

The Week That Was (Oct 24, 2009) Brought to you by SEPP (www.SEPP.org)

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Quote of the Week:

In the information society, nobody thinks. We expect to banish paper, but we actually banish thought.
Michael Crichton, circa 1995

THIS WEEK

No matter what happens in Copenhagen next December, it will be presented as a great success, like all the other global environmental conferences before. Some kind of a treaty will be signed at the last minute – after the traditional all-night session. President Obama will sign it. Most of the third-world countries will sign it because they think they’re going to get money out of it. Most of the left-wing regimes from the European Union will rubberstamp it. Virtually nobody won’t sign it.

But hidden within the draft treaty is language creating a “world government.” According to Lord Monckton, who has read the draft treaty carefully, “the word ‘government’ actually appears as the first of three purposes of the new entity. The second purpose is the transfer of wealth from the countries of the West to third-world countries, in satisfaction of what is called, coyly, ‘climate debt,’ because we’ve been burning CO2 and they haven’t. We’ve been screwing up the climate and they haven’t. And the third purpose of this new entity, this government, is enforcement.”

“Like the EU constitution, which when ratified will surrender most of national prerogatives to a Brussels-based bureaucracy, the Treaty will create world governance. Paragraphs 36 and 38 very clearly envisage the creation of a new world ‘government’ - the word occurs twice - with direct powers of intervention in the economic and environmental affairs of individual nations, over the heads of any elected government. The Treaty provides that the new ‘government’ will have three functions: government, redistribution of wealth from rich to poor countries in supposed reparation for imagined ‘climate debt,’ and enforcement. The last function, enforcement, is to be carried out via a many-tentacled series of ‘technical panels.’

“And all of this to address what is now proven by measurement to be the non-problem of ‘global warming’ - a non-problem which, even if it were a problem, could not possibly be usefully addressed by any attempted mitigation of our CO2 emissions. Of course, one can take the risk of hoping that the Treaty does not mean what I say it means: but I have long experience in the drafting and negotiating of international treaties, and this one is exceptional in the global power that it takes from individual nations and transfers to the new world government - a government not one of whose functionaries will be elected. Article VI of the US Constitution must be read in conjunction with the Vienna Convention on International Treaties. The Supreme Court has found that an international treaty prevails over the Constitution to the extent that there is a conflict.” Lord Monckton of Brenchley

The topic of ‘U.S. sovereignty and the Climate Summit’ is further discussed by Jim Simpson, businessman, former White House staff economist and budget analyst, and [Examiner.com](http://www.americanthinker.com/2009/10/us_sovereignty_and_the_climate_1.html) columnist:
http://www.americanthinker.com/2009/10/us_sovereignty_and_the_climate_1.html

What has happened to global warming since 1998

The respected science journalist Richard Kerr discusses the anxieties of the ‘warmistas,’ who try to explain away the fact that the climate has not been warming since 1998. They now admit that the data are sound and that indeed there has been a slight cooling trend in the last few years. The only exception is the data compilation by Jim Hansen’s GISS which still shows warmer years after 1998 – contrary to the compilations of NOAA-NCDC, and of Hadley-CRU. But GISS is simply contrarian, as can be seen from the satellite data that show no warming either.

Now as we have pointed out repeatedly, this lack of a warming trend should not be taken as evidence against the existence of AGW; but it clearly indicates that the IPCC discussion is quite incomplete, since it omits any forcing that would counteract, or more than counteract, the warming effects of GH gases.

This time around, unlike during the cooling of 1940-75, the warmistas don’t blame the cooling on aerosols. Instead, they seem to be about evenly divided between those who attribute the lack of warming to a change in ocean circulation and those who blame the sun [Rind and Lean]. Except that in the latter case, Rind and Lean attempt to explain the data on a change in Total Solar Irradiance [TSI]; they seem to not have heard of the climate effects of cosmic rays, yet they refer to TSI as ‘solar activity.’

What I find interesting is that the modelers have now admitted that GH models can occasionally produce ten-year long periods of no warming; I’m willing to accept this. According to the modelers even 15-year periods can occur, but very rarely. So perhaps in five years we will be able to judge whether the current absence of warming is a stochastic event or due to real climate forcing, be it a change in ocean circulation or solar activity.

Wouldn’t it be prudent therefore to delay long-term commitments to mitigation until we understand more fully the cause of this puzzling absence of warming and its apparent contradiction to greenhouse models?

Ref: R. Kerr. *Science* 326. pp. 28-29, Oct 2, 2009

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ARTICLES [For the numbered articles below please see the attached pdf]

- 1. CBO: Pain With No Gain - *IBD Editorial***
- 2. Time running out for climate talks – *Nature***
- 3. The Road to Copenhagen: How to Pay for It – *NY Times***
- 4. Consumer Class Actions and Mass Torts: Hurricane Katrina –*Russell Jackson***
- 5. U.S. Sovereignty and the Climate Summit –*Jim Simpson***
- 6. UK Government Challenged on Climate Commercial**

NEWS YOU CAN USE

The Chamber-of-Commerce hoax: *by Dan Henninger in the WSJ Oct 22*

<http://online.wsj.com/article/SB10001424052748704597704574487311163219306.html?mod=djemEditorialPage>

On Monday morning the cable news stations, wire services and Web sites reported that the U.S. Chamber of Commerce had recanted its opposition to climate-change legislation. **It was a hoax.** Incredibly (well maybe not so incredibly), the hoax was perpetrated by an activist group in a room at the National Press Club in Washington in front of reporters who've risen to the top of their industry. The hoaxers had created a fake Web site and faked a Chamber press release. The made-up press conference ran about 20 minutes until someone from the real Chamber of Commerce showed up yelling, "This is a fraud!" Too late. Credulous TV and wire reporters had sent the Chamber's climate flip-flop into an already confused world.

With fakery everywhere—some of it amusing, some of it not funny—people's ability to know where things fall on the spectrum between fact and falsity becomes so compromised that they retreat into a shell of cynicism about everything. And there is a lot to process: 9/11 deniers, Iranian Holocaust deniers, Obama birthers.

Lily Tomlin provided the epigraph for our age: "I try to be cynical, but it's hard to keep up."

SEPP says: *And then, CNN interviewed the hoaxer, an instant celebrity.*

An object lesson on 'renewable energy' *From the report of the RW Institute (Essen, Germany)*

http://www.groenerekenkamer.nl/grkfiles/images/Germany_Study_FINAL..pdf

Proponents of renewable energies often regard the requirement for more workers to produce a given amount of energy as a benefit, failing to recognize that this lowers the output potential of the economy and is hence counterproductive to net job creation. Significant research shows that initial employment benefits from renewable policies soon turn negative as additional costs are incurred. **Trade- and other assumptions in those studies claiming positive employment turn out to be unsupportable.**

In the end, Germany's PV [photovoltaic] promotion has become a subsidization regime that, on a per-worker basis, has reached a level that far exceeds average wages, with per-worker subsidies as high as 175,000 Euros (US \$ 240,000).

Due to their backup energy requirements, it turns out that any increased energy security possibly afforded by installing large PV and wind capacity is undermined by reliance on fuel sources -- principally gas that must be imported to meet domestic demand. That much of this gas is imported from unreliable suppliers calls energy security claims further into question.

Although Germany's promotion of renewable energies is commonly portrayed in the media as setting a "shining example in providing a harvest for the world" (The Guardian 2007), **we would instead regard [Germany's] experience as a cautionary tale of massively expensive environmental and energy policy that is devoid of economic and environmental benefits.**

President Obama is coming under renewed pressure internationally and in the United States to throw his weight behind [Senate] climate-change legislation [Boxer-Kerry], which advocates fear has suffered in light of the president's sweeping domestic agenda.

S. Fred Singer: comments to the WashPost (Oct 12): *Just ask Boxer and Kerry: By how many degrees will their bill lower future temperatures? And how do they know this? [No hand-waving. Please cite some peer-reviewed papers]*

And if they base their estimate on climate models, how do they explain the current, decade-long cooling when every IPCC model had predicted a strong warming?

http://www.washingtonpost.com/wp-dyn/content/article/2009/10/11/AR2009101102108_Comments.html

Public belief in GW weakens: There has been a sharp decline over the past year in the percentage of Americans who say there is solid evidence that global temperatures are rising, according to results of a [new survey](#) released today by The Pew Research Center for People and the Press. And fewer also see global warming as a very serious problem: 35% say that today, down from 44% in April 2008.

<http://pewresearch.org/pubs/1386/cap-and-trade-global-warming-opinion>

SEPP Senate Staff Briefing of Oct 9; see: <http://www.cnsnews.com/news/article/55278>

BELOW THE BOTTOM LINE

Financial Times, 20 Oct 2009 <<http://www.ft.com/cms/s/0/6a834386-bd0f-11de-a7ec-00144feab49a.html>>

By Fiona Harvey, Ed Cooks, George Parker in London and Tony Barber in Brussels

Gordon Brown, the UK prime minister, tried to galvanise other governments into action with a rallying call: "Success at Copenhagen is still within reach. But if we falter, the earth itself will be at risk."

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1. CBO: PAIN WITH NO GAIN

IBD Editorial <http://www.investors.com/NewsAndAnalysis/Article.aspx?id=509557> Posted 10/19/09

A co-sponsor of cap-and-trade legislation has tried to convince the public that the regime would cost families only "about a postage stamp a day." The real cost might be closer to next-day delivery rates.

Congressional Budget Office (CBO) director Douglas Elmendorf, testifying before Congress last week, said the House global warming bill will slow economic growth in the next few decades and cause "significant" job losses in the fossil-fuel industry.

During last Wednesday's session of the Senate Energy and Natural Resources Committee, Elmendorf said the carbon cap-and-trade provisions of the comically named **American Clean Energy and Security Act**

of 2009 would cut GDP below what it would otherwise have been by 0.25% to 0.75% by 2020. The impact in 2050 would be 1% to 3.5%. The CBO had issued the same warning in a report last month.

The cap-and-trade legislation, sponsored by Reps. Edward Markey (D-Mass) and Henry Waxman (D-Cal) and passed in the House in June, is intended to cut domestic carbon dioxide emissions by 17% by 2020 and 83% by 2050. This would drive U.S. per capita CO2 emission levels "below those of George Washington's first term as president," economist Garrett Vaughn wrote in IBD in August.

Such low emission levels can't be reached without economic pain, and the cost will surely be more than Markey's "postage stamp a day." Any sharp reduction will require the country to move almost entirely away from fossil fuels — not a cheap transition.

Neither would it be meaningful. The churning shift simply would not make a real difference in global CO2 levels. The Environmental Protection Agency itself said drastic CO2 emission cutbacks made in the U.S. are virtually worthless if developing nations China and India don't cut their greenhouse gas emissions. Both have made it clear that they have no intention of joining developed nations in committing economic suicide by placing limits on their carbon emissions.

Elmendorf, who seems to have bought into the global warming scare, said during testimony that projected cost estimates "do not include any benefits from averting climate change."

While the statement is a ready-made Democratic talking point, the reality is that no benefits will be coming. There is nothing to avert. **The global warming predicted by the computer models just hasn't materialized. Nor will it.** No one should wonder about that, given the tainted data that were fed into the models and those same models' poor record. It's a classic case of garbage in, garbage out.

Two years ago, the *International Journal of Climatology* published a study [by Douglass, Christy, Pearson, and Singer] finding that 22 models used by [IPCC] researchers were so flawed that they predicted [an atmospheric] warming [trend] when cooling was the case. Nearly three years earlier, the famous Mann hockey stick temperature chart that alarmists cite as evidence that man is causing the Earth to warm was discredited by an article [by McIntyre and McKittrick] in *Geophysical Research Letters*.

Meanwhile, scientists at the University of East Anglia seem to have lost or destroyed the raw data they have used to make the case for man-made global warming. This loss — or cover-up of data the scientists want to conceal — makes it impossible for other researchers to confirm or refute their claim.

Despite his proximity to the university, British Prime Minister Gordon Brown, like all true believers and political operators who have a stake in perpetuating the global warming fraud, is unaffected by this case of scientific malpractice. Brown, who is facing a difficult election, claimed Monday that the world has 50 days to save itself from climate "catastrophe."

Should the Senate follow the House and heed Brown's hysteria by passing a cap-and-trade bill that the president signs, the country will be forced into an uncomfortable place. As is often the case in Washington, doing nothing would be the far better choice.

2. TIME RUNNING OUT FOR CLIMATE TALKS:

Rift between developed and developing nations might be too great.

Jeff Tollefson <http://www.nature.com/news/2009/091021/full/4611034a.html>

Published online 21 October 2009 | *Nature* 461, 1034-1035 (2009) | doi:10.1038/4611034a

With just five negotiating days left before the global-warming summit in Copenhagen this December, the international climate community has tempered its expectations and begun to look for a graceful exit.

Pressure on global leaders has been building since negotiators signed the 'Bali Road Map' in December 2007, which set an aggressive timetable that was supposed to conclude in Denmark with a treaty to follow the 1997 Kyoto Protocol. Rich and poor countries alike have spent two years crafting climate policies and proposals, but deep divisions remain.

When irate representatives of developing nations walked out of a meeting with European officials in Bangkok earlier this month, many realized that even technical questions about how to structure a deal might be out of reach this year. Only one interim negotiating meeting remains — in Barcelona, Spain, on 2–6 November. Even staunch optimists are now rethinking their definition of success in Copenhagen.

Many ideas have been floated on how to accomplish that goal. Some argue for building a consensus around areas of agreement and holding off on contentious issues involving money or specific commitments to reduce greenhouse-gas emissions. Others focus on the architecture of a treaty and a broad, if symbolic, agreement among global leaders. Some have suggested simply 'stopping the clock' on negotiations for a few months.

Such proposals are intended to build political confidence and maintain momentum while allowing the United States more time to work out its domestic policy. Although the House of Representatives has passed climate legislation that would curb emissions to 17% below 2005 levels by 2020 and to 83% below by 2050, Senate Democrats are running out of time to pass a companion bill before Copenhagen.

With the United States in limbo, the Europeans are necessarily leading the talks for the developed world. The European Union (EU) has committed to reduce its greenhouse-gas emissions by 20% below 1990 levels by 2020, and by 30% if there is a global deal; but even those numbers are not enough for most developing countries. The Group of 77 (G77), which represents China, India and the majority of developing nations, is calling on rich countries to cut their emissions by 40% by 2020. So far, only Norway has stepped up to that challenge.

India's environment minister, Jairam Ramesh, says the negotiations are unlikely to go anywhere unless wealthy nations embrace more ambitious emissions reductions and promise more money to help developing countries cope with climate change. He says negotiators should focus on a few key issues, including deforestation, adaptation money for the least developed nations, and the Clean Development Mechanism, which allows rich countries to offset their emissions by paying for clean-energy and other 'green' projects in the developing world. "We need a more limited and more pragmatic approach if we are going to make Copenhagen a success," Ramesh says.

At the same time, wealthy nations are insisting on stronger commitments from developing countries — many of whom have responded by introducing significant new policies. Indonesia recently announced plans to reduce its emissions by 26% by 2020 compared with predicted levels if emissions were left uncurbed, pledging a 41% reduction if it receives international aid for measures such as stopping deforestation. Even India, which has repeatedly said it won't commit to anything until its per-capita emissions reach those of the developed world, has proposed the idea of 'voluntary mitigation outcomes' that would allow the country to calculate specific emissions reductions based on expanding solar power and other existing climate policies.

China, the world's largest emitter, is moving forward with aggressive energy-efficiency targets and renewable-energy mandates — but has yet to pledge binding commitments or agree on a date to level off its explosive emissions growth.

Many were caught off guard in Bangkok when officials from the G77 and Europe fought over the future of the Kyoto Protocol. The G77 wants to maintain Kyoto — which is binding for developed but not developing countries on greenhouse-gas emissions — as the primary international framework. EU officials want to create a single new treaty under the original UN Framework Convention on Climate Change (FCCC) and then import the Kyoto Protocol. The United States claims neutrality, but some fear that it could impede progress by cherry-picking which parts of Kyoto it would be willing to subscribe to in a new treaty.

Some observers believe that the biggest challenge will be money, particularly in the midst of an economic crisis. Costs for adaptation to climate change in the developing world alone have been estimated at US\$100 billion annually, and some suggest the figure could be two or three times that amount. The World Bank estimates that establishing a low-carbon economy in developing countries could cost several hundred billion dollars each year.

Money could enable progress on other fronts. Some developing nations have proposed to allow rich countries that cannot sufficiently reduce their emissions to make up the shortfall with cash. Indeed, after blasting the inadequacy of the US climate proposals, India's Ramesh smiles and acknowledges that a deal would be much more likely if the United States were to put, say, \$200 billion on the table.

Saleemul Huq, who tracks adaptation issues for the London-based International Institute for Environment and Development, says that developed countries will have two more chances to address the issue before Copenhagen (see also *Nature* doi:10.1038/news.2009.1019; 2009). The EU finance ministers were scheduled to meet as *Nature* went to press, and a meeting of the G20 finance ministers is due in early November.

"One expects that they will come back with some kind of offer, and that would then unlock other issues in the negotiations," Huq says. "They will still be wrangling about the amounts, but at least they will go into the process of negotiating. Right now they are posturing, not negotiating."

3. THE ROAD TO COPENHAGEN

Biggest Obstacle to Global Climate Deal May Be How to Pay for It

By Elisabeth Rosenthal, *NYT*, October 15, 2009

http://topics.nytimes.com/top/reference/timestopics/people/r/elisabeth_rosenthal/index.html?inline=nyt-per

As world leaders struggle to hash out a new global climate deal by December, they face a hurdle perhaps more formidable than getting big polluters like the United States and China to reduce greenhouse gas emissions: how to pay for the new accord.

The price tag for a new climate agreement will be a staggering \$100 billion a year by 2020, many economists estimate; some put the cost at closer to \$1 trillion. That money is needed to help fast-developing countries like India and Brazil convert to costly but cleaner technologies as they industrialize, as well as to assist the poorest countries in coping with the consequences of climate change, like droughts and rising seas.

This **financing is an essential part of any international climate agreement**, negotiators and scientists say, because developing nations must curb the growth of their emissions if the world is to limit rising temperatures. Based on calculations by the International Energy Agency for 2005 to 2030, 75 percent of the growth in energy demand will come from the developing world.

Many developing countries have made it clear that they will not sign a treaty unless they get money to help them adapt to a warmer planet. Acknowledging that a new treaty needs unanimity for success, industrialized nations like the United States and those in Europe have agreed in principle to make such payments; they have already been written into the agreed-upon structure of the treaty, to be signed in Copenhagen in December.

But to date there is no concrete strategy to raise such huge sums. There is not even agreement about which nations should pay or in what proportion.

SEPP Comment: There is absolutely no evidence that recent GW (whether manmade or natural) has had any influence on rate of sea-level rise or frequency of droughts. All we are sure of is that higher CO2 levels benefit agriculture. "Reparations" are bunk; the developing countries owe money to us -- and we should all thank China for emitting more CO2.

4. CONSUMER CLASS ACTIONS AND MASS TORTS:

Fifth Circuit Reverses Dismissal of Climate Change Class Action Brought by Private Plaintiffs Who Blame Hurricane Katrina on Global Warming

October 17, 2009 by Russell Jackson

<http://www.consumerclassactionsmasstorts.com/admin/trackback/161889>

Dust off your old property texts and grab your briefcases, ladies and gentlemen! We're off to the races in private party climate change class action litigation!

Yesterday the U.S. Court of Appeals for the Fifth Circuit became the second federal appeals court in less than a month to reverse a trial court decision that had thrown out a climate change lawsuit for presenting a nonjusticiable political question. See *Comer v. Murphy Oil USA*, 2009 WL 3321493 (5th Cir. Oct. 16, 2009).

(The Second Circuit previously had held that in the absence of comprehensive federal legislation regulating greenhouse gas emissions, states, municipalities and certain private organizations had standing to bring viable federal common law nuisance claims to impose caps on certain companies' greenhouse gas emissions. See *Connecticut v. American Elec. Power Co.*, 2009 WL 2996729 (2d Cir. Sept. 21, 2009)

Comer is particularly important because it is a private class action for compensatory and punitive damages, not a suit brought by states or municipalities for injunctive relief. And that means contingency fees. And thus the promise of copycat lawsuits.

The plaintiffs in *Comer* were property owners on Mississippi's Gulf Coast who had suffered property damage in Hurricane Katrina. Their causation theory sounds a little like the litigator's equivalent to the game "Six Degrees of Kevin Bacon." Plaintiffs sued a melange of energy, fossil fuel, and chemical companies, alleging that their greenhouse gas ("GHG") emissions contributed to an increase in air and water temperatures, causing a rise in sea levels and adding to the ferocity of Hurricane Katrina, which blew water and debris onto plaintiffs' property, thereby causing property damage. Plaintiffs asserted a

variety of theories under Mississippi common law, including public nuisance, private nuisance, trespass, negligence, unjust enrichment, fraudulent misrepresentation, and civil conspiracy.

The Fifth Circuit held that plaintiffs lacked standing to bring their claims for unjust enrichment, fraudulent misrepresentation, and civil conspiracy, but that they had standing to assert their claims for public and private nuisance, trespass and negligence. The court further held that this latter group of claims did not present a non-justiciable political question.

The panel was comprised of two Clinton appointees and one Reagan appointee. The Hon. James L. Dennis wrote the opinion, and Judges Carl E. Stewart and W. Eugene Davis joined in it. However, Judge Davis (a Reagan appointee) noted separately that the defendants below also had moved to dismiss the claims for lack of proximate cause, and that he would have affirmed the dismissal on that ground. Nevertheless, because the panel chose not to address grounds that the district court had not relied upon, Judge Davis joined in the panel opinion. However, Judge Davis's statement should give some hope to defendants who worried that the Fifth Circuit's determination that there was enough of a causal connection for standing might preclude successful motion practice in the district court on the issue of proximate cause. Plaintiffs still have a very tough case to make on causation.

On the issue of the political question doctrine, the Fifth Circuit applied the standard test articulated in *Baker v. Carr*, concluding that the case did not involve issues: (i) constitutionally committed to another branch of government, or (ii) that lack judicially discoverable standards for resolution, or (iii) that are impossible to decide without an initial policy decision being made that is not of a judicial character, or (iv) that require adherence to a previously-made political decision. The Fifth Circuit said that the district court erred by relying on other district court decisions -- including the lower court decision in *Connecticut v. American Electric Power* -- that had interpreted the Supreme Court's decision in *Chevron* as requiring federal courts in air pollution cases to balance social and economic interests like a legislative body. The Fifth Circuit reasoned that such an approach would make all air pollution cases non-justiciable political questions and would be contrary to how transboundary water disputes are determined. It also would be contrary to the "long line of cases" holding that the Clean Air Act and Clean Water Act do not preempt state common law claims, the court said.

The Comer Court locked arms with the Second Circuit -- at least on the political question doctrine -- explaining:

Although we arrived at our own decision independently, the Second Circuit's reasoning [in Connecticut v. American Power] is fully consistent with ours, particularly in its careful analysis of whether the case requires the court to address any specific issue that is constitutionally committed to another branch of government.

On the issue of standing, the court divided plaintiffs' causes of action into 2 groups: those that relied on a causal link between GHG emissions and Hurricane Katrina, and those that did not. As to the first group, which included public and private nuisance, trespass and negligence, the only real standing element in dispute was whether plaintiffs' alleged injury was fairly traceable to the defendants' actions. The court was careful to explain that the fact that the complaint may not adequately plead a cause of action under state law does not destroy jurisdiction, and that the Article III "fairly traceable" standard is not the equivalent of proximate cause under state law. Clearly, the court was leaving open the very real possibility that, on remand, the district court would hold that plaintiffs' complaint fails to state a claim under state law.

In reaching the decision that the "fairly traceable" standard had been met by plaintiffs' convoluted causation theory, the Fifth Circuit clearly felt constrained by the Supreme Court's decision in *Massachusetts v. EPA*, which seemed to accept "as plausible the link between greenhouse gas emissions

and global warming" and the fact that "rising ocean temperatures may contribute to the ferocity of hurricanes." As the Comer court concluded, "the [Supreme] Court accepted a causal chain virtually identical in part to that alleged by plaintiffs" when it held in *Massachusetts v. EPA* that to meet the "fairly traceable" standard, the states merely had to show a contributing cause, not the primary cause, of their injuries. *Id.*

As for standing in the Comer plaintiffs' second group of causes of action -- fraudulent concealment, unjust enrichment, and civil conspiracy -- the court employed the doctrine of "prudential standing" to conclude that plaintiffs lacked standing to bring these claims. Plaintiffs' unjust enrichment claim was premised on the petrochemical companies artificially inflating the price of petrochemicals, impacting the public at large. The fraudulent concealment theory was premised on the defendants knowing about global warming, but issuing misinformation to decrease public awareness of the phenomenon. And the civil conspiracy claim was premised on the defendants misleading the government into not regulating GHG emissions.

Each of these theories had at its core a "generalized grievance more properly dealt with by representative branches [of government] and common to all consumers of petrochemicals and the American public," the Comer court observed. In this way, these causes of action were very different from private claims for property damage. As such, the court concluded that, for the second set of claims, plaintiffs lack standing under the doctrine of prudential standing, which encompasses "the general prohibition on a litigant raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked."

It seems clear that the Comer decision will provide some encouragement to plaintiffs' lawyers who dream of scoring a lucrative victory in climate change litigation. But when one examines the opinion closely, it is clear that such cases still are plagued with significant causation problems that will present early and frequent opportunities for defendants to move for dismissal or summary judgment. Neither Comer nor the Second Circuit's decisions in *Connecticut v. American Electric Power* solve these fundamental causation problems for plaintiffs.

Yesterday I also received the district court decision in *Native Village of Kivalina v. ExxonMobil Corporation*, Case No. C 08-1138 SBA, Slip op. (N.D. Cal. Sept. 30, 2009), in which the court held that the village's federal common law claim for nuisance failed for lack of Article III standing and was barred under the political question doctrine. Point of Law describes the decision here. If I have any thoughts to add after comparing Comer and Kivalina, I'll post them later this weekend.

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SEPP comments: They can probably also sue the New Orleans city council for squandering on pet projects the federal money designated for proper maintenance of the levees... or for inadequate emergency management planning at the local and state level. Weren't there a couple of Louisiana emergency management officials in jail when Katrina hit, awaiting trial after indictment for allegedly spending FEMA funds inappropriately?

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Mike Fox wrote: Do they also have standing to sue the Corps of Engineers and the environmentalists who successfully opposed strengthening and upgrading the containment levees around the Lake? Do they also have standing to sue the N.O. mayor and the LA governor for failure to follow their own Emergency Management Plans? Also, from Wikipedia: *Congress failed to fully fund an upgrade requested during the 1990s by the [Army Corps of Engineers](#), and funding was cut in 2003-04 despite a 2001 study by the [Federal Emergency Management Agency](#) warning that a hurricane in New Orleans was one of the country's three most likely disasters.*

5. U.S. SOVEREIGNTY AND THE CLIMATE SUMMIT

Businessman and [Examiner.com](#) columnist Jim Simpson is a former White House staff economist and budget analyst http://www.americanthinker.com/2009/10/us_sovereignty_and_the_climate_1.html

Not content with his [humiliation at Copenhagen](#) this past September, President Obama will be traveling again to the Danish capital in December to attend the U.N. [COP15 Climate Change Conference](#). This agreement would commit the United States to punitive and expensive greenhouse gas regulations dictated by the United Nations without recourse.

COP stands for "Conference of the Parties" and the December Copenhagen conference will be the 15th under the [United Nations Framework Convention on Climate Change](#) (UNFCCC), hence COP15. [According to their website](#), it will be one of the largest conferences ever held outside the New York or Geneva headquarters, with an anticipated attendance of over 10,000 people, including governmental representatives from 189 countries, industry groups, and other non-governmental organizations.

The theme of the December 7 - 18 conference is "[Hope](#)," so perhaps Mr. Obama will have more luck this time. Instead of soliciting the International Olympic Committee with trite cliché and no payoffs, he will be doing something much easier: selling out our country. After all, ceding power, relinquishing billions in U.S. tax dollars and destroying U.S. economic competitiveness is a pretty easy sell to the countries that will benefit, and he has had a lot of practice doing the same thing here at home. He will have a hard time screwing this one up.

The Hope site optimistically pronounces:

On 7 December, leaders from 192 countries gather for U.N. Climate Change Conference in Copenhagen and decide the fate of our planet...

Decide the fate of our planet... Do these people have any idea how mindlessly grandiose they sound? Of course not. They are out to save the planet, [just like Nancy Pelosi](#)! It is hard for a normal person to imagine making such proclamations without embarrassment. But this is today's political class.

This agreement will cede U.S. sovereignty permanently and irrevocably to the United Nations. [So said](#) British Lord Christopher Monckton at an [event at Bethel University in St Paul, Minnesota](#) this past Wednesday, October 14th.

Lord Monckton was an advisor to former British Prime Minister Margaret Thatcher's. He has lectured and written extensively on the issue, including [an in-depth scientific critique](#) to the 50,000 member American Physical Society, a serious [side-by-side comparison slap-down](#) of Al Gore's global warming assertions, and [a recent summary](#) of the global warming issue. In introducing his topic at Bethel University, he states unequivocally:

...and I am going to show you the latest science, which now doesn't leave the question unsettled any more, this is now settled science, it is now settled science that there is not a problem with our influence over the climate. The science is in, the truth is out, and the scare is over.

You can watch his entire 1 hour 35 minute presentation [here](#) - well worth the time if you can spare it. The slideshow he frequently points to in this presentation can be viewed along with the video, [here](#). Lord Monckton presents a series of statistics, charts and studies making a compelling case that not only is global warming insignificant - if it exists at all - but is likely not manmade, and more importantly, that the global warming alarmists have repeatedly, blatantly, deliberately lied, suppressing the facts to promote the myth.

Despite his effective refutation of manmade global warming, his closing remarks about the Copenhagen treaty are chilling:

I read that treaty. And what it says is this, that a world government is going to be created. The word "government" actually appears as the first of three purposes of the new entity. The second purpose is the transfer of wealth from the countries of the West to third world countries, in satisfaction of what is called, coyly, "climate debt" because we've been burning CO2 and they haven't. We've been screwing up the climate and they haven't. And the third purpose of this new entity, this government, is enforcement.

So, thank you, America. You were the beacon of freedom to the world. It is a privilege merely to stand on this soil of freedom while it is still free. But, in the next few weeks, unless you stop it, your president will sign your freedom, your democracy, and your humanity away forever. And neither you nor any subsequent government you may elect will have any power whatsoever to take it back. That is how serious it is. I've read the treaty. I've seen this stuff about [world] government and climate debt and enforcement. They are going to do this to you whether you like it or not.

Watch him make his powerful concluding remarks in [this Youtube video](#). (4 mins.)

You might call it a bit of rhetorical overkill, but given everything else this administration and Congress have already done, only a bit. As Monckton later stated in a Q & A session, for such a treaty to be ratified requires a positive vote from a two-thirds majority in the U.S. Senate.

It seems difficult to imagine Democrats convincing seven Republicans to assist them in committing national suicide that way. Indeed, a recent *Wall Street Journal* article quoted Senate Republicans as saying that whatever deal Obama cut at Copenhagen would be dead on arrival:

Wisconsin Rep. James Sensenbrenner, the top Republican on the House Select Committee on Energy Independence and Global Warming, predicts "a repeat of Kyoto -- namely an environmentally ineffective agreement that cannot be ratified" by the Senate.

However, perhaps an easier option would be for Democrats to pass legislation enacting some or all of the proposals. The House has already passed the [Waxman-Markey \(Cap and Trade\) bill](#). This onerous legislation calls for an 83 percent reduction in greenhouse gases from 2005 levels by 2050. That means almost complete elimination of carbon-based fuels, and parallels the goals identified in COP15, which asks participating countries to reduce global emissions 50-85% by 2050.

Such reductions would essentially bring our economy to a screeching halt, as Lord Monckton states in his speech. Even the more modest goal for 2020 of a 17 percent reduction will force radical changes in how we do business and conduct our daily lives.

Senators John Kerry (D-MA), and the increasingly added [Lindsay Graham \(R-SC\)](#), put out an [Op-Ed in the New York Times](#) last week, under the frighteningly Obamanoid title "Yes We Can," indicating that perhaps Senate Republicans shouldn't be so sanguine either. Their article concludes thusly:

We are confident that a legitimate bipartisan effort can put America back in the lead again and can empower our negotiators to sit down at the table in Copenhagen in December and insist that the rest of the world join us in producing a new international agreement on global warming.

So if Kerry and Graham get their way, not only is America going to agree to U.N. global warming regulations, we are going to lead the charge in getting them imposed!

And the U.N. panel is fully anticipating a more conciliatory approach from the U.S. Recognizing Kerry's efforts, as UNFCCC Executive Secretary [Yvo de Boer, stated:](#)

I think that a major shortcoming of Kyoto was that the official delegation came back with a treaty they knew was never going to make it through the Senate. And this time I have the feeling that the communication is much stronger, that the Senate Foreign Relations Committee, through John Kerry, is really expressing strongly what they feel needs to be done in Copenhagen.

Thank you, John Kerry.

The U.N. website states the following about COP15:

This [the 2009 Bangkok climate change talks] was the penultimate negotiating session before COP15 in Copenhagen in December, at which an ambitious and effective international climate change deal is to be clinched.

Before COP15, there will be a final round of negotiations November 2-6 in Barcelona, Spain at the Barcelona Convention Center.

The most recent UNFCCC Working Group report (181 pages) can be accessed [here in PDF format](#). Much of it references earlier documents, of which there are many. To fully assess the ramifications of this proposal would likely require referencing these earlier documents as well.

While the prospects for Senate ratification of this treaty are probably in doubt, it seems likely the U.S. Congress may try to pass Waxman - Markey or some other hybrid legislation using the same underhanded tactics now in play on healthcare. All the more reason to redouble our efforts at getting them out in 2010.

Suffice it to say that if the carbon reduction targets already discussed are adopted by this country, never mind whatever other onerous provisions are in this treaty, we might as well all buy a horse and buggy - sorry, rickshaw; horses create methane - because we will be headed back into the 18th century.

Additional Resources:

UNFCCC and Kyoto Protocol: [Guide to Climate Change Negotiations](#) (2008)

SourceWatch: [UNFCCC summary](#), listing all participating parties, all COP meetings past and scheduled, and other useful information

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6. UK GOVERNMENT CHALLENGED ON CLIMATE COMMERCIAL

Press Release from Roger Helmer MEP, October 23, 2009

A British member of the European Parliament, Roger Helmer, has condemned the UK government's new climate-change commercial as "one-sided, biased and partisan". Helmer has written to the Advertising Standards Authority asking them to review the government's commercial to see if it meets their criteria for honesty and fairness.

The commercial features a child's bed-time story about the dangers of carbon dioxide, which it presents as fact, without any mention that the science is disputed. Helmer argues that the timing of the government's commercial is particularly ironic, since, he says, doubts over man-made climate change are increasing. He cites a recent BBC report confirming that global temperatures have been static or declining for ten years, and a recent Sunday newspaper headline "Everything you thought you knew about Climate Change is Wrong".

Speaking in Brussels yesterday, Mr. Helmer said "It is scandalous that the government is spending tax-payers' money on this deeply biased campaign, which seems to be aimed at frightening children unnecessarily, and promoting unsubstantiated scientific speculation as fact. It is equally scandalous that the government is pursuing a programme of wind energy which according to a recent OfGem report will increase energy prices by at least 14% and perhaps up to 60% in real terms by 2020".

Roger Helmer MEP has published, with the Bruges Group, a book on the climate issue entitled "Cool Thinking on Climate Change: Why the EU's climate alarmism is both mistaken and dangerous."