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IRA and Clean Energy Implications with Jody Freeman and Greg Dotson – August 25, 2022

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Hannah Perls: Welcome to CleanLaw from the Environmental & Energy Law Program at Harvard Law School. In this episode, Professor Jody Freeman speaks with Greg Dotson, an associate professor at the University of Oregon School of Law. And most recently, a Democratic chief council for the Senate Committee on Environment and Public Works, where he helped negotiate, draft and facilitate the passage of the Inflation Reduction Act. In this episode, Jody and Greg discuss that process, the law of key provisions addressing climate & clean energy and the potential implications for clean energy development. We hope you enjoy this podcast.

JodyFreeman: Welcome to CleanLaw. I'm Jody Freeman, professor at Harvard Law school. And I'm joined today by a really special guest Greg Dotson, whom I have known for some time going back to Obama days, and we will talk a little bit about that. But most importantly, Greg left his position at the University of Oregon Law of School temporarily to go serve as chief counsel to the Senate Environment and Public Works Committee to help negotiate, draft, and get over the finish line, the Inflation Reduction Act. And today, we're going to talk with Greg about that process of getting that bill drafted, negotiated, and passed, what it means, what it contains, the likely impact, and all of the implications of this major climate legislation that a lot of people were skeptical would succeed. It's wonderful that it's succeeded, and Greg, I'm delighted that you're here to discuss it with us. Welcome.

Greg Dotson: Thank you so much, Jody. I'm happy to talk with you about it.

Jody: Greg, before we really dive into the bill and the politics of the bill and the implications of the bill, can you just give us a little bit of background on your time on The Hill and then how you came into law professoring and then it turns out your new time on The Hill. Give us a little bit of bio background.

Greg: I'd be happy to. I moved to Washington, D.C. upon graduating from law school from the University of Oregon, in fact, in 1995, and I began working for Congressman Henry Waxman, who was a real champion of clean air issues, public health issues, the environment, in general. The position was only really available because of the Republican Revolution in 1994 and all of his much more senior staff no longer had positions that were available. So, I began working with him in 1996 and came to work on the Oversight Committee with him, and then the House Energy and Commerce Committee becoming chief



environmental council of that committee, and then the energy and environment staff director. I worked on many laws over the years in that capacity, but definitely the Recovery Act, which made huge investments in clean technology. And then also the Waxman-Markey Bill, which was Congress's first attempt to do a comprehensive climate change bill in 2009 were the pinnacles of that experience, I would say.

I then left to lead the Center for American Progress's Energy and Environment program. I did that for a few years. And during both my time on the Hill and at Center for American Progress, I was teaching as an adjunct professor with a Washington D.C. area law school, which got me intrigued in academia. And so then in 2017, I had the opportunity to come and join the University of Oregon School of Law, which was like coming home actually, and was there until I took a leave of absence in 2021 to join the Senate Committee.

Jody:

So Greg, in that history, you just gave us of your time on the Hill, we met and got a chance to work a bit together during this 2009-2010 period, you were talking about the Recovery Act that Congress passed when President Obama took office, which at that time was a major investment in Climate & Clean Energy. And then the Waxman-Markey Bill, you talked about, which of course passed in the House historically, and then did not manage to get through the Senate. So we shared that experience, but I came to know you then and learned a lot about your magic ways of making things happen and your tenacity and negotiation skill. We worked a bit together on autos and auto efficiency standards and things like that. So I came to know you then, and now I've really admired the work you've put in as part of this critical team to get the Inflation Reduction Act over the finish line.

What I'd like to do is have you talk a little bit about the key provisions of the law, so there's been a lot of media coverage of the bill. Of course, it is a budget bill and it used the reconciliation process, meaning you only need 51 votes. Of course, the vice president cast the tie breaking vote. So this is a piece of legislation that no Republican voted for and it contains the heart of the Biden administration's agenda, whatever was left after negotiations over the Build Back Better bill. And so, can you help add a little context to that? Tell us how this started and how it finished and what the major provisions are that are especially important for climate & clean energy.

Greg:

It really started off as a far more ambitious bill, as far as level of funding and scope of applicability including things like the Child Tax Credit. I believe there were, in the neighborhood, trillions of dollars for climate change, not \$369 billion, which was what was ultimately included. So definitely, the ambition changed during the course of consideration, and it also, the process was anything but straightforward. And the reason for that is that the bill did not have any Republican votes, it didn't need any Republican votes if every single Democrat voted for it. And it turns out getting 50 Democrats to agree on something is not the easiest thing to do. We had obviously Senator Joe



Manchin from West Virginia was very committed to this process, but throughout the course of the year, there were moments in which he announced that he was not yet ready to act on the bill.

And so, I think that affected just the timing and people's expectation of the timeline. So, the bill ended up being something smaller in scope, it ended up addressing pharmaceutical pricing, ACA premium supports. It ended up having some tax provisions as pay-fors that ended up making this overall help reduce the deficit. And then it included \$369 billion in climate funding. And one of the reflections I've had in recent days as people have talked about that reduction in scope is to think about the capacity to spend money and staff programs up. We, in our committee was very involved, was the lead agency in the infrastructure package that passed last year. That was \$1.2 trillion infrastructure package. And it was not a climate change bill, but it had a lot of foundational pieces that were critical for addressing climate change. It had every state receive formula grant dollars to set up EV charging infrastructure.

It had things like battery recycling grants. It had programs to invest in transmission. Those pieces were foundational, I think, to getting the infrastructure we want to address climate change, all the states now are working flat out, I think, to meet all the goals of that bill and to spend that money. And how much more money can you add to that and still effectively spend it, I think, is one of the realizations I've had that this is a 10 year bill, but there's nothing to prevent Congress from coming back and reinvesting in the programs that are working well at some point in the near term future.

So, what the Inflation Reduction Act does is it builds on that foundation from the infrastructure bill. We had \$5 billion invested in that for EV charging, now we have added tax breaks to encourage private investment in EV charging. We have tax credits for electric vehicles. We have amendments to the Clean Air Act that I think are going to be helpful in defending programs that actually require the reductions of greenhouse gases from vehicles. So, I think altogether, these two bills will work together well. And I don't think that there would be a lot more capacity to spend a lot more dollars in the next few years on climate change. So, I don't think we've sacrificed that much there.

Jody:

So Greg, I really appreciate that you connected this back to the 2021 infrastructure bill, because I think putting the IRA in context is really important. If you think about what Congress has done and I want you to correct me if I'm getting any of this wrong, you have the major investment in the infrastructure bill that you talked about, Greg, that is really foundational investment in transmission, EV charging infrastructure, etc. Building on that, you have these provisions in the IRA that provide tax credits and incentives and subsidies to help create consumer demand for clean energy products. And I think we'll talk a little bit more about what else the bill does to incentivize more manufacturing, domestic manufacturing, especially. But you also have other



pieces of legislation that help to put this all in a larger context. If you add it all up, it's very significant.

You've got the HFC bill that drives down hydrofluorocarbons, Congress mandates that reduction EPA has to implement it. And you have the CHIPS Act, which people have not really had, I think, time to digest and figure out, which is a semiconductor bill really about promoting the domestic industry in chips manufacturing. But I believe it has within it and you can help me explain this, some R&D money, some research and develop money that may well, if it gets appropriated, it's been authorized, if it gets appropriated, it will help really produce support R&D in some clean energy technologies, too. So I've been thinking about this as a package of legislation. The IRA is the biggest chunk of it, but this actually looks like a very productive set of statutes if you're interested in clean energy innovation. Do I have that about right?

Greg : Well, I think you have that right. If you were to take a look at the laws that Congress has enacted over the last two years, you see a real consistent effort to take climate change seriously. And frankly, it's a more hopeful period than I really frankly expected.

Jody: Yeah. I think it surprised a lot of us actually, because there was so much concern that Joe Manchin was not prepared to move forward yet, and maybe those negotiations could never get over the finish line and a lot of back and forth about the size of the bill. And so, I think people have been very pleasantly surprised about the climate provisions that managed to get done here.

Let's talk in a little bit more detail. When you and I were, back in 2009-10, hoping for the Waxman-Markey Bill to pass, it was a very different law. At that time, the approach that was thought to be the best approach to climate change was, "Look, let's cap emissions across the economy because after all, if you're worried about climate change, you're worried about greenhouse gas emissions. So let's deal with the problem. Let's cap emissions." The bill did have a bunch of clean energy funding in it, but the primary mechanism was a cap and trade approach, that is not the Inflation Reduction Act. So it's just a very different strategy for dealing with climate change. And some people might fault it for not having really taken an approach that is regulatory, that limits emissions. Can you speak a little bit to that and talk about the very different theory of this bill?

Greg: Yes. So the theory that the Waxman-Markey Bill was built on was that there was so much support in industry to address the very real concerns of climate change, that it would be possible to have an economically efficient law gain enough bipartisan support to make it through Congress. That bill passed the House with 219 votes, I believe 212 of them were Democrats and seven of them were Republicans. And then it just was never able to get the support it needed in the Senate as you described in order to pass. And so, the failure of Waxman-Markey, I think, made it clear to everyone that the strategy of



achieving enough bipartisan support was going to be very difficult to achieve. And in 2011, there was a real retrenchment of the Republican party on climate change. If you recall, the first bill that was moved out of the Energy and Commerce Committee in the energy space in 2011 was to excise any mention of greenhouse gases, excise any authority that could be used to address climate change for EPA.

So, the hopes of a bipartisan bill, I think, really diminished watching those years after that bill. The Inflation Reduction Act was premised on a different approach, and it was really a two step process. The first step was to do an infrastructure bill that could get broad bipartisan support. There, you can make policy changes, and that bill addressed everything from Superfund to drinking water, to wastewater, to energy, to transportation, and passed overwhelmingly in the Senate and in the House. The second phase of the process was the reconciliation bill. And in that bill, the focus was on doing the pieces that could pass with 50 votes has now been demonstrated every senator in the country who is a Democrat wants to take action on climate change. Some of them have different approaches, they have different focuses, maybe different aspects of it they would emphasize, but they were all wanting to address climate change. And so, that strategy ended up working. Bipartisan process first for infrastructure, and then a reconciliation process for climate, which also included the very popular policies of negotiating with drug companies and ACA premium supports.

Jody:

So let me just say though, that the theory of the bill is really a theory that goes with the reconciliation process. So just to nerd out for a minute, reconciliation is a budget process in which you can only adopt measures that fit within a framework of spending and raising revenue. So, we're in the world of money, spending money using the treasury and the tax code to do policy. And I always like to emphasize this because if that's the vehicle, reconciliation and you have to adhere to the budget process and you have to adhere to the Byrd Rule, which maybe you'll describe to us in more detail, you're limited in what you can do, and you can't do the kinds of things you would do in regular legislation in the regular order.

And so, now you're doing climate policy primarily through spending investment, tax credit subsidy, and other incentives. So, that's very different from capping emissions, and it has an indirect lag effect on emissions. So, I think the theory of the bill is, let's really create more clean energy and more consumer demand for clean energy we can help stimulate and that itself will help drive emissions down. Is that what the theory is?

Greg:

I think that is 70% of it. There is definitely the tax credits for clean energy, just a huge portion of this. But I think there's also an element about demand destruction for fossil fuels, and you see that with the requirements for zero emission, all the incentives for zero emission technologies, zero emission vehicles. It's absolutely true that policy changes are somewhat taboo in a



reconciliation bill, and yet, you can do some policy adjustments. Maybe I should take a second to talk about the Byrd Rule. To take advantage of the privileged status of the reconciliation process, you have to comply with the Byrd Rule. And some of those are just check the box exercises. Are you making changes to Title II of the Social Security Act? Byrd Rule says you can't do that. That doesn't come into play with any climate change provisions obviously. Is there a budgetary effect?

So are you raising revenue? Are you spending money? That's a key part of it. Do you increase the deficits in the out years? If you do that, you cannot do it. And that's a 10-year window that you're looking at. So then, with those basic pieces of it, you then get into more detailed questions which is, are you acting in accordance with the specific committee's instructions? So you won't see in the EPW title provisions that would have fallen within the energy committee's jurisdiction, everything we are emissions-focused not energy technology-focused, although you'll see many examples of us referring to zero emission technology, because to the extent it relates to emissions, that's within our jurisdiction. And so, while the Energy and Natural Resources Committee can take action with regard to solar panels, we can take action with regard to technology that generates electricity without emissions.

So, there's somewhat of a semantic game going on there. But very important committee jurisdictional issues, even if it does sound semantic. Where the real debates come into play is for pieces that are not budgetary, are they a necessary term and condition for the budgetary provisions to have effect? And so, a lot of discussion about that. So, for example, we included seven amendments in the Clean Air Act in the EPW title, and that's how we pick up some necessary terms and conditions. We build off of definitions that are already in the act, we build over other aspects of it. And to the extent we are creating new definitions in the code, or we are including requirements about the way EPA is to implement a program, we had to make an argument that those were necessary terms and conditions for the budgetary effects to occur.

Jody: And the person who enforces, whether in fact, what you want to add to the Clean Air Act is a necessary term and condition, and therefore falls under the budget rules is the Senate parliamentarian, the most powerful person no one's ever elected and nobody knows who they are, right?

Greg: That's almost right. The answer is that she acts as a judge, so she does not enforce it. So there are all kinds of examples in reconciliation bills of things just going through because no one raised an objection, but if someone raises an objection, she will either validate that or not.

Jody: So, you can all do what nobody can do in the game of golf, you can agree to break the rules.



- Greg: Yes. Or you can also hope no one sees you cheating a golf and no one raises the objection. So, I mean, I think it's a funny thing that way, because it means it has several practical effects in the conversation. One is just because Congress has done it before, doesn't mean it's a useful precedent because the parliamentarian will say, "Here's my precedent." Parliamentarian will say, "Did anyone raise an objection? Did the parliamentarian sustain that objection or not?" And if you don't have evidence of that, then you really don't have anything. There's one other part of the Byrd Rule that you have to understand, which is a provision can be challenged if the budgetary effect is merely incidental to the policy change associated with it. So that means, the most surefire way to satisfy that is you have a very large appropriation with no policy change that complies. You get on weaker ground as the amount of budget effect is reduced and the amount of policy change increases. And so, that's a balancing test and that there's a lot of discussion there, a lot of action there and figuring out what you can and can't do.
- Jody: So, Greg, it's really interesting you added that because, I guess, I wonder, as you're negotiating all these things, who's doing it, who's talking to the parliamentarian, and who's working this out, just mechanically?
- Greg: From a mechanical perspective, the conversations are very siloed in the committees. And so, I worked on the Environment and Public Works Committee title. So it was our staff, myself, Mary Frances Repko, our staff director who really argued to the parliamentarian on these matters, and then we had counterparts from the other side of the aisle.
- Jody: So, basically you've got committees with responsibility for different parts of this big bill, and EPW, your committee had the part that related to emissions. Is that about how to understand it? Help people understand what other committees had certain other titles.
- Greg: So, they were very siloed. And so, I would say the largest section, certainly, by dollar would be the tax title, and that was a title that I had almost no visibility into during the negotiations, but it's obviously a very important one, and it's where we get the EV tax credits. We were certainly trying to provide our views to the committee, but we were not in those, I personally had no role, and I think most of the committees did not have much visibility into it. The second largest title by dollar amount was the EPW title, \$41 billion. This is the provision that I and the other staffers with EPW worked on extensively. We have a climate lead, we have a transportation lead, we have a staff director that oversees everyone. My background in climate and my responsibilities as chief council to engage with the parliamentarian, put me in the middle of those conversations.
- But that title added seven new sections to the Clean Air Act, all of which were climate-focused, two new sections to Title 23 of the transportation title, all about sustainable transportation, neighborhood access and equity grants. And we also included some other provisions to fund CEQ and their EJ mapping



efforts, as well as we provided, I think, \$150 million to Fish and Wildlife to help with the resilience of the facilities that they own and operated.

Jody:

So CEQ is a Council on Environmental Quality that is part of the office of the president, and they are in charge mostly famously of implementing NEPA, but you're funding them. I mean, what I understand to be these amendments of the Clean Air Act that you accomplished really are provisions that make the EPA more of a grantor or funder of certain things, as you say, for states and communities to make certain investments in low-carbon technologies, especially in the transportation sector. But it sounds like you were amending the Clean Air Act to provide monies, really, through the EPA. Which is a very interesting thing because it creates a different emphasis for the agency. One that is much friendlier. The agency is not just a regulator that sets standards for greenhouse gases and for other pollution. Now the agency has lots of money to help fund emissions reduction. And so, I see that as a very significant contribution to the Environmental Protection Agency.

Greg:

I absolutely agree. I think EPA can fundamentally reframe the way it's engaging in American society. Its role in wastewater now is, yes, it does standards for wastewater, but it also provides lots of grants. And it'll be able to take on that role, I think, in a much more serious way with regard to climate change. I think that's a good development for the agency.

Jody:

So let's go back to just a few more examples if you'll bear with me, because I like to give some content to what people think about when they hear phrases like killing energy investments, etc. I want to talk a little bit about things people know less about like the program that you designed for creating a system to certify low-carbon or decarbonized, steel and concrete, and why that's important and how you set it up so it could help to encourage use of purchasing of these less carbon intensive industrial materials. Talk about that. I think that program is a really interesting one.

Greg:

And it's multi-billion dollar program in our title. Essentially, we are now seeing cement companies, and I think to a lesser extent, steel is being brought to market with lower embodied carbon. And I think cement, if I recall correctly, is about 8% of global emissions. So it's a really huge chunk. And so, it's important to figure out how to decarbonize that. So, what the program does is it sets EPA up in the position to use its historical engagement in this topic to help companies through grants and guidance, to establish environmental product declarations, which will help adequately document what the embodied carbon is in their products. There's also a carbon labeling piece which can happen faster than those declarations. And then it provides several billion to General Services Administration and to DOT to actually pay the incremental additional costs associated with buying lower carbon products. And the idea is to create an accountability mechanism, a transparency mechanism, combined with financial incentives to help get those low-carbon building materials to market,



demonstrate their success, and by bringing them to scale, hopefully, make them competitive against other products.

Jody:

So, that could be transformative over time, especially if you start attracting private investment in these materials, just like the tax credits for wind and solar help attract private dollars to those projects. So, I think another way to think about this is, this is seed money, public money, federal money that ought to help attract other money. The other thing I wanted to ask you about is the domestic manufacturing requirements that were built into the bill to go along with the tax credits for electric vehicles. So, people talk a lot about the fact that there isn't enough domestic manufacturing of battery components and other clean tech. People talk a lot about the minerals that go into those batteries like cobalt and lithium coming from let's call them unfriendly countries or countries that don't have free-trade agreements with the US. So, you really dealt with that as part of this bill too, to attach them to the tax credits. Can you say a little bit about that?

Greg:

Sure. And again, this is not a piece that I was involved with negotiating or writing, but I could tell there's just a very strong focus, a political debate over electric vehicles and whether or not they would actually be made in the United States or whether to supply chains that supported those vehicles would originate in the United States. You can't help but look back at some of the policies that China adopted as they were getting their new energy vehicles to market, in which they required any American automaker wishing to do business in China to partner with a Chinese company. It was an effort, I think, to boost their domestic manufacturing by requiring a partnership for American companies. This doesn't do that, but what it does say is if you want to get a tax credit for an EV, then the vehicles have to be assembled here in the United States. Then there's an increasing percentages of the value of the vehicle originating from either the United States or a country that we have a free-trade agreement with.

And it responds directly to the criticism that I think there's lots of reasons this criticism has flaws, but there's a criticism that you're going to replace dependence on foreign oil with dependence on battery materials, critical minerals from other countries. So this is really using those tax credits in a way to drive domestic investment by manufacturing. I believe it will result in more durable support for zero emission policies, because if a company like Hyundai, who announce they're spending \$10 billion in Georgia to build EVs, if they make that investment and they have a footprint there, they're going to be supportive of policies that support EVs. And I think that's over time going to be a virtuous cycle.

Jody:

This is a very interesting dimension of the legislation and the process of building the coalition, that because of the domestic manufacturing requirements, you get union support, presumably, which diversifies the coalition that's supporting climate policy. And that's good for this bill and it's



good for the future, presumably. So in addition to creating a larger coalition for climate policy, I think your point, Greg, about where these factories and production facilities go really matters. So the fact that the auto industry or other industries might locate in what we think of as red states could actually over time create more support for policies like this. So, the knock on effects, the follow on effects of the bill, the more you sit with it, the more you realize how it could impact climate, not just policy but politics over time, which is one of the advantages of an instrument that that's a spending instrument, as opposed to a regulatory instrument, like a cap on emissions, that sounds to everybody like a restriction.

You're talking now about incentives and spending and subsidies and that sounds to everybody like Christmas. So, I just wanted to bring that in. So, Greg, I also wanted to ask you about the methane fee in this bill, because it stands out as the only tax or fee charge for emissions in legislation. We don't have a broad carbon tax, but we have the methane fee. Can you talk a little about that because it's a little confusing? The environmental protection agency, of course, is finishing a rule, I think, probably within the calendar year setting standards for methane from oil and gas operations. So now, are they also going to pay a fee or do they interact somehow?

Greg:

They do interact. This was an issue of key focus for Senator Carper and Senator Manchin, they've worked on this a lot together. This started off as a proposal to just overlay all of the existing regulation or future regulation with a fee on any emitted methane. And in order to get the support necessary to have it become enacted, the provision ultimately says, "As long as facilities come into compliance with a rule that would achieve the same level of emissions reduction as what was proposed last year, then they can escape the fee, essentially." So this will be a number of years down the road. Some of the benefits of it will be that the Congressional Budget Office projects it'll raise \$6.3 billion. The provision provides \$1.5 billion upfront to help address methane emissions throughout the country, and also to help with legacy pollution issues and communities impacted by oil and gas drilling.

So, again, I'm not trying to say we've resolved all the environmental justice issues, but there's been a good faith effort to try to help. And so, you'll have those investments occurring right away. You'll have the fee being paid until every state adopts a plan under section 111 to control their methane fees and the facilities come into compliance with that rule. So, I think you get an incentive that maybe every state might not otherwise have to adopt an EPA approvable rule on methane as fast as possible, because otherwise the industries in their state will be paying a methane fee.

Jody:

Okay. That's a great way of explaining it. It's sort of the gap filler until there's compliance with the EPA rule. And as long as the emissions match or it's sufficient equivalent, then they're exempt from the fee going forward. Thank you. That's helpful. The other thing I wanted to ask you about is the criticisms



one might hear. So we talk a lot about the amount of money here around \$369 billion for the climate part of the bill. It's a lot of money. That's not nothing. And people could say, "Boy, who's going to track this funding. How are we going to know it's well spent? What if it gets wasted? And why is the federal government pouring billions into this? Why doesn't the private sector just do it? If these things, these cars are so great, these electric vehicles, if this wind and solar power is so great, why doesn't the market just produce it? Why does it need so much help?" So, can you help people with understanding that criticism and your response to it?

Greg:

I can sure try. For one thing, when you just look at tax policy over the years, one thing Congress has been very consistent on is stable tax policies for oil and gas, where you have some policies, some tax incentives have just decades, have been on the books. Intangible drilling costs, people talk about it being on the books for 100 years. Contrast that with the Production Tax Incentive for renewable energy, in which we typically saw a two or three year extension at a time that's very destabilizing for long-term projections. And so, providing a 10-year window of consistent support, I think, is going to be really instrumental. Now, I guess you could argue that you'd be better off by removing all of the policies that allow fossil fuels to continue to serve the country. I think all you have to do is listen to the gasoline debate to see how viable that is.

I don't think that's very viable. So, conceptually, I think what you're doing is you're providing stable platform for renewable energy to take off in the way that fossil fuels has enjoyed over the years. I guess I'd also say that when you take a look at technologies that have emerged in recent years, like electric vehicles, in 2009, there was no commercial electric vehicle for sale. When we were sitting in the hearing room in the House of Representatives talking about Waxman-Markey and we were talking about emission standards there, you could not go out and buy an electric vehicle in the United States unless it was some sort of hand built fabrication. I think I looked this up, I think 2010 was the first year of the Roadster.

Jody:

Is that true? I have to stop us there because I feel like Tesla did have vehicles.

Greg:

Yeah. Well, there was certainly no mass produced, but I'm pretty sure, in 2009, there was no available one. And then end of 2010 was when the Nissan Leaf came to market and Tesla was in 2010 as well, I believe. But at any rate, you might be able to see solar panels, but it wasn't like your neighbor had rooftop solar panels. And here we find ourselves in 2022 and the Chinese EV industry has really taken off due to a lot of investment and state support. I just make the simple point that in the case of electric vehicles, there's been an amazing growth over the last few years that hasn't occurred in any country without a level of government support. So, the US government could say, "We're going to leave it to the market. We're going to step back. We're not going to encourage this." But I think the result of that policy would be that other countries contain



the manufacturing capacity and the intellectual property associated with those vehicles, and we will just be a purchasing market.

Jody: Right. And the fact is people say, "Look, we don't do industrial policy in the US." I remember when I was in the White House hearing that a lot, but the truth is if you don't make these decisions to make these investments, some seed money, R&D money provide tax credits and favorable investment environment. If the federal government plus state governments don't do that, we simply won't have the technologies we need to drive emissions down. So if you're committed to climate change solutions, you either cap emissions or you do this. And if capping emissions is not politically feasible or adopting a tax per ton is not politically feasible for a variety of reasons. This is the instrument you've got. That's the way I would defend it. I don't know if that resonates with you.

Greg: I think it's well said. I mean, are we so committed to certain market principles that we think the world should go up in a fiery flame because of it?

Jody: That's another good way to put it. Let me ask you another couple of questions about things people say about the bill. I find it interesting, because we're still grappling with it, reading it, processing it, you know it very well, but most of the rest of us are still working our way through to figure out what it means. And a lot of people commented early on about the so-called trade-off. So they said, "Look, there are things in this bill that we don't like." This is a lot of criticism, I think, from the coalition that was wanting really big climate policy accomplished that liked what this bill represented, but didn't want to concede anything by way of say investments in carbon capture, they didn't necessarily want to concede anything by way of additional oil and gas leases, and yet, the bill has those things in it. Can you speak to that a little bit? Explain what's there and explain why it was a trade-off that wound up being necessary.

Greg: I think at the end of the day, in order to have all 50 senators support the bill, there had to be significant investments in carbon capture and sequestration, and those investments occur mainly through the tax title. So, what that means is if those projects cannot be cited or those projects do not get built, they're not technically viable, they're not economically feasible. We're not spending taxpayer dollars on it. Those tax incentives go to successful projects that are being implemented. That's the way the tax provisions work is my understanding. And I understand that that is not consistent with how everyone does not agree that we should be pursuing those angles.

At the end of the day, there was the necessary support to include those provisions. With regard to the leasing, I think, there's mandatory thresholds for leasing, but offering acres for lease doesn't guarantee that they're ever bought, doesn't guarantee they're ever developed. And my understanding of the history associated with our leasing programs is that only a very small percentage of acres offered for lease are ever actually developed and produce oil and gas.



And then there's also provisions in the bill that increased leasing fees, do other things to provide some balance on that, that I think would also probably provide counter pressure to additional leasing.

Jody:

So, in the end, I mean, there's a pragmatic political point that these provisions had to be there to get to 50 votes. And I guess a question I want to ask to step back is all the focus has been on Joe Manchin. Joe Manchin is the 50th vote and it was Joe Manchin people write about or talk about or suspect is behind all of these so-called concessions. Surely, there are other senators on the democratic side that come from states with fossil energy that also must be thinking the same way as Joe Manchin.

I mean, is it fair enough to say that Climate & Clean Energy politics isn't as straightforward as people may think? Because it's not just having a D next to your name that turns you into a person, a senator who's supportive of action on climate, it depends what state you're from and what the resource base is. Is that a fair thing to say that the politics are more fraught, they're more about which states have which resources and on which communities depend, it's not just the Democratic-Republican split? Because if it were, Waxman-Markey would've gotten over the finish line because the senate was strongly majoritarian Democratic, more so than 50-50, and yet we couldn't get the Waxman-Markey Bill through. So something is going on in the Democratic Party itself that requires some accommodation. Is that fair to say?

Greg:

There's definitely something to that. I would say that I wasn't around for the 1990 amendments to the Clean Air Act, but everyone describes that experience as one of being regionalism, that one that did not rely on partisan identity. So, Democrats and Republicans in the Northeast, both supported strong measures to reduce air pollution. Democrats and Republicans in the Midwest had much sharper pencils on what that meant for industries in their region. But by the time we got to Waxman-Markey, as people remember that we had the Industry Environmental Coalition for climate change, and we had automakers and utilities and even very limited oil company support for action. And that industry support, which was not limited by region necessarily, was not enough to get bipartisan support. I felt like that year 2009 was a year in which I really believe we started to see a lot more of the tribalism people complain about so much now.

Jody:

But just so I understand it, when you say couldn't get bipartisan support, I want to give people visibility into the politics of climate change. That's what I'm really going after here is, in Congress, I think, there's a notion that the Republicans, none of whom voted for this bill don't want to do anything on climate. I mean, so far, we see no evidence that the Republicans want to do something on climate change. I think that's fair and it's evidenced by the votes. I think it's harder to figure out the Democratic side is all I'm saying. It's not clear that everyone on the Democratic side in the senate is gung ho for doing everything



on climate. So, I'm trying to figure out what is going on there that affects those politics.

Greg: I think that if you were to talk about a deep de-carbonization plan two years ago, what you would've seen was renewable energy, energy storage, energy efficiency, electrification, that's the way forward. And I think reflecting what you're saying, what you see in the Inflation Reduction Act is one that doesn't wholeheartedly just embrace those solutions. It says, what is the role for fossil fuel in a decarbonized United States of America? And it envisions carbon capture and sequestration. It envisions converting natural gas to hydrogen. Those policy paths might not be completely popular with everyone in the Democratic Party. So I think there are gradations.

Jody: Yeah. It's interesting. The bill reflects this mix. Before I let you go, let me ask you what you think now having been through this process, which I imagine has to have been quite grueling at times. I mean, I feel like you've spent, is it over a year negotiating, at one time called Build Back Better and then becomes the Inflation Reduction Act. And that's really quite an experience, I'm sure. And you and your colleagues deserve so much credit. I know Senator Carper, the chair of your committee deserves enormous credit along with leader Schumer and many others. And in the end, whether folks think of Joe Manchin as the villain or the hero of this story, he was necessary get this done. When you think about this process, I know it just came to a conclusion, the president just, I think, signed the bill yesterday, which was very exciting to see.

What do you think about it? You've been doing climate energy policy a long time. You care deeply about it. There's a lot of reaction to this bill. Some saying, "Not enough. Didn't go far enough." Some saying, "Too many trade-offs." Some saying, "Best most historic thing we've finally done it." You read stuff, "We've finally done something comprehensive. We passed comprehensive climate legislation." I have to say when I hear that, I bristle a little because we used to say that about the Waxman-Markey Bill. It's not comprehensive unless you actually price carbon is the first reaction of my head. So I wonder, how do you think about it now? Hot off the presses as you look at what you've done.

Greg: I end up thinking there's legitimacy to all those points of view that, yes, we have done something very historic, which I think will help turn the corner and fundamentally change how difficult it is to act on climate in the future as well. At the same time, it doesn't answer every question on environmental justice. It doesn't answer every question about the future of fossil fuel use and development in our country. But in some ways, it doesn't need to, this bill is a 10-year bill, but Congress can do a reconciliation bill every single year, if he wants too. In fact, it can do two every year, if he wants too. And so, these provisions can be adjusted as we go forward. I think the most significant part about it is that it'll help make a difference in people's lives. They'll provide real financial incentives for things like heat pumps, electric cars, solar panels. The most money I can ever possibly imagine providing for environmental justice.



I mean, it's absolutely remarkable in that way. And people have said, "It's not enough." I can't argue with them, but I can also say it's the most that's ever been done. I was looking back at EPA's environmental grants, which is their EJ grant program, which they've been doing since, I think, at 1994, since the Clinton administration, and it's the hallmark of what we've done on environmental justice. They've spent \$37 million since 1994. The EPW title has \$3 billion grant program for environmental justice. And that can be for climate solutions for climate resilience, climate adaptation, reducing people's environmental exposure. I mean, it is a real game changer as far as what can be done, I think.

Jody: It is historic on environmental justice the percentage of the money allocated, the availability for clean energy projects that will make a meaningful difference. It's really an accomplishment. I would be remiss if I didn't, before we close, raise the prospect that this bill also helps EPA as it goes to regulate under the Clean Air Act. I wrote about that in op-ed and I wanted to make that point because I think some folks might have overlooked that that these investments, if they do lower the cost of technologies, they do make them more available, then they become the technologies on which the EPA can base standards that they set for different industries. So, for the power sector, for the auto sector, for the oil and gas sector, if technologies are actually well within reach and affordable, they can become the basis for more stringent standards. So this is a regulatory amplifier, if you will, I think. Am I right in thinking that?

Greg: Oh, I think you're absolutely right. I think it's for both stationary sources and mobile sources, it's a real potential game changer. And I think there's also another significant aspect of this. If you think back to our discussion about merely incidental, well, you can't make policy changes, but we can reflect current law. And there are some very good aspects of current law that maybe some people would like to change but are reflected in this bill. And for example, in our Clean Air Act amendments, we specifically state that greenhouse gases is defined to mean the air pollutants, carbon dioxide, methane, etc. for the six basket of greenhouse gases. And so, I think you will find very consistent. Very consistently, you will see Massachusetts versus EPA recognized in these amendments to the Clean Air Act. And when I think back on Justice Alito's dissent in AEP versus Connecticut, where he really invited a reopening of the discussion of Massachusetts versus EPA. I think that's a really potentially significant aspect of this.

Jody: Yeah. So reaffirming really that greenhouse gas are pollutants under the Clean Air Act. I think that we've covered a lot. Is there anything else about the bill that you want people to understand or know that we may not have appreciated yet?

Greg: I'm sure there's lots that we have not said in the brief time we've had, but I agree, we've covered a lot and I can't think of anything that must be said at this point.



Jody: I suppose the only thing worth mentioning before we close is there is a projected emissions reduction here that's important, that the analysis, we've heard some estimates and projections that get to about 10% incremental improvement. Meaning, 10% fewer emissions than we would otherwise have had by 2030 compared to 2005 levels. And somebody looks at a 10% increment and they say, "Oh, you didn't do much with all those billions of dollars." That's one criticism you could hear. But it's actually pretty significant if you think that that's going to be achieved in the next seven to eight years. And of course, you and I have talked about all the ways that more reductions will come over time from displacing the energy that is currently produced from fossil fuels with more wind and solar, etc., more EV uptake, means fewer internal combustion engines, and all of that over time low-carbon or decarbonized, steel, concrete, etc. Over time, I would expect we would see some updates on these projections that may improve.

Greg: Yeah, I think that's right. And setting the predicate for a low-carbon future beyond 2030, I think, is really it's my hope of what this bill will do.

Jody: Do you think there's any prospect that if there were Republican controlled Congress, they could pass a reconciliation bill rescinding or repealing all of it?

Greg: I don't think they could repeal all of it, but when you take a look at the provisions, usually the spend date for these new programs, the money has to be obligated by 2026 or so. So, that does go into the next administration, and so, there could definitely be chunks of funding that could be clawed back by Congress. I think that's one reason to make sure that the programs are implemented as quickly as possible. One aspect of that, by putting these spending programs at EPA into the Clean Air Act, one thing that we have done is we've avoided the problem that the Clean Water Act has, where you have a national rule under the Clean Water Act, and then you get a Texas Court interpreting it one way, throwing it out. Oklahoma does something else. Wisconsin does a third way. The Ninth Circuit does something else.

The Clean Air Act, as you well know, if it's a nationally applicable rule, it has to be litigated in the D.C. Circuit. And so by putting these into the D.C. Circuit, I think, we're going to have a much more orderly process with fewer opportunities for a outside the mainstream court to disrupt the implementation of the programs.

Jody: That's a really interesting point. I'm not sure people would've appreciate it. So, Greg, I just want to thank you for taking the time. I know it's been a busy week. On CleanLaw, we like to do these deep dives that are a little bit nerdy, but it gives visibility into the legislative and the regulatory process that people just otherwise wouldn't have. So, thank you for your expertise and thank you for all you have done and your work on the Hill, your work at the Center of American Progress, your work as a law professor, but especially for this historic achievement. So, to you and your colleagues, congratulations, and I hope we



can get you back some time to talk about how this is being implemented once we see how it does down the road.

Greg: Thank you so much, Jody. It's been a real pleasure to talk with you and happy to talk any time.

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