10-9-2013

Community Water Fluoridation around the Nation: Significant Case Law and Legislation

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I. INTRODUCTION

Community water fluoridation, heralded in the United States as one of the great public health successes of the twentieth century, is recognized as an essential mechanism to improve oral health, regardless of one's socioeconomic background. Courts across the United States have consistently supported community water fluoridation as a constitutional means of protecting public health; this Article reviews both the legal history and the chronology of fluoridation as a public health measure.

The U.S. began discovering fluoride's oral health benefits in the 1930s and, in 1945, Grand Rapids, Michigan, became the first city in the nation to fluoridate its water supply. Following the example of Grand Rapids, many states, cities, and municipalities over the last sixty-eight years passed legislation requiring and implementing community water fluoridation. By 2010, seventy-three percent of the U.S. population, or a total of 204.3 million people, had access to optimally fluoridated water in community water systems.

Scientific studies have demonstrated conclusively that adding a low level of fluoride to community drinking water reduces the rate of dental caries among children and adults. The American Dental Association ("ADA") states that "drinking optimally fluoridated water is one of the safest and most cost-effective public health measures for preventing, controlling, and in some cases reversing, tooth decay." Many institutions support community water fluoridation including the ADA, American Medical Association, American Academy of Pediatrics, the American Academy of Family Physicians, the American Public Health Association, the American College of Dentists, and many other medical and public health organizations.

Fluoride exposure during early childhood, while teeth are developing within the jaw, can lead to fluorosis, which is a change in the appearance of tooth enamel. The U.S. government's recommendations for the optimal level of fluoridation balance both protecting from dental caries and limiting the likelihood of dental fluorosis. However, opponents of fluoridation point not only to fluorosis, but also allege that fluoridation can lead to increased risk of cancer, heart disease, osteoporosis and bone fracture, acquired immunodeficiency syndrome, low intelligence, Alzheimer's disease, allergic reactions, Down Syndrome, and other claims, despite reviews from the government and the National Research Council that do not support these claims.

From the beginning, opponents of fluoridation have strived to influence community water fluoridation policies in the public dialogue, courts, and state and local governments. While the percentage of the nation's population with community water fluoridation continues to increase, the number of cities and towns that elect to discontinue water fluoridation is also slowly increasing.
Despite attempts to prevent community water fluoridation through court challenges and ballot initiatives, it has received consistent approval in the courts as a proper means of advancing public health and welfare. In addition, federal guidelines reinforce longstanding government support for community water fluoridation at safe and effective levels.

This Article examines the present status of community water fluoridation in the U.S. Initially, it provides a history of community water fluoridation. Secondly, this Article examines the present state of community water fluoridation at the state and local level. The third section examines the legal challenges mounted against community water fluoridation. The fourth section examines the legal theories employed by opponents of community water fluoridation, and how the courts have addressed them. As community water fluoridation remains a timely public health issue, the final section examines the current efforts both to expand and curtail community water fluoridation.

II. COMMUNITY WATER FLUORIDATION: A HISTORICAL PERSPECTIVE

According to the ADA, tooth decay is “the destruction of [the] tooth enamel.” Bacteria in the mouth produce acids that, over time, destroy the tooth enamel, leading to tooth decay. Dental caries have long been a serious problem in the United States, remaining a common and costly health problem among all age groups. The reduction of dental caries in the United States during the twentieth century was a major accomplishment. At the beginning of the twentieth century, tooth extraction was the common treatment for dental caries. While today obesity acts as a barrier for many young Americans to serve in the nation’s military, during the first and second world wars, the requirement that soldiers have six opposing teeth was a common impediment for military service. During earlier parts of the twentieth century, three in ten Americans above the age of forty-five had lost all of their natural teeth. More than twenty-five percent of children aged two to five, and fifty percent of children aged twelve to fifteen, are affected by tooth decay. According to the Centers for Disease Control and Prevention (“CDC”), approximately fifty percent of all children, and two-thirds of children age twelve to nineteen from lower-income families, have suffered from tooth decay.

Tooth decay and caries often lead to other health problems, such as “constant pain, malnourishment, [and] loss of teeth.” Problems that start in childhood can persist and worsen in adulthood. Poor children are disproportionately affected by pain from tooth decay. Children from families earning less than $10,000 a year have twelve times more “restricted activity days” as a result of dental pain than children of wealthier families.

Fluoride, a natural mineral found in water sources, prevents caries and re-mineralizes tooth surfaces. Dr. Frederick McKay is credited with the discovery of fluoride’s effect on teeth. His research began after noticing many of his patients had brown stains on their teeth in Colorado Springs, Colorado. The residents had many explanations, including “eating too much pork, consuming inferior milk, and drinking calcium-rich water.” Dental researcher Dr. G.V. Black, dean of the Northwestern University Dental School in Chicago, joined Dr. McKay’s research to focus on the cause of this “Colorado Brown Stain.” The research revealed that teeth afflicted by ‘Colorado Brown Stain’ were resistant to decay. Dr. McKay subsequently joined Dr. Grover Kempf of the United States Public Health Service to examine reports of similar tooth staining in Bauxite, Arkansas. Notably, they found that the brown stains were common with children in Bauxite, but nonexistent in a town only five miles away. Dental researcher Dr. H. Trendley Dean, head of the Dental Hygiene Unit at the National Institutes of Health, subsequently found that “fluoride levels of up to 1.0 ppm in drinking water did not cause enamel fluorosis in most people, and only mild enamel fluorosis in a small percentage of people.” As a result of Dr. Dean’s research and his discussions with the Michigan Department of
Health, the City of Grand Rapids, Michigan, became the first city in the world to fluoridate its drinking water. Dental caries among Grand Rapids children dropped more than sixty percent following the addition of fluoride to its water supply.

Community water fluoridation has been implemented at the state level under the general welfare and police powers retained by the states. To date, the following thirteen states have enacted various statutory requirements for fluoridation of their community water systems: Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Minnesota, Nebraska, Nevada, Ohio, and South Dakota. Legislation ranges from requiring fluoridation to providing an option for municipalities to fluoridate their water supply. In many instances, statewide legislation makes fluoridation of water supplies contingent upon attaining a certain population level. In addition, the overwhelming majority of the nation’s largest cities have enacted ordinances requiring fluoridation of their water systems.

III. BACKGROUND ON FLUORIDATION AS A PUBLIC HEALTH MEASURE

The United States supports community water fluoridation based on studies that consistently provide that water fluoridation is a safe and effective modality to prevent tooth decay in both children and adults. Fluoridation reduces decay in children, adolescents, and adults by about twenty-five percent across one’s lifespan, and has substantially reduced the rate of edentulism, losing one’s teeth, among seniors. Today, fluoridated water reaches seventy-three percent of the U.S. population that is on a community water system. HHS’s Healthy People 2020 initiative set a goal of eighty percent of Americans served by community water systems to have optimally fluoridated water by 2020.

Implemented as a public health measure, community water fluoridation is “the adjustment of the existing, naturally occurring fluoride levels in drinking water to an optimal fluoride level recommended by the U.S. Public Health Service for the prevention of tooth decay.” Fluoride prevents tooth decay by fortifying healthy teeth against corrosive acid, re-mineralizing decayed teeth, and limiting the ability of bacteria to attack the teeth. When fluoride is added to drinking water, it is retained in dental plaque and saliva.

The cost-effectiveness of community water fluoridation is now well documented. Providing all Americans with fluoridated water could save up to $1 billion per year in dental costs. For communities with more than 20,000 people, the cost is a mere fifty cents per resident. Even in small communities, fluoridation costs three dollars per resident. In addition, the Center for Disease Control (CDC) estimates that each dollar invested in the fluoridation creates approximately thirty-eight dollars of savings in dental treatment costs.

Additionally, in five to seventeen year olds, tooth decay is five times as common as asthma, and seven times as common as hay fever. Community water fluoridation is an intervention to prevent tooth decay in adults and children without regard to socioeconomic status or access to care. The ADA has stated that “community water fluoridation is the single most effective public health measure to prevent tooth decay.” Former United States Surgeon General David Satcher stated that the fluoridation of community water is “an inexpensive means of improving oral health that benefits all residents of a community, young and old, rich and poor alike.” According to the ADA, tooth decay is reduced by twenty to forty percent as a result of community water fluoridation. Public officials have argued that water fluoridation remains important because many Americans cannot afford dental care.

Notwithstanding the well-documented scientific basis for community water fluoridation, those opposed to fluoridation continue to fight efforts to increase Americans' access to fluoridated water. Two organizations leading this campaign are the Fluoride Action Network and Citizens for Safe Drinking Water. In *The Case Against Fluoride*, Fluoride Action Network’s Executive Director, Paul Connett, argued that the benefits of fluoride have been overstated and that other explanations, including regular brushing and sealants, account for the decline in caries.
Scientists do agree that the decline in caries can, in part, be attributed to the increased use of fluoride toothpaste, and note that ingestion of fluoride by young children while teeth are developing under the gums can lead to clinical dental fluorosis. Yet the World Health Organization (WHO) notes that ingestion of fluoride after age six will not cause dental fluorosis. Regardless, opponents continue to allege that fluoridation can lead to increased risk of cancer, heart disease, osteoporosis and bone fracture, low intelligence, acquired immunodeficiency syndrome, Alzheimer's disease, Down Syndrome, allergic reactions, and other claims, despite the U.S. government, the National Research Council, and academic reviews denying these claims. As just one example, a recent study from Harvard University and the National Cancer Institute failed to provide a link between fluoride and bone cancer.

IV. REGULATION AND IMPLEMENTATION OF COMMUNITY WATER FLUORIDATION

Although the U.S. Public Health Service recommends fluoridation to prevent tooth decay, the decision to add fluoride is a decentralized decision and is not mandated by any federal agency. Most water supplies contain some natural fluoride. The optimal level of fluoride in drinking water prevents tooth decay in children and adults and limits children's chances to develop dental fluorosis in teeth forming under the gums. In the 1950's drinking water was the sole source of fluoride exposure. Studies were constantly conducted regarding water consumption and caries experience across different climates and geographic regions in the United States. In 1962, the U.S. Public Health Service recommended an optimum range of fluoride concentration of 0.7-1.2 mg/L, with the lower concentration applying to warmer climates (where water consumption was higher) and the higher concentration applying to colder climates.

Over the past several decades, many factors, including the advent of air conditioning, have reduced geographical differences in water intake. Recent studies failed to associate the total water intake of children and measures of maximum daily temperature, suggesting that the temperature-based approach was unnecessary given the current conditions. Also, Americans currently receive fluoride from multiple sources in addition to drinking water, including food, dental products and pesticides. On January 7, 2011, the U.S. Department of Health and Human Services (HHS) announced that it was proposing a change in the recommended level for community water fluoridation to a single level for the nation of 0.7 mg/L, to achieve the best balance of protection from dental caries while limiting the risk of dental fluorosis.

Although many communities add fluoride to drinking water to strengthen teeth, some communities must treat their water to remove excess amounts of fluoride, which often is present naturally in water. The Environmental Protection Agency (EPA) regulates the maximum amount of fluoride that may be present in drinking water supplies to protect against adverse health effects, as required by the Safe Drinking Water Act ("SDWA"), passed by Congress in 1974. The SDWA requires the EPA to determine contaminant's levels in drinking water at which no adverse health effects are likely to occur. This is referred to as a non-enforceable health-based maximum contaminant goal (MCLG). The EPA also determines a maximum contaminant level (MCL), which is the maximum permissible level of a contaminant in drinking water delivered to any user of a public water system. These levels are enforceable standards. States are granted "primacy" to control their water systems as long as they have adopted standards as stringent as the EPA's. In a statement released jointly with HHS the day it proposed its new recommendation for the optimal level of fluoride in drinking water, the EPA announced that it was initiating review of the maximum amount of fluoride allowed in drinking water, which is presently 4.0 mg/L. The agencies acknowledged that they were guided by the same scientific assessments and findings of the National Academies of Science (NAS), including information that individuals now receive fluoride from many sources, including "dental products such as toothpaste and mouth rinses, prescription fluoride supplements, and professionally applied fluoride products."
Following the joint announcement, the ADA "commended" the new recommendation and complimented the government's reaffirmation of the benefits of community water fluoridation.80 A week later, the Grand Rapids Press published an editorial supporting the continued benefits of community water fluoridation, remarking that the new guidelines "suggest fluoride should be adjusted, not discarded."81

Because there is no federal water fluoridation requirement, and access to fluoridated water is determined by state and local laws, a complex regulatory web surrounds community water fluoridation. Some states, using their police power, have legislated fluoridation of water. The thirteen states that specifically require fluoridation of community water systems to promote equitable access to optimal fluoride levels by residents across the state include: Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Minnesota, Nebraska, Nevada, Ohio, and South Dakota. The type of requirement varies, with some states including an opt-out provision that allows water systems an exclusion from the requirement. Other state statutes condition fluoridation on the acquisition of capital to fund the fluoridation.

California is an example of a state that requires fluoridation of community water systems. Section 116409 of the California Health and Safety Code states that fluoridation is a "paramount issue of statewide concern"82 and specifically preempts any "local government regulations, ordinances, and initiatives."83 Any public water system that has at least 10,000 service connections must be fluoridated.84 The statute has additional requirements with regard to equipment maintenance, capital cost estimates, testing, record keeping and reporting. The statute also allows for a rate increase, which maintains the system through an application to the Public Utilities Commission.86 Section 116415 exempts a public water system that fails to raise capital and associated costs from sources other than ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system from the requirements.87

States with similar requirement statutes are Arkansas,88 Connecticut,89 Delaware,90 Georgia,91 Illinois,92 Kentucky,93 Louisiana,94 Minnesota,95 Nebraska,96 Nevada,97 Ohio,98 and South Dakota.99 An examination of the statutes reveals each jurisdiction's unique approach to fluoridation. For instance, Nevada's requirement is only applicable to counties with populations over 400,000, and a water system serving over 100,000 people.100 By comparison, Connecticut's requirement applies to water supplies serving 20,000 people,101 and South Dakota requires fluoridation for municipal water supplies serving a population of 500 or more, but offers an exception where the naturally occurring level of fluoride is sufficient with the rules of the Department of Environment and Natural Resources.102 Kentucky requires fluoridation for water systems that serve 3,000 people or more.103 Those receiving water from smaller water systems are also covered, as the statute requires water systems serving between 1,500-3,000 to provide supplemental fluoridation if "adequate fluoride feed equipment is available from the Cabinet for Human Resources, Department for Health Services, and there are competently trained or certified personnel at the community water system."104

In response to the new federal recommendations announced by HHS on January 7, 2011, Illinois amended its state statute mandating fluoridation.105 The statute now requires the Department of Public Health to incorporate in their rules "the recommendations on optimal fluoridation for community water levels as proposed and adopted by the U.S. Department of Health and Human Services."106

Other state fluoride requirements contain opt-out clauses. To date, there has not been research surrounding the effects that opt-out clauses have on access to fluoridated water. For instance, Delaware required a referendum if the water supply was not fluoridated before May 26, 1974.107 The statute provides specific requirements for the referendum, including that it shall be conducted by the Board of Elections;108 the Division of Public Health must also provide an educational campaign
about fluoridation. The referendum must occur within sixty days of the Division of Public Health providing notice to the water supplier and the local government. After the referendum, the statute states that it is "conclusively decided" for a period of three years.

If a public water system in Louisiana has never been fluoridated, a vote on an exemption from the requirement is conditioned upon the receipt of a petition containing the signatures of fifteen percent of registered voters. A referendum's results are controlling for four years. Louisiana's requirement also provides an exemption where funding is not made available.

Similarly, Georgia's fluoridation statute allows a municipality or county to opt-out through a referendum after a petition signed by ten percent of the registered voters is submitted. Georgia's law also provides an exemption where funds are not made available for "the cost of the fluoridation equipment, the installation of such equipment, and the materials and chemicals required for six months of fluoridation of such potable public water supplies." The Georgia statute is unique because it provides a tax deduction for people allergic to fluoride from the drinking water.

Nebraska provided an opt-out clause that exempts its citizens from fluoridating "if the voters of the city or village adopted an ordinance, after April 18, 2008, but before June 1, 2010, to prohibit the addition of fluoride to such water supply." Cities or villages that have 1,000 residents after June 1, 2010 may pass an ordinance prohibiting fluoridation, thereafter placing it on the ballot for a referendum at the next statewide election.

In addition to state statutes, many cities and municipalities have developed their own ordinances to regulate water fluoridation. Forty-three of the largest fifty American cities fluoridate their water systems. Until recently, San Jose was the largest municipality in the country without fluoridated water. On November 15, 2011, the board of the Santa Clara Valley Water District voted in favor of fluoridating the water supply for most residents of the county.

V. LEGAL CHALLENGES TO COMMUNITY WATER FLUORIDATION

To date, courts have consistently upheld fluoridation programs. Moreover, the United States Supreme Court has declined to grant certiorari in cases surrounding water fluoridation. A current review of federal jurisprudence reveals that no community water fluoridation challenge has originated in a federal court.

Even so, opponents of community water fluoridation have utilized the judicial branch as a mechanism to prevent the addition of fluoride to drinking water. Opponents of fluoridation have challenged fluoridation efforts using several different legal arguments, including: abuse of municipal authority; due process clause violations; a violation of fundamental liberties; petition initiatives and re-votes; preemption; push for FDA approval; the right to privacy; state police power; unlicensed practice of medicine/compulsory medicine; and claiming fluoridation is unnecessary, unsafe, and wasteful.

Legal challenges to community water fluoridation began quickly in the years following the addition of fluoridation in Grand Rapids, Michigan, and continue today. The challenges have included a number of legal theories, which have failed. This section briefly identifies and explains each theory advocated in fluoride litigation.

The United States Supreme Court has stated that "public health" means "the health of the community." The seminal case surrounding the use of the state's police power to protect public health is Jacobson v. Commonwealth of Massachusetts. There, Mr. Jacobson challenged the constitutionality of a compulsory smallpox vaccine statute by the City of Cambridge. The Supreme Court held that the statute was a valid exercise of the state's police power to regulate the health and safety of its citizens. The Court noted:

If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that, if a statute purported to have been enacted to protect
the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.\textsuperscript{140}

State courts have repeatedly upheld the constitutionality of community water fluoridation. The U.S. Supreme Court has never heard a challenge to a state's police power to fluoridate community water. In \textit{Young v. Board of Health of Borough of Somerville}, the New Jersey Supreme Court provided a concise history of the legal challenges:

The courts throughout the nation have been virtually unanimous in resisting these as well as other arguments, and in upholding fluoridation of drinking water as a valid public health measure whenever a challenge has been presented. \ldots\ The unanimity of appellate state court holdings is matched only by the frequency and persistent regularity with which the United States Supreme Court has declined review.\textsuperscript{141}

\section{A. Significant Case Law and Legal Theories}

In one of the early challenges to community water fluoridation, the Court of Appeals of California heard the case of \textit{DeAryan v. Butler} in 1953.\textsuperscript{142} There, the plaintiff alleged that the 1951 resolution adopted by the City of San Diego to add fluoride to the public water supply was unconstitutional.\textsuperscript{143} The court disagreed, finding that the resolution was a valid exercise of the city's police power, "so long as it was not unreasonable or an abuse of discretion."\textsuperscript{144} Citing to \textit{Jacobson}, the court stated that a legislature's determination that regulation is necessary for "the protection or preservation of health is conclusive on the courts except only to the limitation that it must be a reasonable determination, not an abuse of discretion, and must not infringe on rights secured by the Constitution."\textsuperscript{145}

\textit{Coshow v. City of Escondido} provided a constitutional challenge of whether the City of Escondido could add hydrofluorosilicic acid to the city's water supply as a means of fluoridation.\textsuperscript{146} The Court of Appeals, Fourth District, held that Coshow failed to state a cause of action evidencing a violation of fundamental constitutional rights.\textsuperscript{147} To comply with the California Safe Drinking Water Act, the City of Escondido directed its staff to fluoridate the water supply.\textsuperscript{148} Coshow asserted he was:

\begin{quote}
[b]eing forced, without his consent, to drink the municipal water containing a drug – HFSA [fluoride] – that has never been tested or approved by the FDA to treat dental caries and which is dangerous to his health and the health of other residents.\textsuperscript{149}
\end{quote}

Coshow's challenge was not timely because he did not challenge the decision to use HFSA to fluoridate the water prior to the Department of Health's decision.\textsuperscript{150} The Court noted that a timely challenge should have been made at the administrative level.\textsuperscript{151} Coshow alleged that water fluoridation was forced medication, which violated his right to bodily integrity and privacy.\textsuperscript{152} The court failed to find a fundamental right to "drinking water uncontaminated with HFSA."\textsuperscript{153} Instead, it noted that "courts throughout the United States have uniformly upheld the constitutionality of adding fluoride to the public water supply as a reasonable and proper exercise of the police power in the interest of public health."\textsuperscript{154} As well, it noted the absence of precedent recognizing due process claims based on drinking water purer than the requirements of federal and state drinking water standards.\textsuperscript{155}

The court next examined Coshow's claim that fluoridation is forced medication. In rejecting this argument, the court noted that fluoridation "stops with the water faucet."\textsuperscript{156} The court distinguished fluoridation from invasive treatments where the state seeks to override individual freedom, and further stated that Coshow retained the freedom not to drink fluoridated water.\textsuperscript{157} In addition, it is the function of the Department of Health to ensure that the level of any chemicals added to the water is safe.\textsuperscript{158} The court also discarded Coshow's claim based on fluoride having not been approved by the FDA to treat dental caries.\textsuperscript{159} The FDA's regulation of fluoride in bottled water and other products does not extend to public supplies of drinking water.\textsuperscript{160}
With regard to Coshow’s due process challenge, the court stated that there is “no fundamental right to privacy at stake” when the challenged action relates to health and safety,¹⁶¹ and thus the rational basis test must be satisfied.¹⁶² In finding the rational basis test to be satisfied, the court offered a strong endorsement of community water fluoridation:

[w]ater fluoridation is integrally related to a strong state interest – public health – and the manner of accomplishing this objective is a cost-effective way of providing dental protection to residents.¹⁶³

Even though challengers to community water fluoridation often allege it is not a valid exercise of the state’s police power, courts nonetheless have uniformly held that water fluoridation is a valid utilization of a state’s police power.¹⁶⁴ In *Kraus v. City of Cleveland*, the plaintiff argued that prevention or treatment of tooth diseases was not a matter of public health, and that a valid exercise of the police powers requires a contagious or infectious disease.¹⁶⁵ The court rejected this contention, noting that laws relating to “child labor, minimum wages for women and minors and maximum hours for women and minors” have all been upheld as state police powers.¹⁶⁶ The court also cited an Oklahoma case challenging fluoridation, which found that “[t]he relation of dental hygiene to the health of the body generally is now so well recognized as to warrant judicial notice.”¹⁶⁷ The court later referenced the advancement of science as a basis for modifications in the law:

Under our modern existence the law must change and expand with mechanical and scientific progress. What did not concern public health yesterday, because of an inability of science to cope with the problem at hand, may very well become a matter of public health due to scientific achievement and progress. The use of fluoridation to prevent dental caries is an excellent example of this proposition.¹⁶⁸

Another charge that has been levied against community water fluoridation is that it infringes on due process rights.¹⁶⁹ The U.S. Supreme Court has held that “[t]he guarantee of due process of law includes a substantive component which prohibits the government from infringing on certain ‘fundamental’ liberty interests unless the infringement is narrowly tailored to serve a compelling state interest.”¹⁷⁰ In *Pure Water Committee of Western Maryland, Inc. v. Mayor and City Council of Cumberland, Maryland*, the plaintiffs asserted that fluoridated municipal water was forced, nonconsensual, medication, and therefore violated their due process.¹⁷¹ The court distinguished water fluoridation from “the type of invasive and highly personalized medical treatments involved in the cases in which the Supreme Court has recognized a liberty interest in freedom from unwanted medical treatments.”¹⁷² The court stated it was unclear whether a liberty interest existed in being free from water fluoridation because plaintiffs retained the choice to not drink the fluoridated water.¹⁷³

When presented with such claims, courts have noted the difference between an invasive medical procedure that overrides personal freedom and adding approved chemicals to public drinking water.¹⁷⁴ “Flouridation occurs before it enters each household and stops with the water faucet.”¹⁷⁵ A person may avoid fluoridated water by purchasing bottled water or by filtering, boiling, or mixing it with purifying spirits.¹⁷⁶

In *Dowell v. City of Tulsa*, the court rejected the argument of compulsory medication and stated that the city of Tulsa:

is no more practicing medicine or dentistry or manufacturing, preparing, compounding or selling a drug, than a mother would be who furnishes her children a well-balanced diet, including foods containing vitamin D and calcium to harden bones and prevent rickets, or lean meat and milk to prevent pellagra. No one would contend that this is practicing medicine or administering drugs.¹⁷⁸

Plaintiffs have also alleged that, because fluoridation has never been proven “safe and effective” by the FDA, it violates constitutional protections.¹⁷⁹ In *City of Watsonville*, the voters passed a ballot initiative, Measure S, prohibiting the introduction of any substance into the city’s drinking water unless it was found to be safe and effective by the FDA.¹⁸⁰ The
court found that, because the FDA does not regulate additives to public water supplies, Measure S was targeting fluoridation, as required by California state law, and struck down the initiative.181

Community water fluoridation has also been at issue in First Amendment cases.182 In Readay v. St. Louis County Water Co., eight taxpayers challenged a 1959 ordinance requiring fluoridation of the St. Louis County water system.183 The taxpayers alleged that "the ordinance is unconstitutional because it prohibits certain county residents from practicing their religious beliefs."184 A Missouri attorney filed an amicus curie brief, asserting that the ordinance was unconstitutional because it subjects Christian Scientists in St. Louis County to forced medication against their religious beliefs.185 The Supreme Court of Missouri decided the case on technical grounds, finding the issue was not before them, as it had not been raised in the case below or preserved for appeal.186 The court upheld the St. Louis ordinance requiring the fluoridation of water.187

In another case, Exner v. American Medical Association, the plaintiff alleged defamation based on an article written about fluoridation. Dr. Frederick Exner, an avowed anti-fluoridation advocate, had been contracted as an expert witness, was published in multiple books and magazines, and had been asked to guest lecture on fluoridation.188 In October 1965, the Director of Public Information for the American Medical Association (AMA) published an article challenging the views espoused by Dr. Exner. Dr. Exner sued the AMA for defamation.189 The Washington Court of Appeals granted summary judgment in favor of the AMA, finding that Dr. Exner had become a "public figure in regard to the limited issue of fluoridation."190 Therefore, because the court found the article to "have commented fairly on the plaintiff's position on fluoridation and not to have attacked his personal character or medical competence,"191 the AMA's article was not defamatory in nature.

Similarly, plaintiffs who argue that fluoridation violates their right to privacy have also been unsuccessful in preventing community water fluoridation.192 The plaintiff in Quiles v. City of Boynton Beach alleged that fluoridation of the community water supply violated his right to privacy under the Florida Constitution.193 The court notably distinguished that water fluoridation does not seek to introduce fluoride into Quile's bloodstream and thereby "stops with Quile's water faucet."194 Because Quile had not been compelled to drink the water, he was "free to filter it, boil it, distill it, mix it with purifying spirits, or purchase bottled drinking water."195 Challengers have also argued that water fluoridation is unnecessary, unsafe and wasteful.196 In Rovin v. Pennsylvania Public Utility Commission, the plaintiff, a local dentist, brought a claim against the Philadelphia Suburban Water Company on the grounds that it was violating the Public Utility Code by failing to provide safe and reasonable water service.197 Rovin argued that, because only some of the residents serviced by the utility were receiving fluoridated water, it was "unsafe, inadequate and unreasonable" because the customers who were not receiving fluoridated water "[were]denied the benefits of fluoridated water."198 In addition, the customers receiving fluoridated water "might be harmed if their pediatricians prescribe a fluoride supplement."199 Rovin was concerned that, because customers would not know whether their source of water contained fluoride, it was possible that they could simultaneously receive a fluoride supplement from their dentist, resulting in fluorosis.200 The court agreed with the decision of the Public Utility Commission that there was no evidence supporting Rovin's petition. Rovin offered no proof of an adverse event to a customer, and the company provided testimony that the water was safe.201 Plaintiffs have also contended that community water fluoridation is an abuse of municipal authority.202 In these cases, plaintiffs have argued that the governing body lacked the authority to require fluoridation. Typically, these cases have not been successful. For example, the court in Young v. Board of Health of Borough of Somerville held that the New Jersey legislature had specifically granted the power to enact policies to promote public health and prevent disease in N.J.S.A. 26:1A-37,203 and in turn, the Department of Health decided to promote fluoridation of water supplies.204 Where a policy decision is made at the
state level, “the proper function of local boards of health is undoubtedly to implement and carry out such decisions.”

There are instances, however, in which courts have ruled that governing bodies have overstepped their power. In Parkland Light & Water Company v. Tacoma-Pierce County Board of Health, private water companies successfully challenged the Washington Board of Health's requirement that municipal water districts fluoridate their water system, arguing that it exceeded its authority. The legislature had previously delegated the ability to fluoridate water systems to local water districts after a majority vote of its board of commissioners. Therefore, because the resolution conflicted with state law, the Board of Health’s resolution requiring fluoridation was invalid. The legislature has not changed the law since this decision.

Challengers have also attacked the procedures surrounding the implementation of water fluoridation. Following the City of Port Angeles’s decision to fluoridate the city water supply, advocacy organizations sued the city, alleging that the State Environmental Policy Act required an environmental review. Despite the prior determination that fluoridation was categorically exempt from environmental review, the challengers argued that “fluoridation could have significant detrimental effects on public health and, therefore, an environmental impact statement should be prepared.” The Washington Court of Appeals held that, because the Department of Health oversees fluoridation of public water, it is categorically exempted by state law from State Environmental Protection Act review.

In Potratz v. Commonwealth of Pennsylvania Department of Environmental Protection, James Potratz challenged the Department of Environmental Protection and the Erie Water Authority’s (DEPEWA) decision to issue operations permits to fluoridation facilities. Potratz alleged that the DEPEWA failed to protect the waters of the Commonwealth, as required by the Pennsylvania Constitution. The respondents argued that the decision to add fluoride to the water supply was determined when they issued the construction permit, not at the time of the operations permit, and therefore the Doctrine of Administrative Finality prevented Potratz from challenging the operations permit. The operations permit was issued a year and a half after the construction permit, and after the construction of the fluoridation facility, which cost $285,498.78. The court noted that, at the construction permit stage, the DEPEWA was required to submit water quality analyses and that the construction permit was an approval at the fluoridation process. Therefore, the doctrine of Administrative Finality precluded a collateral attack of an administrative decision that could have been raised at the time of the construction permit.

Where fluoridation has been approved by voter referendums, opponents of community water fluoridation have challenged the referendums and requested re-votes. For example, after San Antonio residents approved water fluoridation in a November 7, 2000 special election, residents sued to have the vote declared void. Texas law provides the City Council with the power to determine whether to fluoridate the water supply. A city government’s ordinance may not be revised unless it is determined to be arbitrary, unreasonable, and a clear abuse of power. The court in Thompson v. Bexar County Elections noted that the City Council was not provided with materials that the risks associated with fluoridation were unreasonable, and that at most, the issue is debatable. Nonetheless, the court held that the City Council’s decision to hold a special election “[was] a valid constitutional exercise of the City’s police powers.”

The citizens of Davis County, Utah, also voted in favor of water fluoridation in November 2000. A group of Davis County citizens sought a revote and filed an initiative petition. Subsequently, in Utahns for Better Dental Health-Davis (“UFBDH”) v. Davis County Clerk, UFBDH challenged the constitutionality of a revote, and sought declaratory judgment and injunctive relief. The District Court agreed with UFBDH, finding that allowing the petition to be “placed on the ballot would be a ‘misuse [of] the people’s direct legislative power’” and would “thwart the will of a majority of Davis County voters.” Both the District Court and Court of Appeals denied UFBDH’s request for attorney damages. In contrast, the Utah Supreme Court
granted attorney fees, finding that preventing an unconstitutional initiative petition provided value to voters, especially in consideration of the costs of a campaign.\textsuperscript{228}

In an attempt to stop water fluoridation in Port Angeles, Washington, two advocacy organizations filed separate initiatives.\textsuperscript{229} The City Council declined to either enact or refer the initiatives to the ballot, as requested by the organizations.\textsuperscript{230} Instead, the city pursued a declaratory judgment action alleging that the initiatives were administrative in nature because they attempted to administer the details of the city’s existing water system.\textsuperscript{231} The Washington legislature vested the power to decide whether to fluoridate with the Board of Commissioners of a water district.\textsuperscript{232} The court in \textit{City of Port Angeles v. Our Water-Our Choice} agreed that the decision by the City of Port Angeles to fluoridate the water system was administrative in nature,\textsuperscript{233} and affirmed that the initiative was beyond the local initiative power.\textsuperscript{234}

Citizen groups have also utilized preemption when attempting to prevent water fluoridation.\textsuperscript{235} In November 2002, the citizens of the City of Watsonville, California, passed a voter initiative entitled Measure S for the purpose of stopping the city’s fluoridation efforts.\textsuperscript{236} Measure S directly conflicted with the California Department of Health regulations that required the fluoridation of the city’s water system.\textsuperscript{237} The city sought a declaratory judgment and injunctive relief that Measure S was not preempted by California law.\textsuperscript{238} The court in \textit{City of Watsonville v. State Department of Health Services} found that the California legislature clearly intended to preempt local government regulations regarding the fluoridation of drinking water.\textsuperscript{239} The city argued that a conflict did not exist because it lacked the funds to properly fluoridate its water system and did not have 10,000 hookups, a requirement of the California regulation.\textsuperscript{240} The court rejected this argument, noting that Measure S “purports to regulate an area that is fully occupied by express provisions of the state law.”\textsuperscript{241} In supporting the belief that fluoridation of public water systems is a statewide concern, the court cited the language of the legislature: “[p]romotion of the public health of Californians of all ages by protection and maintenance of dental health through the fluoridation of drinking water is a paramount issue of statewide concern.”\textsuperscript{242}

A timely consideration of the court was the cost of healthcare. The court cited the legislative history to support the state’s concern of the importance of water fluoridation, which discussed the cost to the Medi-Cal and Denti-Cal programs of tooth decay.\textsuperscript{243} Ultimately, the court found that California law preempted Measure S.

\textbf{VI. THE PRESENT STATE OF COMMUNITY WATER FLUORIDATION}

A \textit{New York Times} staff editorial on March 18, 2012 noted that challenges to community water fluoridation in public dialog focus on “costs involved, improper government control over a personal decision, and potential health dangers.”\textsuperscript{244} This occurs in the context of a 2007 CDC report, revealing the first increase in forty years of caries amongst preschool age children.\textsuperscript{245} Not only are children developing caries in more teeth, but the caries tend to be so severe that anesthesia is required during some procedures.\textsuperscript{246} One of the reasons posited for this increase is that many children are drinking bottled water instead of fluoridated tap water.\textsuperscript{247} The CDC notes that “[b]ottled water may not have a sufficient amount of fluoride, which is important for preventing tooth decay and promoting oral health.”\textsuperscript{248}

Nevertheless, opposition to community water fluoridation in public dialog shows no signs of relenting. With the courthouse doors severely limited in terms of legal challenges, opponents of community water fluoridation will continue to target cities and municipalities legislatively in their efforts to prevent fluoridation. One city that recently voted to end fluoridation of its drinking water was Fairbanks, Alaska. A report prepared for the Fairbanks City Council found that “[a]lthough claims have been made that adding fluoride to drinking water has been one of the main reasons for this decline, the data indicate that in many countries and communities progress in preventing caries has been made without fluoridated water.”\textsuperscript{249} The Fairbanks Fluoride Task Force recommended the cessation of adding additional fluoride to the city’s drinking water “because of the fluoride content of the city's ground water and the alternate sources of
fluoride available in the community." However, the report also noted that "water fluoridation may be an important element of an effective dental health program in many communities."

On June 5, 2012, New Hampshire Governor John Lynch signed legislation that made New Hampshire the first state in the nation to require notification on the water system's consumer confidence report about mixing infant formula with fluoridated water. Beginning August 4, 2012, consumer confidence reports were required to contain the statement: "Your public water supply is fluoridated. According to the Centers for Disease Control and Prevention, if your child under the age of 6 months is exclusively consuming infant formula reconstituted with fluoridated water, there may be an increased chance of dental fluorosis. Consult your child's health care provider for more information."

This statement actually misquotes the CDC by deleting the important modifier "mild" to describe the type of dental fluorosis associated with fluoridated water. Mild dental fluorosis is, in fact, associated with lower rates of tooth decay and higher perceptions of oral-health related quality of life.

On July 24, 2012, the City of Milwaukee's Common Council passed a resolution requiring a more informative infant advisory notice to be included on quarterly municipal service bills and annual quality water reports. The enacted notice summarizes American Academy of Pediatric (AAP) guidance and provides a link to further information at the AAP website. It also summarizes guidance from the CDC about both dental fluorosis and use of infant formula, including the following:

[i]f breastfeeding is not possible, parents should consult a pediatrician about an appropriate infant formula option. Parents should be aware that there may be an increased chance of mild dental fluorosis if the child is exclusively consuming infant formula reconstituted with fluoridated water. Dental fluorosis is a term that covers a range of visible changes to the enamel surface of the tooth.

These examples demonstrate that, as the fluoridation debate moves forward, advocates on both sides will continue to utilize intense and possibly misleading rhetoric to influence the oral health of millions of Americans.

Notably, educating the public about fluoridation was addressed in the 2010 federal health reform law, the Affordable Care Act (ACA). In Section 399LL of the ACA, the Oral Healthcare Prevention Education Campaign, the Secretary of HHS is required to "utilize science-based strategies to convey oral health prevention messages that include, but are not limited to, community water fluoridation and dental sealants."

Education, while a critically important strategy, may not achieve an optimal public health impact. Additional scientific evidence can assist in informing the decision to fluoridate a community's water, but such choices often are not made purely on the basis of science.

In an era of increasingly tight state and local government budgets, anti-fluoridation advocates argue that stopping community water fluoridation will save money. That argument was used in early October 2011, when Pinellas County, Florida, voted to end adding fluoride to its water. The result of this action was that 700,000 residents would no longer receive fluoride through their water supply. However, in November 2012, two of the commissioners that supported ending community water fluoridation were defeated in their re-election bids. Later that month, the 2011 decision was overturned.

Dr. Bill Maas, a respected authority on community water fluoridation believes:

This decision demonstrates a disconnect in public policy making whereby public water system authorities are aware of the direct costs of fluoridating the water, but not the positive externality or external benefit of improved dental health and lower health care costs. The savings are "external" to the perceived scope of responsibility of the decision-makers. When considering whether discontinuing fluoridation would save money, the water system authorities may not consider the negative externalities or external costs to the members of the
community served by the public water supply when their dental care expenses increase to treat tooth decay that would have been prevented if fluoridation had continued. A broader perspective would consider the total cost-benefit calculation to the community, but because over 90% of dental care expenses are paid by private funds, local decision-makers are often unaware of how their decision affects dental care costs.265

Other policymakers are becoming increasingly aware of the impact of the fluoridation decision on Medicaid costs. Studies in New York,266 Texas,267 and Louisiana268 found that fluoridation substantially reduced dental treatment costs among children and youth in the Medicaid program. Annual per person Medicaid treatment cost savings in these states ranged from $27.6 to $66.8 (in 2010 dollars). The number of procedures related to treatment of tooth decay per child in the New York State Medicaid program was thirty-three percent higher in less fluoridated counties than in predominantly fluoridated counties.269 In Louisiana, more severe tooth decay among young children in non-fluoridated parishes required that treatment be provided under general anesthesia in a hospital operating room three times as often as young children living in fluoridated parishes.270

Court decisions have reinforced the understanding that community water fluoridation is a cost-effective, equitable and safe measure to protect communities from dental decay, and the health problems and costly restorative services that follow. Therefore, educational efforts directed to both policymakers and the public alike to reinforce this understanding is both timely and appropriate.

8 Id.
13 Id.
16 See Achievements in Public Health, supra note 9 (citing Brian A. Burt, Influences for Change in the Dental Health Status of Populations: An Historical Perspective. 38 J. Pub. Health Dentistry 272 (1978)).
17 See id.
19 Achievements in Public Health, supra note 9 (citing Rollo H. Britten & George St. J. Perrott, Summary of Physical Findings on Men Drafted in World War, 56 Publ. Health Reps. 41 (1941); Henry Klein, The Dental Status and Dental Needs of Young Adult Males, Rejective, or Acceptable for Military Service, According to Selective
Beach, Safe Drinking Water, 240 App. 2d Ohio Ct. Manchester, 834 P3d 589
292 P.2d N.E.2d 131
Davis, Inc. v. Davis Cnty. Clerk, 1492276; v. Town of Gonzales, CA-1527, 125 122 Cal. Rptr.
City of Watsonville, Coshow v. City of Escondido, 34 Cal. Rptr.


Coshow, 34 Cal. Rptr. 3d 19; Thompson, 2002 WL 1492276; Dir. of Public Health, 470 N.E.2d 988.


City of Watsonville, 35 Cal. Rptr. 3d 216; Citizens for Safe Drinking Water, 2002 Cal. App. LEXIS 4975.

City of Watsonville, 35 Cal. Rptr. 3d 216; Coshow, 34 Cal. Rptr. 3d 19; Froncek v. City of Milwaukee, 69 N.W.2d 242 (Wis. 1955).

Coshow, 34 Cal. Rptr. 3d 19; Quiles v. City of Boynton Beach, 802 So.2d 397 (Fla. Dist. Ct. App. 2001); City of Fond Du Lac, 516 N.W.2d 13; City of Brainerd, 241 N.W.2d 624.
122 Id.
127 See Ash v. City of Monterey Park, 232 A.2d 881, 883 (N.J. 1967); Dowell v. City of Tulsa, 273 P.2d 859, 860 (Okla.1954); Kaul v. City of Chehalis, 277 P.2d 352, 356 (Wash. 1954). See generally *City of Fond Du Lac*, 516 N.W.2d at 17 (rejecting the argument that the city's adoption of fluoridation ordinance was an impermissible exercise of police power); Kraus v. City of Cleveland, 127 N.E.2d 609, 610, 613 (Ohio 1955) (holding that a municipality could fluoridate its municipally-owned water supply as a proper exercise of police power); DeAryan v. Butler, 260 P.2d 98, 102 (Cal. Ct. App. 1953) (holding that the addition of fluoride to water was a valid exercise of police power as long as it was not unreasonable or an abuse of discretion to do so).
129 Cosmic, 34 Cal. Rptr. 3d 19; Thompson, 2002 WL 1492276; *Dir. of Public Health*, 470 N.E.2d 988.
130 City of Port Angeles v. Our Water-Our Choice!, 34 Cal. Rptr. 3d 19; Thompson, 2002 WL 1492276; *Dir. of Public Health*, 470 N.E.2d 988.
133 City of Watsonville, 35 Cal. Rptr. 3d 216; *Coshow*, 34 Cal. Rptr. 3d 19; Froncek v. City of Milwaukee, 69 N.W.2d 242 (Wis. 1955).
134 See *Coshow*, 34 Cal. Rptr. 3d 19; Quiles v. City of Boynton Beach, 802 So.2d 397 (Fla. Dist. Ct. App. 2001); *City of Fond Du Lac*, 516 N.W.2d 13; *City of Brainerd*, 241 N.W.2d 624.


Id. at 12.

Id. at 31 (citing Mugler v. Kansas, 123 U.S. 623, 661 (1878)).


Id.

Id. at 101-02.

Id. at 102.


Id.

Id.

Id. at 25-26.

Id. at 29.

Id.

Id. at 29-30.

Id.

Id. at 30 (citing Beck v. City Council of Beverly Hills, 30 Cal. App. 3d 112, 115 (1973)).

Id.

Id. at 31-32.

Id.

Id. at 32-33.

Id. at 33-34.

Id. at 33.

Id. at 32 (citing Wilson v. California, 110 Cal. App. 3d 317, 322 (1980)).

Id. at 33.

Id. at 33.


Kraus, 127 N.E.2d at 610.

Id. at 611.

Id. (citing Dowell, 273 P.2d at 863).

Id. at 612.


Mayor Cumberland, 2003 WL 22095654 at *9-10.

Id. at *11.

Id. at *12.

See Coshow, 34 Cal. Rptr. 3d 19; see also Quiles v. City of Boynton Beach, 802 So.2d 397, 399 (Fla. Dist. Ct. App. 2001).

Coshow, 34 Cal. Rptr. 3d 19.

Mayor of Cumberland, 2003 WL 22095654 at *11.

Quiles, 802 So.2d at 399.


City of Watsonville v. State Dept’ of Health Servs., 35 Cal. Rptr. 3d 216 (Fla. Dist. Ct. App. 2005); Coshow, 34 Cal. Rptr. 3d 19; Froneck v. City of Milwaukee, 69 N.W.2d 242 (Wis. 1955).

City of Watsonville, 35 Cal. Rptr. 3d at 218.

Id. at 219.


Readey, 352 S.W.2d at 623.

Id. at 628.

Id.

Id.

Id. at 632.

Exner, 529 P.2d at 865.

Id. at 865.

Id. at 870.

Id. at 867.

Coshow v. City of Escondido, 34 Cal. Rptr. 3d 19 (Fl. Dist. Ct. App. 2005); Quiles v. City of Boynton Beach, 802 So.2d 397 (2001); Safe Water Ass’n v. City of Fond du Lac, 516
of the constitutionality of a revote); City of Watsonville
City of Port Angeles, 208 N.W.2d 414 (Wis. Ct. App. 1972);
that it was a clerk's failure to prepare petition to prevent fluoride
additions to the water supply); Hacker v. Common Council of Ithaca,
266 N.Y.S.2d 927, 929-30 (Sup. Ct. 1966) (deciding whether a voter
petition to amend a city ordinance authorizing fluoridation is legal);
Landt v. City of Wisconsin Dells, 141 N.W.2d 245 (Wis. 1966); Hughes v.
City of Lincoln, 232 Cal. App. 2d 741, 742 (App. Ct. 1965) (petitioning to
compel mayor and city council to repeal and prevent fluoridation
resolution); Stroup v. Eller, 138 S.E.2d 240, 242 (N.C. 1964) (arguing to
enjoin city fluoridation ordinance); State ex rel. Whittington v. Strahm,
374 S.W.2d 127, 128-29 (Mo. 1963) (pressing city council to take
action on referendum to overturn fluoridation ordinance, arguing
ordinance is amendable by referendum); Readey v. St. Louis Cnty. Water Co.,
352 S.W.2d 622, 623 (Mo. 1961) (demanding that city council refrain
from enforcing city ordinance to fluorinate water supply due to
constitutional concerns).

See generally of City of Port Angeles v. Our Water-Our Choice!, 239 P.3d 1080. 1081
(2010) (challenging a city council vote to approve fluoridation with two
initiatives); Utahns for Better Dental Health-Davis, Inc. v. Davis Cnty. Clerk, 175 P.3d 1036, 1037 (Utah 2007)
(noting in passing the question heard and decided below of the
constitutionality of a revote); City of Watsonville v. State Dept.'t. of Health Servs., 35 Cal. Rptr. 3d 216 (App.
2005) (questioning preemption by state law requiring fluoridation
over local referendum banning the same); Balke v. City of Manchester, 834 A.2d 306, 307-08 (N.H. 2003)
(challenging city referendum approving fluoridation which includes the water systems of other municipalities);
Thompson v. Bexar Cnty. Elections, Nos. Civ. A SA-00-
to invalidate fluoridation ordinance as unconstitutional,
and void the special election on the ordinance for voting
irregularities); Citizens for Safe Drinking Water v. San
Diego City Council, No. D036647, 2002 Cal. App. LEXIS
4975 (App. Jan. 11, 2002) (discussing authority granted by
city code initiatives regarding fluoride versus state law
governing community water services); Burt v. Blumenauer,
health offices may expend funds or participating in a
debate about fluoridation initiative); City of Cuyahoga Falls v. McAvo, 1979 Ohio App. LEXIS 12500 (Ohio Comm. Ct. 1979) (dealing with challenges by local referendums
to state regulations of water supplies); Oregon Anti-
Fluoridation Council v. Myers, 554 P.2d 177, 178 (Or. 1976) (challenging Secretary of State's omission from
voting pamphlet certain details about the health risks of fluoride additions); Turnear v. Barnhardt, 497 P.2d 970
(N.M. 1972) (claiming full text of voter approved initiative
on fluorination of water not placed on ballot); Williams v.
that it was a clerk's failure to prepare petition to prevent fluoride
additions to the water supply); Hacker v. Common Council of Ithaca,
266 N.Y.S.2d 927, 929-30 (Sup. Ct. 1966) (deciding whether a voter petition to amend a city ordinance authorizing fluoridation is legal); Landt v. City of Wisconsin Dells, 141 N.W.2d 245 (Wis. 1966); Hughes v.
City of Lincoln, 232 Cal. App. 2d 741, 742 (App. Ct. 1965) (petitioning to compel mayor and city council to repeal and prevent fluoridation resolution); Stroup v. Eller, 138 S.E.2d 240, 242 (N.C. 1964) (arguing to enjoin city fluoridation ordinance); State ex rel. Whittington v. Strahm, 374 S.W.2d 127, 128-29 (Mo. 1963) (pressing city council to take
action on referendum to overturn fluoridation ordinance, arguing ordinance is amendable by referendum); Readey v. St. Louis Cnty. Water Co., 352 S.W.2d 622, 623 (Mo. 1961) (demanding that city council refrain from enforcing city ordinance to fluorinate water supply due to constitutional concerns).

See Thompson, 2002 WL 1492276, at *1 (claiming
election irregularities "tainted" the election results).

See id. at *5 (providing that such city council action is
within the authority to protect the health, safety, and welfare
of the public).

See id. (outlining the presumption of validity city
ordinances are afforded).

See id.

See id. (lacking these materials does not undermine
reasonableness of the council's decision in protecting
the publics' welfare).

See Utahs For Better Dental Health-Davis, Inc. v.
Davis Cnty. Clerk, 175 P.3d 1036, 1037 (2007) (requesting
the same question to be placed on the ballot in the next
general election).

Id.

See id. at 1037-38 (holding that placing the vote on the
ballot violates the law governing initiatives and referenda).