

A Review of Law Pertaining to Current State of Emergency in Washington State

Any law repugnant to the Constitution is null and void.

Marbury vs. Madison (1803) was a landmark U.S. Supreme Court case that established the supremacy of the United States Constitution. It set forth the general rule that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose. It imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it. All cases which have cited the Marbury v. Madison case to the Supreme Court have never been overturned

- *"If any statement, within any law, which is passed, is unconstitutional, the whole law is unconstitutional."*
Marbury v. Madison: 5 US 137 (1803).
- *"An unconstitutional act is NOT LAW, it confers no rights, it imposes no duties, affords no protection, it creates no office. It is in legal contemplation, as inoperative, as though it had never been passed."* **Norton v. Shelby County, 118 US 425 P. 442 (1886)**
- *"An unconstitutional law cannot operate to supersede any existing law. Indeed insofar as a statute runs counter to the fundamental law of the land, (the Constitution) it is superseded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it."* **Bonnett v. Vallier, 116 N.W. 885, 136 Wis. 193 (1908);**

The powers of the government are limited and specific

While the State of Washington Law ([RCW 43.06.220](#)) gives the governor certain powers during a state of emergency, these powers are limited and remain subordinate to the United States Constitution (USC). Vested authority in our Legislators is found in USC Article I. Section 8. Federal and State government have no authority to legislate outside of Article I. Section 8.

[RCW 43.06.010](#) appears to restrict the governor to only 4 conditions that trigger emergency - public disorder, disaster, energy emergency, or riots. Pandemic, and disease are not included. The proper governance for restricting liberties for infection management is contained in [246.100 WAC](#) under which broad area population-level restrictions of the type being levied today are not possible.

- **RCW 43.06.010 (12)** *"The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof... proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation."*
- **RCW 43.06.220 (2)(g)** *The governor, after proclaiming a state of emergency may "issue an order or orders concerning waiver or suspension of statutory obligations, unless... the waiver or suspension would conflict with the rights, under the First Amendment, of freedom of speech or of the people to peaceably assemble."*
- *"We have staked the whole future of American civilization, not upon the power of government, far from it. We have staked the future of all of our political institutions upon the capacity of mankind for self-government; upon the capacity of each and all of us to govern ourselves, to control ourselves, to sustain ourselves According to the Ten Commandments of God" - James Madison*

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An Open-ended State of Emergency is an Abuse of Power

Proclaiming an emergency in Washington State is restricted in RCW 43.06.200 (State of Emergency – Powers of Governor) to the conditions in 43.06.010 (General Powers and Duties). The 4 triggers for proclaiming an emergency in 43.06.010 are clearly acute, short term events that require immediate action, and perhaps temporary unilateral decision making, until the usual branches of government are able to respond. It is clear that the Emergency status is meant for short term immediate stabilization versus long-term crisis management.

- [RCW 43.06.210](#). *The state of emergency shall cease to exist upon the issuance of a proclamation of the governor declaring its termination: PROVIDED, That the governor must terminate said state of emergency proclamation when order has been restored in the area affected.*
- "Even in an emergency, the authority of government is not unfettered. The Constitution cannot accept the concept of a 'new normal' where the basic liberties of the people can be subordinated to open-ended emergency mitigation measures." **U.S. District Court Judge William S. Stickman (Sept 14, 2020)**

No Emergency Suspends the Law

Recent Supreme Court Ruling and other Cases have re-affirmed that a State of Emergency does not suspend our Constitutional rights. In a [recent Federal Court decision out of Pennsylvania](#), Judge Stickman ruled that certain restrictions ordered by Pennsylvania Governor Tom Wolf to slow the spread of COVID-19 were unconstitutional. The judge said in his opinion that COVID-19 orders from the Governor and Pennsylvania Secretary of Health violated the First Amendment right to freedom of assembly and the due process and equal protection clauses of the 14th Amendment.

- *"The liberties protected by the Constitution are not fair-weather - freedoms in place when times are good but able to be cast aside in times of trouble... There is no question that this country has faced, and will face, emergencies of every sort. But the solution to a national crisis can never be permitted to supersede the commitment to individual liberty that stands as the foundation of the American experiment."* **U.S. District Court Judge William S. Stickman (Sept 2020)**
- *"The Constitution protects us from our own best intentions... so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day."* **Justice Scalia, Printz vs. United States (1997)**
- *"The assertion of federal rights [Bill of Rights], when plainly and reasonably made, is not to be defeated under the name of local practice."* - **Davis v. Wechsler, 263 US 22, 24.**

Consent of Authority and the Role of Sheriff

We read in the Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." Any authority our servants have is by our consent, if they act outside their authority, they are subject to criminal charges under US Codes 42 and 18 and liable for damages under US Codes and common law.

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The Sheriff is the chief executive and administrative officer of a county. The office of the Sheriff is not to blindly enforce codes, rules and statutes but to keep the peace, to know and protect the Constitution. The Sheriffs need not go to the county prosecutor for an indictment as all too often, they are gatekeepers for the lawless. The Sheriff needs no permission from a judge or a prosecutor to summon a grand jury to seek an indictment. Recognizing that government can overreach and even judges can be corrupt, sheriff is above these all and answers only to the people and is the direct remedy of the people. .

Implications of Constitutional Amendments – 1st, 4th and 14th

1st Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In that science is not settled and there exists much controversy around the effectiveness of masks, wearing them can be seen as an act of faith. Conversely, for others covering their face may violate their religious beliefs or may be construed as a forced expression of submission to the orders of the governor and his secretary of health. Based on these observations, by implication, a masking mandate violates both freedom of religion and freedom of speech rights protected by the First Amendment. Pennsylvania Judge Stickman also concluded that the State's congregate limits "violate the right of assembly enshrined in the First Amendment."

4th Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.

Today the Fourth Amendment is understood as placing restraints on the government any time it detains (seizes) or searches a person or property. To have an obstruction of breath (mask) imposed upon one's body without probable cause (no proof of infectiousness) is a clear violation against our right to be secure in our persons. Unlawful detainment by police for not wearing a mask in public places, under the false guise of Trespass, is unreasonable seizure also violating the 4th amendment.

14th Amendment:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Supreme Court ruled that the term "liberty" denotes not merely freedom from bodily restraint but also the right of the individual to contract to engage in any of the common occupations of life. **Meyer v. Nebraska (1923)**. Pennsylvania Judge Stickman also determined that the State's order to close the operations of certain businesses violated both the Fourteenth Amendment's due process clause and the equal protection clause.

Because the 14th amendment also provides for equal protection of the laws to all United States citizens, a citizen of one state within the U.S. cannot enjoy greater protections than a citizen of a different state. Since it has already been ruled that certain Covid-19 related orders and restriction in Pennsylvania and in New York State are unconstitutional, it follows that orders identical in nature in Washington State are likewise unconstitutional and cannot stand.