

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes in detail. The stars are white on a dark blue field, and the stripes are red and white.

Election 2020: Potential Impacts **Energy & Environment**

Beth Viola | Dimitrios Karakitsos

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Holland & Knight

Thank you for joining today's program

- All participants are on mute
- Please ask questions via Q&A box
- Today's program is being recorded and will be posted on our website
- For technical assistance please reach out to the host via the chat box

Speakers



Beth Viola
Senior Policy Advisor



Dimitrios Karakitsos
Partner

Countdown to Election Day 2020

35 days

Until the general election

14 states

Are rated as toss-up in the race for the White House

6 states

Have toss-up Senate races

Sept. 29: First presidential debate in Cleveland, Ohio with Chris Wallace (Fox)

Oct. 7: Vice presidential debate in Salt Lake City, Utah with Susan Page (USA Today)

Oct. 15: Second presidential debate in Miami, Fla. with Steve Scully (C-SPAN)

Oct. 22: Third presidential debate in Nashville, Tenn. With Kristen Welker (NBC)

Nov. 3: ELECTION DAY

Congressional State-of-Play

- **Congressional Calendar**

- Congress is scheduled to leave for recess in early October before returning after the elections.
- Congress will adjourn again on Nov. 20, before returning in Dec.

- **Continuing resolution (CR) to keep the government open past Sept. 30**

- House, in a bipartisan vote, passed legislation on Sept. 22 to avert a government shutdown (H.R. 8337)
- Senate final vote on CR expected on Wednesday, Sept. 30.
- Once the Senate passes the CR and President Donald Trump signs off, Congress has until Dec. 11 to pass bipartisan swath of fiscal 2021 appropriations bills or another stopgap

- **Negotiations on coronavirus stimulus measure at standstill**

- House Democrats unveiled a scaled-down \$2.2 trillion Heroes Act 2.0 on Sept. 28; vote could be as early as this will.
 - House passed package largely along party lines in May.
- Senate voted on scaled-down GOP stimulus proposal week of Sept. 7

- **Court Fight Upends Agenda**

- A contentious Senate Republican campaign to send Judge Amy Coney Barrett to the bench before the election is putting other pre-election priorities in the chamber in a state of flux.

Supreme Court Nomination: Environmental Implications

- **A more conservative Supreme Court can solidify Trump's environmental rollbacks AND potentially limits what a Biden administration can accomplish.**
 - **Clean Water Act:** Obama WOTUS rule vs. Trump Navigable Waters Protection Rule
 - **Clean Air Act:** Obama Clean Power Plan vs. Trump Affordable Clean Energy Rule
 - *Massachusetts v. EPA*
 - Fuel economy standards/California waiver
 - **Limits on Executive Branch:** “Non-delegation doctrine” and “Chevron deference”
 - **Legal Standing:** Possible limits on who can bring cases.



Supreme Court Nomination: Environmental Implications

- **The environmental record of Justice Ginsburg.**

- **Clean Water Act:** Ginsburg's most notable environmental ruling concerned whether environmental groups can seek penalties against a company discharging more pollutants than allowed under its Clean Water Act permit.
- ***Friends of the Earth Inc. v. Laidlaw Environmental Services Inc.* (2010):** Ginsburg reversed an appeals court ruling that dismissed the case as moot because the company had stopped operating the facility releasing pollutants.
- **Clean Air Act: *EPA v. EME Homer City Generation*** - In 2014, she penned a 6-2 decision that revived the Obama administration's effort to regulate air pollution that drifts across state lines.
- ***American Electric Power v. Connecticut*:** Led the unanimous decision in 2011, in which the court said challengers cannot invoke federal common law to sue companies for greenhouse gas emissions – the Clean Air Act and EPA take precedence.

- **The environmental record of Judge Amy Coney Barrett.**

- **'Constitutional originalist':** Judge Amy Coney Barrett called for justices to be more willing to overturn past legal precedents, a position that could push the court to open up landmark judicial holdings about climate change if confirmed.
- Her views on executive branch deference and standing could help restrict implementation of policies via legal challenges or agency interpretation in the absence of specific authority granted by Congress.

Post Election Scenarios



Source: BBC

Trump Win/Senate Republican Majority

Trump Win/Senate Flip to Democrats in Control

Biden Win/Senate Republican Majority

Biden Win/Senate Flip to Democrats in Control

Political Positioning: the Right and the Left

Biden vs. Trump: Differing energy priorities and philosophies.

Biden: Increase regulations, emphasis on renewable energy, climate change and social justice.

Trump: Continued emphasis on President's deregulatory agenda and production of domestic energy resources.

Second Term Trump Administration

- **Continuity of policy:** Continued deregulation
- **Potential First Quarter:** Stimulus, Infrastructure
- Continuation of first term Energy and Environmental themes.
 - **Deregulation:** Lower the cost of energy and doing business in the US.
 - **Energy Independence/Dominance:** Continue production of domestic resources including oil, natural gas, and coal. Use these resources not only at home but export them abroad to benefit trade and the country geopolitically.
 - **End Reliance on China:** Clean tech R&D; Bring back manufacturing jobs from China; Tax Credits for companies that bring back jobs from China; No federal contracts for companies who outsource to China
 - **Environmental focus:** The President has listed clean drinking water, clean air, as well as cleaning up the Planet's oceans as environmental priorities.

Deregulation Under Trump

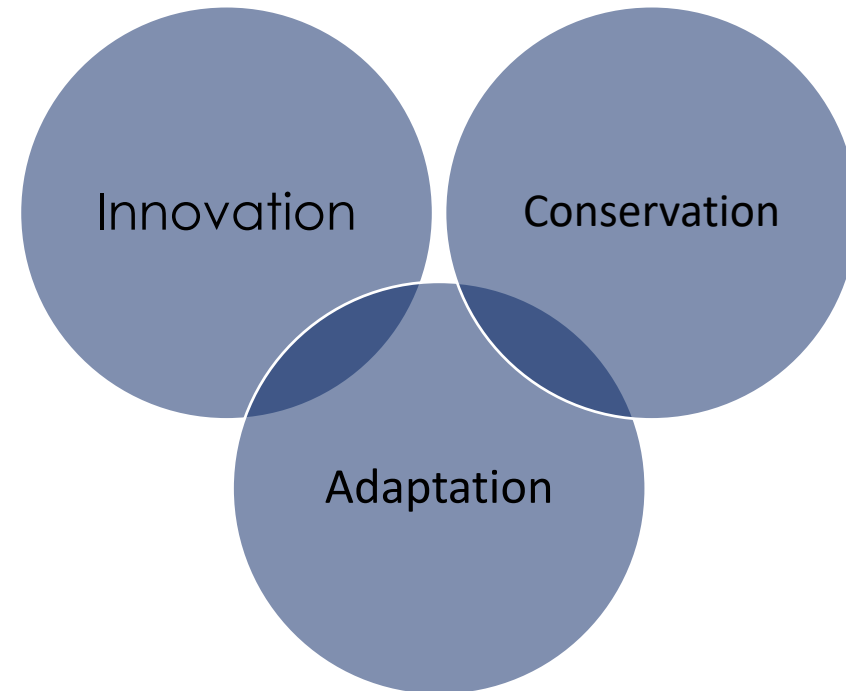
- **Currently more than 30 Trump Administration Energy/Environment rules in litigation:**

- National Environmental Policy Act (NEPA)
- Corporate Average Fuel Economy (CAFÉ)
- Clean Power Rule (ACE)
- Clean Water Rule (NWPR)
- Coal leasing moratorium
- Oil and gas rules
- National Monuments



Possible Bipartisan Climate Cooperation

- Republican leaders have highlighted 12 bipartisan bills focused on addressing climate change through three guiding principles: **innovation**, **conservation**, and **adaptation**.
 - Nuclear energy technology
 - Carbon Capture and Utilization
 - Energy Storage
 - Tax credits for new technologies
 - Energy Efficiency
 - Forrest management for wildfires



Biden: Sustainable Infrastructure and Clean Energy Plan

- **Ambitious, concrete plan achieve economy-wide net-zero emissions by 2050...**
 - Invest \$2 trillion over four-year term in infrastructure, the automotive industry, public transit, energy-efficient affordable housing, innovation, sustainable agriculture, and environmental justice.
- **Near-term benchmarks**
 - Net-zero emissions for all new commercial buildings by 2030
 - All American-built buses zero-emissions by 2030
 - Eliminate carbon emissions from the power sector by 2035
 - Rejoin Paris Climate Accord
- **How's he going to pay for that?**
 - Tax increases: Increase top individual income-tax rate for those with incomes above \$400,000 from 37 to 39.6 percent; Raise corporate tax rate from 21 to 28 percent.
 - Stimulus spending, tied to pandemic response.

Biden: Sustainable Infrastructure and Clean Energy Plan: Plan Components

- Modern Infrastructure
- American Auto Industry
- Clean Electric Power
- Energy-Efficient Affordable Housing
- Clean Energy Innovation
- Sustainable Agriculture and Conservation
- Environmental Justice and Equitable Economic Opportunity
- Renewable Fuels

Democratic Caucus: Table Setting

- **House Energy Bill: Clean Energy and Jobs Innovation Act**
 - The House passed the broad bill on Sept. 24 in a 220-185 vote
 - Aims to boost energy efficiency and renewable energy sources as part of an attempt to combat climate change; Assisting industries to transition to a clean energy economy.
- **Climate Crisis Road Maps**
 - **Top Line Trend:** Framework to make the U.S. carbon neutral by 2050.
 - **Select Committee on the Climate Crisis:** Proposals from both Senate and House Democrats, targeting every sector of the economy.
 - **CLEAN Future Act:** House Energy & Commerce Democrats laid framework for decarbonization strategies to achieve net-zero greenhouse gas pollution no later than 2050.
 - **Bipartisan House Plan:** From Reps. David McKinley (R-WV) and Kurt Schrader (D-OR); Would create a clean energy electricity standard for the power sector to reduce carbon dioxide emissions by 80% by 2050 [still in draft form].

Trends to Watch

- Lingering effects of Supreme Court battle
- Continued use by Trump or Biden Administration of EOs to get around Congress
- Growing tension between Moderate and Progressive Democrats
- Relationship between Trump and Republican Caucus in 2nd Term
- Emphasis on social, racial justice underlying Democratic agenda – especially in climate plans.
- Democrats emphasizing interconnectivity of clean energy economy and stimulus initiatives to target environmental objectives.



Questions?

Beth Viola



Senior Policy Advisor

Washington, D.C.

202.457.7030

beth.viola@hklaw.com

Beth A. Viola is a senior policy advisor in Holland & Knight's Washington, D.C., office where she is among the leadership team for the firm's Energy and Natural Resources Industry Sector Group. Ms. Viola focuses on energy and the environment, tax, trade, appropriations and public relations.

Ms. Viola provides strategic, policy and political advice to energy companies seeking to create or improve their market opportunities. Through her many years working in Washington, D.C., Ms. Viola has the deep connections as well as an impressive track record in building effective coalitions that are essential to shaping legislation and regulation.

Ms. Viola has helped her clients impact federal energy legislation including the American Reinvestment and Recovery Act of 2009, the Energy Independence and Security Act of 2007 and the Energy Policy Act of 2005. She has also guided clients through regulatory matters including the Clean Power Plan and implementation of the Renewable Fuel Standard (RFS) program. Similarly, she has worked extensively on a variety of renewable development tax issues, including the extension of the Production Tax Credit (PTC) and tax incentives related to biofuels, such as the Biodiesel Blenders' Credit.

Dimitri Karakitsos



Partner

Washington, D.C.

202.469.5132

Dimitri.Karakitsos@hklaw.com

Dimitrios Karakitsos is a Washington, D.C., public policy attorney who focuses on developing legislative and executive branch strategies around complex policy matters. He serves as the firm's senior Senate Republican liaison, coordinating on behalf of clients with GOP leadership, committee chairmen and members of the Senate Republican conference on a range of issues including taxes, trade, healthcare, energy and environment.

Mr. Karakitsos has successfully worked with numerous clients on Capitol Hill and within the executive branch on issues ranging from energy and environment to trade and international treaties. He has advocated on behalf of companies on legislative initiatives including the National Defense Authorization Act (NDAA) reauthorization process, federal infrastructure bills, appropriations, tax reform proposals, as well as energy- and environment-related legislation. He has extensive experience in the manufacturing, chemical, oil and gas, renewable energy and coal sectors and has assisted a variety of stakeholders to navigate new regulatory requirements, congressional investigations and the ever-changing political landscapes.