

113TH CONGRESS
2^D SESSION

H. R. 4343

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 United States Constitution, 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 United States Constitution.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2014

Mr. STOCKMAN introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

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 United States Constitution, 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 United States Constitution.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Write the Laws Act”.

5 **SEC. 2. FINDINGS.**

6 (a) Article I, section 1 of the United States Constitu-
7 tion vests the legislative powers enumerated therein in the
8 United States Congress, consisting of a Senate and a
9 House of Representatives, subject only to the veto power
10 of the President as provided in article I, section 7, clause
11 2.

12 (b) Article II, section 1 of the United States Con-
13 stitution vests the executive power of the United States
14 in a President of the United States, except as enumerated
15 in article II, section 2.

16 (c) Article III, section 1 of the United States Con-
17 stitution vests the judicial power of the United States in
18 “one supreme Court, and in such inferior courts as the
19 Congress may from time to time ordain and establish,”
20 subject only to the jurisdictional limitations set forth in
21 article III, section 2.

22 (d) “In the main, [the United States Constitution]
23 has blocked out with singular precision, and in bold lines,
24 in its three primary Articles, the allotment of power to
25 the executive, the legislative, and judicial departments of

1 the government [and] the powers confided by the Con-
2 stitution to one of these departments cannot be exercised
3 by another.” *Kilbourn v. Thompson*, 103 U.S. 168, 191
4 (1881).

5 (e) “It is . . . essential to the successful working of
6 this system, that the persons entrusted with power in any
7 of these branches shall not be permitted to encroach upon
8 the powers confided to others, but that each shall by the
9 law of its creation be limited to the exercise of the powers
10 of its own department and no other.” *Kilbourn v. Thomp-*
11 *son*, 103 U.S. 168, 191 (1881).

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

20 (g) Succumbing to these “powerful and growing”
21 temptations, and beginning in the late nineteenth century
22 with the Interstate Commerce Commission and continuing
23 to the present time, Congress has unconstitutionally cre-
24 ated numerous administrative agencies with blended pow-
25 ers, namely, (i) the exercise of legislative power vested by

1 the Constitution in Congress, (ii) the exercise of executive
2 power vested by the Constitution in the President and (iii)
3 the exercise of judicial power vested by the Constitution
4 in the Supreme Court and lower Federal courts.

5 (h) By delegating legislative, executive and judicial
6 power to the various administrative agencies, Congress
7 has departed from the separation of powers structure of
8 the United States Constitution, and ignored the warning
9 of the framers of that instrument that “[T]he accumula-
10 tion of all powers, legislative, executive, and judiciary, in
11 the same hands, whether of one, a few, or many, and
12 whether hereditary, self-appointed, or elective, may justly
13 be pronounced the very definition of tyranny.” James
14 Madison, *The Federalist* No. 47.

15 (i) Further, by delegating legislative, executive, and
16 judicial powers to various administrative agencies, Con-
17 gress has unconstitutionally established a Star Chamber-
18 like system of rules promulgated, executed and adju-
19 dicated by administrative agencies that are functionally a
20 part of the executive branch of government in violation
21 of the due process guarantee of the Fifth Amendment that
22 secures a system of rules promulgated by Congress, exe-
23 cuted by the President, and adjudicated by the courts
24 independent from the legislative and executive branches
25 of government.

1 (j) By the very nature of legislative power, and by
2 the express terms of article I, section 1 of the United
3 States Constitution, Congress may not delegate any legis-
4 lative power to any other branch of government or other
5 entity, including any administrative agency. As Chief Jus-
6 tice John Marshall stated: “It will not be contended that
7 congress can delegate to the courts, or to any other tribu-
8 nals, powers which are strictly and exclusively legislative.”
9 *Wayman v. Southard*, 10 Wheat. 23 U.S. 1, 41 (1825).

10 (k) As Chief Justice Melville Fuller explained, a
11 “criminal offense” created or clarified by an Executive
12 Branch agency is not valid unless the offense “is fully and
13 completely defined by the act” of Congress. In *re Kollock*,
14 165 U.S. 526 (1897).

15 (l) By vesting legislative power in the Congress, the
16 Constitution requires the Senate and the House of Rep-
17 resentatives to enact statutes containing general rules to
18 be executed by the President, as provided in article II, sec-
19 tion 1 of the Constitution of the United States, and to
20 be adjudicated in a case or controversy by such inferior
21 courts as Congress may from time to time establish, or
22 in the Supreme Court, as provided in article III, sections
23 1 and 2.

24 (m) By abdicating its constitutional legislative re-
25 sponsibility to write the laws whereby the people are gov-

1 erved, and having unconstitutionally delegated that power
2 to unelected bureaucrats, Congress has undermined the
3 constitutional protections of (i) the checks and balances
4 of a bicameral legislative body and (ii) of a presidential
5 veto.

6 (n) As a direct consequence of Congress having abdi-
7 cated its responsibility to properly exercise the legislative
8 power vested by the Constitution, Congress has: (i) im-
9 posed onerous and unreasonable burdens upon the Amer-
10 ican people; and (ii) violated the constitutional principle
11 of the separation of the legislative, executive and judicial
12 processes and functions.

13 (o) As Chief Justice Roberts observed, “the danger
14 posed by the growing power of the administrative state
15 cannot be dismissed,” as there are now “hundreds of fed-
16 eral agencies poking into every nook and cranny of daily
17 life.” *City of Arlington v. FCC*. 569 U.S.__(2013) (Rob-
18 erts, C.J., dissenting).

19 **SEC. 3. RESTORING THE SEPARATION OF POWERS.**

20 Title 1 of the United States Code, shall be amended
21 by inserting at the end of chapter 2 a new chapter, 2B
22 entitled “**SEPARATION OF POWERS**”, including
23 section 101, as follows:

1 **“§ 101. Nondelegation of legislative power**

2 “(a) Effective 90 calendar days after the enactment
3 of this bill into law no bills passed by Congress shall con-
4 tain any ‘delegation of legislative powers’ whatsoever,
5 whether to (a) any component within the Legislative
6 Branch of government, (b) the President of the United
7 States or any other member of the Executive Branch of
8 government, (c) the Judicial Branch of government, (d)
9 any federal administrative agency, (e) any quasi-public
10 agency, (f) any state or instrumentality thereof, or (g) any
11 other organization or individual.

12 “(b)(1) A prohibited ‘delegation of legislative powers’
13 in this section shall include: (a) the creation or clarifica-
14 tion of any criminal or civil offense; and (b) the creation
15 or clarification of any non-criminal regulation, prohibition
16 or limitation applicable to the public, or some subset there-
17 of, that is not fully and completely defined by Congress,
18 except that the Executive Branch of government may be
19 delegated authority to make factual findings that will de-
20 termine the date upon which such statute is implemented,
21 suspended, or revived.

22 “(2) A prohibited ‘delegation of legislative powers’ in
23 this section shall not include the issuance of any presi-
24 dential proclamation, or the issuance by any rule or regu-
25 lation governing the internal operation of any government

1 agency, or conditions made upon grants or contracts
2 issued by any government agency.

3 “(c) Effective 90 calendar days after the enactment
4 of this bill into law, no new presidential directive, adju-
5 dicative decision, rule, or regulation, or change to an exist-
6 ing presidential directive, adjudicative decision, rule, or
7 regulation governing, limiting, imposing a penalty on, or
8 otherwise regulating any activity of any person or entity,
9 other than an officer or employee of the United States
10 government, shall be promulgated or put into effect, un-
11 less said directive, decision, rule or regulation is author-
12 ized by a bill written in compliance with this section, and
13 duly enacted according to the process of Article I, Section
14 7 of the United States Constitution.

15 “(d) Within six months after the effective date of this
16 Act, the Comptroller General of the United States, shall
17 report to Congress identifying all statutes enacted prior
18 to the effective date of this statute which contain any ‘del-
19 egation of legislative powers’ prohibited in this section, to
20 the end that Congress may take action to repeal or amend
21 any such statutes.”.

22 **SEC. 4. ENFORCEMENT CLAUSE.**

23 Title 1 of the United States Code shall be further
24 amended by adding to new said chapter 2B, as follows:

1 **“§ 102. Enforcement clause**

2 “(a) Effective 90 days after the enactment of this bill,
3 no bill shall become law, nor enforced or applied as law,
4 without Congress having complied fully with the require-
5 ments of Section 101(A) and (B) of Chapter 2B of Title
6 1 of the United States Code, and any persons against
7 whom such a law is enforced or applied may invoke such
8 noncompliance as a complete defense to any legal, equi-
9 table, or regulatory action, civil or criminal, brought
10 against him under said law, or the color thereof.

11 “(b) Any person aggrieved by any action of any exec-
12 utive officer or administration agency pursuant to any
13 statute that does not comply with the provisions of this
14 Act shall have a cause of action under Sections 2201 and
15 2202, Title 28, United States Code, and Rules 57 and
16 65, Federal Rules of Civil Procedure, against the United
17 States to seek appropriate relief, including an injunction
18 against enforcement of any law, the contents of which did
19 not conform to the requirements of this Act.

20 “(c) In any judicial action brought pursuant to sub-
21 section (B) of this section, the standard of review shall
22 be de novo.”.

23 **SEC. 5. SEVERABILITY CLAUSE.**

24 If any provision of this Act, or the application there-
25 of, to any person or circumstance is held invalid for any
26 reason in any court of competent jurisdiction, such inva-

1 lidity does not affect other provisions or other applications
2 of this Act which can be given effect without the invalid
3 provision or application, and for this purpose the provi-
4 sions of this Act are declared severable.

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