Defending and Advancing Climate Justice Policies

A comprehensive and deep analysis by state and national policy experts of pathways for action.

January, 2025

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Acknowledgments and Background

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We are grateful to the funders who supported our staff's work in coordinating, compiling, and distributing this document, organizing educational programs, creating communications content, and facilitating collaboration. Their commitment to equity and justice, along with their willingness to amplify the voices and solutions of impacted communities, made this scenario planning possible. Funding was provided by Breakthrough Energy Foundation, The Heising-Simons Foundation, The Kresge Foundation, and The William and Flora Hewlett Foundation.

Because this document is a compilation, the full content may not reflect the contributors' or funders' opinions or positions.

Statement of Purpose

We are in a historic moment with significant and unprecedented federal commitments to addressing climate change and environmental injustice. Following the 2024 presidential election, it is critical that state and national organizations understand and prepare for the change in Presidential administration and control of Congress, which could escalate threats to our democracy and severely undercut or reverse investments and progress toward addressing climate change made to date.

The implementation of major legislation like the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA), along with much-needed updates to regulatory protections that protect human health and the environment, exemplify the Biden Administration's progress towards meaningful climate action. These massive investments and efforts have shown how critical the leadership of equity and justice organizations and coalitions are to achieving climate justice policy goals while simultaneously securing transformational and lasting benefits for frontline and Indigenous communities, including increased economic well-being, better health, broader opportunities, and Indigenous and racial justice.

Because climate change threatens the core foundations of typically marginalized communities, particularly Indigenous Peoples, Black, Brown, and other People of Color, as well as low-income communities—communities that have also been subject to the cumulative impacts of economic, social, and racial injustices—this collaborative effort aims to broaden the conversation and commitment to advancing the best environmental and climate justice solutions by centering and protecting the interests and needs of these communities. By working with policy experts from multiple sectors, integrating related issues, and incorporating diverse perspectives, we can mitigate harms from the worst threats to environmental and climate justice posed by the Trump Administration, while collectively building the political power necessary to protect gains and to advance the climate solutions still needed.

This document brings together the best thinking of multiple collaborators based on experience working with the community, Indigenous Peoples, seasoned advocacy, and content expertise. It consolidates and organizes the policy landscape in the aftermath of the 2024 presidential election, highlighting viable policy pathways to advance the cause of environmental and climate justice in the broader context of a federal government that will be collectively geared towards opposing that cause. We hope this collaborative effort is part of creating a next-generation vision and comprehensive policy agenda that connects and engages a broad array of people and organizations to transform our political landscape and advance just solutions.

Methods

This collaborative effort brought together leading policy experts from national and state environmental, climate, racial, economic, public health, housing, Indigenous Peoples, and immigrant justice organizations to compile policy solutions with the most potential impact on climate change. The content was created through co-learning working groups, interviews with policy partners and leaders, legal advice, and other means. This deep and far-reaching body of experts shared their innovative ideas, existing priorities, and strategic policy insights.

Over seven months, we created this document for the use of participating organizations to share with their members, allies, and other key stakeholders to review and consider as they develop their federal agendas and pathways for action. This is not a campaign platform or a prioritized list of solutions. Instead, it is a compilation of possible pathways to fix current federal policy, advance additional solutions, or defend against attacks from either a hostile administration or Congress.

Acronyms

BRIC ..... Building Resilient Infrastructure and Communities Program

CCS ..... Carbon Capture and Storage

CEJST..... Climate and Economic Justice Screening Tool

CEQ..... Council on Environmental Quality

DOE ..... U.S. Department of Energy

DOI ..... U.S. Department of the Interior

DOJ ..... U.S. Department of Justice

EPA..... U.S. Environmental Protection Agency

EJ ..... Environmental Justice

FEMA ..... Federal Emergency Management Agency

FERC..... Federal Energy Regulatory Commission

FHFA ..... Federal Housing Finance Agency

GAO..... Government Accountability Office

GGRF ..... Greenhouse Gas Reduction Fund

HHS..... U.S. Department of Health and Human Services

HUD ..... U.S. Department of Housing and Urban Development

IIJA ..... Infrastructure Investment and Jobs Act

IRA ..... Inflation Reduction Act

IRS ..... Internal Revenue Service

ITEK ..... Indigenous Traditional Ecological Knowledge

J40 ..... Justice40 Initiative

LIHEAP ..... Low Income Home Energy Assistance Program

LNG..... Liquified Natural Gas

NEPA..... National Environmental Policy Act

OIRA ..... Office of Information and Regulatory Affairs

OMB..... Office of Management and Budget

PFAS ..... Per- and Polyfluoroalkyl Substances

USDA ..... U.S. Department of Agriculture

Introduction

Environmental and climate justice achievements over the past four years have included historic investments made through the Infrastructure Investment and Jobs Act (IIJA) of 2021 and the Inflation Reduction Act (IRA) of 2022. In principle, if not always in practice, these laws address climate change by reducing greenhouse gas (GHG) emissions, advancing equity, and improving community resilience and adaptation. Although they have received less attention, the Biden Administration's updated rules implementing foundational environmental protection laws, such as the Clean Air Act, Clean Water Act, and Safe Drinking Water Act, are poised to protect Americans from a wide variety of health-harming pollutants, as well as the effects of climate change. Additionally, executive orders issued by the Biden Administration have, for the first time, set goals within the federal government for a more equitable distribution of the benefits of investments to frontline and disadvantaged communities across the country. These goals have been set in conjunction with the Biden Administration's broader efforts to expand and strengthen opportunities for public and community engagement within various types of federal regulatory processes. More than ever before, environmental and climate justice voices have been engaged in the consideration and implementation of policy and practice; but more remains to be done. Of notable importance is the Administration's Executive Memorandum that recognizes and calls for the inclusion of Indigenous Traditional Ecological Knowledge (ITEK) across federal agencies, "ensuring that Federal agencies conduct regular, meaningful, and robust consultation with Tribal officials in the development of federal research, policies, and decisions, especially decisions that may affect Tribal Nations and the people they represent."[1]

While it is clear that IIJA and IRA—and improved commitment to this Nation's Indigenous Peoples—are major steps forward in the efforts to improve our climate and infrastructure, these and other of the Biden Administration's environmental justice achievements require vigilant defense and strategic advocacy to ensure equitable inclusion and lasting benefits for frontline communities, especially Indigenous Peoples, Black, Brown, and other People of Color, and low-income communities who are disproportionately affected by the climate crisis. The upcoming return of President Donald Trump to the White House presents a serious danger to the future of environmental and climate justice in the United States.

The first part of this report aims to illuminate the potential threats to environmental and climate justice under the second Trump Administration. This analysis draws on the first Trump Administration's record, Trump campaign rhetoric and official promises, as well as recommendations from Project 2025, the nominally independent "Presidential Transition Project" coordinated by the Heritage Foundation, an influential conservative think tank.[2] A range of potential rollbacks and policy shifts are anticipated, including: cuts to environmental justice grant programs, weakening of the Clean Air Act, the further erosion of federal civil rights protections, and increased support for fossil fuels. The second part of this report highlights examples of actions that can be taken to mitigate the harm from these threats through equitable environmental and climate justice policies advanced at the state and local levels, in addition to strategic actions taken through the courts and via Congressional oversight. This compilation is not intended to be comprehensive, nor are the examples provided universally applicable, but they are presented with the hope that they spark further innovation and action that promotes environmental and climate justice.

1 Office of Science and Technology Policy, Memorandum for the Heads of Departments and Agencies re: Indigenous Traditional Ecological Knowledge and Federal Decision Making, November 15, 2021.

2 Project 2025 Presidential Transition Project (Project 2025), "The Mandate for Leadership: The Conservative Promise," The Heritage Foundation, 2023.

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Predominant Threats to Environmental and Climate Justice

This section is intended to provide a clear perspective of the threats to environmental and climate justice that are likely to manifest in light of the 2024 presidential election result, which has returned former President Donald Trump to the White House, reinstating a presidential administration that is hostile to advancing equity and addressing the climate crisis.

Trump and his political allies are committed climate change deniers and true believers in deregulation, which in effect means giving polluters free rein to force the public—and environmental justice and Indigenous communities in particular—to pay for their negative externalities. While Trump may nominally support clean air and clean water, the Trump campaign and associated entities, like Project 2025, have no proposals to advance environmental justice or environmental protection more broadly. Rhetoric and policy proposals from the Trump campaign have called for dismantling policies and programs that seek to advance racial equity, like canceling federal minority contracting programs and defunding schools with books, classes, or curricula that mention "divisive concepts" like race, racism, sexuality, and gender.[3]

Based on the first Trump Administration's record, it is reasonable to expect the second Trump Administration to pursue many similar actions, especially in terms of broad deregulation of polluting industries and drastic budget cuts to the Environmental Protection Agency (EPA) and other key agencies. Moreover, conditions have changed since Trump's first term: the composition of the United States Supreme Court and the broader federal judiciary has become more right-wing, and Trump has consolidated power within the Republican Party, as the few moderating forces within the party and in Trump's orbit have been driven out. Policies in the style of the Trump agenda have proliferated at the state and local level around the country, including modern-day Alien Land Laws, bans, and other restrictions targeting trans youth, abortion travel bans, and "fetal personhood" laws that jeopardize access to contraception and fertility treatments.[4]

Environmental justice and climate justice are inherently intersectional. Communities, households, and individuals experience pollution and climate impacts differently based on a myriad of social characteristics and other factors, including race, ethnicity, class, age, national origin, religion, culture, disability, sexual orientation, gender identity, and immigration status. This report focuses on issues that are more typically considered to be traditional environmental or climate justice issues like air pollution, that disproportionately impacts frontline and Indigenous communities, or federal energy assistance programs for low-income households.

However, it is important to acknowledge that many residents of environmental justice and Indigenous communities face multiple threats across many issue areas, not only as members of communities that are overburdened with pollution, but as people with marginalized identities.

In particular, the Trump campaign has pledged to persecute and punish trans people, immigrants, and women and girls seeking reproductive healthcare, as well as the former President's perceived enemies, including supporters of a free Palestine. Militarized, mass deportation operations, invasive surveillance, and efforts to police the bodies of women and girls, among other Trump campaign promises, pose significant, material threats to the health and safety of environmental justice and Indigenous communities. Trump's return to the White House will likely embolden right-wing extremists that support him, including white supremacists and Christian nationalists, increasing the risk of political violence and stochastic terrorism, especially considering Trump's well-established record of advocating for violence.[5]

In the context of such immediate threats to bodily autonomy and physical security, concerns like delayed compliance periods and weakened emissions standards may seem to be of secondary importance. For many, they will be. But understanding and countering these threats to environmental justice shows solidarity with marginalized communities by taking these issues seriously and in a way that helps to dismantle the systems that create environmental injustice, pushes back against the ongoing

3 Alex Thompson, "Exclusive: Trump allies plot anti-racism protections — for white people," *Axios*, April 1, 2024; American Civil Liberties Union, "Trump's Attacks on DEI Reveal Administration's Agenda for Second Term," July 2, 2024.

4 Terry Tang and Didi Tang, "State alien land laws drive some China-born US citizens to rethink their politics," *AP*, October 26, 2024; Elana Redfield, Kerith J. Conron, and Christy Mallory, "The Impact of 2024 Anti-Transgender Legislation on Youth," UCLA School of Law Williams Institute, April 2024; Jayme Lozano Carver, "Lubbock County becomes latest to approve 'abortion travel ban' while Amarillo City Council balks," Texas Tribune, October 23, 2023; Mabel Felix, Laurie Sobel, and Alina Salganicoff, "The Right to Contraception: State and Federal Actions, Misinformation, and the Courts," KFF, May 23, 2024.

5 Fabiola Cineas, "Donald Trump is the accelerant," *Vox*, January 9, 2021; Robert Tait, "Trump condemned for suggesting 'one really violent day' to combat crime," *The Guardian*, September 30, 2024.

degradation of democratic norms, and better prepares us to act when the opportunity arises.

A. Environmental justice grants

Many environmental justice and Indigenous communities are concerned about what the second Trump Administration might mean for the environmental justice grant programs administered by the EPA to support projects and activities led by community-based organizations and other nonprofits, as well as the potential for harassment of grant recipients or sub-recipients. Most federal grant dollars, including those created by the Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act, flow through states and local governments, but the IRA notably appropriated $3 billion for environmental and climate justice block grants to be available through 2026. EPA has implemented this funding through a handful of different programs:

- Environmental Justice Collaborative Problem-Solving (EJCPS) Cooperative Agreement Program
- Environmental Justice Government-to-Government Program (EJG2G)
- Thriving Communities Grantmaking Program (TCGM)
- Community Change grants

$49.2 million in awards have been announced for the EJCPS program, $56.6 million for EJG2G, $461 million for the TCGM program, and $1.1 billion in Community Change grants, for a total of $1.7 billion in grants awarded as of January 6. All of these grant programs are provided in the form of "cooperative agreements," a type of funding instrument used by the EPA when "substantial programmatic involvement is anticipated between the EPA and the recipient during the performance of the activities" and the intent is "to support and stimulate a public purpose."[6]

The IRA funding for environmental justice grants comes in the context of a steep decline in grants made under EPA's Environmental Justice Small Grants Program. Under former President Trump's first term, the EPA made 70 percent fewer grants than during the Obama Administration.[7] Project 2025 calls for "grant reform" within the EPA, which would entail installing "a political appointee in charge of the grants office to prioritize distribution of grants to those who are most in need and toward projects that will tangibly improve the environment."[8] Community-based organizations and other nonprofits that have been selected as grant recipients under these programs have already come under political attack by right-wing politicians and media. These attacks have mostly taken the form of rhetoric suggesting that the grants are somehow improper, and some Republican members of Congressional committees have sent letters requesting information from selectees.[9]

On the campaign trail, former President Trump has frequently vowed to attack his perceived political enemies using tools like investigations, prosecution, imprisonment, and immigration and citizenship-related actions like deportation or denaturalization. In fact, pressure and orders from the former President during his first term led to several investigations and audits of individuals ranging from former FBI Director James Comey to former Secretary of State John Kerry.[10] The Trump Administration also created denaturalization units in the U.S. Citizenship and Immigration Services and the Department of Justice to focus on revoking citizenship from naturalized Americans.[11] In his second term, former President Trump will likely be even less restrained, thanks to the Supreme Court's 2024 decision, in *Trump v. United States*, holding that the President has absolute immunity from criminal prosecution for "official acts." While the full scope of "official acts" is not entirely clear, the Court's approach suggests that it would encompass the hypothetical, raised in oral argument, of a President ordering Navy Seals to assassinate a political rival.[12]

6 EPA, "The Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program," November 27, 2023; EPA, "Environmental Justice Government-to-Government (EJG2G)," April 4, 2024; EPA, "The Environmental Justice Thriving Communities Technical Assistance Centers Program," August 13, 2024; EPA, "The Environmental Justice Thriving Communities Grantmaking Program," October 15, 2024; EPA, "Inflation Reduction Act Community Change Grants Program," October 15, 2024; EPA, "EPA Funding Instruments and Authorities," August 13, 2024.

7 Darya Minovi, "Lawmakers Cherry-pick Outdated EPA Data in Effort to Undermine Environmental Justice Grant Programs," Union of Concerned Scientists, March 30, 2023.

8 Project 2025, *supra* note 2 at 443-4.

9 Minovi, *supra* note 7; Julia Johnson, "Biden EPA granted $50M to anti-Israel 'climate justice' group," *Fox News*, May 23, 2024.

10 Tom Dreisbach, "Trump has made more than 100 threats to prosecute or punish perceived enemies," *NPR*, October 22, 2024; Dan Friedman, "Trump Is Promising to Prosecute His Enemies. He's Tried Before." *Mother Jones*, October 29, 2024.

11 American Oversight, "Records Shed New Light on DOJ 'Denaturalization' Section," March 26, 2021.

12 *Trump v. United States*, 603 U.S. ___ (2024) (Sotomayor, J., dissenting).

Under the second Trump Administration, and especially as Republicans control both chambers of Congress, political and rhetorical attacks are likely to continue and potentially intensify, and may even extend to recipients of other grant programs. These attacks may have reputational effects that jeopardize recipients' standing with funders and other partners, in addition to functioning as a distraction and resource sink that impairs organizations' ability to focus on advancing their missions.

In the case of grant funding agreements that are executed as grants—as opposed to cooperative agreements—it will be more difficult for the Trump Administration to claw back or interfere with grants. However, because cooperative agreements are structured to facilitate EPA's continuing substantial involvement, the Trump EPA could substantially burden recipients by revising or reinterpreting the regulations governing federal financial assistance to modify performance or reporting requirements, or subject recipients to increased scrutiny like more frequent audits and intensive monitoring. Grant amounts that have yet to be obligated could also be subject to reallocation.[13]

Since the second Trump Administration is poised to weaponize the powers and instruments of the federal government against disfavored individuals and groups, grant recipients would also be at risk of heightened scrutiny in the form of IRS audits or investigations by the DOJ or Treasury, which could threaten an organization's nonprofit tax status or result in an organization's assets being frozen. Agency investigations under Title VI "reverse discrimination" grounds may also be used to drain resources and harass grant recipients, similar to current legal attacks by entities like America First Legal.[14] Such attacks from the federal government could also set the tone for further attacks from like-minded actors like right-wing state attorneys general and activist organizations.[15]

B. Clean Air Act rollbacks

In the second Trump Administration, a leading threat to environmental justice would be the Administration's expected weakening or vacating of key EPA regulations under the Clean Air Act. These rollbacks would likely worsen both climate warming and conventional air pollution for already pollution-burdened environmental justice communities. Many of these communities are also at increased risk for a wide range of climate hazards, which may come sooner and cause greater harm if greenhouse gas emissions increase under a Trump Administration.

1. Climate regulations

Under the second Trump Administration, EPA regulations issued under the Clean Air Act that address climate change are likely to be severely weakened, if not rolled back completely. Such actions would result in worsening climate change, as well as prolonging the use of fossil fuels and attendant increased conventional air pollution.

Throughout his time in politics, former President Trump has expounded against renewable energy and called climate change a "hoax," while also extolling his support for increasing production and reliance upon fossil fuels. While the Trump campaign has been light on details as to how this would be carried out, the closely allied (although nominally distanced) Project 2025 suggests some more specifics on what Trump's energy and climate policies might look like:

- **Endangerment finding would be revised**. Project 2025 recommends that EPA's Office of Air and Radiation create "a system, with an appropriate deadline, to update the 2009 endangerment finding." A broad range of EPA-issued regulations addressing climate change rely upon the agency's "endangerment finding," which established that greenhouse gases endanger the public health and welfare of current and future generations.[16] This determination unlocked EPA's authority under section 202(a) of the Clean Air Act to regulate greenhouse gas emissions. Since the issuance of the endangerment finding in 2009, EPA has proposed and promulgated several additional findings and regulations

13 See 2 CFR Part 200.

14 America First Legal, "Dei cases," (accessed Oct. 31, 2024).

15 Vianna Davila, "Ken Paxton Has Used Consumer Protection Law to Target These Organizations," *Pro Publica*, May 30, 2024; Jane Mayer, "Sting of Myself," *New Yorker*, May 20, 2016.

16 "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule," 74 Fed. Reg. 66496 (Dec. 15, 2009).

that address greenhouse gas emissions, including emissions standards for vehicles, airplanes, parts of the oil and gas industry, and for electricity generation. Because all of these regulations are based on the 2009 endangerment finding, they may be withdrawn and not replaced if Project 2025's goal of revising the endangerment finding is realized under the second Trump Administration.

- **Greenhouse gas emissions standards for fossil fuel power plants may be withdrawn, weakened, or delayed**. Most significant to both frontline and Indigenous communities, as well as the broader public, are the greenhouse gas emissions standards for certain fossil fuel-fired electric generating units (EGUs), which were finalized in May 2024.[17] Approximately 60 percent of electricity generation in the U.S. comes from fossil fuels, which accounts for an estimated 30 percent of the country's CO_2 emissions.[18] Like other heavily polluting industrial facilities, fossil fuel power plants are more likely to be sited in and around communities of color and low-income communities, adding to the disproportionate, cumulative pollution burden already impacting these communities.[19]

  These regulations' torturous history began in the Obama Administration, when a prior version of these rules was introduced as the "Clean Power Plan."[20] The Clean Power Plan, the country's first attempt to regulate climate pollution from power plants, was finalized in August 2015 but never went into effect, as it was stayed by the U.S. Supreme Court in 2016. In 2019 it was replaced by the Trump Administration's "Affordable Clean Energy" (ACE) rule.[21] On the last full day of the Trump Administration, the D.C. Circuit Court of Appeals vacated the ACE rule, providing the new Biden Administration with the opportunity to develop new rules for greenhouse gas emissions from power plants.[22] In 2022, the Supreme Court issued its opinion in *West Virginia v. EPA*, reversing the D.C. Circuit's vacatur of the ACE rule's repeal of the Clean Power Plan and deciding that the EPA's Clean Power Plan exceeded the agency's authority.[23] This decision informed how the Biden EPA formulated the rules they ultimately proposed in May 2023.[24] Ultimately, the regulations finalized by the EPA established emissions guidelines for new and existing fossil fuel-fired steam generating power plants, which are mostly coal-fired, and new fossil fuel-fired stationary combustion turbine power plants, which generally use methane gas. EPA also determined that the use of Carbon Capture and Storage (CCS) with 90 percent capture is a "Best System of Emissions Reduction" for existing coal plants and new gas plants. Standards for existing gas plants were not finalized; EPA announced that it "plans to expeditiously issue an additional proposal that more comprehensively addresses GHG emissions from this portion of the fleet."[25]

  Further rulemaking to address existing gas plants is forthcoming and compliance deadlines for most regulated categories of facilities do not begin until 2030 at the earliest. These rules have been challenged in court. On October 16, 2024, the Supreme Court denied an emergency application

17 "New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule," 89 Fed. Reg. 39798 (May 9, 2024); 40 CFR Subparts TTTT, TTTTa, and UUUUb.

18 U.S. Energy Information Administration (EIA), "Electricity in the United States," (accessed October 14, 2024); EIA, "Where greenhouse gases come from," (accessed October 14, 2024).

19 Maninder P. S. Thind, Christopher W. Thessum, Inês L. Azevedo, and Julian D. Marshall, "Fine Particulate Air Pollution from Electricity Generation in the US: Health Impacts by Race, Income, and Geography,"

53 *Environ. Sci. Tech.* 14010, November 20, 2019; Haley M. Lane, Rachel Morello-Frosch, Julian D. Marshall, and Joshua S. Apte, "Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities," 9 *Environ. Sci. Technol. Lett.* 345, March 9, 2022.

20 EPA, "Clean Power Plan," (last updated May 9, 2017).

21 "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64662 (Oct. 23, 2015); 40 CFR Part 60; "Order in Pending Case," *West Virginia v. EPA*, Order in Pending Case, February 9, 2016; "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations," 84 Fed. Reg. 32520 (July 8, 2019).

22 American Lung Association v. EPA, No. 19-1140 (D.C. Cir. 2021).

23 *West Virginia v. EPA*, 597 U.S. 697, 142 S. Ct. 2587 (2022).

24 "New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule," 88 Fed. Reg. 33240 (May 23, 2023).

25 "New Source Performance Standards," *supra* note 17, at 39799.

for a stay, allowing the regulations to go into effect while litigation continues in the lower courts.[26] Further delays and weakening of these regulations, especially the standards to be developed for existing gas plants, would likely result in worse climate impacts for environmental justice and Indigenous communities. At the same time, emissions of non-greenhouse gas co-pollutants would continue to harm the health of these communities, in addition to slowing the broader transition to low-carbon energy.

- **California's Clean Air Act waiver may be denied**. Since Congress first acted to regulate air pollution, it has provided for the state of California to seek a waiver from EPA allowing the state to impose vehicle emissions standards that are more stringent than the federal regulations, a method of "grandfathering in" California's vehicle emissions standards, which predated the Clean Air Act. Since then, California has received more than 100 waivers for vehicle emissions standards, and 17 other states as well as the District of Columbia have used another provision in the Clean Air Act to adopt California's standards, accounting for over 40 percent of new light-duty vehicles and 25 percent of new heavy-duty vehicles in the country in just 2023 alone. As of January 7, two waiver requests from California remain pending before the EPA, addressing emissions from locomotives and trucks, following the grant of six other waivers since December.[27] While the Clean Air Act's vehicle standards initially applied only to air pollutants such as NO_x, particulate matter, and carbon monoxide, since the 2009 endangerment finding, EPA has established standards for greenhouse gases including carbon dioxide, methane, and nitrous oxide.

  Project 2025 proposes restricting California's waiver "only to California-specific issues like ground-level ozone" and ensuring that other states can adopt California's standards "only for traditional/criteria pollutants, not greenhouse gases." Former President Trump has campaigned on his promise to revoke California's waiver, while multiple lawsuits from Republican-led states and industry stakeholders have contested the legality of the waiver in litigation that may ultimately be decided by the United States Supreme Court.[28] Under another Trump Administration, the EPA could choose to settle these challenges and purport to withdraw previously granted waivers, as well as deny pending requests. Not only would these actions result in more severe climate impacts from increased vehicle greenhouse gas emissions, they would also prolong the use of both fossil fuels and biofuels to power light- and medium-duty vehicles. This would cause increased local air pollution near highways and transportation corridors as well as near refineries and throughout the supply chain, extending and increasing health-harming pollution in already burdened environmental justice and Indigenous communities throughout the country.

- **Rules limiting emissions of methane and Volatile Organic Compounds from the oil and gas sector may be withdrawn or weakened**. The oil and gas industry is a main contributor to climate warming, accounting for 84 percent of energy-related carbon dioxide emissions in the United States.[29] The U.S. energy sector's shift from coal to so-called "natural gas" has reduced carbon dioxide emissions while masking the climate warming impact of methane. 70 to 90 percent of natural gas consists of methane, a potent greenhouse gas that leaks prolifically and has 80 times the warming power of carbon dioxide.[30] Independent analyses based on direct aerial measurements suggest that federal government estimates of methane emissions from oil and gas operations may be significant underestimates, finding an average leaked emissions rate across surveyed regions of three percent, compared to the official estimate of one percent, and total annual emissions of more than six million metric tons.[31] EPA sought to address this issue by promulgating a rule under section 111(b) and (d) of the Clean Air Act. Finalized in March 2024, this rule limits emissions from oil and gas

26 *West Virginia v. EPA*, Statement of Kavanaugh, J., October 16, 2024, 604 U.S. ___ (2024).

27 Congressional Research Service (CRS), "California and the Clean Air Act (CAA) Waiver: Frequently Asked Questions," R48168, August 30, 2024; Blanca Begert, "Biden administration grants California last-minute pollution waivers," *Politico*, January 3, 2025; Blanca Begert, "Biden administration approves California's zero-emission ferry rule," *Politico Pro*, January 7, 2025.

28 Coral Davenport, "California Tries 'Trump-Proofing' Its Climate Policies," *New York Times*, October 12, 2024; *Ohio v. EPA*, Petition for Writ of Certiorari to the U.S. Supreme Court, filed July 5, 2024 and *Diamond Alternative Energy, LLC v. EPA*, Petition for Writ of Certiorari to the U.S. Supreme Court, filed July 2, 2024.

29 EIA, "What are U.S. energy-related carbon dioxide emissions by source and sector?" (accessed Oct. 14, 2024).

30 Karine Lacroix, Matthew Goldberg, Abel Gustafson, Seth Rosenthal, and Anthony Leiserowitz, "Should it be called 'natural gas' or 'methane'?" Yale Program on Climate Change Communication, December 1, 2020.

31 Stanford University, "Methane emissions from U.S. oil and gas operations cost the nation $10 billion per year," *Stanford Report*, March 13, 2024.

facilities of both methane and Volatile Organic Compounds (VOCs), which contribute to ground-level ozone formation and are linked to a wide variety of health effects, including aggravated asthma, cancer, and premature death.[32] Several Republican-led states and industry groups have challenged this case in court.[33]

While Project 2025 does not explicitly call for repealing or weakening this specific rule, it does call for various changes to EPA's approach to implementing section 111 of the Clean Air Act that suggest critiques of the rule, including proposals to "[r]estore the position that EPA cannot regulate a new pollutant from an already regulated source category without making predicate findings for that new pollutant" and revise EPA's regulations under section 111(d) "to ensure that EPA gives full meaning to Congress's direction, including source-specific application, and that the state planning program is flexible, federalist, and deferential to the states." Withdrawing or weakening this rule would forfeit the estimated avoidance of 1.5 billion tons of CO_2e through 2038 and associated climate benefits of $110 billion, increasing the vulnerability of frontline and Indigenous communities, as well as the reduction of 16 million tons of VOCs that pose air quality and health concerns to those communities.

Clean Air Act climate change regulations finalized by the Biden EPA are expected to cut climate pollution by a total of almost 12 billion metric tons of CO_2e through 2055, as well as provide enormous health and economic benefits, including thousands of avoided premature deaths, hospital visits, cases of asthma onset, school absences, and lost workdays.[34] If the second Trump Administration slashes these climate rules, it would be both a major setback for global efforts to address climate change and pose an acute threat to the health and lives of frontline communities and Indigenous Peoples in the U.S.

2. Conventional air pollutants

While the climate-related Clean Air Act regulations would likely be prioritized for rollbacks under the second Trump Administration, EPA rules addressing conventional air pollutants are also at real risk of weakening, withdrawal, or delay. These rules aim to regulate health-harming and ecologically destructive pollutants including particulate matter, sulfur dioxide, nitrogen dioxide, ozone, and lead, as well as a variety of hazardous air pollutants. Many of these regulations were updated by the Biden Administration for the first time in years, and are critical (if imperfect) safeguards for environmental justice and Indigenous communities, which tend to be disproportionately and severely burdened by air pollution.

- **Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS)**: Particulate matter (PM) is created by a wide variety of sources, from power plants and industrial processes to vehicles and wildfires, and can lead to heart attacks, asthma attacks, and premature death,

32 "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review," 89 Fed. Reg. 16820 (March 8, 2024); 40 CFR Part 60; EPA, "Basic Information about Oil and Natural Gas Air Pollution Standards," (updated September 13, 2024).

33 *See, e.g.*, *Oklahoma v. EPA*, No. 24-1054 (D.C. Cir.).

34 This represents the sum of CO_2e reduced or avoided through the year 2055 for the following rules: "New Source Performance Standards for Greenhouse Gas Emissions," *supra* note 17; "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," 89 Fed. Reg. 27842 (Apr. 18, 2024); "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review," 89 Fed. Reg. 16820 (Mar. 8, 2024); "Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020," 88 Fed. Reg. 73098 (Oct. 24, 2023); and "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3," 89 Fed. Reg. 29440 (Apr. 22, 2024).

especially for vulnerable populations like children, older adults, people of color, people with heart or lung conditions, and low socioeconomic status populations. While the Trump Administration had maintained the PM standards set in 2012, the Biden Administration determined that based on new science, those standards were not adequate to protect public health and welfare, as required by the Clean Air Act. In March 2024, the EPA finalized its revision of the NAAQS for PM, lowering the primary annual $PM_{2.5}$ standard from 2.0 $\mu g/m^3$ to 9.0 $\mu g/m^3$ as well as making changes to the Air Quality Index and monitoring requirements.[35] EPA adopted new design criteria for $PM_{2.5}$-monitoring networks, directing state and Tribal monitoring agencies to account for population at increased risk of $PM_{2.5}$-related health effects to pollution sources of concern when choosing where to locate monitors, which should result in better air monitoring data for environmental justice and Indigenous communities. The public health benefits of adopting these standards are estimated at $46 billion in 2032, including 4,500 avoided premature deaths, 800,000 avoided cases of asthma symptoms, and 290,000 avoided lost workdays.[36]

Although former President Trump has repeatedly boasted about valuing clean air and water, the Trump EPA reversed 28 air quality rules.[37] In fact, the Trump Administration's approach to maintaining the 2012 PM NAAQS undermined EPA's rigorous process for establishing NAAQS, including by restricting the science the agency was allowed to consider and obstructing the independent group of experts, the Clean Air Scientific Advisory Committee (CASAC), that Congress tasked with assisting EPA in reviewing and revising the standards.[38] Project 2025 proposes several policy actions related to NAAQS, including "[e]nsur[ing] that the [CASAC] considers all of the statutorily charged factors (for example, social and economic effects resulting from NAAQS attainment and maintenance strategies)," which implies violating the Supreme Court's ruling in *Whitman v. American Trucking Associations* that EPA is not allowed to consider implementation costs in setting NAAQS, and even removing EPA's role entirely by suggesting, "[i]f possible, return the standard-setting role to Congress."[39]

Any reversal of the NAAQS standards for PM or other pollutants would likely increase air pollution exposure in environmental justice and Indigenous communities, which already face disproportionate risks. Because these communities are more vulnerable to PM pollution's health effects, they would likely experience more severe and widespread health problems, along with the resulting economic hardships.

- **Hazardous Organic National Emission Standards for Hazardous Air Pollutants (NESHAP):** In April 2024, the Biden Administration updated air pollution standards for the manufacturers of synthetic organic chemicals (like plastics) for the first time in 20 years.[40] The pollutants emitted from these facilities pose serious risks to human health, including cancer, respiratory and cardiovascular effects, and the facilities covered by this rule are disproportionately sited in and around low-income communities, Indigenous communities, and communities of color, with a particular concentration in Louisiana's "Cancer Alley" and the Gulf Coast of Texas. The rule is expected to avoid 6,200 tons of hazardous air pollutants and 23,000 tons of volatile organic compounds per year and to decrease ethylene oxide and chloroprene emissions by 80 percent. EPA also established new limits for dioxins and furans and imposed fenceline monitoring requirements, including quarterly reporting provisions, so that monitored data will be publicly available. The rulemaking process used a pioneering, science-based community risk assessment which accounted for impacts from all large facilities within six miles of a covered plant, resulting in standards that are expected to reduce the number of individuals with elevated air toxics-related cancer risk by 96 percent.[41]

The Trump campaign and Project 2025 have not specifically targeted this rule for revision or withdrawal, but in addition to their overall agenda of deregulation, they have advocated for an approach to cost-benefit analysis which suggests po-

35 "Reconsideration of the National Ambient Air Quality Standards for Particulate Matter," 89 Fed. Reg. 16202 (Mar. 6, 2024); 40 CFR Parts 50, 53, and 58.

36 EPA, "Final Rule to Strengthen the National Air Quality Health Standard for Particulate Matter Fact Sheet," February 7, 2024.

37 Siri Chhilukuri, "Fact-Checked: Trump's and Biden's Climate Claims at First Presidential Debate," *Atmos*, June 8, 2024.

38 Joe Goffman and Laura Bloomer, "The Legal Consequences of EPA's Disruption of the NAAQS Process," Harvard Environmental & Energy Law Program, September 30, 2019.

39 Project 2025, *supra* note 2 at 424-5.

40 "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry," 89 Fed. Reg. 42932 (May 16, 2024); 40 CFR Parts 60 and 63.

41 EPA, "EPA Issues Final Rule to Reduce Toxic Air Pollution from the Synthetic Organic Chemical Manufacturing Industry and the Polymers and Resins Industries," April 9, 2024.

tential opposition to the more holistic orientation taken in this rulemaking. If the second Trump Administration weakened or rescinded this rule, many environmental justice communities throughout the country would be further burdened with elevated cancer and other health risks.

C. Other environmental rollbacks

If the Trump Administration succeeds in rolling back hard-fought environmental protections secured during the Biden administration, environmental justice and Indigenous communities would likely face even greater burdens and risks.

- **Fuel efficiency standards may be rolled back**. In addition to the Clean Air Act, fuel efficiency for light-duty vehicles is regulated under the Corporate Average Fuel Economy (CAFE) standards promulgated by the National Highway Traffic Safety Administration (NHTSA), a division of the Department of Transportation. CAFE standards were first established by the Energy Policy and Conservation Act of 1975 and require automakers "to meet a target for the sales-weighted fuel economy of its entire fleet of vehicles sold in the United States in each model year."[42] NHTSA's CAFE standards require average fleet-wide efficiency increases of eight percent per year in model years 2024-2025, and 10 percent in model year 2026, at approximately 49 miles per gallon.[43] These standards have driven manufacturers to improve engine efficiency as well as accelerated development and innovation in order to meet rising fuel efficiency requirements, especially in terms of deploying hybrid and electric vehicles. NHTSA estimates that, including upstream processes like petroleum refining and fuel transportation, the CAFE standards would result in reducing greenhouse gas emissions by 605 million metric tons of CO_2.

  The Trump Campaign's "Agenda47" promises ending CAFE standards.[44] Project 2025 recommends that a second Trump Administration "consider returning to the minimum average fuel economy levels specified by Congress for model year 2020 vehicles," amounting to a fleet-wide average of 35 miles per gallon. Turning back the clock on efficiency gains in order to increase consumption of gas and diesel would increase air pollution and climate impacts in environmental justice and Indigenous communities, exacerbating health disparities while also imposing disproportionate economic burdens on these communities, who already pay a larger share of income on transportation costs.

- **Pollution rules for coal power plants may be rolled back**. In April 2024, the Biden Administration finalized a suite of regulations to address different types of pollution associated with coal-fired power plants.[45] In addition to the greenhouse gas standards for fossil fuel power plants discussed above, EPA unveiled the following final rules:

  - An enhanced Mercury and Air Toxics Standard (MATS) that implements stricter limits on coal plant emissions. Under the updated regulations, lignite-burning facilities must reduce their mercury output by 70 percent, while all coal-powered plants are required to cut their toxic metal emissions by 67 percent. The rule also requires the use of continuous emissions monitoring systems to provide real-time, accurate data to ensure compliance that protects communities from dangerous pollution exposure.[46]

  - Strengthened wastewater discharge standards for coal plants, including imposing a zero-discharge standard for the three major types of wastewater streams created by these facilities. Established numeric limits for mercury and arsenic in combustion residual leachate discharged through groundwater and for "legacy wastewater" stored in coal ash ponds. In addition, the rule improves transparency and public accountability by requiring

42 "Energy Policy and Conservation Act," Pub.L. 94-163, December 22, 1975; CRS, "Vehicle Fuel Economy and Greenhouse Gas Standards," IF10871 (updated May 9, 2022).

43 "Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks," 87 Fed. Reg. 25710 (May 2, 2022); 49 CFR Parts 531, 533, 536, and 537.

44 Donald J. Trump for President 2024, Inc. (Trump for President), "Agenda47: America Must Have the #1 Lowest Cost Energy and Electricity on Earth," September 7, 2023.

45 EPA, "Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants," April 25, 2024.

46 "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review," 89 Fed. Reg 38508 (May 5, 2024); 40 CFR Part 63.

that facilities make information about discharges and wastewater systems publicly available.[47]

- An update of EPA's Coal Combustion Residuals (CCR) rule which closes a loophole that exempted coal ash ponds (or other disposal sites like landfills) that stopped receiving CCR before the original CCR rule's effective date in 2015. These sites are more likely to be unlined and unmonitored, and consequently more likely to leak and have structural problems. Coal ash, a waste product from burning coal, contains mercury, cadmium, chromium, and arsenic, which are associated with serious health effects including cancer. The new rule establishes requirements including providing public notice, monitoring groundwater, and detailed standards for corrective action, closure, and post-closure care.[48]

Health benefits from the MATS and wastewater rules alone amount to over $3.2 billion per year. Benefits from the CCR rule are estimated to be at least $80 million per year, including avoided cancer cases from arsenic in drinking water and non-market benefits of water quality improvements, although this figure excludes many difficult-to-quantify benefits, including "reducing the instance of negative human health impacts such as cardiovascular mortality, neurological effects, and cancers (separate from the quantified cancer benefits) brought on by exposure to toxins found in coal ash."

Project 2025 and the Trump campaign have not specifically targeted these rules for rollbacks, although rescinding them would be consistent with their broader deregulation agenda. Both Project 2025 and former President Trump routinely use rhetoric supporting the continued and unfettered use of coal for electricity generation and decrying the cost of complying with regulations that properly account for the externalized costs associated with burning coal. During his first term, former President Trump's EPA issued new coal ash rules that weakened existing regulations by raising drinking water standards for dangerous chemicals like lead and cobalt, delaying compliance deadlines for unlined, leaking coal ash ponds, and allowing state officials to terminate groundwater monitoring and issue technical certifications about whether the rule was properly applied, rather than a qualified professional engineer.[49] Many environmental justice and Indigenous communities are burdened by pollution from coal power plants, whether from air pollution, wastewater discharges, or groundwater contamination and other risks from coal ash ponds and landfills.

- **PFAS drinking water standards may be weakened or delayed**. The Biden Administration issued federal drinking water standards that would for the first time impose enforceable limits on the amount of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in drinking water. This group of widely used chemicals—also known as "forever chemicals" because they can accumulate in the environment without breaking down for a long time—can pose serious health risks even at low-exposure levels, including causing cancer, liver damage, and immune system and developmental damage in infants and children. The final rule released in April 2024 requires water systems to monitor for six PFAS chemicals and remove them if they exceed the new limits.[50] EPA estimates that the rule will result in reducing PFAS exposure for 100 million Americans who use public drinking water systems. Health benefits like fewer cancers and birth complications and lower incidents of heart attacks and strokes, are estimated to amount to $1.5 billion per year, excluding benefits that are especially hard to quantify, such as developmental, metabolic, and endocrine effects.[51] Exposure to PFAS is widespread and can be found in 99 percent of humans, but communities of color, low-income communities, and people living near manufacturing plants, military bases, and airports have disproportionately higher risks of exposure to PFAS.[52]

47 "Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category," 89 Fed. Reg. 40198 (May 9, 2024); 40 CFR Part 423.

48 "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments," 89 Fed. Reg. 38950 (May 8, 2024); 40 CFR Parts 9 and 257.

49 "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One, Part One)," 83 Fed. Reg. 36435 (Jul. 30, 2018); 40 CFR Part 257.

50 "PFAS National Primary Drinking Water Regulation," 89 Fed. Reg. 32532 (Apr. 26, 2024); 40 CFR Parts 141 and 142.

51 EPA, "PFAS National Primary Drinking Water Regulation," April 2024.

52 Safer States, PFAS Policy Toolkit, 2024; Harvard T.H. Chan School of Public Health, "Communities of color disproportionately exposed to PFAS pollution in drinking water," May 15, 2023; NRDC, "Dirty Water: Toxic "Forever" PFAS Chemicals Are Prevalent in the Drinking Water of Environmental Justice Communities," February 21, 2024.

The Trump Administration actively opposed Congressional efforts to address PFAS in drinking water as well as attempts to provide funding to clean up PFAS contamination. In 2020, the former President announced that he would veto comprehensive legislation approved by the House to address PFAS, which would have directed EPA to set an enforceable PFAS limit for drinking water, after intervening to strip similar provisions from the National Defense Authorization Act of Fiscal Year 2020 (NDAA).[53] While the NDAA required companies to report the amounts of PFAS they discharge, the Trump Administration's implementation of the law allowed polluters to exploit the *de minimis* exemption for releases where PFAS constituted 1 percent or less of the discharge.[54] Project 2025 does not address the PFAS drinking water standards, but does call for revising "regulations and policies to reflect the challenges of omnipresent contaminants like PFAS" and reviewing PFAS' designation as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund).[55]

- **Risk Management Program regulations would be weakened**. EPA administers the Risk Management Program (RMP), a provision of the Clean Air Act that regulates industrial facilities that hold extremely hazardous substances to prevent accidental releases. The need for an effective RMP rule was demonstrated in 2017, when Hurricane Harvey led to approximately 1.5 million pounds in chemical releases from RMP facilities in Texas. Moreover, roughly a third of all RMP facilities are at increasing risk of climate-linked natural disasters, and low-income communities and communities of color are at disproportionate risk due to a number of factors including proximity and linguistic isolation.[56]

  The Biden Administration finalized RMP regulations strengthening protections for communities in proximity to the roughly 12,000 facilities covered by RMP. Improvements include incorporating climate change impacts in hazard evaluation requirements, mandating standby or backup power for monitoring equipment as well as regular third-party compliance audits. In addition, facilities are required to coordinate community emergency response plans with relevant local officials, notify the public and first responders about accidental releases, formally engage workers in decision-making related to process hazard evaluations, compliance audits, and incident investigations, and disclose specific chemical hazard information.

  Although many of the benefits associated with this RMP rule are difficult to quantify, EPA expects "reduced frequency and magnitude of damages from releases" as well as reduced damages from "potential health risks from toxic chemical exposure, lost productivity at affected facilities, emergency response costs, transaction costs from potential subsequent legal battles, property value losses in nearby neighborhoods, environmental damage and costs of evacuation and sheltering-in-place events, and others."[57]

  During the Trump Administration, the EPA rolled back existing RMP regulations to remove various requirements on facility operators, including removing the requirement for third-party compliance audits and most public disclosures as well as delaying compliance deadlines.[58] Project 2025 proposes the RMP rule finalized by the Biden Administration "should be revised to reflect the amendments finalized in 2019 to protect sensitive information."[59] Reinstating these rollbacks would exacerbate risks faced by frontline and Indigenous communities, including workers at RMP facilities, and hinder needed emergency planning and prevention efforts.

53 Executive Office of the President, "Statement of Administration Policy: H.R. 535 - PFAS Action Act of 2019," January 7, 2020; Todd Spangler, "Trump administration, GOP strip out PFAS standard, cleanup requirements from defense bill," *Detroit Free Press*, December 10, 2019.

54 Tom Perkins, "US firms exploiting Trump-era loophole over toxic 'forever chemicals'," *The Guardian*, October 12, 2022; "Community Right-to-Know; Corrections to Toxics Release Inventory (TRI) Reporting Requirements," 85 Fed. Reg. 42311 (July 14, 2020); 40 CFR Part 372.

55 Project 2025, *supra* note 2 at 431.

56 Center for Progressive Reform, Earthjustice, and Union of Concerned Scientists, "Preventing 'Double Disasters': How the U.S. Environmental Protection Agency can protect the public from hazardous chemical releases worsened by natural disasters," July 2021.

57 "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention," 89 Fed. Reg. 17622 (Mar. 11, 2024); 40 CFR Part 68; Katlyn Schmitt, "EPA's Chemical Disaster Rule: Small Steps Forward When Environmental Justice Demands Giant Leaps," Center for Progressive Reform, September 12, 2022.

58 "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act," 84 Fed. Reg. 69834 (Dec. 19, 2019).

59 Project 2025, *supra* note 2 at 432.

D. Climate disaster recovery and resilience rollbacks

As the increasingly frequent and devastating scale of hurricanes, wildfires, floods, and other climate disasters in recent years have shown, the federal government plays a crucial role in responding to emergencies, aiding recovery, and investing in resilience measures. While there are significant areas for improvement in terms of how the federal government carries out this role, the Biden Administration has overseen changes to federal disaster and resilience policies which make progress for frontline communities. However, the second Trump Administration would likely rescind or replace these new rules, increasing risks to the communities that are already the most vulnerable to these hazards.

Project 2025 proposes several "reforms" to the Federal Emergency Management Agency (FEMA), which would result in increased adverse impacts for the communities and households that are already the most vulnerable to climate hazards. These changes include capping federal cost-share at 25 percent for "small disasters" and 75 percent for "truly catastrophic disasters," as well as ending the National Flood Insurance Program and grants programs (such as grants for Preparedness, Hazard Mitigation Assistance, and Emergency Food and Shelter, and Public Assistance). The Trump campaign has not released any specific proposals about FEMA or disaster response, and the 2024 Republican Party platform is silent on the subject. However, disaster response and recovery efforts under the Trump administration were widely considered inadequate and worsened inequities. For example, Hurricane Harvey affected southern areas of Texas and Louisiana, which is home to a thriving immigrant community. The Trump Administration deployed Immigration and Customs Enforcement (ICE) to Texas to assist relief and recovery efforts, creating a significant barrier for immigrant communities to seek relief, shelter, and disaster aid, due to reasonable and justified concerns of deportation or other adverse impacts. Under the Trump administration, U.S. Customs and Border Protection (CBP) did not suspend enforcement measures during Hurricane Harvey, in contrast to the year prior, when the Obama Administration suspended CBP enforcement during Hurricane Matthew.[60] The Trump administration similarly mismanaged Hurricanes Maria and Irma, with slow and limited federal response and lack of empathy.[61] In Puerto Rico, Hurricane Maria destroyed the entire island's energy grid. Instead of supporting the deployment of more resilient, renewable, decentralized, and democratically-governed energy, FEMA approved $9.6 billion to Puerto Rico Electrical Power Authority (PREPA) to rebuild its centralized, fossil-fueled power grid.[62] In the fall of 2024, FEMA's Hurricane Helene and Milton response efforts were impeded by false claims and conspiracy theories made and amplified by the Trump campaign and its allies, which raised concerns about eroding the public's trust in FEMA and deterring impacted residents from seeking available assistance.[63] The effectiveness of public disaster preparation, relief, and recovery will only become more essential as climate change impacts grow more severe.

- **The Federal Flood Risk Management Standard and implementing rules could be rescinded, hindering frontline communities' resilience efforts**. The Federal Flood Risk Management Standard (FFRMS) was established by former President Obama, rescinded by former President Trump, and reinstated by President Biden.[64] Agencies including FEMA and HUD have issued rules and policy implementing FFRMS to ensure that federally-assisted construction and infrastructure is resilient to current and future flood risk.[65] Climate risk disproportionately affects formerly redlined communities, and a significant proportion of affordable housing is in current or future floodplains. Rescinding FFRMS and its implementing rules could increase the risk of property damage and loss, hazards to human life and health, and displacement of flood-affected populations.

- **Improvements to FEMA's Individual Assistance rule could be reversed**. In 2024, FEMA finalized updates to its Individual Assistance regulations and the Individual Assistance Policy and Program Guide, establishing a more flexible approach to provide new benefits, simplifying the application process, reducing administrative burden, and

60 Julián Aguilar, "Immigration authorities seek to soothe fears about Hurricane Harvey rescues," *Texas Tribune*, August 31, 2017.

61 Abby Phillip, Ed O'Keefe, Nick Miroff, and Damian Paletta, "Lost weekend: How Trump's time at his golf club hurt the response to Maria," *Washington Post*, September 29, 2017.

62 American Public Power Association, "Puerto Rico to receive nearly $10 billion from FEMA to rebuild its grid," October 7, 2020.

63 Maxine Joselow and Mariana Alfaro, "How hurricane falsehoods are dividing the Republican Party," *Washington Post*, October 10, 2024.

64 Sec. 5(e), "Climate-Related Financial Risk," EO 14030 (May 20, 2021). 86 Fed. Reg. 27967 (May 25, 2021).

65 "FEMA Policy: Federal Flood Risk Management Standard (FFRMS)," 89 Fed. Reg. 56928 (Jul. 11, 2024) and "Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard," 89 Fed. Reg. 30850 (Apr. 23, 2024).

expanding eligibility.[66] Rolling back these changes would make it more difficult for disaster survivors to receive aid, including money for food, medicine, immediate housing needs, and assistance for home repairs regardless of pre-existing conditions, as well as to prevent similar damage in the future.

- **Interruptions and scaling down of FEMA's operations and mission focus.** Project 2025 proposes to "dismantle the Department of Homeland Security" and for FEMA to be moved to the Department of the Interior (DOI), "or, if combined with [Cybersecurity and Infrastructure Security Agency], to the Department of Transportation" (DOT). Moving FEMA to either DOI or DOT could potentially shift FEMA's current mission and focus. For example, moving FEMA into DOT could enhance its infrastructure programs such as Building Resilient Infrastructure and Communities (BRIC) and Public Assistance, but may negatively impact overall capacity and FEMA's role in other aspects, like housing assistance, infrastructure efforts aside from transportation, and broader capacity to respond in rural communities. In general, any disruption to FEMA's operations, like moving the agency to another department, could bring much additional stress to an already overtaxed agency as climate change increases the frequency of disasters. FEMA needs more staff and funding to deliver on the equity efforts they already have underway, such as the Equity Action Plan, FEMA's current Strategic Plan 2022-2026, and the Community Disaster Resilience Zones Act.

- **HUD's Rapid Unsheltered Survivor Housing program could be abolished or weakened**. In 2022, HUD created the Rapid Unsheltered Survivor Housing (RUSH) program to address gaps in federal assistance in communities affected by disasters by providing grant funding for outreach, emergency shelter, rapid re-housing, and other assistance—including rental assistance and supportive services—to people experiencing or at risk of homelessness.[67] It is also one of the only programs that provides housing assistance to individuals who were homeless prior to a disaster and were residing in the disaster area. (FEMA's Individual Assistance for housing assistance disqualifies individuals homeless prior to the disaster). Ending or weakening this program would severely increase risks to the lives of the most marginalized and lowest income residents in disaster-affected communities and increase burdens on local communities.

- **Updated energy code requirements for federally-assisted housing could be rolled back**. In April 2024, HUD and USDA issued a determination to adopt updated energy codes (2021 IECC for single family and ASHRAE 90.1-2019 for multifamily) for new housing construction (other than manufactured homes) that is financed or assisted by either agency.[68] HUD and USDA estimate that approximately 161,700 housing units will be covered by the 2021 IECC, including over 150,000 in jurisdictions which have not yet adopted the standard. An additional 15,000 mid- or high-rise multifamily units will be covered under ASHRAE 90.1-2019, most of which are in states that have not adopted the standard either. Applying these energy codes to new HUD and USDA housing will benefit low-income residents and residents of environmental justice communities by reducing energy burden and operating costs, improving health and resilience outcomes in the case of extreme temperature events, and maintaining safer and more habitable conditions in the event of power outages or fuel supply disruptions.[69] In addition to adverse air pollution, health impacts, decreased energy resilience, and passive survivability in the case of power outages, reversing this determination would result in higher energy bills for residents, worsening energy burden disparities for low-income households and environmental justice communities.

E. Eroding federal civil rights

Civil rights capacity at the federal level is critical to ensuring that environmental justice communities are not unfairly impacted by federal government actions. The current landscape for civil rights is daunting, due to a federal judiciary now stacked with Trump-appointed judges and a hardline Supreme Court that has signaled open hostility to race consciousness in almost any

66 FEMA, "Amendment to FP 104-009-03, Individual Assistance Program and Policy Guide, Version 1.1," March 22, 2024; "Individual Assistance Program Equity," 89 Fed. Reg. 3990 (Jan. 22, 2024).

67 U.S. Department of Housing and Urban Development (HUD), "FACT SHEET: HUD Deploys First Round of Funding through New Rapid Response Program to Address Homelessness in Areas Hit by Disasters," HUD No. 22-220, October 24, 2022; National Low Income Housing Coalition and National Housing Law Project, "Plugging the Gaps: Recommendations for HUD'S RUSH Program," October 26, 2023.

68 "Final Determination: Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing," 89 Fed. Reg. 33112 (Apr. 26, 2024).

69 Ellen Franconi, Eliza Hotchkiss, Tianzhen Hong, Michael Reiner et al. 2023. "Enhancing Resilience in Buildings through Energy Efficiency," Pacific Northwest National Laboratory, PNNL-32737, Rev 1, July 2023.

context and skepticism that any discrimination occurs in the present day (except against historically and systemically favored groups like Christians.[70])

Under the second Trump Administration, executive orders, regulations, guidance, and structural reforms at EPA, the Department of Justice, and throughout the federal government intended to protect and advance civil rights are likely to be repealed and reversed. As a result, environmental justice and Indigenous communities may be subject to increased and disproportionate pollution, energy, and economic burdens, with fewer mechanisms for recourse at the federal level.

- **Federal environmental justice regulations and enforcement may be severely weakened**. Under the second Trump Administration, it is likely that EPA's and DOJ's Title VI disparate impact regulations will be significantly watered down. Title VI enforcement will likely be deprioritized if not dropped altogether, meaning that EPA will likely decline to investigate complaints of environmental racism and refuse to defend prohibitions against disparate impacts in the courts.

  In its section on the EPA, Project 2025 proposes that the next Administration "pause and review all ongoing EJ and Title VI actions to ensure that they are consistent with" the Supreme Court's decision in *Students for Fair Admissions v. Harvard*, which struck down two race-conscious university admissions programs.[71] Project 2025 notes that "[a]llocations of agency resources, increased EPA enforcement, and/or agency distribution of grants should be based on neutral constitutional principles." Context from other sections of Project 2025 suggests that their interpretation of "neutral constitutional principles" would mean a fundamental departure from the intent and approaches embedded in the Reconstruction Amendments and landmark civil rights legislation. Project 2025 repeatedly denigrates "disparate impact doctrine" in the context of personnel policy, employment law, and education, recommends eliminating the collection of employment statistics that include race or ethnicity, and asserts: "Disparities do not (and should not legally) imply discrimination per se."

- **EPA's Office of Environmental Justice and External Civil Rights may be eliminated**. In 2022, the Biden Administration established the Office of Environmental Justice and External Civil Rights within the EPA, dedicating 200 staff to the work of elevating the importance of environmental justice and civil rights throughout the agency's work, engaging with communities as well as state, local, and Tribal partners, managing the distribution of grants and technical assistance, and ensuring that funding recipients comply with civil rights laws.[72] Project 2025 advocates for "[r]eturning the environmental justice function to the [Office of the Administrator], eliminating the stand-alone Office of Environmental Justice and External Civil Rights." Eliminating this office would not only signal the federal government's retreat from championing environmental justice, it would also make it harder for career EPA staff to continue important, Congressionally-directed functions like overseeing grants and enforcing civil rights laws.

  Similarly, the DOE's Office of Energy Justice and Equity may be targeted by the incoming Trump Administration to be dismantled or weakened. This office, initially established by Congress in 1978 as the Office of Minority Economic Impact, is legislatively mandated to research and advise the Energy Secretary on the effects of energy policies on minorities and minority business enterprises and has been integral to implementing many aspects of the IRA, including the Low-Income Communities Bonus Credit Program. The Office of Energy Justice and Equity has also led the DOE's approach to implementing the Justice40 initiative (discussed further below), which has centered on Community Benefits Plans associated with grant awards; the second Trump Administration may attempt to halt or hinder the implementation of these plans.[73]

70 *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014); *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 592 U. S. ____ (2020) (Gorsuch, J. concurring).

71 *Students for Fair Admissions v. Harvard* (*SFFA*), 600 U.S. 181 (2023). *SFFA* marked a departure in jurisprudence interpreting both the 14th Amendment's Equal Protection Clause and Title VI in deciding that remedying general "societal discrimination" was not a sufficiently compelling government interest to permit race-based classifications.

72 EPA, "EPA Launches New National Office Dedicated to Advancing Environmental Justice and Civil Rights," September 24, 2022.

73 DOE, "Low-Income Communities Bonus Credit Program," (accessed January 8, 2025); DOE, "About Community Benefits Plans," (accessed January 8, 2025).

- **Various executive orders are likely to be revoked**. Since the first day of his Administration, President Biden has issued a series of executive orders (EOs) that have helped advance environmental and climate justice in various ways. In the second Trump Administration, these EOs would be rescinded.

  Two EOs issued by President Biden on his first day of office are likely to be revoked under the second Trump Administration:

  EO 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," established that it is the policy of the Biden Administration "that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."[74] The order required agencies to conduct assessments on potential barriers to underserved communities and individuals accessing services and benefits or contracting opportunities from agencies, to determine whether new guidance or regulations are needed to advance equity in agency programs, and to evaluate resource levels for advancing civil rights and serving underrepresented or disadvantaged communities. The order also tasked the Domestic Policy Council with coordinating equity efforts across agencies—including attempts to remove systemic barriers—and directed agencies to consult with members of underserved communities. It also established the Interagency Working Group on Equitable Data to identify and address inadequacies in Federal data collection programs and to support agencies in expanding and refining data to measure equity and reflect the diversity of the American people.

  EO 13990, "Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis," reestablished a science-based approach to ensure the integrity of decision-making and ordered agencies to review and address any regulations, policies, guidance, orders, and other agency actions taken during the Trump Administration that conflict with the Biden Administration's stated policy goals:

  > *to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.*[75]

  This EO reversed specific actions taken during the Trump Administration, such as the 2019 permit granted to the Keystone XL Pipeline, and placed a temporary moratorium on oil and gas leasing in the Arctic National Wildlife Refuge. EO 13990 also established the Interagency Working Group on the Social Cost of Greenhouse Gases to develop and make recommendations on the implementation of accurate social cost estimates of greenhouse gas emissions.

  EO 14008, "Tackling the Climate Crisis at Home and Abroad," was released at the end of President Biden's first week in office.[76] The first part of this order establishes that "climate considerations shall be an essential element of United States foreign policy and national security" and makes various directives related to global climate cooperation and national security. In the second part, the order describes the Government-wide approach to combat the climate crisis, including establishing the White House Office of Domestic Climate Policy and National Climate Task Force and directing the development of a comprehensive federal clean energy and vehicle procurement strategy. EO 14008 also established the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization to "coordinate the identification and delivery of Federal resources to revitalize the economies of coal, oil and gas, and power plant communities."

74 "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," EO 13985, January 20, 2021.

75 "Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis," EO 13990 (Jan 20, 2021).

76 "Tackling the Climate Crisis at Home and Abroad," EO 14008 (Jan. 27, 2021).

Of particular interest to environmental justice and Indigenous communities and advocates, EO 14008 created the White House Environmental Justice Advisory Council (WHEJAC), to advise the newly created White House Environmental Justice Interagency Council, which was tasked with developing a strategy to address current and historic environmental injustice, developing performance metrics to ensure accountability, and publishing a public performance scorecard on an annual basis. The order directed the Chair of the Council on Environmental Quality (CEQ) to create the Climate and Economic Justice Screening Tool, an interactive mapping tool to highlight disadvantaged communities. Most notably, section 223 of EO 14008 is the origin of the Justice40 Initiative. As set forth in this order, the CEQ Chair, Director of the Office of Management and Budget (OMB), and National Climate Advisor, in consultation with WHEJAC, were directed to "publish recommendations on how certain Federal investments might be made toward a goal that 40 percent of the overall benefits flow to disadvantaged communities," focusing on investments in: clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, the remediation and reduction of legacy pollution, and the development of critical clean water infrastructure.

While the effectiveness of the Justice40 Initiative remains unclear, repealing it without replacing it with an improved approach for ensuring equity in federal climate investments risks causing significant negative impacts on environmental justice and Indigenous communities. For these communities, exacerbated existing environmental inequities, missed economic development opportunities, and reduced climate resilience are all likely consequences of ending Justice40.

Abolishing WHEJAC and the valuable input and community engagement it has facilitated, as well as dismantling the data collection infrastructure and internal capacity that was beginning to be developed under the Biden Administration, would be a serious setback for advancing environmental and climate justice at the federal level, which could take significant time and resources to rebuild in the future.

EO 14096, "Revitalizing Our Nation's Commitment to Environmental Justice for All," established the Biden Administration's policy of pursuing "a whole-of-government approach to environmental justice," encompassing multiple structural changes and policy directives.[77] This order created the White House Office of Environmental Justice within the CEQ, headed by the Federal Chief Environmental Justice Officer, as appointed by the President. EO 14096 further directed each agency to integrate environmental justice into its mission, to embed environmental justice principles in decision-making, and to develop and implement Environmental Justice Strategic Plans. The Order also directed the Director of the Office of Science and Technology Policy to establish an Environmental Justice Subcommittee of the National Science and Technology Council, tasked with researching and making recommendations on gaps in data collection and environmental justice-related scientific research—including consideration of Indigenous Knowledge data sources to include in the Climate and Economic Justice Screening Tool, disaggregating environmental risk, exposure, and health data by appropriate categories, analyzing cumulative impacts from multiple sources and exposure pathways, collaborating with Tribal Nations in relation to subsistence and cultural practices of Tribal and Indigenous populations, and meaningfully engaging communities with environmental justice concerns on data collection and research strategies.

Project 2025 describes a unified strategy to exploit the broader regulatory system, including plans to rescind Biden Administration EOs, reinstate Trump Administration EOs, and remake the OMB, especially the Office of Information and Regulatory Affairs (OIRA), in order to advance an extremist, anti-regula-

77 "Revitalizing Our Nation's Commitment to Environmental Justice for All," EO 14096 (April 21, 2023).

tory agenda.[78] Project 2025 also proposes that CEQ's NEPA regulations be rewritten "along the lines of the historic 2020 effort," including "banning the use of cumulative impact analysis." The 2020 NEPA regulations (which were revoked by the Biden Administration) were widely criticized as undermining the goals of NEPA.[79] Reinstating the 2020 rules would remove key environmental justice principles from NEPA implementation by preventing agencies from considering climate impacts and cumulative impacts, limiting opportunities for public comment, imposing arbitrary page and time limits on environmental review processes and documents, providing "categorical exclusions" that would exempt certain types of projects from full assessments, and seek to limit the availability and scope of judicial review.

F. Continuing corruption of the judiciary

The second Trump Administration is likely to continue the work begun in the former President's first term and appoint even more extremist judges and Supreme Court justices who will continue to weaken key protections for communities, as well as erode foundations of our democratic system of modern governance, particularly the administrative state and the rule of law. Former President Trump and his allies, including Project 2025, have been persistent in their campaign to dismantle the administrative state. In recent years, they have found success through highly controversial and precedent-busting decisions issued by the Roberts Court. The continuation of this campaign is likely to disproportionately harm environmental justice and Indigenous communities, whose interests are already sidelined in the law and policy of the United States, as the powers of the executive branch are further constrained while the power of the judiciary is both enlarged and concentrated.

- **The scope of agencies' authority is ambiguously restricted by the Major Questions Doctrine**. In June 2022, the Supreme Court recognized for the first time the Major Questions Doctrine in deciding *West Virginia v. EPA*, which concerned the EPA's repeal of the Clean Power Plan, a 2015 rule that addresses greenhouse gas emissions from the power sector which never went into effect.[80] The Court held that agencies must have "clear congressional authorization" in order to act on questions of "economic and political significance," where the agency's action is "unheralded" and constitutes a "transformative expansion" of its regulatory authority. As a result of the Court's adoption of this "radically indeterminate" doctrine, agencies' powers are significantly constrained, especially with respect to adopting novel regulatory approaches to some of the most urgent problems of our time, including the climate crisis. As described in the dissenting opinion authored by Justice Elena Kagan, the Court's opinion represents an improper usurpation of power: "The Court appoints itself—instead of Congress or the expert agency—the decision-maker on climate policy."

  Thus far in its relatively short history, the Court's Major Questions Doctrine jurisprudence has exacerbated entrenched problems in the governance and political economy of the United States. The Doctrine reinforces some of the worst existing underlying conditions that plague our democratic system. For example, partisan actors are encouraged to generate political controversy around a regulation so that it can be characterized as a "major question," minority groups are empowered to exercise outsized influence over how Congressional enactments are interpreted, and the judiciary is encouraged to make decisions and adopt reasoning based on partisan policy preferences.[81] Moreover, stakeholders have little certainty as to how the Major Questions Doctrine will be applied by courts. One review found that through October 2023, the lower courts defined and applied it in vastly different ways across 114 federal court cases, although "[i]n a majority of cases concerning Biden Administration agency actions and executive orders, judges applied the doctrine to reach outcomes that aligned with the political party of their appointing President."[82]

While the Major Questions Doctrine does not by itself render agencies completely powerless, it does create an amorphous obstacle around which agencies must navigate. Taken together with other recent Supreme Court decisions weakening the admin-

78 Project 2025, *supra* note 2 at 44-50.

79 Robert L. Glickman and Alejandro E. Camacho, "The Trump Administration's Latest Unconstitutional Power Grab," *The Regulatory Review*, August 24, 2020; "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," 85 Fed. Reg. 43304 (July 16, 2020).

80 *West Virginia v. EPA, supra* note 23; Sylvia Chi, "*West Virginia v. EPA*: What the Supreme Court Ruling Means for Environmental Justice," July 24, 2022.

81 Daniel T. Deacon and Leah M. Litman, "The New Major Questions Doctrine," 109 *Va. L. Rev.* 1009 (2023).

82 Natasha Brunstein, "Major Questions in Lower Courts," *75 Admin. L. Rev.* 661 (2023).

istrative state, agencies are in a much more complicated position than they were just a few years ago, which will likely mean that agencies will act more slowly and in a more risk-averse manner.

For environmental justice communities, the immediate, practical consequences of *West Virginia* are a slowdown of federal regulatory efforts to transition from an energy system reliant on polluting power plants to clean, renewable energy, which means continued exposure to harmful emissions.

- **The end of judicial deference to agencies' statutory interpretations**. *Loper Bright*, along with its companion case, *Relentless, Inc. v. Department of Commerce*, overruled *Chevron v. NRDC*, the 40-year-old precedent that stood for the principle that Congress could delegate its regulatory authority to federal agencies.[83] In *Loper Bright*, the Roberts Court concluded that the second step of the framework created in *Chevron* for determining whether to defer to an agency's interpretation of a statute violated the Administrative Procedure Act (APA). The Court held that section 706 of the APA requires courts to exercise their independent judgment as to whether an agency acted within its statutory authority, and therefore, courts were not permitted to defer to an agency's statutory interpretation even if the statute is ambiguous.

  As a practical matter, it is likely that after *Loper Bright*, federal agencies will approach rulemaking with even more deliberation. Developing and finalizing regulations will involve even longer timelines than they already did, which means critical protections against harmful pollution and other risks could take longer to address. Without the support of *Chevron* deference, agencies will likely adopt even more risk-averse statutory interpretations and may choose not to take actions in ambiguous situations, considering the potential risk of establishing even worse precedent in the current judicial environment.

  Beyond the immediate limits applicable to federal agencies seeking to implement their delegated authority, the decision in *Loper Bright* represents a bold power grab on behalf of the judiciary by the Roberts Court. As Justice Elena Kagan puts it in her dissenting opinion, "The majority disdains restraint, and grasps for power."[84]

In addition to recognizing the Major Questions Doctrine and overruling the *Chevron* doctrine, the Roberts Court landed two more major blows to administrative law in the same 2023-24 term:

- **The end of statutes of limitations on APA challenges**. In another case interpreting the APA, the Court decided in *Corner Post* that a plaintiff's claim under the APA against the United States does not "accrue" until the plaintiff has both experienced an injury and the agency action causing that injury has become final, essentially abolishing any statute of limitations for APA complaints, despite Congress' clearly expressed intent to the contrary. In the dissent authored by Justice Ketanji Brown Jackson, she explains: "*Any* established government regulation about *any* issue—say, workplace safety, toxic waste, or consumer protection—can now be attacked by *any* new regulated entity within six years of the entity's formation. A brand new entity could pop up and challenge a regulation that is *decades* old."[85] This decision fundamentally destabilizes the United States' regulatory system and makes certainty a privilege available only to those whose interests align with that of the Roberts Court's majority.

- **Significant uncertainty in agencies' ability to conduct administrative adjudications**. In *Securities and Exchange Commission v. Jarkesy*, the Court held that the Securities and Exchange Commission (SEC) cannot adjudicate civil securities fraud cases without providing a jury trial. In the Court's opinion, written by Chief Justice Roberts, the SEC's administrative adjudication of securities fraud violated the Seventh Amendment, which guarantees the right to a trial by jury for "suits at common law." Since the 19th century, the Supreme Court has recognized a complex "public rights exception" to the Seventh Amendment, allowing certain types of government actions to be adjudicated without a jury trial because Congress may assign such matters to be decided by agencies. In *Jarkesy*, the Court determined that the SEC's enforcement against securities fraud does not fall within the public rights exception and therefore requires a jury trial.

83 *Loper Bright Enterprises v. Raimondo*, No. 22–451, 603 U. S. ____ (2024); *Chevron v. NRDC*, 467 U.S. 837 (1984).

84 *Loper Bright, supra* note 82, slip op. at 4 (Kagan, J., dissenting).

85 *Corner Post v. Board of Governors of the Federal Reserve System*, No. 22-1008, slip op. at 67, 603 U.S. ___ (2024) (Jackson, J., dissenting).

This decision, characterized as a "power grab" in the dissent by Justice Sonia Sotomayor, destabilizes the long-standing practice among many federal agencies, including the EPA, of enforcing various laws through administrative proceedings.[86] Agencies may need to reevaluate whether administratively adjudicated enforcement actions seeking civil penalties continue to fall within the public rights exception to the Seventh Amendment; in cases where the exception does not apply, agencies will have to resort to the slower judicial process to enforce the law.

Other types of agency adjudication that do not involve monetary penalties, like issuing orders or rescinding permits, have long been considered "equitable" remedies which are excluded from the Seventh Amendment. However, *Jarkesy* leaves the door open for courts to find that any claim that does not fall within the public rights exception instead raises an Article III constitutional challenge, meaning that only Article III courts would be allowed to adjudicate such claims.[87] This could severely restrict the powers of agencies and instead require them to go to court to attempt to enforce or implement many of the laws that Congress has assigned them to carry out.

Taken together, these cases add up to an extensive and multi-pronged attack on the administrative state and simultaneous bold expansion of the judiciary's power. These and other opinions issued by the Roberts Court also demonstrate the Court's selective application of elements of our legal system that are foundational to the rule of law, like standing, *stare decisis*, and the separation of powers. Agencies like the EPA are less empowered to act to protect against pollution and climate hazards, while the courts increasingly assert their authority in alignment with partisan policy preferences, making it more challenging for environmental justice communities to successfully vindicate their rights in court.

The jurisprudence of the Roberts Court, as well as the ideologically-motivated judges and justices appointed by former President Trump, together create an extremely challenging legal environment for agency action and litigation. In this context, it is worth considering how regulatory policy fared in the courts under former President Trump's first term. A careful review of the Trump Administration's record defending its own agency policies reveals that courts upheld agency actions in only 23 percent of cases, far lower than the usual "validation rate" of 70 percent.[88] These losses are attributable to various deficits in the regulatory process: violations of unambiguous statutory or regulatory duties, failure to provide supporting analyses to justify rollbacks of Obama-era rules, and most commonly, actions taken "that fell clearly outside of [agencies'] statutory authority to act."[89] Moreover, the Trump Administration's win rate did not improve over time, and the Administration did not tend to prevail in appeals heard by the Supreme Court—although the Court's ideological makeup was a less lopsided conservative majority of 5-4 until Justice Amy Coney Barrett was confirmed to replace Justice Ruth Bader Ginsburg in October 2020. Considering its recent record, the current Roberts Court may be more emboldened under the second Trump Administration to cast aside precedents that had previously constrained it, which could mean more victories in the courts for the second Trump Administration seeking to defend its agencies' actions.

G. More resources for fossil fuels and false solutions

The Trump Campaign's "Agenda47" invokes the slogan "DRILL, BABY, DRILL" and claims that the United States will achieve "energy dominance" by speeding up the issuance of permits for oil and gas extraction on federal lands and for gas pipelines.[90] Other energy-related promises from the campaign include providing "tax relief" to fossil fuel producers and supporting the nuclear power industry. Trump has long denigrated and spread misinformation about renewable energy, especially wind. In January 2025, the President-elect announced that his administration would seek to block wind power.[91] Project 2025 provides some more detail on the former President's energy agenda, envisioning ending "the Biden Administration's unprovoked war on fossil fuels" and backtracking to a power sector based on coal, nuclear, and methane gas.

In his second term, former President Trump would likely seek

86 *Securities and Exchange Commission v. Jarkesy*, No. 22-859, slip op. at 97, 603 U.S. ___ (2024) (Sotomayor, J., dissenting).

87 Matthew Lee Wiener, "What Is Left of Agency Adjudication After Jarkesy?" *The Regulatory Review*, July 29, 2024.

88 Bethany A. Davis Noll, "'Tired of Winning': Judicial Review of Regulatory Policy in the Trump Era," *73 Admin. L. Rev.* 353 (2021).

89 *Id.* at 358.

90 Trump for President, *supra* note 43.

91 Zack Budryk, "Trump: 'We're going to try to have a policy where no windmills are being built,'" *The Hill*, January 7, 2025.

to deploy more resources and weaken protections to expedite the buildout of harmful fossil fuel infrastructure, like Liquefied Natural Gas (LNG) terminals and pipelines. Project 2025 calls for speeding up LNG export approvals and implementing NEPA regulations to provide LNG infrastructure with a categorical exclusion from NEPA's usual requirement that developers conduct a comprehensive analysis of environmental impacts. Project 2025 also proposes that FERC "[r]ecommit itself to the [Natural Gas Act]'s purpose of providing the American people with access to affordable and reliable natural gas," limit decision-making on pipeline certificates "to the question of whether there is a need for the natural gas," and be barred from incorporating climate change considerations in decisions in order to speed up the process for reviewing and permitting gas pipelines.[92]

With regard to electricity, Project 2025 purports to promote resource neutrality in transmission planning and interconnection processes, while at the same time proposing policies to subsidize coal, gas, and nuclear and placing higher burdens on renewables. Project 2025 expresses dissatisfaction with the Regional Transmission Organizations (RTOs) which, among other responsibilities, manage wholesale electricity markets through structured competitive bidding and calls for FERC to "reexamine the RTOs under its jurisdiction," claiming that they threaten electric reliability and fail to provide economic benefits to customers (which they are not intended or required to do).[93]

In its chapter on the Department of Interior, Project 2025 focuses on unleashing further extraction across federal lands in order to fulfill the agency's supposed "obligation to develop the vast oil and gas and coal resources." Proposals include increasing the frequency of both onshore and offshore lease sales, restarting the coal leasing program, reducing rents, royalty rates, and bonding requirements, reinstating various Trump Administration rules implementing the Endangered Species Act and Migratory Bird Treaty Act, as well as a litany of secretarial orders and reversal of the Biden Administration's decisions limiting the Willow oil-drilling project and canceling oil and gas leases in the Alaska National Wildlife Refuge. With respect to Interior's Office of Surface Mining Reclamation and Enforcement, Project 2025 advocates for reducing field inspectors, reinstating former President Trump's "Schedule F" executive order to allow the firing of "nonperforming employees," and revising the Applicant Violator System so regulators can "consider extenuating circumstances." These proposals outline an agenda that prioritizes enforcement and compliance with environmental protection and reclamation requirements for coal mines and abandoned mine lands, which can jeopardize the health and safety of frontline and Indigenous communities by contaminating groundwater, creating flooding and sinkhole risks, and emitting air pollutants like methane.[94]

Project 2025 also calls for an executive order and additional policies to expedite the process for states to obtain primacy under the Safe Drinking Water Act (SDWA), which would facilitate permitting for geologic carbon storage in states that are eager to attract the carbon capture and storage (CCS) industry.[95] This type of storage, known as Class VI underground injection control (UIC) in the context of SDWA, involves injecting highly-pressurized CO_2 into the ground for long-term storage. The first Class VI UIC well in the United States began operations in Illinois in 2017, and reportedly began leaking in March 2024.[96] Because this technological application is relatively new, the long-term efficacy in terms of permanently and safely storing CO_2 remains uncertain. Leaked CO_2 from these wells poses the risk of contaminating groundwater and induced seismicity, which endangers neighboring residents, especially the disproportionate share of environmental justice and Indigenous communities that rely on wells for drinking water. Moreover, the CCS buildout—including equipment to capture and pipelines to transport CO_2—is likely to lead to prolonged and potentially even increased fossil fuel extraction, processing, and use, which would mean further pollution burdens on the same communities. Even though Project 2025 also calls for the elimination of the 45Q tax credit—which provides up to $85 per metric ton of CO_2 (or $180 per ton via direct air capture) that a taxpayer claims is captured and used or stored—the proposals related to SDWA primacy would still provide significant support to the CCS industry.

The United States currently leads the world in producing and exporting both crude oil and methane gas. In fact, the oversupply of gas produced in the Permian basin has led to record negative prices and it is unclear whether the market will respond to the proposed deregulation by investing in more leases and further expanding production, with the notable exception of LNG ex-

92 Project 2025, *supra* note 2 at 406-408.

93 *Id.* at 400-406.

94 *Id.* at 517-538.

95 Project 2025, *supra* note 2 at 430.

96 Juanpablo Ramirez-Franco, "The nation's first commercial carbon sequestration plant is in Illinois. It leaks." *Grist*, October 21, 2024.

ports. This boom in oil and gas production has led to significant health and social costs for environmental justice and Indigenous communities, who are disproportionately exposed to health risks from pollution released by extraction-related operations while receiving an unequal share of economic benefits from them. In addition, development associated with oil and gas, such as pipelines and drilling sites, often disrupts cultural sites and lands sacred to Indigenous peoples, leads to the loss of cultural and subsistence resources, and violates Tribal sovereignty.

H. Reduction of administrative funding and capacity

The second Trump Administration plans to reduce funding for most federal agencies, resulting in less resources to develop and enforce regulations, as well as for various grant and assistance programs. Just weeks after the Presidential election was decided, the so-called "Department of Government Efficiency" (DOGE) was announced: a vaguely defined, ostensibly non-governmental initiative co-led by Elon Musk, the world's richest person, and Vivek Ramaswamy, a failed Republican presidential candidate, that will purportedly advise the Trump Administration on regulations to target for rescission, federal government staffing reductions, and most notably, cost-cutting, with Musk claiming they will cut $2 trillion from the federal budget.[97] Based on budget requests from President-elect Trump's first term, it is reasonable to expect that the second Trump Administration will seek deep cuts to the agencies and programs whose work is most critical to environmental and climate justice.

In its last budget request for fiscal year 2021, the Trump Administration proposed deep funding cuts to EPA and FEMA, both of which maintain critical responsibilities related to climate and environmental justice.[98] Reductions to EPA's budget amounted to 27 percent overall, including cutting funding for the Clean Water and Drinking Water State Revolving Funds by $782 million, eliminating funding to public water systems under the Safe Water for Small and Disadvantaged Communities program, and halving funding for air quality work, which would particularly harm environmental justice communities.[99] With regard to FEMA, the Trump Administration proposed cutting over $160 million in funding for flood mapping and eliminating a $10 million program to repair high-hazard dams.[100] In addition, the Trump Administration's proposed budget for DOE reduced non-nuclear programs by 29 percent, sought to eliminate and privatize the functions of the Power Marketing Administrations, which own and operate critical electricity transmission infrastructure, and tried to cut funding to the Weatherization Assistance Program, which supports state programs with local implementers to help low-income households reduce energy costs by improving home energy efficiency, from $357 million in fiscal year 2020 to $1 million in fiscal year 2021.[101]

97 Tami Luhby, Tierney Sneed and Rene Marsh, "Trump wants Elon Musk to overhaul the government. Here's what could be on the chopping block," *CNN*, November 14, 2024.

98 U.S. Government Publishing Office (GPO), "Budget FY 2021 - Budget of the U.S. Government, Budget of the United States Government, Fiscal Year 2021," February 10, 2020; Brittany Renee Mayes, Jennifer Liberto, and Damian Paletta, "What Trump proposed in his 2021 budget," *Washington Post*, February 10, 2020.

99 Environmental Protection Network, "Proposed EPA Budget's Deepest Cuts Are to Clean and Safe Water," February 12, 2020.

100 Jean Chemnick and Thomas Frank, "Climate Change Once Again Left Out of Trump's Federal Budget," *Scientific American*, February 11, 2020.

101 GPO, "Budget FY 2021 - Department of Energy," February 10, 2020.

Every year of his term, former President Trump proposed entirely eliminating the:

- **Low Income Home Energy Assistance Program (LIHEAP)**, which provides low-income households with assistance paying energy bills.
- **HOME Investment Partnerships Program**, which provides grants to states and localities to create afford able housing for low-income households.
- **Community Development Block Grant Program**, which provides flexible funding for affordable housing, economic development, and disaster recovery and resilience efforts including housing repair and infrastructure rebuilding.[102]

These or similar budget cuts and program de-funding, if realized, would disproportionately and adversely impact low-income communities, communities of color, and Indigenous communities, especially those who are already experiencing the worst impacts of climate change.

Cuts to agency budgets pose significant threats for critical climate, environment, and health-related information that the federal government currently collects, administers, and disseminates. Of particular relevance in the context of climate and environmental justice, data related to climate impacts and risks, weather or air quality forecasts, and public safety messaging may become unavailable or unreliable. Project 2025 proposes to "[b]reak [up] NOAA," including ending "the preponderance of [the Office of Oceanic and Atmospheric Research's] climate-change research," undermining the agency's independence, and to "fully commercialize" the National Weather Service's forecasting operations. In his first term, President Trump's "Sharpiegate" incident, involving the dissemination of inaccurate information about Hurricane Dorian, harmed NOAA's reputation and eroded public trust, according to a report from the Commerce Department inspector general.[103]

On the campaign trail, the former President frequently claimed he will slash federal spending unilaterally by wielding the Constitution's "impoundment power" to "cut waste, stop inflation, and crush the Deep State" by refusing to spend funds appropriated by Congress.[104] This purported Constitutional power, however, does not exist and has never been recognized by a court.[105] In fact, the first impeachment attempt against the former President concerned his apparent attempt to exercise this power by withholding funding appropriated by Congress for military aid to Ukraine. Nevertheless, former President Trump has said he would use impoundment to cut environmental agencies, and his allies have reportedly been in discussion about targeting energy tax credits from the Inflation Reduction Act as a potential test case that would invite the Supreme Court to newly recognize this power.[106] If carried out, this planned Constitutional crisis would cause significant instability throughout the government, with likely ripple effects in the states. If the Trump Administration does attempt to unilaterally defund EPA or halt the implementation of energy tax credits, EPA enforcement activities and investments in renewable energy would likely be delayed while polluters would be emboldened to continue burdening environmental justice communities.

102 GPO, "Budget FY 2021 - Appendix, Budget of the United States Government, Fiscal Year 2021," February 10, 2020; GPO, "Budget FY 2020 - Appendix, Budget of the United States Government, Fiscal Year 2020," March 18, 2019;

GPO, "Budget FY 2019 - Appendix, Budget of the United States Government, Fiscal Year 2019," (February 12, 2018); GPO, "Budget FY 2018 - Appendix, Budget of the United States Government, Fiscal Year 2018," (May 23, 2017); Robert Greenstein, "Trump administration budgets and programs for people of limited means," Brookings Institution, September 3, 2024.

103 Project 2025, *supra* note 2 at 674-7; Dharna Noor, "Trump will dismantle key US weather and science agency, climate experts fear," *The Guardian*, April 26, 2024; Andrew Freedman and Jason Samenow, "Investigation rebukes Commerce Department for siding with Trump over forecasters during Hurricane Dorian," *Washington Post*, July 9, 2020.

104 Trump for President, "Agenda47: Using Impoundment to Cut Waste, Stop Inflation, and Crush the Deep State," June 20, 2023.

105 Zachary S. Price, "The President Has No Constitutional Power of Impoundment," *Notice & Comment*, July 18, 2024; Michael Angeloni, William Ford, and Conor Gaffney, "The impoundment threat, explained," June 13, 2024.

106 Jeff Stein and Jacob Bogage, "Trump plans to claim sweeping powers to cancel federal spending," *Washington Post*, June 7, 2024.

2

Potential State and Local Mitigating Actions

Local and state advocates may be able to pursue state and local legislative, implementation, and enforcement strategies to mitigate the impacts of a hostile federal administration. The following contains potential ideas that may be worth exploring in such a scenario, and may also be productive to pursue in alternative scenarios. State and local actions can provide valuable frameworks and precedents for future federal actions, and at the state and local level, may be more feasible to implement by narrowly tailoring such actions to the impacted community. Because there are a variety of political conditions among states and localities, which may also change over time, some actions listed here will only work in states with governors and legislatures that prioritize environmental justice and equity, while other recommendations may be more applicable where unfavorable political conditions prevail.

A. State legislation, implementation, and enforcement

Many of the environmental laws that disproportionately impact environmental justice and Indigenous communities are federal and largely implemented by federal agencies that are under the near-complete control of the President of the United States. In addition, due to the U.S. Constitution's Article VI Supremacy Clause, federal laws generally preempt conflicting state laws. Nevertheless, various opportunities exist to advance policies at the state level that can meaningfully advance environmental and climate justice and mitigate some of the potential risks posed by a Presidential administration that is hostile to environmental justice.

In some states, regardless of the results of the federal elections, the political leadership will remain staunchly ideologically opposed to taking action to advance environmental and climate justice. In some cases, appeals based on making energy cheaper, creating local jobs, or improving resilience in the case of disasters and power outages may be more effective than emphasizing racial equity or climate impacts, while still reducing harm and providing meaningful benefits to environmental justice and Indigenous communities.

1. Cumulative impacts requirements

Cumulative impacts refer to the sum of multiple sources of pollution and other environmental stressors that accumulate over time to cause adverse effects to human health and wellbeing. Policies that impose cumulative impact requirements can help to reverse decades of disproportionate impacts on communities with environmental justice concerns and can fill in gaps of knowledge related to the health impacts of multiple pollutants to more holistically assess health and other disparities. An initial step toward better understanding cumulative impacts is to require its evaluation during permitting processes and to require monitoring and prioritized enforcement in communities that are experiencing disproportionate cumulative impacts. Over a dozen states have passed some version of cumulative impacts legislation; of these, New Jersey and New York's requirements are considered the best examples:

- **New Jersey's Environmental Justice Law**, implementation guidance, and regulations require the state's Department of Environment Protection to evaluate environmental and public health impacts of specific categories of facilities on overburdened communities when reviewing permit applications. The law also strengthens the Department's authority to deny permits if the project will have a disproportionately negative impact.[107]

- **New York's Cumulative Impacts Bill** requires an analysis of "cumulative impacts" on "disadvantaged communities" before a permit is approved or renewed. The law requires that: "[n]o permit shall be approved or renewed by the department if it may cause or contribute to, either directly or indirectly, a disproportionate or inequitable or both disproportionate and inequitable pollution burden on a disadvantaged community."[108]

These New Jersey and New York examples represent best practices because they require both an evaluation of cumulative impacts and include consequences if there is a disproportionate or inequitable impact.

107 New Jersey Department of Environmental Protection, "Environmental Justice Law," (last updated October 4, 2024); New Jersey Senate, S. 232, 219th Leg. (adopted June 25, 2020), enacted as P.L. 2020, c. 92.

108 New York Senate, S. 8830, 2021-2022 Reg. Sess. (introduced April 22, 2022).

2. Disparate impacts requirements

Environmental justice and Indigenous communities often experience a disproportionate pollution burden due to unequal concentrations of pollution sources operating within and around these communities. Disparate impact requirements can be useful in addressing this burden by ensuring that future actions or projects do not result in disparate impacts on these communities. Federal agencies are responsible for disparate impact requirements promulgated pursuant to Title VI of the Civil Rights Act of 1964, which prohibits federal agencies from taking actions that have a discriminatory effect based on race, color, or national origin, including limited English proficiency. The enforcement of these federal requirements, however, has been riddled with issues, despite the federal government's attempts to improve its disparate impact regulations and processes. To fill in the gaps left by the federal disparate impact regime and to ensure that state actions are also covered, states could consider establishing their own disparate impact requirements. Some examples of this include:

- **Washington** requires that when local jurisdictions update their comprehensive plans, the housing element must address zoning and policies that may have racially disparate impacts, exclusionary effects, or cause displacement, and identify and implement policies that address and begin to undo them.[109]

- **New Jersey** has developed a set of rules under the state's Law Against Discrimination clarifying the legal standard and burdens of proof for determining what constitutes disparate impact discrimination in the context of employment, housing, public accommodation, credit, and contracting.[110]

3. Stronger state environmental protection requirements

Stronger state requirements can help to mitigate any rollback of environmental protection requirements by an adverse federal administration, and can also help communities prevent harmful land uses from being sited within their communities. More stringent environmental protection requirements can be completely separate from federal requirements, or they can include requirements that fall under—but are more stringent than—federal requirements. A few examples of potential ways to strengthen state environmental protections include:

- **Strengthen state implementation of the Clean Air Act.** Environmental justice and Indigenous communities can engage with state or regional air pollution regulators to ensure that states with delegated authority for implementation of the federal Clean Air Act develop and then carry out State Implementation Plans that are designed to be protective of these communities. For example:

    - In California, the Bay Area Air Quality Management District adopted rules phasing out the sale of new gas furnaces and water heaters in order to address NOx emissions from the appliances, which can cause respiratory problems in humans and contribute to outdoor air pollution in the form of smog, particulate matter, and ozone.[111]

    - Also in California, the South Coast Air Quality Management District's Warehouse Indirect Source Rule seeks to reduce NO_x and particulate matter pollution from trucks traveling to and from large warehouses (at least 100,000 square feet of indoor floor space in a single building) by targeting the owners and operators of these warehouses.[112]

- **Enact greenhouse gas limits on major emitters**. Since 2007, Hawaii has enacted a series of laws and implementing rules to address greenhouse gas emissions, including a 2014 amendment that established greenhouse gas caps for existing large stationary sources.[113]

- **Strengthen water impacts requirements in permitting.** In Arizona, developers must demonstrate a 100-year assured water supply in order to receive approval for new

109 Washington House, H.B. 1220, 67th Leg. (2021), enacted as S.L. 2021, c. 254; Washington State Department of Commerce, "Updating GMA Housing Elements," (last updated October 5, 2024).

110 56 N.J.R. 969(a), "Rules Pertaining to Disparate Impact Discrimination," June 3, 2024.

111 Bay Area Air Quality Management District, "Regulation 9 Rule 4: Nitrogen Oxides from Natural Gas-Fired Furnaces - 2023 Amendment (Current)" (last updated August 20, 2024); Heather Dadashi, "Why the Bay Area's Zero-Emission Appliance Rule is a Big Deal," *Legal Planet*, March 15, 2023.

112 South Coast Air Quality Management District, "Rule 2305. Warehouse Indirect Source Rule - Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program," (adopted May 7, 2021); Nourhan Ibrahim, "Fighting Toxic Pollution: The Indirect Sources Rule," California Environmental Justice Alliance (accessed November 1, 2024).

113 State of Hawaii, Department of Health Clean Air Branch, "Hawaii Greenhouse Gas Program," (accessed November 1, 2024); Haw. Code R. § 11-60.1-204 (2024).

residential subdivisions that rely solely on groundwater in "Active Management Zones," areas with high groundwater usage. In response to an updated groundwater model in 2023 that showed a shortfall in groundwater demand in the Phoenix area, the Arizona Department of Water Resources halted issuance of these approvals.[114]

- **Enact protective measures or restrictions on PFAS, pesticides, or other chemicals of concern.** While federal preemption concerns complicate this approach, states have a proven track record of imposing their own protective measures on certain chemical substances that pose health and developmental risks, including PFAS and pesticides like chlorpyrifos.[115]

- **Establish safety protections and a moratorium on CO_2 pipelines.** In 2024, Illinois passed a law overseeing CCS projects and pipelines, requiring extended safety monitoring, net reductions in greenhouse gas emissions, and a temporary moratorium on construction of new CO_2 project sites until July 1, 2026, unless federal Pipeline and Hazardous Materials Safety Administration (PHMSA) safety standards for carbon dioxide pipelines are finalized and the state completes a study on safety setback requirements before then.[116]

4. Clean energy or renewable portfolio standards

As a way to achieve statewide decarbonization, states can adopt a requirement to transition to clean energy resources in the form of a Renewable Portfolio Standard (RPS) or Clean Energy Standard (CES). Generally, an RPS is a binding requirement on retail electric suppliers to procure a minimum share of generation from renewable energy sources, while a CES is a newer approach that encompasses a broader set of technologies and may not yet have defined enforcement or implementation mechanisms. Sixteen states and the District of Columbia have 100 percent RPS/CES targets with deadlines ranging from 2030 to 2050.[117] Although both of these standards can result in the deployment of new clean resources, many states include harmful, polluting energy resources in their definitions of "clean" or "renewable." Therefore, consideration of the equitable best practices described below can help reduce harmful climate and air pollution and protect frontline and Indigenous communities.

- **Aggressive targets**. States have adopted targets that range from 100 percent to as low as 10 or 15 percent clean and/or renewable energy. Minnesota has one of the most protective targets, requiring 100 percent zero-carbon energy for retail sales by 2040, although some of this target can be satisfied with renewable energy credits.[118]

- **Requirements for real reductions**. Any clean energy requirement should apply to as much energy generation as possible and ensure overall emissions reductions. For example, Oregon requires that the state's investor-owned utilities and electricity service suppliers show that greenhouse gas emissions per megawatt-hour are reduced by 80 percent below baseline emissions levels by 2030 and 100 percent below baseline emissions level by 2040.[119]

- **Exclude harmful technologies**. Resources that emit pollution and/or greenhouse gas emissions should not be included as eligible clean or renewable energy resources. Some states have taken actions to exclude such harmful technologies. For example, Arizona removed municipal waste from the list of qualified resources.[120] Although not as strong as an outright ban, Minnesota does not allow municipal waste facilities to qualify as renewable energy if located in populated areas.[121]

- **Prioritize retiring fossil plants in overburdened communities**. Illinois requires fossil fuel-fired facilities located in or within three miles of an environmental justice community

114 Ariz. Rev. Stat. Ann. § 45-576 (1980); Jeremy Duda, "Arizona restricts new Phoenix housing over groundwater shortage," Axios, June 1, 2023.

115 Safer States, "PFAS "Forever Chemicals"," (accessed January 8, 2025); National Caucus of Environmental Legislators, "Chlorpyrifos Regulation Back in the Hands of State Legislators," February 1, 2024.

116 Illinois Senate Bill 3441, 103rd Gen. Assem., Reg. Sess. (2024).

117 Galen L. Barbose, "U.S. State Renewables Portfolio & Clean Electricity Standards: 2024 Status Update," Lawrence Berkeley National Laboratory, August 2024.

118 H.F. 7, 93rd Leg., 2023 Reg. Sess. (Minn. 2023).

119 H.B. 2021, 81st Leg. (Or. 2021).

120 Ariz. Corp. Comm'n, Decision No. 69127 (Nov. 14, 2006).

121 H.F. 7, *supra* note 109.

to be retired by 2030 or 2035, which is earlier than facilities not located in or near an environmental justice community.[122]

- **Disallow renewable energy certificates**. Systems that involve trading Renewable Energy Certificates (RECs) cause disproportionate impacts on environmental justice and Indigenous communities because they can allow fossil power plants to continue to pollute and harm nearby communities while purchasing credits for renewable energy produced elsewhere. Recent studies have shown that reliance on RECs can put climate goals in jeopardy.[123] Ideally, a decarbonization policy would disallow RECs, but in case that cannot be achieved, there are various ways to mitigate and reduce potential problems, including: reducing RECs over time, limiting when RECs can be used, and restricting where RECs can be sourced from.

5. Procedural justice provisions

Procedural justice provisions are essential to advancing environmental and climate justice because they support the foundational principle of self-determination.

By establishing governance structures like environmental justice councils and implementing measures that enhance community engagement and provide resources for public participation, states can ensure that communities impacted by environmental decisions have a meaningful role in shaping those decisions. These mechanisms have proven effective in promoting procedural justice, fostering inclusive decision-making, and empowering communities to advocate for their needs and priorities.

- **Environmental justice councils and advisory groups**. Several states have created specialized environmental justice councils or advisory groups that include representation from frontline community members to inform the development of "disadvantaged community" definitions and related tools. Examples include California's Environmental Justice Advisory Committee, Colorado's Environmental Justice Action Task Force and Just Transition Advisory Committee, Maryland's Commission on Environmental Justice and Sustainable Communities, and New York's Climate Justice Working Group.[124] To ensure their success, such advisory groups must:

    - *Be adequately resourced*: Many justice-focused advisory groups have had problems with being chronically underfunded and undervalued. Participating members should be compensated for their expertise and time in light of their contributions towards developing policies and informing decision-making. These groups should also be adequately supported by professional staff who are responsive to their needs and requests.

    - *Be empowered to impact decision-making*: Many environmental justice councils have been advisory-only, which limits their effectiveness. A better practice is to ensure that these groups are an official part of the decision-making body. For example, the Governing Board

122 Amend. No. 2 to S.B. 2408, 102d Gen. Assemb., Reg. Sess. (Ill. 2021) (enacted at 20 ILCS 730).

123 Anders Bjørn et al., "Renewable Energy Certificates Threaten the Integrity of Corporate Science-Based Targets," 12 *Nature Climate Change* 539 (2022).

124 CARB, "Environmental Justice Advisory Committee," (accessed November 3, 2024); Colorado Department of Public Health & Environment, "Environmental Justice Action Task Force," (accessed November 3, 2024); Colorado Department of Labor and Employment, "About the Just Transition Advisory Committee," (accessed November 3, 2024); Maryland State Archives, "Maryland Environmental Justice Commission," (accessed November 3, 2024); New York State, "Climate Justice Working Group," (accessed November 3, 2024).

of the San Diego County Air Pollution Control District is legally required to include three representatives of the public, including an environmental justice representative.[125]

- *Be codified in law*: Environmental justice councils that are created only through a Governor's Executive Order are limited in their effectiveness to the current administration. Codifying the authority for such councils into statute is important for continuity and clarifying the scope of the council's power.

- *Beware of conflicts*: Some environmental justice councils include industry representatives, whose business interests are likely to be in direct conflict with some community priorities. A robust conflict check and disclosure process can help protect the integrity of the group's decision-making and provide greater transparency.

- **Provide funding and resources to support public participation and community engagement**. States can set requirements and provide funding to ensure that environmental justice and Indigenous communities can meaningfully participate in decision-making processes overseen by state agencies or utility commissions.[126] Some examples include:

  - *Public participation and community engagement*: Oregon has codified various requirements directing agencies to support the meaningful involvement of environmental justice and Indigenous communities, including creating a dedicated public advocate position and reporting annually to the Governor and the state's Environmental Justice Council on the results of efforts to improve public participation. In the case of water projects, agencies are directed to develop rules based on best practices for community engagement and ensure increased participation by "disproportionately impacted communities"; agencies are also authorized to provide technical or financial assistance to local organizations and governments to develop and implement community engagement plans.[127]

  - *Intervenor compensation*: Several state utility commissions have programs that reimburse nonprofits for the costs of their involvement in regulatory proceedings. These "intervenor compensation" programs can help empower a group to advocate for their communities in proceedings concerning issues like energy planning, procurement, and rate setting cases.[128]

6. Funding for environmental and climate justice priorities

Another promising strategy for supporting environmental and climate justice is for states to provide funding and other policies, such as "polluters pay" programs, that support the deployment of climate resilience and clean energy projects that are designed to benefit environmental justice and Indigenous communities.

- **State analogs to Justice40**. State policies that prioritize or mandate set-asides for funding or incentives for environmental justice or Indigenous communities can help resources reach the communities that need it the most. Examples include:

  - New York's Climate Leadership and Community Protection Act requires that no less than 35 percent (with a goal of 40 percent) of benefits from state investments in renewable energy and energy efficiency are realized in disadvantaged communities.[129]

  - Illinois also includes requirements and goals for a certain percentage of benefits from its program to accrue in environmental justice communities. For example, the Climate and Equitable Jobs Act provides 80 percent rebates to support electric vehicle infrastructure projects that pay prevailing wages—45 percent of which must be located in environmental justice and economically disadvantaged communities—and also sets a goal of at least 25 percent of the large, low-income multifamily solar incentive to be allocated to projects within environmental justice communities.[130]

125 San Diego Air Pollution Control District, "SDAPCD Governing Board," (accessed November 3, 2024).

126 Initiative for Energy Justice and Vote Solar, "Amp Up the People – A Guide for Energy Justice Advocates in Utility Regulation."

127 H.B. 4077, 82d Leg. (Or. 2022); H.B. 3293, 81st Leg. (Or. 2021).

128 National Association of Regulatory Utility Commissioners, "State Approaches to Intervenor Compensation," December 2021.

129 S.B. 6599, 2019–2020 Leg. Sess. (N.Y. 2019) (enacted as N.Y. Envtl. Conserv. Law § 75-0101 *et seq.*).

130 *Supra* note 113.

- **Equitable clean energy deployment**. State policies can support equitable clean energy deployment and ensure that environmental justice and Indigenous communities benefit from the transition to clean energy and clean transportation. Some examples include:

    - *Providing additional state incentives for equitable development*: States can provide incentives that can be stacked with federal incentives to encourage equitable clean energy deployment. For example, the D.C. Solar for All program provides an incentive of $1.25/watt of direct current capacity to solar developers, which can be combined with federal tax credits to steeply reduce the cost of community solar projects subscribed to by low-income households.[131]

    - *Guaranteeing minimum bill savings for projects*: Another best practice applicable to community solar and similar projects is to require minimum bill savings. The D.C. Solar for All program ensures bill savings for community solar participants of an estimated $500 per year.[132]

    - *Providing direct benefits to communities through community ownership and equitable workforce development*: States (and local governments) can design programs to ensure direct community benefits through community ownership and workforce requirements.[133]

    - *Grants and support for resilience hubs*: California and Oregon both have state programs to provide funding and support for neighborhood-level community resilience centers that can provide shelter and resources during emergencies like storms, wildfires, heat waves, and prolonged power outages, in addition to year-round services and programming to strengthen community connections and capacity. These programs cover activities and expenses including construction, upgrades, training, grant writing, purchasing generators, emergency communications equipment, and water purification systems, as well as staffing and ongoing services and programming.[134]

7. Constitutional right to a healthy environment

A state constitutional right to a healthy environment could provide a backstop for environmental protections and potentially provide environmental justice and Indigenous communities with a pathway to prove legal standing to challenge state actions, especially regarding climate impacts. The constitutions of states as varied as Montana, New York and Pennsylvania include a right to a healthy environment, and several more states have considered proposals for similar "Green Amendments." Notably, in December 2024, the Montana Supreme Court held that the state's policy of excluding climate change impacts from environmental reviews violated the state constitution's right to a "clean and healthful environment."[135] Key provisions to consider incorporating when developing a Green Amendment include:

- The right to clean air and water;
- The right to a healthy and/or stable climate;
- Language that expressly ensures that the right to a healthy environment is enforced equitably; and
- The right to preserve the environment for its historic, cultural, or scenic values.[136]

B. Local legislation and implementation

Community-based organizations and advocacy groups should also consider pursuing local policies and actions to help protect environmental justice communities and promote beneficial projects. This type of work is often critical for seeing real change in communities and is likely to be necessary to further equity under any presidential election result scenario. The following list provides some examples of local actions to consider and is not intended to be exhaustive. The examples provided may not be politically or legally feasible in all areas as conditions vary widely and state and federal laws may preempt local governments from taking action on certain issues.

131 U.S. Dept. of Energy (DOE), "District of Columbia Solar for All," (accessed November 3, 2024).

132 District of Columbia Department of Energy & Environment, "Solar for All Terms," (accessed November 3, 2024).

133 DOE, "Community Solar Best Practices Guide: Developing Projects with Meaningful Benefits," (accessed November 3, 2024).

134 California Strategic Growth Council, "Community Resilience Centers," (accessed November 3, 2024); Oregon Department of Human Services, "Resilience Hubs and Networks Grant," (accessed November 3, 2024).

135 Amy Beth Hanson, "Global warming can't be ignored, Montana's top court says, upholding landmark climate case," *Associated Press*, December 18, 2024; Held v. Montana, DA 23-0575 (Mont. 2024).

136 National Caucus of Environmental Legislators, "Green Amendments in 2023: States Continue Efforts to Make a Healthy Environment a Legal Right," March 27, 2023.

1. Zoning and land use laws

Local zoning and ordinances can help lower burdens on environmental justice and Indigenous communities if they prevent siting of harmful projects; although in some cases, local zoning changes may be preempted or limited by state (or in some cases, federal) law. The following list of examples describes ordinances and zoning laws that have been passed in different jurisdictions. Examples of approaches to zoning law that local groups have pursued to prevent harmful projects and/or protect environmental justice communities include:

- **Organizing to persuade decision-makers on zoning applications:** Illinois People's Action mobilized constituents to successfully oppose a "special use" zoning application for a proposed carbon sequestration facility that had been recommended for approval from the county's Zoning Board of Appeals. The organizing effort resulted in a unanimous, bipartisan decision by the McLean County Board to reject the application.[137]

- **Designate fossil infrastructure a prohibited use:** In 2018, Baltimore enacted an ordinance that designated crude oil terminals a prohibited use in all zoning districts in the City of Baltimore, banning any expansion or new construction.[138]

- **Phasing out nonconforming uses through amortization**: Cities that have stopped permitting certain uses under their zoning plans may face challenges in addressing ongoing nonconforming uses. National City, California enacted an ordinance that provides a process called "amortization" that allows the city council to order the termination of a nonconforming use over a period of time to allow the owner to recover their investment in the business. This policy was developed through advocacy from local community members concerned about the health effects of pollution from a concentration of industrial sites, including auto body and chrome plating shops, in close proximity to homes.[139]

- **Proactive consideration of environmental justice impacts**: Another approach that some jurisdictions have taken is to require proactive planning that considers environmental justice impacts for future development. Some communities have advocated for localities to proactively identify "green zones," which are areas that currently shoulder high pollution burdens but could be transformed into healthier communities with targeted investment and development. Some examples of localities that have required proactive planning include:

    - Washington D.C.'s Comprehensive Plan includes policy statements intended to protect communities from disproportionate pollution burdens, calling for the development of solutions to address the overconcentration of industrial uses, expanded outreach to disadvantaged communities, the incorporation into capital improvement and siting decisions of environmental justice considerations, cleaning up and reusing contaminated properties, and auditing and eliminating environmental health threats in affordable housing.[140] These policies have in turn been integrated into citywide elements of the Plan.[141]

    - Minneapolis convened a Green Zones Workgroup that developed criteria, eligibility requirements, goals, progress metrics, and strategies for Green Zone designation and development. In 2017, two Green Zones were designated by the City Council and approved by the Mayor. The Southside Green Zone Council and North Side Green Zone Task Force, made up of members of the impacted communities, develops and implements plans and advises and holds the city accountable for ongoing work to address environmental justice concerns in the Green Zones.[142]

2. Other strategies to oppose harmful pollution sources

- **"Police power" rules**: In addition to zoning and land use, local governments usually have authority, often called

137 Michele Steinbacher, "McLean County Board denies special-use permit for CO2 wells proposed for Saybrook area," *WGLT*, December 14, 2023; McLean County, "Proceedings of the County Board of McLean County, Illinois," December 14, 2023.

138 Environmental Integrity Project, "Baltimore Passes Bill to Protect City from Dangerous Crude Oil Shipments," March 13, 2018; Baltimore City Code Art. 32 § 1-209 (2024).

139 Natl. City, Cal., Mun. Code § 18.11.100 (2023); National City, CA, "Amortization," (accessed November 3, 2024); California Environmental Justice Alliance, "National City's Amortization Ordinance," (accessed November 3, 2024).

140 10-A6 D.C. Mun. Regs. § 628 (2021).

141 DC Office of Planning, "Chapter 6: Environmental Protection," (2021).

142 Minneapolis, Minn., City Council Resolution No. 2017R-188, May 3, 2017; Minneapolis, "Green zones," (last updated August 22, 2024).

"police power," to regulate for the general health, safety, and welfare of their communities. One example of how this power has been used to protect overburdened communities is Chicago's bulk material rules, which imposes various mitigation, monitoring, and recordkeeping requirements on any facility that processes, handles, stores, or transfers materials including ores, coal, coke, petcoke, and metcoke.[143]

- **Develop a zero-waste plan**: Waste incinerators pose significant health risks and are disproportionately sited in low-income, environmental justice, and Indigenous communities, yet these dangerous facilities have managed to evade calls for decommissioning despite proliferating air pollution violations, worker safety issues, and other concerns. While an admittedly longer-term strategy, localities struggling to end the operation of harmful incinerators should consider developing a zero-waste plan and waste prevention and diversion strategies to reduce the reliance on incinerators to manage waste.[144]

  The business model of incinerators depends on selling electricity generated from burning waste, which in turn relies on subsidies which are generally provided on the state and/or federal level. A successful effort to defeat legislation that would have classified waste-to-energy as renewable energy eligible for the state's Renewable Portfolio Standard (RPS) was credited by community advocates for leading to the 2018 closure of an incinerator in Commerce, California. The facility was already struggling economically, even after raising tip fees to accept waste, largely due to the expiration of a valuable 30-year power purchase agreement with the local utility. Had the law proposing to include incinerators in the state RPS passed, the utility may well have chosen to enter into a new agreement.[145]

3. Equitable building and energy decarbonization

Local funding (or local implementation of state funding) can help mitigate potential cuts of federal funding and programs that support the decarbonization of buildings and energy. These programs may also have to navigate dynamic federal and state preemption concerns, especially in the wake of the recent Ninth Circuit decision holding that Berkeley, California's attempt to ban gas infrastructure in new building construction was preempted by the federal Energy Policy and Conservation Act.[146] Some examples of programs and approaches to consider include:

- **Building Performance Standards**: Various local governments throughout the country have adopted Building Performance Standards (BPS), which require existing buildings to achieve minimum levels of energy or climate performance. For example, Denver, Colorado's BPS applies to large commercial and multifamily buildings and requires the use of electrified space and water heating once current appliances reach their end of life. It also offers heat pump incentives for early adopters while also prescribing energy efficiency measures for smaller buildings.[147] The most effective and equitable versions of this approach incorporate protections for renters[148] and dedicated funding that does *not* rely on regressive taxation schemes to provide targeted assistance so low-income households can afford upgrades.

- **Overcoming the "split incentive" barrier**: One of the most daunting challenges in building energy efficiency is known as the "split incentive" problem, where building owners are not incentivized to invest in energy and water efficiency upgrades if tenants bear the cost of paying for utilities. One way to address this is to enact energy efficiency standards for licensed rental properties, like the "SmartRegs" adopted by Boulder, Colorado.[149] Another approach is known as "inclusive utility investments," which enable utilities to pay for efficiency upgrades directly and recover those costs with a site-specific, tariffed charge on the customer's utility bill that is less than the estimated savings.

- **Local support for rooftop and community solar**:

143 Chicago Department of Public Health, "Materials Supporting 2014 Chicago Bulk Material Rules," March 13, 2014.

144 Global Alliance for Incinerator Alternatives, "Incinerators in Trouble," 2018.

145 Cole Rosengren, "After its first WTE facility closes, California down to 2," *Waste Dive*, August 2, 2018.

146 *California Restaurant Association v. Berkeley*, No. 21-16278, Order and Amended Opinion (9th Cir. Jan. 1, 2024); Jamie Long et al, "Equitable Building Decarbonization Options in a Changing Legal Landscape," ACEEE Summer Study (2024).

147 Zachary Hart, "Denver Passes Building Performance Standard," IMT, November 23, 2021.

148 Ruthy Gourevitch, "Tenant Protections for Climate Justice," Climate & Community Institute, October 2024; SAJE, "Decarbonizing California Equitably: A Guide to Tenant Protections in Building Upgrades/Retrofits Throughout the State," October 2023.

149 City of Boulder, "SmartRegs Guide," (accessed November 3, 2024).

Local governments can take a number of steps to encourage the development of clean, beneficial projects like community solar that are accessible to renters and low-income households and can also incorporate equitable workforce and procurement goals. Recommendations for policy changes that local governments can undertake include clarifying the permitting process, streamlining approval and inspection processes, and modifying zoning ordinances to ensure that solar installations are allowed by-right. To achieve equitable community solar, programs should further ensure the allocation of benefits to multiple customers, focus on benefiting marginalized communities, and prioritize local community governance and ownership.[150] Localities may consider deploying solar on public property and municipal buildings, like libraries and schools, or in partnership with public housing authorities or other affordable housing providers. Washington, D.C. has established a "Solar for All" program designed to provide energy bill savings and increase access to both rooftop and community solar for low- to moderate-income residents.[151]

- **Funding sources and progressive revenue generation**: A major barrier to many strategies to support an equitable and clean energy transition is the need for fair and equitable funding sources that are accessible and accountable to members of environmental justice and Indigenous communities. Local governments often resort to regressive taxes, like sales taxes, to create continuing funding streams, but these have an outsized negative impact on low-income households. A better approach is exemplified by the Portland Clean Energy Fund (PCEF), in Portland, Oregon. PCEF was established by a 2018 diverse, community-led campaign and ballot initiative that imposes a 1 percent tax on the gross receipts of large retailers. The fund focuses on investing in community-led projects, giving priority to historically marginalized populations, and is governed by a nine-member grant committee of Portland residents. So far, PCEF has allocated $883 million (out of an estimated $1.5 billion).[152]

  In addition to local progressive revenue sources like PCEF, environmental justice and Indigenous communities should explore whether their funding and financing needs might be addressable by the EPA Greenhouse Gas Reduction Fund (GGRF). The GGRF was designed to disperse funding through independent entities. (In August, EPA announced that all $27 billion has been obligated, thus this funding is in minimal danger of reclamation by a hostile administration.[153])

4. Resilience hubs

Some local governments in states where the political leadership is opposed to climate action and addressing racial inequities may find it instructive to consider the example of Houston and its resilience hubs program. Houston's program is adapted to the locality's unique conditions: its location on Texas' Gulf Coast means that threats include hurricanes, flooding, tornadoes, and extreme temperatures, while many of Houston's culturally and ethnically diverse communities are in the highest percentiles of the CDC's Social Vulnerability Index. In addition, the city's sprawl and lack of traditional planning exacerbates risks like flooding and the urban heat island effect as well as complicates the task of effectively delivering emergency response and recovery services. Therefore, Houston has adopted a network approach to deploying resilience hubs which includes a variety of assets and facility types, including city-owned hubs in the most vulnerable communities, "spokes" that keep the other elements of the network connected and functional, and "spots" and "super spots" that are trusted neighborhood service centers like libraries or churches, as well as larger capacity facilities that may not be directly managed by the city.[154] The organizing, direct services, research, and community engagement of West Street Recovery, a community-based organization that first came together during Hurricane Harvey in 2017, has been critical in demonstrating the need, modeling solutions, and pushing the city of Houston to act.[155]

150 Kelly Aves, "Five Wawys to Encourage Solar Energy in Your Community," National League of Cities, April 3, 2023; Initiative for Energy Justice, "Equitable Community Solar Primer," November 2023.

151 Government of the District of Columbia, "Solar for All," (accessed November 3, 2024); D.C. Code § 8-1774.16 (2024).

152 City of Portland, Oregon, "Portland Clean Energy Community Benefits Fund (PCEF)," (last accessed November 3, 2024); Monica Samayoa, "Portland Clean Energy Fund to invest $92 million in community-led grants," *OPB*, September 11, 2024; Adriana Voss-Andreae, "A Template for Change: The Portland Clean Energy Fund as a Local Model for a Green New Deal," January 27, 2020.

153 EPA, "Greenhouse Gas Reduction Fund Award Obligation Update," August 16, 2024.

154 City of Houston, "Resilience Hubs," (accessed November 3, 2024).

155 West Street Recovery, https://www.weststreetrecovery.org/ (accessed November 3, 2024).

C. Litigation and judiciary

- **Resources and coalition-building for litigation and legal capacity**: Depending on the action, states, localities or community groups may be able to challenge the actions of the second Trump Administration through litigation. Several key challenges of the first Trump Administration's executive orders and regulations were successful in preventing or delaying rollbacks and harmful policies; although, as discussed in sections I.E abd I.F above, conditions in the federal judiciary have changed over time and are particularly bleak in certain parts of the country.

  Philanthropic funders may be open to providing financial and programmatic support for court challenges in the second Trump Administration; others are dedicated to funding specific impact litigation cases.[156] Building relationships with other nonprofits and coalitions whose values and interests are aligned can also provide pathways to effective litigation strategies. Critically, community-based organizations on the frontlines will need significant support to defend against the expected expansion of fossil fuel infrastructure and false solutions; justice demands that funders and allies work to ensure that ample funding and technical assistance is provided to defend against these projects on the ground, in addition to federal defense against federal regulatory actions.

  In addition to litigation, it may be advantageous for community-based organizations to work with legal counsel to ensure that they are protected from potential threats like politically motivated harassment and investigations, as discussed in section I.A above.

- **State public trust doctrine**: Generally, the public trust doctrine is a legal principle that has been interpreted and applied by courts governing how certain natural resources, such as waterways, fish and wildlife, and shorelines, must be managed for public use. In some states, aspects of the public trust doctrine have been incorporated into state constitutions and statutes. In various states, courts have applied the public trust doctrine to strike down state laws, regulatory decisions, and permits, and to block attempts at privatization.[157] Approaches to using the public trust doctrine include codification in statute or state constitutions, engaging in strategic litigation, and filing amicus briefs to influence how jurisprudence interpreting the doctrine is developed. The viability of these approaches will vary significantly depending on state-specific factors.

- **Appoint or elect state court judges who understand environmental justice**: State courts have jurisdiction over land use laws as well as state environmental laws that can directly affect local communities, so it may be worth considering whether the state's judiciary reflects the diversity and varied perspectives of the state's population, especially members of environmental justice and Indigenous communities. State court judges who understand and prioritize environmental justice concerns can interpret the law in ways that protect these communities from harm, making decisions that materially benefit overburdened communities while also setting precedent and shaping jurisprudence to set the course for further progress. Depending on the state and the court (general jurisdiction, appeals, etc.), judges may be directly elected or appointed, so specific tactics will vary accordingly. Complementary approaches can include providing education on environmental justice issues in the law to current state court judges as well as to law students and the broader legal community.

D. Federal government oversight

The Republican Party enjoys narrow majorities in both houses of the 119th Congress, which forecloses some of the most effective and straightforward opportunities for enhanced oversight through Congressional channels. If the midterm elections of 2026 result in Democrats regaining the majority in either house, then these opportunities may become available again. Strategic oversight and reporting can help lead to better accountability and may help mitigate potential rollbacks and other harmful actions under the second Trump Administration.

- **Senate majority to block Presidential appointees**: Many key roles at high levels of the Executive Branch must be approved by a bare majority of the Senate. While Republicans hold the majority in the Senate in the 119th Congress, there may be opportunities to achieve bipartisan consensus to block Senate confirmation of certain Presidential appointees, as in the case of Matt Gaetz's withdrawn Attorney General

156 Impact Fund, https://www.impactfund.org/ (accessed November 3, 2024).

157 See, e.g.: *Robinson Township v. Commonwealth*, 623 Pa. 564, 83 A.3d 901 (2013); *Environmental Law Foundation v. State Water Resources Control Board*, 26 Cal.App.5th 844, 237 Cal.Rptr.3d 393 (2018); *Gunderson v. State*, 90 N.E.3d 1171 (Ind. 2018).

nomination.[158] Blocking or even delaying Senate confirmation of certain nominees may be effective in hindering the Trump Administration's operations.

- **Committee investigations and hearings**: The political party with the majority of seats in a given chamber of Congress gets to lead committees in that chamber; i.e., if in 2026, Democrats win a majority of the House, Democrats will chair the various House committees and set their agendas. Committees have the power to hold hearings to examine specific issues and question administration officials, conduct investigations into the activities of federal agencies and officeholders, and subpoena witnesses and records relevant to investigations. Certain Congressional committees are particularly powerful, such as the House Appropriations Committee, which steers Congress' work in funding the federal government. The House Committee on Oversight and Accountability is another important committee, with broad jurisdiction over government management and operations and a record of influential investigations. In the 119th Congress, where Democrats are in the minority in both the House and the Senate, members' options are more limited but must still be used strategically and to their full potential. Democratic committee members should choose effective hearing witnesses and coordinate their questioning in alignment with advocacy goals and framing. When opportunities arise, they should conduct impactful field hearings and introduce legislation and legislative amendments that would meaningfully advance climate and environmental justice. Although these efforts are unlikely to result in immediate policy changes, they help to socialize new policy ideas and demonstrate political commitment to these priorities.

- **Other audits, investigations, legal opinions, and analyses**: All members of Congress may request that the Government Accountability Office (GAO) conduct audits, investigations, evaluations, and policy analyses on a broad range of topics. The GAO also provides legal opinions on matters of appropriations law; for example, GAO issued multiple decisions finding that the Trump Administration violated the Impoundment Control Act.[159] In addition, most federal agencies have an independent Office of Inspector General, which can initiate investigations or audits based on a request from a member of Congress. A notable example is the Treasury Inspector General for Tax Administration's response to Senator Bob Menendez's request, revealing that companies claiming almost $900 million in carbon capture and sequestration tax credits violated EPA rules.[160] This type of information can be useful to raise public awareness and put pressure on the administration.

158 Elena Moore, Deirdre Walsh, Lexie Schapitl, "Former Rep. Matt Gaetz withdraws as Trump's attorney general pick," *NPR*, November 21, 2024.

159 U.S. Government Accountability Office (GAO),"Office of Management and Budget—Withholding of Ukraine Security Assistance," B-331564, January 16, 2020; GAO, "U.S. Department of Homeland Security—Impoundment Control Act and Appropriations for the Tenth National Security Cutter," B-329739, December 19, 2018; GAO, "Impoundment of the Advanced Research Projects Agency-Energy Appropriation Resulting from Legislative Proposals in the President's Budget Request for Fiscal Year 2018," B-329092, December 12, 2017. As discussed in Section I.H, former President Trump has campaigned on his pledge to again violate the Impoundment Control Act if he returns to the White House.

160 Benjamin J. Hulac, "Treasury IG: A decade of carbon-capture tax credits were faulty," *Roll Call*, April 30, 2020.

Defending and Advancing Climate Justice Policies

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