

State Laws Governing Public Health Powers and Duties: Pendulum Swings and Paradigm Shifts

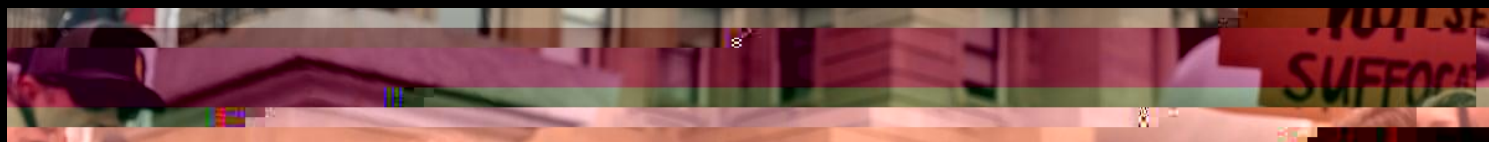
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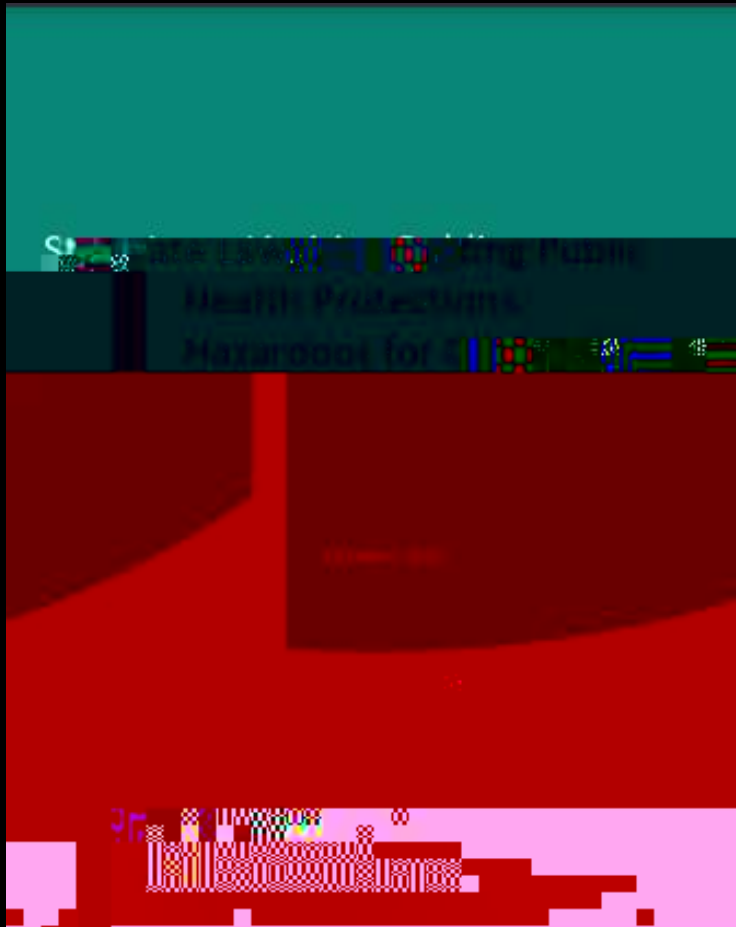


Troubling Trends

Coordinated backlash

Over 1500 bills to limit
exercise of public health powers
introduced in state legislatures in 2021
and 2022

**Over 150 of these bills were enacted into
law (roughly 10 percent)**



***Prohibitions on Public Health Interventions**

***Shifts in Authority**

***Limitations on Executive Orders**

***Elevation of Individual Rights over Common Good**

Vaccination

WHAT THESE TYPES OF LAWS DO Prohibit government entities from requiring COVID vaccination of employees, students, or residents who qualify for an exemption based on religious belief, conscience. Under some laws, no exemption is needed.

EXAMPLES Arizona House Bill 2498 prohibits a government entity from requiring a resident of the state to receive a vaccination for COVID-19. Others include Alaska, Tennessee, Utah, West Virginia, Wyoming.

PROBLEMATIC BECAUSE Vaccines are among the most effective public health interventions. Vaccine requirements impose a relatively modest restriction on individual liberties. Prohibiting COVID vaccine requirements, despite longstanding use of vaccine requirements in U.S. law, undermines governmental authority to require other vaccines.

Masks

WHAT THESE TYPES OF LAWS DO Block public health and executive branch officials from requiring the use of face masks in public places such as schools, businesses, workplaces, and places of worship, or limiting the time during which such requirements may be in place.

EXAMPLES Tennessee Senate Bill 9014 prohibits most governmental entities from requiring persons (including employees) to wear face coverings as a condition for access or services. Others include Iowa, North Dakota, Oklahoma.

PROBLEMATIC BECAUSE Evidence demonstrates that face masks are an effective means to control the spread of respiratory diseases, and they are less restrictive than alternative measures.

Shifts in Authority

WHAT THESE TYPES OF LAWS DO Moves legal authority from one level or branch of government to another level or branch of government;

EXAMPLES Senate Bill 379 in Arkansas authorized a

of emergency or a Board of Health directive. Others include Arkansas, Florida, New York, Ohio, West Virginia

PROBLEMATIC BECAUSE moving legal authority away from public health agencies and from the executive branch to the legislative branch may devalue expertise and

elevate short-BT/F1 20.04 Tf1 0 0 1 113.02 128.06 Tm0 0.533 0.46

Limits on PH and Executive Orders

WHAT THESE TYPES OF LAWS DO limits authority to address a public health emergency and may block reasonable public health measures

EXAMPLES Indiana Senate Bill 5 prohibits local health officers from imposing local emergency orders that are more stringent than those issued by the governor during a declared state of emergency, unless approved by the local legislative body. Others include Kentucky, Michigan, Ohio.

PROBLEMATIC BECAUSE local health officers are generally in the best position to determine whether local conditions warrant a heightened response, and are likely to be able to act more quickly than a local legislative body

Promising Trends



Tools of Public Health Law

Power to tax and spend

Power to alter the informational environment

Power to alter the built environment

Power to alter the socioeconomic environment

Direct regulation not the only option!!

Indirect regulation through the tort system

Deregulation (when law is a barrier to public health)

Source: LAWRENCE GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT (2008, 2nd ed.).

We Need a Public Health System that is:

Effective

**Informed by Expertise,
Emerging Evidence,
and Lived Experience**

**Equitable and Anti-
Racist**

**Has Access to
Resources (Human,
Financial, Data,
Infrastructure)**

**Able to Act Quickly and
Lead Adaptively**

**Transparent and
Democratic**

**Trusted by the
Community**

**Competent, Confident
Resilient**

**Balanced between the
Common Good and
Individual Rights**



Strengthen
Public Health
and Public
Health

Public Health Interventions/ Emergency Orders

WHAT THESE TYPES OF LAWS DO Empower public health officials and others to take action to protect community health, while designed to restrict individual liberties no more than is reasonable and necessary

EXAMPLES Maine LD 1 COVID 19 Patient Bill of Rights requires health insurance providers to cover COVID-19 screening, testing, and vaccine costs at no cost to the patient

HELPFUL BECAUSE While some individuals sought to be free of a requirement to obtain COVID vaccines (as a condition of employment, for example), other individuals wished to obtain COVID screening, testing, and vaccination, but may have been concerned that costs would be imposed during the pandemic or in the future. Ensuring that those who seek vaccination are not barred by cost protects community health.

Intervention/ Exercise of Public Health Authority?

Safety Net Legislation

Eviction Moratoria

Unemployment Benefits and Paid Sick Leave

Access to Green Space

Climate, Environment, and Environmental Justice Legislation

Washington State Healthy Environment for All (HEAL) Act

Climate and Equitable Jobs Act in Illinois

Mental Health

Indiana and Louisiana teacher training re trauma and ACEs

States begin to implement 988, national suicide prevention hotline

Expanded Telehealth (including MAT and OAT for substance use disorder)

Funding

WHAT THESE TYPES OF LAWS DO Establish stable, predictable funding streams, providing a strong foundation for a sound public health system

EXAMPLES Include

Foundational Public Health Services (Washington)

Public Health Modernization (Oregon)

Public Health Transformation (Kentucky)

State Action for Public Health Excellence (Massachusetts)

HELPFUL BECAUSE Predictable funding streams support long-term planning and ongoing implementation, as well as helping to attract and retain a skilled, dedicated workforce with the capacity to address ongoing and emerging public health challenges

Health Equity

WHAT THESE TYPES OF LAWS DO Give public health officials the authority to identify, quantify, analyze, and correct disparate health opportunities and outcomes, including those associated with race and racial discrimination

EXAMPLES

COVID Health Equity Task Forces (Virginia SB 1296)

Declarations of Racism as a Public Health Crisis (Minn House of Rep HR 1, 2020 2nd special session)

Equitable Engagement Compensation Programs (Oregon DOT)

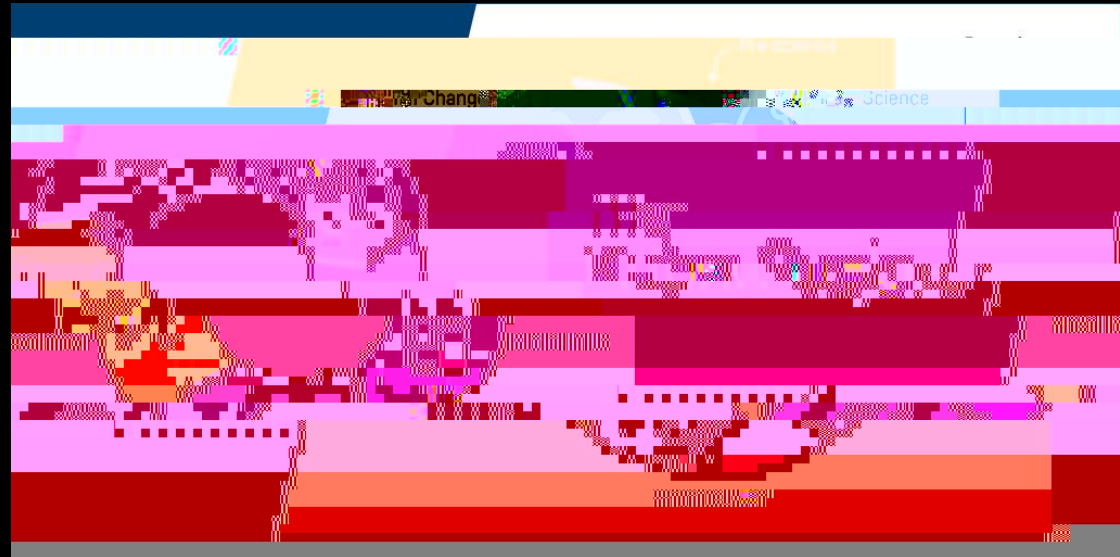
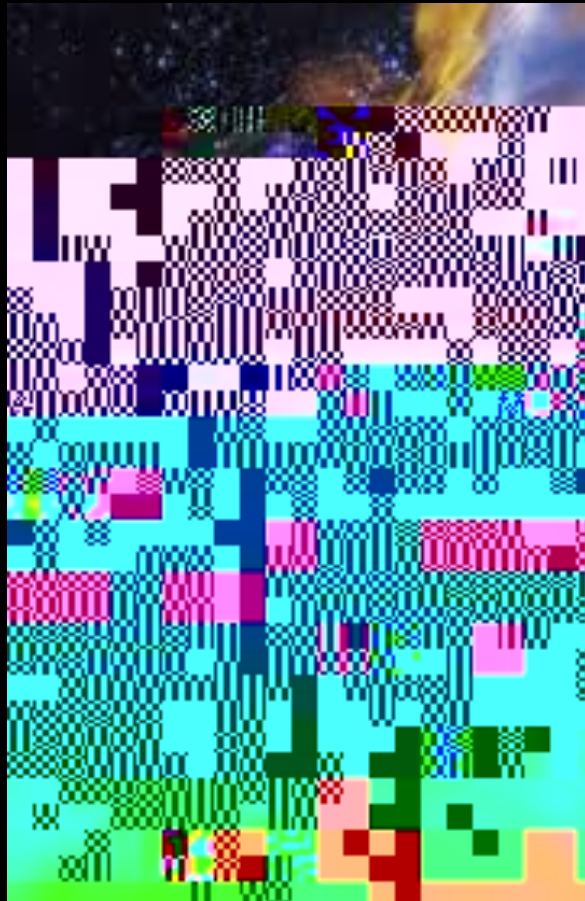
HELPFUL BECAUSE Public health analysis of COVID 19 morbidity and mortality demonstrated disparities associated with race, ethnicity, status as a frontline worker, and rural or urban residence, among others

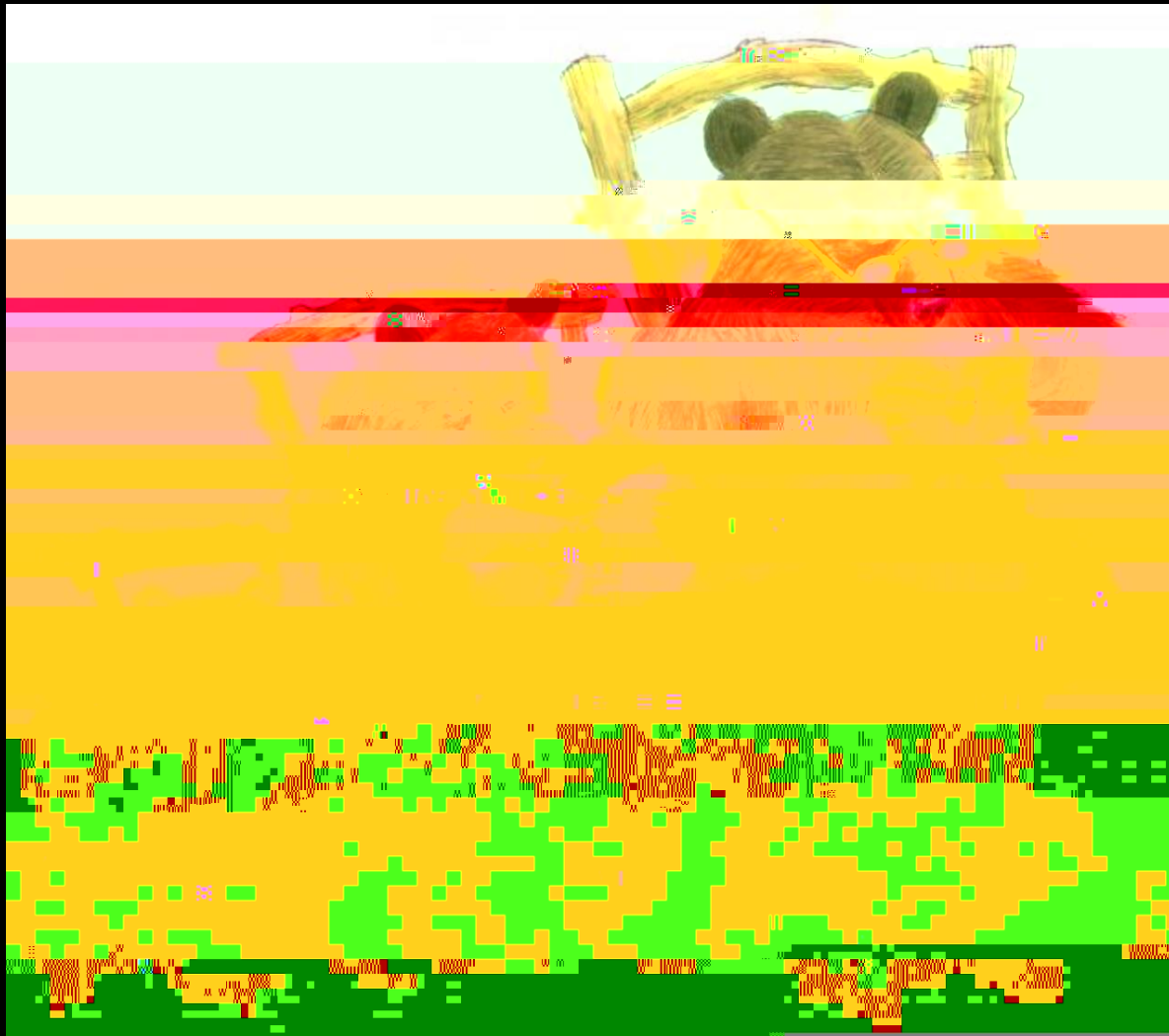


Pendulum Swings

Or Paradigm Shifts

Or Will We See Durable Shifts in Public Health and





The Three Bears, Paul Galdone

Thank You

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