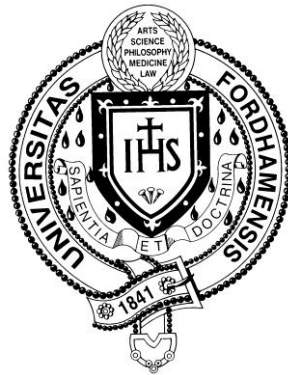


FORDHAM ENVIRONMENTAL LAW REVIEW



“ECO” YOUR OWN WAY: AN ARGUMENT FOR
STATE-SPECIFIC CLIMATE CHANGE LEGISLATION

Amanda Voeller

“ECO” YOUR OWN WAY: AN ARGUMENT FOR
STATE-SPECIFIC CLIMATE CHANGE LEGISLATION

*Amanda Voeller**

ABSTRACT

The consequences of climate change seriously and immediately threaten the American way of life, but proposed federal legislation like the Green New Deal is overly broad, unrealistic, and inefficient. The most effective way for the United States to combat climate change is not with a one-size-fits-all plan like the Green New Deal, but with federal legislation that incentivizes states and cities to enact and enforce individualized, local climate legislation. Different states and cities have different climates, available energy sources, and transportation needs, so the federal government should use financial incentives to encourage states and cities to pass tailor-made bills and ordinances that work for each locality.

The idea for this incentive statute comes from the 1984 National Minimum Drinking Age Amendment, a federal statute in which Congress withheld 5% of federal highway funding from states that did not set their minimum drinking ages to 21. The statute was very effective, leading to all 50 states increasing their drinking ages to 21 within four years. A bipartisan Supreme Court upheld the statute as a constitutional use of Congress’s spending power. This Article proposes more complex and nuanced legislation, but the general idea is the same: Congress may use its spending power to incentivize states to enact statutes in line with federal policy goals. An incentive statute like the one proposed in this Article would succeed because

*Amanda Voeller received her Juris Doctor degree from Texas Tech University School of Law in 2019 and her Bachelor of Journalism degree from The University of Texas at Austin in 2016. She would like to thank Professor Alex Pearl for his guidance and her family for their support.

it would afford states the flexibility to decide which types of climate legislation would work best in their states while also holding those states accountable to environmental benchmarks.

2020]	“ECO” YOUR OWN WAY	261
INTRODUCTION		261
<u>I.</u> BACKGROUND.....		265
<u>A.</u> <i>Climate Change is an Urgent Problem That Harms Americans</i>		265
<u>B.</u> <i>The Green New Deal is Too Broad</i>		268
<u>II.</u> ARGUMENT		270
<u>A.</u> <i>Congress Should Condition a Small Percentage of State Transportation Funding on Climate Legislation</i>		272
<u>1.</u> <i>Cities and States Should Better Incentivize Energy-Efficient Transportation</i>		273
<u>2.</u> <i>Cities and States Should Require LEED Certification for More Buildings</i>		276
<u>3.</u> <i>States Should Join the Regional Greenhouse Gas Initiative</i>		278
<u>B.</u> <i>This Article’s Proposal Would Be Constitutional Under South Dakota v. Dole</i>		280
CONCLUSION		282

INTRODUCTION

“Under the high emissions scenario, the 22nd century would be the century of hell. . . . That century would become the century of exodus from the coast.”¹

Earth’s changing climate affects every person in the world, and Americans are not exempt. The innumerable consequences of climate change—more frequent flooding and debilitating droughts, stronger wildfires and hurricanes, worsening respiratory diseases and more heat-related illnesses—seriously threaten the American way of life.²

¹ Brady Dennis & Chris Mooney, *Scientists Nearly Double Sea Level Rise Projections for 2100, Because of Antarctica, Climate and Environment*, THE WASH. POST (Mar. 30, 2016), https://www.washingtonpost.com/news/energy-environment/wp/2016/03/30/antarctic-loss-could-double-expected-sea-level-rise-by-2100-scientists-say/?utm_term=.fa5abedf4716 (quoting Ben Strauss, director of the program on sea level rise at Climate Central, an independent organization of scientists based in New Jersey).

² Gennaro D’amato et al., *Climate Change and Respiratory Diseases*, EUR. RESPIRATORY UPDATE ENVTL. LUNG DISEASE 163 (2014),

The past six years have been the six warmest years since record-keeping began in the late 1800s, and the average global temperature has increased almost every year since 2002.³ Over the past century, Earth's average temperature has increased by 1.5°F (0.85°C).⁴ This seemingly small increase averaged out over the world means that in certain locations and at certain times, the temperature increase has been much more than 1.5°F.⁵ Higher temperatures have extreme effects including inhibiting grain production, which decreases food supplies, and causing rapid sea-level rise, which will wipe out many coastal properties and some entire cities.⁶ Because of natural variances in Earth's climate in different regions, global warming does not cause warmer weather in every area, and it does not mean the average global temperature every year is warmer than the last.⁷ Rather, it means that because the base temperature of the earth is warmer than it is naturally meant to be, the delicate balance of the earth's climate, ecosystems, and sea levels is thrown off.⁸

<https://err.ersjournals.com/content/errev/23/132/161.full.pdf>; *see also* *Temperature-Related Death and Illness*, U.S. GLOB. CHANGE RES. PROGRAM, <https://health2016.globalchange.gov/temperature-related-death-and-illness> (2016); *see also* *The Effects of Climate Change*, NASA, <https://climate.nasa.gov/effects/> (database updated Dec. 2020).

³ The average global temperature did not increase in 2011. Jeff Masters, *Earth Had Its Second Warmest Year in Recorded History in 2019*, SCI. AM. (Jan. 15, 2020), <https://blogs.scientificamerican.com/eye-of-the-storm/earth-had-its-second-warmest-year-in-recorded-history-in-2019/>; *see also*, *2018 was the Fourth-Hottest Year on Record*, WORLD WILDLIFE FUND (Feb. 6, 2019), <https://www.worldwildlife.org/stories/2018-was-the-fourth-hottest-year-on-record>; *see also*, *Climate at a Glance: Global Time Series*, NOAA NAT'L CTR. FOR ENVTL. INFO. (Dec. 2020), https://www.ncdc.noaa.gov/cag/global/time-series/0.0,0.0/land_ocean/ytd/12/1880-2019?trend=true&trend_base=10&firsttrendyear=1880&lasttrendyear=2020.

⁴ Caitlyn Kennedy, *Does 'Global Warming' Mean It's Warming Everywhere?*, NOAA CLIMATE.GOV (May 6, 2014), <https://www.climate.gov/news-features/climate-qa/does-global-warming-mean-it%E2%80%99s-warming-everywhere>.

⁵ Bob Silberg, *Why a Half-Degree Temperature Rise is a Big Deal*, NASA: GLOB. CLIMATE CHANGE: VITAL SIGNS OF THE PLANET (June 29, 2016), <https://climate.nasa.gov/news/2458/why-a-half-degree-temperature-rise-is-a-big-deal/>.

⁶ *See Southeast Florida Regional Climate Change Compact*, REG'L CLIMATE LEADERSHIP SUMMIT, <http://southeastfloridaclimatecompact.org/wp-content/uploads/2014/09/compact.pdf> (last visited Mar. 28, 2020).

⁷ Kennedy, *supra* note 4.

⁸ *Id.*

Much of the earth’s warming comes from human-induced greenhouse gas emissions, which trap heat and increase the planet’s temperature.⁹ Of American adults, 67% agree with scientists that global warming is happening and 69% agree that it will harm plants, animals, and future generations.¹⁰ Only 53%, however, agree with the 97% of scientists who believe that human activities have mostly caused global warming.¹¹ If there is an increase in the number of Americans who believe that human activities cause global warming, then the number of Americans who are trying to reduce their carbon footprint would likely also increase. Unfortunately, quickly changing Americans’ beliefs on this issue is an uphill battle because climate change has become a deeply partisan issue.¹² Therefore, environmental advocates should focus their efforts not on changing Americans’ beliefs but rather on incentivizing Americans to act in climate-conscious ways.

When asked if “Congress should do more to address global warming,” 60% of American adults said yes, and 56% believe state and local officials should do more to address the issue.¹³ Members of Congress have been unable to agree on how to tackle the problem because of conflicting views on which types of energy the United States should use and the ways that stronger climate change legislation would affect the economy, but the majority of congressional members’ constituents—60%—support climate legislation.¹⁴ This Article will argue that the most effective way the United States can realistically address the urgent issue of global warming is for Congress to enact a

⁹ *Sources of Greenhouse Gas Emissions*, U.S. ENVTL. PROT. AGENCY [EPA] (last updated Sept. 13, 2019), <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>.

¹⁰ Jennifer Marlon et al., *Yale Climate Opinion Maps 2019*, YALE PROGRAM ON CLIMATE CHANGE COMM. (Sept. 17, 2019), <https://climatecommunication.yale.edu/visualizations-data/ycom-us/>; see also *Scientific Consensus: Earth’s Climate is Warming*, NASA, <https://climate.nasa.gov/scientific-consensus/> (database updated Dec. 2020); see also *Climate Change: How Do We Know?*, NASA, <https://climate.nasa.gov/evidence> (database updated Dec. 2020).

¹¹ *Id.*

¹² *Compare 2016 Democratic Party Platform*, DEMOCRATIC PLATFORM COMM. 24 (2016), https://democrats.org/wp-content/uploads/2018/10/2016_DNC_Platform.pdf, with *Republican Platform 2016*, REPUBLICAN NAT’L COMM. (2016), <https://prod-cdn-static.gop.com/static/home/data/platform.pdf>.

¹³ Marlon et al., *supra* note 10.

¹⁴ *Id.*; see generally 165 CONG. REC. 1680 (2019).

statute that uses financial incentives to encourage states, cities, and counties to enact local climate legislation. This federal statute should focus on increasing renewable energy usage and decreasing carbon emissions through various incentive options.

In the United States in 2017, transportation production made up 29% of greenhouse gas emissions, and electricity production made up 28%.¹⁵ Industry sector emissions comprised 22%, emissions from the commercial and residential sectors comprised 12%, and agriculture sector emissions comprised 9%.¹⁶ Because the sectors emitting greenhouse gases in the United States vary, Congress should incentivize states to lower emissions across any sector: it should reward cleaner transportation and electricity generation methods, more LEED-certified buildings, and joining or implementing cap-and-trade programs.¹⁷

The United States encompasses about 3.8 million square miles, and the climates of each region of the country differ greatly.¹⁸ A federal one-size-fits-all bill—if Congress managed to enact such a bill—would likely fail to address each state’s individual concerns. The type of incentive statute proposed in this Article would afford states the flexibility to decide which types of climate legislation would be the most effective and beneficial for them. This Article does not purport to offer a comprehensive collection of legislative actions that each state should take, but it offers a set of guidelines that Congress should encourage cities and states to use in informing their individual climate laws and ordinances.

The legislative-incentive method proposed in this Article has gained traction in recent scholarship. In her Note, Rachel Manning argues that the federal regimes that aim to reduce greenhouse gas emissions focus on major polluters rather than on individuals, creating

¹⁵ *Sources of Greenhouse Gas Emissions*, *supra* note 9.

¹⁶ *Id.* (Industry sector emissions include emissions from burning fossil fuels for energy and emissions from certain chemical reactions necessary to produce goods from raw materials.).

¹⁷ *See* Part III (suggesting that Congress encourage states to enact various types of climate legislation).

¹⁸ *See State Area Measurements and Internal Point Coordinates*, U.S. CENSUS BUREAU, <https://www.census.gov/geographies/reference-files/2010/geo/state-area.html> (last updated Aug. 9, 2018).

a gap that grassroots behavior changes could fill.¹⁹ She argues that because of geographic and demographic differences across the country, state and local governments—rather than the federal government—are best suited to create plans to combat climate change. Manning proposes a federal legislative approach based on the Clean Air Act that would encourage states to adopt policies that incentivize individuals to reduce their greenhouse gas emissions. Her focus on the importance of federal incentives that encourage local legislation underscores this Article’s principal theme: federal climate change policies could be much more powerful and effective if they offer financial incentives for states to take aggressive action. This Article goes further into flexible proposals that would work better at the state and local level than in a federal program like the Green New Deal.

Part I, Section A of this Article discusses climate change’s current and future negative consequences, and Part I, Section B discusses the shortcomings of the Green New Deal. Part II, Section A argues that climate change legislation should come primarily from the states and should consist of incentive programs that encourage policies such as energy-efficient transportation, joining the Regional Greenhouse Gas Initiative, and increasing the number of LEED-certified buildings. Part II, Section B discusses the 1984 National Minimum Drinking Age Amendment and the way that its framework could efficiently create effective climate change legislation. The final Part briefly concludes by reiterating the importance of immediate and sweeping government action on climate change.

I. Background

A. *Climate Change is an Urgent Problem That Harms Americans*

Human activities have caused approximately 1.0°C (1.8°F) of global warming above pre-industrial levels, primarily through greenhouse gas emissions.²⁰ Global warming occurs when greenhouse

¹⁹ Rachel Manning, *Reaching the Individual: A Proposed Federal Framework to Reduce Community-Based Greenhouse Gas Emissions*, 30 *FORDHAM ENVTL. L. REV.* 123 (2019).

²⁰ See V. Masson-Delmotte et al., *Summary for Policymakers: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in context of strengthening the global response to the threat of climate*

gases—carbon dioxide, methane, nitrous oxide, and fluorinated gases—are emitted into the atmosphere.²¹ These gases warm the earth by absorbing energy, essentially acting like a blanket insulating the earth.²²

Increased global temperatures are causing ice melt from land ice sheets in places such as Antarctica and Greenland, leading to rapid sea level rise.²³ Greenland's ice is melting at four times the 2003 rate, and Antarctica's ice is melting at six times the rate it was 40 years ago and 15% faster than it was in 2018.²⁴ The Arctic Circle, which encompasses Greenland, is warming at twice the average rate as the rest of the planet.²⁵ Sea levels are on track to rise by six feet over the next 80 years, which would completely wipe out 36 U.S. cities and

change, sustainable development, and efforts to eradicate poverty, INTERGOV'T. PANEL ON CLIMATE CHANGE, 1, 4 (2018), https://archive.ipcc.ch/pdf/special-reports/sr15/sr15_spm_final.pdf.

²¹See *Sources of Greenhouse Gas Emissions*, *supra* note 9 (In 2017, U.S. greenhouse gas emissions consisted of 82% carbon dioxide and only 10% methane, but methane has 25 times the global warming potential as carbon dioxide, meaning that releasing 1 kilogram of methane is equivalent to releasing 25 kg of carbon dioxide. Nitrous oxide made up 6% of greenhouse gas emissions, and fluorinated gases made up 3%. Nitrous oxide has 298 the global warming potential as carbon dioxide, and various fluorinated gases have between 675 and 22,800 the potential.); see also *CO₂ Equivalents*, CLIMATE CHANGE CONNECTION (last updated Apr. 27, 2016), <https://climatechangeconnection.org/emissions/co2-equivalents>; Gabriel Yvon-Durocher et al., *Methane Fluxes Show Consistent Temperature Dependence Across Microbial to Ecosystem Scales*, 507 *NATURE* 488 (2014), <https://www.nature.com/articles/nature13164.pdf>.

²² *Understanding Global Warming Potentials*, EPA (last updated Feb. 14, 2017), <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>.

²³ *Ice Sheets: Global Climate Change: Vital Signs of the Planet*, NASA, <https://climate.nasa.gov/vital-signs/ice-sheets/> (database updated Dec. 2020).

²⁴ Associated Press, *Ice in Antarctica is Melting Faster Than Last Year, Scientists Say*, *THE WASH. POST.* (Jan. 15, 2019, 7:00 AM), https://www.washingtonpost.com/lifestyle/kidspost/ice-in-antarctica-melting-faster-than-last-year-scientists-say/2019/01/14/a265a55e-1878-11e9-88fe-f9f77a3bcb6c_story.html?utm_term=.c17a478b6b24;

see also John Schwartz, *Greenland's Melting Ice Nears a 'Tipping Point,' Scientists Say*, *N.Y. TIMES* (Jan. 21, 2019), <https://www.nytimes.com/2019/01/21/climate/greenland-ice.html>.

²⁵ Schwartz, *supra* note 24.

submerge half of the homes in 300 more cities—almost 1.9 million homes worth a combined \$882 billion.²⁶

Warmer temperatures and melting ice have already led to the destruction of parts of communities, including the Alaskan village of Kivalina. Kivalina’s residents depend on sea ice to shield them from coastal storms, but over the past few decades, the ice has been thinner, formed later, and broken up earlier, allowing storm waves and surges to destroy the land that the village sits on.²⁷ “[I]t is believed that the right combination of storm events could flood the entire village at any time Remaining on the island . . . is no longer a viable option for the community.”²⁸

Climate change also contributes to higher rates of respiratory disease, which weaken a person’s ability to breathe.²⁹ Scientists are most concerned about asthma, rhinosinusitis, chronic obstructive pulmonary disease, and respiratory tract infections.³⁰ Changes in the climate affect air quality by increasing the amount of pollen and allergen produced by plants and the amount of mold in the air.³¹ Additionally, scientists associate higher carbon dioxide levels—a main factor in causing climate change—with increased fungal spore production, a potential asthma trigger.³²

²⁶ Krishna Rao, *Climate Change and Housing: Will a Rising Tide Sink All Homes?*, ZILLOW (Jun. 2, 2017), https://www.zillow.com/research/climate-change-underwater-homes-12890/#_ftnref2 (The projected six feet of sea-level rise by 2100 would affect homes in 23 states. These states include east coast states such as New York (in which 96,708 properties could be submerged), New Jersey (190,429 properties), and Florida (934,411 properties, which is 1 in 8 properties in the state); west coast states such as California (42,353 properties) and Oregon (4,959 properties); and other states including Hawaii (37,556, which is 1 in 10 properties in the state) and Texas (46,804 properties).).

²⁷ *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 853 (9th Cir. 2012).

²⁸ *Id.* (citing *Alaska Native Villages: Most Are Affected by Flooding and Erosion, but Few Qualify for Federal Assistance*, U.S. GOV’T ACCOUNTABILITY OFFICE, GAO 04–142 30, 32 (2003)).

²⁹ Gennaro D’amato et al., *Climate Change and Respiratory Diseases*, EUR. RESPIRATORY UPDATE ENVTL. LUNG DISEASE 163–64 (2014), <https://err.ersjournals.com/content/errev/23/132/161.full.pdf>.

³⁰ *Id.* at 162

³¹ *Id.* at 162-63.

³² *Id.* at 163-164

The United States contributes 12.56% to the world's greenhouse gas emissions despite being home to only about 4.4% of the world's population.³³ None of the United States' peer countries, including the European Union, Canada, Japan, Norway, Switzerland, and Australia, join it in the Climate Action Tracker's category of "critically insufficient" to keep warming below the 2009 Copenhagen goal of 2°C.³⁴ Nevertheless, those countries still fall far short of climate scientists' goal of keeping warming below 2°C in order to prevent even more drastic environmental changes.³⁵ If every country in the world approached climate change the way the United States does, global warming would exceed 4°C.³⁶ As one of the world's most influential countries, the United States has a duty to lead others in creating a more sustainable earth that can continue to support life for decades to come.³⁷

B. *The Green New Deal is Too Broad*

In February 2019, Representative Alexandria Ocasio-Cortez and Senator Ed Markey introduced an extremely broad, nonbinding resolution explaining their vision for a Green New Deal.³⁸ The resolution sets forth lofty goals that revolve around the idea of "meeting 100 percent of the power demand in the United States

³³ Johannes Friedrich et. al., *This Interactive Chart Explains World's Top 10 Emitters, and How They've Changed*, Blog, WORLD RES. INST. (Apr. 11, 2017), <https://www.wri.org/blog/2017/04/interactive-chart-explains-worlds-top-10-emitters-and-how-theyve-changed>; see also Michelle Ye Hee Lee, *Does the United States Really Have 5 Percent of the World's Population and One Quarter of the World's Prisoners?*, Fact Checker, WASH. POST (Apr. 30, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/?utm_term=.9f97142682f0; see also *U.S. and the World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock/> (last visited Mar. 28, 2020).

³⁴ *Countries*, CLIMATE ACTION TRACKER, <https://climateactiontracker.org/countries/> (last visited Mar. 28, 2020); *Rating System*, CLIMATE ACTION TRACKER, <https://climateactiontracker.org/countries/rating-system/> (last visited Mar. 28, 2020).

³⁵ *Countries*, *supra* note 34.

³⁶ *Countries*, *supra* note 34; *Rating System*, *supra* note 34.

³⁷ See Peter Hayes, *Freer Trade, Protected Environment*, 35 COLUM. J. TRANSNAT'L L. 213, 228 (1997).

³⁸ H.R. Res. 109, 116th Cong. (2019).

through clean, renewable, and zero-emission energy sources.”³⁹ This national Green New Deal, as Ocasio-Cortez and Markey see it, would not only lead to “net-zero greenhouse gas emissions” but would also address income inequality, health care issues, housing issues, unemployment, workers’ abilities to unionize, and unfair competition.⁴⁰

The resolution had the potential to set the stage for innovative climate legislation by encouraging Congress to adopt a progressive mindset regarding climate change, but its broad swath of goals, in this context, simply compounded people’s feelings that addressing climate change is too overwhelming to think about.⁴¹ The sheer vastness of the issue of climate change can cause people to feel paralyzed and unable to comprehend how they could possibly mitigate the consequences of global warming.⁴²

If politicians’ reactions to the Green New Deal are any indication of how they would vote on regulatory climate change legislation, no substantial legislation will pass any time soon.⁴³ A much more effective and American approach would be for Congress to encourage and incentivize the people of each individual state to take ownership of their climate and enact legislation that will remedy the problem of global warming. A bill taking this approach is more likely to pass than one that aims to impose more federal climate regulations. This is because many Republican party members advocate for a more limited government, so the environmental aspects of the bill will generally appeal to Democrats while the state-centered focus of the bill will generally appeal to Republicans.⁴⁴

³⁹ See *id.*; see also Danielle Kurtzleben, *Rep. Alexandria Ocasio-Cortez Releases Green New Deal Outline*, NPR (Feb. 7, 2019), <https://www.npr.org/2019/02/07/691997301/rep-alexandria-ocasio-cortez-releases-green-new-deal-outline>.

⁴⁰ H.R. Res. 109, 116th Cong. (2019).

⁴¹ See *id.*

⁴² See *id.*

⁴³ Robin Lindsay, *How Politicians Are Reacting to a Green New Deal*, *Times Video*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/video/us/politics/100000006368351/green-new-deal-democrats-republicans.html>.

⁴⁴ See DEMOCRATIC PLATFORM COMM. 24 (2016), https://democrats.org/wpcontent/uploads/2018/10/2016_DNC_Platform.pdf; see also *Republican Platform 2016*, REPUBLICAN NAT’L COMM. (2016), <https://prod-cdn-static.gop.com/static/home/data/platform.pdf>.

II. ARGUMENT

In 1970, Congress created the United States Environmental Protection Agency and tasked it with protecting human health and the environment.⁴⁵ This agency would ostensibly work to decrease greenhouse gas emissions, but under the Trump administration, it became weaker and did less to combat climate change.⁴⁶ The Trump administration's proposed budget for Fiscal Year 2021 did not once mention "climate change" or "global warming."⁴⁷ Additionally, the budget proposed a 26% budget cut for the EPA and suggested eliminating the Title XVII Innovative Technology Loan Guarantee Program, which issues loan guarantees to projects that use novel technology and avoid greenhouse gas emissions.⁴⁸ The budget also proposed eliminating the Advanced Technology Vehicle Manufacturing Loan Program, which supports manufacturing of vehicles that meet stringent emissions standards, and the Tribal Energy Loan Guarantee Program, which guarantees loans to support economic opportunities to federally recognized Indian tribes through energy development projects and activities.⁴⁹

Many states are already far ahead of the federal government and much of the nation in using renewable energy.⁵⁰ Vermont, for

⁴⁵ *Our Mission and What We Do*, EPA, (database last updated Feb. 7, 2018), <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>.

⁴⁶ See generally, Cayli Baker, *The Trump Administration's Major Environmental Deregulations*, BROOKINGS (Dec. 15, 2020), <https://www.brookings.edu/blog/up-front/2020/12/15/the-trump-administrations-major-environmental-deregulations/>.

⁴⁷ See generally *A Budget for America's Future – FY 2021*, OFFICE OF MGMT. AND BUDGET [OMB] (2021), https://www.novoco.com/sites/default/files/atoms/files/budget_for_americas_future_fy_2021_021020_0.pdf.

⁴⁸ *Id.* at 44, 97.

⁴⁹ See *id.* at 35-36, 44; see also 10 CFR - Advanced Technology Vehicles Manufacturing Incentive Program, govinfo (2008), <https://www.govinfo.gov/app/details/CFR-2011-title10-vol4/CFR-2011-title10-vol4-part611> ("click PFD hyperlink"); *Title XII Project Eligibility*, U.S. DEPT. OF ENERGY [DOE], <https://www.energy.gov/lpo/title-xvii/title-xvii-project-eligibility> (last visited Apr. 13, 2020); *Tribal Energy Loan Guarantee Program*, DOE, <https://www.energy.gov/lpo/tribal-energy-loan-guarantee-program> (last visited Apr. 13, 2020).

⁵⁰ See generally Zoe Chevalier, *These States Use the Most Renewable Energy*, U.S. NEWS (July 23, 2018), <https://www.usnews.com/news/best-states/slideshows/these-states-use-the-most-renewable-energy>; see also *Vermont State Profile and Energy Estimates*, U.S. ENERGY INFO. ADMIN. [EIA],

example, generates 99.7% of its utility-scale net electricity from renewable sources.⁵¹ Vermont established the first state-wide electric efficiency utility in the country, Efficiency Vermont, which helps Vermonters improve their homes and businesses to save energy and money.⁵² In 2019, 72,504 Vermonters participated in Efficiency Vermont services.⁵³ The energy-efficiency investments that Vermonters made between 2000 and 2019 has saved \$2.6 billion in energy costs and avoided 12 million metric tons of pollutants.⁵⁴

Another example is Hawaii. In 2008, Hawaii was the most fossil fuel-dependent state in the nation, obtaining 90% of its energy from oil.⁵⁵ The state partnered with the United States Department of Energy to launch the Hawaii Clean Energy Initiative and became the first state to set a goal of achieving 100% clean energy by 2045.⁵⁶ Between 2008 and 2018, Hawaii tripled its renewable energy generation, going from 9% of its energy coming from renewable sources to 27%.⁵⁷ Between 2010 and 2015, Hawaii reduced its carbon emissions by 750,000 metric tons, which equates to 84 million gallons of gasoline consumption avoided or 160,000 passenger vehicles removed from the roads for a year.⁵⁸ These drastic drops in emissions after only a few years shows that states are very capable of radically

<https://www.eia.gov/state/?sid=VT> (database last updated Aug. 20, 2020); *Hawaii Clean Energy Initiative*, HAW. STATE ENERGY OFFICE, http://www.hawaiicleanenergyinitiative.org/wp-content/uploads/2018/01/HCEI-Brochure_FINAL_Jan2018.pdf.

⁵¹ See *Vermont State Profile and Energy Estimates*, *supra* note 51; see also *Vermont, Profile Data*, EIA, <https://www.eia.gov/state/data.php?sid=VT> (last updated Mar. 19, 2020).

⁵² See also *Our History*, EFFICIENCY VT., <https://www.encyvermont.com/about/history> (last visited Apr. 13, 2020).

⁵³ *Our Results*, EFFICIENCY VT., <https://www.encyvermont.com/about/results> (last visited Mar. 9, 2021).

⁵⁴ *Id.*

⁵⁵ *Hawaii Clean Energy Initiative*, *supra* note 51 (“Hawaii celebrated a milestone on January 9, 2018 by marking the 10th anniversary of the Hawaii Clean Energy Initiative. Since its launch, HCEI has proven to be an invaluable resource in advancing Hawaii’s ongoing effort to achieve energy self-sufficiency.”)

⁵⁶ See *id.*; see also *Hawaii State Profile and Energy Estimates*, EIA, <https://www.eia.gov/state/index.php?sid=HI> (last updated Nov. 19, 2019).

⁵⁷ *Hawaii Clean Energy Initiative*, *supra* note 51 (See video at 1:28).

⁵⁸ *Hawaii Powered Clean Air*, HAW. CLEAN ENERGY INITIATIVE, (last visited Apr. 13, 2020), http://www.hawaiicleanenergyinitiative.org/wp-content/uploads/2018/01/HCEI-Posters_CleanAir.jpg.

changing their sources of energy.⁵⁹ Rather than advocating for the federal government to catch up to the states, this Article argues that the federal government should simply incentivize states to speed up their efforts.

Instead of trying to create a one-size-fits-all plan to address the nuances of climate change across the nation's 3.8 million square miles, the United States government should use financial incentives to encourage states and cities to pass tailor-made bills and ordinances that work for each individual state and community.⁶⁰ Local environmental legislation should encourage and reward citizens' and companies' usage of renewable energy in a given city or state. This Article's proposal allows for flexibility in the types of renewable energy each state uses because different states and cities have different climates, available energy sources, and transportation needs. Congress should simply accelerate what is already happening in many of the nation's states and incentivize states to focus on renewable energy.

A. *Congress Should Condition a Small Percentage of State Transportation Funding on Climate Legislation*

Congress should use its spending power to withhold a small percentage of transportation funding from states that do not meet the minimum criteria that Congress agrees on.⁶¹ These criteria could include specific levels of Leadership in Energy and Environmental Design ("LEED") certification for new buildings, cleaner transportation and electricity, and cap-and-trade programs. This Article proposes that the federal government give states portions of the withheld funding based on the standards that the states and the cities within the states meet. If a state were to meet some criteria but not the others, then under this Article's proposal, that state would receive some, but not all, of the withheld funding. On the other hand, if a state were to meet all of the goals of all of the criteria, then that state would receive all of the withheld funding. A statute like this would cost

⁵⁹ *Hawaii Clean Energy Initiative*, *supra* note 51; *see also* Julia Pyper, *Hawaii's Clean Energy and Oil Consumption Report Card*, GREEN TECH MEDIA, (Apr. 24, 2017), <https://www.greentechmedia.com/articles/read/hawaiis-clean-energy-and-oil-consumption-report-card#gs.4nnzzn>.

⁶⁰ *2010 Census of Population and Housing*, U.S. CENSUS BUREAU 49, (September 2012) <https://www.census.gov/prod/cen2010/cph-2-1.pdf>.

⁶¹ *See* U.S. CONST. art. 1, § 8, cl. 1; *South Dakota v. Dole*, 483 U.S. 203 (1987).

nothing for the federal government because the incentives for each state would come from withholding funds rather than adding funds to the federal budget. This proposal allows Congress to set specific goals but allows each state to determine how best to meet those goals.

1. *Cities and States Should Better Incentivize Energy-Efficient Transportation*

Of the four energy-consuming sectors in the United States—transportation, industrial, residential, and commercial—transportation uses the largest share of energy: 37% of the country’s energy consumption in 2018.⁶² Because transportation uses such a large amount of energy, Congress should incentivize states to invest in public transportation and electric vehicles. Some states already fund these transportation methods, but the states that do not prioritize public transportation and electric vehicles will likely start if Congress provides monetary incentives.

Many areas of the United States—particularly rural areas—are so spread out that public transportation is not feasible.⁶³ Only about 55% of Americans have access to public transportation, and only 5% of Americans commute using public transportation.⁶⁴ In rural areas, electric vehicles currently provide the best option for sustainable transportation.⁶⁵ As of 2019, 81% of American adults supported providing tax rebates for people who purchase energy-efficient vehicles or solar panels, and there was not a single county in which less than 70% of the American adults supported this policy point.⁶⁶ State legislators all over the nation could easily capitalize on this

⁶² *U.S. Energy Consumption by Source and Sector, 2018, Monthly Energy Review*, EIA, https://www.eia.gov/totalenergy/data/monthly/pdf/flow/css_2018_energy.pdf (last visited May 2, 2019).

⁶³ *Top 10 Metro Areas by Percentage of Workers Who Commute by Public Transportation*, U. S. CENSUS BUREAU, (Dec. 7, 2017), <https://www.census.gov/library/visualizations/interactive/public-transport.html>.

⁶⁴ *See id.*; *see also Public Transportation Benefits*, AM. PUBLIC TRANSP. ASS’N, <https://www.apta.com/news-publications/public-transportation-benefits/> (last visited Apr. 13, 2020).

⁶⁵ *See Top 10 Metro Areas by Percentage of Workers Who Commute by Public Transportation*, U.S. CENSUS BUREAU, *supra* note 63; *see also Public Transportation Benefits*, *supra* note 64.

⁶⁶ Marlon et al., *supra* note 10.

support and enact legislation to benefit electric-car owners.⁶⁷ Additionally, Congress should condition some of its funding on states creating clean vehicle rebate programs to incentivize people who are in the market for a car to purchase electric cars. The statute could also be conditioned on states creating programs that reward people who trade in their gasoline-burning cars for electric cars and/or require the majority of personal cars registered to be electric.

Throughout its lifetime, an electric vehicle (“EV”) generates less than half the emissions of the average comparable gasoline or internal combustion engine (“ICE”) car: 57 metric tons versus 28 metric tons.⁶⁸ Although manufacturing EVs creates more emissions than manufacturing ICE cars do, EVs make up for these higher emissions within 6 to 16 months of average driving.⁶⁹ Driving an EV in different regions of the United States yields different global warming emissions because of the variations between power plants, another reason that state-specific climate legislation would be more effective than federal legislation.⁷⁰ Even though some areas of the country still produce most of their electricity from coal and other non-renewable resources, two-thirds of Americans live in regions in which charging an EV produces fewer emissions than driving a 50-miles-per-gallon ICE car.⁷¹ Disposing of each EV adds less than one ton of emissions, and the electric car battery can be recycled or reused.⁷² Further, EVs are rapidly becoming more affordable. Between 2016 and 2017, the average electric car transaction price decreased by 11%.⁷³

⁶⁷ *See id.*

⁶⁸ Union of Concerned Scientists, *Electric Cars & Global Warming Emissions*, YOUTUBE (Nov. 12, 2015) <https://www.youtube.com/watch?v=K9m9WDxmSN8>.

⁶⁹ Rachael Nealer et al., *Cleaner Cars from Cradle to Grave: How Electric Cars Beat Gasoline Cars on Lifetime Global Warming Emissions*, UNION OF CONCERNED SCI. 1, 1 (2015), <https://www.ucsusa.org/sites/default/files/attach/2015/11/Cleaner-Cars-from-Cradle-to-Grave-full-report.pdf>.

⁷⁰ *See id.*

⁷¹ Nealer et al., *supra* note 69; *West Virginia State Profile and Energy Estimates*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/state/index.php?sid=WV> (last updated Oct. 15, 2020) (West Virginia, which generated 91% of its electricity from coal in 2019, is an example of a state that still produces most of its electricity from non-renewable resources.).

⁷² Nealer, *supra* note 69, at 3.

⁷³ Constance Douris, *The Bottom Line On Electric Cars: They’re Cheaper To Own*, FORBES (Oct. 24, 2017),

The Tesla Model 3, the best-selling EV in the country in 2018 and 2019, starts at \$35,000.⁷⁴ The second-best-selling EV in the country in 2018 and 2019 was the Prius PHEV, which starts at about \$28,000.⁷⁵ Additionally, while the cost to fuel an EV varies from state to state, in some states, it is nearly \$15,000 cheaper to fuel an EV compared to an ICE car over a 15-year period, and as the state power grids transition more towards renewables, average national savings will only increase.⁷⁶

Different methods of incentivizing people to use sustainable transportation will work in different cities and states. Metropolitan areas such as the New York–Newark–Jersey City area, in which 31% of workers commute by public transportation, would benefit from simple improvements to public transit availability.⁷⁷ These improvements could include increasing the operating hours, routes, and frequency of service.

Highly populated cities surrounded by vast stretches of suburbs, such as Houston, would benefit more immediately from an increase in electric vehicle ownership. About 6.9 million people live in the greater Houston metropolitan area, which encompasses 10,000 square miles.⁷⁸ Of course, building public transportation systems across this vast amount of land would take a long time. These types of cities could effectively encourage consumers to choose electric vehicles over conventional vehicles by allowing electric vehicles to drive in high-occupancy vehicle lanes even if the only occupant is the

<https://www.forbes.com/sites/constancedouris/2017/10/24/the-bottom-line-on-electric-cars-theyre-cheaper-to-own/#34834c4c10b6>.

⁷⁴ The Tesla Team, *\$35,000 Tesla Model 3 Available Now*, TESLA (Feb. 28, 2019), <https://www.tesla.com/blog/35000-tesla-model-3-available-now>.

⁷⁵ *2020 Prius Prime*, TOYOTA, <https://www.toyota.com/priusprime/> (last visited Apr. 15, 2020).

⁷⁶ Brian Palmer, *Electric vs. Gas: Is it Cheaper to Drive an EV?*, NRDC (July 32, 2020), <https://www.nrdc.org/stories/electric-vs-gas-it-cheaper-drive-ev>.

⁷⁷ *Top 10 Metro Areas by Percentage of Workers Who Commute by Public Transportation*, *supra* note 63.

⁷⁸ *Annual Update: Population*, GREATER HOUS. P'SHIP (Apr. 18, 2019), <https://www.houston.org/houston-data/annual-update-population>; *see also Houston Facts*, GREATER HOUS. P'SHIP 1, 3 (2019), https://www.houston.org/sites/default/files/2019-08/Houston%20Facts%202019%20Final_3.pdf.

driver.⁷⁹ They could also offer rebates for home electric vehicle charging systems and fixed-rate off-peak electric vehicle charging at consumers' homes, which the City of Austin has done.⁸⁰

2. *Cities and States Should Require LEED Certification for More Buildings*

In 2012, electricity made up 61% of the energy sources used in commercial buildings.⁸¹ The electricity sector produced 27% of greenhouse gas emissions in the United States in 2018, second only to the transportation sector, which produced 28%.⁸² This Article's proposed legislation would encourage states to incentivize (in whatever manner the state chooses) their towns and cities to require that more buildings meet at least the minimum level of LEED certification standards.⁸³ The U.S. Green Building Council, a non-profit organization, developed LEED, which is one of the most popular green building certification programs in the world.⁸⁴ When compared to typical buildings, LEED-certified buildings report almost 20% lower maintenance costs, emit 34% less carbon dioxide, and use 25% less energy and 11% less water.⁸⁵ LEED certification encompasses many aspects of a building, including location and planning, sustainable site development, water savings, energy efficiency, materials selection, and waste reduction.⁸⁶

⁷⁹ See *HOV/HOT (Express) Lanes Schedules*, METRO. TRANSIT AUTH. [MTA] OF HARRIS CNTY., <https://www.ridemetro.org/Pages/HOVHOTLanes.aspx> (last visited Apr. 15, 2020).

⁸⁰ *Home Charging, Plug-In Austin Electric Vehicles*, AUSTIN ENERGY, <https://austinenergy.com/ae/green-power/plug-in-austin/home-charging/home-charging> (last updated Nov. 1, 2019).

⁸¹ *Energy Use in Commercial Buildings, Use of Energy in the United States Explained*, EIA, https://www.eia.gov/energyexplained/index.php?page=us_energy_commercial (last updated Sept. 28, 2018).

⁸² *Sources of Greenhouse Gas Emissions*, *supra* note 9; see Part III. B. *infra*, subsec. 1 (discussing the importance of states and cities funding more energy-efficient transportation).

⁸³ See generally *LEED rating system*, U.S. GREEN BUILDING COUNCIL, <https://new.usgbc.org/leed> (last visited Apr. 15, 2020).

⁸⁴ *Id.*

⁸⁵ *Benefits of Green Building*, U.S. GREEN BUILDING COUNCIL [USGBC], <https://new.usgbc.org/press/benefits-of-green-building> (last visited Apr. 15, 2020).

⁸⁶ *Green Building 101: What Is LEED?*, USGBD (Sept. 14, 2017), <https://www.usgbc.org/articles/green-building-101-what-leed>.

Buildings make up 40% of total energy consumption in the United States, more than the industrial or transportation sectors, so lowering the emissions involved in constructing and maintaining buildings could significantly lower the country’s overall emissions.⁸⁷ Many states and cities already require LEED certification, so it would not be a radical policy for the federal government to reward some states and cities for continuing what they are already doing and incentivizing others to join these cities and states. . As of January 2021, at least 36 cities in the United States required and/or supported LEED certification.⁸⁸

LEED is based on a point system, and the more energy-efficient and “green” a building is, the more points it will earn.⁸⁹ LEED offers four rating systems that encompass many types of projects: Building Design and Construction; Interior Design and Construction; Building Operations and Maintenance; and Neighborhood Development.⁹⁰ After LEED reviews the building or buildings, the organization will award one of four certification levels, based on the number of points the building earned.⁹¹

LEED’s flexibility works well with this Article’s proposal because if Congress simply sets a minimum percentage of LEED-certified buildings required for a state to receive a portion of the withheld transportation funding, then each state can decide the types of buildings for which it wants to encourage certification. LEED for Building Design and Construction provides a framework for building a new, holistic green building.⁹² LEED for Interior Design and Construction offers guidelines and certifications for compete interior fit-out projects, encouraging and helping people who cannot control

⁸⁷ *Energy Efficiency Trends in Residential and Commercial Buildings*, DOE: ENERGY EFFICIENCY AND RENEWABLE ENERGY 4 (2008), https://www1.eere.energy.gov/buildings/publications/pdfs/corporate/bt_stateindustry.pdf.

⁸⁸ *Cities Requiring or Supporting LEED*, EVERBLUE TRAINING INST., <https://www.everbluetraining.com/blog/cities-requiring-or-supporting-leed-2015-edition> (last updated Feb. 13, 2020).

⁸⁹ *Green Building 101: What Is LEED?*, *supra* note 86.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *LEED For Building Design and Construction*, USGBC, <https://new.usgbc.org/leed/rating-systems/new-buildings> (last visited Apr. 16, 2020).

the operations of the entire building but want to develop a “green” interior space.⁹³ Another rating system, LEED for Building Operations and Maintenance, allows existing buildings to receive LEED certification and applies to buildings that are undergoing improvement work or little to no construction.⁹⁴ LEED also offers a rating system tailored toward residential areas, LEED for Neighborhood Development, which helps create more sustainable neighborhoods.⁹⁵ LEED certification is not the only way to create sustainable buildings, but it is a well-organized and established method that cities and states are already using. When considering climate change action, time is of the essence, so when possible, we should expand effective policies that already exist rather than trying to create new ones.

3. *States Should Join the Regional Greenhouse Gas Initiative*

Congress should also consider incentivizing states to participate in cap-and-trade programs. In 1990, President George H.W. Bush launched a cap-and-trade program in the United States for sulfur dioxide, the cause of acid rain.⁹⁶ The program was wildly successful, decreasing emissions in half the time predicted.⁹⁷ Cap-and-trade has also worked well in Europe. Europe’s Emissions Trading System lowered emissions in sectors covered by the system by 35% between 2005 and 2019.⁹⁸ In a cap-and-trade program, a government sets a cap on emissions and lowers that cap every year, and businesses sell

⁹³ *LEED For Interior Design and Construction*, USGBC, <https://new.usgbc.org/leed/rating-systems/new-interiors> (last visited Apr. 16, 2020).

⁹⁴ *LEED For Building Operations and Maintenance*, USGBC, <https://new.usgbc.org/leed/rating-systems/existing-buildings> (last visited Apr. 16, 2020).

⁹⁵ *LEED For Neighborhood Development*, USGBC, <https://new.usgbc.org/leed/rating-systems/neighborhood-development> (last visited Apr. 16, 2020).

⁹⁶ Richard Conniff, *The Political History of Cap and Trade*, SMITHSONIAN MAG. (August 2009), <https://www.smithsonianmag.com/science-nature/the-political-history-of-cap-and-trade-34711212/>.

⁹⁷ *How Cap and Trade Works*, ENVTL. DEF. FUND [EDF], <https://www.edf.org/climate/how-cap-and-trade-works> (last visited Apr. 16, 2020).

⁹⁸ *EU Emissions Trading System (EU ETS)*, EUR. COMM’N, https://ec.europa.eu/clima/policies/ets_en (last visited Apr. 16, 2020); *see generally How Economics Solved Acid Rain*, ENVTL. DEF. FUND, <https://www.edf.org/approach/markets/acid-rain> (last visited Apr. 16, 2020).

emissions allowances to one another.⁹⁹ If lowering emissions is inexpensive for one company, it will sell some of its allowances to another company that would benefit economically from buying allowances rather than reducing its emissions.¹⁰⁰ Companies can also save their emissions allowances for the following year.¹⁰¹ Over time, the cap decreases, leading to lower carbon emissions.¹⁰²

The Regional Greenhouse Gas Initiative (“RGGI”) is a cap-and-trade program that already exists in the United States.¹⁰³ Ten states, all in the northeast, participate in the program, which yielded more than \$4.7 billion in net economic benefits between 2009 and 2017 and has improved all of the participating states’ economies.¹⁰⁴ Between 2009 and 2014, carbon emissions in RGGI-participating states dropped by 35%.¹⁰⁵ Congress should consider incentivizing states to either join this program or work together to create other cap-and-trade programs that suit the needs of different regions of the nation.¹⁰⁶

Under the RGGI, each state has its own carbon dioxide budget trading program, codified in statutes based on the RGGI Model Rule.¹⁰⁷ RGGI uses an online platform to track each member-state’s program.¹⁰⁸ RGGI requires fossil fuel power plants with capacity

⁹⁹ *EU Emissions Trading System (EU ETS)*, *supra* note 98; *Market-Based Strategies*, CTR. FOR CLIMATE AND ENERGY SOL. [C2ES], <http://www.c2es.org/content/market-based-strategies> (last visited Apr. 16, 2020).

¹⁰⁰ *Market-Based Strategies*, *supra* note 99.

¹⁰¹ *EU Emissions Trading System (EU ETS)*, *supra* note 98.

¹⁰² *Id.*

¹⁰³ *Welcome*, THE REGIONAL GREENHOUSE GAS INITIATIVE [RGGI], <https://www.rggi.org/> (last visited Apr. 16, 2020).

¹⁰⁴ David Roberts, *The Northeast U.S. Has a Carbon-Trading System. It is Boosting, Not Hurting, State Economies*, VOX (Apr. 25, 2018), <https://www.vox.com/energy-and-environment/2018/4/25/17269544/fossil-fuel-carbon-trading-economies-rggi-northeast> (These states include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.); *Regional Greenhouse Gas Initiative (RGGI)*, C2ES, <http://www.c2es.org/content/regional-greenhouse-gas-initiative-rggi/> (last visited Apr. 16, 2020).

¹⁰⁵ *The Regional Greenhouse Gas Initiative: A Fact Sheet*, CERES, <https://www.ceres.org/sites/default/files/Fact%20Sheets%20or%20misc%20files/RGGI%20Fact%20Sheet.pdf> (last visited Apr. 16, 2020).

¹⁰⁶ *Regional Greenhouse Gas Initiative (RGGI)*, *supra* note 104.

¹⁰⁷ *Id.*

¹⁰⁸ *RGGI COATS*, RGGI, <https://www.rggi.org/allowance-tracking/rggi-coats> (last visited Apr. 16, 2020).

greater than 25 megawatts to obtain an allowance for each ton of carbon dioxide emitted annually.¹⁰⁹ The program began with a cap of 188 million tons of carbon dioxide from 2009 to 2011 and lowered the cap to 165 million tons in 2012 and 2013 because New Jersey temporarily left the program.¹¹⁰ The cap has continued to decrease each year.¹¹¹ The cap for 2020 was about 96 million tons, and 74 million when adjusted to account for banked carbon allowances.¹¹² The success of the RGGI demonstrates that it could help effectively decrease carbon emissions while improving the economies in the 40 states that have not joined. Further, the effectiveness of President Bush's sulfur dioxide cap-and-trade program shows that this type of program has the potential to work throughout the United States.

B. *This Article's Proposal Would Be Constitutional Under South Dakota v. Dole*

The idea for this Article's incentive program comes from the 1984 National Minimum Drinking Age Amendment, a federal statute in which Congress withheld 5% of federal highway funding from states that did not set their minimum drinking ages to 21.¹¹³ The statute was very effective, leading to all 50 states increasing their drinking ages to 21 within four years.¹¹⁴ In *South Dakota v. Dole*, seven United States Supreme Court Justices—including Justices William Rehnquist, Thurgood Marshall, and Antonin Scalia—upheld this statute as a constitutional use of Congress's spending power.¹¹⁵ The federal legislation proposed in this Article would contain more nuance, but the general idea is the same: Congress may use its spending power to incentivize states to take a particular action as long as Congress is not acting coercively.¹¹⁶ Congress's Spending Power and Commerce Clause Power both support this proposal's constitutionality.¹¹⁷

¹⁰⁹ *Regional Greenhouse Gas Initiative (RGGI)*, *supra* note 104.

¹¹⁰ *Id.*

¹¹¹ *Elements of RGGI*, RGGI, <https://www.rggi.org/program-overview-and-design/elements> (last visited Apr. 16, 2020).

¹¹² *Elements of RGGI*, *supra* note 111.

¹¹³ 23 U.S.C. § 158 (1982 ed., Supp. III); *Dole*, 483 at 203.

¹¹⁴ Mary Pat Treuthart, *Lowering the Bar: Rethinking Underage Drinking*, 9 N.Y.U. J. LEGIS. & PUB. POL'Y 303, 312 n.45 (2005/2006).

¹¹⁵ *Dole*, 483 U.S. at 204, 212; *see* U.S. CONST. art. 1, § 8, cl. 1.

¹¹⁶ *Dole*, 483 U.S. at 205–06.

¹¹⁷ *See generally Dole*, 483 U.S. at 203–212; *see also* U.S. CONST. art. 1, § 8, cl. 1; U.S. CONST. art. 1, § 8, cl. 3.

The five-part test used in *South Dakota v. Dole* illustrates that this Article’s proposed use of Congress’s spending power is constitutional.¹¹⁸ Courts consider whether the spending promotes “the general welfare,” whether the condition is unambiguous, whether the condition relates to the federal interest in specific national projects or programs, whether the condition imposed on the states is barred by a different constitutional provision, and whether the condition is coercive.¹¹⁹

First, a conditional spending rule like the one suggested here would definitely promote the general welfare.¹²⁰ In considering whether a particular type of spending promotes the general welfare, courts should defer substantially to Congress’s judgment.¹²¹ Congress has recognized the hazards that climate change poses to Americans’ health and livelihoods.¹²² The conditional spending that this Article proposes would help mitigate these negative effects.

Second, the condition in question must be unambiguous, a requirement if Congress wants to place a condition on states’ receipt of federal funds.¹²³ The condition must enable states to “exercise their choice knowingly, cognizant of the consequences of their participation.”¹²⁴ Satisfying this condition will require Congress to carefully draft a bill with specific goals for cities and states to meet, using whichever methods work for them and are not barred by a different constitutional provision, as required by the fourth step of the test.

Third, the condition relates to the federal interest in specific national projects.¹²⁵ Numerous federal programs promote climate research, including NASA’s Global Climate Change: Vital Signs of

¹¹⁸ *Dole*, 483 U.S. at 206–208.

¹¹⁹ *Id.*

¹²⁰ See Part III, *supra* § § A, B (discussing the ways that climate change has harmed Americans and proposing that Congress pass a bill incentivizing states and cities to enact more climate-related legislation); see also *Dole*, 483 U.S. at 207.

¹²¹ *Dole*, 483 U.S. at 207 (citing *Helvering v. Davis*, 301 U.S. 619, 640, 645 (1937)); see, e.g., 165 CONG. REC. 1680 (2019).

¹²² See Part II, *supra* § A (discussing the many ways that climate change harms people).

¹²³ *Dole*, 483 U.S. at 207.

¹²⁴ *Id.* (citing *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

¹²⁵ See *Dole*, 483 U.S. at 207.

the Planet program; the EPA's Spill Prevention, Control, and Countermeasure program; and the Department of Energy's Clean Energy Manufacturing Initiative.¹²⁶

Finally, as the United States Supreme Court ruled in *South Dakota v. Dole*, conditioning a small percentage of highway funding on states' enacting legislation is not coercive because it does not pass the point at which "pressure turns into compulsion."¹²⁷ This Article proposes that Congress require states and cities to satisfy specific conditions before each state and city may receive the withheld percentage of transportation funding, and the *South Dakota* Court has already ruled that this practice is a permissible use of Congress's spending power.¹²⁸

CONCLUSION

Climate change is one of the most pressing issues the world faces today.¹²⁹ It is leading to more disasters such as hurricanes and wildfires, the destruction of people's communities and cities, diminishments in public health, and scarcity in the food supply.¹³⁰ The most effective and realistic way for the United States to combat the problem is with federal legislation that incentivizes states and cities to enact local climate legislation.¹³¹ The guidelines set forth in this Article can provide a starting point for federal legislation, focusing on increasing renewable energy usage and decreasing carbon emissions through various initiatives.

¹²⁶ *About the Clean Energy Manufacturing Initiative*, OFF. OF ENERGY EFFICIENCY AND RENEWABLE ENERGY, <https://www.energy.gov/eere/cemi/about-clean-energy-manufacturing-initiative> (last visited Apr. 16, 2020); *Oil Spills Prevention and Preparedness Regulations*, EPA, <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations> (last updated Apr. 1, 2020).

¹²⁷ *Dole*, 483 U.S. at 211 (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)).

¹²⁸ *See Dole*, 483 U.S. at 211.

¹²⁹ *See* Part II.

¹³⁰ *See* Parts I & II.

¹³¹ *See* Parts II & III.

