
REACTION

PRESIDENTIAL COMBAT AGAINST CLIMATE CHANGE

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[F]or the sake of our children and our future, we must do more to combat climate change . . . and act before it's too late.

— President Barack Obama, State of the Union Address (Feb. 12, 2013)

With these words, President Obama publicly renewed his commitment to address climate change. The President himself had largely buried the issue during the last two years of his first term, making his statement all the more striking. While he spoke frequently in 2009 and 2010 about climate change's "urgent dangers," he rarely uttered the words "climate change" during the next two years: only once in 2011 and barely at all in 2012. The White House message was clear. Climate change had become the political equivalent of Harry Potter's Lord Voldemort: the crisis that dared not be named.

The President's emphatic return to the climate issue is therefore welcome and promising. He can do a lot. But any President's considerable powers inevitably suffer from an Achilles' heel. Climate change laws are effective only if enduring, and presidential administrations are short-lived. Whatever one President does, a future President (and Congress) can undo just as quickly.

So, what actions should the President take? He described an "all-of-the-above plan" and promised to "direct my Cabinet to come up with executive actions we can take now and in the future." But what should the specifics be? There are three.

I. UTILIZE ALL EXISTING AUTHORITIES UNDER FEDERAL POLLUTION CONTROL LAWS WHILE LEAVING ROOM FOR STATES

All agree that it would be far better for Congress to enact new comprehensive climate change laws. Congress, however, has abdicated its environmental lawmaking responsibilities since 1990, and there is no reason to suppose that trend is about to change. That abdication is why Environmental Protection Agency (EPA) Administrator Lisa Jackson was right during the President's first term not to wait any longer for Congress to act. She properly exercised her existing authori-

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ty under the Clean Air Act of 1970 to restrict greenhouse gas emissions from new motor vehicles and the largest new stationary sources. The next Administrator needs to pick up where Jackson left off. It is time to exploit the Act's expansive language to take on the next major category of greenhouse gas emitters: existing sources. The relevant language has lain largely dormant for decades, but is now ripe for a presidential awakening.

The Clean Air Act, however, is only the beginning. The Clean Air Act was the first of a series of truly transformative environmental protection legislation that Congress passed with lopsided bipartisan majorities between 1970 and 1990, before partisan gridlock took over. These laws remain on the books, are fully available to EPA, and contain untapped potential. Precisely because climate change creates so many serious risks of environmental and public-health harm, they invariably overlap with other risks addressed by laws such as the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Toxic Substances Control Act. For instance, the quality of the nation's waters is highly dependent on climate and therefore water pollution control laws can be effectively used both to restrict activities that exacerbate climate change and to account for the threats to water quality that climate change presents.

The states play a key role in administering most federal environmental laws, but the President must also leave the states ample space to experiment and innovate apart from those federal laws. They deserve that respect. Contrary to much academic theorizing, states have proven to be potent sovereign forces for creative environmental law-making in general and, more recently, for addressing climate change. The national government has much to learn from their work and should not displace them.

II. EXERCISE THE WIDE-RANGING AUTHORITIES THAT THE PRESIDENT POSSESSES TO ENSURE THE NATION'S SECURITY AND PROSPERITY

EPA is only one executive branch agency. Here again, climate change's reach is so wide and deep, both in terms of its causes and consequences, that many federal agencies possess significant and relevant statutory authorities.

There are the obvious agencies. The Department of the Interior enjoys plenary authority over the resources of public lands, including the Outer Continental Shelf, and has the overarching mission to protect the nation's natural resources and heritage, while supplying the energy to power America's future. Interior should accelerate its work facilitating the deployment of renewable energy systems and mitigating climate change risks posed by energy production on public lands. The Department of Energy possesses broad statutory authority to address

the country's energy needs by promoting science and technology. Energy should drive technological innovation by promulgating ambitious energy efficiency appliance standards and by increasing funding for pathbreaking research institutions such as the Advanced Research Projects Agency–Energy.

But those two agencies merely scratch the surface. For instance, climate change's widespread implications directly trigger the authority of the Department of Agriculture to maintain sustainable agricultural productivity, the Department of Housing and Urban Development to bring the benefits of energy efficiency to residents of affordable housing, the Department of Labor to promote clean energy employment, the Department of Transportation to maintain an efficient national transportation system, and the Department of Defense to safeguard the nation's security.

Military leaders care about real science, not just “political” science. They have already undertaken in-depth analyses of climate change's security implications and taken concrete steps to reduce the military's quite-substantial carbon footprint. Acutely aware of how increased energy efficiency saves the lives of troops responsible for transporting energy supplies into conflict areas, the armed forces have assumed a leadership role in saving energy. The Army's “Net Zero Initiative” will make twenty-five of its installations “net zero” for energy, water, and waste by 2030 and five bases net zero energy by 2020. The Navy's “Great Green Fleet” seeks fifty percent alternative energy supplies for its shored-base requirements, and fifty percent of its installations to become net zero by 2020. These initiatives are role models for the nation.

Finally, although the President possesses less authority over so-called “independent agencies,” he can nominate individuals for agency leadership positions who share his climate concerns and who favor exercising agency authority in constructive ways. For instance, the Federal Energy Regulatory Commission can exercise its jurisdiction over wholesale-electricity rates, interstate transmission, and natural gas pipelines to promote smart grid technologies, renewable energy sources, and energy-efficient pipelines. Similarly, the Securities and Exchange Commission can reform its mandatory disclosure rules applicable to the sales of securities so as to ensure that market prices reflect actual environmental risks, including those now posed by climate change. Such a commonsense correction of market signaling could generate powerful economic incentives to promote greenhouse gas emission reductions and climate change adaptation measures.

III. PROMOTE CLIMATE REFORMS THAT ENDURE

The President can do a lot, but no matter how much he does in the next four years, it will mean little unless his reforms endure over a

long time — decades after 2016. The physics and chemistry of climate change are unforgiving in terms of their far-reaching spatial and temporal dimensions — reaching around the entire globe and extending into the lives of multiple generations.

The necessary steadfastness of climate lawmaking, however, cannot be maintained so long as climate change remains mired in partisan politics. It cannot survive clashing “Democratic” and “Republican” views of climate science. It cannot persist in the midst of exaggerated political rhetoric that, whether launched by industry or environmentalists, demonizes the opposition and further fuels divisiveness and distrust.

The good news is that some in industry have begun to respond to the very real global consequences of climate change; consequences that implicate their own future economic viability. Some environmental organizations, such as the Environmental Defense Fund, have in turn forged creative partnerships with these business interests, seeking to harmonize their shared interest by linking cost savings with emissions reductions. Such measures are hugely promising. More regulation is not the only, and often not the best, way to secure necessary changes in business practices.

The bad news is that such efforts remain relatively infrequent and sporadic. The President’s climate agenda should therefore embrace and promote these essential partnerships. Indeed, the President’s signature achievement — new motor vehicle fuel efficiency standards — was the product of just such a White House effort in 2009, which bridged longstanding battlegrounds. By expanding such agreements in his second term, the President will also do much to reduce the partisan rancor that has so far doomed the prospects of needed legislation.

Finally, the President needs to persuade the American people of the urgency of the climate issue. Only a President can do so. Americans are a proud and patriotic bunch. If they believe the problem is as compelling as climate scientists are saying, they will respond. But at the end of the day, there are no shortcuts to securing the public’s trust. No number of agreements between environmental groups and business interests will do it. Absent public understanding, no new agency regulations or congressional legislation will possess the requisite staying power.

New laws alone will not be enough. The President must restore the public’s trust. We cannot afford to have him shy away again.