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# Rethinking Emergency Powers in Oklahoma - Summary\*

Emergency powers are necessary, but fraught with danger. Emergency powers should exist, but checks and balances must be maintained. Oklahoma was fortunate in 2020; our governor felt a duty to use restraint in implementing his emergency powers. But our laws should be written to ensure that even if a budding totalitarian is governor, the damage will be limited. In an emergency, Oklahoma's governor is granted broad powers with few limits.

At least three aspects of Oklahoma's emergency powers statutes stand out as needing reevaluation and reform.

- 1 There is no clear definition of emergency, nor any meaningful time limit on the assumption of emergency powers;
- 2 Cities are allowed to set up tyrannical fiefdoms with no recourse; and
- 3 Governments have not been made to feel the fiscal weight of their policy decisions.

## Defining an Emergency and Limiting Its Duration

An emergency is not merely a serious situation, but a serious situation where disaster is likely unless immediate action is taken. Since an emergency is necessarily shorted-lived, emergency powers ought to be similarly short-lived. One week ought to be enough time for the legislature to come to a consensus on the next step.

Oklahoma's Emergency Management Act defines an emergency so broadly as to be meaningless. The definition presumes both the goodwill and good judgment of the Governor. It does not require that the Governor contemplate less restrictive alternatives or to consider tradeoffs.

The legislature is the proper body to oversee and expressly authorize action needed to guide the state through a crisis lasting more than a few days. There should be a pre-existing time limit on emergency powers, which automatically puts the legislature in charge once the first few days of a crisis have been navigated under emergency rule by the governor.

## Recommendation

- Define emergency broadly enough to cover real emergencies, but more narrowly than current law.
- Refer to the purpose of the state government, found in the

preamble to the Oklahoma Constitution.

- Limit emergency declarations to situations that require action to commence in the next 48 hours.
- Limit the total duration of the emergency declaration to seven days, with legislature able to extend the emergency two additional weeks.
- Limit total duration of an emergency declaration to three weeks, including legislative extension. A second emergency declaration should not be allowed arise from a given set of circumstances.

## Local Governments

The bulk of Covid-19 related restrictions in Oklahoma came not from the state, but from cities and towns, and even school districts. While the state forced so-called non-essential businesses to close for three weeks, from March 24 to April 15, cities enacted longer lockdowns, mask mandates that lasted for months, and some public school districts shut their doors for a full year.

## Recommendation

- If the governor declares a statewide emergency, no city can enact measures more burdensome than those the Governor has implemented unless the Governor gives the city express permission.

## Fiscal Repercussions

Governments at all levels have cut people off from their livelihoods, and have not paid the consequences for doing so. When the greater good demands destroying someone's livelihood, the greater population should bear that cost.

## Recommendations

- Create a way for business owners and employees can apply to receive full compensation for the harms they suffered under state and city policies.
- Funds for this program should come directly from the government entity's budget.
- Any time the public in under lockdown, all government employees and elected officials should be placed on unpaid furloughs, or earn a greatly reduced salary

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## Conclusion

Oklahoma was lucky in 2020. Despite major flaws in our emergency procedures, we were among the lightest-hit by the secondary effects of Covid-19. But this happened only because our statewide leaders made better choices than leaders in most other states.

We must ensure that what happened in other states can never happen to Oklahoma. Structural protections must be implemented to incentivize even bad leaders to make good decisions.