Written Testimony of Lawrence D. Wood

in opposition to SB72

My name is Lawrence D. Wood, age 64, Christian, a resident of Alaska 63 years. My address is 4750 Wolverine Rd., Palmer, Alaska. I am married 45 years to Lydia Wood, a retired elementary teacher of 27 years with PRWS RSD, and ASD. We are residents of House District 11. We have three grown children who live with their families and work in Alaska. We have 7 grandchildren, 5 of whom live in Alaska. My business is mining, environmental reclamation and writing. My father was a former Alaska Territorial and Alaska State Police Officer and my grandparents came to Alaska with the Bureau of Reclamation in 1952 for the construction of the Eklutna Power plant. My grandparents and my parents are buried here.

I have been an employer and an employee. I have been a member of IBEW and am retired IBEW. I have worked for public utilities and for private businesses. I am an officer of a small, closely held corporation that has engaged in metals fabrication, mining, mining equipment and soil remediation equipment development, and environmental contracting.

Testimony

As a long-time Alaskan, I do not believe that this Legislature wants to follow the examples of WA, OR, CO and eastern states in implementing administrative law over legislative, constitutional and judicial protections. The changes recommended in this bill are nothing more than incremental socialism and will result in expanding the attempt to remove Christianity from the public purview. Imposition of an administrative panel would result in administrative law being the arbiter of the 1st Amendment rights of any Christian citizen. I would remind the Legislature of the individual oaths made upon taking office and that the Constitution of the United States is the supreme law of the land. Administrative law through an unelected "panel" is a means to avoid judicial and legislative oversight and to thwart the protections of the Constitution and the rule of law.

The 1st Amendment bars any interference by government with respect to one's beliefs and the free and unfettered practice of one's religion. Part of the Christian religious belief is the fact that homosexuality, transgenderism, and deviant behavior is something that one should not condone. That such is God's Plan and Law, not man's. God set the standards, standards to which Christians are required to honor as a matter of Faith.

I fail to understand the necessity of including LGBTQ individuals where the protections of the 14th Amendment are concerned. All Americans have the same standing and rights under the law. What the inclusion of these classifications do is to open the door to creating additional protected classes based upon a desire to promote divisiveness and to continue the assault on our traditions, values and Christianity.

It is a matter of public knowledge that the Democratic Party is attempting to remove the stigmas against pedophilia, bestiality and to expand abortion to include killing post birth prior to age 5. Aborting children with Downs Syndrome has been advocated by abortion advocates. This downward spiral of 'anything' goes and the accompanying cult of death that is abortion

needs to be halted. What is happening in Europe is a direct outcome of failed social policies: abortion to reduce the population and condition women to killing the unborn, thereby reducing the value of life and paving the way for the assault on the family. Removing Christian values is necessary to make the state supreme. Islam is being introduced into Europe as the "scouring pad" to finalize the elimination of Christianity, western traditions, culture, history and law. Problem is, the Marxists did not think this thing through.

Islam abhors what they hold dear: the Left's cult of death that is abortion, euthanasia, the devaluing of children through abortion, the inuring women to the killing of their unborn and even post birth babies, homosexual unions, ending Christianity, and the assault on the family. Islam values family, even if it condones killing in its imperative to force submission. Islam will tolerate the Marxist ideology of the Left, as common goals of ending western civilization and Christianity are shared goals. However, when all is said and done, Islam will turn on the Left. Islam is absolutely intolerant of anything not Islam.

How has Europe ended up in its current predicament of rising violence against women and the threat of civil war? Administrative law and edict.

In creating this administrative panel, SB72 will result in creating the administrative avenue to avoid a judge who obeys an oath to the Constitution.

Administrative law and the administrative panel avoids potential public discourse, and the opportunity for the opposition that would be made before the legislative and judiciary branches. Those seeking to avoid a public opposition to their Marxist goals seek to avoid the legislative process and a constructionist judge at all cost. Once they have the foundation laid, their administrative mechanism acts to end opposition.

In the Outside, businesses have been destroyed, reputations sullied, all for what? Perception, feeeeeeelings. There is no substantive issue of civil rights in the LGBTQ attempts to gain special privilege as a protected class. Less than 1.5% of this population is LGBTQ. It is time the majority was protected by keeping to the rule of law, not granting powers that will result in administrative edicts.

None are above the law—unless appointed by an Alaska governor, or the President, that is.

The administrative decree of former President Obama resulted in males being allowed access into female bathrooms and locker rooms in schools and businesses resulting in sexual harassment, assaults, and sexual assault of women and minor female children. Retailer Target's Board of Directors supported President Obama's administrative edict, a policy that resulted in the exposure of customer's minor female children to sexual predators in Target's public restrooms. This policy has cost Target $20 billion in stock value and exposed children to sexual predators, all because of an administrative edict that went against conventional wisdom, ethics, and morality. The experience of Target and of school districts in endangering children by blindly following a presidential administrative order placing ideological goals over common sense should not be repeated in Alaska.

Those women and children molested, terrorized, and raped, because of this policy demonstrates the dangers contained in administrative law. SB72 is another step towards removing constitutional protections and our rule of law to effect ideological goals. President Obama made his "open" bathroom policy possible through Executive Order—an imperial edict, not legislative mandate or court order. This is what happens when ideology dictates morality and overcomes common sense.

The specter of a business license becoming a means to bludgeon the private business owner is also raised by the creation of an administrative panel and the imposition of administrative law.

A business license is a tax document, nothing more. Business is not a "privilege". All have the right to engage in business, government requires a business license to regulate and to tax a business, not to impose or to force conduct that is a violation of one's Faith, law or ethics. Were this so, the government could force one to violate one's ethics and the law . . . which, was done in Fast and Furious with the BATFE requiring legitimate licensed firearms dealers to make illegal sales against their will and in violation of both state and federal law. Over 200 Mexican citizens died, two U.S. federal agents and an unknown number of Parisians. One AK47 recovered in the Paris slaughter of November 13, 2015 was sent to Mexico under Fast and Furious. Administrative edict kills.

If the State of Alaska desires to force one to violate something as fundamental as one's Faith, the outcome would be that the State of Alaska would suffer a rise in unlicensed business in this state. Forcing one to violate one's beliefs is a violation of the 1st Amendment, and the Constitution trumps local or state law.

The business owner who turns away business for whatever reason is making a conscious decision to turn away that business, which is the right of that owner. None are entitled to be served. The potential customer/client has the right to take their business elsewhere. Otherwise, government must recognize that the business owner also has a "right" to demand that the person coming into the business who makes a conscious decision not to do business, must do business against their will. Neither party would have the right to refuse the other, were government to try to make business a privilege and a business license as more than just a tax document. Otherwise, to say that the business owner's refusal is discrimination is to be hypocritical, and discrimination against the business owner where the customer decides to take their business elsewhere. The reason is irrelevant. It is the idea of "privilege" that is abhorrent to the Constitution and our rule of law.

Privilege does not exist in a constitutional republic with a rule of law. However, the protection against privilege can be overcome through the creation of protected classes, such as is being attempted with SB72 and the imposition of administrative law through appointed persons who will be free to act upon political or ideological motivations, ignoring the rights and protections of the citizen under both the federal and state constitutions.

The 14th Amendment is clear regarding a person's standing under the law. What more is necessary that has not already been provided under Alaska law? Further, Art. 1

of Alaska's Constitution is a strong statement in support of the federal Constitution's Bill of Rights.

It can be reasonably argued that SB72 acts to establish privilege by specifying language that goes beyond the Framers' Intent under both the U.S. and Alaska constitutions.

The Constitution of the United States and that of the State of Alaska are very clear regarding free speech and the protection for one's beliefs. There is no "separation of church and state" that exists under law. That is a lie promoted by those seeking to undermine the protections of the 1st Amendment. Art. 1 §4 and §5 of Alaska's Constitution reflect and support the federal Constitution in this regard.

Art. 1 §1 of Alaska's Constitution further enshrines as inherent rights our right to work—to do business--and to enjoy the rewards thereof. Therefore, a business license cannot be used as a bludgeon to enforce ideological goals that require a person of Faith to violate the principles and teachings of their religion or belief system, and to violate both the Constitution of the United States and the Constitution of the State of Alaska.

Even the secular humanist's belief in atheism is a protected belief system under the 1st Amendment of the U.S. Constitution with respect to interference by government.

Constitution of the United States, Amendment XIV, § 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment V

". . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Constitution of the State of Alaska,

§ 1. Inherent Rights

"This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

§ 2. Source of Government

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

§ 3. Civil Rights

No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section. [Amended 1972]

§ 4. Freedom of Religion

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

§ 5. Freedom of Speech

Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right. . . .

§ 7. Due Process

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed. . . .

§ 15. Prohibited State Action

No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

§ 16. Civil Suits; Trial by Jury

In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve."

The idea of an administrative "panel" that will undoubtedly be empowered to administer punishment in the form of civil fines or the forfeiture of a business license, is repugnant to both the federal and Alaska constitutions. There is no provision for a jury of one's peers in any such taking, nor can property be taken except by due process. It can be argued that an administrative court with an appointed "panel" is not "due process" with respect to constitutionally mandated judicial due process.

SB72 is laying the groundwork for an assault upon Christianity to begin in earnest in Alaska. It is another brick to overlay our constitutional protections with the prejudice and lies of the secularist who wishes to distort the Constitution, both federal and state, to fit ideological

goals, and not according to Framers' Intent. Those who want to control what we say and think want to be able to ignore our constitutional protections, and to be allowed to effect a pogrom against Christianity and against our traditions, values, morality, and our rule of law with impunity. It is time this malarkey ended, we all have equal standing under the law.

Perversion in public, mistreatment of animals, violations of the privacy and safety of the sexes, and pedophilia are not civil rights. They are a threat to our children, given that the goal is to remove the stigma and legal bars to all manners of perversion and to pedophilia. The desire to normalize this aberrant conduct is a threat to our children, as was demonstrated by Obama's imperial edict and Target's policy in support of Obama's imperial edict. The crimes committed against women and children in Target's restrooms and school locker rooms and other facilities traditionally female-only demonstrates that our tradition of separating the sexes has a valid basis in safety, morality and privacy. What next? Condoning rape by migrants?

Transgenderism is a mental issue, not social, particularly where children are concerned—they need the help of mental professionals. In "Sexuality and Gender Findings from the Biological, Psychological, and Social Sciences, Lawrence S. Mayer, M.B., M.S., Ph.D; Paul R. McHugh, M.D., Fall 2016, p115, provides the following conclusion regarding transgenderism where children are concerned:

> "*Yet despite the scientific uncertainty, drastic interventions are prescribed and delivered to patients identifying, or identified, as transgender. This is especially troubling when the patients receiving these interventions are children. We read popular reports about plans for medical and surgical interventions for many prepubescent children, some as young as six, and other therapeutic approaches undertaken for children as young as two. We suggest that no one can determine the gender identity of a two-year-old. We have reservations about how well scientists understand what it even means for a child to have a developed sense of his or her gender, but notwithstanding that issue, we are deeply alarmed that these therapies, treatments, and surgeries seem disproportionate to the severity of the distress being experienced by these young people, and are at any rate premature since* ***the majority of children who identify as the gender opposite their biological sex will not continue to do so as adults.*** *Moreover, there is a lack of reliable studies on the long-term effects of these interventions. We strongly urge caution in this regard.*"
>
> (bold face added for emphasis by Lawrence D. Wood)

It appears that the rush by the Left to define a child's sexual identity who is confused, may be causing more problems than not. Until the science is certain, the consideration of this Legislature should not be to put anything in statute regarding sexual orientation where minors are concerned.

It is obvious that a purpose of SB72 is to expand the portfolio of the commission to include oversight of the beliefs of a business owner. Opening female-only restrooms and locker rooms to sexual predators is next, given the experience with the LGBTQ agenda Outside. Not in Alaska.

Is it really the intent of this Legislature to expand the reach of government by imposing an administrative panel that enforces administrative law over the constitutional rights of the individual? To make it possible to expose our female and male minor children to sexual predators under the guise of "equality" for people with aberrant sexual desires?

I have read with interest the assault on Christianity resulting from similar legislation Outside. I note that the goals of the socialists are accomplished through subterfuge, lies, and incrementalism, all the while claiming benefit and no harm. Yet, the only religious beliefs being targeted are those of Christians. Adult and minor females have been harmed. Further, there is no public report of the outcome of a homosexual's attempt to force a Muslim owned business owner to violate the tenets of Islam. The LGBTQ activists know better. Muslims throw homosexuals off roof tops . . . beat them in public—ISIS does this every day where they have control. Their authority is the Qur'an. I suggest you read the Qur'an. Muslims take it literally.

SB72 will add to the cost of government, infringe upon religious rights and impose an administrative nightmare. This insidious attempt to weaken our constitutional rights and to deny Christians their right to conduct business the way they see fit brings home the reasons why we voted multiple times to move the capital to gain access and oversight of our legislative process while in session. Paying $400 for a round-trip ticket to Juneau is not something most Alaskans can afford.

It is obvious that this type of insidious incrementalism that is SB72 is not in the best interests of the people and children of this state. Privilege is an anathema to a constitutional republic with a rule of law. Further, as the John Hopkin's study cited above demonstrates, the majority of children who are confused as to gender identity will normalize as they grow older. Further, it is absolutely absurd to believe that a 3 year old can rationalize gender. There is a game afoot that is simply insidious on the part of the Left.

There is only so much in the way of diluting our constitutional rights, imposing oversight beyond the constitutional limits of government, and forcing us to submit to violations of those rights that will be tolerated. I have never seen this country so divided and so in peril of a civil war.

If there's a problem, the 1st and the 2d Amendments work in concert to provide the solution to a tyrannical government's overreaching. SB72 is obviously another step in the direction of tyranny.

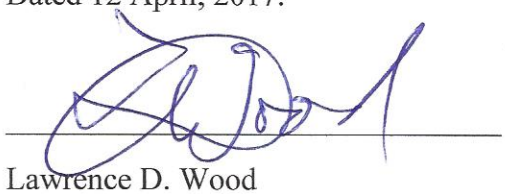
I would suggest that the Legislature consider AS 18.80 for reexamination in light of the state and federal constitutions and reign in the commission's desire to expand its power over religious beliefs. Further, an expansion of the bureaucracy and increasing the cost of government in a time of recession is not the most intelligent solution to a fiscal shortfall.

I would further ask that the safety and security of our women and children be given priority in any consideration of SB72.

SB72 is not a good idea and should be rejected.

This completes my testimony.

Dated 12 April, 2017.



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The History and Danger of Administrative Law

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The following is adapted from a speech delivered on May 6, 2014, at Hillsdale College's Allan P. Kirby, Jr. Center for Constitutional Studies and Citizenship in Washington, D.C., as part of the AWC Family Foundation Lecture Series.

There are many complaints about administrative law—including that it is arbitrary, that it is a burden on the economy, and that it is an intrusion on freedom. The question I will address here is whether administrative law is unlawful, and I will focus on constitutional history. Those who forget history, it is often said, are doomed to repeat it. And this is what has happened in the United States with the rise of administrative law—or, more accurately, administrative power.

Administrative law is commonly defended as a new sort of power, a product of the 19th and the 20th centuries that developed to deal with the problems of modern society in all its complexity. From this perspective, the Framers of the Constitution could not have anticipated it and the Constitution could not have barred it. What I will suggest, in contrast, is that administrative power is actually very old. It revives what used to be called prerogative or absolute power, and it is thus something that the Constitution centrally prohibited.

But first, what exactly do I mean by administrative law or administrative power? Put simply, administrative acts are binding or constraining edicts that come, not through law, but through other mechanisms or pathways. For example, when an executive agency issues a rule constraining Americans—barring an activity that results in pollution, for instance, or restricting how citizens can use their land—it is an attempt to exercise binding legislative power not through an act of Congress, but through an administrative edict. Similarly, when an executive agency adjudicates a violation of one of these edicts—in order to impose a fine or some other penalty—it is an attempt to exercise binding judicial power not through a judicial act, but again through an administrative act.

In a way we can think of administrative law as a form of off-road driving. The Constitution offers two avenues of binding power—acts of Congress and acts of the courts. Administrative acts by executive agencies are a way of driving off-road, exercising power through other pathways. For those in the driver's seat, this can be quite exhilarating. For the rest of us, it's a little unnerving.

The Constitution authorizes three types of power, as we all learned in school—the legislative power is located in Congress, executive power is located in the president and his subordinates, and the judicial power is located in the courts. How does administrative power fit into that arrangement?

The conventional answer to this question is based on the claim of the modernity of administrative law. Administrative law, this argument usually goes, began in 1887 when Congress created the Interstate Commerce Commission, and it expanded decade by decade as Congress created more such agencies. A variant of this account suggests that administrative law is actually a little bit older—that it began to develop in the early practices of the federal government of the United States. But whether it began in the 1790s or in the 1880s, administrative law according to this account is a post-1789 development and—this is the key point—it arose as a pragmatic and necessary response to new and complex practical problems in American life. The pragmatic and necessitous character of this development is almost a mantra—and of course if looked at that way, opposition to administrative law is anti-modern and quixotic.

But there are problems with this conventional history of administrative law. Rather than being a modern, post-constitutional American development, I argue that the rise of administrative law is essentially a re-emergence of the absolute power practiced by pre-modern kings. Rather than a modern necessity, it is a latter-day version of a recurring threat—a threat inherent in human nature and in the temptations of power.

Imprimis (im-pri-mis), [Latin]: in the first place

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The Prerogative Power of Kings

The constitutional history of the past thousand years in common law countries

records the repeated ebb and flow of absolutism on the one side and law on the other. English kings were widely expected to rule through law. They had Parliament for making law and courts of law for adjudicating cases, and they were expected to govern through the acts of these bodies. But kings were discontent with governing through the law and often acted on their own. The personal power that kings exercised when evading the law was called prerogative power.

Whereas ordinarily kings bound their subjects through statutes passed by Parliament, when exercising prerogative power they bound subjects through proclamations or decrees—or what we today call rules or regulations. Whereas ordinarily kings would repeal old statutes by obtaining new statutes, when exercising prerogative power they issued dispensations and suspensions—or what we today call waivers. Whereas ordinarily kings enforced the law through the courts of law, when exercising prerogative power they enforced their commands through their prerogative courts—courts such as the King's Council, the Star Chamber, and the High Commission—or what we today call administrative courts. Ordinarily, English judges resolved legal disputes in accordance with their independent judgment regarding the law. But when kings exercised prerogative power, they expected deference from judges, both to their own decrees and to the holdings and interpretations of their extra-legal prerogative courts.

Although England did not have a full separation of powers of the sort written into the American Constitution, it did have a basic division of powers. Parliament had the power to make laws, the law courts had the power to adjudicate, and the king had the power to exercise force. But when kings acted through prerogative power, they or their prerogative courts exercised all government powers, overriding these divisions. For example, the Star Chamber could make regulations, as well as prosecute and adjudicate infractions. And defenders of this sort of prerogative power were not squeamish about describing it as absolute power. Absolutism was their justification.

Conceptually, there were three central elements of this absolutism: extra-legal power, supra-legal power, and the consolidation of power. It was extra-legal or outside the law in the sense that it bound the public not through laws or statutes, but through other means. It was supra-legal or above the law in the sense that kings expected judges to defer to it—notwithstanding their duty to exercise their own independent judgment. And it was consolidated in the sense that it united all government powers—legislative, executive, and judicial—in the king or in his prerogative courts. And underlying these three central elements was the usual conceptual justification for absolute power: necessity. Necessity, it was said, was not bound by law.

These claims on behalf of absolutism, of course, did not go unchallenged. When King John called Englishmen to account extralegally in his Council, England's barons demanded in Magna Carta in 1215 that no freeman shall be taken or imprisoned or even summoned except through the mechanisms of law. When 14th century English kings questioned men in the king's Council, Parliament in 1354 and 1368 enacted due process statutes. When King James I attempted to make law through proclamations, judges responded in 1610 with an opinion that royal proclamations were unlawful and void. When James subsequently demanded judicial deference to prerogative interpretations of statutes, the judges refused. Indeed, in 1641 Parliament abolished the Star Chamber and the High Commission, the bodies then engaging in extra-legal law-making and adjudication. And most profoundly, English constitutional law began to develop—and it made clear that there could be no extra-legal, supra-legal, or consolidated power.

The Rise of Absolutism in America

The United States Constitution echoes this. Early Americans were very familiar with absolute power. They feared this extra-legal, supra-legal, and consolidated power because they knew from English history that such power could evade the law and override all legal rights. It is no surprise, then, that the United States Constitution was framed to bar this sort of power. To be precise, Americans established the Constitution to be the source of all government power and to bar any absolute power. Nonetheless, absolute power has come back to life in common law nations, including America.

After absolute power was defeated in England and America, it circled back from the continent through Germany, and especially through Prussia. There, what once had been the personal prerogative power of kings became the bureaucratic administrative power of the states. The Prussians were the leaders of this development in the 17th and 18th centuries. In the 19th century they became the primary theorists of administrative power, and many of them celebrated its evasion of constitutional law and constitutional rights.

This German theory would become the intellectual source of American administrative law. Thousands upon thousands of Americans studied administrative power in Germany, and what they learned there about administrative power became standard fare in American universities. At the same time, in the political sphere, American Progressives were becoming increasingly discontent with elected legislatures, and they increasingly embraced German theories of administration and defended the imposition of administrative law in America in terms of pragmatism and necessity.

The Progressives, moreover, understood what they were doing. For example, in 1927, a leading Progressive theorist openly said that the question of whether an American administrative officer could issue regulations was similar to the question of whether pre-modern English kings could issue binding proclamations. By the 1920s, however, Progressives increasingly were silent about the continuity between absolute power and modern administrative power, as this undermined their claims about its modernity and lawfulness.

In this way, over the past 120 years, Americans have reestablished the very sort of power that the Constitution most centrally forbade. Administrative law is extra-legal in that it binds Americans not through law but through other mechanisms—not through statutes but through regulations—and not through the decisions of courts but through other adjudications. It is supra-legal in that it requires judges to put aside their independent judgment and defer to administrative power as if it were above the law—which our judges do far more systematically than even the worst of 17th century English judges. And it is consolidated in that it combines the three powers of government—legislative, executive, and judicial—in administrative agencies.

Let me close by addressing just two of many constitutional problems illuminated by the re-emergence of absolutism in the form of administrative power: delegation and procedural rights.

One standard defense of administrative power is that Congress uses statutes to delegate its lawmaking power to administrative agencies. But this is a poor defense. The delegation of lawmaking has long been a familiar feature of absolute power. When kings exercised extra-legal power, they usually had at least some delegated authority from Parliament. Henry VIII, for example, issued binding proclamations under an authorizing statute

called the Act of Proclamations. His binding proclamations were nonetheless understood to be exercises of absolute power. And in the 18th century the Act of Proclamations was condemned as unconstitutional.

Against this background, the United States Constitution expressly bars the delegation of legislative power. This may sound odd, given that the opposite is so commonly asserted by scholars and so routinely accepted by the courts. But read the Constitution. The Constitution's very first substantive words are, "All legislative Powers herein granted shall be vested in a Congress of the United States." The word "all" was not placed there by accident. The Framers understood that delegation had been a problem in English constitutional history, and the word "all" was placed there precisely to bar it.

As for procedural rights, the history is even more illuminating. Administrative adjudication evades almost all of the procedural rights guaranteed under the Constitution. It subjects Americans to adjudication without real judges, without juries, without grand juries, without full protection against self-incrimination, and so forth. Like the old prerogative courts, administrative courts substitute inquisitorial process for the due process of law—and that's not just an abstract accusation; much early administrative procedure appears to have been modelled on civilian-derived inquisitorial process. Administrative adjudication thus becomes an open avenue for evasion of the Bill of Rights.

The standard justification for the administrative evasion of procedural rights is that they apply centrally to the regular courts, but not entirely to administrative adjudication. But the history shows that procedural rights developed primarily to bar prerogative or administrative proceedings, not to regulate what the government does in regular courts of law. As I already mentioned, the principle of due process developed as early as the 14th century, when Parliament used it to prevent the exercise of extra-legal power by the King's Council. It then became a constitutional principle in the 17th century in opposition to the prerogative courts. Similarly, jury rights developed partly in opposition to administrative proceedings, and thus some of the earliest constitutional cases in America held administrative proceedings unconstitutional for depriving defendants of a jury trial.

* * *

In sum, the conventional understanding of administrative law is utterly mistaken. It is wrong on the history and oblivious to the danger. That danger is absolutism: extra-legal, supra-legal, and consolidated power. And the danger matters because administrative power revives this absolutism. The Constitution carefully barred this threat, but constitutional doctrine has since legitimized this dangerous sort of power. It therefore is necessary to go back to basics. Among other things, we should no longer settle for some vague notion of "rule of law," understood as something that allows the delegation of legislative and judicial powers to administrative agencies. We should demand rule *through* law and rule *under* law. Even more fundamentally, we need to reclaim the vocabulary of law: Rather than speak of administrative law, we should speak of administrative power—indeed, of absolute power or more concretely of extra-legal, supra-legal, and consolidated power. Then we at least can begin to recognize the danger. ■