

Yesterday, Trump issued an [executive order](#) that attempts to eliminate the need for building permits in the LA burn area. The argument is that the permitting process slows down the rebuilding that FEMA grants are supposed to assist. (Never mind that Trump wants to get rid of those federal grants anyway.) The idea seems to be that whenever Congress chooses to subsidize an activity, it authorizes agencies to eliminate all state regulations that might be barriers. This idea is breathtaking in its scope. The Executive Order seems unlikely to hold up in court, and for good reason.

Even putting aside larger legal issues, the order seems deeply flawed. The [stated factual basis](#) is that onerous permitting requirements have caused the delays in rebuilding Los Angeles. I'm sure my UCLA colleagues can say more about that, but on the face of things it seems clear that permitting delays are only one contributing factor. There are other major causes of delay: removing debris and remediating contaminated soils, delayed insurance payouts, (not to mention too few construction workers and contractors.) The state and LA have really worked to streamline the permit process compared with normal building procedures, although [more](#) could be done.

Furthermore, the remedy Trump proposes is drastic: letting builders self-certify that they are complying with all health and safety-related requirements. (Like that's going to work!) Trump can make up facts in his executive orders, but the agencies that are supposed to implement the orders will need evidence to support his claims and proposed solution.

Beyond these flaws, the executive order badly misunderstands the applicable legal doctrine. Congress did not explicitly give FEMA the power to eliminate local permit requirements. Trump is relying on what's called implied preemption.

That's quite a leap. The federal government funds many different activities: food and medical care for poor people, highways, mass transit, electric transmission lines, college for the disadvantaged, police forces — the list is endless. If Congress meant to allow agencies to preempt state laws dealing with all those topics, states could be stripped of most of their authority at the discretion of the President.

Supreme Court opinions are full of warnings against just this kind of assault on state authority, especially in fields like building permits that are a traditional domain of state and local government. And no, this isn't an area where the President can rely on the Supreme Court's conservatives. As much as they seem to like presidential authority, the conservative Justices have also shown a strong attachment to

federalism.

Maybe the White House knew all this and is just using this as a political ploy. But assuming that they recognize any limits on presidential power is always risky. President Trump should be taken literally *and* seriously. He should also be taken to court.