Welcome to the latest edition of The Surge!

- Over 40 organizations express their strong opposition to the PROVE IT Act.
- California is going after trains.
- CEI attorneys sues DOE over water limits for home appliances.
- A House bill would block climate change-related foreign aid.
- Some states are pushing retroactive climate taxes.

These are just some of the issues covered below. Please let others know about The Surge and they can subscribe here.

Best,

CEI's Energy and Environment Team

SPECIAL FOCUS: THE PROVE IT ACT

Over 40 Organizations Express Their Opposition to the PROVE IT Act

The Competitive Enterprise Institute sent a coalition letter to the House of Representatives in opposition to the PROVE IT Act (S. 1836), which would pave the way for a carbon tax. A version of this Senate bill may soon be introduced in the House. Signed by over 40 conservative and free market organizations, the letter makes opposition to the bill very clear.

The PROVE IT Act requires the Department of Energy to collect, analyze, and update data on the carbon intensity of domestic and foreign goods. "Through the creation of this federal administrative framework, Congress would be removing one of the biggest obstacles to the imposition of carbon taxes on both imported and domestically produced goods," the letter explains.

The legislation would lead to the creation of carbon taxes. PROVE IT Act information would be used to impose new "climate" taxes, the letter explains. In the Inflation Reduction Act (IRA), for example, Congress took information collected under the EPA's greenhouse gas reporting program and imposed the first-ever federal methane tax.

"Many of the bill supporters expressly admit that the legislation would be used to develop carbon taxes of some kind," the letter points out. "Once a carbon tax on imported goods is created, the U.S. would inevitably impose a domestic carbon tax," due to trade law obligations and political pressure.

The House recently passed a bipartisan resolution opposing the harmful effects domestic carbon taxes would impose. The PROVE IT Act would make those harms a reality – massive new taxes, punishing energy use, imposing higher costs on the poor, and embracing Europe's extreme climate agenda.

TOP OF THE AGENDA: APPLIANCE STANDARDS

The last couple of weeks have seen some important developments regarding appliances, including many actions taken by CEI. Here are two highlights:

CEI Attorneys Sue the Department of Energy for Illegally Regulating Water Limits in Home Appliances

Attorneys from the Competitive Enterprise Institute sued DOE on behalf of consumers, arguing that several recent DOE rules restricting water use in clothes washers and dishwashers are illegal. CEI attorneys contend the statutes cited by the agency as justification never gave DOE authority to issue the rules in question. That isn't just the opinion of CEI attorneys and the plaintiffs – it's also the opinion of the Fifth Circuit Court of Appeals.

Congress passed a series of laws that regulate the water use of several types of appliances that were expressly named in statute, such as toilets and showerheads. But DOE then issued several rules that regulated the water use of *other* appliances, namely, dishwashers and clothes washers, capping the amount of water these appliances are allowed to use per cycle.

In January 2024, the Fifth Circuit found that a different dishwasher rule issued by the Department of Energy was impermissible, because that rule failed to properly consider how its energy-saving provisions would actually work. The court's opinion also declared that it was "obvious" that the statute in question contained no language that gave DOE authority to regulate the water use of dishwashers and washing machines.

Regrettably, DOE responded to the Fifth Circuit's January opinion by issuing new rules in February and April setting more water caps for clothes washers and dishwashers. CEI's attorneys are challenging those rules in the lawsuit.

21 Cents Worth of Stupid in the Department of Energy's Latest Stove Proposal

The good news is that the Biden Department of Energy's (DOE) latest proposed efficiency regulation for residential stoves is considerably less damaging to consumers than the version floated last year. But, as CEI explained in our June 3 comment to the agency, it's still a bad idea, violates the law, and should be withdrawn.

Last year's proposed stove rule was part of a thinly-veiled regulatory assault on gas stoves in favor of the electric versions in vogue with climate activists inside and outside the administration. As we discussed in our coalition comment to the agency on April 17, 2023, the original proposal would have jeopardized many of the features that have made gas cooking the preferred choice of 38 percent of homeowners. This includes the high heat settings needed for such tasks as searing and stir frying as well as heavy-duty grates. Other commenters noted longer cooking times as well as other likely problems with compliant gas stoves. Note that the underlying statute, the Energy Policy and Conservation Act of 1975 (EPCA), does not allow the agency to set efficiency regulations that compromise appliance quality, features, and choice.

DOE apparently agreed with these criticisms. The agency has shelved the original proposed rule in favor of the current one which is weaker and thus poses fewer technical difficulties for gas stoves. However, by addressing one problem, the new proposal has exacerbated another by further reducing the already-modest energy savings from stove regulations. Because EPCA expressly forbids promulgating efficiency standards that fail to result in significant conservation of energy, the proper course of action would be for DOE to withdraw the proposed rule and give up on meddling with stoves.

Specifically, the original proposed rule would have saved only $21.89 over the estimated 14.5-year life for a gas cooktop, or $1.51 per year. But the new, less stringent version only saves $3.09 over that span, or a mere 21 cents per year. Granted, the statute does not quantify "significant conservation of energy," but 21 cents per year does not pass any rational interpretation of this requirement.

IN THE SPOTLIGHT

Bad News for Trains: California's In-Use Locomotive Rule and the EPA

Starting in 2030, any locomotive 23 years or older would effectively be prohibited from operating in California. All new switch, industrial, and passenger locomotives would have to be zero emissions by 2030. Line-haul locomotives, which are the large freight locomotives, would have to be zero emissions by 2035. There are some alternative regulatory options, but as the American Association of Railroads explains, they "are unworkable for freight railroads." The California Air Resource Board's (CARB) own analysis helps to support this contention. In its request to the EPA for authorization of its rule, CARB barely mentions these alternative options.

The regulation would force the transfer of freight shipments from rail to roads, since there are no commercially available electric locomotives for California freight companies to purchase. It's important to note that this regulation is dependent on Biden's Environmental Protection Agency (EPA) granting CARB authorization for the state's in-use locomotive regulation. Historically the EPA has granted CARB requests.

CARB's regulation mandating freight railroads transition to zero-emission locomotives faces daunting technological hurdles that have gone unaddressed.

Perhaps most glaring is the inadequacy of current battery technology. The Association of American Railroads points out in their comment to EPA that the largest batteries produced in North America today store no more than 15 megawatt-hours – a far cry from the 80-100 megawatt-hours required to replace a single diesel locomotive's fuel tank.

Operating long-haul trains could require 5-6 batteries per locomotive, although there is a lot of ambiguity since this technology has not been adequately demonstrated.

CEI's Patricia Patnode recently sent a statement for the record to the House Committee on Science for its Investigations & Oversight Subcommittee June 13th hearing entitled

"Environmentalism Off the Rails: How CARB will Cripple the National Rail Network." In her statement, Patricia recommended that the EPA and legislators should be asking CARB numerous questions, including:

- Given that there are no commercially available electric locomotives capable of handling long-haul freight, how does CARB justify setting a mandate for zero-emission locomotives by 2035?
- If this regulation drives smaller regional railroads out of business as you acknowledge it will, how will you address the loss of rail capacity and increased truck traffic on roads?
- Why did CARB choose not to directly consult with actual railroad companies and operators in conducting its feasibility assessment for this regulation? Is their expertise not essential for evaluating real-world impacts?

Three Cheers for House Efforts to Defund Climate-Related Foreign Aid

House Republicans should be applauded for introducing a FY 2025 State Department appropriations bill that blocks climate change-related foreign aid.

Specifically, the bill wouldn't allow spending to implement the United Nations's (UN) 2015 Paris Agreement, nor UN programs like the Green Climate Fund, Clean Technology Fund, and Loss and Damage Fund.

The bill would also stop funding for implementation of Biden administration executive orders and guidance on climate change. It specifically names "Executive Order 14008 (relating to Executive Order on Tackling the Climate Crisis at Home and Abroad), including the memorandum entitled Guidance on Fossil Fuel Energy at the Multilateral Development Banks, issued by the Department of the Treasury on August 16, 2021."

There are multiple reasons why Congress should steer clear of an international climate policy spending spree. These include strong doubts about the seriousness of climate change relative to other international issues, as well as concerns about the threat to American interests posed by the Paris Agreement. And, of course, there is the pervasive fraud and waste seen in nearly every foreign aid program, climate or otherwise.

Perhaps most important of all, the bill's authors are on solid ground for why Congress should refrain from spending on climate programs that were not enacted into law.

Most notably, the Paris Agreement has never been submitted to the Senate for the Constitutionally required two-thirds majority needed for ratification. Congress shouldn't simply pretend that this treaty has been ratified and start spending tax dollars on it. Ditto the UN climate foreign aid programs, as well as the wish lists contained in Biden administration executive orders and guidance.

FEATURING OUR FRIENDS

In this edition of The Surge, we feature this excerpt from an important new article by Travis

Fisher from the Cato Institute:

New York and Vermont Seek to Impose a Retroactive Climate Tax (Travis Fisher, Cato Institute)

Energy producers will be subject to retroactive taxes in New York if the state assembly passes Senate Bill S2129A, known as the "Climate Change Superfund Act." The superfund legislation seeks to impose a retroactive tax on energy companies that have emitted greenhouse gases (GHGs) and operated within the state over the last seventy years.

If passed, the new law will impose $75 billion in repayment fees for "historical polluters," who lawmakers assert are primarily responsible for climate change damages within the state. The state will "assign liability to and require compensation from companies commensurate with their emissions" over the last "70 years or more." The bill would establish a standard of strict liability, stating that "companies are required to pay into the fund because the use of their products caused the pollution. No finding of wrongdoing is required."

New York is not alone in this effort. Superfunds built on retroactive taxes on GHG emissions are becoming increasingly popular. Vermont recently enacted similar legislation, S.259 (Act 122), titled the "Climate Superfund Act," in which the state also retroactively taxes energy producers for historic emissions. Similar bills have also been introduced in Maryland and Massachusetts…

Arbitrary and retroactive taxes can, however, raise prices for consumers by increasing policy uncertainty, affecting firm profitability, and reducing investment (or causing investors to flee GHG-emitting industries in the state altogether). Residents in both New York and Vermont already pay over 30 percent more than the US average in residential electricity prices, and this legislation will not lower these costs to consumers.

FROM OUR FRIENDS

Vermont's Climate Superfund Law Targets Domestic Energy Production, Gabriella Hoffman, Independent Women's Forum
EV Sales In WA Far Short of State Target. Ecology's Application of The Rule Appears Illegal, Todd Myers, Washington Policy Center
Biden To Impose Tariffs on Chinese Electric Vehicles, Institute for Energy Research
Net Zero Averted Temperature Increase, R. Lindzen, W. Happer, and W. A. van Wijngaarden, CO2 Coalition
Virginia Breaks Free from California's Extreme Car Restrictions, Diana Furchtgott-Roth, The Heritage Foundation