



*Challenges in Navigating a
Long-Term Legislative
Course on Climate Change*

Prof. John Dernbach

Widener University Law School

August 12, 2008

Overview

- 1. My Perspective*
- 2. Goals*
- 3. Significant short-term emissions reductions*
- 4. Public/consumer engagement*
- 5. Information*
- 6. Role of state and local government*





1. My perspective

- ✧ A. Climate change is a sustainable development issue
- ✧ B. U.S. already has climate change laws, even at the federal level
- ✧ C. Short-term legislation should be structured to produce positive and durable results.



A. Climate change as sustainable development issue

Climate change is:

- ✧ A. Environmental issue
- ✧ B. Economic issue
- ✧ C. Social issue
- ✧ D. Security issue
- ✧ E. All of the above



Consequences

- ✧ 1. Climate change is highly likely to adversely affect social, economic, security, and environmental conditions in the U.S. and throughout the world.
- ✧ 2. Actions to mitigate climate change can improve (and/or reduce adverse effects to) social, economic, security, and environmental conditions.



B. U.S. already has climate change laws

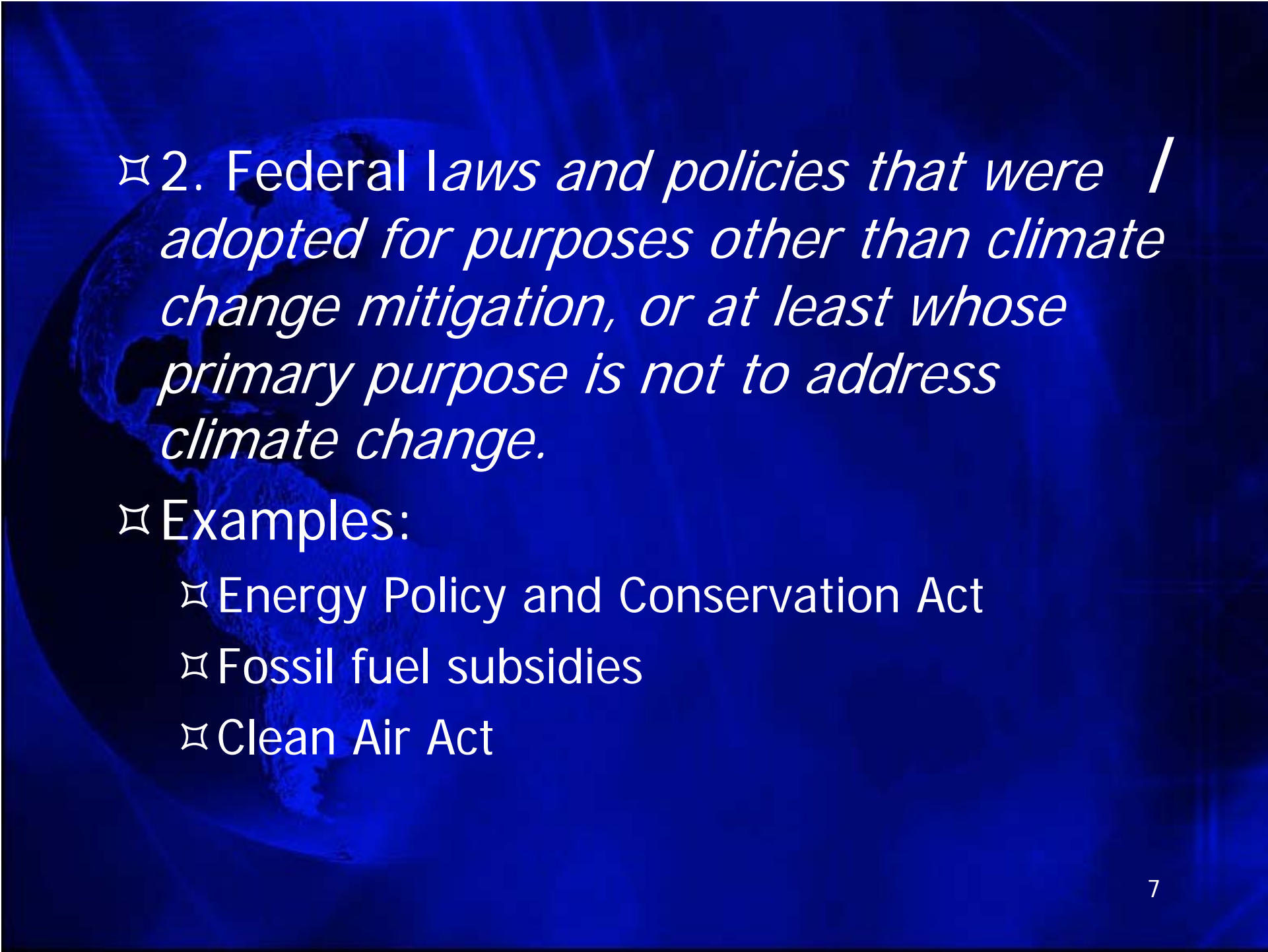
✧ *1. Federal laws and policies that expressly address climate change.*

✧ **Examples:**

✧ Energy Independence and Security Act of 2007

✧ Global Change Research Act of 1990

✧ National Climate Program Act of 1978



✧ 2. Federal *laws and policies that were / adopted for purposes other than climate change mitigation, or at least whose primary purpose is not to address climate change.*

✧ Examples:

✧ Energy Policy and Conservation Act

✧ Fossil fuel subsidies

✧ Clean Air Act



C. Short-term legislation should be structured to produce positive and durable results.

- ✧ Involve the broadest range of citizens, interests, and levels of government in development and implementation
- ✧ Law should require/encourage continuous development and implementation of new information, with appropriate adjustments
- ✧ Use many instruments, not one or two
- ✧ Create many winners right away



2. Goals

✧ Issues:

- ✧ Long-term goals only or short-, medium- and long-term goals?
- ✧ Reduction to national “fair share” of global emissions?
- ✧ Emissions reductions goals only?
- ✧ Goal adjustment mechanisms, especially for emissions reduction
 - ✧ Presumptions
 - ✧ Procedure
 - ✧ Use of outside expertise (e.g., NAS)
 - ✧ Required findings/evidence
 - ✧ Decision maker
 - ✧ Availability of judicial review



3. Significant short-term emissions reductions

✧ Why?

- ✧ Urgency of problem
- ✧ Precautionary approach
- ✧ Current availability of cost-effective measures
- ✧ Reduce costs of climate change and produce significant non-climate related benefits
- ✧ Political “down payment”
- ✧ Probable impossibility of long-term reductions without short-term reductions
- ✧ Ethical responsibilities of U.S./developed countries under UNFCCC
- ✧ Build confidence that significant reductions are possible



Supplementing cap and trade

- ✧ Cap-and-trade appears to be instrument of choice, but market imperfections will likely prevent cap-and-trade alone from achieving lost possible costs (efficiency, R&D, co-benefits)
- ✧ Success of long-term effort will depend on:
 - ✧ Lower short-term costs
 - ✧ Greater short-term environmental, social, and economic co-benefits
 - ✧ Greater short-term investment in new technologies



Tools and options include:

- ✧ State of art national efficiency standards for new buildings
- ✧ Aggressive economic development/job creation program for retrofits/upgrades of existing buildings
- ✧ Greater use of freight and passenger rail.
- ✧ Dozens of other legal and policy tools for efficiency and conservation.



Mechanisms that will make the next series of reductions easier

- ✧ Development and periodic revision of national mitigation research strategy (modeled on climate science strategy) for:
 - ✧ Ambitious research, development, and deployment strategy for technology and know how.
 - ✧ Research on most effective ways of engaging human behavior to reduce emissions
 - ✧ Identification and subsequent adoption of policies and measures capable of producing the greatest co-benefits
 - ✧ Identification and subsequent adoption of state and local legal and policy tools that have proved most effective
- ✧ Periodic assessment by NAS or similar body of existing and projected climate change impacts on U.S.



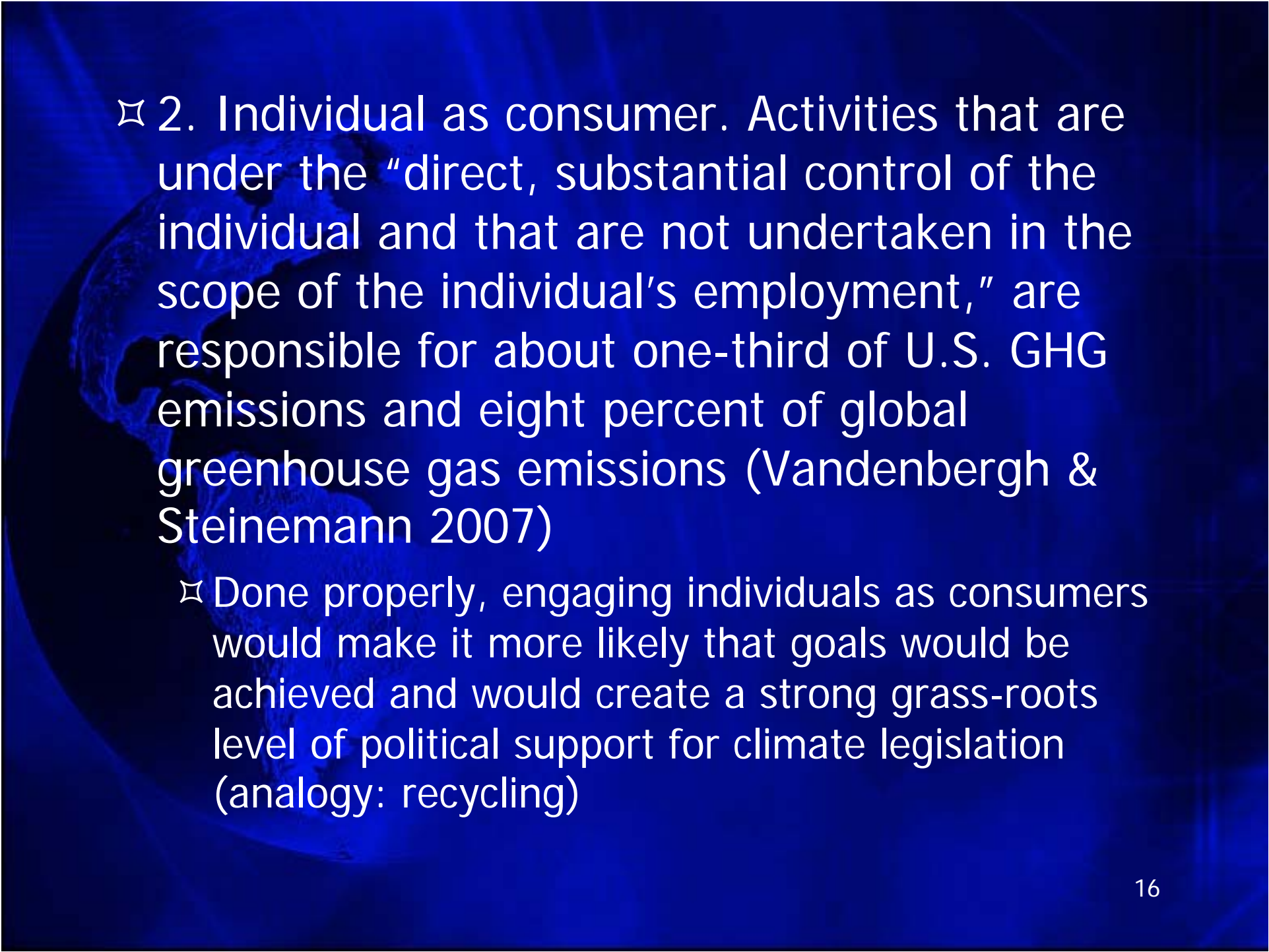
Tax Shift

- ✧ Carbon tax could start small, build over one or two decades
- ✧ Revenue would allow reductions in other taxes
- ✧ Design to avoid negative effects on poor
- ✧ Size of carbon tax could be adjusted over time
- ✧ Could be coupled with other mechanisms



4. *Citizen/consumer engagement*

- ✧ A. Individual as citizen. Most bills amend Clean Air Act, which has extensive citizen participation provisions, including authorization for citizen suits.
 - ✧ Helps ensure government/regulated entities comply with act
 - ✧ Provides means of continuous flow of information/ideas to EPA
 - ✧ Would likely help keep government/regulated entities on course for climate change as well



✧ 2. Individual as consumer. Activities that are under the “direct, substantial control of the individual and that are not undertaken in the scope of the individual’s employment,” are responsible for about one-third of U.S. GHG emissions and eight percent of global greenhouse gas emissions (Vandenbergh & Steinemann 2007)

✧ Done properly, engaging individuals as consumers would make it more likely that goals would be achieved and would create a strong grass-roots level of political support for climate legislation (analogy: recycling)



Legislative options:

1. Tax Incentives
2. Distribution of Allowances
3. Ability to Generate and Trade Allowances
4. Distribution of Proceeds from Sale of Allowances
5. Other Incentives



5. Information

- ✧ Options not already identified:
 - ✧ Emissions Reporting
 - ✧ Consumer Information
 - ✧ Public Information on Available Choices
 - ✧ Public Information on Climate Change Effects
 - ✧ Periodic report by outside experts on effectiveness of U.S. laws affecting climate change with recommendations on how to further reduce emissions.



6. Role of state and local government

- ✧ Many state/local governments are already engaged because they see climate change mitigation as in their interest.
- ✧ This engagement:
 - ✧ Reduces the likelihood of federal back pedaling.
 - ✧ Has provided early and positive results.
 - ✧ Provides opportunity for policy experimentation.



One Option

- ✧ Amend Clean Air Act to modify State Implementation Plan process for greenhouse gases
 - ✧ Focus on emissions, not ambient concentrations
 - ✧ Some reductions are best achieved by mechanisms that are within the primary jurisdiction of the states - - land use, building codes, local transportation and utility regulation.
 - ✧ Others will be achieved by states adopting more stringent standards than nationally applicable ones, as California and other states have already done in the case of mobile source emissions standards.
 - ✧ Establish SIP process to achieve minimum specified levels of reductions through these mechanisms.




Other issues

- ✧ To what extent should administering agency(ies) be politically independent?
- ✧ Would a constitutional amendment be a useful steering or institutional mechanism?

Marjory Stoneman

Douglas, who spent most of her life fighting to protect the Florida Everglades, was asked on her 100th birthday whether she was hopeful about its future. "I am neither an optimist nor a pessimist," she replied. "I say it's got to be done."





*Prof. John C. Dernbach
Widener University Law School
3800 Vartan Way
Harrisburg, PA 17106-9382 USA
(717) 541-1933
(717) 541-3966 (fax)
jcdernbach@widener.edu
<http://ssrn.com/author=411559>
<http://www.johndernbach.com>*