

2019

Life Becoming Hazy: The Withdrawal of the United States from the Paris Agreement and How the Youth of America Are Challenging It

Anne Ustynoski

The Catholic University of America, Columbus School of Law

Follow this and additional works at: <https://scholarship.law.edu/jlt>



Part of the [Constitutional Law Commons](#), [Energy and Utilities Law Commons](#), [Environmental Law Commons](#), [Law and Society Commons](#), [President/Executive Department Commons](#), and the [Science and Technology Law Commons](#)

Recommended Citation

Anne Ustynoski, *Life Becoming Hazy: The Withdrawal of the United States from the Paris Agreement and How the Youth of America Are Challenging It*, 28 Cath. U. J. L. & Tech 111 (2019).

Available at: <https://scholarship.law.edu/jlt/vol28/iss1/7>

This Comment is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Journal of Law and Technology by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

LIFE BECOMING HAZY: THE WITHDRAWAL OF THE UNITED STATES FROM THE PARIS AGREEMENT AND HOW THE YOUTH OF AMERICA ARE CHALLENGING IT

*Anne Ustynoski**

The Paris Agreement was adopted by 175 countries on December 12, 2015 and went into effect on November 4, 2016.¹ The date on which the Paris Agreement entered into force was thirty days after fifty-five of the parties, who account for 55 percent of global emissions, submitted individual instruments of ratification.² The Paris Agreement requires regular meetings, held every five years beginning in 2018, in order to monitor progress and whether the pledges made are sufficient³ to achieve the goal of keeping the temperature rise across the globe to less than two degrees above pre-industrial levels in the next century.⁴ These pledges are based on nationally determined contributions (“NDC”), and include planned reports on emissions and implementation plans on a regular basis.⁵ The agreement also included the goals of providing guidance and resources to countries with less of an ability to handle the impacts of climate

* Anne Ustynoski is a chemical engineer who focuses on environment, health, and safety support. She obtained her Juris Doctor degree from the Catholic University of America, Columbus School of Law in 2019. As part of her occupation, she supports the Environmental Protection Agency with enforcement of the Clean Air Act, and she has worked with both state governments and the federal government to address the impacts of processes on the surrounding environment.

¹ *The Paris Agreement*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> (last visited Sept. 3, 2019).

² *Id.*

³ Press Release, United Nations Framework Convention on Climate Change, Closing Paris Agreement Signing Press Release (Apr. 23, 2016).

⁴ *The Paris Agreement*, *supra* note 1.

⁵ *Id.*

change.⁶

After Syria's signing of the agreement in November 2017, the United States is now the only country that has rejected the newest climate agreement.⁷ President Trump announced his decision to withdraw and notified the United Nations in June 2017, but he noted that he would be willing to renegotiate the agreement to provide for more favorable terms for United States' industries.⁸ However, the structure of the agreement dictates that an exit cannot occur until four years have passed since it went into effect, which would make the crucial date one day after the next presidential election.⁹ This key detail demonstrates how the issues surrounding climate change and environmental improvements will continue to be important political topics, just as they have been since the initiation of the Environmental Protection Agency ("EPA").

This article will first provide some background information discussing the ways in which environmental regulations have evolved throughout the United States' history, including through the establishment of the EPA and the enactment of the Clean Air Act. Second, it will discuss how each contemporary presidency from George H. W. Bush through the current administration under President Donald Trump has made changes to environmental policy, ultimately leading to the United States' current lack of participation in the Paris Agreement. Third, it will provide an overview of some key case law that has shaped environmental regulations. Fourth, this article will discuss the ways in which state officials and the general public, both Democrats and Republicans, have reacted to the removal of the United States from the Paris Agreement. Fifth, it will discuss some of the future challenges that will be faced, including the positive and negative effects on businesses of less strict environmental regulations, and the ways in which states are adopting their own environmental policies to fit their specific needs.

Lastly, this article will discuss how major environmental policy decisions, such as participation in the Paris Agreement, need to be made by Congress and the people, rather than by executive orders. While the Paris Agreement places non-binding monetary obligations and regulatory requirements on American businesses, it also represents long-term gains for public health and the

⁶ *Id.*

⁷ Robinson Meyer, *Syria Is Joining the Paris Agreement. Now What?*, THE ATLANTIC (Nov. 8, 2017), <https://www.theatlantic.com/science/archive/2017/11/syria-is-joining-the-paris-agreement-now-what/545261/>.

⁸ Valerie Volcovici, *U.S. Submits Formal Notice of Withdrawal from Paris Climate Pact*, REUTERS WORLD NEWS (Aug. 4, 2017), <https://www.reuters.com/article/us-un-climate-usa-paris/u-s-submits-formal-notice-of-withdrawal-from-paris-climate-pact-idUSKBN1AK2FM>.

⁹ *Id.*

environment.¹⁰ Those most affected should be able to decide how to keep the United States as a world leader economically and in climate action, and they should be able to communicate this decision through their representative members of Congress.

I. BACKGROUND INFORMATION

The EPA was established in 1970 by President Richard Nixon.¹¹ While air pollution legislation was enacted between 1955 and 1970, a major policy shift was made with the enactment of the Clean Air Act of 1970.¹² This shift was due, in part, to dense smog in many cities and heavy industrial areas, which raised public awareness of the need for regulations and maintenance of emissions.¹³ The Clean Air Act of 1970 authorized the regulation of hazardous air pollutants, which are pollutants “known to cause cancer and other serious health impacts.”¹⁴

The EPA’s efforts include working with both state and local governments to reduce the air emissions of 187 toxic air pollutants.¹⁵ This work involves monitoring “mobile sources (e.g., cars, trucks, buses) and stationary sources (e.g., factories, refineries, power plants), as well as indoor sources (e.g., some building materials and cleaning solvents).”¹⁶ Further, the EPA established National Ambient Air Quality Standards (“NAAQS”) and the requirements for State Implementation Plans (“SIPs”).¹⁷

The first amendment to the Clean Air Act was in 1977.¹⁸ The main impact of

¹⁰ See Frederic G. Sourgens, *Climate Commons Law: The Transformative Force of the Paris Agreement*, 50 N.Y.U. J. INT’L L. & POL’Y 885, 899, 907 (2018) (discussing what obligations are placed on American entities and science community consensus regarding environmental gains from treaty).

¹¹ *The Origins of the EPA*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/history/origins-epa> (last visited Sept. 3, 2019).

¹² *Evolution of the Clean Air Act*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/clean-air-act-overview/evolution-clean-air-act> (last visited Sept. 3, 2019).

¹³ See *Clean Air Act Requirements and History*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history> (last visited Sept. 3, 2019); see also Jonathan Pickering et al., *Global Climate Governance Between Hard and Soft Law: Can the Paris Agreement’s ‘Crème Brûlée’ Approach Enhance Ecological Reflexivity?*, 31 J. ENVTL. L. 1, 83 (2019).

¹⁴ *Hazardous Air Pollutants*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/haps> (last visited Aug. 25, 2019).

¹⁵ *What Are Hazardous Air Pollutants?*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/haps/what-are-hazardous-air-pollutants> (last visited Aug. 25, 2019) (discussing how examples of hazardous air pollutants include dioxin, asbestos, toluene, and mercury).

¹⁶ *Hazardous Air Pollutants: Sources and Exposure*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/haps/hazardous-air-pollutants-sources-and-exposure> (last visited Aug. 25, 2019).

¹⁷ *Evolution of the Clean Air Act*, *supra* note 12.

¹⁸ *Id.*

the 1977 amendment was the inclusion of major permit review requirements, which provided a way to monitor the maintenance of the NAAQS.¹⁹

In the years since its enactment, arguments have been voiced both promoting and opposing the Clean Air Act. “Since 1970, the emissions of criteria pollutants have declined dramatically[,] and air quality has improved significantly.”²⁰ In fact, the EPA’s report, *Our Nation’s Air: Air Quality Improves as America Grows*, indicates that emissions of six key criteria pollutants²¹ have dropped by 73 percent.²² Each president since the establishment of the Clean Air Act has viewed environmental impacts differently based on their views, and, as a result, each has proposed more stringent or more relaxed changes to the act.²³

II. ENVIRONMENTAL REGULATIONS IN RECENT PRESIDENTIAL ADMINISTRATIONS

A. The George H. W. Bush Administration

President George H. W. Bush proposed several revisions to the Clean Air Act, and it was amended in 1990.²⁴ These amendments included an increased focus on acid rain, urban air pollution, and toxic air emissions.²⁵ They also established a national permit program to simplify the process for meeting the permitting requirements, as well as an enforcement program to help better monitor the

¹⁹ *Id.*

²⁰ Promoting Domestic Manufacturing and Job Creation – Policies and Procedures Relating to Implementation of Air Quality Standards, 83 Fed. Reg. 16761, 16761 (Apr. 16, 2018).

²¹ *Clean Air Act Requirements and History*, *supra* note 13 (listing the six criteria pollutants as particulate matter, ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, and lead).

²² Ledyard King, *As EPA Moves to Relax Clean Air Rules, Trump Administration Praises Progress Under the Law*, USA TODAY (July 31, 2018, 5:33 PM), <https://www.usatoday.com/story/news/politics/2018/07/31/moves-relax-clean-air-rules-trump-administration-praises-law/873612002/>; *Our Nation’s Air: Air Quality Improves as America Grows*, ENVTL. PROTECTION AGENCY, <https://gispub.epa.gov/air/trendsreport/2018/#welcome> (last visited Oct. 27, 2018).

²³ See Meghan Ochs, *U.S. Environmental Policy Continues to Evolve*, CAVALIER DAILY (Feb. 23, 2017), <http://www.cavalierdaily.com/article/2017/02/us-environmental-policy-continues-to-evolve>; *US Presidents and Environmental Legacies*, THE FOOTPRINT BLOG, <https://www.terrapass.com/us-presidents-environmental-legacies> (last visited Nov. 17, 2018); Christopher D. Ahlers, *Presidential Authority Over EPA Rulemaking Under the Clean Air Act*, 44 LEWIS & CLARK L. REV. 31, 32 (2014).

²⁴ *1990 Clean Air Act Amendment Summary*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/clean-air-act-overview/1990-clean-air-act-amendment-summary> (last visited Aug. 25, 2019).

²⁵ *Id.*

compliance of businesses.²⁶

Another major change resulting from the 1990 amendments was the implementation of elements of the Montreal Protocol.²⁷ The Montreal Protocol, a United Nations-sponsored policy, is a global initiative to phase out the use of ozone-depleting substances in order to protect the stratospheric layer of the atmosphere.²⁸ This layer protects the earth from ultraviolet radiation, which is associated with reduced agricultural productivity and increased instances of skin cancer and cataracts.²⁹ The Montreal Protocol was the first treaty in history to be ratified by every country, demonstrating a universally recognized need for global environmental improvement.³⁰

B. The Clinton Administration

In June 1993, President Clinton signed an executive order establishing the President's Council on Sustainable Development ("PCSD").³¹ The purpose of the PCSD was to advise President Clinton on topics involving sustainable development, and to also develop "bold, new approaches to achieve economic, environmental, and equity goals."³² In April 1999, Vice President Al Gore announced a rule regarding "regional haze," which was intended to improve the air quality in national parks to ensure visitors had an unspoiled experience.³³

In May 1995, the EPA issued guidance for major sources of toxic air pollutants under the Clean Air Act that involved the concept of "once in, always in."³⁴ Prior to this guidance, if a major source's potential to emit fell below certain threshold amounts, the source could be reclassified and its compliance with Maximum Available Control Technology ("MACT") standards would not be required.³⁵ After the "once in, always in" policy was put in place, major

²⁶ *Id.*

²⁷ *Id.*

²⁸ *The Montreal Protocol on Substances That Deplete the Ozone Layer*, U.S. DEP'T OF STATE, <https://www.state.gov/e/oes/eqt/chemicalpollution/83007.htm> (last visited Sept. 4, 2019).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Environmental Actions by President Clinton and Vice President Gore*, THE WHITE HOUSE, <https://clintonwhitehouse4.archives.gov/CEQ/earthday/ch13.html> (last visited Sept. 4, 2019).

³² *Overview: President's Council on Sustainable Development*, THE WHITE HOUSE, <https://clintonwhitehouse2.archives.gov/PCSD/Overview/index.html> (last visited Sept. 4, 2019).

³³ *Environmental Actions by President Clinton and Vice President Gore*, *supra* note 31.

³⁴ Caitlin McCoy & William Neibling, *Once In Always In Guidance for Major Sources Under the Clean Air Act*, HARV. L. SCH. (Feb. 2, 2018), <http://environment.law.harvard.edu/2018/02/always-guidance-major-sources-clean-air-act/>.

³⁵ *Id.*

sources would no longer be given this option and would instead need to limit their respective hazardous air pollutant emissions through MACT.³⁶

C. The George W. Bush Administration

Within the first one hundred days of the George W. Bush administration, several policy changes were made that retracted some requirements put in place with the goal of minimizing global warming.³⁷ President Bush had made campaign promises to regulate the carbon dioxide emissions generated by coal-burning power plants, but then reneged on that promise.³⁸ The Bush administration also announced that America would not be ratifying the Kyoto Protocol,³⁹ which regulated the maximum amount of emissions that each participant could make over a period of time.⁴⁰

This refusal to ratify the Kyoto Protocol was not only based on the intention of benefiting the coal and oil industries, but it was also one of the first times that an administration casted doubt on the science behind global warming and climate change.⁴¹ There were also several accusations throughout the term that the Bush administration was trying to alter scientific findings and other data that demonstrated the urgent need for action on climate change.⁴² In spite of the fact that climate change had been referred to in the EPA's annual air pollution reports since 1997, the Bush administration removed the climate change section from the annual report in 2002.⁴³

³⁶ *Id.*

³⁷ Suzanne Goldenberg, *The Worst of Times: Bush's Environmental Legacy Examined*, THE GUARDIAN (Jan. 16, 2009), <https://www.theguardian.com/politics/2009/jan/16/greenpolitics-georgebush>.

³⁸ *Id.*

³⁹ *Id.* (discussing the Kyoto Protocol, a United Nations treaty, adopted in Japan in 1997 and entered into force in February 2005); *What is the Kyoto Protocol*, UNFCCC, <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/what-is-the-kyoto-protocol> (last visited Sept. 4, 2019).

⁴⁰ Goldenberg, *supra* note 37; *What is the Kyoto Protocol*, *supra* note 39.

⁴¹ Goldenberg, *supra* note 37.

⁴² *Id.* (including examples of a NASA scientist claiming the Bush administration blocked data showing acceleration of global warming and the objection by the White House to a study showing how the benefits of raising fuel standards would outweigh the associated costs).

⁴³ *Manipulation of Global Warming Science*, UNION OF CONCERNED SCIENTISTS, <https://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/manipulation-of-global.html#.W9XDTS-ZOL8> (last visited Aug. 25, 2019).

D. The Obama Administration

President Obama made major improvements with respect to combating pollution from mobile sources.⁴⁴ Historically, the Clean Air Act had led to fairly broad bipartisan support for clean air improvements; however, President Obama was the first president to try and use the Clean Air Act to also fight global-warming.⁴⁵ One regulation issued by the EPA mandated that by 2025, carmakers had to adhere to new standards of fuel economy of 54.5 miles per gallon.⁴⁶ This regulation led to many companies in the auto industry investing in the research of hybrid and electric vehicles.⁴⁷

One of the most significant regulations that the Obama administration adopted focused on power plants, which have been proven to be the single largest source of carbon dioxide emissions.⁴⁸ The goal of this regulation was to achieve a 30 percent reduction from the 2005 emission levels by the year 2030.⁴⁹ A similar pledge, laid out in President Obama's 2013 Climate Action Plan, was that the United States would limit greenhouse gas emissions to a level of 17 percent below the 2005 level by 2020 if all other major economies agreed to limit their emissions as well.⁵⁰

These regulations were quickly met with opposition from Republican party members.⁵¹ Many people viewed these reductions as limiting major industries, such as coal, oil, and gas, through restrictions.⁵²

President Obama's Clean Power Plan also led to a 2014 agreement with China in which both countries agreed to majorly reduce greenhouse gas emissions.⁵³ This agreement, between two major carbon dioxide emitters, laid the

⁴⁴ Dan Farber, *Obama's Remarkable Environmental Achievements*, LEGAL PLANET (Nov. 2, 2016), <http://legal-planet.org/2016/11/02/obamas-remarkable-environmental-achievements/>.

⁴⁵ Coral Davenport, *Obama Builds Environmental Legacy With 1970 Law*, N.Y. TIMES (Nov. 26, 2014), <https://www.nytimes.com/2014/11/27/us/without-passing-a-single-law-obama-crafts-bold-environmental-policy.html>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Suzanne Goldenberg, *Obama Unveils Historic Rules to Reduce Coal Pollution by 30%*, THE GUARDIAN (June 2, 2014), <https://www.theguardian.com/environment/2014/jun/02/obama-rules-coal-climate-change>.

⁴⁹ *Id.*

⁵⁰ EXEC. OFFICE OF THE PRESIDENT, THE PRESIDENT'S CLIMATE ACTION PLAN 4 (2013), <https://obamawhitehouse.archives.gov/sites/default/files/image/president27climateactionplan.pdf>.

⁵¹ Goldenberg, *supra* note 48.

⁵² See generally Davenport, *supra* note 45 (arguing that Republicans and industry leaders accused the restrictions of being "job killing regulations").

⁵³ Angela Nelson, *15 Things Obama Has Done for The Environment*, MOTHER NATURE NETWORK (Oct. 10, 2016, 5:45 AM), <https://www.mnn.com/earth-matters/wilderness-resources/stories/things-obama-has-done-environment>.

groundwork for the Paris Agreement.⁵⁴

While President Obama had hoped to deal with issues of climate change through Congress, Republican members' strong opposition to cutting carbon emissions lead President Obama to utilize his executive authority, showing the continued political divide between the advocates seeing the need for climate change reform, and those in opposition.⁵⁵

In addition to making domestic policy changes, the Obama administration also succeeded in signing onto both the 2009 Copenhagen Accord and the 2015 Paris Agreement under the authority of the United Nations.⁵⁶

E. The Trump Administration

During his first few months in office, President Trump outlined an America First Energy Plan to highlight the goals and initiatives of his administration.⁵⁷ These goals are centered around expanding the extraction of fossil fuels, reviving the coal industry, and ending the Climate Action Plan that was developed under the Obama administration.⁵⁸ This includes stopping the implementation of the portion of the Clean Power Plan associated with reducing power plant emissions.⁵⁹

President Trump made the decision to pull America out of the Paris Agreement on June 1, 2017, saying, "In order to fulfill my solemn duty to protect America and its citizens, the United States will withdraw from the Paris climate accord, but begin negotiations to re-enter either the Paris accord or an entirely new transaction on terms that are fair to the United States, its businesses, its workers, its people, its taxpayers."⁶⁰

In January 2018, the Trump administration repealed the "once in, always in" policy that was practiced during the Clinton administration.⁶¹ Thus, major sources are once again able to be reclassified as "area sources" and are no longer

⁵⁴ *Id.*

⁵⁵ Goldenberg, *supra* note 48.

⁵⁶ Farber, *supra* note 44.

⁵⁷ Sara Vakhshouri, *The America First Energy Plan, Renewing the Confidence of American Energy Producers*, ATLANTIC COUNCIL: GLOBAL ENERGY CTR. (Aug. 2017), https://svbweb.s3.amazonaws.com/media/new_release/The_America_First_Energy_Plan_web_0817.pdf.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Todd Haselton, *Trump Is Leaving Paris Climate Agreement Even Though Majority of Americans in Every State Supported It*, CNBC (June 1, 2017, 6:25 PM), <https://www.cnbc.com/2017/06/01/trump-leaves-paris-climate-agreement-though-americans-supported-it.html>.

⁶¹ King, *supra* note 22.

required to use MACT.⁶² This approach closely relates to the regulatory arguments brought forth in *Chevron v. National Resources Defense Council*,⁶³ which will be discussed in more detail later in this comment.

Over one thousand businesses have also banded together to form the We Are Still In coalition, and more than eighty cities, even Republican-led San Diego, have signed on to the Climate Mayors initiative to work toward the goal of 100 percent renewable energy.⁶⁴ This coalition sued the EPA in March 2018 over the weakening and withdrawal of the “once in, always in” rule.⁶⁵

In April 2018, President Trump released a directive to the EPA instructing it to provide more flexible emission requirements in order to promote “domestic manufacturing and job creation.”⁶⁶ This directive explained that manufacturing sites were experiencing delays in obtaining air and construction permits due to the continuously heightened requirements, and it instructed the EPA to better assist states in the development of new businesses.⁶⁷

While President Obama heavily utilized Federal Implementation Plans (“FIPs”), these are documents that the Trump administration is seeking to avoid.⁶⁸ Under the Clean Air Act, states are required to assess their emissions and declare whether they meet the NAAQS.⁶⁹ If not in compliance, a state must submit a proposal to the EPA in the form of a SIP demonstrating how it plans to comply.⁷⁰ If a state does not submit a SIP, the federal government may develop

⁶² *Reducing Regulatory Burdens: EPA Withdraws “Once In Always In” Policy for Major Sources Under Clean Air Act*, ENVTL. PROTECTION AGENCY (Sept. 4, 2019), <https://www.epa.gov/newsreleases/reducing-regulatory-burdens-epa-withdraws-once-always-policy-major-sources-under-clean>; see also McCoy & Neibling, *supra* note 34.

⁶³ *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984).

⁶⁴ Oliver Milman, *Paris Deal: A Year After Trump Announced US Exit, a Coalition Fights to Fill the Gap*, THE GUARDIAN (June 1, 2018), <https://www.theguardian.com/us-news/2018/may/31/paris-climate-deal-trump-exit-resistance>.

⁶⁵ McCoy & Neibling, *supra* note 34.

⁶⁶ King, *supra* note 22; *President Donald J Trump Is Reducing Barriers That Are Holding Back American Manufacturing*, THE WHITE HOUSE (Apr. 12, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-reducing-barriers-holding-back-american-manufacturers/>.

⁶⁷ *President Donald J Trump Is Reducing Barriers That Are Holding Back American Manufacturing*, *supra* note 66.

⁶⁸ *Administrator Pruitt Signs Memo to Reform the National Ambient Air Quality Standards Review Process*, ENVTL. PROTECTION AGENCY (May 10, 2018), <https://www.epa.gov/newsreleases/administrator-pruitt-signs-memo-reform-national-ambient-air-quality-standards-review> (stating that the Obama Administration imposed over 50 FIPs, which is ten times the number issued by the previous three administrations combined).

⁶⁹ Promoting Domestic Manufacturing and Job Creation – Policies and Procedures Relating to Implementation of Air Quality Standards, 83 Fed. Reg. 16761, 16762 (Apr. 12, 2018).

⁷⁰ *Id.* at 16761.

a FIP instructing the state on the path it must take to come into compliance.⁷¹ The EPA is supposed to provide assistance with this SIP process by reviewing the SIPs and responding in a timely manner (within 18 months).⁷² The opposition to this Obama-era policy noted that the EPA under the Obama administration rejected many of the submitted SIPs and issued FIPs in their place, which are often more costly and burdensome.⁷³

In 2018, the government released another climate change report titled *Fourth National Climate Assessment*.⁷⁴ The Global Change Research Act of 1990 mandates that at least every four years, the United States Global Change Research Program (“GCRP”) deliver a report to the president and Congress that analyzes the effects of emissions on the environment and projects trends for the next twenty-five to one hundred years.⁷⁵ The goal of this report is to “assess the science of climate change and variability and its impacts across the United States, now and throughout [the] century.”⁷⁶ When asked about the findings and their implications, President Trump simply stated, “I don’t believe it.”⁷⁷

III. LANDMARK CASE LAW ON ENVIRONMENTAL REGULATIONS

A. *Chevron* Deference

There have been several landmark Supreme Court cases that have dealt with environmental law; the first is *Chevron v. National Resources Defense Council*.⁷⁸ The 1977 amendments to the Clean Air Act required each nonattainment state to develop a permit program that would be able to regulate any new or modified major stationary source of air pollution.⁷⁹ However, the statute did not clearly define the term “stationary source,” i.e., whether it meant

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ U.S. GLOB. CHANGE RESEARCH PROGRAM, *FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES I* (2019), <https://nca2018.globalchange.gov>.

⁷⁵ *About This Report: The National Climate Assessment, Fourth National Climate Assessment*, U.S. GLOBAL CHANGE RES. PROGRAM, <https://nca2018.globalchange.gov/chapter/front-matter-about/> (last visited Apr. 17, 2019).

⁷⁶ U.S. GLOB. CHANGE RESEARCH PROGRAM, *FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES*, *supra* note 74.

⁷⁷ *Trump on Climate Change Report: ‘I Don’t Believe It’*, BBC NEWS (Nov. 26, 2018), <https://www.bbc.com/news/world-us-canada-46351940>.

⁷⁸ *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984).

⁷⁹ *Id.* at 850.

a particular piece of equipment or the total emissions of the entire plant.⁸⁰ This lack of a definition significantly impacted the acquisition of new equipment.⁸¹ It was challenging for companies to determine if a piece of equipment would be considered a permitted alteration when it was identified as being in the same “bubble group” as that of a pollution-emitting device, even though the new equipment did not increase total emissions.⁸²

The court held that the EPA should be allowed to enforce its interpretation of the statute because the vagueness of the statute entitled the agency to deference.⁸³ When reasonable, an agency that is significantly more knowledgeable in certain subject matter than a judicial or legislative body should be permitted to provide the court with an interpretation that is appropriate based on the facts at hand.⁸⁴ Furthermore, that interpretation should be upheld even if the court comes across another interpretation.⁸⁵ This highly important decision, routinely referred to as Chevron deference, is frequently quoted in environmental law claims and remains a dominant rule in the field of administrative law.⁸⁶

B. *Massachusetts v. EPA*

Another landmark case in the world of environmental law is the 2007 decision of *Massachusetts v. EPA*.⁸⁷ In this case, the state of Massachusetts, which was comprised of citizens, conservation groups, and environmental groups, brought a claim against the EPA after it refused to regulate the greenhouse gas emissions from motor vehicles.⁸⁸ The Bush administration was adamant that there was no obligation to define and regulate carbon dioxide as an air pollutant.⁸⁹ Numerous amicus briefs were submitted to persuade the Supreme Court that federal action should be mandated.⁹⁰

⁸⁰ *Id.* at 851.

⁸¹ *Id.* at 855.

⁸² *Id.*

⁸³ *Id.* at 864–65.

⁸⁴ David Kemp, *Chevron Deference: Your Guide to Understanding Two of Today's SCOTUS Decisions*, JUSTIA L. BLOG (May 21, 2012), <https://lawblog.justia.com/2012/05/21/chevron-deference-your-guide-to-understanding-two-of-todays-scotus-decisions/>.

⁸⁵ *Id.*

⁸⁶ Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, DUKE L.J. (1989); *Kisor v. Wilkie*, 139 S. Ct. 1, 29 (2019) (concluding that there may be times where Auer Deference is inappropriate and providing extra guidance for lower courts for interpretation).

⁸⁷ *Massachusetts v. EPA*, 549 U.S. 497 (2007).

⁸⁸ *Id.* at 505.

⁸⁹ Barry G. Rabe, *Can Congress Govern the Climate?*, BROOKINGS (Apr. 23, 2007), <https://www.brookings.edu/research/can-congress-govern-the-climate/>.

⁹⁰ *Id.*

The Supreme Court ultimately held that if the EPA finds that any greenhouse gases are a threat to public health, it must regulate these gases as air pollutants.⁹¹ The court noted that “[u]nder the clear terms of the Clean Air Act, the EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.”⁹² The Supreme Court summarized that the “EPA ha[d] offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change,” and thus found the EPA’s decision to be arbitrary and capricious.⁹³

This decision was further strengthened by the 2009 *Endangerment Finding* study conducted by the EPA, which concluded that six of the main greenhouse gases in the atmosphere “threaten the public health and welfare of current and future generations.”⁹⁴ Even with this development and finding, many critics still remain skeptical of the strength of the scientific claims surrounding climate change and its adverse impacts on humans.⁹⁵

C. *Michigan v. EPA*

A third landmark case in the world of environmental law is the 2015 decision of *Michigan v. EPA*.⁹⁶ In this case, the EPA issued regulations to reduce power plant emissions of hazardous air pollutants as a means of improving public health and lessening the impact of these chemicals on the environment.⁹⁷ However, the execution of these regulations led to power plants incurring additional costs of over \$10 billion a year.⁹⁸ The EPA refused to factor these costs into its decision as to whether the regulations were “appropriate and necessary.”⁹⁹

The Supreme Court held that the EPA’s interpretation of the Clean Air Act, which stated that the EPA could deem costs irrelevant when deciding the degree

⁹¹ *Massachusetts v. EPA*, 549 U.S. 497, 533-34 (2007).

⁹² *Id.* at 533.

⁹³ *Id.* at 535.

⁹⁴ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 75 Fed. Reg. 66496, 66498-99 (Dec. 15, 2009), <https://www.epa.gov/ghgemissions/endangerment-and-cause-or-contribute-findings-greenhouse-gases-under-section-202a-clean>.

⁹⁵ *Id.* at 66516.

⁹⁶ *Michigan v. EPA*, 135 U.S. 2699 (2015).

⁹⁷ *Id.* at 2705.

⁹⁸ *Id.* at 2709.

⁹⁹ *Id.*

of regulation of power plants, was incorrect and unreasonable.¹⁰⁰ The court further said that it was “appropriate and necessary” for the EPA to factor costs into its decisions regarding regulations.¹⁰¹ Arguing costs are too high is a common tactic used by companies that struggle to stay in business, provide jobs to the local population, and generate a profit due to the ever-increasing costs of environmental regulations.¹⁰²

D. *Juliana v. United States*

i. *Climate Change as a Fundamental Right*

A case that is currently making its way through the court system raises the argument that climate change should be considered part of a fundamental right.¹⁰³ In November 2016, a federal district court in Oregon ruled that the young plaintiffs have a claim under the public trust doctrine and a constitutional right to a stable climate system.¹⁰⁴ The claim is based on the dangerous levels of greenhouse gases in the atmosphere as a result of the federal government’s insufficient fossil fuel policies.¹⁰⁵ The claim states that the Fifth and Ninth Amendment rights of the youths (ages eleven through twenty-two) are being violated, including the fundamental rights of life, liberty, and property.¹⁰⁶ The plaintiffs in the district court case asserted that “young people and future generations will be disproportionately harmed by climate change because climate change and its effects are worsening over time.”¹⁰⁷

In October 2018, the defendants submitted multiple motions to dismiss, but their efforts were unsuccessful.¹⁰⁸ The United States responded by arguing that

¹⁰⁰ *Id.* at 2712.

¹⁰¹ *Id.* at 2711.

¹⁰² Cheryl Conner, *The ‘8 Great’ Challenges Every Business Faces (and How to Master Them All)*, FORBES (Mar. 4, 2013), <https://www.forbes.com/sites/cherylsnapconner/2013/03/04/the-8-great-challenges-every-business-faces-and-how-to-master-them-all/#7a74144e3891>.

¹⁰³ *Juliana v. United States*, 339 F. Supp. 3d 1062, 1102 (D. Or. 2018) (discussing the case of 21 young plaintiffs who filed a lawsuit in Oregon asserting that the government’s affirmative actions, in regard to climate change, violated their generation’s constitutional rights of life, liberty, and property).

¹⁰⁴ Michael Blumm & Mary Christina Wood, “*No Ordinary Lawsuit*”: *Climate Change, Due Process, and the Public Trust Doctrine*, 67 AM. U. L. REV. 1, 1, 7-8 (Oct. 2017) (discussing the holding of the *Juliana* case).

¹⁰⁵ *Id.* at 7.

¹⁰⁶ Sophie Yeo, *Will the Juliana Climate Case Ever Go to Court?*, PAC. STANDARD (Nov. 27, 2018), <https://psmag.com/environment/will-the-juliana-youth-climate-case-ever-go-to-court>.

¹⁰⁷ *Juliana*, 339 F. Supp. 3d at 1102.

¹⁰⁸ *Id.* at 1105.

the lawsuit puts an overwhelming burden on the government and it is a “clearly improper attempt to have the judiciary decide important questions of energy and environmental policy.”¹⁰⁹ The United States District Court for the District of Oregon has so far decided that the “right to a climate system capable of sustaining human life” is present in the facts and this is a right “the Court has already held to be fundamental.”¹¹⁰ Thus, the district court has decided that there are valid equal protection and due process claims available that involve the violation of a fundamental right, and they must be examined under a strict scrutiny standard.¹¹¹ On February 8, 2019, the plaintiffs sought a preliminary injunction that prevented the federal government from taking several actions including: issuing leases for mining permits to extract coal on federal public lands, issuing leases for offshore oil and gas exploration, and granting approvals for new fossil fuel infrastructure.¹¹² On March 1, 2019, a wide variety of groups filed a total of fifteen amicus briefs in support of the youths in the case.¹¹³

The brief filed by members of Congress in support of the plaintiffs focuses on three main arguments regarding the fundamental rights and the court’s obligations.¹¹⁴ These include: the ninth circuit must exercise its duty to assess the constitutionality of the conduct that violates the fundamental rights of the youths, that the Constitution vests the power to provide remedies for systemic violations in the judiciary, and that the court must fulfill its duty to dispute the inappropriate politicization of climate change.¹¹⁵

A brief filed by the Sierra Club, a grassroots environmental organization within the United States,¹¹⁶ focuses on the ways in which direct actions of the federal government have caused climate change over the last few decades and, in particular, the last few years.¹¹⁷ Specifically, the amicus brief focuses on coal mining and many of the claims within the *Juliana v. United States* case including: coal mining on federal lands, oil and gas development, and motor vehicles and power plants.¹¹⁸ The brief also focuses on the critical social costs

¹⁰⁹ Yeo, *supra* note 106.

¹¹⁰ *Juliana*, 339 F. Supp. 3d at 1103.

¹¹¹ *Id.* at 1104.

¹¹² *Juliana v. United States, Youth Climate Lawsuit*, OUR CHILDREN’S TRUST, <https://www.ourchildrenstrust.org/juliana-v-us> (last visited Aug. 25, 2019).

¹¹³ *Id.*

¹¹⁴ Brief for Members of the United States Congress as Amici Curiae Supporting Plaintiffs-Appellees, *Juliana v. United States*, No. 18-36082, 2020 U.S. App. LEXIS 1579 (9th Cir. 2020) (No. 18-36082).

¹¹⁵ *Id.*

¹¹⁶ *About the Sierra Club*, SIERRA CLUB, <https://www.sierraclub.org/about-sierra-club> (last visited Aug. 25, 2019).

¹¹⁷ Brief for Sierra Club as Amicus Curiae Supporting Plaintiffs-Appellees, *Juliana v. United States*, No. 18-36082, 2020 U.S. App. LEXIS 1579 (9th Cir. 2020) (No. 18-36082).

¹¹⁸ *Id.*

of greenhouse gases and the potential benefits of energy efficiency for the United States.¹¹⁹

In a brief filed by Nuckles Oil Company supporting the United States, one of the key arguments raised is that there is no federal public trust doctrine; further, the brief states that even if one does exist, it was displaced by the Clean Air Act.¹²⁰

Even if the plaintiffs are successful in bringing these claims, it is unlikely that the court will order that the United States rejoin the Paris Agreement as a result.¹²¹ Since the Paris Agreement remains a treaty, this decision would be left to President Trump or a subsequent president.¹²² Oral arguments were held in the United States Court of Appeals for the Ninth Circuit on June 4, 2019.¹²³ During these arguments, the panel of judges admonished the government's lawyers and the youth plaintiffs, stating that "the government's arguments in favor of shutting down the case were too narrow and ... the plaintiffs' legal theories [were] too sweeping."¹²⁴

ii. Climate Change and the Public Trust Doctrine

Alternatively, the United States District Court for the District of Oregon decided that there is also a need for a full factual investigation of a similar claim under the public trust doctrine.¹²⁵ The public trust doctrine is rooted in the concept that "no government can legitimately abdicate its core sovereign powers."¹²⁶ The public trust doctrine ensures that each legislature has the same level of jurisdiction and power as its predecessors when serving the public interest.¹²⁷ The plaintiffs argue that a failure to protect natural resources limits the powers of future legislatures.¹²⁸ In similar cases involving natural resources, the court decided that the "government, as trustee, has a fiduciary duty to protect the trust assets from damage so that current and future trust beneficiaries will be

¹¹⁹ *Id.*

¹²⁰ Brief for Nuckles Oil Co., Inc. et al. as Amici Curiae Supporting Defendants-Appellants, *Juliana v. United States*, No. 18-36082, 2020 U.S. App. LEXIS 1579 (9th Cir. 2020) (No. 18-36082).

¹²¹ Yeo, *supra* note 106.

¹²² *Id.*

¹²³ John Schwartz, *Judge Gives Both Sides a Grilling in Youth Climate Case Against the Government*, N.Y. TIMES (June 4, 2019), <https://www.nytimes.com/2019/06/04/climate/climate-lawsuit-juliana.html>.

¹²⁴ *Id.*

¹²⁵ *Juliana v. United States*, 339 F. Supp. 3d 1062, 1102 (D. Or. 2018).

¹²⁶ *Juliana v. United States*, 217 F. Supp. 3d 1224, 1252 (D. Or. 2016) (quoting *Stone v. Mississippi*, 101 U.S. 814, 820 (1879)).

¹²⁷ *Id.* at 1231 (quoting *Newton v. Mahoning Cnty. Comm'rs*, 100 U.S. 548, 559 (1879)).

¹²⁸ *Id.* at 1231.

able to enjoy the benefits of the trust.”¹²⁹ The district court believes that the young plaintiffs have a claim in this regard, and any motion to dismiss this claim has been denied.¹³⁰

The scientific community continues to discover more information about the impacts of greenhouse gas emissions and warns political leaders about the potential for irreversible damage.¹³¹ This claim was made as early as 1965 when a report from President Johnson’s Scientific Advisory Committee stated that the human-caused emissions of carbon dioxide can threaten, “the health, longevity, recreation, cleanliness and happiness of citizens who have no direct stake in their production, but cannot escape their influence.”¹³²

Ultimately, the outcome of this case could have a serious impact on the development of and changes to future environmental regulations; the outcome also has the potential to be a groundbreaking decision that could limit some of the Trump administration’s current actions.¹³³

IV. THE PARIS AGREEMENT

A. Obama’s and Trump’s Comparative Views of the Paris Agreement

President Obama saw the Paris Agreement as indispensable for maintaining the competitive edge of the United States and enhancing climate security, while also promoting opportunities for business growth and new employment in the renewable energy industry.¹³⁴ President Trump has continuously disagreed with these viewpoints because of the agreement’s impacts on traditional energy businesses.¹³⁵ Their views also differ greatly from a political standpoint; President Obama saw the Paris Agreement as a way to strengthen international affairs, while President Trump views the agreement as a way of weakening United States sovereignty.¹³⁶ These differing views led to President Trump’s

¹²⁹ *Id.* at 1254 (citing MARY C. WOOD, NATURE’S TRUST: ENVIRONMENTAL LAW FOR A NEW ECOLOGICAL AGE 167-75 (2014)).

¹³⁰ *Juliana*, 339 F. Supp. 3d at 1105.

¹³¹ Blumm & Wood, *supra* note 104.

¹³² *See id.* (quoting PRESIDENT’S SCI. ADVISORY COMM., ENVTL. POLLUTION PANEL, RESTORING THE QUALITY OF OUR ENVIRONMENT: REPORT OF THE ENVIRONMENTAL POLLUTION PANEL, PRESIDENT’S SCIENCE ADVISORY COMMITTEE I (1965)).

¹³³ *See Juliana v. United States*, 339 F. Supp. 3d 1062 (D. Or. 2018).

¹³⁴ Zhang Hai-Bin et al., *U.S. Withdrawal from the Paris Agreement: Reasons, Impacts, and China’s Response*, 8 ADVANCES IN CLIMATE CHANGE RES. 220, 220 (2017).

¹³⁵ *Id.*; *Statement by President Trump on the Paris Climate Accord*, THE WHITE HOUSE (June 1, 2017), <https://www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/>.

¹³⁶ Hai-Bin et al., *supra* note 134.

June 2016 announcement that the United States would not ratify the Paris Agreement.¹³⁷

B. Impact of the United States Formally Exiting the Paris Agreement

Senate Majority Leader Mitch McConnell was quoted as saying that President Trump's announcement of the United States' departure from the Paris Agreement was "another significant blow to the Obama administration's assault on domestic energy production and jobs."¹³⁸ McConnell had voted for the passage of the 1990 Clean Air Act amendments under Republican President George W. Bush.¹³⁹ Some people are concerned that the actions taken by the Trump administration are based on the desire to overturn President Obama's policies and the administration has not considered the actual long-term environmental, financial, and public health impacts of the decision.¹⁴⁰

If America were to officially exit the Paris Agreement, it would have a major impact on other countries and their initiatives.¹⁴¹ The Paris Agreement was the first universally signed document that included both developed and developing countries.¹⁴² The United States' departure could persuade other developed countries to lower their initiatives, as well as lower their funding toward mitigation and adaptation in underdeveloped countries, leaving the original pledge of over \$100 billion in aid hanging in the balance.¹⁴³ This could also result in distrust from the developing countries involved in the agreement and greatly taint future climate discussions and improvements.¹⁴⁴

Critics of President Trump's policy change also argue that this departure could have long-term effects on the United States' position as a world leader.¹⁴⁵ Some of President Trump's closest advisers, including former Secretary of State

¹³⁷ Michael D. Shear, *Trump Will Withdraw U.S. from Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html>.

¹³⁸ Volcovici, *supra* note 8.

¹³⁹ Davenport, *supra* note 45.

¹⁴⁰ See generally Angela Chen, *Trump's Environmental Policies Could Lead to an Extra 80,000 Deaths Per Decade, Say Harvard Scientists*, THE VERGE (June 14, 2018, 12:08 PM), <https://www.theverge.com/2018/6/14/17463430/trump-environment-policies-public-health-epa>.

¹⁴¹ Johannes Urpelainen, *Trump's Withdrawal from the Paris Agreement Means Other Countries Spend Less to Fight Climate Change*, WASH. POST (Nov. 21, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/11/21/trumps-noncooperation-threatens-climate-finance-under-the-paris-agreement/?utm_term=.9cde8eb9ded6.

¹⁴² Hai-Bin et al., *supra* note 134, at 222.

¹⁴³ Urpelainen, *supra* note 141.

¹⁴⁴ *Id.*

¹⁴⁵ Hai-Bin et al., *supra* note 134, at 224.

Rex Tillerson and President Trump's daughter Ivanka Trump, have urged the president to remain in the agreement, "arguing it would be beneficial to the United States to remain part of negotiations and meetings surrounding the agreement as a matter of leverage and influence."¹⁴⁶ Moreover, the United States' absence from future negotiations could create opportunities for China and European countries to gain leadership and global influence.¹⁴⁷

Finally, if the United States is no longer included in the calculations of lowered emissions, this will lead to a greater environmental impact and higher expectations being placed on the remaining countries to reach the goal levels set out by the Paris Agreement.¹⁴⁸ This is because the United States is the second highest greenhouse gas emitter in the world¹⁴⁹ and "would have accounted for 21 percent of the total emissions reductions achieved by the accord in 2030."¹⁵⁰ This result is also due to the fact that the United States is a leader in technical research and experience related to managing greenhouse gas emissions.¹⁵¹ In addition, even rising powers like China could be negatively affected by the United States' exit.¹⁵² China, like many other countries, does not have the experience in goal setting or climate research needed to effectively lower their emissions.¹⁵³

C. Economic and Health Impacts

From an economic standpoint, maintaining the Clean Air Act and participating in the Paris Agreement or other environmental legislation would not have a negative impact on, and could actually be beneficial to, businesses.¹⁵⁴ For example, one study shows that despite the additional costs imposed by Los Angeles specific environmental regulations, the productivity for the area's oil

¹⁴⁶ Staff and Wire Reports, *Public Officials React to U.S Withdrawal from Paris Climate Accord*, THE OKLAHOMAN (June 2, 2017, 12:00 AM), <https://newsok.com/article/5551278/public-officials-react-to-us-withdrawal-from-paris-climate-accord>.

¹⁴⁷ Hai-Bin et al., *supra* note 134, at 221.

¹⁴⁸ *Id.* at 222.

¹⁴⁹ *Global Greenhouse Gas Emissions Data*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data#Country> (last visited Aug. 24, 2019).

¹⁵⁰ Staff and Wire Reports, *supra* note 146.

¹⁵¹ Jeff McMahon, *4 New Ways America Is Number 1 in Energy*, FORBES (July 4, 2018), <https://www.forbes.com/sites/jeffmcmahon/2018/07/04/four-new-ways-america-is-number-one-in-energy/#11bd94d96e15>.

¹⁵² Hai-Bin et al., *supra* note 134, at 223.

¹⁵³ *Id.* at 224.

¹⁵⁴ *The Clean Air Act and the Economy*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/clean-air-act-overview/clean-air-act-and-economy> (last visited Sept. 22, 2018).

refineries increased drastically between 1987 and 1992, even though refinery productivity declined in areas with fewer requirements.¹⁵⁵ This example illustrates that additional regulations and related environmental legislation can actually affect businesses and industries in a positive way. It is also important to note that the Paris Agreement remains heavily backed by American and global corporations, which have been adapting businesses for years in accordance with and in expectation of requirements aimed at reducing carbon emissions.¹⁵⁶

In addition, even some of the major oil and gas producers do not believe that existing, increased regulations impact their business.¹⁵⁷ In annual reports that were submitted to the United States Securities and Exchange Commission, “13 of the 15 biggest U.S. oil and gas producers said that compliance with current regulations is not impacting their operations or their financial condition.”¹⁵⁸ While the other two companies did not report whether their businesses had been significantly affected by the increased regulations, they “reported spending on compliance with environmental regulations at less than 3 percent of revenue.”¹⁵⁹

Studies routinely show the correlation between air pollution and public health issues like asthma.¹⁶⁰ “The most significant known human health effects from exposure to air pollution are associated with exposure to fine particles and ground-level ozone pollution.”¹⁶¹ For example, on a hot summer day, children with asthma are 40 percent more likely to have an asthma episode due to increased concentrations of pollutants.¹⁶² In addition to asthma, in the United States alone, there are an estimated thirty-four thousand annual cancer cases that can be attributed to occupational and environmental exposures.¹⁶³

The cycle of emissions and public health concerns is further perpetuated by the fact that health care facilities and hospitals are some of the biggest producers

¹⁵⁵ *Id.*

¹⁵⁶ Staff and Wire Reports, *supra* note 146 (discussing supporters such as Royal Dutch Shell, ExxonMobil, and BP).

¹⁵⁷ Richard Valdmanis, *As Trump Targets Energy Rules, Oil Companies Downplay Their Impact*, REUTERS (Mar. 23, 2017, 7:07 AM), <https://www.reuters.com/article/us-usa-trump-oil-regulation-insight-idUSKBN16U1A9>.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Air Pollution: What Do I Need to Know About Air Pollution?*, ASTHMA AND ALLERGY FOUND., <https://www.aafa.org/air-pollution-smog-asthma/> (last visited Aug. 28, 2019).

¹⁶¹ U.S. ENVTL. PROT. AGENCY OFFICE OF AIR AND RADIATION, *THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020: SUMMARY REPORT 3* (2011), <https://www.epa.gov/sites/production/files/2015-07/documents/summaryreport.pdf>.

¹⁶² *Air Pollution: What Do I Need to Know About Air Pollution?*, *supra* note 160.

¹⁶³ Matthew J. Eckelman & Jodi Sherman, *Environmental Impacts of the U.S. Health Care System and Effects on Public Health*, PLOS ONE, June 2016, at 1, 14 (citing SUZANNE H. REUBEN ET AL., *REDUCING ENVIRONMENTAL CANCER RISK: WHAT WE CAN DO NOW* (2010)).

of greenhouse gases.¹⁶⁴ Studies show that if the health care industry in the United States was viewed as its own country, it would rank thirteenth in the world for greenhouse gas emissions, which would be ahead of the United Kingdom.¹⁶⁵

Investments made toward environmental improvement can also result in jobs for unemployed Americans.¹⁶⁶ Technological improvements to reduce pollution result in engineering, manufacturing, construction, operation, and maintenance jobs, and the number of opportunities will only continue to increase as technology is constantly changing.¹⁶⁷ These improvements also “lead to significant reductions in air pollution-related premature death and illness, improved economic welfare of Americans, and better environmental conditions.”¹⁶⁸ These benefits can be found in a 2011 study conducted by the EPA, which states that “[t]he economic value of these improvements is estimated to reach almost \$2 trillion for the year 2020, a value which vastly exceeds the cost of efforts to comply with the requirements of the 1990 Clean Air Act Amendments.”¹⁶⁹

Beyond the Clean Air Act, there are also impacts from other environmental regulations.¹⁷⁰ In California, a state in which over one-third of the United States’ vegetables and two-thirds of the United States’ fruits and nuts are grown, several farm workers have become sick due to the use of a pesticide that had previously been banned under the Obama administration.¹⁷¹

While the Trump administration strongly believes there is a need to make compliance standards less stringent for businesses like coal mining,¹⁷² the economic benefits of improved public health continue to make a compelling argument for the need for continued environmental improvements.¹⁷³ Other business leaders consider this departure a major blow to international efforts to combat climate change and a missed opportunity for the United States to capture

¹⁶⁴ Eckelman & Sherman, *supra* note 163, at 2.

¹⁶⁵ *Id.* at 4.

¹⁶⁶ *The Clean Air Act and the Economy*, ENVTL. PROTECTION AGENCY, <https://www.epa.gov/clean-air-act-overview/clean-air-act-and-economy> (last updated Mar. 22, 2018).

¹⁶⁷ *Id.*

¹⁶⁸ THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020: SUMMARY REPORT, *supra* note 161, at 2.

¹⁶⁹ *Id.*

¹⁷⁰ See Eric Lipton, *President Trump’s Retreat on the Environment Is Affecting Communities Across America*, N.Y. TIMES (Dec. 27, 2018), <https://www.nytimes.com/interactive/2018/12/26/us/politics/donald-trump-environmental-regulation.html>.

¹⁷¹ *See id.*

¹⁷² Jennifer Ludden, *Coal Jobs Have Gone Up Under Trump, but Not Because of His Policies*, NAT’L PUB. RADIO (Feb. 23, 2018, 5:00 AM), <https://www.npr.org/2018/02/23/586236738/coal-jobs-have-gone-up-under-trump-but-not-because-of-his-policies>.

¹⁷³ *The Clean Air Act and the Economy*, *supra* note 166.

growth in the clean energy industry, which continues to emerge and become a globally dominant field.¹⁷⁴

V. FUTURE CHALLENGES

A. Reviving the Coal Industry – A Challenge Worth Taking?

While some short-term benefits of employment growth may be observed in the coal industry, making the market economically feasible would be burdensome.¹⁷⁵ Despite positions to the contrary, over the years, environmental regulations were not the primary driving force for the decline of the coal industry.¹⁷⁶ Natural gas has been proven to be cheaper, and a form of clean coal has not yet been proven to be economically sustainable.¹⁷⁷ There are too few market incentives for electricity providers to move back toward coal and away from the currently preferred, cleaner, and less expensive option of natural gas.¹⁷⁸

An alternative to domestic consumption of coal that yields some economic benefit is coal exportation.¹⁷⁹ While the Trump administration has made exportation easier for the coal industry, exportation may not be a long-term solution for employment if it offers no incentives or financial benefits, particularly with the major health costs resulting from emissions.¹⁸⁰

B. Impact on Businesses and State Action

The decline of federal laws and regulations has led to an increase in state action in the area of environmental law. When deciding to leave the Paris Agreement, President Trump stated, “I was elected to represent the citizens of Pittsburgh, not Paris.”¹⁸¹ The mayor of Pittsburgh, Bill Peduto, quickly

¹⁷⁴ Volcovici, *supra* note 8.

¹⁷⁵ See Vakhshouri, *supra* note 57.

¹⁷⁶ *Id.*

¹⁷⁷ See Jeffrey Rissman & Robbie Orvis, *Carbon Capture and Storage: An Expensive Option for Reducing U.S. CO₂ Emissions*, FORBES (May 3, 2017, 9:00 AM), <https://www.forbes.com/sites/energyinnovation/2017/05/03/carbon-capture-and-storage-an-expensive-option-for-reducing-u-s-co2-emissions/#1296b14c6482>; Mark Perry, *The Real Cause of Coal's Collapse*, U.S. NEWS (March 9, 2017, 9:35 AM), <https://www.usnews.com/opinion/economic-intelligence/articles/2017-03-09/abundant-cheap-natural-gas-is-the-real-reason-for-the-demise-of-coal?context=amp>.

¹⁷⁸ Vakhshouri, *supra* note 57.

¹⁷⁹ *Id.*

¹⁸⁰ Mike Ludwig, *Trump's Plan to Save Coal Country Will Actually Hurt It*, TRUTHOUT (June 20, 2019), <https://truthout.org/articles/trumps-plan-to-save-coal-country-will-actually-hurt-it/>; Milman, *supra* note 64.

¹⁸¹ Milman, *supra* note 64.

responded, “I can assure you that we will follow the guidelines of the Paris Agreement for our people, our economy [and] future.”¹⁸²

Since President Trump’s decision to pull the United States from the Paris Agreement, “more than 2,700 leaders from states, cities, businesses—representing 160 million Americans and \$6.2 trillion of the [United States] economy—have ramped up their efforts to curb climate change.”¹⁸³ One of these groups, the We Are Still In coalition, has over three thousand five hundred members listed on its website.¹⁸⁴ Its members state, “We, the undersigned mayors, county executives, governors, tribal leaders, college and university leaders, businesses, faith groups, and investors are joining forces for the first time to declare that we will continue to support climate action to meet the Paris Agreement.”¹⁸⁵

These types of groups have come together in an effort to reduce greenhouse gas emissions, invest in the research and growth of renewable energy businesses, and invest in new technologies and potential jobs.¹⁸⁶ This focus on and large increase in renewable energy use led to 2017 having the lowest level of energy-related carbon emissions in twenty-five years, as well as the third year in a row in which emissions fell below 2005 levels.¹⁸⁷

States have also begun to take emission control issues into their own hands in order to compensate for the lack of federal funding or guidance.¹⁸⁸ In September 2018, the Global Climate Action Summit held in California allowed world leaders to discuss findings and actions regarding environmental progress.¹⁸⁹ This effort focused on the various improvements that have been made across the country.¹⁹⁰

In a recent case, petitioners in California brought a claim against the EPA for failure to satisfy its statutory requirements under 42 U.S.C. § 7412(c)(6).¹⁹¹ In the case, the Sierra Club submitted a request for the establishment of MACT

¹⁸² *Id.*

¹⁸³ Lou Leonard, *US Climate Action Grows Stronger Despite Announcement to Leave Paris Agreement*, WORLD WILDLIFE FUND (June 1, 2018), <https://www.worldwildlife.org/stories/us-climate-action-grows-stronger-despite-announcement-to-leave-paris-agreement>.

¹⁸⁴ *America Is Still in, Are You?*, WE ARE STILL IN, <https://www.wearestillin.com> (last visited Nov. 15, 2019).

¹⁸⁵ *Id.*

¹⁸⁶ Leonard, *supra* note 183.

¹⁸⁷ *Id.*

¹⁸⁸ Andrea McGimsey, *States Unite to Take Action on Climate: Celebrating Progress at the State and Local Level During the Global Climate Action Summit*, ENV’T AM. (Sept. 10, 2018), <https://environmentamerica.org/news/ame/states-unite-take-action-climate>.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Sierra Club v. EPA*, 863 F.3d 834, 835 (D.C. Cir. 2017).

standards for the emission of a new set of hazardous air pollutants.¹⁹² The EPA then attempted to utilize “surrogates” as comparable materials and did not respond to the Sierra Club’s comments urging for the additional analysis.¹⁹³ The United States Court of Appeals for the District of Columbia Circuit ultimately decided that the EPA had not met its statutory obligations; thus, the matter was remanded to the EPA for determination.¹⁹⁴

One major issue with the states taking control of environmental regulation relates to combating downstream emissions, which are defined as emissions that can travel to other states.¹⁹⁵ States are less inclined to spend their own funding on pollution caused by neighboring states or make extreme improvements that might benefit neighboring states, meaning downstream emissions are left unaddressed.¹⁹⁶ Another key issue with leaving environmental regulation to the states is that many major polluters are nationwide companies that have locations in multiple states.¹⁹⁷ This forces these companies to decide whether to build a new plant in a populated area that might have more resources but stricter regulations, or to build a new plant in a rural area with fewer pollution controls. Finally, when companies have to comply with individual state regulations, it becomes difficult for them to consistently monitor and regulate air emissions.¹⁹⁸

There are also some major issues from an enforcement standpoint. Violations of environmental regulations can have severe effects on victims, and many states do not have a way to address these violations with criminal sanctions.¹⁹⁹ For many states, civil remedies, such as fines, are the only way to deter violations.²⁰⁰ There is also a concern that weak state enforcement encourages companies to violate the law in order to gain an unfair competitive advantage.²⁰¹ This means that the health and well-being of individual Americans are therefore severely affected and there is no direct way of bringing a claim, regardless of whether it is state or federal in nature.

¹⁹² *Id.*

¹⁹³ *Id.* at 839.

¹⁹⁴ *Id.*

¹⁹⁵ Cynthia Giles, *Why We Can’t Just Leave Environmental Protection to the States*, GRIST (Apr. 26, 2017), <https://grist.org/opinion/why-we-cant-just-leave-environmental-protection-to-the-states/>.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *See generally* INST. FOR POLICY INTEGRITY, IRREPLACEABLE: WHY STATES CAN’T AND WON’T MAKE UP FOR INADEQUATE FEDERAL ENFORCEMENT OF ENVIRONMENTAL LAWS 1 (2017), policyintegrity.org/files/media/EPA_Enforcement_June2017.pdf (emphasizing that States face financial barriers to effective enforcement of environmental violations; thus, public health would suffer as a result of reduced enforcement of such violations).

²⁰⁰ *See id.*

²⁰¹ Giles, *supra* note 195.

VI. PATH FORWARD

A. Alternative Energy Sources

Finding alternative energy sources is a concept that has been popular in the engineering and technology fields for over thirty years.²⁰² There is also strong public support in both political parties for alternative or renewable energy sources.²⁰³ In the 1990s, the alternative energy sources were primarily hydropower and solid biomass, while recently there has been an increase in wind and solar power.²⁰⁴

In 1992, President H.W. Bush signed into law a landmark piece of energy legislation titled the Energy Policy Act of 1992.²⁰⁵ While previously squashed under the Republican Reagan administration, the Republican Bush administration began offering tax credits and commercialization programs to companies that utilized renewable energy.²⁰⁶

President George W. Bush also focused on the importance of renewable energy resources.²⁰⁷ In 1999, the then Governor Bush, known to be an oil executive and advocate, signed legislation in Texas enforcing a renewable electricity mandate.²⁰⁸ As president, he reinstated and extended the production tax credits available for people using wind power or other renewable energy sources.²⁰⁹

In 2012, President Obama set the distinct goal of issuing permits for one hundred megawatts of renewable energy sources on public lands within one year.²¹⁰ This goal was achieved ahead of schedule and led to an even further

²⁰² *What Is Renewable Energy?*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/energyexplained/?page=renewable_home (last updated June 27, 2019).

²⁰³ CARY FUNK ET AL., MAJORITIES SEE GOVERNMENT EFFORTS TO PROTECT THE ENVIRONMENT AS INSUFFICIENT 3 (2018), https://www.pewresearch.org/science/wp-content/uploads/sites/16/2018/05/PS_2018.05.14_energyclimate_FINAL.pdf.

²⁰⁴ *What Is Renewable Energy?*, *supra* note 202.

²⁰⁵ Paul Lester, *Remembering President George H.W. Bush: 5 Key Moments in Energy Department History*, DEP'T OF ENERGY (Dec. 4, 2018), <https://www.energy.gov/articles/remembering-president-george-h-w-bush-5-key-moments-energy-department-history>.

²⁰⁶ Scott Sklar, *A Look at Bush Administration Policies Regarding Renewable Energy*, RENEWABLE ENERGY WORLD (Oct. 28, 2004), <https://www.renewableenergyworld.com/articles/2004/10/a-look-at-bush-administration-policies-regarding-renewable-energy-17544.html>.

²⁰⁷ *The Greatest Myth of the George W. Bush Presidency*, INST. FOR ENERGY RES. (May 25, 2010), <https://www.instituteforenergyresearch.org/renewable/the-greatest-myth-of-the-george-w-bush-presidency/>.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *FACT SHEET: President Obama's Climate Action Plan*, THE WHITE HOUSE OFF. OF

increase in the use of solar facilities, wind farms, geothermal plants, and hydroelectric power sources.²¹¹

Today, technology that can help combat greenhouse gas emissions while also discovering alternative clean energy sources is continuing to be developed. There are also research and development programs, still funded by the government, that can help bring these clean air technologies into commercial use.²¹² One of these programs led to the creation of the Advanced Research Project Agency-Energy, which focuses on the study of “high-potential, high-impact energy technologies that are too early for private-sector investment.”²¹³

The examples provided above, which include actions taken by both Democratic and Republican presidents, demonstrate that focusing on renewable energy sources and reducing greenhouse gas emissions do not need to be bipartisan issues.

B. Climate Change: Not a Bipartisan Issue

In a 2014 and 2016 study conducted by the *New York Times*, most Republicans agreed that “climate change is happening, threatens humans and is caused by human activity . . . and that reducing carbon emissions would mitigate the problem.”²¹⁴ Not surprisingly, the study also found that Republicans supported what they understood to be Republican-backed climate policies and Democrats mostly supported Democratic-backed policies.²¹⁵ The study was developed by psychologists who discussed a fundamental belief that people are most profoundly affected by their perception of what other people think.²¹⁶ These psychologists found that it is this perception that transforms into a fear and prevents a person from breaking ranks with his or her political party.²¹⁷

Many American citizens are against the United States’ exit from the Paris Agreement.²¹⁸ A 2016 study by Yale University showed that 86 percent of

THE PRESS SECRETARY (June 25, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/06/25/fact-sheet-president-obama-s-climate-action-plan>.

²¹¹ *Id.*

²¹² *Federal Action on Climate*, CTR. FOR CLIMATE AND ENERGY SOLUTIONS, <https://www.c2es.org/content/federal-action-on-climate/> (last visited Aug. 25, 2019).

²¹³ *About, Advanced Research Project Agency - Energy*, U.S. DEP’T OF ENERGY, <https://arpa-e.energy.gov/?q=arpa-e-site-page/about> (last visited Aug. 25, 2019).

²¹⁴ Leaf Van Boven & David Sherman, *Actually, Republicans Do Believe in Climate Change*, N.Y. TIMES (July 28, 2018), <https://www.nytimes.com/2018/07/28/opinion/sunday/republicans-climate-change.html>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Jennifer Marlon et al., *Majorities of Americans in Every State Support Participation in the Paris Agreement*, YALE PROGRAM ON CLIMATE CHANGE COMM. (May 8, 2017), https://climatecommunication.yale.edu/publications/paris_agreement_by_state/.

Democrats, 61 percent of Independents, and 51 percent of Republicans agreed that the United States should participate in the Paris Agreement.²¹⁹ The study also showed that it was only conservative Republicans that were split on the Paris Agreement, with a small margin (40 percent) in favor of participation compared to those against participation (34 percent).²²⁰ Furthermore, the study showed that almost half of the people who voted for President Trump in the 2016 presidential election (47 percent) stated that the United States should participate, while only 28 percent of President Trump's voters opposed participation.²²¹

One important finding from the *New York Times* study is that there is much less discord between Republicans and Democrats when considering a Republican-proposed carbon tax, which may demonstrate a path forward.²²² Some groups also feel that there may be interim steps that can even gain bipartisan support in Congress.²²³ One of the proposed plans is a "comprehensive market-based approach" that includes components like a carbon tax and a cap-and-trade program.²²⁴ This approach has already been utilized in the United States to manage things like acid rain and lead-based gasoline.²²⁵ Moreover, these strategies on carbon have already been implemented by eleven states.²²⁶ Still, an economy-wide approach would require Congress to enact new legislation that provides guidance and a means of enforcement.²²⁷

Interestingly enough, one former energy adviser for President Trump, George David Banks, also told *Time* magazine that President Trump may be considering rejoining the Paris Agreement as a talking point for the 2020 presidential election.²²⁸

C. Law Reform

From an enforcement standpoint, there is strong public support for involving

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² Van Boven & Sherman, *supra* note 214.

²²³ *Congress and Climate Change*, CTR. FOR CLIMATE & ENERGY SOLUTIONS, <https://www.c2es.org/content/congress-and-climate-change/> (last visited Apr. 16, 2019).

²²⁴ *Id.*

²²⁵ *Market-Based Strategies*, CTR. FOR CLIMATE & ENERGY SOLUTIONS, <http://www.c2es.org/content/market-based-strategies/> (last visited Apr. 16, 2019).

²²⁶ *Id.*

²²⁷ *Federal Action on Climate*, *supra* note 212.

²²⁸ Justin Worland, *United Nations Climate Change Head Wants Donald Trump Back in the Paris Agreement*, TIME (Mar. 12, 2018), <https://time.com/4476614/self-driving-cars-environment/>.

Congress in any decision related to the Paris Agreement, or any similar decision, in order to avoid changes occurring across presidencies.²²⁹ President Obama knew that the treaty did not have the required two-thirds support of the Senate, so he took the approach of self-ratification.²³⁰ Since the Paris Agreement is an extension of the United Nations Framework Convention on Climate Change, which the United States is already a party to, and because it did not create any new legal obligations, President Obama was not required to obtain the advice and consent of Senate.²³¹ This is the same unilateral executive power that gave President Trump the ability to remove the United States from the agreement.²³²

A United States representative from Oklahoma, Republican Tom Cole, commented that one of President Obama's mistakes was not bringing the Paris Agreement to Congress for approval.²³³ He further stated that President Trump's renegotiations of the United States' involvement in the Paris Agreement should include the opportunity for Congress to vote on the deal.²³⁴ Moreover, one should note that bypassing Congress will result in the business community's lack of confidence and, as such, this approach should not be viewed as a sustainable, long-term strategy.²³⁵

As with past changes in administrations, Republican President Trump's proposed plan has drastically differed from the previous Democratic platform of President Obama.²³⁶ In addition, leaving the enforcement of environmental regulations up to the states is not a long-term sustainable solution.²³⁷ Moreover, pending claims, such as *Juliana v. United States*, could limit executive control and provide a more clear and direct path forward for environmental regulations within the Clean Air Act.²³⁸ From there, it would be prudent for the current administration to have members of Congress, as representatives of the people, involved with the actual execution of any environmental decision that has a truly

²²⁹ Tim Doyle, *Congress Must Come to Terms on Climate Change Regulation*, THE HILL (Oct. 29, 2017, 3:00 PM), <https://thehill.com/opinion/energy-environment/357701-congress-must-come-to-terms-on-regulating-climate-change>.

²³⁰ Merrill Matthews, *Senate Must Have Role in Paris Climate Deal*, THE HILL (May 24, 2017), <https://thehill.com/blogs/pundits-blog/energy-environment/334973-senate-deserves-right-of-refusal-on-paris-agreement>.

²³¹ David Doniger, *Paris Climate Agreement Explained: Does Congress Need to Sign Off?*, NAT'L RESOURCES DEF. COUNCIL (Dec. 12, 2015), <https://www.nrdc.org/experts/david-doniger/paris-climate-agreement-explained-does-congress-need-sign>.

²³² Noah Feldman, *The Paris Accord and the Reality of Presidential Power*, BLOOMBERG OPINION (June 2, 2017, 1:00 PM), <https://www.bloomberg.com/opinion/articles/2017-06-02/trump-paris-climate-change-and-constitutional-realities>.

²³³ Staff and Wire Reports, *supra* note 146.

²³⁴ *Id.*

²³⁵ Doyle, *supra* note 229.

²³⁶ Vakhshouri, *supra* note 57.

²³⁷ Giles, *supra* note 195.

²³⁸ *Juliana v. United States*, 339 F. Supp. 3d 1062 (D. Or. 2018).

global impact.²³⁹ In conclusion, although as an international agreement the Paris Agreement does not require Senate ratification, since it is a treaty, some argue it should be treated in the manner that the Founding Fathers intended.²⁴⁰

²³⁹ Doyle, *supra* note 229.

²⁴⁰ Ian Tuttle, *The Paris Agreement Is a Treaty. Treat It As Such.*, NAT'L REV. (June 1, 2017, 8:00 AM), <https://www.nationalreview.com/2017/06/paris-agreement-treaty-requiring-two-thirds-senate-vote/>; Matthews, *supra* note 230; U.S. CONST. art. II, § 2, cl. 2.