

In the short time since the election, it's already become a truism that state governments will have to keep the flame alive for environmental protection. But it's not just individual state governments. It's also crucial for states to work together. There's been a lot of loose talk about "Calexit" out here. Secession is unconstitutional. (As one of my Minnesota colleagues used to say, that was conclusively settled in the 1865 case of *Grant v. Lee*.) Blue states can't secede from the Union, but we *can* form regional coalitions. Working together, states can accomplish more than they can do individually. For instance, it's easy to see the potential for a West Coast Environmental Initiative involving California, Oregon, and Washington (and maybe even Nevada).

The most familiar area for regionalism involves cap-and-trade. State carbon emissions trading systems often involve linkages with other jurisdictions. Expanding trading markets brings more emissions sources into the system, allowing greater cost savings in achieving emissions goals. Regional trading may fit especially well with the regional organization of the electricity grid. As Andrew Campbell points out in an Energy Institute [post](#), coordination between states also reduces the risk of carbon leakage — the tendency of restrictions on carbon in one place to increase emissions elsewhere.

Regional cooperation makes sense in a lot of other settings too. For instance, the Northeastern states have common interests in addressing air pollution (some of which are explicitly recognized by the Clean Air Act). Regionalism also makes sense for protecting interstate watersheds, migrating species, transportation planning, and habitats that cross state lines.

Of course, the federal government has often played a major role in dealing with such problems, but that's going to be in abeyance in the next few years. At least for the duration, it might make sense for states to band together to fill the gap.

States should also consider some new forms of cooperation. In a previous [post](#), I wrote about the need for states like California to step up to replace federal funding for climate science and energy research. It might make even more sense for multiple states to pool their funding and form a joint venture to fund research and new technologies. Consider the strength of a joint West Coast research effort, or one involving the Northeast states.

There are some legalities that have to be observed in designing regional efforts. The biggest issue is whether Congressional consent to a regional agreement is required under the compact clause, which provides that "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power." This language might seem to require congressional consent to all forms of cooperation between

states. Fortunately, the Supreme Court has interpreted the compact clause quite narrowly.

The Supreme Court says that the clause applies only to agreements that are “directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.” For instance, in the [U.S. Steel](#) case, the Court upheld a multistate tax commission formed to develop tax policy for individual states, which would then be adopted separately by each member state. The commission wasn’t purely advisory, however: it had the power to conduct audits using subpoenas in any of the member states’ courts, including audits of multinational corporations.

Similarly, in the [Northeast Bancorp](#) case, the Court upheld an interstate agreement governing interstate bank mergers. Although parallel state laws were adopted in concert, the Court found it more significant that no joint regulatory body was established, the statutes were not conditional on each other, and the states were not legally bound. But even if an agreement did exist in compact clause terms, the Court held that the agreement was not a compact requiring Congressional consent. The reason was that the statutes did not “either enhance the *political* power of the New England States at the expense of other States or have an ‘impact on our federal structure.’”

In designing trading systems, states have been careful to respect the strictures of the compact clause. The Northeast trading system, RGGI, was the product of two years of negotiations between states. The governors of the states entered into a memorandum of agreement, which ultimately led to a model rule for adoption by individual states. States then individually adopted regulations based on the model rule. Note that at no point were the states as sovereign entities legally bound to take any action, nor did they delegate regulatory power to an interstate entity. All of this is in line with the Supreme Court’s rulings upholding the multi-state tax commission and bank acquisition agreements.

In fact, the federal pollution laws explicitly encourage joint state ventures. Section 102(c) gives congressional consent to multi-state agreements for “cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto,” provided that states can freely withdraw from the agreements. Section 103(b) of the Clean Water Act has similar language.

Air pollution and water pollution are broad terms. For instance, the Supreme Court has held that greenhouse gases are a type of air pollutant. Preserving wetlands and watersheds are ways of preventing water pollution. So these statutory authorizations have broad sweep, and they allow types of cooperation beyond those OK’d by the Supreme Court. Besides allowing

regional emissions trading, they also allow other forms of cooperation, like pooling resources for enforcement or to fund clean energy research (which qualifies as “for the prevention and control of air pollution”).

In short, states can do a lot together legally. So let’s be friends and see how creative we can be on our own, Trump or no Trump.