Re: Understanding the Impact of Executive Orders on Missouri Law

Open Letter to Missouri School Boards, Providers & State Officials:

You are being given this letter to inform your understanding of Executive Orders and their impact on Missouri law. We write on behalf of the American Civil Liberties Union (ACLU), the nation's premier defender of civil rights and civil liberties, in response to recent Executive Orders and other communications from the White House[1] attempting to pressure school districts, healthcare and other service providers, and state officials to violate the rights of the LGBTQ+ community, particularly transgender, gender non-conforming, nonbinary, and intersex people.

It is important to recognize that an Executive Order by itself does not revoke Missourians' rights, nor does it alter Missouri or federal law on its own. Below, we have highlighted four essential legal principles to keep in mind when evaluating the effect of Executive Orders:

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1. **Executive Orders are not a substitute for constitutional checks and balances.**

   The United States Constitution established three separate but equal branches of government: the legislative branch makes laws, the executive branch enforces them, and the judicial branch interprets them. This system of checks and balances creates an interplay of power among the branches of government, ensuring that each holds its own authority while remaining subject to and dependent on the other branches to function fully.

   Article I of the U.S. Constitution gives the U.S. Congress the power to make laws. While this power is subject to the president's veto power, which Congress can override, the President cannot usurp Congress's legislative power.

   Article II of the U.S. Constitution vests the President with executive power over the government. An Executive Order (or "EO") is a written directive, signed by the President, that orders the government to take specific actions to ensure "the laws be faithfully executed." For example, an Executive Order might direct a federal agency to implement a specific rule or declare a new policy priority.

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[1] *See*, *e.g.*, *Oregon v. Kennedy*, No. 6:25-cv-02409-MTK, 2026 WL 1048354, at *18 (D. Or. Apr. 18, 2026) (holding that federal officials "lack the authority to unilaterally establish standards of care" for gender-affirming treatment and cannot exclude providers from Medicare or Medicaid for offering care consistent with professionally recognized standards of care).

2. **Executive Orders alone cannot override federal laws and statutes.**

   Congress is the only branch of the federal government that can pass federal statutes, and federal courts interpret them. Courts can and have determined that an Executive Order is invalid if the court finds that the President acted outside the scope of presidential authority and attempted to exercise legislative power belonging to Congress through Executive Order.[2] A court can also hold that an Executive Order is unlawful if it violates a federal statute.[3]

3. **Executive Orders cannot override the U.S. Constitution.**

   The U.S. Constitution is the highest law of the land. U.S. courts have the authority to interpret the U.S. Constitution and the authority to strike down an Executive Order on the grounds that it is unconstitutional.

4. **Executive Orders cannot change Missouri law.**

   Executive Orders direct federal agencies, not local governments. They cannot dictate how local Missouri governmental entities must act, and they cannot change Missouri laws. However, Executive Orders can direct federal agencies to act in ways that affect the Missouri government and other stakeholders of local government. For example, an Executive Order directing a federal agency to withdraw funding for certain types of work can affect the local government if it has a contract with that agency for work subject to the Executive Order. ***Executive Orders, therefore, while potentially impactful, do not repeal, modify, or otherwise alter Missouri state law***.

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We hope this letter has provided you with a clearer understanding of Executive Orders, congressional action, and Missouri's autonomy. The ACLU of Missouri strongly encourages you to respect the Constitution and the rights of all Missourians, including transgender and other LGBTQ+ people.

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[2] *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)*; Medellín v. Texas*, 552 U.S. 491 (2008).

[3] *See, e.g.*, *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring); *Cole v. Young*, 351 U.S. 536 (1956); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

Please do not hesitate to contact the ACLU of Missouri if you have any questions about this letter or wish to discuss it further. We can be reached at 314-652-3114 or visit our website at https://www.aclu-mo.org/contact-us.

Sincerely,

Jamie Sgarro

Jamie Sgarro
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Students, parents, and community members: Feel free to use this letter as an advocacy tool in your school or community

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