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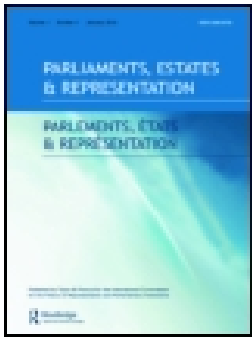
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# To act or not to act. Debating the climate change agenda in the United States Congress

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## ABSTRACT

Most climate change actions take place in the international context in terms of multilateral negotiations and accords or in bilateral agreements between heads of the state. Parliaments or legislatures such as the United States Congress are in a crucial position when it comes to converting agreements or aims to action in domestic politics. The United States has played a volatile role in international negotiations on climate change. From categorically rejecting the Kyoto protocol during the George W. Bush administration, President Barack Obama announced that the United States would join the Paris Climate Accord prior to President Donald J. Trump's announcement of the withdrawal of the United States from the Paris Accord. In domestic politics, too, efforts to address climate change have likewise varied. This article explores the complexity of climate change as a political question in the United States and considers the problematic issue that explains why the United States Congress has not have similar momentum to address climate change since the House of Representatives passed cap and trade legislation in 2009. The focus will be on theoretical discussions on congressional inaction and the United States Congress members' views on how and to what extent that institution should play a role in addressing climate change.

## KEYWORDS

United States Congress; debates; legislative action; climate change; agenda; politics

## Introduction

In contrast to other western liberal democracies, the United States has been an exception regarding environmental policies and action. It has no Green Party representation at the federal government level nor has climate change been at the top of the legislative agenda.<sup>1</sup> The relevant milestone is the passing by the House of Representatives of *The American Clean Energy and Security Act of 2009* (the so-

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<sup>1</sup>See for example the Climate Change Act in the UK in 2008, the Energy-Climate legislation passed by the French Parliament in 2019 or the Climate Change Act passed in 2015 in Finland. See also earlier discussion of congressional paralysis in R. Rabe, 'Can Congress govern the climate?' (NYU Wagner Research Brief, 2007), [https://www.brookings.edu/wp-content/uploads/2016/06/0423climatechange\\_rabe.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0423climatechange_rabe.pdf).

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called Waxman-Markey bill, see House Resolution (H.R. 2454), 111th Congress) by a vote of 219–212. The bill was supported by eight Republican members and opposed by 44 Democratic members.<sup>2</sup>

In the last 15 years the United States (US) Congress has been interested in greenhouse gas emission control. Proposals have often focused on market-based approaches such as a cap and trade programme or a carbon tax.<sup>3</sup> The question arises why congressional inaction in legislative terms has been tolerated since 2009, when the House of Representatives successfully passed cap and trade legislation.<sup>4</sup>

The question of failure on the part of the US Congress to act on climate change legislation can be approached from several perspectives, including decision-making and power relations. In the US Congress, the majority party plays a decisive role in setting the agenda. Related issues to consider are the overall partisanship and polarization of the US Congress. Research shows how the parties diverge more and more from the 'centre'<sup>5</sup> and the question of how to tackle climate change has divided the parties. Another plausible reason may be the amount of political capital and timing. For example, during President Barack Obama's first term, all political efforts were reportedly focused on the enactment of the Affordable Care Act although climate change was also supposed to be on high of the political agenda.<sup>6</sup>

This article presents a short literature review but also considers the views of US Congress members. These views are examined by reference to the Congressional Record in a specific timeframe.<sup>7</sup> The timeframe examined reveals a situation of a Republican majority in both Houses of Congress and the White House. The search results were read mindful of how the members of Congress refer to their role in addressing climate change and how the US Congress' failure to act was articulated. While no specific climate change legislation was considered during the timeframe analysed, debates on climate change emerged in many different contexts. The question of climate change and its implications is not only a local but also a global issue in congressional discussions. The complexity of climate change is illustrated in the debates not only in relation to policy fields such as national security, economy, public health, diplomacy and energy, but also in relation to congressional functions and procedures such as nominations, regulation and rulemaking, funding and agencies, legislation and agreements, to mention only a few topics and discourses.

<sup>2</sup>H.R. 2454 – American Clean Energy and Security Act of 2009, 111th Congress. US House of Representatives, 'Roll Call. 477 June 26, 2009', <http://clerk.house.gov/evs/2009/roll477.xml>. The corresponding bill in the Senate (S.1733) was never brought to the floor.

<sup>3</sup>J. Ramseur, 'Market-Based Greenhouse Gas Emission Reduction Legislation: 108th through 116th Congresses', *CRS Report for Congress* (Updated 23 October 2019), <https://crsreports.congress.gov/product/pdf/R/R45472>.

<sup>4</sup>It should be noted that Congress has passed many legislative actions that address climate change. See for example the list provided by GovTrack 'climate change and greenhouse gases'. But no more 'holistic' approaches, i.e. market-based approaches, have been enacted. (See C2ES, 'Congress climate History', see also Ramseur, 'Market-based greenhouse gas emissions', pp. 7–56).

<sup>5</sup>Brookings Institution 'Vital Statistics of Congress', <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>.

<sup>6</sup>M. DeBonis, 'The political price of Obamacare', *The Washington Post* (16 August 2016), <https://www.washingtonpost.com/graphics/national/obama-legacy/obamacare.html>.

<sup>7</sup>Quick search Congressional Record 115th Congress (accessed via the Library of Congress): 'climate change' (2017–2018), 366 results (as of 20 March 2018). The power relations in Congress at the time were Republican Party majority in both Houses of Congress. Members of Congress positions (i.e. Senators and Representatives) reflect the time of the reference.

A vast body of literature has been published on American environmental politics and policy,<sup>8</sup> environmental political discourses,<sup>9</sup> policy change in the US Congress<sup>10</sup> or how climate change is discussed in parliaments.<sup>11</sup> Environmental framings<sup>12</sup> and discourses have been analysed in various contexts. For example, Miina Kaarkoski's empirical analysis illustrates that parliaments have actively participated in the process of how the threat of global warming and the political solutions proposed have been conceptualized and defined in parliamentary discussions.<sup>13</sup>

The aim of the article is to contribute to the existing literature by concentrating on US Congress members' own views and why climate change has not really been on the top of the agenda of the US congress in legislative terms. The article has a twofold purpose. First, it describes the theoretical discussion on Congressional inaction. Secondly, it examines the actual argumentation by members of the US Congress on the role of the institution in addressing climate change. The first part of the article provides background on the role of the US Congress in the United States as regards addressing climate change. While the US Congress is not a parliament, it follows parliamentary procedure in addressing questions on the agenda. It then moves on to explore why climate change has been such a divisive political question and 'non-agenda' issue in the US Congress and if there is some way other than legislation to address climate change. The conclusion of the article summarizes the argumentation on congressional inaction in failure to address climate change.

## Chancing election cycles and momentum to address climate change

Donald R. Wolfensberger has argued that over time the congressional working culture has changed from a 'culture of legislation to a culture of campaigning' at the cost of solving the major problems facing the nation in a deliberative manner. This has meant that legislation has turned into 'partisan campaign tracts and bumper stickers'.<sup>14</sup> According to Sarah Binder, both institutions and electoral outcomes affect the likelihood of the bills being passed.<sup>15</sup> The election cycles in the United States give a clear indication of how climate change will be addressed. Candidates participating in national elections are obliged to articulate their positions on climate change.<sup>16</sup>

In the two-party system issues are raised for consideration only if Democrats or Republicans consider them relevant. Many grassroots environmental organizations

<sup>8</sup>W. Rosenbaum, *Environmental Politics and Policy* 10th edition (Thousand Oaks, 2017); C. McGrory Klyza and D. J. Sousa, *American Environmental Policy. Beyond Gridlock* (Cambridge, Massachusetts, 2013).

<sup>9</sup>R. K. Besel and B. K. Duffy (eds), *Green voices: Defending Nature and the Environment in American Civic Discourse* (Albany, 2016).

<sup>10</sup>See G.C. Wright, L.N. Rieselbach, L.C. Dodd, *Congress and Policy Change* (New York, 1986); on political gridlock, for example. S. Binder, *Stalemate: Causes and Consequences of Legislative Gridlock* (Washington DC., 2003).

<sup>11</sup>M. Kaarkoski, 'German and British parliaments and conceptions of the global climate threat during the United Nation Earth Summit 1992', *Parliament, Estates and Representation* 39, (2019), pp. 47–63, DOI: <https://doi.org/10.1080/02606755.2018.1532669>.

<sup>12</sup>G. Lakoff, 'Praxis Forum. Why it matters How We Frame the Environment', *Environmental Communication* 4, (2010), pp. 70–81.

<sup>13</sup>Kaarkoski, 'German and British parliaments', pp. 48–9.

<sup>14</sup>D. Wolfensberger, *Changing Cultures in Congress: From Fair Play to Power Plays* (New York, 2018), pp. 6, 125.

<sup>15</sup>See Binder, 'Stalemate', p. 11.

<sup>16</sup>L.R. Cass, *The Failures of American and European Climate Policy: International Norms, Domestic Politics, and Unachievable Commitments* (Albany, 2006), p. 5.

indeed ask their supporters to contact their own Congress members directly in order to have an impact. The Sierra Club, one of the largest environmental organizations in the United States, encourages its members to act on their web page. At the time of writing this article the first of the current campaigns mentioned was ‘Tell your Members of Congress to Support A Green New Deal’.<sup>17</sup>

The Green Party in the United States has been represented only at the local level although they have also had a candidate in presidential elections, including Jill Stein in the 2016 elections. The party has acknowledged that it should campaign to change political conditions that make it very hard for third party candidates to win the elections and to break the two-party system.<sup>18</sup>

It is clear for participants in the discussions over environmental policy that both the Republican and Democratic administrations will have different main concerns.<sup>19</sup> During the discussion on cap and trade legislation in 2009, Representative Henry Waxman (D-California) marked the past elections as a watershed moment to advance climate change issue in the US Congress:

This is a moment in history. This is what the American people were calling for in the election of 2008, a fundamental change that breaks our dependence upon imported oil, creates millions of new jobs, reduced the amount of pollution that we send up into the atmosphere and points us in a new direction in our country that breaks with the pattern of cyclical dependence on imported oil from OPEC that holds our Nation hostage.<sup>20</sup>

In a similar vein, Representative Mark Walker (R-North Carolina) noted among his remarks in the US Congress on the budget resolution of 2017 that Republicans were voted into the US Congress in the 2016 elections to advance the Republican agenda:

Most fundamentally, when the Federal Government is too big and too intrusive, it interferes with our unalienable rights to life, liberty, and the pursuit of happiness. Eleven months ago, the American people voted to give Republicans unified control of government. Now it is time to follow through and implement the policy agenda that Congress and the President were elected on.<sup>21</sup>

The effects of the election cycle on climate change policies were further demonstrated when Democrats gained a majority in the House of Representatives in the 2018 mid-term elections. After achieving a majority, the House Select Committee on the Climate Crisis was established in the 116th US Congress to provide recommendations and advice. Committee Chair, Kathy Castor (D-Florida), introduced H.R.9 the ‘Climate Action Now’ bill to ensure that the United States would meet its emission targets.<sup>22</sup> The bill was passed by a vote of 231–190 in May 2, 2019. Three Republicans joined the Democrats in supporting the resolution. (See roll call 184). In addition, Senator Lisa Murkowski (R-Alaska) joined the bipartisan Senate Climate Change Caucus in the 116th Congress together with Senators Lindsey Graham (R-South Carolina) and

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<sup>17</sup>Sierra Club, ‘Take Action’, <https://www.sierraclub.org/take-action>.

<sup>18</sup>See Green’s Guide to Getting on the Ballot, [https://www.gp.org/getting\\_on\\_the\\_ballot](https://www.gp.org/getting_on_the_ballot); for more on the elections; on the two-party system, see L. Disch, *The Tyranny of the Two-Party System* (New York, 2002).

<sup>19</sup>Klyza & Sousa, ‘American Environmental Policy’, p. 210.

<sup>20</sup>US House of Representatives (US House), 26 June 2009, H7621.

<sup>21</sup>US House, 5 October 2017, H7858.

<sup>22</sup>House Select Committee, ‘press release’, 27 March 2019. <https://climatecrisis.house.gov/news/press-releases/chair-kathy-castor-introduces-climate-action-now-acthr-9-ensure-us-meets>.

Mitt Romney (R-Utah).<sup>23</sup> While there are some clear partisan divisions over climate change, the constituents and states are very different, which is evident in the members' views on how to deal with climate change and from which perspective.

## Congressional framework for legislative (in)action

The two-party system with separation of powers and checks and balances necessarily have an inevitable effect the US Congress and how it functions. The US Congress is mainly a legislative institution, in which the House of Representatives is the 'representative' (historically considered as representing the people) and the Senate (historically considered as representing the states) is the 'deliberative' institution.<sup>24</sup> The Senate was designed to be a 'conservative' body, against possible 'ill-advised' decisions by the House and the President and the way to do this is by careful consideration, including filibuster. The filibuster was actively used, for example, in the 1960s by the senators representing the southern states to block legislation related to civil rights.<sup>25</sup>

Kari Palonen has described how every modern parliament has on its agenda a long list of motions for consideration, but legislatures such as the US Congress work with the future in mind, meaning that their main function is to pass laws before the next elections.<sup>26</sup> The original idea of the US Congress was to create ad hoc majorities or factions to pass bills depending on the issue at hand. In the US political system, the executive has become the chief initiator of legislation, while only members of the US Congress can bring legislation to the floor for consideration. This assumes close co-operation between the President and the majority party leaders, particularly in times when the same party controls both the US Congress and the presidency. It is also characteristic of the check and balances system that bills must be passed by both Houses of Congress and presented for the President's signature. To override a possible presidential veto, a two-thirds majority in the US Congress is required, which creates a tendency for those bills to be passed with which the US President is willing to agree.

The two-year term of the US Congress makes legislative action difficult when bills must be passed by both Houses of Congress before being sent forward for presidential signature. Further, domestic constraints that have had an effect in terms of climate change decision-making in the United States include lobbying and politicians' close relations with industry, the lack of an environmental party, the litigious nature of environmental politics and the disputes in scientific and policy consensus on the fundamentals of how to handle climate change.<sup>27</sup>

<sup>23</sup>See L. Murkowski, 'press release 11.06.19 Bipartisan Senate Climate Solutions Caucus adds new members, host first meeting with CEOs', <https://www.murkowski.senate.gov/press/release/bipartisan-senate-climate-solutions-caucus-adds-new-members-hosts-first-meeting-with-ceos>.

<sup>24</sup>On the different types of parliaments and their functions see K. Palonen, 'A comparison between three ideal types of parliamentary politics: representation, legislation and deliberation', *Parliaments, Estates and Representation* 38, (2018), pp. 6–20, DOI: 10.1080/02606755.2018.1427325; on Parliament and Congress, for example, W. McKay and C. W. Johnson, *Parliament and Congress. Representation and Scrutiny in the Twenty-First Century* (New York, 2012).

<sup>25</sup>N. MacNeil, and R. A. Baker, *The American Senate. An Insider's History* (Oxford, 2013), p. 303.

<sup>26</sup>Palonen, 'A comparison between three ideal types', pp. 17.

<sup>27</sup>Cass, 'The Failures of the American', p. 92.

There are many theoretical discussions on congressional (in)action, including those on gridlock,<sup>28</sup> agenda-setting<sup>29</sup> and non-politicizing or non-decision-making.<sup>30</sup> Congressional inaction is also important from a judicial perspective. Accordingly, it has been considered that the US Congress has acquiesced to something because it has not been overruled by congressional action.<sup>31</sup>

Binder has noted the actual paucity of studies on the legislative process despite numerous case studies on specific legislative actions and how they were enacted. Binder offers an explanation by arguing how context and contingency are both relevant concepts in law making, but they are very difficult to measure systematically. In many cases various crises or situations require speedy legislative action. The other two important aspects are timing and sequence.<sup>32</sup>

The House of Representatives and the US Senate are different in terms of procedure, but the aim of the members is the same in both Houses of Congress: to pass legislation that is in accordance with their own party's agenda.<sup>33</sup> The majority party's task is to set the legislative agenda and the minority party's right is to attempt to amend pending legislation during the process.

While there is no 'opposition' in the American political system, the current partisan divisions sometimes give the impression that there indeed is one. In order to make a major policy change, polarized parties could be counterproductive in terms of finding winning coalitions. On the other hand, more ideologically extreme and coherent parties could also be seen to enhancing the chances of legislative actions because these actions are harder for the minority to oppose.<sup>34</sup> Even, at times when the same party controls the White House and has a majority in the US Congress, measures can be delayed in the Senate because of filibustering. Although the rules for filibustering have been relaxed in recent years and nowadays in order to pass the cloture and to move to the vote only 60 Senators are needed (previously it was 67).<sup>35</sup>

A wide range of studies have focused on legislative work and what kinds of factors do have an effect on legislative change and thus policies, including the circumstances (whether the government is divided or not), the separation of powers, the role of the parties and the partisanship, and the actual congressional procedures, just to mention a few examples. For example, Krehbiel has connected filibustering and presidential veto in his 'pivotal vote theory'. This model helps to understand how gridlock could actually occur both in times of unified and divided government and how both the threat of veto and filibuster play a role. Binder illustrates this by referring to an example of how a

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<sup>28</sup>Binder, 'Stalemate'.

<sup>29</sup>See, for example, V. Heitshusen, 'The Legislative Process on the Senate Floor: An Introduction', *CRS Report for Congress* (updated 22 July 2019), <https://www.senate.gov/CRSpubs/5c970bdd-ed33-446c-a646-cda331d7b108.pdf> about agenda-setting in the US Senate.

<sup>30</sup>See, for example, P. Bachrach & M. S. Baratz, 'Two Faces of Power', *The American Political Science Review* 56, (1962), pp. 947–52; negative agenda setting, such as, S. Gailmard and J. A. Jenkins, 'Negative Agenda Control in the Senate and House: Fingerprints of Majority Party Power', *Journal of Politics* 69, (2007), pp. 689–700, DOI: <https://doi.org/10.1111/j.1468-2508.2007.00568>.

<sup>31</sup>W. N. Eskridge, 'Interpreting Legislative Inaction', Faculty Scholarship Series, Yale Law School Legal Scholarship Repository (1988), [https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4826&context=fsf\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4826&context=fsf_papers).

<sup>32</sup>Binder, 'Stalemate', p. 85.

<sup>33</sup>See Binder, 'Stalemate'.

<sup>34</sup>See Binder, 'Stalemate', p. 87.

<sup>35</sup>See more on filibuster in Heitshusen, 'The legislative process', pp. 3–4; MacNeil and Baker, 'The American Senate', pp. 302–34.



situation of a conservative president with a majority of the same party in the US Congress, the attempts to shift politics further to the right would likely face a liberal filibuster effort. The status quo would nevertheless be maintained because a conservative president would veto any efforts to shift the policy more to the left and if the liberals were to control the majority the revers would happen. Further, centrally located policies may face filibuster efforts from both directions. Some scholars thus expect that large bipartisan coalitions are needed to pass the bills.<sup>36</sup> According to Binder, the degree of partisan politics matters in terms of finding bipartisan majorities to pass the bills and thus having an enduring policy change and the two chambers may have different policy views from the very beginning.<sup>37</sup> It should be also pointed out that the type of legislative outcome matters. For example, Lapinski has noted that foreign policy matters are somewhat immune to partisanship.<sup>38</sup>

Agenda control could be also understood from a different perspective. Sean Gailmard and Jeffrey A. Jenkins, for example, have studied negative agenda control, meaning the ways in which the majority can keep things off the agenda rather than putting things on it.<sup>39</sup> Legislative agenda and decisions on policy in the Senate, for example, are influenced not only by the individual senators' 'preferences' but also by the 'intensity' of these 'preferences'.<sup>40</sup>

While climate change is often seen as a 'global collective action problem' it is at the same time, a 'distributional challenge' with consequences for domestic politics. 'Not in my backyard' – is a common difficulty and the role of the constituents in voting is also significant retrospectively.<sup>41</sup> Michael Gragg et al. studied the issue from the perspective of voting pattern and found that representatives coming from both less carbon-intensive (based on emissions) and wealthier districts tend to vote for climate mitigation efforts. Further, Cragg et al. emphasize the role that ideology plays in carbon politics.<sup>42</sup>

In general, many Americans (54 per cent) considered climate change to be a threat in 2019 according to the Chicago Council report.<sup>43</sup> However, climate change is also a partisan political question.<sup>44</sup> The Pew Research Center's study shows that the numbers of American citizens who consider climate change a major threat to their well-being has risen but the support has been one-sided, coming from Democrats and those of leaning-Democrats.<sup>45</sup> Based on the data gathered from ProPublica, Philip Bump writes that it is possible to see how Democrats in their public statements have spoken more

<sup>36</sup>See the discussion and reference of Krehbiel's work in S. Binder, 'Legislative Productivity and Gridlock', in E. Schickler and F. E. Lee (eds), *The Oxford Handbook of the American Congress* (Oxford, 2013), pp. 650–652.

<sup>37</sup>S. Binder 'Legislative Productivity and Gridlock', p. 653.

<sup>38</sup>Lapinski 2008, referred to in S. Binder, 'Legislative Productivity and Gridlock', p. 655.

<sup>39</sup>Gailmard and Jenkins, 'Negative Agenda Control', pp. 689–700.

<sup>40</sup>Heitshusen, 'The legislative process', p. 1.

<sup>41</sup>L.C. Stokes, 'Electoral Backlash against Climate Policy: A Natural Experiment on Retrospective Voting and Local Resistance to Public Policy', *American Journal of Political Science* 60, (2016), pp. 958–74, JSTOR, <https://www.jstor.org/stable/pdf/24877466>.

<sup>42</sup>M. I. Gragg, J. Zhou, K. Gurney, and M. E. Kahn, 'Carbon Geography: The Political Economy of Congressional Support for Legislation Intended to Mitigate Greenhouse Gas Production', *Economic Inquiry* 51, (2013), pp. 1640–50.

<sup>43</sup>Chicago Council on Global Affairs, 'Rejecting Retreat – Report' (6 September 2019), <https://www.thechicagocouncil.org/publication/rejecting-retreat>.

<sup>44</sup>See more about different aspects of public opinion in E. Kamarck, 'The challenging politics of climate change', *Brookings* (23 September 2019), <https://www.brookings.edu/research/the-challenging-politics-of-climate-change/>.

<sup>45</sup>B. Kennedy and M. Hefferon, 'U.S. Concern about climate change is rising but mainly among Democrats', *Pew Research Center* (28 August 2019), <https://www.pewresearch.org/fact-tank/2019/08/28/u-s-concern-about-climate-change-is-rising-but-mainly-among-democrats/>.

often than Republicans about climate change. Views on climate change in the United States are argued to be exceedingly polarized.<sup>46</sup> Bump writes how:

It's become embedded in the political culture wars: Addressing climate change is a function of liberalism run amok, not an important attempt to fix a crisis. Worrying about the state of the world is alarmism, worthy of being waved away.<sup>47</sup>

The question of partisan polarization is not entirely straightforward, however in political issues or in terms of institutions such as the US Congress. Even though American politics is polarized, studies show that according to public opinion people would like to see 'a Congress full of compromises over one characterized by politicians who rigidly stick by principle'. The desirability of compromise has risen, James M. Glasser and Jeffrey M. Berry argue. The absence of co-operation certainly backs the assumption of the US Congress 'as a dysfunctional body, beset by partisanship, incivility and a lack of productivity'. Even when the public in general may want to compromise, the percentage of voters who take part in party primaries may choose otherwise.<sup>48</sup> Partisan polarization is not a new phenomenon in the United States, but the two-party system and the winner-takes-it all electoral system fosters it.

Binder has considered further how presidential support, partisan polarization, divided government and the Senate filibuster have an effect in terms of what drives legislative action.<sup>49</sup> As mentioned, the same party majority in both Houses of Congress and in the White House will likely enhance the chances of the party's agenda being fulfilled, but not completely. The climate change bill passed the House in 2009 when the Democrats were in the majority in both the US Congress and the White House, but it did not get similar momentum in the US Senate.

A similar example of the difficulty of enacting a new policy can also be found during President Bill Clinton's administration. Clinton, in the context of international climate negotiations, tried to push for domestic action as well and included a carbon tax proposal in his budget proposal. After the elections, the Democrats controlled both Houses of Congress and the White House. To cut emissions (and to lower the deficit), Clinton pushed for an energy/carbon tax. While the House passed the bill, it was considerably altered in the US Senate. The bill proposal faced fierce opposition from industry and the business community because of the likelihood of increased costs. In the end, the bill had very little effect on cutting the emissions, but rather established a petrol tax.<sup>50</sup> One option to proceed with complex issues is to approve an omnibus legislation that includes a diverse set of agenda issues for different parties.

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<sup>46</sup>As regards unified parties, these are very different in the United States from the political parties in Europe. For example, in the House of Representatives, first the Tea Party and then the House Freedom Caucus have caused friction among Republicans and affected how the leadership can build winning coalitions. Similarly, Democrats have different factions within the party, including the fiscal responsible Democrats, the so-called Blue Dogs.

<sup>47</sup>P. Bump, 'The Partisan Gulf in Congress's Focus on Climate Change', *The Washington Post* (7 May 2019), <https://www.washingtonpost.com/politics/2019/05/07/partisan-gulf-congress-focus-climate-change/>.

<sup>48</sup>J. M. Glaser and J. M. Berry, 'Compromising Positions: Why Republican Partisans Are More Rigid than Democrats', *Political Science Quarterly* 133, (2018), pp. 99–125.

<sup>49</sup>Binder, 'Stalemate', pp. 86–90.

<sup>50</sup>Cass, 'The Failures of the American', p. 98; D. Erlandson, 'The Btu Tax Experience: What Happened and Why it Happened', *Pace Environmental Law Review* 12, (1994), pp. 173–84.

## The procedural aspect of politics and the role of the US Congress

The procedural aspect of politics is significant in the parliamentary system. This is also true of the US Congress. When to bring issues to the agenda and how? There are procedural specifics in both Houses of Congress. For example, in the Senate unanimous consent is often employed to proceed with issues, meaning that only one dissenting senator suffices to have an impact to the process.

When the US Congress decides to act on a bill this is normally planned and co-ordinated by the majority leaders in both houses. However, the House majority party leader has more options to form the legislative agenda compared to the Senate majority leader.<sup>51</sup> When bills are introduced, they go to the committees, where the committee chairman (a representative of the majority party) will have the preliminary agenda setting power. Committees rarely ‘mark-up’ bills to have a majority vote in order to report on the bill for consideration on the floor if there are no clear expectations of reaching a majority. The bills need to be placed on the calendar of either the US Senate or the House of Representatives in order to reach floor consideration and a vote. However, even when the bill proposal is in the calendar, it does not necessarily reach the floor of the Senate or of the House of Representatives in the two years’ time span of a Congress.<sup>52</sup>

Congressional procedures play a decisive role in deciding on policy action. Senator John Cornyn (R-Texas) referred to congressional procedures and highlighted the filibuster rule among his remarks to the US Congress. The senator’s argument precisely illustrates the complexity of law making, especially in the US Senate, where a simple majority is not enough:

I have in my hand a document with 15 examples of bills that our Democratic friends, when they were in the majority, supported but that failed to reach the 60-vote threshold because Republicans were not convinced, and thus cloture was not achieved and the bills were not passed. I can think of tax increases. I can think of card check in the labor law environment. I can think of measures with regard to climate change, which remains politically controversial — not the fact of climate change but, rather, what government should do to respond to it. There are examples like that and others where Republicans, even when we were in the minority, were able to stop and force a more extended conversation, to force greater effort at consensus building before we passed legislation that might have such a dramatic impact on our great country.<sup>53</sup>

The senator’s remarks point to the fact that a simple majority is often not enough to make decisions in the US Senate. Cornyn’s argument further points out how a minority party can indeed delay legislative efforts to have a more ‘extended conversation’ and that the main legislative effort should enjoy support from both parties. This, however, is also a way for the Republicans to not have their own agenda but rather to claim that the other party is not offering what could be agreed on in a bipartisan manner.

<sup>51</sup>Bills on tax and spending public money for government spending originate in the House.

<sup>52</sup>V. Heitshusen, ‘Introduction to the Legislative Process in the U.S. Congress’, *CRS Report for Congress* (updated 15 November 2018), <https://fas.org/sgp/crs/misc/R42843.pdf>; about how debate is organized in both the US Senate and the House, see, for example, McKay and Johnson, ‘Parliament and Congress’, pp. 159–68.

<sup>53</sup>Executive session US Senate, 2 May 2017, S2665. The examples include: ‘S. 3036: Climate Security Act (Cap and Trade)—Vote: 48–36 (Jun. 6, 2008); S. 3044: Consumer-First Energy Act (Increased taxes on energy producers)—Vote: 51–43 (Jun. 10, 2008); S. 3268: Stop Excessive Energy Speculation Act (Imposed new regulations on energy trading)—Vote: 50–43 (Jul. 25, 2008); S. 2204: Repeal Big Oil Tax Subsidies Act (Raised taxes on energy producers)—Vote: 51–47 (Mar. 29 2012)’.

Not all the members of the US Congress are convinced, however, that the US Congress is even capable of solving the problems the United States is currently facing, including climate change:

Mr. Speaker, I rise today in support of the freshman class's effort to encourage civility in this Chamber and in our political discourse generally. Americans are divided. Hate speech and hate crimes are spiking. Fake news is increasing. Terrorism threatens the world, and 60 million refugees are displaced across the globe. The public is convinced that elected officials don't seem to get much done regarding the shrinking middle class, immigration reform, climate change, gun violence, and a whole bunch more. What should we do?<sup>54</sup>

Representative Thomas Suozzi's (D-New York) view is criticizing congressional inaction but on the House floor, where the majority has a more significant role. For example, Republicans have followed so-called *Hastert rule* in their actions, meaning that bills are not brought for consideration if there is no secured majority vote in the House of Representatives.<sup>55</sup> This also means that a simple majority is enough to pass the bill in the House of Representatives, and there is no need to convince the 'other' party members if a majority is certain.

Senator Robert Menendez (D-New Jersey) among his remarks also referred to the current culture of politics and argumentation as follows:

Whether we are talking about an adversary like Russia or Iran or an international challenge like climate change or the refugee crisis, we cannot let issues of such importance to our future be obscured by partisan politics, derailed by divisive tweets, or lost amid the revelations of our relentless 24-hour news cycle.<sup>56</sup>

Senator Menendez also points out that some of the issues at hand are too 'important' to be considered through the partisan lenses.

An interesting example of procedural politics was seen when in early 2019 the US Senate voted on the Green New Deal. The US Senate majority leader, Mitch McConnell (R-Kentucky), imposed a vote on his resolution without any committee hearings or consideration. Senators voted against ending the debate and moving to the consideration so the resolution died in the Senate.<sup>57</sup> The US Senate voted by a margin of 0–57, with 43 Democrats voting 'present', and therefore not to proceed on the resolution.<sup>58</sup>

During the floor consideration, McConnell pointed out how the Democrats were not willing to vote on the resolution even though the party had endorsed the idea. For the opposition, US Senate minority leader Chuck Schumer (D-New York) criticized the Republicans for first introducing the resolution and then voting no. During his remarks, the Senator also pointed out how 'for 5 years, the leader hasn't brought one bill to the floor that will deal with the issue of climate change'.<sup>59</sup>

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<sup>54</sup>US House, 14 February 2017, H1163.

<sup>55</sup>About the rule, see J. Richman, 'Relying on the 'Hastert Rule' Damages the Majority Party', *The New York Times* (23 October 2015), <https://www.nytimes.com/roomfordebate/2015/10/23/paul-ryan-the-hastert-rule-and-democracy-on-the-hill/relying-on-the-hastert-rule-damages-the-majority-party>.

<sup>56</sup>US Senate, 7 June 2017, S3305.

<sup>57</sup>M. Lavelle, 'Senate's Green New Deal Vote: 4 things you need to know', *Inside climate news* (2019), <https://insideclimatenews.org/news/25032019/green-new-deal-senate-vote-mcconnell-climate-change-policy>.

<sup>58</sup>J. Carney and M. Green, 'Senate Blocks Green New Deal', *The Hill* (26 March 2019), <https://thehill.com/homenews/senate/435899-senate-blocks-green-new-deal>.

<sup>59</sup>US Senate, 26 March 2019, S1951.

During the consideration of McConnell's measure, Senator Murkowski described in her remarks how to address climate change 'in a meaningful way' the measure 'must be bipartisan, it must be enduring, it must move from one administration to another, and, again, it has to be something we can work toward with meaningful steps'. Senator Murkowski further pointed out how, despite a lack of specific legislative action, there had been many ways that the US Congress had acted on issue and put in place many policies 'that are moving us forward in the right direction'. She mentioned how the US Congress 'expanded the tax credit for carbon capture, utilization, and sequestration, CCUS'. Funding for the Department of Energy to conduct research and develop cleaner technologies was also increased. Congress also passed legislation to advance basic science, nuclear energy and hydropower among other things. Murkowski also pointed out how producing, using and exporting natural gas, which can be helpful in reducing emissions, was supported by many in the US Congress.<sup>60</sup> As Murkowski's argument indicates, there are many alternative routes by which climate change action takes place other than specific bill.<sup>61</sup> One route for policy change is through agency rulemaking. The example of the Obama administration indicates how the Environmental Protection Agency relied on rulemaking to address climate change, when there was no action on behalf of the US Congress. The agencies are not, however, immune for the views of the president and the US Congress.<sup>62</sup>

## Both sides of the political divide on climate change discussions

Discussion on climate change is not only about the phenomenon, but also how to respond, what kinds of actions are required and what the role of the government should be. Republicans have been more sceptical than Democrats regarding the benefits of regulation. They also favour 'tighter standards of evidence' to consider actions taken in administrative agencies as justified.<sup>63</sup>

Differing discourses were also present in the 2009 bill discussions on cap and trade legislation. The proponents saw the bill in terms of national security and clean energy jobs while the opponents questioned the effects of the bill on the economy and on American leadership as China and India were not taking similar action. Moreover, government intervention and taxes were also mentioned.<sup>64</sup>

In a simplistic way, it is possible to differentiate two main discourses and ideas on how to provide solutions to solve environmental problems in the United States: 1) economic innovation and business solutions and 2) government regulations. In an op-ed in the *Washington Post* (March 8, 2019) Senators Murkowski and Joe Manchin (D-West Virginia) stated how,

Congress is in the middle of a debate about the appropriate way to tackle climate change. This is often portrayed as an issue with just two sides — those who support drastic,

<sup>60</sup>US Senate, 26 March 2019, S1955.

<sup>61</sup>See also Klyza and Sousa, 'American Environmental policy' for a discussion about alternatives routes in times of gridlock.

<sup>62</sup>See R. A. Potter and C. R. Shipan, 'Agency rulemaking in a separation of powers system', *Journal of Public Policy* 39, (2019), pp. 89–113, DOI: 10.1017/S0143814X17000216.

<sup>63</sup>M. Grossman & D. A Hopkins, *Asymmetric Politics. Ideological Republicans and Group Interest Democrats* (New York, 2017), p. 193.

<sup>64</sup>See the US House debate on 26 June 2009.

unattainable measures to reduce greenhouse-gas emissions, and those who want to do nothing. We believe the time for sensationalism is over. And we are seeking ideas that will bring people together, rather than drive them apart.<sup>65</sup>

While certain generalizations regarding Republican and Democratic talking points can be made, there are also different views among the members of the parties as to how to proceed and with what kind of legislation.

Since the US Congress has not passed any specific legislation in recent years, one of the most significant action in addition to other executive actions has been the United States joining the Paris Climate Accord. Failure on the part of the US Congress to act has been explained by referring to a wide partisan divide on the need for action. Most of the relevant legislation dealing with environmental protection stems from the 1970s, when the US Congress passed *the Clean Water Act* and *the Clean Air Act* with considerable bipartisan majorities. In 1978 the US Congress passed an act 'to establish a comprehensive and coordinated national climate policy and program'.<sup>66</sup>

While the US Congress did not pass any particular climate change legislation in the time period examined for this article, there were requests for congressional action. In her extension of remarks entitled 'Let's act now on climate change', Representative Ileana Ros-Lehtinen (R-Florida) pressed for bipartisan co-operation and proactive action to address climate change by giving an example of her home state of Florida and how they 'have led on sea level rise proposals with the Miami-Dade County Sea Level Rise Task Force and the Southeast Florida Regional Climate Change Compact'. She addressed the floor noting 'Mr. Speaker, I ask that we put partisan politics aside and tackle the inevitable threat of climate change'. Ros-Lehtinen's remarks indicate the local effects of climate change very often used to legitimize the need for further action at the federal level. States frequently act as a vanguard in climate change actions but federal level action would create a more coherent policy.<sup>67</sup>

During her remarks on Rick Perry's nomination for the position of Secretary of Energy, Senator Maria Cantwell (D-Washington) pointed out how the Republicans under President George W. Bush advocated a different view on taking action to address climate change in contrast to the current Trump administration:

During the President's very first hour in office, the administration announced it was going to eliminate the Obama administration's climate action plan. This plan even included a program started by President George H.W. Bush—the Global Climate Research Initiative to assess and predict the impacts of climate change in the future. This is not a partisan issue. President George W. Bush called on Congress to enact energy efficiency legislation, which he subsequently signed into law.

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<sup>65</sup>L. Murkowski and J. Manchin, 'It's time to act on climate change – responsibly: there are many practical solutions that everyone should be able to get behind', *The Washington Post* (online) (8 March 2019), [https://www.murkowski.senate.gov/press/article/washington-post-op-ed-lisa-murkowski-and-joe-manchin-its-time-to-act-on-climate-change\\_responsibly](https://www.murkowski.senate.gov/press/article/washington-post-op-ed-lisa-murkowski-and-joe-manchin-its-time-to-act-on-climate-change_responsibly).

<sup>66</sup>US Government Information, 'Public Law 95-367, 95th Congress An Act to establish a comprehensive and coordinated national climate policy and program and for other purposes', <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg601.pdf#page=3>.

<sup>67</sup>There are different ways to address the issue. There has been also some federal level guidance. As a part of the stimulus package 'American Recovery and Reinvestment Act' 2009, the US Department of Energy had a program 'Energy Efficiency and Conservation Block' providing ways for state and local level actors to enhance and complete energy efficiency programs. <https://www.energy.gov/eere/wipo/energy-efficiency-and-conservation-block-grant-program>



In the view of Senator Cantwell, climate change has not always been considered in a partisan manner. Despite reluctance on the part of the United States to ratify the Kyoto Protocol during the Bush presidency, it did not mean that there was no action on the domestic level. Senator Cantwell further emphasized President Bush's actions by noting how his administration worked with China to develop more green energy solutions. Bush also used his State of the Union speech as a platform to address relevant topics including electronic vehicles, energy efficiency, R&D and biofuels. According to Cantwell: 'It seems strange now to see a new Republican administration that seems so singlemindedly against these important energy advancements that are going to help our economy'.<sup>68</sup> Cantwell's argument points out the changing election cycles but also that parties are evolving in their positions regarding to how to address these issues.

Representative John Yarmuth (D-Kentucky) also pointed out how divided the two parties have become: 'It used to be that the two parties would debate different strategies to address the problems facing the American people. Sadly, those times are behind us'.<sup>69</sup> The argument gives the impression that there is no longer any actual debate on different strategies. Climate change has not always been such a divisive political question between the parties. The then Republican Representative Carlos Curbelo in an interview pinpointed the starting point of the 2000 presidential election, political divisions at the time and Al Gore's environmental agenda that Republicans came to oppose.<sup>70</sup>

Despite the different views on climate change, there have been among members some bipartisan efforts on climate change. For example, at the beginning of the 114th Congress the US Senate voted by 98 to one in support of the amendment proposed by Senators Inhofe and Whitehouse 'stating that climate change is real and not a hoax'.<sup>71</sup> The amendment brought together a vocal speaker on climate change, Democrat Senator Sheldon Whitehouse from Rhode Island and Senator James Inhofe, a Republican from Oklahoma.

## Climate change as a non-agenda issue?

'Americans do care about climate change, but it is not high on their list'.<sup>72</sup>

Political decision-making on climate change includes a tension between the prevailing circumstances and resources and future developments, conditions and generations. It is not the case that no bills on climate change have been introduced in the US Congress during the period examined. While the mere introduction of legislation might initially sound less than purposeful, it is a way to circulate ideas and to estimate their support and a way to inform the public and constituents. For example, Representative Brad Schneider (D-Illinois) together with his colleagues introduced a bill entitled the CLIMATE Act. The bill, however, was not aimed to create policy to address climate change *per se*, but to oppose President Trump's efforts to weaken the Clean Power Plan, undermine the Paris Climate Accord and create obstacles to the military and

<sup>68</sup>US Senate, 2 March 2017, S1555.

<sup>69</sup>US House, 5 October 2017, H7873.

<sup>70</sup>Curbelo in K. Bagley, 'How One Lawmaker is Breaking the Bipartisan Barrier on Climate Change', *YALE Environment360* (18 January 2018), <https://e360.yale.edu/features/how-one-lawmaker-is-breaking-the-bipartisan-barrier-on-climate-change>.

<sup>71</sup>J. Inhofe, 'Inhofe Speaks on Senate Floor on Undoing Obama's Climate Legacy', *Press release* (15 March 2017), <https://www.inhofe.senate.gov/newsroom/press-releases/inhofe-speaks-on-senate-floor-on-undoing-obamas-climate-legacy>.

<sup>72</sup>US Senate, 14 March 2017, S1800.

government planning for the effects of climate change already perceptible.<sup>73</sup> The example shows that by legislating, the US Congress could also regulate the President's use of executive actions. The use of executive orders to address climate change has raised a lot of discussion during the presidencies of Obama and (later on with) Trump.<sup>74</sup>

Senator Inhofe pointed out the use of executive orders to address climate change when the US Congress had not passed bill to address the issue. He emphasized how the US Congress tried for a long time to pass cap and trade legislation (McCain-Lieberman bills in 2003, 2005, 2007) and how the first of those bills failed to pass in the Senate by 43 votes to 55. Two years later in 2005 the numbers were 38–60. Inhofe pointed out how 'Each year, the margin went up'. He continued how 'President Obama came along and decided: Well, if we can't pass this stuff through legislation, let's do it by regulation. So we had cap-and-trade regulation'.<sup>75</sup> Senator Inhofe criticized how the will of the US Congress not to impose cap and trade measures was circumscribed by presidential authorities. This argument can be seen as a part of wider discussion, in which congressional inaction has resulted in executive branch actions, for example in the field of war powers.<sup>76</sup>

The use of executive orders as practised by Obama during his presidency, was to bypass the US Congress in the name of advancing climate change regulation. The idea continued by President Trump has been to use the same tactic to deregulate. This is not by any means the only time or policy issue in which the US Congress has been bypassed. But even in times when, for example, George W. Bush circumvented the US Congress by relying on his commander-in-chief powers to address the terrorism threat in the post-9/11 situation, the US Congress and the Republicans did not give away their powers. They rather contributed to the situation by granting powers to the president by enacting new legislation such as the 'Patriot Act' but also by enacting a resolution to use of military force.<sup>77</sup>

During the debate on the amendment to the Department of Defense Appropriations Act, Representative Paul Gosar (R-Arizona) emphasized how legislation is primarily a congressional responsibility and also criticized the use of executive orders to address the issue echoing Senator Inhofe's view by pointing out that 'Congress and the American people have repeatedly rejected cap-and-trade proposals'. Gosar continued by arguing how President Obama, knowing that a carbon tax was out of the question, tried deliberately to circumvent Congress by relying on the Clean Air Act to unilaterally impose new regulations. Gosar further pointed out how his colleagues certainly appreciated the constitutional role of the US Congress, the legislature, and opposed these administrative efforts to by-pass the US Congress to have 'an extremist environmental agenda that is not based on best available science'.<sup>78</sup> Representative Gosar pinpointed the problem

<sup>73</sup>Addressing climate change, US House, 30 March 2017, H2578.

<sup>74</sup>See more on the use of executive actions in M. Mehling & A. Vihma, 'Mourning for America: Donald Trump's Climate Change Policy', *FIIA analysis* 8, <https://www.fia.fi/julkaisu/mourning-for-america>

<sup>75</sup>US Senate, 14 March 2017, S1803.

<sup>76</sup>A. Kronlund, 'The Cultivation of Collective Judgment in the Decision-making on War: The US Congress and Contingently Manifested War Powers', *Redescriptions: Political Thought, Conceptual History and Feminist Theory* 18 (1) (2015), pp. 74–104, DOI: <http://doi.org/10.7227/R.18.1.5>.

<sup>77</sup>See A. Kronlund, 'Parliamentary oversight of the exceptional situations in a presidential system: debating the reassertion of the constitutional powers of the US Congress' (University of Jyväskylä, PhD thesis, 2013).

<sup>78</sup>US House, 26 July 2017, H6457.



very clearly, similarly to Senator Inhofe above. In the absence of any action on the part of the US Congress, climate action has taken alternative routes, forcing or enabling the US President to address the issue through executive actions.

Senators John Kerry (D-Massachusetts) and Graham published an op-ed in *The New York Times* called ‘Yes We Can (Pass Climate Change Legislation)’ in 2009 and referred to this very same idea. Senators’ first sentence stated how, ‘Conventional Wisdom suggests that the prospect of Congress passing a comprehensive climate change bill is soon rapidly approaching zero’. They continued by emphasizing how ‘the divisions in our country on how to deal with climate change are deep’. Senators pointed out how the inaction to pass the bill is not a ‘success’.<sup>79</sup>

Representative Castor also referred to congressional inaction in her remarks during the debate on the Energy Infrastructure Act in 2017 by pointing out the short amount of time left to reduce carbon pollution and how a decision made on energy infrastructure has an effect how the United States can mitigate climate change in the future. According to Castor:

This bill’s supporters don’t like to be reminded of the daunting challenges of the changing climate. That is reflected in our discussion today, and, frankly, it is reflected in the glaring inaction of this Republican Congress to address climate change.<sup>80</sup>

Castor’s argument points out how climate change is addressed on many different fronts, including energy policies, despite the lack of any specific climate change legislation. She further emphasised the majority party’s reluctance to put climate change on the agenda of the US Congress.

While the Trump administration focused on deregulation rather than introducing new climate change legislation, the Republicans have aimed to bring some ideas into the discussion. Representative Elise Stefanik (R-New York), for example, in part of her extension of remarks observed how some Republican members support ‘economically viable’ solutions to address climate change:

This resolution calls on American ingenuity, innovation, and exceptionalism, also citing that it is a conservative principle to protect, conserve, and be good stewards of our environment. No matter what side of the aisle you are on, we all have a significant responsibility to protect our environment from avoidable damage. I ask my colleagues to join in this commitment and support this important resolution.<sup>81</sup>

Other efforts have also been made to address climate change through legislation. Representative Pramila Jaypal (D-Washington) with her colleagues introduced legislation under the title ‘Bring America to 100 per cent renewable energy by 2050’. Representative Jaypal began her remarks by quoting Ronald Reagan: ‘Preservation of our environment is not a liberal or conservative challenge; it’s common sense’. She continued by claiming that her Republican colleagues in the US Congress ‘continued the

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<sup>79</sup>J. Kerry and L. Graham, ‘Yes We Can (Pass Climate Change Legislation) Op-ed’, *The New York Times* (10 October 2009), <https://www.nytimes.com/2009/10/11/opinion/11kerrygraham.html>. Because of the lack of legislative action, the U.S. Environmental Protection Agency (EPA) has used the existing Clean Air Act authorities to authorize GHG emissions standards for certain key sectors. The Supreme Court Case of 2014 (Massachusetts v. EPA) confirmed the authority of the EPA to regulate greenhouse gases under the *Clean Air Act* with some exceptions. U.S. Supreme Court, ‘Massachusetts et al. v. Environmental Protection Agency et al.’ (2006), <https://www.supremecourt.gov/opinions/06pdf/05-1120.pdf>.

<sup>80</sup>US House, 19 July 2017, H6011.

<sup>81</sup>US House, 16 March 2017, H2090.

trend of pushing through bills that deeply undermine critical environmental protections'.<sup>82</sup> Representative Jaypal acknowledges that the US Congress is apparently acting, but rather on relaxing environmental regulations than imposing new ones.

During the timeframe examined, at least two other bills, also dealing with carbon fee or tax were brought before the US Congress. The first (that could be mentioned) is that by Heidi Heitkamp (D-Nevada) – Sheldon Whitehouse – Shelley Moore Capito (R-West Virginia) – John Barrasso (R-Wyoming) sponsored the FUTURE bill, 'to provide a tax credit for carbon capture utilization and sequestration in power plants'. Also, Earl Blumenauer (D-Oregon) introduced a bill 'American opportunity carbon fee act'. The bill was introduced by emphasizing how the US Congress must 'step up' because of the lack of presidential leadership:

The United States is a major contributor to global carbon pollution and shows little sign of stopping. We have a moral responsibility to reverse this trend and place sensible limits on emissions. In the absence of leadership from the White House, Congress must step up.<sup>83</sup>

When the US Congress has not acted to address climate change, environmental policy development has taken alternative pathways. A large amount of environmental policymaking has shifted to areas including the executive branch of government, appropriations, and the courts, where public understanding and attention could be limited and where policymakers are not so easily held accountable.<sup>84</sup> Senator Whitehouse referred to the increased importance of the courts with regard to climate change and the social cost of carbon.<sup>85</sup>

## Conclusion

The swing of the pendulum in environmental issues after the elections has been discernible in the United States. After the Democrats gained a majority in the House of Representatives the non-binding Green New Deal (H.Res.109) resolution was introduced and cosponsored by 90 Democrats and Speaker Nancy Pelosi.<sup>86</sup> While American political culture seems to create some obstacles to addressing climate change in legislative terms, such as the increased partisan polarization and the two-year election cycle in the House of Representatives, with constant campaign efforts, the debates suggest that the problem as a whole is the lack of a bipartisan view on how to proceed with the issue.

Much of the gridlock experienced has also resulted in action on climate change taking alternative routes. Failure on the part of the government to act also caused the group of young litigants to seek a Court decision in the case of *Juliana versus the United States*. The Circuit Court of Appeals rejected the case on the grounds that the court cannot dictate climate policy under the constitution and advised the young litigants to turn to the US Congress and the US President and to the electorate at large to change the course of climate policy through voting. The opinion of the court also stated that the article III of the court's powers did not enable it to replace the other two powers: 'That the

<sup>82</sup>US House, 20 July 2017, H6134.

<sup>83</sup>US House, 26 July 2017, E1057.

<sup>84</sup>Klyza and Souza, 'American Environmental Policy', p. 13.

<sup>85</sup>US Senate, 19 September 2017, S5850.

<sup>86</sup>Congress.Gov, 'H.Res.109 Recognizing the Duty of the Federal Government to create Green New Deal', <https://www.congress.gov/bill/116th-congress/house-resolution/109/text>.

other branches have abdicated their responsibility to remediate the problem does not confer on article III courts, no matter how well-intentioned, the ability to step into their shoes'.<sup>87</sup>

Failure to pass a specific bill does not mean, however, that more recent efforts or developments to address climate change have not taken place. During the time period examined Representative Don Bacon (R-Nebraska), a member of Climate Solution Caucus, for example, referred in his extension of remarks to the need for dialogue in solving the environmental challenges facing the United States:

It is hard to deny that our climate is changing. Whether caused by cyclical weather changes or impacted by man's role, it is clear we are seeing changes in the polar ice and a rise in temperatures. It is one of my goals in Congress to keep the momentum we have seen in previous decades of continuing improvement in our environment. We all want to leave our planet cleaner for our children and grandchildren. It is my hope to advance the dialogue and advocate for more renewable and diverse energy sources.<sup>88</sup>

The materials analysed for this article are not from one debate but rather a corpus of arguments by members of the US Congress about climate change during a specific time-frame. While this is certainly a flaw from the perspective of source materials, it also affords an opportunity to examine climate change action more broadly and the argument that it has indeed been discussed despite the lack of analysing a one specific legislative discussion on climate change. It also makes it possible to examine the reasons put forward by Members of Congress for why climate change has not really been on the top of the agenda in a bipartisan manner.

The scholarly literature on congressional action and inaction points out to the procedural aspect of decision-making including filibustering, the polarization of parties and views and how legislative action often requires the right 'momentum'. In addition to filibustering, one possible factor inhibiting legislative action is the possible threat of presidential veto. Members of the US Congress also pointed out these aspects. While the US Congress did not pass a specific bill addressing climate change during the period examined (2017-18), the variety of remarks made also indicates that climate change was discussed with regard to many different actions and shows that addressing climate change was on the members' agenda.

It is somewhat problematic that even when US Congress members acknowledge the 'problem' of inaction, no real solutions seem to have been proposed. Rather, the remarks focused on describing the current state of affairs or how this and that could or should be done or the different positions of the parties. But this seems to pinpoint the real issue, that there are differing views about whether climate change should in the first place be addressed in legislative terms or on the federal level. Republicans with their few efforts to address climate change can at the same time argue that they do indeed support action but what the Democrats are actually presenting does not work for them. In contrast, the Democrats continue to promote their views on how to solve the issue and accuse the Republicans of inaction and not understanding or taking too much action in terms of deregulating environmental norms.

<sup>87</sup>See the majority view in the United States Court of Appeals for the Ninth Circuit, <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/01/17/18-36082.pdf>

<sup>88</sup>US House, 2 November 2017, E1490.

To sum up, winning elections seems to have become more important than following parliamentary procedures. If everything is in the hands of the one-party majority, items are not necessarily put on the agenda at all or they are not thoroughly considered in the committees. Even at times when the other party manages to put climate change as an issue on the agenda, have a committee hearing and even vote on the issue, it really does not matter when the issue – in this case the policy – is sacrificed to election and party-political advantage.

The election cycle and changing power relations are clearly prominent in congressional action to address climate change. Considering the procedural aspect of congressional decision-making to pass significant legislation on climate change, it would need a united effort from both parties as well as both the legislative and executive branches of government in order to proceed. It would be important to scrutinize the 2020 election year from the perspective of climate change and how it raised prominence in discussions. Furthermore, the effect of new generations within the parties will be interesting to follow, likewise whether the number of constituents can increase the momentum for climate change. The op-ed published by Senators Murkowski and Manchin in 2019 at least confirms that the US Congress is ‘in the middle of debate’ on climate change but whether this will transform into comprehensive legislative actions remains to be seen.<sup>89</sup>

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## Notes on contributor

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<sup>89</sup>See Murkowski & Manchin, ‘It’s time to act’.