

# Biden's Plan for Climate Change

by Roberto Louvin

**Abstract:** Il piano di Biden per il cambiamento climatico. – The article discusses the strategies adopted by the Biden administration to tackle the pressing issue of climate change, by highlighting the actions undertaken on the international scale as well as the struggles that Biden has faced within the US domestic legal system.

**Keywords:** Climate Change Policy; Environmental Diplomacy; President Biden.

## 1. Decisive turnaround of US climate policy

Donald Trump's climate policy became very well-known in Europe, being perhaps one of the most remarkable policies of the Trump era. Climate change was, during this Presidency, a genuine battleground between conservatives and democrats and at the same time an exceptionally interesting subject for international media. After describing Trump's environmental and climate policies twice during his term of office, I concluded my analyses two years ago with this remark on what we could expect in the forthcoming months: "we will see if it is plausible that the next Presidency will really make America 'clean again' or not".<sup>1</sup>

The road of climate policy during the first two years of the current presidency has not been easy. Let us try to review it starting from the promises of the tough electoral campaign opposing outgoing president Donald Trump and challenger Joe Biden proclaiming a decisive turnaround.

## 2. Campaign promises and first steps

The Democratic candidate had gone very far in his election promises: 100% clean energy economy and net-zero emissions no later than 2050; to build a stronger and more resilient nation; to become a leading country at a global level in coping with the effects of climate change; the promise to stand up to the disproportionate harm done to communities and to fulfill obligation to workers and communities who powered many decades of economic growth. Biden played on fertile ground even during his campaign in

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<sup>1</sup> R. Louvin, *President Trump's Environmental Policy*, in *DPCE Online*, 46, 1, 2021, 1135-1147. The first midterm was commented in my previous paper *Environmental Policies*, in *The American Presidency under Trump: the first two years*, The Hague, 2019.

countering Trump's climate denialism: we all remember very well the fires in west America and the suffering of a large country grappling with a memorable drought.

It was not very clear at that time, however, which strategy the challenger would choose if elected: the path of tighter regulation with stringent measures aimed at forcing industry, oil companies and consumers to reduce CO<sub>2</sub> emissions, or a strong incentivizing policy to change American society towards more "sober" behavior in terms of consumption. Even at that time it was obvious that the Democratic leader would have to take into account the expectations of the American middle class, especially bearing in mind the need to save jobs threatened by a too rapid energy conversion. In other words, the alternative was between suffering the so-called «Brussels effect»<sup>2</sup> or pursuing the completely different policy that economists sometimes describe as the «Delaware effect».<sup>3</sup>

The enthusiastic European welcome to Biden's election win was absolutely evident,<sup>4</sup> but from the outset, the newly elected president has ceased to stimulate the same enthusiasm. On January 20, just a few hours after taking his oath of office, the President signed some very important climate-related orders. In fact, he immediately decided to re-join the Paris Climate Agreement after the US withdrawal during the Trump presidency, and to repeal the presidential permit granted to Keystone XL pipeline, a very controversial project to convey fossil fuels across the United States. Furthermore, Biden chose to immediately review many other Trump regulations that the new administration deemed harmful to the environment. President Biden also quickly assembled a strong team at the White House and at the U.S. Environmental Protection Agency with deep experience in climate change and greenhouse gas (GHG) regulatory policy. Overall, he demonstrated a "whole-of-government" approach to environmental justice, prescribing initiatives to broadly advance EJ principles.

The response to Donald Trump's mostly anti-scientific attitude came from executive orders protecting Public Health and the Environment and restoring Science to tackle the Climate Crisis;<sup>5</sup> with the immediate institution of the President's Council of Advisors on Science and

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<sup>2</sup> A. Bradford, *The Brussels Effect: How the European Union Rules the World*, Oxford, 2020 defines in this way the process of unilateral regulatory globalization caused by the European Union *de facto* (but not necessarily *de jure*), externalizing its laws outside borders, through market mechanisms.

<sup>3</sup> I use here the expression «Delaware effect» generally utilized in economics to indicate the so called "race to the bottom", in a phase of intense competition during which the competing entities are ready and willing to use unethical business practices to kill competition and usually eliminate small competitors from the market. Joe Biden was, by a strange coincidence, a six-time senator from Delaware indeed and he is not seduced by the European perspective.

<sup>4</sup> M. Elder, *Optimistic Prospects for US Climate Policy in the Biden Administration*, Institute for Global Environmental Strategies (2021).

<sup>5</sup> Executive order 6/13990. EO 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, among other things revokes a key permit issued for the Keystone XL oil pipeline and orders a review of actions taken under the Trump administration.

Technology,<sup>6</sup> and by establishing the Climate Change Support.<sup>7</sup> Following this trend, however, more substantial measures would take a long time to be adopted and strong resistance, especially from the Senate, would prove not easy to overcome. Climate change has been, and remains, an extremely harsh political issue in the United States.

### 3. The Biden's Climate Plan and its legal 'backbones'

The strategy implemented by President Biden can be summed up in a rather paradoxical way by the slogan «For America to decarbonize, it must reindustrialize», and this strategy has been developed along three different lines: 1) domestic action, by a wide range of measures; 2) international action, opened to multilateralism but strongly rooted in the defense of national interests; 3) new climate change legislation, overall implemented through uncertain and contradictory actions.

If we look at domestic action, we can see that it has affected a very wide range of sectors: local air pollution, social cost of carbon, infrastructure investments, energy efficiency, oil and gas pipelines, drilling on public lands, renewable energy, nuclear energy, fossil fuel subsidies, deforestation, environmental reviews of projects, and more.

However, federal tackling of the climate crisis included a general view of the federal, state, and local possibilities for action, and worked to empower the climate response from all points along the federalism spectrum.<sup>8</sup> In fact, it should not be forgotten that, while comprehensive federal action on climate change is welcome and needed, the Biden Administration had to ensure that any action preserved the flexibility of and possibility for climate action at the state and local level as well: states are partners and responsible parties in any regulatory response in this particular field and the federal government can greatly empower its climate action through local governments.

However, let us consider that the dominant concern of the new Presidency in domestic action has always been “work”.

While for President Trump, the environment was not really a concern or even an enemy, because his constant and absolute priority was business, and to make America great again, the mantra of his successor, the political message repeated and hammered home, was “Jobs! Jobs! Jobs!”.

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<sup>6</sup> Executive order 23/14007, *President's Council of Advisors on Science and Technology*. EO 14008 outlines the important roles the different heads of agencies will play in the administration's efforts to address climate change and reinforces the "whole government" approach. It focuses in a special way on land-based climate solutions setting the new goals of conserving 30 percent of the United States' lands and waters by 2030 and requiring the Department of Agriculture to identify and encourage sustainable, less carbon-intensive agricultural practices. EO 14008 also directly addresses fisheries to begin efforts to obtain input from the following diverse perspectives "on how to make fisheries and protected resources more resilient to climate change, including changes in management and conservation measures, and improvements in science, monitoring, and cooperative research”.

<sup>7</sup> Executive order 43/14027, *Establishment of the Climate Change Support Office*.

<sup>8</sup> S.J. Fox: *Why Localizing Climate Federalism Matters (Even) During a Biden Administration*, 99 *Tex. L. Rev. Online*, 122 (2021).

The environment is no longer the scapegoat, the victim of the deal, but essentially - and even more than a value - the main reason for new policy creating more employment, a new lever to revitalize the economy and combat unemployment. “When I think about climate change ... I think about jobs”, Joe Biden said in presenting the National Jobs Plan.<sup>9</sup>

The legal backbone of the White House climate strategy is based on three main pillars: Infrastructure Investment and Jobs Act; Build Back Better Act; Inflation Reduction Act. None of these legislative acts contains in its title terms such as ‘environment’, ‘ecosystem’, or ‘climate’. It is quite clear that these issues do not warm hearts even among Democrats: economic arguments are therefore preferred. Climate commitment is not a flag to be waved too much.

Biden therefore moves in a very pragmatic style, rejecting an excessively ideological approach and preferring simple and effective messages aiming at a new general well-being and the restart of the American locomotive.

Considering now the three main measures enacted by Biden Administration, we can start with the Infrastructure Investment and Jobs Act, approved by the Congress and signed by Joe Biden in mid-November 2021. The priority is certainly not a willingness to change the American lifestyle and to stop the general consumption of natural resources. This Act alone will only make a very small reduction in emissions, and will instead have a heavy environmental impact because of measures specifically regarding highways. The bill includes the largest federal investment in US history in public transportation: in fact, it envisages spending of 105 billion dollars in public transport. It also earmarks 110 billion dollars for repairing roads and bridges, which also includes some measures for climate change mitigation, mainly by promoting and encouraging access for cyclists and pedestrians.

Alongside the Infrastructure Investment and Jobs Act, the Build Back Better Act – a spin off from the American Jobs Plan – faced strong opposition in the Senate and was finally approved in August 2022. It included many provisions related to climate change and to social policy as well and it was narrowly passed (220–213) by the House of Representatives on November 19, 2021. According to analysts, to fulfill the goal announced by the White house of cutting greenhouse gas emissions by 2030, clean energy provisions of this bill are required, and above all investments in clean energy, and electric vehicle tax credits will be needed.

Finally, on August 16, 2022, President Biden signed into law the Inflation Reduction Act including the largest federal climate change investment in American history. By this law and some other additional federal and state measures, the USA is supposed to fulfill its pledge in the 2015 Paris agreement, concerning reduction of greenhouse gas emissions.

With the Inflation Reduction Act (IRA), the federal authorities hope now to pro-mote an economy in which the government not only helps

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<sup>9</sup> The Biden administration introduced the Jobs Plan as an all-encompassing infrastructure bill. Its spending is mainly on large physical infrastructure like roads, railways and bridges, as well as on domestic infrastructure like pipes, broadband, research, and even community-based care.

Americans in buying green technologies, but also aims to support national industries producing those technologies. At the same time, the IRA envisages also the opening of new mines across the country, for example, with most of the untapped reserves of lithium, cobalt and nickel potentially to be mined. Is balancing mining expansion and contextual environmental protection possible? Is re-industrialization strictly required to decarbonize the United States? Such a comprehensive background exposes further divergences regarding climate change policies between the United States and the European Union. Another key topic will therefore be EU foreign policy, especially in the light of the implementation of the Green Deal and the “quest” for rare and imported minerals.

#### 4. US climate diplomacy: pragmatism in action: contents, challenges and opportunities

The Biden administration’s immediate return to the commitments deriving from the 2015 Paris Agreement recalls the strongly supported climate policies endorsed by the Obama presidency.<sup>10</sup> As far as the latter is concerned, US action led by John Kerry – Special Presidential Envoy for Climate has not lived up to the expectations.

At the end of the Trump presidency, it was clear that another, rival superpower was assuming a global leadership role, competing with the USA in managing negotiations within the current international climate regime to cope with the aftermath of the current anthropogenic and socio-ecological crisis. It was not by chance that the most significant and spectacular outcome of the COP26 held in Glasgow (UK) in 2021 was the agreement between the USA and China, addressing cooperation between Washington and Beijing about new measures to mitigate climate change, including lowering methane emissions, phasing out the use of coal, and forest conservation. One year later, during the Sharm el-Sheikh Summit (COP27), one of the most evident facts has instead been the partial lack of a US leadership position within negotiations.

If we look now at the relationship between the United States and Europe, currently there is no technical progress (i.e. specific bi- or multi-lateral agreements) worth mentioning, especially in the field of trade policy and other activities related to coping with the effect of climate change. The only initiative that has to be emphasized, and which may have very positive effects in the long term, is the establishment of an EU-US Trade and Technology Council during the EU-US Summit, held in Brussels on the 15<sup>th</sup> of June 2021. This council serves as a forum to coordinate the approaches of the United States and the European Union on technological, economic and global trade issues. Although the forum pays specific attention to introducing new technologies, it is obvious that significant results in reducing greenhouse gas emissions can also be achieved in the

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<sup>10</sup> Joe Biden must also draw lessons from the mistakes made by President Obama, well identified by M. Lavelle, 2016: *Obama's Climate Legacy Marked by Triumphs and Lost Opportunities*, in *Inside Climate News*, dec. 26, 2016.

long-term through this instrument, and this can also be the field on which a new and more confident dialogue can be carried on.

The US climate commitment at the international level was however also heavily affected by the crisis linked to the war between Russia and Ukraine. In addition to the direct environmental damage caused by the conflict, it was above all the reorientation of the main EU countries, linked to urgent energy needs to cope with reduced Russian gas supplies, which forced the United States to a resumption of fossil fuels in order to supply the European countries in greatest distress through LNG (Liquefied Natural Gas) technology.

The return of U.S. global leadership in climate action was however apparent when, on April 22 2021, President Biden convened a virtual summit to commemorate Earth Day. This summit was attended by the leaders of 40 countries, including many of the world's largest greenhouse gas emitters. Hosting “climate day” at the White House, the Biden Administration described his “government-wide” approach as pointed out by Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad”. Biden opened the event by announcing the United States’ new carbon emissions reduction goal and promising to cut emissions by 50-52% from 2005 levels by 2030.

This event was a promising turn in the international agenda, but it has also been pointed out that promises are not enough on their own. Environmental leaders soon ironically stated that the Earth Day Summit “had more targets than an archery competition, but that real change would take real policy and money”.<sup>11</sup>

## 5. Unexpected obstacles and unsuspected allies: the Supreme Court and the Securities and Exchange Commission

In 2022 the US Supreme Court<sup>12</sup> ruled that the EPA (Environmental Protection Agency) could not set limits on emissions to industry, as established by the Clean Air Act, thus providing a “challenging obstacle”. Through this federal agency, Biden aimed to tighten emission limits on carbon dioxide and greenhouse gas emissions contributing to global warming. This ruling impacts the federal government’s authority to regulate in any areas of climate policy, as well as regulation of the internet and worker safety.<sup>13</sup>

The six to three vote in the ruling unquestionably represents a major setback in Joe Biden’s climate openings, as well as a victory for oil and mining companies. The Supreme Court has practically crippled the main

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<sup>11</sup> *Climate change: countries strengthen climate commitments at Biden-led earth day summit*, Reuter, 51 ELR 10533, June, 2021.

<sup>12</sup> *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022).

<sup>13</sup> Other ways will have to be found as soon as possible so that Congress and the executive branch can continue to protect public health and safety despite this Supreme Court decision. Some recommended actions to reduce the negative impact of this decision are pointed out by J. Goodwin, K. Bell, R. Lyle, A. Rosenberg, *In the Wake of West Virginia v. EPA: Legislative and Administrative Paths Forward for Science-driven Regulation*, Cambridge (MA), 2022.

instrument of the US climate action. Donald Trump succeeded in appointing three young – and life-long – judges, thus the conservative majority of six out of nine members. This crucial ruling takes away the EPA’s authority to impose climate regulations across the country and gives power to Congress, the latter suffering from a not so clear democratic majority. However, large swaths of EPA authority to regulate greenhouse gases across a range of sources are preserved.

Democrats and environmentalists harshly criticized this ruling, and Biden himself commented that this was a “devastating court decision” intended to set the country back, damaging America’s ability to keep the air clean and fight climate change, stating however that “Our fight against climate change must and will continue”.

Interestingly, the Republican comments mainly emphasized the virtues of this decision in restoring power to the people, in that the measures challenged in the court case had been taken by the EPA without clear congressional authorization. This approach of the Supreme Court ruled that only the people’s representatives in Congress, and not “unelected and unaccountable bureaucrats”, can write laws for the United States. This ruling opens the way for future legal challenges to delegations of regulatory power to executive branch agencies: Congress will have to be more specific in giving the agency the power to regulate major issues, considering that the court moves clearly to limit the power of the agency, considered unaccountable to the public.

While the Supreme Court took an adverse position to Joe Biden's climate strategy, a substantially favorable position was unexpectedly adopted by the SEC. All federal agencies have endeavored to put a value on the economic impacts of greenhouse gas (GHG) emissions and to take care of environmental and social governance.<sup>14</sup> On 21 January 2021, SEC president Allison Herren Lee created a new ESG -focused position within the Office of the Acting Chair<sup>15</sup> and directed the Division of Corporation Finance to “enhance its focus on climate-related disclosure in public company filings”.<sup>16</sup>

Clearly, investors need information regarding how companies value the increase in the frequency and intensity of climate events. The SEC considers that regulatory involvement is needed to achieve standardized, comparable, and reliable disclosure in this critical area.<sup>17</sup> The SEC intends to take the lead so that finance actually plays a decisive role in the long

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<sup>14</sup> Under Executive Order 12866, *Regulatory Planning and Review*, signed by President Bill Clinton on September 30, 1993, agencies must “assess both the costs and the benefits” of new regulations and adopt only those regulations where the “benefits of the intended regulation justify its costs”.

<sup>15</sup> M.J. Biles, B. Moore, Institute for Energy Law of The Center for American and International Law’s Annual Institute on Energy Law, *Seventy-Second Annual Institute on Oil and Gas Law*, ch. 12, *Climate Change and Social Justice - The Risks of Government Investigations and Securities Litigation*.

<sup>16</sup> U.S. Securities and Exchange Commission, *Public Statement on the Review of Climate-Related Disclosure*, Feb. 24, 2021.

<sup>17</sup> U.S. Securities and Exchange Commission Speech “Playing the Long Game: The Intersection of Climate Change Risk and Financial Regulation,” Nov. 5, 2020, Commissioner Allison Herren Lee.

term on the issue of climate change and some business groups are becoming more vocal in their support for carbon pricing or GHG regulations, while others still oppose initiatives that would undermine their productive sectors and their businesses:<sup>18</sup> “Many players in the business community (particularly those operating in markets that currently impose more stringent climate regulations) have already incorporated climate change planning into their long-term strategies, and some may be more willing than in the past to accept climate-related regulation as inevitable to some degree”.<sup>19</sup>

## 6. Climate denial or just weak policy?

More advanced groups on the environmentalist front accused Biden’s administration of being in a position of “substantial climate denial”, but this accusation seems to be unfounded. The Democratic President’s approach certainly pays much more attention than his predecessor to scientific research and to the evidence of scientists in recognizing the severity of global warming. On the one hand, technology for transition from fossil fuels is now at our fingertips; on the other hand, Joe Biden is slowed down by a lack of strong political will and by the determination not to escalate the clash with the Republican counterparts, perhaps also for tactical reasons. In any case, in the first two years of Biden’s presidency, the focus on the economic framework and the need for recovery seems still to be absolutely predominant.

President Biden is heading into the midterm without having made any substantial major steps forward for the climate. At the end of this midterm, which began with loud declarations and very ambitious intentions, it must be acknowledged that the outcomes are overall quite modest. This is the result of a policy that wanted to keep control of many conflicting interests without resolving itself by a strong and effective strategy. In contrast with the speedy boldness of his newly announced policies, Biden’s initiatives took time to implement, and the resulting GHG reductions will take years to accrue. Without a national federal climate change law to solidify these policies, Biden’s efforts to institute a long-range climate change regulatory order will face a number of hurdles, including identifying funding and fighting back inevitable litigation.<sup>20</sup>

There is still an expectation that President Biden might pull the ace out of his sleeve by formally declaring a climate emergency. This would be a brilliant and quick way to bypass Congress and use the Defense Production Act – especially designed to speed up production in times of war – to decisively accelerate on renewables. Biden has been so far unwilling to take this step, but we might expect as well exceptional political measures, considering that science has already demonstrated the material existence of rapid and heavy anthropogenic climate change and of its effects.

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<sup>18</sup> B. Detterman et al., *Environmental Law 2022, Biden administration rapidly advances the climate change agenda*, Feb. 16, 2021.

<sup>19</sup> *Ibidem*.

<sup>20</sup> *Ibidem*.



Ecosystem emergencies are more than evident, especially because due to “the ‘ecological deficit’ of the entire planet, with the constant and increasing consumption of goods, resources and ecosystem services, due to fossil emissions globally and locally higher than the regeneration capacities of the biosphere”.<sup>21</sup>

In one of his recent speeches, Joe Biden declared in this regard “[i]t is an emergency, an urgency, and I will treat it that way”. Clear words, but empty words if they are not meant to be a formal statement.

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<sup>21</sup> M. Carducci, C. Di Francesco Maesa, S. Bagni, *Towards an EU Charter of the Fundamental Rights of Nature*, 2020, in [www.eesc.europa.eu](http://www.eesc.europa.eu), p. 56. The authors of this study claim that “To date, the real planetary urgency is the “threat” of climate change and its “feedback loop” that affects the whole environment and human health. All balancing criteria do not guarantee the future of the Planet and human health”. These are precisely the conditions that should justify the use of a climate emergency declaration.

