

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

**STATE OF LOUISIANA ET AL**

**CASE NO. 2:21-CV-01074**

**VERSUS**

**JUDGE JAMES D. CAIN, JR.**

**JOSEPH R BIDEN JR ET AL**

**MAGISTRATE JUDGE KAY**

**MEMORANDUM RULING**

Before the Court is a “Motion for Preliminary Injunction” (Doc. 53) filed by the States of Louisiana, Alabama, Florida, Georgia, Kentucky, Mississippi, South Dakota, Texas, West Virginia, and Wyoming (collectively referred to as the “Plaintiff States”). The Plaintiff States move pursuant to Rule 65 of the Federal Rules of Civil Procedure for a preliminary injunction against Defendants Joseph R. Biden, Jr., Cecilia Rouse, Shalanda Young, Kei Koizumi, Janet Yellen, Deb Haaland, Tom Vilsack, Gina Raimondo, Xavier Becerra, Pete Buttigieg, Jennifer Granholm, Brenda Mallory, Michael S. Regan, Gina McCarthy, Brian Deese, Jack Danielson, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Transportation, U.S. Department of Agriculture, U.S. Department of Interior, National Highway Traffic Safety Administration, and the Interagency Working Group on Social Cost of Greenhouse Gases (hereinafter collectively referred to as “Defendants”).

Plaintiff States also move to make the Order effective immediately and to remain in effect pending the final resolution of this case, or until further orders of this Court, the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court.

## I. BACKGROUND

On April 22, 2021, the Plaintiff States filed a Complaint [doc. 1] against the Government Defendants seeking declaratory and injunctive relief as a result of Executive Order 13990 (“EO 13990”). EO 13990 reinstated the Interagency Working Group (“IWG”) on Social Costs of Greenhouse Gas Emissions (“SC-GGE”) and ordered the IWG to publish Interim Estimates for the Social Cost of Carbon, Nitrous Oxide, and Methane (collectively referred to as “SC-GHG Estimates”) for agencies to use when monetizing the value of changes in greenhouse gas emissions resulting from regulations and other relevant agency actions. EO 13990 provides as follows:

### **Accounting for the Benefits of Reducing Climate Pollution**

- (a) It is essential that agencies capture the full costs of greenhouse gas emissions as accurately as possible, including by taking global damages into account. Doing so facilitates sound decision-making, recognizes the breadth of climate impacts, and supports the international leadership of the United States on climate issues. The “social cost of carbon” (SCC), social cost of nitrous oxide” (SCN), and “social cost of methane” (SCM) are estimates of the monetized damages associated with incremental increases in greenhouse gas emissions. They are intended to include changes in net agricultural productivity, human health, property damage from increased flood risk, and the value of ecosystem services. An accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions.
- (b) There is hereby established an Interagency Working Group on the Social Cost of Greenhouse Gases (the “Working Group”). The Chair of the Council of Economic Advisers, Director or OMB, and Director of the office of Science and Technology Policy shall serve as Co-Chairs of the Working Group.
  - (i) **Membership.** The Working Group shall also include the following other officers, or their designees: the Secretary of the Treasury; the Secretary of the Interior; the Secretary of Agriculture; the Secretary of Commerce; the Secretary of Health and Human Services; the Secretary of Transportation; the Secretary of Energy; the Chair of the Council on

Environmental Quality; the Administrator of the Environmental Protection Agency; the Assistant to the President and National Climate advisor; and the Assistant to the President for Economic Policy and director of the National Economic council.

- (ii) Mission and Work. The Working Group shall, as appropriate and consistent with applicable law:
  - (A) Publish an interim SCC, SCN, and SCM within 30 days of the date of this order, which agencies shall use when monetizing the value of changes in greenhouse gas emissions resulting from regulations and other relevant agency actions until final values are published;
  - (B) Publish a final SCC, SCN, and SCM by no later than January 2022;
  - (C) Provide recommendations to the President, by no later than September 1, 2021, regarding areas of decisions-making, budgeting, and procurement by the Federal Government where the SCC, SCN, and SCM should be applied;
  - (D) Provide recommendations, by no later than June 1, 2022, regarding a process for reviewing, and, as appropriate, updating, the SCC, SCN, and SCM to ensure that these costs are based on the best available economics and science; and
  - (E) Provide recommendations, to be published with the final SCC, SCN, and SCM under subparagraph (A) if feasible, and in any event by no later than June 1, 2022, to revise methodologies for calculating the SCC, SCN, and SCM, to the extent that current methodologies do not adequately take account of climate risk, environmental justice, and intergenerational equity.

(iii) Methodology. In carrying out its activities, the working Group shall consider the recommendations of the National Academies of Science, Engineering, and Medicine as reported in Value Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide (2017) and other pertinent scientific literature; solicit public comment; engage with the public and stakeholders; seek the advice of ethics experts; and ensure that the SCC, SCN, and SCM reflect the interests of future generations in avoiding threats posed by climate change.

## 1. ISSUES BEFORE THE COURT

The Plaintiff States seek injunctive and declaratory relief on three grounds. First, they assert that the SC-GHG Estimates violate the procedural requirements of the Administrative Procedure Act (“APA”) as a substantive rule that did not undergo the requisite notice-and-comment process. *See* 5 U.S.C. § 553. Second, the Plaintiff States claim that President Biden, through EO 13990, and the IWG lack the authority to enforce the estimates as they are substantively unlawful under the APA and contravene existing law. *See* 5 U.S.C. § 706(2)(A)–(C). Third, the Plaintiff States maintain that the Government Defendants acted beyond any congressional authority by basing regulatory policy upon global considerations.

The Plaintiff States request a preliminary injunction: (1) ordering Defendants to disregard the SC-GHG Estimates and prohibiting them from adopting, employing, treating as binding, or relying upon the work product of the Interagency Working Group (“IWG”); (2) enjoining Defendants from independently relying upon the IWG’s methodology considering global effects, discount rates, and time horizons; and (3) ordering Defendants to return to the guidance of Circular A-4, *explained infra*, in conducting regulatory analysis.

The issues presently before the Court are: (1) whether the Plaintiff States satisfy the doctrine of standing; (2) whether the Plaintiff States assert claims subject to judicial review under the APA; and (3) whether the Plaintiff States satisfy the requirements to obtain a preliminary injunction.

To be clear, the Court is ruling only on the actions of the federal agencies and whether the agencies, by implementing the estimates and considering global effects—violate the APA and whether President Biden upon signing EO 13990, violated the separations of powers clause of the United States Constitution. The Court has the authority to enjoin federal agencies from implementing a rule—mandated by an executive order or not—that violates the APA or violates the separation of powers clause. Importantly, the Court is not opining as to the scientific issues regarding greenhouse gas emissions, their effects on the environment, or whether they contribute to global warming.

## **2. HISTORY OF THE ADMINISTRATIVE PROCEDURE ACT AND CIRCULAR A-4**

### **(i) The Administrative Procedure Act and Circular A-4**

The Administrative Procedure Act (“APA”) is one of the foremost checks on the “growth of the Executive Branch [.]” *Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 499 (2010). The APA mandates that agencies take action only pursuant to express legal authority, in a transparent manner, with opportunity for public input, in a nonarbitrary manner, and with judicial review. See *Texas v. U.S.*, 809 F.3d 134 (5th Cir. 2015).

Another check on the growth of the Administrative State is the consensus on cost/benefits analysis required by Presidents Nixon, Ford, Carter, Reagan and Clinton. See Nina A. Mendelson & Jonathan B. Wiener, *Responding to Agency Avoidance of OIRA*, 37 Harv. J.L. & Pub. Pol’y 447, 454–57 (2014). President Clinton issued Executive Order 12866, which instructs agencies to “assess all costs and benefits of available regulatory

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.