

# The Emergency Architecture

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**Kapil Longani**

Senior Vice Chancellor for Legal Affairs and  
General Counsel

[kapil.longani@suny.edu](mailto:kapil.longani@suny.edu)

# *The Big Questions*

- ▶ What is the role of each level of government in a crisis?
- ▶ How do we ensure that the emergency measures don't outlast the emergency?
- ▶ How do we ensure consistent enforcement of emergency laws?

# Who Should Respond?

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- PRO

- Federal: broadest power

- State: police power

- Local: best information/closest to population

- BUT

- Federalism

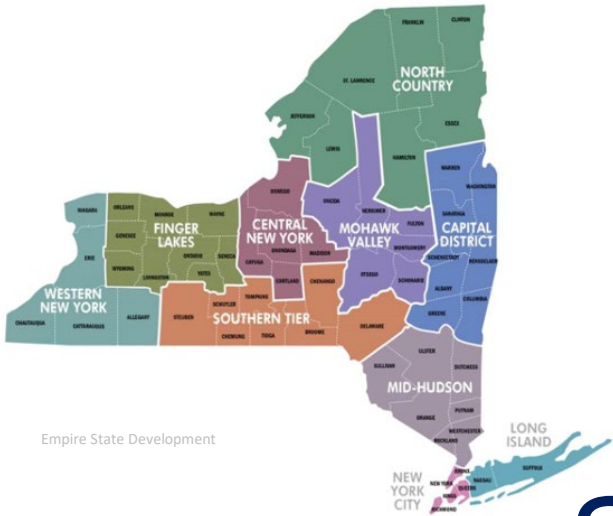
- Coordination

- Disparate needs—and wants

# Federal government powers are broad

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- **National Emergencies Act of 1976:** President can unilaterally invoke special powers from more than 100 provisions of law
- **Stafford Act:** States must request aid from Federal government to trigger Stafford aid
- **Public Health Services Act:** Secretary has the authority to “make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions.”)
- **Public Readiness and Emergency Preparedness (PREP) Act:** Provides broad immunity from liability to entities, including government agencies, that manufacture, distribute, or administer medical tests or treatments to respond to a public health emergency.
- **Food, Drug, and Cosmetic Act:** FDA can issue Emergency Use Authorizations post state of emergency.



# States v. Major Cities – Who Leads?



Getty

Times Square



# NYS Executive Law: Who Is The First Responder?

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- NY Executive Law Section 20(a): It **shall** be the **policy of the state** that:
  - a. **local government** and emergency service organizations continue their essential role as **the first line of defense in times of disaster**, and that the **state** provide appropriate **supportive services** to the extent necessary
- NY Executive Law Section 20(d): state resources [must] be organized and prepared for immediate effective response to disasters which are **beyond the capability of local governments** and emergency service organizations
- NY Executive Law Section 24 (7): the chief executive of the city, **may request the governor to provide assistance under this chapter**, provided that such chief executive determines that the disaster is beyond the capacity of local government to meet adequately and state assistance is necessary to supplement local efforts to save lives and to protect property, public health and safety, or to avert or lessen the threat of a disaster

# Not So Fast!

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## ► NY Executive Law Section 28:

- Whenever the governor, on his own initiative or pursuant to a request from one or more chief executives, finds that a disaster has occurred or may be imminent for which local governments are unable to respond adequately, he shall declare a disaster emergency by executive order.
- The executive order shall include a description of the disaster, and the affected area. Such order or orders shall remain in effect for a period not to exceed six months or until rescinded by the governor, whichever occurs first.

# Roman Senate

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<https://romanempiretimes.com/the-pillars-of-rome-unveiling-the-power-and-intrigue-of-the-roman-senate/>



# Emergency Powers Are Sticky

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- ▶ Standard to declare SOE are ambiguous
  - ▶ NYC: “Reasonable apprehension of immediate danger thereof, and upon a finding by the chief executive thereof that the public safety is imperiled thereby”
  - ▶ NYS: “A disaster has occurred or may be imminent for which local governments are unable to respond adequately.”
- ▶ In theory: SOEs are temporally limited
  - ▶ NYC: 30 days
  - ▶ NYS: 60 days
- ▶ Problem: No limitation on SOE renewals
- ▶ Consequence:
  - ▶ Ratcheting up of baseline powers that government “needs”
    - ▶ Ex: Amending of NYS Exec Law 29(a) allowing the Governor to not only suspend, but make laws

# Requirements To Suspend Laws

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	<u>State</u>	<u>City</u>
What	Statute, local law, ordinance, or orders, rules or regulations	Local laws, ordinances, regulations
Requires	State disaster emergency	State disaster emergency or Request for Governor's assistance
Duration	30 days	5 days
Qualifications	<u>In the interest</u> of the health <u>or</u> welfare of the public  Reasonably necessary to <u>aid</u> the disaster effort	Safeguard the health and welfare of the public  Reasonably necessary to the disaster effort
Scope	Minimum deviation consistent with the <u>goals of the</u> disaster action deemed necessary	Minimum deviation consistent with the disaster action deemed necessary

# General Emergency Powers

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	<u>State 2019</u>	<u>State 2020</u>	<u>City</u>
<b>Declare disaster</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Suspensions</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Directives</b>	<b>N</b>	<b>Y</b>	<b>N</b>
<b>Violation of order</b>	<b>?</b>	<b>?</b>	<b>Class B misdemeanor</b>