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Does Obama Need 67 Votes For A Climate Treaty? Not Necessarily.

Michael A. Livermore December 17, 2009 | 5:48 pm

President Obama will arrive in Copenhagen tomorrow to weigh in on the talks over a global climate treaty. But will he and his envoys be "hemmed in" by Congress, as John Kerry **suggested** [1] on Thursday? After all, even if the United States does agree to an international climate treaty, many observers have argued that the treaty would still need 67 votes in the Senate for ratification. And, given how difficult it's proving just to round up 60 votes for a climate bill, the odds of 67 look dim. So are there any other options available?

Actually, yes. For one, a president is allowed to enter into an executive agreement on international actions, provided that Congress has granted this power through legislation. Over the years, the United States has routinely relied on these congressional-executive agreements to participate in treaties like NAFTA, as well as to sign on to global commitments on issues like intellectual-property rights. Under this option, Congress would simply need to pass a bill authorizing an executive agreement on climate, and the president could then sign on when a treaty is ready. That would only require the 60 votes necessary to overcome a filibuster.



But if 60 votes is too difficult, new legislation isn't the only option. As the Center for Biological Diversity **argued** [2] in a recent report, there are several

tools President Obama could use under *existing law* to enter the United States into a binding agreement on climate change. One is Section 617 of the Clean Air Act, which gives the president the authority "to enter international agreements... and to develop standards and regulations which protect the stratosphere." This could provide a foundation for an executive agreement—and Obama wouldn't need to round up 60 votes from the Senate.

The difficulty in this latter route, however, would be in establishing a link between greenhouse-gas emissions and the stratosphere. While scientists have shown that heat-trapping gases like carbon-dioxide have taken their toll on the planet's troposphere, the stratosphere has been slower to reveal damage, mainly due to the complex dynamics between the two layers. In a nutshell, tropospheric temperatures have continued to increase, but stratospheric temperatures remain low—that combination has led to faster ozone depletion which leads, in turn, to more global warming. Scientists are only just starting to explore this stratosphere-troposphere relationship and how the two layers interact with greenhouse gases.

But even if the science on the stratosphere isn't crystal clear, Obama may still be able to proceed. Title VI of the Clean Air Act contains precautionary language that would likely enable the president to address global problems like climate change even if the stratosphere connection is not yet conclusive. In short, if Congress refuses to ratify a climate treaty, the Obama administration would still have the authority to sign on to whatever climate treaty emerges from Copenhagen and the next set of talks at Mexico City.

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