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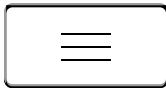


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## Loyola: EPA regulation flies in face of Constitution

Posted: 6:00 p.m. Tuesday, July 22, 2014

By Mario Loyola - Special to the American-Statesman

As Oklahoma Attorney General Scott Pruitt explained recently, the Clean Air Act grants states authority to develop and implement specific proposals to achieve the goals of the Clean Air Act. But it does not empower the EPA to require states to regulate according to its instructions. As the Supreme Court has repeatedly insisted, the Constitution prohibits the federal government from taking control of state agencies.

Yet as the EPA's greenhouse gas regulations show, the federal government is increasingly forcing the states to implement its regulations according to its instructions, whether they want to or not. The Supreme Court

should not take long to realize that the EPA is coercing the states into obedience, accomplishing indirectly what the Court has categorically prohibited the EPA from doing directly.

When the Obama administration first announced its plan to regulate greenhouse gases as pollutants under the Clean Air Act in 2010, the state government of Texas responded in a defiant letter to the EPA: “On behalf of the State of Texas, we write to inform you that Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions.”

If the tone was dramatic, there was nothing unusual in a state’s refusing to file a state implementation plan (SIP) for a new EPA regulation. The Clean Air Act specifically contemplates that some states will be unable or unwilling to file SIPs.

What happened next, however, shows the grave potential for EPA abuse. The 2010 EPA rules imposed a new permit requirement for greenhouse gas emissions from new industrial facilities and modifications to existing ones. If Texas was unwilling to come up with a SIP to issue those permits – and it was under no obligation whatsoever to do so – then the EPA was required by law to issue the permits itself.

Instead, however, the EPA slow-walked the permit applications and they began to pile up at the regional office in Dallas. Some of the largest employers in Texas became increasingly desperate for somebody to issue the permits. With a gun to the head of the state’s economy, the government of Texas was forced to back down and “voluntarily” issue the EPA’s permits.

Our Constitution was designed to preserve state authority over most matters to ensure that people and businesses had a meaningful choice among the “laboratories of democracy” that are the states. The federal takeover of state governments is designed to neutralize that freedom of choice by imposing the policies of regulation-heavy and tax-heavy states on everyone.

In the process, it also eliminates some of the Constitution’s most important checks and balances. The separation of federal and state government functions is vital for the preservation of government accountability, constitutional limits on government power, diversity, and basic rights.

You may agree or disagree with the EPA’s regulation of greenhouse gases. But nothing justifies throwing the Constitution out the window.

*Loyola is a senior fellow at the Texas Public Policy Foundation and an adjunct professor of law at the University of Texas, and was visiting fellow at the Classical Liberal Institute of New York University School of Law in the fall of 2013.*

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