



## CAN CONGRESS GOVERN THE CLIMATE?

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A branch of the federal government is on the verge of taking a major decision on the future of American climate change policy. The U.S. Supreme Court has heard oral arguments in a case, *Massachusetts v. U.S. Environmental Protection Agency* that will determine whether the federal government must define carbon dioxide as a pollutant. The Bush Administration has offered a vigorous defense that the executive branch is under no such obligation to do so. In contrast, a sizable intergovernmental cast takes the opposite stance, led by the Massachusetts Attorney General and backed by counterparts from ten other states. Even localities have entered the fray, as large-city mayors have endorsed *amicus* briefs designed to persuade the court to mandate federal action.

Consequently, virtually every branch and level of American government is engaged in this case. Conspicuous by its absence is the legislative branch of the federal government. Ironically, the case before the Supreme Court is based in large part on an attempt to divine Congressional intent some seventeen years ago. At that point, Congress enacted its most recent amendments to the Clean Air Act and may—or may not—have included sufficient elasticity to allow carbon dioxide to be added to the lexicon of air pollutants as scientific understanding of its role in climate change has matured. Since that 1990 enactment, Congress has offered remarkably few formal utterances on climate change, essentially delegating the lead role in American climate policy development to the Bush Administration and to state-level officials from Sacramento to Augusta.

In many respects, this case mirrors a larger pattern of Congressional inaction on issues of

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profound intergenerational consequence. Congress has struggled mightily in recent decades to reach any semblance of consensus on a host of environmental and energy concerns, including those with relevance to climate change. This paper will attempt to examine some of the stumbling blocks to prior Congressional engagement as well as highlight particular policy and governance challenges for any future Congressional attempt to reduce greenhouse gas emissions. In turn, it will conclude by highlighting some starting points whereby the 110th Congress might begin to reverse this trend and begin constructive deliberation, drawing from previous models and unique opportunities presented by the current context.

### **Climate Disengagement Amid Decades of Environmental Disengagement**

Climate change provides members of Congress with numerous incentives to pass the legislative buck, whether to other levels and branches of government or to future generations. Except for very young legislators who anticipate multi-generational Congressional careers, the most significant anticipated negative impacts of climate change are likely to be realized well after their tenure—and life expectancy. In turn, any Congressional effort to curb American emissions will invariably be piecemeal in global terms, as the United States is responsible for less than one-quarter of global emissions and may well be eclipsed in world emission leadership by China in coming years. As a result, credit claiming opportunities are modest at best, as even significant American reductions could not guarantee any specific level of climate stabilization. Furthermore, most conceivable policy tools designed to reduce emissions would likely confront an anguished constituency, whether electric utilities confronting renewable energy mandates or a carbon cap-and-trade regime, vehicle manufacturers contending with mandated carbon emission reductions, or citizens who experience higher energy costs through a carbon tax scheme. Virtually any climate policy option begins with concentrated political opposition and may well lack influential policy advocates, making blame avoidance through inaction attractive (Layzer 2007; Weaver 1986).

In many respects, Congressional paralysis on climate change reflects a generation of inaction on a host of pressing environmental issues. This helps explain the dramatic decline in federal legislative output that either addresses new environmental challenges or revises earlier statutes where modernization is overdue. According to an index of “major federal laws on the environment” constructed by Norman Vig and Michael Kraft, thirty-four major laws were enacted or revised during the 91<sup>st</sup> through the 102<sup>nd</sup> Congresses (Vig and Kraft 2006). Subsequent Congressional output has declined markedly, with only six major laws enacted or revised between the 103<sup>rd</sup> and 109<sup>th</sup> Congresses. In fact, Congress has been stunningly quiescent on a wide range of environmental topics since November 15, 1990, when George H.W. Bush signed into law the very Clean Air Act Amendments that now stand at the center of the Supreme Court case.

This prolonged Congressional silence coincides with some significant innovations in the design of environmental policy. Collectively, these developments suggest that it is indeed possible to move beyond the limitations of earlier command-and-control policies with new

approaches that offer substantial environmental quality improvement alongside more flexible methods of implementation. These innovations increasingly utilize market-based principles such as credit trading, surmount traditional medium-based barriers to overall environmental protection, and place greater emphasis on achieving measurable environmental outcomes (Fiorino 2006). In many instances, they are providing models for government actions on climate change at the state and local levels in the United States and in many other nations. Nonetheless, the absence of serious Congressional involvement in the development of this body of policy innovation has left a patchwork of executive branch experiments and sub-national initiatives, which has limited their potential impact and often placed them on very uncertain fiscal and legal grounds.

Instead, the most recent Congressional environmental policy output of the past generation, and the one with the greatest likely consequences for greenhouse gas emissions of any existing federal statute runs directly contrary to these new approaches and their underlying principles. The 2005 Energy Policy Act (P.L. 109-58) does demonstrate that it is possible for Congress, after more than four years of deliberation, to achieve a broad consensus that crosses partisan lines. But this law represents a purely distributional approach to energy policy. It tips the scales with 551 pages that are packed with a dizzying array of subsidies, insurance guarantees, and regulatory safeguards for nearly every conceivable existing and potential energy source. As Thomas Mann and Norman Ornstein have noted, this legislation “manages to distribute generous public subsidies to producers—some large and transparent, others small and privately targeted to beneficiaries—without addressing in any serious way the need to reduce consumption of fossil fuels or expand alternative sources of energy” (Mann and Ornstein 2006, 217-218). It remains virtually impossible to discern the economic, energy, environmental, or climatic impact of this legislation. However, it has considerable potential to increase greenhouse gas emissions and complicate the challenge of expanding the use of market-sensitive tools in future rounds of policy due to the range of subsidies and protections that are now being allocated.

### **Challenges for the 110<sup>th</sup> Congress and Its Successors**

The legacy of the 2005 Energy Policy Act following two decades of inertia makes the 110<sup>th</sup> Congress and any of its successors uncertain players in any future exploration of policy formation to address climate change. The recent uptick in the saliency of climate change and a feeding frenzy of new legislative proposals introduced in the opening weeks of the new Congress suggest the possibility of intensified legislative attention in the coming months and years. But amid the understandable desire shared by some members to assemble some form of new legislation and squeeze it through the legislative process, Congressional leaders might first step back and reflect upon a larger set of challenges to preparing the institution for a constructive long-term role in development and implementation of viable policies.

### **Deliberative Capacity**

Although Congress has proven generally incapable of reaching any policy agreement on climate change, it has certainly demonstrated an ability to talk about the subject. Between September 1975 and December 2006, at least 175 Congressional hearings were conducted that gave substantial attention to climate change (McCarthy 2007). Seventeen standing House or Senate Committees sponsored at least one of these hearings, with particularly heavy concentrations in the years 1989 (20), 1998 (15), 1993 (12), and 1992 (11). These hearings have addressed a wide range of topics, most heavily focused upon science and research interpretation but also examining questions relevant to policy formation. The predominant policy focus has been repeated examination of the Kyoto Protocol, even though the Senate has never voted on American ratification.

Discussion is not tantamount to deliberation, however, and these hearings suggest a pattern consistent with larger concerns about Congressional capacity for serious deliberation that can hinder coherent policy development (Mucciaroni and Quirk 2006). Many previous Congressional hearings on climate change have clearly entailed a form of political grandstanding, featuring witnesses and formats more suitable to high-decibel talk radio rather than serious deliberation. Topics have often gravitated toward the immediate and the sensational rather than serious long-term questions on climate science and policy. For example, a review of this voluminous body of hearings suggests that an observer is more likely to learn about the latest fore-checking over the interpretation of “hockey-stick” temperature studies or the climate science views of novelist Michael Crichton than any systemic policy lessons from states or other governments that are implementing policies designed to reduce greenhouse gases.

Congressional capacity for serious deliberation over climate science and policy options may have been further impoverished by the 1995 termination of the Congressional Office of Technology Assessment (Bimber 1996). OTA was created in 1972 to provide analysis for Congress on a series of topics related to technology, including those directly linked to energy, environmental protection, and transportation. Its 1991 report, *Changing By Degrees: Steps to Reduce Greenhouse Gases* was an early and unusually comprehensive analysis of technologies and policy options for greenhouse gas reduction. This report was influential in climate policy development in a number of states and local governments (OTA 1991). By mid-decade, the Office was uniquely positioned to be a major base of analytical support to Congress, given its reputation for independence and ability to draw upon a skilled set of staff and contractors from unusually diverse disciplinary and institutional backgrounds. OTA, however, was eliminated amid budget and domestic policy debates during 1995 and has never been replicated. As a result, Congress has become far more dependent upon briefings organized by non-profit organizations and executive branch analytical expertise than it would likely have been had OTA endured.

A further impediment to Congressional deliberations on climate change remains the myriad House and Senate Committees that can lay claim to at least some semblance of jurisdiction over this issue. This is reflected in the numerous committee sponsors of legislative hearings, suggesting rival entities competing for input. Such a sprawling set of committee overseers is not new to the current decade. In fact, it was even a serious concern as early as

the first Congressional hearings on climate change that occurred during the Gerald Ford presidency. “Allocating responsibilities in the vast and pressing topics of energy, natural resources, and environmental policy was the most intricate intellectual and political challenge,” wrote Roger Davidson and Walter Oleszek. “The subjects were broad yet tightly intertwined; potential claimants for the jurisdiction were numerous” (Davidson and Oleszek 1977, 173). This recognition led to serious review of ways to better integrate various committee activities, including proposals for a “super committee” on environment and energy. But all such proposals were defeated and periodic tinkering with committees and subcommittees has failed to create a context that supports serious deliberation on most environmental issues, particularly those as complex as climate change policy. As a result, Congress has yet to establish clear jurisdictional lines for climate policy deliberations, much less address its analytical losses more than a decade after the demise of OTA.

These issues are already evident in the very early stages of the 110<sup>th</sup> Congress, as committees in both chambers have begun to revisit various policy proposals intended to achieve some reduction of greenhouse gases (Parker 2007). House Speaker Nancy Pelosi’s January 2007 decision to establish a select committee on climate change constituted a bold gambit to create a more unified venue for deliberation. But the response from aggrieved House Committee chairs has been immediate and chilling. House Energy and Commerce Committee Chair John Dingell responded by declaring that “These kinds of committees are as useful as feathers on a fish” and introducing a wide-ranging agenda that would give his committee a lead role in any climate policy development. At present, the newly-formed Select Committee on Energy Independence and Global Warming appears headed toward a largely symbolic role. Early Senate actions have not been as dramatic, although there is already evidence of committee jurisdictional struggle over climate change between the Environment and Public Works Committee and the Energy and Natural Resources Committees (Obey 2007).

While Congress begins to grapple with the issue of committee turf, multiple versions of at least three prominent policy options have emerged: a renewable portfolio standard (RPS) that mandates a steady increase in the supply of electricity derived from renewable sources; a cap-and-trade program that imposes some level of carbon emission reduction from designated industries but allows substantial flexibility in compliance through trading of emission credits and offsets; and mandated increases in vehicular fuel efficiency through Corporate Average Fuel Efficiency standards. Each approach features attributes and drawbacks and has respective champions in the Senate and House. But it is not clear, based on review of prior hearings and Congressional debates that legislators have looked closely at early experimentation with these policies in various settings, such as states and other nations, much less worked systematically through the design features necessary to maximize the likelihood of effective operation in the event of enactment.

In the case of the RPS option, political support may be high compared to other possibilities. One illustration of this support was a June 2005 Senate vote of 52-to-48 in favor of a renewable mandate that would require that at least ten per cent of American electricity must come from renewable sources by 2020. However, the 2005 proposal died in conference

and its resurrection is clearly complicated by the tapestry of subsidies and protections for a wide range of energy sources provided by the 2005 Energy Policy Act. Any future consideration of a national RPS will need to confront 1) the question of how this policy integrates with the 23 (and growing) state policies that are already in operation, 2) how it literally defines renewable energy given the range of competing state interpretations of this term, 3) the issue of credit for early development of renewable energy sources by various states and utilities, 4) whether to deem energy efficiency as tantamount to renewable energy, and 5) how to sustain steady growth of renewables given the repeated fluctuations in the federal Production Tax Credit. In turn, any national RPS will also have to weigh the fit between it and other possible climate policies, such as cap-and-trade mechanisms that could entail double-counting for any expansion of renewable energy (Rabe and Mundo 2007).

Moreover, members of Congress will also have to confront the fact that a renewable energy mandate is likely a far less efficient mechanism for achieving greenhouse gas reduction than market-based methods such as a cap-and-trade program or a carbon tax. Nonetheless, it may be the most politically popular option currently in play. At the same time, more market-sensitive policies require very careful policy development and are not as easy to design or implement as proponents sometimes suggest. Indeed, alongside the celebrated experience of the American sulfur dioxide cap-and-trade program, other sub-national and international trading initiatives have struggled, with many lessons for policy design only available through careful analysis and a deliberative method for vetting policy options. None of these issues are insurmountable but it is not at all clear that Congress has developed either the analytical capacity to sort out these issues effectively or the ability to navigate the particular demands from various committees and subcommittees that can block any environmental or energy bill. A Congress weak on analytic heft and long on providing competing venues for grandstanding may well continue to fumble along on climate change, even in the event that the political saliency of the issue and the receptivity of legislators to “do something” are on the ascent.

## **Executive Relations**

Congress essentially evaded the question of whether or not carbon dioxide could be declared an air pollutant when it wrote the Clean Air Act Amendments. Seventeen years later, Congress has yet to clarify that issue and the executive branch remains locked in litigation with a cluster of states and cities before the U.S. Supreme Court in defending its decision that it lacks authority to make such a determination. This is not the only area in which Congress has proven unwilling or unable to play a constructive role in relation to the executive branch and lead federal agencies responsible for implementing federal environmental laws. As the Reform Institute has noted, “Congress has eschewed nearly all serious oversight of agencies and programs” (Reform Institute 2006, 3). The prevailing approach of Congressional badgering of federal agencies during the 1990s has yielded to Congressional neglect of oversight in subsequent years, with neither strategy approximating a purposive form of executive branch engagement.

The question of constructive Congressional relations with the Executive Branch and its agencies on environmental governance is long-standing but has particularly significant relevance for any future climate change policy. More than thirty-five years after Earth Day, Congress has yet to enact legislation authorizing the creation of a lead environmental protection department. Instead, Richard Nixon's 1969 reorganization of numerous environmental-oriented units scattered across the federal bureaucratic landscape into the Environmental Protection Agency continues to stand. Congress has periodically revisited this issue in recent decades and yet has consistently failed to achieve consensus on a more effective design. Consequently, the United States remains the only Western democracy in which the lead environmental agency lacks Cabinet rank. More importantly, the Environmental Protection Agency maintains the original fragmented structure across medium, functional, and regional lines that analysts have long found suspect when forced to confront the "incoherent regulatory agenda" set for it in piecemeal fashion by various Congresses (Rosenbaum 2006). As the National Academy of Public Administration concluded through a series of studies of EPA and environmental governance over the past decade, the overall Congressional role in environmental policy has served to "drive the agency in a dozen directions, discouraging rational priority-setting or a coherent approach to environmental management" (NAPA 1995, 8; NAPA 2000).

Grafting any climate change policy onto this fragmented management system raises fundamental questions concerning federal agency capacity to work across internal divides as well as with the host of other federal departments and entities that must play some role on such a complex issue. In many respects, climate change governance will be every bit as complex as homeland security, where it is increasingly evident that new legislation and even a massive new departmental structure do not readily translate into effective policy (Kettl 2006). It is likely that any serious federal effort to reduce greenhouse gas emissions will require unique blends of scientific and managerial skill as well as new alliances across traditional agency and departmental lines. Climate change entails far more than a conventional air pollution issue, regardless of any conceivable outcome in the pending Supreme Court case; it cannot simply be deposited in the hands of any EPA Assistant Administrator for Air and Radiation or the Secretary of Energy. Other departments such as Agriculture, Interior, Transportation, Homeland Security, and Health and Human Services, for starters, will need to be active and constructive players and partners, working in concert with EPA and Energy rather than at cross-purposes. Any active return to an international role in climate policy development will necessitate coordination between the Department of State and those units responsible for domestic compliance with international agreements.

There is little if any indication that Congress has given serious thought to what steps it must take to prepare the federal government to implement any future climate change policy. Instead, it is most likely that Congress would consider piecemeal legislation that would be added to the duties of some existing unit within EPA, the Department of Energy, or perhaps another department. New legislative proposals to develop a national cap-and-trade system call for the creation of a non-profit "climate change credit corporation" to manage allowance trading and a "climate technology financing board" embedded in the Department of Energy. They also establish an array of mandates for formal collaboration between

multiple departments and agencies with little track record of effective integration. However appealing in theory, these proposals offer little detail as to how all of this would be put into operation or sustained or built on best practices from other programs or jurisdictions. Other likely implementation challenges abound, including such questions as the creation of a transparent system for measuring greenhouse gas emissions over time, careful monitoring and crediting for carbon impacts from both plant and subterranean sequestration strategies, and effective allocation of carbon permits for a system that will be infinitely more complex than any emissions trading scheme attempted to date in the United States.

All of this would be an enormous challenge for a highly-functional management unit with sufficient resources and high morale. It will only be compounded by the fragmented history of environmental governance at the federal level. In turn, there are growing signs of tension within the federal bureaucracy, reflected in a December 2006 petition from labor leaders who represent more than one-half of the total EPA staff imploring Congress to begin to take seriously its role of agency oversight. This request reflects fundamental differences on climate change that appears to divide much of the agency staff from political appointees. It includes concerns that agency experts may not be allowed to speak publicly or before Congress about climate change “without fear of reprisal” (Spotts 2006). This petition only underscores widespread concern that Congress has largely dodged its responsibilities for executive agency oversight in environmental protection, even before the possible entrance into any bold new world of climate protection.

In turn, the issue of resource availability for sustaining basic implementation has become an equally challenging question, following a decade in which EPA staffing and budgets have been stagnant and external demands on the agency have intensified (Arrandale 2006). Indeed, voluntary environmental programs have continued to proliferate with no attendant staff expansion at the same time that the 2001 Data Quality Act exposes the agency to a barrage of information requests and challenges over its use and interpretation of environmental data. Amid this inertia in Washington, other Western governments, from Sacramento to Albany to London, have seriously begun to engage the issue of the resources, mix of disciplines, and administrative structures that they will need to implement newly-enacted climate policies. This has included development of specialized areas of expertise, establishing mechanisms for inter-institutional coordination, and expanding internal analytical capacity. Congress has yet to demonstrate an ability to think carefully about these kinds of demands, much less begin to advance strategies to address the longer-term challenges of climate governance within the existing tapestry of federal institutions.

## **Intergovernmental Relations**

American legislatures are not inherently incapable of enacting climate change legislation or providing oversight and resources to guide implementation. However, such legislatures operate in state capitals rather than Washington, D.C. More than half of the American state legislatures have enacted one or more policies designed to reduce greenhouse gas emissions, representing clusters of states in every region of the nation except the

Southeast. Multiple states are now implementing policies that are essentially replicas of ideas that have been floating about Congress for many years and are confronting the challenges of operating renewable portfolio standards, cap-and-trade systems, and a wide range of related initiatives (Rabe 2004, 2006). In some instances, states are thinking about larger climate policy objectives through policies that reach across traditional programmatic boundaries or even jurisdictional divides. California's 2006 Global Warming Solutions Act constitutes an effort to work across multiple sectors in pursuing statewide emissions reduction goals while the New York-led Regional Greenhouse Gas Initiative is establishing a formal arrangement to establish a carbon cap-and-trade zone for Northeastern states and potentially others from outside the region.

The growing body of state policy experience presents numerous models for Congress, through both examples of possible policy design and methods for assembling coalitions of interests to secure legislative enactment. The pattern of state engagement cuts across partisan divides and is not exclusively concentrated among those states noted for early action on environmental protection. But it is not yet evident that Congress has paid much attention to this evolving body of state practice, much less attempted to learn any lessons from it. The multitude of Congressional hearings on climate change over the past decade has produced only two hearings featuring a significant focus on state experience and lessons. In 1989, a field hearing of the Senate Environment and Public Works Committee featured some discussion of how evolving Connecticut energy efficiency policy could reduce greenhouse gas emissions. Fifteen years later, a one-day gathering of the Senate Commerce, Science and Transportation Committee was largely focused upon climate change impacts on particular states and regions, with one speaker assigned to address state policy developments. In contrast, annual meetings of state-based organizations such as the National Conference of State Legislatures and the Environmental Council of the States have generated more extensive and meaningful deliberations over a number of concrete climate policy issues than has ever been undertaken in Congress.

This reflects a larger pattern whereby federal-state relations have been deeply strained in recent years, perhaps most notably in such policy arenas as education, homeland security, energy, and elections management. Environmental protection has long suffered from significant federal-and-state tensions, attributable in part to the steep ratio of federal mandates to states as opposed to intergovernmental revenue transfers (Gormley 2006). These tensions have only intensified in recent years and Congress has clearly not found a way to actively engage states in constructive discussion on future directions in environmental policy, much less options for collaborative federalism in the future development of climate policy. Since the demise of the U.S. Advisory Commission on Intergovernmental Relations in 1995, there has not been a replacement mechanism that encourages intergovernmental learning or formal deliberations between legislators at the federal and state levels. As a result, according to Paul Posner, we now lack "institutional opportunities for officials to meet collectively to discuss agreements that cross governmental and sectoral boundaries" (Posner 2006). No Congressional committees or members have emerged as effective champions of serious intergovernmental deliberations, with the missed opportunities in climate policy reflective of these larger trends.

Consequently, a vast body of state officials may literally have considerably greater expertise with climate science and policy design than their federal counterparts and yet have remained untapped resources by Congress. As Senator Pete Domenici (R-NM) noted in a 2006 press conference, “Washington law-makers don’t yet sufficiently realize that there is a growing cadre of experts in many states across the country who do know how to develop climate legislation” (Northrup and Sassoon 2006, 536).

### Stumbling Forward

Climate change poses daunting challenges for any governing body, but these are only compounded in the American case when greenhouse gas emissions are so high and the capacity of federal institutions such as Congress to begin to address this issue is so suspect. More than thirty years after the first Congressional hearing on climate change, it remains difficult to discern evidence of constructive legislative engagement. This reflects a series of fundamental problems facing Congress in the modern era but ones that may only be exacerbated by the scope and nature of the challenge of climate change.

It should not be assumed, however, that serious Congressional engagement on such an issue is either a metaphysical impossibility or could only become conceivable after a series of dramatic climatic catastrophes. New environmental policy does tend to emerge after periods of punctuated equilibrium, whereby triggering events prompt a rapid policy formation process (Repetto 2006). But this is not always the case. There are in fact important precedents over the past quarter-century in which Congress has acted to address long-term public challenges in the face of stiff interest opposition.

One prominent example entails the very amendments to the 1990 Clean Air Act that nearly two decades later have gravitated onto the agenda of the Supreme Court. Despite the current controversy over expanding the interpretation of this legislation to include carbon dioxide, it remains widely heralded for its launch of the sulfur dioxide emissions trading system. The legislation also updated a wide range of other regulatory requirements for conventional air pollutants with its sweeping Title V provisions. Perhaps most relevant to the current case, the Clean Air Act was enacted after prolonged legislative gridlock and in the face of formidable opposition from such organized interests as electric utilities and large manufacturers. Acid rain was indeed a primary driving force but polling suggested relatively low saliency to this issue and low standing on a very crowded national agenda by 1990. In turn, even likely allies in support were divided over whether or not to support the legislation. This included major differences between leading environmental advocacy groups over the appropriateness of using market-based policy tools instead of traditional command-and-control mechanisms. Even political champions of the legislation received stunningly little political credit for what remains a rare functional example of “Washington at Work” (Cohen 1995).

In the case of climate change, there are clearly increasing pressures on Congress to take a more active and functional role. A large body of recent polling suggests that the American citizenry is increasingly concerned about climate change and supports at least some form of

federal policy response. Coalitional politics appears increasingly complex, with traditional environmental advocacy groups now joined by diverse corporate and religious leaders in calling for active policy engagement. In turn, the growing patchwork of state policies is contributing to the movement in some corporate suites to seek some federal involvement that would provide clearer market signals on carbon pricing and more regulatory consistency across the nation. All of these factors appear to be converging, thereby explaining the new focus on climate change in the early months of the 110<sup>th</sup> Congress.

Perhaps the most important official step taken by Congress to date was a 2005 Sense of the Senate resolution that was largely overlooked amid the final assembly of the 2005 Energy Policy Act. This provision was included in Section 1612 of the Senate version of the bill but disappeared in conference, thereby surfacing later in the form of a resolution. Prior to this step, the prevailing Senate statement on climate change was the widely-quoted Resolution 98 of July 1997. Better known as Byrd-Hagel in recognition of co-sponsors Robert Byrd (D-WV) and Chuck Hagel (R-NB), this resolution passed with a 95-0 vote and was widely seen as a repudiation of the Clinton Administration approach to the Kyoto Protocol given its failure to include developing nations. Byrd-Hagel has since been cited repeatedly as a barometer of sweeping Senate disdain for any future involvement in climate policy. In contrast, the 2005 resolution begins by acknowledging the impact of accumulating greenhouse gases on climate change. It then stipulates that: "Congress should enact a comprehensive and effective national program of mandatory market-based limits and incentives on emissions of greenhouse gases that slow, stop, and reverse the growth of such emissions at a rate and in a manner that --- (1) will not significantly harm the United States economy; and (2) will encourage comparable action by other nations that are major trading partners and key contributors to global emissions."

The 2005 resolution not only passed by a 54-to-43 margin but did so with an equal number of Democratic and Republican sponsors. In fact, the majority coalition was very similar to the one that supported inclusion of a national renewable portfolio standard within the 2005 Energy Policy Act. In both instances, the majority received votes from Senators not normally associated with strong environmental positions or possessing a track record in favor of action on greenhouse gas reduction. Neither a Senate resolution nor a national RPS would constitute the kind of long-term policy development that will likely be necessary to confront climate change. But they do provide some indication that Congress may finally be moving toward more serious engagement on this issue, more than three decades after initial debate began. Indeed, a majority of members of Congress now reside in states where legislators from both parties have long since begun to develop climate policies tailored to their particular economies and polities. Perhaps the time is nearing when federal legislators begin to catch up with their statehouse colleagues.

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