

American Energy Alliance  
1155 15th Street NW, Suite 900  
Washington, DC 20005

April 19, 2021

The Honorable Mitch McConnell  
Senate Minority Leader  
317 Russell Senate Office Building  
Washington DC 20510

CC: Senator Shelley Moore Capito, Senator Ron Johnson, Senator Richard Shelby

Dear Minority Leader McConnell,

We write you today to express our opposition to an apparent Biden administration end-run around Congress to impose the Green New Deal through a regulatory back door.

The vehicle for this circumvention of Congress is a secondary National Ambient Air Quality Standard (NAAQS) to reduce greenhouse gas emissions and it would fundamentally transform the Clean Air Act in a way that has never been authorized or survived judicial scrutiny. This end-run contains the worst elements of Washington: bureaucrats cycling in and out of office, collusion with ideological activists, and “sue-and-settle” methods, combining to exclude the people's voice and enable governmental overreach.

The plan was first revealed in public records, as reported in a recent *Wall Street Journal* editorial, “Biden’s ‘Backdoor’ Climate Plan.”<sup>1</sup> Email records from state attorneys general detail the months of development that culminated on January 19 with a lawsuit, *State of New York et al. v. Environmental Protection Agency, et al.* (21-2018, D.C. Cir.). We refer you to a proposed *amicus curiae* brief filed in that case for those records.<sup>2</sup>

As the *Journal* concluded, “To sum up, Democratic AGs, green groups and a top Biden environmental regulator are colluding on a plan to impose the Green New Deal on states through a back regulatory door because they know they can’t pass it through the front in Congress.”

This complicated legal maneuvering to move such a transformation into the regulatory shadows is driven by the considerable political risk of promoting this agenda openly. To tamp down

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<sup>1</sup> [https://www.wsj.com/articles/bidens-backdoor-climate-plan-11616020338?mod=opinion\\_lead\\_pos1](https://www.wsj.com/articles/bidens-backdoor-climate-plan-11616020338?mod=opinion_lead_pos1), March 18, 2021.

<sup>2</sup> Brief of Energy Policy Advocates as Amicus Curiae in Support of Respondent, available at [https://climatelitigationwatch.org/wp-content/uploads/2021/02/21-1028\\_State-of-NY-v-EPA\\_Brief-for-Amicus.pdf](https://climatelitigationwatch.org/wp-content/uploads/2021/02/21-1028_State-of-NY-v-EPA_Brief-for-Amicus.pdf).

discussions of such a radical move, President Obama's first EPA Administrator, Lisa Jackson, rejected a greenhouse gas or "climate" NAAQS as not "advisable."<sup>3</sup> One prominent environmentalist group attorney, also seeking to quell controversy over the prospect early in the Obama administration, said "hell will freeze over before there's a NAAQS for CO2." (*Id.*)

This agenda is no more popular now than it was when last attempted through the front door in 2009, with the doomed "cap and trade" legislation. We also recall the 2020 votes on the "Green New Deal" legislation, in which every Senate sponsor voted "present" and not even the most vocal proponent dared vote in favor.

The lesson that has seemingly been taken from these experiences is to search for a back door. The true lesson is that the American people know what they do and do not want, and what they did and did not vote for.

Nonetheless, we see that one former USEPA attorney, now an outside activist with whom these AGs consulted, wrote in an email that despite the infirmities of this "long shot" approach at sneaking a transformational agenda in through the backdoor, it could be "a useful gamble."<sup>4</sup>

Ultimately, this plan seeks to weaken our nation's ability to extract, transport and use our wealth of affordable, reliable energy resources—resources which are a vital driver of human wellbeing. From electricity for our factories and hospitals to locomotion for the cars, trucks, trains, and ships that move people and goods about the planet, affordable, reliable energy enables the modern standards of wealth and health we enjoy. Political and ideological efforts to fundamentally transform laws into tools to suppress the availability of such energy threaten our wellbeing.

The undersigned request that you exercise your legislative and oversight authorities to examine and, as appropriate, impede what has emerged as a back-door, sue-and-settle campaign to impose an unpopular, unwise energy policy. A dramatic reset of the American economy merits scrutiny and, importantly, public input and debate. It is antithetical to the American system of government to allow parties to collude behind the scenes to transform our economy.

Now is the time for Congress to make its voice heard on this important issue.

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<sup>3</sup> Robin Bravender, "EPA chief signals opposition to Clean Air Act curbs on GHGs," E&E News, December 8, 2009, <https://www.eenews.net/stories/85407>.

<sup>4</sup> December 3, 2019 email from Nancy Ketcham-Colwill to John Bachmann, forwarded on December 11, 2019 by Bachmann to New York OAG's Michael Myers, Subject: Fwd: Draft note on NAAQS lawyers and EPA GHG ANPR 2008 info, available at <https://climatelitigationwatch.org/wp-content/uploads/2021/02/20201123-VT-OAG-Records-Produced-Redacted-Final.pdf>.

For your consideration,

Tom Pyle,  
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60 Plus Association

Bob Carlstrom,  
AMAC Action

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