

THE UNITED STATES AND CLIMATE CHANGE LAW AFTER THE ELECTION OF DONALD TRUMP

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Introduction

While early punditry and reporting indicated that results at COP 29, the meeting in Baku of 70,000 climate change policymakers, lobbyists, lookers on, marketers, journalists, and curious, coupled with the election of Donald Trump would mean changes in the international movement toward greenhouse gas emissions controls, this probably is not the case. There is both good news and bad news in my assessment.

These two events will influence the way the United States of America, still a huge emitter of greenhouse gases, legally addresses this major environmental challenge. And they are related.

COP 29 in Baku was the third conference of the parties held in a major oil producing nation. Azerbaijani president said natural gas was a “gift from God” and he should not be blamed for bringing it to market.

While the outgoing Biden administration fairly strongly committed to reaching the goals of the Paris Agreement, the new President-elect calls climate change a great hoax and urges American to “drill, drill, drill.” What can one expect from the United States in a Trump 2 world and one where “fossil fuels” as a term is deleted from final COP documents. I address this question with a focus on the US federal government, its fifty states, its countless local governments, and the private sector--all of which are heavily influential on climate change policy and law. And I comment on the advisability of continuing the COP process, no matter what role the US plays in it, as a leading source of responding to the climate change challenge.

It is true that the federal Administration of one of the world’s biggest contributors to climate changeⁱ /

is moving from one solidly dedicated to decreasing emissions to one whose leader aims to dismantle the green economy and return the US to an oil producing and using giant.

What will international observers see as changes in US climate change law and policy?

The President/The Executive Branch

Presidents often enter the White House with exaggerated notions of how their individual policy positions could be turned into federal law. Donald Trump has sounded messianic in describing what he will do. But In the United States, it is a particularly interesting challenge to actually move the giant federal mechanisms to behave in the ways that the President envisions. To be sure, some actions are relatively easy such as issuing and rescinding Executive orders. Here the new president can effectively overturn some of Biden’s actions including Executive Order 14008 of 2021, which declared “environmental and economic justice [as] key considerations in how we govern,” committed the government to this justice in several ways including through new, clean infrastructure projects. It also placed the climate crisis at the center of us foreign policy and national

security and directed the Secretary of the Interior to pause on entering new oil and natural gas leases on public lands or offshore waters.

But as for promulgated regulations, the process is formal and time-consuming, and outcomes are not certain. In the first Trump administration attempts were made to overturn about 150 environmental rules. Many succeeded but others were not completed, and others were themselves overturned when President Biden took office. ⁱⁱ

Trump II will almost certainly try to rescind important regulations on environmental protection in general and climate change in particular. In introducing his nominee to head the US Environmental Protection Agency [EPA] Mr. Trump said: “He will ensure fair and swift deregulatory decisions.” Furthermore, the second Trump Administration will:

- begin the process of exiting from the Paris Agreement; and
- rescind unspent funds on major Biden administration legislation which focuses on climate change. The President-elect said of these funds much of which are for climate-based activities: “To further defeat inflation, my plan will terminate the Green New Deal, which I call the Green New Scam.”ⁱⁱⁱ

More specifically, as Amy Turner of the Sabin Center for Climate Change Law has impressively analyzed^{iv}, targets will be

- The 2022 Inflation Reduction Act including all unspent monies under it. The Act provides hundreds of billions of dollars in grants and tax credits to local governments to finance their clean energy, electric vehicle, and green building projects.
- tax credits, here the Trump administration cannot repeal them through executive action alone. But it will aim to weaken or eliminate them.
- initiating the rulemaking process right away for changes before the 2026 Congressional elections. One of the most vulnerable may be regarding electric vehicles but also others indirectly related to climate change.

The Executive may also reduce staff or eliminate key offices within the Internal Revenue Service (IRS), and other federal agencies including with some threat to the very existence of NOAA, the National Oceanic and Atmospheric Administration.

However, as the Sabin center analysis pointed out

Federal programs like the grants, tax credits, and Greenhouse Gas Reduction Fund programs are available now, and if they are undone by the Trump administration or by Congress it will take time.

Also, some Republican members of Congress have expressed opposition to repealing the law. Their districts continue to benefit from projects linked to Biden Administration actions such as development of a solar plant in Georgia and a battery plant in Kentucky.

The States

The United States as a federalist nation [even with a strong orientation that sounds Trumpian: “much authority should remain with the states”] continues to see strong actions at the state level with increasing--although in some regions glacially slow--acceptance of regulation of global emissions.

Major climate change states will not simply disappear under Trump II although the President elect seems to be planning on vindictive actions against the so-called blue states including California, a worldwide leader in climate action law. Some states have been immensely effective in addressing climate change. For one example out of many, California's Low Carbon Fuel Standard resulted in the elimination of 320 million metric tons of carbon dioxide emissions since it began in 2011, a huge percentage of the state's annual total.^v California is not alone and other states and even the major automobile manufacturers are committed to following its leadership.

Local governments

Local governments throughout the US will continue to develop strategies to mitigate and adapt to climate change. They will continue to do so through requirements on new building and development codes, comprehensive planning, and other means.^{vi}

Other legal actions

In the last two decades the courts have become a major venue for challenging government and private actions that implicate climate change law. Climate litigation will continue--probably at even an accelerating pace. The Sabin Center now counts a thousand US state and federal cases, addressing climate change out of a global database of over 2600 cases.^{vii} And although many cases when they make their way high in the federal system will be decided overall unfavorably to realization of climate change goals,^{viii} that is not the full story. Environmental plaintiffs will surely win some cases and will slow down the dismantling of proposed Trump Administration actions to roll back the law on climate change.

The private sector

Another dynamic that Trump does not appreciate fully is that industry, sometimes stereotypically associated with de regulation, in many cases looks not for less regulation, but for stabilized rules. The time it takes to undergo industrial changes to respond to regulatory shifts is long and the processes are extremely expensive [and in some sectors will put the US at a disadvantage in competition with foreign industries]. A recent letter to Trump from major automobile companies^{ix} said, that in order for the auto industry to remain "successful and competitive," it needed "stability and predictability in auto-related emissions standards."

The private sector is now heavily committed to several elements of a green economy. One potentially very significant set of decisions in the Trump and future administrations involves the use of nuclear energy. For decades nuclear power has been a four-letter word for climate activists: the potential risks far outweigh its supposed benefits for climate as a renewable energy source. But that position has surprisingly passed and even among some environmentalists nuclear power is again being reviewed. So also significant will be how the federal government and individual states address the question of permitting nuclear facilities in the United States.

The International Stage

Although President Trump will take the ride much lower, the many decade history of US climate change and climate change related law has been a roller coaster. Under President Reagan the US said it would "continue to take a leadership role" on international environmental issues, including climate change. George H. W. Bush had to be cajoled to attend one important COP. Under the Clinton administration, Al Gore as vice president revived a later COP. George W. Bush ignored his pre-election commitments to regulate greenhouse gas emissions and declared he would not implement the Kyoto Protocol. President Obama was almost inappropriate in his intervention at one

COP, embarrassing delegates to move forward. Trump 1 pulled us out of Paris, Biden put us back in, Trump 2 will act to pull us out again.

The US federal government presence at future IPCC meetings may be limited or absent or focused on slowing progress on international actions to mitigate and adapt to climate change. However, that itself might not matter as much if one concludes that the COP process is deficient and wasteful – as I have come to believe. The meetings may add more to the problem than be a pathway to emission reductions.

The UN climate talks are "no longer fit for purpose" and need an urgent overhaul. Climate change senior leaders, including former UN Secretary General Ban-Ki Moon, and former president of Ireland Mary Robinson wrote in a letter to the UN:

"Its current structure simply cannot deliver the change at exponential speed and scale, which is essential to ensure a safe climate landing for humanity."

At the very least, countries should not host the talks if they do not support the phase out of fossil energy.^x

It is probably unwise to act to dismantle the COP process, but it might be reorchestrated to provide:

- a streamlined forum for nations presenting their leading actions to address climate change;
- as Brazil has already done looking to COP 30, a place to commit to actions such as publishing its Nationally determined contributions (NDCs) commitments earlier than the Paris protocol requires;
- a venue for parties to bring funds to assist developing nations [not to say that they will].^{xi}

Meanwhile nations, subnational governments, and the private sector can continue their climate change mitigation and adaptation actions without looking to blessings in Dubai or Baku with its tens of thousands of countervailing positions or to Pennsylvania Avenue with its short-timer new leaders.

ⁱThe U.S. is the second-largest emitter of CO₂, with 5,057 million metric tons of total carbon dioxide emissions in 2022. 1 Global Carbon Project. "[Carbon Atlas](#)." /articles/investing/092915/5-countries-produce-most-carbon-dioxide-co2.asp#:~:text=Which%20Countries%20Have%20Produced%20the%20Most%20Carbon%20Dioxide%20Emissions%3F&text=As%20of%202022%2C%20the%20five,India%2C%20Russia%2C%20and%20Japan.

ⁱⁱ <https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks-list.html>

And see also explaining the various processes involved in changing rules, [Zoe Stern](#), *Trump's Deregulatory Failures the Regulatory Review*. Jan 31, 2024, <https://www.theregview.org/2024/01/31/stern-trumps-deregulatory-failures/>

ⁱⁱⁱ [Trump vows to pull back climate law's unspent dollars - POLITICO](https://www.politico.com/news/2024/09/05/trump-inflation-reduction-act-00177493) <https://www.politico.com/news/2024/09/05/trump-inflation-reduction-act-00177493>

^{iv} <https://blogs.law.columbia.edu/climatechange/2024/11/13/cities-climate-trump-an-early-research-agenda/> of the Sabin Center

^v Carbon Curbs in California Raise Concerns over Gas Prices, The New York Times November 15, 2024.

^{vi} See Selmi, Kushner, Ziegler, DiMento, and Echeverria, LAND USE REGULATION, CASES AND MATERIALS. (Aspen)

^{vii} [U.S. Climate Change Litigation - Climate Change Litigation](#)

^{viii} See *How a Trump Win Would Upend Major Climate Court Fights* "A second Trump administration could stop defending the E.P.A. against lawsuits attacking its climate policies. Other effects might be more far-reaching" <https://www.nytimes.com/2024/11/02/climate/trump-climate-courts-lawsuits.html>

^{ix} [https://urldefense.com/v3/__https://www.caranddriver.com/news/a63010777/automakers-petition-trump-ev-policy/__;!!CzAuKJ42GuquVTTmVmPViYEvSg!IzM879HL-7BBSwhlaDehLIV9zW-9lZaliEWtu70ksGwLWEBLAEN7mf7HyN72uewfdTBhXy8EcEkxeGcJZZ5yxg\\$](https://urldefense.com/v3/__https://www.caranddriver.com/news/a63010777/automakers-petition-trump-ev-policy/__;!!CzAuKJ42GuquVTTmVmPViYEvSg!IzM879HL-7BBSwhlaDehLIV9zW-9lZaliEWtu70ksGwLWEBLAEN7mf7HyN72uewfdTBhXy8EcEkxeGcJZZ5yxg$)

^xBBC reported that “a senior Azerbaijani official appeared to have used his role at COP to arrange a meeting to discuss potential fossil fuel deals”.

^{xi} In Baku another financial commitment was made--much less than analysts and most activists said is needed. Such commitments have been variably realized. [See the NRDC tracker at <https://www.nrdc.org/bio/joe-thwaites/cop-28-climate-fund-pledge-tracker>]. It is one thing early morning on the last day of an international conference to say we will provide money. It is quite another to get the institutions back home to act.