Politics, Pushback, and Pandemics: Challenges to Public Health Orders in the 1918 Influenza Pandemic

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See also the COVID-19 & History section, pp. 402–445.

During the first wave of the COVID-19 pandemic in the United States, many state governors faced an increasing number of acts of defiance as well as political and legal challenges to their public health emergency orders. Less well studied are the similar acts of protest that occurred during the 1918–1919 influenza pandemic, when residents, business owners, clergy, and even local politicians grew increasingly restless by the ongoing public health measures, defied public health edicts, and agitated to have them rescinded. We explore several of the themes that emerged during the late fall of 1918 and conclude that, although the nation seems to be following the same path as it did in 1918, the motivations for pushback to the 2020 pandemic are decidedly more political than they were a century ago. (*Am J Public Health*. 2021;111: 416–422. https://doi.org/10.2105/AJPH.2020.305958)

AJPH March 2021, Vol 111, No. 3

Beginning in May 2020, communities across the nation began removing the closure orders, gathering bans, and other public health edicts they had enacted to slow the spread of the COVID-19 pandemic. They often did so in response to growing opposition to the measures from a small but vocal group of protestors. In Michigan, for example, a barber who reopened his shop in defiance of state public health orders drew a large crowd of supporters from hundreds of miles away.[1] Other protestors swarmed the state capitol in Lansing, firearms and picket signs in hand, demanding an end to the pandemic control measures they considered too onerous.[2] In New Jersey, a throng gathered outside a gym to jeer at state troopers as they issued citations to the two owners for refusing to comply with the state's closure edicts.[3] In Arizona, several restaurants reopened their doors to crowds of hungry diners despite the ongoing stay-at-home orders and the threat of citations.[4] A coalition of Oregon churches has sued the governor for exceeding her legal authority to issue lengthy closure orders.[5] The Michigan legislature has sued the governor for enacting sequential public health emergency periods without legislative consent.[6] Meanwhile, the Wisconsin legislature won its legal battle with the governor when the state Supreme Court struck down the state's "Safer at Home" orders as unconstitutional.[7] The governors of Pennsylvania, California, Maryland, Ohio, Illinois, Texas, and Virginia have similarly faced various legal challenges from business owners, private citizens, and lawmakers.

The current battles are not a new phenomenon, and there is a long history of pushback—sometimes violent—to the implementation of public health measures, from vaccination campaigns to placarding to forced isolation of cases of communicable diseases.[8] Over a century ago, during the devastating fall wave of the influenza pandemic of 1918, communities across the nation implemented public gathering bans, closure orders, and a host of other measures in an attempt to slow the spread of the disease.[9] And then, as now, similar scenes of pushback, defiance, and political and legal challenges sometimes resulted.

THE 1918 EPIDEMIC AND THEATERS

The brunt of the closures in the fall of 1918 were borne by theaters and movie houses. With the understanding that a lingering epidemic was bad for box office receipts and having been promised by public health officers that the epidemic would be over quickly, owners in many cities initially offered their full cooperation. As the epidemic dragged on, however, that sense of cooperation and civic duty gave way to the financial strain business closures created. Theater owners in Birmingham, Alabama, for

example, estimated their losses at $90 000 during that city's three-week closure period. In Chicago, some 1150 theater employees lost their jobs because of the closure orders. One theater had already sold $80 000 in advance tickets for performances that were canceled. In Cleveland, Ohio, the month-long business closure had cost theater proprietors more than $1.25 million.[10]

As the continued closures took their financial toll, many owners took to city hall. In Atlanta, Georgia, the city's Theater Managers' Association complained that they were required to shut their doors while people could still congregate at the Southeastern Fair, where fairgoers were treated to free outdoor movies produced by the government as part of the Fourth Liberty Loan drive. The angry owners protested to the mayor, who demanded that the Board of Health remove the closure orders. When the board refused, the mayor convened a special session of the city council, which overruled the Board of Health and reopened Atlanta's places of public amusement after less than three weeks and before the city's epidemic had run its course.[11]

In Los Angeles, California, the powerful Theater Owners' Association, backed by producers from several of the largest film studios, demanded that officials close all nonessential businesses to bring the epidemic to a swifter conclusion. The City Council agreed and decided that theater owners were being singled out and treated unfairly. They called on the health officer to enact a complete closure of the city for five days. Retailers vehemently protested. The health officer, believing that such a sweeping order would be impossible to enforce, refused to comply and instead called on the City Council to order the stricter measures itself. Factions formed and the political battle continued until the brunt of the epidemic ended in early December.[12]

In Denver, Colorado, a massive resurgence in cases and deaths after city officials removed public health measures prematurely led the mayor and health officer to reimplement business closures once again. Theater and movie house owners quickly met, formed an "amusement council," and demanded that officials either close all nonessential businesses or issue a mandatory mask order. Faced with such strong opposition from a major sector of the local economy, city leaders capitulated and rescinded the closure order only a few hours after it went into effect, implementing a mandatory mask order in its place.[13]

MANDATORY MASK ORDERS

Denver was not alone in turning to face masks as a way to stem the epidemic. Across the nation, citizens were encouraged to wear masks while in public, and posters, newspaper announcements, and statements from public officials attempted to link the use of face masks to wartime patriotic duty. San Francisco, California Mayor James Rolph said that "conscience, patriotism and self-protection demand immediate and rigid compliance" with his city's mask ordinance.[14] In nearby Oakland, Mayor John Davie stated that "it is sensible and patriotic, no matter what our personal beliefs may be, to safeguard our fellow citizens" by wearing a mask.[15] The Red Cross took out full-page newspaper ads urging Americans to wear masks, bluntly calling the individual who refused to wear a mask "a dangerous slacker."[16]

Officials realized that mask recommendations could only go so far and that many citizens would avoid wearing the uncomfortable devices. As one Sacramento, California, official put it, people "must be forced to do the things that are for their best interests."[17] To that end, numerous communities, particularly in the American West, enacted mandatory mask ordinances. And almost everywhere these measures were met with widespread noncompliance and outright defiance. In Denver, for example, store owners openly told the city health department that they would not turn away unmasked customers. One department store employee refused to wear a mask because she believed "an authority higher than the Denver Department of Health was looking after her well-being."[18] Streetcar conductors, fearful of altercations with passengers, refused to enforce the order aboard their trolleys. Despite the presence of police officers stationed on busy street corners and the threat of hefty fines ranging from $10 to $200 for failure to comply, a majority of Denver residents still refused to don masks. Even the mayor recognized the folly of such an approach. "Why, it would take half the population to make the other half wear masks," he commented. "You can't arrest all the people, can you?"[19]

Denver was not alone. Seattle, Washington, streetcar conductors similarly refused to turn away unmasked passengers. In Oakland, officials had to deputize some 300 War Service civilian volunteers to assist police in securing the names and addresses of scofflaws.[20] Sacramento's police stations began flooding with arrested offenders within 20 minutes of that city's ordinance going into effect.[21] So many residents were caught without their masks in San Francisco that the police chief warned he was quickly running out of jail cells. As more arrests were made, police justices were forced to work well into the evenings and on weekends just to clear the

backlog of cases. Even the health officer and mayor were caught without their masks on while at a crowded boxing match. Both were fined.[22]

Many of those who were caught were simply unfortunate souls who believed they could make a quick public foray without being nabbed. A few, however, were more actively defiant. Some argued that mask orders were an unconstitutional infringement on their civil liberties and vociferously maintained that the government could not force individuals to wear a mask. Others questioned the efficacy of masks. Although in the minority, these groups were vocal and could be quite powerful. When San Francisco's epidemic spiked once again in January 1919, officials issued a second mask order. This time, protestors formed a 2000-strong "Anti-Mask League" and packed an auditorium to listen to speeches on how to fight the ordinance. Audience members included several prominent city physicians as well as a member of the San Francisco Board of Supervisors.[23] In Oakland, debate over a second mask order was tabled after Christian Scientists and several labor organizations (whose workers did not want to wear uncomfortable masks all day while toiling in factories) lodged protests against the proposal. The mayor also opposed a second ordinance, recounting his humiliation at having been arrested while in Sacramento for failing to wear a mask. A prominent local physician commented that "if a cave man should appear . . . he would think the masked citizens all lunatics."[24] In Portland, Oregon, repeated debates over a draft mask ordinance grew so heated that one city official stood up and declared the measure "autocratic and unconstitutional," adding that "under no circumstances will I be muzzled like a hydrophobic dog."[25]

SCHOOL CLOSURES

New York City, Chicago, Illinois, and a few Connecticut communities opted to keep schools in session so that children could be monitored by teachers and nurses, under the premise that many of their pupils were safer in classrooms than in their impoverished homes. In other cities, this discussion was quickly put to rest as the number of new influenza cases began accelerating. In Minneapolis, Minnesota, however, the issue quickly came to a head when Health Officer H. M. Guilford ordered all city schools closed. The state health officer strongly opposed the move and called it an unnecessary overreaction. "Do you think that any program of shutting up a few things is going to stop this epidemic?" he rhetorically asked Minneapolis officials.[26] Nine days later, the city Board of Education—unsupportive of the action to begin with and now backed by the opinion of the state health officer—voted to reopen Minneapolis's schools, arguing that Guilford did not have the legal authority to close them.[27]

Guilford responded by instructing the police to arrest members of the Board of Education. The board readied for battle. "We shall not close the schools if they arrest us and fine us," said the board's spokesperson. Hoping to avoid a confrontation, the police chief met with the school board in person. The result of the meeting was, as one board member put it, "a diplomatic invitation to the school board to surrender unconditionally." The board reversed its decision and closed schools once again.[28]

In the end, the forced closure of Minneapolis schools did not result in a court battle. In other communities, however, legal challenges were made, with mixed results. In Oregon, the state Supreme Court ruled that, under existing statutes, the state Board of Health had no authority to close public schools.[29] In Arizona, on the other hand, the state Supreme Court found that local boards of health had wide administrative power during public health emergencies and could order schools closed as public nuisances during times of epidemics.[30]

HOUSES OF WORSHIP

Many clergy and parishioners were initially eager to do their part to stem the rising tide of influenza, and houses of worship often shut their doors even when such closures were only recommended. In some cities, however, clergy defied mandated closures. In Los Angeles, for example, members of the Ninth Church of Christ, Scientist promptly found themselves escorted to central booking when they reopened their church. Their defiance was designed to spark a test case before the California Supreme Court. It did not go very far: the court refused to issue a writ of habeas corpus for the main defendant, stating that to do so would cast legal suspicion on the closure ordinance and thus make its enforcement difficult in the midst of an epidemic.[31] In Cleveland, two Jewish synagogues decided to ignore the state gathering ban and held indoor services away from their usual buildings. Police arrested nine of the men, who claimed that they were simply worshipping and not holding regular religious services.[32]

Many clergy grew angry that other gatherings were allowed while their churches were shuttered. In Charleston, South Carolina, for example, ministers protested that residents were still allowed to crowd in poorly ventilated office buildings and shops. "Business must not be hindered, it must go on,

come what may," one minister sarcastically wrote in a public letter. "But the King's business . . . must be side-tracked in the presence of a national calamity."[33] The bishop of Charleston protested the continued closure of churches while circus parades were still allowed, writing that US soldiers in Europe were being denied the prayers of loved ones back home by "a drastic law of dubious scientific value" at a time when people desperately needed spiritual comforting.[34]

Clergy were particularly upset at church closures in cities where saloons were allowed to remain open. It was the eve of Prohibition, and the adherents of temperance were vocal in their opposition to saloons. "Why are they not ordered closed?" wrote the vicar general of the Diocese of Fall River, Massachusetts, blasting city officials. "Are not the motley gatherings of the 'great unwashed' assembling in these unclean places . . . a thousand times greater a threat than the congregations of our churches? Is German brewery power supreme in city and State House?"[35] In Cleveland, a group of one hundred clergy joined together for a door-to-door canvass to gain support for Prohibition, denouncing the discrimination of allowing saloons to remain open during a pandemic while churches were closed. A group of Methodist ministers in Columbus, Ohio, likewise protested their mayor's provision allowing saloons to remain open. They called saloons "one of the principal sources for the spread of disease of all kinds for the reason that men congregate there in great numbers, drinking from glasses used by others which have not been properly sterilized."[36] The complaints fell on deaf ears.

SALOONS

Angry clergy were largely correct that saloons tended to be insalubrious dens of large-scale congregation. They were also much more than simple watering holes. Saloons of the early 20th century served as poor-men's social clubs, de facto immigrant community centers, places where workingmen could obtain cheap meals, and the foci of many urban Democratic political machines. They were important gathering places, and there were many of them. By 1918, an estimated 265 000 saloons operated in the United States. A typical US city had one for every 200 to 500 residents. Despite such market saturation, they were almost always very busy establishments, with the vast majority of any city's workingmen visiting a saloon on any given day, typically immediately after their factory shifts had ended.[37]

These factors complicated local public health responses during the epidemic. The sheer crowding of saloons led most states and cities to order them closed. In in a nod to the political, social, and economic importance of saloons, other communities allowed saloons to operate with restrictions on hours, capacity, or how liquor could be sold and consumed. With so many saloons in each city, however, enforcement of either closures or restrictions was often difficult, as saloons could and often did continue to operate clandestinely. In Indianapolis, Indiana, at least six saloon owners defied the closure order and were arrested. When other saloons continued to skirt the order, police were sent to disperse the crowds and close the offending establishments.[38] Saloons in Baltimore, Maryland, had their operating hours limited to the daytime, severely curtailing their ability to serve their usual customers. Many simply ignored the restrictions and remained open well into the night. Chicago saloonkeepers were instructed to maintain proper ventilation and to keep their premises uncrowded. Not all owners were scrupulous about the rules, however. When police raided one saloon, they found 20 men asleep on the benches, 10 of whom were hauled off to the drunk tank. A second saloon was found to have a throng of drunken men bellied up to the bar two-deep. Fifteen violators and the manager were taken to jail.[39] In Cincinnati, Ohio, saloons were allowed to remain open for carryout bottle service only. Police found so many serving drinks as usual that the health officer threatened to order all saloons completely shut if the violations continued.[40] In Paterson, New Jersey, rampant violations of the state closure order led the state Department of Health to dispatch an officer to assist local officials in enforcing the rule. Several saloonkeepers were arrested. Most pleaded guilty and paid their fines. One owner, however, challenged the city Board of Health's authority to close his saloon under state orders. In the end, the state Supreme Court ruled that the public health nuisance ordinance under which he had been charged pertained only to physical structures and not human conduct. "Certainly, the mere *inviting* of people to congregate in his saloon was not dangerous to life or health, even under the construction argued for by prosecutor," the Court found. The justices ruled that Paterson's sanitary ordinance did not apply.[41]

Far and away, however, it was in Newark, New Jersey, that the nation's most significant act of defiance occurred. As historian Stuart Galishoff has noted, Newark had a long and infamous history of probusiness and highly politicized public health.[42] This once again became apparent when Mayor Charles P. Gillen proclaimed that Newark saloons—an important component of his political power base—would be

permitted to sell bottled liquor on a physician's prescription via their side doors, in direct contravention of sweeping closure orders issued by state Director of Health J. G. Price.[43] The city's newspaper of record condemned the mayor's intransigence in a scathing piece criticizing Gillen and questioning his legal authority to skirt state orders. The feisty mayor immediately fired back. "If the *Newark Evening News* attempts to interfere with any orders which I have issued or may issue for the preservation of the health of the people of Newark," he barked, "I will close the paper immediately under the laws of the state, as a menace to the public health, just as I would close any place of assembly." Gillen added that it was not for the editors to question his authority, stating that he had first consulted with a physician at the state Department of Health and was given approval for his side-door plan. Conveniently, Gillen could not remember the name of the doctor with which he spoke.[44]

Many saloonkeepers took Gillen's intransigence as tacit approval to operate as usual. Indeed, Gillen seemed to ignore the mounting reports of violations. Hounded by the New Jersey Department of Health and by the *Evening News* for refusing to comply with the state directive, the mayor unilaterally ended the closure orders only 11 days after they went into effect. He defended his action by arguing that the state edict was only meant to apply while the epidemic existed in any given community. Having declared it over in Newark, the city was therefore free to return to business as usual.[45] When the editors of the *Evening News* again attacked Gillen's act of defiance, the mayor called the piece a "vile lie from beginning to end" and then banned reporters from his office "until such time as the *Newark Evening News* learns to print the truth about these affairs."[46] He also derided the closure orders, stating that it was unfair to close some businesses while allowing crowded factories to remain operational, and arguing that keeping the ban in place would have been "confiscation without proper warrant, reason or authority."[47]

The state was largely powerless to rein in Gillen. Under the intricacies of New Jersey home rule laws and Newark's city charter, official authority over public health in Newark was vested solely in the mayor, who also held the title of Director of the Department of Public Affairs. The City Commission could have removed Gillen but was hesitant to act, especially given that the Newark Theatrical Managers Association had announced its full backing of the mayor and its opposition to the state Department of Health.[48] Officially, Newark was once again open. In March 1919, Gillen won another victory when a series of bills designed to strengthen the state's public health laws ran into a wall of unanimous opposition from the Essex and Hudson County delegations, home of Newark and Jersey City (which had followed Newark in rescinding state closure orders), respectively. The amendments failed.[49]

PAST AS PROLOGUE?

To be sure, history is not a perfect template for the present, let alone the future. The historical context of the United States in 1918 was vastly different from what we are experiencing today. The nation was at war, and social cohesion and patriotism—stoked by a federal propaganda program—ran high. It was a period that historians have labeled the Progressive Era, when tremendous stock was put in scientific expertise. Media consumption patterns were very different than today; news was limited to print, but newspaper circulation and readership were high. The economy was dominated by the manufacturing sector, and the number of women in the workforce was much lower. Most important, the causative agents of the respective pandemics are different.

Despite these differences, the incidents of defiance and pushback seen today are strikingly reminiscent of those displayed a century ago. Business owners presented with mandatory shutdowns today, for example, face the same financial pressures that their forebears did in 1918. Indeed, the economic fallout from shutdowns has been far greater in 2020, given that the orders generally have been more sweeping and have most severely affected the service sector, now the dominant segment of the economy. Many clergy, then and now, believe that their moral obligation to minister is only heightened during a national crisis. Masks are just as uncomfortable to wear today as they were in the fall of 1918, and it is only natural that some citizens will refuse to don them.

What is different today, however, is the way in which public health has become heavily politicized.[50] In 1918, arguments over various closure orders overwhelmingly revolved around questions of the efficacy, equity, and duration of the measures. Even in Newark, Mayor Gillen's defiance was based on economic and political power, not partisanship. Opposition to mask ordinances was mostly driven by nonpartisan complaints that masks were too uncomfortable to wear or orders too difficult to enforce. Those who decried such measures as an unconstitutional infringement of civil liberties may have been motivated by an ideology of personal freedom, but not by naked political partisanship. Furthermore, given that public health was accepted as the

domain of state and local jurisdictions, any opposition to these orders was concomitantly local.

By contrast, the response to the COVID-19 pandemic has become a national partisan battle, led by President Donald Trump. Those on the political left argue that citizens have a civic and social obligation to the collective and a duty to follow the best guidance of public health officials. Those on the political right believe that pandemic control measures restrict private conduct, infringe on individual freedoms, and suppress the economy.[51] Furthermore, trust in science is now heavily influenced by political beliefs.[52] This has colored nearly every aspect of the response to the pandemic, from mask orders to business closures and even to the question of whether and how to reopen schools. Rampant disinformation spread by social media, right-wing outlets, and conservative political figures only serves to heighten the partisan divide. Opposition to public health measures and the rejection of scientific evidence by some elected officials, conservative media, and many voters have now become a symbol of political allegiance to the president. Woodrow Wilson may have remained silent on the 1918 influenza pandemic, but the Trump administration has actively undermined the nation's public health response.

This politicization of public health threatens to contribute further to the public's "epidemic fatigue." In 1918, city after city saw huge crowds of entertainment-starved residents flock to amusement venues when control measures were lifted. Cases and deaths spiked anew, in some communities worse than the initial wave. Yet citizens and officials alike often resigned themselves to the cases and deaths still to come rather than live under another period of economically and socially difficult closure orders and gathering bans. Today, such creeping complacency is further bolstered by scientifically invalid and politically motivated misinformation, which, together, threaten to derail a cohesive, effective, evidence-based public health response precisely when broad consensus and compliance is most critical. Given how the social response to the COVID-19 pandemic in the United States has thus far unfolded, Shakespeare may again be proven right when he wrote the line, "What's past is prologue." Unfortunately, that public health prologue has now become highly partisan. AJPH

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PUBLICATION INFORMATION

Full Citation: Navarro JA, Markel H. Politics, push-back, and pandemics: challenges to public health orders in the 1918 influenza pandemic. *Am J Public Health*. 2021;111(3):416–422.

Acceptance Date: August 19, 2020.

DOI: https://doi.org/10.2105/AJPH.2020.305958

CONTRIBUTORS

J. A. Navarro developed the idea for the article, conducted the research, and drafted and revised the article. H. Markel assisted with the research, drafting, and revising of the article.

CONFLICTS OF INTEREST

The authors have no conflicts of interest to declare.

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