FREEDOM SPEAKS!

"ENVIROMENTAL JUSTICE" NOT SUBJECT TO CONGRESS, COURTS: DEPARTMENT OF INTERIOR'S NEW PLAN VIOLATES CONSTITUTION

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by
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In every Soviet-era military unit, the long shadow of totalitarian political control hung over day-to-day operations. A political commissar served alongside commanding military officers to ensure that communist purity was maintained. The commissar's primary function was ideological training and indoctrination. Today's communist Chinese military has similar "oversight." The commissars were not accountable to military commanders, only to the political directorates. Soviet soldiers and sailors who were judged to be politically deviant were subject to the harshest of penalties.

So why do we look back at that terrifying model of political control? During the seven and a half years of the Obama administration, the appointment of various "czars," the steady flow of Executive Orders, and the explosive expansion of regulatory interpretation beyond the black and white letters of statutes passed by Congress has given rise to political commissar-style federal government enforcement that is anathema to constitutional separation of powers and checks and balances.

Earlier this week, Justice Clarence Thomas urged a group of college graduates "not to hide [their] faith and [their] beliefs under a bushel basket, especially in this world that seems to have gone mad with political correctness." Justice Thomas's statements regarding the limitless reach of "correctness" ring true – particularly in the arena now called "environmental justice."

Born during the Clinton administration and mostly dormant during the Bush years, the "environmental justice" mandate has become an overarching political commissar-style

ideological influence on as many as 15 executive agencies, including and especially the Environmental Protection Agency (EPA).

Carefully crafted to avoid "rulemaking," which would subject the shadowy office in each agency to public, judicial and congressional review, the Obama-era Office of Environmental Justice nevertheless tracks, analyzes, reviews, and has a hand in issuing public tax dollars in the form of grants to all sorts of "community groups" and agenda-driven environmentalists to "educate" the public in the form of political protests and campaigns against private industry.

In short, the limited statutory authority of executive agencies to do the work of regulating has been trumped by the political. Formal actions by agencies are increasingly judged through the political prism of the Orwellian "environmental justice" movement, now cloaked with government power.

For decades, under the banner of "environmental justice," the federal government has sought to expand its jurisdiction, control and influence. Through means largely exempt from any meaningful notice and comment procedures, the federal government grants itself unlimited discretion to determine whether a community may be adversely impacted by an environmental regulatory decision and then regulate actions related to that community. There are no congressionally authorized definitions or limitations.

In the most recent version, the Department of Interior's 2016-2020 Draft Environmental Justice Strategic Plan was, strangely, open for formal public comment. On May 16, 2016, SLF filed a public comment to bring attention to several key infirmities of the proposed plan. In addition to bringing about enormous and transformative expansion to the DOI's regulatory authority without congressional authorization, the proposed plan directly conflicts with several existing federal laws.

Specifically, its focus on environmental "effects" on "minority, low-income, or tribal populations" is both narrower and broader than Title VI in that the latter involves disparate treatment rather than disproportionate effects, protects all racial and ethnic groups rather than only "minority populations," and says nothing about "low-income or tribal populations." This has the effect of making the exact same conduct legal in one city, but illegal in another based solely on the racial makeup of the cities at that exact moment in time.

According to the proposed plan, the DOI intends on increasing its use of social outreach tools - the very same tools that the EPA used to conduct its illegal grassroots lobbying campaign to support its expansive definition of waters of the United States (WOTUS) that SLF is challenging in federal court. As it pushes environmental political correctness and seeks to expand its influence, the DOI is quickly approaching the dangerous line between informing the public and lobbying to the public.

Finally, the DOI's proposed plan is constitutionally problematic in that it protects some racial and ethnic groups, but not others – ostensibly denying the equal protection of laws. The

government's reliance on race as its primary consideration for protecting one group over another from alleged environmental harms runs afoul of the Constitution and is subject to the strictest level of scrutiny. Stay tuned as "environmental justice" begins to receive meaningful legal and congressional examination.