At A Glance: State and City Action on Covid-19  
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There has already been significant differences between state and local governments over the imposition of mandatory shelter in place orders, the need for social distancing and the definition of “essential” and “non-essential” businesses and workers. And now we are seeing similar conflicts over the easing of these public health restrictions and the reopening of businesses.

Reopening starts with the South

Southern governors – with the exceptions of the governors of North Carolina and Kentucky – met by phone last Friday to discuss plans for reopening the region. The governors of Alabama, Georgia, Florida, South Carolina, and Mississippi who were among the last in the nation to issue statewide stay at home restrictions are among the first to lift restrictions.

**Georgia**  
Governor Kemp has set the most aggressive reopening course, announcing Monday (April 20) he will allow gyms, barber shops, tattoo parlors and bowling alleys, among other businesses, to reopen on Friday. He said theaters and dine-in restaurants would be permitted to resume activity on April 27. And he will allow the statewide shelter-in-place order to expire at the end of the month.

Kemp, in his remarks Monday, stressed that his directive overrides local orders, saying, “Local action cannot be taken that is more or less restrictive.” Georgia has reported nearly 20,000 cases and 775 deaths.

- Atlanta Mayor Keisha Lance Bottoms (D) condemned the decision. “More than 19,000 Georgians have tested positive for covid-19 and the numbers continue to increase,” she said in a statement. “It is the governor’s prerogative to make this decision for the state, but I will continue to urge Atlanta to stay at home, stay safe and make decisions based on the best interests of their families.”

- Bottoms said she was not consulted ahead of Kemp's decision. “He did not consult with me. I don’t know what the reasoning and data that the governor used to make this decision was, because I have not spoken with him, but I did not know in advance.”

- Bottoms said she wished the governor had left the choice up to local leaders. “Our governor often defers to local control and I wish that this were an instance that he deferred to local control.”

- Local governments can’t countermand the decision -- but mayors in Atlanta, Albany, Athens are other GA cities are asking their residents to stay home.

- President Trump has said that Georgia is reopening too fast. He says he told Kemp he disagreed “strongly” with the decision.
South Carolina is the only other state pursuing as swift a strategy as Georgia; Governor Henry McMaster allowed a range of retail stores to reopen Monday. The state has had nearly 4,500 cases and 124 deaths.

- The governor allowed beaches there, closed in late March, to reopen to public access as of noon Tuesday, though local governments can keep them closed. Myrtle Beach, Folly Beach, Georgetown County, Hilton Head Island and several beaches around Charleston decided to remain closed.

Tennessee Governor Bill Lee announced Monday that businesses across most of the state would begin reopening as early as next week, although the order did not cover counties with the largest cities, including Nashville, Memphis, Knoxville and Chattanooga,

- Lee said he would let his stay-at-home order expire at the end of the month. “Social distancing must continue, but our economic shutdown cannot.”

- The mayors of Tennessee's four largest cities have created a task force to coordinate the reopening of local economies and recovery of businesses impacted by the COVID-19 pandemic.

- The self-titled "Big Four" — Mayor John Cooper of Nashville, Mayor Jim Strickland of Memphis, Mayor Indya Kincannon of Knoxville, and Mayor Andy Berke of Chattanooga — each appointed business and health leaders to work together to evaluate when to lift restrictions implemented during the pandemic.

- The Tennessee Major Metros Economic Restart Task Force, announced Thursday afternoon, will be an "organized way" of sharing input and working with Gov. Bill Lee for a statewide solution as officials deliberate on reopening scenarios, the mayors announced in a statement.

Texas on Monday began a week of slow reopenings, starting off with state parks, while officials said that later in the week, stores would be allowed to offer curbside service.

Florida residents returned to the beach Saturday despite an increase in COVID-19 deaths and infections. The mayor in Miami-Dade County said that wasn't happening in his jurisdiction any time soon. Mayor Carlos Gimenez, a Republican, said reopening the county will be determined by medical experts and when that time comes, it will require social distancing, face coverings and groups of no more than 10 people -- with those regulations enforced by police.

Oklahoma - Some currently shuttered businesses will be allowed to reopen in just two days and many others can reopen on May 1 under a plan unveiled Wednesday by Gov. Kevin Stitt. Stitt said he has discussed the reopening plan with city officials across the state and that there’s “broad buy-in” for a statewide phase one reopening on May 1. Mayors will have some latitude on whether to allow personal care businesses to reopen before May 1. Norman Mayor Breea Clark took a different tack in a message she tweeted to Stitt, saying, “You may be willing to risk lives by moving forward without proper testing or a plan for contact tracing, but I'm not.”

The “Oklahoma Return to Work and Bill of Rights Conformity Act.,” announced prior to Stitt’s announcement, includes provisions to address social distancing, encourage innovation, provide businesses access to signage conveying health safety guidelines, limit liability for businesses that open, and encourage sick leave for those with COVID-19 symptoms. It also includes a provision that would prohibit local cities and counties from forcing businesses to close.
Washington - A county commissioner in Washington issued a mea culpa Wednesday night and called on his colleagues to rescind a motion passed in defiance of Gov. Jay Inslee’s (D) stay-at-home order. Franklin County Commissioner Brad Peck’s statement came just hours after Inslee, via his general counsel, warned the commissioners that their attempt to reopen county businesses was a violation of state law. Meanwhile, Snohomish County Sheriff Adam Fortney said he believes Gov. Jay Inslee’s stay-home order is unconstitutional and he won’t enforce it.

West Virginia Governor Jim Justice said Monday that he would allow hospitals to begin performing elective procedures if the facilities met an unspecified set of criteria.

Colorado Governor Jared Polis said Monday that he would let his statewide stay-at-home order expire next week as long as strict social distancing and other individual protective measures continued.

In Alaska -- with at least 321 cases and 9 deaths -- Governor Mike Dunleavay announced he intends to relax some of the state's restrictions this week, allowing some businesses -- such as restaurants and hair salons -- to reopen. "We're going to try to do everything we can to move Alaska back and get Alaskans back to work," Dunleavay said. Dunleavay said restaurants would be required to allow only members of an immediate family to sit together and may have to take reservations to ensure that social distancing can be maintained.

Push Back against Stay at Home Orders

Clashes over the lifting of mandatory shelter in place orders are taking three basic forms: legislative action, court challenges and citizen protests. And now they may play out in the federal arena. Attorney General William Barr said the Justice Department will consider legal action against governors who continue to impose strict rules for mitigating the spread of coronavirus even after the outbreak subsides in their states. The comments, in an interview with conservative radio host Hugh Hewitt, come as Barr has faced pressure from conservative groups and activists to push back against governors taking a harder line against the virus.

Legislative Action

Pennsylvania – Governor Wolf vetoed Senate Bill 613, passed by Republicans in the Pennsylvania legislature that would have forced him to reopen some businesses. Wolf said the decision to veto the bill wasn’t easy, but he believes it is the right course of action for Pennsylvania. He said a move to reopen “tens of thousands of businesses too early will only increase the spread of the virus, place more lives at risk, increase the death tolls and extend the length of the economic hardships created by the pandemic.” GOP lawmakers do not have enough votes to override his veto.

Utah - State lawmakers who went into a special session at the end of last week have introduced a bill to preempt local emergency orders. H.B. 3009: Local Government Emergency Response, provides for gubernatorial oversight over local orders, including state preemption of a local order. Senate president Stuart Adams told CNN that the legislature, which is controlled by Republicans in both chambers, is looking to allow the state to enter a "stabilization phase" that would keep social distancing guidelines in place while businesses are gradually reopened beginning April 30.

Washington - Washington Gov. Jay Inslee is facing increasing pressure from state lawmakers to move quickly to reopen certain sectors of the economy, perhaps even before his current “Stay Home, Stay Healthy” order expires on May 4. On Friday, three of the four legislative caucuses sent Inslee a request that he consider allowing a specific set of businesses to reopen, provided they adhere to strict public health guidelines. The list
included homebuilding, online auto sales, landscaping and in-home cleaning companies. Construction and auto sales are the state’s top two sources of excise tax revenue, according to a legislative analysis.

Ohio - In Ohio, at least three Republican lawmakers have called on Gov. Mike DeWine -- one of the first Republican governors to take aggressive action to counter the spread of coronavirus in March -- to start making plans to reopen up the state, which is under a stay-at-home order until May 1. Both the state Senate and House have Republican majorities.

State Sen. Todd Smith, who represents Preble County and a portion of Dayton, in a letter to DeWine said the state had overreached based on "flawed data models," "speculation" and "media overreaction." "We have to start the discussion now to say, 'We need to start seriously considering what businesses can come back right on May 1," Smith told CNN. "I think the quarantine needs to end. I think there are things that can be phased in over time. Hairstylists, lawn care or one-on-one work should be started right back." In a separate letter, Ohio's Senate Majority Leader Matt Huffman, who represents rural areas of Ohio, has proposed that businesses be allowed to open in "less densely populated areas," according to Cleveland.com. A third lawmaker, Andrew Brenner, in a Facebook post titled "We Must Reopen Ohio" reiterated the call to open up the state's economy.

Court Challenges

Wisconsin - Wisconsin's Republican-led legislature filed a lawsuit Tuesday in an attempt to reopen the state and block the extension of a stay-at-home order issued by state health officials to slow the spread of the coronavirus. The lawsuit was filed against Wisconsin's Department of Health Services Secretary-designee Andrea Palm and other health officials, who recently extended the state's "Safer at Home" emergency order until May 26, but loosened some restrictions on certain businesses.

Democratic Gov. Tony Evers on Twitter Tuesday slammed the lawsuit as "focused entirely on how to get legislative Republicans more power" and "exploiting a global pandemic to further their attempts to undermine the will of the people. Apparently, instead of having us act quickly and decisively to respond to a crisis, Republicans would rather have us jump through hoop after hoop and ask for their permission to save lives. Folks, we don't have time. COVID-19 will not wait," Evers wrote.

Ohio - A federal judge has refused to issue a temporary restraining order against Ohio’s order to close “non-essential” businesses as a precaution to stop the spread of coronavirus. Following a teleconference hearing held on Monday by U.S. District Court Chief Judge Algenon L. Marbley, the judge denied a request for a temporary restraining made by the nonprofit 1851 Center for Constitutional Law on behalf of a Columbus area bridal shop.

Pennsylvania - On Monday, in Friends of Danny DeVito v. Wolf, a divided Pennsylvania Supreme Court rejected a constitutional challenge to Governor Tom Wolf’s executive order closing non-life sustaining businesses. Had the court stricken the order, businesses across the Commonwealth would have been free to re-open in the midst of the COVID-19 pandemic. In finding the order valid and not subject to appeal, the court settled the challenge as a matter of Pennsylvania law.

The court, in an opinion written by Justice Christine Donohue, invoked its rarely used King’s Bench jurisdiction to provide clarity concerning the Governor’s order, observing that the case “presents issues of immediate and immense public importance impacting virtually all Pennsylvanians and thousands of Pennsylvania businesses.” The plaintiffs had argued that “because the Executive Order prohibits them from using their property ‘at all,’ it
resulted in a taking of private property for public use without the payment of just compensation,” in violation of the Fifth Amendment of the U.S. Constitution and Article I, Section 10 of the Pennsylvania Constitution.

What remains to be seen is the decision’s effect on other cases, such as the pending class action litigation for damages in federal court in the Eastern District of Pennsylvania. [Find out more about that case here]. There, plaintiffs accept the shutdown order as a valid exercise of the police power but seek damages for a taking and violations of substantive and procedural due process

Kansas - A federal judge on Saturday blocked Kansas from limiting attendance at in-person religious worship services or activities to 10 people or fewer to check the spread of the coronavirus, signaling he believes there’s a good chance the policy violates religious freedom and free speech rights. The ruling from U.S. District Judge John Broomes in Wichita prevents the enforcement of an order issued by Governor Laura Kelly. The judge’s decision will remain in effect until May 2. He has a hearing scheduled Wednesday, April 22, in a lawsuit filed against Kelly by two churches and their pastors.

- Broomes’ action comes amid strong criticism of the Democratic governor’s order from the Republican-controlled Legislature and increasing pressure from GOP lawmakers to lift at least part of a stay-at-home order for all 2.9 million Kansas residents that took effect March 30 and is set to continue until May 3. It also comes as the number of coronavirus cases and COVID-19-related deaths continue to rise in Kansas.
- "That executive order had absolutely nothing to do with religious freedom. It had everything to do with protecting the health and safety of Kansans," the governor said at a Friday news conference.

California - Three Southern California churches that want to keep their doors open during the coronavirus outbreak have sued Gov. Gavin Newsom and other officials arguing that social distancing orders violate the First Amendment right to freedom of religion and assembly. The suit, filed in the federal court for the Central District of California, also names state Attorney General Xavier Becerra and officials of San Bernardino and Riverside counties.

Michigan – Governor Gretchen Whitmer faces two federal lawsuits over her stay-at-home order, with the plaintiffs — Michigan residents and businesses — claiming the April 9 order infringes on the constitutionally protected freedom of association and due process rights.

- A federal lawsuit filed in Grand Rapids by the Michigan Nursery and Landscape Association says Whitmer has gone too far in her response to the coronavirus pandemic. Also suing Whitmer are downstate residents who are barred from travelling to their cottages in northern Michigan.
- “There is no reasonable justification for restricting Michigan residents from travelling to cottages that they own or rent during this current pandemic,” that lawsuit states.

Illinois - The Green and Libertarian parties in Illinois have filed a federal lawsuit claiming Governor J.B. Pritzker's stay-at-home order has impeded the petition process necessary to get on the November ballot.

- The lawsuit, filed last week in Chicago, alleged the order intended to curb the spread of coronavirus and social distancing recommendations have made it “practically impossible” to collect signatures safely in person. Under Illinois' election rules, candidates not from established parties have to collect signatures from March 24 until June 22 for the general election.
Texas - A state judge ruled that all voters in Texas afraid of contracting COVID-19 through in-person voting should be allowed to vote by mail during the pandemic, the Dallas Morning News reports. However, Texas Attorney General Ken Paxton (R) said he was “disappointed” that the court had “ignored the plain text of the Texas election code to allow perfectly healthy voters to take advantage of special protections made available to Texans with actual illness or disabilities.” Paxton said he would appeal the decision.

- **Some cities are hoping to proceed with May 2 elections – if they can be done by mail.** According to Paxton, “Mail ballots based on disability are specifically reserved for those who are physically ill and cannot vote in-person as a result. “Fear of contracting COVID-19 does not amount to a sickness or physical condition as required by the Legislature. The integrity of our democratic election process must be maintained, and law established by our Legislature must be followed consistently.”

Arizona - The mayors of Tucson, Phoenix and Flagstaff believe that when the state’s founders required initiative petitions to be filed as "sheets," they didn't necessarily mean paper. In a new legal filing, the attorney for the mayors is telling the Arizona Supreme Court that nowhere in the Arizona Constitution does it require that signatures be gathered on something people can hold in their hands. And Shawn Aiken said what that means is that the court is free -- and his clients believe should -- give the go-ahead for groups seeking to put issues on the November ballot to use an electronic system for collecting signatures.

**Citizen protests**

Conservative and libertarian groups opposed to statewide stay at home orders organized protests at state capitols last week and this week. According to news reporting, three conservative, gun rights activists Ben, Christopher, and Aaron Dorr are behind a slew of anti-quarantine Facebook groups urging the public to protest. They are behind at least four Facebook groups with 200,000 members organizing anti-lockdown protests in Wisconsin, New York, Ohio & Pennsylvania. According to the Daily Mail, “While at first glance the demonstrations cropping up across the nation appear to be organic, the coordination of these brothers on Facebook means they’re actually being engineered by a network of conservative directors.”

In an opinion piece in the New York Times, Lisa Graves details who is behind the protests and their connection to the Tea Party and the Koch network.

Over the weekend, hundreds protested COVID-19 Orders in Indiana, Texas, and New Hampshire:

In Texas, several hundred people rallied on steps of the state Capitol to call for an end to social restrictions. Many protesters sought an immediate lifting of restrictions and chanted “Let us work!” in a state where more than 1 million people have filed for unemployment since the crisis began.

The rally was organized by a host of Infowars, owned by conspiracy theorist Alex Jones, who joined protesters on the Capitol steps.

More than 200 people upset over restrictions on Indiana residents because of the coronavirus protested outside the state mansion of Gov. Eric Holcomb, urging him to back off and restart the economy. The state health department reported 529 new coronavirus cases between April 7 and midday Friday, raising the total to more than 10,600. The number of deaths rose by 26, to 545.
Elsewhere, a few hundred demonstrators cheered and waved signs outside the Statehouse in New Hampshire, which has had nearly 1,300 cases of the virus and more than three dozen deaths through Friday.

Stay at Home Orders: A Snapshot

In the absence of a federal shelter in place order, states and cities are issuing their own stay at home, shelter in place or “safer at home” rules:

42 states have issued statewide shelter in place mandates.

Eight governors have yet to issue statewide shelter in place orders:

○ Five states have no mandatory shelter in place directives at the city or state level: Arkansas, Iowa, Nebraska, North Dakota and South Dakota.

○ Three states have partial lockdown orders; individual cities or counties have declared shelter-in-place mandates but the state as a whole has not: Oklahoma, Utah, Wyoming. Oklahoma has a “Safer at Home” order which has been extended through May 6 for adults over the age of 65 and vulnerable individuals with serious underlying medical conditions.

All of the governors who have not issued mandatory stay at home orders are Republicans. And despite increases in the number of COVID-19 cases in their states, the eight governors are still refusing to issue statewide stay at home orders. Governors in several states where no statewide order has been issued are being pressured by cities and counties to put one in place:

○ Iowa. Tyson Foods closed one of the country’s largest pork-processing plants in Iowa after two employees died and dozens more workers contracted the virus, but Gov. Kim Reynolds (R) – who has resisted imposing a stay-at-home order – said the facility could reopen as early as this week as its 1,400 workers are tested. According to Reynolds, people “have to be responsible for themselves.” Localities are preempted from issuing their own shelter in place orders.

○ Nebraska. Even as cases grow in places like Grand Island and Douglas County, home to Omaha, and mayors are asking for a statewide stay-at-home order, Governor Pete Ricketts continues to refuse. “This is a program that depends on people exercising personal responsibility and their civic duty. This is about making that decision, not the heavy hand of government taking away your freedoms.”

○ South Dakota. A pork processing plant in Sioux Falls, South Dakota’s most populous city, was forced to close after about 240 employees contracted the virus. Republican Mayor Paul TenHaken asked Gov. Kristi Noem to issue a stay-at-home order in Minnehaha and Lincoln counties, where more than 800 of the state’s 988 positive cases have been confirmed. Noem refused, prompting the Sioux Falls city council to introduce a three-week lockdown ordinance on its own that members lament will take a week just to pass.

Citing scientific modeling, the governor acknowledged this month that up to 70 percent of residents in her state may ultimately fall ill with COVID-19. But Noem says it wasn’t up to government to tell them
how to behave. “The people themselves are primarily responsible for their safety. They are the ones that are entrusted with expansive freedoms.” It was up to individuals — not government — to decide whether “to exercise their right to work, to worship and to play. Or to even stay at home.”

In some states with stay at home orders, localities have had to deal with orders preempting local action – now including voting in local elections:

**Iowa** – Even though Iowa Governor Kim Reynolds has not issued a statewide stay at home order, local officials such as Cedar Rapids Mayor Bret Hart have considered issuing a local order under emergency mayoral powers but backed off after deeming it unenforceable. Hart said: “This week I spoke directly with the Governor who confirmed her opinion, which is supported by the Iowa Attorney General, that *cities and counties in Iowa do not have the authority to close businesses or order people to stay in their homes.*”

**Arkansas** - On March 26, Governor Asa Hutchinson issued an executive order declaring the state of Arkansas to be a disaster area. The order also included social distancing recommendations and some restrictions on public gatherings. On Monday April 6, he issued an order amending the original order; the amendment gives city and county officials more leeway to take local action to prevent the spread of the novel coronavirus, with the provision that they may not interfere with commerce. The new proclamation states “reasonable city or county curfews and closures of city or county owned parks and facilities ... shall not be interpreted as a quarantine regulation of commerce or travel.”

It adds that curfews may not prevent people from traveling to or from work, acquiring food or other necessary goods or services, walking their pets or exercising outdoors. Several cities and counties have issued curfews, including Little Rock, Saline County and Benton County.

Hutchinson asked that any officials planning to take local action first coordinate with his office. He emphasized that he has not issued a statewide stay-at-home order and his order issued Monday preempts local lockdowns, arguing that localities having their own stay-at-home orders could jeopardize essential operations and commerce.

**Mississippi** – Governor Reeves statewide mandatory stay at home order went into effect Friday, April 3 at 5:00 PM. His March 24 Executive Order preempts localities from enforcing stricter restrictions than the state: “any order, rule, regulation or action by any governing body, agency or political subdivision of the state that imposes any additional freedom of movement or social distancing limitations on Essential Business or Operation, restricts scope of services or hours of operation of any Essential Business or Operation, or which will or might in any way conflict with or impede the purpose of this Executive Order is suspended and unenforceable during this COVID-19 State of Emergency.” This order has forced the cities of Tupelo and Oxford to rescind local measures already in place.

According to Tupelo Mayor Jason Shelton, “That means that where there is a difference, the Governor’s Order prevails. Therefore, the city’s mandate of all adhering to President Trump’s 15-day plan, mandating compliance with CDC and MSDH COVID-19 recommendations in all workplaces, and Tupelo’s safety protections pertaining to restaurants will be superseded by the Governor’s Executive Order. The city has no discretion in this - the Governor’s Executive Order supersedes as a matter of law.”

**Arizona** - Gov. Doug Ducey capitulated to a mounting grassroots effort by Arizona local elected officials and citizens demanding that he issue a “stay-at-home” or “shelter-in-place” order to prevent the spread of COVID-19. On March 23, Ducey issued an executive order prohibiting any county, city or town from issuing any order or regulation “restricting persons from leaving their home due to the COVID-19 public health emergency,”
or closing the long list of businesses Ducey deemed “essential,” including golf courses, nail salons, pawnshops and payday lenders.

But on Monday, March 30 Ducey announced a statewide order after receiving a letter from nine Mayors “fervently” calling on him to issue a “stay at home” order. The mayors of Phoenix, Flagstaff, Tolleson, El Mirage, Tucson, Winslow, Superior, Fountain Hills and Guadalupe wrote that state health officials had already recommended Ducey enact a “stay at home” order and cited “recent empirical findings that support social distancing as an effective mechanism by which to slow the spread of COVID-10.”

While several Arizona mayors believe the Governor’s list of essential services is too broad, they also believe Ducey’s order preempts them from closing businesses included on the state’s list of essential services.

Where cities and counties have taken the lead in issuing stay at home orders:

- Oklahoma – Edmond, Norman, Oklahoma City, Stillwater, Tulsa
- South Carolina – Charleston and Columbia
- Utah – Salt Lake, Davis, Weber, Tooele, Summit, Wasatch and Morgan counties
- Wyoming - Jackson

Utah - Public health orders have created a contiguous seven-county containment zone across most of the Wasatch Front. Nearly 1.9 million Utahns living inside it are subject to legally binding restrictions on how they can gather and what businesses can stay open.

The orders are in place in heavily populated Salt Lake, Davis, Weber and Tooele counties and smaller Summit, Wasatch and Morgan. The only densely populated county on the Wasatch Front currently without such an order is Utah County. According to the Salt Lake Tribune, there are commonalities among the seven county orders, but also crucial differences.