

Separation of powers

The policy judgments, under our separation of powers, are supposed to come from Congress and the President. But they don't when the Court refuses to respect the full scope of the delegations that Congress makes to the Executive Branch.

When that happens, the Court becomes the arbiter — indeed, the maker—of national policy. ... (“The Court, rather than Congress, will decide how much regulation is too much”).

That is no proper role for a court. And it is a danger to a democratic order.

Elena Kagan, dissent in Biden v. Nebraska, et. al.