



Letters

Fall 2017

AG Climate Rico Litigation Heats Up; Former AG Sorrell Ducks Deposition

by Craig Richardson, E&E Legal President



As the fall wound down, E&E Legal pursued a number of public records request lawsuits in New York and Vermont, the states with the original co-ringleader attorneys general. In Vermont, E&E Legal pursued William Sorrell, who is no longer attorney general, for records he holds on a private e-mail server. He is represented in the case by the current Vermont attorney general T.J. Donovan.

On October 23, E&E Legal's lead attorney Matthew Hardin attempted to depose Sorrell in Vermont after a Superior Court Judge's ruling there forced him to appear after he skipped his initial deposition. Said Hardin prior to the deposition, "Mr. Sorrell and the Vermont Office of Attorney General have put up as many roadblocks as possible to this point in our litigation. I am glad we finally

have an opportunity to depose Sorrell about his use of non-official email accounts and how that relates to how this now-disgraced campaign came about. Records filed with a New York court show that, at least in that state, donors were involved in the AGs' scheme for many months before subpoenas to political opponents began to flow to political opponents of the 'climate' agenda.

Unfortunately, instead of answers, Hardin faced a stonewall. In his deposition, Sorrell said virtually nothing in the hour and a half he was present. Nearly every question Hardin attempted to ask was interrupted by Sorrell's attorney, who claimed that her client didn't need to respond, defying the Court's order that he answer such questions regarding "the extent to which he has documents and correspondence on his private email account and computer that relate to the specific public record in this case."

The next day, Hardin and local counsel then appeared in front of the New York Supreme Court in the latest chapter of an ongoing struggle to obtain public records relating to New

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Environmental Protection Agency's proposed repeal of the Obama administration's Clean Power Plan is a milestone.

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Anybody Else, but Not You



E&E Legal's Senior Policy Fellow Greg Walcher authored an article on how a Wisconsin zoning law prevented a homeowner from building on this own property.

The battle ensnared the owner in an long and protracted legal battle.

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Jerry Brown's War Against Reality



E&E Legal's Senior Media Fellow Katy Grimes covered Climate Change in Chief, CA Gov. Jerry Brown's trip to

Rome where he met with other world leaders. In one of his speeches he said the world needs 'brainwashing' on climate change.

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The Clean Power Plan's Counterfeit Benefits

The Obama EPA claimed its regulation would have a \$55 billion payoff. You'll never believe how.

by Steve Milloy, Senior Policy Fellow
As Appearing in the *Wall Street Journal*



The Environmental Protection Agency's proposed repeal of the Obama administration's Clean Power Plan is a milestone. No Republican administration has ever mustered the courage to roll back a major EPA regulation. In a clever twist, the Trump administration has done so by directly challenging the plan's purported health benefits.

Although the Clean Power Plan was pitched as a way to reduce emissions of greenhouse gases from coal-fired power plants, averting climate change was not how the Obama EPA justified the rule. In 2015 House Science Committee Chairman Lamar Smith forced Obama's EPA administrator, Gina McCarthy, to acknowledge that the plan would produce no change to global temperatures. Instead, the EPA justified the net benefit of the rule based on collateral reductions in power plants' emissions of fine particulate matter. In regulatory parlance, this soot is called PM2.5.

While the compliance costs to industry of the Clean Power Plan could be as high as \$33 billion a year, the Obama

EPA claimed that the economic benefits from reducing PM2.5 emissions would be even larger—as much as \$55 billion a year. What are the supposed \$55 billion in economic benefits? That sum is intended to represent the value of thousands of premature deaths allegedly prevented every year by the Clean Power Plan via the co-benefit of reduced PM2.5 emissions. The EPA values lives “saved” at around \$9 million each. Thousands times millions equal billions.

EPA staff invented this calculus in 1996 to justify the agency's first effort to regulate PM2.5, although there's no scientific evidence, then or now, to support the notion that particulates in outdoor air kill people. The EPA regulated them anyway, stiff-arming not only the Republican-controlled Congress's demands for proof of the danger of PM2.5 emissions but the objections of then-Vice President Al Gore, who thought the rule too costly.

The Clean Air Act requires air-quality standards for pollutants such as PM2.5 be set at a “safe” level. The EPA has long claimed that there is no safe level of exposure to PM2.5 and that inhalation can cause death within hours. But the EPA could never lower the PM2.5 standard to zero because such a standard could not be attained even if the economy was entirely shut down.

The Trump EPA has now

largely jettisoned the notion that PM2.5 is a killer by slashing the supposed economic benefits of reduced emissions by \$29 billion per year. That nets out favorably against the rule's anticipated annual costs of as much as \$33 billion.

A robust body of scientific literature—from large epidemiologic studies to clinical research to historical air-quality data—supports the EPA's reversal. Standing against it are a few decades of dubious agency-funded studies, the underlying data for which the agency has kept well hidden in order to prevent independent analyses. The Obama EPA even defied a congressional subpoena in order to keep its PM2.5 epidemiologic secret.

EPA chief Scott Pruitt has hailed repeal of the Clean Power Plan as the end of the Obama administration's “war on coal.” It's more like the beginning of the end. New York's Democratic Attorney General Eric Schneiderman and green groups have already announced they will sue. Good luck. When the Supreme Court voted to stay the Clean Power Plan in February 2016, it was a clear signal that the coal industry and red-state plaintiffs would prevail on the merits in any future legal challenge. The EPA's acknowledgment that the Clean Power Plan has no economic or climate benefits is the final nail in the regulation's coffin. □

Anybody Else, but Not You

by Greg Walcher, Senior Policy Fellow
As Appearing in *The American Spectator*



Imagine that you own a house on a one-acre lot. The neighboring lot is vacant, and zoning rules allow anybody to build a similar house on it. So you decide to buy it and build a house for your daughter so she can live closer. Sorry, not allowed. The zoning rule actually means that any else can buy the lot and build on it — but not you. OK, then if you can't use the extra lot you'll sell it off. Again, sorry, not allowed. The zoning board has changed the rule and you now have only one lot.

That is exactly what happened to the Murr family in Wisconsin. The parents had purchased a lot and built their home, then later purchased the adjoining lot as an investment. When they died and the kids inherited the two lots, they decided to sell off the second lot, appraised at \$410,000. But they were stopped by a new local zoning ordinance, passed years after their parents made the investment. Under the new rule, the two lots were treated as one and could only be sold together as one, even though they had always been deeded separately, and taxed separately.

That zoning ordinance had confiscated the \$410,000 value of the second lot, rendering the parent's investment worthless. The kids sued, citing the Fifth Amendment prohibition against government taking private property without just compensation. They lost, appealed, and lost again. They went all the way to the U.S. Supreme Court, where they lost again.

They were prohibited from building on or selling the lot — they were out \$410,000 (plus legal fees).

At every turn in the 13-year legal battle, courts ruled that the government had taken most, but not all, of the lot's value. The house now sits on a two-acre lot, the courts reasoned, that is at least somewhat more valuable than a home on one acre. Thus, not all of the second lot's value is gone. That matters to the Court because an earlier ruling established a standard called the “wipe out” rule. Ironically, it stems from a case in which the plaintiff won.

In that 1992 case, the court ruled that David Lucas was entitled to compensation because a newly-enacted state law prohibiting him from building on his property had effectively “wiped out” all of the land's value. The court said this was an important precedent, but the problem in applying it elsewhere is that very few regulations actually wipe out all value. As in the Murr's situation, even a very small value remaining is enough for courts to rule against requiring any compensation at all.

Regulations that destroy property value are referred to as “regulatory takings,” as I have mentioned in previous columns. The courts say there is no “taking” of private property requiring “just compensation” unless the government either takes the actual deed, or wipes out all of the value. But if such regulatory takings do not violate the letter of the Constitution, they certainly violate its spirit.

Unless you think America's founders wanted to keep people from living near their families, then they must have had something else in mind. Indeed, they drafted the “takings clause” of the Fifth Amendment without any inkling that someday governments would use zoning to take away the value of people's property, and leave them holding worthless deeds.

Sometimes governments do need to take private property for public purposes, such as roads, bridges, and public buildings. Society cannot be

held hostage by a single landowner who refuses to sell, nor should he be allowed to hold out for extortionate prices. That is why the founders explicitly provided the power of “eminent domain,” allowing governments to condemn such properties and “take” them into public ownership — providing just compensation (meaning fair market value). Without that system, America's infrastructure would not exist as we know it.

Similarly, governments today may make land use decisions that benefit the general public, including reasonable zoning. Such rules can limit the size of buildings, or reserve particular areas for industrial, farming, or residential uses. That is within government's power, but when it destroys the value of private property to benefit the whole society, then society has a duty to pay for that value.

Courts are all over the map in recent years, with contradictory rulings on every side of this issue. It shouldn't be that complicated. Common sense should set the standard for what is fair, not arcane court precedents. What happened to the Murr family was clearly not fair. Still, there is one more chapter in their story, because the Murr family is not prone to giving up. They took the battle directly to the State Legislature, and succeeded in changing the law.

Within a month after the adverse ruling from the Supreme Court, a bill was introduced to correct the court's mess. Committee hearings were held less than 90 days later, floor votes within two weeks, and by the end of the year Governor Scott Walker had signed it into law. The measure prohibits enforcement of such local ordinances, making it retroactive and restoring the confiscated property rights of families like the Murrs. Wisconsin's new law should be a model for other States, a beacon of respect for the rule of law, and proof that in our republic the government works for the people, not the other way around. □

CA Gov. Jerry Brown's War Against Reality...And the Climate

by Katy Grimes, Senior Media Fellow
As *Canada Free Press*



California Gov. Jerry Brown says the world needs 'brain washing' on climate change. Sounding indeed brainwashed, Brown said, "The problem ... is us. It's our whole way of life. It's our comfort ... It's the greed. It's the indulgence. It's the pattern. And it's the inertia."

I hate to be a party pooper but the totalitarian trio of Stalin, Mao and Pol Pot also said the world needed brainwashing. But I digress.

Brown arrived at the Vatican in Rome Friday for 14 days of "climate talks." Yet Sacramento reporter Christopher Cadelago, who usually is comfortable sharing opinions, twisted himself into a pretzel trying to explain Brown's dictatorial statements. Brown "said the path to transformational change must include the mass mobilization of the religious and theological sphere, but also the prophetic sphere," Cadelago wrote.

Brown's handlers really shouldn't let him out in public any more.

Let's have a fact-based chat.

If the level of air pollution in the United States is among the lowest on the planet, according to the World Health Organization, why does California Governor

Jerry Brown believe "the threat of climate change could be more dangerous than that of fascism during World War Two?"

Only the Solomon Islands, the island of Vanatu, New Zealand and Micronesia are more pollution free, according to the most recent WHO report on air pollution. In the report, charts and graphs show the U.S. is one of the countries with the cleanest air in the world.

So why is Jerry Brown embarking on yet another overseas trip (gigantic carbon footprint) to another climate summit organized by the Pontifical Academy of Sciences at the Vatican? State Senate president ignoramus Kevin de Leon, will also give remarks at the conference (that ought to be cringe-worthy).

"Jerry Brown Burns Tons of CO2 in New Climate Change Trip Overseas," Chriss Street wrote in *Breitbart CA*, adding, "One round-trip flight from New York to Europe or to San Francisco creates a warming effect equivalent to 2 or 3 tons of carbon dioxide per person."

Jerry's a Marxist and therefore believes the bills he signs into law are for the commoners, while he and the elite class are exempted.

"The governor has sought to contrast California's approach to tackling the climate challenge with federal rollbacks led by the Trump administration, saying that while the White House declares war on climate science and retreats from the Paris Agreement, California is doing the opposite and taking action," the Sacramen-

to Bee reported.

Well, the truth is, Brown is at war with Donald Trump.

"Following Trump's election, California's Democrat Governor Jerry Brown has taken a mostly defiant stance, telling Trump that "California is not turning back" in reference to the president's border security and immigration policies. I wrote in my new book, "California's War Against Donald Trump: Who Wins? Who Loses?"

"Brown, now 79, even warned the President, "You don't want to mess with California," in an interview on NBC's, 'Meet the Press' in March."

Remember when Gov. Jerry Brown traveled to Vatican City in 2015 to discuss climate change with Pope Francis? It was clear then Brown was seeking to burnish his legacy as a world climate change leader. "In the spirit of the pope's encyclical, this unprecedented gathering of global leaders is a wake-up call to face up to the common threats of climate change and human exploitation," Brown said in a statement. "This is about the future of humanity and how we as humans live and treat one another and the natural world around us."

A scientist friend reminded me that a group of highly distinguished climate scientists was physically blocked from entering the Vatican's Pontifical Academy of Sciences where they had traveled to have a scheduled meeting in 2015. (Never let the facts get in the way of the leftist agenda)

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Brown's War Against Reality (Cont.)

Brown expanded his themes in his January 2017 State of the State address to make it very clear he would be at odds with the Trump administration, and the President. Brown dug in his heels and pledged to continue forging dubious climate agreements with other states and countries.

The elites are also exempted from hypocrisy. In 2016, I explained: “The inconsistencies of California Gov. Jerry Brown’s climate change policies, together with his immigration policies, are formidable and deliberately deceptive—one policy is driving taxpayers and businesses out of the state, and the other is driving droves of unskilled, unemployed aliens into the state.”

Brown claimed in 2015 that California has an overpopulation problem, and the ongoing drought was proof that the explosion of population in California has reached the limit of what the states’ resources can provide. “We are altering this planet with this incredible power of science, technology and economic advance,” Brown told the publisher of the Los Angeles Times. “If California is going to have 50 million people, they’re not going to live the same way the native people lived, much less the way people do today.... You have to find a more elegant way of relating to material things. You have to use them with greater sensitivity and sophistication.”

So why do Jerry and Democrats offer a welcome mat and a Swag Bag full of goodies to illegal aliens and Middle Eastern refugees? This only makes it harder to meet the strict lower carbon emis-

sion goals of California’s Global Warming Solutions Act of 2006, also known as AB 32.

You may remember AB 32—in 2006, then-Governor Arnold Schwarzenegger signed this dubious climate-change legislation called California’s Global Warming Solutions Act.

AB 32 required the California Air Resources Board to develop new regulations and create “market mechanisms” to reduce California’s greenhouse gas emissions to 1990 levels, by 2020. But government cannot create “market mechanisms”—only the private sector really can, because market mechanisms are supply and demand. When government gets involved, it manipulates naturally created demand.

AB 32 was supposed to be based on real climate science that proved that unless dangerous greenhouse gas emissions levels were reduced, the earth’s atmosphere would diminish and we’d all die.

But at the crux of the issue is altered data and science. The data originally produced by the Intergovernmental Panel on Climate Change scientists in the 1990s were altered by government bureaucrats in order to create a crisis, as well as a demand.

Ironically, California already achieved the lower emissions goals largely through advanced automobile technology. But no government program or agency goes away. So Sen. De Leon authored another bill, SB 32, which called for even further reductions bumped now to 40 percent below 1990 levels, by 2030. They just keep moving the goal posts.

Democrats lie.

Both AB 32 and SB 32 essentially authorize the California Air Resources Board unlimited power to regulate and even tax businesses without Legislative oversight.

The fundamental underpinning of Trump’s is the use of “cost-benefit” analysis in the promulgation of rules that affect the economy. When a regulation is considered and before it is adopted, not only the benefits to society are considered, but they are also balanced against the costs to society of the new rule. When the costs to society outweigh the benefits, the rule should be rejected.

Trump’s approach is rooted in cost-benefit analysis, in that it considers the costs of the regulations to society in terms of lost jobs and harm to the economy in balance with the alleged benefits, is in stark contrast to California’s Democrat leaders’ idea of regulatory power, perhaps exemplified best by their own “War on Carbon” no matter the cost to society.

“And then there’s the Brown family’s semi-secret financial ties to the military dictatorship of Indonesia, a book-length saga unto itself,” Dan Walters dropped into a column in 2010. (Not surprisingly, the 2010 story has been taken down, but this one from 1990 covers everything.) The Brown family hypocrisy has a long legacy.

For your reading pleasure, Anthony Watts, author of the *Watts Up With That* website, has a nice long list of climate prediction failures. □

AG Climate Rico Litigation Heats Up (Cont.)



York Attorney General Eric Schneiderman's "climate-RICO" scheme to pursue political opponents from the State's top law enforcement office. Our appearance in court was in fact a re-argument involving a longstanding Freedom of Information Law (FOIL) request relating to this now-disgraced scheme after subsequent revelation of Schneiderman's use of a Gmail account for work, about which his office had misled the Court previously.

E&E Legal has been forced into an 18-month effort litigating under FOIL and other state laws to educate the public on how this campaign came about, with whom, at whose behest — major players in which drama, we now know, include major donors, activists and contingency fee lawyers.

Specifically at issue is Gmail correspondence between Schneiderman and his co-ringleader in his policy crusade circumventing the democratic process, former Attorney General William Sorrell of Vermont — also revealed by public records requests to have used a Gmail account for work-related correspondence.

The records sought involve the scheme these two cooked up to go after "Exxon specifically, and the fossil fuel industry generally," as one email described the plan. This shakedown campaign, using the full power of law enforcement offices, recruited several other state attorneys general — if only briefly, until the open records requests started coming in — was launched with a press conference in New York on March 29, 2016 featuring Al Gore.

E&E Legal has been forced to file in New York and Vermont after

what records now also reveal was a coordinated stonewall erected in the wake of Vermont's initial compliance and release of records. That led to spectacular embarrassment of these 'Climate-RICO' attorneys general. A federal judge even shamed the two law enforcement officials, citing to those revelations.

It is this campaign that neither Schneiderman — nor Sorrell, based on his uncooperative deposition — want to discuss. In addition to using Gmail accounts, and their staff telling outside activists to mislead the press about their involvement, Sorrell, Schneiderman and the other attorneys general sought further protection from open records requests by entering into a purported "Common Interest Agreement," which was no such thing but in fact an attempted secrecy pact by which they hoped to keep safe from legally required disclosures.

As Hardin noted, "Once again, we find ourselves in New York, attempting to obtain records belonging to the public from the top law enforcement official in the state — an individual you would most expect to understand complying with the laws he is elected to oversee. Regardless of what e-mail accounts Schneiderman and Sorrell used, if such accounts were used to transact official business in their public capacities, they are subject to open records requests. Period."

E&E Legal also opened up another front in the AG Climate-RICO scandal beyond New York and Vermont. On November 1st, E&E Legal filed suit under California's Public Records Act (PRA) against the state's Attorney General Xavier Becerra for withholding all but one email showing or mentioning its work with partisan and environmentalist activists to use law enforcement in going after opponents of the "climate" political agenda". Under Kamala Harris, California's OAG had participated in the since-col-

lapsed "Climate-RICO" cabal organized by New York Attorney General Eric Schneiderman, but kept its involvement off-screen. The new AG, Becerra, has since suggested that he has indeed been working with activists, correspondence to, from or discussing which E&E Legal sought in its PRA request.

Specifically, in July 2017, E&E Legal requested records "concerning the Office of Attorney General's work with private outside parties to pursue, as targets of investigation, perceived opponents of a political and policy agenda shared by the Attorney General and these outside parties." The complaint specifies the public records sought, in the form of correspondence that was sent to, or received from, the Attorney General, or members of his Executive Office, and certain named parties or entities of interest because of their involvement in the AG Climate RICO scandal beginning roughly six-months prior to the request.

Given our experiences of delay and stonewalling in New York and Vermont, we expect the same treatment in California. As I noted at the time of the Sorrell deposition, "It's clear we're in this for the long haul, just as it's clear the AGs are waging a campaign of denial by delay. In a perfect world, the top law enforcement officers of each state would respect the rule of law and adhere to the same rules they impose on others. Unfortunately, Schneiderman and Sorrell appear more interested in advancing politics and ideology than serving the public interest." □

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