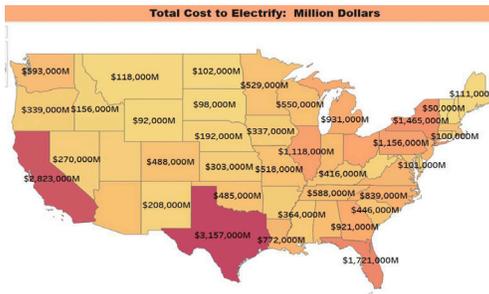




Letters

Fall 2020

E&E Legal Releases Tom Tanton State-by-State “Electrification” Costs Report



On September 22, E&E Legal released a state-by-state report on the capital cost associated with “electrification” for states and the nation. The report, and its accompanying data spreadsheet, was authored by Tom Tanton, E&E Legal’s Director of Science and Technology Assessment.

According to the report, electrifying the entire nation, with a goal of eliminating the direct consumption of fuel and reducing climate change emissions, would cost between \$18 trillion and \$29 trillion in first costs. Going all renewable will force costs to the high end of the range. Also, constructing and implementing an “all-electric” nation will include two other significant costs: stranded assets and deadweight losses. The bottom line is that electrification is not a cost-effective means of reducing

carbon emissions from commercial or residential buildings nor the transportation sector.

“Electrification of everything is a poor means to reduce greenhouse gasses and exposes customers to more frequent outages. Further, we’d just be substituting one set of environmental impacts for another,” said Tanton. “There are several other more environmentally-friendly and cost-effective means to accomplish this goal, and we simply can’t afford to electrify everything as the report clearly shows.”

Tanton adds that electrification will destroy decades of diversification by the market, tying consumers to a fragile yet monolithic electric grid. The electric grid is ill-equipped for extreme conditions, like extended heat waves or polar vortex cold snaps, without blackouts, like just happened in California. The likelihood of outages will increase with the considerable increase in demand associated with electric cars, removing natural gas from buildings, and other electrification moves. Building a more robust grid to handle such extremes would

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As the election continues to linger on, E&E Legal’s Steve Milloy asserts that the results for the GND are in and it’s a resounding NO!

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They’re just nine people



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Tom Steyer Flees A Mess He Help Created



Katie Grimes, E&E Legal’s Media Fellow covers Tom Steyer’s announcement that he’s fleeing San Fran. Of course he blames ‘climate change.’

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How to Stop the Paris Climate Accord



In a WSJ op-ed, Steve Milloy explains how the President should send the Paris Accord to the U.S. Senate so they can address it as a treaty.

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One clear election loser: The Green New Deal

by Steve Milloy, Senior Policy Fellow
As Appearing in the *Washington Examiner*



Despite the mixed signals from the 2020 election, the exit polling indicated one clear loser: the Green New Deal.

Joe Biden was both for and against the Green New Deal. In a debate, he said it would pay for itself. Sentences later, he denied he supported it even though his website said the Green New Deal was a “crucial framework” for his own plan.

No matter, though. The exit polling shows that the climate issue was simply not a voter priority anywhere. The high mark for climate seems to have been in Colorado, where 9% of voters said climate was their priority. But in states such as Florida, Texas, Michigan, Pennsylvania, and even Biden’s Delaware, a mere 3% of voters said climate was their priority.

None of this is to say that Democrats won’t keep trying to force the Green New Deal or variations of it down our throats. They certainly will.

What are the prospects for the success of the Green New Deal in a Biden administration?

It looks like Republicans might successfully defend the Senate, and they have even picked up several seats in the House. So,

we could expect a return to the Obama era of congressional stalemate on the climate issue, perhaps with some unilateral executive pen-and-phone regulation.

There would almost certainly be no successful major climate legislation, i.e., no Green New Deal, coming out of Congress.

The Green New Deal, instead, would be implemented by the regulatory agencies.

A Biden Department of the Interior could be counted on to ban fracking on federal lands. A Biden Environmental Protection Agency could be counted on to roll back the Trump administration’s pro-fracking deregulatory efforts, such as the methane rule. The Biden Department of Energy could be counted on to ratchet up energy efficiency standards further so that appliances, for example, become pointlessly more expensive.

And because the Senate would only be narrowly controlled by Republicans, there would be scant opportunity for the use of the Congressional Review Act to overturn Biden administration excesses.

Lawsuits could be a way of slowing the Biden regulatory juggernaut. But that path is tortuously long and expensive, and you never know what the outcome will be.

Corporate America would be quick to do the bidding of a Biden administration, just as it was during the Obama administration. Corporations would, by

and large, assume that Democrats and the Green New Deal are here to stay and would be eager to please and benefit from close ties and a symbiotic relationship.

Let’s not forget Biden’s promise to reenter the Paris climate accord on Day One. Although the original Obama administration agreement constituted an illegal dodge around the constitutional requirement for Senate ratification, one can easily imagine the Biden administration implementing the promised emissions cuts as though they were required by law. Could the Senate or anyone sue to stop this? It is hard to say, and the damage might already be done by the time a legal challenge is successful. This is what happened to the coal industry during the Obama administration. The Supreme Court halted the regulations only after irreparable damage had been done.

The public doesn’t want the Green New Deal. People say so in every poll. A 2019 Washington Post-Kaiser Foundation survey found that most people would oppose paying even a mere \$2 more per month on their electric bill for climate purposes. The polling running up to the election failed to indicate a significant pulse among voters for the climate. The New York Times exit polls report more of the same.

And if the average person realized the truth that Green New Deal policies just raise prices and reduce their standard of living without improving the weather or climate in any discernible way, support for it would be zero. □

Sue-Happy Louisiana Sends People, Jobs, and Investments Fleeing

by Craig Richardson, President
As appearing on *RealClear Energy*



Home to some of the most beautiful and bountiful fishing and hunting grounds in the world, Louisiana has long been known as the Sportsman's Paradise. Unfortunately, a government-sponsored legal war against some of the country's largest job creators has earned the state a new nickname: The Lawsuit Paradise.

Seeking to blame the oil and gas industry for shoreline erosion along the coast, Louisiana governor John Bel Edwards and some local leaders have partnered with plaintiffs' attorneys to file dozens of lawsuits challenging production and exploration operations conducted across South Louisiana over the last 100 years.

Coastal land loss is a significant issue that needs addressing – but this legal blame game is nothing more than a state-sponsored money grab.

A broad consensus exists across the scientific community, including the state's own coastal experts, that coastal erosion is driven by a combination of massive flood-control projects, creation of major waterways such as the Intercoastal Waterway, and natural forces that have nothing to do with energy production.

Nevertheless, the government's lawyers continue to assert vague and meritless claims in the courtroom, looking to hold the industry liable for oil and gas operations decades ago that complied with the law at the time they were undertaken.

The suits, which appear to be designed to create a windfall for plaintiffs' lawyers who happen to be among

the governor's top campaign contributors, have been hung up in a state court vs. federal court jurisdictional battle for years.

The defendants have said that they want to keep the cases in federal court because many of the activities that the suits challenge were controlled, directed, and authorized by the federal government. Meanwhile, trial lawyers in Louisiana prefer state court, where they hope to find judges and juries less sympathetic to the industry.

In August, the Fifth Circuit weighed in on the plaintiffs' side, affirming the remand of two of the bellwether cases back to state court. The narrow ruling, issued by a three-judge panel, did not address the merits of the case. Instead, it upheld the lower courts' decisions based on procedural grounds of timeliness.

In response, Chevron, Exxon, and other energy companies filed motions asking the panel and the full court to reconsider the decision, arguing that the panel's ruling conflicts with Fifth Circuit precedent.

Several national organizations and associations including the Chamber of Commerce, National Association of Manufacturers, American Petroleum Institute, and others, submitted briefs to the court arguing that the cases should be reheard. The Fifth Circuit took up oral arguments in the cases in October, and the facts presented strongly favor the companies' request for reconsideration and removal of the cases to federal court.

In an attempt to avoid federal jurisdiction, the original petitions filed by plaintiffs' attorneys in 2013 expressly renounced any aspect of federal interest – claiming that their lawsuits were based solely on alleged violations of state coastal use permitting laws. Notably, every court to consider the plaintiff's allegations found them “vague and factually deficient.” In fact, numerous courts noted plaintiffs “fail[ure] to identify which specific activities are at

issue” or “allegedly unlawful.”

In 2018, however, plaintiffs' lawyers did an about-face. They filed an expert report in state district court, which revealed the true nature of their legal claims for the first time. Essentially, the expert report erroneously suggested that energy producers should be held liable under Louisiana state law for exploration and production operations dating back to the 1920s, long before the state implemented its own coastal-management laws in 1980. The report also specifically challenged oil and gas activities that were controlled, directed, and governed by the federal Petroleum Administration for War during World War II.

The Fifth Circuit should not tolerate this apparent attempt to conceal the true nature of plaintiffs' legal claims. If not overturned, the practical effect of the panel's ruling could be to further empower plaintiffs' attorneys to file vague and meritless complaints in state courts only to later reveal their true theory of the case in subsequent filings.

Sadly, this federal vs. state jurisdiction issue is not new to courts around the country. The Supreme Court has agreed to review one of the legal issues present in the Fifth Circuit's panel opinion during its next term. The high court's decision regarding the appropriate scope of appellate review could have far-reaching implications in the Louisiana coastal land loss cases – and beyond.

Unfortunately, in the meantime, hardworking Louisianans will continue to suffer as frivolous lawsuits drive people, jobs, and investments out of state. It is estimated that over 75,000 people left the state over the last four years, searching for jobs and a better life. In addition, economists estimate the suits have cost Louisiana's economy as much as \$113 million a year since the litigation was filed. How much more must be lost before state and local leaders decide to end this legal war on their state's top job creators?

They're just nine people

by Greg Walcher, Senior Policy Fellow
As appearing in *The Daily Sentinel*



Few new Supreme Court nominees have generated as much interest as Judge Amy Coney Barrett, because her confirmation could have far-reaching implications by upending the court's decades-long liberal majority.

More has already been written about Judge Barrett than my poor power to add or detract. It is appropriate in this space, though, to opine on her potential impact on various environment and natural resources issues. And those issues actually underlie much of the debate about the next Supreme Court. The media is focused on the future of *Roe v. Wade*, but no such case is on the court's docket in the near future.

Instead, the court's current term, which began traditionally on the first Monday in October, already has several environmental cases on its docket. Those include the Sierra Club's case against proposed reforms in the Endangered Species Act, and a Sierra Club lawsuit challenging the administration's use of Defense Department funds for the border wall. It also includes two very important water cases, both of which bear directly on enforcement of interstate compacts. *Texas v. New Mexico* is about allocations under the Pecos River Compact, and *Florida v. Georgia* involves waters in the Apalachicola-Chattahoochee-Flint River Basin. Both could establish important precedents for the Colorado River Basin states — all of which are

closely monitoring those cases.

Among the most significant current cases is *BP v. Baltimore*, because it is related to a number of other cases where state and local prosecutors are attempting to bludgeon oil companies to death by claiming their products are destroying the Earth, that the companies have always known that, and that they have spent years covering it up. It is the same conspiracy argument that essentially bankrupted the tobacco industry years ago. The *Baltimore* case is a relatively mundane procedural issue, but court-watchers wonder whether the court might address the larger climate conspiracy issue, which could have worldwide economic consequences.

The Supreme Court has agreed to hear 41 cases during this term, and as usual, more are appeals from the Ninth Circuit than any other lower court. That's important because the Ninth Circuit rules on more environment and natural resources cases than any other, and it is frequently overruled. Between 2007 and 2019, the Supreme Court published opinions in 993 cases, 191 of them from the Ninth Circuit, far more than from any other circuit. In 70% of all cases, the high court reversed a lower court (696 times), and it overruled the Ninth Circuit the most.

Many other environmental cases are not yet on the high court's docket, but might be soon, partly because of Colorado's current attorney general, who wants to be the raspberry seed in Donald Trump's wisdom tooth, especially on all administration attempts to streamline regulations. Under his leadership, Colorado has already sued the administration 10 times on environmental issues.

Colorado sued over the administration's rollback of Obama-era methane emission rules, and its withdrawal of the "Clean Power Plan,"

which was designed to kill America's use of coal. Colorado also sued over the administration's reform of the National Environmental Policy Act, and the power grab known as "Waters of the U.S. (WOTUS)." All previous attorneys general, of both parties, always opposed any expansion of federal control over Colorado water, until now. Finally, the administration's Endangered Species Act reform, intended to establish reasonable timelines for decision-making, generated yet another lawsuit from Colorado's attorney general, joining California, New York, Massachusetts, and other Eastern states — and breaking with Alaska, Arizona, Kansas, Montana, Nebraska, Utah, and Wyoming, all of which supported the reforms.

It is easy to see why so much focus is on the Supreme Court, but in important ways, it is misplaced. People have come to view the court as a policy-making body, though it has no legislative powers. That also puts its long-term credibility in grave danger.

Who should control Colorado water, whether the U.S. ought to join the Paris Accord, whether an environmental impact statement ought to be limited to a certain number of pages — these are not judicial decisions, or least they shouldn't be. They are vital issues, whichever side you may be on. But they are policy matters properly decided by the people, through their representatives in Congress.

Congress and the president are intended under the Constitution to be the people's process for making decisions — not merely the first step on the way to the real decision-makers in black robes. That makes nine people more important than they were meant to be, and more than they should be. □

Steyer Selling San Francisco Home Because of ‘Climate Crisis’

by Katie Grimes, Senior Media Fellow
As Appearing in the *California Globe*



Could it instead be the dismal California economy and failing state that is causing the Steyers to move?

“Billionaire environmental activist and former presidential candidate Tom Steyer is selling a couple of homes in his portfolio. Last month, he parted with a Lake Tahoe home for \$2.8 million, and now he is putting his long-time family home in San Francisco’s exclusive Pacific Heights neighborhood on the market for \$11 million,” the Wall Street Journal recently reported.

“I’ve lived in San Francisco for most of my adult life. I love this city and this state, but I’m terrified of where we are at right now,” Mr. Steyer said in an email to the Journal. “Recently, with orange skies, a sun that did not rise, and air we can not breathe, we are faced with the grim reality that we are living the climate crisis.”

Steyer wants everyone to believe he is leaving San Francisco because of a “climate crisis,” and not because the City by the Bay has devolved into total chaos: skyrocketing property crime and auto theft, violent crime is 54% higher than the rest of the state, homelessness is everywhere as is public defecation and urination, drug addiction and rampant related crime is the new normal in San Francisco.

This “climate crisis” Steyer claims is the cause of “orange skies, a sun that did not rise, and air we can not breathe.”

Yet last month, he parted with a Lake Tahoe home for \$2.8 million,

the WSJ reported. The sky is blue, the sun rises and the air is clean and fresh in Lake Tahoe.

Could it be the dismal California economy that is causing the Steyers to move?

Whether the core reason for Steyer leaving California is the climate crisis or the economy in crisis, it is policies that Steyer supports and ran on in his Presidential bid that are behind these crises.

Steyer’s policies as the Los Angeles Times reported:

100% clean energy and net-zero emissions by 2045,

“justice-centered” policies addressing the vulnerability of communities of color to pollution by fossil fuel companies, and proposed phasing out fossil fuel production.

He supported liberal immigration policies, oversight of the Immigration and Customs Enforcement agency, and proposed restricting its forcible deportations and ending work-site raids.

Steyer called for an assault weapons ban, universal gun licensing and a voluntary buyback program for all firearms.

Steyer favored reparations for the descendants of slaves, promising to create a commission to study proposals, and said that as president he would apologize on behalf of the U.S. for the history of slavery.

The New York Times also reported:

He has embraced a “wealth tax” on the super rich.

He has suggested adding new justices to the Supreme Court, a relatively radical idea pressed by some on the left. He wants to take emergency action to address climate change.

We followed Mr. Steyer on his crusade to spend millions to get money out of politics.”

He says his top priorities are breaking the influence of corporations and addressing climate change.

Steyer’s “crusade to get money out of politics” is ironic. During the 2018 midterm elections, Steyer spent \$123 million on congressional races across the country to try and flip Congress from red to blue. The House went blue, but the U.S. Senate picked up Republican seats.

Steyer’s policies are the same as most California Democrats, which control the Governor, Assembly, Senate, all of the Constitutional offices, and most of its cities. Could he be fleeing his and his party’s own bad policies?

“Billionaire climate change activist Tom Steyer made his fortune investing in the energy sector, through his hedge fund company, the Farrallon Capital Management fund, which Steyer managed until 2012,” California Globe reported in 2019. “Farrallon invested in coal mines in Australia and Indonesia, as well as in tar-sands oil, which is strip mined, processed to extract the oil-rich bitumen, which is then refined into oil. It’s an interesting career change and about-face.

“Steyer founded NextGen Climate, an organization immersed in green cronyism. NextGen is a 501(c)(4) organization, and the NextGen Climate Action Committee is a political action committee fighting the Keystone Pipeline. Steyer said on the NextGen blog that while climate change had not always been on his radar, he came to believe he could no longer invest in fossil fuels – after becoming a billionaire.” Decisions — not merely the first step on the way to the real decision-makers in black robes. That makes nine people more important than they were meant to be, and more than they should be. □

How to Stop the Paris Climate Accord

by Steve Milloy, Senior Policy Fellow
As appearing in *The Wall Street Journal*



Trump should submit it for the Senate to ratify, or rather reject.

Joe Biden has promised to rejoin the Paris Climate Accord on day one, but President Trump could stop it from having any binding legal power.

President Obama signed on to the international agreement by executive action in 2015, which meant Mr. Trump could withdraw from it the same way, as he did in 2017. As per the terms of the accord, that withdrawal became effective on Nov. 4, 2020. Mr. Obama's pledge to reduce greenhouse-gas emissions at least 26% by 2025 wasn't legally binding. Only Senate consent to its ratification

could have made it so—and the upper chamber would have rejected the treaty handily if Mr. Obama had submitted it.

Yet if Mr. Biden brought the U.S. back into the accord, it's possible it will take on the weight of law. Although there is nothing about the agreement's terms or the manner in which the U.S. entered it that make it legally binding on the U.S., some green group may find a friendly federal court to produce that result.

Example: Mr. Trump rescinded Mr. Obama's 2012 Deferred Action for Childhood Arrivals immigration program, yet it remains in place. Although DACA was both created and reversed by executive action, the Supreme Court blocked its rescission in June on grounds that the Trump administration's decision was "arbitrary and capricious" under the Administrative Procedures Act. The court's rationale was procedural; the justices didn't deny that the president can reverse a predecessor's executive action. But creative lawyers and

judges can find ways of blocking a new president from changing policies, with Congress never having a say.

To prevent the Paris Climate Accord from taking on such undue power, Mr. Trump should submit it to the Senate, and Majority Leader Mitch McConnell should schedule a quick vote.

It would certainly be rejected—ratification requires a two-thirds vote—and it is unlikely any court could subsequently resurrect a legislatively tossed treaty. Without the help of judges, Mr. Biden would need a winning ratification vote to make the accord binding, which he likely couldn't get no matter how well Democrats do in Georgia's January runoffs and the 2022 midterm elections.

Mr. McConnell could also call a ratification vote after Mr. Biden's inauguration, even if Mr. Trump does nothing. This would similarly elevate the treaty's status and make it difficult for Mr. Biden to bind his successors to his executive actions. □

Electrification Report (Cont.)

add perhaps \$7 trillion to the costs.

The report notes that Texas would lead the way in total electrification costs at \$3.157 trillion, followed by California at \$2.823 trillion. What's even more frightening is the per capita costs of such an expensive and destructive experiment. For example, each resident of Louisiana can expect a bill of \$166,065, while Wyoming citizens would be on the hook for \$158,961 apiece, and those in North Dakota would face a tab of \$133,847.

Tanton, who lives in Cal-

ifornia and formerly a Principal Policy Advisor with the CA Energy Commission (CEC), has witnessed first-hand the devastation wrought by attempts at complete electrification.

"California's rolling blackouts and cataclysmic forest fires are not the results of climate change. They are the direct result of poor leadership and destructive energy policies that should be rolled back in my state and others before it's too late," Tanton concluded. □

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