

# When Disabled People Draw the Short Straw: The Disproportionate Impact of Plastic Straw Bans

By: Dev Green

## I. Introduction

Plastic is everywhere.<sup>1</sup> It is durable, economically inexpensive, and adaptive, which makes it the material of choice for manufacturers.<sup>2</sup> Despite the many advantages of plastic, the chemical structure of most plastic makes its degradation extremely slow and, consequently, large amounts of plastic enter and remain in the environment.<sup>3</sup> Humans have thrown away so much plastic that there is now a plastic garbage patch in the Pacific Ocean three times the size of France.<sup>4</sup>

Often, plastic finds its way into bodies of water, where animals can become entangled in plastic and get sick due to plastic ingestion and/or exposure to the chemicals in plastic.<sup>5</sup> Plastic manufacturing and usage are also significant problems for humans because of the potential ingestion of microplastics because through contaminated food and water.<sup>6</sup> Further, despite being economically inexpensive, plastic production is environmentally expensive. As plastic is made from fossil fuels, plastic consumption supports an industry that is the dominant contributor to emissions and climate change.<sup>7</sup> A 2019 study found that if plastic use grows as anticipated,

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<sup>1</sup> *Plastic is Everywhere*, PLASTIC SOUP FOUND. (last visited Jan. 18, 2023), <https://www.plasticsoupfoundation.org/en/>.

<sup>2</sup> *Benefits of Manufacturing Plastic Parts*, KAMBINE (Aug. 7, 2018), <https://kambine.com/recycling/benefits-of-manufacturing-plastic-parts/>.

<sup>3</sup> Zeke Elkins, *Why is it So Hard to Decompose Plastic?*, COLUMBIA DAILY TRIB. (Jan. 7, 2019), <https://www.columbiatribune.com/story/lifestyle/family/2019/01/07/why-is-it-so-hard/984920007/>.

<sup>4</sup> Marian Liu, *Great Pacific Garbage Patch now three times the size of France*, CNN (Mar. 23, 2018), <https://www.cnn.com/2018/03/23/world/plastic-great-pacific-garbage-patch-intl/index.html>

<sup>5</sup> Laura Parker, *Microplastics Are in Our Bodies. How Much Do They Harm Us*, NAT'L GEOGRAPHIC (Apr. 25, 2022), <https://www.nationalgeographic.com/environment/article/microplastics-are-in-our-bodies-how-much-do-they-harm-us>.

<sup>6</sup> *Id.*

<sup>7</sup> Michael Lazarus & Harro van Asselt, *Fossil Fuel Supply and Climate Policy: Exploring the Road Less Taken*, 150 CLIMATIC CHANGE 1, 1 (2018).

greenhouse gas emissions from plastic production could reach 1.34 gigatons per year by 2030, which seriously threatens humans' ability to control global temperature rises.<sup>8</sup> Such increases in global temperature have been linked to deadlier hurricanes, increased flooding, more frequent droughts and wildfires, and more extreme weather generally.<sup>9</sup>

Some countries have begun to act on plastic—in January 2022, the United States Department of Energy announced \$13.4 million in funding for creating more recyclable and biodegradable plastics that would reduce the energy consumption and carbon emissions of single-use plastics.<sup>10</sup> Whether this effort will result in meaningful decreases in plastic consumption remains to be seen, but it does reflect changing attitudes towards plastic.

Among the more controversial reduction efforts are the banning of single-use plastics such as straws in communities worldwide. In 2018, Seattle, Washington became the first major U.S. city to ban plastic straws.<sup>11</sup> That same year, Bon Appétit Management, Starbucks, American Airlines, Hyatt Hotels, and Disney all announced plans to phase out plastic straws.<sup>12</sup> Since then, plastic straw bans have emerged in California, Florida, Massachusetts, Minnesota, New Jersey, New York, Ohio, and South Carolina.<sup>13</sup>

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<sup>8</sup> Lisa Anne Hamilton et al., *Plastic & Climate: The Hidden Costs of a Plastic Planet*, CTR. FOR INT'L ENV'T L. (May 2019), <https://www.ciel.org/wp-content/uploads/2019/05/Plastic-and-Climate-FINAL-2019.pdf>.

<sup>9</sup> Ben Clarke et al., *Extreme Weather Impacts of Climate Change: An Attribution Perspective*, 1 ENV'T RESEARCH: CLIMATE 1, 2 (June 28, 2022).

<sup>10</sup> *U.S. Department of Energy Invests \$13.4 Million to Combat Plastic Waste, Reduce Plastic Industry Emissions*, U.S. DEP'T OF ENERGY (Jan. 11, 2022), <https://www.energy.gov/eere/amo/articles/us-department-energy-invests-134-million-combat-plastic-waste-reduce-plastic>.

<sup>11</sup> Caroline Kassir, *10 Years Out: Have Plastic Straw Bans Saved the World Yet?*, DUKE NICHOLAS SCH. OF THE ENV'T. (Apr. 5, 2021), <https://blogs.nicholas.duke.edu/env212/10-years-out-have-plastic-straw-bans-saved-the-world-yet-by-caroline-kassir/>

<sup>12</sup> *Id.*

<sup>13</sup> Karuna Rana, *Plasticless: A Comparative Life-Cycle, Socio-Economic, and Policy Analysis of Alternatives to Plastic Straws*, MICH. TECH. UNIV. (2020), <https://digitalcommons.mtu.edu/cgi/viewcontent.cgi?article=2178&context=etdr>.

While environmentalists have defended plastic straw bans<sup>14</sup>, such policies have had many severe consequences, especially for disabled people.<sup>15</sup> For many people living with disabilities, the decision to use plastic straws is not a matter of convenience but necessity.<sup>16</sup> When exploring efforts to protect the environment, it is vital to consider those efforts' potential implications for people who are already marginalized by society. According to the Center for Disease Control, one in four adults in the United States have some type of disability, with the highest percentage being people with mobility issues.<sup>17</sup> This paper will examine the potential effects of plastic straw bans on people living with disabilities and the importance of balancing the needs of disabled people with the need for environmental protections.

## II. Grasping for Straws

For individuals with mobility and strength issues, lifting cups to drink from can be an impossible task.<sup>18</sup> In addition, people with upper extremity amputations and replantations often still have major impacts on their arms' functionality.<sup>19</sup> As such, many disabled people rely on straws to achieve one of their most basic needs.<sup>20</sup> Popular alternatives to plastic straws have included acrylic, bamboo, glass, metal, paper, pasta, and silicone,<sup>21</sup> but these alternatives come with their own issues, including choking hazards, injury risks, cost, allergy risks, sanitation risks,

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<sup>14</sup> See Brenna Houck, *Why the World is Hating on Plastic Straws Right Now*, EATER (July 12, 2018), <https://www.eater.com/2018/7/12/17555880/plastic-straws-environment-pollution-banned-alternatives-ocean-sea-turtle-viral-video>.

<sup>15</sup> Alice Wong, *The Last Straw*, EATER (July 19, 2018), <https://www.eater.com/2018/7/19/17586742/plastic-straw-ban-disabilities>.

<sup>16</sup> See *id.*

<sup>17</sup> CDC: *1 in 4 US Adults Live with a Disability*, CTR. FOR DISEASE CONTROL & PREVENTION (Aug. 16, 2018), <https://www.cdc.gov/media/releases/2018/p0816-disability.html>.

<sup>18</sup> S.E. Smith, *Banning Straws Might Be a Win for Environmentalists. But it Ignores Us Disabled People*, VOX (July 19, 2018), <https://www.vox.com/first-person/2018/7/19/17587676/straws-plastic-ban-disability>.

<sup>19</sup> Georg Mattiassich, et. al., *Long-Term Outcome Following Upper Extremity Replantation After Major Traumatic Amputation*, BIOMED CENT. (Feb. 10, 2017), [https://bmcmusculoskeletdisord.biomedcentral.com/articles/10.1186/s12891-017-1442-3#auth-G\\_-Mattiassich](https://bmcmusculoskeletdisord.biomedcentral.com/articles/10.1186/s12891-017-1442-3#auth-G_-Mattiassich)

<sup>20</sup> *Id.*

<sup>21</sup> Rana, *supra* note 14.

temperature safety, and inflexibility.<sup>22</sup> Some companies including Starbucks have introduced lids that are designed to eliminate the need for straws.<sup>23</sup> However, these lids require the user to be able to lift the cup, which many disabled people cannot do.<sup>24</sup>

Plastic straw bans often fail to consider the history of plastic straws. In 1937, inventor Joseph Friedman was awarded a patent for a “drinking tube” with a flexible neck.<sup>25</sup> These flexible straws were first sold to hospitals.<sup>26</sup> An advertisement illustrating the use of flexible drinking straws in hospitals and sick rooms states that they bend to different positions to accommodate people in hospital beds, decrease the risk of infectious diseases, and eliminate the danger to people with epilepsy posed by glass straws due to seizures and spasms.<sup>27</sup> Since their invention, plastic straws have been much more than just a convenience.<sup>28</sup>

Some environmental activists have argued that people with disabilities should simply bring their own straws to establishments.<sup>29</sup> Plastic straws cost about 2 cents per straw.<sup>30</sup> While this may seem minimal, for many disabled people, every dollar counts. Under section 14(c) of the Fair Labor Standards Act, businesses that hold a special wage certificate from the Wage and

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<sup>22</sup> Andrew Jenkins & Kelsey Obringer, *The Poverty of Plastics Bans: Environmentalism's Win is a Loss For Disabled People*, CRITICAL SOC. POL'Y (Aug. 19, 2019), <https://journals.sagepub.com/doi/full/10.1177/0261018319868362>.

<sup>23</sup> *Starbucks Strawless Lids Now Available Across the U.S. and Canada*, STARBUCKS STORIES & NEWS (Sep. 10, 2020), <https://stories.starbucks.com/press/2020/starbucks-strawless-lids-now-available-across-the-u-s-and-canada/>.

<sup>24</sup> Isaac T. Caverly, *Water, Water Everywhere, but Not a Straw to Drink: How the Americans with Disabilities Act Serves as a Limitation on Plastic Straw Bans*, 105 IOWA L. REV. 369, 385 (2019), <https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-1-Caverly.pdf>.

<sup>25</sup> U.S. Patent No. 2,094,268 (filed Nov. 7, 1936).

<sup>26</sup> Alice Wong, *The Rise and Fall of the Plastic Straw: Sucking in Crip Defiance*, GALE ACADEMIC ONEFILE (2019), <https://go.gale.com/ps/i.do?id=GALE%7CA584600234&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=23803312&p=AONE&sw=w&userGroupName=anon%7E5c91a11c>.

<sup>27</sup> Chris Broda-Bahm, *The Straight Truth About the Flexible Drinking Straw*, LEMELSON CTR. FOR THE STUDY OF INVENTION & INNOVATION (June 1, 2002), <https://invention.si.edu/straight-truth-about-flexible-drinking-straw>.

<sup>28</sup> *See id.*

<sup>29</sup> *How a Ban on Plastic Straws Hurts the Disabled*. DISABLED EXPERTS OF FLA. (July 19, 2018), <https://www.disabilityexpertsfl.com/blog/plastic-straw-bans-what-it-means-for-the-disabled>.

<sup>30</sup> *Paper or Plastic? Why the Answer Should Be “Neither.”* CLEAN WATER ACTION. (June 25, 2018), <https://cleanwater.org/2018/06/25/paper-or-plastic-why-answer-should-be-neither>

Hour Division are permitted to pay disabled employees well below the federal minimum wage.<sup>31</sup> Currently, there is no wage floor under this act.<sup>32</sup> In part because of policies like these, disabled people are significantly poorer than non-disabled people.<sup>33</sup>

Further, there are several extra direct costs associated with being disabled.<sup>34</sup> People with disabilities incur more than twice the out-of-pocket costs for personal assistance services and healthcare, which are two of the biggest direct expenses.<sup>35</sup> Further, there are costs associated with the cost of ordering things when the in-person pickup option is not accessible, building wheelchair ramps, getting and taking care of service animals, buying more expensive cars to accommodate wheelchairs, buying food for special diets, or paying more for housing in order to find a place that is accessible and convenient.<sup>36</sup> Compounding this is the fact that poverty often begets more poverty; disabled people in low-income neighborhoods may pay more for food because they live in a food desert.<sup>37</sup> With the mounting costs associated with disabilities, asking disabled people to take on yet another cost can be untenable.

Not only would asking disabled people to bring their own straw place an additional cost on an already disadvantaged community, but this argument also fails to realize that this

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<sup>31</sup> *Fact Sheet #39: The Employment of Workers with Disabilities at Subminimum Wages*, U.S. DEP'T OF LABOR (July 2008), [https://www.dol.gov/agencies/whd/fact-sheets/39-14c-subminimum-wage#:~:text=Section%2014\(c\)%20of%20the%20FLSA%20authorizes%20employers%2C%20after,for%20the%20work%20being%20performed.](https://www.dol.gov/agencies/whd/fact-sheets/39-14c-subminimum-wage#:~:text=Section%2014(c)%20of%20the%20FLSA%20authorizes%20employers%2C%20after,for%20the%20work%20being%20performed.)

<sup>32</sup> Anil Lewis, *Seventy-Five Years of the Fair Labor Standards Act and People with Disabilities Have No Reason to Celebrate*, NAT'L FED'N OF THE BLIND (Jan. 2014), <https://nfb.org/sites/default/files/images/nfb/publications/bm/bm14/bm1401/bm140106.htm>.

<sup>33</sup> *Disability & Socioeconomic Status*, AM. PSYCH. ASS'N (2010), <https://www.apa.org/pi/ses/resources/publications/disability>.

<sup>34</sup> Nannette Goodman, et. al., *The Extra Costs of Living with a Disability in the U.S. – Resetting the Policy Table*, NAT'L DISABILITY INST (Oct. 2020), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2020/10/extra-costs-living-with-disability-brief.pdf>

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Michele Ver Ploeg, *Access to Affordable, Nutritious Food is Limited in “Food Deserts,”* U.S. DEP'T OF AGRIC. (Mar. 1, 2010), <https://www.ers.usda.gov/amber-waves/2010/march/access-to-affordable-nutritious-food-is-limited-in-food-deserts/>.

conversation is not simply about straws; it is about people with disabilities yet again being forgotten and being forced to live in an inaccessible world.<sup>38</sup> Plastic straw bans are just one of many examples of how policies can harm or further isolate people.<sup>39</sup> Until just under 50 years ago, several U.S. cities had laws preventing people who were “diseased, maimed, mutilated, or in any way deformed, so as to be an unsightly or disgusting object” from appearing in public.<sup>40</sup> While these laws have since been repealed, disabled people still face countless barriers in society. The argument that people with disabilities should bring their own plastic straws to establishments yet again places the burden on disabled people to overcome structural barriers that they did not create.

Environmental and disability advocacy groups should come together to think of more impactful and inclusive ways of improving the environment. The Global Greengrants Fund is one organization bridging this gap by funding people with disabilities who are working to promote environmental justice.<sup>41</sup> Some of the ways this work is done is by encouraging consultation with people with disabilities, creating accessible information for people with disabilities to learn about and engage in decisions about environmental policy, and funding activist groups founded and led by people with disabilities.<sup>42</sup>

The irony of plastic straw bans is that, according to United Nations research, straws only represent 0.025% of the total volume of marine litter.<sup>43</sup> In contrast, abandoned, lost, or discarded

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<sup>38</sup> See Wong, *supra* note 17.

<sup>39</sup> See e.g. Ruth Colker, *Universal Design: Stop Banning Laptops!*, 39 CARDOZO L. REV. 483, 491 (2017), (describing the harmful effects of laptop bans on individuals with disabilities).

<sup>40</sup> Robert Wilson & Susan Schweik, *Ugly Laws*, EUGENICS ARCHIVES (2015), <https://philpapers.org/rec/SCHUL>.

<sup>41</sup> *Persons with Disabilities and the Environment*, GLOBAL GREENGRANTS FUND,

[https://www.greengrants.org/meettheactivists/disabilities\\_and\\_environment/](https://www.greengrants.org/meettheactivists/disabilities_and_environment/).

<sup>42</sup> *Id.*

<sup>43</sup> *Latin America Wakes Up to the Problem of Plastic Straws*, UNITED NATIONS ENV'T PROGRAMME (Aug. 29, 2018), <https://www.unep.org/news-and-stories/story/latin-america-wakes-problem-plastic-straws>.

fishing gear (also known as “ghost gear”) is estimated to make up 10% of the plastic waste in our oceans.<sup>44</sup> While a viral video of a sea turtle with a plastic straw stuck in its nose garnered widespread attention to the issue of plastic straw pollution,<sup>45</sup> the statistics show that the problem of plastic waste extends far beyond that. Around 300 sea turtles were found dead and entangled in a ghost fishing net in Mexican waters in 2018.<sup>46</sup> A crackdown on the activities of fishers would substantially curb the prevalence of plastic in the ocean without putting disabled people in the crossfire. While some may argue that cracking down on fishers would raise the price of seafood, there may be ways to mitigate the potential impact on the affordability of seafood, such as providing economic incentives to fishermen who report lost gear.

### III. In the Courts

Litigation involving different kinds of single-use plastic has increased dramatically in the past decade.<sup>47</sup> This increase is in line with the substantial increase in plastic production and an increase in concern over sustainability, climate change, and health risks.<sup>48</sup> Much of this litigation is brought by plastic product manufacturers and retailers challenging restrictions on plastic use and distribution.<sup>49</sup> For example, in *Poly-Pak Indus., Inc. v. New York*, the plaintiffs argued that New York’s Bag Reduction Act was unconstitutional.<sup>50</sup> This Act bans certain establishments from distributing plastic carry out bags.<sup>51</sup> While certain parts of the Act were held to be invalid,

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<sup>44</sup> Karli Thomas, Cat Dorey, & Farah Obaidullah, *Ghost Gear: The Abandoned Fishing Nets Haunting Our Waters*, GREENPEACE GERMANY 5 (Nov. 2019). [https://www.greenpeace.org/static/planet4-international-stateless/2019/11/8f290a4f-ghostgearfishingreport2019\\_greenpeace.pdf](https://www.greenpeace.org/static/planet4-international-stateless/2019/11/8f290a4f-ghostgearfishingreport2019_greenpeace.pdf).

<sup>45</sup> Heidi Cuda & Elizabeth Glazner, *The Turtle That Became the Anti-Plastic Straw Poster Child*, PLASTIC POLLUTION COAL. (Nov. 11, 2015). <https://www.plasticpollutioncoalition.org/blog/2015/10/27/the-turtle-that-became-the-anti-plastic-straw-poster-child>

<sup>46</sup> Thomas, *supra* note 38.

<sup>47</sup> Connor Fraser, *Plastics in the Courtroom: The Evolution of Plastics Litigation*, STATE IMPACT CTR. (July 15, 2022), <https://stateimpactcenter.org/insights/plastics-in-the-courtroom-the-evolution-of-plastics-litigation>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Poly-Pak Indus., Inc. v. New York*, No. 902673-20 (N.Y. Sup. Ct., Albany Cnty, Aug. 20, 2020).

<sup>51</sup> *Id.*

the overall ban was upheld in New York's trial court.<sup>52</sup> Because this case was decided in the trial court, it is not binding on future cases. However, the New York Department of Environmental Conservation sees this ruling as a victory in the effort to end the problem of plastic pollution and a criticism of the plastic industry.<sup>53</sup>

There has also been a fair amount of litigation from environmental advocacy organizations brought against alleged violators of plastic bans.<sup>54</sup> For example, in June 2022, the organization Last Beach Cleanup filed two lawsuits against retailers Gelson's Market and Stater Brothers for allegedly selling non-recyclable plastic bags to California consumers.<sup>55</sup> This practice is a violation of California Senate Bill 270, which prohibits retailers from providing single-use carryout bags to customers.<sup>56</sup> As of October 2022, both lawsuits are still pending in the Superior Court of the State of California for the County of Los Angeles, but the outcome could have significant ramifications.<sup>57</sup> If the lawsuits are decided in favor of Last Beach Cleanup, it will set a precedent that these bans can and will be enforced, creating an incentive for retailers to comply or face litigation. If the lawsuits are decided in favor of the retailers, this will likely lead to other retailers continuing to provide single-use plastic carryout bags to customers.

These lawsuits are not just popping up in the United States. The Responsible Use Coalition—a coalition of over two dozen North American plastics companies—has filed a lawsuit asking the Canadian Federal Court to put an end to Ottawa's plan to ban several single-

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<sup>52</sup> *Id.*

<sup>53</sup> Lisa Whitley Coleman, *New York Ruling Upholds State's Plastic Bag Ban*, EHS DAILY ADVISOR (Sep. 4, 2020), <https://ehsdailyadvisor.blr.com/2020/09/new-york-ruling-upholds-states-plastic-bag-ban/>

<sup>54</sup> Fraser, *supra* note 59.

<sup>55</sup> Sarah Ethington, *Environmental Advocacy Group Files Two Lawsuits Against California Retailers for Selling Non-Recyclable Plastic Bags*, JURIST (June 6, 2022), <https://www.jurist.org/news/2022/06/environmental-advocacy-group-files-two-lawsuits-against-california-retailers-for-selling-non-recyclable-plastic-bags/>.

<sup>56</sup> Sen. Bill 270, 2013-2014 Reg. Sess., ch. 850, 2014 Cal. Stat. [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140SB270](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB270).

<sup>57</sup> *Plastics Litigation Tracker*, STATE ENERGY & ENV'T IMPACT CTR. (Oct. 3, 2022), <https://plasticslitigationtracker.org/>

use plastic items.<sup>58</sup> This coalition also filed suit to overturn the government’s decision to designate plastics as “toxic” under the Canadian Environmental Protection Act.<sup>59</sup> As bans on single-use plastics are emerging in areas around the world, areas that are also be home to disabled people,<sup>60</sup> it is important to approach plastic bans and the interplay with disability advocacy with a global mindset.

It is important to note that many brands, such as Unilever and Proctor & Gamble, have been intentional about making their plastic packaging accessible to disabled people.<sup>61</sup> Kao Corporation, for example, introduced tactile markings to its shampoo ranges in Japan, and P&G designed a laundry capsule box “with inclusivity in mind.”<sup>62</sup> While it is worth acknowledging the likely profit motive behind these practices, it still demonstrates a desire for plastic producers to work with disability advocates. There may be room for these collaborations to also include solutions to single-use plastic pollution.

#### **IV. In the Tar Heel State**

Bills addressing single-use plastic have been introduced in both chambers of the North Carolina General Assembly to ban single-use and non-recyclable materials.<sup>63</sup> Specifically, Senate Bill 451 and House Bill 959 were introduced in the 2021-2022 session and would forbid restaurants from using plastic containers and plastic utensils, including straws, unless they are

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<sup>58</sup> *Plastic Manufacturers File Lawsuit to Block Planned Federal Ban on Single-use Plastics*, CAN. PLASTICS (Aug. 11, 2022), <https://www.canplastics.com/canplastics/plastic-manufacturers-file-lawsuit-to-block-planned-federal-ban-on-single-use-plastics/1003459259/>.

<sup>59</sup> *Id.*

<sup>60</sup> *Factsheet on Persons with Disabilities*, UNITED NATIONS, <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html>.

<sup>61</sup> Hannah Cole, *How Can the Packaging Industry Engage with Disability-led Design?*, PACKAGING EUROPE (Sep. 9, 2022), <https://packagingeurope.com/comment/how-can-the-packaging-industry-engage-with-disability-led-design/8713.article>.

<sup>62</sup> *Id.*

<sup>63</sup> *Pass a Plastic Reduction Bill in North Carolina*, MOUNTAINTRUE, <https://mountaintrue.org/pass-a-plastic-reduction-bill-in-north-carolina/>.

reusable or compostable.<sup>64</sup> If passed, these bills would have helped reduce the amount of plastic in North Carolina's environment, but these bills both died in committee in 2021.<sup>65</sup> While these bills will not become law for the 2021-2022 session, they may signal efforts in the North Carolina state legislature to curb plastic straw use. Since these bills did not become law, there are currently no mandated plastic straw bans in the state of North Carolina. However, in 2018, many restaurants and businesses such as The Carolina Inn in Chapel Hill have taken the initiative to make plastic straws only available by request.<sup>66</sup> The Carol Woods Retirement Community in Chapel Hill and the Outer Banks Brewing Station in Kill Devil Hills also started the process of gradually eliminating plastic straws and seeking substitute options in 2018.<sup>67</sup>

While there have not been bans on plastic straws specifically, in September 2009, disposable plastic shopping bags were banned from large retailers in the Outer Banks.<sup>68</sup> The ban was popular locally, but the North Carolina Retail Merchants Association ("NCRMA") spent \$265,500 lobbying against the ban, saying that it burdened business owners to pay more for paper bags.<sup>69</sup> Many members of the General Assembly also expressed a long-standing desire to

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<sup>64</sup> H.B. 959, 2021 Sess. (N.C. 2021).

<sup>65</sup> Will Atwater, *Environmentalists Say Policies Limiting Single-use Plastics are Necessary to Curb NC's Growing Microplastics Problem*, NC HEALTH NEWS (Aug. 9, 2022), <https://www.northcarolinahealthnews.org/2022/08/09/environmentalists-say-policies-limiting-singl-plastics-are-necessary-to-curb-ncs-growing-microplastics-problem/>.

<sup>66</sup> Claudia Rupich, *Chapel Hill Inn the Latest to Ban Plastic Straws*, WRAL NEWS (Aug. 13, 2018), <https://www.wral.com/chapel-hill-inn-the-latest-to-ban-plastic-straws/17765557/>.

<sup>67</sup> Rebecca Martinez, *Some NC Bars and Businesses Say Goodbye to Plastic Straws*, NORTH CAROLINA PUBLIC RADIO (July 26, 2018), <https://www.wunc.org/environment/2018-07-26/some-nc-bars-and-businesses-say-goodbye-to-plastic-straws>.

<sup>68</sup> *Update On Plastic Bag Ban in North Carolina's Outer Banks*, FACTORY DIRECT PROMOS, <https://www.factorydirectpromos.com/blog/update-on-plastic-bag-bans-in-north-carolinas-outer-banks/#:~:text=History%20of%20Plastic%20Bag%20Bans%20in%20the%20Outer%20Banks&text=Litter%20mars%20the%20natural%20beauty,on%20the%20delicate%20coastal%20ecosystem>.

<sup>69</sup> Brian Gordon, *Nowlin Discusses Community Efforts to Reduce Consumers' Use of Disposable Bags and Possible Legal Challenges by the State*, DUKE L. (Jan. 20, 2022), <https://law.duke.edu/news/nowlin-discusses-community-efforts-reduce-consumers-use-disposable-bags-and-possible-legal/#:~:text=In%202009%2C%20the%20Outer%20Banks,ban%20single%2Duse%20plastic%20bags>.

remove regulations for business that they deemed non-beneficial.<sup>70</sup> As such, in 2017, the Outer Banks plastic bag ban was overturned, and no ban has replaced it.<sup>71</sup>

On the other side of the state, the Asheville City Council unanimously voted in October 2022 to ban plastic bags for curbside trash collection and to initiate public engagement around further restrictions on plastic grocery bags at the point of sale.<sup>72</sup> In February 2023, the Asheville City Council is expected to gather feedback about an ordinance that would ban the use of plastic bags and Styrofoam containers by grocery stores, restaurants, and retailers.<sup>73</sup> The NCRMA is already pushing back on these efforts, calling it an overreach of authority.<sup>74</sup>

Notably, in North Carolina, bans on plastic seem to be a partisan issue. When HB 56, the bill to repeal the Outer Banks' plastic ban, came up in the General Assembly in 2017, only one Democrat supported it.<sup>75</sup> Democratic Governor Roy Cooper vetoed the bill, but Republicans had the votes to override his veto.<sup>76</sup> The effort to overturn the veto had the support of the NCRMA as well as several conservative-leaning statewide groups.<sup>77</sup> Whether a statewide plastic straw ban will ever go into effect in the state appears to depend largely on party control of the General Assembly.

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<sup>70</sup> *NC Retail Merchants Supports Repeal of Plastic Bag Ban*, NC RETAIL MERCHANTS ASS'N (Mar. 9, 2017), <https://ncrma.org/nc-retail-merchants-supports-repeal-plastic-bag-ban/>

<sup>71</sup> *Id.*

<sup>72</sup> Kristy Kepley-Steward, *First Phase of Plastic Bag Regulation Approved by City Council*, WLOS (Oct. 12, 2022), <https://wlos.com/news/local/first-phase-of-plastic-bag-regulation-ban-approved-city-council-asheville-code-curbside-leaf-litter-collection>.

<sup>73</sup> *Id.*

<sup>74</sup> Andrew James, *'Overreach:' NC Retail Group Questions Asheville's Authority to Ban Plastic Bags*, WLOS (Oct. 10, 2022), <https://wlos.com/news/local/overreach-by-the-city-of-asheville-north-carolina-retail-merchants-association-questions-citys-authority-to-ban-plastic-bags>.

<sup>75</sup> Brian Gordon, *Plastic Bag Bans and Fees Pit NC Communities Against the General Assembly*, THE FAYETTEVILLE OBSERVER (Jan. 18, 2022), <https://www.fayobserver.com/story/news/2022/01/18/nc-plastic-bag-ban-fee-general-assembly-local-governments/9107322002/>.

<sup>76</sup> *Id.*

<sup>77</sup> *Gov. Cooper Vetoes Bill That Includes Plastic Bag Ban Repeal*, THE OUTER BANKS VOICE (Sep. 21, 2017), <https://www.outerbanksvoice.com/2017/09/21/gov-cooper-vetoes-bill-that-includes-plastic-bag-ban-repeal/>.

## **V. Conclusion**

Protecting the planet by reducing plastic waste is an incredibly worthy goal. However, in order to avoid unintended consequences to vulnerable populations, it will require intentionality to create solutions that are beneficial for all. Any meaningful solution requires representation by impacted communities as a starting point. This could look many different ways including pressuring corporations to develop alternatives through petitions and investor pressure asking for funding from investors, raising awareness on social media, and encouraging environmental advocacy groups to consult with people with disabilities. Because plastic bans in North Carolina appear to be a partisan issue, there may be an opportunity to listen to people with disabilities and environmental advocates on both sides of the aisle to create meaningful solutions.

Implementing meaningful change is challenging. As such, solutions can potentially be detrimental to communities that have been silenced and forgotten, such as disabled people. While bans on plastic straws are too complex to generally be in favor of or against, it is imperative to remember the impacts that they can have on marginalized communities such as the disabled community and take measurable action to reduce or eliminate such adverse impacts.