

BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY
TESTIMONY OF GUERINO J. CALEMINE, III
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HEARING ON THE NOMINATION OF THE HONORABLE NEIL M. GORSUCH
TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED
STATES

March 23, 2017

Mr. Chairman and Members of the Committee:

On behalf of the Communications Workers of America (CWA), it is an honor to submit this testimony as you consider the nomination of Judge Neil Gorsuch for a seat on the United States Supreme Court. CWA represents 700,000 workers across the country in a wide array of industries, including telecommunications, manufacturing, airlines, media, government, and health care. This year, CWA celebrates its 70th anniversary advocating for workers and their rights on the job.

Our concern regarding Judge Gorsuch's nomination is grave and simple: Working people cannot be assured a fair shake from a Justice Gorsuch. His jurisprudence is a threat to our safety and health.

Just seven months ago, Judge Gorsuch issued a seven-paragraph dissent in a workplace safety and health case that amounts to a flashing red light for the Senate. This dissent, in a case called *TransAm Trucking, Inc. v. Administrative Review Board*, shows Judge Gorsuch to be an activist set on rolling back workers' rights. It provides an ominous preview of how Judge Gorsuch – if confirmed to the Supreme Court – would dismantle worker protection laws. It reveals a hostility to, and lack of understanding of, working people, their lives, and the laws that protect them. It trivializes the sometimes life-or-death issues that workers face on the job. Claiming to be guided by the text of a statute alone, it demonstrates the opposite: he picks one particular dictionary definition over another without regard to the absurdities that result and thereby eviscerates the real-world application of a health and safety law. His approach is not value-neutral. It is simply anti-worker. This dissent alone disqualifies Judge Gorsuch for the position to which he has been nominated.

My testimony will provide an overview of this case, with particular attention to the real-world facts at issue, an analysis of his dissent, including a description of the bias and activist mission revealed by the dissent – one that produces a very flawed reading of the law with a cruel and nonsensical result, and an explanation of why this matters to working people across the country.

OVERVIEW OF *TRANSAM TRUCKING*

In *TransAm Trucking, Inc. v. Administrative Review Board*, a majority of the three-judge Tenth Circuit panel denied an employer's petition for review of an Administrative Review Board (ARB) decision

under the Surface Transportation Assistance Act (STAA).¹ The majority upheld the ARB’s ruling in favor of a truck driver who refused to follow his supervisor’s orders to either (a) drag a trailer with frozen brakes dangerously and illegally down a highway or (b) keep his truck with its trailer dangerously parked for hours on the side of the highway in subzero temperatures, without heat, as he began experiencing the telltale signs of hypothermia. Instead, the truck driver unhitched the broken trailer and drove himself to safety. For this, he was fired. Under the STAA, however, a truck driver may not be fired for refusing to operate a vehicle when he has a reasonable fear for his or others’ safety. In these circumstances, an employee is not forced to choose between his life or his job. An Administrative Law Judge, the ARB, and the Tenth Circuit majority all held that the firing was unlawful.

Judge Gorsuch was the lone dissenter. In an incredibly strained reading of the statute, Judge Gorsuch found that the STAA health and safety provision only protected the truck driver if he refused to drive his truck altogether and remained on the side of the road where he reasonably believed he was about to freeze to death.

THE FACTS OF THE CASE: A LIFE-THREATENING SITUATION UNFOLDS FOR ALPHONSE MADDIN ON I-88

Commercial long-haul truck driving is hard work. It can also be dangerous. The most recent Census of Fatal Occupational Injuries reports that 745 truck drivers were killed in 2015 – the most deaths of any single occupation. The story of Alphonse Maddin illustrates how such deaths might happen – and how they can be successfully prevented: by empowering drivers with a right to refuse unsafe operations.²

On January 14, 2009, Alphonse Maddin was driving a trailer full of frozen meat from Nebraska to three locations in Wisconsin and Michigan. He had been working for TransAm Trucking since the previous September. Mr. Maddin was originally supposed to start this run on January 13. But the shipper was a full 12 hours late delivering the load.

That was just the start of his problems. During the drive, Mr. Maddin’s truck sputtered. His bunk heater stopped working. And then, while he was on Interstate 88 in Illinois, he could not find the company-approved fuel station. What emerged later is that TransAm had provided Mr. Maddin incorrect directions. The fuel station was off of I-39, not I-88. Unable to find the station, with his gas gauge falling below “E,” he pulled over. It was 11 p.m., and the temperature outside was below zero.

During this stop, Mr. Maddin received a message that the next driver that would switch him out for this haul was no longer available and so he should continue driving to the first delivery point. He restarted his truck to once again search for the approved fueling station. But now the brakes on his

¹ 833 F.3d 1206 (10th Cir. 2016).

² This rendition of the facts is pulled from the factual record in *Maddin v. TransAm Trucking, Inc.*, Arb Case No. 12-031 (Nov. 24, 2014). The Tenth Circuit decision contains a less detailed summary.

trailer were frozen in place. He stayed on the side of the road and, at 11:17 p.m., reported the problem to TransAm.

TransAm told Mr. Maddin they would send a repairman to fix the brakes. Mr. Maddin waited in his cab, where the heater did not work as the temperature outside further dropped.

About an hour later, after 12:15 a.m., Mr. Maddin had fallen asleep. Another hour later, at 1:18 a.m., he was awakened by a cell phone call from his cousin. His cousin would later recount that Mr. Maddin's speech was slurred and he sounded like he was shivering. His cousin repeatedly asked Mr. Maddin if he was alright. When he sat up straight, Mr. Maddin "realized his skin was crackling from cold, that his torso was numb, and that he could not feel his feet."

Mr. Maddin called TransAm again. He told the company his heater was not working. He told the company about the symptoms he was experiencing. Mr. Maddin asked the company about the arrival time for the repairman, and the company told him to "hang in there."

With the clock ticking and no repairman in sight, Mr. Maddin began having trouble breathing and began to grow afraid that he would lose his feet, or die and never see his family again. As he puts it: "I began having thoughts that I was going to die."³ He decided to try to save his own life. He got out of the cab and unhitched the broken trailer from his truck. He called the company again.

This time, he spoke to his supervisor and explained the situation. His supervisor told him that he must not leave the trailer on the roadside. His supervisor gave him a choice "to either drag the trailer with its frozen brakes or to stay where he was." Over and over, Mr. Maddin described his physical state to his supervisor, and his supervisor told him to turn on the heat. Mr. Maddin had to repeatedly inform his supervisor that the heater was not working.

At 2:05 a.m., after three hours in subzero temperatures, Mr. Maddin drove his truck away, without the trailer, in search of safety. At 2:19 a.m., he got a call that the repairman had arrived. He returned to the trailer. The repairman fixed the trailer's brakes but not the truck's heater. At 3:20 a.m., Mr. Maddin's supervisor told him he would write him up for a late load. But Mr. Maddin reminded his supervisor that the shipper was 12 hours late for the initial load. Then the supervisor told him he would write Mr. Maddin up for missing his fuel stop. Later that morning, Mr. Maddin would inform his supervisor that the company gave him the wrong directions for the authorized fueling station.

The next week, Mr. Maddin was called to the company offices where he was terminated for abandoning his load that night in Illinois. Mr. Maddin filed a complaint with the Occupational Safety and Health Administration (OSHA).⁴

³ "Alphonse Maddin discusses how Judge Gorsach's ruling impacted him," <https://www.youtube.com/watch?v=7eh0hSaWvVE>.

⁴ OSHA enforces STAA's whistleblower protections, as well as the whistleblower protections of dozens of other statutes.

A SAFETY AND HEALTH LAW PROTECTS ALPHONSE MADDIN

Since 1982, the Surface Transportation Assistance Act has provided truck drivers with whistleblowing and other rights against unscrupulous employers who may otherwise order them to engage in unsafe or illegal actions. One provision prohibits an employer from firing an employee who “refused to operate a vehicle because ... the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition.” To be protected by this provision, the employee in question “must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition.” 49 USC 1105(a)(2). Mr. Maddin sought protection under this provision.

An Administrative Law Judge, the Administrative Review Board, and finally the Tenth Circuit all ruled in Mr. Maddin’s favor. TransAm argued that, when Mr. Maddin drove his truck, he was not “refusing to operate.” But the ALJ found that “by unhooking the trailer, Maddin refused to operate the truck under the conditions set by his supervisor and that he did so because of safety concerns.” The ALJ noted that driving the trailer with inoperable brakes was a violation of the law and a threat to Mr. Maddin’s and other drivers’ safety.

The ARB similarly found that, based on long-standing precedent, “a ‘refusal to operate’ may encompass actually operating a vehicle in a manner intended to minimize danger of harm or violation of law.”

The Tenth Circuit majority agreed. The Tenth Circuit reasoned that there was no definition of “operate” in the statute and that the ARB’s definition of “operate” – meaning not only driving, “but other uses of a vehicle when it is within the control of the employee” – was therefore permissible. In this case, “operate” encompassed the operations directed by the TransAm supervisor: either keeping the truck hitched to the disabled trailer on the roadside in subzero temperatures or driving the truck with the trailer with broken brakes down the highway, both of which gave rise to Mr. Maddin’s reasonable apprehension of serious injury or death. The majority observed that TransAm could not point to “any authority for the proposition that Congress intended the refusal-to-operate provision...to be interpreted so narrowly [to only mean ‘drive’], and has not explained how such a narrow interpretation furthers the purposes of the STAA.”

JUDGE GORSUCH’S SHOCKING DISSENT TRIVIALIZES AND MINIMIZES THE VERY REAL HEALTH AND SAFETY CONCERNS OF MR. MADDIN

In his dissent, Judge Gorsuch engages in a game of “gotcha.” With the use of one definition from a particular edition of the Oxford English Dictionary, he adopts TransAm’s narrow definition of “operate” to only mean “drive.” Before examining how Judge Gorsuch reaches this strained and wrong interpretation of “operate,” we should consider his starting place for any analysis. His dissent reveals that starting place to be a hostile one for workers and efforts to legislate workplace safety.

First, Judge Gorsuch is dismissive of the efforts of the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) to effectuate Congress’s purposes in enacting the STAA.

He calls the goals of “health and safety” “ephemeral and generic.” He rhetorically asks what doesn’t relate to “health and safety”? Apparently, Mr. Maddin’s health and safety when operating a commercial motor vehicle in freezing temperatures is too “ephemeral and generic” for Judge Gorsuch – but not for the other decisionmakers at all three levels in the case – and not for Mr. Maddin. With this outlook, we can expect Judge Gorsuch to apply health and safety laws in the narrowest and most restrictive manner possible, straining the meanings of statutes to avoid furthering goals which he seems to believe have insufficient meaning in the real world.

Second, Judge Gorsuch exposes an anti-worker bias from the start. In explaining the options that Mr. Maddin’s supervisor gave him, Judge Gorsuch writes: “He could drag the trailer carrying the company’s goods to its destination (an illegal and maybe sarcastically offered option). Or he could sit and wait for help to arrive (a legal if unpleasant option).” Let’s unpack the biases Judge Gorsuch reflects in these parentheticals. He tries to excuse the company’s obviously illegal direction to drag the disabled trailer down the highway – as “maybe sarcastically offered.” Yet he describes as merely “unpleasant” waiting for a repairman while your skin “crackles,” your feet and torso go completely numb, your breathing becomes labored, you experience hypothermia and begin to fear the loss of an appendage or two and maybe your life. These short parentheticals frame Judge Gorsuch’s dissent and set the stage for minimizing and denigrating the gravity of the situation to Mr. Maddin.

Third, Judge Gorsuch’s dissent trivializes the risks that workers face every day on the job. Not only does Judge Gorsuch describe Mr. Maddin’s potential death from hypothermia as an “unpleasant option,” but he chooses a trite analogy that has nothing to do with health and safety when attacking the majority’s definition of operate:

Imagine a boss telling an employee he may either ‘operate’ an office computer as directed or ‘refuse to operate’ that computer. What serious employee would take that as license to use an office computer not for work but to compose the great American novel? Good luck.

Perhaps Judge Gorsuch’s point is that, if we let Mr. Maddin drive his truck to safety, we might as well let him drive it to the beach.

In short, in seven paragraphs Judge Gorsuch manages to reveal an alarming contempt for congressional and agency efforts to protect workers’ health and safety. This hostility is made further apparent when at one point he describes the possible enactment of a health and safety law as something with which Congress may one day “adorn our federal statute books,” as if these protections are quaint decorations unworthy of respect.⁵

⁵ These biases are corroborated by his approach in another health and safety case. In *Compass Environmental, Inc. v. Occupational Safety and Health Administration*, 663 F.3d 1164 (10th Cir. 2011), a trench hand was electrocuted to death because his employer failed to train him about the dangers of an overhead electrical wire. The employee lost his life. And OSHA imposed a \$5500 fine on the employer. While the rest of the court upheld the fine, Judge Gorsuch dissented. In the opening

JUDGE GORSUCH SELECTS DICTIONARY DEFINITIONS THAT SUPPORT ANTI-WORKER RESULTS

All of these biases lay the groundwork for his ultimate analysis in *TransAm Trucking*. He prepares us for what will be a shock to the conscience:

It might be fair to ask whether TransAm’s decision [to fire “the trucker”] was a wise or kind one. But it’s not our job to answer questions like that. Our only task is to decide whether the decision was an illegal one.

And here is the turn to a supposedly textualist analysis of the case, which Judge Gorsuch’s fans will cite as an example of his sober, “value-neutral” approach. But his values are apparent. And the analysis on its own terms is simply wrong – although it reaches his desired result of gutting a worker protection.

Let us join Judge Gorsuch for a moment in abandoning any notion of incorporating the “ephemeral and generic” statutory goals of truck driver and public health and safety into our interpretation of the statute. We shall, as he puts it, deal with the law as written, not the law we wish we had. We have only the text of the statute. And a dictionary. The Oxford English Dictionary (OED).

According to Judge Gorsuch, the STAA is unambiguous and not open to interpretation. While the term “operate” isn’t defined in the statute, the term can be made unambiguous by looking at its dictionary definition.

So Judge Gorsuch turns to the OED and quotes a definition of “operate”: to “cause or actuate the working of; to work (a machine, etc).” This definition fits best with TransAm’s contention that “refuse to operate” only means “refuse to drive.” With this definition, Judge Gorsuch reaches the conclusion that

the trucker...wasn’t fired for refusing to operate his vehicle. Indeed, his employer gave him the very option the statute says it must: once he voiced safety concerns, TransAm expressly – and by everyone’s admission – permitted him to sit and remain where he was and wait for help. The trucker was fired only after he declined the statutorily protected option (refused to operate) and chose to operate his vehicle in a manner he thought wise but his employer did not.

With this reference to the dictionary, whatever ambiguity there might be in the statute has been cleared up, and Judge Gorsuch is done. He has turned the STAA’s safety provision into a very weak and narrow protection. While Congress sought to empower workers to protect their lives by

sentence of his dissent, explaining that he would overturn the \$5500 fine for the preventable death of a worker was, he writes: “Administrative agencies enjoy remarkable power in our legal order.”

refusing unsafe vehicle operation, Judge Gorsuch’s version of this protection will only have its intended effect where the safe thing to do is nothing – not drive at all. In Mr. Maddin’s case, the safe thing to do was to drive without the trailer. Staying put was not a safe option given his worsening physical condition and uncertainty after many hours of waiting for a repairman with no sign of him in sight. For Judge Gorsuch, under these circumstances, the worker protection law simply failed to reach Mr. Maddin: his choice was either to die or lose his job. If his dissent had carried the day, the STAA would be rolled back. Workers would be less safe, and employers would have more power to direct their workforce to work in life-threatening conditions.

Now, Judge Gorsuch chose one definition of “operate” from the dictionary. It turns out that there are, in fact, multiple definitions of the word “operate” in the Oxford English Dictionary. There are also other English-language and American-English-language dictionaries. The majority found another definition in the OED and dropped it in a footnote: “to control the functioning of.” According to the majority:

This definition [“to control the functioning of”] clearly encompasses activities other than driving. For that reason, the dissent’s conclusion that a truck driver is [refusing to operate] his truck when he refuses to drive it but not when he refuses to remain in control of it while awaiting its repair, is curious. The only logical explanation is that the dissent has concluded Congress use the word “operate” in the statute when it really meant “drive.” We are more comfortable limiting our review to the language Congress actually used. As the dissenting judge stated during oral argument, “Our job isn’t to legislate and add new words that aren’t present in the statute.”

In sum, while Judge Gorsuch would have us believe that he merely applied the dictionary definition of “operate” to reach his result, there are competing definitions of that word. Why this particular definition? Having dismissed health and safety goals as ephemeral and generic, having trivialized the plight of this worker, having revealed his biases in favor of the boss, one of those definitions allowed him to accomplish a key activist goal: the rollback of a worker protection statute.

From a textualist perspective, does Gorsuch’s preferred definition even make sense in the rest of the statute? The word “operate” is used more than once in this STAA provision:

- (B) the employee refuses to operate a vehicle because -
 - (i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security; or
 - (ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition;⁶

⁶ 49 U.S.C. 31105(a)(1)(B).

If “operate” means only “drive” and “refuse to operate” means only “refuse to drive altogether” (rather than refuse to drive or otherwise operate in the manner directed by the employer) – what would (B)(i) mean?

Let’s read Judge Gorsuch’s preferred dictionary definition into the statute and see what happens in a real-world situation: An employer directs a truck driver to exceed the speed limit in order to make faster deliveries, putting himself and others in danger. Under Judge Gorsuch’s narrow reading, the employee may be fired for driving the speed limit – since he is defying the employer’s direction and is still driving, not refusing to drive altogether.

Moreover, it is not clear that the Judge Gorsuch version of the provision even protects the truck driver who refuses to drive altogether. After all, it’s not driving itself that violates a regulation – but the particular manner of the driving – the particular operation of the vehicle that the employer is ordering, the speeding – that is the violation. Driving at all must be the violation, per Judge Gorsuch’s reading. So Judge Gorsuch’s assault on the STAA renders this section inapplicable to what must be one of the most dangerous illegal orders a trucking company might give a truck driver. Indeed, prior ARB cases have held that refusing to follow an employer’s instructions regarding brake usage and maintaining speed constituted a protected refusal to operate under the STAA.⁷

And some operations of vehicles are not driving at all – but parking. If an employer instructed a truck driver to leave his truck stopped dangerously in the middle of a highway rather than moving it to the shoulder, Judge Gorsuch’s interpretation would not allow the employee to move the truck to the shoulder and keep his job. The driver would be driving the vehicle from the stopped location, rather than refusing to drive it. Somehow, an unlawful and dangerous parking operation would not be covered by the STAA’s worker protection, since it is not a driving operation. Again, the other dictionary meaning of operate – to control the functioning of, not simply to cause the working of – and the common sense understanding that one can refuse one manner of operating while continuing to engage in another manner of operating – would avoid the absurd result that Judge Gorsuch’s reading produces.

Finally, none of the agency or court opinions focused on the definition of “vehicle” but a bit of authentic textualism here would also save Mr. Maddin’s life. Let’s stick with the language of the statute. The STAA defines a “commercial motor vehicle” as a “self-propelled or towed vehicle.”⁸ When Mr. Maddin unhitched the trailer with its broken brakes, he was refusing to operate that vehicle – the towed vehicle – out of an undisputed concern for his and other motorists’ safety.

In sum, there are many ways to reach the result that protects Mr. Maddin’s health and safety, even without looking beyond the text of the statute and with making sure the words of the statute are defined in a sensible way. Instead, Judge Gorsuch picked one dictionary definition that would leave

⁷ *Krahn v. UPS*, ARB No. 04-097 (ARB May 9, 2006).

⁸ 49 U.S.C. 31101(1).

Mr. Maddin unprotected and render the entire worker protection hopelessly narrow and inapplicable to many real-world situations confronted by workers. It wasn't a purely textualist analysis. It wasn't value neutral. It was simply anti-worker.

Fortunately, Judge Gorsuch was a one-judge minority in this case. If he were confirmed to the Supreme Court, however, these types of strained readings obviously designed to gut worker protections become a matter of grave concern for working people.

WHY IT MATTERS

CWA members face health and safety risks on the job every day. At times, telecommunications workers have died from electrocution or suffered from asbestos or lead exposure. Health care workers confront infectious disease risks, including the danger that they might take these diseases home to their families. Workers in our manufacturing sector deal with exposures to toxic substances. What stands between them and preventable death or injury are two things: laws that we expect to be enforced, and a union to help them exercise their rights under those laws. On a very frequent basis, a worker will identify a hazard in the workplace, and the union will stand with those workers and stop work until the hazard is abated. We take these actions knowing the law – especially our right to refuse unsafe work – is on our side. Workers will not be fired. Lives are saved as a result. The vast majority of American workers, however, do not have a union backing them up, and, for them, robust enforcement of health and safety laws is all the more critical.

Judge Gorsuch's nomination represents a judicial-activist threat against the efficacy of those laws, let alone their robust enforcement. The *TransAm Trucking* dissent demonstrates a bias against workers and their efforts to win health and safety protections – but it is just the prime example of what we expect will be a broader assault by a Justice Gorsuch against worker protections. Consider Judge Gorsuch's antipathy for *Chevron* deference to agencies⁹ and his apparent support for a reinvigorated non-delegation doctrine.¹⁰

Nearly every workers' rights law assigns enforcement, rulemaking, and initial adjudicatory powers to federal agencies. For example, the Administrative Review Board adjudicates whistleblower rights. The National Labor Relations Board adjudicates organizing and collective bargaining rights. The Occupational Safety and Health Review Commission and the Mine Safety and Health Review

⁹ *Chevron* deference is shorthand for the longstanding precedent that courts should defer to an agency's interpretation of a statute it administers when "the statute is silent or ambiguous" on the matter and the agency's interpretation constitutes a "permissible construction of the statute." See *Chevron USA v. Nat. Res. Defense Council*, 467 U.S. 837 (1984).

¹⁰ See *United States v. Nichols*, 784 F.3d 666 (10th Cir. 2015) (Gorsuch dissenting). A reinvigorated non-delegation doctrine would restrict Congress's ability to delegate policymaking authority to agencies – such as by directing a Secretary to promulgate a rule to achieve some desired congressional result. This doctrine was used to assault aspects of the New Deal but has been largely rejected as impractical in the face of the increasingly complex world in which Congress must make policy. See, e.g., *Mistretta v. United States*, 488 U.S. 361 (1989) ("[O]ur jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives. Accordingly, this Court has deemed it 'constitutionally sufficient' if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.").

Commission adjudicate health and safety matters. The Equal Employment Opportunity Commission adjudicates workplace discrimination matters.

Deference to these agencies' reasonable interpretations and application of the law to real-world situations is a problem for any activist judge who believes the government should not be in the business of protecting workers' rights from employer abuses. First, these bodies are part of agencies on a mission assigned by Congress – to effectuate a law that the activist judge believes should not exist. Second, because of their specialized nature, these agencies develop a strong expertise in the matter in question. The law becomes much more effective when the decisionmakers are highly familiar with how the practical world works in which that law operates. Deference to these agencies is an obstacle to anyone seeking to undermine the underlying worker protections with judicially-enacted partial repeals, thus Judge Gorsuch's hostility to *Chevron*. Better yet, if Congress can be prohibited from delegating detailed policy-making matters, even when it is essential to effectively carrying out the particulars of a piece of legislation, then the expertise at these agencies can be rendered useless, thus Judge Gorsuch's interest in the non-delegation doctrine.

We are concerned with not just how Judge Gorsuch attempted to dismantle the STAA worker protection in *TransAm Trucking*. We are concerned about how he will dismantle protections in other laws like the National Labor Relations Act, the OSH Act, the Mine Act, Title VII, and other anti-discrimination laws. The OSH Act, for example, does not contain an explicit "right to refuse work" provision in the statute. This right is the product of agency interpretation of the Act and the promulgation of regulations.¹¹ If Judge Gorsuch was capable of taking a sledge hammer to an explicit statutory right as he did to the STAA, we surely cannot rest assured that he will respect life-saving rights built up by agency precedents and regulation. After all, not only does he disfavor *Chevron* deference to agencies, he has raised the prospects of bringing back the long-dead non-delegation doctrine, which would forestall Congress from deputizing agencies to fill in the gaps of worker protection statutes. His jurisprudence is a danger to working people.

For the sake of workers who deserve to come home safe and sound, and for their families waiting on them to return, we respectfully urge the Committee and the Senate to reject this nomination.

¹¹ See 29 C.F.R. 1977.12.