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

Sabrina Adler, ChangeLab Solutions
Our Mission
Healthier communities for all through equitable laws & policies
ChangeLab Solutions

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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.

Passage of State Legislation Preempting Local Laws About:

- Gig Economy
- Paid Leave
- Minimum Wage
- Single-Use Plastic Bags
- Soda Taxes
- Short-Term Rentals
- Fair Scheduling

LSSC Local Solutions Support Center
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

Photo credit: CDC/Alissa Eckert, MS; Dan Higgins MAMS
The quantity of preemption laws has skyrocketed

<table>
<thead>
<tr>
<th>States</th>
<th>Preemption Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>Preempt local minimum wage laws</td>
</tr>
<tr>
<td>23</td>
<td>Ban local paid sick days</td>
</tr>
<tr>
<td>31</td>
<td>Prohibit equitable housing policies</td>
</tr>
<tr>
<td>5</td>
<td>Ban local COVID-19 lawsuit indemnifying businesses</td>
</tr>
<tr>
<td>48</td>
<td>Tax and expenditure limits</td>
</tr>
<tr>
<td>19</td>
<td>Ban municipal broadband</td>
</tr>
<tr>
<td>11</td>
<td>Ban local sanctuary cities</td>
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</table>
Pandemic Response
States Punishing Localities
States Withholding Funding
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
Equity-First: Conceptualizing A Normative Framework to Assess the Role of Preemption in Public Health

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Department of Sociology and Aging Studies Institute, Syracuse University, Syracuse, NY.

Context: Due to the inequitable distribution of various social determinants of health, disparities in health and well-being are tied to where an individual lives. In the United States, a zip code often better predicts a person's health than their genetic code. As communities seek to address these inequities, many find that, due to state preemption, these zip code also dictates their ability to pursue more equitable laws through local government action.

Methods: This article reviews the role of law and policy in the genesis of health inequities and highlights how preemption has both created and amplified such inequities. We demonstrate how a normative framework rooted in redefining health inequity can advance a more just approach to preemption and outline a research agenda to support future action.

Findings: Law and policy have been central to creating health inequities, and while some tools can promote health equity, some state legislatures are using preemption with increasing regularity to thwart local policies that may improve health and equity. Nevertheless, preemption is not inherently adverse to public health, equity, or good governance. Preemptive Federal civil rights laws, for example, have counteracted government-sanctioned discrimination. However, existing frameworks for assessing preemption fail to reconcile its potential to both advance and hinder health equity.

Conclusions: Shortcomings in existing preemption frameworks demonstrate the need for new approaches to elevate equity as a central consideration in assessing preemption. We propose the development of an equity-first preemption framework to establish evidence-based criteria for assessing which preemption will enhance or inhibit equity and a research agenda for developing the evidence necessary to inform and operationalize the framework. An equity-first reconceptualization of preemption can help ensure that local governments harness places of innovation while allowing states and the federal government to block local actions that are likely to create or perpetuate inequities.

This is a preprint of an article accepted for publication in The Milbank Quarterly © (2019) The Milbank Memorial Fund.
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?

- Automatic Voter Registration
- Online Registration
- Same Day Registration
- Pre-registration
- Early Voting*
- No-excuse Absentee Voting
- Non-Strict Voter ID Laws (in effect)

*early voting laws vary significantly across the states

Lessons from the 2020 Election Cycle: Building an Equitable Democracy [June 22, 2021]
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


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

hdhp.us
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

## Connecting the data

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

<table>
<thead>
<tr>
<th>Cost of Voting</th>
<th>Active Physicians per 100K pop</th>
<th>Chronic Disease Prevalence</th>
<th>Premature Mortality, YPPL per 100K pop</th>
<th>Infant Mortality Rate</th>
<th>% houseolds below FPL</th>
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</thead>
<tbody>
<tr>
<td><strong>Top 15 States</strong></td>
<td>305.70</td>
<td>8.85</td>
<td>6588</td>
<td>5.43</td>
<td>10.38</td>
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<tr>
<td><strong>US Average</strong></td>
<td>277.8</td>
<td>9.5</td>
<td>7350</td>
<td>5.67</td>
<td>12.2</td>
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<tr>
<td><strong>Bottom 15 States</strong></td>
<td>238.56</td>
<td>11.49</td>
<td>8901</td>
<td>6.52</td>
<td>13.46</td>
</tr>
</tbody>
</table>
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
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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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