

# Georgia State University Law Review

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Volume 37  
Issue 1 Fall 2020

Article 6

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12-1-2020

## PUBLIC HEALTH STATE OF EMERGENCY: Executive Order by the Governor Declaring a Public Health State of Emergency

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### Recommended Citation

Rebecca Hu & Ellen Y. Min, *PUBLIC HEALTH STATE OF EMERGENCY: Executive Order by the Governor Declaring a Public Health State of Emergency*, 37 GA. ST. U. L. REV. 17 (2020).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol37/iss1/6>

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## PUBLIC HEALTH STATE OF EMERGENCY

### *Executive Order by the Governor Declaring a Public Health State of Emergency*

CODE SECTIONS:	O.C.G.A. §§ 38-3-3, -51
EXECUTIVE ORDER:	Ga. Exec. Order No. 03.14.20.01
EFFECTIVE DATE:	March 14, 2020
SUMMARY:	The Executive Order primarily functions to enumerate the Governor’s emergency powers during a Public Health State of Emergency. The Executive Order allows for the Governor to assist health and emergency management officials by deploying available resources for the mitigation and treatment of COVID-19 within Georgia.

### *Introduction*

In late 2019, a novel coronavirus caused a significant outbreak of respiratory disease now known as COVID-19. The World Health Organization (WHO) coined the official name of COVID-19, “CO” standing for corona, “VI” for virus, and “D” for disease.<sup>1</sup> On March 11, 2020, the WHO characterized the disease as a pandemic because the spread of COVID-19 created an unprecedented global health crisis.<sup>2</sup> Although the United States has faced pandemics before—most recently the 2009 H1N1 Swine Flu—the COVID-19 outbreak resembles the deadly 1918 Spanish Flu in both its unforeseeability

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1. Frequently Asked Questions of *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> [https://perma.cc/N2D3-CGTH] (July 15, 2020).

2. WHO Director-General, *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19*, WORLD HEALTH ORGANIZATION [WHO] (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> [https://perma.cc/7MHQ-E95T].

and its novelty.<sup>3</sup> A novel virus is a particular strain of virus that has not been previously identified.<sup>4</sup> Compared to other strains of coronavirus, like the 2003 Severe Acute Respiratory Syndrome (SARS) and the 2012 Middle East Respiratory Syndrome (MERS), the COVID-19 strain likely spreads more easily because individuals lack immunity, leading to more community spread.<sup>5</sup>

Given the rapid spread of COVID-19 and the lack of availability of a vaccine, the virus has drastically impacted the world in all aspects of life—potentially changing the way individuals live permanently. Telecommunications have become the norm for everyday living by replacing the need for in-person interactions—both in the social and professional contexts.<sup>6</sup> Events across the globe, including the Summer Olympics, have been delayed or canceled.<sup>7</sup> To combat the spread of COVID-19, governments all around the world have enacted special powers. Specifically, on March 13, 2020, President Donald Trump (R) declared a national emergency in the United States beginning March 1, 2020. A day later, on March 14, Georgia Governor Brian Kemp (R) declared a Public Health State of Emergency for the state of Georgia.<sup>8</sup> Although these declarations enacted temporary measures, the effects of these measures may outlast the duration of the Public Health State of Emergency.

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3. Mark Terry, *Compare: 1918 Spanish Influenza Pandemic Versus COVID-19*, BIOSPACE (Apr. 2, 2020), <https://www.biospace.com/article/compare-1918-spanish-influenza-pandemic-versus-covid-19/> [https://perma.cc/V5GT-FTFK].

4. Vivien Williams, *How the Virus that Causes COVID-19 Differs from Other Coronaviruses*, MAYO CLINIC (Mar. 30, 2020), <https://newsnetwork.mayoclinic.org/discussion/how-the-virus-that-causes-covid-19-differs-from-other-coronaviruses/> [https://perma.cc/K5SQ-S7XY].

5. *Id.*

6. Natasha Veligura et al., *COVID-19's Impact on the Global Telecommunications Industry*, INT'L FIN. CORP., [https://www.ifc.org/wps/wcm/connect/1d490aec-4d57-4cbf-82b3-d6842eecd9b2/IFC-Covid19-Telecommunications\\_final\\_web\\_2.pdf?MOD=AJPERES&CVID=n9nxogP](https://www.ifc.org/wps/wcm/connect/1d490aec-4d57-4cbf-82b3-d6842eecd9b2/IFC-Covid19-Telecommunications_final_web_2.pdf?MOD=AJPERES&CVID=n9nxogP) [https://perma.cc/G3M8-4EP2] (May 2020).

7. *Joint Statement from the International Olympic Committee and the Tokyo 2020 Organising Committee*, OLYMPIC GAMES (Mar. 24, 2020), <https://www.olympic.org/news/joint-statement-from-the-international-olympic-committee-and-the-tokyo-2020-organising-committee> [https://perma.cc/CN7G-2X26].

8. Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020); Press Release, Brian P. Kemp, Gov. of Georgia, *Kemp Declares Public Health State of Emergency* (Mar. 16, 2020) [hereinafter *Emergency Press Release*], <https://gov.georgia.gov/press-releases/2020-03-16/kemp-declares-public-health-state-emergency> [https://perma.cc/EAR8-C38J].

*Background**Georgia Governor’s Authority to Declare a State of Emergency*

Georgia law authorizes the Governor to declare a State of Emergency when a sufficiently severe threat exists to “warrant extraordinary action by the state.”<sup>9</sup> Further, Code section 38-3-51 authorizes the Governor to declare a Public Health State of Emergency, allowing him to exercise additional powers enumerated in the statute.<sup>10</sup> Under subsection (a), the Governor “may declare that a state of emergency . . . exists” in the event of a “public health emergency.”<sup>11</sup> Furthermore, subsection (a) establishes the procedures required as a condition precedent to the declaration of a Public Health State of Emergency.<sup>12</sup> Subsection (a) requires the Governor to call a special session of the general assembly when declaring a State of Emergency.<sup>13</sup> Once called, the general assembly convenes in a special session on the “second day following” the Governor’s declaration to either “concur[] with or terminate[]” the Governor’s action.<sup>14</sup> Subsection (a) also outlines the basic mechanics of a Public Health State of Emergency.<sup>15</sup> A Public Health State of Emergency in Georgia cannot extend beyond thirty days unless renewed by the Governor, but the Governor may renew the declaration until finding

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9. O.C.G.A. § 38-3-3(7) (2012 & Supp. 2019).

10. O.C.G.A. § 38-3-51 (2012 & Supp. 2020); Ga. Exec. Order No. 03.14.20.01 (Mar. 14, 2020) (on file with the Georgia State University Law Review).

11. § 38-3-51(a). Code section 38-3-3 specifically defines a “public health emergency” as:

[T]he occurrence or imminent threat of an *illness* or health condition that is reasonably believed to be caused by . . . *the appearance of a novel* or previously controlled or eradicated *infectious agent* or biological toxin and poses a high probability of any of the following harms:

- (A) *A large number of deaths in the affected population;*
- (B) *A large number of serious or long-term disabilities in the affected population; or*
- (C) *Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.*

§ 38-3-3(6) (emphasis added).

12. § 38-3-51(a).

13. *Id.* The Georgia Constitution prescribes that the Governor may “convene the General Assembly in special session by proclamation.” GA. CONST. art. V, § 2, para. 7.

14. § 38-3-51(a).

15. *Id.*

that the threat has passed.<sup>16</sup> Though this section grants the Governor broad authority, the general assembly can act to limit the Governor's power by voting to terminate the Public Health State of Emergency declaration by concurrent resolution.<sup>17</sup>

Subsection (b) of Code section 38-3-51 governs the effects of a Public Health State of Emergency once declared.<sup>18</sup> Such a declaration by the Governor will "activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans."<sup>19</sup> Subsection (b) further provides that a "declaration of a [S]tate of [E]mergency . . . shall" authorize the "use or distribution of any supplies, equipment . . . materials[,] and facilities" made pursuant to laws relating to emergencies or disasters.<sup>20</sup>

Subsections (c) and (d) jointly enumerate the powers conferred on the Governor during a State of Emergency.<sup>21</sup> Specifically, the Governor may:

- (c)(1) [E]nforce all laws . . . relating to emergency management and assume direct operational control of all civil forces and helpers in the state;
- (c)(2) [S]eize, take for temporary use, or condemn property for the protection of the public . . .
- . . .
- (d)(1) Suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute . . . would . . . delay necessary action in coping with the emergency . . .
- (d)(2) Utilize all available resources of the state government . . . as reasonably necessary to cope with the emergency . . .

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16. *Id.*

17. *Id.*

18. § 38-3-51(b).

19. *Id.*

20. *Id.*

21. § 38-3-51(c)-(d).

- (d)(3) Transfer the direction, personnel, or functions of state departments and agencies . . . for the purpose of . . . facilitating emergency services;
- (d)(4) Commandeer or utilize any private property if he finds this necessary to cope with the emergency . . . .<sup>22</sup>

Importantly, the Governor has additional powers during a Public Health State of Emergency. Under subsection (d)(4.1), the Governor can compel healthcare facilities to provide services when the Governor deems such services reasonable and necessary.<sup>23</sup> The Governor may also compel the use of such healthcare facilities for emergency response.<sup>24</sup> The use of facilities can include the power to transfer the management and supervision of healthcare facilities to the Department of Public Health for an unlimited period of time during the duration of the Public Health State of Emergency.<sup>25</sup> Additionally, the Governor may implement a mandatory vaccination or quarantine program.<sup>26</sup>

During a Public Health State of Emergency, the Governor has the authority to direct the Department of Public Health to coordinate all matters pertaining to the response of the state to a State of Emergency; this subsection (i) grants the Department of Public Health the power to:

- (A) Plan[] and execut[e] public health emergency assessments, mitigation, preparedness response, and recovery for the state;
- (B) Coordinat[e] public health emergency responses between state and local authorities;

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22. *Id.*

23. § 38-3-51(d)(4.1).

24. *Id.*

25. *Id.*

26. § 38-3-51(i)(2); Memorandum from Georgia Gov.'s Office on the Pub. Health State of Emergency to Members of the Georgia Gen. Assemb. (Mar. 15, 2020) (on file with the Georgia State University Law Review).

- (C) Collaborat[e] with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;
- (D) Coordinat[e] recovery operations and mitigation initiatives subsequent to public health emergencies;
- (E) Organiz[e] public information activities regarding state public health emergency response operations; and
- (F) Provid[e] for special identification for public health personnel involved in a public health emergency.<sup>27</sup>

A final catchall provision grants the Governor broad authority to “perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection” of the population.<sup>28</sup> The final subsection—an immunity clause—stipulates that individuals who act in accordance with the Governor’s Emergency Order will not be held liable to another in any action seeking legal or equitable relief.<sup>29</sup>

*Governor Brian Kemp Declares a Public Health State of Emergency*

On March 14, 2020, Governor Brian Kemp (R) declared Georgia’s first ever Public Health State of Emergency to combat the outbreak of COVID-19.<sup>30</sup> Governor Kemp found that a severe public health threat existed when officials identified sixty-four cases of COVID-19 in Georgia.<sup>31</sup> In his press release addressing the Public Health State of Emergency, Governor Kemp highlighted that “[t]his declaration [would] greatly assist health and emergency management officials across Georgia by deploying all available resources for the mitigation and treatment of COVID-19” and emphasized that “Georgians need to incorporate social distancing into their everyday lives.”<sup>32</sup>

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27. § 38-3-51(i)(1).

28. § 38-3-51(c)(4).

29. § 38-3-51(j).

30. Ga. Exec. Order No. 03.14.20.01, *supra* note 10; Emergency Press Release, *supra* note 8.

31. Ga. Exec. Order No. 03.14.20.01, *supra* note 10, at 1; Emergency Press Release, *supra* note 8.

32. Emergency Press Release, *supra* note 8.

Following the declaration of the Public Health State of Emergency, commercial vehicles were allowed to forgo normal weight, height, and length restrictions to assist in transportation of necessary supplies.<sup>33</sup> Further, the declaration granted the Georgia Composite Medical Board and the Georgia Board of Nursing the authority to grant temporary licenses to professionals to “assist with the needs of this Public Health State of Emergency,” provided those professionals were in good standing with the governing board of another state.<sup>34</sup>

### *Analysis*

On June 29, 2020, Governor Brian Kemp (R) issued two Executive Orders extending Georgia’s Public Health State of Emergency.<sup>35</sup> Executive Order 06.29.2020.01 extended the Public Health State of Emergency through August 11, 2020, and Executive Order 06.29.2020.02 required continued social distancing for certain types of businesses and banned large gatherings of more than fifty people, unless six feet of space remained between each person.<sup>36</sup> The state government “strongly encouraged” the use of face masks, though not

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33. Ga. Exec. Order No. 03.14.20.01, *supra* note 10, at 2.

34. *Id.*

35. Press Release, Brian P. Kemp, Gov. of Georgia, Gov. Kemp Extends COVID-19 Executive Orders (June 29, 2020) [hereinafter Extension Press Release], <https://gov.georgia.gov/press-releases/2020-06-29/gov-kemp-extends-covid-19-executive-orders> [<https://perma.cc/368S-W6TB>].

36. Ga. Exec. Order No. 06.29.20.02, at 2 (June 29, 2020) (on file with the Georgia State University Law Review) (“Ordered: That all residents and visitors of the State of Georgia shall practice Social Distancing as defined herein and refrain from Gathering as defined herein.”). The Order defined “Gathering” as:

[M]ore than fifty (50) persons physically present at a Single Location if, to be present, persons are required to stand or be seated within six (6) feet of any other person. Therefore, groups of more than fifty (50) people are permitted if their grouping is transitory or incidental, or if their grouping is the result of being spread across more than one Single Location.

*Id.* at 4. The Order defined “Single Location” as “a space where all persons gathered cannot maintain at least six (6) feet of distance between themselves and any other person.” *Id.* at 5. The Order defined “Social Distancing” as:

“Social Distancing” shall mean keeping space between yourself and other people outside of your home or place of residence. Persons practicing Social Distancing should stay at least six (6) feet from other people, avoid assembling in groups, avoid crowded places, and avoid large crowds. This provision shall not apply to cohabitating persons, family units, or roommates residing together in private homes, whether inside or outside of their homes or place of residence.

*Id.* at 5.



requiring their use.<sup>37</sup> Under Executive Order 06.29.2020.02, the following types of businesses and establishments were required to enforce preventive practices, including social distancing: (1) gyms and fitness centers; (2) indoor movie theaters and cinemas; (3) bowling alleys; (4) businesses that possess a bar license; and (5) amusement parks.<sup>38</sup> Specifically, the Order required restaurants and dining services to implement the following measures to mitigate the exposure and spread of COVID-19 among its patrons and workforce: (1) screening and evaluating workers who exhibit symptoms of COVID-19; (2) requiring workers who exhibit symptoms of COVID-19 to either seek medical attention or not report to work; (3) requiring workers to wear face coverings while interacting with patrons; and (4) redesigning seating arrangements to ensure at least six feet of separation between seatings or using physical barriers to separate groups of seatings within six feet.<sup>39</sup> Although these restrictions were temporary, many have criticized the Orders as either failing to sufficiently restrict the spread of COVID-19 or, conversely, as infringing on individuals' rights. Regardless, Governor Kemp's initial declaration of the Public Health State of Emergency falls within the state's powers to protect the public's health against the COVID-19 pandemic.

### *General State Powers to Protect Public Health*

Georgia was not alone in implementing Emergency Orders to combat the spread of COVID-19. For the first time in U.S. history, the fifty states, the District of Columbia, and the U.S. territories all approved emergency measures to assist with COVID-19 relief.<sup>40</sup>

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37. *Id.* at 14.

38. *Id.* at 14–20.

39. *Id.* at 8–10. Though the state government did not mandate the use of face masks, Atlanta Mayor Keisha Lance Bottoms (D) issued an Executive Order on July 8, 2020, mandating the use of face masks in public spaces. City of Atlanta Exec. Order No. 2020-113 (July 8, 2020) (on file with the Georgia State University Law Review). Governor Kemp's office called Mayor Bottoms's Order "unenforceable." Sam Whitehead & Emma Hurt, *Atlanta Now Requires Masks in Public Spaces in the City*, WABE (July 8, 2020), <https://www.wabe.org/atlanta-mayor-says-shes-going-to-mandate-masks/> [<https://perma.cc/YCP4-LN6C>].

40. *COVID-19 Disaster Declarations*, FED. EMERGENCY MGMT. AGENCY (June 8, 2020, 10:24 AM), <https://www.fema.gov/coronavirus/disaster-declarations> [<https://perma.cc/YN6B-RDRM>].

However, a fraction of the general public criticized these measures as infringing on individual rights.<sup>41</sup> Beginning in mid-April 2020, thousands of protestors gathered—often in spite of stay-at-home Orders—around the country to protest against government-imposed restrictions in response to the pandemic.<sup>42</sup> Calling for the reopening of states, protestors decried the government for what they perceived as unconstitutional conduct that violated their personal liberties.<sup>43</sup>

Nevertheless, the Constitution, Congress, and the courts have long recognized that states maintain the power to take measures to protect the public’s health.<sup>44</sup> In *Jacobson v. Massachusetts*, the Supreme Court reinforced a well-established principle: the state government has the right to protect its populace against an “epidemic of disease.”<sup>45</sup> A state government’s authority to enact health-related regulations, including quarantine restrictions, works in tandem with its right to protect its population, and this authority is derived from the police power of the state.<sup>46</sup>

The doctrine of state “police power” refers to the state’s general power of governing.<sup>47</sup> The Tenth Amendment explicitly limits the federal government’s power and reserves certain powers to the states; courts have interpreted such powers to include states’ authority to establish and enforce laws protecting the welfare, safety, and health of the public.<sup>48</sup> Under this police power, states can promulgate and

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41. Kenneth P. Vogel et al., *The Quiet Hand of Conservative Groups in the Anti-Lockdown Protests*, N.Y. TIMES (Apr. 21, 2020), <https://www.nytimes.com/2020/04/21/us/politics/coronavirus-protests-trump.html> [https://perma.cc/L3L7-YJAW].

42. *Id.*

43. Matt Mencarini & Billy Kobin, *Protesters Say the COVID-19 Fight Takes Away Their Constitutional Rights. Are They Right?*, COURIER-J., <https://www.courier-journal.com/story/news/2020/04/19/protesters-say-governors-violating-their-constitutional-rights-stay-home-orders/5162295002/> [https://perma.cc/A3V6-9E7R] (Apr. 20, 2020, 4:39 PM).

44. *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905).

45. *Id.*

46. *Id.* at 25 (“[The Supreme Court has] distinctly recognized the authority of a state to enact quarantine laws and health laws of every description . . . .”); *Hannibal & St. J.R. Co. v. Husen*, 95 U.S. 465, 468 (1877) (“[A] State may . . . establish quarantine and reasonable inspection regulations, and prevent persons . . . having contagious or infectious diseases from entering the State . . . .”).

47. Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 536 (2012).

48. U.S. CONST. amend. X; *New York v. United States*, 505 U.S. 144, 157 (1992); *Chicago, Burlington & Quincy Ry. Co. v. Illinois*, 200 U.S. 561, 592 (1906) (holding “that the police power of a state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety”).

enforce measures, including public health regulations, to promote the public good.<sup>49</sup> The Supreme Court of Georgia echoed this posture in *Blackman Health Resort v. City of Atlanta*, stating that “under the police power[,] the state has undoubted constitutional power to protect the public health . . . .”<sup>50</sup>

Though states have broad authority in issuing Emergency Orders to protect public safety or health, the Eleventh Circuit Court of Appeals has held that states “do not have *carte blanche* to impose any measure without justification or judicial review.”<sup>51</sup> Instead, state regulations implemented through the police power must be a reasonable exercise of power and established directly by legislative enactments.<sup>52</sup> Such reasonable exercises of power must serve a legitimate public purpose, such as protecting public health.<sup>53</sup>

In *Jacobson*, the Supreme Court famously established a state’s authority to “enact quarantine laws and health laws of *every description*.”<sup>54</sup> In this case, the Cambridge Board of Health adopted a regulation requiring all adults to vaccinate.<sup>55</sup> When the defendant refused vaccination, the state filed a criminal complaint against him.<sup>56</sup> The defendant argued that a compulsory vaccination undoubtedly invaded his liberty and was thus unreasonable, arbitrary, and oppressive.<sup>57</sup> The Supreme Court firmly rejected the defendant’s position, stating the Court has “distinctly recognized the authority of a state to enact quarantine laws and health laws of every description.”<sup>58</sup> The Court asserted what it called a “fundamental principle”: that persons do not have an “absolute right . . . to be . . . wholly freed from restraint” and that “[t]here are manifold restraints to which every person is necessarily subject for the

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49. *Plessy v. Ferguson*, 163 U.S. 537, 550 (1896) (“[E]very exercise of the police power must be reasonable and extend only to such laws as are enacted in good faith for the promotion of the public good . . . .”), *overruled on other grounds by* *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

50. *Blackman Health Resort v. City of Atlanta*, 151 Ga. 507, 507, 107 S.E. 525, 528 (1921).

51. *Robinson v. Att’y Gen.*, 957 F.3d 1171, 1179 (11th Cir. 2020).

52. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905).

53. *Atlanta Taxicab Co. Owners Ass’n v. City of Atlanta*, 281 Ga. 342, 348, 638 S.E.2d 307, 314 (2006).

54. *Jacobson*, 197 U.S. at 25 (emphasis added).

55. *Id.* at 12–13.

56. *Id.* at 13.

57. *Id.* at 26.

58. *Id.* at 25.

common good.”<sup>59</sup> The Supreme Court further provided a useful example of reasonable conduct, explaining that states can appropriately hold a man in quarantine against his will when he travels on a ship with passengers infected by yellow fever.<sup>60</sup>

*Governor Kemp’s Declaration of the Public Health State of Emergency is Protected Under Jacobson*

Courts across the nation have consistently used *Jacobson* to uphold Executive Orders that impose COVID-19-related restrictions on citizens.<sup>61</sup> One such court includes the District Court of Connecticut, which rejected constitutional claims brought by the plaintiff challenging COVID-19-related restrictions.<sup>62</sup> In *Murphy v. Lamont*, the District Court of Connecticut stated that “*Jacobson* remains binding precedent today,” further quoting the District Court of Hawaii in stating that “[c]ourts presented with emergency challenges to governor-issued orders temporarily restricting activities to curb the spread of COVID-19 have consistently applied *Jacobson* to evaluate those challenges.”<sup>63</sup>

Similarly, Governor Kemp’s Executive Order declaring a Public Health State of Emergency in Georgia would survive under the *Jacobson* framework because the Order bears a reasonable relation to the public health crisis posed by COVID-19. As of October 10, 2020, the virus had infected more than 37 million people worldwide and killed more than 1 million people.<sup>64</sup> As of October 10, 2020, Georgia had reported over 330,000 confirmed cases and over 7,000 deaths.<sup>65</sup> Because COVID-19 is a respiratory infection, transmission occurs

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59. *Id.* at 26.

60. *Jacobson*, 197 U.S. at 29 (“An American citizen arriving . . . on a vessel in which . . . there had been cases of yellow fever . . . [may] be held in quarantine against his will . . .”).

61. *Murphy v. Lamont*, No. 20-CV-694, 2020 WL 4435167, at \*16 (D. Conn. Aug. 3, 2020) (rejecting plaintiffs’ claim that the Governor of Connecticut’s Executive Orders that imposed COVID-19 restrictions, such as the prohibition of large gatherings, violated their constitutional rights).

62. *Id.*

63. *Id.* at \*9; *Bannister v. Ige*, No. 20-305, 2020 WL 4209225, at \*4 (D. Haw. July 22, 2020).

64. *Coronavirus Disease (COVID-19) Pandemic*, WORLD HEALTH ORGANIZATION [WHO], <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> [<https://perma.cc/4JTN-PWPX>].

65. *Georgia Department of Public Health Daily Status Report*, GA. DEP’T OF PUB. HEALTH, <https://dph.georgia.gov/covid-19-daily-status-report> [<https://perma.cc/8PGE-XN83>].

quickly between people in close contact, primarily spreading via small droplets produced by coughing, sneezing, and talking.<sup>66</sup> Furthermore, COVID-19 can spread by asymptomatic exposure—meaning an individual can be contagious without exhibiting symptoms.<sup>67</sup> All these factors make COVID-19 a particularly transmittable and insidious virus.<sup>68</sup> In response, all state governments have enacted emergency safety measures, some of which have been challenged in courts.<sup>69</sup> However, those courts have turned to *Jacobson* to uphold the emergency safety measures, relying on the “scope of judicial authority to review emergency measures.”<sup>70</sup>

Like in *Jacobson*, where the vaccination law was within the state’s authority during a smallpox epidemic because of the increasing spread of the disease, Governor Kemp, acting within his permissible authority as Governor, reasonably declared a Public Health State of Emergency in response to the rapid spread of COVID-19 to enact new public health restrictions.<sup>71</sup> As the Court in *Jacobson* noted, concerns for the common good and halting the spread of disease

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66. Q&A on Coronaviruses (COVID-19), WORLD HEALTH ORGANIZATION [WHO] (Apr. 17, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> [https://perma.cc/9MUV-GKYW].

67. COVID-19 FAQs for Health Professionals, U.C. DAVIS HEALTH, <https://health.ucdavis.edu/coronavirus/resources/covid-19-faqs-for-health-professionals.html#:~:text=asymptomatic%20transmission%20may%20occur%20and,than%20individuals%20with%20symptoms> [https://perma.cc/4N8C-XY8A] (July 17, 2020).

68. *Id.*

69. *In re Abbott*, 956 F.3d 696, 703 (5th Cir. 2020) (upholding Texas’s emergency measure temporarily postponing nonessential medical procedures during the COVID-19 pandemic); *Givens v. Newsom*, 20-CV-852, 2020 WL 2307224, at \*3 (E.D. Cal. May 8, 2020) (denying plaintiffs’ temporary restraining orders requesting to enjoin enforcement of stay-at-home Order so that plaintiffs could hold political demonstrations and religious services in compliance with social distancing guidelines), *appeal filed*, No. 20-15949 (9th Cir. May 19, 2020); *Cross Culture Christian Ctr. v. Newsom*, 20-CV-832, 2020 WL 2121111, at \*4 (E.D. Cal. May 5, 2020) (declining to enjoin defendants’ enforcement of stay-at-home Orders against a church’s in-person services).

70. *Pro. Beauty Fed’n of California v. Newsom*, No. 20-CV-832, 2020 WL 3056126, at \*5 (C.D. Cal. June 8, 2020). In *Jacobson*, the Supreme Court set forth the scope of judicial authority explaining:

If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when . . . a statute purporting to have been enacted to protect the public health . . . has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law . . . .

*Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905).

71. *Jacobson*, 197 U.S. at 25.

outweigh the importance of individual liberties.<sup>72</sup> Thus, the Public Health State of Emergency authorized Governor Kemp to implement restrictions—such as limiting nonessential interactions—and to provide necessary supplies to halt the spread of COVID-19. These temporary emergency measures were substantially related to reducing in-person interactions given the highly infectious nature of the disease.

### *Conclusion*

According to the Centers for Disease Control and Prevention (CDC), “the best way to prevent illness is to avoid being exposed to [COVID-19].”<sup>73</sup> As such, the CDC strongly recommends individuals avoid close contact with others.<sup>74</sup> Heeding these public health guidelines, Governor Brian Kemp (R) continued to extend the Public Health State of Emergency and existing COVID-19 safety measures in Georgia.<sup>75</sup> Despite criticisms that the measures unconstitutionally encroach upon individuals’ rights, the declaration of a Public Health State of Emergency is protected under *Jacobson* and traditional state police powers. In a June press conference, Governor Kemp attributed the need for further emergency extensions to the task of protecting “the lives . . . of all Georgians . . . .”<sup>76</sup> The declaration of the Public Health State of Emergency in Georgia was necessary and properly allowed for the Governor to enact measures to combat the spread of COVID-19 and the ever-changing nature of the pandemic.

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72. *Id.* at 27.

73. *How to Protect Yourself & Others*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> [<https://perma.cc/KV4C-4BHM>] (Apr. 24, 2020).

74. *Id.*

75. Extension Press Release, *supra* note 35.

76. *Id.*

