

## **How Unfettered Emergency Powers Have Led to the Disregard of the Rule of Law**

Hannah Schanz  
Liberty University  
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Hannah is passionate about bringing justice and representation to the fatherless and hopes to use law as her avenue. Through her study of the Constitution, Hannah has grown a deep passion for its preservation, and for the youth of America to know its power and significance.

## Introduction

What a difference a day makes. How much more a month? A year? How different our world looked over a year ago before we knew about the COVID-19 virus. Children casually played on playgrounds during recesses; family and friends gathered at churches, weddings, and funerals; and over 40,000 fans cheered from the stadium as the Washington Nationals won their first World Series. But in March of 2020, dark clouds rolled in under which many Americans have still not felt the sunlight on their uncovered faces. School doors still remain shut. Churches, which were banned from meeting, forbidden from singing, and denied communion, are only now opening after hard fought battles all the way to the United States Supreme Court.<sup>1</sup> Life as we knew it was taken under the control of governors, but not all governors. Some governors did not have the authority to impose life-altering burdens on their citizens; others could only do so with Legislative oversight. The most dangerous were those who operated unilaterally, which almost always resulted in unfettered exercise of power over their fellow citizens. For many of these states where emergency powers of governors were unchecked, the restrictions continue even now. These inconsistencies in the application of emergency action of executive powers, are not due to a variation of the COVID-19 virus somehow impacting states differently; rather, the inconsistencies in the burdens placed upon the citizens of a given state depend upon the authority given to a governor through the states' statutes.<sup>2</sup>

In 1944, Friedrich Hayek, a famous economist, warned of unfettered executive powers in his timeless work, *The Road to Serfdom*. One of the most poignant chapters in this book is entitled "Planning and the Rule of Law." According to Friedrich Hayek, the rule of law is one in which:

General principles [are] laid down before hand, the 'rules of the game' which enable individuals to foresee how the course of apparatus of the state will be used, or what he and his fellow citizens will be allowed to do, or made to do, in stated circumstances.<sup>3</sup> The rule of law establishes the basic principle that laws should govern people, not rulers. When rulers govern people, equality is lost, and prejudice, favoritism, and status sway the decision maker.

As Hayek noted:

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<sup>1</sup> *Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*, No. 19A1070, 1.

<sup>2</sup> National Conference of State Legislatures, "Legislative Oversight of Emergency Executive Powers," accessed November 1, 2020, <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx>.

<sup>3</sup> Friedrich A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), 72.

Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of the great principles known as the Rule of Law.<sup>4</sup>

Our own courts have long recognized the bedrock principle that we are a nation governed by laws:

[The] Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are: publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights principles.<sup>5</sup>

This principle was affirmed by our Founding Fathers; but even before then, other political philosophers were fully aware of the importance of the principle of the Rule of Law. Without its diligent application, any culture is on its way toward enslavement. As Americans, we need to consider carefully the authority placed in governors' hands as emergency powers. Within days of governors from across the United States imposing orders regulating certain activities - such as wearing face coverings; staying at least 6 feet from friends, colleagues, neighbors, and strangers; staying in their homes; and forbidding attendance at social gatherings, including weddings and religious services - citizens began to notice a disparity in treatment as it related to what was permitted conduct and what was deemed illegal. Many businesses were shut down, while others were able to remain open with no logical explanation as to why one would be treated differently from another. What seemed unthinkable as Americans, became a reality within weeks for many American citizens.

Emergency powers are granted to governors in times of disease, war, and other crisis situations.<sup>6</sup> Under normal circumstances, the power to legislate is reserved for the Legislature. However, when an emergency arises, Legislatures in some states, have ceded their power to the governors or an agency controlled by the governor. The National Conference of State Legislatures ("NCSL") has provided an excellent compendium on emergency powers identifying state-by-state the emergency powers granted to governors and the restrictions placed upon them. The NCSL notes generally:

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<sup>4</sup> Ibid., 72.

<sup>5</sup> "Overview: Rule of Law," United States Courts, accessed November 1, 2020, <https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law>.

<sup>6</sup> National Conference of State Legislatures, "Legislative Oversight of Emergency Executive Powers."

These [emergency] powers include authority normally reserved for legislatures, such as the ability to suspend existing statutes or effectively create new laws – albeit temporarily and only as needed to respond to the emergency situation.<sup>7</sup>

The COVID-19 pandemic has added to our vocabulary new phrases, and perhaps even concepts. Many governors made determinations of what is “essential” and “not essential” conduct or occupations. There could be no better example of the departure from the Rule of Law, than a governor or agency controlled by the governor arbitrarily deciding what is essential or non-essential. Millions of Americans learned from their elected official that they were non-essential - their churches were non-essential; their businesses were non-essential; and the education of their children was non-essential. On the other hand, shopping at Lowe’s, Walmart, Home Depot, purchasing marijuana from a cannabis dispensary, or alcohol from a liquor store were all deemed essential.

In my own state of Oregon, Oregon Governor Brown placed restrictions on all indoor and outdoor gatherings and threatened to forcibly close businesses that would not comply. Under Oregon Revised Statute 401.990, if a person violated any of the provisions implemented by the governor, upon conviction that person would be guilty of a Class C misdemeanor, resulting in up to 30 days in jail and a fine of up to \$1,250.00.<sup>8</sup>

At the time, the executive orders imposing these types of penalties were put in place, many believed that even if the governor created an arbitrary edict that could potentially destroy a business or shut down a church, surely the Rule of Law would require that some objective time limitation would be placed on the executive order. Unfortunately, that was not the case, demonstrating that once the Rule of Law is abandoned, there seems to be no limit on a ruler’s power. Again, in my own state, Oregon Governor Kate Brown answered the question of how long such emergency edicts would exist in Oregon Executive Order Number 20-12, in which she stated:

This Executive Order is effective immediately, and remains in effect until terminated by the Governor.<sup>9</sup>

What if the governor chose to never lift the restrictions? Those citizens living in states in which the governors implemented these types of emergency orders began to ask the question, where in

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<sup>7</sup> Ibid.

<sup>8</sup> “ORS 401.990 Penalties,” ORS 401.990 Penalties 2020 Oregon Revised Statutes, accessed November 1, 2020, <https://www.oregonlaws.org/ors/401.990>.

<sup>9</sup> Office of the Governor State of Oregon, *Executive Order No. 20-12*, 8 [https://govsite-assets.s3.amazonaws.com/jkAULYKcSh6DoDF8wBM0\\_EO%20-12.pdf](https://govsite-assets.s3.amazonaws.com/jkAULYKcSh6DoDF8wBM0_EO%20-12.pdf).

the emergency orders is there accountability under the U.S. and State Constitutions? What about basic human rights? How could governors be given unfettered power to place restrictions on the citizens of their states without any checks on these powers? This unchecked power resulted in the abolition of the Rule of Law.

However, not every state lost sight of the Rule of Law amidst the pandemic. Those living in South Dakota experienced a different 2020 than much of the rest of the country. Prior to 2021 nowhere under the State Constitution of South Dakota could the governor alone determine how her state and citizens would respond to an emergency. Under SDLRC 34-48A-2 an emergency was to be managed through a Division of Emergency Management, conference between the Governor, secretary, and governing bodies, and associations, boards, and departments that would seek the safety, health, and welfare of the people.<sup>10</sup> Under this leadership South Dakota remained open and remained stable throughout the pandemic. Businesses were not required to close, and in December of 2020 the state held the lowest unemployment rate along with Nebraska, another state where the governor did not have unfettered power.

In many instances, the governors' powers were actually "emerging powers" under the guise of "emergency powers." As will be discussed, this has resulted in the violation of the separation of powers between the executive branch and the legislative branch, the unequal application of the law, and the total abrogation of checks and balances designed to protect citizens from the infringement of their constitutional and civil rights. In other words, the complete abolition of the Rule of Law.

### **Executive Power Ignores Separation of Power and Becomes Consolidation of Power**

Laws should be made by legislatures, not governors. When a governor legislates, the result is a direct violation of the doctrine on which our country was founded and which almost all states recognize in their own constitutions, that power or branches of the government must be separated. This was fully affirmed and implemented by our Founders. In *Federalist 51*, James Madison wrote, "ambition must be made to counteract ambition."<sup>11</sup> This is the purpose for the separation of powers. The executive and legislative branches should work in tandem to ensure the safety and the preservation of constitutional rights during a local or national emergency. John Adams knew what could happen if a person was given unchecked power, and he viewed it as one of the greatest dangers to democracy. John Adams said:

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<sup>10</sup> "SDLRC 34-48A-2 South Dakota Legislature," Legislative Research Council, [https://sdlegislature.gov/Statutes/Codified\\_Laws/2057926z](https://sdlegislature.gov/Statutes/Codified_Laws/2057926z)

<sup>11</sup> "Federalist Papers No. 51," Bill of Rights Institute, March 8, 2015, <https://billofrightsinstitute.org/founding-documents/primary-source-documents/the-federalist-papers/federalist-papers-no-51/>.

We may appeal to every page of history we have hitherto turned over, for proofs irrefragable, that the people, when they have been unchecked, have been as unjust, tyrannical, brutal, barbarous and cruel as any king or senate possessed of uncontrollable power.<sup>12</sup>

John Adams was instrumental in the drafting of the Massachusetts Constitution. In Article XXX, he indicated that each branch of government should operate under its intentional design, and in no other fashion. When one branch of government begins to operate as the other, the balance of powers is disturbed. This has been clearly demonstrated throughout the pandemic in many instances where the executive branch has operated as the legislative branch establishing and enforcing the law. John Adams, in Article XXX of the Massachusetts Constitution, ended with the acknowledgement that each branch should operate under its intentional design and no other fashion for the purpose that “it may be a government of laws and not of men.”<sup>13</sup> When power is equally distributed and checked, government remains under the law.

Similarly, John Locke, a political philosopher who greatly influenced many of the Founding Fathers, saw the importance of a strong legislative branch. To John Locke, the legislative branch was the branch closest to the people, and therefore could be more easily influenced by them. In his *Second Treaties of Government*, John Locke stated:

Yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them: for all power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security.<sup>14</sup>

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<sup>12</sup> John Adams, *The Works of John Adams, Second President of the United States: with a Life of the Author, Notes and Illustrations, by his Grandson Charles Francis Adams*, Vol. 6, (Boston: Little, Brown and Co., 1856), 1850-1856 Vol. 6 <https://oll.libertyfund.org/titles/2104>.

<sup>13</sup> John Adams, Massachusetts Constitution, Article XXX, 1780.

<sup>14</sup> John Locke, *The Second Treatise of Government*, The Project Gutenberg eBook, accessed November 1, 2020. <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.

Even before Locke, yet another political philosopher instrumental in influencing the American Founders was Samuel Rutherford. In 1644, he published a book entitled, *Lex Rex*, simply meaning, “the law is king.”<sup>15</sup>

However, in virtually every state where governors have issued emergency executive orders, legal challenges have been raised. One example is found in Michigan, in which a healthcare provider challenged Governor Whitmer’s Executive Order No. 2020-17 which, “prohibited healthcare providers from performing nonessential procedures.”<sup>16</sup> The governor attempted to do this by extending and reinstating her order three times before it was eventually brought before the Michigan Supreme Court. Upon review, the Michigan Supreme Court unanimously held that the governor did not have the power to extend or renew the emergency past its original expiration.<sup>17</sup> In reaching its decision, the Court also declared that the Emergency Powers of the Governor Act “violated the Michigan Constitution because it delegated to the executive branch the legislative powers of state government and allowed the executive branch to exercise those powers indefinitely.”<sup>18</sup>

In my own state of Oregon, Governor Brown issued orders governing both Thanksgiving and Christmas. Her orders consisted of “limiting social get-togethers (indoors and outdoors) to no more than six people, total, from no more than two households.”<sup>19</sup> Violators of this mandate could face up to 30 days in jail and a \$1,250.00 fine.<sup>20</sup> One can only imagine whether legislatures would ever be brazen enough to pass such a law. Certainly, if the legislature were to convene, people from across the state could at least provide input, and no doubt some sort of compromise could be implemented.

I would argue that maintaining the Rule of Law requires active participation by the legislature. Unfortunately, many governors and state legislatures have ignored the principles established by our Founders and even their predecessors. These principles were intended to protect against unfettered power. Throughout the COVID-19 pandemic, many governors were acting “as the

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<sup>15</sup> Ligonier Ministries, “Lex Rex,” *5 Minutes in Church History*, accessed November 1, 2020, <https://www.5minutesinchurchhistory.com/lex-rex/>.

<sup>16</sup> *Midwest Institute of Health, PLL v. Governor*, 161492 (2020).

<sup>17</sup> *Ibid.*, 1.

<sup>18</sup> *Ibid.*, 2.

<sup>19</sup> Jason Dudash, “How Oregon’s Governor Became the Latest Poster Child for Covid-19 Tyranny,” *The Daily Signal*, November 18, 2020, <https://www.dailysignal.com/2020/11/18/how-oregons-governor-became-the-latest-poster-child-for-covid-19-tyranny>.

<sup>20</sup> *Ibid.*



law,” as opposed to “under the law.” In many instances, executive orders are still pending, and no one knows when they will end. Rutherford, Locke, Adams, Madison, and Hayek, all warned of, and we are now seeing the harm, when all power is consolidated by ceding unfettered authority to governors. No longer does the law rule, but individuals. Sadly, *rex lex*.

### **The Absence of Checks and Balances Transforms the Rule of Law into Slips and Slides**

Throughout the COVID-19 pandemic, many governors were given the ability to “suspend existing statutes or effectively create new laws,”<sup>21</sup> and in many cases, the power to choose when the emergency will end.<sup>22</sup> These governors have singlehandedly decided who is “essential” and “nonessential,” as well as what businesses would close, when they would they close, and for how long they must stay closed. The only way to protect the Rule of Law, besides a rigorous application of the separation of powers, is to also uphold checks and balances. Again, most state constitutions recognize and have incorporated checks and balances within their own constitutional framework. An example of one state enforcing checks and balances is Pennsylvania. In that state, the County of Butler sued the Governor of Pennsylvania on the grounds that the emergency orders violated a number of constitutional rights and lacked any sort of accountability under checks and balances. The County argued:

There is no question that our founders abhorred the concept of one-person rule. They decried government by fiat. Absent a robust system of checks and balances, the guarantees of liberty set forth in the Constitution are just ink on parchment. There is no question that a global pandemic poses serious challenges for governments and for all Americans. But the response to a pandemic (or any emergency) cannot be permitted to undermine our systems of constitutional liberties or the system of checks and balances protecting those liberties. Here, Defendants are statutorily permitted to act with little, if any, meaningful input from the legislature. For the judiciary to apply an overly deferential standard would remove the only meaningful check on the exercise of power.<sup>23</sup>

The Pennsylvania Court entered judgement in favor of the Plaintiffs, concluding that:

Even in an emergency, the authoring of government is not unfettered. The liberties protected by the Constitution are not fair-weather freedoms—in place when times are good but able to 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

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<sup>21</sup> National Conference of State Legislatures.

<sup>22</sup> *Ibid.*

<sup>23</sup> *County of Butler v. Thomas W. Wolf*, 20.

never be permitted to supersede the commitment to individual liberty that stands as the foundation of the American experiment.<sup>24</sup>

When unfettered authority is exercised it absolves checks and balances, which exist to protect the liberty of citizens.

### **The Unequal Application of Executive Orders Demonstrates the Absence of the Rule of Law**

Perhaps the most glaring example of what occurs when the Rule of Law is abandoned, is the unequal application of a ruler's edict, in this case emergency orders, to the citizens of their state. Again, Hayek recognized:

Under the Rule of Law the government is prevented from stultifying individual efforts by *ad hoc* action. Within the known rules of the game the individual is free to pursue his personal ends and desires, certain that the power of the government will not be used deliberately to frustrate his efforts.<sup>25</sup>

The Rule of Law as described by Hayek protects men and women against the government choosing who will be impacted by the law under the government's prerogative. The Rule of Law is intended to protect an individual or business from being discriminated against by the government. It prohibits one person benefitting over another, simply because the executive prefers the former over the latter. However, one of the most significant outcries against unfettered executive power has been the biased application of the law and the prejudice at the whims of the governor or its agency choosing one citizen, or group of citizens, over another. In no manner has this been more significantly demonstrated than executive orders applied to religious worshippers. In the Supreme Court case of *Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*,<sup>26</sup> Calvary Chapel sued the governor of Nevada for allowing certain businesses to open at 50% capacity while keeping churches at a maximum capacity of 50 people regardless of the size of the building. Justice Alito, in his dissent, pointed out:

The Constitution guarantees the free exercise of religion. It says nothing about the freedom to play craps or blackjack, to feed tokens into a slot machine, or to engage in any other game of chance. But the Governor of Nevada apparently has different priorities. Claiming virtually unbounded power to restrict constitutional rights during the COVID-19 pandemic, he has issued

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<sup>24</sup> *Ibid.*, 65,66

<sup>25</sup> *The Road to Serfdom*, 73.

<sup>26</sup> *Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*, No. 19A1070, 1.

a directive that severely limits attendance at religious services. A church, synagogue, or mosque, regardless of its size, may not admit more than 50 persons, but casinos and certain other favored facilities may admit 50% of their maximum occupancy—and in the case of gigantic Las Vegas casinos, this means that thousands of patrons are allowed.<sup>27</sup>

Hayek warned that when government becomes the planner for people, it ultimately leads to arbitrary and discriminatory application. He indicated that government planners and their version of the law:

must provide for the actual needs of people as they arise and then choose deliberately between them. It must constantly decide questions which cannot be answered by formal principles only, and, in making these decisions, it must set up distinctions of merit between the needs of different people.<sup>28</sup>

The case of *Calvary Chapel* ends on a high note in Justice Gorsuch’s dissent, in which he reiterates that the Bill of Rights is the ultimate rule of law under which all governments must operate. In his dissent, Justice Gorsuch set forth his now famous quote:

In Nevada, it seems, it is better to be in entertainment than religion. Maybe that is nothing new. But the First Amendment prohibits such obvious discrimination against the exercise of religion. The world we inhabit today, with a pandemic upon us, poses unusual challenges. But there is no world in which the Constitution permits Nevada to favor Caesars Palace over Calvary Chapel.<sup>29</sup>

When rulers create the law, they often consider themselves above the law. This is perhaps the most egregious form of unequal application of the law. Many of the most stringent governors across the United States have demonstrated that their own orders do not apply to themselves. The Heritage Foundation provides a detailed list of these violations.<sup>30</sup> Finally, simple economic outcomes demonstrate the unequal effect the governors’ orders have had on the citizens of their states. In an article by NBC NEWS, “A Tale of Two Pandemics: Big-box Store Rake in Record Profits While Small Businesses Fold,” the title says it all. Governors have shut down small businesses but allowed giant retail stores to experience all-time record sales. According to the article referenced above, Target has experienced a 24% increase

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<sup>27</sup> Ibid., 1.

<sup>28</sup> Hayek, *The Road to Serfdom*, 75.

<sup>29</sup> *Calvary Chapel Dayton Valley*, 1.

<sup>30</sup> The Heritage Foundation, “COVID Hypocrisy: Policymakers Breaking Their Own Rules,” The Heritage Foundation, February 10, 2021, <https://www.heritage.org/data-visualizations/public-health/covid-hypocrisy-policymakers-breaking-their-own-rules/>

compared to the past year during the beginning months of the pandemic, and Walmart experienced a 97% increase of online sales during that same time.<sup>31</sup> Unfortunately, the American Bankruptcy Institute projects that in 2020 the total number of small businesses filing for bankruptcy will increase by 36% as compared to the year before.<sup>32</sup> None of this should surprise us. Hayek recognized:

There can be no doubt that planning necessarily involves deliberate discrimination between particular needs of different people and allowing one man to do what another must be prevented from doing. It must lay down by a legal rule how well-off particular people shall be and what different people are to be allowed to have and do.<sup>33</sup>

Some may argue that in many instances the executive powers are a result of the democratic process, and therefore, represent the will of the people. However, Hayek addressed this argument noting that the use of the democratic process to bestow executive power can result in tyranny; no different than tyranny achieved through force.<sup>34</sup> Hayek explains that this argument entirely confuses the meaning of the “rule of law.” The Rule of Law does not mean that so long as the legislature, or in this case the executive, is given the power to do something, that it is perfectly acceptable for them to carry out their desires. Hayek noted:

By giving the government unlimited powers, the most arbitrary rule can be made legal; and in this way a democracy may set up the most complete despotism imaginable.<sup>35</sup>

### **The Road to Freedom**

What is to be done? Certainly, the states as laboratories for democracy can be looked to as examples of how to preserve the Rule of Law and individual liberties. Certainly, states such as South Dakota where a lockdown was never administered and businesses equally remained open, as compared to states such as Oregon, demonstrate how emergency powers can be appropriately managed. The easiest way to fix the broken system is to require active legislative participation and oversight. It is not enough for an emergency statute to proclaim: “emergency powers granted

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<sup>31</sup> Leticia Miranda, “A Tale of Two Pandemics: Big-Box Stores Rake in Record Profits While Small Businesses Fold,” NBCUniversal News Group, August 20, 2020, <https://www.nbcnews.com/business/consumer/tale-two-pandemics-big-box-stores-rake-record-profits-while-n1237464>.

<sup>32</sup> Miranda, “A Tale of Two Pandemics.”

<sup>33</sup> *The Road to Serfdom*, 78.

<sup>34</sup> Hayek, *The Road to Serfdom*, 82.

<sup>35</sup> *Ibid.*, 83.

to the governor shall be terminated by proclamation of the governor or by joint resolution of the Legislative Assembly.”<sup>36</sup> If the legislative assembly never meets, this does not occur. Time limitations should be imposed in the statutes requiring the legislatures to meet. Representatives are voted into House legislatures to represent the needs of their respective districts. Citizens vote for representatives with the understanding that they will be their voice and access is much easier to representatives than to the governor.

Strict time periods should be imposed as it relates to the existence of an emergency. For instance, states such as Kansas, California, Minnesota, South Carolina, and Washington, have limitation on the number of days governors are allowed to operate under emergency powers.<sup>37</sup> An example of legislation is the Kansas statutes, which govern the emergency power and states:

No state of disaster emergency may continue for longer than 15 days unless ratified by concurrent resolution of the legislature, with the single exception that upon specific application by the governor to the state finance council and an affirmative vote of a majority of the legislative members thereof, a state of disaster emergency may be extended once for a specified period not to exceed 30 days beyond such 15-day period. Kan. Stat. Ann. § 48-924.<sup>38</sup>

The inclusion of these types of time limitations on governors provides for direct legislative oversight and preserves the separation of powers doctrine and checks and balances. No one person or agency should make individual decisions impacting the lives of American citizens. No one person or a few should decide whether churches and schools should be opened or closed; whether small businesses should be shut down; and who should be left open. All of these issues should be governed by the legislative process in which people have direct access and the ability to hold their leaders accountable.<sup>39</sup> In summary, a few ideas that would preserve and widen the path to freedom are below:

1. Executive powers be limited to actual emergencies. An emergency should be narrowly defined and never have an unlimited tenure, so long as a governor declares the emergency exists.
2. Executive powers must be limited in duration. They should have automatic expiration dates of no more than 30 days.

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<sup>36</sup> National Conference of State Legislatures.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> *Elkhorn Church, et al v. Katherine Brown Governor of the State of Oregon*, Case # 20CV17482.

3. The Legislature should be actively involved in oversight and must vote to approve executive authority every 30 days.
4. There should be citizen input and the ability to file actions in courts by citizens to preserve and uphold their own constitutional and civil liberties as it relates to an individual's life being directly impacted, either through a child not being able to attend school or a business being closed.
5. If emergency measures are implemented, the executive orders must be applied consistently across all categories of citizen activity.
6. Most importantly, any exercise of executive power must acknowledge and respect the fundamental civil rights of freedom of religion and freedom of speech. Churches hold a higher place, than casinos or big block stores.

Our nation has lost its innocence in many ways as a result of the pandemic. We should not be surprised that individuals who are given unfettered power wield that power in a manner that often causes more harm than the “emergency,” under which they are operating. Our predecessors warned us of this conduct. Hayek, in more recent times, does perhaps one of the best jobs of setting forth how unfettered executive power strips individuals of their civil liberties. We should not let the pandemic pass without careful consideration as to how to protect our individual liberty. We have been awakened to the abuses that can occur under emergency powers. Fortunately, we have the tools to correct the mistakes that have been made by many states’ governors. While there is time, we should consider what has happened to us and continue to build a society that is safer, stronger, and still free. That requires as a foundation stone the dedication to the Rule of Law.<sup>40</sup>

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<sup>40</sup> Thanks, Dad, for your input and painstaking editing.



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