



United States: Federal, State, and Local Government Responses to COVID-19

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SUMMARY: The United States has responded to the COVID-19 pandemic at all levels of government. Congress has enacted legislation and the President and the executive agencies have promulgated rules and regulations and taken other action to implement responses to COVID-19 to alleviate economic and societal impacts. State governments have acted in similar ways, enacting legislation and relying on their own state agencies to respond to the pandemic, often targeting specific situations that impact their populations. Although local governments have narrower jurisdictional authority than state or federal governments, they have been on the front lines, supporting first responders and municipally-funded programs. Examples of local government responses range from creating mask mandates and policies to administrating funding received from state and federal governments for pandemic response.

I. Introduction

The coronavirus pandemic has prompted a comprehensive government response from the federal, state, and local governments. The federal government has enacted legislation to stimulate the economy and promote a robust public health response. It has also implemented policies through agency regulations and temporary rules to utilize the funding provided by Congress. State governments have approached the situation in a more varied way, targeting their specific populations with public health policy and economic responses. Local governments have responded within the framework of power delegated to them by their state governments, focusing their emergency powers on policies to protect their citizens and support their municipal economies.

This report highlights selected responses from Congress and the many executive agencies that act under the authority of the US President. It also provides examples of state government measures, including both state legislation and state executive actions. Finally, it considers local government approaches to the pandemic, which vary across the states, depending in part on how much power localities are granted under state law. While this report discusses emergency powers first at the federal level, and then at the state and local levels, crisis response in the United States is generally organized from the ground up, with local governments taking the lead with the support of their respective state governments and, in larger emergency situations, the federal government.¹

¹ See Bruce Lindsay & Elizabeth Webster, Cong. Res. Serv., R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies 1-2* (updated June 3, 2020), <https://perma.cc/EDH5-ATYE>.

II. Congressional Response

Under the US Constitution, Congress has the sole power to authorize funding out of tax revenue and may do so for those purposes enumerated in the Constitution, including to provide funding for the general welfare of the United States.² Within Congress's ambit is the power to respond to disasters and public health emergencies; however, during times of crisis, such as the coronavirus pandemic, many emergency powers have been delegated by Congress to the President, with direction from Congress on how to administer and distribute monetary relief through federal agencies.³ The Constitution also provides that Congress must pass a law, referred to as an appropriation, in order to draw upon money in the Treasury.⁴ Funding for public health and disaster response is provided under emergency spending, and generally supplemental appropriations made due to a national emergency are exempt from other budgetary constraints.⁵

During the pandemic, Congress has enacted several public laws providing funding to help government agencies, states, localities, businesses, and individuals respond to the coronavirus. This funding has been designed both to provide for government intervention for public health resources (such as creating testing infrastructure) and to stimulate the economy (in the form of grants for businesses and direct payments to citizens). Congress has passed several key pieces of legislation in response to the pandemic, including the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136), the Families First Coronavirus Response Act (FFCRA) (Pub. L. No. 116-127), and the Coronavirus Preparedness and Response Supplemental Appropriations Act (Pub. L. No. 116-123). In many instances, these laws direct federal agencies to use the funding provided to implement temporary rules in response to the pandemic, which are discussed in this report (Parts III(A)-(C)., *infra*).

A. General Funding Process

Funding the federal government begins with an annual budget proposal prepared by the President. Congress then discusses the proposed budget and creates its own budget plan to return to the President. The overall budget is established by statutes, such as the Congressional Budget and Impoundment Control Act of 1974 (CBA),⁶ which directs the president to create an annual budget, and the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA),⁷ which sets limits for general appropriations categories.⁸

² U.S. Const. art. I, § 8, cl. 1, <https://perma.cc/28ZG-NDTE>.

³ See Jennifer K. Elsea et al., Cong. Res. Serv., R46379, *Emergency Authorities under the National Emergencies Act, Stafford Act, and Public Health Service Act 1-2* (updated July 14, 2020), <https://perma.cc/XLU5-55UN>.

⁴ U.S. Const. art. I, § 9, cl. 7, <https://perma.cc/2AY8-G7PQ>.

⁵ See James V. Saturno, Bill Heniff Jr., & Megan S. Lynch, Cong. Res. Serv., R42388, *The Congressional Appropriations Process: An Introduction* 19 (updated Nov. 30, 2016), <https://perma.cc/2K5A-JNPT>.

⁶ 2 U.S.C. §§ 601-688.

⁷ 2 U.S.C. §§ 900-922.

⁸ See James V. Saturno, Bill Heniff Jr., & Megan S. Lynch, *supra* note 5, at 2-4; 19-20.

1. *Regular Appropriations*

Appropriations measures are developed in 12 subcommittees each of the House and Senate Committees on Appropriations. These appropriations measures can be passed individually; however, it is generally more efficient to pass appropriations in one large bill, known as an omnibus appropriations measure. These omnibus appropriations bills are often over 1,000 pages long and incorporate the appropriations developed in multiple subcommittee.⁹

2. *Continuing Resolutions*

Continuing Resolutions (CRs) are necessary appropriation measures taken when a regular appropriations bill has not yet been enacted prior to the expiration of current appropriations. Most fiscal years require at least one CR in order for the government to stay open. A CR acts as a stop-gap measure and expires after a set amount of time. At the end of the CR funding period, Congress will either pass a regular appropriations bill or another CR.¹⁰

3. *Supplementary Appropriations*

Supplemental appropriations are used when additional funding is needed to continue government operations, and it would be untimely to fund through the next general appropriations bill. Supplemental appropriations are generally more targeted than regular appropriations or CRs. Emergency funding bills generally appear as supplementals, and in the case of the coronavirus response, most of the new funds were passed in supplementals.¹¹

B. Selected Examples of Congressional Legislation

The legislation described here is a snapshot of appropriations created to combat the coronavirus. These examples summarize the primary appropriations statutes that have been enacted to date, but do not exhaustively cover the full response by Congress.¹² All of the actions below have been deemed emergency responses, exempting them from the provisions of the Pay-As-You-Go Act of 2010 (PAYGO), a law requiring new spending to be offset by tax increases or tax cuts elsewhere.¹³

1. *Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020*

Congress passed the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, on March 5, 2020. It was signed into law by the President on March 6, 2020. This appropriations bill provided \$8.3 billion as an initial legislative response to the

⁹ See James V. Saturno, Bill Heniff Jr., & Megan S. Lynch, *supra* note 5, at 12-13.

¹⁰ *Id.* at 13-14.

¹¹ *Id.* at 14.

¹² For an expanded list of enacted and pending congressional, presidential, and administrative responses to the coronavirus pandemic, see *Coronavirus (COVID-19)*, govinfo (last visited Nov. 16, 2020), <https://www.govinfo.gov/features/coronavirus>.

¹³ 2 U.S.C. §§ 931-939.

pandemic. It provided funding for testing, vaccine research, and medical supply procurement, and aided in the evacuation of US embassies and State Department overseas facilities.¹⁴

2. *Families First Coronavirus Response Act*

Congress enacted the Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116-127, on March 18, 2020, and it was signed into law by the President on the same day. The FFCRA provided a variety of benefits, including paid sick leave, tax credits, free COVID-19 testing, expanded food assistance, enhanced sick-leave benefits, and increased Medicaid funding.¹⁵ According to the Congressional Budget Office (CBO), the FFCRA will add approximately \$192 billion to the federal deficit through 2030, with \$105 billion of that amount attributed to a new tax credit for COVID-19 related paid leave.¹⁶

Of note in this Act is the expansion of emergency family and medical leave and emergency paid sick leave. The FFCRA increased leave granted under the Family and Medical Leave Act (FMLA) by providing up to 12 weeks of paid leave for employees who cannot work due to childcare issues. The increase in leave under FMLA applies to private employers of fewer than 500 employees and certain public employers. The FFCRA also provided 80 hours of paid sick time to employees who need to stay home from work if ill with COVID-19, if required to quarantine, or if caring for a close family member who has tested positive for the virus.

3. *Coronavirus Aid, Relief and Economic Security Act*

Congress passed the CARES Act, Pub L. No. 116-136, on March 27, 2020, and it was signed into law by the President on the same day. The CARES Act was a comprehensive response to provide support to the economy, public health, state and local governments, individuals, and businesses.¹⁷ The CARES Act authorized around \$2 trillion in appropriations in direct response to combat the coronavirus pandemic.

The majority of the CARES Act's provisions delegate authority to federal agencies to utilize the available funding in a targeted manner (discussed further in Part III(C)(2)). The CARES Act also authorized direct payments to the American public in varying amounts, and provided supplemental unemployment payments for those who were out of work due to lock-downs, quarantines, and business closures.

¹⁴ Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, <https://perma.cc/B9H9-UFMM>.

¹⁵ Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116-127, <https://perma.cc/QD64-6QWY>.

¹⁶ Phillip L. Swagel, Congressional Budget Office, *Preliminary Estimate of the Effects of H.R. 6201*, 1-2 (Apr. 2, 2020), <https://perma.cc/6XNU-5GAV>.

¹⁷ Coronavirus Aid, Relief and Economic Security Act, Pub. L. No. 116-136, <https://perma.cc/T2Z8-X9PY>.

4. *Paycheck Protection Program and Health Care Enhancement Act*

Congress passed the Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, on April 23, 2020. This Act was signed into law by the President on April 24, 2020. The legislation provided a special funding program to be executed by the Small Business Administration (discussed in Part III(C)(3)), and also provided more supplemental appropriations for the public health response to COVID-19.¹⁸ The law appropriated an additional \$484 billion for programs initially created under the CARES Act.

One feature of the Paycheck Protection Program and Health Care Enhancement Act is funding set aside specifically for COVID-19 testing. The funding went to state, local, territorial, and tribal governments, as well as to several different agencies (such as the Centers for Disease Control) and to community health centers. The law also directed the Department of Health and Human Services to establish a strategic testing plan for the coronavirus.

III. Federal Executive Response

Executive agencies regulate aspects of American society pursuant to congressionally-delegated authority through the rulemaking framework provided by the Administrative Procedure Act (APA).¹⁹ An agency creates a new regulation (or modifies an existing one) when directed by Congress, or when the agency, under its delegated legal authority, determines a regulation should be implemented or amended.

A. Formal and Informal Rulemaking

Federal agencies generally engage in two types of rulemaking—formal and informal. Formal rulemaking is triggered when Congress directs the agency to create a rule by statute. It involves a hearing before an administrative law judge in which the agency and interested parties present evidence in support of, or in opposition to, the proposed rule.²⁰ Informal rulemaking is the more common procedure. An agency uses this process when modifying, changing, or creating rules it has promulgated previously.²¹ Generally, agencies allow a limited period for interested parties to offer input on the proposed rule.

One exception to the rulemaking process applies when an agency creates an emergency rule. Under these circumstances, an agency must demonstrate that following the typical rulemaking process would be contrary to the public interest.²² Agencies have invoked the COVID-19 pandemic as a basis for rulemaking under this exception because it is a public health crisis. (See Part III(C), below, for examples of emergency rulemaking at the federal level.) An agency may also promulgate a temporary rule, which acts as a final rule for enforcement purposes, but is still

¹⁸ Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, <https://perma.cc/WES4-3G7L>.

¹⁹ Administrative Procedure Act, 5 U.S.C. §§ 500-596, <https://perma.cc/7PYZ-37DQ>.

²⁰ Id. §§ 556-557.

²¹ Id. § 553.

²² Id. § 553(b)(B).

open for public comment for later review. (See Part III(A) for an example of temporary rulemaking.)

Other exceptions exist under the Congressional Review Act (CRA).²³ Under the CRA, Congress requires federal agencies to submit to it a copy of each newly promulgated rule. The CRA gives Congress the ability to nullify a rule by passing a joint resolution. The President can, however, veto such a joint resolution and thereby allow the rule to go into effect. Another exception under the CRA is available for imminent threats to health or safety.²⁴ For this exception to apply, the President must issue an executive order making a determination that a rule must go into effect immediately because of an imminent threat to health or safety.²⁵

B. Presidential and Judicial Authority

The President may authorize rulemaking through executive orders, and the judiciary may determine whether an agency provided sufficient reasoning to support its rule. For example, through executive order, the President may direct an agency to perform a specific action. As with other rulemaking procedures, the agency's actions must adhere to the APA's requirements. An agency may also be called upon to act under an executive order based on authority vested in the President by Congress.²⁶

The judiciary, when reviewing rules and regulations that are being challenged or enforced in court, gives a high level of deference to agencies. Generally, an agency need only show a reasonable level of justification for its actions.²⁷

C. Selected Examples of Federal Executive Responses to COVID-19

1. Family First Coronavirus Response Act, Department of Labor

As stated above, the FFCRA allows small businesses to provide employees with more paid time off during the pandemic, so employees can adhere to guidelines created in the interest of public health. The FFCRA also authorized the Department of Labor (DOL) to determine how best to implement this statute's requirements. In response, the DOL created a temporary rule (set to expire on December 31, 2020) to execute the congressional action.²⁸

²³ Congressional Review Act, 5 U.S.C. §§ 801-808, <https://perma.cc/A6FV-5KR5>.

²⁴ *Id.* § 801(c)(2).

²⁵ *Id.* § 801(c)(2)(A).

²⁶ A thorough explanation of the President's authority to engage in rulemaking with executive orders can be found in Valerie C. Brannon, Cong. Res. Serv., LSB10172, *Can a President Amend Regulations by Executive Order?* (July 18, 2018), <https://perma.cc/KFY7-ACMW>.

²⁷ *Kisor v. Wilkie*, 588 US ___, 139 S. Ct. 2400 (2019), <https://perma.cc/BQ9P-DFZU>.

²⁸ 85 Fed. Reg. 19,326 (Apr. 6, 2020), <https://perma.cc/FF93-MUZV>; corrected by 85 Fed. Reg. 20,156 (Apr. 10, 2020), <https://perma.cc/Z7IJ-7WFR>.

The temporary rule explains the reasoning behind the rule's creation and the goals of the statute the rule seeks to fulfill.²⁹ The DOL did not go through the typical rulemaking process because it created a temporary rule. Relying on the good cause requirements under 5 U.S.C. § 553(b)(B), the DOL supported its decision to move forward without notice and comment by stating that the pandemic created an immediate need for action related to family and medical leave, and that adhering to the normal process would have obstructed the goal of offering swift relief for families. The DOL specifically noted:

The COVID-19 pandemic has escalated at a rapid pace and scale, leaving American families with difficult choices in balancing work, child care, and the need to seek medical attention for illness caused by the virus. To avoid economic harm to American families facing these conditions, a decision to undertake notice and comment rulemaking would likely delay final action on this matter by weeks or months, and would, therefore, complicate and likely preclude the Department from successfully exercising the authority. . . . Moreover, such delay would be counter to one of the FFCRA's main purposes in establishing paid leave: enabling employees to leave the workplace now to help prevent the spread of COVID-19.³⁰

The rule's practical implications are described on the DOL's website, which provides a fact sheet.³¹ The fact sheet explains to the general public the FFCRA's protections as they relate to the DOL's purview. In short, the rule provides guidance on who is affected by the rule (employees), the reasons the rule applies to those individuals (hardship caused by their own or a close relative's sickness), and the resulting effect on the employee (in this instance, monetary compensation).³²

2. *Coronavirus Aid, Relief and Economic Security Act, Department of Education*

One key piece of the CARES Act authorized the Department of Education (DOE) to provide colleges and universities with the ability to supply their students with financial aid, through the Higher Education Emergency Relief Fund (HEERF), due to hardship experienced because of the COVID-19 pandemic. The DOE was granted the authority to determine eligibility requirements for students to receive the money from HEERF.

The rule adopted by the DOE provides reasoning for the rule's creation, as well as the justification for waiving the standard notice and comment period.³³ For this particular rule, the DOE had to define the term "student" due to an ambiguity in the legislation. The DOE further determined that the waiver of notice and comment was justified because of the need to provide students with financial assistance as quickly as possible. The DOE, relying on 5 U.S.C.

²⁹ FFCRA § 5111.

³⁰ 85 Fed. Reg. 19,342 (Apr. 6, 2020), <https://perma.cc/2XAQ-5ESH>.

³¹ Families First Coronavirus Response Act: Employer Paid Leave Requirements, US Dep't of Lab. Wage & Hour Division, <https://perma.cc/8HEG-KSVP>.

³² A more in-depth explanation is available in Sarah A. Donovan & Jon O. Shimabukuro, Cong. Res. Serv., IF11487, *The Families First Coronavirus Response Act Leave Provisions* (Apr. 2, 2020), <https://perma.cc/E7PQ-AQPM>.

³³ 85 Fed. Reg. 36,494 (June 17, 2020), <https://perma.cc/AK7J-4WSR>.

§ 553(d)(3), found that the suspension of the notice and comment period also justified making the rule effective immediately.³⁴

3. *Paycheck Protection Program and Health Care Enhancement Act, Small Business Administration*

The Paycheck Protection Program and Health Care Enhancement Act, in part, authorized the Small Business Administration (SBA) to provide direct payments to eligible small businesses through the Paycheck Protection Program (PPP). PPP loans are designed to allow small businesses to continue paying employees during the potential economic downturn caused by the COVID-19 pandemic. The SBA was authorized to provide loans through June 30, 2020.

The interim final rule provides the bases for the rule's creation, as well as its intended goals.³⁵ The rule statement explains the reasoning for moving forward without notice and comment; in this instance, the exception was triggered because the CARES Act authorizes the SBA to implement the PPP without a notice and comment period. However, the SBA continued soliciting comments in anticipation of further guidance. The statement also reasoned that the rule would take immediate effect because, at the time of the rule's creation, PPP applications were open only until June 30, 2020.³⁶ The initial rule authorized the program through June 30, 2020; however, on July 6, 2020, the program was extended through August 8, 2020.

4. *Emergency Rulemaking under Existing Law: Magnuson-Stevens Act*

The Magnuson-Stevens Fishery Conservation and Management Act is a law that provides for observation of fishing vessels to enforce catch limits.³⁷ The National Oceanic and Atmospheric Administration (NOAA) previously had been delegated the authority to execute this law, and had created regulations detailing its enforcement process. Due to the COVID-19 pandemic, NOAA issued a temporary rule, bypassing the notice and comment period.³⁸

The temporary rule allows NOAA to waive the use of observers on fishing vessels in certain instances. Relying on 5 U.S.C. § 553(d)(3), the agency made findings that the rule needed to go into effect immediately due to the risk to both fishermen and observers if the agency were to adhere to the typical notice and comment process, specifically noting the ongoing public health

³⁴ The information provided in the *Federal Register*, 85 Fed. Reg. 36,494 (June 17, 2020), is available on the DOE's website at <https://perma.cc/SGW8-2YDS>. Information on eligibility and process, as well as university requirements, is available for student review. Further discussion of this rule is available in Rebecca R. Skinner et al., Cong. Res. Serv., R46378, *CARES Act Education Stabilization Fund: Background and Analysis* (June 3, 2020), <https://perma.cc/EG7L-RZTD>.

³⁵ 85 Fed. Reg. 20,817 (Apr. 15, 2020), <https://perma.cc/M4KX-SY9A>.

³⁶ The SBA provides supplemental materials at <https://perma.cc/R9JJ-D64Q>; for further analysis of the PPP, see Robert Jay Dilger, Cong. Res. Serv., R41146, *Small Business Administration 7(a) Loan Guaranty Program* (Apr. 30, 2020), <https://perma.cc/XF9Q-PC2A>.

³⁷ Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1891, <https://perma.cc/CGE8-65AV>.

³⁸ Emergency Measures to Address Fishery Observer Coverage during the COVID-19 Coronavirus Pandemic, 85 Fed. Reg. 17,285 (Mar. 27, 2020), <https://perma.cc/PQ5W-T48H>.

issues caused by the global pandemic. The justification focused on balancing the need to protect individuals while still maintaining the integrity of the fishery.

The practical effects of this regulation are not as easy to see, because its effects are less far-reaching than the examples above. However, NOAA has posted guidance on its website detailing the reasons for the emergency rule.³⁹

5. *Executive Direction Under the Stafford Act*

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)⁴⁰ provides the President with significant powers during a national emergency. One such power under this act is the ability to utilize federal funds in support of individual state National Guard units. In a series of executive memoranda, the President committed federal resources to support National Guard operations in several states during the pandemic response. For example, the President issued a memorandum directing the Department of Defense and the Department of Homeland Security to fund 100% of the costs associated with deploying National Guard troops to the states to support the COVID-19 response.⁴¹

6. *Executive Order Under the Defense Production Act*

The Defense Production Act of 1950 (DPA)⁴² provides the President with the power to implement regulatory changes through power vested in him by Congress and delegated by him to different federal agencies. In the example of Executive Order No. 13,917, the President authorized the US Department of Agriculture to implement necessary rules and regulations to ensure the continued processing of meat and poultry.⁴³ Within this statement, the President justified his authority to do so under the DPA.

7. *Recent Presidential Actions*

On August 8, 2020, President Trump announced one executive order and three presidential memoranda outlining additional COVID-19 relief measures. These executive documents refer to the Stafford Act and outline some of the measures previously implemented in response to the pandemic. The executive order directs the Secretary of the Department of Housing and Urban Development to identify funds to assist renters and homeowners who have been financially impacted by the pandemic fulfill their rental and mortgage obligations.⁴⁴

³⁹ IB 20-29: Notification on Waiver of Observer Coverage Requirements in the Partial Coverage Category, NOAA (Mar. 27, 2020), <https://perma.cc/J7UK-QFSC>.

⁴⁰ 42 U.S.C. § 5121, *et seq.*

⁴¹ Memorandum on Providing Federal Support for Governors' Use of the National Guard to Respond to COVID-19, 2020 Daily Comp. Pres. Doc. 00181 (Mar. 22, 2020), <https://perma.cc/7WAZ-T3XG>.

⁴² 50 U.S.C. § 4501, *et seq.*

⁴³ Exec. Order No. 13,917, 85 Fed. Reg. 26,313 (May 1, 2020), <https://perma.cc/DG7R-7GZ5>.

⁴⁴ Exec. Order No. 13,945, 85 Fed. Reg. 49,935 (Aug. 8, 2020) <https://perma.cc/6UC6-4D6E>.

The first memorandum extends relief from repaying student loans, and waives interest on these loans, through December 31, 2020.⁴⁵ This loan repayment deferral program was originally implemented under the CARES Act, and it was set to expire on September 30, 2020.⁴⁶ On August 8, 2020, the President directed the Secretary of Education to extend student loan relief until December 31, 2020.⁴⁷ The next memorandum instructs the Treasury Secretary to defer “the withholding, deposit, and payment of the [payroll] tax[.]”⁴⁸ This directive applies to pay periods during September 1, 2020, through December 31, 2020, and impacts employees who make less than \$4,000, pretax, every two weeks.⁴⁹ The final memorandum directs the Federal Emergency Management Agency and state governments to divert disaster relief funds to compensate individuals who are entitled to unemployment benefits.⁵⁰ This memorandum allows for qualifying persons to receive \$400 per week in unemployment benefits through a cost-sharing program, with \$300 federally funded and the remainder paid by state governments.⁵¹

As of the date of this report, the legislative and executive branches are continuing negotiations on further economic relief measures.

IV. State Responses to COVID-19

The Tenth Amendment to the US Constitution states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁵² The *Federalist Papers*’ authors contemplated the interplay among federal and state governments, regularly stressing the idea of state autonomy. “[T]he proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.”⁵³

⁴⁵ Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic, 85 Fed. Reg. 49,585 (Aug. 13, 2020), <https://perma.cc/N3W4-A4NA>.

⁴⁶ CARES Act § 1107(a).

⁴⁷ Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic, 85 Fed. Reg. 49,585 (Aug. 13, 2020), <https://perma.cc/N3W4-A4NA>.

⁴⁸ Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, 85 Fed. Reg. 49,587 (Aug. 13, 2020), <https://perma.cc/Y25W-B5XH>.

⁴⁹ For more information on payroll taxes, see Donald J. Marples & Molly F. Sherlock, Cong. Res. Serv., IN11230, Payroll Tax Cuts as an Economic Stimulus Response to Coronavirus Disease (COVID-19) (Mar. 5, 2020), <https://perma.cc/2HDZ-NZT6>.

⁵⁰ Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019, White House (Aug. 8, 2020), <https://perma.cc/B6RD-JKUY>.

⁵¹ A more thorough analysis of these executive orders and memoranda can be found in Kevin M. Lewis et al., Cong. Res. Serv., LSB10532, President Trump’s Executive Actions on Student Loans, Wage Assistance, Payroll Taxes, and Evictions: Initial Takeaways (Aug. 10, 2020), <https://perma.cc/8UKH-5JAP>.

⁵² US Const. amend. X, <https://perma.cc/MU2V-B7EY>.

⁵³ *The Federalist No. 39* (James Madison), <https://perma.cc/S52J-HGLW>.

Courts have interpreted the states' reserved powers under the Tenth Amendment to include police powers, such as the authority to take action in response to a public health emergency.⁵⁴ Some of these powers include issues related to family, crime, education,⁵⁵ and other matters related to providing for "the public health, safety and morals" of citizens.⁵⁶

Most states have a framework for executive actions, similar to the federal government's, under their own versions of the APA.⁵⁷ Along with the powers listed in a state's administrative procedures, individual governors have broad powers under their respective state constitutions or statutes to protect citizens during a disaster or emergency.⁵⁸

One matter in particular over which governors have authority is implementing quarantines, or lockdowns, of their citizens. That power is generally delegated to the state's health department or health agency.⁵⁹

State governments across the United States have enacted emergency rules and legislation to respond to the COVID-19 pandemic. In some instances, state governors have issued various orders declaring states of emergency, authorizing executive action. State legislatures also have enacted emergency legislation providing funding for responses to the pandemic and performing oversight over certain executive and judicial actions. Three examples of exercises of state executive authority and three examples of exercises of state legislative authority are provided below.

A. State Quarantine Order – Ohio

The US Supreme Court has established that states have broad authority to "enact quarantine laws and health laws of every description[.]"⁶⁰ According to the state constitution, the governor has the "supreme executive power of [the] state[.]"⁶¹

⁵⁴ Jorge E. Galva, Christopher Atchison & Samuel Levey, *Public Health Strategy and the Police Powers of the State*, 120 Pub. Health Rep. 20, 21-22 (Supp. 1, 2005), <https://perma.cc/H68H-5NKG>.

⁵⁵ April J. Anderson, Joanna R. Lampe & Whitney K. Novak, Cong. Res. Serv., R46530, *Police Reform and the 116th Congress: Selected Legal Issues 2* (Sept. 16, 2020), <https://perma.cc/FP8M-6DWC>.

⁵⁶ Wen W. Shen, Cong. Res. Serv., LSB10300, *An Overview of State and Federal Authority to Impose Vaccination Requirements 1* (May 22, 2019), <https://perma.cc/4C8U-2H5R>.

⁵⁷ See, e.g., Washington State Administrative Procedure Act, Wash. Rev. Code § 34.05 (1988), <https://perma.cc/S2UB-AX24>; Massachusetts State Administrative Procedure, Mass. Gen. Laws ch. 30A, §§ 1-25 (1954), <https://perma.cc/B69P-9R7M>.

⁵⁸ See, e.g., Ariz. Rev. Stat. § 26-303 (2015), <https://perma.cc/B74M-TYSZ>; Conn. Gen. Stat. (2010) § 28-9, <https://perma.cc/MA3W-GRRT>.

⁵⁹ For a survey of different state laws on emergency powers, see *State Quarantine and Isolation Statutes*, National Conference of State Legislatures (Aug. 7, 2020), <https://perma.cc/6GEY-LYJK>.

⁶⁰ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (internal quotation omitted), <https://perma.cc/N9VW-F2YL>.

⁶¹ Ohio Const. Art. III. § 5, <https://perma.cc/365N-4EUF>.

In early March 2020, Governor Mike DeWine of Ohio issued an executive order declaring a state of emergency.⁶² Through this order, he authorized the Ohio Department of Health to implement rules designed to protect the general public. The Health Department then issued an order requiring people to stay at home unless engaged in essential work or activities.⁶³ On July 7, 2020, the Ohio Interim Director of Health issued an order extending the dates from the initial emergency order until the governor's state-of-emergency declaration is withdrawn.⁶⁴

B. State Evictions Halting Order – Illinois

On June 26, 2020, Illinois Governor J.B. Pritzker issued an executive order halting eviction proceedings within the state.⁶⁵ The governor has been extending the order each month, with the latest extension being ordered on October 16, 2020, extending the moratorium to November 14, 2020.⁶⁶ The governor is granted these powers under statute and the Illinois Constitution, which provides, "The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws."⁶⁷ This broad-reaching order provided many authorizations, findings, and justifications. Similar to executive orders under federal and state law, the governor can delegate power to other state agencies to carry out these directives.

C. Declaration of State of Emergency – Montana

On March 12, 2020, Governor Steve Bullock of Montana issued an executive order declaring a state of emergency in Montana.⁶⁸ The very next day, Governor Bullock amended this order to remain in effect so long as the President of the United States continues to classify the pandemic as a state of emergency.⁶⁹ Upon issuance of these orders, the governor mobilized different state resources to meet urgent needs arising from the pandemic. The orders also provided the governor with the power to direct a statewide response to the disease outbreak.

D. Oversight of Executive Authority – Colorado

On July 14, 2020, the Colorado General Assembly exercised oversight authority by passing a law requiring the governor to attend regular meetings with the legislature when a disaster or emergency has been declared.⁷⁰ The law requires the governor to provide information about the disaster response and answer questions from the legislature. The law further provides that the

⁶² Ohio Exec. Order No. 2020-01D (Mar. 9, 2020), <https://perma.cc/PT8H-BQXZ>.

⁶³ Director's Stay Safe Ohio Order, Ohio Dep't of Health (Apr. 30, 2020), <https://perma.cc/HSD5-8XND>.

⁶⁴ Director's Order, Ohio Dep't of Health (July 7, 2020), <https://perma.cc/9G9N-CZK3>.

⁶⁵ Ill. Exec. Order No. 2020-44 (COVID-19 Executive Order No. 42) (June 26, 2020), <https://perma.cc/BNT3-QQ8H>.

⁶⁶ Ill. Exec. Order No. 2020-59 (COVID-19 Executive Order No. 55) (Oct. 16, 2020), <https://perma.cc/H9A7-VTBC>.

⁶⁷ Ill. Const. art. V, § 8, <https://perma.cc/FEB9-JBDD>.

⁶⁸ Mont. Exec. Order No. 2-2020 (Mar. 12, 2020), <https://perma.cc/DT5Z-9XKN>.

⁶⁹ Mont. Exec. Order No. 3-2020 (Mar. 13, 2020), <https://perma.cc/H5A2-XWKS>.

⁷⁰ 2020 Colorado Sess. Laws 1556 (July 14, 2020), <https://perma.cc/T72L-9Y69>.

governor must give notice to the legislature when promulgating any executive order related to the disaster or emergency.

E. Criminal Procedure – New York

On June 17, 2020, the New York legislature amended its criminal procedure laws to allow witnesses to appear electronically in felony hearings.⁷¹ The law applies while the governor has declared a state of disaster or emergency and will expire on April 30, 2021. The law provides that a witness may appear in this manner if the court finds that it would be an unreasonable hardship for the witness to appear in person. The law also outlines the technological and logistical requirements for an appearance in this manner.

On September 4, 2020, New York Governor Andrew Cuomo executed an order to continue enforcing various modified laws that were put into effect as a result of COVID-19. With regard to criminal procedure, the order provided that “any appearance which has been required to be in-person may continue to be conducted virtually with the consent of the parties.”⁷² In one criminal case, the defendant argued that this executive order prevents courts from demanding in-person appearances unless all parties consent. The court disagreed, finding that the executive order granted courts flexibility in running proceedings and the order could not “be read to mandate virtual court appearances if the parties prefer not to appear in person.”⁷³ An executive order signed by Governor Cuomo on November 3, 2020, removed language about parties in criminal proceedings consenting to appear in court virtually.⁷⁴

F. Special Funding – Arizona

On March 28, 2020, the Arizona legislature amended its laws to establish the Crisis Contingency and Safety Net Fund to provide money for the general welfare of Arizona’s population.⁷⁵ This act provides funding for housing, small business, and food bank operations. It clarifies that the money in the fund may be spent only when the governor has declared a state of emergency, and only for the specific purposes set forth in the act.

V. Local Government Responses to COVID-19

Local governments are made up of counties (including boroughs and parishes) and municipalities (cities, towns, and villages). Local governments are granted powers from the state government and are unable to act beyond those powers.⁷⁶ Although the Tenth Amendment discusses the states’ authority, it is silent on the interplay between a state government and the

⁷¹ N.Y. Crim. Proc. Law § 180.65 (Consol. 2020), <https://perma.cc/K2ZU-BLGC>.

⁷² N.Y. Exec. Order No. 202.60 (Sept. 4, 2020), <https://perma.cc/ASX3-NYW4>.

⁷³ *People v. Jackson*, 2020 N.Y. Slip. Op. 20266 (N.Y. Sup. Ct., Queens County 2020), <https://perma.cc/KEM9-R478>.

⁷⁴ N.Y. Exec. Order No. 202.72 (Nov. 3, 2020), <https://perma.cc/A2G9-B3UQ>.

⁷⁵ AZ SB1690 (Mar. 28, 2020), <https://perma.cc/KC6G-E2CY>.

⁷⁶ *State & Local Government*, The White House, <https://perma.cc/BLD9-C5DY> (last visited Nov. 16, 2020).

powers of local government entities existing within its borders. This broad issue has been addressed by the US Supreme Court on multiple occasions since the mid-1800s.

In various opinions, the US Supreme Court has explained in general terms the powers of local government entities. In *Hunter v. City of Pittsburgh*, the Court held that

[m]unicipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.⁷⁷

This principle is commonly known as Dillon’s Rule, which is named after a 19th-century Iowa Supreme Court justice who authored an opinion on this topic and, while subsequently serving as a federal appellate judge, an influential work on municipal corporations. The US Supreme Court reiterated and upheld *Hunter’s* holding in *Trenton v. New Jersey*. In *Trenton*, the court noted,

[i]n the absence of state constitutional provisions safe-guarding it to them, municipalities have no inherent right of self government which is beyond the legislative control of the State. A municipality is merely a department of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the State exercising and holding powers and privileges subject to the sovereign will.⁷⁸

Based on these Supreme Court precedents, it is generally accepted that local governments may exercise only (1) powers expressly granted by the state, (2) powers necessarily and fairly implied from the grant of power, and (3) powers crucial to the existence of local government.⁷⁹

In the early 20th century, states began enacting statutes or amending their constitutions to provide greater autonomy to municipal governments.⁸⁰ Part of this process involved municipal governments creating charters to define local governmental powers and functions. A county or city charter is analogous to a local constitution.⁸¹ This relationship between state and local governments is known as “home rule,” which allocates to local governments specific areas of authority, with which the state government generally may not interfere.⁸² Home rule statutes and constitutional provisions vary state-by-state; likewise, local charters vary by jurisdiction. Examples of home rule dynamics can be found on state government websites: Minnesota’s legislature explains local government functions within the state,⁸³ and Nebraska’s legislature

⁷⁷ *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907), <https://perma.cc/9YHX-DJ7Z>.

⁷⁸ *City of Trenton v. New Jersey*, 262 U.S. 182, 187 (1923), <https://perma.cc/ASS3-MRSK>.

⁷⁹ *Cities 101 – Delegation of Power*, National League of Cities (Dec. 13, 2016), <https://perma.cc/QHR9-NCGZ>.

⁸⁰ Paul Diller, *Intrastate Preemption*, 87 B.U. L. Rev. 1113, 1124 (2007), <https://perma.cc/WPL6-3Q6R>.

⁸¹ *Cities 101 – Charters*, National League of Cities (Dec. 16, 2016), <https://perma.cc/XX26-6LTL>.

⁸² Diller, *supra* note 80, at 1124-27, <https://perma.cc/WPL6-3Q6R>.

⁸³ Deborah A. Dyson, *State-Local Relations*, Minnesota House Research Department (Nov. 2019), <https://perma.cc/7LFY-ZL6P>.

offers a similar primer on state and municipal government interactions.⁸⁴ Typically, local governments may not step outside their state-granted powers, and local laws cannot conflict with state legislation or the state constitution.⁸⁵

When federal and state governments are silent on specific regulations and emergency responses, local governments (such as municipalities, cities, and counties) generally use their own emergency powers to respond, so long as they do not conflict with federal or state laws.⁸⁶ The following examples illustrate some current revenue forecasts for municipal governments and actions that local government entities across the country have taken in response to the pandemic.

A. Funding for Local Governments During the Pandemic (New York)

Municipal governments rely on tax revenue, including sales tax in many states, to run local government institutions and programs. Sales taxes are connected to consumer spending on products and services such as dining and retail. In New York State, for example, outside of New York City, local governments' sales tax revenue accounted for over one-quarter of county revenues and nearly one-fifth of city revenues in fiscal year 2018.⁸⁷ Shelter-in-place orders and travel restrictions have reduced consumer spending considerably. Many local governments are bracing for millions of dollars in revenue shortfalls.⁸⁸ Revenue from sales tax is used to fund local government institutions, including emergency responders, public schools, healthcare, and libraries, among other programs and services.

Although the long-term consequences of reduced consumer spending are currently unknown, the New York State Association of Counties has estimated that county sales tax collections outside of New York City could fall by as much as 22% over the course of a year, amounting to \$1.8 billion in lost revenue.⁸⁹ According to the New York State Comptroller, "[i]n May, retail sales were down 7.7 percent over May 2019, with much steeper drops in some of the most important taxable sales, including clothing and accessories (-63 percent), gasoline stations (-32 percent), electronics and appliance stores (-31 percent) and department stores (-26 percent)."⁹⁰

⁸⁴ Travis Moore, *Dillon Rule and Home Rule: Principles of Local Governance*, Nebraska Legislative Research Office (Feb. 2020), <https://perma.cc/8GZL-YV4R>.

⁸⁵ Richard Briffault et al., *Principles of Home Rule for the Twenty-First Century* 46-52 (Working Paper, National League of Cities, Apr. 2, 2020), <https://perma.cc/32X9-JRN3>.

⁸⁶ See Whitney K. Novak, Cong. Research Serv., LSB10487, *Congress and Law Enforcement Reform: Constitutional Authority* 1-2 (June 4, 2020), <https://perma.cc/D7R4-T864>.

⁸⁷ Thomas P. DiNapoli, Office of New York State Comptroller, *Under Pressure: Local Government Revenue Challenges During the COVID-19 Pandemic* 2 (July 2020), <https://perma.cc/N2HG-WV82>.

⁸⁸ Alison Felix, *COVID-19 Challenges State and Local Government Finances* 2, kcFED Econ. Bull. (May 13, 2020), <https://perma.cc/AL2P-V2UR>.

⁸⁹ John F. Marren & Stephen J. Acquario, *Lost Revenue and State Aid Cuts: Coronavirus Economic Impact on Counties* 3, New York State Association of Counties (May 2020), <https://perma.cc/EPN7-YZ8Z>.

⁹⁰ DiNapoli, *supra* note 87, at 3.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated \$150 billion in funding for state governments, which was then apportioned to municipalities. This funding, however, had to be used to cover “necessary expenditures incurred due to the COVID-19 public health emergency from March 1, 2020 to December 30, 2020.”⁹¹ Municipal governments were also entitled to CARES Act funding under the Education Stabilization Fund (\$30.75 billion), the Federal Emergency Management Act Disaster Relief Fund (\$45 billion), and the Municipal Liquidity Facility (\$500 billion), all of which had to be used for specific purposes related to the coronavirus pandemic. On October 1, 2020, the House of Representatives passed the proposed Heroes Act, which earmarks \$179 billion for local governments.⁹² The Heroes Act is currently being reviewed in the Senate. As of the date of this report, Congress and the executive branch are negotiating additional federal emergency funding measures.

B. School Boards and Education (Philadelphia, Pennsylvania)

According to data from the US Department of Education, in the United States, state and local governments administer approximately 13,500 public school districts.⁹³ Frequently, state governments regulate schools, oversee curricula, develop standards, and provide some funding, but much of the funding, and the bulk of administrative activities, are provided at the local level. For example, in the 2019–2020 school year, the Philadelphia School District received 51% of its funding from the state of Pennsylvania, 48% from the city of Philadelphia, and 1% from the federal government.⁹⁴

In response to the coronavirus pandemic, school districts have been required to reimagine instruction methods, including educating students remotely. In Philadelphia, the local school district began the school year with all students learning remotely. The school district will reassess local conditions in November and may transition to a hybrid of in-person and digital learning if state and local health authorities indicate that it is safe to do so.⁹⁵

In furtherance of educational equity, the Philadelphia School District purchased laptop computers “to ensure all students have access to digital learning opportunities while schools remain closed long-term due to COVID-19 (coronavirus) response efforts.”⁹⁶ The school district is also working closely with local internet service providers to provide internet access for students who do not have it at home.⁹⁷ Although the total financial cost of the school district’s transition

⁹¹ Id. at 11.

⁹² H.R. 925, 116th Cong. (House engrossed amendment, Oct. 1, 2020), <https://perma.cc/K8R8-PH5Y>.

⁹³ *Number of Public School Districts and Public and Private Elementary and Secondary Schools: Selected Years, 1869-70 through 2017-18*, National Center for Education Statistics, <https://perma.cc/MS44-KEPN>.

⁹⁴ *Quick Budget Facts: 2019-2020 Adopted Operating Budget*, School District of Philadelphia, <https://perma.cc/F7HQ-4J7X> (last modified July 1, 2020).

⁹⁵ *School Year 2020-2021: Advancing Education Safely*, School District of Philadelphia, <https://perma.cc/HYF6-QB5M> (last modified Sept. 25, 2020).

⁹⁶ *Chromebooks*, School District of Philadelphia, <https://perma.cc/KF6Q-TH67>.

⁹⁷ *Internet Access Options for Families*, School District of Philadelphia, <https://perma.cc/FA57-A89V> (last modified Aug. 31, 2020).

to an online learning environment is unknown, the Philadelphia Board of Education approved spending \$11 million on the laptop initiative.⁹⁸

C. Emergency Funding Expenditures (Sacramento, California)

Under the CARES Act, funding was made available to local governments to aid their response to the pandemic through the Coronavirus Relief Fund (CRF). The State of California received \$15 billion, and then divided that up among local government entities. The City of Sacramento received a grant of \$89.6 million from the CRF. Sacramento presented surveys to the entire community to guide grant expenditures. One such initiative for which the city provided funding was to increase internet connectivity among households in Sacramento, in order to support access to digital resources while public resources such as libraries and schools operate at a limited capacity.⁹⁹

On August 17, 2020 a notice of funding availability (NOFA) was published by the City of Sacramento, seeking applications for its Work-Based Learning & Workforce Readiness Program.¹⁰⁰ The City Council approved the program created by PRO Youth and Families, a local nonprofit focusing on providing tools and services to under-resourced communities, officially awarding funding on September 8, 2020.¹⁰¹

The City of Sacramento's program has several major goals in providing funding in this manner. These goals include targeting a population of young people between 12 to 24 years of age, providing participants with workforce training, and paying participants a stipend. The program also requires that the funding be used before the end of this year.

D. Local Police Powers and Mask Mandates

Cities and counties are responsible for funding and administering local police departments and sheriff's offices. State laws generally govern the roles and responsibilities of state police forces, but most police enforcement activities fall under the purview of city police departments. Additionally, local governments may enact rules and regulations for emergency management at the local level, which may be enforced by local police departments.¹⁰² The United States has seen a variety of responses to social distancing mandates and the interaction of state and city governments and local police departments in enforcing these measures.

⁹⁸ Press Release, School District of Philadelphia, School District Will Use \$11 Million to Help Bridge the Digital Divide Among Students (Mar. 26, 2020), <https://perma.cc/J93L-DJD5>.

⁹⁹ City of Sacramento, *Notice of Funding Availability (NOFA) and Request for Applications* (July 29, 2020), <https://perma.cc/D82V-MGPN>.

¹⁰⁰ City of Sacramento, *Notice of Funding Availability (NOFA) and Request for Applications* (August 17, 2020), <https://perma.cc/3FKQ-GA76>.

¹⁰¹ City of Sacramento, *City Council Report* (Sept. 8, 2020), <https://perma.cc/VW74-745C>.

¹⁰² See Nathan James et al., Cong. Research Serv., R43904, *Public Trust and Law Enforcement – A Discussion for Policymakers* 3-4 (July 13, 2020), <https://perma.cc/T7YY-T756>.

1. Atlanta, Georgia

On July 8, 2020, Mayor Keisha Lance Bottoms of Atlanta, Georgia, issued Executive Order Number 2020-113, which, among other provisions, required all individuals to wear a cloth face covering “when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain appropriate social distancing from another person not in the same household.”¹⁰³ In response, Georgia Governor Brian Kemp sued Atlanta’s mayor and the city council. Governor Kemp requested that the court strike down the mayor’s executive order, arguing that the mayor’s mandate exceeded her legal authority and contradicted a statewide executive order that the governor’s office had issued, which did not mandate wearing face masks but “strongly encourage[d]” wearing them.¹⁰⁴

In August 2020, Governor Kemp voluntarily dismissed the lawsuit against Atlanta and issued an executive order empowering local governments to require face coverings under certain circumstances. That order allows private businesses to decide whether masks are required within their establishments, regardless of whether the business is within a city with a mask mandate.¹⁰⁵

2. Moscow, Idaho

The State of Idaho does not have a mask mandate. Instead, the governor has allowed local governments to create policies regarding face coverings.¹⁰⁶ The city of Moscow has been under Public Health Emergency Order No. 20-03 since March 13, 2020. That order has been amended several times, including the addition of a mask mandate on July 1, 2020.¹⁰⁷ That mask mandate was set to expire on October 6, 2020. At the last city council meeting, the order was extended to January 5, 2021.¹⁰⁸

In response to the mask mandate issued by the City of Moscow, there have been protests against mask wearing and even arrests involving people who refused to follow the guidelines.¹⁰⁹ Although most of northern Idaho has been averse to mask mandates, Moscow is also home to the University of Idaho, which is currently following similar mask mandates and social distancing guidelines while holding in-person classes.¹¹⁰

¹⁰³ Exec. Ord. No. 2020-113, City of Atlanta (July 8, 2020), <https://perma.cc/9KK2-PQ46>.

¹⁰⁴ *Kemp v. Bottoms*, No. 2020CV338387 (Ga., Fulton Cty. Super. Ct. July 16, 2020) (Complaint for Declaratory and Injunctive Relief), <https://perma.cc/9JUF-JRE3>.

¹⁰⁵ Ga. Exec. Ord. 08.15.20.01 (Aug. 15, 2020), <https://perma.cc/9WPZ-MK56>.

¹⁰⁶ James Dawson, *Callers Demand Statewide Mask Mandate in Idaho from Gov. Brad Little*, Boise State Public Radio (NPR) (Sept. 30, 2020), <https://perma.cc/J7FX-P9MU>.

¹⁰⁷ Amend. Pub. Health Emerg. Ord. No. 20-03, City of Moscow (July 1, 2020), <https://perma.cc/PTQ6-9XML>.

¹⁰⁸ Garrett Cabeza, *Moscow Face Mask Order Extended*, Moscow-Pullman Daily News (Sept. 22, 2020), <https://perma.cc/MEW8-FN4X>.

¹⁰⁹ Garrett Cabeza, *Candidate Rensch Arrested at Downtown Moscow Event*, Moscow-Pullman Daily News (Sept. 23, 2020), <https://perma.cc/HD6Y-Y25Z>.

¹¹⁰ Memorandum from Blaine Eckles, Vice Provost for Student Affairs and Dean of Students, to University of Idaho Parents and Families on 2020 Fall Plans (Aug. 10, 2020), <https://perma.cc/K9MP-9XLK>.

3. *Limits on Large Gatherings (Norman, Oklahoma)*

Oklahoma has been under a state of emergency since March 15, 2020, due to the coronavirus.¹¹¹ The governor of Oklahoma, J. Kevin Stitt, has opposed a statewide mask mandate and has left that decision up to local governments. The government has also had limited involvement in regulating the size of gatherings, leaving that up to local governments. The state government has been following its “Open Up and Recover Safely Plan,” which, as of June 1, 2020, was in its final phase.¹¹²

Based on state guidance, individual local governments had to enact their own mask and capacity guidelines. Norman, Oklahoma, is the home of the University of Oklahoma, a large public university known for its football program. The city government passed an emergency order regarding public building capacities on football game days. On September 8, 2020,¹¹³ the city council passed Ordinance O-2021-11, providing guidance on several categories of public spaces, specifically noting amended capacity rules when the University of Oklahoma plays home football games.¹¹⁴

E. Virtual Government Meetings

Local government meetings in the United States are generally open to the public. During the coronavirus pandemic, local governments have come up with different methods to maintain public health while balancing an interest in transparency and public participation.

1. *Asheville, North Carolina*

Asheville’s city charter requires the council to hold meetings in a manner that is open to the public and gives the public reasonable opportunity to be heard.¹¹⁵ Adapting to the pandemic while still following this law, the city’s government has been holding its city council meetings virtually. Virtual city council meetings began on March 24, 2020.¹¹⁶ The city council announced a new process for virtual public participation for its meeting on July 28, 2020.¹¹⁷ Both the county and city governments have followed guidance from the state government in their response to the pandemic. Beginning on October 2, 2020, the state governor allowed indoor gatherings of up to

¹¹¹ Okla. Exec. Ord. 2020-07 (Mar. 15, 2020), <https://perma.cc/57QS-KHG2>.

¹¹² Press Release, Oklahoma Governor, Governor Stitt Announces “Open Up and Recover Safely” Plan (Apr. 22, 2020), <https://perma.cc/S6HE-26DX>.

¹¹³ *Norman Coronavirus Updates*, City of Norman, Oklahoma (last visited Oct. 27, 2020), <https://perma.cc/KF6Q-TH67>.

¹¹⁴ Ord. O-2021-11, City of Norman, Oklahoma (Sept. 8, 2020), <https://perma.cc/SA8Y-Z5AL>.

¹¹⁵ Asheville, N.C., Mun. Code pt. 1, art. II, § 9 (1985), <https://perma.cc/XBH8-BDS3>.

¹¹⁶ Polly McDaniel, *Asheville City Council Meeting to Be Held Following CDC, State and Local Guidelines*, City of Asheville (Mar. 21, 2020), <https://perma.cc/H4WZ-J664>.

¹¹⁷ Polly McDaniel, *Asheville City Council Continues Remote Meetings with New Public Comment Procedure*, City of Asheville (July 24, 2020), <https://perma.cc/UW94-YUM5>.

25 persons, and the county followed suit.¹¹⁸ Nevertheless, Asheville has decided to continue to hold its city council meetings remotely.¹¹⁹

2. Surprise, Arizona

The City of Surprise had been holding public meetings virtually until September 15, 2020, when government officials announced they would be reopening meetings for in-person participation. The city council may change the date, time, or location of a meeting by majority vote. Surprise's City Code provides that members must be physically present at the meeting in order to participate; however, elected officials amended the Code under Ordinance No. 2020-12 in March to allow for some members to participate virtually.¹²⁰

In Arizona, local governments are subject to the Open Meeting Law, Ariz. Rev. Stat. § 38-431.01(A). Under that statute, local government meetings must be made open to the public.¹²¹ In order to help local governments respond to the pandemic while still performing their governmental functions, Arizona Attorney General Mark Brnovich released guidance on how local governments could satisfy the Open Meeting Law's requirements while still maintaining social distancing and complying with other regional and national public health guidelines.¹²²

VI. Conclusion

The pandemic response is dynamic and changing; it is expected that federal, state, and local governments' responses will continue to develop. While no one government entity has introduced a comprehensive response to the COVID-19 pandemic, legislative and executive bodies at the federal, state, and local levels have exercised their authority in enacting laws, promulgating rules, exercising oversight, and making emergency declarations to serve their constituents. The federal government has issued broad guidance and provided financial resources, leaving the states to create their own, more specific, directives. From there, local governments have enforced more detailed plans based on the guidance received from state and federal officials, limited by the authority granted to them by their state governments. As the United States recovers from the pandemic, government entities will likely continue to adopt new rules and legislation in an effort to promote the health and financial security of US citizens and residents.

¹¹⁸ *Buncombe County's Stay Safe, Stay Smart Order Update*, Buncombe County (Oct. 1, 2020), <https://perma.cc/BF5V-Q466>.

¹¹⁹ *City Council Regular Meeting Agenda*, City of Asheville (last visited Oct. 2, 2020), <https://perma.cc/E7LB-SVH8>.

¹²⁰ Ord. No. 2020-12, City of Surprise, Arizona (Mar. 17, 2020), <https://perma.cc/T4UM-UPUE>.

¹²¹ Ariz. Rev. Stat. § 38-431.01(A), <https://perma.cc/5H9Z-2BX8>.

¹²² Memo from Attorney General Mark Brnovich Re: Concerns Relating to Arizona's Open Meeting Law and COVID-19 (Mar. 13, 2020), <https://perma.cc/53TE-R2LW>.