States and localities are being pressured to reopen. The pressure is coming from Attorney General Barr, state legislatures, the courts and street protesters. These efforts are setting up clashes between the federal and state governments and between state and local governments looking to do more to keep their residents safe and alive.

Attorney General Barr threatens to sue state and local governments over pandemic orders

Attorney General Bill Barr has directed all 93 U.S. attorneys on Monday to “be on the lookout for state and local directives” that curtail individual rights in the name of containing the novel coronavirus. “If a state or local ordinance crosses the line from an appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court,” the attorney general wrote.

Barr’s threat to sue is being read as a warning to governors and mayors that they may face challenges in federal court if they don’t move quick enough to relax restrictions.

Snapshot: Where states are on reopening

- Governors across the country have been announcing whether they will begin phased reopenings of their states when many of their order expire this week or wait a few weeks more. At least 28 states will have loosened coronavirus restrictions by Friday. Texas and Ohio are the most populous states set to open in early May.

- Even after those states reopen, estimates are 210 million Americans, or 64% of the population will still be living under lockdown going into May.

State preemption explicit in Executive Orders

- AR: Preempts local lockdowns
- AZ: Prohibits any county, city or town from issuing any order or regulation “restricting persons from leaving their home.”
- FL: Supersedes “conflicting local provisions.”
- IA: Preempts local authority to close businesses or order people to stay in their homes.
- GA: Preempts local action “that is more or less restrictive.”
- MS: Preempts localities from enforcing stricter restrictions than the state
- SC: “Local governments do not have the authority”
- TN: “This Order shall supersede and preempt any emergency order, health order, or other order issued by a local official or local governmental.”
- TX: “Supersedes all local orders”
States and cities clash over reopening orders

In several places, states and cities will have different rules — a reflection of demographic and political fault lines. In some states, mayors are resisting efforts to let businesses open. Here are some examples:

Missouri -- Republican Gov. Mike Parson has said he would let the vast majority of businesses reopen May 4, after his statewide stay-at-home order expires. But a local order remains in effect until May 15 in Kansas City, the state’s most populous city, where the virus is disproportionately sickening the African American community. “I’m not going to abandon my community just because the rest of society says we don’t care anymore,” said Kansas City Mayor Quinton Lucas.

St. Louis Mayor Lyda Krewson also says she will not lift her city's mandatory stay-at-home order. She wrote on Twitter that the city, St. Louis County and St. Charles County make up more than two-thirds of the state's cases. "I don't believe this out to be a 'one size fits all' issue," she wrote.

Texas -- Gov. Greg Abbott this week eased restrictions statewide, allowing the reopening of state parks, elective surgeries and curbside pickups at certain stores. Abbott said he will let the state’s stay-at-home order expire Thursday as scheduled and allow businesses to begin reopening in phases the next day. Abbott said his new order "supersedes all local orders" including Harris County's (Houston's) order that would have imposed a fine or penalty for not wearing a mask and the Dallas County Commission vote to extend their local stay at home order until May 15. Dallas County Judge Clay Jenkins to North Texans has advised Dallas residents to follow the science and stay home. Jenkins, hamstrung by governor’s order, is pleading with residents to avoid going out in public.

Georgia -- Governor Kemp has set the most aggressive reopening course, announcing on April 20 he was allowing gyms, barber shops, tattoo parlors and bowling alleys, among other businesses, to reopen. Theaters and dine-in restaurants were permitted to resume activity on April 27. And Kemp will allow the statewide shelter-in-place order to expire at the end of the month. Kemp, in his remarks stressed that his directive overrides local orders, saying, “Local action cannot be taken that is more or less restrictive.”

- 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 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.

Colorado - The state's stay-at-home order expired Monday, ceding to a tapered plan to reopen the state, beginning with curbside retail sales and elective surgeries Monday. But Denver Mayor Michael Hancock (D) has extended the city's stay-at-home order until May 8, and suburban counties have followed suit.

Oklahoma - Gov. Kevin Stitt has authorized personal-care businesses to open, citing a decline in the number of people being hospitalized for COVID-19. Those businesses were directed to maintain social distancing, require masks and frequently sanitize equipment.
Still, some of the state’s largest cities, including Norman, Oklahoma City and Tulsa, were opting to keep their bans in place. Norman Mayor Breea Clark 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.”

**South Carolina** has pursued a strategy as swift as Georgia; Governor Henry McMaster allowed a range of retail stores to reopen. He also allowed beaches there, closed in late March, to reopen to public access, 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** - Gov. Bill Lee has issued an executive order that will allow dine-in restaurants and retail stores to resume operations this week across the state. The governor’s action preempts and cancels a local reopening plan and business permit process that was announced last week by local city and county mayors. “This Order shall supersede and preempt any emergency order, health order, or other order issued by a local official or local governmental entity addressing or otherwise related to COVID-19; provided, that the six locally run county health departments in Davidson, Hamilton, Knox, Madison, Shelby, or Sullivan Counties shall have the authority to maintain any existing order or issue further restrictions regarding the operation of restaurants for the purposes of containment or management of the spread of COVID-19,” Gov. Lee’s order states.

**Nevada** - Gov. Steve Sisolak is planning to reveal his “Roadmap to Recovery” today, Thursday April 30. Las Vegas Mayor Carolyn Goodman has pressed for a quick return to business, telling CNN, “I’d love everything open. … We’ve had viruses for years.” She called the closings “total insanity” and offered the citizens of her city as “control group” to see how many people die of the coronavirus without social distancing. Said Goodman: “We would love to be that placebo!”

**Legal challenges to stay at home orders are bubbling up in courts across the country**

**Michigan** - A Michigan court on Wednesday April 29 ruled that Gov. Gretchen Whitmer’s (D) stringent stay-at-home order in response to the coronavirus outbreak does not violate residents’ constitutional rights, denying a motion for a preliminary injunction.

A group of five Michigan residents filed a lawsuit against the governor and other state officials claiming that the quarantine measures infringed on their constitutional rights to procedural and substantive due process. They also alleged that the state’s Emergency Management Act was unconstitutional. The Michigan Court of Claims rejected both allegations, ruling that an injunction against Whitmer’s order would not serve the public interest, “despite the temporary harm to plaintiffs’ constitutional rights.”

**Illinois** - Governor Pritzker is appealing a court ruling against his stay at order extension. State Attorney General Kwame Raoul has appealed the decision in the 5th District Appellate Court and has also asked the state Supreme Court to take up the matter immediately. Earlier this week, a Clay County judge ruled in favor of a temporary restraining order after a lawsuit was filed by Republican Representative Darren Bailey. Bailey argued that Governor Pritzker’s extension of the stay-at-home order is an overreach of power. This temporary restraining order only applies to Bailey. it does not lift the stay-at-home order for anybody else. In a statement, the governor said, “Rep. Darren Bailey’s decision to take to the courts to try and dismantle public health directives designed to keep people safe is an insult to all Illinoisans who have been lost during this covid-19 crisis, and it’s a danger to millions of people who may get ill because of his recklessness.”

Now a second lawmaker, State Rep. John Cabello has also filed a lawsuit also challenging the extended stay-at-home order. In the lawsuit, Cabello says he’s filing on his own behalf and on behalf of all people in Illinois. That’s a key distinction from Bailey’s lawsuit, which only applied to the lawmaker himself. The lawsuit
argues that Pritzker only has emergency authority for 30 days and by extending his stay-at-home order is unjustly ordering people to shelter at home for longer than he is allowed.

Virginia - A circuit court judge ruled on Monday that Gov. Ralph Northam (D) exceeded his authority by forcing an indoor gun range to close as part of his stay-at-home order. This marks the first victory by a business challenging the commonwealth’s restriction and may spur other suits.

Wisconsin - Last week, Wisconsin state GOP lawmakers sued Democratic Gov. Tony Evers and asked the state’s supreme court to invalidate his stay-at-home order. Attorney General Josh Kaul urged the court to reject the Republican lawsuit, arguing the governor’s administration has broad authority to protect Wisconsin residents from the coronavirus. Evers issued a stay-at-home order in March. It was supposed to expire on April 24 but state Department of Health Services Secretary Andrea Palm two weeks ago extended it to May 26 at Evers’ direction. Conservatives control the court 5-2. Earlier this month they struck down an Evers order that postponed the state’s April 7 presidential primary and spring election, signaling Kaul faces long odds in this case.

The Wisconsin Institute for Law and Liberty, a conservative law firm, filed an advisory brief with the court on Tuesday on behalf of the Independent Business Association of Wisconsin, Double Decker Automotive in Pleasant Prairie, and Shear Xcellence, a hair salon in Grafton. The businesses argued that the DHS has assumed so much power that it has come “perilously close” to tyranny and that legislators never intended to give the executive branch so much power.

Kansas – Gov. Laura Kelly has agreed to a settlement with two Baptist churches challenging her executive order limiting religious services to no more than 10 people, even if members complied with social distancing guidelines to avoid spreading COVID-19. The resolution to the lawsuit filed in U.S. District Court would allow congregations in Junction City and Dodge City to conduct in-person services if attendees complied with safety protocols. The deal announced Saturday night created a window for the governor to revise her mass-gathering order so it would no longer apply to religious meetings.

“While I am confident that we have the law on our side, the agreement with these two churches will allow us to move forward and focus our efforts on mitigating the spread of the disease and working to restart the economy,” Kelly said.

Pennsylvania - 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.
Louisiana – A group of GOP lawmakers want to take the unprecedented step of repealing the governor’s public health emergency declaration,” the Baton Rouge Advocate reports. “Incensed by an extension of the state’s stay-at-home order until May 15, and a perceived lack of communication on Edwards’ behalf, a cadre of Republican legislators have been looking at a little-used law to overturn the public health emergency declaration.” State law allows a majority in either legislative chamber to overturn the governor’s order and give that authority to local officials, according to a draft circulated by Rep. Alan Seabaugh, a Shreveport Republican.

If the Republican legislators’ petition is successful, Edwards’ chief lawyer Matthew Block warned legislative leaders Louisiana would become the only state in the nation without an emergency declaration. It would also revoke bans on price gouging, end the suspension of legal deadlines, end the closure of schools and perhaps most importantly, result in a “crushing loss of federal funding.” Federal disaster programs require an emergency declaration before money is released. Terminating the emergency declaration also could jeopardize the $1.8 billion heading to Louisiana through the $2 trillion federal stimulus as well as U.S. Small Business Administration loans.

Delaware - Two members of the Delaware State Legislature have introduced a bill that would limit Governor Carney’s emergency powers. State Representative Richard Collins and Senator Bryant Richardson have submitted House Bill 330 “An Act To Amend Title 20 Of The Delaware Code Relating To Emergency Management” that would give the legislature more say in during an emergency.

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 - a bill to preempt local emergency orders, H.B. 3009: Local Government Emergency Response, has died in committee.

Citizen protests

Dozens of protests against stay-at-home orders are set for Friday, May 1. According to news reporting, conservative and libertarian groups opposed to statewide stay at home orders have been organizing the protests at state capitols.

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