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# THE SURGE

BY THE COMPETITIVE ENTERPRISE INSTITUTE

Welcome to the latest edition of *The Surge*!

- Congress must help restore representative government: Here's a legislative plan.
- The pro-tax, anti-energy PROVE IT Act gets introduced in the House.
- What does the demise of the Chevron doctrine mean?
- President Biden signs bipartisan nuclear legislation into law.
- Nine principles for electrical grid reliability.

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

## TOP OF THE AGENDA: A Legislative Plan To Restore Representative Government

### **Congress Should Establish Limits On Regulatory Power To Ensure Agencies Are Not Answering Major Policy Questions**

Many of the biggest policy decisions affecting the lives of Americans are made by federal agencies. This is contrary to our republican form of government, in which elected officials representing the people have the lawmaking power.

This has been a long-standing problem that is only getting worse. During the Biden Administration, agencies have promulgated some of the most sweeping rules ever, ranging from the Environmental Protection Agency's (EPA) [effort](#) to limit the availability of gas-powered cars to the Centers for Disease Control and Prevention's (CDC) nationwide eviction moratorium that was struck down by the Supreme Court.

Congress needs to take action now to restore representative government and protect the voice of the American people. There needs to be broad-based process changes so that there is no more need to play regulatory whack-a-mole.

CEI's Daren Bakst explains in a new [report](#) that Congress should amend the Administrative Procedure Act that governs the regulatory process by establishing some "rules" on rules. Informed in part by the major questions doctrine, there should be prohibitions on certain types of rules; those rules in which it would defy common sense to think Congress would have authorized them, absent clear authority. The covered types of rules include:

- Any rule that is outside the agency's statutory mission or demonstrated regulatory expertise;
- Any rule that would reshape or change the nature of an industry, such as bans or restrictions on types of goods and services, or shutting down types of businesses;
- Any rule that would have an annual cost of \$300 million or more or have a total cost of \$3 billion or more;
- Any rule that would intrude on a traditional state power; or
- Any rule that resolves an issue Congress has repeatedly and conspicuously declined to address itself.

If there is any reasonable basis to conclude a rule meets any one of these criteria, then it would be prohibited unless there is a clear statement of authority.

Congress created the agencies and the regulatory process. It now needs to fix the problems that exist with its creation. Unlike with the courts, Congress through statutory language can provide a clear and extensive way to address agency abuses. This statutory reform could serve as a first line of defense against agencies ignoring the will of Congress and thereby the will of the voters.

**SPECIAL FOCUS: The PROVE IT Act**

## [Small Group of House Members Introduce Pro-Tax, Anti-Energy Bill](#)

The PROVE IT Act ([S. 1863](#)) is a [pro-tax, anti-energy bill](#) that, if passed, would lead to a carbon tax on imports and a domestic carbon tax.

Last month, a coalition of over 40 leading conservative and freedom-loving organizations made it clear to the House: the conservative community [opposes](#) the PROVE IT Act. The [letter](#) was sent in anticipation of a House version of the bill being introduced.

That day has arrived. [This week](#), Rep. John Curtis (R-UT) and Rep. Scott Peters (D-CA) [introduced](#) the [House PROVE IT Act](#), with a smaller number of cosponsors than expected. Based on Rep. Curtis's press release, there are 21 sponsors in total (including Curtis and Peters), with 10 Republicans and 11 Democrats.

That's still 21 legislators too many.

But the reality is that there are legislators who want carbon taxes. And the PROVE IT Act would help make their dreams to punish energy use come true. The bill would require the government to measure the carbon intensity of domestic and foreign goods, thus creating the foundation by which to make carbon taxes a reality.

The June coalition letter [explains](#):

It is clear that this information would then be used to impose new "climate" taxes, similar to what Democrats in Congress did during the summer of 2022. In the [Inflation Reduction Act](#) (IRA), which no Republicans supported in either the House or the Senate, Congress took information collected under the EPA's greenhouse gas reporting [program](#) and imposed the first-ever federal methane tax. The Senate passed the IRA on a 51-50 party-line vote with Vice President Kamala Harris casting the tiebreaker.

House members, especially conservatives, should be unequivocal and vocal in strongly opposing this harmful legislation.

Here's what leading conservative organizations [wrote](#) in last month's letter:

Americans want affordable and reliable energy, not federal tax schemes that treat energy use as a sin. This bill though would lead to such taxes and is one of the biggest threats to energy and economic prosperity in

recent memory.

Therefore, we strongly urge legislators to oppose the PROVE IT Act and ensure that it is not included, in any form, within other legislation.

Visit CEI's [PROVE IT Act web page](#) to learn more about this major threat to energy and economic prosperity.

## IN THE SPOTLIGHT

### **Nine Principles for Electrical Grid Reliability**

A reliable electrical grid is essential to all aspects of daily life. Power keeps the lights on, appliances running, and keeps home temperatures well regulated. Americans have rightfully come to expect reliable electricity and the grid has made this possible.

Yet some legislators are valuing other goals above maintaining reliability. Predictably, reliability has begun to suffer.

Legislators at all levels of government should respect certain principles for electrical grid soundness. In so doing, they will be helping to ensure the long-term efficacy of all parts of the electrical grid.

CEI's Paige Lambermont in a [new report](#) identified nine principles that legislators should respect. Some of these key principles include:

- Reliability should be the primary concern of electricity policy, with cost as the second consideration for lawmakers.
- Policymakers should reject energy subsidies and not pick energy “winners and losers.”
- The movement of necessary natural gas fuel should not be impeded by government regulations.
- Baseload power should not be taken off the grid in the name of “reducing emissions.”
- Transmission investments should not be used to cover for flawed policies that hurt reliability.

### **Conservatives Must Remain Committed to Dismantling the IRA's “Green” Subsidies**

The [Inflation Reduction Act](#) is partisan [legislation](#) packed with what could amount to more than one trillion dollars in “green” [subsidies](#) meant to centrally plan how Americans produce and use [energy](#).

Not a single House or Senate Republican voted for the IRA. And to their credit, House Republicans have passed important legislation this Congress, such as the Limit, Save, Grow Act ([H.R. 2811](#)), which attempts to repeal many of the IRA’s “green” subsidies.

Unfortunately, these legislative efforts have not sought to repeal all of the subsidies. And recently, a small number of Republicans revealed they may be [backing off](#) going after these subsidies, at least to some extent.

The wobble comes at a time when conservatives may well find themselves in a political position to dismantle the IRA subsidies altogether. It is critical, therefore, that Republicans do not waver because these subsidies are extremely damaging.

The costs of the subsidies are not even the biggest concern. More troubling is how the money is being spent. For example, the IRA seeks to make radical changes, such as shifting the country from reliable electricity sources (e.g., natural gas and coal) to unreliable electricity sources (e.g., wind and solar).

Conservative legislators need to ramp up their fight against the IRA’s “green” subsidies. This should start right now with Republicans making it perfectly clear that they do, in fact, plan to dismantle the subsidies.

### **[Loper and the Demise of Chevron: A Big Win for Representative Government](#)**

Federal courts will no longer favor bureaucrats over the public, thanks to a June 28 U.S. Supreme Court decision.

In a 6-3 opinion in [Loper Bright v. Romando](#), the Court overruled its own 1984 case *Chevron v. NRDC* that created what is known as the Chevron doctrine. As a result of that doctrine, whenever there were ambiguities in statutes that agencies administer, courts deferred to federal agencies’ interpretations of those statutes.

For 40 years, it didn’t matter if an agency’s interpretation was the best interpretation or even a good interpretation of ambiguous statutes. It didn’t matter if an individual or business had a much better interpretation. The agency would win under this doctrine so long as it had what a court deemed a reasonable interpretation.

Now that the Chevron doctrine is dead, federal agencies should find it more difficult to ignore the will of Congress. Regulators will need to stay within the boundaries of the law and stop trying to regulate outside the statutory lines.

This will help with predictability because agencies won't just be able to keep changing interpretations of the law, often creating wild swings in national policy. As the majority explains, the Chevron doctrine "fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty."

Agencies will find it more difficult to do whatever they want. That's a good thing. This opinion won't affect agencies when it comes to promulgating rules that are authorized by law. But it will affect them if they want to exceed their authority. Congress created federal agencies to implement the will of Congress, not to use statutes as a blank check to push the ideological agendas of federal bureaucrats.

### **[Biden Just Signed into Law Legislation to Greenlight Nuclear Energy](#)**

This week, President Joe Biden signed the "Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act" (ADVANCE ACT) into law. This legislation was part of the "Fire Grants and Safety Act" ([S. 870](#)).

The ADVANCE Act is more than a year in coming and constitutes a compromise between different factions concerned with the future of nuclear power development in the US.

The legislation does a few important things. The [most widely discussed](#) change is the reform of the regulatory process for advanced reactors. For the many small modular reactor companies currently working on licensing new designs, this regulatory process reform should simplify the path of development and eventual demonstration of advanced reactors. Two less-covered aspects of the law are also incredibly interesting and worthy of note.

1. Improves the Nuclear Regulatory Commission's mission: The [ADVANCE Act](#) updates the Nuclear Regulatory Commission's (NRC) mission to acknowledge the potential utility and benefit of nuclear power technology. This is an important departure from the current mission which is only focused on maintaining protection from nuclear technology, rather than stewarding its possible benefits.
2. Creates a pathway for US nuclear companies to obtain export licenses: Many countries want to reap the benefits of nuclear power technology without establishing a robust domestic industry (a process that takes

considerable time, research, and expense). In recent years, these countries have often depended on China for power from reactors that China would generally continue to control.

China [has been using](#) nuclear power technology as a means to have leverage over the countries that use its nuclear reactors. It's more than reasonable that the US should be able to counteract this and provide alternatives to developing nations looking for electricity. The ADVANCE Act [creates a pathway for export licenses](#) to allow US nuclear technology to be used elsewhere in the world with specific nonproliferation safeguards in place. Such a pathway does not currently exist.

The legislation is far from a comprehensive solution to the multitudinous problems with nuclear regulation in the US, but it takes important steps toward acknowledging the potential benefits of nuclear technology and allowing the technology to be utilized more both at home and abroad.

### **[Inflation Has Spread to Your Air Conditioner, and Federal Regulations are the Cause](#)**

The Biden administration's home appliance regulators at DOE have been on [quite a rampage](#) as of late, with pending or recently finalized rules impacting stoves, dishwashers, furnaces, ceiling fans, water heaters, refrigerators, light bulbs, and washing machines. But the worst of them all may be an efficiency regulation for residential central air conditioners that was finalized back in 2017 and went into effect on Jan. 1, 2023.

We are in the second summer under this rule, and it has single-handedly boosted the cost of a new air conditioning unit by [at least \\$1,000](#), according to installers.

The EPA has also saddled those who repair air conditioners with reams of [red tape](#) that make the job more time consuming and necessitate additional equipment and training, all of which translates into higher bills for homeowners trying to keep cool. More such measures [have been proposed](#).

It will only get worse in future summers. Another EPA regulation, applicable to all residential systems manufactured in 2025 and after, requires that only agency-approved climate-friendly refrigerants be used. Get ready for another price boost. Several manufacturers are guessing at price increases in the [10% or higher](#) range — well into the hundreds of dollars. And that number could end up being even higher — the above-mentioned DOE rule that went into effect last year turned out to be [at least five times](#) higher than originally estimated by the agency.

The only good news for heated-up homeowners is that summers don't last forever. The bad news is that the inflation may persist into winter with some equally bad [furnace measures](#) on the way. Hot or cold, the regulators won't leave us alone.

### **[Spam Alert! A Devastating Outlook on the SEC's Final Climate Disclosure Rule](#)**

While the Securities and Exchange Commission's (SEC) [final climate disclosure](#) rule is a notable improvement from the agency's initial proposal, it still introduces the most substantial disclosure burden for public companies in US history.

The rule is facing scrutiny from both Congress and the courts, and the best outcome would be for one or the other branch of government to strike it down entirely.

The SEC's final rule retains many of the [worst elements](#) of its proposed rule, with the caveat of removing the highly disputed "Scope 3" mandate and a less-invasive financial statement disclosure on climate risks. Scope 3 reporting requires companies to disclose data on their business partners' and customers' greenhouse gas (GHG) emissions across their value chain.

Only a small number of businesses (less than a quarter of all publicly registered companies) have voluntarily reported their direct greenhouse gas emissions through Scope 1 reporting. Even fewer have provided sufficient Scope 2 reporting on indirect emissions, while Scope 3 is almost impossible to standardize.

Yet, this has not prevented the SEC from barreling forward by requiring most large and many mid-sized businesses to report on their Scope 1-2 emissions. Refusing to wait for any congressional directive, the SEC has imposed what is akin to a de facto carbon tax. The greater and more diversified a business's emissions are, the costlier their GHG disclosures to the SEC will be.

### **FROM OUR FRIENDS**

[What Climate Alarmists Are Hiding from You](#), James Taylor, The Heartland Institute

[Federal Judge Blocks Pause of LNG Export Projects](#), Gabriella Hoffman, Independent Women's Forum

[Biden's Hypocrisy on Climate Change is Painfully Obvious](#), Diana Furchtgott-

Roth, The Heritage Foundation  
[ESG: A Gordian Knot of the Highest Order](#), Kimberlee Josephson, American  
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