



The US Constitution

Is Trump's executive order on sanctuary cities an attack on states' rights?

What's the story?

On January 25th 2017, President Trump signed Executive Order 13768, 'Enhancing Public Safety in the Interior of the United States.' The order attempts to clamp down on 'sanctuary cities' across the US, by penalising them for not fully complying with federal immigration laws. The order has been highly controversial, with some Democrats claiming that it infringes on state sovereignty.

What are sanctuary cities?

There are around 400 cities and counties in the US that operate as sanctuary cities - jurisdictions where local law enforcement is generally prevented from helping federal immigration authorities to identify and deport undocumented immigrants, unless they have been charged with serious crimes. Some cities have enshrined this policy in law, and others choose to informally enforce the practice. Supporters argue that these policies encourage cooperation between undocumented immigrants and the police, providing reassurance that supporting police investigations will not result in deportation. They also argue that these policies protect immigrant families and children from being separated. Critics argue that sanctuary jurisdictions shelter dangerous criminals from deportation, allowing them to go on and commit further crimes. Under federal law, states are encouraged, but not compelled, to communicate with federal agencies regarding the detention and deportation of undocumented immigrants.

What did the Executive Order say?

The order stated that executive departments and agencies should employ 'all lawful means to enforce the immigration laws of the United States.' It announced that the executive branch will ensure that any jurisdictions that fail to comply with federal immigration laws will not receive any federal funds beyond those they are entitled to under the law. This would have a major financial impact on several sanctuary cities, as many receive a large proportion of their income from federal funds and grants. The order also instructed that 10,000 additional immigration officers be hired to enforce the law. In addition, the order gives the Secretary of State the authority to designate a jurisdiction as a sanctuary jurisdiction, and to take 'appropriate enforcement action' against any jurisdiction it deems to be preventing or hindering the enforcement of federal law. The Secretary of State was instructed to publish a weekly list of all criminal actions committed by undocumented immigrants, detailing any jurisdiction that did not follow federal law when handling such immigrants. The order also instructed federal agencies to exclude non-US citizens and non-permanent residents from the protections of the Privacy Act (1974), which governs the use and dissemination of federally held personal information.

How have the sanctuary cities responded?

Several jurisdictions have spoken out against the order, arguing that the federal government does not have the right to force states to impose its immigration laws. On January 31st, San Francisco's City Attorney Dennis Herrera filed a lawsuit on behalf of the city, arguing that the order 'strikes at the heart of established principles of federalism.' San Francisco receives approximately \$1.2 billion dollars in federal funding, and, with almost 8% of its population being comprised of undocumented immigrants, the city would lose much of its workforce should mass deportation occur. New York's Attorney General, Eric Schneiderman has also publically denounced Trump's order, stating 'I will do everything within my power to fight it.' The Republican governed Miami-Dade County in Florida, however, was the first jurisdiction to agree to 'fully cooperate' with the order and abandon its sanctuary city status.

Debate! Will the fact that Republicans have spent the last few decades championing states' rights make it any easier for Democratic sanctuary cities to resist Trump's executive order?



The US Constitution (federalism)

The Democratic response to Trump's executive order on sanctuary cities highlights just how much the debate over federalism is likely to change over the next four years. In recent decades, the Republican Party has been a firm supporter of 'states' rights', aiming to reduce the size of the federal government and return greater power to the states. The US Constitution enumerates the specific powers of the federal government, and leaves all others powers to the states. One of the powers delegated to the US Congress is the exclusive power to create national immigration laws. However, as the existence of 'sanctuary cities' highlights, the successful enforcement of federal immigration laws can rely upon a great deal of state cooperation. Since the 16th Amendment was ratified in 1913, giving the federal government greater power to levy taxes, Congress has often used categorical grants to persuade states to cooperate with federal policies. These grants provide federal funding to states only if they follow certain federal guidelines. For supporters of states' rights this more coercive form of federalism infringes on the sovereignty of the states. Republican Presidents Richard Nixon and Ronald Reagan replaced a number of categorical grants with block grants, which did not come with as many conditions attached. Support for states' rights and a more limited federal government has become a hallmark of the Republican Party, and, in recent decades, state Republicans have filed multiple legal challenges against Democratic sponsored federal reforms. During Obama's presidency, Texas alone filed 48 lawsuits against the federal government. One of the biggest victories for states' rights groups was one of the challenges against the Obamacare health reforms. In 2012, the Supreme Court ruled in *National Federation of Independent Business v. Sebelius*, that the categorical grant attached to the Patient Protection and Affordable Care Act was unconstitutional. The Act required states to either expand their Medicaid programmes, or lose all of their federal funding for Medicaid. The Justices ruled that this was unconstitutionally coercive - by threatening to withhold all of a states' funding, the federal government was effectively forcing them to expand their programmes, undermining the 10th Amendment.

However, now that the Republicans control the federal government, it is Democrats who are voicing concerns over states' rights, using many Republican arguments, and court cases, to challenge Trump's actions. San Francisco has argued that their lawsuit 'is about state sovereignty and a local government's autonomy', insisting that the city should not be 'forced to carry out the agenda of the Federal government.' Such sanctuary jurisdictions recognise that the federal government has the power to make immigration laws, but argue that they do not have the power to coerce the states into enforcing these laws for them. Many Democrats have pointed to Republican challenges to federal gun laws as an example. In *Printz v. United States (1997)*, the Supreme Court ruled that a provision of the Brady Handgun Violence Prevention Act, which commanded the "chief law enforcement officer" of each local jurisdiction to conduct background checks on gun purchases, was unconstitutional. The Court argued that the requirement violated the 10th Amendment, as the Constitution does not state that the federal government has the power to force the states to enact or administer a federal programme. While President Trump may wish to deport all undocumented immigrants, it would be challenging for him to do it alone. There are an estimated 11 million undocumented immigrants in the US, but only 20,000 deportation officers working across the country. In 2016, 240,255 people were deported, with just 66,332 being apprehended by federal deportation officers. Furthermore, as the Supreme Court has recently upheld many Republican challenges against more coercive forms of federal power, it is possible that Trump may be challenged by legal precedents once encouraged by his own party.

Think about how you could use this case study in the following questions...

In the style of AQA – "In practice, federalism does not work in America." Discuss. (30 Marks)

In the style of Edexcel – To what extent is federalism still an important constitutional principle? (15 Marks)

OCR students – To what extent has federalism changed over time? (25 Marks)