

Breyer's suggestion that "[p]roposed regulations, or at least those that would impose a burden in excess of a specified amount, say \$100 million, would not take effect unless affirmatively approved by both houses of Congress." In this regard, I would note that Justice Breyer was one of the seminal thinkers in the field of regulatory reform and I would recommend that everyone read his 1982 book, "Regulation and Its Reform" in which he lays out a comprehensive analysis of, and suggestions for, regulatory reform.

In Chief Judge Ginsburg's speech, *On Constitutionalism*, published in the *Cato Supreme Court Review* in 2003, he articulates much the same position, stating that the separation of powers doctrine clearly indicates that "there must be a limit upon the ability of Congress to delegate lawmaking functions to the executive branch." *Id.* at 16. That is, the Constitution does seem to prohibit legislators from simply delegating their constitutional authority to legislate to an executive branch agency and then go home. Yet he also notes the Supreme Court's failure since the mid 1930's to find any act of Congress a violation of the non-delegation doctrine, demonstrating the High Court's reluctance to give meaning to the doctrine. So this is the view some have characterized as radical, the Constitution assigns the legislative power to Congress, and it violates the principle of separation of powers to have unlimited delegation of that law-making authority to executive branch agencies. Yet because the courts have been reluctant to adjudicate these arrangements, any remedy must come through political persuasion.

Chief Judge Ginsburg did join an opinion, the relevant part of which was written by another judge, in which the court held that the Environmental Protection Agency had interpreted sections of the Clean Air Act authorizing the national ambient air quality standards, NAAQS, for ozone and particulate matter so loosely as to render them unconstitutional delegations of legislative power. See *American Trucking Ass'n. v. EPA*, 175 F.3d 1027, 1034-40, D.C. Cir. 1999. More specifically, the court determined that it was unclear what in EPA's view was the "intelligible principle" the Congress had directed the agency to follow and no such principle was apparent to the court on the face of the act.

The court therefore remanded the cases to the EPA so that it could detail the principle limiting the agency's discretion. The full DC Circuit then denied the EPA's petition for rehearing en banc. See 195 F.3d 4, DC Cir. 1999. It is true, however, the Supreme Court granted the EPA's petition for certiorari and held that the act's delegation of authority to the EPA to set the NAAQS at the level "requisite to protect the public health", although broad, provided an "intelligible principle" for setting air quality standards and was therefore constitutional with-

out further delineation by the agency. *Whitman v. American Trucking Ass'n*, 531 U.S. 457, 473, 2001. But this is hardly the first time the Supreme Court overruled an appellate court and, in any case, is a pretty thin reed on which to reach a conclusion that the lower court decision represented a radical break with constitutional jurisprudence.

I encourage everyone to examine Chief Judge Ginsburg's writings pertaining to the takings clause, the non-delegation doctrine, and the tenth and eleventh amendments. A fair reading warrants a conclusion that there is nothing radical about his reasoning or conclusions. Chief Judge Ginsburg's writings on these matters are neither extensive nor extreme. Characterizing them as a "stark departure from current constitutional law" is not justified.

I also might add that the issue of non-delegation is not as black or white as many have come to believe in recent times. Some appear—including many advocates of the liberal welfare state administered by so many Federal agencies—to argue, contrary to the Constitution's clear commitment to limited government, that there should be little, if any, judicial oversight over congressional actions and claim that even modest judicial requirements that Congress act within its constitutional authority are radical changes to our law. It seems counterintuitive then that these same people argue for an unlimited congressional authority to delegate their lawmaking power to another branch of Government. On the one hand, Congress is all powerful. On the other hand, they can give that power away.

The record reflects that Chief Judge Ginsburg is a mainstream conservative judge, who applies the Constitution faithfully. He is no judicial radical. He is one of the most respected judges in the Federal judiciary. Suggestions to the contrary are not supported by the facts.

NOTICE OF CHANGE IN INTERNET SERVICES USAGE RULES AND REGULATIONS

Mr. LOTT. Mr. President, I am taking this opportunity to announce that in accordance with Title V of the Rules of Procedure of the Committee on Rules and Administration, the committee intends to update the "U.S. Senate Internet Services Usage Rules and Regulations."

Based on the committee's review of the 1996 regulations and the October 8, 2003 amendments to the regulations, the following changes to these policies have been adopted effective today, December 21, 2005. The changes primarily affect the activities of a Senator who is running for election, section C.

Set forth below are the updated Internet Usage Rules and Regulations:

A. SCOPE AND RESPONSIBILITY

1. Senate Internet Services ("World Wide Web and Electronic mail, BLOGS,

Podcasting, streaming media, etc.") may only be used for official purposes. The use of Senate Internet Services for personal, promotional, commercial, or partisan political/campaign purposes is prohibited.

2. Members of the Senate, as well as Committee Chairmen and Officers of the Senate may post to the Internet Servers information files which contain matter relating to their official business, activities, and duties. All other offices must request approval from the Committee on Rules and Administration before posting material on the Internet Information Servers.

3. Websites covered by this policy must be located in the SENATE.GOV host-domain.

4. It is the responsibility of each Senator, Committee Chairman (on behalf of the committee), Officer of the Senate, or office head to oversee the use of the Internet Services by his or her office and to ensure that the use of the services is consistent with the requirements established by this policy and applicable laws and regulations.

5. Official records may not be placed on the Internet Servers unless otherwise approved by the Secretary of the Senate and prepared in accordance with Section 501 of Title 44 of the United States Code. Such records include, but are not limited to: bills, public laws, committee reports, and other legislative materials.

B. POSTING OR LINKING TO THE FOLLOWING MATTER IS PROHIBITED

1. Political Matter

a. Matter which specifically solicits political support for the sender or any other person or political party, or a vote or financial assistance for any candidate for any political office is prohibited.

b. Matter which mentions a Senator or an employee of a Senator as a candidate for political office, or which constitutes electioneering, or which advocates the election or defeat of any individuals, or a political party is prohibited.

2. Personal Matter

a. Matter which by its nature is purely personal and is unrelated to the official business activities and duties of the sender is prohibited.

b. Matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Senator on a purely personal or political basis rather than on the basis of performance of official duties as a Senator is prohibited.

c. Reports of how or when a Senator, the Senator's spouse, or any other member of the Senator's family spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Senator is prohibited.

d. Any transmission expressing holiday greetings from a Senator is prohibited. This prohibition does not preclude an expression of holiday greetings at the commencement or conclusion of an otherwise proper transmission.

3. Promotional Matter

a. The solicitation of funds for any purpose is prohibited.

b. The placement of logos or links used for personal, promotional, commercial, or partisan political/campaign purposes is prohibited.

C. RESTRICTIONS ON THE USE OF INTERNET SERVICES

1. During the 60 day period immediately preceding the date of any primary or general election (whether regular, special, or runoff) for any national, state, or local office in which the Senator is a candidate, no Member may solicit constituent input or inquiries (such as online petitions or opinion polls or issue alerts) using a Senate Internet Server ("World Wide Web and Electronic mail,

BLOGs, Podcasting, streaming media, etc.''), unless the candidacy of the Senator in such election is uncontested.

2. Electronic mail may not be transmitted by a Member during the 60 day period before the date of the Member's primary or general election unless it is in response to a "direct inquiry". Exceptions to this moratorium include the following: press release distribution to press organizations and email to perform administrative communication. "Direct inquiries" do not include a request to be added to a mailing list, subscription list, or other request to receive future mailings. During the 60 day period, electronic news letters may not be sent out.

3. During the 60 day period immediately before the date of a biennial general Federal election, no Member may solicit constituent input or inquiries (such as online petitions or opinion polls, issue alerts or request to be added to newsletter mailing lists—electronic or otherwise, on behalf of another Senator who is a candidate for election, unless the candidacy of the Senator in such election is uncontested."

4. An uncontested candidacy is established when the Rules Committee receives written certification from the appropriate state official that the Senator's candidacy may not be contested under state law. Since the candidacy of a Senator who is running for reelection from a state which permits write-in votes on elections day without prior registration or other advance qualification by the candidate may be contested, such a Member is subject to the above restrictions.

5. If a Member is under the restrictions as defined in subtitle C, paragraph (1), above, the following statement must appear on the homepage: ("Pursuant to Senate policy, newsletters, petitions, opinion polls and issue alerts and other electronic communications cannot be initiated by this office for the 60 day period immediately before the date of a primary or general election."'). The words "Senate Policy" must be hypertext linked to the Internet services policy on the Senate Home Page.

6. A Senator's homepage may not refer or be hypertext linked to another Member's site or electronic mail address without authorization from that Member.

7. Any Links to Information not located on a Senate Internet Server must be identified as a link to a non-Senate entity.

D. MISCELLANEOUS

Domains and Names (URL)—Senate entities must reside exclusively on SENATE.GOV domains. The URL name for an official Senate Web site located in the SENATE.GOV domain must:

1. Member's sites—contain the Senator's last name.
2. Committee sites—contain the name of the committee.
3. Officer sites—contain the name of the office.

NEPAL'S DOWNWARD SPIRAL

Mr. LEAHY. Mr. President, this is the third time in the past 6 months that I have spoken in this chamber about Nepal. I do so because this land of mostly impoverished tea and rice farmers who toil between India and China on precipitous hillsides in the shadows of the Himalayas, is experiencing a political crisis that may plunge the country into chaos.

As many predicted, King Gyanendra's seizure of absolute power on February 1 and suppression of civil liberties has damaged Nepal's foreign relations,

triggered clashes between prodemocracy demonstrators and the police, and strengthened the Maoist insurgency.

The Maoists, whose use of extortion and brutality against poor villagers has spread throughout the country, announced a unilateral ceasefire on September 3 which they recently extended for an additional month. Although flawed, the ceasefire was the impetus for a loose alliance with Nepal's weak political parties after the King refused to negotiate with them and sought instead to consolidate his own grip on power.

Last month, the Maoists and the parties endorsed a vaguely worded but important 12 point understanding that could be the basis for a national dialogue to restore democracy and end the conflict. That, however, would require some reciprocal confidence building measures by the army, which has so far rejected the Maoist ceasefire as a ploy and continues to see itself as the defender of an anachronistic, corrupt and autocratic monarchy.

Although the army has won praise for its role in international peacekeeping missions, its reputation has been badly tarnished because of its abusive and ineffective campaign against the Maoists. It has engaged in arbitrary arrests, torture and extrajudicial killings of ordinary citizens, which has alienated many of the same people who have been victims of the Maoists.

On December 10, when hundreds of Nepali citizens took to the streets to protest the King's repressive actions, the police used force to break up the rally and arrested several dozen people. The press reported another 120 arrests and dozens injured in demonstrations on December 17. More protests are likely, and it may be only a matter of time before Katmandu is in the full throes of a pitched battle between prodemocracy demonstrators and the King's security forces.

This is the disheartening situation in which Nepal finds itself today. The immediate challenge for the United States is how to help promote a political dialogue which includes the broadest possible participation from Nepali society to restore and strengthen democracy and end the conflict.

The Maoist cease-fire, while welcome, was a tactical move to lure the political parties into an alliance and further isolate the palace. There is no way to predict with confidence if the Maoists would participate in a political process in good faith, or simply use it as a ruse to gain new recruits and weapons. A resumption of attacks against civilians would be condemned and resisted by the international community. The Maoists should know that they cannot defeat the government by force, and as long as they extort money and property and abduct children they will be seen as enemies of the Nepali people.

Similarly, military experts have concluded that Nepal's undisciplined army

cannot defeat a determined insurgency that attacks civilians and army posts and then disappears into the mountains.

There are also concerns about Nepal's political parties, who do not have a record of putting the interests of the nation above their own self interest. But the political parties, for all their flaws, are the real representatives of the Nepali people. They urgently need to reform, but there is no substitute for them.

Despite these difficulties and uncertainties, it is clear that the King has failed to provide the leadership to build bridges with the country's democratic forces and develop a workable plan. It is also clear that efforts by the international community, including the United States, to appeal to the King to start such a process, have failed. The Bush administration should apply whatever pressure it can, including denying U.S. visas to Nepali officials and their families.

With few options and no guarantees, Nepal's hour of reckoning is approaching. There is a growing possibility that the King's obstinacy and unpopularity will trigger massive civil unrest, shootings and arrests of many more civilians by soldiers and police, Nepal's further isolation, and perhaps the end of the monarchy itself.

Only the army has the ability to convince the King to abandon his imperial ambitions, but time is running out. The army's chief of staff, General Pyar Jung Thapa, was privileged to receive training at the Army War College and he has participated in other U.S. military training programs. He has led Nepali troops in UN peacekeeping missions. He knows, or he should have learned, that the function of a modern, professional military is to protect the rights and security of the people, not the privileges of a dictator who has squandered the moral authority of his office. It is not only in the interests of Nepal, but in the army's long-term self-interest, to show real leadership at this critical time.

The United States should do everything possible to encourage the army to announce its own cease-fire, to accept international observers as the Maoists have said they would do, and to support a broadly inclusive political dialogue with or without the participation of the palace.

Such a process, to be meaningful, must lead to free and fair elections. The municipal elections announced by King Gyanendra for early next year, without any consultation with the political parties, are no solution. An attempt to apply a veneer of legitimacy to an otherwise undemocratic process will only prolong and exacerbate this crisis.

Many of the Maoist's grievances mirror those of the majority of Nepal's people who for centuries have suffered from discrimination, poverty, and abuse by one corrupt government after another. But Nepal's problems, which