



Written by [Joe Wolverton, II, J.D.](#) on March 17, 2011

McConnell Amendment Seeks to Defang the EPA

The Senate is considering passage of Senate Amendment 183 to S 493, an amendment sponsored by Senate Minority Leader, Mitch McConnell (R-KY). The McConnell Amendment would “prohibit the Administrator of the Environmental Protection Agency from promulgating any regulation concerning, taking action relating to, or taking into consideration the emission of a greenhouse gas to address climate change.”



What, precisely, is the EPA planning to do and why does Senator McConnell want to prevent it?

In a nutshell, the EPA is attempting a covert regulatory end-run around Congress by promulgating immeasurably intrusive regulations and basing the power to perform such a move on the Clean Air Act of 1970. The EPA would like Americans to believe that that act grants to it the authority to combat global warming, as well as to control every activity, public and private, which would ostensibly alter the temperature of the earth.

If the agency gets its way, nearly everything under the sun (pun intended) would fall under the EPAs expansive purview, including all vehicles and all industry. [Reports](#) indicate that, When its fully phased in, their plans include over 18,000 pages of appendices that would regulate every industry in the U.S., cause electricity prices to skyrocket, and greatly diminish our freedom and prosperity.

Now, regardless of the fact that all the hot air spewed in defense of the science of global warming is more dangerous to the environment than any automobile or factory, there is more to this story than just another head-shaking example of the chutzpah of the federal government and its “watermelon agenda” (green on the outside, red on the inside).

Standing in the way of the EPAs rush to regulatory mayhem is the Constitution and its doctrine of the separation of powers. According to the plain language of [Article 1](#), All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Pretty simple, pretty clear.

For years, however, on the watch of congresses controlled by both parties, agencies created under the auspices of the executive branch have ignored the Constitution and illegally imposed legislation on the people of the United States via a complex and convoluted scheme of regulation enactment and enforcement. Most vexing for those of us who have witnessed and chronicled the rise of these regulatory super-legislatures is that these bureaucrats are answerable to no one as they are not elected by the American people.

The issue that is now before the Senate in the form of the McConnell Amendment is whether our duly elected representatives are content to acquiesce yet again to these unaccountable and unrestrained departmental despots or are they finally ready to reassert and reclaim their constitutionally mandated



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exclusive authority to make law.

Regarding the severability of the right to legislate, the English philosopher, John Locke, a man whose influence on the Founders is nearly without equal, wrote the following:

The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others . . . The power of the legislative, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws, and place it in other hands.

The Senate has the opportunity to demonstrate its resolve by voting in favor of the McConnell Amendment and putting an end to the unconstitutional assumption of power on the part of the EPA and other agencies who likewise lust for unchecked power.

At this point, passage of the McConnell Amendment looks like a long shot, but there is hope. Sixty votes will be needed to pass the amendment and attach it to the underlying measure, a [bill](#) reauthorizing the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs of the Small Business Administration (SBA).

Of course, there are those senators who stand immovably against placing any fetters on the EPA, regardless of how badly it emasculates their own branch of government.

Senate Democrats opposed to the McConnell Amendment (and their de facto party leader, President Barack Obama) claim that without the regulation of greenhouse emissions, the United States will lose its competitive edge and that we will be contributing to the speed at which the earth's climate is changing. In fact, after defeat of his cap-and-trade bill, President Obama remarked, "Cap and trade was just one way of skinning the cat; it wasn't the only way." Indeed, there's always the unconstitutional option.

In a [letter](#) sent to U.S. senators, the National Association of Manufacturers (a group whose members would be mandated into oblivion if the EPA and the President had their way) wrote:

At a time when our economy is attempting to recover from the most severe recession since the 1930s, Environmental Protection Agency (EPA) regulations, with no guidance from Congress, will establish disincentives for the long-term investments necessary to grow jobs and expedite economic recovery. The McConnell Amendment seeks to ensure a healthy and productive discussion in Congress on harmonizing our nation's energy, environmental and economic needs before EPA regulates carbon dioxide (CO₂) emissions from stationary sources, including manufacturing facilities.

Manufacturers support a comprehensive, federal climate policy within a framework that will cause no economic harm while granting sufficient time to deploy low-carbon technologies, such as carbon capture and sequestration, renewable energy and a renewed and large-scale deployment of nuclear power plants.

Americans for Prosperity echoed NAMs sentiment in their own letter sent to senators:

The Obama administration's attempt to use a decades-old statute to advance climate change policy via an unaccountable and unelected bureaucracy must be stopped. The American people have spoken out loudly and repeatedly against the higher energy costs and lost jobs that would result



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from the Environmental Protection Agency distorting the Clean Air Act to regulate GHGs. Despite massive congressional majorities over the past few years, President Obama was unable to push climate regulations through Congress, now he is trying to go around Congress.

The federal government must respect the will of the people, and ignoring their opinion on something as monumental as a national energy taxhoused in either a legislative cap-and-trade scheme or through the Clean Air Act risks further debasing the public's faith in government.

In what can be described as hyperbole for the sake of attention, Senator Barbara Boxer (D-Calif.) offered [her own summary](#) of the McConnell Amendment and its likely legacy: "I would call it the 'Reliance on the Foreign Oil Forever Act' because part of it says we can no longer look at fuel economy through the Clean Air Act. If you don't like that you can name it something else, like the 'The More Air Pollution for Americans Act' because this amendment says forever the EPA can never, ever go after carbon pollution."

Calling the measure a radical, radical amendment, Boxer added (apparently with sincerity), "This amendment is an attack on our children.

One wonders if Senator Boxer considers the surrender of the power to legislate into the hands of an unelected body of bureaucrats reliant on shaky science and angry, discredited agitprop a radical, radical submission.

On Tuesday, the full House Energy and Commerce Committee voted 34-19 to report out [H.R. 910](#), the Energy Tax Prevention Act, which has the same language as the McConnell amendment.

While the effort to secure passage of the McConnell Amendment in the Senate and the House Energy and Commerce Committees vote to send H.R. 910 to the whole House for debate are laudable, there is much more to be done. There must be some sort of permanent legislative action taken to prevent future usurpations by executive branch departments via the unchallenged promulgation of regulations.

Fortunately, such a battle is being waged by one of the most trustworthy troops in the war against the eradication of the Constitution. Senator Rand Paul (R-KY) has sponsored [S. 299](#), a bill that would mandate Congressional approval of any major policy change proposed in regulations issued by any agency or department.

Senator Paul's bill (and a nearly identical bill sponsored in the House by fellow Kentuckian, Representative Geoff Davis) if enacted would restore the legislative power back into the hands of the legislature, where it belongs.



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