

August 2, 2024

THE SURGE

BY THE COMPETITIVE ENTERPRISE INSTITUTE

Welcome to the latest edition of *The Surge*!

- There's a critical new solution to help restore representative government.
- Senator Elizabeth Warren has a new bill to reverse Loper Bright.
- Federal regulatory burdens cost the average household more than \$15,000 per year – more than food, clothing, education, or any other household expense except for housing.
- What are the costs of subsidies for specific energy sources?
- FERC Commissioner highlights problems with grid reliability.
- Newly enacted bill will help U.S. companies to export nuclear technology.

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: Regulatory Process Refrom

The Overreaching Power of the Bureaucracy Is Destroying Our Representative Government

Background

There is significant momentum right now to help restore our nation's republican form of government and ensure that Congress and not unelected agency officials make the major policy decisions affecting the lives of Americans.

Much of the credit goes to the U.S. Supreme Court for decisions like *Loper Bright v. Raimondo* (getting rid of the Chevron doctrine) and *West Virginia v. EPA*, which helped to flesh out the major questions doctrine. This judicial doctrine requires agencies to have clear authority to issue rules of major significance. What constitutes a major question is far from clear, but it involves "extraordinary cases," as the Court has explained. So it will likely be applied in very narrow situations.

Loper Bright and *West Virginia v. EPA* are important cases, but there is only so much courts can do. Agencies are still going to have significant leeway to go way beyond the intent of Congress, especially when citing to broad or vague statutory language that allows them to get creative with their rules.

Congress Needs to Take Action

Congress needs to pass major reform that helps to restore representative government. Congress created the agencies and the rulemaking process and now it's up to legislators to address the problems arising from its own creations.

There should be no tinkering or small ball. Enough trying to change the rules of a game that those who believe in our republican form of government don't even want to play. *We need to change the game*. This simply means restoring representative government as envisioned by the Framers of the U.S. Constitution and rejecting the President Woodrow Wilson-vision of a country run in large part by unelected experts. This also includes rejecting Wilson's shocking disdain for voters.

Regulatory reform is never easy, even for modest reforms. Plenty of people want to keep power within the agencies and give them a blank regulatory check to aid the ideological ambitions of those who seek greater governmental control. One new and simple solution would void this blank check.

The New Legislative Solution

Similar to the major questions doctrine, Congress should require that an agency

have clear statutory authority for a rule if it would defy common sense to think Congress would have authorized such a rule without saying so directly.

For example, Congress should prohibit agencies from issuing rules outside their demonstrated regulatory expertise, unless clearly authorized to do so. After all, one of the biggest justifications for agency rulemaking is the alleged expertise of agencies. If they don't have the expertise on certain issues, then it follows that Congress didn't want them to promulgate rules on those matters.

That's common sense, as are many other boundaries. For example, absent clear authority [from Congress](#), it would be absurd to think lawmakers wanted agencies to equate shutting down businesses with regulating them, as the EPA is doing with its [new power plant rule](#). The rule is creating infeasible requirements that necessarily will lead to plant closures.

It would also defy common sense to think Congress, without saying so clearly, is OK with an agency banning or limiting the availability of certain types of goods, such as gas-powered cars, or reshaping an entire industry. Therefore, legislators should make it clear that such rules are prohibited unless clearly authorized by law.

Even with the existence of the major questions doctrine, new legislation [from Congress](#) is required because a congressionally passed law could provide both clearer prohibitions against certain agency rules and far more comprehensive protection from agency abuses than the judicial branch.

Statutory language should serve as a first line of defense against agencies ignoring the will of Congress and, thereby, the will of the voters.

What Would The Reform Mean?

There are many recent energy and environmental rules that very well could get shot down due to the major questions doctrine, such as the [Clean Power Plan 2.0](#), the "[EV mandate](#)," and the [SEC climate disclosure rule](#). This doesn't even include many other rules unrelated to energy and environmental issues.

But it is hardly a slam dunk that the Supreme Court will shoot down these rules on major questions grounds.

Congress should ensure that these rules and similarly egregious rules don't have a chance of survival. If legislators develop clear authority requirements that are easy-

to-apply by courts, instead of worrying about whether the worse agency abuses will persist, Americans can have confidence that these abuses will be a thing of the past.

[Ten Thousand Commandments Report on Federal Regulation Exposes Washington's Big Costs, Little Accountability](#)

The Competitive Enterprise Institute released its annual report on the federal regulatory state, [Ten Thousand Commandments](#) by [Clyde Wayne Crews](#).

Federal regulatory burdens cost the average household more than \$15,000 per year – more than food, clothing, education, or any other household expense except for housing. In total, regulation imposed a \$2.1 trillion total cost, rivaling the \$2.3 trillion income tax cost.

The report identifies the main problems with a regulatory system grown more expensive, extensive, and politicized — and less transparent and accountable — under the Biden administration.

One of the biggest problems is a 2023 Biden executive order that undermined the crucial watchdog mission of the White House Office of Management and Budget (OMB). [Executive Order 14094](#) 1) downplays the cost of regulation by changing the threshold that triggers more intense OMB review and 2) switches the focus of regulatory review from [cost/benefit assessment to a pursuit](#) of “net benefits” as envisioned by progressives.

To fix these and other problems, the report identifies reforms aimed at increasing transparency, rigorous review, and accountability to Congress, such as:

- Regulatory budgeting
- Creating a [regulatory reduction commission](#)
- Mandating congressional approval for costly or controversial agency rules
- Passing an “[Abuse of Crisis Prevention Act](#)”

[New Bill Would Restore Agency Deference](#)

New legislation [introduced](#) by Senator Elizabeth Warren (D-MA) would reverse the recent Supreme Court decision in *Loper Bright* and codify deference to federal agencies’ “reasonable” interpretation of statute as to whether regulation is congressionally authorized.

Under the Chevron doctrine, Americans challenging an agency would have a hard time winning their case because the system was gamed in favor of agencies. Even if a court thought an individual had a better legal interpretation of an ambiguous law than an agency, judges would have to rule in favor of an agency so long as the agency's interpretation was reasonable.

About 80 years ago, when Congress passed the law governing the regulatory process, the Administrative Procedure Act, Congress made it perfectly clear that it was the role of the courts to interpret statutes. Now some legislators want to codify into law that unelected agency bureaucrats are more important than the people and the judges who are required to interpret the laws. This bill should be called the Deep State Protection Act. It isn't even clear whether such a change would survive legal scrutiny since it isn't the role of Congress to tell courts how to interpret laws. Regardless, such a proposal shows a disturbing disdain for representative government, basic fairness, and the U.S. Constitution.

IN THE SPOTLIGHT

The SEC's Climate Disclosure Rule Is a Dark Cloud Over Energy Abundance

The Securities and Exchange Commission (SEC) climate disclosure rule posts real problems for public companies. The SEC's mission is to do facilitate capital formation and maintain market efficiency, but for the first time in its [90-year history](#), the SEC has injected political risk factors into its traditionally principles-based disclosure framework.

Leading up to the new rule, the SEC buckled under pressure from left-wing special interests to impose the first environmental disclosure mandate on public companies. If the SEC's final rule is allowed to go into effect by the courts, it will be a financial disaster for the public markets.

The climate rule will require most large and mid-sized public firms to report annual and quarterly disclosures that account for an endless range of climate risk factors. This translates to approximately 3,488 firms spending upwards of \$628 million on direct disclosure costs and millions on indirect costs.

Consequentially, firms will need to expend great resources hiring climate scientists, ESG experts, lawyers, and accountants to properly prepare their disclosures for SEC review, neglecting the time normally spent on enhancing their market value.

Corporate boards will lose much of their discretionary decision making, forced to prioritize environmental risk factors over purely financial concerns. In its place, corporate boards must infuse speculative climate science to determine which climate risks warrant inclusion in their SEC disclosure.

The Dominion's Proposed Peaker Plant Is a Good Sign for Reliability

In the last decade, many states have made energy policy decisions that prioritize building new renewable energy sources, namely wind and solar, over more reliable forms of power. Often, this comes in the form of renewable portfolio standards that mandate a certain portion of the energy mix comes from wind and solar.

One such state is Virginia. [The Virginia Clean Economy Act \(VCEA\)](#) is a renewable portfolio standard that requires that the state's largest utilities, Dominion Energy and Appalachian Power, both use 100 percent renewable energy by 2050. Despite this mandate, the state's utilities are doing what they must to maintain a [reliable grid](#).

Earlier this year, Dominion Energy announced plans to build a new peaking natural gas plant to help meet the state's growing demand for power. Peaking power plants, otherwise known as peaker plants, are power plants that are able to ramp up and down to compensate for the intermittency of other sources of electricity. Dominion [may](#) need to construct up to eight more similar plants over the next decade and a half.

The state's unique position in the technology sector may contribute to [demand growth](#). Northern Virginia is currently the number one state for data centers [in the US](#). This gives the state immense importance as artificial intelligence and other data intensive applications develop further and are used more widely. With this economic boon comes an obligation for the state's utilities to rise to the occasion. That means maintaining reliability.

Dominion Energy is Virginia's largest utility company. The fact that it's choosing to invest in new natural gas peaker plant capacity right now is a promising sign for those concerned with reliable electricity.

FERC Commissioner Mark Christie's Highlights Reliability Concerns

The following is an excerpt highlighted by America's Power in a [blog](#) on Federal Energy Regulatory Commission (FERC) commissioner Mark Christie's recent

Congressional testimony:

“The core threat is two-fold: On the power supply side, dispatchable generating resources, even with many years of useful life remaining, are retiring far too quickly and in quantities that threaten our ability to keep the lights on. The supply problem is not the addition of intermittent resources such as wind and solar, but the far too rapid subtraction of dispatchable resources, especially coal and gas.”

“Further, the nation’s largest regional grid operators have made crystal clear that the Environmental Protection Agency’s power-plant regulations, which have now been finalized, will make this already dire situation much worse by forcibly accelerating the retirement of the vast majority of the remaining coal fleet and making it extremely difficult, if not virtually impossible, to build the new combined-cycle natural gas generation units that will be too essential as baseload generation resources to meet the rising power demand.”

“To cite just one example of the threat that is typical among grid operators: PJM – the largest grid operator in the country in terms of consumers served (load) – warned last year that PJM faced the likelihood of losing 40 gigawatts or more of generation capacity by 2030 through early retirements of generating units. Most of this retiring capacity is dispatchable generation, primarily coal and gas. Meanwhile, PJM faces unprecedented load growth due to the proliferation of data centers, for example, in my own home state of Virginia, home of “Data Center Alley.”

Combatting Climate Anxiety: Yes, It’s Okay to Have Children

In recent surveys, some Americans have cited the environment and/or climate change as [reasons](#) to [not](#) have [children](#) or to [have fewer](#) children. [However](#), the survey data is far from clear and generally shows fairly low concern, but still high enough to pay attention to.

This comes at a time when US fertility rates are hitting [historic lows](#). [Globally](#), fertility is falling at a substantial rate, and future projections indicate this trend will continue. As it is, the Earth can handle a growing global population and quality of life will only continue to improve unless governments prevent this from happening.

It’s unfortunate that climate anxiety is an issue for some, especially because things are going quite well in terms of energy innovation and resource abundance. This will help to solve any problems that humans will need to address. When humans are allowed to prosper, the result isn’t strained resources and environmental problems, it’s greater abundance and better environments.

Advocating for a future that embraces both environmental stewardship and human flourishing isn't contradictory, but complementary. Having children is a personal choice that shouldn't be influenced by doomsayers, especially those who want to drill their beliefs on such matters into the minds of impressionable young people.

[New Legislation Will Make It Easier for U.S. Companies to Export Nuclear Technology](#)

A South Korean company, [Korea Hydro and Nuclear Power](#), just received a [\\$17.3 billion](#) dollar contract to construct two new nuclear power plants for the Czech Republic. The company won the bid for the government contract over [France's EDF](#), which is the government-owned electric company that operates France's nuclear fleet.

This deal, and the large dollar figure attached to it, is a prime example of the sort of economic gain that can come from building nuclear power plants across borders. Until very recently, it was nearly impossible for American companies to take advantage of these possibilities in most markets.

Previously, U.S. nuclear technology [could only](#) be exported to countries where "[123 Agreements](#)" under the Atomic Energy Act were present. The U.S. has 24 of these agreements that currently cover 48 countries. The majority of these are those that have their own nuclear plants and technology. The countries that are most likely to want to accept bids from foreign countries for their civilian nuclear power are the ones that don't have these agreements.

No formal pathway existed to permit U.S. companies to export nuclear technology to countries outside this list. With the signing of the ADVANCE Act as part of the Fire Grants and Safety Act last month, this has finally changed.

The ADVANCE Act, along with its provisions to streamline the regulation of advanced reactor designs, takes important steps to make it easier for U.S. nuclear technology to be exported. The law allows for the Nuclear Regulatory Commission (NRC) to [approve export licenses](#) for nuclear material, nuclear reactors, and other components. It [establishes a branch](#) within the agency to manage import and export activities. The NRC will notify Congress of any approved licenses.

This is an important step, as the U.S. has long lagged behind both its allies and enemies on exporting nuclear power technology. These exports are both an economic vehicle, as the projects generally involve large sums of money, as well as

a diplomatic tool in many cases. The provision of this power can be an incredibly binding tie between nations. It can be used to establish friendly relations amongst countries.

U.S. companies now have more freedom to play a role in bidding for nuclear energy projects. That's good for the U.S. economy, good for the countries that will now have another bidder on their projects, and good because it will help to moderate the influence of other mal-intentioned nations in the nuclear space

FEATURING OUR FRIENDS

Climate and Energy: The Case for Realism?: An Interview with E. Calvin Beisner and David R. Legates (Editors)

1) What does your [book](#) say about the role of oceans when it comes to the climate?

Because oceans are a thousand times more massive than the atmosphere and have the largest ability to absorb heat per unit of mass for a temperature change, they are certain to affect global atmospheric temperature (GAT), and to do so much more than it affects them. Ocean cycles influence each other as well as atmospheric weather and climate, with cyclical effects superimposed on, and hence disguising, enhancing, or suppressing underlying trends in GAT. These natural oscillations, running from the three-to-eight-year cycles of El Niño to the fifty-eight-year cycles of the Pacific Decadal Oscillation and similar periodicities of the Atlantic Multidecadal Oscillation and the Atlantic Meridional Mode, are all missing from IPCC models, leading to the models' inaccurate temperature attribution and poor estimation of climate sensitivity.

2) What are some of the findings your [book](#) discusses regarding subsidies for specific energy sources?

Subsidies to “green” or “renewable” energy technologies have a poor cost/benefit ratio. Despite receiving three-fourths of federal subsidies, wind and solar only produced 5.4 percent of power generation. Solar receives 38,833 percent more subsidies per MWh than natural gas and petroleum liquids; wind, 2,356 percent more. In recent years, wind and solar received \$14 billion in federal direct subsidies (cash handouts—excluding tax credits); natural gas and petroleum, zero. Yet, while receiving subsidies equal to only about 0.7 percent of global GDP, fossil fuels account for about 85 percent of global energy supply.

3) What does your [book](#) say about snow and ice cover?

Video documentaries often show large chunks of ice breaking off from Greenland and Antarctica, into the oceans, as if this were somehow unnatural and driven by anthropogenic global warming. But this calving is the natural, gravity-driven flow of ice sheets toward the oceans. Fears that melt from Greenland and Antarctica will cause rapid sea-level rise are unjustified, because although global oceans would rise by about 67 meters with their complete melt, that would take thousands of years at the present and foreseeable rate, during which cycles of cooling would reverse the melt.

FROM OUR FRIENDS

- [Google Backpedals on Carbon Neutrality](#), Gabriella Hoffman, Independent Women's Forum
- [Green Tax Credits Benefit Wealthier Households Most](#), Sarah Montalbano, Center of the American Experiment
- [Blown Apart: Massachusetts Offshore Wind Turbine Disintegrates into the Ocean](#), Isaac Orr and Mitch Rolling, Energy Bad Boys Substack
- [Why the Chevron Victory Won't End the Administrative Abuse Coming from the EPA](#), Travis Fisher, Cato Institute
- [From Plans to Reality: The Vital Role of Categorical Exclusions in Forest Restoration Projects](#), Hannah Downey, PERC (piece for The Frontier Institute)
- [Climate Surcharges: Coming Soon to an Airport Near You?](#), Kristen Walker, American Consumer Institute, (piece in Townhall)

Competitive Enterprise Institute
1310 L Street NW, 7th Floor
Washington, DC 20005
www.cei.org

[Manage Email Preference](#)