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S. 3361

To end the unconstitutional delegation of legislative power which was exclusively vested in the Senate and House of Representatives by article I, section 1 of the Constitution of the United States, and to direct the Comptroller General of the United States to issue a report to Congress detailing the extent of the problem of unconstitutional delegation to the end that such delegations can be phased out, thereby restoring the constitutional principle of separation of powers set forth in the first sections of the Constitution of the United States.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2012

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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A BILL

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Write the Laws Act''.

SEC. 2. CONSTITUTIONAL AUTHORITY STATEMENT.

(a) IN GENERAL.—This Act is enacted pursuant to the powers conferred by the Constitution of the United States upon Congress by—

(1) article I, section 1, which vests in Congress all legislative powers granted under the Constitution; and

(2) article I, section 8, clause 18, which vests in Congress the power to make all laws that shall be necessary and proper for executing the legislative power granted to Congress in the Constitution.

(b) OTHER AUTHORITY.—This Act is also enacted to bring the enforcement of Federal law into compliance with the guarantee under the Fifth Amendment to the Constitution of the United States that no person be deprived of life, liberty, or property without due process of law.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Article I, section 1 of the Constitution of the United States vests the legislative powers enumerated therein in Congress, consisting of a Senate

and a House of Representatives, subject only to the veto power of the President as provided in article I, section 7, clause 2.

(2) Article II, section 1 of the Constitution of the United States vests the executive power of the United States in a President.

(3) Article III, section 1 of the Constitution of the United States vests the judicial power of the United States in ''one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish'', subject only to the jurisdictional limitations set forth in article III, section 2.

(4) As the Supreme Court of the United States has stated, ''In the main, [the Constitution of the United States] has blocked out with singular precision, and in bold lines, in its three primary Articles, the allotment of power to the executive, the legislative, and judicial departments of the government [and] the powers confided by the Constitution to one of these departments cannot be exercised by another.''. Kilbourn v. Thompson, 103 U.S. 168, 191 (1881).

(5) ''It is . . . essential to the successful working of this system, that the persons entrusted with

power in any one of these branches shall not be permitted to encroach upon the powers confided to others, but that each shall by the law of its creation be limited to the exercise of the powers . . . of its own department and no other.''. Id.

(6) ''The increase in the number of States, in their population and wealth, and in the amount of power . . . [has] present[ed] powerful and growing temptations to those to whom that exercise is intrusted, to overstep the just boundaries of their own department, and enter upon the domain of one of the others, or to assume powers not intrusted to either of them.''. Kilbourn v. Thompson, 103 U.S. 168, 191–192 (1881).

(7) Succumbing to these ''powerful and growing'' temptations, and beginning in the late nineteenth century with the Interstate Commerce Commission and continuing to the present time, Congress has unconstitutionally created numerous administrative agencies with blended powers, namely—

(A) the exercise of legislative power vested by the Constitution of the United States in Congress;

(B) the exercise of executive power vested by the Constitution of the United States in the President; and

(C) the exercise of judicial power vested by the Constitution of the United States in the Supreme Court and lower Federal courts.

(8) By delegating legislative, executive, and judicial power to the various administrative agencies, Congress has departed from the separation of powers structure of the Constitution of the United States, and ignored the warning of the framers of that instrument that ''The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.''. James Madison, The Federalist No. 47.

(9) Further, by delegating legislative, executive, and judicial powers to various administrative agencies, Congress has unconstitutionally established a Star Chamber-like system of rules promulgated, executed, and adjudicated by administrative agencies that are functionally a part of the executive branch of the Federal Government in violation of the due

process guarantee of the Fifth Amendment to the Constitution of the United States.

(10) By the very nature of legislative power, and by the express terms of article I, section 1 of the Constitution of the United States, Congress may not delegate any legislative power to any other branch of the Federal Government or other entity, including any administrative agency. As Chief Justice John Marshall stated: ''It will not be contended that congress can delegate to the courts, or to any other tribunals, powers which are strictly and exclusively legislative.''. Wayman v. Southard, 10 Wheat. (23 U.S.) 1, 42 (1825).

(11) As Chief Justice Melville Fuller explained, a ''criminal offense'' created or clarified by an agency in the executive branch is not valid unless the offense ''is fully and completely defined by the act'' of Congress. In re Kollock, 165 U.S. 526, 533 (1897).

(12) By vesting legislative power in the Congress, the Constitution requires the Senate and the House of Representatives to enact statutes containing general rules to be executed by the President, as provided in article II, section 1 of the Constitution of the United States, and to be adjudicated in a case or controversy by such inferior courts as

Congress may from time to time establish, or in the Supreme Court, as provided in article III, sections 1 and 2.

(13) By abdicating its constitutional legislative responsibility to write the laws whereby the people are governed, and having unconstitutionally delegated that power to unelected bureaucrats, Congress has undermined the constitutional protections of—

(A) the checks and balances of a bicameral legislative body; and

(B) of a presidential veto.

(14) As a direct consequence of Congress having abdicated its responsibility to properly exercise the legislative power vested by the Constitution of the United States, Congress has—

(A) imposed onerous and unreasonable burdens upon the American people; and

(B) violated the constitutional principle of the separation of the legislative, executive, and judicial processes and functions.

SEC. 4. RESTORING THE SEPARATION OF POWERS.

(a) IN GENERAL.—Title 1 of the United States Code is amended by inserting after chapter 2 the following:

"CHAPTER 2A—SEPARATION OF POWERS

"Sec.
"151. Nondelegation of legislative power.

''152. Enforcement clause.
''153. Applicability.

"§ 151. Nondelegation of legislative power

''(a) DEFINITION.—In this section, the term 'delegation of legislative powers'—

''(1) includes—

''(A) the creation or clarification of any criminal or civil offense; and

''(B) the creation or clarification of any non-criminal regulation, prohibition or limitation applicable to the public, or some subset thereof, that is not fully and completely defined in an Act of Congress, except that the Executive Branch of government may be delegated authority to make factual findings that will determine the date upon which such an Act is implemented, suspended, or revived; and

''(2) does not include the issuance of any presidential proclamation, or the issuance of any rule or regulation governing the internal operation of any agency, or conditions made upon grants or contracts issued by any agency.

''(b) PROHIBITION.—An Act of Congress may not contain any delegation of legislative powers, whether to—

''(1) any component within the legislative branch of the Federal Government;

"(2) the President or any other member of the executive branch of the Federal Government;

"(3) the judicial branch of the Federal Government;

"(4) any agency;

"(5) any quasi-public agency;

"(6) any State or instrumentality thereof; or

"(7) any other organization or individual.

"(c) EXECUTIVE ACTIONS.—No new presidential directive, adjudicative decision, rule, or regulation, or change to an existing presidential directive, adjudicative decision, rule, or regulation governing, limiting, imposing a penalty on, or otherwise regulating any activity of any individual or entity, other than an officer or employee of the Federal Government, may be promulgated or put into effect, unless the directive, decision, rule or regulation is authorized by an Act of Congress that complies with subsection (b).

"(d) REPORT.—Not later than 6 months after the date of enactment of this chapter, the Comptroller General of the United States shall submit to Congress a report identifying all statutes enacted before the date that is 90 days after the date of enactment of this chapter which contain any delegation of legislative powers prohibited under this section.

"§ 152. Enforcement clause

''(a) IN GENERAL.—An Act of Congress, presidential directive, adjudicative decision, rule, or regulation that does not comply with section 151 shall have no force or effect and no legal, equitable, regulatory, civil, or criminal action may be brought under such an Act of Congress, presidential directive, adjudicative decision, rule, or regulation.

''(b) CAUSE OF ACTION.—Any person aggrieved by any action of any officer or employee in the executive branch of the Federal Government under any Act of Congress that does not comply with section 151 may bring a cause of action under sections 2201 and 2202 of title 28 against the United States to seek appropriate relief, including an injunction against enforcement of any Act of Congress, presidential directive, adjudicative decision, rule, or regulation that does not comply with section 151.

''(c) STANDARD OF REVIEW.—In any action brought under subsection (b), the standard of review shall be de novo.

"§ 153. Effective date

''This chapter shall apply to any Act of Congress, presidential directive, adjudicative decision, rule, or regulation, change to an existing presidential directive, adjudicative decision, rule, or regulation, enacted or promul-

gated on or after the date that is 90 days after the date of enactment of this chapter.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 1, United States Code, is amended by inserting after the item relating to chapter 2 the following:

''2A. Separation of powers ..... 151''.

SEC. 5. SEVERABILITY CLAUSE.

If any provision of this Act or an amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be invalid for any reason in any court of competent jurisdiction, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any other person or circumstance, shall not be affected.

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