

Equitable Rebuilding from COVID-19: Strengthening Protections for Communities

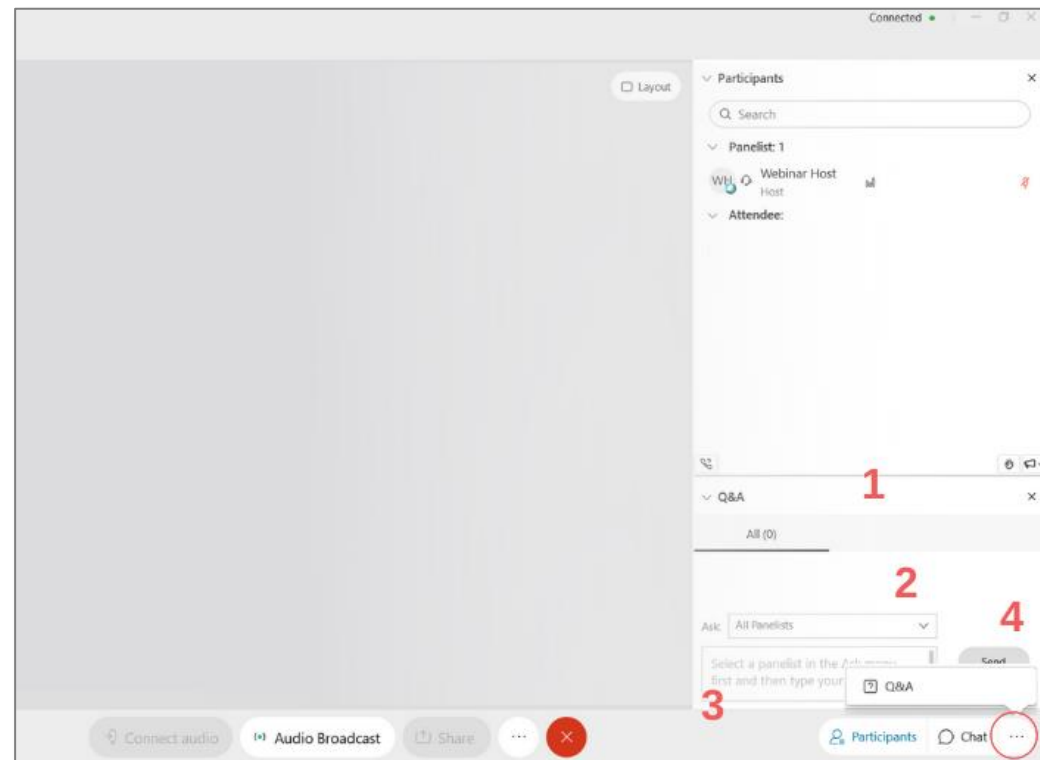
June 22, 2021

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Executive Decision-Making for COVID-19: Incorporating Equity Considerations

Abigail Lynch, JD, MA

June 22, 2021



Introduction: Executive Decision-Making, Equity, and COVID-19

- » **Executive decision-making is the crux of using law to achieve public health objectives.**
- » **Problems can arise when executive decision-making is used only to achieve immediate public health goals, because progress toward the long-term objective of achieving health equity may suffer.**
- » **COVID-19 has presented negatively impacted health equity.**
- » **State executive branches have had to use their legal authority both to prevent the spread of COVID and to mitigate inequitable impacts of COVID and COVID responses.**



Executive Decision-Making and Equity

Public health officials often have broad discretion in determining what actions to take. They should ask, “Can I?” “Must I?” and “Should I?” before acting.

- » **“Can I?” Is there legal authority that permits taking the action?**
- » **“Must I?” Is action mandated (by law, by funding requirements, etc.)?**
- » **“Should I?”**
 - A discretionary policy question
 - Often involves scientific and political considerations
 - Should also involve considerations of public health ethics

The public health ethics value of distributive justice encompasses equity considerations.



The Tension Between Effective Public Health Response and the Ethical Consideration of Equity

When immediate public health action is required, ensuring an equitable distribution of risks, benefits, and burdens may not be possible.

- » **An action that has causes an inequitable distribution of risks, benefits, and burdens may be required to avoid (further) endangering the public health.**
- » **The situation may require a choice between two options, each of which inequitably burdens different populations or that burdens the same populations in different ways.**



The Tension Between Effective Public Health Response and the Ethical Consideration of Equity (*cont'd*)

- » **Actions to ensure equitable distribution of benefits and burdens may not be legal, as they may violate the Equal Protection Clause.**

For these reasons, while ethical considerations should be included in the process of executive decision-making, they cannot be expected to dictate results.



How State Public Health Officials Promoted Equity in the Response to COVID-19

Eight-state sample:

- » States with Republican governors: Alabama, Arizona, Florida, Texas
- » States with Democratic governors: Colorado, Maine, Michigan, Wisconsin

Trends

- » The states with Democratic governors *developed* initiatives focusing on COVID-19 equity issues.
- » The majority of the states *participated in* at least one such initiative.
- » Each of the states, to varying degrees, took other executive actions to address inequities.



State Actions to Promote Equity in COVID-19 Response

Trend: Development of Initiatives Focused on COVID-19 Equity

Initiatives in this area were of two primary types:

» **State-action driven**

- E.g., Michigan's Coronavirus Task Force on Racial Disparities, which studies COVID-19 racial disparities, makes recommendations to address disparities, and performs community and stakeholder outreach

» **Community-action driven**

- E.g., Maine's COVID-19 Health Equity Improvement Initiative, which reimburses community-based organizations in minority communities that work to educate on COVID-19 and its prevention in culturally sensitive ways



State Actions to Promote Equity in COVID-19 Response

Trend: Participation in COVID-19 Equity Initiatives

Most of the states participated in the Reskilling and Recovery Network (RRN).

- » **RRN was a nationwide partnership between the National Governors Association and the American Association of Community Colleges.**
- » **It aimed to increase low-wage workers' skills to help them obtain employment and to address equity issues.**

Participating States

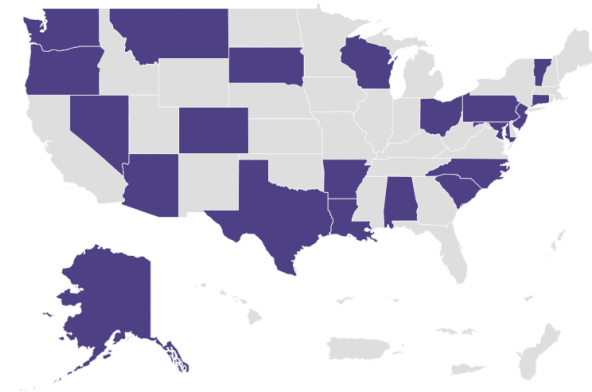


Image from <https://www.nga.org/reskilling/>



State Actions to Promote Equity in COVID-19 Response

Trend: Other Actions to Address Inequities

- » **Designating as essential businesses groups that provide services to populations in need**
- » **Preventing evictions, foreclosures, and utility disconnection due to nonpayment**
- » **Expediting, expanding, or removing barriers to unemployment benefits**
- » **Providing rent/mortgage assistance**
- » **Implementing worker protections (e.g., re: disease prevention, prevention of retaliation for those who missed work due to quarantine)**
- » **Expanding assistance for homeless individuals and children in need of emergency housing**
- » **Expanding free student meal availability during school closures**



State Equity Failures

Examples include the following:

- » **Failing to timely implement bilingual COVID briefings**
- » **Ignoring explicit calls from people of color to take action to address inequities**
- » **Only providing COVID testing centers in minority areas after community pressure**



Takeaways on Public Health Officials' Efforts to Promote Equity

- » **Public health efforts to promote equity in pandemics can vary.**
 - in the actor(s) responsible for driving efforts
 - In method
- » **Resource constraints likely are the biggest obstacle to providing relief to populations in-need.**
 - States received federal funding, but funding was inadequate to provide all needed assistance.
- » **Public health officials must think creatively about how they can promote equity in each step of emergency response.**



Conclusions

- » Public health officials first must determine what actions are needed to protect the public's health. As much as possible, equity should be included in weighing the options and evaluating trade-offs.
- » To the extent possible, the actions selected should attempt to produce equitable results, or at least avoid exacerbating existing inequities.



Recommendations for State and Local Governments

- » **Incorporate equity considerations into decision-making, address the needs of vulnerable populations, and encourage other officials (public health and otherwise) to do the same**
- » **Collect and analyze complete and accurate COVID-19 morbidity and mortality data by race, ethnicity, age, and socioeconomic status**
- » **Include equity considerations as an essential concern when planning for public health emergencies and advocate that all parts of state and local government plan in advance actions they could take to help ameliorate inequitable effects arising from public health emergencies**
- » **Consider how already-existing disparities may cause outcomes in public health emergencies to be worse in certain populations and work to reduce this inequitable distribution of outcomes**
- » **Examine, in after-action reports, how equity considerations can be incorporated into epidemic response policies and practices**

Presentation adapted from Peter D. Jacobson, Denise Chrysler, and Abigail Lynch, “Executive Decision Making for COVID-19: Incorporating Equity Considerations,” *in* COVID-19 POLICY PLAYBOOK: LEGAL RECOMMENDATIONS FOR A SAFER, MORE EQUITABLE FUTURE (Burris et al., eds., 2021), *available at* <https://www.publichealthlawwatch.org/covid19-policy-playbook>.



ChangeLab Solutions



Preemption, Public Health, and Equity in the Time of COVID-19

Sabrina Adler, ChangeLab Solutions



ChangeLab Solutions



Our Mission

Healthier communities
for all through equitable
laws & policies

ChangeLab Solutions

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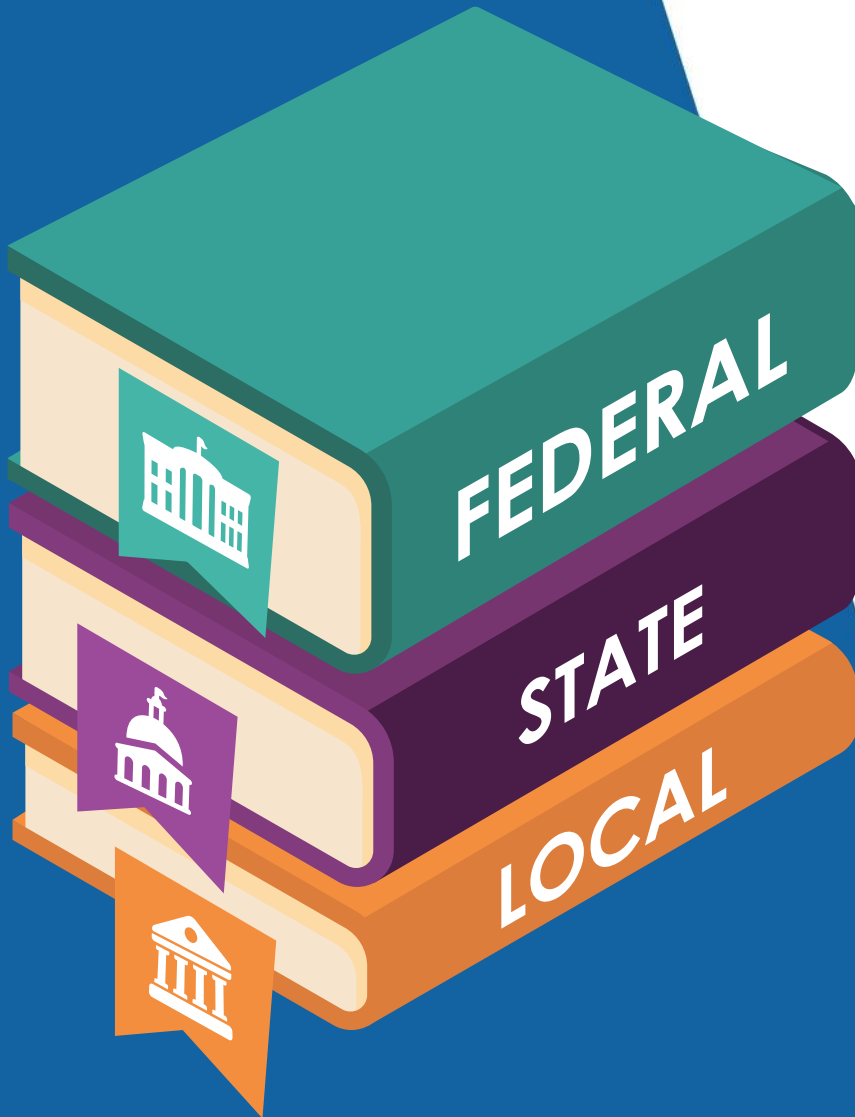


Kim Haddow

Local Solutions Support
Center

What is Preemption?

When the law of a higher level of government invalidates the law of a lower level of government



Preemption Comes in Many Forms



Ceiling Preemption
(ie, Maximum Standards)



Floor Preemption
(ie, Minimum Standards)



Vacuum Preemption
(ie, No Standards)



Preemption isn't
universally
negative
or
inherently
partisan

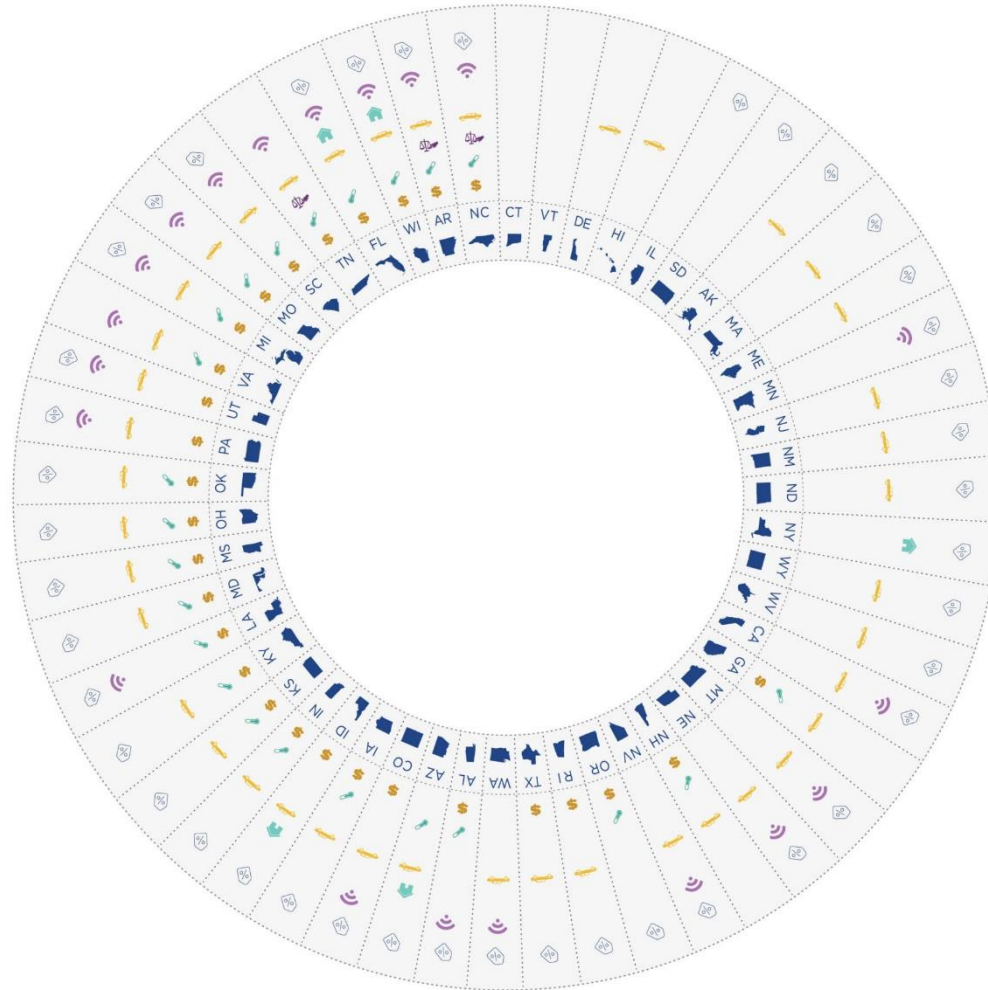
The Equity Landscape



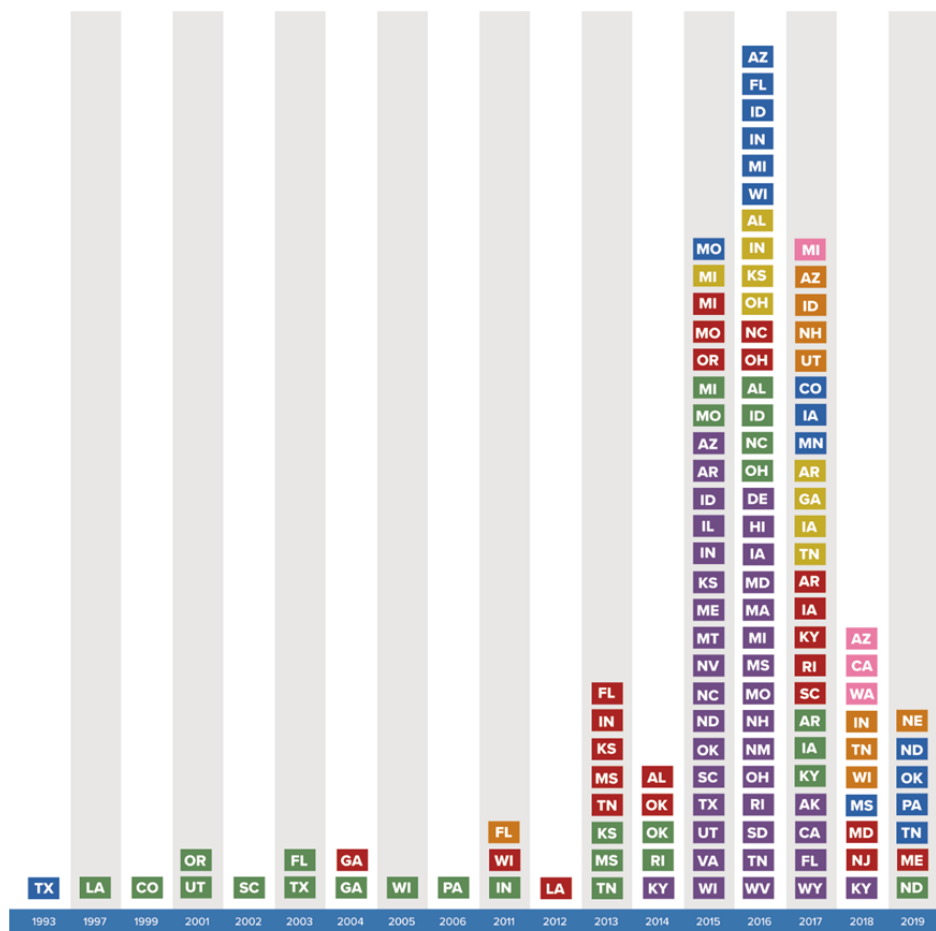
Where Does Preemption Limit Local Control?

Preemption is the use of state law to nullify a municipal ordinance or authority. State preemption can span virtually all policy areas.

- Minimum wage
- Anti-discrimination
- Ride sharing
- Tax and Expenditure Limitations (TEs)
- Paid leave
- Home sharing
- Municipal broadband



Passage of State Legislation Preempting Local Laws About:



Characteristics of “New” Preemption

**Death Star
deregulation**

**Blanket
deregulation**

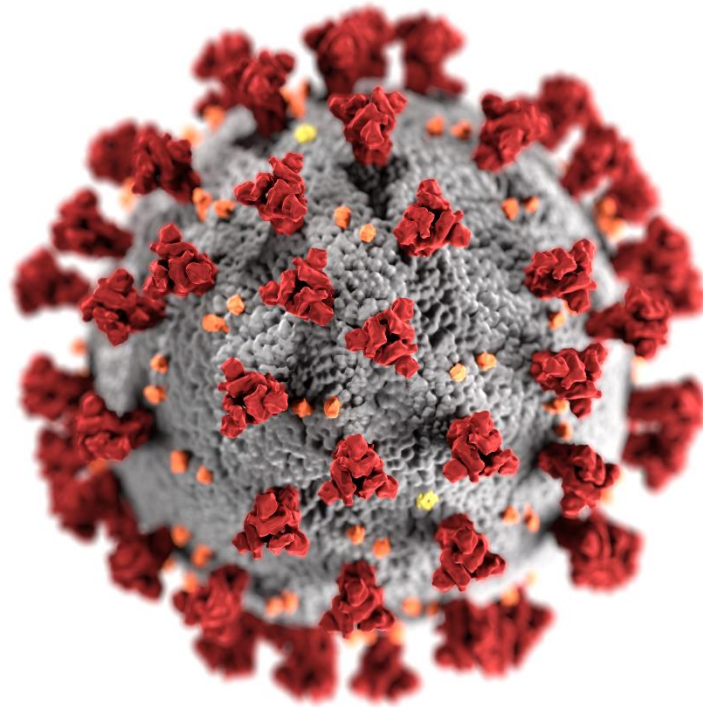
**Punishments
for cities,
electeds**

**Disproportionate
effects on
people of color,
women**

**Targeting
core local
government
functions**

**Chilling
aspirations,
innovations**

Preemption & COVID-19



The **quantity** of preemption laws has **skyrocketed**

25 states

preempt
local minimum
wage laws

23 states

ban local paid
sick days

31 states

prohibit
equitable
housing
policies

5 states

ban local
COVID- lawsuits
indemnifying
businesses

48 states

tax and
expenditure
limits

19 states

ban municipal
broadband

11 states

ban local
sanctuary cities

Pandemic Response



CLOSED



States Punishing Localities

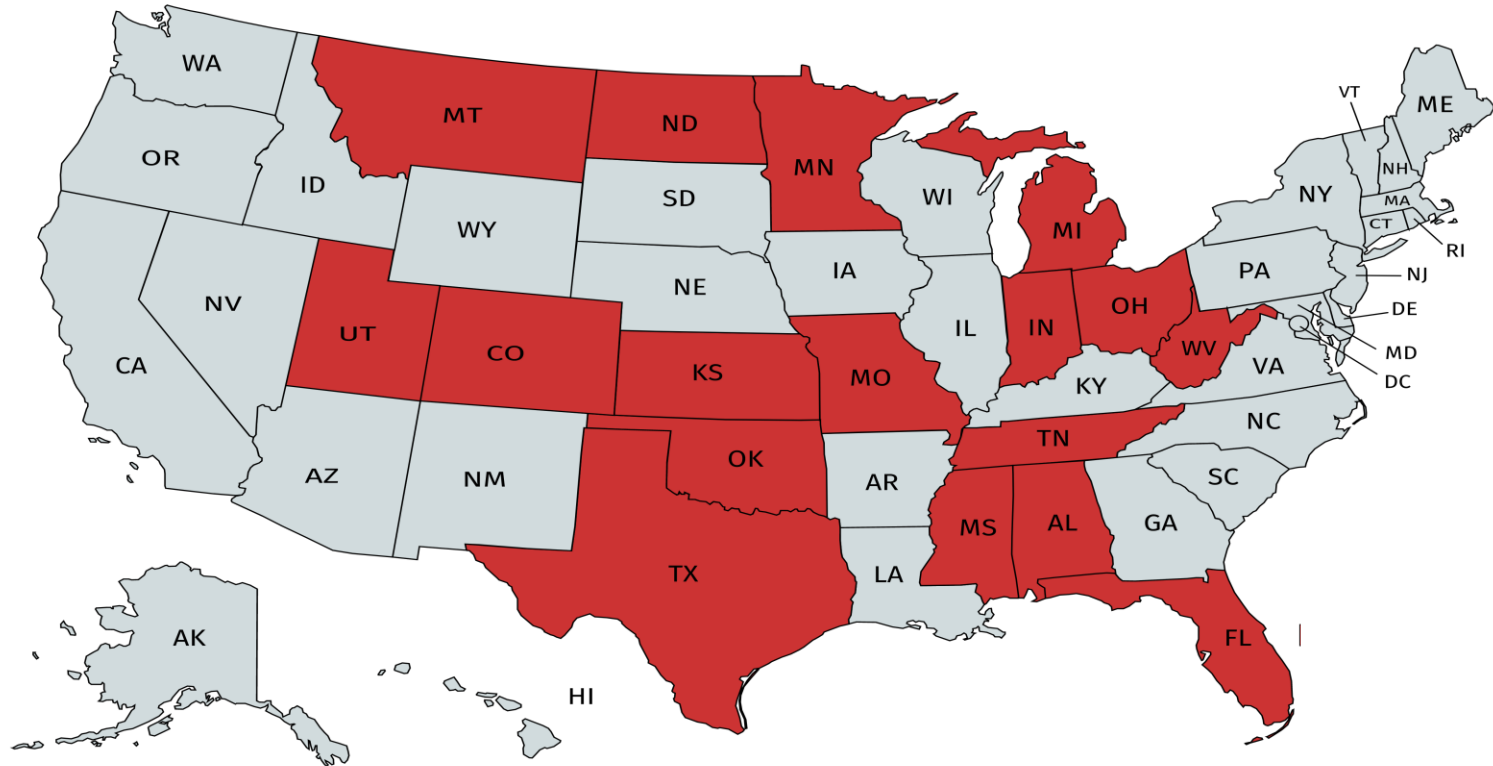


States Withholding Funding



Vaccination Efforts

Public Health Authority Bills





Preemption during the pandemic
has had consequences for health
and equity



"People who live in cities and towns want control over their own destinies," said National League of Cities CEO and Executive Director Clarence E. Anthony. "When states take away the ability of local leaders to make decisions, the values and will of the people are ignored."



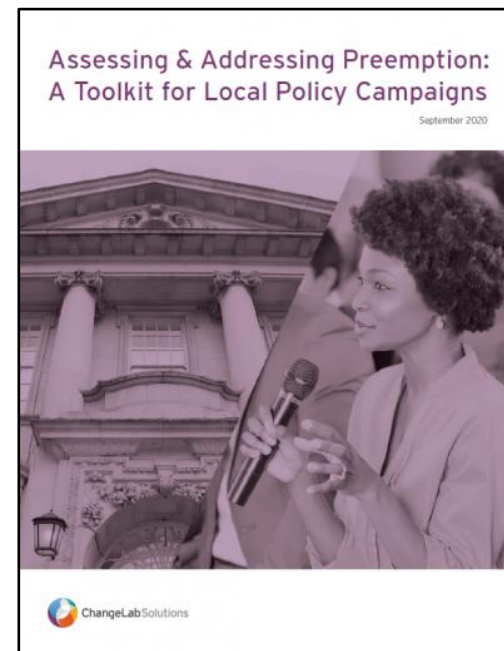
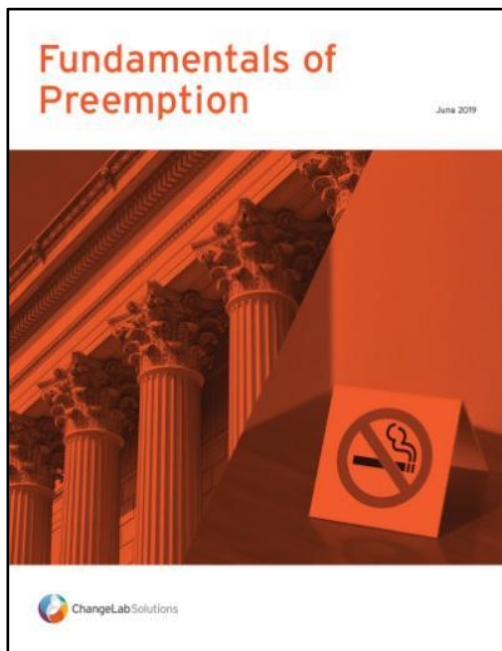
But... some preemption can be beneficial



Pushing Back

- Advocacy
 - Grassroots organizing
- The Political Process
 - Legislation
 - Repeal campaigns
- Litigation
- Structural Reforms
- Research





www.changelabsolutions.org/good-governance/preemption

Resources

Thank You!

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www.changelabsolutions.org



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Lessons from the 2020 Election Cycle: Building an Equitable Democracy

Dawn Hunter

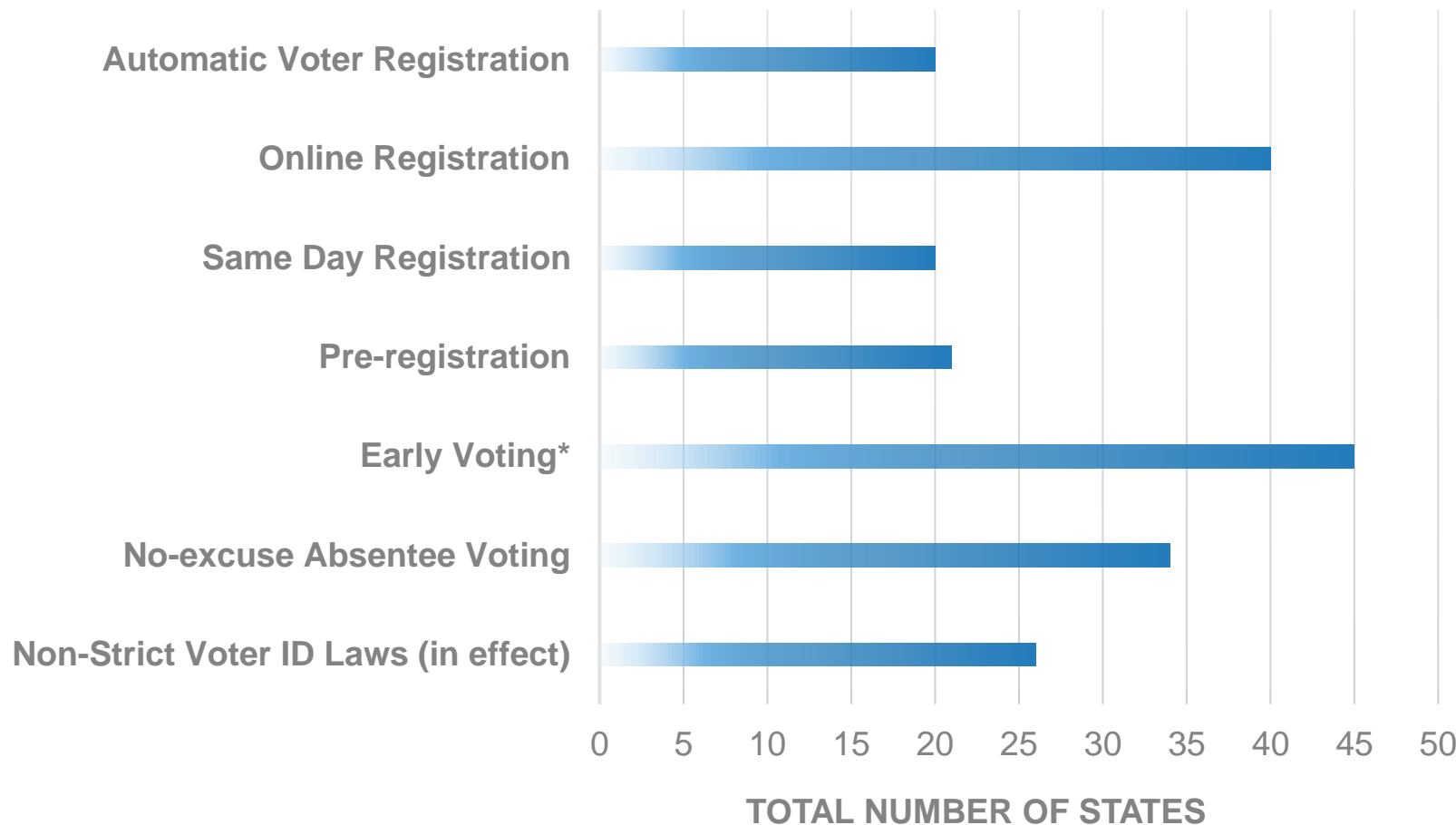
Presented June 22, 2021



2020 Election Overview

- ✓ Record turnout: 67% with increased turnout over 2016 in all 50 states
- ✓ 70% of voters voted early in person or by mail
- ✓ 28 states changed their policy to make it easier to use mail-in ballots
- ✓ 20 states had turnout over 70% (with MN at top 80%)
- ✓ States with the highest turnout either sent all voters a mail ballot, have same day registration, or both
- ✓ States with the lowest turnout cut off registration 4 weeks before the election or require an excuse for mail ballots, or both
- ✓ Improvements in representation (more women and people of color)

What supports electoral participation?



*early voting laws vary significantly across the states



State Action on Voting Rights in 2021



Expanded in-person early voting
Ballot notice and cure processes
Expanded eligibility or access for people with past felony convictions
New or updated ballot tracking laws
Improved voter registration
Drop box expansion



Transfer of election authority
Creation of election-related crimes
Restrictions on returning ballots on behalf of other voters
More restrictive voter ID laws
Voter registration barriers
Drop box restrictions



In many states it's a mixed bag



Litigation

Moore v. Circosta, 2020; Republican Party of Pennsylvania v. Boockvar, 2020 (implications for redistricting; ballot initiatives)

Challenges to new voting laws in Florida and Georgia

- **Plaintiffs:** NAACP, Disability Rights FL, New Georgia Project, Fair Fight Action, League of Women Voters, Common Cause, Asian Americans Advancing Justice Atlanta, other religious groups and voting rights organizations
- **Arguments:**
First, Fourteenth, and Fifteenth Amendments
Section 2 of the Voting Rights Act
Title II of the Americans with Disabilities Act

Pending decision implicating Section 2 of the VRA: *Arizona Republican Party v. Democratic National Committee* consolidated with *Brnovich v. Democratic National Committee*

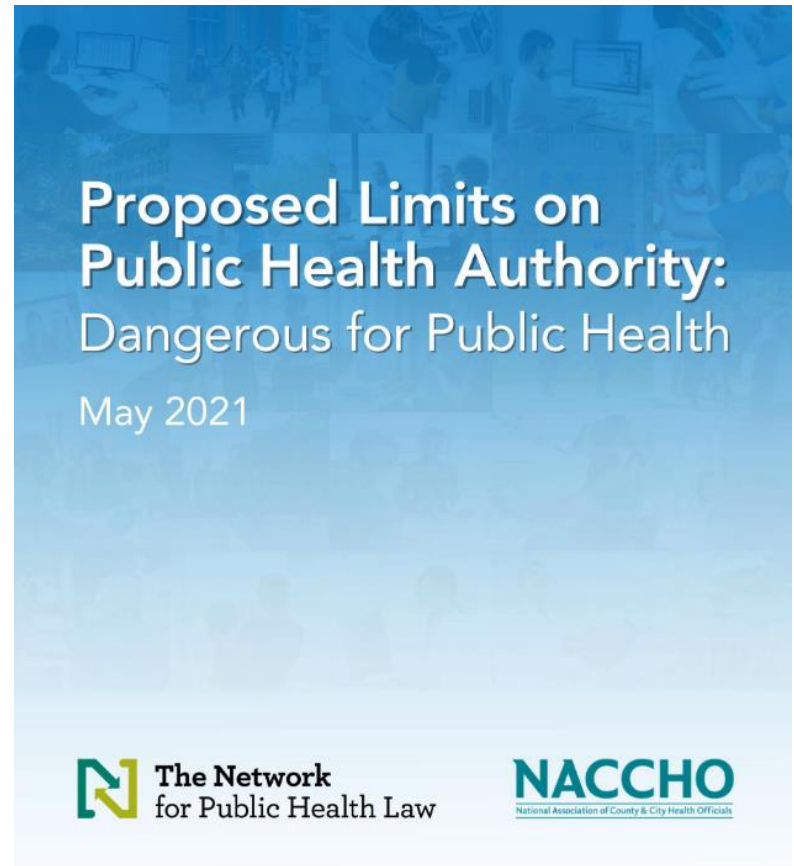


What else was happening in 2020?

Threats to public health and elections officials

Limitations on public health and elections authority

2020 Census – important for redistricting





Successful Public Health Initiatives in 2020

Implications for health equity

- **Medicaid Expansion (boosted by ARPA and FFCRA)**
- **Minimum wage increases (24 states and 48 cities in 2020)**
- **Voter enfranchisement**
- **Decriminalization of low-level drug possession**
- **Taxes for public education and public transit**
- **Police oversight boards**
- **Paid medical and family sick leave**



Recommendations

The Biden administration should:

- ✓ Develop an infrastructure to include voices from the community in policy development and implementation.
- ✓ Invest in civic infrastructure and education.

Congress should:

- ✓ Ensure sustained funding for elections administration.
- ✓ Enact minimum elections standards including automatic, same day, and online voter registration; national no-excuse absentee voting; a minimum nationwide early vote period; and preventing the purge of eligible voters from voter rolls.



Recommendations

State legislatures should:

- ✓ **Eliminate felony disenfranchisement laws.**
- ✓ **Set fair standards for drawing electoral boundaries.**
- ✓ **Ensure protections for elections, public health, or other public officials.**
- ✓ **Update state law to expand poll worker eligibility; increase incentives for poll workers; and set standards for polling place closures and consolidation.**
- ✓ **In the absence of federal standards, enact laws that facilitate voter access and protect the right to vote.**



For the People Act – HR1/S1

- ✓ **Creates automatic, same day, and online registration**
- ✓ **Expands early voting nationwide (15 days)**
- ✓ **Restores voting rights to people with past felony convictions**
- ✓ **Establishes national no-excuse absentee voting**
- ✓ **Provides financial support to improve US election infrastructure and improves oversight**
- ✓ **Prohibits voter rolls purges based on non-voting in past elections**
- ✓ **Provides a voter ID alternative for people who don't have required documentation**
- ✓ **Requires states to have independent redistricting commissions**



**Healthy
Democracy**

**Healthy
People**



Health and Democracy Scorecard

“In democracies, voting is an important action through which citizens engage in the political process. Although elections are only one aspect of political engagement, voting sends a signal of support or dissent for policies that ultimately shape the social determinants of health.”

*Voting, health and
interventions in healthcare
settings: a scoping review*
Chloe L. Brown et al., 2020

Health-related indicators associated with civic engagement or voting

In general, would you say your health is poor, fair, good, very good, or excellent?



Excellent



Very Good



Good



Fair

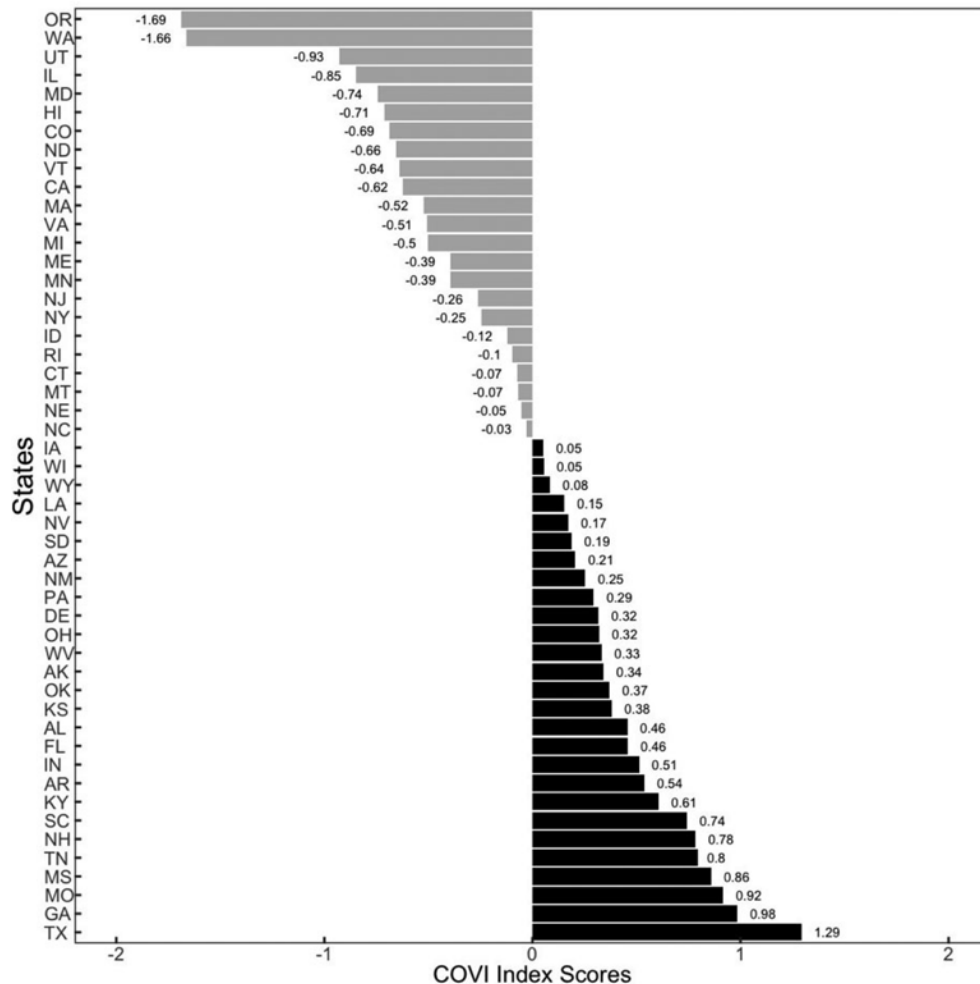


Poor

Self-rated health & mental health
Self-reported chronic health condition
Self-reported disability preventing work
Disability status
Use of healthcare services

Health risk behaviors like smoking
Life expectancy, mortality rates
Income level
Education level
Neighborhood safety

Cost of Voting Index, 2020



Scot Schraufnagel, Michael J. Pomante II, and Quan Li. Election Law Journal: Rules, Politics, and Policy. Dec 2020. 503-509.



Connecting the data

Cost of Voting	Voter Turnout 2020 General Election	Self-Rated Health – % Good or Better	Avg. # Poor Mental Health Days in the last 30 days	% Adults Receiving Disability Benefits	% Uninsured
Top 15 States	71.7%	84.7%	4.15	4.34	10.27
US Average	66.8%	82.7%	4.3	4.7	11
Bottom 15 States	64.0%	80.7%	4.71	5.95	15.04



Connecting the data

Cost of Voting	Active Physicians per 100K pop	Chronic Disease Prevalence	Premature Mortality, YPPL per 100K pop	Infant Mortality Rate	% households below FPL
Top 15 States	305.70	8.85	6588	5.43	10.38
US Average	277.8	9.5	7350	5.67	12.2
Bottom 15 States	238.56	11.49	8901	6.52	13.46

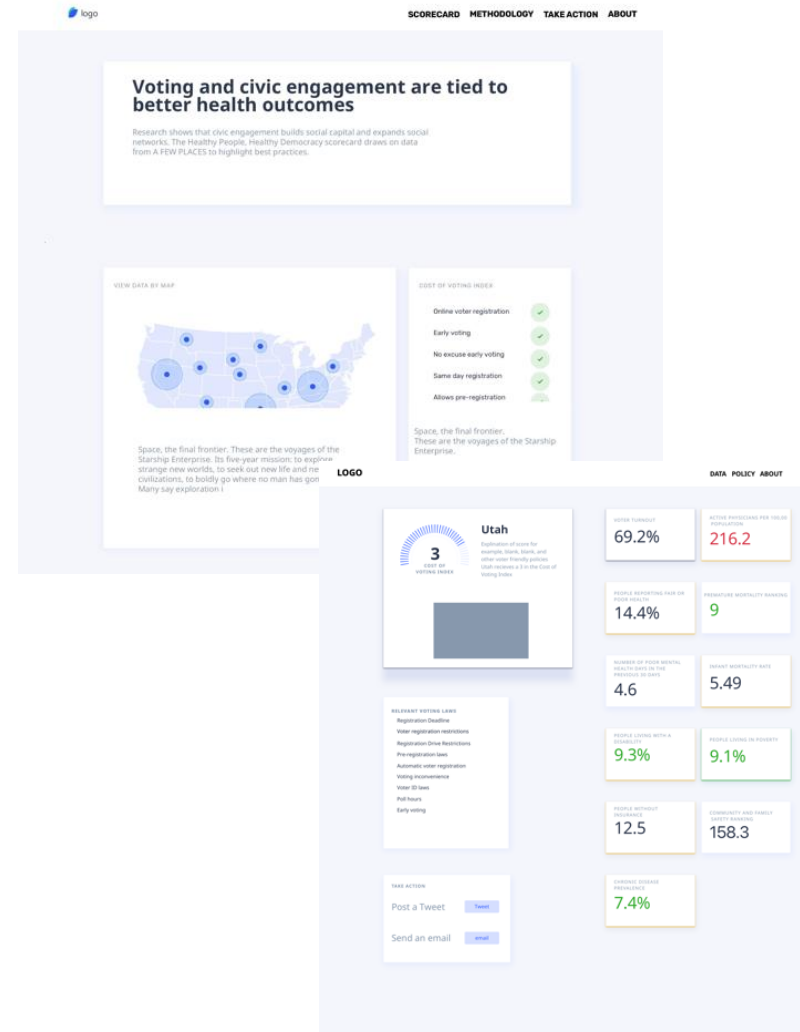
What's next?

Health and Democracy Scorecard Website & Launch of **Healthy Democracy Healthy People**

Civic Health Month – August 2021

Call to Action

- **Healthy People 2030**
- **Automatic Voter Registration**



Resources

National Conference of State Legislatures

Nonprofit Vote

Voting Rights Lab

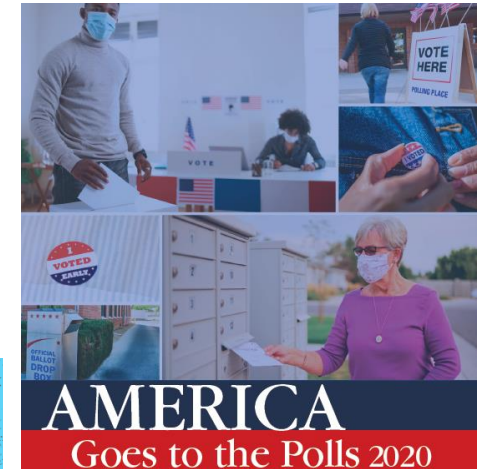
The Brennan Center

A Tale of Two Democracies

**How the 2021 Wave of State
Voting Laws Created a New
American Fault Line**

**VOTING
RIGHTS
LAB**

June 2021



Policy and Voter Turnout
in the 2020 Election

Nonprofit VOTE US Elections Project



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The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

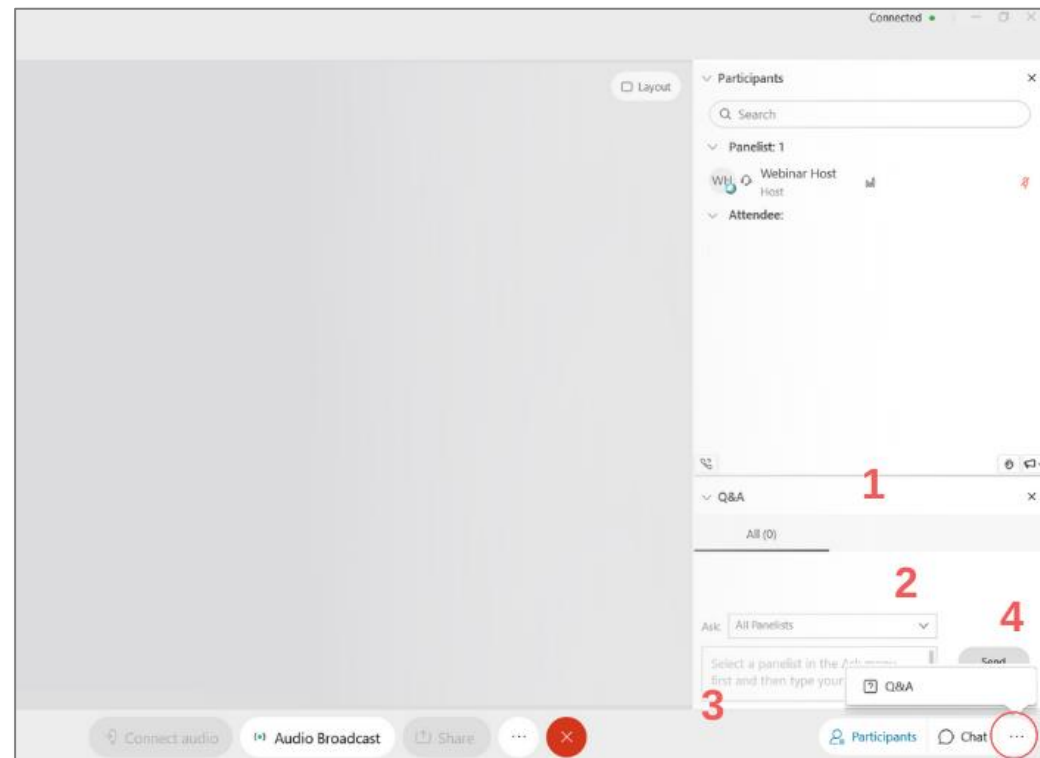


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Upcoming Webinar:

Public Health Under Threat: An Examination of State Laws Protecting Public Health Officials from Harassment

1:00 – 2:30 p.m. ET, June 24, 2021

Upcoming Events:

**2021 Public Health Law Conference:
Building and Supporting Healthy Communities for All**
September 21 – 23, 2021 | Baltimore, MD



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