A Resolution Destined to Fail

By Richard Revesz
Dean, New York University School of Law

Almost everyone agrees that legislative climate action is preferred over regulation—it is the simpler, more democratic and longer lasting way to bring down our carbon emissions. But the congressional process has stalled out and Senator Murkowski's attempt to shut down EPA's ability to regulate is not helping. Procedurally, a disapproval resolution is destined to fail—at best it is a waste of time, but more likely a political move designed to slow down progress on climate legislation.

First, it should be noted that the form of legislative action Senator Murkowski is suggesting has only been used successfully one time—to strike down a Clinton-era regulation requiring more ergonomic workplaces. It is so rare, in part, because it asks a President to sign a bill that reverses the actions of an administrative agency—something this is unlikely to happen absent a change in administrations. If the effort is vetoed, the House and Senate would each require a two-thirds supermajority vote to override it.

Even before these hurdles, this ...
Postpone EPA Reg of Stationary Sources

By Cal Dooley
CEO, American Chemistry Council

EPA can promote both environmental improvement and economic recovery by postponing regulation of greenhouse gas emissions from stationary sources. With Congress and the Administration hard at work on job creation and a national climate and energy policy, premature stationary source regulation could throw both efforts off course.

The economic recovery package and new Administration proposals contain important investments in clean energy development that can reduce greenhouse gas emissions and speed job creation. Yet these investments would be delayed, scaled back or cancelled if EPA moves ahead with stationary source regulation early this year as planned. Facilities that want to implement energy efficiency and other clean energy technologies would be among the millions of sources required to get permits. They will be stymied by the confusion surrounding the absence of permitting requirements and the flood of applications to EPA and state agencies. Even if EPA’s “tailoring rule” (raising the threshold for GHG emission from 250 to 25,000 tons per year) ...

Resolution Would Protect Economy

By Amy Harder
NationalJournal.com

The following comments are from Marlo Lewis, a senior fellow at the Competitive Enterprise Institute:

Sen. Murkowski’s resolution of disapproval is a gutsy action intended to safeguard the U.S. economy, government’s accountability to the people, and the separation of powers under the Constitution.

Critics claim that the resolution attempts, in King Canute fashion, to repeal physics. They say it is equivalent to Congress voting to overturn the Surgeon General’s 1964 finding that cigarette smoking causes cancer. Rubbish!

A strong case can be made that the endangerment finding is scientifically-challenged. But that’s not what the Murkowski resolution is about.

As the Senator made clear in her floor statement, and as anyone can see from the text, the resolu...
The following comments are from Frank M. Stewart, President and COO, American Association of Blacks in Energy

The answer to questions regarding any EPA greenhouse gas regulation hinges on the answer to a broader question regarding national policy: are US legislators (and the voters who elected them) right to be skeptical of proposals that are not the product of a very broad, participatory process? The answer, in most cases, is “yes.”

One can understand that members of the United States Senate are more than a bit frustrated by the difficulty and the complexity of crafting a policy to guide this nation’s efforts in addressing climate change. After all, the Congress has been working at this for only a little over 300 days and nights.

However, the issue -- not so much with EPA specifically, as with any process that would purport to move to action without the guidance of the people's representatives -- is of concern. Senator Murkowski is correct to be wary of any proposal that hasn’t had to withstand a broad, pa...

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**Natural Gas More Costly With Regulation**

**By Amy Harder**

Kathleen Sgamma, Director of Government Affairs for the Independent Petroleum Association of Mountain States (IPAMS), submitted the following response:

No, the EPA should not regulate greenhouse gas emissions under the Clean Air Act (CAA). Regulation under CAA would be be intrusive, inefficient, and excessively costly. The CAA was meant to control traditional air pollution, not greenhouse gases that come from every home and commercial facility in America. Congressional action utilizing a market system that does not disadvantage natural gas is preferable to an all-encompassing command-and-control approach.

Natural gas is a clean energy source that offers significant greenhouse gas reductions compared to other conventional fuels. By increasing utilization of natural gas for base load power generation to 50%, the US could experience a 40% reduction in emissions from the electricity sector. Natural gas enables renewable energy such as wind and solar by providing a back up. However, EPA regulation of greenhouse gases under the CAA would make ...

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**Murkowski/Lincoln Reflect Real Concerns**

**By Hal Quinn**

President, National Mining Association

Sens. Lisa Murkowski (R-Alaska) and Blanche Lincoln’s (D-Ark.) bipartisan disapproval resolution gives a legislative voice to all those who have been wringing their hands over the prospects of what Rep. John Dingell candidly assessed as a “glorious mess” if Congress left the regulation of greenhouse gas emissions to the Environmental Protection Agency (EPA) under the Clean Air Act.

President Obama, EPA Administrator Jackson and various members of Congress have expressed the same concern in somewhat less-colorful language. They have all said regulation under the Clean Air Act is not the best option, and the regulatory pathway is fraught with peril. Yet, here it comes.
Congress, Not EPA, Should Lead

By David Holt
President, Consumer Energy Alliance

The Consumer Energy Alliance is concerned that using the EPA’s Clean Air Act as a vehicle to control greenhouse gas emissions could effectively bar Americans from being a part of this very important national climate change debate. Consumer Energy Alliance member companies are taking a hard look at EPA’s proposed action.

While CEA has not taken a formal position on current climate change proposals, the climate change issues and potential legislative changes should be debated openly and should ensure that all consumers of energy, effectively all Americans, have a chance for their voices to be heard. After all, this is an issue that will affect everyone, and has the potential to affect people in a dramatic way. During this time of economic downturn when so many Americans are already struggling with energy prices, further changes to US energy policy should be fully vetted with the American consumer. We look forward to a transparent climate change process led by the US Congress.

EPA Threat Stalling Action On Climate

By Stephen Eule
Vice President for Climate and Technology, U.S. Chamber of Commerce

No, the Environmental Protection Agency should not regulate greenhouse gas (GHG) emissions under the Clean Air Act. The Chamber’s been very clear that the CAA wasn’t designed for-- and is ill suited to address-- the complexities of reducing GHG emissions. Does anyone really believe, for example, that EPA can set a National Ambient Air Quality Standard for greenhouse gases when the U.S. accounts for, on net, only about a 15% (and shrinking) share of global emissions? How can EPA set what it can’t control?

One of the major selling points of a comprehensive energy and climate change bill is that it would establish a single set of rules for controlling GHGs. It isn’t working out that way, however. The Waxman-Markey bill, for example, doesn’t bar EPA from regulating businesses that don’t fall under the rubric of the cap and trade scheme the bill would set up. The Kerry-Boxer bill goes even further and leaves the door open to EPA regulation of “capped” and “uncapped” facilities. And EPA Administrator Lis...
President Obama and his comments throughout the past year that a legislative approach is the right mechanism for pursuing the reduction of greenhouse gases. Regulation under the Clean Air Act would require new facilities and facilities undergoing major modifications to obtain permits covering their emissions. Without certainty on the availability and timing of permits and other issues affecting the cost of compliance with greenhouse gas regulation, the very investments that are needed to create jobs and further the nation's economic recovery will be delayed, cancelled, or exported.


**Clean Air Act Is Tested; It Works**

By Carl Pope  
*President, Sierra Club*

The claim that the Clean Air Act can't work effectively to clean up carbon dioxide pollution is nonsense. Carbon dioxide is largely emitted from exactly those kinds of emission sources which the Clean Air Act has already cleaned up with great success; power plants, refineries, factories, vehicles. There is nothing new or unprecedented here. Yes, there are small sources that shouldn't be required to clean up, but that's true for pollutants like nitrogen oxides and particulates as well. (They come out of your fireplace, and you don't need a permit to light the yule log.)

And the Clean Air Act specifically envisaged that science would discover new pollutants that would need regulation, and provided that EPA would add to the list of regulated substances. It even envisaged pollutants whose main harm would be to the climate, listing damage to climate as one of the criteria which would require EPA to require a clean up.

Nor is there a conflict between Congressional action and EPA regulation. Congress has on a number of occasions stepped in to tell EPA what...

**It's Not the Dirty Air Act**

By Frances Beinecke  
*President, Natural Resources Defense Council*

The EPA should regulate carbon emissions because that is what the Clean Air Act requires it to do. We can't ignore a 40-year-old law simply because some polluters would prefer it. And we certainly can't gut a bedrock law because the polluters' political allies make erroneous claims about how that law works.

Senator Murkowski asserts, for instance, that “the Clean Air Act was written by Congress to regulate criteria pollutants, not greenhouse gases.” That is incorrect. The Supreme Court held in Massachusetts v. EPA that the Clean Air Act unambiguously covers all kinds of air pollutants, including greenhouse gases. Indeed, the court noted that the law has a “sweeping definition” of air pollutants.

Senator Murkowski also claims that her disapproval resolution “has nothing to do with the science of climate change.” Yet this too is incorrect. The resolution explicitly overturns the EPA's scienc...
Can Anyone Answer This?
By Jon A. Anda
Executive-in-Residence Fuqua School of Business, Visiting Fellow Nicholas Institute

If the EPA wanted to push the legal envelope to limit large-source CO2 emissions (without the inefficiency of command & control) an annual abatement obligation with debiting or crediting of abatement accounts (amongst regulated facilities) seems to have merit. This approach, call it baseline or abatement trading (or my www.justcapit.org name) doesn’t distribute or even create permit assets - though it does create a ”rent” if new sources are simply barred. While it seems entirely clear that EPA can’t implement cap and trade on its own - and they are restricted in creating trading markets - could facility-level debiting and crediting fall into some kind of safe harbor as a way to act on their own endangerment finding?

Preserve the Clean Air Act’s Protections
By Larry Schweiger
President and CEO, National Wildlife Federation

Just last week, NASA announced 2009 was the 2nd-hottest year on record, with the 2000s being the hottest decade on record. That leaves Sen. Murkowski and her supporters in a delicate position. With climate science looking more dire by the day, why would they try to direct the Environmental Protection Agency to ignore scientific climate findings about global warming’s threat to human health?

Sen. Murkowski’s effort would allow unlimited emissions of carbon pollution from the biggest corporate polluters and could stall the growth in clean energy jobs by creating uncertainty about our government’s commitment to a cleaner energy future. Clean Energy Works has rightly called it a Dirty Air Act.

Sen. Murkowski says she prefers a legislative solution and we encourage her to focus on finding one. But in the meantime, we urge her to stop attacking the EPA and the Clean Air Act, which are the best tools we currently have...
Wrong To Disarm EPA

By Eileen Claussen
President, Pew Center on Global Climate Change

Steve Seidel, Vice President for Policy Analysis at the Pew Center, has written the below response in place of Eileen Claussen.

With Thursday's floor statement by Senator Murkowski announcing her joint resolution to override EPA's endangerment finding, we were introduced to a new term to add to our lexicon -- a disapproval resolution. If like me, you only had a vague recollection that Congress had given itself the ability to override any new federal regulation, some quick research was in order.

This authority is contained in the Congressional Review Act of 1996 (CRA) and was passed as one element of the Contract with America. In the 13 years since enactment, it has been successfully used once. The 2001 Congress overturned an end-of-term rule issued by OSHA under the Clinton administration that would have imposed ergonomic requirements in certain workplaces. Two other resolutions have passed the Senate but not the House (in 2003, a FCC rule setting limits on broadcast media ownership and in 2005, a USDA rule setting minimum risk zones to protect ag...

4 Reasons To Stop EPA

By William O'Keefe
CEO, George C. Marshall Institute

Greenhouse gas regulation under the Clean Air Act would command and control into uncharted waters and be very bad for jobs, bad for economic recovery, and devastating for American competitiveness. Carbon dioxide is such a naturally occurring and intricately interwoven part of our daily lives that attempting to manage it through sweeping, command-and-control regulations intended to mitigate adverse health affects would be akin to deploying a nuclear bomb to open a locked door. (Ineffective and messy.) By allowing EPA to unleash this blunt tool on Americans, Congress would be failing to protect their constituents.

This pending decision also underscores a broader issue. A failure to rein in EPA would signal that legislators still haven't gotten the unmistakable message that Americans, and most recently Massachusetts voters, have been sending to Washington's political elites. Here are four important reasons:

1. Science Trumped By Political Science

In May 2007, shortly after the Supreme Court decision, I published a Marshall Institute paper, ...