

**From Sea Change to Sea Levels Rising:
What a Unified Democratic Government Means for Climate Change Action**

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With Democrats now in control of both houses of Congress, environmental and climate change issues will play a more prominent role in legislative deliberations in the United States over the next two years and beyond. The Georgia Senate results enable Congressional Democrats to facilitate President Biden's ambitious path toward a lofty aspiration of a "100% clean energy" economy with net-zero greenhouse gas emissions by 2050. As the new government takes shape, the number of overlapping environmental and climate plans offered by Democrats over the last several years will receive renewed attention, including most prominently Biden's \$2 trillion dollar climate plan.

Still, any ambitious landmark climate change legislation will face a steep uphill battle in light of Democrats' thinnest of margins vote counts in both houses of Congress (particularly in the Senate). Absent the elimination of the Senate filibuster or the use of budget reconciliation, comprehensive reform through a singular bill is unlikely. Instead, Democrats may learn from their failed attempt to pass economy-wide cap-and-trade legislation through a unified Congress in 2009. They may consider eschewing a single, major legislative proposal and, instead, embedding climate change provisions in myriad pieces of legislation to implement a comprehensive climate strategy in a more bottom-up approach. It is not anticipated that in 2021 Congress passes the Green New Deal, a fracking ban, or a full repeal of the 2017 Tax Cuts and Jobs Act to fund an ambitious environmental agenda. Nor is it expected that there will be a climate-focused overhaul of the National Environmental Policy Act (NEPA).

Rather, this newly unified government—which will require the cooperation of the more moderate members from both parties—is likely to look to more politically palatable, incremental ways to accelerate the United States' response to environmental and climate impacts with an economy still struggling from a global pandemic. Given these constraints, it is expected that short-term legislative priorities of Congress and the President will include infrastructure, transportation (especially motor vehicles), and energy efficiency as modest, but tangible, ways to refocus the Trump Administration's nationalist, fossil-fuel-based approach through a more renewable, climate-friendly, environmental justice lens. Lastly, Democrats may be reluctant to use the oft-discussed Congressional Review Act to overturn late-term Trump Administration rules due to the law's prohibition on the promulgation of similar rules and instead rely on the regulatory process to rescind or replace them with rules that include stronger climate protections.

A number of Democrats will encourage Leader Schumer and Speaker Pelosi to use the budget reconciliation process. But doing so would require some deft legislating to amend a rule to allow for consideration of legislation beyond mandatory spending and revenue measures. If Democratic leaders decide to pursue the budget reconciliation process to move climate policy and are successful in amending the rules, legislation can be much more ambitious. This special mechanism used to pass the Trump tax reforms, as well as the Bush tax cuts, allows the Senate to pass legislation with a simple majority and prevents the use of the filibuster. But using the budget

reconciliation process to pass climate legislation will still require approval from moderates such as Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ), in the absence of any Republican support.

While the first 100 days of his presidency are not expected to yield comprehensive legislative reforms, a Democratic Congress gives President Biden more cover to take bolder steps to “Build Back Better.” In the short term, the narrow Democratic majority in the Senate (when considering the tie-breaking vote of Vice President Harris) means prompt confirmation of nominees to lead executive branch agencies, including the Environmental Protection Agency, Department of the Interior, Department of Energy, Council on Environmental Quality, and Department of Justice. Following these confirmations, relatively quick action to achieve the more realistic components of the President’s environmental agenda that do not require congressional authorization or appropriations is expected, possibly including efforts to rescind and replace Trump-era rules related to methane and other greenhouse gas emissions from both stationary and mobile sources, scientific transparency in the rulemaking process, protected species, and NEPA implementation.

While there is increased optimism for an ambitious climate agenda under the newly unified government, Democrats continue to be constrained by their narrow margins in the House and Senate. Nonetheless, various Congressional rules changes or procedures are now available and could ultimately enable the passage of more robust climate and environmental legislation. But President Biden and Congressional leaders will have to decide if prioritizing climate change warrants the use of budget reconciliation or filibuster reform, or if they will rely on a more targeted strategy of winning smaller victories wherever feasible.