

POLICY MECHANISMS, PRECEDENT, AND AUTHORITY FOR STATE IMPLEMENTATION OF CLIMATE CHANGE AGENDAS

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In an era of heightened partisanship, animosity, and gridlock, the chances of federal action to combat climate change seem increasingly bleak at best. In response to the federal administrative machine slowing and eight years of regulatory schemes being altered, in regards to climate change, state governments have the ability, and precedent, to methodically begin to step in and fill the gap left by the administrative state. This note discusses the power and authority of state action to address climate change and later moves to a thorough examination of existing climate change initiatives at the state level. In addition, this note gathers and explores potential abilities of state governments to respond to climate change through their vested powers and instruments. Finally, this note illustrates and examines several examples of state actors already taking the helm. This note more broadly contends that (1) states themselves have increasingly significant capability to address climate change and (2) there exists ample bipartisan, and modern, precedent from various state actors in the environmental and climate change arena providing a framework for modern state action.

I. INTRODUCTION

November 6th, 2012, 11:15AM, hours before Governor Romney's defeat, President, then citizen, Donald J. Trump tweeted "The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive."¹ The President has been unclear if he maintains this belief,² but the new EPA Administrator has made it unequivocally obvious the Trump

1. Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 6, 2012, 11:15AM), <https://twitter.com/realdonaldtrump/status/265895292191248385?lang=en>.

2. See generally John Schwartz, *Trump's Climate Views: Combative, Conflicting and Confusing*, N.Y. TIMES, Mar. 10, 2017, <https://www.nytimes.com/2017/03/10/climate/donald-trump-global-warming-views.html> (examining statements made by President Trump regarding climate change).

Administration will not be spearheading climate change progress.³ Indeed, it appears the federal arena is no longer the battlefield in the fight against climate change.

So, what is to be done? The existence of climate change has near universal consensus in the scientific community;⁴ but public policy initiatives are no less needed now than they were previously. The Note argues our Republic's system of cooperative federalism provides the future for combating climate change. This Note works to show that states are afforded a wealth of opportunity to take action.

Common sense dictates that perhaps the last thing these initiatives need are legal quarrels challenging authority. Discussion and examination of various sources of authority for state action bring clarity to the occasionally tangled legal framework of dual sovereignty. Federal climate change and environmental action has long been the subject of derision from opponents;⁵ conservatives have previously insisted state and local governments should have a larger role in environmental regulation than the federal government.⁶ This Note illustrates that states, however, have distinct and at times more steadfast sources of authorization to fight climate change. How states are handed the power to make law regarding the environment and how states codify that authority within their various charters and constitutions warrant examination.

There has been climate change action seen at the state level, but what form does it take? State bodies have worked to implement, occasionally in a bipartisan fashion, various steps to address climate change. Further, it appears the state climate change initiatives already seen were not solely to pander to various demographics or electorates; state bodies empowered and implemented programs that made change and avoided politics.

First, the Note examines, illustrates, and cements authority for state action. After, this Note scrutinizes California's AB32, or the Global Warming Solutions Act of 2006, and discuss legislative action and precedent. Finally, the Note moves to examine tools the

3. See generally Brady Dennis & Chris Mooney, *On Climate Change, Scott Pruitt Causes an Uproar—and Contradicts the EPA's Own Website*, WASH. POST Mar. 9, 2017, https://www.washingtonpost.com/news/energy-environment/wp/2017/03/09/on-climate-change-scott-pruitt-contradicts-the-epas-own-website/?utm_term=.8f42634e2dda (discussing EPA Administrator Pruitt's controversial comments on climate change).

4. Clare Foran, *Donald Trump and the Triumph of Climate-Change Denial*, THE ATLANTIC, Dec. 25, 2016, <https://www.theatlantic.com/politics/archive/2016/12/donald-trump-climate-change-skeptic-denial/510359/>.

5. Barton H. Thompson Jr., *Conservative Environmental Thought: The Bush Administration and Environmental Policy*, 32 ECOLOGY L.Q. 307, 344–45 (2005).

6. *Id.*

legislature has in tandem with the executive, and pertinent parallels to Governor Rockefeller's work in State of New York. Next, discussion of the Regional Greenhouse Gas Initiative and the Midwestern Greenhouse Gas Reduction Accord proves illuminating. Then, this Note dissects and elaborates on the Minnesota Office of Enterprise Sustainability, an inter-agency watchdog organization similar to the Office of Information and Regulatory Affairs. This Note moves to then examine the Washington State Carbon Tax initiative to illustrate another excellent tool at the disposal of states. Finally, this Note explores information-gathering commissions and committees.

Several sections and subsections are dedicated to potential tools at the disposal of state governments. While much precedent has been set, not every tool and resource has been exhausted. This Note works to broadly discuss the tools reserved by state governments between discussion of precedent and recent action.

The last subsection of this Note works to show the proposals argued in action, already. Several examples of state actors bucking the federal government's lead and taking action utilizing state authority warrant examination. These recent actions could create resounding precedent and work as a catalyst for further state action.

This Note serves not to provide politicized actors with a route to circumvent the President in a deceptive fashion, but to illustrate the *very real* and *very legal* authority and actions states have and can take to combat climate change. There can be no doubt many of the state actions witnessed are born of partisanship; nonetheless, these actions rely on steadfast authority. This Note advocates for an alternate path forward, the path of wanton legality, the path well-traveled, and the path that can serve to make a real difference in climate change.

II. THE AUTHORITY FOR STATE CLIMATE CHANGE INITIATIVES

A. The U.S. Constitution

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."⁷

The promise of the Republic guarantees states a role as a sovereign in their individual realms, and thus, the ability to protect their lands and environment.⁸ Chief Justice Taft famously opined,

7. U.S. CONST. amend. X.

8. See *Alden v. Maine*, 527 U.S. 706, 713–14 (1999).

“We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject-matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition, with the limitation that no legislation can give validity to acts prohibited by the amendment.”⁹ This section works to untangle the interwoven strings of authority granted to the states and federal government to regulate climate change and the environment.

Criticisms of climate change or environmental action, especially criticisms of a political nature, range from a larger role for states, overregulation, and even skepticism of the need for environmental protection.¹⁰ Federal environmental regulations are still such a source of ire to some that as recently as February of 2017 a bill was drafted in the House of Representatives to abolish the Environmental Protection Agency altogether.¹¹ Federal environmental regulation has long been hobbled by the need for state and local cooperation to implement initiatives—geography, costs, and resources have required local governments to work with the federal government.¹²

The Supreme Court previously enumerated state interest and sovereignty, in regards to environmental and land use regulation, distinct from federal interests.¹³ What has come to be known as the “quasi-sovereign” interest in protecting the land of the state or commonwealth was perhaps most notably observed in *Tennessee Copper*,¹⁴ which served to solidify the state’s role in environmental protection.¹⁵ “[The state] has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.”¹⁶ States witnessed their right to control and protect their land enumerated.¹⁷

Much of the legal analysis regarding the interests and controls vested in the states takes legal analysis and discussion from the nation’s foundation into consideration. Opinions addressing state standing and sovereignty show justices considering what states

9. United States v. Lanza, 260 U.S. 377, 382 (1922).

10. Thompson, *supra* note 5, at 312–13.

11. To Terminate the Environmental Protection Agency, H.R. 861, 115th Cong. (2017).

12. Richard B. Stewart, *Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy*, 86 YALE L.J. 1196 (1977).

13. Georgia v. Tennessee Copper Co., 206 U.S. 230, 327 (1907).

14. *Id.*

15. See Robert V. Percival, *The Frictions of Federalism: The Rise and Fall of the Federal Common Law of Interstate Nuisance* (U. of Maryland, Pub-Law Research Paper No. 2003-02, 2003), <https://ssrn.com/abstract=452922> or <http://dx.doi.org/10.2139/ssrn.452922> (discussing the quasi-sovereign interest doctrine and dogma).

16. *Tennessee Copper Co.*, 206 U.S. at 237.

17. North Carolina *ex rel.* Cooper v. Tennessee Valley Authority, 439 F. Supp. 2d 486, 489 (W.D.N.C. 2006).

forfeited individually when joining the union and what powers they retained; Madison, *The Federalist Papers* or various framers of the Constitution end up cited in quasi-sovereign legal analysis.¹⁸ *Blatchford v. Native Village of Noatak & Circle Village* would later discuss this in a 1991 Supreme Court ruling: “[t]he States entered the federal system with their sovereignty intact.”¹⁹ The principle iterated through *Federalist No. 39*, “a residuary and inviolable [state] sovereignty,” recurs in state sovereignty discussion.²⁰

The following section discusses how state constitutions have enshrined their own authority to regulate and take environmental action given the Federal Constitution’s grant of power. Which state actors are granted which powers, and the manner in which states created the constitutional provisions guaranteeing the power to regulate is remarkably unique.

B. State Constitutions

“The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.”²¹

The Guarantee Clause promises each state an individualized government and constitution.²² Still, some scholars and commentators raise questions on the validity of state constitutions and their constitutionality to even come in to existence at all.²³ Nevertheless, the strong federal interest for maintaining state charters and constitutions lies within the Guarantee Clause.²⁴

Below, this Note discusses various state constitution provisions pertinent to climate change initiatives. Separate from uncertainty of the validity of state constitutions, some skepticism has been

18. See e.g., *Principality of Monaco v. Mississippi*, 292 U.S. 313, 322–23 (1934).

19. 501 U.S. 775, 779 (1991).

20. *THE FEDERALIST NO. 39* (James Madison). For discussion of the use of this principle by the Supreme Court, see generally Michael J. Mano, *Contemporary Visions of the Early Federalist Ideology of James Madison: An Analysis of the United States Supreme Court's Treatment of the Federalist No. 39*, 16 WASH. U. J.L. & POL'Y 257, (2004).

21. U.S. CONST. art. IV, § 4.

22. See Thomas A. Smith, Note, *The Rule of Law and the States: A New Interpretation of the Guarantee Clause*, 93 YALE L.J. 561, 566 (1984) (broadly examining the Guarantee Clause).

23. Jack L. Landau, *Some Thoughts About State Constitutional Interpretation*, 115 PA ST. L. REV. 837, 839 (2011).

24. Jacob M. Heller, *Death by A Thousand Cuts: The Guarantee Clause Regulation of State Constitutions*, 62 STAN. L. REV. 1711, 1718 (2010) (analyzing the interplay between state constitutional doctrine and the Guarantee Clause).

sparked from the stark contrast in length, amendment process, and revision procedure among the individual states.²⁵ State constitutional revision and amendment is widely varied.²⁶ West Virginia's Constitution has a provision discussing lotteries, raffles, and bingo.²⁷ Minnesota's Constitution grants citizens the right to "peddle the products of a farm or garden" without a license.²⁸ This codification of varied and unusual provisions serves as a precedent working to the advantage of advocates for state action in climate change as several states guarantee environmental dignity to their citizens.

1. Provisions Inspired by Federal Actions

The initial passage of environmental legislation and the growth of the environmental movement in the late 1960s and early 1970s that began federal presence in preservation of the environment had resounding effects on state constitutions.²⁹ Public support for environmental safeguards, at the time, was relatively widespread,³⁰ and in the early stages of regulatory presence in the environment, a movement formed for environmental protection to be preserved in state constitutions; fortunately, support for initial environmental regulation was mildly more bipartisan.³¹ Republican Governor Francis Sargent signed environmental protection bills into law and led Massachusetts when the provision was added to their Constitution in 1972.³² Below, a sample of various state constitutional provisions is included, some of which are state bills of rights, all are a product of the early environmental movement.

25. *E.g., id.*; Daniel B. Rodriguez, *Change That Matters: An Essay on State Constitutional Development*, 115 PA ST. L. REV. 1073, 1074 (2011).

26. Michael G. Colantuono, Comment, *The Revision of American State Constitutions: Legislative Power, Popular Sovereignty, and Constitutional Change*, 75 CAL. L. REV. 1473, 1477–78 (1987).

27. W. VA. CONST. art. VI, § 36. (subsection titled "Lotteries; Bingo; Raffles; County Option").

28. MINN. CONST. art. XIII, § 7. (subsection titled "No License Required to Peddle").

29. See Bruce Ledewitz, *The Challenge of, and Judicial Response to, Environmental Provisions in State Constitutions*, 4 EMERGING ISSUES ST. CONST. L. 33, 33–34 (1991) (broadly showing federal and state court confusion and reluctance in interpreting state constitutions).

30. See generally Chris Mooney, *When Did Republicans Start Hating the Environment?*, MOTHER JONES (Aug. 12, 2014), <http://www.motherjones.com/environment/2014/08/republicans-environment-hate-polarization> (illustrating historical context for political polarization in regards to environmental legislation, regulation, and law).

31. Jaime Fuller, *Environmental Policy Is Partisan. It Wasn't Always*, WASH. POST, June 2, 2014, https://www.washingtonpost.com/news/the-fix/wp/2014/06/02/support-for-the-clean-air-act-has-changed-a-lot-since-1970/?utm_term=.cc2f453b5527.

32. See Richard Evans, *Conservation Conveyancing: When Your Client Is Posterity*, 37 W. NEW ENG. L. REV. 201, 203 (2015) (discussing environmental litigation and early foundations).

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.³³

The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.³⁴

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

33. PA. CONST. art. I, § 27.

34. R.I. CONST. art. I, § 17.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.³⁵

All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.³⁶

Fortuitously, for activists and enthusiasts, these provisions, generally, have yet to be removed from state constitutions following the national hyper-politicization of environmental regulation. It should be noted, that when states begin to take the reigns and start to have a serious role in addressing climate change, and source their authority exclusively to these provisions, state actors of opposing stances likely have paths to remove these provisions.³⁷

2. Recreation of Federal Authority

The Federal Constitution is remarkably concise when held in comparison to state constitutions.³⁸ As previously, stated, states share authority with the federal government to begin environmental regimes.³⁹ As with the prior subsection and the following subsections, excerpts from varied state constitutions illustrating this point have been included.

"The Governor shall take care that the laws be faithfully executed."⁴⁰

"The supreme executive power of this state shall be vested in a governor, who shall be responsible for the enforcement of the laws of this state."⁴¹

35. MASS. CONST. art. XCVII, §3.

36. MONT. CONST. art. II, § 3.

37. See generally Rodriguez, *supra* note 25; Colantuono, *supra* note 26.

38. Landau, *supra* note 23, at 839.

39. See *supra* notes 13–17 and accompanying text.

40. N.C. CONST. art. III, § 5.

41. KAN. CONST. art. I, § 3.

“ . . . and they shall have all other powers necessary for the Legislature of a free and sovereign State; but they shall have no power to add to, alter, abolish, or infringe any part of this Constitution.”⁴²

“The General Assembly shall have the power to make all laws not inconsistent with this Constitution, and not repugnant to the Constitution of the United States, which it shall deem necessary and proper for the welfare of the state.”⁴³

These provisions echo the Federal Constitution’s Necessary and Proper Clause for Congress and the Take Care Clause for the President—the two have enabled a great deal of federal environmental action,⁴⁴ alongside the Commerce Clause.⁴⁵ Thus, it can be inferred that granting similar powers to state legislatures, with minimal federalism principles binding states, enables climate change and environmental legislation from the statehouses.

3. Allocation of Power and Responsibility Within State Governments by Constitutional Provisions

This Note moves to now illustrate how state constitutions can begin to provide directives or mandates for which state actors are to draw instruction on how to act upon environmental issues. The provided provisions detail natural resources broadly and are absent climate change specific language. More generally, these provisions can be seen to create stability and allocate power deliberately and in a precise manner.

The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.⁴⁶

42. VT. CONST. Ch. II, § 6.

43. GA. CONST. art. III, § 6.

44. See Kate Andrias, *The President’s Enforcement Power*, 88 N.Y.U. L. REV. 1031, 1064 (2013) (discussing the foundation for federal action in regards to the environment).

45. James R. May, *Healthcare, Environmental Law, and the Supreme Court: An Analysis Under the Commerce, Necessary and Proper, and Tax and Spending Clauses*, 43 ENVTL. L. 233, 245 (2013).

46. LA. CONST. art. IX, § 1.

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.⁴⁷

“It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.”⁴⁸

Crucial to the notion of modern separation of powers doctrine and jurisprudence is the preservation of powers within each individual branch of governance.⁴⁹ State constitution provisions assigning specific duty and authority over environmental or natural resource action are, essentially, a double-edged sword. Despite the precedential benefits, these prevent any government actor, aside from the constitutionally designated actor, from taking action when acting solely on the subject matter enumerated by the state constitution. Thus, these may benefit those actors who are opponents of climate change initiatives.

4. Self-Executing Environmental Provisions

The aforementioned provisions expressly address paths and concerns regarding law and rule making. However, this Note shifts to show that state constitutions retain the capacity to go beyond just preservation of power to regulate climate change or the environment, and almost begin to govern by dictating state action. The following examples are limited to pertinent constitutional provisions regarding the environment, but action through constitutional amendment and revision is by no means limited to environmental matters.

47. HAW. CONST. art. XI, § 1.

48. FLA. CONST. art. II, § 7.

49. See Josh Blackman, *Donald Trump's Constitution of One*, THE NAT'L REV. (May 12, 2016), <http://www.nationalreview.com/article/435296/donald-trumps-constitution-end-separation-powers>.

The fees, monies, or funds arising from the operation and transactions of said Commission and from the application and the administration of the laws and regulations pertaining to the bird, fish, game and wildlife resources of the State and from the sale of property used for said purposes shall be expended and used by said Commission for the control, management, restoration, conservation and regulation of the bird, fish, game and wildlife resources of the State, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto and for no other purpose.⁵⁰

The people of the State of Colorado intend that the net proceeds of every state-supervised lottery game operated under the authority of Article XVIII, Section 2 shall be guaranteed and permanently dedicated to the preservation, protection, enhancement and management of the state's wildlife, park, river, trail and open space heritage, except as specifically provided in this article. Accordingly, there shall be established the Great Outdoors Colorado Program to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage.⁵¹

Common sense dictates provisions akin to the listed examples are capable of being seen more frequently in states with constitutional amendment and revision schemes that allow for frequent plebiscite amendment and revision.⁵² These provide an advantageous path for a motivated electorate, if state actors are unengaged in climate change or environmental issues.⁵³

5. In Summation

Over half the states have addressed natural resources or other environmental concerns in their constitutions.⁵⁴ As climate change action begins to be taken on at the state level, a second environmental movement may lie, waiting to catch fire. The beauty of these provisions is that they wait in the shadows as a resource,

50. OKLA. CONST. art. XXVI, § 4.

51. COLO. CONST. art. XXVII, § 1.

52. See generally Robert F. Williams, *Evolving State Constitutional Processes of Adoption, Revision, and Amendment: The Path Ahead*, 69 ARK. L. REV. 553, 554–62 (2016).

53. John C. Tucker, *Constitutional Codification of an Environmental Ethic*, 52 FLA. L. REV. 299, 325 (2000).

54. *Id.* at 307.

while the dangers and perils of climate change increase.⁵⁵ Some previously enumerated provisions listed in states' bill of rights—Pennsylvania's, as an example, "[t]he people have a right to *clean air, pure water*, and to the preservation of the natural, scenic, historic and esthetic values of the environment"—can be used as a source of action.⁵⁶ If President Trump's environmental non-enforcement regime and rollback of Obama-era climate change policies motivate state actors in Pennsylvania, they can claim the mandate provided by the Pennsylvania State Constitution. This provision *calls* for the state to preserve the people's right to natural rights like clean air or pure water.

The excerpts and examples provided are not an exhaustive list purporting to be absolute, rather an illustrative, substantive subset showing the varied nature of state constitution and environmental authority. Statehouses and capitols will likely emerge as the next battlefield for climate change initiatives, and fortunately, there is ample authority for them to act—both in the Federal Constitution and state constitutions—and no shortage of need.

III. THE GLOBAL WARMING SOLUTIONS ACT OF 2006

Below, this Note begins to examine and delicately elucidate California's AB32, or the Global Warming Solutions Act of 2006, and its potential inspirations. Not intended to sequester the efficacy of the legislature from the rest of this piece, later sections will touch on legislative power as well, but the following subsection focuses on the substantive power of the legislature when operating in tandem with the executive and the precedential ripples that can be created.

Governor Arnold Schwarzenegger signed Assembly Bill 32 (AB32) into law in September of 2006.⁵⁷ Among other reforms and initiatives, in short, AB32 implemented a state program to curb greenhouse gas emissions from statewide sources.⁵⁸ AB32 was partially foreshadowed by executive order S-3-05,⁵⁹ from Governor Schwarzenegger in 2005, that directed the California Air Resources Board to begin substantial initiatives to curb greenhouse

55. See generally Alissa Scheller, *2 Degrees Will Change the World*, MOTHER JONES (Dec. 3, 2015), <http://www.motherjones.com/environment/2015/11/2-degrees-will-change-world-paris-climate-change> (broadly examining the future risks of climate change).

56. PA. CONST. art. I, § 27 (emphasis added).

57. Office of the Governor, *Governor Schwarzenegger Highlights California's Global Warming Accomplishments On Eve Of AB 32 Anniversary*, Sept. 25, 2008, <https://www.gov.ca.gov/news.php?id=10632>.

58. See CAL. HEALTH & SAFETY CODE § 38500 (2006).

59. See Mary D. Nichols, *California's Climate Change Program: Lessons for the Nation*, 27 UCLA J. ENVTL. L. & POL'Y 185, 198 (2009) (summarizing AB32 and discussing national climate change needs).

gases statewide and set substantial targets.⁶⁰ The California Air Resources Board needed more authority to enact the Governor's executive order from the state legislature.⁶¹ AB32 creates long-lasting compliance plans that are still being monitored by the California Air Resources Board.⁶² The timeline for AB32 extends to 2020 and creates a deadline for greenhouse gas emissions caps;⁶³ one of the stated goals of AB32 is to return California's emission levels to where they were in 1990.⁶⁴

AB32 created an annual mandatory reporting requirement for emissions of greenhouse gases from private businesses.⁶⁵ AB32 authorized imposition of non-compliance penalties from AB32.⁶⁶ In addition, AB32 has provisions centered on creating a database at the governmental level of the largest producers and emitters of greenhouse gases, for better response and management from the state government.⁶⁷

Separate from reporting requirements, administrative reform, or creation of large-scale plans for greenhouse gas emissions, AB32 also ushered in new advisory and regulatory boards.⁶⁸ The Environmental Advisory Justice Committee was created to meet with and advise the California Air Resources Board in long-term implementation of AB32.⁶⁹ In addition, an Economic and Technology Advancement Advisory Committee was created to further advise the board;⁷⁰ the committee submitted its investigatory findings to the Board on how best to implement measures and developments from AB32 immediately.⁷¹

Further, the California Air Resources Board pioneered a cap-and-trade scheme with the Provincial Government of Quebec.⁷² On January 1st, 2014, Quebec and California formally began their program to trade greenhouse gas emission allowances.⁷³ The

60. Cal. Exec. Order S-3-05 (June 1, 2005), <https://www.gov.ca.gov/news.php?id=1861>.

61. See California Climate Change, *California Climate Change Executive Orders* (Mar. 20, 2017), http://www.climatechange.ca.gov/state/executive_orders.html.

62. Nichols, *supra* note 59, at 199–201.

63. *Id.* at 200–01.

64. See, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY–AIR RESOURCES BOARD, Assembly Bill 32: An Overview, (last visited Oct. 20, 2017) <https://www.arb.ca.gov/cc/ab32/ab32.htm> (describing AB32 generally).

65. *Id.*

66. *Id.*

67. See CAL. HEALTH & SAFETY § 38580 (2006).

68. See generally Nichols, *supra* note 59, at 198–202.

69. CAL. HEALTH & SAFETY § 38591 (2006).

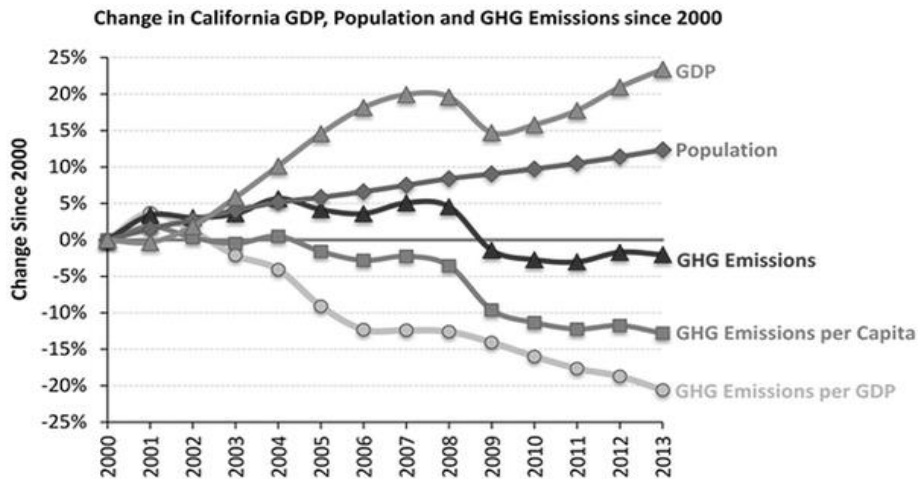
70. *Id.*

71. *Id.*

72. CENTER FOR CLIMATE AND ENERGY SOLUTIONS, *California Cap and Trade*, 13, (2014) <https://www.c2es.org/us-states-regions/key-legislation/california-cap-trade#Revenue> (last visited Nov. 3, 2017).

73. *Id.*

linkage program in 2015 saw a 2 percent decrease in emissions covered from the year before—California remains on track to reach 1990 level emissions by 2020.⁷⁴ The prominence and relative success of the program drew Ontario, Canada's most populous province, to join the cap-and-trade scheme with California and Quebec as well.⁷⁵



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Senate Bill 32 (SB32), passed in 2016, supplements AB32.⁷⁷ SB32 codifies a provision of Governor Brown's B-30-15 Executive Order.⁷⁸ With SB32 signed into law, by 2030 California's greenhouse gas emission levels must be 40 percent below 1990 levels and by 2050, 80 percent below.⁷⁹ SB32 also grants the California Air Resources Board additional authority to promulgate more regulations in order to meet the new standards.⁸⁰

In a testament to the majesty of well-functioning, traditional law-making, Governors Schwarzenegger and Brown worked with the California Legislature to implement the programs. State

74. *Id.* at 6. See also *infra* note 76 and accompanying chart.

75. See generally Allison Martell & Mike De Souza, *Ontario Confirms it Will Join Quebec, California in Carbon Market* REUTERS, Apr. 13, 2015, <http://www.reuters.com/article/us-climatechange-canada-idUSKBN0N41X220150413> (examining recent decision by Ontario to join cap-and-trade scheme).

76. CLEAN OIL AND GAS FOUND., *California Extends Climate Change Bill, Seeks 40% Cut in GHGs Below 1990 Levels*, <http://cleanoilgasfoundation.org/california-climate-change.html> (last visited Nov. 2, 2017).

77. S.B. 32, 2015-16 Reg. Sess. (Cali. 2016).

78. See Cal. Exec. Order No. B-30-15 (Apr. 29, 2015), <https://www.gov.ca.gov/news.php?id=18938>; Richard Gonzalez, *California Gov. Jerry Brown Signs New Climate Change Laws*, NAT'L. PUB. RADIO (Sept. 8, 2016), <http://www.npr.org/sections/thetwo-way/2016/09/08/493191842/california-gov-jerry-brown-signs-new-climate-change-laws>.

79. Cal. Exec. Order No. B-30-15.

80. *Id.*

agency, executive, and legislature thrived in tandem to apply one of the nation's largest climate change initiatives seen to date.⁸¹ Indeed, as Professor Robert Stavins notes, "[t]his is a critical time for California's climate change policies."⁸² These previous acts are wide-ranging bills setting regulatory standards until the year 2050, assuring the long-term stability of the plans enacted. It appears AB32 has garnered substantive results in fighting climate change. Perhaps there is merit to California Air and Resources Board Chairwoman, Mary Nichols', quote "What the nation needs now is a federal Global Warming Solutions Act, modeled after California's efforts, and building off of the time-tested 'cooperative federalism' framework."⁸³

*A. A Potential Product: The Global Warming
Solutions Act of 2008*

As noted, Chairwoman Nichols implored the federal government to recreate the California Global Warming Solutions Act.⁸⁴ Massachusetts, however, took the helm and instituted similar legislation. Democratic Governor Deval Patrick, and Republican Governor Charlie Baker each have taken proactive AB32-esque action. Without a doubt, the precedent shows bipartisanship works best to prompt state governments to address climate change.

Governor Patrick signed Massachusetts' Global Warming Solutions Act (GWSA) into law in 2008.⁸⁵ The GWSA requires that by "2020 statewide greenhouse gas emissions . . . be between 10 per cent and 25 per cent below the 1990 emissions level."⁸⁶ The GWSA sets a long-term goal of an 80% reduction by 2050, as well. Common sense dictates this gallant reform was, at least partially, inspired by AB32, even if in name only. At the time of signing, fans praised the GWSA for acting in the midst of uncertainty about the direction the nation would head in,⁸⁷ as the country was in the throes of the 2008

81. See David Siders, *This Is What The Climate Bill Jerry Brown Signed Means*, THE SACRAMENTO BEE, Sept. 8, 2016, <http://www.sacbee.com/news/politics-government/capitol-alert/article100734142.html>.

82. Robert N. Stavins, *California Steps Forward on Climate but Emphasizes a Poor Policy Choice*, 34 THE ENVTL. F. 2, 15 (2017).

83. Nichols, *supra* note 59, at 212 (citation omitted).

84. See *supra* note 83 and accompanying text.

85. Michael P. Norton, *Mass. Greenhouse Gas Emissions Down 21 Percent*, THE LOWELL SUN, Apr. 4, 2017, http://www.lowellsun.com/breakingnews/ci_30897427/mass-greenhouse-gas-emissions-down-21-percent.

86. Global Warming Solutions Act, 2008 Mass. Legis. Serv. Ch. 298 (S.B. 2540) (2008).

87. See generally *Global Warming Solutions Act Passes Legislature*, THE MARBLEHEAD REP., Aug. 1, 2008 <http://marblehead.wickedlocal.com/x1566624572/Global-Warming-Solutions-Act-passes-Legislature> (discussing recent environmental legislation from the Massachusetts State Legislature).

Presidential Election when the bill was signed.⁸⁸ Advocates have opined this bold reform has put Massachusetts “at the head of the pack” in the fight against climate change.⁸⁹

Moving from *legislative* action mirroring California, Governor Baker’s executive order seems starkly similar to Governor Brown’s actions.⁹⁰ In 2016, Governor Baker signed Executive Order 569.⁹¹ Executive Order 569 directed the Governor’s executive agencies to start taking substantial steps to individually address climate change.⁹² Executive Order 569 mandated the administration to begin drafting adaptation plans across the Commonwealth.⁹³ It should be noted, drawing staunch parallels to Governor Brown, Baker doubled down support of the initial Global Warming Solutions Act of 2008, signed into law by his predecessor—of an opposite party.⁹⁴ Executive Order 569 mandates that the administration make sure it is in compliance and on track to meet the long term requirements of the GWSA.⁹⁵

The magnificence of AB32, it appears, is that it has created a ripple effect. California and Massachusetts stand as glistening examples of how climate change can be addressed across political lines. These two examples serve, more broadly, however, to illustrate the tools in the hands of statehouses to combat climate change.

B. Precedent: Governor Rockefeller’s Administration

Governors Schwarzenegger and Brown’s actions in fighting climate change in California were undoubtedly admirable and unique; yet, this is not to imply the two were the first governors to artfully implement environmental initiatives with the legislature’s cooperation. Governor Nelson Rockefeller excelled, particularly, as

88. *Id.*

89. David Danielson, *Finally, a Good Energy Policy*, MIT TECH. REV. (Aug. 7, 2008), <https://www.technologyreview.com/s/410570/finally-a-good-energy-policy/>.

90. See *supra* note 78–80 and accompanying text.

91. Mass. Exec. Order. No. 569 (Sept. 16, 2016), <http://www.mass.gov/eea/docs/executive-order-climate-change-strategy.pdf>.

92. *Id.*

93. See Brook J. Detterman, *Massachusetts Governor Baker Signs Executive Order 569 On Climate Change*, THE NAT’L L. REV., Oct. 24, 2016, <http://www.natlawreview.com/article/massachusetts-governor-baker-signs-executive-order-569-climate-change> (examining Governor Baker’s Executive Order 569’s climate change efforts and affects).

94. See generally Michael P. Norton & Andy Metzger, *Baker Order Requires Climate Change Plan*, THE TELEGRAM, Sept. 16, 2016, <http://www.telegram.com/news/20160916/baker-order-requires-climate-change-plan> (broadly examining Executive Order 569 and climate change in Massachusetts).

95. Detterman, *supra* note 93.

a statesman and environmentalist, through implementation of his initiatives and creation of long term precedent.

Adirondack Park is a substantive part of the New York Forest Preserve,⁹⁶ Governor Rockefeller's legislative efforts worked to set up a commission to find a way to properly administer conservation and environmental management efforts.⁹⁷ Rockefeller spearheaded the creation of, and utilized his bully pulpit to lobby for, a bill he eventually signed it into law, the Adirondack Park Agency Act, which created a state agency to regulate the park properly with state resources.⁹⁸ Rockefeller also worked to create, with the legislature, a unified state environmental agency,⁹⁹ the New York Department of Environmental Conservation, one of the first of such measure and scope, in 1970.¹⁰⁰

Perhaps Rockefeller's greatest environmental legacy was creating what some call the inspiration for the Clean Water Act by introducing the Pure Waters Bond Act in 1965.¹⁰¹ Rockefeller lobbied hard for its passage, and exhausted himself working towards passing the Act.¹⁰² The Pure Waters Bond Act touted its goals as making waters "swimmable and fishable" and, in addition, worked to increase the efficacy and quantity of wastewater management systems across the state.¹⁰³ The Pure Waters Bond Act still maintains a legacy of achieving environmental reform and cleaning up New York's waters.¹⁰⁴ Rockefeller has been heralded as an environmental trailblazer and noted for his precedent-setting

96. See generally Peter Bauer, *Governor Andrew Cuomo and the Boreas Ponds*, ADIRONDACK ALMANACK (Mar. 7, 2017), <http://www.adirondackalmanack.com/2017/03/governor-andrew-cuomo-and-the-boreas-ponds-part-1.html> (discussing New York's environmental state history).

97. Charles Gottlieb, *Regional Land Use Planning: A Collaborative Solution for the Conservation of Natural Resources*, 29 J. ENVTL. L. & LITIG. 35, 58–59 (2014).

98. Stacey Lauren Stump, "Forever Wild" A Legislative Update on New York's Adirondack Park, 4 ALBANY GOV'T L. REV. 682, 698 (2011).

99. Jeffrey Frank, *Big Spender: Nelson Rockefeller's Grand Ambition*, THE NEW YORKER, Oct. 13, 2014, <http://www.newyorker.com/magazine/2014/10/13/big-spender-2>.

100. See Patricia E. Salkin, *The Executive and the Environment: A Look at the Last Five Governors in New York*, 31 PACE ENVTL. L. REV. 706, 708 (2014).

101. James Tierney, *Celebrating 50th of the Pure Waters Act*, CLEAR WATERS, <http://www.dec.ny.gov/chemical/105432.html>.

102. *Id.*

103. *Id.*

104. Willie Janeway, Editorial, *Gov. Cuomo's Proposed Budget Fails to Invest Enough in Clean Water*, THE POST-STANDARD, Jan. 28, 2015, http://www.syracuse.com/opinion/index.ssf/2015/01/gov_cuomos_proposed_budget_fails_to_invest_in_clean_water_commentary.html.

action.¹⁰⁵ A governor set the path for federal action in the absence of proper legislation, and undoubtedly, a governor, or *governors* could do it again.

IV. MISCELLANEOUS LEGISLATIVE TOOLS

The examples above are sterling efforts by state governments to address environmental issues facing states. Yet, state legislatures possess several more tools to pursue or advocate for an agenda of their choosing. Next, is a brief illustration of several well-known tools state legislatures have that could apply to climate change initiatives and give a few modern examples illustrating how legislatures use these powers. These serve to prove that while traditional lawmaking, cooperation between branches, has its merits, many tools remain in the hands of the legislatures.

A. *The Power of the Purse*

Previously, this Note enumerated a subset of state constitution provisions that mirror the Federal Constitution's dispersal of power amongst the branches.¹⁰⁶ Statehouses themselves are typically anointed with the "power of the purse."¹⁰⁷ Governor Tom Wolf refused to sign the funding package the Pennsylvania General Assembly sent to him in 2015, leading to a budget impasse and the state operating without a budget for 266 days.¹⁰⁸ As illustrated, governors without line-item vetoes, face the choice of complying with oft seen omnibus appropriations bills or opposing them entirely. Riders, or small provisions packaged within larger legislation, are sent along in these bills that give legislatures power over the governor.¹⁰⁹ The executive is more politically accountable and thus faces greater risks if it vetoes appropriations and a

105. See Jeffrey Frank, *Big Spender: Nelson Rockefeller's Grand Ambitions*, THE NEW YORKER, Oct. 13, 2014, <https://www.newyorker.com/magazine/2014/10/13/big-spender-2>; Michael O'Donnell, *Fortune's Son*, THE NATION, Feb. 4, 2015, <https://www.thenation.com/article/fortunes-son/>.

106. See *supra* Part II.B.

107. Ronald Snell, *The Power of the Purse: Legislatures That Write State Budgets Independently of the Governor*, NAT'L. COUNCIL OF ST. LEGISLATURES, Mar. 2008, <http://www.ncsl.org/research/fiscal-policy/the-power-of-the-purse-legislatures-that-write-st.aspx>.

108. See Maria Panaritis & Kathy Boccella, *Ending Budget Impasse, Wolf Says: 'We Need to Move on'*, THE PHILA. INQUIRER, Mar. 24, 2016, http://www.philly.com/philly/news/20160324_Wolf_relents_on_budget_ends_historic_impasse.html (explanation of the 2015 Pennsylvania Budget discord and resolution).

109. See Sandra Beth Zellmer, *Sacrificing Legislative Integrity at the Altar of Appropriations Riders: A Constitutional Crisis*, 21 HARV. ENVTL. L. REV. 457 (1997); Brandon F. Denning & Brooks R. Smith, *Uneasy Riders: The Case for A Truth-in-Legislation Amendment*, 1999 UTAH L. REV. 957, 959–64 (1999).

government shutdown results. Omnibus riders are an invaluable tool in the hands of the state legislatures and could be used to implement conservation or environmental plans.

B. Censure and Impeachment

The impeachment and censure tools are one of the few methods the legislature has to grab headlines and attention statewide for a cause important to them at a level comparable to the state executive.¹¹⁰ Further, impeachment and censure require little cooperation from other branches of government.¹¹¹ Wallace Hall was a member of the Texas Board of Regents, the governing body for the State University System of Texas.¹¹² In 2013, the Texas Legislature censured Regent Hall for “misconduct, incompetency in the performance of official duties, or behavior unbefitting [of a regent].”¹¹³ Impeachment and censure are often relegated to the annals of history and not frequently used at the federal level,¹¹⁴ the previous example served to illustrate state legislatures are still *very* capable of censure and impeachment. A state legislature, if held by ardent environmental activists, could censure or impeach a head of the state environmental agency, if the head refused to address climate change or environmental issues to the legislatures liking.

C. Redistricting

Common sense dictates that the political fruit of redistricting or gerrymandering are long-term investments. The demand for immediate climate change action is strong, so does redistricting deserve a place in the pantheon of tools state legislatures have? State legislatures still retain the ability to draw maps more sympathetic to their causes.¹¹⁵ Some, not all, state legislatures hold the sole power to redistrict and apportion state and federal district

110. See generally John Nichols, *Censure and Impeachment*, THE NATION, July 23, 2007, <https://www.thenation.com/article/censure-and-impeachment/> (general analysis of impeachment power).

111. *Id.*

112. See Ralph K.M. Haurwitz, *Panel Censures UT Regent Wallace L. Hall Jr.*, THE AUSTIN-AMERICAN STATESMAN (Aug. 11, 2014), <http://www.statesman.com/news/state--regional-govt--politics/panel-censures-regent-wallace-hall/dTKKhqoALaXjN90qb6OnBM/> (discussion of Regent Hall impeachment scandal).

113. *Id.*

114. See generally Bill Schnieder, *A Historical Tutorial on Impeachment*, CNN (Mar. 11, 1998), <http://www.cnn.com/ALLPOLITICS/1998/03/11/impeachment.censure/> (broad examination of history of impeachment power in America).

115. See Christopher Ingraham, *This is the Best Explanation of Gerrymandering You Will Ever See*, THE WASH. POST, Mar. 1, 2015, <https://www.washingtonpost.com/news/wonk/wp/2015/03/01/this-is-the-best-explanation-of-gerrymandering-you-will-ever-see/> (explaining redistricting and Gerrymandering).

boundaries.¹¹⁶ If these legislatures partake in gerrymandering practices, they have the capability to ensure districts are shaped to their liking, and to their potential political or policy inclinations.¹¹⁷

D. Joint Resolutions

Legislatures can also make broad statements, announce resolutions, and initiate symbolic gesturing—akin to the executive’s use of press releases or utilization of state and national media outlets—often utilized by Joint Resolutions.¹¹⁸ Utah State Senator Jim Dabakis introduced Senate Joint Resolution 9 (S.J.R.9), or the Joint Resolution on Climate Change in February of 2017.¹¹⁹ S.J.R.9 is a statement of the legislature’s intent to address climate change and its interest in better understanding the causes of climate change.¹²⁰

Whereas, if left unaddressed, the consequences of a changing climate have the potential to:

- [A]dversely impact all Americans;
- [A]ffect vulnerable populations the hardest;
- [H]arm productivity in key economic sectors such as construction, agriculture, and tourism;
- [S]addle future generations with costly economic and environmental burdens; and
- [I]mpose additional costs on state and federal budgets that will further add to the long-term fiscal challenges that we face as a state and nation.¹²¹

The introduction of S.J.R.9 is a marked reversal from the previously passed House Joint Resolution 12 (H.J.R.12), adopted in 2010, which implored the EPA to reverse its current course of regulations on carbon dioxide reduction.¹²² The utilization of a joint resolution to call attention to issues the legislature determines at

116. See Christopher Ingraham, *This is Actually What America Would Look Like Without Gerrymandering*, THE WASH. POST, Jan. 13, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/01/13/this-is-actually-what-america-would-look-like-without-gerrymandering/> (illustrating non-Gerrymander-ed districts).

117. *Redistricting*, THE NAT’L COUNCIL OF STATE LEGISLATURES, <http://www.ncsl.org/research/redistricting.aspx>.

118. *The Legislative Process*, UNITED STATES HOUSE OF REPRESENTATIVES, http://www.house.gov/content/learn/legislative_process/.

119. S.J. Res. 9 Joint Resolution on Climate Change, Utah State. Legis. Reg. Sess. (2017).

120. See *id.*

121. *Id.*

122. H.R.J. Res. 12, Climate Change Joint Resolution, Utah State Legis. Reg. Sess. (2010).

their discretion is a perceptive and resourceful tool the state legislatures have at their disposal.

V. THE REGIONAL GREENHOUSE GAS INITIATIVE AND THE MIDWESTERN GREENHOUSE GAS REDUCTION ACCORD

Below, this Note emphasizes two notable pacts between states led by governors. The listed examples are glistening demonstrations of the power a governor has. However, the Interstate Compact Clause limits the executive's agreement power.¹²³ The Supreme Court iterated in *Virginia v. Tennessee*, that not all agreements from states are subject by the bar established by the Interstate Compact Clause.¹²⁴ Later in the case, the Supreme Court noted that states may not enter into agreements that run afoul of the powers of the federal government.¹²⁵ As environmental and climate change regulation is soundly within the realm of dual sovereignty, which was examined earlier, interstate climate change agreements *should* be protected from vulnerability in regards to this clause, especially with the following two examples as precedent. However, this ought to implore governors to proceed warily and try not to tread on any authority or power so outside the realm of environmental and climate change precedent it encroaches on the *Virginia* limits and begins to lead to the "increase of political power in the states[;]" thus, encroaching "upon or interfere[ing] with the just supremacy of the United States."¹²⁶

A. The Regional Greenhouse Gas Initiative

In 2003, a bipartisan group of northeastern governors began joint talks and information sessions that culminated with the creation and individual approval of the Regional Greenhouse Gas Initiative (RGGI).¹²⁷ In 2005, Rhode Island, Connecticut, Delaware, New York, Vermont, Maine, New Hampshire, New Jersey, Maryland, and Massachusetts began the program to implement a cap-and-trade scheme, and to focus on carbon dioxide emissions, among power plants within their states.¹²⁸ The RGGI was created largely in conformity with existing cap-and-trade frameworks;

123. U.S. CONST. art. I, §10, cl. 3.

124. 148 U.S. 503, at 518–521 (1893).

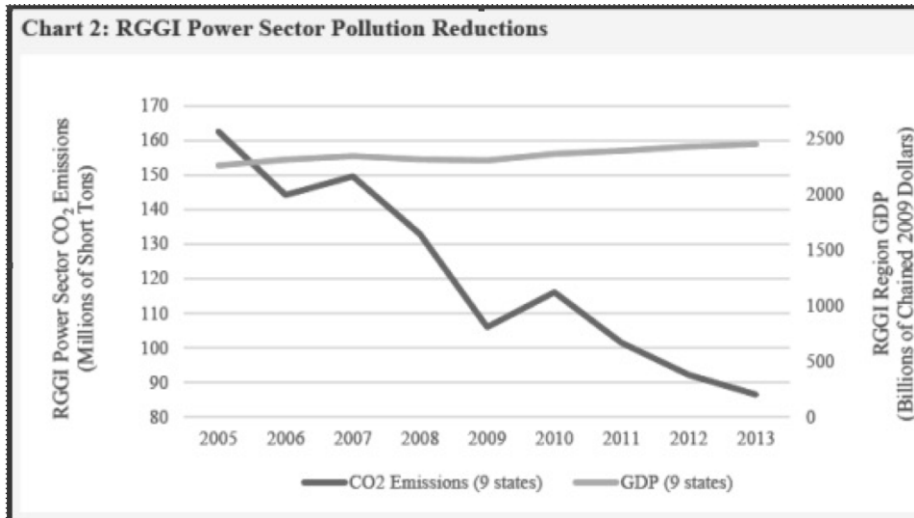
125. *Id.* at 519.

126. *Id.*

127. Note, *The Compact Clause and the Regional Greenhouse Gas Initiative*, 120 HARV. L. REV. 1958, 1959–60 (2007).

128. Lauren E. Schmidt & Geoffrey M. Williamson, *Recent Developments in Climate Change Law*, 37 COLO. LAW. 63, 70 (2008).

however, the program does not span the entire economies of each individual state, but focuses specifically on the energy sector.¹²⁹ This particular climate change program was born from the capacity the state executive has to barter, negotiate, and exercise political capital and function as a dignitary for the state to implement and enter agreements above the state level.¹³⁰



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The RGGI is still functioning today and has produced positive results in reducing carbon dioxide emissions while also saving consumers millions.¹³² New Jersey left the agreement in 2012, but a movement at the state level has developed advocating rejoining after several companies reported economic losses.¹³³ A 40% decrease in power sector carbon dioxide emissions has been reported since the RGGI's implementation in 2005.¹³⁴

129. Robert Zeinemann, *Emerging Practice Area: The Regulation of Greenhouse Gases*, 82 WIS. LAW, 6, 8 (2009).

130. See generally Commentary, *supra* note 127, at 1958.

131. Silvio Marcacci, *RGGI Carbon Market Invests \$1 Billion in Clean Energy*, CLEAN TECHNICA, Apr. 22, 2015, <https://cleantechnica.com/2015/04/22/rggi-carbon-market-invests-1-billion-clean-energy/>.

132. Committee Report, *Report of the Climate Change & Emissions Committee*, 31 ENERGY L.J. 571, 594–95 (2010).

133. FACT SHEET, ACADIA CENTER, ENTER, NEW JERSEY AND RGGI: POTENTIAL BENEFITS OF RENEWED PARTICIPATION, http://acadiacenter.org/wpcontent/uploads/2014/09/Acadia_Center_RGGI_NJ_FactSheet_032415.pdf.

134. Report, REGIONAL GREENHOUSE GAS INITIATIVE, INC., RGGI REPORT: INVESTMENTS PROVIDE \$2.9 BILLION IN ENERGY BILL SAVINGS; 3.7 MILLION PARTICIPATING HOUSEHOLDS BENEFIT, (Apr. 21, 2015), http://www.rrgi.org/docs/ProceedsReport/2013Proceeds%20Report_PR_Final.pdf.

B. Midwestern Greenhouse Gas Reduction Accord

The Midwestern Greenhouse Gas Reduction Accord was created as an agreement between six midwestern governors and the Premier of Manitoba.¹³⁵ Each of the individual states have large agri-business sectors and are susceptible to climate change-induced disaster.¹³⁶ The Accord set up a blueprint for a multi-sector cap-and-trade system in the region, and various other mitigation efforts.¹³⁷ The Accord produced the Midwestern Greenhouse Gas Reduction Program, the formal write-up of the cap-and-trade program.¹³⁸ The Program included goals for curbing greenhouse gas emissions, and discussed a potential cap-and-trade program, the management and tracking of emissions, and regional incentives for implementing the programs.¹³⁹

The Midwestern Greenhouse Gas Reduction Accord remains a high-profile verification of what can be done to combat climate change with willing state executives. While no sweeping action has been taken in the various statehouses of Accord members, and the current executives are not pursuing it,¹⁴⁰ the Accord put together an extensive study of how to implement regionally specialized climate change mitigation programs.¹⁴¹ Should executives of any participating member-state seek to immediately take steps on climate change, expensive studies and delays to develop plans are not necessary, the Accord provides an on-demand blueprint.

VI. THE MINNESOTA DEPARTMENT OF ENTERPRISE SUSTAINABILITY

Administrative officers at the state level are employed at the pleasure of the Governor and the Governor, vested with executive authority, exercises mass influence over the organization of agencies and the substantive manner the agencies operate. This has proven true at the federal level and can function at the state level.

135. Erin Benoy, Note, *Wanted: Farmer-Friendly Climate Change Legislation*, 16 DRAKE J. AGRIC. L. 147, 150 (2011).

136. *Id.* at 154.

137. *Id.*

138. See Press Release, Cal. Office of the Governor, Governor Schwarzenegger Applauds Nine Midwest States For Creating Regional Climate Partnership (Nov. 15, 2007), <https://www.gov.ca.gov/news.php?id=8109>.

139. *Id.*

140. Maria Gallucci, *Cap and Trade Resurrected? Some States Awaken to Its Economic Benefits*, INSIDE CLIMATE NEWS (July 12, 2012) <https://insideclimatenews.org/news/20120708/cap-and-trade-rgg-states-california-economic-benefits-energy-efficiency-jobs-carbon-auctions-proceeds-deficits>.

141. See *Midwest Greenhouse Gas Reduction Accord*, CENTER FOR CLIMATE AND ENERGY SOLUTIONS, <https://www.c2es.org/us-states-regions/regional-climate-initiatives/mggra>. (last visited Oct. 20, 2017).

For example, President Clinton's Executive Order 12898 set up an "Interagency Working Group on Environmental Justice."¹⁴² Essentially, this group served as a watchdog organization spanning the majority of the executive branch and working with each agency to advance the goals of environmental justice pursuant to the governor's policy preferences and agenda.¹⁴³ Below a hefty illustration takes place of the steps the Governor of Minnesota has already begun to take, utilizing similar methodology to the one that President Clinton employed.

In 2016, Minnesota Governor Mark Dayton created the Office of Enterprise Sustainability (OES).¹⁴⁴ The OES is a watchdog accountability organization that monitors and works with the existing executive agencies in Minnesota.¹⁴⁵ Lieutenant Governor Tina Smith proclaimed, regarding Minnesota's climate change actions, "State government has many opportunities to fight climate change—by ensuring buildings are energy efficient, increasing our reliance on renewable energies, choosing more fuel-efficient fleet vehicles, and making more informed purchasing decisions."¹⁴⁶ Dayton's creation of OES was an effort to take immediate mitigation steps within his own administration.

OES will provide agencies with the assistance needed to:

- Reduce greenhouse gas emissions and water usage,
- Increase energy efficiency and recycling, and
- Support better coordination of sustainability efforts across state government.
- Develop sustainability plans to reduce costs associated with operations while improving Minnesota's environment.¹⁴⁷

OES celebrated its first anniversary in August of 2017.¹⁴⁸ Before the creation of OES, the Dayton Administration released a substantive report, titled "Climate Solutions and Economic Opportunities."¹⁴⁹ The report includes a brief manifesto of stated goals and explanations of what can be done to tackle climate

142. Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

143. *See generally id.*

144. Press Release, Minn. Office of the Governor, Minnesota Establishes New Office of Enterprise Sustainability to Fight Climate Change (July 20, 2016), <http://mn.gov/governor/newsroom/?id=1055-249987>.

145. *See id.*

146. *Id.*

147. MINNESOTA DEPARTMENT OF ADMINISTRATION, *Office of Enterprise Sustainability*, <http://mn.gov/admin/government/sustainability/> (last visited Oct. 20, 2017).

148. *Id.*

149. MINNESOTA ENVIRONMENTAL QUALITY BOARD, *Climate Solutions and Economic Strategies: A Foundation for Minnesota's State Climate Action Planning* (2016).

change.¹⁵⁰ Direction and exercising of executive authority over state agencies to implement climate change is one of the easiest steps to be taken by the state executive to enact reform.¹⁵¹

VII. WASHINGTON STATE'S CARBON TAX

As touched on earlier, statehouses hold many of the same abilities as the federal government to make law regarding their province.¹⁵² Laying and collecting taxes is one of the federal government's most obvious and infamous roles.¹⁵³ This ability is, of course, extended to the states as well.¹⁵⁴ Washington State's failed 2016 carbon-tax initiative, also known as I-732, serves as a staid example of carbon taxes as a method for states to combat climate change.

British Columbia's successful implementation of a carbon tax program served as the inspiration for the Washington carbon tax initiative.¹⁵⁵ If the measure had been successful starting on July 1, 2017, a tax rate, increasingly yearly, would have been placed on metric tons of carbon used.¹⁵⁶ CarbonWA, a Washington activist organization, sparked interest by garnering over 360,000 signatures on a petition,¹⁵⁷ without Democratic Governor, and noted climate change activist,¹⁵⁸ Jay Inslee's support, the initiative was sent to the ballots during the 2016 election cycle.¹⁵⁹

The initiative suffered setbacks early on, with criticisms coming from varied sides of the political aisles.¹⁶⁰ Some environmentalists argued it did too little and harmed minority or impoverished communities,¹⁶¹ while other opponents derided it's very nature, being an increased revenue collection method, anointed with "the

150. *Id.* at 3.

151. MINNESOTA DEPARTMENT OF ADMINISTRATION, *supra* note 147.

152. *See supra* Part II, B, 2.

153. U.S. CONST. art. I, §8.

154. *See* Kathryn L. Moore, *State and Local Taxation: When Will Congress Intervene?*, 23 J. LEGIS. 171 (1997).

155. Cassandra Profita, *A Carbon Tax In Oregon?*, OR. PUB. BROAD., Jan. 8, 2013, <http://www.opb.org/news/blog/ecotrope/a-carbon-tax-in-oregon/>.

156. Ferdinand Hogroian, *2016 Election Roundup*, 26-FEB. J. MULTISTATE TAX'N 27, 2017 WL 117867.

157. Shi-Ling Hsu, *Environmentalists' Disdain for Washington's Carbon Tax*, SLATE (Oct. 16, 2016) http://www.slate.com/articles/health_and_science/science/2016/10/environmentalists_are_against_i_732_washington_s_carbon_tax.html.

158. Marianne LaVelle, *Washington State Voters Reject Nation's First Carbon Tax*, INSIDE CLIMATE NEWS, (Nov. 9, 2016), <https://insideclimatenews.org/news/09112016/washington-state-carbon-tax-i-732-ballot-measure>.

159. *Id.*

160. *See generally* Hsu, *supra* note 157.

161. William Yardley, *How A Tax On Carbon Has Divided Northwest Climate Activists*, THE L.A. TIMES, Oct. 13, 2016, <http://www.latimes.com/nation/la-na-sej-carbon-tax-washington-20161011-snap-story.html>.

dreaded word ‘tax.’”¹⁶² The Sierra Club, markedly, declined to endorse the initiative, alongside several other noteworthy activist organizations.¹⁶³ Truly, the infighting between environmentalists became well-known, and led to a Seattle Times Columnist calling it “a liberal pig pile.”¹⁶⁴

The election eventually came and I-732 failed by a 59%-41% margin.¹⁶⁵ The valiant effort remains the highest profile carbon tax initiative our nation has seen.¹⁶⁶ Through this example, lessons can be learned for other states; perhaps calling the potential programs a “price adjustment” or “fee implementation” to avoid labeling the carbon tax initiative with, the “t-word.”¹⁶⁷ In addition, environmentalists ought to stress that cannibalizing the efforts from within will only serve to hinder the cause, long-run. Yet, despite all its problems, I-732 is a strong example of how states hold the quasi-dormant ability to take the mantle in the fight against climate change. Carbon taxes can originate from statehouses and be signed into law without a plebiscite in some states, while others may opt to place it on a ballot for a referendum. Regardless, states have significant power and precedent in carbon tax initiatives.

A. Influences and Precedents

While I-732 serves as the most recent and perhaps most well-known carbon tax initiative, it would be a disservice to not include several trailblazers. While British Columbia’s carbon tax is the most notable, *successfully* passed initiative, it is necessary to include Vermont’s and Oregon’s attempts for implementation of carbon taxes. Not only did these three initiatives form precedent for states wishing to implement carbon taxes, they serve to prove that the issue of carbon taxation can leave the borders of Washington State. Hefty and intricate analysis of these plans may not be necessary, but some examination and explanation of their role, moving forward, as precedent, warrant examination.

162. Hsu, *supra* note 157.

163. LaVelle, *supra* note 158.

164. Danny Westneat, *Audubon Backs I-732 To Fight Climate Change—It’s Better Than Nothing*, THE SEATTLE TIMES, July, 13, 2016, <http://www.seattletimes.com/seattle-news/audubon-backs-i-732-its-better-than-nothing/>.

165. Matthew C. Boch, *A Green Headache? Thinking About The Practical Implications Of A State Carbon Tax*, 26-FEB J. MULTISTATE TAX’N 35, 2017 WL 117870, 1.

166. *Id.*

167. Hsu, *supra* note 157.

1. British Columbia

In February of 2008, British Columbia announced it would introduce and implement a carbon tax initiative.¹⁶⁸ The initiative drew fire and praise from the usual parties, some environmental activists showing support and some opposing industrialists levying criticisms.¹⁶⁹ While British Columbia's carbon tax met some hiccups, generally the program is viewed as a success, "[o]verall, [British Columbia]'s carbon tax has still returned more in reduced taxes to B.C. households and businesses than it has taken in—and will do so in the future."¹⁷⁰ The carbon tax proved so inspirational, the very columnist who described the I-732 as a "liberal pig pile," also credited British Columbia's carbon tax as a model for I-732.¹⁷¹ Internationally, the United Nations and the World Bank have each praised the British carbon tax plan.¹⁷² While some domestic dissent remains, and debate about the figures and results remain lively, the program is a steadfast example of a successful climate change initiative, and a carbon tax plan, taken at the state, or in this case, provincial, level.

2. Oregon

Rumblings of an Oregonian statewide climate change initiative began in 2009, but the pressures of the economic recession and varying intimating political waves sank the movement.¹⁷³ Later on, in 2014, the Legislature proposed a significantly more comprehensive and thorough carbon plan.¹⁷⁴ The Oregon Legislature's carbon tax plan was thorough to say the least, exemptions for certain classes of taxpayers were carved out, a study was commissioned, and hefty debate was held.¹⁷⁵ The study reported that the program, if implemented, would have

168. David G. Duff, *Carbon Taxation in British Columbia*, 10 VT. J. ENVTL. L. 87, 101 (2008).

169. *Id.*

170. Mark Cameron, *The Real Lesson Ontario Can Take Away from B.C.'S Carbon Tax*, MACLEAN'S (Mar. 16, 2017), <http://www.macleans.ca/economy/economicanalysis/the-real-lesson-ontario-can-take-away-from-b-c-s-carbon-tax/>.

171. Westneat, *supra* note 164.

172. Mark Hume, *B.C. Carbon Tax: An Effective Model For National Climate Change Approach*, THE GLOBE AND MAIL, Dec. 10, 2014, <http://www.theglobeandmail.com/news/british-columbia/bcs-carbon-tax-effective-in-reducing-greenhouse-gas-emissions-report/article22017313/>.

173. Scott Learn, *Can Oregon's Climate Change Plan Survive A Down Economy?*, THE OREGONIAN, Jan. 17, 2009, http://www.oregonlive.com/environment/index.ssf/2009/01/can_oregons_climate_change_pla.html.

174. Nancy Shurtz, *Carbon Pricing Initiatives in Western North America: Blueprint for Global Climate Change Policy*, 7 SAN DIEGO J. CLIMATE & ENERGY L. 61, 123 (2016).

175. *Id.*

dramatically reduced greenhouse gas emissions, while avoiding harming the economy.¹⁷⁶ Regrettably, the plan never passed.¹⁷⁷ Yet, it can be inferred, that Oregon's neighbor to the North was not oblivious to the movement and likely looked to the precedent Oregon set. Oregon played a vital role in garnering momentum, one-by-one carbon tax plans seem to be popping up at the state level, these rumblings are significant and may eventually lead to a substantive carbon tax; however, one thing is certain, they have ample authority and precedent to back them up.

3. Vermont

Vermont also took the carbon tax battle by the horns through House Bill 412 (HB412).¹⁷⁸ The 2015 bill ultimately met its demise in committee,¹⁷⁹ yet, much like Oregon, Vermont's effort provides a blueprint and political momentum for further state initiatives. The bill brought discussion to carbon taxation and climate change initiatives to Vermont.¹⁸⁰ Vermont's climate change measure, developed as 2015 was waning, undoubtedly influenced or, at the least, was discussed by Washington's carbon tax activists during the public debate of I-732.

VIII. INFORMATION-GENERATING ORGANIZATIONS

States possess the ability to gather more concise, more relevant to local issues, assemblies to address pertinent issues in climate change or environmental policy. Climate change and even some environmental policy still carries a stigma amongst some political actors.¹⁸¹ The information-finders listed below, present and gather information usually unique to their individual state to present to the executive or legislature. These groups usually present information in a vacuum off of the national stage. These assemblies, consisting either of private citizens or public state actors, can exercise significant clout by advising the governor

176. Wendy Culverwell, *The Cost Of Carbon: Tax Would Be 'A Small Drag' On Oregon Economy*, THE PORTLAND BUS. J., Dec. 8, 2014, <http://www.bizjournals.com/portland/blog/sbo/2014/12/the-cost-of-carbon-tax-would-be-a-small-drag-on.html>.

177. Shurtz, *supra* note 174, at 123.

178. H. 412, 2015-16 Gen. Assemb., Leg. Sess. (Vt. 2015).

179. *Id.*

180. Peter Hirschfeld, *Vermont GOP Targets Democrats in New 'Stop The Carbon Tax' Attack Ad*, VERMONT PUB. RADIO, (Aug. 17, 2016), <http://digital.vpr.net/post/vermont-gop-targets-democrats-new-stop-carbon-tax-attack-ad#stream/0>.

181. Fuller, *supra* note 31.

and recommending changes.¹⁸² Yet, the common thread running between them is their substantive ability to gather information and produce research on and study the varied needs facing states.

A. Legislative Committees

Federal congressional committees usually control the fate of any given bill within their jurisdiction; they can issue subpoenas, hold hearings, compel witnesses to produce data, and hold parties in contempt.¹⁸³ Yet what can be done on the state level through these committees? The following section works to elucidate the capacities and abilities of these committees. Several state legislatures have taken action to create legislative committees or commissions solely addressed to climate change causes.

Alaska State Representative Andy Josephson introduced House Bill 173 (HB173), an attempt to codify the progress made through the Alaskan Climate Change Sub-Cabinet that Governor Palin had organized, in the form of a separately molded committee to monitor and address climate change.¹⁸⁴ The sub-cabinet, as common sense dictates, can be called or dismissed at the pleasure of the Governor.¹⁸⁵ HB173 attempts to distinctly codify and fund a commission addressed to climate change is a utilization of the legislatures tools to address climate change.¹⁸⁶

The North Carolina Legislature organized a Legislative Commission on Global Climate Change in 2005.¹⁸⁷ The Commission was to conduct an in-depth examination and study of the nature of climate change, the danger it presents to North Carolina, and will make recommendations and publish its findings.¹⁸⁸ The Commission was not meant to be a standing committee, but to publish research and adopt findings; thus, after several extensions, the Commission dissolved.¹⁸⁹ The Bill creating the Commission was signed into law by Governor Easley; should an opposing party have taken power, the Commission would still have remained in existence.¹⁹⁰

182. *Governors' Use of Cabinets*, NATIONAL GOVERNORS ASSOCIATION 1, 11–13 (Oct. 26, 2006), <https://www.nga.org/files/live/sites/NGA/files/pdf/06GOVCABINT.PDF>.

183. *See generally The Role of Committees in the Legislative Process*, THE UNITED STATES SENATE, <https://www.senate.gov/general/Features/Committees.htm>.

184. *See* Alaska Legislative Assembly, *An Act establishing the Alaska Climate Change Response Commission*, H.R. 173 Alaska Legis. Assemb. Reg. Sess. (Mar. 10, 2017).

185. *See Governors' Use of Cabinets*, *supra* note 182, at 11–13.

186. *Id.*

187. 2005 N.C. Session L. 442 (“An Act to Establish the Legislative Commission on Global Climate Change”).

188. *See id.*

189. *Id.* §11.

190. *Id.*

California and Massachusetts each organized within their state legislatures committees dedicated to addressing climate change. These committees, an exercise in legislative power and autonomy, hold massive power within their own states. The Commonwealth of Massachusetts organized a House and Senate Committee on Global Warming and Climate Change.

It shall be the duty of the House Committee on Global Warming and Climate Change to consider all matters related to the Commonwealth's climate policy, including but not limited to greenhouse gas emissions, the climate impacts of renewable energy development and climate change adaptation and mitigation. The committee shall also serve in an advisory capacity to other joint committees that consider legislation with significant climate impacts, including but not limited to environment, natural resources and agriculture, transportation, energy, housing and economic development and emerging technologies. The committee may participate with other committees in joint hearings at the request of the Speaker or by agreement of the committee chairs.¹⁹¹

Massachusetts Governor Charlie Baker recently signed an executive order attempting to begin curbing greenhouse gas emissions within the commonwealth.¹⁹² Baker had the findings or resources of the committees at the state government's disposal as well to aid his drafting of the executive order. The committees provide more research and resources than would be normally available otherwise.

The California State Assembly created a standing Joint Legislative Committee on Climate Change Policies that has been relatively active in state climate change action.¹⁹³ While legislative commissions wield substantial authority and power, they also hold a great deal of discretion to exercise that authority and power.¹⁹⁴ California's Climate Change Committee stated from its inception it seeks to take an active role in making findings and ascertaining facts related to climate change.¹⁹⁵

191. HOUSE COMMITTEE ON GLOBAL WARMING AND CLIMATE CHANGE, <https://malegislature.gov/Committees/Detail/H51/About> (last accessed Mar. 13, 2017).

192. Mass. Exec. Order No. 569 (Sept. 16, 2016), <http://www.mass.gov/governor/legislationexecorder/execorders/executive-order-no-569.html>.

193. See CALIFORNIA STATE ASSEMBLY, JOINT LEGISLATIVE COMMITTEE ON CLIMATE CHANGE, POLICIES, <http://assembly.ca.gov/climatechange/policies> (last visited Oct. 20, 2017).

194. See *generally*, United States v. Armstrong, 517 U.S. 456, 464 (1996) (discussing prosecutorial discretion).

195. Cal. Gov't. Code §9147.10 (2016).

The Joint Legislative Committee on Climate Change Policies is hereby created. The committee shall ascertain facts and make recommendations to the Legislature concerning the state's programs, policies, and investments related to climate change. Those recommendations shall be shared with other appropriate legislative standing committees, including the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review.¹⁹⁶

I assert these specialized climate change committees provide resources, funds, and attention to a totally unique and demanding field of legislation and hold an enviable vantage point. Their importance cannot be understated. These committees give legislatures a seat at the table in regards to power to enact climate change legislation.

B. Sub-cabinets, Commissions, and Advisory Groups

These assemblies, sub-cabinets, commissions, or advisory groups, wield significant influence and have varied power and influence. These committees, as demonstrated below, can be organized by the executive or can be created by legislature and signed into law by the executive, thus granting the resources the legislature can give. The discussion and analysis includes a brief, selected subset, not an absolute listing of state initiatives to create information-gathering organizations.

Montana Governor Steve Bullock assembled an interim Clean Power Advisory Group from various state actors and citizens to advise the Montana Department of Environmental Quality.¹⁹⁷ The Council's purpose was a one-time submission of recommendation to the executive's environmental agency regarding clean power options in Montana.¹⁹⁸ The governor, here, assembled experts in the field to help take informed action combating climate change in Montana.

In 2005, Arizona Governor Janet Napolitano signed an executive order creating the Climate Change Advisory Group.¹⁹⁹ Napolitano assembled thirty five individuals to form a team to advise her administration on how to address greenhouse gas emissions and

196. *Id.*

197. See Press Release, Mont. Office of the Governor, Governor Steve Bullock Announces Interim Clean Power Plan Advisory Council Members, <https://governor.mt.gov/Newsroom/Governor-Steve-Bullock-Announces-Interim-Clean-Power-Plan-Advisory-Council-Members>.

198. *Id.*

199. Ariz. Exec. Order No. 2005-02 (Mar. 20, 2017), <http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/465>.

to create a long-term plan to curb emissions in Arizona.²⁰⁰ The executive order emphasized keeping jobs and natural resources preserved while doing everything possible to address Gases.²⁰¹ The Group also was to take inventory of Arizona's current greenhouse gas emissions.²⁰²

Illinois Governor Rod Blagojevich assembled the Illinois Climate Change Advisory Group through Executive Order.²⁰³ Similar to other groups mentioned, the Committee was to gather research and present the executive with a climate change plan he could enact.²⁰⁴ The executive order also mandated the Illinois Environmental Protection Agency to submit an annual report tracking greenhouse gas emissions across the state and forecast new trends.²⁰⁵

In 2007, Governor Sarah Palin signed an administrative order creating the Alaska Climate Change Sub-Cabinet.²⁰⁶ The Sub-Cabinet was dedicated to creating a climate change plan for Alaska and publishing a high-profile plan for mitigation of risks.²⁰⁷ The Sub-cabinet was solely organized under the role of the executive.²⁰⁸

These commissions or committees have vast power. They can attempt fact-finding missions; draw attention to issues; maneuver more flexibly than the governor across the state and communicate with various actors; they can bring in varied voices from across the spectrum; and finally, they can assess the needs of the state and make findings in a manner political actors cannot.²⁰⁹ Commissions and advisory groups *are not* merely figurehead displays; they have unique abilities and can achieve real results.

IX. RECENT ACTION

By most metrics, it can be noted that the Trump Administration has moved resoundingly fast in instituting reform within the regulatory state.²¹⁰ In addition, the President has withdrawn from

200. *Id.*

201. *Id.*

202. *Id.*

203. Ill. Exec. Order No. 2006-11 (Mar. 13, 2017), https://www2.illinois.gov/Pages/government/execorders/2016_11.aspx.

204. *See id.*

205. *Id.*

206. Alaska Admin. Order No. 238 (Mar. 13, 2017), <https://gov.alaska.gov/admin-orders/238.html>.

207. *Id.*

208. Rick Steiner, *Gov. Parnell Must Revive Alaska Climate Change Cabinet*, ALASKA DISPATCH NEWS, Mar. 7, 2013, <https://www.adn.com/commentary/article/gov-parnell-must-revive-alaska-climate-change-cabinet/2013/03/08/>.

209. *See generally The Role of Committees in the Legislative Process*, *supra* note 183.

210. Chris Cillizza, *President Trump Likes To Move Fast. The Public Isn't Thrilled.*, WASH. POST, Feb. 3, 2017, <https://www.washingtonpost.com/news/the-fix/wp/2017/02/03/the-trump-administration-is-very-proud-of-how-fast-its-moving-the-public-is-less->

the Paris Climate Accord, sparking passionate responses on both sides of the aisles. Below, responses from state actors advocating for climate change policy already seen in the Trump Administration are included.

A. *The Paris Climate Accord*

Even in the lead-up to President Trump withdrawing from the Paris Climate Accord, governors, other state actors, and even large companies were putting pressure on the President to reconsider withdrawal and making preliminary plans should the Administration do so.²¹¹ Nonetheless, the attempts to lobby the President were unsuccessful and in the wake of the announcement, pacts and groups began to form amongst state actors.²¹² The U.S. Climate Alliance (USCA) was launched immediately after the White House made the announcement.²¹³ A state-led group materialized before the President's eyes as governors pledged their commitments to the principles of the Paris Climate Accord and vowed their membership to the USCA.²¹⁴ USCA's stated goals mirror the Paris Climate Accord; members vow to reduce emissions from 26-28%.²¹⁵ While primarily populated by Democratic governors, the USCA boasts Republican Governors Charlie Baker of Massachusetts, and Phil Scott of Vermont as well.²¹⁶

In response, the White House seemed uncharacteristically complacent in regards to this step. As demonstrated by White House Press Secretary Sean Spicer statement that,

If a mayor or a governor wants to enact a policy on a range of issues, they are accountable to their own voters, and that's what they should do. We believe in states' rights, so if

thrilled/?utm_term=.a903155dac3e; Richard Pierce, *Is Trump Moving Too Fast? Checks and Balances Will Slow Him Down*, THE HILL, (Feb. 12, 2017), <http://thehill.com/blogs/pundits-blog/the-administration/319083-is-trump-moving-too-fast-checks-and-balances-will-slow>.

211. See Marianne Lavelle, *Climate Action Will Thrive on State and Local Level, Leaders Vow After Trump Order*, INSIDE CLIMATE NEWS (Mar. 29, 2017), <https://insideclimatenews.org/news/29032017/climate-change-mayors-states-donald-trump-executive-order>.

212. *Id.*

213. Doyle Rice, *More States Sign on to U.S. Climate Alliance to Honor Paris Agreement*, USA TODAY (June 8, 2017), <https://www.usatoday.com/story/news/nation/2017/06/08/more-states-sign-us-climate-alliance-honor-paris-agreement/102629160/>.

214. *See id.*

215. *Id.*

216. See Timothy Luetkemeyer, *Fighting Climate Change in Post-Paris Agreement America: Reducing Livestock Emissions*, 94 DENV. L. REV. ONLINE 418, 422 (2017); David Abel, *Mass. Joins Other States to Fulfill US Pledges On Carbon*, THE BOSTON GLOBE, June 2, 2017, <https://www.bostonglobe.com/metro/2017/06/02/climate/qELM7JPNpKnORMMqkzi2XJ/story.html>.

a locality, a municipality or a state wants to enact a policy, that their voters or American citizens believe in, then that's what they should do.²¹⁷

From the statement alone it appears the Trump Administration goes as far as to give validation to the USCA, as long as it's the will of member states' constituents.

Perhaps most curious is the response on the city and municipality level. Beyond the statehouses, U.S. mayors reacted strongly to the President's actions regarding the Climate Accord and vowed that they would step up the fight through action in their respective city halls.²¹⁸ The Mayors of Chicago and Boston have been notably passionate in their responses.²¹⁹ In an act seemingly mirroring the USCA, 365 Mayors across the nation have founded an organization, nicknamed "The Climate Mayors," or the "Mayors National Climate Action Agenda."²²⁰ These Mayors have vowed to take steps to fight climate change and created new goals and deadlines to reduce their emissions, and appear to be working in tandem with a similar effort through the Governor's USCA. Though, it should be noted, Mayoral action was included for thoroughness of explanation and bears little resounding consequence of federalist action in climate change.

B. The Clean Power Plan

The Trump Administration's only foray in to the climate change arena was not solely the Paris Climate Accord. The Trump Administration has released a slew of memoranda, notices, policy shifts, and drafts all working to adjust the previous Administration's climate policy.²²¹ The Executive Order instructing the EPA to begin review or revision of the Clean Power Plan, however, drew significant drawback from State Actors. Indeed, much like the decision to abandon the Paris Climate Accord, state officials were vowing to meet standards alone. Governors Cuomo

217. Benjamin Storrow, *Governors Face Pressure to Distance Themselves from Trump on Climate*, THE SCIENTIFIC AMERICAN (June 5, 2017), <https://www.scientificamerican.com/article/governors-face-pressure-to-distance-themselves-from-trump-on-climate/>.

218. *See generally id.*

219. *Id.*

220. Lizette Alvarez, *Mayors, Sidestepping Trump, Vow to Fill Void on Climate Change*, NEW YORK TIMES, June 26, 2017, <https://www.nytimes.com/2017/06/26/us/mayors-trump-climate-change.html>.

221. Robinson Meyer, *Trump's EPA Repeals a Landmark Obama Climate Rule*, THE ATLANTIC (Oct. 9, 2017), <https://www.theatlantic.com/science/archive/2017/10/the-trump-administration-repeals-obamas-central-climate-rule/542403/>; Alex Guillén & Eric Wolff, *5 Big Things Trump Is Doing To Reverse Obama's Climate Policies*, POLITICO (Oct. 10, 2017), <https://www.politico.com/story/2017/10/10/trump-obama-climate-clean-energy-243655>.

and Brown, New York and California, each promised their commitment to the Clean Power Plan, despite the Trump Administration's actions.²²² New York Attorney General Eric Schneiderman vowed to lead a coalition of State Attorneys General challenging the action, going so far as to say he would take it to the Supreme Court.²²³ The beauty of these actions is not merely opposing or advocating for a policy that may or may not be favorable, but the ability vested in the states to take action on climate change.

X. CONCLUSION

Climate change is an overtly politicized matter, and the analysis has not shied away from this; it is no secret that states with opposing heads of government to President Trump will relish taking climate change action first and allocating resources in defiance of the Trump Administration. If de-politicization of climate change is to occur effectively, states must act evenly and remove personal or political animus from the equation, to administer and create climate change initiatives uniformly. Each state carries a varied and distinct risk of climate change harm or benefit; state governments can react in a way the most environmentally friendly federal government could not. Professor Felix Mormann summarizes the merits of federal versus state government initiatives as follows:

Those who argue for implementation at the federal level point to the better fit with the inter-state nature of the U.S. electricity grid, efficiency gains from a unified, national market for trading RECs and the reduced risk of regulatory leakage. Proponents of state-level renewable portfolio standards, on the other, hand, argue that existing state policy activism displaces the need for federal action, states are better positioned to account for local renewable resources, and have historically been tasked with determining their own energy portfolios.²²⁴

222. Governor Andrew Cuomo (@NYGovCuomo), TWITTER (Mar. 28, 2017, 10:06PM), <https://twitter.com/NYGovCuomo/status/846770535619055617>.

223. New York Attorney General Eric Schneiderman (@AGSchneiderman), TWITTER (Mar. 28, 2017, 12:20PM), <https://twitter.com/AGSchneiderman/status/846804128282107905>.

224. Felix Mormann, *Constitutional Challenges and Regulatory Opportunities for State Climate Policy Innovation*, 41 HARV. ENVTL. L. REV., (forthcoming Mar. 7, 2017) (University of Miami Legal Studies Research Paper No. 17-9; Stanford Public Law Working Paper No. 2928840), available at SSRN: <https://ssrn.com/abstract=2928840>.

State governments are too capable and too talented at responding to climate change to let it remain subject to the inert political dangers it faces at the national level.

The analysis and explanation above was meant to provide a framework, or blueprint, of sorts, illustrating authorized, legal action that states can take to combat climate change. There is much at stake in the fight against climate change and the actions taken by states cannot be mired in complex legal challenges and adjudicatory actions. Beyond legality of action, extensive precedent and example for states to act were provided, and the ability to, at times, go past the state legislatures was explored as well. Be it negotiating with foreign leaders or entering compacts with various states within the union, states have more capacity now than ever before to take up arms the climate change fight.

