

The Proper Response of Law Enforcement to Unconstitutional Executive Orders



Jake MacAulay

There are many who are saying that this current COVID-19 crisis makes it necessary to suspend the exercise of God-given, constitutionally protected rights; this includes the freedom to practice religion, freedom of assembly and association, and the freedom to move about without molestation.

However, no governor in any state has the authority to suspend the Constitution. And no pretended “Emergency Powers” legislation can give it to him because the legislature cannot give the Governor an authority that they, themselves, do not have.

Right now, our lives are being severely affected by these “so-called” “executive orders.” Perhaps it is imperative for us to understand just what they are – and what they are not.

What they are not is a “stroke of the pen... Law of the Land... Kinda cool,” as defined by [former President Clinton Advisor Paul Begala](#).

The first executive order given was in 1789 by George Washington to the heads of departments “to impress me with a

full, precise, and distinct general idea of the affairs of the United States.”

As you may note it was addressed to officials of the executive branch of the national government. It was applicable to those already under his authority as head of the executive branch.

Properly understood, this is the nature of executive orders: They are directives or policy instructions addressed to and binding upon persons who are already under the authority of the executive, but they have no binding effect on anyone else. They are not “law” and they do not have the force of law.

Only legislatures have lawmaking power, and that power is specified and limited by the Constitution.

So, if the governor of a state wanted to do so, he could direct his department heads and employees in the executive agencies of the state to wear masks and stay six feet apart while they are in state office buildings. He could, arguably, order them to do that because they work for him.

But he can’t order the rest of us to do that because we don’t work for him – he works for us.

Executive orders have their purpose and place, but it is crucial that all Americans – and especially those in law enforcement – understand that they are not law and cannot lawfully be enforced.

Therefore, I would like to remind all law enforcement agents that when you took your oath of office, you swore obedience and fidelity to the United States Constitution and the Constitution of your state.

You did not swear allegiance to a mayor or a governor or a judge or a president.

Your fidelity to your oath and to the rule of law requires you

to abstain from enforcing any edict or order from a Governor, or any executive, which lacks constitutional authority.

In the words of founding father James Madison, “We are right to take alarm at the first experiment upon our liberties.”

Finally, your duty requires that you shelter and protect the citizenry from all acts of lawlessness, even and especially when they originate from civil authorities.

Schedule an event or learn more about your Constitution with Jake MacAulay and the Institute on the Constitution and receive your [free gift](#).

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