

In the  
**United States Court of Appeals**  
for the Eighth Circuit

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STATE OF MISSOURI, et al.,

*Plaintiffs-Appellants,*

v.

JOSEPH R. BIDEN, JR., in his official capacity as the President of the United States  
of America, et al.,

*Defendants-Appellees.*

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Appeal from the United States District Court  
for the Eastern District of Missouri – St. Louis, No. 4:21-cv-00287-AGF.  
The Honorable **Audrey G. Fleissig**, Judge Presiding.

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**BRIEF OF *AMICUS CURIAE* COMMITTEE FOR A CONSTRUCTIVE  
TOMORROW IN SUPPORT OF APPELLANTS AND REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

The Committee for a Constructive Tomorrow (“CFACT”) hereby certifies that it is a nonprofit organized under the laws of the District of Columbia. It has no stockholders, no parent companies, and no subsidiaries.

## TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT .....	i
TABLE OF AUTHORITIES .....	iv
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	6
I. The Interagency Working Group has improperly chosen to focus only on alleged U.S. and global <i>costs</i> of U.S. carbon dioxide and other greenhouse gas emissions from America’s fossil fuel use. A competent, complete analysis must also assess the U.S. and global <i>benefits</i> of those fuels and carbon dioxide emissions.....	6
II. Attempting to replace America’s hydrocarbon-based energy systems with wind, solar and battery technologies, and expand and upgrade electrical systems, would cost trillions of dollars and result in major environmental, wildlife, economic, scenic and human health damage from installing new facilities across the United States and along its ocean and Great Lakes coasts .....	10
III. Attempting to transform America to wind, solar, battery and other “renewable” energy technologies and associated transmission systems would require metals, plastics, concrete and other materials on scales unprecedented in human history. Mining, processing and refining ores and other raw materials – and operating factories to turn them into “green” energy equipment – would result in major environmental, wildlife, scenic and human health damage throughout the world .....	14
IV. Because the United States increasingly restricts mining, most of the raw materials needed for the renewable energy transformation will be extracted and processed overseas, predominantly by Chinese companies, under minimal environmental and workplace safety rules. This raises serious national security, pollution, human rights and environmental justice issues that must be addressed in any IWG analysis .....	17

V. Emerging economies are rapidly increasing their carbon-based fuel use and greenhouse gas emissions, to modernize, improve their people’s living standards, and provide U.S. renewable energy materials and technologies. Even if the United States completely eliminated its fossil fuel use and GHG emissions, there would be no global emission or climate benefits from doing so.....20

VI. Climate policies strongly correlate with “energy poverty” – energy prices rising above individuals’ ability to stay adequately warm or cool at reasonable cost, given their incomes. The numerous illnesses and deaths caused by such policies must be addressed by any competent IWG analysis.....22

CONCLUSION.....29

## TABLE OF AUTHORITIES

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5 U.S.C. § 552 <i>et seq.</i> .....	5
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## INTEREST OF AMICUS CURIAE

CFACT respectfully submits this Brief with the consent of all parties as *Amicus Curiae* in support of Appellants.<sup>1</sup> This brief focuses on the speculative, inadequate, arbitrary and capricious analysis by the Interagency Working Group (Working Group or IWG) and affiliated Federal Government agencies in setting “social costs” of greenhouse gases, to justify enormously expanding the federal regulatory reach, forcing the attempted substitution of “renewable” energy for hydrocarbon or “fossil fuel” energy, and intruding into virtually every aspect of Americans’ lives, employment, health and living standards.

CFACT is a Washington, DC-based nonprofit public policy and educational organization that promotes environmental protection, economic development, human health, and more productive lives for people throughout the United States and world, through modern science and technology grounded in complete and careful analysis of often competing needs, costs, benefits, interests and political agendas.

CFACT’s interest in this case stems from the Working Group’s failure to allow proper opportunities for comment, and its failure to consider major costs and

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<sup>1</sup> No party's counsel authored the brief in whole or in part; nor did any party or a party's counsel contribute money for preparation of this brief; nor did any person—other than the amicus curiae or its counsel contribute money intended to fund preparing or submitting the brief.

benefits that any competent, rigorous and complete analysis would necessarily have included. These failures are particularly important because the Group is developing highly influential scientific and economic assessments that are used to support, justify and drive major federal actions that will have especially far-reaching and costly impacts on employment, the economy, the health and well-being of American citizens, and the quality and diversity of the natural and human environment.

### **SUMMARY OF ARGUMENT**

Fossil fuels make our lives richer, freer, more productive and manifestly safer. They are central to our economy and way of life. Recent blackouts and energy price increases provide stark reminders of the importance of reliable, affordable, “dispatchable” energy, as opposed to intermittent energy sources.

A valid, complete, rigorous analysis of the “social costs” of greenhouse gases (GHGs) must not only address the asserted American and global *costs* of U.S. hydrocarbon use and resulting GHG emissions. It must also examine the *benefits* of those fuels and emissions to the United States and world – and the numerous, significant *costs* of attempting to *replace* existing U.S. fossil fuel energy systems with wind, solar, battery and biofuel power, and installing a vastly expanded and enhanced electricity transmission system. Yet IWG analysts somehow ignored these benefits and costs throughout their analysis.

The combustion of carbon-based energy indisputably produces carbon dioxide (CO<sub>2</sub>) and other greenhouse gases that have *some influence* on Earth's climate. However, claims that they are causing "dangerous" temperature increases, more extreme weather, melting ice caps and other climate "chaos" are contested by many reputable scientists.<sup>2</sup>

Forcibly eliminating abundant, reliable, affordable fossil fuels would not only cause the loss of numerous American jobs, companies, industries and other benefits. It would force Americans to discard expensive power generation and industrial, business and household equipment, and attempt to replace them with costly electricity-based equipment operated with intermittent, unreliable, weather-dependent wind and solar power.

Still more costs would be imposed by compelling the installation of potentially hundreds of thousands of onshore and offshore wind turbines, billions of solar panels and battery modules, and thousands of miles of new electricity transmission lines. Those facilities would impact millions of acres of scenic vistas

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<sup>2</sup> See e.g., R Carter, *Climate: The Counter Consensus*, London: Stacey International (2010); J Christy, Testimony before U.S. House Committee on Science, Space & Technology, March 29, 2017, [https://science.house.gov/imo/media/doc/Christy%20Testimony\\_1.pdf?1](https://science.house.gov/imo/media/doc/Christy%20Testimony_1.pdf?1); S Koonin, *Unsettled: What climate science tells us, what it doesn't, and why it matters*, Dallas: BenBella Books (2021); R Spencer, *The Great Global Warming Blunder: How Mother Nature fooled the world's top climate scientists*, New York: Encounter Books (2010).

and wildlife habitats; impair human health; and displace or kill millions of birds, mammals, sea creatures and other species.

These new industrial facilities would require enormous quantities of metals, minerals, plastics, concrete and other materials. That would necessitate greatly expanded mining, processing and manufacturing operations, many involving fossil fuels, air and water pollution, forced labor, more habitat and wildlife destruction, and human diseases, injuries and deaths.

These activities would occur primarily in foreign countries, because the U.S. increasingly restricts mining, has insufficient metal and mineral deposits to meet these raw material needs, and will be able to support only limited manufacturing with renewable energy.<sup>3</sup>

These realities raise critical, complex national security and environmental justice issues.

Meanwhile, even in a hypothetical future in which U.S. fossil fuel reliance is forcibly decreased or eliminated, many other countries would not stop using fossil fuels. Indeed, their oil, gas and coal use would likely increase, to improve their people's living standards, and to operate the new and expanded mines, processing

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<sup>3</sup> See E. Scheyder and T. Hunnicutt, "Exclusive: Biden looks abroad for electric vehicle metals, in blow to U.S. miners," Reuters, May 25, 2021, <https://www.reuters.com/business/energy/biden-looks-abroad-electric-vehicle-metals-blow-us-miners-2021-05-25/>.

plants and factories to meet U.S. “renewable” energy needs. Global greenhouse gas emissions will thus *increase*, rather than decline.

That means all the foregoing U.S. and global costs and sacrifices would bring no climate benefits, even assuming that greenhouse gases are the primary factor in modern climate change.

Anti-fossil-fuel policies also price life-protecting, life-saving heating and air-conditioning technologies out of reach for many poor, minority, and fixed-income families, causing many thousands to perish every year.

A proper analysis would consider and balance all these scenarios, costs and benefits. It would not present all costs, and no detectable or obvious benefits, to the quality of the natural and human environment from fossil fuel use and associated emissions. It would not exaggerate claimed *global* benefits from eliminating fossil fuels in the United States. Nor would it minimize or ignore the costs and risks associated with forcibly eliminating existing U.S. energy delivery systems and attempting to replace them with new wind, solar and battery electricity systems.

Anything less than careful, complete analysis of all these costs, risks and benefits is arbitrary, capricious, and contrary to the Administrative Procedure Act (APA), 5 U.S.C. §552 *et seq.*, and National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*

## ARGUMENT

- I. **The Interagency Working Group has improperly chosen to focus only on alleged U.S. and global *costs* of U.S. carbon dioxide and other greenhouse gas emissions from America’s fossil fuel use. A competent, complete analysis must also assess the U.S. and global *benefits* of those fuels and carbon dioxide emissions.**

By Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” the Biden Administration has tasked a reconstituted Interagency Working Group with examining the alleged *global costs* of emissions by the *United States* of carbon dioxide and other greenhouse gases, by January 2022. 86 Fed. Reg. 7037; Docket No. 1-1. On February 26, 2021, the Working Group released its interim values for the social costs of carbon, methane and nitrous oxide.<sup>4</sup>

By this act and “without any statutory or constitutional authority,” the President has “arrogated to the Executive Branch the unilateral power to dictate specific values for the ‘social costs’ of greenhouse gases in virtually every regulatory program administered by the federal government.” [Complaint at 1]

Additionally, any competent, rigorous, complete analysis must also examine the *U.S. and global benefits* of fossil fuel use and CO<sub>2</sub>/GHG emissions. The IWG

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<sup>4</sup> Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, Technical Support Document: Social Cost of Carbon, Methane and Nitrous Oxide, Interim Estimates Under Executive Order 13990, February 26, 2021 [Docket No. 1-2].

did not do so in preparing its interim values, and is not doing so now for its final report.

Those benefits include the industries, jobs, living standards, revenues, health and other social-economic-environmental improvements that oil, natural gas and coal bring to families and communities throughout the United States and world. That the United States and developed world were largely built with fossil fuels and still rely on oil, natural gas and coal for 80% of their energy further underscores this reality.<sup>5</sup>

Fossil fuel benefits also include enhanced plant growth and drought-resistance due to increasing levels of *atmospheric carbon dioxide*, resulting in record corn, wheat, soy and other crop yields in recent years, improved forest and grassland productivity, the “greening” of desert areas, and enriched freshwater and marine habitats throughout the world.

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<sup>5</sup> See e.g., I Goklany, *The Improving State of the World*, Washington, DC: Cato Institute (2007); U.S. Energy Information Administration, Monthly Energy Review, April 2018, “U.S. Energy consumption by source, 2017,” [https://www.e-education.psu.edu/ebf301/sites/www.e-education.psu.edu/ebf301/files/Revised\\_folder/Lesson\\_01/2017%20energy\\_consumption\\_by\\_source\\_large.jpg](https://www.e-education.psu.edu/ebf301/sites/www.e-education.psu.edu/ebf301/files/Revised_folder/Lesson_01/2017%20energy_consumption_by_source_large.jpg); and R Rapiere, Primary Global Energy Consumption 2019 (by source), Realgy Energy Services, [https://d2fu5nmlldghv48.cloudfront.net/realgyenergy-services.com/public\\_html/wp-content/uploads/2020/07/01164553/Primary-Energy-Consumption.png](https://d2fu5nmlldghv48.cloudfront.net/realgyenergy-services.com/public_html/wp-content/uploads/2020/07/01164553/Primary-Energy-Consumption.png)

Even small amounts of CO<sub>2</sub> enable plants to grow and release oxygen, making almost all life on Earth possible. Whether from human activities or natural processes, more CO<sub>2</sub> enables plants to grow better and faster, even under adverse conditions like limited water, hotter air temperatures, and insect and other infestations. These enhanced rates of photosynthesis and biomass production occur for virtually every kind of plant, every part of the plant, in every ecosystem, on every continent.<sup>6</sup>

Raising CO<sub>2</sub> levels in greenhouses and “forest enrichment facilities” (from a recent ambient level of 350 parts per million to 700 ppm) increased the growth rates and productivity of legumes, corn, grains, rice, sugarcane, cotton and trees by 28% to 80% or more.<sup>7</sup> In the “real world” outside greenhouses, trees in Minnesota, Spain and elsewhere grew better in recent years compared to 70-120 years ago, as planetary temperatures rose a half degree and atmospheric CO<sub>2</sub> levels increased from about 300 ppm in 1900 to 375 ppm in 2003 (versus 410 ppm today).<sup>8</sup>

Higher crop yields ensure that more people have greater quantities of nutritious food, thereby reducing hunger and improving lives, from less land and

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<sup>6</sup> See C Idso, R Carter and S Singer, *Climate Change Reconsidered: 2011 Interim Report of the Nongovernmental Panel on Climate Change*, Chicago: Heartland Institute (2011), especially Chapter 7 (pages 197-315), “Terrestrial Plants and Soils,” citing more than 650 scientific articles and studies. <https://www.heartland.org/template-assets/documents/CCR/CCR-Interim/Full%20Interim%20Report.pdf>

<sup>7</sup> *Ibid.* at 199, 204-205, 232, 244, 265-269.

<sup>8</sup> *Ibid.* at 206-210.

with less water. That is due to better crop varieties and improved agricultural technologies, and to warmer temperatures, longer growing seasons *and more atmospheric CO<sub>2</sub>*.<sup>9</sup>

Higher atmospheric CO<sub>2</sub> levels also allow plants to absorb more carbon dioxide thereby avoiding water loss through those openings, improving plant growth and water use efficiency, and “greening” desert areas.<sup>10</sup>

These *benefits* are perhaps worth trillions of dollars per year. The IWG must assign reasonable dollar values to them – and apply those socio-economic *benefits* against any alleged “social *costs*” of carbon dioxide.

The IWG’s failure to address these issues and impacts runs afoul of the Administrative Procedure Act and National Environmental Policy Act.

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<sup>9</sup> *Ibid.* at 231-232, 265-273. See also M Bhardwaj, “India expected to harvest record wheat, rice crops this year,” Reuters, February 24, 2021, <https://www.reuters.com/world/india/india-expected-harvest-record-wheat-rice-crops-this-year-2021-02-24/>

<sup>10</sup> *Climate Change Reconsidered* at 208, 220-222, 269, 275-287; P. Gosselin, “Looking at NASA’s Vegetation Index data, the news is good,” February 24, 2021, <https://notrickszone.com/2021/02/24/nasa-vegetation-index-globe-continues-rapid-greening-trend-sahara-alone-shrinks-700000-sq-km/>. See also CO<sub>2</sub> Science, Biospheric Productivity (Global: The Recent Past), <http://www.co2science.org/subject/b/bioproductivity.php>

**II. Attempting to replace America’s hydrocarbon-based energy systems with wind, solar and battery technologies, and expand and upgrade electrical systems, would cost trillions of dollars and result in major environmental, wildlife, economic, scenic and human health damage from installing new facilities across the United States and along its ocean and Great Lakes coasts.**

Wind and sunlight are clean, green, renewable and sustainable. *Harnessing them* to meet humanity’s growing energy needs is *not*, for that requires nonrenewable raw materials.

A full, accurate, scientific analysis of eliminating America’s existing carbon-based energy system for powering our economy and sustaining our lives and living standards – and attempting to replace that system with wind turbines, solar panels, backup battery modules and additional transmission lines – must calculate the many *costs* of those federal actions. Those costs include damage to the environment, scenery, wildlife and habitats, and human health.

The Biden Administration has proposed 80% hydrocarbon-free electricity generation by 2030 and 100% by 2035, followed by fossil fuel elimination (“net-zero emissions”) in all sectors nationwide by 2050.<sup>11</sup> This involves replacing coal

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<sup>11</sup> A Restuccia and T Puko, “At Earth Day Climate Summit, Biden pushes for sharp cut to greenhouse-gas emissions,” *Wall Street Journal*, April 22, 2021, <https://www.wsj.com/articles/biden-to-urge-climate-action-at-world-leaders-summit-11619085614?mod=article>; V Volcovici and N Groom, “White House backs 2030 milestone on path to net zero grid,” Reuters, April 26, 2021, <https://www.reuters.com/business/sustainable-business/exclusive-white-house-pushing-80-clean-us-power-grid-by-2030-2021-04-26/>

and natural gas for generating electricity; gasoline and diesel for powering vehicles; natural gas for smelting and manufacturing; and natural gas for heating, cooking and water heating in homes, hospitals, schools and businesses.

This would mean the nation’s annual electricity requirement would skyrocket from about 2.7 billion megawatt-hours (the fossil fuel portion of the 2018 U.S. total) to almost *7.5 billion MWh* by 2050, to replace fossil fuels that now power many components of the energy-dependent U.S. economy.<sup>12</sup> Substantial additional generation would be required to constantly recharge backup batteries for windless, sunless days.

In the absence of new nuclear and hydroelectric power plants, generating this much electricity would potentially require tens of thousands of offshore wind turbines, hundreds of thousands (perhaps even millions) of smaller onshore turbines, and/or billions of photovoltaic solar panels.<sup>13</sup> Backing up sufficient nationwide electricity for even a week of windless, sunless days would involve well over a

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<sup>12</sup> See P Driessen, *Protecting the Environment from the Green New Deal*, Chicago: Heartland Institute (2019), pp 7-8, [https://www.heartland.org/\\_template-assets/documents/publications/EnviHarmsPB.pdf](https://www.heartland.org/_template-assets/documents/publications/EnviHarmsPB.pdf) (This includes about 2.7 billion MWh for today’s fossil fuel electricity, plus 2.0 billion MWh for electric vehicles, plus more than 2.7 billion MWh to replace home-business-industry gas use – totaling nearly 7.5 billion MWh needed per year by 2050 – plus additional generation to recharge batteries.)

<sup>13</sup> *Ibid.*, pp 6-14. See also GE Renewable Energy, “Haliade-X offshore wind turbine,” <https://www.ge.com/renewableenergy/wind-energy/offshore-wind/haliade-x-offshore-turbine>

billion half-ton battery modules akin to those in Tesla cars, to ensure 24/7 power. Connecting all these power sources to electricity-dependent communities, industrial facilities and data centers would require thousands of miles of new underwater and onshore transmission lines.<sup>14</sup>

These high numbers reflect the fact that wind and solar generate electricity only 25-50% of the year in the best U.S. locations (33% on average nationwide);<sup>15</sup> turbines and panels must not be located in ecologically sensitive areas; and the more wind and solar electricity the nation needs, the more it must put turbines and panels in lower quality areas, where they might generate power only 15-20% of the year. Hundreds of millions of acres would be impacted.

The “social cost” of these intended replacements involves both the widespread effects of *not having today’s reliable energy*, and the impacts of trying to *replace* that energy.

For example, President Biden has called for installing 30,000 MW of wind power (2,100 or more 14-MW turbines) off America’s Atlantic, Gulf of Mexico and Pacific coasts by 2030.<sup>16</sup> Even if they operated at full capacity 24/7, all this

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<sup>14</sup> P Driessen, *Protecting the Environment*, pp 17, 21.

<sup>15</sup> G Edwards, “How much energy does a wind turbine produce?” May 17, 2021, <https://www.semprius.com/how-much-power-does-a-wind-turbine-produce/>

<sup>16</sup> K Tamborrino and E Wolff, “White House pushes new offshore wind power expansion,” Politico, March 29, 2021, <https://www.politico.com/news/2021/03/29/biden-administration-offshore-wind-power-expansion-478372>

electricity would not meet peak summer electricity needs for *New York State*, much less the entire U.S.<sup>17</sup>

Moreover, in a hypothetical United States without hydrocarbon energy, still functional good fossil fuel generating and industrial systems, home furnaces, stoves and water heaters, gasoline and diesel vehicles, and other equipment would have to be thrown out and replaced with electrical versions. Home and business, community, state and national electrical systems would have to be expanded and upgraded to handle the added power demands.

Even if wind and solar facilities were sited to avoid highly sensitive areas, they would still disrupt or destroy scenic areas, croplands and wildlife habitats; kill numerous birds, bats and other protected wildlife; and interfere with military and civilian air and sea radar and navigation. Vibration noise from offshore turbines could disrupt whale and dolphin navigation and communication. Light flicker and infrasound would interfere with human sleep and health.<sup>18</sup>

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<sup>17</sup> See D Wojick, “New York cannot buy its way out of coming blackouts,” Townhall, December 30, 2020, <https://townhall.com/columnists/davidwojick/2020/12/30/new-york-cant-buy-its-way-out-of-coming-blackouts-n2582278>

<sup>18</sup> See e.g., J Wiegand, “Hiding Avian Mortality,” MasterResource blog, September 4, 2013, <https://www.masterresource.org/cuisinarts-of-the-air/hiding-avian-mortality-altamont-pass/>; A Montford, “Green Killing Machines,” Global Warming Policy Foundation Report 36, 2019, <https://www.thegwpf.org/content/uploads/2019/07/Green-Killing-Machines-1.pdf>; Wind Energy: The Facts, “Impacts on marine mammals and sea birds” (undated), <https://www.wind-energy-the-facts.org/impacts-on-marine-mammals-and-sea->

The Interagency Working Group must address these issues, calculate reasonable dollar values for these expenses and adverse impacts – and apply those costs to offset any benefits the Group might attribute to eliminating fossil fuels and GHG emissions. It has failed to do so, in violation of the Administrative Procedure Act and National Environmental Policy Act.

**III. Attempting to transform America to wind, solar, battery and other “renewable” energy technologies and associated transmission systems would require metals, plastics, concrete and other materials on scales unprecedented in human history. Mining, processing and refining ores and other raw materials – and operating factories to turn them into “green” energy equipment – would result in major environmental, wildlife, scenic and human health damage throughout the world.**

The International Energy Agency (“IEA”) found that manufacturing fossil fuel replacement technologies would require billions of tons of (non-renewable) iron, copper, aluminum, cobalt, lithium, rare earth elements, plastics, cement and other raw materials. That would mean mining, crushing, processing, refining and transporting tens of billions of tons of ores from thousands of mines and quarries,

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birds.html; H Parker, “The Secret, Silent Wind-Power Peril,” MasterResource blog, February 8, 2017, <https://www.masterresource.org/windpower-health-effects/secret-silent-wind-power-peril-1/>; U.S. Department of Energy, “Wind Turbine Radar Interference Mitigation,” March 2019, [https://www.energy.gov/sites/prod/files/2019/04/f61/WTRM\\_Factsheet\\_Final\\_2019.pdf](https://www.energy.gov/sites/prod/files/2019/04/f61/WTRM_Factsheet_Final_2019.pdf)

using enormous gasoline and diesel equipment.<sup>19</sup> These activities will likely not occur in the United States, but will be intentionally outsourced to foreign countries.

These fuel-intensive activities often employ hazardous chemicals and release toxic pollutants; require large volumes of water, often in the world's most water-deprived regions; cause acid mine drainage; create small mountains of waste rock; and result in vast "pit lakes" of toxic chemicals from refining the ores. Foreign laws governing these operations are often well below U.S. standards and expectations.<sup>20</sup>

Wind, solar, battery and electric vehicle technologies require far more metals and minerals than their fossil fuel counterparts. For example, an onshore wind turbine requires nine times more materials per megawatt than a modern gas-fired generating plant; much larger offshore turbines need 14 times more materials. Taken together, global renewable energy raw material requirements greatly exceed the entire world's current and foreseeable mining and processing capabilities.<sup>21</sup>

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<sup>19</sup> International Energy Agency (IEA), *The Role of Critical Minerals in Clean Energy Transitions: A World Energy Outlook Special Report*, May 2021, <https://iea.blob.core.windows.net/assets/24d5dfbb-a77a-4647-abcc-667867207f74/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf>; M Mills, "Biden's not-so-clean energy transition," *Wall Street Journal*, May 12, 2021, <https://www.wsj.com/articles/bidens-not-so-clean-energy-transition-11620752282>

<sup>20</sup> IEA, *op. cit.*, pp 210-224; M Mills, *op. cit.* See also P Driessen, *How the Green New Deal's Renewable Energy Mining Would Harm Humans and the Environment*, Chicago: Heartland Institute, (2020), [https://www.heartland.org/\\_template-assets/documents/publications/PBdriessenmining2Apr20.pdf](https://www.heartland.org/_template-assets/documents/publications/PBdriessenmining2Apr20.pdf)

<sup>21</sup> IEA, *op. cit.*, pp 5-6, 11-14, 26, 132-156.

Wind turbines utilize 3.6 tons of copper per megawatt of rated capacity.<sup>22</sup> Just the initial 30,000-MW offshore wind program would require nearly 110,000 tons of copper (plus millions of tons of other materials). At an average of 0.44% copper in all types of copper ore deposits around the world today, building just those initial 2,100 offshore turbines would thus require mining, crushing and processing some 25,000,000 tons of copper ore, after removing some 40,000,000 tons of overlying rock to reach the ore bodies.<sup>23</sup>

Add in the myriad materials for solar panels, additional wind turbines, backup battery systems, subsea electrical cables, onshore transmission lines, electric vehicles, electric heating systems and other technologies – to run the entire USA – and the “green energy transformation” would require tens of billions of tons of copper, other metals and minerals; trillions of tons of ores; trillions of tons of overburden; and thousands of mines, processing plants and factories. *Global* impacts would be truly astronomical.

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<sup>22</sup> N Mamula and A Bridges, *Groundbreaking! America's New Quest for Mineral independence*, San Jose, CA: Penned Source Production (2018), pp. 207-209.

<sup>23</sup> G Ashcroft, “Porphyry Deposits: The world’s largest source of copper,” May 28, 2014 (updated April 22, 2021). <https://www.GeologyForInvestors.com/porphyry-largest-source-copper/>; B Berger, R Ayuso *et al.*, Preliminary Model of Porphyry Copper Deposits, U.S. Geological Survey Open-File Report 2008–1321 (2008), pp. 21-22, [https://pubs.usgs.gov/of/2008/1321/pdf/OF081321\\_508.pdf](https://pubs.usgs.gov/of/2008/1321/pdf/OF081321_508.pdf)

These impacts represent tens of trillions of dollars in U.S. and global costs that must be factored into any robust and comprehensive cost-benefit analysis, with reasonable dollar amounts assigned to every impact – and applied against any supposed “social costs” of greenhouse gases. The IWG’s failure to consider these matters violates the Administrative Procedure Act and National Environmental Policy Act.

**IV. Because the United States increasingly restricts mining, most of the raw materials needed for the renewable energy transformation will be extracted and processed overseas, predominantly by Chinese companies, under minimal environmental and workplace safety rules. This raises serious national security, pollution, human rights and environmental justice issues that must be addressed in any IWG analysis.**

The United States permits little access to or mining of metals and minerals essential for the energy transformation the IWG seeks to justify.<sup>24</sup> Instead it effectively, and unjustly, demands that most of them be extracted overseas, often by Chinese companies – which also control the processing of many minerals mined in Africa, Asia and Latin America, and the manufacturing of increasing percentages of U.S.-bound wind turbines, solar panels and batteries. Russia is another major supply chain power. The United States plays only a very minor role.<sup>25</sup>

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<sup>24</sup> N Mamula, “Federal Land Withdrawals: Endangering the Nation,” Capital Research Center, January 2020, <https://capitalresearch.org/article/federal-land-withdrawals-part-1>

<sup>25</sup> International Energy Agency, *op. cit.*, pp 11-13, 46, 132-156; N Mamula and A Bridges, *Groundbreaking!* pp 41-68; B Marlow, “Green evangelicals are handing the global mining industry to China & Russia,” *The Daily Telegraph*, June 7, 2021,

Ironically, in the course of this rapid transformation, the United States could quickly become *almost totally dependent* on often unfriendly foreign sources for the materials required for its energy, economy, manufacturing, living standards, health, communications, transportation and defense.

Moreover, China and many other foreign countries rarely apply U.S. laws and standards for environmental protection, pollution control, mined land reclamation, workplace safety, child labor, fair wages and related issues that are at the forefront of government and activist concerns outside the “green” energy context. But as the United States and developed world further restrict resources production, these are the countries where mining will take place, and where the worst environmental and human impacts will occur.<sup>26</sup>

Some 40,000 children as young as four already toil with their parents in Democratic Republic of Congo mines, for a few dollars a day, under constant threat of cave-ins and exposure to toxic and radioactive mud, dust and water – just to meet

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<https://www.telegraph.co.uk/business/2021/06/07/green-evangelicals-handing-global-mining-industry-china/>

<sup>26</sup> See e.g., M Shellenberger, “If solar panels are so clean, why do they produce so much toxic waste?,” *Forbes*, May 23, 2018, <https://www.forbes.com/sites/michaelshellenberger/2018/05/23/if-solar-panels-areso-clean-why-do-they-produce-so-much-toxic-waste/#7c92b6bc121c>; A Maxmen, “Poverty plus a poisonous plant blamed for paralysis in rural Africa,” *National Public Radio*, February 23, 2017, <https://www.npr.org/sections/thesalt/2017/02/23/515819034/poverty-plus-a-poisonous-plant-blamed-for-paralysis-in-rural-Africa>

today's cobalt needs, which would increase dramatically under a Green New Deal transformation. The cobalt ore is sent to China for processing in plants with equally abominable safety and pollution conditions, which have been linked to cancer, blood disease and other health problems.<sup>27</sup>

An enormous toxic dump for effluents from rare earth mining and processing in Inner Mongolia has destroyed agriculture and created serious health issues for workers and residents. China also uses Uighur slave labor to build solar panels for sale to the United States.<sup>28</sup>

The IWG has raised “climate and environmental justice” as “social cost of carbon” issues – but has yet to do so in the context of foreign sourcing of critical “energy transition minerals.” Under the APA and NEPA, it must to do so, and must

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<sup>27</sup> See e.g., K Dickerson, “The world’s lust for new technology is creating a ‘Hell on Earth’ in Inner Mongolia,” *Business Insider*, May 12, 2015, <https://www.businessinsider.com/the-worlds-tech-waste-lake-inmongolia-2015-5>; B Jones, “Child miners aged four living a Hell on Earth so YOU can drive an electric car,” *The Daily Mail*, August 5, 2017. <https://www.dailymail.co.uk/news/article-4764208/Child-miners-aged-four-living-hell-Earth.html>; J Conrad, Cobalt Sourcing: Child labor and corporate responsibility, *Washington Lawyer*, May/June 2021, pp. 22-25.

<sup>28</sup> See e.g., K Dickerson, *op. cit.*; *Investment Watch*, “John Kerry admits America will buy solar panels made in China by slave labor,” May 13, 2021, <https://www.investmentwatchblog.com/john-kerry-admits-america-will-buy-solar-panels-made-in-china-by-slave-labor/>; J Ambrose and J Jolly, “UK solar projects using panels from firms linked to Xinjiang forced labour,” *The Guardian*, April 25, 2021, <https://www.theguardian.com/environment/2021/apr/23/revealed-uk-solar-projects-using-panels-from-firms-linked-to-xinjiang-forced-labour>

assign reasonable costs to these mining, processing, manufacturing, equipment replacement, environmental justice and human rights matters.

**V. Emerging economies are rapidly increasing their carbon-based fuel use and greenhouse gas emissions, to modernize, improve their people’s living standards, and provide U.S. renewable energy materials and technologies. Even if the United States completely eliminated its fossil fuel use and GHG emissions, there would be no global emission or climate benefits from doing so.**

Even total U.S. fossil fuel replacement would not offset other nations’ fossil fuel use, and associated emissions resulting from rapidly expanding energy needs, to: (a) meet those nations’ own economic development goals; and (b) conduct the mining, processing and manufacturing needed to support the proposed “transition” to wind, solar and battery energy.

While the United States significantly *reduced* its carbon dioxide emissions by replacing coal-fired power capacity with natural gas, Asian and other countries *opened* hundreds of new coal-fired power plants, in addition to those already in operation. China alone put 38.4 gigawatts (38,400 MW) of coal plants into operation in 2020; its annual GHG emissions in 2019 *exceeded those of all developed countries combined*. Beijing is also building, planning or financing more than 300 coal plants in Turkey, Vietnam, Indonesia, Egypt and other nations.<sup>29</sup>

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<sup>29</sup> See e.g., U.S. Energy Information Administration, *U.S. Energy-Related Carbon Dioxide Emissions: 2019, September 2020*, [https://www.eia.gov/environment/emissions/carbon/pdf/2019\\_co2analysis.pdf](https://www.eia.gov/environment/emissions/carbon/pdf/2019_co2analysis.pdf); Reuters, “Study: China’s new coal power plant capacity in 2020 more than 3 times

African countries are planning to build more than 1,250 new coal- and gas-fired generating units by 2030, many financed by Chinese banks and built by Chinese companies. Coal still supplies more than 70% of annual electricity consumption in India, the world's second-largest coal user. India and Russia plan to mine much more coal and build hundreds more new coal-fired generating units in the coming years.<sup>30</sup>

An American “energy transformation” would simply *transfer* emission sources and other ecological impacts from the United States to these and other countries. Worldwide fossil fuel use and GHG and pollution emissions would actually *increase* significantly. Even assuming greenhouse gases are now the primary factor controlling Earth's climate, there would thus be no climate benefits

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rest of world's,” February 3, 2021, <https://www.voanews.com/science-health/study-chinas-new-coal-power-plant-capacity-2020-more-3-times-rest-worlds>; S Inskip, A Westerman, “Why is China placing a global bet on coal?” National Public Radio, April 29, 2019, <https://www.npr.org/2019/04/29/716347646/why-is-china-placing-a-global-bet-on-coal>; D Watkins, R Lai, K Bradsher, “China Rules: How China became a superpower,” *New York Times*, November 18, 2018, <https://www.nytimes.com/interactive/2018/11/18/world/asia/world-built-by-china.html>

<sup>30</sup> See e.g., Global Warming Policy Forum, “African nations planning 1250 new coal and gas power plants, new study reveals,” January 13, 2021, <https://www.thegwpf.com/african-nations-planning-1250-new-coal-and-gas-power-plants-new-study-reveals/>; V Jayaraj: “Despite COP26 pressure, Asia and Africa remain committed to coal,” Global Warming Policy Forum, June 6, 2021, <https://www.thegwpf.com/despite-cop26-pressure-asia-and-africa-remain-committed-to-coal/>; *Wall Street Journal*, “America's Energy Gift to Dictators,” June 10, 2021, [https://www.wsj.com/articles/americas-energy-gift-to-dictators-11623279139?mod=opinion\\_lead\\_pos1](https://www.wsj.com/articles/americas-energy-gift-to-dictators-11623279139?mod=opinion_lead_pos1)

even from completely eliminating fossil fuel use in the United States – and attempting to replace that energy with wind, solar, battery and biofuel power – at enormous economic, environmental, social and human cost to the United States and world.

Any valid, accurate, complete and proper IWG analysis must address and monetize these realities in determining “social costs of carbon and greenhouse gases” and calculating any supposed benefits from eliminating the 80% of U.S. energy that currently comes from fossil fuels. The IWG’s failure to do this violates the Administrative Procedure Act and National Environmental Policy Act.

**VI. Climate policies strongly correlate with “energy poverty” – energy prices rising above individuals’ ability to stay adequately warm or cool at reasonable cost, given their incomes. The numerous illnesses and deaths caused by such policies must be addressed by any competent IWG analysis.**

Computer climate models have created “scenarios” ranging from Earth warming up to 4.1 degrees C (7.2 F) over the next 80 years to a warming Arctic causing colder winters.<sup>31</sup> A recent “mortality cost of carbon” study estimated that 83 million people (equivalent to the population of Germany) “could be killed” this

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<sup>31</sup> S Gibbens, “Why a warming Arctic may be causing colder U.S. winters,” *National Geographic*, March 13, 2018, <https://www.national-geographic.com/science/article/global-warming-arctic-colder-winters-climate-change-spd>

century by rising planetary temperatures due to fossil fuel use.<sup>32</sup> That is the premise of the IWG's analysis.

Modern housing and energy systems enable people to adapt to and survive even extreme heat and cold – even in Antarctica, parts of which recently experienced their coldest average winter temperatures ever recorded: -61° C (-78° F).<sup>33</sup>

Adaptation and survival become much more difficult, however, when government policies ration energy that powers efficient air conditioning and heating; create recurrent blackouts; or make cooling and heating homes difficult or impossible to afford amid joblessness and rising oil, natural gas, coal and electricity prices.

Moreover, it is often on the coldest and hottest days and nights, when heating or cooling are most essential, that winds blow at inadequate speeds to turn turbine blades and/or the sun shines with inadequate intensity to generate solar electricity. This situation (and wind and solar variability in general) necessitates duplicative, expensive “backup” energy: coal, natural gas, diesel, hydroelectric or battery systems that further increase energy costs and compound “energy poverty.”

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<sup>32</sup> J Tirone, “Global warming will kill 83 million people in the next 80 years,” Bloomberg News Service, July 29, 2021, <https://www.bloombergquint.com/politics/warming-planet-means-83-million-face-death-from-heat-this-century>

<sup>33</sup> M Kile, “South Pole’s winter weather record,” WattsUpWithThat.com, Oct. 22, 2021, <https://wattsupwiththat.com/2021/10/22/south-poles-winter-weather-record/>

Yet proposed federal policies grounded in the IWG’s “social cost” calculation would mandate that natural gas heating and cooking be replaced with expensive heat pumps and electric appliances, powered by weather-dependent wind and solar systems.<sup>34</sup>

Contrary to media reports focused on deaths from warming, far more people die in cold weather than in hot weather. In the United States and Canada, cold causes 45 times more deaths per year than heat: 113,000 from cold versus 2,500 from heat. Worldwide, with air conditioning far less available, some 1,700,000 people die annually from cold versus 300,000 from heat.<sup>35</sup>

A 2014 report underscores how energy policies favoring wind and solar over fossil fuels create fuel poverty that results in numerous illnesses, health problems and deaths. Poor, elderly, fixed-income and minority families are most severely, disproportionately and inequitably affected.<sup>36</sup>

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<sup>34</sup> See, e.g., D Flanakin, “The unholy crusade against gas appliances,” ClimateChange.live, March 7, 2020, <https://climatechange.live/the-unholy-crusade-against-gas-appliances/>

<sup>35</sup> B Lomborg, “More people die of cold,” *New York Post*, July 14, 2021, <https://nypost.com/2021/07/14/more-die-of-cold-medias-heat-death-climate-obsession-leads-to-lousy-fixes/>

<sup>36</sup> Public Health England, UCL Institute of Health Equity, “Local action on health inequalities: Fuel poverty and cold home-related health problems,” September 2014, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/355790/Briefing7\\_Fuel\\_poverty\\_health\\_inequalities.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/355790/Briefing7_Fuel_poverty_health_inequalities.pdf)

Cold homes increase or exacerbate risks of asthma, bronchitis, flu, cardiovascular disease and other adverse health conditions. Cold home temperatures also increase depression, anxiety and other mental health problems, intensifying medical and physical issues. Already vulnerable groups – young children, older people and those with preexisting health issues – are especially susceptible to hypothermia, illness and death.<sup>37</sup>

Public Health England calculated that one-tenth of all “excess winter deaths” in England and Wales are directly attributable to fuel poverty, and 21% of excess winter deaths are attributable to the coldest 25% of homes. Between 1990 and 2014, researchers estimated, *30,000 to 40,000 people died each year* who would not have perished if their homes hadn’t been so cold.<sup>38</sup>

Adjusted for population, but not for hotter and colder temperatures in much of the USA, this is equivalent to some 170,000 to 230,000 excess winter deaths per year in the United States.<sup>39</sup>

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<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.* See also U.S. Department of Health and Human Services, Low Income Home Energy Assistance Program Report to Congress, “Preventing Loss of Life Due to Extreme Indoor Temperatures FY 2007,” February 15, 2007, <https://www.acf.hhs.gov/ocs/report/liheap-report-congress-preventing-loss-life-due-extreme-indoor-temperatures-fy-2007>

<sup>39</sup> The 2021 population of the United States is 331 million, roughly 5.7 times the population of England (55 million) plus Wales (3 million). Multiplying PHE estimated excess winter death by 5.7 results in comparable U.S. excess winter deaths of 171,000 to 228,000.

In 2019, 344,000 German families had their electricity cut off because they could not pay their power bills.<sup>40</sup> Data were not available on associated excess deaths, but one may reasonably presume they were significant.

Coal, oil, natural gas, electricity and home heating costs have risen significantly since those English and German reports were prepared, likely increasing the excess winter death toll markedly. Many factors played a role, among them:

global demand for gas and coal surged as the world recovered from Covid;<sup>41</sup> British natural gas production plunged 60% since 2000;<sup>42</sup> Britain and Europe banned fracking for gas;<sup>43</sup> Russia restricted gas deliveries to Europe;<sup>44</sup> European coal and natural gas prices

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<sup>40</sup> *The Local*, “Call to prevent power cuts in poorest German households,” May 14, 2019, <https://www.thelocal.de/20190514/call-to-prevent-power-cuts-in-german-households-amid-rising-energy-poverty/?utm>

<sup>41</sup> P Nagle and K Temaj, “Energy market developments: natural gas and coal prices surge amid constrained supply,” World Bank Blogs, November 8, 2021, <https://blogs.worldbank.org/opendata/energy-market-developments-natural-gas-and-coal-prices-surge-amid-constrained-supply>

<sup>42</sup> Net Zero Watch, “Government’s years of irresponsible neglect has left Britain at mercy of Putin,” October 18, 2021, <https://www.netzerowatch.com/net-zero-watch-governments-years-of-irresponsible-neglect-has-left-britain-at-mercy-of-putin/>

<sup>43</sup> M Ridley, “The plot against fracking,” *The Critic*, December 2019, [https://thecritic.co.uk/issues/december-2019/the-plot-against-fracking/?mc\\_cid=12e29b9ac0&mc\\_eid=aa96fcfc4f](https://thecritic.co.uk/issues/december-2019/the-plot-against-fracking/?mc_cid=12e29b9ac0&mc_eid=aa96fcfc4f)

<sup>44</sup> A Finley, “Climate policy meets cold reality in Europe,” *Wall Street Journal*, September 27, 2021, [https://www.wsj.com/articles/climate-policy-reality-europe-energy-costs-gas-coal-11632754849?mod=opinion\\_lead\\_pos5&mc](https://www.wsj.com/articles/climate-policy-reality-europe-energy-costs-gas-coal-11632754849?mod=opinion_lead_pos5&mc)

skyrocketed October 2020 to September 2021;<sup>45</sup> and the Biden Administration stymied leasing, drilling, fracking, pipelines, and petroleum exports.<sup>46</sup>

Meanwhile, Europe's wind turbines generated less electricity in 2021 due to unfavorable winds, necessitating greater reliance on increasingly expensive coal and gas,<sup>47</sup> while rising energy bills threatened to close British elder care homes.<sup>48</sup>

Further exacerbating health risks, hospitals could also become chillier. At 13¢ per kilowatt-hour (average U.S. business rate) a 650,000-square-foot hospital building would pay about \$2.5 million annually for electricity. At 27¢ per kWh (Britain), the annual cost jumps to \$5.2 million; at 39¢ per kWh (Germany), to \$7.5 million! Those soaring costs would likely result in colder conditions, employee layoffs, higher medical bills, reduced patient care, and more deaths.<sup>49</sup>

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<sup>45</sup> AA Energy, "European gas prices up by 600%, coal by 265% driven by supply shortage," September 30, 2021, <https://www.aa.com.tr/en/energy/coal/european-gas-prices-up-by-600-coal-by-265-driven-by-supply-shortage/33704>

<sup>46</sup> T Doshi, "The IPCC's climate 'code red' versus the real world," *Forbes*, August 14, 2021, <https://www.forbes.com/sites/tilakdoshi/2021/08/14/squaring-the-circle-the-uns-climate-code-red-versus-the-real-world/?sh=12c1de314430>

<sup>47</sup> P Stevens, "UK energy titan SSE says low wind, driest conditions in 70 years hit renewable generation," CNBC Online, September 29, 2021, <https://www.cnbc.com/2021/09/29/sse-says-low-wind-dry-conditions-hit-renewable-energy-generation.html>

<sup>48</sup> R Booth, "Care homes warn crippling energy bills could force closures," *The Guardian*, September 24, 2021, [https://www.theguardian.com/business/2021/sep/24/care-homes-warn-crippling-energy-bills-could-force-closures?mc\\_](https://www.theguardian.com/business/2021/sep/24/care-homes-warn-crippling-energy-bills-could-force-closures?mc_)

<sup>49</sup> See ElectricRate.com, "Pricing of Electricity by Country (updated November 2021)," <https://www.electricrate.com/data-center/electricity-prices-by-country/>; E

In the United States, one-third of families already had difficulty six years ago adequately heating and cooling their homes. One-fifth of U.S. households had to reduce or forego food, medicine and other necessities to pay their energy bills.<sup>50</sup>

Even before COVID, low-income, and minority families were spending a greater portion of their incomes on energy than average U.S. households.<sup>51</sup> This disproportionate impact would increase dramatically under anti-fossil-fuel policies justified by the IWG's biased analyses.

Nearly half of U.S. households heating with natural gas will spend 20-50% more this winter than last year, as the average monthly spot price for natural gas skyrocketed from \$1.63 in June 2020 to \$5.51 in October 2021.<sup>52</sup>

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Source Companies, "Managing Energy Costs in Hospitals," National Grid US, 2002 (total costs adjusted for inflation), [https://www9.nationalgridus.com/non\\_html/shared\\_energyeff\\_hospitals.pdf](https://www9.nationalgridus.com/non_html/shared_energyeff_hospitals.pdf); P Fairbanks, "Hospital energy use: Taking advantage of energy efficiency," EET&D Magazine, July/August 2018, <https://electricenergyonline.com/energy/magazine/1147/article/Hospital-Energy-Use-Taking-Advantage-of-Energy-Efficiency.htm>

<sup>50</sup> U.S. Energy Information Administration, "One in three U.S. households faces a challenge in meeting energy needs," September 19, 2018, <https://www.eia.gov/todayinenergy/detail.php?id=37072>

<sup>51</sup> American Council for an Energy-Efficient Economy, "2020 Energy Burden Report: Low-Income, Black, Hispanic and Native American households face high energy burdens," <https://www.aceee.org/energy-burden>

<sup>52</sup> U.S. Energy Information Administration, "Henry Hub Natural Gas Spot Price," October 2021, <https://www.eia.gov/dnav/ng/hist/rngwhhdm.htm>; U.S. Energy Information Administration, "Winter Fuels Outlook," October 2021, [https://www.eia.gov/outlooks/steo/special/winter/2021\\_Winter\\_Fuels.pdf](https://www.eia.gov/outlooks/steo/special/winter/2021_Winter_Fuels.pdf)

These perfect storms of misinformed policies and natural events could bring unprecedented excess deaths during winter 2021-22 and moving forward.

Impacts on hard-pressed working families and those on fixed incomes would also be disproportionate and inequitable, as they all spend a greater portion of their limited incomes on energy.

The Interagency Working Group has failed to consider these outcomes. Instead, its analyses, reports and recommendations attempt to justify existing and proposed policies, in violation of the Administrative Procedure Act and of National Environmental Policy Act requirements that major federal actions fully and carefully consider all likely positive and negative effects of proposed federal policies, especially on the overall quality of the human environment.

## **CONCLUSION**

Proper calculation of the “Social Cost of Greenhouse Gases” must include more than merely the asserted costs of “carbon” emissions. It must include the *benefits*, as well as the costs, of *using* fossil fuels that produce the emissions – especially carbon dioxide, which is essential for plant, animal and human life.

To properly serve the American people, and to comply with the Administrative Procedure Act and National Environmental Policy Act, the Interagency Working Group’s “Social Costs of Greenhouse Gases” analysis must be accurate, rigorous and thorough. As this brief makes clear, the IWG’s analysis

improperly begins with the desired policy outcome and works backward to justify that outcome.

The IWG analysis conveys a false impression that fossil fuels are dirty, unnecessary, and the cause of alleged climate disasters. Its narrow approach likewise suggests that wind and sunshine can be harnessed easily, with relatively few wind turbines, solar panels and battery modules that can be manufactured and installed at minimal cost.

The IWG's actions represent a textbook example of arbitrary, capricious and deceptive decisions and analyses by government regulators. They violate sound public policy, U.S. constitutional principles of separation of powers, and the Administrative Procedure Act and National Environmental Policy Act.

The Working Group's analysis is designed and intended to justify and drive one of the most far-reaching federal actions in U.S. history: the forcible elimination of fossil fuel energy and its attempted replacement with wind, solar and battery technologies, via mining, processing and manufacturing by or in foreign countries that are often unfriendly to America.

These actions would also likely result in the deaths of thousands of Americans annually over the coming decades, who will not be able to afford sufficient heat and air conditioning to survive freezing winters and scorching summer heat waves.

The IWG’s actions will result in widespread and costly impacts on the U.S. economy and employment; the health, well-being and life spans of Americans; and the quality and diversity of the U.S. and global natural and human environment.

At a minimum, the IWG must expand its analysis and address all these issues, costs and foregone benefits – fully, properly and honestly. Only in that way can the American people fully assess the true costs of any proposed “green energy transformation.”

CFACT asks this Court to reverse the IWG’s shortsighted calculations and remand to the District Court for entry of a preliminary injunction.

Dated: November 29, 2021

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5). This brief contains 6,470 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in fourteen (14) point Times New Roman font.

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## **CIRCUIT RULE 28A(h) CERTIFICATION**

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 28A(h), a version of the brief in non-scanned PDF format. I hereby certify that the file has been scanned for viruses and that it is virus-free.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 29, 2021, an electronic copy of the Brief of *Amicus Curiae* Committee for a Constructive Tomorrow in Support of Plaintiffs-Appellants and Reversal was filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. The undersigned certifies that all participants in this case are registered CM/ECF users and that service of the Brief will be accomplished by the CM/ECF system.

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