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Robert Stavins: Welcome to Environmental Insights, a podcast from the Harvard Environmental Economics Program. I'm your host, Rob Stavins, a professor at the Harvard Kennedy School and director of our Environmental Economics Program and our Project on Climate Agreements.

Robert Stavins: On January 20th, Joe Biden will be sworn in as the 46th president of the United States, along with Kamala Harris as vice-president. Changes from one presidential administration to another are, of course, always significant, but sometimes the anticipated changes are not dramatic, such as when the same political party retains the White House. Although I think the last time that happened was the transition in 1988 from Ronald Reagan to George H. W. Bush. But I, for one, do not recall a transition that has represented such dramatic changes in both the style and substance as the transition from President Trump to President-Elect Biden.

Robert Stavins: One of the areas among many others where this will be the case is the realm of environmental, energy, and natural resource policy. And today we are very fortunate to have with us someone who is exceptionally well-qualified to talk about this transition and what we can expect going forward. And that's my longtime colleague, coauthor and friend Richard Revesz, the Lawrence King Professor of Law at New York University, where he was previously Dean, and was the co-founder of the well-known Institute for Policy Integrity. Ricky, welcome to Environmental Insights.

Richard Revesz: Thank you, Rob. It's a real pleasure to be here.

Robert Stavins: So, I'm really interested to hear your impressions, Ricky, about environmental policy, both what we've experienced during the Trump years, and I know you've been watching that really carefully, I follow your writings, and what we can expect during the Biden years. But before we talk about that, let's go back, because I think our listeners will be interested as they always are to hear where you've been, where you've come from, and how you got to be where you are. So let's start with where did you grow up?

Richard Revesz: I grew up in Argentina, and came to the US in the mid-70s when I was 17 to go to college. I went to Princeton, with the intention of going back to Argentina. Now, Argentina at the time was in the middle of the so-called Dirty War, between 10 and 30,000 people were killed through government sponsored violence in a country with a 10th of the population of the United States. And for various reasons, I ended up not going back to Argentina after college, and staying in the US, first going to graduate school in environmental engineering at MIT, and then going to law school.

Robert Stavins: So you actually studied as an undergraduate and then in graduate school, Princeton and MIT, respectively, you were studying engineering.

Richard Revesz: I was, but somewhere along the way, probably my junior year in college, I became more interested in the public policy side of science and technology problems, than in the technical side. I still remained interested in both, so I applied both to graduate school and engineering and law school. I had to stay in school continuously because I was otherwise subject to the draft in Argentina during the Dirty War. And I ended up going to MIT and deferring law school. And while I was at MIT, I came under significant pressure from my advisor to stay and get a PhD, which I actually did consider briefly, but then decided to go ahead with the original plan, because I remained convinced that the public policy side was of more interest to me. And I had decided that for better or worse in the US, the profession that has the greatest impact on public policy in general, tends to be lawyers, with the exception of economists like you Rob. On average, I had decided at the time that it tended to be lawyers.

Robert Stavins: Right. And so I assume you have no regrets about having gone on to Yale Law School then for your degree?

Richard Revesz: I have no regrets at all.

Robert Stavins: And then what was your first job out of school?

Richard Revesz: Well, I was a law clerk for two years. I worked for the chief judge of the US Court of Appeals for the second circuit, which is a federal appellate court in New York. And then I was a law clerk for one year for Justice Thurgood Marshall on the Supreme Court of the United States. And those were all fabulous experiences. And after that, I joined the NYU faculty in 1985. I was only 27. I was, for today's standards, incredibly young. And I've now been on the NYU Law School faculty for 35 years.

Robert Stavins: Now, you said it was a great experience being at the Supreme Court. Is it fair to say that one of the reasons is that's where you met your wife, Vicki Bean?

Richard Revesz: That is definitely one of the reasons. And from a personal perspective, it's the most important reason, but in addition to being a great dating place, it was also a fabulous job. And in addition to putting me in the same building as Vicki, we

started jogging together every afternoon, around five o'clock. We worked incredibly hard. So five o'clock was the middle of our workday. I was also exposed on a daily basis to Justice Marshall, who is a kind of true figure of American history. It's very seldom does one spend a significant amount of time with a historical figure. And he was a historical figure. And working for him was an unbelievable privilege.

Robert Stavins: And is it right that while you were clerking for Thurgood Marshall, that Vicki was clerking for Justice Harry Blackmun?

Richard Revesz: That is right.

Robert Stavins: So both of you had remarkable experiences here.

Richard Revesz: We did. We were very lucky.

Robert Stavins: Okay. Well let's turn to the situation in which we find ourselves now, which is this period of presidential transition. I think it's fair to say that you've been very critical of a number of the Trump Administration's moves, particularly in the regulatory domain. I'm curious, is there anything that you could say positive? You don't have to, but I'm curious, is there anything you could say positive about this administration's actions in the environmental realm?

Richard Revesz: It's very hard to find something positive to say. I mean, if I rack my brain, I'd probably think of something that was inconsequential where they didn't do the wrong thing, but on virtually any significant environmental issue, the Trump Administration was on the wrong side. It was on the wrong side of the legal issues; it was in the wrong side of the economic issues; it was in the wrong side of the scientific issues. And it was really on the wrong side of history.

Robert Stavins: Then with that, let me go to the opposite extreme. There is a long list of bad decisions, and bad initiatives I'm sure you could name, but what's the single worst thing in your mind that this administration has done in the environmental realm? And maybe perhaps one of the ways you might assess that would be that even within effective Biden Administration, the effects will be long-lasting.

Richard Revesz: You know, it's actually hard to think of one thing, but you probably don't want...

Robert Stavins: Well give me a few, or a couple.

Richard Revesz: I'll give you a couple, I'll give you a couple. So, one, on the climate change front, the administration was relentless in its effort to undo the Obama Administration's deregulatory initiatives. On cars, the greenhouse gas vehicle standards for cars promulgated by EPA and their companion, the Department of Transportation CAFE standards, on stationary sources, in their repeal, and then replacement with a toothless regulation of the Obama Administration's efforts to regulate the greenhouse gas emissions of existing power plants, and repeal of

the Clean Power Plan. So those are the two big contributors to greenhouse gas emissions in the United States – cars and power plants. And on both, they turned the dial back very significantly. They also repealed the Obama Administration's regulation of methane emissions of oil and gas installations. And it's not just that they move the dial back so forcefully, is that at a time when our recognition of the gravity of the problem is heightened, and where each passing year is a potential significant lost opportunity, they did nothing to move the ball forward.

Richard Revesz: So it's both the very significant rollbacks, and the four totally wasted years at a time when time is passing in ways that are likely to have very negative effects. So I would put climate change or actions of climate change as one of the really bad outcomes. The other is the disrespect for science and economics. And in some ways, this will be harder for the Biden Administration to deal with, because these are regulations and administrative measures that have across-the-board effect, they apply to everything, not just to greenhouse gas emissions. So for example, the administration has proposed what it calls a strengthening regulatory science regulation, which in essence would make it very difficult for EPA to rely on epidemiological studies, because the underlying data is not made public on public websites, and under the standards that the Trump administration would like to push, it would become impossible to epidemiological studies.

Richard Revesz: No one's going to agree to be the subject of a study where their health data for their whole life is made public on a public website. It would just be an enormous disincentive to participate in such studies. And also the existing studies didn't do that for very good and understandable reasons. And arguably, the Trump measure could get rid of those studies as things that the agency can rely on for future regulatory initiatives. It might also call into question existing regulations. That rule hasn't yet been finalized, but Andrew Wheeler, the EPA Administrator has indicated that he wants to finalize it before the end of the administration. And one of the areas in which the Trump administration has proved to be very reliable is when they promise to do really bad things before the end of the administration, they seem to keep those promises and they've been keeping them in other areas. So I expect we will see this rule come out in the next three weeks.

Richard Revesz: On a rule that actually just did come out earlier this month, the Trump administration has promulgated a new rule for doing cost-benefit analyses of clean air regulations that is designed to call into question the use of co-benefits, which the Trump Administration has done with respect to other regulations. And the cynicism of how the Trump Administration has handled this issue is truly extraordinary. The Trump administration has taken the position that the indirect costs of regulation must be considered and has kind of drawn a very large circle around indirect costs that should be considered, but has argued in some proceedings that the indirect benefits of regulation should be ignored. It did that in removing the finding that the regulation of mercury and other air toxics is appropriate and necessary. So it's basically saying that the indirect

consequence of regulation must be taken into account if they are negative, and should be ignored if there are positive.

Richard Revesz: The standard for review of agency action is the arbitrary and capricious standard of the Administrative Procedure Act. And it's hard to imagine anything more arbitrary and capricious than taking indirect consequences into account that they are negative and ignoring that they are positive. And even there, the Trump Administration in some cases has embraced co-benefits where doing so allowed it to justify deregulatory actions. It did that for the car standards, because it claimed that there were some safety benefits to the car standards. And those are indirect. There are co-benefits, because EPA does not have any jurisdiction at all over the safety of cars. Its jurisdiction extends to reducing the emissions of cars, and while the Department of Transportation does have jurisdiction over car safety, it doesn't under the statutory provision that produces the CAFE standards, that's purely an energy conservation provision. So safety benefits, if any, are indirect. So, when you put that together, we're being told that the Trump Administration is prepared to embrace co-benefits if it leads to deregulation, but it's prepared to ignore them if that makes deregulation easier to justify. So the contradictions are astonishing.

Robert Stavins: Just to emphasize for our listeners, quantitatively how important is what you're saying is that if we think back to what you mentioned before, the Clean Power Plan under the Obama Administration, the regulatory impact analysis for the Clean Power Plan from the Obama Administration – fully 94 percent, 94 percent of the estimated benefits for the year 2030, which is the mean year in the analysis were due to correlated pollutants, in particular PM 2.5, not to climate change risk reductions. That was for the domestic benefits, 94 percent. So it's not just in China. People may not realize this. It's not just in China, it's in many parts of the world, including the United States where the co-benefits are a very important part of the justification of a sensible climate change policy.

Richard Revesz: Definitely.

Robert Stavins: One thing that occurred to me, there is sort of an irony when I asked you for something positive that the Trump Administration has done. I can't say it's something they've done, but it's something positive that's happened during the period of the Trump Administration. And that is that under a statute that got rolled into the COVID relief plan, into that huge piece of legislation is essentially implementation domestically of the Kigali Amendments to reduce hydrofluorocarbons, greenhouse gas, under the Montreal Protocol by 85 percent over a remarkably short period of time.

Richard Revesz: Yes. I mean, that is a positive, although I will give the credit to the US Congress.

Robert Stavins: Yeah. Right.

Richard Revesz: And also for that matter, private industry was 100 percent behind it, since the US private industry is in a good position in terms of the substitute products.

Robert Stavins: So let's get to what is the heart of the matter, which is thinking forward of what's coming as to opposed to what we've been through. And maybe also we can get a little happier as a result. Things are going to change with the new administration. What do you expect are going to be the major impacts of the Biden-Harris Administration given the Congress and the uncertainty over who wins the election today, the senatorial elections in Georgia, what would you expect over the next two to four years to be forthcoming in terms of environmental policy?

Richard Revesz: Well, let's talk about the regulatory side first, and that's where the bulk of the action has been in recent decades. There's been very little environmental legislation during the Obama Administration. The Waxman-Markey Bill ended up failing. And the advances on the greenhouse gas front were done through EPA regulatory authorities under the Clean Air Act. And regardless of what happens in Congress, that must and will continue. And I would say that two of the positive things that I would expect will happen are direct reactions to the two main negative categories I attributed to the Trump Administration. So one is that I am extremely hopeful and very optimistic that the Biden Administration will restore confidence in science and economics, and that these will be taken as serious analytical frameworks, and not as tools to be bent at will to justify the political preferences of the moment.

Richard Revesz: And that is extremely important because I don't think our country could take another four years of the bending of truth without it having very serious long-term repercussions. So we're very lucky that the November election brought that possibility to an end. And the second positive set of actions that I see are on the climate change front. The president-elect and vice president-elect have both signaled that the reduction of greenhouse gases is a very important priority and have extremely ambitious goals. So, they will have to both undo all of the negative actions of the Trump Administration, but also pivot quickly to undertake measures that are significantly more protective than those taken by the Obama Administration. The goal here is not to go back to the Obama Administration status quo because that will not lead to meeting the very ambitious goals set in the campaign. It will be to do significantly more than that.

Richard Revesz: And so, I expect we'll see a continued significant ratcheting down of automobile emissions, including much greater penetration of zero emitting vehicles. And those will have to go beyond 2025, which was the last year covered by the Obama regulations. And we will see very significant work, I assume and hope, on the stationary source side. Even in the Obama Administration, where we ended up with regulations for new oil and gas facilities, we didn't have regulations for existing facilities, which is where a lot of the emissions are. The electric sector will have to be looked at. And then other industrial sectors that have not yet been being gotten attention, like refinery cement plants, will need to get a significant attention. So I see a lot happening on the regulatory side,

regardless of the outcome of today's Senate races in Georgia. Now the races could make a significant difference.

Robert Stavins: Can I ask you first about the regulatory side though, for a second, Ricky?

Richard Revesz: Yes.

Robert Stavins: Something that I've heard, but I want you to correct me, because I'm not a lawyer or a legal scholar, is that the regulatory approach, which as you've said in the environmental realm has become the norm over recent years, that is going to be more difficult during the Biden Administration than it was for example, during the Obama Administration, for two reasons, one being the 220 federal judges appointed by Trump, but the other, the more important, perhaps the 6-3 conservative majority on the Supreme Court and a conservative majority that at least in some cases seems to be very tied toward the literal meaning of statutes, less flexibility to interpret a statute in innovative ways, such as the Clean Air Act, local air pollution title, allowing one to address CO2 a global pollutant. In fact, someone said to me that they thought the Chevron Doctrine, which gives, I guess, deference to agency's interpretations could even be overturned. Is that too pessimistic an assessment, what I just laid out?

Richard Revesz: It's on the pessimistic side, but it might be right actually. I think there are more challenges on the regulatory side than there were in the Obama Administration, as you indicated. But I think that if the Biden Administration does its work right, that is, if it relies on science and economics and careful statute interpretation, it will be able to get most of its regulations through the judicial gauntlet. It doesn't mean that some rule won't be struck down. I mean, that always happens. I mean, and there's an instructive statistic here. Before the Trump Administration, presidential administrations generally won about 70 percent of the cases in which their regulations were challenged in court. They lost 30 percent, but they won 70 percent. That was a historic record. The Trump Administration, only won 17 percent of the cases in which its regulations were challenged in court.

Richard Revesz: And mostly because its work on the statute interpretation area on the economics, on the science, on the justifications was so pathetically terrible. And while they did slightly better with Republican-appointed judges, they lost the bulk of the cases that went to Republican-appointed judges. In fact, I mean, perhaps the most poignant example is an effort by the Trump administration to roll back penalties for violations of the CAFE Standards, sort of dollars per 10th of a mile per gallon penalties. They try to cut them by a factor of three, which was going to create a significant disincentives to actually meeting the standards, and was going to essentially be a kind of rollback of the standards of about a third of what the actual former roll back in the rollback rule took place. So this was not an insignificant effect. That regulation was challenged in the second circuit, the Federal Court of Appeals in New York, and went to a panel of three Trump-appointed judges, not just three Republican judges, but three Trump-appointed judges.

Richard Revesz: It was a very low probability of happening because these panels are set at random. And there was concern among people who thought that the Trump Administration's rollback of these penalties was really bad public policy and illegal, which it was. The Trump Administration lost 3-0 in that panel. So, I think that while on the margin, some cases will come out differently, judges on the whole understand their role, and the fact that the Trump Administration lost most of the cases before went to Republican-appointed judges and lost this one case that I mentioned suggest to me that if the Biden Administration does its work right, which it should, it will prevail in the majority of the cases and we'll be back to kind of a baseline of a 70 percent win rate or something of that sort.

Robert Stavins: Well, that's comforting. So with that, let me take you back to where you were about to go before I interrupted you. And I think you were going to comment on the outlook for legislative action and something about what's happening today in Georgia.

Richard Revesz: Yeah. So, the outlook for legislative action depends on one factor that goes beyond which party effectively controls the Senate. And that is whether the party that controls the Senate is able and willing to get rid of the filibuster for legislation. With the filibuster in play, so I think it's unrealistic that major economy-wide greenhouse gas regulation will take place. I mean, the filibuster is what killed Waxman-Markey, at a time when Democrats had actually close to 60 votes in the Senate, they still could not overcome the filibuster. And with a very thin majority, it's just not possible to come up with enough Republican votes. I mean, I know that people out there say that they're the silent Republican senators who are waiting for the right moment to come out in favor of economy-wide greenhouse gas legislation, but they've been waiting in the silence for a very long time. And I don't see what's different now. I could imagine there being legislation on infrastructure spending, with clean energy components, transmission lines, bringing renewables to where the electricity needs to be used, RND for storage, charging stations for electric vehicles.

Richard Revesz: That I could see because basically both parties are committed to some level of infrastructure spending. And I think that the Biden Administration will be able to push that in clean directions. And if Democrats have an effective control of the Senate, that'll help as well. But in terms of an economy-wide tax and dividend approach, or cap and trade approach, when we have to get rid of the filibuster for this to be viable. And we learned that during the Obama Administration. One concern is that even getting 50 democratic senators and effective control because of the tie breaking role that the vice-president would then play might not be enough to get rid of the filibuster, because it's not clear that every one of the democratic senators would be on board with doing that.

Richard Revesz: And I believe that Senator Manchin from West Virginia indicated that he would not be willing to do that. So, legislation could maybe happen in 2022, if Democrats picked up more Senate seats, they will also have to retain the House for legislation to be possible. But I actually don't think that the next two years

are going to be a time when there is significant greenhouse gas legislation in the US Congress outside of the infrastructure spending realm.

Robert Stavins: What I worry about, and I don't have any inside information to warrant this worry, but what I worry about is that the New Left, the progressives in the House of Representatives, will do the climate version of what Republican majority did in the House of Representatives during the Obama years, with regards to passing the repeal of Obamacare something like 135 times, knowing it wasn't going to go anywhere in the democratic Senate. And that now the democratic House would pass wonderful policies, $2 trillion over four years, all electricity is carbon free within 15 years, in other words the Biden campaign pledges, knowing that they're not going to go anywhere in the Senate, but maybe again, I'm just being cynical.

Richard Revesz: I mean, it could happen. I mean, history would suggest that some of this will happen, because there's always an effort. I think it's more likely to happen if Republicans end up controlling the Senate after today's election. I mean, I think the Democrats in the House would probably be less likely to want to embarrass a democratically-controlled Senate than a Republican-controlled Senate, but some level of blaming the other chamber always takes place, even when the same party controls both.

Robert Stavins: Let me ask you about that then since you mentioned about votes in Georgia today, and the possibility of the Democrats having control. As you said, as you pointed out, as long as the super majority is required for voting in the Senate, it's not going to have a big effect on the promise of climate legislation, but some people say, and I don't know, but some people say that one of the other things that's so important about controlling the Senate is that then you have the leadership, you control what's going to be getting onto the floor, but also you control every one of the committees in the majority in terms of setting priorities and discussion. Is that of great significance or importance?

Richard Revesz: It is a great significance. And we saw that in the Trump Administration where democratic control of the house in the last two years, open investigations, and the impeachment vote of the president. So that would not have happened had Democrats not gotten control of the house in 2018. The other thing that in all the things that you mentioned are actually important and can move the dial in measurable ways, what's perhaps even more important is that there are roughly 1,200 positions in the executive branch, political positions, that require Senate confirmation. And getting all these people confirmed and into their jobs is always a challenge. I mean, it was a challenge for Obama with starting out with 60 Republican senators, but it's always a challenge, but controlling the agenda is very important because that kind of controls the allocation of Senate debate time, which is a hugely valuable commodity.

Richard Revesz: And that's controlled by the Majority Leader. And so, having 50 senators and having Chuck Schumer as Majority Leader is very different than having 49 and having Mitch McConnell as Majority Leader. And so, it's going to be a lot easier

to get hearings and get votes on Biden Administration nominees, if today's election in Georgia results in a democratically-controlled Senate. And it's not just the cabinet members who obviously will come first and are very important, but it's all of the sub-cabinet positions that require Senate confirmation. It's probably a couple dozen positions at EPA that are the positions that actually end up moving things along, the administrator on his or her own is somewhat limited in what he or she can do, but the assistant administrator for air and for water and for toxics, all these are tremendously important positions, and they require Senate confirmation. It's also important to get an early start, I mean, the clock is ticking. It becomes harder to do major regulatory initiatives right before elections. So there's kind of a year in which a lot can be accomplished and it will be slowed down a lot if positions remain vacant.

Robert Stavins: We're almost out of time, but I want to ask you one last thing. I'm interested in your telling me, what's your reaction to what I think has been a new development in the last few years, particularly striking in 2019, and that's these youth movements of climate activism. We've seen it in Europe. We see it in the United States, tremendously different certainly from when I was of that age, but even when my children were of that age. What's your reaction to these youth movements of climate activism?

Richard Revesz: Political participation is very important in our society. And we have been lamenting for decades the fact that young people are empathetic and don't engage in the political process. And for one thing, these youth movements show that we may be at a turning point, that it may be the case that young people are coming to understand the impacts of what older generations have done, and want to take control of the political process and have an impact. And I think greater participation in voting, and in policy development and litigation or whatever form the participation takes is a positive.

Robert Stavins: Well, let's end with that because that's ending on an up note. It makes me feel good. Listen, Ricky, thank you very much for taking time to join us today.

Richard Revesz: Rob, I really enjoyed it. It was a privilege to join you. I've admired this podcast series for a long time, and I was very happy that you invited me to have this conversation.

Robert Stavins: Well, thanks again to our guest today, Ricky Revesz, the Lawrence King Professor of Law at New York University, where he is Dean Emeritus. Please join us for the next episode of Environmental Insights: Conversations on Policy and Practice from the Harvard Environmental Economics Program. I'm your host, Rob Stavins. Thanks for listening.

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