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## Obama's Push for Copenhagen Deal Could Violate Constitution, Critics Say

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President Obama's mission to save the planet from global warming could end up trampling on the U.S. Constitution, critics say.



*President Barack Obama walks along the Colonnade at the White House in Washington, Tuesday, Dec. 15, 2009. (AP)*

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When Obama arrives in Copenhagen Friday, he is hoping to cut a deal on a new global-warming agreement. Even though the conference is not likely to produce a legally binding deal, critics say if the president signs an international climate treaty pledging reductions in carbon emissions, he will violate the Constitution.

"President Obama cannot bind the American people to job killing international agreements on climate change without the advice and consent of the United States Senate," former Republican House Speaker Newt Gingrich wrote Wednesday at the conservative Web site Human Events.

The Constitution states that the president cannot sign treaties without the approval of two-thirds of the Senate.

But with climate change legislation stuck in the Senate after the House passed its version earlier this year, the White House is flirting with the possibility of taking action without Congress.

Last week, on the day the climate summit opened in Denmark, the EPA formally declared that greenhouse gases including carbon dioxide are a danger to human health -- a finding that could pave the way for massive new regulations under the Clean Air Act for cars, power plants, crude-oil refineries and chemical plants.

While administration officials have said they would prefer Congress take action on regulating greenhouse gas emissions, Republicans fear the EPA, buoyed by its latest finding, is prepared to act unilaterally.

Democratic Rep. Ed Markey of Massachusetts, co-author of the House climate change bill, told Fox News that the Obama administration has the power to act without Congress through the EPA.

"It's no longer a question of legislation or no legislation," he told Fox News' Chris Wallace. "It is now a question of legislation or regulation. The EPA can act.

"And so this is now something which is going to happen. And the only question now is whether or not, as you say, command and control of the EPA is going to be the way in which we solve the problem, or legislation that allows us to protect trade-intensive, energy-intensive industries, to protect consumers."

But Gingrich warned of an uprising if the Obama administration takes action through the EPA.

"Similarly, he can't bypass the peoples' representatives in Congress by having the EPA pursue the same goals through bureaucratic totalitarianism," he wrote.

"This message to the president is also a message to Congress. Should the Obama administration act unilaterally and subvert the Constitution, the American people will rightfully rise up in opposition."

Global leaders were expected to arrive before Friday's summit finale to sign a political outline of a global warming treaty that would set limits on carbon dioxide pollution by the United States, China and India, as well as extend emissions targets for the 37 countries regulated under the 1997 Kyoto Protocol, which was never ratified by the U.S.

So far, negotiations in Copenhagen have been rocky. The Obama administration is looking to strike a loose agreement on guidelines for greenhouse gas emissions, with a binding treaty to follow sometime in the future.

But Obama has received one warning from a member of his party on signing a treaty. Sen. Jim Webb, D-Va., told Obama in a letter late last month not to commit the U.S. to any binding climate standards in Copenhagen without congressional support.

"As you well know from your time in the Senate, only specific legislation agreed upon in the Congress, or a treaty ratified by the Senate, could actually create such a commitment on behalf of our country," he wrote.

Webb's office could not be reached for further comment.

The Center for Biological Diversity Climate Law Institute, however, argues the Supreme Court has given the president the legal authority to bypass Congress and bind the country internationally through an "executive agreement" and that Congress itself has given the president specific authority to negotiate international agreements to reduce greenhouse gas emissions.

In a report, the institute also claims that Obama could "make an international commitment grounded in his power -- and indeed, his duty -- to enforce existing U.S. environmental laws," such as the Clean Air Act, Clean Water Act, and Endangered Species Act.

"In short, any one of these sources of authority would allow President Obama to make a binding, meaningful commitment to the international community," the institute wrote in the [report](#), titled "Yes He Can: President Obama's Power to Make an International Climate Commitment Without Waiting for Congress."

"Together, these congressional enactments and environmental statutes give President Obama a very strong hand -- strong enough to do what the science demands, and not just what a divided and rancorous Congress might someday allow."

But others framed Obama's trip to Copenhagen in very different terms.

"Who will President Obama heed?" Vince Haley, vice president of policy at American Solutions for Winning the Future, wrote in an opinion article published in FoxNews.com. "The American people and our constitutional system of checks and balances, or the collection of dictators, tyrants, and most undemocratic heads of government convened by the United Nations in Copenhagen this week?

"They are tempting the American president to do what he wants to do and what they mostly do: ignore the will of their own people and sign a political agreement based on an unconstitutional sham."