

Briefly Noted

Crony Environmentalism

BY SOFIE E. MILLER

The benefits and costs that regulators highlight when announcing a rule can say a lot about a regulation's composition—and sometimes the benefits (or costs) that are omitted are the most important part of the story. For the Environmental Protection Agency's new biodiesel standard, the stated costs and benefits don't even begin to tell the whole story: by the agency's own estimates, the rule achieves neither economic efficiency nor improved environmental quality, and it leaves the public paying the price. What could have caused regulators to finalize a rule that causes harm to the environment at such a great cost to the public?

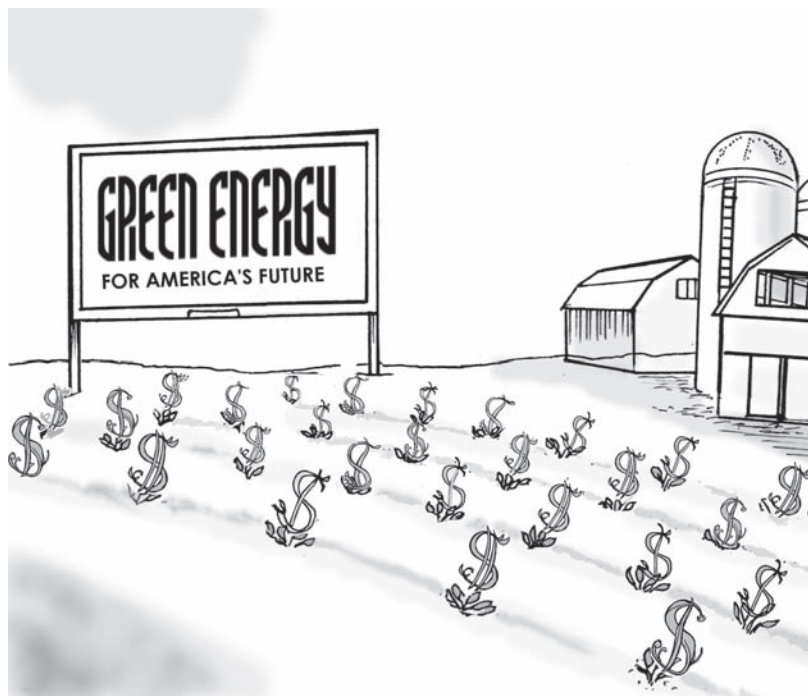
Under the Clean Air Act (as amended by the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007), the EPA sets the annual volume of biomass-based diesel required to meet the agency's renewable fuel standard. The EPA set the 2013 standard in a new rule, "Regulation of Fuels and Fuel Additives: 2013 Biomass-Based Diesel Renewable Fuel Volume." The rule increases the applicable volume requirement for biomass diesel fuels by 28 percent, up from the statutory baseline of 1 billion gallons.

Instead of claiming environmental improvements as the primary benefit of this rule (which might be expected from an agency premised on environmental protections), the EPA justifies the rule on the basis of increased energy security, which it values at \$41.2 million. In fact, the agency explicitly did not quantify the greenhouse gas reductions that the rule is intended to effect: "While we are not quantifying the GHG [greenhouse gas] emissions impact of this [rule], qualitatively we believe that it will provide a reduction in GHGs."

It may not be possible to quantify every benefit (or cost), as acknowledged in President Bill Clinton's Executive Order 12866, and qualitative assessments have their place in regulatory analyses. However, this is where the EPA's tale of benefits ends.

Higher costs | The agency does, however, quantify a number of costs associated with this rule. The EPA expects that the increased production of biodiesel (which is made from soybeans) as a result of the rule will increase the price of soybean

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oil by 3 cents per pound, or \$66 per metric ton. Considering that the United States produced over 18 million metric tons of soybean oil in 2011, the price tag for mandating increased biodiesel production becomes astronomical. The EPA's modeling predicts that its biodiesel mandate will increase both U.S. and world commodity prices. Fuel prices are expected to increase by between \$253 million and \$381 million in 2013 alone, or between \$0.90 and \$1.36 per additional gallon of biodiesel required by the standard.

As soybean oil is redirected to biodiesel production, U.S. soybean exports are expected to decrease by 135 million bushels over the next decade. At the same time, the United States will increase net imports of ethanol by 248 percent.

Dirtier air and water | But the explicit price tag of achieving the standard is only a portion of the cost. The EPA also estimates that this standard will cause up to \$52 million in environmental costs from reductions in air quality, and will have modest but "directionally negative" effects on water quality, water use, wetlands, ecosystems, and wildlife habitats.

A closer look at the emission impacts of the EPA's proposed rule raises even more questions. As a result of the rule, the agency expects ambient air increases in particulate matter, nitrogen oxides, and sulfur dioxide. As stated in the agency's Regulatory Impact Assessment, "In addition to the GHG impacts laid out in Chapter 2, we project that the increased use of renewable fuels

ILLUSTRATION BY KEVIN TUMA

required by [the new standard] will affect emissions of ‘criteria’ pollutants (those pollutants for which a National Ambient Air Quality Standard [NAAQS] has been established), criteria pollutant precursors, and air toxics.” According to the assessment, the monetized particulate emission costs alone from this rule amount to between 7 and 19 cents per gallon, or \$53 million. It is disconcerting that, despite acknowledging this, EPA issued a standard

above and beyond the minimum volume required by statute.

It is particularly surprising to see the EPA mandating a technology that increases particulate emissions because, in the context of the NAAQS, the agency takes the position that cost is no object when the goal is to reduce particulate emissions. In fact, the EPA just tightened the fine particulate NAAQS, reducing allowable concentrations by 20 percent. (See “The EPA Implausible Return on its Fine Particulate Standard,” below.)

Despite recognizing these environmental costs, the EPA finalized the rule without identifying sufficient benefits to justify increases in criteria pollutants and consumer prices. Incurring costs to the environment through a rulemaking intended to improve environmental quality is inconsistent with the agency’s approach toward accounting for particulate matter when counting regulatory benefits. When did

the EPA’s priorities change regarding environmental protection?

The real benefit | Taking these effects into account, the EPA estimates that in 2013 its new biodiesel rule will incur between \$263 million and \$425 million in net costs while harming air and water quality. What could motivate the agency to issue a regulation that is more costly than necessary to meet its statutory obligation, increases emissions of criteria pollutants, and raises consumer prices? To answer that question, one need only look to the recipients of these price increases. The rule will deliver concentrated benefits to a very specific special interest: the soybean industry.

Enforcement of this rule will increase the production of soybean oil, from which most commercial biodiesel is produced. The agency estimates that this standard will require the production of 600 million gallons of soybean-based biodiesel and 4,530 million pounds of soybean oil, almost double the 2,550 million pounds of soybean oil produced for biofuels in 2011. The EPA’s biodiesel rule will raise the price of soybeans by 18 cents per bushel, which will yield soybean farmers a \$550 million increase in revenues based on 2011 bushel-production figures. The price of soybean oil is expected to rise by 3 cents per pound, adding up to a \$1.2 billion increase in revenues for soybean oil producers. Fuel users will bear only a fraction of those higher prices; many other soy products will also become more expensive.

All of this suggests that the agency’s analysis doesn’t tell the whole story. Consumers will shoulder the burden of this transfer payment to farmers and producers.

While this rule is a bad deal for American consumers, it is highly profitable for the domestic soybean industry. That fact is not lost on Secretary of Agriculture Tom Vilsack, who touted the mandate in Sergeant Bluff, Iowa, while touring a biodiesel plant last September. “A key part of the President’s strategy is the development and promotion of biofuels,” Vilsack said. “[T]oday’s announcement by EPA will ensure that we are continuing to utilize biodiesel to help meet our energy needs, create jobs, and strengthen the rural economy.” While these benefits are concentrated to a specific few groups, the costs are borne by all Americans who buy products incorporating soy, from soap to beef.

Conclusion | The EPA’s biodiesel rule doesn’t live up to the spirit of the agency’s enabling statutes, nor does it live up to the letter of EO 12866, retained by President Obama. According to the order, “The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being, and improves the performance of the economy without imposing unacceptable or unreasonable costs on society.”

The EPA’s renewable fuel standard falls short of this requirement in two very important ways. First, the rule does not improve public health or the environment; in fact, by the EPA’s own estimate, the rule will cause environmental harm from increases in criteria pollutants. Second, the rule does not improve the performance of the economy and essentially acts as a transfer payment from the public to soybean farmers. This is crony phony environmentalism, and we all deserve better. R

The EPA’s Implausible Return on its Fine Particulate Standard

BY SUSAN E. DUDLEY

Last January 14th, the Environmental Protection Agency published a final rule in the *Federal Register* updating the National Ambient Air Quality Standards (NAAQS) for particulate matter. The rule reduces by 20 percent the allowable annual concentrations of fine particles less than 2.5 micrometers in size (PM_{2.5}), from the current 15.0 micrograms per cubic meter (µg/m³) that was affirmed in 2006, to 12.0 µg/m³.

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According to the EPA, meeting the standard “will provide health benefits worth an estimated \$4 billion to \$9.1 billion per year in 2020—a return of \$12 to \$171 for every dollar invested in pollution reduction.” This is such an impressive return on investment that it raises the question why the EPA chose a standard of $12.0 \mu\text{g}/\text{m}^3$ when, by its logic, a tighter standard would yield even greater returns.

The Clean Air Act directs the EPA administrator to set standards “requisite to protect the public health..., allowing an adequate margin of safety.” The U.S. Supreme Court has confirmed the EPA’s interpretation that this statutory language precludes consideration of any impacts other than direct health effects from pollutant exposure. Thus, the EPA administrator cannot consider the costs of meeting the standard in determining what levels are “requisite to protect public health” with an “adequate margin of safety.”

According to the EPA’s final Regulatory Impact Analysis (RIA) of the new rule, meeting the $12.0 \mu\text{g}/\text{m}^3$ standard will avoid between 460 and 1,000 premature deaths per year. However, the analysis also indicates that further tightening—going from a standard of $12 \mu\text{g}/\text{m}^3$ to $11 \mu\text{g}/\text{m}^3$ —would yield additional life savings of 1,040 to 2,300 mortalities per year. Given the EPA’s statutory mandate, it is puzzling that outgoing administrator Lisa P. Jackson chose to set a standard that leaves so many lives unprotected.

Two explanations for this puzzle are possible. One is that, contrary to her statutory directive, Jackson considered the costs of achieving the tighter standard (estimated at an additional \$320 million to \$1.7 billion per year) and decided they outweighed the incremental benefits. This seems unlikely, however, since the EPA’s RIA claims that achieving the tighter $11 \mu\text{g}/\text{m}^3$ standard would yield health benefits far in excess of costs and result in net benefits of between \$10 billion and \$29 billion per year. The net benefit

test required by President Obama’s Executive Order 13563 would lead Jackson to the $11 \mu\text{g}/\text{m}^3$ standard, if not an even tighter one.

The other possibility is that Jackson recognizes these benefit estimates are greatly overstated. The predictions of lives saved are highly uncertain, and they hinge on unsubstantiated assumptions about the causal relationship between exposure to $\text{PM}_{2.5}$ and premature mortality. Observers have suggested the EPA’s estimates of the mortality effects of PM exposure overstate actual effects by a factor that could well exceed 1,000.

In contrast to these implausible benefits, the costs of achieving the NAAQS are real, with the standards requiring expensive control measures and hindering economic growth and productivity in regions that are designated non-attainment. While the EPA cannot consider the opportunity costs of complying with the standard, it should be more honest in its examination of the health effects the standard seeks to reduce.

A more realistic assessment would probably indicate that requiring states to comply with the new standard is not requisite to protect public health with an adequate margin of safety. **R**

No ‘Midnight’ After This Election

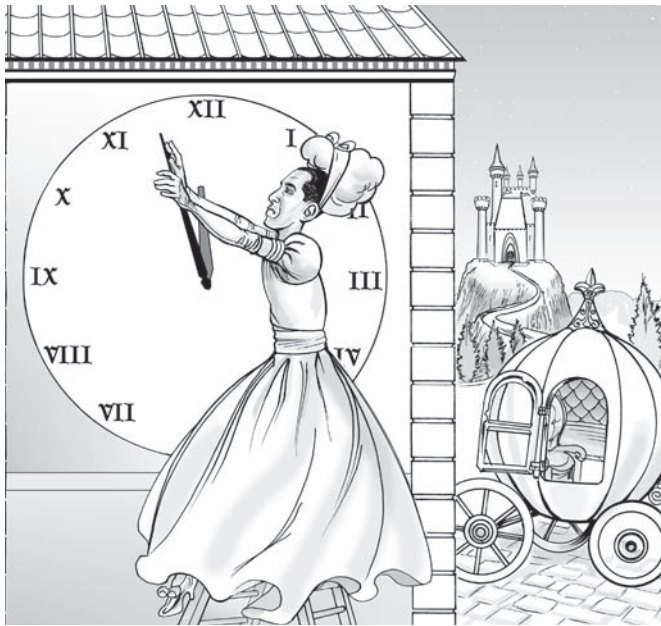
BY SAM BATKINS AND IKE BRANNON

It is not uncommon for presidential administrations to issue a large number of regulations in the interregnum between Election Day and the inauguration. These are often called “midnight regulations” because, for outgoing presidents, they are a final effort to shape the nation’s policies. But every president, regardless of electoral status, has a reason to accelerate the issuance of regulations in the waning days of a term: presidents up for reelection typically delay controversial regulations that could anger various constituencies until after the election, resulting in a surfeit of rules in the hopper the day after the election.

Given the slow pace of significant rulemaking in 2012, after what had been an extremely active Obama administration regulatory agenda the preceding three years, most regulatory scholars expected the agencies to be very busy in the post-election period. However, the data reveal subdued regulatory activity, akin to the last reelection year (2004), with sharply fewer significant regulations as compared to the election years of 2008 and 2000.

Table 1 shows the regulatory activity around recent presiden-

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tial elections. The developing pattern comports with the intuition that a reelected president has little compunction to issue regulations quickly—not with four more years of governing in the offing. As a result, no one should interpret the regulatory pause in 2012 as evidence of a new “go slow” approach by the Obama administration.

In the pipeline | At the start of the campaign season, Republican leaders on Capitol Hill worried about a flood of post-election regulations. Speaker of the House John Boehner and Senate Minority Leader Mitch McConnell warned the White House in a letter of their concern that a government “commitment [to transparency] will be further undermined by a final push to issue a set of ‘midnight regulations,’ with little opportunity for oversight.” Congressional Republicans were presumably hoping that GOP presidential candidate Mitt Romney would win the 2012 election, and that their letter would act as a prophylactic against a last-minute deluge of regulations by a vanquished Obama administration.

Figure 1 examines “economically significant” regulations published in the *Federal Register* during the midnight period, which correlates closely with White House review of significant measures. An economically significant regulation is a regulation that has an “annual effect” of at least \$100 million, and thus

must undergo review by the president’s Office of Information and Regulatory Affairs. The data reveal that the number of regulations formally issued between the most recent Election Day of November 6th and January 20th dropped off significantly from the same time period in 2011. The pace was generally on par with 2004, a period when President George W. Bush did not have to worry about cementing his regulatory legacy before the arrival of a Democratic administration. With only 11 significant regulations during the midnight period, the Obama administration issued the fewest midnight regulations in the last four election cycles.

In contrast, 2008 saw a marked increase in regulatory activity despite President Bush’s chief of staff, Josh Bolten, warning agencies to oppose “the historical tendency of administrations to increase regulatory activity in their final months.” The White House did not issue such a letter in 2012, although on Inauguration Day 2009 new White House chief of staff Rahm Emanuel issued a memo to claw back any of the last-minute Bush administration regulations.

During the months before Election Day 2012, there was evidence of a surfeit of regulations “in the pipeline” that could be rushed into place before the inauguration of a new president. For example, during the first nine months of 2012, regulators published an average of 315 pages daily, compared to just 271 pages the month before Election Day—a 14 percent drop. In October, 84 percent of all rules were under review at OIRA for more than 90 days, and the wait time for significant rules was 50 percent longer than in 2011. Today, just 58 percent of all regulations have been under review for more than 90 days.

While there was an increase in significant regulatory activity toward the end of 2012, the increase was moderate: from Election Day 2012 to Inauguration Day (49 publication days), OIRA concluded review of 22 significant regulations. During the previous 49 days in 2012, OIRA concluded only 12 significant reviews.

FIGURE 1

Economically Significant Regulations Published during the “Midnight” Period

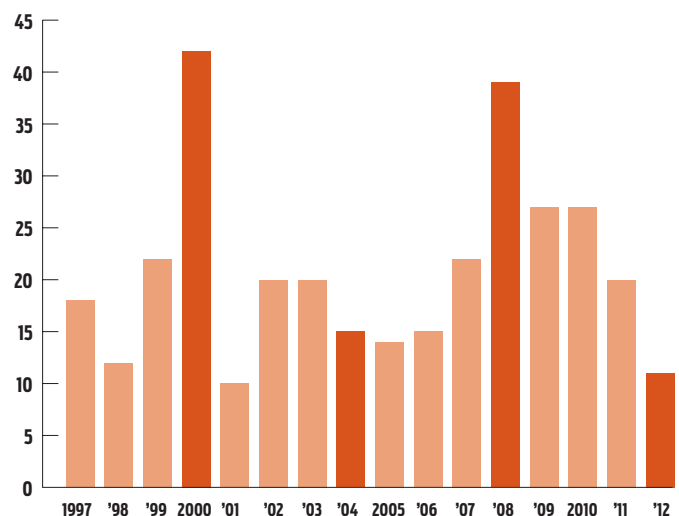


TABLE 1

“Midnight” Regulations following Recent Presidential Elections

	Total OIRA Reviews	Significant OIRA Reviews
2000–2001	202	48
2004–2005	139	16
2008–2009	181	42
2012–2013	91	22

TABLE 2

Some Notable 2012 Midnight Regulations

	COST
Proposed HHS Payment Parameters	\$3.3 Billion
Proposed Produce-Growing Standards	\$3.2 Billion
Proposed Produce Hazard Analysis	\$2.2–\$3.2 Billion
Final NAAQS for Fine Particulate Matter	\$350 Million
Final Flightcrew Rest Requirements	\$311 Million
Total	\$10.3 Billion

Examining the yearly data, shown in Figure 2, reveals that in all years when a president successfully runs for reelection, the number of regulations issued is lower than in the previous year, indicating either that the White House is understandably preoccupied with other activities or initiates a temporary slowdown in regulations, most likely so as to remove one potential source of ammunition for political opponents.

However, merely counting the “significant” regulations does not tell the entire story, so we examined all regulatory activity, including paperwork hours and independent agency activity to determine if there was any increase from the previous year. We found that there was a significant drop in total regulatory activity compared to the year before. From November 1, 2011 to January 20, 2012, regulators published final rules totaling more than \$5.7 billion in compliance costs, inflicting nearly 46.5 million hours in associated paperwork burdens on the public. For perspective on those hours, assuming a 2,000-hour work year, it would take 23,235 full-time equivalent (FTE) employees to complete the required red tape.

The most recent midnight period added an estimated \$1.8 billion in final compliance costs to U.S. businesses, along with 1.2 million paperwork burden hours. However, the administration did significantly increase the pace of Affordable Care Act implementation after the inauguration. In fact, the U.S. Department

of Health and Human Services published a \$2 billion exchange proposal, with 500,000 associated paperwork burden hours.

Conclusion | Despite some rhetoric to the contrary, the Obama administration did not accelerate the pace of its regulatory output immediately after the election because there was no need to do so with the president’s successful reelection. This corresponds to the pattern that has emerged in recent elections: If an administration is in its first term, there is an election-year pause in regulatory activity as the president hits the campaign trail. However, if the administration is nearing the end of its second term, it does not slow the pace of issuing regulations during the election year, and like all outgoing presidencies it accelerates activity in its waning days. **R**

Don’t Californize Texas

BY DWIGHT R. LEE AND RICHARD ALM

Bragging about their economy, Texans often point to the waves of newcomers moving into their state. According to Internal Revenue Service data, Texas led the nation with a net gain of more than 680,000 interstate migrants between 2004 and 2010. The inflow reflects the drawing power of Texas’ economy, and productive newcomers are helping the state outperform the rest of the nation.

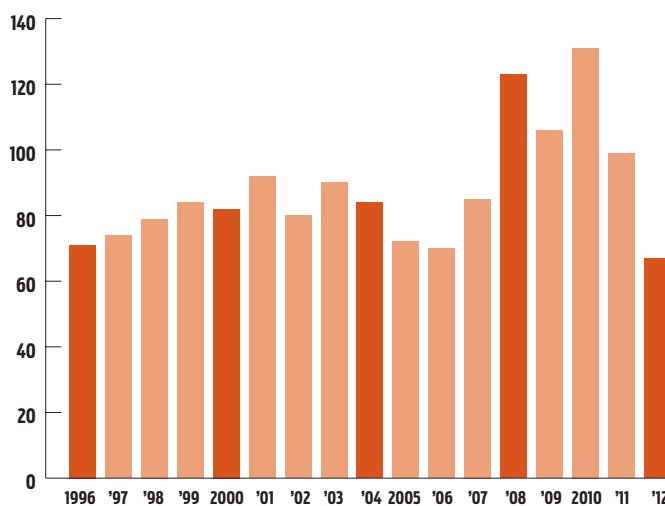
New residents coming from California and other places, however, could pose a long-term threat to Texas’ winning formula of low taxes, mild regulation, and limited government spending. The danger stems from the seldom-noted difference between voting with one’s feet and voting with one’s ballot.

The economic contrasts between California and Texas are vivid. California’s taxes are high, but not high enough to prevent large and persistent budget deficits that result from the state’s exorbitant government spending. An army of state regulators, equipped with an arsenal of regulations, practically dares anyone to start a business or hire more workers to expand an existing one.

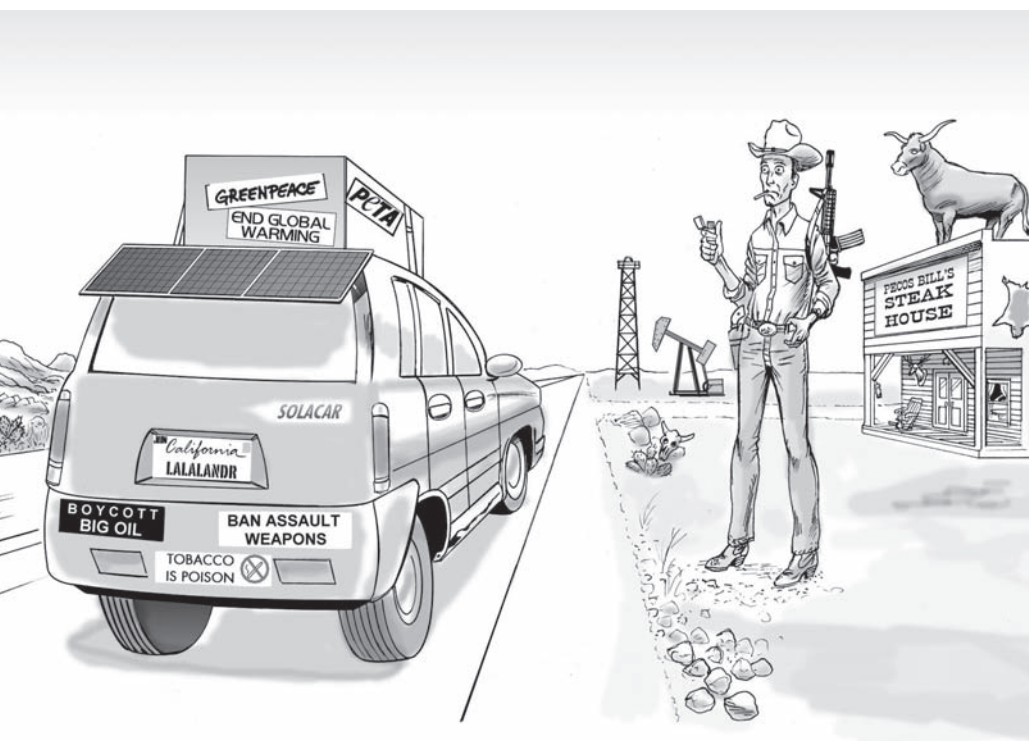
More and more Californians, both as consumers and producers, are concluding that pleasant weather and attractive scenery aren’t worth the tax burden and high cost of living. They’re voting with their feet by leaving the state, with Texas the most popular destination. Between 2004 and 2010, net migration from California to Texas totaled about 185,000 people—over a quarter of the Lone Star State’s overall gain.

Most of us understand that voting with one’s feet depends heavily on economic benefits and costs. Someone contemplating a move from California to Texas has good reason to weigh those

FIGURE 2

Economically Significant Regulations per Year

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factors carefully because his “vote” determines whether he receives those benefits and incurs those costs. His vote is decisive—he ends up in Texas because—and only because—he “voted” to do so.

California voting | Economic benefits, however, aren’t the only consideration when voting with one’s feet. Political ideology can also be important. Assume, for example, that many Californians are sympathetic to arguments for ambitious spending programs, the high taxes that support them, and tough regulations on businesses. For those people, at least part of the value of living in California lies in policies consistent with their liberal sympathies.

When Californians consider the choice of moving to Texas or remaining in California, they weigh a dollar’s worth of economic benefits the same as a dollar’s worth of ideological benefits. Those who grumble about high taxes and big government will be the first to pack up and leave. They’re already in a Texas state of mind, and this may lead to the casual assumption that newcomers won’t change Texas’ politics. However, in time the economic benefits of moving will convince even political liberals that Texas offers a better deal. Yet they arrive in Texas clinging to California’s political ideology, apparently not realizing the connection between Texas’ politics and its economy. Having voted with their feet, these former Californians start voting with their ballots—to express their opinions and preferences. This shifts the relative importance of economic and ideological benefits in a way that’s rarely appreciated.

Voting with her feet, the individual gets exactly what she chooses. Voting at the ballot box is another matter. In statewide elections, the chance that the policy will pass only because she votes for it is effectively zero. Weighted by this tiny probability, her personal cost

of voting “yes” in terms of the new policy’s higher taxes and prices becomes so small that she can ignore them with impunity. This holds even if passage of the new policy imposes high total costs on the voter.

Take, for example, a referendum to impose a Texas state income tax to fund noble-sounding programs. As a matter of principle, most Texans oppose an income tax—a sentiment that may not be shared by voters relocating from California. If the tax passes, it will cost our hypothetical California transplant \$10,000—a cost that might dissuade all but the most liberal voters. A “no” vote thus seems certain—except for the tiny probability that her vote will decide the election’s outcome.

Assume the probability that our transplanted Californian’s vote will alter the referendum’s outcome is one in 100,000. Her expected cost of voting “yes” would thus equal a dime. So the voter would favor a Texas income tax if she realizes more than

a dime’s worth of ideological satisfaction from expressing her support for the political preferences she brought from California. The typical Texan faces the same low cost for ideological satisfaction, but he’s more likely to adhere to Texas traditions, favoring lower taxes and limited government.

The important insight of expressive voting is that a little bit of ideological satisfaction can sway voters to cast their ballots in favor of policies with high personal costs. It explains why people commonly ignore their economic interests to further political agendas they favor. Rich people vote for policies that raise their taxes. Private sector workers vote to increase public sector workers’ pay, even if it means higher taxes. Parents vote to maintain public school monopolies that reduce educational quality. Old people vote for reducing future global temperatures, although that means higher energy bills today.

This voting seldom comes from deep commitments to carefully examined policy positions. Instead, it reflects the opportunity for voters to feel good about their generosity by casting a vote that effectively costs them nothing. If enough voters indulge their feelings, the policies win political approval and everybody foots the bill.

Californians aren’t the only newcomers attracted to Texas. Others are arriving from New York, Illinois, Michigan, Ohio, New Jersey, and countries all over the world. It’s highly unlikely that most of them will share Texans’ ideological ethos. Once in Texas, many of those newcomers will see a net benefit in voting for policies that will in time undermine the economic factors that drew them to Texas in the first place.

Maybe it’s time to scrape off the anti-litter “Don’t Mess with Texas” bumper stickers and replace them with “Don’t Californize Texas.”