

July 9, 2013

**John Fund** explains how the dishonesty of President Pick-and-Choose will probably cause the collapse of immigration reform.

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**Charles Krauthammer** has fun with globalony.

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**Craig Pirrong** reminds us of the folly of ethanol mandates. Mandates, by the way, signed into law by George W. Bush who proved he could be as stupid as the idiot incumbent.

*The road to hell is paved with good intentions. A couple of examples from environmentalist attempts to mitigate climate change.*

*The first relates to ethanol. In its infinite wisdom, in 2010 Congress mandated the use of renewable fuels with lower CO2 content than corn ethanol to meet the renewable fuel standard it created in 2005. Sugar ethanol from Brazil fits the bill. But given the blend wall and other limits on ethanol usage, this created an excess of corn ethanol in the US, and created an incentive to export excess corn ethanol from the US to Brazil, and import sugar ethanol from Brazil.*

*The problem being, of course that all the fuel burned to ship ethanol from the US to Brazil, and from Brazil to the US, pours CO2 into the atmosphere. And the net result: more CO2 emissions than would have occurred absent the mandate to meet the renewable fuel standards with low CO2 producing fuels:*

Left hypocrisy exposed by **Victor Davis Hanson**.

*One of the strangest things about the modern progression in liberal thought is its increasing comfort with elitism and high style. Over the last 30 years, the enjoyment of refined tastes, both material and psychological, has become a hallmark of liberalism — hand in glove with the art of professional altruism, so necessary to the guilt-free enjoyment of the good life. Take most any contemporary issue, and the theme of elite progressivism predominates.*

*Higher education? A visitor from Mars would note that the current system of universities and colleges is designed to promote the interests of an elite at the expense of the middle and lower-middle classes. UCLA, Yale, and even CSU Stanislaus run on premises far more reactionary and class-based than does Wal-Mart. The teaching loads and course responsibilities of tenured full professors have declined over the last half-century, while the percentage of units taught by graduate students and part-time faculty, with few benefits and low pay, has soared.*

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*scenario embodying these bizarre trends would run something like the following: The UC assistant provost for diversity affairs, or the full professor of Italian literature, focusing on gender and the self, depend on lots of graduate and undergraduate students in the social sciences and humanities piling up debt without any guarantee of jobs, while part-time faculty subsidize the formers' lifestyles by teaching, without grading assistants, the large introductory undergraduate courses, getting paid a third to half what those with tenure receive.*

*The conference and the academic book, with little if any readership, promote the career interest and income of the trendy administrator and the full professor, and are subsidized by either the taxpayers or the students or both. All of the above assumes that a nine-month teaching schedule, with tenure, grants, sabbaticals, and release time, are above reproach and justify yearly tuition hikes exceeding the rate of inflation. The beneficiaries of the system win exemption from criticism through loud support of the current progressive agenda, as if they were officers with swagger sticks in the culture wars who must have their own perks if they are to properly lead the less-well-informed troops out of the trenches. ...*

Today we opened with an example of the extra-legal actions of the administration and [Kim Strassel](#) provides more at the close.

*For a true expression of the imperious and extralegal tendencies of the Obama administration, there is little that compares with the Wisdom of Solomon. Lafe Solomon, that is, the acting general counsel of the National Labor Relations Board.*

*Mr. Solomon's wisdom was on revealing display this week, in the form of a newly disclosed letter that the Obama appointee sent to Cablevision in May. The letter was tucked into Cablevision's petition asking the Supreme Court this week to grant an emergency stay of NLRB proceedings against it. The Supremes unfortunately denied that request, though the exercise may prove valuable for shining new light on the labor board's conceit.*

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*Regional directors in April filed two such unfair-labor-practice complaints against Cablevision. The company requested that Mr. Solomon halt the proceedings, given the NLRB's invalid status. It is Mr. Solomon's refusal, dated May 28, that provides the fullest expression of the NLRB's insolence.*

*The acting general counsel begins his letter by explaining that the legitimacy of the board is really neither here nor there. Why? Because Mr. Solomon was himself "appointed by the President and confirmed by the Senate"—and therefore, apparently, is now sole and unchecked arbiter of all national labor policy.*

*This is astonishing on many levels, the least of which is that it is untrue. Mr. Solomon is the acting general counsel precisely because the Senate has refused to confirm him since he was first nominated in June 2011. Nor will it, ever, given his Boeing escapades. ...*

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## National Review

### Why Obamacare Threatens Immigration Reform

*In delaying the employer mandate, Obama shows his disregard for the rule of law.*

by John Fund

Chuck Todd, the political director of NBC News, startled much of Washington on Sunday morning when he announced on *Meet the Press* that White House aides he's spoken to have lost confidence that immigration reform will pass. He reported that "suddenly the White House doesn't see a path" to passing a bill through the House this year.

There are many reasons why immigration reform is in trouble, ranging from the fact that immigration is not currently a burning political issue to the inherent complexity and internal contradictions of a 1,200-page bill.

But there is another less-discussed reason. The Obama administration's instinctive dishonesty and contempt for the rule of law are finally catching up with it. Few Republicans in the House — even those who devoutly want immigration reform — trust the Obama administration to enforce with consistency and integrity anything that passes Congress.

Take the 900-page monstrosity of a law that's been dubbed "Obamacare." When it passed back in 2010, the law was clear on many points. It decreed that beginning in 2014, any company with more than 50 full-time employees would be required to offer them health-care insurance or pay stiff fines. But it's been impossible, in the three years since the law's passage, to work out the Byzantine requirements of that mandate. Max Baucus (D., Mont.) said in a congressional hearing he feared that Obamacare's implementation would result in a "train wreck," and many other Democrats have come to share his anxiety. White House aides fretted that enforcing the mandate's timetable would hurt job creation in the run-up to the 2014 midterm elections and put Democratic control of the Senate in jeopardy.

The White House could have handled the problem as the Constitution envisioned and opened up negotiations with Congress to change the law. But it quickly concluded that the Republican House would demand too much in exchange for any adjustment to the law. So instead the administration had a blog item quietly posted on the Treasury's website just before the July Fourth holiday. Under the Orwellian headline "Continuing to Implement the ACA [Affordable Care Act] in a Careful, Thoughtful Manner," Assistant Secretary for Tax Policy Mark Mazur announced that enforcement of the employer mandate would be delayed until 2015. A Treasury official claimed that the administration has "longstanding administrative authority to grant transition relief when implementing new legislation like the ACA." Oh, really? Even though the law is quite clear that the mandate shall be effective as of 2014?

Representative Darrell Issa (R., Calif.), chairman of the House Oversight and Government Reform committee, says the announcement represents "policy by blog post" and that it is "another in a string of extra legal actions" that President Obama has used to evade laws and the

intent of Congress. He noted earlier this year that the Obama administration was interpreting the health-care law to provide tax credits in health exchanges even if states refused to set them up.

“As a former constitutional-law teacher, President Obama must know that this action gets into very questionable constitutional territory,” Issa fold the Capitol Hill newspaper *Roll Call*. “It also paves the way for future administrations to simply not enforce parts of Obamacare they don’t believe are functioning well.”

Rick Klein of ABC News concluded that the announcement was “a blow in every conceivable way to the Obama administration — an admission that its signature legislative accomplishment isn’t ready for prime time, just as the law’s critics have been arguing and arguing.”

Ultimately, the greatest damage from delaying the employer mandate may come in the way it solidifies House Republican doubts about the immigration bill. Representative Phil Roe (R., Tenn.), chairman of an Education and Workforce subcommittee, says that he doubts the administration can be trusted to enforce the will of Congress when it comes to border security or any other part of the immigration bill. “They have shown no respect for traditional Constitutional separation of powers, and that makes it difficult to pass laws where the fear is that they will simply ignore the parts they don’t like,” he tells me. The Obama administration has not hesitated to simply ignore the clear language of Obamacare. Why wouldn’t it disregard the immigration bill in the same way? In addition, the Gang of Eight bill is stuffed with instances of discretion – in other words, opportunities for administrative meddling. It includes 222 mentions of the word “may” and 153 uses of “waive.” That’s an awful lot of discretion to hand to an administration that is expert at interpreting laws creatively to suit whatever political advantage it desires.

In the classic 1960s free-market poem “Tom Smith and His Incredible Bread Machine,” an entrepreneur is pursued and prosecuted by an ideologically driven Justice Department on trumped-up charges. Just before he is sentenced, he asks the judge presiding over his trial what is happening to him. “The rule of law, in complex times, has proved itself deficient,” she sneers at him. “We much prefer the rule of men! It’s vastly more efficient.”

But our system wasn’t designed by the Founding Fathers to be efficient. Indeed, it was designed to rein in the arbitrary and capricious use of power. The growing belief that the Obama administration can’t be trusted to respect the rule of law may prove to be one of the biggest obstacles it faces in passing the immigration reform it so powerfully desires.

## Washington Post

### Obama’s global-warming folly

by Charles Krauthammer

The economy stagnates. [Syria burns](#) . Scandals lap at his feet. [China and Russia mock him](#) , even as a “29-year-old hacker” revealed his nation’s spy secrets to the world. How does President Obama respond? With a grandiloquent [speech on climate change](#) .

Climate change? It lies at the very bottom of a list of Americans’ concerns ([last of 21 — Pew poll](#)). Which means that [Obama’s declaration](#) of unilateral American war on global warming,

whatever the cost — and it will be heavy — is either highly visionary or hopelessly solipsistic. You decide:

Global temperatures have been flat for 16 years — a curious time to unveil a grand, hugely costly, socially disruptive anti-warming program.

Now, this inconvenient finding is not dispositive. It doesn't mean there is no global warming. But it is something that the very complex global warming models that Obama naively claims represent settled science have trouble explaining. It therefore highlights [the president's presumption](#) in dismissing skeptics as flat-earth know-nothings.

On the contrary. It's flat-earthers like Obama who refuse to acknowledge the problematic nature of contradictory data. It's flat-earthers like Obama who cite a recent Alaskan heat wave — a freak event in one place at one time — as presumptive evidence of planetary climate change. It's flat-earthers like Obama who cite perennial phenomena such as droughts as cosmic retribution for environmental sinfulness.

For the sake of argument, nonetheless, let's concede that global warming is precisely what Obama thinks it is. Then answer this: What in God's name is his massive new [regulatory and spending program](#) — which begins with a war on coal and ends with billions in more subsidies for new Solyndras — going to do about it?

The United States has already radically cut carbon dioxide emissions — more than any country on earth since 2006, according to the [International Energy Agency](#). Emissions today are back down to 1992 levels.

And yet, at the same time, [global emissions have gone up](#). That's because — surprise! — we don't control the energy use of the other 96 percent of humankind.

At the heart of Obama's program are EPA regulations that will make it impossible to open any new coal plant and will systematically shut down existing plants. "Politically, the White House is hesitant to say they're having a war on coal," explained one of Obama's climate advisers. "On the other hand, a war on coal is exactly what's needed."

Net effect: tens of thousands of jobs killed, entire states impoverished. This at a time of chronically and crushingly [high unemployment](#), slow growth, jittery markets and deep economic uncertainty.

But that's not the worst of it. This massive self-sacrifice might be worthwhile if it did actually stop global warming and save the planet. What makes the whole idea nuts is that it won't. This massive self-inflicted economic wound will have no effect on climate change.

The have-nots are rapidly industrializing. As we speak, China and India together are opening one new coal plant *every week*. We can kill U.S. coal and devastate coal country all we want, but the industrializing Third World will more than make up for it. The net effect of the Obama plan will simply be dismantling the U.S. coal industry for shipping abroad.

To think we will get these countries to cooperate is sheer fantasy. We've been negotiating climate treaties [for 20 years](#) and gotten exactly nowhere. China, India and the other rising and

modernizing countries point out that the West had a 150-year industrial head start that made it rich. They are still poor. And now, just as they are beginning to get rich, we're telling them to stop dead in their tracks?

Fat chance. Obama imagines he's going to cajole China into a greenhouse-gas emissions reduction that will slow its economy, increase energy costs, derail industrialization and risk enormous social unrest. This from a president [who couldn't even get China](#) to turn over one Edward Snowden to U.S. custody.

I'm not against a global pact to reduce CO2. Indeed, I favor it. But in the absence of one — and there is no chance of getting one in the foreseeable future — there is no point in America committing economic suicide to no effect on climate change, the reversing of which, after all, is the alleged point of the exercise.

For a president to propose this with such aggressive certainty is incomprehensible. It is the starkest of examples of belief that is impervious to evidence. And the word for that is faith, not science.

### **Streetwise Professor** **[The Road to Hell, Enviro Edition](#)** by Craig Pirrong

The road to hell is paved with good intentions. A couple of examples from environmentalist attempts to mitigate climate change.

The first relates to ethanol. In its infinite wisdom, in 2010 Congress mandated the use of renewable fuels with lower CO2 content than corn ethanol to meet the renewable fuel standard it created in 2005. Sugar ethanol from Brazil fits the bill. But given the blend wall and other limits on ethanol usage, this created an excess of corn ethanol in the US, and created an incentive to export excess corn ethanol from the US to Brazil, and import sugar ethanol from Brazil.

The problem being, of course that all the fuel burned to ship ethanol from the US to Brazil, and from Brazil to the US, pours CO2 into the atmosphere. [And the net result: more CO2 emissions than would have occurred absent the mandate to meet the renewable fuel standards with low CO2 producing fuels:](#)

As a result, since the start of 2011, the United States and Brazil have shipped over 1 billion gallons of ethanol back and forth – more than 500 million gallons each way. The emissions generated by the shipping have worsened the carbon footprint of both fuels.

Thomson Reuters Foundation found that this overseas trade has produced more than 312,000 tonnes of carbon dioxide (CO2) since the start of 2011, based on an industry method used to calculate greenhouse gas emissions from shipping. This equals a ratio of one tonne of CO2 emitted for every 10 tonnes of ethanol transported between the two countries.



Not to mention its just wasteful and stupid to expend real resources-fuel, labor, capital-to swap ethanol between hemispheres.

Not to mention that corn-based ethanol is a monstrosity.

The second example: [electric cars](#). Yes: No noxious fumes or CO2 come out of the (nonexistent tailpipe) of an electric vehicle. But if you take into account emissions over the lifetime of the vehicle-including the CO2 emitted to generate the electricity that charges the batteries of electric cars-and the other environmental impacts of their construction-including battery disposal and the environmental costs of mining rare earth metals, etc.-it's likely that electric cars have as bad or worse environmental effects as fossil-fuel powered ones.

Government policies have substantially encouraged the use of renewable fuels, and the development of electric cars, for the purpose of improving the environment. But the actual effects of these policies often fall far short of the intended effects, and quite frequently have the exact opposite effect, or unintended consequences that are more costly than the intended environmental benefits.

This illustrates several points. First, policies frequently create perverse incentives that induce market participants to undertake actions contrary to the intent of the policy: this is what is going on in the ethanol trade. Second, we live in a second best world. The theory of the second best implies that when there are multiple "market failures" (i.e., multiple unpriced harms), mitigating one of them (e.g., reducing CO2 emissions) is not necessarily a good thing, because it can exacerbate the other market failures. That's the lesson in the case of electric vehicles.

It's my sense that these problems are most likely to occur when legislators and regulators attempt to dictate technologies, rather than affect incentives through taxes on harms (e.g., CO2 taxes). That seems to be particularly true of the first problem. It's less clear that's true of the second problem. For instance, a monomaniacal focus on CO2, whether implemented through taxes or cap and trade or dictating technology, tends to have substantial perverse effects because there are other unpriced harms and benefits. The encouragement of wind power, for example, results in environmental damage in the form of massive bird kills and abandoned wind turbines.

Economics is sometimes called the dismal science, originally because of the Malthusian connection. But the name has stuck long after economists have left Malthus far behind. And for good reason. We're killjoys, with a habit of pointing out that things people do with the best of intentions often fail to realize those goals, or worse, are actually counterproductive.

## **National Review**

### **Liberal Apartheid**

***The elite mostly lead a reactionary existence of talking one way and living another.***

by Victor Davis Hanson

One of the strangest things about the modern progression in liberal thought is its increasing comfort with elitism and high style. Over the last 30 years, the enjoyment of refined tastes, both material and psychological, has become a hallmark of liberalism — hand in glove with the art of



professional altruism, so necessary to the guilt-free enjoyment of the good life. Take most any contemporary issue, and the theme of elite progressivism predominates.

Higher education? A visitor from Mars would note that the current system of universities and colleges is designed to promote the interests of an elite at the expense of the middle and lower-middle classes. UCLA, Yale, and even CSU Stanislaus run on premises far more reactionary and class-based than does Wal-Mart. The teaching loads and course responsibilities of tenured full professors have declined over the last half-century, while the percentage of units taught by graduate students and part-time faculty, with few benefits and low pay, has soared.

The number of administrators has likewise climbed — even as student indebtedness has skyrocketed, along with the unemployment rate among recent college graduates. A typical scenario embodying these bizarre trends would run something like the following: The UC assistant provost for diversity affairs, or the full professor of Italian literature, focusing on gender and the self, depend on lots of graduate and undergraduate students in the social sciences and humanities piling up debt without any guarantee of jobs, while part-time faculty subsidize the formers' lifestyles by teaching, without grading assistants, the large introductory undergraduate courses, getting paid a third to half what those with tenure receive.

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Take illegal immigration. On the facts, it is elitist to the core. Big business, flush with cash, nevertheless wants continued access to cheap labor, and so favors amnesties for millions who arrived without English, education, or legality. On the other end of the scale, Jorge Hernandez, making \$9 an hour mowing lawns, is not enthusiastic about an open border, which undercuts his meager bargaining power with his employer.

The state, not the employer, picks up the cost of subsidies to ensure that impoverished illegal-immigrant workers from Oaxaca have some semblance of parity with American citizens in health care, education, legal representation, and housing. The employers' own privilege exempts them from worrying whether they would ever need to enroll their kids in the Arvin school system, or whether an illegal-alien driver will hit their daughter's car on a rural road and leave the scene of the accident. In other words, no one in Atherton is in a trailer house cooking meth; the plastic harnesses of missing copper wire from streetlights are not strewn over the sidewalks in Palo Alto; and the Menlo schools do not have a Bulldog-gang problem.

Meanwhile, ethnic elites privately understand that the melting pot ensures eventual parity with the majority and thereby destroys the benefits of hyphenation. So it becomes essential that there remain always hundreds of thousands of poor, uneducated, and less-privileged immigrants entering the U.S. from Latin America. Only that way is the third-generation Latino professor, journalist, or politician seen as a leader of group rather than as an individual. Take away illegal immigration, and the Latino caucus and Chicano graduation ceremony disappear,

and the beneficiaries become just ordinary politicians and academics, distinguished or ignored on the basis of their own individual performance.

Mexico? Beneath the thin veneer of Mexican elites suing Americans in U.S. courts is one of the most repressive political systems in the world. Mexican elites make the following cynical assumptions: Indigenous peoples are better off leaving Mexico and then scrimping to send billions of dollars home in remittances; that way, they do not agitate for missing social services back home; and once across the border, they act as an expatriate community to leverage concessions from the United States.

Nannies, gardeners, cooks, and personal attendants are increasingly recent arrivals from Latin America — even as the unemployment rates of Latino, African-American, and working-class white citizens remain high, with compensation relatively low. No wonder that loud protestations about “xenophobes, racists, and nativists” oil the entire machinery of elite privilege. Does the liberal congressman or the Washington public advocate mow his own lawn, clean his toilet, or help feed his 90-year-old mother? At what cost would he cease to pay others to do these things — \$20, \$25 an hour? And whom would he hire if there were no illegal immigrants? The unemployed African-American teenager in D.C.? The unemployed Appalachian in nearby West Virginia? I think not.

Or take the green industry. At about the same time that statisticians readjusted the first-quarter GDP growth markedly downward — to a 1.8 percent annual rate, from the previously reported 2.4 percent — President Obama announced sweeping new regulations to curtail carbon emissions that will hamper the coal industry, further slow the economy — and delight his elite green base. Al Gore thought the speech historic. And why would he not? Gore has made hundreds of millions of dollars in the Marcus Licinius Crassus style of hyping a disaster and then profiting from its remedy. Gore hates carbon emissions. So much so that he dismisses those who live by them, such as coal-company executives, coal miners, and the rubes who mindlessly use coal-based electricity. But Gore also likes money and what money can do for him — SUVs, private jet travel, multiple residences. That’s why he just sold his interest in a failed cable-television network to a broadcasting network backed by a Middle Eastern authoritarian sheikhdom, known for both its anti-Semitism and its huge cash profits from the sale of fossil fuels. Take away the talk of polar bears and melting ice caps, and Gore becomes just another huckster, cashing in on oil profits from the Middle East, a region that is ensured continuance of its riches in part because of environmental restrictions that hamper fracking, horizontal drilling, and coal production on public lands in the United States.

Here in central California there are predictable themes to the new environmentalism: Land that could produce food and provide jobs will be idled to protect a bait fish in the Sacramento–San Joaquin River Delta. Rivers that are critical to irrigation and are anchors of the economy will be diverted to their 19th-century course in order to fulfill the dream of salmon runs through a desert-like San Joaquin Valley, and hundreds of billions of dollars worth of gas and oil that could be fracked and provide jobs for communities suffering 10-plus percent unemployment will be ignored. On one side, there are academics, lawyers, high government officials, those with inherited wealth, and those with enough capital to easily afford the higher taxes and higher costs of fuel, power, and food that are the inevitable wages of their own boutique ideology. On the other side, there are the apparent losers and clingers who are out of work, who pay over \$4 a gallon for gas for their silly used Dodge Ram trucks, and who stupidly splurge by turning their air conditioners on for an hour or two a day in 108-degree Fresno.

In the real world, the tiny delta smelt is a good psychological totem for a well-paid Google exec in Mountain View, who doesn't mind paying a little more for his arugula or paying higher sales taxes. But the worship of a bait fish is not shared by Manuel Lopez, a tractor driver in Bakersfield who has no more fields to disc this summer. Those in breezy, cool Malibu hate coal, and apparently believe those who mine it would be better off on food stamps and unemployment insurance, which the generous seaside denizens would so selflessly be willing to pay for.

Take gun control. What caused the latest round of furor over the Second Amendment was not gun-related deaths per se. In fact, they have been declining overall in the United States for some time. Nor is it the death toll in Chicago, where last year over 500 mostly African-American and Latino youths gunned each other down, almost exclusively with illegally obtained handguns in a city that has enacted among the tightest gun laws in the nation. Instead, the horrible tragedies of Columbine and Sandy Hook and Aurora suggest that the atypical shooter with a semi-automatic long gun will on rare occasions slaughter anywhere, from an upscale school to a cinema in a good neighborhood. Worse still, the most effective remedies for stopping these typically young, white, unhinged suburbanite shooters — detain the mentally ill far more frequently, curb the promiscuous use of psychotropic drugs, treat violent video games for our youth as we do pornography, jawbone Hollywood to show some restraint in its graphic and titillating portrays of gun carnage — rub up against liberal elite views on mental health, civil liberties, free expression, and the arts.

The result is that the elite find resonance in demonizing the largely white lower-middle-class gun crowd, who are not responsible for the vast majority of yearly gun deaths, but whose culture as the proverbial clingers is ripe for caricature and the fuel of elite outrage. No gun law that Barack Obama has supported would have stopped any of the recent suburban violence — given the millions of weapons that exist throughout the United States. To stop Sandy Hook — where the deranged Adam Lanza stole from his own mother firearms that she had legally purchased — the president would have had to confiscate privately owned semi-automatic rifles and larger clips, or made the possession of existing rifle ammunition illegal. No matter: Obama knew well that the liberal elites were outraged that savage violence had hit the suburbs; he knew too that there was nothing he could do to stop it that was acceptable to those elites, while there were lots of cultural targets that would at least allow the elites to vent. Thus followed the hysterical calls to ban all sorts of evil-looking black “assault weapons” and the demonization of the redneck beer-bellies who for some reason like to shoot them at their inane target ranges.

Modern liberalism, among other things, is a psychological state, in which very-well-off Americans find ways through their income and privilege to be exempt from the ramifications of their own ideologies, while adopting causes and pets that exempt them from guilt over their own status and limitless opportunities. Judging by their concrete actions, they are indifferent to the poor whom they romanticize at a safe distance. In short, voting for larger government and subsidies is seen as a necessary cost of being a reactionary, liberal elite.

WSJ

## The Lord of U.S. Labor Policy

***Lafe Solomon, acting general counsel of the National Labor Relations Board, defies Congress and the courts on behalf of Big Labor.***

by Kimberley A. Strassel

For a true expression of the imperious and extralegal tendencies of the Obama administration, there is little that compares with the Wisdom of Solomon. Lafe Solomon, that is, the acting general counsel of the National Labor Relations Board.

Mr. Solomon's wisdom was on revealing display this week, in the form of a newly disclosed letter that the Obama appointee sent to Cablevision in May. The letter was tucked into Cablevision's petition asking the Supreme Court this week to grant an emergency stay of NLRB proceedings against it. The Supremes unfortunately denied that request, though the exercise may prove valuable for shining new light on the labor board's conceit.

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This is astonishing on many levels, the least of which is that it is untrue. Mr. Solomon is the acting general counsel precisely because the Senate has refused to confirm him since he was first nominated in June 2011. Nor will it, ever, given his Boeing escapades.

Then there is the National Labor Relations Act, which created the NLRB. The law clearly says that the general counsel acts "on behalf of the Board"—a board that is today void, illegitimate, null, illegal. Mr. Solomon admits the "behalf" problem in his letter, though he says he's certain Congress nonetheless meant for him to be "independent" of the board. He says.

The acting general counsel naturally rushes to explain that—his omnipotence aside—the NLRB still has every right to ignore the courts. His argument runs thus: Because a decade ago the 11th Circuit issued an opinion that upholds recess appointments (though it didn't deal with Mr. Obama's breathtaking reading of that power), there exists a "split" in the circuit courts. The NLRB is therefore justified in ignoring any courts with which it disagrees until the Supreme Court has "resolved" the question.

What Mr. Solomon fails to note is the extremes the NLRB has gone to in order to suggest court confusion. The agency has deviated from past procedures, and it refused to ask either the D.C. Circuit or the Third Circuit to "stay" their opinions. Why? Because to do so—and to be rebuffed—would put the NLRB under enormous pressure to acknowledge that those courts have authority over its actions.

The board has likewise ignored the fact that the D.C. Circuit hears more NLRB decisions than any other, and is also the pre-eminent court for reviewing federal agency decisions. This ought to entitle that court, and its *Noel Canning* ruling, respectful deference from the labor board.

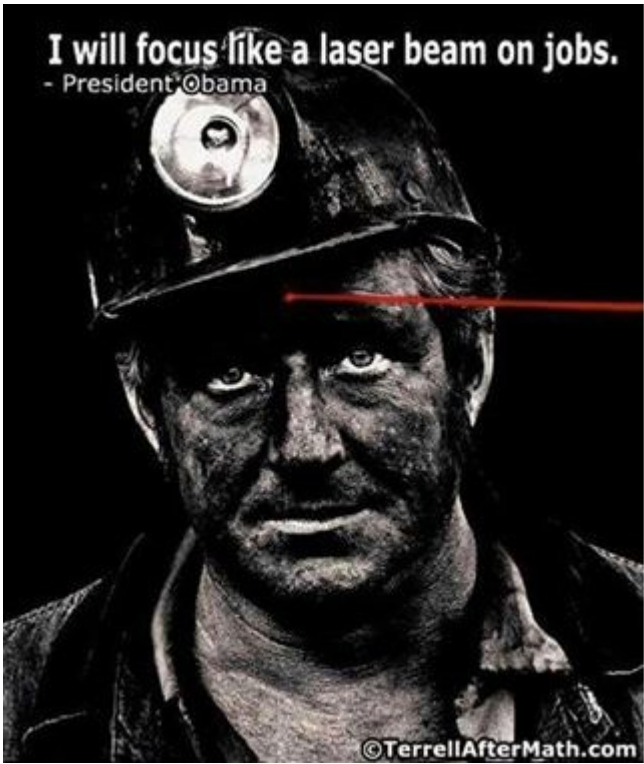
The most revealing part of Mr. Solomon's letter is the section cynically outlining why the NLRB continues to operate at a feverish pace. Mr. Solomon notes that this isn't the first time the board has operated without a quorum.

The NLRB issued 550 decisions with just two board members before the Supreme Court's 2010 ruling in *New Process Steel* that the NLRB must have a three-person board quorum to operate. Mr. Solomon brags that of these 550, only about 100 were "impacted" by the Supreme Court's ruling—which, he writes, proves that the NLRB is justified in continuing to operate even at times when its "authority" has been challenged.

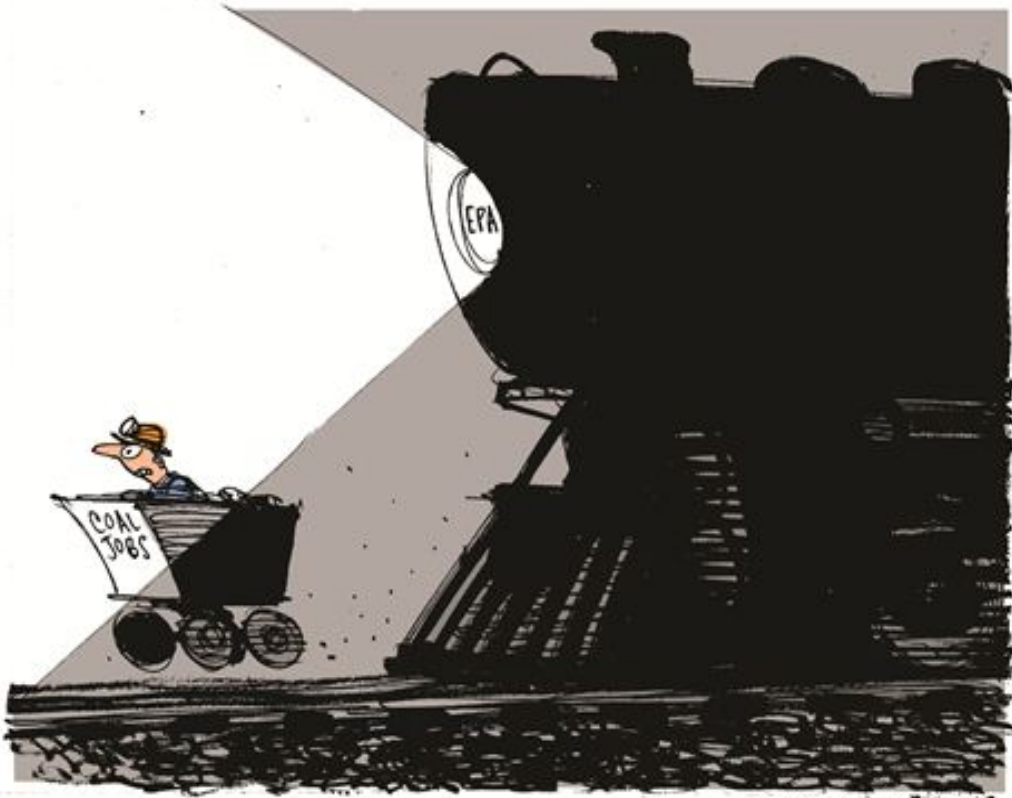
Mr. Solomon is in fact celebrating that of the 550 outfits harassed by an illegal, two-member board, only about 100 later decided they had the money, time and wherewithal to spend years relitigating in front of the labor goon squad. The NLRB is counting on the same outcome in Cablevision and other recent actions.

The board will push through as many rulings and complaints against companies as it can before the Supreme Court rules on its legitimacy. And it will trust that the firms it has attacked and drained will be too weary to then try for reversals. This is why the Obama administration waited so long to petition the Supreme Court to reverse *Noel Canning*. The longer this process takes, the more damage the NLRB can inflict on behalf of its union taskmasters.

Right now, the NLRB is the only weapon the administration can wield on behalf of Big Labor. The need to placate that most powerful special interest was behind Mr. Obama's decision to install his illegal recess appointments in the first place, and it explains the NLRB's continuing defiance of courts and Congress. Mr. Solomon's wisdom is the Obama philosophy of raw power, in all its twisted glory.







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