The Scope of the Police Power

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- Counts toward participation!
- Be sure to tag the following in your tweets:
  - @DrSinhaEsq
  - #PHLaw
- Optional additional tags: @PHLawWatch, @PHLK_Temple, @NetworkforPHL, @PublicHealthLaw, #LawTwitter
- Student tweets will be highlighted at the beginning of each class
- If you want help getting started on Twitter, schedule time during office hours

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"Your health is in your hands..."

... until you factor in the social and structural determinants of health, those that produce (and perpetuate) racial/ethnic and gender-based disparities. #PHLaw

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As noted in 12/2020 on the absurdity of relying overwhelmingly on micro-level, individualistic approaches to a public health emergency:

blog.petriefiom.law.harvard.edu/2020/12/09/ind...

cc @jyfieldman.spt

#PHLaw #SocialEpi #epitwitter #LegalEpi

Microlevel approaches to public health are wasteful and ineffective. The evidence overwhelmingly shows that asking large numbers of individuals to believe in something will work to public health is extremely unlikely to work. This is not an easy circumstance. The CDC is not an easy circumstance. This is an unusual pandemic. The pandemic is not one uncontrolled pandemic, it is an unusual. The other public health crises - the use of legal and public health policy to promote lower risk for the population at a whole and especially for the most vulnerable and marginalized among us.

5:20 PM - May 14, 2021 - TwitterDeck

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The new guidance means that more people will be unmasked (vaccinated or not) and more people will harass small business owners (like my parents) or minimum wage workers when asked to put on a mask.

12:04 AM - May 14, 2021 - Twitter for Android

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"Hardly for what it set to come from this belly!"
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In @FAVE's @Theresa_Chappell & @G.Glenney say the quiet part out loud: timeto.com/040812/c7e6-...

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OSHA ETS long overdue but would likely impose considerable costs on businesses (ventilation upgrades, PPE). Easier to act like nothing has changed and force vulnerable employees back to unsafe workplaces.

See @feldman_eph https://citizen.org/wp-content/uploads/.../Osha PTS 10/21

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Ser de Gola, JD

The lessons of the pandemic are clear: we need a stronger, better-resourced public health system. Yet some states are taking authority away from public health agencies. Read the op-ed co-authored with @DOBao & @myelphil at https://phlaw.iip.org/

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Robert Wood Johnson Foundation

New poll finds a large majority of the public now recognizes the critical importance of public health agencies and supports more federal funding for public health programs: phlaw.nlp/a/fiy7

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#Overdose deaths up 5% overall in MA in 2020 (from 2019).

Overdose deaths down 6% among White men in MA in 2020 from 2019.

Overdose deaths up 65% among Black men in MA in 2020 from 2019.

Don't tell me structural #racism doesn't exist.

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The U.S. Constitution provides a separation of powers. 3 branches of government:

- Legislative (makes laws)
- Executive (carries out laws)
- Judicial (interprets laws)

Bringing to you by:

CERTIORARI GRAN.

HEALTH OFFICER ET AL.

petition for a writ of certiorari:

Certiorari Grant: The great question of doubt is that one reason for the imposition of liability or complicated issues arising from business...

#PHLaw
Public Health, Broadly

“Public health is the science and art of preventing disease, prolonging life, and promoting physical health and efficiency through organized community effort for the sanitation of the environment, the control of communicable infections, the education of the individual in personal hygiene, the organization of medical and nursing services for the early diagnosis and preventive treatment of disease, and the development of the social machinery to insure everyone a standard of living adequate for the maintenance of health, so organizing these benefits as to enable every citizen to realize his birthright of health and longevity.”

Charles E.A. Winslow
American bacteriologist/public health expert (1877-1957)
A Framework for Public Health Action: The Health Impact Pyramid


Health Impact Pyramid

Public Health Policy Tools

- Regulation (set standards, requirements/prohibitions)
- Taxation (encourage/discourage purchases, subsidies)
- Funding (grants/loans to others for desired services)
- Direct service provision (government services)
- Market forces (harness, regulate competition)
- Education (provide information)
State Legislative Authority:
“The Police Power”

- Authority of a state to enact laws to protect the health, safety & welfare of its population
- Retained by states when they gave up some power to allow creation of a more powerful central (federal) government in ratifying the US Constitution

Police Power

- Authority states retain within their borders
  - US Supreme Court repeatedly has held that Congress/federal government does not have police power
  - States exercise police power by enacting legislation (may include giving authority to counties, towns, localities)
  - Courts generally defer to legislative judgment regarding reasonable means to a legitimate end
    - ... as long as the state action does not violate constitutional rights

Police Power

- Police power is generally limited to protecting other people (not the person for their own benefit)
- Parentis patriae power: state power to protect individuals who are not capable of protecting themselves from harm (e.g., children, adults who lose competence, some mentally ill persons)

Muller v. Oregon (1908)

Background

- Constitutionality of Oregon law limiting work hours for women in factories to 10 hours per day
**Muller v. Oregon** (1908)

J. Brewer’s opinion for the Court

- What is the state interest here?
- How does the Court distinguish *Lochner*?
- Do you agree with the Court’s decision?

**ABATE of Georgia v. Georgia** (N.D. Ga. 2001)

Background

- Constitutional challenge to Georgia’s motorcycle helmet law

**Guertin v. State of Michigan** (6th Cir. 2019)

Background

- As a cost-saving measure, public officials switched City of Flint water supply from Detroit to the Flint River and an outdated treatment plant
- Significant immediate impact on water quality and health of Flint residents
Guertin v. State of Michigan
(6th Cir. 2019)

J. Griffin’s opinion for the Court

• What was the government interest being asserted here?
• What are the two legal issues being discussed here?
  • How did the Court decide on the 14th Amendment issue?
  • How did the Court decide on the 11th Amendment issue?

Any questions?