Caraconference 2023

Transcending Barriers to Ending the HIV Epidemic

September 11–15



caracole

We are Greater Cincinnati's HIV nonprofit devoted to positively changing lives in the fight against HIV/AIDS through:

Prevention

Promoting health and well-being in at-risk communities through evidence-based approaches to prevent disease and reduce the spread of HIV

Housing

Offering a variety of permanent housing support to prevent homelessness and to stabilize individuals living with HIV and their families

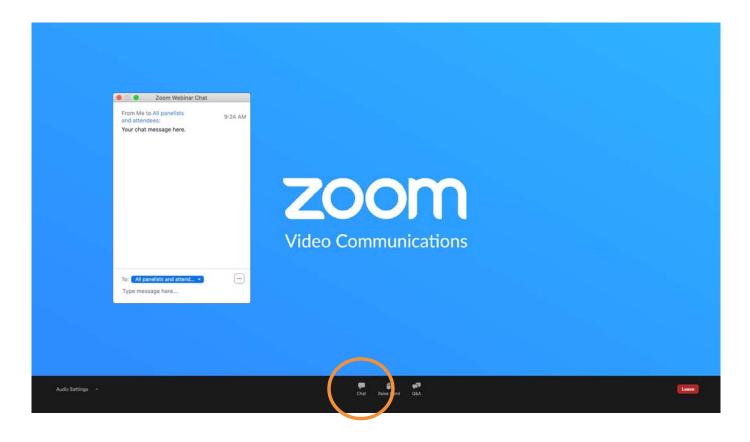
Care

Helping individuals living with HIV access the health care they need through medical case management and pharmacy services

Learn more: caracole.org

How to participate in today's webinar:

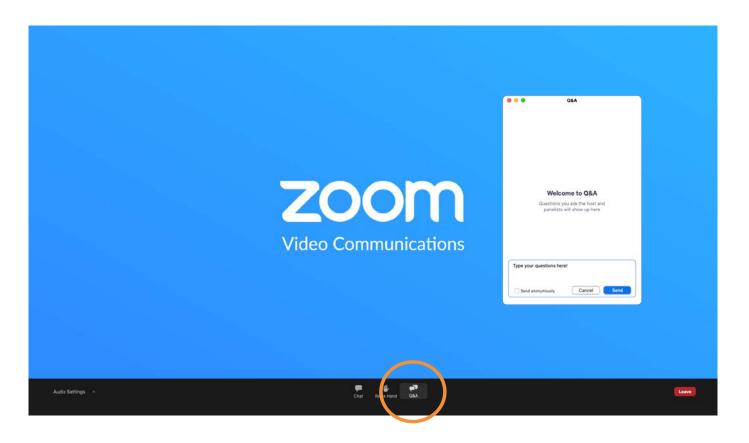
Use "Chat" for technical questions.





How to participate in today's webinar:

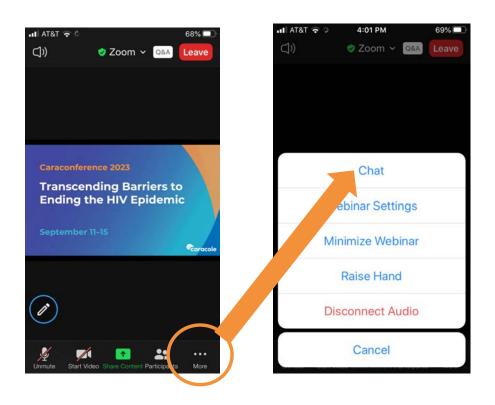
Use "Q&A" for presenter questions.





How to participate in today's webinar:

Use the same options for "Chat" and "Q&A" on your mobile device.







Caraconference 2023

Special thanks!

Presenting Partner



Sponsor



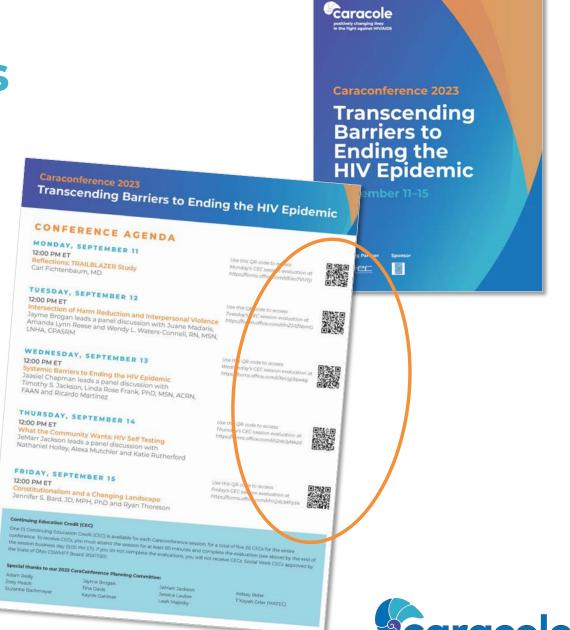


Evaluations and Credits

Evaluations recommended for all attendees

Required for CECs

- Link in program and today's chat
- Must be completed by end of business day (5:00 PM EST) today



MATEC Resources

- National Clinician Consultation Center http://nccc.ucsf.edu/
 - HIV Management
 - Perinatal HIV
 - HIV PrEP
 - HIV PEP line
 - HCV Management
 - Substance Use Management
- AETC National HIV Curriculum <u>https://aidsetc.org/nhc</u>

- AETC National HIV-HCV Curriculum <u>https://aidsetc.org/hivhcv</u>
- Hepatitis C Online https://www.hepatitisc.uw.edu
- AETC National Coordinating Resource Center https://aidsetc.org/
- Additional Trainings <u>https://matec.info</u>



Caraconference 2023 Friday, September 15

Constitutionalism and a Changing Landscape

Moderator: Suzanne Bachmeyer

Presenters: Jennifer S. Bard, JD, MPH, PhD & Ryan Thoreson, JD, DPhil



Friday, September 15

Objectives for Today

- Increase knowledge of the specific role State and Federal courts, laws and policies play in the implementation of public health policies.
- 2. Gain an understanding of the court's changing views on religious beliefs and religious exemptions.
- 3. Increase knowledge on how seemingly unrelated court cases, laws and policies can have a wide-reaching implication for public health.
- 4. Learn how individual rights intersect with State and Federal courts, laws and policies.
- 5. Gain an understanding of what remedies may exist to address such impacts and how the populous may retain some voice and autonomy.



Professors Jennifer S. Bard JD, MPH, Ph.D. and Ryan Thoreson, JD, D.Phil.

University of Cincinnati College of Law





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- Not only does law change so quickly that any static presentation becomes instantly unreliable, We are not a licensed attorney in the state of Ohio and have no intention of providing legal advice.
- If you have a question about the law as it applies in Ohio (or any state), please reach out to a licensed attorney.
- We are lawyers in several states, but we are not "your" lawyer.
- Images & Links in these slides are to the best of our ability valid & from sources that allow them to be shared for educational purposes, but please always check if you intend to use them yourself.









Welcome/Introductions

Jennifer S. Bard

- Professor UC Law & Medical Schools
- Writes & Teaches In Area Of Public Health Law & Constitutional Law
- Medicaid Policy Analyst, AIDS Action Counsel 1993
- Board Member, Planned Parenthood of Lubbock (2006-2010)

Ryan Thoreson

- Assistant Professor, UC Law
- Writes and teaches on Constitutional Law, Law & Sexuality, and Human Rights
- Researcher, LGBT Rights Program at Human Rights Watch (2015-2022)









Starting at the End: How Current

Interpretations
of the U.S.
Constitution
Can Affect
Access to PReP
and other Drugs
that Prevent
HIV/AIDS

The U.S. Constitution creates a balance of power between individual states & the federal government over issues related to health & safety-each has unique abilities to act.

Current Supreme Court's persistent hostility to federal exercise of their power has led to unprecedented nationwide state challenges to federal authority.

Protecting access to HIV Preventive care needs to be part of a broad effort to add legal protection of HIV Prevention Drugs & individual rights at the state and federal level.

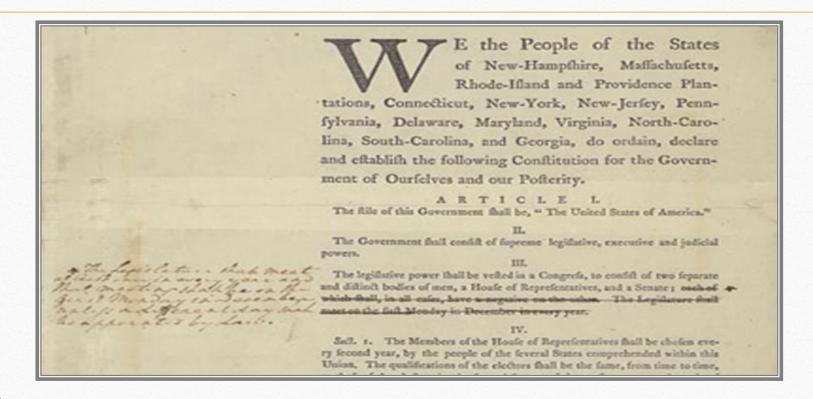








In 1787, after much debate and many drafts the 13 original colonies gave up many but not all of their post-revolution powers in return for the protection of a federal government











The Most Important One They Kept (later documented in the 10th Amendment) Was the Right to Oversee Health & Safety in Their Own State

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"











That leaves individual states with exclusive authority to:

1

License Health Care Workers 2

License
Hospitals,
Clinics, &
Pharmacies

3

Regulate the practice of medicine



Protect Health Care Workers from Malpractice Liability



Regulate Insurance (on issues not taken over yet by the federal government)









How Can States Can Use This Power to Raise or Lower Barriers to Accessing PReP?

Maintain laws that criminalize even potential transmission of HIV (35 states)

Pass laws protecting physicians from liability for refusing to provide care or prescribe medications against their "conscience" (Ohio, South Carolina)

Prohibit insurers in their state from covering ACA services

Impose restrictions on filling prescriptions for PReP (not yet)

Ban HIV Preventive Care (not yet)









The Federal Government's Authority Over Health Care Issues

Protecting Company's Ability to Sell Their Products Nationwide	Offering cash to states and individuals to encourage "healthy" activity	Providing Health Care directly to:
FDA approval of Drugs, Devices, & Vaccines	Sending everyone Covid-19 testing kits	Active duty military
Overseeing shipping & transportation	Subsidizing Medicaid & Funding Medicare	Veterans
Controlling Advertising of FDA approved products	Subsidizing Pharmacies	Those eligible for the Indian Health Service









Braidwood Management v. Becerra: Striking Down Obamacare's Mandate that Employers Cover ALL Preventive Services

5th Circuit Court of Appeals Upheld Texas District Court's decision that employers who offer health care through the Affordable Care Act do not have to pay for PReP because:

- 1. The way HHS established a list of preventive services is beyond their authority and
- 2. It violates their religious beliefs.
- "Defendants do not show a compelling interest in forcing private, religious corporations to cover PReP drugs with no cost-sharing and no religious exemptions,"





Attack on ALL ACA preventive services recommended by the Preventive Services Task Force (PSTF) because they were illegally appointed! (something no one had ever successfully challenged before)

Invalidating ACA Mandate to Cover PReP (or even to cover it with no cost-sharing) will make it financially prohibitive.

Jennifer



What's The Worst That Could Happen With All This Change?

Supreme Court's revisiting of past opinions & increasing concern over federal over-reach could have significant impact on health care delivery.









Could PReP Itself Be Taken Off the Market? Maybe.

5th Circuit has already upheld a challenge to the FDA's approval of Mifepristone which opens the door for challenges to all drugs.





Section 1557 of the Affordable Care Act Prevents Discrimination in Health Care-But the Supreme Court Can Decide What That Means









What Rights Are at Risk?

U.S. Supreme Court has always had the power to revisit any of their past decisions.









What Can Be Done?

Protect individual rights & specific rights to access care

- Pass State Laws
- Amend State Constitution
- Pass Federal Laws
- Amend the Federal Constitution





All of These Federal Funding Programs for PLWAH Are Subject to reductions in funding (Ryan White is now being renewed on just a year by year basis)

Medicare

Medicaid

Obamacare (ACA)

Ryan White





States Can Use This Power To Pass Laws Lower Barriers to Accessing PReP

Lower Barriers

Require Insurers to Cover all ACA recommended preventive services

Allowing Pharmacists to Prescribe PrEP, California SB 7159

Allow prescription to minors without parental permission (CT, Iowa, MD)

<u>Fund</u> comprehensive preventive/testing/treating centers

Make HIV Prevention drugs available over the counter



Jennifer







State Laws & Constitutional Amendments That Can Protect PReP

- Mandate that Medicaid include preventative services identified by the Task Force
- Specifically Mandate inclusion of PrEP
- Prohibit gender based discrimination









Citizens Can Also Strengthen Individual Rights in the U.S. Constitution











First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."











Employment Division v. Smith

"[I]f prohibiting the exercise of religion is... merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended."



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Religious Freedom Restoration Act (RFRA)

- (b) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—
- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.









(Slip Opinion

OCTOBER TERM, 2013

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. 8, 221, 387.

SUPREME COURT OF THE UNITED STATES

BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. v. HOBBY LOBBY STORES, INC.,

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 13-354. Argued March 25, 2014-Decided June 30, 2014*

The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person-(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§2000bb-1(a), (b). As amended by the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), RFRA covers 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief." §2000cc-5(7)(A).

At issue here are regulations promulgated by the Department of Health and Human Services (HHS) under the Patient Protection and Affordable Care Act of 2010 (ACA), which, as relevant here, requires specified employers' group health plans to furnish "preventive care and screenings' for women without 'any cost sharing requirements,' 42 U.S.C. §300gg-13(a)(4). Congress did not specify what types of preventive care must be covered; it authorized the Health Resources and Services Administration, a component of HHS, to decide. Ibid. Nonexempt employers are generally required to provide coverage for the 20 contraceptive methods approved by the Food and Drug Admin-

Burwell v. Hobby Lobby Stores

"There are other ways in which Congress or HHS could equally ensure that every woman has costfree access to the particular contraceptives at issue here and, indeed, to all FDA-approved contraceptives."



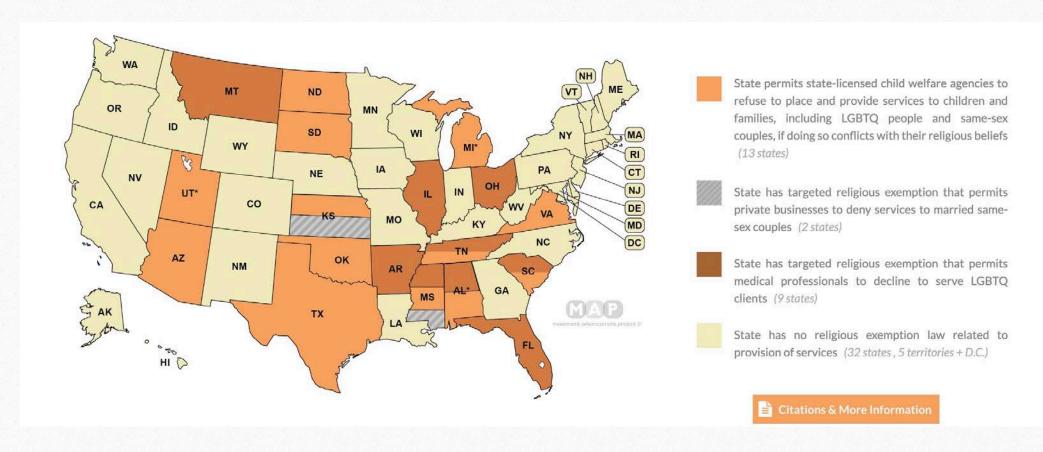


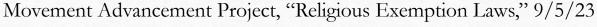
^{*}Together with No. 13-356, Conestoga Wood Specialties Corp. et al. v. Burwell, Secretary of Health and Human Services, et al., on certiorari to the United States Court of Appeals for the Third Circuit.





Religious Exemptions













Real World Impact

If you want the best surgeon, you want the best surgeon, you don't want the second best.

Krista Contreras, reflecting on hersix-day-old child being turned away bya pediatrician, Ferndale, MI, January 18, 2018









Gender Affirming Care



- State has "shield" law protecting access to transgender health care (see this map for more information) (14 states + D.C.)
- State bans best practice medication and surgical care for transgender youth, though ban may not be in effect (see note) (21 states)
- State bans best practice surgical care for transgender youth (1 state)
- State does not ban best practice medical care for transgender youth (28 states, 5 territories + D.C.)
- State ban makes it a felony crime to provide best practice medical care for transgender youth (5 states)
 - State has taken steps to ban or restrict best practice medical care for transgender youth, but state law does not ban this care (see note) (0 states)







Fourteenth Amendment

Equal Protection Clause

Due Process Clause



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Resources for Legal News

- Kaiser Family Foundation: kff.org/womens-health-policy/issue-brief/explaining-litigation-challenging-the-acas-preventive-services-requirements-braidwood-management-inc-v-becerra/
- NAAG: <u>naag.org/issues/public-health/</u>
- NCSL: ncsl.org/ncsl-search-results/searchtext/%20/topics/29/t/1694798163281
- LAMBDA LEGAL:

 lambdalegal.org/newsroom/us_20230330_ll-condemns-ruling-striking-down-insurance-coverage-of-preventative-services/

- ACLU: aclu.org/issues/lgbtq-rights
- ACLU's HIV Docket: <u>aclu.org/court-cases?issue=hiv</u>
- CHLP's HIV Criminalization Tracker: hivlawandpolicy.org/resources/us-hiv-laws-andprosecutorial-tools-chlp-updated-2022
- Movement Advancement Project's Map on Gender-Affirming Care: lgbtmap.org/equality-maps/healthcare/youth-medical-care-bans
- fivefourpod.com
- scotusblog.com
- <u>slate.com/podcasts/amicus</u>











Thank you & Please Ask Questions!

Thank you by Nick Youngson CC BY-SA 3.0 Pix4frec









Questions



