Testimony of Julie Dumont Rabinowitz
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In Support of
LD 1366, An Act To Require a Majority Vote of the Legislature for Maine To Join Any Multistate Compact,
LD 1472, An Act To Require Legislative Approval for the State's Participation in Compacts, Programs and Agreements Regarding Transportation and Climate Change, and
LD 1498 An Act To Prevent Increased Heating Fuel, Natural Gas, Gasoline and Diesel Fuel Pricing in Maine by Prohibiting Adoption of Rules Limiting Greenhouse Gas Emissions

Good morning Senator Baldacci, Representative Matlack, and members of the Committee on State and Local Government and Senator Brenner, Representative Tucker and members of the Environment and Natural Resources Committee. I apologize for being unable to testify in person but I am providing this written testimony for LDs 1472 and 1366 for the SLG Committee and LD 1498 for the ENR Committee.

These three bills are tied to the policy debate over regional climate collaboration: first, how such collaboration should be conducted and, second, which branch of government should have the final say on the adoption of policies that will result in regressive carbon taxes and/or fees that pass inequitable costs on to Mainers, especially rural Mainers and all Maine people living on fixed incomes.

This testimony reviews:

- how these compacts are designed to work;
- the current compact that the Mills Administration has been participating in and now monitoring;
- the constitutional problems with joining such compacts under rulemaking and not by legislation; and
- a few specifics about each of the bills.

First, MPBP's support of LD 1366 and 1472 is limited. We respectfully suggest that these bills be amended not to prohibit current or future regional collaboration or regional participation, but to mandate that any such participation that requires the levying of a fee or tax be prohibited without the approval of a majority vote of the Legislature.

Maine has had a successful interstate collaboration in a regional climate initiative to reduce power-sector greenhouse gas [GHG] emissions. The state has participated in the "Regional Greenhouse Gas Initiative" (RGGI, pronounced "reggie") for more than a decade. But this participation is vastly different than other regional collaborations currently under review by the Mills Administration and the Maine Climate Council.

The new regional climate-change proposal Maine is monitoring, and for which Maine has been attending conferences and policy discussions over more than two years, differs greatly from RGGI; it requires states to raise the cost of gasoline and diesel by potentially 17 cents a gallon if not more. It is called the Transportation and Climate Initiative, or TCI.

The Transportation and Climate Initiative (TCI) Is a Regressive Tax and an Example of the Type of Interstate Compact That Should Require Legislative Approval

"The states that have participated in the development of TCI are: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia." Massachusetts, Connecticut, Rhode Island, and the District of Columbia are launching TCI, and eight other states shared a **statement of support**. Maine is "monitoring" the program. Governor Sununu of New Hampshire pulled his state out of the program.

The TCI will impose new fees (essentially a "tax") on gasoline and diesel fuels though an emissions-permit auction; its goal is to limit all gasoline and diesel sold annually in participating states. The agreement requires a state to "spend" the millions of dollars raised by auctioning permits "to strategically invest in programs to help their residents transition to affordable, low-carbon transportation options that provide substantial public health benefits, reduce congestion, and increase economic and job opportunities."

A state's total amount of fuel sold would drop each year to reduce carbon emissions. It claims that the fees would be paid only by the fuel distributors, and the surveys environmental groups have conducted to demonstrate support for the TCI mislead the people answering the survey to think that the costs will not be passed onto the consumer, see the attached transcript from a press conference with the people who conducted.

However, TCI counts—and touts—both reductions in driving and benefits to public health only achievable when the cost of the permit fees are passed to consumers at the pump, possibly a cost of 17 cents a gallon. Higher gas prices, the states hope, will encourage people to drive less, walk or bike more, or switch to greener transportation methods. TCI would require that states use the revenue from the permit auctions to improve mass transit and green transportation, for example, installing more electric vehicle charging stations.

These are not options many Mainers can afford or access. The TCI would disproportionately burden Mainers by raising the cost of gas for those who do not have realistic public transportation alternatives or who cannot afford to buy electric vehicles.

TCI, and similar interstate proposals to cap transportation or heating fuel use, is a regressive, hidden tax on Maine drivers. It will hit individuals who live in rural areas, those who commute long distances, and those whose businesses rely on trucks to deliver goods especially hard. Maine farmers will pay more in fuel to power their equipment and pass those costs onto consumers.

TCI Could Be Adopted through Rulemaking under Current Maine Law

Legal analysts believe that Maine can adopt the permitting fees and other financial penalties that would be required by an interstate emissions-reduction compact such as the TCI through routine-technical rulemaking.

The Conservation Law Foundation concurs this is possible: "Conservation Law Foundation attorney Staci Rubin says her group's legal analysis shows Massachusetts, Maine, and Connecticut likely do not need legislative approval, while the other states potentially will," the Boston Globe reports. MPBP believes the Legislature should vote on whether Maine should join and implement TCI or any similar agreement.

Maine People Before Politics and other organizations see these permit fees as a back door to a carbon tax. Article 1, Section 22 of Maine's Constitution states, "Taxes. No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature." Policies like the TCI, that impose a tax or duty in the form of a permitting fee, deserve the type of public hearing bills before the Legislature provide. Such policies should only be implemented through the legislative process.

That provision of the constitution would seem to indicate that interstate compacts such as a TCI would be unconstitutional in Maine if implemented without legislative approval. However, the bill that created the Climate Council in the 129th Legislature (LD 1679, An Act to Create the Maine Climate Council to Assist Maine to Mitigate, Prepare for and Adapt to Climate Change) also provided the Department of Environmental Protection authority to adopt measures through routine technical rulemaking to limit climate emissions. Legal analysts believe this would allow permit auctions and fees such as TCI proposes. LD 1498 offers an amendment to that 2019 law, and would prevent this regulatory back door to implementing carbon taxes or permitting fees without the approval of the Legislature, as required by the Maine Constitution.

TCI Removes the Appropriation Authority from the Legislature

In contrast to TCI, the implementation of the multistate RGGI program did require legislative approval. An entire act was created to provide for its operations in the state and to identify how the funds generated by Maine's participation could be used.

But unlike RGGI, if Maine were to join and implement an interstate compact such as TCI through rulemaking, such participation would dictate how any revenue raised by the state could be used—not Maine's Legislature. TCI requires that all revenue raised by the permit auctions be targeted to initiatives that increase the use of public transportation and green transportation, like electric cars and biking and walking infrastructure.

But there are additional strings that would come with joining TCI that would dictate how Maine could spend its funds.

TCI has received significant and appropriate criticism from environmental justice advocates. "Nearly 50 grassroots organizations sent a March 2020 letter [PDF] calling for the creation of community advisory committees to provide local representation from underserved communities in deciding how TCI money is spent" (Streetsblog NYC). Many of the TCI's participating states have long histories of constructing highways, railways and other infrastructure in communities of color or low-income communities. Those communities are then disproportionally affected by pollution, noise, traffic and depressed property values due to their proximity to the transportation infrastructure.

Last December, Connecticut, Massachusetts, Rhode Island, and the District of Columbia moved forward, signing a Memorandum of Understanding committing to implement TCI in their jurisdictions, with a requirement that at least 35 percent of the revenue "is invested for the benefit of communities that are overburdened by pollution and underserved by the current transportation system," to quote the TCI website.

Therefore, adoption of the TCI in Maine through rulemaking would require that Maine agree to a targeted spending amount, likely about 35 percent, as dictated by the other participating states, not its own needs.

Maine has different transportation and infrastructure challenges—most significant of which is an annual $232 million shortfall in the transportation budget. TCI implements a hidden and regressive carbon tax, and then, rather than giving the state flexibility to meet its own transportation challenges, takes that allocation role away from the Legislature, forcing Maine to meet standards that may be more equitable for other states, but that do not necessarily better address Maine's income or otherwise disadvantaged populations or its pressing infrastructure needs.

Maine People Before Politics does not believe the Legislature intended to delegate its constitutional authority and responsibilities to tax and appropriate funds when it passed a bill to create the Maine Climate Council. Passing an amended version of LDs 1472 or 1366 or passing LD 1498 would clarify that the Legislature did not do so.

Interstate Compacts Should Be Evaluated by the Legislature on a Case-By-Case Basis

No matter one's views about climate change, a policy to raise the cost of gasoline for Maine's rural residents and working poor must come before the Legislature.

Governor Mills' "Maine Won't Wait" Climate Action Plan claims to only want to monitor the program on page 105, but supports a transportation emissions-reduction strategy that echoes the policy goals of TCI without referring to it by name: "By 2022, create policies, incentives, and pilot programs to encourage the adoption of electric, hybrid, and alternative-fuel medium- and heavy-duty vehicles, public transportation, school buses, and ferries" (p. 10). Incentives and pilot programs will cost money, and TCI, as articulated by many members of the Climate Council, would provide a means of funding those projects.

In their pursuit of joining and implementing TCI, many of the groups supporting this initiative compare TCI to RGGI.

However, comparing the TCI to RGGI, as if all interstate compacts with similar goals are equally effective or beneficial, is misleading. The success of RGGI, which is a program regulating electric utilities, should not be used as a justification for joining TCI. These two programs differ in both mechanism and intended audience.

Jeffrey Wennberg, the environmental conservation commissioner under Vermont Gov. Jim Douglas, was Vermont's lead negotiator for the original RGGI. He later managed state, regional and national studies of cap-and-trade proposals for the Center for Climate Strategies in Washington, D.C.

He recently wrote, "Applying cap-and-trade to the transportation sector is like using a hammer to turn a screw. Cap-and-trade only makes sense when: 1) the participants in the program make the key decisions affecting GHG emissions; 2) the participants in the program are few in number; and 3) the participants in the program are sophisticated players with significant technical, legal and financial resources. All of these are true for the electric-generation sector [RGGI] and none are true for the transportation sector [TCI]."

Wennberg continues: "But the decisions that affect emissions in the transportation sector are not made by the participating fuel distributors and gas station owners. They are made by millions of individual consumers. If customers are willing to pay five cents more at the pump, the fuel suppliers will happily pass that cost along and change nothing. . . As a result, TCI is nothing more than an inefficient, bureaucratic, hopelessly complicated way to increase revenue from transportation fuels."

Under current law, the Mills Administration can implement a "cap-and-invest" program under the rulemaking provisions authorizing the Department of Environmental Protection and the Department of Transportation to curb carbon emissions. If this were a traditional tax instead of a "permitting fee," it would have to be voted on by the Legislature. However, since this program is specifically designed to raise prices at the pump so as to achieve the benefits touted by the coalition, it should be treated like a tax and all Legislators should be on record as to whether they support it.

Additional Testimony specific to LD 1498

LD 1498 includes an additional change to the statutory language used to create the climate council in 2019.

Section 1 of the bill makes the following change:

"D. May establish a mechanism for crediting voluntary measures that quantifiably and reliably sequester additional carbon in forests, farms and coastal lands in the State or by the use of materials that sequester additional carbon <u>that prioritizes sequestration that offsets Maine-generated emissions</u>."

MPBP supports this provision. Maine's vast forests offset the majority of the state's GHG emissions. Maine is the "tailpipe" for emissions generated in other places. As the Governor's Carbon Offset Task Force develops policy recommendations to regulate the selling of carbon offsets, including offsets for emissions generated outside the state, there is a concern that the scales might be tipped, so that more and more of Maines forests are being contracted to offset emissions from outside Maine, and even outside the United States.

If Maine wants to be carbon-neutral, Maine people may have to further reduce our carbon emissions to cover the offsets that are now counted on our balance sheet but down the road might be offsetting emissions in China, for example. It is important that Maine policy, especially where many of these forests are publicly owned or enrolled in the tree-growth program, prioritizes that forests that are for the public benefit or taking advantage of state tax incentives be used to offset Maine emissions. This is a complex policy area, but the bottom line is that Mainers should not have to sacrifice because we sold the bulk of our carbon offsets to polluters in China and elsewhere.

Thank you.

Attachment: Maine People Before Politics Press Release, "Legislature Must Have Say on Maine Joining Regressive Gas Tax Coalition"

FOR IMMEDIATE RELEASE: Tuesday, December 15, 2020
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Legislature Must Have Say on Maine Joining Regressive Gas Tax Coalition

Transportation and Climate Initiative MOU due this week, Mills Administration still participating in the coalition, and Mainers need to know this fee is just a tax with a different name

AUGUSTA —Maine People Before Politics is calling upon members of Maine's Legislature to put in a bill to require that Maine's participation in the Transportation and Climate Initiative (TCI) be subject to a majority vote of the state's Legislature.

"As the bill submission deadline for the first session of the 130th Legislature approaches, we urge Maine's Legislators to ensure the Maine people have a voice through their elected Representatives and Senators on whether Maine joins ten other states in implementing what amounts to a regressive tax on gasoline and diesel fuel," stated Julie Dumont Rabinowitz, executive director of Maine People Before Politics.

"Frankly, with the massive reduction in driving from remote working during the pandemic, as evidenced by the Dec. 1 report from the Department of Administrative and Financial Affairs regarding the significant reduction in emissions due to 85 percent of state workers now telecommuting, TCI is absolutely unnecessary in Maine if the goal is to reduce driving. We should no longer be participating in TCI. But the actions of the Mills Administration and TCI's supporters have revealed the real goal is money—billions of dollars every year to fund a host of other projects. That is why Mainers must have a say," Rabinowitz stated.

"Today we are reminding the Maine people, first, the Transportation and Climate Initiative is a scheme created by states with failing mass transportation systems to find alternative funding from people who never use those systems. Second, the Mills Administration continues to participate in this program. Third, Maine's participation, without a bill like the one we are urging the Legislature to pass, can be instituted in simple rulemaking. Last, both the Mills Administration and the Maine organizations supporting this tax on rural Mainers are deliberately obscuring Maine's level of participation or omitting key information from polls and data they are submitting to policymakers," Rabinowitz stated. "Mainers deserve the truth."

How TCI Works

Under TCI, states will auction off permits that limit the amount of gasoline and diesel fuel to be sold. The revenue generated by the permits, estimated to be $7 billion annually, will be passed to the states to be used to support low-carbon transportation programs, for example, the expansion of public transportation options and electric vehicle use. The amount of fuel that can be sold under the permits will drop each year to reduce carbon emissions from transportation fuel.

"TCI's supporters describe the program simply as a fee that would be absorbed by fuel distributors. However, the benefits they claim are only achieved when the costs are passed onto the consumer in the form of higher gas prices," Rabinowitz said.

She continued: "As it stands, the Mills Administration can implement this 'cap-and-invest' program under the rulemaking provisions authorizing the Department of Environmental Protection and the Department of Transportation to curb carbon emissions. If this were a traditional tax instead of a 'permitting fee,' it would have to be voted on by the Legislature. However, since this program is specifically designed to raise prices at the pump so as to achieve the benefits touted by the coalition, it should be treated like a tax and all Legislators should be on record as to whether they support it."

Maine continues to participate in the coalition, which is expected to release its MOU this week. Supporters anticipate that a core group of states will begin to implement TCI immediately and others will join in the coming months.

Supporters Masking Maine's Participation in TCI and How It Would Work

"Having a bill before the Legislature will require that Maine's participation in TCI undergo a public hearing, rather than be adopted under routine technical rulemaking," noted Rabinowitz. "Too many organizations involved in TCI, including the Mills Administration, are trying to hide what it is and what it will do: raise the cost of driving, farming, transporting goods and food, and doing business in Maine."

Governor Mills, in her Climate Action Plan, claims to only want to monitor the program on page 105, but supports a transportation emissions-reduction strategy that echoes the policy goals of TCI without referring to it by name: "By 2022, create policies, incentives, and pilot programs to encourage the adoption of electric, hybrid, and alternative-fuel medium- and heavy-duty vehicles, public transportation, school buses, and ferries" (p. 10).

Numerous organizations, including MPBP, however, have pointed out the unequal nature of TCI, where rural residents would pay proportionately more and receive less in return, effectively subsidizing public transportation and people who can afford to purchase electric vehicles. This has caused supporters to change tactics, calling for TCI to become more equitable in its implementation. No details have been forthcoming on how that would be accomplished.

At meetings of the Governor's Climate Council and its working groups, supporters urged inclusion of the TCI as a revenue generation to be used to fund their other initiatives—which collectively carry a price tag of tens—if not hundreds—of millions of dollars.

It is clear from the November 12 Climate Council meeting that the Mills Administration wants to downplay where it stands on TCI. About an hour into the meeting, after a council member called for them to support TCI to raise revenue but acknowledged "the third rail politics around that particular discussion," the moderator indicated that the references to supporting TCI were deliberately downplayed in the report, stating, "And the language there reflects the language that was, uh, painfully but artfully created in the Transportation Working Group. So that's the language in this document."

Other organizations, in polls designed to show public support for the initiative and to pressure participating governors, are omitting the key TCI policy to raise gasoline prices.

Last week, the group Our Transportation Future published a poll purporting that most people surveyed support the TCI, although it did not ask any questions that indicated TCI would raise gas prices and did not ask how voters felt about paying more for gasoline or diesel fuel [see excerpts from the press conference included with this release].

This misleading poll is being used by Maine organizations to justify the adoption of TCI by the Mills Administration, including the Maine Beacon, a publication of the Maine People's Alliance. Maine members of Our Transportation Future include the Natural Resources Council of Maine, Environment Maine, Maine Conservation Voters, and the Acadia Center.

As part of the excuse for not including the gas price information in the poll, members of the panel claimed during a press conference that the price increase is not known and therefore it would not be appropriate to ask voters about it.

Rabinowitz concluded, "The press conference last week illustrated the scam these organizations are trying to pull on Mainers, using people's reasonable desire to live in a clean environment to trick them into stating that they support policies that would disproportionately and negatively affect them. If an organization can claim that the TCI would save lives, then the voters deserve to be given the same data used to make those assessments. This debate needs a public forum and public accountability. Anything less is disrespectful to the Maine people who would foot this bill."

The 11 participating states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. Governor Sununu of New Hampshire withdrew his state from the coalition.

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Excerpts from the Our Transportation Future Press Conference, December 9, 2020

Barbara Moran from WBUR asked the first question (23 minutes into the conference):

"I noticed that the polling questions didn't indicate that there might be a cost increase at the pump for consumers, so I'm wondering if we need to take this sort of positive response with a grain of salt given that people may not be familiar with the fact that there may be an increase in gas prices with TCI, so can your talk about why you didn't include that as part of the questioning?"

Anthony Leiserowitz, director of the Yale Program on Climate Change Communication, answered, "First of all, we didn't have the details in hand to give people accurate estimates, but . . . when you do give people a sense of what things will cost, support does drop. . ."

In follow up questions, the panel was asked whether people understood TCI, and the response indicated that people were not screened for understanding exactly what TCI was and only may have learned about it from the questions.

At 31 minutes into the conference, Lisa Prevost from Energy News Network asked, “Returning to the issue of costs, why didn’t you at least ask voters if they would support TCI if it resulted in higher gas prices?”

Leiserowitz responded, “I’ll have to turn that over to our colleagues at Climate Nexus, we didn’t consider that.”

Phoebe Sweet, with Climate Nexus, then answered, “I’m not sure I have much to add there, we didn’t consider it.”

Alli Gold Roberts, director, state policy program, Ceres, then went on to explain that they couldn’t ask about raising gas prices because how much the prices will be raised are unknown, “ . . . It’s not clear what the gas price, or pump increase would potentially look like, depending on how the design of the program, whatever the cap level of what the state decides. . . It’s a complicated question to put in a poll because it’s not a clean ‘this is what the price would look like’ at any exact time across the board.”