

Opening Up America, States to Decide on Current COVID-19 Restrictions

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According to US constitutional experts, state governors and local officials, not Trump, are empowered to decide on when and to what extent current COVID-19 restrictions may be eased.

Days earlier, Trump falsely said “ultimately, I have to make that decision.” On April 13, he tweeted:

“(S)ome in the fake news media are saying that it is the governors decision to open up the states, not that of the president...& federal government.”

“Let it be fully understood that this is incorrect...It is the decision of the president...”

At his daily self-promoting briefing earlier this week, he arrogantly said “(t)he president... has the authority to do what the president has the authority to do...The president...calls the shots.”

No US constitutional or statute law affirms this power. According to Law Professor Robert Chesney, restrictions in place are “promulgated by state governors, county commissioners and mayors — not from the federal government.”

UC Berkeley Law School dean Erwin Chemerinsky stressed that

“Trump is wrong as a matter of constitutional law,” adding:

“Quarantine and stay-at-home orders are entirely the decision of the state governors.”

“States have the police power and the authority to quarantine.”

“The president has no authority to override such orders and order the country open.”

“No federal statute gives the president such authority. Nor did the president order sheltering in place.”

“He can exhort, but the orders come from state and local governments.”

“(H)e cannot override state or local law...The bottom line is that if California, or other states, or cities or counties, feel the need to continue restrictions...they may (legally) do so.”

According to Law Professor Jonathan Turley,

“(t)here is no authority for a president to order states to ‘open up’ if the state believes that such an order would be inimical to public health.”

“The president had no authority to order a national lockdown and certainly does not have authority to now order the lifting of such orders issued by governors.”

The US Constitution was “designed to limit federal authority.” Trump’s aim to reopen the economy “falls somewhere between the aspirational and the persuasive” — short of legal authority to order it.

“Trump has to convince, not command, governors on what is best for their states.”

James Madison, the 4th US president and one of its founders said the following:

“The powers delegated by the proposed Constitution to the federal government are few and defined.”

“Those which are to remain in the State governments are numerous and indefinite” — according to the 10th Amendment that states:

“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.”

In *Jacobson v. Massachusetts* (1905), the Supreme Court ruled that the “safety and health of the” states’ people are for its authorities “to guard and protect,” not the “national government.”

This “right (is) secured by the federal Constitution.”

Trump has no legal authority to prioritize economic issues over public health and welfare, the latter the prerogative of states and local communities to decide.

At present, 41 US states are in mandated lockdown. Authorities of several others recommended it.

Schools are closed nationwide. Except for essential services like hospitals and pharmacies, businesses serving patrons are either closed or have limited operations — like drive-through orders offered by some restaurants.

States and local communities are empowered to order business closures, sheltering in place, and other public restrictions at their discretion — not the president or federal government.

One possible exception to the above exists — classified Presidential Emergency Action Documents that exist for worst-case scenarios like nuclear war or other extraordinary circumstances never before experienced in the nation’s history.

Created in the 1950s, they’ve never been invoked or revealed to show what powers they

contain, not even to congressional members.

COVID-19 outbreaks don't remotely rise to the level of a need to invoke whatever extraordinary powers these documents contain.

They likely circumvent international, constitutional, US statute, and individual state laws that render them illegal and highly controversial — the stuff tyrannical rule is made of if invoked.

So far at least, Trump hasn't gone this far. On Thursday, he presented phased guidelines on reducing movement restrictions and reopening the economy in steps as considered appropriate by states and local communities.

He left it to their authorities to decide when and how to reopen their economies.

He falsely said "if they need to remain closed, we will allow them to do that." It's not his call. It's the sole prerogative of state and local officials.

How phased in reopening of the economy will work in various states will depend on whether COVID-19 outbreaks are contained and don't reemerge in a second wave ahead.

Whatever happens going forward, an unacceptable new normal is likely that involves further erosion of fundamental human and civil rights.

Post-COVID-19 life in America was likely planned in advance by the nation's ruling class like pre-and-post-9/11 — for ill, not good.

As for Trump, his only interests are self-serving — getting reelected, protecting, preserving, and increasing his personal wealth, and serving privileged interests exclusively.

Throughout his time in office, he showed contempt for world peace, equity, justice, and the rule of law.

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