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NCLA Amicus Brief Calls on Sixth Circuit to Restore Congress' Power to Set Safety Standards

Allstates Refractory Contractors LLC v. Martin Walsh, in his official capacity as Secretary of Labor, et al.

Washington, DC (November 15, 2022) - The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [amicus curiae brief](#) in *Allstates Refractory Contractors LLC v. Walsh, et al.*, challenging the constitutionality of the Occupational Safety and Health (OSH) Act of 1970. NCLA's brief asks the U.S. Court of Appeals for the Sixth Circuit to decide that the OSH Act unlawfully transfers lawmaking power—specifically, the legislative power to promulgate permanent “safety standards”—by authorizing the Secretary of Labor to promulgate, modify, or revoke any occupational safety standard he deems “reasonably necessary or appropriate.”

Congress may not divest legislative power that Article I of the Constitution vests in it, even to an executive agency like the Occupational Safety and Health Administration (OSHA). The OSH Act's criteria for safety standards is so open-ended that it delegates unchecked legislative authority to the Executive Branch to enact workplace safety laws. Such unfettered discretion to issue safety standards under Section 6(b) of the OSH Act is unconstitutional.

The district court concluded that the OSH Act met the nondelegation doctrine's (undemanding) intelligible-principle test. It held that Congress permissibly delegated to OSHA the discretion to determine the adequate level of public safety, and then to set standards based on that determination. But a statute with such a subjective criterion to guide Executive Branch conduct renders the intelligible-principle test meaningless. To avoid administrative lawmaking, the Supreme Court has explained that Congress must supply objective principles that allow “the courts to test” whether the agency has faithfully executed the legislative command. The OSH Act's “reasonably necessary or appropriate” standard is completely subjective and thus fails this minimal requirement. The Sixth Circuit should issue a permanent injunction preventing OSHA from enforcing the standard at issue in this case.

NCLA released the following statement:

“The Supreme Court has repeatedly affirmed that the Constitution prohibits Congress from transferring its lawmaking powers to an executive agency. If this restriction is to have any meaning at all, the OSH Act's grant of unfettered discretion to enact workplace safety laws must be rejected on principle.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.