

## Summary Report Concerning Responses to COVID-19 in the USA

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**Abstract.** The United States of America (US) has been profoundly impacted by the Covid-19 pandemic, leading the world in both Covid-19 cases and deaths despite access to vaccinations and advanced treatments. Critical to the US response to Covid-19 from a legal and regulatory perspective is the dichotomy between federal and US state governance powers and systems, which have frequently come into conflict during the pandemic. At the same time, the pandemic occurred during a highly divisive presidential campaign, in which responses became a matter of political rhetoric, and an equally contentious aftermath. The change of presidential administrations in January 2021 brought significant shifts in national policies and rules regarding Covid-19 response and recovery. However, the tensions between national and state legal and regulatory responses remains and continues to be evident in responses to the rise of variants, particularly the Delta variant, across the country. This article reviews Covid-19 legal and regulatory responses and the national and state levels in order to highlight how these entities have addressed economic, social, and public health-related issues.

**Keywords:** COVID-19, Pandemic, Law, National Law, Federal Law, Local Law, United States, Federal Jurisdiction, State Jurisdiction, Administrative Law

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### 1. Introduction

The United States of America (US) has been profoundly impacted by the Covid-19 pandemic, leading the world in both Covid-19 cases and deaths.<sup>1</sup>

The jurisdictional power allocations have compounded this under the federal constitutional system in the US, which has proven to be a complex tool for legal and health governance during a public health-related emergency. At the same time, the pandemic occurred during a highly divisive presidential campaign, in which responses became a matter of political rhetoric and an equally contentious aftermath. The change of presidential administrations in January 2021 brought significant shifts in national policies and rules regarding Covid-19 response and recovery. However, the dichotomy between national and state legal and regulatory responses remains and continues to be evident in responses to the rise of variants, particularly the Delta variant, across the country.

This article discusses the critical elements of the US federal response to the pandemic both during the Trump administration and the Biden

administration and how the US States have responded on an individual level.

### 2. Federal Responses

The US officially recognized Covid-19 as a pandemic on March 13, 2020, when President Trump issued Presidential Proclamation Number 9994.<sup>2</sup>

Before this, there had been a series of executive orders regarding information gathering and early attempts at preparedness for an outbreak of some sort. Thus, from March 13, 2020, to the present, several laws and executive orders, proclamations, and memoranda have formed the core of US pandemic response. In turn, this has allowed federal agencies and US States to adopt responsive policies.

#### 2.1. Economic and Social Responses

In terms of educational issues associated with the pandemic, it should be noted that much of the decision-making capacity regarding in-person and remote learning is vested in the States rather than the federal government. However, in December 2020, through Executive Order 13969, the Trump administration emphasized the need for schools

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<sup>1</sup> Johns Hopkins University, *Covid-19 Dashboard* <<https://coronavirus.jhu.edu/map.html>> accessed 19 August 2021.

<sup>2</sup> *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (13 March 2020) Pres. Proc. No. 9994.

across the country to take CDC guidance into account and begin creating plans for the return to in-person instruction.<sup>3</sup> In this context, the impacts of remote learning on children's educational progress and physical and mental health was stressed as critical. At the same time, there was an emphasis on the role of non-access to school breakfast and lunch services as detrimental to students and families' health and food poverty across the country.<sup>4</sup> The Executive Order identified students attending private and parochial schools as facing risks of school closures and cuts, potentially overburdening public schools should these schools be unable to continue their functions.<sup>5</sup> To address these educational concerns, the Executive Order allowed for scholarships for students and families identified as disadvantaged and lacking access to in-person education to pay for private or parochial school fees, tutoring or remedial education, access to homeschooling assistance, and special education access.<sup>6</sup>

Since January 2021, the Biden administration has focused on ensuring the readiness of all forms of school systems to return to in-person learning based on the ideas that "First, the health and safety of children, students, educators, families, and communities is paramount. Second, every student in the United States should have the opportunity to receive a high-quality education, during and beyond the pandemic."<sup>7</sup> To accomplish this, there are extensive areas for coordination between

national, state, and tribal authorities and agencies, including for school breakfast and lunch programs and after-school programs.<sup>8</sup>

From the outset of the pandemic, the Trump administration issued a series of travel and immigration-related executive orders and instruments which sought to limit the ability of non-citizens to enter the country. In some instances, these measures were aimed at specific countries or regions where Covid-19 was highly prevalent at the time.<sup>9</sup> This practice has been continued through the Biden administration, most recently in terms of the Delta variant in countries such as India.<sup>10</sup> In other instances, however, these orders were used to target migrants, especially those arriving at the US-Mexico border.<sup>11</sup> These orders were continued throughout the Trump administration's tenure in office, although they were promptly rescinded at the outset of the Biden administration. Additionally, the Trump administration began a system of restricting the issuance of immigrant work visas and clearances starting in June 2020 under the guise of protecting the American workforce and jobs.<sup>12</sup> This highly controversial program has since been rescinded by the Biden administration.<sup>13</sup>

Many of these orders have expired and not been renewed, and the effective restrictions on travel for US citizens and foreign nationals have begun to change in 2021. Face masks and social distancing remain requisite for all airports within the US and on domestic flights and international flights on

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<sup>3</sup> See *Expanding Educational Opportunity Through School Choice* (28 December 2020) Exec. Order No. 13969.

<sup>4</sup> *Ibidem*.

<sup>5</sup> *Ibidem*.

<sup>6</sup> *Ibidem*.

<sup>7</sup> *Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers*, (21 January 2021) Exec. Order No. 14000.

<sup>8</sup> *Ibidem*.

<sup>9</sup> *Terminating Suspensions of Entry Into the United States of Aliens Who Have Been Physically Present in the Schengen Area, the United Kingdom, the Republic of Ireland, and the Federative Republic of Brazil*, (18 January 2021) Pres. Proc. No. 10138; *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus*, (11 March 2020) Pres. Proc. No. 9993; *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus* (14 March 2020) Pres. Proc. No. 9996; *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus*, Pres. Proc. No. 10041 (24 May 2020); *Suspension of Entry of Immigrants and Nonimmigrants Who Continue To Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, Pres. Proc. No. 10131 (31 December 2020);

*Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus*, Pres. Proc. No. 9992 (29 February 2020); *Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus and Other Appropriate Measures To Address This Risk*, Pres. Proc. No. 9984 (31 January 2020); *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019*, Pres. Proc. No. 10143 (25 January 2021).

<sup>10</sup> See *Suspension of Entry as Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019*, Pres. Proc. No. 10199 (30 April 2021).

<sup>11</sup> *Continuation of the National Emergency With Respect to the Southern Border of the United States*, 86 FR 6557 (15 January 2021).

<sup>12</sup> See *Suspension of Entry of Immigrants and Nonimmigrants Who Continue To Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, Pres. Proc. No. 10131 (31 December 2020); *Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, Pres. Proc. No. 10052 (22 June 2020).

<sup>13</sup> *Revoking Proclamation 10014*, (24 February 2021) Pres. Proc. No. 10149.

American airlines.<sup>14</sup> In addition, those Americans traveling outside the US – to the extent possible – are required to take a Covid-19 test and test negative within 72 hours of their return to the US regardless of their vaccination status. Domestic air travel does not require a negative Covid-19 test, however.<sup>15</sup>

Significantly, in Executive Order No. 13927, the Trump administration invoked terms of the National Environmental Policy Act, which authorize federal agencies to approve alternate methods of complying with the environmental impact assessment and similar impact studies mandated for potentially impactful public and private projects during times of emergency.<sup>16</sup> While seemingly neutral in language, in practice, this has resulted in the undermining of much environmental law and regulatory protection and the authorization of projects with long-term impacts when they have been proposed during the pandemic. In addition, the Executive Order contains similar provisions regarding the enforcement of the Endangered Species Act and other federal agencies tasked with overseeing national infrastructure.<sup>17</sup>

Given the timing of the pandemic declaration in the US on March 13, 2020, a little over a month before the set annual deadline for filing income taxes in the US on April 15, the Internal Revenue Service (IRS) acted quickly to extend the filing deadline to July 15, 2020. Additionally, the Trump administration authorized the deferral of payroll taxes, typically paid by employers at set times throughout the year, for industries and businesses meeting specific requirements.<sup>18</sup> Student loan payments were also made deferrable across the Trump and Biden administrations for qualifying loans held through government and government-associated holders.<sup>19</sup>

On March 27, 2020, the US Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>20</sup> This Act was broad in scope, seeking to protect employers and employees from the economic impacts of the pandemic at the same time as addressing critical issues such as housing assistance for those having trouble paying rents or mortgages. The CARES Act includes provisions for specific industries.<sup>21</sup> The Act received criticism,

however, as a number of the financial support systems provided for smaller businesses were in the form of loans rather than outright grants. In comparison, many larger businesses and sectors received grants that were argued to be bailouts.<sup>22</sup> In addition, under the CARES Act, provisions were made to ensure that those who became unemployed due to the pandemic were able to receive special assistance.<sup>23</sup> This has been reauthorized subsequent to the CARES Act, with many states following suit. While regarded as necessary at the time, the continuation of this practice has become controversial since many business owners argue that it incentivizes workers to remain unemployed and has caused labor shortages in many industries.

The CARES Act provided for an initial rebate to most Americans who file taxes in the amount of \$1,200 per person, with additional amounts added for children.<sup>24</sup> Under the CARES Act, new reporting requirements were established for manufacturers of medical supplies in cases of anticipated delays or disruption in production.<sup>25</sup> It also provided for reimbursement and cost coverage systems for Covid-19 testing so that cost would not inhibit anyone from being tested.<sup>26</sup> The federal work-study program, used to provide funding for students who work at qualifying on-campus jobs at their undergraduate and graduate universities, was expressly extended under the CARES Act to ensure that students could still work remotely and receive payments regardless of their ability to perform work remotely.<sup>27</sup> This was essential since these payments are calculated into student scholarships and financial aid packages from the beginning of each term. In terms of labor protections, the CARES Act extends the parameters of the Family Medical Leave Act to include employees who contract Covid-19 and employees with immediate family members who contract it.<sup>28</sup>

The follow-up to the CARES Act was the American Rescue Plan Act of 2021 (Rescue Plan Act), which extended several CARES Act provisions and brought federal efforts to address critical issues raised by the pandemic to a level reflective of more

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<sup>14</sup> *Promoting COVID-19 Safety in Domestic and International Travel*, (21 January 2021) Exec. Order No. 13998.

<sup>15</sup> *Ibidem*.

<sup>16</sup> *Accelerating the Nation's Economic Recovery From the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities*, (4 June 2020) Exec. Order No. 13927.

<sup>17</sup> *Ibidem*.

<sup>18</sup> *Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster*, 85 FR 49587 (8 August 2020).

<sup>19</sup> *Continued Student Loan Payment Relief During the COVID-19 Pandemic*, (8 August 2020) 85 FR 49585.

<sup>20</sup> PL 116-136 (27 March 2020).

<sup>21</sup> See generally *ibidem*.

<sup>22</sup> See generally *ibidem*.

<sup>23</sup> *Ibidem* at sect 2102.

<sup>24</sup> *Ibidem* at sect 2201.

<sup>25</sup> *Ibidem* at sect 3111.

<sup>26</sup> *Ibidem* at sects 3201 – 3203.

<sup>27</sup> *Ibidem* at sects 3505 – 3509.

<sup>28</sup> *Ibidem* at subtitle C.

current impacts.<sup>29</sup> The Rescue Plan Act addresses new sectors of the economy, particularly ranchers and farmers, as needing specialized aid and assistance given the effects of the pandemic.<sup>30</sup> The Rescue Plan Act also reflects the severe impacts of the pandemic and the lack of access to school breakfast and lunch programs on nutrition among the young and economically disadvantaged communities and provides additional funding to address this.<sup>31</sup> The impacts of long-term remote learning and the inability for students to access educational support are also discussed in the Rescue Plan Act, which recognizes the need for flexibility in funding for school districts based on their Covid-19 experiences.<sup>32</sup> The Rescue Plan Act extends the protection and assistance provided for small businesses under the CARES Act, including specific terms relating to revitalizing the restaurant industry.<sup>33</sup> Certain essential infrastructure systems, notably railroads and airports, are provided funding and other regulatory assistance under the Rescue Plan Act, including the return to higher passenger volumes as pandemic restrictions ease.<sup>34</sup> To encourage consumer spending, the Rescue Plan Act authorized an additional rebate of \$1,400 per qualifying American taxpayer and additional amounts for those with children.<sup>35</sup> The Act further authorized an extra child tax credit for 2021.<sup>36</sup>

In August 2020, the initial protections for homeowners and renters unable to make mortgage or rent payments, respectively, from eviction as part of the CARES Act expired. Executive Order 13945 extends the protections contained in the relevant portions to the CARES Act to fill this void.<sup>37</sup> These protections have expanded across the transition in administrations. In July 2021, the Biden administration most recently extended them until October 2021 while recommending that the States take similar actions as well.

A critical power of the President of the US in times of declared emergency is the ability to designate sectors and industries as essential. This designation allows them to remain open despite

federal or state regulations that would otherwise require them to cease operations and provides the relevant federal administrative authorities with the ability to assist them in their operations. An example of the use of this power during the Covid-19 pandemic comes from the meat and poultry industry, which was designated as an essential part of the national supply chain in April 2020.<sup>38</sup> Similar allowances were made for the US International Development Finance Corporation to act as the primary purchaser and source of financing for purchasing necessary medical and other supplies on the international market.<sup>39</sup> Relatedly, the Executive Order on Regulatory Relief To Support Economic Recovery required all federal agencies to adopt measures addressing the pandemic while also seeking to assist the businesses and entities they regulate during it.<sup>40</sup>

## 2.2. Medical Treatment and Vaccine Access

On the same day the US declared the existence of the pandemic, an additional Presidential Memorandum recognized the ability of the States and tribal agencies to create flexible policies for Covid-19 testing and funding allocations.<sup>41</sup> Subsequently, several days later, the administration issued orders to federal agencies regarding prioritization and appropriations for purchasing and ensuring the supply of essential medical supplies for combatting the pandemic and ensuring that hospitals across the country had sufficient capacity to withstand a surge in Covid-19 patients.<sup>42</sup> Shortly thereafter, the administration clarified this prioritization with an Executive Order, allowing the Secretary of Health and Human Services to implement measures that restricted and penalized hoarding of medical and related supplies during the pandemic.<sup>43</sup> In a significant development that has been widely used across many sectors, the administration issued Executive Order No. 13911, *Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical*

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<sup>29</sup> See *American Rescue Plan Act of 2021*, (11 March 2021) PL 117-2.

<sup>30</sup> *Ibidem* at sect 1005.

<sup>31</sup> See generally *ibidem*.

<sup>32</sup> See generally *ibidem*.

<sup>33</sup> *Ibidem* at sect 5003 (C)(9)(b).

<sup>34</sup> See *ibidem*.

<sup>35</sup> *Ibidem* at sect 6428B.

<sup>36</sup> *Ibidem* at sect 9611.

<sup>37</sup> *Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners*, Exec. Order 13945 (8 August 2020).

<sup>38</sup> *Delegating Authority Under the Defense Production Act With Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19*, (28 April 2020) Exec. Order No. 13917.

<sup>39</sup> *Delegating Authority Under the Defense Production Act to the Chief Executive Officer of the United States International Development Finance Corporation To Respond to the COVID-19 Outbreak*, (May 14, 2020) Exec. Order 13922.

<sup>40</sup> *Regulatory Relief To Support Economic Recovery*, (May 19, 2020) Exec. Order No. 13924.

<sup>41</sup> See *Expanding State-Approved Diagnostic Tests*, (March 13, 2020) 85 FR 15335.

<sup>42</sup> *Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19*, (March 18, 2020) Exec. Order No. 13909.

<sup>43</sup> *Preventing Hoarding of Health and Medical Resources To Respond to the Spread of COVID-19*, (March 23, 2020) Exec. Order No. 13910.

*Resources To Respond to the Spread of COVID-19*, on March 27, 2020. In this extensive Order, President Trump expressly stated that:

'[t]o ensure that our healthcare systems are able to surge capacity and capability to respond to the spread of COVID-19, it is the policy of the United States to expand domestic production of health and medical resources needed to respond to the spread of COVID-19, including personal protective equipment and ventilators. Accordingly, I am delegating authority under title III of the Act to guarantee loans by private institutions, make loans, make provision for purchases and commitments to purchase, and take additional actions to create, maintain, protect, expand, and restore domestic industrial base capabilities to produce such resources. To enable greater cooperation among private businesses in expanding production of and distributing such resources, I am also delegating my authority [...] to provide for the making of voluntary agreements and plans of action by the private sector.'<sup>44</sup>

Many of these protections were extended, and indeed amplified, in additional presidential actions, which further identified the range of medical and associated supplies necessary for continuing to address the spectrum of health issues associated with Covid-19.<sup>45</sup>

In December 2020, the Trump administration took steps to ensure the availability of the Covid-19 vaccine for the American population when it became available for widespread use.<sup>46</sup> As part of this plan, there are provisions for coordinating the distribution of vaccines internationally, but only after a reserve has been established. Thus, it would guarantee the availability of vaccines for all in the US seeking to obtain them.<sup>47</sup>

As discussed in the state responses section below, telemedicine and telehealth access have become vital in the US as the pandemic has evolved.

Indeed, these medical services are increasingly being used to supplement standard healthcare, especially in vulnerable and marginalized areas. Under the CARES Act, additional funding was

authorized for telehealth services during the pandemic, particularly for the provision of healthcare in marginalized regions and populations at high risk.<sup>48</sup> Against this background, Executive Order 13941 from August 2020 enabled new payment schemes for healthcare in rural areas that necessitated the use of telemedicine during the pandemic.<sup>49</sup> Additionally, as the mental health toll of the pandemic has become apparent, there have been federal actions to recognize the issue and create oversight bodies tasked with providing information on and recommendations for methods of meeting these needs across a spectrum of populations and conditions.<sup>50</sup>

When the Biden administration took office on January 20, 2021, it took several immediate measures to address the Covid-19 pandemic and federal responses to it. First, from the governance perspective, specialized advisory positions were created for the pandemic and provided advice on potential future health outbreaks.<sup>51</sup>

From the onset of the pandemic to the time of writing, the US has not adopted an overarching national mask mandate, although, as discussed below, many States have stepped in to fill this gap. However, among the first actions of the Biden administration was the Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing, under which everyone present at a federal building or other facilities – regardless of the reason – to wear a face mask, maintain necessary social distancing measures and follow applicable CDC guidelines in place at the time.<sup>52</sup> This Order further requires coordination between federal officials and States, and other authorities to encourage the wearing of face masks across the country as a standard practice.<sup>53</sup> At the same time, the Biden administration has used existing laws, notably the Occupational Safety and Health Act, to attempt to extend federal influence in Covid-19-related workplace safety and oversight.<sup>54</sup>

On July 1, 2021, the White House released the *U.S. COVID-19 Global Response and Recovery Framework*, seeking to ensure a coordinated

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<sup>44</sup> *Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources To Respond to the Spread of COVID-19*, (27 March 2020) Exec. Order No. 13911.

<sup>45</sup> *Combating Public Health Emergencies and Strengthening National Security by Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States*, Exec. Order No. 13944 (6 August 2020).

<sup>46</sup> *Ensuring Access to United States Government COVID-19 Vaccines*, (8 December 2020) Exec. Order No. 13962.

<sup>47</sup> *Ibidem*.

<sup>48</sup> *CARES Act*, *supra* note 22 at sect 3704.

<sup>49</sup> *Improving Rural Health and Telehealth Access*, (3 August 2020) Exec. Order 13941.

<sup>50</sup> See *Saving Lives Through Increased Support for Mental- and Behavioral-Health Needs*, (3 October 2020) Exec. Order No. 13954.

<sup>51</sup> *Organizing and Mobilizing the United States Government To Provide a Unified and Effective Response To Combat COVID-19 and To Provide United States Leadership on Global Health and Security*, (20 January 2021) Exec. Order No. 13987.

<sup>52</sup> *Protecting the Federal Workforce and Requiring Mask-Wearing*, (20 January 2021) Exec. Order No. 13991.

<sup>53</sup> *Ibidem*.

<sup>54</sup> *Protecting Worker Health and Safety*, (21 January 2021) Exec. Order No. 13999.

international, national and State-based effort to quell the pandemic and respond to its impacts.<sup>55</sup> This Framework establishes the five overarching policies that will inform American pandemic responses:

1) accelerate widespread and equitable access to and delivery of safe and effective COVID-19 vaccinations;

2) reduce morbidity and mortality from COVID-19, mitigate transmission, and strengthen health systems, including to prevent, detect, and respond to pandemic threats;

3) address acute needs driven by COVID-19, mitigate household shocks, and build resilience;

4) bolster economies and other critical systems under stress due to COVID-19 to prevent backsliding and enable recovery; and

5) strengthen the international health security architecture to prevent, detect, and respond to pandemic threats.<sup>56</sup>

The Framework sets a global vaccination target date of 2022 and specifies that the goal is to vaccinate 2/3 of the eligible global population.<sup>57</sup> At the same time, the Framework works from the understanding that the national target is to bring Covid-19 under control and to reduce mortality rates to pre-pandemic levels rather than entirely eradicating the virus.<sup>58</sup>

Under the CARES Act, Congress established a medical malpractice liability exception for medical professionals who volunteer to assist in Covid-19 responses, provided the act or omission potentially incurring liability happened as part of the Covid-19 treatment system.<sup>59</sup> This will be discussed below in the State context as well.

Anticipating the need for a vaccine to combat the Covid-19 pandemic, the CARES Act establishes requirements for the vaccine – prospective as it was at the time – to be administered free of cost to the American population through cooperation with federal, state, and private health insurance entities.<sup>60</sup>

The Rescue Plan Act, enacted several months after vaccination began in most States, allocates

funding to States for vaccine rollout plans, including mobile vaccination units and the payment of secondary costs for vaccine access such as transportation costs to access vaccine distribution sites.<sup>61</sup> The Act also provides for continued studies of the Covid-19 virus and emerging strains to identify and take proactive measures as necessary.<sup>62</sup>

### 2.3. Federal-State Elements

In the US military system, the National Guard branches are organized by state and fall under the jurisdiction of a state governor and the President of the United States when exercising the Commander-in-Chief role. By the end of March 2020, President Trump issued the first authorization of the use of and federal payments for National Guard troops for Covid-19-related activities.<sup>63</sup> These orders have consistently been reauthorized each month from March 2020 onward, through the Biden administration. However, as the nature of the pandemic has shifted, the financial reimbursements to the States have begun to decline.<sup>64</sup>

Several cases have been brought to the federal court system in the wake of Covid-19 pandemic responses by the government at all levels, although many of these cases have challenged State law on religious and freedom of association grounds. In these instances, the US Supreme Court has opined in favor of the least restrictive means for protecting the public while also respecting freedom of religion.<sup>65</sup> In a significant case, the US Supreme Court established a new precedent by setting a broad definition of the groups qualifying for recognized Native American group status to receive federal aid and assistance under the CARES Act.<sup>66</sup>

### 3. State Responses

The initial responses of the States in terms of recognizing Covid-19 as a threat varied dramatically. In some States, such as Alaska, declarations of public health emergencies came as

<sup>55</sup> *U.S. COVID-19 Global Response and Recovery Framework* (1 June 2021).

<sup>56</sup> *Ibidem* at p 4.

<sup>57</sup> *Ibidem* at p 6.

<sup>58</sup> *Ibidem*.

<sup>59</sup> *CARES Act, supra* note 22 at sect 3215.

<sup>60</sup> *Ibidem* at sect 3714.

<sup>61</sup> See *American Rescue Plan, supra* note 31 at subject D.

<sup>62</sup> *Ibidem* at sect 2304.

<sup>63</sup> *Providing Federal Support for Governors' Use of the National Guard To Respond to COVID-19*, 85 FR 16997 (22 March 2020).

<sup>64</sup> See *Extension of the Use of the National Guard To Respond to COVID-19 and To Facilitate Economic*

*Recovery*, 85 FR 47885 (3 August 2020); *Extension of the Use of the National Guard To Respond to COVID-19 and To Facilitate Economic Recovery*, 85 FR 49225 (7 August 2020); *Memorandum To Extend Federal Support to Governors' Use of the National Guard To Respond to COVID-19 and To Increase Reimbursement and Other Assistance Provided to States*, 86 FR 7481 (21 January 2021).

<sup>65</sup> See *Tandon v Newsom*, 141 S.Ct. 1294 (2021); *Roman Catholic Diocese of Brooklyn v Cuomo*, 141 S.Ct. 93 (2020).

<sup>66</sup> See *Yellen v Confederated Tribes of the Chehalis Reservation*, 141 S.Ct. 2434 (2021).

early as January 2021.<sup>67</sup> However, these declarations subsequently evolved into declarations of pandemic emergencies.<sup>68</sup>

### 3.1. Economic and Social Responses

Although there has been a notable lack of lockdowns at the national level in the US when compared with other countries around the world, many States and even some municipalities have filled this void at various points throughout the pandemic. For example, in Alaska, major cities, including Juneau, the State capitol, have been locked down for extensive periods, resulting in severe economic impacts.<sup>69</sup> To allow for continued authorization of social, economic, and health programs to address the pandemic, the Alaska legislature approved legislation extending the declaration of a disaster-based emergency and conferral of emergency powers on the governor effective until December 31, 2021.<sup>70</sup> Perhaps most extensively, California adopted a shelter-in-place mandate for much of 2020, leading to a phased relaxation of restrictions throughout 2021.<sup>71</sup> These rules are consistently updated as deemed necessary by the state.

Most recently, an order to wear masks in public was reinstated due to a spike in Covid-19 cases in California.<sup>72</sup>

In terms of education, States have recognized the issues attendant with remote learning during

the pandemic and created a series of efforts to address them.<sup>73</sup> In some states, such as Arkansas, a dedicated tutoring corps has been established.<sup>74</sup>

Colorado has established a special law to fund additional online educational services where necessary to fill the gaps in education stemming from remote learning systems.<sup>75</sup> Testing for students seeking to pass the grade they are currently enrolled in and advance to the next grade level, or to graduate from their school programs, has been a consistent issue of state concern, with some States opting to suspend or delay the administration of these tests where the use of online evaluations was deemed inappropriate.<sup>76</sup>

To facilitate economic recovery and encourage qualifying businesses to remain open during the pandemic and ease restrictions, many states have adopted measures limiting any potential liability for businesses should Covid-19 transmissions occur on their premises.<sup>77</sup> In addition, many states have adopted laws and rules that extend the ability of those unemployed due to and during the pandemic. Some have also increased the number of benefits available to the unemployed.<sup>78</sup>

As in the federal context, States have typically opted to extend income tax filings in 2020 and 2021.<sup>79</sup> Similarly, States have acted to ensure extended and enhanced laws to prevent evictions resulting from non-payment of rents and mortgages due to pandemic-related economic stresses.<sup>80</sup>

<sup>67</sup> See, e.g., 2021 Alaska Laws Ch. 2 (H.B. 76).

<sup>68</sup> *Ibidem*.

<sup>69</sup> *Ibidem*.

<sup>70</sup> *Ibidem*.

<sup>71</sup> See State of California, 'Current Safety Measures' <<https://covid19.ca.gov/safely-reopening/>> accessed 19 August 2021.

<sup>72</sup> See City of San Francisco, 'Coronavirus (COVID-19)' <<https://sf.gov/stay-home-except-essential-needs>> accessed 19 August 2021.

<sup>73</sup> See e.g., Hawaii H.B. No. 1362 (2021); Illinois H.B. 2748 (2021); Maine Ch. 372 H.P. 238 (2021); North Carolina H.B. No. 82 (2021); Nevada S.B. No. 173 (2021); NJ Assembly No. 4461 (2021); PA Act No. 2021-66 (2021).

<sup>74</sup> See Arkansas S.B. 564 (2021).

<sup>75</sup> Colorado H.B. 21-1259 (2021).

<sup>76</sup> See Colorado H.B. 21-1161 (2021).

<sup>77</sup> See Arkansas H.B. 1487 (2021); Florida S.B. 72 (2021); Georgia H.B. 112 (2021); Hawaii H.B. No. 1376 (2021); Missouri S.B. Nos. 51 & 42 (2021); Montana H.B. No. 435 (2021).

<sup>78</sup> See CO Legis. 1ES 20B-002 (2020); 2020 CO. EO. D12-20; 2020 CO. E.O. D100-20; 2020 CT. E.O. 9P; 2020 DE Reg. Text 556331; DC Legis. Act 23-326 (2021); DC Legis. Act 23-435 (2020); 2020 FL E.O. 20-104; 2020 Hawaii Laws Act 9; 2020 HI Reg. Text 569056; 2020 ID E.O. P20-07; IL Legis. 101-633 (2020); 2020 IN E.O. 20-5; KS Legis. 1SS 1 (2020); 2019 KS E.O. 20-17; 2020 LA Reg.

Text 557817; MA Legis. 81 (2020); MA Legis. 201 (2020); MI Legis. 229 (2020); 2019 NE E.O. 20-04; NV Legis. 7 (2020); NY Legis. 97 (2020); 2020 OH Reg. Text 554457; 2020 OR Reg. Text 550910; 2020 PA Reg. Text 569459; 2020 RI Reg. Text 549315; 2019 SC E.O. 20-63; 2019 TN E.O. 73; 2019 VT E.O. 01-20; 2020 VA E.O. 54; 2020 WV E.O. 4-20; 2019 WI E.O. 20-07.

<sup>79</sup> See Arkansas S.B. 593 (2021); 2020 Colo. Legis. Serv. Ch. 5; 2021 Georgia Laws Act 3; 2020 Hawaii Laws Act 9; 2021 Idaho Laws Ch. 86; 2020 Ill. Legis. Serv. P.A. 101-635; 2020 Ia. Legis. Serv. H.F. 2641; 2021 KS E.O. 21-18; 2019 NE E.O. 20-17; 2020 NH Legis. Serv. Exec. Ord. 2020-56—Emerg.; 2020 New Mexico Laws 1st Sp. Sess. Ch. 4; 2021 Sess. Law. News of N.Y. Ch. 58; 2020 Pa. Legis. Serv. Act 2020-114; 2019 TN EO 36; 2020 Utah Laws 6<sup>th</sup> Sp. Sess. Ch. 15.

<sup>80</sup> See 2020 AL E.O. P20-06; 2020 AZ E.O. 20-14; 2020 AZ E.O. 2-049; 2019 CA E.O. 28-20; 2019 CA E.O. 37-20; 2020 Colo. Legis. Serv. 2020 CO E.O. D12-20; 2020 CO E.O. D31-20; 2020 CO E.O. D101-20; 2020 CO E.O. D99-20; 2020 CT E.O. 7S; Ch. 112; DC Act 24-67 (2021), Act 24-30 (2021); 2020 FL E.O. 20-180; 2020 IL Reg. Text 568990; 2020 IN E.O. 20-6; 2019 KS E.O. 20-10; 2020 KY E.O. 20-700; 2021 KY E.O. 21-073; 2019 ME E.O. 19-40; 2020 MD E.O. 11; 2020 Mass. Legis. Serv. Ch. 257; 2020 Miss. Laws H.B. 1810; 2019 MT E.O. D20-12; 2019 NE E.O. 20-07; 2020 NJ Sess. Law Serv. Ch. 149; NY A. 7127 (2021); 2019 NC E.O. 171; 2020 Oregon Laws 3rd Sp. Sess. Ch. 3; SC Act 99 (2021); 2020 Utah Laws 5th Sp. Sess. Ch. 11; 2020

Food production concerns have been raised at the state and national levels and have been the subject of various laws and rules. For example, in Arizona, a newly passed law established coordination between agricultural departments in the University of Arizona system and farmers and agricultural organizations to assist in food production to meet the needs of Arizona citizens.<sup>81</sup>

One of the unfortunate results of the Covid-19 pandemic and associated responses has been an increase in domestic violence across the globe, and this is undoubtedly true in the US. As a result, many US states have adopted laws and rules addressing domestic violence and seeking to assist adult and child victims in the short and long term. One core example of this is the trend in several states to create exceptions to stay-at-home or shelter-in-place orders for instances of domestic violence.<sup>82</sup> In other cases, states have modified restrictions on courts and court practice during the pandemic to ensure that temporary and other forms of restraining orders can be ordered.<sup>83</sup>

Under federal and the majority of state law, many formal documents must be executed in the physical presence of a licensed notary public to be legally binding. However, the pandemic has caused a strain on these requirements, especially when many of the offices in which notaries can be found have been closed for long periods of time. To remedy this issue, States have adopted laws to allow for the use of online conferencing systems to validate execution in the presence of a notary for the duration of the pandemic.<sup>84</sup> Similarly, some states have adopted laws to allow for the electronic filing of government filings as a result of the pandemic and pandemic responses.<sup>85</sup>

### 3.2. Medical Treatment and Vaccine Access

Many states have adopted laws that recognize and expand the allowable uses of telemedicine and telehealth services for the duration of the pandemic, if not longer.<sup>86</sup> Additionally, States have tended to enact special laws to absolve medical professionals from tort liability related to the diagnosis and treatment of Covid-19 patients.<sup>87</sup>

In the absence of a national vaccine passport system, some states have opted to create their own vaccine passports for use at large gatherings and other events. These can be used as a repository of information on vaccine administration for purposes such as boarding a flight.<sup>88</sup> Other states have shown extreme reluctance to participate in such systems, however, and some have gone as far as to ban even the requirement that a person show proof of vaccination by any state or sub-state governmental actor.<sup>89</sup> Further, many states have adopted laws that prohibit the state or sub-state governmental actors from requiring individuals to receive a Covid-19 vaccine.<sup>90</sup>

In some instances, states have adopted legislation to allow the conversion of medical facilities to remote hospital settings to ease overburdened hospitals and assist in treating patients for issues other than Covid-19.<sup>91</sup> Similarly, states have taken measures to provide additional reimbursements for hospice care facilities that have had to switch focus and receive long-term care nursing patients due to the need for other Covid-19-related treatment facilities.<sup>92</sup> Nursing homes in the US represented sites of high Covid-19 transmission and death rates, and states have begun to recognize this in new laws which require the stockpiling of PPE and other essential items, adopt plans for future outbreaks similar to the Covid-19 pandemic

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Vermont Laws No. 101; 2019 WA E.O. P20-19.5; 2019 WI E.O. 20-15.

<sup>81</sup> Arizona S.B. 1825 (2021).

<sup>82</sup> See 2020 AL E.O. 504; 2020 AZ E.O. 18; 2020 CT E.O. 23; 2020 DE E.O. 44; 2020 D.E. EO 50; 2020 IL E.O. 10; 2020 IL E.O. 32; 2020 IN E.O. 8; 2020 MN E.O. 20; 2020 MN E.O. 33; 2020 MN E.O. 47; 2020 MS E.O. 11; 2020 MS E.O. 12; 2020 MN E.O. 23; 2020 MT E.O. 500; 2020 NC E.O. 121; 2020 UT E.O. 500; 2020 UT E.O. 501; 2020 UT E.O. 502; 2020 WA E.O. 520; 2020 WI E.O. 511; 2020 WI E.O. 528.

<sup>83</sup> See Arkansas H.B. 1724 (2021); Cal. Rules of Court, App. I, CA ST RULES OF COURT App. I; NJ Directives Dir. 12-20; 9 NYCRR 8.202.48; 2020 NC E.O. 135; 2020 WA E.O. 584; 2020 WA E.O. 543.

<sup>84</sup> See Arkansas S.B. 340 (2021).

<sup>85</sup> See Colorado H.B. 21-1100 (2021); Illinois S.B. 730 (2021).

<sup>86</sup> See Arkansas H.B. 1063 (2021); Arizona H.B. 2454 (2021); Hawaii S.B. 970 (2021); Maryland S.B. No. 3 (2021); Maine Ch. 291 S.P. 50 (2021).

<sup>87</sup> See 2020 AL E.O. P20-05; 2020 Alaska Laws Ch. 10; Arizona S.B. 1377 (2021); 2019 CA E.O. 43-20; 2020 CO E.O. D20-20; 2020 CT E.O. 7FF; 2020 FL E.O. 20-85; 2019 HI E.O. 20-02; 2021 ID E.O. P21-01; 2019 IL E.O. 20-09; 2019 IA E.O. P20-03; 2019 KS E.O. 20-08; 2020 LA E.O. P20-32; 2020 MD E.O. 26; 2019 MA E.O. E20- 2019 MN E.O. 20-B; 2019 MN E.O. 20-28; Montana H.B. No. 435 (2021); 2019 NE E.O. 20-12; 2019 NH E.O. 20-04; 2019 ND E.O. 20-05; SC Act 99 (2021); TX S.B. No. 6 (2021); 2020 UT E.O. 20-69; 2019 WA E.O. P20-29; 2020 WV E.O. 7.

<sup>88</sup> See State of New York, *Excelsior Pass* <<https://covid19vaccine.health.ny.gov/excelsior-pass>> accessed 19 August 2021.

<sup>89</sup> See Arkansas S.B. 615 (2021).

<sup>90</sup> See Arkansas H.B. 1547 (2021); Arizona S.B. 1824 (2021).

<sup>91</sup> See, e.g., Arkansas S.B. 663 (2021), H.B. 1061 (2021).

<sup>92</sup> See Colorado S.B. 21-214 (2021).



and create oversight and coordination mechanisms for outbreaks at the facility level.<sup>93</sup>

One area in which divergent state practices have emerged is the ability of family members to visit relatives in hospitals and long-term care facilities during the pandemic. In some states, these visits were banned from the early stages of the pandemic onward and are only now beginning to re-open, albeit with masking and other precautionary measures still in place.<sup>94</sup> However, in other states, laws were adopted to specifically require that hospitals and care facilities admit visitors subject to precautionary measure guidelines from the CDC.<sup>95</sup>

Recognizing the intensive impacts of Covid-19 treatment on the medical community, some states have adopted measures that allow medical professionals needing time off after these rotations due to physical and emotional impacts to qualify for workers' compensation benefits.<sup>96</sup>

#### 4. Conclusion

The US response to Covid-19 has been diverse.

From federal mandates aiming to secure vaccine's availability and provide economic relief to US citizens to state-mandated movement restrictions and measures to facilitate economic recovery, Covid-19 has impacted US policy-making in unprecedented ways. Some of the state measures have helped fill in the gaps left by the federal-mandated measures. However, the juxtaposition of national and state legal and regulatory responses has proven to be an obstacle in comprehensively addressing the current public health crisis. Legal and health governance is crucial in times like these.

As the Delta variant brings new challenges to the healthcare system, the policy measures will once again be tested. The challenge now is to build back better in a way that ensures economic recovery and stability, but also prevents future pandemics from hitting the country as hard as Covid-19 has.

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<sup>93</sup> See Connecticut S.B. 1030 (2021).

<sup>94</sup> See Centers for Medicare and Medicaid Services (CMS), *Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes* (CMS, 13 March 2020) <<https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and/guidance-infection-control-and-prevention-coronavirus-disease-2019-covid-19-nursing-homes-revised>> accessed 19 August 2021.

<sup>95</sup> See Alabama H.B. No. 521 (2021); Connecticut H.B. 6634 (2021); Maryland H.B. No. 983 (2021); NY A. 6966 (2021).

<sup>96</sup> Connecticut S.B. No. 660 (2021).

