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## Emergency powers and the pandemic: Reflecting on state legislative reforms and the future of public health response

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### Abstract

The first 2 years of combatting the COVID-19 pandemic necessitated an unprecedented use of emergency powers. States responded with an equally unprecedented flurry of legislative changes to the legal underpinnings of emergency response and public health authorities. In this article, we provide a brief background on the framework and use of governors and state health officials' emergency powers. We then analyze several key themes, including both the enhancement and restriction of powers, emerging from emergency management and public health legislation introduced in state and territorial legislatures. During the 2020 and 2021 state and territorial legislative sessions, we tracked legislation related to the emergency powers of governors and state health officials. Legislators introduced hundreds of bills impacting these powers, some enhancing and others restricting emergency powers. Enhancements included increasing vaccine access and expanding the pool of eligible medical professions that could administer vaccinations, strengthening public health investigation and enforcement authority for state agencies, and preclusion of local orders by orders at the state level. Restrictions included establishing oversight mechanisms for executive actions, limits on the duration of the emergency, limiting the scope of emergency powers allowed during a declared emergency, and other restraints. By describing these legislative trends, we hope to inform governors, state health officials, policymakers, and

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<sup>a</sup> Davis and Dedon contributed equally to this paper.

All states and the District of Columbia allowed pharmacists to administer certain vaccinations prior to the pandemic. Ultimately, the federal government issued a Public Readiness and Emergency Preparedness (PREP) Act declaration to provide liability protections to a wider range of healthcare professionals, including EMTs and pharmacy technicians, expanding scopes of practice, so that they may administer the COVID-19 vaccine for the duration of the COVID-19 PREP Act declaration.

emergency managers about how changes in the law may impact future public health and emergency response capabilities. Understanding this new legal landscape is critical to effectively preparing for future threats.

### Keywords

COVID-19 pandemic; public health emergency; governor emergency powers; state health official powers; public health emergency authorities; emergency powers; COVID-19 legislation; COVID-19 legislative challenges; pandemic preparedness

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## INTRODUCTION

The COVID-19 pandemic has necessitated an unprecedented response from government leaders. In the United States, governors and state/territorial health officials are on the front lines of the pandemic response, leveraging a range of emergency powers to mitigate the spread of COVID-19 and save lives. Most states created their original laws pertaining to emergency powers decades before COVID-19 with the intent to respond to short-term natural or man-made disasters. Consequently, the extended use of these powers during COVID-19 was highly controversial.

Although state and territorial constitutional or statutory schemes vary, all governors are granted the authority to declare one or more types of emergencies, including a disaster, an emergency, or a public health emergency.<sup>1</sup> The COVID-19 response marked the first time in US history when all 55 governors of the states and territories issued some type of emergency declaration in response to the same incident.<sup>1,2<sup>b</sup></sup> The appendix catalogs initial gubernatorial declarations issued in response to the COVID-19 pandemic.

Emergency powers, generally activated through the implementation of a state declaration of emergency or disaster, provide governors, state health officials, and emergency managers avenues to leverage or enhance capabilities, coordination, and collaboration across state and local agencies. They also give states flexibility to respond to exigent circumstances and often allow governors or state health officials to temporarily modify their state's statutory, regulatory, or legal framework to respond to the changing nature of an emergency quickly.<sup>3</sup> While emergency powers can activate additional legal tools, these authorities may only be available for the duration of the emergency declaration.

In the first 2 years of the pandemic, governors and state health officials used their emergency powers to confront a range of COVID-19 pandemic-related challenges.<sup>4</sup> Statewide and geographically targeted disaster and emergency declarations and orders enabled a robust response by facilitating the flow of people and resources to where they were needed most. Emergency powers also allowed states to operate in a regulatory environment conducive to facilitating a rapid and responsible answer to evolving crises. Governors and state health officials mobilized health care workers by expanding their scopes of practice,

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<sup>b</sup>For the purposes of this article, the term "state" is intended to encapsulate officials and legislatures from the 55 states, commonwealths, and territories of the United States of America, and the District of Columbia.

granting them liability protection, ensuring that life-saving medical resources were directed appropriately, and restricting price gouging. Research has shown that nonpharmaceutical interventions implemented by governors and health officials effectively mitigated the spread of the pandemic by reducing population movement and preventing COVID-19 incidence, hospitalization, and death.<sup>5–8</sup> In addition to these public health benefits, state policy interventions were shown to account for a small portion of the observed decreases in economic activity<sup>9,10</sup> particularly when compared to the “health shock” of the pandemic,<sup>11</sup> while some interventions—such as mask mandates—resulted in higher rates of consumer spending.<sup>12–14</sup> As COVID-19 vaccines became more readily available, state officials have adopted policies to mitigate the spread of the coronavirus through vaccination, including vaccination incentives<sup>15</sup> and mandates.<sup>16,17</sup>

To implement these public health interventions and mount an effective pandemic response, executive and legislative branch officials in the states and territories were called upon to employ their respective areas of authority. In some cases, cooperation and open communication may have enhanced the effectiveness of a state’s whole-of-government approach.<sup>18</sup> In others, legislatures sued governors and state health officials or passed legislation to limit their emergency powers.<sup>19</sup>

In the 2020 and 2021 state legislative sessions, legislatures introduced more than 750 bills, limiting the emergency powers of governors and state health officials.<sup>c</sup> The authors of this article reviewed these bills and found that at least 70 such bills passed with at least 25 states enacting laws limiting public health powers. As states continue to consider changes to their emergency powers laws, the National Governors Association (NGA), the Association of State and Territorial Health Officials (ASTHO), and the Centers for Disease Control and Prevention (CDC) offer this analysis, highlighting proposed and enacted changes in law to inform future public health emergency responses. By describing trends observed in these legislative sessions, we hope policymakers, emergency management agencies, and health departments will consider this new legal landscape as they prepare for future threats.

## STATE LEGISLATION ON EMERGENCY AND PUBLIC HEALTH POWERS DURING THE 2020 AND 2021 SESSIONS

Throughout the 2020 and 2021 state legislative sessions, legislators introduced hundreds of bills on the emergency powers of governors and state health officials, with some enhancing and others restricting these powers.<sup>d</sup> Many of the 2020 state legislative sessions were substantially disrupted due to the COVID-19 pandemic. As such, the pace of legislation was limited, and though many legislatures in regular or special sessions introduced proposals to modify emergency powers, little legislation passed during this period.<sup>e</sup>

<sup>c</sup>The Association of State and Territorial Health Officials tracked legislation relating to public health authority and governor authority throughout the 2020 and 2021 legislative sessions, supported by a grant from the Robert Wood Johnson Foundation. A graphical depiction of the bills identified is published by Temple University’s Policy Surveillance Program and can be found at <http://lawatlas.org/datasets/sentinel-surveillance-laws-limiting-public-health-authority>. For additional information, please contact ASTHO at [statehealthpolicy@astho.org](mailto:statehealthpolicy@astho.org).

<sup>d</sup>Ibid. Please note that not all introduced or enacted legislation related to executive emergency powers is discussed, and final counts may not be exhaustive.

<sup>e</sup>Ibid.

In 2021, state legislative sessions saw a notable increase in both the introduction and passage of legislation related to gubernatorial emergency authorities and public health authorities. Legislators introduced at least 235 bills on gubernatorial authorities in 47 states during the 2021 state legislative sessions, with legislation passing in 15 states (Figure 1).<sup>16,17</sup> Of these, 24 bills were enacted without a governor's veto, and three bills were enacted through an override of the governor's veto.<sup>f</sup> In one state, Pennsylvania, the legislature also passed a constitutional amendment through joint resolution to limit the governor's emergency powers, which was presented on the ballot and later adopted by Pennsylvania voters on May 18, 2021.<sup>g</sup> Additionally, state legislatures introduced at least 221 bills on public health authorities in 47 states during the 2021 state legislative sessions, with legislation passing in 21 states (Figure 2). Of these, 49 bills were enacted without a governor's veto, and four bills were enacted through an override of the governor's veto.<sup>h</sup>

Several key themes have emerged from emergency power and public health legislation both proposed and enacted in the 2020 and 2021 state legislative sessions. The following describes these themes and potential implications for public health and emergency response, organized by whether they involved enhancements or restrictions of authority.

### Enhanced government emergency response capability

Though less common than limitations on emergency powers, several states passed laws that enhanced government public health emergency response capacity, providing governors and state health officials more emergency and public health response tools. State executives commonly use emergency authorities to temporarily waive or modify regulatory and statutory requirements that could slow or delay response activities. During the COVID-19 pandemic, several states amended or adopted laws to codify aspects of executive emergency orders, making those changes last beyond the end of the emergency period. This legislation fell into three main categories: (1) expanding the pool of eligible medical professions that could administer COVID-19 vaccinations, (2) strengthening public health investigation and enforcement authority for state agencies, and (3) preclusion of local orders by orders at the state level.

**Increasing vaccine access and supporting vaccine administration.**—In coordination with federal partners, states swiftly established a COVID-19 vaccination program aimed at efficiently and equitably distributing approved COVID-19 vaccines. While state law governs which medical professionals are authorized to prescribe or administer vaccinations, all states permitted physicians, nurses, and pharmacists to administer certain Food and Drug Administration (FDA)-approved vaccines to adults prior to the COVID-19 pandemic. Also prior to the pandemic, pharmacists were authorized to administer at least one vaccine in all 50 states, Puerto Rico, and Washington, DC. In most jurisdictions, pharmacists were authorized to administer any vaccine to adults in accordance with Advisory Committee on Immunization Practices/CDC recommendations.<sup>20</sup><sup>i</sup> Needing to

<sup>f</sup>S.B. 1, 2021 Leg., Reg. Sess. (Ky. 2021); S.B. 2, 2021 Leg., Reg. Sess. (Ky. 2021); S.B. 22, 134th Leg., Reg. Sess. (Ohio 2021).

<sup>g</sup>S.B. 2, 78th Gen. Assemb., Reg. Sess. (Pa. 2021).

<sup>h</sup>S.B. 1, 2021 Leg., Reg. Sess. (Ky. 2021); S.B. 2, 2021 Leg., Reg. Sess. (Ky. 2021); H.B. 1, 2021 Leg., Reg. Sess. (Ky 2021); S.B. 22, 134th Leg., Reg. Sess. (Ohio 2021).

greatly increase the vaccination workforce, many governors and state health officials took early steps using executive emergency orders to expand health professionals' scope of practice and authorized dentists, emergency medical technicians (EMTs), pharmacy technicians, and other health professionals to administer COVID-19 vaccines.<sup>21–23</sup><sup>j</sup>

At least 32 state legislatures considered bills to expand scopes of practice, and at least 19 states enacted laws expanding the scope of practice or enhancing the COVID-19 vaccination workforce during the 2021 legislative sessions.<sup>k</sup> Prior to the pandemic, pharmacists in 18 states had prescription authority for at least one vaccine, a trend designed to increase vaccination rates broadly and improve access to vaccinations in general.<sup>24</sup> Pharmacy professionals were the most common profession to receive consideration for an expanded scope of practice, with at least 10 states enacting laws granting pharmacists<sup>l</sup> greater ability to administer COVID-19 vaccines and five states expanding the scope of pharmacy technicians to administer vaccines.<sup>m</sup> In some instances, states permanently expanded pharmacist vaccination authority for vaccines other than the COVID-19 vaccine. For example, Arkansas, which previously only allowed pharmacists to administer vaccines to persons over the age of 7 under written protocols, now allows pharmacists to prescribe and administer pediatric vaccines to persons ages 3 and older.<sup>n</sup>

Dentists were the second most common profession legislatures considered for an expanded scope of practice, and at least two states enacted laws authorizing dentists to administer COVID-19 vaccines.<sup>o</sup> Other professions for which states expanded scope of practice to administer COVID-19 vaccines during the COVID-19 emergency declaration include EMTs, pharmacy technicians, pharmacy interns, and cardiovascular technicians.<sup>p</sup>

While most states that expanded scopes of practice did so for specific professions, Virginia took a different approach in enacting HB 2333.<sup>q</sup> HB 2333 authorized the Virginia Department of Health to establish a program for any person licensed by the Virginia Department of Health Professions to administer drugs to administer the COVID-19 vaccine, if they were in good standing currently or if they were in good standing within 20 years of

<sup>j</sup>Pharmacists in at least 18 states also had the authority to prescribe at least one immunization prior to the pandemic. With many states already granting pharmacists vaccine administration authority, many bills, like one Iowa is considering, would grant pharmacists authority to prescribe and administer the COVID-19 and other vaccines broadly.

<sup>k</sup>Historically, physicians and nurses administer vaccines within their scope of practice.

<sup>l</sup>H.B. 1134, 93rd Leg., Reg. Sess. (Ark. 2021); H.B. 1135, 93rd Leg., Reg. Sess. (Ark. 2021); A.B. 1064, 2021–2022, Reg. Sess. (Cal. 2021); S.B. 768, 123rd Leg., Reg. Sess. (Fla. 2021); S.B. 46, 156th Leg., Reg. Sess. (Ga. 2021); H.B. 1079, 122nd Leg., Reg. Sess. (Ind. 2021); S.F. 296, 89th Gen. Assemb., Reg. Sess. (Iowa 2021); L.D. 1, 130th Leg., Reg. Sess. (Me. 2021); S.B. 67, 2021 Leg., Reg. Sess. (Md. 2021); S.B. 736, 2021 Leg., Reg. Sess. (Md. 2021); S.F. 475, 92nd Leg., Reg. Sess. (Minn. 2021); S.B. 2221, 67th Leg., Reg. Sess. (N.D. 2021); H.B. 572, 2021 Leg., Reg. Sess. (N.H. 2021); A 5222, 219th Leg., Reg. Sess. (N.J. 2021); H.B. 6, 134th Leg., Reg. Sess. (Ohio 2021); SB 398, 58th Leg., Reg. Sess. (Okla. 2021); H 3900, 124th Leg., Reg. Sess. (S.C. 2021); S.B. 777, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021); H.B. 2079, 2021 Gen. Assemb., Spec. Sess. (Va. 2021); S.B. 13, 2021–2022, Reg. Sess. (Wis. 2021); and H.B. 2962, 85th Leg., Reg. Sess. (W. Va. 2021).

<sup>m</sup>H.B. 1134, 93rd Leg., Reg. Sess. (Ark. 2021); A.B. 1064, 2021–2022, Reg. Sess. (Cal. 2021); S.B. 768, 123rd Leg., Reg. Sess. (Fla. 2021); S.B. 46, 156th Leg., Reg. Sess. (Ga. 2021); S.F. 296, 89th Gen. Assemb., Reg. Sess. (Iowa 2021); S.B. 736, 2021 Leg., Reg. Sess. (Md. 2021); H.B. 6, 134th Leg., Reg. Sess. (Ohio 2021); S.B. 398, 58th Leg., Reg. Sess. (Okla. 2021); S.B. 777, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021); and H.B. 2079, 2021 Gen. Assemb., Spec. Sess. (Va. 2021).

<sup>n</sup>H.B. 1135, 93rd Leg., Reg. Sess. (Ark. 2021); H.B. 572, 2021 Leg., Reg. Sess. (N.H. 2021); S.B. 2279, 67th Leg., Reg. Sess. (N.D. 2021); H.B. 6, 134th Leg., Reg. Sess. (Ohio 2021); and A.B. 4, 2021–2022 Leg., Reg. Sess. (Wis. 2021).

<sup>o</sup>H.B. 1134, 93rd Leg., Reg. Sess. (Ark. 2021).

<sup>p</sup>S.F. 475, 92nd Leg., Reg. Sess. (Minn. 2021) and S.B. 13, 2021–2022 Leg., Reg. Sess. (Wis. 2021).

<sup>q</sup>See, eg, S.B. 46, 156th Leg., Reg. Sess. (Ga. 2021) (expanding the scope of practice of cardiac technicians and EMTs) and H.B. 572, 2021 Leg., Reg. Sess. (N.H. 2021) (authorizing pharmacy technicians and interns administer vaccines).

<sup>r</sup>H.B. 2333, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

their license lapsing. This approach delegated authority to the health department to identify which professions were best suited to support vaccination efforts.

**Public health investigative authority in group care and workplace settings.—**

The COVID-19 pandemic has created a nation-wide need for robust infection reporting and safety protocol enforcement mechanisms for congregate or group care settings, (eg, nursing homes and long-term care facilities) and certain workplaces.<sup>25,26</sup> Some states developed new protocols during the pandemic through emergency orders and regulations, while other states codified these processes in statute.<sup>f</sup> For example, in Maryland, a new law establishes planning and reporting requirements for nursing homes during a governor-declared public health emergency.<sup>g</sup> In New York, employers are now required to create plans to prevent the transmission of airborne infectious diseases in workplaces.<sup>h</sup> The new law also permits the commissioner of labor to investigate whether an employer has violated the law and impose fines for noncompliance. New York also enacted a law granting the department of health authority to review the policies and practices for COVID-19 outbreaks in correctional facilities.<sup>u</sup>

**Preclusion of local orders.—**As was highlighted during the COVID-19 pandemic, whether and to what extent governors' executive orders or state health official orders precluded local public health orders was and remains a source of conflict and confusion in states.<sup>25</sup> Several states have enacted legislation to resolve that tension by stipulating that state executive orders during public health emergencies would preclude local orders when they conflict or that give state orders exclusive jurisdiction. In West Virginia, a new law provides that if the governor declares a statewide public health emergency, the governor may direct the state health officer to develop emergency policies and guidelines with which local health departments must comply.<sup>v</sup> In Ohio, the legislature overrode the governor's veto to enact a statute, which provides that state department of health isolation and quarantine authority precludes local board of health authority, among other changes.<sup>w</sup> While these types of laws serve as an enhancement in the scope of state powers and clarify their relationship with conflicting local measures, they also limit local government emergency response flexibilities.

**Limitations on government emergency response capabilities**

Much of the introduced and enacted 2020 and 2021 legislation regarding emergency and public health powers restricts the authority of governors and state health officials—both procedurally and substantively. Some legislatures expanded legislative oversight of public health emergency response, while others expressly limited the powers of the governor and state health officials. Other legislatures limited the duration of emergency and public health orders, limited the scope of such orders, set limits for state action in relation to federal

<sup>f</sup>See, eg, Maryland Department of Health, No. MDH 2021-05-04-02 (May 4, 2021), <https://health.maryland.gov/phpa/Documents/2021.05.04.02%20MDH%20Order%20-%20Amended%20Nursing%20Homes%20Matter%20Order.pdf>.

<sup>g</sup>H.B. 1022, 2021 Leg., Reg. Sess. (Md. 2021).

<sup>h</sup>S 1034B, 2021-2022 Leg., Reg. Sess. (N.Y. 2021).

<sup>u</sup>S 877, 2021-2022 Leg., Reg. Sess. (N.Y. 2021) and A 984, 2021-2022 Leg., Reg. Sess. (N.Y. 2021).

<sup>v</sup>S.B. 12, 85th Leg., Reg. Sess. (W. Va. 2021).

<sup>w</sup>S.B. 22, 134th Leg., Reg. Sess. (Ohio 2021).

guidance, and established a process for attorneys general to determine the constitutionality of federal actions and prohibit state compliance.

**Oversight of executive actions.**—State emergency statutes grant governors broad discretion for issuing emergency, disaster, and public health emergency orders.<sup>26</sup> Prior to the COVID-19 pandemic, at least 41 state/territorial emergency statutes required some type of legislative involvement—most typically in the form of legislative authority to terminate the emergency.<sup>27</sup> Additionally, prior to the pandemic, at least eight states and two territories had statutes beyond granting the legislature authority to terminate the emergency.<sup>27</sup> These statutes required explicit legislative engagement to further extend an emergency or other varying mechanisms of legislative oversight.<sup>27</sup>

Although the COVID-19 pandemic proved to be highly disruptive for legislative business during the 2020 sessions, by 2021, legislatures had developed processes to conduct regular business and simultaneously participate fully in their states' responses to the pandemic. Nevertheless, state legislatures took several approaches to increase legislative involvement and add procedural requirements for the response to public health emergencies. These reforms include the establishment of legislative councils or committees and processes for legislative notification, review, approval, termination, and rescission of executive emergency actions.

Several states adopted new mechanisms for legislative oversight of public health emergencies, including the establishment of special legislative commissions to oversee emergency response activities. A new law in Arkansas stipulates that during a statewide public health state of disaster, orders issued by the state board of health are subject to review by a state legislative council, which has the authority to terminate the order.<sup>x</sup> In Kansas, a new law establishes a Legislative Coordinating Council with the power to revoke an order issued by the state health official when the order is pursuant to a governor-declared disaster.<sup>y</sup> Utah enacted a law requiring that the state department of health submits a notice of proposed action to the legislative emergency response committee at least 24 hours before issuing orders that will last longer than 30 days.<sup>z</sup> The Ohio legislature overrode a veto from the governor to enact SB 22,<sup>aa</sup> creating the Ohio Health Oversight and Advisory Committee, which has the authority to oversee the state health department and review the state health director's actions to prevent, investigate, and control the spread of infectious diseases. Florida enacted a law requiring any agency to submit any order issued before, during, or after a declared emergency to the Division of Administrative Hearings within 3 days of issuance. If the order is not filed in a timely manner, it is considered void.<sup>bb</sup>

Several states enacted legislation giving the legislature the authority to terminate a state of emergency or rescind orders issued by governors and state health officials. New York enacted a law empowering the legislature to terminate an emergency declaration

<sup>x</sup>S.B. 379, 93rd Leg., Reg. Sess. (Ark. 2021).

<sup>y</sup>S.B. 40, 2021 Leg., Reg. Sess. (Kan. 2021).

<sup>z</sup>S.B. 195, 2021 Leg., Reg. Sess. (Utah 2021).

<sup>aa</sup>S.B. 22, 134th Leg., Reg. Sess. (Ohio 2021).

<sup>bb</sup>S.B. 2006, 123rd Leg., Reg. Sess. (Fla. 2021).

by concurrent resolution.<sup>cc</sup> Ohio enacted SB 22, mentioned previously, to empower the legislature to rescind any state health department order or action aimed at controlling infectious diseases by concurrent resolution. If an order is rescinded, the state health department is prohibited from taking the same or similar action for 60 days.

**Limits on duration of emergencies and orders.**—Prior to the COVID-19 pandemic, most states had laws stipulating the maximum duration of a state of emergency and requiring a governor or state health official to renew a state of emergency after a certain period (usually 30 or 60 days).<sup>28</sup> In the case of an ongoing emergency such as the COVID-19 pandemic, governors and state health officials in states with such requirements must repeatedly renew orders to ensure a consistent and effective emergency response. In response to COVID-19, legislation was introduced and enacted in several states imposing new time limits on public health emergencies. Montana enacted a law imposing a 21-day limit on a governor’s emergency declaration, unless extended by a majority of members of both the state house and senate. To extend the declaration up to 45 days, the secretary of state is authorized to poll the legislature.<sup>dd</sup> In Wyoming, a new law limits any order that restricts freedom of movement or an individual’s ability to engage in any activity to 10 days.<sup>ee</sup> The governor of Michigan vetoed a bill which would have imposed a 28-day limit on emergency orders unless the legislature approved an extension request from the state health official.<sup>ff</sup>

**Limits on scope of emergency powers and public health orders.**—During the COVID-19 pandemic, many governors and state health officials, seeking to prevent the spread of disease and save lives, instituted measures that impacted individuals’ personal lives to protect the public’s health. In response, several state legislatures enacted laws limiting governor and state health official authority to respond to the COVID-19 pandemic or to curtail their ability to respond to future emergencies. For example, in Idaho, a new law<sup>gg</sup> prohibits the governor from altering, adjusting, or creating any provision of the state code, a well-established emergency power in many states.<sup>3,29</sup> Other actions fell into two general categories: (1) limiting or prohibiting emergency orders relating to certain constitutional rights and (2) limiting executive powers to establish and enforce mitigation efforts for the prevention or control of infectious disease outbreaks, including mask protocols, vaccination requirements, vaccine verification, and isolation and quarantine requirements.

**Limiting restrictions to first and second amendment rights.**—State powers to protect the health and welfare of its residents are well established in constitutional law with all governors empowered to declare states of emergency,<sup>1</sup> and state health officials conferred with powers to identify and contain infectious diseases, even when doing so may infringe on certain individual rights.<sup>hh</sup> During the COVID-19 pandemic, more than half of state legislatures considered bills limiting public health actions that may infringe on First

<sup>cc</sup>A 5967, 2021–2022 Leg., Reg. Sess. (N.Y. 2021) and New York S 5357, 2021–2022 Leg., Reg. Sess. (N.Y. 2021).

<sup>dd</sup>H.B. 230, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>ee</sup>H.B. 127, 66th Leg., Reg. Sess. (Wyo. 2021).

<sup>ff</sup>S.B. 1, 101st Leg., Reg. Sess. (Mich. 2021).

<sup>gg</sup>H.B. 392, 66th Leg., Reg. Sess. (Idaho 2021).



and Second Amendments rights.<sup>ii</sup> These bills exempt activity protected under the First and Second Amendments, eg, church services, from public health restrictions that are otherwise applicable to businesses, public spaces, and other venues, eg, indoor gathering prohibitions.

At least 26 states introduced, and seven states enacted,<sup>jj</sup> laws limiting how governor and state health official emergency orders can affect religious facilities and the exercise of religion. For example, Indiana’s new law prohibits more restrictions on the operations of religious organizations and religious services than those imposed on other businesses and organizations that provide essential services to the public.<sup>kk</sup> Furthermore, under the new law, the state may impose health, safety, or occupancy requirements that may substantially burden religious activities only if the state demonstrates that the proposed order is the least restrictive means available to meet a compelling governmental interest, even if those requirements do not single out religious organizations. Similarly, Montana’s new law prohibits direct limitations to religious services by the government unless the government demonstrates that the limitations are applied equally to nonreligious organizations performing essential services and are the least restrictive means necessary to further a compelling government interest.<sup>ll</sup> Montana also enacted a law which prohibits state, local, and interjurisdictional bodies, eg, emergency management agencies that cover more than one jurisdiction, and officials from interfering with or limiting a person’s ability to physically attend a religious facility or other place of worship.<sup>mmm</sup> In Wisconsin, the legislature passed a bill to prohibit public health measures to restrict gatherings in places of worship to control outbreaks and epidemics of COVID-19. This bill was vetoed by the governor and not passed into law.<sup>nn</sup>

States also considered constraints to governor and state health official emergency powers applicable to the First Amendment right of assembly. Specifically, some states sought to block social distancing measures that restricted gatherings in private businesses and burdened commercial activities. At least 27 states considered bills related to the operation of private industry under an emergency declaration or operation during the COVID-19 pandemic.<sup>30</sup> At least four states enacted laws limiting executive powers to place emergency restrictions on commercial activities.<sup>oo</sup> For example, Texas’s new law removes any executive emergency authority for restricting or impairing business operations during a disaster, and this authority now stands solely as a legislative power.<sup>pp</sup> Montana’s new

<sup>hh</sup>*Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (recognizing that there are “manifold restraints to which every person is necessarily subject for the common good.”).

<sup>ii</sup>The Association of State and Territorial Health Officials tracked legislation relating to public health authority and governor authority throughout the 2020 and 2021 legislative sessions, supported by a grant from the Robert Wood Johnson Foundation. A graphical depiction of the bills identified is published by Temple University’s Policy Surveillance Program and can be found at <http://lawatlas.org/datasets/sentinel-surveillance-laws-limiting-public-health-authority>. For additional information, please contact ASTHO at [statehealthpolicy@astho.org](mailto:statehealthpolicy@astho.org).

<sup>jj</sup>H.B. 391, 66th Leg., Reg. Sess. (Idaho 2021); S.B. 263, 122nd Leg., Reg. Sess. (Ind. 2021); S.B. 40, 2021 Leg., Reg. Sess. (Kan. 2021); S.B. 370, 67th Leg., Reg. Sess. (Mont. 2021); S.B. 172, 67th Leg., Reg. Sess. (Mont. 2021); H.B. 230, 67th Leg., Reg. Sess. (Mont. 2021); S.B. 2181, 67th Leg., Reg. Sess. (N.D. 2021); H.B. 1410, 67th Leg., Reg. Sess. (N.D. 2021); H.B. 572, 2021 Leg., Reg. Sess. (N.H. 2021); and S.B. 195, 2021 Leg., Reg. Sess. (Utah 2021).

<sup>kk</sup>S.B. 263, 122nd Leg., Reg. Sess. (Ind. 2021).

<sup>ll</sup>S.B. 172, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>mmm</sup>H.B. 230, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>nn</sup>A.B. 1, 2021–2022 Leg., Reg. Sess. (Wis. 2021).

<sup>oo</sup>H.B. 391, 66th Leg., Reg. Sess. (Idaho 2021); S.B. 14, 2021 Leg., Reg. Sess. (Kan. 2021); H.B. 257, 67th Leg., Reg. Sess. (Mont. 2021); and H.B. 3, 87th Leg., Reg. Sess. (Tex. 2021).

law prohibits local governments from imposing restrictions on individual access to private businesses.<sup>99</sup> Both Kansas<sup>tt</sup> and Idaho<sup>ss</sup> enacted laws that limit the governor from enforcing or imposing restrictions that would substantially burden or inhibit freedom of movement for religious and/or commercial activities.

In addition to prohibiting restrictions impacting First Amendment rights on the free exercise of religion and assembly, some states considered protections to the Second Amendment right to bear arms. Prior to the pandemic, at least 14 states limited the governor's authority to restrict the sale or usage of firearms, explosives, or combustibles during a declared emergency.<sup>tt</sup> During the 2021 legislative sessions, at least 13 states considered bills to create or expand existing limits on officials' ability to restrict firearm or ammunition sales during a declared emergency, two of which were enacted into law.<sup>uu</sup> For example, Kansas's new law prohibits the governor from seizing ammunition or restricting firearm sales under an emergency declaration.<sup>vv</sup> Montana's new law specifically calls on the state to ensure protection of the Second Amendment rights of its residents during an emergency or disaster.<sup>ww</sup>

While many legislatures restricted the use of public health powers on constitutional rights, governors and health officials' ability to regulate First Amendment freedoms of assembly, association, and freedom to worship and the Second Amendment right to bear arms were highly litigated facets of state responses to the COVID-19 pandemic. In the case of religious activity, the United States Supreme Court issued several orders throughout the pandemic, indicating that public health restrictions on religious worship should be no greater than "any comparable secular activity,"<sup>xx</sup> although a subsequent order from the Court suggests secular public health restrictions could be struck down if they affect religious gatherings.<sup>31yy</sup> In addition to legislative changes in many states, the resulting case law arising out of these legal challenges may also impact the scope of health authorities available to governors and health officials.

**Limiting measures for the prevention and control of infectious diseases.**—The authority to isolate and quarantine individuals to mitigate the spread of communicable diseases is an established power of governors and state health officials with or without an emergency declaration. During the COVID-19 pandemic, governors and state health officials leveraged these authorities in a variety of ways to limit the spread of the coronavirus and save lives, including broad stay-at-home orders early in the pandemic response.<sup>32</sup>

PPH.B. 3, 87th Leg., Reg. Sess. (Tex. 2021).

<sup>99</sup>H.B. 257, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>tt</sup>S.B. 14, 2021 Leg., Reg. Sess. (Kan. 2021).

<sup>ss</sup>H.B. 391, 66th Leg., Reg. Sess. (Idaho 2021).

<sup>tt</sup>See Ala. Code § 31-9-8 (2016); Ariz. Rev. Stat. Ann. § 26-303 (2019); Idaho Code Ann. § 46-1008 (2016); Ind. Code § 10-14-3-12 (2018); Kan. Code § 48-959 (2009); Ky. Rev. Stat. § 39A.100 (2013); Mo. Rev. Stat. § 44.101 (2021); Nev. Rev. Stat. § 414.155 (2014); 21 Okl. Stat. § 1321.4 (2020); Tex. Gov't Code Ann. § 418.014 (2005); Utah Code Ann. § 53-2a-214 (2018); W. Va. Code § 15-5-19a (2014); Wis. Stat. § 323.24 (2012); and Wyo. Stat. § 19-13-104 (2011).

<sup>uu</sup>S.B. 14, 2021 Leg., Reg. Sess. (Kan. 2021) and S.B. 370, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>vv</sup>S.B. 14, 2021 Leg., Reg. Sess. (Kan. 2021).

<sup>ww</sup>S.B. 370, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>xx</sup>*Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

<sup>yy</sup>*Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021); Nelson Tebbe, *The Principle and Politics of Equal Value*, 121 Colum. L. Rev. 2397, 2400 (2021) ("see also *Gateway City Church v. Newsom*, 141 S. Ct. 1460, 1460 (2021) (mem.) (granting injunctive relief without mentioning the absence of a religious classification).").

In response to the use of these powers, governors and state health officials faced many legislative and legal challenges to the use of emergency powers to order and enforce public health mitigation measures, eg, stay-at-home orders and mask wearing.<sup>33</sup>

Several states enacted legislation prohibiting orders that would establish specific public health protective measures or limit the ability of the governor to use broad mitigation measures in future pandemics. Specifically, these laws limited state isolation and quarantine powers and prohibited mask protocols, COVID-19 vaccination requirements, and the verification of COVID-19 vaccination status. Idaho's new law limits quarantine authority to a person *known* to be exposed to an infectious or communicable disease, displaying "medically unknown symptoms" or contaminated from a chemical, nuclear, or biological agent.<sup>zz</sup> Under the new law, public health officials can no longer issue quarantine orders to individuals *suspected* of exposure to an infectious disease absent specific knowledge of an individual's exposure "under circumstances likely to result in the spread of the disease[.]"<sup>aaa</sup> The law also narrows the definition of "isolation" to only apply while individuals diagnosed with a communicable disease are infectious, contaminated from a chemical, nuclear, or biological agent, or displaying medically unknown symptoms.

Beyond restrictions on executive actions aimed at disease mitigation, states also enacted legislation to limit the ability to enforce mitigation efforts and limit the geographic reach of mitigation activities. Arizona's new law prevents any state agency from revoking a license to operate a business unless there is clear and convincing evidence that the business was the actual cause of disease transmission.<sup>bbb</sup> In Arkansas, the state legislature attempted to pass SB 301,<sup>ccc</sup> which would have required agencies to return fines collected from certain businesses for violation of public health orders. SB 301 was ultimately vetoed by the governor. North Dakota's new law restricts state health official orders to only the geographical area affected by the communicable disease.<sup>ddd</sup> The law also stipulates that a state health officer may only issue a statewide order if the governor has declared a statewide disaster or emergency.

States also considered bills limiting nonpharmaceutical interventions like requiring face masks in certain places and situations. At least 11 states considered bills that would prohibit government officials from requiring mask wearing or place procedural limitations to enacting a mask mandate to control a disease outbreak. Four states enacted laws prohibiting or ending mask protocols.<sup>eee</sup> For example, North Dakota's new law prohibits the state health official from mandating the use of a face covering, a face mask, or a face shield. Arkansas enacted a new law that ended the statewide mask requirement executive order and required that any future face mask requirements must be enacted legislatively.<sup>fff</sup> Iowa and Utah

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<sup>zz</sup>S.B. 1139, 66th Leg., Reg. Sess. (Idaho 2021). The law defines "medically unknown symptoms" as "symptoms that are or could be suggestive of an infectious or communicable disease and that do not sufficiently reveal the structural or other specified pathology of an illness on initial examination."

<sup>aaa</sup>*Ibid.*

<sup>bbb</sup>H.B. 2570, 55th Leg., Reg. Sess. (Ariz. 2021).

<sup>ccc</sup>S.B. 301, 93rd Leg., Reg. Sess. (Ark. 2021).

<sup>ddd</sup>H.B. 1118, 67th Leg., Reg. Sess. (N.D. 2021).

<sup>eee</sup>S.B. 590, 93rd Leg., Reg. Sess. (Ark. 2021); H.F. 847, 89th Gen. Assemb., Reg. Sess. (Iowa 2021); H.B. 1007, 2021 Leg., Spec. Sess. (Utah 2021); and H.B. 1323, 67th Leg., Reg. Sess. (N.D. 2021).

<sup>fff</sup>S.B. 301, 93rd Leg., Reg. Sess. (Ark. 2021).

limited their prohibitions on mask mandates to schools, with Iowa's law preventing school districts from requiring face coverings,<sup>ggg</sup> and Utah's law prohibiting institutions of higher education from requiring face masks going forward.

In anticipation of COVID-19 vaccines, and later when government leaders were working to increase vaccination rates, states considered bills regarding governmental, employer, and school vaccination requirements. At least 35 states considered at least one bill regarding vaccine mandates, with nine states enacting laws restricting the ability to require COVID-19 vaccinations. For example, Tennessee<sup>hhh</sup> and Utah<sup>iii</sup> enacted laws prohibiting governmental entities from requiring individuals to receive the COVID-19 vaccine. Arkansas<sup>jjj</sup> and New Hampshire<sup>kkk</sup> enacted laws that prevent the state from requiring COVID-19 vaccination as a condition of receiving public benefits or entering a public facility. Alaska's new law expressly allows religious, medical, and personal objections to the COVID-19 vaccine and prohibits any requirement to document why a person declined vaccination.<sup>lll</sup> In Wisconsin, a bill the legislature passed, AB 23,<sup>mmm</sup> prohibits vaccine mandates issued by state or local health officials, but the bill was vetoed by the governor and not enacted into law.

Several states focused their legislation on school vaccination requirements, with Ohio enacting a new law to prohibit any school from requiring a vaccine without full FDA approval.<sup>nnn</sup> Arizona<sup>ooo</sup> and Oklahoma<sup>ppp</sup> enacted laws that prohibit certain educational institutions from creating or enforcing a COVID-19 vaccine requirement as a condition of attendance or acceptance. Arkansas' law prohibits any COVID-19 vaccine requirement as a condition of a public benefit, including schools, but provides state leaders the option to lift the prohibition against school vaccines if a more virulent strain of the virus impacting children occurred within 2 years of the law's enactment.<sup>qqq</sup>

**Incorporation of federal guidance.**—In general, the federal government's authority to impose mandatory public health restrictions is limited as compared with the authority of governors, state health officials, and state legislatures, and federal officials “[cannot] directly order states to implement federal standards.”<sup>2</sup> Nevertheless, many state and local governments incorporated CDC recommendations by reference in their legally enforceable public health orders.<sup>ttt</sup> At least one state went further by enacting legislation establishing federal guidelines as the ceiling for state emergency orders. New Jersey enacted a law, requiring that COVID-19 orders be no more restrictive than CDC recommendations.<sup>sss</sup>

<sup>ggg</sup>H.F. 847, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

<sup>hhh</sup>S.B. 187, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021).

<sup>iii</sup>H.B. 308, 2021 Leg., Reg. Sess. (Utah 2021).

<sup>jjj</sup>H.B. 1547, 93rd Leg., Reg. Sess. (Ark. 2021).

<sup>kkk</sup>H.B. 220, 2021 Leg., Reg. Sess. (N.H. 2021).

<sup>lll</sup>H.B. 76, 32nd Leg., Reg. Sess. (Alaska 2021).

<sup>mmm</sup>A.B. 23, 2021–2022 Leg., Reg. Sess. (Wis. 2021).

<sup>nnn</sup>H.B. 244, 134th Leg., Reg. Sess. (Ohio 2021).

<sup>ooo</sup>S.B. 1825, 55th Leg., Reg. Sess. (Ariz. 2021).

<sup>ppp</sup>S.B. 658, 58th Leg. Reg. Sess. (Okla. 2021).

<sup>qqq</sup>H.B. 1547, 93rd Leg., Reg. Sess. (Ark. 2021).

<sup>ttt</sup>See, eg, Office of Governor J.B. Pritzker, Executive Order 2021–10 (May 17, 2021), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2021-10.aspx>; Office of Governor Phil Murphy, Executive Order No. 242 (May 24, 2021), <https://nj.gov/infobank/eo/056murphy/pdf/EO-242.pdf>; and Office of Governor Tim Walz, Emergency Executive Order No. 20–20 (March 25, 2020), [https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed\\_tcm1055-425020.pdf](https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed_tcm1055-425020.pdf).

<sup>sss</sup>A 5820, 219th Leg., Reg. Sess. (N.J. 2021).

**State attorney general review of federal actions.**—At least two states enacted legislation that codified the process for state attorney general review of federal public health emergency actions.<sup>ttt</sup> Under these laws, if the state attorney general determines that a federal policy is unconstitutional, the governor and state health officials are precluded from requiring compliance with that policy. Montana enacted a law stipulating that the legislative council reviews executive orders issued by the President of the United States and may recommend further review by the state attorney general and the governor.<sup>uuu</sup> If the attorney general determines that the order is unconstitutional, the state government is prohibited from using public funds to act pursuant to the executive order in response to a pandemic or other public health emergency. Utah enacted a law preventing any state agency from implementing a federal executive order relating to a pandemic or other public health emergency that the state attorney general has determined it is unconstitutional.<sup>vvv</sup>

## CONCLUSION

Throughout the COVID-19 pandemic, state responses have been bolstered by robust emergency powers in the hands of governors and state health officials. Before the COVID-19 pandemic, several states used these emergency and public health authorities to respond to natural disasters, such as hurricanes, and day-to-day public health threats, such as tuberculosis.<sup>34</sup> States also used these emergency authorities to respond to public health threats that presented unique and exigent circumstances, including outbreaks of HIV and hepatitis A, as well as the current opioid epidemic.<sup>35</sup> The use of these powers under these circumstances demonstrates their utility in protecting communities from a wide variety of public health threats. Governors, state health officials, and emergency managers can benefit from familiarizing themselves with the contents of their emergency response toolboxes and incorporating these tools into agency operations and response strategies.

At the same time, the changing legal landscape of state emergency powers since the onset of the COVID-19 pandemic means that leaders and decisionmakers may have different legal authorities and constraints when responding to future public health emergencies. In some instances, these changes will result in new tools for addressing threats and, in others, restrict or eliminate mechanisms for garnering resources and powers to protect the public's health and safety.

The COVID-19 pandemic will not be the last time leaders are called upon to respond to public health emergencies in their states. In looking toward future public health threats, governors, state health officials, policymakers, and emergency managers can examine these legislative changes, as well as proposed changes in future legislative sessions, to determine whether enhancements or limitations on government emergency response capabilities will position them best for future public health emergencies.

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<sup>ttt</sup>S.B. 277, 67th Leg., Reg. Sess. (Mont. 2021) and H.B. 415, 2021 Leg., Reg. Sess. (Utah 2021).

<sup>uuu</sup>S.B. 277, 67th Leg., Reg. Sess. (Mont. 2021).

<sup>vvv</sup>H.B. 415, 2021 Leg., Reg. Sess. (Utah 2021).

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## APPENDIX: GUBERNATORIAL EMERGENCY DECLARATIONS IN RESPONSE TO THE COVID-19 PANDEMIC

The COVID-19 response marked the first time in US history when all 55 governors of the states and territories issued some type of emergency declaration in response to the same incident. Governors began declaring emergencies on January 29, 2020. By March 15, 2020, every state and territory had declared some type of emergency.

State and territory emergency declarations made in response to the COVID-19 pandemic, in chronological order, are included below. Please note this list only contains initial orders from governors and does not include gubernatorial order renewals or public health emergencies simultaneously/subsequently declared by State Health Officials.

- *The Commonwealth of the Northern Mariana Islands* declared a State of Significant Emergency on January 29, 2020. Office of Governor Ralph DLG Torres, Executive Order No. 2020–01 (January 29, 2020). <https://www.pncguam.com/coronavirus-prompts-cnmi-to-declare-an-emergency/>.
- *American Samoa* declared a Public Health Emergency on February 27, 2020. Office of Governor Lolo M. Moliga, Declaration of Continued Public Health Emergency (February 27, 2020). [https://6fe16cc8-c42f-411f-9950-4abb1763c703.filesusr.com/ugd/4bfff9\\_876de830e2a34d63a4dde79cc7c5d331.pdf](https://6fe16cc8-c42f-411f-9950-4abb1763c703.filesusr.com/ugd/4bfff9_876de830e2a34d63a4dde79cc7c5d331.pdf).
- *Washington* declared a State of Emergency on February 29, 2020. Office of Governor Jay Inslee, Proclamation by the Governor 20–05 (February 29, 2020). <https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf>.
- *California* declared a State of Emergency on March 4, 2020. Office of Governor Gavin Newsom, Proclamation of a State of Emergency (March 4, 2020). <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.
- *Hawaii* declared a State of Emergency on March 4, 2020. Office of Governor David Ige, Proclamation (March 4, 2020). [https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-Proclamation\\_COVID-19.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-Proclamation_COVID-19.pdf).

- *West Virginia* declared a State of Preparedness on March 4, 2020. Office of Governor Jim Justice, Proclamation (March 4, 2020). [https://governor.wv.gov/Documents/SKM\\_C45820030417010.pdf](https://governor.wv.gov/Documents/SKM_C45820030417010.pdf).
- *Maryland* declared a State of Emergency on March 5, 2020. Office of Governor Larry Hogan, Declaration of State of Emergency and Existence of Catastrophic Health Emergency—COVID-19 (March 5, 2020). <https://governor.maryland.gov/wp-content/uploads/2020/03/Proclamation-COVID-19.pdf>.
- *Indiana* declared a Public Health Disaster Emergency on March 6, 2020. Office of Governor Eric Holcomb, Executive Order 20–02 Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak (March 5, 2020). [https://www.in.gov/gov/files/20-02ExecutiveOrder\(DeclarationofPublicHealthEmergencyforCOVID-19\)FINAL.pdf](https://www.in.gov/gov/files/20-02ExecutiveOrder(DeclarationofPublicHealthEmergencyforCOVID-19)FINAL.pdf).
- *Kentucky* declared a State of Emergency on March 6, 2020. Office of Governor Andy Beshear, Executive Order No. 2020–215 (March 6, 2020). [https://governor.ky.gov/attachments/20200306\\_Executive-Order\\_2020-215.pdf](https://governor.ky.gov/attachments/20200306_Executive-Order_2020-215.pdf).
- *Pennsylvania* declared a Disaster Emergency on March 6, 2020. Office of Governor Tom Wolf, Proclamation of Disaster Emergency (March 6, 2020). <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.
- *Utah* declared a State of Emergency on March 6, 2020. Office of Governor Gary Herbert, Executive Order (March 6, 2020). [https://drive.google.com/file/d/1HQf7KjdTadeQCLWQ38Y6y\\_XRwVH4TOnE/view](https://drive.google.com/file/d/1HQf7KjdTadeQCLWQ38Y6y_XRwVH4TOnE/view).
- *New York* declared a State Disaster Emergency on March 7, 2020. Office of Governor Andrew Cuomo, Executive Order No. 202 (March 7, 2020). [https://www.governor.ny.gov/sites/default/files/atoms/files/EO\\_202.pdf](https://www.governor.ny.gov/sites/default/files/atoms/files/EO_202.pdf).
- *Oregon* declared a State of Emergency on March 8, 2020. Office of Governor Kate Brown, Executive Order No. 20–03 (March 8, 2020). <https://drive.google.com/file/d/1AcKOePvhmBpuNuaBQq7yZ37E2Sog4tUe/view>.
- *Florida* declared a State of Emergency on March 9, 2020. Office of Governor Ron DeSantis, Executive Order No. 20–52 (March 9, 2020). [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-52.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf).
- *Illinois* declared a Disaster on March 9, 2020. Office of Governor JB Pritzker, Gubernatorial Disaster Proclamation (March 9, 2020). <https://www.illinois.gov/content/dam/soi/en/web/coronavirus/documents/coronavirus-disaster-proc-03-12-2020.pdf>.
- *Iowa* declared a State of Disaster Emergency on March 9, 2020. Office of Governor Kim Reynolds, Proclamation of Disaster Emergency (March 9, 2020). <https://governor.iowa.gov/sites/default/files/documents/202003100818.pdf>.

- *New Jersey* declared a Public Health Emergency and a State of Emergency on March 9, 2020. Office of Governor Phil Murphy, Executive Order No. 103 (March 9, 2020). <https://nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf>.
- *Ohio* declared a State of Emergency on March 9, 2020. Office of Governor Mike DeWine, Executive Order 2020–01D (March 9, 2020). <https://drive.google.com/file/d/1AcKOePvhmBpuNuaBQq7yZ37E2Sog4tUe/view>.
- *Rhode Island* declared a State of Emergency on March 9, 2020. Office of Governor Gina Raimondo, Executive Order No 20–02 (March 9, 2020). <https://health.ri.gov/publications/exec-orders/ExecOrder20-02.pdf>.
- *Connecticut* declared a Public Health Emergency and a Civil Preparedness Emergency on March 10, 2020. Office of Governor Ned Lamont, Declaration of Public Health and Civil Preparedness Emergencies (March 10, 2020). <https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200310-declaration-of-civil-preparedness-and-public-health-emergency.pdf?la=en>.
- *Massachusetts* declared a State of Emergency on March 10, 2020. Office of Governor Charlie Baker, Governor’s Declaration of Emergency (March 10, 2020). <https://www.mass.gov/doc/governors-declaration-of-emergency-march-10-2020-aka-executive-order-591/download>.
- *Michigan* declared a State of Emergency on March 10, 2020. Office of Governor Gretchen Whitmer, Executive Order 2020–04 (March 10, 2020). <https://www.michigan.gov/coronavirus/News/2020/03/10/michigan-announces-first-presumptive-positive-cases-of-covid-19-governor-whitmer-declares-a-state-o>.
- *North Carolina* declared a State of Emergency on March 10, 2020. Office of Governor Roy Cooper, Executive Order No. 116 (March 10, 2020). <https://files.nc.gov/governor/documents/files/EO116-SOE-COVID-19.pdf>.
- *Alaska* declared a Public Health Disaster Emergency on March 11, 2020. Office of Governor Mike Dunleavy, Declaration of Public Health Disaster Emergency (March 11, 2020). <https://gov.alaska.gov/wp-content/uploads/sites/2/COVID-19-Disaster-Packet.pdf>.
- *Arizona* declared a State of Emergency on March 11, 2020. Office of Governor Doug Ducey, Declaration of Emergency (March 11, 2020). [https://azgovernor.gov/sites/default/files/declaraton\\_0.pdf](https://azgovernor.gov/sites/default/files/declaraton_0.pdf).
- *Arkansas* declared an Emergency on March 11, 2020. Office of Governor Asa Hutchinson, Executive Order 20–03 (March 11, 2020). [https://governor.arkansas.gov/images/uploads/executiveOrders/EO\\_20-03\\_.pdf](https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-03_.pdf).
- *Colorado* declared a State of Disaster Emergency on March 11, 2020. Office of Governor Jared Polis, Executive Order D 2020 003 (March 11, 2020). [https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20003%20Declaring%20a%20Disaster%20Emergency\\_1.pdf](https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20003%20Declaring%20a%20Disaster%20Emergency_1.pdf).



- *Louisiana* declared a Public Health Emergency on March 11, 2020. Office of Governor John Bel Edwards, Proclamation No. 25 JBE 2020 (March 11, 2020). <https://gov.louisiana.gov/assets/ExecutiveOrders/25-JBE-2020-COVID-19.pdf>.
- *New Mexico* declared a Public Health Emergency on March 11, 2020. Office of Governor Michelle Lujan Grisham, Executive Order No. 2020–004 (March 11, 2020). <https://www.governor.state.nm.us/wp-content/uploads/2020/03/Executive-Order-2020-004.pdf>.
- *Delaware* declared a State of Emergency on March 12, 2020. Office of Governor John Carney, Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat (March 12, 2020). [https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/State-of-Emergency\\_03122020.pdf](https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/State-of-Emergency_03122020.pdf).
- *Kansas* declared a State of a Disaster Emergency on March 12, 2020. Office of Governor Laura Kelly, State of Disaster Emergency Proclamation (March 12, 2020). <https://governor.kansas.gov/wp-content/uploads/2020/03/2020-03-12-Proclamation.pdf>.
- *Montana* declared a State of Emergency on March 12, 2020. Office of Governor Steve Bullock, Executive Order No. 2–2020 (March 12, 2020). [https://covid19.mt.gov/\\_docs/EO-02-2020\\_COVID-19%20Emergency%20Declaration.pdf](https://covid19.mt.gov/_docs/EO-02-2020_COVID-19%20Emergency%20Declaration.pdf).
- *Nevada* declared a State of Emergency on March 12, 2020. Office of Governor Steve Sisolak, Declaration of Emergency for COVID-19 (March 12, 2020). [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-12\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/).
- *Puerto Rico* declared a State of Emergency on March 12, 2020. Office of Governor Wanda Vazquez-Garced, Administrative Bulletin No. OE 2020–020 (March 12, 2020). <https://assmca.pr.gov/Documents/Orden%20Ejecutiva-2020-020.pdf>.
- *Tennessee* declared a State of Emergency on March 12, 2020. Office of Governor Bill Lee, Executive Order No. 14 (March 12, 2020). <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee14.pdf>.
- *Virginia* declared a State of Emergency on March 12, 2020. Office of Governor Ralph Northam, Executive Order No. 51 (March 12, 2020). <https://www.iftach.org/bulletins/VA%20-%20EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus.pdf>.
- *Wisconsin* declared a Public Health Emergency on March 12, 2020. Office of Governor Tony Evers, Executive Order No. 72 (March 12, 2020). [https://content.govdelivery.com/attachments/WIGOV/2020/03/12/file\\_attachments/1399035/EO072-DeclaringHealthEmergencyCOVID-19.pdf](https://content.govdelivery.com/attachments/WIGOV/2020/03/12/file_attachments/1399035/EO072-DeclaringHealthEmergencyCOVID-19.pdf).
- *Alabama* declared a State Public Health Emergency on March 13, 2020. Office of Governor Kay Ivey, Proclamation (March

13, 2020). <https://governor.alabama.gov/newsroom/2020/03/state-of-emergency-coronavirus-covid-19/>.

- *Idaho* declared a State of Emergency on March 13, 2020. Office of Governor Brad Little, Proclamation (March 13, 2020). <https://gov.idaho.gov/wp-content/uploads/2020/03/covid-19-declaration.pdf>.
- *Minnesota* declared a Peacetime Emergency on March 13, 2020. Office of Governor Tim Walz, Emergency Executive Order No. 20–01 (March 13, 2020). [https://mn.gov/governor/assets/EO%2020-01\\_tcm1055-422957.pdf](https://mn.gov/governor/assets/EO%2020-01_tcm1055-422957.pdf).
- *Missouri* declared a State of Emergency on March 13, 2020. Office of Governor Michael Parson, Executive Order No. 20–02 (March 13, 2020). <https://www.sos.mo.gov/library/reference/orders/2020/eo2>.
- *Nebraska* declared a State of Emergency on March 13, 2020. Office of Governor Pete Ricketts, Proclamation (March 13, 2020). <https://www.dropbox.com/s/64xel8oha2gw22h/2020%20State%20of%20Emergency%20-%20Coronavirus%20.pdf?dl=0>.
- *New Hampshire* declared a State of Emergency on March 13, 2020. Office of Governor Chris Sununu, Executive Order No. 2020–04 (March 13, 2020). <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-04.pdf>.
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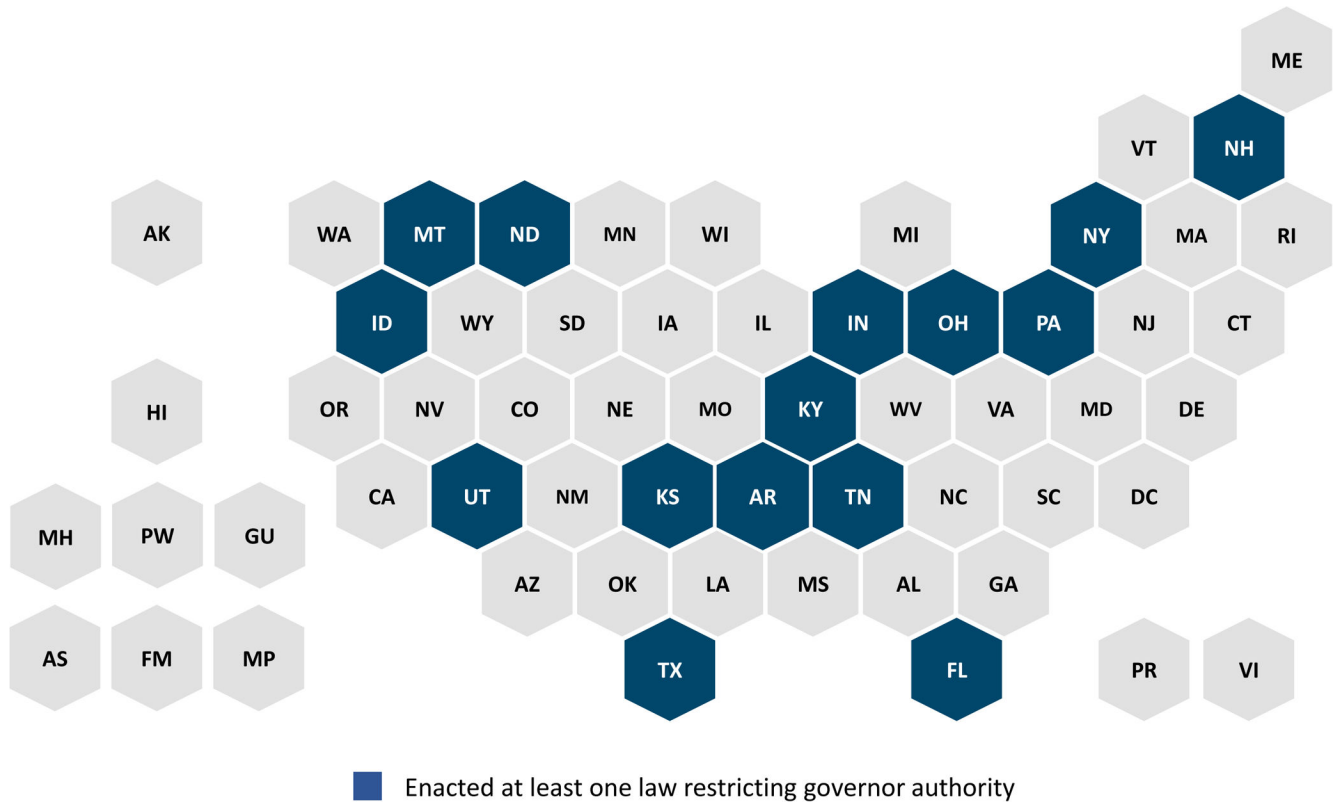
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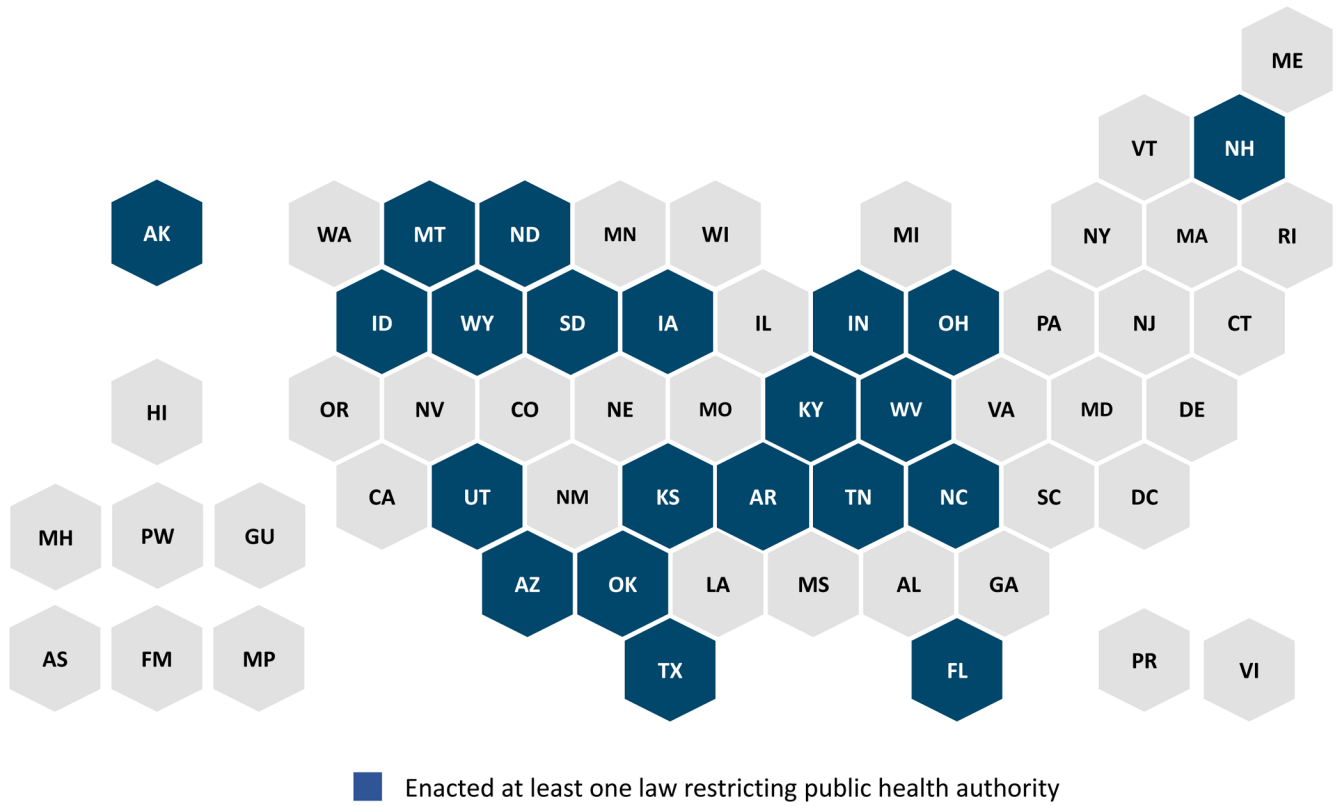
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**Figure 1.**  
Restricted governor authority.



**Figure 2.**  
Restricted public health authority.