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CONGRESS VS. THE EPA ON CLEAN AIR

Proposed Laws to Limit EPA Authority to Issue the Clean Air Act

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For more info: www.climatecommunities.us



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Background – EPA Authority Under Clean Air Act

- **Congress gave EPA authority under the Clean Air Act to:**
 - ✓ **Determine whether a substance is an air pollutant that harms human health and the environment**
 - ✓ **Set standards to prevent harm**
 - ✓ **Set emissions controls and limitations to reduce pollutants**
 - ✓ **Use operating permits and construction permits to enforce these limitations**
 - ✓ **For some pollutants, use cap-and-trade to implement (e.g., SO₂, NO_x)**
- **EPA has major emissions reduction programs underway, and new regulations proposed, for NO_x, SO₂, mercury and other air toxics, and PM. Mostly targeted at large stationary sources (fossil-fired electric utilities and industrial boilers), and at vehicle and fuel emission standards**
- **Efforts to pass GHG or “4P” Clean Air Act amendments in Congress have failed**
- **In Massachusetts v. EPA, U.S. Supreme Court directed EPA to determine whether GHG endangered human health and environment, and EPA did so, which triggered emissions regulations.**
- **As a result, EPA:**
 - ✓ **Worked with U.S. DOT to set national vehicle and fuel emission standards; and**
 - ✓ **Finalized the “GHG Tailoring Rule” to require monitoring and reporting by large GHG boilers, and to require Best Achievable Control Technologies for new or modified units.**



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Congressional Attempts to Stop EPA Authority

H.R. 1

- Prohibits any funds from being used by EPA to implement, administer, or enforce any statutory or regulatory requirement pertaining to emissions of GHGs including NOx from stationary sources for post-1/1/2011 rules
- Bars EPA from listing coal ash as RCRA-regulated hazardous waste
- Bars EPA from changing NAAQS for coarse PM
- Bars funding to planned NOAA Climate Service
- Bars funding Intergovernmental Panel on Climate Change
- Bars funding for Chesapeake TMDL or watershed implementation plan
- Senate Democrats oppose, and the President has threatened veto of H.R. 1
- Rep. Moran has been House leader fighting EPA restrictions in H.R. 1, Rep. Hoyer and Rep. Van Hollen are in leadership and opposed H.R. 1, Rep. Edwards and Rep. Connelly voted against H.R. 1; Rep. Wolf voted for H.R. 1 including GHG restrictions
- Senator Cardin is one of the leaders in efforts to protect EPA authority



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Congressional Attempts to Stop EPA Authority

Senate Legislation

- Senator Rockefeller's S. 231 would delay EPA's GHG regulatory authority for two years. Co-sponsored by six centrist Democrats: Webb, Manchin, McCaskill, Nelson (NE), Johnson, Conrad
- Senator Inhofe & Representative Upton have released draft legislation that would permanently block EPA GHG regulations
- Senator Barrasso has introduced S. 228 to bar EPA GHG regulations and bar EPA from taking GHG into account in any other regulation
- EPA Administrator Jackson says that President has been advised to veto any restrictions on EPA GHG authority



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Court Developments

- Texas and Wyoming have sued EPA challenging authority to require GHG permits. Texas challenges endangerment finding, Wyoming claims EPA did not give sufficient time for State to develop permitting
- AEP v. Connecticut – Connecticut & six other states plus NYC sued the five largest electric utility emitters in U.S., claiming GHG emissions constitute “nuisance” under federal common law, and asking for cap on emissions. 2nd Circuit reversed lower court and found:
 - ✓ Plaintiffs have valid federal common law nuisance claims
 - ✓ Plaintiffs have standing
 - ✓ Court decision is not barred as non-judicial by political question doctrine. Quoting 40 year old clean water S.Ct. case, 2nd Circuit says, *“It may happen that new federal laws and new federal regulations may in time pre-empt the field of federal common law of nuisance. But until that comes to pass, federal courts will be empowered to appraise the equities of the suits alleging creation of a public nuisance’ by greenhouse gases.”*
 - ✓ Nearly every industry segment, 23 states, conservative think tanks, Rep. Upton & Senator Inhofe, and others have filed amici briefs in support of the utilities



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Thank You!

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