

1/27/2021

Dalton Davis

Abstract for Liberty University Research Week 2021

Title – The Return of a Judicial Artifact?: How the Supreme Court Could Examine the Question of the Nondelegation Doctrine’s Place in Future Cases

Program of Study – Undergraduate Legal Studies

Presentation Type – Choose one of the following: Oral Presentation

Subtype – Choose one of the following for poster or oral presentation types: Textual or Investigative

Mentor(s) and Mentor Email - Dr. Benjamin Rathsam (brathsam@liberty.edu)

Student name(s) and email(s) – Mr. Dalton Davis (drdavis4@liberty.edu)

Abstract: Before 1930, the nondelegation doctrine was a crucial interpretive tool used by the federal courts to maintain the separation of powers between the legislative branch and the executive branch of the United States Government. The nondelegation doctrine prevents Congress from delegating to other branches of the federal government Congress’s legislative power under Article I Section 1 of the United States Constitution. The Supreme Court stopped using the nondelegation doctrine in the 1940s and the nondelegation doctrine has remained largely extinct at the federal level since that time. However, recent decisions by the Supreme Court in cases like *Gundy v. United States*, 139 S. Ct. 2116 (2019), *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), and *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), demonstrate that the Court appears to be open to reconsidering the nondelegation doctrine’s place within mainstream judicial thought. To understand how the Supreme Court could reconsider the position of the nondelegation doctrine in modern judicial thought, this article will examine 1) the historical record of the nondelegation doctrine in Supreme Court cases, 2) the current Justices’ past statements on the nondelegation doctrine, 3) recent Supreme Court precedent addressing the nondelegation doctrine, and 4) the potential implications that a revived nondelegation doctrine could have on administrative law. To achieve this end, the article will focus on the statements of the Court’s two junior-most members, Justice Brett Kavanaugh and Justice Amy Coney Barrett, sine neither Justice was a sitting member of

the Court when the Court last considered a nondelegation claim. Based on the Court's current composition, the article concludes that a ruling reviving the nondelegation doctrine could soon be handed down by the Supreme Court in the coming years.

Christian worldview integration: A worldview is a system of underlying beliefs through which an individual understands the world and their place within it. I base my worldview on the principles and ideas found in the Bible. I hold that the Bible, as the authoritative and inspired word of God is the ultimate foundation of all truth (2 Tim. 3:16). As such, I seek to live my life in accordance with its teaching and seek to more fully understand its truth (Prov. 4:7). Because of my Biblical worldview, I hold that God in three persons, Father, Son, and Spirit (Matt. 3:13-17), is the holy Creator of all things (Col. 1:16) and is worthy of all praise (Psalm 146:2). Specifically, I believe that humanity is fallen as a result of sin and rebellion against God (Gen. 3), but that God in His loving-kindness provided the means of redemption through the life, death, and resurrection of Jesus Christ (Eph. 2:4-10). Ultimately, this leads me to seek to honor Him by living my life in a manner that reflects who He is and what He has done in and through my life (Phil 1:27).

Regarding how my Biblical worldview impacts my approach to research, my worldview compels me to diligently seek after truth by carefully and honestly examining all relevant information regardless of my preconceptions of a topic. Additionally, it leads me to diligently work throughout the research and writing process to produce the best research product I can in a timely manner. Overall, I view the research process as one avenue through which I can honor God, the ultimate source of truth, by seeking after knowledge.

The research that this article will address has widespread implications for American culture due to the impact that a revitalized nondelegation doctrine could have on administrative agencies' abilities to create regulations. Specifically, the nondelegation doctrine could reduce the breadth of the administrative state and its regulatory power in America. Since federal regulations govern almost all aspects of individual and organizational conduct, Christians should closely monitor and understand how a change in this doctrine could impact other parts of their lives and cultural setting.