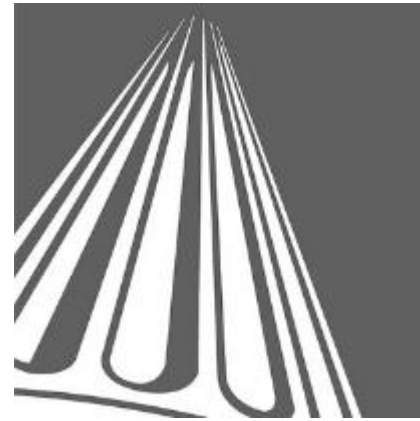




SCOTUS “Top 5” Health Law Impacts – 2024



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+ Principle Objectives

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- U.S. Supreme Court Health Care and Public Health Impacts
- “Top 5” Current Impactful Cases
 - Premier Questions Presented
 - Potential Public Health Impacts
 - Prospective Forecasts
- Questions, thoughts, comments

+ SCOTUS Impacts

Supreme Court Impacts in Public Health Law: 2021-2022

Public Health and the Law

James G. Hodge, Jr.¹, Erica N. White¹, Rebecca Freed¹, and Nora Wells¹

Keywords: Supreme Court, Constitution, Public Health, Reproductive Rights, Agency Deference, Vaccinations, Anti-Discrimination

Abstract: In a dynamic term of

tury, health impacts may be extensive. These key themes are examined below in 10 select areas of SCOTUS cases this term, both decided and forthcoming, whose outcomes may substantially affect public health laws and policies for decades.

Federal Vaccine Mandates and

Supreme Court Impacts in Public Health Law: 2022-2023

Public Health and the Law

*James G. Hodge, Jr.¹,
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L. Piatt,¹ Erica N. White,¹*

Keywords: Supreme Court, Constitution, Public Health, Agency Deference, Vaccinations

Abstract: In another tumultuous term of the United States Supreme Court in 2022-2023 a

liability for misinformation, (3) reduced criminal liability for cyberthreats, (4) opened health care and public health agencies to newfound claims, (5) injected itself into medication abortion debates, (6) denied executive authority to forgive federal student loan debts, (7) re-defined the

SCOTUS Public Health Law Updates (“PHLU”)

APRIL 15, 2024

SCOTUS impacts in public health law and policy are diverse and extensive. In each edition of SCOTUS PHLU (pronounced “flu”), the Center selects specific highlights or developments surrounding the Court’s influence in the field, which it annually assesses in the [Journal of Law, Medicine & Ethics](#).



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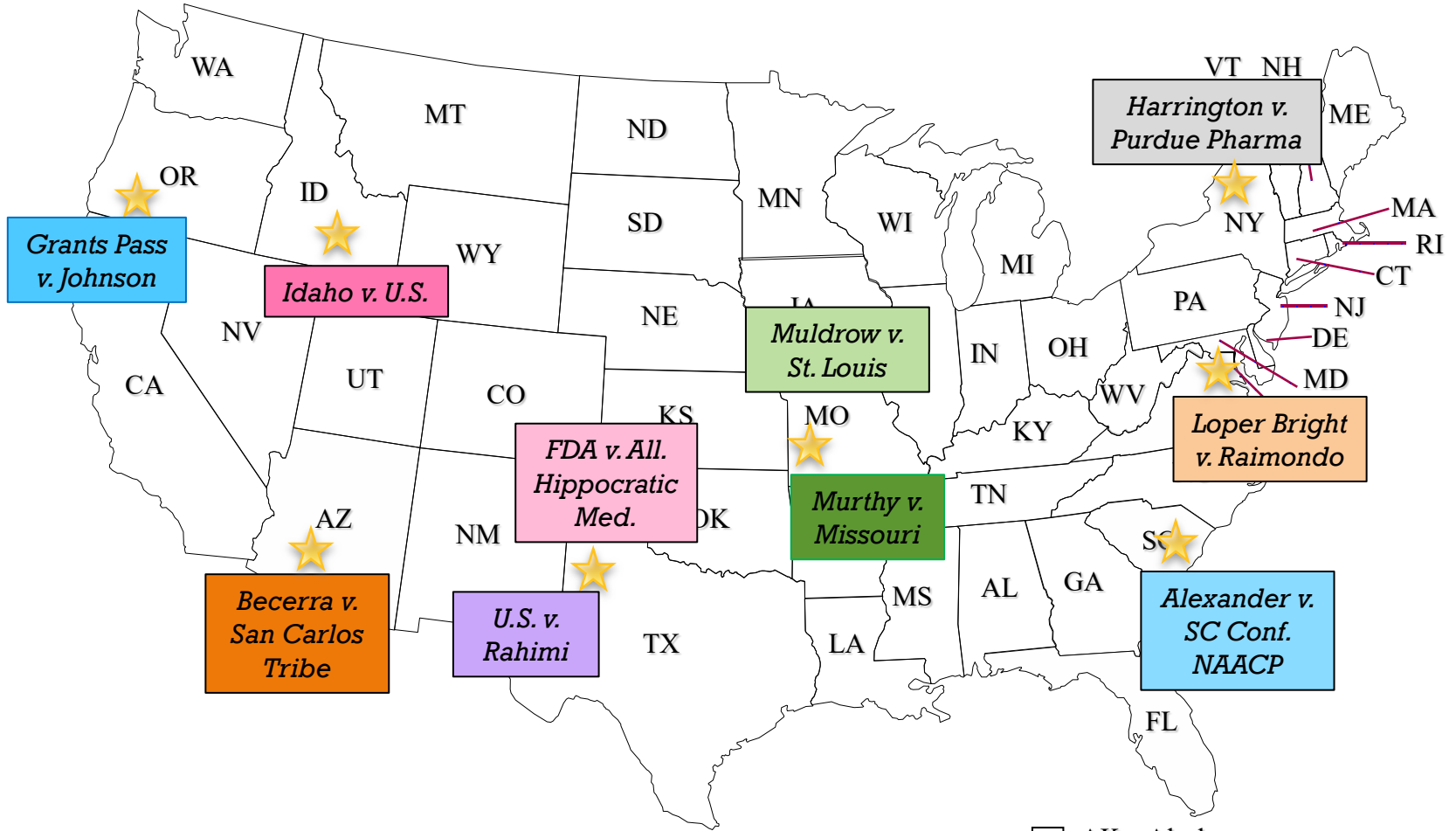
SCOTUS ON THE FIRST AMENDMENT

Opinion Analysis: *Lindke v. Freed*

On March 15, SCOTUS held that a public officials’ social media account use qualifies as state action triggering First Amendment protections when (1) the officials have been empowered to speak for the government, and (2) they use their governmental authority in the posts in question. Plaintiffs must show that communicating with the public was “actually part” of officials’ job descriptions and that they used their accounts to publish announcements not otherwise available.

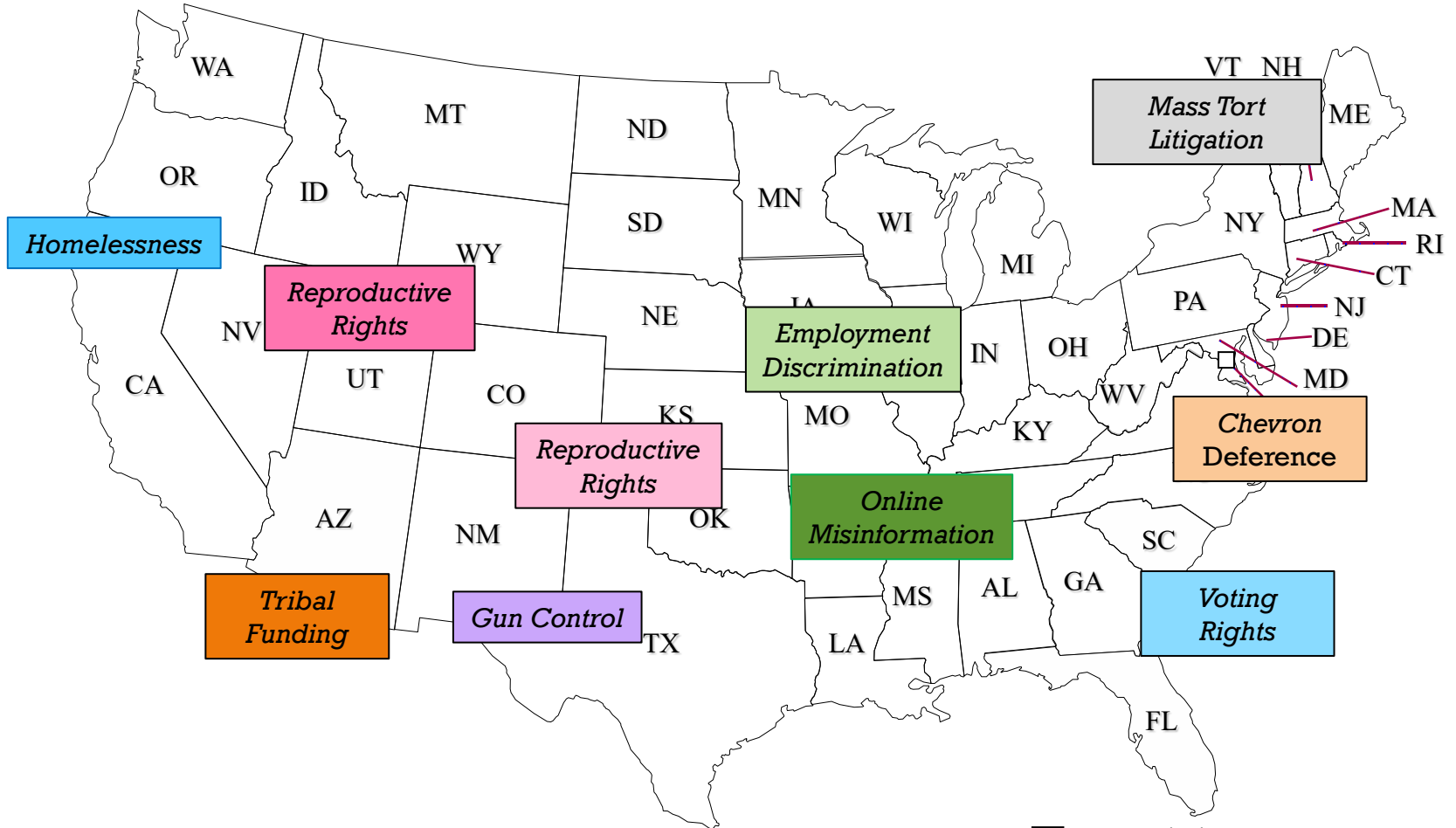


2024 SCOTUS Cases



- AK – Alaska
- HI - Hawaii
- PR - (Puerto Rico)
- VI - (U.S. Virgin Islands)

2024 SCOTUS Topics



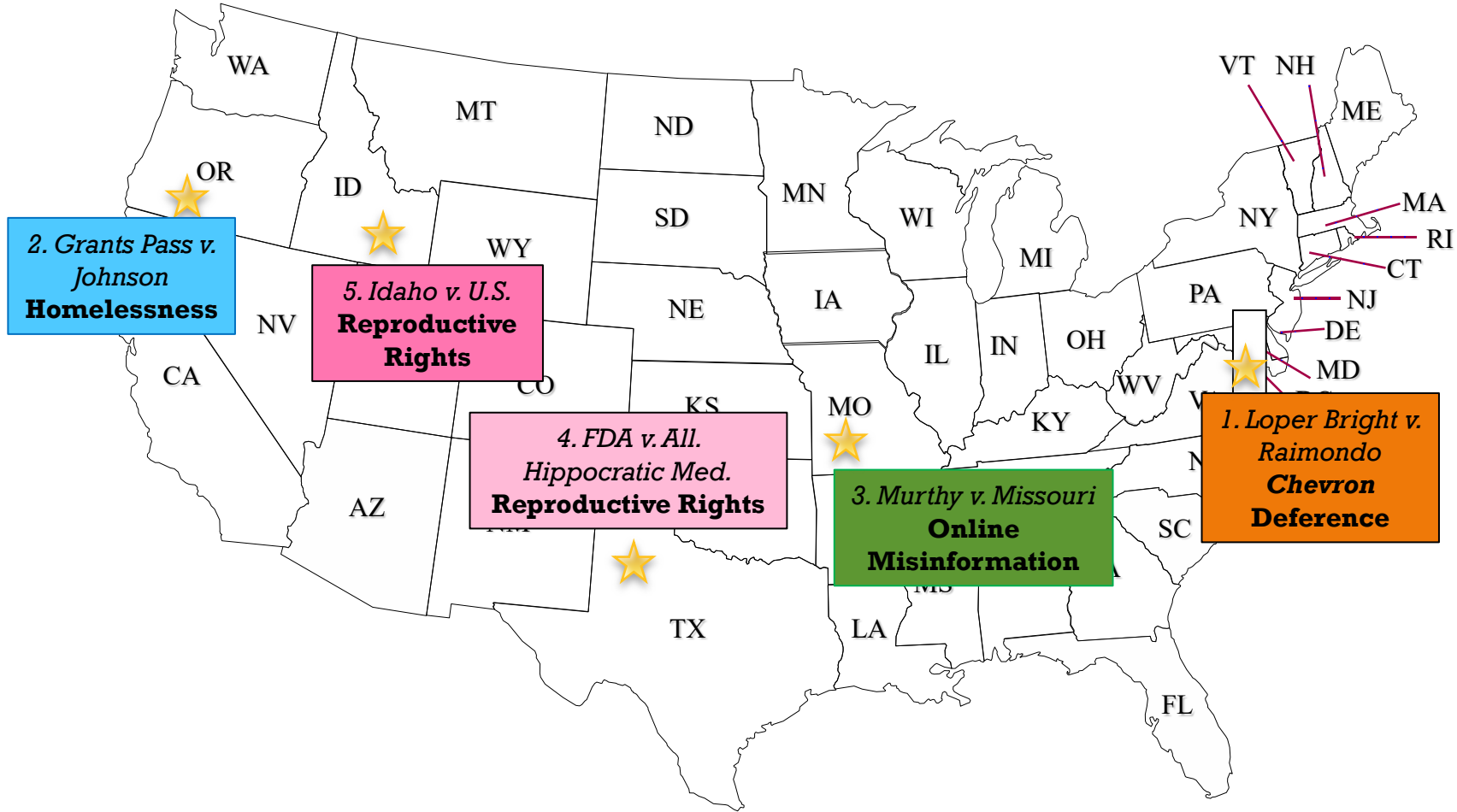
- AK – Alaska
- HI - Hawaii
- PR - (Puerto Rico)
- VI - (U.S. Virgin Islands)

+ SCOTUS Dismissals

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- ***Biden v. Feds for Medical Freedom***
Challenge to federal COVID-19 vaccination mandates.
- ***Acheson Hotels v. Laufer***
ADA case involving “reservation rule.”
- ***Students for Fair Admissions v. West Point***
Challenge to race-based admission policy.

“Top 5” SCOTUS Cases



+ *Loper Bright v. Raimondo*; *Relentless v. Dep't of Commerce*

STATUS: Argued – 1/17/24

QUESTION: Whether *Chevron* deference should be overruled or clarified to the extent Congressional silence on “controversial powers expressly but narrowly granted” via statute require agency deference due to ambiguities.



+ *Loper Bright v. Raimondo*; *Relentless v. Dep't of Commerce*

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Public Health Impacts: If *Chevron* is overturned, lower courts (or in some cases, specific judges) will be empowered to make independent decisions about federal agencies' statutory authorities (including CDC, FDA, HHS).



“Overruling *Chevron* would be a **convulsive shock** to the legal system.” – Solicitor General of the United States, Elizabeth Prelogar

+ *Loper Bright v. Raimondo;* *Relentless v. Dep't of Commerce*

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Justice Elena Kagan
Relentless oral argument

“Is a new product designed to promote healthy cholesterol levels a dietary supplement of a drug? ... that’s a statutory term ... [Agencies] do that under *Chevron*.

“Sometimes there’s a genuine ambiguity... **In that case, I would rather have people at HHS telling me whether this new product was a dietary supplement or a drug.**”

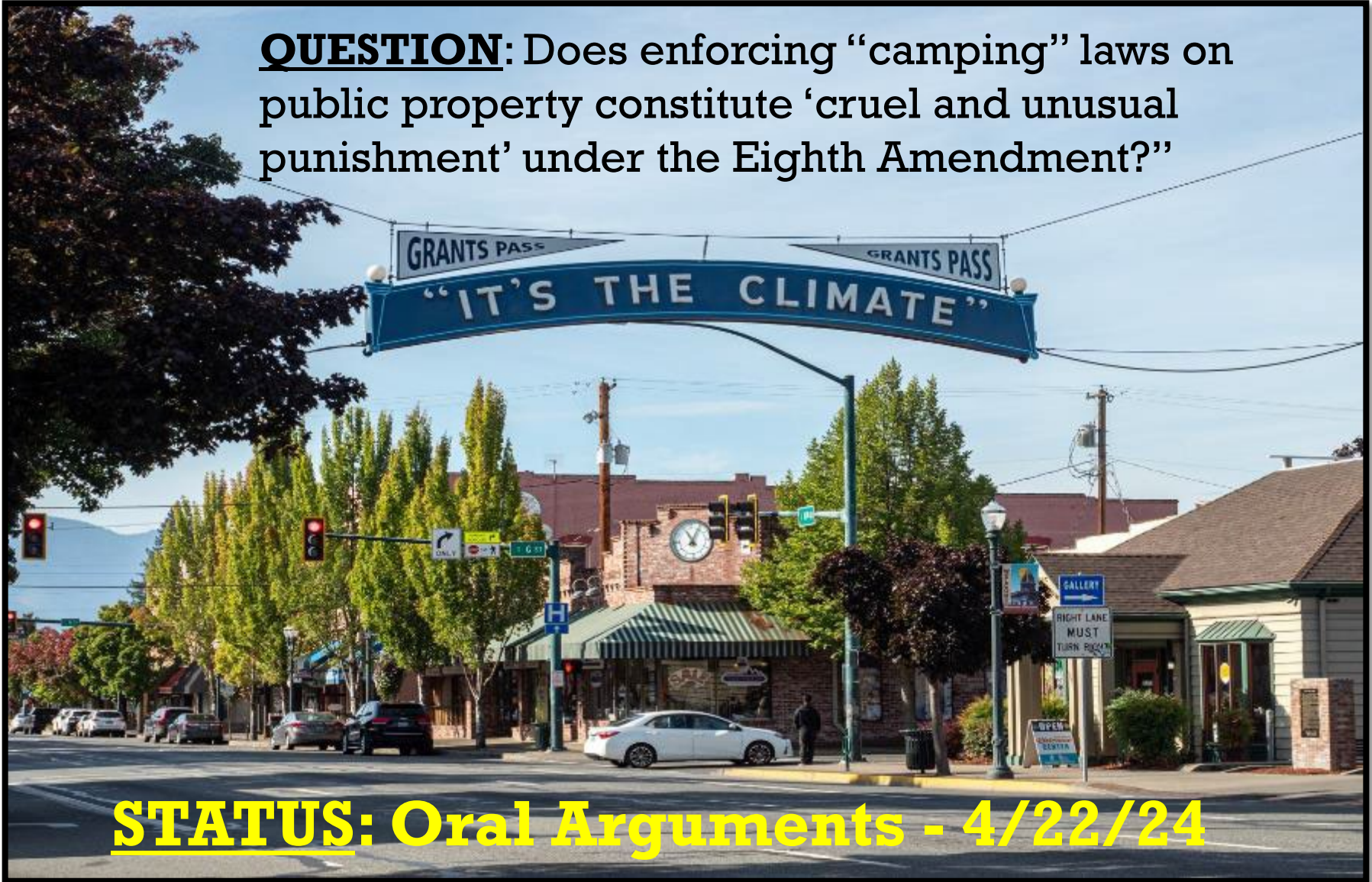
+ *Loper Bright: Forecast*

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Grants Pass v. Johnson

QUESTION: Does enforcing “camping” laws on public property constitute ‘cruel and unusual punishment’ under the Eighth Amendment?”



STATUS: Oral Arguments - 4/22/24

PUBLIC HEALTH IMPACTS: A determination contrary to existing jurisprudence may reshape national homelessness laws & policies.



Grants Pass v. Johnson: Forecast



[Image Source](#) (available at this link)

+ *Murthy v. Missouri*

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STATUS: Oral Arguments- 3/18/24

QUESTION: “Whether the Supreme Court should stay the injunction of the U.S. District Court for the Western District of Louisiana restricting federal officials’ and employees’ speech concerning content moderation on social media platforms.”



Source: [SCOTUSblog](#)

+ *Murthy v. Missouri*

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Public Health Impact:

Addressing misinformation, especially related to COVID-19, is emerging as a key priority for public health. Stymieing action against misinformation may lend to broader health-related misinformation and subsequent negative health outcomes.



FDA Commissioner Dr. Robert Califf

+ *Murthy v. Missouri: Forecast*

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The Justices' questions, on balance, seemed to indicate a preference not to find state action, and thus no First Amendment violation.

+ *FDA v. Alliance for Hippocratic Medicine*

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STATUS: Oral Arguments – 3/26



QUESTIONS:

“(1) Whether respondents have standing to challenge the [FDA’s] 2016 and 2021 actions [with respect to mifepristone]; and

(2) whether the FDA’s 2016 and 2021 actions [loosening mifepristone’s requirements were unlawful].”

Source: [Petition for Cert](#)

+ *FDA v. Alliance for Hippocratic Medicine*

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Public Health Impacts:

This case attempts to overturn FDA actions related to mifepristone as a safe and effective medication. Allowing this case to go forward throws all FDA approvals into question, placing these determinations in the hands of non-expert judges across the country.



Source: [The New York Times](#)

+ *FDA v. Alliance for Hippocratic Medicine: Forecast*

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During oral argument, the Justices focused not on whether FDA acted wrongfully, but on standing, indicating a high probability that this case should never have made it past the trial court.

+ *Idaho v. U.S.; Moyle v. U.S.*

22

STATUS: Oral Arguments –
4/24/24

QUESTION: “Whether
EMTALA preempts state laws
that protect human life and
prohibit abortions, like Idaho’s
Defense of Life Act.”

Source: Idaho’s Application for Stay



Source: PBS News Hour

+ *Idaho v. U.S.; Moyle v. U.S.*

23

Public Health Impacts:


A finding that Idaho's and other similar state laws are not preempted by EMTALA would make it impossible for physicians in these states to provide health-preserving abortions pursuant to restrictive state laws, and would continue to pressure doctors into determining when, exactly, a situation turns life-threatening, enabling abortion care.



Source: Covenant Health

+ *Idaho v. U.S.: Forecast*

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With a bad outcome from this decision, even women experiencing health-threatening impacts may not be able to get access to EMTALA-permissible abortions until their condition is determined to be literally life threatening, as dictated by individual state laws.

+ *Planned Parenthood v. Hazelrigg*

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STATUS: Arizona Supreme Court Decision – 4/9/24

QUESTION: “[W]hether the Arizona Legislature repealed or otherwise restricted [**Arizona’s 1864 abortion ban**] by enacting the abortion statutes in Title 36,2 namely A.R.S. § 36-2322, the statute proscribing physicians from performing elective abortions after [15] weeks’ gestation.”

Source: Opinion

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+ *Planned Parenthood v. Hazelrigg*

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Majority Rationale, authored by
Justice John Lopez IV:

- The 15-week statute's text was ambiguous.
- With an ambiguous statute, Justices could reach beyond the text to the statute's construction notes.
- No affirmative right to abortion + no repeal of 1864 ban = resurrection of 1864 ban.

MAJORITY



Justice John
Lopez IV



Justice Clint
Bolick



Justice James
Beene



Justice Kathryn
King

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+ *Planned Parenthood v. Hazelrigg*

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Dissent Rationale, authored by
Justice Ann A. Scott Timmer:

- The 15-week statute is not ambiguous. There is no need to look at anything but the statute's text.
- The fact that the 15-week statute didn't expressly say it was providing a "right to abortion" is inconsequential.
- The legislature cannot have been "forced by *Roe*" to pass the 15-week ban.

DISSENT



Vice Chief
Justice Ann A.
Scott Timmer



Chief Justice
Robert M.
Brutinel

+ *Hazelrigg: Practical Results*

- 1864 ban becomes enforceable 60 days from April 9 (on or around June 8, 2024).
- Penalty is 2-5 years in prison for anyone convicted (potentially stretching beyond just doctors).
- AG Kris Mayes has stated she won't prosecute under the 1864 statute, but general SOL for crimes like these in AZ is 7 years.
- 1864 ban's only exception is where "necessary to save" the life of the mother, but this term is undefined. We don't know what it means, and the AZ Supreme Court refused to define it, arguing it hadn't been briefed and wasn't properly before them.



Source: [Gloria Rebecca Gomez, AZ Mirror](#)



Source: [Tucson Sentinel](#)

+ *Hazelrigg: What Now?*

Justices
on the
Ballot?



New
Constitutional
Amendment?



Governor
Pardon
Power?

New
Legislation?



New Lawsuits?

Med. Bd.
Discipline?

