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## A Survey of Civil Procedure: Technology to COVID-19 Within State Courts

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# **A SURVEY OF CIVIL PROCEDURE: TECHNOLOGY RESPONSES TO COVID-19 WITHIN STATE COURTS**

*The COVID-19 pandemic catalyzed the implementation of technological innovation within the legal field. Specifically, state courts used technology to adjust their civil procedures while maintaining accurate results, limiting costs, and providing meaningful participation to varying degrees of success. In addition, given the piecemeal nature of these adjustments, there is a lack of knowledge regarding what actions were taken in the early months of the pandemic. Thus, this Comment conducts a survey focusing on how the states adjusted their judicial civil procedures to respond to COVID-19's impact. This Comment then argues that the most liberal implementation of technological adjustments may not be best for states to fulfill the historical purpose of civil procedure. Rather, states that implemented statewide orders, for a short period of time, allowing their lower courts to implement a full range of technological adjustments, best balanced the need for accuracy with the costs of implementation to maintain the highest degree of meaningful participation.*

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## I. INTRODUCTION

Technological advancement has rapidly adjusted the way individuals and institutions conduct operations. However, state and federal courts have taken painfully slow steps to utilize technology to achieve the fundamental goals of civil procedure. In the 1980s, legal scholars analyzed the strengths and shortcomings of audio and video technologies, which had been suggested to meet increasing cost and delay problems, “but which nevertheless [were] used infrequently and sporadically in judicial proceedings.”<sup>1</sup> Today, organizations are still working on implementing common-sense technology into our court systems. One example is the Legal Services Corporation (LSC), Congress’s effort to fund civil legal aid to the nation’s poor.<sup>2</sup> The LSC dedicated its 2022 Innovations in Technology conference to increasing judicial access through technology innovation.<sup>3</sup>

Today, the novel coronavirus (COVID-19) pandemic<sup>4</sup> has served as a catalyst forcing the traditionally rigid legal field to accelerate years of technological innovation into mere months of rapid response. Unfortunately, COVID-19 variants, like Delta and Omicron,<sup>5</sup> have compelled the legal field to keep these technological innovations available now two years into the pandemic. Prior to the World Health Organization officially labeling the COVID-19 viral disease a pandemic (March 11, 2020),<sup>6</sup> states had already

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1. Kathy L. Stuart & Lynae K. E. Olson, *Audio and Video Technologies in the Court: Will Their Time Ever Come*, 8 JUST. SYS. J. 287, 304 (1983).

2. *History: The Founding of LSC*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are/history> [https://perma.cc/ZS97-JU5T].

3. *LSC’s Innovations in Technology Conference*, LEGAL SERVS. CORP. (Jan. 12, 2022), <https://www.lsc.gov/events/events/lscs-innovations-technology-conference> [https://perma.cc/8U5K-3WMS].

4. Bill Chappell, *Coronavirus: COVID-19 Is Now Officially a Pandemic, WHO Says*, NPR (Mar. 11, 2020), <https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says> [https://perma.cc/XE9U-ZUJ4].

5. *What You Need to Know About Variants*, CTR. FOR DISEASE CONTROL AND PREVENTION (Feb. 25, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/variants/about-variants.html> [https://perma.cc/5P9X-QCCC].

6. Chappell, *supra* note 4.

taken steps,<sup>7</sup> and some had already issued judicial orders,<sup>8</sup> to respond to the concern surrounding COVID-19. States across the nation quickly followed suit by implementing COVID-19 related civil procedure responses.<sup>9</sup> However, the pathway of implementation, length of validity, and the breadth of adjustments of such responses differed widely across the states.<sup>10</sup>

This Comment argues that the most liberal implementation of technological adjustments to combat COVID-19 may not be best for states to fulfill the historical purpose of civil procedure. Rather, states that implemented statewide orders, for a short period of time, allowing their lower courts to implement a full range of technological adjustments, best balanced the need for accuracy with the costs of implementation to maintain the highest degree of meaningful participation.

There is a general lack of knowledge regarding what action states took in response to COVID-19. Thus, this Comment will conduct a survey focusing on how the fifty states, at the highest levels of government, adjusted their judicial civil procedures to respond to COVID-19. Due to the technological resources accessible to courts, this Comment will focus on responses that looked to technology as a way to fulfill the historical purpose of civil procedure. Part II will lay the foundational work by speaking to the historical purpose of civil procedure and conducting a brief review of previous surveys that looked at state level civil procedure. Part III will then establish survey objectives and classificatory criteria by explaining the methodology and criteria used to conduct the survey. Next, Part IV will classify and describe the technology-focused COVID-19 civil procedure responses for the fifty states. Then, Part V will analyze the survey data on these civil procedure responses to answer how successful COVID-19 responses have been at balancing the need for efficiency

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7. N.J. CTS., CORONAVIRUS (COVID-19)—CONTINUATION OF NORMAL COURT OPERATIONS; GUIDANCE TO ATTORNEYS AND LITIGANTS; REMINDER NOT TO SHARE CONFIDENTIAL HEALTH INFORMATION IN PLEADINGS (2020) <https://www.njcourts.gov/notices/2020/n200309a.pdf?c=dDn> [<https://perma.cc/UYH5-TB76>].

8. *Status of State Covid-19 Emergency Orders*, NAT'L GOVERNORS ASS'N (Dec. 29, 2020), <https://web.archive.org/web/20210125143742/https://www.nga.org/state-covid-19-emergency-orders/> [<https://perma.cc/28XP-ZRL9>].

9. *See, e.g.*, SUPREME COURT OF APPEALS STATE OF W. VA., COVID-19 PLANNING DOCUMENT 4–5 (Mar. 12, 2020), <http://www.courtswv.gov/covid19/COVID-19PlanningDocument1.pdf> [<https://perma.cc/DAB8-62UJ>] (encouraging West Virginia courts to allow technological resources in an effort to be flexible and proactive in managing their dockets).

10. *Compare id.* (stating that West Virginia courts shall remain open and functioning but “[allow] for telephonic hearings” and “[encourage] the use of video conferencing systems”) *with* STATE OF N.D. CTS., ORDER 25. CORONAVIRUS PANDEMIC (2020), <https://www.ndcourts.gov/legal-resources/rules/ndsuptadminorder/25-3> [<https://perma.cc/MKP5-FM8Y>] (halting civil jury trials, but not civil bench trials, with no mention of utilizing technological resources to continue litigation).

with the fundamental goal of supplying fair and just dispute resolution. Finally, after analyzing the efficacy of states' COVID-19 civil procedure responses, Part VI will conclude.

## II. CIVIL PROCEDURE PURPOSE & PREVIOUS SURVEYS

### A. *Background and Historical Purpose of Civil Procedure*

First adopted in 1937 by the Supreme Court, and effected September 16, 1938, the Federal Rules of Civil Procedure (F.R.C.P.)<sup>11</sup> historically served as the dominant model for the majority of state systems of civil procedure.<sup>12</sup> Even though it has been suggested “that state and federal systems of procedure have formally diverged not just in some states, but almost everywhere,”<sup>13</sup> this Comment will still look to the F.R.C.P. to establish a fundamental historical purpose for state civil procedures. As stated within the F.R.C.P., civil procedure rules should be “construed, administered, and employed . . . to secure the just, speedy, and inexpensive determination of every action and proceeding.”<sup>14</sup> Further, scholars have noted that procedural questions dominate legal debate in the United States, covering arguments from justice, rights, efficiency, and sovereignty.<sup>15</sup> At the heart of civil procedure purpose lies the belief that the system must be just—the system must produce accurate results, within a reasonable cost, while providing meaningful participation rights for individuals with business before the court.<sup>16</sup> However, there must be an appropriate balance between these three attributes (accuracy, cost, and meaningful participation) due to the potential conflict that may arise as one attempts to achieve all three to the greatest extent.<sup>17</sup>

#### i. Accuracy

First, for civil procedure to be just, the system must be built around the goal of accurately interpreting pertinent law to the facts an “acceptably high

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11. *Federal Rules of Civil Procedure*, U.S. CTS., <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure> [https://perma.cc/6A89-MMTU].

12. John B. Oakley, *A Fresh Look at the Federal Rules in State Courts*, 3 NEV. L.J. 354, 357 (2003).

13. *Id.* at 384.

14. FED. R. CIV. P. 1.

15. See Paul MacMahon, *Proceduralism, Civil Justice, and American Legal Thought*, 34 U. PA. J. INT'L L. 545, 547, 563 (2013).

16. Paul Stancil, *Substantive Equality and Procedural Justice*, 102 IOWA L. REV. 1633, 1636 (2017).

17. *Id.* at 1649.

percentage of the time.”<sup>18</sup> While courts frequently communicate the goal of the civil judicial system as a “search for truth,”<sup>19</sup> the understanding of what it means to be accurate has diverged.<sup>20</sup> One perspective asks whether a case was decided correctly, described as “case accuracy.”<sup>21</sup> Another perspective asks whether implemented procedure produces more or less accurate outcomes for future cases, described as “systemic accuracy.”<sup>22</sup> While these two perspectives of accuracy often track together, conflict between the two perspectives can arise when applying certain civil procedure rules.<sup>23</sup> For this Comment’s purpose, it is sufficient to recognize that “accuracy is a plausible . . . component of an ideal of procedural justice, but it is not a candidate for a complete account of procedural justice.”<sup>24</sup>

## ii. Cost

Next, the cost of obtaining accurate outcomes must be considered and balanced against the commitment to accuracy.<sup>25</sup> While additional cost expenditures (continuous pretrial proceedings or lengthened discovery) could lead towards accuracy improvements, at some point the law of diminishing returns kicks in.<sup>26</sup> For this reason, there can be instances where a perfectly accurate procedural system may still be unjust if the associated costs exceed the value of the judgment.<sup>27</sup> Due to the fact that judicially perfect accuracy is impossible, and that costs become unideal the closer a system gets to perfection, scholars have termed this balancing act as “imperfect procedural justice.”<sup>28</sup> Many questions arise when attempting to compromise between accuracy and costs.<sup>29</sup> Two approaches have surfaced, one that creates a system of procedure that maximizes utility and one that emphasizes rights-based constraints to

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18. *Id.*

19. *See, e.g.,* Carroll v. Jaques Admiralty Law Firm, 110 F.3d 290, 294 (5th Cir. 1997) (stating that “[t]he search for truth . . . is at the heart of the litigation process.”).

20. *See* Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 244–52 (2004) (defining “The Accuracy Model” as “The Utopian Ideal,” and acknowledging the difference between systemic accuracy and case accuracy).

21. *Id.* at 247.

22. *Id.*

23. *Id.* at 248–49 (viewing the conflict, between the two perspectives of accuracy, through a statute of limitations situations and a destruction of evidence example).

24. *Id.* at 252.

25. Stancil, *supra* note 16, at 1650.

26. *Id.*

27. *Id.* at 1651.

28. Solum, *supra* note 20, at 252.

29. *Id.* (“Under what conditions will accuracy be sacrificed? How should the costs of procedural justice be distributed?”).

costs.<sup>30</sup> Similar to law and economics approaches, the utility maximizing approach would “minimize the sum of two types of costs. The first is the cost of erroneous judicial decisions[,] [and t]he second type of cost is ‘the cost of operating the procedural system.’”<sup>31</sup> In contrast, the rights-based approach looks to concepts of fairness and rights to create a systemic account for how best to answer balancing questions.<sup>32</sup> No matter the approach taken, civil procedure justice must accept the fact that perfect accuracy is implausible while appreciating the types of costs associated with the search for accuracy.<sup>33</sup>

### iii. Meaningful Participation

Finally, meaningful participation for all parties within the civil judiciary process is vital to upholding a just system.<sup>34</sup> While meaningful participation may have a positive impact on accuracy or cost reduction, the idea that meaningful participation matters, in and of itself, is vital to civil procedure’s fundamental purpose.<sup>35</sup> While there are many theories regarding meaningful participation within procedural justice, a full breakdown of those theories goes beyond the scope of this Comment.<sup>36</sup> One fundamental proposition regarding meaningful participation is that it “is necessary because it supports the legitimacy of our dispute resolution mechanisms.”<sup>37</sup> Further, the support meaningful participation provides to legitimacy is completely independent of the legal merits of a participant’s claims or defenses.<sup>38</sup> Larry Solum argues that “[t]he most important task for a theory of procedural justice is to offer those who suffer from inaccurate and binding decisions a reason to regard themselves as legitimately bound.”<sup>39</sup> Central to this attribute is the fundamental understanding that *meaningful* participation, and not simply participation, is required.<sup>40</sup>

As explained above, civil procedure’s historical purpose focuses on creating a just system with the primary goal of balancing the attributes of producing accurate results, maintaining reasonable costs, and providing

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30. *Id.*

31. *Id.* at 254 (quoting RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 549 (4th ed. 1992)).

32. *Id.* at 257.

33. Stancil, *supra* note 16, at 1651.

34. *Id.* at 1652.

35. *Id.*

36. For a thorough and in-depth recitation of different potential participation theories please see Solum, *supra* note 20, at 259–73.

37. Stancil, *supra* note 16, at 1652 (referencing Solum, *supra* note 20, at 275–89).

38. *Id.*

39. Solum, *supra* note 20, at 292.

40. Stancil, *supra* note 16, at 1652.

meaningful participation rights. This Comment will utilize this purpose framework to analyze states' technology-focused COVID-19 civil procedure responses.

### *B. Previous Surveys Regarding Civil Procedure at the State Level*

For the most part, previous surveys having to do with civil procedure at the state level focus on how these systems differ from the F.R.C.P.<sup>41</sup> However, there has been a general lack of legal research on how technology has impacted civil procedure systems within the United States. While this subject has been missing in academic writing here in the United States, global scholars have touched on pertinent aspects—with some analysis on technologically focused COVID-19 civil procedure responses.<sup>42</sup> These resources will provide a model for research and are beneficial to analyzing which potential procedural reform should be encouraged.

Professors John Oakley and Arthur Coon provide an in-depth survey for how civil procedure within the fifty states have adopted or modeled their systems from the FRCP.<sup>43</sup> This fundamental research piggy backed on the mid-twentieth century work by Professor Charles Wright and Judge Charles E. Clark who distinguished “code” and “common law,”<sup>44</sup> and who observed the degree to which the FRCP were adopted as the standard within state courts.<sup>45</sup> What these legal scholars found was that “the [FRCP] are the dominant system of procedure in American law, not merely by merit but by headcount.”<sup>46</sup> With this

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41. Thomas O. Main, *Procedural Uniformity and the Exaggerated Role of Rules: A Survey of Intra-State Uniformity in Three States That Have Not Adopted the Federal Rules of Civil Procedure*, 46 VILL. L. REV. 311, 319, 381–82 (2001); John B. Oakley & Arthur F. Coon, *The Federal Rules in State Courts: A Survey of State Court Systems of Civil Procedure*, 61 WASH. L. REV. 1367, 1367 (1986); 1 W. BARRON & A. HOLTZOFF, *FEDERAL PRACTICE AND PROCEDURE* §§ 9.1–9.53, at 46–80 (Wright ed. 1960); CHARLES E. CLARK, *HANDBOOK OF THE LAW OF CODE PLEADING* 46, 50–54 (2d ed. 1947) (1928).

42. See K. L. Branovitsky, I. G. Rents, Al. V. Neznamov, An. V. Neznamov & V. V. Yarkov, *Digital Technology and Civil Procedure: Some Problems and Prospects*, 2019 HERALD CIV. PROC. 54, 55 (2019) (analyzing problems and prospects of digital technology implementation in Russian civil procedure); see also Nicholas Mouttotos, *Reform of Civil Procedure in Cyprus: Delivering Justice in a More Efficient and Timely Way*, 49 COMMON L. WORLD REV. 99, 103, 128 (2020) (researching how to modernize the Cyprus system of civil procedure post the financial crisis while briefly touching on COVID-19); see also Sergiu I. Stănilă, *Tehnologia Informației Și Comunicațiilor în Procesul Judiciar [Information and Communication Technology in the Judicial Process]*, 2020 REV. UNIVERSUL JURIDIC 111, 112, 127 (2020) (analyzing how the Romanian legislative framework can be extended, through effective technical solutions, to provide regulation within the field of justice).

43. Oakley & Coon, *supra* note 41.

44. *Id.* at 1369–72.

45. *Id.* at 1367.

46. *Id.* at 1372.



being said, Oakley and Coon have argued that states are inherently passive to procedural reform and the trend towards modeling the FRCP has ended.<sup>47</sup> While that trend may be slowing down, or reversing in some instances,<sup>48</sup> this research provides an understanding of where each state's civil procedure begins. Thus, this understanding provides the starting point to analyze how each state has adopted technologically focused, COVID-19 related civil procedure responses.

While state level civil procedure has been analyzed within the United States, there has been a research gap for how COVID-19 has impacted technologically focused civil procedure responses within the United States. However, in Romania, Attorney Sergiu I. Stănilă analyzed the post COVID-19 application of videoconferencing, electronic file, and digital communication between the courts of Romania and their litigants.<sup>49</sup> In addition, Professor Nicholas Mouttotos has noted that the lack of "necessary infrastructure for electronic justice" has been detrimental to the Republic of Cyprus's ability to manage delays in litigation.<sup>50</sup> This research shows that it is time for analysis within the United States on how each state has adopted technologically focused civil procedure responses related to COVID-19.

### III. SURVEY OBJECTIVES & CLASSIFICATORY CRITERIA

#### A. Survey Objectives

Given the nature of our court system built on federalism,<sup>51</sup> and the fact that each state has differing civil procedure systems,<sup>52</sup> increasing the knowledge regarding what action states have taken in response to COVID-19 is paramount. While the first vaccine arrived by the end of 2020,<sup>53</sup> bringing society a fleeting degree of normality in part of 2021,<sup>54</sup> COVID-19 variants have prolonged the

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47. *Id.* at 1427.

48. Oakley, *supra* note 12, at 383–84.

49. Stănilă, *supra* note 42, at 112, 127.

50. Mouttotos, *supra* note 42, at 128. Mouttotos later contrasts Cyprus' situation to that of the United Kingdom, which has conducted litigation over Skype. *Id.* at n.226.

51. William H. Pryor, Jr., *Madison's Double Security: In Defense of Federalism, the Separation of Powers, and the Rehnquist Court*, 53 ALA. L. REV. 1167, 1171–75 (2002).

52. Oakley & Coon, *supra* note 41, at 1427.

53. *FDA Takes Key Action in Fight Against COVID-19 By Issuing Emergency Use Authorization for First COVID-19 Vaccine*, U.S. FOOD & DRUG ADMIN. (Dec. 11, 2020), <https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19> [<https://perma.cc/QX6W-KU2D>].

54. Karen Weintraub, *There May be a COVID-19 Vaccine by the End of the Year, but 'Normality' May Not Come Until End of 2021*, USA TODAY (Nov. 10, 2020, 12:05 PM),

length of the pandemic.<sup>55</sup> In addition, the possibility for future pandemics, or additional COVID-19 variants, is a fact our legal system cannot ignore. Further, it is still too early to know whether the broad social changes will stick once we do reach a sustained degree of normality. Some business insiders suggest that our technology-based adjustments to COVID-19 are here to stay.<sup>56</sup> In addition, technology has rapidly adjusted our way of life even before COVID-19. It would behoove our legal system to acknowledge this trend and adjust state civil procedure in an effort to fulfill the system's historical purpose.

### B. Explanation of Classifications

#### i. Methodology

Focusing on executive orders submitted by either state governors or supreme courts, this survey will classify each state's response by focusing on three important aspects. First, the civil procedure responses of the states are classified according to how their systems adjusted to account for the impact of COVID-19. Second, the classification scheme categorizes these adjustments by length of validity with some acknowledgement of response time. Third, criteria categories have been identified that focus on the breadth of implemented technological advancement with recognition of states that included anti-impediment language.

Undoubtably, each state has made some form of adjustment to account for the impact of COVID-19. However, how the state systems have adjusted to COVID-19 has differed. Nearly all state judicial branches quickly implemented changes via emergency orders handed down by state supreme court chief justices.<sup>57</sup> Connecticut was the only true exception to this pathway of implementation.<sup>58</sup> Some states responded early by implementing orders that

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<https://www.usatoday.com/story/news/health/2020/11/10/covid-19-vaccine-willingness-needed-to-end-pandemic/3516649001/> [<https://perma.cc/7EGV-J69K>].

55. *COVID Data Tracker Weekly Review*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Dec. 17, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html#more-info> [<https://perma.cc/5BRP-EBT7>].

56. Marius Mihalec, *Pandemic IT Innovation: What is Here to Stay?*, FORBES (Aug. 18, 2020, 7:00 AM), <https://www.forbes.com/sites/forbestechcouncil/2020/08/18/pandemic-it-innovation-what-is-here-to-stay/?sh=510e95dec2a3> [<https://perma.cc/3XDW-G3NK>]; Ryan Browne, *Remote Work is 'Here to Stay'—Even with a Vaccine, Says Former IBM CEO*, CNBC (Nov. 10, 2020, 7:19 PM), <https://www.cnbc.com/2020/11/11/covid-vaccine-ex-ibm-ceo-rometty-says-remote-work-is-here-to-stay.html> [<https://perma.cc/Z4WN-CD54>].

57. See *infra* Section IV.B.

58. GOVERNOR OF CONN., EXECUTIVE ORDER NO. 7G (2020), <https://jud.ct.gov/HomePDFs/Executive-Order-No-7G.pdf> [<https://perma.cc/4XTX-GFD9>].

governed all state courts,<sup>59</sup> while other states explicitly vested power to their lower courts to implement their own emergency orders.<sup>60</sup> These two pathways to implementation have ramifications that will impact the state's ability to see these technologically focused adjustments stick as our society obtains a sustained degree of normality.<sup>61</sup>

Next, most states implemented COVID-19 adjustments within their civil procedure systems rather quickly in the month of March 2020.<sup>62</sup> However, some states failed to codify technological adjustments until April 2020.<sup>63</sup> Further, three states almost entirely failed to mention civil procedure technology implementation within their respective early judicial orders.<sup>64</sup> In addition, the length of validity for the emergency orders varied from state to state. This difference led to stop and go practices within certain state systems,<sup>65</sup> while other states have been able to continuously conduct court operations due to orders with open-ended lengths of validity.<sup>66</sup> This classification category will show how the early adaptation, or lack thereof, has built state civil procedure systems that are more adaptable to technological adjustments.

Finally, the breadth of implemented technological advancement is different from state system to state system. Some jurisdictions have given near full

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59. SUP. CT. ARIZ., ADMINISTRATIVE ORDER No. 2020-41 1 (2020), <https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-41.pdf?ver=2020-03-04-144310-587> [https://perma.cc/KBY2-J2NC].

60. SUP. CT. FLA., RESPONSE OF THE FLORIDA STATE COURTS SYSTEM TO CORONAVIRUS DISEASE 2019 (COVID-19), No. AOSC20-12 2 (2020), <https://www.floridasupremecourt.org/content/download/631290/file/AOSC20-12.pdf> [https://perma.cc/VPC4-DZWB].

61. More or less, each pathway of implementation can lead towards the removal of orders that established the technological adjustments.

62. N.J. CTS., *supra* note 7.

63. CHIEF COURT ADMINISTRATOR, CONNECTICUT JUDICIAL BRANCH INITIATES PLAN TO RESOLVE MORE CASES (2020), <https://jud.ct.gov/HomePDFs/CaseResolvePlan.pdf> [https://perma.cc/NFM2-UEHQ].

64. SUP. CT. COLO., ORDER REGARDING COVID-19 AND OPERATION OF COLORADO STATE COURTS (2020), [https://www.courts.state.co.us/userfiles/file/Media/Opinion\\_Docs/COVID-19%20Order%2016Mar2020\(1\).pdf](https://www.courts.state.co.us/userfiles/file/Media/Opinion_Docs/COVID-19%20Order%2016Mar2020(1).pdf) [https://perma.cc/Z7BZ-Y8NF]; GOVERNOR OF CONN., *supra* note 58.

65. SUP. CT. ARIZ., ADMINISTRATIVE ORDER No. 2020-47 (2020), <https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-47.pdf?ver=2020-03-16-172137-227> [https://perma.cc/CM3A-D9EH].

66. STATE OF ME. JUD. BRANCH, REVISED EMERGENCY ORDER AND NOTICE FROM THE MAINE SUPREME JUDICIAL COURT PMO-SJC-1 (2020), <http://www.cleaves.org/PMOSJC1.1.pdf> [https://perma.cc/D2DA-VNG6].

freedom to courts to see which implementation works best.<sup>67</sup> Other jurisdictions essentially limited the types of technological implementation the systems could introduce.<sup>68</sup> In addition, this breadth can differ within each state's lower courts depending on the two factors above. By categorizing states by breadth of implementation, additional points of interest can be analyzed to see if this factor can catalyze the technologically focused adjustments. Further, some states added anti-impediment clauses within their specific orders that either nullified or suspended legislation that would have prevented the utilization of technology to respond to COVID-19.<sup>69</sup>

## ii. Criteria

### 1. Pathway to Implementation

Within the pathway to implementation criterion, the states responded early to introduce technology specific adjustments to their civil procedure systems in predominantly two distinct ways—judicial emergency orders that governed statewide and judicial emergency orders that vested the power to lower courts to create their own response orders. Only one state, Connecticut, had their judicial COVID-19 response codified by executive branch emergency order.<sup>70</sup> While some states ultimately utilized multiple pathways of implementation,<sup>71</sup> the structure for this criterion category considers the dominant pathway of implementation each state utilized. With that in mind, the survey recognizes special state situations if the ramifications of those situations have impactful effects on the state's civil procedure system.

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67. SUP. CT. ARK., RESPONSE TO THE COVID-19 PANDEMIC 3 (2020), <https://www.arcourts.gov/sites/default/files/articles/COVID-19-PC.pdf> [https://perma.cc/H8F2-9LJW].

68. SUP. CT. DEL., ORDER DECLARING A JUDICIAL EMERGENCY 3 (2020), <https://courts.delaware.gov/forms/download.aspx?id=120328> [https://perma.cc/F52X-GKD2].

69. See, e.g., SUP. CT. ALA., COVID-19 PANDEMIC EMERGENCY RESPONSE 2 (2020) <https://www.alacourt.gov/docs/COV-19%20order%20FINAL.pdf> [https://perma.cc/AHK2-WZCL]; SUP. CT. ARIZ., *supra* note 65; SUP. CT. ARK., *supra* note 67.

70. GOVERNOR OF CONN., *supra* note 58.

71. SUP. CT. IDAHO., IDAHO SUPREME COURT RESPONSE TO COVID-19 EMERGENCY (2020), <https://isc.idaho.gov/EO/Suprsd/Response-to-COVID-19-Emergency-Order-March-13-2020.pdf> [https://perma.cc/KN77-JH3M] [hereinafter IDAHO SUPREME COURT RESPONSE]; SUP. CT. IDAHO., EMERGENCY REDUCTION IN COURT SERVICES AND LIMITATION OF ACCESS TO COURT FACILITIES (2020), <https://isc.idaho.gov/EO/Emergency-Reduction-Order.pdf> [https://perma.cc/W2DE-4AH8] [hereinafter EMERGENCY REDUCTION IN COURT SERVICES].

## 2. *Length of Validity*

As to the length of validity criterion, the first response period was rather similar across all state jurisdictions, with a handful of exceptions.<sup>72</sup> Thus, that point of differentiation does not provide much insight into how the states adjusted to COVID-19. However, the states did differ as to the length that each of their adjustments were valid. This criterion is subcategorized as open ended and short period of validity. The open-ended category is characterized as COVID-19 technologically focused adjustments that were implemented without a given end period or through the end of the state's judicial emergency.<sup>73</sup> Short period of validity implementation can be characterized by state jurisdictions that approved their technology-based adjustments for finite periods of time.<sup>74</sup> This factor forced the responding state body to repeal and replace existing orders or amend previous orders as the pandemic continued.

## 3. *Breadth of Advancement*

The breadth of advancement criterion looks to how the executive or judicial branch spoke about technological adjustments within their orders. The subcategories for this criterion are broken down to full-freedom and limited-freedom. Full-freedom states implemented adjustments that essentially allowed freedom throughout all levels of their courts and across all types of potential technology adjustments.<sup>75</sup> Limited-freedom states provided either categories of technology adjustments, or specific adjustments, that their courts could, or had to, implement.<sup>76</sup> Special acknowledgement will be made of states that added anti-impediment language within their early orders which nullified or suspended laws and rules to allow for full utilization of technology

72. SUP. CT. NEB., ARTICLE I, CHAPTER 11, NEW RULE FOR EMERGENCY DOCUMENT DELIVERY FOR FILING IN THE NEBRASKA COURTS (2020), [https://supremecourt.nebraska.gov/sites/default/files/Administration/emergency/Chief\\_Heavicans\\_order\\_on\\_e-delivery\\_4-23-20.pdf](https://supremecourt.nebraska.gov/sites/default/files/Administration/emergency/Chief_Heavicans_order_on_e-delivery_4-23-20.pdf) [https://perma.cc/Z2QA-MBNL].

73. GOVERNOR OF CAL., EXECUTIVE ORDER N-38-20 (2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf> [https://perma.cc/8DWU-UGT5]; JUDICIAL COUNCIL OF CAL., STATEWIDE EMERGENCY ORDER BY HON. TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF CALIFORNIA AND CHAIR OF THE JUDICIAL COUNCIL 4 (2020), <https://newsroom.courts.ca.gov/sites/default/files/newsroom/document/Statewide%2520Order%2520by%2520the%2520Chief%2520Justice-Chair%2520of%2520the%2520Judicial%2520Council%25203-30-2020.pdf> [https://perma.cc/GN4K-TCWN].

74. SUP. CT. PA., GENERAL STATEWIDE JUDICIAL EMERGENCY, No. 531 1 (2020), <http://www.pacourts.us/assets/files/page-1433/file-8500.pdf> [https://perma.cc/MM3T-8BM6].

75. GOVERNOR OF CAL., *supra* note 73, at 2.

76. SUP. CT. FLA., *supra* note 60, at 3.

adjustments.<sup>77</sup> Similar to the first criterion, some states ultimately utilized varying breadths of advancement throughout the COVID-19 pandemic.<sup>78</sup> Again, the structure for this criterion category took into account the dominate breadth of advancement each state utilized while recognizing special state situations.

#### IV. CLASSIFICATIONS & STATE COVID-19 CIVIL PROCEDURE ADAPTION

##### *A. Classifications and State Categorizations*

The variation encountered within the survey led to the development of eight distinct classifications. Outside of those classifications, three states were categorized separately due to their lack of executive order language specific to technological adjustments. On the most liberal end were states that implemented orders that vested power to their lower courts, for an open-ended period of time, and allowed these courts essentially full freedom to implement technological adjustments within their civil procedures.<sup>79</sup> From here, two additional categories emerge where states vested power to their lower courts, but either did so for a short period of time or allowed for a limited amount of freedom to implement technological adjustments. Finally, within this subsection includes states that vested power to their lower courts, but for a short period of time and with limited amount of freedom.

On the other end of the spectrum were states that implemented orders that kept the majority of power at the top with their supreme courts.<sup>80</sup> Most restrictively controlling were states that made these orders for a short period of time and provided limited freedom for technological adjustments. Two categories emerged where states retained power at the top, but either did so for an open-ended period of time or provided essentially full freedom for their states to utilize forms of technology within their procedures. One state, Louisiana, retained control at the top, for an open period of time, but also provided the near full freedom to implement technology adjustments.<sup>81</sup>

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77. See, e.g., SUP. CT. ALA., *supra* note 69; SUP. CT. ARIZ., *supra* note 65; SUP. CT. ARK., *supra* note 67.

78. SUP. CT. MICH., ORDER LIMITING ACTIVITIES/ASSEMBLAGES IN COURT FACILITIES, ADMINISTRATIVE ORDER NO. 2020-2 (2020), [https://mcedsv.org/wp-content/uploads/2020/03/2020-08\\_2020-03-18\\_FormattedOrder\\_AO2020-2.pdf](https://mcedsv.org/wp-content/uploads/2020/03/2020-08_2020-03-18_FormattedOrder_AO2020-2.pdf) [<https://perma.cc/Q5EK-MG2U>].

79. SUP. CT. TEX., FIRST EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER, MISC. DOCKET NO. 20-9042 1-2 (2020), <https://www.txcourts.gov/media/1446056/209042.pdf> [<https://perma.cc/9W48-DFKB>].

80. See *infra* p. 14 (Categories R0-R3).

81. SUP. CT. LA., ORDER (2020), [https://www.lasc.org/COVID19/Orders/2020-03-16\\_LASCorder.pdf](https://www.lasc.org/COVID19/Orders/2020-03-16_LASCorder.pdf) [<https://perma.cc/6PCQ-38GF>].

Surprisingly, three states, Nebraska, Colorado, and Connecticut, implemented early response orders from their supreme courts that were essentially devoid of any language having to do with technological adjustments that their state courts could, should, or had to utilize within their civil procedures to respond to COVID-19.<sup>82</sup> These states were categorized separately as “void.” A full breakdown of these categories can be found below. That table is followed by a full list of which states fall into which categories.

Category	Pathway of Implementation	Length of Validity	Breadth of Advancement
L3	Vested Power Down	Open-Ended	Full-Freedom
L2	Vested Power Down	Short Period	Full-Freedom
L1	Vested Power Down	Open-Ended	Limited-Freedom
L0	Vested Power Down	Short Period	Limited-Freedom
R0	Held Power Statewide	Open-Ended	Full-Freedom
R1	Held Power Statewide	Short Period	Full-Freedom
R2	Held Power Statewide	Open-Ended	Limited-Freedom
R3	Held Power Statewide	Short Period	Limited-Freedom
V0	Void	Void	Void

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82. SUP. CT. NEB., NOVEL CORONAVIRUS AND COVID-19 DISEASE (2020), <https://supremecourt.nebraska.gov/sites/default/files/Administration/emergency/order3.12.20.pdf> [https://perma.cc/4Z6K-Q8RM] [hereinafter March 20 Order]; SUP. CT. NEB., NOVEL CORONAVIRUS AND COVID-19 DISEASE (2020), <https://supremecourt.nebraska.gov/sites/default/files/Administration/emergency/adminorder040620.pdf> [https://perma.cc/M9TS-TMXR] [hereinafter April 6 Order].

L3	L2	L1	L0	R0	R1	R2	R3	V0
California Illinois New Mexico Ohio South Dakota Tennessee	Alabama New Hampshire West Virginia Texas	Alaska Florida Hawaii Indiana Kansas South Carolina Washington	Idaho Michigan Mississippi Nevada Oregon Pennsylvania	Louisiana	Arizona Arkansas Missouri	Delaware Iowa Maine Maryland Montana New Jersey New York North Dakota Oklahoma Utah Vermont Wisconsin	Georgia Kentucky Massachusetts Minnesota North Carolina Rhode Island Virginia Wyoming	Nebraska Colorado Connecticut
Total: 6	Total: 4	Total: 7	Total: 6	Total: 1	Total: 3	Total: 12	Total: 8	Total: 3

### B. State COVID-19 Civil Procedure Technological Adaptation

#### Alabama

Originally, the Supreme Court of Alabama provided presiding judges the authority to suspend jury trials for a period of one week with no mention of technology implementation.<sup>83</sup> However, the court quickly, and unanimously, implemented a 30-day emergency order that vested judicial circuit judges and court clerks the ability to utilize available technologies to limit in-person courtroom contact as much as possible.<sup>84</sup> In addition, Alabama is one of the minority states that included an anti-impediment clause that suspended state or local rules that impeded the implementation of technologies to limit in-person contact.<sup>85</sup> Alabama falls into category L2.

#### Alaska

The Alaska Supreme Court first implemented an emergency order vesting power to their district level presiding judges to implement specific technology adjustments, centered around remote appearances and electronic filing, for an open-ended period of time.<sup>86</sup> To “provide uniform guidance to litigants, counsel, and court staff throughout the state,” the presiding judges from the four Alaska Judicial Districts implemented essentially a statewide administrative order that spoke to technology civil procedure adjustments.<sup>87</sup> This original

83. SUP. CT. ALA., AUTHORITY TO SUSPEND JURY TRIAL ORDER 3–4, 7 (2020), [https://www.alacourt.gov/docs/Authority%20to%20Suspend%20Jury%20Trial\\_Order.pdf](https://www.alacourt.gov/docs/Authority%20to%20Suspend%20Jury%20Trial_Order.pdf) [<https://perma.cc/L6Q3-TMSR>].

84. SUP. CT. ALA., *supra* note 69.

85. *Id.*

86. SUP. CT. ALASKA, EMERGENCY ORDER RE COVID-19: RELAXATION AND SUSPENSION OF VARIOUS COURT RULES BASED ON THE COVID-19 PANDEMIC, ORDER No. 1957 3–4, 7 (2020), <https://public.courts.alaska.gov/web/covid19/docs/sco1957.pdf> [<https://perma.cc/DXF5-WVUU>].

87. TRIAL CTS. ALASKA, PRESIDING JUDGE STATEWIDE ADMINISTRATIVE ORDER GOVERNING RELAXATION AND SUSPENSION OF VARIOUS COURT RULES BASED ON THE COVID-19 PANDEMIC 2–4 (2020), <https://public.courts.alaska.gov/web/covid19/docs/statewide-pjo-rules-suspension.pdf> [<https://perma.cc/4UW7-7XZR>].



order only codified the limited specific technology adjustments to the lower courts' civil procedure that had previously been approved by the Alaska Supreme Court.<sup>88</sup> Throughout March and April, the Alaska Supreme Court and district level presiding judges executed emergency orders that vested power and implemented that power on an ad hoc basis.<sup>89</sup> Alaska falls into category L1.

### *Arizona*

The State of Arizona was one of the earliest adapters when they codified civil procedure technology adjustments on March 4, 2020, via a chief justice's administrative order.<sup>90</sup> This order impacted courts statewide and was open-ended.<sup>91</sup> However, the order had limited breadth as to approved technology utilization.<sup>92</sup> Post public emergency, Arizona implemented statewide judicial orders allowing courts full-freedom to utilize available technologies to limit in-person courtroom contact as much as possible.<sup>93</sup> Arizona was another state that included an anti-impediment clause even though the provision had a short-term length of validity.<sup>94</sup> However, the anti-impediment clause was extended numerous times through the end of May.<sup>95</sup> Arizona falls into category R1.

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88. *Id.* at 2.

89. TRIAL CTS. ALASKA, AMENDED SECOND UPDATED PRESIDING JUDGES' STATEWIDE ADMINISTRATIVE ORDER GOVERNING RELAXATION AND SUSPENSION OF VARIOUS COURT RULES BASED ON THE COVID-19 PANDEMIC 1, 5, 13 (2020), <https://public.courts.alaska.gov/web/covid19/docs/statewide-pjo-rules-suspension-2.pdf> [https://perma.cc/5LLU-DS33].

90. SUP. CT. ARIZ., *supra* note 59, at 2.

91. *Id.* at 1.

92. *Id.*

93. SUP. CT. ARIZ., *supra* note 65.

94. *Id.*

95. *Id.*; SUP. CT. ARIZ., AUTHORIZING LIMITATION OF COURT OPERATIONS DURING A PUBLIC HEALTH EMERGENCY, ADMINISTRATIVE ORDER No. 2020-48 2 (2020), <https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-48.pdf?ver=2020-03-18-160342-583> [https://perma.cc/7DZA-DV3X]; SUP. CT. ARIZ., AUTHORIZING LIMITATION OF COURT OPERATIONS DURING A PUBLIC HEALTH EMERGENCY, ADMINISTRATIVE ORDER No. 2020-60 2 (2020), <https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-60.pdf?ver=2020-04-06-114510-393> [https://perma.cc/9WWJ-UKST]; SUP. CT. ARIZ., AUTHORIZING LIMITATION OF COURT OPERATIONS DURING A PUBLIC HEALTH EMERGENCY, ADMINISTRATIVE ORDER No. 2020-70 2 (2020), <https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-70.pdf?ver=2020-04-24-145922-837> [https://perma.cc/852S-RUFY].

*Arkansas*

Arkansas was another early mover when it came to exploring ways to implement technology within their civil procedure in response to COVID-19.<sup>96</sup> However, their pre-public emergency action was only advisory and not via judicial order.<sup>97</sup> Similar to Arizona, Arkansas implemented a statewide judicial order that allowed the courts full freedom to utilize available technologies to limit in-person courtroom contact as much as possible.<sup>98</sup> Further, the first order included a short-term anti-impediment clause; Arkansas quickly turned this short-term anti-impediment clause into an open ended one.<sup>99</sup> Arkansas similarly falls into category R1.

*California*

California is rather different compared to most other states, as the state's appellate courts and superior courts implemented their own individual orders ad hoc in the days preceding the state and national declarations of emergency.<sup>100</sup> California's first statewide judicial order by their chief justice only briefly touched on the implementation of technology in limited situations.<sup>101</sup> However, via executive order by Governor Newsom, and subsequent judicial order by the chief justice, California vested their lower courts the ability to "mak[e] use of available technology" for an open-ended period of time while the judicial order included an open-ended anti-impediment clause.<sup>102</sup> California's codified civil

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96. SUP. CT. ARK., *Statement on Novel Coronavirus Outbreak (COVID-19) and the Courts* (2020), <https://www.arcourts.gov/sites/default/files/articles/Arkansas-judiciary-COVID-19-Preparedness.pdf> [https://perma.cc/8JGF-T9GN].

97. SUP. CT. ARK., *COVID-19 Update Issued March 13, 2020* (2020), <https://www.arcourts.gov/sites/default/files/articles/COVID-19-update-march132020.docx.pdf> [https://perma.cc/JH6F-XXEH].

98. SUP. CT. ARK., *supra* note 67.

99. SUP. CT. ARK., *RESPONSE TO THE COVID-19 PANDEMIC* (2020), <https://www.arcourts.gov/sites/default/files/articles/COVID-19-PC-april-3.pdf> [https://perma.cc/FM7P-ND9T]; SUP. CT. ARK., *supra* note 67.

100. *Court Emergency Orders*, CALIFORNIA COURTS NEWSROOM, (2021) <https://newsroom.courts.ca.gov/covid-19-news-center/court-emergency-orders> [https://perma.cc/Q7JB-ULYU].

101. JUD. COUNCIL OF CAL., *STATEWIDE ORDER BY HON. TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF CALIFORNIA AND CHAIR OF THE JUDICIAL COUNCIL 2* (2020), <https://newsroom.courts.ca.gov/sites/default/files/newsroom/2020-09/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-23-2020.pdf> [https://perma.cc/9DGT-YQP7].

102. GOVERNOR OF CAL., *supra* note 73; JUD. COUNCIL OF CAL., *supra* note 75, at 3.

procedure technology response was one of the most liberal, yet ambiguous, responses out of any state.<sup>103</sup> California falls into category L3.

### *Colorado*

The Supreme Court of Colorado, through order by their chief justice, fully entrusted the state's district courts with the discretion to implement operational civil procedure changes for a short period of validity.<sup>104</sup> The first order including implementation of technological adjustments covered civil litigation only and included the language, "it is the expectation that . . . every effort to facilitate work from remote locations and to minimize or eliminate in-person proceedings and contact [will be made]."<sup>105</sup> Subsequent Supreme Court orders were equally vague and almost completely devoid of substantive orders having to do with technological implementation within the state's civil procedure.<sup>106</sup> Colorado falls into category V0.

### *Connecticut*

Unique within the entire United States, Connecticut's judicial response was handled via executive order by Governor Lamont.<sup>107</sup> The Governor's executive order remained effective through the duration of the public health emergency and suspended most civil procedure requirements and limited surrounding location and venue, time and deadline, statutes of limitation, services of

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103. *Cf. with* SUP. CT. WYO., ORDER ADOPTING TEMPORARY PLAN TO ADDRESS HEALTH RISKS POSED BY THE COVID-19 PANDEMIC (2020), <http://www.courts.state.wy.us/wp-content/uploads/2020/03/COVID-19-Order.pdf> [<https://perma.cc/GB4V-M848>].

104. SUP. CT. COLO., *supra* note 64.

105. *Id.*

106. SUP. CT. COLO., ORDER EXTENDING PROHIBITION ON JURY CALLS (2020), <https://www.courts.state.co.us/userfiles/file/Media/SC%20-%20Cases%20of%20Interest/Order%20Extending%20Prohibition%20on%20Jury%20Calls.pdf> [<https://perma.cc/Q7D6-9Q9W>]; SUP. CT. COLO., ORDER REGARDING COVID-19 AND OPERATION OF COLORADO STATE COURTS (2020), [https://www.courts.state.co.us/userfiles/file/Media/COVID/4\\_16\\_20%20Chief%20Justice%20Order%20Regarding%20Court%20Operations.pdf](https://www.courts.state.co.us/userfiles/file/Media/COVID/4_16_20%20Chief%20Justice%20Order%20Regarding%20Court%20Operations.pdf) [<https://perma.cc/SKD7-UKRM>]; SUP. CT. COLO., UPDATED ORDER REGARDING COVID-19 AND OPERATION OF COLORADO STATE COURTS (2020), [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/01st\\_Judicial\\_District/Chief%20Justice%20Operations%20Order%20May%205.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/01st_Judicial_District/Chief%20Justice%20Operations%20Order%20May%205.pdf) [<https://perma.cc/JSG7-Q8BF>]; SUP. CT. COLO., UPDATED ORDER REGARDING COVID-19 AND OPERATION OF COLORADO STATE COURTS (2020), <https://www.courts.state.co.us/userfiles/file/Media/COVID/Chief%20Justice%20Operations%20Order%20June%2015.pdf> [<https://perma.cc/N85R-LDS4>]; SUP. CT. COLO., UPDATED ORDER REGARDING COVID-19 AND OPERATION OF COLORADO STATE COURTS (2020), <https://www.courts.state.co.us/userfiles/file/Media/COVID/Chief%20Justice%20Operations%20Order%20July%2024.pdf> [<https://perma.cc/CLL4-DK88>].

107. GOVERNOR OF CONN., *supra* note 58.

process, court proceedings, and filings.<sup>108</sup> However, this order lacked any substantive guidance for the courts to implement technologically focused adjustments to their civil procedure.<sup>109</sup> Connecticut's first inkling of adjustments happened on April 14, 2020, when the Chief Court Administrator, Patrick Carroll III, released a statement that focused on increasing the volume of court work through technological initiatives.<sup>110</sup> Additional guidance was provided by the judicial branch on May 7, 2020.<sup>111</sup> Connecticut falls into category V0.

#### *Delaware*

Delaware's first judicial order issued an open-ended request for their trial courts "to utilize audiovisual devices to conduct proceedings."<sup>112</sup> A subsequent judicial order broadened the scope of technological adjustments to include email filing and telephonic arguments and hearings.<sup>113</sup> Delaware falls into category R2.

#### *Florida*

Prior to the United States issuance of a state of emergency, but after the Florida declaration of a state of emergency, the Supreme Court of Florida issued an open-ended administrative order directing all chief judges at the district and circuit court levels to take mitigating measures to address the effects of COVID-19.<sup>114</sup> Included in these measures was the power to use electronic means to conduct court business to the extent consistent with law.<sup>115</sup> Florida implemented a judicial task force, the Court Emergency Management Group, that advised the chief justice on COVID-19 adjustment.<sup>116</sup> Florida falls into category L1.

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108. *Id.*

109. *Id.*

110. CHIEF COURT ADMINISTRATOR, *supra* note 63.

111. JUD. BRANCH EXTERNAL AFFAIRS DIV., JUDICIAL BRANCH CONTINUES TO EXPAND TYPES OF CASES HANDLED REMOTELY (2020), <https://jud.ct.gov/HomePDFs/RemotelyHandledCases.pdf> [<https://perma.cc/DN8D-8AE3>].

112. SUP. CT. DEL., *supra* note 68.

113. SUP. CT. DEL., Administrative Order No. 3, 2 (2020), <https://courts.delaware.gov/forms/download.aspx?id=120578> [<https://perma.cc/D4LH-8HLN>].

114. SUP. CT. FLA., *supra* note 60.

115. *Id.* at 3.

116. *Id.*

### *Georgia*

Georgia implemented its first statewide judicial emergency order for a period of one month and included limited flexibility for its courts to implement civil procedure technological adjustments.<sup>117</sup> This order specifically referenced court proceedings and videoconferencing where possible.<sup>118</sup> Even though Georgia continuously renewed its judicial emergency order, its orders only vaguely added more freedom to the lower courts.<sup>119</sup> Georgia falls into category R3.

### *Hawaii*

The Supreme Court of Hawaii issued an open-ended order requesting that each of its circuit chief judges devise a court-specific plan to reduce in-court appearances.<sup>120</sup> This order vested the decision process onto these circuits to “remotely conduct[] proceedings; adjust[] the form, venue, and frequency of proceedings; or otherwise modify operations.”<sup>121</sup> Throughout the month of April 2020, Hawaii approved email filing for family courts,<sup>122</sup> created a Committee on Operational Solutions to accelerate court capacity,<sup>123</sup> and extended the amount of procedures to be conducted remotely.<sup>124</sup> Hawaii falls into category L1.

117. SUP. CT. GA., ORDER DECLARING STATEWIDE JUDICIAL EMERGENCY 2 (2020), <https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Melton-amended-Statewide-Jud-Emergency-order.pdf> [<https://perma.cc/78Y2-VRXK>].

118. *Id.*

119. SUP. CT. GA., SECOND ORDER EXTENDING DECLARATION OF STATEWIDE JUDICIAL EMERGENCY 3 (2020), [https://www.gasupreme.us/wp-content/uploads/2020/05/Second-Order-Extending-Declaration-of-Statewide-Judicial-Emergency\\_as-issued.pdf](https://www.gasupreme.us/wp-content/uploads/2020/05/Second-Order-Extending-Declaration-of-Statewide-Judicial-Emergency_as-issued.pdf) [<https://perma.cc/8XWV-BNQW>]; SUP. CT. GA., THIRD ORDER EXTENDING DECLARATION OF STATEWIDE JUDICIAL EMERGENCY 5–6 (2020), [https://www.gasupreme.us/wp-content/uploads/2020/06/THIRD\\_ORDER\\_EXTENDING\\_DECLARATION\\_OF\\_STATEWIDE\\_JUDICIAL\\_EMERGENCY\\_AS\\_ISSUED.pdf](https://www.gasupreme.us/wp-content/uploads/2020/06/THIRD_ORDER_EXTENDING_DECLARATION_OF_STATEWIDE_JUDICIAL_EMERGENCY_AS_ISSUED.pdf) [<https://perma.cc/7GY8-KAZS>].

120. SUP. CT. HAW., IN THE MATTER OF THE JUDICIARY’S RESPONSE TO THE COVID-19 OUTBREAK 2 (2020), [https://www.courts.state.hi.us/wp-content/uploads/2020/03/031619\\_scmf-20-152\\_In\\_Re\\_COVID-19.pdf](https://www.courts.state.hi.us/wp-content/uploads/2020/03/031619_scmf-20-152_In_Re_COVID-19.pdf) [<https://perma.cc/VA4K-C82P>].

121. *Id.*

122. SUP. CT. HAW., IN THE MATTER OF THE JUDICIARY’S RESPONSE TO THE COVID-19 OUTBREAK, SCMF-20-0000152 (2020), [https://www.courts.state.hi.us/wp-content/uploads/2020/04/scmf-20-152-filed-order\\_1\\_04092020.pdf](https://www.courts.state.hi.us/wp-content/uploads/2020/04/scmf-20-152-filed-order_1_04092020.pdf) [<https://perma.cc/7GSU-CDNR>].

123. SUP. CT. HAW., ORDER REGARDING THE COMMITTEE ON OPERATIONAL SOLUTIONS, SCMF-20-0000152 (2020), [https://www.courts.state.hi.us/wp-content/uploads/2020/04/041720\\_scmf-20-152\\_InReCOVID-19\\_ORD-Com-on-Op-Solutions.pdf](https://www.courts.state.hi.us/wp-content/uploads/2020/04/041720_scmf-20-152_InReCOVID-19_ORD-Com-on-Op-Solutions.pdf) [<https://perma.cc/JE9G-BJ82>].

124. SUP. CT. HAW., ORDER REGARDING JUDICIARY OPERATIONS, SCMF-20-0000152 3 (2020), <https://www.courts.state.hi.us/wp-content/uploads/2020/04/scmf-20-152-In-Re-COVID-19-Outbreak-4-27-order.pdf> [<https://perma.cc/XUJ6-KQW3>].

*Idaho*

The Supreme Court of Idaho first implemented a short-term judicial order that allowed their lower court proceeding judges the ability to conduct proceedings through telephonic or video means as long as they could adequately be recorded.<sup>125</sup> Shortly after this order, each district implemented their own piecemeal administrative orders to address technological adjustments to their civil procedure.<sup>126</sup> However, within two weeks of its first order, the Supreme Court issued a new open-ended emergency order that superseded the administrative orders entered by Idaho's administrative district judges.<sup>127</sup> This new order provided new guidance for lower courts to implement adjustments, albeit with limited breadth.<sup>128</sup> Idaho falls into category L0.

*Illinois*

The Supreme Court of Illinois leaned heavily on its lower courts to implement COVID-19 adjustments.<sup>129</sup> Each court was vested the power to implement its own orders in line with each appellate and circuit court's Emergency Preparedness Continuity of Operations Plan.<sup>130</sup> This open-ended order provided some guidance for the lower courts to implement technological adjustments, specifically remote hearings.<sup>131</sup> Further, the order essentially included an open-ended anti-impediment clause.<sup>132</sup> Illinois falls into category L3.

*Indiana*

Similar to Illinois, Indiana also directed its lower courts to implement orders in line with lower-level Continuity of Operations Plans.<sup>133</sup> While this first open-ended judicial order had limited language regarding how the courts can implement technological adjustments within their civil procedure, the

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125. IDAHO SUPREME COURT RESPONSE, *supra* note 71.

126. EMERGENCY REDUCTION IN COURT SERVICES, *supra* note 71.

127. *Id.*

128. *Id.*

129. SUP. CT. ILL., ILLINOIS COURT RESPONSE TO COVID-19 EMERGENCY, M.R. 30370 (2020), <https://courts.illinois.gov/SupremeCourt/Announce/2020/031720-3.pdf> [https://perma.cc/5Z2N-RARG].

130. *Id.*

131. *Id.*

132. *Id.*

133. SUP. CT. IND., ADMINISTRATIVE RULE 17 EMERGENCY RELIEF FOR INDIANA TRIAL COURTS RELATING TO THE 2019 NOVEL CORONAVIRUS (COVID-19), S.C. CASE NO. 20S-CB-00123 (2020), <https://www.in.gov/courts/files/order-other-2020-20S-CB-123.pdf> [https://perma.cc/5532-2P4W].

supreme court subsequently issued orders that allowed remote notaries,<sup>134</sup> remote signing of wills and other estate-planning documents,<sup>135</sup> filing electronically within family court,<sup>136</sup> and relaxed hour requirements for judicial education.<sup>137</sup> Indiana falls into category L1.

### *Iowa*

Throughout the month of March 2020, Iowa's Supreme Court issued a total of seven statewide, open-ended judicial supervisory orders, five of which gradually implement new technology-focused adjustments within its court's civil procedure.<sup>138</sup> Each of these orders had an anti-impediment clause that only covered the provisions within each specific order.<sup>139</sup> On April 2, 2020, the court issued a replacement statewide supervisory order that included a broad list of technology focused adjustments all within a singular order.<sup>140</sup> While broad, the supreme court did not provide each court the open-ended ability to

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134. SUP. CT. IND., PROCEDURES FOR THE ADMINISTERING OF OATHS VIA REMOTE AUDIO-VIDEO COMMUNICATION EQUIPMENT RELATING TO THE 2019 NOVEL CORONAVIRUS (COVID-19), S.C. CASE NO. 20S-CB-00236 (2020), <https://www.in.gov/judiciary/files/order-other-2020-20S-ms-236.pdf> [<https://perma.cc/84UT-QSQJ>].

135. *Coronavirus Update: Indiana Supreme Court Issues 5 Order Giving Flexibility*, THE INDIANA LAWYER (Apr. 1, 2020), <https://www.theindianalawyer.com/articles/coronavirus-update-indiana-state-courts-postpone-travel> [<https://perma.cc/FTP4-C9F5>].

136. SUP. CT. IND., CUSTODY, PARENTING TIME, AND CHILD, SUPPORT DURING THE 2019 NOVEL CORONAVIRUS (COVID-19), S.C. CASE NO. 20S-CB-00238 (2020), <https://www.in.gov/judiciary/files/order-other-2020-20S-ms-238.pdf> [<https://perma.cc/A6RH-SN6J>].

137. SUP. CT. IND., CUSTODY, WAIVER OF LIMITATIONS ON DISTANCE EDUCATION COURSES FOR ATTORNEYS AND JUDGES, S.C. CASE NO. 20S-CB-00239 (2020), <https://www.in.gov/judiciary/files/order-other-2020-20S-ms-239.pdf> [<https://perma.cc/9WP5-U2AB>].

138. SUP. CT. IND., PREPARATION FOR CORONAVIRUS/COVID-19 IMPACT ON COURT SERVICES (2020), [https://www.iowacourts.gov/static/media/cms/031220\\_COVID19\\_Order\\_1F51B086A3C5F.pdf](https://www.iowacourts.gov/static/media/cms/031220_COVID19_Order_1F51B086A3C5F.pdf) [<https://perma.cc/LKG9-3A6L>]; SUP. CT. IOWA, PREPARATION FOR CORONAVIRUS/COVID-19 IMPACT ON COURT SERVICES (2020), [https://www.iowacourts.gov/static/media/cms/031320\\_COVID\\_19\\_Ord\\_JCS\\_5D5C56E7FA424.pdf](https://www.iowacourts.gov/static/media/cms/031320_COVID_19_Ord_JCS_5D5C56E7FA424.pdf) [<https://perma.cc/3P7F-YLQJ>]; SUP. CT. IOWA, ONGOING PREPARATION FOR CORONAVIRUS/COVID-19 IMPACT ON COURT SERVICES (2020), <https://www.iowacourts.gov/collections/470/files/1049/embedDocument/> [<https://perma.cc/5QMS-TYKH>]; SUP. CT. IOWA, ONGOING PROVISIONS FOR CORONAVIRUS/COVID-19 IMPACT ON COURT SERVICES (2020), <https://www.iowacourts.gov/collections/476/files/1055/embedDocument/> [<https://perma.cc/9JYC-QGUK>]; SUP. CT. IOWA, ONGOING PROVISIONS FOR CORONAVIRUS/COVID-19 IMPACT ON COURT SERVICES (2020), <https://www.iowacourts.gov/collections/480/files/1059/embedDocument/> [<https://perma.cc/U6C9-H2UL>].

139. *Id.*

140. SUP. CT. IOWA, ONGOING PROVISIONS FOR CORONAVIRUS/COVID-19 IMPACT ON COURT SERVICES 11 (2020), <https://www.iowacourts.gov/collections/485/files/1076/embedDocument/> [<https://perma.cc/G3UX-J7SA>].

implement the breadth of advancement as it saw fit.<sup>141</sup> Iowa falls into category R2.

### *Kansas*

The Kansas Supreme Court directed its district courts to implement adjustments in line with Continuity of Operations Plans.<sup>142</sup> Shortly after, the Kansas Supreme Court issued another statewide, open-ended order that provided bare minimum requirements each lower court had to abide by.<sup>143</sup> Both orders were rather vague as to what technology adjustments could be implemented, but they essentially left the question to the state lower courts and provided limited freedom in terms of breadth of advancement.<sup>144</sup> Kansas falls into category L1.

### *Kentucky*

Kentucky's first action consisted of a statewide, short-term judicial response order that encouraged the use of telephonic or video technology for hearings and recommended e-filing.<sup>145</sup> It was subsequently amended to mandate the usage of telephonic or video technology for all necessary hearings.<sup>146</sup> The subsequent statewide orders provided little additional guidance in terms of what technological adjustments could be made.<sup>147</sup> Further,

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141. *Id.*

142. SUP. CT. KAN., KANSAS JUDICIAL BRANCH POLICY ON PANDEMIC DISEASE, 2020-PR-013 2 (2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-013.pdf> [https://perma.cc/JY6B-GHDL].

143. SUP. CT. KAN., ORDER IMPOSING STATEWIDE JUDICIARY RESTRICTED OPERATIONS DUE TO COVID-19 EMERGENCY, 2020-PR-013 1 (2020), <https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-016.pdf> [https://perma.cc/77KC-JLTM].

144. *Id.* at 4; SUP. CT. KAN., *supra* note 142.

145. SUP. CT. KY., KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY, 2020-08 (2020), <https://kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/202008.pdf> [https://perma.cc/GB9B-VZH4].

146. SUP. CT. KY., KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY, 2020-10 (2020), <https://kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/202010.pdf> [https://perma.cc/8FSZ-XA5Y].

147. *See generally* SUP. CT. KY., KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY, 2020-13 (2020), <https://kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/202013.pdf> [https://perma.cc/45Y8-XGPF] [hereinafter Order 2020-13]; SUP. CT. COLO., KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY, 2020-16 (2020), <https://kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/202016.pdf> [https://perma.cc/WE5A-HNEA] [hereinafter Order 2020-16]; SUP. CT. KY., KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY, 2020-



the short lengths of the orders, and the changing COVID-19 landscape, led to replacement orders in nearly weekly increments through the month of April 2020.<sup>148</sup> Kentucky falls into category R3.

### *Louisiana*

Prior to the United States' declaration of a national emergency, but after Louisiana's own declaration of public health emergency, the Louisiana chief justice issued a letter imploring the lower courts to expand the use of audio and video conferencing across a handful of procedural setting.<sup>149</sup> Shortly after this guidance, the state issued its first statewide, open-ended judicial order that allowed all judges and court clerks the ability to utilize "available technologies" as much as possible to limit in-person courtroom contact.<sup>150</sup> One point of difference, from the majority of other states within Louisiana's category, is that Louisiana lacked an anti-impediment clause within their emergency orders.<sup>151</sup> Louisiana falls into category R0.

### *Maine*

Maine's original approach was to implement an individual statewide judicial order that covered specific aspects of technological adjustments.<sup>152</sup> Shortly after this first order, the state issued a judicial order that was specific to "expanding the use of video and telephone for certain contacts with parties to some litigation."<sup>153</sup> However, by the end of March, Maine consolidated and superseded this order and provided additional information within pandemic

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22 (2020), <https://kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/202022.pdf> [https://perma.cc/M4Y9-9N9Q] [hereinafter Order 2020-22]; SUP. CT. KY., KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY, 2020-28 (2020), <https://kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/202028.pdf> [https://perma.cc/4WLH-FGRY] [hereinafter Order 2020-28].

148. *Id.*

149. SUP. CT. LA., *Letter from Chief Justice Johnson to Louisiana Chief Judges* 2 (2020), <https://www.lasc.org/COVID19/2020-03-13-LASC-ChiefLetter.pdf> [https://perma.cc/Q9BT-PNAC].

150. SUP. CT. LA., *supra* note 81.

151. *Id.*; SUP. CT. LA., ORDER (2020), [https://www.lasc.org/COVID19/orders/2020-03-20\\_LASC\\_EXTENSION.pdf](https://www.lasc.org/COVID19/orders/2020-03-20_LASC_EXTENSION.pdf) [https://perma.cc/AE9P-Q93S].

152. ME. SUPREME JUD. CT., REVISED EMERGENCY ORDER AND NOTICE FROM THE MAINE SUPREME JUDICIAL COURT COURTHOUSE SAFETY AND CORONAVIRUS (COVID-19) (2020), <https://www.courts.maine.gov/covid19/order-march13.shtml> [https://perma.cc/67Z5-HDDA].

153. Luke Rioux, *Main Federal Court Delays Criminal Cases for COVID-19*, ATTORNEY LUKE S. RIOUX (Mar. 24, 2020), <http://lukerrioux.com/category/court-procedure/> [https://perma.cc/EY55-YA8U].

response orders.<sup>154</sup> Within these orders, Maine implemented statewide, open-ended, technologically focused adjustments centered on remote audio-video communication for depositions, administering of oaths,<sup>155</sup> and email filing.<sup>156</sup> Maine falls into category R2.

### *Maryland*

Maryland is unique in that two years prior to the COVID-19 pandemic it implemented a judicial administrative order on “Remote Electronic Participation in Judicial Proceedings” which the judiciary pointed courts to for guidance.<sup>157</sup> This June 2018 order had already codified many of the technological adjustments needed during COVID-19.<sup>158</sup> The purpose of the order, and the subsequent chapter within the Maryland rules, was to “take advantage of the technology that allows for reliable interactive communications to provide more efficient access to the courts without sacrificing the required fairness in judicial proceedings in circuit court civil proceedings.”<sup>159</sup> This previous order quickly allowed the state to implement a statewide, open-ended order that provided structured flexibility for their lower courts.<sup>160</sup> Maryland falls into category R2.

### *Massachusetts*

The Supreme Judicial Court of Massachusetts first issued a short-term order that directed some statewide adjustments but ultimately requested each trial court submit their own standing orders for further measures to address COVID-

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154. STATE OF ME. JUD. BRANCH, PANDEMIC MANAGEMENT ORDER FROM THE MAINE SUPREME JUDICIAL COURT CONSOLIDATING, RATIFYING, AND SUPERSEDING THE PREVIOUS ORDERS CONCERNING, PMO-SJC-2 1 (2020), <http://www.cleaves.org/PMOSJC2.1.pdf> [<https://perma.cc/CLD6-VGFK>].

155. *Id.* at 1–2.

156. STATE OF ME. JUD. BRANCH, EMERGENCY RULE FROM THE SUPREME JUDICIAL COURT FOR THE FILING OF DOCUMENTS IN PRIORITY CASE TYPES, PMO-SJC-3 1 (2020), <http://www.cleaves.org/PMOSJC3.1.pdf> [<https://perma.cc/V493-HK4Z>].

157. CT. OF APPEALS OF MD., ADMINISTRATIVE ORDER ON STATEWIDE CLOSING OF THE COURTS TO THE PUBLIC 2 (2020), <https://www.courts.state.md.us/sites/default/files/admin-orders/20200313statewideclosingofcourts.pdf> [<https://perma.cc/TK8U-G54N>].

158. CT. OF APPEALS OF MD., ADMINISTRATIVE ORDER ON THE IMPLEMENTATION OF REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS 2–3 (2020), <https://mdcourts.gov/sites/default/files/admin-orders/20180618remoteparticipationjudicialproceedings.pdf> [<https://perma.cc/233T-MKWV>].

159. *Id.* at 1.

160. *Id.*

19.<sup>161</sup> Over the back half of March, the judicial branch issued additional short-term orders that provided little flexibility for their lower courts to implement some forms of technological adjustments.<sup>162</sup> However, in early April 2020 the judiciary approved the usage of electronic signatures in a wide array of courts and case types.<sup>163</sup> Massachusetts falls into category R3.

### *Michigan*

Michigan implemented a judicial order granting each trial court judge the power to implement emergency court operation measures in hopes of mitigating transmission of COVID-19.<sup>164</sup> The order specified which indicated emergency measures were permitted.<sup>165</sup> These measures included video conferencing with consent, the maximization of the use of technology for remote participation, and the utilization of electronic filing.<sup>166</sup> Shortly after this order, another order was implemented that further broadened the utilization of video technology or other remote participation tools within differing proceedings.<sup>167</sup> Michigan falls into category L0.

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161. COMMONWEALTH OF MASS. SUPREME JUD. CT., ORDER REGARDING EMPANELMENT OF JURIES, OE-144 (2020), <https://www.mass.gov/doc/repealed-sjc-order-regarding-empanelment-of-juries-march-13-2020/download> [<https://perma.cc/GN2M-VKW3>].

162. COMMONWEALTH OF MASS. SUPREME JUD. CT., ORDER REGARDING COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES CREATED BY THE COVID-19 (CORONAVIRUS) PANDEMIC, OE-144 1 (2020), <https://www.mass.gov/doc/repealed-sjc-order-regarding-court-operations-under-the-exigent-circumstances-created-by-the/download> [<https://perma.cc/K5FP-NRSS>]; COMMONWEALTH OF MASS. SUPREME JUD. CT., ORDER LIMITING IN-PERSON APPEARANCES IN STATE COURTHOUSES TO EMERGENCY MATTERS THAT CANNOT BE RESOLVED THROUGH A VIDEO CONFERENCE OR TELEPHONIC HEARING, OE-144 (2020), <https://www.mass.gov/doc/repealed-sjc-order-limiting-in-person-appearances-in-state-courthouses-to-emergency-matters/download> [<https://perma.cc/RR6N-K6HG>].

163. COMMONWEALTH OF MASS. SUPREME JUD. CT., ORDER AUTHORIZING USE OF ELECTRONIC SIGNATURES BY ATTORNEYS AND SELF-REPRESENTED PARTIES, OE-144 1 (2020), <https://www.mass.gov/doc/repealed-sjc-order-authorizing-use-of-electronic-signatures-by-attorneys-and-self-represented/download> [<https://perma.cc/DC4J-YNFP>].

164. SUP. CT. MICH., EMERGENCY PROCEDURES IN COURT FACILITIES, ADMIN. ORDER No. 2020-1 1 (2020), [https://www.courts.michigan.gov/4a72aa/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08\\_2020-03-15\\_formattedorder\\_ao2020-1.pdf](https://www.courts.michigan.gov/4a72aa/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2020-03-15_formattedorder_ao2020-1.pdf) [<https://perma.cc/X8WU-G4NB>].

165. *Id.*

166. *Id.*

167. SUP. CT. MICH., *supra* note 78.

*Minnesota*

Minnesota had one of the later judicial orders implementing adjustments in response to COVID-19.<sup>168</sup> However, the supreme court's short-term statewide order allowed the appellate courts the ability to implement procedures to conduct remote hearings; mandated the usage of video conferencing technology for non-mandatory proceedings, while allowing it for mandatory proceedings; and allowed for e-mail filing.<sup>169</sup> Minnesota falls into category R3.

*Mississippi*

Mississippi's first judicial administrative order, in response to the declaration of national emergency, essentially provided full discretion to the lower court proceeding judges to implement responses to COVID-19.<sup>170</sup> This short-term order was amended and modified multiple times through March and April 2020.<sup>171</sup> The subsequent orders pushed for utilization of available technologies already codified within the state's civil procedure code.<sup>172</sup> Further, those orders approved rule changes and policy adjustments that

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168. SUP. CT. MINN., CONTINUING OPERATIONS OF THE COURTS OF THE STATE OF MINNESOTA UNDER A STATEWIDE PEACETIME DECLARATION OF EMERGENCY (2020), <https://mncourts.gov/mncourtsgov/media/CIOMediaLibrary/News%20and%20Public%20Notices/Orders/Order-Continuing-Operations-of-the-Courts-of-the-State-of-Minnesota-Under-a-Statewide-Peacetime-Declaration-of-Emergency.pdf> [<https://perma.cc/5SVR-RZK2>].

169. *Id.*

170. SUP. CT. MISS., EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19): EMERGENCY ADMINISTRATIVE ORDER, SERIAL: 230781 (2020), [https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700\\_490703.pdf&c=91465&a=N&s=2](https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700_490703.pdf&c=91465&a=N&s=2) [<https://perma.cc/4PNT-YQ62>].

171. SUP. CT. MISS., EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19): EMERGENCY ADMINISTRATIVE ORDER-2, SERIAL: 230786 (2020), [https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700\\_490712.pdf&c=91465&a=N&s=2](https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700_490712.pdf&c=91465&a=N&s=2) [<https://perma.cc/M6PQ-2H4G>]; SUP. CT. MISS., EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19): EMERGENCY ADMINISTRATIVE ORDER-4, SERIAL: 230902 (2020), [https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700\\_491292.pdf&c=91465&a=N&s=2](https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700_491292.pdf&c=91465&a=N&s=2) [<https://perma.cc/LM2A-WVYT>]; SUP. CT. MISS., EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19): EMERGENCY ADMINISTRATIVE ORDER-5, SERIAL: 230963 (2020), [https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700\\_491588.pdf&c=91465&a=N&s=2](https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700_491588.pdf&c=91465&a=N&s=2) [<https://perma.cc/ZD9Q-LJCB>].

172. SUP. CT. MISS., EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19): EMERGENCY ADMINISTRATIVE ORDER-5, SERIAL: 230963 (2020), [https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700\\_491588.pdf&c=91465&a=N&s=2](https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700_491588.pdf&c=91465&a=N&s=2) [<https://perma.cc/4F3H-DKP5>]; SUP. CT. MISS., EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19): EMERGENCY ADMINISTRATIVE ORDER-6, SERIAL: 230972 (2020), [https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700\\_491602.pdf&c=91465&a=N&s=2](https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700_491602.pdf&c=91465&a=N&s=2) [<https://perma.cc/7A5W-XNF2>].

gradually increased the technology adjustments.<sup>173</sup> Mississippi falls into category L0.

#### *Missouri*

The Supreme Court of Missouri responded to COVID-19 by issuing a statewide, short-term order that, among other things, allowed judges and court clerks to utilize all available technologies to further limit in-person courtroom appearances.<sup>174</sup> This order also included a short-term anti-impediment clause to suspend any local criminal rules that would impede the implementation of such technologies.<sup>175</sup> Missouri falls into category R1.

#### *Montana*

Montana's first response to COVID-19 was to issue an open-ended statewide memorandum that encouraged courts to use video-conferencing and telephonic conferencing as much as possible.<sup>176</sup> While not a court order, this memo was followed by many Montana courts.<sup>177</sup> However, in late March the Supreme Court of Montana codified their remote procedure requests via an open-ended statewide judicial order.<sup>178</sup> Montana falls into category R2.

#### *Nebraska*

At the Nebraska Supreme Court level, its first two judicial orders in the mid weeks of March 2020 lacked any guidance for their local courts to adopt technologically focused alternatives within their civil procedure.<sup>179</sup> For the most part, the judicial response was handled by the individual judicial districts implementing their own orders.<sup>180</sup> The Supreme Court issued their first technology specific statewide open-ended order in late April 2020 that focused

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173. *Id.*

174. SUP. CT. MO., ORDER DATED MARCH 16, 2020, RE: RESPONSE TO THE CORONAVIRUS DISEASE (COVID-19) PANDEMIC (2020), <https://www.courts.mo.gov/page.jsp?id=151973> <https://perma.cc/K97U-HA8T>.

175. *Id.*

176. SUP. CT. MONT., *E-mail dated March 13, 2020*, 3 (2020), <https://courts.mt.gov/Portals/189/docs/COVID-19%203-13.pdf> [<https://perma.cc/XRX2-PTEE>].

177. SUP. CT. MONT., THE STATEWIDE RESPONSE BY MONTANA STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY 1 (2020), <https://courts.mt.gov/Portals/189/virus/shelter.pdf> [<https://perma.cc/VT5F-TZGZ>].

178. *Id.* at 2.

179. March 20 Order, *supra* note 82.

180. See April 6 Order, *supra* note 82.

on electronic filing avenues for pro se litigants.<sup>181</sup> Nebraska falls into category V0.

#### *Nevada*

Directly after the Nevada Governor's declaration of emergency, Nevada's district courts entered emergency administrative orders to mitigate the risk of COVID-19.<sup>182</sup> This ministerial power was exercised in consultation with the chief justice of the Nevada Supreme Court.<sup>183</sup> These individual orders have minor differences but are all considered short-term, as they must be reviewed within 30 days of implementation.<sup>184</sup> In mid-April, the supreme court issued additional guidance to the lower courts in the form of an order that laid out the possible provisions to update each district's individual orders.<sup>185</sup> This guidance provided a limited structure of technology adjustments to implement in response to COVID-19.<sup>186</sup> Nevada falls into category L0.

#### *New Hampshire*

Through a short-term judicial order, the Supreme Court of New Hampshire authorized all judges and court clerks to utilize all available technologies to limit in-person courtroom contact.<sup>187</sup> Further, this short-term order included an anti-impediment clause that was valid for the duration of the order.<sup>188</sup> New Hampshire falls into category L2.

#### *New Jersey*

New Jersey was an early adapter that tried to get ahead of the ramifications associated with COVID-19. On March 9, 2020, New Jersey's chief justice issued a notice that mentioned the state's plans to conduct virtual and telephonic court proceedings across most of their state courts.<sup>189</sup> The court's goal was to "enable the New Jersey courts to continue to serve the public in an appropriate

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181. SUP. CT. NEB., *supra* note 72.

182. SUP. CT. NEV., ORDER CONCERNING ONGOING ADMINISTRATION OF DISTRICT COURT PROCEEDINGS DURING COVID-19 EMERGENCY, AO-0013 2 (2020), <https://www.nvbar.org/wp-content/uploads/NSC-AO-0013.pdf> [<https://perma.cc/8L8X-UCY3>].

183. *Id.*

184. *Id.*

185. *Id.* at 3.

186. *Id.* at 4.

187. SUP. CT. N.H., ORDER SUSPENDING IN-PERSON COURT PROCEEDINGS, 2 (2020), <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-08/3-16-20-order.pdf> [<https://perma.cc/U2SV-WJTZ>].

188. *Id.*

189. N.J. CTS., *supra* note 7.

manner during a still developing public health situation.”<sup>190</sup> Through two additional notices, the state’s supreme court provided additional guidance and procedure adjustments to further implement technological changes across the state for an open period of duration.<sup>191</sup> New Jersey falls into category R2.

#### *New Mexico*

The Supreme Court of New Mexico issued an open-ended order in response to COVID-19 that allowed for all judges to have discretion to authorize telephonic or audio-visual attendance for court appearances.<sup>192</sup> Further, the order allowed all courts the ability to adopt local procedures to accept email filing from self-represented litigants and some email filing for attorneys who are not eligible for the state’s electronic filing system.<sup>193</sup> This being said, the supreme court quickly amended this order “to authorize court appearances by remote methods to [the] fullest extent possible” and required all judges to use remote telephonic or audio-visual technology for court appearances unless in situations of emergency.<sup>194</sup> New Mexico falls into category L3.

#### *New York*

New York’s early administrative orders were rather limited on technology focused adjustments for COVID-19. The first adjustment focused on arguments for motions in civil matters conducted by Skype or other remote means whenever possible.<sup>195</sup> Next, the chief administrative judge of the courts ordered county clerks to no longer accept paper filings.<sup>196</sup> However, some

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190. *Id.*

191. N.J. CTS., COVID-19 CORONAVIRUS—STATUS OF COURT OPERATIONS: IMMEDIATE AND UPCOMING PLAN (2020), <https://www.njcourts.gov/notices/2020/n200312d.pdf?c=z3W> [<https://perma.cc/24XJ-8UME>].

192. SUP. CT. N.M., PRECAUTIONARY MEASURES FOR COURT OPERATIONS IN THE NEW MEXICO JUDICIARY DURING THE COVID-19 PUBLIC HEALTH EMERGENCY, NO. 20-8500-002 4 (2020), [https://www.nmcourts.gov/wp-content/uploads/2020/12/Order-No\\_-20-8500-002-Precautionary-Measures-for-NM-Court-Operations-During-COVID-19-Public-Health-Emergency-3-17-20-1.pdf](https://www.nmcourts.gov/wp-content/uploads/2020/12/Order-No_-20-8500-002-Precautionary-Measures-for-NM-Court-Operations-During-COVID-19-Public-Health-Emergency-3-17-20-1.pdf) [<https://perma.cc/N6CB-5QUW>].

193. *Id.* at 5.

194. SUP. CT. N.M., ADDITIONAL PRECAUTIONARY MEASURES FOR COURT OPERATIONS IN THE NEW MEXICO JUDICIARY DURING THE COVID-19 PUBLIC HEALTH EMERGENCY, NO. 20-8500-006 2 (2020), [https://www.nmcourts.gov/wp-content/uploads/2020/12/Order-No\\_-20-8500-006-Additional-Precautionary-Measures-for-Court-Operations-3-23-20-Amending-Order-No\\_-20-8200-002-2.pdf](https://www.nmcourts.gov/wp-content/uploads/2020/12/Order-No_-20-8500-006-Additional-Precautionary-Measures-for-Court-Operations-3-23-20-Amending-Order-No_-20-8200-002-2.pdf) [<https://perma.cc/DNX5-Z5W3>].

195. CHIEF ADMIN. JUDGE CTS., ADMINISTRATIVE ORDER, AO/68/20 (2020), <http://www.nycourts.gov/whatsnew/pdf/AO-68-20.pdf> [<https://perma.cc/4VXA-2XD5>].

196. CHIEF ADMIN. JUDGE CTS., ADMINISTRATIVE ORDER, AO/78/20 (2020), <http://www.nycourts.gov/whatsnew/pdf/AO-78-20.pdf> [<https://perma.cc/GWY2-JP26>].

orders can be interpreted as limiting judicial access and technological implementation.<sup>197</sup> Specifically, video teleconferencing conducted by courts were exclusively limited to Skype for Business and new filings for nonessential matters were stopped for a period of time.<sup>198</sup> As the pandemic continued the state continued to codify limited technological adjustments through state wide open-ended administrative orders.<sup>199</sup> New York falls into category R2.

### North Carolina

After the state declaration of emergency, North Carolina executed an order by the chief justice of the supreme court only allowing proceedings to be conducted remotely for a 30-day period.<sup>200</sup> In a subsequent order, the chief justice allowed for all document types to be filed electronically in the appellate courts.<sup>201</sup> As a further step, the judicial branch allowed for email service of process to be conducted through a statewide, open-ended order.<sup>202</sup> Throughout the early stages of the pandemic, North Carolina responded through state wide

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197. CHIEF ADMIN. JUDGE CTS., ADMINISTRATIVE ORDER, AO/85/20 (2020), <http://www.nycourts.gov/whatsnew/pdf/AO-85-20.pdf> [<https://perma.cc/WF3X-KQJG>].

198. *Id.*

199. CHIEF ADMIN. JUDGE CTS., ADMINISTRATIVE ORDER, AO/86/20 (2020), <http://www.nycourts.gov/whatsnew/pdf/AO-86-20.pdf> [<https://perma.cc/4MVQ-RAAN>]; CHIEF ADMIN. JUDGE CTS., ADMINISTRATIVE ORDER, AO/87/20 (2020), <http://www.nycourts.gov/whatsnew/pdf/AO-87-20.pdf> [<https://perma.cc/G7TW-JNSM>]; CHIEF ADMIN. JUDGE CTS., ADMINISTRATIVE ORDER, AO/94/20 (2020), <http://www.nycourts.gov/whatsnew/pdf/AO-94-20.pdf> [<https://perma.cc/9QER-88WJ>]; N.Y. STATE UNIFIED CT. SYS., *Virtual Courts Expanded Beyond the Limited Category of Essential and Emergency Matters* (2020), [https://www.nycourts.gov/LegacyPDFS/press/PDFs/PR20\\_15virtualcourtstortsetc.pdf](https://www.nycourts.gov/LegacyPDFS/press/PDFs/PR20_15virtualcourtstortsetc.pdf) [<https://perma.cc/23TC-TXRU>].

200. SUP. CT. N.C., ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA EMERGENCY DIRECTIVE 1 AND 2 1 (2020), [https://www.nccourts.gov/assets/news-uploads/COVID-19-13-March-2020-7A-39%28b%29%282%29-Order\\_0.pdf?sCe0Me\\_YaLJBPjYl4doVvi4r\\_4Sm1Zbn=](https://www.nccourts.gov/assets/news-uploads/COVID-19-13-March-2020-7A-39%28b%29%282%29-Order_0.pdf?sCe0Me_YaLJBPjYl4doVvi4r_4Sm1Zbn=) [<https://perma.cc/Q3L6-XY7B>].

201. SUP. CT. N.C., ORDER IN RESPONSE TO THE COVID-19 OUTBREAK (2020), <https://www.nccourts.gov/assets/news-uploads/COVID-19%20Order%20-%20Appellate%20Courts%20%28Approved%2027%20March%202020%29.pdf?Usv1FrQQI0juvDuSL01phDeXNM1.yTkr> [<https://perma.cc/969S-PJ78>].

202. SUP. CT. N.C., ORDER OF THE CHIEF OF THE SUPREME COURT OF NORTH CAROLINA EMERGENCY DIRECTIVE 1-7 (2020), <https://www.nccourts.gov/assets/news-uploads/2%20April%202020%20-%207A-39%28b%29%282%29%20Order%20%28Final%29.pdf?UqRJH9wO2z3oEU4GW3Eg9rxRuFvTlixn> [<https://perma.cc/YG54-CK2W>].



judicial orders that covered a short period of time and provided limited breadth of technological adjustments.<sup>203</sup> North Carolina falls into category R3.

#### *North Dakota*

North Dakota's supreme court was a late adapter to the pandemic and submitted a handful of open-ended statewide judicial orders that allowed for audio or audiovisual technologies to be implemented in certain proceedings.<sup>204</sup> Other than that, the state took a rather hands-off approach when it came to implementing orders focused on technological adjustments. North Dakota falls into category R2.

#### *Ohio*

Ohio's chief justice took the early approach of sharing COVID-19 technological adjustment suggestions via email and also put the onus on proceeding judges and lower courts to create emergency plans and adjustments to respond to the pandemic.<sup>205</sup> In a subsequent administrative action, the chief justice approved for the electronic execution of appearances and service of process.<sup>206</sup> While the Ohio Supreme Court took a hands off approach, disseminating power to lower courts, their open ended guidance and orders gave the lower courts freedom to implement technologies as they saw fit. Chief Justice Maureen O'Connor said in one email that "[j]udges have told me that

203. See SUP. CT. N.C., *supra* note 200; SUP. CT. N.C., ORDER OF THE CHIEF JUSTICE OF THE SUPREME COURT OF NORTH CAROLINA (2020), <https://www.nccourts.gov/assets/news-uploads/2%20April%202020%20-%207A-39%28b%29%282%29%20Order%20%28Final%29.pdf?UqRJH9wO2z3oEU4GW3Eg9rxRuFvTlixn> [https://perma.cc/5LVH-GBMV].

204. N.D. SUP. CT., *Order 27. Emergency Suspension of Eviction Proceeding*, State of North Dakota Courts (2020), <https://www.ndcourts.gov/legal-resources/rules/ndsuptadminorder/27> [https://perma.cc/5CSZ-XNT7]; S.D. SUP. CT., *Order 28. Emergency Procedure in Interim Order Proceedings*, State of North Dakota Courts (2020), <https://www.ndcourts.gov/legal-resources/rules/ndsuptadminorder/28> [https://perma.cc/NHH5-SGWB]; N.D. SUP. CT., *Order 29. Emergency Procedure in Guardianship Proceedings*, State of North Dakota Courts (2020), <https://www.ndcourts.gov/legal-resources/rules/ndsuptadminorder/29> [https://perma.cc/GY3Q-D7WH]; N.D. SUP. CT., *Order 30. Emergency Permanency Hearing Procedure*, State of North Dakota Courts (2020), <https://www.ndcourts.gov/legal-resources/rules/ndsuptadminorder/30> [https://perma.cc/N4DA-8QW8].

205. SUP. CT. OHIO, *Letter to Ohio Judges Regarding Coronavirus Guidance* (2020), <http://www.supremecourt.ohio.gov/coronavirus/resources/ChiefCommunications/letterOhioJudges.pdf> [https://perma.cc/XZP9-NY5A].

206. SUP. CT. OHIO, TOLLING OF TIME REQUIREMENTS IMPOSED BY RULES PROMULGATED BY THE SUPREME COURT AND USE OF TECHNOLOGY, 2020-OHIO-1166, 3 (2020), <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-1166.pdf> [https://perma.cc/BCQ3-ZCA9].

the equipment has changed the way they can do business not just during this COVID-19 crisis but going forward when we return to ‘normal.’”<sup>207</sup> Ohio falls into category L3.

### *Oklahoma*

Oklahoma’s supreme court responded judicially to COVID-19 by implementing statewide, open-ended orders that provided limited freedom for courts to adjust technologically to the pandemic.<sup>208</sup> With this being said, it was ordered that “[s]ubject only to constitutional limitations, all deadlines and procedures . . . shall be suspended for 30 days from the date of this order [, March 16, 2020].”<sup>209</sup> This may work as an anti-impediment clause that could allow lower courts to implement additional technologically focused adjustments but it is rather ambiguous. Either way, Oklahoma falls into category R2.

### *Oregon*

Through both guidelines and judicial orders, Oregon’s chief justice provided avenues for how the lower courts could technologically adjust to the ramifications of COVID-19.<sup>210</sup> In her judicial order, Chief Justice Martha Walters executed short-term orders that provided guidance for proceeding judges to respond to COVID-19.<sup>211</sup> This guidance provided limited freedom in terms of breadth of technological adaption.<sup>212</sup> Oregon falls into category L0.

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207. E-mail from Chief Justice Maureen O’Connor (Tues. Apr. 28, 2020 6:00:14 PM), [http://www.supremecourt.ohio.gov/coronavirus/resources/ChiefCommunications/COVID-19UpdatedGuidance\\_042820.pdf](http://www.supremecourt.ohio.gov/coronavirus/resources/ChiefCommunications/COVID-19UpdatedGuidance_042820.pdf) [<https://perma.cc/Z6EH-4NXZ>].

208. SUP. CT. OKLA., FIRST EMERGENCY JOINT ORDER REGARDING THE COVID-19 STATE OF DISASTER, SCAD No. 2020-24 (2020), <https://www.ok.gov/wagonercounty/documents/Emergency%20Joint%20Order%20from%20Supreme%20Court.pdf> [<https://perma.cc/SU85-DJPF>] [hereinafter FIRST EMERGENCY JOINT ORDER]; SUP. CT. OKLA., SECOND EMERGENCY JOINT ORDER REGARDING THE COVID-19 STATE OF DISASTER, SCAD No. 2020-24 (2020), <https://law.justia.com/cases/oklahoma/supreme-court/2020/2020-ok-24.html> [<https://perma.cc/T7HX-ZCA4>].

209. FIRST EMERGENCY JOINT ORDER, *supra* note 208.

210. CHIEF JUST., *Oregon Chief Justice Issues Court Guidelines to Respond to COVID-19*, (2020), [https://www.courts.oregon.gov/news/Documents/Covid-19News\\_3\\_13\\_20.pdf](https://www.courts.oregon.gov/news/Documents/Covid-19News_3_13_20.pdf) [<https://perma.cc/9DN6-34A7>]; CHIEF JUST., *Chief Justice Order Restricts Court Hearings and Operations* (2020), [https://www.courts.oregon.gov/news/Lists/ArticleNews/Attachments/1176/acd3fb79befadf4982b20ceba127ffd0-2020-03-16\\_COVID-19\\_News.pdf](https://www.courts.oregon.gov/news/Lists/ArticleNews/Attachments/1176/acd3fb79befadf4982b20ceba127ffd0-2020-03-16_COVID-19_News.pdf) [<https://perma.cc/KN3R-KFNS>].

211. *Id.*

212. *Id.*

*Pennsylvania*

The Supreme Court of Pennsylvania issued a judicial order that vested power in their districts to take appropriate measures to safeguard the health and safety of their respective communities.<sup>213</sup> Within this order, enacted to cover a relatively short period of time, the court authorized the usage of advanced communication technology to conduct court proceedings.<sup>214</sup> Further, the judicial order provided a pathway for the presiding judges to request anti-impediment ruling to suspend or modify statewide court rules with proper justification.<sup>215</sup> Pennsylvania falls into category L0.

*Rhode Island*

Through a judicial news advisory<sup>216</sup> and a subsequent short-term statewide judicial executive order,<sup>217</sup> the chief justice of Rhode Island implemented parameters encouraging courts to utilize video conferencing tools whenever possible. Rhode Island's codified civil procedure rule adjustments, with a focus on technological implementation, was rather limited and centered on remote procedures.<sup>218</sup> Rhode Island falls into category R3.

*South Carolina*

A week prior to the start of emergency declarations, South Carolina's supreme court sent out an email that, among other things, mentioned that they were reviewing the South Carolina Judicial Branch's Business Continuity Plan which included pandemic preparation.<sup>219</sup> In their first memorandum after issuing a judicial emergency, the supreme court set out some broad guidelines and provided their district courts some leniency to implement technological responses to COVID-19.<sup>220</sup> Within this open-ended order, courts were directed

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213. SUP. CT. PA., *supra* note 74.

214. *Id.* at 2.

215. *Id.* at 2–3.

216. R.I. JUDICIARY, *News Advisory* (2020), <https://www.courts.ri.gov/PDF/Covid-19release031320.pdf> [<https://perma.cc/S543-55XR>].

217. SUP. CT. R.I., EXECUTIVE ORDER NO. 2020-04 (2020), <https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/20-04.pdf> [<https://perma.cc/G3B3-36R6>].

218. R.I. SUPER. CT. R. CIV. P. 30(b)(7) (2020).

219. SUP. CT. S.C., *Coronavirus (COVID-19) Preparation Memorandum*, SOUTH CAROLINA JUDICIAL BRANCH (2020), <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2450> [<https://perma.cc/CAM4-CQP3>].

220. SUP. CT. S.C., *Coronavirus*, SOUTH CAROLINA JUDICIAL BRANCH (2020), <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2460> [<https://perma.cc/4KZA-FDMQ>].

to hold hearings remotely by video to the greatest extent possible.<sup>221</sup> In early April 2020, the supreme court issued an order that provided their lower courts a litany of technological adjustment options.<sup>222</sup> This order included details regarding hearings via remote communication technology, remote administration of oaths, alternatives to court reporters within digital courtrooms, attorney to attorney email service of process, digital attorney signatures, and optional electronic filing methods.<sup>223</sup> The supreme court left it up to the lower courts to decide whether they should implement these adjustments.<sup>224</sup> South Carolina falls into category L1.

#### *South Dakota*

Within an open-ended order, the South Dakota Supreme Court granted the presiding judges of each lower judicial circuit the authority to enter their own set of orders to respond to COVID-19.<sup>225</sup> Within this authority, each presiding judge was provided the “authority to adopt, modify and suspend court rules and orders as warranted to address emergency conditions.”<sup>226</sup> In a subsequent order, the chief justice codified additional technologically focused options for their lower courts and implemented an anti-impediment clause until removed by further order.<sup>227</sup> South Dakota falls into category L3.

#### *Tennessee*

Via an open-ended judicial order, the Tennessee Supreme Court vested its lower courts with the primary responsibility to determine the manner in which

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221. *Id.*

222. SUP. CT. S.C., OPERATION OF THE TRIAL COURTS DURING THE CORONAVIRUS EMERGENCY, 2020-04-14-01 (2020), <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2480> [https://perma.cc/X8C7-JYMT].

223. *Id.*

224. *Id.*

225. SUP. CT. S.D., ORDER DECLARING JUDICIAL EMERGENCY COVID-19 DISEASE (2020), <https://ujs.sd.gov/uploads/news/OrderDeclaringJudicialEmergency.pdf> [https://perma.cc/6TRV-PPCF]; THE S.D. UNIFIED JUD. SYS., *COVID-19 Response* (2020), <https://ujs.sd.gov/uploads/news/COVID19UJSProcedures.pdf> [https://perma.cc/9DFE-ZD9C].

226. SUP. CT. S.D., *supra* note 225.

227. SUP. CT. S.D., AMENDED EMERGENCY ORDER REGARDING COURT REPORTERS, WITNESSES AND NOTARIZATION IN MIDST OF THE COVID-19 PANDEMIC (2020), <https://ujs.sd.gov/uploads/news/COVID19OrderRegardingCourtReportsWitnessesNotarization.pdf> [https://perma.cc/93M4-L6WG].

their courts should adjust to COVID-19.<sup>228</sup> Within this order, the supreme court urged all judges and court clerks to “limit in-person courtroom contact as much as possible by utilizing available technologies.”<sup>229</sup> This order also provided a short-term anti-impediment clause that suspended all state, local or civil rule that impedes the court’s ability to utilize technologies.<sup>230</sup> Tennessee falls into category L3.

#### *Texas*

In the state’s first emergency order regarding the COVID-19 state of disaster, the Texas Supreme Court issued an order that vested power to all courts in Texas.<sup>231</sup> While providing this flexibility, Texas limited the length of this order to two months unless renewed.<sup>232</sup> This order included a short-term anti-impediment clause and provided specific and ambiguously freeing language to implement technologically focused adjustments.<sup>233</sup> Texas falls into category L2.

#### *Utah*

Utah was very prepared by having a judicially focused Pandemic Response Plan that they quickly implemented.<sup>234</sup> Within this response plan, the presiding judges were provided authority to take some action, like allowing for “remote communication when a proceeding is necessary to preserve constitutional rights.”<sup>235</sup> With this being said, the state’s first order superseded all other orders relating to the pandemic issued by any court or district.<sup>236</sup> This order also provided the judiciary a limited breadth of freedom when it came to implementing technologically specific adjustments.<sup>237</sup> Utah falls into category R2.

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228. SUP. CT. TENN. AT NASHVILLE, ORDER SUSPENDING IN-PERSON COURT PROCEEDINGS, NO. ADM2020-00428 (2020), [http://www.tncourts.gov/sites/default/files/docs/covid-19\\_order.pdf](http://www.tncourts.gov/sites/default/files/docs/covid-19_order.pdf) [https://perma.cc/F2RL-T9HK].

229. *Id.*

230. *Id.*

231. SUP. CT. TEX., *supra* note 79, at 1.

232. *Id.* at 2.

233. *Id.* at 1–2.

234. SUP. CT. UTAH., Order for Court Operations During Pandemic (2020), <https://www.utcourts.gov/alerts/docs/20200313%20-%20Utah%20Court%20Pandemic%20order.pdf> [https://perma.cc/EC5M-V8KS].

235. SUP. CT. UTAH, *In re: Pandemic Response Plan, Administrative Order* (2020) <https://www.utcourts.gov/alerts/docs/20200312%20-%20Pandemic%20Response%20Plan.pdf> [https://perma.cc/NW9G-JP2F].

236. SUP. CT. UTAH, *supra* note 234.

237. *Id.*

*Vermont*

Through a statewide, open-ended administrative order, the Vermont Supreme Court provided specific technological adjustments to court procedure for its lower courts to implement.<sup>238</sup> That order included language allowing for certain remote hearings, notwithstanding provisions within Vermont's Rules of Civil Procedure.<sup>239</sup> Further, the order suspended other civil procedure rules to allow for electronic filing.<sup>240</sup> Vermont falls into category R2.

*Virginia*

Through a handful of pre-COVID-19 procedural resources, the State of Virginia vested power to its lower courts to prepare for ramifications of a pandemic.<sup>241</sup> Specifically, the state had a continuity of operations plan for essential functions as well as an up-to-date pandemic preparedness bench book.<sup>242</sup> After a request from the Virginia Governor, the chief justice issued a short-term judicial emergency that included a specific set of orders that provided courts with technologically focused procedural adjustment options.<sup>243</sup> Virginia falls into category R3.

*Washington*

Washington was in one of the most tough positions as they were the first state to be hit by COVID-19 cases and the only state to have a state of emergency issued in the month of February 2020.<sup>244</sup> To combat this, the Supreme Court of Washington quickly vested authority onto presiding judges of the state's lower courts with authority to adopt, modify, and suspend court rules and orders.<sup>245</sup> While disseminating power to lower courts, a subsequent

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238. SUP. CT. VT., DECLARATION OF JUDICIAL EMERGENCY AND CHANGES TO COURT PROCEDURES, ADMIN ORDER NO. 49, 2-3 (2020) [https://www.vermontjudiciary.org/sites/default/files/documents/AO%2049\\_0.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/AO%2049_0.pdf) [<https://perma.cc/N5CN-KLZW>].

239. *Id.*

240. *Id.*

241. SUP. CT. VA., ORDER DECLARING A JUDICIAL EMERGENCY IN RESPONSE TO COVID-19 EMERGENCY (2020), [http://www.courts.state.va.us/2020\\_0316\\_scv\\_order\\_declaration\\_of\\_judicial\\_emergency.pdf](http://www.courts.state.va.us/2020_0316_scv_order_declaration_of_judicial_emergency.pdf) [<https://perma.cc/V4M7-RGNL>].

242. *Id.*

243. *Id.*

244. *Status of State Covid-19 Emergency Orders*, *supra* note 8.

245. SUP. CT. WASH., RESPONSE BY WASHINGTON STATE COURTS TO THE PUBLIC HEALTH EMERGENCY IN WASHINGTON STATE, NO. 25700-B-602 (2020), [http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/SC%20Order%20Cl](http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/SC%20Order%20Closure%2025700-B-602.pdf) <https://perma.cc/KR2H-H3BG>].

open-ended order submitted by the Washington Supreme Court acknowledged only a limited amount of technologically focused adjustments to court procedures.<sup>246</sup> Washington falls into category L1.

*West Virginia*

Through a COVID-19 Planning Document, the Supreme Court of Appeals for the State of West Virginia suggested possible methods to mitigate the spread of COVID-19.<sup>247</sup> Within these methods included approval of telephonic hearings and encouraged the use of video conferencing systems.<sup>248</sup> Via a subsequent short-term administrative order, the supreme court of appeals implemented some technologically focused adjustments to civil court procedures centered around video technology.<sup>249</sup> In addition, this order included a corresponding anti-impediment clause to allow for the utilization of this technology.<sup>250</sup> Finally, the order provided the courts of West Virginia with the authority to take additional steps to manage their court docket and proceedings “in a manner designed to protect the health and well-being of court employees, litigants, witnesses, jurors, attorneys, and the general public.”<sup>251</sup> West Virginia falls into category L2.

*Wisconsin*

Through judicial order, Wisconsin’s Clerk of Supreme Court implemented statewide, open-ended orders that provided guidance for Wisconsin lower courts.<sup>252</sup> Within these orders were specific technologically focused adjustments that pertained to implementing available technologies by all judges, court commissioners, and court clerks.<sup>253</sup> The order also included a short-term anti-impediment clause that suspended local or administrative rules

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246. SUP. CT. WASH., STATEWIDE RESPONSE BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY, NO. 25700-B-607 3 (2020), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf> [https://perma.cc/S99S-ES4B].

247. SUPREME COURT OF APPEALS STATE OF W. VA., *supra* note 9, at 1, 4.

248. *Id.* at 5.

249. SUP. CT. OF APPEALS W. VA., SUPREME COURT OF APPEALS OF WEST VIRGINIA ADMINISTRATIVE ORDER 1 (2020).

250. *Id.* at 2.

251. *Id.*

252. SUP. CT. WIS., THE MATTER OF REMOTE HEARINGS DURING THE COVID-19 PANDEMIC (2020), <https://www.wicourts.gov/news/docs/remotehearings.pdf> [https://perma.cc/TMZ8-HNLH].

253. *Id.*

that hampered the implementation of these technologies.<sup>254</sup> Wisconsin falls into category R2.

### *Wyoming*

By judicial order, Wyoming's supreme court implemented short-term statewide orders that encouraged technologically focused specific adjustments.<sup>255</sup> These adjustments included electronic remote procedures and the utilization of electronic filing beyond what was previously allowed.<sup>256</sup> Through subsequent orders in the month of March 2020, the supreme court streamlined electronic filing by suspending rules requiring paper copies,<sup>257</sup> freeing the court's ability to take remote depositions, allowing for remote testator witnesses, okaying remote administrations of oaths, and further simplifying electronic filing.<sup>258</sup> Wyoming falls into category R3.

## V. ANALYSIS OF SURVEY DATA ON CIVIL PROCEDURE ADAPTION

As seen on the state-by-state breakdown for each subcategory,<sup>259</sup> there is a rather even split between how states implemented their early responses to COVID-19. It was a near split between states that implemented orders that specifically vested power to their lower courts and states that withheld most of the power at the highest levels of the judiciary. Further, roughly half of the states implemented orders that had an open-ended period of validity while the other half implemented orders that were valid for a short period of time. Finally, of the states that spoke to technologically focused adjustments within their orders, nearly one fourth of the states chose to allow for essentially full freedom when implementing adjustments. Of these fourteen states, nine did so with explicit anti-impediment clauses added to their orders. Within these subcategories, there were interesting developments.

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254. *Id.*

255. SUP. CT. WYO., ORDER ADOPTING TEMPORARY PLAN TO ADDRESS HEALTH RISKS POSED BY THE COVID-19 PANDEMIC (2020), <http://www.courts.state.wy.us/wp-content/uploads/2020/03/COVID-19-Order.pdf> [https://perma.cc/N68J-7GCW].

256. *Id.*

257. SUP. CT. WYO., ORDER SUSPENDING RULES REQUIRING PAPER COPIES OF PLEADINGS IN THE SUPREME COURT (2020), <https://www.courts.state.wy.us/wp-content/uploads/2020/03/Order-Suspending-Paper-Pleadings-3-20-20.pdf> [https://perma.cc/7J4V-JAAH].

258. SUP. CT. WYO., COVID-19 EMERGENCY ORDER ADOPTING PROCEDURES FOR REMOTE ADMINISTRATION OF OATHS AND WITNESSES, VERIFICATION OF GUILTY PLEAS, AND FOR PAPER FILINGS (2020), <https://www.courts.state.wy.us/wp-content/uploads/2020/03/COVID-19-Order.R30.pdf> [https://perma.cc/JG6E-RSF2].

259. *Supra* Section III.



Each subcategory had a rather mixed split of states that one would consider traditionally liberal or traditionally conservative. For example, both California and South Dakota chose to disseminate power to their lower courts, with an open-ended order, and for a full range of technological adjustments.<sup>260</sup> On the other end, Georgia and Massachusetts chose to implement statewide orders, but for a short period of time with a limited range of technological adjustments.<sup>261</sup> Further, within these subcategories, states implemented their adjustments with varying quality. R2, Maryland and New Jersey did a better job communicating their limited technological adjustments compared to states like New York and North Dakota that left their implementation vaguer.<sup>262</sup> In addition, throughout various categories some states either implemented a judicial task force to monitor the pandemic, had codified pandemic plans, or provided operational guides for states of emergency.<sup>263</sup> One state, Maryland, even had a “Remote Electronic Participation in Judicial Proceedings” order in place from 2018 that quickened their response to the pandemic.<sup>264</sup> This additional preparedness or guideline structure allowed for flexibility and a smoother implementation of technology.

Future research can be done to drill down into these early, upper-level governmental responses to further analyze the trends within the subcategories. This Comment predominantly focused on the first months of the pandemic response at the highest level of government. More research needs to be conducted that focuses on lower court order and memorandum implementation of technological adjustments within their civil procedures; how states further adapted as the pandemic lingered; and whether states plan on, or have, codified these technological adjustments for when society returns to a sustained degree of normality. With this being said, category R1 states (those that implemented statewide orders for a short period of time, allowing their lower courts to implement a full range of technological adjustments) appeared to best balance the need for accuracy with the costs of implementation—maintaining the highest degree of meaningful court participation.

The states of Arizona, Arkansas, and Missouri chose the best avenue: to structure their early judicial orders to implement technological adjustments that best balanced accuracy with the judicial costs of implementation and to ultimately promote a high degree of meaningful court participation. While other states may have executed their implementation better, potentially due to

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260. *Supra* notes 100–03, 225–27.

261. *Supra* notes 117–21, 161–63.

262. *Compare supra* notes 157–60, 7, and 191, *with supra* notes 195–99 and 204.

263. *Supra* notes 116, 130, 133, 142, 219, 220, 234, 242.

264. *Supra* notes 157–60.

pre-planning or quicker responses, this subcategory provided key elements that allowed for the right balance to respond to COVID-19 through the usage of technology.

First, by implementing a statewide judicial order, rather than vesting the power to their lower courts, these states were able to keep a unified set of rules that provided attorneys, judges, litigants, and other stake holders with a clear understanding of what was happening across all state courts. While these states ultimately had individual orders submitted at the lower courts, providing an umbrella order better unified the civil procedure changes across the board. Choosing to structure their implementation this way, the R1 states could maximize meaningful participation by creating a newly adapted civil procedure that provided unified guidance across the states' courts. Further, the umbrella order structure could possibly help minimize costs through larger purchases of technological hardware and software.

Second, the differences between an open-ended and a short period length of validity were, for the most part, negligible because the speed and uncertainty of COVID-19 forced all courts to adjust their orders as the situation evolved. However, orders that were valid for a short period of time provided the courts with an idea of when new guidance, orders, or implementation would be handed down from the judiciary. On its face, open-ended orders seemed like the ideal pathway; however, this left ambiguity as to when the lower courts should expect additional orders. The ambiguity associated with the open-ended orders could further increase judicial uncertainty that may negatively impact accuracy.

Third, providing state courts with essentially full freedom to implement technological adjustments gave the lower courts the ability to be rather creative with how they wanted to implement technological adjustments. The most fundamental adjustment all courts implemented was moving proceedings and hearings to remote forums through the usage of telephonic or audiovisual technology. However, electronic filing, remote swearing in and witnessing, digital signatures, and flexible service of process were additional ways courts utilized technology to adjust state civil procedures. A major aspect of this subcategory was the fact that these states implemented anti-impediment clauses that nullified or suspended laws and rules to allow for full utilization of technology adjustments. By allowing for full freedom of implementation, these R1 states could more quickly implement changes that increased meaningful participation. Not only was meaningful participation increased, but so was accuracy due to the shorter delays and flexibility provided by the anti-impediment clauses.

## VI. CONCLUSION

When it comes down to it, all the states took executive action to combat COVID-19 in ways that promoted accuracy, balanced costs, and held onto meaningful participation. The quick nature of COVID-19 forced everyone to adjust every aspect of their lives. However, practitioners need to take steps to better prepare for when future emergencies grind the wheels of justice to a halt. Other than creating pandemic plans or codifying emergency tasks forces, the best way states can structure their executive judicial orders in response to a pandemic emergency is by statewide orders, that are valid for a relatively short period of time, providing courts with the freedoms needed to implement technological adjustments within their civil procedures.

States in the R1 category, Arizona, Arkansas, and Missouri chose the best avenue to construct their early judicial orders to implement technological adjustments. This category's structure best balanced accuracy with the judicial costs associated with implementation. By striking this important balance, a higher degree of meaningful court participation was achieved.

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