

Energy and environment

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From the very beginning, the Biden-Harris administration aggressively pursued an agenda that prioritizes climate change considerations above all else, including the production of affordable and reliable American energy. The tone was set on Inauguration Day 2021 with a wave of anti-energy Executive Orders – reentering the United Nations’ Paris Agreement and its US commitments to reduce emissions of greenhouse gases, canceling the Keystone XL pipeline, blocking oil leasing in the Arctic National Wildlife Refuge and other federal lands, as well as many other steps to reverse pro-energy policies instituted by the previous administration.

In the four years since, the administration has not let up – record low levels of oil and gas leasing on federal lands, a moratorium on new liquefied natural gas (LNG) export facilities, unprecedented permitting delays for needed pipelines and other projects, Environmental Protection Agency regulations favoring electric vehicles (EVs) over gasoline powered ones as well as regulations further hampering coal and natural gas-fired electricity, a wave of Department of Energy appliance regulations targeting gas stoves and other home appliances, and much more. Even federal agencies with no logical jurisdiction over climate change matters, such as the Securities and Exchange Commission, have been swept up in the administration’s “whole of government” obsession with regulations targeting greenhouse gas emissions.

The ultimate target of this sweeping climate agenda is the coal, oil, and natural gas for which America is the world’s leading producer. This is the affordable energy serving our homes and businesses while supporting millions of energy industry jobs and billions of dollars in export revenues. Thus, the engine of the American economy is literally under threat by the Biden-Harris agenda.

In tandem with this expansive array of regulatory and permitting sticks, the president and Congress have enacted potentially trillions of dollars of carrots in the form of subsidies for politically favored alternative energy sources and technologies. The 2022 Inflation Reduction Act added to an already crowded field of handouts for everything from onshore and offshore industrial wind to manufacturing facilities for EV batteries and solar panels to consumer purchases

of electric vehicles. These Green New Deal-style policies cost us as taxpayers while favoring more expensive and less reliable energy – a double whammy that harms family budgets and the American economy overall.

It is imperative for Congress to take on these measures in a comprehensive manner. In doing so, lawmakers will help to bring down energy prices, defend consumer freedom, and increase the abundance and reliability of our nation's energy. To fix the current dismal state of energy policy in this country, Congress should:

- Officially withdraw from the Paris Agreement;
- Greatly reduce the impediments placed on the production, use, and export of domestically produced fossil fuels;
- Repeal the energy and climate provisions of the Inflation Reduction Act;
- Repeal climate-related regulations that impose costs higher than any likely benefits and enact constraints on agency authority to promulgate additional ones;
- Refrain from enacting a carbon tax or the PROVE IT Act;
- Reject policies that hurt electricity reliability and seek to impose a heavy-handed federal role in transmission policy;
- Develop across-the-board permitting reform that does not pick winners and losers; and
- Constrain the Department of Energy's authority to set additional home appliance regulations.

Paris Agreement, other treaties: The United Nations' 2015 Paris Agreement would commit the US to extremely burdensome, economy-wide restrictions on greenhouse gas emissions in the name of addressing climate change. Specifically, it would force reductions in the use of affordable coal, oil, and natural gas that this nation possesses in great abundance and that we depend on for more than 80 percent of our energy. At the same time, the Paris Agreement would confer an unfair advantage on many other nations, including China, that face less stringent provisions.

Treaties must be submitted to the Senate for the constitutionally-required ratification vote and garner a two-thirds supermajority. Most observers believe that the Paris Agreement would fall well short of the necessary 67 Senate votes.

For this reason, President Obama never submitted the Paris Agreement to the Senate for a vote. Instead, he began implementing it anyway. President Trump put an end to this in 2017 by withdrawing from the treaty. Although doing so stopped implementation for the time being, Trump did not submit the treaty to the Senate where a rejection would have put a permanent end to it. On Inauguration Day 2021, President Biden revived the Paris Agreement and the Obama approach.

Notwithstanding legitimate questions about the current legal status of the Paris Agreement, the treaty is already being used by the Biden administration and climate policy advocates to justify numerous domestic climate measures and create a legal precedent on which future climate obligations can be built.

For these reasons, the Paris Agreement should be submitted to the Senate for the long-overdue ratification vote where its failure would put a definitive end to what well may be the worst treaty ever for the American people.

The Paris Agreement is bad policy. It is made much worse by the fact that the United Nations classifies China as a developing nation and thus subjects it to less stringent requirements. China is even eligible for funding provided by the US and other developed nations to assist developing countries in complying with its limited requirements under Paris. Bills have been introduced that would withdraw all US funding for the Paris Agreement and other treaties until the United Nations reclassifies China as a developed country under them. Such bills should be enacted into law.

Domestic fossil fuel restrictions: President Biden came into office having made the extraordinary and unprecedented promise to end American oil and natural gas production. This has proven to be a difficult task for him—along with coal, these fossil fuels are the strong preference of American homeowners, vehicle owners, and business owners due to their affordability and reliability. Not surprisingly, Congress has shown little interest in legislation restricting access to nation's abundant supplies of these energy sources. Nonetheless, the Biden-Harris administration has made inroads, especially as regards oil and gas leasing on federal lands and offshore areas.

Granted, domestic oil and natural gas output is currently at record highs, but the increase is due to projects that could not be stopped by the current administration. This includes production from state and private lands as well as federal leases from previous administrations. However, reduced levels of new leasing in the most recent Outer Continental Shelf 5-Year Plan bodes ill for future production.

From Inauguration Day onward, the administration attempted to cancel previously-issued leases as well as cut back on new leasing, and has done so based on climate change considerations. Several of these efforts have run into legal difficulties. The law in fact requires a minimum of oil and gas leases be offered each year. But the administration has managed to reduce leasing activity to levels well below the historic average.

Much-needed oil and gas infrastructure has also been subjected to federal permitting delays and outright rejections. For example, according to the Energy Information Administration, natural gas pipeline approvals in 2022 (the most recent

year available) were at the lowest level since records began in the 1990s, despite the fact that the fracking revolution has unlocked record high reserves. Note that blocking needed infrastructure is one way that the federal government can choke off new oil and gas production from state and private lands where it otherwise has little control.

The administration's recently-announced moratorium on the approval of additional liquefied natural gas (LNG) exports – currently under legal challenge – is another potential impediment. By placing limits on future natural gas export growth, such restrictions would have a chilling effect on domestic production. And the Day One assault on the Keystone XL pipeline has likely discouraged other potential oil infrastructure projects. Congress should do what it can to undo these Biden actions and reduce governmental obstacles that will unleash American energy.

Inflation Reduction Act: Enacted in 2022 without the support of a single congressional Republican, the Inflation Reduction Act (IRA) provides sweeping and in some cases uncapped subsidies for politically favored alternative energy sources and technologies. Few if any “green” energy lobbyists failed to get what they wanted from this massive giveaway. The Congressional Budget Office's initial cost estimate of \$369 billion dollars through 2031 now appears to be several times too low.

These harmful subsidies centrally plan how energy is used and produced in the country. They are a means to try and create demand for goods and prop up businesses that progressives favor but would not succeed without the subsidies. Not that the subsidies would necessarily achieve those objectives. In fact, it should not surprise anyone that little is being achieved by these expenditures. Two years in, and nearly all the Green New Deal-style projects bankrolled under the IRA are turning into disappointments for its proponents.

For example, the billions spent on subsidies of up to \$7,500 for the purchase of an EV are proving insufficient to overcome most new car buyers' preference for gasoline-powered cars and trucks. And with EV sales failing to live up to the hype, this is yet another reason why the tens of billions more in tax credits and other incentives to build EV battery factories is looking like it will be a costly mistake. Boondoggles beget more boondoggles under the IRA.

The same is true for other favored energy alternatives such as sustainable aviation fuel and green hydrogen. Some heavily subsidized companies are now saying that need even more cash to stay afloat. What is missing is evidence of anything incentivized under the IRA progressing to the point where it could eventually stand on its own without handouts. Meanwhile, true energy success stories, like the fracking revolution, happened in the absence of expensive government meddling like that in the IRA, a lesson that Washington has failed to learn.

For the electric sector, the IRA threatens both higher electric bills and reduced reliability by subsidizing intermittent wind and solar generation and doing so at the same time as baseload coal and natural gas generation is being hit with ever-increasing regulatory burdens from the Environmental Protection Agency. The very threats to reliability warned about by PJM and the North American Electric Reliability Corporation (NERC) are the ones actively encouraged by this agenda. Thanks to the IRA, the American people face a greater likelihood of future blackouts – and are being made to pay for the privilege.

Congress should make it a priority to eliminate these IRA subsidies that are not only costly but will also hurt the well-being of Americans.

Climate change regulations: Over the last 30 years, numerous climate change bills have been introduced in Congress seeking to create explicit regulatory or tax authority penalizing greenhouse gas emissions, chiefly carbon dioxide from the combustion of coal, oil, and natural gas. All of these bills have failed to become law, most likely because the American people find such measures to be more damaging than beneficial. Nonetheless, the Biden-Harris administration has sidestepped the will of Congress by misusing unrelated regulatory authority to promulgate measures pursuing its climate change goals. These regulations are both bad law and bad policy.

The ability of federal agencies to freelance into climate change regulations absent statutory authority has always been on shaky ground, and all the more so in light of some recent Supreme Court decisions. This includes *West Virginia v. EPA*, in which the Supreme Court reversed an agency regulation that would shift the nation's electric generation towards those the agency deems climate friendlier, namely from coal and natural gas to wind and solar. The Court's ruling found the Clean Air Act did not authorize the agency to impose such a sweeping and highly consequential change – an application of the so-called major questions doctrine.

Similarly, the ruling should constrain EPA from using regulations to force a shift away from gasoline powered vehicles and towards electric ones, given the absence of any statutory authority to tell Americans what to drive. At the very least, this should put an end to forays into climate policy from agencies, like the Securities and Exchange Commission, which never had any environmental authority in the first place.

It is imperative for Congress to reassert its role and affirmatively place limits on agency efforts to pursue climate policy that the American people never asked for. As part of this effort, Congress should expressly prohibit the regulation of greenhouse gases.

Carbon taxes, PROVE IT Act: A tax on the carbon intensity of fuels, emissions, or products is a market-rigging policy, not a free market one. The environmental rationales for a carbon tax do not survive inspection. A carbon tax would not be revenue-neutral and would not displace greenhouse gas regulations. Even a revenue neutral carbon tax would be economically harmful. Whether “modest” or aggressive, the tax would have negligible effects on climate change.

Congress, therefore, should reject legislative proposals to establish a carbon tax or other policies that would facilitate its enactment.

A carbon tax rigs energy markets. It drives investment into renewable energy sources not by lowering their cost or improving their performance but by making coal, oil, and natural gas more expensive. Those fuels supply 83 percent of US commercial energy.

Because energy is a fundamental factor of production, a carbon tax makes almost everything more expensive—food, housing, medical care, transportation, education, and consumer goods. Quite simply, a carbon tax is a tax on almost every facet of life and punishes energy use. It is hard to imagine a more toxic concoction than being pro-tax and anti-energy.

Neither the social cost of carbon (SCC) nor the alleged climate crisis justify new taxes imposing large costs on the economy. The SCC—a guesstimate of the cumulative climate damages from an incremental ton of carbon dioxide—is deeply speculative and prone to user manipulation. The climate crisis is a political narrative spun out of errant climate models, inflated emission scenarios, and unreasonable pessimism about human adaptive capabilities.

No enacted carbon tax would be “revenue neutral” and revenue neutral does not mean “not harmful.” The smaller the base on which a tax of a given size is levied, the greater its destructive impact. The tax base for a carbon tax is much narrower than those for other taxes. Thus, for example, cutting income or FICA taxes by \$100 billion would not come close to offsetting the economic damage from a new \$100 billion tax on fossil-fuel companies or their products.

Even a politically impossible carbon tax that achieves Net-Zero emissions by 2100 at a cost of trillions of dollars would avert less than 0.2°C of global warming by 2100. It would mean huge costs to achieve miniscule benefits. Congress should also oppose legislation that would facilitate enactment of a carbon tax. A prime example is S. 1863, the PROVE IT Act, in the 118th Congress.

Purportedly a research program to simply measure the carbon intensities of imported and domestically produced goods, the PROVE IT Act would establish the complex federal database necessary for a carbon border adjustment mechanism (CBAM). A CBAM would enable federal officials to impose tariffs on imports

equivalent to any carbon tax imposed on similar domestically produced goods. The political function of a CBAM is to make carbon taxes tolerable to domestic manufacturers by subjecting foreign competitors to the same tax burden. It is a political prerequisite for enacting a domestic carbon tax.

The PROVE IT Act's database would enable narrow partisan majorities to enact both domestic and border carbon taxes via a future reconciliation bill, which requires only 51 votes for passage in the Senate. Inflation Reduction Act sponsors used that strategy in August 2022 to enact unprecedented new taxes on methane emissions. Affordable energy advocates should be vigilant against a replay of that strategy in the 119th Congress.

Electricity and reliability: Electricity needs to be reliable and affordable. Therefore, electricity policy should prioritize these concerns over other ambitions. This means allowing reliable thermal generators (e.g. coal, natural gas, nuclear) to compete without harmful government intervention and opposing all energy subsidies especially those that favor less reliable sources of power like wind and solar.

The extension of subsidies for the wind and solar buildout contained in the Inflation Reduction Act, namely the Investment Tax Credit and the Production Tax Credit, should be repealed. These subsidies upset the balance in energy markets and make it more difficult for reliable generators to compete economically.

The IRA renewable energy subsidies are also a root cause of current attempts to build out transmission to support the connection of newly built and planned wind and solar facilities to the grid. Despite claims that the transmission is needed for reliability, the vast majority of the transmission connection queue is unreliable wind and solar that only provide power intermittently. These efforts should be opposed when they would harm electricity consumers. Consumers should not be required to pay for superfluous transmission that benefits the owners of intermittent facilities to the detriment of consumers and reliability. Congress should also protect the state's role in transmission and fight efforts to federalize the grid.

There are many other concerns regarding the grid. It is important that the government not dictate the electricity mix. This means rejecting clean energy and climate policies that have deleterious effects on the energy mix.

It is also essential to fight policies that lead to the premature closure of reliable electricity sources, especially because more of them will be needed in the coming years as power demand increases from data center demand. Congress should kill off federal regulations, such as the EPA's power plant rule, which would in effect force the closure of reliable power capacity.

The reliability and affordability of the electricity grid is being attacked in all directions. On the federal level, the seemingly endless barrage of subsidies and regulations are being used as a means to centrally plan a shift away from reliable electricity to unreliable electricity. In the United States, Americans should never have to expect brownouts and blackouts. However, the nation is headed in that direction if we continue down this path to unreliable electricity. Congress needs to change course now before it becomes too late.

Permitting reform: Permitting reform is critical to revitalizing America's infrastructure and energy sectors. To be truly effective, it must be comprehensive and apply across all sectors.

Reform efforts should begin with—but not be limited to—modernizing the National Environmental Policy Act (NEPA). Given that lawsuits under NEPA are one of the biggest obstacles to development, litigation reform must be a central component of any overhaul. This should include implementing a zone of interest standing requirement, which would limit who has the right to challenge energy and infrastructure projects in court and therefore reduce frivolous lawsuits that unnecessarily delay projects.

Similarly, adopting a substantial performance standard for agencies—setting clear criteria for when an agency has sufficiently completed an environmental impact assessment—would prevent endless legal challenges over the most minor details in analysis.

In addition, Congress should repeal the Council on Environmental Quality (CEQ) NEPA Implementing Regulations (Phase 2). This rule introduces vague environmental justice and climate-related mandates, that are likely to increase litigation and delays even further. Congress should also clarify that CEQ's role is to oversee NEPA's implementation primarily through issuing guidance to federal agencies, and that it does not have the authority to impose substantive requirements beyond NEPA's procedural focus.

Any congressional effort at permitting reform must also acknowledge the intersection between Inflation Reduction Act (IRA) subsidies and the broader energy landscape. The IRA commits billions of dollars in subsidies to renewable energy projects, which in turn depend heavily on expanding transmission infrastructure.

Allowing federal transmission policy changes to advance without addressing the distortions caused by these subsidies, or without implementing parallel reforms in other areas—such as streamlining permitting for nuclear energy projects, fossil fuel infrastructure, and pipeline development—would create an imbalanced energy policy. True reform must ensure a level playing field across energy sources, avoiding favoritism toward specific industries.

Finally, Congress should look beyond NEPA to modernize other critical environmental statutes, including the Clean Water Act and the Endangered Species Act, which themselves create significant delays and regulatory uncertainty beyond NEPA. Reforming these statutes in tandem would substantially reduce the bureaucratic barriers that currently stifle development across the United States.

Home appliance regulations: In January 2023, Consumer Product Safety Commission (CPSC) Commissioner Richard Trumka Jr. created quite a shock when he announced his agency was investigating the safety of gas stoves and that a ban on them as “a real possibility.”

This caused a powerful consumer backlash against such government meddling, followed up by Biden-Harris administration denials that any such restrictions were in the works. In reality, the administration has been busy promulgating a wave of problematic appliances regulations, not just for stoves but for nearly every major home appliance.

Most of these are Department of Energy (DOE) energy efficiency standards, including ones targeting stoves, furnaces, dishwashers, water heaters, refrigerators, washing machines, ceiling fans, and light bulbs. Some of these rules threaten to raise up-front costs more than is likely to be earned back in the form of energy savings. Others compromise appliance performance, features, reliability and choice. Some do both.

These appliance regulations are justified, at least in part, by climate change considerations. For each new standard, DOE calculates the claimed climate change benefits resulting from reduced appliance energy consumption. Not surprisingly, these monetized climate benefits are grossly inflated, and they are about to get worse now the agency has proposed using a new methodology that will increase them several-fold. These questionable environmental considerations depart from the overriding emphasis in the law on the best interests of consumers.

Efforts to address appliance overregulation have included bills specifically protecting gas stoves as well as broad reform bills requiring more extensive justification from DOE before setting any additional rules. While these measures are steps in the right direction, Congress should sunset or at least greatly limit agency authority to target home appliances any further. Congress should also expand agency authority to revisit and repeal existing regulations that are causing problems, and explicitly forbid the inclusion of claimed climate benefits in all future rulemakings.

Experts: Daren Bakst, Ben Lieberman, Marlo Lewis, James Broughel, Paige Lambermont

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