

April 5, 2021



TO: RI Senate Committee on Rules, Government Ethics and Oversight
FROM: RI Center for Freedom & Prosperity, former Judge Robert Flanders
SUBJECT: Written Testimony re. Overview of Executive Orders

Chairman DiPalma and Committee Members: As a Board member and chair of the legal Board center sub-committee for the **RI Center for Freedom & Prosperity**, a non-partisan research and advocacy organization, and as a **former Associate Justice of the Rhode Island Supreme Court**, I would like to provide my perspective as to why reforms to our state’s Emergency Powers Act, including the issuance of related Executive Orders, should be strongly considered, so as to provide for more balanced governance, with appropriate checks on power.

Rhode Island’s Emergency Powers Act should be legislatively reformed to provide for more democratic emergency governance, along with a re-examination of the statutory parameters of the Governor’s emergency powers and the related roles of the legislative and judicial branches of state government. Currently, RI General Laws vest the Governor with broad and virtually unchecked power and flexibility to address emergency needs created by a disaster, upon declaring a state of emergency, which can be renewed unilaterally and indefinitely every 30 days without any required legislative oversight or approval.

Existing statutes direct those with the exercise of these great powers “to act with restraint and moderation and with strict regard to the rights of the people.” At its sole discretion, the General Assembly has the enumerated power to override such declarations to force an immediate end to states of emergency. However, in actual practice during the coronavirus pandemic of 2020-21, the Governor did not act with restraint, let alone “with strict regard to the rights of the people,” and the General Assembly was missing in action, failing to even hold any remote or socially distanced meetings for huge swaths of time during the Governor’s reign of emergency powers..

Further, the General Assembly refused to exercise its powers to contravene executive action, apparently leery of creating a political dispute with a Governor of the same party. Since March of 2020, except for some collaboration on the disbursement of federal funds, Rhode Island’s response to the pandemic has been governed solely by the Executive Branch, issuing executive orders and imposing arbitrary and inconsistent regulations, which caused significant, often irreparable, harm to countless residents and businesses. Under current law, there is no guarantee of any check-and-balance by any other branch of government. Further, there is no end in sight to this state of emergency ... arguably now ... a state of tyranny. During the 2020-21 state of emergency a number of constitutional issues arose:

- The right to peaceably assemble vs. the Governor’s arbitrary limitations on gatherings.
- Religious rights vs. the Governor’s harsh limits on faith-based gatherings as compared with larger permissible crowds in other secular settings.
- The constitutionality for the state to enforce face-mask mandates or to compel citizens to take other putative “health”-related actions.
- Economic liberty and equal protection and the constitutionality of designating certain businesses as “non-essential,” while permitting others, often dealing in similar products, to continue operations.
- Legal recourse, for all intents and purposes, was closed off to individuals and businesses who suffered economic and other harms

New statutory language, which considers the best practices of ‘emergency powers’ statutes enacted or under consideration in other states, as well as some novel considerations, should be developed to amend RI General Laws, such that a more democratic form of governance is maintained during states of emergency, with defined roles for each branch of government, and leading to a more equal balance and checking of the exercise of emergency government powers.

Specifically, there are three general areas that should be addressed:

- A) Consider whether the General Assembly should be required to affirmatively act when it comes to extending declared states of emergency and Executive Orders issued by the Executive Branch.
- B) Protect individuals and business entities from contact tracing abuses and unwarranted searches and seizures, with regard to compliance with Executive Orders issued under a declared State of Emergency.
- C) Ensure more viable legal avenues exist for individuals or businesses to challenge application of executive orders to their circumstances, even if court calendars are suspended, and to seek injunctive and compensatory relief from related Executive or Legislative action that are proven to cause undue or unequal harm. One hopes there can be a bi-partisan introduction of such legislation in 2021.

Thank you. If I can be of service, please contact me via our Center's CEO, Mike Stenhouse, at mstenhouse@RIFreedom.org or 401.429.6115.