

## EXTENSIONS OF REMARKS

### THE COURTS THWART THE EPA'S POWER GRAB

**HON. MICHAEL G. OXLEY**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 19, 1999*

Mr. OXLEY. Mr. Speaker, many of us voiced serious concern when the U.S. Environmental Protection Agency approved strict new NAAQS standards affecting ozone and particulate matter levels. We warned that EPA was not basing the standards on good science, and indeed questioned whether the agency was running amok. This issue was of particular importance in my home state of Ohio, which faced billions of dollars in compliance costs with little prospect of any real benefit to human health and the environment. In a vindication, these rules have now been overturned by an appeals court. I commend the following Wall Street Journal article to the attention of my colleagues.

#### THE COURTS THWART THE EPA'S POWER GRAB (By C. Boyden Gray and Alan Charles Raul)

Last week a three-judge panel of the U.S. Court of Appeals for the District of Columbia threw out the Environmental Protection Agency's sweeping ozone and particulate-matter rules. Citing a doctrine known as "nondelegation," the judges held that the EPA was exercising too much power, effectively making rather than enforcing the law. The decision could have far-reaching implications for all government rulemaking, but it should not have come as a shock. The EPA's usurpation of legislative power has provoked significant controversy in recent years, and the only surprise is how long it took for the courts to bring it under control.

Contrary to much prevailing opinion among both journalists and lawyers, the nondelegation doctrine is not some arcane, obscure and benighted legal relic of the pre-New Deal era. The doctrine has been alive and well, serving primarily as a canon of judicial construction to save otherwise overly broad statutory grants or agency claims of legislative authority from being held unconstitutional.

The most important regulatory example of the doctrine's use was in the Supreme Court's 1980 decision *Industrial Union Department v. American Petroleum Institute*, which involved the Occupational Safety and Health Administration's regulation of benzene. The court was faced with a claim that OSHA has untrammelled discretion to choose any regulatory policy in the spectrum between not regulating at all and imposing rules so stringent that they take an industry to the brink of economic ruin. The justices used the nondelegation doctrine essentially to rewrite the statute, limiting OSHA to regulation of "significant" risks. A decade later, the D.C. Circuit, in the so-called "lock-out, tag-out" decisions written by Judge Stephen Williams (who wrote last week's EPA decision as well), invoked the doctrine and the benzene decision to place additional limits on OSHA.

An accident of timing allowed the EPA to escape these constraints for nearly two decades and retain its license to choose between doing nothing at all and shutting down an industry. The governing case (*Lead Industries Association v. EPA*) gave the EPA this broad power because it was issued by the D.C. Circuit five days before the Supreme Court's benzene decision, and thus was unaffected by the latter ruling. But it was only a matter of time before the EPA's power would collide with the Supreme Court's limitations.

For those subject to the EPA's unchecked authority, the day of reckoning came none too soon. EPA issued these rules in July 1997 despite:

Its science advisory board's admonition that the new ozone rule did not deal with any new significant risk not already addressed by the rule it replaced.

The board's inability to identify any proper level of fine particulate matter to regulate.

Universal recognition that extensive research was necessary to develop any implementing regulations for particulate matter.

Unrebutted evidence that the ozone rule could cause more public health harm than good.

Unconstrained by any coherent principle, the rules were the ultimate example of legislative horse trading. The EPA declared that in order to defuse some political opposition, it was going to exempt or favor its political allies, such as farmers, certain small business, and that section of the country (the Northeast) that provided political support for the rules. "The new rules do not reflect the inescapable result of the available science, but simply the judgment of a political appointee," said Rep. John Dingell (D., Mich.), one of the principal architects of the Clean Air Act.

The D.C. Circuit's decision to overturn these rules is not inherently anti-environmental. It leaves the EPA with considerable power to decide how much environmental protection the country needs. The court simply said the EPA is not omnipotent. Its power must be limited by "intelligible principles" that Congress incorporated into the Clean Air Act. The representatives who face the voters' music must call the agency's tune.

This decision does nothing to impair the EPA's implementation of Congress's explicit directives in the 1990 amendments to the Clean Air Act, such as its recent auto and gasoline rules. The real question is whether future policy will be set by Congress or the unelected managers of the EPA. At present, EPA has presented no reason for going beyond the provisions of the 1990 Clean Air Act Amendments, which the agency has not yet fully implemented. EPA's backdoor efforts to regulate green-house gases will also come in for closer constitutional scrutiny. Without express congressional authorization to address "global warming," the agency should not be deciding for itself how to do so.

The dissenting opinion in the D.C. Circuit decision closed with the observation that if the states had difficulty implementing the new EPA standards, they could go back to

Congress and ask for repeal. But this formulation turns the Constitution on its head. It's not Congress's job to review EPA initiatives, but rather the EPA's job to carry out congressional initiatives. And it's the courts' role to keep the other players honest.

### CONGRATULATING THE MEN'S VOLLEYBALL TEAM OF BYU

**HON. CHRIS CANNON**

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 19, 1999*

Mr. CANNON. Mr. Speaker, on May 8, 1999 in Los Angeles, Brigham Young University won its first-ever NCAA men's volleyball title in their first-ever NCAA Tournament appearance. They finished the season with a record of 30-1, suffering their only loss to Long Beach State whom they beat in the finals. Joining Penn State, BYU became the second non-California team to win the Championship.

BYU men's volleyball program began NCAA competition in 1990, headed by current coach Carl McGown. Initially struggling through some difficult seasons, they quickly rose to ardently compete with traditionally strong California teams. They deftly handled big name schools like UCLA, USC, Pepperdine, and UCSB.

I congratulate the fine athletes, coaches, and trainers who comprise the BYU men's volleyball program. Their dedication, endurance, and commitment are examples to all who seek lofty, worthwhile goals.

### CONGRATULATIONS TO THE MUSIC DEPARTMENT OF OTTAWA TOWNSHIP HIGH SCHOOL

**HON. JERRY WELLER**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 19, 1999*

Mr. WELLER. Mr. Speaker, I rise today to offer congratulations to the Music Department of Ottawa Township High School of Ottawa, IL, for the remarkable achievement of winning the Illinois State Championship in Music competition for the third consecutive year.

For nearly the past two decades, the Ottawa Township High School Music Department has dominated the Illinois High School Association music competition by finishing in the top three places fourteen times and never lower than ninth place. On only four occasions in the history of the music competition have schools compiled more than 1,000 points. Two of these four 1,000-plus point finishes belong to Ottawa Township High School. The Ottawa Township High School Music Department also holds the State record for most points earned in the Illinois High School Association Solo and Ensemble contest.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Clearly, Ottawa Township High School offers its students and community many outstanding music education opportunities. Currently, 270 students take advantage of these opportunities by participating in Concert Choir, Treble Choir, Freshman Girls Choir, Symphonic Band, Jazz Choir, and Jazz Band.

Special congratulations must be offered to Mr. Roger Amm, Vocal Music Director, and to Ms. Sarah Reckmeyer, Director of Bands. Their hard work, commitment, and leadership have undoubtedly played a major role in building the statewide dominance of Ottawa Township High School's Music Department.

In closing, Mr. Speaker, I am proud and pleased to be able to offer to my colleagues in the U.S. House of Representatives the example of Ottawa Township High School as an educational institution where excellence in the fine arts is strongly encouraged. From its outstanding music program to its incredible, multi-million-dollar collection of artwork on display throughout the school building to its vibrant 25 year old annual music festival, Ottawa Township High School provides its fortunate students with an all too rare appreciation of the fine arts.

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#### REEMPLOYMENT RIGHTS OF OUR SELECTED RESERVISTS

#### HON. LANE EVANS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 19, 1999*

Mr. EVANS. Mr. Speaker, the activation and deployment of uniformed service members to the Balkans area has generated numerous inquiries about the reemployment rights of members of the National Guard and Reserves who are required to leave a position of employment to answer a call to duty.

I hope the following explanation will provide all of my colleagues some basic information on the law that provides these rights and guidance on what a constituent who might contact you concerning this issue can do to receive more information and assistance.

The job entitlements of our citizen-soldiers are provided by the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, at 38 U.S. Code, Section 4310-4333. The Veterans' Employment and Training Service (VETS) of the Department of Labor administers and enforces USERRA.

USERRA provides that a person be promptly reemployed following completion of qualifying military service. The position to which the person is entitled is essentially the position he or she would have attained had the military absence not occurred. To be eligible for reemployment rights, the person must generally give the employer prior notice of the military duty and the employee must have received a discharge from the military that is not punitive in nature. For example, an honorable discharge would qualify, but not a dishonorable or bad conduct discharge. There is a cumulative 5-year limit of military service after which an employer is not obliged to reemploy a returning service member. There are important

exceptions to the 5-year limit, including voluntary duty in support of an emergency situation or war, involuntary callups for operational missions or contingencies, and required training of National Guard and Reserve members.

Mr. Speaker, the Department of Labor's Veterans Employment and Training Service (VETS) maintains a website on the Internet that contains USERRA information designed to help protected persons and employers understand the law. The "USERRA Advisor" can be found on the VETS home page at [www.dol.gov/dol/vets](http://www.dol.gov/dol/vets). VETS also has offices in each of the States that can provide information and assistance for your constituents as well as your District office staff members. VETS offices are listed in the Blue Pages of local telephone directories under the U.S. Department of Labor.

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#### CONGRATULATING THE ANNAPOLIS (MD) CAPITAL FOR BEING NAMED "NEWSPAPER OF THE YEAR"

#### HON. WAYNE T. GILCHREST

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 19, 1999*

Mr. GILCHREST. Mr. Speaker, I rise today to recognize one of Maryland's finest newspapers, the Annapolis Capital. The Capital was recently named "Newspaper of the Year" by the Maryland-Delaware-D.C. Press Association. This prestigious award goes to the newspaper which has received the most awards for any newspaper in its category, and this year, Mr. Speaker, the Capital was honored with 22 separate awards for outstanding work.

Under the leadership of their executive editor, Edward D. Casey, the staff at the Capital collected 21 awards for photos, articles, page designs, and graphics published in 1998. These awards are given by their peers, Mr. Speaker, and the message this year was loud and clear: The Capital consistently delivers a quality product with outstanding coverage of its community.

Among the award winners was Eric Smith, the Capital's own talented editorial cartoonist. He won first place for an editorial cartoon which I am happy to report, Mr. Speaker, was not about me. Mr. Smith spent a day with me in Washington several years ago to find out what members of Congress do on a daily basis, and I'm happy to report, has not given up his day job yet. Mr. Smith also won second place for a column he wrote.

David Brown won first place for spot news for a story he wrote on a Navy flier from Annapolis who was killed on an aircraft carrier. Nicole Gaudiano won second place for spot news for a story on a shooting death. Christopher Munsey captured second place for general news for his story on a body police could not identify.

The staff as a whole won second place for continuing coverage on the Whitbread Race, the prestigious yacht race which came to An-

napolis last year. Staff members that shared that award included: Bill Wagner, Jeff Nelson, Scott Haring, Christopher Munsey, Denise Murray, Kristin Hussey, Gerry Jackson, David Trozza, George N. Lundskow, Bob Gilbert, Mark M. Odell, and Christopher B. Corder.

Reporter Jeff Nelson won first place for investigative reporting for his story on bonuses given to county employees. Sara Marsh won second place in this category for her probe of the legal problems of an election candidate.

Mary Allen won first place in state government reporting for her story on the law that allowed the marriage of a 13-year-old girl. Theresa Winslow won second place in the public service category for her consumer story on the cost of funerals.

In the photography category, the Capital has consistently delivered its readers some of the most beautiful photographs capturing incredible joy sorrow and every moment in between. Bob Gilbert won second place for a photo series of a heart transplant operation. David Trozzo won first place for general news photo with a photo depicting a tribute to a shooting victim. Christopher B. Corder won first place for sports photo with a photo of a baseball play.

John McNamara won second place for a sports column, and Mary Grace Gallagher won first place for a medical/science story on a heart transplant. She also captured second place for business/economic news for a story on choosing new employees.

The staff won first place for Page One design for a Sunday Capital layout of a heart transplant patient. That award was shared by Scott and Loretta Haring, Denise Murray, Bob Gilbert, and Mary Grace Gallagher. Scott Haring also won first place for feature/news page design for his layout of the Naval Academy graduation.

Andra Baumgardt won second place for feature/news page design for her layout of an Entertainment cover featuring the Annapolis Symphony Orchestra. And Denise Murray won second place for information graphics/general for her graphic on Inner West Street.

And finally, Mr. Speaker, The Capital was awarded the first-ever "Freedom of Information Award" by the Maryland-Delaware-D.C. Press Association. This award was given to the newspaper for its diligence and persistence in seeking the truth. The Capital, with the leadership of Managing Editor Tom Marquardt, has a long history of holding public officials accountable to the voters they represent, and it's a tradition I respect. Newspapers have an obligation to inform the public of the activities of their public officials, and I'm glad the Capital takes its obligation seriously.

Mr. Speaker, I am proud to represent the great city of Annapolis in Congress, and I am equally proud that my Congressional District is served so well by an outstanding newspaper that has received overdue recognition from its peers. I ask my colleagues to join me in congratulating The Annapolis Capital on being named the 1998 Newspaper of the Year by the Maryland-Delaware-D.C. Press Association.