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## Forward Special Edition: “Innovations in Public Health Law: Exploring New Strategies”

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# Foreword

## **Special Edition: “Innovations in Public Health Law: Exploring New Strategies”**

In 2012, faculty and students from the Beazley Institute for Health Law and Policy at the Loyola University Chicago School of Law and the Public Health Law and Policy Program at the Sandra Day O’Connor College of Law at Arizona State University began collaboration on a Special Edition of the *Annals of Health Law* focusing specifically on innovations in public health law and policy. Building on the two programs’ unique strengths, this Special Edition represents our dual programs’ commitment to align in the production of outstanding scholarship to advance the field of public health law.

The diversity of issues addressed in this Special Edition reflects the many challenges underlying the role of law to protect and promote the public’s health nationally and globally. Public health problems transcend legal abstraction. They are immediate and tangible, affecting real people within and across geopolitical borders. Addressing these problems requires consideration of legal, political, ethical, and cultural factors. Implementing solutions involves coordination and cooperation among multiple public and private stakeholders. Articles for this Special Edition were selected in part due to their authors’ careful consideration and explanation of well-reasoned solutions to the significant public health problems they identify.

The first article, *Intervening at the Right Point in the Causal Pathways: Law, Policy, and the Devastating Impact of Pain Across the Globe*, by Daniel S. Goldberg, Assistant Professor, Department of Bioethics & Interdisciplinary Studies, Brody School of Medicine, East Carolina University, addresses the problem of chronic pain experienced by individuals worldwide. Dr. Goldberg acknowledges the importance of the current, dominant approach to reducing pain—increasing access to clinical medical treatments—but observes that this approach has had limited effectiveness in improving pain or reducing inequitable distribution of pain. He argues for law and policy interventions that focus on upstream points in the causal pathway, in particular those social and economic factors that constitute fundamental causes of pain. He also posits the use of fundamental cause theory as a framework for evaluating competing law and policy approaches and employment of resources to eliminate pain.

*In Complementarity in Public Health Systems: Using Redundancy as a Tool of Public Health Governance*, Lance Gable, Associate Dean and Associate Professor of Law, Wayne State University, and Benjamin Mason Meier, Assistant Professor of Global Health Policy, University of North Carolina at Chapel Hill, discuss redundancy in public health governance. Challenging the perception of redundancy as inevitably wasteful and inefficient, they encourage the reframing of some types of redundancy as complementary systems. Complementarity can expand the capacity of public health systems to respond to challenges, promote flexibility and innovation in public policy, advance accountability and transparency in governance, and encourage consistency in public policy and governance across jurisdictional boundaries. In conclusion, the authors emphasize how mitigating the negatives and cultivating the positives of redundancy should be the goals of public health governance.

From the University of Maryland Center for Health and Homeland Security, Clark J. Lee, Senior Law and Policy Analyst (Research Associate), Patrick P. Rose, Senior Policy Analyst, and Earl Stoddard III, Public Health Program Manager, address how to protect the public welfare from the potential harms of scientific research on dangerous biological pathogens, which they term “dangerous research.” In their article, *Enhancing Communication Between Scientists, Government Officials, and the Lay Public: Advancing Science and Protecting the Public’s Welfare Through Better Multi-Stakeholder Interfacing*, they discuss how dangerous research may result in harms to the public from malefactors using research findings to create biological weapons or pathogens being accidentally released into the community. The authors claim that direct communication between the scientists conducting the research, the government,

and those at risk may best insulate the public from these potential harms. The authors further argue that such communication is strengthened when supported by law and grounded in public policy, providing examples of the adoption of community involvement via state and local policy and legislative efforts.

The fourth article, *Making a Positive Impact: Striking a Balance Between Legislative Reach and Road Safety*, highlights the problem of death and injury from road traffic crashes globally, especially in developing countries. Global momentum for curbing traffic death and injury culminated in the World Health Organization (“WHO”) declaring 2011-2020 to be the Decade of Action for Road Safety, as well as the identification of legislative instruments as a key mechanism for reducing these harms. Authors Diana M. Bowman, Assistant Professor, University of Michigan School of Public Health, Michael P. Fitzharris, Senior Research Fellow, Accident Research Centre, Monash University (Australia), and Ray Bingham, Research Professor, University of Michigan Transportation Research Institute and School of Public Health, propose a global framework convention under the WHO’s treaty-making powers that balances civil liberties and public safety to reduce death and injury due to road traffic crashes after 2020.

Rachel L. Hulkower, J.D., and Leslie E. Wolf, J.D., M.P.H., Professor of Law, at Georgia State University’s College of Law, jointly penned their piece, *Federal Funds for Syringe Exchange Programs: A Necessary Component Toward Achieving an AIDS-Free Generation*. They describe how the federal government has declared the goal of an AIDS-free generation a “policy imperative” yet still bans the use of federal funds for needle and syringe exchange programs (“SEPs”), thereby also discouraging state and local support for such programs. SEPs are known to significantly reduce the spread of HIV/AIDS among injecting drug users. The authors argue that express funding for SEPs would supply stable financing and serve as an endorsement of such programs to the states, encouraging further support of SEPs through alterations in drug paraphernalia laws that currently inhibit SEPs.

John O. Spengler, Professor, College of Health and Human Performance, University of Florida, Natasha Frost, Staff Attorney, Public Health Law Center, William Mitchell College of Law, Daniel P. Connaughton, Professor, College of Health and Human Performance, University of Florida, and J. David Prince, Professor of Law, William Mitchell College of Law, discusses the need for schools to share recreational facilities with the outside community to help address rising rates of communal obesity. In their article, *Clarifying Liability for After-Hours Community Use of School Recreational Facilities*, the authors advocate adoption of state legislative instruments to address potential liability issues that may otherwise discourage schools from sharing these facilities. They also provide policy guidance in the form of sample legislation developed by the American Heart Association and the Public Health Law Center to reduce barriers to shared use.

Finally, in *Local Governments and the Food System: Innovative Approaches to Public Health Law and Policy*, Lainie Rutkow, Assistant Professor and Assistant Director, Center for Law and the Public’s Health, Johns Hopkins Bloomberg School of Public Health, Jennifer L. Pomeranz, Director of Legal Initiatives, Rudd Center for Food Policy & Obesity, Yale University, and Sarah O. Rodman, Pre-Doctoral Fellow, Center for a Livable Future, Johns Hopkins Bloomberg School of Public Health, discuss the role of the law in creating a healthier, more sustainable food system. Local governments can serve as policy innovators whose advances can influence national policy. Understanding local governments’ challenges and successes in regulating food systems is critical to realizing improvements nationally. The authors examine two primary types of legal challenges to local regulations, specifically First Amendment commercial speech and federal preemption challenges, and then strategize how local governments can address these challenges to advance underlying public health objectives.

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