



Written by [Bob Adelman](#) on May 4, 2020

Oklahoma Mayor Gets Pushback on Mask Order, Reverses Position

Stillwater, Oklahoma, Mayor Will Joyce [quickly backed off](#) from requiring that customers and employees of stores and restaurants must all wear masks. The rule was applied on Friday, May 1, and was revised later that day.

City Manager Norman McNickle explained why it was revised: “In the short time beginning on May 1, 2020, — that face coverings have been required for entry into stores [and] restaurants — store employees have been threatened with physical violence and showered with verbal abuse. In addition, there has been one threat of violence using a firearm.”

Mayor Joyce was quick to apologize:

I knew there would be some objections, but I did not expect physical confrontations with employees and threatening phone calls to city hall. I hate that our businesses and their employees had to deal with abuse today, and I apologize for putting them in that position....

I issued a revised order this afternoon to correct this problem.

Ohio Governor Mike DeWine learned the same lesson. After issuing a similar order on April 27, he discovered that some Ohioans found the order “offensive,” adding, “It became clear to me that that was just a bridge too far. People were not going to accept the government telling them what to do.”

He changed his order into a “recommendation” for customers doing business in stores in his state. His order requiring all employees to wear masks remains in place.

Counties on the West Coast are also pushing back against onerous restrictions issued by state governors. Commissioners in Franklin County, Washington, announced on Facebook, in defiance of Governor Jay Inslee’s stay-at-home order: “Franklin County is now open for business!!!”

Ron Sullenger, chairman of the board of supervisors of Sutter County, California, pushed back against Governor Gavin Newsom’s orders: “We do not have the same level of exposure that San Francisco or Los Angeles has.... One size doesn’t necessarily fit all counties in our situation and we would want some flexibility.”

Commissioners of Douglas County, Oregon, have asked officials in four neighboring counties to sign on to their request to the governor to speed up his timetable to reopen businesses there.

All of this raises a question: Under just what authority are these government officials operating? They are in the executive branch, tasked with enforcing laws and not writing them. It’s a key part of the genius of the Founders who determined to separate those powers in order to keep them from being





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abused.

Andrew Napolitano, who served as a judge on the New Jersey Superior Court for seven years, asked, analyzed, and then answered that question.

The judge wrote:

We begin our analysis with the observation of the truism that freedom is the default position. The language of the Declaration of Independence, as well as various amendments in the Bill of Rights, unambiguously reflects the views that those who wrote, ratified and amended the Constitution recognized that our rights — to think, speak, publish, worship, defend ourselves, travel, own property, be left alone — are natural to our humanity.

These rights preexisted the government. Their source is our humanity. Government does not grant these rights. Rather, its primary purpose — as stated in the Declaration of Independence, its sole purpose — is to protect these rights.

After providing significant historical background, the judge answered the question:

Now back to our question of whether the government — state or federal — can confine persons against their will in order to protect public health. The short answer is yes, but the Constitution requires procedural due process. That means a trial for every person confined.

Thus, a government-ordered quarantine of all persons in a city block or a postal ZIP code or a telephone area code would be an egregious violation of due process, both substantive and procedural.

Substantively, no government in America has the lawful power to curtail natural rights by decree.

Procedurally, notwithstanding the fear of disease contagion, the states and feds may only quarantine those who are actively contagious and will infect others imminently. And it must present evidence of both at a trial at which it bears the burden of proof.

While the non-aggression principle permits offensive aggression in self-defense when an attack is imminent and certain, that is a high standard for the government to meet, as it should be. Freedom — even the freedom of a madman or a dangerously sick and contagious person — is the default position. Infringing upon it without procedural due process is always constitutionally impermissible.

Citizens and elected officials are learning the hard way just how important those constitutional limitations are and how freedoms that are taken for granted are so easily abridged and abrogated when those limitations are ignored.



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