



Debates continue about where the authority to reopen the United States resides

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Where did President Trump get the idea that he alone had the power to order all the states to reopen their businesses in the midst of the deadly viral pandemic that is killing thousands of Americans?

With businesses closing their doors across the country, and laying off millions of workers in the face of a plunging economy, Mr. Trump declared Monday that he alone had the “total” authority to lift the pandemic restrictions and reopen the nation’s businesses.

“The authority of the president of the United States, having to do with the subject we’re talking about, is total,” Mr. Trump declared Monday, triggering what governors and constitutional scholars fear could lead to “a Constitutional crisis.”

“It’s hard to know what the president means with this statement,” Ilya Shapiro, a constitutional expert at the libertarian-leaning Cato Institute, told CBS News, “so perhaps it’s an occasion to take him seriously but not literally.”

Steve Vladeck, a law professor at the University of Texas School of law, wrote on Twitter that Mr. Trump’s tweet “is just false. The president has no formal legal authority to categorically override local state shelter-in-place orders or to reopen schools and small businesses. No statute delegates to him such power; no constitutional provision invests him with such authority.”

“The president can informally put pressure on local/state governments. He can mess with emergency funding,” Mr. Vladeck writes. “And he can even order the federal workforce back to their offices. But largely because he’s left so much to local authorities so far, this, too, is ultimately up to them.

“The federal government cannot commandeer the machinery of the state governments ... That is, the federal government cannot coerce the states into taking actions to suit federal policy preference,” he wrote.

CBS News online said that Mr. Trump was contradicting his earlier policies. “After weeks of touting states’ rights to decide whether to issue stay-at-home and other mitigation orders, President Trump now says the decision to “open up the states” rests with him, not governors, amid the coronavirus pandemic.”

“Only three days ago, the president insisted he didn’t want to direct states to shutter their economies for constitutional reasons,” CBS News reported.

“... I like to allow governors to make decisions without overruling them, because from a constitutional standpoint, that’s the way it should be done,” Mr. Trump said during his Friday Coronavirus Task Force briefing. “If I disagreed, I would overrule a governor, and I have the right to do it. But I’d rather have them — you can call it ‘federalist,’ you can call it “the Constitution,’ but I call it ‘the Constitution.’ I would rather have them make their decisions,”

But New York Gov. Andrew Cuomo isn’t buying Mr. Trump’s convoluted logic. “Really, the only way this situation gets worse is if the president creates a constitutional crisis,” Mr. Cuomo said in an interview on MSNBC’s “Morning Joe.”

“If he says to me ‘I declare it open’ and this is a public health risk, or it’s reckless with the welfare of the people of my state, I will oppose it,” Mr. Cuomo said.

“Earlier Tuesday the governor told NBC’s “Today” that the power to reopen state economies clearly sat with the governors as defined by the 10th Amendment to the Constitution, which states that powers not clearly designated to the federal government fall instead to the states.”

“I don’t know what the president is talking about, frankly,” Mr. Cuomo said. “We have a Constitution, the Constitution is based on balance of powers.”

“This is all uncharted territory, you have to feel the way it goes, you have to start to reopen with a plan, an informed plan that actually improves on the situation and learns the lessons,” Mr. Cuomo said.

Mr. Trump continues to insist that he is right on this issue, and says he will offer a plan “to reopen the nation’s economy. The problem with this is that Mr. Trump has never read the Constitution, and if he’s reading this column, take a look at the Tenth Amendment. It 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.”

Case closed.