

107TH CONGRESS
1ST SESSION

H. R. 864

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2001

Mr. PAUL introduced the following bill; which was referred to the Committee
on the Judiciary

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 The Congress finds the following:

8 (1) As a limit on governmental power, Constitu-
9 tional framers vested Federal powers in three co-
10 equal branches of government, each with unique and
11 limited powers and each with a coequal duty to up-

1 hold and sustain the Constitution of the United
2 States.

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

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

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

20 (5) A congressional committee print has noted
21 that, “[b]ecause the President has no power or au-
22 thority over individual citizens and their rights ex-
23 cept where he is granted such power and authority
24 by a provision in the Constitution or by statute, the
25 President’s proclamations are not legally binding

1 and are at best hortatory unless based on such
2 grants of authority.” 85th Cong., 1st Sess., *Execu-*
3 *tive Orders and Proclamations: A Study of a Use of*
4 *Presidential Powers* (Comm. Print 1957).

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

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

19 **SEC. 3. EFFECT OF PRESIDENTIAL ORDERS.**

20 (a) LIMITED EFFECT OF PRESIDENTIAL ORDERS.—
21 A Presidential order neither constitutes nor has the force
22 of law and is limited in its application and effect to the
23 executive branch.

24 (b) EXCEPTIONS.—Subsection (a) does not apply
25 to—

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

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

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

9 (A) issued pursuant to such authority;

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

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

15 (i) violates the ninth or tenth amend-
16 ments to the Constitution; or

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

21 **SEC. 4. REQUIREMENT OF STATEMENT OF AUTHORITY FOR**
22 **PRESIDENTIAL ORDERS.**

23 (a) STATEMENT OF AUTHORITY.—The President
24 shall provide for each Presidential order a statement of
25 the specific statutory or constitutional provision which in

1 fact grants the President the authority claimed for such
2 action.

3 (b) INVALIDITY OF NONCONFORMING ORDERS.—A
4 Presidential order which does not include the statement
5 required by subsection (a) is invalid, to the extent such
6 Presidential order is issued under authority granted by a
7 congressional enactment. This subsection applies to Presi-
8 dential orders in effect on or after the date that is 180
9 days after the date of enactment of this Act.

10 **SEC. 5. STANDING TO CHALLENGE PRESIDENTIAL ORDERS**

11 **WHICH IMPACT SEPARATION OF POWERS IN-**
12 **TEGRITY.**

13 The following persons may bring an action in an ap-
14 propriate United States court to challenge the validity of
15 any Presidential order which exceeds the power granted
16 to the President by the relevant authorizing statute or the
17 Constitution:

18 (1) CONGRESS AND ITS MEMBERS.—The Con-
19 gress, the House of Representatives, the Senate, any
20 Senator, and any Representative to the House of
21 Representatives, if the challenged Presidential
22 order—

23 (A) infringes on any power of Congress;

24 (B) exceeds any power granted by a con-
25 gressional enactment; or

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

5 (2) STATE AND LOCAL GOVERNMENTS.—The
6 highest governmental official of any State, common-
7 wealth, district, territory, or possession of the
8 United States, or any political subdivision thereof, or
9 the designee of such person, if the challenged Presi-
10 dential order infringes on a power of such State or
11 on a power afforded to such commonwealth, district,
12 territory, or possession under any congressional en-
13 actment or relevant treaty of the United States.

14 (3) AGGRIEVED PERSONS.—Any person ag-
15 grievied in a liberty or property interest adversely af-
16 fected directly by the challenged Presidential order.

17 **SEC. 6. NATIONAL EMERGENCY POWER DIVESTED TO CON-**
18 **GRESS.**

19 (a) DIVESTITURE OF AUTHORITY TO DECLARE
20 EMERGENCY.—To the extent that any Act of Congress in
21 effect on the date of enactment of this Act grants to the
22 President or any other officer or employee of the executive
23 branch the power to declare a national emergency, such
24 power is hereby divested to the Congress alone.

1 (b) TERMINATION OF POWERS UNDER EXISTING
2 STATES OF EMERGENCY.—

3 (1) IN GENERAL.—All powers and authorities
4 possessed by the President, any other officer or em-
5 ployee of the Federal Government, or any executive
6 agency (as defined in section 105 of title 5, United
7 States Code) as a result of the existence of any dec-
8 laration of national emergency in effect on the date
9 of enactment of this Act are terminated 90 days
10 after the date of enactment of this Act. Such termi-
11 nation shall not affect—

12 (A) any action taken or proceeding pend-
13 ing that is not finally concluded or determined
14 before such date of termination;

15 (B) any action or proceeding based on any
16 act committed before such date termination; or

17 (C) any rights or duties that matured or
18 penalties that were incurred prior to such date
19 of termination.

20 (2) NATIONAL EMERGENCY DEFINED.—For the
21 purpose of this subsection, the term “national emer-
22 gency” means a general declaration of emergency
23 made by the President or any other officer or em-
24 ployee of the executive branch.

1 **SEC. 7. PRESIDENTIAL ORDER DEFINED.**

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

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

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

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