

# **OVERVIEW OF STATE & LOCAL GOVERNMENT POWERS DURING THE COVID-19 PANDEMIC**

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State and local governmental powers have been a significant focus during the COVID-19 pandemic as governmental entities of all levels have issued both guidance and directives in response to the pandemic. As more medical research is conducted and information is dispersed through news organizations, citizens may find that it is difficult to determine how to navigate the ever-changing restrictions and guidelines issued by the government at all levels. Some residents have not left their homes, while others have continued with their daily lives as best as possible. One thing is clear -- the COVID-19 virus and the changes it brought came quickly.

Presently, many states, including Alabama, are in the stage of re-opening. Re-opening brings with it many challenges and questions, specifically in regard to state and local government powers. The constitutionality of quarantines and stay-at-home orders has been questioned. Cities that are coronavirus hot-spots in states that are re-opening worry what the numbers will look like a month from now. People have lost jobs, are unable to see family members, and are now required to wear masks in certain areas. Those who live alone are living in isolation, and those who have children need a break. How much longer is this way of living sustainable? Even more so, is all of this constitutional? This article will detail the actions taken by the federal government and the State of Alabama in response to the COVID-19 pandemic and discuss the constitutionality of state and municipal response measures, enforcement of these measures, and liability issues for Alabama municipalities, business owners, and employers.

## **Overview of COVID-19 Timeline and Emergency Orders**

The following is an overview of the response of both the federal government and the State of Alabama to the COVID-19 pandemic.

FEDERAL COVID-19 RESPONSE TIMELINE

<ul style="list-style-type: none"> <li>– <i>Jan. 30:</i> Centers for Disease Control and Prevention (CDC) identifies person-to-person transmission in US</li> <li>President Trump (POTUS) establishes COVID-19 task force</li> </ul>	<ul style="list-style-type: none"> <li>the Spread,” implementing social distancing at all levels of society</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Apr. 9:</i> Federal Reserve announces options to provide up to \$2.3T in loans to support the economy</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Jan. 31:</i> Department of Health and Human Services (DHHS) declares a public health emergency</li> <li>Announcement of travel restrictions from China</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Mar. 17:</i> All 50 states have confirmed COVID-19 cases</li> <li>– <i>Mar. 18:</i> POTUS signs Family First Coronavirus Response Act providing \$3.5B in emergency funding for employment-related protections and benefits, health programs and insurance coverage requirements, and tax credits</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Apr. 11:</i> Major disaster declarations have been issued in all 50 states for the first time in U.S. history</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Feb. 6:</i> First U.S. death related to COVID-19</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Mar. 19:</i> POTUS invokes the Defense Production Act</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Apr. 16:</i> POTUS announces guidelines on the three phases of Opening Up American Again</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Mar. 6:</i> POTUS signs COVID-19 bill providing \$8.3B for crisis response</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Mar. 27:</i> POTUS signs Coronavirus Aid, Relief, and Economic Security Act providing \$2T for families and small businesses</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Apr. 24:</i> POTUS signs Paycheck Protection Program and Health Care Enhancement Act</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Mar. 11:</i> POTUS addresses the nation</li> <li>Announcement of travel restrictions from Europe</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Mar. 28:</i> POTUS invokes the Defense Production Act, requiring GM to make ventilators</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Apr. 28:</i> U.S. passes 1M confirmed COVID-19 cases</li> <li>POTUS invokes the Defense Production Act to ensure Americans have a reliable supply of meat products</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Mar. 13:</i> POTUS declares COVID-19 a national emergency</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Mar. 29:</i> POTUS extends social distancing guidelines through Apr. 30</li> </ul>	<ul style="list-style-type: none"> <li>– <i>May 8:</i> Bureau of Labor Statistics reports the U.S. jobless rate reached 14.7% in Apr., the highest level since the Great Depression</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Mar. 16:</i> White House announces “15 Days to Slow</li> </ul>		

STATE OF ALABAMA COVID-19 RESPONSE TIMELINE

<ul style="list-style-type: none"> <li>– <i>Mar. 13:</i> Gov. Ivey declares a state public health emergency</li> </ul>	<ul style="list-style-type: none"> <li>Shelby, Tuscaloosa, and Walker Counties</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Mar. 19:</i> SHO suspends public gatherings of 25 people or more statewide</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Mar. 17:</i> State Health Officer (SHO) suspends public gatherings of 25 people or more in Blount, Saint Clair,</li> </ul>	<ul style="list-style-type: none"> <li>– <i>Mar. 18:</i> Gov. Ivey requires the closure of all K-12 public schools</li> </ul>	<ul style="list-style-type: none"> <li>Closes schools; closes beaches; prohibits visitation at Hospitals and Nursing Home/Long Term Care</li> </ul>

<p>Facilities; delays elective procedures; prohibits on-premises consumption of food or drink at all restaurants, bars, and breweries</p> <p>– <i>Mar. 23</i>: Gov. Ivey postpones certain state tax obligations</p> <p>– <i>Mar. 27</i>: SHO closes non-essential businesses</p> <p>– <i>Apr. 3</i>: SHO issues Stay at Home Order</p> <p>Prohibits non-work related gatherings of 10 people or more</p> <p>Gov. Ivey orders protection against residential evictions and foreclosures</p>	<p>– <i>Apr. 28</i>: SHO issues Safer at Home Order</p> <p>Non-work related gatherings of 10 persons or more remain prohibited; several businesses and offices, including retail, are allowed to re-open subject to restrictions; restaurants, bars, and breweries remain limited to no on-premises consumption; higher-risk business and activities remain closed (entertainment venues, athletic facilities, close-contact service providers); schools remain closed; elective procedures may proceed</p> <p>– <i>May 8</i>: Gov. Ivey extends State of Emergency</p>	<p>SHO amends Safer at Home Order</p> <p>Re-opens most businesses and activities subject to restrictions, including close-contact service providers and gyms; restaurants, bars, and breweries allowed to offer on-premises consumption; certain higher-risk businesses and activities remain closed (entertainment venues, athletic activities that involve interaction with another person)</p> <p>Gov. Ivey provides liability protections related to COVID-19 for businesses and health care providers</p>
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### **Constitutionality of States Implementing Stay-at-Home Orders**

Individual states possess the power to establish and enforce laws to protect the public health, safety, and general welfare. This power, known as the state police power, comes from the Tenth Amendment to the Constitution which grants states the “powers not delegated to the United States.”<sup>i</sup> Nearly two-hundred years ago, in 1824, Chief Justice John Marshall in *Gibbons v. Ogden* described state police powers as those “which embrace[] every thing within the territory of a State, not surrendered to the general government[,] all which can be most advantageously exercised by the States themselves.”<sup>ii</sup> Chief Justice Marshall then listed examples of these laws exercisable by the states, and among them are, yes, “quarantine laws” and “health laws of every description.”<sup>iii</sup>

Several decades later, in 1905, the United States Supreme Court decided *Jacobson v. Commonwealth of Massachusetts*.<sup>iv</sup> During the relevant time period of this case, the country was

experiencing a health emergency similar to COVID-19, but with smallpox. The law at issue was a statute passed by Massachusetts that allowed cities or towns to require that all residents be vaccinated if “necessary for the public health or safety.”<sup>v</sup> Under the authority granted by the statute, the City of Cambridge adopted a regulation requiring all of its inhabitants to be vaccinated to prevent the spread of smallpox.<sup>vi</sup> Jacobson refused the vaccination, Cambridge prosecuted him, and a jury found him guilty.<sup>vii</sup> Jacobson appealed his conviction and the case made it to the United States Supreme Court.

The question to be addressed on appeal was whether Cambridge’s vaccination law violated Jacobson’s Fourteenth Amendment right to liberty. The Court, with a 7-2 majority, held that the law did not violate Jacobson’s right, because the states possess the police power, which “must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and public safety.”<sup>viii</sup> The Court made several assertions and conclusions that are directly applicable to the COVID-19 pandemic today, such as:

- “[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.”<sup>ix</sup>
- “Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one’s will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others.”<sup>x</sup>
- “Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.”<sup>xi</sup>

- “[I]t is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.”<sup>xii</sup>

Ultimately, the Court held that to prevent the spread of an infectious disease, a state may use its police power to enact reasonable regulations in order to protect the public health and safety. Of course, regulations of this nature cannot be arbitrary, unusual, or unreasonable.<sup>xiii</sup> As further explained by the *Jacobson* Court, regulations that are intended to prevent the spread of an infectious disease should be based on the recommendations of a board of health.<sup>xiv</sup>

#### What does this mean today?

As the United States Supreme Court held in *Gibbons*, implementing and enforcing quarantine laws are well within a state’s police power.<sup>xv</sup> This means that the shelter-in-place and stay-at-home orders implemented by states thus far in response to COVID-19 are most likely constitutional. And because the police power also includes the power to pass “health laws of every description,” many of the other COVID-19 related regulations implemented thus far are most likely constitutional as well.<sup>xvi</sup> This conclusion is supported by the holding in *Jacobson*, where the Court applied the *Gibbons* principles to a health emergency similar to what we are currently experiencing. If requiring vaccination is a constitutional measure which can be justified via the protection of the public health and safety, then measures requiring people to stay at home, closing non-essential businesses, and restricting travel are likely permissible as well. This is especially true because there is no vaccine for COVID-19 yet, and the only known way to prevent its spread is through limiting contact with other people. Additionally, a court would be unlikely to find the present regulations to be arbitrary, unusual, or unreasonable, because health

boards across the United States, and across the world, have recommended such regulations to protect the public health and safety.

To address the somewhat controversial mask-wearing guidelines and requirements, it is necessary to analyze the differences and similarities between a vaccination and wearing a mask. A vaccination is a comparatively invasive procedure to limit the spread of disease. Vaccinations require antigens to be injected into the body so the immune system can produce antibodies to protect from later exposure to viruses or bacteria.<sup>xvii</sup> A mask, on the other hand, is an item of clothing that covers one's mouth and nose. A mask does not require anything to be injected into a person, nor does it alter anything in a person's body. Since the Court in *Jacobson* found that a vaccination requirement did not violate a person's right to liberty, then it would likely find that governments suggesting or mandating that people wear masks to prevent the spread of COVID-19 do not violate the right to liberty either.<sup>xviii</sup>

### **Municipal Government Power to Implement COVID-19 Response Measures**

Not only are there questions surrounding a state's power to issue stay-at-home orders, but there are also questions regarding the power that municipal governments possess to implement preventative response measures that are different from a state's orders. There are two general approaches to municipal governance and autonomy. The first, referred to as "Dillon Rule," holds that local government power is derived from the state, and that a local government's authority is therefore limited to what is delegated by the state.<sup>xix</sup>

The second approach, known as "Home Rule," stands for the proposition that local governments enjoy at least some inherent rights that are free from the threat of state interference.<sup>xx</sup> If a state adopts Home Rule, whether through a constitutional amendment or legislative act, local governments may pass ordinances without approval from the state

legislature.<sup>xxi</sup> A majority of states have adopted some form of Home Rule, though each state varies in the counties, cities, and towns it applies to.<sup>xxii</sup>

### Alabama's Approach

Alabama applies the Dillon Rule in analyzing the power of a city or town to exercise a particular power.<sup>xxiii</sup> Alabama grants specific powers to municipal governments either expressly through its constitution or through statutes or acts passed by the Alabama State Legislature. This principle was discussed long ago in an opinion of the Alabama Supreme Court in the case of *City of Mobile v. Moog* wherein Justice Manning quotes Judge Dillon's THE LAW OF MUNICIPAL CORPORATIONS: "It is a general rule, and undisputed proposition of law, that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in, or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable."<sup>xxiv</sup> Incidental or implied powers must be akin to the municipal purpose.<sup>xxv</sup> Despite Alabama granting no general powers to municipalities, the Alabama Constitution delegates specific powers to municipal corporations, which include cities and towns. Section 89 of the Alabama Constitution prohibits municipalities from passing "any laws inconsistent with the general laws of this state."<sup>xxvi</sup>

### Municipal Power to Issue Stay-At-Home Orders and Other Measures

Section 11-47-131 of the Alabama Code gives cities and towns the power to establish and regulate quarantines, such as stay-at-home orders, as long as the quarantine is "not inconsistent with laws of the state."<sup>xxvii</sup> Under this statute, cities and towns have the power to "prevent the introduction of contagious, infectious, or pestilential diseases," implement a quarantine punishable by law, and adopt ordinances and regulations deemed "necessary to insure good

sanitary condition in public places or in private premises.”<sup>xxviii</sup> The powers set forth in this statute are considered “police powers” of a municipality to protect the public’s health, safety and welfare.<sup>xxix</sup> This “umbrella” of police powers is set forth in Alabama Code §11-45-1 which states: “Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by the applicable provisions of this title and any other applicable provisions of law and to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances.”<sup>xxx</sup>

Additionally, Section 22-12-12 gives cities and towns the authority to issue a quarantine order separate from the state.<sup>xxxi</sup> This statute conditions a quarantine proclamation upon the recommendation of the county board of health and subject to the approval of the State Board of Health; but in emergency situations, the mayor or chief executive officer of incorporated cities and towns may proclaim a quarantine without the recommendation of the county board of health and the approval of the State Board of Health, provided that the quarantine is subject to “approval, modification or withdrawal by the board of health of the county.”<sup>xxxii</sup>

In the wake of the current COVID-19 pandemic, Alabama’s attorney general has provided supplementary guidance on this topic for municipalities. The guidance issued on March 25, 2020 states, “[a] municipal ordinance proclaiming a quarantine that is more restrictive than a regulation or order by the State Board of Health is likely not ‘inconsistent’ or ‘in conflict with’ the laws of the state.”<sup>xxxiii</sup> Subsequent guidance, issued on April 8, 2020, affirmed this position.<sup>xxxiv</sup>

In both statements made by the attorney general, he urged municipalities to “recite the specific circumstances that make more restrictive measures than similar State orders necessary,” limit the duration of the restrictive measures, and reevaluate periodically with updated information.<sup>xxxv</sup> He also advised local governments “to coordinate with their county boards of health, where applicable, and the state health officer to ensure that the municipal action in question will be supported by, and is not inconsistent or in conflict with, current or impending state actions related to quarantine.”<sup>xxxvi</sup>

### **Law Enforcement and COVID-19 Response Measures**

With many states and cities implementing stay-at-home orders, travel restrictions, and mask-wearing requirements, the next question is, how will these measures be enforced by law enforcement? Most of the regulations seen around the country provide for fines or short-term imprisonment (or both) for those who violate them.<sup>xxxvii</sup> Instead of traditional penalties, some states have provided for sanctions for non-compliant businesses.<sup>xxxviii</sup> For example, businesses that do not comply with Pennsylvania’s laws risk losing eligibility for disaster relief funding and other loan or grant funding, and businesses in the District of Columbia and New Mexico risk losing their business licenses.<sup>xxxix</sup> Likewise, the City of Los Angeles threatened to shut off utility services to non-essential businesses that refused to close.<sup>xl</sup> There is a push to educate and persuade the public to adhere to the COVID-19 orders rather than use the criminal justice enforcement process immediately.<sup>xli</sup> This seems to be Alabama’s approach, as the attorney general issued guidance for law enforcement to restrain from criminally enforcing the governor’s orders unless “a violator has been made aware of the state health order and the refusal to comply presents a threat to public health and safety.”<sup>xlii</sup> Even though Alabama is no longer under a stay-at-home order, there are still restrictions on people keeping a six-foot distance between each

other and entertainment businesses remaining closed. As a result, there remain possibilities of people and businesses facing criminal consequences for violating current orders.

### **Liability Issues for Municipalities, Business Owners, and Employers**

On May 8, 2020, Governor Ivey issued a proclamation providing liability protections related to COVID-19.<sup>xliii</sup> The proclamation affords protections from certain liabilities, limitations on damages, and a standard of care for negligence claims arising before the issuance of the proclamation. The protections apply to “businesses, health care providers, and other covered entities,” which are defined as:

[A]n individual, partnership, association, corporation, health care provider, other business entity or organization, or any agency or instrumentality of the State of Alabama, including any university or public institution of higher education in the State of Alabama, whether any such individual or entity is for profit or not for profit, including its directors, officers, trustees, managers, members, employees, volunteers, and agents.<sup>xliv</sup>

For liability protections, the proclamation states that there will be no liability for the death or injury to people, or for damage to property, from an act or omission related to or in connection with COVID-19, unless the claimant can show, by clear and convincing evidence, that there was wanton, reckless, willful, or intentional misconduct.<sup>xlv</sup>

For limitations on damages, the proclamation states that if liability can be established under the new liability protections, but there is no serious physical injury, then damages are limited to those that are actual economic compensatory damages. The proclamation further provides that there will be no liability for non-economic or punitive damages, unless a party asserts a wrongful death claim, in which case the plaintiff is entitled only to punitive damages.<sup>xlvi</sup>

For causes of action related to COVID-19 that occurred before the May 8 proclamation, and if a court holds that the liability protections and limitations on damages do not apply, then there are still protections. The proclamation states that there will be no liability for negligence, premises liability, or any non-wanton, non-willful, or non-intentional civil causes of action related to COVID-19, unless the claimant can show, by clear and convincing evidence, that the alleged at-fault party “did not reasonably attempt to comply with the then applicable public health guidance.”<sup>xlvii</sup> Additionally, there will be no liability for damages from mental anguish or emotional distress, or for punitive damages; however, for causes of action that do not involve serious physical injury, there still may be liability for economic compensatory damages.<sup>xlviii</sup> Finally, the proclamation states that only punitive damages may be awarded for wrongful death claims.<sup>xlix</sup>

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In summary, the COVID-19 pandemic has created unique challenges for government. Governmental entities of all levels have issued both guidance and directives in response to the pandemic that have restricted individual liberties. However, the right to individual liberties is not absolute. Based upon the support presented in this article, it is clear that a state may use its police power to prevent the spread of an infectious disease by enacting reasonable regulations to protect the public’s health and safety. Likewise, Alabama municipalities may also use their police powers and the specific powers given to them by the Alabama Legislature to protect their residents’ health, safety and welfare.

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<sup>i</sup> U.S. CONST. amend. X.

<sup>ii</sup> *Gibbons v. Ogden*, 22 U.S. 1, 203 (1824).

<sup>iii</sup> *Id.*

<sup>iv</sup> *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905).

<sup>v</sup> *Id.* at 12.

<sup>vi</sup> *Id.* at 12–13.

<sup>vii</sup> *Id.* at 13–14.

<sup>viii</sup> *Id.* at 25.

<sup>ix</sup> *Id.* at 26.

<sup>x</sup> *Jacobson*, 197 U.S. at 26–27.

<sup>xi</sup> *Id.* at 27.

<sup>xii</sup> *Id.* at 29.

<sup>xiii</sup> *Id.* at 27.

<sup>xiv</sup> *Id.*

<sup>xv</sup> *Gibbons*, 22 U.S. at 203.

<sup>xvi</sup> *Id.*

<sup>xvii</sup> *Understanding How Vaccines Work*, CENTER FOR DISEASE CONTROL AND PREVENTION (last updated July 2018), <https://www.cdc.gov/vaccines/hcp/conversations/downloads/vacsafe-understand-color-office.pdf>.

<sup>xviii</sup> As an aside, private businesses are also allowed to require certain sanitation standards for customers because they are on private property. Just as a private business can require customers to wear shirts and shoes for service, a private business may require mask-wearing or check customers' temperatures. The requirements must apply to every

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person equally, though, as issues would begin to arise if a business required masks or temperature screenings based on specific demographics, such as age, race, or place of residence.

<sup>xix</sup> Hon. Jon D. Russell & Aaron Bostrom, *Federalism, Dillon Rule and Home Rule*, AMERICAN CITY COUNTY EXCHANGE (Jan. 2016), <https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf>.

<sup>xx</sup> *Id.*

<sup>xxi</sup> *Id.*

<sup>xxii</sup> *Id.*

<sup>xxiii</sup> See *New Decatur v. Berry*, 7 So. 838 (Ala. 1890); *Best v. Birmingham*, 79 So. 113 (Ala. 1918).

<sup>xxiv</sup> *City of Mobile v. Moog*, 53 Ala. 561 (1875) (quoting JOHN FORREST DILLON, *THE LAW OF MUNICIPAL CORPORATIONS* § 55 (2d. ed. 1873).

<sup>xxv</sup> *Best*, 79 So. at 116.

<sup>xxvi</sup> AL. CONST. art. IV, § 89.

<sup>xxvii</sup> ALA. CODE § 11-47-131(2).

<sup>xxviii</sup> ALA. CODE § 11-47-131(1)–(3).

<sup>xxix</sup> State of Alabama Office of the Attorney General, Guidance for Municipalities on Shelter-in-Place Orders/Quarantine (Mar. 25, 2020), <https://www.alabamaag.gov/Documents/files/2020-03-26-Shelter-in-place-Orders.pdf>.

<sup>xxx</sup> ALA. CODE § 11-45-1.

<sup>xxxi</sup> ALA. CODE § 22-12-12. For an incorporated city or town, the power may be exercised by the mayor. *Id.*

<sup>xxxii</sup> *Id.*

<sup>xxxiii</sup> Guidance for Municipalities on Shelter-in-Place Orders/Quarantine, *supra* note 29.

<sup>xxxiv</sup> See State of Alabama Office of the Attorney General, Guidance for Municipalities on Use of Power during State of Emergency (Apr. 8, 2020), <https://www.alabamaag.gov/Documents/files/StayAtHomeGuidance.pdf>.

<sup>xxxv</sup> *Id.*

<sup>xxxvi</sup> Guidance for Municipalities on Shelter-in-Place Orders/Quarantine, *supra* note 29.

<sup>xxxvii</sup> Kelly Currie & Tyler Brown, *COVID-19 Stay-at-Home and Traveler Quarantine Orders Pose Enforcement Challenges for Local Officials*, AMERICAN CITY & COUNTY (Apr. 22, 2020), <https://www.americancityandcounty.com/2020/04/22/covid-19-stay-at-home-and-traveler-quarantine-orders-pose-enforcement-challenges-for-local-officials/>.

<sup>xxxviii</sup> *Id.*

<sup>xxxix</sup> *Id.*

<sup>xl</sup> *Id.*

<sup>xli</sup> Betsy Pearl, et al., *The Enforcement of COVID-19 Stay-at-Home Orders*, CENTER FOR AMERICAN PROGRESS (Apr. 2, 2020), <https://www.americanprogress.org/issues/criminal-justice/news/2020/04/02/482558/enforcement-covid-19-stay-home-orders/>.

<sup>xlii</sup> State of Alabama Office of the Attorney General, Guidance for Law Enforcement on Enforcement of State Health Order (last updated Mar. 27, 2020), <https://www.alabamaag.gov/Documents/files/03-27-2020-GuidanceEnforcementStateHealthOrder.pdf>.

<sup>xliii</sup> State of Alabama, Proclamation by the Governor (May 8, 2020), <https://governor.alabama.gov/newsroom/2020/05/eighth-supplemental-state-of-emergency-coronavirus-covid-19/>.

<sup>xliv</sup> *Id.* Questions have arisen as to whether a municipality is an instrumentality of the State of Alabama. However, the recent Alabama Supreme Court decision in the case of *State of Alabama v. City of Birmingham, et. al* involving a Civil War monument in Linn Park clearly affirms that a municipality is an instrumentality of the state through the following statements. “Any discussion of this issue must begin with the well settled principle that “[m]unicipalities are but subordinate departments of state government.” *Alexander v. State ex rel. Carver*, 274 Ala. 441, 443, 150 So. 2d 204, 206 (1963) (citing *Ex parte Rowe*, 4 Ala. App. 254, 59 So. 69 (1912)). As “mere instrumentalities of the state,” municipalities possess “only such powers as may have been delegated to them by the legislature.” *City of Leeds v. Town of Moody*, 294 Ala. 496, 501, 319 So. 2d 242, 246 (1975) (citing *State ex rel. Britton v. Harris*, 259 Ala. 368, 371, 67 So.2d 26, 28 (1953)). See also *Winter v. Cain*, 279 Ala. 481, 487, 187 So. 2d 237, 242 (1966) (“‘A municipal corporation is but a creature of the State, existing under and by virtue of authority and power granted by the State.’” (quoting *Hurvich v. City of Birmingham*, 35 Ala. App. 341, 343, 46 So. 2d 577, 579 (1950))); and *Alexander*, 274 Ala. at 443, 150 So. 2d at 206 (“Counties and cities are political subdivisions of the state, each created by sovereign power in accordance with sovereign will, and each exercising such power, and only such

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power, as is conferred upon it by law.” (*citing Trailway Oil Co. v. City of Mobile*, 271 Ala. 218, 122 So. 2d 757 (1960)).” *State of Alabama v. City of Birmingham, et al.*, No. 1180342, 2019 WL 6337424 (Ala. Nov. 27, 2019).

<sup>xlv</sup> *Id.*

<sup>xlvi</sup> *Id.*

<sup>xlvii</sup> *Id.*

<sup>xlviii</sup> *Id.*

<sup>xlix</sup> State of Alabama, Proclamation by the Governor (May 8, 2020), <https://governor.alabama.gov/newsroom/2020/05/eighth-supplemental-state-of-emergency-coronavirus-covid-19/>.