

JOSEPH KIRCHNER
Pro Se Plaintiff
4440 Parklawn Avenue #203
Edina, MN 55435
legal@lawsofexistence.com
(612) 552-2122

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JOSEPH KIRCHNER,
Plaintiff,

Case No. _____

vs.

**DEFINITIONS: THE KIRCHNER
CONSTITUTIONAL
FRAMEWORK**

ALEXANDER ACOSTA, et al.,
Defendants.

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I. Core Framework Terms

Madisonian Separation of Powers Objective Compliance Test

The six-step analytical framework for determining whether coordinate government action impermissibly delegates an assigned enumerated power in violation of the constitutional structure. The test operationalizes Madison's "balance and check" framework and the Supremacy Clause's "in Pursuance" validity requirement. A coordinate action **FAILS** the test if it fails ANY step; constitutional validity requires passing ALL six steps.

Coordinate Action

Any government action subject to the Madisonian Test. Coordinate actions fall into three categories: (1) **Legislative enactment** — statutes passed by Congress under Article I, Section 7; (2) **Judicial doctrine** — rules created by courts under Article III power; (3) **Executive enforcement** — actions by the President or executive officers under Article II. Each type has distinct constitutional constraints.

Distribution of Powers

Madison's preferred terminology for what is commonly called "separation of powers." The term describes a *structural distribution* that inherently precludes delegation. Madison used "distribution of power among its constituent parts" rather than "separation of powers" because "distribution" implies a completed allocation that departments cannot redistribute, while "separation" implies a relationship that can be adjusted.

Non-Delegation

The constitutional principle that powers assigned to one branch cannot be transferred to another branch. **Non-delegation is definitionally synonymous with separation of powers** — you cannot have "separation" while also having "delegation." The concepts are mutually exclusive by definition: to "separate" powers means to keep them apart; to "delegate" powers means to transfer them together.

Accumulation

Madison's term for the concentration of powers in the same hands. In Federalist No. 47, Madison declared: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands... may justly be pronounced the very definition of tyranny." Delegation produces accumulation; accumulation produces tyranny. The syllogism is complete.

Encroachment

Madison's term for one branch taking another's power. Power is "of an encroaching nature" and must be "effectually restrained from passing the limits assigned to it." Delegation is a form of encroachment — one branch absorbing functions constitutionally assigned to another.

Usurpation

The unlawful exercise of power not constitutionally assigned. Distinguished from encroachment in that usurpation may involve claiming power that belongs to no branch, while encroachment involves taking power assigned to another.

Position of Assigned Enumerated Power (PAEP)

The constitutional position to which an enumerated power is textually assigned. The PAEP is identified by the grammatical subject of the constitutional clause granting power (e.g., "The Congress," "The President," "the judicial Power"). The PAEP incorporates ALL constitutional provisions that define the position — not merely the power-granting clause, but every clause establishing the position's composition, selection, tenure, and structural requirements. For example, "The Congress" as PAEP incorporates: Article I, § 1 (legislative vesting), Article I, § 2 (House composition), Article I, § 3 (Senate composition), Article I, § 7 (bicameral passage and presentment), and the Incompatibility Clause (Art. I, § 6, cl. 2). An actor claiming to exercise the power must satisfy ALL definitional clauses constituting the PAEP — the position is indivisible.

Definitional Clauses

The constitutional provisions that collectively define a Position of Assigned Enumerated Power. These clauses establish the composition, selection method, tenure, structural requirements, and operational constraints of the position. An actor cannot claim the predicate (power grant) while failing to satisfy the subject's definitional clauses. Example: "The President" is defined by Article II, § 1 (executive vesting, election, term, oath), Article II, § 2 (specific powers), and Article II, § 3 (duties). A prosecutor claiming presidential pardon power must satisfy all definitional clauses for "The President" — which is impossible.

Process Challenge

A claim that challenges *how* a Position of Assigned Enumerated Power exercises its validly-held powers. Process challenges ask courts to: (a) superintend constitutional amendment procedures (*Fairchild v. Hughes*); (b) second-guess legislative policy judgments within enumerated discretion (*Frothingham v. Mellon*); or (c) determine if statutory grants of standing comply with Article III (*Lujan v. Defenders of Wildlife*).

Process challenges do NOT identify any constitutional provision that government violated — they dispute the result of completed constitutional processes or the scope of enumerated discretion. Process challenges properly require individualized injury under *Lujan* because they seek judicial supervision of valid governmental processes, not remedy for constitutional violations.

Violation Claim

A claim that a Power Separation Vulnerability (PSV) has occurred — that is, government has acted *outside* the constitutional assignment of powers. Because the Constitution assigns ALL governmental powers to specific positions, **every constitutional violation is fundamentally a separation of powers violation.**

Violation claims identify a specific constitutional provision that government has transgressed. Unlike process challenges, violation claims do not ask courts to second-guess valid exercises of enumerated power — they ask courts to declare that the claimed power was never validly held. Violation claims are properly cognizable under

Article III equity jurisdiction because they vindicate the constitutional structure itself, not merely individual interests.

Power Separation Vulnerability (PSV)

A condition where the constitutional separation of powers has been breached — where government has acted outside the assignment of powers established by the Constitution. A PSV occurs through three mechanisms:

Type	Description	Example
Enumerated Action by Non-Assigned Position (EAP-NAP)	An actor exercises power assigned to a different constitutional position	Prosecutor grants immunity (pardon power assigned to President)
Non-Enumerated Action by Any Position (NEA)	Government exercises power not granted by any constitutional provision	Federal agent claims "absolute immunity" (no such power exists)
Structural Violation (SV)	Government action violates structural constitutional requirements	Executive originates revenue bill (Origination Clause requires House)

Every PSV is cognizable as a violation claim because it represents government acting beyond constitutional authorization — not merely exercising enumerated discretion in a manner a plaintiff dislikes.

The Process/Violation Distinction

The fundamental jurisdictional distinction in the Kirchner Framework. This distinction determines whether Article III courts have constitutional jurisdiction to provide remedy:

Characteristic	Process Challenge	Violation Claim
Nature	Challenges <i>how</i> valid power is exercised	Challenges <i>whether</i> power exists
Constitutional provision violated	None identified	Specific provision transgressed

What plaintiff seeks	Court supervision of valid process	Declaration that action was ultra vires
Standing requirement	Individualized injury (<i>Lujan</i>)	Citizenship (Equity)
Historical analog	Dismissed in equity	Cognizable in equity
Examples	<i>Fairchild, Frothingham, Lujan</i>	<i>Bond, Clinton v. City of New York, INS v. Chadha</i>

The distinction is not merely taxonomic — it determines whether courts have jurisdiction. Process challenges ask courts to become super-legislatures reviewing policy judgments; violation claims ask courts to perform their core Article III function of declaring what the law is.

II. THE SIX-STEP TEST COMPONENTS

Step One: Clause Identification

The first step requires identifying the express textual assignment of power in the Constitution. This establishes the **Major Premise** for the syllogistic analysis. The identification must be precise — the analyst must locate the specific clause, section, and article that assigns the power at issue.

Step Two: Coordinate Action Classification

The second step classifies the coordinate action being tested into one of three categories: legislative enactment (must be "in Pursuance" of Constitution), judicial doctrine (must not exceed "Cases" and "Controversies"; cannot legislate), or executive enforcement (must "take Care that Laws be faithfully executed").

Step Three: Syllogism Construction

The third step constructs a syllogism to test whether the coordinate action validly derives from constitutional authority under the Supremacy Clause hierarchy:

- **MAJOR PREMISE:** The constitutional clause assigns power X to Branch/Officer Y

- 1 • **MINOR PREMISE:** Coordinate action Z is "Law made in Pursuance" of that
- 2 clause
- 3 • **CONCLUSION:** Therefore, action Z validly derives from constitutional authority

4 If the Minor Premise cannot be established, the syllogism fails and the action lacks
5 constitutional foundation.

6 **Step Four: Textual Consistency Test**

7 The fourth step applies Madison's textual consistency principle from the *Report on the*
8 *Virginia Resolutions*: "the same argument results from the same consideration." The
9 test identifies all clauses within the same Section (or Article) and applies the **same**
10 **interpretive method** to each parallel clause. If the method yields **absurd or**
11 **impossible results** for any parallel clause, the method is invalid and the claimed
12 derivation fails.

13 **Step Five: Structural Impossibility Determination**

14 The fifth step determines whether the power at issue is **inherently non-delegable**
15 based on constitutional structure. Certain powers are structurally non-delegable
16 because of: (a) express personal assignment to a specific officer; (b) structural
17 requirements like bicameralism or presentment; (c) the Incompatibility Clause's
18 prohibition on personal union of offices; or (d) incompatibility with the constitutional
19 architecture.

20 **Step Six: Position of Assigned Power Analysis (PAEP/PAP)**

21 The sixth step examines whether the actor claiming the power satisfies ALL
22 definitional clauses constituting the constitutionally-assigned position. The "Position
23 of Assigned Power" is the grammatical subject of the constitutional clause (e.g., "The
24 President," "The Congress"). A claim cannot selectively adopt the predicate ("shall
25 have Power") while disclaiming the subject to which that predicate is grammatically
26 assigned. The Position is **indivisible** — all definitional requirements must be satisfied.

III. MADISONIAN TERMINOLOGY

Balance and Check

Madison's sequential framework — two distinct operations, not one combined concept as in "checks and balances." **BALANCE** distributes powers among departments (accomplished by the Constitution itself). **CHECK** provides defensive mechanisms against abuse (veto, confirmation, judicial review, impeachment). One must **first balance** the distribution of power before one can **check** the exercise of that power. Delegation collapses both operations.

Departments

Madison's term for what modern usage calls "branches of government." The three departments are the Legislative (Congress), Executive (President), and Judiciary (Courts). Madison required that departments be "separate and distinct" — both separated (not combined) and distinct (clearly differentiated).

Separate and Distinct

Madison's structural requirement for the three departments. "Separate and distinct" is more explicit than "separated" — the departments must be both **separate** (not combined or merged) and **distinct** (clearly differentiated, not blurred). Delegation violates both requirements.

Parchment Barriers

Madison's term for written constitutional limits, which he warned are insufficient protection standing alone. "Experience assures us, that the efficacy of the provision has been greatly overrated." Arguments treating constitutional structure as mere "parchment barriers" to be overcome when inconvenient undermine the constitutional design.

Legislative Vortex

Madison's metaphor for Congress's tendency to absorb other branches' powers: "The legislative department is everywhere extending the sphere of its activity, and drawing

1 all power into its impetuous vortex." The warning applies in both directions —
2 executive absorption of legislative power produces the same tyranny.

3 Each Department's Own Will

4 Madison's requirement for departmental independence: "Each department should have
5 a will of its own." Delegation defeats this requirement because the receiving
6 department no longer exercises its own will on delegated matters — it exercises the
7 delegating department's authority.

8 Ambition Counteracting Ambition

9 Madison's structural mechanism: "Ambition must be made to counteract ambition. The
10 interest of the man must be connected with the constitutional rights of the place."
11 Delegation severs this connection because the receiving department has no institutional
12 interest in restraining accumulated power.

13 Double Security

14 Madison's description of American federalism: "The power surrendered by the people
15 is first divided between two distinct governments, and then the portion allotted to each
16 subdivided among distinct and separate departments. Hence a double security arises to
17 the rights of the people." Delegation destroys both levels of this security.

18 The People as Fountain of Power

19 Madison's principle of popular sovereignty: "As the people are the only legitimate
20 fountain of power, and it is from them that the constitutional charter... is derived." All
21 governmental authority derives from the People; departments are agents, not principals.

22 IV. CONSTITUTIONAL CONCEPTS

23 Supremacy Clause

24 Article VI, Clause 2, which establishes the hierarchy of legal authority: "This
25 Constitution, and the Laws of the United States which shall be made **in Pursuance**
26 **thereof**... shall be the supreme Law of the Land." The phrase "in Pursuance thereof" is
27 a validity condition — only laws conforming to the Constitution qualify as supreme.

1 Laws not made in pursuance of the Constitution are not supreme and need not be
2 obeyed.

3 **In Pursuance Thereof**

4 The Supremacy Clause's validity test for federal laws. The Constitution serves as the
5 object (the standard to be pursued); Laws are the subject (derivative enactments that
6 must conform). "In Pursuance thereof" operates as the validity condition — only
7 conforming laws qualify as supreme law.

8 **Incompatibility Clause**

9 Article I, Section 6, Clause 2: "no Person holding any Office under the United States,
10 shall be a Member of either House during his Continuance in Office." This clause IS
11 separation of powers written into explicit constitutional text — a direct prohibition
12 against any person simultaneously holding legislative and executive office. If personal
13 union of offices is forbidden, institutional merger through delegation is forbidden *a*
14 *fortiori*.

15 **Origination Clause**

16 Article I, Section 7, Clause 1: "All Bills for raising Revenue shall originate in the
17 House of Representatives." "Originate" requires substantive origination — the
18 legislative conception and drafting must occur in the House, not merely formal
19 introduction.

20 **Necessary and Proper Clause**

21 Article I, Section 8, Clause 18, which authorizes Congress to "make all Laws which
22 shall be necessary and proper for carrying into Execution the foregoing Powers." The
23 clause authorizes *implementation* of constitutional powers — not *circumvention* of
24 constitutional limits. Laws redistributing constitutionally assigned powers are
25 structural modifications requiring Article V amendment, not Article I implementation.

26 **Vesting Clauses**

27 The first sections of each constitutional article that vest governmental powers in
28 specific departments:

- **Article I, § 1:** "All legislative Powers herein granted shall be vested in a Congress"
- **Article II, § 1:** "The executive Power shall be vested in a President"
- **Article III, § 1:** "The judicial Power of the United States, shall be vested in one supreme Court"

Pardon Power

Article II, Section 2, Clause 1: "he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." The grammatical subject is "The President" — the power is assigned to a specific constitutional position, not to the executive branch generally or to subordinate officers.

Take Care Clause

Article II, Section 3: The President "shall take Care that the Laws be faithfully executed." This is an obligation, not a grant of discretionary power. The clause requires faithful execution of laws — not selective non-enforcement or executive legislation.

Article V Amendment Process

The constitutional mechanism for modifying the Constitution's structure. Some changes cannot be accomplished through Article I legislation — they require Article V ratification by the States. Delegation of assigned enumerated powers is structural modification, not implementation, and therefore requires Article V process.

V. Legal Latin Terms

A Fortiori

"From the stronger [argument]." A logical principle meaning: if a proposition holds in a less compelling case, it necessarily holds in a more compelling case. Applied to the Incompatibility Clause: if the Constitution explicitly prohibits the same *person* from holding offices in different branches, it necessarily prohibits the same *branch* from exercising powers assigned to another branch through delegation (the greater danger).

1 **Ab Initio**

2 "From the beginning." When an action is **void ab initio**, it was never valid — not
3 merely voidable, but void from its inception. Executive-imposed tariffs pursuant to
4 unconstitutional delegations are void ab initio.

5 **Ultra Vires**

6 "Beyond the powers." An action that exceeds the legal authority of the actor.
7 Prosecutorial immunity grants exceeding the President's pardon power are ultra vires
8 — beyond any constitutional authority.

9 **Nunc Pro Tunc**

10 "Now for then." A legal fiction treating an action as if it had occurred at an earlier time.

11 **Stare Decisis**

12 "To stand by things decided." The doctrine of adhering to precedent. The Kirchner
13 Framework argues that unconstitutional practices do not become constitutional through
14 longevity — stare decisis cannot validate structural violations.

15 **Sua Sponte**

16 "Of one's own accord." An action taken by a court without prompting from any party.

17 **VI. ABBREVIATIONS AND ACRONYMS**

18 **PAEP / PAP**

19 **Position of Assigned Enumerated Power / Position of Assigned Power.** The
20 constitutional position to which power is textually assigned. The PAP is the
21 grammatical subject of the constitutional clause and incorporates all definitional
22 clauses for that position. Step Six of the Madisonian Test analyzes whether the actor
23 satisfies all requirements of the PAP.

24 **PSV**

25 **Power Separation Vulnerability.** A condition where the constitutional separation of
26 powers has been breached — where government has acted outside the assignment of

1 powers established by the Constitution. PSVs occur through three mechanisms: EAP-
2 NAP, NEA, or SV (see below). Every PSV is cognizable as a violation claim under
3 Article III equity jurisdiction.

4 **EAP**

5 **Enumerated Assigned Power.** A power expressly assigned by the Constitution to a
6 specific branch or officer.

7 **EAP-NAP**

8 **Enumerated Action by Non-Assigned Position.** A type of PSV where an actor
9 exercises power that the Constitution assigns to a *different* constitutional position.
10 Example: Prosecutor grants immunity (pardon power is assigned to the President, not
11 prosecutors).

12 **NEA**

13 **Non-Enumerated Action.** A type of PSV where government exercises power not
14 granted by any constitutional provision. Example: Federal agent claims "absolute
15 immunity" — no such power exists in the Constitution.

16 **SV**

17 **Structural Violation.** A type of PSV where government action violates structural
18 constitutional requirements without necessarily involving a specific enumerated power.
19 Example: Executive originates a revenue bill (violates Origination Clause requiring
20 House origination).

21 **CVS**

22 **Constitutional Violation Statement.** A pleading component for equitable petitions
23 that identifies the specific constitutional provision violated, the government actor, and
24 the structural nature of the violation.

25 **SMF**

26 **Statement of Material Facts.** A document required in summary judgment practice
27 listing undisputed facts.

1 **IFP**

2 **In Forma Pauperis.** Permission to proceed without paying court fees due to inability
3 to afford them.

4 **VII. STANDING FRAMEWORK TERMS**

5 **Enumerated Constitutional Limit Test**

6 The threshold inquiry that precedes the Madisonian Test: **Does the alleged**
7 **governmental conduct implicate an enumerated constitutional limit on that**
8 **branch's authority?** If YES → Apply the Madisonian Separation of Powers
9 Objective Compliance Test to determine whether the conduct exceeds that limit. If the
10 Madisonian Test reveals a violation, equitable standing exists automatically; *Lujan*
11 does not apply; "Generalized grievance" barrier is eliminated. Constitutional limits on
12 governmental power ARE enumerated rights — when the Constitution enumerates
13 limits on governmental authority, it simultaneously creates enforceable rights for all
14 citizens. The limit and the right are two sides of the same constitutional protection.

15 **Equitable Standing**

16 Standing to sue based on citizenship alone, without requiring individualized injury
17 distinct from other citizens. Available under Article III equity jurisdiction for
18 challenges to violations of enumerated constitutional limits on governmental power —
19 specifically, violations identified by the Madisonian Separation of Powers Objective
20 Compliance Test. Derives from Article III's grant of "Equity" jurisdiction and the
21 historical understanding that enumerated limits protecting everyone through structure
22 create equitable enforcement rights. *See Bond v. United States*, 564 U.S. 211 (2011);
23 *Clinton v. City of New York*, 524 U.S. 417 (1998); *INS v. Chadha*, 462 U.S. 919
24 (1983); *Powell v. McCormack*, 395 U.S. 486 (1969).

25 **Particularized Standing**

26 Traditional *Lujan v. Defenders of Wildlife* standing requiring: (1) concrete and
27 particularized injury-in-fact; (2) causation (fairly traceable to defendant's conduct); (3)

1 redressability (likely to be redressed by favorable decision). Required under Article III
2 law jurisdiction for individual constitutional rights claims and damages claims. Not
3 required under Article III equity jurisdiction for structural constitutional violations.

4 **Generalized Grievance Barrier**

5 The *Lujan* doctrine that standing is defeated when plaintiff's injury is "undifferentiated"
6 from harm suffered by the general public. The Framework demonstrates this barrier
7 applies only to statutory violations (like the ESA claim in *Lujan* itself), NOT to
8 enumerated constitutional violations. The Supreme Court has never applied the
9 generalized grievance barrier to dismiss an enumerated constitutional limit violation.

10 **Line-Drawing / Line-Crossing (Parchment Barriers)**

11 Conceptual framework for understanding constitutional enumeration, derived from
12 Madison's warning about "parchment barriers": **Constitutional enumeration is line-**
13 **drawing** — the Framers drew clear textual boundaries (parchment barriers) marking
14 where governmental authority ends. **Ultra vires conduct is line-crossing** —
15 government exceeding those enumerated boundaries, treating parchment barriers as
16 mere inconveniences. The standing question reduces to: Who can report line-
17 crossings? Current doctrine says if the line protected everyone, nobody can tell the
18 judge it was crossed. Eight hundred years of constitutional tradition says the opposite:
19 lines drawn to protect everyone must be enforceable by anyone. Madison warned that
20 written limits have "efficacy... greatly overrated" without judicial enforcement — the
21 Kirchner Framework provides that enforcement mechanism.

22 **Ultra Vires Conduct**

23 "Beyond the powers." Government action exceeding constitutional authority. When
24 government acts ultra vires, it crosses lines the Constitution drew to protect citizens.
25 Every ultra vires action is cognizable as a violation claim because the Constitution
26 assigns ALL governmental powers to specific positions — action outside that
27 assignment is fundamentally lawless.

Article III's Law/Equity Jurisdictional Framework

The constitutional enforcement framework based on Article III's distinct grants of jurisdiction:

Article III "Equity" (Equitable Standing — Equitable Relief):

- Applies to claims challenging violations of enumerated constitutional LIMITS on governmental power
- Does not require individualized injury beyond citizenship
- Derives from Article III's grant of jurisdiction over "Cases... in Equity"
- Available relief: Declaratory judgment, injunction, mandamus
- Cannot obtain: Monetary damages, compensatory relief, restitution

Article III "Law" (Particularized Standing — Legal Relief):

- Applies to claims for individual constitutional RIGHTS violations
- Requires concrete, particularized injury-in-fact under *Lujan*
- Derives from Article III's grant of jurisdiction over "Cases, in Law"
- Available relief: Compensatory damages, nominal damages, punitive damages, equitable relief, attorney's fees

Structural Relief vs. Legal Relief

Structural Relief (Equitable): Declaratory judgment, injunction, mandamus — remedies that correct the violation and benefit everyone equally. Available under Article III equity jurisdiction without particularized injury because the remedy operates on the conduct itself, not on compensation of a specific individual.

Legal Relief: Monetary damages compensating identified individuals for particularized harm. Requires particularized standing under *Lujan* because compensation flows to a particular plaintiff for a particular injury.

The Law/Equity Distinction (Article III Foundation)

Article III, Section 2 grants judicial power over "all Cases, in Law and Equity." These are two distinct jurisdictional grants with eight centuries of distinct jurisprudential character:

- **Courts of Law** provided legal remedies — primarily monetary damages compensating identified individuals for particularized harm. Legal remedies are inherently particularized.
- **Courts of Equity** provided equitable relief — injunctions, declarations, mandamus. Equitable relief is inherently non-particularized because it operates on the conduct itself, benefiting everyone equally.

1 The 1938 merger of law and equity courts was procedural — it did not amend Article
2 III's substantive jurisdictional grants. Requiring particularized injury for equitable
3 relief contradicts equity's fundamental character and renders "Equity" in Article III
4 surplusage.

5 **2008 Non-Prosecution Agreement**

6 The agreement entered by the U.S. Attorney's Office for the Southern District of
7 Florida regarding Jeffrey Epstein, which purported to grant immunity to "unnamed co-
8 conspirators" for unspecified crimes. The Kirchner litigation challenges this as an ultra
9 vires exercise of power exceeding constitutional authority.

10 **Clearly Established (Qualified Immunity)**

11 The requirement under *Harlow v. Fitzgerald* that a constitutional right must be "clearly
12 established" before an official can be held liable for violating it. The Framework
13 identifies this as creating a Catch-22: novel violations are never clearly established, so
14 they are never remedied, so the right is never established.

15 **Madisonian Test**

16 Shorthand for the Madisonian Separation of Powers Objective Compliance Test — the
17 six-step analytical framework.

18 **Historical Validation**

19 The process of applying the Madisonian Test to cases where the Supreme Court has
20 already held government action unconstitutional. Historical validation demonstrates
21 the test's accuracy by showing it correctly identifies known constitutional violations
22 (e.g., *INS v. Chadha*, *Clinton v. City of New York*, *Youngstown*).

23 **The Vicious Cycle**

24 The self-perpetuating immunity loop created by *Harlow*'s "clearly established"
25 requirement:

- 26 1. Novel constitutional violation occurs
- 27 2. No prior case with identical facts exists

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1 These are three expressions of one constitutional principle. The equation works in
2 reverse as well:

3 **Delegation of Power = Accumulated Departments = Substituted Will**
4 **= Tyranny**

5 Madison defined tyranny as accumulation. Delegation produces accumulation.

6 Therefore, delegation produces tyranny.

7 *Document prepared as reference for *Kirchner v. Acosta*, S.D. Fla.*