



Written by [Joe Wolverton, II, J.D.](#) on July 27, 2016

Senator Mike Lee Looks to Stop Bureaucracy From Usurping Legislative Powers

Since Barack Obama was inaugurated, his administration has added 229 new major regulations, the enforcement of which cost the American taxpayer \$108 billion every year.

One senator is trying to return the power of making law to the legislature where the Constitution places it.

With the election of a new president just months away, it is possible that the bureaucracy could grow, regardless of whether the new Oval Office occupant has an R or a D after his or her name. Thus it is extremely important that an effort such as Senator Mike Lee's is pressing forward.



In an article published July 17 by National Review online, the scope of the swelling regulatory behemoth is measured. "On average, about 4,000 new regulations take effect each year and another 2,700 are proposed. This steady accumulation of rules has caused the Code of Federal Regulations to balloon to more than 175,000 pages," the article reports.

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The largest benefactors of the largesse are the Environmental Protection Agency (EPA), the Department of Energy, and the Department of Transportation. These are three executive departments that certainly have a profound impact on the "life, liberty, and property" of every American.

And that is precisely why Mike Lee is working to rid the regulators of the legislating power they have usurped. In May, Lee unveiled legislation designed to restore direct, accountable congressional control over the federal regulatory system.

The Article I Regulatory Budget Reform Act would, for the first time, require Congress to vote on the total regulatory burden each federal agency may impose on the American people each year. It would require a budget for federal regulatory costs similar to Congress' annual budget for taxes and spending.

Under the discipline of a regulatory budget, Congress would be directly responsible for the size and scope of the regulatory state. Executive agencies could still issue and enforce their rules, but only so long as their impact fits within the regulatory-cost limits established by Congress.

Article I of the Constitution grants "all legislative powers" to the Congress.

As of today, there are 13 cosponsors of the bill, all of whom are Republicans.

At a press conference announcing the legislation, Lee explained the impetus behind the bill's drafting:

The starting point for that agenda is the simple observation that the federal government is broken, and congressional weakness is to blame.



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But it's important not to conflate a broken federal government with an inoperative federal government. Likewise, we must be careful not to assume that congressional weakness is equivalent to congressional innocence.

Indeed, the problem that we're here to address today — the problem of our hyperactive Executive Branch bureaucracy writing upwards of 95 percent of all new federal "laws" without winning a single vote in Congress or at the ballot box — was primarily created by the Legislative Branch for its own convenience.

Lee's assessment of the growth of the bureaucracy and its choking affect on the Constitution is spot on. As I recently wrote:

In this as in almost every other case of the slow suffocation of liberty under reams of paper pushed out onto the people by petty tyrants, history is a reliable guide to understanding the problem.

In his seminal study of the end of ancient Rome, *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 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!

Senator Lee recognizes an end run around the separation of powers in the expansion of the regulatory state. "For the American people, this kind of government without consent is a violation of the social compact at the heart of our Republic and exactly why [the people] no longer trust the federal government," he said.

Lee is right.

The Constitution represents the supreme law of the land, and all federal offices created therein are given specific and limited powers. If a president (or any other person holding elective office under the Constitution) ventures beyond those restrictive boundaries, he or she acts outside the law, and those actions are absolutely without the force of law, and people are obligated to disregard them.

Perhaps this point is made most clearly in Book I, Chapter 3 of Emer de Vattel's *Law of Nations*, a book that profoundly impacted every leading light of the Founding Generation from Sam Adams to James



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Wilson. Here is de Vattel's statement on the subject of a ruler acting outside the limits of his constitutionally defined powers:

The constitution and laws of a state are the basis of the public tranquillity, the firmest support of political authority, and a security for the liberty of the citizens. But this constitution is a vain phantom, and the best laws are useless, if they be not religiously observed: the nation ought then to watch very attentively, in order to render them equally respected by those who govern, and by the people destined to obey. To attack the constitution of the state, and to violate its laws, is a capital crime against society; and if those guilty of it are invested with authority, they add to this crime a perfidious abuse of the power with which they are entrusted. The nation ought constantly to repress them with its utmost vigor and vigilance, as the importance of the case requires.

As of today, the bill remains in committee.

While the measure languishes in the long road to consideration, the Constitution is being battered, and the walls formerly separating the constitutional authority of the three federal branches are being breached by bureaucrats determined to despotically suffocate liberty under an ever-growing pile of policies, pronouncements, and punishments for their violation.



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