

117TH CONGRESS
1ST SESSION

H. R. 4317

To restore the separation of powers between the Congress and the President.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2021

Mr. GOSAR (for himself, Mr. MASSIE, Mrs. GREENE of Georgia, and Mrs. BOEBERT) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on the Judiciary, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To restore the separation of powers between the Congress
and the President.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Separation of Powers
5 Restoration Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) As a limit on governmental power, Constitu-
9 tional framers vested Federal powers in three co-

1 equal branches of government, each with unique and
2 limited powers and each with a coequal duty to up-
3 hold and sustain the Constitution of the United
4 States.

5 (2) A Supreme Court justice stated, “The doc-
6 trine of the separation of powers was adopted by the
7 convention of 1787 not to promote efficiency but to
8 preclude the exercise of arbitrary power. The pur-
9 pose was not to avoid friction, but, by means of the
10 inevitable friction incident to the distribution of the
11 governmental powers among three departments, to
12 save the people from autocracy.” *Myers v. United*
13 *States*, 272 U.S. 52, 293 (1926) (Brandeis, J., dis-
14 senting).

15 (3) James Madison, quoting Montesquieu, stat-
16 ed in *Federalist* 47, “There can be no liberty where
17 the legislative and executive powers are united in the
18 same person, or body of magistrates.”.

19 (4) Article I of the Constitution provides, “All
20 legislative powers herein granted shall be vested in
21 a Congress of the United States.”.

22 (5) A congressional committee print has noted
23 that, “[b]ecause the President has no power or au-
24 thority over individual citizens and their rights ex-
25 cept where he is granted such power and authority

1 by a provision in the Constitution or by statute, the
2 President's proclamations are not legally binding
3 and are at best hortatory unless based on such
4 grants of authority." 85th Cong., 1st Sess., Execu-
5 tive Orders and Proclamations: A Study of a Use of
6 Presidential Powers (Comm. Print 1957).

7 (6) The Supreme Court has stated that, even if
8 Presidents have, without congressional authority,
9 taken actions only the Congress may take, "Con-
10 gress has not thereby lost its exclusive constitutional
11 authority to make laws necessary and proper to
12 carry out the powers vested by the Constitution 'in
13 the Government of the United States, or any De-
14 partment of Officer thereof.'". (Youngstown Sheet &
15 Tube Co. v. Sawyer, 343 U.S. 579 (1952)).

16 (7) Treaties or Executive Agreements which
17 purport to assign powers not amongst those specifi-
18 cally granted to the Federal Government by the
19 Constitution are non-binding and cannot constitute
20 law.

21 **SEC. 3. SEPARATION OF POWERS RESTORING RESCIS-**
22 **SIONS.**

23 (a) REPEAL OF WAR POWERS RESOLUTION.—The
24 War Powers Resolution (50 U.S.C. 1541 et seq.) is re-
25 pealed.

1 (b) TERMINATION OF STATES OF EMERGENCY.—

2 (1) IN GENERAL.—All powers and authorities
3 possessed by the President, any other officer or em-
4 ployee of the Federal Government, or any executive
5 agency (as defined in section 105 of title 5) as a re-
6 sult of the existence of any declaration of national
7 emergency in effect on the date of enactment of this
8 Act are terminated 90 days after such date. Such
9 termination shall not affect—

10 (A) any action taken or proceeding pend-
11 ing not finally concluded or determined on such
12 date;

13 (B) any action or proceeding based on any
14 act committed prior to such date; or

15 (C) any rights or duties that matured or
16 penalties that were incurred prior to such date.

17 (2) DEFINITION.—For the purpose of this sub-
18 section, the term “national emergency” means a
19 general declaration of emergency made by the Presi-
20 dent or any other officer or employee of the execu-
21 tive branch.

22 (c) TERMINATION OF AUTHORITY TO DECLARE
23 EMERGENCY.—To the extent that any Act of Congress in
24 effect on the date of enactment of this Act grants to the
25 President or any other officer or employee of the executive

1 branch the power to declare a national emergency, such
2 power is hereby divested to the Congress alone.

3 **SEC. 4. REQUIREMENT OF STATEMENT OF AUTHORITY FOR**
4 **PRESIDENTIAL ORDERS.**

5 (a) STATEMENT OF AUTHORITY.—The President
6 shall include with each Presidential order a statement of
7 the specific statutory or constitutional provision which in
8 fact grants the President the authority claimed for such
9 action.

10 (b) INVALIDITY OF NONCONFORMING ORDERS.—A
11 Presidential order which does not include the statement
12 required by subsection (a) is invalid, to the extent such
13 Presidential order is issued under authority granted by a
14 congressional enactment.

15 **SEC. 5. EFFECT OF PRESIDENTIAL ORDERS.**

16 (a) LIMITED EFFECT OF PRESIDENTIAL ORDERS.—
17 A Presidential order neither constitutes nor has the force
18 of law and is limited in its application and effect to the
19 executive branch.

20 (b) EXCEPTIONS.—Subsection (a) does not apply
21 to—

22 (1) a reprieve or pardon for an offense against
23 the United States, except in cases of impeachment;

1 (2) an order given to military personnel pursu-
2 ant to duties specifically related to actions taken as
3 Commander in Chief of the Armed Forces; or

4 (3) a Presidential order citing the specific con-
5 gressional enactment relied upon for the authority
6 exercised in such order and—

7 (A) issued pursuant to such authority;

8 (B) commensurate with the limit imposed
9 by the plain language of such authority; and

10 (C) not issued pursuant to a ratified or un-
11 ratified treaty or bilateral or multilateral agree-
12 ment which—

13 (i) violates the ninth or tenth amend-
14 ments to the Constitution; or

15 (ii) makes a delegation of power to a
16 foreign government or international body
17 when no such delegating authority exists
18 under the Constitution.

19 **SEC. 6. STANDING TO CHALLENGE PRESIDENTIAL ORDERS**
20 **WHICH IMPACT SEPARATION OF POWERS IN-**
21 **TEGRITY.**

22 The following persons may bring an action in an ap-
23 propriate United States court to challenge the validity of
24 any Presidential order which exceeds the power granted

1 to the President by the relevant authorizing statute or the
2 Constitution:

3 (1) CONGRESS AND ITS MEMBERS.—The House
4 of Representatives, the Senate, any Senator, and
5 any Representative to the House of Representatives,
6 if the challenged Presidential order—

7 (A) infringes on any power of Congress;

8 (B) exceeds any power granted by a con-
9 gressional enactment; or

10 (C) violates section 4 because it does not
11 state the statutory authority which in fact
12 grants the President the power claimed for the
13 action taken in such Presidential order.

14 (2) STATE AND LOCAL GOVERNMENTS.—The
15 highest governmental official of any State, common-
16 wealth, district, territory, or possession of the
17 United States, or any political subdivision thereof, or
18 the designee of such person, if the challenged Presi-
19 dential order infringes on the powers afforded to the
20 States under the Constitution.

21 (3) AGGRIEVED PERSONS.—Any person ag-
22 grieved in a liberty or property interest adversely af-
23 fected directly by the challenged Presidential order.

24 **SEC. 7. DEFINITION OF PRESIDENTIAL ORDER.**

25 In this Act, the term “Presidential order” means—

1 (1) any Executive order, Presidential proclama-
2 tion, or Presidential directive; and

3 (2) any other Presidential or Executive action
4 by whatever name described purporting to have nor-
5 mative effect outside the executive branch which is
6 issued under the authority of the President or any
7 other officer or employee of the executive branch.

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