



FOR IMMEDIATE RELEASE

Media Inquiries: [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

NCLA Brief Asks High Court to Restore Law Forbidding Congress from Divesting Legislative Power

Allstates Refractory Contractors LLC v. Julie A. Su, in her official capacity as Acting Secretary of Labor, et al.

Washington, DC (March 1, 2024) – Last night, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) at the Supreme Court in *Allstates Refractory Contractors LLC v. Su*, challenging the Occupational Safety and Health (OSH) Act of 1970, which divested lawmaking power to the Occupational Safety and Health Administration. The OSH Act unlawfully grants OSHA untrammelled legislative power by authorizing the Secretary of Labor to create, modify, or revoke any occupational safety standard she deems “reasonably necessary or appropriate.” NCLA asks the Supreme Court to hear the case and disallow this unconstitutional transfer of core Congressional authority.

Congress may not divest to an executive agency legislative power that Article I of the Constitution vests in it, a principle known as the nondelegation doctrine. The OSH Act violates this principle by delegating to the Secretary standardless power to enact whatever safety standard she deems “reasonably necessary” *or* “appropriate.” That open-ended language divests Congress’s lawmaking power to OSHA. The U.S. Court of Appeals for the Sixth Circuit construed this statutory language as limited enough to pass constitutional muster. The Supreme Court should review the Sixth Circuit’s erroneous decision and deem unrestricted divestment of power impermissible.

NCLA’s *amicus* brief details how the nondelegation doctrine developed to prevent Congress from divesting legislative power to outside parties, but its modern application actually enables constitutional violations, wrongly legitimizing statutes that effectively grant power to the Executive Branch. This misnamed doctrine rests on multiple false assumptions, incorrectly implies that Congress can easily revoke power it transfers to agencies, and interferes with courts’ Article III duty by allowing Congress to delegate lawmaking based on nothing more than open-ended policy suggestions. *Allstates v. Su* provides a perfect opportunity to reinvigorate the nondelegation doctrine and restore the Vesting Clause in Article I, § 1 of the Constitution to its proper role.

NCLA released the following statements:

“The nondelegation doctrine purports to prohibit Congress from delegating *any* lawmaking power to executive agencies. But it has devolved into something that does just the opposite, promiscuously permitting such delegations. This case presents an ideal vehicle to restore the doctrine to its proper function because the broad delegation here—power to enact any “reasonably necessary or appropriate” safety standard—clearly crosses the line between an agency merely executing the law that Congress enacted and writing the law itself.”

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

“The Supreme Court should grant *certiorari* in this case and once again restrict the exercise of legislative power to Congress—where it belongs.”

— **Mark Chenoweth, President, 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.

###