

Second Generation Climate Policies in the American States: Proliferation, Diffusion and Regionalization *

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More than fifteen years after its ratification of the Rio Declaration on Environment and Development and nearly a decade after its signing of the Kyoto Protocol, the American federal government has maintained its posture of disengagement on climate change policy. Congress rejected a series of legislative proposals in 2005 that would have established modest targets for containing the growth of greenhouse gas emissions from major sources. Even Congressional passage of one of these bills would likely have been blocked by a Presidential veto. At about the same time, President George W. Bush rejected strong overtures from his closest foreign ally, United Kingdom Prime Minister Tony Blair, to take some new greenhouse gas initiatives as the G-8 group of developed nations gave new attention to climate change. American federal intransigence on this issue was further illustrated when it was revealed in June 2005 that a senior Bush Administration official had quietly downplayed the severity of climate change through substantial modification of a major federal government report on the topic, only to resign shortly thereafter and assume a senior position with a major oil company known for its hostility to any early action to reduce greenhouse gases.

This familiar tale does not, however, provide anything approaching a complete picture of the evolving American governmental role in climate policy development and implementation. Indeed, at the very time federal institutions continued to thrash about on this issue, major new initiatives were launched, with bipartisan support, in such diverse state capitals as Honolulu, Sacramento, Carson City, Santa Fe, Austin, Springfield, Harrisburg, Albany, and Hartford, among others. By the middle of the current decade, more than half of the American states could be fairly characterized as actively involved in climate change, with one or more policies that promised to significantly reduce their level of greenhouse gas emissions. Virtually all states were beginning to at least study the issue and explore very modest remedies and some—such as California, Connecticut, New Jersey, and New York—were every bit as engaged on multiple policy fronts as international counterparts in European capitals that were formally obligated to implement Kyoto reduction pledges. As these programs began to move from enactment into early implementation, they are clearly having some effect on stabilizing emissions from their jurisdictions. Indeed, many states are major sources of greenhouse gas emissions, with considerable potential for reduction. If the fifty states were to secede and become sovereign nations, thirteen of them would rank among the top forty nations of the world in emissions, led by Texas in seventh place between Germany and the United Kingdom (Rabe 2004).

There are, of course, profound limitations on what American states, acting individually or collectively, can do to reverse the steady growth of American greenhouse gas releases of recent decades. States face enormous constitutional constraints, including prohibitions against the negotiation of international treaties and imposition of restrictions on any commercial transactions that cross state boundaries. Moreover, states cannot encroach on regulatory areas in which the federal government has established a primary role, such as setting standards for fuel economy from motor vehicles or sustaining an extensive set of subsidies and incentives for continued use of fossil fuels. States may also face significant disincentives to take “early action” on a unilateral basis, not knowing if their steps would receive credit under any subsequent regulatory program approved in Washington, D.C. Indeed, given the indifference to climate change evident at the federal level, where the Senate never even voted on the Kyoto Protocol before its ratification

prospects were declared dead in 2001, why would such a diverse—and growing—set of states take a very different direction, redefining American climate policy in the process? This paper will attempt to respond to that question. It will consider both the historic role of American states in national policy development and particular drivers that seem pivotal in the climate case. In addition, it will attempt to chronicle the evolving role of states on climate policy, with particular attention to new trends that appear to be emerging as we have moved from the early to middle years of the first decade of the Twenty-first Century. Finally, we will look ahead to consider possible limitations facing state-driven policy and opportunities for these rather unexpected statehouse-level developments to continue to expand and ultimately define a unique American response to this enormous policy challenge.

Policy From the Bottom-Up

Many accounts of American public policy are written as if the U.S. operated as a unitary system, whereby all innovations and major departures emanate from the federal governments. Under such depictions, state governments are often impediments to progress or mere vessels for implementation of federal commands once issued. However, a more nuanced view of American federalism demonstrates that states have often served a far more expansive and, at times, visionary role. Many major developments of the late Nineteenth and early Twentieth Centuries, from elimination of child labor abuses to providing women with the right to vote, were launched through movements that assumed policy form first in various state capitals (Peterson 2003; Walker 2000). In environmental policy, a number of states took early and constructive action to address particular concerns years or even decades in advance of the first Earth Day and the advent of federal command-and-control regulatory programs. Indeed, some current federal policies that are widely heralded for their effectiveness are based in large part on earlier state experiments, such as the Toxics Release Inventory that mandates toxic pollution disclosure and market-based emissions trading programs for air contaminants.

The potential for early and active state engagement on policy issues has likely only intensified in recent decades, as the capacity of most state governments has grown markedly. During this period, many states have either drafted entirely new constitutions or dramatically revised existing ones to expand potential areas for state policy involvement (Rosenthal 2005; Hedge 1998; Teske 2004). This has led, in many instances, to dramatic increases in state revenue and expansion of state agencies with considerable oversight in all areas relevant to greenhouse gases, including environmental protection, energy, transportation, and natural resources. Even in areas with significant federal policy oversight, states have become increasingly active and, in some cases, fairly autonomous in interpretation, implementation, and innovation. States collectively issue more than 90 percent of all environmental permits issued in the United States, complete more than 75 percent of all environmental enforcement actions, and rely on their own fiscal source for more than 75 percent of their total funding (Rabe 2006).

Extending such resources and powers into the realm of climate change might be a fairly incremental step in some instances, certainly in areas such as regulation of the electricity sector where the state government role has been dominant for decades (Gormley 1983). But the burgeoning state role must be seen as not merely an extension

of existing authority but rather a new movement of sorts driven by a set of factors distinct to the issue of climate change. These factors have proven increasingly effective, in a wide range of jurisdictions, overcoming inherent opposition and building generally broad and bipartisan coalitions for action. In some jurisdictions, this dynamic has advanced so far that one of the greatest conflicts in climate policy innovation is determining which political leaders get to “claim credit” for taking early steps. In California, for example, Republican Governor Arnold Schwarzenegger tussles with Democratic legislators such as Assemblywoman Fran Pavley or Democratic State Treasurer Phil Angelides to determine whose name will become synonymous with far-reaching climate initiatives that are almost unthinkable at the federal level but have proven quite popular in Sacramento and statewide. The following factors appear to be pivotal drivers behind action in California and numerous other states.

Immediate Signs of Climate Impact. Contrary to the rather acrimonious interpretations of climate science in Washington, D.C. policy circles, individual states have begun to feel the impact of climate change in more immediate ways. These impacts differ by jurisdiction but are often buttressed by state-based researchers, working cooperatively with state regulatory agencies in attempting to discern early and localized indicators of climate impact. For coastal states, concern is often concentrated on the impact of rising sea level, particularly given the substantial level of economic development concentrated along many shores at relatively low sea level in the United States. This dynamic has influenced state governments from Honolulu to Trenton. In turn, other states are concerned by the decline and loss of key species, due to migration of plants, birds, insects, and animals as climate changes. Additional states have experienced dramatic shifts in weather patterns that put the agricultural sector at considerable risk, particularly central Plains states such as Nebraska and the Dakotas. No two states have faced identical experiences but a common theme suggests that individual states and regions have begun to face direct impacts, thereby taking the climate change policy debate from an acrimonious battle over graphs and charts toward something that touches real life experience and thereby legitimizes a policy response.

Economic Development Opportunities. Virtually all states that have responded to the challenge of climate change have done so through methods that they deem likely to reduce greenhouse gas emissions but simultaneously foster alternative forms of economic development. Active state promotion of renewable energy, through a combination of mandates and financial incentive programs, have focused upon development of “home grown” sources of electricity that promise to simultaneously stabilize local energy supply and promote significant new job opportunities for state residents. Many states with active economic development programs have concluded that investment in the technologies and skills needed in a less-carbonized society in coming decades is a sound bet. In response, they have advanced many policy initiatives in large part in anticipation of economic benefits. Even some states with substantial sectors that generate massive amounts of greenhouse gases, such as coal mining and usage in Pennsylvania, have begun to shift their thinking toward the opportunities for longer-term economic development presented by investment in renewable energy (Rabe, 2006a, Rabe 2007).

State Agency Support and Advocacy. Many states worked intensively in recent decades to build in-house capacity on environmental, energy and other areas that now have direct relevance to climate change. Consequently, state agencies have proven increasingly fertile areas for “policy entrepreneurs” to develop ideas that are tailored to their state’s needs and opportunities. These ideas can then be translated into legislation, executive orders and pilot programs. Such officials also have proven effective in forming coalitions, often cutting across partisan lines in the legislature and engaging supportive interest groups where feasible (Rabe 2004; Mintrom 2000). No two states have assembled identical constituencies for climate policy, just as no two states have devised identical policies. But state agencies have been significant drivers behind innovation, whether in the stages of developing policy ideas, seeing them through to policy formation, or moving into policy implementation. In recent years, state-based environmental advocacy groups as well as businesses and industries that might benefit from climate policy have become increasingly visible and active in bringing about far-reaching initiatives.

Entering the Second Generation of State Climate Policies

The sheer volume and variety of state climate initiatives is staggering, hard to measure with precision and subject to expansion. Much policy analysis has been so heavily focused on federal or international-level actions that state or other sub-national policies have received markedly less attention. In the last few years, however, some literature has begun to emerge, involving a body of scholarly publications, research reports from non-governmental organizations such as the Pew Center on Global Climate Change, and state policy overviews from entities that represent the interests of all fifty state governments such as the National Conference of State Legislators and the National Association of State Energy Officials. From this evolving body of work, we can distill current developments and highlight trends that appear to be emerging in what we can characterize as a “second generation” of state climate policy development.

The Beat Goes On: Continuing Proliferation

Perhaps the most evident trend in state policy engagement on climate change is that the sheer number of states involved as well as aggregate number and range of policies continues to grow on a monthly basis. As of mid-2006, this trend showed no signs of slowing and may even accelerate in reaction to continued federal government inability to engage the issue. At this point in time, more than half of the states have enacted at least one piece of climate legislation or passed at least one executive order which set formal requirements for reducing greenhouse gases; approximately 18 states have passed multiple laws designed to achieve such reductions. Forty-seven have completed greenhouse gas inventories and 22 have set forth “action plans” to guide future policy. In six cases, states have formally established statewide reduction commitments over future years and decades, linked to policies designed to attain these reduction pledges. Renewable energy, discussed further below, has been a particularly popular area of engagement, with 22 states having enacted so-called “renewable portfolio standards” that

mandate a formal increase in the amount of electricity distributed in a state that must be generated from renewable sources. Fifteen states have established their own version of carbon taxes, through so-called “social benefit charges” that allocate their revenues to renewable energy development or energy efficiency projects. In transportation, ten states have agreed to follow the lead of California in establishing the world’s first carbon dioxide emissions standards for vehicles and twelve states are engaged in some form of capping carbon emissions from major industrial sources.

Alongside the sheer magnitude of state policies, these efforts are generally becoming more rigorous in terms of the levels of greenhouse gas emissions that they are seeking. There has been a gradual shift in state policy over the past decade, with voluntary initiatives increasingly supplanted with regulatory efforts. Most of these policies retain considerable flexibility in terms of compliance, consistent with the credit-trading mechanisms dominant in most Western governments that have ratified Kyoto. But their regulatory rigor is steadily increasing, along with the likely impact on greenhouse gases if faithfully implemented. In turn, states continue to have multiple motivations for pursuing these respective policies but are becoming increasingly explicit and forceful in noting the climate benefits, among others. This runs somewhat contrary to earlier practice, whereby many states were aware of potential climate impact but said little if anything about this element of a proposed policy. In such “stealth” cases, such as a 1999 renewable energy law in Texas, initial emphasis was placed almost exclusively on the non-climate benefits from enactment, but that has begun to give way as policy proponents see more advantage in being explicit about the greenhouse gas ramifications, among others, of various policy tools. This is particularly evident among current and recent state governors with prominent national profiles, some with aspirations for higher office, such as Schwarzenegger, other Republicans such as George Pataki of New York and Mitt Romney of Massachusetts and such Democrats as Bill Richardson of New Mexico and Ben Nelson of Nebraska. Indeed, it is possible to envision Presidential primaries, in 2008 or 2012, where multiple candidates may emanate from statehouses from which they can claim more constructive climate policy engagement than any of their recent Presidential predecessors.

Diffusion: Spreading Across the States

Much of the existing infrastructure of state climate programs has been individually tailored to the needs of a particular state. However, there is increasing evidence that some policies enacted in one state ultimately are being replicated in one or more additional states. There is, in fact, precedent in other policy arenas for such “policy diffusion” to spread across the nation and become, in effect, a *de facto* national policy (Mossberger 2000). Under such circumstances, it may be possible for the states to simply negotiate inter-state differences and implement these inter-related programs. There may also be some tipping point at which diffusion reaches sufficient numbers of states that the federal government concludes that it should respond by drawing from these state models and establishing some version of this on a national basis. In the late 1980s, for example, the Reagan Administration actively opposed a federal role in increasing energy efficiency standards for a wide range of household appliances. After more than two dozen states responded with some form of state-specific regulation, the Congress and President

Reagan negotiated a federal bill that drew heavily on state experience but preempted all existing state laws in the process.

There are several areas in which enactment of a climate policy in one jurisdiction has already been duplicated elsewhere. In 2000, Nebraska enacted carbon sequestration legislation, designed to promote changes in agricultural practice that could result in less use of fossil fuels in farming and increase the capacity of state-grown crops to sequester carbon through growing plant material. Shortly thereafter, three other states adopted essentially identical legislation, although there was virtually no contact between officials in the respective states during this period. However, the policy tool that appears to be diffusing most rapidly is the renewable portfolio standard (RPS), which has been established in 22 states and the District of Columbia as of mid-2005. The first RPS was enacted in 1991 in Iowa, with little if any attention to greenhouse gas impacts. Subsequently, the pace of adoption has intensified, with four new RPS programs approved in 2005 and three existing ones significantly expanded during that period.

Particular RPS features vary by state but all such programs mandate a certain increase over time in the level of renewable energy that must be provided by all electricity providers in a state. For example, the State of Nevada passed legislation in June 2005 that will require that state's two primary utilities, Nevada Power Corporation and Sierra Pacific Power Corporation, to gradually increase their supply of renewable energy over the following decade, ultimately reaching a level of 20 percent by 2015. This legislation passed with unanimous support in both legislative chambers in Nevada and was signed into law by Republican Governor Kenny Guinn. It built on earlier laws enacted in 1997, 2001, and 2003, each expanding the state's commitment to formally promote renewable energy. Nevada, like virtually every other state that has enacted an RPS, provides regulatory utilities considerable flexibility in finding ways to meet renewable mandates through so-called "renewable energy credit" programs that function much like other market-based programs and promise to lower compliance costs significantly.

RPS programs appear likely to continue to diffuse in coming years, reflecting recent legislative enactments and the continuing exploration of this approach as a policy option in a number of other state legislatures. In turn, several states with established RPS programs, such as Texas, have found them so successful in terms of their ability to add renewable energy at reasonable costs, that they are looking actively to "increase the bar," building on the exponential rate of renewable energy growth of recent years with a substantial increase in future mandate levels (Texas Public Utility Commission 2005). Ironically, this American state pattern coincides closely with the experience of the European Union, where a growing number of nations—including Denmark, Sweden, and the United Kingdom—have adopted their own RPS programs as central components of their plans for meeting Kyoto Protocol obligations (Rowlands 2004). This growing trend toward state diffusion may explain why the U.S. Senate adopted a proposal for a federal RPS (reaching 10 percent of renewable energy nation-wide by 2020) by a 52-to-48 margin in June 2005, although it was not adopted in the House or included in the 2005 Energy Act. One growing challenge as RPSs proliferate will be differential state requirements, ranging from varied definitions of what constitutes renewable energy to state efforts to maximize generation of in-state renewable sources for economic development reasons. The former issue poses challenges for renewable energy market

development in areas where generators serve multiple states whereas the latter raises questions of state adherence to the Commerce Clause of the U.S. Constitution (Rabe 2006a).

Regionalism: Between Nation and State

There is also ample precedent in American federalism for states to work cooperatively on common concerns and, in some instances, formalize regional approaches involving two or more states (Derthick 1975; Zimmerman 2002). Some regional strategies take a formal structure, such as interstate compacts, which involve a formal agreement ratified by participating states and ultimately Congress. These have been used extensively among states that share responsibility for an ecosystem, such as the Great Lakes Commission which was established in 1955 to promote the environmental well-being of the Basin. Other strategies may entail establishing a multi-state organization or commission to facilitate ongoing negotiation over particular issues or memoranda-of-understanding concerning reciprocal policy commitments. An obvious rationale for regional action involves those instances in which participating jurisdictions see a common advantage to working cooperatively rather than independently on a particular policy issue.

As state climate policies proliferate and diffuse, it is entirely possible that certain clusters of states may become, in practice, regions even in the absence of formal agreements. All Southwestern states between California and Texas, for example, have an RPS program. It is increasingly possible to envision inter-state trading of renewable energy credits and other forms of cooperation that link these state boundaries and programs. But more formal regional arrangements are also under consideration, perhaps most notable among Northeastern states, where relatively small physical size and heavy population densities foster considerable economic and environmental interdependence. States in this region have a strong tradition of working together on issues, whether campaigning for federal air emission standards to deter acid rain or common regional standards negotiated with the U.S. Environmental Protection Agency's office for the region (Scheberle 2004).

For more than three decades, the New England Governors have further formalized this partnership through an organization that links them in cooperative ventures with the five eastern provinces of Canada (Quebec and the four Maritime provinces). In fact, the respective premiers (provincial government heads) and governors meet annually, with environmental and energy concerns often paramount. In 2001, the leaders of these jurisdictions, representing five different political parties, agreed to common greenhouse gas reduction goals, beginning with a pledge to stabilize at 1990 levels by 2010, reach "at least" 10 percent below 1990 levels by 2020, and achieve more significant reductions thereafter (Selin and VanDeveer 2005). These goals are not formally binding, even in Canada where provinces are in fact obligated by Kyoto after federal ratification of the Protocol in 2002. But they have triggered exploration of common strategies and prodded some jurisdictions, such as Connecticut and New Hampshire, to take more aggressive steps on climate policy than ever before.

Perhaps the most vibrant regional initiative that involves American states is the so-called Regional Greenhouse Gas Initiative (RGGI). This effort was launched in April

2003, when New York Governor Pataki invited his counterparts from 10 regional states and the mayor of the District of Columbia to explore the possibilities of establishing a regional cap-and-trade program for reducing carbon dioxide emissions from all fossil fuel-burning power plants located within the region. At this point, states such as Massachusetts and New Hampshire had already taken formal action to cap greenhouse gas emissions from their own coal-burning plants and similar steps were under consideration elsewhere. New York completed a multi-year review to confront climate change, which included a number of renewable energy initiatives and a pledge to reduce emissions five percent below 1990 levels by 2010 and 10 percent below 1990 levels by 2020. But state policy analysts concluded that a regional approach to cap-and-trade might be most cost-effective given the strong inter-state linkages noted above in the electricity generation sector.

In response, New York has reached agreement in December 2005 with six other states (Connecticut, Delaware, Maine, New Hampshire, New Jersey, and Vermont) on a regional cap-and-trade program. Massachusetts and Rhode Island were active in negotiations but have decided at present not to join the regional group, while Maryland, Pennsylvania, the District of Columbia and the province of New Brunswick continue as formal observers in the process and may ultimately decide to join the initiative. Development of a model rule addressing all key provisions continues through 2006, with the goal of formally launching the cap-and-trade program in January 2009. RGGI would cap regional emissions at 2009 levels through 2014, and then reduce these 10 percent below that level by 2018. This process would follow some of the framework for interstate coordination in reducing nitrogen oxides emissions in the northeastern Ozone Transport Region (Burtraw and Evans 2004), although RGGI entails almost exclusively a negotiation among states with no significant input of any sort from federal officials. One formal RGGI goal is to establish and implement a regional cap on carbon emissions, while “accommodating, to the extent feasible, the diversity in policies and programs in individual states” (RGGI 2005). In that regard, it bears a rather significant resemblance to the European Emissions Trading System (ETS) that was launched in February 2005 and has triggered “informal contacts between state officials and representatives of the European Commission and European member states” (Kruger and Pizer 2005, 6).

Yet another variant of a multi-state approach involves an extension of “regionalism” to include states that are not necessarily contiguous with one another. Under federal air pollution legislation, for example, California enjoys unique status among the 50 states that it can parlay to establish a network of states with regulatory standards more stringent than those of the federal government. This exemption stems from Congressional recognition in the 1970s that California had acted in an early and assertive way on confronting air emissions and so was entitled to take any emerging federal air standard as a minimum from which it could establish its own regulations. The remaining states would then be free to adhere to federal standards or join forces with California, often setting up a dynamic of “upward bidding” in air regulatory standards.

California chose in 2002 to revisit those powers, becoming the first Western government to establish carbon dioxide caps for motor vehicles. This took the form of legislation, signed by former Democratic Governor Gray Davis that emphasized that the goal of the legislation was to control air emissions. This legislation went to considerable lengths to characterize carbon dioxide as a natural extension of earlier regulatory efforts.

The state has continued to assert that it is in no way encroaching on fuel economy standards, which clearly remain under federal control. Since the legislation was enacted, the California Air Resources Board has moved toward implementation, which is scheduled to go into effect later in the current decade and could achieve reductions of up to 25 percent in vehicle emissions in future fleets. This legislation has been a cornerstone of a larger California effort on climate change, which has resulted in some of the lowest per capita emission rates of any state and relatively modest emission growth since 1990. In fact, under Republican Governor Schwarzenegger, the state has only intensified its efforts on climate, leading to a June 2005 executive order by the Governor that vowed to return California to 2000 emission levels by 2010, followed by a return to 1990 levels by 2020 and reductions that are 80 percent below current levels by 2050 (Ball 2005).

But these steps have already had effects beyond the boundaries of the state, the home to the world's fifth largest economy and 17th largest source of greenhouse gases among nations. Within two weeks of the Schwarzenegger executive order, his New Mexico counterpart Richardson proposed comparable reductions through his own executive order powers. Perhaps more important, ten states have already formally approved the California vehicle standards for carbon dioxide. These include the States of Oregon and Washington and eight Northeastern states, with decisions pending in additional states. This creates the very real possibility of two separate "regional" standards for vehicular emissions, which some have dubbed the "coastal approach" (representing California and collaborating East and West Coast states) and the "central approach" (representing the remaining states). Automobile manufacturers have vowed litigation and the Bush Administration has expressed concerns based on policy grounds and alleged Constitutional encroachment on federal terrain. Nonetheless, this additional re-definition of regionalism illustrates the array of possibilities whereby multiple states might begin to pool their efforts and work collaboratively.

Direct Democracy: Taking it to the People

The overwhelming majority of state climate policies have been enacted through traditional mechanisms of representative democracy, either legislation or executive orders by governors. But thirty-one states and the District of Columbia possess an alternative route for making policy that is not constitutionally available to Washington, D.C., namely direct democracy through ballot proposition. State constitutions define provisions such as referendum and initiative in differing ways but a common theme is to set before the electorate of a state a question or policy proposal. In the event that a majority of participating voters support the proposition, it becomes law, no different than legislation fashioned through representative institutions. Forty-nine states also have provision for some form of direct democracy for approval of Constitutional amendments.

Direct democracy has been an alternative route for policy making in most states for nearly a century, reflecting its origins in the Populist and Progressive movements (Gerber 1999; LeDuc 2003). But its use in the American state context has grown at an exponential rate over the past two decades, particularly in controversial arenas such as environmental and energy policy (Guber 2003). In recent decades, states have used the tools of direct democracy to take decisions on such issues as nuclear plant closure and waste management, state land use policy and public land acquisition, and the disclosure

and regulation of toxic substance releases, among numerous others. Indeed, state Constitutions impose few if any restrictions on the kinds of policy questions that can be addressed through direct democracy and a number of states, such as California and Oregon, make extensive and regular use of this feature.

In November 2004, state climate policy moved from the exclusive realm of representative institutions to the expressed will of the people. Colorado voters, by a 54-to-46 margin, approved Proposition 37, which established an RPS for that state. The ballot proposition set forth an ambitious target for steadily increasing the level of electricity in the state derived from renewable sources from a current level of approximately two percent to 10 percent by 2015. Many other provisions in this legislation are comparable to RPS programs in Nevada and other states.

Obviously, what makes Colorado unique is that proponents turned to direct democracy after repeated efforts to enact such a statute were blocked in the Colorado legislature. Interest group opposition, led by the state's dominant electric utility company, an affiliate of Xcel Energy, Inc., and coal-mining interests, was instrumental in blocking the legislative proposals, in a manner similar to efforts to block climate policy in Congress in the face of ferocious interest group opposition. Moreover, Colorado had generally proved to be among the least supportive states in climate policy development more generally during the past decade, due in large part its major coal mining sector.

In this case, a bipartisan group led by the Republican Speaker of the Colorado House of Representatives and a Democratic member of the U.S House assembled a very broad coalition, attracting environmental and agricultural interests, a mixture of citizen groups and public health organizations, as well as manufacturers of renewable energy systems that stood to gain from the legislation. Most major media outlets in the state offered strong endorsement. Despite a massive opposition campaign led by Xcel Energy that clearly reduced the margin of support, as measured through late shifts in polling, the proposition passed and has since passed through an extensive rule-making process.

In numerous other areas of environmental policy, once one state turns to the ballot on a particular issue stalled in representative institutions, others often follow suit. Ironically, the RPS issue continues to move apace in many jurisdictions, with Montana following the Colorado example—through conventional methods—shortly thereafter. But this sets forth an important precedent and further underscores the possibilities for expanding the state role in climate policy development. Indeed, climate policy proponents in other states, most notably Oregon and Washington, have already begun to examine the Colorado case in some detail in weighing possible next steps.

Litigation from State Attorneys General: Taking it to the Courts

Alongside citizen-driven policy, states also have turned increasingly to litigation against their neighbors or the federal government for actions—or inactions—seen to cause environmental harm to their states and citizenries. The vast majority of state attorneys general are elected officials and many of them are very prominent figures in state governance (Provost 2003). They often possess considerable independence from their respective governors and have proven increasingly bold in expanding the definition of what warrants a state litigation strategy. Huge shifts in policy have followed attorney general-led interventions in such areas as regulation of the tobacco and financial services

industries (Derthick 2004; Greenblatt 2003a). There are strong signals that climate policy is emerging as the next target for this type of policy engagement.

In recent years, a loose coalition of attorneys general has formed and begun to explore ways in which they might unleash litigation to force the federal government to act. For example, in February 2003, attorneys general from California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, filed suit in federal court challenging a Bush Administration decision to exclude carbon dioxide as a pollutant regulated under the 1990 Clean Air Act Amendments (Letter from Eliot Spitzer, et al., 2003). Other initiatives have followed, whereby the lead legal officers of various states contend that climate change is posing a direct environmental and human threat to state residents and seeks a judicial remedy that would force some degree of active federal engagement.

Such steps have often been endorsed and supported by coalitions of environmental groups and state regulatory agencies, which often supply detail and expertise in fashioning the litigation strategy. It remains much too soon to discern what impact, if any, these respective approaches might have, since they move the federal courts into new policy terrain and are likely to receive very different hearings in respective federal judicial districts. Nonetheless, they represent yet another strategy that states appear increasingly willing to employ in assuming a lead role in American climate policy formation. This approach, of course, appears particularly unique in that it is designed not to result in intra-state action or inter-state cooperation. Instead, the focus is finding state-based policy levers that might compel a recalcitrant federal government to take action on the climate issue.

Looking Ahead: The Second Generation and Beyond

At the mid-point of the current decade, there is no sign whatsoever of a slowing pace in state engagement on climate change. If anything, all trends pointed in the opposite direction. Long-active states were expanding their efforts and elevating their reduction commitments. Long-dormant states were, in some instances, showing signs of engagement. Consequently, one could increasingly envision an American climate policy system emerging on a bottom-up basis, with an expanding and perhaps permanent role for states to play in continued policy development and implementation. In certain respects, this appears to parallel the experience in other federal or federated systems, whether or not they have ratified Kyoto. Australia, for example, generates a level of greenhouse gases per capita very similar to the United States and its federal government has also spurned Kyoto. But its six states hold considerable constitutional powers in areas relevant to greenhouse gas emissions and have begun to develop an increasingly diverse array of policy initiatives. Indeed, there is active discussion among Australian states, led by New South Wales, to develop a RGGI-like cap-and-trade system that would involve inter-state agreement and essential bypass the federal government. In turn, two Australian states have established RPSs that function much like their American counterparts. At the same time, this phenomenon is not universal in federal systems, reflected in the remarkably slow pace of climate policy development in Canadian provinces despite federal government ratification of Kyoto (Rabe 2007b).

Even in Europe, striking parallels exist with the American case. Despite the shaky constitutional standing of European-wide environmental decision making, the European Union remains formally bound to meeting Kyoto reduction targets between 2008 and 2012. This led to the launch of the ETS in early 2005 and the first volley of cross-national emission trading in carbon. However, each EU member has a different reduction target and is free to establish its own internal policies to achieve them. This has resulted in a tapestry of different strategies and varying degrees of success in individual nations in approaching their pledged reductions. In renewable energy, for example, nations have adopted variations of RPS programs, direct subsidies for development, and various taxes on consumption of conventional energy sources. Just as some states lead while others lag in American climate policy development, it is increasingly clear that a similar dynamic operates among European nations.

At the same time, there may be two distinct challenges facing continued or expanding state involvement on climate policy, some unique to the American context. These have yet to have any demonstrable effect on state policy engagement but could potentially have a chilling impact. First, a consortium of well-funded organizations hostile to any action by any American government to reduce greenhouse gases has become increasingly vocal and visible in the state policy making process. Organizations such as the Heartland Institute in Chicago and Competitive Enterprise Institute in Washington, D.C., have begun to release a series of studies and reports that not only challenge prevailing scientific views on climate change but portray state-based initiatives as posing dire economic and social consequences. Such groups have roundly condemned most existing state policies as “mini-Kyoto regimes,” with extraordinarily high estimates of their projected economic impacts. Perhaps most importantly, the American Legislative Exchange Council (ALEC) has launched an aggressive campaign to reverse or rescind existing state climate laws. ALEC contends that it draws roughly one-third of all American state legislators into its orbit, which includes hosting of conferences and study trips, as well as draft legislation that can easily be modified for an individual state. Such model legislation includes a “Resolution in Opposition to Carbon Dioxide Emissions Standards,” which, if enacted, would essentially eliminate existing state greenhouse gas reduction programs of either a mandatory or voluntary nature and prohibit any future policy of this sort (ALEC 2003). ALEC contends that it introduces approximately 1,500 bills into state legislatures each year, although it has had little demonstrable effect on state climate policy to date (Greenblatt 2003b).

Second, it appears increasingly likely that various interest groups and the executive branch of the federal government may join forces in bringing legal challenge against many state climate policy initiatives on Constitutional grounds. This is somewhat ironic given the long-standing emphasis in the Republican Party on decentralization and maximizing state latitude and the fact that so many Bush Administration leaders, including the President, were far more amenable to climate policy development when they worked in their respective statehouses (Whitman 2005). Nonetheless, there are growing indications that serious legal challenges may ensue. Perhaps the most prominent confrontation will focus on the California vehicle emissions program, whereby the Bush Administration and a consortium of many (but not all) major vehicle manufacturers in North America contend that California has usurped federal jurisdiction by enacting what in reality is a fuel economy rather than an air pollution bill. But other challenges are also

possible, including those relating to the interpretation of the Commerce Clause. This provision allows for few restrictions on the movement of interstate goods. A number of state climate policies potentially cross the line of a narrowly-interpreted Commerce Clause, such as state RPS programs that arguably discriminate against electricity generated by fossil fuels in other states in favor of “home-grown” renewables. In both sets of cases, there are compelling arguments to sustain state policy (Engel 1999; Engel and Saleska 2005). But this nonetheless remains uncertain terrain that could result in an aggressive federal effort to quash state initiatives.

Third, as a growing number of states become active players in climate policy development and implementation, inevitable questions emerge regarding inter-state collaboration. This is most apparent in cases such as RGGI, which require considerable cooperation between multiple states where turnover of elected officials is a constant. Despite the substantial body of agreement reached among RGGI states, a number of questions concerning long-term viability have emerged. Whereas New York launched the negotiations and has footed much of the bill to date, some states have begun to complain that it has become too dominant in inter-state deliberations. Even issues such as locating a RGGI office or the degree of collaboration with existing regional environmental authorities, such as the Northeast States for Coordinated Air Use Management (NESCAUM), become points of contention, before getting to even trickier issues such as defining offsets and carbon emissions allocations among the states. The late 2005 decisions of Massachusetts and Rhode Island to refrain from joining RGGI, at least for now, further underscored the fragility of such a complex intergovernmental network being established in the absence of any constructive input from a hostile federal government.

Despite these potential impediments, all indicators suggest that climate policy has not only reached the agenda of most state capitals but is moving forward in constructive ways that are in vivid contrast to the federal government. This chapter has attempted to explain some of the underlying rationale behind this robust and rather unexpected set of developments, as well as highlight possible future trends. Indeed, one can further envision other forms of policy development, including indicators that clusters of states are beginning to work formally with other foreign governments at various levels. All of this suggests that the political context for climate policy is far more complex—and far less fruitless—than many conventional depictions would suggest. Moreover, there remain abundant precedents in other areas of public policy for states to take the lead and often remain active in continuing policy development and implementation. Consequently, there is considerable reason to suspect that states will remain central players in the evolution of American climate policy, with considerable potential for achieving emission reductions as well as offering a host of lessons and models worthy of consideration in Washington, D.C., and around the world.

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