

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

THE STATE OF MISSOURI, *et al.*,

Plaintiffs,

v.

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

Defendants.<sup>1</sup>

Case No. 4:21-cv-00287-AGF

**DEFENDANTS' COMBINED MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

BRIAN M. BOYNTON  
Acting Assistant Attorney General

SAYLER A. FLEMING  
United States Attorney

ERIC WOMACK  
Assistant Branch Director  
Federal Programs Branch

STEPHEN M. PEZZI, #84311 (VA)  
CODY T. KNAPP, #5715438 (NY)  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch

*Attorneys for Defendants*

---

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Shalanda Young (Acting Director of the Office of Management and Budget) and Dr. Eric S. Lander (Director of the Office of Science and Technology Policy) are automatically substituted as Defendants in their official capacities for their predecessors, Robert Fairweather and Kei Koizumi (respectively).

## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>BACKGROUND.....</b>	<b>3</b>
<b>I. Factual Background .....</b>	<b>3</b>
A. Requiring cost-benefit analysis is a longstanding presidential practice. ....	3
B. Federal agencies assess the costs and benefits of changes in greenhouse gas emissions when conducting cost-benefit analyses. ....	5
1. Past Federal Estimates of the Social Cost of Greenhouse Gases .....	5
2. Executive Order 13990 and the Working Group’s 2021 Interim Estimates..	11
<b>II. Procedural Background .....</b>	<b>13</b>
<b>ARGUMENT.....</b>	<b>13</b>
<b>I. THE COURT LACKS SUBJECT-MATTER JURISDICTION.....</b>	<b>14</b>
A. Plaintiffs lack Article III standing. ....	15
1. The possibility that Plaintiffs will suffer a future injury—let alone an injury actually caused by the Executive Order—is speculative.....	15
2. Any injury would be traceable to future, hypothetical agency actions, not to the Executive Order or the Interim Estimates. ....	21
3. Plaintiffs’ alleged injuries are not redressable by a victory in this lawsuit .....	24
4. Plaintiffs’ remaining, miscellaneous bases for standing are meritless. ....	26
B. Plaintiffs’ claims are not ripe. ....	30
<b>II. PLAINTIFFS LACK A CAUSE OF ACTION.....</b>	<b>37</b>
A. Plaintiffs do not challenge any final agency action. ....	37
B. The APA provides no cause of action to sue the President or the Working Group..	39
C. Plaintiffs cannot rely on an implied equitable cause of action for their separation-of-powers claim. ....	42
<b>III. PLAINTIFFS’ CLAIMS ARE MERITLESS.....</b>	<b>43</b>
A. Plaintiffs’ statutory claims are meritless. ....	43

B.	Plaintiffs' constitutional claims are meritless.....	44
C.	Plaintiffs' notice-and-comment claims are meritless.....	48
D.	Any remaining claims against the Defendants other than the President or the Working Group should be dismissed for failure to state a claim.....	50
<b>IV.</b>	<b>PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION.....</b>	<b>51</b>
A.	Plaintiffs cannot show imminent, irreparable harm.....	51
B.	The public interest would be disserved by a preliminary injunction.....	53
C.	Any relief should be limited to declaring the Interim Estimates non-binding.....	54
<b>CONCLUSION.....</b>		<b>55</b>

TABLE OF AUTHORITIES**Cases**

<i>Abbott Labs. v. Gardner,</i> 387 U.S. 136 (1967) .....	30
<i>Alexander v. Sandoval,</i> 532 U.S. 275 (2001) .....	37
<i>Alfred L. Snapp &amp; Son, Inc. v. Puerto Rico, ex rel., Barez,</i> 458 U.S. 592 (1982) .....	27
<i>Ali v. Rumsfeld,</i> 649 F.3d 762 (D.C. Cir. 2011).....	42
<i>Almaklani v. Trump,</i> 444 F. Supp. 3d 425 (E.D.N.Y. 2020) .....	39
<i>Am. Textile Mfrs. Inst., Inc. v. Donovan,</i> 452 U.S. 490 (1981) .....	36
<i>Armstrong v. Exec. Off. of the President,</i> 90 F.3d 553 (D.C. Cir. 1996) .....	41
<i>ASARCO Inc. v. Kadish,</i> 490 U.S. 605 (1989) .....	16
<i>Batsche v. Price,</i> 875 F.3d 1176 (8th Cir. 2017).....	37
<i>Bennett v. Spear,</i> 520 U.S. 154 (1997) .....	35, 37, 38
<i>Bldg. &amp; Const. Trades Dep't, AFL-CIO v. Allbaugh,</i> 295 F.3d 28 (D.C. Cir. 2002) .....	33, 46
<i>California v. Bernhardt,</i> 472 F. Supp. 3d 573 (N.D. Cal. 2020) .....	18, 24, 32
<i>California v. Trump,</i> No. 19-cv-960 (RDM), 2020 WL 1643858 (D.D.C. Apr. 2, 2020).....	19, 44
<i>Care Comm. v. Arneson,</i> 638 F.3d 621 (8th Cir. 2011) .....	30
<i>Center for Biological Diversity v. National Highway Traffic Safety Administration,</i> 538 F.3d 1172 (9th Cir. 2008).....	<i>passim</i>

...

<i>Citizens Telecommunications Co. of Minnesota, LLC v. FCC,</i> 901 F.3d 991 (8th Cir. 2018) .....	50
<i>City of Kennett, Missouri v. EPA,</i> 887 F.3d 424 (8th Cir. 2018) .....	15, 16
<i>City of Tacoma v. Taxpayers,</i> 357 U.S. 320 (1958) .....	36
<i>Clapper v. Amnesty Int'l USA,</i> 568 U.S. 398 (2013) .....	15, 16, 29
<i>Carlson v. Postal Regul. Comm'n,</i> 938 F.3d 337 (D.C. Cir. 2019) .....	37
<i>Correctional Servs. Corp. v. Malesko,</i> 534 U.S. 61 (2001) .....	43
<i>Daimler Chrysler Corp. v. Cuno,</i> 547 U.S. 332 (2006) .....	16
<i>Dataphase Sys., Inc. v. CL Sys., Inc.,</i> 640 F.2d 109 (8th Cir. 1981) .....	51, 52
<i>Duffner v. City of St. Peters, Missouri,</i> 930 F.3d 973 (8th Cir. 2019) .....	30, 32
<i>EarthReports, Inc. v. FERC,</i> 828 F.3d 949 (D.C. Cir. 2016) .....	32
<i>Entergy Corp. v. Riverkeeper, Inc.,</i> 556 U.S. 208 (2009) .....	36
<i>Fed. Forest Res. Coal. v. Vilsack,</i> 100 F. Supp. 3d 21 (D.D.C. 2015) .....	17
<i>Frank v. City of St. Louis,</i> 458 F. Supp. 3d 1090 (E.D. Mo. 2020) .....	51
<i>Franklin v. Massachusetts,</i> 505 U.S. 788 (1992) .....	25, 26, 39
<i>Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.,</i> 561 U.S. 477 (2010) .....	45, 47
<i>Golden Gate Rest. Ass'n v. City &amp; Cty. of San Francisco,</i> 512 F.3d 1112 (9th Cir. 2008) .....	53

# 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.