

**AMENDMENT TO
RULES COMMITTEE PRINT 117-20
OFFERED BY MR. GOSAR OF ARIZONA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Separation of Powers
3 Restoration Act”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

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

12 (2) A Supreme Court justice stated, “The doc-
13 trine of the separation of powers was adopted by the
14 convention of 1787 not to promote efficiency but to
15 preclude the exercise of arbitrary power. The pur-
16 pose was not to avoid friction, but, by means of the
17 inevitable friction incident to the distribution of the
18 governmental powers among three departments, to

1 save the people from autocracy.” *Myers v. United*
2 *States*, 272 U.S. 52, 293 (1926) (Brandeis, J., dis-
3 senting).

4 (3) James Madison, quoting Montesquieu, stat-
5 ed in Federalist 47, “There can be no liberty where
6 the legislative and executive powers are united in the
7 same person, or body of magistrates.”.

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

11 (5) A congressional committee print has noted
12 that, “[b]ecause the President has no power or au-
13 thority over individual citizens and their rights ex-
14 cept where he is granted such power and authority
15 by a provision in the Constitution or by statute, the
16 President’s proclamations are not legally binding
17 and are at best hortatory unless based on such
18 grants of authority.” 85th Cong., 1st Sess., Execu-
19 tive Orders and Proclamations: A Study of a Use of
20 Presidential Powers (Comm. Print 1957).

21 (6) The Supreme Court has stated that, even if
22 Presidents have, without congressional authority,
23 taken actions only the Congress may take, “Con-
24 gress has not thereby lost its exclusive constitutional
25 authority to make laws necessary and proper to

1 carry out the powers vested by the Constitution ‘in
2 the Government of the United States, or any De-
3 partment of Officer thereof.’ ”. (*Youngstown Sheet &*
4 *Tube Co. v. Sawyer*, 343 U.S. 579 (1952)).

5 (7) Treaties or Executive Agreements which
6 purport to assign powers not amongst those specifi-
7 cally granted to the Federal Government by the
8 Constitution are non-binding and cannot constitute
9 law.

10 **SEC. 3. SEPARATION OF POWERS RESTORING RESCIS-**
11 **SIONS.**

12 (a) REPEAL OF WAR POWERS RESOLUTION.—The
13 War Powers Resolution (50 U.S.C. 1541 et seq.) is re-
14 pealed.

15 (b) TERMINATION OF STATES OF EMERGENCY.—

16 (1) IN GENERAL.—All powers and authorities
17 possessed by the President, any other officer or em-
18 ployee of the Federal Government, or any executive
19 agency (as defined in section 105 of title 5) as a re-
20 sult of the existence of any declaration of national
21 emergency in effect on the date of enactment of this
22 Act are terminated 90 days after such date. Such
23 termination shall not affect—

1 (A) any action taken or proceeding pend-
2 ing not finally concluded or determined on such
3 date;

4 (B) any action or proceeding based on any
5 act committed prior to such date; or

6 (C) any rights or duties that matured or
7 penalties that were incurred prior to such date.

8 (2) DEFINITION.—For the purpose of this sub-
9 section, the term “national emergency” means a
10 general declaration of emergency made by the Presi-
11 dent or any other officer or employee of the execu-
12 tive branch.

13 (d) TERMINATION OF AUTHORITY TO DECLARE
14 EMERGENCY.—To the extent that any Act of Congress in
15 effect on the date of enactment of this Act grants to the
16 President or any other officer or employee of the executive
17 branch the power to declare a national emergency, such
18 power is hereby divested to the Congress alone.

19 **SEC. 4. REQUIREMENT OF STATEMENT OF AUTHORITY FOR**
20 **PRESIDENTIAL ORDERS.**

21 (a) STATEMENT OF AUTHORITY.—The President
22 shall include with each Presidential order a statement of
23 the specific statutory or constitutional provision which in
24 fact grants the President the authority claimed for such
25 action.

1 (b) INVALIDITY OF NONCONFORMING ORDERS.—A
2 Presidential order which does not include the statement
3 required by subsection (a) is invalid, to the extent such
4 Presidential order is issued under authority granted by a
5 congressional enactment.

6 **SEC. 5. EFFECT OF PRESIDENTIAL ORDERS.**

7 (a) LIMITED EFFECT OF PRESIDENTIAL ORDERS.—
8 A Presidential order neither constitutes nor has the force
9 of law and is limited in its application and effect to the
10 executive branch.

11 (b) EXCEPTIONS.—Subsection (a) does not apply
12 to—

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

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

18 (3) a Presidential order citing the specific con-
19 gressional enactment relied upon for the authority
20 exercised in such order and—

21 (A) issued pursuant to such authority;

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

1 (C) not issued pursuant to a ratified or un-
2 ratified treaty or bilateral or multilateral agree-
3 ment which—

4 (i) violates the ninth or tenth amend-
5 ments to the Constitution; or

6 (ii) makes a delegation of power to a
7 foreign government or international body
8 when no such delegating authority exists
9 under the Constitution.

10 **SEC. 6. 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 House
19 of Representatives, the Senate, any Senator, and
20 any Representative to the House of Representatives,
21 if the challenged Presidential order—

22 (A) infringes on any power of Congress;

23 (B) exceeds any power granted by a con-
24 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 the powers afforded to the
11 States under the Constitution.

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

15 **SEC. 7. DEFINITION OF PRESIDENTIAL ORDER.**

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

17 (1) any Executive order, Presidential proclama-
18 tion, or Presidential directive; and

19 (2) any other Presidential or Executive action
20 by whatever name described purporting to have nor-
21 mative effect outside the executive branch which is
22 issued under the authority of the President or any
23 other officer or employee of the executive branch.

