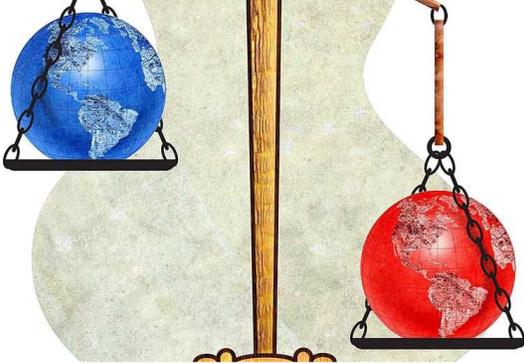


Skewed justice

Obama lawyers would deny free speech to climate change skeptics



Prosecution of Climate Deniers Illustration by Greg Groesch/The Washington Times

By Todd Young - - Wednesday, March 16, 2016

Scientists don't use the term "consensus," despite the regular use of the term by politicians who promote government-mandated action to stop alleged human-caused climate change. The scientific method has little space for opinion, and no room at all for the democratic process.

Yet it's that "consensus" that has U.S. Attorney General Loretta Lynch investigating whether the Justice Department can and should sue scientists and others who question the human-caused climate change assumptions. Last week, Ms. Lynch testified before the Senate Judiciary Committee that she has discussed the potential for bringing civil action against those who question human-caused climate change science, who include esteemed scientists — Nobel laureates among them.

Responding to a question from Sen. Sheldon Whitehouse, Rhode Island Democrat, who egged on the investigation by describing a widespread "climate denier apparatus," Ms. Lynch admitted that she has referred the matter to the FBI "to consider whether or not it meets the criteria for which we could take action." That's certainly one way to try to silence the skeptics — the First Amendment be damned.

Bring it on, Attorney General Lynch. The Constitution was designed to protect fundamental rights of speech and expression. U.S. Supreme Court Justice Louis Brandeis concurred in one of the most profound free speech cases, *Whitney v. California*: "Believing in the power of reason as applied through public discussion, [the Founders] eschewed silence coerced by law — the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed. The remedy to be applied is more speech, not enforced silence."

It's funny how words matter. It was only a few years ago, before the U.S. Supreme Court slammed the U.S. Environmental Protection Agency (EPA) for executive overreach and violation of constitutional separation of powers in enacting new regulations to limit greenhouse gas emissions, that the politically correct term was "global warming." That term lost favor when scandals over Climategate and an EPA whistleblower showed that global warming could only be proved by manipulating the data.

Now the politically correct term is "climate change denier." Ms. Lynch used it, echoing the political dogma of the climate change cabal. EPA Administrator Gina McCarthy uses it regularly in public comments. In fact, she has repeatedly said those who embrace human-caused climate change are "normal people," and that "deniers" are not normal. In the Obama-era regulatory lexicon, "not normal" is apparently new grounds for federal prosecution.

In Ms. Lynch's testimony, climate change "deniers" were compared to the tobacco industry, which lost a civil RICO Act case brought by the Justice Department under President Clinton, giving us a hint at the direction the Obama administration is heading. With respect to the First Amendment defense put up by the tobacco industry, the court found that the First Amendment did not protect them because their statements were made with the intent to deceive and the defendants knew that their statements were false at the time they were made.

Fast-forward to potential legal action against "deniers." The Justice Department would have to establish that the statements denying human-caused climate change are false. In other words, they would have to somehow prove that all of the science indicating evidence contrary to the "consensus" about carbon emissions is false.

Further, the Justice Department would have to prove that statements denying human-caused climate change were made with the intent to deceive, and with the knowledge that such statements were entirely false. Any statements made to Congress during formal testimony by private entities and individuals are likewise protected under various legal doctrines, even regarding potential RICO Act claims.

The Obama-era EPA regulators have been thwarted by loss after loss at the Supreme Court for executive overreaching and acting without the approval of Congress. For its part, even a Democratic-controlled Congress during President Obama's first years in office wouldn't pass a cap-and-trade law to mandate carbon emission controls. The EPA's newest adventure in the form of a Clean Power Plan has likewise been stayed by the Supreme Court. Undoubtedly out of frustration, they've decided the target should now be the "deniers."

Enforcing silence by the strong arm of the federal government is exactly the kind of tyranny the Founders anticipated. It's the reason why they and subsequent generations of judges and lawmakers have held fast to, and even expanded, protections against enforced silence. Stay tuned.

- *Todd Young is chief operating officer of Southeastern Legal Foundation, which participated in a successful 2014 Supreme Court challenge of EPA greenhouse gas regulations.*