

The Year in Review

Volume 54 *International Legal Developments*
Year in Review: 2019

Article 26

February 2024

Life Sciences & Health Law

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Recommended Citation

Carly M. Toepke et al., *Life Sciences & Health Law*, 54 ABA/SIL YIR 407 (2024)

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Life Sciences & Health Law

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This article examines selected international legal developments relating to life sciences and health law in 2019.

I. Africa

A. DISABILITY & THE LAW

In Nigeria, the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 was signed in January 2019.² This positive action provides that a person with a disability “shall not be discriminated against on the ground of his disability by any person or institution in any manner or circumstance whatsoever.”³ The act requires physical accessibility; awareness raising programs; non-discrimination in goods, services, and facilities; an unfettered right to an inclusive education without discrimination or segregation; participation in politics and social life; and other protections including anti-exploitation policies for people with disabilities.⁴ Nigeria ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2007 and the CRPD Optional Protocol in 2010.⁵ This act helps align Nigeria to its responsibilities under the CRPD.⁶

B. TRADE

With the African Continental Free Trade Agreement in force, the African Continental Free Trade Area has been officially established as of 2019.⁷ Fifty-four of the fifty-five African Union states have signed this agreement,

1. Contributors to the 2019 YIR Life Sciences and Health Law Committee are: Andrew J. Bayne (Bayne Law), Gerald P. Schneeweis (Clark Hill LLP), and Carly M. Toepke, editor (University of Texas School of Law).

2. *Discrimination Against Persons with Disabilities Prohibition Act, 2018 – Overview and Impact*, OLANIWUN AJAYI LP (Mar. 4, 2019), <http://www.olaniwunajayi.net/blog/discrimination-against-persons-with-disabilities-prohibition-act-2018-overview-and-impact/>.

3. Discrimination Against Persons with Disabilities (Prohibition) Act (2018) (Nigeria).

4. *Id.*

5. Multilateral Treaties Deposited with the Secretary-General, U.N., N.Y. (ST/LEG/SER.E), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en on (Feb. 27, 2020) [hereinafter CRPD Signature Status].

6. Anietie Ewang, *Nigeria Passes Disability Rights Law*, HUM. RTS. WATCH (Jan. 25, 2019), <https://www.hrw.org/news/2019/01/25/nigeria-passes-disability-rights-law#>.

7. Andrew Meldrum, *African leaders to launch continent-wide free trade zone*, ASSOCIATED PRESS (July 7, 2019), <https://www.apnews.com/e5ab779ada5e40c2a2ae782f844e519a>.

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which removes the tariffs from most goods in hopes of boosting trade and development.⁸ Although many positive outcomes can come out of a free-trade zone, some hypothesize that the increased trade will bring the

weakening of government-funded public-health systems, increasingly unequal access to care, a medical brain drain [including medical personnel moving from poorer to higher richer countries], higher drug prices [similar to what happened after the Central America Free Trade Agreement was ratified], increased consumption of unhealthy products, and the spread of diseases.⁹

On the other hand, many contend the agreement will positively allow people to access government-funded health services in other member countries.¹⁰ Additionally, there are worries that, because “trade is important to a lot of African economies” and this Free Trade Agreement will expand trade, the lack of food safety standards across borders will cause foodborne illnesses.¹¹

The World Health Organization estimated that ninety-one million people get sick and 137,000 die because of foodborne illness every year in Africa.¹² This statistic comprises one third of the global death toll for foodborne diseases.¹³ The issue lies in the informal market regulations that fail to meet international standards (such as the U.S. FDA).¹⁴ Although these types of regulations are those used by most Africans, the African governments do not have the resources “to effectively regulate food safety risks.”¹⁵ But recently, the African Union Commission has discussed plans to create a continent-wide food safety authority meant to undertake this task.¹⁶ As of this writing, the creation of this authority is still ongoing.

An investment in health is a focus in Africa.¹⁷ This was confirmed in 2001 when African Union members “pledged to dedicate at least 15 [percent] of

8. *Id.*

9. Walter Ochieng, *Will Free Trade Make Africans Sick?*, PROJECT SYNDICATE (April 27, 2019), <https://www.project-syndicate.org/commentary/africa-free-trade-agreement-health-risks-by-walter-ochieng-2019-04?barrier=accesspaylog>.

10. *Id.*

11. Tim McDonnell, *A Fatal Public Health Problem In Africa That Flies Under The Radar*, NPR (Feb. 21, 2019), <https://www.npr.org/sections/goatsandsoda/2019/02/21/696385246/a-fatal-public-health-problem-in-africa-that-flies-under-the-radar>.

12. *WHO's first ever global estimates of foodborne diseases find children under 5 account for almost one third of deaths*, WHO (Dec. 3, 2015), <https://www.who.int/news-room/detail/03-12-2015-who-s-first-ever-global-estimates-of-foodborne-diseases-find-children-under-5-account-for-almost-one-third-of-deaths>.

13. *Id.*

14. McDonnell, *supra* note 11.

15. *Id.*

16. U.S.D.A. FOREIGN AGRICULTURAL SERVICE, GAIN REP. NO. ET1502, AFRICA CONTEMPLATES ESTABLISHING CONTINENTAL FOOD SAFETY BODY (Feb. 26, 2015).

17. *Agriculture and Food Security*, AFRICAN UNION, <https://au.int/en/directorates/agriculture-and-food-security> (last visited Feb. 29, 2020).

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their annual budgets to public health.”¹⁸ Only three members have met this goal by 2019, but twenty-nine have increased their total spending on health.¹⁹ Yet, with the new issues of open trade and the possibilities of food traveling over longer distances without safety regulations, chronic hunger and an increase in noncommunicable diseases related to obesity will cause current resources dedicated to health to be utilized even more rapidly.²⁰

II. Asia

A. HEALTH POLICIES

Research has shown that a health policy in China used language derived directly from the Coca-Cola company policy.²¹ Moreover, this research showed that the policy was in alignment with Coca-Cola’s corporate interest.²² Namely, the policy dictated that increased physical activity is the best way to avoid obesity without any mention of nutrition being a contributing factor in obesity.²³ After these findings surfaced, Coca-Cola responded by confirming that it would stop providing “the bulk of funding for scientific studies [and] introduce new sugar-free products in China to combat obesity.”²⁴

B. TRADE, HEALTH & CLIMATE IMPACTS

The Belt and Road Initiative gained more interest in 2019.²⁵ This trade scheme initiative was first proposed in 2013 and implemented in 2017.²⁶ It “aim[ed] to connect the Asia-Pacific [and] European Economic Area[s]” through national development strategies and efforts for global health and

18. Paul Kagame & Bill Gates, *African Investments In Health Critical To Continent’s Economic Future*, CNN (Mar. 25, 2019) <https://www.cnn.com/2019/03/22/opinions/african-health-key-economic-growth-paul-kagame-bill-gates/index.html?no-st=1553513256>.

19. *Id.*

20. See Kasumi Iwase, *Obesity Is Now Africa’s Health Care Crisis, Too*, BLOOMBERG (Mar. 19, 2019), <https://www.bloomberg.com/opinion/articles/2019-03-19/obesity-is-now-africa-s-health-care-crisis-too>.

21. See Kasumi Iwase, *Obesity Is Now Africa’s Health Care Crisis, Too*, BLOOMBERG (Mar. 19, 2019), <https://www.bloomberg.com/opinion/articles/2019-03-19/obesity-is-now-africa-s-health-care-crisis-too>.

22. Peter Reuell, *Researcher finds Coke’s fingerprints on health policy in China*, HARV. GAZETTE (Jan. 10, 2019), <https://news.harvard.edu/gazette/story/2019/01/harvard-research-reveals-cokes-fingerprints-on-health-policy-in-china/>.

23. *Id.*

24. *Id.*

25. Andrew Chatzky & James McBride, *China’s Massive Belt and Road Initiative*, COUNCIL ON FOREIGN REL. (Jan. 28, 2020), <https://www.cfr.org/background/chinas-massive-belt-and-road-initiative>. This is also known as the Silk Road Economic Belt and the 21st-century Maritime Silk Road (丝绸之路经济带和21世纪海上丝绸之路) or “One Belt, One Road” (OBOR) (一带一路); Peng Jia & Youfa Wang, *Global health efforts and opportunities related to the Belt and Road Initiative*, 7 LANCET GLOB. HEALTH 703, 703 (2019).

26. Jia & Wang, *supra* note 25, at 703.

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wellness.²⁷ Topics at the center of the health and wellness efforts have focused on “non-communicable diseases (NCDs), childhood obesity, healthy life expectancy, health care accessibility, and environmental health issues in the Belt and Road countries.”²⁸ Both UNICEF and WHO have taken part in discussing these concerns.²⁹ Further studies are planned to continue discovering health outcomes across Belt and Road countries.³⁰

The Belt and Road trade initiative also extends to different economic facets, including energy. Energy production has effects on all areas of life, including health. There has been some speculation as to whether the participating countries in the initiative will help or hurt the Paris Agreement’s carbon objectives that China agreed to.³¹ The initiative “overwhelmingly support[s] fossil fuels infrastructure while giving short shrift to renewables and low-carbon technology.”³² China remains the “largest greenhouse gas emitter”—even though it has pledged under the Paris Agreement to stop growing emissions by 2030.³³ But the Belt and Road initiative may shift this growth to the other 152 nations involved, impacting climate and environmental damage.³⁴ Some countries are even turning away from involvement with Chinese investors due to this impact.³⁵ One suggestion has been for China to shift its investments to align with the United Nations’ Sustainable Development Goals and the Paris Agreement.³⁶ Although the Belt and Road is about trade and economic development—not climate—China’s government has made it clear that it has “long-term interests” in developing clean energy development.³⁷

III. Australia

The new Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) “creates a framework for Australia and Indonesia to unlock the vast potential of the bilateral economic partnership, fostering

27. Ruwei Hu, Ruqing Liu, & Nan Hu, *China’s Belt and Road Initiative from a global health perspective*, 5 LANCET GLOB. HEALTH 752, 752 (2017).

28. Jia & Wang, *supra* note 25, at 704.

29. *Id.* at 703.

30. *Id.* at 704.

31. Jean Chemnick, *To Cut Emissions, China’s Global Infrastructure Plan May Need a Greener Path*, E&E NEWS (Apr. 26, 2019), <http://sciencenewssite.com/to-cut-emissions-chinas-global-infrastructure-plan-may-need-a-greener-path/>; UNFCCC Secretariat, Paris Agreement – List of Representatives to High-Level Signature Ceremony, (Oct. 27, 2017), <https://unfccc.int/sites/default/files/list-of-representatives-to-high-level-signature-ceremony.pdf>; *see generally* Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

32. Chemnick, *supra* note 31.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*; *see generally* G.A. Res. 70/1, Transforming our world: the 2030 Agenda for Sustainable Development (Oct. 21, 2015); Paris Agreement, *supra* note 31.

37. Chemnick, *supra* note 31.

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economic cooperation between business, communities and individuals.”³⁸ With this framework, the IA-CEPA “preserves the government’s right to regulate in the public interest” and excludes claims based on certain public health measures.³⁹ The policy will remain flexible in areas such as public health, prescription drugs, medical services, and any agencies dealing with therapeutic goods.⁴⁰ Australia and Indonesia mutually decided to further cooperation in the health sector by working on “Health Professional Standards and competitiveness in the health sector.”⁴¹ Therefore, this agreement is expected to help the health and age-care sectors benefit and thrive.⁴²

IV. Europe

A. DISABILITY & THE LAW

A new housing law in France called the Evolution of Housing, Development, and Digital Law (ELAN Law) may have a discriminatory effect against people with disabilities.⁴³ Although the main objective of the ELAN Law is seemingly to make construction and renovations of houses more efficient, one of the side effects is that article 18 may reduce the number of accessible new homes for people with disabilities.⁴⁴ While the 2005 Disability Act required that all new buildings be made accessible,⁴⁵

38. *Indonesia-Australia Comprehensive Economic Partnership Agreement*, AUSTRAL. GOVT. DEPT. OF FOREIGN AFF. AND TRADE, <https://dfat.gov.au/trade/agreements/not-yet-in-force/iacepa/pages/indonesia-australia-comprehensive-economic-partnership-agreement.aspx> (last visited Feb. 27, 2020).

39. Caroline Simson, *Aussie Trade Pact Doesn't Nix Old Arbitration Clause: Group*, LAW 360 (Apr. 19, 2019, 6:35 PM), <https://www.law360.com/articles/1149092/aussie-trade-pact-doesn-t-nix-old-arbitration-clause-group>.

40. *IA-CEPA – Key Outcomes for Australia*, AUSTRAL. GOVT. DEPT. OF FOREIGN AFF. AND TRADE, <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/iacepa/Pages/ia-cepa-key-outcomes-for-australia.aspx> (last visited Feb. 27, 2020).

41. Letter from Senator the Hon. Simon Birmingham to the Hon. Mr. Enggartiasto Lukita (March 4, 2019), <https://dfat.gov.au/trade/agreements/not-yet-in-force/iacepa/iacepa-text/Documents/iacepa-side-letter-improving-health-professional-stand>.

42. *IA-CEPA-A Win for business*, ASIALINK BUS. (Feb. 10, 2020), <https://asialinkbusiness.com.au/news-media/ia-cepa-a-win-for-business>.

43. Tien Tran, *The enemy in the home – housing for the disabled in France*, EQUAL TIMES (Feb. 15, 2019), <https://www.equaltimes.org/the-enemy-in-the-home-housing-for#.XlhXOxNKi00>; see generally Loi n° 2018-1021 du 23 novembre 2018 portant évolution du logement, de l'aménagement et du numérique [Law 2018-1021 of November 23, 2018 on the Evolution of Housing, Development, and Digital], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Nov. 23, 2018, art. 18 [hereinafter ELAN Law].

44. Tran, *supra* note 43; see generally ELAN Law, *supra* note 43, art. 18.

45. See Loi 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées [Law 2005-102 of Feb. 11, 2005 on the focus of granting equal rights, opportunities, participation and citizenship to individuals with disabilities], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Feb. 11, 2005, arts. 41 – 54.

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article 18 of the ELAN Law brings this down to twenty percent instead of all.⁴⁶ The other eighty percent only have to be adaptable—meaning that they could be adapted for accessibility if needed.⁴⁷ This change could lead to potential discrimination against new tenants with disabilities, as landlords could choose not to rent to these tenants in order to avoid extra work and costs to adapt the home.⁴⁸ Losing equal access to housing choices affects the lives and health of people with disabilities and could violate the CRPD, which France ratified in 2010.⁴⁹ Namely, article 28 of the CRPD requires that people with disabilities have the right to housing on an equal basis with others.⁵⁰

The Federal Constitutional Court in Germany aligned itself with the CRPD by ruling that people with disabilities—even under full time care and those with mental disabilities—have their right to vote protected in EU elections.⁵¹ This case found section 13, no. 2 of the Federal Elections Act⁵² which prohibited those under full guardianship and those in criminal psychiatric hospitals from voting, unconstitutional.⁵³ The court found that “the interference with the right to equality is not minor, given that, due to their exclusion from voting rights, the persons concerned are permanently deprived of the most noble right conferred on citizens in a democratic state.”⁵⁴ Having a secured right to vote on policies that affect their rights—including health-related policies—enabled people with disabilities to have their voices heard.

An estimated “90,000 people in Poland are unable to vote because of accessibility issues.”⁵⁵ There are technical barriers, absence of sign language interpretation, inability to be assisted by persons of their choosing, and a deprivation of right to vote for persons with intellectual disabilities.⁵⁶ This lack of access is in direct contradiction to Poland’s responsibilities under the

46. ELAN Law, *supra* note 43, art. 18.

47. Tran, *supra* note 43.

48. *Id.*

49. CRPD Signature Status, *supra* note 5.

50. G.A. Res. 61/106, annex I, Convention on the Rights of Persons with Disabilities, art. 28 (Jan. 24, 2007) [hereinafter CRPD].

51. BVerfG, 2 BvC 62/14, Feb. 21, 2019, ¶¶ 70–74, https://www.bundesverfassungsgericht.de/e/cs20190129_2bvc006214en.html (Ger.).

52. Bundeswahlgesetz [BWahlG] [Federal Election Law], May 7, 1956, BGBL I at 383, repromulgated July 23, 1993, BGBL II at 1288, 1594, last amended by Gesetz [G], Nov. 15, 1996, BGBL I at 1712, art. 13 (Ger.), <https://germanlawarchive.iuscomp.org/?p=228>.

53. 2 BvC 62/14, *supra* note 51, ¶ 83.

54. Press Release No. 13/2019, Exclusion from voting rights of persons placed under full guardianship and of offenders confined in a psychiatric hospital based on exemption from criminal responsibility is unconstitutional (Feb. 21, 2019), <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2019/bvg19-013.html>.

55. Martin Banks, *Marek Plura: Make voting accessible for disabled people*, PARLIAMENT MAG. (Feb. 2, 2019), <https://www.theparliamentmagazine.eu/articles/news/marek-plura-make-voting-accessible-disabled-people>.

56. *Id.*

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CRPD, which it ratified in 2012.⁵⁷ States have to guarantee that people with disabilities can exercise and enjoy their political rights on an equal basis with others and ensure that they can effectively and fully participate directly or through freely chosen representatives, including the right to vote.⁵⁸ These continued barriers to political rights—including voting—are affecting other areas of life for people with disabilities.

V. Latin America

A. ABORTION

Illegal abortion continues to be a problem in Argentina. Since the Argentine senate rejected the bill to legalize abortion in 2018, by only seven votes, issues with even the very limited cases of legal abortion have continued to arise.⁵⁹ Abortion is banned and punishable in Argentina except in the case of rape, incest, or danger to a woman's life.⁶⁰ Even in those limited cases, there are many instances where minors who have survived rape are refused abortions and forced to give live birth instead of a legal abortion.⁶¹ This results because many doctors will not perform abortions based on their own religion or their inexperience with the procedure.⁶²

The Supreme Court of Justice in Mexico published a groundbreaking decision finding that guardianship of people with disabilities, which can strip away legal capacity and decision-making abilities, is unconstitutional and contrary to the CRPD and article 1 of the Mexican Constitution.⁶³ Mexico ratified the CRPD in 2007.⁶⁴ In this Supreme Court case, "Ernesto," a 50-year-old Mexican citizen with an intellectual disability, had been denied the ability to make decisions his entire life because he was under guardianship.⁶⁵ The Mexican Supreme Court integrated the CRPD into its decision on

57. CRPD Signature Status, *supra* note 5.

58. CRPD, *supra* note 50, art. 29.

59. *Argentina abortion: Crowds gather to back pro-choice bill*, BBC NEWS (May 29, 2019), <https://www.bbc.com/news/world-latin-america-48444884>.

60. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE], Ley 11.179 (T.O. 1984 updated), art. 86, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/textact.htm#15>.

61. Allison Herrera, *Legal abortions remain elusive in Argentina, especially for the most vulnerable*, PRI (Mar. 22, 2019), <https://www.pri.org/stories/2019-03-22/legal-abortions-remain-elusive-argentina-especialmente-los-mas-vulnerables>.

62. *Id.*; Uki Goñi, *Thousands' of young girls denied abortion after rape in Argentina*, GUARDIAN (Mar. 5, 2019), <https://www.theguardian.com/global-development/2019/mar/05/thousands-young-girls-denied-abortion-argentina>.

63. CRPD, *supra* note 50, art. 12 (ensuring that people with disabilities have right to recognition before the law and are given support and protection for their right to legal capacity); Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014 (Mex.).

64. CRPD Signature Status, *supra* note 5.

65. Carlos Ríos Espinosa, *En camino a liberarse de la interdicción en México*, HUM. RTS. WATCH (Mar. 15, 2019), <https://www.hrw.org/es/news/2019/03/15/en-camino-liberarse-de-la-interdicion-en-mexico>.

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multiple occasions and specifically confirmed nearly all the CRPD's article 12 provisions on legal capacity.⁶⁶ Specifically, the Supreme Court held that both autonomy and decision-making are intertwined, are stemming from civil law, are human rights, and are integral for making decisions in legal life.⁶⁷ The Court noted that the fact that a person has an ability or disability should not be a reason to deny that person their legal capacity or any other naturally given human right.⁶⁸ The Court stressed that the right to legal capacity is not a matter of intelligence or whether the decisions being made are intelligent ones.⁶⁹ Instead, decision-making and legal capacity for all people are core elements of the legal system.⁷⁰

VI. United Kingdom

A. ABORTION

In a landmark decision, the Belfast High Court in Northern Ireland ruled that the country's abortion law violated the United Kingdom's human rights law.⁷¹ The 1967 Abortion Act, which opened up the United Kingdom's abortion regulations, was never applied to Northern Ireland.⁷² Therefore, abortion was only permitted if a woman's life was at risk or if there was a risk of permanent and serious damage to a woman's mental or physical health.⁷³ This case follows the 2018 United Kingdom Supreme Court decision where five of the seven justices ruled that Northern Ireland's abortion law breached human rights obligations of the United Kingdom.⁷⁴ In 2018, that court was unable to issue a formal declaration based on a legal technicality.⁷⁵ But Amnesty International, along with Sarah Ewart, filed another case and brought it to the Belfast High Court with success this year.⁷⁶

B. DISABILITY & THE LAW

In 2009, the United Kingdom joined the international community in ratifying the CRPD.⁷⁷ As part of this treaty, access to education for people

66. Personas con discapacidad. el déficit de la capacidad mental no debe utilizarse como justificación para negar su capacidad jurídica, Primera Sala de la Supreme Corte de Justicia [SCJN], Semario Judicial de la Federación y su Gaceta, Décima Época, tomo II, Mayo de 2019, Tesis 1a. XLII/2019 (10a.), p. 1258 (Mex.).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *In re Sarah Jane Ewart* [2019] NIQB 88 [63] (N. Ir.).

72. Abortion Act 1967, c. 87, § 7(3) (Eng.).

73. *Id.* § 1(1).

74. *In re N. Ir. Hum. Rts. Comm'n* [2018] UKSC 27, [2] (appeal taken from N. Ir.).

75. [2018] UKSC 27 at [3].

76. [2019] NIQB 88 at [4].

77. CRPD Signature Status, *supra* note 5.

with disabilities was one of the guarantees.⁷⁸ The UK has worked to meet this goal through reforms and deconstructing barriers to access.⁷⁹ This includes the Disabled Students' Allowances (DSAs), which are grants to help with extra educational costs incurred as a direct result of a student's disability.⁸⁰ This year, the UK Department for Education reported that "where support was provided from DSAs . . . it was positively received."⁸¹ The report further discussed findings that DSAs "positively impact[ed] [the students'] confidence about completing and passing their courses based on the positive impact the DSAs had on their learning experience[s]."⁸² Although there was positive feedback, the report ultimately concluded that more outreach was needed to inform potential users of DSAs and their benefits and to have a greater impact on potential students with disabilities in accessing higher education.⁸³

VII. United States

A. ABORTION & CONTRACEPTIVE CONTROVERSY

Class certification was granted to a class of unaccompanied pregnant minors claiming the unconstitutionality of a policy barring unaccompanied alien minors from obtaining a pre-viability abortion.⁸⁴ This policy had functioned as an "across-the-board ban on access to abortion," including in instances of rape.⁸⁵ This policy only applied to minors—whereas, pregnant adults were not banned.⁸⁶ The court here confirmed class certification and upheld a preliminary injunction enjoining obstructions to abortion access.⁸⁷

In early 2019, President Trump aimed to allow companies who had a religious or moral objection to contraceptives to opt out of the Affordable Care Act's requirements that they offer free contraception coverage in their employee health plans.⁸⁸ Although religious organizations are already exempted, this change proposed by the White House would broaden the

78. *Id.*

79. Chris Skidmore, *Universities can do more to support their disabled students*, *GUARDIAN* (Jan. 17, 2019), <https://www.theguardian.com/education/2019/jan/17/universities-can-do-more-to-support-their-disabled-students>.

80. *Help if you're a student with a learning difficulty, health problem or disability*, *GOV.UK*, <https://www.gov.uk/disabled-students-allowances-dsas> (last visited Feb. 28, 2020).

81. Claire Johnson et al., *Evaluation of disabled students' allowances Research Report 66* (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770546/Evaluation_of_DSAs_Report_IFF.pdf.

82. *Id.* at 85.

83. *Id.* at 95.

84. *J.D. v. Azar*, 925 F.3d 1291, 1300 (D.C. Cir. 2019).

85. *Id.*

86. *Id.* at 1299–1300, 1303 (stating that abortion had to first be approved by the ORR Director, but the Director Scott Lloyd denied every subsequent request).

87. *Id.* at 1299.

88. *Pa. v. President United States*, 888 F.3d 52, 56 (3rd Cir. 2018).

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scope to allow more employers to deny this coverage.⁸⁹ In January 2019, this plan was blocked by a preliminary injunction against this exemption—limited to the thirteen states that sued.⁹⁰ But in June 2019, the Northern District of Texas issued a permanent injunction against ACA’s contraceptive mandate—determining that it violated the Religious Freedom Restoration Act and cannot be enforced by the federal government.⁹¹ In October 2019, a petition for certiorari was filed in the U.S. Supreme Court, asking the Court to overturn a federal appeals court, which had blocked the attempted cut of contraception coverage requirement in July 2019.⁹²

B. DISABILITY & THE LAW

The Second Circuit Court followed the Fourth, Sixth, and Seventh Circuits in shifting the causation standard to a “but for” test in proving disability bias under the Rehabilitation Act and Americans with Disabilities Act (ADA) regarding employment discrimination based on disability.⁹³ This test requires that a plaintiff show that the employment discrimination would not have been made “but for” their disability.⁹⁴ Although the two Acts are now in alignment regarding the test, this move has raised the standard for the ADA from a “mixed-motive” standard.⁹⁵ But the change has lowered the causation standard for the Rehabilitation Act, which had previously required plaintiffs to show that the discrimination was based solely on their disability.⁹⁶

The disability rights movement has continued on both the social and the legal level in 2019.⁹⁷ Since the CRPD was ratified (currently by 180 countries worldwide),⁹⁸ the social model and human rights model of disability have taken center stage. Although the United States signed the CRPD in 2009, the Senate has still not ratified it.⁹⁹ Disability rights activists and people in the disability community have continued their push for

89. *Id.*

90. *Cal v. HHS*, 390 F. Supp. 3d 1061, 1063–64 (N.D. Cal. 2019).

91. *Deotte v. Azar*, 393 F. Supp. 3d 490, 514 (N.D. Tex. 2019).

92. *Pa. v. President United States*, 930 F.3d 543, 574 – 76 (3d Cir. 2019) (holding that the nationwide preliminary injunction was properly issued prohibiting entities to invoke an exemption restricting contraceptives under the Affordable Care Act) *cert. granted*, (U.S. Oct. 01, 2019) (No. 19-431).

93. *Natofsky v. City of New York*, 921 F.3d 337, 341 (2d Cir. 2019), *petition for cert. filed*, (U.S. Dec. 10, 2019) (No. 19-732).

94. *Id.* at 347.

95. *Id.*

96. *Id.* at 344–45.

97. Robyn Powell, *For the First Time, Disability Rights Are a Major Campaign Issue*, REWIRE.NEWS (Nov. 20, 2019), <https://rewire.news/article/2019/11/20/for-the-first-time-disability-rights-are-a-major-campaign-issue/>.

98. *Country Status*, DATABASE OF THE U.N. OFF. OF LEGAL AFF. (Sept. 30, 2019), https://www.ohchr.org/Documents/HRBodies/CRPD/OHCHR_Map_CRPD.pdf.

99. Arlene S. Kanter, *Let’s Try Again: Why the United States Should Ratify the United Nations Convention on the Rights of People with Disabilities*, 35 *TOURO L. REV.* 301, 301, 330 (2019).

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ratification, which would allow people with disabilities the access to human rights that have been otherwise denied by societal barriers, including physical, attitudinal, and mental barriers.¹⁰⁰ The CRPD requires State Parties to prevent construction of and also dismantle these barriers that have for so long prevented people with disabilities access to their protected rights.¹⁰¹ For example, students are guaranteed a Free Appropriate Public Education (FAPE) under federal law.¹⁰² But if school systems and curriculum are not modified to accommodate the needs of all learners to be inclusive, students with disabilities could be denied this right.¹⁰³

In the United States, there are sixty-one million people (twenty-six percent) with disabilities.¹⁰⁴ But they continue to experience discrimination and inability to access their rights, including employment.¹⁰⁵ Article 27 of the CRPD provides that “State Parties recognize the right of persons with disabilities to work, on an equal basis with others . . . prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment . . . ensure reasonable accommodation . . . [and, among other things,] ensure that persons with disabilities are protected, on an equal basis with others, from forced or compulsory labour.”¹⁰⁶ Even though the United States has only signed and not ratified the CRPD, the rights encompassing employment should not be seen as separate or newly created.¹⁰⁷ But only 18.7 percent of people with disabilities are employed as compared to 65.7 percent of people without disabilities.¹⁰⁸ Furthermore, people with disabilities earn much less comparatively. In fact, research shows that this wage gap is far below the federal minimum wage of \$7.25/hour—averaged at just \$2.15/hour.¹⁰⁹ But a bill this year was brought before Congress to bring an end to the subminimum wages for people with disabilities.¹¹⁰ The bipartisan bill, the Transformation to Competitive Employment Act, aims at helping businesses and programs to “support individuals with intellectual, developmental, mental health, and other disabilities to find and retain work in competitive integrated employment.”¹¹¹ This bill was read twice in

100. *Id.* at 306.

101. *Id.*

102. Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq. (2004).

103. *Protecting Students With Disabilities*, OCR (January 10, 2020), <https://www2.ed.gov/about/offices/list/ocr/504faq.html>.

104. *Disability Impacts All of Us*, CDC (Sept. 9, 2019), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

105. Aimee Picchi, *Americans with disabilities still can't land jobs*, CBS (July 26, 2017) <https://www.cbsnews.com/news/americans-with-disabilities-still-cant-land-jobs/>.

106. G.A. Res. 61/106, art. 27, Convention on the Rights of Persons with Disabilities (May 3, 2008).

107. Kanter, *supra* note 99, at 336.

108. Mary O'Hara, *Disabled people deserve equal pay, too. Let's start fighting for it*, GUARDIAN (Feb. 26, 2019), <https://www.theguardian.com/society/2019/feb/26/disabled-deserve-equal-pay>.

109. *Id.*

110. *Id.*

111. Transformation to Competitive Employment Act, § 260, 116th Cong. (2019-2020) (as read by Senate, Jan 29, 2019, and referred to the Comm. On Health, Educ., Lab. & Pensions).

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Congress and referred to the Senate Committee on Health, Education, Labor, and Pensions for further review in January 2019. Although subminimum wages are banned in some states, this bill would effectively prohibit subminimum wages at the federal level, creating a blanket ban across the country.¹¹²

Multiple class actions in the United States have focused on accessibility to society, wellness, and health. In the case of *Bunting v. Vivi Bubble Tea Inc.*,¹¹³ the plaintiffs claimed a violation to the Americans with Disabilities Act based on an inaccessible website of a bubble tea company. The argument claims that the ADA requires the elimination of discrimination caused by barriers, prohibiting people with disabilities to access goods, services, and facilities.¹¹⁴ Because the website was not accessible to legally blind individuals—due to its lack of alt text, inaccessible drop-down menus, lack of navigation links, inadequate prompting and labeling, and denial of keyboard access—the plaintiffs sought to certify a nationwide class of legally blind individuals in the United States who have tried to access Vivi Bubble Tea’s website and been denied based on their disability.¹¹⁵

C. DISCRIMINATION

California was the first state to officially ban hairstyle discrimination.¹¹⁶ The CROWN Act (Create a Respectful and Open Workplace for Natural Hair) passed thirty-seven to zero and aims to prohibit employers and schools from enforcing Eurocentric grooming policies that disproportionately affect people of color.¹¹⁷ It was argued that it was difficult to balance what was socially acceptable as professional and protect the health of the hair.¹¹⁸ Specifically, the CROWN Act provides that “[d]espite the great strides American society and laws have made to reverse the racist ideology that Black traits are inferior, hair remains a rampant source of racial discrimination with serious economic and health consequences, especially for Black individuals.”¹¹⁹

A proposed class action seeks to represent transgender Arizona Board of Regents employees, who faced discrimination under the state employee health care plan’s policy denying transgender employees’ claims for

112. *Id.*

113. Class Action Complaint at 2, *Bunting v. Vivi Bubble Tea Inc.*, No. 1:19-cv-02424 (E.D.N.Y. 2019), ECF No. 1.

114. *Id.* at 2.

115. *Id.* at 8, 12.

116. Liam Stack, *California Is First State to Ban Discrimination Based on Natural Hair*, N.Y. TIMES (June 28, 2019), <https://www.nytimes.com/2019/06/28/us/natural-hair-discrimination-ban.html>.

117. Pamela Avila, *California Just Became the First State to Ban Discrimination Against Natural Hair*, L.A. MAG. (July 3, 2019), <https://www.lamag.com/citythinkblog/crown-act-signed-natural-hair/>.

118. *Id.*

119. S.B. 188, Reg. Sess. (Ca. 2019).

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transition-related surgeries.¹²⁰ In that case, the plaintiff brought the action under Title VII of the Civil Rights Act of 1964 and a violation of rights under the Equal Protection Clause of the Fourteenth Amendment after being denied a hysterectomy deemed as medically necessary for his gender dysphoria.¹²¹ The trial court granted the defendant's motion to dismiss in part based on the Title VII claim but denied it in part based on the Equal Protection Clause claim.¹²²

D. INSURANCE & MEDICAL MALPRACTICE

Another class action is targeting a health coverage policy in Florida.¹²³ In that case, the insurer refused to cover a certain radiation treatment for prostate cancer patients, claiming that it was experimental.¹²⁴ But this treatment had been used for thirty years and was accepted widely in the medical community.¹²⁵ The plaintiff in that case was denied coverage prior to United Healthcare's policy switch in January 2019, which allowed this treatment.¹²⁶ Because other insurers, including Medicare, cover the treatment, the plaintiff argued United Healthcare should have as well.¹²⁷ At this point, the case has been transferred to the United States District Court for the District of Massachusetts and is awaiting the next steps.¹²⁸

The holding of the Georgia case *Preferred Women's Healthcare LLC* may lead future plaintiffs to spread a wider net against potential defendants in medical malpractice suits.¹²⁹ In that case, the plaintiff argued that a patient's death in 2012 was caused by failing to diagnose her with cancer.¹³⁰ The complaint was amended in 2017 to add another doctor to the suit, one who, the plaintiff argued, was aware of the original suit against their practice group and who knew that another doctor had been incorrectly blamed for the negligence instead.¹³¹ The court determined that the medical malpractice statute of repose imposed a bright-line rule, and that adding another defendant five years after the claimed negligence was

120. *Toomey v. Arizona*, No. CV-19-00035-TUC-RM (LAB), 2019 WL 7172144, at *8 (D. Ariz. Dec. 23, 2019).

121. *Id.* at 1.

122. *Id.* at 3–4.

123. *Cole v. United Healthcare Ins. Co.*, No. 19-CV-21258-GAYLES, 2019 U.S. Dist. LEXIS 187358, at *1 (S.D. Fla. Oct. 28, 2019).

124. *Id.* at 1.

125. Jay Hancock, *For Cancer Centers, Proton Therapy's Promise Is Undercut by Lagging Demand*, N.Y. TIMES (April 27, 2018), <https://www.nytimes.com/2018/04/27/business/proton-therapy-finances.html>.

126. *Cole*, 2019 U.S. Dist. LEXIS 187358, at *1.

127. First Amended Complaint at 8, *Cole v. United Healthcare Ins. Pol'y*, No. 19-CV-21258-GAYLES (S.D. Fla. April 22, 2019), ECF No. 4.

128. *Cole*, 2019 U.S. Dist. LEXIS 187358, at *1.

129. *Preferred Women's Healthcare, LLC v. Sain*, 823 S.E.2d 569 (Ga. Ct. App. 2019), cert. denied.

130. *Id.* at 571.

131. *Id.* at 572.

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impermissible.¹³² The plaintiff therefore missed the window of adding the possibly culpable doctor to the suit.¹³³

E. OPIOID CONFLICT

Indivior Inc., a company who marketed Suboxone Film as a safer opioid option, was indicted by a federal grand jury and Indivior's motion to dismiss was denied.¹³⁴ Indivior had marketed this film as a "more child-proof and less addictive version of the opioid addiction drug's tablet form."¹³⁵ The FDA had rejected these safety claims before final approval in 2010.¹³⁶

Purdue Pharma LLP's motion to dismiss was denied against the claims against the Commonwealth of Massachusetts, which is seeking redress for deceptive marketing practices and sale of opioid products (namely OxyContin) in Massachusetts.¹³⁷ According to the plaintiff, Purdue has continued to use deceptive and illegal marketing practices, persuaded doctors to prescribe the opioids at great frequency, and influenced prescribing to inappropriate patient populations.¹³⁸

F. PRODUCT LIABILITY & NEGLIGENCE

1. *MDA Federal Preemption Rules Confirmed*

The Court of Appeals for the Ninth Circuit recently affirmed on express federal preemption grounds an Arizona federal district court's grant of summary judgment in favor of Allergan, Inc. against the plaintiff's strict product liability and negligence claims made under Arizona state law.¹³⁹ The court upheld summary judgment in favor of Allergan against a strict product liability/negligence claim that its "Style 20" silicone breast implant (a Class III device) was defective because it leaked silicone after implantation, causing severe health problems that included a significant loss of vision.¹⁴⁰ The implants were Class III medical devices approved by FDA under the Premarket Application (PMA) approval process.¹⁴¹ Allergan claimed in its PMA submission that its lab testing showed that over ninety-nine percent of the Style 20 implants that were tested showed no sign of

132. *Id.* at 576–77.

133. *Id.*

134. *U.S. v. Indivior Inc.*, No. 1:19CR00016, 2019 U.S. Dist. LEXIS 197629, at *2–3 (W.D. Va. Nov. 14, 2019).

135. Ryan Boysen, *Indivior Indicted Over Opioid Treatment Marketing Fraud*, Law360 (April 9, 2019), <https://www.law360.com/articles/1148378/indivior-indicted-over-opioid-treatment-marketing-fraud>.

136. *Id.*

137. *Commonwealth v. Purdue Pharma, L.P.*, Nos. 143398, 1884CV01808-BLS2, 2019 Mass. Super. LEXIS 589, at *1–2 (Sep. 16, 2019).

138. *Id.*

139. *Weber v. Allergan, Inc.*, 940 F.3d 1106, 1110, 1114 (9th Cir. 2019).

140. *Id.* at 1109.

141. *Id.* at 1110.

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leakage.¹⁴² Plaintiff's medical expert testified that the right implant had lost 2.8 percent of its mass by way of leakage, and that this showed a departure from the manufacturer's specifications.¹⁴³ Plaintiff argued this constituted evidence that Allergan had violated an FDA requirement and thus her claims escaped express preemption, because Allergan's claim of a ninety-nine percent efficacy rate (which was accepted by FDA) essentially created an FDA "requirement" rather than an "aspirational figure."¹⁴⁴

A Ninth Circuit panel rejected this contention, providing

[t]here is no indication that Allergan purported to the FDA that the implant would 'always' bleed less than [one percent] . . . Dr. Feng's opinion that the implant was defective and malfunctioned is not evidence that Allergan deviated from the FDA's pre-market approved procedures.¹⁴⁵ Res ipsa loquitor is not enough to survive MDA preemption.¹⁴⁶

Nor did the court accept plaintiffs' second contention that Allergan had violated FDA CGMP requirements. Plaintiff's medical expert expressed "no opinion" on the sufficiency of Allergan's manufacturing processes and ". . . the mere evidence that her particular breast implant was defective does not show that Allergan failed to comply with the FDA's Current Good Manufacturing Practices."¹⁴⁷ Finally, evidence that Allergan had produced some other defective implant did not demonstrate Allergan's noncompliance with FDA device-specific or general CGMP requirements as to the implant at issue.¹⁴⁸ The entire action was thus expressly preempted under 21 U.S.C. section 360k (a).¹⁴⁹

The implant product in *Weber* was a Class III device that had received Premarket Approval, to which the MDA's express preemption rules applied.¹⁵⁰

For quite some time now, the vast majority of medical device products are cleared under the FDA's 510 (k) process, to which the Supreme Court has held that the MDA's statutory express preemption rule does not apply.¹⁵¹

Since the *Lohr* decision, courts have routinely pointed to the lesser showing required by the FDA of manufacturers under the 510 (k) process (which does not constitute FDA "approval" but instead that the new device is "substantially equivalent" to an existing marketed device, and does not require clinical trials) as a strong reason why the manufacturer of a 510 (k)

142. *Id.* at 1109.

143. *Id.*

144. *Weber*, 940 F.3d at 1113.

145. *Id.*

146. *Id.*

147. *Id.* at 1114.

148. *Weber*, 940 F.3d at 1114.

149. *Id.*

150. *Id.* at 1111.

151. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 470, 495–96 (1996).

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cleared device should not be entitled to preemption.¹⁵² But the FDA's review of device submissions under the 510 (k) process has become quite more substantial since *Lobr* was decided.¹⁵³

This does not mean that the courts are generally receptive to an argument that the evolution of the FDA's 510 (k) review process should prompt them to apply preemption to such devices—quite the contrary.¹⁵⁴ But earlier this year a state trial court in Utah held that, even though not expressly preempted, claims of defective design and manufacture of a 510 (k) cleared device (contact lens solution) were subject to implied preemption, where the “special controls” relating to the product's design and manufacturing processes were submitted to FDA as part of the 510 (k) process and the product was cleared by FDA.¹⁵⁵

Whether the “special controls/implied preemption” argument gains traction with the courts will be worth watching in 2020.

2. *Neurobiological Responses to Smartphone Use*

In a case focusing on negligence regarding a product, the U.S. Supreme Court denied certiorari for a case about whether Apple, Inc. is liable based on an iPhone distraction that caused a deadly car crash.¹⁵⁶ In that case, the Fifth Circuit had been asked to decide whether, under Texas Law, a driver's neurobiological response to a smartphone notification could be a cause-in-fact of a car crash.¹⁵⁷ In that case, the driver of a car looked down to read a text from her iPhone after a notification sounded; she then crashed into another car killing two adults and rendering a child paraplegic.¹⁵⁸ The Fifth Circuit ruled that applying Texas Law in this case would be an inappropriate extension of *Erie*,¹⁵⁹ mentioning that it was for the state to decide whether smartphone manufacturers and dram shops are analogous.¹⁶⁰ Therefore, as it stands currently, Apple is not liable for the crash.¹⁶¹

G. SMOKING & VAPING

The U.S. Food and Drug Administration (FDA) has been urged to regulate and remove 15 different dietary supplements that have claimed to help smokers stop smoking from shelves of retailers as the supplements have not

152. *Reeves v. AcroMed Corp.*, 103 F.3d 442, 445–46 (5th Cir. 1997); *Duvall v. Bristol-Myers-Squibb Co.*, 103 F.3d 324, 327–28 (4th Cir. 1996).

153. *Gelber v. Stryker Corp.*, 752 F. Supp. 2d 328, 331 (S.D.N.Y. 2010).

154. *Id.* at 323.

155. *Kelsey v. Alcon Laboratories, Inc.*, No. 180902756, 2019 WL 1884225, at *3 (Utah Dist. Ct. April 22, 2019) (Trial Order).

156. *Meador v. Apple, Inc.*, 911 F.3d 260, 263–64, 267 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 2649 (2019).

157. *Id.* at 263.

158. *Id.*

159. *Id.* at 267.

160. *Id.*

161. *Meador*, 911 F.3d at 267.

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undergone the proper FDA tests and could therefore be misleading.¹⁶² A few of the supplements contain the herb lobeline, which had been previously banned by the FDA as an anti-smoking product.¹⁶³

In Florida, Gov. Desantis worked to have the legislative branch repeal a medical marijuana smoking ban and signed Bill SB 182 into law.¹⁶⁴ This passage comes after the smoking ban was found unconstitutional in 2018.¹⁶⁵ Although this is a victory for medical marijuana users, Desantis strongly opposes recreational marijuana usage.¹⁶⁶

A lawsuit filed in California by former Juul Labs, Inc. (JUUL) senior vice president of global finance, Siddharth Breja, argued that the company wrongfully terminated him after he brought to light the fact that JUUL had released 1 million contaminated vaping pods into the market and gave no warning to the public.¹⁶⁷ The lawsuit alleges that Breja learned about the contaminated pods in March 2019 and alerted shareholders, the board, and the public by reporting these issues internally.¹⁶⁸ In an earlier filed case, plaintiffs argued that JUUL intentionally marketed to minors and young people, including using flavored products even though the FDA has banned flavored tobacco because of its appeal to young smokers.¹⁶⁹ That court ruled that plaintiffs met the test of whether JUUL was targeting minors.¹⁷⁰ It was also argued that the JUUL products deliver doses of nicotine that are materially higher than cigarettes.¹⁷¹ The court ruled in the plaintiffs' favor on this issue as well.¹⁷²

Massachusetts, New York, Rhode Island, Michigan, and Washington have specifically banned the sale of flavored vaping products.¹⁷³ California issued

162. Adam Lidgett, *FDA Urged To Crack Down on Anti-Smoking Supplements*, LAW360 (April 24, 2019), <https://www.law360.com/articles/1153042/fda-urged-to-crack-down-on-anti-smoking-supplements>.

163. Letter from Peter Lurie and Laura MacCleery to Food & Drug Admin., 3 (April 24, 2019), <https://cspinet.org/sites/default/files/attachment/Letter%20to%20FDA%20regarding%20Smoking%20Cessation%20Supplements.pdf>.

164. Medical Use of Marijuana, S.B. 182, 2019 Reg. Sess. (Fla. 2019) (as approved by Governor, March 18, 2019).

165. *People United for Med. Marijuana v. Fla. Dep't of Health*, No. 2017-CA-1394, 2018 Fla. Cir. LEXIS 2124, at *1 (Fla. Cir. Ct. June 5, 2018).

166. Mike Vasilinda, *DeSantis against recreational marijuana despite 65% approval*, CAP. NEWS SERV. (June 24, 2019), <https://www.wctv.tv/content/news/DeSantis-against-recreational-marijuana-despite-65-approval-511742852.html>.

167. Complaint at 2, *Breja v. Juul Labs, Inc.*, No. 3:19-CV-7148 (N.D. Cal. Oct. 29, 2019).

168. *Id.* at 14–15.

169. *Colgate v. Juul Labs, Inc.*, 402 F. Supp. 3d 728, 737–38 (N.D. Cal. 2019).

170. *Id.* at 759–60, 762.

171. *Id.* at 739.

172. *Id.*

173. Sarah Jarvis, *Washington To Ban Flavored Vape Products, Including THC*, LAW360 (Sept. 27, 2019), <https://www.law360.com/articles/1203785/washington-to-ban-flavored-vape-products-including-thc>; Vanessa Romo, *Massachusetts Governor Signs Law Severely Restricting Flavored Tobacco, Vape Products*, NPR (Nov. 27, 2019), <https://www.npr.org/2019/11/27/783400051/massachusetts-governor-signs-law-severely-restricting-flavored-tobacco-vape-prod>.

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an executive order targeting counterfeit devices.¹⁷⁴ And Massachusetts further targeted marijuana and flavored and non-flavored vaping products after declaring a public health emergency.¹⁷⁵ But a vaping industry group and two e-cigarette companies are suing to block New York's ban on flavored vaping products. As of September, petitioners were able to temporarily enjoin the city from banning flavored vaping products, pending the decision on the preliminary injunction.¹⁷⁶

In late November, the House Judiciary Committee approved (twenty-four to ten) a bill that would legalize marijuana on the federal level.¹⁷⁷ This bill would remove marijuana from Schedule 1 of the Controlled Substances Act. Although there is skepticism that the bill will pass in the Senate,¹⁷⁸ this bill would decriminalize marijuana by eliminating criminal penalties—including importing and exporting it with intent to distribute.¹⁷⁹

H. FORCED VACCINATION

Health officials in New York have faced measles outbreaks from unvaccinated children.¹⁸⁰ Officials have banned unvaccinated students from attending school and have been attempting to work with parents about vaccines, but officials ended up using emergency powers, including quarantine and required vaccinations. A preliminary injunction was issued against banning unvaccinated children from public places.¹⁸¹ But another court has upheld the order to have every person in affected ZIP codes to be vaccinated.¹⁸² That court proposed that “the pivotal question posed for this court’s determination is whether Respondent Commissioner has a rational, non-pretextual basis for declaring a public health emergency and issuing the attendant orders challenged.”¹⁸³ Required vaccinations were found constitutional under *Jacobson v. Massachusetts*, which allowed for public health orders because as a “principle of self-defense, or paramount necessity, a community has the right to protect itself against an epidemic of disease

174. Jarvis, *supra* note 173.

175. Sam Reisman, *Mass. Vape Ban Draws Ire Of State Pot Commissioner*, LAW360 (Sept. 24, 2019), <https://www.law360.com/articles/1202380/mass-vape-ban-draws-ire-of-state-pot-commissioner>.

176. *In re VAPOR Tech. Ass’n., v. Cuomo*, No. 530123, slip op. at 1 (N.Y. App. Div. Oct. 3, 2019).

177. Ending Federal Marijuana Prohibition Act of 2019, H.R. 1588, 116th Cong. §§ 1, 3 (as introduced in H., April 8, 2019).

178. Berkeley Lovelace, *House committee approves landmark bill legalizing marijuana at the federal level*, CNBC (Nov. 20, 2019), <https://www.cnbc.com/2019/11/20/house-committee-approves-bill-decriminalizing-marijuana-on-the-federal-level.html>.

179. H.R. Res. 1588, 116th Congress (2019).

180. Wendy Parmet, *Measles, emergency powers, and the allure of the ‘old’ public health*, STAT (April 26, 2019), <https://www.statnews.com/2019/04/26/measles-emergency-powers-public-health/>.

181. *W.D. ex rel. A. & J. v. Cty. of Rockland*, 101 N.Y.S.3d 820, 823 (N.Y. Sup. Ct. 2019).

182. *C.F. v. N.Y.C. Dep’t of Health & Mental Hygiene*, No. 508356/19, slip op. at 1, 6–7 (N.Y. Sup. Ct. April 18, 2019).

183. *Id.* at 2.

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which threatens the safety of its members.”¹⁸⁴ To combat the continued controversy, it has been suggested that Congress should update the National Childhood Vaccine Injury Act to include measles and other deadly diseases.¹⁸⁵

VIII. World Health Organization

A. MALARIA VACCINE ROLLOUT

As a pilot-program, the World Health Organization (WHO) coordinated with the ministries of health in Ghana, Kenya, and Malawi (among other partners both in Africa and internationally) to roll out a landmark malaria vaccine.¹⁸⁶ The vaccine aims to reach about 360,000 children per year across those three countries.¹⁸⁷

B. BURNOUT CLASSIFICATION DESIGNATED BY THE WHO

According to a new WHO classification, a doctor can diagnose someone with burnout if they meet the following symptoms, as long as they are limited to the work environment: (1) feelings of energy depletion or exhaustion; (2) increased mental distance from one’s job, or feelings of negativism or cynicism related to one’s job; and (3) reduced professional efficacy.¹⁸⁸

184. *Jacobson v. Mass.*, 197 U.S. 11, 27, 37–38 (1905).

185. National Childhood Vaccine Injury Act of 1986, 42 U.S.C.S. § 300aa-1 et seq. (approved Nov. 8, 2019).

186. World Health Organization, *Malaria vaccine pilot launched in Malawi*, <http://www.who.int> (April 23, 2019), <https://www.who.int/news-room/detail/23-04-2019-malaria-vaccine-pilot-launched-in-malawi>.

187. *Id.*

188. Ryan Prior, *Burnout is an official medical diagnosis, World Health Organization says*, CNN (May 27, 2019), <https://www.cnn.com/2019/05/27/health/who-burnout-disease-trnd/index.html>.

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