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Trump's Absolute-Power Assertion Runs Headlong Into Constitution

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President Donald Trump says he has absolute power to end the U.S. coronavirus shutdown. The Constitution says otherwise.

Trump's assertion Monday runs headlong into the Constitution's limits on federal power and the explicit preservation of state authority through the 10th Amendment, a provision long championed by his Republican Party. Supreme Court decisions have said that, while the federal government has broad power, health and safety rules are primarily the domain of the states.

"No responsible constitutional scholar agrees with Trump," said Neal Katyal, who served as President Barack Obama's top Supreme Court lawyer, in an email. "Rather, the whole point of the Constitution was a reaction to King George's similar claims of absolute power. The 10th Amendment is one of many places that reflect the basic point that the Constitution does not vest absolute power in any one person."

Without citing legal basis, Trump said several times at a news conference on Monday that he has "total" authority to open up the country and override shutdown orders imposed by governors.

"When somebody is president of the United States, the authority is total," Trump said. "And that's the way it's got to be. It's total. The governors know that."

But the governors also know they probably can ignore him.

Until recently, Trump and Vice President Mike Pence have insisted that governors are the front-line authorities who should be deciding what needed to be done to enforce health guidelines, with the federal government playing only a supporting role. The president declined to press several GOP governors who lagged behind other states in issuing stay-at-home orders.

Cuomo Pushback

New York Governor Andrew Cuomo, whose state has been the hardest hit by the outbreak, said on CNN Tuesday he wouldn't obey a presidential directive to lift the stay-at-home order that has helped slow the spread of the virus there.

"And we would have a constitutional challenge between the state and the federal government and that would go into the courts, and that would be the worst possible thing he could do at this moment," said Cuomo, a Democrat.

Cuomo would have plenty of Supreme Court precedent at his disposal. The court has said that, under the 10th Amendment, the federal government may not “commandeer” state governments by forcing them to carry out federal regulatory programs. The court invoked that doctrine in 2012 to let states opt out of the Affordable Care Act’s expansion of the Medicaid health-insurance system for the poor.

“The Framers rejected the concept of a central government that would act upon and through the states,” Justice Antonin Scalia, a conservative icon, wrote in a 1997 ruling that said the U.S. couldn’t require state officials to perform background checks on prospective handgun purchasers.

The 10th Amendment says: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The court has also said the Constitution doesn’t give the federal government the type of broad “police power” possessed by the states. The court said in the landmark 1819 case *McCulloch v. Maryland* that the national government is “one of enumerated powers.” The court reiterated that doctrine in 1995, when a conservative majority struck down a federal law outlawing gun possession near schools.

The Constitution doesn’t give Congress “plenary police power that would authorize enactment of every type of legislation,” Chief Justice William Rehnquist wrote in the 1995 ruling.

National Emergencies

Other rulings make clear that the president has even less authority when acting without the support of Congress. The court stopped President Harry Truman when he sought to seize the nation’s steel mills to avert a strike in 1952. The memorable opinion from that case, a concurrence written by Justice Robert Jackson, said presidential power is reduced when it doesn’t have Congress’s explicit blessing.

Jackson also rejected the notion that the president has “inherent” power to do whatever is necessary to address a national emergency.

“Emergency powers are consistent with free government only when their control is lodged elsewhere than in the executive who exercises them,” Jackson wrote.

A few Republicans also took exception to Trump’s assertion.

Representative Liz Cheney tweeted Monday that “The federal government does not have absolute power.” Senator Marco Rubio wrote on Twitter that “the Constitution & common sense dictates these decisions be made at the state level.”

Trump’s comments Monday perhaps should be taken “seriously but not literally,” said Ilya Shapiro, a lawyer with the libertarian Cato Institute.

“Under our system of checks and balances, the president doesn’t have ‘total authority’ over anything,” Shapiro said in an email. “With respect to reopening the country, it’s hard to know what he means because governors and mayors are the ones who issued shelter-in-place and related orders, and they’re the only ones who can rescind them.”