

# Domestic challenges could limit new US climate policy

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**A**FTER US President Joe Biden and Vice President Kamala Harris were inaugurated on 20 January this year, the new administration initiated the process of re-joining the Paris Agreement on climate change. Thirty days after the necessary paperwork was filed with the United Nations, the United States resumed its status as a party to the agreement. Shortly after Inauguration Day, more executive orders were issued, including one which identified climate change as having a central role in foreign and national security policy.

That was the easy part. The hard part is coming up with a quantitative statement of how and by how much US emissions of greenhouse gases (GHGs) will be reduced over time in a new Nationally Determined Contribution (NDC). The new NDC needs to be sufficiently ambitious to satisfy (at least to some degree) both domestic green groups and key countries within the international community—despite the likelihood that Biden and his special envoy for climate, John Kerry, will initially be warmly welcomed by most world leaders.

The NDC must be more ambitious than the former Obama administration's target of a 26–28 per cent reduction in GHG emissions by 2025 compared with 2005. It will need to compare favourably with the announced targets of other major emitters, like the European Union's target to cut emissions 55 per cent

below its 1990 level by 2030 and China's recent pledge to achieve carbon neutrality (zero net emissions) by 2060.

If significant ambition is one necessary condition for the new Biden NDC, there is another one, namely that it be credible, hence achievable, given existing and reasonably anticipated policy actions. These necessary conditions can only be met with aggressive new domestic climate legislation. But even with the Democrat-controlled US Senate—with its one-vote margin—meaningful and ambitious climate legislation will be difficult, if not impossible. This is because of the Senate tradition of filibusters, which can only be stopped with 60 votes.

The budget reconciliation process, where only a simple majority is needed to pass legislation rather than the 60 votes required to cut off Senate debate, can be used to reverse some of Trump's last-minute policies that

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are connected with the tax code or mandatory spending. But for broad and ambitious climate legislation, the 60-vote threshold will be the binding constraint.

Executive orders notwithstanding, it will be challenging for Democrats to enact Biden's climate plan, including its US\$2 trillion in spending over four years with the goal of making all US electricity carbon-free in 15 years and achieving net-zero emissions economy-wide by 2050. The prospects over the next two to four years for comprehensive climate legislation—such as a carbon-pricing system—are not good.

But other legislation that would help reduce GHG emissions in the long term may be more feasible. That includes a post-COVID-19 economic stimulus bill, which may have a green tinge. Another candidate will be infrastructure legislation—something that both parties seem to recognise is important to upgrading ageing US roads and bridges. This could include funding for improvements in the national electricity grid, which will be needed to facilitate greater reliance on renewable energy.

Finally, there are possibilities for less ambitious but fundamentally bipartisan climate legislation, with much less stringent and lesser scope than Biden's climate plan. The key approaches might involve tax incentives and subsidies targeting wind and solar power; carbon capture, storage and utilisation; nuclear power; technology initiatives and electric vehicles.



Birds fly over a closed steel factory where chimneys of another working factory are seen in background, in Tangshan, Hebei province, China.

But such modest, bipartisan initiatives are unlikely to satisfy either the demands of domestic climate policy advocates or international calls for action. So the new administration will likely have to opt for regulatory approaches. While this may be an attractive option, using new regulations under existing legislation rather than enacting new laws raises another problem—the courts.

New regulations are now much more likely to be successfully challenged in federal courts. The 228 Trump-appointed federal judges and a six–three conservative majority on the Supreme Court gives executive departments and agencies much less flexibility to go beyond the letter of the law or to interpret statutes in innovative ways.

Even if little can be accomplished at the federal level over the next two to four years, surely the Biden

administration will not be hostile to states and municipalities taking more aggressive action. Climate policies at the state level (as in California) and regional level (the Regional Greenhouse Gas Initiative in the Northeast) became increasingly important during the Trump administration. Bottom-up evolution of national climate policy may continue to evolve from Democrat-leaning states, representing over half of the US population and an even larger share of economic activity and GHG emissions.

The new administration may or may not find creative ways to break the logjam that has prevented ambitious national climate change policies from being enacted (or, if enacted, from being sustainable). Optimistically, the Biden–Harris team, in sharp contrast with the Trump–Pence administration, gives every indication

that it will embrace scientific and other expertise across the board. The best epidemiologists and infectious disease experts will lead efforts on designing an effective strategy for the COVID-19 pandemic, and the best scientists, lawyers and economists will cooperate on designing sound, politically feasible climate policies. [EAFQ](#)

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