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## SHELTER IN PLACE: Executive Order by the Governor to Ensure a Safe & Healthy Georgia

Preston A. Dunaway

Georgia State University College of Law, pdunaway1@student.gsu.edu

Graham H. Gordon

Georgia State University College of Law, ggordon10@student.gsu.edu

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## SHELTER IN PLACE

### *Executive Order by the Governor to Ensure a Safe & Healthy Georgia: Statewide Shelter in Place*

CODE SECTION:	O.C.G.A. § 38-3-7
EXECUTIVE ORDER:	Ga. Exec. Order No. 04.02.20.01
EFFECTIVE DATE:	April 3, 2020
SUMMARY:	The Order required all visitors and residents of Georgia to practice social distancing in compliance with the Centers for Disease Control and Prevention guidelines; prohibited businesses in Georgia from allowing groups of more than ten people to gather at any single location; imposed a mandatory shelter-in-place requirement for all visitors and residents of Georgia except for essential workers, as defined within the Order; and laid out guidelines for how businesses would operate during the quarantine. Further, the Order limited restaurant services and closed certain businesses, including gyms and bowling alleys. The Order also superseded all local Orders purporting to regulate the same subject matter and declared violations of the Order's requirements to be a misdemeanor.

#### *Introduction*

For years, Georgia has flourished as an ideal home for business, and Governor Brian Kemp's (R) top priority when he assumed office

in 2019 was to “Make Georgia #1 for Small Business.”<sup>1</sup> However, a novel coronavirus, the underlying virus which causes COVID-19, brought small businesses, along with all other facets of life in Georgia, to an abrupt halt.<sup>2</sup> By March 2, 2020, the first case of COVID-19 was confirmed in Georgia.<sup>3</sup> Days later, the World Health Organization (WHO) declared COVID-19 a pandemic on March 11, 2020.<sup>4</sup> The following day, counties all across Georgia began shutting down schools and canceling planned social gatherings while the Georgia legislature suspended the legislative session.<sup>5</sup> Shortly thereafter, Georgia reported its first death caused by COVID-19.<sup>6</sup> On April 2, 2020, news outlets reported over 5,400 people in Georgia had COVID-19, and 180 had died from it.<sup>7</sup>

In response, Governor Kemp issued an Executive Order on March 23, 2020, that imposed shelter-in-place restrictions for certain populations and statewide limits on large gatherings.<sup>8</sup> One day later, Savannah Mayor Van Johnson (D) issued a shelter-in-place directive that imposed tighter restrictions on Savannah residents.<sup>9</sup> By the end

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1. Mark Arend, *VII Straight*, SITE SELECTION MAG. (Nov. 2019), <https://siteselection.com/issues/2019/nov/business-climate-rankings-seven-straight-georgia-sets-a-record.cfm#gsc.tab=0> [<https://perma.cc/QQ8W-3QJP>]; *Initiatives and Priorities*, GOVERNOR BRIAN P. KEMP OFF. OF THE GOVERNOR, <https://gov.georgia.gov/about-us/initiatives-and-priorities> [<https://perma.cc/BU7A-27H5>].

2. *Archived: WHO Timeline - COVID-19*, WORLD HEALTH ORGANIZATION [WHO] (Apr. 27, 2020) [hereinafter *COVID-19 Timeline*], <https://www.who.int/news/item/27-04-2020-who-timeline---covid-19> [<https://perma.cc/647B-MS5K>]. The coronavirus was identified in Wuhan, China, as early as December 2019. *Id.*

3. Courtney Kueppers, *A Timeline of the 10-Day Period When Coronavirus Really Changed Life in Georgia*, ATLANTA J.-CONST. (Mar. 20, 2020), <https://www.ajc.com/lifestyles/timeline-the-day-period-when-coronavirus-really-changed-life-georgia/mI1Be5ZTZn2onEZgDU3u3O/> [<https://perma.cc/YT4U-W9MR>].

4. *COVID-19 Timeline*, *supra* note 2.

5. Kueppers, *supra* note 3.

6. *Id.*

7. *Coronavirus in Georgia on April 2*, 11ALIVE, <https://www.11alive.com/article/news/health/coronavirus/coronavirus-georgia-real-time-updates-april-2/85-0bac5a3d-782a-44b1-bccc-bdda344994b2> (Apr. 3, 2020, 6:02 AM).

8. Ga. Exec. Order No. 03.23.20.01 (Mar. 23, 2020) (on file with the Georgia State University Law Review).

9. City of Savannah First Amended Declaration of Local Emergency (Mar. 24, 2020) (on file with the Georgia State University Law Review); Zach Dennis & Nick Robertson, *Savannah Mayor Issues Mandatory Shelter-in-Place Order, Effective Tuesday Night*, SAVANNAH MORNING NEWS (Mar. 24, 2020, 10:19 AM), <https://www.savannahnow.com/news/20200324/savannah-mayor-issues-mandatory-shelter-in-place-order-effective-tuesday-night> [<https://perma.cc/W8BA-8GHU>].

of the week, cities across Georgia continued to issue more detailed restrictions, including Atlanta Mayor Keisha Lance Bottoms (D).<sup>10</sup>

The need for a uniform statewide shelter-in-place mandate became clearer as the virus continued to spread, and Georgians grew confused about the hodgepodge of different shelter-in-place orders.<sup>11</sup> Recognizing these issues, Governor Kemp issued Executive Order 04.02.20.01 to impose a uniform statewide shelter in place for all Georgia residents on April 2, 2020.<sup>12</sup>

The Order went into effect at 6:00 PM on April 3 and was expected to stay in effect until April 13, 2020.<sup>13</sup> With Executive Order 04.02.20.01's issuance, Georgia joined thirty-nine other states that had issued similar Orders in response to COVID-19 at the time.<sup>14</sup> Over the next few days, Governor Kemp continued to issue Orders to clarify the enforcement methods laid out in Executive Order 04.02.20.01 and to expound upon the types of businesses subject to closures and service limitations.<sup>15</sup> Executive Order 04.02.20.01 set out to lessen the impact of the virus by limiting opportunities for residents and visitors to have face-to-face interactions.<sup>16</sup> To this end, the Order imposed a strict shelter in place on all persons in Georgia

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10. City of Atlanta Exec. Order No. 2020-21 (Mar. 23, 2020) (on file with the Georgia State University Law Review); Zachary Hansen, *Atlanta Mayor Signs 14-Day Stay-at-Home Order due to Coronavirus Pandemic*, ATLANTA J.-CONST. (Mar. 25, 2020), <https://www.ajc.com/news/breaking-news/breaking-atlanta-mayor-signs-day-stay-home-order-due-coronavirus-pandemic/HpYoORZDNNqdIWc3QfKWwK/> [<https://perma.cc/8KXP-ZTR9>].

11. *Coronavirus in Georgia: Saturday, March 28 Updates*, 11ALIVE, <https://www.11alive.com/article/news/health/coronavirus/coronavirus-georgia-latest-news/85-7b0feb59-c1f6-49d9-aae0-eb87ddf7d6c2> (Mar. 29, 2020, 7:19 AM) (noting that by March 28, 2020, there were 2,366 confirmed cases of COVID-19 in the State of Georgia, with 69 deaths); Robin Kemp, *Confusion Over Local COVID-19 Ordinances Led to Statewide Shelter-in-Place Order, Gov. Kemp Says*, CLAYTON NEWS-DAILY (Apr. 1, 2020), [https://www.news-daily.com/news/confusion-over-local-covid-19-ordinances-led-to-statewide-shelter-in-place-order-gov-kemp/article\\_5a066620-743b-11ea-a827-e3711cb835b0.html](https://www.news-daily.com/news/confusion-over-local-covid-19-ordinances-led-to-statewide-shelter-in-place-order-gov-kemp/article_5a066620-743b-11ea-a827-e3711cb835b0.html) [<https://perma.cc/HK5Z-854K>].

12. Ga. Exec. Order No. 04.02.20.01 (Apr. 2, 2020) (on file with the Georgia State University Law Review).

13. *Id.*

14. Sarah Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> [<https://perma.cc/5K7R-NXQZ>] (Apr. 20, 2020).

15. Ga. Exec. Order No. 04.03.20.01 (Apr. 3, 2020) (on file with the Georgia State University Law Review) (authorizing sheriffs to enforce provisions of Executive Order 04.03.20.01); Ga. Exec. Order No. 04.03.20.02 (Apr. 3, 2020) (on file with the Georgia State University Law Review) (expanding definition of essential services and clarifying enforcement procedures).

16. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 2–3.

that prohibited not only large gatherings and visitation to high-risk areas as previous Orders had, but it even went as far as to limit all travel outside the home except for essential services.<sup>17</sup> The Order set out a plan for businesses to follow to ensure compliance with the Order and regulated the shutdown of various businesses whose operations would inherently jeopardize social distancing measures, such as movie theaters, bowling alleys, hair salons, restaurants and bars, massage parlors, and amusement parks.<sup>18</sup> Following the recommendations of the Centers for Disease Control and Prevention (CDC) and the Georgia Department of Public Health (DPH), the Order also laid out a requirement that all persons and businesses practice social distancing to further mitigate the virus's spread.<sup>19</sup> All provisions that would otherwise restrict residents' and visitors' ability to travel or gather were subject to a general exception in the case of emergency and for necessary services, such as buying food or going to an essential job.<sup>20</sup>

On April 30, 2020, Governor Kemp extended the Public Health State of Emergency he initially declared on March 14, and he then renewed the extension on May 28.<sup>21</sup> On June 11, 2020, Governor Kemp issued Executive Order 06.11.20.01, which reinstated the shelter in place for high-risk communities and continued to require all Georgia residents and visitors to follow the health and safety guidelines posted by the CDC.<sup>22</sup> Governor Kemp then began shifting efforts toward reopening the state and lifting restrictions.<sup>23</sup>

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17. *Id.* at 3.

18. *Id.* at 4–5.

19. *Id.* at 2.

20. *Id.*

21. Ga. Exec. Order No. 04.30.20.01 (Apr. 30, 2020) (on file with the Georgia State University Law Review); Ga. Exec. Order No. 05.28.20.01 (May 28, 2020) (on file with the Georgia State University Law Review).

22. Ga. Exec. Order No. 06.11.20.01 (June 11, 2020) (on file with the Georgia State University Law Review).

23. *Coronavirus in Georgia: Shelter-in-Place Comes to an End for Most Georgians*, WSB-TV [hereinafter *Shelter-in-Place Order Ends*], <https://www.wsbtv.com/news/local/coronavirus-georgia-shelter-in-place-comes-an-end-most-georgians/R4QGJPB3QFGHTMQUGI7G6OP36M/> [<https://perma.cc/8FFF-ZRDL>] (May 1, 2020, 9:59 AM).

*Background*

The overall purpose of the Order was to protect the health, safety, and welfare of Georgia's residents by reducing the opportunities for individuals to transmit COVID-19.<sup>24</sup> In addition to promoting health and safety, the Order aimed "to provide uniformity in regulations for COVID-19 response around the state."<sup>25</sup> The Order sought to accomplish this purpose by imposing social distancing requirements upon residents and visitors in Georgia and by mandating shelter-in-place guidelines for individuals and businesses while providing certain exceptions to keep essential and critical businesses running during the pandemic.<sup>26</sup>

*Social Distancing*

The initial Order, and the subsequent extensions, required all residents and visitors of the State of Georgia to practice social distancing and sanitation.<sup>27</sup> Specifically, these Orders required people located in Georgia to adhere to the CDC guidelines and limit gatherings to no more than ten people in a single location.<sup>28</sup>

The CDC issued guidance for individual behaviors known to reduce the spread of COVID-19.<sup>29</sup> The CDC defined social distancing as "keeping space between yourself and other people outside of your home" and recommended that individuals practice social distancing by staying at least six feet from other people.<sup>30</sup> Beyond the six-foot requirement, the CDC issued more detailed

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24. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 2.

25. Interview with David Dove, Exec. Couns. to Governor Brian P. Kemp, Off. of the Governor (June 6, 2020) (on file with the Georgia State University Law Review) [hereinafter Dove Interview].

26. *Id.*

27. *Id.*

28. *Id.*; see also Social Distancing of *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter Social Distancing Guidelines], <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> [<https://perma.cc/DEM6-LJ74>] (July 15, 2020).

29. Social Distancing Guidelines, *supra* note 28.

30. Households Living in Close Quarters of *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/living-in-close-quarters.html> [<https://perma.cc/HMX9-BPWM>] (May 29, 2020).

guidance for families and businesses.<sup>31</sup> Those guidelines advised families to limit errands, wear face coverings, avoid high-touch surfaces, and isolate household members who were sick or had recently been exposed to the virus.<sup>32</sup> The guidelines also urged families that relied on public transportation to use touchless payment and enter and exit buses through rear-entry doors.<sup>33</sup>

### *Shelter-in-Place and the Exceptions to the Shelter-in-Place*

The fourth mandate within the Order required all residents and visitors of Georgia to shelter in place, defined as “remaining in their place of residence and taking every possible precaution to limit social interaction to prevent the spread or infection of COVID-19 to themselves or any other person . . . .”<sup>34</sup>

However, the Order provided four exceptions to the shelter-in-place mandate for individuals: (1) conducting or participating in essential services; (2) performing necessary travel; (3) engaging in the performance of minimum basic operations for a business that was not classified as critical infrastructure; or (4) working previously in the workforce for critical infrastructure.<sup>35</sup>

### *Essential Services*

First, Governor Brian Kemp (R) provided a broad exception to the shelter-in-place mandate for “essential services,” the definition of which included: all activities that were necessary to obtain food and supplies for household consumption; medical necessities and services; and engaging in outdoor exercise activities that allowed for six feet of distance between all persons who were not occupants of the same residence.<sup>36</sup>

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31. Protect Yourself When Using Transportation of *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html> [<https://perma.cc/3LR5-8BVL>] (May 26, 2020).

32. *Id.*

33. *Id.*

34. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 2.

35. *Id.* at 2–3.

36. *Id.* at 3.

*Necessary Travel*

The second exception, necessary travel, was also defined broadly to include all travel “required to conduct or participate in Essential Services, Minimum Basic Operations, or Critical Infrastructure . . . .”<sup>37</sup>

*Minimum Basic Operations for Non-Critical Infrastructure Businesses*

Third, the Order provided an exception to the shelter-in-place mandate for businesses that were not critical infrastructure, provided the businesses engaged only in minimum basic operations.<sup>38</sup> However, these businesses had to adhere to certain specific measures designed to mitigate the spread of COVID-19 among the workforce.<sup>39</sup> Such measures included screening workers who exhibited signs of illness, providing personal protective equipment to workers, holding all meetings virtually when possible, and suspending the use of personal identification number pads.<sup>40</sup>

*Critical Infrastructure*

The fourth and final exception to the shelter-in-place mandate exempted businesses defined by the U.S. Department of Homeland Security (DHS) as “critical infrastructure.”<sup>41</sup> Critical manufacturing, such as vehicle manufacturing, fell within the definition of critical infrastructure.<sup>42</sup> The Order required businesses designated as critical

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37. *Id.*; see also *Critical Infrastructure Sectors*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY, <https://www.cisa.gov/critical-infrastructure-sectors> [<https://perma.cc/5M4L-EW37>] (Mar. 24, 2020).

38. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 3–4.

39. *Id.* at 4–5.

40. *Id.*; see also *Manufacturing Workers and Employers of Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter *Guidelines for Manufacturing Workers & Employers*], <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-manufacturing-workers-employers.html#create-assessment-plan> [<https://perma.cc/8YE9-GSAT>] (May 12, 2020).

41. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 5–6; see also *Guidelines for Manufacturing Workers & Employers*, *supra* note 40.

42. *Guidelines for Manufacturing Workers & Employers*, *supra* note 40.



infrastructure to follow CDC guidelines for operations during the COVID-19 pandemic.<sup>43</sup>

### *Restaurants and Dining Clubs*

Next, the Order mandated that all restaurants and private social clubs stop providing dine-in services, though pick-up and delivery services were still permitted.<sup>44</sup> As an exception to this rule, dine-in service facilities located in hospitals, healthcare facilities, and nursing homes were allowed to continue operations.<sup>45</sup>

### *Other Businesses*

Further, the Order listed specific types of businesses that were prohibited from operating while the Order was in effect.<sup>46</sup> For example, the Order expressly required all gyms, bowling alleys, theaters, live performance venues, massage parlors, and estheticians to “cease in-person operations.”<sup>47</sup>

### *Limitation of Visitors*

Next, the Order prohibited people who were required to shelter in place from receiving visitors.<sup>48</sup> However, the Order provided certain exceptions for (1) visitors providing medical or health services, (2) visitors assisting in daily living activities, (3) visitors providing necessary supplies like food and sanitation equipment, and (4) visitors received during end-of-life circumstances.<sup>49</sup> Additionally, the Order called special attention to visitors of nursing homes.<sup>50</sup> Specifically, the Order noted that restrictions limiting visitors “shall

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43. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 5–6; *see also* Guidelines for Manufacturing Workers & Employers, *supra* note 40.

44. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 6.

45. *Id.*

46. *Id.* at 6–7.

47. *Id.*

48. *Id.* at 7.

49. *Id.*

50. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 7.

be strictly enforced against nursing homes or other long-term care facilities . . . .”<sup>51</sup>

*Exception in the Event of an Emergency*

The Order further included a general exception to the shelter-in-place decree in the event of an emergency.<sup>52</sup> Under such circumstances, the Order encouraged people to leave their homes and seek alternative locations to shelter in place.<sup>53</sup> The Order also urged individuals lacking adequate options to shelter in place to contact governmental entities for assistance.<sup>54</sup>

*State Departments Authorized to Mandate Business Closures*

The Order continued with a section granting special powers to state departments responsible for enforcing the business restrictions described *supra*.<sup>55</sup> The Order expressly stated that “[t]he Department of Public Health, the Department of Public Safety, or any other state department or state officer deputized by the Governor or the Georgia Emergency Management and Homeland Security Agency” were empowered to “mandate the closure of any business, establishment, corporation, non-profit corporation, or organization not in compliance with [the] Order” while the Order remained in effect.<sup>56</sup> Additionally, state departments were required to provide reasonable notice of enforcement to organizations.<sup>57</sup>

*National Guard and Public Safety Resources*

To facilitate enforcement, the Order further provided that the Adjutant General of the Georgia National Guard and the

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51. *Id.*

52. *Id.* at 7–8.

53. *Id.*

54. *Id.* at 8.

55. *Id.*

56. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 8.

57. *Id.*

Commissioner of the Department of Public Safety would supply resources as requested.<sup>58</sup>

*Suspending Local Government Ordinances Superseded by the Executive Order*

The Order provided that any local ordinances or orders issued in response to the pandemic, pursuant to powers granted to cities and counties under Titles 36 and 38 of the Georgia Code, were suspended to the extent such ordinance or order “conflict[ed], varie[d], or differ[ed] from the terms of [the] Order.”<sup>59</sup> The Order preempted local ordinances that responded to COVID-19.<sup>60</sup> Counties and cities were suspended from adopting or enforcing future ordinances or Orders related to the pandemic while the Order was in effect, except where such ordinances or Orders were designed to enforce compliance with the Order.<sup>61</sup>

*Conflicting Provisions in Prior Executive Orders*

Moreover, the Order included a provision specifying that any previous Executive Order or Administrative Order that conflicted with Executive Order 04.02.20.01 was superseded.<sup>62</sup> The provisions of the Order controlled over all previous Executive Orders, but the Order also specified that “the provisions of any quarantine or isolation [o]rder issued to a specific person by the Department of Public Health shall control” over even Executive Order 04.02.20.01 itself.<sup>63</sup>

*Exception for Firearms*

The Order added an exception to the restrictions on business operations for those selling, distributing, or transporting firearms or

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58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 8.

63. *Id.*

ammunition.<sup>64</sup> The section noted “[t]hat nothing in the Order [should] be construed to suspend or limit the sale, dispensing, or transportation of firearms or ammunition, or any component thereof.”<sup>65</sup>

### *Identifying Violations as a Misdemeanor*

The Order further stated that any violation of its provisions constituted a misdemeanor.<sup>66</sup> Pursuant to Code section 38-3-7, the Order enforced its provisions with a criminal penalty, but contained restrictive language urging officials to “take reasonable steps to provide notice prior to issuing a citation or making an arrest.”<sup>67</sup>

### *Analysis*

Nearly every state, in addition to Georgia, had issued similar shelter-in-place Executive Orders in response to the COVID-19 pandemic.<sup>68</sup> Though no Order had been fully invalidated by the courts, several of those Orders had been challenged, including the Orders issued in Illinois and California.<sup>69</sup> Most Orders provided substantially the same restrictions as Georgia’s shelter-in-place Order, such as limits on visitors, restrictions on gatherings over a certain size, and business closures.<sup>70</sup> The federal government, by

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64. *Id.* at 9.

65. *Id.*

66. *Id.*

67. *Id.*; see also O.C.G.A. § 38-3-7 (2012).

68. Mervosh et al., *supra* note 14.

69. See, e.g., Ben Christopher, *Churches, Gunshops, Irked Parents andirate Brides: All the Shutdown Lawsuits Against Newsom, Explained*, CALMATTERS, <https://calmatters.org/health/coronavirus/2020/05/california-shutdown-lawsuits-newsom-dhillon-coronavirus-shelter-in-place-executive-orders/> [<https://perma.cc/LZK6-ZFB7>] (July 22, 2020). But see, e.g., Cheryl Corley, *Illinois Lawmaker Files Lawsuit; Wants Stay-at-Home Rules Lifted*, NPR (Apr. 28, 2020, 10:11 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/28/847620047/illinois-lawmaker-files-lawsuit-wants-stay-at-home-rules-lifted> [<https://perma.cc/3VGE-TV57>] (detailing a challenge to an Illinois Executive Order extending the State’s shelter-in-place requirements where the court granted a temporary restraining order for one individual against the State’s Order).

70. See, e.g., Cal. Exec. Order No. N-33-20 (Mar. 19, 2020) (on file with the Georgia State University Law Review); Ill. Exec. Order No. 21288 (Mar. 20, 2020) (on file with the Georgia State University Law Review).

contrast, did not issue a nationwide shelter-in-place Order.<sup>71</sup> Instead, the federal government issued an Order providing for regulatory relief and empowering the Secretary of Health and Human Services to allocate resources in response to the pandemic.<sup>72</sup>

### *Potential Challenges to the Order's Validity*

The validity of nearly every state-issued shelter-in-place Order was challenged by lawsuit.<sup>73</sup> Plaintiffs challenged the shelter-in-place Orders by asserting that such Orders violated constitutional rights such as the rights of due process, privacy, religious freedom, and the right to bear arms.<sup>74</sup> Despite the volume of litigation challenging the validity of such Orders, no court had sided against a State's shelter-in-place Order as of October 10, 2020.<sup>75</sup>

### *Bringing All Georgians Under One Set of Guidelines*

Before Governor Brian Kemp (R) issued Executive Order 04.02.20.01, many municipalities within the state had not instituted social distancing or shelter-in-place guidelines for individuals and businesses to follow.<sup>76</sup> For Georgians in localities that had not issued social distancing or shelter-in-place guidance, many individuals and businesses were confused about what standards to follow.<sup>77</sup> As such, "it was not feasible for businesses and supply chains to operate without a statewide standard."<sup>78</sup> The Order thus provided uniformity

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71. Aamer Madhani et al., *President Trump Resists National Stay-at-Home Order to Stem the Spread of Coronavirus, Leaving It up to the States*, CHICAGO TRIB. (Apr. 1, 2020, 3:27 PM) <https://www.chicagotribune.com/coronavirus/ct-nw-coronavirus-national-stay-at-home-order-20200401-iv6jy7rjbrbfre5uwheoc45jii-story.html>.

72. Exec. Order No. 13,909, 85 Fed. Reg. 16,227 (Mar. 23, 2020).

73. *Lawsuits About State Actions and Policies in Response to the Coronavirus (COVID-19) Pandemic*, 2020, BALLOTPEdia, [https://ballotpedia.org/Lawsuits\\_about\\_state\\_actions\\_and\\_policies\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020](https://ballotpedia.org/Lawsuits_about_state_actions_and_policies_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020) [https://perma.cc/SE42-6CRL].

74. *Id.*

75. *Id.*

76. See Kemp, *supra* note 11.

77. *Id.*

78. Dove Interview, *supra* note 25.

by requiring all Georgia businesses to follow a set of guidelines.<sup>79</sup> For example, the Order required noncritical infrastructure retailers to provide alternative points of sale outside of buildings, like curbside pick-up or product delivery.<sup>80</sup>

### *Remedying Inconsistent Shelter-in-Place Orders at the Local Level*

Next, local ordinances initially caused confusion when municipalities that issued shelter-in-place Orders defined terms such as critical infrastructure or essential infrastructure in similar, but inconsistent, manners.<sup>81</sup> For example, Savannah’s shelter-in-place directive provided its own definition of “essential infrastructure” while listing the “Critical Infrastructure Sectors” as defined by the DHS as essential businesses.<sup>82</sup> Atlanta’s shelter-in-place directive, however, lacked any reference to the DHS list of critical infrastructure workers.<sup>83</sup> Here, Executive Order 04.02.20.01 resolved this confusion by establishing the DHS list of essential critical infrastructure workers as the standard definition for critical or essential infrastructure.<sup>84</sup>

### *Conclusion*

Executive Order 04.02.20.01 provided largely the same regulations as all other State Orders. In the months following the Order’s issuance, Governor Brian Kemp (R) pulled back many of the restrictions initially imposed by the Order and declined to extend the mandated statewide shelter in place for all but the most fragile residents.<sup>85</sup> Any future suit against the Order would be moot given

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79. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 2.

80. *Id.* at 4–5.

81. Dennis & Robertson, *supra* note 9; Press Release, Mayor’s Off. of Commc’ns, City of Atlanta, Mayor Keisha Lance Bottoms’ Executive Order Requires Use of Masks or Face Coverings (July 8, 2020 8:52 PM), <https://www.atlantaga.gov/Home/Components/News/News/13406/672> [https://perma.cc/ZEZ9-ETFH].

82. City of Savannah First Amended Declaration of Local Emergency, *supra* note 9; *see also* Dennis & Robertson, *supra* note 9.

83. Press Release, *supra* note 81.

84. Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 5.

85. *Shelter-in-Place Order Ends*, *supra* note 23.

that the Order expired on May 1, 2020.<sup>86</sup> The Order served as a crucial exercise of gubernatorial power during a crisis, but moving forward, it exists only as a historical example of the State action taken in response to the COVID-19 pandemic.

*Preston A. Dunaway & Graham H. Gordon*

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86. *Id.*; see also Ga. Exec. Order No. 04.02.20.01, *supra* note 12, at 9; Ga. Exec. Order No. 04.08.20.03, at 6 (Apr. 8, 2020) (on file with the Georgia State University Law Review).