

**FORECAST FOR COP-21:
*SENATE PREDICTS OBAMA
CLIMATE PROMISES
TO COME UP SHORT AGAIN***

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EXECUTIVE SUMMARY

This White Paper, issued by U.S. Senate Committee on Environment and Public Works Majority Staff, documents the policy, technical, and legal shortcomings with the Obama Administration's promises leading up to the 21st United Nations Framework Convention on Climate Change Conference of the Parties (COP-21). It provides the first comprehensive account of the Senate's efforts during the 114th Congress to set the record straight on the Obama Administration's misguided climate agenda in the context of historical international agreements and negotiations leading up to COP-21, including: 1) the EPW Committee's oversight related to the Obama Administration's climate actions; 2) the Senate's vote to disapprove the Environmental Protection Agency (EPA) final regulations for coal-fired power plants, which are the cornerstone of Obama's climate agenda and international pledge; and 3) Senate resolutions that reiterate the Senate's role in providing advice and consent for the U.S. to join international climate agreements. Such efforts are critical given these findings documented in the White Paper:

- Congress, under both Democrats or Republicans majorities, has a history of opposing international agreements, legislation, and regulations targeting greenhouse gas (GHG) emissions that would undermine the welfare of the American people and the economy.
- President Obama has pursued radical environmental policies to “decarbonize” the U.S. economy through unilateral executive actions, rather than work with Congress to develop policies that reflect the consensus view and have broad public support.
- The Obama Administration's pledge to reduce GHG emissions by 26 to 28 percent by 2025 (per the U.S. intended nationally determined contribution, or INDC) does not withstand scrutiny. The actions in the INDC do not add up to 26 to 28 percent and are unlikely to be fully implemented due to litigation challenges and policy objections.
- President Obama's international climate financing pledge of \$3 billion to the Green Climate Fund (GCF) for developing countries is not supported by Congress.
- The Obama Administration has failed to be fully transparent and forthcoming with the American people, Congress, and the international community regarding U.S. actions.
- Other countries appear to be using the COP-21 process as a way to bolster their own domestic coffers, at the expense of the American people.
- The Senate must be able to exercise its constitutional role to approve any agreement setting targets or timetables that emerges from COP-21.
- Absent approval by the Senate, any deal announced at COP-21 will be little more than a press release, with no binding accountability or enforcement mechanisms in place. Such an agreement is also limited in duration as the next Administration could change its pledge.
- While President Obama has already claimed “victory” at COP-21 due to other countries GHG reduction pledges, these are mere promises, and there is no requirement they will be implemented. U.S. action alone won't have an impact on global climate change.
- The COP-21 agreement will likely be based on political commitments from President Obama, an approach that is no different than the go-it-alone strategy used throughout his Administration, but now his onerous regulations will be promised to the world, serving to boost his environmental legacy, rather than advance the interest of the American people who do not consider climate change an important issue.

INTRODUCTION

By December 11, 2015, world leaders from roughly 190 countries who are parties to the United Nations Framework Convention on Climate Change (UNFCCC) are aiming to reach an international climate agreement at the 21st conference of the parties (COP-21) in Paris. While the United States Senate fully supports U.S. participation in the COP and international climate negotiations generally, there is vast concern with the U.S. approach to and objective of such negotiations under President Obama's leadership. President Obama and his Administration officials engaged in the negotiations have embarked on an approach that advances a radical environmental agenda with hollow promises to the international community at the expense of the U.S. Constitution and the welfare of the American people.

This White Paper serves to document these shortcomings by providing an overview of the policy, technical, and legal concerns with the Obama Administration's promises leading up to COP-21. Critically, this White Paper delineates these promises within the context of past international and domestic efforts to address climate change. Ultimately, this White Paper is an effort to provide the American people the truth about the state of international climate negotiations and the full impacts of President Obama's approach. In the years since the Democratic-controlled Senate abandoned efforts to enact comprehensive cap-and-trade climate legislation, the Obama Administration has sought unilateral executive actions to impose domestic limits on GHG emissions across vast swaths of the American economy. While these efforts have been supported by environmental activist groups and members of the international community interested in "decarbonizing" the American economy, they remain unpopular with the American public and lack a majority of support in Congress and the states.

This White Paper is an effort to provide the American people the truth about the state of international climate negotiations and the full impacts of President Obama's approach.

In the 114th Congress, the U.S. Senate Committee on Environment and Public Works (EPW) has conducted vigorous oversight of the Obama Administration's climate policies and regulations, including holding eight hearings of either the Full Committee or the Subcommittee on Clean Air and Nuclear Safety, sending more than a dozen letters and document requests to the Administration, and issuing a 72-page staff report. The Senate, which would need to ratify any binding agreement coming out of COP-21, has already voted to disapprove climate regulations that are the cornerstone of the Obama Administration's international commitment. These same regulations are also the subject of lawsuits by 27 states, 24 national trade associations, 37 rural electric cooperatives, 10 major companies, and labor unions representing 878,000 members. In regards to international climate negotiations specifically, there have been three Senate resolutions introduced. Namely, Senator James M. Inhofe (R-Oklahoma), Chairman of the Senate EPW Committee, introduced a bipartisan resolution on November 19, 2015, to further inform the international community of the U.S. Senate's respective role in any agreement reached at COP-21. Overall, the Obama Administration's climate change agenda and plans for COP-21 are substantially flawed, counter to public opinion, transpired behind closed doors, will lead to increased energy costs, will decrease electric reliability and economic growth, and result in near-certain court losses – all the while having little to no impact on global climate change.

I. RECOUNTING INTERNATIONAL CLIMATE NEGOTIATIONS

At the outset, it is important to note that a framework for international negotiations regarding climate change has only materialized in recent history. In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) was established as the international body to govern such negotiations. Countries that signed the treaty are referred to as “parties” of the UNFCCC. In June 1992 President George H. W. Bush signed the treaty and submitted for Senate ratification. On October 15, 1992, the Senate ratified the treaty by a voice vote, which officially made the United States a party to the UNFCCC.

Senate ratification of the UNFCCC treaty was particularly based on the understanding that future international agreements that include any targets or timetables for U.S. GHG emission reductions would be subject to Senate advice and consent. The Senate Committee on Foreign Relations’ report accompanying the ratification of the UNFCCC treaty included an express provision that “[a] decision by the Conference of the Parties to adopt targets and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement.”¹ By joining the UNFCCC, the United States was required to adopt national policies that would mitigate climate change by reducing GHGs, but it was not required to take specific emission reduction actions.

While the UNFCCC did not assign specific GHG emission reduction targets or timetables, it did assign “common and differentiated” responsibilities for reducing GHGs to Annex I countries (referred to as developed countries, such as the United States and the European Union, or E.U.) and non-Annex I countries (referred to as developing countries, such as China and India).

From the time the UNFCCC was established to present day, issues surrounding specific GHG emission reduction targets and timetables as well as the dichotomy between actions by developing and developed countries have been a focal point of contention during UNFCCC negotiations.

a) Early Days of International Climate Agreements and U.S. Climate Action

The UNFCCC went into force with 50 countries as parties in 1994. In 1995, the UNFCCC hosted its first conference of the parties (COP) in Berlin, Germany, which resulted in the Berlin Mandate. The Berlin Mandate set up a process for developed countries, such as the United States, to strengthen its GHG emission reduction commitments while there would be “no new commitments for developing countries.”² Critically, the Berlin Mandate was known for laying the negotiating groundwork for the first GHG reduction treaty: the Kyoto Protocol. At COP-3 in 1997, the UNFCCC adopted the Kyoto Protocol, which set binding targets and timetables for GHG reductions that would have imposed unfair restrictions on the U.S. while giving a free pass to developing countries.

¹ S. Exec. Report No. 102-55, 102d Cong., 2d Sess., 1992, p. 14.

² United Nations Framework Convention on Climate Change, Report of the Conference of the Parties on its First Session, Held at Berlin from 28 March to 7 April 1995, available at <http://unfccc.int/resource/docs/cop1/07a01.pdf>.

Drafters of the protocol dubbed it a solution to global warming, which in their view was the “greatest challenge to human existence on this planet.”³ The Kyoto Protocol would have required the United States to reduce GHG emissions by 7 percent from its 1990 levels; yet developing countries that signed the agreement, such as China, India, and Brazil, were not obligated to reduce GHG emissions at all. In fact, the Kyoto Protocol exempted countries responsible for 80 percent of the world’s GHG emissions from the emission reduction requirements.

Absent action from developing countries it was clear the protocol would not have had a meaningful impact on global climate change. However, it was clear the Kyoto Protocol would have significant economic impacts on the U.S. economy. Studies at the time revealed that if the U.S. Senate ratified the Kyoto Protocol, gas prices would have increased by up to 53 percent and electricity prices would have increased by 86 percent, while decreasing U.S. gross domestic product by as much as eight percent.⁴

In an effort to put President Bill Clinton on notice of the Senate’s stance on the Kyoto Protocol, the Senate passed a resolution by Senators Robert Byrd (D-West Virginia) and Chuck Hagel (R-Nebraska) by a 95-0 vote on July 25, 1997. The Byrd-Hagel resolution stated that the Senate opposed any international climate change agreement that would result in serious harm to the American economy and that did not impose binding emission limits on developing countries.⁵

Accordingly, while President Clinton signed the Kyoto Protocol in 1998, the United States was not subject to the protocol because Clinton decided not to submit it to the Senate for ratification. Upon assuming office in 2001, President George W. Bush announced that the United States would not become a party to the Kyoto Protocol, provoking the ire of environmental activist groups across the globe.⁶ Consequently, the Kyoto Protocol, which entered into force in 2005, never went into effect in the United States.

As for domestic climate action, throughout the tenure of the Bush Administration, a majority of Congress rejected repeated attempts to enact comprehensive climate change legislation.⁷ In 2007, a newly Democratic controlled House of Representatives sought to politicize climate change as an issue benefiting Democrats, establishing a select committee focused on climate

³ S. Fred Singer, *Climate Policy-From Rio to Kyoto: A Political Issue for 2000-and Beyond*, Hoover Institution on War, Revolution and Peace, Stanford University, 2000 at pg. 2, available at http://www.hoover.org/sites/default/files/uploads/documents/epp_102a.pdf.

⁴ Energy Information Administration, A Briefing Paper on the Energy Information Administration’s Analysis and Report Prepared for the Committee on Science, U.S. House of Representatives: What Does the Kyoto Protocol Mean to U.S. Energy Markets and the U.S. Economy?, October 1998; available at: <http://www.eia.gov/oiaf/kyoto/kyotobtxt.html>.

⁵ S.Res.98 (A resolution expressing the sense of the Senate regarding the conditions for the United States becoming a signatory to any international agreement on GHG emissions under the United Nations Framework Convention on Climate Change), 105th Congress; available at: <https://www.congress.gov/bill/105th-congress/senate-resolution/98>.

⁶ See, Greenpeace response to President Bush’s Kyoto Statement, Greenpeace, April 2, 2001; available at: <http://www.greenpeace.org.uk/climate/greenpeace-response-to-president-bushs-kyoto-statement>; see also, An Open Letter to President Bush: Don’t Turn Your Back on Global Warming, NRDC, Apr. 12, 2001; available at <http://www.nrdc.org/globalwarming/pbushlet.asp>.

⁷ See, S. 139 (108th Congress), available at: <https://www.congress.gov/bill/108th-congress/senate-bill/139>; S. 1151 (109th Congress), available at: <https://www.congress.gov/bill/109th-congress/senate-bill/1151/actions>; S. 3036 (110th Congress), available at: <https://www.congress.gov/bill/110th-congress/senate-bill/3036/actions>.

change.⁸ Even some Democrats objected to unilateral action to address climate change, arguing that the absence of broad support and consensus would doom such efforts to failure.⁹ The EPW Committee under Ranking Member Inhofe released a White Paper on a Senate climate bill, explaining “[w]hat some proponents are masking and others fail to comprehend, is that the economic costs of action are likely to be unbearable if the approach in S. 2191, America’s Climate Security Act (Lieberman-Warner), is enacted into law.”¹⁰

That same year COP-12 in Bali, Indonesia, resulted in the “first cracks in the UNFCCC wall separating developed and developing [countries],”¹¹ where developing countries signed an agreement to consider “nationally appropriate mitigation actions” to reduce GHGs that were “measurable, reportable, and verifiable.”¹² In what was referred to as the “Bali Action Plan,” COP-12 established two tracks for future negotiations: one for Kyoto Protocol parties to negotiate future compliance commitments and one for UNFCCC parties to negotiate new GHG mitigation targets for developed countries and “nationally appropriate mitigation actions” for developing countries for the post-2012 period. Notably, the Bali Action Plan marked the first time all UNFCCC parties agreed to negotiate a GHG reduction plan, which would be reached by COP-15 in Copenhagen, Denmark, in late 2009.

b) Obama Falls Short of Meeting Climate Campaign Promises in Copenhagen

On the international front, 2008 marked the start of the Kyoto Protocol compliance period while UNFCCC parties were discussing the need for a successor agreement in 2009 at COP-15 in Copenhagen. It has been described that “[w]hile the inter-sessional meetings during 2007 and 2008 showed little movement, public and many diplomatic expectations were high that the United States, and perhaps China and other developing countries, would come to Copenhagen negotiations with a new willingness to change positions and agree.”¹³

In the 2008 Presidential campaign, Senator Obama campaigned on promises to address climate change through domestic legislation and international negotiations, characterizing the United

⁸ “Internal Rifts Cloud Democrats’ Opportunity on Warming,” Washington Post, by Juliet Eilperin and Michael Grunwald, January 23, 2007; available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/22/AR2007012201508.html>.

⁹ *Id.*

¹⁰ “The Economics of America’s Climate Security Act of 2007: S. 2191, Lieberman-Warner Climate Bill,” U.S. Senate Committee on Environment and Public Works, Minority Staff White Paper, May 2008; available at: http://www.epw.senate.gov/public/_cache/files/84039130-6b2d-4cbc-85df-929d6e938d90/whitepaperfinal.pdf.

¹¹ Testimony of Stephen D. Eule, Vice President, of the Institute for 21st Century Energy, an affiliate of the U.S. Chamber of Commerce, U.S. Senate Committee on Environment and on Public Works, Subcommittee on Clean Air and Nuclear Safety, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at: http://www.epw.senate.gov/public/_cache/files/3f20f502-aca6-433e-afc5-22b57d9d051f/eule-testimony.pdf.

¹² United Nations Framework Convention on Climate Change, Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2007; available at <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf>.

¹³ CONG. RESEARCH SERV., A U.S. Centric Chronology of the United Nations Framework Convention on Climate Change, R40001, November 8, 2013.

States as “Earth’s best hope” in an October 2007 speech.¹⁴ Then-Senator Obama seemed to view his focus on climate change as the means to transition the United States away from affordable and reliable fossil fuels toward increased investment in renewable energy.¹⁵ He spoke in support of legislation to impose a hard cap on carbon dioxide (CO₂) emissions and to impose a fee on businesses that emit CO₂, recognizing the “transition will be costly in the short-term”¹⁶—a system known as “cap-and-trade.”

In criticizing the outgoing Bush Administration, candidate Obama promised to reduce U.S. carbon dioxide emissions by 80 percent by 2050.¹⁷ He also displayed considerable hostility on the campaign trail toward electricity generated from coal, admitting that while companies would legally still be able to build coal plants in his Administration, doing so would “bankrupt” them.¹⁸ Candidate Obama also pledged to cut emissions from automobiles if elected, and one of his top advisors said EPA would be “obligated to move forward in the absence of Congressional action. If there’s no action by Congress in those 18 months, I think any responsible president would want to have the regulatory approach.”¹⁹ Apparently, these promises were all part of a broader strategy by candidate Obama to distinguish himself from his predecessors and rivals and to pave the way toward an international climate agreement at COP-15.

Upon his election, President Obama signaled that the executive branch bureaucracy would play an important role and serve as a backstop against weak or failed Congressional action. Indeed, Obama had to make good on his campaign promises to address climate change – whether through legislation or regulation. Environmentalists supporting his campaign continued to exert pressure on the newly elected president to address climate change, particularly in advance of the COP-15 in December 2009 and to end “eight years of U.S. inaction on climate change”²⁰ under the Bush Administration. As one example, activists connected to the anti-fossil fuel funding operation at the Rockefeller Brothers Fund penned a blog post in February 2009 entitled “What Obama Must Do on the Road to Copenhagen,” which explained, “[i]f crucial climate negotiations later this year in Copenhagen are to have any chance of success, the U.S. must take the lead. To do that, President Obama needs to act boldly in the coming months.”²¹

Given the outcry from environmentalists who demanded the United States demonstrate “leadership” on climate action prior to COP-15, it was no surprise President Obama subscribed to the same “leadership” message throughout the course of his Administration’s actions to address climate change. In one of the first steps President Obama took to centralize power in the

¹⁴ Speech of Senator Barack Obama entitled, “Real Leadership for a Clean Energy Future, October 8, 2007; available at: <http://grist.org/article/obamas-speech/>.

¹⁵ “Obama’s Cynical Energy Agenda,” National Affairs, by Adam J. White, 2012; available at: http://www.nationalaffairs.com/doclib/20120619_White_Indiv.pdf.

¹⁶ Speech of Senator Barack Obama entitled, “Real Leadership for a Clean Energy Future, October 8, 2007; available at: <http://grist.org/article/obamas-speech/>.

¹⁷ *Id.*

¹⁸ “Uttered in 2008, still haunting Obama in 2012,” Politico, Erica Martinson, April 5, 2012; available at: <http://www.politico.com/news/stories/0412/74892.html>.

¹⁹ “Obama to Declare Carbon Dioxide Dangerous Pollutant,” Bloomberg, by Jim Efstathiou, Jr., October 16, 2008; available at: <http://www.bloomberg.com/apps/news?sid=a1HWVvGnkcd4&pid=newsarchive>

²⁰ “What Obama Must Do on the Road to Copenhagen,” Yale Environment 360, by Michael Northrop and David Sassoon, February 2, 2009; available at:

http://e360.yale.edu/feature/what_obama_must_do_on_the_road_to_copenhagen/2116/

²¹ *Id.*

White House over the energy and climate agenda, he created a new “czar” position filled by Carol Browner. Notably, Browner was the EPA Administrator under the Clinton Administration. President Obama’s first budget request, unveiled in February 2009, called on Congress to develop a cap-and-trade system to reduce carbon dioxide emissions by 14 percent by 2020 and 83 percent by 2050 that would raise \$150 billion from fees on American business.²² The President looked to a Democratic-controlled House of Representatives and Senate to enact his cap-and-trade legislation.

Representatives Henry Waxman (D-California) and Ed Markey (D-Massachusetts) obliged, introducing legislation to establish a cap-and-trade system that would reduce GHG emissions by 17 percent from 2005 levels by 2020 and 83 percent by 2050. In the early morning hours of June 26, 2009, the House of Representatives approved the Waxman-Markey legislation by a vote of 219-212, notably after arm-twisting by the Obama Administration on moderate Democrats.²³ Senator Inhofe, at the time the Ranking Member of the EPW Committee, made it clear that the Senate would not support legislation that would have such devastating effects on the economy:

*Today’s razor thin vote in the House spells doom in the Senate. Despite a large Democratic majority in the House, and the fact that this is one of the President’s top priorities, the Democratic leadership was forced to do everything possible to get a bill passed. ... The Waxman-Markey bill is just the latest incarnation of cap-and-trade legislation that will destroy American jobs by pushing them overseas, force consumers to shoulder the burden of higher gasoline and electricity prices, and drastically increase the size and scope of the federal government.*²⁴

Although the Democrats controlled the Senate, shepherding climate legislation through the upper chamber would prove to be as politically impossible of a task as it had been before. However, then-Senator John Kerry (D-Massachusetts), joined by Senator Barbara Boxer (D-California), nonetheless introduced a cap-and-trade bill in the Senate in September 2009 that would have required a 20 percent cut in emission levels by 2020.²⁵ Senator Boxer, then the Chairman of the EPW Committee, pushed the Kerry-Boxer bill through the EPW Committee in early November 2009,²⁶ but the bill did not enjoy broad support among their Senate colleagues and did not get a

²² President Obama Fiscal Year 2010 Budget Request: available at: <http://www.gpo.gov/fdsys/pkg/BUDGET-2010-BUD/pdf/BUDGET-2010-BUD.pdf>, at 21.

²³ “On Waxman-Markey,” National Review, by Andrew Stuttaford, June 27, 2009; available at: <http://www.nationalreview.com/corner/184024/waxman-markey-andrew-stuttaford>.

²⁴ Minority Office Press Release, EPW Committee, June 26, 2009; available at: <http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=1EDE5CA4-802A-23AD-443B-B553BE86908A>.

²⁵ S. 1733 (111th Congress), available at: <http://www.lis.gov/cgi-lis/bdquery/D?d111:128:./temp/~bdkC8O:dbs=n:/billsumm/billsumm.php?id=2>.

²⁶ The bill was reported out of the EPW Committee over the objection of the Republican minority because the Committee lacked a quorum at the markup and EPA did not complete a detailed analysis of the legislation as had been requested. See, U.S. Senate Committee on Environment and Public Works, Report on the Clean Energy Jobs and American Power Act accompanying S. 1733, 111th Congress, 2nd Session, S. Report 111-121, Minority Views at 87-89; available at: <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt121/pdf/CRPT-111srpt121.pdf>.

floor vote.²⁷ Then Senator Max Baucus (D-Montana), who is now the United States' ambassador to China, even warned "we also cannot afford the unmitigated effects of [the] legislation."²⁸

As it became clear Congress would not enact cap-and-trade legislation prior to COP-15, hopes for a successor to Kyoto began to fade. For instance, a November 17, 2009, *Wall Street Journal* editorial titled "Copenhagen's Collapse – The Climate Change Sequel is a Bust," said:

*Now is the time to confront this challenge once and for all,' President-elect Obama said of global warming last November. 'Delay is no longer an option.' It turns out that delay really is an option-the only one that has world-wide support. Over the weekend Mr. Obama bowed to reality and admitted that little of substance will come of the climate-change summit in Copenhagen next month. For the last year the President has been promising a binding international carbon-regulation treaty a la the Kyoto Protocol, but instead negotiators from 192 countries now hope to reach a preliminary agreement that they'll sign such a treaty when they meet in Mexico City in 2010. No doubt. The environmental lobby is blaming Copenhagen's pre-emptive collapse on the Senate's failure to ram through a cap-and-trade scheme like the House did in June, arguing that 'the world' won't make commitments until the U.S. does. But there will always be one excuse or another, given that developing countries like China and India will never be masochistic enough to subject their economies to the West's climate neuroses.*²⁹

While President Obama touted U.S. "leadership" on climate in his speech before COP-15, he was equally careful to downplay the negotiations in an apparent acknowledgement that the conference would fail to reach a binding agreement. For instance, President Obama told the UNFCCC in his address that "America is going to continue on this course of action to mitigate our emissions and to move towards a clean energy economy, *no matter what happens here in Copenhagen*" (emphasis added).³⁰ He also sought to shift the focus away from the shortcomings of COP-15 and set the stage for future COPs, stating "[t]hat's also why I believe what we have achieved in Copenhagen will not be the end but rather the beginning, the beginning of a new era of international action."³¹

As expected, COP-15 failed to result in a legally binding agreement, but it was a turning point for international agreements as all major emitting parties agreed to take GHG mitigation actions. In what was a non-binding political commitment, President Obama pledged the U.S. would reduce GHG emissions by 17 percent from 2005 levels by 2020 – mirroring the reduction goals

²⁷ "Senate global warming battle shifts onto new turf," Energy & Environment Daily, Darren Samuelsohn, November 9, 2009; available at: <http://www.eenews.net/eedaily/stories/84414>.

²⁸ "Baucus criticizes Boxer climate bill," Politico, Lisa Lerer, October 27, 2009; available at: <http://www.politico.com/story/2009/10/baucus-criticizes-boxer-climate-bill-028781>.

²⁹ "Copenhagen's Collapse," Wall Street Journal, November 17, 2009; available at: <http://www.wsj.com/articles/SB10001424052748704431804574540002267533772>

³⁰ White House Press Release, December 18, 2009; available at: <https://www.whitehouse.gov/the-press-office/remarks-president-morning-plenary-session-united-nations-climate-change-conference>

³¹ White House Press Release, December 18, 2009; available at: <https://www.whitehouse.gov/the-press-office/remarks-president-during-press-availability-copenhagen>.

in Waxman-Markey.³² This commitment, in addition to his other remarks at Copenhagen that “[m]ost importantly, we remain committed to comprehensive legislation,”³³ was seemingly an attempt to further pressure the U.S. Senate to pass the Waxman-Markey bill.

At the suggestion of then-U.S. Secretary of State Hilary Clinton, COP-15 also led the highest income UNFCCC parties, including the U.S., to agree to a goal of “fast start” financing commitment of \$30 billion from 2010 to 2012 with a goal of mobilizing financing of \$100 billion annually by 2020. Critically, in the fall of 2015, Rachel Kyte, the World Bank vice president and special envoy for climate change admitted the \$100 billion figure “was picked out of the air at Copenhagen.”³⁴ This financing was designed to “assist developing countries in their efforts to combat climate change through the provision of grants and other concessional financing for mitigation and adaptation projects, programs, policies and activities.” COP-15 also proposed the GCF to “channel funds for mitigation, capacity-building, and other types of assistance and projects.”³⁵ Ultimately, as described by the Congressional Research Service, “the Copenhagen Accord was a political outcome, not a legal agreement.”³⁶

c) Climate Legislation Dies and EPA Regulations Ramp Up

On April 1, 2010, EPA and the National Highway Traffic Safety Administration issued GHG emission limits for cars and light-duty vehicles as part of the federal fuel economy program, in response to the 2007 *Massachusetts v. EPA* decision by the U.S. Supreme Court and EPA’s December 2009 “endangerment finding” for GHGs emissions from vehicles.³⁷

In an effort to broaden the scope of EPA’s regulatory authority moving forward, EPA took the novel position that regulating GHGs under the mobile source part of the Clean Air Act would trigger requirements to regulate all manner of stationary sources that emit carbon dioxide or other GHGs. A month after the final vehicle rule was issued and with speculation still swirling about the prospects of Senate climate legislation, EPA finalized a rule, known as the “tailoring rule,” to increase administratively the statutory emission thresholds that trigger construction permits for new and modified stationary sources as well as operating permits.³⁸ In purporting to “tailor” the emission thresholds, so only the largest sources would be subject to immediate regulation, the Obama Administration was in fact highlighting the parade of horrors that would

³² White House Press Release, November 25, 2009; available at: <https://www.whitehouse.gov/the-press-office/president-attend-copenhagen-climate-talks>; see also, “Obama to Go to Copenhagen With Emissions target,” New York Times, John Broder, November 25, 2009; available at: http://www.nytimes.com/2009/11/26/us/politics/26climate.html?pagewanted=all&_r=0.

³³ White House Press Release, December 18, 2009; available at: <https://www.whitehouse.gov/the-press-office/remarks-president-during-press-availability-copenhagen>.

³⁴ “Paris climate talks should not put figure on finance, says World Bank vice-president,” Guardian, Fiona Harvey, October 7, 2015; available at: <http://www.theguardian.com/environment/2015/oct/07/paris-talks-un-cop-climate-finance-world-bank-vice-president>.

³⁵ CONG. RESEARCH SERV., A U.S. Centric Chronology of the United Nations Framework Convention on Climate Change, R40001, November 8, 2013).

³⁶ *Id.*

³⁷ 75 Fed. Reg. 25323 (May 7, 2010). Industry groups petitioned EPA to reconsider the endangerment finding based on allegations that the science on which the finding was based was flawed and manipulated. EPA rejected the petition. 75 FR 49555 (Aug. 13, 2010). The U.S. Court of Appeals for the D.C. Circuit upheld the endangerment finding and vehicle rule in *Coalition for Responsible Regulation, et al., v. EPA*, 684 F.3d 102 (D.C. Cir. 2012).

³⁸ 75 Fed. Reg. 31514 (June 3, 2010).

result from its self-generated regulatory mess at the same time Congress was debating whether to enact comprehensive climate legislation.

With EPA beginning to propose regulations against GHG emissions as a backdrop, negotiations were occurring in the Senate to broaden the base of support for climate legislation. Senators Kerry and Joe Lieberman (I-Connecticut) released a draft of a cap-and-trade bill in May 2010 that sought 17 percent emission reduction by 2020 – mirroring Waxman-Markey and the U.S. commitment in Copenhagen – and 83 percent by 2050. The proposal, a rehash of the controversial Waxman-Markey bill, was never introduced and was dead on arrival in the Senate. “Kerry-Lieberman is not going to pass,” Ranking Member Inhofe correctly predicted.³⁹

It would take Democrats just two more months to admit publicly that the American public would not support the massive tax increases embedded in the draft legislation. As Senate Majority Leader Harry Reid (D-Nevada) announced in July 2010 that he had “pulled the plug” on efforts to pursue cap-and-trade legislation in the Senate,⁴⁰ some in the Obama Administration and environmental groups appeared warm to the idea of cutting Congress out of the picture.

With the collapse of cap-and-trade legislation in the Senate, the Obama Administration quickly shifted gears in the fall of 2010 to focus on the largest single source of carbon dioxide emissions: coal-fired power plants. EPA began negotiations with the Natural Resource Defense Council (NRDC), the Sierra Club, and the Environmental Defense Fund, and several states, and local governments to reach a “sue-and-settle” agreement.⁴¹ As detailed in the EPW Committee majority staff report, “Obama’s Carbon Mandate: An Account of Collusion, Cutting Corners, and Costing Americans Billions,” EPA worked cooperatively behind closed doors with its allies in the environmental activist community to advance these power plant regulations, which would become the centerpiece of the Obama Administration’s domestic climate agenda and subsequent international climate pledge for COP-21.⁴²

By November 2010 President Obama declared “cap and trade was just one way of skinning the cat; it was not the only way. It was a means, not an end. And I’m going to be looking for other means to address this problem.”⁴³ Reflecting on this time in a recent interview with the *Rolling Stone*, President Obama conceded “we probably should have moved faster to a nonlegislative strategy, but I don’t think that there was some magic recipe whereby we could have gotten cap-and-trade through the Senate without some Republican support.”⁴⁴

³⁹ Minority Office Press Release, U.S. Senate Committee on Environment and Public Works, May 17, 2010; available at: <http://www.epw.senate.gov/public/index.cfm/speeches?ID=A88999EF-802A-23AD-4A4F-E4CF54901BD7>.

⁴⁰ “Dems pull plug on climate bill,” Politico, Coral Davenport and Darren Samuelsohn, July 22, 2010; available at: <http://www.politico.com/story/2010/07/dems-pull-plug-on-climate-bill-040109>.

⁴¹ *State of New York, et al. v. EPA*, No. 06-1322 (D.C. Cir.)

⁴² Available at: http://www.epw.senate.gov/public/_cache/files/386eb25d-b723-4ffd-9fcf-218425a33191/epw-staff-report-obama-carbon-mandate.pdf.

⁴³ White House Transcript of Press Conference, November 3, 2010; available at: <https://www.whitehouse.gov/the-press-office/2010/11/03/press-conference-president>

⁴⁴ “Obama Takes on Climate Change,” *Rolling Stone*, Jeff Goodell, September 23, 2015; available at: <http://www.rollingstone.com/politics/news/obama-takes-on-climate-change-the-rolling-stone-interview-20150923>.

The month after President Obama won re-election, NRDC issued a proposal for how EPA should regulate existing power plants, based in large part on the technical discussions that had occurred between NRDC and EPA staff the previous two years. Critically, NRDC's proposal provided the blueprint for achieving a 17 percent GHG reduction by 2020, to fulfill President Obama's 2009 climate commitment in Copenhagen, by regulating existing power plants under section 111(d) of the Clean Air Act.⁴⁵

d) Following Copenhagen Failure, Successor to Kyoto Deal Sought

Leading up to COP-17 in Durban, South Africa, in December 2011 a new round of negotiations launched that were focused on a successor to the Kyoto Protocol. As the compliance deadline for the Kyoto Protocol was about to come to an end in 2012, the parties were increasingly centered on reaching an agreement to replace Kyoto. In reality, compliance with Kyoto was significantly lacking prompting some parties to reconsider the Protocol and whether to join the next compliance period. On December 15, 2011, Canada, which joined the Kyoto Protocol in 2002, formally withdrew from Kyoto. In doing so, the Government of Canada explained:

*From an environmental perspective, the Kyoto Protocol has not served the international community well in meeting the real challenges of global climate change or effectively engaging all major economies. The Protocol only covers countries responsible for a small, and increasingly small, percentage of global emissions and, as a consequence, is not an effective vehicle for addressing the global challenge of climate change.*⁴⁶

As Kyoto Protocol compliance fell apart, parties struggled to reach a new agreement. Ultimately, what came of COP-17 was the Durban Platform, which required the development of “a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, which is to be completed no later than 2015 in order for it to be adopted at the [COP-21] and for it to come into effect and be implemented from 2020.” At the time, an op-ed by Senator Inhofe explained why President Obama sought to downplay COP-17 negotiations following Republicans takeover of the House of Representatives and amid his reelection cycle:

*With little attention and fanfare, the United Nations kicked off its latest global-warming conference—this time in Durban, South Africa. Their mission: to extend the Kyoto Protocol. But as Bloomberg reports, Japan, Russia and Canada will not renew their commitments, and of course, the United States will never sign on without commitments from China and India. The Kyoto process is essentially dead – and even President Obama is acknowledging it, much to the chagrin of his left-wing environmental base.*⁴⁷

⁴⁵ NRDC Press Release, December 4, 2012 for report entitled, “Closing the Power Plant Carbon Pollution Loophole.”

⁴⁶ Government of Canada Press Release, December 15, 2011; available at: <https://www.ec.gc.ca/Publications/default.asp?lang=En&n=EE4F06AE-1&xml=EE4F06AE-13EF-453B-B633-FCB3BAECEB4F&offset=3&toc=hide>

⁴⁷ “Obama’s Job-Killing Global-Warming Agenda Continues Under the Radar,” Human Events, Sen. James Inhofe, December 2, 2011; available at: <http://humanevents.com/2011/12/02/obamas-jobkilling-globalwarming-agenda-continues-under-the-radar/>

However, in regards to climate financing, 2014 marked a pivotal year for the parties. The GCF, which was first proposed at COP-15 in Copenhagen and accepted by the parties at COP-17 in Durban, became operational in the summer of 2014. Parties pledged an initial capitalization of \$10-15 billion to the GCF in the first year. At the G-20 meetings on November 15, 2014, President Obama pledged the United States would contribute \$3 billion to the GCF over a four year period. President Obama's pledge, coupled with pledges from other developed countries such as Germany and France, had brought close to \$10 billion in pledges by the end of 2014. Critically, President Obama's pledge was only a political commitment, as such funding requires appropriations from a Republican-controlled Congress. On the day of the President's announcement, Senator Inhofe made the following statement:

*President Obama's pledge to give unelected bureaucrats at the U.N. \$3 billion for climate change initiatives is an unfortunate decision to not listen to voters in this most recent election cycle. His climate change spending priorities, estimated to be \$120 billion since the beginning of his Administration, were on the ballot, and Americans spoke. The President's climate change agenda has only siphoned precious taxpayer dollars away from the real problems facing the American people.*⁴⁸

Days before the GCF pledge, on November 11, 2014, the Obama Administration also announced a bilateral agreement with China for reducing GHG emissions beginning after 2020.⁴⁹ As part of the accord, President Obama committed the United States to reduce GHG emissions by 26 to 28 percent below 2005 levels by 2025. For its part, China said it planned to "peak" its carbon dioxide emissions around 2030. Secretary of State Kerry trumpeted the deal as "something of great consequence in the fight against climate change."⁵⁰ Senator Inhofe called the deal a "charade."⁵¹ Critically, under the deal, China's emissions could continue unabated in the immediate future and would not be subject to a specific cap.⁵²

⁴⁸ Senator James Inhofe, Press Release, November 14, 2014; available at:

<http://www.inhofe.senate.gov/newsroom/press-releases/inhofe-statement-on-presidents-3-billion-climate-change-pledge>.

⁴⁹ White House Press Release, November 11, 2014; available at: <https://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change>.

⁵⁰ "China, America and Our Warming Planet," New York Times, Sen. John Kerry, November 11, 2014; available at: http://www.nytimes.com/2014/11/12/opinion/john-kerry-our-historic-agreement-with-china-on-climate-change.html?_r=0.

⁵¹ Senator James Inhofe, Press Release, November 12, 2014; available at:

<http://www.inhofe.senate.gov/newsroom/press-releases/inhofe-us-china-climate-deal-a-non-binding-charade>.

⁵² "Top congressional Republicans slam U.S.-China climate deal," CNN, Jeremy Diamond, November 12, 2014; available at: <http://www.cnn.com/2014/11/12/politics/senate-republicans-slam-us-china-climate-deal/>.

II. OBAMA SEEKING ENVIRONMENTAL LEGACY LEADING TO COP-21

On June 25, 2013, at a speech at Georgetown University, President Obama announced his Climate Action Plan (CAP) outlining plans for domestic and international efforts to reduce GHG emissions and address climate change.⁵³ In conjunction with the release of the CAP, President Obama issued a directive for EPA to issue a new proposal to regulate emissions from new power plants by September 30, 2013, and a proposed rule for existing, reconstructed, and modified power plants by June 1, 2014.⁵⁴ EPA was also directed to finalize the rule for new power plants “in a timely fashion after considering all public comments, as appropriate” and to finalize the existing source rule by June 1, 2015.⁵⁵

a) Final Carbon Mandates Lack Support from Congress, States, and Public

On August 5, 2015, EPA publicly released final rules regulating carbon dioxide emissions from new, modified and reconstructed, and existing power plants. With the release of the final power plant rules, EPW Committee Chairman Inhofe pledged to work with colleagues in Congress to overturn them, saying:

*The Environmental Protection Agency has managed to take a bad deal and make it worse. The Obama administration has no concern for costs, no concept of reality and no respect for the rule of law. President Obama, and his EPA know that Americans do not support his costly carbon mandates, as most prominently on display when the U.S. Senate expressly rejected such an economically disastrous idea by failing to pass cap-and-trade legislation in 2009.*⁵⁶

Importantly, a November 2015 study by NERA Economic Consulting found that the final existing source rule would impose a total \$220 to 292 billion from 2022 to 2033 in compliance costs.⁵⁷ The American Action Forum predicted that the existing source rule would result in 125,800 lost jobs across the U.S.⁵⁸ Moreover, the final rule will cause electricity price increases for all the lower 48 states. These price hikes are depicted in the following Senate Republican Policy Committee chart:

⁵³ “The President’s Climate Action Plan,” Executive Office of the President, June 2013; available at: <https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>.

⁵⁴ “Presidential Memorandum – Power Sector Carbon Pollution Standards,” issued June 25, 2013; available at: <https://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards>.

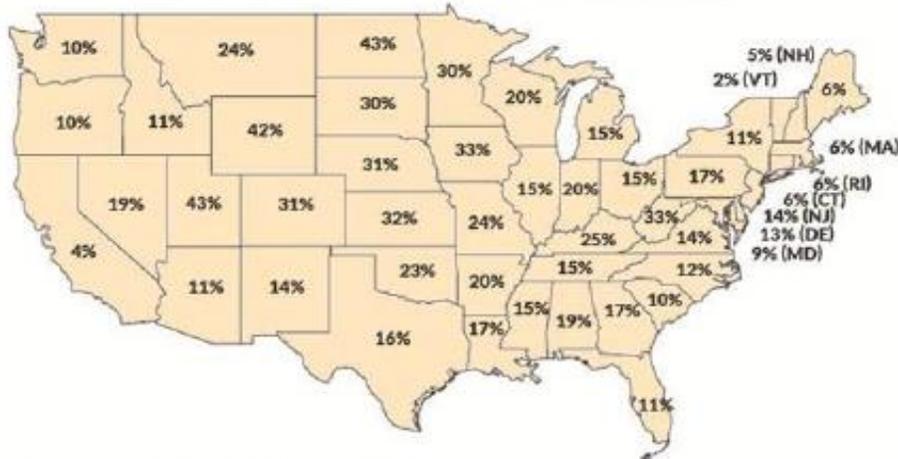
⁵⁵ *Id.*

⁵⁶ Majority Office Press Release, U.S. Senate Committee on Environment and Public Works, August 3, 2015; available at: <http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=1218DD3A-5740-46CE-BC62-6BA288262DB7>.

⁵⁷ “Energy and Consumer Impacts of EPA’s Clean Power Plan,” NERA Economic Consulting, November 7, 2015; available at: <http://www.americaspower.org/wp-content/uploads/2015/11/NERA-CPP-Final-Nov-7.pdf>.

⁵⁸ “EPA’s Greenhouse Gas Regulation Expects Coal Generation to Decline 48 Percent,” American Action Forum, Sam Batkins, August 4, 2015; available at: <http://americanactionforum.org/research/epas-greenhouse-gas-regulation-expects-coal-generation-to-decline-48-percen>.

**CO2 RULE WILL CAUSE DOUBLE DIGIT
ELECTRICITY PRICE HIKES IN MOST STATES**



Source: Senate Republican Policy Committee

The same day the final power plant rules were released, the EPW committee approved Senator Shelley Moore Capito's (R-West Virginia) Affordable Reliable Electricity Now Act (ARENA) of 2015 to overturn the EPA rules and require EPA meet certain requirements before new regulations could be issued.⁵⁹

Once the final rules were published in the Federal Register, Senator Capito introduced S.J. Res. 24 to disapprove the existing power plant rule and Majority Leader Senator Mitch McConnell (R-Kentucky) introduced S.J. Res. 23 to disapprove the new, modified, and reconstructed power plant rules. On November 17, 2015, the Senate passed both resolutions on a bipartisan basis 52 to 46.⁶⁰ In regards to the resolutions for existing power plants, co-sponsor Senator Heidi Heitkamp (D-North Dakota) stated after the Senate vote:

*EPA's rules on existing power plants are not realistic for our state and many others, and this resolution makes it clear that a bipartisan majority of the Senate agrees. To make sure overly burdensome EPA regulations don't hurt our state, I'll keep pushing for viable solutions through legislation, negotiation, and legal challenges to make sure coal remains a key energy sources for decades to come.*⁶¹

⁵⁹ S. 1324; available at: <https://www.congress.gov/bill/114th-congress/senate-bill/1324>.

⁶⁰ S.J.Res. 23, 114th Congress; available at: http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=114&session=1&vote=00307; S.J.Res. 24, 114th Congress; available at: http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=114&session=1&vote=00306.

⁶¹ Senator Heidi Heitkamp, Press Release, November 17, 2015; available at: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=68255c5d-342b-48df-b040-d067dc54f00c>.

West Virginia and 23 other state governments and agencies filed a lawsuit against the new power plant rule.⁶² A lawsuit from 24 different states and state agencies across the country, led by West Virginia, has been filed against the existing power plant rule.⁶³ Three additional states have filed suit, as well as 24 national trade associations, 37 rural electric cooperatives, 10 major companies, and labor unions representing 878,000 members. As depicted in the Senate Republican Policy Committee chart below, a majority of the states have challenged the rules in court:



Source: Senate Republican Policy Committee

It is clear there are significant legal questions that could result in these rules being struck down, including the reliance on carbon capture and sequestration technology, applicability to emission sources and activities beyond power plants themselves, and a statutory prohibition that bars emission limits under section 111 from sources already subject to regulation under section 112(n)(1). However, these rules serve as the cornerstone of President Obama's GHG emission reduction pledges going into COP-21. It is no surprise the Obama Administration requested the D.C. Circuit Court of Appeals withhold rulings on the lawsuits against the existing source rule until after COP-21 has concluded, with final briefs due on December 23, 2015.

In a 2014 decision, the U.S. Supreme Court rebuked EPA's expansive view of its authority to regulate GHG emissions from stationary sources outlined in the 2010 tailoring rule.⁶⁴ As Justice Scalia wrote for the Supreme Court:

⁶² *State of West Virginia, et al. v. EPA*, No. 15-1399 (D.C. Cir.).

⁶³ *State of West Virginia, et al. v. EPA*, No. 15-1363. (D.C. Cir.).

⁶⁴ *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014). However, the Supreme Court did support EPA's application of GHG limits to stationary sources already undergoing permitting for emissions of other regulated air pollutants.

*EPA's interpretation is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization. When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast "economic and political significance."*⁶⁵ (internal citation omitted)

According to an email exchange between a senior EPA official and a former Obama Administration official now teaching at Harvard Law School obtained by the EPW Committee sent after the 2014 Supreme Court decision, EPA was on notice about the legal peril the power plant rules would face.⁶⁶ The email also suggests that EPA went out of its way to develop a regulatory scheme that would be overly burdensome and complicated and calls into question the sincerity of EPA statements to this day that the language of the Clean Air Act necessarily supports the Obama's Administration's expansive and expensive climate legacy.⁶⁷

Given the likely review of these rules by the Supreme Court, and the significant legal questions about the new and existing power plant rules, it would not be a surprise if EPA was again found to have overreached, this time in its controversial use of the Clean Air Act section 111 to regulate carbon dioxide emissions from power plants. The centerpiece of the Obama Administration's international climate commitments will remain in doubt long after COP-21 ends – potentially undermining whatever commitments the Obama Administration expects to make and legacy it intends to leave.

b) U.S. International Climate Pledge Does Not Add Up

In advance of COP-21, the parties were to submit domestic GHG emission reduction plans, referred to as an intended nationally determined contribution (INDC). On March 31, 2015, President Obama submitted the U.S. INDC to the UNFCCC. With its INDC, the Obama Administration announced the intention “to achieve an economy wide target of reducing its GHG emissions by 26 percent to 28 percent below its 2005 level in 2025 and to make best efforts to reduce its emissions by 28 percent.”⁶⁸ The Obama Administration claimed it would use its existing statutory authorities and pursue several regulatory schemes to achieve this target, including regulations for carbon dioxide emissions from power plants, vehicle fuel efficiency,

⁶⁵ *Utility Air Regulatory Group v. EPA*, 134 S.Ct. at 2444.

⁶⁶ June 24, 2014 email from J. Goffman [gmail.com] to J. Freeman.

⁶⁷ *Id.* (“Thanks so much, Jody. Been meaning to call you for two days, but have been mostly on the road. Just did a careful read of the opinions (on a plane; where else?) We could have spared ourselves four years of counterproductive bullshit (pace Judge Tatel) if we had gone NAAQS-only when Gina proposed it. But enough with the stale and repetitious retro-recrimination. What is such a happy surprise is that, with huge assist from Scalia himself (“We are giving EPA most of what they want” – from the bench), we get this rescuing outcome while getting good press.”)

⁶⁸ United States Intended Nationally Determined Contribution; available at:

<http://www4.unfccc.int/submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20INDC%20and%20Accompanying%20Information.pdf>.

energy efficiency for buildings and appliances, methane emissions from landfills, and GHG emission from federal buildings and government operations by 40 percent by 2025.

In announcing the INDC, a senior White House official touted “Obama’s leadership” and that the President would “will seize every opportunity to make progress on climate change at home and on the international stage—as we look toward forging a global agreement on climate change in Paris this December and beyond.”⁶⁹ However, it is unclear if the Obama Administration’s INDC is anything more than a propaganda piece to create the illusion that the U.S. will be able to satisfy the demands of the international community. Independent analysis quickly poked holes in the U.S. INDC and found that the actions the Obama Administration identified do not add up to 26 to 28 percent reduction in GHG emissions – and will not stop predictions of global temperature increases from occurring.⁷⁰

These views have been echoed before Congress. The EPW Committee held an oversight hearing on July 8, 2015, to examine the impact of President Obama’s international climate commitments on domestic environmental policies. In opening the hearing, Chairman Inhofe stated:

*All of these statements sound good in a press release, but the slightest level of scrutiny reveals a significant lack in authenticity, substance and merit. And while the President is lecturing the rest of the world on the importance of credibility and transparency, he is going out of his way to write the U.S. Senate and the American people out of a final agreement.*⁷¹

Senior Fellow with the World Resources Institute, Karl Hausker, also at the July 8, 2015, hearing that additional actions are required for the United States to meet its INDC emission reduction targets.⁷² Others have also questioned the Obama Administration’s math in estimating the 26 to 28 percent emissions cut outlined in the INDC. At the July 8, 2015, EPW Committee hearing, several witnesses testified that the anticipated emission reductions from the various actions identified in the INDC did not add up to 26 to 28 percent. For example, David Bookbinder, former chief climate counsel for the environmental activist group the Sierra Club testified:

I do not see how these measures will allow the U.S. to meet even the lower end – 26 percent – of that goal. ... Regrettably, the measures listed in the INDC do not appear to get us there; in fact, using what I believe are very generous assumptions, the U.S. will be at least 29 percent (and probably more) short of the 2025 goal. It appears that the 26-28 percent target was based on emissions reductions attributable to regulatory measures other than the ones listed in the

⁶⁹ “We’re taking action on climate change – and the world is joining us,” Medium, Brian Deese, March 31, 2015; available at: <https://medium.com/@Deese44/we-re-taking-action-on-climate-change-and-the-world-is-joining-us-2bf44a62b9b9>.

⁷⁰ See e.g., Climate Action Tracker; available at: <http://climateactiontracker.org/countries/usa.html>.

⁷¹ Statement of Chairman James Inhofe, U.S. Senate Committee on Environment and Public Works, Hearing on Road to Paris: Examining the President’s International Climate Agenda and Implications for Domestic Environmental Policy, July 8, 2015; available at: http://www.epw.senate.gov/public/_cache/files/3b2dbe20-e0f9-4f35-886b-7e6e050fb8ed/opening-statement-2-final.pdf.

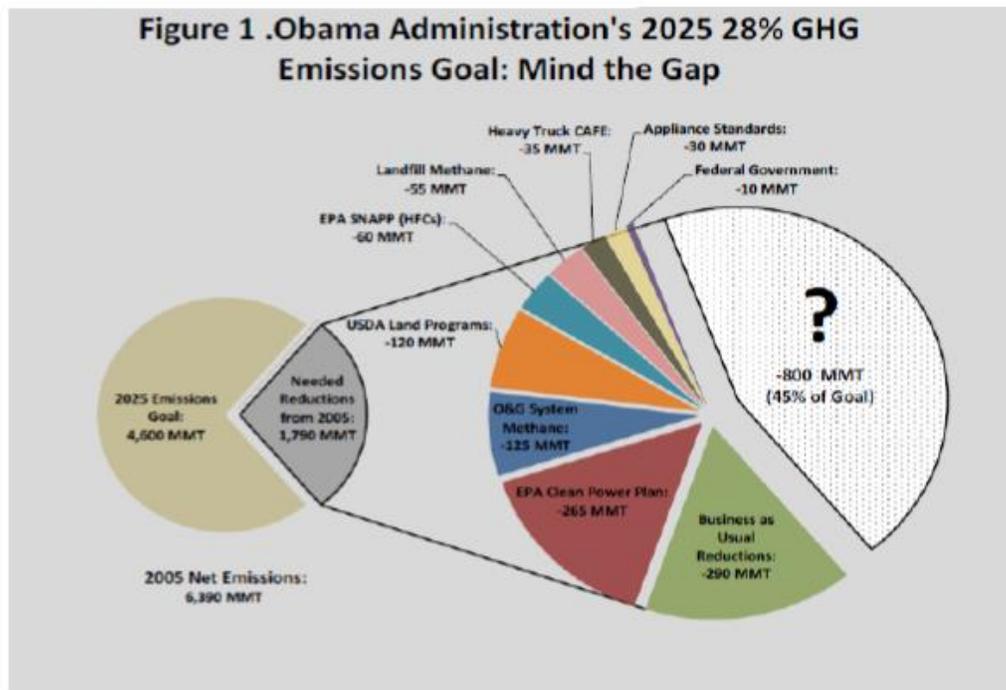
⁷² Testimony of Karl Hausker, Senior Fellow, World Resources Institute, U.S. Senate Committee on Environment and Public Works, Hearing on Road to Paris: Examining the President’s International Climate Agenda and Implications for Domestic Environmental Policy, July 8, 2015; available at: http://www.epw.senate.gov/public/_cache/files/cc17e984-d833-4245-abb9-247fefaef2bf/spw-070815.pdf

*INDC. In order for the American people and their representatives to fully understand the basis for the INDC commitment, I have asked, and continue to ask, that the Administration share the results of that planning process.*⁷³

At a November 18, 2015, EPW Committee hearing on the COP-21 negotiations, Stephen Eule with the U.S. Chamber of Commerce, identified a lack of transparency and a large gap in the Obama Administration’s claimed emission reduction activities:

*A close examination of the INDC raises more questions than it answers. Nowhere does it explain how the administration intends to achieve the unrealistic goals it has set out. In the absence of a detailed explanation of how the administration intends to meet the goal, the Congress, foreign governments, and stakeholders here and abroad have no basis on which to assess its cost or achievability. So how does the U.S. commitment add up? It does not.*⁷⁴

U.S. INDC DOES NOT ADD UP



Source: U.S. Chamber of Commerce

⁷³ Testimony of David Bookbinder, partner, Element VI Consulting, U.S. Senate Committee on Environment and Public Works, Hearing on Road to Paris: Examining the President’s International Climate Agenda and Implications for Domestic Environmental Policy, July 8, 2015; available at: <http://www.epw.senate.gov/public/cache/files/96e1aded-05af-485a-9e23-544f82e0f4bc/bookbinder.pdf>.

⁷⁴ Testimony of Stephen D. Eule, Vice President, of the Institute for 21st Century Energy, an affiliate of the U.S. Chamber of Commerce, U.S. Senate Committee on Environment and Public Works, Subcommittee on Clean Air and Nuclear Safety, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at: <http://www.epw.senate.gov/public/cache/files/3f20f502-aca6-433e-afc5-22b57d9d051f/eule-testimony.pdf>.

With more than a quarter of the emission reductions unaccounted for, former top EPA air official Jeff Holmstead, testified that the United States could not achieve its intended emission reductions using only existing legal authorities and speculated the Obama Administration may target emissions from the agricultural sector of the economy to make up some of the difference.⁷⁵ Holmstead also questioned whether the Obama Administration’s reliance on the Clean Power Plan to achieve almost a quarter of the United States’ intended reductions was misplaced given the legal uncertainty surrounding the power plant rules.⁷⁶

To be sure, it appears that the United States would need to pursue regulations against vast swaths of the economy – not just the utility sector – to meet the INDC commitment. EPA Administrator Gina McCarthy also recently signaled that EPA will have to look at refineries, in addition to power plants to continue to generate new GHG emissions reductions.⁷⁷ A November 24, 2015, report by the American Council for Capital Formation concludes that regulation of GHG emissions from the industrial sector would be considerably more costly than the utility sector alone because the new rules would impact both energy consumption and industrial processes and further would undermine the United States’ competitiveness compared to China and other countries.⁷⁸

The other components of the INDC that are based on non-EPA action outlined in the Climate Action Plan are on similarly shaky footing. Some of the greatest uncertainty about whether the United States could meet its intended 26 to 28 percent emission reduction is associated with non-EPA components of the INDC. An analysis of the INDC by the Center for Climate and Energy Solutions suggests that the non-EPA part of the plan would constitute 4.7 to 8.2 percent of the total emissions reduction.⁷⁹ Specific actions outlined in the INDC indicate that the U.S. Department of Energy (DOE) has already finalized multiple rules affecting the building sector and energy efficiency standards.⁸⁰ However, as Mr. Bookbinder testified before the EPW Committee in July, DOE’s contribution to GHG reductions is particularly difficult to quantify.⁸¹

Republican Senators of the Senate EPW Committee also sent a letter to President Obama asking a series of questions regarding the specifics of the INDC in an attempt to rectify the lack of detail

⁷⁵ Testimony of Jeff Holmstead, Partner, Bracewell & Giuliani, U.S. Senate Committee on Environment and Public Works, Hearing on Road to Paris: Examining the President’s International Climate Agenda and Implications for Domestic Environmental Policy, July 8, 2015; available at:

<http://www.epw.senate.gov/public/cache/files/21ffe37a-8052-4498-ba78-18395db0fc42/holmstead.pdf>.

⁷⁶ *Id.*

⁷⁷ “EPA will have to ‘look at refineries’ eventually – McCarthy,” ClimateWire, Jean Chemnick, November 24, 2015; available at: <http://www.eenews.net/climatewire/2015/11/24/stories/1060028505>.

⁷⁸ “Success of U.S. Climate Pledge Depends on Future GHG Regulation of U.S. Industry, Other Sectors,” American Council for Capital Formation Center for Policy Research, George Banks, November 2015; available at: http://accf.org/wp-content/uploads/2015/11/ACCF-Report_US-INDC-FINAL.pdf.

⁷⁹ “Achieving the United States’ Intended Nationally Determined Contribution,” Center for Climate and Energy Solutions, June 2015; available at: <http://www.c2es.org/docUploads/achieving-us-indc.pdf>

⁸⁰ United States Intended Nationally Determined Contribution, March 2015; available at: <http://www4.unfccc.int/submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20INDC%20and%20Accompanying%20Information.pdf>

⁸¹ Testimony of David Bookbinder, partner, Element VI Consulting, U.S. Senate Committee on Environment and Public Works, Hearing on Road to Paris: Examining the President’s International Climate Agenda and Implications for Domestic Environmental Policy, July 8, 2015; available at: <http://www.epw.senate.gov/public/cache/files/96e1aded-05af-485a-9e23-544f82e0f4bc/bookbinder.pdf>.

provided.⁸² To date the Obama Administration has refused to respond to the Committee's request for information about the INDC and has not been forthcoming with answers regarding planned cuts by sector, source, and GHG needed to meet the INDC goal.

This ongoing lack of transparency prevents the American people and Congress from fully understanding the intentions and goals of the Obama Administration as it purports to commit the U.S. to further regulations and economic hardship in the name of addressing climate change.

c) Obama's Empty Promise of American Taxpayer Dollars to UN Slush Fund

Per the pledge rich countries made in Copenhagen, President Obama requested \$500 million for the GCF in his fiscal year 2016 budget request to Congress in March 2015 in an effort to make good on his \$3 billion pledge to the GCF in advance of COP-21. The U.S. Senate opposed that budget request in a 98 to 1 vote.

Indeed, much of the discussion around the world leading to COP-21 has been focused on just how much money developed countries, such as the U.S., would have to commit to pay for developing countries as part of a United Nations administered GCF to "promote the paradigm shift towards low-emission and climate-resilient development pathways..."⁸³ For example, Brazil, China, India and South Africa released a joint statement where they expressed, "disappointment over the continued lack of any clear roadmap for developed countries to provide \$100 billion per year by 2020, as well as on substantially scaling up financial support after 2020."⁸⁴ At the November 18, 2015, EPW Committee hearing, Oren Cass, a senior fellow with the Manhattan Institute for Policy Research, testified:

*My primary message to the committee is this: international climate negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) no longer bear a substantial relationship to the goal of sharply reducing greenhouse gas emissions. Rather, the only likely achievement of the upcoming Paris conference (COP-21) is a commitment by developed nations including the United States to transfer large sums of wealth to poorer nations.*⁸⁵

Americans are not the only ones making the observation that these negotiations are about finance, but leaders around the world have been affirming it. Here are just some of the statements that reflect this reality:

⁸² July 8, 2015 letter from Senator James Inhofe and 10 other Senators to President Obama; available at: <http://www.epw.senate.gov/public/cache/files/9c0aa2f6-bb9b-4c0b-a8ca-646c3b2920fd/letter-to-obama-on-indc-signed.pdf>.

⁸³ Climate Fund Update; available at: <http://www.climatefundupdate.org/listing/green-climate-fund>.

⁸⁴ "Brazil, China, India, South Africa in push for climate financing," Agence France-Presse, June 28, 2015; available at: <http://news.yahoo.com/brazil-china-india-south-africa-push-climate-financing-202322385.html>

⁸⁵ Testimony of Oren Cass, Senior Fellow, Manhattan Institute for Policy Research, U.S. Senate Committee on Environment and Public Works, Hearing on Road to Paris: Examining the President's International Climate Agenda and Implications for Domestic Environmental Policy, November 18, 2015; Available at: http://www.epw.senate.gov/public/index.cfm/hearings?Id=0BFAE2BB-416F-40A1-9698-5BED0FE72BDC&Statement_id=10B8A5A7-DE5D-43C8-91BB-A71CDB4AC3AA.

- Christiana Figueres (UNFCCC Executive Secretary): “There is no doubt that financial and technical support for the transformation in developing countries is a very important piece of the puzzle in Paris.”⁸⁶
- Prime Minister Narendra Modi (India): “We look forward to (a) comprehensive and concrete outcome in Paris with a positive agenda on combating climate change which also focuses on access to finance and technology for the developing world, especially the poor countries and small island states.”⁸⁷
- President Francois Hollande (France): “There will not be an agreement if there is no firm commitment on financing.”⁸⁸
- Laurence Tubiana (France): “I would say the most difficult [part of an agreement] is finance. ... It has to be clear that money is flowing from developed to developing countries, that’s for sure. It should be a significant share of public money as well.”⁸⁹
- Marko Pomerants (Estonia): “Everybody knows, to really succeed we need to make financial efforts.”⁹⁰
- Nozipho Mxakato-Diseko (South Africa's ambassador, who represents 134 developing countries, the G77 grouping and China) told negotiators during climate talks in Bonn: “Whether Paris succeeds or not will depend on what we have as part of the agreement on climate finance.”⁹¹

However, the international community should not count on receiving such financial support. In the first instance, Congress has appropriated zero funds for the GCF. The House of Representatives’ FY 2016 spending bill explicitly precludes any funds from going into the GCF. While the Senate FY 2016 spending bill removed this language, Congressional leaders have indicated they expect the FY 2016 omnibus spending bill due December 11, 2015, will provide zero funds for the GCF. For example, Senator Capito, who serves on the EPW Committee as well as the Senate Committee on Appropriations, said of the GCF, “[o]f course, that will remain unfunded on Dec. 11. I’m sure of that.”⁹²

⁸⁶ “Paris talks won’t hit global warming target, UN warns,” Politico, Kalina Oroschakoff, September 15, 2015; available at: <http://www.politico.eu/article/paris-talks-global-warming-target-un-cop21-figueres/>.

⁸⁷ “Modi calls for climate change agenda that helps developing countries”, Reuters, David Brunnstrom & Jeff Mason, September 29, 2015; available at: <http://www.reuters.com/article/2015/09/29/un-assembly-obama-modi-update-1-pix-tvco-idUSL1N11Y1XZ20150929#1Zfpv7Y2oyaFpU10.97>

⁸⁸ “France’s Hollande says risk climate talks could fail,” Reuters, September 7, 2015; available at: <http://www.reuters.com/article/2015/09/07/climatechange-summit-hollande-idUSP6N0WP01X20150907#i0L4SkuMLdBaMmYA.97>

⁸⁹ “French climate ambassador concerned over slow progress of draft Paris deal,” Guardian, Adam Vaughan, July 28, 2015, available at <http://www.theguardian.com/environment/2015/jul/28/french-climate-ambassador-paris-deal-cop21>.

⁹⁰ “Paris climate talks hinge on money,” Politico, Kalina Oroschakoff, July 30, 2015; available at: <http://www.politico.eu/article/paris-climate-summit-cop21-2015-money/>.

⁹¹ “Internal divisions hobble EU climate leadership,” POLITICO Pro, Sara Stefanini, October 23, 2015, <https://www.politicopro.com/energy/story/2015/10/internal-divisions-hobble-eu-climate-leadership-069322>

⁹² “Aiming to stymie Paris deal, Republicans have time on their side,” Politico, Darren Goode & Andrew Restuccia, November 19, 2015; available at: <https://www.politicopro.com/energy/story/2015/11/paris-climate-talks-government-shutdown-collide-077747>.

Secretary of State Kerry has alluded to President Obama vetoing any spending bill that does not provide funds for the GCF. Senator Inhofe, in his opening statement before the November 18, 2015, EPW Committee hearing on the negotiations, avowed:

*Beyond the process, there is the financing element of these negotiations. Let me be very clear—this Congress will not approve a cent of appropriations for the Green Climate Fund. The President would like to shut down livelihoods and ship American jobs overseas while imposing a cap and trade energy tax on the American people so he can pay for his international climate legacy that hinges on cooperation from rent-seeking developing countries lining up for a piece of the President's multi-billion dollar slush fund.*⁹³

On November 19, 2015, Senator John Barrasso (R-Wyoming), Chairman of the Senate Committee on Foreign Relations' Subcommittee on Multilateral International Development, Multilateral Institutions, and International Economic, Energy, and Environmental Policy, and EPW Committee Chairman Inhofe led a group of 37 senators in a letter to President Obama reiterating, “[w]hile the Executive Branch and Congress both play an important role in the foreign policy of our nation, Congress ultimately holds the power of the purse,” so U.S. State Department officials must “explain [at COP-21] that Congress will not be forthcoming with these [GCF] funds in the future without a vote in the Senate on any final agreement as required in the U.S. Constitution.”⁹⁴ On November 20, 2015, 110 Republican congressmen sent a similar letter urging House Appropriations Chairman Hal Rogers (R-Kentucky) and Ranking Member Nita Lowey (D-New York) not to fund the GCF unless the President submitted the final COP-21 agreement to the Senate.⁹⁵

Given Congressional resistance to funding the GCF, it appears the Administration has been mulling over other options to meet its financing pledge that avoids a shutdown situation, such as turning to private financing. These efforts, however, may not fulfill the expectations of developing countries. As one article described:

To circumvent Congress, the administration is recruiting companies to privately finance renewable energy developments and other projects to cut emissions. The White House announced this week, for example, that 81 companies have agreed to support a strong agreement in Paris and take steps to tackle climate change. A senior administration official stressed that private sector finance is going to be "very important" ahead of Paris. While poor countries value private finance, they

⁹³ Statement of Chairman James Inhofe, U.S. Senate Committee on Environment and Public Works, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at: <http://www.epw.senate.gov/public/cache/files/b883df1e-Oba5-479e-816e-2c53413826c5/jmi-opening-statement-final-111815.pdf>.

⁹⁴ Letter from Senator Barrasso & Senator Inhofe, et al., to President Obama, November 19, 2015, available at <http://www.barrasso.senate.gov/public/index.cfm/2015/11/senators-to-pres-obama-no-international-climate-funding-without-senate-approval>.

⁹⁵ Letter from Congressman H. Morgan Griffith, et al., to Chairman Hal Rogers and Ranking Member Nita Lowey, Committee on Appropriations, U.S. House of Representatives; available at: http://morgangriffith.house.gov/uploadedfiles/final_green_climate_fund_letter.pdf.

*say it cannot replace public money from the United States and other rich nations.*⁹⁶

There is vast concern over the integrity of the program given other areas of need. Senator Barrasso at an October 20, 2015, Senate Foreign Relations Subcommittee hearing, lamented that instead of funding the GCF, “[w]e need to focus current scarce resources on the increasing need for humanitarian assistance, democracy promotion, embassy security measures, countering global terrorist threats.” An October 22, 2015, op-ed in the *Wall Street Journal* by Danish author Bjorn Lomborg, critically explained:

*In the run-up to the 2015 U.N. Climate Change Conference in Paris from Nov. 30 to Dec. 11, rich countries and development organizations are scrambling to join the fashionable ranks of “climate aid” donors. This effectively means telling the world’s worst-off people, suffering from tuberculosis, malaria or malnutrition, that what they really need isn’t medicine, mosquito nets or micronutrients, but a solar panel. . . [Already] roughly \$1 in 4 of global develop aid goes to climate-related aid, at expense of improved public health, education, and economic development.*⁹⁷

Congress has little faith in the validity of the GCF and its intended use to counter the impacts of climate change. As highlighted in a November 19, 2015, op-ed in the *National Review* by Senator Mike Lee (R-Utah) and Representative Mike Kelly (R-Pennsylvania):

*This is not a trivial sum of money, especially considering that the United States already spends tens of billions of dollars every year in foreign aid. But it is chump change compared with the total estimated costs required to retrofit the world’s emerging economies to bring them into compliance with the kind of emissions standards necessary to have any meaningful effect on global atmospheric conditions.*⁹⁸

According to the testimony by the Manhattan Institute’s Oren Cass:

Negotiations in Paris will focus little on greenhouse-gas emissions and almost entirely on the more mundane subject of cash. . . [yet] it makes little sense under any rationale for the developed world to offer trillions of dollars in wealth transfers as part of an agreement not likely to produce emissions reductions. But increasingly, those payments are considered the price of the agreement. Developed-world climate negotiators are pursuing a transaction in which leaders in the developed world, having staked their political capital and legacies on

⁹⁶ “Pressure rises for U.S. money as Bonn climate talks end,” Politico, Andrew Restuccia, October 23, 2015.

⁹⁷ “This Child Doesn’t Need a Solar Panel,” *Wall Street Journal*, Bjorn Lomborg, October 21, 2015; available at <http://www.wsj.com/articles/this-child-doesnt-need-a-solar-panel-1445466967>.

⁹⁸ “Pay Up, and Up, and Up: Developing Nations Set to Make Demands at Climate-Change Talks in Paris,” *National Review*, Senator Mike Lee and Representative Mike Kelly, November 19, 2015; available at: <http://www.nationalreview.com/article/427295/price-paris-developing-nations-demand-trillions-meet-climate-change-goals-mike-lee>.

*achieving and “agreement,” must pay developing nations to sign on the dotted line.*⁹⁹

Indeed, it appears President Obama’s GCF pledge is nothing more than a bargaining chip he plans to use at COP-21 to forge some type of agreement. While he may cite the pledge and his budget request to Congress, along with threats of a government shutdown to the international community, these promises are empty as Congress has no intention to fund the GCF.

d) Obama’s International Climate Commitment is a Bad Deal for Americans

Aside from the Obama Administration, many members of the international community strongly support efforts to “decarbonize” the U.S. economy. Much of this support likely stems from the UNFCCC’s “common and differentiated” responsibilities approach for reducing GHGs, which is meant to ensure that developed countries such as the United States and E.U. are required to make costly emissions reductions today, while paying hundreds of billions of dollars to developing countries each year to help them mitigate impacts of climate change.

The UNFCCC approach for achieving the purported goal of limiting temperature increases to 2 degrees Celsius by 2100 is unworkable, as 79 percent of projected carbon emission in that timeframe will come from developing nations.¹⁰⁰ This fact, affirmed by the United Nations Intergovernmental Panel on Climate Change (IPCC), seriously calls into question why country or individual who is interested in “solving” the problem of climate change is advocating for a strong agreement out of Paris. However, close review of the incentives of other countries make it clear where the real motivations for pursuing an ambitious deal lies – in undermining the status of the United States as a world superpower.

Some international officials have also been candid about the opportunity this conference presents to advance their ideological goals. Most notably, Ms. Figueres, the U.N. climate chief recently said, “This is probably the most difficult task we have ever given ourselves, which is to intentionally transform the economic development model, for the first time in human history.”¹⁰¹ The transformation she is referring to involves nations purposely giving up some of their sovereignty in favor of a top-down approach where the United Nations ultimately dictates how much each economy is allowed to grow by severely limiting how much energy each developed country can produce and redirecting substantial amounts of capital to developing countries at their discretion without oversight.

⁹⁹ Testimony of Oren Cass, Senior Fellow, Manhattan Institute, U.S. Senate Committee on Environment and Public Works, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at <http://www.epw.senate.gov/public/cache/files/6658e59c-1098-4820-8360-3d61a34985bf/cass-testimony.pdf>.

¹⁰⁰ “Leading Nowhere: The Futility and Farce of Global Climate Negotiations,” Manhattan Institute for Public Policy Research, October 2015; available at: http://www.manhattan-institute.org/pdf/eper_19.pdf.

¹⁰¹ Questions to Christiana Figueres on COP 21, United Nations Regional Information Centre, November 02, 2015; available at: <https://europa.eu/eyd2015/en/unric/posts/questions-cristina-figures-cop21>.

Americans might also be surprised at how extreme some developing countries have been in their INDCs regarding their ultimate goals in engaging in these negotiations. In one example, Bolivia's INDC states, "...for a lasting solution to the climate crisis we must destroy capitalism."¹⁰² A review of INDCs from other poorly developed countries show that any actions they pledge to take are strictly conditional on significant climate financing from developed nations.¹⁰³

Most of the international focus surrounding the Paris climate negotiations has been on China. As the world's largest carbon dioxide emitter and the second largest economy, China's participation in any agreement is seen as critical for curbing climate change. China's motives for pushing a climate agreement should be viewed skeptically since it would decrease the economic competitiveness of the U.S. right as China is rapidly developing and increasingly seen as a dominant world power. In addition to making China more competitive, participation in a climate agreement will help China's Communist Party maintain legitimacy with the Chinese people who are currently enduring some of the worst air pollution in the world.¹⁰⁴

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China's importance in this deal is why the Obama Administration has worked to promote any pledge made by China as "historic" and evidence that U.S. efforts are not for naught. However, since China is not a fully developed country, under the UNFCCC affirmed principle of "common but differentiated responsibilities and respective capabilities," it is not expected to put forth an agreement nearly as ambitious as the United States or E.U..

China has advanced two pledges on climate leading up to the negotiations in Paris. First, China's announcement that it would "peak emissions" and get 20 percent of its energy from "renewable sources" by 2030.¹⁰⁵ This proposal has been largely criticized as a business as usual scenario.¹⁰⁶ While visiting the United States in late September 2015, Chinese President Xi Jinping seemingly upped the ante when he announced that China would also aim to implement a

¹⁰² INDC of Bolivia, available at:

<http://www4.unfccc.int/submissions/INDC/Published%20Documents/Bolivia/1/INDC-Bolivia-english.pdf>.

¹⁰³ Carbon Brief's Paris climate pledge tracker: INDC database, available at <http://www.carbonbrief.org/paris-2015-tracking-country-climate-pledges>.

¹⁰⁴ "Is the US-China Pact as Big a Deal as it Seems," Mother Jones, James Fallows, November 12, 2014: available at <http://www.motherjones.com/environment/2014/11/us-china-climate-pact-big-deal-it-seems>.

¹⁰⁵ "China to cap rising emissions by 2030 in boost to Paris U.N. Deal," Reuters, Julian Ponthus, June 30, 2015; available at: <http://www.reuters.com/article/2015/06/30/us-france-china-climatechange-idUSKCN0PA1G420150630>.

¹⁰⁶ "China's Energy and Carbon Emissions Outlook to 2050," Ernest Orlando Lawrence Berkeley National Laboratory, Nan Zhou, et al., April 2011; available at: <https://china.lbl.gov/sites/all/files/lbl-4472e-energy-2050april-2011.pdf>.

cap-and-trade system by 2017.¹⁰⁷ This proposal, while more stringent than the last, was short of specifics and still effectively served as a pre-COP-21 press release for the Obama Administration and China. In response to this announcement, Senator Inhofe observed:

*If the president was serious about achieving a substantive climate agreement, he would spend more time working with Congress instead of developing press releases with the Chinese government. These public pledges sound good, but come with serious economic consequences for the United States. The Obama administration will use regulatory overreach to claim our nation's commitment, while China's pledge has no guarantee of enforcement. This is a great deal for the Chinese who are slated to continue increasing emissions with the potential of capping them years from now. China stands to not only inherit a bounty of U.S. taxpayer dollars through various 'climate change' and 'sustainability' initiatives but also inherit U.S. manufacturing jobs and economic investment that the president's carbon mandates will deliver straight to Beijing.*¹⁰⁸

Testimony from Mr. Eule with the U.S. Chamber of Commerce before the EPW Committee on November 18, 2015, analyzed why China's pledge would be a "business as usual" scenario:

*An examination of the Chinese commitment reveals it to be little better than business as usual. For example, International Energy Agency (IEA) historical and forecast data show that carbon dioxide emissions from China already are expected to peak around 2030 at 9.5 billion TCO₂ and that zero-emitting energy will provide 18 percent of total energy demand. IEA data also suggest that from 1990 to 2005, China reduced its carbon dioxide emissions intensity by 58 percent to 61 percent – essentially the same rate it is pledging for 2005 to 2030. In other words, business as usual.*¹⁰⁹

Chinese pledges to date are not only broad and unserious, but they will be hard to verify. Recent news that the Chinese government has suppressed data about how much coal the country has been burning reignited this legitimate fear. According to the *New York Times*, "...the new figures add about 600 million tons to China's coal consumption in 2012 – an amount equivalent to more than 70 percent of the total coal used annually by the United States."¹¹⁰ This event not only weakens China's credibility, it also has the effect of weakening its pledge, which has no absolute emissions targets and therefore will now allow that country to start from a higher

¹⁰⁷ "US, China Announce Steps on Climate Change, \$3.1 Billion Contribution," Wall Street Journal, Colleen McCain Nelson & William Mauldin, September 25, 2015; available at: <http://www.wsj.com/articles/u-s-china-announce-steps-on-climate-change-3-1-billion-contribution-1443197680>.

¹⁰⁸ Available at: <http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=7B0E0E8A-C860-4664-9F65-FD6FF606A2CB>.

¹⁰⁹ Testimony of Steven Eule, Vice President, Institute for 21st Century Energy, US Chamber of Commerce, U.S. Senate Committee on Environment and Public Works, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at http://www.epw.senate.gov/public/_cache/files/3f20f502-aca6-433e-afc5-22b57d9d051f/eule-testimony.pdf.

¹¹⁰ "China Burns Much More Coal than Reported, Complicating Climate Talks", New York Times, Chris Buckley, November 3, 2015; available at: <http://www.nytimes.com/2015/11/04/world/asia/china-burns-much-more-coal-than-reported-complicating-climate-talks.html?ref=topics&r=1>.

baseline. The higher baseline will in turn lead to even more consumption and emissions than previously anticipated.

Another country seen as key to any successful climate agreement is India. India is the world's fourth largest emitter of carbon dioxide and was the last major economy to submit an INDC. Like China, India is a developing country and, therefore, is not expected by the UNFCCC to put forth an INDC as tough as developed countries. Analysis of India's INDC shows that it is even weaker than China's pledge. This was confirmed at the November 18, 2015, Senate EPW hearing by Manhattan Institute for Policy Senior Fellow Oren Cass:

*Analyses from multiple perspectives demonstrate the emptiness of this commitment. In April, India's Centre for Policy Research estimated an emissions trajectory for the country absent further policy action and the INDC commitment falls squarely in the middle of the established range. Bloomberg finds it significantly worse than BAU [Business as Usual] and researcher Glen Peters has shown the proposed progress is slower than historical trend. Indeed, the most obvious reference point is in the INDC itself: India reports that its energy efficiency has already improved more than 17 percent between 2005 and 2012. Assuming no change in its carbon intensity of energy, India could improve only half as fast going forward and still achieve its 'goal.'*¹¹¹

Specifically, India has pledged to reduce the intensity of its carbon-dioxide emissions and boost the share of electricity produced from sources other than fossil fuels by 40 percent by 2030.¹¹² Like the Chinese commitment, India's allows for a considerable increase in GHG emissions while the United States is required to make drastic cuts now.

In addition to putting forth a weak agreement, India essentially showed they are not serious about reducing their emissions by refusing a "review mechanism" in the potential COP-21 agreement to ensure that countries are following through with their INDCs.¹¹³ Seemingly, India is more concerned about being involved in the negotiations and receiving benefits from developed nations than solving the problem of climate change.

Finally, Russia is the fifth largest GHG emitter and also notably the second largest producer of oil and gas after the United States.¹¹⁴ Russia is a developing country and, therefore, also supportive of the "common but differentiated responsibility" principle. Historically Russia has been seen as one of the biggest obstacles to reaching climate agreements and surprised the world

¹¹¹ Testimony of Oren Cass, Senior Fellow, Manhattan Institute, U.S. Senate Committee on Environment and Public Works, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at <http://www.epw.senate.gov/public/cache/files/6658e59c-1098-4820-8360-3d61a34985bf/cass-testimony.pdf>.

¹¹² "India Pledges to Cut Emissions Intensity to Help Fight Climate Change," Wall Street Journal, October 1, 2015; available at: <http://www.wsj.com/articles/india-pledges-to-cut-emissions-intensity-to-help-fight-climate-change-1443752106>.

¹¹³ "India slows progress on ambitious climate change accord, Financial Times, Alex Barker & Pilita Clark, November 16, 2015; available at: <http://www.ft.com/intl/cms/s/0/de7a31b6-8c55-11e5-8be4-3506bf20cc2b.html#axzz3rs5vLZ6s>.

¹¹⁴ "US Ousts Russia as Top World Oil, Gas Producer in BP Data," Bloomberg Business, Rakteem Katakey, June 10, 2015; available at: <http://www.bloomberg.com/news/articles/2015-06-10/u-s-ousts-russia-as-world-s-top-oil-gas-producer-in-bp-report>.

when it submitted its INDC early in March 2015.¹¹⁵ However, like the previously discussed pledges, Russia's can also be defined as a "business as usual" pledge. Unlike other countries, after the collapse of the former Soviet Union, GHG emissions also plummeted. This unusual GHG trend will allow the country to also increase emissions while fulfilling its promise to cut emissions by 25-30 percent of the 1990 levels by 2030. Russia's pledge is also conditional on the outcome of the agreement in Paris and therefore could be withdrawn.

Not only developing countries stand to gain financially from an agreement in COP-21, but this also presents an opportunity for the E.U. to be more competitive with the United States. In fact, former E.U. minister Margo Wallstrom stated international agreements are about the economy and "leveling the playing field for big business worldwide."¹¹⁶ This is why it is not surprising that Europe's top oil firms jointly called for carbon pricing in a letter to the U.N. last summer in anticipation of the Paris negotiations.¹¹⁷ Notably, no American firms signed onto the letter. This is because firms within the E.U. already have to deal with mandates similar to President Obama's CAP, which combines a carbon market with generous subsidies to renewables which "...impose heavy costs on European consumers and companies..."¹¹⁸ Ironically, despite the costly mandates, emissions in the United States have declined more quickly than in the E.U. thanks to innovative new drilling practices developed by the oil and gas industry that allows for increased use of natural gas.¹¹⁹ Recent Senate EPW testimony by Mr. Eule of the Chamber of Commerce shed light on this trend:

*That continent's exorbitant energy prices, largely policy-driven, are ruining its competitiveness and turning energy-intensive industries into endangered species. More and more, we are seeing European companies fleeing sky-high energy costs and shifting production to the United States and other countries.*¹²⁰

Since the E.U. negotiates as a block, concerns within the E.U. about committing to an ambitious target have been minimized internationally. For example, Poland fought to weaken the INDC put forth by the E.U. because nearly 90 percent of their electricity comes from coal.¹²¹ Recently, in an attempt to further lower the ambition in the E.U.'s agreement, Poland became the first country

¹¹⁵ "Paris climate talks: Russia will use its huge forests as a bargaining chip at COP21," International Business Times, Marianna Poberezhskaya, November 20, 2015; available at: <http://www.ibtimes.co.uk/paris-climate-talks-russia-will-use-its-huge-forests-bargaining-chip-cop21-1529685>.

¹¹⁶ "Controlling Climate? More like Controlling Humans," CNS News, Marc Morano, October 30, 2009; available at: <http://cnsnews.com/blog/marc-morano/controlling-climate-more-controlling-humans>.

¹¹⁷ "Europe's top oil firms jointly call for carbon pricing," Reuters, Ron Bousso & Susanna Twidale, June 1, 2015; available at: <http://www.reuters.com/article/2015/06/01/europe-carbon-un-idUSL1N0YN08L20150601#XlYxGtv3bmAZK22A.97>.

¹¹⁸ "European climate policy: Worse than useless," Economist, January 25, 2015; available at: <http://www.economist.com/news/leaders/21595002-current-policies-are-mess-heres-how-fix-them-worse-useless>.

¹¹⁹ "Why the US is Cutting Carbon Faster than Europe," Bloomberg Business, Matthew Philips, April 19, 2013; available at: <http://www.bloomberg.com/bw/articles/2013-04-19/why-the-u-dot-s-dot-is-cutting-carbon-faster-than-europe>.

¹²⁰ Testimony of Steven Eule, Vice President, Institute for 21st Century Energy, US Chamber of Commerce, U.S. Senate Committee on Environment and Public Works, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at http://www.epw.senate.gov/public/_cache/files/3f20f502-aca6-433e-afc5-22b57d9d051f/eule-testimony.pdf.

¹²¹ "EU climate goals set to clash with US aims," Politico, Kalina Oroschakoff, September 19, 2015; available at: <http://www.politico.eu/article/eu-climate-goals-set-to-clash-with-us-aims-cop21-paris-canete/>.

that threatened to veto a deal in Paris.¹²² The United Kingdom has also signaled that it is not completely committed to the E.U. targets with their recent actions to phase out renewable energy subsidies over the next decade amid concerns about escalating costs to consumers.¹²³ Other countries such as Germany and Spain have also had to cut back on their generous renewable energy subsidies as costs became unsustainable.¹²⁴ If the E.U.'s climate policies have sent a signal, it is not to pursue similar policies.

¹²² "Poles may spoil the Paris party," Politico, Andrew Kureth, November 24, 2015; available at:

<http://www.politico.eu/article/the-poles-may-spoil-paris-climate-summit-party/>

¹²³ "Britain moves to slash renewable subsidy costs," Reuters, Susana Twidale, July 22, 2015; available at:

<http://uk.reuters.com/article/2015/07/22/uk-britain-renewables-subsidies-idUKKCN0PW0DW20150722>.

¹²⁴ "The environment: Less green and pleasant," Economist, November 5, 2015; available at:

<http://www.economist.com/news/britain/21677663-some-cuts-green-power-subsidies-are-sensible-mixed-messages-risk-deterring-much-needed>.

III. CURRENT REALITIES RESET EXPECTATIONS FOR COP-21 AND BEYOND

Despite President Obama's lofty promises to foster a historic agreement at COP-21, the current dynamics between the Administration and Congress at home and among the negotiating parties abroad reveal that history is likely to repeat itself – the United States will not be a party to a substantive long-term legally binding agreement. Co-chairs of the agreement have tested a novel strategy, which seems to be backfiring as the negotiating text going into Paris is nowhere close to streamlined or in a place of consensus. One of the most controversial and substantive items yet to be resolved going into COP-21 is the legal form of the impending agreement.

While the Obama Administration has been working toward an agreement that would circumvent the Senate, such an agreement is counter to the objectives of many countries. Moreover, the Obama Administration has failed to be fully transparent and forthcoming with the parties regarding the legal hurdles to fulfilling President Obama's pledges. These hurdles include:

- Any substantive agreement establishing binding “targets and timetables” must go to the Senate to have legal relevance in the United States;
- Without the Senate, President Obama is limited to making non-binding political commitments with no means of enforcement or accountability; and
- Absent Congress, there will be no funds provided for the GCF.

As such, the Obama Administration has recently attempted to change its tone; on November 20, 2015, President Obama admitted any agreement reached in Paris “won't be as strong initially as it needs to be eventually.”¹²⁵ White House aides have admitted “they're wary of getting too far ahead of a result that may yet blow up in their faces.”¹²⁶ Even so, if history is any indication, President Obama will follow the same pattern he did leading up to COP-15, which was expected to result in an unprecedented agreement on a successor to the Kyoto Protocol by all parties. At that time, President Obama had a democratically-controlled Congress, but due to the unpopularity of cap-and-trade legislation at home, he chose not to seek an agreement that would require Senate ratification.

The circumstances leading up to COP-21 are no different. President Obama continues to avoid Congressional input while public opinion reveals that globally, concern for climate change has declined since COP-15,¹²⁷ and domestically, 97 percent of Americans do not consider climate change an important issue.¹²⁸ Indeed, President Obama will likely paint any agreement reached in Paris as a victory to claim credit for his environmental legacy. However, the reality is that all

¹²⁵ “Obama: Paris climate deal will be only a beginning,” POLITICO Pro Energy Whiteboard, Andrew Restuccia, November 20, 2015.

¹²⁶ “White House reins in expectations for Paris,” POLITICO Pro Energy, Edward-Isaac Dove & Andrew Restuccia, November 27, 2015.

¹²⁷ Wealthy Countries Less Concerned about Climate Change: Global Poll, GLOBALSCAN (Nov. 26, 2015), available at <http://www.globescan.com/news-and-analysis/press-releases/press-releases-2015/367-wealthy-countries-less-concerned-about-climate-change-global-poll.html>.

¹²⁸ “The New ‘Consensus’: 97 Percent of Americans Aren't Worried About Global Warming,” Daily Caller, Mike Bastasch, November 25, 2015; available at: <http://dailycaller.com/2015/11/25/the-new-consensus-97-of-americans-arent-worried-about-global-warming/>.

the promises will be reduced to international rhetoric that Obama will cite as reason to impose overly burdensome regulations on Americans during his final year in office, which will fail to produce any meaningful impact on global climate change.

a) COP-21 Co-chairs' Novel Process for Reaching an Agreement is Backfiring

As compared to the lengthy negotiating text leading into COP-15 in Copenhagen, which stretched to nearly 200 pages,¹²⁹ the 54 pages of text going into COP-21¹³⁰ may seem manageable for negotiators to sift through during the two-week conference. However, the process leading up to the current text and the issues that remain unsettled seem to provide little hope of reaching a comprehensive agreement on the text in Paris. As a July 2, 2015, POLITICO article explained, the co-chairs of the COP-21 negotiations “made a counter-intuitive strategic decision to allow countries to add almost anything they wanted to the negotiating text. Not surprisingly, countries jumped at the chance, inserting a hodgepodge of conflicting language. By the end of an interim meeting in Geneva, Switzerland, in February [2015], the document had more than doubled in size from the draft delegates had agreed to last year in Lima, Peru.”¹³¹

While the co-chairs were pleased to pare down an 85-page version to 20 pages of streamlined text for the October 2015 negotiations in Bonn, Germany, an entire week was spent adding text back to the document rather than negotiating key terms or legal form. According to an October 23, 2015, press account, “countries felt the 20-page text the co-chairs published earlier this month oversimplified a number of issues and neglected others – ranging from the E.U.’s push to limit emissions from the shipping and aviation industries to demands from developing countries for clear requirements on financial aid after 2020.”¹³² Another characterized the issue as, “the 20 page draft agreement released early October *drew widespread anger and disappointment*, particularly from the G77 group of developing countries. One issue was the lack of any mention about helping poor countries deal with loss and damage related to climate change” (emphasis added).¹³³ Such feelings of “anger and disappointment” are not new to international climate talks, as past talks have been “bogged down” by distrust among the parties.¹³⁴

While COP-21 was framed as being much different and the co-chairs over the summer believed they had the parties’ trust, co-chair Daniel Reifsnyder of the United States acknowledged that trust “is always at risk.”¹³⁵ After the streamlined text was released and the Bonn talks were underway, it seems that trust was called into question. In the midst of the talks in Bonn it was reported that “[t]he Venezuelan delegate said she worried about the lack of trust in the talks, and

¹²⁹ “Copenhagen negotiating text: 200 pages to save world?” The Hindu, David Adam, September 30, 2009; available at: <http://www.thehindu.com/todays-paper/tp-opinion/copenhagen-negotiating-text-200-pages-to-save-world/article193716.ece>

¹³⁰ ADP contact group, Draft agreement and draft decision on workstreams 1 and 2 of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, UNFCCC, November 6, 2015; available at: <http://unfccc.int/resource/docs/2015/adp2/eng/11infnot.pdf>.

¹³¹ “U.S. climate diplomat faces delicate balancing act,” POLITICO Pro Energy, Andrew Restuccia, July 2, 2015.

¹³² “Bonn draft for COP21 grows to 55 pages,” POLITICO Pro Energy Whiteboard, October 23, 2015.

¹³³ “NGO upbeat after cloudy start in Bonn,” POLITICO Pro Energy Whiteboard, Sara Stefanini, October 20, 2015; available at: <https://www.politicopro.com/energy/whiteboard/2015/10/ngo-upbeat-after-cloudy-start-in-bonn-062274>.

¹³⁴ “U.S. climate diplomat faces delicate balancing act,” POLITICO Pro Energy, Andrew Restuccia, July 2, 2015.

¹³⁵ “U.S. climate diplomat faces delicate balancing act,” POLITICO Pro Energy, Andrew Restuccia, July 2, 2015.

warned of a repeat of the failure at the COP15 summit in Denmark in 2009.”¹³⁶ France’s environmental minister Laurence Tubiana further explained, “We didn’t enter really into a negotiation [in Bonn]. We can’t repeat that next time. We have to come to Paris prepared.”¹³⁷ Yet, in the week prior to COP-21 it was reported that “[f]or Poland [an E.U. member country], the road is not signing that document,”¹³⁸ marking the first veto threat of the impending Paris agreement. Among the most divisive areas left unresolved in the text involve climate finance and legal form. Consensus on these topics is not easy, as evidence by the years-long negotiations leading up to COP-21.

U.S. State Department Special Envoy for Climate Change Todd Stern expressed concern over whether the parties could even reach an agreement in a letter to Senator Bob Corker (R-Tennessee), stating, [w]e do not know yet what the specific provisions of the Paris agreement will look like, should an agreement be reached.¹³⁹

Dirk Forrister, president and corporate executive officer of the International Emissions Trading Association, on November 18, 2015, predicted “I think the actual agreement is likely to be quite short, and it’ll kind of be headline items. It’ll be very principled, but it’ll probably be something like, you know, 10 or 15 pages long, something you can read in one setting and understand.”¹⁴⁰ Even Senator Sheldon Whitehouse (D-Rhode Island) has predicted the negotiations will “go into overtime, perhaps for as long as two days.”¹⁴¹ Yet, given the current form of the text and status of negotiations, it is extremely unlikely—as a purely practical matter—the co-chairs will develop a text to be adopted by all parties at COP-21 without some countries, like the United States under President Obama’s reign, making huge concession at the expense of their domestic interests.

b) Countries Spar as Obama Administration Obscures U.S. Goals

Aside from the dismal status of the negotiating text, the parties’ negotiating positions have devolved into a public quarrel over key provisions. Areas regarding treatment of the INDC as well as incremental review and reporting have prompted an unexpected debate among parties. The most important element of disagreement involves the legal form of an agreement.

While most countries that agreed to the Copenhagen Accord have made voluntary GHG pledges through their individual INDCs; many developed countries continue to oppose legally binding GHG reductions without all parties participation at the same time developing countries continue to oppose any legally binding GHG reductions. In regards to the U.S. position, Special Envoy

¹³⁶ “Warning of failure ahead of final day of Bonn talks,” POLITICO Pro Energy Whiteboard, Sara Stefanini, October 22, 2015.

¹³⁷ “Pressure rises for U.S. money as Bonn climate talks end,” POLITICO Pro Energy, Andrew Restuccia, October 23, 2015.

¹³⁸ “The Poles may spoil Paris party,” POLITICO Pro Energy, Andrew Kureth, November 24, 2015.

¹³⁹ October 19, 2015, letter from Julia Frifield, Assistant Secretary of Legislative Affairs, U.S. Dep’t of State, to Hon. Bob Corker, Chairman, S. Comm. on Foreign Relations.

¹⁴⁰ Transcript of interview with Dirk Forrister, E&E TV, November 16, 2015; available at: <http://www.eenews.net/tv/videos/2056/transcript>.

¹⁴¹ “Aiming to stymie Paris deal, Republicans have time on their side,” POLITICO Pro, Darren Goode & Andrew Restuccia, November 19, 2015; available at: <https://www.politicopro.com/energy/story/2015/11/paris-climate-talks-government-shutdown-collide-077747>.

Stern explained in an October 19, 2015, letter to Senator Bob Corker (R-Tennessee), Chairman of the Senate Committee on Foreign Relations:

*The [INDC] submission is not intended to constitute an obligation the United States must fulfill under international law, and the United States considers that the Paris agreement should reflect that approach more broadly. Thus, we are not seeking an agreement in which Parties take on legally binding emissions targets... It remains unclear which provisions of the agreement would contain legal obligations.*¹⁴²

On November 27, 2015, Canada's Environment Minister Catherine McKenna avowed the country would support the U.S. approach that GHG reduction pledges should not be legally binding.¹⁴³ However, other developed countries such as the E.U. and France have advocated the need to require binding pledges. According to testimony before the EPW Committee, Manhattan Institute fellow Cass, explained "[n]egotiations have followed this course of discretionary, unenforceable pledges only because the positions and interests of countries were so plainly incompatible that a substantive agreement was not possible."¹⁴⁴

Whether an agreement is binding or not, most parties, including the U.S., claim the current pledges are not enough to maintain the goal of keeping average surface temperature below two degrees Celsius. Ms. Figueres of the U.N. called the review provisions "absolutely fundamental," given that multiple reviews of countries' existing targets "are not enough" to meet the 2-degree goal.¹⁴⁵ Yet, Figueres herself has admitted that it is "impossible"¹⁴⁶ to get countries to agree to do more to reach the 2-degree goal ahead of COP-21. Even so, Obama Administration officials have pushed for provisions requiring countries to "ratchet up" pledges over time. Special Envoy Stern explained: "We have proposed and pushed the idea of successive rounds of targets, so you keep ratcheting ambition up. The first round of targets is hugely significant . . . They're very good, but they're not enough."¹⁴⁷ Canada has echoed the call for countries to update pledges every five years.¹⁴⁸

¹⁴² October 19, 2015, letter from Julia Frifield, Assistant Secretary of Legislative Affairs, U.S. Dep't of State, to Hon. Bob Corker, Chairman, S. Comm. on Foreign Relations.

¹⁴³ "Canada backs US: climate deal should not be legally binding," Reuters, David Ljunggren, November 27, 2015; available at: <http://www.reuters.com/article/2015/11/27/us-climatechange-canada-idUSKBN0TG1YF20151127#GSUoae3I6RwJfU6O.97>.

¹⁴⁴ Testimony of Oren Cass, Senior Fellow, Manhattan Institute, U.S. Senate Committee on Environment and Public Works, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at http://www.epw.senate.gov/public/_cache/files/6658e59c-1098-4820-8360-3d61a34985bf/cass-testimony.pdf.

¹⁴⁵ "After G-20, Review Mechanism Emerges As Key Test For Paris Climate Deal," Climate Daily News, InsideEPA/climate, November 17, 2015; available at <http://insideepaclimate.com/climate-daily-news/after-g-20-review-mechanism-emerges-key-test-paris-climate-deal>.

¹⁴⁶ "White House reins in expectations for Paris," POLITICO Pro Energy, Edward-Isaac Dove & Andrew Restuccia, November 27, 2015.

¹⁴⁷ "White House: Paris deal needs to 'ratchet up' commitments over time," EnergyGuardian, Kevin Rogers, October 19, 2015; available at: <http://www.energyguardian.net/white-house-paris-deal-needs-ratchet-commitments-over-time>

¹⁴⁸ "Canada backs US: climate deal should not be legally binding," Reuters, David Ljunggren, November 27, 2015; available at: <http://www.reuters.com/article/2015/11/27/us-climatechange-canada-idUSKBN0TG1YF20151127#GSUoae3I6RwJfU6O.97>.

While it has been reported that a deal in Paris is expected to include provisions for a review mechanism, parties are far from reaching a consensus on such provisions. Even those who advocate for such provisions have not decided when those reviews should occur and how often they will be required.¹⁴⁹ China's top climate envoy, Xie Zhenhua, said they would not lower post-2020 mitigation targets "under any circumstances and will push for reaching a legally binding treaty."¹⁵⁰ India and Saudi Arabia have made clear they are opposed to a review mechanism and any provisions that would increase countries' GHG reduction pledges over time.¹⁵¹ Developing countries have also expressed opposition to "any obligatory review mechanism for increasing individual efforts."¹⁵² Most recently, per a November 16, 2015, G-20 meeting in Turkey, the block of countries decided not to endorse a review mechanism.¹⁵³

Environmental analysts have pointed out that "[a]ny deal without a five-year review mechanism . . . as well as a "strong transparency mechanism" . . . would be "pretty weak" and *would not be considered a success*" (emphasis added).¹⁵⁴ As such, it is no surprise the Obama Administration has doubled-down on its advocacy for provisions requiring recurring reviews. Despite developing countries' resistance to such provisions, U.S. National Security Council Senior Director for Energy and Climate Change Paul Bodnar told reporters on November 24, 2015, "[o]ur task in Paris is to secure a long-term framework in which countries set successive rounds of targets in the future beyond 2030 and ratchet down their carbon emissions over the course of the coming decades."¹⁵⁵

Disagreement over the legal form of the agreement is even more divisive. In early November, an unusual exchange between the Obama Administration and French Environmental Minister Laurent Fabius galvanized the debate over legal form. Secretary Kerry said that any climate deal reached in Paris "will not delivery a 'treaty' that legally requires countries to cut their carbon emissions."¹⁵⁶ French Minister Fabius, clearly taken by surprise by Kerry's remarks, was quick

¹⁴⁹ See Review Provision in Paris Climate Deal Faces Host of Unresolved Details, Climate Daily News, InsideEPA/climate, November 19, 2015; available at: <http://insideepaclimate.com/climate-daily-news/review-provision-paris-climate-deal-faces-host-unresolved-details>.

¹⁵⁰ "Nations: China will push for a legally binding treaty in Paris climate talks," E&E News, Coco Liu, November 19, 2015; available at: <http://www.eenews.net/climatewire/2015/11/19/stories/1060028265>.

¹⁵¹ "India slows progress on ambitious climate change accord," Financial Times, Alex Barker & Pilita Clark, November 16, 2015; available at <http://www.ft.com/intl/cms/s/0/de7a31b6-8c55-11e5-8be4-3506bf20cc2b.html#axzz3rs5vLZ6s>.

¹⁵² Testimony of Oren Cass, Senior Fellow, Manhattan Institute, U.S. Senate Committee on Environment and Public Works, Hearing on Examining the International Climate Negotiations, November 18, 2015; available at http://www.epw.senate.gov/public/_cache/files/6658e59c-1098-4820-8360-3d61a34985bf/cass-testimony.pdf.

¹⁵³ "India slows progress on ambitious climate change accord," Financial Times, Alex Barker & Pilita Clark, November 16, 2015; available at: <http://www.ft.com/intl/cms/s/0/de7a31b6-8c55-11e5-8be4-3506bf20cc2b.html#axzz3rs5vLZ6s>.

¹⁵⁴ "After G-20, Review Mechanism Emerges As Key Test For Paris Climate Deal, Climate Daily News, InsideEPA/climate, November 17, 2015; available at: <http://insideepaclimate.com/climate-daily-news/after-g-20-review-mechanism-emerges-key-test-paris-climate-deal>.

¹⁵⁵ "Obama lays out Paris agenda, calls climate talks a 'rebuke' to terror," Energy Guardian, Kevin Rogers, November 24, 2015.

¹⁵⁶ "Paris climate deal will not be a legally binding treaty," Financial Times, Demetri Sevastopulo & Pilita Clark, November 11, 2015; available at: <http://www.ft.com/intl/cms/s/0/79daf872-8894-11e5-90de-f44762bf9896.html#axzz3szJpJOf2>.

to say the Secretary Kerry must have been “confused.”¹⁵⁷ Thereafter, the State Department clarified the Obama Administration is advocating for an agreement with some binding and some non-binding elements, stating:

*The Financial Times interview with Secretary Kerry may have been read to suggest that the U.S. supports a completely non-binding approach. That is not the case and that is not Secretary Kerry's position. Our position has not changed: the U.S. is pressing for an agreement that contains provisions both legally binding and non-legally binding.*¹⁵⁸

Nonetheless, the E.U.’s submission to the COP-21 co-chairs on the eve of the conference reaffirmed the country’s negotiating position that advocates for a legally binding treaty for GHG emission reduction pledges.¹⁵⁹

Even the top climate official at the Organization for Economic Cooperation and Development, Simon Buckle, balked at the French and E.U. hardline on an internationally binding treaty, noting the unlikelihood of U.S. Senate ratification.¹⁶⁰ Buckle instead explained the likely outcome of Paris will be an agreement relying on domestic policies.¹⁶¹ Notably, Mr. Bookbinder, the former Sierra Club official, said “Paris is completely academic. From a hardcore legal enforcement, compliance viewpoint, there’s not going to be anything coming out of Paris that’s binding.”¹⁶² Even if some elements of the agreement are “binding,” Bookbinder said there has not been “serious discussion among the countries that there’s going to be any penalty whatsoever” for violating such elements.¹⁶³

“Paris is completely academic. From a hardcore legal enforcement, compliance viewpoint, there’s not going to be anything coming out of Paris that’s binding.”

– David Bookbinder

c) U.S. Legal and Political Hurdles Confine Obama’s International Approach

While parties continue to spar over key provisions of the agreement and the likely legal form, there are a number of domestic legal and political hurdles to fulfilling President Obama’s

¹⁵⁷“Paris climate talks not just hot air, France tells US,” Reuters, John Irish & Valerie Volcovici, November 12, 2015; available at: <http://www.reuters.com/article/2015/11/12/us-climatechange-summit-fabius-kerry-idUSKCN0T111920151112#lLtqsyTdpmlHowq.97>.

¹⁵⁸“Climate Agreement’s Treaty Status Heisenbergian Uncertainty,” POLITICO Morning Energy, Eric Wolff, November 13, 2015; available at: <http://www.politico.com/tipsheets/morning-energy/2015/11/morning-energy-wolff-211265>.

¹⁵⁹“Climate negotiators launch COP21 talks,” POLITICO Pro Energy Whiteboard, Sara Stefanini, November 29, 2015.

¹⁶⁰“OECD Officials Downplay U.S.-Europe Rift Over Paris Deal’s Legal Force,” Climate Daily News, InsideEPA/climate, November 13, 2015; available at: <http://insideepaclimate.com/climate-daily-news/oecd-officials-downplay-us-europe-rift-over-paris-deals-legal-force>.

¹⁶¹ *Id.*

¹⁶²“Obama Critic Concedes Non-Binding Paris Targets May Not Need Senate Vote,” Climate Daily News, InsideEPA/climate, October 30, 2015; available at: <http://insideepaclimate.com/climate-daily-news/obama-critic-concedes-non-binding-paris-targets-may-not-need-senate-vote>.

¹⁶³ *Id.*

objectives at COP-21 that the Administration has tried to downplay. President Obama and his unelected officials have embarked on a “do-it-alone” strategy, ignoring the U.S. Constitution, Congress, and the American people to advance a radical climate agenda. “We are a week and a half away from the start of the United Nation’s 21st session of the Conference of Parties and have yet to hear directly from this administration on the president’s international climate agenda,” said Senate EPW Chairman Inhofe.¹⁶⁴ Inhofe continued, “[t]his is not due to a lack of outreach on our part, but rather a continued disrespect for the rule of law and an obstructionist approach to Senate oversight.”¹⁶⁵

Indeed, it has been the goal of the Obama Administration to reach an agreement that circumvents Congress, and by extension the will of the American people. However, whatever deal President Obama agrees to at COP-21 will be severely limited in application – both legally and politically in the United States. In the first instance, any pledges regarding climate finance and funding for the GCF are dead-on-arrival due to opposition in Congress, which under the Constitution, must first appropriate money before the executive branch can spend it. To date, Congress has appropriated zero funds for the GCF and more than a third of all Senators are on record opposing funds for the GCF unless the Obama Administration seeks the Senate’s advice and consent of the Paris agreement per the Constitution.

As for any substantive agreement, there are several legal routes for a President to enter into an international agreement under U.S. law, including:

1. Treaty under Article II of the Constitution (advice and consent by two-thirds of the Senate);
2. Congressional-Executive Agreements (legislative approval by Congress either ex post approval by statutes or ex ante authorization by a statute);
3. Treaty-Executive Agreements (accepted by the President under a prior treaty); or
4. President-Executive Agreements (accepted by the President pursuant to independent constitutional authority or agreement consistent with and can be implemented under existing U.S. law).¹⁶⁶

Importantly, agreements reached under these scenarios hold different weight under U.S. law, but they all share the same status under international law. If the President signs an agreement under international law, it is not legally binding in the United States. However, the Vienna Convention on the Law of Treaties states that such an agreement creates a “moral obligation” for the United States to advance the agreement for Senate ratification and to “refrain from acts which would defeat the object and purpose” of the agreement.¹⁶⁷

¹⁶⁴ Statement of Chairman James Inhofe, U.S. Senate Committee on Environment and Public Works Hearing on Examining the International Climate Negotiations, November 18, 2015, available at: http://www.epw.senate.gov/public/_cache/files/b883df1e-0ba5-479e-816e-2c53413826c5/jmi-opening-statement-final-111815.pdf.

¹⁶⁵ *Id.*

¹⁶⁶ *See* CONG. RESEARCH SERV., International Law and Agreements: Their Effect upon U.S. Law (September 24, 2015).

¹⁶⁷ *Id.*

Thus, when it comes to international agreements seeking legal force in the United States there is a required role for Congress. However, the Obama Administration has not properly engaged with Congress in advance of COP-21. For these reasons, the Senate has introduced resolutions to reassert its rightful role in international agreements and to communicate its stance on the climate negotiations to the Administration, the international community, and the American people. Notably on November 19, 2015, Senators Inhofe, Roy Blunt (R-Missouri), and Joe Manchin (D-West Virginia) introduced a resolution that states any agreement reached at COP-21 “shall have no force or effect in the United States and no funds shall be authorized in support of that protocol, amendment, extension or other agreement, including for the Green Climate Fund, until that protocol, amendment, extension or other agreement has been submitted to the Senate for advice and consent.”¹⁶⁸

Even states have highlighted the Senate’s role in this process. Most recently, a November 24, 2015, letter from the attorneys general of West Virginia and Texas to Secretary Kerry, the states cite “legal limits” of President Obama’s international promises and emphasize any legally binding agreement must be submitted to the Senate.¹⁶⁹

While Secretary Kerry suggested the Obama Administration has no problem with Congress reviewing the Paris agreement as long as it was not a “poison pill effort,”¹⁷⁰ it is clear the Administration is crafting a deal without consulting Congress. Even French Environmental Minister Fabius said, “[w]e know the politics in the U.S. . . . [w]e must find a formula which is valuable for everybody and valuable for the U.S. without going to the Congress.”¹⁷¹ Most recently, Canadian Environment Minister Catherine McKenna acknowledged, “[t]here are political realities in the United States . . . [but] [e]veryone wants to see the United States be part of this treaty.”¹⁷²

However, the President can only enter into a sole-executive agreement if domestic legal authority exists. At the July 8, 2015, hearing before the EPW Committee, George Mason University School of Law professor Jeremy Rabkin testified: “even advocates suggest a sole-presidential agreement would have to be limited to procedural commitments – as in reporting to foreign

¹⁶⁸ In addition, on October 21, 2015, Senator Rand Paul (R-Kentucky) introduced a resolution (S.Res. 290, 114th Congress) highlighting the need for any agreement reached at COP-21 to follow the past precedent for congressional review, established by the Senate’s call to review the Kyoto Protocol. On November 19, 2015, Senator Mike Lee (R-Utah) introduced a resolution (S.J.Res. 25, 114th Congress) along with 30-consponsors that makes the legal and constitutional case that any agreement reached at COP-21 is a treaty and therefore must be submitted to the Senate for its advice and consent.

¹⁶⁹ November 23, 2015 letter from Attorneys General Patrick Morrisey and Ken Paxton to Secretary of State John Kerry; available at <http://www.ago.wv.gov/pressroom/2015/Documents/2015-11-23%20Paris%20Treaty%20Letter.PDF>

¹⁷⁰ “Paris climate deal will not be a legally binding treaty,” Financial Times, Demetri Sevastopulo & Pilita Clark, November 11, 2015; available at: <http://www.ft.com/intl/cms/s/0/79daf872-8894-11e5-90de-f44762bf9896.html#axzz3szJpJOf2>.

¹⁷¹ “Climate deal must avoid US Congress approval, French minister says,” Guardian, June 1, 2015; available at: <http://www.theguardian.com/world/2015/jun/01/un-climate-talks-deal-us-congress>.

¹⁷² “Canada backs US: climate deal should not be legally binding,” Reuters, David Ljunggren, November 27, 2015; available at: <http://www.reuters.com/article/2015/11/27/us-climatechange-canada-idUSKBN0TG1YF20151127#GSUoae3I6RwJfU6O.97>.

governments or international institutions on U.S. progress in reaching its emission reduction commitments.”¹⁷³

Accordingly, Obama Administration negotiators are pressing for binding procedural provisions for items such as requiring countries to submit pledges to the UNFCCC for periodic review and reporting. As previously discussed, these reporting and review provisions have experienced vast opposition from developing countries and even failed to garner the endorsement of the G-20. Moreover, the Administration has clarified that these “binding” provisions, even procedural ones, are only subject to international law, which does not apply to the United States. In other words, what President Obama is pursuing in Paris is simply a political commitment under U.S. law. Senator Inhofe’s prepared statement for the November 18, 2015, hearing on the negotiations expanded on these options:

*With the formal submission of various countries “intended nationally determined contributions” (INDCs), we know the structure of emission reduction commitments has changed from a top-down Kyoto-style approach to a bottoms-up; but what hasn’t changed for President Obama is the application of the 1992 UNFCCC ratification agreement and its express limitations. Specifically, the caveat included in the Foreign Relations Committee report that “[A] decision by the Conference of Parties to adopt targets and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement.” If the president wishes to produce something substantive from the Paris negotiations – and presumably stronger than Kyoto – there is no way around the Senate. However, if the president heeds the advice of other COP-21 participants and wishes to bypass congress, then he will be limited to making a non-binding, political commitment with no means of enforcement, accountability, or longevity.*¹⁷⁴

Such an agreement, which circumvents the Senate, is also limited in application. The President is essentially limited to making a nonbinding political commitment that has no means of enforcement or accountability. According to testimony received by Hofstra University School of Law professor Julian Ku at the November 18, 2015, EPW Committee hearing:

By making a mere political commitment, the United States would not owe any obligations to foreign countries under international law to reach particular emissions reduction targets. Moreover, as a mere political commitment, no future President or Congress would be bound under U.S. law to reach these emission targets. As a matter of law, the Paris Agreement would be no different than the

¹⁷³ Testimony of Jeremy Rabkin, Professor of Law, George Mason University, before S. Comm. on Env’t & Pub. Works Hearing: Road to Paris: President Obama’s International Climate Agenda” (July 8, 2015), available at http://www.epw.senate.gov/public/_cache/files/18af3cac-9323-477e-b5d0-0a766043f4ef/rabkin.pdf.

¹⁷⁴ Statement of Chairman James Inhofe, U.S. Senate Committee on Environment and Public Works Hearing on Examining the International Climate Negotiations, November 18, 2015, available at: http://www.epw.senate.gov/public/_cache/files/b883df1e-0ba5-479e-816e-2c53413826c5/jmi-opening-statement-final-111815.pdf.

*President giving a speech, or stating at a news conference, that he will make reductions in emissions.*¹⁷⁵

Ultimately, whatever type of agreement President Obama signs at COP-21 – without the consent of the Senate – is also limited in duration as the next Administration could change the terms of the deal. A future President or Congress may withdraw from an agreement in accordance with the terms of the agreement or, in the event the agreement does not provide for withdrawal, in accordance with the Vienna Convention on the Law of Treaties. The United States could also withdraw through domestic action, either by a future President through an executive action or by Congress through enactment of an inconsistent, later-in-time statute.

Given these limitations, some have suggested Paris will be no different than Copenhagen and fall short of a successor to Kyoto. While an agreement signed by President Obama as a political commitment may not produce the “meaningful” agreement parties had hoped, the American people should be deeply concerned with the Administration’s strategy. Competitive Enterprise Institute Senior Scholar Chris Horner has warned, “Obama’s plans after Paris is to claim that these [EPA] rules cannot be upset because they are part of something larger, a promise to the world. In effect, the administration seeks to create international political pressure to box in Congress – and the next administration.”¹⁷⁶ Indeed, in a November 25, 2015, op-ed in the *Wall Street Journal* Senator Barrasso predicted, “[t]he inevitable outcome [of COP-21] is a plan with unproven benefits and unreachable goals, but very real costs.”¹⁷⁷

Unfortunately for the interest of the American people and preservation of the U.S. rule of law, this plan is nothing new to President Obama’s unilateral executive strategy disguised to the international community as U.S. “leadership.” If history is any indication, then it is clear President Obama will move forward as planned with the Administration’s mounting red tape described in the Climate Action Plan, despite having questionable legal authority or no approval from Congress or support from the American people. In fact, it appears the Obama Administration does not care about the final outcome of these policies – legally, practically, and environmentally – as years of potential litigation will only further distance current Obama officials from responsibility for the devastating impacts of this agenda. EPA Administrator McCarthy expressed this very attitude in July 2015 as she shrugged off concerns over the Supreme Court striking down EPA’s 2012 rule to regulate mercury emissions from power plants because the rule had already gone in to effect and power plant investment and closure decision had already been made, regardless of the court’s eventual decision. In other words, essentially the damage had already been done. The American people cannot afford this damage. For these reasons the Senate has tirelessly worked to represent its constituencies in exposing the truth about President Obama’s international climate commitments to the American people and the international community and will not relent.

¹⁷⁵ Testimony of Julian Ku, Maurice A. Deane Distinguished Professor of Constitutional Law, Hofstra University School of Law, U.S. Senate Committee on Environment and Public Works, Hearing: Examining the International Climate Negotiations (Nov. 18, 2015, available at http://www.epw.senate.gov/public/_cache/files/29525f03-9fc4-4112-9488-701f3dc1e8d1/ku-testimony.pdf).

¹⁷⁶ “How to halt the president’s climate change ploy,” *Washington Times*, Chris Horner, November 18, 2015: available at: <http://m.washingtontimes.com/news/2015/nov/18/chris-horner-halting-obamas-climate-change-ploy/>

¹⁷⁷ “Congress Can Cool Off Obama’s Climate Plans,” *Wall Street Journal*, Sen. John Barrasso, November 25, 2015.

CONCLUSION

During the kick-off to COP-21 on November 30, 2015, President Obama declared: “We are the first generation to feel the impact of climate change, and the last generation that can do something about it.” President Obama used similar rhetoric in a speech at COP-15 six years ago when he told international leaders, “We are running out of time. The time for talk is over. It is better for us to act than talk.”

However, as detailed in this White Paper, President Obama’s climate change commitments to the international community are just that: all talk with no basis in reality. This White Paper makes clear that the United States will not be a party to any agreement that sets targets or timetables for GHG reductions, nor will the United States provide taxpayer dollars to a U.N. slush fund for foreign bureaucrats without Congressional approval. Without approval from Congress, the President’s commitments will be little more than a press release.

Rather than work with Congress, President Obama has chosen to go-it-alone to “decarbonize” the American economy through unilateral executive actions that will not stand the test of time. While this may serve to polish President Obama’s reputation among the environmental activist community, it will not result in a binding international agreement or meaningfully impact global temperatures. Although the President has already touted COP-21 as a “victory” because countries like China and India have submitted domestic GHG reduction plans, these are mere promises – with no binding enforcement, review mechanism, or accountability measures in place to guarantee they are fully implemented. In fact, most developing countries’ plans are contingent on receiving hundreds of millions of climate financing from developed countries such as the United States. What was true six years ago and even 20 years ago during the debate surrounding the Kyoto Protocol, remains so today: U.S. action alone will devastate the American economy and shift valuable jobs overseas, while producing no impact on global climate change.

The American people understand these consequences and do not support climate change as a priority for U.S. policy. These constituencies have been heard by both Democrat and Republican members of Congress who have also made it clear that they do not support President Obama’s activist environmental agenda, voting just last month to disapprove EPA rules to regulate carbon dioxide emissions from power plants. A majority of states have filed lawsuits challenging these power plant rules, which are the centerpiece of the Obama Administration’s international climate commitments. President Obama has routinely sought to sidestep Congressional oversight of these international climate negotiations, failing to disclose how the United States will fully meet the President’s commitment to reduce GHG emissions by 26 to 28 percent by 2025. As the White Paper describes, the EPW Committee has learned that the regulatory and policy actions identified by the Obama Administration to date do not add up, leaving Congress and the American people in the dark about the President’s intended actions.

Finally, while President Obama tells the world he wants to “do something about” climate change, this White Paper concludes that Obama Administration’s strategy going into COP-21 will lead to a redux of the failed COP-15 in Copenhagen. The Obama Administration will not be able to live up its international promises due to the considerable legal, policy, and political challenges outlined in the White Paper. And that is a good thing for the American taxpayer and economy who cannot afford the President’s expensive climate legacy.