No. 18-2885

IN THE

United States Court of Appeals for the Seventh Circuit

CITY OF CHICAGO,

Plaintiff-Appellee,

v.

MATTHEW G. WHITAKER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, No. 17-cv-05720, Judge Harry D. Leinenweber

BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* state that no party to this brief is a publicly-held corporation, issues stock, or has a parent corporation.

Pursuant to Seventh Circuit Rule 26.1, *amici* state that the Constitutional Accountability Center is the only law firm that has appeared for *amici* in this Court.

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INTEREST OF *AMICI CURIAE*[1]

Amici are members of Congress who are familiar with the laws governing the Edward Byrne Memorial Justice Assistance Grant Program, a grant program that provides federal financial assistance to localities across the country to help them enhance public safety. As *amici* well know, Congress established this grant program to provide states and localities with funding to determine what programs and approaches to law enforcement and public safety will work best in different communities around the country. The grant conditions at issue in this case undermine Congress's carefully considered plan in establishing this grant program, as well as fundamental constitutional principles that give Congress, not the executive branch, the power to make laws establishing conditions on the receipt of federal financial assistance. *Amici* have a strong interest in ensuring that the executive branch respects the role of Congress in our Constitution's system of separation of powers and the laws that it has enacted.

A full listing of *amici* appears in the Appendix.

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[1] *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *amici* or its counsel made a monetary contribution to the brief's preparation or submission. Counsel for all parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

The Edward Byrne Memorial Justice Assistance Grant ("Byrne JAG") Program provides federal financial assistance to localities across the country, including the City of Chicago, to help them enhance public safety as they see fit. Using a formula keyed to the jurisdiction's population and violent crime rate, Byrne JAG grants provide states and cities with financial assistance that they can use to "provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice." 34 U.S.C. § 10152(a)(1); *City of L.A. v. McLaughlin*, 865 F.2d 1084, 1088 (9th Cir. 1989) ("'formula' grants," unlike discretionary grants, "are not awarded at the discretion of a state or federal agency, but are awarded pursuant to a statutory formula"). Reflecting the primary role of states and cities in fighting crime, the statute establishing the Byrne JAG program places minimal limits on the public safety and criminal justice uses to which funds may be allocated.

Despite all this, in July 2017, United States Attorney General Jeff Sessions sought to administratively mandate new funding conditions for every Byrne JAG grant, seeking to coerce local jurisdictions into adopting immigration policies preferred by President Trump. Significantly, Congress neither imposed these conditions, nor authorized the Attorney General to impose them. As this Court held in the first appeal in this case, "the power of the purse rests with Congress,

which authorized the federal funds at issue and did not impose any immigration enforcement conditions on the receipt of such funds." *City of Chi. v. Sessions,* 888 F.3d 272, 277 (7th Cir. 2018).

As *amici* know from their experience in Congress, Congress designed the Byrne JAG program as a formula grant to ensure that states and localities would have maximum flexibility in determining how to best improve public safety in their respective jurisdictions. The one-size-fits-all conditions that the Attorney General now seeks to impose are not only at odds with the flexibility that was central to Congress's plan in establishing the grant program, but also would undermine public safety in jurisdictions like Chicago by decreasing trust and cooperation between the police force and crime victims and witnesses in many neighborhoods. *Id.* at 285 (allowing the Executive Branch "to impose any conditions on the grants at will[] is inconsistent with the goal of the statute to support the needs of law enforcement while providing flexibility to state and local governments").

To ensure that states and localities would have maximum discretion in determining how best to use the program funds, Congress carefully limited the executive branch's authority over the Byrne JAG program, giving the Attorney General only extremely narrow powers over its administration. None of these powers authorizes the Attorney General to add new substantive conditions on the

award of grants, which is why the Attorney General here relies principally on a statute that does not concern either the Byrne JAG program or the Attorney General. But that statute, which imposes duties on a subordinate officer, the Assistant Attorney General of Justice Programs, that are primarily related to information sharing, does not help the Attorney General either. Congress did not hide an elephant in that mousehole.

As this Court's previous decision in this case recognized, the Attorney General's attempt to administratively write into law new substantive Byrne JAG grant conditions not authorized by Congress—and, indeed, at odds with the laws Congress did pass—also runs afoul of fundamental constitutional principles. The Framers of our Constitution took pains to deny the executive branch the power to both make the law and then execute it, recognizing that such concentrated power "in the hands of a single branch is a threat to liberty." *Clinton v. City of N.Y.*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring); *Chicago*, 888 F.3d at 277 ("The founders of our country well understood that the concentration of power threatens individual liberty and established a bulwark against such tyranny by creating a separation of powers among the branches of government."). They also conferred on Congress in the Spending Clause the power to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States," U.S. Const. art. I, § 8, cl. 1, authorizing it

"to grant federal funds to the States" and to impose conditions to "ensure that the funds are used by the States to 'provide for the . . . general Welfare' in the manner Congress intended," *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 576 (2012) ("*NFIB*"); *see Chicago*, 888 F.3d at 277 ("the power of the purse rests with Congress"). The Framers thus gave the legislative power, including the authority to impose conditions on the receipt of federal financial assistance, to Congress, recognizing that "[m]oney is . . . considered as the vital principle of the body politic; as that which sustains its life and motion and enables it to perform its most essential functions." *The Federalist No. 30*, at 156 (Hamilton) (Clinton Rossiter ed., rev. ed. 1999).

Here, the government turns a blind eye to these vital structural constitutional principles, hard-wired into our Constitution by the Framers in order to preserve liberty. Once again, it falls to the "judiciary . . . to act as a check on . . . usurpation of power." *Chicago*, 888 F.3d at 277. The Attorney General's actions cannot be squared with our Framers' design, which gave to Congress the exclusive power of the purse. Nor can they be squared with the laws passed by Congress, which deny to the Attorney General a freewheeling power to impose policy conditions on grant programs such as the Byrne JAG program. The district court was correct to issue a permanent injunction against the enforcement of these conditions.

ARGUMENT

I. CONGRESS DID NOT GRANT THE ATTORNEY GENERAL THE POWER TO IMPOSE NEW GRANT CONDITIONS ON BYRNE JAG PROGRAM GRANTEES.

In enacting the Byrne JAG program, Congress sought to give state and local law enforcement "flexibility to spend [federal] money for programs that work for them rather than to impose a 'one size fits all' solution." H.R. Rep. No. 109-233, at 89 (2005). To achieve that end, Congress gave states and local jurisdictions considerable discretion in determining how best to spend the funds that they were awarded under the grant program. While Congress of course retains its power to impose conditions on the receipt of grant funds when it concludes that some policy is sufficiently important to warrant conditioning the award of funds on compliance with that policy, *see, e.g.*, NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180, § 104, 121 Stat. 2559, 2569 (codified at 34 U.S.C. § 40914(b)(2)) (providing for the withholding of up to 5 percent of Byrne JAG formula grant funds to states that fail to provide adequate records to the National Instant Criminal Background Check System); *see also* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 125, 120 Stat. 587, 598 (codified at 34 U.S.C. § 20927); Death in Custody Reporting Act of 2013, Pub. L. No. 113-242, § 2, 128 Stat. 2860, 2861 (codified at 34 U.S.C. § 60105(c)(2)), Congress did not give the power to make that determination to the executive branch. In fact, it did just the

opposite, carefully limiting the Attorney General's role in administering the Byrne JAG grant program. It granted him a handful of specifically defined and exceedingly narrow powers, thereby ensuring that the executive branch would not impose constraints on award recipients that were at odds with Congress's carefully considered choice about how best to structure the program.

In designing the Byrne JAG program, Congress simply conferred on the Attorney General the authority to choose the "form" of the application for Byrne JAG funds, 34 U.S.C. § 10153(a), and the "certification" that grantees must sign, *id.* § 10153(a)(5), to require grantees to provide "data, records, and information (programmatic and financial)," *id.* § 10153(a)(4), and to set "guidelines" to be used to conduct "program assessment[s]" of programs funded by Byrne JAG funds, *id.* § 10152(c)(1). Congress also gave the Attorney General the authority to permit, based on a finding of "extraordinary and exigent circumstances," jurisdictions to spend their Byrne JAG funds on certain "vehicles," "vessels," "aircraft," "luxury items" "real estate," "construction projects," or "similar matters." *Id.* § 10152(d)(2). Nothing in the Byrne JAG statute authorizes the Attorney General to impose additional conditions on grantees, as he has attempted to do here. *See Chicago,* 888 F.3d at 284 ("None of th[e Act's] provisions grant the Attorney General the authority to impose conditions that require states or local governments

to assist in immigration enforcement, nor to deny funds to states or local governments for the failure to comply with those conditions.”).

The Attorney General effectively concedes as much, relying not on the provision governing the Byrne JAG program, but instead on a separate provision, 34 U.S.C. § 10102(a)(6), that does not even address the powers of the Attorney General, but instead sets forth the powers of the Assistant Attorney General for the Office of Justice Programs. Appellant’s Br. at 32. But that statute, which gives the Assistant Attorney General the authority to “exercise such other powers and functions *as may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General*, including placing special conditions on all grants, and determining priority purposes for formula grants,” does not supersede Congress’s decision to deny the Attorney General the authority to impose substantive constraints on Byrne JAG grantees. 34 U.S.C. § 10102(a)(6) (emphasis added).

First, Section 10102 is located in an entirely different subchapter of the U.S. Code than the Byrne JAG program, and nothing in the text suggests that it governs the Byrne JAG program. “Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001). But here, the Attorney General claims that, despite the

lengths to which Congress went to sharply circumscribe the Attorney General's authority under the Byrne JAG program, a provision in a different subchapter of the Code implicitly gives a subordinate of the Attorney General, the Assistant Attorney General of Justice Programs, the sweeping power to add new substantive conditions to grants. The Assistant Attorney General "is an unlikely recipient of such broad authority," given "the statute's otherwise careful allocation of decisionmaking powers." *Gonzales v. Oregon*, 546 U.S. 243, 274 (2006); *Chicago*, 888 F.3d at 287 (observing that the claim that "such sweeping authority" was "provided to the Assistant Attorney General by merely adding a clause to the sentence in a list of otherwise-ministerial powers defies reason"). Appellant's brief offers no reason why Congress would sharply limit the powers of the Attorney General over the Byrne JAG program, while giving a broad and freewheeling lawmaking power to one of his subordinates. As the text of Section 10102 demonstrates, Congress did no such thing.

Second, the text of Section 10102 makes clear that it does not vest in the Assistant Attorney General lawmaking powers to impose new substantive conditions on grants. Section 10102 merely requires the Assistant Attorney General to deliver information about the state of the criminal justice system, *see* 34 U.S.C. § 10102(a)(1) (duty to "publish and disseminate information on the conditions and progress of criminal justice systems"); *id.* §10102(a)(3) (duty to

"provide information to the President, the Congress, the judiciary, State and local governments, and the general public relating to criminal justice"), and to maintain relationships with stakeholders, government bodies, and experts in the field, *see id.* § 10102(a)(2) (duty to "maintain liaison with the executive and judicial branches of the Federal and State governments in matters relating to criminal justice"); *id.* § 10102(a)(4) (duty to "maintain liaison with public and private educational and research institutions, State and local governments, and governments of other nations relating to criminal justice"); *id.* § 10102(a)(5) (duty to "coordinate and provide staff support to coordinate the activities of the Office and the Bureau of Justice Assistance, the National Institute of Justice," and other government offices). None of these obligations, which focus primarily on delivering information and maintaining contacts, authorizes the Assistant Attorney General to engage in executive lawmaking to add new substantive grant conditions.

After imposing that list of specific obligations on the Assistant Attorney General, Section 10102 contains a catch-all provision stating that the Assistant Attorney General may "exercise such other powers and functions as may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General, including placing special conditions on all grants, and determining priority purposes for formula grants." *Id.* § 10102(a)(6). The Attorney General's reliance on this provision is misplaced for two reasons. To

start, Section 10102(a)(6) does not specifically confer any new authority on the Assistant Attorney General: it simply makes clear that the Assistant Attorney General may exercise such power "as may be vested" "pursuant to this chapter or by delegation of the Attorney General," including "placing special conditions on all grants." Nowhere in the U.S. Code has the Assistant Attorney General been vested with the power to make new law and add substantive grant conditions.

On top of that, the Attorney General's argument depends on reading the "special conditions" language in this subprovision in isolation from the rest of Section 10102. But "statutes 'should not be read as a series of unrelated and isolated provisions.'" *Gonzales*, 546 U.S. at 273 (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995)). Rather, under the settled "principle of *noscitur a sociis*—a word is known by the company it keeps," courts "'avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.'" *Yates v. United States*, 135 S. Ct. 1074, 1085 (2015) (quoting *Gustafson*, 513 U.S. at 575 (internal quotation marks omitted)); *United States v. Williams*, 553 U.S. 285, 294 (2008) ("[A] word is given more precise content by the neighboring words with which it is associated."). The sweeping lawmaking power the Attorney General claims differs in kind from the narrow information-sharing obligations imposed by Section 10102.

Third, and finally, the authority to place "special conditions" on grants is not a lawmaking power to add new conditions; rather, it "is a term of art for conditions intended for 'high-risk grantees' with difficulty adhering to existing granting requirements." *City of Phila. v. Sessions*, 280 F. Supp. 3d 579, 617 (E.D. Pa. 2017); *see* 28 C.F.R. § 66.12(a)(5) (DOJ regulations noting that, for high risk grantees, "special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award"); OMB Circular No. A-102 (Revised), *Grants and Cooperative Agreements with State and Local Governments*, § 1(g) (Aug. 29, 1997) ("Agencies may impose special conditions or restrictions on awards to 'high risk' applicants/grantees"). The regulations applicable to other federal agencies are similar. *See* 7 C.F.R. § 550.10 (Department of Agriculture); 34 C.F.R. § 80.12 (Department of Education); 45 C.F.R. § 74.14 (Department of Health and Human Services). The government's argument cannot be squared with this settled, circumscribed meaning.

In sum, without any basis in law, the Attorney General has sought to arrogate to himself the power to set conditions on federal funding in order to make Chicago and all other Byrne JAG recipients follow President Trump's preferred immigration policies. In doing so, he threatens not only to undermine the statute's carefully-crafted flexibility and frustrate its goal of enhancing public safety in Chicago and other local jurisdictions, but also to impose new costs on Byrne JAG

recipients, as the Department of Justice acknowledged in its solicitation form. *See* U.S. Dep't of Justice, *Edward Byrne Memorial Justice Assistance Grant Program FY 2017 Local Solicitation* 30 (2017), https://www.bja.gov/Funding/JAGLocal17.pdf (advising that "[t]he reasonable costs . . . of developing and putting into place statutes, rules, regulations, policies, or practices as required by these conditions, and to honor any duly authorized requests from DHS that is encompassed by these conditions, will be allowable costs under the award"). The imposition of these new costs only underscores how fundamentally the Attorney General's actions are at odds with Congress's plan in establishing the Byrne JAG grant program. As noted earlier, Congress wanted to give states and localities financial support and maximum flexibility in determining how best to enhance public safety in their jurisdictions. But these new costs imposed by the Attorney General would require states and localities to prioritize the executive branch's policy preferences over their own and to redirect resources to support the executive branch's agenda. Congress carefully limited the Attorney General's powers over the grant program to ensure that it would not do what the Attorney General is attempting to do here.[2]

[2] The government also seeks to rely on 8 U.S.C. § 1373, but the district court recognized, in holding § 1373 unconstitutional on the ground that it "impermissibly directs the functioning of local government in contravention of Tenth Amendment principles," that superimposing § 1373 on the Byrne JAG grant process "supplants local control of local officers." Op. at 32, 22. Notably, § 1373

Because Congress has not given the Attorney General the power to impose additional conditions on Byrne JAG grantees, the Attorney General's decision to do so does violence to Congress's deliberate and considered choices about how to structure this public safety grant program. It also does violence to fundamental constitutional principles, which give to Congress—and not the executive branch—the power to make the very sorts of spending choices at issue here, as the next Section discusses.

II. SEPARATION-OF-POWERS PRINCIPLES DO NOT PERMIT THE EXECUTIVE BRANCH TO IMPOSE NEW CONDITIONS ON RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE.

When the Framers wrote the Constitution more than two centuries ago, they took pains to deny the President the kind of sweeping powers the King of England had enjoyed. In the seventeenth and eighteenth centuries, British Kings had used their royal prerogatives both to legislate, and to tax and to spend, without the approval of Parliament. *See*, *e.g.*, Robert J. Reinstein, *The Limits of Executive Power*, 59 Am. U. L. Rev. 259, 272-77 (2009); Paul F. Figley & Jay Tidmarsh, *The Appropriations Power and Sovereign Immunity*, 107 Mich. L. Rev. 1207, 1217-29 (2009). "The combination of legislation through proclamation and taxation . . . threatened to concentrate autocratic power in the King." Reinstein, *supra*, at 274.

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does not explicitly apply to grantmaking, and applying it to Byrne JAG grants contravenes Congress's choice to give localities broad discretion to use those federal funds in the manner that best supports local needs.

After centuries of struggle, Parliament succeeded in ending these prerogatives. The Bill of Rights of 1689 prohibited the various devices the King had used to raise money on his own, providing that "levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal." An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown (Bill of Rights), 1689, 1 W. & M., c.2, § 4 (Eng.). In 1782, Parliament eliminated the King's prerogative to determine how the "civil list"—the domestic budget—would be spent. Figley & Tidmarsh, *supra*, at 1229.

In the U.S. Constitution, "the prerogatives that had been discredited in England were naturally rejected by the Framers." Reinstein, *supra,* at 307. The Framers gave the lawmaking power, including the power of the purse, to Congress, recognizing that "the Prerogatives of the British Monarch" were not "a proper guide in defining the Executive powers." 1 *The Records of the Federal Convention of 1787*, at 65 (Max Farrand ed., 1911). The U.S. Constitution strictly limited the President's lawmaking powers, appreciating that "'[w]hen the legislative and executive powers are united in the same person or body . . . there can be no liberty.'" *The Federalist No. 47*, *supra*, at 271 (Madison) (quoting Montesquieu).

As the Supreme Court has explained, "the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952); *id.* at 655 (Jackson, J., concurring) ("The Executive, except for recommendation and veto, has no legislative power."); *Zivotovsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2090 (2015) ("The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue."). Thus, "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellín v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown*, 343 U.S. at 585). "Ours is a government of laws, not of men" in which "we submit ourselves to rulers only if under rules." *Youngstown*, 343 U.S. at 646 (Jackson, J., concurring). These separation-of-powers principles "[were] designed to implement a fundamental insight: Concentration of power in the hands of a single branch is a threat to liberty." *Clinton*, 524 U.S. at 450 (Kennedy, J., concurring); *The Federalist No. 47*, *supra,* at 269 ("The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.") (Madison).

In the Spending Clause, the Framers explicitly gave the power to tax and spend—which British Kings had claimed as a royal prerogative—to Congress,

denying the President the power of the purse. The Spending Clause is the first and one of the most sweeping powers the Constitution confers upon Congress, providing the power "[t]o lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1. The Framers, who had witnessed the disastrous consequences of the failure of the Articles of Confederation to give such a power to Congress, called the power of the purse "an indispensable ingredient in every constitution," *The Federalist No. 30*, *supra*, at 156 (Hamilton); *The Federalist No. 31*, *supra*, at 163 (Hamilton) ("[R]evenue is the essential engine by which the means of answering the national exigencies must be procured."); Akhil Reed Amar, *America's Constitution: A Biography* 106 (2005) (explaining that under the Articles, Congress could raise money only by making requests to the States, but "State governments had often failed to provide the funds that the Confederation demanded of them. . . . Without a strong revenue stream, vital federal functions were withering."). The Framers thus gave Congress power over "all those matters which will call for disbursements out of the national treasury." *The Federalist No. 30*, *supra*, at 156 (Hamilton); *The Federalist No. 78*, *supra*, at 433 (Hamilton) ("The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated.").

Because the Framers gave the Spending Clause power to Congress alone, and because they strictly limited the President's lawmaking powers, the Executive has no independent power to dictate what the federal government spends money on, or the conditions it attaches to those expenditures. Rather, it is Congress—and Congress alone—that has broad power to "fix the terms on which it shall disburse federal money to the States." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981); *see NFIB*, 567 U.S. at 576 ("We have long recognized that Congress may use this power to grant federal funds to the States, and may condition such a grant upon the States' 'taking certain actions that Congress could not require them to take.'" (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686 (1999))); *Chicago*, 888 F.3d at 283 ("the Executive Branch does not have the inherent authority . . . to condition the payment of such federal [grant] funds on adherence to its political priorities"); *City & Cty. of S.F. v. Trump*, 897 F.3d 1225, 1234 (9th Cir. 2018) (holding that the Executive branch may not "claim[] for itself Congress's exclusive spending power").

Because the power to "fix the terms on which [Congress] shall disburse federal money to the States," *Pennhurst*, 451 U.S. at 17, belongs to Congress alone, the Executive cannot change Congress's decision, except by persuading Congress to amend the laws that it has enacted. It is well settled that "[t]he

Constitution does not confer upon [the President] any power to enact laws or to suspend or repeal such as the Congress enacts." *United States v. Midwest Oil Co.*, 236 U.S. 459, 505 (1915); *Kendall v. United States ex rel. Stokes,* 37 U.S. (12 Pet.) 524, 613 (1838) (refusing to "cloth[e] the President with a power entirely to control the legislation of congress"); *see Clinton*, 524 U.S. at 447 (the President lacks "unilateral power to change the text of duly enacted statutes"). In other words, the executive branch cannot make an end-run around the "single, finely wrought," "step-by step, deliberate and deliberative process," *INS v. Chadha*, 462 U.S. 919, 951, 959 (1983), the Framers prescribed for lawmaking. To license such executive lawmaking "would deal a severe blow to the Constitution's separation of powers." *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2446 (2014).

In sum, while the President's duty to "execut[e] the laws necessarily includes both authority and responsibility to resolve some questions left open by Congress that arise during the law's administration[,] it does not include a power to revise . . . clear statutory terms to suit [his] own sense of how [a] statute should operate." *Id.* Yet that is exactly what the Attorney General has attempted to do here, and the district court's decision to enjoin him from doing so should be affirmed.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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Dated: November 15, 2018

APPENDIX:

LIST OF *AMICI*

U.S. Senate

Richard J. Durbin
Senator of Illinois

Tammy Duckworth
Senator of Illinois

Mazie K. Hirono
Senator of Hawai‘i

Richard Blumenthal
Senator of Connecticut

Robert Menendez
Senator of New Jersey

Chris Van Hollen
Senator of Maryland

Jack Reed
Senator of Rhode Island

Kamala D. Harris
Senator of California

Patrick J. Leahy
Senator of Vermont

Sheldon Whitehouse
Senator of Rhode Island

U.S. House of Representatives

Zoe Lofgren
Representative of California

Jerrold Nadler
Representative of New York

Karen Bass
Representative of California

David N. Cicilline
Representative of Rhode Island

Yvette D. Clarke
Representative of New York

Steve Cohen
Representative of Tennessee

Val Demings
Representative of Florida

Mark DeSaulnier
Representative of California

Ted Deutch
Representative of Florida

Luis V. Gutiérrez
Representative of Illinois

Sheila Jackson Lee
Representative of Texas

Pramila Jayapal
Representative of Washington

Henry C. "Hank" Johnson, Jr.
Representative of Georgia

John Lewis
Representative of Georgia

LIST OF *AMICI* – cont'd

Ted W. Lieu
Representative of California

Eleanor Holmes Norton
Representative of District of Columbia

James P. McGovern
Representative of Massachusetts

Frank Pallone, Jr.
Representative of New Jersey

Bill Pascrell
Representative of New Jersey

Mike Quigley
Representative of Illinois

Jamie Raskin
Representative of Maryland

Cedric Richmond
Representative of Louisiana

Lucille Roybal-Allard
Representative of California

Jan Schakowsky
Representative of Illinois

Robert C. "Bobby" Scott
Representative of Virginia

Albio Sires
Representative of New Jersey

Eric Swalwell
Representative of California

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 4,542 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that the attached brief *amici curiae* complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 15th day of November, 2018.

/s/ Elizabeth B. Wydra
Elizabeth B. Wydra

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system on November 15, 2018.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 15th day of November, 2018.

/s/ Elizabeth B. Wydra
Elizabeth B. Wydra

Counsel for Amici Curiae