

Can He Do That?: A Constitutional Analysis of President Trump’s Withdrawal from the Paris Agreement

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I. INTRODUCTION

On June 1, 2017, President Donald Trump announced his intention to withdraw from the international climate agreement known as the Paris Agreement.¹ The withdrawal was met with vocal outcry and a show of resistance from citizens, CEOs, and various global leaders.² The agreement, first signed into by President Barack Obama in August of 2016, was aimed at creating a system of international cooperation and accountability regarding responses to the global threat of climate change.³ It called for adopting more green energy sources, reducing greenhouse emissions over the length of the agreement, and ultimately limiting the rise of global temperatures.⁴

In his withdrawal announcement, President Trump cited concerns about the fairness of the agreement, as other global powers like China and India would not be subject to the same requirements and obligations as the United States.⁵ Although it differed structurally from previous United Nations agreements aimed at international cooperation against climate change, the Paris Agreement ultimately was another in a series of global climate agreements that failed to last.

1. Michael D. Shear, *Trump Will Withdraw U.S. from Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html> [https://perma.cc/XF2P-FUB].

2. Scott Clement & Brady Dennis, *Post-ABC Poll: Nearly 6 in 10 Oppose Trump Scrapping Paris Agreement*, WASH. POST (June 5, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/06/05/post-abc-poll-nearly-6-in-10-oppose-trump-scrapping-paris-agreement/?utm_term=.46618bec6ac6 [http://perma.cc/UL23-TLVW].

3. See Paris Agreement to the United Nations Framework Convention on Climate Change art. 2, Dec. 12, 2015, U.N. Doc. FCCC/CP/2015/L.9/Rev.1, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_pdf [hereinafter *Paris Agreement*] [http://perma.cc/62Y8-WGLY].

4. Camila Domonoske, *So What Exactly Is in the Paris Climate Accord?*, NAT'L PUB. RADIO (June 1, 2017), <https://www.npr.org/sections/thetwo-way/2017/06/01/531048986/so-what-exactly-is-in-the-paris-climate-accord> [https://perma.cc/JDL2-Y2R9].

5. See William Galston, *Trump's Paris Withdrawal: What It Means and What Comes Next*, BROOKINGS (June 1, 2017), <https://www.brookings.edu/blog/planetpolicy/2017/06/01/trumps-paris-agreement-withdrawal-what-it-means-and-what-comes-next/> [http://perma.cc/PJM2-ZHTB].

This Article is structured to give context as to the history of United Nations-sponsored, climate change centered, international agreements from the early 1990s to the present. The Article also shows how the goals and responsibilities placed on the United States as a part of the Paris Agreement may still be realized even without full party membership. Additionally, the Article discusses the structural framework of the Paris Agreement and the significance of its legal classification when deciding how President Trump can leave the agreement in accordance with international law. The Article will also discuss how President Trump's actions regarding the Paris Agreement will impact the international climate change field, and what sorts of solutions are available at both the state and national level.

Specifically, Part II of this Article will provide a background on the history of the United States' approach to climate change agreements proposed over the past thirty years, the various United Nations sponsored agreements proposed and enacted by previous presidential administrations, and how the Paris Agreement compared to previous attempts. Part III will focus primarily on the various means of withdrawal from or termination of the Paris Agreement by the Trump administration. Depending on President Trump's concerns, there are a few different ways that the United States can end its membership in the Paris Agreement. The options vary regarding speed of withdrawal or termination, and level of international legality. Part III will also focus on what sort of precedent exists for a unilateral withdrawal by the Trump administration without the advice and consent of the Senate, and ultimately whether or not this power is constitutional. Finally, Part IV will focus on the potential ramifications both domestically and globally stemming from President Trump's withdrawal from the Paris Agreement. Part IV further addresses how best to reconcile President Trump's goals of protecting the United States' power at the international table and maintaining economic strength domestically with the important global goals set forth by our international peers.

II. A BACKGROUND ON CLIMATE CHANGE INITIATIVES AND INTERNATIONAL RESPONSES

Responses to the issue of climate change over the past decades have been shaped both internationally and domestically by economic, political, diplomatic, and scientific factors, among others. National responses and reactions have varied, ranging from misinformation of the existence of climate change, to active participation in reforming actions and discontinuing harmful practices and behaviors believed to contribute to the problem.

Although scientists have attempted to make the issue digestible and comprehensible for politicians and policymakers,⁶ there still exists a back and forth struggle about how best to address environmental concerns. Because such global and national dissension still exists over this polarizing topic, many attempts to combat climate change have been challenged in the political sphere.⁷ However, to address such a global, significant problem to all human life, there is a need for international cooperation.

Population growth trends have made climate change an important topic for international discussion. As the global population trends toward almost ten billion by 2050,⁸ and the U.S. population toward 438 million by 2050,⁹ scientists,¹⁰ legal thinkers,¹¹ and concerned citizens¹² have all shown great interest as to the effect this population growth has on the climate. There are general concerns that “consumption of goods and services whose draw on resources for their fabrication, distribution, sale and use causes the emission of [greenhouse gases].”¹³ More births lead to a greater need for resources such as food, water, clothing, housing, schools, and hospitals, among many others.¹⁴ These resources, produced at the hand of human activity, have

6. See, e.g., Intergovernmental Panel on Climate Change [IPCC], *Summary for Policymakers*, in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS (2013), https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WGIAR5_SPM_brochure_en.pdf [<http://perma.cc/93FL-J3XK>].

7. Justin Worland, *Climate Change Used to Be a Bipartisan Issue. Here's What Changed*, TIME (July 27, 2017), <http://time.com/4874888/climate-change-politics-history/> [<http://perma.cc/PX7Z-PCEG>].

8. *World Population to Hit 8bn in 2023, Says New UN Survey*, THE GUARDIAN (June 21, 2017), <https://www.theguardian.com/global-development/2017/jun/21/world-population-to-hit-8bn-in-2023-says-new-un-survey> [<http://perma.cc/5AYG-G433>].

9. *U.S. Population Could Reach 438 Million by 2050, and Immigration is Key*, POPULATION REFERENCE BUREAU (Feb. 15, 2008), <http://www.prb.org/Publications/Articles/2008/pewprojections.aspx> [<http://perma.cc/N8L7-U2DY>].

10. See, e.g., Andrew Griffin, *15,000 Scientists Give Catastrophic Warning About the Fate of the World in New 'Letter to Humanity'*, INDEPENDENT (Nov. 13, 2017, 3:51 PM), <http://www.independent.co.uk/environment/letter-to-humanity-warning-climate-change-global-warming-scientists-union-concerned-a8052481.html> [<http://perma.cc/2P2M-GCPC>].

11. See, e.g., Matthew Brodahl & William A. Shutkin, *Exactly the Right Amount: Municipal Water Efficiency, Population Growth, and Climate Change*, 14 U. DENV. WATER L. REV. 337 (2011).

12. See, e.g., *Why We Need to Address Population Growth's Effects on Global Warming*, L.A. TIMES (Jan. 25, 2015, 5:00 AM), <http://www.latimes.com/opinion/editorials/la-ed-population-and-climate-change-20150125-story.html> [<http://perma.cc/S6NW-Q6ZN>].

13. David Satterthwaite, *The Implications of Population Growth and Urbanization for Climate Change*, 21(2) ENV'T & URBANIZATION 545, 547 (2009).

14. See Juliet Eilperin, *Population Growth Taxing Planet's Resources*, WASH. POST (Oct. 23, 2011), https://www.washingtonpost.com/national/health-science/population-growth-taxing-planets-resources/2011/10/16/gIQAD9bMAM_story.html (explaining how population growth is having clear ecological distortion effects causing depletions in water, fish, forests, fuel, and food) [<http://perma.cc/Y54A-FL2S>].

generally accounted for the largest source of greenhouse gas emissions over the past thirty years.¹⁵ Additionally, as the issue has become more well-known and better understood, policy makers and government officials began to take more preventative actions.

*A. The United Nations Framework Convention on
Climate Change (UNFCCC)*

In 1992, the United Nations Framework Convention on Climate Change (“UNFCCC”) was introduced to encourage international cooperation and participation in response to the increased greenhouse gas emissions caused by human activities. The treaty acknowledged that the “global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response.”¹⁶ At the time, 154 nations signed the UNFCCC.¹⁷ Now there are 197 parties to the convention.¹⁸ This treaty, signed by President George H.W. Bush, was approved by the Senate in 1992,¹⁹ giving the treaty statutory approval and enforceability.²⁰

This United Nations treaty aimed to stabilize “greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”²¹ The treaty established a framework and introduced protocols to limit average global temperature increases and resulting climate change.²² It placed different obligations on developing

15. U.S. ENVTL. PROT. AGENCY, EPA 430-R-16-002, INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 1990–2014 (2016).

16. United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter *UNFCCC*].

17. *Timeline of Major UN Climate Negotiations*, ENVTL. ENERGY STUDY INST., <https://www.eesi.org/policy/international> (last visited Aug. 31, 2018) [<https://perma.cc/8ED4-LDF4>].

18. *Status of Ratification of the Convention*, UNFCCC, <https://unfccc.int/process/the-convention/news-and-updates> (last visited July 27, 2018) [<http://perma.cc/TW33-SU65>].

19. S. Res. 38, 102nd Cong. (1992) (enacted) (“Resolved that the Senate advise and consent to the ratification of the United Nations Framework Convention on Climate Change, Committee for a Framework Convention on Climate Change (“Convention”), and signed on behalf of the United States at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro on June 12, 1992.”).

20. U.S. CONST. art. II, § 2.

21. UNFCCC, *supra* note 16, at 4.

22. *Id.*

and developed countries.²³ According to Professor Daniel Bodansky, the multilateral treaty introduced many general commitments including:

[U]se of best available technology to limit greenhouse gas emissions; promotion of energy efficiency and conservation; development of renewable energy sources; promotion of sustainable forest management; removal of subsidies that contribute to global warming; harmonization of national policies, taxes, and efficiency standards; internalization of costs; and development and coordination of market instruments.²⁴

Most importantly, the treaty committed all parties to “develop, periodically update, publish and make available to the Conference of the Parties . . . national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases . . . using comparable methodologies to be agreed upon by the Conference of the Parties.”²⁵

The treaty required parties to “adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases. . . .”²⁶ Additionally, it encouraged international communication and cooperation—requiring communication between party members.²⁷ This treaty effectively laid the foundation for the issue of climate change in the domestic and international legal landscapes, shaping and structuring succeeding agreements. The UNFCCC established a system to keep track of the problem, required progress reports from both developed and developing countries, and served as the parent treaty when introducing new UN climate-focused agreements. Additionally, it served as the backdrop for the Kyoto Protocol, Copenhagen Accord, and Paris Agreement—all of which were discussed at their respective annual UNFCCC Conference of the Parties (COP).

B. The Kyoto Protocol

Following the ratification of the UNFCCC, the Kyoto Protocol was introduced in an attempt to build off of the UNFCCC foundation. The Kyoto Protocol was signed in December 1997²⁸ and entered into force in

23. Daniel Bodansky, *The United Nations Framework Convention on Climate Change: A Commentary*, 18 YALE J. INT’L L. 451, 505 (1993).

24. *Id.* at 508.

25. UNFCCC, *supra* note 16, at 4.

26. *Id.*

27. *Id.*

28. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, 37 I.L.M. 22 (1998) [hereinafter *Kyoto Protocol*].

February 2005.²⁹ This agreement was built upon the framework set out in the UNFCCC to stabilize greenhouse gas emissions and sought to attain firm commitments to reduce emissions by a particular amount in developed countries.³⁰ The Kyoto Protocol was unique because it was the first to stem from the UNFCCC. Additionally, it mandated that industrialized nations cut their greenhouse gas emissions.³¹ However, due to fears of what impact the binding reductions would have on countries in the midst of development, then-Vice President of the United States Al Gore noted to developing nations that “[w]e understand that your first priority is to lift your citizens from the poverty so many endure, and build strong economies that will assure a better future. This is your right. It will not be denied.”³² This served as Vice President Gore’s rationale for agreeing to the binding terms of the Kyoto Protocol. However, the Senate and the following presidential administration were less accepting of the binding emission reductions and financial obligations imposed by the Kyoto Protocol.³³

The binding language of the agreement called for signatories to cut their country’s greenhouse gas emissions to five percent below 1990 levels between 2008 and 2012.³⁴ In response to President Clinton’s Kyoto Protocol proposition, the United States Senate passed the Byrd-Hagel Resolution in July of 1997 by a 95-0 vote which provided that:

29. *Kyoto Protocol Comes into Force*, THE GUARDIAN (Feb. 16, 2005, 10:12 AM), <https://www.theguardian.com/science/2005/feb/16/sciencenews.environment> [<http://perma.cc/XPW5-8FRK>].

30. Laura Poppick, *Twelve Years Ago, the Kyoto Protocol Set the Stage for Global Climate Change Policy*, SMITHSONIAN (Feb. 17, 2017), <https://www.smithsonianmag.com/science-nature/twelve-years-ago-kyoto-protocol-set-stage-global-climate-change-policy-180962229/> [<https://perma.cc/WZ76-66G6>].

31. *Kyoto Protocol Fast Facts*, CNN, <http://www.cnn.com/2013/07/26/world/kyoto-protocol-fast-facts/index.html> (last updated Mar. 21, 2018, 12:06 PM) [<http://perma.cc/DH4R-3R6H>].

32. Vice President Al Gore, Speech at the Kyoto Climate Change Conference (Dec. 8, 1997), (transcript available at <https://clintonwhitehouse2.archives.gov/WH/EOP/OVP/speeches/kyotofin.html> [<https://perma.cc/5R8C-9WTY>]).

33. See Julian Borger, *Bush Kills Global Warming Treaty*, THE GUARDIAN (Mar. 29, 2001, 3:28 AM), <https://www.theguardian.com/environment/2001/mar/29/globalwarming.usnews> [<http://perma.cc/D228-3QML>].

34. *Kyoto Protocol*, *supra* note 28, at 24.

[T]he United States should not be a signatory to any protocol to, or other agreement regarding, the United Nations Framework Convention on Climate Change of 1992, at negotiations in Kyoto in December 1997, or thereafter, which would mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period³⁵

Despite President Clinton’s efforts, the United States Senate made it clear to future administrations that the United States would not become a signatory of an international agreement that imposes such strict and binding requirements on its parties. Although President Clinton signed the Kyoto Protocol with the hopes of binding the United States to its obligations, President George W. Bush did away with the protocol after his election in 2000 citing concerns about the lack of participation or requirement on developing countries.³⁶ Additionally, President Bush noted that the binding financial obligations of the protocol would hinder the United States economy while exempting large population centers from bearing the cost.³⁷

C. *The Copenhagen Accord*

Twelve years after President Clinton’s and Vice President Gore’s attempt to bind the United States to the terms of the Kyoto Protocol, President Barack Obama sought to introduce a less-binding international agreement, one which many hoped would represent a big step forward regarding international action toward climate change.³⁸ At the 2009 United Nations Climate Change Conference in Copenhagen, “[a] new political accord [was] struck by world leaders . . . [which provided] for explicit emission pledges by all the major economies—including, for the first time, China and other major developing countries—but chart[ed] no clear path toward a treaty with binding commitments.”³⁹

Labeled as a political agreement rather than a binding agreement, there were multiple key elements of the agreement including:

35. S. Res. 98, 105th Cong. (1997) (enacted).

36. See Julian Borger, *Bush Kills Global Warming Treaty*, THE GUARDIAN (Mar. 29, 2001, 3:28 AM), <https://www.theguardian.com/environment/2001/mar/29/globalwarming.usnews> [<http://perma.cc/D228-3QML>].

37. See Cass R. Sunstein, *Of Montreal and Kyoto: A Tale of Two Protocols*, 31 HARV. ENVTL. L. REV. 1, 28 (2007).

38. See Alden Meyer, *The Copenhagen Accord: Not Everything We Wanted, But Something to Build On*, UNION OF CONCERNED SCIENTISTS, <https://www.ucsusa.org/global-warming/solutions/reduce-emissions/the-copenhagen-accord.html> (last visited Nov. 12, 2017) [<https://perma.cc/5JCT-X282>].

39. *Outcomes of the U.N. Climate Change Conference in Copenhagen*, CTR. FOR CLIMATE & ENERGY SOLUTIONS, <https://www.c2es.org/content/cop-15-copenhagen/> (last visited Nov. 18, 2017) [<https://perma.cc/6E9R-NJ3S>].

An *aspirational* goal of limiting global temperature increase to 2 degrees Celsius . . . broad terms for the reporting and verification of countries' actions . . . a collective commitment by developed countries for \$30 billion in "new and additional" resources in 2010-2012 to help developing countries reduce emissions, preserve forests, and adapt to climate change [and a] goal of mobilizing \$100 billion a year . . . to address developing county needs.⁴⁰

Many critics took issue with the accord. First, critics argued that the lack of a binding agreement failed to promote progress, as it would not hold countries accountable for the promises they made.⁴¹ Second, critics objected to the Copenhagen Accord under the belief that without any clearly defined national contribution measures or rules, countries would struggle to make meaningful progress toward lower greenhouse gas emissions.⁴²

Despite the backlash, the agreement still had some positive results. The proposal set goals and was a step in the right direction by uniting China, India, South Africa, and Brazil regarding carbon emission plans.⁴³ Getting these countries in agreement was important, as the greenhouse gas reductions these countries made as a part of the Copenhagen Accord were their first such ones; these nations had failed to commit to such reductions under the Kyoto Protocol.⁴⁴ Additionally, although many have been critical of the lack of binding commitments in the Copenhagen Accord⁴⁵ and the failure to introduce a formal global agreement addressing climate change mitigation techniques,⁴⁶ the Accord encouraged international cooperation and subjected party members to international pressures to achieve climate reduction goals.⁴⁷

Between Senate outrage at the binding requirements the Kyoto Protocol proposed and environmentalist disappointment at the somewhat toothless Copenhagen Accord, there was a need to introduce a new plan that satisfied

40. *Id.* (emphasis added).

41. Kelley Inman, *The Symbolic Copenhagen Accord Falls Short of Goals*, 17 U. BALT. J. ENVTL. 219, 225 (2010).

42. *Id.* at 225–26.

43. David Biello, *U.S., China, India, and Other Nations Arrive at Nonbinding Agreement at U.N. Climate Summit*, SCIENTIFIC AMERICAN (Dec. 18, 2009), <https://www.scientificamerican.com/article/us-china-india-climate-accord/> [<https://perma.cc/247F-TPR5>].

44. Richard L. Ottinger, *Introduction: Copenhagen Climate Conference—Success or Failure?*, 27 PACE ENVTL. L. REV. 411, 412 (2010).

45. See Ben Lieberman, *The Copenhagen Conference: A Setback for Bad Climate Policy in 2010*, HERITAGE FOUND. (Jan. 19, 2010), <https://www.heritage.org/environment/report/the-copenhagen-conference-setback-bad-climate-policy-2010> [<https://perma.cc/V2RA-45QM>].

46. Ottinger, *supra* note 44.

47. See Daniel Bodansky, *The Copenhagen Climate Change Conference: A Postmortem*, 104 AM. J. INT'L L. 230, 239–40 (2010).

both sides of the argument. This new plan called for an international agreement that would impose strict enough requirements to make real environmental progress—unlike the Copenhagen Accord—while not imposing as many binding requirements as that of the Kyoto Protocol. What followed was an international agreement with compromise that contained both binding and nonbinding elements.

D. *The Paris Agreement*

In December 2015, as a result of the UNFCCC’s efforts and built upon the foundation of previous agreements, there was a global call to action to curb dangerous anthropogenic trends. This attempt was the landmark climate change agreement referred to as the Paris Agreement, agreed to in December 2015 and signed in August of 2016.⁴⁸ Where the Kyoto Protocol and Copenhagen Accord had failed, the Paris Agreement sought to correct.

Where the Kyoto Protocol proposed a plethora of binding targets and requirements, the Paris Agreement provided a far more flexible structure.⁴⁹ It included specialized and nationally determined contributions and quinquennial progress reports to monitor progress made.⁵⁰ The individualized, pledge-based system of greenhouse gas emission reductions, where countries were able to set their own commitments, was far less brittle and rigid than its predecessor agreements.⁵¹ It also included a means to financially assist developing countries “with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”⁵²

In the international law context, the Paris Agreement was a treaty in accordance with the terms of the Vienna Convention on the Law of Treaties. For an agreement to receive international treaty force, the Vienna Convention requires that it must be signed as “an international agreement concluded between states in a written form and governed by international law.”⁵³ At the time, President Barack Obama noted that “[t]he Paris Agreement

48. John D. Sutter, Joshua Berlinger & Ralph Ellis, *Obama: Climate Agreement ‘Best Chance We Have’ to Save the Planet*, CNN, <https://www.cnn.com/2015/12/12/world/global-climate-change-conference-vote/> (last updated Dec. 14, 2015, 1:02 AM) [<https://perma.cc/R25U-SH7W>].

49. Brad Plumer, *Stay In or Leave the Paris Climate Deal? Lessons from Kyoto*, N.Y. TIMES (May 9, 2017), <https://www.nytimes.com/2017/05/09/climate/paris-climate-agreement-kyoto-protocol.html> [<https://perma.cc/L83D-2RZ3>].

50. Paris Agreement, *supra* note 3, art. 4.

51. David G. Victor, *Why Supreme Court’s Action Creates Opportunity on Climate*, YALE ENV’T 360 (Feb. 17, 2016), https://e360.yale.edu/features/why_supreme_courts_action_creates_opportunity_on_climate [<https://perma.cc/3SEH-NTKV>].

52. *See* Paris Agreement, *supra* note 3, art. 9.

53. Vienna Convention on the Law of Treaties art. 2, May 23, 1969, 1155 U.N.T.S. 331.

establishe[d] the enduring framework the world needs to solve the climate crisis,” and that it “create[d] the mechanism, the architecture, for us to continually tackle this problem in an effective way.”⁵⁴

Unlike the previously discussed Copenhagen Accord, the Paris Agreement represented a more significant step forward in the international climate change context. Supporters have noted that the Paris Agreement was more successful than the Copenhagen Accord because it built on the previously agreed upon but not binding political agreement.⁵⁵ Supporters argued that the Paris Agreement was a necessary progression, as it built on the structure put in place by both the UNFCCC and the Copenhagen Accord in three important ways. First, the Paris Agreement abandoned the strict dichotomy of Annex 1 and non-Annex 1 countries.⁵⁶ Under the new agreement, all countries share many of the same international obligations. Second, the agreement created a longer temporal framework “establish[ing] a treaty regime of indefinite determination”⁵⁷—unlike the Copenhagen Accord’s limited scale set to end in 2020. Third, the agreement provided more transparent rules and a clearer framework for introducing nationally determined contributions.⁵⁸

The agreement’s purpose was to establish individualized national goals for reducing greenhouse gas emissions.⁵⁹ The agreement established a global warming goal calling for a 2°C reduction from pre-industrial averages.⁶⁰ It promoted a flexible standard for achieving climate related goals. Specifically, the agreement relied on voluntary mitigations made by individual countries

54. President Barack Obama, Statement by the President on the Paris Climate Agreement (Dec. 12, 2015), (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2015/12/12/statement-president-paris-climate-agreement> [<https://perma.cc/9FHN-EVK8>]).

55. See Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope?*, 110 A.J.I.L. 288, 317 (2016) (discussing what makes the Paris Climate Change Agreement a historic agreement and how it departs from the existing paradigms in international climate change response in regards to its structure, terms, parties, and obligations).

56. *Id.*

57. *Id.*

58. *Id.*

59. Gwynne Taraska & Ben Bovarnick, THE AUTHORITY FOR U.S. PARTICIPATION IN THE PARIS CLIMATE AGREEMENT, CTR. FOR AM. PROGRESS 1 (2015), <https://cdn.americanprogress.org/wp-content/uploads/2015/07/InternationalExecutiveAgreements-report1.pdf> [<http://perma.cc/TXE9-5FGB>].

60. THE PARIS AGREEMENT SUMMARY, CLIMATE FOCUS 1 (2015), <http://www.climatefocus.com/sites/default/files/20151228%20COP%2021%20briefing%20FIN.pdf> [<http://perma.cc/5DYN-DHJD>].

rather than strict, bright-line tests applying to all countries equally.⁶¹ Each country has a nationally determined contribution (NDC) consisting of their plans and efforts to reduce greenhouse gas emissions, which will be submitted every five years starting in 2020.⁶²

The inclusion of both binding and non-binding language made classification of the Paris Agreement difficult. Specifically, there are provisions in the agreement that only suggest participation through use of the word “should.”⁶³ Using this language regarding some of the larger commitments of the agreement makes the agreement’s material provisions seem less binding and less imposing than those of the Kyoto Protocol. However, the inclusion of responsibility-bearing verbs like “shall”⁶⁴ or “will”⁶⁵ for some of the more immaterial provisions of the agreement still impose binding obligations on signing parties.⁶⁶ Even though, on its face, the non-binding language used in material provisions makes the overall character of the agreement appear non-binding, the provisions still function in accordance with the overall binding goal of the agreement to lower carbon emissions over time.⁶⁷ Some argue that imposing a material goal like that of the Paris Agreement on the United States (even while including non-binding individual provisions) makes the agreement more binding and of a legal character, and therefore it should have had to pass through the advice and consent of the Senate.⁶⁸

Despite its complex legal character, the simultaneously binding and non-binding Paris Agreement succeeded at contributing to the global environmental call to action and spawning new programs and attempts. According to the Grantham Research Institute on Climate Change and the Environment, “[t]here are now over 1,200 climate change or climate change-relevant laws worldwide, a twentyfold increase over 20 years: in 1997 there were about 60 climate laws in place.”⁶⁹ Additionally “two-thirds of court

61. *Id.*

62. Swell Chan, *Key Points of the Paris Climate Pact*, N.Y. TIMES (Dec. 12, 2015, 11:40 AM), <https://www.nytimes.com/interactive/projects/cp/climate/2015-paris-climate-talks/key-points-of-the-final-paris-climate-draft> [<https://perma.cc/TK43-RQBV>].

63. *See, e.g.*, Paris Agreement, *supra* note 3, arts. 4.4, 4.19.

64. *See, e.g., id.* arts. 4.2, 4.8.

65. *See, e.g., id.* art. 2.

66. *See* Daniel Bodansky, *The Legal Character of the Paris Agreement*, 25 REV. EUR. COMP. & INT’L ENVTL L. 142, 145 (2016).

67. *See* Michael D. Ramsey, *Evading the Treaty Power?: The Constitutionality of Nonbinding Agreements*, 11 FIU L. REV. 371, 386 (2016) (discussing how the Paris Agreement should be categorized partly based on the use of language in the agreement and where binding language was used in comparison to where non-binding language was used).

68. *See id.* at 385–87.

69. Michal Nachmany, Sam Fankhauser, Joana Setzer & Alina Averchenkova, *Global Trends in Climate Change Legislation and Litigation*, LONDON SCH. ECON. & POL. SCI. 5

cases challenging regulation have either strengthened or maintained climate change regulation.”⁷⁰ From an international perspective, the Paris Agreement increased global cooperation and set forth a new framework for climate change analysis.

However, on June 1, 2017, President Donald Trump announced his intention to withdraw from the Paris Agreement noting that the agreement “subject[s] our citizens to harsh economic restrictions and fails to live up to our environmental ideals.”⁷¹ While countries like Italy, Brazil, France, and Germany made progress in reducing their greenhouse gas emissions under the Paris Agreement framework and in solidifying themselves as global leaders in combatting climate change,⁷² the United States has essentially announced its intention to relinquish its seat at the head of the international table. President Trump’s administration sent its notice to the United Nations to share “the U.S. intent to withdraw from the Paris Agreement as soon as it is eligible to do so, consistent with the terms of the Agreement.”⁷³

The administration noted in its withdrawal that “[t]he United States will continue to participate in international climate change negotiations and meetings, including the 23rd Conference of the Parties (COP-23) of the UN Framework Convention on Climate Change, to protect U.S. interests and ensure all future policy options remain open to the administration.”⁷⁴ However, this appearance that the United States wants to remain at the global table and in the international conversation while remaining the sole outsider of this international agreement seems problematic. The decision

(2017), <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2017/04/Global-trends-in-climate-change-legislation-and-litigation-WEB.pdf> [<http://perma.cc/T7W4-D46A>].

70. *Id.*

71. Statement by President Trump on the Paris Climate Accord (June 1, 2017) (transcript available at <https://www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/> [<http://perma.cc/BKG2-3HZX>]).

72. See Jack Loughran, *Paris Agreement: Italy, Brazil, France and Germany Take Lead as Others Fall Behind*, ENGINEERING & TECH. (July 7, 2017), <https://eandt.theiet.org/content/articles/2017/07/paris-agreement-italy-brazil-france-and-germany-take-the-lead-as-others-fail-to-reduce-emissions/> [<http://perma.cc/7CTV-8552>].

73. Press Release, Office of the Spokesperson, Communication Regarding Intent to Withdraw from Paris Agreement, U.S. DEP’T ST. (Aug. 4, 2017), <https://www.state.gov/r/pa/prs/ps/2017/08/273050.htm> [<http://perma.cc/6U9L-RBD2>] [hereinafter *Trump Statement*].

74. *Id.*

creates a situation where the United States would be the only country opposed to the agreement.⁷⁵

Although the Trump administration noted that President Trump “is open to re-engaging in the Paris Agreement if the United States can identify terms that are more favorable to it, its businesses, its workers, its people, and its taxpayers,”⁷⁶ the UNFCCC has announced no such intention to this point. To the contrary, the UNFCCC released a statement responding to the Trump administration’s decision and noted that “[t]he Paris Agreement remains a historic treaty signed by 195 Parties and ratified by 146 countries plus the European Union. Therefore it cannot be renegotiated based on the request of a single Party.”⁷⁷ Without indication of either side budging, the forthcoming official withdrawal from the Paris Agreement seems inevitable.

President Trump made this decision despite pressure from some of the largest United States companies including Facebook, Apple, Google, Intel, Salesforce, and many others.⁷⁸ These companies attempted to reach out and convince President Trump that the Paris Agreement benefitted domestic businesses and the United States economy.⁷⁹ They further noted that remaining in the agreement benefitted the United States economy through stronger competition, market creation and growth, and the reduction of business risks.⁸⁰

In addition, many energy companies including Exxon Mobil, Chevron, BP, and Shell announced their support of the Paris Agreement.⁸¹ Shell CEO Ben van Beurden believes that the United States’ role in the climate change discussion is vital, stating that “the world needs to go through an energy transition to prevent a very significant rise in global temperatures. And we need to be part of that solution in making it happen.”⁸² Despite the pressure by the technology and energy industries, President Trump has not announced any intention to rejoin the agreement without introducing substantial changes to the framework and obligations. However, there are still different options

75. See Lisa Friedman, *Syria Joins Paris Climate Accord, Leaving Only U.S. Opposed*, N.Y. TIMES (Nov. 7, 2017), <https://www.nytimes.com/2017/11/07/climate/syria-joins-paris-agreement.html> [<https://perma.cc/H9WZ-CJLA>].

76. *Trump Statement*, *supra* note 73.

77. *UNFCCC Statement on the US Decision to Withdraw from Paris Agreement*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (June 1, 2017), <https://unfccc.int/news/unfccc-statement-on-the-us-decision-to-withdraw-from-paris-agreement> [<http://perma.cc/59DA-URPN>].

78. See *Business Support for the Paris Agreement*, CTR. FOR CLIMATE & ENERGY SOLUTIONS, <https://www.c2es.org/content/business-support-for-the-paris-agreement/> [<http://perma.cc/BFJ5-42YE>] (last visited July 28, 2018).

79. *Id.*

80. *Id.*

81. Samantha Raphelson, *Energy Companies Urge Trump to Remain in Paris Agreement*, NPR (May 18, 2017, 6:32 PM), <https://www.npr.org/2017/05/18/528998592/energy-companies-urge-trump-to-remain-in-paris-climate-agreement> [<https://perma.cc/PG2Q-D353>].

82. *Id.*

for President Trump to consider regarding withdrawal from or termination of the agreement.

III. WITHDRAWAL/TERMINATION OPTIONS

There are questions as to how President Trump would go about a withdrawal from or termination of the Paris Agreement, because as of now he has only announced his intention to withdraw. Regarding the temporal element of the withdrawal, the Paris Agreement explicitly states that any country wishing to withdraw must wait four years from the date of agreement.⁸³ This would make November 2020 as the soonest the United States could officially withdraw from the agreement.⁸⁴ Also, because the Paris Agreement uses non-binding language for more of its material provisions, unlike those that its predecessors the UNFCCC and the Kyoto Protocol contained, the United States' failure to follow the obligations put in place under the Paris Agreement will not have any ramifications. This means that if President Trump chooses to wait out the specified length, he and the United States would be leaving as per the terms of the agreement itself.⁸⁵

This appears to be the Trump administration's plan: withdrawing in accordance with the official provisions of the agreement. Specifically, the withdrawal letter sent to UN Secretary-General, Antonio Guterres, by UN Representative, Nikki Haley, specifically states that "the United States will submit to the Secretary-General, in accordance with Article 28, paragraph 1 of the Agreement, formal written notification of its withdrawal *as soon as it is eligible to do so*."⁸⁶ This language seems to signify that the withdrawal will be in accordance with the terms of the agreement once the administration is able to withdraw officially.

83. See Paris Agreement, *supra* note 3, arts. 28.1–28.2.

84. See *Trump Is Reportedly Looking for the Quickest Way Out of the Climate Deal*, FORTUNE (Nov. 14, 2016), <http://fortune.com/2016/11/14/donald-trump-paris-climate-change-deal/> [<http://perma.cc/F5QS-7YZN>].

85. See Ethan G. Shenkman, Michael B. Gerrard & Erika Norman, *9 Things to Know About Trump's Paris Agreement Decision*, ARNOLD & PORTER (June 2, 2017), <https://www.arnoldporter.com/en/perspectives/publications/2017/06/9-things-to-know-about-trumps-paris-agreement> [<http://perma.cc/38TY-TRKJ>].

86. Karl Mathiesen, *Trump Letter to UN on Leaving Paris Climate Accord—in Full*, CLIMATE HOME NEWS (July 8, 2017, 10:46 AM), <http://www.climatechangenews.com/2017/08/07/trump-tells-un-intention-leave-paris-climate-accord-full/> [<http://perma.cc/C3SJ-BY3P>] (emphasis added).

However, a couple alternative options exist. Article 28 of the Paris Agreement states that “[a]ny Party that withdraws from the [UNFCCC] shall be considered as also having withdrawn from this Agreement.”⁸⁷ One option is for President Trump to withdraw from the Paris Agreement’s parent treaty, the UNFCCC.⁸⁸ This would expedite the process of withdrawal but may have international ramifications. Such a decision would largely remove the United States from the international discussion regarding global climate change initiatives on a much quicker timeline than that of the current withdrawal procedure set in place by the Paris Agreement, which may be a concern as other countries take on increased global leadership roles.⁸⁹ Also, withdrawal from the UNFCCC would be an aggressive option that may hurt the trust other countries have with the United States going forward.⁹⁰ Although this would still be considered a withdrawal as per the terms of the agreement, there has been no indication that the Trump administration plans to withdraw from the UNFCCC to expedite the process.

A second and even faster process would be to abrogate the agreement entirely and immediately, leaving out of accordance with the terms of the agreement. Such an abrogation may be possible and allowed under Article 50 of the Vienna Convention. Article 50 allows for a party to unilaterally abrogate a treaty outside of the specified notice period “[i]f the expression of a State’s consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State. . . .”⁹¹ There does not seem to be any indication that the Trump administration is contemplating termination under the terms of the Vienna Convention.

However, if there is no basis of corruption or fraud for abrogation and the Trump administration still abrogates the agreement, such a decision would break international law under the laws of the Vienna Convention by failing to withdraw or terminate on specified and allowed grounds. A decision like this from the Trump administration would likely come from a belief that the material commitments make the legal character of the Paris Agreement that of a binding treaty. Supporters of this option would argue that because the agreement brings binding domestic obligations, it must be subject to the advice and consent of the Senate under the United

87. See Paris Agreement, *supra* note 3, art. 28.3.

88. See John Upton, *3 Ways Trump Could Abandon the Paris Climate Pact*, CLIMATE CENT. (Sept. 19, 2016), <http://www.climatecentral.org/news/trump-could-abandon-paris-climate-agreement-20711> [<http://perma.cc/5BL6-BFUC>].

89. See Lisa Friedman, *As U.S. Sheds Role as Climate Change Leader, Who Will Fill the Void?*, N.Y. TIMES (Nov. 12, 2017), <https://www.nytimes.com/2017/11/12/climate/bonn-climate-change.html> [<https://perma.cc/E5AU-DEHB>].

90. See Mathiesen, *supra* note 86.

91. Vienna Convention on the Law of Treaties, *supra* note 53, art. 50.

States Constitution.⁹² Because the Paris Agreement did not go through the advice and consent of the Senate process, the agreement would be unconstitutional. From there, supporters of abrogation would likely regard continuing with prescribed withdrawal terms based on Article 28 to be acting in opposition to the Constitution, and thus immediate abrogation of the agreement is the only remaining solution in accordance with the Constitution. However, there does not seem to be any indication that the Trump administration is considering immediate abrogation, especially as he has left the door open to a potential return to the Paris Agreement if key changes are made to the United States' obligation as a member of the agreement.⁹³

A. Constitutional Basis for Unilateral Presidential Withdrawal

The Constitution provides that the President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.”⁹⁴ However, the Constitution does not mention which branch has the power to withdraw from treaties.⁹⁵ Although the text of the Constitution does not textually clarify the issue regarding the President's ability to withdraw from treaties, there is debate as to why the President should have such withdrawal power.⁹⁶

The belief that the President should have such withdrawal powers, although not explicitly stated in the Constitution, came in part from the Sole Organ Doctrine.⁹⁷ The Sole Organ Doctrine stemmed from a speech John Marshall gave in front of the House of Representatives in 1800 where Marshall “described the President as ‘the sole organ of the nation in its external relations, and its sole representative with foreign nations.’”⁹⁸ Over 130 years later, the Supreme Court of the United States spoke to this idea in the 1936 case *United States v. Curtiss-Wright Export Corporation*.⁹⁹ In this case,

92. U.S. CONST. art. II, § 2.

93. See Donald Trump Says He Might Sign Back Up to a Revamped Paris Accord, THE GUARDIAN (Jan. 27, 2018, 8:38 PM), <https://www.theguardian.com/us-news/2018/jan/28/donald-trump-says-he-might-sign-back-up-to-a-revamped-paris-accord> [http://perma.cc/E73U-S3W3].

94. U.S. CONST. art. II, § 2, cl. 2.

95. See MICHAEL RAMSEY, THE CONSTITUTION'S TEXT IN FOREIGN AFFAIRS 157 (2007).

96. See generally Oona A. Hathaway, *Treaties' End: The Past, Present, and Future of International Lawmaking in the United States*, 117 YALE L.J. 1236, 1326–28 (2008).

97. See Jean Galbraith, *International Law and the Domestic Separation of Powers*, 99 VA. L. REV. 987, 1012 (2013).

98. *Id.*

99. See *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936).

Justice Sutherland reiterated and expanded upon Marshall's theory, noting that "the President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it."¹⁰⁰

Another theory in support of this unilateral withdrawal power, as proposed by Alexander Hamilton, is that it is necessary for the President to have these sorts of powers, as "[a] feeble Executive implies a feeble execution of the government."¹⁰¹ To support this theory, one must look at the actual text of the Article I and II Vesting Clauses alongside the Article III Judicial Power Clause.¹⁰²

Even though the Constitution does not explicitly discuss the withdrawal or termination power regarding treaties, a textual analysis of the introductory language in the Article I and Article II Vesting Clause and the visible textual distinctions may help clarify the issue.¹⁰³ Whereas the Article I Vesting Clause states that "[a]ll legislative Powers *herein granted* shall be vested in a Congress of the United States,"¹⁰⁴ the Article II Vesting Clause regarding the Executive Branch's powers does not contain the same language.¹⁰⁵

Instead, the Executive Vesting Clause notes only that "[t]he executive Power shall be vested in a President of the United States of America"¹⁰⁶ and is not restricted to only the powers "herein granted", unlike the Article I Vesting Clause. As a result, debate existed as to whether the language of the Executive Vesting Clause has left more discretion to the President.¹⁰⁷ This textual difference was important when trying to ascertain presidential powers not explicitly specified. Thus, the independent foreign powers that the President enjoyed, coupled with the legal basis of existing treaties and congressional authority delegated to him/her, should provide a sufficient basis for the president to unilaterally withdraw from, terminate, or introduce new treaties under the Vesting Clause powers granted in the Constitution.

However, counter arguments exist as to this unilateral treaty-making and withdrawal power. For instance, some argue that the Sole Organ Doctrine permits the President to act as a sole representative in international discussion and treaty-making; however, the text of the Constitution makes it clear

100. *Id.*

101. THE FEDERALIST NO. 70 (Alexander Hamilton).

102. See Saikrishna B. Prakash & Michael D. Ramsey, *The Executive Power over Foreign Affairs*, 111 YALE L.J. 231, 256–57 (2001).

103. *Id.*

104. U.S. CONST. art. I, § 1 (emphasis added).

105. U.S. CONST. art. II, § 1.

106. U.S. CONST. art. II, § 1.

107. See Curtis A. Bradley & Martin S. Flaherty, *Executive Power Essentialism and Foreign Affairs*, 102 MICH. L. REV. 545, 553 (2004).

that the President does not have such unilateral power to make treaties without both the advice and consent of the Senate.¹⁰⁸ Therefore, he/she should not have the power to terminate or abrogate a treaty without the advice and consent of the Senate either.¹⁰⁹

*B. The Supreme Court Speaks (Through Silence) to the Issue:
Goldwater v. Carter*

In the past, the Supreme Court has been reluctant to speak on whether or not the President of the United States has the ability to unilaterally withdraw from treaties.¹¹⁰ The legal character of the Paris Agreement plays an important role into whether President Trump should have the ability to unilaterally withdraw from the agreement. If the agreement was viewed solely as a non-binding executive agreement, then there would likely be no issue with a President's unilateral withdrawal. However, the Supreme Court's reluctance to speak on the issue has left the answer unclear.

In 1979, President Jimmy Carter chose to terminate the Mutual Defense Treaty between the United States and the Republic of China.¹¹¹ Following President Carter's decision, Senator Barry Goldwater filed suit in order to gain "a declaration that the President's attempt to terminate unilaterally the treaty with the Republic of China was 'unconstitutional, illegal, null and void,' and that 'any decision of the United States to terminate the [Mutual] Defense Treaty must be made by and with the full consultation of the entire Congress, and with the advice and consent of the Senate, or with the approval of both Houses of Congress.'"¹¹² However, when this case of *Goldwater v. Carter* made it to the Supreme Court, Justice Rehnquist's plurality opinion stated, "I am of the view that the basic question presented by the petitioners in this case is 'political' and therefore nonjusticiable because it involves the authority of the President in the conduct of our country's foreign relations and the extent to which the Senate or the Congress is authorized to negate the action of the President."¹¹³

108. See Luke A. McLaurin, *Can the President "Unsign" a Treaty? A Constitutional Inquiry*, 84 WASH. U. L. REV. 1941, 1980 (2006).

109. *Id.*

110. *Id.* at 1942–43.

111. Edward M. Gaffney, Jr., *Goldwater v. Carter: The Constitutional Allocation of Power in Treaty Termination*, 6 YALE J. INT'L L. 81 (1980).

112. *Id.* at 82 (quoting Complaint for Declaratory and Injunction Relief at 1–2, *Goldwater v. Carter*, 481 F. Supp. 949 (D.D.C. 1979)).

113. *Goldwater v. Carter*, 444 U.S. 996, 1002 (1979).

Justice Rehnquist's belief stems from the political question doctrine, which was later clarified by Justice White and the Supreme Court in 1986. In a 1986 case concerning an agreement entered into between Japan and the Secretary of Commerce, Justice White stated that "[t]he political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch."¹¹⁴

Legal thinkers have since interpreted Judge Rehnquist's opinion as giving the President the power to withdraw from treaties unilaterally or to do so without court interference.¹¹⁵ Further, in 2002, President George W. Bush unilaterally withdrew from the 1972 Senate-ratified Anti-Ballistic Missile Treaty without interference.¹¹⁶ Thus, a similar line of reasoning may keep the Supreme Court from intervening in President Trump's unilateral withdrawal, as it may resemble the political question that the Supreme Court in *Goldwater v. Carter* chose not to interfere with.

However, President Trump's withdrawal from the Paris Agreement does differ from both President Carter's and President Bush's unilateral withdrawals. Unlike the Mutual Defense Treaty, which was in action from 1955-1979,¹¹⁷ and the Anti-Ballistic Missile Treaty, which began in 1972 and ended in 2002,¹¹⁸ President Trump's withdrawal in 2017 came only a year and a half after President Obama signed the Paris Agreement in 2016. This expedited unilateral withdrawal is worth another look by the courts.

C. *The Legal Standards and Framework for International Agreements*

The international standards for treaty withdrawal must also be weighed to determine whether President Trump's actions regarding the Paris Agreement will have lasting ramifications in international law context. The standard

114. *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986).

115. Guy M. Miller, *Treaty Termination Under the United States Constitution: Reassessing the Legacy of Goldwater v. Carter*, 27 N.Y.U. J. INT'L L. & POL. 859, 868 (1995).

116. See Emily K. Penney, *Is That Legal?: The United States' Unilateral Withdrawal from the Anti-Ballistic Missile Treaty*, 51 CATH. U. L. REV. 1287, 1288 (2002).

117. Walter C. Clemens, Jr., *It Takes Two to Tear It Up; Congress and the President Share the Responsibility*, WASH. POST (Aug. 5, 2001), https://www.washingtonpost.com/archive/opinions/2001/08/05/it-takes-two-to-tear-it-up/aba0ee19-c3ca-4467-9672-3476c27a6fef/?utm_term=.2bed0c049c47 [<http://perma.cc/K3KA-NE86>].

118. See Terence Neilan, *Bush Pulls Out of ABM Treaty; Putin Calls Move a Mistake*, N.Y. TIMES (Dec. 13, 2001), <http://www.nytimes.com/2001/12/13/international/bush-pulls-out-of-abm-treaty-putin-calls-move-a-mistake.html> [<http://perma.cc/AR3F-HZWG>].

that governed international agreements was the Vienna Convention on the Law of Treaties.¹¹⁹

Although the United States was not a ratified party to the Vienna Convention, it was a signatory, and it relied on the Vienna Convention to guide understandings of international law.¹²⁰ Under the law of the Convention, a party's obligation as part of a treaty may be invalidated and terminated for multiple reasons including error, fraud, corruption, coercion, and breach among others.¹²¹ It does not seem as though President Trump's withdrawal in accordance with the terms of the agreement would fit into any of these categories to allow for abrogation of the agreement. However, if he chose to expedite the process by abrogating the agreement entirely, this could constitute a violation of international law under the Vienna Convention, Article 18. Specifically, Article 18 of the Vienna Convention notes that "[a] State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty or exchanged instruments constituting the treaty subject to ratification."¹²²

1. International Agreements, Legal Character, and Significance

International agreements can take a variety of forms. They can include a "treaty, convention, agreement, protocol, covenant, charter, statute, act, declaration, concordat, exchange of notes, agreed minute, memorandum of agreement, memorandum of understanding, and modus vivendi."¹²³ However, the distinction between domestic treaties and international treaties is one to be mindful of.¹²⁴ Although the Constitution does not speak to the difference between the dueling terms,¹²⁵ the distinction was codified by the Supreme Court of the United States in the 1982 case of *Weinberger v. Rossi*.¹²⁶ In *Weinberger v. Rossi*, Justice Rehnquist cited the Vienna Convention and noted:

119. See Evan Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 VA. J. INT'L L. 431, 433 (2004).

120. *Id.* at 435.

121. See Vienna Convention on the Law of Treaties, art. 49–53, May 23, 1969, 1155 U.N.T.S. 331.

122. *Id.* at art. 18.

123. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 301 (1987).

124. *Weinberger v. Rossi*, 456 U.S. 25, 34 (1982).

125. MICHAEL D. RAMSEY, *THE CONSTITUTION'S TEXT IN FOREIGN AFFAIRS* 187 (2007).

126. *Weinberger v. Rossi*, 456 U.S. at 34.

The word ‘treaty’ has more than one meaning. Under principles of international law, the word ordinarily refers to an international agreement concluded between sovereigns, regardless of the manner in which the agreement is brought into force. Under the United States Constitution, of course, the word ‘treaty’ has a far more restrictive meaning. Article II, § 2, cl. 2, of that instrument provides that the President ‘shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.’¹²⁷

Legal thinkers have tried to clarify how the public should view these international treaties and agreements. As Professor Michael Ramsey clarified, it is easier to look at many international treaties as “presidential announcements of policy [as they] do not impose material costs upon changes in policy. They do not commit the nation to particular policies for the future, legally or practically.”¹²⁸ However, although they are not all considered binding treaties in the domestic sense, the treaties do reflect the intentions of the United States to act within the boundaries of the proposed agreements, and the treaties are still intended as binding promises in accordance with international law.¹²⁹

Nevertheless, it is more often that international agreements come in the form of executive agreements.¹³⁰ These executive agreements are distinguishable from treaties, as they typically do not require approval from the Senate before being enacted, and thus do not have the same weight of congressional consent behind them as Article II Treaties that have passed through the advice and consent of the Senate.¹³¹

2. *The Classification of the Paris Agreement*

Whether President Trump has the Constitutional authority to withdraw from the Paris Agreement without facing significant repercussions ultimately depends on the legal character and classification of the agreement itself. If the Agreement is regarded as a sole executive order, the binding effects would be limited, and President Trump would likely have the power to withdraw unilaterally. However, due to the binding elements of the agreement and the previous Senate authorization of its parent treaty (the UNFCCC),

127. *Id.* at 29–30.

128. RAMSEY, *supra* note 125, at 188.

129. *See generally, id.*

130. *See* MICHAEL GARCIA, CONG. RES. SER., RL32528, INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECT UPON U.S. LAW 4 (2015), <https://fas.org/sgp/crs/misc/RL32528.pdf> [<http://perma.cc/48B8-4P6Q>] (stating that “the great majority of international agreements that the United States enters into are not treaties but executive agreements—agreements entered into by the executive branch that are not submitted to the Senate for its advice and consent”).

131. *See* Oona A. Hathaway, *Presidential Power over International Law: Restoring the Balance*, 119 YALE L.J. 140, 181 (2009).

unilateral withdrawal or termination would be more difficult for President Trump. There are multiple conflicting theories about the classification of the Paris Agreement; however, an underreported alternative utilized often by the Obama Administration in the past may provide the best analytical framework through which the Paris Agreement should be evaluated.

a. The Paris Agreement as a Nonbinding Sole Executive Agreement

The most common interpretation of the Paris Agreement is that it is a sole executive and nonbinding agreement. Sole executive agreements are the product of a President making an agreement alone, held in check by his constitutional powers.¹³² Sole executive agreements are enacted without the consent and advice of the Senate, and thus are not allowed to impose binding domestic obligations.¹³³ These agreements are believed to have the most legal force when they relate to issues of military, recognition of a foreign government, settlement of international claims or when the President acts in accordance with express or implied Congressional authorization.¹³⁴ Contrarily, when the President's decision is directly in contrast "with the expressed or implied will of Congress, [the President's] power is at its lowest ebb."¹³⁵

The belief that the Paris Agreement should be viewed as a sole executive agreement stems from the fact that President Obama did not send the agreement to the Senate for approval, and would have been unlikely to find support had he done so.¹³⁶ Additionally, this theory is supported by proponents under the belief that the Paris Agreement imposes no truly binding norms. Without imposing such norms, agreement without Congressional approval would be acceptable. However, this is not the best way to analyze

132. *Id.* at 211.

133. *See id.*

134. *See* *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring) ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth), to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power.").

135. *Id.* at 637.

136. *See generally* Noah Feldman, *The Paris Accord and the Reality of Presidential Power*, BLOOMBERG (June 2, 2017, 10:00 AM), <https://www.bloomberg.com/view/articles/2017-06-02/trump-paris-climate-change-and-constitutional-realities> [<http://perma.cc/9QXJ-NFQ7>].

the legal character of the agreement because it fails to account for the previous Senate approval the parent treaty received, and thus should provide more force behind the Paris Agreement.

b. The Paris Agreement as a Nontreaty Agreement with Binding Elements

Another potential classification for the Paris Agreement is an agreement with some binding elements, yet one not considered a binding treaty as a whole. Professor Michael Ramsey argued that the Paris Agreement should have been classified as a nonbinding agreement with binding elements based on the structural make-up of the agreement.¹³⁷ Specifically, Professor Ramsey looked at both the language and the procedural elements that weighed in favor of a binding status.¹³⁸ However, because the agreement contained both binding and nonbinding terminology, depending on the parties and specific provisions, classification was difficult. The classification ultimately relies on the subjective weighing of the binding and nonbinding factors.¹³⁹ Specifically, Professor Ramsey analyzed the framework of the Paris Agreement to illustrate the potential dangers of leaving ambiguity as to the binding or nonbinding nature of international commitments—as it may leave the door open to executive vagueness in the future when implementing executive agreements similar to the Paris Agreement.¹⁴⁰

c. The Paris Agreement as a Binding Treaty with Domestic Obligations

Some have made the argument that the Paris Agreement has more elements and obligations indicative of an Article II Treaty, and thus should have been submitted to the Senate prior to enactment. This argument rests on the language used and requirements identified in the agreement itself, specifically “[t]he commitments made pursuant to the agreement are significant, open-ended, and legally binding on the United States, seemingly in perpetuity.”¹⁴¹ Additionally, the five-year reporting requirement proposed under the Paris Agreement is viewed by some as an obligation worthy of regarding the Paris Agreement as a binding treaty.¹⁴² If the agreement was a binding treaty imposing future obligations, then President Trump’s administration could

137. Michael D. Ramsey, *Evading the Treaty Power?: The Constitutionality of Nonbinding Agreements*, 11 FIU L. REV. 371, 385 (2016).

138. *See id.*

139. *See id.*

140. *See id.* at 386.

141. Steven Groves, *The Paris Agreement Is a Treaty and Should Be Submitted to the Senate*, HERITAGE FOUND. (Mar. 15, 2016), <http://www.heritage.org/environment/report/the-paris-agreement-treaty-and-should-be-submitted-the-senate> [<http://perma.cc/XU9J-G3X8>].

142. *Id.* at 7.

withdraw from the treaty under the theory that it is inconsistent with the Constitution.¹⁴³ However this does not seem to be the case, as nowhere in the adoption of the Paris Agreement was there any advice or consent by the Senate. Thus, the Paris Agreement does not seem to be an entirely binding treaty with domestic obligations on the United States. Any such “treaty” that did not go through the advice and consent of the Senate requirement would be unconstitutional, and thus may present an opportunity for abrogation by the President.

d. The Paris Agreement as an Executive Agreement+

However, there is an alternative option for consideration as proposed by the Obama Administration. This alternative classification is referred to by some legal thinkers as an Executive Agreement+ (EA+).¹⁴⁴ An EA+ is a categorization of executive agreements that does not fit neatly into the current understanding of international agreement formation. An EA+ enactment rests on congressionally approved policies that are already in place, and such agreements are consistent with and further these policies.¹⁴⁵ Additionally, these agreements must

be capable of implementation on the basis of existing federal law. They cannot be used by the President to change an existing statute or extend the executive’s domestic authority. Second, EA+ are appropriate only as a complement to existing domestic measures, in order to address the transnational aspects of a problem.¹⁴⁶

According to Professor Bodansky and Professor Peter Spiro, the Obama Administration had already introduced multiple EA+ before signing on to the Paris Agreement.¹⁴⁷ In at least three separate instances the Obama administration entered into agreements which, based on past conceptions, would be viewed as sole-executive agreements; instead, these agreements have served as a structural framework for future agreements based on related legislative authority.¹⁴⁸ The connective fiber between these agreements was that they were all based on a pre-existing law authorized by Congress.

143. See MICHAEL RAMSEY, *THE CONSTITUTION’S TEXT IN FOREIGN AFFAIRS* 168–70 (2007).

144. See Dan Bodansky & Peter Spiro, *Executive Agreements +*, 49 *VAND. J. TRANSNAT’L L.* 885, 886–87 (2016).

145. *Id.* at 887–88, 897–98.

146. *Id.* at 915.

147. *Id.* at 908, 910–11.

148. See *id.* at 907.

Professors Bodansky and Spiro interpreted, “[i]f Congress asks the President to work with other countries to establish effective international standards, and the standards that the president negotiates are consistent with existing U.S. law, the President is acting in alignment with Congress, rather than in opposition to it.”¹⁴⁹

When analyzing the Paris Agreement, multiple factors weigh in favor of Professor Bodansky’s and Professor Spiro’s EA+ classification rather than a strict sole executive agreement.¹⁵⁰ First, Professor Bodansky and Professor Spiro noted the procedural nature of the Paris Agreement is distinguishable from the flat line binding emissions standards proposed in the Kyoto Protocol, which were struck down handily by the Senate.¹⁵¹ Instead, the requirements of submitting reports and conducting international review seem to fit under the aforementioned ‘Sole Organ’ theory of the President.¹⁵² Second, because the Paris Agreement builds on the framework established by the Senate-supported UNFCCC, there is reason to believe that the necessary Senate support is in place and thus the Paris Agreement should be regarded as an EA+.¹⁵³ Legal support for the enforcement of the Paris Agreement stems from the previous Senate approval of the UNFCCC Article II treaty. Third, the Paris Agreement should be categorized as an EA+ based on the fact it complements current existing law by addressing an issue which the Senate has previously voiced support in favor of.

Critics of Professor Bodansky’s and Professor Spiro’s approach have noted this may be a slight mischaracterization rather than a uniquely novel and new invention by the Obama Administration.¹⁵⁴ Additionally, critics have noted the difficulty an EA+ poses due to the general inability to determine whether there is existing legal basis for an EA+ classification.¹⁵⁵ Professors Bradley and Goldsmith looked at the Minamata Convention of Mercury signed as an international agreement by President Obama in 2013 and noted that this agreement was problematic for EA+ classification for two major reasons. They argued the agreement, concerned with the production, use, and disposal of mercury, was neither acknowledged as within the President’s

149. *See id.* at 909.

150. *See id.* at 917–19.

151. *See id.* at 917–18.

152. *See id.* at 916–18.

153. *See id.* at 918–19.

154. *See* David A. Wirth, *Executive Agreements Relying on Implied Statutory Authority: A Response to Bodansky and Spiro*, 50 VAND. J. TRANSNAT’L L. 741, 743 (2017).

155. Curtis A. Bradley & Jack L. Goldsmith, *Presidential Control Over International Law*, 131 HARV. L. REV. 1201, 1217 (2018) (“The Executive Agreements+ example highlights how opaque the process is for making international agreements without congressional input. The Obama Administration concluded the Minamata Convention without offering any clear public explanation of the precise legal basis for the agreement.”).

authority to conclude sole executive agreements nor did the Obama Administration claim that Congress actually authorized the Convention.¹⁵⁶ Bradley and Goldsmith concluded the low requirements for EA+ classification ultimately make it difficult to determine whether an agreement is ultimately in support of existing federal law, and thus EA+ classification is riddled with vagueness and secrecy.¹⁵⁷

However, Professor David Wirth voiced support in favor Professor Bodansky's and Professor Spiro's classification. Professor Wirth noted that the analogous procedural requirements found in the UNFCCC Article II Treaty and the Paris Agreement served as a domestic legal authority which bestowed the United States the ability to introduce such commitments without explicit congressional or Senate approval.¹⁵⁸ Ultimately, this new classification is better for international agreements as the classification provides more flexibility for agreements aimed at supporting a pre-existing, congressionally approved goal. In the case of the Paris Agreement, an EA+ classification would be proper based on the pre-existing legislative support found in the UNFCCC.

3. *Domestic Deference to International Obligations?*

Some argue the Paris Agreement imposes domestic obligations on United States citizens.¹⁵⁹ However, because one of the goals behind the Paris Agreement was to encourage collaborative efforts to tackling climate change,¹⁶⁰ there were no specifications for how to impose penalties for failing to meet the agreement's standards.¹⁶¹ The Supreme Court had taken steps in the past to clarify what sort of effect international executive agreements have in domestic law.¹⁶² Particularly, the Supreme Court noted that "not all international law obligations automatically constitute binding federal law enforceable in United States courts."¹⁶³ Additionally, the Court has established that "absent a clear and express statement to the contrary, the procedural rules of the forum [s]tate govern the implementation of the treaty in that

156. *Id.* at 1216.

157. *Id.* at 1263.

158. Wirth, *supra* note 154, at 747.

159. *See* Groves, *supra* note 141.

160. *Id.*

161. *Paris Climate Agreement Q&A*, CENTER FOR CLIMATE AND ENERGY SOLUTIONS: INTERNATIONAL (June 2017).

162. *Medellin v. Texas*, 552 U.S. 491, 504 (2008).

163. *Id.*

[s]tate.”¹⁶⁴ Similarly here, the Paris Agreement cannot constitute binding federal law over individuals and citizens in the United States without passing through the proper channels of ratification and congressional approval.

However, a withdrawal from the Paris Agreement does not stop and has not stopped states and individual citizens from exercising their own sovereignty and remaining committed to the provisions put in place by the Paris Agreement.¹⁶⁵ Rather, there are currently efforts for what some have recognized as “shuttle diplomacy” where international leaders have had discussions with state leaders in order to continue efforts to combat the international problem.¹⁶⁶ These communications and discussions have allowed for “states and local communities [to] join forces, develop and share information and expertise, and work across jurisdictions with the help of facilitators such as academic institutions and other partners to move forward in the absence of federal leadership and partnership.”¹⁶⁷ Thus, this state and local community action taken in the aftermath of President Trump’s withdrawal from the Paris Agreement creates an interesting discussion on how the goals can be achieved going forward.

Waiting the required length as specified by the terms of the agreement and withdrawing unilaterally seems to be the likeliest option by the Trump Administration. The Trump Administration would likely not violate international law by waiting pursuant to specified withdrawal provisions of the agreement. Further, the Trump Administration would still gain the benefit of membership as part of the parent treaty, the UNFCCC. There is historical precedent for unilateral presidential withdrawal from an international agreement as per the terms of the agreement.¹⁶⁸ In 2001, President Bush unilaterally withdrew from the Anti-Ballistic Missile Treaty the United States had previously made.¹⁶⁹ However, because the text of the agreement provided a broad termination provision that a party could withdraw “if [the party] decides that extraordinary events, related to the subject matter of this [t]reaty, have jeopardized [the party’s] supreme interests,”¹⁷⁰ President Bush’s withdrawal satisfied the terms of the agreement and provides a

164. *Id.* at 517 (quoting *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 351 (2006)).

165. Max Greenwood, *20 states, 50 cities sign pledge to abide by Paris agreement even if US withdraws*, THE HILL: ENERGY & ENVIRONMENT (Nov. 11, 2017, 11:22 AM), <http://thehill.com/policy/energy-environment/359910-20-states-50-cities-sign-pledge-to-abide-by-paris-agreement-even-if> [<http://perma.cc/2XMX-S3EF>].

166. Vicki Arroyo, *State and Local Climate Leadership in the Trumpocene*, 11 CARBON & CLIMATE L. REV. 303, 306 (2017).

167. *Id.* at 310.

168. *See Kucinich v. Bush*, 236 F. Supp. 2d 1, *2–3 (D.D.C. 2002).

169. *Id.*

170. *See Miller, supra* note 115, at 1301.

model for what may be a simple and straightforward means of withdrawal for President Trump.

The drawback to waiting is timing. The United States could officially withdraw from the Paris Agreement, as per the terms of the agreement, in November 2020.¹⁷¹ This may not be appealing to the Trump Administration, as it would take effect following the next United States presidential election. Because potentially leaving such a large decision up to the next president may not lend itself to accomplishing the Trump Administration's goals, it is not unreasonable to believe that the Trump Administration may try to expedite the process through one of the aforementioned means of expedited withdrawal or abrogation.¹⁷²

IV. RAMIFICATIONS OF WITHDRAWAL FROM THE PARIS AGREEMENT

Although there are a few different means by which President Trump and his administration may pursue withdrawal from the agreement, some of the ramifications look similar regardless of the route taken.

One of the largest potential ramifications of President Trump's actions is the enormous gap left at the international table regarding global leadership and approaches to combatting climate change.¹⁷³ Without participation from the United States, many climate initiatives pushing for renewable energy, energy efficiency, forest conservation, and other projects that reduce greenhouse gas emissions are less likely to succeed due to less spending.¹⁷⁴ Without contributions from the United States, which totaled about \$2.4 billion committed to climate finance in 2014, other industrialized countries would have a greater responsibility to act as a global leader.¹⁷⁵ But the burden does not apply solely to the industrialized countries. Another fear is that without

171. See Robinson Meyer, *Trump and the Paris Agreement: What Just Happened?: The United States affirmed it's definitely leaving the treaty—but not yet.*, THE ATLANTIC: SCIENCE (Aug 4, 2017), <https://www.theatlantic.com/science/archive/2017/08/trump-and-the-paris-agreement-what-just-happened/536040/> [http://perma.cc/4M6U-PECC].

172. See REUTERS, *supra* note 84.

173. See Simon Reich, *The end of America's global leadership?*, CONVERSATION (July 1, 2017, 10:24 PM), <http://theconversation.com/the-end-of-americas-global-leadership-78736> [http://perma.cc/R7Y4-FH3M].

174. See Johannes Urpelainen, *Trump's withdrawal from the Paris agreement means other countries will spend less to fight climate change*, WASH. POST (Nov. 21, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/11/21/trumps-noncooperation-threatens-climate-finance-under-the-paris-agreement/?utm_term=.4d7b78485349 [http://perma.cc/K7TE-CBTX].

175. *Id.*

a strong and unified global leadership from the industrialized global superpowers, developing countries will be less likely to support climate proposals from the global powers in the future.¹⁷⁶

Without the participation of the United States, China would likely fill the gap regarding climate change and trade.¹⁷⁷ Just days after President Trump's withdrawal announcement, a meeting took place in Beijing in which "China launched a number of initiatives to advance clean energy and announced partnerships with other governments [to take aim at combatting] climate change."¹⁷⁸ While explaining China's continued commitment to the Paris Agreement amidst the Trump Administration's withdrawal announcement, China's Foreign Ministry spokeswoman Hua Chunying noted that "[c]limate change is a global challenge. No [country] can place itself outside of this."¹⁷⁹

In addition to the launched initiatives, China and India have already shifted to investing in solar and wind energy as renewable energy sources.¹⁸⁰ As of May 2017, China has cut coal use for three years in a row and has opted to avoid opening numerous new coal power plants.¹⁸¹ With China's coal use dropping by almost ten percent since 2005 and increased reliance on non-fossil fuels, China is asserting itself at the forefront of the international conversation on climate change.¹⁸² Along with China and India, France and the United Kingdom have taken increased steps at the global leadership table to account for the United States' absence. France has introduced a plan to close all coal-fired power plants by 2021, while the UK has doubled its contributions to the Intergovernmental Panel on Climate Change (IPCC).¹⁸³ These steps show that without the United States'

176. *Id.*

177. See Carol Morello & John Wagner, *As the U.S. leaves Paris climate accord, some see shifts in global leadership*, WASH. POST (June 1, 2017), https://www.washingtonpost.com/world/national-security/as-the-us-leaves-paris-climate-accord-some-see-shifts-in-global-leadership/2017/06/01/4c916554-4634-11e7-a196-a1bb629f64cb_story.html [http://perma.cc/5ZSH-4WM8].

178. Justin Worland, *It Didn't Take Long for China to Fill America's Shoes on Climate Change*, TIME (June 8, 2017), <http://time.com/4810846/china-energy-climate-change-paris-agreement/> [http://perma.cc/YVD2-2V6H].

179. *Ahead of Trump Decision, China Says it Will Stick to Paris Climate Deal*, REUTERS (June 1, 2017, 12:31 AM), <https://www.reuters.com/article/us-usa-climatechange-china/ahead-of-trump-decision-china-says-it-will-stick-to-paris-climate-deal-idUSKBN18S43Q> [http://perma.cc/QPR3-EYH8].

180. *China and India Make Big Strides on Climate Change*, N.Y. TIMES: OPINION (May 22, 2017), <https://www.nytimes.com/2017/05/22/opinion/paris-agreement-climate-china-india.html> [http://perma.cc/Q9KU-GSK3].

181. *Id.*

182. See Xinhua, *Spotlight: China reasserts itself responsible player at Bonn climate talks*, NEW CHINA (Nov. 18, 2017), http://news.xinhuanet.com/english/2017-11/18/c_136762725.htm [http://perma.cc/3NAE-TBFZ].

183. Markus Wackett, *France and UK vow to make up for Trump's withdrawal of climate change funding*, INDEPENDENT (Nov. 15, 2017), <http://www.independent.co.uk/news/>

participation, the international community will rise to recognize and combat the threat of climate change, to the detriment of the United States' international reputation.

The withdrawal also impairs the United States' ability to engage in collaborative international efforts resulting from the Paris Agreement. Following President Trump's decision, Australian Prime Minister Malcolm Turnbull,¹⁸⁴ Canadian Prime Minister Justin Trudeau,¹⁸⁵ and UK Prime Minister Theresa May¹⁸⁶ all voiced disapproval of the regressive steps President Trump took and reiterated their respective country's commitment to the terms of the Paris Agreement.

V. WHERE DO WE GO FROM HERE: A RECOMMENDATION

There are a few options that may be better for President Trump. The first and best option for environmental progress would be to remain in the Paris Agreement. Withdrawing from the agreement hurts the nation on environmental, political, and economic levels. President Trump and his administration should remain in the Paris Agreement for multiple reasons.

First, there is already public support that weighs in favor of remaining in the agreement.¹⁸⁷ According to a national poll by the Yale Program on Climate Change Communication, by a 5 to 1 margin, voters said that the United States should remain as a member of the agreement.¹⁸⁸ Additionally, in

world/europe/trump-climate-change-funding-france-uk-vow-make-up-money-paris-agreement-a8057546.html [http://perma.cc/Y8UU-NVP8].

184. Louise Yaxley, *Donald Trump's decision 'disappointing' but Australia still committed to Paris agreement, Malcolm Turnbull says*, AUSTL. BROADCASTING CORP. (June 1, 2017), <http://www.abc.net.au/news/2017-06-02/donald-trump-paris-deal-decision-disappointing-say-turnbull/8582696> [http://perma.cc/K3CK-GH6B].

185. Peter Zimonjic, *Trudeau tells Trump Canada is Disappointed by Withdrawal from Paris Climate Deal*, CBC NEWS (June 1, 2017), <http://www.cbc.ca/news/politics/trudeau-mckenna-trump-paris-deal-1.4142211> [http://perma.cc/A7FW-M2B9].

186. Heather Stewart, *Theresa May speaks out against Trump climate change stance at UN*, GUARDIAN (Sept. 20, 2017), <https://www.theguardian.com/politics/2017/sep/20/theresa-may-speaks-out-against-trump-climate-change-stance-at-un> [http://perma.cc/7KCS-TTP5].

187. Ed Maibach, Anthony Leiserowitz & Jennifer Marlon, *Should the U.S. Stay in the Paris Agreement?*, US NEWS (June 1, 2017), <https://www.usnews.com/news/best-countries/articles/2017-06-01/a-bipartisan-majority-thinks-the-us-should-stay-in-the-paris-agreement> [http://perma.cc/FVA6-4QLP].

188. Jennifer Marlon, Eric Fine, & Anthony Leiserowitz, *Majorities of Americans in Every State Support Participation in the Paris Agreement*, 2017 YALE PROGRAM ON CLIMATE

response to President Trump’s denouncement of the Paris Agreement and while noting that he “was elected to represent the citizens of Pittsburgh, not Paris,” Pittsburgh Mayor Bill Peduto quickly responded that “Pittsburgh stands with the world & will follow Paris Agreement.”¹⁸⁹ Mayor Peduto’s statements along with the overwhelming public support show that this is a serious issue for passionate voters and state leaders.

Second, the United States remaining on the outside of such a global movement will ultimately hurt the United States’ standing as a global leader in the climate change discussion. Remaining on the outside of this global movement would set a bad precedent going forward for global climate cooperation.¹⁹⁰ The gap left by the United States also creates an opening for other countries to come together to realign the power structure regarding climate initiatives and programs going forward.¹⁹¹

Third, remaining in the Paris Agreement would be better for the United States economy, according to some of the largest job creators, by “strengthening competitiveness, creating jobs, markets, and growth, and reducing business risks.”¹⁹² Remaining in the agreement would benefit the United States economically by promoting growth in clean energy areas. Already, the United States has witnessed more jobs being produced by cleaner energy companies. The natural gas, solar, and wind industries employ over 838,000 workers, compared to that of the coal industry, which employs roughly 160,000 workers.¹⁹³

However, if the Trump Administration continues with the withdrawal plan, the best remaining option for tackling the global issue going forward is for states to continue to follow the guidelines of the Paris Agreement—

CHANGE COMM ¶¶ 1, 4, http://climatecommunication.yale.edu/publications/paris_agreement_by_state/ [<http://perma.cc/2S9G-5JWW>].

189. Sean Rossman, *Pittsburgh mayor to Trump: Um, actually we’re pro-Paris Climate Agreement*, USA TODAY (June 1, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/06/01/pittsburgh-mayor-calls-out-trump-paris-climate-agreement-speech/363466001/> [<http://perma.cc/U428-PL3D>].

190. See Hai-Bin Zhang, Han-Cheng Dai, Hua-Xia Lai, & Wen-Tao Weng, *U.S. Withdrawal from the Paris Agreement: Reasons, Impacts, and China’s Response*, 8 ADVANCES CLIMATE CHANGE RES. 220, 222 (2017), <https://www.sciencedirect.com/science/article/pii/S1674927817301028> [<http://perma.cc/XNE8-5MUL>].

191. See David Sanger and Jane Perlez, *Trump Hands the Chinese a Gift: The Chance for Global Leadership*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/us/politics/climate-accord-trump-china-global-leadership.html> [<http://perma.cc/TV5T-3H9E>].

192. Alanna Petroff, *CEOs Make a Final Urgent Plea: Don’t Pull Out of Paris Accord*, CNN (June 1, 2017), <http://money.cnn.com/2017/06/01/news/trump-paris-climate-deal-business-ceo/index.html> [<http://perma.cc/TAA4-H3LL>].

193. DEPT. OF ENERGY, U.S. ENERGY AND EMPLOYMENT REPORT 29 (2017), https://www.energy.gov/sites/prod/files/2017/01/f34/2017%20US%20Energy%20and%20Jobs%20Report_0.pdf [<http://perma.cc/7VHP-9WCG>].

even without the United States as a signed party of the agreement.¹⁹⁴ Since June 2017, according to the *We Are Still In Campaign*, “more than 2,500 leaders from America’s city halls, state houses, boardrooms, and college campuses, representing more than 130 million Americans and \$6.2 trillion of the U.S. economy have signed the *We Are Still In* declaration.”¹⁹⁵ In addition to the *We Are Still In* campaign, a group called *America’s Pledge*, run by former New York City Mayor Mike Bloomberg and California Governor Jerry Brown, likewise reaffirmed their commitment to the guidelines of the Paris Agreement noting that

The group of American cities, states, and businesses who remain committed to the Paris Agreement represents a bigger economy than any nation outside the U.S. and China. Together they are helping deliver on the promise of the agreement and ensuring the U.S. remains a global leader in the fight against climate change. In Paris, the U.S. pledged to measure and report our progress reducing emissions alongside every other nation. Through America’s Pledge, we’re doing just that, and we’re going to continue to uphold our end of the deal, with or without Washington.¹⁹⁶

These movements by students, teachers, parents, politicians, and business leaders have great force behind them. There is legal precedent for states having the freedom to take on increased responsibilities and roles on global issues like this. As Justice Brandeis noted over eighty years ago in *New State Co. v. Liebermann*, “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹⁹⁷

With states, businesses, organizations, and most importantly, concerned citizens taking up the mantle for continuing the goals set in place by the Paris Agreement, the UNFCCC, and other agreements aimed at combatting

194. See Allison H. Ross & Meghan V. Brown, *Environmental Federalism: Individual States, Cities, and Businesses Vow to Combat Climate Change*, 59 ORANGE COUNTY LAW. 36, 38 (2017).

195. *Declaration, WE ARE STILL IN*, <https://www.wearestillin.com/we-are-still-declaration> (last updated Summer 2018) [<http://perma.cc/KP9G-QV7H>].

196. Press Release, *America’s Pledge*, *America’s Pledge Co-Chairs Mike Bloomberg and Governor Jerry Brown Reaffirm U.S. Commitment to Paris Agreement on Climate Change*, Present Report on U.S. Climate Action at UN Talks (Nov. 11, 2017), <https://www.americaspledgeonclimate.com/news/americas-pledge-co-chairs-mike-bloomberg-governor-jerry-brown-reaffirm-u-s-commitment-paris-agreement-climate-change-present-report-u-s-climate-action-un-talks/> [<http://perma.cc/LCQ4-5XZ7>].

197. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

climate change, the international framework introduced over two decades ago remains steady in the face of uncertainty.

But the growing realization is that unless the terms of the agreement are restructured in a way that caters to President Trump's demands, the Trump Administration will not return to the Paris Agreement. Therefore, the recommendation for supporters of the goals of the Paris Agreement is for states, cities, businesses, and individuals to continue to follow the goals and guidelines of the Paris Agreement.

VI. CONCLUSION

There are three key takeaways worth noting. First, due to the previous existing legislative history subject to the Senate's approval, the Paris Agreement should be understood as an Executive Agreement+. The agreement compliments the existing legislative support and would expedite the process for the president to implement agreements complementary to existing congressionally supported initiatives. This classification would open the door to more executive agreements based on pre-existing legislative authority, and may revolutionize the way executive agreements are made going forward. An Executive Agreement+ classification would also entitle the Paris Agreement to receive more protection and authority based on its pre-existing Senate authorization from the UNFCCC. Second, if President Trump chooses to withdraw as per the terms of the agreement, it is likely that such withdrawal would be supported by and in line with the Constitution and Supreme Court precedents. There would not be a problem as it is of great national importance to allow the President to unilaterally withdraw from certain non-binding agreements under the Vesting Clause or the Sole Organ Doctrine. However, if President Trump instead decides that the Paris Agreement was entered into unconstitutionally (without the advice and consent of the Senate), then abrogation may be a possible method of termination, but one that would also likely violate international law. Finally, because the United States' status as a party to the Paris Agreement remains in a sort of international legal "purgatory" based on the withdrawal terms and waiting period of the Paris Agreement, there are still ways for concerned citizens, businesses, universities, community heads, and state leaders to encourage the continuation of the guidelines put in place by the Paris Agreement at lower levels. Although these parties would not be official signatories of the agreement, and could not be legally bound by a non-Senate approved international agreement at the domestic level, the intent and framework of the Paris Agreement could survive regardless of the United States' official position as a party member or as an outsider of the agreement.