



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

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**ACT** for  
**Public  
Health**



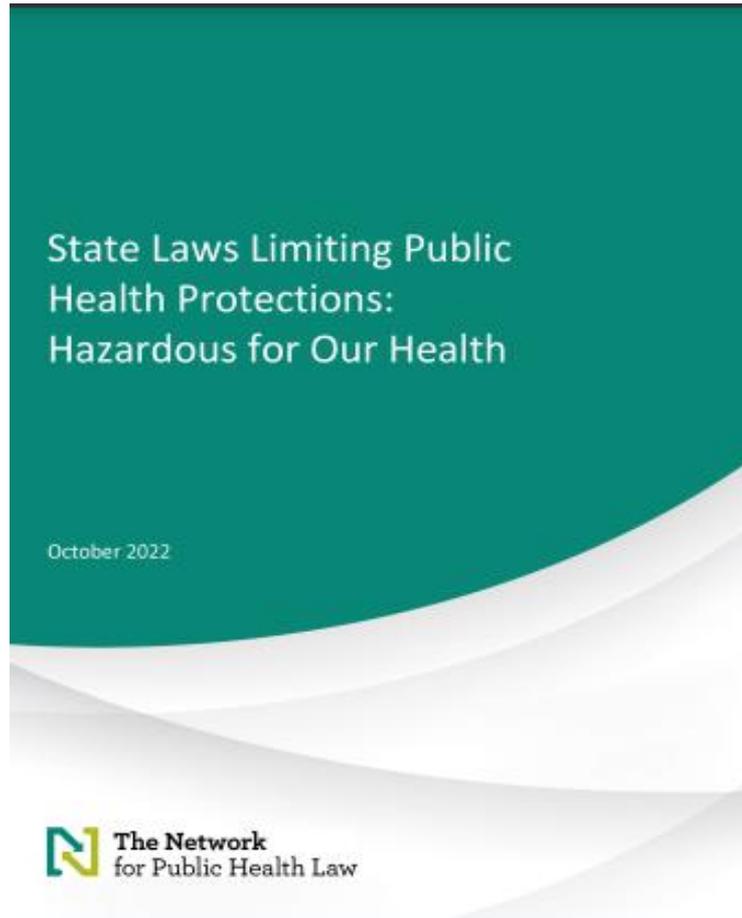


## Troubling Trends

» **Coordinated backlash**

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

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



**\*Prohibitions on Public Health Interventions**

**\*Shifts in Authority**

**\*Limitations on Executive Orders**

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



## Vaccination

- » **WHAT THESE TYPES OF LAWS DO** Prohibit government entities from requiring COVID vaccination of employees, students, or residents who qualify for an exemption based on religious belief, conscience. Under some laws, no exemption is needed.
- » **EXAMPLES** Arizona House Bill 2498 prohibits a government entity from requiring a resident of the state to receive a vaccination for COVID-19. Others include Alaska, Tennessee, Utah, West Virginia, Wyoming.
- » **PROBLEMATIC BECAUSE** Vaccines are among the most effective public health interventions. Vaccine requirements impose a relatively modest restriction on individual liberties. Prohibiting COVID vaccine requirements, despite longstanding use of vaccine requirements in U.S. law, undermines governmental authority to require other vaccines.



## Masks

- » **WHAT THESE TYPES OF LAWS DO** Block public health and executive branch officials from requiring the use of face masks in public places such as schools, businesses, workplaces, and places of worship, or limiting the time during which such requirements may be in place.
- » **EXAMPLES** Tennessee Senate Bill 9014 prohibits most governmental entities from requiring persons (including employees) to wear face coverings as a condition for access or services. Others include Iowa, North Dakota, Oklahoma.
- » **PROBLEMATIC BECAUSE** Evidence demonstrates that face masks are an effective means to control the spread of respiratory diseases, and they are less restrictive than alternative measures.



## Shifts in Authority

- » **WHAT THESE TYPES OF LAWS DO** Moves legal authority from one level or branch of government to another level or branch of government;
- » **EXAMPLES** Senate Bill 379 in Arkansas authorized a Legislative Council to terminate a Governor's declaration of emergency or a Board of Health directive. Others include Arkansas, Florida, New York, Ohio, West Virginia
- » **PROBLEMATIC BECAUSE** moving legal authority away from public health agencies and from the executive branch to the legislative branch may devalue expertise and elevate short-term political popularity over necessary but unappealing action. Some bills and laws may not be constitutional.



## Limits on PH and Executive Orders

- » **WHAT THESE TYPES OF LAWS DO** limits authority to address a public health emergency and may block reasonable public health measures
- » **EXAMPLES** Indiana Senate Bill 5 prohibits local health officers from imposing local emergency orders that are more stringent than those issued by the governor during a declared state of emergency, unless approved by the local legislative body. Others include Kentucky, Michigan, Ohio.
- » **PROBLEMATIC BECAUSE** local health officers are generally in the best position to determine whether local conditions warrant a heightened response, and are likely to be able to act more quickly than a local legislative body

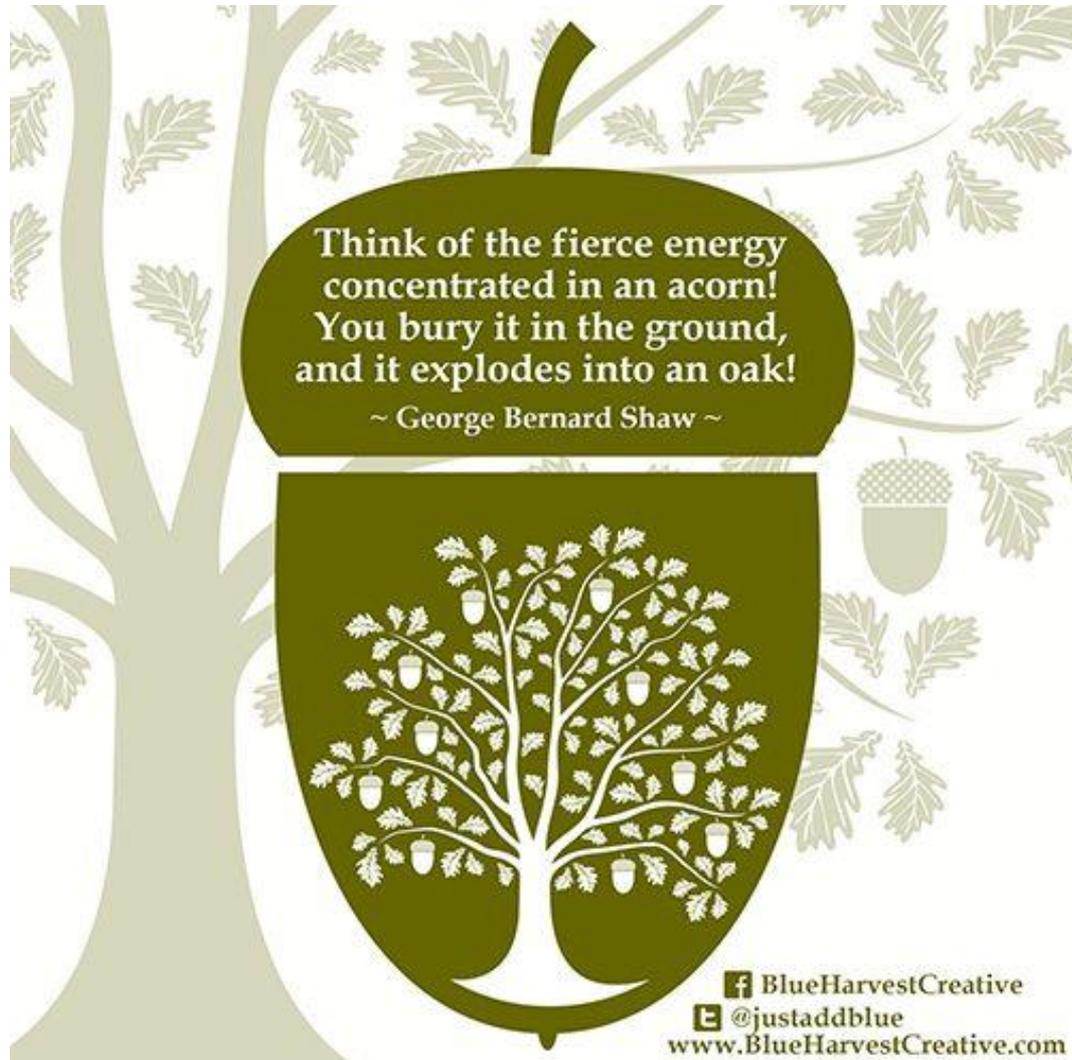


## Choosing Individual Rights Over Common Good

- » **WHAT THESE TYPES OF LAWS DO** Protect individual Constitutional rights, including rights to: peaceful assembly, free exercise of religion, and bear arms, even when exercising these rights threatens community health
- » **EXAMPLES** Montana House Bill 230 protects the individual right of physical attendance at religious services. Others include Idaho, Kentucky, New Hampshire, Florida
- » **PROBLEMATIC BECAUSE** By treating individual liberties as nearly absolute rights, these laws may place the rights (and health) of other individuals in the community at risk, as where physical attendance at religious services may enable the spread of infectious disease, and interfere with public health efforts to contain spread in the community



## Promising Trends





## Tools of Public Health Law

- » **Power to tax and spend**
- » **Power to alter the informational environment**
- » **Power to alter the built environment**
- » **Power to alter the socioeconomic environment**
- » **Direct regulation—not the only option!!**
- » **Indirect regulation through the tort system**
- » **Deregulation (when law is a barrier to public health)**

Source: LAWRENCE GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 28–38 (2008, 2<sup>nd</sup> ed.).



## We Need a Public Health System that is:

- » **Effective**
- » **Informed by Expertise, Emerging Evidence, and Lived Experience**
- » **Equitable and Anti-Racist**
- » **Has Access to Resources (Human, Financial, Data, Infrastructure)**
- » **Able to Act Quickly and Lead Adaptively**
- » **Transparent and Democratic**
- » **Trusted by the Community**
- » **Competent, Confident Resilient**
- » **Balanced between the Common Good and Individual Rights**



# Bright Spots





## Public Health Interventions/ Emergency Orders

- » **WHAT THESE TYPES OF LAWS DO** Empower public health officials and others to take action to protect community health, while designed to restrict individual liberties no more than is reasonable and necessary
- » **EXAMPLES** Maine LD 1 COVID 19 Patient Bill of Rights—requires health insurance providers to cover COVID-19 screening, testing, and vaccine costs at no cost to the patient
- » **HELPFUL BECAUSE** While some individuals sought to be free of a requirement to obtain COVID vaccines (as a condition of employment, for example), other individuals wished to obtain COVID screening, testing, and vaccination, but may have been concerned that costs would be imposed during the pandemic or in the future. Ensuring that those who seek vaccination are not barred by cost protects community health.



# What else “Counts” as a Public Health Intervention/ Exercise of Public Health Authority?

## » **Safety Net Legislation**

Eviction Moratoria

Unemployment Benefits and Paid Sick Leave

Access to Green Space

## » **Climate, Environment, and Environmental Justice Legislation**

Washington State Healthy Environment for All (HEAL) Act

Climate and Equitable Jobs Act in Illinois

## » **Mental Health**

Indiana and Louisiana teacher training re trauma and ACEs

States begin to implement 988, national suicide prevention hotline

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



## Funding

- » **WHAT THESE TYPES OF LAWS DO** Establish stable, predictable funding streams, providing a strong foundation for a sound public health system
- » **EXAMPLES** Include
  - » **Foundational Public Health Services (Washington)**
  - » **Public Health Modernization (Oregon)**
  - » **Public Health Transformation (Kentucky)**
  - » **State Action for Public Health Excellence (Massachusetts)**
- » **HELPFUL BECAUSE** Predictable funding streams support long-term planning and ongoing implementation, as well as helping to attract and retain a skilled, dedicated workforce with the capacity to address ongoing and emerging public health challenges



## Health Equity

- » **WHAT THESE TYPES OF LAWS DO** Give public health officials the authority to identify, quantify, analyze, and correct disparate health opportunities and outcomes, including those associated with race and racial discrimination
- » **EXAMPLES**
- » **COVID Health Equity Task Forces (Virginia SB 1296)**
- » **Declarations of Racism as a Public Health Crisis (Minn House of Rep HR 1, 2020 2<sup>nd</sup> special session)**
- » **Equitable Engagement Compensation Programs (Oregon DOT)**
- » **HELPFUL BECAUSE** Public health analysis of COVID 19 morbidity and mortality demonstrated disparities associated with race, ethnicity, status as a frontline worker, and rural or urban residence, among others



## Governance

- » **WHAT THESE TYPES OF LAWS DO** Establish the manner of governing in order to achieve goals, provide checks and balances
- » **EXAMPLES** Indiana Executive Order 21-21 establishing public health commission. Commission Report informed the governor's legislative agenda, including Senate Bill 4.  
  
[https://www.in.gov/health/files/GPHC-Report-FINAL-2022-08-01\\_corrected.pdf](https://www.in.gov/health/files/GPHC-Report-FINAL-2022-08-01_corrected.pdf)
- » **HELPFUL BECAUSE** The way in which public health (or any other government entity) takes action may support achieving societal goals, or undermine them. Government processes may increase trust and engender community support, or erode them.



## Infrastructure

- » **WHAT THESE TYPES OF LAWS DO** Commit the use of public funds to develop, build, and maintain critical facilities, structures, and systems that provide the foundation for public health
- » **EXAMPLES INCLUDE**
- » **South Dakota SB 58** authorizing construction of a new public health lab
- » **Numerous states** have enacted laws authorizing use of funds appropriated under the federal American Rescue Plan Act
- » **HELPFUL BECAUSE** Infrastructure such as public health labs and modern IT systems support early detection, surveillance, and prevention of disease, including rapid, secure, and useful communication of data, as well as other day to day public health functions. In addition, they provide jobs



## Workforce

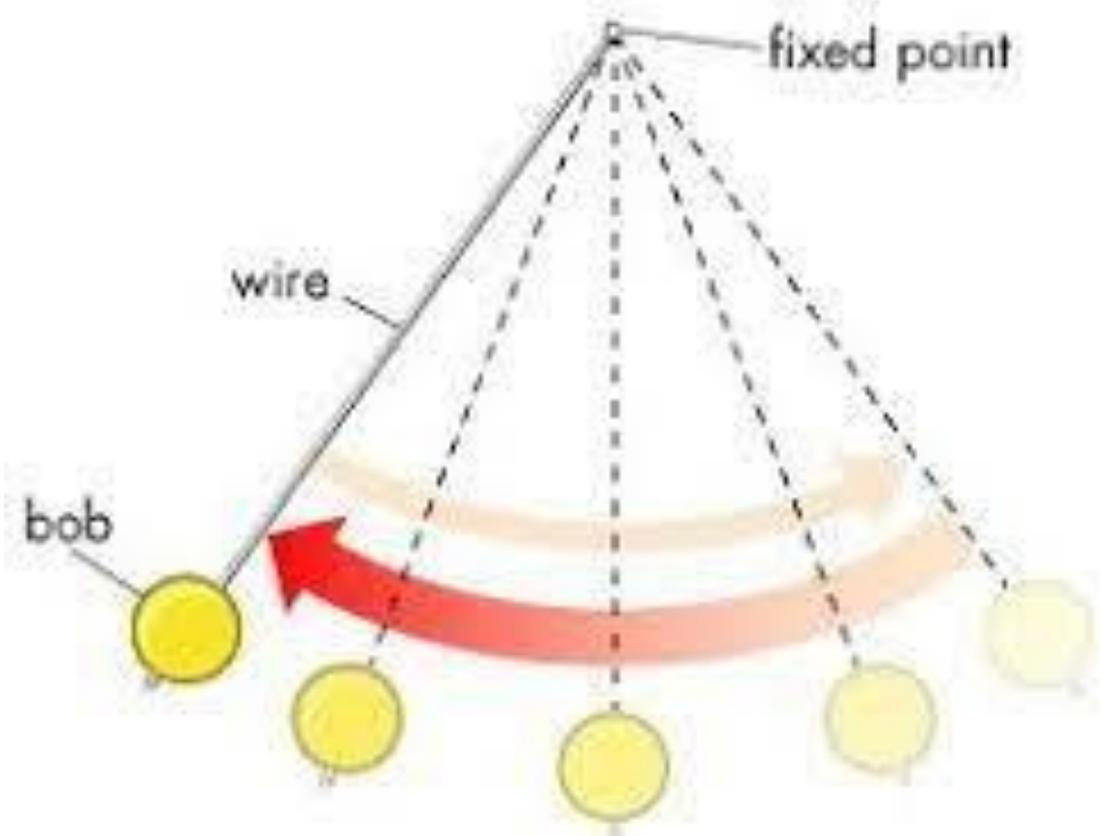
- » **WHAT THESE TYPES OF LAWS DO** Support the public health workforce by providing protection from threats and harassment; providing additional pay in recognition of service during a public health emergency; providing systemic supports to address trauma and foster resilience; and providing education and training opportunities to recruit and retain a professional public health workforce
- » **EXAMPLES**
- » **Colorado HB 1041** is an example of a “doxxing law” to protect the personal information of public officials, public employees, or all persons. Other examples include laws in Oklahoma and Oregon
- » **HELPFUL BECAUSE** The public health workforce served at the frontlines of the COVID pandemic, and is integral to a positive vision (and reality) for public health in the future.



# Pendulum Swings



# Will There be a Return to Center?





# Or Paradigm Shifts



# Or Will We See Durable Shifts in Public Health and Public Health Law Paradigms?

## OHA's Acknowledgement to Community

We are committed to partnerships, co-creation and co-ownership of solutions with communities disproportionately affected by health issues so that groups can actively participate in planning, implementing and evaluating efforts to address the COVID-19 response and other health issues.

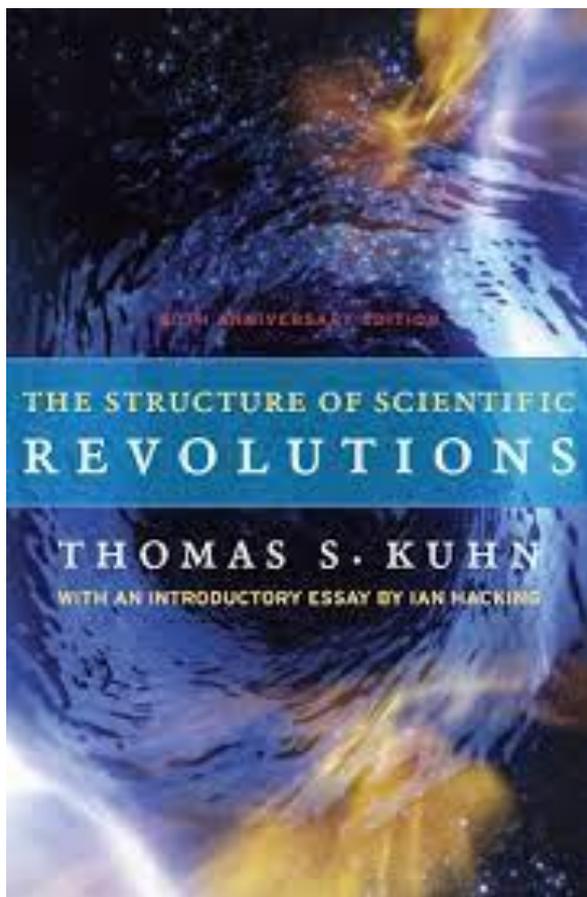


PUBLIC HEALTH DIVISION  
Office of the State Public Health Director





# Are We Doing “Normal Public Health Law?”



<https://www.apqc.org/blog/preparing-process-management-paradigm-shift>



The Three Bears, Paul Galdone



## Thank You

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