

# THE DAILY CALLER

## There Could Be A Legal Fight Brewing Over Politically Appointed Leadership In Trump's DOI

Tim Pearce

March 6, 2018

Politically appointed Department of the Interior (DOI) leadership officials are serving lawfully, though their acts may violate federal law designed to give Congress a voice in choosing bureaucracy administrators.

Interior Secretary Ryan Zinke in January extended the terms of 10 department officials temporarily serving in place of administrators who the Senate has yet to nominate and confirm, The Hill reported.

The government watchdog and environmental group Public Employees for Environmental Responsibility (PEER) said the order may put Zinke and the DOI in violation of the Vacancies Reform Act (VRA) — enacted to ensure Congressional input is sought before staffing department leadership. The VRA sets guidelines for acting directors the administration appointed and limits the amount of time they can serve before being forced to step down.

Zinke and the DOI officials are clear of any violations as far as the order goes, experts say.

“This order takes into account the Federal Vacancies Reform Act,” Cato Institute Senior Fellow in Constitutional Studies Ilya Shapiro told The Daily Caller News Foundation in an email. “In effect, the order strips out all duties not statutorily committed to Senate-confirmed officers and gives them to these other people. That’s lawful.”

“This is not to say that all the actions taken by the appointed officials are legal themselves,” Pacific Legal Foundation Attorney Thomas Berry told TheDCNF. “This all goes with the caveat that they have not infringed on any exclusive duties for only Senate-confirmed officials. The way the Interior is structured right now, however, is lawful and not a violation of the Vacancies Reform Act.”

The VRA, for all practical purposes, can only be enforced when powers explicitly given to Senate-confirmed officials serving in a specific role are co-opted by an unauthorized official. The federal government can be sued in that instance and, once if the court finds a VRA violation, the action is nullified.

Zinke’s order to the appointed officials “covers only those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position.”

Duties exclusive to Senate-confirmed officials vary by position, so in order to spot a potential VRA violation, the acts of each appointed official will have to be scrutinized and cross referenced with federal law. The Secretary of the Interior retains the authority of duties exclusive to positions not yet filled.

“The legal fight going forward will be ‘what do the statutes and regulations say on these?’ For each of these particular officers, what are the people being delegated the powers actually doing? Have they made any mistakes? Have they, in fact, actually done something that is an exclusive duty, inadvertently?” Berry told TheDCNF. “In practice, they might be violating [the VRA], but the text of the delegation itself is not a violation.”