

Climate 'emergency' declaration would give Biden new tools — but limits unclear

BY [ANTHONY ADRAGNA](#)

|01/26/2021 06:04 PM EST

Senate Majority Leader [Chuck Schumer](#) has called for President Joe Biden to declare a national emergency on climate, a move that would give the new administration a host of statutory authority. But the extent of those powers is untested, especially with statutes never envisioned to deal with a problem as broad as climate change.

Experts say Biden could invoke the 1976 National Emergencies Act to give himself the power to employ the Defense Production Act to manufacture clean energy technology, move Defense Department funds to deploy renewables on military bases, block exports of crude oil exports or even suspend offshore drilling — though that would require compensation to the owners. The law limits the emergency declarations to one year, but it could be renewed annually to keep the extraordinary power.

Doing so would, of course, trigger a political firestorm and rely on novel interpretations of the statutes around national emergencies. However, experts acknowledge an emergency declaration would generate powerful symbolism for the administration's goal of aggressively fighting climate change, and, as Schumer contends, empower Biden with new tools to confront the problem.

“He can do many, many things under the emergency powers of the president that wouldn't have to go through — that he could do without legislation,” Schumer told “The Rachel Maddow Show” in an interview Monday night. “Now, Trump used this emergency for a stupid wall, which wasn't an emergency. But if there ever was an emergency, climate is one.”

White House Press Secretary Jen Psaki did not directly respond — but notably didn't dismiss the idea — when asked about it at a Tuesday briefing.

“There will be more we have to share on our efforts on climate in the days ahead but I don't think Leader Schumer has any doubt about the president's commitment to this,” she said.

The Brennan Center, a public policy institute at the NYU School of Law, has compiled a list of [123 statutory powers](#) that become available to a president once a national emergency is declared. Former President Donald Trump declared a national emergency in February 2019, after which he reprogrammed Defense Department funds to construct parts of a border wall. Congress twice held bipartisan votes to override those national emergency declarations, but Trump vetoed them.

Even without testing the powers of the emergency declaration, it sends a signal about how the administration views climate change.

“I think the idea is mostly symbolic rather than practical because in practice what is freed up by a national emergency declaration is not nearly sufficient to address climate change,” said Elizabeth Goitein, director of the Liberty and National Security Program at the Brennan Center. “In my mind, it doesn't get you very far and I think it's vulnerable to the accusation that he's doing a version of what Trump did, which is using a national emergency declaration to get around Congress.”

Dan Farber, director of UC Berkeley's Center for Law, Energy and Environment, noted that declaring a national emergency does not require Biden to take any specific actions, and inevitable political blowback might dissuade Biden from deploying it immediately, but it's a valuable option for him to hold onto.

“This doesn't mean that Biden can just declare an emergency and then implement the 'Green New Deal' or even implement the plan he proposed during the campaign,” he said. “It is important symbolism and it also gives people in Congress and elsewhere a signal that if they try to stonewall too much, he has other options.”

Republican Sen. [John Barrasso](#), ranking member of the Energy Committee and whose state of Wyoming is the leading U.S. coal producer, warned that Schumer is “playing with fire” in urging a climate emergency declaration and urged Biden not pursue the idea.

“By calling on President Biden to declare a climate emergency, he is trying to muzzle Congress,” Barrasso said in a statement. “President Biden should work with both parties in Congress, not listen to Chuck Schumer's dangerous ideas.”

Sen. [Kevin Cramer](#) (R-N.D.), who represents the No. 2. oil producing state, called Schumer's idea “an early admission Democrats' climate proposals are too extreme to be passed by Congress” and warned it would “be a policy nightmare and a political disaster the Biden Administration would quickly regret.”

During his interview Monday, Schumer said he intended to pursue other options for enacting bold climate legislation that would not require Republican support. He's exploring ways to advance measures through the budget reconciliation process, a maneuver that would allow a bill to pass the Senate with a simple majority.

“There may be things that are reconcilable,” he told Maddow, suggesting Democrats would use the first of two opportunities this year to invoke budget reconciliation on a Covid-19 package, and the second for implementing Biden's "Build Back Better" agenda that would include climate provisions.

In particular, Schumer said he would push for a [massive new electric vehicle subsidy program](#) and that the eventual bill be consistent with the principles in a [roadmap to address](#) the pandemic and economic, racial, and climate crises he unveiled last year.

Climate advocates quickly welcomed Schumer's commitments out-of-the-gate and urged Biden to make the emergency declaration, even if the limits of the presidential powers are murky.

"It's very much a statute-by-statute, agency-by-agency analysis," said Brett Hartl, government affairs director at the Center for Biological Diversity. "[The limits are] somewhere in the middle between 'it's totally symbolic' and 'it totally gives the president full, undeterred power.'"