

1.1. US: The war against plastic legislation

The US is facing a huge plastic pollution crisis, which was entirely predictable. Over the last few decades, the plastics industry has massively increased the supply of single-use plastics, with consumer-goods companies more than willing to package their beverages, cereals, snacks, cosmetics and other products using these cheap materials. At the same time, the industry has continuously promoted recycling as the solution to dealing with all this extra waste, funding efforts through seemingly pro-environment non-profits to lay the blame and responsibility for 'litter' on consumers and municipalities. This focus on recycling has acted a smokescreen, behind which the industry has opposed mandatory legislation - from bottle bills to plastic-bag bans.

1.1.1. A global leader in garbage

The US generates three times more garbage than the global average, and recycles far less of it than other high-income countries.² It represents just 4% of the world's population but produces 12% of global municipal solid waste - 773kg per capita - of which 106.2kg (234lb) is plastic waste.³ In comparison, China and India make up more than 36% of the world's population and generate 27% of its waste.⁴

Nearly 1 million workers are employed in the US plastic supply chain, which is a sector worth over \$400 billion annually, according to industry data.⁵ According to the US Environmental Protection Agency (EPA), in 2017 the US produced over 35 million tonnes of plastic, yet fewer than 3 million tonnes were recycled.⁶ As Figure 4.1 shows, plastic production has grown exponentially since the 1960s, less than 10% of which has been recycled; most of it has ended up in landfills or incinerated. Plastic bottles are recycled at a much higher rate in the 10 states that have bottle bills, but the US average rate has hovered between 28% and 31% over the last decade.⁷

For years, cities and waste-management authorities were able to put a band aid on the situation by exporting cheap – often contaminated – plastics to China. This all changed in 2018, when China implemented the National Sword policy, dramatically limiting the flow of plastics and other materials into the country.⁸ Other countries – such as Malaysia,⁹ the Philippines¹⁰ and Thailand¹¹ – have followed suit, closing their borders to imported plastic waste. Coupled with low prices for nearly all recyclables, it is no surprise that recycling centres across the country are closing, kerbside recycling is being abandoned and more plastic is ending up in landfills and the environment. The fall in oil prices following the Covid-19 lockdowns further exacerbated this crisis, as the fall in price of virgin plastic makes it difficult for recycled materials to compete without supportive legislation.¹²

1.1.2. Derailing legislation

Legislation and regulation threaten to fundamentally change our business model. We can't continue to fight back just at the reactive stage when things are emotionally charged. We have to take the offensive.

– William Carteaux, former president of the Society of the Plastics Industry¹³

The US plastics industry has been extremely successful in delaying, undermining and pre-empting any attempt to introduce progressive legislation. Over the past decade, several states and local governments have passed bans on commonly wasted, unrecyclable, single-use plastics, such as plastic bags and polystyrene foam;¹⁴ however, the industry always vigorously attacked these efforts, which have, in many cases, even been rolled back at the state level. Industry groups associated with plastic producers mounted concerted efforts to block bans or other types of legislation, pre-empt the ability of local governments to pass them and delay their implementation.¹⁵ If they did pass, producers challenged them in the courts or through industry-funded voter referendums, and launched accompanying – heavily funded – disinformation campaigns. The Covid-19 health crisis has been the latest opportunity seized by the plastics industry to roll back some of the legislation, notably plastic-bag bans.¹⁶

1.1.3. History of opposition

The plastics industry in the US is extremely powerful, and has been fighting legislation for over 70 years. Initially, the industry denied the problem, but this started changing due to environmental awareness; as the problem of marine pollution became undeniable, the industry changed tactics. According to Sharon Lerner's exposé for The Intercept, *'[the] trick has been to publicly embrace its opponents' concern for the environment while fighting attempts at regulation behind the scenes'*.¹⁷ She writes that this 'strategy dates back to at least 1969, when an editorial in Modern Plastics magazine warned about the impending waste crisis'.¹⁸ That year, a conference on packaging waste was organised at the University of California at Davis, which showed the plastics industry was aware of the general plastic-waste issue – and, according to the Centre for International Environmental Law (CIEL), *'recognised the ways in which they contributed to the problem and the viability of different solutions'*.¹⁹

The industry turned to two key tactics: pushing the blame onto the public for littering, and promoting recycling as the solution. The 'Crying Indian' ad by Keep America Beautiful (KAB) came out in 1971, and had a profound impact on the American public and its perception of litter as their own individual responsibility. Although KAB was set up by packaging and beverage companies, they never publicised their involvement, and viewers were led to believe a neutral organisation created this ad.²⁰

The solution presented for continuing to use plastics was recycling, and, in the mid-1970s, the industry started urging municipalities to run taxpayer-funded recycling programmes.²¹ At the same time, as a means to prevent legislation – such as bans on different types of plastic or bottle bills – it spent millions of dollars on massive advertising and public relations campaigns, promoting recycling and extolling the virtues of plastic.²² A Frontline PBS investigation uncovered the industry's internal documents from the 1970s, which show they knew recycling plastic on a large scale was unlikely to ever be economically viable – but it was a great strategy to prevent legislation and improve the image of plastic.²³ When legislation was proposed, the industry vigorously lobbied against it and used all kinds of legal and political tools to stop undesirable laws, as we will see in the following case studies.

1.1.4. Case study: Opposing bottle bills

As far back as 1969, at the first national conference on packaging waste, an industry insider explained the profit-driven trend away from deposit-type bottles: 'each deposit-type bottle displaced from the market means the sale of 20 one-way containers'.²⁴ It is therefore no surprise that giant drinks companies (like Coca-Cola and PepsiCo) and their associations (like the American Beverage Association (ABA) and International Bottled Water Association (IBWA)) have been fierce opponents of bottle bills. Opposition also came from grocery and manufacturers' associations, waste haulers, and the wine and beer industries.

1.1.4.1. Beverage industry and bottle bills

Oregon was the first state to successfully pass a bottle-deposit law in 1971, and Vermont was the second in 1973; most of the other states with bottle bills passed their laws in the 1980s.²⁵ Since 1987, however, only one state – Hawaii – has successfully passed a bottle bill, due to very strong opposition from beverage companies, grocery manufacturers and many of the non-profit groups they control. According to the Container Recycling Institute, opponents have spent huge sums of money *'to defeat ballot initiatives over the past twenty years, with industry opponents outspending proponents by as much as 30:1'*.²⁶ In 2019, such measures have been proposed in at least eight states, but nearly all have been rejected or failed to gain traction.²⁷

Although the ABA and Coca-Cola, which have opposed bottle bills in the past, say they are no longer opposed – if they 'do not harm the comprehensive curbside recycling systems that consumers prefer'²⁸ – a recent example from Georgia still casts doubts over where they stand. *The New York Times* reported that, in 2019, the Coca-Cola Foundation was making a \$4 million investment in Atlanta to showcase its World Without Waste campaign, which centred on increasing collection rates of bottles and cans.²⁹ The idea was that the RP – an industry group whose members include Coca-Cola, PepsiCo and many other FMCGs – would pay city workers to comb through residential recycling bins for recyclable items. When participants at the meeting proposed a bottle bill as a proven way to increase recycling rates, Coca-Cola made its opposition to deposits clear, calling bottle bills inconvenient and costly.³⁰

The ABA website promotes its commitment to recycling through its Every Bottle Back project, which Coca-Cola, PepsiCo and Keurig Dr Pepper launched in October 2019, in conjunction with WWF, the RP and Closed Loop Partners.³¹ The launch press release talked about *'directing the equivalent of \$400 million to The Recycling Partnership and Closed Loop Partners through a new \$100 million industry fund that will be matched three-to-one by other grants and investors'*, which *'will be used to improve sorting, processing and collection in areas with the biggest infrastructure gaps to help increase the amount of recycled plastic available to be remade into beverage bottles'*.³² The initiative boasted it would capture an additional 80 million pounds of PET bottles per year by reaching 9 million homes in the US. According to calculations by journalist Steve Toloken, this would have likely resulted in only a very small boost in the US PET-bottle recycling rate – from 29.2% to about 30.5%, based on the industry report that estimated total PET-bottle resin sales to be 5.91 billion pounds in 2017.³³ Interestingly, there is no mention of bottle bills, which have proven high collection rates of clean PET that can easily be recycled back into new bottles.

Recycling rates in the 10 states with bottle bills are 2–3 times higher than in the 40 states without them. In addition, the quality of material is better (due to cleaner waste streams),³⁴ which means rPET is more easily recycled back into bottles. This makes opposition to bottle bills by beverage companies, which have made significant voluntary commitments to increase recovery and recycled-content rates, increasingly untenable. Recently, some companies – including Coca-Cola and Nestlé Water NA – told an As You Sow survey they were in favour of deposit systems operated by producers, or by a consortium of stakeholders. PepsiCo and Keurig Dr Pepper were still opposed or neutral to all types of deposit systems. However, As You Sow cautions that 'brand endorsements of producer responsibility laws must be taken with a measure of caution', as they have, in the past, expressed principled support and then opposed concrete legislation due to disagreement with specific provisions of a bill.³⁵ Still, our research shows none of the companies are publicly calling for enactment of bottle bills.

1.1.4.2. Opposing reform of existing bills



A recycling plant worker in California

Credit: Les Stone

In addition to undermining proposals for new bottle bills, the industry has opposed modernisation of existing bills. For example, New York State proposed an update to its bill in 2009, which IBWA delayed using legal action.³⁶ Repeated efforts to reform the Californian bottle bill have been unsuccessful due to strong industry opposition. The redemption rates of consumers in California have fallen to 66%, and will continue to decline due to the closure of recycling centres, which makes it difficult for citizens to return their used containers.³⁷ The bill is in desperate need of an update, but the most recent attempt failed in early 2020. This bill, led by Senator Bob Wieckowski (D-Fremont), proposed reforming California's Beverage Container Recycling Program by shifting the system from one managed by CalRecycle (the state recycling authority) to an EPR system managed by the industry itself. The bill proposal included a four-year period in which beverage companies and distributors would be in charge of designing a new system.³⁸

Among the main opponents of reform are waste haulers - companies in charge of picking up kerbside recycling, which currently benefit from a proportion of deposits from kerbside collection, even though this waste is often highly contaminated and non-recyclable. California is the only state that allows waste haulers to redeem consumer deposits; according to Consumer Watchdog, in 2017, waste haulers received over \$170 million in payments from CalRecycle for bottles and cans that

ended up in kerbside recycling (around 12% of beverage containers),³⁹ while recycling centres - where consumers bring their containers - received \$155 million for handling 88% of containers.⁴⁰ Waste haulers also got paid \$13 million for scrap, and some (but not all) of these companies also run landfills and materials-recovery facilities. Waste Management (the largest waste hauler in California) was a key opponent of the bill, as was the Institute of Scrap Recycling Industries (which represents the recycling industry).⁴¹

The alcohol industry is opposed to efforts to expand the scope of the Californian programme to include wine, liquor and beer. In particular, the wine industry - led by the Wine Institute, which represents around 1,000 wineries - played a key role in the bill's defeat. According to Consumer Watchdog, the Wine Institute, along with large wineries like Southern Glazer's Wine & Spirit and EJ Gallo, donated roughly \$1.3 million to individual lawmakers between 2017 and 2019 to continue to be exempt from the bottle-deposit programme.⁴² In a local news piece, a Wine Institute representative said: '[Our] long standing, established opposition to being placed in a redemption program is mainly based on the fact that we don't believe people are likely to redeem heavy glass bottles'.⁴³ However, a March 2020 YouGov opinion poll, commissioned by the Changing Markets Foundation, showed that 68% of Californians are in favour of extending the deposit system to include wine and liquor containers.⁴⁴



1.1.5. Case study: Delaying and undermining plastic-bag bans

Eight of the 50 US states - California, Connecticut, Delaware, Maine, New York, Oregon, Vermont and Washington State - have banned single-use plastic bags. Fourteen other states have pre-emptive laws, which prohibit the government from regulating containers (such as plastic bags, and, in some cases, bottles and foam foodware), while in six states there is threat of pre-emption, and in Florida there is an ongoing lawsuit to establish whether pre-emption is in place.⁴⁵

In 2007, San Francisco became the first city to pass a ban on plastic shopping bags. Other cities and counties soon followed, passing their own bans. Seen as a direct threat to plastic-bag manufacturers, the industry has fought bans at every level ever since.

1.1.5.1. Lobbying against the bag bans

Leading the charge against bag bans is the American Progressive Bag Alliance (APBA), which represents the plastic-bag industry, and the ACC, which represents large petrochemical companies like ExxonMobil, Dow, LyondellBasell and SABIC. The ACC originally set up the APBA, which recently changed its name to the American Recyclable Plastic Bag Alliance. According to CIEL, during California's 2007-08 legislative session the ACC led a \$5.7 million campaign against plastic-bag bans. The group then spent over \$1.5 million to overturn a bag tax in Seattle in 2009, and over \$2 million when the California legislature was considering a state-wide ban in 2010.⁴⁶

Where laws have passed, the industry has challenged them through referendums. In 2014, California implemented a state-wide plastic-bag ban by passing SB 270, which banned the sale of most single-use plastic bags. The plastic-bag industry wasted no time fighting back; the APBA spent more than \$6 million gathering signatures and promoting a ballot initiative, Proposition 67, aiming to prohibit the state from enforcing the ban.⁴⁷

The APBA failed in California, where voters voted in favour of upholding the bag ban, but it has succeeded in most states. Its latest win was New Jersey, which failed to pass a bill that would ban most retail store bags, foam food containers, some plastic utensils and plastic straws; media reports said the APBA, and plastic-bag manufacturers like Novolex, played a key role in its defeat.⁴⁸ In addition to pushing for a delay in enacting the legislation, the industry wanted thicker-film plastic bags to be considered reusable, and thus not subject to the ban.

Where the industry did not manage to stop the bans, it tried to delay and weaken legislation. When New York City tried to pass a 10-cent bag fee in 2014, the APBA funded a local grassroots group, the Black Leadership Action Coalition, which opposed the legislation by arguing it would have a disproportionate impact on lower-income communities.⁴⁹ The legislation was delayed for two years - and, when it finally passed in 2016, the fee was reduced to five cents. The New York City bag fee was pre-empted by the New York State legislature, which passed a state-wide bag ban in 2019. The enforcement of the ban, which went into effect in March 2020, was delayed due to an industry lawsuit;⁵⁰ however, as part of its general misinformation campaign, the industry is framing this delay as being due to Covid-19.

1.1.5.2. Pre-emptive legislation to stop bans

Besides undermining any ongoing legislative efforts to ban plastic bags, the industry has also proactively introduced its own state-level legislation that pre-empts the introduction of local-level bag bans. According to Jennie Romer, an expert on bag laws, the plastics industry discovered it has more power at the state level, and has worked via The American Legislative Exchange Council (ALEC) to develop a model bill specific to banning local regulation of containers.⁵¹ According to Greenpeace, ALEC is a one-stop shop for elected officials pursuing corporate agendas on many different issues, and has deep ties with Koch Industries and Koch-controlled non-profits.⁵² In the past eight years, the ACC (a member of ALEC, along with PLASTICS) has helped pass pre-emption bills, based on ALEC's model, in 13 states.^{53,54} This model has proven effective because plastic-bag bans have their roots in grassroots activism.⁵⁵ State legislators in Arizona, Indiana, Iowa, Michigan, Mississippi, Missouri and Wisconsin have pre-empted plastic regulation on all manner of containers (including StyrofoamTM), as well as plastic bags, and much of the pre-emption legislation is worded identically.

Elsewhere, the Florida Retail Federation - which represents huge retailers, such as Walmart - convinced Republicans in government to include a pre-emption to local bag laws as part of a wide-ranging energy bill in 2008, which environmentalists otherwise welcomed as part of a response to climate change.⁵⁶ In Texas, the small border town of Laredo passed a plastic-bag ban in 2014, but had to reverse its decision following the Texas Supreme Court ruling the ban to be illegal - it violated a 1993 law that prevented cities or counties from banning containers or packaging.⁵⁷ The lawsuit was brought by the Laredo Merchant Association - but it was supported by the APBA and ACC, and funded by Novolex.⁵⁸

1.1.5.3. Using the Covid-19 health crisis to reverse the bans

The plastics industry's most recent attempt to reverse the bans happened during the Covid-19 pandemic. Towards the start of the pandemic, two prominent studies found that coronaviruses can survive the longest on plastic, among other surfaces.⁵⁹ Despite the original studies not testing reusable bags, soon after, several media outlets began to warn about the potential of reusable grocery bags in spreading the virus, conflating the Covid-19 study with older studies into the transmission of some types of bacteria via reusable bags.⁶⁰ Crucially, these studies were industry sponsored; the ACC and Novolex paid for them.⁶¹

Throughout February and March 2020, a flurry of articles appeared in major media outlets - including the *New York Post* and *Wall Street Journal* - decrying plastic-bag bans and claims around unsanitary reusable bags.⁶² Most of these articles cited the original op-ed - written by John Tierney of the Manhattan Institute, which is funded by Exxon Mobil and Koch Brothers - which claims (without citations) the virus survives on reusable bags for nine days.⁶³ According to Greenpeace, the media campaign appears to have been strategically targeted at states where plastic regulation was recently enacted or planned - including Maine, Maryland, New Hampshire, New York and Washington State - as well as at the municipal level in Albuquerque and Denver.⁶⁴

US states that have plastic bag bans or pre-emption laws:

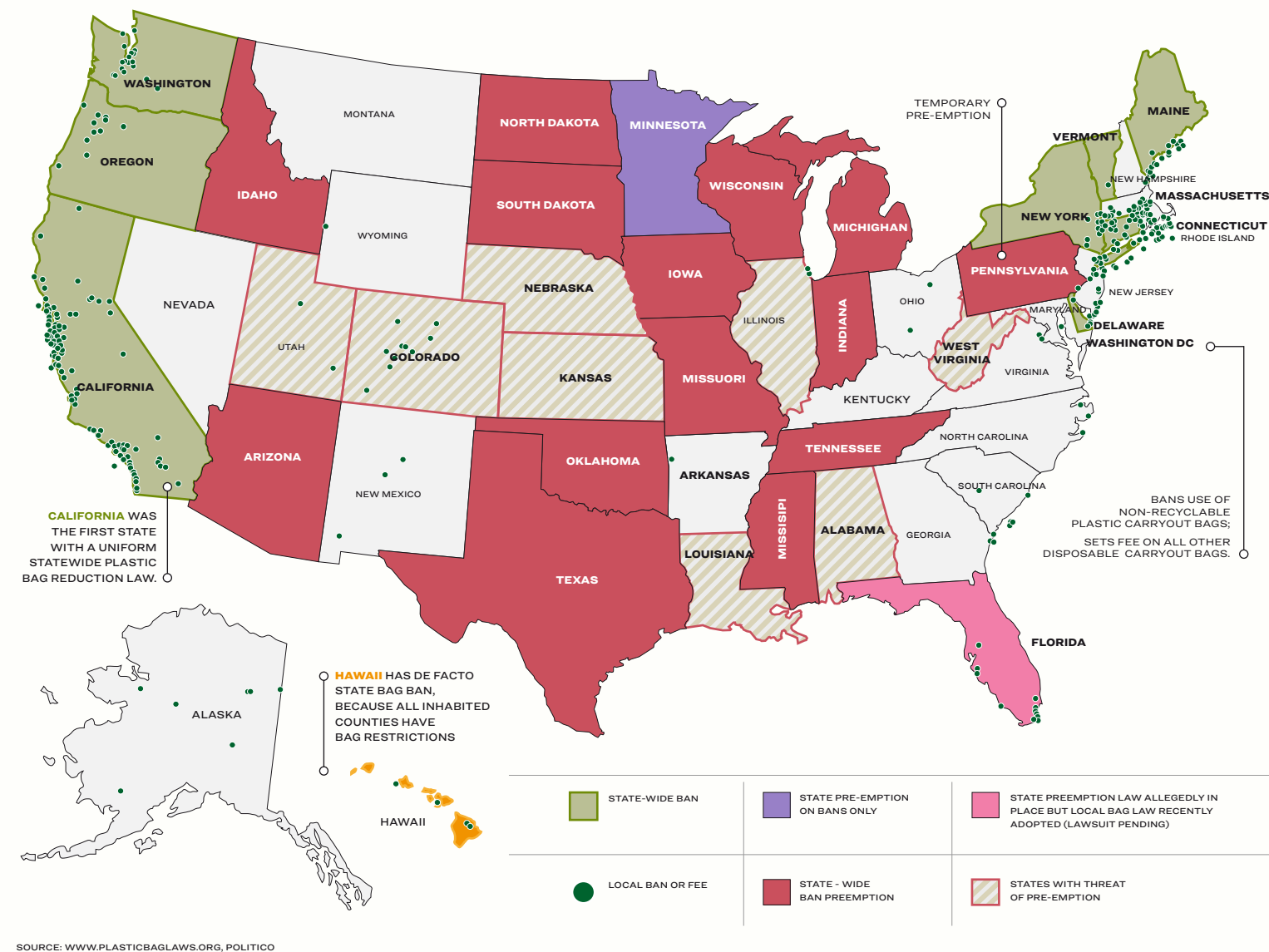


Figure 4.2: Plastic bag bans and pre-emption laws in the US ⁶⁵

At the same time as capitalising on pandemic fear, the industry was doubling down on efforts behind the scenes by lobbying legislators directly. In the midst of the media campaign in March, the Plastic Industry Association wrote to the US Health Secretary, Alex Azar, denouncing reusable bags and urging him to ‘*make a public statement on the health and safety benefits seen in single-use plastics*’⁶⁶ – revealing that, all along, the industry’s goal was not public health but pushing plastics. By capitalising on public fears and skewing scientific facts, the industry achieved reversals of bans on single-use plastic. Several states – Colorado, Illinois, Maryland, Massachusetts, and New Hampshire – have either stopped enforcing their bans or have banned reusables, while several cities (including San Francisco) and retailers also prohibited customers from bringing in reusable bags or cups.⁶⁷

1.1.6. Pre-empting legislation at the national level

Despite the growing waste crisis, little legislation has been proposed at the national level in the US. This changed recently with the introduction of three bills in Congress that aim to address plastic pollution. Two of them are weak, industry-backed bills, while a stronger third

bill has already been heavily attacked by industry groups. This points to a growing trend in federal attention to recycling: action from either federal agencies or Congress is growing increasingly appealing to some in the industry, who are feeling the squeeze from the closure of waste-export markets and falling prices of virgin materials. In addition to these proposals, the EPA drew up plans to establish national recycling goals in 2020 – but these targets are entirely voluntary, like the agency’s existing goal of reducing food waste by 50% by 2030.⁶⁸

1.1.6.1. HR 5115: Realising the Economic Opportunities and Values of Expanding Recycling (RECOVER) Act

This bill has broad support from industry groups – PLASTICS, the ACC, the Association of Plastic Recyclers, the National Waste & Recycling Association, the Solid Waste Management Association of North America and the Sustainable Packaging Coalition all support it. Brands such as PepsiCo and Unilever have also expressed support.⁶⁹

The bill would allocate \$500 million in matching federal funds, aimed at improving various aspects of collection and processing infrastructure, and would establish a recycling infrastructure programme within the EPA, but part of the funds would have to be ringfenced to support incineration. It would require the EPA to submit a progress report to Congress no later than two years after implementation.⁷⁰ Otherwise, the bill neither includes any measurable targets nor addresses the key problem – growing production of single-use plastic.

In April 2020, during the Covid-19 pandemic, the industry wrote a letter to the House Speaker, Nancy Pelosi, asking her to include the RECOVER Act in the next pandemic stimulus bill.⁷¹ The industry group signatories – which increased their request for public funding to \$1 billion – claimed this ‘immediate investment would start to reverse the current trend of landfilling valuable materials’.

1.1.6.2. S. 1982: Save Our Seas 2.0

As with the RECOVER Act, Save Our Seas 2.0 enjoys the support of the ACC, PLASTICS and other associations, like the Grocery Manufacturer Association and the Ocean Conservancy.⁷² It would earmark funds for clean-up efforts and processing technologies meant to reduce the amount of plastic that ends up in waterways. In a letter of opposition, Break Free From Plastic argued: *‘the bill ultimately approaches the issue as one of waste management, not overproduction of plastic, and risks further entrenching the systems that produce plastic rather than dislodging them’*.⁷³

Senator Tom Udall of New Mexico proposed several amendments that would strengthen this bill: adding a national container-deposit requirement, prohibiting certain types of single-use plastic, and preventing the bill from supporting chemical recycling and waste-to-energy.⁷⁴ These amendments were not voted on. The bill passed the Senate unanimously in January 2020, and is currently in the House Subcommittee on Conservation and Forestry.

1.1.6.3. Break Free from Plastic Pollution Act of 2020

On 10 February 2020, Senator Udall and Rep. Alan Lowenthal of California introduced legislation that would create a national EPR programme and a 10-cent container-deposit system for plastics, while also banning certain plastic bags, disposable foodware and straws. The bill also has minimum recycled-content standards for plastic beverage bottles: 25% by 2025, 30% by 2030, 50% by 2035 and 80% by 2040. Requirements for other covered products would be set by the EPA administrator, in coordination with other stakeholders. EPR is also a strong component of the legislation, which *‘aims to shift the large and growing financial burden of cleaning up plastic pollution from state and local governments to the companies that manufacture and sell the products’*.⁷⁵

Senator Udall notes the Act tackles the issue from a new angle, and that past approaches have *‘been mostly supplied by industry, who would rather see taxpayers and the government resolve the issue’*. Rep. Lowenthal said: *‘Save Our Seas 2.0 Act is a good step, but it doesn’t deal with the source of the problem, and it doesn’t put the responsibility on the producers for the financial resources needed for the design and the management of cleaning it up’*.⁷⁶

Thus far, no Republicans have come out in support of the bill; nor has the White House released any statement with regards to it. Rep. Lowenthal said opposition from the plastics industry is expected, but that he also believes there is bipartisan support in Congress for ad-

ressing plastic pollution. Agence France Presse (AFP) reported that the bill *‘has little chance of passage in the Senate where a Republican majority opposes curbs on an industry that generates about \$400 billion in sales and maintains almost a million manufacturing jobs’*. Udall told AFP that, while his bill was unlikely to become law soon, it was intended as a model, *‘so that when we have an administration and a Senate that’s more receptive, that we can get something done’*.⁷⁷

Prior to its introduction, the ACC pushed Save our Seas 2.0 in its official response to the bill, and said banning certain plastics *‘would have the unintended consequences of increasing greenhouse gas emissions and other environmental impacts’*. Upon introduction, the ACC released a press release that stated *‘suggestions, such as a moratorium on new plastic facilities, would limit domestic manufacturing growth, jobs, tax revenues for local communities, and other benefits’*, and argued the bill *‘would lead to increased environmental impacts’*. It also highlighted its existing work, including the Alliance to End Plastic Waste, as an adequate solution.⁷⁸ PLASTICS has also come out against the bill.

1.1.7. Distracting: Blaming the consumer for littering and making them responsible for recycling

End users of packaged goods – citizens – are integral to sustainable material management. Without their participation the material loop cannot be properly closed.

– How2Recycle website (Green and Blue)⁷⁹

No doubt about it, legislation [restricting plastics] is the single most important reason why we are looking at recycling.

– Wayne Pearson, Executive Director of the Plastics Recycling Foundation⁸⁰

The industry has turned to recycling as a convenient way to distract environmentalists and government authorities, offering what seemed to be a solution to the growing waste crisis.

Early on, it founded separate institutions that were in charge of such initiatives – such as the Plastics Recycling Foundation, an initiative that 45 companies (such as Coca-Cola and PepsiCo) formed in the mid-1980s;⁸¹ and the Council for Solid Waste Solution, to promote recycling programmes and infrastructure while also pushing for incineration – as a form of recycling.⁸² Currently, the main industry-funded organisations with similar agendas – to co-ordinate recycling, and the private funding that supports it, while simultaneously supporting communicating to citizens that this is the solution – are the RP, Closed Loop Partners and the Sustainable Packaging Coalition. In addition, the How2Recycle® programme – an initiative to standardise recycling information through labels informing consumers what types of packaging can be recycled – is continuing with its corporate communication to consumers about the recyclability of different products and importance of recycling.

However, a significant amount of evidence, including internal industry documents, points to the fact that the industry knew recycling was a limited solution from the start. The evidence against recycling ranged from the warning that there is no market for recycled plastics to the fact that recycling is not feasible for most multi-material or multi-laminate packages. These facts are still true, but this did not stop the industry coming out with new recycling pledges and initiatives, while at the same time pushing most of responsibility onto consumers and municipal authorities. Early industry documents also show the industry did not feel responsible for plastic pollution in the ocean, concluding that most marine debris (with the exception of resin pellets) is *‘the result of activity by individuals beyond the control of the plastics industry’*.⁸³ To deal with this problem, the industry largely focused on *‘public education encouraging the proper disposal of plastics and other materials as the most effective way to reduce harm to the marine environment’*.⁸⁴

1.1.7.1 A network of organisations, set up by brands to promote recycling - without legislation

Keep America Beautiful (KAB) was founded in 1953 by the packaging and beverage industry. Its focus has been to push the responsibility for waste, litter and recycling away from the companies producing single-use packaging and onto consumers and municipalities. As we have seen, this well-funded organisation initiated a massive media campaign against individuals' littering, rather than exposing corporate responsibility for producing this litter in the first place.⁸⁵ According to Mother Jones, within its first few years, KAB had state-wide anti-litter campaigns either planned or running in 32 states, which shifted the entire debate about America's garbage problem. The focus on regulating production - like the introduction of bottle bills or refillable containers - disappeared, and there was no new legislation on packaging. Instead, the 'litterbug' became the real villain, and individual behaviour was to be regulated by fines and jail time for people who carelessly tossed out litter.⁸⁶

These industry cover groups also constantly invent new tricks. As not everything can be 'recycled', the KAB - in partnership with Dow and the Flexible Packaging Association (FPA) - developed a new feel-good alternative to keep using the single-use plastic: 'The Hefty EnergyBag'.⁸⁷ This was aimed at diverting non-recycled plastics into a separate consumer waste stream and converting this into energy in two cities: Omaha and Nebraska.⁸⁸ But the inconvenient truth of the energy bag is that, far from being recycled, it is simply burned.

Almost 80 years later, KAB's relationship with the industry remains cosy - its director is also the Chief Financial Officer of Dow, another board member is from PepsiCo, and other corporate members and supporters include Coca-Cola, DART, Mars, and Nestlé.⁸⁹ While KAB remains influential, and continues to push its message of consumer responsibility, it now has a sister organisation: The Recycling Partnership (RP). RP describes itself as a 'force for improving recycling'. While acknowledging a problem with recycling in its current form, its focus is not on reducing production of single-use plastic but using technological innovation and investment to scale up the recycling infrastructure. RP's membership includes several companies cited as key sources of ocean plastic pollution: PepsiCo, Colgate-Palmolive, Nestlé, P&G and DART. RP also has close ties to several industry groups representing plastic producers (such as the IBWA), and has board members from the ACC and ABA - key groups in preventing legislative action on plastic across the country.

RP's recent report, *The Bridge to Circularity* - published to support the implementation of pledges made by companies as part of the *EMF New Plastics Economy Global Commitment* - claims 'massive national and industry-wide efforts' will be needed to create a more circular economy for plastics in the US.⁹⁰ The report estimates that, to reach a 25% recycled-content target for PET bottles, brands need an 'additional 1.1 billion pounds of r-PET resin to be recycled and used in bottle-grade r-PET—a three-times increase over the current amount available', which translates into the need for a 27% growth in the US PET recycling rate. Although the report recognises that states with bottle bills have collection rates between 60-90% (as opposed to other states, where PET capture can be as low as 10-15%), it fails to recommend this as a way forward.⁹¹ It says that: 'there is a lack of industry alignment on deposit expansion among the Global Commitment signatories that are most aggressively seeking access to more material', and that the 'expansions of current deposit laws have largely not succeeded and are counterbalanced by political action to eliminate such laws'.⁹² Such opposition, again, puts a big question mark over how genuine the efforts of these organisations are, and points to this being just the latest form of greenwash.

Another recent organisation established by brands is Closed Loop Partners, which was created in 2014 as a \$100 million fund for improvements in kerbside recycling infrastructure, following Walmart's original stakeholder-convening initiative.⁹³ The fund became an investment firm, raising \$700 million in capital to support improvements in recycling. It is supported by Coca-Cola, Colgate-Palmolive, Johnson & Johnson, Keurig Dr Pepper, McDonald's, Nestlé, Nestlé Waters NA, P&G, PepsiCo, Starbucks, Unilever, Walmart, Wendy's and Yum! Brands.⁹⁴ A recent Closed Loop Partners report called for increased investment in chemical recycling, which could unlock 'potential revenue opportunities of \$120 billion', as, in their view, demand for recycled materials outpaces supply.⁹⁵ The answer to why Closed Loop Partners do not promote proven methods for obtaining higher amount of recyclates, like bottle bills, probably lies in its corporate supporters.

According to As You Sow, the cumulative funding of RP and Closed Loop Partners represents only about 7% of what is needed to fix the US recycling system.⁹⁶ Our own analysis shows that many corporations supporting these 'partnership approaches' are in fact lobbying - both openly and behind the scenes - against legislation that would increase recycling and oblige them to invest in infrastructure, whether through producer-responsibility legislation or through expansion or improvement of existing bottle bills.



'We're planting trees for a greater, greener LA'
Credit: Les Stone

Box 4.1: Masters of distraction: Recyclable... or not?

In response to growing public concerns about plastic pollution, many corporations are making high-profile public commitments to make all their products recyclable, reusable or compostable. According to The Intercept, the How2Recycle programme – an initiative by Sustainable Packaging Coalition and NGO GreenBlue – makes some plastic products seem far easier to recycle than they actually are.⁹⁷ The number of brands and retailers in the initiative grew by 45% in 2018, while the number of products carrying the How2Recycle label was growing at the rate of 80 new products daily at the time.⁹⁸

The Intercept reported that the How2Recycle label is now affixed to several products that are all but impossible for many consumers to recycle, including cups, plates, and containers made from plastics #3 to #7, all of which have recycling rates close to zero.⁹⁹ Asked about the ‘guilt-free’ pouch, Kelly Cramer, director of How2Recycle at GreenBlue, responded that the product was not ‘appropriately qualified’ for the label, and said that the organisation would ‘reach out to this company immediately to rectify’.¹⁰⁰ Although How2Recycle provides ‘not recyclable’ as well as ‘recyclable’ labels, it is the member companies’ choice whether to apply them.¹⁰¹ In addition, many labels state that consumers must ‘check locally’ whether packaging can be recycled, which, according to As You Sow, limits the ‘value of the label ... requiring consumers to do additional research to determine if a specific packaging is recycled in their community’.¹⁰²



How2Recycle is not the first attempt to promote different types of plastic as recyclable. The widely used chasing-arrows symbol, and a numbering system identifying different types of plastic resin, was created by the Society of the Plastics Industry in 1988. According to a

Frontline PBS investigation, the plastics industry went around individual states and quietly passed legislation requiring this label to be added to containers.¹⁰³ This – in combination with the word ‘recyclable’, which is also printed on the containers – created the impression that all those types of plastic are actually *being* recycled, despite recyclers being unable to sell or recycle these materials.¹⁰⁴

A recent Greenpeace report investigated the legitimacy of recyclable claims through a comprehensive survey of US collection, sorting and post-consumer plastic-reprocessing facilities.¹⁰⁵ It concluded that only PET #1 and HDPE #2 bottles and jugs, with acceptable shrink sleeves and labels, can be claimed as recyclable in the US, and are recycled at a rate of 18.2% and 9.4% respectively. The many other types of consumer plastic products and packaging are neither recyclable nor legitimately recycled – and, by labelling them as such, companies are exposed to legal, reputational and financial liability risks. For example, plastic wrappers and pouches only have one Material Recovery Facility (MRF) pilot programme that recycles them.¹⁰⁶ On the other hand, the ACC created the Wrap Recycling Action Program (not to be confused with the UK’s WRAP) to raise ‘public awareness to make plastic film – including wraps, bags, and flexible packaging – a commonly recycled material’.¹⁰⁷ Plastic bags are only accepted at 4% of all MRFs, despite the WRAP’s goal to increase recycling to 2 billion pounds by 2020. WRAP prides itself that over 70 million Americans have been exposed to its messaging since 2014,¹⁰⁸ and supports the How2Recycle label, informing consumers to recycle these types of packaging via store drop-offs, or to ‘check locally’.¹⁰⁹ Stores only downcycle these materials, and the industry is misleading the consumer about the ability to recycle wraps and similar materials.

Greenpeace recommends that companies have credible in-house expertise on the local recyclability of their products, and verify the accuracy of labels themselves.¹¹⁰ In addition, they should make direct investments in collection, sorting and proven mechanical reprocessing of the specific type of plastic product.¹¹¹ According to Greenpeace, companies that make unsubstantiated recyclable claims could be liable for misrepresentation.

It will be interesting to observe whether companies’ liability for these claims will be tested in the US courts. The Earth Island Institute recently launched a lawsuit against the biggest plastic polluters – including Coca-Cola, PepsiCo and Nestlé – for their contribution to the plastic pollution crisis, claiming the key aspects of these companies’ misinformation campaign are the ideas that plastic is recyclable, and that recycling is the responsibility of consumer rather than the producer.¹¹²

PLASTIC RESIN IDENTIFICATION CODES



PERCENTAGE OF GLOBAL PLASTIC WASTE, 2015

EASE OF RECYCLING BY TYPE

- EASY
- DIFFICULT
- VERY DIFFICULT



1.1.8. Promoting industry-friendly studies and research

The industry also works through the FPA, which includes nearly all the country's major plastic and plastics-chemical companies, and represents chemical companies and plastic-bag manufacturers that produce thick-plastic packaging products – from bags, Saran™ wrap and bubble wrap to plastic lids.¹¹³ These products are among the most difficult to recycle and the most harmful for the environment.

The FPA has been on the frontline of actively misinforming the public through the release of several life-cycle assessments (LCAs). These studies focus on some of the top sources of discarded, non-recycled or recovered plastic waste – coffee lids, laundry-detergent pods, single-serve juice packages and baby food – and compare them to metal, plastic PET/HDPE on water usage, carbon impact and material to landfill. They mostly come out in favour of flexible plastic, ignoring the fact that flexible packaging is rarely recyclable (instead, they blame lack of consumer participation in collection as the key problem in waste management) and failing to assess the impacts of plastic that ends up in the environment or ocean. And there's another problem – these studies were commissioned to PTIS LLC, itself a packaging consultancy, not an independent or academic institution.¹¹⁴ This conflict of interest is disclosed in neither the case studies nor the accompanying materials.

Industry groups cite the FPA studies and use them to lobby against proposed legislation. When Charleston, South Carolina, was considering a plastic-bag ban in 2015 and 2016, the industry countered with a range of materials, including academic research.¹¹⁵ This included a 2014 study with an LCA of grocery bags, which concluded that bans *'may result in negative impact on the environment rather than positive'*.¹¹⁶ A deeper look by Public Integrity uncovered that Hilex Poly Co. (Novolex's previous name) paid for the research, while, according to Greenpeace research, lead author Robert Kimmel is the director of Clemson's Center for Flexible Packaging, which is funded by membership fees from plastic converters and packaging manufacturers.¹¹⁷

Other groups use similar tactics. In its public messaging, the ACC regularly cites a 2016 study by the firm Trucost¹¹⁸ (owned by the financial firm S&P Global), which it claims shows that *'replacing plastics with alternatives in common packages and consumer products would raise environmental costs nearly fourfold'*. It focuses on the lighter weight and durability of plastics compared to alternatives in industrial use, while downplaying the long-term environmental impacts of single-use plastics. These studies, and their potentially false conclusions, confuse and undermine factual analysis on plastic's true impacts on climate and the environment.

1.1.9. Lobbying through fake environmental groups

In June 2019, a new group was registered in California – Californians for Recycling and Environment (CRE). Behind this seemingly green name was a lot of dirty plastic money. The group, founded by plastic-bag manufacturer Novolex, was led by two Novolex staff members. Its goal was not to promote environmental solutions but rather to fight against efforts to ban plastic, or restrict the production of plastic products, in California. Some environmental organisations believe CRE was formed specifically to fight the California Circular Economy and Pollution Reduction Act (SB54) – a piece of legislation that would impose a comprehensive regulatory scheme on producers, retailers and wholesalers of single-use packaging. The bill's aim is that, by 2030, manufacturers and retailers will achieve a 75% reduction in the waste generated from single-use packaging and products offered for sale or sold in the state through source reduction, recycling or composting. It has garnered fierce opposition from not only CRE but also the ACC and PLASTICS. Thus far, CRE has spent nearly \$1 million dollars opposing EPR legislation in California, including lobbying against SB54.¹¹⁹



1.1.10. Where next for US plastic pollution legislation?

For decades, the American plastics industry has successfully avoided legislation by ploughing millions of dollars into distraction campaigns, putting the blame on consumers for littering, and promoting recycling as a way out of the crisis. The overall rate of recycling has been less than 10%, while the production of plastic has grown exponentially, and a significant amount of new capacity is in the pipeline. The industry has constantly reinvented new organisations that, on the surface, look like a serious attempt to improve recycling infrastructure – but a closer look at what they promote shows excessive reliance on voluntary approaches and false solutions, like chemical recycling, under the guise of innovation. None of these industry-funded organisations has supported proven ways of bringing the plastic crisis under control, like bottle bills, producer responsibility and a greater focus on reuse.

Pre-empting, rather than waiting for, legislation has been another key industry tactic – whether attacking local bag bans or state legislation. We're currently witnessing an attempt at the federal level to pass weak RECOVER and Save our Seas 2.0 acts, which ask for significant sums of public funding, without making the industry accountable for plastic pollution and financially responsible for solving it. The industry is using the Covid-19 health crisis to justify its latest demand for public funds. However, at the same time it is also exploiting public fear to undermine any restrictions on single-use plastics, like bag bans, and to introduce even more single-use plastic in a post-COVID world.

Despite the flurry of voluntary initiatives, consumer brands only cover around 7% of what is needed to fix the US recycling system.¹²⁰ These companies have fought producer-responsibility legislation for decades, and, unlike Europe, no US state has EPR legislation in place for packaging. As we have seen, the industry is also fighting bottle bills, although the recycling rate for beverage containers has stagnated at around 30% for many years – except for the 10 states that have bottle bills, where the rate is between 66% and 96%.¹²¹ Brands' commitments to make their products recyclable and increase the share of recycled content will, once again, dissolve into empty promises without legislation that supports collection and delivers clean materials for recycling.

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