

McConnell Urges States to Help Thwart Obama's 'War on Coal'

By CORAL DAVENPORT MARCH 19, 2015

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Senator Mitch McConnell, the majority leader, urged the nation's governors not to comply with President Obama's climate rules. Credit Doug Mills/The New York Times

WASHINGTON — Senator [Mitch McConnell](#) of Kentucky has begun an aggressive campaign to block [President Obama's climate change](#) agenda in statehouses and courtrooms across the country, arenas far beyond Mr. McConnell's official reach and authority.

The campaign of Mr. McConnell, the Senate majority leader, is aimed at stopping a set of [Environmental Protection Agency](#) regulations requiring states to reduce carbon pollution from coal-fired power plants, the nation's largest source of greenhouse gas emissions.

Once enacted, the rules could shutter hundreds of coal-fired plants in what Mr. Obama has promoted as a transformation of the nation's energy economy away from fossil fuels and toward sources like wind and [solar power](#). Mr. McConnell, whose home state is one of the nation's largest coal producers, has vowed to fight the rules.

Since Mr. McConnell is limited in how he can use his role in the Senate to block regulations, he has taken the unusual step of reaching out to governors with a legal blueprint for them to follow to stop the rules in their states. Mr. McConnell's Senate staff, led by his longtime senior energy adviser, Neil Chatterjee, is coordinating with lawyers and lobbying firms to try to ensure that the state plans are tangled up in legal delays.

On Thursday, Mr. McConnell sent a detailed letter to every governor in the United States laying out a carefully researched legal argument as to why states should not comply with Mr. Obama's regulations. In

the letter, Mr. McConnell wrote that the president was “allowing the E.P.A. to wrest control of a state’s energy policy.”

To make his case, Mr. McConnell is also relying on a network of powerful allies with national influence and roots in Kentucky or the coal industry. Within that network is Laurence H. Tribe, a highly regarded scholar of constitutional law at Harvard Law School and a former mentor of Mr. Obama’s. Mr. Tribe caught Mr. McConnell’s attention last winter when he was retained to write a legal brief for Peabody Energy, the nation’s largest coal producer, in a lawsuit against the climate rules.

In the brief, Mr. Tribe argued that Mr. Obama’s use of the existing [Clean Air Act](#) to put forth the [climate change](#) regulations was unconstitutional. He then echoed that position in an op-ed article in The Wall Street Journal. He argued that in requiring states to cut carbon emissions, and thus to change their energy supply from fossil fuels to renewable sources, the agency is asserting executive power far beyond its lawful authority.

Peabody Energy has been the fourth-largest contributor to Mr. McConnell’s election campaigns over the course of his political career, and his office maintains close and frequent communication with the company.

In addition to stopping state-level enactment of the climate rules, Mr. McConnell’s strategy is intended to undercut Mr. Obama’s position internationally as he tries to negotiate a global climate change treaty to be signed in Paris in December. The idea is to create uncertainty in the minds of other world leaders as to whether the United States can follow through on its pledges to cut emissions.

“We’ve seen modern lobbying strategies that become a very large campaign, coordinated with states and localities, but we’ve never seen a Senate majority leader or House speaker in front of it,” said James Thurber, director of the Center for Congressional and Presidential Studies at American University in Washington. “It’s quite clever. It’s sophisticated and unusual.”

As he campaigned across Kentucky’s economically ravaged coal towns last fall, Mr. McConnell frequently declared that he would do everything in his power to battle what he calls Mr. Obama’s “war on coal.”

Although Republicans now control both chambers of Congress and could summon a simple majority of votes for legislation to block or delay the climate regulations, they do not have the majorities necessary to override a Democratic [filibuster](#) or a presidential veto. Blocking Mr. Obama’s climate policies is also difficult for lawmakers because the regulations largely sidestepped Congress.

Using its existing authority, the E.P.A. will require each state to submit an individual plan for cutting emissions from power plants. Ultimately, the success or failure of the plan will depend on how — and if — states comply with the rules. It will also depend on the courts. Coal-dependent states and coal mining companies are already planning legal challenges to the regulations.

Those coal-dependent states are where Mr. McConnell has trained his fire.

Mr. McConnell opened his campaign on March 3 with an [op-ed article](#) published in The Lexington Herald-Leader in Kentucky with the headline, “States should reject Obama mandate for clean-power regulations.” Mr. McConnell urged governors to refuse to submit climate change compliance plans to the E.P.A., citing the arguments of Mr. Tribe.

Mr. McConnell contends that the Obama administration has bypassed Congress and stretched the boundaries of existing law to impose climate change regulations — and that he intends to step outside of Congress and use creative legal methods to push back.

“The E.P.A. is bypassing Congress and the American people by unilaterally proposing these crippling regulations that would wreak havoc on our economy and are clearly unprecedented,” he said. “I have used and will continue to use all of the tools available to protect families and jobs, whether that be in Congress, or outside of the legislative process.”

Advocates of Mr. Obama’s climate change agenda called Mr. McConnell’s actions nearly unprecedented, and a spokesman for the White House assailed Mr. McConnell’s moves.

“Climate change is one of the most pressing challenges that we face, and instead of offering solutions, Senator McConnell’s alternative is an inappropriate and unfounded attempt to dictate state decisions,” said Frank Benenati, the spokesman. “E.P.A. is following the law by proposing clean-air standards to tackle the largest sources of carbon pollution — the power sector,” he said.

While some governors oppose the climate change plan, others are preparing to comply. On Thursday, the National Governors Association announced that four states — Michigan, Missouri, Pennsylvania and Utah — would take part in a program to prepare to meet the climate-change regulations.

But longtime experts in the field of climate change law and policy say that Mr. McConnell’s unconventional efforts could prove formidable.

“The majority leader is a master tactician,” said Scott Segal, a lobbyist with the law firm Bracewell & Giuliani and the director of the Electric Reliability Coordinating Council, which represents power companies. “He understands the legal vulnerabilities, and he’s acutely aware that not all solutions go through traditional legislative channels.”

Over the coming weeks and months, Mr. McConnell’s office intends to continue to push to undermine the climate regulations, using a host of legal, lobbying and legislative tools.

Less than a week after Mr. McConnell’s op-ed article citing Mr. Tribe, Mr. McConnell’s friend and fellow Republican, Representative Ed Whitfield of Kentucky, was the chairman of a House hearing designed to highlight the legal challenges to the climate change law. Mr. Whitfield called as his star witness Mr. Tribe — who in testimony likened Mr. Obama’s climate change rules to “burning the Constitution.”

In April, Mr. Tribe, representing Peabody Energy, is set to deliver oral arguments in the first federal court case about Mr. Obama’s climate change rules.

Mr. McConnell’s efforts come on top of an initial groundswell of efforts by Republican governors from coal-dependent states to push back at the rules. Twelve states have already filed suit against the rules.

In Washington, a coalition of nearly 200 industry and lobbying groups, led by the Chamber of Commerce and the National Association of Manufacturers, has been working together for months on a set of legal and legislative tactics, both in Washington and the states, to block the rules.

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