



Executive Memorandum

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WHY THE KYOTO SIGNING SIGNALS DISREGARD FOR CONGRESS

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Negotiators from 180 countries recently gathered in Buenos Aires, Argentina, to address unresolved issues in the Kyoto Protocol to the United Nations Framework Convention on Climate Change. The Kyoto Protocol, an international treaty that addresses the uncertain threat of greenhouse gas emissions resulting from human activity, requires developed countries to reduce emissions in 2012 by a combined 5.2 percent (7 percent for the United States) below 1990 levels. Despite unresolved issues, a Clinton Administration official signed the Kyoto Protocol on November 12.

The purpose of the meeting in Buenos Aires—the fourth negotiating session on the global warming treaty—was to clarify enforcement mechanisms and developing country participation. Little progress was made on these fronts. By agreeing to the Protocol, the Administration signaled its commitment to implement the treaty. But the treaty faces stiff bipartisan opposition at home from Congress and traditional allies like labor unions, as well as from businesses and the states, because it portends dire economic consequences for Americans—as much as \$30,000 in lost income per family and up to 2 million lost jobs each year.

Although the Protocol is not legally binding until the Senate ratifies it, the Administration knows the United States is bound by its word. By approving the treaty, the Administration signaled its intent to begin implementing it without Senate ratification. In response to this affront, Congress should send a clear message that it will enforce the current

prohibitions on agency spending and regulatory initiatives related to the Protocol.

THE ADMINISTRATION'S BLANK CHECK

Even under the terms of the Protocol, greenhouse gas emissions are likely to increase because, by 2015, the majority will originate in developing countries, which are not required to restrict emissions. Only Argentina has agreed to reduce greenhouse gas emissions voluntarily. The remaining developing countries, including critical emitters China and India, refuse to accept Kyoto's limitations and were able to get the issue dropped from the Buenos Aires agenda. Thus, the Protocol will place heavy burdens on developed countries without offering any return.

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The Clinton Administration responds to criticisms of the Protocol by noting it is not yet complete. Stuart Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs and chief U.S. negotiator in Buenos Aires, observed, "Kyoto is a landmark achievement, but it is a work

in progress, and many issues remain [unresolved].” Carefully ignored is any explanation of the reason the United States is signing a treaty before it is complete. The Protocol does not allow countries to make reservations and can be amended by a three-fourths majority—which would allow developing countries to amend it over U.S. objections. Thus, the Administration essentially signed a blank check that Americans will be expected to pay.

Article II of the U.S. Constitution states that the President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties.” Under the Vienna Convention on the Law of Treaties, however, any treaty signed by recognized representatives of a state—in this case, Peter Burleigh, Acting Ambassador to the United Nations, and not President Clinton—is considered binding. The Convention lists circumstances under which a treaty can bind a signatory of an unratified treaty. It states that a signatory is “obligated to refrain from acts which would defeat the object and purpose of the treaty” and cannot “invoke the provisions of its internal law [such as the U.S. Constitution] as justification for its failure to perform a treaty.” Ironically, the Senate never ratified the Vienna Convention, which President Richard Nixon signed on April 24, 1970. The United States technically is bound neither by the Convention nor its interpretation of international treaties that would prevent Congress from blocking implementation of the Protocol. Other countries, however, are likely to see the U.S. signature as a binding commitment, and the United States will be compelled to honor its signed pledge.

WHAT CONGRESS SHOULD DO

In 1997, when the Senate unanimously passed the Byrd–Hagel Resolution on global warming treaties, it established a clear threshold: *Unless developing countries accept emissions limitations and the Administration demonstrates the treaty will not harm the U.S. economy, the Senate would not ratify any global warming treaty.* The Administration approved the Kyoto Protocol before these conditions had been met. Until the Clinton Administration submits the treaty to the Senate for ratification, as required by the Constitution, Congress should:

1. Vigorously enforce existing prohibitions on

the use of federal funds to implement the Protocol. The fiscal year (FY) 1999 budget makes it clear that the Environmental Protection Agency cannot use any funds “to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto Protocol.” Congressional committees must be vigilant in their oversight of agency activities and spending to ensure compliance with this directive.

2. **Expand the existing funding prohibitions.** A 1998 Congressional Institute study reports that more than 17 federal agencies engage in activities related to climate change. In the final hours of the FY 1999 budget negotiations, Congress added almost \$1 billion in funding for programs related to global warming, such as renewable energy, and international global warming programs, such as \$193 million for the Global Environment Facility. Congress should extend funding restrictions to all federal agencies and refuse to appropriate additional funding absent a Senate-ratified treaty.
3. **Continue to hold the Clinton Administration accountable for the consequences of signing the Protocol.** Congress should conduct public hearings on the treaty’s scientific and economic impact and make the Administration explain to the American people the reason it signed a fundamentally flawed treaty.
4. **Continue to monitor and attend the international negotiations to ensure that the interests of Americans are well-protected.**

Congress must not allow the Clinton Administration to downplay the treaty signing at home while trumpeting it abroad. If the Kyoto Protocol is good enough to sign, it should be good enough to submit to the Senate for ratification—as the U.S. Constitution requires. Absent this good-faith effort by the Administration, Congress should restrict the use of federal funds to implement the terms of the treaty.

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