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## The Fourth Branch of Government

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At both the state and federal level, government agencies are comprised of appointed, not elected, personnel. That being said, these positions are nearly always mired in partisanship; appointees' ideologies reflect the agendas of their appointer, be that the president or governor.

The power of the agencies, and arguably the problem, has become increasingly evident across the country and in Montana especially. Rules and regulation promulgated by an alphabet soup of agencies, from the EPA to the BLM and USFWS, are stifling economic growth. Simply put, the "Do as I sayers" are having their way with the "Doers" of America.

When the USFWS determined, for example, that the sage grouse was warranted for a listing under the Endangered Species Act (ESA) in 2010, the 11 western contiguous states were essentially forced to impose their own restrictive land use stipulations to prevent a listing of the bird.

Pay no mind to the fact that only 1.3 percent of listed species have ultimately been delisted. Results matter little when at odds with intent — at least as far as government bureaucracy is concerned. No businessperson could survive if they continued to operate any program, service or procedure that was as unsuccessful as the ESA. The act, passed by Congress and administered by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, was intended to "halt and reverse the trend toward species extinction, whatever the cost" (U.S. Supreme Court). Just more than four decades later, with a national debt now 40 times that in 1973 (when the ESA was passed) perhaps it's time to seriously rethink "whatever the cost" proposals.

Sage grouse states, including Montana, have lauded their own efforts to reach agreements on sage grouse stewardship plans among a myriad of interests typically at odds, but the end result is encumbered production and development at the hand of the federal government; restrictive free enterprise. And states were given essentially no choice.

Activities requiring a state permit and located in sage grouse habitat will now have to go through a review process in Helena by the Montana Sage Grouse Oversight Team (MSGOT), made up of various government agency appointees, two members of the state legislature, and the Governor's Natural Resources Policy Advisor. While MSGOT was empowered by Executive Order (EO) of

the governor to act as an advising authority, the team was not granted regulatory authority. Will that preclude MSGOT from being able to disapprove project proposals, such as the construction of pipelines, wind developments, transmission lines, or oil and gas wells?

The team has the power to recommend and direct proposed development, with stipulations that coincide with the EO and the Sage Grouse Stewardship Act passed last session. Time will tell whether or not the limitations or cost of compensatory mitigation for permanent conservation easements, protected in perpetuity, will hamper future development. Montana has seen plenty of new state and federal regulations which include requirements too stringent to comply with, at least without severe costs or impacts on operations.

Montana, a state which houses one fourth of the nation's recoverable coal reserves, was put in the crosshairs by EPA's Clean Power Plan (CPP). Though the CPP threatens all coal producing states, no other state was hit with as dramatic a reduction requirement in emissions; 47 percent. Colstrip power plants 1 and 2 are at risk, along with every employee at each plant, the coal miners, and the more than 1,500 Montanans working for businesses which purchase energy from the plants. It's no wonder the grassroots group, Colstrip United, is shining (coal powered) light on the severity and urgency of the situation.

As fossil fuel naysayers applaud the "do as I sayers" and point to a struggling global economy and low coal prices, the fact remains that the world needs coal. In Montana, nearly half of the state's electrical generation comes from coal. It's cheap, abundant, and reliable. It is clean coal and the developing world not only wants it, they need it! More than a billion people around the world are considered energy impoverished without a reliable source of energy.

Aside from the lifesaving benefits of coal, consider the costs and effects of the CPP. The Plan is projected to have a \$41 billion annual price tag, though its global impact will be minuscule. According to analysis by the Cato Institute using EPA models, the CPP will only avert 0.019° Celsius of warming by the year 2100, an amount so small it can't be detected.

Is it worth it? The EPA and the president believe so, however, the plan is now in the hands of the Supreme Court; the last bastion of checks and balances against the evermore powerful fourth branch of government.

Just last month, the Supreme Court struck down a BLM rule to further regulate hydraulic fracturing, stating that the Department of the Interior lacked the authority to issue regulation. With regard to an EPA proposed expansion to the Clean Water Act, the Supreme Court ruled in May that wetlands "jurisdictional determinations" can be immediately challenged in court. This came as the result of a large outcry from private property owners and agriculture groups.

Let these be examples of why the appointment of Supreme Court Justices matters so greatly.

In January, the Lone Star state and oil capital of the U.S. called for a convention of the states for the purpose of amending the constitution. While Texas Governor, Greg Abbot is certainly not the first to make such a request of the states, the amendments proposed by Abbot respond directly to the government overreach effectively undermining opportunities for working class America.

Specifically, the proposal called for amendments to prohibit administrative agencies — and the unelected bureaucrats that staff them — from creating federal law; and to prohibit administrative agencies from preempting state law. In matters concerning resource development and land use especially, these amendments would reassert state rights defined in the tenth amendment, and empower the working class against many of the current rules and regulations which threaten blue collared livelihoods in particular.

But these ideas, these safeguards of liberty and prosperity are not dependent upon a constitutional convention. These are principles and limits of power that should be commonplace in this country. The most effective government, after all, is the government that governs closest to the people; of the people, by the people, and for the people.

How have we gotten so far off track? Will the next president and the next governor of Montana be able to rein in government overreach of bureaucratic agencies? Or will they be emboldened to continue their war on the builders, farmers, coal miners, and roughnecks...the “doers” of America?

If we are to make America great again, it’s going to take remembering and restoring what made us great to begin with; the spirit of ingenuity, innovation, and invention, not restrictive regulation.