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Executive orders are not laws

By Cheryl K. Chumley - *The Washington Times* - Tuesday, May 5, 2020

ANALYSIS/OPINION:

COVID-19 has shined some important light on the tendency of government to do as Founding Fathers warned — stretch and reach and overreach, and tread into places it doesn't belong. And as the executive orders come fast and furious from governors' mansions around the nation, it's high time for a reminder: Orders are not laws.

They should be challenged by the people. They should be held to constitutional muster. They should be challenged and debated and fought over because they threaten the very foundation of America's free society.

America is not a kingdom but rather a system of limited government where rule of law, meaning, the Constitution, guides — not mob mentality, or worse, fear — and public servants are just that: beholden to the citizenry.

Executive orders bypass that system. They are not duly passed laws by elected representatives of the people. They are not pieces of legislation that are openly debated and discussed and voted upon in ways that keep the elected accountable to the people.

They don't give the voter the chance to express yay or nay; they don't allow the people to hold the ultimate power.

Truly, really, if viewed through the lens of Founding Father intents with the Constitution, they hold little legal weight — in fact, they are outright blots to this system of limited government America is supposed to represent.

And guess what: Nobody knows that better than the very government sources issuing these orders. The whole executive order system relies on a complicit and cowed citizenry being too blowed over by government to question, challenge or fight.

Take the face mask orders that have been issued with rising frequency by state officials and private businesses alike.

These orders are [based](#) on President Donald Trump's declaration of national emergency under four statutes — two under the Stafford Act, two under the National Emergencies Act — as well as on his invoking of national emergency powers through the Defense Production Act. Governors in the varying states subsequently issued their own declarations of emergencies, invoking their own special and specific executive powers in the process.

All this emergency declaration doesn't suspend the Constitution, however.

And that's been kind of the forgotten caveat among the political fallout from COVID-19, the disease caused by the new coronavirus.

In Stillwater, Oklahoma, city officials put in place an emergency order that required both business workers and customers to wear face masks. Store employees soon after reported verbal and physical confrontations with

mask-wearing customers, including one involving a firearm. Mayor Will Joyce quickly revised the mask order so that it applied only to store employees. City Manager Norman McNickle then issued a statement saying that many of those who objected to the face mask order “cite[d] the mistaken belief the requirement is unconstitutional and under their theory, [that] one cannot be forced to wear a mask,” NBC News [reported](#).

And on that, McNickle also said, ABC News [reported](#): “No law or court supports this view.”

Hmm. What that means is the American legal system does not specifically address the idea of government ordering citizens to wear face masks as a condition of entering places of business — because there has never before in American history been an issuance of such an order. There has never before been a time when free American citizens were ordered by their public servants to wear face masks — so it’s not been challenged in court. It’s not been addressed by law.

McNickle knows this.

He was just trying to turn a recommendation into an order, and hoping the good citizens of Stillwater wouldn’t notice. He was hoping the citizens would be so blown over by the force of government they wouldn’t dare protest.

Read his next words, as [reported](#) by Fox News: “It is further distressing that these people, while exercising their believed rights, put others at risk. As mentioned, there is clear medical evidence the face coverings prevent COVID-19 spread; they are recommended by both the CDC and the

Oklahoma State Department of Health. The wearing of face coverings is little inconvenience to protect both the wearer and anyone with whom they have contact. And, an unprotected person who contracts the virus can infect their own loved ones and others.”

Duck. Dodge.

Shame. Blame.

As McNickle himself said: Face coverings are recommendations. Not laws. Recommendations.

The city of Stillwater tried to morph those recommendations into mandates by issuing an order.

But executive orders are not laws. And they only hold up to court challenge if they're in line with the powers vested to the government under the Constitution. And once again, the Constitution does not wither and die during government declared national emergencies — particularly as the days and weeks go by and it becomes more and more difficult to justify the ongoing existence of the national emergency. By the way, isn't COVID-19's curve flattening?

State and local governments ought to look to Attorney General William Barr for some guidance.

“The Constitution is not suspended in times of crisis,” he wrote in April. Stop the “draconian” practices, he warned government officials, on Fox News.

“If a state or local ordinance crosses the line from an appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court,” he wrote, also in April.

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McNickle and his ilk may try and pass them off as must-do’s; may try and slide them by as legal and lawful and one and the same as pieces of legislation that have traveled the proper legislative routes — the proper accountable-to-the-people paths.

But courts have ruled otherwise.

Bill Clinton, while president, [saw](#) his executive order banning government contracts with companies that kept strike-breakers on the payroll slapped away at the appeals court level; another of his orders requiring federal officials to provide services in languages other than English was killed by the Supreme Court. The Supreme Court overturned several of former President Franklin D. Roosevelt’s orders; a federal district judge [overturned](#) portions of Trump’s orders involving the firing of federal workers. There are more, many more instances of orders being challenged, overturned, overturned again and challenged even more.

The best way to look at orders is they’re legal — until they’re not.

They're constitutional because the government says they're constitutional, and they stand on that assumption only so long as citizens accept that assumption.

But letting them pass unchallenged is a sure-fire way to ruin America's freedom.

If government holds the authority to declare national emergencies, and then government holds the authority to order citizens at will, using these declared national emergencies as justification for the orders, think where that leaves the Constitution.

In a dust pile of tyranny.

In times of national crises, it's incumbent on the citizens to ensure their civil rights are upheld. Because simply put: Government is not going to do it. Remember: Executive orders are not laws.

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