

You Can't Make Me Stay Home! Medical and Legal Aspects of the COVID-19 Pandemic



Coronavirus disease 2019 (COVID-19), the infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), has brought about dramatic changes worldwide. Here we explore the interwoven medical and legal challenges posed by the COVID-19 pandemic, including legal restrictions impacting public health measures. Understanding these conflicts against the backdrop of human psychological tendencies can help inform ways of achieving greater compliance with and development of public health initiatives.

As we are acutely aware, SARS-CoV-2 has led to a worldwide pandemic and millions of deaths. Because it is a novel virus, the incubation period is up to 2 weeks, its spread is increased with close social gatherings, and people may be infectious without exhibiting symptoms (i.e., carriers), SARS-CoV-2 unfortunately spread rapidly. Furthermore, COVID-19 is an unusual epidemic because it is neither common source (ie, people are not exposed at a common place and time) nor propagative (ie, it is not necessarily characterized by multiple generation times) and has a possible zoonotic source, leading to a complex transmission pattern and making establishment of effective control measures challenging.

Subsequently, multi-fold interventions have been required to curb SARS-CoV-2's transmission (eg, social distancing, wearing masks, frequent hand washing, quarantining and self-isolating, and contact tracing).¹ More divisive methods have included government orders requiring businesses, schools, and places of worship to limit patrons or shut down, travel limitations, and vetting people's departure points at airports and train stations. Although vaccination is likely the most sustainable prevention method, mandating this particular intervention is incredibly controversial.

Of course, the success of many interventions is heavily dependent upon each individual's *voluntary compliance*—an ethical choice of personal responsibility. Prime examples where compliance was not met included spring break parties, holiday travel, and defiance to mask wearing. Further, these public health measures—which may seem medically justifiable—have raised legal questions and illuminated tensions between law and public health, particularly where individuals' constitutional rights and personal liberties are at stake. [Table 1](#) provides some examples, and detailed cases follow.

For about 1 month in March 2020, Texas Governor Greg Abbott attempted to halt elective surgeries in an attempt to increase hospital capacity for COVID-19 patients.² Planned Parenthood for Choice subsequently filed a lawsuit in Texas federal court seeking to limit the Governor's ability to stop abortions that, if delayed, would result in significant health risks for the mother.² The case moved to a quick appeal to the United States Court of Appeals for the Fifth Circuit. Although a new executive order issued by Abbott suggested the abortion ban had expired, petitioners appealed to the US Supreme Court, likely to ensure clarity in the law.² The Supreme Court granted Planned Parenthood's request to vacate the Fifth Circuit decisions that had allowed Abbott's executive order banning abortions to go into effect and remanded the case to the Fifth Circuit with instructions to dismiss as moot.² The health impact on expecting mothers and likely out-of-state travel (possibly further contributing to additional COVID-19 spread) caused by the abortion ban were plausible adverse consequences of emergency legal action purportedly intended to curb a public health emergency.

In addition, some states discouraged interstate travel or required self-quarantine for out-of-state travel, although enforcement mechanisms relied heavily upon self-responsibility and lacked real teeth. Kentucky Governor Andy Beshear prohibited out-of-state travel except in limited circumstances (eg, employment, health care).³ Residents challenged this ban because it violated their right to travel for personal reasons. The US District Court for the Eastern District of Kentucky agreed with the residents, finding that “[n]ot only is there a lack of procedural due process with

Funding: None.

Conflict of Interest: None.

Authorship: Both authors had access to the data and a role in writing this manuscript.

Requests for reprints should be addressed to Dr. Sarah E. Nelson, MD, MPH, Mount Sinai West, 1000 10th Avenue, New York, 10019.

E-mail address: senelson13@gmail.com

Table 1 Public Health Measures Implemented During the COVID-19 Pandemic and Examples of Legal Actions

Public Health Measure	Example of Legal Action
Hand washing and cleaning surfaces	Los Angeles County Public Health Protocols for Office Worksites included accommodations for frequent hand washing and washing of frequently touched areas. ⁷
Wearing masks	Following a Florida county passing a resolution requiring face coverings inside public businesses, a pastor filed a lawsuit, which he later dismissed after the county voted to exclude places of worship from the order. ⁴
Social distancing	California Governor Gavin Newsom signed an executive order placing attendance limitations and other restrictions on indoor worship services. Despite lawsuits, his action was in part supported by the US Supreme Court. ²
Quarantining and isolating	Per CDC guidelines, people in close contact with someone who has COVID-19 (except those vaccinated or who had COVID-19 within the past 3 months) are required to quarantine for 14 days. ¹
Contact tracing	No specific law about its implementation; however, confidentiality has been considered. ⁶
Vaccination	The federal government cannot mandate that people become vaccinated, even for COVID-19. ¹
Limiting or closing businesses	Pennsylvania Governor Tom Wolf mandated that non-life-sustaining businesses temporarily close; however, these shutdowns “violated businesses’ rights to due process and equal protection under the Fourteenth Amendment.” ⁵
vetting departure points	For international travel, testing ≤ 3 days before flying into the United States or documentation of recovery from COVID-19 is required. ¹
Limiting travel between states	Kentucky Governor Andy Beshear issued an executive order prohibiting out-of-state travel except for limited circumstances; this order was later overturned. ³
Limiting medical interventions	Texas Governor Greg Abbott attempted to halt all elective surgeries for ~ 1 month; this was effectively later dismissed ²

CDC = Centers for Disease Control and Prevention; COVID-19 = coronavirus disease 2019.

respect to the Travel Ban, but . . . these travel regulations are not narrowly tailored to achieve the government’s purpose.”³ The Court found the ban did not clearly define who would provide facilities for quarantining; would require checkpoints at bridge entrances, resulting in massive traffic jams; and that family members in Kentucky and Cincinnati living <1 mile apart would be unable to visit each other.³ Further, this travel ban violated the “constitutional right to travel” embedded in legal precedent and “infringe[d] on the basic right of citizens to engage in interstate travel.”³

Ordinances mandating mask-wearing also raised constitutional challenges that illuminate the tension between personal freedom and government intervention in public health crises. For example, in July 2020, a Florida county passed an emergency resolution requiring face coverings inside public businesses. A church pastor subsequently filed a lawsuit challenging this mask mandate as unconstitutional, claiming it violated religious freedom and interfered with the ability to pray.⁴ He later voluntarily dismissed the case after the county voted to exclude places of worship from the order.⁴ Similar lawsuits have been filed against other counties in Florida.

Many businesses also expressed concern that their livelihoods were impacted unfairly by government orders intended to reduce the spread of SARS-CoV-2. Several governors ordered the temporary shutdown of non-life-sustaining businesses early in the pandemic, resulting in strong objections from small businesses. Indeed, in *Butler vs Wolf*,

Judge Stickman IV of the US District Court for the Western District of Pennsylvania ruled that these types of orders shuttering non-life-sustaining businesses “violated businesses’ rights to due process and equal protection under the Fourteenth Amendment.”⁵

Contact tracing, intended to locate contacts of people diagnosed with COVID-19, does not appear to be codified in law, although it has been used for decades for other diseases. Although initially met with enthusiasm during the pandemic as an additional tool to help curb the virus, government-mandated contact tracing has raised concerns about personal privacy. In response, New York State passed a law intended to protect the personal information of individuals identified as close contacts of those with a probable or confirmed COVID-19 diagnosis.⁶

In sum, public health interventions instituted to help control the spread of SARS-CoV-2 have faced significant legal challenges. Although personal responsibility is critical, it was often deemed essential to institute recommendations and policies more formally. Perhaps a deeper understanding of medicine, public health, psychology, and dangers of the spread of an infectious agent would help prevent future similar conflicts.

Sarah E. Nelson, MD, MPH^a
Emily J. Nelson, JD^b

^aDepartments of Neurosurgery and
Neurology, Mount Sinai West, NY

^bEmployment lawyer, Austin, TX

References

1. Centers for Disease Control and Prevention. Available at: <https://www.cdc.gov/>. Accessed June 16, 2021.
2. Supreme Court of the United States. Available at: <https://www.supremecourt.gov>. Accessed June 16, 2021.
3. Theodore Joseph Roberts et al. v. Hon. Robert Neace et al., Memorandum Opinion and Order, No. 2:20-cv-00054-WOB-CJS, Eastern District of Kentucky (May 4, 2020).
4. UniCort. Joel D. Tillis vs. Manatee County. Available at: <https://unicourt.com/case/fl-man-joel-d-tillis-vs-manatee-county-376264>. Accessed June 16, 2021.
5. Duston NA. Coronavirus and the constitutional rights of businesses: Butler v. Wolf. Norris McLaughlin, P.A. 2020. Available at: <https://norrismclaughlin.com/blb/2020/09/24/coronavirus-constitutional-rights-businesses-butler-wolf/>. Accessed April 26, 2021.
6. The New York State Senate. Senate Bill S8450C. 2020. Available at: <https://www.nysenate.gov/legislation/bills/2019/s8450/amendment/c>. Accessed April 26, 2021.
7. County of Los Angeles Department of Public Health: Order of the Health Officer. Protocols for Office Worksites: Appendix D. 2021. Available at: http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Reopening_OfficeBasedWorksites.pdf. Accessed April 26, 2021.