

Law & the Prevention & Control of Obesity: a Selected Bibliography

Introduction

This selected bibliography provides a starting point for learning more about the intersection of obesity and law. The bibliography is not intended to be all inclusive of the literature on obesity and the law, but it is intended to be a credible source of information about the influence law can have on the public health issue of obesity prevention and control. The CDC PHL Program gratefully acknowledge the work of Courtney Petty, a 2009 intern with the program who prepared the update to this bibliography.

Methods in creating the Bibliography:

In creating the bibliography, we established an initial parameter for items published in public health, medical, and law journals from January 1, 2000 through the summer of 2009. The bibliography includes articles accepted for publication, but not published, if they were accessible electronically through PubMed.

To identify articles in the public health or medical literature, PubMed searches look for select combinations of the terms in Box 1 in either the title or abstract of the articles.

To identify articles in the legal literature, Lexis Nexis and Westlaw searches examine the U.S. law journal databases for articles containing “obesity” in their titles.

The results from these searches were reviewed for relevance. Articles were excluded if (a) they failed to address either obesity or law; (b) they addressed legal approaches to obesity only within the larger issue of chronic disease; (c) their focus on law was minor; or (d) they bore a limited relation to the issue of obesity and law within the U.S. Based on a review of the article abstracts and introductions, the articles were divided into topical categories, the descriptions of which are below. Some of the articles fit into multiple categories, but are in the category that appeared most relevant. Included at the end of the bibliography are selected reports and tools.

Box 1. PubMed Search Terms

Built environment
Court
Courts
Farm Bill
Fast food
Law
Legal
Legislation
Litigation
Menu
Obesity
Overweight
Physical Activity
Regulations

CATEGORIES:

Legal Strategies for Preventing or Reducing Obesity:

Public health professionals and the legal practitioners who advise them have become increasingly aware that legal strategies are useful to address the obesity epidemic. Laws and legal authorities impact the nutrition standards at our nation's schools, subsidies to farmers, zoning and transportation that impact our physical activity and insurance regulations that impact how professionals treat obesity.

The articles in this section primarily address two issues: (1) Should government take a role in preventing the obesity epidemic and if so what is its appropriate role? and (2) What legal strategies are likely to be most effective in combating the obesity epidemic? Articles fitting within this topic have been divided into four sub-categories depending on which legal avenue the article emphasizes.

The General Use of Law:

The following articles address the use of law generally to fight the obesity epidemic. Several address the broader issue of whether government should be involved in the fight against obesity. Several present theoretical legal approaches to framing the issue of obesity and several discuss multiple legal approaches to reducing the prevalence of obesity.

General

- N. Anderson, Note, "Would You Like Some First Amendment Rights with That? How Mandatory Nutritional Disclosure on Restaurant Menus Violates the Freedom of Commercial Speech." 36 Hastings Constitutional Law Quarterly 105 (2008).
- Benforado, J. Hanson and D. Yosifon, "Broken Scales: Obesity and Justice in America," Emory Law Journal, 53 (2004): 1645-1806.

- E. Benjamin, Comment, "Public Health Approaches to Obesity: Litigation, Legislation, and Lessons Learned," *Pittsburgh Journal of Environmental and Public Health Law*, 1 (2006): 127-149.
- M.G. Bloche, "Obesity and the Struggle Within Ourselves," *Georgetown Law Review*, 93 (2005): 1335-1359.
- Garson & C.L. Engelhard, "Attacking Obesity: Lessons from Smoking," 49 *Journal of the American College of Cardiology*." 49 (2007): 1673-5.
- E. M. D'Addabbo, "Regulating Childhood Obesity: A Comparison of Federal School Meal Programs in England and the United States." 12 *Quinnipiac Health Law Journal* 171 (2008/2009).
- R.A. Epstein, "What (Not) To Do About Obesity: A Moderate Aristotelian Answer," *Georgetown Law Review*, 93 (2005): 1361-1386.
- E.J. Fried, "Food Fights and Food Trends: A Legal Perspective," *Topics in Clinical Nutrition*," 22 (2007): 323-35.
- L.O. Gostin, "Fast and Supersized: Is the Answer to Diet by Fiat?" *Hastings Center Report*, 35 (2005): 11-12.
- L.O. Gostin, "Law as a Tool to Facilitate Healthier Lifestyles and Prevent Obesity," *JAMA*, 297 (2007): 87-90.
- J. Greenway, "Childhood Obesity: Bringing Children's Rights Discourse to Public Health Policy," *Community Practitioner*, 81 (2008): 17-21.
- N. Hunter, Note, "Revisiting the Regulation Debate: The Effect of Food Marketing on Childhood Obesity." 7 *Pierce Law Review* 205 (2009).
- Kelley and J.A. Smith, "Legal Approaches to the Obesity Epidemic: An Introduction," *Journal of Public Health Policy*, 25 (2004): 346-352.
- R. Kersh, "The Politics of Obesity: A Current Assessment and Look Ahead." *Milbank Quarterly*, 87 (2009): 295-316.
- K. Mayer, Note, "An Unjust War: The Case Against the Government's War on Obesity," *Georgetown Law Journal*, 92 (2004): 999-1031.
- M.M. Mello, D.M. Studdert and T.A. Brennan, "Obesity - The New Frontier of Public Health Law," *N. Engl. J. Med.*, 354 (2006): 2601-2610.
- G.A. Mensah, R.A. Goodman, S. Zaza, A.D. Moulton, P.L. Kocher, W.H. Dietz, T.F. Pechacek and J.S. Marks, "Law as a Tool for Preventing Chronic Diseases: Expanding the Range of Effective Public Health Strategies," *Preventing Chronic Disease*, 1 (2004): A13.
- G.A. Mensah, R.A. Goodman, S. Zaza, A.D. Moulton, P.L. Kocher, W.H. Dietz, T.F. Pechacek and J.S. Marks, "Law as a Tool for Preventing Chronic Diseases: Expanding the Spectrum of Effective Public Health Strategies," *Preventing Chronic Disease*, 1 (2004): A11.
- J.E. Oliver and T. Lee, "Public Opinion and the Politics of Obesity in America," *Journal of Health Politics, Policy and Law*, 30 (2005): 923-954.
- J. L. Pomeranz, "A Historical Analysis of Public Health, the Law, and Stigmatized Social Groups: The Need for Both Obesity & Weight Bias Legislation," *Obesity*, 16 (2008) Supplement 2: S93-103.
- L.M. Powell, F.J. Chaloupka, "Food Prices and Obesity: Evidence & Policy Implications for Taxes and Subsidies." *Milbank Quarterly*, 87 (2009): 229-57.

- R. Pulver, Note, "An Imperfect Fit: Obesity, Public Health and Disability Antidiscrimination Law," 41 Columbia Journal of Law & Social Problems 365-415 (2008).
- N.T. Rigby, S. Kumanyika and W.P. James, "Confronting the Epidemic: The Need for Global Solutions," Journal of Public Health Policy, 25 (2004): 418-234.
- L. Rutkow, J.S. Vernick, J.G. Hodge Jr., SP. Teret, "Preemption and the Obesity Epidemic. State and Local Menu Labeling Laws & the Nutrition Labeling and Education Act," 36 Journal of Law Medicine & Ethics 772 (2008).
- N. Smith, "Eatin' Good? Not in this Neighborhood, A Legal Analysis of Disparities in Food Availability and Quality at Chain Supermarkets in Poverty-Stricken Areas." 14 Michigan Journal of Race & Law 197 (2009).
- B.A. Swinburn, "Obesity Prevention: The Role of Policies, Laws and Regulations," Australia and New Zealand Health Policy, 5 (2008): 12.
- T.A. Wadden, K.D. Brownell and G.D. Foster, "Obesity: Responding to the Global Epidemic," Journal of Consulting and Clinical Psychology, 70 (2002): 510-525.
- E.Y. Wu, "McFat - Obesity, Parens Patriae, and the Children," Oklahoma City University Law Review, 29 (2004): 569-582.
- D.G. Yosifon, "Legal Theoretic Inadequacy and Obesity
- L.Wang, Note, "Weight Discrimination: One Size Fits All Remedy?" 117 Yale Law Journal 1900 (2008).

The Use of Courts and Litigation:

Can fast food companies be held accountable for their role in the obesity epidemic? Should courts authorize removal of morbidly obese children from their parents under theories of medical neglect? Are fast food lawsuits frivolous? The following articles explore the manner in which courts have and could be used to reduce the obesity problem.

Judicial/Litigation

- J. Alderman and R.A. Daynard, "Applying Lessons from Tobacco Litigation to Obesity Lawsuits," American Journal of Preventive Medicine, 30 (2006): 82-88.
- F.L. Andrews, Comment, "Small Bites: Obesity Lawsuits Prepare to take on the Fast Food Industry," Albany Law Journal of Science and Technology, 15 (2004): 153-182.
- B. Antler, Note, "Role of Litigation in Combating Obesity Among Poor Urban Minority Youth: A Critical Analysis of *Pelman v. McDonald's Corp.*" 15 Cardozo Journal of Law & Gender 275 (2009).
- S. Arani, Case Comment, "State Intervention in Cases of Obesity-Related Medical Neglect," Boston University Law Review, 82 (2002): 875-894.
- D. Burnett, "Fast-Food Lawsuits and the Cheeseburger Bill: Critiquing Congress's Response to the Obesity Epidemic," Virginia Journal of Social Policy and the Law, 14 (2007): 357-417.
- J.A. Cohan, "Obesity, Public Policy, and Tort Claims Against Fast-Food Companies," Widener Law Journal, 12 (2003): 103-133.

- K.A. Collier, Note & Comment, "Love v. Love Handles: Should Obese People Be Precluded From Adopting A Child Based Solely Upon Their Weight?" 15 Texas Wesleyan Law Review 31 (2008).
- B. Courtney, "Is Obesity Really the Next Tobacco? Lessons Learned from Tobacco for Obesity Litigation," Annals of Health Law, 15 (2006): 61-106.
- J. Davis, Note, "Fast Food, Zoning, and the Dormant Commerce Clause: Was it Something I Ate?" 35 Boston College Environmental Affairs Law Review 259 (2008).
- R.A. Daynard, P.T. Howard and C.L. Wilking, "Private Enforcement: Litigation as a Tool to Prevent Obesity," Journal of Public Health Policy, 25 (2004): 408-417.
- B. Falit, Recent Development, "Fast Food Fighters Fall Flat: Plaintiffs Fail to Establish that McDonalds Should be Liable for Obesity-Related Illnesses," Journal of Law, Medicine & Ethics, 31 (2003): 725-729.
- T.H. Frank, "A Taxonomy of Obesity Litigation," University of Arkansas at Little Rock Law Review, 28 (2006): 427-441.
- D.A. Frazier, Note, "The Link Between Fast Food and the Obesity Epidemic," Health Matrix, 17 (2007): 291-317.
- E.J. Fried, "Food Fights and Food Trends: A Legal Perspective," Topics in Clinical Nutrition," 22 (2007): 323-35.
- L.F. Gizzi, Comment, "State Menu-Labeling Legislation: A Dormant Giant Waiting to Be Awoken By Commerce Clause Challenges." 58 Catholic University Law Review 501 (2009).
- L.A. Kelley, Court Watch, "What Should be the Standards for Intervening between Parent and Child?: The Parental Prosecution for a Young Boy's Obesity," Buffalo Women's Law Journal, 9 (2000): 7-11.
- R. Kersh and J.A. Morone, "Obesity, Courts and the New Politics of Public Health," Journal of Health Politics, Policy and Law, 30 (2005): 839-868.
- C. Kubilis, Note, "'Weighting' for Protection in Massachusetts: The Myth of Equal Opportunity in Employment." 42 Suffolk University Law Review 211 (2008).
- C.E. Mason, "Doctrinal Considerations for Fast-Food Obesity Suits," Tort Trial and Insurance Practice Law Journal, 40 (2004): 75-106.
- J.P. McMenamin and A.D. Tiglio, "Not the Next Tobacco: Defenses to Obesity Claims," Food and Drug Law Journal, 61 (2006): 445-518.
- Meislik, Note, "Weighing in on the Scales of Justice: The Obesity Epidemic and Litigation Against the Food Industry," Arizona Law Review, 46 (2004): 781-814.
- M.M. Mello, E.B. Rimm and D.M. Studdert, "The McLawsuit: The Fast-Food Industry and Legal Accountability for Obesity," Health Affairs, 22 (2003): 207-216.
- L. Murtagh, Recent Development, "Judicial Interventions for Morbidly Obese Children," Journal of Law, Medicine & Ethics, 35 (3): 497-499.
- G. Novack, Note, "Lawsuits in the Fast-Food Nation: Will Fast-Food Suits Succeed As Obesity Becomes an American Tradition?" Wayne Law Review, 52 (2006): 1307-1327.

- J. O'Connor, Note, "Childhood Obesity & State Intervention: A Call to Order!" 38 Stetson Law Review 131 (2008).
- D. Patel, Student Note, "Super-Sized Kids: Using the Law to Combat Morbid Obesity in Children," Family Court Review, 43 (2005): 164-173.
- E.E. Patrick, Comment, "Lose Weight or Lose Out: The Legality of State Medicaid Programs That Make Overweight Beneficiaries' Receipt of Funds Contingent Upon Healthy Lifestyle Choices." 58 Emory Law Journal 249 (2008).
- J.L. Pomeranz, S.P. Teret, S.D. Sugarman, L. Rutkow, K.D. Brownell, "Innovative Legal Approaches to Address Obesity," Milbank Quarterly, 87 (2009): 185-213.
- A.R. Pulver, Note, "An Imperfect Fit: Obesity, Public Health and Disability Antidiscrimination Law," 41 Columbia Journal of Law & Social Problems 365-415 (2008).
- S.T. Roller, T. Voorhees and A.K. Lunkenheimer, "Obesity, Food Marketing and Consumer Litigation: Threat or Opportunity?," Food and Drug Law Journal, 61 (2006): 419-444.
- S.J. Romero, Comment, "Obesity Liability: A Super-Sized Problem or a Small Fry in the Inevitable Development of Product Liability?," Chapman Law Review, 7 (2004): 239-278.
- L. Rutkow, J.S. Vernick, J.G. Hodge Jr., SP. Teret, "Preemption and the Obesity Epidemic. State and Local Menu Labeling Laws & the Nutrition Labeling and Education Act," 36 Journal of Law, Medicine & Ethics 772 (2008).
- J.A. Smith, "Setting the Stage for Public Health: The Role of Litigation in Controlling Obesity," University of Arkansas at Little Rock Law Review, 28 (2006): 443-455.
- A.J. Vroom, "Fast Food or Fat Food: Food Manufacturer Liability for Obesity," Defense Counsel Journal, 72 (2005): 56-65.
- M. Walker, Note and Comment, "Low-Fat Foods or Big Fat Lies?: The Role of Deceptive Marketing in Obesity Lawsuits," Georgia State University Law Review, 22 (2006): 689-710.

The Use of Federal and State Legislation and Regulation:

How do laws relating to our food supply impact obesity rates? Should the government be able to tell us what to eat? Can legislation be an effective tool against childhood obesity? The following articles address the use of either legislation or regulations to address obesity.

Legislation/Regulation

- K. A. Collier, Comment, "Love v. Love Handles: Should Obese People be Precluded from Adopting A Child Based Solely Upon Their Weight?" 15 Texas Wesleyan Law Review 31 (2008).
- J. Alderman, J.A. Smith, E.J. Fried and R.A. Daynard, "Application of Law to the Childhood Obesity Epidemic" Journal of Law, Medicine & Ethics, 35 (2007): 90-112.

- D. Alter, Recent Legislative Development, "Prohibition Against Obesity Lawsuits," *Utah L. Rev.*, 2005 (2005): 395-400.
- N. Anderson, Note, "Would You Like Some First Amendment Rights with That? How Mandatory Nutritional Disclosure on Restaurant Menus Violates the Freedom of Commercial Speech." 36 *Hastings Constitutional Law Quarterly* 105 (2008).
- A.B. Antler, Note, "Role of Litigation in Combating Obesity Among Poor Urban Minority Youth: A Critical Analysis of *Pelman v. McDonald's Corp.*" 15 *Cardozo Journal of Law & Gender* 275 (2009).
- M. Ashe, D. Jernigan, R. Kline and R. Galaz, "Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants," *American Journal of Public Health*, 93 (2003): 1404-1408.
- M. Ashe, L.M. Feldstein, S. Graff, R. Kline, D. Pinkas, L. Zellers, "Local Venues for Change: Legal Strategies for Healthy Environments," *Journal of Law, Medicine & Ethics*, 35 (2007): 138-147.
- B.L. Atwell, "Obesity, Public Health and the Food Supply," *Indiana Health Law Review*, 4 (2007): 1-27.
- S.E. Benjamin, A. Cradock, E.M. Walker, M. Slining and M.W. Gillman, "Obesity Prevention in Child Care: A Review of U.S. State Regulations," *BMC Public Health*, 8 (2008): 188.
- T.K. Boehmer, D.A. Luke, D.L. Haire-Joshu, H.S. Bates, R.C. Brownson, "Preventing Childhood Obesity Through State Policy Predictors of Bill Enactment," *American Journal of Preventive Medicine* 34 (2008): 333-40.*
- T.K. Boehmer, R.C. Brownson, D. Haire-Joshu and M.L. Dreisinger, "Patterns of Childhood Obesity Prevention Legislation in the United States," *Preventing Chronic Disease*, 4 (2007): A56.
- V.L. Brescoll, R. Kersh and K.D. Brownell, "Assessing the Feasibility and Impact of Federal Childhood Obesity Policies," *Annals of the American Academy of Political and Social Science*, 615 (2008): 178-194.
- M. Cardin, T.A. Farley, A. Purcell and J. Collins, "Preventing Obesity and Chronic Disease: Education vs. Regulation vs. Litigation," *Journal of Law, Medicine & Ethics*, 35 (2007): 120-128.
- G.M. Catlin, Comment, "A More Palatable Solution? Comparing the Viability of Smart Growth Statutes to Other Legislative Methods of Controlling the Obesity Epidemic," *Wisconsin Law Review*; 2007 (2007): 1091-1121.
- J. Cawley and F. Liu, "Correlates of State Legislative Action to Prevent Childhood Obesity," *Obesity*, 16 (2008): 162-167.
- J. Cawley, "Markets and Childhood Obesity Policy," *The Future of Children*, 16 (2008): 69-88.
- M. D'Addabbo, "Regulating Childhood Obesity: A Comparison of Federal School Meal Programs in England and the United States." 12 *Quinnipiac Health Law Journal* 171 (2008/2009).
- D. Darwin, Note, "Advertising Obesity: Can the U.S. Follow the Lead of the UK in Limiting Television Marketing of Unhealthy Foods to Children?" 42 *Vanderbilt Journal of Transnational Law* 317 (2009).

- J. Davis, Note, "Fast Food, Zoning, and the Dormant Commerce Clause: Was it Something I Ate?" 35 Boston College Environmental Affairs Law Review 259 (2008).
- W.H. Dietz, D.E. Benken, A.S. Hunter, "Public Health Law and the Prevention and Control of Obesity," *Milbank Quarterly*, 87 (2009): 215-27.
- E.E. Dodson, C. Fleming, T.K. Boehmer, D. Haire-Joshu, D.A. Luke, R.C. Brownson, "Preventing Childhood Obesity Through State Policy: Qualitative Assessment of Enablers and Barriers," *Journal of Public Health Policy*, 30 (2009), Issue Supplement 1: S161-76.*
- L. F. Gizzi, Comment, "State Menu-Labeling Legislation: A Dormant Giant Waiting to be Awoken By Commerce Clause Challenges." 58 *Catholic University Law Review* 501 (2009).
- S.L. Fabros, Statute Note, "A Cry for Health: State and Federal Measures in the Battle Against Childhood Obesity," *Journal of Law and Family Studies*, 7 (2005): 447-457.
- E.A. Finkelstein, J.G. Trogdon, D.S. Brown, B.T. Allaire, P.S. Dellea and S.J. Kaman-Bahl, "The Lifetime Medical Cost Burden of Overweight and Obesity: Implications for Obesity Prevention," *Obesity*, 16 (2008): 1843-1848.
- B.A. Fisher, Note and Comment, "Community-Based Efforts at Reducing America's Childhood Obesity Epidemic: Federal Lawmakers Must Weigh In," *DePaul Law Review*, 55 (2006): 711-743.
- S. Fleischhacker, "Food Fight: The Battle Over Redefining Competitive Foods," *The Journal of School Health*, 77 (2007): 147-152.
- V.B. Fulwider, Comment, "Future Benefits? Tax Policy, Advertising, and the Epidemic of Obesity in Children," *The Catholic University of America Journal of Contemporary Health Law & Policy*, 20 (2003): 217-242.
- Garson & C.L. Engelhard, "Attacking Obesity: Lessons from Smoking," 49 *Journal of the American College of Cardiology*." 49 (2007): 1673-5.
- Garson Jr. and C.L. Engelhard, "Attacking Obesity: Lessons from Smoking," *Journal of the American College of Cardiology*, 49 (2007): 1673-1675.
- H.L. Greene, T. Prior and H.I. Frier, "Foods, Health Claims, and the Law: Comparisons of the United States and Europe," *Obesity Research*, 9 Suppl (2001): 276S-283S.
- J.L. Harris, J.L. Pomeranz, T. Lobstein, K.D. Brownell, "A Crisis in the Marketplace: How Food Marketing Contributes to Childhood Obesity and What Can Be Done," *Annual Review of Public Health* 30 (2009): 211-25.
- Hawkes, "Regulating and Litigating in the Public Interest: Regulating Food Marketing to Young People Worldwide: Trends and Policy Drivers," *American Journal of Public Health*, 97 (2007): 1962-1973.
- C.L. Hayne, P.A. Moran and M.M. Ford, "Regulating Environments to Reduce Obesity," *Journal of Public Health Policy*, 25 (2004): 391-407.
- J.G. Hodge Jr., A.M. Garcia and S. Shah, "Legal Themes Concerning Obesity Regulation in the United States: Theory and Practice," *Australia and New Zealand Health Policy*, 25 (2008): 14.

- S. Hubbard, Comment, "Taking Roll: An Assessment of State & Local Governance of School Wellness Policies." 5 *Indiana Health Law Review* 201 (2008).
- N. Hunter, Note, "Revisiting the Regulation Debate: The Effect of Food Marketing on Childhood Obesity." 7 *Pierce Law Review* 205 (2009).
- M.B. Justus, K.W. Ryan, J. Rockenbach, C. Katterapalli and P. Card-Higginson, "Lessons Learned While Implementing a Legislated School Policy: Body Mass Index Assessments Among Arkansas's Public School Students," *The Journal of School Health*, 77 (2007): 706-713.
- N. Kaushal, "Do Food Stamps Cause Obesity? Evidence from Immigrant Experience," *Journal of Health Economics*, 26 (2007): 968-991.
- F.R. Kline, S. Graff, L. Zellers and M. Ashe, "Beyond Advertising Controls: Influencing Junk-Food Marketing and Consumption with Policy Innovations Developed in Tobacco Control," *Loyola of Los Angeles Law Review*, 39 (2006): 603-646.
- J. L. Pomeranz, "A Historical Analysis of Public Health, the Law, and Stigmatized Social Groups: The Need for Both Obesity & Weight Bias Legislation," *Obesity*, 16 (2008) Supplement 2: S93-103.
- R.J. Lazarus, Note, "The Elephant in the Room: Evolution, Behavioralism, and Counteradvertising in the Coming War Against Obesity," *Harvard Law Review*, 116 (2003): 1161-1184.
- S. Levmore, Lecture, "Taxing Obesity - Or Perhaps the Opposite," *Cleveland State Law Review*, 53 (2005/2006): 575-583.
- S.E. Linn and C.L. Novosat, "Calories for Sale: Food Marketing to Children in the Twenty-First Century," *Annals of the American Academy of Political and Social Science*, 615 (2008): 133-155.
- S.E. Linn, "Food Marketing to Children in the Context of a Marketing Maelstrom," *Journal of Public Health Policy*, 25 (2004): 367-378.
- W.C. MacLeod and J.L. Oldham, "Kid-Vid Revisited: Important Lessons for the Childhood Obesity Debate," *Antitrust*, 18 (2004): 31-35.
- R.S. Magnusson, "What's Law Got To Do With It? Part 2: Legal Strategies for Healthier Nutrition and Obesity Prevention," *Australia and New Zealand Health Policy*, 5 (2008): 11.
- Malina and J.M. Balbus, "Environmental Interventions to Help Address the Obesity and Asthma Epidemics in Children," *Duke Environmental Law and Policy Forum*, 17 (2007): 193-207.
- M.M. Mello, "Obesity - Personal Choice or Public Health Issue?" *Nature Clinical Practice Endocrinology and Metabolism*, 4 (2008): 2-3.
- M.M. Mello, J. Pomeranz and P. Moran, "The Interplay of Public Health Law and Industry Self-Regulation: The Case of Sugar-Sweetened Beverage Sales in Schools," *American Journal of Public Health*, 98 (2008): 595-604.
- S.L. Mercer, L.W. Green, A.C. Rosenthal, C.G. Husten, L.K. Khan and W.H. Dietz, "Possible Lessons from the Tobacco Experience for Obesity Control," *American Journal of Clinical Nutrition*, 77 (2003): 1073S-1082S.

- Montgomery, Note, "The American Obesity Epidemic: Why the U.S. Government Must Attack the Critical Problems of Overweight & Obesity Through Legislation." 4 *Journal of Health & Biomedical Law* 375 (2008).
- L.J. Munger, Note, "Is Ronald McDonald the Next Joe Camel? Regulating Fast Food Advertisements that Target Children in Light of the American Overweight and Obesity Epidemic," *Connecticut Public Interest Law Journal*, 3 (2004): 390-413.
- N. Kubilis, Note, "'Weighting' for Protection in Massachusetts: The Myth of Equal Opportunity in Employment." 42 *Suffolk University Law Review* 211 (2008).
- B. Navarro, Note, "No Such Thing As Free Lunch: Supplementing Federal Nutrition Laws to Effectively Combat Obesity in Minority & Low-Income Children." 9 *Rutgers Race & Law Review* 365 (2008).
- J. Neal, Comment, "Childhood Obesity Prevention: Is Recent Legislation Enough?" *Journal of Juvenile Law*, 27 (2006): 108-122.
- J. O'Connor, Note, "Childhood Obesity & State Intervention: A Call to Order!" 38 *Stetson Law Review* 131 (2008).
- Patel, "Are We Too Darned Fat? Trying to Prevent and Treat Obesity with Health Care Reform," *Quinnipiac Health Law Journal*, 8 (2004): 141-159.
- E.E. Patrick, Comment, "Lose Weight or Lose Out: The Legality of State Medicaid Programs That Make Overweight Beneficiaries' Receipt of Funds Contingent Upon Healthy Lifestyle Choices." 58 *Emory Law Journal* 249 (2008).
- J.L. Pomeranz and K.D. Brownell, "Legal and Public Health Considerations Affecting the Success, Reach, and Impact of Menu-Labeling Laws," *American Journal of Public Health*, 98 (2008): 1578-83.
- J.L. Pomeranz, S.P. Teret, S.D. Sugarman, L. Rutkow, K.D. Brownell, "Innovative Legal Approaches to Address Obesity," *Milbank Quarterly*, 87 (2009): 185-213.
- L.M. Powell, F.J. Chaloupka, "Food Prices and Obesity: Evidence & Policy Implications for Taxes and Subsidies." *Milbank Quarterly*, 87 (2009): 229-57.
- A.R. Pulver, Note, "An Imperfect Fit: Obesity, Public Health and Disability Antidiscrimination Law," 41 *Columbia Journal of Law & Social Problems* 365-415 (2008).
- E.P. Richards, M.S. Shimabukuro and S. Combs, "Innovative Legal Tools to Prevent Obesity," *Journal of Law, Medicine & Ethics*, 32 (2004): 59-61.
- L. Rutkow, J.S. Vernick, J.G. Hodge Jr., S.P. Teret, "Preemption and the Obesity Epidemic. State and Local Menu Labeling Laws & the Nutrition Labeling and Education Act," 36 *Journal of Law Medicine & Ethics* 772 (2008).
- K.W. Ryan, P. Card-Higginson, S.G. McCarthy, M.B. Justus, J.W. Thompson, "Arkansas Fights Fat: Translating Research into Policy to Combat Childhood and Adolescent Obesity," *Health Affairs*, 25 (2006): 992-1004.
- J.B. Schor and M. Ford, "From Tastes Great to Cool: Children's Food Marketing and the Rise of the Symbolic," *Journal of Law, Medicine & Ethics*, 35 (2007): 10-21.

- M.B. Schwartz and K.D. Brownell, "Actions Necessary to Prevent Childhood Obesity: Creating the Climate for Change," *Journal of Law, Medicine & Ethics*, 35 (2007): 78-89.
- M. Simon and E.J. Fried, "State Laws on School Vending: The Need for a Public Health Approach," *Food and Drug Law Journal*, 62 (2007): 139-150.
- L. Smith and B.A. Liang, "Childhood Obesity: A Public Health Problem Requiring a Policy Solution," *Michigan State University College of Law Journal of Medicine and Law*, 9 (2005): 37-54.
- N. Smith, "Eatin' Good? Not in this Neighborhood, A Legal Analysis of Disparities in Food Availability and Quality at Chain Supermarkets in Poverty-Stricken Areas." 14 *Michigan Journal of Race & Law* 197 (2009).
- K.R. Stanton and Z.J. Acs, "The Infrastructure of Obesity and the Obesity Epidemic: Implications for Public Policy," *Applied Health Economics and Health Policy*, 4 (2005): 139-146.
- M. Story, K.M. Kaphingst and S. French, "The Role of Child Care Settings in Obesity Prevention," *The Future of Children*, 16 (2006): 143-168.
- M. Story, K.M. Kaphingst and S. French, "The Role of Schools in Obesity Prevention," *The Future of Children*, 16 (2006): 109-142.
- M. Story, M.S. Nannery, M.B. Schwartz, "Schools & Obesity Prevention: Creating School Environments and Policies to Promote Healthy Eating & Physical Activity." *Milbank Quarterly*, 87 (2009): 71-100.
- S.D. Sugarman and N. Sandman, "Fighting Childhood Obesity Through Performance-Based Regulation of the Food Industry," *Duke Law Journal*, 56 (2007): 1403-1490.
- S.D. Sugarman and N. Sandman, "Using Performance-Based Regulation to Reduce Childhood Obesity," *Australia & New Zealand Health Policy*, 5 (2008).
- Thompson, Note and Comment, "The Obesity Agency: Centralizing the Nation's Fight Against Fat," *American Journal of Law and Medicine*, 30 (2004): 543-559.
- S.S. Wang and K.D. Brownell, "Public Policy and Obesity: The Need to Marry Science with Advocacy," *The Psychiatric Clinics of North America*, 28 (2005): 235-252.
- R.I. Weiss and J.A. Smith, "Legislative Approaches to the Obesity Epidemic," *Journal of Public Health Policy*, 25 (2004): 379-390.
- P.E. Wilde, "Federal Communication about Obesity in the Dietary Guidelines and Checkoff Programs," *Obesity*, 14 (2006): 967-973.
- A.L. Willette, Commentary, "Where Have All the Parents Gone?" *Journal of Legal Medicine*, 28 (2007): 561-577.
- T.J. Zywicki, D. Holt and M.K. Ohlhausen, "Obesity and Advertising Policy," *George Mason Law Review*, 12 (2004): 979-1011.
- L. Wang, Note, "Weight Discrimination: One Size Fits All Remedy?" 117 *Yale Law Journal* 1900 (2008).

The Use of Community-Based Policies:

How can communities be involved in using law to decrease obesity rates? What school policies seem to work in addressing the childhood obesity rate? How do community land-use policies impact weight? The following articles have some overlap with the above category. However, these articles tend to focus more on policies that could be implemented on a local level, with an emphasis on community involvement.

Community Based Policies

- B. Antler, Note, "Role of Litigation in Combating Obesity Among Poor Urban Minority Youth: A Critical Analysis of *Pelman v. McDonald's Corp.*" 15 *Cardozo Journal of Law & Gender* 275 (2009).
- D. Darwin, Note, "Advertising Obesity: Can the U.S. Follow the Lead of the UK in Limiting Television Marketing of Unhealthy Foods to Children?" 42 *Vanderbilt Journal of Transnational Law* 317 (2009).
- J. Davis, Note, "Fast Food, Zoning, and the Dormant Commerce Clause: Was it Something I Ate?" 35 *Boston College Environmental Affairs Law Review* 259 (2008).
- L. Demattia and S.L. Denney, "Childhood Obesity Prevention: Successful Community-Based Efforts," *Annals of the American Academy of Political and Social Science*, 615 (2008): 83-99.
- W.H. Dietz, D.E. Benken, A.S. Hunter, "Public Health Law and the Prevention and Control of Obesity," *Milbank Quarterly*, 87 (2009): 215-27.
- W.H. Dietz, M.G. Bland, S.L. Gortmaker, M. Molloy, T.L. Schmid, "Policy Tools for the Childhood Obesity Epidemic," *Journal of Law, Medicine & Ethics*, 30 (2002): 83-87.
- C.D. Economos, R.R. Hyatt, J.P. Goldberg, A. Must, E.N. Naumova, J.J. Collins and M.E. Nelson, "A Community Intervention Reduces BMI z-score in Children: Shape Up Somerville First Year Results," *Obesity*, 15 (2007): 1325-1336.
- C.D. Economos, S. Irish-Hauser, "Community Interventions: A Brief Overview and Their Application to the Obesity Epidemic," *Journal of Law, Medicine & Ethics*, 35 (2007): 131-137.
- S. Fleischhacker, "Weighing the Legal & Ethical Implications of BMI Measurements in Schools." 12 *Michigan State Journal of Medicine & Law* 185 (2008).
- T. Giang, A. Karpyn, H.B. Laurison, A. Hillier and R.D. Perry, "Closing the Grocery Gap in Underserved Communities: The Creation of the Pennsylvania Fresh Food Financing Initiative," *Journal of Public Health Management and Practice*, 14 (2008): 272-279.
- N. Gorman, J.A. Lackney, K. Rollings, T.T.-K. Huang, "Designer Schools: The Role of School Space & Architecture in Obesity Prevention," *Obesity* 15 (2007): 2521-530.
- S.K. Graff, "First Amendment Implications of Restricting Food and Beverage Marketing in Schools," *Annals of the American Academy of Political and Social Science* 615 (2008): 158-173.

- H.M. Greves and F.P. Rivara, "Report Card on School Snack Food Policies Among the United States' Largest School Districts in 2004-2005: Room for Improvement," *International Journal of Behavioral Nutrition and Physical Activity*, 3 (2006): 1.
- S. Hubbard, Comment "Taking Roll: An Assessment of State & Local Governance of School Wellness Policies." *5 Indiana Health Law Review* 201 (2008).
- K.A. Kalich, V. Chomitz, K.E. Peterson, R. McGowan, R.F. Houser and A. Must, "Comfort and Utility of School-Based Weight Screening: The Student Perspective," *BMC Pediatrics*, 8 (2008): 9.
- D.L. Katz, "School-Based Interventions for Health Promotion & Weight Control: Not Just Waiting on the World to Change," *Annual Review of Public Health* 30 (2009): 253-72.
- L.C. Leviton, "Children's Healthy Weight and the School Environment," *The Annals of the American Academy of Political and Social Science*, 615 (2008): 38-55.
- R.P. Lopez and H.P. Hynes, "Obesity, Physical Activity, and the Urban Environment: Public Health Research Needs," *Environmental Health*, 5 (2006): 25.
- E.B. Navarro, Note, "No Such Thing As Free Lunch: Supplementing Federal Nutrition Laws to Effectively Combat Obesity in Minority & Low-Income Children." *9 Rutgers Race & Law Review* 365 (2008).
- E.B. Navarro, Note, "No Such Thing As Free Lunch: Supplementing Federal Nutrition Laws to Effectively Combat Obesity in Minority & Low-Income Children." *9 Rutgers Race & Law Review* 365 (2008).
- N.L. Nollen, C.A. Befort, P. Snow, C.M. Daley, E.F. Ellerbeck and J.S. Ahluwalia, "The School Food Environment and Adolescent Obesity: Qualitative Insights from High School Principals and Food Service Personnel," *The International Journal of Behavioral Nutrition and Physical Activity*, 4 (2007): 18.
- W.C. Perdue, L.A. Stone and L.O. Gostin, "The Built Environment and Its Relationship to the Public's Health: The Legal Framework," *American Journal of Public Health*, 93 (2003): 1390-1394.
- K.E. Peterson and M.K. Fox, "Addressing the Epidemic of Childhood Obesity through School-Based Interventions: What Has Been Done and Where Do We Go From Here?" *Journal of Law, Medicine & Ethics*, 35 (2007): 113-130.
- C. Probart, E. McDonnell, J.E. Weirich, P. Birkenshaw and V. Fekete, "Addressing Childhood Overweight through Schools," *Collegium Anthropologicum*, 31 (2007): 29-32.
- P. Salkin & A. Lavine, "Current Issues in Public Policy: Land Use Law & Active Living: Opportunities for States to Assume a Leadership Role in Promoting and Incentivizing Local Options." *5 Rutgers Journal of Law & Public Policy* 317 (2008).
- J.F. Sallis and K. Glanz, "The Role of Built Environments in Physical Activity, Eating, and Obesity in Childhood," *The Future of Children*, 16 (2006): 89-108.
- J.F. Sallis, "Physical Activity and Food Environments: Solutions to the Obesity Epidemic," *Milbank Quarterly* 87 (2009): 23-54.

- J. Schilling and L.S. Linton, "The Public Health Roots of Zoning: In Search of Active Living's Legal Genealogy," *American Journal of Preventive Medicine*, 28 (2005): 96-104.
- J. Schilling and S.D. Keyes, "The Promise of Wisconsin's 1999 Comprehensive Planning Law: Land-Use Policy Reforms to Support Active Living," *Journal of Health Politics, Policy and Law*, 33 (2008): 455-496.
- L.M. Segal and E.A. Gadola, "Generation O: Addressing Childhood Overweight Before It's Too Late," *Annals of the American Academy of Political and Social Science*, 615 (2008): 195-213.
- M. Story, M.S. Nanney, M.B. Schwartz, "Schools & Obesity Prevention: Creating School Environments and Policies to Promote Healthy Eating & Physical Activity." *Milbank Quarterly*, 87 (2009): 71-100.

Legal Challenges Posed by a Growing Population:

With an increasing percentage of the US population overweight or obese, legal questions have arisen regarding how people and institutions react to obesity. These include the legal issues posed by workplace wellness programs and whether institutions should be permitted to discriminate based on weight. The articles below address some of the issues posed by an increasing prevalence of obesity.

Legal Challenges Posed by an Obese Population

- C.R. Buxton, "Obesity and the Americans with Disabilities Act," *Barry Law Review*, 4 (2003): 109-129.
- S. Byrd, Comment, "Civil Rights and the 'Twinkie' Tax: The 900-Pound Gorilla in the War on Obesity," *Louisiana Law Review*, 65 (2004): 303-385.
- W.H. Dietz, D.E. Benken, A.S. Hunter, "Public Health Law and the Prevention and Control of Obesity," *Milbank Quarterly*, 87 (2009): 215-27.
- M.A. Glover, Note, "Employment & Disability Law - Americans with Disabilities Act of 1990 - The Weight of Personal Responsibility: Obesity, Causation, and Protected Physical Impairments," *University of Arkansas at Little Rock Law Review*, 30 (2008): 381-411.
- M. Henry, Note, "Do I Look Fat? Perceiving Obesity as a Disability Under the Americans with Disabilities Act," *Ohio State Law Journal*, 68 (2007): 1761-1793.
- K. Hinton, Note and Commentary, "Employer by Name, Insurer by Trade: Society's Obesity Epidemic and its Effects on Employers' Healthcare Costs," *Connecticut Insurance Law Journal*, 12 (2005/2006): 137-171.
- S. Hubbard, Comment, "Taking Roll: An Assessment of State & Local Governance of School Wellness Policies." *5 Indiana Health Law Review* 201 (2008).
- M.M. Mello and M.B. Rosenthal, "Wellness Programs and Lifestyle Discrimination - The Legal Limits," *New England Journal of Medicine*, 359 (2008): 192-199.
- J. Meyer, "Obesity Harassment in School: Simply 'Teasing' Our Way to Unfettered Obesity Discrimination and Stripping Away the Right to Education," *Law and Inequality*, 23 (2005): 429-454.

- D.B. Miller, "Work, Obesity, and Occupational Safety and Health," *American Journal of Public Health*, 97 (2007): 428-436.
- P.M. Minihan, S.N. Fitch and A. Must, "What Does the Epidemic of Childhood Obesity Mean for Children with Special Health Care Needs?" *Journal of Law, Medicine & Ethics*, 35 (2007): 61-77.
- E.E. Patrick, Comment, "Lose Weight or Lose Out: The Legality of State Medicaid Programs That Make Overweight Beneficiaries' Receipt of Funds Contingent Upon Healthy Lifestyle Choices." *58 Emory Law Journal* 249 (2008).
- P.A. Schulte, G.R. Wagner A. Ostry, L.A. Blanciforti, R.G. Cutlip, K.M. Krajnak, M.Luster, A.E. Munson, J.P. O'Callaghan, C.G. Parks, P.P. Simeonova and D.B.
- E.E. Theran, "'Free to be Arbitrary and ... Capricious': Weight-Based Discrimination and the Logic of American Antidiscrimination Law," *Cornell Journal of Law and Public Policy*, 11 (2001): 113-201.
- L. Wang, Note, "Weight Discrimination: One Size Fits All Remedy?" *117 Yale Law Journal* 1900 (2008).
- B. Montgomery, Note, "The American Obesity Epidemic: Why the U.S. Government Must Attack the Critical Problems of Overweight & Obesity Through Legislation." *4 Journal of Health & Biomedical Law* 375 (2008).

Related Reports and Tools

- "A CDC Review of School Laws and Policies Concerning Child and Adolescent Health," *Journal of School Health*, 78 (2008).
- L.M. Feldstein, "General Plan and Zoning: A Toolkit on Land Use and Health," *Public Health Law and Policy*, (2006), available at http://www.healthyplanning.org/toolkit_gpz.html
- G.W. Heath, R.C. Brownson, J.Kruger, R. Miles, K.E. Powell, L.T. Ramsey and the Task Force on Community Preventive Services, "The Effectiveness of Urban Design and Land Use and Transport Policies and Practices to Increase Physical Activity: A Systematic Review," *Journal of Physical Activity and Health*, 3 (2006): S55-S76. (One-page summaries of recommendations available at <http://www.thecommunityguide.org/pa/default.htm#environmental>)
- J. Levi, L.M. Segal and E Gadola, "F as in Fat: How Obesity Policies are Failing in America," *Trust for America's Health*, (2009), available at <http://healthyamericans.org/reports/obesity2009/>
- P. Stair, H. Wooten and M. Raimi, "How to Create and Implement Health General Plans: A Toolkit for Building Healthy, Vibrant Communities through Land Use Policy Change," *Public Health Law and Policy*, (2008), available at http://www.healthyplanning.org/toolkit_healthygp.html