

In recent days, Trump has said that he won't provide relief for the LA fires unless California changes its voting laws and its water regulations. And he also suggested that he'd like to abolish FEMA entirely. The first of Trump's proposals is likely unconstitutional. The second one is both a terrible idea and beyond his legal authority.

Although he and Gov. Newsom made nice at an airstrip encounter, there's no reason to think Trump's view of his own power has changed. The basic commitment of Americans to help each other out when disaster strikes will remain at risk.

### **Arbitrary Conditions on Disaster Relief**

Whether a state has a particular kind of voting law is obviously not relevant to the state's need for disaster resistance. Trump's other demand is for changes in the California water system to increase the amount of water going from the California Delta to the southern part of the state. That's a demand Trump has made for years with the goal of leaving less water for endangered fish and sending more water to farmers in the Central Valley. Be that as it may, the water in question clearly had [nothing](#) to do with the LA fires. LA had plenty of water to fight the fires; it just couldn't get water in such vast amounts to the right places.

The question is whether it is legal for the President to deny disaster relief to strong-arm the state into changing unrelated policies. The answer is no, for two reasons rooted in constitutional law. Ironically, the constitutional doctrines involved are especially revered by conservatives.

**The non-delegation doctrine.** While the president clearly has broad discretion, Congress cannot constitutionally give the president unlimited discretion. Congress must provide an "intelligible principle" to guide the use of executive discretion.

It is not hard to find such a principle in the [Stafford Act](#). It is plainly stated in the first section of the Act: "to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage" caused by disasters. Using the threat of withholding aid to pursue unrelated policy objectives does not advance that goal.

**Federalism.** Under the unconstitutional conditions doctrine, it is unconstitutional

for the federal government to condition funding on a state's agreement to adopt unrelated policies. The Supreme Court has [ruled](#) that Congress can condition federal funding on changes in state policies, but only if the condition is relevant to the funding program and is not so severe as to be coercive. Congress cannot give the president authority to do what it cannot constitutionally do itself. The president has no greater authority to invade state's rights than Congress does. Trump's demands for changes in California voting laws for the state to get desperately needed help is a particularly stark violation of this constitutional rule.

### **Abolishing FEMA**

"I'll sign an executive order to begin the process of reforming FEMA or getting rid of FEMA," Trump [said](#) on Friday. "I think FEMA's not good." Instead, he said, the sole responsibility for disaster response would lie with state government. The federal government would then reimburse some share of the expenses. "He added, "Rather than going through FEMA, it will go through us." Trump followed through by appointing a [special council](#) to consider what should be done with FEMA.

FEMA was created by an executive order, but Congress has firmly established its legal status as an agency. Trump can't change that.

Well before FEMA, the federal government had started providing emergency assistance during disasters when states needed help. FEMA's role in emergency response mostly involves coordinating that assistance. Leaving each state entirely on its own to respond to disasters makes no more sense than leaving each county or town entirely on its own. When catastrophe strikes, local and even state resources can be overwhelmed, leaving federal assistance as the only recourse.

Trump suggests that "we" - the White House - could take over another role of the federal government - helping to fund disaster response and recovery. That would more deeply politicize disaster relief. States would not know in advance what efforts would be reimbursable, and the White House lacks the resources to audit recovery spending. And finally, FEMA's role is not limited to disaster response. It also does flood risk maps and runs the national flood insurance system. It's hard to see how the White House could perform those functions.

FEMA was established for good reason. It has had its failings, such as the slow responses to Hurricanes Katrina and Maria, but it has learned from its mistakes and improved as a result. Its procedures remain too cumbersome. But it would be far

worse to abandon the states to their own devices when disasters strike and leave later financial aid to the political whims of the White House.