No. _____

In The
Supreme Court of the United States

ERIC FRIEDLANDER, in his official capacity as Secretary of the Kentucky Cabinet for Health and Family Services, et al.,

Petitioners,

v.

PHILLIP TRUESDELL, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Questions Presented are:

(1) Whether the modern case law approach controls a court's analysis of the dormant Commerce Clause and repudiates the holding in *Buck v. Kuykendall*, 2167 U.S. 307 (1925)?

(2) If *Buck v. Kuykendall* has not been repudiated, whether the United States Court of Appeals for the Sixth Circuit erred when it found *Buck*, a case concerning stage lines, indistinguishable from the present case, holding a portion of the Commonwealth of Kentucky's Certificate of Need laws for healthcare ground ambulance services *per se* unconstitutional?

PARTIES TO THE PROCEEDING

The Parties to these proceedings are as follows:

The Petitioners were the Defendants-Appellees. The Petitioners are Eric Friedlander, in his official capacity as Secretary of the Kentucky Cabinet for Health and Family Services; Adam Mather, in his official capacity as Inspector General for the Kentucky Cabinet for Health and Family Services; and Carrie Banahan, in her official capacity as Deputy Secretary of the Kentucky Cabinet for Health and Family Services.

The Respondents Phillip Truesdell and Legacy Medical Transport, LLC were the Plaintiffs-Appellants. Respondent First Care Ohio, LLC, fka Patient Transport Services, Inc., was the Intervenor Defendant-Appellee.

CORPORATE DISCLOSURE STATEMENT

Petitioners, in their official capacity, are an agency of the Commonwealth of Kentucky, and therefore a corporate disclosure statement is not required.

RELATED CASES

Truesdell, et al. v. Friedlander, et al., No. 3:19-CV-00066, U.S. District Court for the Eastern District of Kentucky, Memorandum Opinion & Order entered May 3, 2022.

Truesdell, et al. v. Friedlander, et al., No. 3:19-CV-00066, U.S. District Court for the Eastern District of Kentucky, Memorandum Opinion & Order entered September 9, 2022.

Truesdell, et al. v. Friedlander, et al., No. 22-5808, U.S. Court of Appeals for the Sixth Circuit, Opinion entered September 1, 2023.

Truesdell, et al. v. Friedlander, et al., No. 22-5808, U.S. Court of Appeals for the Sixth Circuit, Order entered October 5, 2023.

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In response to federal mandate, the Commonwealth of Kentucky's General Assembly enacted Kentucky's Certificate of Need ("CON") program in 1980. The CON program requires anyone wanting to establish a health facility, including an ambulance service, to obtain a CON. Ky. Rev. Stat. § 216.061(1). The purpose of the CON program is to (1) improve the quality of healthcare in Kentucky, (2) improve access to healthcare facilities, services, and providers, and (3) create a cost-efficient healthcare delivery system. *See* Ky. Rev. Stat. § 216B.010. The program has been amended continuously to reflect changes in the healthcare industry and technological advances. *See* Ky. Rev. Stat. § 216B.020.

Respondents Legacy Medical Transport, LLC, a ground ambulance service, and its owner Phillip Truesdell challenged Kentucky's CON requirement as violating the dormant Commerce Clause derived from article I, § 8, cl. 3 of the Constitution of the United States.

The Federal District Court found that Kentucky's CON laws regulated both in-state and out-of-state providers evenhandedly and passed the *Pike v. Bruce Church, Inc*., 397 U.S. 137 (1970), balancing test. The Federal District Court further found that *Buck v. Kuykendall*, 267 U.S. 307 (1925), a case about common carrier stage lines and certificates of necessity, is distinguishable and that the modern case law approach

to the dormant Commerce Clause has repudiated its reasoning.

The United States Court of Appeals for the Sixth Circuit agreed that Kentucky's CON laws regulate in-state and out-of-state providers evenhandedly and pass constitutional muster under the *Pike* balancing test. However, the Sixth Circuit held that whether *Buck* has been repudiated is "debatable" and ultimately found *Buck* indistinguishable from the facts of the present case. Therefore, the Sixth Circuit held Kentucky's CON laws relating to ground ambulance services and interstate transportation *per se* unconstitutional.

Petitioners respectfully seek a writ of certiorari to review the Opinion of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Court of Appeals for the Sixth Circuit's opinion is published in *Truesdell v. Friedlander*, 80 F.4th 762 (6th Cir. 2023). (App. 1). The United States District Court for the Eastern District of Kentucky's decision is published in *Truesdell v. Friedlander*, 626 F.Supp.3d 957 (E.D. Ky. 2022). (App. 46). The Court of Appeals for the Sixth Circuit's decision to deny the Petitioner's Motion for *En Banc* review was entered on October 5, 2023, and is unpublished. (App. 75).

Additionally, the United States District Court for the Eastern District of Kentucky, dismissed several of Respondents' claims that are not at issue in this Petition. The opinion is unpublished in *Truesdell v. Friedlander*, 2022 WL 1394545 (E.D. Ky. May 3, 2022).

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its Opinion on September 1, 2023, and denied Petitioners' timely petition for panel rehearing and rehearing *En Banc* on October 5, 2023. (App. 75). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The issues presented in this case involve the dormant Commerce Clause derived from the Commerce Clause in article I, § 8, cl. 3 of the Constitution of the United States, which states Congress shall have the Power:

> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

STATEMENT OF THE CASE

In 1974, Congress enacted Public Law 93-641, the National Health Planning and Resources Development Act. The law conditioned the continued receipt of federal healthcare funding on a state creating and administering a certificate of need program within its jurisdiction. In 1980, the Commonwealth of Kentucky dutifully complied and promulgated its CON program, a comprehensive statutory framework to satisfy the federal mandate. Although Congress ultimately rescinded the federal mandate, it did not force the states to abandon the CON programs. As a result, the CON program has served as a fundamental component of healthcare policy in the Commonwealth for more than 40 years with modifications as appropriate.

Ground ambulance services operate under conditions much different than those of other services and industries. This is mainly because the individual businesses have nearly zero control over how much payment they can receive for their services. Approximately 70% of total ambulance transports performed are for Medicaid and Medicare beneficiaries. Both Medicaid and Medicare set non-negotiable reimbursement rates. A further 25% of total ambulance transports are for those with private insurance, against whom ambulance services carry little negotiating power. The remaining 5% are performed for "private-pay" persons, who often do not have the means to pay at all. Ambulance companies routinely collect only one-percent to two-percent (1% to 2%) of their gross charges from those paying out of pocket.

In addition, the two types of services offered – emergency and non-emergency transports – produce significantly different returns. Emergency ambulance transports in response to 911 calls are often the most expensive to perform and result in the lowest reimbursement. A ground ambulance service that responds to 911 calls must always be staffed and equipped to provide the highest level of service (*i.e.*, Advanced Life Support or "ALS"). It cannot refuse to provide emergency transportation to patients who have no ability to pay. *See* 202 Ky. Admin. Reg. 7:555, § 3. Non-emergency transports are often much more lucrative. They are less costly to perform because they require a lower level of service (*i.e.*, Basic Life Support or "BLS"), they are normally scheduled in advance, and they have better reimbursement rates. For those reasons, ground ambulance services that provide 911-response transports often use the revenue from non-emergency runs to help cover their losses resulting from the emergency services they provide. Many ground ambulance services that respond to 911 calls rely on tax subsidies from local communities to simply stay afloat financially. There is real concern that if new, non-emergency ambulance transport services skim the available profit from the financially lucrative non-emergency runs without providing emergency runs, local governments will be forced to cover the difference to maintain emergency services. In many rural communities across the Commonwealth, the resulting deficit would simply be insurmountable without substantial tax increases.

Considering the financial constraints facing most emergency ambulance transport companies and the critical need to have those services available, at least 19 states in addition to Kentucky have some sort of restriction on new entrants into established ground ambulance service areas. These restrictions are often placed within a larger CON program or its functional regulatory equivalent, but some states allow county governments to grant an exclusive right to operate in their counties to just one ground ambulance provider. The Kentucky General Assembly chose to regulate ground ambulance services through its established CON program.

Recognizing both its jurisdictional limitation and the reality of cross-border ambulance travel, however, Kentucky created several exemptions to allow out-of-state ground ambulance services to operate in Kentucky without obtaining a Kentucky CON or license. These exemptions allow out-of-state agencies to: (1) transport a patient from another state to a location in Kentucky; (2) transport a resident of another state from a location in Kentucky back to the patient's home; and (3) drive through Kentucky when taking a patient from another state to a location in another state. *See* 202 Ky. Admin. Reg. 7:501, § 6. Thus, the Commonwealth's regulatory scheme applies only for agencies wishing to transport Kentucky residents when the run originates inside the Commonwealth. *Id.*

To open a ground ambulance transport service, a person must submit an application to the Cabinet for Health and Family Services ("Cabinet") demonstrating

that its proposed services "shall meet an identified need in a defined geographic area and be accessible to all residents of the area." Ky. Rev. Stat. § 216B.040(2)(a)(2)(b). Affected Persons – including patients, residents and existing health facilities within the geographic area; the Cabinet; and third-party payors – may request a hearing and present evidence relevant to the application. *See* Ky. Rev. Stat. § 216B.085. A Cabinet hearing officer conducts the hearing and determines whether to issue the certificate of need based on statutory criteria. Ky. Rev. Stat. § 216B.040(2)(a)(2)(a-e); 900 Ky. Admin. Reg. 6:090. Unsuccessful applicants may appeal for comprehensive judicial review of the Cabinet's final decision. Ky. Rev. Stat. § 216B.115. A successful applicant must then acquire a license from the Kentucky Board of Emergency Medical Services. 202 Ky. Admin. Reg. 7:501.

Legacy Medical Transport, LLC ("Legacy") is a non-emergency ambulance provider based in Ohio. In 2018, Legacy applied for a CON to perform non-emergency basic life Support runs in several rural Kentucky counties near the border with Ohio. Legacy never intended for its application to be granted. The company left entire portions of the CON application incomplete and very likely cannot meet the requirements for a license. Unsurprisingly, the hearing officer correctly denied their application after a public hearing, and Legacy did not appeal.

Soon after, Legacy filed a Complaint for Declaratory and Injunctive Relief against several Cabinet officials, asking the federal judiciary to discard a

40-year-old law in favor of its uncompromising economic theories. First Care Ohio, LLC, an Ohio-based ground ambulance company that obtained a CON and license to operate in Northern Kentucky was granted permission to intervene as a Defendant. In its Second Amended Complaint, Legacy alleged two components of the CON program – the substantive requirement to show a "need" for additional services and the procedural rule allowing "affected persons" to participate in the application process – violated various provisions of the Constitution. Specifically, Legacy alleged violations of the dormant Commerce Clause (Count I), the Due Process Clause (Count II), the Equal Protection Clause (Count III), and the Privileges and Immunities Clause (Count IV) of the United States Constitution.

The District Court dismissed Counts II, III, and IV at the pleading stage. *Truesdell v. Friedlander*, 2022 WL 1394545, at **2–7 (E.D. Ky. May 3, 2022). After extensive discovery, the District Court granted summary judgment to the Cabinet on the remaining dormant Commerce Clause claim. *Truesdell v. Friedlander*, 626 F. Supp. 3d 957, 964–972 (E.D. Ky. 2022).

In its Motion for Summary Judgment, Legacy presented two arguments that shaped the analysis of both the District and Appellate Courts. First, Legacy argued the two components of the CON program – what it called the "need" requirement and the "protest" procedure – unduly burden interstate commerce in violation of the test announced in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Second, Legacy argued the same two components of the CON program constitute a "direct

regulation of interstate commerce" in violation of *Buck v. Kuykendall*, 267 U.S. 307 (1925), when narrowly viewed through one alleged burden on interstate commerce, interstate ambulance transports.[1]

Both the District Court and the Sixth Circuit rejected the first argument, finding the CON program did not discriminate against out-of-state ambulance providers in purpose or effect. Likewise, both found that the alleged burdens on interstate commerce did not clearly exceed the putative local benefits under the *Pike* burden-benefit balancing test.

The Courts diverged on the second argument. The District Court found *Buck* distinguishable on the facts of the case, but also recognized that its reasoning had been repudiated. *See CSX v. City of Plymouth*, 283 F.3d 812, 818 (6th Cir. 2002). The District Court proceeded to apply *Pike* once again, finding Legacy wholly failed to support its argument with fact.

The Sixth Circuit disagreed. It found that *Buck* stands for the proposition that only the federal government carries the authority to determine the adequacy of "facilities for conducting interstate commerce."

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[1] In *Buck*, a Washington resident wanted to operate a stage line as a common carrier from Seattle, Washington, to Portland, Oregon. Buck obtained the necessary license from Oregon but was denied a certificate of public necessity from Washington state. 267 U.S. 307, 313 (1925). This Court held that the Washington law appeared to regulate not just the use of its highways, but also the use of interstate commerce, which this Court deemed obstructive and not just a burden violating the dormant Commerce Clause. *Id*. at 316.

Although admitting "interstate ambulance services do not resemble interstate busing services[,]" the Sixth Circuit ruled Kentucky's CON program violates the Commerce Clause because it regulates "interstate transportation services" on the basis of need. Ignoring the federal origin of the program, the Court found Kentucky invaded a uniquely federal prerogative.

Petitioners now seek this writ for certiorari centering on analysis of the nearly 100-year-old Supreme Court decision in *Buck*.

REASONS FOR GRANTING THE PETITION

This case presents important questions about the proper analysis of a state statute or regulation under the dormant Commerce Clause. The Sixth Circuit's decision affects the ability not just of Kentucky, but all states in the circuit to legislate autonomously. Additionally, the Sixth Circuit's decision has potential impact across all the circuit courts. The Kentucky Cabinet for Health and Family Services administers Kentucky's CON program pursuant to statutes passed by the Commonwealth's General Assembly. The Sixth Circuit reversed, in part, the District Court decision, holding a portion of the Kentucky CON and ambulance transportation laws unconstitutional. Despite both the District Court and the Sixth Circuit agreeing that Kentucky's CON laws do not discriminate on their face, that they regulate in-state and out-of-state entities evenhandedly, and that they pass constitutional

muster under the *Pike* balancing test, the Sixth Circuit still found the law in violation of the dormant Commerce Clause. The Sixth Circuit based its holding on a nearly 100-year-old case, *Buck v. Kuykendall*, 267 U.S. 307 (1925).

There are important questions that only this Court can answer. This case asks this Court to decide whether *Buck* employed the direct regulation doctrine, and, therefore, whether *Buck* has been repudiated in favor of this Court's modern analysis of the dormant Commerce Clause? If not, this case asks the Court to decide whether the Sixth Circuit extended *Buck* in error beyond its holding by likening it to apply to healthcare services? These are questions that affect all states with CON programs. For the reasons set forth below, this Court should grant the petition for a writ of certiorari to answer these important questions.

I. This Case Presents the Question of Whether the *Buck* Court Used the Direct Regulation Doctrine and Has Therefore Been Repudiated and Replaced with the Modern Approach to Analysis of the Dormant Commerce Clause.

In the present case, there is a split between the District Court and the Sixth Circuit regarding whether *Buck* has been repudiated in favor of the modern analysis of the dormant Commerce Clause. Even though the Sixth Circuit ultimately relied on *Buck* to invalidate a portion of Kentucky's CON laws, the court admitted that whether *Buck* has been repudiated is

"debatable" and further stated that the court saw "two reasons why caselaw might call *Buck* into doubt." (App. 3, 40).

A. The modern approach.

Both the District Court and the Sixth Circuit used this Court's modern approach to analyze whether the state law violated the dormant Commerce Clause. The modern approach is divided into a two-step inquiry. (App. 12) (citing *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 390 (1994); *Foresight Coal Sales, LLC v. Chandler*, 60 F.4th 288, 295 (6th Cir. 2023)). The first step asks if the state law "discriminates" against out-of-state economic interests to benefit a local economic interest. *Id*. (citing *C & A Carbone*, 511 U.S. at 390).

If a law does not discriminate, a court must proceed to step two and ask whether the law inflicts a substantial harm on interstate commerce. *Id*. (citing *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1143, 1162–1163 (2023)). If it does not, the law may still violate the Commerce Clause if its interstate burdens clearly exceed its local putative benefits under the benefits-burdens balancing test the Supreme Court adopted in *Pike Id*. (citing *Pike*, 397 U.S. at 142).

B. The District Court held that *Buck* has been repudiated in favor of the modern approach to analysis of the dormant Commerce Clause.

The District Court held that the *Buck* court used the direct regulation of interstate commerce doctrine to reach its conclusion. (App. 73). The court found that because of the modern approach to dormant Commerce Clause analysis, *Buck* has been repudiated. *Id*. The court reached this conclusion by relying on established Sixth Circuit and Supreme Court precedent. Specifically, with respect to Legacy's argument that Kentucky's CON laws are *per se* unconstitutional as applied to interstate trips between Kentucky and other states, the Court held that "[t]o the extent Legacy relies on *Buck* for the proposition that Kentucky's CON law constitutes a 'direct regulation of interstate commerce,' that doctrine 'appears to have been repudiated.'" *Id*. (citing *Tenn. Scrap Recyclers Ass'n v. Bredesen*, 556 F.3d 442, 449 (6th Cir. 2009) (quoting *CSX*, 283 F.3d at 818)).

In *Bredesen*, the Sixth Circuit stated, "what counts as a 'direct' burden on interstate commerce has long been a matter of difficulty for the courts, and presumably due to its questionable value as an analytical device, the 'direct/incidental' distinction has fallen out of use in dormant commerce clause analysis." *Bredesen*, 556 F.3d at 448–449. The Court continued:

> [I]t is difficult to square the mechanical line . . . based on a supposedly precise division between 'direct' and 'indirect' effects on interstate commerce, with the general trend in our

> modern Commerce Clause jurisprudence to look in every case to the 'nature of the state regulation involved, the objective of the state, and the effect the regulation upon the national interest in commerce.'

Id. at 449 (citing *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 390, 103 S.Ct. 1905, 76 L.Ed.2d 1 (1983)).

In *CSX*, the Sixth Circuit stated, "Although there have been periods in our legal history when the constitutionality of state [law] burdening interstate commerce was thought to turn on the answer to the question whether the burden was 'direct' or 'indirect' . . . , that test now appears to have been repudiated[.]" *CSX*, 283 F.3d at 818 (quoting *Maharg, Inc. v. Van Wert Solid Waste Mgmt. Dist*., 249 F.3d 544, 549 (6th Cir. 2001)). In *CSX*, the Court held that the district court erred in concluding a Michigan statute violated the Commerce Clause without first determining whether the burden a nondiscriminatory state statute imposes on interstate commerce is "clearly excessive in relation to the putative local benefits." *Id.* at 818. The Court stated that the proper standard for "[t]he constitutionality of a state law affecting interstate commerce turns on 'two lines of analysis: first, whether the ordinance discriminates against interstate commerce, and second whether the ordinance imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits.'" *Id*. (citing *C & A Carbone*, 511 U.S. at 390, 114 S.Ct. 1677).

Here, relying on this line of cases, the District Court held that the modern approach is proper and controls the analysis, and *Buck* has been repudiated and is inapplicable to the present case. (App. 73).

C. The Sixth Circuit qualified its opinion, stating that it is "debatable" whether *Buck* has been repudiated and admitting *Buck* has been called into doubt.

This Sixth Circuit agrees that there is a question regarding whether the direct regulation of interstate commerce doctrine is used in *Buck* and, therefore, whether *Buck* itself has been repudiated. The Sixth Circuit qualified its holding in the present case, stating whether *Buck* had been repudiated is "debatable," and further stating that *Buck*'s precedential value is "unclear" and that the court saw two reasons why precedential caselaw "calls *Buck* into doubt." (App. 3, 40). First, the court identified cases related to interstate sales tax and regulation of wholesale energy that shed rules which "drew a 'mechanical line' between laws that imposed direct burdens on interstate commerce." (App. 40–41). The court admitted that "one could view *Buck* as adopting a similar 'mechanical' rule[.]" (App. 41). Additionally, the court noted that the Supreme Court's modern Commerce Clause cases treat as presumptively invalid only laws that discriminate against out-of-state entities to favor in-state ones. *Id*.

Therefore, the Sixth Circuit itself was unsure if *Buck* has been repudiated. Ultimately, the court held

that it felt the *Buck* facts were indistinguishable and that this Court has "has repeatedly reminded lower courts that we must apply one of its cases that is directly on point even if the logic of its later decisions has undercut the case." (App. 44).

Accordingly, there is an important question for this Court regarding whether the modern approach to the analysis of the dormant Commerce Clause has repudiated *Buck*. Flowing from that question, this case asks whether a challenged state law that passes constitutional muster under the modern approach and *Pike* balancing test can still be held unconstitutional?

II. The Sixth Circuit Has Dangerously Overextended *Buck v. Kuykendall*.

The Sixth Circuit dangerously overextends the holding in *Buck* in opposition to decades of a modern approach to analysis of the dormant Commerce Clause. Despite acknowledging that *Buck*'s relevance is debatable in the analysis of a state statute or regulation in the context of the dormant Commerce Clause and stating "[a]dmittedly, interstate ambulance services do not resemble interstate busing services[,]" the Sixth Circuit found that *Buck* was indistinguishable so as to "directly control" the case at hand. (App. 36, 44).

The District Court, on the other hand, held *Buck* distinguishable from the present case, refusing to liken stage line carrier requirements to healthcare services. (App. 73). *Buck* concerned a permit for a commercial stage line. Conversely, Kentucky's CON

laws are carefully crafted and regulate out-of-state businesses equally. *Id*. Kentucky's CON program regulates the unique and complex world of healthcare services within Kentucky. *See Tiwari v. Friedlande*r, 26 F.4th 355, 366 (6th Cir. 2022) (stating "healthcare is uniquely complex, with 'its own idiosyncrasies,' and with many different metrics upon which to gauge success[]").

The differences between *Buck* and the present case are significant. If the fact pattern and holding in *Buck* can be extended to CON laws, it sets a dangerous precedent that extends beyond the Sixth Circuit and calls into doubt the modern approach to analyzing laws that impact interstate commerce, specifically *Pike* and its progeny.

III. This Case Is an Ideal Vehicle to Examine an Issue that Is Vitally Important and Impacts CON laws Across Different States and Circuits.

The Sixth Circuit's ruling has the potential to affect CON laws not only in Kentucky, but across the country. Currently, 35 states and the District of Columbia maintain some form of a CON program regulating healthcare services.[2] With respect to ground ambulance services, 19 states have some form of restriction on new entrants into those services, including the State of Ohio in the Sixth Circuit.[3] If the Sixth

[2] https://www.ncsl.org/health/certificate-of-need-state-laws.

[3] Arizona (A.R.S. 36-2233), Arkansas (007 28 CARR 001), California (Cal. Health & Safety Code § 1797.224), Connecticut

Circuit, and other circuits, can use *Buck* to erode the modern approach to analysis of the dormant Commerce Clause as related to CON laws, all these states will be impacted. This case is an ideal vehicle for this Court to examine this vitally important issue that has impact across all the circuit courts.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari.

Respectfully submitted,

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(Conn. Gen. Stat. § 19a-0), Florida (Fla. Stat. § 401.25), Hawaii (HAR 11-72), Illinois (77 Ill. Adm. Code 515.300), Louisiana (La. R.S. § 33:4791), Massachusetts (105 CMR 170.249), Nevada (Nev. Rev. Stat. Ann. § 474.590), New Mexico (N.M. Stat. Ann. § 65-2A-8), New York (NY CLS Pub. Health § 3005), North Carolina (N.C. Gen. Statute § 153A-250), Ohio (ORC Ann. 505.44), Oklahoma (O.A.C. § 310:641-3-10), Oregon (ORS § 682.062), Texas (Tex. Health & Safety Code § 774.003), Utah (Utah Code Ann. § 26-8a-402), and Washington (Rev. Code Wash. (ARCW) § 18.73.130).