



DENTONS

Andrew Shaw is a partner and Linda J. Willard is counsel at Dentons. Mr Shaw can be contacted on +1 (202) 496 7116 or by email: andrew.shaw@dentons.com. Ms Willard can be contacted on +1 (202) 496 7293 or by email: linda.willard@dentons.com.

Published by Financier Worldwide Ltd
©2024 Financier Worldwide Ltd. All rights reserved.
Permission to use this reprint has
been granted by the publisher.

■ SPECIAL REPORT ARTICLE REPRINT January 2024

Will election-year politics imperil the US Inflation Reduction Act?

BY ANDREW SHAW AND LINDA J. WILLARD

The Inflation Reduction Act (IRA) represents the most significant investment Congress has ever made in addressing climate change. But as we enter election season in the US, the legislation may be a significant part of the looming campaign, which could impact the measure's long-term fate. With high energy prices, congressional Republicans, and leading presidential candidates such as former president Donald Trump, are sharply criticising the IRA, pledging to repeal the climate law. On the other hand, President Joe Biden is placing the IRA at the centre of his 'Bidenomics' pitch, arguing that the law is not only incentivising clean energy deployment but

also creating good-paying industrial jobs and reshoring supply chains back to the US.

Notwithstanding the grand promises of the campaign trail, history teaches us that even if Republicans win both the White House and Congress in November, the prospects of repealing the IRA will be much tougher in practice given the bill's economic impacts, including in conservative districts and states. In some ways, the debate over the future of the IRA bears some resemblance to the Affordable Care Act (ACA), also known as 'Obamacare', another landmark, albeit controversial, bill passed by a Democratic Congress during President Barack Obama's first term. Republicans pledged to repeal the ACA during successive elections, but when they

finally controlled both the White House and Congress after the 2016 elections, their efforts to undo the legislative centrepiece of the Obama presidency fell short.

The passage of the IRA

The IRA provided nearly \$370bn in investments in clean energy. In contrast to other climate change proposals, such as cap-and-trade and clean energy standard's legislation that take a 'stick' approach, the IRA takes a 'carrot' approach by offering tax credits and other incentives for clean energy deployment and the reshoring of domestic manufacturing. The IRA provides long-term extensions of the electricity production tax credit (PTC) and investment tax credit (ITC) and makes the PTC and

ITC technology neutral after 2024. The IRA also establishes new PTCs for nuclear energy and clean hydrogen and expands the section 45Q carbon capture tax credit. There are additional incentives, such as the section 45X and section 48C incentives, to encourage clean energy manufacturing. Non-taxable entities, such as states, tribes and municipalities, are now able to avail themselves of the PTC, ITC and other tax credits by electing to receive a direct payment for clean energy projects. The law also establishes more liberal rules related to the transferability of tax incentives, easing the ability of small and medium renewable developers to monetise these credits.

For consumers, the law provides significant tax incentives and rebates for buying electric vehicles and energy efficient technologies, such as heat pumps, solar panels and electric vehicles.

In addition to the tax incentives, the IRA establishes other clean energy programmes, such as the Environmental Protection Agency's (EPA's) Greenhouse Gas (GHG) Reduction Fund, to address climate change, and it expands the Department of Energy's (DOE's) loan authority.

The IRA was controversial from its inception, as the votes in both the House and Senate fell sharply along party lines. There are again similarities between the IRA and ACA. In 2009 and 2010, congressional Democrats were unable to build support for a more expansive overhaul of the healthcare industry. Instead, President Obama and congressional Democrats coalesced around the ACA, which borrowed from former Republican Massachusetts Governor Mitt Romney's state legislation that established an individual mandate for individuals to purchase health insurance and created various incentives to expand coverage. Similarly with the IRA, President Biden and congressional Democrats were unable to advance aggressive climate change policies, such as a Clean Energy Standard, but passed legislation that extended and expanded a variety of tax incentives that some Republicans have supported through the years. With both the ACA and IRA, congressional Republicans, despite supporting in the past portions of these

bills, unanimously opposed these two measures.

The Biden administration and arguments in favour of the IRA

The IRA, along with the Infrastructure Investment and Jobs Act, which passed in 2021, represent the cornerstones of President Biden's clean energy agenda. One year in, the president and Democrats argue that the IRA responsibly addresses climate change, creates millions of good-paying jobs, and reshores supply chains. The IRA, according to the Rhodium Group, is projected to reduce economy-wide GHG emissions 32-42 percent below 2005 levels by 2030, representing a 7-10 percentage point improvement compared to a world without it. A report by E2, a nonpartisan group of business leaders and investors, found that the 210 new clean energy projects announced over the last year are projected to create 74,181 new jobs if completed. Democrats offer further that addressing climate change and protecting future generations is our moral duty.

Republicans and arguments against clean energy measures in the IRA

Republican criticism of the IRA is focused on a variety of issues. First, Republicans contend that the IRA's clean energy measures, along with other Biden administration policies, are driving up energy costs by artificially promoting renewables at the expense of more traditional fossil fuel resources. Second, Republicans are concerned that the IRA, through incentivising additional renewable penetration, is undermining grid reliability. Third, Republicans are contending that the IRA is contributing to US dependence on China and other hostile nations for critical minerals necessary for electric vehicles and other clean energy sources. Fourth, some Republicans contend that tax incentives, such as the PTC and ITC, distort the market and force the phase-out of baseload sources of power, such as natural gas and coal. Finally, some Republicans continue to be sceptical regarding the human contribution to climate change.

Since the start of the 118th Congress, House Republicans have made several

attempts to repeal various clean energy provisions of the IRA. Members of the small but outspoken wing of the House Republican party known as the Freedom Caucus have advocated for a repeal the IRA in its entirety as part of the debt ceiling discussions. In April, House Republicans voted 217-215 in favour of a debt ceiling bill that would repeal most of the clean energy provisions of the IRA. The controversial Limit, Save, and Grow Act did retain, however, some clean energy provisions from the IRA. Republican members from agricultural-intensive states fought to protect the biofuels, sustainable aviation fuels and clean fuels tax incentive, and Republicans from oil & gas-rich states advocated to retain section 45Q carbon capture credit. The Lower Energy Costs Act, which passed the House in March 2023, would claw back the \$27bn tied to the EPA Greenhouse Gas Reduction Fund and would repeal the IRA's fees on methane emissions from the oil and natural gas sector, as well as a set of programmes that provide rebates and training for energy-efficient appliances.

Over the next year, the House may move other legislation to repeal parts of the IRA, but such measures stand virtually no chance of passage due to opposition from the Democrat-controlled Senate and the White House.

Challenges to repealing the IRA: post-2024 election outlook

The IRA and other efforts to decarbonise the US energy market will continue to face political scrutiny leading up to the 2024 congressional and presidential elections. Despite these challenges, it may be quite difficult to repeal the IRA's key provisions. As illustrated in House Republicans' efforts to repeal the ACA, it is challenging to take away incentives and credits once they have been granted. Although not one Republican voted for the measure, more than half of the projects that will benefit from the bill's tax credits and incentives are in predominantly Republican states, according to a study by the Rocky Mountain Institute. Several Republican governors are leveraging the IRA, along with state incentives to attract clean energy and manufacturing plants in

their states. There may be push-back from these states if Republicans seriously try to undermine the IRA's incentives.

The greatest threat to the IRA is a scenario in which a Republican wins the White House and both the Senate and House. If Donald Trump or another Republican were to win the presidency, there would be tremendous pressure to extend the Trump-era tax credits, which have lowered tax rates for families and businesses and are set to expire at the end of 2025. Extending the tax cuts would come at a cost, making the \$370bn of credits and incentives in the IRA vulnerable to repeal in order to at least partially pay for tax cuts. Short of outright repeal, Republicans could seek the repeal of the IRA's more politically vulnerable provisions such as the efficiency

standards, methane fee, GHG reduction fund and potentially the clean electricity PTC.

There are some measures that are politically 'safer' than others, like the PTCs for biofuels, clean hydrogen, carbon capture and nuclear energy. If the ACA is any indication, however, Republicans are unlikely to be successful in repealing the IRA, and any changes to the law will be relatively minor. Since the passage of the ACA, Republicans have voted more than 60 times to repeal the measure, but even with Republicans in control of the Congress and the presidency, they were unable to succeed in their efforts. Nonetheless, as the US enters election season, the energy industry must educate elected officials and the public about the potentially adverse

economic impacts of an IRA repeal in case the 2024 elections see a 'red wave'.

Conclusion

There will continue to be a great deal of rhetoric about the IRA in the context of the election. Republicans will likely tout the ways in which their energy policies, in contrast to the IRA, will provide abundant, reliable and affordable energy for American families. Democrats, on the other hand, will likely discuss how the IRA will meaningfully address climate change without sacrificing affordability or reliability. Clean energy policy on its own will not drive the ultimate results of the election, but it will be important in terms of larger economic concerns. ■

This article first appeared in the January 2024 issue of Financier Worldwide magazine. Permission to use this reprint has been granted by the publisher. © 2024 Financier Worldwide Limited.

FINANCIER
WORLDWIDE corporatefinanceintelligence