

WHAT IS A CONSTITUTIONAL CRISIS?

It is popular today to say that certain activities in Washington, DC constitute a “constitutional crisis.” We discussed the basic concepts in our February newsletter.

In this blog, we go a little more in-depth on what constitutes a constitutional crisis.

Constitutional crisis defined

Exactly what is a constitutional crisis?

There are many definitions. Simply put, in my opinion as a lawyer and former elected official, a constitutional crisis exists when one branch of government usurps the power of another branch of government. For example, a constitutional crisis is precipitated when the executive branch (i.e., the President) refuses to comply with an order from the judicial branch (i.e., the federal courts). It occurs when the constitutional separation of powers is breached.

Example of a constitutional crisis

One of the constitutional crises we face today is that the executive branch of government is violating the power of the legislative branch by preventing expenditure of federal funds on lawful government functions.

Let me explain. Congress has the “power of the purse.” That is, only Congress has the constitutional authority to pass a federal budget and to order (that is, “appropriate”) federal funds to be spent on federal functions. The President has no power to pass a budget or appropriate funds. The President’s power is limited to proposing a budget or suggesting appropriations of funds, but cannot pass a budget or refuse to spend the money Congress appropriates.

The President’s constitutional role is limited to taking care that the laws passed by Congress are “faithfully executed.” That is, the President is constitutionally mandated to operate the federal agencies created and funded by Congress.

The President has no authority to shut down federal agencies created and funded by Congress. The President’s unlawful refusal to spend funds appropriated by Congress is called “impoundment.”

Elon Musk shutting down federal agencies created and funded by Congress is a constitutional crisis. A good example of this is Musk’s closure of the Consumer Financial Protection Bureau (CFPB). The CFPB protects consumers from fraud committed by banks and other financial institutions. Congress created the CFPB in 2011. President Obama signed the legislation passed by Congress creating the CFPB. Every year, Congress

appropriates funds for its operations. By shutting down the agency, firing its staff, and refusing to expend the funds appropriated by Congress, the President has overstepped his authority and infringed on the authority of Congress.

Executive Orders

A word about Presidential Executive Orders: The President has no constitutional authority to enact laws. That power belongs exclusively to Congress.

Examples of past unlawful Executive Orders include President Trump's "ban" on immigration from Muslim countries in his first term.

Executive Orders do not have the force and effect of law and cannot legally contradict laws duly-enacted by Congress. Executive Orders are supposed to be directions to Cabinet members and federal employees as to how to lawfully implement laws passed by Congress. Executive Orders are simply the manner in which the President gives direction to federal agencies.

Executive Orders which violate laws enacted by Congress do not override or invalidate those laws.

You can read more about executive orders here. https://act.represent.us/sign/what-is-an-executive-order/?source=go-ad-gen-20241212&utm_source=go&utm_medium=ad&utm_campaign=gen&utm_content=20241212&utm_term=&gad_source=1&gclid=Cj0KCQjwhMq-BhCFARIsAGvo0KeIQoZc_8MWSx021eCxl9jpgeivRBTcGAPlOKPtoUjxlUTf33mSQ_EaAuwcEALw_wcB