
[image from
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In our system of government, Congress is the institution with the greatest power to address issues of national importance. Unfortunately, Congress has been AWOL on the issue of climate change. The election has made it marginally more likely that Congress might wake up and take action on climate change, possibly even including a carbon tax as part of a budget deal. But the odds still seem to be strongly against any break in the congressional deadlock on this issue. That makes it even more important to look at what states and the executive branch can do while waiting for Congress to take action.

An effective climate policy needs to take steps to combat carbon leakage — the tendency of emissions to shift to other jurisdictions in response to regulation. Effective policy also needs to coordinate and link with other jurisdictions. State efforts to accomplish these goals are subject to a variety of constitutional attacks. However, as I explain in a new paper, there are excellent arguments for upholding state climate policies despite challenges under the dormant commerce clause, the compact clause, and the doctrine of foreign affairs preemption. Similarly, the executive branch has leeway to combat leakage and cooperate with other nations by implementing current laws and using executive agreements.

Congress remains a critically important player. But valuable work can be done in the meantime. As discussed in more detail here, such executive branch and states can achieve real emissions reductions and help build the groundwork for a global climate regime. These efforts should not be thwarted by constitutional challenges.