

WASHINGTON **Examiner**

Conservatives must reject Trump's false claim to 'total authority'

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April 14, 2020

Despite being informative, President Trump's daily coronavirus press briefings are sometimes derailed by campaign trail-esque antics. This was the case Monday evening when Trump told reporters that he has "total authority" to override governors and reopen the economy at a time of his choosing.

"I have the ultimate authority," Trump told the press. "When somebody is the president of the United States, the authority is total, and that's the way it's got to be. ... It's total. The governors know that. ... [They] can't do anything without the approval of the president of the United States."

This, naturally, made waves, but it isn't actually a new point from the president. He had argued something similar on Twitter already:

Trump is simply wrong here, and conservatives should reject this false notion as forcefully as they would have if former President Barack Obama had asserted it.

Yes, the president does have expansive powers but only within the subset of powers reserved to the federal government. Based on the text of the Constitution, the president is the locus of all power in the U.S. government's executive branch. This is the basis of the theory of the unitary executive.

Nonetheless, nothing in the Constitution authorizes that federal executive branch or its president to order localities to shut down or reopen anything. These broader powers over businesses, not enumerated in the Constitution, are universally understood as reserved to the states under the 10th Amendment. That's why no one was surprised last month when it was the governors and the local officials with delegated state authority who made all of the shutdown decisions amid the coronavirus crisis — not the president, who has no direct role in such decisions.

In the American system, the federal government has powers enumerated specifically in the Constitution. It is the states which, subject to the terms of the Constitution (and especially its 14th Amendment), have broader powers over everyday life that constitutional scholars refer to as "the police power." This is defined by constitutional law professor Randy Barnett as "the power to prohibit wrongful and to regulate rightful conduct of individuals."

This is why, if you think about it, most of the rules in your life are state and local rules. The state (or if your state delegates this power, your municipality) licenses all restaurants and pubs and practitioners of the medical and legal professions and other occupations. It sets building codes, inspects buildings to make sure they are sound, dictates the disposal of waste, sets the rules of

the road (including speed limits and open-range laws), and regulates other businesses for safety and health purposes.

This is why most crimes are state crimes; most prisoners are state prisoners; nearly all law enforcement is employed by states and their chartered municipalities. The federal government, despite its voluminous regulatory code, does not rule over such areas of life, and despite its large bureaucracy, it lacks any significant number of people capable of enforcing such rules.

And of course, you have to do something unusual to have a federal agent (FBI, Bureau of Alcohol, Tobacco, Firearms and Explosives, or Drug Enforcement Administration) arrest you. But if you're like most people, you've probably been pulled over by state or local police at least once.

The various governors' sweeping economic lockdowns are unlike anything a president can do — or undo. And don't take my word for it — experts and legal commentators from across the ideological spectrum have made the same point.

“The federal government can't give orders to governors,” constitutional law professor Josh Blackman told the *Washington Post*. “That's a very simple fact of life.”

“The Constitution's grant of limited, enumerated powers to the national government does not include the right to regulate either public health or all business in the land,” writes John Yoo, University of California at Berkeley Law professor and American Enterprise Institute scholar, in *National Review*. “Only the states can impose quarantines, close institutions and businesses, and limit intra-state travel... only they will decide when the draconian policies will end.”

"Under our system of checks and balances, the president doesn't have 'total authority' over anything," the Cato Institute's Ilya Shapiro told me. "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. Maybe this is one of those cases where we should take Trump seriously, but not literally."

To date, Trump has actually been fairly humble in asserting his authority. He has not at all behaved like a dictator during the coronavirus crisis to date — and yes, actions do speak louder than words. But as much as the president's most ardent defenders would like to pretend otherwise, words still do matter. Trump's overzealous conception of his own authority must be rejected before it starts to bleed into his policy decisions.