

A New National Strategy for COVID-19 Response: Legal Opportunities & Challenges

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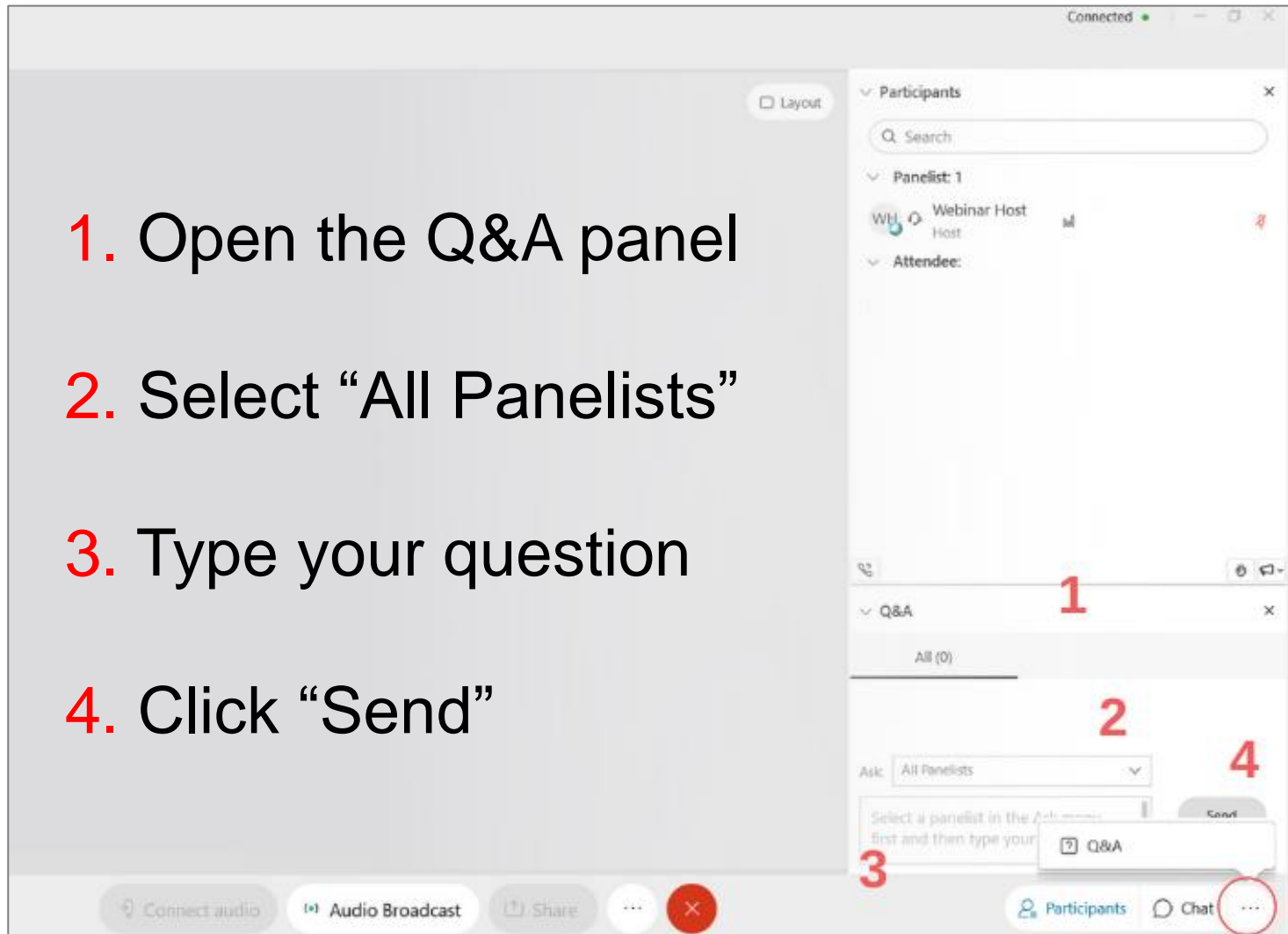
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How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



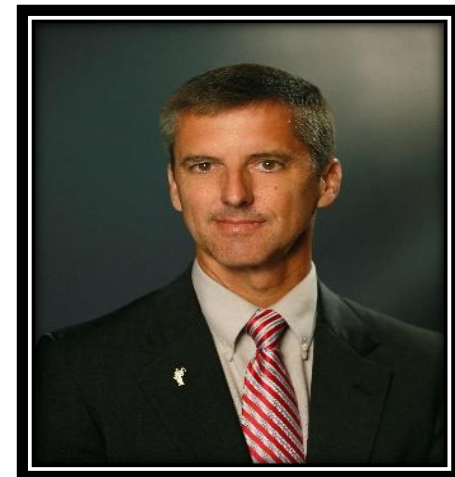
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Principal Objectives



COVID-19 Epidemiologic Trends



National COVID-19 Strategic Response Plan



Legal Opportunities & Challenges



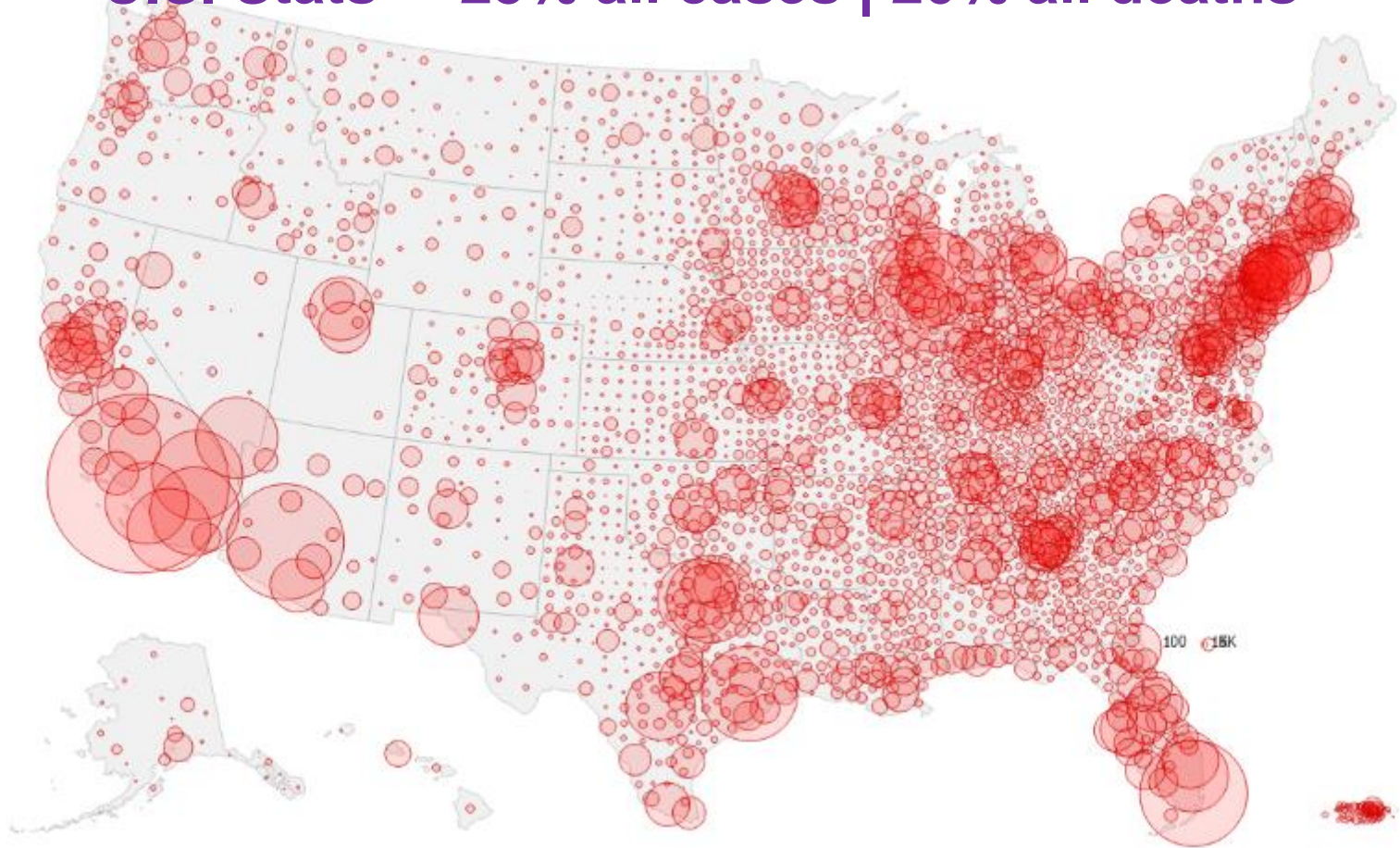
Questions & Comments

COVID-19 Confirmed Cases & Deaths

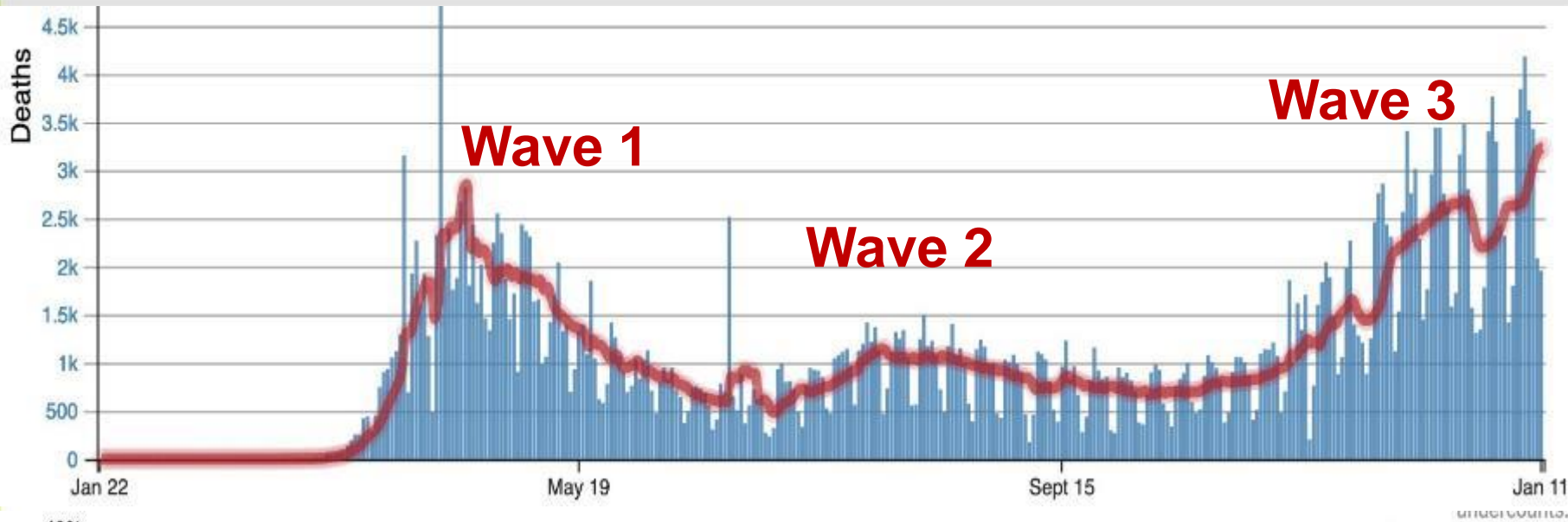
Global Cases 103 million | Deaths: 2.23 million

U.S. Cases 26.19 million | Deaths: 441,331

U.S. Stats 25% all cases | 20% all deaths

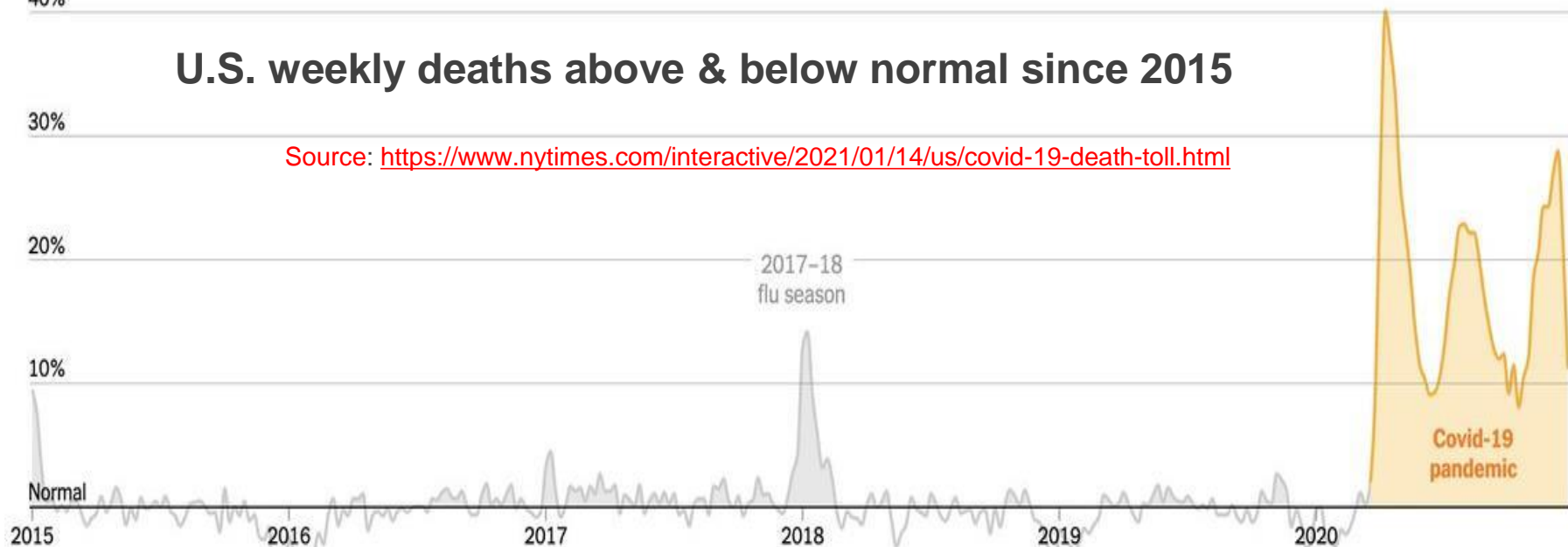


COVID-19 Deaths



U.S. weekly deaths above & below normal since 2015

Source: <https://www.nytimes.com/interactive/2021/01/14/us/covid-19-death-toll.html>



Profile of U.S. COVID-19 Deaths

81%
of deaths in
persons
ages 65+

66,000+
deaths of
persons ages
64 & under

54%
of deaths
among males

2.8x*
number of
deaths
among
Blacks

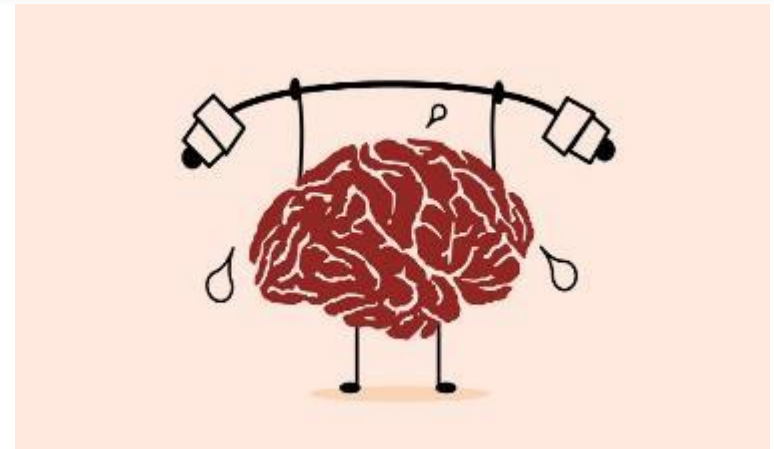
2.8x*
number of
deaths
among
Hispanics

2.6x*
number of
deaths
among Native
Americans

* Compared to White/Non-Hispanics persons



Evidence of long-term associated disabilities



Substantial mental health impacts of COVID infection and responses



Multiple vaccines are authorized for use; others are forthcoming



Variants/mutations challenge existing infection rates & vaccines

Biden-Harris Administration National Response Efforts

“There are moments in history when more is asked of us as Americans. We are in that moment now and history will measure whether we were up to a task. *Beating this pandemic will be one of the most difficult operational challenges we have ever faced as a nation.*” Jan. 21, 2021



Day 1: January 20, 2021:

- Appoint national COVID-19 Response Coordinator
- Create Safer Federal Workforce Task Force
- Issue mask “challenge” & federal mandate
- Allow delays in student loan payment
- Extend restrictions on home evictions/foreclosures
- Seek \$1.9 trillion COVID-19 relief legislation
- Re-engage with the World Health Organization & global priorities

Days 2-10:

- Introduce National Strategic Plan
- Set public health standards based in science & best practices
- Restructure federal response efforts globally & domestically
- Deliver economic relief to families bearing the brunt of the crisis

Days 11-100:

- Coordinate with state, territorial tribal & local governments to sync social distancing & mask requirements nationally
- 100 million+ vaccine shots to Americans
- Open 100 FEMA-supported vaccination centers



Jeffrey Zients

Objectives & Duties:

- Reduce disparities in COVID-19 response & treatment
- Coordinate efforts to produce & distribute PPE, vaccines, tests & other response supplies
- Ensure continuity of educational & other services for kids & elementary/secondary students
- Coordinate with state, tribal, territorial & local authorities

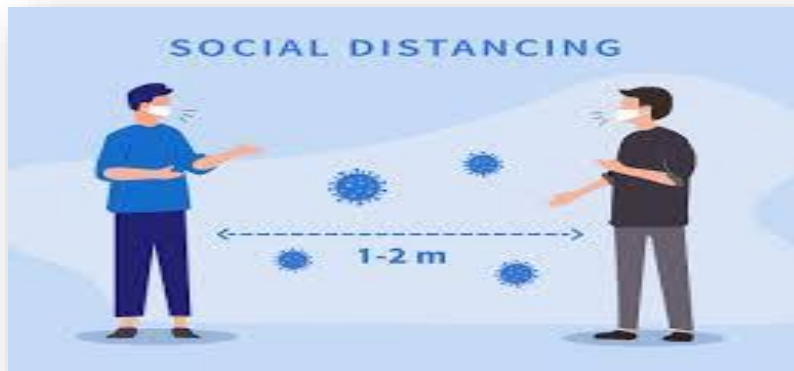
The Task Force shall guide heads of agencies on multiple subjects related to the federal workforce:



Testing methodologies & protocols



Case investigation & contact tracing



**Requirements & limitations on
physical distancing**



Enhanced structures to support telework

Federal Agency Coordination

Right click on each image to link to COVID-19 sites



NATIONAL STRATEGY FOR THE COVID-19 RESPONSE AND PANDEMIC PREPAREDNESS

 JANUARY 2021

National Strategic Plan – 6 Primary Domestic Goals

“We can and will beat COVID-19. America deserves a response to the COVID-19 pandemic that is ***driven by science, data, and public health — not politics.***”

1.
Restore trust
with Americans

2.
Comprehensive
vaccination
campaign

3.
Mitigate spread
through public
health standards

4.
Expand
emergency relief
via DPA

5.
Reopen schools,
business &
travel

6.
Equity across
racial, ethnic &
rural/urban lines

Goal 1. Restore Trust

“To rebuild the trust of the American people, the National Strategy will signal ***clear public leadership and a commitment to a robust whole-of-government response*** that puts science first.”

A.
National COVID-19
response structure
driven by science &
equity

B.
Conduct regular
science-based
public briefings

C.
Publicly share data
around key
response indicators

D.
Lead science-first
public health
campaigns

Goal 2. Vaccination Campaign

“The [U.S.] will spare no effort to ensure Americans can get vaccinated quickly, effectively, and equitably. The federal government will execute an aggressive vaccination strategy, focusing on the immediate actions necessary to convert vaccines into vaccinations. . . .”

A.

Ensure the availability of safe, effective vaccines

B.

Accelerate vaccine administration to people & communities

C.

Create new venues for people to be vaccinated

D.

Focus on hard-to-reach & high-risk populations

E.

Expand range of providers & assure they are compensated

F.

Monitor vaccine safety & efficacy

Goal 3. Mitigate Spread

“A ***comprehensive national public health effort to control the virus*** — even after the vaccination program ramps up — will be critical to saving lives and restoring economic activity.”

A.
National mask mandate
& “challenges” to state,
tribal & local
governments

B.
Establish COVID-19
Pandemic Testing
Board to unify
approaches

C.
Effectively distribute
tests & expand access
to testing, especially
among schools

D.
Seek new treatments
& therapeutics

E.
Empower CDC to
develop actionable,
evidentiary guidance
based on new data

F.
Expand U.S. public
health workforce &
increase clinical care
capacity

Goal 4. Defense Production Act

“It’s past time to fix America’s COVID-response supply shortage problems for good. The [U.S.] will immediately address urgent supply gaps, . . . while also steering the distribution of supplies to areas [of] greatest need.”

A.

Increase emergency funding to states & bolster FEMA’s response efforts

B.

Fill major supply shortfalls via the Defense Production Act

C.

Develop a new Pandemic Supply Chain Resilience Strategy

D.

Improve distribution, expand availability, & control pricing of critical materials

“At the same time that the [U.S.] takes immediate steps to achieve an overall decrease in COVID-19 spread, it will also support *the safe operation of schools, businesses, and travel.*”

A.

Implement a national strategy to safely reopen schools

B.

Fund safe operations at child care centers & at-home providers

C.

Support equitable reopenings & operations at colleges

D.

Protect workers via OSHA & other federal safety guidelines

E.

Provide guidance & support to safely open commerce & small businesses

F.

Promote safe travel domestically & abroad

“The COVID-19 pandemic has exposed & exacerbated severe & pervasive health inequities among communities defined by race, ethnicity, geography, disability, sexual orientation, gender identity & other factors.”

A.
Establish a COVID-19 Health Equity Task Force

B.
Ramp up data collection & reporting for at-risk populations

C.
Ensure equitable access to critical PPE, tests, therapies & vaccines

D.
Expand access to high quality health care

E.
Enhance the “social service safety net” to meet basic needs

F.
Address risks for persons in congregate settings

Goal 7. Global Responses

Goal 7. Restore U.S. leadership globally



The Assistant to the President for National Security Affairs (APNSA) shall convene the National Security Council (NSC) Principals Committee for guidance regarding:

- Preparing & responding to biological threats
- Identifying, monitoring & preparing for emerging pandemic threats
- Assessing secondary or tertiary effects of COVID-19
- Intersection of COVID-19 responses & other national security priorities
- Re-engaging with the World Health Organization

National Vision for a Healthier, Safer America



Widespread vaccinations



Prevention via surveillance, testing, tracing, masks



Focus on equitable & uniform allocations & benefits



Reopening schools & businesses safely with substantial support

National Reality Facing America



Discordant vaccination approaches



COVID fatigue re: prevention efforts



**Disparate access to essential
services & safe environments**



Partial reopenings across jurisdictions

Major Strategic Changes in Approach



Responsibility
for:

- *Testing*
- *Screening*
- *Masks*
- *Vaccination*
- *Treatments*
- *Travel/Opening*

Shared
with:

- *Science*
- *Guidance*
- *Data*
- *Best Practices*
- *Funding*

In return
for:

Shifts
to:



Practical Realities



Costs



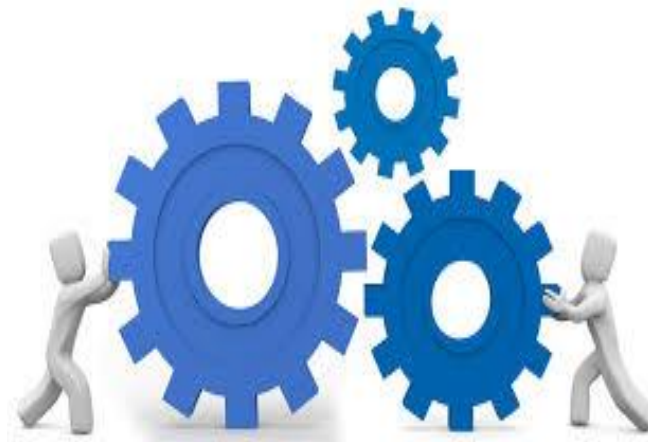
Logistics



Industry



Lobbies



Implementation



Infrastructure

Legal Realities



Legal Opportunities

A Healthier, Safer & Open America

National
Security

Emergency
Powers

Interstate Commerce Powers

PREP Act

PHS Act

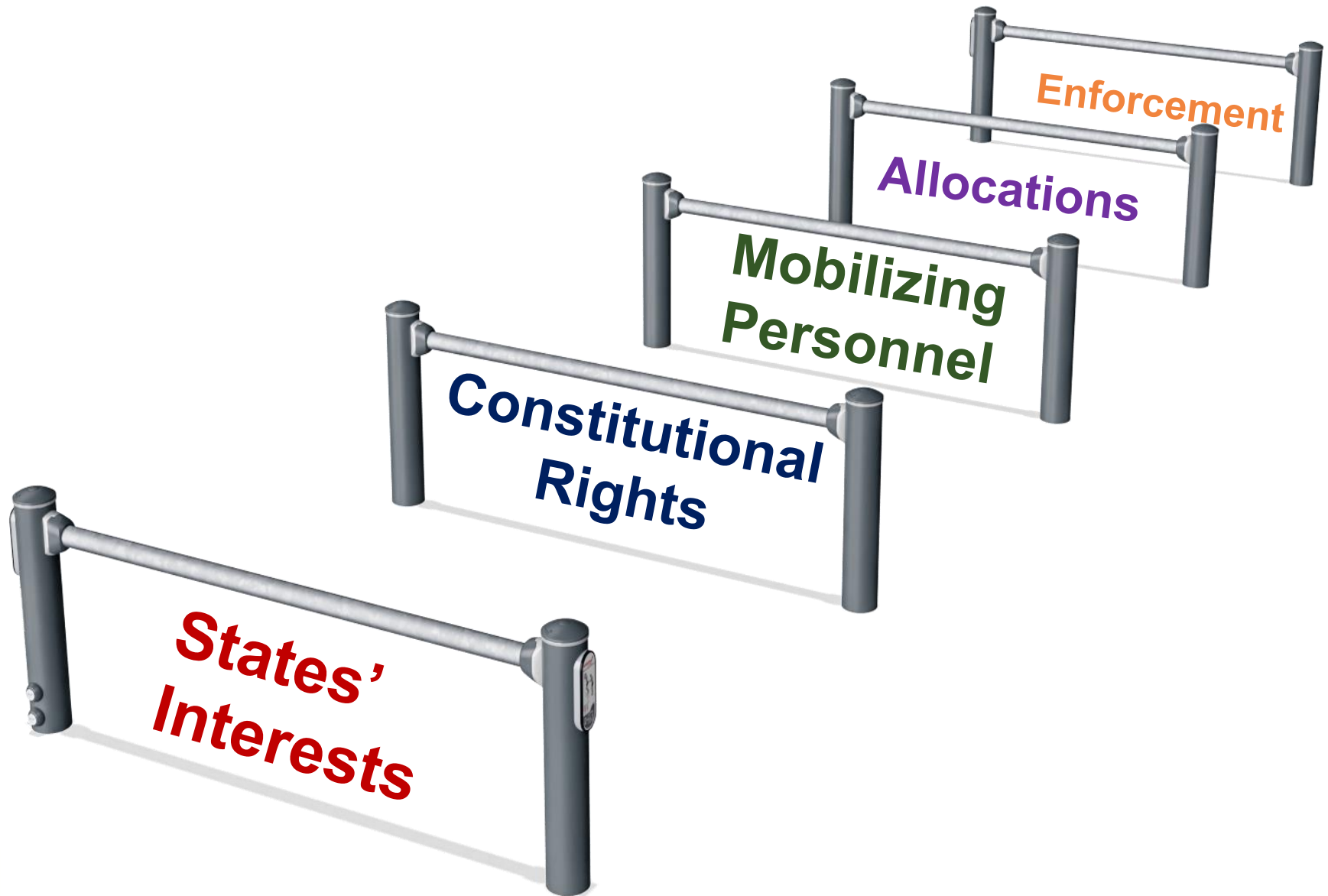
Defense Production
Act

Tax & Spend
Powers

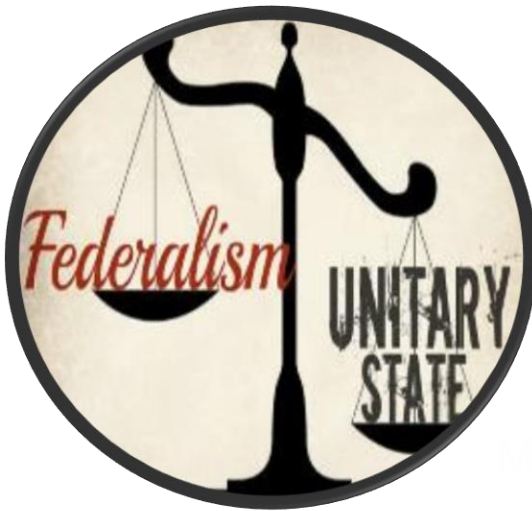
Cooperative
Federalism



Potential Legal Hurdles



States' Interests



Non-cooperative
Federalism



Public Health
Sovereignty



Spending
Power Limits

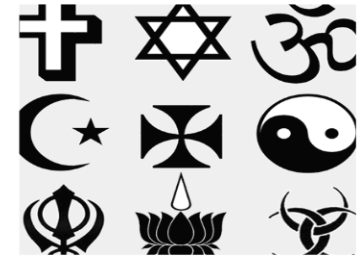
Constitutional Rights



**Freedom of
Expression**



**Freedom of
Assembly**



**Freedom of
Religion**



Right to Travel



Right to Privacy



Due Process

Mobilizing Personnel



Licensure



Scope of Practice



Standards of Care



Liability

Allocations



Disability Discrimination



Age Discrimination



Equal Protection

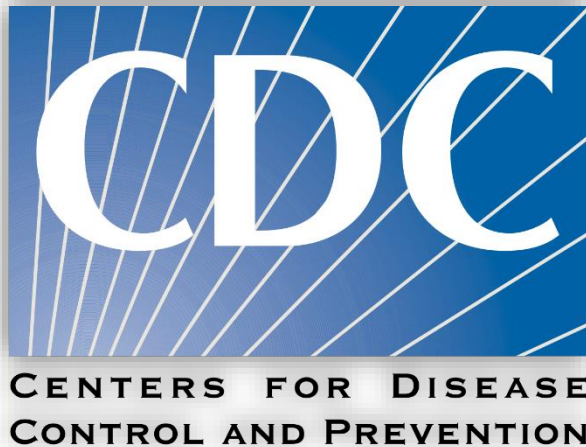


8th Amendment Cruel
& Unusual Punishment

Moratoriums

Regulations

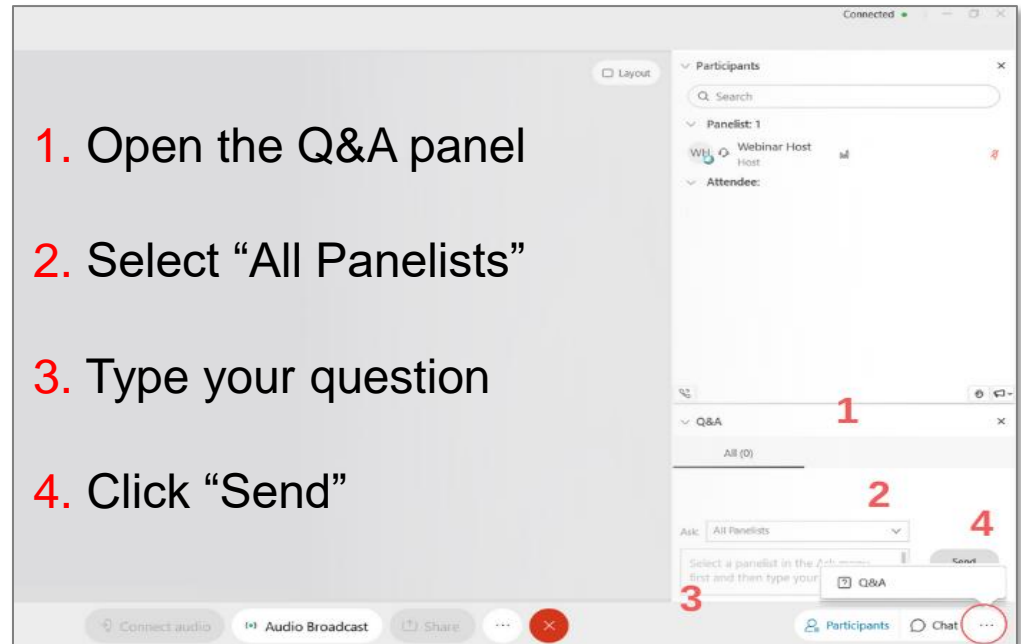
Mandates



Clearing the Hurdles



How to Use WebEx Q & A



- Special thanks to **Emily Carey**, Senior Legal Researcher, at ASU's Sandra Day O'Connor College of Law for her contributions!
- [Ask the Network](#) re: additional questions/comments
- james.hodge.1@asu.edu | @jghodgejr

Thank you for attending

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