

Capacity Building in Public Health Policy & Law

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American Public Health Association

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Growing interest in policy and environmental interventions

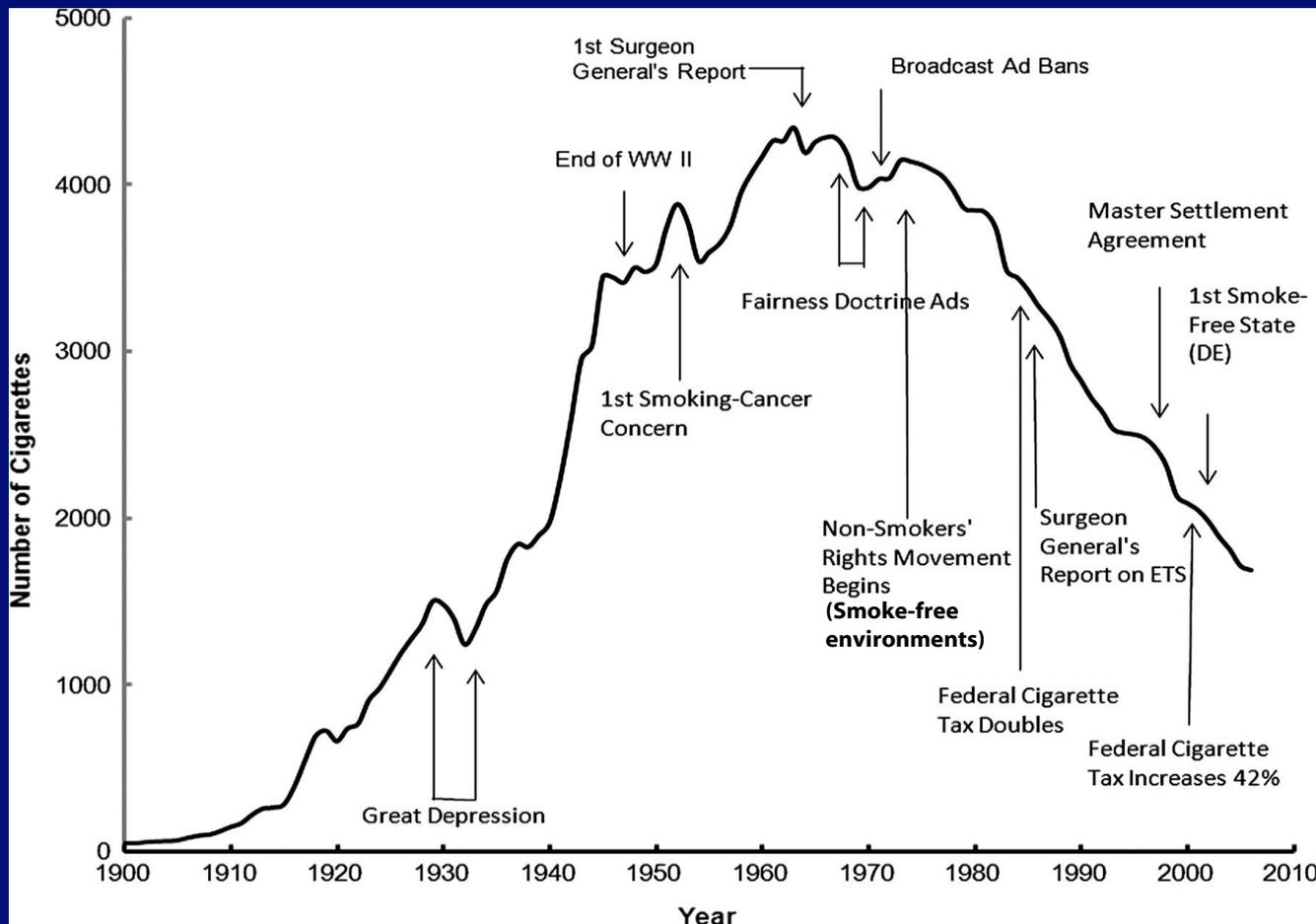
- Policy: laws, regulations, and rules (both formal and informal)
- Environmental interventions: interventions that modify the economic, social, or physical environment (usually involves policy change)

Power of policy

- Policy change is one of best ways to change behaviors because it can be:
 - Effective: changing the environment changes social norms
 - Sustainable: no need for ongoing services
 - As a result: Cost-effective

Power of Policy: Tobacco

Adult per capita cigarette consumption, the United States, 1900–2006.

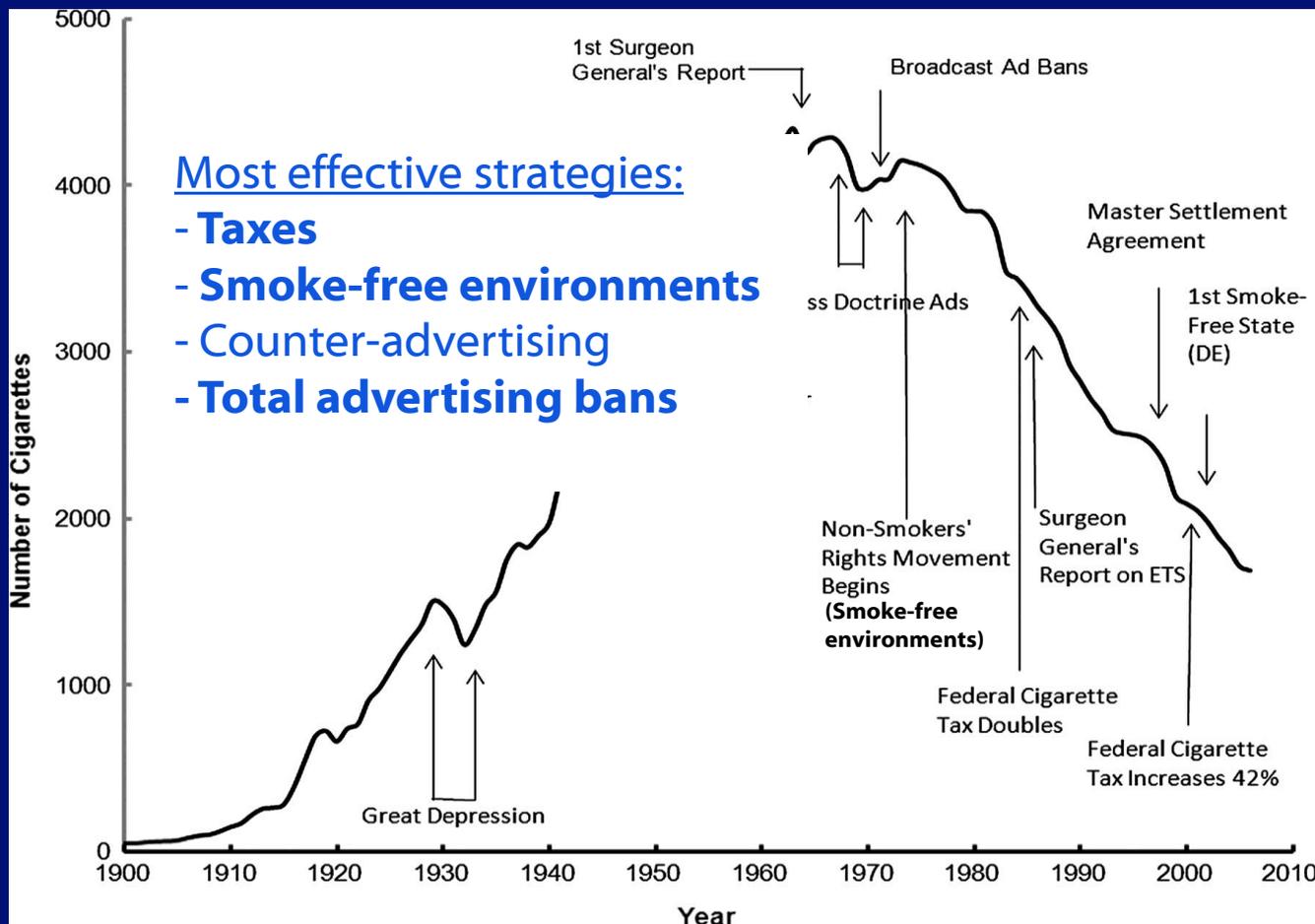


Warner K E , Mendez D Nicotine Tob Res 2010;12:876-887

Nicotine & Tobacco
Research

Power of Policy: Tobacco

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Nicotine & Tobacco
Research

Power of Policy: Motor-vehicle Injury

- Child safety seat laws:
 - Found to decrease fatal injuries by 35% (median) and fatal and non-fatal injuries combined by 17%
- Seatbelt laws:
 - Found to decrease fatal injuries by 9%

CDC's Key Winnable Battles for Public Health

Tobacco



**Nutrition,
Physical Activity,
Obesity and
Food Safety**

**Healthcare-
Associated
Infections**



**Motor
Vehicle
Injuries**

**Teen
Pregnancy**



HIV

APHA - Capacity Building Assistance

To assist with building capacity in state, local, tribal and territorial health department to *assess, interpret, develop, use and influence public health policy and law* in order to improve health in your localities through:

- One-on-one technical assistance
- General capacity building assistance

One-on-one technical assistance

Types of technical assistance:

- Conduct policy and legal analysis
- Identify best practices
- Connect you with subject matter experts
- Facilitate training
- Provide on-site technical assistance

Examples

- Environmental scan and literature review of Health in All Policies
- Identification of best practices for law and policy approaches to chronic disease prevention

General capacity building assistance

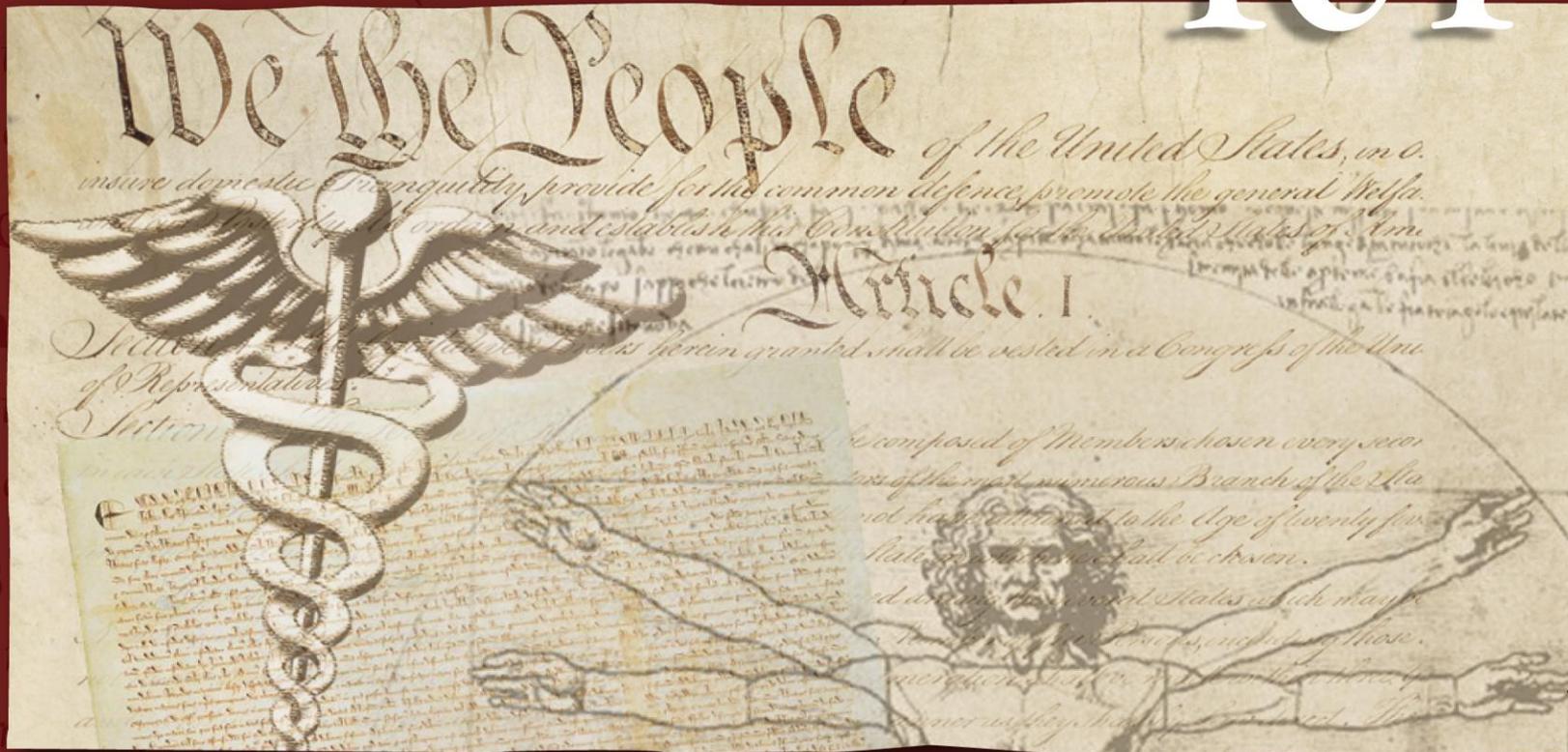
Develop and disseminate capacity building tools, including:

- Resource guides
- Tool kits
- Training modules
- Webinars
- Compendium of current and emerging best and promising practices
- Peer networks

Examples

- General policy and law resource guides
- Webinars highlighting emerging best practices

Public Health Law 101



A CDC Foundational Course for Public Health Practitioners



Public Health Law Program

<http://www.cdc.gov/phlp>



PUBLIC HEALTH LAW 101
A CDC Foundational Course for
Public Health Practitioners

Unit 1

Key Concepts of U.S. Law in
Public Health Practice

Disclaimer

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Historical Perspective

While the modern health officer must be an educator and a statesman, rather than merely a police officer, many of his duties are still necessarily concerned with law enforcement. . . . Health officers must be familiar not only with the extent of their powers and duties, but also with the limitations imposed upon them by law.

James A. Tobey,

1947

Law's Paramount Role: 10 Great Public Health Achievements, United States, 1900-1999*

Do you know how law contributed to these achievements?

- **Vaccination**
- **Motor-vehicle safety**
- **Safer workplaces**
- **Control of infectious diseases**
- **Decline in deaths from coronary heart disease and stroke**
- **Safer and healthier foods**
- **Healthier mothers and babies**
- **Family planning**
- **Fluoridation of drinking water**
- **Recognition of tobacco use as a health hazard**

Impact of Specific Laws on Public Health Problems

Law	Public Health Issue	How Law Works
	Herd immunity or individual immunity	
	Exposure to environmental tobacco smoke	
	Unintentional injuries of children	
	Dental caries	

Impact of Specific Laws on Public Health Problems

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School entry vaccination laws	Herd immunity or individual immunity	
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Impact of Specific Laws on Public Health Problems

Law	Public Health Issue	How Law Works
School entry vaccination laws	Herd immunity or individual immunity	Requires parental behavior
	Exposure to environmental tobacco smoke	
	Unintentional injuries of children	
	Dental caries	

Impact of Specific Laws on Public Health Problems

Law	Public Health Issue	How Law Works
School entry vaccination laws	Herd immunity or individual immunity	Requires parental behavior
Smoking bans or restrictions	Exposure to environmental tobacco smoke	Requires behavioral change to alter environment
Child safety seat use laws	Unintentional injuries of children	Requires direct behavioral change
Fluoridation of community water supplies	Dental caries	Directly changes physical environment requiring no action on part of target population

Definitions: *Public Health*

- *Public health*: “Fulfilling society’s interest in assuring conditions in which people can be healthy.”*

Definitions:

Law

- Law has many definitions:
 - Rules that are subject to the enforcement power of a government entity.
 - The structures, norms, and rules that a society uses to resolve disputes, govern itself, and order the relations between members of the society.
 - “The enterprise of subjecting human conduct to the governance of rules.”*
- Key Concept - Enforcability

Key Concept: *Police Powers*

- Defined: Powers exercised by the states to enact legislation and promulgate regulations to protect the public health, welfare, and morals, and to promote the common good.
- Examples:
 - Investigations of infectious disease outbreaks
 - Childhood vaccinations as condition for school entry
 - Ban on distribution of free cigarette samples in areas around schools and other places frequented by minors
 - Involuntary detention of persons with certain communicable diseases
 - Property seizure and destruction to control toxic substance threats

The U.S. Constitution and Public Health

- Term *public health* not mentioned
- Enables some federal public health-related activities (Art. I , Sec. 8)
 - Interstate commerce
 - Taxation and spending
- Primary responsibility for public health left to states (10th Amendment)



U.S. Constitution and States' Powers: The Tenth Amendment

The Tenth Amendment framed the powers of the states:

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

Impact: States retain police powers and other powers not expressly enumerated to U.S. federal government.

State and Local Government Branches: Roles in Lawmaking

- While the U.S. Constitution is the supreme law, each state's own constitution provides for establishment of state and local government branches and powers
- State governments' branches and lawmaking roles generally are similar to federal government's
 - Legislature → enacts statutes
 - Governor and state agencies → enforce laws and promulgate regulations
 - Courts (supreme, appellate, trial) → interpret laws
- Under state constitutions and laws, local governments' branches and lawmaking roles vary

U.S. Constitutional Design: Implications for Public Health

- Most public health activities carried out by state and local governments
- Federal government functions in public health carried out through regulatory (e.g., FDA) and non-regulatory (e.g., CDC) agencies
- Federal government shapes state / local public health through funding and defunding

Example of Constitutional Balance: 21st Century Concept of Quarantine

A collective action for the common good predicated on aiding individuals infected or exposed to infectious agents while protecting others from the dangers of inadvertent exposure.

Public good

Individual liberties



U.S. Constitutional Safeguards: Bill of Rights

- Bill of Rights (First 10 Amendments): ratified in 1791
- The source of individual liberties such as freedom of speech and religion, the right to assemble, and the right to be free of unreasonable searches and seizures
- Originally applied only to the federal government, not the states: The 14th Amendment (ratified after the Civil War) applied most of the Bill of Rights to the states

Constitutional Safeguards Relevant to Public Health

- 1st Amendment
 - Free Speech and Assembly
 - Freedom of Religion
- 4th Amendment
 - Unreasonable Search and Seizure
- 5th Amendment
 - Due Process (federal)
 - Equal Protection
 - Criminal Procedure
 - Property Rights - Takings
- 14th Amendment
 - Applies the Bill of Rights to the States
 - Requires Due Process
 - Expands Equal Protection

Constitutional Rights in States

- Until the 14th Amendment, most U.S. Constitutional protections did not apply to state laws
- Now state laws must meet U.S. Constitutional protections
- Many state constitutions provide more protection for individual liberties than does the U.S. Constitution
- Many state constitutions limit agency powers more than does the U.S. Constitution

Comparison of Constitutional Safeguards: Criminal Law vs. Civil Law and Public Health

- Searches
 - Criminal law: Must have a warrant based on probable cause for criminal evidence
 - Civil law (public health): No probable cause required, but search must be legislatively reasonable
- Right to counsel
 - Criminal law: Right to appointed counsel
 - Civil law (public health): No right to appointed counsel
- Standard of proof
 - Criminal law: Beyond a reasonable doubt
 - Civil law (public health): Preponderance of the evidence

Discussion Points:

Why do Constitutional rights differ for criminal justice and public health?

- Why should health departments be able to enter your house without a warrant from a judge?
- Why should health departments be able to isolate or quarantine you without a trial?
- Some law enforcement officials want health inspectors to report drugs they find:
 - What issues could this raise?
 - How might this undermine the special Constitutional status of public health enforcement?

Historical Perspective

Everyone condemns unnecessary legislation and equally abhors ill considered and badly framed laws, but the relations of human beings are becoming more complex every day... There is no doubt, too, that those who "on general principles" condemn "meddling legislation," when it comes to specific problems affecting themselves, are in favor of rat proofing plague infected cities, of stamping out virulent smallpox by drastic measures, of compelling one city to cease discharging its sewage into its neighbor's drinking water and of dealing summarily with him who peddles tuberculosis with his milk.

Charles V. Chapin, 1925

Using Legal Strategies to Improve Public Health Outcomes

**Centers for Disease Control and Prevention
Public Health Law Program**

Donald Benken, JD, MPH
Lindsay Culp, KD, MPH



CDC Public Health Law Vision

- Using Law to Improve Public Health Outcomes
- Customers
 - Public Health Practitioners
 - Legal Counsel to Public Health Practitioners
 - CDC Partners
 - CDC Grantees

CDC Public Health Law Mission

- To provide support to public health practitioners and their counsel using legal tools and strategies that when implemented improve public health outcomes.
 - Converging science, policy and law into specific strategies that are promising practices or best practices.

CDC PHLP Values . . .

- Legislation and regulations that implement public health strategies supported by science
- A coordinated approach to identifying priority public health issues
- Legal tools and strategies that combine law, policy and science to identify a rational legal approach to implementing public health programs

CDC-PHLP Services

- We provide consultation and technical assistance that is coordinated with multidisciplinary subject matter experts, focused on jurisdiction specific public health issues, and encourages a team approach between public health practitioners and their legal counsel.

CDC PHLP Services

- We will ...
 - Provide legal technical assistance
 - Partner with CDC programs and SMEs
 - Integrate CDC policy and science into legal strategies
 - Partner with other resources as needed
 - Governmental Function

CDC-PHLP Services

- Examples
 - Case Studies
 - Legal Tools
 - Legal Research
 - Contact Lists
 - News, Listserve, Peer to Peer Communication
 - <http://www2a.cdc.gov/phlp/>

CDC Public Health Law News



- Monthly e-digest of developments and resources in public health law
- 48,000 subscribers
- To subscribe: <http://www2a.cdc.gov/phlp>

State Legal Counsel Listserv

- Legal counsel to 35 state health departments and several local health departments
- Discuss legal issues with counterparts, PHLP, and CDC Office of the General Counsel
- Expansion to all local health departments
- For information, contact lculp@cdc.gov

Public Health Law Blog

- New interactive discussion of current topics in public health law
- PHLP staff member will post new topic twice per month
- STLT partners may respond, suggest future topics

Public Health Legal Counsel Directory

- Allows PHLP to build relationships with legal counsel serving STLT partners
- Contact information for lead attorney?
- Is she dedicated to the service of your agency full time?
- What types of legal services does she provide?
- For information: lculp@cdc.gov

Additional resources

- RWJF Public Health Law Network
 - New since Sept 2010
 - Technical assistance on any public health law issue
- Public Health Law and Policy/National Policy and Legal Analysis Network (NPLAN)
 - Technical assistance, training and resources on policy and legal approaches to obesity, tobacco, climate change, and planning for healthy communities.

Tell us what you need!

- What kinds of resources does your department need?
- What policy and law topics is your department most interested in?
- Fill out the needs assessment and/or stop by our table in Salon 5

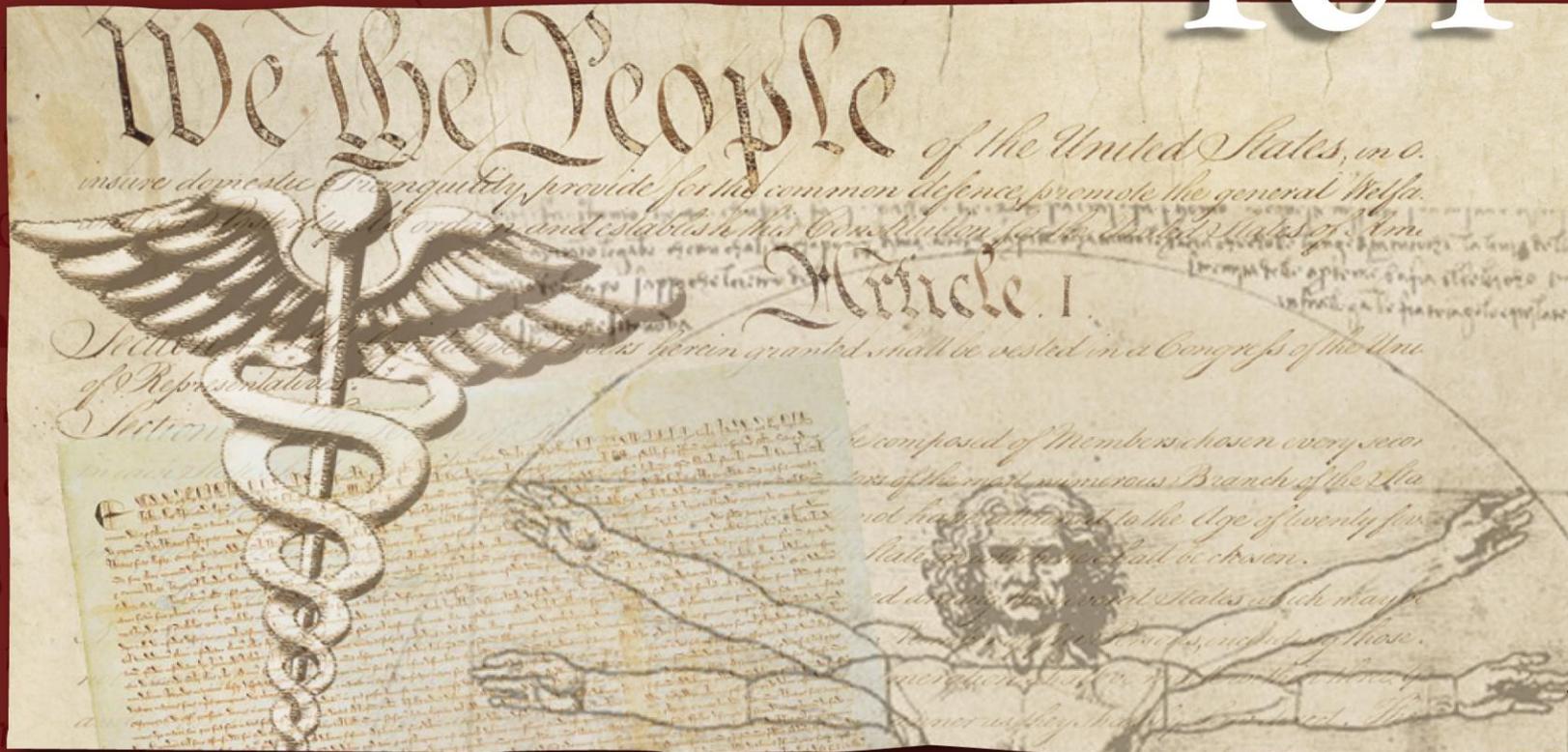
Questions?

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