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## State-Level Legislation to Address Global Warming: A Recommendation That Washington Join the Cap and Trade Movement

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## **Cover Page Footnote**

Monique Saysana will graduate from Seattle University School of Law in May 2019, where she served as a Lead Article Editor for the Seattle Journal of Environmental Law. Monique is a Pacific Northwest native who is passionate about all things related to the environment, social justice, and technology, and had the pleasure of dedicating her law school career to these passions. Monique would like to thank the SJEL board members and staff editors for all their hard work on this piece, and to thank her family for their love and support that made this all possible.

State-Level Legislation to Address Global Warming:  
A Recommendation That Washington Join the Cap and  
Trade Movement

*Monique Saysana*<sup>†</sup>

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INTRODUCTION

Global warming is a problem that has demanded a solution for years. Despite the complex nature of implementing an effective solution to this issue, the urgency to make progress has only hastened over time due to the amount of greenhouse gas emissions that industries developed countries have rely on continue to produce. Countries have struggled to find a balance between maintaining a commitment to the environment and advancing their industries, which have been dependent on the use of resources that emit greenhouse gases. In addition to the struggle of finding a balance to make progress in addressing climate change, the Trump Administration's withdrawal from the Paris Climate Agreement posed an additional setback to the United States (U.S.) contributing to international progress. Progress at the federal level has also seen major setbacks, facing constitutional challenges made by Environmental Protection Agency (EPA) administrator Scott Pruitt's proposals to repeal the Clean Power Plan.<sup>2</sup> With

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<sup>2</sup> *Federal Coercion and the EPA's Clean Power Plan*, THE ATLANTIC (May 17, 2015) <https://www.theatlantic.com/politics/archive/2015/05/federal-coercion-and-the-epas-clean-power-plan/393389/>.

international efforts and federal efforts being stifled and challenged on a number of grounds, it is clear that state-level legislation may be the path of least resistance for environmental legislation.

The Paris Climate Agreement is an agreement within the United Nations Framework Convention on Climate Change which aimed to create a concerted international effort dealing with greenhouse-gas-emissions mitigation, adaptation, and finance, starting in the year 2020. The EPA's Clean Power Plan, an Obama administration policy, aimed to reduce carbon dioxide emissions from electrical power generation by 32% by the year 2030, relative to 2005 levels, by reducing emissions from coal-burning power plants and increasing the use of renewable energy and energy conservation.<sup>3</sup> Critics of the Clean Power Plan point to the scope and magnitude about the impact of such federal regulation on state policy-making powers and private industries as violations the Fifth Amendment's Due Process and Takings Clause. These concerns brought up the argument that the EPA lacks authority to make such

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<sup>3</sup> U.S. ENVTL. PROT. AGENCY, EPA FACT SHEET: CLEAN POWER PLAN – CUTTING CARBON POLLUTION FROM POWER PLANTS (2014), <https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-overview.html>.

sweeping legislation and that allowing the EPA to pass such sweeping legislation was a breach on federalism.<sup>4</sup>

However, regardless of the constitutional and political concerns of environmental legislation, the need to address climate change has been accepted by members of both major political parties.<sup>5</sup> Climate everywhere is going through rapid changes. The changes are apparent on both a global and national scale. Globally, the average surface temperature and ocean temperatures have risen the last 35 years.<sup>6</sup> These rising temperatures have shown their effects nationally in the U.S., with an increase in extreme weather events that started in 1950.<sup>7</sup> While the consequences of rising

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<sup>4</sup> LAURENCE H. TRIBE & PEABODY ENERGY CORP., Comment Letter on Proposed Rule Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units 5 (Dec. 1, 2014), [http://www.masseygail.com/pdf/Tribe-Peabody\\_111%28d%29\\_Comments\\_%28filed%29.pdf](http://www.masseygail.com/pdf/Tribe-Peabody_111%28d%29_Comments_%28filed%29.pdf).

<sup>5</sup> Oliver Milman, *The Republicans who care about climate change: 'They are done with the denial'*, THE GUARDIAN (Apr. 27, 2017), <https://www.theguardian.com/environment/2017/apr/27/climate-solutions-caucus-republicans-trump>.

<sup>6</sup> *Climate change: How do we know?* (Sept. 8, 2018) <https://climate.nasa.gov/evidence/>.

<sup>7</sup> *Id.* See also, Comm. on Extreme Weather Events and Climate Change Attribution, Attribution of Extreme Weather Events in the Context of Climate Change, THE NAT'L ACADEMIC PRESS, <https://www.nap.edu/read/21852/chapter/1>.

temperatures would lead most to expect that legislation would prioritize an issue with such detrimental effects, this has not been the case. This is because sweeping legislations meant to target climate change often conflict directly with economic growth interests. This is also why, from an environmentalist's point of view, the March 28, 2017 Executive Order instructing that protection of the environment and public health should be protected but should also support the President's policy to promote economic growth and energy independence is deceptively a statement of inaction towards the environment rather than a promise to actually address climate change.<sup>8</sup>

Not only do citizens and lawmakers accept the need to address climate change, but major corporations that strongly influence policymaking have also begun to acknowledge the urgency of climate change. However, when asked about whether they support the Clean Power Plan, these same corporations have either declined to take a position on it or have expressed concerns with the lack of flexibility in implementing such a sweeping federal

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<sup>8</sup> Promoting Energy Independence and Economic Growth, 82 Fed. Reg. § 16093 (Mar. 31, 2017).

regulation and the negative impact it would have on manufacturers.<sup>9</sup>

When asked to share its position on the EPA's Clean Power Plan, Dow Chemical was concerned that the rule gave states little flexibility in implementation and "that the rule will have a detrimental impact on the U.S. manufacturing renaissance by increasing the demand for natural gas at the same time when supplies are most likely to be constrained because of increased industrial demand..."<sup>10</sup> When DuPont, one of the largest chemical companies in the world, was approached with the same question, Dupont replied "[w]e have a preference for a comprehensive, market-based approach to addressing climate change."<sup>11</sup> General Electric also commented on the Clean Power Plan by saying "we believe that this rule should be improved to make it more flexible, less burdensome, and more legally defensible."<sup>12</sup>

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<sup>9</sup> *Corporate America's position on the EPA's clean power act*, THE GUARDIAN (Apr. 2, 2015) <https://www.theguardian.com/sustainable-business/2015/apr/02/corporate-america-climate-change-position-epa>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Regardless of the many pushbacks on federal regulations focused on the environment, the effects of climate change continue to demonstrate that something must be done. The consequences of climate change are experienced through natural disasters that uproot cities, and often have the most significant effect on low-income households. For example, Hurricane Katrina had the greatest effect on low-income populations, because they were the least likely group to have transportation options and secondary housing options in the midst of environmental disasters. “Low-income communities cope with chronically low investment in their neighborhoods...in some cases, forcing poorer populations to live closer to power plants, airports, waste sites, and otherwise undesirable land that is often affected ‘first and worst’ by natural disasters,” and “poor populations, and elderly nursing home residents, are more likely to lack transportation during disasters.”<sup>13</sup>

The overarching concern is that climate change on a national level means that policies and industry leaders must cooperate. With

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<sup>13</sup> Pamela Worth, *Where Climate Change Hits First and Worst*, CATALYST, Fall 2015, at 8-10, <https://www.ucsusa.org/sites/default/files/legacy/assets/documents/catalyst/catalyst-fall-2015.pdf>.

the EPA's Clean Power Plan as an example of how a federal policy that promises change but fails because of overlapping authorities, federalism, and free market values. A different approach highlighting state and industry autonomy may be a more collaborative approach. Carbon tax and cap and trade programs are two leading ideas for addressing climate change through the very industries responsible for greenhouse gas emissions by placing a price on carbon. A carbon tax would place a tax on fossil fuels which essentially taxes the amount of carbon footprint that a good or service creates. A cap and trade system sets a limit on pollution, distributes allowances of pollution to each industry, and creates a market for businesses and industries to trade pollution allowances depending on how much they need. This paper will discuss how state-level approaches to climate change have proven to be effective, and how Washington could push this movement forward by adopting a cap and trade system that has already proven to be effective.

This article will first discuss the trends of greenhouse gas emissions, the causes and effects of these emissions, and how successfully reducing emissions requires widespread effort across

all geographical regions and across all industries. Second, this article will take a closer look at the tendency of federal plans designed to address greenhouse gas emissions to be unstable and subject to numerous political changes while state-based plans that have been successful in environmental justice through the implementation of cap and trade systems. Third, Washington's movement towards a carbon tax, the possibility of successful implementation, and critiques of the carbon tax which include potential loopholes that may fail to hold certain industries accountable, leaving consumers to bear the costs of the tax, but that cannot be closed due to Commerce Clause concerns. The third section will also assess Washington's carbon "fee" approach, which is similar to the carbon tax except for two key differences. Fourth, in the context of the critiques of the carbon tax as well as the number of its political failures, this article discusses why Washington could benefit from joining the cap and trade movement in our country, and why joining this movement would also benefit future environmental change on a national scale.

## PART I: BACKGROUND OF GREENHOUSE GAS EMISSIONS

Greenhouse gases refer to the gases that trap heat in the atmosphere.<sup>14</sup> This includes carbon dioxide, methane, nitrous oxide, and fluorinated gases.<sup>15</sup> Human activities are responsible for almost all of the increase in greenhouse gases in the atmosphere over the last 150 years.<sup>16</sup> The largest source of human activity-related greenhouse gas emissions in the United States is burning fossil fuels for electricity, heat, and transportation.<sup>17</sup> The EPA found that in 2015, “U.S. greenhouse gas emissions totaled 6,587 million metric tons of carbon dioxide equivalents,” the largest contributor being electricity (29%); transportation being second (27%); industry third (21%); commercial & residential coming in fourth (12%); and agriculture the fifth (9%).<sup>18</sup> Comparing these levels with the

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<sup>14</sup> U.S. ENVTL. PROT. AGENCY, *Overview of Greenhouse Gases* (Sept. 8, 2018), <https://www.epa.gov/ghgemissions/overview-greenhouse-gases>.

<sup>15</sup> *Id.*

<sup>16</sup> U.S. ENVTL. PROT. AGENCY, *Sources of Greenhouse Gas Emissions* (Sept. 8, 2018), <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions#t1fn1>.

<sup>17</sup> *Id.*

<sup>18</sup> U.S. ENVTL. PROT. AGENCY, *Inventory of U.S. Greenhouse Gas Emissions and Sinks* (Sept. 8, 2018), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks>.

previous year, “emissions decreased from 2014 to 2015 by 2.3 percent.”<sup>19</sup> This was largely due to a decrease in emissions from fossil fuel combustion because of substitution from coal to natural gas consumption in the electric power sector, warmer winter conditions that reduced demand for heating fuel in residential and commercial sectors, and a slight decrease in electricity demand.<sup>20</sup> 2.9% is a significant decrease in greenhouse gas emissions. The decrease was mainly due to substituting forms of energy with more sustainable sources and a decrease in demand for use, a plan to change more consumption to more sustainable energy and implementing policies that incentivize decreasing demand and consumption of various forms of energy. Continuing the trends of decreasing demand for higher emission energy and increasing more sustainable substitutes is our best solution for improving our approach to climate change. This solution can only be implemented through policy that, inevitably, affects every individual and entity that consumes energy directly or indirectly, or that is exposed to environmental change. In other words, any effective policy will

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

have some sort of effect on everyone. Once every individual, party, and entity is able to comprehend these realities, we will be able to make progress by negotiating how much of these inevitable costs and effects each individual, party, and entity is willing to accept.

PART 2: THE MANY CHALLENGES OF FEDERAL ENVIRONMENTAL  
POLICY

With the Clean Power Plan facing many challenges including possibly being repealed, and with the number of competing interests that interfere with federal policy, a more promising approach would be to leave the states to implement their own environmental policies to encourage the other states to follow this trend. This would allow environmental policy to withstand the constitutional challenges against the Clean Power Plan and respect the principles of federalism. A downside of this approach is that it would be a longer and more gradual approach of each state taking action and waiting for the rest of the states to follow. It would take much more time for environmental policy to progress at a national level. However, with the constitutional concerns against the Clean Power Plan being so great, state-level changes would arguably be more effective than trying to reconcile the national legislation with the numerous competing economic interests. Not only would state-

level changes dodge these constitutional concerns, but they would be implementing the type of approach that has already been proven as effective because of how these changes can be tailored to the industries and needs of each locality, which differ across states depending on industrial makeups and geographic elements.<sup>21</sup>

The EPA reviewed the Clean Power Plan in 2017 and found it to exceed the EPA's statutory authority and issued a Notice of Proposed Rulemaking for its repeal.<sup>22</sup> If the Clean Power Plan does get repealed, it will indicate a definite limit to the EPA's scope of continuing to address climate change. The Clean Air Act in 1970 granted the EPA legal power at a federal level gave it the

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<sup>21</sup> See generally, U. S. ENERGY INFO. ADMIN., U.S. DEP'T OF ENERGY, ELECTRIC POWER MONTHLY WITH DATA FOR JUNE 2018, TABLE 1.3.A UTILITY SCALE FACILITY NET GENERATION BY STATE, BY SECTOR, (Aug. 2018) (report shows the different amounts of electric power generated by utility scale facilities in the electric power sector, commercial sector, and industrial sector by each state and census division of the U.S. The census divisions include: New England, Middle Atlantic, East North Central, West North Central, South Atlantic, East South Central, West South Central, Mountain, Pacific Contiguous, and Pacific Noncontiguous. Each census region has unique geographical features.).

<sup>22</sup> U.S. ENVTL. PROT. AGENCY, *EPA Takes Another Step To Advance President Trump's America First Strategy, Proposes Repeal Of "Clean Power Plan"* (Oct. 10, 2017), <https://www.epa.gov/newsreleases/epa-takes-another-step-advance-president-trumps-america-first-strategy-proposes-repeal>.

responsibilities for improving air quality and the stratospheric ozone layer. However, it was not originally granted the power to regulate greenhouse gas emissions.<sup>23</sup> The EPA was given the responsibility to regulate greenhouse gas emissions through environmental litigation in 2007 and 2009. The 2007 litigation *Massachusetts v. EPA* involved a coalition of states, cities, and environmental groups led by Massachusetts that challenged the Bush administration's refusal to regulate greenhouse gases.<sup>24</sup> This litigation ended with a ruling in the 2nd Circuit that asserted the legitimacy of the Clean Air Act to regulate the matter of human endangerment caused by carbon emissions.<sup>25</sup>

The Supreme Court was faced with the same question in 2009 in the case of *American Electric Power v. Connecticut*, where the Court held that it is, as a matter of fact, the EPA's responsibility, rather than the courts, to oversee and enforce climate change

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<sup>23</sup> NICHOLAS STERN, *THE GLOBAL DEVELOPMENT OF POLICY REGIMES TO COMBAT CLIMATE CHANGE: 4* (The Tricontinental Series on Global Economic Issues) 36, Nicholas Stern et al. eds. (2014).

<sup>24</sup> *See Massachusetts v. E.P.A.*, 549 U.S. 497, 127 S. Ct. 1438 (2007).

<sup>25</sup> *Massachusetts v. E.P.A.*, 249 Fed. Appx. 829 (D.C. Cir. 2007).

regulations.<sup>26</sup> This effectively shaped the path of future climate change litigation, leading to the EPA regulating climate change despite states' objections to such regulations.<sup>27</sup> The EPA has regulated emissions from various transportation and new power plant sources under the Clean Air Act since this litigation. However, the Clean Power Plan, published through the Federal Register on October 23, 2015, attempted to broaden the scope of the EPA's authority. For the first time, a rule from the EPA "required States to submit plans specifically designed to limit carbon dioxide emissions from existing fossil fuel-fired power plants."<sup>28</sup> While this rule was passed, it was never enforced due to the Supreme Court's order to halt enforcement until a lower court ruling after states challenged the rule and then was repealed.<sup>29</sup>

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<sup>26</sup> See *Connecticut v. Am. Elec. Power Co., Inc.*, 582 F.3d 309, 318 (2d Cir. 2009), *rev'd*, 564 U.S. 410 S. Ct. 2527 (2011); see also *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410 S. Ct. 2527 (2011).

<sup>27</sup> *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410 S. Ct. 2527 (2011).

<sup>28</sup> Review of the Clean Power Plan, 82 Fed. Reg. 16329 (proposed Apr. 4, 2017) (to be codified at 40 C.F.R. pt. 60).

<sup>29</sup> See *West Virginia v. EPA*, No. 15A773, 2016 136 S. Ct. 1000 LEXIS 981, at \*1000 (U.S. Feb 9, 2016); See, e.g., Richard Wolf, *Supreme Court blocks Obama's climate change plan*, USA TODAY (Feb. 9, 2016), <https://www.usatoday.com/story/news/politics/2016/02/09/supreme->

The Trump Administration plans to repeal the Clean Power Plan were announced shortly after President Trump's withdrawal from the Paris Climate Agreement.<sup>30</sup> While these plans threaten the progress of environmental change for the better, it's important to keep in mind other smaller scale initiatives that have proven to be successful and even point to a larger change in the future should more localities like Washington state follow suit.

### PART 3: STATE-LEVEL LEGISLATURE AS A PROMISING AVENUE

With federal plans proving unsuccessful, smaller scale initiatives have proven to be effective at the state or province level and can replace failed federal plans if more states implement such initiatives. A province-wide carbon tax in British Columbia and state-wide cap-and-trade systems have proven to be successful models.

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court-halts-obamas-emissions-rule/80085182/; Rob Brubaker & Eric Gallon, *Part Two: The Clean Power Plan: Legal Challenges and Prospects*, ABA, [https://www.americanbar.org/publications/infrastructure/2016-17/winter/part\\_two\\_clean\\_power\\_plan\\_legal\\_challenges\\_and\\_prospects.html#2](https://www.americanbar.org/publications/infrastructure/2016-17/winter/part_two_clean_power_plan_legal_challenges_and_prospects.html#2) (last visited Jan. 5, 2018).

<sup>30</sup> Jennifer A. Dlouhy, *Trump to Argue Obama's Clean Power Plan Violates U.S. Law*, BLOOMBERG NEWS (Oct. 6, 2017), <https://www.bloomberg.com/news/articles/2017-10-05/trump-is-said-to-argue-obama-s-clean-power-plan-violates-law>.

The first example is the province-wide carbon tax that was implemented in British Columbia that has proven to be effective and efficient.<sup>31</sup> Passed into legislation in 2008, the province of British Columbia applied a tax of \$10 Canadian dollars (CAD) per ton of carbon dioxide which applied to businesses, families, cars, trucks, factories, and homes across the province.<sup>32</sup> Surprisingly enough, this legislation was supported by British Columbia conservatives, and the remaining voters were likely swayed by the fact that all carbon tax revenue would be returned to businesses and families in the form of tax breaks.<sup>33</sup> This tax proved to be both business-friendly and consumer-friendly because the tax increased to \$30 CAD per ton in 2012.<sup>34</sup> To put this into perspective, this increase equated to an increase in gas prices of \$0.19 United States Dollars (USD) per gallon.<sup>35</sup> People drove less, were more careful about heating and

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<sup>31</sup> Eduardo Porter, *Does a Carbon Tax Work? Ask British Columbia*, NEW YORK TIMES (Mar. 1, 2016), <https://www.nytimes.com/2016/03/02/business/does-a-carbon-tax-work-ask-british-columbia.html>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* The British Columbia corporate income tax was cut from 12% to 10%, and low-income families received tax credits.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

cooling their homes, and businesses invested in energy efficiency measures or switched fuels to minimize their carbon footprints.<sup>36</sup> The province's greenhouse gas emissions declined by 5-15%, and the provincial economy grew faster than those of their neighboring provinces'.<sup>37</sup> As a result of the province's success, many other provinces began to consider implementing carbon-pricing policies.<sup>38</sup>

British Columbia provides just one example of a successful carbon pricing scheme. The World Bank reports currently, "40 countries and more than 20 cities already use carbon pricing mechanisms," and about 13% of the annual global greenhouse

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> John Paul Tasker, *Here's where the provinces stand on carbon prices*, CBC NEWS (Oct. 3, 2016), <http://www.cbc.ca/news/politics/provinces-with-carbon-pricing-1.3789174> (examples include: Prime Minister Justin Trudeau announced that the federal government will set a "floor price" on carbon for all provinces; Alberta announced a plan to implement a carbon tax that started in 2017; Ontario launched a cap-and-trade system; Quebec followed Ontario with a similar cap-and-trade; newly elected government in Manitoba vowed to develop a carbon pricing system; Newfoundland implemented a dramatic increase to its gas tax; Nova Scotia continued to reduce its greenhouse gas emissions ahead of the federal deadlines).

emissions are subject to carbon pricing.<sup>39</sup> The carbon tax adopted in British Columbia is only one of two types of carbon pricing mechanisms. The second type of carbon pricing is implemented through an emissions trading system, also known as a cap-and-trade system and is currently the leading carbon pricing mechanism in the United States. Next in this discussion will be an examination of 2 leading cap-and-trade programs in the United States that seek to reduce greenhouse gas emissions through a market-based approach.

In regard to state-wide cap-and-trade systems, a system where multiple states join one effort has been promising. The Regional Greenhouse Gas Initiative (“RGGI”) was the first mandatory market-based program in the United States.<sup>40</sup> It is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont that started on January 1, 2009.<sup>41</sup> RGGI

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<sup>39</sup> *Pricing Carbon*, THE WORLD BANK, <http://www.worldbank.org/en/programs/pricing-carbon> (last visited Sept. 7, 2018).

<sup>40</sup> POTOMAC ECONOMICS, ANNUAL REPORT ON THE MARKET FOR RGGI CO<sub>2</sub> ALLOWANCES: 2009, 5 (2010) [http://www.rggi.org/docs/MM\\_2009\\_Annual\\_Report.pdf](http://www.rggi.org/docs/MM_2009_Annual_Report.pdf).

<sup>41</sup> *Id.* at 2.

implements a typical cap-and-trade program that works “by setting an aggregate emissions limit for a particular class of emitters, and [requires] them to acquire a number of allowances sufficient to cover their emissions,” and firms are left to decide “whether it is more profitable to use [the allowances] to cover their emissions or to sell them to an emitter that can use them more efficiently,” which is meant to use market forces to reduce overall emissions in cost-effective ways.<sup>42</sup> RGGI creates an allowance market with the following key elements: compliance obligations, the Carbon Dioxide (CO<sub>2</sub>) Allowance Tracking System, the primary market for allowances, and the secondary market for allowances.<sup>43</sup> Fossil fuel-fired electricity generating plants with more than 25 MW of capacity must acquire a number of allowances sufficient to cover their emissions by the end of each compliance period, and firms that own budget sources, or “compliance entities,” can acquire allowances through quarterly RGGI auctions or in the secondary market for allowances.

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<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.*

Under the RGGI, the cap, also known as the regional budget for CO<sub>2</sub> emissions from the power sector within RGGI's scope, started at 188 million tons per year from 2009-2011 between the states involved, and allowances would slowly decrease, therefore decreasing the cap for emissions each year.<sup>44</sup> By 2014, the RGGI states implemented a new 2014 RGGI cap of 91 million short tons, and the RGGI cap was adjusted to decline 2.5% each year from 2015 to 2020.<sup>45</sup> The most recent auction which took place September 5, 2018 and was the 41<sup>st</sup> RGGI auction, sold 13,590,107 allowances for \$4.50 each, raising over \$61.1 million in proceeds.<sup>46</sup> The proceeds are used for re-invest in strategic energy and consumer programs, which states are allowed discretion regarding use.<sup>47</sup> A report that tracked the reinvestments from the 2016 proceeds estimated, among other impacts from the investments funded during

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<sup>44</sup> *Elements of RGGI*, REGIONAL GREENHOUSE GAS INITIATIVE, <http://www.rggi.org/design/overview/cap> (last visited Jan. 10, 2018).

<sup>45</sup> *Id.*

<sup>46</sup> *Auction Results*, REGIONAL GREENHOUSE GAS INITIATIVE, <https://www.rggi.org/auctions/auction-results> (last visited Nov. 8, 2018).

<sup>47</sup> *Investments of Proceeds*, REGIONAL GREENHOUSE GAS INITIATIVE, [http://www.rggi.org/rggi\\_benefits](http://www.rggi.org/rggi_benefits) (last visited Feb. 23, 2018) (reinvestments are made during the year's time following the yearly auction, with tracking and reporting of the programs funded and the benefits created).

this year, found 6.4 million short tons of CO<sub>2</sub> emissions will be avoided over the lifetime of the 2016 investments.<sup>48</sup>

Where multi-state cap and trade systems are less promising, a cap and trade system within one state can effectively address carbon emissions in a way that is tailored to the state's needs. California is another leading participant in a cap and trade program. California's cap and trade program took effect in early 2012 and became an enforceable compliance obligation on January 1, 2013 for greenhouse gas emissions.<sup>49</sup> The program was established by Assembly Bill 32, which requires "California to reduce its GHG emissions to 1990 levels by 2020"<sup>50</sup> and to do so with the Cap-and-Trade Program. This cap and trade program first applied to electricity generators and large industrial facilities emitting 25,000

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<sup>48</sup> *Investment of RGGI Proceeds in 2016* (Sept. 2018), REGIONAL GREENHOUSE GAS INITIATIVE, [https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI\\_Proceeds\\_Report\\_2016.pdf](https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2016.pdf).

<sup>49</sup> Cal. Air Resources Bd., Cap-and-Trade Program (Dec. 1, 2017), <https://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>.

<sup>50</sup> See CAL. AIR RESOURCES BD., ASSEMBLY BILL 32 OVERVIEW (Aug. 4, 2014), <https://www.arb.ca.gov/cc/ab32/ab32.htm>; see also Cal. Env'tl. Prot. Agency, Overview of ARB Emissions Trading Program (Feb. 2, 2015), [https://www.arb.ca.gov/cc/capandtrade/guidance/cap\\_trade\\_overview.pdf](https://www.arb.ca.gov/cc/capandtrade/guidance/cap_trade_overview.pdf).

metric tons of carbon dioxide equivalent (MTCO<sub>2</sub>e) or more annually in 2013, and then expanded to include distributors of transportation, natural gas, and other fuels in 2015.<sup>51</sup> These entities are required to report emissions and additional data annually, and are permitted to trade their allowances to minimize cost of pollution controls.<sup>52</sup> Allowing entities to trade allowances gives them flexibility and offers a way to capitalize on environmentally friendly practices. The cap in 2013 “was set at about 2 percent below the emissions level forecast[ed] for 2012”, declined about 2 percent in 2014, and will decline about 3 percent annually from 2015 to 2020.<sup>53</sup> California’s cap and trade program also creates investment plans for the cap and trade auction proceeds for each fiscal year to ensure that the proceeds are spent on investments that will continue to improve the state’s environmental concerns. Investment categories list low carbon transportation and infrastructure, strategic planning for sustainable infrastructure, energy efficiency and clean energy, and natural resources and solid waste diversion as eligible investments

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

listed in the legislation, and there is also a requirement that “at least 25 percent of the annual [proceeds from the auctions] be allocated to projects located within disadvantaged communities.”<sup>54</sup> This type of promised reallocation is what has been missing from Washington carbon tax bills, which is a large reason why none have passed. By May of 2015, California’s cap and trade program raised \$2.2 billion, and the state started a program that provided 1,600 low-income families with solar power systems installed for free, among other programs that were eligible under the cap and trade program.<sup>55</sup> Once the program was due to be reassessed, Assembly Bill No. 398 was passed to extend the California cap and trade program through the year 2030.<sup>56</sup>

#### PART 4: WASHINGTON’S RECENT CARBON TAX PROPOSALS

The State of Washington has progressed by implementing renewable energy programs in the past 10 years. A report released

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<sup>54</sup> CAL. AIR RESOURCES BD., CAP-AND-TRADE AUCTION PROCEEDS SECOND INVESTMENT PLAN: FISCAL YEARS 2016-17 THROUGH 2018-2019, ES-2 (Jan. 2016), <https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/16-17-updated-final-second-investment-planii.pdf>.

<sup>55</sup> *Id.*

<sup>56</sup> CAL. HEALTH AND SAFETY CODE § 38501 (2017).

by Environment Washington Research and Policy Center indicated that between 2007 and 2016, Washington increased solar energy generation by 17,588%<sup>57</sup> and increased wind energy generation by 330%.<sup>58</sup> While these improvements are promising and portray an optimistic picture of the state's clean energy future, the report still notes that "the U.S. must dramatically accelerate its clean energy progress" to transition to a clean, renewable energy system by 2050.<sup>59</sup> The report also recommends that states and leaders "set goals to meet all of their energy needs for all sectors by 2050" as well as "set limits on carbon and greenhouse gas emissions that will shift us away from fossil fuels."<sup>60</sup> Even though clean energy progress is necessary on a national level, every state, Washington included, must continue to move towards cleaner energy to pave the way for other states to follow. While there have been major

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<sup>57</sup> GIDERO WEISSMAN, ROB SARGENT & BRET FANSHAW, RENEWABLES ON THE RISE A DECADE OF PROGRESS TOWARD A CLEAN ENERGY FUTURE, Env't Wash. Research and Policy Center, 30 (July 2017), <https://environmentwashingtoncenter.org/sites/environment/files/reports/WAE%20Renewables%20on%20the%20Rise%20July%202017%20%281%29.pdf>.

<sup>58</sup> *Id.* at 31.

<sup>59</sup> *Id.* at 27.

<sup>60</sup> *Id.*

successes in renewable energy in Washington, there is still a need to make these same changes in the State's three largest sources of greenhouse gas emissions. In 2013, the three largest sources of greenhouse gas emissions sector in Washington were transportation first, Residential/Commercial/Industrial second, and electricity third.<sup>61</sup> To be more specific, 40.4 million metric tons of CO<sub>2</sub>e came from transportation alone, amounting to around 43% of total CO<sub>2</sub>e emissions in 2013.<sup>62</sup> Residential/Commercial/Industrial sources were responsible for 21 million metric tons CO<sub>2</sub>e, and electricity was the source for 18.2 million metric tons CO<sub>2</sub>e.<sup>63</sup>

Washington has taken steps to move towards clean energy for the environment for years. This historical engagement to prioritize our environmental concerns is shown through Governor Jay Inslee's long list of environmental policy initiatives and

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<sup>61</sup> WASH. DEPT. OF ECOLOGY, REPORT TO THE LEGISLATURE ON WASHINGTON GREENHOUSE GAS EMISSIONS INVENTORY: 2010 - 2013 (Oct. 2016), <https://fortress.wa.gov/ecy/publications/documents/1602025.pdf>.

<sup>62</sup> *Id.* CO<sub>2</sub>e is the standard unit that encompasses all different types of greenhouse gases. The quantity of CO<sub>2</sub>e signifies the amount of CO<sub>2</sub> that would have the equivalent impact on global warming. 42.5 million metric tons CO<sub>2</sub>e is the CO<sub>2</sub> equivalent to 42.5 million metric tons of greenhouse gases.

<sup>63</sup> *Id.*

proposals starting in 2013.<sup>64</sup> However, despite Washington's commitment to clean energy, the inability to implement climate change regulations to effectively reduce emissions through other avenues has proven to be an uphill battle of voter opposition, with trade groups leading the biggest opposition. In 2014, Governor Jay Inslee proposed a cap and trade plan that did not pass through to legislation.<sup>65</sup> In 2015, Governor Inslee attempted to use his executive power to develop a cap on emissions by directing the Department of Ecology to develop a regulatory cap on emissions<sup>66</sup> that would require greenhouse gas emissions cuts on distributors of fuel and natural gas and the largest polluters in Washington.<sup>67</sup> This

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<sup>64</sup> *Energy & Environment*, WASH. GOVERNOR JAY INSLEE <https://www.governor.wa.gov/issues/issues/energy-environment> (last visited Mar. 1, 2018).

<sup>65</sup> See, ENERGY, ENV'T & TECH. COMM., SENATE BILL REPORT S.B. 6203, S. 65 (2018); see also, Kristin Eberhard, *Washington Legislators' Chance to Act on Climate*, SIGHTLINE INSTITUTE (Jan. 30, 2018), <http://www.sightline.org/2018/01/30/washington-legislators-chance-to-act-on-climate/>.

<sup>66</sup> *Inslee Directing Ecology to Develop Regulatory Cap on Carbon Emissions*, WASH. GOVERNOR JAY INSLEE (July 28, 2015), <https://www.governor.wa.gov/news-media/inslee-directing-ecology-develop-regulatory-cap-carbon-emissions>.

<sup>67</sup> *Carbon Pollution Accountability Act of 2015*, WASH. GOVERNOR JAY INSLEE (Dec. 2014) [http://www.governor.wa.gov/sites/default/files/policy\\_briefs/pb\\_Carbon\\_market\\_policy.pdf](http://www.governor.wa.gov/sites/default/files/policy_briefs/pb_Carbon_market_policy.pdf).

would have allowed Washington to make a meaningful impact on the state's greenhouse gas emissions, while spreading the costs associated to this change to the main sources of emissions to minimize any increase in living costs of Washington families. However, trade groups lead by the Association of Washington Business were concerned that Washington manufacturers would be put at a competitive disadvantage to national and international companies, and quickly sued over these regulations.<sup>68</sup> The trade groups argued that the state lacks the authority to impose carbon caps without legislative approval, and the judge overturned the regulations, ruling that the "state lacks authority to mandate reductions from indirect emitters – suppliers of petroleum and natural gas, which account for about two-thirds of Washington's emissions."<sup>69</sup>

Because using executive authority has proven to be an unsuccessful avenue for implementing swift carbon pricing and regulation, legislation seems to be the only avenue, even though it

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<sup>68</sup> Debra Kahn, *Judge Overturn's State's Carbon-Capping Rule*, CLIMATE WIRE (Dec. 20, 2017), <https://www.eenews.net/climatewire/stories/1060069519/>.

<sup>69</sup> *Id.*

subjects environmental efforts to scrutiny and opposition from a number of competing interests. After the 2015 cap-and-trade initiative's failure, Washington legislators have presented a number of carbon tax proposals and a voter initiative has been included on ballots in a general election. All carbon tax proposals to date have yet to make it out of committee, and the voter initiative was rejected by Washington voters in 2018.

In the Washington State House of Representatives, House Bill 1646 was introduced during the 2017 Regular Session along with its Senate companion bill SB 5509.<sup>70</sup> The bill proposed a tax of \$15 per ton of carbon dioxide equivalent emissions on fossil fuels and electricity, which are to be distributed to various new programs, such as funding workers who lose their jobs, providing grants for low income individuals, and to specified types of energy, water, and forest health projects.<sup>71</sup> HB 1646 did not make it out of committee

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<sup>70</sup> PROMOTING AN EQUITABLE CLEAN ENERGY ECONOMY BY CREATING A CARBON TAX THAT ALLOWS INVESTMENT IN CLEAN ENERGY, CLEAN AIR, HEALTHY FORESTS, AND WASHINGTON'S COMMUNITIES, H.B. 1646-2017-18 (Wash. 2017), <https://app.leg.wa.gov/billsummary?BillNumber=1646&Year=2017>.

<sup>71</sup> ENV'T COMM. H.B. REP. 1646 (Wash. 2017) <http://lawfilesexternal.leg.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/House/1646%20HBA%20ENVI%2017.pdf>.

during the regular session and also failed to leave committee when reintroduced at the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> 2017 special sessions.<sup>72</sup> HB 1646 was reintroduced at the 2018 regular session, but did not clear the House to move forward.<sup>73</sup> After the numerous attempts to pass a carbon tax, environmental groups are now trying to get the same initiative onto the ballot as a “pollution fee” or “carbon fee.”<sup>74</sup>

The Washington Senate has also been presented a number of carbon tax bills. At the 2017 regular session, SB 5127 proposed a \$25 per carbon emission ton tax on the sale and use of fossil fuels and electricity, devoted 50% of the revenue to fund education, and granted a tax credit for small businesses.<sup>75</sup> Another carbon tax bill, SB 5385, proposed that a \$15 per carbon emission ton tax be applied to all electricity or fossil fuel extracted, manufactured, or introduced into Washington, and would repeal any other state agency, rule,

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<sup>72</sup> *See supra* note 69.

<sup>73</sup> *Id.*

<sup>74</sup> Hal Bernton, *Fight heats up over Washington state carbon ‘fee’ likely to make fall ballot*, THE SEATTLE TIMES (July 2, 2018, 4:50 PM), <https://www.seattletimes.com/seattle-news/fight-heats-up-over-washington-state-carbon-fee-likely-to-make-fall-ballot/>.

<sup>75</sup> SENATE WAYS & MEANS, SENATE BILL REPORT S.B. 5127 (Wash. 2018), <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/5127%20SBR%202ND%2017.pdf>.

policy, or standard capping or pricing carbon emissions.<sup>76</sup> 2017 marks the year of many attempts to pass a carbon tax that could have made more progress if the efforts were united. Another 2017 carbon tax bill SB 5930 was similar to SB 5385 in that it would repeal any other carbon-capping or pricing policies, but applied to the sale or use of all fossil fuels within the state.<sup>77</sup> None of the Senate bills made it out of committee in 2017, and all three have been reintroduced during the 2018 regular session. We have yet to see whether any of these bills pick up enough traction to be passed into law.

Washington citizens also proposed the ballot initiative I-1631 that appeared on ballots for the 2018 state general election. If approved by Washington voters, I-1631 would have established a carbon emissions fee of \$15 per metric ton of carbon starting in the year 2020, which would increase by \$2 until the state's greenhouse

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<sup>76</sup> ENERGY, ENV'T & TECH. COMM., SENATE BILL REPORT S.B. 5385 (Wash. 2017), <http://lawfilesextd.leg.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/5385%20SBA%20EET%2017.pdf>.

<sup>77</sup> S.B. 5930, Reg. Sess., at 4 (Wash. 2017); Kevin Tempest, *Modeling Analysis of Senator Palumbos Carbon Tax (SB 5930)- With additional details*, PLAN WASH. (Apr. 20, 2017), <http://planwashington.org/blog/archive/modeling-analysis-of-senator-palumbos-carbon-tax-sb-5930-with-additional-details/>.

gas reduction goals, determined by a public oversight board within the governor's office, are met.<sup>78</sup> While the fee is similar to a tax, it has two political benefits not typically offered by a tax.<sup>79</sup> The first and possibly most politically advantageous benefit, is the fact that the “t” word is avoided,<sup>80</sup> which lowers the likelihood of voters and groups instantly being turned off by the idea of agreeing to additional taxes. The second and more important benefit, is the assurance that proceeds from a fee will be used for a specific purpose. A “fee” legal structure limits the uses of revenue from a policy to addressing specific issues, here being carbon emissions and pollution, while tax revenues often get routed towards broader issues.<sup>81</sup> Benefits aside, I-1631 still faced major criticism that the

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<sup>78</sup> Initiative Measure No. 1631, WASH. SEC’Y OF STATE (filed Mar. 13, 2018), [https://www.sos.wa.gov/\\_assets/elections/initiatives/finaltext\\_1482.pdf](https://www.sos.wa.gov/_assets/elections/initiatives/finaltext_1482.pdf).

<sup>79</sup> *How does I-1631 Compare to Other Recent Carbon Pricing Proposals in Washington State?*, CARBON WASHINGTON (Mar. 23, 2018), <http://carbonwa.org/1631-compare-recent-carbon-pricing-proposals-washington-state/>.

<sup>80</sup> *Id.*

<sup>81</sup> Hugh D. Spitzer, *Taxes vs. Fees: A Curious Confession*, 38 GONZ. L. REV. 335, 337-43 (2003) (discussing the difference in legal restrictions on taxes and fees, characterizing a tax as having an absence of “nexus between burdens and benefits of [the] tax” due to the Washington legislature’s practice of placing tax revenue into a general fund used to fund both related and unrelated public programs, in contrast

fee would “force Washington families, small business, and consumers to pay billions in higher costs for gasoline, electricity, heating and natural gas – while exempting the state’s largest polluters, and providing little accountability for spending” due to the fact that an unelected board would have broad discretion to direct the spending without a plan or set of requirements.<sup>82</sup> When it came time to vote, I-1631 won 43.74% of voters, but was rejected by the 56.26% majority of votes.<sup>83</sup>

The high number of repeated attempts to pass a carbon tax and failed attempt to pass a carbon fee that would pose a similar financial burden on voters reflects the number of interests involved and the inevitable tendency for these interests to be in direct conflict. Washington voters have been resistant to these carbon tax bills for a number of reasons. A tax of \$15 per metric ton of carbon emission

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with fees, where the proceeds from fees are treated with legal protections that ensure the proceeds are used solely for the provision of the specific service, benefit, or mitigation that the fee was intended to address).

<sup>82</sup> WASH. SEC’Y OF STATE, 2018 GENERAL ELECTIONS VOTERS’ PAMPHLET (2018).

<sup>83</sup> *November 6, 2018 General Election Results*, WASH. SEC’Y OF STATE, <https://results.vote.wa.gov/results/current/State-Measures-Initiative-Measure-No-1631-Initiative-Measure-No-1631-concerns-pollution.html> (last updated Nov. 9, 2018)

is estimated to add approximately \$0.15 to each gallon of gasoline, which already deterred a number of voters.<sup>84</sup> Not only would costs of transportation increase for individuals and households, but so would costs associated with heating homes.

Business and industry groups have opposed carbon tax bills largely because of concerns that Washington's economy would be negatively impacted.<sup>85</sup> Specifically, the costs associated with Washington's rural businesses would be increased significantly due to the machinery and transportation's dependency on fuel.<sup>86</sup> Utility companies with no cost-effective variable resources would pass the tax on directly to consumers.<sup>87</sup> Additionally, a number of businesses like freight companies and food processors would be at a competitive disadvantage with their out of state competitors due to Washington businesses being forced to pay additional taxes while

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<sup>84</sup> Seattle Times Staff, *Carbon-tax bill calls for higher gas prices in Washington*, THE SEATTLE TIMES (Jan. 26, 2017), <https://www.seattletimes.com/seattle-news/politics/carbon-tax-bill-calls-for-higher-gas-prices-in-washington/>.

<sup>85</sup> *See supra* note 75.

<sup>86</sup> *Id.* at 4.

<sup>87</sup> *Id.* at 4.

their competitors are able to alter their operations to avoid paying the extra taxes.<sup>88</sup>

Industry groups that opposed SB 5385 at public hearing included Clark Public Utility, Association of Washington Business, Cascade Natural Gas Co., Washington Trucking Associates, Northwest Food Processors Association, Pacific Propane Gas Association, PacifiCorp, and Audubon Washington, as well as a fellow Washington citizen.<sup>89</sup> The opposition to SB 5385 at the public hearing were also concerned the legislation would allow future legislators to choose to reallocate the tax revenues to a number of other projects later, possibly taking away any initial incentives that some businesses may have had in supporting the carbon tax.<sup>90</sup> Public testimony in opposition of the bill also voiced that they would not support taxing electricity because the “taxing a basic service is regressive” and would not lead to a reduction of emissions.<sup>91</sup>

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<sup>88</sup> *Id.* at 4.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

The number of concerns that have been raised in opposition of each carbon tax bill highlight a number of challenges- some of which may be addressed; while others likely cannot be addressed if carbon emissions are to be effectively reduced. First, the increase in gasoline prices is a direct and inevitable effect of any carbon pricing system. As for the concerns about the impact a carbon tax would have on the rural economy, these concerns include Washington businesses being competitively disadvantaged and the risk that reallocation of tax revenue in the future could mean changes that will not benefit rural businesses. Some of the groups voicing these concerns may be swayed if there can be tax revenue allocations to businesses and high emission industries can be guaranteed. This would undermine the purpose of a carbon tax to incentivize developing lower carbon emissions across industries, and risk limiting tax revenue available to aid low income households. The competitive disadvantage concern, which poses a huge perceived threat to Washington businesses, and also means increased costs of goods and services for Washington individuals, is in some ways unavoidable in a carbon tax scheme. Specifically, industry groups opposing SB 5385 expressed the risk of leakage happening, where

out-of-state freighters would insulate their businesses from this tax by buying fuel outside of Washington. Whereas Washington businesses would be forced to pay a higher price for all transportation needs.<sup>92</sup> Those who support the carbon tax have also acknowledged that power plants in Washington would be disadvantaged, and that the carbon tax bills created a loophole where power generated out of state may be imported to avoid the tax.<sup>93</sup> These types of loopholes are not ones that can be closed by simply taxing imported power due to the Commerce Clause which prevents states from discriminating against interstate commerce.<sup>94</sup> The

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<sup>92</sup> *Id.*

<sup>93</sup> *New Carbon Tax Bill! Our SB 5930 Analysis*, CARBON WASHINGTON (Apr. 20, 2017), <http://carbonwa.org/new-carbon-tax-bill-sb-5930-analysis/>.

<sup>94</sup> Article 1, Section 8, Clause 3 of the US Constitution, commonly referred to as the Commerce Clause makes it unconstitutional for a state to impose taxes on imports from other states. This is because the Commerce Clause gives Congress the authority “to regulate commerce with foreign nations, and among the several states. . .” This authority is unconstitutionally undermined if, in a commercial context, a state discriminates against other states in ways that include imposing taxes that apply to goods because they originate from another state. *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 196, 114 S. Ct. 2205 (1994). Therefore, Washington would have no way of ensuring that consumers won’t just switch from using Washington power plants to sourcing their energy from other states in efforts to avoid paying the state carbon tax. A carbon tax would by default place Washington power plants at a competitive disadvantage in the energy marketplace.

concern about the competitive disadvantage caused by a state-wide carbon tax is one that brings strong opposition, but the direct effect of a carbon tax will continue to be a challenge of implementing a state carbon tax.

PART 5: WASHINGTON SHOULD IMPLEMENT CARBON PRICING

Despite the number of concerns that numerous voters have with Washington's recent carbon tax proposals, environmental concerns are widespread enough that a majority of voters still agree that a solution is needed. As we will inevitably continue to experience and witness the various effects of climate change, the push to reduce carbon emissions will continue to foster support, and the presence of the pressure to adopt some sort of scheme to reduce carbon emissions will likely remain until something is done. The movement towards carbon pricing has shown to be promising because of the support across about 40 countries and more than 20 cities, states and provinces<sup>95</sup>, including neighbors of Washington, California and British Columbia. California and British Columbia

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<sup>95</sup> *Pricing Carbon*, THE WORLD BANK, <http://www.worldbank.org/en/programs/pricing-carbon> (last visited Sept. 7, 2018).

voters and industries have been able to support a carbon pricing scheme. Subsequently, Oregon has also introduced a bill to implement a carbon pricing scheme<sup>96</sup>, indicating that the whole West Coast may soon join the carbon-pricing movement.<sup>97</sup> Whether it be a carbon tax or cap and trade program, Washington should continue to push voters to accept a carbon pricing scheme. The carbon tax has faced a number of obstacles, and the inevitability of conflict between voter interests can only be overcome if voters accept that a rise in prices is unavoidable for environmental issues to be addressed. Washington should revisit the possibility of

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<sup>96</sup> Ted Sickinger, *Lawmakers unveil 'cap and invest' carbon pricing bills*, OREGON LIVE (Jan. 9, 2018), [https://www.oregonlive.com/politics/index.ssf/2018/01/oregon\\_lawmakers\\_unveil\\_carbon.html](https://www.oregonlive.com/politics/index.ssf/2018/01/oregon_lawmakers_unveil_carbon.html) (announcing the unveiling of the bare-bones concept of a possible carbon pricing program, but also noting that if implemented, that such bills would call for more complicated systems of carving out proceeds and free allowances, so complex that a 35-day session is not enough time to properly vet the complexities).

<sup>97</sup> Gregory Scruggs, *2018 could see wave of West Coast climate pollution pricing*, REUTERS (Jan. 17, 2018, 9:28 AM), <https://www.reuters.com/article/us-usa-climatechange-carbon/2018-could-see-wave-of-west-coast-climate-pollution-pricing-idUSKBN1F62BY> (report that the 2018 state legislature sessions opened with Washington state Governor Jay Inslee calling for a carbon tax, Oregon legislators proposing a “cap and invest” system, and both state legislators being able to look to California’s cap and trade system and British Columbia’s carbon tax as examples of how carbon pricing schemes affect different groups and populations).

implementing a cap and trade system, which could provide compromise between voter interests as well as promise progress towards a cleaner energy future.

While the movement towards carbon pricing is growing and maintaining a presence in legislation, the concerns that have been voiced over this type of legislation continue to pose an obstacle to the movement. Voters in Washington and Oregon have expressed concerns about how proposed legislation would impact businesses and employment state-wide. Washington voters viewed the 2017 carbon tax proposals as threats to smaller businesses, stating that an increase in costs, goods, and transportation would put Washington businesses at a competitive disadvantage in the national and international market.<sup>98</sup> Oregon voters have also expressed that due to Oregon's food industry has already helped the state reduce carbon emissions and because the state is already the lowest in carbon emissions nationally, the state should not have to introduce more costly legislation for this cause.<sup>99</sup> Also, Oregon voters expressed

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<sup>98</sup> *Supra* note 75.

<sup>99</sup> Pamela Barrow, *Oregon doesn't need California's "cap and trade" legislation to reduce carbon emissions*, STATESMEN JOURNAL (Jan. 5, 2018),

concern about agricultural and forestry businesses would suffer from competitive disadvantage to neighboring states without a similar tax.<sup>100</sup>

While these concerns are valid and there is no doubt carbon pricing will have some sort of effect on living costs, businesses, and employment. Washington and Oregon should look at the results of British Columbia's and California's carbon pricing programs to gain some clarity on these concerns.

British Columbia's carbon tax has proven to be effective without hindering the economy. There is no doubt that the cost of gasoline and heating became more costly for households as a result of a carbon tax, but voters in British Columbia were able to manage the \$0.17 CAD increase in gasoline prices by driving less, heating and cooling their homes more carefully, and energy efficiency was

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<http://www.statesmanjournal.com/story/opinion/2018/01/05/oregon-doesnt-need-californias-cap-and-trade-legislation-reduce-carbon-emissions/1009137001/>.

<sup>100</sup> See generally, Shelly Boshart Davis, *Carbon emissions bills: Cap-and-trade proposal unnecessary and harmful (Guest opinion)*, THE OREGONIAN (Jan. 24, 2018), [https://www.oregonlive.com/opinion/index.ssf/2018/01/carbon\\_emissions\\_bills\\_cap-and.html](https://www.oregonlive.com/opinion/index.ssf/2018/01/carbon_emissions_bills_cap-and.html); Shelon Zakreski, *Oregon Cap and Trade Could Make Industry More Competitive*, THE CLIMATE TRUST (Feb. 26, 2018), <https://climatetrust.org/oregon-cap-and-trade-could-make-industry-more-competitive/>.

eased in other ways because businesses started to invest in energy efficiency measures and switching fuels where possible.<sup>101</sup> British Columbia's economy grew faster than its neighbors' with negligible effects from the carbon tax.<sup>102</sup>

California has also shown promising futures for their economy, employment, and environmental health alongside carbon emission reduction. In July 2017, California was on track to exceed their 2020 climate target of bringing emissions back to 1990 levels while their economic growth from 2012-2016 was still the third highest nationally.<sup>103</sup> Not only is California's program showing great progress, but the projections from their current program with enhanced low carbon fuels standards actually exceed the projected progress of programs such as carbon tax or cap and tax.<sup>104</sup>

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<sup>101</sup> Eduardo Porter, *Does a Carbon Tax Work? Ask British Columbia*, NEW YORK TIMES (Mar. 1, 2016), <https://www.nytimes.com/2016/03/02/business/does-a-carbon-tax-work-ask-british-columbia.html>.

<sup>102</sup> *Id.* at 2.

<sup>103</sup> CAL. ENVTL. PROT. AGENCY AIR RES. BD., CAP-AND-TRADE ECONOMIC ANALYSIS (July 21, 2017), [https://www.arb.ca.gov/cc/scopingplan/cap-and-trade-economic-analysis-factsheet\\_july2017.pdf](https://www.arb.ca.gov/cc/scopingplan/cap-and-trade-economic-analysis-factsheet_july2017.pdf).

<sup>104</sup> *Id.* at 1-2 (comparing the projections of greenhouse gas reduction and cost effectiveness of the California's Air Resource Board's proposed plan, a carbon tax, and cap and tax, showing that the proposed cap-and-

Projections show that if California abandoned their cap-and-trade altogether, their 2030 gross domestic product (GDP) would decrease by at least twice as much as it would with the cap-and-trade program or a carbon tax program, with a -1.2% projection for no program, -0.4% to -0.6% projection for the cap-and-trade, and -0.6% for the carbon tax.<sup>105</sup> The cap-and-trade program is also more favorable to employment, with a 2030 projection under the cap-and-trade to be -0.3% to -0.4%, -0.4% with the carbon tax, and -1.2% with no program.<sup>106</sup> Given the progress and favorable economic activities in British Columbia and California, those opposed to carbon pricing should find that their interests will not be substantially harmed by carbon pricing.

PART 6: IN PARTICULAR, WASHINGTON SHOULD REVISIT A CAP-AND-TRADE PROGRAM

If Washington voters can accept the necessary additional costs from carbon pricing and if Washington's business groups can

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trade is cost-effective and guarantees reaching greenhouse gas reduction goals while the other approaches fall behind in either certainty of reductions or cost effectiveness).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

realize that the economy can flourish, Washington could certainly be successful in implementing a carbon pricing structure and pave the way for a more sustainable future. The number of carbon tax bills that have failed due to their inability to appease environmentalists while also protecting businesses, and with the failure by the carbon fee of winning over majority of Washington voters, Washington legislators should revisit the possibility of a cap-and-trade program. A well-written and properly planned cap-and-trade proposal that promises certain prices for carbon and gradually decreasing caps would create a framework that would likely meet the needs of Washington state better than a carbon tax. A cap-and-trade program, when properly planned, would allow businesses to acclimate and adjust practices that produce less carbon emissions, and collect state revenue proportionate to each industry's carbon footprint, which can be used to subsidize ways to make these industries more efficient.

During the 2015-2016 house sessions, the testimony in support and in opposition of the cap-and-trade proposal HB 1314 shed light on many concerns that can now be addressed by looking at California and British Columbia's results. The biggest concern of

those opposed to a cap-and-trade program believed that businesses would be at a competitive disadvantage because of the cost of buying allowances or rises in utility rates, and the overall cost of doing business.<sup>107</sup> With both British Columbia and California's continued economic growth and the fact that British Columbia found their businesses began to invest in cleaner energy to reduce costs, it is clear that businesses can still remain competitive with added costs for emissions. Another concern from trade groups was that under a cap-and-trade program, prices for emissions allowances could be volatile because they are decided on by the legislature, creating uncertainty for businesses.<sup>108</sup> This is one reason why Washington may have chosen to propose more carbon tax bills in 2017. Carbon tax bills tend to be favored by business groups because the price for pollution is fixed, and businesses do not need to worry about the risk of price volatility from a cap-and-trade system.<sup>109</sup> However, a cap-and-trade program could provide more price

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<sup>107</sup> ENV'T. COMM. H. B. REP. 1314 at 13 (Wash. 2015), <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/House/1314%20HBR%20ENVI%202015.pdf>.

<sup>108</sup> *Id.*

<sup>109</sup> *See supra* note 88.

certainty by specifying a maximum amount that prices may rise or fall each year. If this could be done, then businesses would be able to more easily predict their costs to be associated with carbon emissions.

A cap-and-trade bill that addresses these concerns could be passed and could offer more environmental and economic benefits to Washington. First, cap-and-trade programs are preferred by environmental groups because the fixed total amount of carbon emissions can be controlled and lowered over time.<sup>110</sup> By creating a gradual reduction emissions caps, individuals and businesses are given the necessary time and incentives to adapt behaviors or business practices to be more sustainable and efficient. This creates a more certain guarantee of how much emissions can be reduced than a carbon tax. The revenue collected by this program can also be controlled, because the state can price allowances, and because the state also controls the cap, the state can predict total revenue to be collected. If the state plans to direct revenues to public health, education, and investments that support future sustainability, the

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<sup>110</sup> *Id.*

state can be certain about its funding. With a carbon tax program, opponents may point to how simply adding a tax to carbon may not incentivize all individuals or businesses from reducing their emissions, and the state would just be collecting more and more tax revenue. Because a cap-and-trade program offers so much certainty for revenues, the state can create better plans to reinvest in the public interest with guaranteed funding. Public interest is a large issue in climate change because while it effects all demographics, lower income individuals are affected disproportionately. For this same reason, the cap-and-trade program would create more jobs to implement programs or projects like how California's use of cap-and-trade revenues to install solar panels in low income neighborhoods.<sup>111</sup> Reinvestment in sustainable and cleaner energy would guarantee a cleaner future for our state, and the jobs created by businesses that rely on high-emission energy would not be lost, but moved to jobs for the transition and maintenance of lower carbon systems.

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<sup>111</sup> *Supra* note 53.

CONCLUSION

In conclusion, a legislative solution to decreasing high levels of greenhouse gas emissions has been necessary for years. This past year, our nation has struggled to pass national legislation to effectively reduce emissions, and that is why state-level legislation must address global warming. As we have seen more and more carbon pricing schemes be implemented around the world and within our country, we have also been able to see the impact that these programs have had for both emissions levels and the economy. The wealth of knowledge and the fact that these programs have demonstrated that they can yield positive results, Washington should move forward with carbon pricing legislation, and consider implementing a cap-and-trade program to ensure that the environmental benefits are maximized.