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DR. NORBERT WAGNER
MICHAL MACHNOWSKI

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US Energy and Climate Change Legislation - Open to Proposals

In response to the lack of progress in Congress on global climate change and energy legislation coupled with mounting international criticisms, President Obama recently took three important steps that would seek to seriously confront America's carbon-limited future. President Obama proposed to open vast expanses of water along the Atlantic coastline, the eastern Gulf of Mexico, and the north coast of Alaska to oil and natural gas drilling, announced plans for significant increases in the fuel mileage standards for automobiles and trucks and stated that the government would provide \$8 billion in federal loan guarantees to build two new nuclear reactors in the U.S.

Offshore Drilling

The offshore drilling proposal proposed by the president is intended to reduce dependence on foreign oil imports, while generating revenue from the sale of offshore leases. However, while President Obama has staked out middle ground on other environmental matters—such as supporting nuclear energy—the sheer breadth and scope of the offshore drilling decision will take some of his supporters aback. In March, 10 coastal state Senate Democrats said they'd oppose a climate bill if it greatly expands offshore drilling. The warning was issued to the three architects of the upcoming energy and climate legislation: Senator Kerry (D-MA), Senator Lieberman (CT) and Senator Graham (R-SC).¹

The warning highlights the balancing act that Senator Kerry and others face as they try to craft legislation that can attract industry and GOP backing without hemorrhaging support from liberals and environmentalists. The coastal Democrats laud the effort to write a climate bill, noting their states are at risk from rising sea levels, but say a major expansion of offshore drilling would cause them to drop their support. "But we hope that as you forge legislation, you are mindful that we cannot support legislation that will mitigate one risk to our coasts at greater peril from another source," the 10 Democrats wrote. The letter is signed by Democratic Senators Bill Nelson (FL), Robert Menendez (NJ), Sheldon Whitehouse (RI), Barbara Mikulski (MD), Ben Cardin (MD), Frank Lautenberg (NJ), Ted Kaufman (DE), Ron Wyden (OR), Jeff Merkley (OR), and Jack Reed (RI).

While many liberals were disappointed by President Obama's decision to support the expansion of offshore drilling, the decision was seen by others as a move to garner the support of conservative Democrats and Republicans who would be open to voting for a comprehensive climate and energy measure.²

¹ The Hill, 10 Dems warn Kerry: Don't expand offshore drilling in climate change bill. By Ben Ge-
man, March 25th, 2010

² The Hill, House Liberals shift climate change tactics, will not draw 'lines in the sand'. By Russell
Berman, April 7th, 2010

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Senator Kerry recently said that the president's decision on offshore drilling could help get the 60 votes in the Senate that will be needed in order to pass climate change legislation. Whitney Smith, the spokes person for Senator Kerry stated: "In the difficult work of putting together a 60 vote coalition to price carbon, Senator Kerry has put aside his own long-time policy objections and been willing to explore potential energy sources off our coasts as part of a suite of alternative solutions. He and his colleagues are committed to find acceptable compromises on onshore and offshore oil and gas exploration, conducted in an environmentally sensitive manner that protects the interests of the coastal states. They've met with Senators who oppose drilling and those who support it and they've worked for months to determine the best solutions."³

Republicans favor more drilling but their leaders have said that the plan does not open up enough areas for drilling because it excludes the Pacific coast and some areas of Alaska.⁴ So the question remains: Which Republican Senators can be persuaded to support even a "compromise" version of climate change legislation?

In response to such concerns, the bipartisan trio unveiled an eightpage draft outline for their bill showing an emphasis on a sectoral approach to fighting climate change. The draft legislation draws on ideas from the Carbon Limits and Energy for America's Renewal (CLEAR) Act introduced by Senator Maria Cantwell (D-WA) and Senator Susan Collins (R-ME). The CLEAR ACT is a framework for a capand- trade program that has gained praise from the oil industry, AARP, and some prominent climate activists. From the details that have been released by the members of the Alliance for Energy and Economic Growth, the U.S. Chamber of Commerce working group of top polluter lobbyists who met with the legislators, it appears that the Kerry-Graham-Lieberman draft is consistent with President Obama's principles and similar in its policy aims to the House's Waxman-Markey Act.⁵

The chances of passing this legislation in an election year depend on whether enough politicians, political pundits, and most importantly, the American people believe, as Senator Kerry, Senator Lieberman and Senator Graham do, that their approach is the right political re economic competitiveness, and increasing climate instability.

Fuel Economy Standards

A day after President Obama urged Congress to expand offshore oil and gas exploration, the Obama Administration, along with the Environmental Protection Agency and the Department of Transportation, rolled out updated fuel economy standards for new cars and trucks. It was last May that the President first announced plans for the first significant increase in fuel mileage standards since Congress set them back in the 1970s.

At a glance, the fuel savings-and greenhouse gas emissionsproduced by the 35.5 miles per gallon standard are impressive. Over the life of the 2012-2016 model years covered by the rules, the drop in oil usage will be 1.8 billion barrels, more than the U.S. imports each year from Saudi Arabia. "That's like taking 58 million cars off the road for an entire year," said President Obama. By 2020, the savings would reportedly amount to 1.3 million barrels a day-about 7 percent of the current daily use.⁶

³ <http://theplumline.whorunsgov.com/climate-change/kerry-office-drilling-will-help-get-60-votes-for-climate-change/>

⁴ Briefing Room, Kerry open to Obama drilling plan. By Jordan Fabian, March 31st, 2010

⁵ <http://wonkroom.thinkprogress.org/2010/03/18/kerry-graham-lieberman-rumors/>

⁶ The Washington Insider, New Fuel Standards. By Jaime Dupree, April 1st, 2010

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The fuel standards are intended for consumers as much as the environment. The plan is to have consumers benefit from lowered fuel costs while the atmosphere benefits from less pollution. While critics point out that each vehicle will have an extra \$1,000 added in extra production costs necessitated by the new standards, the owner of a 2016 car will pocket over its lifetime a net of \$3,000 in savings.⁷

Senator Barbara Boxer (D-CA), Chairman of the Senate Committee on Environment and Public Works, said, "The national pollution and efficiency standards for vehicles adopted by the Obama Administration are an historic step forward. The new standards, built on California's leadership on cutting carbon pollution, will save consumers money at the gas pump due to higher fuel efficiency while reducing our dangerous dependence on foreign oil."

Additionally, the new auto efficiency standards could help keep oil demand low enough that developing new offshore oil wells will be economically unattractive (the oil industry is currently producing oil from just 22 percent of the total acreage it has already leased for exploration on the Outer Continental Shelf)⁸.

Nuclear Power

In February, President Obama underscored his embrace of nuclear power as a clean energy source, announcing that the Department of Energy had approved \$8.3 billion in federal loan guarantees to build two new nuclear reactors in Georgia. If the project goes forward, the reactors would be the first begun in the U.S. since the 1970s. The U.S. currently has 104 operating nuclear power reactors.

The main reason for resistance in the U.S. towards nuclear power seems to be more financial rather than technological. One cannot build a new nuclear power plant without loans, and banks steer away from nuclear investments because of the inevitable regulatory hurdles, which create waves of uncertainty. However, the announcement of the guaranteed loans aims to make the more manageable. The new revised process seeks to eliminate problems that caused huge cost overruns in the 970s and 1980s, when regulatory changes during construction added billions to the original costs. About 100 reactors were abandoned during construction in that era.⁹

The loan guarantees were authorized by the Energy Policy Act of 2005. If the reactors are built and fully operate profitably, the borrowers will repay the banks and pay a fee to the federal government in exchange for the guarantee; if the borrowers default, the federal government will repay the banks. Critics have argued that the chance of default is high, and the loans have been delayed by protracted negotiations over what the fee should be.

The announcement of the loan guarantee comes as the Obama Administration is courting Republican support for its climate and energy policies. With current climate and energy legislation stalled in the Senate and its prospects for success still uncertain, President Obama is seeking new incentives to spur clean energy development and create jobs.

In a speech given in February, President Obama said, "Those who have long advocated for nuclear power-including many Republicans have to recognize that we will not achieve a big

⁷ Boston Globe, A great boost for fuel economy. Globe Editorial, April 3rd, 2010

⁸ Boston Globe, A great boost for fuel economy. Globe Editorial, April 3rd, 2010

⁹ The New York Times, US Supports New Nuclear Reactors in Georgia, MattWald, February 16th, 2010

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boost in nuclear capacity unless we also create a system of incentive to make clean energy profitable."¹⁰

Some Republicans, however, have stated that although they praise the move, it will have little impact on their votes. Don Stewart, spokesman for Republican Senate Leader Mitch McConnell, said that Senator McConnell has repeatedly praised President Obama for favoring additional loan guarantees for nuclear power plants. But, he said, this would not translate into support for a cap on carbon dioxide emissions. "It won't cause Republicans to support the national energy tax," said Mr. Stewart. "While Republican and Democratic ideas overlap in some areas, much of President Obama's proposed energy program does not fall into these overlapping areas."

Robert Dillon, spokesman for Senator Lisa Murkowski (R-AK), said that she thought nuclear power was "a core component of a comprehensive energy plan," but that she would vote against the energy bill as a whole. "One or two provisions aren't going to offset the bad provisions," he said.

At the same time, President Obama's decision to embrace nuclear power has drawn plenty of ire from environmental groups who have long opposed the reliance on nuclear power. Carl Pope, executive director of the Sierra Club, said that nuclear power was not the cheapest and fastest way to reduce the greenhouse gases linked to global warming. "The loan guarantees announced may ease the politics around comprehensive clean energy and climate legislation, but we do not believe they are the best policy," he said.

Despite the announcement of the loan guarantees, the reactors are from being a done deal; their design has yet to be approved by the Nuclear Regulatory Commission, who staff raised concerns about whether changes made to harden the plants against aircraft attack had made it more vulnerable to earthquakes.

Room for Cap-and-Trade?

Less than a year ago, cap-and-trade was seen as the policy of choice for tackling climate change in a bi-partisan fashion (see Road to Copenhagen). Today, the concept is very much tarnished, with opponents condemning it as "cap-and-tax". President Obama did not mention cap-and-trade in his current budget proposal, there is no mention of it by Senator Kerry, and Senator Graham pronounced economy wide cap-and-trade dead in February.¹¹ Why did it disappear? The short answer is that it was done in by weak economy, the Wall Street meltdown, determined industry opposition and its own complexity.

The current Senate plan, still in the drafting stage, will include a cap on greenhouse gas emissions only for utilities, at least at first, with other industries phased in perhaps years later. It is also reported to contain a modest tax on gasoline, diesel fuel and aviation fuel, carbon capture and storage, renewable energy sources like wind and solar, accompanied by the previously mentioned new incentives for oil and gas drilling, and nuclear power plant construction.

¹⁰ The New York Times, US Supports New Nuclear Reactors in Georgia, Matt Wald, February 16th, 2010

¹¹ The New York Times, 'Cap and Trade' loses its standing as energy policy of choice'. By John Broder, March 25th, 2010

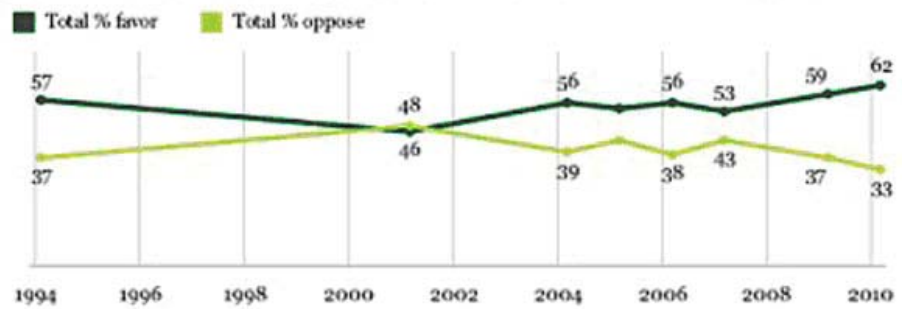
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A March 7th Gallup Poll showed that, for the first time in 10 years, Americans are more likely to support the development of energy supplies than they are to support the protection of the environment. The data represents a continuing shift in opinion toward energy production in the U.S. Since 2007, when America's preferences for environmental protection were the greatest (58% to 34%), Americans' opinions have shown significant movement each year in the direction of prioritizing energy production.

Overall, do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose the use of nuclear energy as one of the ways to provide electricity for the U.S.?

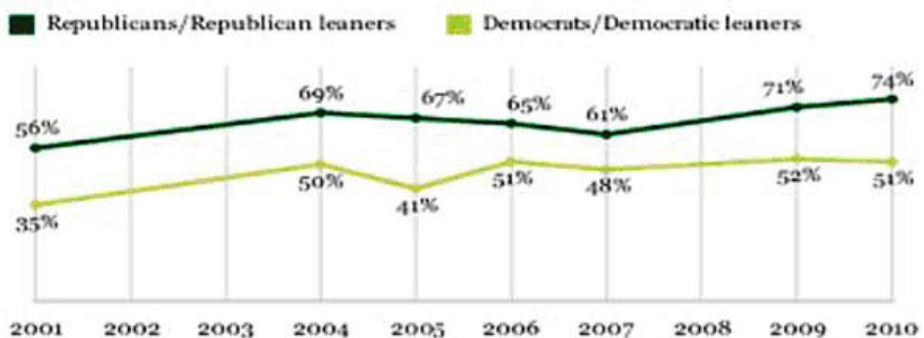


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At the same time, Americans continue to advocate greater energy conservation by consumers (52%) over greater production of oil, gas, and coal supplies (36%) as a means of solving the nation's energy problems. While Americans have always come out in favor of greater consumer conservation, though this year marks the highest percentage favoring production in the last ten years. One possible explanation for the greater public priority on energy production at a time of diminished concern about energy is that Americans typically become somewhat less likely to say they favor environmental protection during down economic times. The same Gallup Poll also found a new high in the percentage of Americans favoring economic growth over environmental protection.

In a recent interview with CNN contributor Fareed Zakaria, Energy Secretary Chu remarked on the importance of tying economic growth to the energy-environment debate, "We are looking at all the factors and we are asking, how can we get to the lowest possible level of

Favor Use of Nuclear Energy, by Political Party Affiliation



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carbon as quickly as possible and not only at the lowest cost, but with the greatest possible economic opportunity for the U.S."

With regards to an investment in new technologies, Secretary Chu said that "We are making major investments, though in some areas the effort is just to get something started. The

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Department of Energy is responsible for the entire energy innovation chain—from basic research, to even beginning to help deploy and scale new technologies. You fund for a very short time—two years, three years maximum—in hopes of opening up something big. So we are saying, ‘Swing for the fences.’ Now if you swing for the fences, you may strike out more. But we want a few homeruns.”

In a speech given to students and faculty of Harvard University in early March, Secretary Chu cited the Recovery Act, signed into law in February 2009, as a step in the right direction. The measure provides for an \$80 billion down payment on developing a clean-energy economy, with \$8 billion earmarked for energy-innovation research. But with China investing \$8 billion a month on renewable energy, said Secretary Chu, there is more to be done in both the public and private sectors. “If we hold off for another 10 years, we’ll fall behind the other countries,” he warned.¹²

“We have to get moving. The U.S. innovation machine is the greatest in the world. When given the right incentives, it will respond,” said Secretary Chu.

A large portion of this response is resting on the legislative velocity of a divided Congress. Secretary Chu spoke of the need to pass a comprehensive energy bill that will require the energy sector to revamp its old infrastructure in order to meet more stringent regulations. Such a bill would ‘liberate financial markets’ to loan the money required to make those expansive adjustments, setting a complex process of energy revolution into motion, Secretary Chu said.

The Senate is expected to take up the climate bill in the coming weeks—the last chance to enact such legislation before the midterm elections take political precedence. Steve Pearlstein, a business columnist for the Washington Post, wrote that “Many in the environmental community have come around to Senator Kerry’s view that this is the best shot they are going to have anytime soon at passing comprehensive energy and climate change legislation. And parts of the business community have come around to Senator Graham’s view that they can’t afford another decade of uncertainty over regulatory issues, particularly with an activist Democrat in control of the regulatory agencies, just as they cannot afford to alienate an entire generation that has a keen interest in the environment and doesn’t look kindly on their intransigence.”¹³

“Although the Senate bill retains the cap-and-trade structure of the House bill, it would apply, at least initially, only to electric power producers, with other manufacturers coming under the regime after 2016. The oil and gas industry would be handled under a separate regime that requires refiners to buy emissions permits for all the carbon contained in the gasoline or other fuels they sell -- in effect, a fee or tax on carbon. The amount of the fee would be determined by the price at which carbon emissions allowances are bought or sold by utilities on open exchanges. And while the fee would almost certainly be passed on to consumers in the form of higher fuel prices, most of it would be rebated through payroll and other tax credits. By paying more for energy and less for taxes, the idea is that Americans will use less energy and wind up with roughly the same amount of money to spend on everything else.”

Furthermore, Mr. Pearlstein stated that Senator Graham and Senator Kerry are targeting “George Voinovich of Ohio and Richard Lugar of Indiana, whose Midwestern states would

¹² Stanford Report, Waving the banner of energy revolution: Secretary of Energy speaks on green technology and climate change. By Aimee Miles, March 8th, 2010

¹³ <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/15/AR2010041505755.html>

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fare even better under the Senate bill than the House-passed version; Judd Gregg of New Hampshire, who will surely like all of the goodies for the nuclear power industry included in the bill; Susan Collins of Maine, whose idea for rebating to consumers money collected by the government through the sale of carbon-emission rights to electric utilities and oil refiners is a central feature of the Senate compromise; and Scott Brown of Massachusetts, the newbie senator who so far has lived up to his promise to be an 'independent' Republican."¹⁴

But things in the Senate are never that clear. Due to Senator Reid's recent announcement that he would move ahead with immigration reform legislation before the energy and climate change bill, Senator Graham has decided to pull his support from the climate bill.¹⁵ "I want to bring to your attention what appears to be a decision by the Obama administration and Senate Democratic leadership to move immigration instead of energy. Unless their plan substantially changes this weekend, I will be unable to move forward on energy independence legislation at this time. I will not allow our hard work to be rolled out in a manner that has no chance for success. Moving forward on immigration-in this hurried, panicked manner-is nothing more than a cynical political ploy. I know from my own personal experience the tremendous amounts of time, energy, and effort that must be devoted to this issue to make even limited progress."

Due to Senator Graham, Senator Kerry announced that he would be postponing the unveiling of a climate bill. "We believe that we had reached an agreement on the bill, but regrettably external issues have arisen that force us to postpone only temporarily," said Senator Kerry.

"Immigration and energy reform are equally vital to our economic and national security and have been ignored for far too long," Senator Reid said. "I have said, I am committed to trying to enact comprehensive clean energy legislation this session of Congress. Doing so will require strong bipartisan support and energy could be next if it's ready. I have also said we will try to pass comprehensive immigration reform. This too will require bipartisan support and significant committee work that has not yet begun. I appreciate the work of Senator Graham on both of these issues and understand the tremendous pressure he is under from his own members. But I will not allow him to play one issue off of another, and neither will the American people. They expect us to do both, and they will not accept the notion that trying to act on one is an excuse for not acting on the other."

Senator Reid has said publicly that he would try to move on both pieces of legislation, but some insist that he's put climate change legislation on the back burner. On both issues, the conventional wisdom has long been that neither bill will pass the Senate this year as 36 Senators look ahead to reelection bids in November.

Still the president sounded a upbeat about the chances of passing a climate and energy bill this year. President Obama said that while some of his plans can be completed by the Executive Branch, a majority of the changes will require Congressional action and urged the passage of a broad energy and climate bill through Congress this year. "I'm still open to proposals from my Democratic friends and my Republican friends," said the President.

¹⁴ http://voices.washingtonpost.com/ezra-klein/2010/04/a_50-50_chance_that_the_senate.html

¹⁵ <http://www.politico.com/news/stories/0410/36301.html>