

## THE AMERICAN STATES AND MUNICIPALITIES: CAN THEY COUNTER THE TRUMP II ATTACK ON CLIMATE CHANGE LAW?

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### Abstract

The new Trump administration, Trump II, has taken an aggressive approach to rolling back climate change law. In this brief article, we address whether sublevel governments, the states and municipalities, can limit the damage of the Trump initiatives and independently achieve meaningful climate change mitigation and adaptation goals. This involves a brief description of government powers in the constitution-based federalist system of United States. We then cite and sample the remarkable inventory of actions that state and local governments have taken. We ask to what extent the new administration's approach can undermine these actions while it is at the same time trying to directly undo pre-Trump federal law. This requires a note on the role of the American courts in relationship to executive, congressional, and administrative actions. We conclude that, although there are legal views to the contrary, the administration will be meaningfully stymied in its actions on rollbacks. Furthermore, independent of rollbacks, the states have considerable room to move to realize either the goals of the Paris Agreement or some other important climate change goals. Finally, we briefly sample additional sub federal actions that have been suggested that provide other ways to limit the disruptive and destructive administration assault.

**Introduction:** The new Trump Administration & Climate Change Law and Policy

In my last column in RGA I wrote:

*The United States as a federalist nation [even with a strong orientation that sounds Trumpian: "much authority should remain with the states"] continues to see strong actions at the state level with increasing--although in some regions glacially slow--acceptance of regulation of global emissions. .... Major climate change state-based climate change law and policy will not simply disappear under Trump II although the President elect seems to be planning on vindictive actions against the so-called blue states including California, a worldwide leader in climate action law. ...Local governments throughout the US will continue to develop strategies to mitigate and adapt to climate change. They will do so through requirements on new building and development codes, comprehensive planning, and other means.<sup>1</sup>*

### Trump II's attacks on climate change law.

What has happened since that pre inauguration time? The most newsworthy action probably is that President Trump has again begun the process of withdrawing the United States from the Paris Agreement. However, there are numerous other plans and federal initiatives. The United States Environmental Protection Agency (EPA) has listed many agency actions and regulations under

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<sup>1</sup> See Selmi, Kushner, Ziegler, DiMento, and Echeverria, LAND USE REUGLATION, CASES AND MATERIALS. (Aspen)

reconsideration,<sup>2</sup> ranging from those on the regulation of oil and gas production to control of climate pollutants from many sources. The new Administration is also planning to revisit several other regulations and standards.<sup>3</sup>

In this article, we explain the EPA's actions, including what this means for states and how state and local government actors are filling and can further fill the gap left by the federal government's changing direction. We describe state and local activities by means of a sample of to some we believe a surprisingly large legal effort.<sup>4</sup>

Much of the Trump II effort will require drafting new proposed rules, following a notice and comment period, ultimately adopting new regulations over the course of what is likely to be years, and then defending them in court. However, the types of changes the agency is considering suggest that it intends to end the regulation of climate pollutants to the maximum extent possible regardless of procedural and judicial obstacles. As in the first Trump Administration, the President's desires face Administrative Procedures Act and other administrative law requirements and they will be challenged in the courts, where under Trump I many of them were vacated or overturned.<sup>5</sup> Nonetheless the new Administration and its EPA Administrator Lee Zeldin and other current officials may have gleaned from the first Trump administration's court losses that they should find new workarounds for deregulation, rather than try to operate within legal constraints.<sup>6</sup>

And some observers fear that even if there is considerable success in the courts in challenges to the Trump initiatives "... in its attempt to undercut environmental protections, the Trump administration may succeed in creating enough havoc to delay the nation's response to the urgent problem of climate change."-"Just creating a world-class mess is victory."<sup>7</sup> But we think the victory is not assured and that ongoing efforts can make it at best a small and temporary one.

### The highly significant endangerment finding.

What one may call the nuclear option of Trump II is to address a fundamental part of federal clean air law. Under the Clean Air Act if the EPA finds that a pollutant meets a standard of endangering public health or welfare it is required to promulgate emissions regulations for that pollutant. This endangerment finding is the basis for the EPA's greenhouse gas regulations. If this finding was

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<sup>2</sup> Jordan Gerow, How States Can Fill the Gaps Left by the EPA's Climate Deregulation

1 <https://climate-xchange.org/2025/03/how-states-can-fill-the-gaps-left-by-the-epas-climate-deregulation/>

<sup>3</sup> The list is large; if many of these deregulatory actions were successful it would be a major blow to climate law. They address the Mercury and Air Toxics Standards for Coal Fired Plants, Particulate Matter Regulations, Coal Wastewater Standards, Wastewater Regulations for Oil and Gas Extraction: Hazardous Air Pollution Standards, The Regional Haze Program: and the Coal Ash Rules. And the January "Unleashing American Energy" Executive Order, directed the EPA to consider "eliminating the 'social cost of carbon' calculation from any Federal permitting or regulatory decision" within 60 days.

<sup>4</sup> A large number of sites have compiled long lists of state [and local] actions. Among the most notable are *Trump and the States: What to Expect*, BROWNSTEIN CLIENT ALERT, JAN. 24, 2025 <https://www.bhfs.com/insights/alerts-articles/2025/trump-and-the-states-what-to-expect>

<sup>5</sup> Furthermore New York University's Institute for Policy Integrity found that the first Trump administration prevailed in legal challenges to agency actions a mere 23 percent of the time, compared to a 70 percent win rate by prior administrations. That could mean EPA will now face a tougher road in justifying rule changes. It will need to demonstrate that under the US Administrative Procedures Act the repeal is not "arbitrary and capricious" and is consistent with the authority of Congress. Still, the Administration may try to circumvent the traditional rulemaking by issuing interim final rules. However other experts warn: "The only legally defensible way of doing it is for notice-and-comment rulemaking," said Richard Revesz, a former federal regulatory administrator and law school dean.

<sup>6</sup> Id.

<sup>7</sup> Joe Goffman, <https://www.ehn.org/epas-deregulatory-push-faces-legal-roadblocks-but-could-still-delay-climate-action>

overturned, it would be a significant setback for climate change regulation. The challenge however to the Administration is strong.

To reverse this finding EPA would need to establish to the federal judiciary that an overwhelming body of scientific evidence from decades of climate change research is wrong. Legal experts say the courts have consistently rejected that position. And under Supreme Court jurisdiction known as the *Chevron rule* the judiciary is no longer compelled to defer to agency interpretations of ambiguous statutes.

The process is different from rewriting rules and would take at least a year. EPA would first need new scientific advisory boards to replace panels it previously disbanded. Then the agency would need to take their input and use it to write a proposed finding before taking public comment and finalizing its new conclusion on the dangers of greenhouse gases. One last ironic point on the Administration's approach is that the new work created for EPA would need to be undertaken by a much smaller EPA staff as hundreds of staff are being laid off this year and the EPA budget is to be slashed.

### **General Trends at the sub federal level.**

Meanwhile, the states and some municipalities continue to act to address climate change through law. They have long been climate leaders, creating the nation's first pollution control laws and clean energy standards.<sup>8</sup> They maintained their efforts when President Trump attempted to withdraw the United States from the Paris Agreement in 2017, and they continue to lead the way on climate action today.<sup>9</sup>

In 2017, the governors of Washington, New York, and California came together to form the United States Climate Alliance, "coven[ing] U.S. states committed to upholding the Paris Climate Agreement and taking aggressive action on climate change."<sup>10</sup> Today, the coalition consists of twenty-four governors, representing 54% of the U.S. Population and 57% of the U.S. Economy, working together to "secur[e] America's net-zero future by advancing state-led, high-impact climate action."<sup>11</sup>

Additionally, twenty-four U.S. states, the District of Columbia, and Puerto Rico have set 100% clean electricity goals.<sup>12</sup> Twenty-five states, including Arizona, North Carolina, Pennsylvania and Illinois, have adopted clean energy standards for electricity, while thirteen states, alongside the District of Columbia and Puerto Rico, have adopted policies that require electric utilities to transition to 100% clean power.<sup>13</sup>

To address vehicle emissions, Colorado, Connecticut, New Jersey, Nevada, and eleven other states have set their own tailpipe emissions limits.<sup>14</sup> Following California's Executive Order N-79-20,

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<sup>8</sup> Reema Bzeih, Sam Ricketts & Shannon Baker-Branstetter, *States Must Lead the Way on Climate*, CTR. AM. PROGRESS (Jan. 7, 2025), <https://www.americanprogress.org/article/states-must-lead-the-way-on-climate/>.

<sup>9</sup> *Id.*

<sup>10</sup> Matthew Bentley, *States v. Trump: The Second-Term Climate Fight Fast Becoming a Constitutional Crisis*, GEO. ENV'T L REV. (Feb. 18, 2025), <https://www.law.georgetown.edu/environmental-law-review/blog/states-v-trump-the-second-term-climate-fight-fast-becoming-a-constitutional-crisis/>; *citing* Press Release, United States Climate Alliance, CA Governor Brown, NY Governor Cuomo and WA Governor Inslee Announce Formation of U.S. Climate Alliance (June 1, 2017).

<sup>11</sup> *States United for Climate Action*, U.S. CLIMATE ALL. <https://usclimatealliance.org/>.

<sup>12</sup> Bzeih et al., *supra* note 1.

<sup>13</sup> Lisa Friedman, *Trump Threatens Climate Policies in the States*, N.Y. TIMES (Apr. 9, 2025), <https://www.nytimes.com/2025/04/09/climate/trump-threatens-climate-policies-in-the-states.html>; Bzeih et al., *supra* note 1.

<sup>14</sup> Friedman, *supra* note 6.

which bans the sale of all new passenger cars, trucks, and SUVs cars by 2035, eleven other states have adopted similar bans.<sup>15</sup>

The most contentious state initiatives however, have been the “climate superfund” bills. These bills aim to compel large coal, gas, and oil companies to pay hundreds of billions of dollars to fund state-level climate adaptation infrastructure.<sup>16</sup> These companies would be required to finance disaster relief efforts for weather events, such as wildfires, floods, and other extreme conditions, made worse by the burning of fossil fuels.<sup>17</sup> Modeled after the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), climate superfund bills use a strict liability framework, requiring major polluters to contribute an amount in proportion to their shares of total GHG emissions into state-managed funds.<sup>18</sup> Lawmakers in Vermont and, more recently, New York, have passed climate superfund laws, while legislators in California, Maryland, Massachusetts, New Jersey, and Oregon have proposed similar bills.<sup>19</sup>

State laws have addressed climate change broadly, considering energy, transportation, housing, waste management, conservation, agriculture, and corporate accountability. Local governments have also taken important steps, with smaller jurisdictions like Athens, Ohio, Detroit, Michigan, and Berkeley, California leading the way with resourceful, community-based actions.

### **Cameos: Specific State and Local Initiatives**

To demonstrate the commitment of some of these actions we detail a few here.

**California** in 2006 enacted a law which provided the California Air Resources Board with the authority to establish a cap-and-trade program—the first in the nation. The law aims to achieve an 85 percent reduction in climate pollution from 1990 levels by 2045.

**Washington’s** Climate Commitment Act acts as a cap and invest program, requiring major polluters to purchase allowances at state auctions to cover each metric ton of their greenhouse gas emissions.<sup>20</sup> It also prevents state agencies from imposing any type of program involving the trading of carbon tax credits.<sup>21</sup> The Act’s overall aim is to reduce carbon emissions to nearly half of 1990 levels by 2030.<sup>22</sup> Along with compelling companies to reduce their carbon emissions, the law has raised billions of dollars of funding for electric school buses, free public transit for youth, air quality monitoring, electric vehicle chargers, and for programs that to lessen air and water pollution, improve fish habitat, and prevent wildfires.<sup>23</sup> Described as “one of the most progressive climate policies ever passed by state lawmakers,” the Climate Commitment Act has faced serious repeal efforts, primarily led by the group Let’s Go Washington.<sup>24</sup> This group, funded by hedge fund manager Brian Heywood, obtained roughly 420,000 voter signatures to get the repeal measure on the ballot. However, despite these efforts, on Tuesday, November 5, 2024, voters in Washington upheld the Climate Commitment Act

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

<sup>16</sup> Martin Lockman & Emma Shumway, *State “Climate Superfund” Bills: What You Need to Know*, CLIMATE L. BLOG (Mar. 14, 2024), <https://blogs.law.columbia.edu/climatechange/2024/03/14/state-climate-superfund-bills-what-you-need-to-know/>.

<sup>17</sup> Friedman, *supra* note 6.

<sup>18</sup> Lockman et al., *supra* note 9.

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

<sup>20</sup> Jerry Cornfield, *Voters Reject Measure to Repeal Landmark Washington Climate Law*, WASH. STATE STANDARD (Nov. 5, 2024), <https://washingtonstatestandard.com/2024/11/05/voters-rejecting-measure-to-repeal-landmark-washington-climate-law/>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Associated Press, *Washington Voters Uphold Landmark Climate Law Against Challenge From Conservatives*, U.S. NEWS & WORLD REP. (Nov. 2, 2024) <https://www.usnews.com/news/best-states/washington/articles/2024-11-05/landmark-washington-climate-law-faces-possible-repeal-by-voters>.

in a 62% vote against repealing the Act.<sup>25</sup> [**The Regional Greenhouse Gas Initiative (RGGI)** is a multistate cap and trade initiative that now numbers eleven states]

In 2008, Hawaii was the most petroleum-dependent state in the nation.<sup>26</sup> With oil supplying 90% of its energy needs, Hawaii was four times more reliant on oil than any other U.S. state.<sup>27</sup> As demand for energy continued to rise, Hawaii's leaders and community members grew increasingly concerned that this heavy dependence on imported oil threatened the state's "energy security, economic stability, and environmental sustainability."<sup>28</sup>

The State of Hawaii and the U.S. Department of Energy worked together to create the Hawaii Clean Energy Initiative (HCEI).<sup>29</sup> Through a Memorandum of Understanding between the State of Hawaii and the U.S. Department of Energy, HCEI set out to transform Hawaii into a global model for energy independence and sustainability.<sup>30</sup> The Initiative's original goal was to meet 70% of the state's energy needs energy by 2030.<sup>31</sup> However, on May 2015, the state legislature decided to accelerate the process and adopted a Renewable Portfolio Standard (RPS) requiring 100% of the state's electricity to come from renewable sources by 2045, with interim targets of 30% by 2020, 40% by 2030, and 70% by 2040.<sup>32</sup>

The Hawaii Clean Energy Initiative is a comprehensive framework of statutes and regulations that establish specific, actionable goals. It aims to transform Hawaii's financial, regulatory, legal, and institutional structures governing energy planning and delivery to support a clean energy future.<sup>33</sup>

Several other state initiatives are also noteworthy: California's Low Carbon Fuel Standard resulted in the elimination of 320 million metric tons of carbon dioxide emissions since it began in 2011. New York's Climate Act requires a 40% reduction in greenhouse gas emissions by 2030 and an 85% reduction by 2050. California, Oregon, Maryland, and Colorado have adopted ACC II, which requires a certain percentage of new car sales to be zero-emission vehicles. [The transportation sector nationwide remains a major source of greenhouse gas emissions.] A dozen states have adopted the California policies. The policies are possible because of California's waiver under the Clean Air Act that enables California to set stricter emissions limits than the federal government.<sup>68</sup> As noted, this authority is a major target of the new Administration.<sup>69</sup>

Minnesota was one of the first states to require a comprehensive evaluation of the climate pollution associated with new transportation infrastructure projects.<sup>13</sup>

Michigan's clean energy future plan requires 60 percent renewable power by 2030. Virginia's 2020 Clean Economy Act adopted a 100 percent Clean Energy Standard or CES. Rhode Island required electric distribution companies and nonregulated power producers to supply 100 percent of their retail electric sales from renewable energy sources by 2033.<sup>30</sup> Other states have also required moves to Clean Energy Standards.

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<sup>26</sup> NAT'L RENEWABLE ENERGY LAB'Y, CELEBRATING 10 YEARS OF SUCCESS: HAWAII CLEAN ENERGY INITIATIVE 2008–2018 2 (2018),

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nrel.gov/docs/fy18osti/70709.pdf&ved=2ahUKEwig4JTpmPqMAxUyBu8ChEL2DS8QFnoECBYQAAQ&usg=AOvVaw3PNLT5NTeLqcT8hJwV-Ii-> [hereinafter 10 YEARS OF SUCCESS].

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

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3.

<sup>30</sup> *Hawai'i Clean Energy Initiative*, HAW. STATE ENERGY OFFICE, <https://energy.hawaii.gov/hawaii-clean-energy-initiative/> (last visited Apr. 28, 2025).

<sup>31</sup> 10 YEARS OF SUCCESS, *supra* note 18, at 3.

<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Hawai'i Clean Energy Initiative*, *supra* note 22.

To date, nearly one-half of states are working toward completely decarbonizing their electricity sources. Several states hold utilities accountable via public utility commissions to require their utilities to support and align with state electrification and decarbonization goals. Colorado was one of the first states to require its major utilities to factor in the social cost of carbon into their integrated resource plans. Oregon integrated equity into climate policy by prioritizing vulnerable groups and requiring its utilities commission to focus on differential energy burdens and inequities. California adopted an energy storage procurement target. Maryland and New York recently announced plans to double its goal for energy storage.<sup>46</sup> Texas has deployed a number of innovations in this sector. New York, Minnesota and Massachusetts have integrated community solar into their electricity grids.

There are many other state actions, perhaps not as significant in emission reductions as the vehicle type actions, which aggregate to meaningful reductions in greenhouse gas emissions. To name a few: Maine's transportation department has a number of projects underway aimed at increasing mobility options, including revitalizing downtowns, installing roadway features for pedestrian safety, incentivizing people to carpool or take "green" commutes, and providing grant opportunities for local and regional partnerships to pilot innovative ways to connect workers and employers through ridesharing, vanpooling, and other subsidized transit options. Washington set a vehicle miles traveled [VMT] reduction goal in 2008 requiring an 18 percent reduction in VMT per capita by 2020, a 30 percent reduction by 2030, and a 50 percent reduction by 2050. Some states including Colorado, Minnesota, and New Jersey require their transportation departments to evaluate the amount of greenhouse gas emissions transportation projects may create. Some establish electric vehicle-ready requirements for buildings. Some have adopted comprehensive green procurement policies. Some provide considerable incentives to industry to reach emission reductions. For example, Colorado exempts all sales, storage, and use of low-carbon construction materials from state sales and use tax. Some establish methane regulations for landfill management. Products using hydrofluorocarbons [in aerosols, foams and other products] are phased out or prohibited in Washington, Vermont, and California.

Colorado, Maryland Massachusetts and Vermont have adopted clean heat standards and or appliance efficiency and emission standards. A third of the states have standards aimed at lowering carbon emissions from their buildings. California is the first state to have a state-mandated green building code. New York bans new buildings under seven stories from including stoves, furnaces, or water heaters that burn gas and other fossil fuels, starting in 2026.

Some states have taken remarkable steps to apply the polluter pays principle to climate damage. Several state attorneys general have brought legal action against fossil fuel companies for the climate damages caused by their pollution and for misleading the public about these harms for decades. As noted above, some states have enacted or are considering the Superfund strategy, imposing fees on industries for their historical contribution to climate pollution.

### **State and local actions versus Federal attacks on climate law.**

Do these actions aggregate to a gap filler? That is to say, do they allow continued movement toward the US Paris Agreement commitment, and independent of that commitment, move the US in the direction of making significant progress through climate change law? We assert that they do. We acknowledge there are alternative views. There are sceptics about the influence of state and local actions. For example, one commentator noted "*state and local climate policies are working against physical and structural limitations.... state and local actors cannot substantially reduce carbon emissions without the support of a federal regulatory program.... Despite their many creative and praiseworthy initiatives, state and local climate policies are substantially limited if unsupported by a federal program.*"<sup>34</sup>

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<sup>34</sup> See <https://houstonlawreview.org/article/12953-the-limitations-of-state-and-local-climate-policies> **Hous. L. Rev.** Jack Buckley DiSorbo, *The Limitations of State and Local Climate Policies*, 57 Hous. L. Rev. 1169 (2020).

However, our position reflects the major commitments of state legislators and attorneys general and public interest groups. And our conclusion is reinforced by the contributions of lawsuits of many kinds that have proliferated in the US. They challenge federal deregulatory actions; they address polluting actions by the private sector and the failure of governments to address the health and environmental effects of climate change; they defend innovative and effective state legal actions to mitigate and adapt to climate change.

The constitutionality of State actions and legality and constitutionality of what the Trump Administration is doing to limit or end them is an ongoing matter of great importance. Thus, litigation is considerable, the number of lawsuits, almost unimaginable just a few years ago, is large and their outcomes are significant.

A small sample of cases gives a sense of how various groups are working in different ways to move forward in the absence of federal leadership on climate change, to actively challenge the Administration's anti-climate change law efforts, and to challenge alleged sources of climate change emissions and those linked to the damages they create. Inventories of many others are available in several sites.<sup>35</sup>

The California Attorney led a coalition of states attorney general and major cities in a filing in support of the Environmental Protection Agency (EPA's) reinstatement of waivers which authorize enforcement of California's Advanced Clean Cars II (ACC II) and Heavy-Duty Engine and Vehicle Omnibus (Omnibus) regulations.<sup>36</sup>

Farmers and environmental groups sued the Agriculture Department for ordered staff to take down pages focused on climate change: websites containing information that farmers and researchers used for planning and adaptation projects. Arguments were based on violations of the Paperwork Reduction Act, the Administrative Procedure Act, and the Freedom of Information Act.

A public interest law firm sued the administration to stop its efforts to expand offshore oil and gas drilling. Here the argument was based in part on the conclusion that, while Congress granted the president power to place protections on areas it wants to drill, it did not grant the executive authority to reverse those protections. The allegation in part is that the Executive "acted in excess of his authority under Article II of the U.S. Constitution and intruded on Congress's non-delegated exclusive power under the Property Clause, in violation of the doctrine of separation of powers."<sup>37</sup>

## Conclusions

We have covered only some of what has been already done at sub federal levels. And there is much more that can be done under the US constitutional federalism legal system. To name just a few possibilities from a long list compiled by Climate Xchange: states can streamline clean energy and transmission siting, permitting, and interconnection; set statewide vehicle miles traveled reduction goals; adopt building performance and clean heat standards; incorporate social cost of carbon into state regulatory analyses, even if the federal government suspends its use. And state and local land-use law reforms can require compact development that can also reduce annual U.S emissions.<sup>37</sup>

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<sup>35</sup> Perhaps the largest and earliest is the Columbia University's Center for Climate Change Law <https://climate.law.columbia.edu>. See also the Center for Climate and Energy Solutions <https://www.c2es.org/content/state-climate-policy/>, and Jordan Gerow, How States Can Fill the Gaps Left by the EPA's Climate Deregulation

| <https://climate-xchange.org/2025/03/how-states-can-fill-the-gaps-left-by-the-epas-climate-deregulation/>

<sup>36</sup> <https://oag.ca.gov/news/press-releases/attorney-general-bonta-carb-leads-multistate-coalition-defend-california-clean#:~:text=OAKLAND%20—>

%20On%20behalf%20of%20California,EPA)%20actions%20granting%20two%20Clean

<sup>37</sup> <https://climate-xchange.org/2025/03/how-states-can-fill-the-gaps-left-by-the-epas-climate-deregulation/>

At this, about the hundredth day of the Trump II presidency, the situation in the US regarding climate change law has moved. At the inauguration there was a startling sense of discouragement, even doom. Now careful analysis and assessment, including of the powers which US federalism creates, suggest that much is being done and more is legally possible to thwart the Administration's attempts to undo fifty years of important climate change law at all levels of government.

Rumors of the death of climate law have been greatly exaggerated.<sup>38</sup>

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<sup>38</sup> Special thanks to Mark Twain.