



Texas Public Policy Foundation
**LEGISLATOR'S GUIDE
TO THE ISSUES
2021-2022**

Government Emergency Powers

The Issue

Under a disaster declaration in Texas, state and local authorities may operate under the Texas Disaster Act of 1975 in order to respond to crises. The act, codified in [Texas Government Code Chapter 418](#), grants temporary emergency powers to the governor and certain local officials, albeit in unequal measure.

In the midst of COVID-19, authorities have wielded these special powers to impose a variety of rules and restrictions on Texans as they engage in everyday activities. While some of these constraints, like social distancing guidelines, have ostensibly advanced a meaningful public health objective, other directives have been less reasonable and gratuitous. A few orders have even been unlawful.

Although circumstances may warrant the use of emergency powers, this authority is not unlimited nor are government officials allowed to create their own extrajudicial concepts. Americans enjoy certain fundamental protections, even during times of disaster. As [one federal court wrote](#) recently: “There is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment.”

In spite of this fact, government overreach has been a persistent problem at the local level, with county judges and city mayors taking some alarming actions, such as extending disaster declarations indefinitely; proposing excessive fines and criminal penalties for noncompliance; [threatening to commandeer private property](#); imposing unconstitutional demands on houses of worship; and placing onerous restrictions on certain businesses, such as the requirement that restaurants track customers. Some local governing bodies—like [the city of Austin](#)—have even empowered unelected bureaucrats to issue emergency orders dictating intimate details about a person's life.

The degree to which local governments have acted in authoritarian fashion reveals an uncomfortable truth: We must better balance government power and individual liberty in times of emergency.

There are simply too many instances of local elected and unelected officials trampling on Texans' personal liberties and livelihoods. These infringements are made all the worse by the duration of the disaster and the absence of empirical evidence supporting each new rule meted out.

Given the extent of local government overreach and the importance of civil liberties, it is critical that the next Texas Legislature reform Chapter 418 of the Government Code with an eye toward restoring equilibrium between government power and individual liberty. State lawmakers can move in this direction by bringing clarity and predictability to the law, requiring greater government transparency, and more narrowly tailoring the authority of local officials.

The Facts

- Chapter 418 of the Texas Government Code grants temporary emergency powers to state and local authorities during a declared disaster.
- In some cases, the rules and restrictions imposed by county judges, city mayors, and unelected administrators have been an overreach. Certain orders have arguably been unlawful.
- In *Berean Baptist Church v. Governor Roy A. Cooper, III*, [one federal judge noted](#): “There is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment.”
- The Texas Legislature must better balance government power and individual liberty.

Recommendations

- Clarify state and local emergency authority provided under Chapter 418 of the Texas Government Code and the limitations on those powers.
- Prohibit the indefinite extension of local disaster declarations. Require periodic re-approval of the orders at a public meeting.
- Amend the Texas Public Information Act and the Texas Open Meetings Act to strengthen the public's ability to access information and participate in their governance.
- Require local disaster orders to cite the statute authorizing uncommon actions, like commandeering private property.
- Bar local governments from imposing excessive fines and criminal penalties.
- For local emergency orders that impose an undue burden on the public, require political subdivisions to make public any empirical evidence or data that supports their rule or restriction.

Resources

[Exposing Overreach: Tarrant County](#) by Shelby Sterling, Texas Public Policy Foundation (June 2020).

[“Face Masks May Be Symbols for Some, or They Could Have Cost You \\$1,000”](#) by Shelby Sterling, *Houston Courant* (June 16, 2020).

[“On Mask Wearing, Don't Use Law Enforcement as Hall Monitors”](#) by Michael Haugen, Right On Crime (June 23, 2020).

[“Heavy-Handed Draconian Rules Must Go”](#) by Shelby Sterling, *Houston Courant* (May 26, 2020).