

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

STATE OF TEXAS; STATE OF MONTANA; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF GEORGIA; STATE OF KANSAS; STATE OF KENTUCKY; STATE OF INDIANA; STATE OF LOUISIANA; STATE OF MISSISSIPPI; STATE OF MISSOURI; STATE OF NEBRASKA; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF UTAH; STATE OF WEST VIRGINIA; and STATE OF WYOMING,

*Plaintiffs,*

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; ANTONY J. BLINKEN, in his official capacity as Secretary of the Department of State; MERRICK B. GARLAND, in his official capacity as Attorney General of the United States; ALEJANDRO MAYORKAS, in his official capacity as Secretary of the Department of Homeland Security; SCOTT DE LA VEGA, in his official capacity as Acting Secretary of the Interior; JENNIFER GRANHOLM, in her official capacity as Secretary of the Department of Energy; JANE

Civ. Action No. \_\_\_\_\_

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NISHIDA, in her official capacity as Acting Administrator of the Environmental Protection Agency; PETE BUTTIGIEG, in his official capacity as Secretary of Transportation; and the UNITED STATES OF AMERICA,

*Defendants.*

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## COMPLAINT

### I. INTRODUCTION

1. When the States ratified the Constitution, they ceded the power to regulate inter-state and international commerce to Congress, U.S. Const. art. I, § 8, cl. 3, which must act through the process of bicameralism and presentment. *Id.* § 7. This process may “often seem clumsy, inefficient, even unworkable,” but was designed to protect both the liberty and property of individuals and the prerogative of sovereign States. *See, e.g., I.N.S. v. Chadha*, 462 U.S. 919, 958-59 (1983). The President has certain prerogatives to act on behalf of the United States in foreign affairs. But as far as domestic law is concerned, the President must work with and abide by the limits set by Congress—whether he likes them or not.<sup>1</sup>

2. This Administration has sought to leverage its power regarding U.S. *foreign* policy to unilaterally contradict Congress’s stated *domestic* policy regarding one of

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<sup>1</sup> For a discussion of the difference between the President’s ability to bind the United States as a matter of international law and as a matter of domestic law, see generally Bradford Clark, *Domesticating Sole Executive Agreements*, 9393 Va. L. Rev. 1574 (2007).

the most significant energy projects in a generation: the Keystone XL Pipeline. This it may not do. On behalf of many of the States through which Keystone XL runs—beginning within the United States in Montana in the north and terminating in Texas in the south, the States of Montana and Texas bring this suit to prevent the Administration from circumventing limits placed on it by the Constitution, Administrative Procedure Act, and congressionally enacted national policy in this critical energy matter.

3. Keystone XL is part of a larger system of pipelines, which was designed by TC Energy Corporation to transport approximately 830,000 barrels of oil from where it is produced in Canada and Montana to pre-existing refineries in Houston. Keystone XL is that piece of the pipeline that cross the United States-Canadian border in Philips County, Montana. The U.S. government has studied the safety, environmental impact, and economic benefits of Keystone XL for years. It repeatedly concluded that the pipeline would have a negligible impact on the climate but significant impact on the economy and American energy independence.

4. In 2019, consistent with multiple acts of Congress, President Trump approved the construction of the 1.2 mile stretch of Keystone XL that crosses the border.<sup>2</sup> That construction is now effectively complete.<sup>3</sup>

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<sup>2</sup> Presidential Permit of March 29, 2019 Authorizing TransCanada Keystone Pipeline, L.P., To Construct, Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Canada, 84 Fed. Reg. 13101 (April 3, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-04-03/pdf/2019-06654.pdf>.

<sup>3</sup> *Id.*

5. Within hours of taking office, President Biden issued an Executive Order that purports to revoke the permit on the grounds that he has “an ambitious plan” to “reduce harmful emissions and create good clean-energy jobs” and that this completed pipeline would “not be consistent with [his] Administration’s economic and climate imperatives.”<sup>4</sup> The order itself relies on a permit provision that purports to allow such revocation by agreement from the Company holding the permit. But it cites no statutory or other authorization permitting the President to change energy policy as set by Congress in this manner.

6. Revocation of the Keystone XL pipeline permit is a regulation of interstate and international commerce, which can only be accomplished as any other statute can: through the process of bicameralism and presentment. The President lacks the power to enact his “ambitious plan” to reshape the economy in defiance of Congress’s unwillingness to do so. To the extent that Congress *had* delegated such authority, it would violate the non-delegation doctrine. But Congress has not delegated such authority: It set specific rules regarding what actions the President can take about Keystone XL and when. The President, together with various senior executive officials, violated those rules. The action should be set aside as inconsistent with the Constitution and the Administrative Procedure Act, 5 U.S.C. §§ 500, *et seq.*

## II. PARTIES

6. Plaintiffs are the States of Montana, Texas, Alabama, Arkansas, Georgia, Kentucky, Indiana, Louisiana, North Dakota, Oklahoma, South Carolina,

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<sup>4</sup> Exec. Ord. No. 13990, 86 Fed. Reg. 7037, 7041 (January 20, 2021).

South Dakota, Utah, and Wyoming (collectively, the “States”). They are sovereign States of the United States of America, represented by their respective Attorneys General, the States’ chief legal officers who bear the duty and authority to represent the States in court.

7. Defendant Joseph R. Biden, Jr. is named in his official capacity as President of the United States. President Biden issued Executive Order 13990, which purported to revoke the March 2019 Permit for Keystone XL.

8. Defendant Antony J. Blinken is named in his official capacity as Secretary of the Department of State. The Department of State communicates and coordinates with the Canadian government regarding commercial issues affecting the U.S.-Canada relationship. Pursuant to Executive Orders 13337 and 13867, the Secretary of State has been responsible for assessing Keystone XL permit requests. Based on information and belief, the Secretary is also responsible for implementing Executive Order 13990. *See, e.g.*, Temporary Payroll Tax Cut Continuation Act of 2011, Pub. L. No. 112-78, § 501(a), 125 Stat. 1280 (the “2011 Act”)Exec; Exec. Order No. 13337, 69 Fed. Reg. 25299 (Apr. 30, 2004).

9. Defendant Merrick B. Garland is named in his official capacity as Attorney General of the United States. The Attorney General is the chief law enforcement officer of the United States and directs litigation on its behalf.

10. Defendant Alejandro Mayorkas is named in his official capacity as Secretary of the Department of Homeland Security. The Department of Homeland Security is the agency primarily responsible for law enforcement at the nation’s

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