

PRESERVING LIFE AND LIBERTY IN A PUBLIC HEALTH EMERGENCY



Preserving Life and Liberty in a Public Health Emergency

explores the constitutional authority granted to states to protect the public health, available federal assistance, and the practical application of Louisiana's public health emergency statutes.

Recently, lawmakers passed legislation geared towards easing recovery and encouraging Louisiana's businesses to respond to the state's needs. However, there is more work to be done as we take stock of the lessons learned during this shutdown and respond accordingly. We should seize the opportunity to make 2020 the year we put limits on government overreach so that we are better prepared the next time we face a pandemic, hurricane, or other disaster.

COVID-19 will be around until a vaccine and treatment are available. In the meantime, **we must find a way to balance preventing the spread of the disease with the preservation of our rights and economy.**



TO BETTER PRESERVE LIFE AND LIBERTY DURING A PUBLIC HEALTH EMERGENCY:

- Louisiana's legislature should require the governor to seek legislative approval to extend a state of emergency beyond 30 days.
- Future executive orders should consider business operations as "safe" and "unsafe" rather than "essential" or "non-essential". Rather than blanket bans on certain types of businesses, elected officials should consider whether any part of a business' operations can be done in a way unlikely to spread the disease.
- Lawmakers should pay careful attention to court decisions updating the century-old body of pandemic law and present legislation within this framework.
- The Louisiana Homeland Security and Emergency Assistance and Disaster Act should be amended to make clear that the termination of an emergency due to a natural disaster or act of terrorism does not affect the governor's ability to declare a public health emergency.
- Public records requests can be used to access data and information elected officials use to make decisions related to the shutdown and discover whether and how shutdown orders are being enforced.

THE TENTH AMENDMENT OF THE U.S. CONSTITUTION CONFIRMS ELECTED OFFICIALS' BROAD AUTHORITY TO RESPOND TO PUBLIC HEALTH EMERGENCIES.

- Any exercise of the state's police power to protect public health should have a real or substantial relation to that end.
- Although courts have given broad authority to government officials exercising their police power to curb the COVID-19 threat, they have also cautioned that "[t]he Constitution is not suspended when the government declares a state of disaster."¹
- Public health measures affecting fundamental rights must be neutral and generally applicable.
- Elected officials who curtail civil liberties in response to a pandemic should take advantage of opportunities to demonstrate that those measures are absolutely necessary to combat the disease, and that less restrictive measures would be ineffective.

¹ *In re Abbott*, No. 20-0291, 2020 WL 1943226, at *1 (Tex. Apr. 23, 2020).

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Most everyone agrees that 2020 is a year we would all rather forget. COVID-19 and dismal economic numbers combined to make a year that broke all the wrong records. However, we should seize the opportunity to make 2020 the year we put limits on government overreach so that we are better prepared the next time we face a pandemic, hurricane, or any other disaster.



LOUISIANA'S PUBLIC HEALTH EMERGENCY STATUTES PROVIDE TOOLS TO RESPOND TO A CRISIS

- The Louisiana Public Health Emergency Powers Act grants the government extraordinary powers to rapidly combat a public health emergency, and requires that the state's public health officials coordinate with the federal government, other states, local governments, and private agencies to respond to a disaster.
- Only the governor can declare a public health emergency. Declarations must be renewed every 30 days.
- The Act contains provisions that encourage the public and business community to help with the response, including limitations on liability.
- Potential personnel and equipment shortages are addressed by permitting health care providers licensed in other states to temporarily register in Louisiana and allowing the Department of Health to forego the traditional procurement process.

FEDERAL RESOURCES ARE AVAILABLE TO STATES RESPOND TO A PUBLIC HEALTH EMERGENCY

- The President and the Health and Human Services (HHS) Secretary can declare a public health emergency to help states with their response.
- The Stafford Act allows state governments and tribal authorities to request disaster assistance from the federal government. On March 13, 2020, President Donald Trump invoked the Stafford Act to declare an emergency under Section 501(b) in response to the COVID-19 pandemic.
- Provisions of the National Emergencies Act waive certain statutory requirements for healthcare reimbursement and allows the HHS Secretary to waive or modify Medicare, Medicaid, and State Children's Health Programs.
- Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide federal aid to states to make up for the losses that occurred due to stopping the spread of COVID-19. Louisiana has received \$1.8 billion in CARES Act funds so far.



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