**Citation:**

Robert L. Glicksman & Richard E. Levy, *Climate Change Adaptation: A Collective Action Perspective on Federalism Considerations*, 40 ENVTL. L. 1159 (2010); GWU Legal Studies Research Paper No. 593.

**Other Sources:**

http://ssrn.com/abstract=1667533

**Key Words:**

Global Climate Change, Greenhouse Gases, Environmental Law, Federalism, Collective Action, Race To The Bottom, Interstate Externalities, NIMBY Problems, Resource Pooling

**Abstract:**

The buildup of greenhouse gases in the atmosphere and the likely growth in future emissions due to increased energy consumption in developing nations have convinced many scientists and policymakers of the need to develop policies that will allow adaptation to minimize the adverse effects of climate change. Climate change adaptation is designed to increase the resilience of natural and human ecosystems to the threats posed by a changing environment. Although an extensive literature concerning the federalism implications of climate change mitigation policy has developed, less has been written about the federalism issues arising from climate change adaptation policy. This article provides a framework for determining how to structure a policy to facilitate adaptation to climate change that assigns appropriate roles to all levels of government.

In particular, the article addresses three questions. First, when is participation by the federal government in directing climate change adaptation policy appropriate? Second, should the federal government set a floor that requires participation by, or at least conformance with federal requirements, by states and localities? Third, should the federal government ever displace state and local adaptation responses based on the threats they pose to federal interests? Collective action principles can assist in answering these questions and determining the proper institutional arrangements for dealing with climate change adaptation.

It is inevitable that clashes of interest will develop between jurisdictions when desired resources are scarce or efforts by one jurisdiction to avoid the undesirable aspects of climate change shift the burden of those changes to other jurisdictions. These conflicts are likely to arise both when states and localities fail to do enough to anticipate and react to climate change and when they do “too much.” In these instances, federal intervention is desirable. The presence of transboundary externalities and race-to-the-bottom considerations are the most likely justifications for establishment of a federal floor, and conditional funding or cooperative federalism arrangements may be useful in avoiding excessive intrusion on state and local discretion. While most of the collective action rationales for a federal presence in environmental law are not likely to justify preemption of state and local adaptation measures, transboundary externalities, the need for uniformity, and the proclivity of state and localities to foist problems arising from climate change on other jurisdictions may do so in limited instances.