

Recommendations to the Obama Administration on its Legislative Strategy for Energy and Climate Policy

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1) Above all, the Executive Branch needs a serious legislative strategy.

The Administration needs a robust consultative relationship with Congress. It cannot take Congressional support for granted. At the same time, it should not rollover and accept whatever Congress or interest groups want.

In 1993, the Clinton Administration came out with an effort to pass grazing rights reform. Some Western legislators raised a hue and a cry, mostly to appease interest groups at home, but privately, they probably could have lived with the measure. However, the Clinton Administration caved right away. A more experienced team would have been able to recognize what the legislators could live with. When the Administration tried to pass a BTU tax later in 1993, there was already a sense the Administration could be pushed around. Industry interests then lobbied hard and some were able to get exemptions, which then led to a pile-on by every other group to get exemptions, essentially dooming the measure. Sometimes the Administration will have to stick to its guns, as long as the process is fair to all. The Bush Administration had terrible relations with Congress and tried to shove legislation through, which ultimately engendered sour relations even with his own party. A president that strokes congress, visits them, possibly even holds multi-day issue-retreats, and flatters Congress will have his gestures of goodwill, respect, and genuine consultation returned in kind.

2) Appoint people with considerable legislative experience to liaise with Congress.

The Administration needs to invest considerable resources in understanding the needs of various legislators and constituencies. Having Congressional liaisons who are highly experienced will help. With both the President and the Vice President coming from the Senate, the incoming Administration should have a pretty firm grasp of this issue. Furthermore, the appointments of Rahm Emanuel and Phil Schiliro will likely facilitate such a careful approach.

3) Begin climate policy at home.

The U.S. will only be able to engage internationally if it has already passed some major piece of climate legislation here at home. The Clinton Administration negotiated an international climate agreement and then sought to create the domestic context for passage later on. That will not work. Climate policy begins at home, and therefore, the route to a national climate policy must go through the Congress.

4) Link cap-and-trade with green jobs and industrial renewal.

The pending recession has in a sense made it harder to pass a cap-and-trade bill as people are worried about the extra costs of a climate bill. At the same time, people find the idea of green jobs and green industrial renewal very appealing. So, to the extent that these issues can be linked (either in the same bill or sequentially), a green jobs/infrastructure program will make it possible to pass a cap-and-trade bill.

5) Be bipartisan and bring in Republicans.

The President needs to do what successful presidents have done for major pieces of legislation in the past – bring prominent members of the opposition party on board. President Truman did this to pass the Marshall Plan, President Johnson did this with civil rights, and President Reagan did this with TEFRA (tax policy) and the START treaty.

The Democrats will likely not have the votes pass major climate/energy legislation on their own. Republican support will be necessary. Even if the Democrats attain a sixty-vote majority in the Senate after the Minnesota recount and the Georgia elections, the Administration will not be able to count on all sixty Democratic Senators if it intends to pursue a major reorientation in energy policy. Democratic Senators from states with large carbon-based energy interests like Louisiana, Indiana, West Virginia, Montana, Ohio, and Arkansas might vote with Republicans. A number of Republicans could be needed for cloture and passage of a bill in the Senate. Similarly, some Republican support may be necessary in the House to get bills out of committee and possibly to pass comprehensive energy reform and climate policy. Democrats in Congress will be tempted to go after remaining vulnerable, moderate Republicans to pick them off in the mid-terms. The President may need to invite those Republicans to signing ceremonies, be willing to be photographed with them, and to praise them, as they may be necessary for passage and to be interlocutors with other Republicans.

6) Be efficient, inclusive, and transparent in your processes of consultation with the private sector.

The Cheney task force of 2001 was too exclusive and secret and thus lacked legitimacy. In the same vein, the Hillary Clinton health care initiative of 1994 also was seen as insular and secretive. The willingness by the Obama Administration to make many of its consultative processes public through use of change.gov and C-Span may make its ultimate policies more robust. That said, given the multiplicity of interests, it will be difficult to consult with every last industrial interest and NGO. Trade associations offer one way to efficiently and inclusively gauge the sentiments of different sectors. However, on climate change, there is a danger. Trade associations may only be able to move as fast as their slowest members, which takes what policies they say they are willing to support to the lowest common denominator. On climate change, other groups like USCAP, BELC, or the Bipartisan Policy Center may be more effective interlocutors to aggregate private sector opinion.

The President-elect should insist that on climate and energy policy that every interest group/organization come with a serious proposal and that everyone will have to do something. Groups that do not come with serious proposals could be warned that they might not get a repeat invitation to participate in consultative sessions.

7) Choose whether or not you want Congress to lead with their proposal, whether the Executive branch will lead with a proposal, or both will move forward simultaneously.

On climate change, recently ousted committee chair Rep. John Dingell of the House Energy and Commerce committee spent two years developing the contours of a robust cap and trade bill. Incoming chairman Rep. Waxman should not reinvent the wheel and start over. At the same time, the incoming Administration may feel like broader proposals for green energy and technology investment merit a proposal of their own. In any event, the president should choose an approach and make it clear to Congress what the expectations are. Either a joint approach or Congress taking the lead is likely to be more inclusive and robust than an Executive branch-led effort at least for climate legislation, given the progress made already with Dingell-Boucher (and Lieberman-Warner in the Senate).

8) Don't be afraid to "go public" and use the bully pulpit to cajole and shame Congress.

The President-elect has already indicated he will use his list and new media to appeal directly to the American people on issues of concern. Mobilizing the people to put pressure on their lawmakers to support the president's priorities could make the difference between passage and failure.

9) Take Congress with your team to international meetings.

The Bush Administration like its predecessors has taken a number of Congressional staff and occasionally members of Congress to be observers as part of international climate negotiations. While for the annual conference of parties meeting, the president-elect should insist that this group be relatively small 10-15 people, having Congressional (especially Senate) participation in those negotiations will ensure that Congress has a better understanding of the issues at play as well as a stake in the outcomes. These observers should understand their role is to observe and not interfere in the negotiations but otherwise have full access to the work of the delegation, to the extent practicable.

10) Ask Congress to limit the number of committees with jurisdiction.

These issues potentially bleed over to lots of different committees. It may be useful for the President-elect to ask Chairman Reid and Majority Leader Pelosi to limit the number of committees that have jurisdiction over these policies. On the Senate side, this could possibly be limited to Energy, Finance, and Environment and Public Works. Senator Barbara Boxer led the effort with Lieberman-Warner in the last Congress, which did not work out that well. Senator Boxer needs to have a piece of the bill, but it is unclear if she has the bipartisan appeal to get the bill passed (the same was said of Rep. Waxman in the House). On the House side, Energy and Commerce is the principal committee, though Ways and Means, Science and Technology, Natural Resources, Transportation and Infrastructure, Agriculture, and Foreign Affairs will all want a piece. Chairman Waxman will likely need some guidance to be duly inclusive with respect to Republicans and private sector concerns of the segments of the business community.

11) Use the threat of EPA regulation of carbon under the Clean Air Act to hasten Congressional action.

Congress will likely speed up its pace of consideration of legislation if there is a sword of Damocles hanging over it. If the President-elect says, you must act by 2010 or I will instruct the EPA to begin to regulate carbon, this could facilitate swifter legislative action on climate change.

12) Identify what needs to be done by when.

International audiences are hoping for major breakthrough in the December 2009 negotiations in Copenhagen where a successor agreement to the Kyoto Protocol is supposed to be concluded. Domestic observers are skeptical that the U.S. will have a domestic cap-and-trade bill passed by then. If the Administration cannot get a cap-and-trade bill through Congress in 2009, then it will have to figure out the right sequence of activities and what international commitments can be made in Copenhagen that do not make it harder to pass a cap-and-trade bill at home.