

# ALL ROADS LEAD TO PARIS

ADMINISTRATIVE CHRONOLOGY AND STRUCTURAL VIOLATIONS OF THE  
CLIMATE POLICY AGENDA UNDER THE BIDEN ADMINISTRATION EXECUTIVE  
ORDERS 14008 AND 13990

Prepared for: Major Questions Doctrine  
Principle author: Nathan Descheemaeker  
01/27/2023



# Introduction

The case presented here is a structural case dealing with direct violations of constitutional provisions both by the White House and virtually every department under the president as well as a coalition of State governors who seek to use 60% GDP, international partnerships and agreements, and illegitimate relationships with ESG investment banks to transform the entire United States economic and governance systems in conformance to obligations to international timetables and targets established in contravention to the U.S. Constitution and Laws established in pursuance thereof.

The Major Questions Issue is an issue of structure. The Federalist system of our government diffuses power among separate branches of our government as well as political subdivisions constituting a compound republic intended to preserve and perpetuate self-determination as well as self-government. There is no unilateral power within the federal executive departments nor the state governments to commit themselves to goals and objectives which have not been set by law, and use its coercive discretionary powers to transform every sector of the economy to meet such commitments.

The Major questions here are in three parts:

*first*, is whether the executive branch of the United States can implement initiatives and align with foreign objectives that imply vast transformative impacts on the economy, without Senate Concurrence, or explicit Congressional delegation?

*Second*, is whether States can legitimately form alliances seeking international recognition by committing to regulatory policy and leveraging of finance to transition the U.S. economy to align with international obligations and goals which have not been established by law, and forge a state-federal partnership to make achievable the NDCs?

*Third*, is whether or not the influence of international financiers and private investors can legitimately influence market investment practices of businesses and governments in such a way to benefit politically-favored sectors while penalizing the traditional sectors which provide reliability and affordability to the energy grid?

The major questions doctrine consists of two steps for the Court to determine: (1) if the assertion of Executive authority implicates matters of “vast ‘economic and political significance,’” and (2) if Congress has “expressly and specifically” delegated authority over the issue to the Executive.

This document seeks to answer those two questions relating to the Climate Policy Agenda being implemented by the executive branch and shows that this agenda has vast transformative impacts on the economy and political process, and that Congress has not expressly delegated authority on this issue to executive department or states. The agencies and officials responsible for implementing the Climate Policy Agenda have failed to account for the disproportionate impacts felt by the ordinary citizens of this country as a result of an alliance between international investment finance firms and governments to decarbonize the global economy by undermining private property in the means of production as well as a basis for economic calculation.

# Table of Contents

## **A. Administrative Background of Climate Crisis Agenda Under the Biden**

### **Administration (p. 4)**

- 1) EO 13990 PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT AND RESTORING SCIENCE TO TACKLE THE CLIMATE CRISIS (p. 4)
- 2) EO 14008 PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY (p. 6)
- 3) Secretarial Order 3398 (April 16, 2021) (p. 8)
- 4) Secretarial Order 3399 (April 16, 2021) (p. 9)

## **B. Executive Department Actions and Structural Violations Under the Climate Policy Agenda (CPA) (p. 11)**

- 1) United States Climate Alliance and the Paris Agreement (p. 17)
  - a) Structural Violations of the USCA (p. 17)
  - b) Violation of U.S. Constitution (p. 18)
- 2) United States Nationally Determined Contribution (NDC) Under the Paris Agreement (p. 19)
- 3) 30x30 and the America the Beautiful Conservation Atlas (p. 22)
- 4) Department of Interior Climate Action Plan (p. 24)
- 5) International Climate Finance Plan-United States Treasury Department-Multilateral Development Banks-Securities and Exchange Commission (p. 27)
  - a) Securities and Exchange Commission (p. 29)
  - b) ESG Investment Practices and Stakeholder Capitalism (p. 30)
  - c) Blackrock and Banking Powers (p. 31)

## **C. Statutory Structure, Major Questions, Non-Delegation, and EO 14008 and 13990 (p. 34)**

- a) A System of Delegation and Long-Term Policy (p. 42)

**Attachment 1:** Congressional Delegation Structured Around Domestic Impacts and Critical National Interest in Principle Resources and Fostering of Private Enterprise in Development of Those Resources (TABLE)

## Executive Summary

There appears to be a near complete disconnect between the scope, purpose and intent of the Congressional record on land use planning and the “*Climate Crisis*” agenda being propagated by the present administration. Over the past two decades, federal agencies have increasingly become ideologically driven, departing from the congressional mandates that form the basis of their authority and moving toward the more politically driven decision-making of the administration occupying the White House. When combined with blitz-style federal initiatives, this situation has created confusion, and blurred jurisdictional distinctions between federal, state, and county governments. The policymaking of the U.S. executive branch is now on a trajectory that has little basis in statute or alignment with congressionally declared policy relating to fundamental principles of good government.<sup>1</sup>

Close scrutiny demonstrates the Climate-Policy Agenda (CPA) is severely deficient in that it fails to comply with Data Quality Act standards for scientific information, it inappropriately relies upon executive directives and international guidance while significantly diminishing intergovernmental coordination with the political sub-divisions of the United States. The CPA agenda has resulted in a fragmented public record, diminution of the role, power, and authority of State and local governments by removing parity they now have in land-use planning and create more opportunities for mischief by national or international NGOs – all of which are counter to FLPMA<sup>2</sup> statute for land-use planning.

This work demonstrates that the provisions contained in EO 13990 and EO 14008 are in direct contravention to the U.S. Constitution, contrary to statutory Law, conflict with geopolitical boundaries, and subordinate State and local land-use planning prerogatives to supranational interests. Acting Director of the Office of Management and Budget signed off on a one page “*Budgetary Impact Analysis’s*” stating there is a minimum impact on costs and revenues of the federal government thus bypassing analytical requirements of the Regulatory Flexibility Act (RFA) and associated guidance and directives intended to protect and inform small entities including units of local government.<sup>3</sup>

Further the CPA Agenda puts the “*climate crisis*” at the center of the United States foreign policy and national security which is linked to commitments to international timetables and objectives achieved through regulatory tools applied to every sector of the U.S. economy. This whole of government approach is incompatible with the critical safeguards of federalism; raises questions

---

<sup>1</sup> F A Hayek, *The Constitution of Liberty* The Definitive Edition. (The University of Chicago Press, London 2011) chapter 16 *The American Contribution* p. 269 “A commitment to long-term principles, in fact, gives the people more control over the general nature of the political order than they would possess if its character were to be determined solely by successive decisions of particular issues. A free society certainly needs permanent means of restricting the powers of government, no matter what the particular objective of the moment may be.”; George Mason, first draft Virginia Declaration of Rights May 1776 “that no free Government, or the Blessings of Liberty can be preserved by any people, but by a firm adherence to Justice, Moderation, Temperance, Frugality, and Virtue and by frequent Recurrence to fundamental principles.” (see Kate Mason Rowland, *The Life of George Mason, 1725-1792* (2 vols.; New York: G. P. Putnam’s Sons, 1892 vol. 1 p 435)

<sup>2</sup> Public Law 94–579—October 21, 1976, as amended through December 19, 2014

<sup>3</sup> OMB Circular A-4 September 17, 2003 “*Rarely do all regions of the country benefit uniformly from government regulation.*”

under the non-delegation doctrine,<sup>4</sup> and the major questions doctrine; as well as a direct violation of Article II ratifying requirements concerning treaties, alliances, compacts, or agreements with a foreign power.

Senate Resolution 98 passed by the 105<sup>th</sup> Congress regarding the conditions for the U.S. becoming a signatory to any international agreement on greenhouse gas emissions under the United Nations Framework Convention on Climate Change states:

*“Whereas the exemption for Developing Country Parties is inconsistent with the need for global action on climate change and is environmentally flawed;”*

*“Whereas the Senate strongly believes that the proposals under negotiation, because of the disparity of treatment between Annex I Parties and Developing Countries and the level of required emission reductions, could result in serious harm to the United States economy, including significant job loss, trade disadvantages, increased energy and consumer costs, or any combination thereof”*

Heads of relevant agencies failed to consider these and other fundamental elements in their budgetary analysis without citing clear statutory authority for such an international policy agenda that will affect the economic, cultural, and public health interests and needs of State and County governments. This destabilizes the regulatory environment for entrepreneurial individuals and businesses who cannot compete with the Federal governments purchasing power in driving economic development and adjustments in every sector of the economy.

This administration’s policy agenda has cut off integral sources of critical energy, revenue, and significant potentials in tax revenues for rural resource dependent counties by terminating the XL pipeline,<sup>5</sup> and began to implement a regulatory regime making it difficult or impossible to acquire leases for new domestic oil, gas and coal deposits with the potential to generate billions of dollars in lease bonuses, rents and royalties, corporate taxes and worker income taxes.<sup>6</sup> Local units of government funded by tax royalties from coal have been significantly impacted with closures in many states.<sup>7</sup> This agenda disintegrates state and national interests by making the U.S. more dependent on foreign sources of minerals, energy, unregulated manufacturing, while imposing major increase in costs for consumers, individual industries, Federal, State, or Local Government agencies, and geographic regions. The Executive branch has cited no authority which grants it unilateral capacity to direct the entirety of government appropriations and funding streams

---

<sup>4</sup> CRS ‘Congress’s Delegation of “Major Questions”: The Supreme Court’s Review of EPA’s Authority to Regulate Greenhouse Gas Emissions May Have Broad Impacts’ Dec. 2021, p. 4 - “...*The nondelegation doctrine is based on separation of powers principles and exists primarily to prevent Congress from abdicating its core legislative function as established under Article I of the Constitution. In limiting Congress’s power to delegate, the nondelegation doctrine seeks to ensure that legislative decisions are made through a bicameral legislative process by the elected Members of Congress or governmental officials subject to constitutional accountability.*”

<sup>5</sup> Executive Order 12866 requires agencies to conduct a regulatory analysis for economically significant regulatory actions as defined by Section 3(f)(1). This requirement applies to rulemakings that rescind or modify existing rules as well as to rulemakings that establish new requirements. (OMB Circular A-4, 2003); EO 12866 Sec. (3)(f)(1) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities...

<sup>6</sup> States win oppositions in court; [gov.uscourts.lawd.179675.1.0.pdf \(archive.org\)](https://www.uscourts.gov/record-and-courts/press-releases/2022/06/30/2022-06-30-179675-1-0.pdf)

<sup>7</sup> SCOTUS now held in [597 U. S. *West Virginia v EPA* (2022)] that the Clean Power Plan was illegal. “Congress did not grant EPA ... the authority to devise emissions caps based on the generation shifting approach the Agency took in the Clean Power Plan,” a 6-3 majority wrote. “We cannot ignore that the regulatory writ EPA newly uncovered conveniently enabled it to enact a program that, long after the dangers posed by greenhouse gas emissions had become well known, Congress considered and rejected multiple times.” [20-1530 West Virginia v. EPA \(06/30/2022\) \(supremecourt.gov\)](https://www.supremecourt.gov/opinions/20-1530/wv-v-epa-20-1530.pdf)

relating to domestic affairs based on an international policy agenda that has not been ratified by the Senate.

On this basis the present mobilization of the executive branch fails to consider important procedural aspects of the problem and constitutes actions that are arbitrary and capricious.<sup>8</sup> The Administrative Procedures Act (APA) requires Federal Agencies to provide sufficient reasoning for rules and regulations they put in place.<sup>9</sup> EO 13990, and 14008 constitute an abuse of discretion not in accordance with land use statutes, run counter to constitutional right, power, and privilege concerning international commitments, and represent an excess of statutory jurisdiction, authority, or limitations in violation of the reserved (sovereign) powers of State and County governments relating to local home rule, self-government, and self-determination.<sup>10</sup>

The safeguards of federalism and the separation of powers is paramount to the necessary limitations upon the departments of government, which framework is enshrined in the first 3 articles of the U.S. constitution. The legislative, executive, and Judicial branches and then Article IV guaranteeing a compound republic for each individual sovereign state. The strategic policy of carving up the western territories into distinct republican states starting with the early land ordinances and pushed by Jefferson with the Louisiana purchase, set in stone on one hand the fundamental right of local people as soon as a representative constituency could be assembled to apply for statehood and establish a government for the administration of internal affairs as a sovereign, self-governing state with equal footing with the original states;<sup>11</sup> and on the other hand the disposal of federal lands to private appropriation fostering private property in the means of production. This diffusion of power both in separate branches of government at the Federal and State level, as well as the political subdivision are designed to decentralize government power<sup>12</sup> in order to protect the sovereign unit for which the government was established to begin with, the individual person.<sup>13</sup>

---

<sup>8</sup> The Arbitrary and Capricious Standard Under The APA, Landmark Publications, Contemporary Decisions 2017

<sup>9</sup> The Administrative Procedures Act is one of the essential checks on the growth of the executive branch. See, *Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 499 (2010)

<sup>10</sup> The Federalist No. 47, at 303 (J. Madison); *id.*, No. 62, at 378 (J. Madison); T. Merrill, Capture Theory and the Courts: 1967–1983, 72 Chi.-Kent L. Rev. 1039, 1043 (1997); *Solid Waste Agency of Northern Cook City. v. Army Corps of Engineers*, 531 U.S. 159, 173–174 (2001)

<sup>11</sup> Federalist No. 39, at 245 (J. Madison)

<sup>12</sup> Gregory, 501 U.S. at 458 “The Founders intended for federalism to prevent the abuse of power by diffusing concentrations of power. Observing the constitution “divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day”

<sup>13</sup> Consequently, the most fundamental purpose of our federalist structure is to protect individual liberty, see Federalist No. 51; *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J. dissenting)

## A. Administrative Background of Climate Crisis Agenda Under the Biden Administration

### Climate Crisis Executive Order 13990 and 14008 and Secretarial Orders 3398 and 3399 Summaries

#### 1 EO 13990 PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT AND RESTORING SCIENCE TO TACKLE THE CLIMATE CRISIS<sup>14</sup>

On January 20, 2021, President Biden signed Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. Sec. 2. Called for Immediate Review of Agency Actions Taken Between January 20, 2017, and January 20, 2021 of all existing regulations, orders, guidance documents, policies, and any other similar agency actions promulgated, issued, or adopted under the former administration.<sup>15</sup>

Heads of agencies were directed as appropriate and consistent with applicable law to consider suspending, revising, or rescinding the agency actions that present obstacles to the policy set forth in Sec. 1 of the order. Among other provisions, EO 13990 in Sec. 5 set out the importance of accounting for the benefits of reducing climate pollution and how “[a]n accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other action.”

Sec. 6. Revoked the March 2019 Permit for the Keystone XL Pipeline, stating that the pipeline disserves the U.S. national interest and that the United States and the world face a climate crisis. **This Executive Order does not cite any Constitutional or Statutory authority for setting a Policy agenda that revokes former orders prioritizing domestic national interests (consistent with Statutory obligations) in favor of international obligations that are burdensome to those domestic interests.**<sup>16</sup>

<b>EO 13990 Sec. 7 - Other Revocations</b>	
Executive Order 13766 of January 24, 2017 ( <i>Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects</i> )	Revoked
Executive Order 13778 of February 28, 2017 ( <i>Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule</i> )	Revoked

<sup>14</sup> Federal Register / Vol. 86, No. 14 / Monday, January 25, 2021/Presidential Documents

<sup>15</sup> OMB Circular A-4 “Executive Order 12866 requires agencies to conduct a regulatory analysis for economically significant regulatory actions as defined by Section 3(f)(1). This requirement **applies to rulemakings that rescind or modify existing rules as well as to rulemakings that establish new requirements.**” (emphasis ours); U.S. General Accounting Office, Regulatory Reform: Agencies’ Efforts to Eliminate and Revise Rules Yield Mixed Results, GAO/GGD-98-3, October 2, 1997.

<sup>16</sup> [Louisiana et al v. Joseph R. Biden Jr. et al CASE NO. 2:21-CV-01074](#) “The Court finds that EO 13990 contradicts Congress’ intent regarding legislative rulemaking by mandating consideration of the global effects. The Court further finds that the President lacks power to promulgate fundamentally transformative legislative rules in areas of vast political, social, and economic importance, thus, the issuance of EO 13990 violates the major questions doctrine.”

Executive Order 13783 of March 28, 2017 ( <i>Promoting Energy Independence and Economic Growth</i> )	Revoked
Executive Order 13792 of April 26, 2017 ( <i>Review of Designations Under the Antiquities Act</i> )	Revoked
Executive Order 13795 of April 28, 2017 ( <i>Implementing an America-First Offshore Energy Strategy</i> )	Revoked
Executive Order 13868 of April 10, 2019 ( <i>Promoting Energy Infrastructure and Economic Growth</i> )	Revoked
Executive Order 13927 of June 4, 2020 ( <i>Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities</i> )	Revoked
Executive Order 13834 of May 17, 2018 ( <i>Efficient Federal Operations</i> ),	Revoked except for sections 6, 7, and 11
Executive Order 13807 of August 15, 2017 ( <i>Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects</i> )	Revoked
Executive Order 13920 of May 1, 2020 ( <i>Securing the United States Bulk-Power System</i> )	suspended for 90 days.
Presidential Memorandum of April 12, 2018 ( <i>Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards</i> )	Revoked
Presidential Memorandum of October 19, 2018 ( <i>Promoting the Reliable Supply and Delivery of Water in the West</i> )	Revoked
Presidential Memorandum of February 19, 2020 ( <i>Developing and Delivering More Water Supplies in California</i> )	Revoked

EO 13990 Summary bullets:

- Immediate Review of Agency Actions Taken Between January 20, 2017, and January 20, 2021.** Directs the heads of all agencies to immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted during the Trump Administration that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order.
- Restoring National Monuments.** (a) The Secretary of the Interior, as appropriate and consistent with applicable law, including the Antiquities Act, 54 U.S.C. 320301 et seq., shall, in consultation with the Attorney General, the Secretaries of Agriculture and Commerce, the Chair of the Council on Environmental Quality, and Tribal governments, conduct a review of the monument boundaries and conditions that were established by Proclamation 9681 of December 4, 2017 (Modifying the Bears Ears National Monument); Proclamation 9682 of December 4, 2017 (Modifying the Grand Staircase-Escalante National Monument); and Proclamation 10049 of June 5, 2020 (Modifying the Northeast Canyons and Seamounts Marine National Monument), to determine whether restoration of the monument boundaries and conditions that existed as of January 20, 2017, would be appropriate. (EO 13990 Sec. 3)



- **Accounting for the Benefits of Reducing Climate Pollution.** (a) It is essential that agencies capture the full costs of greenhouse gas emissions as accurately as possible, including by taking global damages into account. Doing so facilitates sound decision-making, recognizes the breadth of climate impacts, and supports the international leadership of the United States on climate issues. The “social cost of carbon” (SCC), “social cost of nitrous oxide” (SCN), and “social cost of methane” (SCM) are estimates of the monetized damages associated with incremental increases in greenhouse gas emissions. They are intended to include changes in net agricultural productivity, human health, property damage from increased flood risk, and the value of ecosystem services. An accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions.<sup>17</sup> (EO 13990 Sec. 5)<sup>18</sup>
- **Revoked the March 2019 Permit for the Keystone XL Pipeline.**<sup>19</sup> (EO 13990 Sec. 6)
- **Directs other revocations** (see tables below). (EO 13990 Sec. 7)

## 2 EO 14008 PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY<sup>20</sup>

On January 27, 2021, **Executive Order 14008, *Tackling the Climate Crises at Home and Abroad*** was signed and is comprised of 2 parts, PART I - PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY. The purpose includes submitting the United States instrument of acceptance to rejoin the Paris Agreement and immediately beginning the process of developing U.S. Nationally Determined Contribution (NDC) under the Paris Agreement.<sup>21</sup>

PART II - TAKING A GOVERNMENT-WIDE APPROACH TO THE CLIMATE CRISIS which sets the policy (Sec. 201) to deploy the full capacity of federal agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy. (Sec. 202) established the White House Office of Domestic Climate Policy, and (Sec. 203) established a National Climate Task Force tasked with facilitating the organization, development and deployment of a Government-wide approach to combat the climate crisis. This order eliminates fossil fuel subsidies (Sec. 209), paused new oil and natural gas leases on public lands or in offshore waters (Sec. 208), and seeks to conserve 30% of land and

<sup>17</sup> Federal District Court Western District of Louisiana Lake Charles Division granted preliminary injunction to plaintiff states and issued an order enjoining and restraining federal departments from Relying upon or implementing Section 5 of Executive Order 13990 in any manner. [PIOCC.pdf \(texasattorneygeneral.gov\)](#) (appealed and reinstated by three judge 5<sup>th</sup> circuit appeals court, being appealed to a 15-judge appellate court)

<sup>18</sup> January 6<sup>th</sup> 2023 [Biden-Harris Administration Releases New Guidance to Disclose Climate Impacts in Environmental Reviews | CEQ | The White House](#); Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices [Federal Register :: National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#)

<sup>19</sup> EO 13990 Sec. 6(d) – “...The Keystone XL pipeline disserves the U.S. national interest. The United States and the world face a climate crisis. That crisis must be met with action on a scale and at a speed commensurate with the need to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory...”

<sup>20</sup> Federal Register / Vol. 87, No. 2 / Tuesday, January 4, 2022 / Notices

<sup>21</sup> [Microsoft Word - United States NDC April 21 2021 Final.docx \(unfccc.int\)](#);

water by the year 2030 (Sec. 216). It is important to note that the United States NDCs for decarbonization includes land use, for China and the EU land use is excluded.

To date 26 Federal Departments under the Executive have developed Climate Action Plans pursuant to 14008 that are now being cited on the Federal Register as a preliminary need for flip-flopping<sup>22</sup> recent Records of Decisions (RODs) for Monument Management Plans, Sage Grouse Management Plans, and other Resource management planning documents developed pursuant to the Federal Land Policy and Management Act touching tens of millions of acres of surface and sub-surface lands and resources.

EO 14008 summary bullets:

- **Place climate change at the forefront of United States foreign policy** by making commitments to host international summits and forums.
- **Directs aggressive greenhouse gas emission reductions** putting the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050.
- **Initiates the process of submitting the United States instrument of acceptance to rejoin the Paris Agreement.** (EO 14008 Part 1 Sec. 102)
- Directed the United States to **immediately begin the process of developing its nationally determined contribution** under the Paris Agreement.<sup>23</sup> (EO 14008 Part 1 Sec. 102(e))
- **Calls for the development of a Climate Finance Plan**<sup>24</sup>—the *first of its kind* in the U.S. government—focuses specifically on international climate finance. (EO 14008 Part 1 Sec. 102(f))
- **Orders the transition of the United States to a carbon-free economy** by using the purchasing and banking power of the United States Treasury Department<sup>25</sup> to demonetize investments in the fossil fuel industry and encourage the multinational banking community to divert capital support from the coal, natural gas, and fossil fuel sectors to green energy. (EO 14008 Part 1 Sec. 102(g), (h))
- **Establishes a White House Office of Domestic Climate Policy and a National Climate Task Force** (EO 14008 Part 2 Sec. 203)
- **Directed the Secretary of Interior to pause new oil and natural gas leases** on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior’s broad stewardship responsibilities. (EO 14008 Part 2 Sec. 208)

<sup>22</sup> *California v. Bernhardt*, 472 F.Supp.3d 573, 600–01 (N.D. Cal. 2020) “While the Executive branch holds the power to issue executive orders, an agency cannot flip-flop regulations on the whims of each new administration. The APA requires reasoning, deliberation, and process. These requirements exist in part, because markets and industries rely on stable regulations.”

<sup>23</sup> [Microsoft Word - United States NDC April 21 2021 Final.docx \(unfccc.int\)](#) The United States Nationally Determined Contribution, Reducing Greenhouse Gases in the United States: a 2030 emissions target, April 21, 2021

<sup>24</sup> [U.S.-International-Climate-Finance-Plan-4.22.21-Updated-Spacing.pdf \(whitehouse.gov\)](#) The Whitehouse, United States International Climate Finance Plan, April 22, 2021; [National Strategy to Develop Statistics for Environmental-Economic Decisions](#), A U.S. System of Natural Capital Accounting and Associated Environmental Economic Statistics – Office of Science and Technology Policy Office of Management and Budget Department of Commerce, The White House, Jan. 2023

<sup>25</sup> [Fossil Fuel Energy Guidance for the Multilateral Development Banks \(treasury.gov\)](#); [Microsoft Word - Fossil fuel banking letter-FINAL Reformatted.docx \(utah.gov\)](#)

- **Directs the head of each agency to develop a Climate Action Plan**<sup>26</sup> to be submitted to the Task Force and the Federal Chief Sustainability Officer. (EO 14008 Part 2 Sec. 211)
- **Directs the Secretary of Interior to achieve the goal of conserving at least 30 percent of our lands and waters by 2030.** (EO 14008 Part 2 Sec. 216)
- The Order created within the Executive Office of the President a **White House Environmental Justice Interagency Council**. The Chair of the Council on Environmental Quality shall serve as Chair of the Interagency Council. (EO 14008 Part 2 Sec. 220)
- **Established the Justice40 Initiative**<sup>27</sup> directing the Chair of the Council on Environmental Quality, the Director of the Office of Management and Budget, and the National Climate Advisor, in consultation with the Advisory Council, shall jointly publish recommendations on how certain Federal investments might be made toward a goal that 40 percent of the overall benefits flow to disadvantaged communities. (EO 14008 Part 2 Sec. 223)<sup>28</sup>

### **Secretarial Orders 3398 and 3399 were issued pursuant to these Executive Orders April 16, 2021**

- 3 Secretarial Order 3398 (April 16, 2021) - Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.** Sec. 1 Purpose. This Order implemented the review of the Department of the Interior (Department) actions directed by Executive Order (EO) 13990. Among other provisions, EO 13990 directed the Department to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions that are or may be inconsistent with, or present obstacles to, the policy set forth in that EO.

EO 13990 Cited no Constitutional or Statutory authority warranting Climate Change Policies that implicate a whole of government approach to transition every sector of the economy away from carbon sources.<sup>29</sup> Further the burden resides on responsible officials to make available the findings showing such orders are inconsistent with priorities in the order such as National survival, underserved communities, and the promotion of public health and the environment. Sec. 4 of the order states that the following Secretarial Orders have been found to be inconsistent with, or present obstacles to, the policy set forth in EO 13990 and were thereby revoked.

<sup>26</sup> One of the preliminary needs cited in the Notice of Intent to amend Sage Grouse Plans across ten states was the implementation of the Department of the Interior's Climate Action Plan - [Federal Register / Vol. 86, No. 222 / Monday, November 22, 2021 / Notices; Federal Climate Adaptation Plans | Office of the Federal Chief Sustainability Officer](#)

<sup>27</sup> [whejac\\_interim\\_final\\_recommendations\\_0.pdf \(epa.gov\)](#)

<sup>28</sup> January 6<sup>th</sup> 2023 [WHAT THEY ARE SAYING: Environmental Justice and Congressional Leaders, Advocates Applaud the New Climate and Economic Justice Screening Tool | CEO | The White House; Explore the map - Climate & Economic Justice Screening Tool \(geoplatform.gov\)](#)

<sup>29</sup> Regarding the United States Nationally Determined Contributions for decarbonization under the agreement "*The NDC is an absolute economy-wide emissions reduction target.*" [Microsoft Word - United States NDC April 21 2021 Final.docx \(unfccc.int\)](#)

<b>Secretarial Order 3398 Revocations</b>	
SO 3348 – “ <i>Concerning the Federal Coal Moratorium</i> ” (March 29, 2017)	Revoked
SO 3349 – “ <i>American Energy Independence</i> ” (March 29, 2017)	Revoked
SO 3350 – “ <i>America-First Offshore Energy Strategy</i> ” (May 1, 2017)	Revoked
SO 3351 – “ <i>Strengthening the Department of the Interior's Energy Portfolio</i> ” (May 1, 2017)	Revoked
SO 3352 – “ <i>National Petroleum Reserve – Alaska</i> ” (May 31, 2017)	Revoked
SO 3354 – “ <i>Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program</i> ” (July 6, 2017)	Revoked
SO 3355 – “ <i>Streamlining National Environmental Policy Reviews and Implementation of Executive Order 13807, ‘Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects’</i> ” (August 31, 2017)	Revoked
SO 3358 – “ <i>Executive Committee for Expedited Permitting</i> ” (October 25, 2017)	Revoked
SO 3360 – “ <i>Rescinding Authorities Inconsistent with Secretary's Order 3349, ‘American Energy Independence’</i> ” (December 22, 2017)	Revoked
SO 3380 – “ <i>Public Notice of the Costs Associated with Developing Department of the Interior Publications and Similar Documents</i> ” (March 10, 2020)	Revoked
SO 3385 – “ <i>Enforcement Priorities</i> ” (September 14, 2020)	Revoked
SO 3389 – “ <i>Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews</i> ” (December 22, 2020)	Revoked

- 4 Secretarial Order 3399 (April 16, 2021) - Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process**: prioritizes action on climate change and establishes a Departmental Climate Task Force. The only authorities cited to justify these actions is Sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, and 4 executive orders including EO 13990, and 14008. A Departmental Climate Task Force was established in the Department. The Climate Task Force will counsel the Secretary, who is a member of the National Climate Task Force. The Climate Task Force is directed to develop a strategy to reduce climate pollution; improve and increase adaptation

and resilience to the impacts of climate change; address current and historic environmental injustice; protect public health; and conserve Department-managed lands.<sup>30</sup>

(page break)

---

<sup>30</sup> SO – 3399 Sec. 7 “To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.”

## B. Executive Department Actions and Structural Violations Under the Climate Policy Agenda (CPA)

### 1) United States Climate Alliance and the Paris Agreement

President Obama signed the U.S. into the Paris Agreement illegitimately without concurrence from the United States Senate. The Nationally Determined Contributions (NDCs) for the United States were so onerous that the Trump administration pulled out of the Paris accord and halted all implementation of the NDCs and cut dollars going to the Green Climate Fund which was costing American taxpayers a “vast fortune.” Citing from the National Economic Research Associates (NERA),<sup>31</sup> the short-term compliance with the NDCs could cost America as much as 2.7 million lost jobs. President Trump pointed out from the research, that by 2040, production would be cut in the following sectors: “paper down 12 %; cement down 23%; iron and steel down 38%; coal down 86 %; natural gas down 31%. The cost to the economy at this time would be close to \$3 trillion in lost GDP and 6.5 million industrial jobs, while households would have \$7,000 less income, and in many cases worse than that.” The agreement was withdrawn from because it was “less about the climate and more about other countries gaining a financial advantage over the United States.” It was June 1<sup>st</sup>, 2017, the Trump administration withdrew from the Paris Agreement.

The same day the Trump administration pulled the U.S. out of the Paris Accord, California, New York, and Washington governors created the U.S. Climate Alliance (USCA)<sup>32</sup> to achieve the goals of the Paris Agreement and Progress towards the U.S. climate target committing to tracking and reporting progress to an international body. The Alliance now consists of 24 state governors. These governors have sense been collaborating domestically and carrying a message of U.S. commitment to the international objectives and goals under Paris through COP23 and subsequent conferences of the parties. COP23 is the informal name for the 23rd Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC).



**| Growing a Bipartisan State-Led Climate Action Coalition**

On June 1, 2017, the U.S. Climate Alliance was formed by a small group of U.S. governors committed to achieving the goals of the Paris Agreement in response to the previous federal administration’s decision to withdraw the United States from this international accord.

Since then, the Alliance has rapidly grown to include a sizeable, and bipartisan, group of governors from states across the country representing:

- 55% of the U.S. population.
- 60% of the U.S. economy.
- Nearly 40% of U.S. emissions.



<sup>31</sup> [Report \(globalenergyinstitute.org\)](http://globalenergyinstitute.org) NERA, Impacts of Greenhouse Gas Regulations On the Industrial Sector, NERA Economic Consulting 1255 23rd Street NW Washington, DC 20037, March 2017. (Prepared for: American Council for Capital Formation Center for Policy Research)

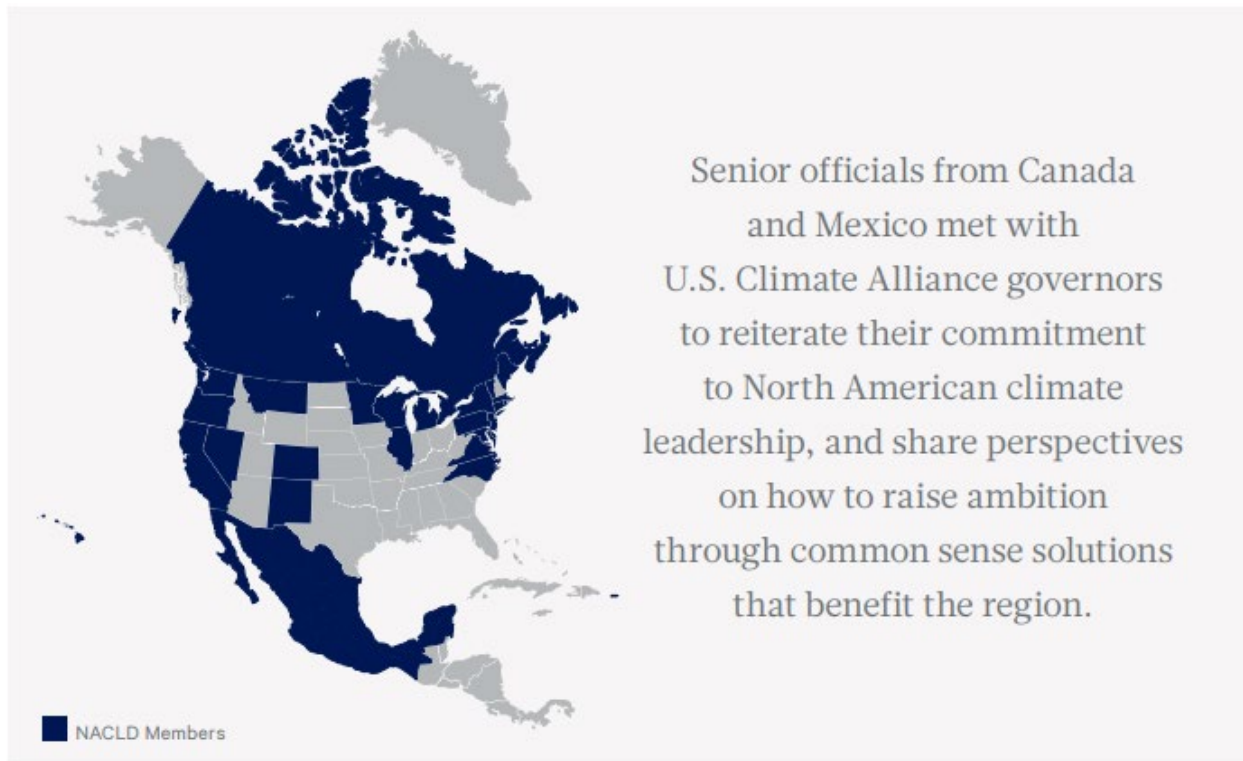
<sup>32</sup> [The U.S. Climate Alliance](http://TheU.S.ClimateAlliance) UNITED STATES CLIMATE ALLIANCE, U.S. Climate Alliance States Commit to New High-Impact Actions to Achieve Climate Goals and Go Further, Faster, Together, Nov. 7, 2021 - (current) is a bipartisan coalition of U.S. governors leading states that collectively represent 62% of U.S. GDP, 56% of the U.S. population, and 43% of U.S. emissions.

Furthermore, Alliance States in order to accelerate climate policy efforts across North America launched the North American Climate Leadership Dialogue (NCLD) at COP23 in partnership with Canada and Mexico. Stating in the Joint Statement on North American Climate Leadership, September 13, 2018:<sup>33</sup>

*"Our jurisdictions are already leaders on zero-carbon energy. We commit to go further, by reaffirming the commitment made at the North America Leaders' Summit to work toward a goal of 50% of zero-carbon power generation by 2025 collectively across North America, working hand-in-hand with the private sector and beyond the borders of our membership."*

and that,

*"Delivering on that promise for closer cooperation, at today's Global Climate Action Summit, Canada, Mexico, and the U.S. Climate Alliance agreed to work together to achieve an ambitious climate agenda, and to report on our progress at the 2019 UN Secretary General's Climate Summit."*



(North American Climate Leadership Dialogue Update on Progress 2018/19, published Dec. 2019. Note: (MT is no longer an Alliance member))

<sup>33</sup> [JOINT STATEMENT ON NORTH AMERICAN CLIMATE LEADERSHIP — U.S. Climate Alliance \(usclimatealliance.org\)](https://www.usclimatealliance.org/joint-statement-on-north-american-climate-leadership)  
 UNITED STATES CLIMATE ALLIANCE, Joint Statement on North American Climate Leadership, Sep. 13, 2018 – “We recognize the importance of the Social Cost of Carbon, a critical tool for assessing the damages associated with carbon pollution, and Canada and Mexico join the partnership between the U.S. Climate Alliance, Resources for the Future, and Climate Impact Lab in order to share information related to scientific progress to update the metric, and promote opportunities to use the Social Cost of Carbon appropriately across a wide range of policy applications.”

The alliance states spent four years (2017-2021) backstopping federal rules, defending against challenges to critical climate policies and regulations, and quote, *“filling the void left by the previous administration’s decision to withdraw the U.S. from the Paris Agreement.”*<sup>34</sup> These States along with hundreds of cities across the U.S. proceeded to backdoor the federal government relating to international affairs and invested billions in aligning *“policies and regulations to help transform the U.S. economy.”*<sup>35</sup> This involved the inclusion of the North American Climate Leadership Dialogue (NCLD) agreed to by Canada, Mexico and the Alliance States at COP23 in Bonn, Germany.

The NCLD in September 2018 issued a joint statement seeking to accelerate climate policy efforts across North America. This included the need for the establishment of an interim Social Cost of Carbon (SCC) tool used to assess carbon pollution touching virtually every human activity. This tool was adopted by the Biden administration and interim estimates were developed under section 5 of EO 13990 which is currently being litigated by multiple plaintiff states who are challenging the executive’s authority to establish a new agency and implement the SCC analysis which is highly speculative and breaks with long settled rules regarding regulatory cost/benefit analysis under OMB Circular A-4 and EO 12866.<sup>36</sup>

January 6th 2023 the Biden Harris administration issued a press release announcing new guidance to disclose climate impacts in environmental reviews.<sup>37</sup> On January 9<sup>th</sup>, 2023, the Council on Environmental Quality issued interim guidance on the federal register<sup>38</sup> affective upon publication to *“assist agencies in analyzing greenhouse gas (GHG) and climate change effects of their proposed actions under the National Environmental Policy Act (NEPA).”*

*“Disclosing and reducing emissions will ensure we’re building sustainable, resilient infrastructure for the 21<sup>st</sup> century and beyond,”*

said CEQ Chair Brenda Mallory.

*“These updated guidelines will provide greater certainty and predictability for green infrastructure projects, help grow our clean energy economy, and help fulfill President Biden’s climate and infrastructure goals.”*

<sup>34</sup> USCA Annual Report FURTHER FASTER TOGETHER, United States Climate Alliance, 2021: *“Over the past four years, we have coordinated across state lines to enact ambitious bipartisan climate solutions and leverage our collective market power to transform the U.S. economy, while also backstopping federal rules and fighting off challenges to critical federal policies and regulations.”* USCA, Further, Faster, Together: U.S. Climate Alliance Unveils COP26 Delegation, United States Climate Alliance, October 29, 2021 [Further, Faster, Together: U.S. Climate Alliance Unveils COP26 Delegation — U.S. Climate Alliance \(usclimatealliance.org\)](https://www.usclimatealliance.org/); USCA, U.S. Climate Alliance Releases 2021 Annual Report, Details Pathway to Achieve 2030, 2050 Climate Goals Through Collective State-Federal Action, United States Climate Alliance, December 15, 2021 [U.S. Climate Alliance Releases 2021 Annual Report, Details Pathway to Achieve 2030, 2050 Climate Goals Through Collective State-Federal Action — U.S. Climate Alliance \(usclimatealliance.org\)](https://www.usclimatealliance.org/)

<sup>35</sup> [Fact Sheet | The U.S. Climate Alliance and Related Actions | White Papers | EESI](https://www.eesi.org/) Richard Nunno, Fact Sheet | The U.S. Climate Alliance and Related Actions, Environmental Energy and Study Institute, Aug. 14, 2017

<sup>36</sup> STATE OF LOUISIANA; et al., Applicants, v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; et al., Respondents, April 27, 2022 - “Although EO13990 requires that virtually every agency apply these numbers in virtually every decision, the government has yet to identify a single statute authorizing either the IWG or the SC-GHG Estimates . . .”; “. . . As the district court expressly found, the government is using the SC-GHG Estimates to alter the nature of federal-state relations in cooperative federalism programs. See App. A at 19-20. But Congress will ‘not be deemed to have significantly changed the federal/state balance’ unless it ‘conveys its purpose clearly.’ United States v. Bass, 404 U.S. 336, 349 (1971).

<sup>37</sup> [Biden-Harris Administration Releases New Guidance to Disclose Climate Impacts in Environmental Reviews | CEQ | The White House](https://www.eea.gov/)

<sup>38</sup> Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices, [Federal Register :: National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](https://www.federalregister.gov/)



At COP26 in the fall of 2021 the USCA was accompanied by a new partner: the federal government, which according to the USCA “*hit the ground running. . . in large part because of ambitious climate action we laid.*” Which included aligning “*policies and regulations to help transform the U.S. economy.*”<sup>39</sup>

The USCA is looking to take existing state regulations and policies in conformance to these international obligations and scale them up at the federal regulatory level. This approach includes the forging of a new “state-federal partnership” designed to play an integral role in meeting the goals and objectives under the Paris Agreement.

*“The U.S. Nationally Determined Contribution (NDC), which outlines and communicates post-2020 climate actions to other parties of the Paris Agreement, enshrines this new kind of state-federal partnership and the historic role of states in keeping climate leadership alive in the United States through differing federal administrations. . .” (USCA, 2021)*

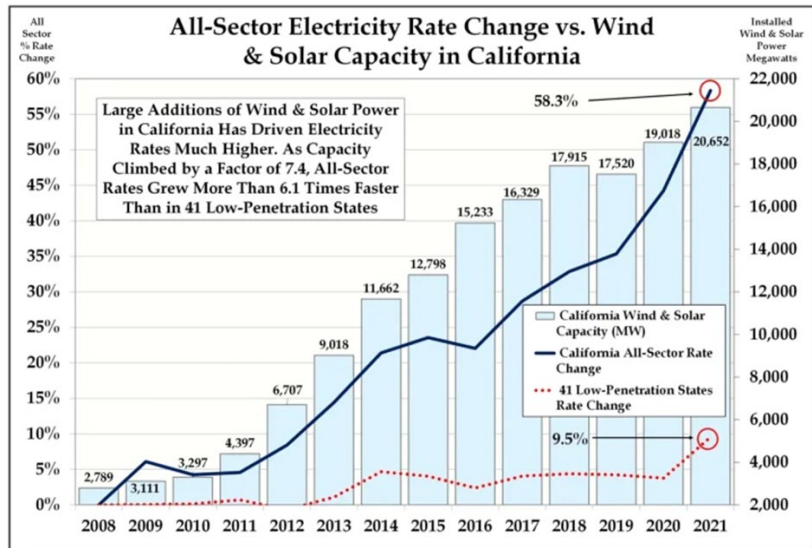
In April 2021, the U.S. Department of Agriculture, the Department of Interior, and the Council on Environmental Quality asked the U.S. Climate Alliance for recommendations to “*support the federal 30x30 effort to be achievable; well-coordinated with state priorities, goals, and leadership; and a key pillar of a federal climate strategy.*” Best practices were also shared from member states with proposals of sustained dialogue to deepen collaboration between state and federal 30x30 efforts. May 5<sup>th</sup>, 2022, Vermont passed legislation<sup>40</sup> to conserve 50% of lands in the state by 2050. New York is also passing 30x30 legislation. Over the past year, a number of Alliance members committed to more-ambitious GHG emissions-reduction targets within their own states that set a North Star towards [deep GHG emissions reductions](#) no later than 2050.

// THE BIG PICTURE	
Alliance members have adopted or are in the process of adopting the following	# of Alliance Members
<b>ECONOMY-WIDE GHG TARGETS &amp; CLIMATE GOVERNANCE</b>	
Lead by Example programs and goals CA, CO, CT, DE, HI, IL, L A, ME, MD, MA, MI, MN, NV, NM, NJ, NY, NC, OR, PA, RI, VT, VA, WA, WI	24
Economy-wide GHG goals CA, CO, CT, HI, IL, L A, ME, MD, MA, MI, MN, NV, NJ, NM, NY, NC, OR, PA, RI, VT, VA, WA	22
State climate action plans CA, CO, CT, DE, HI, ME, MD, MA, MN, NV, NM, NJ, NY, NC, OR, PA, RI, VT, WA, WI	20
Net-zero GHG goals CA, HI, L A, MA, ME, MI, NM, NV, NY, RI, WA, VA, VT	13
<b>CLIMATE FINANCE</b>	
Green and/or resilient infrastructure banks CA, CO, CT, DE, HI, IL, LA, ME, MD, MI, NV, NY, PA, RI, VA	15
<b>CARBON PRICING</b>	
Carbon market participation CA, CT, DE, ME, MD, MA, NJ, NY, PA, RI, VA, VT, WA	13

<sup>39</sup> USCA 2021 Annual Report FURTHER FASTER TOGETHER: “*After nearly four years of backstopping federal rules, defending against challenges to critical climate policies and regulations, and filling the void left by the previous administration’s decision to withdraw the U.S. from the Paris Agreement, we gained a new partner: the federal government. This new partner hit the ground running this year in large part because of the foundation of ambitious climate action we laid. . . . We invested billions into building more equitable, resilient, and sustainable communities and we aligned policies and regulations to help transform the U.S. economy.*”

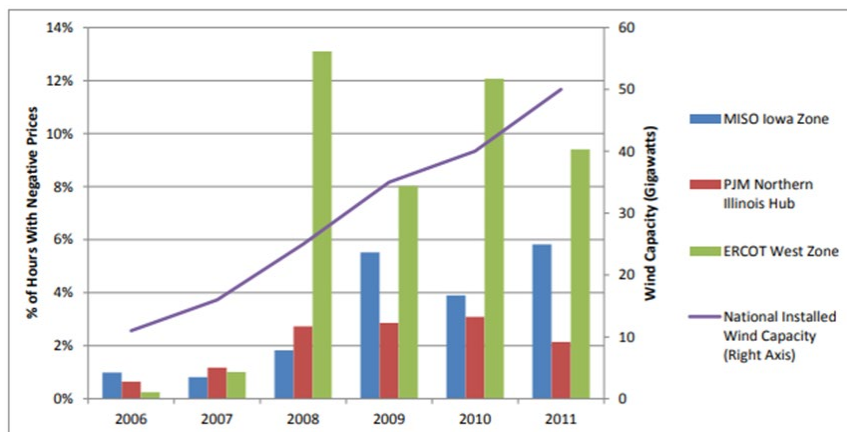
<sup>40</sup> May 5, 2022, the Vermont legislature passed a law to protect 50 percent of the land within the state by 2050. [H.606](#), the “Community Resilience and Biodiversity Protection Act,” is now awaiting the signature of Governor Phil Scott. The conservation goal is stated as follows: “*Thirty percent of Vermont’s total land area shall be conserved by 2030, and 50 percent of the State’s total land area shall be conserved by 2050. The Secretary of Natural Resources shall assist the State in achieving these goals. The land conserved shall include State, federal, municipal, and private land.*”

Alliance states boast of increased jobs and GDP with a corresponding net reduction of Green House Gas reductions without noting the increase of GDP/jobs is a result of federal subsidization of green infrastructure. A further failure for Alliance states is the lack of disclosure in their reports to show increased cost passed on to consumers and rate payers. The chart below shows to corresponding increase of sector-wide ratepayer costs with installation of wind and solar power capacity in the State of California.



Source: Ventyx Velocity Suite; U.S. Energy Information Administration

There is also lack of transparency regarding the potential for undermining energy reliability to consumers by manipulating the energy market through the federal Production Tax Credit (PTC) and other green energy subsidies. The record shows that the PTC for wind generation is large enough that it is used to artificially incentivize a business to pay customers to take its product, in this case wind energy. The federal PTC for wind provides \$22 per MWh of energy generated by a wind resource. These significant incentives allows wind energy sources to bid negative prices into the market while still making a profit. The chart below from a 2012 study on [Negative Electricity Prices and the Production Tax Credit](#) shows the percent of hours with negative pricing.



Subsidization of wind and solar by USCA and Federal Climate Policies are undermining conventional technologies and businesses within the energy sector which are needed to maintain reliability and affordability for consumers. This gives alliance states an inequitable excess of federal subsidies and finance options to create green jobs and shift to renewables which gives an illusion of job creation and increased GDP of alliance states which they pit against non-member states whose traditional industries are not being permitted or being phased out by the heavy hand of regulation.<sup>41</sup>

### **America Is all In: Americas Pledge**

Mike Bloomberg and then governor of California Jerry Brown launched Americas Pledge. This pledge was an initiative that quantified the climate actions of U.S. cities, states, and businesses to drive down emissions in line with the Paris Agreement goals.

This was initiated separately from the USCA as an unprecedented coalition of U.S. states, cities, businesses, universities, and other institutions to fulfill “Americas” climate pledge to the world. The commitments are “*reflected in the large number of American actors continuing to back the Paris Agreement,*” including U.S. Climate Alliance, Climate Mayors, and many others.

On December 10<sup>th</sup>, 2019, Bloomberg took it upon himself stepping “*in for the U.S. federal government to convey U.S. climate action to the international climate community*” and released to the conference of the parties in Madrid Spain a report entitled “*Accelerating Americas Pledge*”<sup>42</sup> The document states:

*“We formed America’s Pledge to quantify and communicate the successes of this unprecedented climate mobilization—and to show the international community that, despite federal inaction, we are still in.”*

November 2022 *America Is All In* published a document entitled AN “ALL-IN” PATHWAY TO 2030: The Beyond 50 Scenario.<sup>43</sup> The beyond 50 scenario represents an excess of 50% GHG emissions reductions by 2030. Further, *America is All In* issued a press release Nov. 8<sup>th</sup> 2022 claiming capacity through states, cities, and businesses to deliver on U.S. climate targets regardless of the midterm election results.<sup>44</sup>

These states, businesses, and other institutions are bringing a message of *America is all in* into the international climate policy community while non-member states and a whole host of businesses and investment backed expectations are not all in on destroying their own industries. The carbon-based industries of many of our states and communities provide essential goods and

<sup>41</sup> Joint Governors’ Comment on SEC Release Nos. 33-11042 & 34-94478, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (File No. S7-10-22) May 31, 2022 [Joint-Governors-Letter-on-SEC-Climate-Disclosure-Proposal-5-31-22.pdf \(idaho.gov\)](#) “. . .The proposed rule (SEC Rule) degrades and undermines that mission by injecting subjective political judgments on climate policy into corporate disclosures, in a manner calculated to harm the states that provide for America’s energy security. . .”

<sup>42</sup> [Accelerating-Americas-Pledge.pdf \(bbhub.io\)](#); [Mike Bloomberg Delivers America's Pledge at COP25 | Americas Pledge On Climate](#)

<sup>43</sup> [Final - The Beyond 50 Scenario 0.pdf \(americaisallin.com\)](#);

<sup>44</sup> [Beyond 50 Press Release.pdf \(americaisallin.com\)](#)

services to the American people. The means of using whole of government, economy wide, executive policy objectives to force economy-wide market transitions is a fundamental violation of constitutional due process.

#### a) Structural Violations of the USCA:

Not only has the Federal Executive entered into these international commitments without Senate concurrence nor congressional delegation, this alliance of state Governors have committed themselves to achieve obligations under the Paris Accord regardless of the stance of the federal government on the same object. There are now 24 State Governors signed onto the alliance. States are explicitly prohibited in Article 1 Sec. 10 of the US Constitution from *entering into any treaty, alliance, or confederation* with another state in general let alone in commitment to international objectives not ratified through the process the constitution requires.<sup>45</sup>

*“From the very nature and organization of the general or national government, it is vested with the sole jurisdiction over all matters of a national character, and of external concern. The states, by the adoption of the existing Constitution, have become divested of all their national attributes, except such as relate purely to their internal concerns. They are not known to foreign governments as states, nor can they properly be distinguished by them from the mass of this nation.”*

- *Holmes v. Jennison et. al. 1840*

States have a residual and inviolable sovereignty touching all places within their boundaries. But being prohibited from entering, without the consent of Congress, into "any agreement or compact with another state, or with a foreign power," can it be said, that a state can act upon the subject at hand (international climate policy commitments), when, at the same time, states are prohibited from entering into any agreement or compact with such governments. *“Certainly, the power to act implies the power to regulate the manner of action.”*

The case here is that an Alliance was formed by California, Washington, and New York state governors and now consists of 24 states, called the United States Climate Alliance, and that under the obligations and commitments under this alliance, member states are developing extensive strategic policy and fiscal leverage to transform the U.S. economy and therefore influence non-member states in order to meet goals and objectives expressed in numerical terms, and agreed to by international governments.

The opposing case will be made that there is no treaty involved in the dialogue, statements, and agreements among member states and other governments. But we can see the use of terms by the framers of the Constitution as expressed by the court relating to state authorities and foreign nations are clear:

*“. . . We can be at no loss to comprehend the intention of the framers of the Constitution in using all these words, "treaty," "compact," "agreement." The word "agreement," does not necessarily*

---

<sup>45</sup> (*Williams v. Bruffy*, Oct 1877) - “Now, the Constitution of the United States prohibits any treaty, alliance, or confederation by one State with another. The organization (confederacy) whose enactment is pleaded cannot, therefore, be regarded in this court as having any legal existence.” (*Holmes v. Jennison et. al.* (1840)) - “It is now well settled and understood, that there are three ways in which the states have been deprived of power by the Constitution. First, where there is a grant of power to the national government, exclusive in its terms. Secondly, where, after a grant to that government, there is a prohibition upon the states in relation to the same object. And, thirdly, where the exercise by the states of an authority conferred upon the national government would be repugnant and incompatible.”

*import any direct and express stipulation; nor is it necessary that it should be in writing. If there is a verbal understanding to which both parties have 'assented, and upon which both are acting, it is an "agreement. . ."*

And that,

*“. . . It would be but an evasion of the Constitution to place the question upon the formality with which the agreement is made. The framers of the Constitution manifestly believed that any intercourse between a state and a foreign nation was dangerous to the Union; that it would open a door of which foreign powers would avail themselves to obtain influence in separate states. Provisions were therefore introduced to cut off all negotiations and intercourse between the state authorities and foreign nations. . .”<sup>46</sup>*

#### **b) USCA Violation of U.S. Constitution:**

**Prohibition on the States: Article 1 Sec. 10 U.S. Const. Clause 1** “No State shall enter into any Treaty, Alliance, or Confederation; Clause 3 No State shall, without the Consent of Congress, . . enter into any Agreement or Compact with another State, or with a foreign Power”<sup>47</sup>

**Treaty Clause: Article II Sec. 2 clause 2** - “He (President) shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur;”

**Jurisdiction of Federal Judiciary: Article III Sec. 2** - “The Judicial power shall extend to all cases in law and equity arising under this constitution . . . .

**Article III, Section 2.** of the Constitution recognizes only three types of law as they existed under the English law of the time: “Law, "Equity" and "Admiralty or Maritime" law:” The judicial power [of the federal courts] shall extend to all cases, in law and equity, arising under this

<sup>46</sup> *Holmes v. Jennison et. al.* (1840) “A few extracts from an eminent writer on the laws of nations, showing the manner in which these different words have been used, and the different meanings sometimes attached to them, will, perhaps, contribute to explain the reason for using them all in the Constitution; and will prove that the most comprehensive terms were employed in prohibiting to the states all intercourse with foreign nations: Vattel, page 192, sec. 152, says: "A treaty, in Latin foedus, is a compact made with a view to the public welfare, by the superior power, either for perpetuity, or for a considerable time."; Section 153. " The compacts which have temporary matters for their object, are called agreements, conventions, and pactions. They are accomplished by one single act, and not by repeated acts. These compacts are perfected in their execution once for all ; treaties receive a successive execution, whose duration equals that of the treaty."; Section 154. Public treaties can only be made by the "supreme power, by sovereigns who contract in the name of the state. Thus, conventions made between sovereigns respecting their own private affairs, and those between a sovereign and a private person, are not public treaties."; Section 206, page 218. "The public compacts called conventions, articles of agreement, &c., 'when they are made between sovereigns, differ from treaties only in their object."; Section 153. " The compacts which have temporary matters for their object, are called agreements, conventions, and pactions. They are accomplished by one single act, and not by repeated acts. These compacts are perfected in their execution once for all; treaties receive a successive execution, whose duration equals that of the treaty."; Section 206, page 218. "The public compacts called conventions, articles of agreement, &c., 'when they are made between sovereigns, differ from treaties only in their object.'”

<sup>47</sup> Chief Justice Joseph Story, 'Commentaries on The Constitution of The United States'. Quid Pro Books, Legal Legends Series 2013; Ch. 5 Prohibitions on the States p. 272 - “The prohibition against treaties, alliances, and confederations, constituted a part of the articles of Confederation, and was from thence transferred in substance into the constitution. The sound policy, nay, the necessity of it, for the preservation of any national government, is so obvious, as to strike the most careless mind. If every state were at liberty to enter into any treaties, alliances, or confederacies, with any foreign state, it would become utterly subversive of the power confided to the national government on the same subject.”; James Madison in Federalist # 44 - “The prohibition against treaties, alliances, and confederations makes a part of the existing articles of Union; and for reasons which need no explanation, is copied into the new Constitution.”

Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be party; to controversies between two or more states, between a state and citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

**Reservation of Powers: 10th Amendment** - "The powers **not delegated** to the United States by the Constitution, **nor prohibited** by it to the States, are reserved to the States respectively, or to the people.

"Not only do States retain sovereignty under the Constitution, there is also a **'fundamental principle of equal sovereignty' among the States.**" ... "Over a hundred years ago, this Court explained that **our Nation 'was and is a union of States, equal in power, dignity and authority.'**"  
Shelby County v. Holder, 570 U.S. \_\_\_\_ (2013)

"Indeed, **'the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized.'** ...the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent **disparate treatment of States.**"  
Shelby County v. Holder, 570 U.S. \_\_\_\_ (2013)

"Where Congress exceeds its authority relative to the States, therefore, the departure from the Constitutional plan cannot be ratified by the 'consent' of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitution's division of power among the three branches is violated where one Branch invades the territory of another, whether or not the encroached-upon Branch approves of the encroachment. "New York v. U.S., 505 U.S. \_\_\_\_\_, 120 L.Ed.2d. 120, 154, 112 S. Ct. 2408, 2431 (1992).

Links to USCA Reports:

[USCA 2021+Annual+Report\\_FurtherFasterTogether.pdf \(squarespace.com\)](#); [Further, Faster, Together: U.S. Climate Alliance Unveils COP26 Delegation — U.S. Climate Alliance \(usclimatealliance.org\)](#); [U.S. Climate Alliance States Commit to New High-Impact Actions to Achieve Climate Goals and Go Further, Faster, Together — U.S. Climate Alliance \(usclimatealliance.org\)](#);

## 2) United States Nationally Determined Contribution (NDC) Under the Paris Agreement<sup>48</sup>

*"The management of foreign relations appears to be the most susceptible of abuse of all the trusts committed to a government, because they can be concealed or disclosed, or disclosed in such parts and at such times as will best suit particular views . . ."*

- James Madison (letter to Jefferson, 1789)

The nationally determined contribution of the United States of America is: To achieve an economy-wide target of reducing its net greenhouse gas emissions by 50-52 percent below 2005 levels in 2030

<sup>48</sup> The United States of America Nationally Determined Contribution Reducing Greenhouse Gases in the United States: A 2030 Emissions Target, April 22, 2021 [Microsoft Word - United States NDC April 21 2021 Final.docx \(unfccc.int\)](#)  
CRS Report: U.S. Climate Change Policy, R46947 October 28, 2021 [R46947 \(congress.gov\)](#) "The United States established a new pledge to reduce its economy-wide net GHG emissions by 50%-52% below the 2005 level by 2030, in a required communication, the U.S. Nationally Determined Contribution (NDC) to the Paris Accord."

January 20, 2021, Joe Biden established a “National Climate Advisor” position in the Office of the White House. The National Climate Advisor is the president’s senior advisory relating to domestic climate change policy. The advisor is the lead for the White House Office of Domestic Climate Policy.<sup>49</sup> It was announced December 2020 that Gina McCarthy, the former EPA administrator under Barack Obama, would be the first national climate advisor. The Office of Domestic Climate Policy was established under Section 202 of EO 14008 in order to:

*“. . .coordinate the policy-making process with respect to domestic climate-policy issues; coordinate domestic climate-policy advice to the President; ensure that domestic climate-policy decisions and programs are consistent with the President’s stated goals and that those goals are being effectively pursued; and monitor implementation of the President’s domestic climate-policy agenda. The Climate Policy Office shall have a staff headed by the Assistant to the President and National Climate Advisor (National Climate Advisor) and shall include the Deputy Assistant to the President and Deputy National Climate Advisor.”*

Section 203 of EO 14008 established the National Climate Task Force consisting of 20 departments under the Executive. The order directs the National Climate Advisor to chair the task force and prioritizes the Task Force mission and work:

*“The Task Force shall facilitate the organization and deployment of a Government-wide approach to combat the climate crisis. This Task Force shall facilitate planning and implementation of key Federal actions to reduce climate pollution”*

The Climate Action Advisor through a whole of government approach via the National Climate Task Force developed the Nationally Determined Contribution (NDC) for decarbonization for formal submittal to the United Nations Framework Convention on Climate Change. The April 22, 2021, Whitehouse FACT SHEET<sup>50</sup> states:

*“On Day One, President Biden fulfilled his promise to rejoin the Paris Agreement and set a course for the United States to tackle the climate crisis at home and abroad, reaching net zero emissions economy-wide by no later than 2050. As part of re-entering the Paris Agreement, he also launched a whole-of-government process, organized through his National Climate Task Force, to establish this new 2030 emissions target – known as the “nationally determined contribution” or “NDC,” a formal submission to the United Nations Framework Convention on Climate Change (UNFCCC). Today’s announcement is the product of this government-wide assessment of how to make the most of the opportunity combatting climate change presents.”*

The white house admits that these initiatives being initiated are unprecedented by using statements like “first ever.” The current Climate Policy Agenda under the Executive is whole-of-government and economy-wide. The April, 22, 2021 US NDC states:

*"The United States’ NDC exceeds a straight-line path to achieve net-zero emissions, **economy-wide**, by no later than 2050. It also promotes the goal of keeping*

<sup>49</sup> EO 14008 Sec. 202

<sup>50</sup> White House FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies, April 22, 2021 [FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies | The White House](#)

within reach a 1.5 degree Celsius limit on global average temperature increase. While Article 4.3 does not necessarily apply to this NDC, the United States nevertheless notes that this NDC substantially increases ambition compared to the NDC previously submitted in relation to 2025. The NDC is an **absolute economy-wide emissions reduction target**.

*This NDC is expected to put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050, which would contribute substantially to the aim outlined in Article 4.1 to reach global peaking of greenhouse gas emissions as soon as possible, and to **undertake rapid reductions thereafter** in accordance with best available science."*

Though the Biden administration has not explicitly defined "Science based targets." This is defined in the Sectoral Decarbonization Approach for global companies. This method was developed by Science Based Targets, an international initiative on science-based target setting for companies initiated by CDP, the United Nations Global Compact, the World Resources Institute (WRI), and the Worldwide Fund for Nature (WWF). Here is what this document considers science based:

*"Targets adopted by companies to reduce GHG emissions are considered "science-based" if they are in line with the level of decarbonization required to keep global temperature increase below 2°C compared to preindustrial temperatures, as described in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC)."*<sup>51</sup>

In accounting for the NDCs the United States intends to use the 2006 IPCC guidelines<sup>52</sup> and 100-year global warming potential from Assessment Report 5<sup>53</sup> for estimating anthropogenic emissions and removals. Under the agreement the US commits to:

*"Consistent with IPCC good practice guidance, and paragraph 28 of Decision 18/CMA1 Annex 1,<sup>54</sup> the United States is committed to improving the quality of its **inventory** and will perform **recalculations to the inventory** time series as needed to reflect the latest data and to maintain methodological consistency over time. The carbon dioxide equivalent mass of net greenhouse gas emissions used as a basis in tracking progress*

<sup>51</sup> Science Based Targets SECTORAL DECARBONIZATION APPROACH (SDA): A method for setting corporate emission reduction targets in line with climate science, Version 1 May 2015 [Methodologies -Book.indb \(sciencebasedtargets.org\)](https://sciencebasedtargets.org/publications/methodologies-book)

<sup>52</sup> 2006 IPCC Guidelines for National Greenhouse Gas Inventories [Publications - IPCC-TFI \(iges.or.jp\)](https://www.iges.or.jp/public/ipcc_tfi/)

<sup>53</sup> [AR5 Climate Change 2013: The Physical Science Basis — IPCC](https://www.ipcc.ch/report/ar5/wg1/); "Each Party shall use the 100-year time-horizon global warming potential (GWP) values from the IPCC Fifth Assessment Report, or 100-year time-horizon GWP values from a subsequent IPCC assessment report as agreed upon by the CMA, to report aggregate emissions and removals of GHGs, expressed in CO<sub>2</sub> eq." CMA Annex 1 guidance p. 25

<sup>54</sup> United Nations Framework Convention on Climate Change, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 2 to 15 December 2018, March 19, 2019 [Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 3 to 14 December 2018. Addendum 2 \(unfccc.int\)](https://unfccc.int/paris_agreement/items/9444) "Decides that Parties shall submit their first biennial transparency report and national inventory report, if submitted as a stand-alone report, in accordance with the modalities, procedures and guidelines, at the latest by 31 December 2024"; ". . . In accordance with Article 13, paragraph 5, of the Paris Agreement, the purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions (NDCs) under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14."



*towards the NDC target will be the 2005 net emissions reported in the most recent Inventory at the time of submission of the relevant biennial transparency report (BTR)."*

The National Climate Task Force chaired by the National Climate Advisor have developed the NDCs under a whole of government approach which is being developed into a national climate strategy to be issued at a coming date. November of 2021 the US department of State and the United States Executive Office of the President published *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050*<sup>55</sup> which also anticipates the national climate strategy.

What these executive initiatives show is that Federal departments under the executive branch are already committed to following guidance developed by an international body in relationship to producing inventories and other analysis regarding domestic policy and interests with the explicit intent to decarbonize the US economy in conformance with international timetables and targets without explicit disclosure in all related domestic documents. The executive is building a framework to track progress towards the NDC targets in conformance to United Nations Framework Convention on Climate Change as well as the 2006 IPCC good guidance under Article 4, and Article 7, in order to inform the global stocktake for decarbonization under Article 14 of the Paris Accord.

(Appendix: relating the Post 2020 Global Biodiversity Framework) RELATED Source DOCUMENTS

[Zero draft of the post-2020 global biodiversity framework \(cbd.int\)](#); [TNC Position ZeroDraft GlobalBiodiversityFramework.pdf \(nature.org\)](#); [A new global framework for managing nature through 2030: First detailed draft agreement debuts | Convention on Biological Diversity \(cbd.int\)](#)

### 3) 30x30 and the America the Beautiful Conservation Atlas

Congressional policy is clear that all goals and objectives relating to the resources and management of resources on federal lands are to be established by law.<sup>56</sup> Timetables and targets that imply whole of government and whole of economy transitions by executive edict are inconsistent with the rule of law and long-standing congressional policy.

The documents coming out of the federal departments regarding the America the Beautiful 30x30 agenda lack transparency regarding the use of the data collection and inventorying process under the America the Beautiful Atlas. The Notice Of Intent on the federal register regarding DOIs development of the Atlas is silent regarding the associated CMA guidelines for development of a National Inventory Report of anthropogenic emissions by sources and removals.<sup>57</sup> Nor is there any transparency with respect to the definitions of the GHG inventory principles as established in the 2006 IPCC Guidelines for National Greenhouse Gas Inventories, and whether the EPA as the

<sup>55</sup> The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050. Published by the United States Department of State and the United States Executive Office of the President, Washington DC. November 2021 [The Long-Term Strategy of the United States, Pathways to Net-Zero Greenhouse Gas Emissions by 2050 \(whitehouse.gov\)](#)

<sup>56</sup> 43 U.S.C. 1701(a)(7); 43 U.S.C. 1714 Sec. 204(c)

<sup>57</sup> Guidance for the National Inventory Report is found in the Appendix of the CMA guidelines p. 20 and 22 - "Annex Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement" [Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 3 to 14 December 2018. Addendum 2 \(unfccc.int\)](#)

compiler of the Inventories has authority to subjugate itself under international guidelines for national greenhouse gas inventories and through the State Department submit data to the International Panel on Climate Change (IPCC) to inform a global stocktake. None of this language is disclosed in the relevant domestic documents coming off the federal register through various federal departments. The same departments who through the National Climate Taskforce established and submitted the Nationally Determined Contributions under the Paris Agreement developed Climate Action/Adaptation Plans (CAPs) which make no mention of the associated CMA Annex 1 commitments and guidance for all steps of Inventory compilation – from data collection to reporting.

Methods are at this point wholly based on **agreed upon estimates** with no way to empirically measure exact values relating to decarbonization. The America the Beautiful Conservation Atlas appears to be a mechanism to meet inventorying requirements in order to be easily repurposed by EPA and the State Department for formal submission in the international arena. If this is the case the Executive branch is repurposing administrative processes delegated by congress for purposes, goals, and objectives not delegated or established by law and therefore not delegated by congress.

E.O. 14008 directs the Secretary of the Interior—in coordination with the Secretary of Agriculture, the Secretary of Commerce, and the Chair of the Council on Environmental Quality—to deliver an America the Beautiful progress report to the National Climate Task Force (NCTF). And the NCTF is made up of the 20 federal departments who developed the Nationally Determined Contributions for decarbonization submitted under the Paris Agreement which requires conformance to international guidelines.<sup>58</sup>

EO 14008 itself is not wholly transparent regarding these obligations, but the order does direct DOI, in coordination with other agencies, to establish mechanisms to measure progress, with annual reports facilitated by the Secretary of Interior to the NCTF. It fails to mention that the NCTF will then through the National Climate Advisor, the EPA, and the State Department compile inventories and submit the data as a national inventory representing the nations contribution to the global stocktake of CO2 emissions reductions based on goals and objectives stated in numerical terms by an international body, not the Congress of the United States.<sup>59</sup>

The 30x30 initiative is linked to decarbonization particularly because the NDCs for the US, land use is included. So, land use touching forests, grasslands, mountains, water, urban, and city environments are intended under this agenda to evolve into a national inventory/tracking system for carbon emissions and sinks. This will develop into a sophisticated mechanism to track progress towards international objectives, and report to international conferences seeking to

---

<sup>58</sup> **C. Methods 1. Methodologies, parameters and data 20.** Each Party shall use the [2006 IPCC Guidelines](#) and shall use any subsequent version or refinement of the IPCC guidelines agreed upon by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA). Each Party is encouraged to use the 2013 Supplement to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Wetlands. (p. 23); **D. Metrics 37.** Each Party shall use the 100-year time-horizon global warming potential (GWP) values from the IPCC Fifth Assessment Report, or 100-year time-horizon GWP values from a subsequent IPCC assessment report as agreed upon by the CMA, to report aggregate emissions and removals of GHGs, expressed in CO2 eq.; **E. Reporting guidance 38.** Pursuant to Article 13, paragraph 7(a), of the Paris Agreement, each Party shall provide a national inventory report of anthropogenic emissions by sources and removals by sinks of GHGs.

<sup>59</sup> *Catholic Health Initiatives v. Sebelius*, 617 F.3d 490, 495 (D.C. Cir. 2010) “Judge Friendly wrote that when an agency wants to state a principle ‘in numerical terms,’ terms that cannot be derived from a particular record, the agency is legislating and should act through rulemaking.” see also *Hocor v. U.S. Dep’t of Agric.*, 82 F.3d 165, 170 (7th Cir. 1996) (“When agencies base rules on arbitrary choices they are legislating, and so these rules are legislative or substantive and require notice and comment rulemaking, a procedure that is analogous to the procedure employed by legislatures in making statutes.”)

fundamentally change the global economy to a green economy. This implies vast transformative effects on the United States economy, primarily the production sectors, and therefore violates the sovereignty of individual states in their capacity for individual self-government and fostering of free markets necessary for local self-determination.

The executive's discretionary authority regarding the management of resources is limited to national analysis and national interests. The broad discretion permitted in the past by the judiciary is being expanded under current executive climate initiatives such as the 30x30 conservation goals and objectives to a degree beyond major questions and requires **the court to remove deference on the issue at hand and bind departments to Congressional Policy and nullify the attempt of the executive to rule by decree, subjugating the entire US economy to the will of that executive.**<sup>60</sup>

### **Inventories**

Guidance for the National Inventory Report is found in the Appendix of the CMA guidelines p. 20 and 22 - "*Annex Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement*" [Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 3 to 14 December 2018. Addendum 2 \(unfccc.int\)](#)

## **4) Department Of Interior (DOI) Climate Action Plan**

### ***Predication for CAPs***

Department Of Interior's *Climate Action Plan (CAP)*<sup>61</sup> accompanies like-kind CAPs by 25 Executive Departments pursuant to Executive Order 14008, 13990, and Secretarial Order 3399 and raises novel legal and policy issues arising out of international timetables and targets<sup>62</sup> being directly linked to a "*first-ever*"<sup>63</sup> national conservation goal,<sup>64</sup> absent Senate ratification or explicit Statutory authority. Furthermore, these CAPs at the federal level were precluded by State Climate Action Plans. 20 States who are a party to the US Climate Alliance have adopted CAPs.<sup>65</sup>

### ***CAPs Being Cited as Preliminary Need for Expansive Land Use Planning Initiatives***

---

<sup>60</sup> "[W]hen Congress wishes to 'alter the fundamental details of a regulatory scheme,' . . . we would expect it to speak with the requisite clarity to place that intent beyond dispute." *U.S. Forest Serv. v. Cow pasture River Pres. Ass'n* 140 S.Ct. 1837, 1848–49 (2020); "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952)

<sup>61</sup> [Department of the Interior Climate Action Plan \(doi.gov\)](#)

<sup>62</sup> [The Long-Term Strategy of the United States. Pathways to Net-Zero Greenhouse Gas Emissions by 2050 \(whitehouse.gov\); U.S.-International-Climate-Finance-Plan-4.22.21-Updated-Spacing.pdf \(whitehouse.gov\); Microsoft Word - United States NDC April 21 2021 Final.docx \(unfccc.int\)](#)

<sup>63</sup> Section 216(a) of Executive Order 14008 established the *first-ever* national conservation goal, calling for the conservation of "at least 30 percent of U.S. lands and waters by 2030." Federal Register / Vol. 87, No. 2 / Tuesday, January 4, 2022 / Notices

<sup>64</sup> [Budgetary Impact Analysis for Executive Order Entitled "Tackling the Climate Crisis at Home and Abroad"](#) – "This executive order establishes a whole-of-government approach to tackle the climate crisis"

<sup>65</sup> CA, CO, CT, DE, HI, ME, MD, MA, MN, NV, NM, NJ, NY, NC, OR, PA, RI, VT, WA, WI

Agencies are now citing the DOI Climate Action Plan as a preliminary need and purpose to amend recent Records of Decisions (RODs) regarding land use planning policy established pursuant to extensive FLPMA and NEPA process. RODs constitute final agency action. Implementation and conformance requirements of the plan is binding on all higher levels of Bureau of Land Management and Department of Interior.<sup>66</sup>

The Notice of Intent issued on the Federal Register cites the CPA as one of the preliminary needs to amend sage grouse plans across ten western States. The executive departments responsible for carrying out the directives of the president must meet the *Quality, Utility, Objectivity, and Integrity* standards in Data Quality Act (DQA). Information which serves to inform *major federal actions* or executive decisions - such as the proposed Planning initiative to amend Sage Grouse Plans across ten states - must be of high quality, reliability, transparency and veracity.<sup>67</sup> Currently the agency is using modeling data which has not been ground verified to expand maps of core sage grouse habitat. These expansions are pursuant to EO 14008s (30x30) initiative to conserve the nations lands and waters.<sup>68</sup>

### ***Departmentwide CAPs Constitute a Major Federal Action Under NEPA***

The Council on Environmental Quality regulations for implementing the National Environmental Policy Act defines *major federal actions* at 40 CFR 1508.18 stating:

*“Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.”*

And,

*(b) “Federal actions tend to fall within one of the following categories:”*

*(1) . . . “treaties and international conventions or agreements; formal documents establishing an agency’s policies which will result in or substantially alter agency programs.”<sup>69</sup>*

*(3) “Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.”*

Surely 26 federal departments drafting climate action plans in a concerted effort to implement specific policy laid out in EO 14008 constitutes a *major federal action*<sup>70</sup> per 40 CFR 1508.18. The Regulations at 40 CFR 1502.4 clarifies that *major federal actions*, as such, require an EIS:

*(b) “Environmental impact statements may be prepared, and are sometimes required, for broad federal actions such as the adoption of new agency programs or regulations*

<sup>66</sup> 43 CFR § 1610.5-3 Conformity and implementation - (a) All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning, shall conform to the approved plan.

<sup>67</sup> “The more important the information, the higher the quality standards to which it should be held, for example, in those situations involving influential scientific or statistical information.” Ibid. Federal Reg. Vol. 66, No. 189

<sup>68</sup> [EplanningUi \(blm.gov\)](https://www.blm.gov/eplanningui)

<sup>69</sup> Executive Order 14008

<sup>70</sup> 42 USC § 4332(2)(C)

**(§1508.18).** *Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decision-making.”*

- 42 USC § 4332(2)(C) Requires an Environmental Impact Statement for *major federal actions* significantly affecting the quality of the human environment. Section 102 of NEPA requires responsible officials to include a detailed statement for every “*recommendation or report on proposals for legislation and other major federal actions.*”

Department Of Interior Climate Action Plans and associated plans by 25 other federal departments pursuant to executive directives constitutes a *major federal action* per 40 CFR 1508.18 and necessitates an Environmental Impact Statement per 40 CFR 1502.4.

DOIs Climate Action Plan cannot be used as a justification to revise or amend Land Use Planning Documents such as the statewide sage grouse amendments without first meeting the requirements under NEPA and other laws pertinent to such a whole of government agenda.

Climate Action/Adaptation Plans Pursuant to Executive Order 14008	
1.	<a href="#">Department of Agriculture 2021 Climate Adaptation Plan (sustainability.gov)</a>
2.	<a href="#">Department of Commerce 2021 Climate Adaptation Plan (sustainability.gov)</a>
3.	<a href="#">Department of Defense 2021 Climate Adaptation Plan (sustainability.gov)</a>
4.	<a href="#">Department of Education 2021 Climate Adaptation Plan (sustainability.gov)</a>
5.	<a href="#">Department of Energy 2021 Climate Adaptation Plan (sustainability.gov)</a>
6.	<a href="#">HHS Climate Action Plan (CAP) (sustainability.gov)</a>
7.	<a href="#">Department of Homeland Security Climate Action Plan (sustainability.gov)</a>
8.	<a href="#">Department of Housing and Urban Development 2021 Climate Adaptation Plan (sustainability.gov)</a>
9.	<a href="#">Department of the Interior 2021 Climate Adaptation Plan (sustainability.gov)</a>
10.	<a href="#">Department of Justice 2021 Climate Adaptation Plan (sustainability.gov)</a>
11.	<a href="#">Department of Labor 2021 Climate Adaptation Plan (sustainability.gov)</a>
12.	<a href="#">U.S. Department of State Climate Adaptation and Resilience Plan 2021 (sustainability.gov)</a>
13.	<a href="#">Department of Transportation 2021 Climate Adaptation Plan (sustainability.gov)</a>
14.	<a href="#">Department of the Treasury 2021 Climate Adaptation Plan (sustainability.gov)</a>
15.	<a href="#">Department of Veterans Affairs 2021 Climate Adaptation Plan (sustainability.gov)</a>
16.	<a href="#">U.S. Environmental Protection Agency 2021 Climate Adaptation Action Plan (sustainability.gov)</a>
17.	<a href="#">Climate Change Risk Management Plan (sustainability.gov)</a>

18. <a href="#">Millennium Challenge Corporation Climate Action Plan, 2021 (sustainability.gov)</a>
19. <a href="#">National Aeronautics and Space Administration 2021 Climate Adaptation Plan (sustainability.gov)</a>
20. <a href="#">NCPC Climate Action Plan (sustainability.gov)</a>
21. <a href="#">Office of Personnel Management 2021 Climate Adaptation Plan (sustainability.gov)</a>
22. <a href="#">Smithsonian Institution 2021 Climate Adaptation Plan (sustainability.gov)</a>
23. <a href="#">Social Security Administration Climate Action Plan (sustainability.gov)</a>
24. <a href="#">USAID Climate Readiness Plan in Response to EO 14008 (sustainability.gov)</a>
25. <a href="#">Army Corps of Engineers 2021 Climate Adaptation Plan (sustainability.gov)</a>
26. <a href="#">U.S. International Development Finance Corporation Climate Action Plan Under Executive Order 14008 (sustainability.gov)</a>

Departmental Climate Action Plans cannot be used to inform, advise, or warrant agency rule making that constitute major federal actions. The CPAs themselves represent a group of concerted actions to drive agency policy items which are substantially altering agency programs. This effort by itself constitutes a Major Federal Action and yet has not been through any economic impacts analysis, RFA analysis, or programmatic environmental impact statement pursuant to NEPA.

#### **5) International Climate Finance Plan - United States Treasury Department - Multilateral Development Banks – Securities and Exchange Commission**

A very significant and unprecedented part of EO 14008 of January 27, 2021, is that it orders the transition of the United States to a carbon-free economy by using the purchasing and banking power of the United States to demonetize investments in the fossil fuel industry and encourage the multinational banking community to divert capital support from the coal, natural gas, and fossil fuel sectors to green energy. The Treasury Department is the majority shareholder in the Multilateral Development Banks and is leveraging this lending power to pull finance away from fossil fuel development in developing countries as well as domestically. This potentially cedes development interests and investments to Chinese interests. On this point it is important to note that EO 14008 not only is picking winners and losers in the energy industry, but by ordering the demonetization of an entire industry the government of the United States is attempting to target which private businesses may succeed and which may fail.

Under the Regulatory Flexibility Act of 1980 (RFA), the Office of Management and Budget (OMB) and federal agencies are required to quantify the effect of major federal actions to small businesses, small organizations, and small governmental jurisdictions. According to RFA the impact assessment requirement may be waived if the agency heads including the Director of OMB certifies that the major federal action will have a de minimis impact on costs and revenues to the Federal Government or impact to local businesses and communities.

Astoundingly the Office of Management and Budget itself under the direction of acting Director Robert Fairweather dated January 2021 issued a one paragraph budgetary impact analysis that the

outworking's of EO 14008 are projected to have a de minimis budgetary impact on the federal budget and the economy of the United States as a result of the demonetization of the entire fossil fuel industry and transition of the energy sector of the United States to a carbon neutral economy.

Part 1 Sec. 102(f) of EO 14008 directed the development of a Climate Finance Plan. The White House Climate Finance Plan calls for the 1) Scaling up of International Climate Finance and enhancing its impact through a whole-of-government approach 2) Mobilizing Private Finance Internationally 3) Ending International Official Financing for Carbon-Intensive Fossil Fuel Based Energy 4) Making Capital Flows Consistent with Low-Emissions, Climate-Resilient Pathways 5) Defining, Measuring, and Reporting International Climate Finance.

The plan states that it is:

*“Enabling bold action to reduce emissions and build resilience against the impacts of climate change will require mobilizing and aligning finance at scale. President Biden’s Executive Order on Tackling the Climate Crisis at Home and Abroad (E.O. 14008, signed January 27, 2021) called for the preparation of a Climate Finance Plan (herein “Plan”). This Plan—the first of its kind in the U.S. government—focuses specifically on international climate finance.”*

Furthermore, in order to build long-term capacity, the Department of State “. . .will leverage its substantial diplomatic assets and foreign assistance to catalyze greater support among governments. . .,” and that the State Department “. . .will ensure a global focus on effective implementation of the Paris Agreement. . .” The Plan directs Department of Energy (DOE) through multilateral engagements, including the Clean Energy Ministerial, Mission Innovation, the G7, the G20,<sup>71</sup> and DOE’s leadership in the International Energy Agency to “advance the goals of the climate policy agenda.”

The Department of Treasury, a shareholder in the Multilateral Development Banks (MDBs), was directed to develop guidance regarding MDBs fossil fuel energy activities “which it will use as part of its criteria when casting U.S. votes on specific projects.”<sup>72</sup> The Treasury Department is illegitimately directing U.S. executive directors in the MDBs to “set and apply ambitious climate finance targets and policies to their operations and programming.” According to the guidance<sup>73</sup> issued by the Treasury Department this implies the withholding of finance from fossil fuel investments both domestically and abroad.

In response to the Treasury Department guidance fifteen State Treasurers issued a letter of notice that they:<sup>74</sup>

<sup>71</sup> Climate Finance Plan - “Through its Office of Technical Assistance (OTA), Treasury will provide technical assistance to help governments mobilize private sector financing for high quality infrastructure development incorporating economic, environmental, social and governance standards consistent with the G20 Principles on Quality Infrastructure Investment.” [G20-Principles.pdf \(roadsforwater.org\)](#)

<sup>72</sup> Climate Finance Plan p.4 - “Treasury will engage with other shareholders and MDB management to shape MDB strategies and policies in line with this guidance and to align with the Paris Agreement. Treasury will post this guidance publicly.”

<sup>73</sup> U.S. Treasury Department, Guidance on Fossil Fuel Energy at the Multilateral Development Banks, 2021 [Fossil Fuel Energy Guidance for the Multilateral Development Banks \(treasury.gov\)](#)

<sup>74</sup> [Fossil Fuel Energy Guidance for the Multilateral Development Banks \(treasury.gov\)](#); Riley Moore West Virginia State Treasurer, Fossil Fuel Banking Letter, Nov. 22, 2021 [Microsoft Word - Fossil fuel banking letter-FINAL Reformatted.docx \(utah.gov\)](#)

*“have a compelling government interest, when acting as participants in the financial services market on behalf of our respective states, to select financial institutions that are not engaged in tactics to harm the very people whose money they are handling.”*

And that they,

*“have the responsibility, as fiduciaries and stewards of more than \$600 billion, to ensure that our financial service providers are free from harmful conflicts of interest that could jeopardize state funds. Any financial institution that has adopted policies aimed at diminishing a large portion of our states’ revenue has a major conflict of interest against holding, maintaining, or managing those funds”*

Now we are seeing the impacts resulting from what the Treasurers warned of last November,

*“These misguided political schemes have impeded economic growth, driven up consumer costs, and regressed our country to foreign energy dependence.”*

[Biden energy secretary uses Russia-Ukraine conflict to 'urgently' push green agenda \(wnd.com\)](#)

[Report: Russia funded European 'rabid environmental groups' which led continent into energy dependence \(wnd.com\)](#)

#### **a) Securities and Exchange Commission Proposed Rule<sup>75</sup>**

The Securities and Exchange Commission as the top financial regulator issued a rule April 11, 2022, to require publicly traded companies to disclose *“climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition.”* Under the proposed rules, *“certain climate-related financial metrics would be required in a registrant’s audited financial statements.”* The SEC extended the comment period on the proposed rule to June 17, 2022.<sup>76</sup> May 31, 2022, 16 Governors signed a joint letter<sup>77</sup> strongly urging the Biden administration to withdraw the proposed rule stating:

*“. . . The SEC’s congressionally directed mission is to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets. The proposed rule degrades and undermines that mission by injecting subjective political judgments on climate policy into corporate disclosures, **in a manner calculated to harm the states that provide for America’s energy security.** . . .”*

<sup>75</sup> The Enhancement and Standardization of Climate-Related Disclosures for Investors (87 FR 21334, April 11, 2022) [Federal Register :: The Enhancement and Standardization of Climate-Related Disclosures for Investors](#)

<sup>76</sup> Press Release, SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS, May 9<sup>th</sup> 2022 [SEC.gov | SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS](#)

<sup>77</sup> Joint Governors’ Comment on SEC Release Nos. 33-11042 & 34-94478, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (File No. S7-10-22) May 31, 2022 [Joint-Governors-Letter-on-SEC-Climate-Disclosure-Proposal-5-31-22.pdf \(idaho.gov\)](#) *“The unprecedented level of federal overreach makes your proposed rule an especially dangerous step. The SEC’s congressionally directed mission is to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets. The proposed rule degrades and undermines that mission by injecting subjective political judgments on climate policy into corporate disclosures, in a manner calculated to harm the states that provide for America’s energy security.”*



And that,

*“ . . . The proposed rule appears part of an ongoing effort across the federal government to penalize companies involved in traditional energy development. . . ”*

Furthermore, the Senate Committee on Banking, Housing, and Urban Affairs issued [public input on climate change disclosures June 13, 2021](#),<sup>78</sup> almost 10 months prior to the SEC issuing its rule regarding [The Enhancement and Standardization of Climate-Related Disclosures for Investors](#). The Senate Committee made its input clear on the issue stating:

*“We do not believe that any further securities regulations to specifically address global warming are necessary or appropriate, and will only serve to further discourage firms from becoming publicly traded, thus denying significant investment opportunities to retail investors.”*

It was recognized that the current push for more disclosure relating to global warming fails to provide material information for investment purposes.

*“Rather, activists with no fiduciary duty to the company or its shareholders are trying to impose their progressive political views on publicly traded companies, and the country at large, having failed to enact change via the elected government.”<sup>79</sup>*

## **b) ESG Investment Practices and Stakeholder Capitalism**

The SEC rule along with Treasury Department Guidance seems to be paralleling with the growing “stakeholder capitalism” and “Environment, Social, and Governance” (ESG) investment practices in the investment management and banking realm, both of which prioritize activist goals over the interests of their public and state employee clients. As stated in an [Opinion of the Attorney General 22-05](#) May 26, 2022, requested by the State Auditor of the Commonwealth of Kentucky:

*“Investment management firms in some corporate suites now use the assets they manage—that is, other people’s money—to enforce their preferred partisan sensibilities and to seek their desired societal and political changes.”*

This opinion defines ESG investing which shows the connection to the SECs proposed rule:

*“ESG investing is an “umbrella term that refers to an investment strategy that emphasizes a firm’s governance structure or the environmental or social impacts of the firm’s products or practices.”<sup>80</sup>*

<sup>78</sup> U.S. Senate Committee on Banking, Housing, and Urban Affairs, Public Input on Climate Change Disclosures June 13, 2021 [banking committee republicans letter to sec on climate disclosures.pdf \(senate.gov\)](#)

<sup>79</sup> “The social change they seek has often been rejected outright by the people’s elected representatives.” See, e.g., Will ESG Disclosures be Mandated by Law? A Legislative Analysis, KING & SPALDING (Sept. 22, 2021), <https://perma.cc/F4FZ-9JA7> (discussing environmental, social, and governance (“ESG”) legislation from the 117th Congress and finding a “low likelihood” that the legislation becomes law); see also Stuart Loren, ESG and the Road to Serfdom, LINKEDIN (Oct. 22, 2021), <https://perma.cc/3UVC-ETZ7> (“Even if well-intentioned and sensible, . . . do we really want a handful of senior management at BlackRock and the world’s largest asset allocators pushing for policy related changes? Isn’t this the role of government?”)

<sup>80</sup> Max M. Schanzenbach & Robert H. Sitkoff, Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by A Trustee, 72 STAN. L. REV. 381, 388 (2020).

Investment management firms are publicly committed to reducing climate change and actively coordinating joint action for ESG purposes. The Glasgow Alliance for Net Zero states:

*“The systemic change needed to alter the planet’s climate trajectory can only happen if the entire financial system makes ambitious commitments and operationalizes those commitments with near-term action. That is why we formed [GFANZ], to bring together over 450 leading financial enterprises united by a commitment to accelerate the decarbonization of the global economy.”*

Additionally, as the Kentucky AG pointed out Climate Action 100<sup>81</sup> explicitly concedes a mixed motive, stating that its investor signatories believe that taking action “is consistent with their fiduciary duty and essential to achieve the goals of the Paris Agreement.”<sup>82</sup>

The opinion goes on to conclude that State and Federal Laws “have long recognized fiduciary duties for those who manage other people’s money.” The AG office found the ESG investment practices to be in violation of Kentucky law:

*“In sum, politics has no place in Kentucky’s public pensions. Therefore, it is the opinion of this Office that “stakeholder capitalism” and “environmental, social, and governance” investment practices that introduce mixed motivations to investment decisions are inconsistent with Kentucky law governing fiduciary duties owed by investment management firms to Kentucky’s public pension plans.”*

### **c) Blackrock and Banking Powers**

On August 4<sup>th</sup> 2022 19 State Attorneys Generals sent a letter<sup>83</sup> to Laurance Fink, the CEO of Blackrock responding to a letter sent by BlackRock’s Chief Client Officer, Mark McCombes to many of the states describing BlackRock’s position on energy investments with respect to state pension funds. McCombes letter conflicts with previous public statements and commitments from Blackrock. Fink sits at the helm of BlackRock’s roughly 10 trillion dollars of assets with tremendous monopoly power over investment across the global economy. BlackRock is the world’s largest investment management company with GDP assets under management greater than every county save the US and China. The AG letter led by Texas AG Ken Paxton stated at the outset:

*“BlackRock’s past public commitments indicate that it has used citizens’ assets to pressure companies to comply with international agreements such as the Paris Agreement that force the phase-out of fossil fuels, increase energy prices, drive inflation, and weaken the national security of the United States. These agreements have never been ratified by the United States Senate. The Senators elected by the citizens of this country determine which international agreements have*

<sup>81</sup> Climate Action 100+ is made up of hundreds of big banks and money managers that together manage 60 trillion dollars.

<sup>82</sup> Act Now, Financial Leaders Urge More Climate Action from the G20, GLASGOW FINANCIAL ALLIANCE FOR NET ZERO, <https://perma.cc/43B2-XQ4A> (“More governments need to commit to the Paris target of 1.5 degrees Celsius by 2050. They need to make immediate cuts to emissions . . . .”); 2020 Progress Report, CLIMATE ACTION 100+ (2020), at 18 and 78, <https://perma.cc/B5XW-XW2X> (scoring companies on whether the companies and their trade associations’ lobbying efforts are “Paris agreement aligned” and noting industry associations who “engage in problematic lobbying on climate” are “holding back Paris-aligned climate policy”)

<sup>83</sup> [AG Paxton Demands BlackRock Account for its Underperforming, Potentially Illegal 'ESG' State Pension Fund Investments | Office of the Attorney General \(texasattorneygeneral.gov\); BlackRock Letter.pdf \(texasattorneygeneral.gov\)](https://www.texasattorneygeneral.gov/AG-Paxton-Demands-BlackRock-Account-for-its-Underperforming-Potentially-Illegal-ESG-State-Pension-Fund-Investments)

*the force of law, not BlackRock. We have several additional concerns that fall under our jurisdictional authority as attorneys general.”*

Blackrock’s letter proposes that it maintains neutrality relating to the question of energy. McCombe claims Blackrock simply offers to its clients “a range of investment options in the energy sector.” As Paxton points out that such claimed neutrality contrasts considerably from public commitments indicating that “BlackRock has already committed to accelerate net zero emissions across all of its assets, regardless of client wishes.” This includes Blackrock joining the Net Zero Managers Alliance propagating urgent need to accelerate transitions toward net-zero emissions targets and other objectives under the Paris Agreement. Further BlackRock has committed to an engagement strategy and voting policy to achieve net zero emissions by 2050 or sooner for all assets under management. As the AG letter points out:

*“Accelerating and delivering the goals of the Paris Agreement across all assets under management through an escalation and voting strategy is a far cry from neutrality.”*

The AGs point out potential anti-trust violations under the Sherman Act highlighting failure of dialog, group boycotts, restraining trade in energy markets, and concerted refusals to deal.

*“BlackRock’s actions appear to intentionally restrain and harm the competitiveness of the energy markets. Disturbingly, a survey last year from the Federal Reserve Bank of Dallas asked: “Which of the following is the primary reason that publicly traded oil producers are restraining growth despite high oil prices?” Sixty percent of respondents referenced a form of “investor pressure.””*

On October 19, 2022 Missouri Attorney General Eric Schmitt and 18 other State AGs served six major American Banks with civil investigative demands, “which act as a subpoena, asking for documents relating to the companies’ involvement with the United Nations’ (UN) Net-Zero Banking Alliance.” Bank of America, Citigroup, Goldman Sachs, JP Morgan Chase, Morgan Stanley, and Wells Fargo are the banks being investigated. Missouri, Arizona, Kentucky, and Texas are the lead on this investigation.

*“The Net-Zero Banking Alliance is a massive worldwide agreement by major banking institutions, overseen by the U.N., to starve companies engaged in fossil fuel-related activities of credit on national and international markets. Missouri farmers, oil leasing companies, and other businesses that are vital to Missouri’s and America’s economy will be unable to get a loan because of this alliance,”*

said Attorney General Schmitt,

*“We are leading a coalition investigating banks for ceding authority to the U.N., which will only result in the killing of American companies that don’t subscribe to the woke, climate agenda. These banks are accountable to American laws - we don’t let international bodies set the standards for our businesses.”<sup>84</sup>*

Bank of America, Citigroup, and Morgan Stanley are currently listed as members of the 12-member steering group for the NZBA.<sup>85</sup> Amalgamated Bank is not included in this investigation but is also on the steering group. Amalgamated is established in the U.S. labor movement through the United Federation of Teachers, and the American Federation of State, County, and Municipal Employees. The issue of the

<sup>84</sup> [Missouri Attorney General Leads 19 State Coalition in Launching Investigation into Six Major Banks Over ESG Investing \(mo.gov\)](https://www.mo.gov/newsroom/missouri-attorney-general-leads-19-state-coalition-in-launching-investigation-into-six-major-banks-over-esg-investing-mo.gov)

<sup>85</sup> [Governance – United Nations Environment – Finance Initiative \(unepfi.org\)](https://www.unepfi.org/governance)

finance community aligning with international policy objectives in contravention to domestic law and bicameral processes required under the American Constitutional Republic is paramount.

Running parallel to the banking communities Net-Zero push is the alignment of the Federal Government and Alliance States with ESG investment management practices to influence whole of economy/whole of government transitions. The SEC proposed rule is one example of exceeding executive authority to impose on companies to report on uncertain climate criteria that then those companies are rated by international investment firms based on ad hoc performance standards which will be used to both reward and or penalize companies for political or preferential reasons.

Furthermore a case study published by [Research and Analysis for Government Accountability and Oversight](#) shows the private finance influence behind the climate litigation industry in the States through Universities, state Attorney Generals, and now federal rule making relating to the SEC climate disclosure rule as well as the Social Cost of Carbon rule.

*“New research details how scores of millions of dollars are directed by a UK investor to finance “climate disclosure” campaigns now threatening U.S. companies through proposed rules from the Biden SEC, and to support U.S. climate litigation despite denials by grant recipients that funds are used for U.S.- targeted operations.”<sup>86</sup>*

This case study highlights the adverse impacts of ESG investments practices on traditional industries and markets as a whole which is exacerbated more by the Biden White House that has explicitly targeted oil and gas industries while threatening liability as polluters.<sup>87</sup>

*“For example, in late 2021 some U.S. traditional energy producers, particularly coal and related industries (e.g., rail), were unable to affordably access capital markets to ramp up production and transport in the face of a looming energy crisis (which continues today), leading to serious energy security concerns. They were informed by lenders that loaning money to, e.g., coal, gave the banks an “ESG problem”. This resulted not from regulation but pressure campaigns including from a Biden administration that made clear it has targeted hydrocarbon energy interests for extinction and that assisting them would not be well-received in Washington”<sup>88</sup>*

USCA states as well as certain businesses under current market manipulation are now politically-favored sectors as recipients of capital flow into decarbonization efforts and heavily subsidized infrastructure projects encouraged by financial regulators such as the Treasury Department and the Security and Exchange Commission in collaboration with huge banking investment firms that has nothing to do with financial returns.

---

<sup>86</sup> Research and Analysis for Government Accountability and Oversight: Case Study: UK “ESG” Billionaire Behind US Climate Regulatory, Litigation Campaigns DISCLOSING THE REAL “CLIMATE RISK” (2022) [Hohn-TCI-CIFF-Paper.pdf \(govoversight.org\)](#)

<sup>87</sup> Mike Sommers American Petroleum Institute, Letter to POTUS June 14, 2022 [Letter-to-President-Biden-on-10-in-2022-Plan \(api.org\)](#) “To that end, following on your campaign promise to “end fossil fuel,” consider just some of the policy and investment signals being sent by various federal agencies and allied state governments to the market about our refining industry;” Raúl M. Grijalva (D-Ariz.) and Rep. Katie Porter (D-Calif.) U.S. House of Representatives, Committee on Natural Resources Washington DC 20515. Request Documents from Organizations Giving Awards to Climate Misinformation Campaigns [Letter to P ROvoke Media .pdf \(house.gov\)](#)

<sup>88</sup> See, e.g., “President Costanza Takes On Inflation,” Wall Street Journal, May 10, 2022, [https://www.wsj.com/articles/president-costanza-on-inflation-joe-biden-prices-11652215621?mod=opinion\\_lead\\_pos1n](https://www.wsj.com/articles/president-costanza-on-inflation-joe-biden-prices-11652215621?mod=opinion_lead_pos1n)

*“The willingness of institutional investors to deepen the current economic crisis and undermine the strategic interests of the West is a new problem brought about by the rise of Environmental, Social and Governance (ESG)- investing that has swept the world of finance.”*

Rupert Darwall, “Rishi Sunak’s net zero u-turn,” *The Spectator* (UK), May 12, 2022<sup>89</sup>

These processes constitute significant threats to U.S. national Security as well as individual state sovereignty. If this alliance between the banking powers of the world and executive departments is allowed to continue without account, the men who profit by the abuses will desire to perpetuate them by besieging the halls of Congress and seek by every artifice to mislead and deceive the public servants. The culmination of such a process would make the gridlock system of our constitutional republic a puppet show for international financiers.

As President Andrew Jackson stated in his Veto of the Bank Renewal Bill, July 10, 1832:

*“It is easy to conceive that great evils to our country and its institutions might flow from such a concentration of power in the hands of a few men irresponsible to the people.”*

*“When a Government,” Napoleon Bonaparte declared, “is dependent for money upon bankers, they and not the leaders of that Government control the situation, since “the hand that gives is above the hand that takes”” ... “Money,” he declared, “has no motherland; financiers are without patriotism and without decency: their sole object is gain.”<sup>90</sup>*

### **C. Statutory Structure, Major Questions, Non-Delegation, and EO 13990 and 14008**

*“. . . As a practical matter, he who controls my economic destiny controls much more of my life as well . . .”*

- Justice Antonin Scalia

The major questions doctrine consists of two steps for the Court to determine:

- (1) if the assertion of Executive authority implicates matters of “vast ‘economic and political significance,’” and
- (2) if Congress has “expressly and specifically” delegated authority over the issue to the Executive. *Paul v. United States*, 140 S.Ct. 342 (2019) (statement of Kavanaugh, J., respecting denial of certiorari) (collecting cases); *NFIB v. OSHA*, 2022 WL 120952, at \*3 (U.S. Jan. 13, 2022).

“In order for an executive or independent agency to exercise regulatory authority over a major policy question of great economic and political importance, Congress must either:

- (i) expressly and specifically decide the major policy question itself and delegate to the agency the authority to regulate and enforce; or
- (ii) expressly and specifically delegate to the agency the authority both to decide the major policy question and to regulate and enforce.” *Paul v. United States*, 140 S.Ct. 342 (2019) (citing *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. 302 (2014); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *MCI Telecomms. Corp. v. Am. Telephone & Telegraph*

<sup>89</sup> <https://www.spectator.co.uk/article/rishi-sunak-s-cop-speech-is-coming-back-to-haunt-him>

<sup>90</sup> Wilson R. McNair's book, *Monarchy or Money Power* (1933)

Co., 512 U.S. 218 (1994); Stephen A. Breyer, *Judicial Review of Questions of Law and Policy*, 38 *Admin. L. Rev.* 363, 370 (1986)).

“The management of foreign relations appears to be the most susceptible of abuse of all the trusts committed to a Government, because they can be concealed or disclosed, or disclosed in such parts and at such times as will best suit particular views . . . perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.” - James Madison (letter to Jefferson, 1789)

The case presented here is a structural case dealing with direct violations of constitutional provisions both by the White House and virtually every department under the president as well as a coalition of State governors who seek to use 60% GDP, international partnerships and agreements, and illegitimate relationships with ESG investment banks to transform the entire United States economic and governance systems in conformance to obligations to international timetables and targets established in contravention to the U.S. Constitution and Laws established in pursuance thereof.

The Major Questions Issue is an issue of structure. The Federalist system of our government diffuses power among separate branches of our government as well as political subdivisions constituting a compound republic intended to preserve and perpetuate self-determination as well as self-government. There is no unilateral power within the federal executive departments nor the state governments to commit themselves to goals and objectives which have not been set by law,<sup>91</sup> and use its coercive discretionary powers to transform every sector of the economy to meet such commitments.

The Major questions here are in three parts:

*first*, is whether the executive branch of the United States can implement initiatives and align with foreign objectives that imply vast transformative impacts on the economy, without Senate Concurrence, or explicit Congressional delegation?<sup>92</sup>

*Second*, is whether States can legitimately form alliances seeking international recognition by committing to regulatory policy and leveraging of finance to transition the U.S. economy to align with international obligations and goals which have not been established by law, and forge a state-federal partnership to make achievable the NDCs.

*Third*, is whether or not the influence of international financiers and private investors can legitimately influence market investment practices of businesses and governments in such

<sup>91</sup> 43 U.S.C. 1701(a) **The Congress declares that it is the policy of the United States that– (7) goals and objectives be established by law** as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

<sup>92</sup> Julian Davis Mortenson, *ARTICLE II VESTS THE EXECUTIVE POWER, NOT THE ROYAL PREROGATIVE*, *Columbia Law Review* Vol. 119 No. 5 2019; William Blackstone, *COMMENTARIES ON THE LAWS OF ENGLAND BOOK I: THE RIGHTS OF PERSONS* Wallachia Publishers New York City, NY 2015, Ch. 1 (first published 1769) *“Not only the substantial part, or judicial decisions, of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament: for if once those outworks were demolished, there would be an inlet to all manner of innovation in the body of the law itself.”*

a way to benefit politically-favored sectors while penalizing the traditional sectors which provide reliability and affordability to the energy grid.

Structural checks from both fronts:

The states have a concurring voice regarding international commitments in Article II of the Constitution. And this requires 2/3<sup>rd</sup> concurrence of the senate.<sup>93</sup> This provision protects as does all the safeguards of our federal system the minority states which are at risk of unjust disadvantages in international obligations that serve to the advantage of other states. For a union of sovereign states the intercourse with foreign states is always a danger which is why the Articles of Confederacy as well as the Federal Constitution outright prohibit individual states from entering into any such obligations without Congress.<sup>94</sup> And as stated, equally so, the General Government cannot enter into any such obligations without 2/3<sup>rd</sup> state concurrence by their elected Senators. There is a check on both sides because of the inherent danger in foreign affairs to misplace the interest of the individual American citizen.

Article IV of the US Constitution guaranteeing to the states a republican form of government is clear enough and limits federal process to govern the religious, economic, and civil rights of the citizen of any given state. Without local government a citizen loses his right to petition his government for redress. The lack of disclosure on the part of the federal government relating to the implications of accomplishing such goals as Net-Zero by 2050 with the extensive international guidelines to be followed is in violation of the primary intent of the rule of law and due process which employ the essentials of public scrutiny, without which the individual citizen is left exposed to unrestrained power.<sup>95</sup> Where else would the injunction of the judiciary be more

---

<sup>93</sup> Chief Justice Joseph Story, 'COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES'. Quid Pro Books, Legal Legends Series 2013 (orig. 1833); Ch. 37 p. 307 *Executive-Powers and Duties* - "The plan of the constitution is happily adapted to attain all just objects in relation to foreign negotiations. While it confides the power to the executive department, it guards it from serious abuse by placing it under the ultimate superintendence of a select body of high character and high responsibility. It is indeed clear to a demonstration, that this joint possession of the power affords a greater security for its just exercise, than the separate possession of it by either. . . the constitutional check of requiring two thirds to confirm a treaty is, of itself, a sufficient guarantee against any wanton sacrifice of private rights, or betrayal of public privileges. To suppose otherwise would be to suppose, that a representative republican government was a mere phantom; that the state legislature were incapable, or unwilling to choose senators possessing due qualifications; and that the people would voluntarily confide power to those, who were ready to promote their ruin, and endanger, or destroy their liberties. . ."

<sup>94</sup> (*Williams v. Bruffy*, Oct, 1877) - "Now, the Constitution of the United States prohibits any treaty, alliance, or confederation by one State with another. The organization whose enactment is pleaded cannot, therefore, be regarded in this court as having any legal existence.;" see (*Holmes v. Jennison et. al.* 1840) - "The framers of the Constitution manifestly believed that any intercourse between a state and a foreign nation was dangerous to the Union; that it would open a door of which foreign powers would avail themselves to obtain influence in separate states. Provisions were therefore introduced to cut off all negotiations and intercourse between the state authorities and foreign nations.;" see - (Chief Justice Joseph Story, 'Commentaries on The Constitution of The United States'. Quid Pro Books, Legal Legends Series 2013; Ch. 5 Prohibitions on the States p. 272 (originally published 1833)) - "The prohibition against treaties, alliances, and confederations, constituted a part of the articles of Confederation, and was from thence transferred in substance into the constitution. The sound policy, nay, the necessity of it, for the preservation of any national government, is so obvious, as to strike the most careless mind. If every state were at liberty to enter into any treaties, alliances, or confederacies, with any foreign state, it would become utterly subversive of the power confided to the national government on the same subject.;" James Madison in Federalist # 44 concurs: "The prohibition against treaties, alliances, and confederations makes a part of the existing articles of Union; and for reasons which need no explanation, is copied into the new Constitution.;"

<sup>95</sup> Supreme Court Justice Scalia - "Uncertainty has always been inconsistent with the Rule of Law.;" Preamble of Blacks Law Dictionary 4<sup>th</sup> Edition: "The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the [rule of law]- (stripped of all technicalities, this means that government in all its actions is bound by rules fixed and announced beforehand (Hayek, pg.112, 2007)) grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law

important than the preservation of fundamental principles as enumerated by compact in the Federal Constitution and State Constitutions and the Declaration of Independence from which they stand. Preserving the structure of our system is the most pertinent importance for preserving the rights of persons.

One way of determining what the Congress has not delegated over to the executive branch is by looking at what Congress has explicitly delegated to the executive branch. Much of the foundational statutory law regarding management of public lands, and regulating agencies responsible for the task, is frontloaded with either congressional policy, or in regulatory and procedural statutes congressional findings. The policy and findings place the emphasis and importance of private enterprise,<sup>96</sup> periodic inventories for resource management consistent with principles of multiple use and sustained yield, (which are defined as best meeting the needs of the American people), and the need for domestic sources of essential materials and services from the federal lands as a matter of national security, national defense, and maintaining local home rule by providing opportunities for economic development of resources to local communities. All these elements and more are clearly laid out in congressional law as **goals and objectives** and are sharply contrasted with the ad hoc executive climate initiatives being promulgated government-wide, economy-wide, by the current administration, which practically is placing the sovereignty of the United States of America as well as individual states in the union under international **goals and objectives** not established by law.<sup>97</sup>

*“There is no undefined residuum of power,” said President William Howard Taft, “which the president can exercise because it seems to him to be in the public interest . . . His jurisdiction must be justified or vindicated by the affirmative constitutional or statutory provisions, or it does not exist.”*

- William Howard Taft<sup>98</sup>

The fourth amendment of the US Constitution guarantees to the states a republican form of government. As such States have a fundamental obligation to preserve to its citizens the republican principles of local home rule and a system of self-government stimulated by free markets that encourage and enable self-determination.<sup>99</sup> This being based on the dignity of the individual as being inviolable.<sup>100</sup> The original compact of government between the states and

---

does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.”

<sup>96</sup> **5 USC 601 SEC. 202. FINDINGS.** Congress finds that— (1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy; **PUBLIC LAW 96-354 SEC. 2.** (a) The Congress finds and declares that— (5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

<sup>97</sup> 43 U.S.C. 1701(a)(7)

<sup>98</sup> William Howard Taft, *Our Chief Magistrate and His Powers* 138-45 (1916), quoted and cited in James L. Hirsen, *Government by Decree* 7 (1999).

<sup>99</sup> The nature and intent of much of the natural resource policy at the county level in the state of Montana is to protect the customs and cultures of county citizens through protection of private property rights, the facilitation of a free market economy, and the establishment of a process to ensure self-determination by county residents. (Fergus LUP p.1); *Self-determination*: (Merriam Websters) 1: free choice of one's own acts or states without external compulsion 2: determination by the people of a territorial unit of their own future political status

<sup>100</sup> Montana Constitution Article II DECLARATION OF RIGHTS Section 4 . INDIVIDUAL DIGNITY. – “*The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.*”



federal Union recognizes as a fundamental right, local self-government.<sup>101</sup> Furthermore the basis of the Union is that the citizen of each state shall be entitled to all the privileges and immunities of citizens of the several states.’ In regard to states brought into the union later they were guaranteed “equal footing” with the existing states.<sup>102</sup> This all assumes what is properly provided in the Constitution which is the place of a national judiciary extending to *all cases in law and equity arising under the constitution, . . .* as well as *controversies between two or more states.*

The case before us involves:

- Article 1 Sec. 10 violations by the USCA states exercising powers explicitly prohibited;
- Article 2 violations by the President entering into whole of government, economy wide commitments with an international convention stated in numerical terms with timetables and targets without 2/3 concurrence from the Senate;
- Article 3 controversy between USCA states and non-member states, as well as the president and non-member states.

The USCA has been engaged over the last administration with foreign countries making public declarations and being a signatory to decarbonization commitments in conformance with obligations under the Paris Agreement. Now the Federal Executive has partnered with Alliance states to leverage finance in such a way to change the entire United States economy away from carbon sources including non-member states.<sup>103</sup> This includes the emerging concept of “stakeholder capitalism” and ESG investment or rather divestment of fossil fuels being driven by the international investment banking community, corporate finance, and governments using its shareholding power through the treasury department and regulatory power through various other federal or state departments to penalize or disincentivize development of any fossil fuels by withholding finance from traditional energy sectors. This includes prioritizing green development projects and subsidization which **Alliance states stand to be an inequitable beneficiary** of because of the illegitimate alliance between member states, foreign states, and the federal government around decarbonization goals and objectives which have been established in contravention to the U. S. Constitution.

---

<sup>101</sup> Montana Constitution Article II DECLARATION OF RIGHTS Section 2 . SELF-GOVERNMENT. - “*The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.*”

<sup>102</sup> “Not only do States retain sovereignty under the Constitution, there is also a ‘fundamental principle of equal sovereignty’ among the States.” . . . “Over a hundred years ago, this Court explained that our Nation ‘was and is a union of States, equal in power, dignity and authority.’” *Shelby County v. Holder*, 570 U.S. (2013); “Indeed, ‘the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized.’ . . . the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States.” *Shelby County v. Holder*, 570 U.S. (2013); “Where Congress exceeds its authority relative to the States, therefore, the departure from the Constitutional plan cannot be ratified by the ‘consent’ of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitution’s division of power among the three branches is violated where one Branch invades the territory of another, whether or not the encroached-upon Branch approves of the encroachment.” *New York v. U.S.*, 505 U.S., 120 L.Ed.2d. 120, 154, 112 S. Ct. 2408, 2431 (1992).

<sup>103</sup> Hayek, Friedrich, ‘The Road to Serfdom’ (Text and Document, Definitive Edition), The University of Chicago Press Routledge, London 2007 *Planning and Democracy* p. 103, 104. – “We can unfortunately not indefinitely extend the sphere of common action and still leave the individual free in his own sphere. . . . Although the state controls directly the use of only a large part of the available resources, the effects of its decisions on the remaining part of the economic system becomes so great that indirectly it controls almost everything. Where, as was, for example, true in Germany as early as 1928, where the central and local authorities directly control the use of more than half the national income (53% in Germany’s case), they control indirectly almost the whole economic life of the nation. There is, then, scarcely, an individual person which is not dependent for its achievement on the action of the state, and the “social scale of values” which guides the states action must embrace practically all individual ends.”

This gives alliance states an inequitable excess of federal subsidies and finance options to create green jobs and shift to renewables which gives an illusion of job creation and increased GDP of alliance states which they pit against non-member states whose **traditional industries are not being permitted or being phased** out by the heavy hand of regulation.<sup>104</sup> Policies and subsidies prioritizing wind and solar development while penalizing or prohibiting fossil fuel development undermines conventional technologies that are necessary for maintaining affordability and reliability across the energy grid. **The agencies and officials responsible for implementing the Climate Policy Agenda have failed to account for the disproportionate impacts felt by the ordinary citizens of this country as a result of an alliance between international investment finance firms and governments to decarbonize the global economy by undermining private property in the means of production** as well as a basis for economic calculation.

As economists have argued for centuries:

*“If the owner may do with his property only that which is prescribed to him, what directs the national economic activity is not property but that prescribing power.”*

And,

*“This merely means that a given condition of social production is to be preserved, even though it would vanish under private property.” (Mises, 1981).<sup>105</sup>*

This kind of coercive influence in the markets is a gross obstruction of the otherwise broad economic freedom which has always served as a basis for broad political freedom necessary for the republican form of government guaranteed to the States in Article IV of the U.S. Constitution. The late Supreme Court Justice Antonin Scalia noted in a speech at the Cato Institute conference on *Economic Liberties and The Judiciary* in 1984 stating:<sup>106</sup>

*“We (the court) will ensure that the executive does not impose any constraints upon economic activity which Congress has not authorized; and that where constraints are*

<sup>104</sup> [Joint-Governors-Letter-on-SEC-Climate-Disclosure-Proposal-5-31-22.pdf \(idaho.gov\)](#) “. . .The proposed rule (SEC Rule) degrades and undermines that mission by injecting subjective political judgments on climate policy into corporate disclosures, in a manner calculated to harm the states that provide for America’s energy security. . .”; [Motion for PI 0.pdf \(texasattorneygeneral.gov\)](#) The rule “will result in reduced investment in the fossil fuel industry, which will reduce the revenue that accrues to the plaintiff states through oil and gas extraction,”

<sup>105</sup> Ludwig Von Mises (1881-1973), *SOCIALISM an Economic and Sociological Analysis* (Liberty Fund Indianapolis 1981) chapter 16 p.235 Pseudo-Socialist Systems - “They want, they say, only to limit property, but to maintain it in principle. But when one has gone so far as to set up for property limits other than those resulting from its own nature, one has already abolished property. **If the owner may do with his property only that which is prescribed to him, what directs the national economic activity is not property but that prescribing power. . .** This merely means that a given condition of social production is to be preserved, even though it would vanish under private property. **The owner is told what and how and how much he shall produce and at what conditions and to whom he shall sell. He thus ceases to be owner; he becomes a privileged member of a planned economy, an official drawing a special income.”**

<sup>106</sup> Antonin Scalia, *The Essentials of Scalia, On the Constitution, the Courts, and the Rule of Law*. New York, 2020, p.180 *Economic Affairs as Human Affairs* (originally delivered at Cato Institute's conference on "economic liberties and the judiciary") “*We (the court) will ensure that the executive does not impose any constraints upon economic activity which Congress has not authorized; and that where constraints are authorized the executive follows statutorily prescribed procedures and that the executive (and much more rarely, Congress in its prescriptions) follows constitutionally required procedures.*”(p.181); “*I know no society, today or in any era of history, in which high degrees of intellectual and political freedom have flourished side by side with a high degree of state control over the relevant citizen’s economic life. The free market, which presupposes relatively broad economic freedom, has historically been the cradle of broad political freedom, and in modern times the demise of economic freedom has been the grave of political freedom as well. . . as a practical matter, he who controls my economic destiny controls much more of my life as well.”*

*authorized the executive follows statutorily prescribed procedures and that the executive (and much more rarely, Congress in its prescriptions) follows constitutionally required procedures.”*

It has become evident that the court has not ensured the executive does not impose any constraints upon economic activity without express delegation. The timetables and targets expressed in numerical terms for decarbonization and the associated international commitments have not been approved by representatives accountable to the electorate, and the process is currently impacting individual citizens, homes, businesses and governments with the **inflationary result of pumping dollars into the economy while regulating the material conversion of resources for consumption, creating high demand and too little commodity driving up costs across the board.** And all this being done on purpose to target and destroy traditional industries which have consistently provided stable rates and reliable energy to ratepayers and consumers. Reliability of energy and other necessary goods and services are becoming a thing of the past<sup>107</sup> and culminates in what could be called a regulatory taking of the entire country.

The problem with economic calculations used by the net-zero economists is that **they treat energy as another input into the economy when in reality energy is the characteristic structure by which all other inputs come into the economy.** When our energy grid is undermined the entire market from production to manufacturing to distribution is undermined as well. The regulatory inflation which results undermines national security interest of the United States, the UK, and Europe by driving up the cost of living and destabilizing the production and manufacturing sectors resulting in further dependence on Russia and China for energy and manufacturing needs, placing the west as a whole on shaky geo-political ground.

As journalist Bill Wirtz writes in the National Interest,

*“Do environmental organizations support the efforts of foreign governments by increasing the dependence of NATO allies on Russia? Even if not deliberately, they do so indirectly as their advocacy leads to food inflation and economies that cannot argue from a position of strength.”<sup>108</sup>*

If there is any hope for the Union it must be in the competing interest of local home rule and self-determination. If the Constitutional rule of law is not restored both are compromised.

Just as the mechanisms being utilized by the present administration and allied states are *“first of their kind”* so also elements of this case appeal the court into uncharted waters. **Nonetheless the duty and obligation of the judicial department remains essential.** *“Where there is no judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction*

<sup>107</sup> See, e.g., “NERC Warns of Mounting Reliability Risks, Urges Preparation for Challenging Summer,” Power Magazine, May 2022, <https://www.powermag.com/nerc-warns-of-mounting-reliability-risks-urges-preparation-for-challenging-summer/>. Katherine Blunt, “Electricity Shortage Warnings Grow Across U.S.,” Wall Street Journal, May 8, 2022, [https://www.wsj.com/articles/electricity-shortage-warnings-grow-across-u-s-11652002380?mod=djem\\_EnergyJournal](https://www.wsj.com/articles/electricity-shortage-warnings-grow-across-u-s-11652002380?mod=djem_EnergyJournal).

<sup>108</sup> Bill Wirtz, “Is Russia Funding European Environmental Activists?: Russia might be funding European environmental organizations to support its position in the energy market and undermine competitors,” The National Interest, June 7, 2022, [https://nationalinterest.org/blog/buzz/russia-funding-european-environmental-activists-202846?mc\\_cid=a73ed7e7c4&mc\\_eid=546d7a34dc](https://nationalinterest.org/blog/buzz/russia-funding-european-environmental-activists-202846?mc_cid=a73ed7e7c4&mc_eid=546d7a34dc)

*of liberty. . . No remark is better founded in human experience, than that of Montesquieu, that 'there is no liberty, if the judiciary power be not separated from the legislative and executive powers.' And it is no less true that personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice.*" (Story, 1833) This requires a hierarchy of law which is noted throughout Federal Statute as well as the Code of Federal Regulations. The federal constitution is the law of the land,<sup>109</sup> to which all subsequent legislation and functions of the departments must conform to. As justice Story stated:

*"The power of interpreting the laws involves necessarily the function to ascertain, whether they are conformable to the constitution, or not; and if not so conformable, to declare them void and inoperative. As the constitution is the supreme law of the land, in a conflict between that and the laws, either of congress, or of the states, it becomes the duty of the judiciary to follow that only, which is of paramount obligation. This results from the very theory of a republican constitution of government; for otherwise the acts of the legislature and executive would in effect become supreme and uncontrollable, notwithstanding any prohibitions or limitations contained in the constitution; and usurpations of the most unequivocal and dangerous character might be assumed, without any remedy being within the reach of the citizens. The people would thus be at the mercy of their rulers in the state and national governments; and an omnipotence would practically exist, like that claimed for the British Parliament. The universal sense of America has decided, that in the last resort the judiciary must decide upon the constitutionality of the acts and laws of the general and state governments, as far as they are capable of being made the subject of judicial controversy. **It follows, that, when they are subjected to the cognizance of the judiciary, its judgements must be conclusive; for otherwise they may be disregarded, and the acts of the legislature and executive enjoy a secure and irresistible triumph.**"*

The top-down, intentional imposition of executive mandates lies in stark contrast to longstanding US land law and federal procedures governing administrative processes that ensure meaningful participation of states and county governments. The conflict created by EO 13990 and 14008 is one where the longstanding statutory doctrine of multiple-use and sustained-yield is replaced with an access-limited philosophy that burdens and suffocates legitimate recreational uses, mineral exploration activities, livestock grazing, or natural resource harvesting. Even though these permitted interests are to be fostered and protected by federal laws and policy, the practical outworking of administrative actions under the executive without direct congressional delegation is that modest and legitimate interests are driven off the land and out of the marketplace nearly always without recourse. The Supreme Court "expect[s] Congress to speak clearly if it wishes to assign to an agency, decisions of vast "economic and political significance." Util. Air Regulatory Grp. v. E.P.A., 573 U.S. at 324

---

<sup>109</sup> William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND BOOK I: THE RIGHTS OF PERSONS Wallachia Publishers New York City, NY 2015, Ch. 1 (first published 1769) ". . . It were endless to enumerate all the affirmative acts of parliament wherein justice is directed to be done according to the **law of the land**: and what that law is, every subject knows; or may know if he pleases: for it depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament. . . by I W. & M. st. 2. c. 2. it is declared, that the pretended power of suspending, or dispensing with laws, or the execution of laws, by **regal authority** without consent of parliament, is illegal. . ." "Not only the substantial part, or judicial decisions, of the law, but **also the formal part, or method of proceeding, cannot be altered but by parliament: for if once those outworks were demolished, there would be an inlet to all manner of innovation in the body of the law itself.**"

### a) A System of Limited Delegation and Long-Term Policy

*"It will be of little Avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be replaced or revised before they are promulgated, or undergo such incessant changes that no man who knows what the law is today, can guess what it will be tomorrow."*<sup>110</sup>

- James Madison

In the American system of government, all authority possessed by Federal administrative agencies is delegated by Congress through statutory acts. Statutes form the core mandates undergirding agency action, and for purposes of legal hierarchy, statutes supersede administrative rules, regulations, memoranda, executive orders, policy and guidance. All major Federal actions are to be adequately justified through the demonstration of need and science, having a clear purpose, with the onus and demonstration-of-need burden being upon the agency.

The Land Use Planning section under Title II of the Federal Land Policy and Management Act of 1976 (FLPMA) Sec. 202 - Land Use Planning, requires a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences consistent with the principles of multiple-use and sustained-yield as provided for in other applicable law.<sup>111</sup> The Secretary is to the maximum extent to which federal law permits coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located.

The land use planning policies in FLPMA provides for a bottom-up administration through development of land use plans, called Resource Management Plans (RMPs) which serve as a 15-20-year policy document with internal provisions for implementing, maintaining, evaluating, and changing the plan. (This process is accompanied by a full NEPA Environmental Impact Statement considering associated environmental laws as well as Laws governing our natural resources fostering access and utilization under multiple-use sustained-yield principles consistent with valid existing rights). Once a Record of Decision is signed and an RMP goes into effect the implementation and conformance requirements of the plan is binding on all higher levels of Bureau of Land Management (BLM) and Department of Interior (DOI).<sup>112</sup>

Congressional policy in FLPMA is explicit in relationship to the *Nations* need for the domestic sources of food, fiber, timber, and minerals.<sup>113</sup> Furthermore the United States Congress invoked its Article IV, Section 3 prerogative, reserving near exclusive authority over Federal land and mineral withdrawals.

Declaration of Policy. 43 U.S.C. § 1701(a), (a)(4) - *"The Congress declares that it is the Policy of the United States that - the Congress exercise its constitutional authority to withdraw or*

<sup>110</sup> Neil Gorsuch et. al. A Republic If You Can Keep It, Crown Forum 2019 p. 44

<sup>111</sup> 43 U.S.C. 1712(e)(1)(2)

<sup>112</sup> 43 CFR § 1610.5-3 Conformity and implementation - (a) All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning, shall conform to the approved plan.

<sup>113</sup> 43 U.S.C. 1701 (a) "The Congress declares that it is the policy of the United States that (12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands."

*otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action.”*

**EO 14008 seeks to designate federal lands for specified purposes linked to international timetables and targets expressed in numerical terms and values that cannot be derived from a particular statutory delegation.**<sup>114</sup> Thus, 30x30 and the sectoral decarbonization of the entire economy **constitutes a legislative rule dictating specific numerical targets for use across every federal department affecting State and Local Governments and private parties.**

History and experience have always shown that *“even in simpler times uncertainty has been regarded as incompatible with the rule of law. Rudimentary justice requires that those subject to the law must have the means of knowing what it prescribes.”*<sup>115</sup> **When men are no longer able to predict the coercive functions of government, the loss of private incentive and other subsidiary prerequisites that constitute self-government are diminished.** Of course, uncertainty exists within the market and the spontaneous processes that relate to personal decisions and risks, but those uncertainties are based on unknowable contingencies, and therefore those who succeed and those who fail are not determined by authority but the diligence and mutual assistance of his fellow man. This has repeatedly been demonstrated.<sup>116</sup>

When you cannot predict the coercive functions of government, its not simply that people act and fail, its that they fail to act, because uncertainty is no longer simply linked to spontaneity, but by the dead hand of the great planners and conditioners.<sup>117</sup> In these cases lawful and righteous actions of citizens who attempt self-government are penalized. Freedom is linked to conditions set by the “experts.” Of course, you are free to act, or we would not speak of ones choosing this or that, but when the alternatives have become so manipulated that the least painful path under the circumstances is precisely the way in which another mind and not your own has directed, did you at the end of the day choose at all.

There has been for decades the development of what initially began as an appendage to the executive branch in the form of administrative regulatory agencies, to **an administrative bureaucracy which is**

<sup>114</sup> *Catholic Health Initiatives v. Sebelius*, 617 F.3d 490, 495 (D.C. Cir. 2010) “Judge Friendly wrote that when an agency wants to state a principle ‘in numerical terms,’ terms that cannot be derived from a particular record, the agency is legislating and should act through rulemaking.” see also *Hoctor v. U.S. Dep’t of Agric.*, 82 F.3d 165, 170 (7th Cir. 1996) (“When agencies base rules on arbitrary choices they are legislating, and so these rules are legislative or substantive and require notice and comment rulemaking, a procedure that is analogous to the procedure employed by legislatures in making statutes.”)

<sup>115</sup> Antonin Scalia, *The Essentials of Scalia, On the Constitution, the Courts, and the Rule of Law*. New York, 2020: p.7 *The Rule of Law*

<sup>116</sup> **President Cleveland stated in his veto of the Texas Seed Bill in 1887:** “I do not believe that the power ... of the general government ought to be extended to the relief of individual suffering. ... A prevalent tendency to disregard the limited mission of this power ... should ... be steadfastly resisted. ... Though the people support the government, the government should not support the people. Charity of our countrymen can always be relied upon to relieve their fellow-citizens in misfortune. This has been repeatedly ... demonstrated.” **President Cleveland continued:** “Government aid in such cases encourages the expectation of paternal care on the part of the government and weakens the sturdiness of our national character, while it prevents ... among our people of that kindly sentiment ... which strengthens the bonds of a common brotherhood.”

<sup>117</sup> C.S. Lewis, *The Complete C.S. Lewis Signature Classics*, Harper One, C.S. Lewis Pte. Ltd. 2002, p. 718 (original copywrite 1944) - This modifies the picture which is sometimes painted of a progressive emancipation from tradition and a progressive control of natural processes resulting in a continual increase of human power. In reality, of course, if any one age really attains, by eugenics and scientific education, the power to Make its descendants what it pleases, all men who live after it are the patience of that power. They are weaker, not stronger: for though we may have put wonderful machines in their hands we have pre-ordained how they are to use them. And if, as is almost certain, the age which had thus attained maximum power over posterity were also the age most emancipated from tradition, it would be engaged in reducing the power of its predecessors almost as drastically as that of its successors.....The last men, far from being the heirs of power, will be of all men most subject to the dead hand of the great planners and conditioners and will themselves exercise least power upon the future...”

**more and more delegating administrative responsibilities over to “not-for-profit” tax exempt foundations and supra-national interests to perform.**

As with all delegation, when A delegate's B to assume a function A is responsible for, the more B assumes the duties of A the less incentive will A have to discharge them. Instead of requiring A to discharge his responsibilities the politician who happens to be A searches in the dark for ways to make B socially responsible. But B being either an administrative agency or a tax-exempt foundation not being elected is not accountable to the electorate, except through expensive litigation which for most of us is not practical, in turn B ends up having a monopoly over government policy.

# Table of Authorities and References

## **Federal Constitution**

- Article 1 Sec. 10
- Article II Sec. 2 clause 2
- Article III Sec. 2
- Article IV
- 10<sup>th</sup> Amendment

## **Montana Constitution**

- Article II DECLARATION OF RIGHTS Section 4. INDIVIDUAL DIGNITY
- Article II DECLARATION OF RIGHTS Section 2. SELF-GOVERNMENT
- MGCA 76-16-102

## **Federal Statutes**

- Public Law 94-579—October 21, 1976
- Data Quality Act 2000 (DQA)
- 42 USC § 4332(2)(C)
- Regulatory Flexibility Act of 1980 (RFA)
- 42 U.S.C. 4321-4347
- 43 U.S.C. 1701(a)
- 5 USC 601 SEC. 202. FINDINGS
- PUBLIC LAW 96-354 SEC. 2
- 43 U.S.C. 1701(a)(7)
- 43 U.S.C. 1712(c)(1)(2)
- 43 U.S.C. § 1701(a), (a)(4)
- Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a)
- Organic Forest Service Act 1897 (16 USC § 475)
- Mineral Leasing Act of 1920
- Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r)
- The Bankhead Jones and Farm Tenant Act of 1937 (7 U.S.C. 1012)
- Outer Continental Shelf Lands Act of 1953
- OCSLA 43 U.S.C. § 1332(3)
- Multiple Use and Sustained Yield Act 1960
- 43 U.S.C. 1702 (c)
- Public Law 88-606 (1964)
- 43 U.S.C. § 1714(c)(2)
- 30 U.S.C. § 21a
- 84 Stat. 1876, 30 U.S.C. 21(a)
- 43 U.S.C. § 1701(a)(12)
- Public Law 88-607. 78 Stat 986. September 19, 1964 (repealed)
- Public Rangeland Improvement Act of 1978
- 43 USC §1901(c)



- 43 USC § 1902(f)
- 43 USC § 1903(b)
- Administrative Procedure Act (APA) of 1946 (5 U.S.C. § 551 et seq.)
- Regulatory Flexibility Act of 1980 PUBLIC LAW 96-354
- The Unfunded Mandates Reform Act of 1995, 109 STAT. 48 PUBLIC LAW 104-4—MAR. 22, 1995
- Small Business Regulatory Enforcement Act of 1996, 5 USC 601
- Congressional Review Act, 5 U.S.C. Sec. 801-808
- 5 U.S.C. § 551(4). Definitions
- 5 U.S.C. § 804(3)
- 5 U.S.C. § 806(a)
- 42 U.S.C. § 6295(o)(2)(B)(i)
- 49 U.S.C. § 32902(f)
- 42 U.S.C. 7401(b)(1)
- 43 U.S.C. § 1332(3)

### **Federal Court Cases**

- 597 U. S. *West Virginia v EPA* (2022)
- *California v. Bernhardt*, 472 F.Supp.3d 573, 600–01 (N.D. Cal. 2020)
- [Louisiana et al v. Joseph R. Biden Jr. et al CASE NO. 2:21-CV-01074](#)
- STATE OF LOUISIANA; et al., Applicants, v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; et al., Respondents, April 27, 2022
- *Holmes v. Jennison et. al.*1840
- *Williams v. Bruffy*, Oct 1877
- *Shelby County v. Holder*, 570 U.S. \_\_\_\_ (2013)
- *New York v. U.S.*,505 U.S. \_\_\_\_\_,120 L.Ed.2d. 120, 154, 112 S. Ct. 2408, 2431 (1992)
- *Catholic Health Initiatives v. Sebelius*, 617 F.3d 490, 495 (D.C. Cir. 2010)
- *Hocor v. U.S. Dep’t of Agric.*, 82 F.3d 165, 170 (7th Cir. 1996)
- *Paul v. United States*, 140 S.Ct. 342 (2019) (statement of Kavanaugh, J., respecting denial of certiorari) (collecting cases)
- *NFIB v. OSHA*, 2022 WL 120952, at \*3 (U.S. Jan. 13, 2022)
- *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. 302 (2014)
- *MCI Telecomms. Corp. v. Am. Telephone & Telegraph Co.*, 512 U.S. 218 (1994)
- *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. at 324
- 597 U. S. *West Virginia v. EPA*, (Gorsuch, J., concurring) (2022)
- *Department of Transportation v. Association of American Railroads*, 575 U. S. 43, 61 (2015) (ALITO, J., concurring)
- *Solid Waste Agency of Northern Cook City. v. Army Corps of Engineers*, 531 U. S. 159, 173–174 (2001) (SWANC)
- *NRDC v. Hodel*, 62 F.Supp. 1945, 1054 (D. Nev.1985)
- *Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 499 (2010)
- *Solid Waste Agency of Northern Cook City. v. Army Corps of Engineers*, 531 U. S. 159, 173–174 (2001)
- *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J. dissenting)
- *Gregory*, 501 U.S. at 458
- *U.S. Forest Serv. v. Cow pasture River Pres. Ass’n* 140 S.Ct. 1837, 1848–49 (2020)

- *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952)

-

### **White House**

- National Climate Task Force
- White House FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies, April 22, 2021
- United States Nationally Determined Contribution April 22, 2021
- The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050
- Climate Finance Plan

### **Executive Orders**

- Executive Order 12830
- Executive Order 12866
- Executive Order 13422
- Executive Order 14008
- Executive Order 13990
- Executive Order 13766 (January 24, 2017) *Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects*
- Executive Order 13778 (February 28, 2017) *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule*
- Executive Order 13783 (March 28, 2017) *Promoting Energy Independence and Economic Growth*
- Executive Order 13792 (April 26, 2017) *Review of Designations Under the Antiquities Act*
- Executive Order 13795 (April 28, 2017) *Implementing an America-First Offshore Energy Strategy*
- Executive Order 13868 (April 10, 2019) *Promoting Energy Infrastructure and Economic Growth*
- Executive Order 13927 (June 4, 2020) *Accelerating the Nation’s Economic Recovery from the COVID–19 Emergency by Expediting Infrastructure Investments and Other Activities*
- Executive Order 13834 (May 17, 2018) *Efficient Federal Operations*
- Executive Order 13807 (August 15, 2017) *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*
- Executive Order 13920 (May 1, 2020) *Securing the United States Bulk-Power System*
- Presidential Memorandum of April 12, 2018, *Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards*
- Presidential Memorandum of October 19, 2018, *Promoting the Reliable Supply and Delivery of Water in the West*
- Presidential Memorandum of February 19, 2020, *Developing and Delivering More Water Supplies in California*

-

### **Secretarial Orders**

- Secretarial Order 3399 (April 16, 2021) - *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process*
- Secretarial Order 3398 (April 16, 2021) - *Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*
- Secretarial Order 3348 "*Concerning the Federal Coal Moratorium*" (March 29, 2017)
- Secretarial Order 3349 "*American Energy Independence*" (March 29, 2017)
- Secretarial Order 3350 "*America-First Offshore Energy Strategy*" (May 1, 2017)
- Secretarial Order 3351 "*Strengthening the Department of the Interior's Energy Portfolio*" (May 1, 2017)
- Secretarial Order 3352 "*National Petroleum Reserve – Alaska*" (May 31, 2017)
- Secretarial Order 3354 "*Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program*" (July 6, 2017)
- Secretarial Order 3355 "*Streamlining National Environmental Policy Reviews and Implementation of Executive Order 13807, 'Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects'*" (August 31, 2017)
- Secretarial Order 3358 "*Executive Committee for Expedited Permitting*" (October 25, 2017)
- Secretarial Order 3360 "*Rescinding Authorities Inconsistent with Secretary's Order 3349, 'American Energy Independence'*" (December 22, 2017)
- Secretarial Order 3380 "*Public Notice of the Costs Associated with Developing Department of the Interior Publications and Similar Documents*" (March 10, 2020)
- Secretarial Order 3385 "*Enforcement Priorities*" (September 14, 2020)
- Secretarial Order 3389 "*Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews*" (December 22, 2020)

### **Code of Federal Regulations**

- 43 CFR § 1610.5-3 Conformity and implementation
- 40 CFR 1508.18
- 40 CFR 1502.4
- 43 CFR § 4100

### **Guidance**

- OMB Circular A-4 September 17, 2003
- Department Of Interior, Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, HHS, Department of Homeland Security, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of Treasury, Department of Veterans Affairs, Environmental Protection Agency, Climate Change Risk, Millennium Challenge Corporation, National Aeronautics and Space Administration, NCPC, Office of Personal Management, Smithsonian Institution, Social Security Administration, USAID, Army Corps of Engineers, U.S. International Development Finance Corporation, Whole-of-Government Economy-Wide Climate Action Plans 2021
- OMB Budgetary Impact Analysis for Executive Order Entitled "*Tackling the Climate Crisis at Home and Abroad*"
- January 6<sup>th</sup> 2023 [Biden-Harris Administration Releases New Guidance to Disclose Climate Impacts in Environmental Reviews | CEQ | The White House](#); Federal Register / Vol. 88, No. 5 /

Monday, January 9, 2023 / Notices [Federal Register :: National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change](#)

- U.S. Treasury Department, Guidance on Fossil Fuel Energy at the Multilateral Development Banks, 2021
- Ibid. GAO Guidance, pps 7. April 11, 2019
- January 6<sup>th</sup> 2023 [WHAT THEY ARE SAYING: Environmental Justice and Congressional Leaders, Advocates Applaud the New Climate and Economic Justice Screening Tool | CEQ | The White House; Explore the map - Climate & Economic Justice Screening Tool \(geoplatform.gov\)](#)
- [National Strategy to Develop Statistics for Environmental-Economic Decisions](#), A U.S. System of Natural Capital Accounting and Associated Environmental Economic Statistics – Office of Science and Technology Policy Office of Management and Budget Department of Commerce, The White House, Jan. 2023

### **Federal Register**

- Federal Register / Vol. 87, No. 2 / Tuesday, January 4, 2022 / Notices
- [Federal Register / Vol. 86, No. 222 / Monday, November 22, 2021 / Notices](#)
- Federal Register / Vol. 86, No. 14 / Monday, January 25, 2021/*Presidential Documents*
- The Whitehouse, United States International Climate Finance Plan, April 22, 2021
- The United States Nationally Determined Contribution, Reducing Greenhouse Gases in the United States: a 2030 emissions target, April 21, 2021
- Federal Climate Adaptation Plans | Office of the Federal Chief Sustainability Officer
- The Enhancement and Standardization of Climate-Related Disclosures for Investors (87 FR 21334, April 11, 2022)
- Press Release, SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS, May 9<sup>th</sup> 2022
- Federal Register Vol 83, No.97. Friday, May 18, 2018. pps. 23295

### **State Responses**

- Riley Moore West Virginia State Treasurer, Fossil Fuel Banking Letter, Nov. 22, 2021
- Joint Governors' Comment on SEC Release Nos. 33-11042 & 34-94478, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (File No. S7-10-22) May 31, 2022
- Commonwealth of Kentucky [Opinion of the Attorney General 22-05](#) May 26, 2022
- Mike Sommers American Petroleum Institute, Letter to POTUS June 14, 2022

### **Legislative Committee**

- U.S. Senate Committee on Banking, Housing, and Urban Affairs, Public Input on Climate Change Disclosures June 13, 2021
- Raúl M. Grijalva (D-Ariz.) and Rep. Katie Porter (D-Calif.) U.S. House of Representatives, Committee on Natural Resources Washington DC 20515. Request Documents from Organizations Giving Awards to Climate Misinformation Campaigns

### **International Guidelines, Agreements, Alliances, Compacts, and Treaties**

- UNITED STATES CLIMATE ALLIANCE, Joint Statement on North American Climate Leadership, Sep. 13, 2018
- UNITED STATES CLIMATE ALLIANCE, [U.S. Climate Alliance States Commit to New High-Impact Actions to Achieve Climate Goals and Go Further, Faster, Together](#), Nov. 7, 2021
- USCA, [Further, Faster, Together: U.S. Climate Alliance Unveils COP26 Delegation](#), United States Climate Alliance, [October 29, 2021](#)
- USCA Annual Report FURTHER FASTER TOGETHER, United States Climate Alliance, 2021
- [Richard Nunn](#), Fact Sheet | The U.S. Climate Alliance and Related Actions, Environmental Energy and Study Institute, Aug. 14, 2017
- North American Climate Leadership Dialogue (NCLD) agreed to by Canada, Mexico and the Alliance States at COP23 in Bonn, Germany
- The United States of America Nationally Determined Contribution Reducing Greenhouse Gases in the United States: A 2030 Emissions Target, April 22, 2021
- [U.S.-International-Climate-Finance-Plan-4.22.21-Updated-Spacing.pdf \(whitehouse.gov\)](#) The Whitehouse, United States International Climate Finance Plan, April 22, 2021
- [Fossil Fuel Energy Guidance for the Multilateral Development Banks \(treasury.gov\)](#)
- United Nations Framework Convention on Climate Change
- 2006 IPCC Guidelines for National Greenhouse Gas Inventories
- [AR5 Climate Change 2013: The Physical Science Basis — IPCC](#)
- United Nations Framework Convention on Climate Change, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 2 to 15 December 2018, March 19, 2019
- Decision 18/CMA.1 Annex 1
- Guidance for the National Inventory Report is found in the Appendix of the CMA guidelines p. 20 and 22 - “Annex Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement” [Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 3 to 14 December 2018. Addendum 2 \(unfccc.int\)](#)
- Paris Agreement
- Zero draft of the post-2020 global biodiversity framework  
[TNC Position ZeroDraft GlobalBiodiversityFramework.pdf \(nature.org\)](#)

## Reports and Other References

- CRS ‘Congress’s Delegation of “Major Questions”’: The Supreme Court’s Review of EPA’s Authority to Regulate Greenhouse Gas Emissions May Have Broad Impacts’ Dec. 2021
- CRS Report: U.S. Climate Change Policy, R46947 October 28, 2021
- The Arbitrary and Capricious Standard Under The APA, Landmark Publications, Contemporary Decisions 2017
- Science Based Targets SECTORAL DECARBONIZATION APPROACH (SDA): A method for setting corporate emission reduction targets in line with climate science, Version 1 May 2015
- “The social change they seek has often been rejected outright by the people’s elected representatives.” See, e.g., Will ESG Disclosures be Mandated by Law? A Legislative Analysis, KING & SPALDING (Sept. 22, 2021), <https://perma.cc/F4FZ-9JA7> (discussing environmental, social, and governance (“ESG”) legislation from the 117th Congress and finding a “low likelihood” that the legislation becomes law)

- Research and Analysis for Government Accountability and Oversight: Case Study: UK “ESG” Billionaire Behind US Climate Regulatory, Litigation Campaigns DISCLOSING THE REAL “CLIMATE RISK” (2022)
- Max M. Schanzenbach & Robert H. Sitkoff, Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by A Trustee, 72 STAN. L. REV. 381, 388 (2020)
- Wilson R. McNair's book, Monarchy or Money Power (1933)
- Rupert Darwall, “Rishi Sunak’s net zero u-turn,” The Spectator (UK), May 12, 2022
- Stephen A. Breyer, Judicial Review of Questions of Law and Policy, 38 Admin. L. Rev. 363, 370 (1986)
- Chief Justice Joseph Story, 'COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES'. Quid Pro Books, Legal Legends Series 2013
- William Howard Taft, Our Chief Magistrate and His Powers 138-45 (1916), quoted and cited in James L. Hirsen, Government by Decree 7 (1999)
- Fergus Land Use Plan
- Hayek, Friedrich, ‘The Road to Serfdom’ (Text and Document, Definitive Edition), The University of Chicago Press Routledge, London 2007
- F A Hayek, *The Constitution of Liberty* The Definitive Edition. (The University of Chicago Press, London 2011) chapter 16 *The American Contribution* p. 269
- Ludwig Von Mises (1881-1973), SOCIALISM an Economic and Sociological Analysis (Liberty Fund Indianapolis 1981)
- Antonin Scalia, The Essentials of Scalia, On the Constitution, the Courts, and the Rule of Law. New York, 2020
- Bill Wirtz, “Is Russia Funding European Environmental Activists?: Russia might be funding European environmental organizations to support its position in the energy market and undermine competitors,” The National Interest, June 7, 2022
- Blacks Law Dictionary 4<sup>th</sup> Edition
- Neil Gorsuch et. al. A Republic If You Can Keep It, Crown Forum 2019
- President Cleveland stated in his veto of the Texas Seed Bill in 1887
- C.S. Lewis, *The Complete C.S. Lewis Signature Classics*, Harper One, C.S. Lewis Pte. Ltd. 2002
- The Federalist No. 47, at 303 (J. Madison); id., No. 62, at 378 (J. Madison)
- T. Merrill, Capture Theory and the Courts: 1967–1983, 72 Chi.-Kent L. Rev. 1039, 1043 (1997)
- Office of The Solicitor May 3, 2003 Clarification of M-37008)
- Public Land Law Review Commission Report 1970
- FOREST SERVICE MINERALS PROGRAM POLICY.pdf (fs.fed.us)
- David H. Getches, Managing the Public Lands: The Authority of the Executive to Withdraw Lands, 22 Nat. Resources J. 279 (1982)
- Getches, David H., "Withdrawals of Public Lands Under the Federal Land Policy and Management Act" (1984) The Federal Land Policy and Management Act (Summer Conference, June 6-8)
- Wheatley. Study of Withdrawals and Reservations of Public Domain Lands 55. (Rev. 1969)
- Judicial Review Under the Administrative Procedure Act (APA) December 8, 2020, CRS report
- 1 U.S. Advisory Commission on Intergovernmental Relations (ACIR), Regulatory Federalism: Policy, Process, Impact, and Reform, A-95 (Washington, DC: ACIR, 1984)
- Unfunded Mandates Reform Act: History, Impact, and Issues Updated February 23, 2021, Congressional Research Services
- Regulatory Reform Legislation in the 112th Congress Curtis W. Copeland Specialist in American National Government May 25, 2011

- The Federalist No. 47, at 303 (J. Madison); id., No. 62, at 378 (J. Madison)
- T. Merrill, Capture Theory and the Courts: 1967–1983, 72 Chi.-Kent L. Rev. 1039, 1043 (1997)
- Federalist No. 51 (J. Madison)
- Federalist No. 39, at 245 (J. Madison)
- Federalist No. 44 (J. Madison)
- William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND BOOK I: THE RIGHTS OF PERSONS Wallachia Publishers New York City, NY 2015, Ch. 1 (first published 1769)
- A new global framework for managing nature through 2030: First detailed draft agreement debuts | Convention on Biological Diversity (cbd.int)
- GLASGOW FINANCIAL ALLIANCE FOR NET ZERO, <https://perma.cc/43B2-XQ4A>
- 2020 Progress Report, CLIMATE ACTION 100+ (2020), at 18 and 78, <https://perma.cc/B5XW-XW2X>