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CURB UPDATE

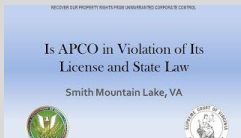


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OUR MISSION IS TO EDUCATE AND INFORM ...

VOLUME 2, NUMBER 2



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NEXT CURB MEETING – TUESDAY 26 APRIL WESTLAKE LIBRARY 6:00 TO 8:00PM

Quick Update --The Pressl appeal is complete and awaiting the US 4th Circuit Court of Appeals to hear the case. The Nissen appeal to the 4th Circuit is in-process. The Court requires the appeal to be filed no later than April 27th. APCO's answer to Nissens' brief to be filed no later than May 31st, and Nissens' reply to APCO to be filed no later than June 14th. Then the wait begins for the Court to schedule the hearing.

Pressl and Nissen are the first to appeal Judge Moon's decisions based upon the absence of federal jurisdiction and the authority of state courts to determine state property law. Both cases will be heard by a panel of three appellate justices who are guided purely by law. The appeal asks the appellate justices to correct the mistakes the lower court made when it issued its decisions.

Appeals courts are very busy. Their dockets are crowded. Their deliberations and decisions take time. In Pressl's case we do not expect to hear from the 4th Circuit Court of Appeals before the end of this year; and Nissens' appeal is approximately 6 months behind Pressl. So we must be patient and allow this process to unfold.

The essential argument in both cases is that Federal District Court Justice Moon had no business hearing either case because his court lacked jurisdiction to decide purely state property law disputes – per the U.S. Constitution Article III and FERC.

The 4th Branch of Our Government -- In January 2012, after filing a petition with over 5,550 names from across the county on the Government's website We the People, challenging FERC's arbitrary and capricious regulation, CURB received this answer from the White House:

"... FERC is an independent regulatory agency, meaning that while FERC is part of the executive branch of the federal government, it is independent of presidential control, with substantial discretion in carrying out the Federal Power Act's mandate that private hydropower projects it approves be best adapted to the comprehensive development of waterways."

CURB lamented that we have a fourth branch of Government, the independent Agency, which has no responsibility to respond to the We the People and is accountable to no one!

Recently (15 March 2015) the US House of Representatives' Subcommittee on Regulatory Reform, Commercial and Antitrust Law held hearings concerning Constitutional and Statutory Questions in Judicial Deference to Agencies.

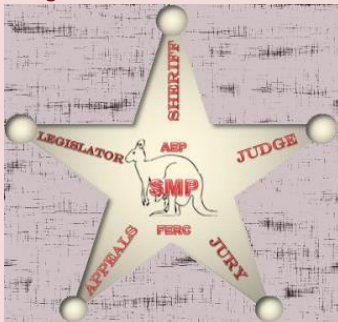
Jonathan Turley, Shapiro Professor of Public Interest Law at George Washington University addressed this subcommittee concluding that America has witnessed a massive shift in government authority, "one that has occurred without a national debate and certainly not a national vote." That shift has led to the *de facto* creation of a "fourth branch of government containing legislative, executive and judicial components but relatively little direct public influence. **By failing to rein in regulatory agencies when they overstep their bounds, the Supreme Court and Congress have allowed those agencies to run roughshod over the public.**"

- The American governmental system obviously has changed dramatically since the founding when the vast majority of governmental decisions rested with state governments.
- Massive federal agencies now promulgate regulations, adjudicate disputes, and apply rules in a system that often has relatively little transparency or accountability to the public.

- As a result, it is the Administrative State, not Congress, which now functions as the dominant “law giver” in our system. In 2007, Congress enacted 138 public laws, while federal agencies finalized 2,926 rules, including 61 major regulations. Agencies now adjudicate most of the legal disputes in the federal system. In a given year, federal judges conduct roughly 95,000 adjudicatory proceedings, including trials, while federal agencies complete more than 939,000.
- In the 1984 Supreme Court ruling *Chevron USA v Natural Resources Defense Council*, six justices put forward a simple test for courts -- whether the agency’s decision is “permissible” or reasonable.
- The Chevron ruling has proven a windfall for agencies in advancing their priorities and policies in the execution of federal laws. Rather than declaring courts as the final arbiter of what the law means, *Chevron* practically resulted in the same thing for agencies by giving them the effective final word over most administrative matters.
- Perhaps the Supreme Court is beginning to recognize the constitutional problems *Chevron* created. In 2013 (*City of Arlington v FCC*) Chief Justice Roberts, in his dissenting opinion wrote: “*Our duty to police the boundary between the Legislature and the Executive is as critical as our duty to respect that between the Judiciary and the Executive . . . We do not leave it to the agency to decide when it is in charge.*” In a chilling warning, Roberts further notes that “*[i]t would be a bit much to describe the result as ‘the very definition of tyranny,’ but the danger posed by the growing power of the Administrative State cannot be dismissed.*”
- While many will argue that it is too late and the Administrative State is now a fait accompli, we need not accept such a fatalistic view. Congress has not become a passive player in government and still retains the ability to actively impose limiting principles on agency action. The first step however in addressing the independence of federal agencies is to reduce their insulation from review.

“The Constitution gives to Congress the power to declare war ... just as it gives to Congress the power to write the laws. These days the Executive Branch is doing both far more than the Founders intended — or the public knows. Those who do so are unelected, unaccountable, and unconstrained. For any democratic system, that is most unhealthy.” – A. Bart Hinkle, The fourth branch of government is out of control, Richmond Times Dispatch, 26 March 2016.

Kangaroo Justice



CURB's Badge logo deserves some explanation. First and most obvious is the five pointed star, which is the customary symbol of authority for law enforcement personnel such as a sheriff or marshal. CURB labeled each point of this star with different authorities – legislator, sheriff, judge, jury and appeals. In the USA, these powers are always distributed among the three separate but equal branches of government to ensure due process. However, in the domain of FERC, it has assigned a corporate-monopoly (AEP) all of these roles for administration of the SMP.

Why the kangaroo with the baby in its pouch? This symbolizes the Kangaroo-Justice system of regulation and enforcement currently in-place between the FERC and AEP. Who is in Who's pocket? Consider this fact ... AEP pays FERC an annual license fee of \$950,000 for the Smith Mountain Project, which ultimately funds FERC staff salaries. This is a palpable conflict of interest – the regulator is predisposed to act in the best interest of its licensee, rather than in the interest of private property owners or in the best interest of the project.

Before you agree to sign any APCO's property taking revokable permits, at least read them and your flowage easement. Seek the professional advice of a competent attorney. We know several. If you can postpone efforts for another few months, do so to avoid signing away your property rights without being compensated. Remember APCO will allow you to maintain or repair your dock without interference, so long as you don't change its footprint. Be patient and be vigilant.

For a more in-depth understanding, we recommend viewing the following CURB videos: [Read Your Flowage Easement](#) [Read APCO's Dock Permit](#) [History of Regulation](#) [What Did APCO Permit](#) [APCO Manipulated the Judicial System](#)

Please consider making a donation to support the ongoing legal effort and education programs. CURB is a registered 501c (4) not-for-profit Virginia corporation. Your donations to support CURB efforts are not discoverable and remain anonymous. Use the donate button on the first page of this update. Thanks for your continued support. ***For Our Property Rights ...***

Bill Brush