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## A momentum day passed

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On April 24, the U.S. Environmental Protection Agency (EPA), under the full authority of the Clean Air Act (CAA), declared carbon dioxide a pollutant "reasonably anticipated" to endanger public health and welfare.

This "Endangerment Finding," expected since a U.S. Supreme Court ruling in 2007, is the first legally potent rupture of the energy system that made modern industrial civilization possible.



economic and personal activities. According to Stephen Johnson, the previous EPA Administrator, regulation of CO2 under the CAA "would have a profound effect on virtually every sector of the economy and touch every household in the land."

Hundreds of thousands of appropriately unregulated buildings like hospitals, schools, hotels, and large homes would now come under EPA's command-and-control permitting regimes.

In contrast to the only other vaguely legal CO2 caps in the European Union, the U.S. law has teeth. The CAA is highly enforceable.

In an effort to veil the economic havoc the Endangerment Finding could unleash, the current EPA Administrator, Shelia Jackson, claims EPA will proceed cautiously, limiting initial action to mobile sources and perhaps reducing the emission threshold for permits.

Anyone familiar with Supreme Court jurisprudence on the CAA knows this is subterfuge. Litigation would compel EPA action. EPA's change of the black-letter statutory standards could be judicially reversed as an improper legislative action by an administrative agency in violation of the separation of powers clause of the U.S. Constitution.

Contrary to prevalent media accounts, the Supreme Court did not force EPA's hand. The Court merely ruled that EPA had to reasonably justify a decision whether or not CO2 is a harmful pollutant within the legal meaning of the CAA.

There are multiple reasons to justify a negative Endangerment Finding. CO2 is wholly unlike the conventional pollutants. The CAA covers ground-level emissions which in certain ambient concentrations and exposures can harm human health. A doubling or tripling of ambient levels of CO2 would have no adverse health consequences.

Yet, "ho-hum," said the mainstream media. "Our public loud speakers have labeled CO2 a pollutant for years. Wasn't this already decided?" Such were the typical responses.

Think again. Man-made CO2 subject to regulation under the CAA – a more daunting anti-stimulus program would be hard to imagine.

Legally declaring CO2 a harmful pollutant subject to the CAA's regulatory hardware triggers unprecedented expansion of EPA's authority over basic

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CO2's alleged role in global warming occurs through global accumulation in the upper atmosphere. The location of the source of CO2 emissions – whether a power plant in Texas or in China – is irrelevant. The law is not too handy in the troposphere or in China.

A ubiquitous component of nature's chemistry, CO2 is essential to the planetary food chain. And when 85 percent of our energy derives from carbon-rich fossil fuels, CO2 is an ever-present byproduct of human activity.

Atmospheric CO2 accounts for around 3.5 percent of greenhouse gases. Water vapor accounts for more than 90 percent. When natural CO2 is subtracted, man-made CO2 contributes 0.117 percent of the total greenhouse effect.

The CAA, unquestionably, was not designed to regulate a compound like CO2. Obama administration officials agree and urge Congress to create a legal alternative.

By legally opening this Pandora's box, however, the EPA Endangerment Finding operates like legislative extortion. Enact the climate tax-and-ration legislation the administration wants, or EPA will open regulatory floodgates under existing law. A "Reckless Endangerment," The Wall Street Journal aptly noted. This amounts to putting "a gun to the head of Congress and play[ing] cap-and-trade with the U.S. economy."

Congressional resistance to the administration's carbon policy is growing. Instead of remaining in the corner created by the EPA Endangerment Finding and reluctantly supporting the 600-page juggernaut of a climate bill in the U.S. House of Representatives, Congress should pass a one-liner: "Under the legal terms of the CAA, CO2 is not a pollutant endangering human health and is not subject to regulation under this law."

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