

**Act for Public Health:  
Opportunities and Challenges from  
Legislation and Litigation Impacting  
Public Health Authority**

## Agenda

- Act for Public Health
- Legislative tracking
- Litigation tracking
- Early framework thinking
- Q & A



Image credit: <https://visit-twincities.com/saint-paul-riverwalk/>



# ACT for Public Health



---

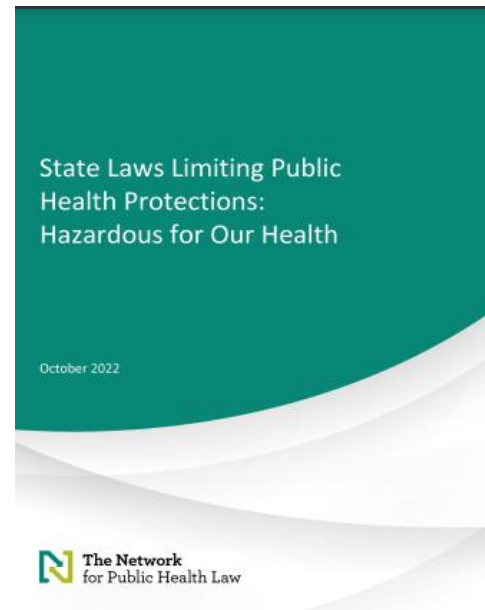
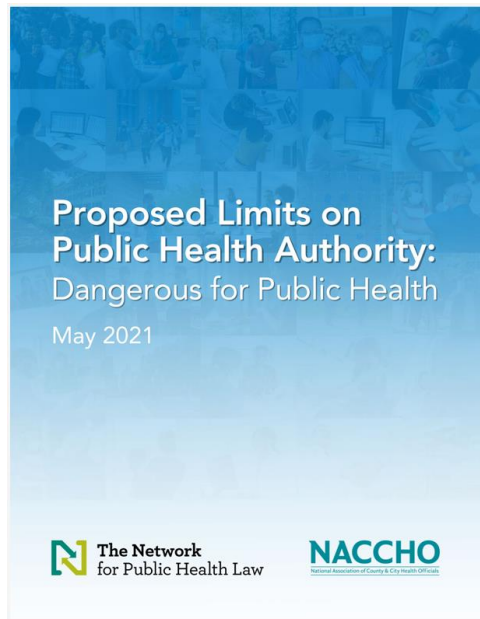
**Health law partners addressing challenges to  
public health authority and infrastructure.**

---



***Perhaps more than at any other time in its history, public health is being directly and significantly impacted by how laws and policies are being implemented—or weakened.***

## Coordinated backlash



## Themes

- Prohibitions on public health interventions
- Shifts in authority
- Limitations on public health orders
- Elevation of individual freedoms over the common good

# Dataset Live on LawAtlas.org now!



Search for...



## Laws Addressing Public Health Authority to Respond to Emergencies

State laws setting the scope and limits of emergency authority are crucial to an effective public health response. Since January 1, 2021, the majority of states have enacted laws addressing authority to respond to public health emergencies. These laws include: limits on the authority of a governor, state health official, or local health official regarding emergency orders; reallocation of authority from a governor, state health official, or local health official regarding emergency responses; limits on the application of federal law related to a public health emergency; expansions or limitations on the use of specific pandemic-related public health measures (e.g., vaccine measures, mask measures); preemption of local public health emergency measures; and laws aimed at strengthening public health authority.

This longitudinal dataset captures laws addressing authority to respond to public health emergencies that were enacted between May 21, 2022, and May 22, 2023, in all 50 US states and the District of Columbia. This dataset will be updated regularly through the end of the 2023 legislative session.



For details on legislation — bills that were enacted and those that were not — that addresses emergency public health authority introduced between January 1, 2021, and May 20, 2022, in all 50 US states and the District of Columbia, see the [State Legislation Addressing Public Health Emergency Authority](#) datasets. The enacted bills from that time period will be included in this dataset in a future update.

CREATED BY: Center for Public Health Law Research

MAINTAINED BY: Center for Public Health Law Research

VALID FROM: May 21, 2022

UPDATED THROUGH: May 22, 2023

 [Data](#)  [Codebook](#)  [Protocol](#)

 [See all related maps](#)

## Expanded Scope of Practice for Vaccine Administration

Laws expanding vaccination access were an important public health authority state legislative trend in 2022, and the trend continues.

Despite intensified anti-vaccine rhetoric during the COVID-19 pandemic, almost 70% of the U.S population is considered fully vaccinated against COVID-19 (over 80% has received at least one dose). That translates to the prevention of 3.2 million additional deaths, 18.5 million additional hospitalizations, and almost 120 million more infections as well as over \$1 trillion in medical costs saved.

While these benefits have not been across the board – with differences by race/ethnicity, community type, education, and political affiliation – laws that expand access to vaccines by increasing the vaccination workforce (also known as expanded scope of practice laws) are an opportunity to advance health and health equity.

Between January 1 and May 22, 2023, 66 bills expanding vaccination access have been introduced in 28 states. This includes at least 8 enacted laws in 6 states (GA, KS, MD, MT, NC, and WV).



## Public Health Authority Legislative Update

**New York** introduced a bill that permits dentists to administer vaccines for COVID-19 and the flu and vaccines related to a declared public health emergency (S 7356).

**Montana** enacted a law to allow pharmacists to delegate the administration of authorized immunizations to a licensed intern or to a pharmacy technician under the supervision of the pharmacist (HB 710).

**New Hampshire** introduced a bill to expand the practice of optometry to include administering influenza, COVID-19, and shingles vaccines that have been approved by the FDA to adults (SB 200).

Visit LawAtlas for more information on laws addressing public health authority to respond to emergencies.

# Public Health Authority Case Updates

June 2, 2023

## Case updates this week:

**Tuesday, May 30**: A federal judge in Washington rejected former Washington State University football coach Nick Rolovich's claim that the university discriminated against his religious beliefs when he was fired for refusing to comply with the state's COVID-19 vaccine mandate. Three of his other claims will go to trial, including for breach of contract.



**Thursday, June 1**: A Georgia federal judge dismissed Republican states' challenge to the Biden administration's COVID-19 vaccine mandate for federal contractors, approving a joint stipulation of dismissal filed by Georgia and six other states, the Associated Builders and Contractors Inc. trade group and the U.S. government.

This newsletter is distributed by [Public Health Law Watch](#) as part of [Act for Public Health](#), a working group of the Public Health Law Partnership that is convening to provide law and policy research, analysis, and expertise in support of public health authority.



ChangeLab Solutions

<https://www.changelabsolutions.org/product/preserving-local-public-health-powers>

# Preserving Local Public Health Powers

## How to resist policy efforts to limit public health authority

FACT SHEET | GOOD GOVERNANCE

Public health is best served when decisions are driven by experts and experience rather than politics, but in the wake of COVID-19, some state legislatures continue to propose and pass preemptive bills that limit the authority of local public health officials. To help localities better protect the public's health, ChangeLab Solutions has developed a set of resources for advocates, detailing what public health authority is, how it works, and the types of restrictions that public health departments are facing.

DOWNLOADS



### Help Ensure That Public Health Professionals Can Continue to Protect Community Well-Being

How communities can identify, understand, and resist potential legislative and other legal limitations on their traditional public health powers

#### What do public health professionals do?

We all want to live in communities where **everyone** has what they need to live healthy, happy lives. Public health professionals in state and local agencies use their governmental powers and resources to protect and promote health and well-being for all. This includes **reduce risks** (for example, to provide safety in our homes and restaurants; preventing illnesses through education and seminars; providing vaccines; reducing incidents of injury and violence in our neighborhoods; supporting moms and babies in their early days; and countering the harmful influence of commercial tobacco companies on our kids). The public health workforce must also **prepare for and respond to emergencies** that threaten our health and safety, such as natural disasters, security threats, and infectious diseases like COVID-19!

#### Where do public health powers come from?

Governmental public health powers are rooted in states' authority to take actions that will protect residents' health and safety – the police power reserved to them in the US Constitution. Elected officials in state legislatures delegate some of this authority to state and/or local agencies like health departments. These agencies maintain expertise in public health and fairness with community needs and conditions so that they can respond quickly and flexibly to public health threats! Local health departments also tend to be



### Help Ensure That Public Health Professionals Can Continue to Protect Community Well-Being (10/22)

FACT SHEET



### Why Keep Public Health Powers Close to Local Communities? (10/22)

FACT SHEET



# Public Health Advocacy: The Basics

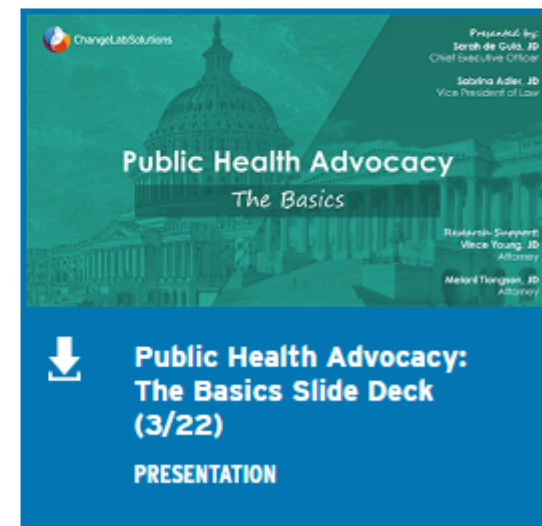
How can public health practitioners engage in advocacy even when faced with restrictions on lobbying?

PRESENTATION | GOOD GOVERNANCE

This one-hour webinar, hosted by the American Public Health Association and ChangeLab Solutions, aims to help new and seasoned advocates understand the general ethics and legalities related to lobbying and advocacy. The webinar

- Defines lobbying and distinguishes between direct and grassroots lobbying;
- Explains the restrictions on lobbying for federal grantees and 501(c)(3) nonprofit organizations that receive funding from foundations;
- Shares exceptions to lobbying rules and provides an overview of allowable advocacy activities;
- Provides examples of common scenarios that public health professionals may face in their day-to-day practice;

## DOWNLOADS





## Webinar

 Making the case for public health: A framing and communication webinar

Frame public health as indispensable

Consider the way fire departments are framed





0:00 / 1:01:45

YouTube

## Working toward a coordinated response



### Innovative Laws and Policies for a Post-Pandemic Public Health System

June, 2023

 The Network  
for Public Health Law

## How We Can Help

Our assistance comes in many forms. Some individuals and organizations contact us to help them in understanding and navigating a particular law, ordinance or statute. Others want to know how other public health professionals and advocates are leveraging laws and policies to address pressing issues in their communities. For many, law and policy seem complex and they are unsure how their initiatives might benefit by examining the laws and policies that impact it. We help them cut through this complexity by providing the legal expertise and evidence-based information they need to protect and improve public health, and advance health equity.



<https://www.networkforphl.org/request-assistance/>

**Darlene Huang Briggs**, Network for Public Health Law  
[dhbriggs@networkforphl.org](mailto:dhbriggs@networkforphl.org)

**Elizabeth Platt**, Center for Public Health Law Research, Temple  
University  
[elizabeth.platt@temple.edu](mailto:elizabeth.platt@temple.edu)

**Wendy Parmet**, Public Health Law Watch, Northeastern University  
[w.parmet@northeastern.edu](mailto:w.parmet@northeastern.edu)

**Sara Bartel**, ChangeLab Solutions  
[sbartel@changelabsolutions.org](mailto:sbartel@changelabsolutions.org)



# ACT for Public Health



**Visit the Act for Public Health Website**  
**[actforpublichealth.org](https://actforpublichealth.org)**

- Request assistance
- Join the email list
- Learn about public health authority
- View resources
- Sign up for events




# Act for Public Health: Legislative Tracking

**Elizabeth Platt**

Director of Research and Operations  
Center for Public Health Law Research  
Temple University Beasley School of Law

 **The Network**  
for Public Health Law

 **ChangeLab Solutions**

 **PUBLIC HEALTH LAW**  
WATCH

 **PUBLIC HEALTH LAW CENTER**  
at Mitchell Hamline School of Law

 **Temple University**  
Beasley School of Law

**Center for Public Health Law Research**

 **astho™**

ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS

**ASTHO: Bill tracking**

**CPHLR: Collect, categorize, and code**

**Legal data on LawAtlas.org**





## Year 1: State Legislation Addressing Public Health Emergency Authority

- **Legislation introduced between January 1, 2021, and May 20, 2022:**

- Public health authority limits
- Reallocation of public health authority
- State limits on enforcement of federal law
- Regulating public measures
- Public health preemption
- Strengthening public health measures

Visit this suite on  
LawAtlas:

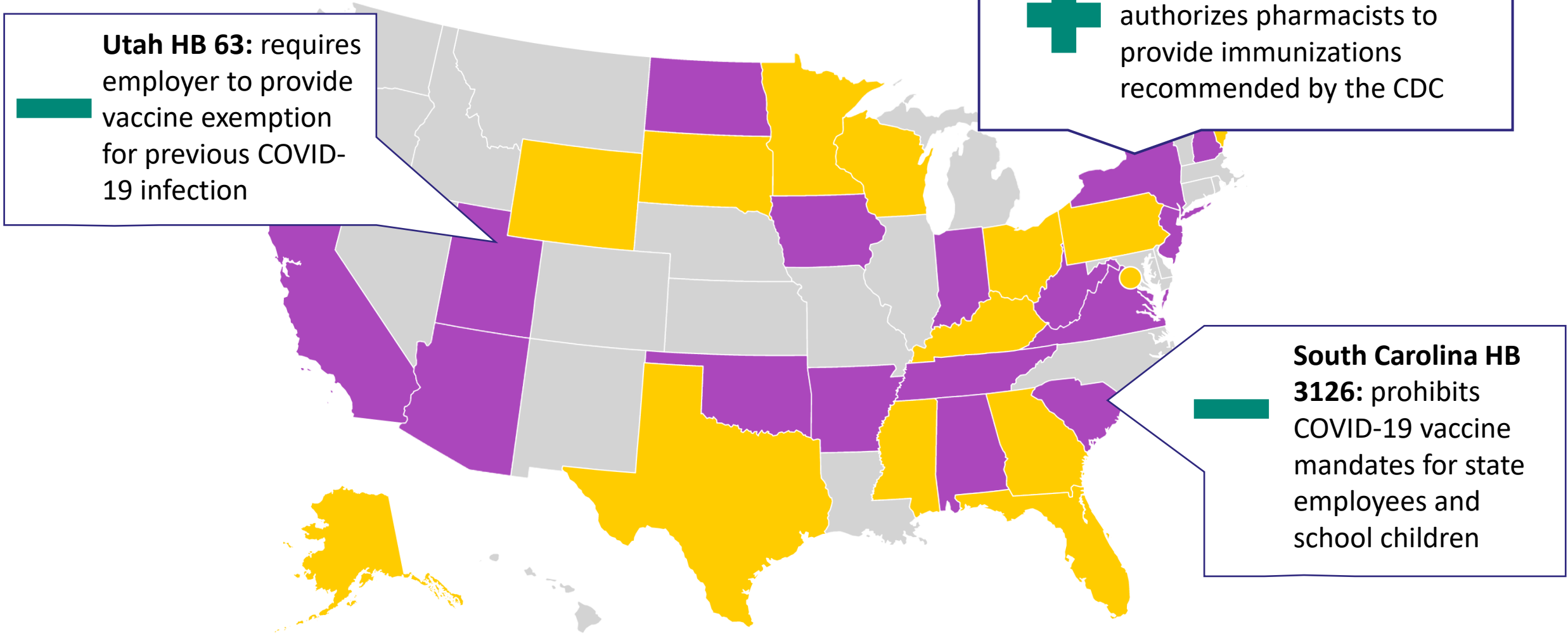


- **Key findings:**

- **1,531** individual bills introduced → **191** bills enacted in law in 43 states and D.C.
- Most bills introduced (1197) seeking to **regulate public health measures** were also the most bills enacted (163)
- **Vaccination** was the most common type of public health measure attempted to be regulated or preempted
- **54 laws** enacted **limiting the scope of emergency orders** by the governor, state health officials, local health officials

# Regulating Public Health Measures – Vaccines

66 Total Enacted Bills as of May 20, 2022



**Utah HB 63:** requires employer to provide vaccine exemption for previous COVID-19 infection



**New York SB 4807:** authorizes pharmacists to provide immunizations recommended by the CDC

**South Carolina HB 3126:** prohibits COVID-19 vaccine mandates for state employees and school children

## Year 2: State Laws Addressing Public Health Emergency Authority

- **Enacted bills** addressing public health authority to respond to emergencies between **May 21, 2022, to October 6, 2023**
  - Same topics in one dataset
    - Limiting and expanding public health measures
    - Coding whether the law is specific to COVID-19
- **Forty-two** enacted bills in **21 states and D.C.**
  - Same trends continue

Visit this dataset  
on LawAtlas:



# Types of Enacted Bills - May 21, 2022, to October 6, 2023

Bill Type	Number of Enacted Bills
Limiting public health measures	20
➤ Vaccine measures	17
Expanding public health measures	15
➤ Vaccine measures	9
Preempting public health measures	6
➤ Vaccine measures	5
Limiting public health authority	12
Reallocating public health authority	1
Strengthening public health authority	4
Limiting state enforcement of federal law	1

## **Year 3: State Bills Relating to Vaccines in Schools and Provider Scopes of Practice**

**January 1, 2023, through May 22, 2023**

Released October 19, 2023

- **School entry vaccination requirements**
  - Adding
  - Prohibiting
- **Reallocating determinations of school entry vaccination requirements from health agencies**
- **Non-medical exemptions for school entry vaccination requirements**
  - Limiting
  - Expanding
- **Expanding provider scopes of practice to include vaccination administration**

# Vaccine Bills Dataset Live on LawAtlas.org now!



## State Bills Relating to Vaccines in Schools and Provider Scopes of Practice

All 50 states and the District of Columbia require vaccinations for school entry. Since the emergence of the COVID-19 vaccine, a debate has emerged around compulsory vaccinations for school-age children and parental rights. In some states, COVID-19 vaccines became the newest battleground for anti-vaccine efforts more broadly, leading to the introduction of bills during the 2023 legislative session seeking to restrict the use of — or expand exemptions to — school requirements. At the same time, state legislatures continued to introduce bills expanding vaccination access by changing the scope of practice for providers like midwives, pharmacists, dentists and dental hygienists, and others to allow them to administer vaccinations.




This longitudinal dataset captures legislation addressing school entry vaccination requirements, non-medical exemptions to school vaccination requirements, the reallocation of authority to determine vaccination requirements for schools, and expansions to provider scope of practice to administer vaccines between January 1, 2023, and May 22, 2023, in all 50 US states and the District of Columbia.

CREATED BY: Center for Public Health Law Research Staff

MAINTAINED BY: Center for Public Health Law Research Staff

VALID FROM: January 1, 2023

UPDATED THROUGH: May 22, 2023

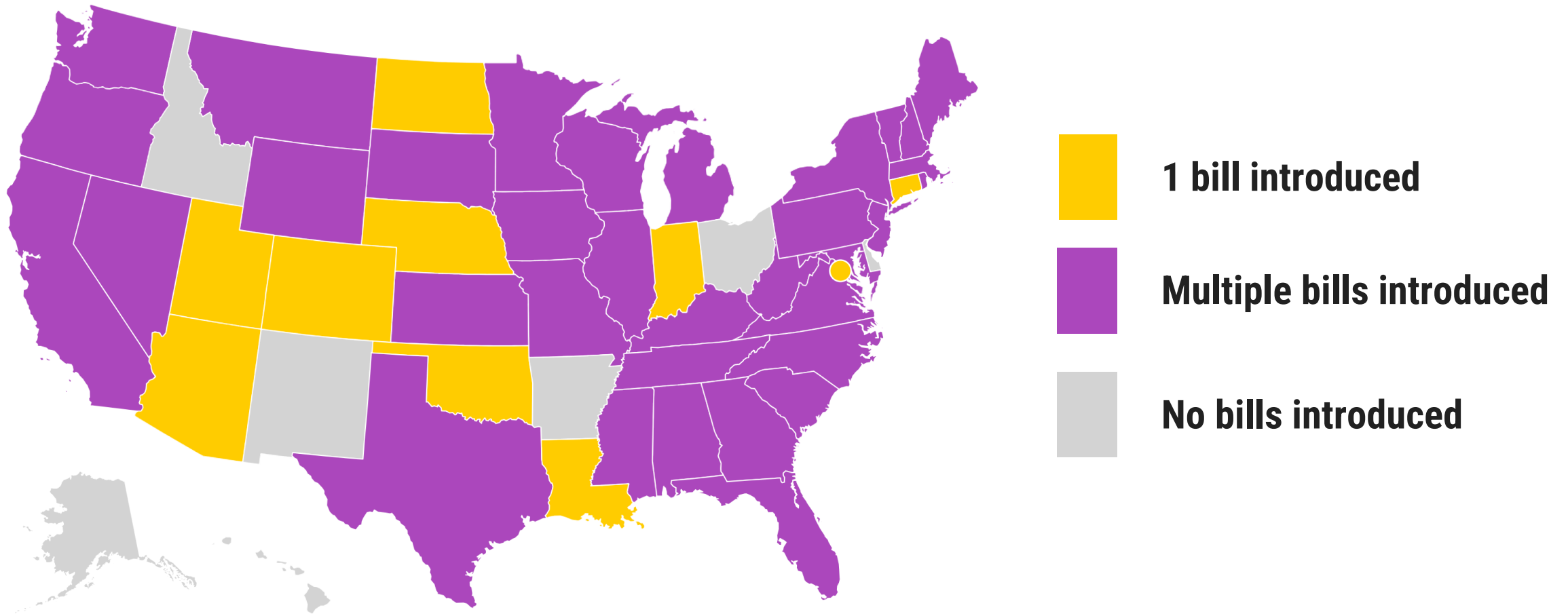
 Data  Codebook  Protocol

 See all related maps

<https://lawatlas.org/datasets/act-for-public-health-vaccine-bills>

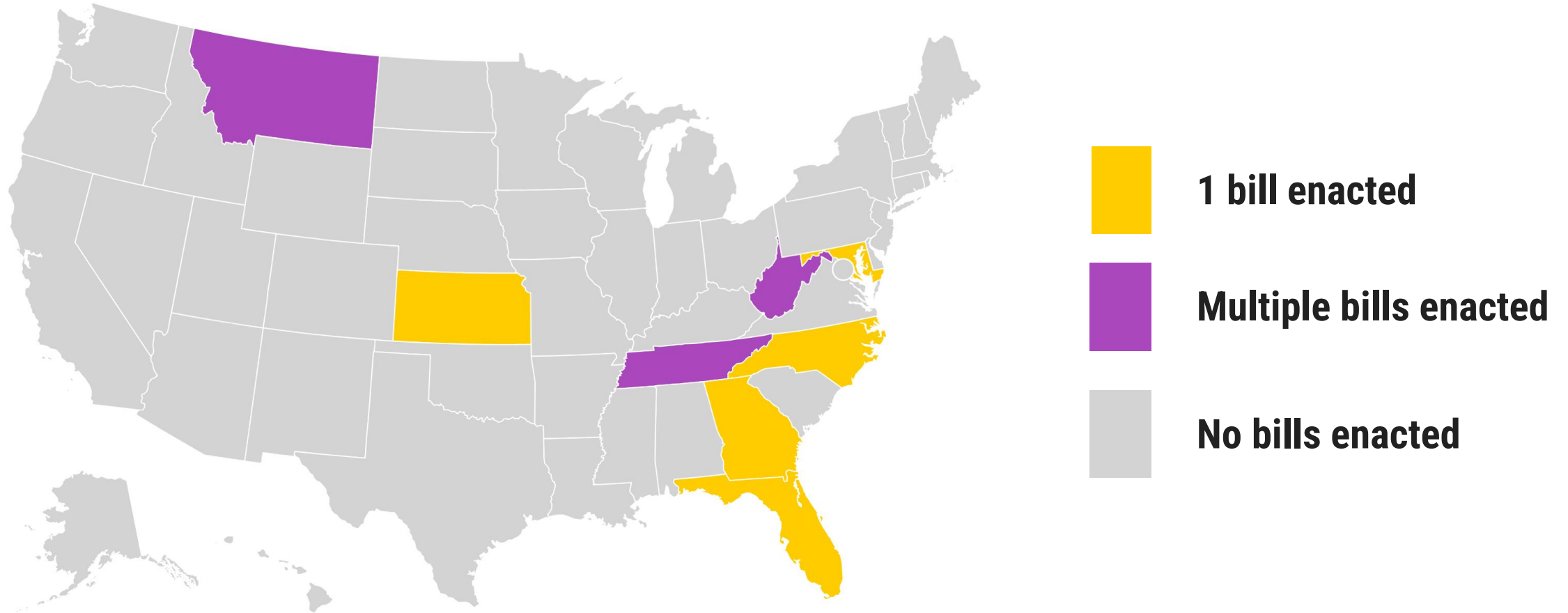
# State Bills Relating to Vaccines in Schools and Provider Scopes of Practice

196 Total Introduced Bills between January 1, 2023 – May 22, 2023



# State Bills Relating to Vaccines in Schools and Provider Scopes of Practice

11 Total Enacted Bills between January 1, 2023 – May 22, 2023

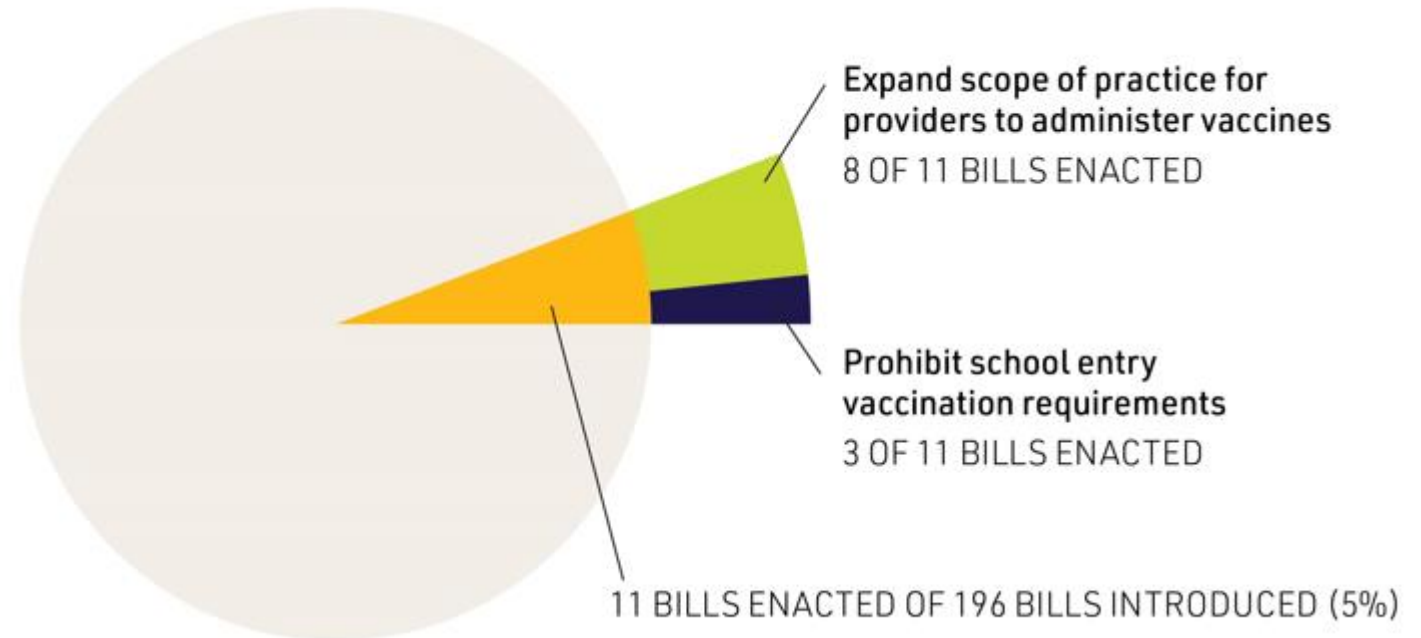




## 196 Total Introduced Bills January 1, 2023 – May 22, 2023

### As of May 22, 2023:

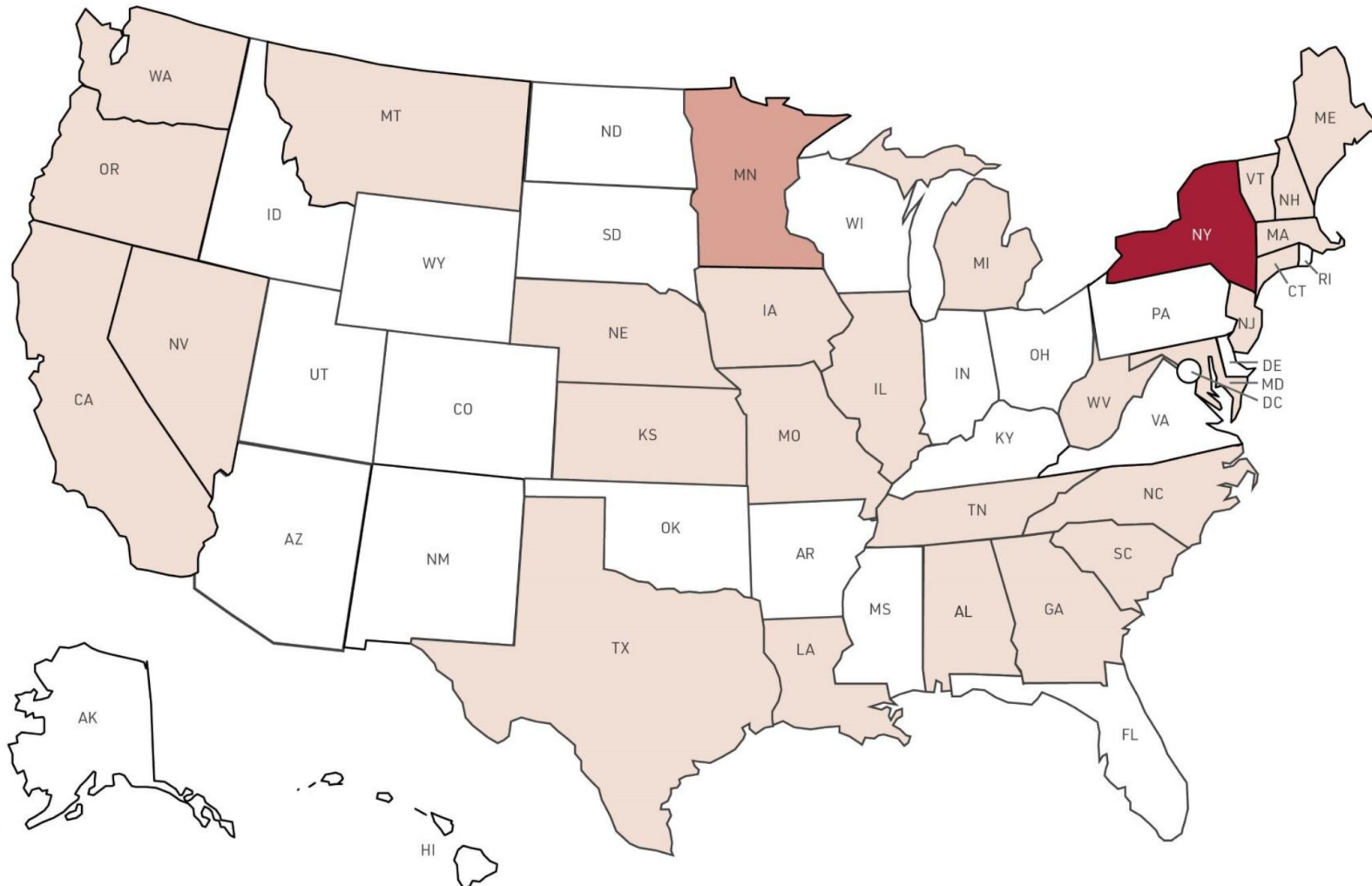
- Total Enacted Bills: 11
  - Expanding SOP: 8
  - Prohibit school vaccine requirements: 3
- Passed First Chamber: 13
- Passed Second Chamber: 5
- Didn't pass either chamber: 167



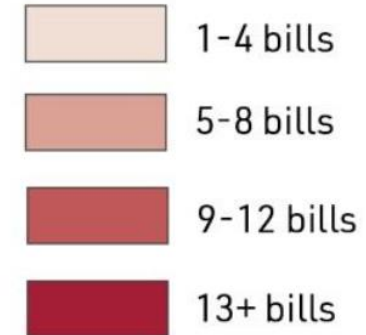
<b>Type of Bill</b>	<b>Introduced</b>	<b>Enacted</b>
<b>Prohibiting school entry requirements</b>	<b>72</b>	<b>3</b>
<b>Expanding non-medical exemptions</b>	<b>47</b>	<b>0</b>
<b>Expanding provider scope of practice for vaccine administration</b>	<b>63</b>	<b>8</b>
<b>Reallocating determination of vaccine requirements</b>	<b>18</b>	<b>0</b>
<b>Adding school entry requirements</b>	<b>10</b>	<b>0</b>
<b>Limiting non-medical exemptions</b>	<b>3</b>	<b>0</b>

# Bills Promoting Vaccination

## Added Vaccination Requirements for School Entry, Limited Non-Medical Exemptions, or Expanded Provider Scopes of Practice to Administer Vaccines

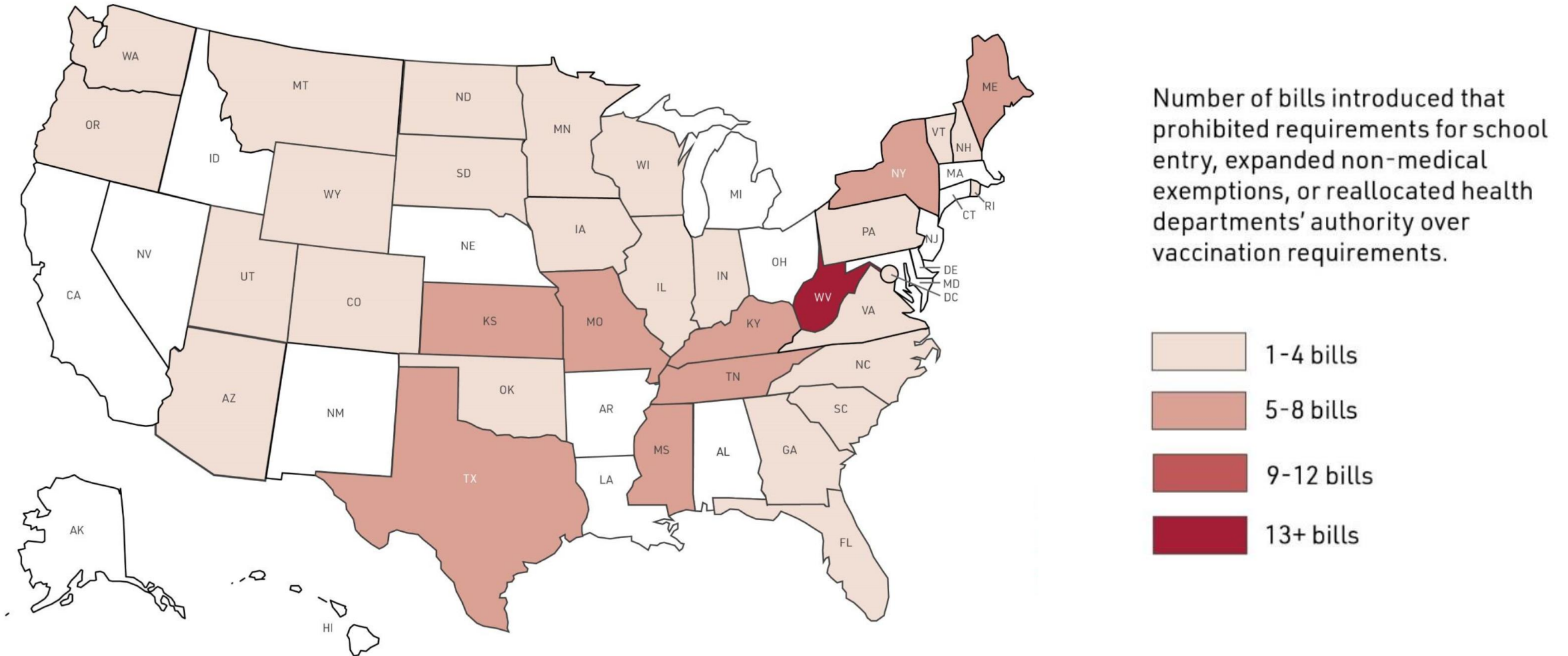


Number of bills introduced that added requirements for school entry, limited non-medical exemptions for vaccination, or expanded the scope of practice for providers to administer vaccines.



# Bills Limiting Vaccination

## Prohibited Vaccination Requirements for School Entry, Expanded Non-Medical Exemptions, or Reallocated Health Agency Control Over Vaccination Requirements



- While attempts to prohibit school entry vaccination requirements or expand non-medical exemptions have been largely unsuccessful, it is not for lack of trying
  - Takes up a lot of effort: time spent countering vaccine-limiting bills means less time available to support vaccine-promoting bills
  - Shifting to broader “parental rights” or “parental freedom” bills
- Still, a few alarming bills . . .
  - MN attempts to increase pharmacist scope of practice authorizing the use of hydroxychloroquine or ivermectin for COVID-19 (HF 1915, SF 1643)
  - ID attempted to make providing or administering an mRNA vaccine to any person or mammal a misdemeanor (ID 154)
- Next steps: updating through October 6, 2023

## Explore the Data & Stay Tuned for Updates!



**Year 1: State Legislation Addressing  
Public Health Emergency Authority,**  
January 1, 2021 – May 20, 2022



**Year 2: State Laws Addressing Public  
Health Emergency Authority,**  
May 21, 2022 – October 6, 2023



**Year 3: State Bills Relating to Vaccines in  
Schools and Provider Scopes of Practice,**  
January 1, 2023 – May 22, 2023

**Elizabeth Platt**

[elizabeth.platt@temple.edu](mailto:elizabeth.platt@temple.edu)

- Access the data at [LawAtlas.org](https://LawAtlas.org)
- Follow us at [@PHLR\\_Temple](https://twitter.com/PHLR_Temple)

# **POST-COVID TRENDS IN PUBLIC HEALTH LITIGATION**

**Wendy E. Parmet**

**Matthews Univ. Distinguished Prof. of Law**

**Northeastern University**

# Roadmap

- COVID Litigation: The Decline of Deference
- Problematic Doctrines from the Pandemic Era
- Where are we now, where are we going?
  - Efforts to Moot Prior Decisions
  - COVID-19 Employer Vaccine Mandates
  - Impact on Childhood Vaccines
- Issues to Watch
- PHLW Spring Convening



# Three Plus Years of Cases

1,237 decisions from March 2020 to December 2022

Common claims from March 2020 to December 2022

- Due process (480 decisions)
- Equal protection (375 decisions)
- Free Exercise (312 decisions)
- Scope of authority (20 decisions by state supreme courts)

# Case Outcomes (as of Dec. 2022)

- **Most decisions in favor of public health authority (over  $\frac{3}{4}$ )**
- **Plaintiffs more likely to win in administrative procedure cases than other types of cases (37 out of 95)**
  - Free Exercise cases – 74 out of 312
  - Due process cases – 66 out of 480
- Significant rulings in favor of plaintiffs
  - *Ala. Assoc. of Realtors v. CDC* (CDC eviction moratorium)
  - *NFIB v. OSHA* (OSHA vaccine mandate)
  - *Health Freedom Defense Fund v. CDC* (transportation mask mandate)
  - *Roman Catholic Diocese v. Cuomo* (restrictions on worship)

# The Decline of Deference

*Jacobson v. Massachusetts* (1905)



*South Bay United Pentecostal Church v. Newsom* (2020)

Chief Justice Roberts, quoting *Jacobson*: "Our Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'"



Throughout pandemic, less and less deference afforded to public health agencies

# Problematic Doctrines from the Pandemic Era

## *Religious Liberty*

- *Tandon v. Newsom*
- *Fulton v. City of Philadelphia*

## *Major Questions Doctrine*

- *NFIB v. OSHA*
- *Alabama Association of Realtors v. CDC*

## *Administrative Procedure*

- Continuing rules might require orders

# Where are we now, where are we going?



## Efforts to Moot Prior Decisions

Officials are seeking to vacate adverse decisions i.e. granting of preliminary injunctions against mandates. Some decisions denying preliminary injunctions also being vacated



Most courts vacating, but some not

Fifth Circuit explicitly refused to vacate prior order for preliminary injunction, stating the government “has not argued, much less shown, that the public interest would be served by vacatur.” *U.S. Navy Seals 1-26 v. Biden*.

# COVID-19 Employer Vaccine Mandates

Usually brought as Title VII religious discrimination claims or ADA violations

*Groff v. DeJoy* (2023): no longer de minimis standard, but higher burden required

The EEOC is now bringing suits on behalf of employers alleging religious discrimination in vaccine mandates

# Impact on Childhood Vaccines

- Since the start of the pandemic, support for childhood vaccine mandates has fallen
- Litigants are now using the COVID cases to challenge childhood vaccine laws
- ***Bosarge v. Edney*, No. 1:22-cv-00233-HSO-BWR (S.D. Miss. Aug. 29, 2023)**
  - If the state offers medical exemptions, they must also provide religious exemptions to not violate Free Exercise
- ***Fox v. Makin*, No. 2:22-cv-00251-GZS (D. Me. Aug. 16, 2023)**
  - Case recently allowed to move forward
  - Argues that Maine's medical exemptions have loopholes, so the state barring all religious exemptions may violate Free Exercise





# Beyond COVID: Litigation Threats to Public Health

## Gun Violence Public Health Order

- New Mexico governor declared a public health emergency in order to ban carrying firearms in public spaces
- Immediately challenged and temporary restraining order issued

## Social Media

- FDA and other agencies asked social media platforms to combat misinformation during pandemic
- Fifth Circuit recently upheld preliminary injunction preventing most of this contact, but Supreme Court has stayed implementation

## FDA and Mifepristone

- Drug approval decisions recently challenged in court
- Fifth Circuit upheld restrictions on mifepristone, an abortion drug, holding FDA did not adequately consider safety in expanding access
- Supreme Court hearing case this term

# Issues to Watch



## Upcoming Supreme Court cases

- *US v. Rahimi* (Second Amendment domestic violence case)
- *Loper Bright Enterprises v. Raimondo* (seeking to overturn *Chevron*)
- *SEC v. Jarkesy* (seeking to invalidate the statutory scheme that empowers the SEC)
- Mifepristone case

## More challenges to childhood vaccine mandates likely

## Fall-out from *Students for Fair Admission*

# Public Health Law Watch Spring Convening

## Goal:

- Start building a legal and judicial strategy to reverse the recent weakening of public health authorities and powers

## When/Where:

- Spring 2024, in Boston, MA

THANK YOU