

Constitutionality of OSHA



By Paul Engel

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- Are there limits to the powers of a federal agency?
- When Congress created OSHA, did they follow the Constitution?
- While the Supreme Court failed to take the time to consider these questions, We the People should.

Was the Occupational Safety and Health Administration properly created? Was the grant of authority Congress gave the agency constitutional and valid, or did Congress create an overpowered agency to micromanage businesses throughout the United States? That is the question in the case [Allstates Refractory Contractors, LLC v. Julie A. Su, Acting Secretary of Labor, et.al.](#) Sadly, the Supreme Court decided not to hear the case, even if Justice Gorsuch would have and Justice Thomas wrote a dissent.

The Petition

When I was researching my book, [The Constitution Study](#), I made a shocking discovery. There are 537 departments and agencies in the federal government, yet only 49 of those agencies exercise powers delegated to the United States by the Constitution. This case asks a similar question about the Occupational Safety and Health Administration (OSHA).

Congress gave the Occupational Safety and Health Administration the power to enact and enforce any workplace-safety standard that it deems “reasonably necessary or

appropriate.” 29 U. S. C. §§652(8), 655(b). This petition asks us to consider whether that grant of authority is an unconstitutional delegation of legislative power.

[Allstates Refractory Contractors, LLC v. Julie A. Su, Acting Secretary of Labor, et.al.](#)

The petition in question is for a writ of certiorari, asking the Supreme Court to review this case. Sadly, at least to my mind, the court has declined to hear the case, a decision with which justices Gorsuch and Thomas disagreed. Justice Thomas went so far as to write a dissent from the decision.

The Law in Question

The Thomas dissent listed two subsections of Chapter 15 of Title 29 of the United States Code, which covers Occupational Health and Safety. The first of them, §652(8) defines the term “occupational safety.”

(8) The term “occupational safety and health standard” means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

[29 USC §652\(8\)](#)

The second establishes the procedures for the creation and management of the occupational safety and health standards.

The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner: ...

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments.

[29 USC §655\(b\)](#)

While the court was asked to determine the question of delegation of powers, there is a more fundamental problem with [Chapter 15](#) as a whole.

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources

[29 USC §651](#)

While Congress may be correct that work related personal injuries and illness place a burden on interstate commerce, Congress is not authorized to regulate said work related situations, only interstate commerce itself.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[U.S. Constitution, Article I, Section 8](#), Clause 3

You see, Congress can regulate commerce among the several states, but not anything that impacts said commerce. Furthermore, Congress claims to create these laws under their power to “provide for the general welfare.’

But Congress is NOT delegated the power to provide for the general welfare as they claim. Read the General Welfare clause:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States;

[U.S. Constitution, Article I, Section 8, Clause 1](#)

Congress has the power to lay and collect taxes, to pay the debts, and provide for the common defense and General Welfare of the United States, capital "U", capital "S", a proper noun, the very same proper noun the Tenth Amendment uses to say:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[U.S. Constitution, Amendment X](#)

Congress is not delegated the power to regulate labor, neither is it delegated the power to regulate anything it thinks is for the "general welfare." During a debate on bounties for cod fisherman, none other than James Madison said on the floor of the House of Representatives:

If Congress can apply money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may establish teachers in every state, county, and parish, and pay them out of the public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the union; they may assume the provision for the poor; they may undertake the regulation of all roads other than post roads; in short, every thing, from the highest object of state legislation, down to the most minute object of police, would be thrown under the power of Congress; for every object I have mentioned would admit the application of money, and might be called, if Congress pleased, provisions for the general welfare.

[Bounty Payments for Cod Fisheries, \[6 February\] 1792](#)

The General Welfare Clause was never meant as a “catch all” power for Congress to do whatever it thought was for the “general welfare” of those in the nation. Rather, it seems quite obvious by its placement in a taxes clause, that the General Welfare Clause was meant to allow Congress to collect taxes to pay for the ancillary costs of its duties, such as paying the salaries of those offices created by the Constitution, maintaining “other needful buildings,” and providing necessary supplies. Based on this, Chapter 15 of Title 29 of the United States code was made contrary to the Constitution of the United States. Therefore, as Alexander Hamilton stated in [Federalist #78](#):

No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

[Alexander Hamilton, Federalist #78](#)

Delegation of Powers

As I said, this case is not about the creation of OSHA, but of the powers Congress delegated to it.

The Constitution vests “[a]ll legislative Powers herein granted . . . in a Congress of the United States.” Art. I, §1. And, “[w]e have held that the Constitution categorically forbids Congress to delegate its legislative power to any other body,” including to an administrative agency.

[Allstates Refractory Contractors, LLC v. Julie A. Su, Acting Secretary of Labor, et.al.](#)

All legislative power, all power to make law, is vested solely in Congress, and the Constitution does not delegate that body

the power to delegate the powers vested in it. However, the court doesn't seem to get tripped up on this detail.

But, under our precedents, a delegation of authority is constitutional so long as the relevant statute sets out an "intelligible principle" to guide the agency's exercise of authority.

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If, as the court has held, "the Constitution categorically forbids Congress to delegate its legislative power to another body," how can they say that delegation of authority is constitutional under any circumstance? The answer is: By violating their oath of office and placing precedent and politics above the supreme law of the land.

The Court of Appeals for the Sixth Circuit upheld the delegation of authority to the Occupational Safety and Health Administration under this "intelligible principle" test, over Judge Nalbandian's dissent.

[Allstates Refractory Contractors, LLC v. Julie A. Su, Acting Secretary of Labor, et.al.](#)

Based on this unconstitutional "intelligible principle" test, the courts, including the Sixth Circuit court of appeals, have set aside the Constitution in support of a political agenda, namely empowering unelected bureaucrats to effectively make law. Since these unconstitutional laws include the collection of fines, fees, and other pseudo taxes, Congress' dereliction of duty is the very definition of "taxation without representation," or as the Declaration of Independence put it:

For imposing Taxes on us without our Consent

[Declaration of Independence](#)

The American people's consent, as shown in the Constitution,

did not include allowing unelected bureaucrats to impose fees, fines, or any other form of taxation.

Since the courts are not delegated the power to simply make up the rules as they go along, Justice Thomas states:

I continue to adhere to my view that the intelligible principle test “does not adequately reinforce the Constitution’s allocation of legislative power.”

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Justice Thomas is correct. Since the Constitution categorically prohibits Congress from delegating their legislative power to another branch, these laws are unconstitutional and void.

Usurpation of the Constitution

This case is a perfect example not only of Congress creating the bloated administrative state, but also of the courts placing the imprimatur of legitimacy on their actions.

This case exemplifies the problem. Congress purported to empower an administrative agency to impose whatever workplace-safety standards it deems “appropriate.” That power extends to virtually every business in the United States.

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Congress literally handed over the keys of the regulatory system over to OSHA, by allowing them to create any standard they deem appropriate, with little if any oversight, review, and certainly no due process.

The agency claims authority to regulate everything from a power lawnmower’s design, 29 CFR §1910.243(e) (2023), to the level of “contact between trainers and whales at SeaWorld,”

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Not only does OSHA claim the authority to regulate every aspect of the workplace, but to overrule the Constitution itself. Specifically, Title 29 §1903.3 of the [Code of Federal Regulations](#) claims:

Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer;...

[29 CFR § 1903.3 Authority for inspection.](#)

What Fourth Amendment?

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

[U.S. Constitution, Amendment IV](#)

Who cares if a search of someone's business is reasonable or not, or if there's probable cause or due process? This group of unelected bureaucrats claim that the Constitution doesn't apply to them. And if you refuse to allow them to illegally search your business, guess who gets to review the refusal?

Upon a refusal to permit the Compliance Safety and Health Officer, in exercise of his official duties, to enter without delay ... The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Area Director. The Area Director shall consult with the Regional Solicitor, who shall take appropriate action, including compulsory process, if necessary.

[29 CFR § 1903.4 Objection to inspection](#)

That's right, the very same agency attempting to illegally inspect your business reviews your objection to it. Please notice, none of these powers are recorded in the laws of the United States, because they are not law. There are merely regulations impersonating laws and used to destroy your rights.

The Occupational Safety and Health Act may be the broadest delegation of power to an administrative agency found in the United States Code. ... If this far-reaching grant of authority does not impermissibly confer legislative power on an agency, it is hard to imagine what would.

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Thomas is correct, if OSHA isn't the greatest abuse of power, both by Congress in creating it and in the agency by how they wield said power, I don't know what is. I can think of no other act by Congress that so exemplifies the tenth grievance listed in the Declaration of Independence:

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

[Declaration of Independence](#)

Just imagine if other agencies had similar discretion?

It would be no less objectionable if Congress gave the Internal Revenue Service authority to impose any tax on a particular person that it deems "appropriate," and I doubt any jurist would sustain such a delegation.

[Allstates Refractory Contractors, LLC v. Julie A. Su, Acting Secretary of Labor, et.al.](#)

Again, Just Thomas is correct. Yes, as inconceivable as this law is, the nine justices on the Supreme Court could not

muster the four votes needed to hear the case. That, ladies and gentlemen, is not only inconceivable to me, but an apparent dereliction of duty of the highest order.

The question whether the Occupational Health and Safety Administration's broad authority is consistent with our constitutional structure is undeniably important. At least five Justices have already expressed an interest in reconsidering this Court's approach to Congress's delegations of legislative power. See *Paul v. United States*, 589 U. S. , (2019) (statement of KAVANAUGH, J., respecting denial of certiorari) (slip op., at 2); *Gundy*, 588 U. S., at 149 (ALITO, J., concurring in judgment); *id.*, at 164 (GORSUCH, J., joined by ROBERTS, C. J., and THOMAS, J., dissenting). Because this petition is an excellent vehicle to do exactly that, I would grant review.

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Justice Thomas then lists two cases, *Paul v. United States* and *Gundy*, where justices Kavanaugh, Alito, Gorsuch, Roberts, and Thomas himself have questioned Congress' delegation of legislative power. So why couldn't this case get four votes to review? We will probably never know.

Conclusion

Here the Supreme Court had an excellent opportunity to fix the mistake of the "intelligible principle" test, yet it didn't even take a swing at the case. As I said, we may never know why. I suppose the most generous view would be that there were more important cases to deal with this term, but I do not see that. Which leaves me with what I believe is the more likely reasons: Either it was politics or the desire to maintain the unconstitutional administrative state, neither of which are good for the republic. As Justice Thomas said:

Because the standard this Court currently applies to determine

whether Congress has impermissibly delegated legislative power “largely abdicates our duty to enforce that prohibition,” I would grant the petition.

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Which is why it is so important that We the People read and study the Constitution. Not only so we are prepared to defend and assert our rights from the abusive powers of the bureaucrats, but so we can hire representatives at the state, federal, and yes, even local level, to help us protect ourselves and our rights. Because as long as unelected bureaucrats have the power to make rules, we are NOT a republic and we are most definitely NOT free.

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