

Should Biden declare a national climate emergency? There are certainly arguments that, on balance, it would be better not to take that step. Some opponents argue that declaring a climate emergency would be horribly anti-democratic, polarizing, and counterproductive. Those arguments seem to me seriously overstated. I'd like to go through the major arguments against declaring a climate emergency one by one.

A presidential declaration would be based on the National Emergencies Act. That law authorizes the president to declare an emergency. This law doesn't describe the consequences of declaring an emergency. However, over a hundred other federal laws have provisions that allow the president to take certain actions during a national emergency. I have [argued](#) along with [others](#) such as Mark Nevitt that some of those powers would be useful in addressing climate change, though they wouldn't be game changes.

With this background in mind, let's turn to the arguments that doing so would be a terrible idea.

Climate change doesn't qualify as an emergency under the emergencies law. Critics argue that emergency has to be unexpected, while we've known about the climate issue for quite some time. This isn't an unreasonable argument, but it's not conclusive either. There are situations that we'd call an emergency even though they were predictable. For instance, suppose that a river levee is known to be too low for extreme floods. If flood waters are moving down the river, would anyone say that's not an emergency because we knew it would come someday? Or would anyone argue that it's wrong to pile up sandbags on the levee given that Congress refused to fund raising it?

Declaring a climate emergency would be anti-democratic. Part of the answer to this argument is that a statute passed by Congress does recognize the president's power to declare an emergency, and that subsequent actions would also be authorized by statutes passed by Congress. Why is that anti-democratic? You could argue that major policy decisions should only come from Congress, so this would be a big power grab by Congress. That argument is inconsistent with another argument that critics make, which is that the president wouldn't actually be able to accomplish much by using statutory emergency powers. If that's true, declaring an emergency wouldn't be a big step forward, but it also wouldn't be a major power grab.

An emergency declaration would be polarizing. There's little doubt that the conservative media would ridicule the idea of a climate emergency and that the GOP base would respond accordingly. Still, just about any climate action seems to have this effect, including President Obama's quite moderate Clean Power Plan. If Biden can't get

substantial GOP support for some version of a green infrastructure plan, you have to wonder whether there's much to lose by going for an emergency declaration.

There would be a backlash in Congress. Here, critics point to Trump's declaration of a national emergency in order to get funding for his border wall. That did lead to pushback even from members of his own party. That situation seems quite different. Trump issued his declaration after he had already had to cave on the issue legislatively, when Congress wouldn't give him the funding he wanted even after he forced a government shutdown. A better analogy would be Trump's efforts to weaken Obamacare through administrative actions and his Justice Department's support for a lawsuit to invalidate the law. Those were all bad moves on the merits, but you didn't see any big backlash in Congress.

It would be a terrible precedent. Populist leaders in other countries, along with would-be dictators in early times, have used purported emergencies as an excuse to seize power and undermine the rule of law. Declaring a climate emergency wouldn't have those dire effects, given the limited administrative powers that it would unleash. But it could be seen as legitimating the use of emergency declarations to accomplish all kinds of other policy goals. On the other hand, Trump didn't need to have any precedent to abuse emergency powers, and it's hard to imagine that a future authoritarian populist would need past precedent either.

People who believe that declaring a climate emergency would solve all our problems are off-base. But so are those who seem to think the sky would fall. An emergency declaration is a tool that would have some utility, and a political move that might or might not be productive. It's certainly not the ideal process for making policy. It's also not nearly as desirable as getting meaningful climate legislation through Congress. Nonetheless, we may reach the point where it will be hard to justify turning down any available tool, including this one.