From Chapter 23: Tilting the Power Structure in New York

The language was simple. The ramifications were more complicated. During the late hours of Monday, March 2, more than two weeks before the COVID-19 pandemic was declared, the State Legislature passed Governor Program Bill 8. This legislation provided for a $40 million public health emergency appropriation for the governor to fight the pandemic. The bill’s language also gave Governor Cuomo unprecedented powers in an unprecedented time, the largest and most aggressive global public health crisis in more than 100 years. These powers allowed him to make laws without a vote of state lawmakers.

In fact, the State Legislature shaped how the governor could use these executive powers to fight the pandemic by expanding his powers and making it clear that under law a virus such as COVID-19 could qualify as a statewide emergency. New York Executive Law, Section 29a was changed to now read (in relevant parts with changes in brackets and underlined):

Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend [specific provisions of] any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster or if necessary to assist or aid in coping with such disaster. The governor, by executive order, may issue any directive during a state disaster emergency declared in the following instances: fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, disease outbreak, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse. Any such directive must be necessary to cope with the disaster and may provide for procedures reasonably necessary to enforce such directive.

The clear inclusion of “epidemic” and “disease outbreak” as emergencies that would qualify under these expanded gubernatorial powers helped keep future challenges to this authority at bay. There is little case law that defines the extent of the reach of executive orders (EO) in the declaration of a statewide emergency, which is more commonly used for natural disasters such as high-level floods, hurricanes, ice storms, or superstorms like Irene, which slammed New York State just over a decade ago. The unprecedented redistribution of power, included as part of the state’s coronavirus response efforts, gave the governor these emergency powers for more than a year, until April 1, 2021. The powers were revoked in an act signed by the Legislature, which was signed by the governor on March 7, 2021.

Five days after the State Legislature granted him these extraordinary powers, on March 7, 2020, he signed his first COVID-19 Executive Order 202, declaring “a State disaster emergency for the entire State of New York. This Executive Order shall be in effect until September 7, 2020.”