

rule-comments@sec.gov Climate Disclosure Request for Comment

SEC Request for Comment on ESG-Climate Disclosure Raises Legal and Scientific Issues

Securities and Exchange Commission (SEC) Acting Chair Allison Herren Lee announced on 3.15.2021 that "Public Input Welcomed on Climate Change Disclosures." Per the SEC post by Lee, that request for input was premised "In light of demand for climate change information and questions about whether current disclosures adequately inform investors, public input is requested from investors, registrants, and other market participants on climate change disclosure."

Per the SEC webpage linked here - <https://www.sec.gov/sec-response-climate-and-esg-risks-and-opportunities> - similarly said the following.

"Request for Comment on Climate Disclosure

In light of demand for climate change information and questions about whether current disclosures adequately inform investors, public input is requested from investors, registrants, and other market participants on climate change disclosure."

There are suggested questions posed by Lee in her post. But this comment opts to exercise constitutionally protected rights to free speech and the right to petition for a redress for grievances instead for specific reasons. Among them are concerns:

1. that the SEC may be pressing an issue that is an Antitrust violation. If so, the federal government will be in the odd position of having one agency (i.e.: the SEC) pressing for a standard that another aspect of state and/or the federal government may determine to be illegal.
2. While there is a popular narrative presented by some in the public view that presses the green agenda – which operates in the background of the ESG interests the SEC is asking for comments on – so-called climate change is hardly settled science. Climate is always changing. It always has changed. It always will change. The question, then, is to what extent is manmade climate change an issue? That has to be considered in order to seriously ponder a motivation for the SEC, or any other governmental entity, to press for standards that may be based upon a false 'scientific' or logically lacking premise.

These two points above will be raised sequentially herein.

1.

"ESG May Be an Antitrust Violation," said an article by Mark Brnovich in the *Wall Street Journal* published on 3.6.2022. Brnovich is the attorney general for the State of Arizona, so he has a position which lends itself to such a claim. That op-ed by Brnovich followed his office's announcement on 11.17.2021. It said the following.

"Arizona Attorney General Mark Brnovich announced he is looking into ESG investing practices by major firms, including their membership in the investor-led initiative, Climate Action 100+. Many large investment companies, which manage trillions in assets, have recently publicized their focus on environmental, social, and governance factors. The firms are accused of intimidating and threatening companies if they do not comply with their left-wing agenda. This raises concerns about potential inappropriate pressure and anticompetitive conduct to align with the firms' goals and not investors' best interests pursuant to well-established fiduciary duties."

Until that concern raised by AZ AG Brnovich is settled, this SEC proposal is ill advised. Furthermore, there are potentially other constitutionally concerns about pressuring investors to push for ESG connected investing practices which may violate their own beliefs and/or violate their own constitutionally protected rights.

The above are reasons enough for the SEC to kill this proposal until all such legal questions are clearly addressed and settled. That noted, let's press on to concerns raised in bullet two, above.

2.

On 7.30.2009 *Business Insider* said that "The media portrays climate scientists as having delivered a final verdict on global warming. They haven't." Events before and since can objectively be considered that question the claims of those who press a green agenda based upon so-called manmade climate change.

Let's set the stage by noting that the climate on Earth, per geological studies, other scientific, and historic records, *has always been changing*. Tens of millions of Americans 'doubt' the 'science.' That too is sufficient reason to stop or 'kill' this SEC process that aims to add layers of costly rules that may fail in its stated aim of protecting investors. That doesn't mean that those millions who question the claims of climate alarmists, or this writer, favor pollution. Someone can doubt the claims of those who press the notion of manmade climate change yet still be in favor of corporations or others being held to a standard that protects the air, water, soil, and environment in general. Numbers of "conservatives" - who often opposed corporate overreach via antitrust laws - were historically in the camp of "conservationists."

These two federal webpages illustrate that point. Beginning with evidence that someone can be for conservation, clean air, clean water and uncontaminated soil, this writer will provide a series of subpoints as evidence of what *Business Insider* said: "The media portrays climate scientists as having delivered a final verdict on global warming. They haven't."

a):

[Theodore Roosevelt and Conservation - National Park Service](https://www.nps.gov/thro/learn/historyculture/thro.htm)

[https://www.nps.gov > thro > learn > historyculture > th...](https://www.nps.gov/thro/learn/historyculture/thro.htm)

Nov 16, 2017 — The **conservation** legacy of **Theodore Roosevelt** is found in the 230 million acres of public lands he helped establish during his presidency.

b):

[The Conservation Legacy of Theodore Roosevelt - US ...](https://www.doi.gov/blog/conservation-legacy-theodore-roosevelt)

[https://www.doi.gov > blog > conservation-legacy-theo...](https://www.doi.gov/blog/conservation-legacy-theodore-roosevelt)

Feb 14, 2020 — President **Theodore Roosevelt** was one of the most powerful voices in the history of American **conservation**. Enthralled by nature from a young ...

c). Those links are shared to clarify for those who arguably falsely believe and/or claim that someone who questions or opposes the manmade climate change agenda are somehow anti-science or anti-environmental. Neither of those mistaken thoughts are true. Classical conservatives share environmental and socially responsible business concerns with those who may dub themselves to be progressives on the political left.

It may be that *some* corporations attempt to abuse the concerns raised by those who legitimately question manmade climate change as a way of creating cover for their own pollution or other problematic business practices. So, this statement in opposition to the proposed SEC plan on ESG should not be misconstrued as providing cover for polluters. I am making no such argument. That's why the conservation legacy of President Theodore "Teddy" Roosevelt is relevant. Roosevelt took populist antitrust stances during his career as well as pro-environmental stances. There is no contradiction between those positions.

d): The premise being advanced herein is simple. Someone can favor constitutionally protected rights and freedom while also believing in conservation and responsible corporate behavior. There is little doubt that corporations routinely know – or should – what chemicals and/or processes that they may use or consider that have harmful environmental impact.

e): **The illustration on the left** is just one of several possible pieces of scientific evidence that climate change predates the industrial age of humanity by thousands of years. The rising and fall of the oceans obviously are influenced by factors besides manmade carbon.

f): The SEC would be well advised to focus on point 2d) above and the other points herein, rather than create some new rule that benefits larger players in business or investing over smaller ones. [Carol Roth](#) has appeared on news media outlets that span the left-right political divide. She has periodically argued that small businesses are disproportionately harmed by regulations. Per one of Roth's posts:

- "...small businesses are the backbone of the economy. However, they don't often get the appropriate platform to have their concerns or needs voiced and as a result, are often over-burdened or all-together ignored by the powers that be."
- "...promote the growth of small business by getting rid the of legislative [and regulatory] red tape, reducing tax burdens, and reforming health care so that it's affordable & provides effective incentives for small business to grow."



- “The lack of job growth is largely driven by the oppressive government **regulations** that disproportionately **hurt small businesses...**”
- Roth cited voices that favor a simplified and low-tax code too, which is part of the logic of encouraging investing and improving the American business vs. overseas.
- To Roth’s points, part of the problem with any new regulation is that there are ripple effects by regulations which deep pocket corporate interests can say they support, but then invest in nations where labor, tax, human rights, or environmental standards are lax.

g): The Roth quote below and the illustration from the National Association of Manufacturers (NAM) underscore the point that smaller businesses – or by extension, smaller investors – are disproportionate harmed by regulations than larger firms (or larger investors).



Carol Roth | Fox News

“...all regulation, that excessively impacts small business...In fact, big companies secretly love regulation because regulations are in fact anti-competitive -- every new rule, law or compliance measure limits the ability of existing smaller competitors or new start-ups to compete.”

- **Carol Roth**
- American television personality, bestselling author, entrepreneur, radio host, and investor. Roth appears regularly on national cable television networks including *Fox Business*, *CNBC*, *CNN*, *Fox News* and *MSNBC*, per Wikipedia.



Regulatory Compliance Costs per Employee per Year for Manufacturers, 2012 (in 2014 Dollars)



h): Videos and more examples of why the climate change voices may be well intentioned but are nevertheless mistaken are found in the reports linked below. Those reports include videos and more linked content that should be considered as part of my submission to the SEC's request for comments on this issue.

<https://www.tampafp.com/tapestry-of-lies-putin-led-russian-ukraine-war-new-reports-fact-packed-tampafp-op-ed-reveal-u-s-woes-opportunity/>

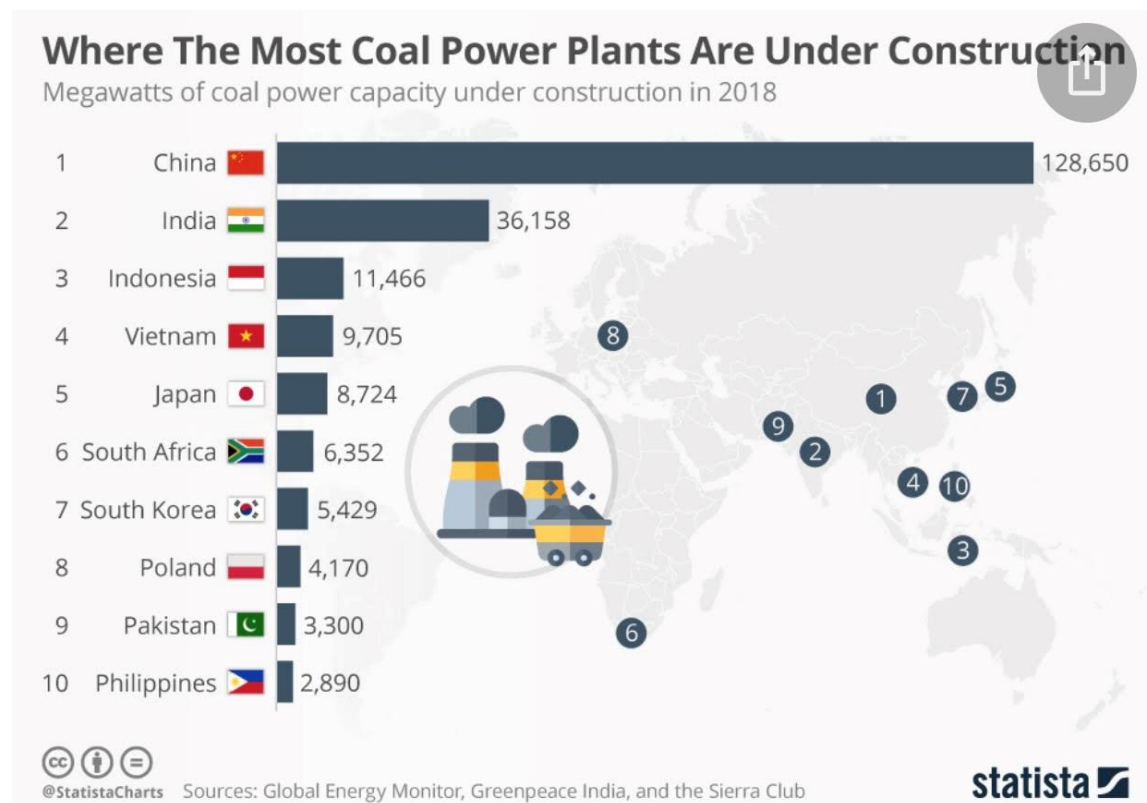
<https://www.tampafp.com/vlad-the-impaler-ukraine-usa-eu-nato-oil-green-energy-oligarchs-george-soros-paltering-affordable-housing-2022-costly-facts-you-have-and-havent-been-told/>

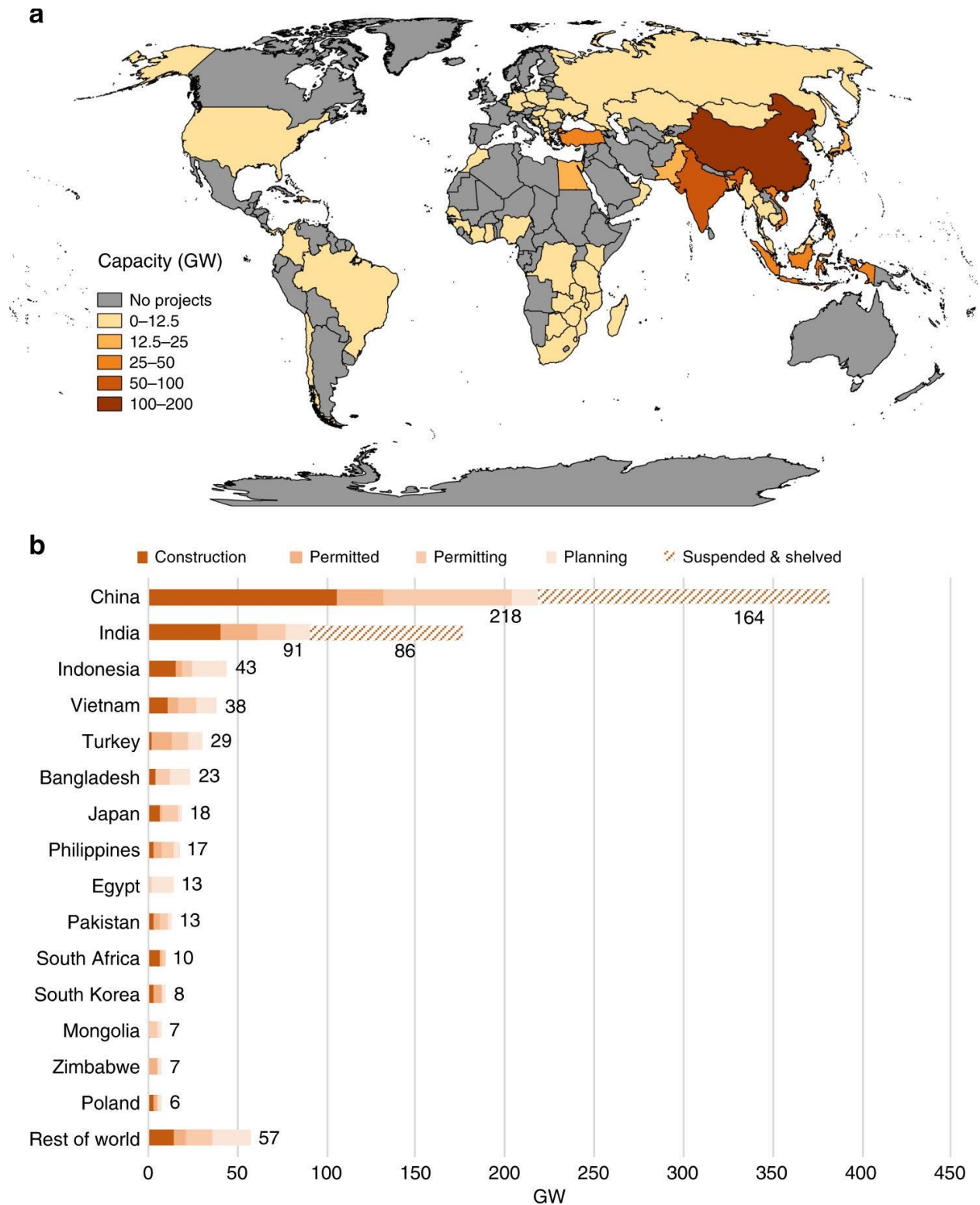


i): In Hawaii, I've personally walked by old wind-powered generators that were rusting and unused. The number of birds killed by such wind-power are but one of several concerns that sincerely environmentally motivated individuals should consider. (Photo credit: Daily Mail.)

j): China and India are havens attracting U.S. capital that may not share our nation's environmental, labor rights, or other human rights records. They are opening coal fired electric plants while the U.S. and other nation's have been

phasing them out for ill timed, perhaps questionable-at-best, or illogical at worst reasons. See the reports linked above for details as well as the infographics below.





k): As a relevant segue on energy production, nuclear power with appropriate security and other safeguards is an option that the sincerely green-minded advocates should consider. Hydroelectric power has long been proven useful. Other promising energy sources that are clean should also be considered.

l): A partial list of sources that question the common climate change narrative are below.

<https://www.climatedepot.com/>

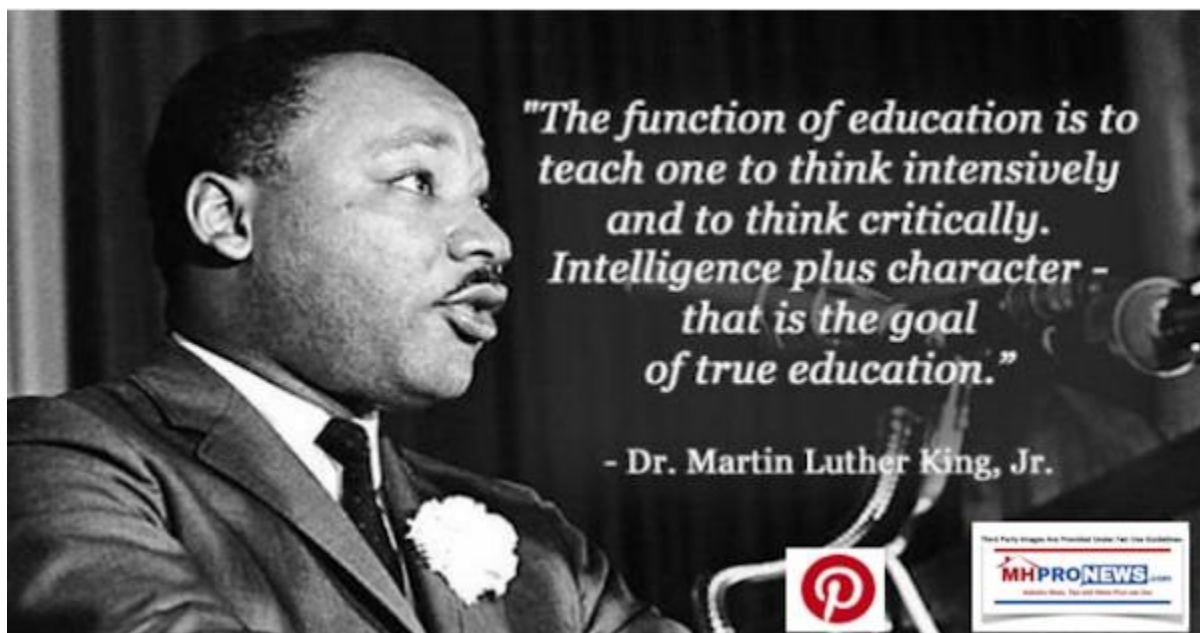
<https://www.manufacturedhomepronews.com/clintel-research-climate-intelligence-vs-climate-activist-thunberg-plus-president-trump-great-climate-debate-investing-jobs-and-manufactured-housing/>

<https://www.cfact.org/>

<https://www.desmog.com/climate-intelligence-foundation-clintel/>

<https://clintel.org/500-expert-skeptics-rattle-europes-climate-cage/>

m): These are just some examples of why there are legitimate reasons to question the common narrative on climate change. One of the periodically humorous points that routinely arise from weather reporters who try to push the 'climate crisis' agenda is this. Some bad weather or hot weather is cited as 'evidence' of climate change. In the course of such a report, the weatherperson may say something like 'this is the worst summer heat since 1923.' 'Or this is the most active tornado (or hurricane, etc.) seasons in 20 years.' Such statements only underscores the point that similar (or worse) weather has occurred before. They make the point that weather has long undergone cycles and changes thousands of years before the industrial era and modern pollution. As the late Martin Luther King Jr. observed, the purpose of education – or information – is to cause people to think deeply and analytically.



To cite an example of (m) above is this from PBS. It should be obvious that PBS are hardly climate change skeptics.

NOVA: Killer Hurricanes DVD - Shop PBS

<https://shop.pbs.org> › Science & Nature › Earth

Jan 22, 2018 — **NOVA: Killer Hurricanes** The Great Hurricane of 1780 took nine days to blast ... highest known death toll of any single weather event **in history.**"

- That killer storm of 1780 that PBS reported on occurred before the modern industrial era and the related manmade pollution.

There are scores of such examples possible. But these examples are sufficient to kill the proposed rule. It may be well intentioned, but as the maxim goes, *the road to hell is paved with good intentions*.

Additional 'Bonus' Support for Legal and Pragmatic Concerns About the SEC's Proposed Plan

Ironically, a commissioner in the SEC has raised concerns about this proposed regulatory regime. On 3.21.2022 Commissioner Hester M. Peirce's SEC post headline proclaimed: "We are Not the Securities and Environment Commission - At Least Not Yet,"



Commissioner Hester M. Peirce

Commissioner Peirce's bio says that "Prior to joining the SEC, Commissioner Peirce conducted research on the regulation of financial markets at the Mercatus Center at George Mason University. She was a Senior Counsel on the U.S. Senate Committee on Banking, Housing, and Urban Affairs."

Said Pierce: "The proposal, however, will undermine the existing regulatory framework [at the SEC] that for many decades has undergirded consistent, comparable, and reliable company disclosures. We cannot make such fundamental changes to our disclosure regime without harming investors, the economy, and this agency. For that reason, I cannot support the proposal."

Pierce cautioned: "The proposal turns the disclosure regime on its head."

With a tone that smacks of a satirical barb, she wrote: "Some elements [of the proposal that] are missing...from this action-packed 534 pages:

- A credible rationale for such a prescriptive framework when our existing disclosure requirements already capture material risks relating to climate change;
- A materiality limitation;
- A compelling explanation of how the proposal will generate comparable, consistent, and reliable disclosures;
- An adequate statutory basis for the proposal;
- A reasonable estimate of costs to companies; and
- An honest reckoning with the consequences to investors, the economy, and this agency.

While all of her concerns that are [linked here](#) are noteworthy - and should be considered as part of this writer's commentary - Pierce's points may be among her most compelling legally. Namely, per Peirce:

- "IV. The Commission lacks authority to propose this rule" and
- "VI. The proposed rule would hurt investors, the economy, and this agency."
- Those are akin to the points raised by this writer above, and was only discovered by this writer after the balance of this statement in opposition to the proposed rules were drafted.

In conclusion. Fear of so-called "climate change" - which is operating in the background of these often proposed ESG standards - should not be used to trump facts, evidence, and common sense. Nor should groupthink be used to herd the population - including, but not limited to investors, smaller businesses, and others - into a direction that violates both common sense and constitutionally protected rights.

Respectfully submitted,

Tony

L. A. "Tony" Kovach
Managing Member
LifeStyle Factory Homes, LLC

DBAs:

MHLivingNews.com | MHProNews.com | LATonyKovach.com | Office: (407) 350-3093 | Cell
832-689-1729 |

Connect on **LinkedIn**:

<http://www.linkedin.com/in/latonykovach>

Note: L. A. "Tony" Kovach earned the Lottinville Award in history from the University of Oklahoma, along with other awards and recognition in history, business, and journalism. Our work has been cited in reports published by the CFPB in their Manufactured Housing White Paper (2014), National Association of Realtors (NAR) Journal of Real Estate Studies report on manufactured housing (2018) by Scholastica "Gay" Cororaton, by mainstream media, and other nonprofits.