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# PRESIDENT BIDEN’S EXECUTIVE ORDERS ON THE ENVIRONMENT: PRAISEWORTHY POLICY, POLITICAL RED HERRING, OR... BOTH?

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## I. INTRODUCTION

To be “praiseworthy” is to be deserving of praise, of warm approval. To be a “red herring” is to be misleading, a distraction from the real question, whether intentional or not. It is hard to argue that Executive Orders [13990](#) and [14008](#) do not contain praiseworthy environmental policies, many of which have already been reaffirmed in further Presidential efforts. However, for the learned environmentalist, it is difficult not to maintain a robust skepticism. In the discussion that follows, I will explore elements of the Biden administration’s praiseworthy environmental policy. I will also examine ways in which some of those policies may be misleading based on current political narratives and environmental history. I conclude that although the Biden administration’s position on a variety of environmental issues is praiseworthy, it fails to acknowledge and address the underlying ideological commitment that has gotten us here, and as such, we should not let our praise distract from the ideological battle that must still be won.

## II. PRAISEWORTHY POLICIES

Executive Order 13990 is largely a Trump-reversing presidential action on issues of the environment. President Biden reinstates listening to the science as integral to addressing environmental issues. He articulates several policies regarding pollution, including limiting exposure to dangerous chemicals and pesticides, ensuring access to clean water and air, and holding polluters accountable. EO 13990 directs executive agencies to review *all* anti-environment agency actions undertaken during the Trump administration. It reinstates Bears Ears, Grand-Staircase Escalante, and Northeast Canyons and Seamounts Marine National Monuments to their pre-Trump designations. Because Bears Ears National Monument was designated at the request of and is managed with the input of

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[Native American tribes](#), its reinstatement restores an important environmental justice victory won during the Obama administration. EO 13990 also reverses President Trump's [reversal](#) of President Obama's [creation](#) of the Northern Bering Sea Climate Resilience Area, which withdrew oil and mining activities from a portion of the [decades-disputed](#) Arctic National Wildlife Refuge. It reinvigorates federal efforts into determining the social cost of carbon, which was recently pegged at [\\$51/ton](#), a substantial increase from the Trump administration's claim of \$1/ton. Finally, EO 13990 cancels the Keystone XL Pipeline ("KXL") permit issued by the [Trump administration](#), reinstating the Obama administration's position on KXL and sparking a lawsuit over the KXL permit revocation from [21 states](#).

Executive Order 14008 outlines an extensive administrative effort to address climate change that begins with the United States immediately rejoining the Paris Agreement (entered into by [President Obama](#) and withdrawn from by [President Trump](#)). EO 14008 directs a comprehensive, government-wide approach to climate change, both as an international and as a domestic issue. It echoes EO 13990 in its commitments to listening to the science, holding polluters accountable, and addressing environmental justice issues. Further, it makes a commitment to net-zero carbon emissions, economy-wide by 2050. Included in the path to net-zero is the commitment to transitioning the federal fleet of vehicles to all-electric and doubling offshore wind by 2030 (while ensuring robust environmental protections and creating good jobs). The Biden administration has further [announced](#) a new priority Wind Energy Area in the shallow waters between Long Island, New York and the coast of New Jersey and has formally [backed](#) a major wind farm plan off the coast of Massachusetts, which alone would satisfy EO 14008's offshore wind commitment. EO 14008 envisions rebuilding America's infrastructure to be more sustainable while producing jobs. It sets a conservation target of 30% of America's lands and waters by 2030 ("30By30").<sup>1</sup> Finally, all agencies are to make environmental justice a part of their missions. EPA and the U.S. Attorney General are to strengthen enforcement of environmental infractions that cause disparate impacts.

President Biden's EO's are broad and thorough, and they have been backed up by additional and ongoing presidential action. So, where lies the problem when we have had essentially no good environmental news from the White House for four years? Isn't President Biden deserving of praise for his swift and extensive actions on climate and the environment?

The short answer is "Yes, but." The "Yes" is fairly straightforward. Climate change is real; it is imminent; it is caused by humans; it has already shown its

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1. This goal has been recently reaffirmed in the Biden administration's Fiscal Year [2022 budget request](#), where an additional \$200 million is sought for the Department of Interior to work towards the 30By30 goal.

potential for catastrophe. Making climate change a focal point of the federal government's operations and goals, both internationally<sup>2</sup> and domestically,<sup>3</sup> is praiseworthy. Reaffirming environmental justice as a government priority equal to addressing climate change and pollution is what we should want to hear from the leader of the richest nation in the world. Too long have minorities been the subject of disparate social policy and environmental harm in this country. And what environmentalist does not welcome concrete conservation goals? These are all praiseworthy environmental policies.

### III. POLITICAL RED HERRINGS

So, what about the “but”? Limiting myself to two examples, I will explore the “but” as it relates to climate change and pollution. Starting with climate change, in 1998, President Clinton [entered](#) the United States into the Kyoto Protocol on Climate Change.<sup>4</sup> Just a few years later, President Bush formally [withdrew](#) the United States from the Kyoto Protocol. In 2016, President Obama [signed](#) the Paris Agreement, entering the United States into the next round of international agreement on climate change efforts. Shortly thereafter, President Trump withdrew the United States from the Paris Agreement, and now, President Biden has re-entered the United States into the Paris Agreement. We have lived through more than twenty years of repeated federal reversal on climate change in the international arena.<sup>5</sup> What drives this reversal? Political gain. It is important that the United States participate in global climate change efforts. It is equally important that commitments to such efforts are made into realized advancements and not just used as political maneuvers. History supports the latter more than the former as of late.<sup>6</sup>

Pollution is what ignited modern environmentalism. In *Silent Spring* (1962), Rachel Carson exposed the harms caused by indiscriminate pesticide use by the chemical industry to all manner of carbon-based life forms. Many people know that *Silent Spring* resulted in the banning of DDT, a toxic pesticide, and the passing of many of our pollution laws. But what is less known is just how fast and furiously the chemical industry creates [new compounds](#) with little to no

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2. Of recent note, the Biden administration just [announced](#) an agreement between China and the United States, the world's two largest carbon polluting countries, to work on climate change with urgency.

3. Just one day before this article was sent to press, President Biden [announced](#) a commitment to achieve a 50-52% reduction from 2005 levels of economy-wide greenhouse gas emissions by 2030.”

4. It is worth noting that Congressional hostility to participating in international climate change efforts was so strong that President Clinton did not even present the Kyoto Protocol to the Senate for ratification, preventing the Kyoto Protocol from becoming binding on the United States.

5. To begin to appreciate the number of federally-dictated reversals that have occurred in the environmental arena more generally, see Jeffery Lambert and Heidi Hurd's excellent article, Jeffery Lambert & Heidi Hurd, *Will the Biden Administration Continue to Protect the Environment Only When it is Profitable to Do So?*, 2021 U. ILL. L. REV. ONLINE: BIDEN 100 DAYS 140 (Apr. 30, 2021), <https://www.illinoislawreview.org/symposium/first-100-days-biden/will-the-biden-administration-continue-to-protect-the-environment-only-when-it-is-profitable-to-do-so>.

6. Many forget that the many of our most crucial federal environmental statutes were passed with little dissent in Congress under Republican Presidents Nixon and Ford.

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government oversight or restriction for putting those compounds into the environment and into our bodies. An example of this is the extensive pollution of the planet and our bodies with [PFOA \(a.k.a. C8\)](#) by 3M and DuPont in the furtherance of manufacturing Teflon. 3M [knew](#) as early as the 1970s that PFOA was biopersistent, harmful, and accumulating in people's blood. DuPont knowingly discharged high levels of PFOA into the drinking water of 80,000 residents living near its Parkersburg, West Virginia plant for decades. The [DuPont-PFOA case](#) has its beginnings in 1999 with a complaint from a local farmer, William Tenant, over contaminated river water from the Parkersburg plant poisoning and killing his cattle herd. From there, the residents of the Parkersburg area brought a class action lawsuit against DuPont, which resulted in a unique settlement in 2005. Under that settlement, DuPont agreed to be bound by the results of the largest [epidemiological study](#) to date on the human health effects of PFOA. In 2013, the study concluded that PFOA, more probably than not, causes six human diseases: diagnosed high cholesterol, ulcerative colitis, thyroid disease, testicular cancer, kidney cancer, and pregnancy-induced hypertension. Additionally, under the Bush administration, EPA obtained a [\\$16.5 million](#) civil administrative penalty against DuPont for its failure to disclose its research on PFOA. More than three thousand Parkersburg-area plaintiffs, who developed one of the established diseases from DuPont's PFOA emissions, settled their claims with the company in [2017](#), and EPA took almost [sixteen years](#) from obtaining its \$16.5 million fine to finally make substantial progress on regulating PFAS in drinking water.<sup>7</sup> Although DuPont agreed in 2006 to EPA's request that PFOA be phased out by 2015, by 2009, it had begun using a new chemical in its manufacture of Teflon, [GenX](#), that is associated with some of the same health problems as PFOA. GenX has been found in the surface waters around the Parkersburg plant and in the drinking waters of Wilmington, North Carolina, emitted from Chemours', a DuPont spin-off company, plant in Fayetteville, North Carolina. Polluters develop ways around environmental victories as fast (if not faster) than environmentalists can score such victories.

Two political phenomena permeate efforts to address climate change and pollution. They are the war on science and the political narrative claiming that addressing climate change and reducing pollution will hurt the economy and cost jobs. The former divides the people through manufactured ignorance and confusion as to the nature and extent of environmental problems. The latter divides the people through fear of losing one's ability to provide the basic necessities of life for oneself and one's family.

The [war on science](#) began in the 1950s with the denial that cigarette smoke causes cancer. It has continued to be used by think tanks, corporations (especially multi-national, high polluting corporations), and politicians to deny the harmfulness of a variety of pollutants as well as the existence of human-caused

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7. I want to emphasize that eight of those years were during the Obama administration, and three of the eight Obama years occurred after the results of the epidemiological study demonstrated PFOA's negative effects on human health.

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climate change in order to advance their self-interested agendas. Doubting climate science has been political currency for decades and was a focal point of the Trump administration. Yet, [ExxonMobil](#) knew about climate change more than forty years ago. Active concealment of known harms is the bread and butter of polluting corporations, and the politicians who aid them in avoiding accountability lend a hand by encouraging the people to believe that such companies are doing no wrong.

The “economy and jobs” narrative has been just as pervasive since the Reagan administration began to slow the environmental victories of the 1960s and 1970s. It was recently [invoked](#) to tear down the Biden administration’s \$2 trillion infrastructure plan. The [American Jobs Plan](#) contains a variety of environmental efforts including installing electric vehicle charging stations across the country and removing lead water pipes that provide drinking water to [10 million Americans](#). But, it proposes raising the corporate tax rate to pay for such investments, something big business worries will hurt the American economy and cost Americans jobs.

Why corporations and big business doubt science and fear monger “economy and jobs” is very simple, but underappreciated. It is in their very nature to operate this way. The corporation has one function and one function only: to maximize its shareholder profits.<sup>8</sup> Commitment to a principle of maximization is shared by utilitarian moral theory, where the moral command is to act so as to produce the most good. Furthermore, utilitarian reasoning reduces all things to the status of mere means to the end of maximizing the Good. The difference between a corporation and a utilitarian is that the corporation rejects any kind of impartiality principle, and so becomes, in essence, a narcissistic utilitarian reasoner: act so and only as to maximize *my own* Good.<sup>9</sup> So, the nature of the multinational, large polluting corporation is to treat all things, land, water, air, humans, life itself, as mere means to maximizing profits for itself, a privileged class of shareholders. The corporation does not wage war on science because it thinks science is inherently bad or ought to be mistrusted. It does not conceal knowledge of the harms its actions cause because it is concerned about its reputation. It does not deny climate change because it wants to see all of human civilization (which generates its profits) collapse.<sup>10</sup> It does these things because, at that moment, they facilitate greater profit maximization at the cost of (often) irreparable harms to others. But those harms are of no concern to the corporation because it rejects

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8. This is generalizable to other common business forms, such as partnerships and limited liability companies. All common business forms in our current state of liberal capitalism operate to maximize the business’s profits.

9. Economists might be tempted to say that I am negatively and unfairly characterizing the concept of “rational self-interest,” something that humans engage in all the time. To this I would respond that the phrase “rational self-interest” hides from view the commitment to treating all things, human lives included, as mere resources to one’s, and only one’s, own ends, and this is just the commitment that I want to emphasize that goes on behind these exploitative behaviors of big business.

10. Indeed, [major oil companies](#) are investing in efforts to address climate change such as renewable energy, reducing emissions, and carbon capture technology.

the impartiality principle. The dilemma, then, is not between holding corporations accountable and “economy and jobs.” The dilemma is between *picking two* of: increasing corporate profits, holding corporations accountable, and “economy and jobs,” at the cost of the third. Historically, holding corporations accountable has been the sacrificial lamb in favor of the hidden third desideratum of increasing corporate profits.

Unfortunately, this narcissistic utilitarian logic is now significantly overrepresented in American government, in part due to the Supreme Court’s decision in *Citizens United*.<sup>11</sup> Any United States President will have to contend with this logic in advancing any environmental goals. Yet, EOs 13990 and 14008 are silent with regards to President Biden’s strategy for addressing this dominate view in Congress.<sup>12</sup> I believe we are going to have a hard time addressing environmental issues in a complete and just manner without addressing the commitment to this ideology, which has caused many of the problems in the first place.

#### IV. CONCLUSION

On the surface, President Biden has taken a swift, broad, and deep swing at the myriad of environmental and social-environmental crises that we currently face. After four years of President Trump, this is praiseworthy. But we cannot let our praise distract from the smoldering fact that President Biden has not addressed the ideological commitment that continues to hamper any just progress on climate and pollution, namely that as of right, multi-national, large polluting corporations may treat everything on this planet as a mere resource for their own profit maximization.

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11. *Citizen United* held that corporations (and other collective entities) have a free speech right to contribute to election campaigns, which fundamentally changed how campaigns are funded and therefore, what interests get most attention by government representatives.

12. This is not unique of the Biden administration. Lambert and Hurd, *supra* note 5, explicitly note that this commitment on regulating environmentally impactful activities, only when it is profitable to do so, has been in place since the Regan administration.