protection Clause. For example, people who have antibodies for COVID-19 may

be able safely to return to work, while people without antibodies must keep sheltering at home. This form of discrimination does not distinguish people based on their race, ethnicity or other immutable characteristic, but rather on neutral criteria of the likelihood of harm to oneself or another due to the infectious disease.

CONCLUSION

The separate and coequal branches of government are designed to ensure a system of checks and balances to prevent abuses of power by any one branch. The government has broad powers to protect the public's health. The U.S. Constitution limits the reach of that power to protect individual liberty, fairness, and equality.

CHAPTER REVIEW

Review Questions

1. If a motorcycle rider has full health insurance and knows the risks of riding without a helmet, does the state have a compelling reason to mandate that the rider wear a helmet?
2. Is there clear evidence that points to the causes of the opioid addiction epidemic in the United States? Further, how would you propose combatting the spread and deadly effects of this crisis?

Essay Question

Should states allow parents to opt-out of having their children receive standard vaccinations? Does it make a difference if their objection is based on religious grounds or if it is simply philosophical (nonfaith based)?

Internet Activities

1. Find and describe the structure of government in your state. You may want to start by looking at your state's official government website (often, STATE.GOV). Describe the governmental structure. Who is the governor? What administrative agency(ies) oversees public health functions? What is the make-up of the legislative body? Who sits on the state Supreme Court? How is authority delegated to local governments? It might be interesting to do this exercise and ask the same questions for your local government, too.
2. Find the list of Enumerated Powers in Article 1, Section 8 of the U.S. Constitution. Create a list of all the powers of Congress. What is the "necessary and proper" clause? Identify a Supreme Court case wherein a Congressional statute was upheld under this clause.
3. Find the Alcohol Policy Information System (APIS). Describe at least five variables for how the alcohol control laws for all 50 states are similar and different from each other.
4. Suppose there is a new outbreak of the deadly SARS virus, and it is spreading rapidly through a large U.S. city. Do local public health officials have to follow all the *Greene* standards if the Governor has declared a state of emergency?
5. Find the Bill of Rights and the Supreme Court cases listed previously. Can you describe the test the Supreme Court uses to identify whether a claimed individual right is a fundamental right under the Constitution? Why do you think application of this test sometimes yields inconsistent results, for example in the *Bowers* and *Lawrence* decisions?

6. Find the case *Trump v. Hawaii* (2018) challenging the federal ban on travel from predominantly Muslim countries. In that case, the State of Hawaii claimed that President Trump made blatantly hostile public statements that targeted almost exclusively immigrants from several Muslim-majority countries. Do you agree with the Court that the travel ban was not discriminatory because it was not motivated by religious hostility and it was justified on national security grounds?

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Additional Resources

- **Public Health Law Academy: Public Health Law: Past & Present**
<https://www.changelabsolutions.org/phla/public-health-law>
- **Public Health Law Academy: Structure of Government**
<https://www.changelabsolutions.org/product/structure-government>