

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# 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.

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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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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. CONSTITUTIONAL AUTHORITY STATEMENT.**

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

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

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

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

21 **SEC. 3. FINDINGS.**

22        Congress finds the following:

23            (1) Article I, section 1 of the Constitution of  
24 the United States vests the legislative powers enu-  
25 merated therein in Congress, consisting of a Senate

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

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

7 (3) Article III, section 1 of the Constitution of  
8 the United States vests the judicial power of the  
9 United States in “one supreme Court, and in such  
10 inferior courts as the Congress may from time to  
11 time ordain and establish”, subject only to the juris-  
12 dictional limitations set forth in article III, section  
13 2.

14 (4) As the Supreme Court of the United States  
15 has stated, “In the main, [the Constitution of the  
16 United States] has blocked out with singular preci-  
17 sion, and in bold lines, in its three primary Articles,  
18 the allotment of power to the executive, the legisla-  
19 tive, and judicial departments of the government  
20 [and] the powers confided by the Constitution to one  
21 of these departments cannot be exercised by an-  
22 other.”. *Kilbourn v. Thompson*, 103 U.S. 168, 191  
23 (1881).

24 (5) “It is . . . essential to the successful work-  
25 ing of this system, that the persons entrusted with

1 power in any one of these branches shall not be per-  
2 mitted to encroach upon the powers confided to oth-  
3 ers, but that each shall by the law of its creation be  
4 limited to the exercise of the powers . . . of its own  
5 department and no other.” Id.

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

15 (7) Succumbing to these “powerful and grow-  
16 ing” temptations, and beginning in the late nine-  
17 teenth century with the Interstate Commerce Com-  
18 mission and continuing to the present time, Con-  
19 gress has unconstitutionally created numerous ad-  
20 ministrative agencies with blended powers, namely—

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

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

4           (C) the exercise of judicial power vested by  
5           the Constitution of the United States in the Su-  
6           preme Court and lower Federal courts.

7           (8) By delegating legislative, executive, and ju-  
8           dicial power to the various administrative agencies,  
9           Congress has departed from the separation of pow-  
10          ers structure of the Constitution of the United  
11          States, and ignored the warning of the framers of  
12          that instrument that “The accumulation of all pow-  
13          ers, legislative, executive, and judiciary, in the same  
14          hands, whether of one, a few, or many, and whether  
15          hereditary, self-appointed, or elective, may justly be  
16          pronounced the very definition of tyranny.”. James  
17          Madison, *The Federalist* No. 47.

18          (9) Further, by delegating legislative, executive,  
19          and judicial powers to various administrative agen-  
20          cies, Congress has unconstitutionally established a  
21          Star Chamber-like system of rules promulgated, exe-  
22          cuted, and adjudicated by administrative agencies  
23          that are functionally a part of the executive branch  
24          of the Federal Government in violation of the due

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

3 (10) By the very nature of legislative power,  
4 and by the express terms of article I, section 1 of  
5 the Constitution of the United States, Congress may  
6 not delegate any legislative power to any other  
7 branch of the Federal Government or other entity,  
8 including any administrative agency. As Chief Jus-  
9 tice John Marshall stated: “It will not be contended  
10 that congress can delegate to the courts, or to any  
11 other tribunals, powers which are strictly and exclu-  
12 sively legislative.”. *Wayman v. Southard*, 10 Wheat.  
13 (23 U.S.) 1, 42 (1825).

14 (11) As Chief Justice Melville Fuller explained,  
15 a “criminal offense” created or clarified by an agen-  
16 cy in the executive branch is not valid unless the of-  
17 fense “is fully and completely defined by the act” of  
18 Congress. *In re Kollock*, 165 U.S. 526, 533 (1897).

19 (12) By vesting legislative power in the Con-  
20 gress, the Constitution requires the Senate and the  
21 House of Representatives to enact statutes con-  
22 taining general rules to be executed by the Presi-  
23 dent, as provided in article II, section 1 of the Con-  
24 stitution of the United States, and to be adjudicated  
25 in a case or controversy by such inferior courts as

1 Congress may from time to time establish, or in the  
 2 Supreme Court, as provided in article III, sections  
 3 1 and 2.

4 (13) By abdicating its constitutional legislative  
 5 responsibility to write the laws whereby the people  
 6 are governed, and having unconstitutionally dele-  
 7 gated that power to unelected bureaucrats, Congress  
 8 has undermined the constitutional protections of—

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

11 (B) of a presidential veto.

12 (14) As a direct consequence of Congress hav-  
 13 ing abdicated its responsibility to properly exercise  
 14 the legislative power vested by the Constitution of  
 15 the United States, Congress has—

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

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

21 **SEC. 4. RESTORING THE SEPARATION OF POWERS.**

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

24 **“CHAPTER 2A—SEPARATION OF POWERS**

“Sec.

“151. Nondelegation of legislative power.

“152. Enforcement clause.

“153. Applicability.

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

2 “(a) DEFINITION.—In this section, the term ‘delega-  
3 tion of legislative powers’—

4 “(1) includes—

5 “(A) the creation or clarification of any  
6 criminal or civil offense; and

7 “(B) the creation or clarification of any  
8 non-criminal regulation, prohibition or limita-  
9 tion applicable to the public, or some subset  
10 thereof, that is not fully and completely defined  
11 in an Act of Congress, except that the Execu-  
12 tive Branch of government may be delegated  
13 authority to make factual findings that will de-  
14 termine the date upon which such an Act is im-  
15 plemented, suspended, or revived; and

16 “(2) does not include the issuance of any presi-  
17 dential proclamation, or the issuance of any rule or  
18 regulation governing the internal operation of any  
19 agency, or conditions made upon grants or contracts  
20 issued by any agency.

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

23 “(1) any component within the legislative  
24 branch of the Federal Government;



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

3           “(3) the judicial branch of the Federal Govern-  
4           ment;

5           “(4) any agency;

6           “(5) any quasi-public agency;

7           “(6) any State or instrumentality thereof; or

8           “(7) any other organization or individual.

9           “(c) EXECUTIVE ACTIONS.—No new presidential di-  
10          rective, adjudicative decision, rule, or regulation, or  
11          change to an existing presidential directive, adjudicative  
12          decision, rule, or regulation governing, limiting, imposing  
13          a penalty on, or otherwise regulating any activity of any  
14          individual or entity, other than an officer or employee of  
15          the Federal Government, may be promulgated or put into  
16          effect, unless the directive, decision, rule or regulation is  
17          authorized by an Act of Congress that complies with sub-  
18          section (b).

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

1 **“§ 152. Enforcement clause**

2       “(a) IN GENERAL.—An Act of Congress, presidential  
3 directive, adjudicative decision, rule, or regulation that  
4 does not comply with section 151 shall have no force or  
5 effect and no legal, equitable, regulatory, civil, or criminal  
6 action may be brought under such an Act of Congress,  
7 presidential directive, adjudicative decision, rule, or regu-  
8 lation.

9       “(b) CAUSE OF ACTION.—Any person aggrieved by  
10 any action of any officer or employee in the executive  
11 branch of the Federal Government under any Act of Con-  
12 gress that does not comply with section 151 may bring  
13 a cause of action under sections 2201 and 2202 of title  
14 28 against the United States to seek appropriate relief,  
15 including an injunction against enforcement of any Act of  
16 Congress, presidential directive, adjudicative decision,  
17 rule, or regulation that does not comply with section 151.

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

21 **“§ 153. Effective date**

22       “‘This chapter shall apply to any Act of Congress,  
23 presidential directive, adjudicative decision, rule, or regu-  
24 lation, change to an existing presidential directive, adju-  
25 dicative decision, rule, or regulation, enacted or promul-

1 gated on or after the date that is 90 days after the date  
2 of enactment of this chapter.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of chapters for title 1, United States Code, is  
5 amended by inserting after the item relating to chapter  
6 2 the following:

“2A. Separation of powers ..... 151”.

7 **SEC. 5. SEVERABILITY CLAUSE.**

8 If any provision of this Act or an amendment made  
9 by this Act, or the application of a provision or amend-  
10 ment to any person or circumstance, is held to be invalid  
11 for any reason in any court of competent jurisdiction, the  
12 remainder of this Act and amendments made by this Act,  
13 and the application of the provisions and amendment to  
14 any other person or circumstance, shall not be affected.

