FLAWLESSLY STRAWLESS?

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INTRODUCTION

In the last decade, state and local governments have significantly limited access to single-use plastics in order to clean up our waterways and roads.[1] A well-known example are the laws in which states and municipalities have banned or charge customers' for their use of plastic bags.[2] In 2015, California was the first state to enact a ten-cent minimum charge for recycled and reusable plastic bags.[3] In 2016, Suffolk County, Long Island followed suit, instituting a five-cent fee per paper or plastic bag used.[4] Around the same time, private retailers voluntarily got on board and gave a discount for their customer's use of reusable bags.[5] These schemes have been effective; plastic bag litter in California dropped almost 72 percent since the

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[1] Laura Blasey, *Suffolk County's 5-cent fee for plastic and paper bags, explained*, NEWSDAY (Jan. 3, 2018, 7:18 PM), https://www.newsday.com/long-island/suffolk/suffolk-plastic-paper-bag-fee-1.15786305; *State Plastic and Paper Bag Legislation*, NAT'L CONFERENCE OF STATE LEGISLATURES (Nov. 1, 2019), https://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx; *see* Joseph Gambardello, *3 More Jersey Shore towns ban plastic bags*, THE PHILADELPHIA INQUIRER (June 3, 2019), https://www.inquirer.com/news/new-jersey/jersey-shore-plastic-ban-brigantine-avalon-stone-harbor-20190531.html.

[2] *State Plastic and Paper Bag Legislation*, NAT'L CONFERENCE OF STATE LEGISLATURES (Feb. 27, 2019), http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx; *see* Joseph Gambardello, *3 More Jersey Shore towns ban plastic bags*, THE PHILADELPHIA INQUIRER (June 3, 2019), https://www.inquirer.com/news/new-jersey/jersey-shore-plastic-ban-brigantine-avalon-stone-harbor-20190531.html.

[3] Katy Steinmetz, *California Becomes First State to Ban Plastic Bags*, TIME (Sept. 30, 2014), https://time.com/3449887/california-plastic-bag-ban/.

[4] Blasey, *supra* note 1.

[5] Melissa Newman, *7 Stores That Pay You to Bring a Reusable Bag*, MONEYTALKSNEWS (Aug. 24, 2017), https://www.moneytalksnews.com/7-stores-where-bringing-your-own-bag-pays/.

enactment of the statewide fee.[6] Furthermore, in 2017, cleanup volunteers in Monterey County, California found only forty-three plastic bags as compared to approximately 2,500 in 2010.[7]

California did not stop with banning bags. In September 2018, it was the first state to institute what has been colloquially referred to as the "plastic straw ban"[8] with Assembly Bill 1884.[9] The law prohibits full-service restaurants from automatically providing plastic straws to customers.[10] A full service restaurant is defined as an establishment where customers are walked to their seats, have their orders taken and check subsequently delivered to the table.[11] As with bag bans, private actors have joined in. In 2018, Starbucks committed to eliminating plastic straws from its cold beverages by 2020 and developing straws made from alternative materials and straw-less lids.[12] Even with support from the private sector, however, California's straw ban has generated quite a bit of controversy. Indeed, critics believe the law to be a result of the California "nanny state"[13] and question its effectiveness.[14]

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[6] Ari Philips, *California's Plastic Bag Ban Appears to Be Kicking Some Major Ass*, EARTHER Nov. 14 2017), https://earther.gizmodo.com/california-s-plastic-bag-ban-appears-to-be-kicking-some-1820443038.

[7] *Id.*

[8] Abby Hamlin, *California's new plastic straw law takes effect in 2019. Here's what's happening,* THE SAN DIEGO TRIBUNE (Dec. 31, 2018), https://www.sandiegouniontribune.com/opinion/the-conversation/sd-plastic-straw-ban-2019-california-new-law-20181231-htmlstory.html.

[9] Ralph Ellis & Sarah Moon, *California bans plastic straws in full service restaurants – unless customers request one,* CNN (Sept. 20, 2018, 8:58 PM), https://www.cnn.com/2018/09/20/us/plastic-straws-banned-in-california/index.html.

[10] *Id.*

[11] Gen. Assemb. B. 1884, 2018, Reg. Sess. (Cal. 2018) §1, ch. 5.2, 42270(d).

[12] Bonnie Rochman, *Straws are out, lids are in: Starbucks announces environmental milestone,* STARBUCKS STORIES (July 9, 2018), https://stories.starbucks.com/stories/2018/starbucks-announces-environmental-milestone/.

[13] Patrick McGreevy, *California lawmakers vote to restrict use of plastic straws, keeping state in national spotlight on environment*, LOS ANGELES TIMES (Aug 23, 2018), https://www.latimes.com/politics/la-pol-ca-plastic-straw-limits-california-20180823-story.html.

[14] James Rainey, '*Banning plastic straws will not be enough': The fight to clean the oceans,* NBC NEWS (Dec. 30, 2018, 6:51 AM), https://www.nbcnews.com/news/us-news/banning-plastic-straws-will-not-be-enough-fight-clean-oceans-n951141.

This Note will examine the private and public incentives for straw bans. It will argue that if state governments like California want to accomplish their stated goal to reduce plastic straw pollution, both the private and public sectors should each have their own straw ban.

Specifically, Section I will examine public incentives for the bans. Section I.A will briefly discuss the environmental concerns straw bans were designed to remedy. Section I.B will conclude that plastic straw pollution is a negative externality. Negative externalities are the costs imposed on society by the production of goods which are not reflected in their prices.[15] However, it will point out that unlike with most negative externalities,[16] private companies like Starbucks which would otherwise by exempt from California's straw bans, have chosen to institute them anyway.[17] Section I.C will determine that straw bans are public goods. Like other public goods, they are non-rivalrous because one person's consumption of the effects of the straw ban; cleaner oceans, does not deplete the supply for others.[18] They are also non-excludable because it is almost impossible to prohibit any person from enjoying the cleaner waterways or healthier marine life brought on by straw elimination.[19] While positive for society, these characteristics of public goods make it difficult to charge individuals for consumption.[20] Therefore, with the exception of straw bans, private actors are not usually incentivized to administer public goods.[21] Section I. D will then analyze criticisms of the ban. Skeptics believe

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[15] Celeste Pomerantz, *Energy Education*, UNIVERSITY OF CALGARY (June 4, 2018), https://energyeducation.ca/encyclopedia/Negative_externality.

[16] Thomas Helbling, *What are Externalities?* INT'L MONETARY FUND (Dec. 2010), https://www.imf.org/external/pubs/ft/fandd/2010/12/basics.htm.

[17] Starbucks would be exempt because it does not fit the "fully service restaurant definition in AB 1184" as defined in Gen. Assemb. B. 1884, 2018, Reg. Sess. (Cal. 2018) §1, ch. 5.2, 42271(d).

[18] *Non-Rivalrous Goods*, CORPORATE FINANCE INSTITUTE, https://corporatefinanceinstitute.com/resources/knowledge/economics/non-rivalrous-goods/ (last visited Jan. 1, 2020).

[19] *See infra* note 58.

[20] R.H. Coase, *The Lighthouse in Economics*, 17 J. OF LAW AND ECONOMICS, 357, 358 (1974).

[21] *See id*.

government straw bans to be the result of the "nanny state"[22] and question their effectiveness in abating plastic pollution.[23]

Section II will examine the possible motivations behind Starbucks' straw ban. Section II.A will explore the possibility that the firm's objectives are as stated: to do good while doing well. This is plausible because Starbucks has long safeguarded the environment through green construction methods[24] and vocalized its commitment to environmental sustainability.[25] Subsection II.B will consider whether Starbucks implemented the ban for the benefit of its shareholders, namely through maintaining and/or possibly increasing sales to stay competitive with other major "green" corporations. Finally, Subsection II.C will analyze whether the company banned the straws to increase employee engagement and therefore productivity. When corporations adopt green practices, they often implement training programs, which result in increased interpersonal contact among employees.[26] Training and interpersonal contacts are positively associated with increased labor productivity.[27]

Section III will conclude the Note by arguing that to best accomplish the objectives of straw bans, the private and public sectors should both institute them. By banning the automatic provision of straws, the government is making a decision that many believe belongs to individuals.[28] Voluntary private initiatives may at least partially quell fears of an overbearing Big Brother. However, each of the

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[22] Devin Nunes, (@Devin Nunes), TWITTER (Mar. 9, 7:15 PM), https://twitter.com/DevinNunes/status/1104581433618661376.

[23] James Rainey, '*Banning plastic straws will not be enough': The fight to clean the oceans*, NBC NEWS (Dec. 30, 2018, 6:51 AM), https://www.nbcnews.com/news/us-news/banning-plastic-straws-will-not-be-enough-fight-clean-oceans-n951141.

[24] *Greener Stores*, STARBUCKS, https://www.starbucks.com/responsibility/environment/leed-certified-stores (last visited Mar. 15, 2019).

[25] *Environment: Pioneering Sustainable Solution*, STARBUCKS https://www.starbucks.com/responsibility/environment (last visited Jan. 11, 2020).

[26] Magali Delmas & Sanja Pekovic, *Environmental standards and labor productivity: Understanding the mechanisms that sustain sustainability*, 34 J. OF ORGANIZED BEHAVIOR, 230, 246 (2013).

[27] *Id.* at 245.

[28] [28] Patrick McGreevy, *California lawmakers vote to restrict use of plastic straws, keeping state in national spotlight on environment*, LOS ANGELES TIMES (Aug 23, 2018), https://www.latimes.com/politics/la-pol-ca-plastic-straw-limits-california-20180823-story.html.

possible explanations for private straw bans including managerial interest, increasing shareholder value, and stimulating employee productivity are subject to change. In the future, employees, consumers and management may not be as excited by pro-environmental measures as they are now. Should these practices no longer be considered a good use of shareholders' resources, companies may discontinue them. Therefore, to clean up our waterways, it is important that governmental bodies, unencumbered by a corporate bottom line, keep straw bans in place.

I. PUBLIC INCENTIVES FOR THE STRAW BAN

California Assembly Bill 1884 ("Straws Upon Request") effective January 1, 2019 banned full-service restaurants from automatically giving their customers plastic straws. If patrons want a straw, they must ask for it.[29] A "full service restaurant" is defined as an establishment with the primary business of serving food.[30] Because the definition requires that customers be walked to their seats or seating area, orders be taken and delivered to the table, and a check brought at the end of the meal, the prohibition excludes fast food restaurants, bars, or coffee shops, including Starbucks.[31] AB 1884 does not prescribe jail time as a punishment. First and second violations result in a notice.[32] Subsequent offenses are infractions punishable by a fine of $25 for each day the facility is not in compliance.[33] However, the fine will not exceed an annual total of $300.[34]

A. Environmental Issues Straw Bans are trying To Address

In signing the California straw ban, Governor Jerry Brown said that the California legislature aimed to curb the use of devices that "chok[e] our planet."[35] Plastic straws are especially problematic for

[29] Gen. Assemb. B. 1884, 2018, Reg. Sess. (Cal. 2018) §1, ch. 5.2, 42271(a).
[30] *Id.* at 42271(d).
[31] *Id.*
[32] *Id.* at 42271(b).
[33] *Id.*
[34] *Id.*
[35] Jeff Daniels, *California governor signs bill to reduce plastic straw use, cut waste 'choking our planet'*, CNBC (Sept. 20, 2018, 6:42 PM),

marine life.[36] There are 7.5 million straws lying around America's shorelines alone.[37] Under normal environmental conditions, plastic straws take 200 years to decompose and can be ingested by marine life during that time.[38] For every pound of tuna that humans remove from the ocean, we put two pounds of plastic back in.[39] Moreover, seabirds can ingest as much as eight percent of their body weight in plastic.[40] For humans, this is the equivalent of the average woman having the weight of two babies in her stomach.[41] Further, seventy-one percent of seabirds and thirty percent of sea turtles have some amount of plastic in their systems.[42] When they ingest plastic, marine animals have a fifty-percent mortality rate.[43]

Other local governments have followed California's example. Seattle was the first municipality to ban plastic straws and utensils.[44] Going forward, Seattle's 5,000 restaurants will be using reusable or compostable utensils, straws and cocktails picks.[45] Similarly, to safeguard the Jersey shoreline, Monmouth Beach officials voted unanimously to ban single use plastic straws, bags and food

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https://www.cnbc.com/2018/09/20/california-gov-jerry-brown-signs-bill-to-reduce-plastic-straw-use.html.

[36] Felicia Bolton, *What is the reasoning behind the push to ban plastic straws?* CBS17 (July 11, 2018), https://www.cbs17.com/news/investigators/answer-desk/what-is-the-reasoning-behind-the-push-to-ban-plastic-straws-/1295590379.

[37] Seth Borenstein, *Science says: Amount of straws, plastic is huge*, PHYS.ORG (Apr. 21, 2018), https://phys.org/news/2018-04-science-amount-straws-plastic-pollution.html.

[38] Felicia Bolton, *What is the reasoning behind the push to ban plastic straws?* CBS17.com (July 11, 2018), https://www.cbs17.com/news/investigators/answer-desk/what-is-the-reasoning-behind-the-push-to-ban-plastic-straws-/1295590379.

[39] Borenstein, *supra* note 37.

[40] *Id.*

[41] *Id.*

[42] Bolton, *supra* note 36.

[43] *Id.*

[44] Cleve Wootson, *Seattle becomes first major U.S. city to ban straws*, WASH. POST (July 1, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/07/01/seattle-becomes-first-major-u-s-city-to-ban-straws/.

[45] *Seattle becomes first U.S. city to ban plastic utensils and straws*, CBS NEWS (July 2, 2018), https://www.cbsnews.com/news/seattle-becomes-first-u-s-city-to-ban-plastic-utensils-and-straws/.

containers.[46] Finally, straw bans transcend U.S. borders.[47] India committed to ban all single use plastics by 2022.[48] In April 2018, former Prime Minster Theresa May proposed to ban the sale of plastic straws and drink stirrers in the United Kingdom, referring to plastic waste as "one of the greatest environmental challenges facing the world."[49]

B. Plastic Straw Pollution as an Externality

Government regulation and/or intervention encourages private actors to assume costs that they would otherwise put on to others as externalities.[50] An externality is the difference between what an organization pays for a good and the cost that producing it imposes on society. [51] As applied to straw bans, restaurants do not pay the full costs to society that result from plastic straw use. They simply pay the manufacturer for the straws. When straws are haphazardly thrown on to beaches or in the water, society must pay to clean up beaches and waterways. Through instituting fines, the government pressures restaurants to incur more of these costs. Therefore, to avoid the fines,

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[46] Steve Strunksy, *Plastic or Paper? Not a choice anymore under N.J. Shore town ban*, NJ.COM (May 23, 2018), https://www.nj.com/monmouth/2018/05/plastic_or_paper_no_choice_anymore_under_monmouth.html.

[47] *India vows to ban all single use plastics by 2022*, CBS NEWS, https://www.cbsnews.com/news/india-vows-to-ban-all-single-use-plastics-by-2022-world-environment-day-un-environment/.

[48] *Id.*

[49] Lauren Wamsley, *To Curb Ocean Pollution, U.K. May Ban Plastic Straws, Stirrers And Cotton Swabs,* NAT'L PUB. RADIO (Apr. 19, 2018), https://www.npr.org/sections/thetwo-way/2018/04/19/603936455/to-curb-ocean-pollution-u-k-may-ban-plastic-straws-stirrers-and-cotton-swabs.

[50] *See generally* Jeffrey Morris, Environmental Costs and Externalities, OREGON. GOV (Dec. 17, 2013), https://www.oregon.gov/deq/FilterDocs/mmexternalities.pdf; *see also* Thomas Helbling, *What are Externalities?* INT'L MONETARY FUND (Dec. 2010), https://www.imf.org/external/pubs/ft/fandd/2010/12/basics.htm.

[51] Morris, *supra* note 50; *Externalities- The Economic Lowdown Podcast Series*, Volume 1, Episode 11, https://www.stlouisfed.org/education/economic-lowdown-podcast-series/episode-11-externalities (accessed online); Thomas Helbling, *Externalities: Prices Do Not Capture Costs,* INT'L MONETARY FUND (Dec. 18, 2018) https://www.imf.org/external/pubs/ft/fandd/basics/external.htm.

restaurants will cease handing out straws automatically and may even try to find an environmentally safer option.

Importantly however, straw pollution does not conform to the typical externality theory holding that corporations do not consider the costs to society imposed by negative externalities.[52] Without having to factor in these costs, corporations will act on profit opportunity regardless of the effects.[53] Corporations like Starbucks, which would otherwise by exempt from California's straw ban,[54] will phase out plastic straws and will fund an alternative.[55] Therefore, companies must believe that these green practices will yield greater benefits than if they externalized those costs.

C. The Straw Ban as a Public Good

In addition to intervening to reduce costs imposed on society by negative externalities, governments act when they consider a service to be a public good.[56] A public good is non-rivalrous and non-excludable.[57] Non-rivalrous means that one's enjoyment of a good does not diminish the supply for others.[58] A good is non-excludable when it is impossible to prohibit someone from enjoying the good.[59] In determining whether the straw ban could be considered a public good, the analysis laid out in the esteemed Ronald Coase's article, *The Lighthouse in Economics*, is on point. Coase explored the economic

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[52] Helbling, *supra* note 51.

[53] *Id.*

[54] Starbucks would be exempt because it does not fit the "fully service restaurant definition in AB 1184" as defined in Gen. Assemb. B. 1884, 2018, Reg. Sess. (Cal. 2018) §1, ch. 5.2, 42271(d).

[55] Rochman, *supra* note 12.

[56] *See* R.H. Coase, *The Lighthouse in Economics,* 17 J. OF LAW AND ECONOMICS, 357 (1974).

[57] *What are Public Goods?* KHAN ACADEMY, https://www.khanacademy.org/economics-finance-domain/microeconomics/consumer-producer-surplus/externalities-topic/a/public-goods-cnx (last visited May 10, 2019); *Non-Rivalrous Goods,* CORPORATE FINANCE INSTITUTE, https://corporatefinanceinstitute.com/resources/knowledge/economics/non-rivalrous-goods/ (last visited Jan. 1, 2020).

[58] *Non-Rivalrous Goods*, CORPORATE FINANCE INSTITUTE, https://corporatefinanceinstitute.com/resources/knowledge/economics/non-rivalrous-goods/ (last visited Jan. 1, 2020).

[59] *Id.*

foundations of government with respect to the question of whether lighthouses systems in the United Kingdom can be privately or publicly funded.[60] Coase examined various economists such as John Stuart Mill and Paul A. Samuelson's perspectives, neither of whom in their consideration of the subject acknowledged that the lighthouse system was indeed privately maintained.[61] Mill posited that lighthouses must be government funded because it would be impossible to collect fees from every ship that benefitted from the lighthouse's illumination.[62] Therefore, he argued, no private actor operating for profit would build and/or manage a lighthouse unless they received some sort of indemnification from the state.[63]

Economist Paul A. Samuelson considered lighthouses a public good.[64] Indeed, Samuelson listed lighthouse services along with national defense as necessary services from which private actors do not easily collect profits.[65] However, he reasoned, because they save lives, the government must fill the gap for these services.[66] However, Samuelson also argued that even if the private actors could charge a fee, it would not be socially optimal for them to do so.[67] Because it does not cost more to allow another ship to benefit from this light, any ship that would be discouraged from using it by the fee equals a social economic loss, measured by possible cargo loss and death.[68] Therefore, the government should step in and regulate the lighthouse industry.[69] Both Mill and Samuelson described a type of market failure that usually occurs with protecting public goods; because it is difficult to profit from administering most public goods, private actors will not do so.[70]

Coase pointed out that the lighthouse system was in fact operated by a private organization called the Trinity House.[71] The organization derived income from collecting lighthouse dues, paid by

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[60] *See* Coase, *supra* note 56, at 357.
[61] *Id. at* 360.
[62] *Id*. at 357.
[63] *Id.*
[64] *Id.* at 359.
[65] *Id.* at 358.
[66] *Id.*
[67] *Id.* at 359.
[68] *Id.*
[69] *Id.*
[70] *Id.* at 357-79.
[71] *Id.* at 367.

shipowners.[72] Like lighthouse services, straw bans are public goods. The benefits derived from the straw bans, like light from a lighthouse are non-rivalrous. [73] One person enjoying cleaner oceans and healthier marine life as a result of less plastic straw pollution does not prevent another from doing so, just as the illumination from the lighthouse guiding one boat does not diminish its utility for others. Cleaner waterways are non-excludable as well. It would be impossible to limit light exposure to mariners who have paid dues. Indeed, one cannot cabin off our cleaner oceans and marine life so that only those who drank from straw-less lids.

Banning single use straws is similar to the operation of lighthouses services in that if incentivized properly, private actors will undertake their management, and they have. Starbucks, on their own accord, will phase out plastic straws for their cold drinks by 2020[74] and expended resources to test a more easily recyclable alternative.[75]

However, despite market-based incentives for private actors to adopt "straw bans," such as the CEO's interest in safeguarding the environment, maximizing shareholder value, and increasing employee productivity, corporate motivations are subject to change. Should a corporation no longer consider the implementation of green programs like straw bans to be in its best interest, it may revert back to single use plastic straws. Therefore, to best accomplish the goals of straw bans, of cleaning our waterways, the government, unencumbered by a corporate bottom line, should stay involved. However, such intervention is not without criticism.

D. Public Reactions to Assembly Bill No. 1884

Opposition to California's "straw ban" centers on two arguments. First, that this measure is another in the line of socialist[76]

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[72] *Id.* at 360.

[73] *See* CORPORATE FINANCE INSTITUTE, *supra* note 58.

[74] Bonnie Rochman, *Straws are out, lids are in: Starbucks announces environmental milestone*, STARBUCKS STORIES (July 9, 2018), https://stories.starbucks.com/stories/2018/starbucks-announces-environmental-milestone/.

[75] *Id.*

[76] Nunes, *supra* note 22.

or "nanny state"[77] enactments by California. Critics also doubt that the ban will achieve its stated objective: reducing plastic pollution.

Those arguing that the straw ban is a "nanny state" maneuver believe that straw preferences are personal. According to Assemblyman Matthew Harper (R-Huntington Beach) "California needs to stop being the nanny state that … tells restaurants how to run their businesses."[78] On March 9, 2019, Representative Devin Nunes from California tweeted, "[a]t restaurant tonight waitress asks if we want straws. Says has to ask now in fear of "THE STRAW POLICE." Welcome to Socialism in California!"[79] The next day, Nunes tweeted a picture of a straw in his garden and posted "[a]nyone have the number for the #StrawPolice Socialists?"[80] While the nanny state arguments often appear with any new regulation, they are widespread enough to potentially slow the momentum of the straw bans.

Skeptics also question the effectiveness of these policies in curbing plastic pollution. California Assemblyman Harper worries that restricting straws will lead to businesses using plastic lids composed of more plastic, therefore further adding to the waste stream.[81] Similarly, Diana Cohen, the CEO of the Plastic Pollution Coalition, a California based environmental group, in regard to Starbucks' new straw-less lid, said, "[t]hese lids are going to be made of even more plastic than the straws… [i]t's kind of ridiculous." [82] To Starbucks' claim that the lids can be recycled, she retorted, "the key word is 'can.' The lids can be recycled. That doesn't mean they will be recycled." [83] Another criticism points out that around the fact that proportionally,

[77] Patrick McGreevy, *California lawmakers vote to restrict use of plastic straws, keeping state in national spotlight on environment*, LOS ANGELES TIMES (Aug 23, 2018), https://www.latimes.com/politics/la-pol-ca-plastic-straw-limits-california-20180823-story.html.

[78] *Id.*

[79] Nunes, *supra* note 22.

[80] Devin Nunes, (@Devin Nunes), TWITTER (Mar. 10, 2019, 5:06 PM), https://twitter.com/DevinNunes/status/1104896245561155586.

[81] Patrick McGreevy, *California lawmakers vote to restrict use of plastic straws, keeping state in national spotlight on environment*, LOS ANGELES TIMES (Aug 23, 2018), https://www.latimes.com/politics/la-pol-ca-plastic-straw-limits-california-20180823-story.html.

[82] *Id.*

[83] *Id.*

straws constitute a very small amount of the plastic trash.[84] Indeed, straws make up approximately four percent of the plastic trash by piece, but far less by weight.[85] Despite these criticisms, however, the private sector has voluntarily assisted in the effort to limit single use plastics use.

II. PRIVATE INCENTIVES FOR THE STRAW BAN

Interestingly, the straw-less lid resembling an "adult sippy cup"[86] that has received so much attention was not initially intended to be the lid for all of Starbucks' cold beverages.[87] Emily Alexander, an engineer in Global Research and Development, initially designed the lids to showcase its Draft Nitro and its trademark Cold Foam to be sold in one store.[88] However, it soon became apparent to the company that straw less lids would reduce plastic straw waste and should not be confined to Nitro.[89] Accordingly, on July 9, 2018, just a week after the announcement of the Seattle straw ban,[90] Starbucks committed to eliminating single use plastic straws from most of their beverages by 2020 in its over 28,000 stores worldwide.[91] From 2020 on, only cold beverages will automatically come with this lid, with the exception of frappuccinos.[92] Frappuccinos, and all other drinks, upon request, [93] will

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[84] Seth Borenstein, *Science says: Amount of straws, plastic is huge*, PHYS.ORG (Apr. 21, 2018), https://phys.org/news/2018-04-science-amount-straws-plastic-pollution.html.

[85] *Id.*

[86] Daniela Galarza, *Starbucks Sippy Cups Will Replace Plastic Straws by 2020*, EATER (July 9, 2018), https://www.eater.com/2018/7/9/17548260/starbucks-ban-plastic-straw-2020.

[87] Bonnie Rochman, *Straws are out, lids are in: Starbucks announces environmental milestone*, STARBUCKS STORIES (July 9, 2018), https://stories.starbucks.com/stories/2018/starbucks-announces-environmental-milestone/.

[88] *Id.*

[89] *Id.*

[90] *Starbucks to ban plastics in all straws by 2020*, BBC NEWS (July 8, 2018), https://www.bbc.com/news/world-us-canada-44774762.

[91] Bonnie Rochman, *Straws are out, lids are in: Starbucks announces environmental milestone*, STARBUCKS STORIES (July 9, 2018), https://stories.starbucks.com/stories/2018/starbucks-announces-environmental-milestone/.

[92] *Id.*

[93] *Id*.

be served with straw made from paper or PLA compostable plastic fermented from plant starch or other sustainable material.[94] Starbucks is currently testing the straws composed of these alternative materials.[95] Despite coming standard for only a portion of beverages, the new lid is expected to result in a significant reduction in plastic waste because cold beverages now comprise more than half of Starbucks' sales.[96] Indeed, Starbucks estimates that it will eliminate one billion straws from their stores through this initiative.[97] The "adult sippy cups"[98] are the greener option despite containing more plastic than straws, for two reasons: they are fully recyclable and compostable[99] and second, more likely to actually be recycled because straws are normally sorted out due to their small size and weight.[100]

This Note posits three different explanations for Starbuck's voluntary investment in the straw less lid and alternative material straw. First, it is possible that the firm's current and past managers have/had genuinely committed to reducing the coffee giant's carbon footprint. Second, the Starbucks might hope to increase/maintain sales by keeping up with other large corporations that have publicly committed to safeguarding the environment. Finally, it is possible that Starbucks implemented this program to increase employee productivity. Indeed, greener firms are associated with higher labor productivity.[101] Such a program may give its employees a positive social identity for working for a "green company."[102]

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[94] *Id.*

[95] *Id.*

[96] Kate Taylor, *Starbucks is killing its iconic green straws*, BUSINESS INSIDER (July 9, 2018, 6:00 AM), https://www.businessinsider.com/starbucks-to-ditch-plastic-straws-2018-7.

[97] *Starbucks to Eliminate Plastic Straws Globally by 2020*, STARBUCKS STORIES (July 9, 2018), https://stories.starbucks.com/press/2018/starbucks-to-eliminate-plastic-straws-globally-by-2020/.

[98] Galarza, *supra* note 86.

[99] *Id.*

[100] Trevor Nice, *Starbucks To Ditch Plastic Straws – Will It Actually Help The Environment*?, FORBES (July 10, 2018, 11:58 am), https://www.forbes.com/sites/trevornace/2018/07/10/starbucks-to-ditch-plastic-straws-worldwide-for-adult-sippy-cups/#4422ab34c9eb.

[101] Delmas & Pekovic, *supra* note 26, at 246.

[102] *See* Delmas & Pekovic, *supra* note 26, at 233.

A. Managerial Interests/Incentives

First, it is possible that Starbucks CEO, Kevin Johnson, as well as chief executive officers Orin Smith, James McDonald and Howard Schultz have invested resources into campaigns like straw bans because they are genuinely committed to green business practices. Indeed, Starbucks has a long history of environmental consciousness. To integrate environmental safeguards into their business, the company sustainably constructs their retail locations,[103] gives discounts for consumers' drinking from reusable cups,[104] and has made further investment in sustainable hot and cold cups.[105]

In 2001 Starbucks joined the U.S. Green Building Counsel to develop the LEED (Leadership in Energy and Environmental Design) for Retail Program.[106] LEED-approved stores include low emitting materials for adhesives, sealants, paints, the use of recycled coffee grounds in table tops, and forty-five percent lighting power savings through the use of efficient LED fixtures.[107] Starbucks was the first company to take this building strategy global.[108] Today, the firm has over 750 LEED certified stores in nineteen countries, more than any other retailer in the world.[109]

Further, in September 2018, Starbucks announced the "Starbucks Greener Stores Initiative" through which it committed to building and operating 10,000 "Greener Stores" by 2025.[110] Specifically, the plan will focus on delivering thirty percent water

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[103] STARBUCKS, *supra* note 24.

[104] *How do I qualify for a cup discount?* STARBUCKS CUSTOMER SERVICE (Aug. 7, 2018), https://customerservice.starbucks.com/app/answers/detail/a_id/2463/~/how-do-i-qualify-for-a-cup-discount%3F.

[105] *McDonalds Joins Starbucks & Closed Loop Partners as Founding Member of Initiative to End Cup Waste,* STARBUCKS STORIES (July 17, 2018), https://stories.starbucks.com/press/2018/mcdonalds-joins-starbucks-closed-loop-partners-to-end-cup-waste/.

[106] STARBUCKS, *supra* note 24.

[107] *Building Greener Stores*, STARBUCKS, https://en.starbucks.nl/responsibility/environment/green-building (last visited Jan. 9, 2020).

[108] *Id.*

[109] *Id.*

[110] *Starbucks Announces Global Greener Stores Commitment*, STARBUCKS STORIES (Sept. 13, 2018), https://stories.starbucks.com/press/2018/starbucks-announces-global-greener-stores-commitment/.

savings, operating stores on 100% renewable energy through investments in solar and wind projects.[111] In the next year, Starbucks will develop an accredited program to audit company-operated stores in the United States and Canada.[112] In presenting this plan on behalf of the company, CEO Johnson said that, "sustainable coffee, served sustainably is our aspiration."[113]

Since 2006, starting under CEO James McDonald, Starbucks has offered cups made from 10 percent post-consumer recyclable paper fiber.[114] In 2012, it introduced the EarthSleeve for hot beverages in the United States and Canada.[115] EarthSleeves are protective sleeves for drinks made from less paper and more post-consumer content.[116] Since Starbucks rolled them out, the recyclable sleeves have saved 21 million pounds of fiber which correlates to more than 188,000 trees.[117] Additionally, since 1985, Starbucks has offered a discount for customers who bring in their own tumblers.[118] In 2011, the company offered customers free brewed coffee for bringing in personal tumblers. That year, customers brought in their tumblers 34 million times, saving more than 1.5 million pounds of paper from landfills.[119]

Therefore, it is possible that Starbucks recent straw ban was another in the line of the firm's chief executive officers instituting policies because they are dedicated to protecting the environment. Indeed, managerial commitment to the environment may explain the firm taking on costs that traditional economic theory would expect them to impose on others.[120]

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[111] *Id.*

[112] *Id.*

[113] STARBUCKS, *supra* note 110.

[114] *Cups and Materials*, STARBUCKS, https://www.starbucks.com/responsibility/environment/cups-and-materials (last visited Mar. 15, 2019).

[115] *Starbucks completes global rollout of new cup sleeves*, STARBUCKS *https://stories.starbucks.com/stories/2015/earthsleeve-global-rollout.*

[116] *Id.*

[117] *Id.*

[118] *Goals & Progress: Reusable Cups*, STARBUCKS, https://www.starbucks.com/responsibility/global-report/environmental-stewardship/reusable-cups (last visited Mar. 15, 2019).

[119] *Id.*

[120] Helbling, *supra* note 51.

B. Starbucks' Potential Belief that the Straw Ban will Increase Shareholder Value

It is also possible managers and/or directors of Starbucks believe that internalizing some of the costs of plastic straw pollution will increase shareholder value more so than putting them on to others because green practices increase sales[121] and employee productivity.[122]

According to a study conducted by Nielsen, a measurement and global analytics company, millennials, now the world's largest consumer base,[123] factor a business's green corporate practices into their purchase decisions through checking labels for sustainable labeling and even paying extra for sustainable products.[124] Further, researchers at the School of Hospitality and Tourism Management, Institute for International Management in Haryana, India surveyed respondents using a structured questionnaire.[125] Researchers found that of respondents searching for hotels, twenty two percent of them deliberately sought out hotels with green practices and fifty five percent paid attention to hotel's environmental initiatives.[126]

As Starbucks' major competitors have implemented pro-environmental measures,[127] staying green is as important as ever. In 2014, Dunkin Brands Group launched the DD Green Program, a building certification program similar to LEED.[128] To obtain DD

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[121] *Doing Well By Doing Good*, 5 NIELSEN (June 2014), https://www.nielsen.com/content/dam/nielsenglobal/apac/docs/reports/2014/Nielsen-Global-Corporate-Social-Responsibility-Report-June-2014.pdf

[122] Delmas & Pekovic, *supra* note 26, at 245.

[123] Robert Klara, *Why Targeting Millennial Consumers Might Not be Such a Hot idea After All*, ADWEEK (June 11, 2019), https://www.adweek.com/brand-marketing/why-targeting-millennial-consumers-might-not-be-such-a-hot-idea-after-all/.

[124] NIELSEN, *supra*, note 121, at 7.

[125] Kamal Manaktola & Vinnie Jauhari, *Exploring consumer attitude and behavior towards green practices in the lodging industry in India*, 19 INT'L J. OF CONTEMP. HOSPITALITY MGMT. 364, 369 (2007).

[126] *Id.* at 372.

[127] *Dunkin Donuts Launches DD Green, An Initiative to build sustainable and energy-efficient restaurants*, DUNKIN' NEWSROOM (Dec. 9, 2014) https://news.dunkindonuts.com/news/dunkin-donuts-launches-dd-greenTM-an-initiative-to-build-sustainable-and-energy-efficient-restaurants; *Great taste without the waste*, COSTA, https://www.costa.co.uk/responsibility/environment/ (last visited Mar. 16, 2019).

[128] *Id.*

Green Certification, franchisees, construction managers and architects must follow a five-stage construction process concentrated on the mitigation of construction pollution, installation of LED light fixtures, and water saving plumbing fixtures.[129] Beginning in 2018, Dunkin Donuts replaced its styrofoam cup with a double walled paper cup,[130]which is certified to the Sustainable Forestry Initiative Standard.[131] The cups were introduced in New York City and California and the company plans for them to be worldwide by 2020.[132] Similarly, Costa Coffee recently constructed the first "zero energy" coffee shop known as the Eco Pod.[133] The shop is constructed using a timber frame instead of steel in order to reduce the carbon footprint of the building, an under-floor and passive ventilation system and PV solar panels on the roof.[134]

Not only do consumers factor green practices into their purchase decisions but are willing to pay more for them.[135] Nielson polled 30,000 consumers in 60 countries throughout Asia-Pacific, Europe, Latin America, the Middle East, Africa and North America.[136] More than half of the respondents said that they were willing to pay a premium for products and services from companies committed to a positive social and environmental impact.[137] To assess how these sentiments applied to sales, Nielson reviewed retail sales data for a cross section of both consumable and non-consumable categories across twenty brands across nine countries.[138] The results from a March 2014 year by year analysis showed an annual sales increase of two percent for products with sustainability claims on the packaging

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[129] *Id.*

[130] *Dunkin' Donuts to Eliminate Foam Cups Worldwide in 2020,* DUNKIN' NEWSROOM (Feb. 7, 2018), https://news.dunkindonuts.com/news/dunkin-donuts-to-eliminate-foam-cups-worldwide-in-2020.

[131] *Id.*

[132] *Id.*

[133] *Costa open first 'zero-energy' coffee shop,* EDIE (Apr. 13, 2015) https://www.edie.net/news/6/Costa-Eco-Pod-zero-energy-coffee-shop-Wrekin-Retail-Park-Telford%20/.

[134] *Id.*

[135] *Doing Well By Doing Good,* 5 NIELSEN (June 2014), https://www.nielsen.com/content/dam/nielsenglobal/apac/docs/reports/2014/Nielsen-Global-Corporate-Social-Responsibility-Report-June-2014.pdf.

[136] *Id.* at 15.

[137] *Id.* at 5.

[138] *Id*.

and a boost of five percent for products promoting sustainability actions through marketing programs.[139] A review of fourteen other brands without sustainability claims or marketing showed a sales increase of only one percent.[140] Moreover, age is significant in this analysis.[141] Among the global respondents, millennials represent fifty one percent of consumers who will spend more for sustainable products[142] and of those who will check the packaging for sustainable labeling.[143] Fortunately for environmentally conscious firms like Starbucks, as of 2015, millennials have risen past baby boomers to be the largest consumer base.[144]

Additionally, a study conducted at Harvard Business School tracking the performance of 180 U.S. companies for eighteen years found that companies deemed "High Sustainability Companies" outperformed the "Low Sustainability companies" in areas such as accounting rates of return, return on equity and return on assets.[145] The study defined "High Sustainability Companies" as those adopting socially and environmentally beneficial policies since the early to mid-1990's.[146] In these organizations, the Board of Directors are more likely to have direct responsibility for the company's social and environmental objectives companies.[147] Additionally, compared to Low Sustainability firms, High Sustainability firms are more focused on understanding the needs of stakeholders and ensuring that stakeholders raise their concerns.[148] Examples of stakeholders in Starbucks' case would be employees as well as people living and working around the company's retail locations. In contrast, Low Sustainability Companies are ones that regard social and environmental policies as externalities, adhering simply to the traditional model of profit maximization.[149] The authors posit that by

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[139] *Id.*
[140] *Id.*
[141] *Id.* at 7.
[142] *Id.*
[143] *Id.*
[144] Klara, *supra* note 123.
[145] Robert Eccles et al., *The Impact of Corporate Sustainability on Organizational Processes and Performance* 4 (Nat'l Bureau of Econ. Research, Working Paper No. 17950, 2012).
[146] *Id.* at 3.
[147] *Id*. at 7.
[148] *Id.* at 10.
[149] *Id.* at 23.

paying mind to stakeholders rather than just shareholders, sustainable firms may be able to attract human capital, establish reliable more reliable supply chains and maintain peaceable relations with the local surrounding communities, thus enabling them to remain competitive despite possibly expending more to go green.[150] Finally, researchers found that the financial outperformance is more pronounced for companies that sell products to individuals, compete on the basis of brand and reputation, and make substantial use of natural resources.[151] These results suggest that Starbucks, which relies on its brand name to sell its various products, would benefit financially from their sustainable habits.

Finally, as Harvard Law Professor Einer Elhauge argues in Sacrificing *Corporate Profits in the Public Interest,* allowing managers like CEO Johnson the discretion to institute policies like the straw ban is not only socially beneficial, but economically efficient.[152] Despite the popular belief that managers are tasked only with profit maximization on behalf of shareholders, corporate law enables managers to engage in pro-environmental and pro social measures on behalf of the corporation.[153] However, even if the relevant metric of success is pure profit maximization, to reach optimal agency costs it is best to leave the managers some discretion to implement socially and environmentally beneficial policies as Starbucks' CEO Johnson did with the straw ban.[154] Agency costs result from shareholders and boards of directors hiring an officer or chief executive to manage the company.[155] Shareholders and the directors want to ensure that the manager does not act in ways divergent from their interests such as making excessive use of corporate perquisites like booking excessively expensive hotels for travel.[156] Therefore, shareholders incur costs to monitor the officers.[157] Accordingly, giving some discretion to managers will reduce agency costs because any residual

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[150] *Id.* at 17.

[151] *Id.* at 4.

[152] Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest,* 80 N.Y.U. L. REV.,733, 777 (2005).

[153] *See id.* at 733.

[154] *See id.* at 776.

[155] *See Agency Costs,* CORPORATE FINANCE INSTITUTE, https://corporatefinanceinstitute.com/resources/knowledge/finance/agency-costs/ (last visited Jan. 29, 2020).

[156] *Id.*

[157] *Id*.

loss incurred by the manager pursuing action such as developing a straw-less lid that does not necessarily reflect pure profit maximization will be offset by the savings in monitoring costs.[158]

Therefore, it is possible that Starbucks chose to internalize the costs of developing a straw made from alternative material and the straw-less lids because it saw a chance for profit and maximization of shareholder values.

C. *Increased Employee Productivity*

Adopting environmental standards enhances work practices and may create a circle of positive interactions between an employer and its employees.[159] Moreover, in addition to showing interest in the environment, the company has a history of valuing their employees' perspectives in their pro-environmental measures. First, instead of "employees," the company refers to its workers as "green apron partners."[160] Similarly, in an interview with the Wall Street Journal, Starbucks CEO Kevin Johnson said that he would follow in former Starbucks' CEO Howard Schultz's footsteps and speak publicly about popular issues.[161] Johnson believes that, "[o]ne of the reasons people come to work at Starbucks is because we stand for something. It's about human connection and having a sense of humanity. We think that's part of what makes Starbucks a special place that both partners and customers want to be associated with."[162]

Starbucks has also launched a program, Partners for Sustainability.[163] Green apron partners are encouraged to help the company in its "green" practices by submitting to the company sustainable practices they engage in locally and/or in their personal

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[158] *See* Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 776-77 (2005).

[159] Delmas & Pekovic, *supra* note 26, at 246.

[160] *Starbucks Announces Global Greener Stores Commitment*, STARBUCKS STORIES (Sept. 13, 2018), https://stories.starbucks.com/press/2018/starbucks-announces-global-greener-stores-commitment/.

[161] Julie Jargon, *New Starbucks CEO Sees Growth in Suburbs, Midwest and Lunch*, WALL ST. J. (Apr. 3, 2017), https://www.wsj.com/articles/new-ceo-on-where-starbucks-sees-growth-suburbs-midwest-lunch-1491192060.

[162] *Id.*

[163] *New Starbucks Partner Group Seeks to 'Make the Green Apron Even Greater*,' STARBUCKS STORIES (Dec. 4, 2015), https://stories.starbucks.com/stories/2015/starbucks-partners-for-sustainability/.

lives.[164] As part of the program, Starbucks evaluates whether these practices can be brought to scale to lessen its own footprint.[165] According to John Kelly, Starbucks' Senior Vice President of Global Responsibility and Public Policy, "[b]y harnessing the ideas of Partners for Sustainability, sharing their stories and hearing directly from them on ways Starbucks can continue to lead on sustainability, we have a unique opportunity to make the green apron even greener."[166] Indeed, "[a]ll partners, no matter what their position, have an opportunity to help drive sustainability at Starbucks," said Susan Long, member of the Starbucks Global Responsibility Team and co-chair of Partners for Sustainability, "Partners for Sustainability is intended to help them connect, share and amplify their efforts."[167]

Firms that have adopted environmental standards are associated with higher labor productivity than those without such policies.[168] Indeed, 67 percent of employees prefer to work for socially responsible companies.[169] Corporations adopting green practices have higher employee productivity than those that do not.[170] Professor Maglia Delmas at the UCLA Anderson School of Management collected data using a survey which included responses with detailed employee characteristics at 5,220 firms.[171] There are several possible explanations for the direct relationship between firms' adoptions of environmental standards and increased employee productivity. First, that the adoption of environmental standards may provide the positive social identity that comes from working for a "greener firm."[172] Therefore, employees have a stronger emotional connection with the firm and may be willing to work harder.[173] From her data analysis, Professor Delmas found that the adoption of environmental standards is associated with higher levels of labor productivity and that improved

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[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] Delmas & Pekovic, *supra* note 26, at 245.
[169] *Doing Well By Doing Good*, 3 NIELSEN (June 2014), https://www.nielsen.com/content/dam/nielsenglobal/apac/docs/reports/2014/Nielsen-Global-Corporate-Social-Responsibility-Report-June-2014.pdf.
[170] Delmas & Pekovic, s*upra* note 168, at 245.
[171] *Id.* at 231.
[172] *Id.* at 233.
[173] *Id.* 245

training and interpersonal contacts mediate this relationship.[174] She argues that increased communication among workers with diverse capabilities can lead to knowledge transfer and innovation.[175] These results are encouraging for Starbucks. Training employees to adapt to the company's straw ban and answer customer questions will likely foster increased interpersonal relations and therefore productivity and innovation.[176]

Therefore, the proposed motivations for Starbuck's institutional of the straw ban including managerial interest in the environment, increased shareholder value and employee productivity may help to explain the firm's internalization of what others may be tempted to externalize.

III. POLICY IMPLICATIONS AND RECOMMENDATION

As discussed above, the straw ban is a public good and plastic straw pollution is an externality. Usually because it is difficult to collect a fee for doing so, public actors will not elect to protect a public good and the government must intervene.[177] This is not so in the case of straw bans. Management at Starbucks has found it advantageous to go green than impose costs of single use straws on the environment. This depart from economic theory may be attributed to managerial interest in going green, maximizing shareholder value, and/or increase employee productivity.

Despite various firms voluntarily taking on straw bans and/or campaigns to find a more sustainable alternative, we must be mindful of the ever-present corporate bottom line. Indeed, the aforementioned incentives for private action are subject to change. A future CEO with new ideals and aspirations for the company may not want to incur the expense of investing in new technology like the "adult sippy cup,"[178] and institute the cheapest cup design possible. Similarly, as for increasing shareholder value and employee productivity, going "green" may lose its popularity among its customers. Therefore, companies like Starbucks may feel less assured that taking on such an investment will be well-received by the public and their shareholders.

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[174] *Id.* at 231.
[175] *Id*. at 246.
[176] *See id.*
[177] *See* Helbling, *supra* note 51.
[178] Galarza, *supra* note 86.

In those cases, if the risk is greater than the reward, corporations may conform with traditional economic theory and put the environmental costs of plastic straws on to others.[179]

However, if we want to accomplish the stated objectives of straw bans, private involvement is important to sweeten their bitterness for those who find them overbearing. Seeing a successful large company voluntarily take action may bolster support. Critics are justified however, in saying that proportionally straws do not comprise a large portion of plastic pollution. However, "small" is still 7.5 million straws on American coastlines alone. [180]

CONCLUSION

Accordingly, to best accomplish the goals of the straw bans; reducing plastic pollution in our waterways and shores, it is best if both the private and public sectors are involved. Because the government is unlikely to be motivated by the same fickle incentives as the private sector, its engagement provides a consistent way to reduce plastic pollution.

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[179] *See* Helbling, *supra* note 51.
[180] Borenstein, *supra* note 37.