

## IN ALL FAIRNESS

### Governing in the Shadows

Although many of their political allies were recently swept out of power, armies of professional activists and lawyers remain firmly entrenched, eager to move forward with their own agendas. They understand what too few of us have yet to realize — elections don't matter when regulatory agencies can be used to implement policy.



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An alphabet soup of agencies — not *legislatures* — have emerged as America's true center of policy-making power. Lacking sympathy for its ideological campaign in the legislative branch, a shadow government seeks to impose its radical policies not through the democratic process, but through an unaccountable regulatory system of unelected bureaucrats.

Take, for instance, the Treasury Department's proposal to give a \$1.6 billion tax deduction to lawyers bringing lawsuits on a contingency fee basis. For years, trial lawyers had lobbied Congress for such a subsidy, but when that failed they decided to bypass elected officials and focus their attention on unelected bureaucrats.

Meanwhile, other activists, cashing in on their ties to state attorneys general, have sued the nation's leading energy providers under a "nuisance" theory to impose economically destructive controls on carbon emissions. Although Congress has repeatedly refused to implement such controls, an entire sector of the economy operating lawfully under state and federal environmental permits is now being threatened with tort liability for perfectly legal carbon emissions.

Although Congress has authorized the FDA to determine what drugs are safe and available, federal Medicare regulators have recently begun denying Medicare and

Medicaid reimbursements for certain FDA-approved drugs, thereby making the drugs unavailable for millions of Americans.

With much of America distracted during the holiday season, the Interior Department quietly issued an order seizing authority to designate public lands as "wild lands," which could have a profound impact on domestic energy development. That same day, the EPA announced that it would soon begin drawing up anti-carbon regulations on oil refineries and power plants, regardless of the wishes of Congress. Is it any wonder that heating and auto fuel prices continue to rise?

The common thread here is that activists are using regulation and litigation as surrogates to advance unpopular causes. Indeed, nearly every aspect of the American economy is caught in a vortex of unchecked legal shakedowns and silently imposed federal rules. So far, courts haven't effectively limited this abuse of our legal system. Now, more than ever, there is an enormous need for trustworthy free enterprise legal advocacy and education.

### **Rule of the unelected**

Simply put, an avalanche of regulations cannot address broad, complex controversies. And the victims of lawmaking by regulatory fiat are not only the targeted business, but the very workers, consumers, and shareholders whom government bureaucrats claim to be protecting. Ultimately, however, a government by bureaucrats and lawyers can never be a government of, by, or for the people.



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