

MEMORANDUM - December 5, 2017



To: Members of the ALEC Energy, Environment, and Agriculture Task Force

From: Endangerment Finding Resolution Coalition

Re: Open Letter in Favor of Endangerment Finding Resolution

We welcome discussion and debate over the resolution to support a review of EPA's Endangerment Finding and we hope public and private sector members will keep in mind the following facts:



- The President of the United States is Donald Trump, not Barack Obama. Scott Pruitt, not Gina McCarthy, is Administrator of EPA. The President and the Administrator have said they want the “war on coal” to end, that the threat of catastrophic climate change was grossly exaggerated by the past administration, and that it is time to pursue a pro-environment, pro-energy, and pro-jobs agenda. They have taken dramatic steps to reverse the reckless and costly mistakes of the past administration. Opponents to the resolution ignore this new political reality.
- Public opinion is strongly on the President’s side, as opinion polls show the public is evenly divided over the question of whether man-made climate change is occurring (despite billions of dollars spent over the past decade to convince them that a “climate crisis” was underway), barely a third favor government action to somehow change the weather, and only a fifth are willing to pay higher taxes or energy prices to pay for such action. Virtually no one favors spending as much as *is already being spent* in the futile campaign to change the weather.
- Scientific opinion is on the President’s side, as revelations of scientific misconduct (such as the [Climategate](#) and [Climategate II](#) scandals, the [InterAgency Council audit of the IPCC](#), and the [John Beale scandal at EPA](#)) make it clear that the science relied on by EPA in 2009 did not pass the requirements of the Information Quality Act. Moreover, estimates of climate sensitivity have fallen steadily since 2009, and calculations of the social costs and benefits of fossil fuels cited in 2009 were off by orders of magnitude and have been formally disavowed by the current administration. A strong scientific case for rescinding the Endangerment Finding is easily assembled and defended in court.
- “Tort and nuisance suits” do not pose a threat to industry, especially in light of President Trump’s judicial nominations and list of candidates for the U.S. Supreme Court. If such suits have a legal basis at all, it derives from the Endangerment Finding, making this an argument for rescinding that finding, not keeping it.

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- While “the potential patchwork of judicial and regulatory outcomes” is often used as an excuse for federal action, in this case it should not be viewed as compelling to ALEC members who recognize that the states, not the national government, are historically and constitutionally responsible for regulating energy policy in the United States. Much as the Obama administration tried to nationalize education (via Race to the Top) and health care (via the Affordable Care Act), so too it sought to nationalize energy policy via the Endangerment Finding. That policy must be revisited if states are to return to their historic and important role as the primary regulator of energy.
- ALEC’s primary allegiance, and the allegiance of its public sector members, must be to consumers and not to the producers of particular goods and services. Unless regulations imposed under Obama, including the Endangerment Finding, are reassessed it is clear consumers will continue suffer to the tune of trillions of dollars, according to new research produced by [The Heritage Foundation](#).

Signed,

Joseph Bast, CEO, The Heartland Institute

Hon. Bette Grande, Research Fellow, The Heartland Institute. Former Public Sector Chair of the ALEC Energy, Environment, and Agriculture Task Force

Myron Ebell, Director of the Center for Energy and Environment, Competitive Enterprise Institute

Craig Richardson, President, E&E Legal

Fred Birnbaum, Vice President, Idaho Freedom Foundation

Amy Oliver Cooke, Executive Vice President, Independence Institute

Dan Peterson, Director, Center for Property Rights, James Madison Institute

Steve Milloy, Founder and publisher, JunkScience.com