

May 19, 2020

**VIA CM/ECF**

Molly C. Dwyer, Clerk  
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Susan N. Herman  
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Re: *Sierra Club v. Trump*, Nos. 19-16102, 19-16300, 19-17501  
Notice under Federal Rule of Appellate Procedure 28(j) and  
Circuit Rule 28-6.

Dear Ms. Dwyer:

Plaintiffs-Appellees respectfully write to bring to the Court's attention the attached April 30, 2020 decision of the United States Court of Appeals for the Seventh Circuit. The decision confirms that when the executive branch usurps Congress's control over spending through inapplicable claims of statutory authority, its actions violate the separation of powers and injunctive relief is appropriate. *Accord* Plaintiffs' Answering Br. in 19-16102 & 19-16300 at 19-31, 60; Plaintiffs' Answering Br. in 19-17501 at 29-32, 53-57, 59-62.

In *City of Chicago v. Barr*, Nos. 18-2885 & 19-3290, the Seventh Circuit upheld permanent injunctive relief against the executive branch's *ultra vires* efforts to impose conditions on a federal grantmaking program. The court rejected the executive branch's broad claims of statutory authority, which fell "far astray from the language, context and structure of the statute itself," and "would raise potential constitutional and statutory concerns." Slip Op. at 44.

The Seventh Circuit emphasized that "Congress has thus far refused to pass legislation that would do precisely what the Attorney General seeks to do here." Slip Op. at 15; *accord* Plaintiffs' Answering Br. in 19-16102, 19-16300 at 50; Plaintiffs'

Answering Br. in 19-17501 at 57. In the face of Congress’s refusal to adopt the executive branch’s policy preferences, “the Attorney General’s perception of the urgency of immigration enforcement does not corral for the executive branch the powers entrusted to the legislative branch.” Slip Op. at 4. “The separation of powers is a foundation of our government, not a formality to be swept aside on the path to achieving goals that the executive branch deems worthy.” Slip Op. at 94.

The court found injunctive relief appropriate because the executive branch “usurped the power of the legislature to determine spending.” Slip Op. at 74. “Whether deemed a statutory or a constitutional violation, the executive’s usurpation of the legislature’s power of the purse implicates an interest that is fundamental to our government and essential to the protection against tyranny.” Slip Op. at 72. “Preservation of the separation of powers is paramount if our democracy is to survive.” Slip Op. at 94.

Respectfully submitted,



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