ATTORNEYS GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, AND THE STATES OF CALIFORNIA, DELAWARE, MAINE, MARYLAND, RHODE ISLAND and VERMONT

April 5, 2010

The Honorable John F. Kerry
218 Russell Senate Office Building
Washington, DC 20510

The Honorable Lindsey O. Graham
290 Russell Senate Office Building
Washington, DC 20510

The Honorable Joseph I. Lieberman
706 Hart Senate Office Building
Washington, DC 20510

Dear Senators Kerry, Graham, and Lieberman:

We write today to urge you to craft a Senate climate and energy bill in a way that capitalizes on, and does not abandon, the significant progress that has been achieved through numerous State efforts to address global warming pollution. As explained below, federal climate legislation that builds on, and works in conjunction with, existing and ongoing State initiatives is not only consistent with a long-established model of federal and State partnership, but will also create a robust and effective legislative scheme that will maximize environmental and economic benefits.

Indeed, the great majority of federal environmental statutes allow States to adopt standards and requirements that are more stringent than federal law. For more than 40 years, this model has worked effectively to improve the nation's environment, protect public health and welfare, and stimulate innovation through creative state experimentation. For example, in the Clean Air Act, Congress expressly declared that "air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401 (a). In the area of mobile source regulation, in particular, in 1967, Congress adopted amendments to the Clean Air Act allowing California to continue setting its own emissions standards that are more protective than federal standards, provided it obtained a waiver from EPA. Subsequently, Congress authorized other States to adopt the California standards, which thirteen other States have done. This arrangement reflects Congress's sound judgment that preserving room for State experimentation would accelerate efforts to attain healthful air without imposing unsustainable burdens on industry. As a result, California has played a pioneering role in setting mobile-source emissions standards, and the entire country has benefited. This long-practiced model of coexisting federal and State authority should be equally successful in the context of spurring energy independence and reducing global warming pollution.

In fact, this model is potentially more valuable in the climate change context due to the significant State leadership in this area over the last decade while action at the federal level was lacking. During that time, States have developed, adopted, and implemented a host of measures to promote reduction of global warming pollution. For example, States have adopted emission targets and caps, automobile emission standards, low carbon and renewable fuel standards, renewable electricity portfolio standards, electricity generation emission performance standards, climate action plans, land use measures, reporting requirements, building and appliance efficiency standards, and labeling mandates. These programs foster innovation, save energy, create jobs, improve local air quality, generate revenue and produce consumer benefits, in addition to reducing global warming pollution.

Specifically, consider that under the Regional Greenhouse Gas Initiative (RGGI)[1], seven auctions of emissions allowances have been conducted to date that have generated proceeds totaling more than $582.3 million. The RGGI States are investing these auction proceeds in State programs to promote energy efficiency and develop and deploy renewable energy technologies. For example, Massachusetts recently proposed energy efficiency plans expected to yield net savings of $3.8 billion for electric and natural gas consumers over the next three years. The plans set unparalleled three-year targets for electricity and natural gas savings through a significant ramp up of public utility energy efficiency programs, and are expected to create or save nearly 4,000 jobs in Massachusetts. One study projects an $89 billion boost to Massachusetts's gross state product over 15 years if all cost-effective efficiency, in the three-year plans, is captured. The cost of implementing the plans is expected to be partially funded through RGGI auction proceeds.

There is simply no substantive basis to terminate such positive impacts and abandon RGGI and other similar initiatives at least until a national system is established and achieving equivalent or better results. Moreover, it is unknown whether measures that may be adopted through federal legislation now will fully resolve the problem and thereby eliminate the need for further measures in the future. Keeping State initiatives viable – and, at most, imposing a temporary moratorium for a fixed period of time – would provide a valuable incentive to ensure rigorous implementation and enforcement of the federal program. In addition, industries participating in regional programs should be afforded time to transition to any federal program and not lose the benefits of their early actions. Further, any temporary moratorium of State or regional initiatives should be narrowly tailored and limited to apply solely to State cap and trade regulations so that States' non-cap and trade climate-related regulations (of both stationary sources and motor vehicles) remain in force and continue to achieve the wide ranging benefits they are producing. These traditional regulations controlling air pollution at the source are

[1] RGGI is the first mandatory, market-based carbon dioxide emissions reduction program in the United States. RGGI is a cooperative effort to limit greenhouse gas emissions by ten northeast and mid-Atlantic states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) that have each capped carbon dioxide emissions from the power sector and require a ten percent reduction in these emissions by 2018.

proven, valuable tools and would not interfere with operation of a national program. Thus, federal legislation should also include "savings" clauses to preserve direct State regulation, complementary State programs, and State cap and trade regulations outside any moratorium period.

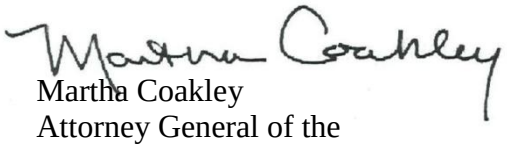
Finally, we believe federal legislation should also provide for exchangeability of emissions allowances (*i.e.*, that allowances issued by States affiliated with RGGI, or other similar initiatives, before the effective date of any federal cap and trade program, could be used under a federal program). Such exchangeability would assure equitable treatment to purchasers of regional allowances and protect them from being penalized from exercising foresight and taking early action. Also, to the extent State and regional programs would come back into effect after expiration of a moratorium, exchangeability will maintain certainty in, and stability of, those programs.

Thus, State efforts can and should be retained to complement and work in harmony with a national program. As discussed, this would be accomplished by offering additional ways in which federal emissions reductions targets can be achieved, providing incentives to encourage more rigorous federal implementation and enforcement, generating revenues to direct back into global warming pollution reduction measures, and providing ongoing opportunities for creative experimentation that spurs technology development and other innovations that produce enhanced protection of public health and welfare, improved environmental conditions, and job creation and economic growth.

On a related point, we also believe that, at this time, it would be a serious setback to preempt EPA's authority to regulate greenhouse gases under the Clean Air Act, which the Supreme Court confirmed in *Massachusetts v. EPA*, 549 U.S. 497 (2007), after years of litigation. For reasons similar to those discussed above, abandonment of the existing federal authority, prior to having new federal authority in place and functional, would be imprudent given the magnitude, complexity and time sensitivity of global warming. EPA has taken significant strides towards proposing and finalizing regulations to begin to address global warming pollution under the Act, including reaching an historic agreement with the auto industry, the federal government, and California concerning issuance of motor vehicle emissions standards. Thwarting this historic agreement and preempting existing authority now would be a mistake.

For all these reasons, we strongly urge that any federal climate and energy bill should preserve the State-federal partnership that has functioned successfully over the years, and explicitly protects States' authority to continue to adopt and implement climate-related measures to complement and enhance the benefits of federal law. We urge you to incorporate these concepts into your emerging legislative proposal.

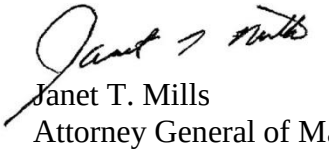
Respectfully submitted,



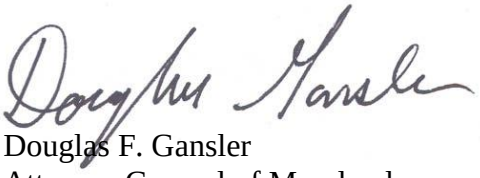
Martha Coakley
Attorney General of the
Commonwealth of Massachussets

Edmund G. Brown
Attorney General of California

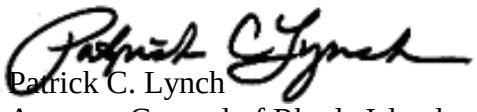
Joseph R."Beau" Biden, III
Attorney General of Delaware



Janet T. Mills
Attorney General of Maine



Douglas F. Gansler
Attorney General of Maryland



Patrick C. Lynch
Attorney General of Rhode Island

William H. Sorrell
Attorney General of Vermont

cc: Senator Max Baucus
Senator Jeff Bingaman
Senator Barbara Boxer
Senator Scott P. Brown
Senator Benjamin L. Cardin
Senator Thomas R. Carper
Senator Susan M. Collins
Senator Dianne Feinstein
Senator Edward E. Kaufman
Senator Patrick J. Leahy
Senator Blanche L. Lincoln
Senator Barbara A. Mikulski
Senator Jack Reed
Senator Harry Reid
Senator John D. Rockefeller, IV
Senator Bernard Sanders
Senator Olympia J. Snowe
Senator Sheldon Whitehouse