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 disorder, 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.

IN THIS ISSUE...

Philadelphia Argues That State Opioid Settlement Funds Should Fund its Kensington Resident Support Fund

Federal Court Preliminarily Approves $180 Million Settlement Between Benefit Plans, Opioid Manufacturers, and Pharmacies

Insurance Companies' Duty to Defend/Indemnify in Opioid Related Litigation

SALVATION ARMY PROTECTED BY FIRST AMENDMENT IN MAT DISCRIMINATION CASE

***Mark Tassinari, et al. v. The Salvation Army National Corp., et al.*, U.S. District Court for the District of Massachusetts, Case No. 1:21-cv-10806-LTS (opinion filed July 6, 2026).** For previous updates on this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal district court has granted the Salvation Army's motion for summary judgment in a suit involving its medication for addiction treatment (MAT) policy. The Salvation Army is an "international religious and charitable organization that is part of the evangelical part of the universal Christian Church." The organization provides a variety of charitable programs, including operating Adult Rehabilitation Centers (ARCs). ARC participants are referred to as beneficiaries, and the Salvation Army provides them with housing and basic living necessities for six to 12 months. The Salvation Army views ARCs as "residential churches" and it considers the priority of the ARCs to be "bringing the beneficiaries into a personal relationship with God." Abstinence from alcohol and drugs is a core religious tenet of the Salvation Army, and the organization believes that the "long-term use of narcotics to treat addiction is not true rehabilitation." As part of the Salvation Army's medication policy, individuals with opioid use disorder (OUD) who use methadone or buprenorphine as MAT[1] are not eligible for admission to ARCs, and beneficiaries who test positive for either may be discharged from the ARC program. The named plaintiffs in this suit are individuals with OUD who use methadone or buprenorphine for MAT and, thus, were denied participation in the ARC. The suit alleged that the Salvation Army's medication policy violated Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Act (FHA; 42 U.S.C. § 3601, *et seq*.). In March 2025, the court certified three classes: (1) an injunction class seeking an order requiring the Salvation Army to permit ARCs to accept beneficiaries that use MAT; (2) a damages class asserting claims under Section 504; and (3) a damages class asserting claims under the FHA. The court bifurcated the proceedings, staying litigation of the damages classes until after the deposition of the injunction class.

The Salvation Army moved for summary judgment on the injunctive class's claims, arguing that even if its medication policy violates Section 504 or the FHA, it is shielded from judicial scrutiny by the church-autonomy doctrine[2] under the First Amendment of the U.S. Constitution. Specifically, the Salvation Army argued that it is entitled to summary judgment because adjudication of this case involves matters of "faith and doctrine." The court determined that the undisputed facts in the record establish that ARCs are residential churches with an evangelical mission, and the Salvation Army is allowed to determine the rules by which beneficiaries must abide. The court ruled that because the relief that the plaintiffs sought would require it to evaluate and potentially invalidate the Salvation Army's religious tenet, the First Amendment bars its interference in the challenged portions of the medication policy. As such, directing the Salvation Army to adopt and implement a medication policy that is contrary to its religious beliefs would be unlawful. The plaintiffs argued that the Salvation Army waived its constitutional defense to the Section 504 claims by

[1] The Salvation Army permits ARC beneficiaries to use naltrexone as a form of MAT because "the drug is not a narcotic and is not addictive."

[2] The "church-autonomy doctrine" is a First Amendment doctrine based on the principle that civil courts should not resolve religious questions or settle disputes involving church beliefs, structures, or rules. Carl H. Esbeck, *Church Autonomy, Textualism, and Originalism: SCOTUS's Use of History to Give Definition to Church Autonomy Doctrine*, 108 MARQ. L. REV. 705 (2025), https://scholarship.law.marquette.edu/mulr/vol108/iss3/5.

accepting federal funds, but the court disagreed. The court noted that to the extent that the Salvation Army could waive its church-autotomy defense, such a waiver would have to be knowing and voluntary. The court determined that a generic agreement to abide by all terms of federal funding did not sufficiently put the Salvation Army on notice that, by accepting federal funds, it waived its fundamental constitutional right to determine matters of "faith and doctrine" free from governmental interference. Additionally, the court noted that there is not any evidence that the Salvation army knowingly agreed, as a condition of receiving federal funds, to waive its First Amendment rights. The court granted the Salvation Army's motion for summary judgment as it pertains to the injunction class. The case will proceed against the damages classes. (Return to In This Issue)

TEXAS COURT DISMISSES CHALLENGE TO LIFETIME SOCIAL WORK BAN FOR PAST CONVICTIONS

***Katherin Youniacutt and Tammy Thompson v. State of Texas*, Court of Appeals of Texas, Fifteenth District, Case No. 15-25-00064-CV (opinion filed June 4, 2026).** A Texas appeals court has dismissed a lawsuit brought by two women seeking to overturn a state law that permanently bars individuals with past convictions from becoming licensed social workers. Katherin Youniacutt and Tammy Thompson both struggled with substance use disorder in the early 2000s, during which time each woman pleaded guilty to one simple assault offense. Years later, both women earned masters' degrees in social work with the purpose of assisting others struggling with addiction. After graduating, each applied for a social work license to the Texas Behavioral Health Executive Council which denied their applications pursuant to a 2019 state statute that imposes an automatic, lifetime disqualification for specific prior criminal offenses for those applying to be licensed in certain healthcare professions, including social work (TEX. OCC. CODE ANN. § 108.052 (West 2026)). In November 2024, Youniacutt and Thompson filed a lawsuit asserting that the statutory ban violates the Texas Constitution's guarantee of economic liberty by imposing an irrational barrier to pursuing an honest occupation. The Travis County district court initially denied the state's motion to dismiss, finding that the categorical lifetime ban lacked a rational relationship to protecting the public. On June 4, 2026, however, the Texas Fifteenth Court of Appeals reversed the trial court's ruling, holding that under rational basis review, the legislature acted within its constitutional authority to establish broad statutory qualifications for healthcare and social work professionals. The plaintiffs have until September 17, 2026 to file a petition for review with the Texas Supreme Court. (Return to In This Issue)

FEDERAL COURT RULES ADA DISCRIMINATION SUIT CAN PROCEED AGAINST CONCRETE AND CONSTRUCTION COMPANIES

***U.S. Equal Employment Opportunity Commission v. Wrightway Ready-Mix, LLC, et al.*, U.S. District Court for the Southern District of West Virginia, Case No. 2:25-cv-00711 (opinion filed June 25, 2026).** For previous updates on this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor,* available here. A federal district court has ruled that an Americans with Disabilities Act (ACA; 42 U.S.C. § 12112) discrimination claim against a group of concrete and construction companies can continue. In December 2025, the U.S. Equal Employment Opportunity Commission (EEOC) filed suit against Wright Concrete & Construction, Inc. (Wright Concrete) and Wrightway Ready-Mix, LLC (Wrightway) claiming that the defendants violated the ADA when they denied John Moore employment because of his use of prescribed medication for addiction treatment. In February 2026, the EEOC added Wright-Mix Materials Solutions, LLC (Wright-Mix) as a defendant. The EEOC sought injunctive relief prohibiting further disability discrimination, the implementation of non-discriminatory employment policies by the companies, and monetary and equitable relief for Moore. The defendants moved to dismiss the complaint, arguing that the EEOC failed to exhaust its administrative remedies prior to filing the suit. Although the ADA generally requires private plaintiffs to exhaust their administrative remedies before filing a suit, the court noted that that requirement does not apply in the same manner to EEOC public enforcement actions. Had Moore filed a suit in his own name, he would have been required to exhaust his administrative remedies before pursuing an ADA claim in federal court. However, because the plaintiff in this suit is the EEOC and not Moore himself, the court determined that the same obligation does not apply and ruled that the defendants' exhaustion argument does not provide a basis for dismissal.

Although the EEOC is not required to exhaust administrative remedies in the same manner as private litigants, it must nevertheless "satisfy the statutory conditions precedent to suit before instituting an enforcement action" under the ADA. The defendants argued that the EEOC failed to satisfy the statutory prerequisites to sue on the ground that Wright Concrete and Wright-mix are separate entities from Wrightway and were not properly named during the administrative process. The defendants argued that Wrightway, Wright Concrete, and Wright-Mix are legally distinct employers, such that the administrative proceedings directed toward Wrightway cannot satisfy the statutory conditions precedent as to Wright Concrete and Wright-Mix. The Fourth Circuit established a test to assess whether two nominally separate entities are sufficiently interrelated to be treated as a single employer (*Hukill v. Auto Care, Inc.* (192 F.3D (4th Cir. 1999)). The *Hukill* test examines four nonexclusive factors: (1) common management; (2) interrelation between operations; (3) centralized control of labor relations; and (4) degree of common ownership. The EEOC argued that the three companies constitute a single employer under the ADA and alleged facts supporting that conclusion, including that: (1) Wrightway and Wright-mix are affiliates or subsidiaries of Wright Concrete; (2) the entities publicly represent themselves as divisions of Wright Concrete and the "Wright family of companies;" (3) they share common management, ownership, and financial control; (4) labor relations and human resource functions were centrally administered; and (5) Wright Concrete solicited employment applications on behalf of Wrightway and Wright-Mix. The defendants counter argued that the EEOC's allegations were "nothing more than mere legal conclusions and [were] not entitled to the assumption of truth." The court disagreed with the defendants, finding that the EEOC's allegations corresponded directly to the factors identified in the *Hukill* test. The court concluded that at the pleading state, it must accept those allegations as true and draw all reasonable inferences in the EEOC's favor. Whether discovery ultimately substantiates those allegations is a question for a later stage. Accordingly, the court denied the defendants' motion to dismiss. (Return to In This Issue)

FEDERAL COURT DISMISSES DISABILITY DISCRIMINATION CASE AGAINST MOBIS PARTS AMERICA

***Betsy Vega v. Mobis Parts America, LLC*, U.S. District Court for the District of Connecticut, Case No. 3:24-cv-01478-VAB (opinion filed July 24, 2026).** 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 granted Mobis Parts America, LLC's (Mobis) motion for summary judgment in a disability discrimination case filed against the company. In February 2022, Betsy Vega submitted an application for non-temporary employment with Mobis. On the application, Vega stated that she had a high school equivalency diploma (GED), however, according to the court record, that statement was a lie as Vega had never earned a GED. Mobis offered Vega a conditional offer of employment that was contingent on the results of a background check and drug screen. Vega's drug screen was positive for cannabis, and in March 2022, Vega informed the facility manager Ed Jones that she had a medical cannabis card; however, the record indicated that Vega did not actually have a medical cannabis card at the time. On April 21, 2022, Victoria Andrews, from the HR department at Mobis, required Vega to provide photos of her medical cannabis card in order to continue with the hiring process. On May 4, 2022, Vega provided Andrews with a medical cannabis registration certification, which she had obtained on May 2. This was the first time Vega had obtained a medical cannabis certification, and she received the card based on her post-traumatic stress disorder (PTSD). Vega alleged that she told Jones about her PTSD, but Mobis employees all denied that they knew about her condition. On May 5, 2022, Andrews informed Vega that she would prepare a new offer letter for her and while preparing the new offer letter, Andrews discovered that Vega's background check had failed to verify that she graduated from high school. On May 11, 2022, Andrews informed Vega that she needed to provide proof of a high school diploma or

GED. On May 20, Lilana Marquez, Andrews' associate, informed Vega that she had a tentative start date of July 5, 2022, contingent upon the receipt of her GED certificate. When Vega failed to submit documentation of her GED by July 5, Marquez informed Vega that Mobis was rescinding its offer letter. On September 16, 2024, Vega filed suit against Mobis, bringing forth claims of disability discrimination, failure to accommodate, and retaliation in violation of the Americans with Disabilities Act (ADA; 42 U.S.C. §12101, *et seq*.). Vega also brought forth claims of disability discrimination, failure to accommodate, and retaliation in violation of the Connecticut Fair Employment Practices Act (CONN. GEN. STAT. ANN. § 46a-60b, *et seq*. (West 2026)), and a violation of the Palliative Use of Marijuana Law (CONN. GEN. STAT. ANN. § 21a-408p (West 2026)). On December 15, 2025, Mobis filed a motion for summary judgment.

Mobis argued that Vega's disability claims were premised solely on her medical cannabis use because she never told any Mobis employee that she had PTSD that required the use of medical cannabis, and she failed to provide evidence of her PTSD diagnosis. Because the ADA does not protect medical cannabis use, Mobis argued that Vega's claims under the ADA should be dismissed. Additionally, Mobis argued that the disability discrimination claims should be dismissed because Mobis had a legitimate non-discriminatory reason to rescind Vega's employment offer: her failure to obtain a GED. Mobis also asserted that Vega never requested a reasonable accommodation, and even if she had requested an accommodation to use medical cannabis, there was no evidence that Mobis denied the request. Vega argued that Mobis was aware of her disability and asserted that the company's alleged reason for rescinding her employment offer was pretextual. The court disagreed with Vega, finding that she failed to raise a triable issue as to whether Mobis knew she had a disability. Because Vega failed to meet the burden in demonstrating that she is disabled under the ADA, the court concluded that she had not established a prima facie case of disability discrimination or failure to accommodate. Moreover, even if Vega had established a prima facie case, the court determined that based on the record, there was no genuine evidence to support that Mobis's reason for rescinding her offer letter was pretextual. The court concluded that Mobis had a legitimate, non-discriminatory reason for rescinding its offer and dismissed all of Vega's claims under the ADA. Having dismissed all of Vega's federal claims, the court declined to exercise supplemental jurisdiction over the remaining state law claims. Accordingly, the court dismissed the claims asserted under the Connecticut Fair Employment Practices Act and the Palliative Use of Marijuana Law without prejudice. (Return to In This Issue)

SINALOA CARTEL LEADER SENTENCED TO LIFE IN PRISON

***United States v. Ismael Zambada Garcia*, U.S. District Court for the Eastern District of New York, Case No. 1:09-cr-00466-BMC-5 (sentencing issued July 20, 2026).** A federal district court has sentenced Mexican national Ismael "El Mayo" Zambada Garcia to life in prison over his role in running the Sinaloa cartel. Zambada Garcia, who co-founded the Sinaloa cartel with Joaquin "El Chapo" Guzman, pleaded guilty in August 2025 to being a principal leader of a continuing criminal enterprise (21 U.S.C. § 848) and a Racketeer Influenced and Corrupt Organization (RICO) charge (18 U.S.C. § 1962). As part of the plea agreement, Zambada Garcia also agreed to pay $15 billion in forfeiture. (Return to In This Issue)

CALIFORNIA APPELLATE COURT RULES STATE LICENSE PLATE READER LAW REQUIRES ACTUAL HARM TO SUE

***Guillermo Mata v. Digital Recognition Network, Inc.*, California Court of Appeals (Fourth District), Case No. D084781 (opinion filed July 20, 2026).** An appellate court in California has ruled that an individual only has standing to sue under the state's Automated License Plate Recognition (ALPR) statute (CAL CIV. CODE § 1798.90.5, *et seq*. (West 2026)) if he or she has experienced actual harm. Enacted in 2015, the ALPR statute regulates both public agencies and private entities in the operation and use of an ALPR system, which is defined as "a searchable computerized database resulting from the operation of one or more mobile or fixed cameras combined with computer algorithms to read and convert images of registration plates and the characters they contain into computer-readable data" (§ 1798.90.5). Under the law, ALPR operators must: (1) maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure; and (2) implement a usage and privacy policy in order to ensure that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties (§ 1798.900.51). The ALPR statute provides a private right of action to individuals who have been harmed by a violation of the ALPR statute including, but not limited to, unauthorized access or use of ALPR information or a breach of security of an ALPR system (§ 1798.90.54). Digital Recognition Network, Inc. (DRN) is an ALPR operator that offers license plate recognition services to customers in the private sector. In 2021, Guillermo Mata filed a putative class action lawsuit against DRN on behalf of all individuals in California whose license plate data was collected by DRN using an automatic license plate reader. Mata alleged that DRN violated the ALPR statute by: (1) not making a meaningful usage and/or privacy policy publicly available; (2) not implementing a meaningful usage and privacy policy; and (3) failing to conduct the security procedures and practices reasonably necessary to protect sensitive information from unauthorized access. Mata asserted that he and the class were harmed by DRN's conduct because their private and sensitive personal information has been improperly collected and used without their notice or consent.

At the trial court level, DRN moved for summary judgment, arguing that Mata lacked standing to bring a civil action under the ALPR statute because he had not been harmed by any alleged violation and there was no evidence that DRN had violated the ALPR statute. In his deposition, Mata testified that his ALPR information in DRN's system had never been the subject of a data security breach or unauthorized access or use. Additionally, Mata conceded that his ALPR data has only been accessed by his own attorneys, with his express authorization, for this litigation. Despite not refuting that he had not suffered any direct harm because of DRN's conduct, Mata argued that the ALPR statute is designed to protect individual privacy and that invasions of privacy are harmful. The trial court did not agree with Mata's theory of harm and granted summary judgment in favor of DRN. On appeal, Mata argued that the trial court erred in its interpretation of the ALPR statute's standing requirement and claimed that summary judgment should not have been granted. Mata's standing turned on whether he has been "harmed by a violation" of the ALPR statue. DRN asserted that Mata has not been harmed within the meaning of the ALPR statute, because the "harm" which must be shown to confer standing is actual harm. In contrast, Mata argued that the collection and retention of sensitive information in a manner that is not secure is an actionable harm. The appellate court ruled that Mata's theory of harm was not supported by the statutory text or the legislative history of the ALPR statute and that standing under the ALPR statute requires actual harm. The court concluded that there was no triable issue of material fact that Mata suffered harm within the meaning of the ALPR statute and that the trial court properly granted summary judgment in favor of DRN. (Return to In This Issue)

PARENTS SUE "FEEL FREE" KRATOM MANUFACTURER AFTER SON'S DEATH

***Adriana Sousa Duarte Oliveira and Francisco Oliveira v. Botanic Tonics, LLC, et al.*, Florida Circuit Court for the 15th Judicial Circuit, Case No. 50-2026-CA-006228-XXXA-MB (suit filed June 3, 2026).**
The parents of a man who died after allegedly consuming Botanic Tonic, LLC's (Botanic Tonic) "Feel Free" kratom product have filed a wrongful death lawsuit against the product manufacturer and several Palm Beach County, Florida retailers. According to the complaint, Kevin Russel Oliveira began using Feel Free kratom products in 2023 and would regularly purchase the products from the retailers named in the suit. After becoming a regular user of Feel Free, the complaint asserts that Oliveira began experiencing symptoms similar to severe opioid use, including vomiting, lapses in consciousness, delirium, seizures, and psychosis. At one point, Oliveira voluntarily admitted himself to a detox facility, however, he left after only two days due to the facility allegedly being unable to manage his kratom addiction. The complaint asserts that Oliveira's use of Feel Free caused him to lose his job and had severe impacts on his relationships and health. On April 21,

2025, Oliveira's parents found him deceased in their home. An autopsy determined the cause of death to be toxic effects of mitragynine, which is the main psychoactive component in kratom. Oliveira's parents filed a lawsuit on behalf of their son's estate, arguing that Botanic Tonics failed to properly warn consumers about the risks associated with kratom. The plaintiffs assert that Oliveira's death was the direct and proximate result of Botanic Tonics' lack of reasonable and adequate instructions or warnings on the product labels. The suit brings forth claims against Botanic Tonics of: (1) strict liability for failure to warn; (2) strict liability for design defects; (3) negligence; (4) breach of implied warranty; and (5) negligent misrepresentation. The suit also brings forth claims of: (1) strict liability for failure to warn; (2) strict liability for design defects; and (3) negligence against the retailer defendants, arguing that they had a duty to warn consumers of the risks associated with the use of kratom products, and that they knew or should have known that the products that they were selling were dangerous and lacked proper warnings. The plaintiffs are requesting all compensatory damages recoverable under the Florida Wrongful Death Act (FLA. STAT. ANN. § 768.16, *et seq*. (West 2026)).
(Return to In This Issue)

7-OH MANUFACTURER AGREES TO STOP SELLING PRODUCTS IN MISSOURI, ENDING LITIGATION AGAINST THE COMPANY

***State of Missouri ex rel., Attorney General Catherine L. Hanaway, et al. v. Relax Relief Rejuvenate Trading LLC. d/b/a EDP Kratom*, Missouri Circuit Court (Cole County), Case No. 26AC-CC00227 (settlement reached June 10, 2026).** For previous updates on this case, please refer to the June 2026 issue of the LAPPA *Case Law Monitor*, available here. On June 10, 2026, Missouri Attorney General Catherine Hanaway announced that Relax Relief Rejuvenate Trading, LLC and its owner Dustin Robinson (collectively, "RRR") have agreed to suspend all in-state sales of 7-hydroxymitragynine (7-OH) and other alkaloid derived products, including mitragynine pseudoindoxyl and dihydro-7-hydroxymitragynine (MGM-15). This agreement ends litigation between the state attorney general's office, the state department of health and senior services, and RRR. If RRR breaches the agreement, the attorney general may seek a court order to stop the conduct. If RRR fails to immediately remedy its breach, the attorney general may invoke an agreed upon $5 million penalty.
(Return to In This Issue)

BALTIMORE SUES "O.P.M.S." KRATOM MANUFACTURER FOR DECEPTIVE MARKETING

***Mayor and City Council of Baltimore v. JOpen LLC, et al.*, Circuit Court of Maryland (Baltimore City), Case No. C-24-CV-26-005160 (suit filed July 28, 2026).** Baltimore Mayor Brandon Scott and the City Council of Baltimore have filed a lawsuit asserting that the manufacturer and certain affiliates of the "O.P.M.S." brand of kratom products have violated the city's consumer protection ordinance (Baltimore City Code, Art. 2, § 4) by selling products with false and misleading disclosures. The suit claims that the defendants' products were marketed and sold throughout Baltimore using promotional language that advertised the products' alleged wellness and therapeutic benefits without disclosing the known safety hazards associated with their use, including the risk of addiction. The plaintiffs are requesting the maximum amount of statutory penalties available under the Baltimore Consumer Protection Act, as well as injunctive relief requiring the defendants to: (1) disclose that the active ingredients in their products are similar to opioids and highly addictive substances; (2) cease falsely stating or implying in their labeling, packaging, advertising, marketing, and selling of O.P.M.S. products that they are safe or have therapeutic benefits that they do not have; (3) issue corrective disclosures clarifying the misimpression created by their labeling, packaging, advertising, marketing, and promoting of their products; and (4) disclose on the labeling and packaging and in the advertising and marketing of their products the addictive nature of such products. (Return to In This Issue)

FEDERAL DISTRICT COURT GRANTS PRELIMINARY INJUNCTION PROHIBITING OHIO PROSECUTORS FROM ENFORCING LICENSING LAW AGAINST OUT-OF-STATE HEMP MANUFACTURERS

***Titan Logistics Group, LLC, et al. v. Beth Tischler, et al.*, U.S. District Court for the Northern District of Ohio, Case No. 3:26-cv-1300 (motion for preliminary injunction granted July 13, 2026).** A federal district court has issued a preliminary injunction prohibiting Ohio county and municipal prosecutors from enforcing a new state law against out-of-state hemp manufacturers. On June 4, 2026, 10 out-of-state companies that manufacture and sell hemp beverages and other hemp-derived products filed suit against 96 Ohio county and municipal prosecutors to prohibit them, and the law enforcement officers working with them, from taking any adverse action against the plaintiffs pursuant to the changes to the definition of hemp enacted by Ohio Senate Bill 56. Ohio law previously defined hemp as the *Cannabis sativa L.* plant, or any of its parts, with a concentration of no more than 0.3 percent delta-9 THC, which was a statutory definition consistent with that found in federal law (7 U.S.C. § 1639o).[3] Senate Bill 56, which took effect on March 20, 2026, redefined hemp to include any substance with a total concentration of no more than 0.3 percent of any THC compound (OHIO REV. CODE ANN. § 928.01 (West 2026)). Any substance with a total concentration of THC greater than 0.3 percent is now considered "marijuana" under the new definition. While the cultivation and sale of marijuana generally is prohibited by federal and state law, Ohio permits companies to do so if they obtain a license. (OHIO REV. CODE ANN. § 3796.18 (West 2026)). A company may obtain a license only if they obtain, transfer, and dispense those products from locations solely within the state (OHIO ADMIN. CODE § 3796:6-3-01 (West 2026)). The plaintiffs moved for a temporary restraining order and a preliminary injunction, arguing that Senate Bill 56 violates the Dormant Commerce Clause of the U.S. Constitution.[4] On June 15, 2026, the court granted the plaintiffs' motion for a temporary restraining order, finding that they had established that there is a strong likelihood that they will succeed on the merits of their Dormant Commerce Clause claim. The court determined that while it is true that Senate Bill 56 applies the same definition of hemp to both in-state and out-of-state companies, the law prohibits out-of-state companies from offering their products for sale unless they source and distribute those products solely in Ohio. The defendants raised several substantial public health concerns in justifying the law, but although the court acknowledged the defendants' strong interest in protecting consumer safety, it concluded that the enforcement of a likely unconstitutional law does not serve the public interest. On July 13, 2026, the court granted the plaintiffs' motion for a preliminary injunction, again finding that there was a strong likelihood that they will succeed on the merits of their Dormant Commerce Clause claim. The court also concluded that the plaintiffs adequately alleged that they will suffer irreparable harm in the absence of a preliminary injunction. In granting the motion for a preliminary injunction, the court enjoined the defendants, and any individuals working for the defendants, from taking any criminal, civil, administrative, or regulatory enforcement action against the named plaintiffs or any individual or entity possessing, selling, distributing, or consuming plaintiffs' products as it involves or relates to the statutory definition of hemp as amended by Senate Bill 56. On July 20, 2026, the defendants filed an appeal with the Sixth Circuit. The district court denied the defendants' motion to stay the preliminary injunction pending appeal.

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[3] Note that the Continuing Appropriations and Extensions Act of 2026 (Pub. L. No. 119-37) modified the definition of hemp, and the new definition is set to go into effect on November 12, 2026. For more information, please refer to LAPPA's Closing the Hemp Loophole: The New Federal Definition of Hemp and its Impact factsheet.

[4] The Dormant Commerce Clause is a constitutional principle that the Commerce Clause of the U.S. Constitution prevents state regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity. *Dormant Commerce Clause*, BLACK'S LAW DICTIONARY (12th ed. 2024).

MASSACHUSETTS SUPREME COURT RULES BALLOT PETITION TO REPEAL RECREATIONAL CANNABIS IS CONSTITUTIONAL

***Caroline Pineau, et al. v. Andrea Joy Campbell and William F. Galvin*, Massachusetts Supreme Judicial Court, Case No. SJC-13927 (opinion filed June 12, 2026).** For previous updates on this case, please refer to the June 2026 issue of the LAPPA *Case Law Monitor*, available here. The Massachusetts Supreme Court has ruled that a ballot initiative to repeal recreational cannabis within the commonwealth is constitutionally valid and can be placed on the Massachusetts ballot during the November 2026 election. In 2025, a group of Massachusetts voters submitted Initiative Petition 25-10 (Petition), proposing to repeal Chapters 94G and 64N, which permit the growth, distribution, sale, and taxation of recreational cannabis . The Petition does not seek to eliminate Massachusetts' medical cannabis program, but the proposed full repeal of Chapter 94G eliminates some aspects of the medical cannabis program. On September 3, 2025, Andrea Campbell, the commonwealth's attorney general, certified that the Petition was appropriate for submission to the people and prepared a summary of the Petition to appear on the ballot and on forms used to gather registered voters' signatures in support of the Petition. On April 1, 2026, the plaintiffs filed this lawsuit against the attorney general and the secretary of the commonwealth, claiming that the attorney general erred in certifying the petition because it did not meet the requirements of Article 48 of the Amendments to the Massachusetts Constitution and that her summary of the petition was not fair.

Article 48 requires the attorney general to certify that a proposed ballot measure only contains subjects that are related or mutually dependent. The plaintiffs argued that the Petition violated the relatedness requirement of Article 48 because it concerns both recreational and medical cannabis and contains various other subjects unrelated to its purpose, including the elimination of the cannabis social equity program and trust. The attorney general argued that the Petition's various parts relate to the common purpose of restricting the use of recreational cannabis through a new integrated scheme for cannabis regulation. The court agreed with the attorney general, ruling that the Petition does not violate the relatedness requirement on the ground that it concerns both recreational and medical cannabis. The court determined that the Petition's limited effects of the regulation of medical cannabis as part of its overall scheme to impose greater restrictions on recreational cannabis does not deprive the Petition of a common purpose. The plaintiffs also argued that the attorney general erred in certifying the Petition because it is inconsistent with the right to receive compensation for private property appropriated to public use under Article 48. Specifically, they argued that the elimination of the cannabis social equity program and trust would amount to a taking without compensation of qualified social equity participants' property rights to grant funding. The court noted that when deciding whether to certify an initiative Petition under Article 48, the attorney general may only consider a limited array of facts. Accordingly, the court determined that the question as it relates to this issue is whether the limited facts that the attorney general may consider compel a conclusion that the Petition proposes legislation which would bring about a taking of private property without compensation. Under this standard, the court ruled that the plaintiffs fell short of demonstrating an error by the attorney general. Finally, the plaintiffs argued that the attorney general's summary of the Petition is not fair under Article 48. Specifically, they argued that the summary is unfair because it fails to mention that the repeal of Chapter 94G would eliminate the cannabis social equity program and trust. For a summary to be considered fair under Article 48, "it must be complete enough to serve the purpose of giving the voter who is asked to sign a petition or who is present in a polling booth a fair and intelligent conception of the main outlines of the measure. The court noted that although the summary omits the mention of a number of the consequences of fully repealing Chapter 94G, Article 48 only requires a summary, and the attorney general is not required to make detailed references to existing law. Accordingly, the court determined that the attorney general's summary of the Petition was fair because it "gives the required fair and intelligent conception of the main outlines of the measure." The court remanded the case to the county court for entry of a judgment declaring that the attorney general's certification and summary of the Petition complied with Article 48. (Return to In This Issue)

SUIT INVOLVING IDAHO'S THC CHILD ABUSE REGISTRY NOT BARRED BY ELEVENTH AMENDMENT IMMUNITY

***Keeva Rossow and Serah Thompson v. Juliet Charron*, U.S. District Court for the District of Idaho, Case No. 1:23-cv-00131-BLW (opinion filed June 24, 2026).** A federal district court judge has ruled that a challenge to Idaho's Child Abuse Registry is not barred by the immunity provisions of the Eleventh Amendment of the U.S. Constitution. In March 2023, plaintiffs Keeva Rossow and Serah Thompson filed a class action lawsuit challenging the Idaho Department of Health and Welfare's (Department) enforcement of Idaho Administrative Code Rule 16.06.01.563.02.a (Rule 563.02.a), which categorizes the prenatal use of a controlled substance as a basis for substantiating child abuse or neglect and places an individual on the Child Protection Central Registry (Registry) for a minimum of 10 years. Both Rossow and Thompson were substantiated for child abuse under the regulation after testing positive for THC following the birth of their children. In this suit, Rossow and Thompson represent a class of Idaho women who currently appear on the Registry for prenatal use of THC, as well as those women who may be listed in the future. They alleged that their and other class members' continued or future placement on the Registry violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution. They sought to enjoin the Department from either placing or maintaining class members' names on the Registry and requested the court to declare that Rule 563.02.a is unconstitutional on its face and as applied. Juliet Charron, the director of the Department, moved to dismiss the plaintiffs' claims, arguing that the suit is barred by Eleventh Amendment immunity. Alternatively, Charron argued that the suit should be dismissed for failure to state a claim.

The Eleventh Amendment shields nonconsenting states from suits in federal court, and the immunity extends to state officials sued in their official capacities under 24 U.S.C. § 1983. There is an exception to the immunity, however. Under *Ex parte Young* (209 U.S. 123 (1908)), a plaintiff may sue a state official for prospective relief to halt an ongoing violation of federal law. Charron argued that the *Ex parte Young* exception does not apply in this case because the plaintiffs brought their claims based on a past event, namely their past substantiations and listings, and the relief they sought was "impermissibly 'reparative,' aimed solely at compensating plaintiffs for the 'lingering effects' of these past substantiations." The court disagreed with Charron, noting that a plaintiff may pursue relief that would relate to a past violation, as long as it would not amount to relief solely for the past violation. The court determined that the plaintiffs in this case do not seek damages or any remedy measured by a past loss but rather seek removal from the Registry and an injunction against the enforcement of Rule 563.02.a going forward. Because an injunction directing the removal of class members' names from the Registry would put an end to the ongoing violation and would prevent present and future harm to them, the court concluded that such relief cannot be characterized solely as retroactive and is not barred by the Eleventh Amendment.

While the court denied Charron's motion to dismiss the suit on Eleventh Amendment grounds, it ruled that the plaintiffs nonetheless failed to plausibly allege an equal protection violation. The plaintiffs had asserted that Rule 563.02.a denies equal protection because it burdens women, as "mothers," for conduct during pregnancy while not imposing a comparable burden on men, as "fathers." Charron argued that Rule 563.02.a classifies individuals on the basis of pregnancy, which is a physical condition, rather than sex, and therefore triggers only a rational basis review. The U.S. Supreme Court does not treat pregnancy as a sex-based classification, and thus, a pregnancy-based classification escapes heightened scrutiny absent a showing that the distinction is pretext for sex-based discrimination (*Geduldig v. Aiello*, 417 U.S. 484 (1974)). The court ruled that because the plaintiffs failed to plead pretext, a rational basis review applied. Under the rational basis test, a government act survives an equal protection challenge if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. The court determined that because only pregnant women can expose a fetus to a controlled substance prenatally, pregnant and non-pregnant women are not similarly situated. As such, the court ruled that the plaintiffs have not stated an equal protection claim and dismissed the claim with prejudice. The court granted in part and denied in part Charron's motion to dismiss. (Return to In This Issue)

UTAH MEDICAL CANNABIS COMPANY ARGUES THAT IT IS NOT UNDER THE JURISDICTION OF THE NLRB

***True North of Utah, LLC d/b/a/ The Flower Shop v. National Labor Relations Board, et al.*, U.S. District Court of the District of Utah, Case No. 1:26-cv-00108-AMA-PK (motion for preliminary injunction denied July 20, 2026).** A Utah medical cannabis retailer has filed suit against the National Labor Relations Board (NLRB) over assertions that it cannot assert jurisdiction over an employer who operates solely by virtue of state law and whose existence remains unlawful under federal law. True North of Utah d/b/a The Flower Shop (True North) is a Utah limited liability company organized for the purpose of operating a cannabis business pursuant to the Utah Medical Cannabis Act (UTAH CODE ANN. § 26B-4-216 (West 2026)). This suit arises from unfair labor practices (ULP) charges filed by the United Food and Commercial Workers, Local 99 (Union). On June 18, 2026, the regional director of NLRB Region 27 issued a complaint and notice of hearing against True North based on the Union's charges. The ULP complaint alleged that: (1) in March 2024, the Union sent a letter signed by a number of True North employees seeking Union recognition; (2) True North, over the following several weeks, discharged four of the signatories; (3) True North then banned two of the discharged employees from entering True North's premises; and (4) True North has refused to respond to the Union's recognition request or to bargain with the Union. The ULP complaint further alleged that True North violated Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act (29 U.S.C. § 158) by discriminating against and discouraging union membership by failing to recognize and bargain with the Union. The NLRB notified True North that a hearing would be held before an NLRB administrative law judge on July 21, 2026. On July 8, 2026, True North filed an emergency motion for preliminary injunction, asking the court to enjoin the ongoing administrative proceedings against it, including the July 21, 2026 hearing, arguing that the NLRB's exercise of jurisdiction over an intrastate cannabis employer is unlawful. The court denied True North's emergency motion for preliminary injunction, holding that the Norris-LaGuardia Act (NLGA; 29 U.S.C. § 107) bars it from issuing injunctive relief in this case. The NLGA contains anti-injunction provisions that strip district courts of jurisdiction to issue injunctions in cases growing out of a labor dispute unless they follow strict procedures. Because this action involves or grows out of a labor dispute and falls within the scope of the NLGA's broad prohibition on injunctive relief, the court ruled that it is prohibited from granting True North's motion for a preliminary injunction. Additionally, the court ruled that even if the NLGA did not prevent it from issuing an injunction, True North failed to establish that it would suffer irreparable harm if the injunction was denied. (Return to In This Issue)

FLORIDA APPELLATE COURT RULES FLORIDA EMPLOYERS CAN FIRE CERTAIN WORKERS FOR OFF-SITE MEDICAL CANNABIS USE

***Hillsborough County v. Angelo Giambrone*, Florida District Court of Appeal (Second District), Case No. 2D2025-0115 (opinion filed July 29, 2026).** A Florida appellate court has ruled that Florida employers can terminate certain employees for using medical cannabis off-site. Angelo Giambrone worked for Hillsborough County Fire Rescue as a firefighter paramedic. On February 26, 2019, he was selected for a random urine drug screen, and the results came back positive for cannabis. Giambrone had a medical cannabis card, and according to the court record, there was no evidence that Giambrone: (1) used or possessed cannabis on work premises or during work hours; (2) had any work performance evaluations alleging impairment; or (3) had any prior complaint or suspicion of impairment on his employment record. Based on the positive drug screen, the county placed Giambrone on unpaid administrative leave. After being placed on leave, Giambrone filed a lawsuit against the county asserting the following claims: (1) one in violation of the Florida Civil Rights Act (FCRA; FLA. STAT. ANN. § 760.01 (West 2026)) premised on a failure to accommodate; (2) one for wrongful termination premised on the county's refusal to accept his medical cannabis card as a justification for the positive drug screen; (3) one alleging failure to update the county's drug free workplace policy; and (4) one for a breach of contract. Both parties moved for summary judgment, and in December 2024, the trial court granted Giambrone's motion for summary judgment, granting him relief on the pleaded counts and awarding broad prospective relief directed beyond the individual dispute by mandating the county to provide an accommodation to employees who present a valid Florida medical cannabis card after testing positive for cannabis as long as there is no evidence of on-duty use, possession, or working under the influence. The county appealed.

Giambrone's employment was governed by a collective bargaining agreement (CBA), which contained a detailed substance abuse policy. Section 40.1(A) of the CBA broadly prohibits all employees from using, possessing, or being under the influence of a drug while at work, on county property, in a county vehicle, or while displaying a county logo. The CBA also prohibits employees from engaging in the same conduct "at any time while employed by Hillsborough County Fire Rescue, other than alcohol or prescribed medications." Additionally, the CBA prohibits all employees "from reporting to work when it is determined that the employee is impaired," defined by "a confirmed positive drug test." The CBA also defines "prescription or nonprescription medication" as "a drug or medication obtained pursuant to a prescription as defined by [FLA. STAT. ANN. § 893.02(24) (West 2026)] or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment for human diseases, ailments, or injuries." In addition to the CBA, the county maintained a countywide drug-free workplace policy. Under the policy's over-the-counter or prescription drugs provision, employees and applicants "should confidentially report the use of prescription or nonprescription medications to the county's medical review officer (MRO)" and that they have the opportunity to contest or explain the results of a drug screen to the MRO within five working days of the positive test. If an employee or job applicant can provide an adequate explanation regarding prescription or non-prescription drug use that may affect the test results, the MRO is to verify the test as negative and report back to the employer. Finally, the Florida Constitution provides that "the medical use of marijuana by a qualifying patient is not subject to criminal or civil liability or sanctions under Florida law," however, it also states that "nothing in the section requires the violation of federal law or purports to give immunity under federal law" and that "nothing in the section shall require any accommodation of any on-site medical use of marijuana in any place of employment." (Fla Const. Art. X, § 29). The implementing statute similarly provides that it "does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy and it does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana." (FLA. STAT. ANN. § 381.986 (West 2026)).

The trial court determined that medical cannabis is "considered a prescription or akin to a prescription, as it is an order for drugs written by a licensed doctor and nowhere in the CBA is medical marijuana enumerated as distinct from all other prescribed medications." On appeal, the appellate court determined that under the CBA, cannabis is neither a medication "obtained pursuant to a prescription," nor one that is authorized by "federal or state law for general distribution and use without a prescription." The trial court had determined that because Giambrone provided the MRO with his state issued medical cannabis card as justification of the positive drug screen, the MRO was required to verify the test as negative. However, because medical cannabis does not meet the definition of a prescription or nonprescription medication under the CBA, the appellate court ruled that the county was not contractually obligated to treat Giambrone's positive test as a negative. The trial court had also concluded that the CBA only prevents employees from using substances or illegal drugs in four circumstances: (1) while at work; (2) on county property; (3) in county vehicles; (4) or while reporting to work under the influence. The appellate court noted, however, that the trial court impermissibly ignored an additional and distinct prohibition that employees are prohibited from using drugs "at any time while employed by Hillsborough County Fire Rescue, other than alcohol and prescribed medications." Finally, the trial court had reasoned that the constitutional provision "requires people to be able to use medical marijuana in private" and that "the pertinent section requires that qualified patients be allowed to use medical marijuana off-site and employers are required to make accommodations." The appellate court disagreed, finding that Florida's medical cannabis provisions do not constitutionalize continued public employment, nor do they prohibit an employer from imposing and enforcing stringent fitness-for-duty standards in safety-sensitive settings. Because the trial court's rulings rested on mistaken premises and misinterpretations, the appellate court ruled that all four of Giambrone's claims fail as a matter of law. The appellate court reversed: (1) the

FCRA and wrongful termination claims because they could not stand on the theory adopted by the trial court; (2) the claim that the county failed to update or amend its drug-free workplace policy because it sought relief that courts are not empowered to grant; and (3) the breach of contract claim because the trial court's contract analysis depended on improperly interpreted definitions. The appellate court also ruled that the trial court erred in granting the relief it did, finding that when a court order imposes broad, prospective, unrequested relief on a government employer that impacts employees who are not parties to the suit and decides future disputes not before the court, the fundamental error doctrine applies.[5] The appellate court reversed the final summary judgment in its entirety, vacated the broad prospective relief, and remanded the case with instructions to enter final summary judgment for Hillsborough County on all counts. (Return to In This Issue)

ILLINOIS CANNABIS DISPENSARY CHALLENGES $1.6 MILLION FEDERAL TAX ASSESSMENT

***Terra Herbal Health LLC v. Commissioner of Internal Revenue*, U.S. Tax Court, Case No. 5541-26 (petition filed June 30, 2026).** An Illinois cannabis dispensary operator has filed a petition in federal tax court seeking to overturn nearly $1.6 million in tax deficiencies and penalties levied by the Internal Revenue Service (IRS). On June 30, 2026, Terra Herbal Health LLC (Terra Herbal), which operates licensed medical and recreational dispensaries in Marion, Illinois, sued the acting IRS Commissioner after the agency disallowed millions of dollars in business deductions for Terra Herbal's 2019 and 2020 tax years. Under Section 280E of the Internal Revenue Code (26 U.S.C. § 280E), state-licensed commercial cannabis businesses are barred from claiming certain business expense deductions because all forms of cannabis were historically classified as a Schedule I controlled substance under federal law. In its petition, Terra Herbal asserts that the federal government's April 2026 administrative rescheduling of cannabis products that have been approved by the U.S. Food and Drug Administration along with medical cannabis from Schedule I to Schedule III (91 Fed. Reg. 22714) of the Controlled Substances Act (21 U.S.C. § 801, *et seq*.) retroactively eliminates Section 280E liability and entitles state-authorized cannabis operators to retrospective tax relief. The dispensary also disputes an IRS finding that its 2020 return was filed late, requesting a formal judicial ruling that no deficiency exists and ordering full refunds for both tax years. An answer to the petition by the IRS is pending. (Return to In This Issue)

U.S. SUPREME COURT STRIKES DOWN FEDERAL GUN BAN FOR CANNABIS USERS

***United States v. Ali Hemani*, U.S. Supreme Court, Case No. 24-1234 (opinion filed June 18, 2026).** The U.S. Supreme Court has unanimously ruled that the federal statute banning unlawful users of a controlled substance, whether convicted of a use or possession crime or not, from possessing firearms violates the Second Amendment as applied to nonviolent cannabis users who are not actively intoxicated or demonstrably dangerous. In 2022, federal law enforcement agents searched the home of Ali Hemani, who cooperated with investigators, surrendered a handgun kept inside his residence, and admitted during an interview that he smoked cannabis regularly. Federal prosecutors subsequently indicted Hemani under 18 U.S.C. § 922(g)(3), which makes it a felony for any individual who is an "unlawful user of or addicted to any controlled substance" to possess a firearm or ammunition. Hemani moved to dismiss the indictment, arguing that the federal statute violated his Second Amendment rights under the "historical tradition" standard established in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen* (597 U.S. 1). The federal district court granted the motion, and the U.S. Court of Appeals for the Fifth Circuit affirmed, on the grounds that founding-era regulations targeted actively intoxicated or dangerous individuals rather than imposing blanket disarmament based on

[5] A "fundamental error" is an error that is so obvious and prejudicial that an appellate court should address it despite the parties' failure to raise a proper objection at trial. The failure to correct a fundamental error would infringe a party's due process rights and damage the integrity of the judicial process. *Fundamental error*, BLACK'S LAW DICTIONARY (12th ed. 2024).

regular drug use. On June 18, 2026, the U.S. Supreme Court affirmed the Fifth Circuit's decision, upholding the dismissal of Hemani's indictment and holding that § 922(g)(3) is unconstitutional as applied to individuals whose cannabis consumption is disconnected from simultaneous intoxication or dangerous behavior. (Return to In This Issue)

TRADE-SECRET LAWSUIT DISMISSED AGAINST LSD THERAPY FIRM

***Signant Health Holding Corp. v. Definium Therapeutics, Inc.*, U.S. District Court for the District of Delaware, Case No. 1:26-cv-00114 (motion to dismiss granted July 1, 2026).** A federal court has dismissed a trade secret lawsuit brought against a biotechnology firm developing psychedelic therapies derived from lysergic acid diethylamide (LSD). Definium Therapeutics, Inc. (Definium) conducts clinical trials evaluating proprietary LSD formulations for the treatment of generalized anxiety disorder and major depressive disorder. In February 2026, clinical trial software provider Signant Health (Signant) filed suit against Definium in federal district court, alleging that Definium had misappropriated proprietary trial management protocols and software trade secrets during its clinical trials in violation of the federal Defend Trade Secrets Act (18 U.S.C. § 1836) alongside supplemental state-law causes of action. Definium moved to dismiss, arguing that Signant had only identified general information like "pricing" and "methodologies," which were not protected trade secrets. On July 1, 2026, the court granted Definium's motion, holding that Signant had failed to plausibly allege specific facts establishing that any protected trade secrets had actually been misappropriated. The court dismissed the complaint without prejudice, and Signant has announced its intention to refile the lawsuit.
(Return to In This Issue)

PHILADELPHIA ARGUES THAT STATE OPIOID SETTLEMENT FUNDS SHOULD FUND ITS KENSINGTON RESIDENT SUPPORT FUND

***City of Philadelphia v. Board of Trustees of the Pennsylvania Opioid Misuse and Addiction Abatement Trust*, Commonwealth Court of Pennsylvania, Case No. 1056 CD 2025 (opinion filed July 15, 2025).** The City of Philadelphia has filed a petition for specialized review in the Commonwealth Court of Pennsylvania, asserting that the Board of Trustees (Board) of the Pennsylvania Opioid Misuse and Addiction Abatement Trust (Trust) should have approved its expenditure of Trust funds for two sub-programs with the Kensington Resident Support Fund, known as Program 9. Over the past decade Pennsylvania has participated in multiple multistate lawsuits against various opioid manufacturers and distributors. Settlements from these multistate lawsuits have resulted in approximately $1 billion for the commonwealth, and pursuant to the terms of the consent judgment approved by the court, the commonwealth created the Trust to receive, allocate, and disburse the settlement funds. The Trust may approve the distribution of funds only for the purposes set forth in Exhibit E of the Settlements, a 15-page list of approved programs and strategies addressing opioid addiction, divided into two schedules. The first schedule gives priority to core abatement strategies, while the second schedule provides a non-exhaustive list of treatment and prevention efforts. Each year, the Trust disburses the funds to counties and other participating subdivisions that are required to expend those funds in compliance with Exhibit E. If the Board determines that funds have been expended inconsistently with Exhibit E, then it may withhold the following year's payments. A county or other participating subdivision can challenge the Board's decision regarding compliance with Exhibit E.

Philadelphia's Program 9 is intended to lower the risk of opioid use disorder (OUD) and overdose and mitigate the effects of the opioid epidemic in the city's Kensington neighborhood by addressing the root causes of addiction. Program 9 consists of several sub-programs targeting home repair, rent/mortgage relief, safety improvements to parks and schools, and small business assistance. Initially, the Board deemed Program 9 to be non-compliant with Exhibit E because the city did not establish any connection between the program and those with OUD and instead determined that the program appeared to only support general community development. The city filed a complaint, and in October 2024, the Board approved the rent/mortgage relief and parks/school improvements sub-programs but continued to deny the home repairs and small business support sub-programs. The city filed a petition for specialized review with the commonwealth court, arguing that the Board erred in concluding that certain sub-programs in Program 9 were non-compliant with Exhibit E. The city asserted that Program 9 complies with Exhibit E because it targets the root causes of addiction and "employs evidence-informed strategies proven to lower the risk of OUD and overdose." The city also asserted that the Board has adopted an impermissibly narrow reading of Exhibit E. In response, the Board claimed that national settlements do not permit beneficiaries to expend opioid settlement funds on general community development programs that are not specifically tailored to address OUD. In reviewing the case, the court noted that the Board's October 2024 decision does not reveal the underlying reason why the sub-programs it rejected fell outside of Exhibit E. Without the Board's decision explaining its reasoning, the court concluded that it could not conduct any appellate review. The court remanded the case to the Board, ordering it to file a decision explaining its reasoning within 30 days. Per the court's order, the Board's decision must identify the Exhibit E sections at issue and explain why the disputed sub-programs do not qualify, along with specific findings of fact relevant to its decision. (Return to In This Issue)

FEDERAL COURT PRELIMINARILY APPROVES $180 MILLION SETTLEMENT BETWEEN BENEFIT PLANS, OPIOID MANUFACTURERS, AND PHARMACIES

***In re: National Prescription Opiate Litigation*, U.S. District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (preliminary approval of settlement granted June 16, 2026).** For previous updates on this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal district court judge has granted preliminary approval to a $180 million settlement between a class of private employee benefit plans, opioid manufactures (Allergan, Janssen, and Teva), and pharmacies (CVS, Walgreens, and Walmart). Under the proposed settlement, Allergan will pay $10 million, Janssen will pay $40 million, Teva will pay $45 million, and the pharmacies will pay a total of $85 million. The settlement funds are meant to compensate the benefit plans for the amounts paid or the costs incurred for covering treatment, services, and procedures related to the use of and addiction to opioids on behalf of their beneficiaries. The court has set a hearing to determine final approval of the settlement for September 23, 2026. (Return to In This Issue)

INSURANCE COMPANIES' DUTY TO DEFEND/INDEMNIFY IN OPIOID RELATED LITIGATION

- ***Publix Super Markets, Inc. v. ACE Property and Casualty Insurance Company, et al.*, U.S. Court of Appeals for the Eleventh Circuit, Case No. 25-11185 (certified question issued June 11, 2026) and *Allied Property & Casualty Insurance Company, et al. v. Bloodworth Wholesale Drugs, Inc.*, U.S. Court of Appeals for the Eleventh Circuit, Case No. 24-11398 (certified question issued June 11, 2026).** For previous updates on the *Publix* case, please refer to the April 2025 issue of the LAPPA *Case Law Monitor*, available here. The Eleventh Circuit has issued a certified question to two state supreme courts requesting that they weigh in on whether the past and future costs related to opioid litigation for Publix Super Markets, Inc. (Publix) and Bloodworth Wholesale Drugs Inc. (Bloodworth) are covered by their liability insurance policies. Publix and Bloodworth both appealed lower court rulings that held that the underlying suits over the companies' role in the opioid crisis were not covered by their insurance policies because the plaintiffs in those suits did not seek damages "because of bodily injury." On appeal, the Eleventh Circuit determined that there is little case law to go on that directly addresses this type of coverage issue and decided that it would be more appropriate for the states to decide these questions of law rather than a federal court. The Eleventh Circuit issued the certified question to the Georgia Supreme Court for the *Bloodworth* Case and the Florida Supreme Court for the *Publix* case.

- ***Giant Eagle, Inc. v. Aon Risk Services Central, Inc., et al.*, U.S. District Court for the Western District of Pennsylvania, Case No. 2:26-cv-01319-NR (suit filed June 17, 2026).** The grocery chain Giant Eagle, Inc. (Giant Eagle) has filed a lawsuit against insurance brokerage units of Aon PLC (Aon) over claims that it failed to notify Giant Eagle's insurers about underlying opioid-related lawsuits. Beginning in 2018, states and local governments sued Giant Eagle in over 30 lawsuits for allegedly contributing to the opioid epidemic. At that point, the company began looking for any and all insurance coverage that might be available for the potential exposure that came with these lawsuits. In 2018, Giant Eagle entered into a service agreement with Aon, in which Aon agreed to "provide timely notice for all [Directors and Officers] D&O claims and advice and guidance regarding the insurers and policies that should receive notice of any claim asserted against Giant Eagle." The service agreement established that Aon was acting as an agent for both Giant Eagle and the insurers for notice purposes, such that notice of a D&O claim to Aon would, in effect, be notice to the insurers too. In keeping with the service agreement, Giant Eagle asked Aon to put all insurers whose policies might provide coverage on notice of the opioid lawsuits. According to the complaint, on September 21, 2018, Aon sent emailed notices of the opioid lawsuits to Giant Eagle's commercial general liability insurers but failed to send email notices to any of Giant Eagle's D&O insurers. Later, when Giant Eagle requested D&O coverage for the opioid lawsuits, the insurers denied their defense and coverage obligations because the notice of the opioid lawsuits had not been sent in accordance with their respective D&O policies. The complaint asserts that these denials, which occurred in late June and July 2024, were the first time that the grocery chain learned that the insurers did not consider the Aon notice sent in 2018 to be sufficient under their respective policies. After the insurers denied coverage due to the alleged late notice, Giant Eagle filed a demand for arbitration against the insurance companies seeking coverage for the opioid lawsuits causing the grocery chain to incur more than $1 million in litigation costs to date. Giant Eagle also asserts that it continues to incur settlement and defense costs in the opioid lawsuits that now exceed the $40 million in combined limits from the D&O policies. The suit argues that if Aon had provided proper notice to the D&O insurers, then the company would not have incurred notice-related litigation costs, and its D&O coverage would not be at risk. Giant Eagle brings forth claims of breach of contract, professional negligence, negligent misrepresentation, and fraudulent misrepresentation and is requesting the court to award the company: (1) compensatory damages for the actual or potential loss of $40 million in D&O coverage; (2) compensatory damages in an amount exceeding $1 million for the attorney fees and expenses incurred from litigating the notice issue in its D&O coverage arbitration: and (3) punitive damages. Aon's answer is due by August 17, 2026.
- ***Walgreen Company v. ACE American Insurance Company, et al.*, Illinois Circuit Court (Cook County), Case No. 2022-CH-04283 (opinion filed June 18, 2026).** An Illinois state court has ruled that American International Group Inc. (AIG) insurance units do not have a duty to defend or indemnify Walgreen Company (Walgreens) in opioid-related litigation. Walgreens sought coverage for approximately $7 billion in judgment and settlements, as well as substantial defense costs incurred in connection with thousands of underlying opioid-related lawsuits. The court determined that the underlying suits did not allege damages "because of bodily injury" and therefore were not covered by AIG's commercial general liability and druggist professional liability umbrella policies in effect from 1997 to 2013. The court granted summary judgment to the AIG insurers as well as the excess carriers who had matching policy language.
- ***Opioid Master Disbursement Trust II v. ACE American Insurance Company, et al.*, Missouri Court of Appeals, Eastern District, Case No. ED113635 (opinion filed July 21, 2026).** For previous updates on this case, please refer to the April 2025 issue of the LAPPA *Case Law Monitor*, available here. A Missouri intermediate appellate court has affirmed a lower court's ruling for summary judgment in favor of American International Group, Inc. and other insurers, finding that insurance policies precluded coverage for opioid-related claims against the drug manufacturer Mallinckrodt. The court ruled that a liability insurance policy exclusion applied to claims for bodily injuries caused by Mallinckrodt's allegedly deceptive opioid promotional marketing campaign. Specifically, the court determined that because the bodily injuries Mallinckrodt sought coverage for arose from allegedly false representations, such injuries fell within the policy exclusion.
- ***Harris Teeter Supermarkets, Inc., et al. v. ACE American Insurance Company, et al.*, Superior Court of North Carolina (Forsyth County), Case No. 22CVS005279-330 (opinion filed July 24, 2026).** A North Carolina state court has ruled that American Financial Group, Inc.'s insurance units are not obligated to

compensate Harris Teeter Supermarkets, Inc. (Harris Teeter) for its purported share of liability under a global settlement agreement that resolved hundreds of opioid-related lawsuits brought by governmental entities against its parent company, the Kroger Company (Kroger). In March 2024, Kroger agreed to the terms of a $1.37 billion settlement to resolve opioid-related lawsuits brought against it and its subsidiaries. The settlement provided certain "released entities" a release from liability for "released claims;" Harris Teeter was named in the settlement as a released entity. After announcing the agreement in principle, Kroger internally allocated more than $60 million in liability to Harris Teeter. This allocation was not made pursuant to any requirement in the settlement nor any terms of a separate contractual agreement between Kroger and Harris Teeter, but instead as part of Kroger's own practice, as the parent company, of allocating settlement liability to its subsidiaries. The insurance companies sought a declaration that they did not owe insurance coverage to Harris Teeter for the amounts Kroger paid to resolve the opioid-related claims through the settlement because Harris Teeter did not have a legal obligation to pay any damages. The court agreed with the insurers, finding that as a released entity, Harris Teeter was not legally obligated to pay any damages under the settlement. The court ruled that because Harris Teeter's allocated portion of the settlement liability was made pursuant to Kroger's internal processes, not the terms of the settlement agreement, it was not covered by Harris Teeter's commercial general liability insurance. (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 disorder, medication for addiction treatment in correctional settings, and the involuntary commitment of individuals with alcohol or substance use disorders.

For more information about LAPPA, please visit: https://legislativeanalysis.org/.