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Legal Analysis

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An Argument that Oklahoma's Mayors Acted Unlawfully During COVID-19

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Introduction

In response to COVID-19, the mayors of Oklahoma's three largest cities subjected approximately two-thirds of Oklahoma's population to emergency decrees that severely restricted their freedom, damaged them financially, and undermined their constitutional rights. Mayoral decrees differed significantly from less restrictive policy judgments made by the governor, who was acting pursuant to his constitutional and statutory authorities. These are not small matters, and deserve close scrutiny. Elected officials should not pursue such drastic actions lightly or without prior assurance they are acting with ironclad legal authority. Unfortunately, it appears the mayors of Oklahoma City, Tulsa, and Norman have overstepped their authority in ill-considered ways.

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This legal analysis first examines the general authority of Oklahoma cities to enact ordinances exercising the state's police power. It then explores the specific powers the state has actually delegated to city governments and the language of the city ordinances relied on by the mayors. Finally, it recommends that the governor and attorney general intervene to end the discrepancies between local and state COVID-19 rules, and that the legislature codify in statute that cities do not have the authority to contravene state law on matters of state concern.

At best, the mayors of Oklahoma City, Tulsa, and Norman were on shaky legal ground when they decreed the lockdowns of their cities, and at worst, they lacked authority under Oklahoma law. In rushing to impose their orders, the mayors have harmed the citizens of their communities and exposed their city governments to potentially costly litigation, costs that will ultimately be borne by the taxpayers who suffered under the emergency decrees in the first place.

Factual Background

The mayors of Oklahoma City, Tulsa, and Norman have been vocal in implementing their emergency pandemic response orders. The mayors, at times, cast the governor's policies as irresponsible and their own aggressive lockdown decrees as the only policies sufficient to meet the COVID-19 threat.[1] The mayor of Norman has gone so far as to suggest that the governor's policy will cost additional lives,[2] a dubious and hyperbolic claim. They have claimed that their local orders override the state rules whenever the local orders are more restrictive.[3]

The substance of the orders pursued by all three mayors was largely the same. In each case, the mayors proclaimed a state of emergency due to the threat of COVID-19 and unilaterally imposed what they called "shelter in place" orders. These orders generally restrict citizens to their homes except to perform designated "essential" tasks, such as to work in an "essential" business or to obtain food and other necessities. The shelter in place orders also forcibly closed all "non-essential" businesses to the public.[4]

The mayors claimed the legal authority to issue their emergency orders pursuant to city ordinances enacted five decades ago relating to "civil emergencies."[5]

The mayoral orders depart in significant ways from the policies imposed by the governor in his COVID-19 executive orders, and the mayors' escalating decrees sometimes resembled a race to see which of the mayors could be the most aggressive. The Mayor of Norman first proclaimed a state of emergency on March 13, two days prior to the governor's declaration of a statewide emergency.[6] There were no confirmed cases of COVID-19 in

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Norman at the time of her order and only three confirmed cases in the entire state.[7] Tulsa and Oklahoma City followed suit on March 16,[8] and the restrictions imposed in all three cities grew rapidly from there. Within ten days, "shelter in place" orders were in place in all three cities.[9] None of these mayoral orders were approved or ratified by city councils.

The actions taken by the three mayors have generated substantial controversy. Norman's policy is the subject of litigation alleging it violates citizens' constitutional rights.[10] Significantly, the city orders conflicted in substantial ways with the state's orders, even though much of the substance overlapped with the governor's orders. All three cities retained restrictions on businesses and individuals after they were lifted by the state.[11] At the time of this writing, citizens and businesses in all three cities are still restricted in ways not required by the governor's phased re-opening plan.[12]

Evaluating Government Power to Order Lockdowns

Assessing the legal validity of the mayors' "shelter in place" decrees requires examination of the general powers of state and city governments under Oklahoma law, the specific state laws that might be claimed to authorize the city ordinances, and the particular city ordinances on which the shelter in place orders were based.

The State's Police Power in General

The question of whether the government possesses the general authority to order citizens to stay home and businesses to close hinges on the most central of all powers possessed by a state government, the police power. The "[p]olice power is an attribute of state sovereignty[,]" and is "an inherent power of the state legislature that extends to the whole system of internal regulation by which the state preserves public order, prevents offenses against the state, and insures to the people the enjoyment of rights and property reasonably consistent with like enjoyment of rights and property by others."[13] As such, protecting the "safety of its citizens is a valid basis for the exercise of a state's police power."[14]

The Oklahoma Supreme Court has construed the state's police power expansively. "The Legislature may exercise its police power to regulate any property within the jurisdiction of the state when regulation is necessary to secure the general safety, the public welfare, and the peace and good order of the community."[15] Moreover, the legislature "may exercise its police power to regulate the use and enjoyment of property when the free exercise of such use is detrimental to the public interest."[16] Indeed, nearly all government regulation of private activity is justified under state law as the state's exercise of its police power to protect the health, safety, and welfare of the citizenry.

Accordingly, there is little debate over whether the state itself, in principle, possesses the authority to make laws authorizing emergency action, including forced quarantine and business closure, to contain an infectious disease. Instead, debate about the governor's executive orders has revolved around the wisdom of the policies implemented, separation of powers between the legislature and the governor, and whether they have been pursued in a manner inconsistent with individual constitutional rights (federal and state).

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Municipal Power in General

Just because the state has a general police power to regulate health, safety, and welfare does not mean the cities possess the same power. Cities in Oklahoma do not possess inherent sovereignty of the kind possessed by the state. Instead, cities have only the powers granted them by the Oklahoma Constitution or delegated to them by statutes enacted by the legislature.[17]

Cities fall into two broad categories, home-rule chartered cities created pursuant to Article 18 of the Constitution, and non-chartered cities created pursuant to state statute.[18] The principal difference between the two is that the Constitution grants home-rule cities a greater degree of authority for local decision-making regarding purely municipal matters, whereas non-chartered cities are only free to act when they are given explicit statutory authority to do so by the legislature.

Though home-rule cities are "accorded full power of local self-government,"[19] this local control is not akin to the state's position in relation to the federal government. Home-rule cities are fully subordinate to the state government and possess only that authority granted them specifically by law.[20] Conversely, the state, acting through its legislature, can act in any manner *not forbidden* by the state or federal constitutions.[21]

Distilling these principles into a rule, the Oklahoma Supreme Court has consistently held that home-rule cities can only legislate (1) on matters of "purely municipal concern," or (2) pursuant to authorization from the legislature acting through state statute.

Even regarding matters of "chiefly local interest," a state law will override city authority if "the state has a sovereign interest in the municipal matter."[22] On matters of purely municipal concern, cities may act independently of the state, and may even legislate on matters that are already the subject of general laws enacted by the legislature, so long as the local law is consistent with state law.[23] Likewise,"[a]n ordinance may cover an authorized field of local laws not occupied by general [state] laws and may prohibit acts not prohibited by statute."[24] However, the Constitution's inclusion of a "charter form of municipal government in no way limited or abridged the supreme sovereign control over such municipality, but only guarantees to such municipality the right of municipal government subject to the Constitution and laws of the state."[25]

On matters of statewide concern, however, cities may only act pursuant to an explicit delegation of authority from the legislature and in a manner consistent with that state statute.[26] Notably, when the state delegates power to cities, it is delegating *enforcement* power, not the power to make laws.[27] An example of this is seen in a city's power to regulate traffic on a public street, which is an exercise of the state's police power performed by the local government.[28]

The Supreme Court has held that "[a] city under its charter and

for a purpose justifying exercise of its police powers may enact an ordinance not in conflict with statutes on the same subject," but that "[a] constitutional exercise of such power to promote the public peace, health and welfare must serve those ends in a uniform way and accomplish a result that does not defeat the express purpose of the statute."[29] In order for there to be a conflict between a state statute and a city ordinance, "both must contain either express or implied conditions which are inconsistent and irreconcilable with one another . . . [i]f either is silent where the other speaks there can be no conflict."[30]

Nonetheless, the Supreme Court recognized early in statehood that "[t]he only reasonable construction of [the home-rule provision] is that when [a] city adopts the freeholders' charter form of government, in the exercise of its power as a municipal government, the same must be consistent with the organic law of the state and subject to the supreme powers of the Legislature."[31] Noting that any other interpretation of the Constitution would mean "that the framers of the Constitution authorized the establishment of independent petty states within this state," the Court ruled that the Constitution "is not subject to such a construction."[32]

Containing pandemics and infectious diseases is clearly a matter of statewide concern, not a purely municipal matter.

Cities Have No Independent Authority to Enact Ordinances Allowing Emergency Pandemic Response, Non-Essential Business Closure, or Shelter in Place Orders

Containing pandemics and infectious diseases is clearly a matter of statewide concern, not a purely municipal matter. A virus like COVID-19, by its nature, recognizes no borders and the threat to public health is a core concern of the state's police power. Even a non-pandemic infectious disease outbreak, such as a localized meningitis outbreak, is more properly thought of as a matter of state—rather than purely municipal—concern. Much as enforcement of the criminal laws are concerns of the state even when crimes are committed locally,[33] so are infectious diseases state concerns, as they broadly implicate public health and can quickly become non-localized. The Oklahoma Supreme Court has repeatedly found that even the relationship between a city government and its own employees is a matter of statewide concern because it implicates labor relations involving government workers.[34] With the Court's rather expansive view[35] of what is a state concern, surely a pandemic, which, by definition, extends globally, is a state concern. The present circumstances highlight the non-local nature of such a crisis. The COVID-19 pandemic touches all corners of Oklahoma and nearly every part of the globe. Accordingly, the governor's state of emergency proclamation covers all 77 counties in the state.

Likewise, the forced closure of businesses and restrictions on citizens' freedom of movement, because they implicate fundamental state and federal constitutional rights, are plainly state concerns. It is true that cities routinely legislate ordinances that burden these constitutional rights. However, they do so pursuant to delegations of authority from the legislature, not according to a city's inherent home-rule authority.

Because controlling pandemics, ordering businesses closed, and restricting free movement are squarely matters of statewide concern, cities in Oklahoma possess no independent authority to legislate in this area. Therefore, any city ordinance granting a mayor emergency powers to take such measures must have some legislative delegation of the state's police power as its source.

Moreover, any city ordinance granting a mayor powers delegated from the state—and the mayor's use of those powers—must be consistent with and in furtherance of the *purpose* of the state's delegation of its police power to the city.[36] That is, mayors given authority by their city councils to further a specific purpose set by the legislature may not put those powers to use in pursuit of a *different* purpose, especially if the purposes are inconsistent with one another. If the purposes directly conflict, the mayor certainly is acting outside of law, but even if they are merely inconsistent, the mayor's legal authority is questionable.[37]

Questionable Statutory Sources of Authority for Cities to Legislate Emergency Powers Ordinances

Given the foregoing, analyzing which powers the state has *actually* delegated to cities is at the heart of assessing the legality of the mayors' COVID-19 decrees, and points to those decrees' legal deficiencies. Only Oklahoma City's emergency powers ordinance explicitly cites state statute, so it is not clear where the Tulsa and Norman city councils believed their legal authority came from when they first enacted their ordinances. Regardless, determining their reasoning is academic. The relevant questions are what specific authority, if any, has been granted cities by statute, and do the emergency powers ordinances comport with those statutory grants of authority?

Each mayor claims to be acting pursuant to city ordinances enacted under statutes that either do not have as their purpose the containment of a pandemic, or ...

In short, the answer is no. Each mayor claims to be acting pursuant to city ordinances enacted under statutes that either plainly do not have as their purpose the containment of a pandemic, or conceivably contemplate pandemic response but do not confer to cities the types of powers claimed by the mayors. In addition, the legislature *has* squarely conferred emergency powers to deal with pandemics in a separate state statute, just not to cities. Instead, the extraordinary powers permitted under the Catastrophic Health Emergency Powers Act are given to the governor alone. This explicit grant of power to the governor, while at the same time declining to delegate powers to cities, indicates the *opposite* of the mayors' legal position: the legislature's intent was actually to *deny* this type of authority to cities and their mayors.

Three Oklahoma statutes authorize extraordinary government action during public emergencies, making them the likeliest

candidates to have delegated state power authorizing the city emergency powers ordinances: (1) the Catastrophic Health Emergency Powers Act of 2003 (CHEPA),[38] (2) the Oklahoma Emergency Management Act of 2003 (OEMA),[39] and (3) the Riot Control and Prevention Act of 1968 (RCPA).[40]

Closer examination, however, reveals flaws with each statute as they relate to the particular ordinances the mayors utilized. To summarize, CHEPA most clearly addresses pandemics and confers expansive powers on the governor, but does not delegate any power to cities, so it cannot be the source of authority for the city ordinances. The OEMA delegates powers to cities, but not the types of powers the city ordinances invoked during COVID allow. The RCPA is the likeliest source of statutory authority for the ordinances, but it was likely not intended to be applicable to a pandemic, indicating that while the city ordinances are valid on their face, the mayors' *application* of them was legally suspect.

The Catastrophic Health Emergency Powers Act

Most directly related of the three statutes to pandemics and infectious diseases, the Catastrophic Health Emergency Powers Act of 2003 confers expansive powers on the governor after he declares a "catastrophic health emergency."[41] The act includes within the definition of such a health emergency "the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin."[42] The Act permits the governor to impose quarantines, isolation, and a host of other measures to slow the spread of an infectious disease.[43] In short, CHEPA is specifically tailored to the crisis Oklahoma now faces, making it the most obviously applicable law for present circumstances. In 17 years of existence, the Act had never been invoked prior to COVID-19.

CHEPA does not explicitly delegate authority to cities and, for this reason, none of the cities have enacted ordinances broadly consistent with its provisions. The city codes simply do not contain provisions to deal with catastrophic health emergencies, due either to city councils concluding they do not have such power under CHEPA, affirmatively choosing to leave such matters to the state, or simply from such emergencies not being on their radar. In any event, CHEPA is not the source of authority for the city emergency powers ordinances cited by the mayors.

A basic interpretive rule applied by Oklahoma courts is that "[w]here there is authority to speak, legislative silence may indicate its intent."[44] Likewise, affirmatively granting power to one government official but not another indicates a manifest intent to exclude the latter. Accordingly, the legislature's delegation of authority to the governor points to an intent that cities and their mayors be *denied* the powers conferred by CHEPA.

The Oklahoma Emergency Management Act of 2003

Next, the Oklahoma Emergency Management Act of 2003 constructs the state's emergency response architecture. It creates state and local emergency response agencies, all ultimately reporting to the governor, and confers broad powers on the governor in times of emergency.[45] The OEMA is fairly broad in scope, and is the statute normally invoked when Oklahoma governors have proclaimed past states of emergency. Like CHEPA, it can be found in Title 63, the "Public Health and Safety" portion of the Oklahoma Statutes.

While the OEMA does delegate some authority to cities,[46] it does not confer to cities the types of powers exercised in response to COVID-19. The OEMA gives the *governor* expansive authority to institute quarantines and arguably grants him the authority to close businesses, impose curfews, and the like, *but it delegates different powers to cities*.[47] In general, the Act gives cities the power to (1) create local civil defense and emergency management units (i.e., emergency response architecture ultimately answerable to the governor),[48] (2) to relax normal rules and procedures for things like contracting and appropriating funds for disaster relief,[49] and (3) to receive disaster relief dollars and other resources from the federal and state governments.[50] The OEMA does *not* empower cities to enact ordinances or to issue edicts closing businesses, imposing curfews, or forcing residents to shelter in their homes, let alone permit city councils to sub-delegate such decisions to the singular discretion of a mayor.

Instead, the primary delegation of authority to cities under the OEMA consists of the following text:

> In carrying out the provisions of this act, each political subdivision, in which any disaster as defined in Section 683.3 of this title occurs, shall have the authority to declare a local emergency and the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law, excepting mandatory constitutional requirements, pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, and the appropriation and expenditure of public funds.[51]

The above section gives cities authority to declare local emergencies, but *only* under two conditions: (1) a "disaster" as defined in Section 683.3 of the OEMA has occurred in the city, and (2) the declaration is in furtherance of the OEMA ("in carrying out the provisions of the act"). As to the first condition, Section 683.3 of the OEMA does not contain a definition of "disaster," but does define "natural disaster" and "man-made disaster."[52] A "natural disaster" means "any natural catastrophe, including, but not limited to, a tornado, severe storm, high water, flood waters, wind-driven water, earthquake, landslide, mudslide, snowstorm, or drought which causes damage of sufficient severity and magnitude to warrant hazard mitigation or the use of resources of the federal government, or the state and political subdivisions thereof to alleviate the damage, loss, hardship or suffering caused thereby."[53] Man-made disasters as defined by the OEMA are not relevant to the present situation.[54]

This means a local emergency can be declared under the OEMA only in response to a natural or manmade disaster as defined in the OEMA (not a pandemic) and in order to carry out the provisions of the OEMA, which do not include cities issuing shelter in place orders or closing businesses.

Moreover, the ability to *declare* a local emergency under the OEMA does not equate to a state delegation of power to the cities

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to enact general ordinances that construct their own emergency powers *regimes*. Instead, the foregoing provision simply permits cities flexibility in an emergency by waiving certain usual requirements for things like contracting and the performance of public works. County commissioners in Oklahoma are granted similar "emergency" powers in the narrow context of contracting and procurement, and all public boards in the state have the ability to call emergency meetings under the Open Meetings Act without giving the type of public notice normally required. Certainly, permitting flexibility in an emergency does not endow these bodies with open-ended authority to legislate new contracting procedures or new open meetings procedures.

The Riot Control and Prevention Act of 1968

Finally, the Riot Control and Prevention Act of 1968 is aimed, as the name suggests, at quelling civil disorder when it breaks out and preventing disorder in situations where it is more likely than usual to occur, such as in the wake of a destructive tornado. The law was enacted on the heels of major civil unrest across the country due to racial tensions and opposition to the Vietnam War.

The RCPA allows the governor to proclaim a state of emergency when he determines "that a public disorder, disaster or riot exists within this state or any part thereof which affects life, health, property or the public peace."[55] Upon such a proclamation, the governor is given certain extraordinary powers, all of which are aimed at restoring public order and preventing further violence or property destruction.[56] The governor is empowered, among other things, to impose a curfew, limit or eliminate gatherings of people, prohibit the possession or transportation of "Molotov cocktails" and explosive liquids, close roads and highways, and place prohibitions and restrictions on the sale and consumption of alcohol.[57] The Act is located in Title 21, the portion of the Oklahoma Statutes entitled "Crimes and Punishments."

The RCPA explicitly delegates power to cities to enact ordinances "in general conformity with" the Act,[58] and clarifies that if a city imposes more restrictive measures under the Act than does the state, the city measures will be in force, and vice versa.[59] Thus, the RCPA creates a one-way ratchet, with always the more aggressive government measures, regardless of whether they come from the city or the state, to quell or prevent civil disorder taking precedence over the more restrained policy.

The RCPA is the Likeliest Source of Authority for the City Ordinances Used by the Mayors

Each of the three cities' emergency powers ordinances appear to either be enacted explicitly pursuant to the RCPA, or, by default, are only a valid exercise of city lawmaking if made pursuant to authority granted the cities by the RCPA.

Oklahoma City's emergency powers ordinance is explicitly based on the RCPA and mirrors the RCPA's language nearly word for word. A 1968 memorandum accompanying the proposed ordinance from the then-City Manager to the then-City Council explains the statutory authority for the ordinance: "[o]n April 4, 1968, Governor Bartlett signed Senate Bill No. 753 which is known as the Oklahoma Riot Control and Prevention Act. This Statute authorizes cities and towns to enact ordinances in general conformity with the provisions of the Act. The attached proposed ordinance follows the provisions of the Statute."[60]

Tulsa's ordinance was enacted the year prior to the RCPA, possibly under some claim of independent local authority or, more likely, without much thought given to whether the city was empowered under state law to create such an ordinance.[61] Given this timing, Tulsa's ordinance could not have been explicitly based on the RCPA at the time it was enacted. However, courts could find that the RCPA's subsequent delegation of power to cities retroactively authorized the powers claimed in the ordinance. That is, if the Tulsa emergency powers ordinance was invalid when it was enacted in 1967, it became valid when the RCPA became law in 1968. In fact, there is some evidence that the legislature was aware of Tulsa's riot control ordinance at the time it enacted the RCPA, and crafted the RCPA to account for local ordinances seeking to achieve the same result.[62]

Finally, Norman's ordinance mirrors the language of the Tulsa ordinance and was passed in 1970, after the RCPA. There is scant evidence of the Norman City Council's claimed source of authority—the meeting minutes from October 1970 simply note that the ordinance was approved—but given its similar structure, purposes, and timing, it is likely the ordinance was enacted pursuant to the RCPA.[63]

The city emergency powers ordinances find their firmest grounding in state law in the RCPA, but this means only that the ordinances *as written* are permissible under Oklahoma law, not that the mayors' *application* of those ordinances to a pandemic was lawful.

The Legal Infirmities of the Mayors' Orders

There are two potential legal problems with the mayors invoking city emergency powers ordinances that are only authorized pursuant to the RCPA, as they appear to be. First, the plain language and history of the RCPA and the ordinances authorized by it indicate the laws were never intended to apply to pandemics or infectious disease outbreaks. Second, the governor has never invoked the RCPA in his emergency orders, raising the question of whether the city ordinances are even available to be used during the COVID-19 state of emergency.

Legal Problem 1: The RCPA and the Ordinances Authorized by It Were Never Intended to Apply to Pandemics

The RCPA has as its purpose the maintenance and, if necessary, restoration of public order. Unsurprisingly, the city ordinances enacted pursuant to the RCPA's delegation of authority are aimed at the same purpose, not at the containment of pandemics.

The RCPA Was Not Intended to Apply to Pandemics

The rules of statutory construction in Oklahoma are well-established. "The fundamental rule of statutory construction is to ascertain and give effect to the legislative intent, and that intent is

first sought in the language of a statute."[64] Courts will "give the words of a statute a plain and ordinary meaning, unless a contrary intention plainly appears," and "[w]hen the language of a statute is plain and unambiguous, no occasion exists for application of rules of construction, and the statute will be accorded meaning as expressed by the language employed."[65] Moreover, "[a] statute will be given a reasonable and sensible construction: one that will reconcile its provisions and avoid inconsistences and absurdities."[66] Notably, the Supreme Court has held that "legislative intent may be expressed in an enactment's title."[67]

The plain and unambiguous language of the Riot Control and Prevention Act makes clear the law's intent was to control and prevent riots, not to contain the spread of pandemics.

The plain and unambiguous language of the Riot Control and Prevention Act makes clear the law's intent was to control and prevent riots, not to contain the spread of pandemics. Specifically, the intent was to give officials additional power to put down civil disorder or prevent it from occurring in the first place in times of vulnerability. The RCPA limits circumstances under which the governor may proclaim a state of emergency under the Act to when he determines "*a public disorder, disaster or riot exists* within this state or any part thereof which affects life, health, property or the public peace."[68] These terms are not defined in the RCPA, but obviously infectious disease does not qualify as "a public disorder" or a "riot." Therefore, the only circumstance in the statute that could plausibly include a pandemic is a "disaster."

In the context of the RCPA, "disaster" appears to be intended to mean natural disasters such as floods or tornados, or man-made disasters such as bombings. The law does not appear to contemplate pandemics. The dictionary definition of "disaster" is "a sudden event, such as an accident or a natural catastrophe, that causes great damage or loss of life."[69] As has been seen during COVID-19, pandemics are not "sudden events," but rather are slowly unfolding and long-lasting threats.

Moreover, the remaining provisions of the RCPA indicate the term "disaster" was not intended to include pandemics. The powers given to the governor are tools that might be used to control violence and restore order, not public health tools to fight an infectious disease.[70] The term "disaster," then, read in context, is clearly limited to disasters in which it is more likely that public order will deteriorate. This considerably narrows the circumstances in which the statute applies, considering that a great many devastating events exist which could be described colloquially as "disasters," but for which giving riot control powers to the governor would not aid in addressing them. For example, the financial crisis in 2008 can properly be described as a disaster and, for many, constituted an emergency situation. Yet no one would suggest that it would be an appropriate precipitating event for which the RCPA could be invoked. In contrast, flooding or wildfires that require evacuation may leave vacant property susceptible to looting, which might be prevented by the tools given the governor under the RCPA.

Pandemics and infectious disease, while no doubt costly, pose no serious threat to public order. If anything, the existence of a contagious disease is likely to cause individuals to avoid direct contact with others, stay home more, and avoid large crowds. Quite the opposite of the volatile, crowded conditions typically present just before rioting breaks out.

The exclusion of infectious disease from "disasters" comports with the powers conferred by the RCPA. In short, banning alcohol sales does nothing to contain a pandemic, but it is not difficult to see why the legislature thought it might be a useful tool in the event of a riot.[71] The same goes for the RCPA's provisions that allow the governor to restrict gasoline and other flammable liquids, Molotov cocktails, and to close streets to traffic.[72] The power to limit the size of gatherings in public areas and to close public parks, also given to the governor in an RCPA emergency, may be of some use in a pandemic, but they are more directly useful in taming civil disorder than in limiting spread of a virus.[73] Given that the rest of the powers conferred by the act obviously are intended to be part of an anti-riot toolkit, it is unlikely that these powers incidentally useful in fighting a pandemic were included for that purpose.

The text of the RCPA also contemplates a short duration state of emergency, not a rolling "crisis" that lasts for months or years, as a pandemic does. The Act stipulates that any state of emergency proclaimed under the Act "shall cease to exist upon the issuance of a proclamation of the Governor declaring its termination; provided that *the Governor must terminate said proclamation when order has been restored in the area affected*."[74] Again, the focus of the RCPA is on the restoration of order, not the mitigation of just any public threat. Reading pandemics into the RCPA renders perhaps the most important part of the Act meaningless—the safeguard that dictates when the governor's extraordinary powers should terminate and citizens' usual liberties be restored. A pandemic comes and goes with no discernable impact on public order, meaning the only measure of whether the threat has abated is the eradication of the virus. But this provides no sure end date at all. If a state of emergency using this standard were proclaimed when the HIV/AIDS pandemic first appeared in Oklahoma, the state would today be in its 38th consecutive year of emergency rule.[75]

If the language of the Act were not clear enough, the history and context of the RCPA's enactment in 1968 should eliminate any doubt as to the intent of the law. Riots and the breakdown of law and order were front of mind for many Oklahomans in the late 1960s, due to real and imagined fears about the civil unrest erupting in major cities in the United States. Oklahoma newspaper articles during this period regularly reported on riots, looting, and property destruction in places like Detroit, Los Angeles, and Memphis, often with unsubtle racial undertones.[76] Moreover, dissatisfaction with the Vietnam War reached a crescendo in the late 1960s, with college campuses somewhat regularly overwhelmed by sit-ins and other protests. Consider that in 1968 alone, Robert F. Kennedy and Martin Luther King, Jr. were both assassinated, the Democratic National Convention in Chicago deteriorated into chaos in the streets, the Tet Offensive was launched, and two black athletes staged a silent but provocative protest while on the podium to receive medals at the Summer Olympics.[77]

In short, it is not surprising that an act like the Riot Control and Prevention Act was passed, only that it took until the third month of the 1968 legislative session to become law.[78]

Like the RCPA, the ordinances relied on by the mayors of Tulsa, Oklahoma City, and Norman do not appear to contemplate pandemics and infectious disease within their scope.

The City Ordinances Were Not Intended to Apply to Pandemics, Either

Like the RCPA, the ordinances relied on by the mayors of Tulsa, Oklahoma City, and Norman do not appear to contemplate pandemics and infectious disease within their scope. The structure of each ordinance closely resembles that of the RCPA. Each permits a proclamation of emergency by the executive, includes similar language to the RCPA, and confers the same types of riot-fighting powers to the mayors as are given to the governor under the RCPA.[79] The ordinances were enacted very close in time to the RCPA.[80] Given these similarities, the above analysis of the RCPA applies with equal force to the ordinances, and leads to the conclusion that the ordinances simply were not intended to be applied to combat pandemics and infectious disease. The Oklahoma City ordinance, in particular, is essentially a carbon copy of the RCPA and was enacted days after the RCPA was passed, so any legal analysis of the Oklahoma City ordinance should closely track analysis of the RCPA.

In addition, the language of the Tulsa and Norman ordinances are even more plainly inapplicable to pandemics than are the RCPA and Oklahoma City ordinance. Rather than applying during "a public disorder, disaster or riot" like the RCPA and Oklahoma City's ordinance, the Tulsa ordinance applies during riots, and "*[a]ny natural disaster* or man-made calamity *including flood, conflagration, cyclone, tornado, earthquake or explosion* within the corporate limits of the City of Tulsa resulting in the death or injury of persons or the destruction of property to such an extent that extraordinary measures must be taken to protect the public health, safety and welfare."[81]

Similarly, the Norman ordinance applies in the event of a riot or a "*natural disaster* or man-made calamity *(including flood, fire, tornado or explosion)*, which results in the death or injury of persons or the destruction of property to such an extent that extraordinary measures must be taken to protect the public health, safety and welfare."[82]

Any fair reading of the above-highlighted language would conclude the primary circumstance contemplated by that section of the ordinance is that of a weather calamity, not a pandemic. The ordinances not only specify "natural" disasters, but list examples to illustrate the intended meaning. The only question is whether the term "natural disaster" can be stretched to include a pandemic, which, after all, normally emanates from nature.

Merriam-Webster defines "natural disaster" as "a sudden and terrible event in nature—such as a hurricane, tornado, or flood—that usually results in serious damage and many deaths."[83] Common usage of "natural disaster" would indicate an emphasis on the suddenness and naturalness aspects of this definition. That is, a natural disaster is a disaster that (1) comes from nature, and (2) appears suddenly, with its direct damage inflicted immediately even if negative after-effects are felt for a long period of time.

State statutory references to "natural disaster" do not aid the mayors' position. The term is defined a few times in state statute, and these definitions never specifically include infectious diseases or pandemics. In fact, when read together, Oklahoma statutes repeatedly use the term "natural disaster" to refer to damage or injury caused by weather calamities. For example, the OEMA defines natural disaster as "any natural catastrophe, including, but not limited to, a tornado, severe storm, high water, flood waters, wind-driven water, earthquake, landslide, mudslide, snowstorm, or drought."[84] Nowhere in Oklahoma law is the term "natural disaster" used to refer to infectious diseases.

Considering All Circumstances, It is a Stretch to Conclude City Emergency Powers Ordinances Apply to Pandemics

For the mayors' legal positions to be valid, one must conclude the following:

(1) the words "disaster" or "natural disaster" in a city ordinance that mostly pertains to riots and other civil disorder, and explicitly or implicitly derives its authority from something called the Riot Control and Prevention Act, includes pandemics and infectious diseases, even though they do not threaten civil order;

(2) that to counter pandemics, the drafters of the municipal ordinance chose to give the mayor tools that one would more naturally use to quell civil strife, such as the ability to ban possession of alcohol and flammable liquids;

(3) that despite never mentioning pandemics or infectious diseases—even though the ordinances were passed around the time of the country's last major pandemic, the 1968 Hong Kong Flu—the drafters intended pandemics to be included; and

(4) above all, that when the legislature enacted the Riot Control and Prevention Act of 1968—in the midst of regular news reports and public discussion of riots across the country—part of the intent of the law was to delegate to cities the power to fight pandemics with emergency fiats from mayors.

The governor has never explicitly invoked the RCPA in his more than twenty executive orders and memorandums related to COVID-19.

Legal Problem 2: The Governor Never Invoked the RCPA During the COVID-19 Crisis

The governor has never explicitly invoked the RCPA in his more than twenty executive orders and memorandums related to COVID-19.[85] In contrast, his orders broadly, and repeatedly, invoke the OEMA and CHEPA, and the orders implement the powers granted him by those statutes.

Moreover, the governor's executive orders indicate that had he intended to invoke the RCPA, he would have done so explicitly. Weeks after his initial executive orders activating his powers under the OEMA and Constitution, the governor issued a separate executive order invoking the Catastrophic Health Emergency Powers Act.[86] The use of separate orders to invoke the separate statutes, and the governor's direct citation in his executive orders to the statutes he is acting under, indicate that it is not the case that one gubernatorial proclamation of emergency activates all of the other emergency powers statutes. Instead, the governor views his own powers as being triggered only when he declares an emergency *under the statute he is seeking to put into effect*.

It is uncertain whether a city ordinance that derives its authority from the RCPA is operative when the RCPA itself has not been activated or invoked by the governor. Two possibilities exist: (1) the RCPA delegates a general power on cities to enact their own ordinances that, once enacted, operate independently from any proclamations by the governor, or (2) the RCPA confers on cities the power to enact ordinances that will assist the state in advancing the purposes of the RCPA *in the event the governor activates the law through an emergency proclamation*.

The better reading of the statute is that it delegates to cities the power to enact ordinances that can only be used in the event the governor declares an RCPA-emergency. Construing the RCPA as empowering cities to act independently of the governor would allow for ordinances that *conflict* with the RCPA. Such an interpretation would effectively transfer the power to determine when emergency powers should be activated from the governor to the mayors of each city in the state. In a circumstance where a mayor believes an emergency proclamation is justified, but the governor disagrees, this interpretation would fundamentally alter the operation of the RCPA. A city ordinance that purports to divest the authority of the governor to make the call whether an emergency exists that justifies the use of RCPA powers cannot be said to be made "in general conformity with" the RCPA, as this role given to the governor is a central feature of the law.

Recommendations

What is needed to correct this situation and prevent it from happening again is rather straightforward. First, state officials, particularly the governor and the attorney general, should take a firm position with the mayors making clear that to the extent their orders contradict the state rules, they are legally invalid. An attorney general opinion following the analysis contained in this paper would be legally binding on the mayors, instantly resolving the state-local discrepancies in policies. Oklahomans would have one place to look to determine the rules they must conform their conduct to during this statewide emergency.

Second, the legislature should enact simple legislation that makes clear it has not delegated independent authority to cities and their mayors to assume emergency powers independent of the state. The Texas Constitution, for example, contains a succinct provision establishing this principle. It provides that "no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State."[87] This provisions was cited by the Texas Attorney General in cease and desist letters to cities that had imposed restrictions similar to those described in this paper. There is no reason a similar statement—already the law in Oklahoma as interpreted by the Supreme Court—could not be codified into statute.

Finally, the legislature should reconsider whether any of these emergency powers statutes are appropriate, or needed. If COVID-19 has demonstrated anything, it is that when given extraordinary powers, government officials find ways to overreach. When normal processes are abandoned in the name of extenuating circumstances, the objectives those processes are designed to promote—transparency, careful deliberation, legitimacy in the eyes of the governed—are undermined. And to what end? American society experienced emergencies before there were emergency response statutes, and there is little indication government lacked the authority it needed to respond appropriately.

Conclusion

Roughly two-thirds of Oklahomans have been subjected to emergency mayoral decrees that severely restrict their freedom, damage them financially, and undermine their constitutional rights. These decrees significantly depart from the policy judgments made by the governor of the state acting pursuant to his constitutional and statutory authorities. These are not small matters, and should not be pursued lightly or without ironclad legal authority. Unfortunately, this appears to be precisely what the mayors of Oklahoma's three largest cities have done. At a minimum, their legal authority was suspect, and it was perhaps nonexistent. In rushing to impose their orders, the mayors have harmed the citizens of their communities and exposed their city governments to potentially costly litigation.

It has been noted by many legal experts that courts afford government officials great deference when exercising emergency powers to address crises, and that this deference makes successful litigation to beat back government overreach during emergencies all but impossible. This may be true. However, if the strongest legal argument justifying these mayors' actions is that it will be difficult for individual plaintiffs to hold them to account in court, it is no defense at all. Elected officials are entrusted with power with the understanding that they are sworn to uphold the law, not that they are sworn to uphold the law only to the extent someone can successfully prosecute a lawsuit against them.

Oklahomans should be asking questions of these mayors, and the mayors should be providing detailed explanations of the legal authority for their actions. The fact that they have not already done so reflects poorly on their administrations as well as their truly legal authority.

Oklahomans should be asking questions of these mayors, and the mayors should be providing detailed explanations of the legal authority for their actions.

End Notes

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1 Dillon Richards, "Oklahoma Mayors, Democrats Criticize Governor Stitt for Lack of Action Amid Covid-19 Crisis," *KOCO News 5*, March 23, 2020, https://www.koco.com/article/oklahoma-mayors-democrats-criticize-gov-stitt-for-lack-of-state-action-amid-covid-19-crisis/31906399#

Dan Snyder, "Metro Mayors Likely to Reopen Businesses Slower than Governor's Pace," *KOKH Fox 23* News, April 22, 2020, https://okcfox.com/news/coronavirus/metro-mayors-unlikely-to-reopen-businesses-at-governors-pace (April 22).

G.T. Bynum, "I'm a Red-State Mayor and I Ordered My City to Stay Home," New York Times, April 1, 2020, https://www.nytimes.com/2020/04/01/opinion/tulsa-lockdown-coronavirus.html

2 "Oklahoma Mayors React to Gov. Stitt's Plans to Reopen State," KRMG Tulsa News, April 23, 2020, https://www.krmg.com/news/local/oklahoma-mayors-react-gov-stitt-plans-reopen-state/a3PflKJussW5rKpixY2WTP/.

3 Angela Shen, "City Versus State Rules for Reopening Businesses," KFOR Oklahoma's News 4, April 23, 2020, https://kfor.com/health/coronavirus/city-versus-state-rules-for-reopening-businesses/

4 Oklahoma City Mayor's Revised Proclamation of State of Emergency, March 28, 2020, https://www.okc.gov/home/showdocument?id=16535

Tulsa Mayor's Executive Order 2020-04, March 28, 2020, https://www.cityoftulsa.org/government/city-charter-ordinances-and-executive-orders/executive-orders/

Norman Mayor's Proclamation 2020-04, March 24, 2020, https://www.coronavirus.normanok.gov/s/Proclamation-2020-04-6d93.pdf

5 Tulsa's Ordinance was enacted on August 8, 1967, Oklahoma City's was enacted on April 24, 1968, and Norman's was enacted on October 13, 1970. (copies of original ordinances and meeting minutes on file with author).

6 Norman Mayor's Proclamation No. 2020-01, March 13, 2020, https://www.coronavirus.normanok.gov/s/March-13-Origianl-Proclamation.pdf.

7 Mindy Ragan Wood, "Norman Mayor Declares City-Wide State of Emergency Due to COVID-19," *The Norman Transcript*, March 13, 2020, https://www.normantranscript.com/news/norman-mayor-declares-city-wide-state-of-emergency-due-to/article_238a36c2-657b-11ea-b02e-97a5b445944a.html.

Oklahoma State Department of Health COVID-19 Data Tool, https://coronavirus.health.ok.gov/ (Last accessed May 19, 2020).

8 Oklahoma City Mayor's Proclamation of State of Emergency, March 16, 2020

Tulsa Mayor's Executive Order 2020-1, March 16, 2020, https://www.cityoftulsa.org/media/12505/executive-order-2020-01.pdf

9 Oklahoma City Mayor's Revised Proclamation of State of Emergency, March 28, 2020, https://www.okc.gov/home/showdocument?id=16535

Tulsa Mayor's Executive Order 2020-04, March 28, 2020, https://www.cityoftulsa.org/government/city-charter-ordinances-and-executive-orders/executive-orders/

Norman Mayor's Proclamation 2020-04, March 24, 2020, https://www.coronavirus.normanok.gov/s/Proclamation-2020-04-6d93.pdf

10 *Russell, et al v. City of Norman*, Cleveland County District Court, Case No. CJ-2020-471 (filed April 30, 2020). The Plaintiffs in this case are salon-owners who allege that the Mayor's Proclamation violates their equal protection and other constitutional rights.

11 For example, all three cities kept hair salons and personal care businesses closed longer than the governor's order did. The governor's order allowed these businesses to re-open on April 24, and the cities did not allow them to re-open until May 1. Additionally, the cities have required sanitation protocols, mask-wearing by employees of businesses, mandatory temperature checks of employees, and various other restrictions not required by the governor's order.

Rebecca Klar, "Oklahoma City mayor: Not comfortable reopening 'until there is a vaccine or a proven treatment,'" *The Hill*, April 27, 2020, https://thehill.com/homenews/state-watch/494779-oklahoma-city-mayor-not-comfortable-reopening-until-there-is-a-vaccine.

Compare Oklahoma City Mayor's Revised Proclamation of State of Emergency, March 28, 2020, https://www.okc.gov/home/showdocument?id=16535; Tulsa Mayor's Executive Order 2020-04, March 28, 2020, https://www.cityoftulsa.org/government/city-charter-ordinances-and-executive-orders/executive-orders/; Norman Mayor's Proclamation 2020-04, March 24, 2020, https://www.coronavirus.normanok.gov/s/Proclamation-2020-04-6d93.pdf *with* Oklahoma Governor's Sixth Amended Executive Order No. 2020-13, May 12, 2020, https://www.sos.ok.gov/documents/executive/1943.pdf; Open Up and Recover Safely (OURS) Plan, *Oklahoma Department of Commerce*, https://www.okcommerce.gov/wp-content/uploads/Open-Up-and-Recover-Safely-Plan.pdf.

12 The cities, especially Norman, have been slower to open up than has been the state. For example, Norman initially refused to allow churches to re-open even though they were allowed to under the governor's orders, but later backed off of them after being rebuked by the Attorney General. See Chris Casteel, "Norman Mayor Reverses Course, Allows Churches to Reopen, After Admonishments from U.S. Attorney, Oklahoma Attorney General," *The Oklahoman*, May 8, 2020, https://oklahoman.com/article/5661968/us-attorney-to-norman-mayor-theres-no-pandemic-exception-to-the-bill-of-rights?no_cache=1&utm_source=SFMC&utm_medium=email&utm_campaign=The%20Oklahoman%20breaking-news%202020-05-0901:35:14&utm_content=GTDT_OKC&utm_term=050820.

13 *Jacobs Ranch, L.L.C. v. Smith*, 2006 OK 34, 148 P.3d 842, 849 (Okla. 2006).

14 *State ex rel. Dep't of Transp. v. Pile*, 1979 OK 152, 603 P.2d 337, 342 (Okla. 1979).

15 *Gibbons v. Missouri, K. T. Ry. Co.*, 142 Okla. 146, 285 P. 1040, 1042 (Okla. 1930).

16 *Phillips Petro. Co. v. Corp. Comm'n*, 1956 OK 313, 312 P.2d 916 (Okla. 1956)

17 *City of Sapulpa v. Land*, 101 Okla. 22 (Okla. 1924) ("The powers [cities] exercise at all times are subject to legislative control. The state has power to determine what matters are of general public concern.").

18 Okla. Const., Art. XVIII, Sec. 3(a);

19 *Moore v. City of Tulsa*, 1977 OK 43 (Okla. 1977); *Sparger v. Harris*, 191 Okl. 583, 131 P.2d 1011, 1013 (Okla. 1943).

20 *Edwards v. City of Sallisaw*, 2014 OK 86, 339 P.3d 870 (Okla. 2014); *City of Sapulpa v. Land*, 101 Okla. 22 (Okla. 1924).

21 *Jackson v. Freeman*, 1995 OK 100 (Okla. 1995) (the Court does not seek to "determine whether the Legislature is authorized to do an act, but rather, to see if the act is prohibited."); *Adwon v. Oklahoma Retail Grocers Ass'n*, 1951 OK 43, ¶ 13 (1951) ("It is only where an act of the Legislature is clearly, palpably, and plainly inconsistent with the terms and provisions of the Constitution that the courts will interfere and declare such act invalid and void.")

22 *Edwards v. City of Sallisaw*, 2014 OK 86, 339 P.3d 870 (Okla. 2014) ("But this Court has demarcated this principle—municipal authority can be overcome despite 'chiefly local interest' if 'the state has a sovereign interest' in the municipal matter.").

23 *Edwards v. City of Sallisaw*, 2014 OK 86, 339 P.3d 870 (Okla. 2014).

24 *Moore v. City of Tulsa*, 1977 OK 43 (Okla. 1977).

25 *City of Sapulpa v. Land*, 101 Okla. 22 (Okla. 1924).

26 *Edwards v. City of Sallisaw*, 2014 OK 86, 339 P.3d 870 (Okla. 2014).

27 *Teeter v. City of Edmond*, 85 P.3d 817, 822 (Okla. 2004); *see also Harris v. State*, 251 P.2d 799, 802-03 (Okla. 1952) (stating that the Legislature has no power to delegate the power to make laws, but may delegate authority to carry into effect existing laws).

28 *Teeter v. City of Edmond*, 85 P.3d 817, 822 (Okla. 2004) *citing White v. City of Lawton*, 1961 OK 287, 373 P.2d 25, 27 (Okla. 1961); *Ex parte Shaw*, 1916 OK 179, 157 P. 900 (Okla. 1916).

29 *Moore v. City of Tulsa*, 1977 OK 43 (Okla. 1977), *citing Spartan's Industries, Inc. v. Oklahoma City*, 498 P.2d 399, 401 (Okla. 1972).

30 *Moore v. City of Tulsa*, 1977 OK 43 (Okla. 1977), *citing Ray v. City and County of Denver*, 109 Colo. 74, 121 P.2d 886, 888, 138 A.L.R. 1485 (1942); *Clemons v. Wilson*, 151 Kan. 250, 98 P.2d 423, 427 (1940).

31 *City of Sapulpa v. Land*, 101 Okla. 22 (Okla. 1924).

32 *City of Sapulpa v. Land*, 101 Okla. 22 (Okla. 1924).

33 *Edwards v. City of Sallisaw*, 2014 OK 86, 339 P.3d 870 (Okla. 2014) citing *Thurston v. Caldwell*, 1913 OK 714, ¶ 10, 137 P. 683, 687 (Okla. 1913).

34 *City of Durant v. Cicio*, 2002 OK 52, 50 P.3d 218 (Okla. 2002); *Tulsa v. Public Employees Relations Board*, 1990 OK 114, 845 P.2d 872 (Okla. 1990); *Fraternal Order of Police, Lodge No. 165 v. City of Choctaw*, 1996 OK 78, 993 P2d 261 (Okla. 1996); *Bethany v. Public Employees Relations Board*, 1995 OK 99, 904 P.2d 607 (Okla. 1995).

35 *Edwards v. City of Sallisaw*, 2014 OK 86, 339 P.3d 870 (Okla. 2014) ("The line between a chiefly municipal affair and a sovereign state interest is not well illuminated, . . . [w]e have recognized specific issues that are of sovereign state interest, including taxation, public education, control and regulation of public highways, and state control over local police protection.").

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36 *Sparger v. Harris*, 191 Okla. 583, 131 P.2d 1011, 1013 (Okla. 1943) ("A municipality may move in the same direction as the Legislature, but not contrary to nor in an opposite direction.").

37 *Moore v. City of Tulsa*, 1977 OK 43 (Okla. 1977); *Sparger v. Harris*, 191 Okla. 583, 131 P.2d 1011, 1013 (Okla. 1943).

38 63 O.S. § 6101, *et seq.*

39 63 O.S. § 683.1, *et seq.*

40 21 O.S. § 1321.1, *et seq.*

41 63 O.S. § 6401.

42 63 O.S. 6104.

43 63 O.S. § 6403.

44 *City of Jenks v. Stone*, 321 P.3d 179, 183 (Okla. 2014) *quoting Zaloudek Grain Co. v. CompSource Oklahoma*, 2012 OK 75, ¶ 7, 298 P.3d 520, 523 (Okla. 2012).

45 63 O.S. § 683.1, *et seq.*

46 Even though the current form of the OEMA was enacted in 2003, its predecessor, the Civil Defense and Emergency Resources Management Act was first enacted some six decades ago. The statute changed significantly over time, but a version of it was in place in 1967 when the earliest of the three emergency powers ordinances (Tulsa's) was enacted. *See* Laws 1967, HB 512, c. 33, § 1, emerg. eff. March 21, 1967.This likely explains the grouping of Tulsa's ordinance with "civil defense" sections of the City Code, as well as the ordinance's use of the term "civil emergencies."

47 63 O.S. § 683.8, 683.9, 683.11, *et seq.*

48 63 O.S. § 683.11.

49 63 O.S. § 683.11.

50 63 O.S. § 683.17.

51 63 O.S. § 683.11.

52 63 O.S. § 683.3.

53 63 O.S. § 683.3.

54 63 O.S. § 683.3 ("'Man-made disaster' means a disaster caused by acts of man including, but not limited to, an act of war, terrorism, chemical spill or release, or power shortages that require assistance from outside the local political subdivision.").

55 21 O.S. § 1321.3.

56 21 O.S. § 1321.4.

57 21 O.S. § 1321.4.

58 21 O.S. § 1321.9 ("Cities and towns are hereby authorized to enact ordinances in general conformity with the provisions of this act.").

59 21 O.S. § 1321.5.

60 Council Memo No. 1031, from City Manager Robert H. Oldland to Oklahoma City Council, April 12, 1968 (copy on file with author).

61 The minutes from the meeting where the ordinance was adopted reflect extended discussion of several matters, but perfunctory discussion of the riot control ordinance, if any. The ordinance was adopted unanimously. *See* Tulsa City Ordinance No. 10889, August 8, 1967 and Minutes of Regular Meeting of the Mayor and City Commissioners of the City of Tulsa, August 8, 1967 (copies ordinance and minutes on file with author).

62 A UPI report from March of 1968 quotes a dissenting legislator predicting the law would result "in law enforcement agencies fighting each other" during a riot because each locality would be operating under its own rules, and that "cities already have all the authority they need." Conversely, an advocate of the bill is quoted as saying city officials in Oklahoma City and Tulsa had gone over the bill "with a fine tooth comb" and approved it. United Press International, "Riot Control Act Passes House Test, 82-4," appearing in the *Sapulpa Daily Herald*, March 28, 1968, https://gateway.okhistory.org/ark:/67531/metadc1491875/m1/1/zoom/?q=riot%20control%20act&resolution=8&lat=2008.44545793591 35&lon=3323.318824534592.

63 Norman City Ordinance No. 2346, October 13, 1970 and Norman City Council Minutes, October 13, 1970 (copies ordinance and minutes on file with author).

64 *City of Durant v. Cicio*, 2002 OK 52, 50 P.3d 218 (Okla. 2002).

65 *Oklahoma Ass'n for Equitable Taxation v. City of Oklahoma City*, 1995 OK 62 , 901 P.2d 800, 803; *City of Bethany v. Hill*, 1973 OK 49, 509 P.2d 1364 (Okla. 1973).

66 *Zaloudek Grain Co. v. CompSource Oklahoma*, 2012 OK 75, ¶ 7, 298 P.3d 520, 523 (Okla. 2012).

67 *City of Jenks v. Stone*, 321 P.3d 179, 183 (Okla. 2014).

68 21 O.S. § 1321.3.

69 Oxford Lexico Dictionary, https://www.lexico.com/en/definition/disaster (last accessed May 19, 2020).

70 21 O.S. § 1321.4.

71 21 O.S. § 1321.4.

72 21 O.S. § 1321.4.

73 21 O.S. § 1321.4.

74 21 O.S. § 1321.3.

75 "AIDS Cases In State Placed At 162 in 1988," *Tulsa World*, January 12, 1989, https://www.tulsaworld.com/archive/aids-cases-in-state-placed-at-in/article_adaac315-8892-5567-90b4-33beca67b2fb.html.

76 Mary Goddard, "Movement's a Bust, Draft Chief Says: Protestors Don't Ruffle Him," *Oklahoma City Times,* March 8, 1968, https://gateway.okhistory.org/ark:/67531/metadc993178/m1/1/zoom/?q=arrest&resolution=4&lat=3220&lon=2264

"King Widow Leads March in Memphis," *Sapulpa Daily Herald*, April 8, 1968, https://gateway.okhistory.org/ark:/67531/metadc1492507/m1/1/zoom/?q=riot%20negro&resolution=4&lat=5737.334043148425&lon=2772.309108177603

"Federal Troops Control Riot-Scarred Detroit," *Sapulpa Daily Herald*, July 25, 1967, https://gateway.okhistory.org/ark:/67531/metadc1490945/?q=riot%20negro%20detroit.

77 Katie McLaughlin, "Eight Unforgettable Ways 1968 Made History," CNN, July 31, 2014, https://www.cnn.com/2014/07/31/us/1968-important-events/index.html.

78 Laws 1968, SB 753, c. 125, § 1, emerg. eff. April 4, 1968.

79 Oklahoma City Municipal Code Art. 3, § 15-36, https://library.municode.com/ok/oklahoma_city/codes/code_of_ordinances?nodeId=OKMUCO2010_CH15CIDEEMMA.

Tulsa Municipal Code Title 8, Chapter 1, Sec. 100, https://library.municode.com/ok/tulsa/codes/code_of_ordinances?nodeId=CD_ORD_TIT8CIDECIEM.

Norman Municipal Code Sec. 2-111, https://library.municode.com/ok/norman/codes/code_of_ordinances?nodeId=COOR_CH2AD.

80 Tulsa's Ordinance was enacted on August 8, 1967, Oklahoma City's was enacted on April 24, 1968, and Norman's was enacted on October 13, 1970. (copies of original ordinances and meeting minutes on file with author).

81 Tulsa Municipal Code Title 8, Chapter 1, Sec. 100, https://library.municode.com/ok/tulsa/codes/code_of_ordinances?nodeId=CD_ORD_TIT8CIDECIEM.

82 Norman Municipal Code Sec. 2-111, https://library.municode.com/ok/norman/codes/code_of_ordinances?nodeId=COOR_CH2AD.

83 Mirriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/natural%20disaster (last accessed May 19, 2020).

84 63 O.S. § 683.3.

85 All of the governor's executive orders and memorandums related to COVID-19 are available on the Secretary of State's website, https://www.sos.ok.gov/gov/execorders.aspx.

86 Governor J. Kevin Stitt, Executive Order No. 2020-12, April 2, 2020.

87 Texas Const. Art. 11, Sec. 5.