

From: Carlson, Ann on behalf of Carlson, Ann <carlson@law.ucla.edu>

Sent: Wednesday, November 04, 2020 12:38 PM PST

To: Umair Irfan <umair@vox.com>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

Good questions. If you have the patience to read it, I'm sending along a blog post we wrote recently with somewhat general responses to your questions but I'll also answer them specifically.

I think one big strategy that will be important for a Biden Administration without a Democratic Senate is to have a suite of climate policies rather than relying too heavily on any single policy -- think of it as the "don't place all your eggs in the same basket" approach. Many climate policies don't face the kind of legal vulnerability the Clean Power Plan did. This includes tightening efficiency standards, tighter fuel economy standards, limiting drilling on public lands, investing in infrastructure, appointing FERC commissioners who can factor carbon into their decisionmaking, continuing tax incentives to encourage renewable energy and R & D investments, and many international efforts (obviously rejoining the Paris Agreement, reasserting U.S. diplomacy on climate, trying to tackle global problems like deforestation, etc.). Much of this can be done without Congress. Biden should also use his Clean Air Act authority to regulate greenhouse gas emissions even given legal uncertainty. Doing so is, after all, required by *Mass v. EPA*. As we say in the blog post, there are some guidelines that might help insulate the regulations from legal vulnerabilities -- standard regulations like limiting methane emissions, car standards, and so forth should be upheld unless the Court decides to overturn *Mass v. EPA*. It is also worth stressing that any challenges to Biden policies under the CAA will take a long time to work their way to the Supreme Court -- probably three or four years. A lot can change during that time, including the composition of the Court. So I think it's important to utilize the power that the *Mass v. EPA* Court has made clear EPA possesses. And it should do so aggressively given the climate crisis we face. Using that power in a way that looks similar to the kinds of regulations EPA has adopted in the past might be a smart way to reduce litigation risk but the agency shouldn't sacrifice ambition out of fear.

In addition, there may be some climate policies that could get through a Republican controlled Senate. Maybe a renewable energy standard? Big investment in R & D and infrastructure? Tax incentives? The politics on climate are changing, even if slowly, and there may be some opportunity to advance policies that attract Republican support.

I don't think there's much Congress can do to thwart rejoining the Paris Agreement or engaging in extensive diplomacy. I'm not a trade expert so don't know enough to say anything intelligent!

Happy to talk more if you'd find it helpful even though I'm operating on only a few hours of fitful sleep! Hope you're hanging in.

here's the post: <https://legal-planet.org/2020/10/27/climate-policymaking-in-the-shadow-of-the-supreme-court/>

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From: Umair Irfan <umair@vox.com>

Sent: Wednesday, November 4, 2020 12:07 PM

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

Sure, here's what I'm looking at:

What have we learned since the Obama era about making durable environmental policies from the White House? Given how much Obama's climate policies were litigated (Clean Power Plan, CAFÉ standards), would Biden's domestic policies be doomed to similar challenges, or have we actually made some progress in the legal case for such policies?

Since the president has a lot of leeway on foreign affairs, is there anything Congress could do to thwart Biden's plans for, say, rejoining the Paris agreement or signing a trade deal with a focus on emissions reductions?

Thanks,
Umair

From: "Carlson, Ann" <carlson@law.ucla.edu>

Date: Wednesday, November 4, 2020 at 2:10 PM

To: Umair Irfan <umair@vox.com>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

Hi Umair,

Would be great to get a couple of questions from you if that works. Thanks!

On Nov 4, 2020, at 10:43 AM, Umair Irfan <umair@vox.com> wrote:

Hi Professor Carlson,

I'm working on a piece on what Joe Biden might be able to do on climate change if he wins the White House but only has a tiny majority or a minority in the Senate.

I wanted to see if you had any thoughts as to what durable changes he could make, or if everything he does could be undermined through litigation and undone by a future administration.

Feel free to give me a call, or I can send a couple specific questions by email. I'm at 217 721 4377

Thanks

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