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Student Note

QUASI-INTERNATIONAL ORGANIZATIONS: CROSS-BORDER SUBNATIONAL ORGANIZATIONS IN AMERICAN LAW

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ABSTRACT

The past two decades witnessed what some have called a "Federalism Revolution." With new powers to state actors came scholarly questions, as new sub-organizations developed. These participants created subnational organized creatures that crawled over geopolitical borders. As these transnational quasi-organizations grew, questions followed. This paper examines the role of international organizations and federalism through the lens of the extant subnational climate change organizations. Can governors buck President Trump's decision on the Paris Climate Accords? Did this so-called Federalism Revolution grant new authority to join and form international organizations? What of the Compact Clause and Treaty Clauses? What pertinent precedent lies waiting? First, the paper explores and examines international law and then U.S. law, as well as the doctrine that created the previous federalism structure. Then, the paper delineates and explores the climate change international organizations as case studies. Finally, the paper discusses supplementary international environmental organizations as working precedent. This paper pays much needed attention to a trending form of cross-border global partnership to resoundingly show their undoubted efficacy and rising prominence.

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I. INTRODUCTION

The last several decades have witnessed ample fluctuation in the carefully strung and unyieldingly taut balance of vertical separation of powers,[1] becoming what scholars have called a "Federalism Revolution."[2] Treatises have been written and libraries filled with works, analyses, and compilations dissecting the nature of foreign relations and states' rights, but modern events are resoundingly bringing new questions. While this revolution was underway, pseudo-international organizations have sprouted and developed in tandem. What ramifications come from an overzealous governor and a complicit state legislature that might be inclined to enter in or create one of these organizations? What role should the international community play in a federalism dispute within a nation? What of the Compact Clause and Treaty Clauses in the U.S. Constitution?

This paper, at its core, examines international organizations, but specifically, subnational cross-border organizations. Peculiarly, the most noteworthy and substantial examples of these hybrid organizations surround climate change adaptation and mitigation efforts. Gubernatorial international forays unsanctioned by Congress could be constitutionally problematic and set dangerous precedent. This paper is likely one of the first to assess the domestic and international frameworks as well as the potential legality of these quasi-international organizations during the

1. *See* Patrick M. Garry et al., *Raising the Question of Whether Out-of-State Political Contributions May Affect a Small State's Political Autonomy: A Case Study of the South Dakota Voter Referendum on Abortion*, 55 S.D. L. REV. 35 (2010); Nicole Huberfeld et al., *Plunging into Endless Difficulties: Medicaid and Coercion in* National Federation of Independent Business v. Sebelius, 93 B.U. L. REV. 1, 47 (2013); Christina E. Coleman, *The Future of the Federalism Revolution:* Gonzales v. Raich *and the Legacy of the Rehnquist Court*, 37 LOY. U. CHI. L.J. 803 (2006).

2. Garry et al., *supra* note 1, at 35; Huberfeld et al., *supra* note 1, at 5; Coleman, *supra* note 1, at 803.

Trump Administration, while also examining the Paris Climate Accords and questions raised in light of the Trump Administration's policy shifts and subsequent reactions.

This paper heavily illustrates precedent and case studies. Empirical and quantitative data have their place in assessing the efficacy of the case studies' mitigation efforts, yet for this paper's central argument, jurisprudential blueprints and authorities prove more illuminating than statistical assessment. The case studies employed by this paper work to elucidate the applicative value of these substantive constitutional doctrines. The history behind the framework, the modern challenges it faces, and the questions being raised are all examined.

Parts II and III of this paper focus on international and domestic law. The American Compact and Treaty Clauses are explored at length. Elucidation of international law and the role it plays in recognition or rebuttal of these quasi-international organizations becomes especially intriguing when assessing the international response to American foreign policy movement or the further development of these cross-border subnational organizations. These sections place particular emphasis on constitutional interpretation, case law, and historical advents in interpreting the Compact and Treaty Clauses.

Part IV of this paper then moves to examine and dissect case studies. First, the Western Climate Initiative is explored, a stunning creation and testament to gubernatorial foreign policy capabilities. Next, the paper examines the Midwestern Greenhouse Gas Reduction Accord. Finally, the paper delves into the Paris Climate Accords and the modern fallout of the Trump Administration's declaration of withdrawal. Through each of the studies, pertinent precedent and repercussions are explored in tandem with the intricacies of the original examples. This final case study, the Paris Climate Accords, works to thrust aged jurisprudence into the modern context and to illustrate the seemingly federalism-focused revolt against the Trump Administration's stance on the Paris Climate Accord. Part V works to illustrate factors leading to the creation of the case studies examined, namely the critiques of the preexisting international environmental organizations.

This paper was not developed to shame governors and state legislatures for good faith beliefs that they have the authority to enter these organizations. Nor was this paper written to attempt to hold back state action or inspire partisan political action. Rather, the goal of this paper is to call to light some of the murkier aspects of the current institutional framework's challenges in an

effort to give a clear blueprint for repairing it. This paper attempts to shine a light on a rapidly developing area of constitutional law that poses real concerns for the sanctity of the tenuous balance of American federalism.

II. INTERNATIONAL LAW

This section works to briefly assess the international community's degree of toleration of subnational international organizations. Indeed, there appears to be stark solidarity on the international stage in regard to international organizations beneath the penumbra of an existent countries and previously drawn geopolitical boundaries and demarcations. For, what good can understanding the legality of the domestic constitutional quandaries be if the organizations themselves are doomed to fail?

Regarding international agreements, and their regulations and power, the Vienna Convention is without doubt the highest binding document.[3] Generally, the international community, and international law, defer to the domestic policy of the parent nation when assessing if a subnational unit can enter into and become part of international organizations.[4] Scores of distinctions and peculiarities exist regarding the nature of the agreements, particularly if they are treaty or non-treaty agreements.[5] For this paper's broader argument, further exploration into individual peculiarities is not wholly warranted, but a brief foray is of some use. Questions are raised if the international organization is an organism of a binding treaty.[6] The Vienna Conventions set forth regulations for the process of entering into and being bound by a treaty as a state.[7] The Conventions emphasize functionalism over formalism in assessing intention in being bound as a nation.[8] Essentially, the actions of the nation are emphasized much more than the dictum.[9] Notions of the ever-pertinent "pacta sunt servanda," enshrined in Article 26, illustrate the Conventions' emphasis on the nation expressing the will to be bound by a treaty, and then performing obligations of that treaty in good faith.[10]

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3. Jeremy Lawrence, *Where Federalism and Globalization Intersect: The Western Climate Initiative as a Model for Cross-Border Collaboration Among States and Provinces*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10,796, 10,800 (2008).
4. *Id.* at 10,801.
5. *Id.* at 10,800.
6. *Id.* at 10,801.
7. *See* Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S 331.
8. *Id.*
9. *Id.*
10. *Id.* art. 26.

Yet, some international organizations are not treaty-bound organisms, and are rather entered into and participated in without the full power of treaties; in particular, the International Electrotechnical Commission (IEC) proves to be a functioning example.[11] These groups still garner the resources and expertise of their members, without the binding threat of enforcement that accompanies traditionally anointed international organizations.[12] Non-treaty organizations are notably distinct: while members may express their will to participate, they do not formally declare any intent to be bound by law, and thus there are less legal recourse options available for non-compliance.[13]

The Conventions appear notably ambiguous as to whether subnational organizations have the ability to form international agreements.[14] While a draft of the Conventions did express explicit deference to domestic policy,[15] given the many varied federalism structures of the home nations' of the drafters, some discord was noted between the parties regarding this issue.[16] Ultimately, the final version of the Conventions was left with little mention of instruction for subnational international obligations and organizations, thus setting the stage for international law to remain largely silent and deferential towards domestic policy.[17] As such, any subnational international organization must be assessed through the lens of domestic constitutionality and legality, rather than international law.[18]

III. AMERICAN LAW

Not meant to be an absolute or exhaustive listing of all jurisprudence regarding state-led foreign policy and constitutional law, but rather an abridged, yet sufficient attempt to illustrate the traditional legal thought, Part III explains international and domestic frameworks and dogma. In analyzing American domestic frameworks, Part III examines the Compact Clause and the Treaty Clause. Precedent and legal scholarship are employed as well as

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11. James Bryce Clark, *Technical Standards and Their Effects on E-Commerce Contracts: Beyond the Four Corners*, 59 BUS. LAW. 345, 349 (2003).

12. *Id.*

13. *Id.*

14. *See* Lawrence, *supra* note 3, at 10,801.

15. *Report of the International Law Commission to the General Assembly*, 21 U.N. GAOR, Supp. No. 9 at 11, U.N. Doc. A/6309/Rev. 1 (1966), *reprinted in* [1966] 2 Y.B. INT'L L. COMM'N 178, U.N. Doc. A/CN.4/191.

16. Lawrence, *supra* note 3, at 10,801.

17. *Id.*

18. *Id.* at 10,802.

primary sources in a larger effort to not only shed light on the frameworks, but also the remaining questions underlying this seldom litigated area of constitutional law.

A. The Compact Clause

In an effort to circumscribe temptation for state actors to link together, and potentially chip away at federal authority, the Founders drafted the Constitution's Compact Clause.[19] Indeed, not content with the mere existence of the Supremacy Clause, the Founders sought to explicitly bar interstate or foreign compacts from being fostered and developed at the state and local level, it appears.[20]

> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.[21]

Historical difficulties defining the exact contours and limits of what can constitute a "compact" in the eyes of the Constitution have occurred across various jurisprudential realms and time frames.[22] Questions riddle the academic arena and field of legal theory.[23] Yet, it appears that the Compact Clause can allow subnational organizations to create a "compact agency" that functions and exists, at least in part, to manage and oversee agreements between subnational bodies.[24] Many a justice, judge, and scholar alike have attempted to push the limits and test the metaphorical waters of the Compact Clause's boundaries in an attempt to further understand the intricacies of the Clause and further examine exactly what agreements are subject to its

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19. *See generally* Note, *The Compact Clause and the Regional Greenhouse Gas Initiative*, 120 HARV. L. REV. 1958, 1960–61 (2007) [hereinafter *Note on the Compact Cause and RGGI*].

20. *See* U.S. CONST. art. I, § 10, cl. 3.

21. *Id.*

22. Edward T. Swaine, *Does Federalism Constrain the Treaty Power?*, 103 COLUM. L. REV. 403, 499–500 (2003).

23. *Id.*

24. *Id.* at 511.

requirements and demands.[25] However, it should certainly be noted that the text of the Clause indicates both foreign and interstate agreements are included.[26]

1. Case Law

Virginia v. Tennessee saw a border dispute and attempted negotiations between the two states reach the Supreme Court.[27] The court ultimately found the agreement between two states, in regards to the border dispute at hand, had not conflicted with the Compact Clause due to the evident ample effort to inform the federal legislature of the agreement, and the implicit assent ascertained.[28] This proves particularly insightful, as the dicta provides the starkest definitions of what is not a violation of the Clause and further iterates express explicit Consent of Congress is not necessarily mandated in permissive interstate compacts.[29]

In a dispute heard at the Supreme Court of North Dakota, the court in *McHenry County v. Brady* held that a cross-border agreement between North Dakota and Canada regarding northern river drainage did not encroach on federal authority.[30] The court in *Brady* emphasized that the agreement did not usurp political power from the federal government and indicated that this factor is important for identifying a violation of the Compact Clause.[31] Of course, *Brady* is a state court case and bears markedly little gravitas when federally litigating subnational agreements, but the case still provides rare insight into this seldomly litigated issue.

Holmes v. Jennison, pertinent in Compact Clause and Treaty Clause jurisprudence, warrants hefty examination; in *Jennison*, Chief Justice Taney took an extensive look at the constitutionality of compacts in the context of a dispute regarding Vermont Governor's extradition of a Canadian criminal in the absence of a federal extradition treaty but presence of an agreement entered into by Vermont and Quebec.[32] Taney explicitly delineated "treaties" from "compacts" and discussed the nature of agreements versus compacts.[33]

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25. *Id.*
26. U.S. CONST. art. I, § 10, cl. 3.
27. Virginia v. Tennessee, 148 U.S. 503, 526–28 (1893).
28. *Id.*
29. *Id.*
30. McHenry Cty. v. Brady, 163 N.W. 540, 546–47 (1917).
31. *Id.* at 544.
32. Holmes v. Jennison, 39 U.S. (1 Pet.) 540, 543–45 (1840).
33. *Id.*

> [T]he states are forbidden to enter into any "agreement" or "compact" with a foreign nation; and as these words could not have been idly or superfluously used by the framers of the Constitution, they cannot be construed to mean the same thing with the word treaty. They evidently mean something more, and were designed to make the prohibition more comprehensive.
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> . . . .
>
> After reading these extracts, we can be at no loss to comprehend the intention of the framers of the Constitution in using all these words, "treaty," "compact," "agreement." The word "agreement," does not necessarily import any direct and express stipulation; nor is it necessary that it should be in writing. If there is a verbal understanding to which both parties have assented, and upon which both are acting, it is an "agreement." And the use of all of these terms, "treaty," "agreement," "compact," show that it was the intention of the framers of the Constitution to use the broadest and most comprehensive terms; and that they anxiously desired to cut off all connection or communication between a state and a foreign power: and we shall fail to execute that evident intention, unless we give to the word "agreement" its most extended signification; and so apply it as to prohibit every agreement, written or verbal, formal or informal, positive or implied, by the mutual understanding of the parties.[34]

In practice, gubernatorial agreements are far less foreboding than the *Jennison* opinion might make them appear and in fact have flourished in recent times.[35]

Moving towards the modern jurisprudence, the following case provides perhaps the most accessible and pellucid dicta to assess a potential Compact Clause violation. In a conflict surrounding a prisoner transfer, the Supreme Court in *Cuyler v. Adams* assessed the nature of the Compact Clause and aggregated the older dicta as well as modern thought.[36] For a Compact Clause violation there must be (1) an agreement between states or a foreign government, (2) the agreement must increase the state's powers, and (3) the

34. *Id.* at 571–72.
35. Julian G. Ku, *Gubernatorial Foreign Policy*, 115 YALE L.J. 2380, 2396 (2006).
36. Cuyler v. Adams, 449 U.S. 433, 437–40 (1981).

agreement must not have been approved by Congress.[37] Below, Justice Brennan elucidates the rationale behind the Compact Clause.

> The requirement of congressional consent is at the heart of the Compact Clause. By vesting in Congress the power to grant or withhold consent, or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority. . . .
>
> Congressional consent is not required for interstate agreements that fall outside the scope of the Compact Clause. Where an agreement is not "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," it does not fall within the scope of the Clause and will not be invalidated for lack of congressional consent. . . . But where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause.[38]

The onus is on the power of the state, thus, the discussion centers on if said power was increased by a compact or agreement.[39] Notably, if Congress has sanctioned an agreement between a state and other states or governmental organizations, there is no Compact Clause violation.[40]

The test in practice has obvious, common-sense complications. For, should a court always look to the text of an agreement over a more functionalist approach? Should a court disregard the statements of the parties at hand and examine what is the effect of a de facto law? When assessing if a compact or agreement exists, the court must seek the traditional "indicia" of an agreement, rather than a formalistic approach.[41] It may be handily concluded

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37. *Id.*
38. *Id.* at 439–40 (citations omitted).
39. *Id.*
40. *See id.*
41. For an example of this approach, see Ne. Bancorp, Inc. v. Bd. of Governors. of Fed. Reserve Sys., 472 U.S. 159, 175 (1985).

that the instructions to disregard text and form while emphasizing function is in an effort to ultimately police potential encroachments on federal authority rather than to police zealous state actors or discourage foreign leadership from making deals with state leaders individually. The protection of federal supremacy as a goal, rather than the dignity of the formalist interpretation of separation of powers, drives Compact Clause jurisprudence and theory, as it led Justice White to describe the purpose of the Clause as a function of "the Framers' deep-seated and special fear of agreements between States."[42]

While the case law has demonstrated substantive constraints on interstate and foreign compacts, it has also shown the durability and strength of duly sanctioned agreements. While it may seem unpalatable to state actors to seek the approval of the federal government to enter into a compact or agreement, the benefits, namely the resilience of the agreement, can far outweigh the burdens. Later, the Compact Clause test and advents within the Trump Era will be discussed at length, but perhaps most intriguing regarding the case law is the relative lack of twenty-first century case law on the subject, potentially indicating ripeness for a new matter to come to the Supreme Court.

2. Scholarship and Legal Thought

Worthy of examination for further elucidation, the academic interpretation and schools of jurisprudence surrounding the Compact Clause prove intriguing. For, what good are scores of precedential case precedents and judicial conflict without explanation and testing from judicial scholars? The following subsection provides a circumscribed sampling of various discussions and arguments posited by scholars and theorists alike.

Professor Michael Greve calls for a more judicious enforcement and embrace of the Compact Clause from the judiciary.[43] Indeed, Professor Greve posits that the judiciary's tepid engagement with the Compact Clause has allowed state compacts to begin to run amok relatively unscathed and unafraid of repercussions.[44] Perhaps most insightful is the observation from Professor Greve that no compact has ever been struck down for failure to garner

42. U.S. Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 489 (1978) (White, J., dissenting).

43. Michael S. Greve, *Compacts, Cartels, and Congressional Consent*, 68 MO. L. REV. 285, 289 (2003).

44. *Id.* at 288–93.

Congressional blessing.[45] In addition, Professor Greve argues that one should approach compacts functionally, and that the Clause prohibits the agreements, not the actions, of maintaining a compact, thus proper enforcement mandates non-formalist engagement and interpretation.[46]

Curiously, Professor Duncan Hollis posits that the current form of Compact Clause jurisprudence is largely a result of jurisprudence and an aberration from the original text and interpretation.[47] Professor Hollis' argument surrounds the interpretation and functionalist approach to compact diagnosis; indeed, the departure from the formalistic origins poses a concern for Professor Hollis.[48] Finally, Professor Hollis argues that the political and federalism quandaries, among other factors, work to illustrate the need for distinct Interstate and Foreign Compact Clauses in the Constitution.[49] Unequivocally, Professor Hollis illustrates several weaknesses that the singular Compact Clause engenders.[50] Seemingly, this assessment of the weaknesses of the Compact Clause proves intriguing and holds some water. There can be little doubt that a more succinct and precise Compact Clause for both international compacts and domestic compacts could prove more directly helpful and insightful to actors at the state and federal level.

Professor Jessica Bulman-Pozen posits a fascinating prediction; essentially, the real Compact Clause chaos will form in future sanctioning of compacts.[51] Indeed, Professor Bulman-Pozen argues the Compact Clause assumes a unified federal government, or at least one without vehement partisanship, and today's realities will lead to conflict in sanctioning these agreements between the Commander-in-Chief and Congress.[52] For, while the Congress is designated to bless the compact, the President has broad vested authority in foreign policy and international agreements. Intriguing and foreboding, this notion is predicated on the prediction that more compacts shall continue to arise and inter-branch discord will then result. Working with this theory, what if ardent climate change enthusiasts hold the Congress, actively

45. *Id.*
46. *Id.* at 287–93.
47. Duncan B. Hollis, *Unpacking the Compact Clause*, 88 TEX. L. REV. 741, 766 (2010).
48. *Id.* at 765–68.
49. *Id.* at 769–70.
50. *Id.*
51. Jessica Bulman-Pozen, *Executive Federalism Comes to America*, 102 VA. L. REV. 953, 1025 (2016).
52. *Id.*

sanctioning climate change compacts across borders, and an active opponent to climate change policy holds the Presidency? How can blessing truly be assessed?

Not purported to be absolute, the above sample of scholarly thought works to illustrate the schools of jurisprudence regarding the Compact Clause. Of course, each come along with counterarguments and retorts from critics in the legal community, as law review articles typically engender. Yet, each unequivocally posits real concerns and theories. The discussion from academia at large works in tandem with the precedent to illustrate the Compact Clause as fully as possible.

B. The Treaty Clause

"[The President] shall have Power, by and with the Advice and Consent of the Senate, to make treaties, provided two thirds of the Senators present concur . . . ."[53]

The Treaty Clause clarifies and elucidates the roles the various governmental actors are to play in the negotiation and implementation of treaties.[54] Seemingly straightforward and initially outside the scope of subnational compacts, the Treaty Clause without doubt still plays a substantive role in this paper's argument. The Treaty Clause holds state actors back by mandating a carefully wrought procedure for treaty implementation and restrains state actors from entering into binding prototypical treaties.[55]

As stated previously, the Treaty Clause ties the hands of the actors attempting to negotiate agreements.[56] Essentially, governors are prohibited from entering fully binding agreements with the nuances of prototypical treaties, but are instead relegated to memorandums of understanding or various other forms of participation signaling.[57] This inhibits state actors from acting freely in their own microcosm of international relations and foreign policy and binds them by the actions of the federal government.[58]

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53. U.S. CONST. art II, § 2, cl. 2.
54. *Id.*
55. *Id.*
56. *Id.*
57. Lesley Wexler, *Take the Long Way Home: Sub-Federal Integration of Unratified and Non-Self-Executing Treaty Law*, 28 MICH. J. INT'L L. 1, 43 (2006).
58. *Id.*

The Treaty Clause was seen in action in *Holmes v. Jennison*.[59] The primary dispute in *Jennison* surrounded an extradition treaty entered into by state actors,[60] as discussed earlier. In this case, Chief Justice Taney demarcated the difference between agreements and treaties and attempted to distinguish the two, with agreements being less suspicious and less constitutionally questionable.[61] The treaty dichotomy in *Jennison* sets state-led treaties into a route of marked and clear vulnerability,[62] yet has seldom been embraced by the Court since, which may or may not reflect the judiciary's given preferences as substantive cases have rarely risen high enough to see the Court discuss them.[63] Utilizing the *Jennison* test, one must diagnose if the alleged state partnership represents a treaty or an agreement; treaties more expressly illustrate the long-term will of the partners while agreements pertain to individuals and or particular subject matters, with trappings closer to contracts.[64] Treaties must meet higher scrutiny and are likely to require the express consent of the Congress while agreements are given more deference, mirroring the strict scrutiny and rational basis distinctions in other areas of constitutional analysis.[65]

Of course, a cynical reader may just assume most of this by the nature of the Supremacy Clause and the American concept of dual sovereignty and notion of federalism. Yet, the Treaty Clause still warrants examination and elucidation as the nature of sub-federal international compacts treads closely to the nature of international treaties. Indeed, it is with firm grasp of the nature of the Compact Clause and the Treaty Clause working in tandem that the restraints placed upon state-level actors become unequivocally clear.

IV. CASE STUDIES

Part IV examines real-world compacts in play when they cross national borders. Almost exclusively, these compacts have surrounded climate change and environmental policy domestically and abroad. The following section delineates three individual case studies. First, the Western Climate Initiative is studied. Next, the

59. Holmes v. Jennison, 39 U.S. (1 Pet.) 540, 543–45 (1840).
60. *Id.*
61. *Id.* at 572.
62. *Id.*
63. *See* U.S. Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 489 (1978) (White, J., dissenting).
64. 39 U.S. (1 Pet.) at 572.
65. *Id.*

Regional Greenhouse Gas Initiative and its repercussions are examined. Finally, the Paris Climate Accords and the massive reaction to the American withdrawal from them are assessed.

A. The Western Climate Initiative

This subsection focuses on the chief working case study of a functioning subnational cross-border international organization.[66] Brief exploration of the origins of the Western Climate Initiative (WCI), the modern advents and quandaries, and application to the Compact Clause scheme proves insightful. The Initiative presents an intriguing fact-pattern worth surveying and, more broadly, raises fascinating questions regarding federalism and separation of powers.

Born in 2007 by the governors of Arizona, California, New Mexico, Oregon, and Washington, the Western Climate Initiative was inaugurated with the purpose of greenhouse gas reduction through business-oriented solutions, namely cap-and-trade schemes.[67] Membership to the WCI is broken into "observers" and "partners."[68] In addition to the five states listed above, other partners and observers of the WCI at various times included Manitoba, British Columbia, Quebec, Ontario, Utah, Montana, Saskatchewan, Alaska, Nevada, Idaho, Colorado, Wyoming, and Kansas.[69] The Mexican states of Baja California, Sonora, Tamaulipas, Coahuila, Nuevo Leon, and Chihuahua have also been observers of the WCI.[70]

The formation of the Initiative paralleled and drew inspiration from the Regional Greenhouse Gas Initiative (RGGI);[71] joint talks were held as leaders, premiers and governors, met together, ultimately culminating with the formation of a subnational compact.[72] The RGGI developed in 2005 among several northeastern states that wished to usher in a cap-and-trade

66. *See* Brooks V. Rice, *The "Triumph" of the Commons: An Analysis of Enforcement Problems and Solutions in the Western Climate Initiative*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 401, 402–05 (2010).

67. W. CLIMATE INITIATIVE, WESTERN REGIONAL CLIMATE ACTION INITIATIVE (Feb. 26, 2007), http://westernclimateinitiative.org/index.php?option=com_remository&Itemid=37&func=fileinfo&id=12.

68. *Id.*

69. *Conservation in a Changing Climate*, LAND TR. ALLIANCE, https://climatechange.lta.org/western-climate-initiative/ (last visited Sept. 15, 2019).

70. *Western Climate Initiative*, AZIMUTH PROJECT, https://www.azimuthproject.org/azimuth/show/Western+Climate+Initiative (last updated Nov. 7, 2011).

71. *Note on the Compact Clause and RGGI*, *supra* note 19, at 1959–60.

72. *Id.*

scheme to reduce long-term greenhouse gas emissions.[73] The RGGI, unlike the WCI, operated only on fossil fuel plants,[74] making it not nearly as all-encompassing as the WCI. Member states would include New York, Rhode Island, Connecticut, Delaware, Vermont, Maine, Massachusetts, New Hampshire, New Jersey, and Maryland; as political pressures and preferences shifted, membership did as well.[75] RGGI has seen moderate success; after implementation of the RGGI, member states have decreased the carbon dioxide emission of their power sectors by 40%.[76]

Moving away from the instrumental precedent and back to the case study at hand, the Western Climate Initiative has notable differences from the Regional Greenhouse Gas Initiative. The Western Climate Initiative is, broadly, a large-scale cap-and-trade scheme in an effort to reduce greenhouse gas emissions.[77]

1. Constitutional Questions

How can the Western Climate Initiative stand up to the Compact Clause? The Western Climate Initiative is a substantive departure from federal climate policy: foreign nations are being negotiated with and subnational actors created an entire international organization alone. Can this truly be constitutional?

Obviously, one of the first places to look is precise dicta from the Supreme Court. In the seminal *Massachusetts v. EPA* case, the Court noted, "[w]hen a State enters the Union, it surrenders certain sovereign prerogatives" and then later "[a State] cannot negotiate an emissions treaty with China or India."[78] This poses a threat to the fabric of the WCI,[79] but on what level? This dictum seemingly stands as the first line of offense against the Western Climate Initiative's structure and legality.

Regarding the Treaty Clause, the Constitution itself sets no exact dicta forth delineating the differences between international partnerships, compacts, or collaborations. A functionalist approach

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73. Lauren E. Schmidt & Geoffrey M. Williamson, *Recent Developments in Climate Change Law*, 37 COLO. LAW. 63, 70 (2008).

74. Robert Zeinemann, *Emerging Practice Area: The Regulation of Greenhouse Gases*, 82 WIS. LAW. 6, 8 (2009).

75. *Id.*

76. Silvio Marcacci, *RGGI Carbon Market Invests $1 Billion in Clean Energy*, CLEAN TECHNICA (Apr. 22, 2015), https://cleantechnica.com/2015/04/22/rggi-carbon-market-invests-1-billion-clean-energy/.

77. *See generally id.*

78. Massachusetts v. EPA, 549 U.S. 497, 519 (2007).

79. *See id.*

then must be employed when assessing if the alleged subnational international agreement treads on the treaty powers of the federal government. The only substantive Treaty Clause case was seen with the *Jennison* dispute regarding a subnational extradition treaty entered into at the state level,[80] as discussed above. Applying Chief Justice Taney's dichotomy, as substantive other frameworks failed to have emerged in Treaty Clause jurisprudence, it appears given the limited subject matter of the WCI and the voluntary basis of membership the WCI does not rise to the level of Taney's treaties. Without rising to this level, the WCI requires no congressional consent as the Initiative's expansion of state climate regimes makes no grab for succinct long-term federal power given the WCI's limited scope and potentially temporally limited membership. The functionalist nature of assessment mandates failure to this line of attack on the constitutionality of the WCI; the states have not expressed any substantive intent to be bound or to usurp for the federal government's authority, and thus the internal assessment demanded by the Treaty Clause mandates failure. The Treaty Clause would not be the substantive platform for attack on the legality of the Western Climate Initiative.

Moving to Compact Clause analysis, the *Cuyler* test proves to be the most illuminating tool for assessment. For a violation, there must be (1) an agreement between states or a foreign government, (2) the agreement must increase the state's powers, and (3) the agreement must not have been sanctified by Congress.[81] The WCI's first line of defense could be that the voluntary nature of the partnership prevents the WCI from rising to the level of an "agreement" under the Compact Clause. For the sake of argument, this subsection will move to prong two. To violate prong two, the power of the state must be expanded and the federal government's authority must be encroached on. Given the WCI's largely dispersed regulatory authority and that the states have the ability to create their own constitutionally valid cap-and-trade schemes, the WCI seems to survive prong two. The WCI holds no central mechanisms or trappings of a constituted regulatory international body.[82] While the cap-and-trade scheme as it is currently constituted creates a cross-border partnership scheme, it does not anoint a body or internationally distinct organization that saps power from the federal government. If the Western Climate

80. Holmes v. Jennison, 39 U.S. (1 Pet.) 540, 561 (1840).
81. Cuyler v. Adams, 449 U.S. 433, 437–40 (1981).
82. Schmidt & Williamson, *supra* note 73, at 70.

Initiative were to increase in scope and begin to create more centrally governed organisms, there could be an argument that the power of the federal government would be infringed upon. However, this potential development seems too remote right now for any substantive, successful challenges on prong two.

Of course, as mentioned earlier, international law stands as a permissive body not willing to intervene. As deference is given to the domestic policy and jurisprudence, international law allows the WCI to survive as long as U.S. and Canadian law allow it to survive. Generally, Canadian law is more permissive of subnational climate agreements than the U.S. so the WCI stands little risk in the Canadian arena.[83]

Thus, applying the Treaty Clause and the Compact Clause, it appears that the Western Climate Initiative is safe from constitutional challenges. Of course, there are scores of other legal schools to attack the legality of the WCI; as examples, the preemption and foreign affairs powers pose substantive risks to the WCI. Of course, at any given time, simply gaining congressional blessing would abate the WCI's potential Compact Clause or Treaty Clause dangers.

B. The Midwestern Greenhouse Gas Reduction Accord

In 2005, a band of six governors from the Midwest and the premier of Manitoba gathered to begin joint talks on climate change; these talks culminated with the creation of the Midwestern Greenhouse Gas Reduction Accord (MGGRA).[84] Formed perhaps out of necessitated fear for the agriculture sector for which each executive was responsible, the Midwestern Greenhouse Gas Reduction Accord was designed with agricultural sustainability and climate change in mind.[85] The MGGRA created an institutional framework and design for a cross-border cap-and-trade scheme; regionally confined and holding goals that were primarily localized, as opposed to a more global aim, the MGGRA was meant to immediately institute a mitigation scheme to begin insulating the region from the consequences of climate change.[86]

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83. *See* Shawn McCarthy, *National Carbon Market Faces Opposition*, GLOBE & MAIL (Can.) (Mar. 12, 2008), https://www.theglobeandmail.com/report-on-business/national-carbon-market-faces-opposition/article1351530/.

84. Erin Benoy, Note, *Wanted: Farmer-Friendly Climate Change Legislation*, 16 DRAKE J. AGRIC. L. 147, 150 (2011).

85. *Id.* at 154.

86. *See id.*

The Accord's apogee was the production of the Midwestern Greenhouse Gas Reduction Program, a formal manifesto and documented blueprint of the Accord's designated plan-of-attack regarding climate change mitigation.[87]

Political winds changed and state executives came and went, thus turning the individual members' positions on climate change policy and initiative implementation, resulting in the MGGRA never being fully implemented and the program partially abandoned.[88] Yet, it remains a stark demonstration of the quasi-foreign powers of the state executives. The Accord, should it have been implemented, would have raised a slew of constitutional concerns and questions, apparently paralleling the WCI in becoming a quasi-international organization. Hefty research and studies were commissioned to create the Midwestern Greenhouse Gas Reduction Program; if the political tides turn in favor of policies to reduce greenhouse gas emissions, a large-scale blueprint to combat climate change is ready.[89]

The Accord was largely a U.S.-led initiative and, despite Manitoba playing a role, it is likely exempt from typical international organization analysis.[90] As such, there was likely no Treaty Clause violation, even if the strategic initiatives and greenhouse gas reduction goals were deployed. Yet, what questions does the Accord raise regarding the Compact Clause and International Organizations? Employing the previous tests, there is a blatant agreement between states, opening vulnerability for Compact Clause jurisdiction. There was no sanctioning from Congress on the particularities of the MGGRA, thus failing the anointment portion of the test. The final prong may be a bit trickier. Should the MGGRA have been fully executed with a central governance scheme or regulatory body, there could have been a substantive argument that there was power being grabbed by the states that needed to be delegated by the federal government. Arguably then, a Midwestern cap-and-trade scheme or other large-scale centrally located governing body dedicated on implementing a climate change policy scheme contrary to the

87. *See* Press Release, Cal. Office of the Governor, Governor Schwarzenegger Applauds Nine Midwest States for Creating Regional Climate Partnership (Nov. 15, 2007).

88. Maria Gallucci, *Cap and Trade Resurrected? Some States Awaken to Its Economic Benefits*, INSIDECLIMATE NEWS (July 12, 2012), https://insideclimatenews.org/news/20120708/cap-and-trade-rgg-states-california-economic-benefits-energy-efficiency-jobs-carbon-auctions-proceeds-deficits.

89. *See* KATHRYN ZYLA & JOSHUA BUSHINSKY, DESIGNING A CAP-AND-TRADE PROGRAM FOR THE MIDWEST (2008), https://www.c2es.org/site/assets/uploads/2008/03/designing-cap-and-trade-program-midwest.pdf.

90. *See id.* at 11.

stated will of the federal government could theoretically begin to erode federal power. Though the best argument against this is the fact that states were not legally bound by the ill-fated regulatory body and thus, the MGGRA was so voluntary, that it was a mere coalition, rather than a binding organization operating without the blessing of the Congress.

The precedential role the MGGRA, in tandem with the international composition of membership[91] warranted examination for purposes of this paper's argument. Though the MGGRA was never implemented fully, it remains a substantive blueprint should political tides turn and the policy preferences of gubernatorial actors fluctuate again. If the MGGRA is dusted off, implementation challenges may follow shortly after. Though, as noted, the MGGRA is likely in no obvious legal peril and, given the current understanding of Compact Clause jurisprudence, would require a particularly judicially active court to find the Accord in violation of the Compact Clause.

C. The Paris Climate Accords

Politically pungent and seemingly never out of the mainstream news cycle for long, the Paris Climate Accords, or Paris Climate Agreement (PCA), not only shed light on modern U.S. climate policy, but provided a stunning and intriguing case study in subnational organizations and partnerships. Briefly, Part IV-C works to provide a summation of the relevant provisions of the Paris Climate Accords, in efforts to apply this paper's arguments to the core mechanics of the PCA.

Agreed to in November of 2015, and taken effect in November of 2016,[92] the Paris Climate Accords seek to immediately begin emission mitigation and adaptation efforts worldwide.[93] The PCA explicitly aims to fight climate change and global warming effects while still allowing developing nations to industrialize.[94] While the PCA has claimed to be a step in the right direction, many including President Barack Obama have argued the need for more

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91. *See generally id.*

92. Paris Agreement to the United Nations Framework Convention on Climate Change, *opened for signature* Dec. 12, 2015, T.I.A.S No. 16-1104.

93. Eric Reguly, *Paris Climate Accord Marks Shift Toward Low-Carbon Economy*, GLOBE & MAIL (Can.) (Dec. 14, 2015), https://www.theglobeandmail.com/news/world/optimism-in-paris-as-final-draft-of-global-climate-deal-tabled/article27739122/.

94. *Id.*

action.[95] Notably, President Obama did not have the PCA ratified by the Senate;[96] rather the PCA's mandates were enacted through the administrative and environmental regulations under his administration.[97]

The PCA's stated intent is to address climate change by working to keep the global temperature from rising above two degrees Celsius as compared to pre-industrialization levels.[98] One of the main goals of the PCA is to analyze the industrialization of developed countries in an effort to understand how still developing, or yet-to-develop countries could do so in the most climate-change friendly way possible.[99] Under the PCA, each country self-reports and self-sets their own goals, with it being understood that developing nations can proportionally emit more gasses as they develop, relatively.[100] No enforcement mechanism exists within the PCA to punish countries that fail to comply. Understood in the PCA is the eventual goal to divest from fossil fuels and other high-emission activities, at least partially, within the next several decades in an attempt to fight climate change.[101]

Curiously, this structure substantively departs from the most notable precedent, the Kyoto Protocols.[102] Whereas the Protocols were enforceable and held to a firm agreement, the PCA attempts to individualize each country's goals, in an attempt to keep individual countries participating and focused on the global effort.[103] The PCA also attempts to keep active negotiations and participation in an attempt to stay more prescient and omnipotent regarding international climate change efforts.[104]

President Trump promptly withdrew from the PCA in June 2017.[105] President Trump expressed his belief that the PCA contains longstanding negative implications for the United States,

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95. *See Obama: Paris Climate Accord Best Possible Shot to 'Save' Planet*, NBC NEWS (Oct. 5, 2016, 3:50 PM), https://www.nbcnews.com/news/world/obama-paris-climate-accord-best-possible-shot-save-planet-n660446.

96. *Id.*

97. *See id.*

98. *Id.*

99. *What Is the Paris Agreement?*, U.N. CLIMATE CHANGE, https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement (last visited Aug. 25, 2019).

100. *Id.*

101. *Id.*

102. Brad Plumer, *Stay In or Leave the Paris Climate Deal? Lessons from Kyoto*, N.Y. TIMES (June 1, 2017), https://www.nytimes.com/2017/05/09/climate/paris-climate-agreement-kyoto-protocol.html.

103. *Id.*

104. *Id.*

105. Elle Hunt et al., *Paris Climate Agreement: World Reacts as Trump Pulls Out of Global Accord – As It Happened*, GUARDIAN (June 2, 2017, 2:47 P.M.), https://www.theguardian.com/environment/live/2017/jun/01/donald-trump-paris-climate-agreement-live-news.

while expressing a desire to construct a better agreement for American interests.[106] Though it should be stated, that technically, the United States is still a party to the PCA as the earliest formal withdrawal date under the Accords is in November 2020.[107] President Trump's Environmental Protection Agency has moved to abandon President Obama's regulatory scheme to keep compliance with the PCA.[108] Quite ironically, during drafting, one large criticism of the PCA was the lack of enforcement mechanisms within the PCA itself, which later blatantly manifested by the lack of legal repercussions following President Trump's withdrawal.

1. The U.S. Climate Alliance

In response to President Trump's withdrawal from the Paris Climate Accords, numerous actors emerged upon the domestic and international stage to state their intent to adhere to the mandates and requirements of the PCA despite the federal withdrawal.[109] The U.S. Climate Alliance (Alliance) was formed from a bipartisan group of governors who all stated their intention to adhere to the greenhouse gas goals of the PCA within their state.[110] Much is still unfolding regarding the Alliance and the backlash of the American withdrawal; nonetheless, pertinent concerns and details have been raised that pertain to the center of this paper's argument.

The Alliance boasts thirteen members, and several prospective participants expressing interest in keeping in line with the PCA's goals.[111] Curiously, these members appear to have crossed party lines, with two members and six prospective member states being led by Republican governors.[112] The Alliance has been straightforward about wanting each member to meet the standards agreed to, within their own states, that the Paris

106. *Id.*

107. *See generally* Hiroko Tabuchi & Henry Fountain, *Bucking Trump, These Cities, States and Companies Commit to Paris Accord*, N.Y. TIMES (June 1, 2017), https://www.nytimes.com/2017/06/01/climate/american-cities-climate-standards.html.

108. Interview with Scott Pruitt, EPA Administrator (June 1, 2018), https://wjla.com/news/bottom-line/interview-with-epa-administrator-scott-pruitt-paris-agreement.

109. *See, e.g.*, Matt Murphy, *Gov. Baker Enters Mass. into Multi-State Climate Alliance After U.S. Withdraws from Paris Agreement*, WBUR, (June 2, 2017, 6:35 PM), http://www.wbur.org/news/2017/06/02/baker-massachusetts-joins-climate-alliance.

110. *See id.*

111. *See* Michael Greshko, *Map Shows Growing U.S. 'Climate Rebellion' Against Trump*, NAT'L GEOGRAPHIC, (June 8, 2017), https://news.nationalgeographic.com/2017/06/states-cities-usa-climate-policy-environment/.

112. Robinson Meyer, *17 Bipartisan Governors Vow to Fight Climate Change—and President Trump*, ATLANTIC (Sep. 13, 2018), https://www.theatlantic.com/science/archive/2018/09/17-states-vow-to-fight-climate-change-with-new-policies/570172/.

Agreement puts forward.[113] The U.S. Climate Alliance seeks to implement, verbatim, the goals of the PCA, as if the federal departure from it had never happened at all, perhaps raising even more federalism questions.

What questions of legality does the U.S. Climate Alliance raise? Moving first towards the Treaty Clause, it appears the U.S. Climate Alliance is safe from attack on that front. The organization boasts no legally binding treaty. In addition, for now, the U.S. Climate Alliance is firmly a domestic organization and does not cross national boundaries, thus preventing it from gaining the stature of a true international organization. Further, the structure, composition, and details of the U.S. Climate Alliance are so fresh and fluid, there is a strong argument that the Alliance's existence has not solidified enough to form into a domestically agreed to organization vulnerable to suit via the Treaty Clause.

The next pertinent argument lies in the application of the Compact Clause. It appears that the Alliance might be a compact within the definition of the Compact Clause. There is an extant agreement between more than one state that in effect bolsters their powers on the international stage. Additionally, Congress did not sanctify the Alliance. In fact, if intent were to be inferred, one could argue that the current Congress would certainly not sanctify the Alliance; this agreement runs contrary to the stated policy preferences of the executive branch government and its Senate-majority Republican allies in Congress. However, there is a strong counterargument that state greenhouse gas emission standards are all ably accomplished by utilizing the state police powers, which exist with or without the U.S. Climate Alliance. Bolstering this particular argument, member states could point to the Western Climate Initiative as an example of successful implementation of strong emission policy by relying on the police powers of the state. Further, defenders of the U.S. Climate Alliance could posit that the dicta employed by the President when withdrawing from the PCA did not indicate rejection of the Accords' ideals and goals altogether, but rather a desire to renegotiate portions of it. This argument could be employed to posit that by embracing the PCA, the U.S. Climate Alliance is not explicitly countering the stated presidential policy, as President Trump argued a desire for a better deal, not a purist rejection of the PCA and its goals.

The U.S. Climate Alliance likely survives under both the Treaty Clause and the Compact Clause and, as stated earlier,

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113. *Id.*

international law defers to domestic law. The Paris Climate Accords seemed to create a decentralized quasi-international organization, and the state adherence to it, seems to create a pseudo-quasi-international organization, so to speak. Challenges to the legality of these issues would likely be difficult to mount given the vulnerability of the U.S. Climate Alliance to political pressures. If the White House should change hands to a President that embraces the PCA, the entire case could be rendered moot, and given the lengthy nature of litigation, the U.S. Climate Alliance's potential challenges would almost certainly still be ongoing at that point in time. Thus, this appears to leave an observer with an overwhelming sense of futility in challenging the U.S. Climate Alliance at all, and perhaps making the best show for the Alliance's long-term stability.

V. INTERNATIONAL ENVIRONMENTAL ORGANIZATIONS AS PRECEDENT

The previously discussed and explored case studies are of great importance, constitutionally and internationally, but for a more thorough understanding, one must grasp the international organizations leading up to the creations of the case studies. This section works to clarify leading steps to the PCA and other precedent. First, the United Nations Environment Programme (UNEP) is explored, and then the Intergovernmental Panel on Climate Change (IPCC), finally the United Nations Framework Convention on Climate Change (UNFCCC) is examined.

The UNEP is an agency of the United Nations (UN).[114] The UNEP works to implement international environmental policy through the UN's mechanisms.[115] The UNEP has been instrumental in implementing and drafting standardized conventions on environmental issues and addressing climate change;[116] for example, the UNEP played a pivotal role in creating the IPCC, which will be addressed shortly. However, the UNEP has faced some criticism, particularly during the 2007 Rio+20 Summit, wherein some called to abandon UNEP and create a

114. *See* Mark S. Blodgett et al., *A Primer on International Environmental Law: Sustainability as a Principle of International Law and Custom*, 15 ILSA J. INT'L & COMP. L. 15, 25 (2008).

115. *Id.*

116. *See* Carol Annette Petsonk, *The Role of the United Nations Environment Programme (UNEP) in the Development of International Environmental Law*, 5 AM. U.J. INT'L L. & POL'Y 351, 355, 365 (1990).

stronger organization.[117] Curiously, the critiques of the UNEP were reaching their apex as the WCI and RGGI were christened.

The IPCC was formed by UNEP and the World Meteorological Organization in 1988 and is still held under the umbrella of the UN.[118] The IPCC is, primarily, a group dedicated to scientific understanding of climate change and open to any members of the UNEP.[119] Primarily pursuing adaptation and mitigation policies to combat climate change, the IPCC does not commission studies; rather it aggregates and assesses international climate change reports in an effort to remain unbiased and deferential to localized findings.[120] Its once yearly substantive panel meeting,[121] the highest-profile IPCC event, is the subject of perennial derision from those who advocate for a more weighty response to climate change. Criticisms of the IPCC have ranged from its bulky organization to its potential politicization and exaggeration of climate data.[122] The desire of U.S. quasi-international organizations to avoid these critiques can be seen manifested in the relatively efficient structure of the Western Climate Initiative and the WCI's overt effort not to riddle the organizations in the international political drama that can occasionally be associated with international organizations.

The United Nations Framework Convention on Climate Change (UNFCCC), signed by the United States early in the Clinton Administration,[123] is an international treaty meant to aid the mitigation of climate change related activities, namely the emission of greenhouse gases.[124] The UNFCCC led to numerous subsequent environmental treaties, such as the Kyoto Protocols,[125] and even contributed to the build-up of the Paris Climate Accords.[126] The UNFCCC has yearly meetings to address emissions, during which agreements and new treaties come to

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117. *See* Alister Doyle, *46 Nations Call for Tougher U.N Environment Role*, REUTERS, (Feb. 3, 2007, 8:26 A.M.), https://www.reuters.com/article/idUSL03357553.

118. *See* THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, https://www.ipcc.ch/ (last visited Aug. 25, 2019).

119. *Id.*

120. *See, e.g.*, D. Bart Turner & Chris J. Williams, *Law in a Changing Climate*, 70 ALA. LAW. 358, 359–62 (2009).

121. THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, http://www.ipcc.ch/ (last visited Aug. 25, 2019).

122. *See, e.g.*, Ben Webster, *UN Must Investigate Warming 'Bias', Says Former Climate Chief*, TIMES (London), (Feb. 15, 2010, 12:01 AM), https://www.thetimes.co.uk/article/un-must-investigate-warming-bias-says-former-climate-chief-lgplj89s8dz.

123. Schmidt & Williamson, *supra* note 73, at 63–64.

124. *Id.*

125. *Id.*

126. *See* Erin L. Deady, *Why the Law of Climate Change Matters: From Paris to a Local Government Near You*, 91 FLA. B.J. 54, 54 (2017).

fruition.[127] The UNFCCC and the subsequent protocols it has helped produce have drawn ire due to their lack of long-term solutions and binding enforcement.[128] In the context of this international failure to adequately address climate change, the U.S. quasi-international organizations discussed earlier drew even more inspiration to take matters into their own hands.

The problems with these long-extant organizations helped directly cause the creation of the quasi-international organizations discussed at length in this paper. It is not an accident that these organizations went largely under the national-political radar. Quasi-international climate organizations have attempted to avoid the problems of the Intergovernmental Panel on Climate Change and other similar international organizations. A direct link appears clear between the flawed extant international organizations, christened with authority, and the quasi-international organizations that have developed.

VI. CONCLUSION

Yet, what exactly does this tell us about international organizations? It seems abundantly clear the international trends point to organizations dedicated to certain interests alone, rather than more general partnerships dedicated to wide-ranging, more global causes. Is this the future of international and subnational partnership: cause-specific unity? The wealth of climate organizations discussed above make clear the patterns emerging involve subnational organizations redeveloping arrangements and agreements regardless of national leadership. With ample precedent, at this point, little argument exists to posit that these subnational groups are in any way slowing or will do anything but steadily increase. The organizations above show the new trends moving away from national-stated interests and toward emerging regional and quasi-international partnerships.

Obvious political conclusions could be drawn from this paper's arguments. Opponents of climate change action could see a "call-to-arms" and read a methodology for challenging the Western Climate Initiative. Perhaps defenders of the Initiative could see lessons to ensure the preservation of the quasi-international

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127. *See generally* Ian Prasad Philbrick, *Trump Thinks We Spend "Billions and Billions and Billions" on the Paris Climate Deal. We Don't.*, SLATE: MONEYBOX (June 2, 2017, 5:37 PM), http://www.slate.com/blogs/moneybox/2017/06/02/president_trump_falsely_claims_the_u_s_spends_billions_and_billions_and.html.

128. *See generally id.*

organization model. This paper was not written to pursue a policy agenda, but rather to explore an often-confounding arena of international and American law.

Part II and Part III worked to illustrate the international and American legal frameworks in place to assess and diagnose the legality of these pseudo-international organizations. With international law largely deferring to domestic policy and our domestic framework leaving archaic tests, the legal formulas prove intriguing. Regretfully, there is not a wealth of jurisprudence or abundance of case law at this paper's disposal. Scholarship was employed in an effort to fill the gap that more robust precedent and case law could have provided for this paper's argument.

Part IV provided a series of case studies in an effort to shed more light on the real-world examples of cross-border subnational international organizations. These case studies largely surrounded climate change mitigation and adaptation efforts employed by active states. With the Western Climate Initiative as the shining, extant example of one of the quasi-international organizations discussed, the other case studies remain less active and hold less utility for this paper's purpose and argument. Part V illustrated the international atmosphere and how the case studies came into existence.

The Federalism Revolution and the near-immediate backlash to President Trump's withdrawal from the Paris Climate Accords suggest that more of these pseudo-international organizations could appear, or that existing subnational organizations may even strengthen, to defy President Trump's climate policy. With thorough study and appreciation of the frameworks and legal tests discussed through this paper, the next generation of quasi-international organizations stand a substantively better chance of remaining effective and extant. The importance of a strong grasp of international and domestic law regarding these curious organizations cannot be understated.