



A post-Covid-19 agenda for Minnesota's state government: Governance

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For now at least, the emergency period of the Covid-19 pandemic in Minnesota is over. What did this traumatic experience show ought to be done in response to or in preparation for a possible repeat? The Cato Institute offers some suggestions in a new collection of essays titled Pandemics and Policy.

In State Police Powers and the Constitution, Ilya Shapiro argues that state governments should:

- stay within their constitutional limits, respect the separation of powers, and return to regular governance (not rule by executive decree) as soon as practicable;
- tailor orders to public health needs, avoiding heavy-handed or arbitrary rules; and
- recognize the importance of sustaining people's abilities to live their lives, attending to economic, spiritual, and recreational concerns.

Since the Governor declared an emergency in Minnesota in March, lawmaking and enforcement have been arbitrary to an alarming degree. So, for example, when Kris Schiffler, owner of Shady's Hometown Tavern in Albany, announced plans to reopen his bar in defiance of Gov. Walz' anti-Covid-19 measures, state Attorney General Keith Ellison descended on him with lightning speed and the full force of the state government, saying: "My office has the duty to enforce the law and the Governor's order." By contrast, when a large group of demonstrators blocked off the 35W bridge in Minneapolis in breach of federal law to protest the killing of an Ethiopian singer and activist, their second such action, the authorities turned a blind eye. As I wrote in July:

This isn't uncommon anymore. When vandals publicly announced their intention to haul down the statue of Christopher Columbus at the state capitol, the authorities stood by and let them. While grieving Minnesotans have seen funerals curtailed by state government decree, the same policymakers who issued those decrees have exempted themselves from them when they have found it convenient. Whether or not the law applies to you in Minnesota seems to depend on how the state authorities feel about you, how big your business is, and how 'connected' you are. That is not how the rule of law is supposed to work.

The governor's arbitrary rule by decree has fostered this division. There is the Minnesota of big businesses like Target which are allowed stay open, and the Minnesota of small businesses like Hub Hobby which are closed. There is the Minnesota where you are immune from Covid-19 at the Mall of America, which is allowed to reopen, and the Minnesota where you can catch it in churches, which remained closed.

Two of the fundamental principles of American law are that the legislature makes the law while the executive enforces it and that all are equal before that law. Both principles have been sorely tested in Minnesota in recent months. To remedy this, and to prevent a similar abuse of emergency powers in future, we propose that any state of emergency declared by a governor under Chapter 12 of the Minnesota Statutes will automatically expire after 14 days unless renewed for a specified length of time by a two-thirds vote of both the Minnesota House and the Minnesota Senate.