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Opinion

Our View

It's time for Congress to act on immigration reform

Congress has the sole authority under the Constitution to change immigration laws, and it's time for it to address the issues created by 12 million illegal immigrants.

A three-judge panel of the 5th U.S. Circuit Court of Appeals has upheld a lower court's order blocking President Obama's executive action that would delay deportation and grant temporary legal status to as many as 5 million illegal immigrants.

After last November's election handed the Senate back to Republicans, the president urged Congress to reform immigration laws.

Unwilling to wait, and perhaps as bait, he announced executive actions to extend and expand a program that delays deportation for illegal immigrants brought to the U.S. as children — "Deferred Action for Childhood Arrivals." He also initiated a program — "Deferred Action for Parents of Americans and Lawful Permanent Residents" — to delay the deportation of illegal immigrants who are parents of children born in the U.S.

The president said he was exercising prosecutorial discretion in not pressing deportation cases for those qualifying. It's a power he has, though not generally practiced wholesale. But then he went a step further, extending work permits — in effect, lawful status — to those allowed the temporary reprieve.

Twenty-six states, all Republican-led, sued. Though the merits of their case have yet to be decided, the trial and appellate rulings to date on the injunction are clear that the president has gone too far.

In upholding the injunction, the appeals court said the action goes beyond discretion by taking the affirmative action of conferring "lawful presence."

"Declining to prosecute does not convert an act deemed unlawful by Congress into a lawful one and confer eligibility for benefits based on that new classification."

As we said when the president announced his executive actions, only Congress can change immigration law. That it has consistently refused to take action does not change the Constitution and allow the president to do so by fiat.

Still, the law needs to be changed and the fate of 12 million illegal immigrants must be decided.

We recognize that immigration is a sticky bit of politics that has been difficult for both parties. While business interests want reform, Republicans looking towards the next election are wary. Democrats are no better. When they held Congress and the White House they took no bold action, lest they offend the electorate.

We continue to believe the answer is to offer illegal immigrants temporary legal status and a path to permanent residency after 10 years if they meet strict requirements — no prior felony convictions, no violations while awaiting residency, learning to speak English and pay a fine and back taxes. We think the border should be secured. A viable guestworker program must be established, and employers must verify the work status of their employees.

Whether taken piecemeal or in a comprehensive measure, it's time Congress moved forward.

The alternatives are clear: Let them stay, or make them go. The devil is in the details.

Our View

Waters of the U.S. rule needs rewrite

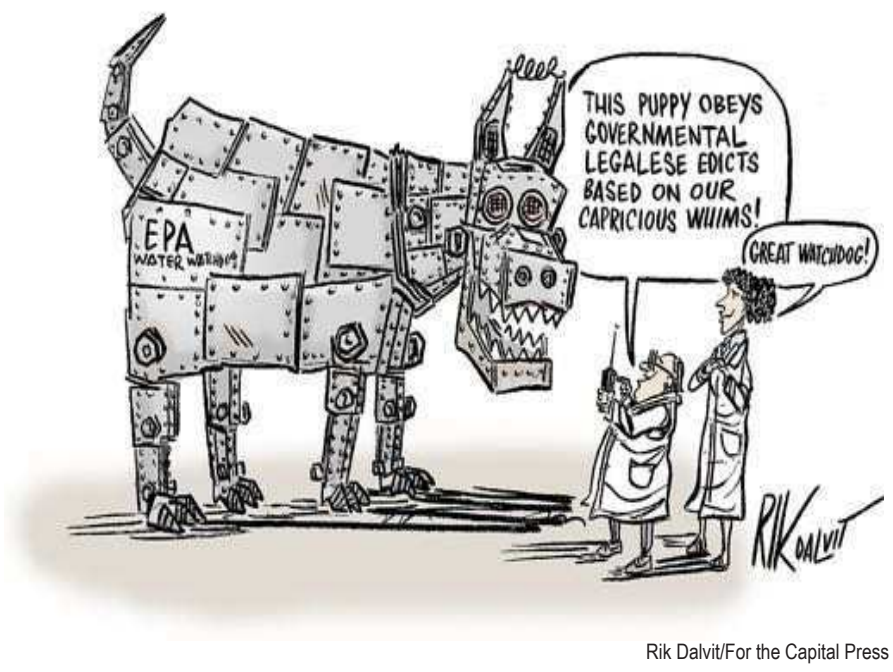
It happens a lot in Washington, D.C. An agency sets out to clarify regulations and the outcome is worse than the starting point.

Think of the Food Safety Modernization Act. Once the folks at the U.S. Food and Drug Administration began to put their heads together, the simple intent of Congress to make sure food is safe to eat turned into a Frankenstein monster of what-ifs. Ask onion growers, who were forced to prove to the FDA that their crop had never been linked to a food-borne illness. And ask breweries, which had for thousands of years fed their spent grain to cattle without ever creating a food safety problem.

Only after members of Congress interceded and researchers proved what experience had already demonstrated did the FDA decide to reverse itself on those issues.

And think of the new Waters of the United States rule. A simple effort on the part of the Environmental Protection Agency and the U.S. Army Corps of Engineers to reconcile conflicting court decisions turned into another Frankenstein rule. Actually, we would characterize it as Frankenstein on steroids. It's 297 pages of bureaucratese.

"It leaves all the previously ill-defined terms in place, like 'adjacent,' 'wetland' and 'discharge,' while adding equally malleable terms such as 'floodplain,' 'tributary' and 'significant nexus,'" said M. Reed Hopper, the Pacific Legal Foundation attorney who successfully argued one of the cases before the U.S. Supreme Court that caused the EPA to rewrite its rule. "And it provides that federal officials can decide on a case-by-case basis whether any 'other waters' should be regulated."



Rik Dalvit/For the Capital Press

Another major objection that we editorialized on in the past is the EPA and Corps provide no path for appealing an agency's decision other than going through a jurisdictional review by the Corps. According to Hopper, rulings from the 5th, 8th and 9th U.S. Circuit Courts of Appeals differ on whether landowners' due process rights are protected in similar cases.

If the EPA wanted to clarify something, it could have guaranteed a citizen the right to challenge an agency determination in court after a jurisdiction review.

Because of its bulk and unclear language the rule created or left open as many questions as it answered. That is what made farmers and ranchers — and other landowners — most nervous.

There's on old term we like a lot: Cowboy talk. It's a synonym for plain language. Instead of trying to impress each other with their command of obscure and unclear terms, the folks at the EPA and Corps should have written a rule that reads something like this: We promise to leave farmers and ranchers alone unless we can prove scientifically and beyond a shadow of a doubt that runoff from a farm or ranch is polluting a navigable stream, river or lake protected under the Clean Water Act. Any of our determinations can be appealed in federal court.

They would have saved 296 pages of vagueness and gibberish and done a better job.

Readers' views

Dairy farmers deserve larger settlement

I am a seventh-generation Lancaster County, Pennsylvania, dairy farmer and member of Land-O-Lakes cooperative, marketing Grade A milk in Federal Order 1 throughout the entirety of the time period covered by the proposed Northeast dairy settlement. I hold in my hand a 2003 milk check, with a mailbox price of $10.80 to show the effect this Dairy Farmers Of America, Inc., and Dairy Marketing Services, behavior has caused.

In the interest of the ability of future generations to continue my family's dairy farming tradition, I strongly object to the proposed settlement in this case.

My objection is based on the following reasons.

First, the amount of the proposed settlement is $50 million, or approximately $4,000 per farmer. This insignificant amount falls way short of the actual alleged damages caused by DFA/DMS's anticompetitive behavior. The damage amounts calculated by Drs. Kalt and Rausser range from 41 cents to 69 cents per hundredweight. By nature of the scrutiny expected, these calculations are themselves very conservative, and could be considered a "settlement." The same defendants in the recent Southeast dairy case paid their members roughly $300 million as compensation for the same anticompetitive behavior.

Second, and more important than the dollar amount, is the accountability for or exoneration from the behavior alleged in the suit that will only occur if the case goes to trial. As dairy farmers, we need to have confidence that our farmer-owned cooperatives truly act in our best interests. The information that would come out in a trial, or be buried in a settlement, is vital to this confidence. It should not be an option for the defendants to pay a relatively small settlement fee for the privilege of continuing business as usual.

The National Dairy Producers Organization's mission is to seek a profitable price for the quality milk produced by USA dairy farmers. The USA dairy farmer produces the quality milk, but due to the alleged anti-trust allegations, the dairy producer was not rightfully compensated for his quality product.

The NDPO board is made up of only dairy producers, and only represents the dairy producer as to not have a conflict of interest unlike our processing co-ops.

NDPO represents the interest all USA farmers regardless of size. When the Northeast dairymen are affected by anti-competitive behavior we come to their aid to help in ways the board sees fit.

I as chairman planned to be in Vermont federal court on June 1 to witness the judge's decision of the plaintiffs' request to remove class counsel.

Mike Eby
Gordonville, Pa.

New EPA rule muddies the water for farmers, ranchers and property owners

By GREG WALDEN
For the Capital Press

Guest comment
Greg Walden

All across Oregon and the rural West, farmers, ranchers and other property owners have been wondering: What will Washington, D.C. try to unnecessarily regulate next? Where will a federal agency again attempt to curtail private property rights? How will this uncertainty affect already struggling rural economies?

Last week we got that answer when the Environmental Protection Agency finalized their rule to massively and unilaterally expand federal jurisdiction over water and private property. With the stroke of a pen, the administration has pushed aside the "navigable waters" limitations of the Clean Water Act, leaving in its wake vague definitions that potentially open up intermittent streams, vernal pools, irrigation ditches, or ponds to even more federal regulations.

The EPA first proposed this rule under the guise of "clarifying" the scope of the Clean Water Act. But I've heard throughout Oregon that the vague language in their proposal actually creates more uncertainty, not less. More red tape, not less. For farmers, ranchers, Oregonians and others that utilize our water resources, it is a huge threat.

Ranchers are wondering when the EPA will come after their stock ponds. Wheat growers worry about an intermittent stream adjacent to a field. Fruit and vegetable growers are concerned about their irrigation ditches. As one Eastern Oregon rancher told me, the rule is "an overreach by the federal government that threatens to eliminate conservation practices currently implemented by farmers and ranchers across Oregon."

I have long opposed expansion of this authority, whether through legislation or administrative rulemaking. This regulatory overreach by the EPA blatantly ignores Congress' repeated rejection of similar legislative efforts to expand jurisdiction of the Clean Water Act in the past. Of course, we shouldn't be that surprised. The EPA has tried this before, and they have twice been rebuked by the Supreme Court.

Even the Small Business Administration has said that the proposed rule would have "direct, significant effects" on small businesses, and recommended that the EPA withdraw their rule. But the agency went full steam ahead last week.

The economies of rural Oregon and other communities around the country face enough obstacles already. Broken federal land policies and unnecessary red tape have strangled communities, often leaving only agriculture to grow jobs and combat unemployment rates in the double digits. We don't need agencies in Washington, D.C., erecting more hurdles and creating more uncertainty as our farmers and ranchers work to feed the world and create jobs in rural communities.

That's why I worked hard to pass a bill in the House to require the EPA to withdraw the rule. The Regulatory Integrity Protection Act (HR 1732) passed the House on a bipartisan vote in May. Twenty-four House Democrats (including my Oregon colleague Kurt Schrader) joined every Republican in supporting this common-sense measure.

As one Oregon farmer told me when a similar bill passed the House last year, "This attempt to control private lands using the Clean Water Act must be stopped. It is important that farms be able to focus on raising fresh, healthy and necessary food and feed for this world without unnecessary regulations. Congress has taken an important step to help ensure farmers can continue to farm their land without federal permission and allows landowners to meaningfully improve water quality through existing state programs."

The House has also passed legislation that would prohibit funding from being used on this rule (this is on top of our successful efforts to cut the EPA's budget by 21 percent — $2.2 billion — over the past five years).

The Senate should take up and pass these bills right away and send the EPA back to the drawing board. Our farmers, ranchers and rural communities deserve better than federal agencies strangling them with more red tape. It's time to ditch this rule.

Greg Walden represents Oregon's second congressional district, which covers 20 counties in southern, central and eastern Oregon.

Letters policy

Write to us: Capital Press welcomes letters to the editor on issues of interest to farmers, ranchers and the agribusiness community.

Letters policy: Please limit letters to 300 words and include your home address and a daytime telephone number with your submission. Longer pieces, 500-750 words, may be considered as guest commentary pieces for use on the opinion pages. Guest commentary submissions should also include a photograph of the author.

Send letters via email to opinions@capitalpress.com. E-mailed letters are preferred and require less time to process, which could result in quicker publication. Letters may also be sent to P.O. Box 2048, Salem, OR 97308; or by fax to 503-370-4383.