



Written by [Joe Wolverton, II, J.D.](#) on March 3, 2023

Senate Votes to Nullify Biden Admin. Regulation Promoting “Climate Change”

The Senate voted Wednesday to reject a Biden administration regulation that would allow retirement-plan managers to claim climate change and other factors can be reasonably relied upon when making investment decisions for their clients. Joe Biden has said that he will make this bill the subject of his first veto.

The Senate voted 50 to 46 in favor of overriding the Labor Department’s regulation. Just the day before, the House of Representatives likewise voted to nullify the Labor Department rule by a vote of 216-214.



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As for why Biden would veto the measure, the *Wall Street Journal* reports:

White House press secretary Karine Jean-Pierre said the bill in question would give investment professionals “less flexibility to make prudent decisions” and “forces MAGA Republican ideology down the throats of the private sector.”

Ridiculous partisan rhetoric aside, there is a very basic constitutional principle here being ignored by the Biden administration: separation of powers.

James Madison wrote in *The Federalist*, No. 47:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

The principle of separation of powers was well established for centuries before James Madison wrote those now famous lines. Madison, Hamilton, Jefferson, and the other members of the Founding pantheon were familiar with this core concept of self-government from reading it in Montesquieu’s seminal *Spirit of the Laws*, as well as from the history of Rome written in the second century B.C. by Greek historian Polybius.

Over the past several years, administrative agencies of the executive branch have grown into petty tyrannies of their own — despotic departments possessed of the sort of quasi-lawmaking power rightly regarded for centuries as “the very definition of tyranny.”

Regulation of any sort is never the way forward. Allowing unaccountable bureaucrats to exercise legislative authority is unconstitutional and unwise.

Undoubtedly, giving the government control over what should and could be considered by financial advisors would end as it has in almost every other case: the slow suffocation of liberty under reams of



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paper pushed out onto the people by petty tyrants claiming to be protecting the people. History is a reliable guide to understanding the problem.

In his seminal study of the end of ancient Rome, *The History of the Decline and Fall of the Roman Empire*, 18th-century historian Edward Gibbon identified an over-bloated bureaucracy as one of the contributors to the collapse of the once mighty superpower:

The number of ministers, of magistrates, of officers, and of servants, who filled the different departments of the state, was multiplied beyond the example of former times; and (if we may borrow the warm expression of a contemporary) “when the proportion of those who received exceeded the proportion of those who contributed the provinces were oppressed by the weight of tributes.” From this period to the extinction of the empire it would be easy to deduce an uninterrupted series of clamors and complaints. According to his religion and situation, each writer chooses either Diocletian or Constantine or Valens or Theodosius, for the object of his invectives; but they unanimously agree in representing the burden of the public impositions, and particularly the land-tax and capitation, as the intolerable and increasing grievance of their own times.

Another historian, Tacitus, lived at the time of Augustus and witnessed the unwinding of the Roman Republic first hand. Tacitus, too, pointed to the increasing power of the bureaucrats as a reason republican liberty was becoming a myth in his time. He reported that the Roman Empire under Caesar Augustus employed 1,800 bureaucrats throughout the whole of the expansive empire.

While 1,800 bureaucrats may sound like a lot, that’s far fewer than those regulation-writing civil servants employed by the state of Nevada alone!

Furthermore, let’s not forget that the very first line of the U.S. Constitution grants all legislative (lawmaking) authority to Congress. Any law that is to be enforced within the 50 states must come from Congress. The attempt by any other branch of the federal government to make law is an act of tyranny and should be treated accordingly.

Or, as Alexander Hamilton wrote in *Federalist 78*:

There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid.

Regulations are an act of authority contrary to the Constitution and are therefore null, void, and of no legal effect.

Congress’s act to legislatively nullify a rule promulgated by the Biden administration Labor Department, therefore, is constitutionally sound, despite any forthcoming veto by the president.



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