

# Climate Change at the Crossroads: The Potential Impact the Election Will Have on Climate Change Policy

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*This is the third in a series of articles Jones Walker LLP is providing that will explore the impact of the 2020 Election on Environmental Law.*

In the September 29 debate between President Trump and Joe Biden, climate change was the subject of a question in a presidential debate for the first time in 20 years.<sup>[1]</sup> The two candidates have very different views on climate change and how to address the impact of global warming. Because of this, the results of this November's election will determine whether we see aggressive executive and, potentially, legislative action related to climate change — consistent with Biden's plan — or a continuation of the deregulatory agenda of the Trump administration.

## Climate Change Actions in a Second-Term Trump Administration

The first term of the Trump administration has brought a series of [deregulation moves](#): The administration's actions have included but not been limited to proposing substantial changes to regulations that implement the [National Environment Policy Act](#), rolling back auto emission standards, announcing the intention to withdraw from the [Paris Agreement](#), reversing course on the Obama-era Clean Power Plan, rescinding new source performance standards for [methane](#) pollution at oil and gas sites, and overhauling how the cost/benefit analysis is performed under the Clean Air Act. The Columbia University Earth Institute at Columbia Law School is tracking approximately [100 deregulatory actions](#) taken by the Trump administration. If the president is reelected, we should expect that this deregulation agenda will continue. Additionally, with a second term, President Trump could effectuate the country's withdrawal from the Paris Agreement, which could trigger other countries' withdrawal from the agreement.

One scenario could slow or even thwart some of the Trump administration's deregulatory agenda: If the Democrats retain control of the House of Representatives and gain control of the Senate, President Trump should expect to have climate change legislation sent to his desk. At that point, the president will likely veto the legislation and rely on the fact that the Democrats will likely not have the two-thirds vote required to override the veto in Congress. Additionally, a Democrat-controlled Congress could pass legislation restraining or reversing the Trump administration's deregulatory

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actions, and both houses of Congress would likely engage in aggressive oversight hearings on presidential and agency actions.

## Climate Change Actions in a Biden Administration

As a senator and as President Obama's vice president, Joe Biden was relatively moderate on issues related to oil and gas and traditional energy. In the intervening years, the Democratic Party has moved to the left on climate change issues, particularly as those issues relate to fossil fuels. As a presidential candidate, Joe Biden has released "The Biden Plan to Build a Modern, Sustainable Infrastructure and an Equitable Clean Energy Future" ([Plan](#)). While less ambitious than the Green New Deal, the Plan does embrace a few key concepts from the Green New Deal and the policies of the progressive wing of the Democratic Party. The Plan is largely aspirational and lacks specific policy details, but it provides the framework for how a Biden administration would address climate change:

- **Net Zero Emissions:** Achieve net zero emissions "economy-wide" no later than 2050, which is less aggressive than the 2030 deadline advocated by the more progressive wing of the Democratic Party.
- **Carbon-Free Power:** Achieve carbon-free power generation by 2035.
- **Promote Green Energy:**
  - Create 1 million jobs in the electric auto manufacturing industry.
  - Install millions of solar panels.
  - Construct 500,000 electric vehicle charging stations.
  - Provide every city that has a population of more than 100,000 with zero-emission public transportation options, ranging from light rail networks to infrastructure for pedestrians and bicyclists.
  - Begin a new cross-agency effort to identify and promote clean energy technologies, including grid-scale storage technologies, advanced nuclear reactors, "decarbonizing" of the food and agriculture sectors, and carbon capture technologies.
  - Set a goal that all new American-built buses be zero-emission by 2030.
  - Reform and extend tax incentives in order to generate energy efficiency and clean energy alternatives, which likely includes eliminating so-called subsidies for fossil fuel companies.
- **Promote Carbon Capture:** Promote and incentivize carbon capture technology and projects.
- **Promote Conservation Projects:** Create the New Deal-inspired Civilian Climate Corps to perform conservation projects, wetlands restoration, and forests management projects.

The Plan calls for taking executive and legislative actions to achieve its emissions target, but a few potential areas for executive action include:

- **Executive Orders:** A Biden administration may take the following actions via executive orders:
  - Require methane pollution limits for new and existing oil and gas operations.
  - Develop new fuel economy standards aimed at fully electrified new light- and medium-duty vehicles.
  - Set new appliance- and building-efficiency standards.
  - Encourage additional offshore wind production by 2030.
  - Ban or reduce drilling on federal lands and in offshore waters.
- **Foreign Policy:** A Biden administration would also likely reembrace the country's role in leading the fight against climate change, including taking the following actions:

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- Recommit to the Paris Climate Agreement and the Green Climate Fund, and promote the Kigali amendment to the Montreal Protocol.
  - Pressure China on subsidizing coal exports.
  - Pressure Brazil and other countries with large tropical rain forests to curb deforestation.

## Climate Change Actions in Congress

While climate change policy can be strongly controlled through the executive branch, any legislative climate change action necessarily depends on the positions of senators and representatives — and which party controls the houses of Congress. In June, the House Select Committee on the Climate Crisis released a [report](#) titled **Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America**. The House plan echoes many of Biden’s policy goals, including establishing a Civilian Conservation Corps and achieving net-zero emissions economy-wide in the U.S. by 2050. The report, weighing in at over 500 pages, has detailed policy goals for each congressional committee that has jurisdiction over policies that support the plan’s 12 pillars. In August, a Senate Democrats’ Special Committee on the Climate Crisis issued a 260-page [report](#) titled **The Case for Climate Action: Building a Clean Economy for the American People**. The report outlines the legislation Senate Democrats plan to pass should they retake the Senate majority in November. In a slight difference from the Biden and House plans, the Senate plan does not commit to a fully net-zero emissions goal economy-wide in the U.S., but instead commits to reduce U.S. emissions to help achieve 100% global net-zero emissions no later than 2050. It also states an explicit goal to increase federal spending on climate action to at least 2% of GDP annually and would “ensure that at least 40 percent of the benefits of that spending focus on communities of color, and low-income, deindustrialized, and disadvantaged communities.”

While neither Congressional plan became law, the plans are illustrative of the types of legislation that we should expect, especially if Mr. Biden is elected president or if the Democrats take control of both chambers of Congress.

With the coronavirus pandemic and its economic reverberations likely to dominate the debate in Washington well into the next Congress, one should probably not expect stand-alone climate change legislation to be the priority, even if the Democrats gain control of both houses. Instead, it is much more likely that economic stimulus, healthcare, or budget legislation will contain provisions designed to meet the larger climate change goals expressed by the Senate, House, and Biden plans. However, climate change–related initiatives and legislation will be a long-term legislative priority of a Biden administration, especially if both chambers of Congress are controlled by the Democrats.

<sup>[1]</sup> Two questions about climate change were posed in the 2008 vice presidential debate, and various candidates have mentioned climate change in responding to questions that were not focused on climate change. See <https://www.climatepower2020.org/wp-content/uploads/sites/23/2020/09/Climate-Debate-Mentions.pdf>.

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