

2025 Unconstitutionality Index: 19 rules for every law

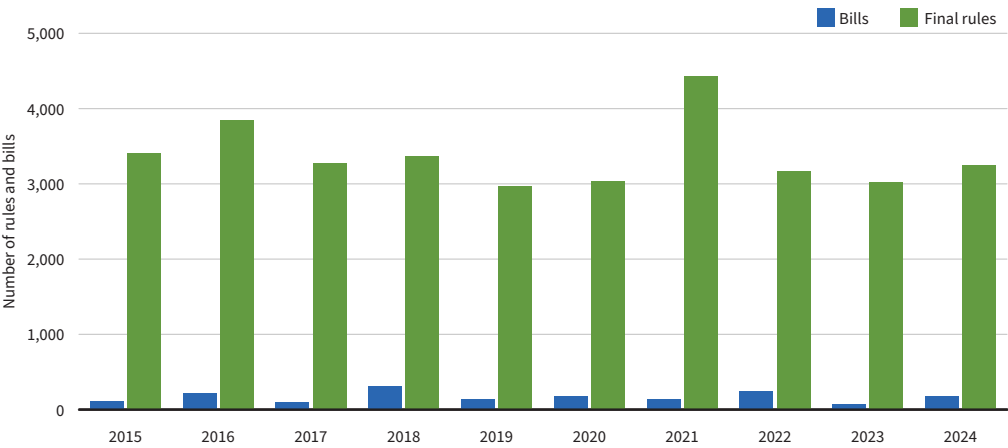
Article I of the Constitution notwithstanding, administrative agencies, not Congress, do most of America's law-making.¹¹⁹ Congress enacts weighty legislation but delegates the details to agencies. Agencies welcome this delegation and can use it to add to their powers in ways that often go beyond congressional intent.¹²⁰

This imbalance gives rise to the Unconstitutionality Index. The index is the ratio of rules issued by agencies to laws Congress passes. During 2024, federal regulatory agencies issued 3,248 final rules, compared with the 118th Congress passing 175 bills. That means 19 rules were issued for every law passed

in 2024. The ratio obviously can and does easily fluctuate with changes in the numerator or denominator; such as the uncharacteristically high Index of 44 in 2023 owing to the unusually small number of laws passed. Congress passed 68 laws in 2023, with 34 each from the outgoing 117th Congress during January 2023, and the first session of the incoming 118th Congress.¹²¹ (See Figure 26 for the 2024 Unconstitutionality Index.) The average over the past decade has been 23 agency rules for every congressional law.

Federal agency rules in any given year are not likely to be associated with laws passed that same year. For example,

Figure 26. The 2024 Unconstitutionality Index



Sources: *Federal Register* data from National Archives and Records Administration and from author calculations at <https://tenthousandcommandments.blogspot.com>. Public laws data compiled by the author from Government Printing Office, Public and Private Laws, <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW> and from <https://www.congress.gov/public-laws/>. Figures also available at National Archives, Previous Sessions: Public Law Numbers, <http://www.archives.gov/federal-register/laws/past/index.html>.

regulations coming to the fore now are and will be the fruit of legislation like the inflation and infrastructure laws passed in recent years. Appendix M

provides a look back over the past three decades of rules and laws, and it also depicts executive orders and memoranda for comparison.