LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Case Law Monitor

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Each issue of *Case Law Monitor* highlights cases from around the United States in the areas of public health and safety, substance use disorders, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the *Case Law Monitor* helpful, and please feel free to provide feedback at info@thelappa.org.

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KRATOM MANUFACTURER CONTINUES TO FACE CONSUMER PROTECTION AND FRAUD CLAIMS IN CLASS ACTION SUIT

***J.J., et al. v. Ashlynn Marketing Group, Inc.*, U.S. District Court for the Southern District of California, Case No. 3:24-cv-00311 (opinion filed July 1, 2025).** For previous updates on this case, please refer to the October 2024 issue of the LAPPA *Case Law Monitor*, available here. A federal district court has again ruled that the kratom manufacturer and distributor, Ashlynn Marketing Group, Inc. (Ashlynn), must face consumer protection and fraud claims in a class action lawsuit alleging that the company failed to disclose the addictive nature of its kratom products. The plaintiffs brought forth a punitive class action on behalf of the following three classes who have purchased Ashlynn's Krave Botanicals kratom products: (1) all individuals nationwide; (2) all individuals in California; and (3) all individuals in New York. The suit alleged five causes of action, including: (1) violations of California's Unfair Competition Law (UCL; CAL. BUS. & PROF. CODE § 17200 (West 2025)); (2) violations of California's Consumer Legal Remedies Act (CLRA; CAL. CIV. CODE § 1770(a)(5), (7), and (9) (West 2025)); (3) violations of New York's Consumer Protection from Deceptive Acts and Practices Act (NYDAPA; N.Y. GEN. BUS. LAW § 349 (McKinney 2025)); (4) violations of New York False Advertising Act (NYFAA; N.Y. GEN. BUS. LAW § 350 (McKinney 2025)); and (5) common law fraudulent omission. The plaintiffs' state law claims are based on Ashlynn's failure to disclose kratom's alleged addictiveness. Ashlynn argued that the plaintiffs' state law claims are preempted by federal law because the only way it could avoid liability would be to make an unauthorized "disease claim" in contradiction of the Federal Food, Drug, and Cosmetic Act (FDCA; 21 U.S.C. § 343) and its regulation forbidding dietary supplement labels that "claim to diagnose, mitigate, treat, cure, or prevent" a disease (21 C.F.R. § 101.93). According to Ashlynn, because only the U.S. Food and Drug Administration can make a determination that kratom is addictive, any disclosure claiming that its kratom products are addictive or "opioid-like" would be unauthorized and violate the FDCA. The court rejected Ashlynn's argument, ruling that a disclosure that a supplement has addictive qualities is not a "claim to diagnose, mitigate, treat, cure, or prevent" disease and that Ashlynn could easily comply with state laws and the FDCA by avoiding false, misleading, or deceptive statements or omissions regarding kratom's alleged addictiveness. Accordingly, the court determined that federal law did not preempt the plaintiffs' state law claims and denied Ashlynn's motion to dismiss on that count. The court also ruled that the plaintiffs made a sufficient showing of false advertising and product defects under state law and denied Ashlynn's motion to dismiss the claims brought forth under the UCL, CLRA, NYDAPA, and NYFAA. The court, however, granted Ashlynn's motion to dismiss the plaintiffs' nationwide class action claims without leave to amend, holding that there is too much variance in consumer protection laws across all U.S. jurisdictions to establish a single nationwide class. *(Return to In This Issue)*

FEDERAL COURT CERTIFIES CLASS IN SUIT AGAINST PRISON HEALTHCARE PROVIDER COMPANY FOR FAILING TO PROVIDE MAT

***Lauren Spurlock, et al., v. Wexford Health Sources, Inc.*, U.S. District Court for the Southern District of West Virginia, Case No. 3:23-0476 (motion for class certification granted July 24, 2025).** A federal district court has ruled that current and formerly incarcerated individuals can proceed as a class in a suit alleging that a prison healthcare provider was deliberately indifferent to their serious medical needs by failing to provide them with medication for addiction treatment (MAT). Wexford Health Sources (Wexford) contracts with state and local authorities to provide comprehensive healthcare services in approximately 100

correctional facilities across 11 states. In July 2023, the plaintiffs filed a suit against Wexford alleging that the company had a uniform policy and practice of denying MAT to patients in violation of the medical standard of care. The plaintiffs brought forth claims for deliberate indifference to a medical need in violation of the Eighth and Fourteenth Amendments of the U.S. Constitution. As part of the suit, the plaintiffs sought to certify two classes: a forward-looking injunctive relief class and a backward-looking damages class. The plaintiffs proposed definition for the damages class is "all individuals who were confined at a listed facility during the applicable relevant time period who: (1)(a) had a diagnosis of opioid use disorder (OUD) at the time of intake or during such incarceration," (b) had a prescription for a MAT that was approved by the U.S. Food and Drug Administration at the time of intake, "or (c) were monitored for opioid withdrawal during such incarceration; and (2) who were not screened for OUD or offered MAT; and (3) who were thereafter released from the listed facility." The proposed definition for the injunctive relief class is: "all persons who are currently, or will in the future, be confined at a carceral facility for which Wexford provides comprehensive medical care/or healthcare services, who are diagnosed with OUD, test positive for opioids, or are monitored for opioid withdrawal." The court granted the plaintiffs' motion to certify the classes but modified the class definitions slightly to ensure that they were specific and not overbroad. To the damages class definition, the court removed the current language of section two and replaced it with "who were not continued on [MAT,] if already prescribed [MAT,] or screened for [MAT] induction." The court limited the definition of the injunctive relief class to incarcerated individuals who were diagnosed with OUD at the time of intake, and reported the diagnosis during intake, or are diagnosed during the incarceration, test positive for opioids during such incarceration, or are monitored for opioid withdrawal during such incarceration. *(Return to In This Issue)*

FEDERAL COURT GRANTS MOTIONS TO DISMISS ALL BUT ONE POLICE OFFICER NAMED IN A WRONGFUL DEATH SUIT

***Kathy Lau v. City of Philadelphia, et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:24-cv-06352-JMY (opinion filed July 9, 2025).** For previous updates on this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal court has granted the motions to dismiss of all but one police officer named in a wrongful death suit. Jonathan Lau died from an alleged opioid withdrawal while in the custody of the Detention Unit (PDU) of Philadelphia Police Department. As a result of her son's death, Lau's mother filed suit against multiple defendants, including the City of Philadelphia and 12 city police officers (defendant officers), alleging violations of the Fourteenth Amendment of the U.S. Constitution for failure to protect and denial of medical care. The city and the defendant officers filed a motion to dismiss. The defendants argued that the Fourteenth Amendment violation claims made against them should be dismissed because the plaintiff failed to plead facts that would be sufficient to satisfy the deliberate indifference standard for each individual defendant. The defendant officers asserted that the plaintiff "inappropriately lump[ed] together all of the defendant [officers'] alleged conduct" and as a result the plaintiff: (1) failed to allege that four of the defendant officers ever saw Lau suffering from a serious medical need; and (2) only alleged conclusory facts related to the remaining eight defendant officers. With the exception of one defendant, Officer Nakita Wilson, the court agreed that the plaintiff failed to meet the pleading burden for the defendant officers. The court noted that because the plaintiff did not plead that Lau was diagnosed by a physician as requiring treatment, the complaint needed to contain facts that each individual defendant officer was aware of some set of facts that would have made it obvious to a layperson that Lau needed medical attention. The court determined that the timeline of events evidenced in the complaint fell short of pleading that each defendant officer was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]." The court, however, found an exception with Officer Wilson. The complaint stated that the day before Lau died, Officer Wilson completed a medical checklist for Lau, which included information that Lau said that he used heroin and was experiencing withdrawals when he was checked into PDU. The court determined that Officer Wilson's knowledge of Lau's statement at check-in is a fact from which it can be inferred that Officer Wilson was aware that Lau needed medical attention. Accordingly, the court granted the defendant officers' motion to dismiss with the exception of the claim made against Officer Wilson. The court granted the plaintiff leave to amend the deficiencies in the complaint.

The plaintiff asserted three claims against the city: (1) a Fourteenth Amendment failure to protect claim; (2) supervisor liability; and (3) municipal liability. The court dismissed the Fourteenth Amendment claim and the supervisor liability claims with prejudice as the city cannot be held liable under a theory of *respondeat superior*.[1] With respect to the municipal liability claim, the plaintiff is allowed to establish the city's liability by demonstrating that the injuries were either caused: (1) by a policy or custom; or (2) a failure to train the defendant officers. The plaintiff invoked the first theory, arguing that the city had a policy of not providing adequate medical care to detainees. The court ruled that the complaint failed to demonstrate that the city had knowledge of similar unlawful conduct and, therefore, granted the city's motion to dismiss without prejudice, providing the plaintiff with leave to amend. *(Return to In This Issue)*

INMATE CLAIMS JAIL'S REFUSAL TO PROVIDE HER WITH MAT CAUSED HER TO HAVE A MISCARRIAGE

***Debora Jane Frame v. Ruben Marte, et al.*, U.S. District Court for the Southern District of Indiana, Case No. 1:24-cv-00783-RLY-TAB (amended complaint filed June 12, 2025).** A pregnant woman who was incarcerated at the Monroe County Jail in Bloomington, Indiana has sued the Monroe County Sheriff and other members of the jail staff over allegations that she experienced a miscarriage because the jail failed to provide her with medication for addiction treatment (MAT). On November 20, 2023, police booked Debora Jane Frame into jail on burglary and theft charges. Prior to being taken to the jail, Frame received a medical evaluation at the hospital where she was observed to have "sepsis, polysubstance use, and pregnancy." During a bail hearing the next day, a judge noted that Frame's medical situation was complex, and the jail responded that it would not be able to accommodate a pregnant woman withdrawing from opioids. Despite the jail's statement, the judge declined to release Frame on bail and police transported her back to the jail. According to the complaint, the jail did not provide Frame with MAT and failed to properly monitor her for withdrawal symptoms. Frame asserts that the jail has a policy of not providing inmates with medications which threaten the security of the facility unless they are prescribed by a doctor. In December 2023, Frame visited an obstetrician for an ultrasound, but the ultrasound did not indicate a heartbeat. A month later, jail staff took Frame to the hospital after she began to experience pain and bleeding. At the hospital, a physician confirmed that Frame had experienced a miscarriage. Frame brings forth claims that the defendants violated her Fourteenth Amendment rights under the U.S. Constitution by being deliberately indifferent to her serious medical needs. She is requesting punitive and compensatory damages and injunctive relief to compel the sheriff to allow MAT in the jail. *(Return to In This Issue)*

FEDERAL COURT RULES PLAINTIFF FAILED TO ESTABLISH THAT TEXAS HAD A DE FACTO POLICY OF ALLOWING DRUGS INTO ITS FACILITY

***Cassandra Johnson, et al. v. Tarrant County, et al., Texas*, U.S. District Court for the Northern District of Texas, Case No. 4:24-cv00682-P (opinion filed July 11, 2025).** For previous updates on this case, please refer to the August 2024 issue of the LAPPA *Case Law Monitor*, available here. A federal court has granted Tarrant County, Texas Jail's (jail) motion to dismiss in a wrongful death suit, finding that the plaintiff failed to properly plead that the county had a pattern and practice of disregarding the medical, mental health, and substance use issues of individuals in the jail. This suit arose from the 2022 overdose death of Trelynn Wormley at the jail. After Wormley's death, the Tarrant County Sheriff ordered an investigation into how the drugs that Wormley ingested had gotten into the jail. The investigation uncovered that a commissary worker

[1] Respondeat superior is a legal doctrine of holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency. *Respondeat superior*, BLACK'S LAW DICTIONARY (12th ed. 2024).

smuggled the drugs into the jail and sold them to Wormley. The investigation also revealed that a few jail officers had aided incarcerated individuals in smuggling contraband into the jail. Wormley's estate filed suit against Tarrant County over claims that the county violated the Fourteenth Amendment of the U.S. Constitution by failing to provide Wormley with adequate medical care while in custody and failing to protect him from harm. Tarrant County filed a motion to dismiss arguing that the plaintiff failed to establish that the jail had a *de facto* policy of allowing drugs into the jail.

To successfully plead a Fourteenth Amendment unconstitutional condition of confinement case, the plaintiff must identify a rule, restriction, or an identifiable intended condition or practice that caused the violation of the detainee's constitutional rights. In some cases, "a condition may reflect an unstated or *de facto* policy, as evidenced by a pattern of acts or omissions sufficiently extended or pervasive." A successful showing of such a pattern requires similarity and specificity, and it must be comprised of "sufficiently numerous prior incidents" rather than isolated instances. The plaintiff argued that Tarrant County has a widespread pattern and practice of subjecting its detainees to harm by allowing illicit substances into its facility and that such pattern is evidenced by the number of drug-related deaths in the jail, past incidents of officers being found with contraband, the investigation conducted directly after Wormley's death, and the county's lack of remedial efforts. The court ruled that the plaintiff did not plausibly plead that Tarrant County had a *de facto* policy of allowing drugs into the jail because she did not offer incidents of the same similarity and specificity. While the plaintiff generally alleged that jail officers helped inmates smuggle drugs into the jail, she only provided three specific instances where jail officers smuggled contraband. The court held that three instances of officers smuggling contraband into the jail over a five-year period does not constitute "sufficiently numerous prior incidents" and failed to indicate that Tarrant County allowed the free flow of drugs into the jail. Similarly, the court determined that 10 overdose deaths in the jail over the span of eight years does not suggest that there is a severe and pervasive condition of detainees overdosing due to unfettered access to drugs. Finding that the plaintiff failed to establish that the jail had a *de facto* policy of allowing drugs into the facility, the court granted Tarrant County's motion to dismiss and declined to exercise supplemental jurisdiction over the plaintiff's state law claims against the county.

The plaintiff also sued Keefe Commissary Network LLC (Keefe), which was the entity that employed the commissary worker who supplied drugs to Wormley, over claims that it was vicariously liable for the tort of its employee. Keefe filed a motion to dismiss arguing that it was not responsible for its employee's actions because selling drugs is not within any of its employees' scope of employment. The court granted Keefe's motion to dismiss the common law negligence claims, determining that the Keefe employee used her work as a pretense for selling drugs and that such conduct was not within the employee's course and scope of employment. The court also ruled that the plaintiff failed to plead that Keefe knew or should have known that its employee posed a substantial risk of harm. *(Return to In This Issue)*

FORMER DEA INFORMANT CHARGED WITH WIRE FRAUD OVER ITS ALLEGED EXTORTION SCHEME

***United States v. Jorge Luis Hernandez Villazon*, U.S. District Court for the Middle District of Florida, Case No. 8:25-cr-00327-WFJ-AAS (suit filed June 12, 2025).** The U.S. Attorney's Office for the Middle District of Florida has charged Jorge Hernandez Villazon, a former drug informant for the federal Drug Enforcement Administration, with one count of conspiring to commit wire fraud over allegations that he extorted cocaine traffickers facing extradition from Colombia and the Dominican Republic. According to the criminal complaint, beginning in 2020, Hernandez Villazon operated a scheme in which he pretended to be a paralegal who, for a certain price, could obtain lighter sentences for drug traffickers. Hernandez Villazon allegedly demanded payments of $1 million from six suspected drug traffickers who ended up surrendering or being extradited to the United States. The drug traffickers paid Hernandez Villazon using cash, jewelry, properties, and vehicles in exchange for a guaranteed short prison sentence that would be served "in an apartment similar to being on house arrest." Hernandez Villazon, however, did not have the authority or

ability to offer such deals, and when the drug traffickers confronted him about their sentences, he denied responsibility and shifted the blame to the traffickers' attorneys. Police arrested Hernandez Villazon on June 17, 2025. *(Return to In This Issue)*

SON OF "EL CHAPO" PLEADS GUILTY IN DRUG TRAFFICKING CASE

***United States v. Ivan Archivalo Guzman Salazar, et al.*, U.S. District Court for the Southern District of New York, Case No. 1:23-cr-00180-KPF; and *United States v. Ivan Archivalo Guzman Salazar, et al.*, U.S. District Court for the Northern District of Illinois, Case No. 1:09-cr-00383 (guilty plea entered July 11, 2025).** For previous updates on this case, please refer to the June 2023 issue of the LAPPA *Case Law Monitor*, available here. Ovidio Guzman Lopez, the son of former Sinaloa Cartel leader Joaquin "El Chapo" Guzman, has pleaded guilty to federal drug trafficking charges. As part of the plea agreement, Guzman Lopez admitted to helping oversee the production and trafficking of large quantities of illicit drugs into the United States. Guzman Lopez pleaded guilty to drug trafficking, money laundering, and firearms charges related to his leadership role in the cartel. The terms of the plea agreement, including any sentencing recommendations or cooperation agreements, are not publicly available. The court has scheduled a status hearing for January 9, 2026 to determine a sentencing date. Guzman Lopez faces life in prison, but he may receive a reduced sentence if he cooperates with federal authorities. Additionally, Guzman Lopez agreed to forfeit $80 million in property and other assets to the government as part of the plea deal. *(Return to In This Issue)*

OREGON DRUG TAKE-BACK PROGRAM FINED FOR VIOLATING STATE LAW

***In re Drug Takeback Solutions Foundation*, Environmental Quality Commission of the State of Oregon, Case No. LQ-MM-HQ-2024-139 (request for a contested case hearing filed June 11, 2025).** On May 22, 2025, Oregon's Department of Environmental Quality (DEQ) issued a $648,500 civil penalty against the Drug Take-back Solutions Foundation (foundation) for allegedly violating state law. The foundation is one of two entities operating Oregon's Drug Take-back Program, which offers residents a free and safe way to dispose of unused and unwanted prescriptions and over-the-counter medications. DEQ asserts that the foundation violated the state's drug take-back law (OR. REV. STAT. ANN. § 459A.200, *et seq.* (West 2025)) by failing to: (1) provide convenient drug take-back services in the state; (2) provide collection sites with an initial stock of at least five mail-back packages for pre-filled injector products; (3) provide residents with mail-back envelopes and packages within 10 days of their requests; and (4) fully apportion drug take-back program costs among participating pharmaceutical manufacturers. The state Drug Take-back law requires drug manufacturers to pay all costs associated with participating in the drug take-back program. DEQ learned that the foundation did not invoice any manufacturers until 2024 and still has not documented that manufacturers are paying the full cost of the program. The majority of the civil penalty represents the economic benefit that the foundation gained by failing to meet the standards for providing drug take-back services in Oregon. If the foundation takes measures to comply with the order and address the alleged violations, DEQ will consider recalculating the costs and may reduce the civil penalty accordingly. On June 11, 2025, the foundation informed DEQ that it wishes to contest the allegations, claiming that state regulators were informed and approved of the way that the foundation was operating. *(Return to In This Issue)*

FTC SUES MARKETING COMPANY OVER ALLEGATION OF DECEPTIVE SUD TREATMENT CLINIC ADVERTISING

***Federal Trade Commission v. Mercury Marketing, LLC, et al.*, U.S. District Court for the District of Maryland, Case No. 1:25-cv-02021-MJM (suit filed June 24, 2025).** The Federal Trade Commission (FTC)

has filed a complaint against Mercury Marketing, LLC (Mercury) and several other defendants alleging that they impersonated substance use disorder (SUD) treatment clinics in Google search ads to deceptively route consumers trying to call those clinics to Mercury's and the other defendants' clinics. The complaint alleges that the defendants' Google search ads would prominently display the names of specific clinics not affiliated with the defendants while redirecting phone calls to a call center operated by Mercury and the other defendants. The defendant telemarketers would pose as representatives of the consumers' searched-for clinics or as employees of a centralized admissions office and inform consumers that clinical professionals were recommending the defendants' clinics based on an assessment of the consumer's medical history and treatment needs. The FTC asserts that because of the deceptive tactics of Mercury and the other defendants, many consumers were diverted from seeking admission at the SUD treatment clinics that they were actually trying to contact. The complaint alleges that the actions of Mercury and the other defendants violated the FTC Act (15 U.S.C. §§ 45(a) and 52), the Opioid Addiction Recovery Fraud Prevention Act of 2018 (15 U.S.C. § 45d(a)), and the FTC's Trade Regulation Rule on the Impersonation of Government and Businesses (16 C.F.R. Part 461). The FTC is seeking a court order permanently barring the defendants from such conduct and imposing civil penalties against them. *(Return to In This Issue)*

FLORIDA TREATMENT CENTER ENTERS SETTLEMENT WITH FTC OVER DECEPTIVE ADS

***Federal Trade Commission v. Evoke Wellness, LLC*, U.S. District Court for the Southern District of Florida, Case No. 0:25-cv-60073-MD (motion for settlement approved July 14, 2025).** For previous updates on this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. The operators of the Florida-based substance use disorder (SUD) treatment clinic, Evoke Wellness, LLC (Evoke), has agreed to participate in a settlement with the Federal Trade Commission (FTC) to resolve allegations that the company used deceptive Google search ads and telemarketing to impersonate other treatment providers. The settlement includes a $7 million civil penalty. However, because Evoke claimed that it was unable to pay the full penalty, the FTC has stipulated that if Evoke makes a $1.9 million payment within 14 days of the approved settlement, the remainder of the civil penalty will be suspended. If Evoke is later found to have misrepresented its financial condition to the FTC, the full penalty amount will immediately become due. In addition to the civil penalty, the settlement issues a permanent injunction banning Evoke from using the names of third-party SUD facilities in search ads and impersonating other businesses. The settlement also requires Evoke to establish a compliance program to monitor its call centers for misrepresentations and to take correct action against any agents who violate the settlement order. *(Return to In This Issue)*

MISSOURI SUPREME COURT AFFIRMS THAT COUNTY AND CITY GOVERNMENT CANNOT BOTH CHARGE CANNABIS TAX

***Robust Missouri Dispensary 3 LLC v. St. Louis County*, Supreme Court of Missouri, Case No. SC100898 (opinion filed July 22, 2025).** For previous updates on this case, please refer to the December 2024 issue of the LAPPA *Case Law Monitor*, available here. In a 7-1 decision, the Supreme Court of Missouri affirmed an intermediate appellate court's ruling that only one local government entity within a jurisdiction can impose a cannabis sales tax on dispensaries. Missouri's recreational cannabis amendment authorizes local governments to impose up to a three percent sales tax on recreational cannabis sales if the voters of a political subdivision choose to enact such a tax ordinance. (Mo. Const. art. XIV, sec. 2.6(5)). "Local government" as used in article XIV, section 2.6(5) is defined as, "in the case of an incorporated area, a village, town, or city and, in the case of an unincorporated area, a county." (Mo. Const. art. XIV, sec. 2.2(12)). The city of Florissant and county of St. Louis voted to impose a three percent sales tax on recreational cannabis. Robust Missouri Dispensary 3 LLC (Robust) operates a dispensary in Florissant, which is an incorporated city in St. Louis County. Robust collected and remitted the three percent sales tax to Florissant but did not remit the same to St. Louis County.

When St. Louis County notified Robust that it was required to also remit the sales tax to St. Louis County, Robust filed a petition in the circuit court for declaratory and injunctive relief against St. Louis County seeking a declaration that: (1) article XIV, section 2 does not authorize a county to impose an additional sales tax when the dispensary is located within the boundaries of an incorporated village, town, or city; and (2) article XIV authorizes a county to impose a retail sales tax at a dispensary only if it is located in an unincorporated area of that county. The circuit court granted St. Louis County's motion for summary judgment and the appellate court vacated the lower court's ruling, finding that only one local government can impose a sales tax on recreational cannabis. This appeal followed.

The primary issue in this appeal is weather a county may impose a sales tax on the sale of recreational cannabis sold within an incorporated area of the county. Robust argued that counties are not a "local government" as defined in article XIV, section 2 when the dispensary is located in an incorporated area within the county based on the plain language of section 2.2(12). St. Louis County disputed Robust's interpretation, arguing that the use of the conjunction "and" between "in the case of an incorporated area, a village, town, or city" and "in the case of an unincorporated area, a county" means both a county and a city are "local governments." The majority disagreed with St. Louis County's argument, finding that its interpretation ignores the phrase "in the case of an unincorporated area" that appears immediately before the words "the county," which indicates that a county may implement and collect the tax only when a dispensary is located in an unincorporated area. The majority also noted that the paired phrases—"in the case of" and "and, in the case of"—introduce two distinct, mutually exclusive scenarios and the conjunction "and" simply indicates that those are the only two alternatives. Thus, the majority ruled that, based on the plain language of article XIV, section 2, the incorporated city of Florissant is the only local government that may institute and collect a sales tax against Robust, and remanded the case to the circuit court to enter judgment for Robust. The dissent argued that the plain language of article XIV, section 2.2(12) defines a county as a "local government" in both incorporated and unincorporated areas and as such, allows both the city and the county to impose cannabis sales taxes simultaneously. *(Return to In This Issue)*

EIGHTH CIRCUIT ALLOWS ARKANSAS' HEMP LAW TO GO INTO EFFECT

***Bio Gen LLC, et al. v. State of Arkansas, et al.*, U.S. Court of Appeals for the Eighth Circuit, Case No. 23-03237 (opinion filed June 24, 2025).** The Eighth Circuit has ruled that Arkansas's hemp law is not preempted by the Agriculture Improvement Act of 2018 (2018 Farm Bill; Pub L. No. 115-334) and vacated the district court's preliminary injunction. In 2023, Arkansas Governor Sarah Huckabee Sanders signed Act 629 into law, criminalizing many hemp products previously made legal under the 2018 Farm bill. Act 629 narrowed the scope of legal hemp production and distribution by lowering the legal limit of delta-9 THC concentration and carving out any substance explicitly identified in Arkansas's Uniform Controlled Substance Act. (ARK. CODE ANN. § 5-64-101, *et seq.* (West 2025)). A coalition of hemp businesses sued Arkansas's governor, attorney general, prosecuting attorneys, and others, seeking to enjoin Act 629 over allegations that the law violates the Supremacy Clause, the Due Process Clause, the Takings Clause, and the Commerce Clause of the U.S. Constitution. The district court denied Arkansas's motion to dismiss the governor and the attorney general from the suit, finding that they were not entitled to sovereign immunity because they were sufficiently connected to the enforcement of Act 629. The district court also entered an order preliminarily enjoining the state officials from enforcing Act 629, finding that the 2018 Farm Bill likely preempted Act 629 and that the state law was likely void for vagueness. On appeal, the Eighth Circuit vacated the district court's preliminary injunction, holding that the 2018 Farm Bill allows states to regulate hemp in a more stringent manner than the federal government. (7 U.S.C. § 1639p(a)(3)(A)). The Eighth Circuit also concluded that Act 629 is not unconstitutionally vague and that the district court abused its discretion when it issued a preliminary injunction based on the statute being void for vagueness. Additionally, the court ruled that the governor and the attorney general were entitled to sovereign immunity because neither has a sufficient connection to the enforcement of Act 629 to fall within an exception to sovereign immunity. *(Return to In This Issue)*

THIRD CIRCUIT RULES THAT PHILADEPHIA SAFE INJECTION SITE NON-PROFIT CAN PROCEED WITH RELIGIOUS FREEDOM DEFENSES

***United States v. Safehouse, et al.*, U.S. Court of Appeals for the Third Circuit, Case No. 24-2027 (opinion filed July 24, 2025).** For previous updates on this case, please refer to the April 2024 issue of the LAPPA *Case Law Monitor*, available here. In January 2021, the Third Circuit held that the Philadelphia non-profit Safehouse's plan to open a supervised injection site would violate the federal "crack house statute" (21 U.S.C. § 856). Following the ruling, the Third Circuit remanded the case to the District Court for the Eastern District of Pennsylvania to consider Safehouse's claim that 21 U.S.C. § 856 cannot be enforced against it under the terms of the Religious Freedom Restoration Act (RFRA; 42 U.S.C. § 2000bb, *et seq.*) and the Free Exercise Clause of the First Amendment of the U.S. Constitution. Safehouse argued that its board members' shared religious belief in the value of human life motivates it to provide "evidence-based public health interventions" and that government intervention with those services substantially burdens its religious exercise. In April 2024, the district court rejected Safehouse's religious freedom claims, holding that non-religious entities are not protected by RFRA and the Free Exercise Clause. On appeal, the Third Circuit ruled that the district court erred in holding that Safehouse was not eligible for religious protections because both RFRA's plain text and the Free Exercise doctrine are clear that those statutory and constitutional protections extend to non-natural individuals. RFRA states that the "government shall not substantially burden a person's experience of religion . . ." While RFRA does not define "person", the Dictionary Act states that in "any Act of Congress, unless the context indicates otherwise, . . . the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." (1 U.S.C. § 1). The federal government argued that congressional reports in RFRA's legislation history make no mention of protecting non-religious entities, but the court rejected that argument, holding that when the statutory text is clear, there is no need to look beyond it to lawmakers' statements. In reaching its holding, the Third Circuit cites the U.S. Supreme Court's 2014 decision in *Burwell v. Hobby Lobby* (573 U.S. 682) in which the Supreme Court unanimously held that non-profit corporations are persons under RFRA and in a 5-4 split decision that for-profit corporations are persons under RFRA. Additionally, the Third Circuit ruled that Safehouse is also protected by the Free Exercise Clause because it is well established that the Bill of Rights applies to corporate entities and there is no non-religious entity carveout for the First Amendment. Thus, the court reversed the District Court's decision and remanded the case for it to consider whether Safehouse has plausibly pleaded RFRA and Free Exercise counterclaims. *(Return to In This Issue)*

FEDERAL JUDGE ISSUES PRELIMINARY INJUNCTION PREVENTING HHS FROM PROCEEDING WITH ITS REDUCTION IN FORCE REGARDING FOUR SUBAGENCIES

***State of New York, et al. v. Robert F. Kennedy, Jr., et al.*, U.S. District Court for the District of Rhode Island, Case No. 1:25-cv-00196-MRD-PAS (motion for preliminary injunction granted July 1, 2025).** For previous updates on this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal judge granted the motion for a preliminary injunction of 20 state attorneys general[2] and enjoined the U.S. Department of Health and Human Services (HHS) from taking any actions to implement or enforce the planned reduction in force announced in March 2025 with regard to four specific sub-agencies: the Centers for Disease Control and Prevention, the Center for Tobacco Products (part of the U.S. Food and Drug Administration), the Office of Head Start, and the Office of the Assistant Secretary for Planning and

[2] The jurisdictions involved in the lawsuit are Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.

Evaluation. The judge determined that the attorneys general are likely to win on the merits of their claims, including that Secretary Robert F. Kennedy, Jr.'s proposed cuts violate the Administrative Procedure Act (5 U.S.C. § 706) because they are arbitrary, capricious, and unsupported by evidence. Additionally, the judge ruled that the plaintiffs showed that they will be irreparably harmed as a result of HHS's major restructuring because they will be unable to continue certain health programs funded by the federal government if the plan goes forward. The judge rejected HHS's procedural challenges to the lawsuit, finding that the attorneys general had standing to sue and were not required to submit their claims to the Merit Systems Protection Board, which is an independent, quasi-judicial agency that handles federal employee disputes. Furthermore, the judge ruled that the Tucker Act (28 U.S.C. § 1491(a)(1)), which provides the exclusive remedy for plaintiffs alleging breach of contract against the U.S., did not require the attorneys general to bring their suit in the U.S. Court of Federal Claims. On July 18, 2025, the judge denied the defendants' motion to vacate the preliminary injunction. It is important to note that this ruling only applies to four subagencies; HHS has chosen to move forward with its reduction in force plan for other parts of the agency in light of the U.S. Supreme Court's July 2025 ruling in *McMahon, et al. v. New York, et al.* (case no. 24A1203), which allowed the U.S. Department of Education to proceed with its reduction in force plan. *(Return to In This Issue)*

TRUMP ADMINISTRATION FILES APPEAL TO VACATE PRELIMINARY INJUNCTION BLOCKING CUTS TO PUBLIC HEALTH FUNDS

***State of Colorado, et al. v. U.S. Department of Health and Human Services, et al.*, U.S. District Court for the District of Rhode Island, Case No. 1:25-cv-00121-MSM-AEM (notice of appeal filed July 15, 2025).** The Trump Administration has filed an appeal with the First Circuit in an effort to vacate a preliminary injunction issued by the U.S. District Court for the District of Rhode Island that temporarily halted the U.S. Department of Health and Human Services (HHS) from implementing $11 billion in cuts to public health funds. In April 2025, 23 states[3] and the District of Columbia sued HHS arguing that the agency arbitrarily froze grants intended to pay for programs that track infectious diseases, ensure access to vaccines, strengthen emergency preparedness, and provide mental health and substance use disorder treatment services. In May 2025, the district court granted the states a preliminary injunction which temporarily halted the elimination of the funds. The district court determined that the states had clearly shown that they would suffer irreparable harm without preliminary injunctive relief. On July 29, 2025, HHS filed a motion to voluntarily dismiss the appeal for an unspecified reason, which the court granted. *(Return to In This Issue)*

FEDERAL COURT RULES FORMER MCKINSEY & CO. PARTNER'S DEFAMATION CLAIMS AGAINST THE COMPANY ARE TIME-BARRED

***Arnab Ghatak v. McKinsey & Company, et al.*, New York County Supreme Court, Case No. 153908/2024 (opinion filed July 3, 2025).** For previous updates on this case, please refer to the June 2024 issue of the LAPPA *Case Law Monitor*, available here. A federal court has dismissed part of a lawsuit by a former partner against the consulting firm, McKinsey & Company (McKinsey), and its global managing partner, Bob Sternfels, and transferred the remaining claim to arbitration. McKinsey terminated Arnab Ghatak's equity interest in the company in 2021 after it investigated an email exchange between Ghatak and another McKinsey senior partner concerning the destruction of documents related to the company's work with Purdue Pharma. Ghatak's relationship with McKinsey was governed by a shareholders' agreement, which stated that "any disagreement, claim, or controversy between a shareholder and McKinsey arising out of or relating to this agreement, or the breach, termination, or validity hereof, shall be settled and resolved exclusively through binding and final arbitration." Ghatak filed suit against the defendants in 2024, asserting claims of defamation,

[3] The states involved in the suit are Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin.

breach of fiduciary duty, and tortious interference with prospective employment. Ghatak claimed that the defendants made two specific defamatory statements about him. The first involved a February 2021 statement released by McKinsey regarding its settlement with state attorneys general in connection with the company's advisory work for opioid manufacturers, in which McKinsey stated that it terminated two partners for deleting documents in violation of the company's professional standards. The second involved the April 2022 testimony of Sternfels before the U.S. House Committee on Oversight and Reform, in which he stated that two individuals were terminated for violating the company's document retention policy. The court dismissed Ghatak's defamation claims, finding that they were time-barred by New York's one-year statute of limitations on defamation claims. Ghatak argued that the defamation claims were not time-barred because the statements were republished on McKinsey's website as recently as September 2023 and included in a Wall Street Journal article from April 2024. The court, however, rejected this argument, finding that Ghatak failed to allege that the allegedly defamatory statements were restated in a way that sufficiently retriggered the statute of limitations. The court also dismissed Ghatak's claim for tortious interference with prospective employment because the cause of action is indistinguishable from the defamation claim and, therefore, is also time-barred by the one-year statute of limitations. The court also ruled that Ghatak failed to allege any specific business relationship that has been harmed. Finally, finding that the breach of fiduciary duty claim is reasonably related to the termination of Ghatak's shareholders' agreement with McKinsey, the court granted McKinsey's motion to compel arbitration. *(Return to In This Issue)*

MARYLAND JUDGE RULES BALTIMORE JURY'S AWARD IN OPIOID DISTRIBUTOR CASE WAS TOO HIGH

Maryland Judge Rules Baltimore Jury's Award in Opioid Distributor Case Was Too High
***Mayor & City Council of Baltimore v. Purdue Pharma L.P., et al.*, Circuit Court of Maryland (Baltimore City), Case No. 24-C-18-000515 (opinion filed June 12, 2025).** For previous updates about this case, please refer to the December 2024 issue of the LAPPA *Case Law Monitor*, available here. In November 2024, a jury found drug distributors McKesson and AmerisourceBergen liable for $266 million in compensatory damages due to their roles in contributing to Baltimore's opioid crisis. The distributors challenged the verdict, and a judge ruled that the jury's award was too high and that the jurors attributed too much blame to the distributors for the city's opioid crisis. The judge presented the city with the option of accepting a $52 million payout, an 80 percent reduction from the jury's award, or undergo a new trial to determine damages. The city has until August 8, 2025 to decide whether it will accept the reduced award or proceed with a new trial. *(Return to In This Issue)*

FIFTY-FIVE ATTORNEYS GENERAL AGREE TO SIGN-ON TO PURDUE PHARMA BANKRUPTCY SETTLEMENT

Fifty-five Attorney Generals Agree to Sign-on to Purdue Pharma Bankruptcy Settlement
***In re Purdue Pharma L.P.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 19-23649 (states agree to settlement June 16, 2025).** For previous updates on this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor*, available here. The attorneys general of 55 states and U.S. territories have agreed to sign onto Purdue Pharma's (Purdue) $7.4 billion bankruptcy settlement to resolve lawsuits against the company and members of the Sackler family. Oklahoma did not sign onto the agreement because it reached a $270 million settlement with Purdue and the Sacklers in 2019. Now that the state sign-on period has ended, local governments across the country will be asked to join the settlement. *(Return to In This Issue)*

ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication for addiction treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

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