**MEMORIAL DAY 2020 PART 3**

COUNTRY BIBLE CHURCH

Pastor Mike Smith

May 28, 2020

Tyrannical government officials are able to oppress the people only when people are willing to obey their dictates which pose as laws, but are unconstitutional and there- fore totally null and void.

Nor can they oppress the people unless law enforcement officers are willing to break their oath to the Constitu- tion in order to execute dictatorial unconstitutional orders. They become pawns of maniacal usurpers and in doing so, they become just as evil as those who issue the freedom destroying orders. Same on them!

Why would anyone obey a “law” or enforce a “law” that destroys our God-given rights which has inevitably been voided and nullified? Three reasons come to mind:

(1) Fear (2) Ignorance (3) Apathy. No nation can remain free when these three enemies of freedom prevail.

One does not need to hire an attorney to determine if a right enshrined in the Bill of Rights has been disregard- ed. We know when our right to exercise our religion, or our right to speak our mind, or our right to peaceably assemble, or our right to keep and bear arms has been ignored.

When no one in the chain of command in government is willing to interpose themselves between tyrannical acts and the people, then people have the right to nullify those dictatorial acts by refusing to obey them.

Thomas Jefferson said that nullification is the rightful remedy for tyrannical government officials. Some recoil at the notion of disobeying the “law”. Remember, if it is unconstitutional, it’s not a law. Nullification is logically, constitutionally, and morally the rightful remedy.

Those who accuse people who would employ nullification to preserve their freedoms say that they are rebelling.

No, they are not rebelling, they still submit to legitimate laws, they are actually taking action to stop rebellion of rogue government officials.

Submitting when submission leads to further tyranny doesn’t count as a moral act. In fact, submission leading to the perpetuation of tyranny is an immoral act. It is those who refuse to submit to injustice that are moral.

Nullification has been used successfully many times to halt the execution of unconstitutional laws and acts:

Two dozen states nullified the **REAL ID ACT of 2005**, legislation which aroused the opposition. Resistance was so widespread that although the law is still on the books, the federal government has, in effect, given up trying to enforce it.

One of the most successful examples of modern-day nullification involves the medicinal use of marijuana, which is illegal under federal law. Fourteen states are openly resisting the federal government’s policy.

Another example of a state challenge to federal power is the **Sheriffs First Initiative**, whereby, with a few exceptions, it would be a state crime for a federal law enforcement official to make an arrest or engage in a search and seizure without first receiving permission from the local sheriff.

**CSPOA Advisory Board Member Michael Peroutka Intervenes for Liberty in Washington State**

America has weathered many storms in our history, brought on both by nature and by enemies of the Constitution, and this current pandemic is no different.Though it is a real virus like many others of the past, government’s response has been dramatically different.

The overreach has been treacherous and often tyrannical, violating fundamental individual rights in the name of safety.

**There is no 'except for emergencies' clause in the Bill of Rights.**Separation of Powers cannot be abrogated by a single member of one branch of government.  The fear-mongering and panic has pushed liberty to the back burner.  No longer.

Here, **Michael Peroutka**, attorney and member of our CSPOA Advisory Board, intervenes in a specific state (Washington) and sets forth the law….the Supreme Law of the Land.  This clearly written and easily understood explanation of that law could well serve for similar circumstances in every state in the Union.

The following is a response to the legal opinion provided by **John F Driscoll, Jr.**, Chief Civil Deputy Prosecuting Attorney for Spokane County in an April 30, 2020 letter to the Commissioners of Spokane County, Washington.

**Mr. Driscoll’s** letter contains a legal opinion. The subject of the opinion is the Governor’s purported emergency powers and the question posed by the Commissioners is this:

“What ARE the governor’s emergency powers during the present COVID-19 pandemic, including enforcement of any orders issued by the governor during that time?”

The April 30th letter (the opinion) contains one paragraph which is titled **SHORT ANSWER** and then 5 pages titled **ANALYSIS** which includes text taken from the State Code.

**RESPONSE** [from **Michael Peroutka –** CSPOA]

We respectfully disagree with the substance of the short answer and with the body of analysis for the reasons herein:

**Short answer Section**:

The opinion begins by making the following statement:

“*The Governor derives his power both constitutionally and statutorily*.”

This is true but begs the question as to the lawful source and limits of that power. The remaining sentences in this section recite the penalties for disobeying the governor and asserts that the orders of local health officers also must be obeyed so as to avoid fines and punishments. We can find no discussion in the opinion documenting the constitutional source of authority for health officials to MAKE law.

**Analysis Section**:

This section begins with the statement that the governor’s power to make law is initially derived from Article X of the Bill of Rights to the United States Constitution commonly known as the Tenth Amendment which states:

***“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people”***

After citing the Tenth Amendment the opinion concludes, “*This basically allows the state, through its executive, to decide state matters.”*

This is not an accurate summation of the nature, purpose and effect of the Tenth Amendment. Under the terms of the United States Constitution ONLY certain powers are delegated to the national government by the states. In addition, the language of Article I, Section 10, prohibits the states from certain other things, i.e. treaties and coining money.

The Tenth Amendment clarifies that, but for these powers, powers that previously belonged to the states continue to rest with them. At the same time, powers that previously belonged to the people are similarly reserved to them.

The Tenth Amendment, then, is not a grant of plenary (full, complete, absolute) power which devolves to the executive of the state. It is simply an acknowledgment that powers, other than those affected by the terms of the Constitution of the United States, remain as status quo ante. That is, whatever powers resided in the state government still exist. In like manner, whatever powers resided in the people still reside there.

This last point is salient (prominent, very clear) because Article I, Section 1 of the Washington State Constitu- tion acknowledges that all governmental authority comes from the people and is authorized by virtue of their consent:

**ARTICLE I**

***Section 1: All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.***

Nothing in the 10th amendment operates, then, to subtract in any way from the authority of the people, or to give the governor of Washington State any power or authority which is not specifically delegated to him by the people under the terms of the Washington State Constitution.

Turning then to the Washington State constitution, the opinion cites Article III, Sections 2 and 5 as follows:

**ARTICLE III**

**SECTION 2 GOVERNOR, TERM OF OFFICE**. The supreme executive power of this state shall be vested in a governor, who shall hold his office for a term of four years, and until his successor is elected and qualified.

**SECTION 5 GENERAL DUTIES OF GOVERNOR**. The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed....**NOT MADE**...!

The opinion then states:

“*This basically allows the governor to enforce state laws, including orders or proclamations he may issue under those laws.”*

We respectfully disagree. This is not an accurate statement. Pursuant to article III, Section 2 the governor is not “allowed” but is required to faithfully execute state laws. But there is nothing in the constitution that authorizes or permits him to make laws or to issue orders or proclamations that pretend to be law or (carry the weight of law=if you disobey, punishment follows) In fact, all authority to make law is reserved to the legislative branch under Article II, Section 1.

**ARTICLE II**

**SECTION 1** **LEGISLATIVE POWERS, WHERE VESTED**. The legislative authority of the state of Washington shall be **vested in the legislature**, consisting of a senate and house of representa- tives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.

Therefore, any proclamation issued by the Governor must be executory in nature (executing existing law) and not legislative (pretending to make law). And since valid executive orders only apply to those who are under the authority of the executive, no executive order is binding on anyone outside the executive branch of government. The opinion’s reference to Article III, Section 5 above is consistent with the idea that the Governor may impose requirements on those in the executive branch, that is, those already under his authority, but NOT on anyone else. (See Addendum 2 for separate discussion regarding executive orders generally).

Moreover, **Article II, Section 18**, confirms this point by stating plainly that no laws shall be enacted except by bill (not by order, mandate, directive or edict.)

ISSUE EDICTS ARE WHAT DICTATORS HAVE ALWAYS DONE, WHETHER THEY BE CALLED Pharoah, King, Queen, Emporer, Caesar, Czar, Tzar, Führer, Supreme Leader, Comandante, Imam, Pope, Governor or President, one person decided what everyone in their realm could or could not do... and if they didn't do exactly what the dictator said, they were punished in some way and, more often than not, off came their head!

**ARTICLE II**

**SECTION 18 STYLE OF LAWS**. The style of the laws of the state shall be:

"Be it enacted by the Legislature of the State of Washington." And no laws shall be enacted except by bill.

Finally, and in any event, no executive order or pretended legislation is lawful which contravenes or violates the God-given constitutionally protected rights of the people as particularly described in Article I, Sections 2,3,4,5 and 11, as well as many other sections of the Washington State Constitution:

**ARTICLE I**

**SECTION 2** SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

**SECTION 3** PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

**SECTION 4** RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

**SECTION 5** FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

**SECTION 11** RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion…until or unless they commit MURDER 'in the name of their god' in which case they will be prosecuted to the full extent of the law!

The dangerous situation in which we find ourselves was contemplated and provided for by the Founders and the necessity for civil officials to exercise fidelity to the rule of law has been rearticulated by courts throughout the American political experience.

For example, in Federalist 51, James Madison ('father of the US Constitution") observed that when one level or branch of government gets out of its lane, another level and/or branch will **interpose** itself to defend the people from tyranny.

"Hence, a double security arises to the rights of the people. The different governments will control each other at the same time that each will be controlled by itself. (Federalist 51, at 323)"

More recently, Justice Scalia observed: "*But the Constitution protects us from our own best intentions. It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day*.”

For these reasons we believe that the analysis in the opinion should be revisited and reconsidered. The circumstances of the “current crisis” (aka COVID-19) can never be used to justify lawless- ness, either on the part of individuals or government officials or institutions.

Respectfully submitted,

Michael Anthony Peroutka, Attorney at Law

Co-Founder, Institute on the Constitution