

The Texas Disaster Act—This is What Democracy Looks Like?

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The Texas Disaster Act of 1975—sometimes called the Emergency Powers Act—authorizes the governor to “suspend the provisions of any regulatory statute [or rule] prescribing the procedures for conduct of state business . . . in coping with a disaster.” TEX. GOV'T CODE ANN. § 418.016(a). Governor Greg Abbott has exercised this executive power during the COVID-19 pandemic (unilaterally and broadly), unchecked by the courts or the Texas Legislature, which cannot convene before the next regular session in 2021 unless the governor calls a special session.

Exigent circumstances sometimes warrant a governor's application of emergency powers without seeking legislative approval. Executive powers, however, should not extend past constitutional limits—even during a disaster. Texas lawmakers should consider amending the Act to ensure legislative oversight over the governor's expansive authority to declare a state of disaster and suspend laws.

Our discussion of the Texas Disaster Act will proceed as follows:

- **Part I** provides a brief history on emergency management statutes in Texas and key provisions of the Texas Disaster Act.
- **Part II** briefly discusses Governor Abbott's most notable (and controversial) coronavirus-related executive orders.
- **Part III** considers potential bases for challenging Governor Abbot's coronavirus-related executive orders.
- **Part IV** discusses recent demands for legislative oversight of the governor's powers under the Texas Disaster Act, highlights efforts by other state legislatures to limit their governors' powers during COVID-19 and other emergencies, and proposes amendments to the Texas Disaster Act.

Additional resources and information are attached:

- **Appendix A** lists every coronavirus-related executive order and proclamation issued by Governor Abbott from March 13-October 28, 2020.
- **Appendix B** identifies cases that have challenged the constitutionality of Governor Abbott's coronavirus-related executive orders and proclamations.
- **Appendix C** includes provisions from all 50 states (plus D.C. and Puerto Rico) that provide for legislative oversight of disaster declarations.
- **Appendix D** tracks bills or resolutions that have been recently proposed in other states and aim to limit a governor's power during a declared disaster.

I. Overview of the Texas Disaster Act

A. Historical background

The State of Texas has more major disasters than any other state in the nation. Texas has had 360 federally declared disasters since 1953, the furthest back FEMA records are available online.¹ That's 24 more than California, a state infamous for earthquakes, fires, and landslides. *Id.*

Before 1950, state and local agencies took the lead in disaster response and recovery, with help from non-governmental organizations (often faith-based).² Cold War-era panic about a potential attack on U.S. soil prompted the formalizing of federal disaster preparedness and response efforts. *Id.* In response, Congress passed the Federal Disaster Relief Act of 1950, which authorized the president to provide supplementary federal assistance when a governor requested help and the president approved the request by declaring a major disaster.³ The Texas Legislature, when it next convened, unanimously passed Texas' first comprehensive emergency management statute—the Texas Civil Protection Act of 1951.⁴ The three-page statute authorized the governor to, among other things, organize a civil defense and disaster relief program, direct evacuation plans and operations, and issue directives and executive orders “within the limits of constitutional power.”⁵

A series of hurricanes and earthquakes in the late 1960s and early 1970s were catalysts for emergency response legislation and an increased focus on natural disasters.⁶ In 1972, the Council of

¹ See *Disaster Declarations for States and Counties*, FEMA, <https://www.fema.gov/data-visualization/disaster-declarations-states-and-counties> (last visited Oct. 28, 2020).

² Zoe Middleton, *FEMA: A brief history lesson*, TEXAS HOUSERS, (Dec. 21, 2017), <https://texashousers.org/2017/12/21/fema-a-brief-history-lesson/>.

³ *Unit Three: Overview of Federal Disaster Assistance*, at 3-2, https://training.fema.gov/emiweb/downloads/is7unit_3.pdf (last visited Oct. 28, 2020).

⁴ 1951 Tex. Gen. Laws 529; Augustus L. Campbell, *After the Storm: Understanding and Improving U.S. and Texas Disaster Recovery and Hazard Mitigation Policies*, 5 TEX. A&M J. PROP. L. 107, 128 (2018).

⁵ See generally Texas Civil Protection Act of 1951, <https://www.sll.texas.gov/assets/pdf/historical-statutes/1952/1952-supplement-to-1948-vernons-texas-statutes.pdf>.

⁶ Jason Marks, *A History of Emergency Response in Our Lives*, <https://www.peoriomagazines.com/ibi/2018/sep/history-emergency-response-our-daily-lives> (last visited Oct. 28, 2020).

State Governments proposed an Example State Disaster Act, recognizing that “vulnerability to disaster is steadily increasing” and earlier statutes were “not always well suited to meeting all disaster problems and responsibilities.”⁷ A few years later, the Legislature passed the Texas Disaster Act of 1975, modeled after the Example State Disaster Act. It was re-codified in 1987 and today can be found in Title 4 (Executive Branch), Chapter 418 (Emergency Management) of the Government Code. TEX. GOV’T CODE ANN. §§ 418.001-418.261.

B. “State of disaster” declaration

The Texas Disaster Act defines a “disaster” as “the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency.” *Id.* § 418.004.

Under the Act, the governor may—by executive order or proclamation—declare a state of disaster if he or she finds that “a disaster has occurred or that the occurrence or threat of disaster is imminent.” *Id.* § 418.014(a). That is, a declaration is not limited to after the fact, but rather can be issued ahead of an “imminent” threat.

A state of disaster declaration: “(i) activates the disaster recovery and rehabilitation aspects of the state emergency management plan applicable to the area subject to the declaration; and (ii) authorizes the deployment and use of any forces to which the plan applies and the use or distribution of any supplies, equipment, and materials or facilities assembled, stockpiled, or arranged to be made available under [the Texas Disaster Act] or other law relating to disasters.” *Id.* § 418.015(a).

Since 2001, Texas governors have issued 94 state of disaster declarations (plus extensions) for disasters including hurricanes, wildfires, tornadoes, winter storms, drought conditions, brain-eating amoeba, racial injustice protests, the September 11 attacks, and the 2013 explosion in West, Texas.⁸

⁷ *Special Report: Example State Disaster Act of 1972*, THE COUNCIL OF STATE GOVERNMENTS (1972) <https://lrl.texas.gov/scanned/SIRSI/1972%20Suggested%20State%20Legislation%20361.5%20C832.pdf>.

⁸ *See Governor documents search*, LEGISLATIVE REFERENCE LIBRARY OF TEXAS, <https://lrl.texas.gov/legLeaders/governors/searchDisaster.cfm> (last visited Oct. 28, 2020).

C. The governor's expansive authority under the Texas Disaster Act

The Texas Disaster Act grants the governor near carte-blanche discretion on when to declare a disaster and when to rescind the declaration. A disaster declaration expires after 30 days, but the governor can simply renew it at his or her discretion.⁹ Governor Abbott has renewed the COVID-19 state of disaster seven times so far, with the latest renewal on October 7, 2020.¹⁰

The Texas Legislature may terminate a state of disaster, but because the Legislature meets for just 140 days every other year, the governor has wide latitude to act unilaterally during emergencies that happen to occur during the interim.¹¹ The *only* authority for the Legislature to convene outside a regular session *lies with the governor*.¹² And so exists an effective catch-22 wherein a governor must convene the Legislature that aims to override his authority during an interim-period disaster. There have been 124 special sessions since 1850, and 51 of those sessions were called during an interim.¹³

Under the Act, “[d]uring a state of disaster and the following recovery period, the Governor is the commander in chief of state agencies, boards, and commissions having emergency

⁹ *Id.* § 418.014(c). The state of disaster can terminate earlier if (i) the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist; and (ii) the governor terminates the state of disaster by executive order. *Id.* § 418.014(b).

¹⁰ *Governor Abbott Renews State Disaster Declaration for COVID-19*, OFFICE OF THE TEXAS GOVERNOR (Oct. 7, 2020), <https://gov.texas.gov/news/post/governor-abbott-renews-state-disaster-declaration-for-covid-19>.

¹¹ TEX. GOV'T CODE ANN. § 418.014(c). Upon termination by the legislature, the Governor must issue an executive order ending the state of disaster. *Id.*

¹² Article 4, Section 8 of the Texas Constitution provides that: “(a) The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government, or at a different place, in case that should be in possession of the public enemy or in case of the prevalence of disease threat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.”

The interpretive commentary following Article 4, Section 8 in Vernon's Constitution of the State of Texas Annotated explains: “[The Governor] ‘may call at any time and for any reason, although he must state his purpose in the proclamation calling the legislators to special session.’” *Frequently asked questions about special sessions*, LEGISLATIVE REFERENCE LIBRARY OF TEXAS, <https://lrl.texas.gov/sessions/specialSessions/FAQ.cfm#:~:text=Unlike%20the%20president%20of%20the,house%20alone%20into%20special%20session> (last visited Oct. 28, 2020).

¹³ *Special sessions and years*, LEGISLATIVE REFERENCE LIBRARY OF TEXAS, <https://lrl.texas.gov/sessions/specialSessions/specialsessionYears.cfm> (last visited Oct. 28, 2020).

responsibilities.” TEX. GOV’T CODE ANN. § 418.015(c). The Act authorizes the governor to “issue executive orders, proclamations, and regulations” which “have the force and effect of law.” *Id.* § 418.012. The governor has broad authority under the Act to direct:

- use of public and private resources, including the commandeering of private property (subject to compensation requirements);
- evacuation or other movement of persons, including control of “the movement of persons and the occupancy of premises in the [disaster] area;”
- suspension or restriction of the sale or transportation of alcoholic beverages, firearms, explosives, and combustibles;
- temporary housing and emergency shelter;
- financial aid to individuals or families adversely affected by the disaster; and
- clearance of debris or wreckage from public or private land.

Id. §§ 418.017-.020; 418.022-.023.

In addition, the governor is authorized “to ***suspend the provisions of any regulatory statute*** prescribing the procedures for conduct of state business ***or the orders or rules of a state agency*** if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.” *Id.* § 418.016(a). This suspension-of-laws provision was a feature of the Example State Disaster Act.¹⁴ In the accompanying commentary, the Council of State Governments noted that “[i]n times of emergency it is often necessary [for a governor] to make exceptions on an ad hoc basis” and “improvise.” *Id.*

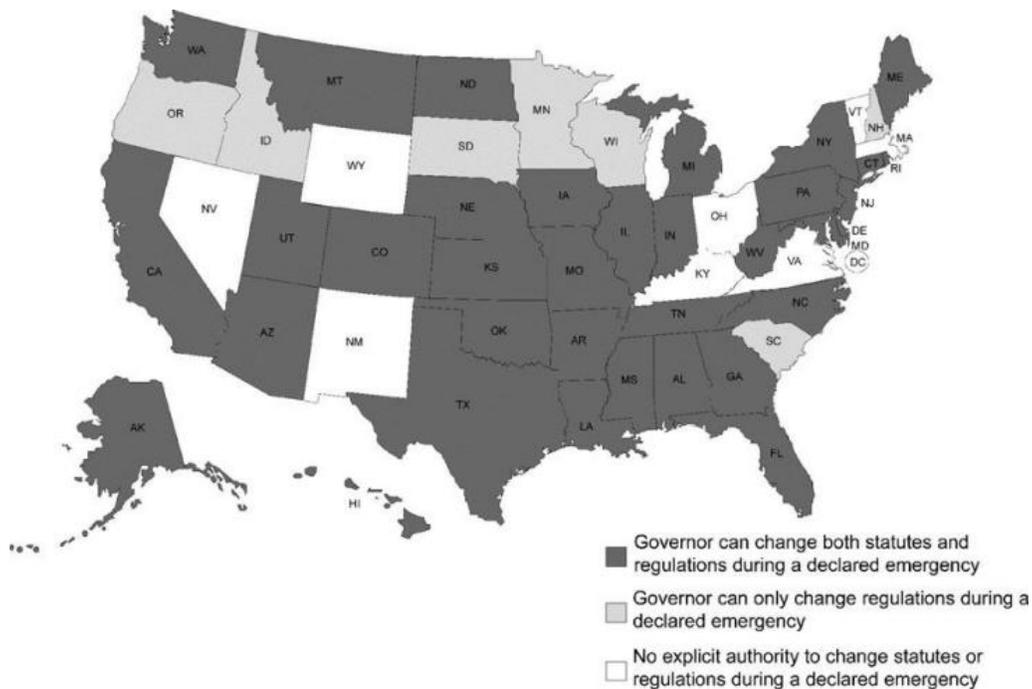
Governors have historically possessed emergency powers, but largely out of custom and the desire that someone should hold such a responsibility. *Id.* The Council of State Governments admitted that “there is some virtue” in keeping constitutional provisions dealing with the governor’s emergency powers “fragmentary or vague,” because “it is desirable that the Governor be able to do whatever is reasonable in meeting unforeseen circumstances.” *Id.* As they feared codifying authority would limit the governor’s powers elsewhere, a stipulation was included by the Council in the model act and then by the Legislature in the Texas law: “This [law] does not . . . (6) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in the

¹⁴ *Special Report: Example State Disaster Act of 1972*, THE COUNCIL OF STATE GOVERNMENTS (1972) <https://lrl.texas.gov/scanned/SIRSI/1972%20Suggested%20State%20Legislation%20361.5%20C832.pdf>.

governor under the constitution or laws of this state independent of or in conjunction with any provisions of this chapter." *Id.*; TEX. GOV'T CODE ANN. § 418.003.

The Texas Disaster Act, and its suspension-of-laws provision, is not an outlier. In 35 states, including Texas, governors are explicitly permitted to suspend or amend statutes and regulations that interfere with emergency response. *See Figure 1*. One state (*North Carolina*) actually permits governors to create new statutes and regulations, and two states (*Minnesota and New Hampshire*) permit the creation of regulations during emergencies. Eight states (*Kentucky, Massachusetts, Nevada, New Mexico, Ohio, Vermont, Virginia, and Wyoming*) and the District of Columbia provide no explicit authority to the governor (or, in the case of the District of Columbia, the mayor) to change statutes or regulations during a declared emergency.

Figure 1¹⁵



¹⁵ Gregory Sunshine, et al., *An Assessment of State Laws Providing Gubernatorial Authority to Remove Legal Barriers to Emergency Responses*, HEALTH SECURITY, Vol. 17, No. 2 (2019), <https://www.nga.org/wp-content/uploads/2019/06/An-Assessment-of-State-Laws-Providing-Gubernatorial-Authority-to-Remove-Legal-Barriers-to-Emergency-Response.pdf>.

A July 2020 report by the National Conference of State Legislatures notes that the laws of **38** states may be suspended by a governor when necessary to effectuate a disaster response. Nicholas Birdsong, *Balancing Legislative and Executive Powers in Emergencies*, NCSL LEGISBRIEF, Vol. 28, No. 25 (July 2020), <https://www.ncsl.org/research/about-state-legislatures/balancing-legislative-and-executive-powers-in-emergencies.aspx>.

Together, these provisions demonstrate a concentration of authority in the executive branch and a marked departure from the traditional demands of separation of powers and its system of checks and balances.¹⁶ Governor Abbott has certainly made use of these powers, citing Chapter 418 (the Texas Disaster Act) as authority in each of his coronavirus-related executive orders.¹⁷

II. Governor Abbott's COVID-19 Executive Orders

Before March 19, 2020, Governor Abbott had issued only seven executive orders over a four-year period, and only one of those orders relied on the Texas Disaster Act to suspend laws.¹⁸ From March 19, 2020 through October 7, 2020 (a seven-month period), Governor Abbott issued a flurry of 25 coronavirus-related executive orders. *See Appendix A*. Governor Abbott has also signed 15 coronavirus-related proclamations. *Id.* Of those proclamations, (i) eight were related to certifying or renewing the state of disaster; (ii) three amended previously-issued executive orders, (iii) three were related to elections, and (iv) one related to hospital capacity. *See id.*

¹⁶ Hon. Ryan Kellus Turner and Elizabeth Rozacky, *The Intersection of Public Safety, Public Health, and Law*, 2020 TXCLE-AGL 8-II, 2020 WL 5607007.

¹⁷ *See Executive orders by Governor Greg Abbott*, LEGISLATIVE REFERENCE LIBRARY OF TEX., <https://lrl.texas.gov/legeLeaders/governors/displayDocs.cfm?govdoctypeID=5&governorID=45> (last visited October 28, 2020).

GA-06 suspended a provision of the Texas Occupations Code to prevent the abolition of the Texas State Board of Plumbing Examiners and expiration of the Plumbing License Law, and delayed that abolition and expiration until the disaster needs (from Hurricane Harvey) subsided or the legislature addressed the matter.

GA-01 related to the continuation of the Governor's Commission for Women. **GA-02** suspended the seven-day waiting period for unemployment benefits for people who lost their jobs as a direct result of Hurricane Harvey, as authorized by section 207.0212 of the Texas Labor Code, which provides that "the governor, by executive order, may suspend the waiting period requirement imposed under Section 207.021(a)(8) to authorize an individual to receive benefits[.]" **GA-03** established the Governor's Committee to Support the Military. **GA-04** ordered a day of mourning for George H.W. Bush. **GA-05** established the Emergency Management Council to advise the governor, the lieutenant governor, and the speaker of the house of representatives on emergency management matters. **GA-07** related to the prevention of mass attacks.

¹⁸ *See Executive orders by Governor Greg Abbott*, LEGISLATIVE REFERENCE LIBRARY OF TEX., <https://lrl.texas.gov/legeLeaders/governors/displayDocs.cfm?govdoctypeID=5&governorID=45> (last visited October 28, 2020).

Each order cites the Texas Disaster Act and states that the Legislature has “expressly granted the governor broad authority” to meet the dangers presented by disasters.¹⁹ Nearly every order (except GA-08, GA-10, GA-11, and GA-12) cites the suspension-of-laws provision of the Act and suspends specified statutes or regulations. A few of Governor Abbott’s most notable (and controversial) COVID-19 executive orders are summarized below.

- **GA-08—March 19, 2020—Abbot orders Texas bars, restaurants, gyms, and schools closed**

In his first coronavirus-related executive order, Governor Abbott: (i) limited social gatherings to 10 people; (ii) prohibited eating and drinking at restaurants and bars while still allowing takeout, delivery, and pickup; (iii) closed gyms and massage parlors; (iv) banned people from visiting nursing homes except to provide critical care; and (v) temporarily closed schools.

As of March 19, when this order was issued, there were 108 coronavirus cases and 6 deaths in Texas.²⁰

- **GA-09—March 22, 2020—Abbott orders “all surgeries and procedures that are not immediately medically necessary” to stop**

Just three days after his first executive order, Governor Abbott ordered health care professionals and facilities to postpone “all surgeries and procedures that are not medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient’s physician.”

As of March 22, when this order was issued, there were 263 coronavirus cases and 12 deaths in Texas.

¹⁹ *E.g.*, Executive Order GA-32 (Oct. 7, 2020), <https://lrl.texas.gov/scanned/govdocs/Greg%20Abbott/2020/GA-32.pdf>.

²⁰ *See Cases over Time by County and Fatalities over Time by County, Texas COVID-19 Data*, TEXAS HEALTH AND HUMAN SERVICES, <https://dshs.texas.gov/coronavirus/additionaldata.aspx> (last visited Oct. 28, 2020).

- **GA-13—March 29, 2020—Abbott suspends several provisions of the Texas Code of Criminal Procedure**

GA-13 limits the release of inmates from jails who are “charged with, convicted of, or hav[e] a history of offenses involving physical violence or threats of physical violence.” GA-13 was issued in response to the concern that “several counties are now reportedly considering the broad-scale release of arrested or jailed individuals as a result of COVID-19” It partially suspends several statutory provisions, including article 17.03 of the Code of Criminal Procedure, which grants trial courts discretion to release inmates before trial without requiring monetary bond.

As of March 29, when this order was issued, there were 2,552 coronavirus cases and 69 deaths in Texas.

- **GA-14—March 31, 2020—Abbott tells Texans to stay home, closes schools until May 4**

Governor Abbott tells Texans to stay at home for the next month unless they are taking part in essential services and activities. He declined to call this executive order a shelter-in-place or stay-at-home order. He also ordered schools to remain closed to in-person classroom attendance until May 4.

As of March 31, when this order was issued, there were 3,266 coronavirus cases and 101 deaths in Texas.

- **GA-28—June 26, 2020—Abbott temporarily halts the reopening of Texas**

Key provisions in GA-28 include: (i) all bars and establishments that receive 51% or more of their gross income from alcoholic beverages are required to close, effective 12:00 p.m. on June 26; (ii) restaurants may not exceed 50% occupancy for indoor services, effective June 29; (iii) all tubing and rafting businesses must close immediately; and (iv) all outdoor gatherings of 100 or more people must be approved by local governments.

As of June 26, when this order was issued, there were 137,624 coronavirus cases and 2,894 deaths in Texas.

GA-28 was amended on July 6, 2020 by GA-29 (described below).

- **GA-29—July 2, 2020—Abbott orders Texans in most counties to wear masks in public**

GA-29 requires Texans living in counties with more than 20 coronavirus cases to wear a face covering over the nose and mouth when inside a commercial entity or other building open to the public and in an outdoor public space when distancing is not possible. It provides exceptions, including for children who are younger than 10 years old, people who have a medical condition that prevents them from wearing a mask, people who are eating or drinking, and people who are exercising outdoors.

As of July 2, when this order was issued, there were 175,977 coronavirus cases and 3,472 deaths in Texas.

- **Proclamation—October 1, 2020—Abbott restricts delivery of mail-in ballots prior to election day to a single designated drop-off location per county**

By statute, “[a] voter may deliver a marked ballot in person to the early voting clerk’s office only while the polls are open on election day.” TEX. ELEC. CODE § 86.006(a-1). On July 27, the Governor issued a proclamation eliminating the statutory restriction on in-person delivery of mail-in ballots prior to election day. Texas law allows only certain voters to apply for a mail-in ballot. The July proclamation gave those voters the option to deliver their mail-in ballots “to the early voting clerk’s office.” Then, on October 1, Governor Abbott issued a proclamation prohibiting county officials from designating multiple mail-in ballot delivery sites prior to election day. It left in place the county officials’ ability to offer multiple drop-off sites on election day.

As of October 1, when this proclamation was issued, there were 617,333 coronavirus cases and 16,642 deaths in Texas.

III. Judicial Review

At least 15 lawsuits have been filed in state and federal court challenging the constitutionality of Governor Abbott’s coronavirus-related executive orders and proclamations. *See Appendix B.* Courts have generally dismissed these cases based on lack of standing and lack of subject-matter jurisdiction:

- *In re Hotze*, 20-0430, 2020 WL 4046034 (Tex. July 17, 2020)
 - Relators challenged the governor's COVID-19 executive orders through an original mandamus petition, naming the governor as the real party in interest. The Texas Supreme Court dismissed the petition for want of jurisdiction.
- *6th St. Bus. Partners LLC v. Abbott*, 1:20-CV-706-RP, 2020 WL 4274589 (W.D. Tex. July 24, 2020)
 - Court concluded that it lacked subject-matter jurisdiction based on lack of standing and sovereign immunity.
- *BMB Dining Services (Fuqua), Inc. d/b/a Bombshells Houston-South v. Abbott, et al.*, D-1-GN-20-004109, 353rd Judicial District of Travis County
 - Court granted defendants' plea to the jurisdiction.
- *Ector County Alliance of Businesses v. Abbott and State of Texas*, D-20-07-0749-CV , 244th Judicial District of Ector County
 - Court granted Abbott's plea to the jurisdiction.
- *Mi Familia Vota v. Abbott*, 20-50793, 2020 WL 6058290 (5th Cir. Oct. 14, 2020)
 - District court granted defendants' motion to dismiss. Fifth Circuit affirmed the judgment of the district court in part, reversed the judgment with respect to the Voting Rights Act claim, and remanded that claim.
- *Stirr Dallas, LLC, et al. v. Abbott*, DC-20-09166, 68th Judicial District of Dallas County
 - Court denied Abbott's plea to the jurisdiction and Abbott has appealed.

Courts have also generally denied plaintiffs' requests for temporary injunctions and temporary restraining orders:

- *Texas Criminal Defense Lawyers Association, et al. v. Abbott, et al.*, D-1-GN-20-002034, 459th Judicial District of Travis County
 - Trial court issued temporary restraining order (TRO), and defendants appealed. Texas Supreme Court held that plaintiffs lacked standing and directed the trial court to withdraw the TRO.
- *BMB Dining Services (Fuqua), Inc. d/b/a Bombshells Houston-South v. Abbott, et al.*, D-1-GN-20-004109, 353rd Judicial District of Travis County
 - Trial court denied plaintiff's temporary injunction. No appeal has been filed.

- *Tex. League of United Latin Am. Citizens v. Abbott*, 1:20-CV-1006-RP, 2020 WL 5995969, at *23 (W.D. Tex. Oct. 9, 2020)
 - District court granted plaintiff's motion for a preliminary injunction, allowing Texas counties to have multiple drop-off locations for ballots. The Texas Secretary of State moved for a stay pending appeal, and the Fifth Circuit granted the motion. *Tex. League of United Latin Ams. Citizens v. Hughs*, ___ F.3d ___, ___, No. 20-50867, 2020 WL 6023310, at *5 (5th Cir. Oct. 12, 2020). Notably, no party in this case has questioned the governor's July 27 proclamation, which eliminated the statutory restriction on in-person delivery of mail-in ballots prior to election day and gave voters the option to deliver their mail-in ballots "to the early voting clerk's office." The plaintiffs want that proclamation enforced as is—while the State of Texas wants the July 27 proclamation enforced, but only as amended by the governor's October 1 proclamation limiting counties to one drop-off location.

- *The Anti-Defamation League Austin, Southwest, and Texoma Regions, et al. v. Abbott, et al.*, D-1-GN-20-005550, 353rd Judicial District of Travis County
 - Trial court granted plaintiffs' application for a temporary injunction, allowing Texas counties to have multiple drop-off locations for ballots. Defendants appealed, and the court of appeals affirmed the trial court's order. Defendants then filed a Petition for Review, and the Texas Supreme Court stayed the injunction. On October 27, 2020, the Texas Supreme Court reversed the judgment of the court of appeals, and dissolved the temporary injunction issued by the trial court.

The lawsuits challenging Governor Abbott's executive orders have invoked a variety of constitutional provisions and statutes:

- TEX. CONST., ART. I, § 3 (equal protection)
- TEX. CONST., ART. I, § 6 (religious freedom)
- TEX. CONST., ART. I, § 7 (no appropriation of state funds for religious purposes)
- TEX. CONST., ART. I, § 8 (free speech)
- TEX. CONST., ART. I, § 16 ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.")
- TEX. CONST., ART. I, § 17 (takings clause)
- TEX. CONST., ART. I, § 19 (due process)
- TEX. CONST., ART. I, § 27 (right of assembly)
- TEX. CONST., ART. I, § 28 (suspension of laws)
- TEX. CONST., ART. II, § 1 (separation of powers)
- TEX. CONST., ART. IV, § 8 (governor may convene special session)
- Texas Religious Freedom Restoration Act
- 42 U.S.C. § 1983 (civil action for deprivation of rights)
- Voting Rights Act (52 U.S.C. § 10301)

- 1st Amendment (free speech)
- 5th and 14th Amendments (due process and equal protection)

Some plaintiffs have argued that the governor's expansive authority under the Texas Disaster Act, specifically the governor's power to issue executive orders that have the force and effect of law, violates separation of powers. "The Texas Constitution—which states that no branch of government 'shall exercise any power properly attached to either of the others'—is not simply a suggestion." *In re Hotze*, 20-0430, 2020 WL 4046034, at *2 (Tex. July 17, 2020) (J. Devine, concurring) (quoting Tex. Const. art. 2, § 1).

Many plaintiffs have also argued that Governor Abbott's executive orders do not comport with Article I, Section 28 of the Texas Constitution, which provides that: "No power of suspending laws in this State shall be exercised except by the Legislature."

Some background on Article 1, Section 28 of the Texas Constitution is instructive. From 1845 through 1875, the section provided that: "No power of suspending laws in this State shall be exercised, except by the Legislature, *or its authority*."²¹ The last three words became "a source of difficulty" when the Texas Governor began to overstep his bounds:

Although Reconstruction had ended officially in Texas on March 3, 1870 when President Grant approved the Texas Reconstruction Act, Governor E. J. Davis asked for and received from the Texas Legislature the power "to declare . . . counties under martial law and to suspend the laws therein until the legislature shall convene[.]" Governor Davis used these powers to try quarantine offenders by court martial in Houston, to declare martial law in Hill and Walker counties in 1871, and later the same year to deal with "election disorders" in Limestone and Freestone counties. When the Democrats won control of the legislature they proceeded in early 1873 to strip the governor of special powers conferred upon him by their predecessors. They also proposed a constitutional amendment, ratified on December 2, 1873 which deleted the words "or its authority" from the suspension section and gave it the exact wording of Section 28 today.

In short, Article 1, Section 28 exists to prevent the Governor's attempt to unilaterally suspend laws without legislative authority.

On July 17, 2020, the Texas Supreme Court dismissed a challenge to Governor Abbott's coronavirus-related executive orders. *In re Hotze*, 20-0430, 2020 WL 4046034 (Tex. July 17, 2020). The action was brought by Steven Hotze, MD, and several business owners and clergy that sought original mandamus relief from the Supreme Court. A unanimous Court dismissed the mandamus

²¹ George D. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 84 (1977) (emphasis added).

petition for want of jurisdiction. Justice John Devine, writing in a concurrence, noted that mandamus against the governor was not “the proper vehicle to make such a challenge.” That is because the Texas Constitution says that the Legislature may confer original jurisdiction on the Texas Supreme Court to issue writs of mandamus in certain cases, *except* against the governor. TEX. CONST. ART. V, § 3(a). And the Texas Government Code provides that “The supreme court or a justice of the supreme court may issue writs of . . . mandamus . . . against . . . any officer of state government *except* the governor.” TEX. GOV'T CODE § 22.002(a) (emphasis added). Thus, the Court lacked jurisdiction to mandamus the governor.

Justice John Devine noted, however, that “this to not to say that a governor’s emergency-related actions are categorically immune from judicial review There are of course other ways in which we may—and indeed must—weigh in on questions of constitutional magnitude.” For two reasons, he “share[s] Relators’ concern in what they describe as ‘an improper delegation of legislative authority’ to the executive branch.”

First, Justice Devine noted that “the Texas Disaster Act of 1975 bestows upon the governor the power to issue executive orders that have the ‘force and effect of law’”—but “[d]isaster or not, the Texas Constitution doesn’t appear to contemplate any circumstances in which we may condone such consolidation of power.” The governor’s “end-running [of] the traditional law-making process” has “threaten[ed] our everyday liberties.”

Second, Justice Devine hinted that he thinks it is unconstitutional for Governor Abbott to suspend state laws in his COVID-19 emergency orders. Referring to Article 1, Section 28 of the Texas Constitution, Justice Devine stated in a concurring opinion: “This provision means what it says. The judiciary may not suspend laws. Nor may the executive. Only the Legislature.”

Justice Devine’s concurring opinion in *In re Hotze* does not carry the weight of precedent but suggests a potential basis for challenging the constitutionality of the governor’s executive orders. In *Tex. League of United Latin Am. Citizens v. Hughs*, 20-50867, 2020 WL 6023310 (5th Cir. Oct. 12, 2020), Circuit Judge James C. Ho wrote a concurring opinion in which he cites Devine’s concurring opinion and states that the governor’s executive orders improperly rewrite Texas law:

Only the district court’s rewriting of Texas law is before us today, however. And that leads us to an unfortunate irony: by setting aside only the district court’s rewriting of Texas law, we must restore the Governor’s rewriting of Texas law. It recalls the adage that sometimes it’s only the guy who throws the second punch that gets caught.

The Texas Disaster Act, like any other Texas law, must be construed in light of the Texas Constitution. While litigants have been generally unsuccessful so far in challenging the governor’s COVID-19 executive orders, “a different case may require courts to confront head-on the constitutional extent of gubernatorial power under the Texas Disaster Act.” *Tex. League of United Latin Am. Citizens v. Hughs*, 20-50867, 2020 WL 6023310, at *5 n.7 (5th Cir. Oct. 12, 2020).

IV. Legislative Oversight

The Legislature has made few revisions to the Texas Disaster Act of 1975 since it was adopted. A 1980 interim report to the 67th Legislature, issued to analyze, among other things, the effectiveness of the new law in relation to the 1979 Galveston flood, reads, “With the designation of local officials as Disaster Directors/Coordinators and provision for delegation of their authority, the Governor may have cured the major problem experienced in the coastal flooding in July, 1979.”²² Similarly, in 1983, a Senate interim study committee concluded that the law did not need any revision during that year’s session.²³ In 2010, after reviewing the State’s public health preparedness in the context of H1N1, the House Select Committee on Emergency Preparedness recommended that the Legislature consider allowing the governor “to exercise *greater* authority over local health authorities during a public health emergency.”²⁴

Some Texas lawmakers have recently expressed dissatisfaction with the lack of legislative oversight of the governor’s expansive authority under the Act. On July 9, 2020, the Texas Freedom Caucus wrote a letter urging Governor Abbott to call a special session for the purpose of amending the Texas Disaster Act, stating that “there is a near unanimous belief among legislators that this is a priority issue for the legislature to discuss.”²⁵ Republican Party of Texas Chairman Allen West has been a vocal critic of Governor Abbott’s coronavirus-related executive orders and has called for a special session of the Texas Legislature.²⁶

Legislative chambers in at least 26 states have introduced bills or resolutions that would limit governors’ powers during the COVID-19 pandemic or other emergencies. *See Appendix D*. Common examples of legislative action related to executive orders include (i) limiting the duration of disaster declarations to 5-60 days (with most states limiting duration to 30 days without legislative approval),

²² *Interim Report to the 67th Texas Legislature*, THE COMMITTEE ON INTERGOVERNMENTAL AFFAIRS (Nov. 1980), <https://lrl.texas.gov/scanned/interim/66/in8.pdf>.

²³ *Report of Senate Interim Committee to Study the Texas Disaster Act* (Jan. 10, 1983), <https://lrl.texas.gov/scanned/interim/67/d63s.pdf> (“[T]he satisfaction with the Texas Disaster Act . . . was unanimous.”).

²⁴ *Interim Report to the 82nd Texas Legislature*, HOUSE COMMITTEE ON EMERGENCY PREPAREDNESS (Dec. 2010); <https://lrl.texas.gov/scanned/interim/81/Em32.pdf> (emphasis added).

²⁵ Texas Freedom Caucus (@TxFreedomCaucus), TWITTER (July 9, 2020, 12:48 pm), <https://twitter.com/TxFreedomCaucus/status/1281284037131276293>.

²⁶ Michael McCardel, *Texas GOP chairman calls Gov. Abbott’s actions on coronavirus ‘heavy-handed,’* KVUE (Sept. 17, 2020, 2:57 pm), <https://www.kvue.com/article/news/politics/yallitics-texas-gop-chairman-gov-abbott-actions-coronavirus-heavy-handed/287-0dbb169f-8ad5-4052-b9e1-fe7460a20aaa>.

and (ii) requiring legislative action to extend a declaration past a limited initial period. Measures have been adopted or enacted in at least nine states, notably:

- **KANSAS** – [House Bill 2016](#) – **Passed** – Provides that, if a state of disaster emergency is proclaimed, the Governor shall terminate the emergency proclamation within 15 days, unless ratified by concurrent resolution of the Legislature. When the Legislature is not in session, upon specific application by the Governor to the State Finance Council (SFC) and an affirmative vote of a majority of the legislative members of the SFC, a state of disaster emergency may be extended for a specified period not to exceed 30 days.
- **PENNSYLVANIA** – [Senate Bill 1166](#) – **Passed** – Provides that a disaster emergency declaration shall be in effect for no more than 21 days unless otherwise extended by the General Assembly.
- **WASHINGTON** – [Senate Bill 5260](#) – **Passed** – Provides that no orders concerning waiver or suspension of statutory obligations or limitations may continue for longer than 30 days unless extended by the legislature through concurrent resolution. If the legislature is not in session, the waiver or suspension of statutory obligations or limitations may be extended in writing by the leadership of the senate and the house of representatives until the legislature can extend the waiver or suspension by concurrent resolution.

The Texas Disaster Act should similarly be amended to ensure legislative oversight over the governor's emergency powers, by: (i) requiring the legislature to approve any extension of a disaster declaration; (ii) requiring the governor to call a special session if the governor seeks an extension and the legislature is not convened; and (iii) permitting the legislature to meet remotely to consider the governor's request for an extension. Specifically, section 418.014 the Act could be amended as follows:

- (a) The governor by executive order or proclamation may declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent.
- (b) Except as provided by Subsection (c) and (c-1), the state of disaster continues until the governor or the legislature:
 - (1) finds that:
 - (A) the threat or danger has passed; or
 - (B) the disaster has been dealt with to the extent that emergency conditions no longer exist; and

(2) terminates the state of disaster by executive order, in the case of termination by the governor, or by concurrent resolution, in the case of termination by the legislature.

(c) A state of disaster may not continue for more than 30 days unless renewed by the governor. If the governor finds it necessary to continue a state of disaster beyond the initial 30 days, the governor may only extend that declaration or make further declarations regarding the same disaster if the legislature passes a concurrent resolution that approves the extension. The governor shall submit to the legislature a request for an extension of the state of disaster, and the request shall include the specific reasons for the extension, the time period of the extension, and a plan of action to address the conditions that necessitate the extension. All subsequent requests for an extension shall be submitted to the legislature before the expiration of the extension that is in effect. If the legislature is not in session when required to consider an extension pursuant to this section, the governor shall call the legislature into special session for that purpose. Notwithstanding any other law, the legislature may meet and transact business via electronic means for the purpose of considering an extension pursuant to this section. This subsection (c) does not prohibit the governor from declaring a state of emergency for some other, unrelated emergency.

(c-1) The legislature by law may terminate a state of disaster at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster.

(d) An executive order or proclamation issued under this section must include:

- (1) a description of the nature of the disaster;
- (2) a designation of the area threatened; and
- (3) a description of the conditions that have brought the state of disaster about or made possible the termination of the state of disaster.

(e) An executive order or proclamation shall be disseminated promptly by means intended to bring its contents to the attention of the general public. An order or proclamation shall be filed promptly with the division, the secretary of state, and the county clerk or city secretary in each area to which it applies unless the circumstances attendant on the disaster prevent or impede the filing.

Additionally, the Texas Constitution and Texas Government Code should be amended to permit the Texas Supreme Court to mandamus the governor, as the plaintiffs in *In re Hotze* sought to do. Specifically, TEX. CONST. ART. V, § 3 could be amended as follows:

(a) The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be coextensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, ~~except as against the Governor of the State.~~

Section 22.002 of the Texas Government Code could be amended as follows:

(a) The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of a court of appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals, except that the supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs against the governor during the period of a state of disaster declared by the governor under section 418.014 of the Texas Government Code or a limited purpose declaration declared by the governor under section 418.025 of the Texas Government Code.

Further, Article I, Section 28 of the Texas Constitution should be amended as follows to provide an exception to the prohibition on the governor's ability to suspend laws in the Texas Constitution:

No power of suspending laws in this State shall be exercised except by the Legislature, except upon the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought,

infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency.

An amendment to Article 2, Section 1 of the Texas Constitution would not be necessary because the language “except in the instances herein expressly permitted” would encompass our revision to Article I, Section 28 above.

* * * * *

Appendix A

Governor Abbott's COVID-19 Executive Orders and Proclamations (as of October 28, 2020)

	Type	Date	Title/Description and Hyperlink
1.	Proclamation	03/13/2020	A proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas
2.	Executive Order (GA-08)	03/19/2020	Relating to COVID-19 preparedness and mitigation (coronavirus)
3.	Executive Order (GA-09)	03/22/2020	Relating to hospital capacity during the COVID-19 disaster (coronavirus)
4.	Executive Order (GA-10)	03/24/2020	Relating to daily reporting during the COVID-19 disaster (coronavirus, hospital reporting)
5.	Executive Order (GA-11)	03/26/2020	Relating to airport screening and self-quarantine during the COVID-19 disaster (New York Tri-State Area, New Orleans, coronavirus)
6.	Executive Order (GA-12)	03/29/2020	Relating to roadway screening and self-quarantine during the COVID-19 disaster (coronavirus)
7.	Executive Order (GA-13)	03/29/2020	Relating to detention in county and municipal jails during the COVID-19 disaster (coronavirus)
8.	Executive Order (GA-14)	03/31/2020	Relating to statewide continuity of essential services and activities during the COVID-19 disaster (coronavirus)
9.	Proclamation	04/12/2020	A proclamation renewing the declaration of March 13, 2020, stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas
10.	Executive Order (GA-15)	04/17/2020	Relating to hospital capacity during the COVID-19 disaster (coronavirus)
11.	Executive Order (GA-16)	04/17/2020	Relating to the safe, strategic reopening of select services as the first step to Open Texas in response to the COVID-19 disaster (coronavirus)

12.	Executive Order (GA-17)	04/17/2020	Relating to the establishment of the Governor's Strike Force to Open Texas (coronavirus/COVID-19)
13.	Executive Order (GA-18)	04/27/2020	Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)
14.	Executive Order (GA-19)	04/27/2020	Relating to hospital capacity during the COVID-19 disaster (coronavirus)
15.	Executive Order (GA-20)	04/27/2020	Relating to expanding travel without restrictions as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)
16.	Executive Order (GA-21)	05/05/2020	Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)
17.	Executive Order (GA-22)	05/07/2020	Relating to confinement during the COVID-19 disaster (coronavirus)
18.	Proclamation	05/11/2020	A proclamation concerning early voting for special elections to occur on July 14, 2020
19.	Proclamation	05/12/2020	A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas
20.	Executive Order (GA-23)	05/18/2020	Relating to the expanded opening of Texas in response to the COVID-19 disaster (coronavirus)
21.	Executive Order (GA-24)	05/21/2020	Relating to the termination of air travel restrictions as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)
22.	Executive Order (GA-25)	05/22/2020	Relating to in-person visitation at county and municipal jails during the COVID-19 disaster (coronavirus)
23.	Executive Order (GA-26)	06/03/2020	Relating to the expanded opening of Texas in response to the COVID-19 disaster (coronavirus)
24.	Proclamation	06/11/2020	A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas

25.	Proclamation	06/23/2020	A proclamation amending Executive Order GA-26 relating to the expanded opening of Texas during the disaster posed by the novel coronavirus (COVID-19)
26.	Executive Order (GA-27)	06/25/2020	Relating to the need for increased hospital capacity during the COVID-19 disaster (coronavirus)
27.	Executive Order (GA-28)	06/26/2020	Relating to the targeted response to the COVID-19 disaster as part of the reopening of Texas (coronavirus)
28.	Proclamation	06/30/2020	A proclamation amending Executive Order GA-27 relating to increased hospital capacity in Texas during the disaster posed by the novel coronavirus (COVID-19)
29.	Executive Order (GA-29)	07/02/2020	Relating to the use of face coverings during the COVID-19 disaster (coronavirus/masks)
30.	Proclamation	07/09/2020	A proclamation amending Executive Order GA-27 relating to increased hospital capacity in Texas during the disaster posed by the novel coronavirus (COVID-19)
31.	Proclamation	07/10/2020	A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas
32.	Proclamation	07/27/2020	A proclamation suspending certain statutes concerning elections on November 3, 2020
33.	Proclamation	08/08/2020	A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas
34.	Proclamation	09/07/2020	A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas
35.	Executive Order (GA-30)	09/17/2020	Relating to the continued response to the COVID-19 disaster as Texas reopens
36.	Executive Order (GA-31)	09/17/2020	Relating to hospital capacity during the COVID-19 disaster
37.	Proclamation	10/01/2020	A proclamation suspending certain statutes concerning the November 3, 2020 elections

38.	Proclamation	10/07/2020	A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas
39.	Executive Order (GA-32)	10/07/2020	Relating to the continued response to the COVID-19 disaster as Texas reopens (bars)
40.	Proclamation	10/08/2020	A proclamation relating to hospital capacity during the COVID-19 disaster

Appendix B

Cases Challenging Governor Abbott's COVID-19 Executive Orders (as of October 28, 2020)

	Case Style	Exec. order(s) or proclamation at issue	Relevant Claim(s)	Status
1.	<i>6th Street Business Partners LLC v. Abbott</i> , No. 1:20-CV-706-RP (U.S. District Court, WD Texas) (Jul. 24, 2020)	GA-28	<ul style="list-style-type: none"> • 42 U.S.C. § 1983 (civil action for deprivation of rights) • 1st Amendment • 5th and 14th Amendments (due process and equal protection) • TEX. CONST., ART. I, § 19 (due process) • TEX. CONST., ART. I, § 27 (right of assembly) • TEX. CONST., ART. I, § 28 (suspension of laws) 	Court granted Abbott's Motion to Dismiss and denied Plaintiffs' Amended Request for a Temporary Restraining Order. Case dismissed for lack of subject-matter jurisdiction. (Order)
2.	<i>BMB Dining Services (Fuqua), Inc. d/b/a Bombshells Houston-South v. Abbott, et al.</i> , D-1-GN-20-004109, 353 rd Judicial District of Travis County (Petition)	GA-28	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 3 (equal protection) • TEX. CONST., ART. I, § 19 (due process) • TEX. CONST., ART. I, § 28 (suspension of laws) • TEX. CONST., ART. II, § 1 (separation of powers) 	Trial court denied Plaintiff's Temporary Injunction and granted Defendants' Plea to the Jurisdiction on 8/25/20. No appeal has been filed.
3.	<i>Ector County Alliance of Businesses v. Abbott and State of Texas</i> , D-20-	GA-28	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 3 (equal protection) • TEX. CONST., ART. I, § 8 (free speech) • TEX. CONST., ART. I, § 19 (due process) 	District court granted Abbott's plea to the jurisdiction on 8/12/20. Plaintiff appealed to the 11 th Court

	07-0749-CV , 244 th Judicial District of Ector County		<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 27 (right of assembly) • TEX. CONST., ART. I, § 28 (suspension of laws) • TEX. CONST., ART. II, § 1 (separation of powers) 	of Appeals (Cause No. 11-20-00206-CV).
4.	<i>Galovelho, LLC v. Abbott, et al.</i> , No. 219-02595-2020, 219 th Judicial District of Collin County	Various orders	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 3 (equal protection) • TEX. CONST., ART. I, § 17 (takings clause) • TEX. CONST., ART. I, § 19 (due process) 	Plaintiff filed a notice of appeal, then later moved to dismiss the appeal. The motion to dismiss the appeal was granted. <i>Galovelho, LLC v. Abbott</i> , 05-20-00784-CV, 2020 WL 6156014, at *1 (Tex. App.—Dallas Oct. 21, 2020, no pet. h.).
5.	<i>Hotze, et al. v. Abbott</i> , D-1-GN-20-002146, 98 th Judicial District of Travis County (First Amended Petition)	All of Abbott's COVID-19 related executive orders	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 6 (religious freedom) • TEX. CONST., ART. I, § 7 (no appropriation of state funds for religious purposes) • TEX. CONST., ART. I, § 8 (free speech) • TEX. CONST., ART. I, § 28 (suspension of laws) • TEX. CONST., ART. II, § 1 (separation of powers) • TEX. CONST., ART. IV, § 8 (governor may convene special session) • Texas Religious Freedom Restoration Act 	Defendants filed a Plea to the Jurisdiction on 5/14/20 and Plaintiffs filed their First Amended Petition on 5/20/20.
6.	<i>In re Hotze</i> , 20-0430, 2020 WL 4046034 (Tex. July 17, 2020) (Petition)	All of Abbott's COVID-19 related	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 3 (equal protection) • TEX. CONST., ART. I, § 19 (due process) • TEX. CONST., ART. I, § 28 (suspension of laws) 	Texas Supreme Court dismissed petition for want of jurisdiction. Justice Devine issued an opinion

		executive orders	<ul style="list-style-type: none"> • TEX. CONST., ART. II, § 1 (separation of powers) • TEX. CONST., ART. IV, § 8 (governor may convene special session) 	concurring in the dismissal. (Concurring Opinion)
7.	<i>Mi Familia Vota, et al. v. Abbott, et al.</i> , 5-20-CV-830, Western District of Texas, San Antonio Division (Complaint)	GA-29	<ul style="list-style-type: none"> • Undue burden on the right to vote in violation of the due process clause of the 14th Amendment • Denial of equal protection in violation of the 14th Amendment • Undue burden on the right to vote in violation of the 1st Amendment • Race discrimination in violation of the 15th Amendment (42 U.S.C. § 1983) • Race discrimination in violation of Section 2 of the Voting Rights Act (52 U.S.C. § 10301) 	District court granted Defendants' Motion to Dismiss. (Memorandum Opinion and Order) Plaintiffs appealed. Fifth Circuit affirmed the judgment of the district court in part, reversed the judgment with respect to the Voting Rights Act claim, and remanded that claim. <i>Mi Familia Vota v. Abbott</i> , 20-50793, 2020 WL 6058290 (5th Cir. Oct. 14, 2020).
8.	<i>Planned Parenthood Center for Choice, et al. v. Abbott, et al.</i> , 1:20-cv-323-LY, Western District of Texas, Austin Division (Second Amended Complaint)	GA-09	<ul style="list-style-type: none"> • 42 U.S.C. § 1983 (civil action for deprivation of rights) • 5th and 14th Amendments (due process and equal protection) 	District court entered TRO preventing application of GA-09 to 3 categories of abortion including medication abortions. Defendants petitioned for writ of mandamus and filed motion for emergency stay. Fifth Circuit denied emergency motion to stay the TRO as to medical abortions. Plaintiffs filed a second motion for TRO, which the court granted. Fifth Circuit again stayed the district

				court's order, but then dissolved the stay as to medication abortions because it was unclear whether GA-09 applied to medication abortions. Plaintiffs then filed their Second Amended Complaint. Fifth Circuit then granted Defendant's petition for mandamus and directed the district court to partially vacate the TRO. Case is ongoing.
9.	<i>Renneberg, et al. v. Abbott, et al.</i> , D-1-GN-20-004719, 53 rd Judicial District of Travis County (Petition)	GA-28	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 3 (equal protection) • TEX. CONST., ART. I, § 19 (due process) • TEX. CONST., ART. I, § 27 (right of assembly) • TEX. CONST., ART. I, § 28 (suspension of laws) 	Plaintiff's Application for Injunctive Relief is set for a hearing on 11/17/2020.
10.	<i>Stand for Something Group Live, LLC, et al. v. Abbott, et al.</i> , D-1-GN-20-004403, 200 th Judicial District of Travis County (Petition)	GA-28	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 3 (equal protection) • TEX. CONST., ART. I, § 16 ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.") • TEX. CONST., ART. I, § 17 (takings clause) • TEX. CONST., ART. I, § 27 (right of assembly) 	Plaintiff's Application for Immediate Injunctive Relief is set for a hearing on 11/6/20.
11.	<i>Stirr Dallas, LLC, et al. v. Abbott</i> , DC-20-09166,	GA-28	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 3 (equal protection) • GA-28 violates § 418.017(c) of the Texas Disaster Act by commandeering private property without compensation 	On 7/25/20, trial court denied Defendant's Plea to the Jurisdiction, granted Plaintiffs' request to add TABC as a party

	68 th Judicial District of Dallas County (Petition)			defendant, and ordered depositions of 2 members of the governor's COVID-19 Strike Force. Abbott has appealed (Cause No. 05-20-00694-CV) and filed a mandamus petition challenging he parts of the order granting Plaintiffs' request to add TABC as a party defendant and ordering depositions (Cause No. 05-20-00768-CV). The appeal and mandamus have been consolidated into cause no. 05-20-00694-CV.
12.	<i>Texas Criminal Defense Lawyers Association, et al. v. Abbott, et al.</i> , D-1-GN-20-002034, 459 th Judicial District of Travis County (Petition)	GA-13	<ul style="list-style-type: none"> • TEX. CONST., ART. I, § 28 (suspension of laws) • § 418.016(a) of the Texas Disaster Act (suspension-of-laws provision) does not authorize governor to suspend provisions of the Code of Criminal Procedure • TEX. CONST., ART. II, § 1 (separation of powers) 	Trial court issued Temporary Restraining Order. Defendants appealed. Texas Supreme Court held that Plaintiffs lacked standing and directed the trial court to withdraw the TRO. <i>In re Abbott</i> , 601 S.W.3d 802 (Tex. 2020) (Per Curiam). Defendants' Plea to the Jurisdiction is set for a hearing on 11/9/20.
13.	<i>Texas League of United Latin American Citizens, et al. v. Abbott, et al.</i> , 1-20-CV-1006-RP,	10/1/20 Proclamation	<ul style="list-style-type: none"> • 42 U.S.C. § 1983 (civil action for deprivation of rights) • Violation of Plaintiffs' fundamental right to vote under 1st and 14th Amendments 	District court dismissed Plaintiffs' claims against Abbott and granted Plaintiffs' motion for a preliminary injunction and enjoined the 10/1/20 Proclamation. <i>Tex. League</i>

	Western District of Texas, Austin Division		<ul style="list-style-type: none"> Arbitrary disenfranchisement in violation of 14th Amendment Race and language minority discrimination in violation of Section 2 of the Voting Rights Act (52 U.S.C. § 10301) 	<i>of United Latin Am. Citizens v. Abbott</i> , 1:20-CV-1006-RP, 2020 WL 5995969, at *23 (W.D. Tex. Oct. 9, 2020) (Order). Texas SoS appealed. Fifth Circuit granted Texas SoS' emergency motion for stay pending appeal. (Order)
14.	<i>The Anti-Defamation League Austin, Southwest, and Texoma Regions, et al. v. Abbott, et al.</i> , D-1-GN-20-005550, 353 rd Judicial District of Travis County (Petition)	10/1/20 Proclamation	<ul style="list-style-type: none"> 10/1/20 Proclamation is <i>ultra vires</i> (outside governor's legal authority) TEX. CONST., ART. I, § 3 (equal protection) 	Trial court denied Defendants' Plea to the Jurisdiction and granted Plaintiffs' Application for Temporary Injunction on 10/15/20. Defendants appealed. The court of appeals affirmed the trial court's order. (Memorandum Opinion). Defendants filed a Petition for Review, and the Texas Supreme Court stayed the injunction. (Stay) Most recently, the Texas Supreme Court reversed the judgment of the court of appeals and dissolved the temporary injunction. (Opinion)
15.	<i>Tune-Up Salon Holdco, LLC v. Abbott, et al.</i> , No. 20-06-07436, 284 th Judicial District of Montgomery County	GA-08 , GA-14 , GA-16 , and GA-18	<ul style="list-style-type: none"> TEX. CONST., ART. I, § 28 (suspension of laws) TEX. CONST., ART. II, § 1 (separation of powers) TEX. CONST., ART. IV, § 8 (governor may convene special session) 	Defendants State of Texas and Abbott filed an answer on 7/27/20. Defendant Montgomery County filed an answer on 8/5/20.

Appendix C

Legislative Oversight of Disaster Declarations (as of October 28, 2020)

	State	Statute
1.	Alabama	The legislature may declare a state of emergency by joint resolution. Additionally, the lieutenant governor or the speaker of the House may request in writing that the governor call the Legislature into special session. ALA. CODE § 31-9-8.
2.	Alaska	<p>A state of emergency declared as a result of an actual enemy or terrorist attack in or against the state, or credible threat thereof, may not remain in effect longer than 30 days unless extended by the legislature by law and may be terminated by law or withdrawal of the declaration. ALASKA STAT. ANN. § 26.20.040.</p> <p>If the governor finds that a disaster has occurred or that a disaster is imminent or threatened, the governor shall, by proclamation, declare a condition of disaster emergency. The disaster emergency remains in effect until the governor finds that the danger has passed or the disaster has been dealt with so that the emergency no longer exists. The governor may terminate the disaster emergency by proclamation. A proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution. ALASKA STAT. ANN. § 26.23.020.</p>
3.	Arizona	The powers granted the governor with respect to a state of war emergency shall terminate if the legislature is not in session and the governor, within 24 hours after the beginning of such state of war emergency, has not issued a call for an immediate special session of the legislature for the purpose of legislating on subjects relating to such state of war emergency. The powers granted the governor by this chapter with respect to a non-state of war emergency shall terminate by proclamation of the governor or by concurrent resolution of the legislature declaring it at an end. ARIZ. REV. STAT. ANN. § 26-303.
4.	Arkansas	The General Assembly, by concurrent resolution, may terminate a state of disaster emergency at any time. ARK. CODE ANN. § 12-75-107.
5.	California	State of war emergency powers terminate when the governor has not, within 30 days after the beginning of such state of war emergency, issued a call for a special session of the Legislature for the purpose of legislating on

	State	Statute
		<p>subjects relating to such state of war emergency, except when the Legislature is already convened with power to legislate on such subjects. CA GOVT § 8624.</p> <p>Non-war emergency may be terminated by concurrent resolution of the legislature declaring it at an end. CA GOVT § 8629.</p>
6.	Colorado	The general assembly, by joint resolution, may terminate a state of disaster emergency at any time. CO ST § 24-33.5-704.
7.	Connecticut	Any such proclamation, or order issued pursuant thereto, issued by the governor because of a disaster resulting from man-made cause may be disapproved by majority vote of a joint legislative committee consisting of the president pro tempore of the Senate, the speaker of the House of Representatives and the majority and minority leaders of both houses of the General Assembly, provided at least one of the minority leaders votes for such disapproval. Such disapproval shall not be effective unless filed with the Secretary of the State not later than 72 hours after the filing of the governor's proclamation with the Secretary of the State. As soon as possible after such proclamation, if the General Assembly is not then in session, the governor shall meet with the president pro tempore of the Senate, the speaker of the House of Representatives, and the majority and minority leaders of both houses of the General Assembly and shall confer with them on the advisability of calling a special session of the General Assembly. CONN. GEN. STAT. ANN. § 28-9.
8.	Delaware	No relevant provisions found. Statute addressing emergency executive authority is located at DEL. CODE ANN. TIT. 20, § 3116.
9.	District of Columbia	Emergency executive orders issued by the Mayor shall be effective for no more than 15 calendar days from the day it is signed by the Mayor. Such orders may be extended for up to an additional 15-day period, only upon request by the Mayor of, and the adoption of, an emergency act by the Council of the District of Columbia. Section c-1 of this statute grants a unique 90-day extension specific to the COVID-19 public health emergency. DC ST § 7-2306.
10.	Florida	The Legislature, by concurrent resolution, may terminate a state of emergency at any time. FLA. STAT. ANN. § 252.36.

	State	Statute
11.	Georgia	As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the governor shall issue a call for a special session of the General Assembly... which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. GA. CODE ANN. § 38-3-51.
12.	Hawaii	The governor or mayor shall be the sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency in the State or a local state of emergency in the county, as applicable. HAW. REV. STAT. ANN. § 127A-14.
13.	Idaho	The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Idaho Code Ann. § 46-1008.
14.	Illinois	No relevant provisions found. Statute addressing emergency executive authority is located at 20 ILCS 3305/7.
15.	Indiana	The general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time. IND. CODE ANN. § 10-14-3-12.
16.	Iowa	The general assembly may, by concurrent resolution, rescind a proclamation of a state of public disorder emergency. If the general assembly is not in session, the legislative council may, by a majority vote, rescind this proclamation. Rescission shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. IOWA CODE ANN. § 29C.3. (A virtually identical provision exists for disaster emergency proclamations, located at IOWA CODE ANN. § 29C.6).
17.	Kansas	No state of disaster emergency may continue for longer than 15 days unless ratified by concurrent resolution of the legislature, with the single exception that upon specific application by the governor to the state finance council and an affirmative vote of a majority of the legislative members thereof, a state of disaster emergency may be extended once for a specified period not to exceed 30 days beyond such 15-day period. KAN. STAT. ANN. § 48-924.
18.	Kentucky	No relevant provisions found. Statute addressing emergency executive authority is located at KY ST § 39A.100.

	State	Statute
19.	Louisiana	The legislature, by petition signed by a majority of the surviving members of either house, may terminate a state of disaster or emergency at any time. This petition terminating the state of emergency or disaster may establish a period during which no other declaration of emergency or disaster may be issued. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster or emergency. LA. STAT. ANN. § 29:724.
20.	Maine	The Legislature, by joint resolution, may terminate a state of emergency at any time. Thereupon, the governor shall issue an executive proclamation ending the state of emergency. ME. REV. STAT. TIT. 37-B, § 743.
21.	Maryland	The General Assembly by joint resolution may terminate a state of emergency at any time. After the General Assembly terminates a state of emergency, the governor shall issue an executive order or proclamation that terminates the state of emergency. MD PUBLIC SAFETY § 14-107.
22.	Massachusetts	No relevant provisions found. Emergency response statutes may be found in Chapter 639 of the Acts of 1950: Civil Defense Act.
23.	Michigan	No relevant provisions found. Statute addressing emergency executive authority is located at MICH. COMP. LAWS ANN. § 10.31.
24.	Minnesota	For wartime emergencies: If the legislature is not in regular session, the governor, concurrently with the proclamation declaring the emergency issues, shall immediately call for a convening of both houses of the legislature. Otherwise, the governor may exercise emergency powers for a period not to exceed 30 days. For peacetime emergencies: the governor must immediately notify the majority and minority leaders of the senate and the speaker and majority and minority leaders of the house of representatives. A peacetime emergency must not be continued for more than five days unless extended by resolution of the Executive Council up to 30 days. An order, or proclamation declaring, continuing, or terminating an emergency must be given prompt and general publicity and filed with the secretary of state. MINN. STAT. ANN. § 12.31.
25.	Mississippi	No relevant provisions found. Statute addressing emergency executive authority is located at MISS. CODE ANN. § 33-15-11.

	State	Statute
26.	Missouri	Any emergency shall terminate upon the proclamation thereof by the governor, or the passage by the legislature, of a resolution terminating such emergency. MO. REV. STAT. ANN. § 44.100.
27.	Montana	A proclamation is ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days. MONT. CODE ANN. § 10-3-505.
28.	Nebraska	The Legislature by resolution may terminate a state of emergency proclamation at any time, whereupon the governor shall terminate the proclamation by letter of notice to such agency, the Secretary of State, and the clerks of the local governments in the area to which it applies. NEB. REV. STAT. ANN. § 81-829.40.
29.	Nevada	Any such emergency or disaster terminates upon the proclamation of the termination thereof by the governor, or the passage by the Legislature of a resolution terminating the emergency or disaster. NEV. REV. STAT. ANN. § 414.070.
30.	New Hampshire	The legislature may terminate a state of emergency by concurrent resolution adopted by a majority vote of each chamber. The governor's power to renew a declaration of a state of emergency shall terminate upon the adoption of a concurrent resolution under this subparagraph; provided, however, that such resolution shall not preclude the governor from declaring a new emergency for different circumstances under paragraph I of this section. N.H. REV. STAT. ANN. § 4:45.
31.	New Jersey	No relevant provisions found. Statutes addressing emergency executive authority are located at N.J.S.A. 26:13-3 and N.J.S.A. App. A:9-34.
32.	New Mexico	No relevant provisions found. Statute addressing emergency executive authority is located at N.M. STAT. ANN. § 12-10A-5.
33.	New York	The legislature may terminate by concurrent resolution executive orders issued under this section at any time. N.Y. EXEC. LAW § 29-a (McKinney).
34.	North Carolina	A state of emergency declared shall expire when rescinded by the authority that issued it (legislative or gubernatorial). N.C. GEN. STAT. ANN. § 166A-19.20.

	State	Statute
35.	North Dakota	The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. N.D. CENT. CODE ANN. § 37-17.1-05.
36.	Ohio	No relevant provisions found. Statute addressing emergency executive authority is located at OH ST § 5502.22.
37.	Oklahoma	The existence of such emergency may be proclaimed by the governor or by concurrent resolution of the Legislature if the governor in such proclamation, or the Legislature in such resolution, finds that an emergency or disaster has occurred or is anticipated in the immediate future. Any such emergency, whether proclaimed by the governor or by the Legislature, shall terminate upon the proclamation of the termination thereof by the governor, or by passage by the Legislature of a concurrent resolution terminating such emergency. OKLA. STAT. ANN. TIT. 63, § 683.9.
38.	Oregon	Emergency powers granted to the governor shall be terminated by proclamation of the governor or by joint resolution of the Legislative Assembly. OR. REV. STAT. ANN. § 401.192.
39.	Pennsylvania	The state of disaster emergency shall continue until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than 90 days unless renewed by the governor. The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened and the conditions which have brought the disaster about or which make possible termination of the state of disaster emergency. 35 PA. STAT. and CONSOL. STAT. ANN. § 7301.
40.	Puerto Rico	The legislature shall pass judgment on the content of emergency executive orders and may delimit their scope through a concurrent resolution. 3 L.P.R.A. § 1942.
41.	Rhode Island	The general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time. 30 R.I. GEN. LAWS ANN. § 30-15-9.

	State	Statute
42.	South Carolina	A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly. S.C. Code Ann. § 25-1-440 (a)(2). Statute addressing emergency executive authority is located at S.C. CODE ANN. § 1-3-420.
43.	South Dakota	No relevant provisions found. Statute addressing emergency executive authority is located at S.D. Codified Laws § 34-48A-5.
44.	Tennessee	No relevant provisions found. Statute addressing emergency executive authority is located at TENN. CODE ANN. § 58-2-107.
45.	Texas	The legislature by law may terminate a state of disaster at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster. TEX. GOV'T CODE ANN. § 418.014.
46.	Utah	A state of emergency may not continue for longer than 30 days unless extended by joint resolution of the Legislature, which may also terminate a state of emergency by joint resolution at any time. The governor shall issue an executive order ending the state of emergency on receipt of the Legislature's resolution. UTAH CODE ANN. § 53-2a-206.
47.	Vermont	The governor, upon receiving notice that a majority of the legislative body of a municipality affected by a natural disaster no longer desires that the state of emergency continue within its municipality, shall declare the state of emergency terminated within that particular municipality. VT. STAT. ANN. TIT. 20, § 13.
48.	Virginia	The Governor shall cause copies of any order, rule, or regulation proclaimed and published by him pursuant to § 44-146.17 to be transmitted forthwith to each member of the General Assembly. VA. CODE ANN. § 44-146.17:1.
49.	Washington	No order or orders concerning waiver or suspension of statutory obligations or limitations (during a declared emergency) may continue for longer than 30 days unless extended by the legislature through concurrent resolution. If the legislature is not in session, the waiver or suspension of statutory obligations or limitations may be extended in writing by the leadership of the senate and the house of representatives until the legislature can extend the waiver or suspension by concurrent resolution. For purposes of this section, "leadership of the senate

	State	Statute
		and the house of representatives” means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives. WASH. REV. CODE ANN. § 43.06.220.
50.	West Virginia	Any state of emergency or state of preparedness, whether proclaimed by the governor or by the Legislature, terminates upon the proclamation of the termination by the governor, or the passage by the Legislature of a concurrent resolution terminating the state of emergency or state of preparedness. W. VA. CODE ANN. § 15-5-6.
51.	Wisconsin	A state of emergency shall not exceed 60 days, unless the state of emergency is extended by joint resolution of the legislature. A copy of the executive order shall be filed with the secretary of state. The executive order may be revoked at the discretion of either the governor by executive order or the legislature by joint resolution. WIS. STAT. ANN. § 323.10. Firearm limit to powers at WIS. STAT. ANN. § 323.24.
52.	Wyoming	No relevant provisions found. Statute addressing emergency executive authority is located at WYO. STAT. ANN. § 19-13-104.

Appendix D

Proposed Bills or Resolutions to Limit Governor's Power During a Disaster (as of October 28, 2020)

	State	Bill	Status	Description
1.	Alabama	SB 334	Failed-- adjourned	Provides that a state of emergency terminates after 14 days and may be extended only by joint resolution of the Legislature.
2.	Arkansas	SB 2	Passed	Provides that the release of any funds from the COVID-19 Rainy Day Fund require prior approval of the Speaker of the House of Representatives, majority party leader of the House, minority party leader of the House; the President Pro Tempore of the Senate; the majority party leader of the Senate and the minority party leader of the Senate.
3.	California	AB 1857	Failed-- adjourned	Amends the Emergency Services Act. Requires the governor to submit a copy of any contract executed with moneys authorized for expenditure to support a declared state of emergency to the Joint Legislative Budget Committee and members of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget with 72 hours of a contract becoming final.
4.	Colorado	HB 1426	Passed	Concerns legislative engagement in the management of state operations; sets forth requirements for the receipt of information from the Executive Branch during a declared disaster emergency; provides for reporting on expenditures from the Disaster Emergency Fund and the reporting of federal funds.
	Colorado	HCR 1002 and SCR 2	Failed-- adjourned	Submits to the registered electors of the state of Colorado an amendment to the Colorado constitution concerning legislative oversight of a state of disaster emergency declared by the governor.

	State	Bill	Status	Description
5.	Delaware	HB 330	Failed -- adjourned	Limits the Governor's authority to continue a state of emergency by requiring the General Assembly to adopt and set the time period for continuing the state of emergency.
6.	Hawaii	SR 166	Passed	Requests all executive branch departments and attached agencies to inform the Senate and House of Representatives when implementing their plans and procedures relating to the coronavirus pandemic.
7.	Illinois	HB 5776 and SB 3987	Pending	Provides that after an initial proclamation declaring that a disaster exists, the Governor may only extend that declaration or make further proclamations regarding the same disaster if the General Assembly passes a resolution within 5 calendar days that approves the extension or further proclamation. Provides that if, due to health or safety concerns, the General Assembly is unable to convene in either regular or special session to approve the extension or further proclamation, the extension or further proclamation may continue in effect until the General Assembly is able to convene in regular or special session if the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives submit written certification to the Governor that the General Assembly is unable to convene to provide the necessary approval of the extension or further proclamation.
8.	Kansas	HB 2054	Vetoed	Requires a supermajority of legislative leaders on the State Finance Council to approve emergency actions.
	Kansas	HB 2016	Passed	Prohibits the governor from proclaiming any new COVID-19 related state of disaster emergency in 2020 without approval of at least six legislative members of the State Finance Committee (SFC). Prohibits the governor from ordering the closure or cessation of any business or commercial activity for more than 15 days. At least 24 hours prior to the issuance of such order, the governor must call a meeting of the SFC to consult with the SFC regarding the conditions necessitating

	State	Bill	Status	Description
				the issuance of the order. After an order or orders have resulted in 15 days of such closures or cessation, the governor may not order such closure or cessation except, upon specific application by the governor to the SFC and an affirmative vote of at least six legislative members of the SFC, the governor may order such closure or cessation of business or commercial activity, as approved by the SFC, for specified periods not to exceed 30 days each.
9.	Kentucky	Bill Request 41 (2021)	Pending	Limits the effective dates of executive orders issued by the governor to 30 days unless an extension is approved by the General Assembly, and prohibit the Governor from issuing a new executive order relating to the same emergency without the approval of the General Assembly.
10.	Louisiana	HB 11	Pending	Specifies that legislative termination of an emergency declaration does not affect the governor's ability to declare a state of disaster or emergency or public health emergency based on circumstances that are not directly related to the emergency that was terminated.
	Louisiana	HB 17	Pending	Requires legislative approval for renewal of declarations of public health emergencies when at least 50 percent of the state's population is affected and provides for the procedure to be used when determining whether to renew a declaration of public health emergency.
	Louisiana	HB 57	Pending	Requires legislative approval for renewal of gubernatorial emergency declarations continuing beyond 30 days, provides for a procedure for legislative approval of the renewal, and allows the legislature to modify gubernatorial emergency declarations.
	Louisiana	HB 61	Pending	Authorizes the legislature, by a majority vote, to approve the renewal of emergency declarations to continue beyond 30 days, requires the governor to submit a notice

	State	Bill	Status	Description
				of intent to renew to the legislature, and provides the procedure for legislative approval of a renewal.
	Louisiana	HB 68	Pending	Provides for renewal of gubernatorial declarations of disaster or emergency and of public health emergency.
	Louisiana	HCR 9	Pending	Suspends the provisions of R.S. 29:724(A) and (B)(1), 766(A) and (B), and 768(A), which authorize the governor to declare and renew a state of emergency or public health emergency only as they apply to the COVID-19 pandemic.
	Louisiana	SB 29	Pending	Restricts the length of any declaration to 30 days. requires the governor to submit written notification of his intent to renew the order, proclamation, or suspension to a newly-created Legislative Emergency Declaration Review Committee and the chief justice of the state supreme court for review.
	Louisiana	SB 35	Pending	Requires that the termination of a gubernatorially declared state of disaster or emergency be approved by two-thirds of the membership of both houses.
	Louisiana	SB 39	Pending	Provides for remote operations of the Legislature during a gubernatorially declared state of emergency.
	Louisiana	SB 43	Pending	Provides that after 60 calendar days from the initial declaration of a state of disaster or emergency, each renewal by the governor shall require approval by a majority of the elected members of both houses of the legislature. Failure to obtain approval shall terminate the state of disaster or emergency. Such termination shall be in addition to other means of termination provided by law.
	Louisiana	SB 48	Pending	Limits the duration of declarations of emergency to 30 days unless extension is authorized by the legislature. After the initial 30-day period, if the governor determines that the circumstances which precipitated the initial executive order, proclamation, or suspension are still present, then at least seven days before the expiration of the order, proclamation, or suspension the governor may do either of

	State	Bill	Status	Description
				the following: (1) Call the legislature into an emergency session pursuant to his constitutional authority to address emergency events which are continuing in nature; or (2) Notify the legislature and request a continuation of the executive order, proclamation, or suspension. notification of the request for extension will provide a ballot to each member of the legislature so that the member may vote to approve or reject the extension.
11.	Michigan	SB 858	Vetoed	Reduces the length of executive orders, proclamations and directives issued by the governor to 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of disaster terminated, unless a request by the governor for an extension of the state of disaster for a specific number of days is approved by resolution of both houses of the legislature.
	Michigan	HR 250 and SR 114	Passed	Authorizes the Speaker of the House to commence legal action on behalf of the House of Representatives challenging the governor's authority and actions during the Coronavirus pandemic.
12.	Minnesota	HB 4592	Failed-- adjourned	Limits duration of peacetime emergency to 5 days. Requires legislative approval to extend the duration of a peacetime emergency.
	Minnesota	HB 4629 , HB 4648 and SB 4583	Failed-- adjourned	Proposes an amendment to the state constitution that provides that the governor may declare an emergency and the emergency declaration may last for 7 days unless an extension is granted by the legislature.
	Minnesota	HB 4657 , HB 81 and HB 139	Failed-- adjourned	Permits the legislature to terminate any order or rule promulgated by the governor directing a response to a peacetime emergency if the emergency is continued for more than 30 days.

	State	Bill	Status	Description
	Minnesota	HB 22 , SB 4519 and SB 55	Failed-- adjourned	Requires legislative approval to extend the duration of a peacetime emergency declared by the Governor. Limits duration of peacetime emergency extension.
13.	Nevada	BDR 41 (2021)	Pending	Limits the duration of a state of emergency or declaration of disaster declared by the governor
	Nevada	BDR 178 (2021)	Pending	Limits the Governor's use of executive power under an emergency declaration.
14.	New Jersey	ACR 181	Pending	Proposes constitutional amendment to limit effective period of certain emergency orders, rules, or regulations issued by Governor to 14 days.
	New Jersey	AB 4212	Pending	Limits to 30 days effective period of certain emergency orders, rules, or regulations.
	New Jersey	SB 2482	Pending	Provides that any order, rule, or regulation issued by the Governor pursuant to the "Civil Defense and Disaster Control Act" will terminate on the 15th day after issuance, unless the Legislature approves a greater period of time by way of concurrent resolution. Prohibits the Governor from issuing an order, rule, or regulation to the same or substantially same effect as one terminated pursuant to the bill for the same emergency.
	New Jersey	SCR 117	Pending	Proposes constitutional amendment to limit effective period of certain emergency orders, rules, or regulations issued by Governor to 14 days.
15.	New Mexico	HB 10	Pending	Requiring legislative approval to extend an emergency declaration. Providing that a state of emergency or invocation of emergency powers terminates after 30 days unless extended.

	State	Bill	Status	Description
16.	New York	AB 6384	Pending	Provides that the governor shall not issue any executive order or give any direction to any executive agency to take any action that contradicts any current state law.
	New York	AB 10449	Pending	Eliminates the powers of the governor to issue any directive necessary to respond to a state disaster.
	New York	AB 10546 and SB 8466	Pending	Restores the legislative checks and balances to any emergency declaration that exceeds 45 days and ensures judicial due process rights for any action that impairs fundamental constitutional rights by limiting the powers of the governor to suspend laws during a state disaster emergency; requires a specification and explanation of which municipalities are effected by such suspension of laws.
	New York	AB 10918 and SB 8924	Pending	Provides that the Board of Regents, the Commissioner of Education, and the Education Department shall have the responsibility to respond to the current COVID-19 pandemic; terminates certain Executive Orders issued by the Governor; provides for the procedure to be followed regarding future Executive Orders regarding elementary, secondary, post-secondary schools, state universities, and other educational entities.
17.	North Carolina	HB 1170	Pending	Provides for expiration of executive orders and states of emergency issued by the Governor after 14 days unless approved by a joint resolution adopted by a majority vote of each house of the General Assembly.
18.	Ohio	HB 617	Pending	Establishes time frames and legislative approval procedures as conditions governing the authority of the Department of Health to issue statewide shelter-in-place or stay-at-home orders.
	Ohio	HB 618	Pending	Limits the authority of the governor and the Department of Health to issue orders regarding contagious or infectious diseases. Prohibits any order from affecting the conduct of an election.

	State	Bill	Status	Description
	Ohio	HB 682	Pending	Provides that only the General Assembly, by a two thirds majority vote, can require that all residents of the state wear a face mask or covering.
	Ohio	SB 311	Pending	Requires the approval of the Joint Committee on Agency Rule Review for Department of Health orders to be effective for more than 14 days.
19.	Oklahoma	SB 1102	Failed -- adjourned	Requires the governor or a designee to meet with the Legislature at least twice per week for the duration of the emergency to discuss actions that have been taken and actions that will be taken.
20.	Pennsylvania	HB 2463	Passed	Provides for access to public records during a disaster declaration.
	Pennsylvania	SB 1166	Passed	Provides that a disaster emergency declaration shall be in effect for no more than 21 days unless otherwise extended by the General Assembly.
21.	South Carolina	HCR 5473	Pending	Expresses the sense of the General Assembly that the Governor is not authorized to declare successive States of Emergency that are based upon the scope of impact of the event or occurrence that was the basis for the state of emergency. Expresses that it is the Governor's duty to ask for consent if a state of emergency needs to be extended beyond 15 days.
	South Carolina	HB 5488	Pending	Provides that a declared state of emergency shall not continue for a period of more than 15 days without the passage of a joint resolution by the General Assembly expressly approving the declaration's continuation. Provides that upon the expiration of the governor's original emergency declaration, he may not declare a new state of emergency based upon the same or substantially similar facts and circumstances as the original declaration without the passage of a joint resolution by the General Assembly expressly approving the new emergency declaration. Requires the governor to submit a report to the General Assembly before continuing a declared state of emergency or declaring a new state of emergency

	State	Bill	Status	Description
				based upon the same or substantially similar facts and circumstances as the original declaration.
	South Carolina	SB 1200	Pending	Provides that a state of emergency declared by the governor may not last more than 15 days unless the General Assembly adopts a concurrent resolution authorizing the state of emergency to remain in place for a longer period of time. Provides that the General Assembly must adopt a concurrent resolution authorizing a declared state of emergency if it is to remain in place for longer than 15 days, and inaction by the General Assembly in this regard does not constitute consent.
	South Carolina	SB 1203	Pending	Enact the “Emergency Order Balance of Powers Act” which sets forth actions that would make a proclamation ineffective and permits the governor to renew a state of emergency in periods of no greater than 15 days.
22.	Tennessee	HB 2931 and SB 2938	Failed-- adjourned	Requires the Governor to receive approval from the General Assembly prior to continuing a state of emergency for longer than 30 days.
23.	Utah	HB 3005	Passed	Requires the governor to provide notice to certain legislative branch officers before issuing a declaration of a state of emergency or making other executive orders or actions in response to an epidemic or pandemic disease. Provides an exemption to the notice requirement if there is an imminent threat of serious injury, loss of life, or harm to property.
24.	Virginia	HJR 5001	Pending	Limits the authority of the Governor to issue an executive order declaring a state of emergency that restricts, limits, or prohibits otherwise lawful action by a private business, nonprofit entity, or individual for a period more than 45 days in duration without approval by the General Assembly. The Governor is required to convene a special session for the purpose of the General Assembly approving the extension of such executive order beyond the forty-fifth day after its original issuance and if the

	State	Bill	Status	Description
				General Assembly does not approve such extension, the Governor is prohibited from issuing a subsequent executive order in the same form for the same declared emergency. The General Assembly is permitted to extend the executive order to a date requested by the Governor or to a date of the General Assembly's choosing, but it shall not approve the extension to a date beyond the first full week of the next regular session of the General Assembly, unless such date is requested by the Governor.
	Virginia	HJR 5003	Pending	Requires the Governor to convene a special session whenever declaring a state of emergency for a period that exceeds 90 days or whenever extending a state of emergency for a period that exceeds 90 days in the aggregate.
	Virginia	HJR 5005	Pending	Provides that the Governor shall have the powers and duties related to states of emergency as provided by general law, except that no declared state of emergency shall be in effect for more than seven days unless approved by an affirmative vote of two-thirds of the members elected to each house. The amendment also prohibits the suspension of any constitutionally protected right of an individual during a declared state of emergency.
	Virginia	HB 5007	Pending	Provides that executive orders declaring a state of emergency, and any other executive orders pertaining to such emergency, shall not have any effect beyond 30 days after the date of issuance, unless the General Assembly takes action to grant the Governor additional authority to extend such an order. Changes the penalty for a violation of certain executive orders from a Class 1 misdemeanor to a civil penalty of no more than \$100 per violation. Provides that in no case shall any person be assessed a total of more than \$1,000 in penalties for violations of the same executive order.
	Virginia	HB 5010	Pending	Limits the duration of any executive order issued by the Governor pursuant to his powers under the Emergency Services and Disaster Law to no more than 60 days

	State	Bill	Status	Description
				from the date of issuance. Provides that if the General Assembly does not take any action on the rule, regulation, or order within the 60 days during which the rule, regulation, or order is effective, the Governor shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency.
	Virginia	HB 5039 and SB 5008	Pending	Limits the duration of any executive order issued by the Governor pursuant to his powers under the Emergency Services and Disaster Law to no more than 45 days from the date of issuance. Provides that if the General Assembly does not take any action on the rule, regulation, or order within the 45 days during which the rule, regulation, or order is effective, the Governor may once again issue the same rule, regulation, or order but shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency.
	Virginia	SB 5001 and SB 5111	Pending	Limits the duration of any executive order issued by the Governor pursuant to his powers under the Emergency Services and Disaster Law to no more than 30 days from the date of issuance. Provides that if the General Assembly does not take any action on the rule, regulation, or order within the 30 days during which the rule, regulation, or order is effective, the Governor may once again issue the same rule, regulation, or order but shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency.
	Virginia	SB 5077	Pending	Limits the Governor's powers as the Director of Emergency Management by requiring that emergency rules, regulations, and executive orders be objectively necessary and required to control, restrict, allocate, or regulate the use, sale, production, and distribution of food, fuel, clothing and other commodities, materials, goods, services, and resources under any state or federal emergency services programs, rather than necessary in the Governor's judgment. Prohibits an emergency executive order from closing any business, or any category of business

	State	Bill	Status	Description
				or industry, either temporarily or permanently, unless pursuant to a confirmed order of quarantine or isolation.
25.	Washington	SB 5260	Passed	Revises provisions relating to powers to waive statutory obligations or limitations during a state of emergency in order to cope with the emergency. Provides that the governor shall give as much notice as practical to legislative leadership and impacted local governments when issuing orders. Provides that no orders concerning waiver or suspension of statutory obligations or limitations may continue for longer than 30 days unless extended by the legislature through concurrent resolution. If the legislature is not in session, the waiver or suspension of statutory obligations or limitations may be extended in writing by the leadership of the senate and the house of representatives until the legislature can extend the waiver or suspension by concurrent resolution.
26.	Wisconsin	AB 1037 and SB 923	Failed	Requires the governor to submit a copy of any order declaring a state of emergency that may exceed 30 days to the Joint Committee on Legislative Organization. Requires that before any ban of gatherings of 50 or fewer individuals goes into effect, a written report be submitted to the legislature detailing the justification for the ban, including how the restrictions in the order serve a compelling governmental interest and are narrowly tailored to achieve that compelling governmental interest.