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NomineeAlert



this issue:

Cass Sunstein, Nominee for Administrator of the Office of Information and Regulatory Affairs, White House Office of Management and Budget

Sunstein's Background

Professor, Harvard Law School

Director, Program on Risk Regulation, Harvard Law School

Visiting Professor, Columbia Law School

Professor, University of Chicago Law School

Attorney-Advisor, Office of Legal Counsel, U.S. Department of Justice

Law Clerk, Justice Thurgood Marshall, U.S. Supreme Court

Law Clerk, Justice Benjamin Kaplan, Massachusetts Supreme Judicial Court

EDUCATION

B.A., Harvard University

J.D., Harvard Law School

Who is Cass Sunstein?

On April 20, 2009, President Obama nominated Cass Sunstein to be Administrator of the Office of Information and Regulatory Affairs in the White House Office of Management and Budget. This post is also known as the "regulatory czar" as all major regulatory actions by the federal government are subject to review by this office.

Sunstein is an academic with a long record of bizarre advocacy.

Sunstein supports gun control and has little use for the National Rifle Association. "[A]most all gun control legislation is constitutionally fine. And if the Court is right, then fundamentalism does not justify the view that the Second Amendment protects an individual right to bear arms." Fn.2.

Sunstein opposes hunting and would like to

Rats have rights...

expand the rights of animals and "natural objects" at the expense of farmers, consumers, and patients. "We ought to ban hunting." Fn.3.

"If rats are able to suffer, then their interests are relevant to the question of how, and perhaps even whether, they can be expelled from homes."

-Cass Sunstein, Fn.1.

"One can only imagine the type of regulations that will spring from the mind of a man who thinks long and hard about whether rats have the right to protection from expulsion from our homes. We need someone who is on the side of the rat-catcher, not the rat."

-Bill Wilson, President, Americans for Limited Government

"[Humans'] willingness to subject animals to unjustified suffering will be seen ... as a form of unconscionable barbarity ... morally akin to slavery and the mass extermination of human beings." *Id.*

"We could even grant animals a right to bring suit without insisting that animals are persons, or that they are not property. A state could certainly confer rights on

a pristine area, or a painting, and allow people to bring suit on its behalf, without therefore saying that that area and that painting may not be owned." Fn.4.

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What you really need to know about Cass Sunstein his own words

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Sunstein unsurprisingly believes that more regulation is needed in this area stating, "In short, the law should impose further regulation on hunting, scientific experiments, entertainment, and (above all) farming to ensure against unnecessary animal suffering." Fn.5.

Sunstein supports the idea of a "Fairness Doctrine" for broadcasting and the internet:

"A legislative effort to regulate broadcasting in the interest of democratic principles should not be seen as an abridgment of the free speech guarantee." Fn.6.

"A system of limitless individual choices, with respect to communications, is not necessarily in the interest of citizenship and self-government." Fn.7.

Sunstein supports a Second Bill of Rights guaranteeing the "rights" to employment, food, clothing, shelter, education, recreation, and health care. He also has a strong dislike for individual rights:

"Much of the time, the United States seems to have embraced a confused and pernicious form of individualism. This approach endorses rights of private property and freedom of contract, and respects political liberty, but claims to distrust 'government intervention' and insists that people must fend for themselves. This form of so-called individualism is incoherent, a tangle of confusions." Fn.8.

Sunstein rejects originalism in interpreting the Constitution and doesn't believe the original meaning of the Constitution is binding today:

"Sunstein's attack on the legitimacy of originalism is even more disturbing. Assume, Sunstein says, that the Framers were committed to originalism. Does it follow that we must be originalists? No, he says, for it 'is up to us to decide whether to accept' originalism. Why, after all, should we be governed by people long dead?"

"Sunstein's position has radical anarchistic implications that he hastens to disguise. He claims that he is not arguing that the Constitution itself should not be taken as binding, but he can argue only that we ought to take it as binding 'because it is good to take it as binding.' But why can't we instead pick and choose the parts of the Constitution that we think would be good and disregard the others? Why, indeed, can't each of us reject the legitimacy of any law that we don't like and to which we personally did not consent? Sunstein is so desperate to combat originalism that he would destroy the law itself in the process." Fn.9.

Sources for further reading:

Fn.1. CASS R. SUNSTEIN, MARTHA C. NUSSBAUM, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 12 (Oxford University Press, USA, 2004.)

Fn.2. CASS R. SUNSTEIN, RADICALS IN ROBES (Basic Books 2005.)

Fn.3. Cass Sunstein, in a 2007 speech at Harvard University.

Fn.4. ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS at 11.

Fn.5. Sunstein, Cass R., *The Rights of Animals: A Very Short Primer* (August 2002). U Chicago Law & Economics, Olin Working Paper No. 157; U of Chicago, Public Law Research Paper No. 30, at 6. Available at SSRN: <http://ssrn.com/abstract=323661>. (Accessed July 6, 2009.)

Fn.6. CASS R. SUNSTEIN, DEMOCRACY AND THE PROBLEM OF FREE SPEECH 92 (The Free Press 1995.)

Fn.7. CASS R. SUNSTEIN, REPUBLIC.COM 2.0 137 (Princeton University Press 2007.)

Fn.8. CASS R. SUNSTEIN, THE SECOND BILL OF RIGHTS: FDR'S UNFINISHED REVOLUTION AND WHY WE NEED IT MORE THAN EVER 3 (Basic Books 2004.)

Fn.9. M. Edward Whelan III, *Boiling the Frog*, NATIONAL REVIEW, October 24, 2005. Available online at: http://www.eppc.org/programs/constitution/publications/pubID.2459.programID.39/pub_detail.asp. (Accessed July 6, 2009.)

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