



A ‘threat to liberty’

October 14, 2016

It’s no secret that President Obama and congressional Democrats routinely ignore constitutional boundaries in pursuit of advancing their progressive agenda.

“I’ve got a pen and I’ve got a phone,” Mr. Obama famously declared. Meantime, liberals in the House and Senate regularly agitate for expansion of the Beltway bureaucracy without regard for the limits on federal power embedded in the nation’s founding document.

These troubling trends make the role of the judiciary that much more important.

The Heritage Foundation reports that the U.S. Supreme Court on more than a dozen occasions has rejected Mr. Obama’s attempts to circumvent the Constitution as part of his effort to grow the Washington leviathan. And on Tuesday, a federal appeals court put the kibosh on a powerful regulatory board that Democrats and the president created in the wake of the financial crisis to punish evil capitalists without regard to due process.

The U.S. Court of Appeals for the D.C. Circuit ruled this week that the structure of the Consumer Financial Protection Bureau was inconsistent with constitutional provisions regarding the separation of powers.

The agency, created in 2010, essentially answers to no one. The director serves a five-year term and can be removed by the president only for cause. He “can issue new rules,” the Wall Street Journal noted, “determine how and when to enforce them, decide against whom they will be enforced, and dictate what sanctions and penalties to impose.”

The three-judge panel held that such a setup bestows too much authority in an unelected and unaccountable executive and was not consistent with the operation of other independent government agencies, which are usually run by a panel of commissioners. Unlike the FCC or National Labor Relations Board, the court found, the bureau “lacks the critical internal check on arbitrary decision-making and poses a ... threat to individual liberty.”

As Ilya Shapiro of the Cato Institute observed, “We’re only supposed to have three branches of government. So to have an agency that is not accountable to the president or to Congress violated the constitutional structure.”

None of this should be surprising given the refusal of the president and many of his congressional supporters to recognize even basic checks on executive branch activity. But it’s nevertheless refreshing to see a federal court once again call them out on it.

