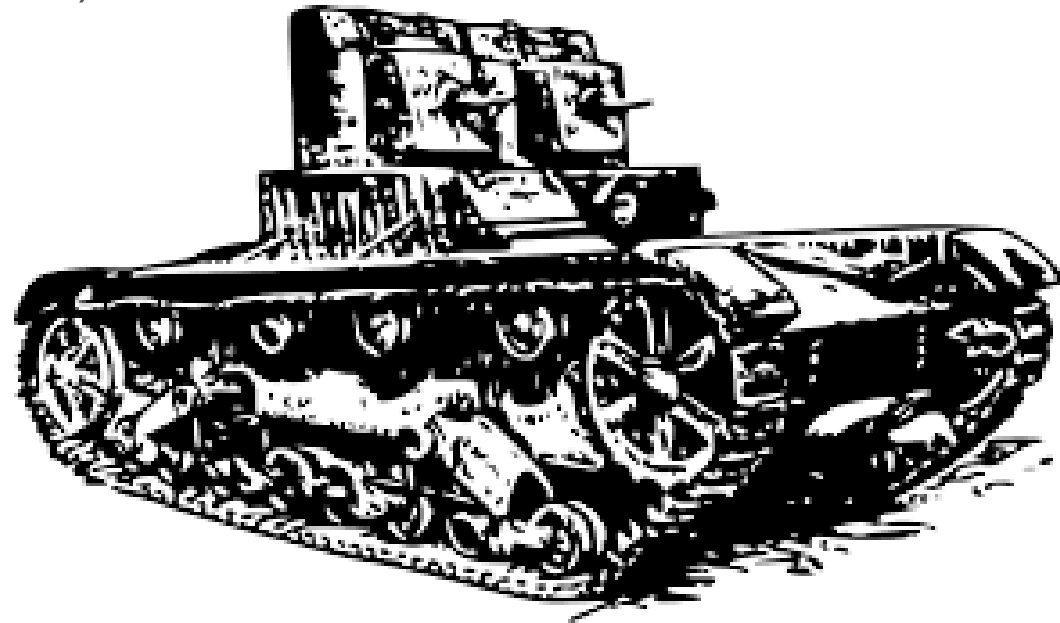


**SOURCES AND
LIMITATIONS OF GOVERNOR'S
AUTHORITY DURING A
PANDEMIC**

GOVERNOR'S AUTHORITY IN EMERGENCIES STEMS FROM TWO SOURCES

- CONSTITUTION
- Title 46 (Militia and Military Affairs)



TWO DIFFERENT TYPES OF EMERGENCY

- “Normal” emergency (Title 46, Ch. 10)
- “Extreme” emergency (Title 46, Ch. 6)

“NORMAL” EMERGENCY

- **"Disaster"** means occurrence or imminent threat of **widespread or severe damage, injury, or loss of life or property** resulting from any natural or man-made cause, including but not limited to fire, flood, earthquake, windstorm, wave action, volcanic activity, explosion, riot, or hostile military or paramilitary action and including acts of terrorism. I.C. 46-1002
- **"Emergency"** means occurrence or imminent threat of a disaster or condition **threatening life or property** that requires state emergency assistance to supplement local efforts to save lives and protect property or to avert or lessen the threat of a disaster. I.C. 46-1002

EXAMPLES OF NORMAL EMERGENCY / DISASTER



EXAMPLES OF NORMAL EMERGENCY / DISASTER



EXAMPLES OF NORMAL EMERGENCY

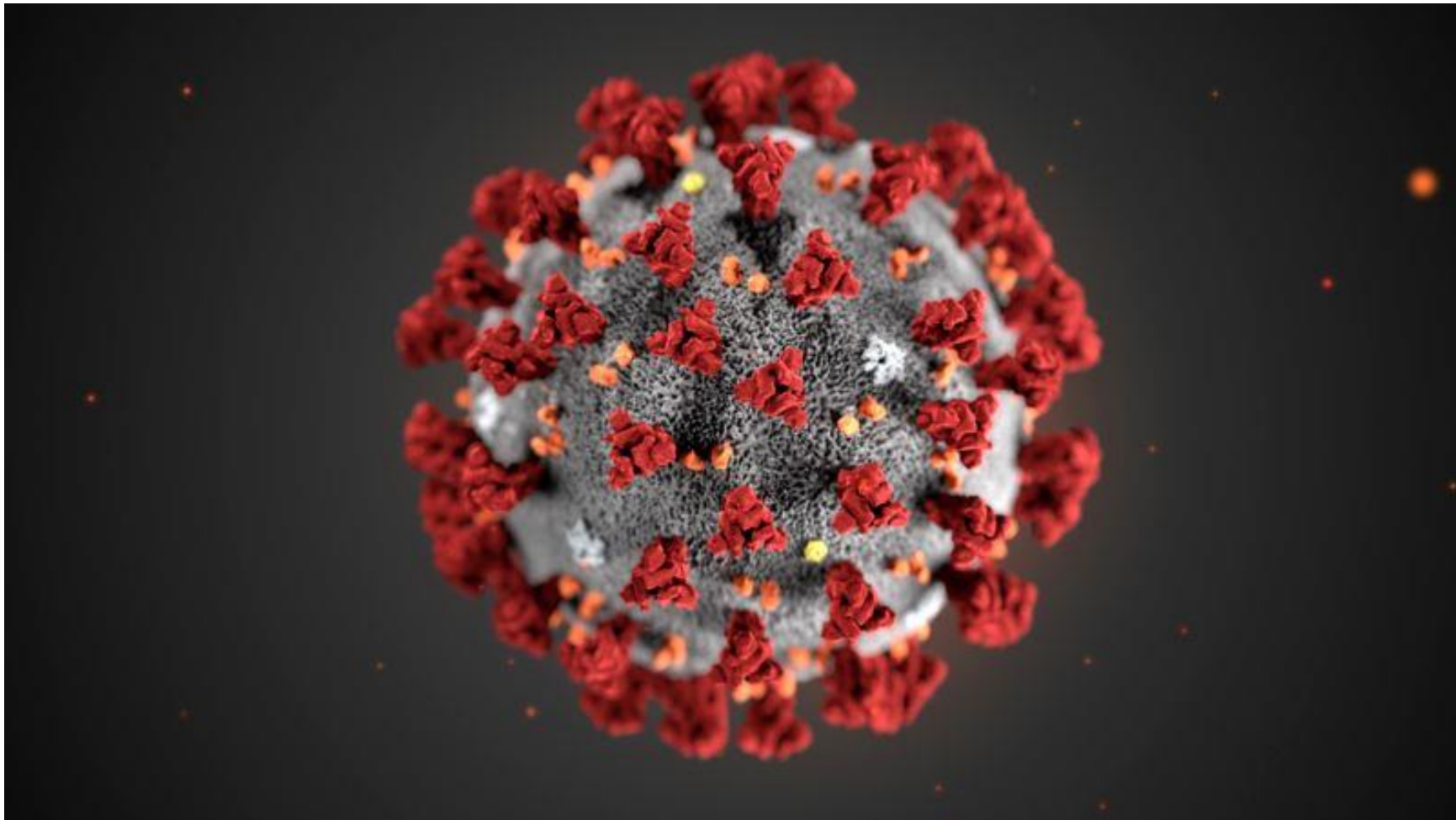


EXTREME EMERGENCY

EXTREME EMERGENCY

- I.C. 46-602(b) the duly proclaimed existence of conditions of **extreme peril** to the safety of persons and property within the state, or any part thereof, caused by such conditions as ... **epidemic** ... (IC 46-601(1)(a))

EXAMPLES OF EXTREME EMERGENCY



EXAMPLES OF EXTREME EMERGENCY



EXAMPLES OF EXTREME EMERGENCY



EXAMPLES OF EXTREME EMERGENCY



EXAMPLES OF EXTREME EMERGENCY



TITLE 46, CHAPTER 10

NORMAL EMERGENCY DISASTER

- Bulk of Governor's Authority is in I.C. 46-1008
 - May assume command militia AND of all other forces available for emergency duty
 - Activate emergency response plans – state and local
 - Utilize all necessary resources of the state to pay for the disaster
 - Have state agencies respond to the emergency however he deems fit
 - Utilize private property to respond to emergency
 - Evacuate disaster areas; control ingress and egress
 - Control/limit sale of alcohol, combustibles, and explosives
 - Make provisions for temporary housing
- If federally declared disaster, Governor can:
 - Enter into agreements with feds to help pay for disaster
 - Obligate state to pay for its share of the disaster
 - Enter into agreements with other states to respond to disaster



TITLE 46, CHAPTER 6

EXTREME EMERGENCY

TITLE 46, CHAPTER 6

EXTREME EMERGENCY

- I.C. 46-601
 - Can activate Nat'l Guard
 - Complete authority over all state agencies
 - Can promulgate, issue and enforce rules/regulations
 - Right to exercise all police power of the state
 - Declare martial law

LIMITATION OF POWER

- In both normal and extreme emergency, Governor CANNOT:
 - Place restrictions on lawful possession, transfer, sale, transport, storage, display or use of firearms



NORMAL EMERGENCY V. EXTREME EMERGENCY

- How Governor's authority differs under specific scenarios?

ISOLATE AND QUARANTINE AUTHORITY

- **Normal Emergency—Most likely yes**
- I.C. 46-1008(5)(b) & (c): Governor may utilize all resources of the state and transfer direction, personnel, or functions of state departments or agencies.
- I.C. 56-1003(7): H&W Director has I & Q powers to protect the public from the spread of infectious / communicable disease. No enforcement mechanism.



ISOLATE AND QUARANTINE AUTHORITY

- **Extreme Emergency—YES**
- I.C. 46-601(2):
 - During a period of a state of extreme emergency, the governor shall have complete authority over all agencies of the state government
 - Governor is authorized to promulgate, issue and enforce rules, regulations and orders which he considers necessary for the protection of life and property.



CLOSE BORDERS

- **Normal Emergency—YES, but limited to area of disaster**
- I.C. 46-1008(5)(g): Governor may control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of the premises therein.



CLOSE BORDERS

- **Extreme Emergency—YES**
- I.C. 46-601(2): **Governor is authorized to promulgate, issue and enforce rules, regulations and orders** which he considers necessary for the protection of life and property.



COMPEL NON-ESSENTIAL BUSINESS CLOSURE OR MANDATING CONTINUED OPERATIONS OF ESSENTIAL BUSINESSES

- Normal Emergency—NO



COMPEL NON-ESSENTIAL BUSINESS CLOSURE OR MANDATING CONTINUED OPERATIONS OF ESSENTIAL BUSINESSES

- Extreme Emergency—YES
- I.C. 46-601(2): Governor is authorized to promulgate, issue and enforce rules, regulations and orders which he considers necessary for the protection of life and property.



MAIL-ONLY VOTING

- **Normal Emergency—YES, but likely need both emergency powers**
- I.C. 46-1008(5)(a): Suspend the provisions of any regulations prescribing the procedures for conduct of public business that would in any way prevent, hinder, or delay necessary action in coping with the emergency.



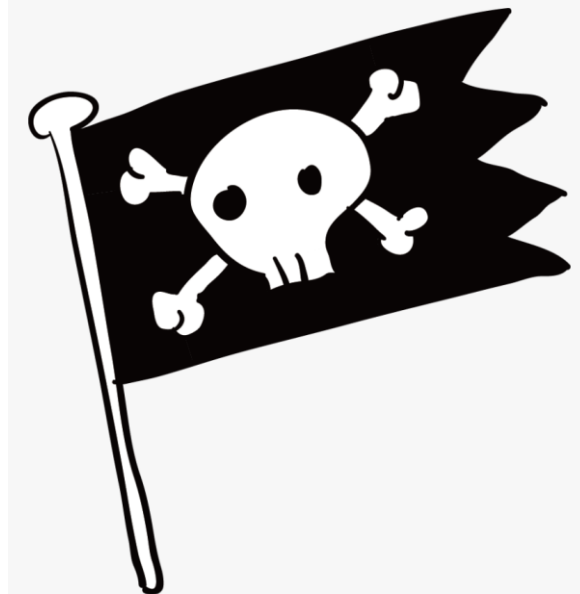
MAIL-ONLY VOTING

- **Extreme Emergency—YES, but likely need both emergency powers**
- I.C. 46-601(2): Governor is authorized to promulgate, issue and enforce rules, regulations and orders which he considers necessary for the protection of life and property.



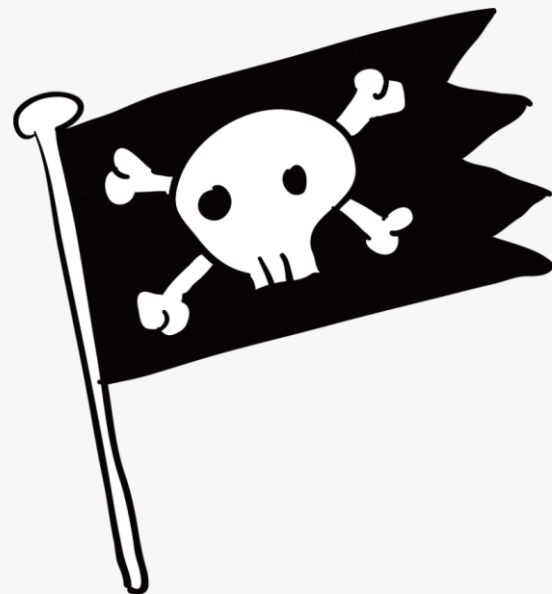
COMMANDEER/UTILIZE PRIVATE PROPERTY

- **Normal Emergency—YES**
- I.C. 46-1008(5)(d): Governor may commandeer or utilize any private property real or personal, if he finds this necessary to cope with a disaster emergency.



COMMANDEER/UTILIZE PRIVATE PROPERTY

- **Extreme Emergency—NO (at least not explicitly)**
- I.C. 46-601(2): Governor is authorized to promulgate, issue and enforce rules, regulations and orders which he considers necessary for the protection of life and property.



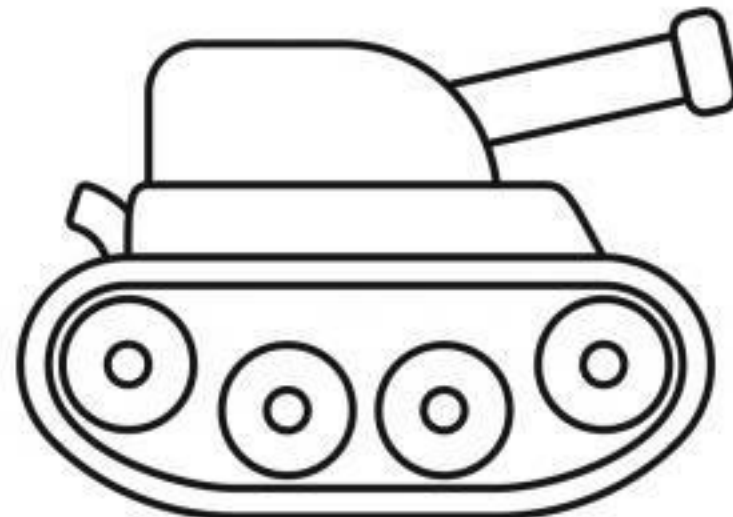
ORDER MARTIAL LAW

- **Ordinary Emergency—Not Explicitly but . . .**
- I.C. 46-1008: During the continuance of any state of disaster emergency, the governor is commander-in-chief of the militia and may assume command of all other forces available for emergency duty.
- I.C. 46-1007: “Nothing in this act shall be construed to: Limit, modify, or abridge the authority of the governor **to proclaim martial law . . .**”



ORDER MARTIAL LAW

- **Extreme Emergency—YES**
- I.C. 46-601(1): Governor can activate National Guard.
- I.C. 46-602: Governor can by proclamation declare the state or portion of the state to be in state of insurrection and declare martial law.



EXPIRATION OF DECLARATIONS

- Normal emergency – every 30 days
 - **The state of disaster emergency shall continue until the governor finds that the threat or danger has passed, or the disaster has been dealt with to the extent that emergency conditions no longer exist,** and when either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation; provided, however, that **no state of disaster emergency may continue for longer than thirty (30) days unless the governor finds that it should be continued for another thirty (30) days** or any part thereof. (I.C. 46-1008)
- BUT
 - Emergency account fund can only be used to pay for obligations and expenses incurred by the state **DURING** a declared state of emergency
- RESULT
 - Disasters stay open for a long time

EXPIRATION OF DECLARATIONS

- Extreme emergency – up to the Governor
 - “Whenever the state of extreme emergency has been ended by either the **expiration of the period for which it was proclaimed or the need for said state of extreme emergency has ceased**, the governor shall declare the period of the state of extreme emergency to be at an end.” (I.C. 46-602)

LEGISLATIVE POWER TO END DECLARATION

- Normal Emergency
 - The legislature by concurrent resolution may terminate a state of disaster emergency at any time.
I.C. 46-1008
- Extreme Disaster
 - Only Governor has authority to terminate.

	Normal Emergency (Chapter 10)	Extreme Emergency (Chapter 6)
Close Borders	Yes.	Yes.
Vote	Maybe.	Yes.
Isolate and Quarantine	Arguably yes with assistance from H&W.	Yes.
Compel Non-Essential Business Closure or Mandating Continued Operations of Essential Businesses	No.	Yes.
Commandeer/Utilize Private Property	Yes.	Yes if Governor issued order allowing for this.
Martial Law	Yes, but softer authority.	Yes.

QUESTIONS??