



Written by [Steve Byas](#) on November 23, 2016

Another Obama Administration Executive Action Blocked

“The decision brings us a step closer to curbing regulations that have resulted in \$80 billion in compliance costs and more than 25 million hours of paperwork. The fights are not yet over — and our work is just beginning,” said Linda Kelly, senior vice president of the National Association of Manufacturers.



Kelly was responding to the injunction issued by a federal judge in Texas against an effort by President Barack Obama and his Department of Labor to circumvent the legislative power of Congress, this time in a rule relating to overtime pay. The Labor Department rule would have increased the number of employees eligible for “time-and-a-half” overtime pay. Under “time-and-a-half,” an employee is paid 50 percent more, per hour, for each hour worked in excess of their normal number of hours worked. (Of course, this also increases the amount of tax revenue that can be collected by the Internal Revenue Service.)

Judge Amos L. Mazzant III of the Eastern Federal District Court in Texas ruled that Obama and his Labor Department had gone beyond its authority under the law when it proposed to raise overtime salary limits so significantly (from \$26,660 to \$47,476). The suit was brought by the U.S. Chamber of Commerce and other business groups. Mazzant was appointed to the bench by Obama.

The injunction is, of course, only a temporary action that suspends the regulation until Judge Mazzant can issue a more complete ruling on the merits of the case itself. But it appears that the judge is inclined to permanently block the actions of the Labor Department.

Marc Freedman, executive director of labor law policy with the U.S. Chamber of Commerce, certainly thinks so. “We are assuming that this preliminary injunction holds and there isn’t an appeal or some other thing that disrupts it.”

Twenty-one states had joined together in challenging the rule promulgated by the Labor Department. They argued that the Obama administration had exceeded its statutory authority in raising the overtime salary limit so significantly. The states were joined by several business groups in a consolidated lawsuit.

Significantly, Judge Mazzant even questioned whether the executive branch had the authority to establish a salary limit at all, despite this being done several times by the Labor Department in the years since Congress passed the Fair Labor Standards Act in 1938. The administration argument was that they were merely making a rule to keep up “with our modern economy,” an argument the judge



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rejected. He responded that the increase to the 40th percentile of all weekly earnings in the country essentially eliminated the exception in the law for “bona fide executive, administrative or professional” employees. Mazzant said that by raising the cap so high, “The Department exceeds its authority and ignores Congress’s intent by raising the minimum salary level such that it supplants the duties test.” He insisted in his ruling that the Labor Department must examine the duties of employees to determine who fits the exception.

The Fifth Circuit Court of Appeals in Texas is regarded as one of the more “conservative” appellate courts in the country, and legal observers expect Mazzant’s ruling adverse to the Obama Labor Department would be upheld, if it was appealed.

President Obama has seen some other of his executive actions thwarted in court as unconstitutional, such as his efforts to appoint officials without congressional approval (arguing Congress was in recess) and his orders concerning immigration.

The Constitution is quite clear that Congress has all legislative powers that the Constitution delegates to the federal government, yet some presidents have chosen to usurp legislative power (in violation of their oath of office to uphold the Constitution) by the issuance of “executive orders.” There is a legitimate place for executive orders — such as when the president gives direction to members of the executive branch or the military, or in the enforcement of federal law, or court orders — but presidents simply are not allowed to make law via executive orders. Despite this, Obama has often said that he has a “pen and a phone,” and therefore will use his executive authority to get certain things done he wants done, if Congress refuses to act.

Hopefully, future presidents, starting with President-elect Donald Trump, will have better respect for the letter and the spirit of the Constitution in this regard.

As encouraging as the judge’s ruling was in upholding this important principle (that the executive branch cannot make law on its own), it remains a question whether Congress itself acted without constitutional authority when it passed the Fair Labor Standards Act in 1938, usurping the role of the states in our federal system.

The judge also turned down the request of the states that such overtime rules do not apply to them at all. Their argument is, of course, that they are sovereign entities in our federal system, and Congress has no more authority to set labor policy of state governments than do state legislatures have authority to pass laws governing federal employees within their individual state. But the U.S. Supreme Court ruled in the past that labor laws do apply to state governments, and the judge wrote that he would follow their precedent-setting decision.

Still, the ruling should be seen as a partial victory for the rule of law and the Constitution, and with Obama set to vacate the White House in less than two months, we can hope the days of ruling by executive decree are over.

After all, it is unlikely that Obama will hand over his pen and phone to Trump on Inauguration Day, set for January 20, 2017.



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