

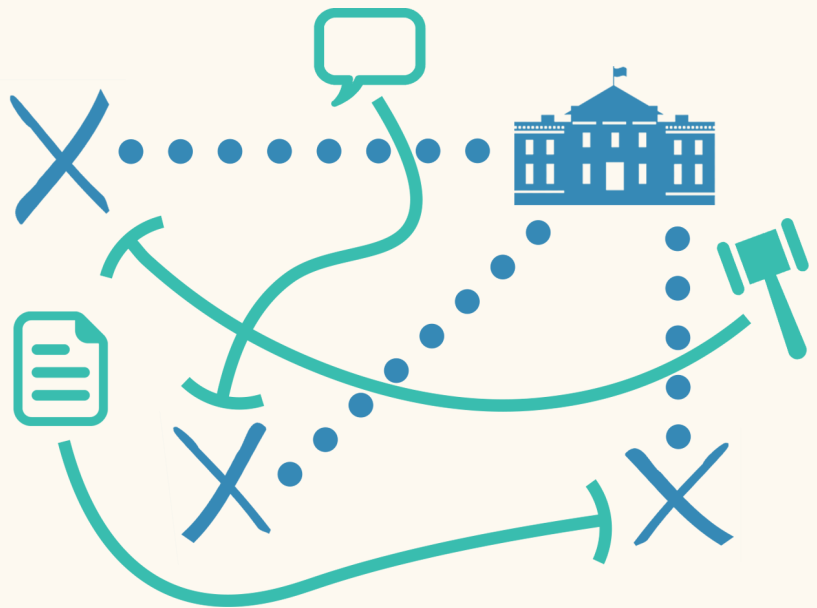


The State Energy &  
Environmental Impact Center  
NYU School of Law

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## Full Court Press:

How State Attorneys General  
Guarded Against the  
Trump Administration's  
Anti-Regulatory Agenda



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State Energy and Environmental Impact Center  
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## TAKING STOCK

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During the early weeks and months of President Donald Trump’s term, his administration’s public messaging and personnel decisions reinforced his campaign promise to remove a raft of environmental regulatory “barriers” claimed to be needlessly holding back the coal and oil and gas industries. At the top of the agenda: reverse coal’s decline, protect oil and gas incumbents from clean energy competition, and wipe off the books as many environmental protections as possible.

The Trump administration got to work quickly. Newly installed political leadership at the Environmental Protection Agency and the Energy and Interior Departments short-circuited ongoing rulemakings, moved to delay impending compliance deadlines and ignored statutory directives from Congress. Environmental, climate and clean energy interests faced attacks on all fronts, unchecked by powers in Washington, D.C.

**State attorneys general — together with environmental groups, public health advocates, scientists, state regulators, activists and an engaged public — stepped in to fill the vacuum and prevent the Trump administration from freely imposing its so-called “energy dominance” agenda.** The result was a string of court decisions in 2017 and 2018 that invalidated many of the administration’s initial slapdash efforts to undermine and reverse regulatory protections for our air, water, public lands and wildlife — exposing, along the way, the administration’s disregard for the rule of law.

**After their early victories, state attorneys general and their allies held their ground as the Trump administration tried to develop and then justify its polluter-friendly policy reversals.** In its haste to make up for squandered time, the administration repeated many of the same errors — poor planning, shoddy legal arguments and fudged math — that led to its first wave of court defeats. As the Trump administration ends, none of its marquee environmental, climate and energy deregulatory policies have grown deep roots. The “energy dominance” agenda is on thin legal ice.

**While working tirelessly to hold the Trump administration to account, state attorneys general simultaneously ramped up efforts to advance their own affirmative agendas through other channels.** State attorneys general have emerged as indispensable advocates on numerous fronts, including championing clean energy, fighting for environmental justice and addressing per- and polyfluoroalkyl substance (PFAS) contamination.

This report highlights a selection of the literally [hundreds of actions](#) taken by state attorneys general to defend against the Trump administration’s anti-regulatory assault and build a cleaner, healthier, more just world for future generations. We use case examples to illustrate the tenacious defensive and break-away offensive strategies employed by state attorneys general over the past four years. When pending challenges move through the courts and the dust settles, many of the Trump administration’s other indefensible rollbacks of air quality protections, free passes to exploit America’s special lands and waters, illegitimate regulatory processes grounded in anti-science and pro-industry biases, and other environmental abominations will also be thwarted. These wins will further confirm the success of the “Full Court Press” strategy executed by state attorneys general.

# HOLDING THE LINE

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## Keeping Climate in the Game

The climate-denying Trump administration prioritized the elimination of Obama-era legal requirements aimed at reducing greenhouse gas (GHG) emissions from the three largest climate-polluting sectors of the U.S. economy: the power sector (the [Clean Power Plan](#)); the automotive sector ([Clean Car Standards](#)); and the oil and gas sector ([restrictions on methane emissions](#)). The administration has failed to achieve its climate-busting deregulatory goals, thanks to the intervention of state attorneys general and their partners.

Early on, state attorneys general won major court victories that stopped the Trump administration's initial efforts to put the Obama administration's climate rules on ice. This forced the Trump administration to do the much harder work of coming up with alternative rules that would free industry from greenhouse gas emissions restrictions in the face of (1) a clear legal requirement, rooted in the U.S. Supreme Court's decision in [Massachusetts v. EPA](#), that the Environmental Protection Agency (EPA) must regulate GHG emissions from major industry sectors; and (2) the strong fact- and science-based evidence that supported the common-sense GHG reductions put in place by the Obama administration for the power, automotive and oil and gas sectors.

It took the Trump administration nearly the entire balance of its time in office to promulgate replacement rules that purport to overcome these legal and factual hurdles. Most were not finalized until the last year of the Trump administration, giving them little or no time to take hold. Along the way, state attorneys general and their allies exposed gross legal, scientific and factual flaws in each of the rollbacks. They are headed for outright rejection by the courts, if they are not undone administratively first. A quick tour through the three sectors proves the point.

## *Upholding Obligations to Address Power Sector Carbon Emissions*

In September 2016, fossil fuel boosters argued in the U.S. Court of Appeals for the D.C. Circuit that the Clean Power Plan's strategy for reducing GHG emissions from the power sector — which reflected the main ways that power companies had already begun to cut those emissions — was nonetheless beyond the EPA's authority under the Clean Air Act. Upon taking office, the Trump administration insisted that the D.C. Circuit hold off deciding that case, arguing that the court should wait instead to review the administration's replacement rule. The court grudgingly complied, but the delay yielded no benefit for the Trump administration.

Fast forward to October 2020 — four years and one month later — and it feels like Groundhog Day. The question of how to reduce GHG emissions from the power sector, as required by the Clean Air Act, was again [being argued](#) before the D.C. Circuit. But this time the Trump administration, which had embraced the fossil fuel boosters' position, was on the defensive. A broad coalition of 23 attorneys general led by New York AG Letitia James firmly [made the case](#) that the administration was flatly wrong in its contention that the Clean Air Act required repeal of the Clean Power Plan; that the administration's replacement rule, the so-called [Affordable Clean Energy \(ACE\) rule](#), did not identify specific GHG emissions targets that states must meet; and that the ACE rule may not yield *any* overall GHG emissions reductions.

The bottom line: Four years later, the Trump administration finds itself making many of the same legal arguments that question the scope of Clean Air Act authority to regulate GHGs from the power sector. But this time, it is trying to defend an approach that manifestly fails to satisfy the language or intent of the law. Ironically, by pressing a legal interpretation that holds no water, the Trump administration has lost ground, opening the door for an updated plan that will actually achieve the meaningful GHG emissions reductions that the Clean Air Act requires.

## *Keeping Auto Emissions Reductions on Track*

One of the Obama administration's most remarkable climate achievements was forging a long-term [agreement](#) among the federal government, the State of California and the auto industry that reduced greenhouse gas emissions from automobiles and light trucks by ratcheting up their fuel economy standards over a 10-year period. The Trump administration answered by issuing new rules that, if they stand, would slow the progression of emissions reductions to a crawl and disallow the statutory waiver that gives California independent rights to set tough tailpipe standards.

It is now obvious, however, that the Trump administration's attempts to kneecap the Obama administration's ambitious tailpipe standards will not hold. The [health and consumer costs](#) associated with the Trump administration's fuel economy slowdown are astronomical — swamping the rule's purported (and [shown to be fictional](#)) benefits. As a coalition of 24 attorneys general led by California AG Xavier Becerra pointed out, the administration's own math confirms that its so-called [Safer Affordable Fuel-Efficient \(SAFE\) Vehicles rule](#) will cost consumers an estimated 1.9-2.0 billion barrels of increased gasoline use, while causing an estimated 16,000 additional asthma cases and as many as 1,000 premature deaths annually from exposure to tailpipe pollution.



State attorneys general have also [made clear](#) that the Trump administration’s attempt to eliminate the California waiver in favor of “One National Program” [runs smack into](#) the inconvenient Clean Air Act language and history that give California the right to adopt more stringent standards — a right that the statute also extends to other states that follow California’s lead.

Because the Trump administration did not finish these two rollbacks until late in its term, courts have not yet had the opportunity to strike down the rules. Few expect them to survive. Indeed, a majority of auto manufacturers have lined up against the Trump administration’s rollbacks, sealing their fate as failures.

### ***Preventing Unlimited Methane Emissions From the Oil & Gas Industry***

Under the Obama administration, the EPA [promulgated a rule](#) that required periodic inspections for and repairs of methane leaks from new sources in the oil and gas sector — the largest industrial source of methane emissions in the country. Separately, the Interior Department’s Bureau of Land Management (BLM) [promulgated a rule](#) that barred oil and gas operators on public lands from excessively venting and flaring methane because the practice violated Interior Department regulations against the wasting of valuable public resources.

The Trump administration took an early run at eliminating both of these rules. The gambit failed. State attorneys general and their partners sued both the EPA and the Interior Department to stop them from releasing the oil and gas industry from its obligation to comply with the law. The courts [agreed](#) and [slapped down](#) those efforts.

State attorneys general stayed on point throughout the Trump administration’s subsequent efforts to promulgate replacement rules. In the BLM matter, the administration pushed through a rescission rule over the objections of California AG Xavier Becerra and New Mexico AG Hector Balderas. As soon as the rule was finalized, the attorneys general sued and subsequently won a [resounding victory](#). In striking down the replacement rule, the court did not mince words, [commenting](#) that “[i]n its haste” to repeal the rule, BLM “ignored its statutory mandate under the Mineral Leasing Act [to prohibit the waste of natural resources], repeatedly failed to justify numerous reversals in policy positions previously taken, and failed to consider scientific findings and institutions relied upon by both prior Republican and Democratic administrations.” (Separately, the industry reached back to the 2016 BLM rule and persuaded a federal court in Wyoming to issue a contrary ruling that questioned BLM’s authority to regulate waste under the Mineral Leasing Act; that ruling is on appeal.)

The EPA’s parallel effort to remove the oil and gas industry’s obligation to reduce its methane emissions appears destined for the same fate. In addition to finalizing a scaled-back methane leak detection and repair [rule](#), the agency audaciously proposed and later finalized a replacement [rule](#) that removes entirely the requirement that new oil and gas operators restrict their methane emissions. The reasons for that second rule are completely transparent: to enable the administration’s defense against a state coalition’s [lawsuit](#) over the EPA’s unreasonable delay in issuing regulations requiring existing oil and gas facilities — which emit the lion’s share of methane — to control their emissions. Specifically, the EPA is arguing in court that because it is letting new oil and gas operators off the hook, existing oil and gas operators also will have no obligation to identify and fix the methane leaks that are prevalent throughout the industry.

Lawsuits led by state attorneys general swiftly followed the EPA’s late release of these final rules in August 2020, [blasting](#) the rollbacks as “a quintessential example of unlawful and arbitrary and capricious rulemaking” that is “full of internal inconsistencies, inexplicable reversals in policy, and faulty legal conclusions,” and noting that the rollback is nothing more than “a convenient smokescreen ... to escape [the EPA’s] mandatory duty to control methane emissions from hundreds of thousands of existing sources in the oil and gas industry.” Even major oil companies have [acknowledged](#) the industry’s need to reduce its climate-damaging methane emissions and concluded that the Trump administration has gone too far.

### ***Blunting the Attack on California’s Climate Cap-and-Trade Program***

In 2019, as part of its broader vendetta against California’s progressive climate policies, the Trump administration [sued](#) the state for voluntarily linking its carbon cap-and-trade market with the Canadian province of Quebec. The Justice Department alleged that California’s voluntary agreement with Quebec violates two rarely invoked constitutional provisions, the Treaty Clause and Compact Clause — despite the fact that the arrangement falls within state regulatory authority and does not encroach upon constitutional federalism interests.

California AG Xavier Becerra has successfully defended California against this federal strike suit, [backed](#) by a coalition of 14 additional attorneys general led by Oregon AG Ellen Rosenblum. In two significant opinions in [March 2020](#) and [July 2020](#), a federal district court soundly rejected the federal government’s claims, noting that the California-Quebec agreement did not represent a “treaty” within the Constitution nor did it rise to the level of a “compact” under the Constitution.



## Fighting for Clean Air & Clean Water

### *Preventing EPA From Letting Upwind Polluters Off the Hook*

State attorneys general have held the EPA accountable for its failure to meet its obligations under the Clean Air Act's "Good Neighbor" provision, which requires the agency to take action against upwind pollution sources that are preventing downwind states from meeting required air quality standards under the National Ambient Air Quality Standards (NAAQS) program.

The attorneys general of New York and Connecticut secured an initial victory in June 2018, with the U.S. District Court for the Southern District of New York [finding](#) that the EPA missed its deadline to promulgate federal plans to address upwind pollution, and ordering the agency to do so by early December 2018. When the EPA responded with a [rule](#) that fell well short of its Clean Air Act obligations, state attorneys general led by New York once again took the agency [to court](#) and [won](#), with the D.C. Circuit rejecting the EPA's attempt to slough off its Good Neighbor obligation to address the upwind pollution problem.

As the EPA continued to drag its feet, a group of five attorneys general — Connecticut AG William Tong, Delaware AG Kathy Jennings, Massachusetts AG Maura Healey, New Jersey AG Gurbir Grewal and New York AG Letitia James — [sued](#) the agency over its "failure to take immediate action" as ordered by the court, emphasizing that with air quality compliance deadlines looming, "[t]ime is of the essence." The court [sided](#) with the attorneys general in late July 2020 and set a March 2021 deadline for the EPA to promulgate final federal plans to reduce ozone emissions from upwind states. The implementation of the final federal plans will help protect millions of residents of downwind states from exposure to smog and other pollutants that cause asthma, lung damage and other respiratory harms.

A related effort began in October 2019, when the attorneys general of New York and New Jersey partnered to file a [petition for review](#) in the D.C. Circuit challenging the EPA's [denial](#) of an administrative petition requesting that the agency find that several upwind states were significantly contributing to New York's inability to meet NAAQS standards. In mid-July 2020, the court [ruled](#) in favor of New York and New Jersey, concluding that the EPA "offered insufficient reasoning for the convoluted and seemingly unworkable showing it demanded of New York's petition." The court also noted that in finding New York in compliance with the 2008 NAAQS for ozone, the EPA had "relied on two faulty interpretations of the Clean Air Act that have since been invalidated."

### *Defending Clean Water Act Protections for Wetlands & Upland Waterways*

The Clean Water Act protects the "waters of the United States" (WOTUS) — a jurisdictional term that the courts, the EPA and the U.S. Army Corps of Engineers (USACE) have consistently applied for many decades to confirm federal protection for wetlands and other upland water bodies that are not themselves "navigable," but which play a role in maintaining or improving downstream water quality. In 2015, at the conclusion of a rigorous rulemaking process guided by cutting-edge hydrological and ecological research, the EPA and the USACE [fine-tuned](#) the jurisdictional reach of the Clean Water Act and reinforced the scientific underpinnings of its application to isolated wetlands and other upland water bodies.

After many long delays — including a pointless exercise in temporarily reinstating an older jurisdictional determination — the Trump administration waited until April 2020 to finally issue its replacement Clean Water Act jurisdictional [rule](#). The final rule departed radically from both the 2015 definition of "waters of the United States" and preceding definitions — all of which had confirmed that wetlands and other upland waters that are not directly and physically connected to downstream "navigable" waters nonetheless qualify for federal protection based on their impacts on downstream water quality.

In doing so, the Trump administration's final rule ignored the science-based, water quality-related jurisdictional line drawing that the Supreme Court has previously endorsed, and which the 2015 rule meticulously confirmed and documented. In its stead, the new rule simply asserts that regardless of science-based connectivity, there is no Clean Water Act coverage for wetlands or other water bodies that are not in constant physical contact with navigable waters — thereby [excluding](#) half of all previously protected wetlands and a large number of intermittently-flowing upland streams from Clean Water Act coverage.

State attorneys general ferociously objected to the Trump administration's brazen attempt to remove federal Clean Water Act protections from vast areas of wetlands and thousands of miles of upland waterways. In May 2020, a coalition of 18 attorneys general led by New York AG Letitia James [sued](#) the EPA and the USACE, emphasizing that "[a]ccepted science and the [a]gencies' previous findings overwhelmingly demonstrate that the waters excluded from the Act's protections by the 2020 Rule significantly affect downstream water quality and require protection" under the Clean Water Act. Other lawsuits, including separate litigation filed by Colorado AG Phil Weiser in which Colorado secured a [preliminary injunction](#) on implementing the new Clean Water Act jurisdictional rule, are underway in other courts.

Because the Trump administration waited until the end of its time in office to finalize its final Clean Water Act jurisdictional rule, the new rule has the shallowest of roots. The administration has not issued rulemakings or guidance documents that flesh out in detail how its radical new approach will apply on the ground. Nor is the EPA or the USACE methodically issuing new jurisdictional determinations under the disruptive and confusing new rule. The stage is again set for a court victory against a shoddy rule that made no attempt to discredit the legal and science-based underpinnings of the rule that it purports to replace.

### ***Defeating a Trump-Supported Clean Water Act Loophole***

For many years, the EPA has made clear that industries do not escape Clean Water Act permitting requirements by discharging their wastewaters into a ditch, pond, groundwater or other intermediary that then delivers pollutants into a navigable waterway. Under this long-standing interpretation, companies need to obtain a permit for the discharge of coal ash or other soluble industrial wastes into impoundments that leak directly into adjacent rivers through groundwater.

Industries complained to the Trump administration about this Clean Water Act requirement and requested that the EPA create a loophole that would free them of the obligation to obtain a permit. In April 2019, the EPA responded by [proposing](#) a new interpretation of the law that would “categorically exclude” Clean Water Act coverage for pollutants that reach navigable waters via groundwater. A coalition of 11 attorneys general led by Maryland AG Brian Frosh [pushed back](#), warning that the EPA’s new interpretation “flouts the Clean Water Act’s goals” by giving polluters “a road map to skirt the Act’s application.”

The issue came to a head in the courts later in 2019. The previous fall, the U.S. Court of Appeals for the Sixth Circuit [overturned](#) — despite concerns raised by AG Frosh and fellow state attorneys general in an [amicus brief](#) — a district court [decision](#) that confirmed the Clean Water Act’s applicability to point source discharges through groundwater conduits. The ruling created a circuit split, prompting the Supreme Court to take up *County of Maui, Hawaii v. Hawaii Wildlife Fund*, in which the U.S. Court of Appeals for the Ninth Circuit [held](#) that the Clean Water Act “does not require that the point source itself convey the pollutants directly into the navigable water” so long as the discharge is “fairly traceable from the point source to a navigable water.”

A larger coalition of state attorneys general, once again led by Maryland AG Brian Frosh, filed an [amicus brief](#) before the Supreme Court. The Court [sided](#) with the attorneys general and their allies in holding that pollutants are subject to the Clean Water Act when there is a “functional equivalent of a direct discharge” of pollutants from a point source to protected waters. Citing the brief of the attorneys general, the Court noted that to hold otherwise would flout congressional intent and create “a large and obvious loophole in one of the key regulatory innovations of the Clean Water Act.”



## Protecting America's Wildlife & Public Lands

### Blocking Attempts to Allow the Reckless Killing of Migratory Birds

The Migratory Bird Treaty Act (MBTA) is a strict liability statute that prohibits the “taking” or “killing” of migratory birds “at any time, by any means or in any manner,” without regard to intent. Despite this clear statutory language, and decades of interpreting the language to prohibit the “incidental” take of migratory birds, the chief lawyer for the Interior Department issued a legal [opinion](#) in December 2017 asserting that companies are only liable for killing migratory birds when they intentionally set out to do so. Under the opinion, even companies that engage in reckless practices that they know are likely to kill migratory birds, and which they could easily avoid, would have no liability under the MBTA. Not surprisingly, as a result of the opinion, some companies that had been taking prudent actions to avoid or limit practices that kill migratory birds quickly [abandoned](#) those practices.

State attorneys general filed a [lawsuit](#) in September 2018 to overturn the Interior Department's new interpretation of the MBTA — and won. The court [vacated](#) the opinion, noting that it “is not only a sin to kill a mockingbird, it is also a crime.” The court concluded that the legal opinion was “simply an unpersuasive interpretation of the MBTA's unambiguous prohibition on killing protected birds.”

Despite the decisive court defeat, the Trump administration is attempting to convert its defective legal opinion into a [regulation](#) that would codify its faulty interpretation of the MBTA. State attorneys general, however, are having none of it. A coalition led by New York AG Letitia James filed extensive [comments](#) opposing the proposal, and followed up by [criticizing](#) a later-released [draft environmental impact statement](#) confirming that the rule, if finalized, will result in the killing of additional migratory birds. Recently, on its way out the door, the Trump administration finalized the defective [rule](#), setting up another court battle for the already once-victorious state attorneys general.



### Turning Back Plans to Expand Offshore Oil & Gas Drilling

In January 2018, the Trump administration's Interior Department [proposed](#) a new “five-year plan” that would open up virtually the entire U.S. coastline to offshore oil and gas drilling, starting in 2019. The administration also began processing requests by the oil industry to undertake seismic testing to assess potential oil and gas deposits off the Atlantic coast.

North Carolina AG Josh Stein and Maryland AG Brian Frosh led a [coalition](#) of attorneys general [opposing](#) the proposed expansion. The attorneys general filed individual and joint comments, spoke out in public forums, and threatened to sue if the Trump administration insisted on moving forward and finalizing its plan to open up the east and west coasts, and virtually all of Alaska's offshore waters, to oil and gas exploration and drilling.

AG Frosh and a coalition of attorneys general also strongly [objected](#) when the Commerce Department proposed to allow oil and gas companies to conduct seismic surveys in search of oil off the Atlantic coast. They later [joined](#) a lawsuit challenging the issuance of seismic testing permits, noting that such testing could result in more than 300,000 incidents of harm to marine mammals while also damaging the states' robust coastal tourism and recreation industries.

State attorneys general have successfully beaten back both of the Trump administration's offshore oil and gas initiatives. The Interior Department has lost the opportunity to finalize its expansive offshore oil and gas drilling plan before it leaves office. 2019, the proposed start of the final plan, has come and gone. At most, the Trump administration can release a revised — but still not final — plan in its final days. And in the face of strong, bipartisan opposition by state attorneys general, the Trump administration also has given up on its plan to allow seismic testing in the Atlantic. Rather than trying to defend its seismic testing permits, the Commerce Department let them expire, prompting AG Frosh to confirm that seismic testing is “[dead in the water](#).”



## Stopping Retrograde Energy Actions

### *Defeating the Energy Department's Push for a Coal Bailout*

In October 2017, the Energy Department [proposed](#) that the Federal Energy Regulatory Commission (FERC) manipulate interstate electricity sales to subsidize coal and nuclear plants that were having difficulty staying competitive with natural gas and renewable energy power providers. The Energy Department based its proposal on a dubious assertion that coal and nuclear plants contributed uniquely to grid “resilience” — an undefined term — because they could maintain 90-day fuel supplies on site.

A coalition of 11 state attorneys general, led by Massachusetts AG Maura Healey, [joined](#) with many other parties in strongly criticizing the proposal. The attorneys general explained that the coal subsidy was unsupported by data and experience, would damage the environment and was antithetical to state clean energy policies. The proposal also violated the Federal Power Act's requirement to ensure just and reasonable rates; it would have increased costs without justification, burdening consumers and undermining markets and competition. The attorneys general pointed to a long list of well-crafted policies enacted by states “as overseers of the economic aspects of electrical generation” that could be threatened by the proposal.

FERC [agreed](#) and handed the Trump administration an embarrassing defeat. All five members of FERC at the time rejected the proposal, noting the ways in which it fell short of the “clear and fundamental legal requirements” of the Federal Power Act and was antithetical to FERC's goals of promoting competition.

### *Challenging Energy Suppliers' 'Resilience' Claims*

State attorneys general also have confronted efforts by the Trump administration — at the behest of incumbent fossil fuel energy providers — to raise false “resilience” concerns in the hope of erecting regulatory barriers against competition from new clean energy sources. For example, FERC opened a “resilience” docket and directed the organized wholesale market operators that it oversees — called Regional Transmission Operators (RTOs) or Independent System Operators (ISOs) — to submit information to allow FERC to evaluate potential threats to resilience and how each RTO/ISO might address those threats.

The attorneys general of Massachusetts, Vermont, and Rhode Island submitted [comments](#) in response to ISO-New England's grid resilience comments, highlighting flaws in the ISO's assumptions and analysis. ISO-New England framed the challenges of the region in terms of fuel security. The attorneys general strongly objected, pointing out that this characterization of the problem is fundamentally at odds with state clean energy policies and is out-of-touch with where the energy industry is headed. As discussed below, state attorneys general have made similar points in other proceedings in which FERC and wholesale market operators have elevated the private interests of incumbent fossil fuel providers over state clean energy laws and policies.

### *Securing Energy Efficiency Gains*

The Trump administration has made a pernicious, below-the-radar effort to unwind the Energy Department's longstanding and well-established energy efficiency program under the Energy Policy and Conservation Act (EPCA). The program has yielded significant consumer savings and emissions reductions since the first standards were adopted in 1987 — benefits that are [projected](#) to reach more than \$2 trillion and nearly 8 billion tons CO<sub>2</sub>e, respectively, by 2030. State attorneys general have vigorously defended the energy efficiency program, in their traditional role of looking after their constituents' pocketbook and environmental health interests.

In June 2017, a coalition of 10 attorneys general, along with environmental and consumer groups, [sued](#) the Trump administration for failing to publish and enforce energy efficiency standards for four consumer products that had been finalized at the end of the Obama administration. The district court [agreed](#) that the Energy Department had “breached its duty” to finalize the standards, the department appealed, and the Ninth Circuit [affirmed](#). The Energy Department finally relented and [published](#) the standards in January 2020.

State attorneys general remained vigilant and successfully challenged other attempts to hollow out the Energy Department's energy efficiency program. For example, when the Energy Department attempted to delay the effective compliance date for selling more energy-efficient ceiling fans, nine attorneys general [sued](#). Shortly afterward, the Energy Department [relented](#) and gave up its delay effort. Most recently, a coalition of 15 attorneys general went on offense by bringing a [lawsuit](#) to force the department to review and update efficiency standards for 25 consumer and commercial or industrial product categories, as required by law. Forcing the Energy Department to update these standards alone potentially could save consumers more than \$580 billion in energy costs and prevent emissions of over 2 billion tons CO<sub>2</sub>e by 2050. Similarly, state attorneys general have [challenged](#) the Energy Department's attempt to undo Congress' phase-out of energy-hogging incandescent light bulbs — a move that violates the EPCA's anti-backsliding provision and could cost consumers billions of dollars and result in millions or billions of tons of foregone emissions reductions.



## Other Notable Victories

### *Fighting EPA's Enforcement Freeze During COVID-19 Pandemic*

Ever on the lookout to remove environmental protections, the Trump administration [used](#) the COVID-19 pandemic as an excuse to stop enforcing environmental regulations and, in particular, to suspend monitoring and reporting requirements under a number of environmental laws.

State attorneys general immediately recognized the danger associated with the EPA's policy of easing regulatory enforcement measures meant to protect public health in the midst of a public health crisis. In April 2020, New York AG Letitia James led 14 attorneys general in [urging](#) the EPA to rescind the policy, and blasting the agency's "lack of consideration of the policy's potential impact on public health, especially the health of low income and minority communities who are [at] greater risk of suffering adverse outcomes from COVID-19." California AG Xavier Becerra sent a similar [letter](#).

Following the EPA's failure to respond to their letters, nine attorneys general [sued](#) the agency in May 2020. The attorneys general noted that the EPA had exceeded its statutory authority by issuing "a broad, open-ended policy that gives regulated parties free rein to self-determine when compliance with federal environmental laws is not practical because of COVID-19." Facing a [motion](#) for preliminary injunction in the litigation, the EPA acknowledged defeat in June 2020 and [announced](#) it would ditch the enforcement suspension at the end of August 2020.

### *Beating Back Efforts to Reverse Royalty Reforms*

For years, independent watchdogs warned that federal coal and oil and gas lessees were exploiting regulatory loopholes to avoid paying their full royalty obligations to the federal government. The Obama administration investigated and [confirmed](#) that some companies were making the first "sale" of extracted materials to an affiliated entity at a below-market price, thereby shorting the royalty payment owed to Uncle Sam. The Interior Department finalized a valuation reform [rule](#) in 2016 that closed this loophole and required companies to base royalty payments on arm's-length transactions or on publicly posted commodity prices.

Coal and oil and gas companies asked the Trump administration to scrap this reform and revert to insider "sales" that enabled companies to pocket millions owed to federal and state governments. The Trump administration's Interior Department willingly supported the companies' (rather than the public's) agenda. It began by trying to [put off](#) compliance deadlines set forth in the 2016 valuation rule. California AG Xavier Becerra and New Mexico AG Hector Balderas [sued](#) the Interior Department for illegally postponing the start date of a rule that already had gone into force — and [won](#).

Next, the Interior Department proposed, and shortly thereafter finalized, a [rule](#) that purported to repeal the valuation rule "in its entirety." AG Becerra and AG Balderas [sued](#) and requested that the court invalidate the final rule as arbitrary and capricious and unauthorized by law. They [won](#) again. The court concluded that the department had not provided an adequate, reasoned explanation for disregarding the facts and circumstances that supported the 2016 rule. The court vacated the repeal rule, requiring compliance with the 2016 reform rule.

In a desperation move, the Trump administration is trying once again — on the eve of its departure — to eliminate the 2016 valuation rule. Encouraged by an industry-sponsored attack on the rule in federal court in Wyoming, the administration [issued](#) a new proposal in October 2020 to eliminate key provisions in the 2016 valuation rule in order to "encourage domestic oil and gas production and reduce undue regulatory burdens on industry" — with apparently little regard for the interests of collecting fair value from coal and oil and gas lessees. Once again, AG Becerra and AG Balderas [opposed](#), reminding the department of the interests and rationale that supported the 2016 rule, and noting that the new proposal fails to adequately address those issues.

On its way out the door, the Interior Department will likely finalize the latest, hastily-contrived effort to enable the coal and oil and gas industry to avoid royalty payments due to the American people. State attorneys general soundly beat back two prior efforts to enable that corrupt result. They will not hesitate to go back to court again.

### *Ensuring Collection of Asbestos Risk Information*

Asbestos is a known carcinogen that causes 15,000 premature deaths annually, and its manufacture, import, sale and use in the U.S. are evaluated and regulated by the EPA under the Toxic Substances Control Act (TSCA) to prevent harm to human health and the environment. In January 2019, a coalition of 13 attorneys general led by California AG Xavier Becerra and Massachusetts AG Maura Healey [petitioned](#) the EPA to strengthen its existing Chemical Data Reporting (CDR) rule, which contains many exemptions for asbestos reporting. The attorneys general firmly asserted that "[a]ny TSCA risk evaluation that EPA conducts without access to accurate and complete asbestos data cannot satisfy TSCA's risk evaluation criteria."

The EPA [denied](#) the states' petition in May 2019, and the attorneys general headed straight to court to [challenge](#) the denial. In December 2020, the court [handed](#) the attorneys general a victory, ordering the EPA to amend its CDR rule to include more thorough reporting of asbestos data. The court wrote that the EPA's "unwillingness to act stands in the face of its significant statutory authority to require that this information be reported" and "runs contrary to its obligation to collect reasonably available information to inform and facilitate its regulatory obligations under TSCA."

### *Defending Lower Emissions Fuels*

Oregon and California each have a [Low Carbon Fuel Standard \(LCFS\)](#), which seeks to reduce greenhouse gas emissions from the use and production of transportation fuels sold in each state. Industry groups challenged the latest iteration of California's LCFS. In January 2019, the Ninth Circuit [sided](#) with California AG Xavier Becerra and dismissed the claims. The Ninth Circuit also [tossed](#) challenges to Oregon's LCFS, which Oregon AG Ellen Rosenblum defended. Challengers sought Supreme Court review; AG Rosenblum and Washington AG Bob Ferguson [opposed](#), and the Supreme Court [declined](#) the petition.

# MOVING THE BALL

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## Championing Clean Energy

State attorneys general have emerged as leaders in the transition to a clean energy economy. As the State Impact Center has previously [discussed](#), clean energy advocacy spans the environmental, consumer protection, and state law and policy work of state attorneys general.

### *Promoting States' Ability to Implement Clean Energy Requirements*

States have authority over power generation and distribution, as recognized by the Federal Power Act, as well as a long-standing responsibility to protect the public health and environmental interests of their residents. Taken together, it is not surprising that many states have set aggressive clean energy goals and requirements. State leadership on clean energy and climate has driven innovation, job growth, and decarbonization — particularly during the Trump administration where federal leadership has been lacking.

Incumbent fossil fuel energy providers often object to these state laws and policies, characterizing preferences for clean energy as anti-competitive while ignoring the countless examples of subsidies and support that fossil fuels receive. State attorneys general are standing up for their states' ability to incentivize clean energy, including through mandates or subsidies.

For example, New York and Illinois each developed Zero Emission Credit (ZEC) programs to compensate qualifying nuclear generators for the zero-carbon-emissions attributes of their generation. The states recognized that some nuclear generators were at risk of closing due to market forces, and they wished to retain that generation until other low- and zero-emitting resources could come online. If the nuclear units were to retire quickly, they would likely be replaced by greenhouse gas-emitting natural gas plants. State attorneys general successfully defended both the New York and Illinois ZEC programs against challenges from natural gas generators.

Although FERC supported the states' wins in the ZECs cases, FERC was clear that it retained the authority to mitigate what it perceived as adverse impacts on wholesale electricity markets of these state programs. And FERC has grown increasingly hostile to state climate policies that seek to reduce greenhouse gas emissions and promote clean energy expansion. Rather than seeking to harmonize markets with these policies and programs that are within state authority, FERC views them as market distortions, directing some RTOs and ISOs to adopt rules that penalize clean energy technologies.

State attorneys general have been using their platform to object to FERC's penal response to states' rights to promote clean energy. Attorneys general in the mid-Atlantic region, for example, have pushed back firmly against rules adopted by PJM Interconnection that are hostile to clean energy. In a November 2018 [op-ed](#), the attorneys general of Delaware, Illinois, Maryland, New Jersey and Washington, D.C., called out the various long-standing subsidies enjoyed by fossil fuels and emphasized that state policies supporting clean energy "are market corrections, not market distortions." The attorneys general of Delaware, Maryland and New Jersey wrote another [op-ed](#) on the subject in February 2020. Massachusetts AG Maura Healey convened a [symposium](#) in October 2019 to discuss market reforms; issued a follow-up set of [recommendations](#); and recently held a [teach-in](#) to expand public knowledge and engagement on these issues.

As her state's statutory ratepayer advocate, AG Healey is also involved in many proceedings involving ISO-New England, which serves Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire and Maine. For example, AG Healey was active in the FERC docket to consider how to integrate clean energy procurements into one of ISO-New England's markets — an important step to phase out high-emitting resources and expand the market to new clean energy technologies at a reasonable rate to consumers.

Throughout, state attorneys general have emphasized their interest in working cooperatively with federal authorities to eliminate barriers to competition for clean energy technologies, and to take other steps in line with the rights of states under the Federal Power Act to shape their resource mixes. A coalition of 11 attorneys general sent a [letter](#) to FERC in October 2019 making these points, and highlighting the importance of modernizing the power sector to benefit consumers, public health and the environment, noting that "[d]ecisions made today will shape the electricity system for decades to come." Hopefully, state attorneys general will soon be able to open a more constructive dialogue on these important matters as FERC's composition and direction changes.



### ***Protecting States' Net Metering Programs***

A large bipartisan group of state attorneys general led by Massachusetts AG Maura Healey advocated for clean energy by [urging](#) FERC to deny a [petition](#) that sought to strip states of jurisdiction over net metering programs, which can help foster rooftop solar and other kinds of distributed electricity generation. An organization called the New England Ratepayers Association — which seems more [aligned with](#) investor-owned utilities and the fossil fuel industry than with customers — had asked FERC to essentially upend state-based net metering programs by asserting federal jurisdiction. FERC ultimately agreed with the attorneys general and denied the petition. A subset of 16 attorneys general, again led by AG Healey, filed additional [comments](#) detailing the extensive practical and legal problems with the petition.

### ***Advocating for Due Process at FERC***

In addition to advocating for state interests in climate change, consumer protection and clean energy, state attorneys general have been vocal advocates of reforming several anachronistic and unfair FERC processes. For example, a coalition of 12 attorneys general led by Maryland AG Brian Frosh submitted an [amicus brief](#) in litigation in the D.C. Circuit regarding FERC's use of tolling orders to grant itself unlimited extensions to act on requests for rehearing of its orders. Because governing statutes require an aggrieved party to request a rehearing from FERC before it can challenge an agency order in court, FERC has been able to frustrate judicial review by routinely extending its own deadline to act.

FERC's use of tolling orders in this way has been particularly egregious in situations involving natural gas pipelines. FERC would grant a pipeline company a certificate to go forward with a project. Challengers, such as landowners and environmental groups, would then be blocked from taking their case to court by FERC's ongoing refusal to rule on their rehearing requests — thereby enabling pipeline companies to proceed with taking land and even initiating construction before any court hears objections. Similar unfair results can occur when FERC refuses to grant rehearing requests for extended periods for controversial market design rules that opponents should have an opportunity to challenge on a timely basis.

An en banc panel of the D.C. Circuit recently [agreed](#) with the attorneys general and other parties urging reform of this unjust practice, noting that FERC's "use of tolling orders that do nothing more than buy itself more time to act on a rehearing application and stall judicial review has become virtually automatic." And in the case of pipeline certificates, the tolling orders "render Commission decisions akin to Schrödinger's cat: both final and not final at the same time." The court found this practice legally impermissible.



## Fighting for Environmental Justice

Low-income communities, communities of color and otherwise marginalized populations across the country suffer disproportionate exposure to air- and water-borne pollutants and other environmental hazards. Through both state-level initiatives and multistate coalition actions at the federal level, state attorneys general have brought increased attention to the nexus between environmental justice and the law, and have launched ambitious initiatives to address these issues in their states and territories.

### *Establishing Environmental Justice Divisions and Initiatives*

Several state attorneys general have established dedicated environmental justice divisions and initiatives within their offices:

- In February 2018, California AG Xavier Becerra [established](#) a Bureau of Environmental Justice within the Environmental Section of the California Department of Justice to focus on environmental enforcement matters affecting frontline communities.
- In December 2018, New Jersey AG Gurbir Grewal [created](#) an Environmental Enforcement and Environmental Justice Section within the New Jersey Department of Justice to bring enforcement actions and address environmental injustice across the state. In the two years since the section was established, AG Grewal has [filed](#) at least 25 lawsuits to hold violators — including chemical manufacturers, unlicensed waste dump operators and owners of defunct gas stations — accountable for the harms caused by pollutants discharged during their operations and from their properties.
- In April 2020, Washington AG Bob Ferguson [launched](#) an environmental justice initiative with the goal of protecting residents and the environment by bringing affirmative civil and criminal litigation on behalf of the residents of his state.
- In September 2020, New Mexico AG Hector Balderas [introduced](#) an initiative to address representation inequities in environmental and natural resources policy and decision-making processes, noting that “the future of conservation and environmental protection depends upon deconstruction of systemically racist policies that disproportionately ignore and outright harm Indigenous, Hispanic, Black, and other communities of color.”

### *Elevating Environmental Justice Concerns in Regulatory Processes*

Many of the Trump administration’s environmental rollbacks disproportionately harm frontline communities, and state attorneys general have highlighted these consequences. Evidence [suggests](#), for example, that particulate matter (PM) pollution — much of it from the burning of fossil fuels — is the largest environmental health risk factor in the U.S. and has a disproportionate impact on communities of color. State attorneys general submitted [comments](#) emphasizing that strengthening PM standards is a matter of environmental justice, and warning that the Trump administration’s failure to do so will harm frontline communities most vulnerable to PM pollution. The Trump administration ignored the warning and finalized its [decision](#) to not strengthen PM standards — a decision that is likely to be challenged in court.

Massachusetts AG Maura Healey connected the environmental justice dots between the COVID-19 pandemic, climate change and disadvantaged Massachusetts communities’ heavy pollution burdens in a [brief](#) released in May 2020. To help address longstanding environmental injustices in Massachusetts, AG Healey’s brief recommends investing in clean energy jobs, halting rollbacks of federal environmental protections and bolstering enforcement of existing ones.

Washington AG Bob Ferguson and California AG Xavier Becerra have also led state attorneys general in raising concerns about the environmental justice ramifications of the Council on Environmental Quality’s (CEQ) unprecedented [overhaul](#) of National Environmental Policy Act (NEPA) regulations. CEQ’s rollback weakened requirements that agencies analyze the cumulative impacts of their actions, which will hamper efforts to fully identify and mitigate harm to low-income and frontline communities, as state attorneys general emphasized in [comments](#) criticizing the changes. State attorneys general also noted NEPA’s important role in giving a voice in the regulatory process to communities that have historically been excluded. State attorneys general are currently [challenging](#) CEQ’s overhaul of NEPA regulations in federal court.

A coalition of attorneys general led by New York AG Letitia James fought the Trump administration’s efforts to delay and then gut the Chemical Accident Safety rule, a regulation put in place by the Obama administration to better protect workers and neighboring communities against the dangers of chemical facility accidents. The coalition succeeded in defeating the EPA’s effort to [delay](#) the effective date of these safeguards by two years. In [vacating](#) the delay rule in August 2018, the D.C. Circuit stated that EPA’s interpretation of the Clean Air Act’s risk management program requirements “makes a mockery of the statute.” After the EPA nonetheless finalized a [rollback](#) of many of the Chemical Accident Safety rule’s common-sense safeguards, the attorney general coalition again took the administration [to court](#).

### *Protecting Farmworkers & Their Families From Pesticide Exposure*

In December 2020, New York AG Letitia James led a coalition of five attorneys general in [suing](#) the EPA for illegally [weakening](#) pesticide exposure protections for farmworkers, their families and neighboring communities. The coalition’s lawsuit argues that the EPA violated federal law when it adopted a regulation that allows pesticide spraying to continue even if farmworkers or other persons are within the area immediately surrounding the spraying equipment, if that area is outside the farm’s boundaries. A district court recently issued a temporary restraining [order](#) barring the EPA from implementing its new rule, in response to a similar lawsuit brought by environmental and worker advocacy groups.

Previously, in May 2018, the attorneys general of California, Maryland and New York [sued](#) the EPA for its indefinite delay of a key requirement that provides improved training intended to better protect farmworkers, pesticide handlers and their families from pesticide poisoning. Fifteen days later, the EPA abruptly reversed course and [announced](#) plans to make the expanded pesticide safety training materials available for use.

## Addressing PFAS Contamination

Per- and polyfluoroalkyl substances (PFAS) are a family of chemicals that entered widespread use beginning in the 1950s in a range of [commercial applications](#), including non-stick coatings, lubricants, polishes and firefighting foam. PFAS are bioaccumulative, [environmentally persistent](#), and [linked](#) to a range of human health harms, including cancer, kidney disease and birth and developmental disorders. PFAS contamination of drinking water or groundwater has been [found](#) at nearly 1,400 sites in 49 states, and one [study](#) estimated that as many as 110 million Americans may be exposed to PFAS-contaminated drinking water.

State attorneys general have used the wide variety of legal tools at their disposal to require remediation of PFAS contamination, hold responsible parties accountable, protect their constituents from exposure and secure sorely needed regulatory action to address this nationwide public health and environmental crisis.

### *Holding Polluters Accountable*

Both Republican and Democratic state attorneys general have moved assertively to require companies to remediate contamination of natural resources resulting from their manufacturing, use and sale of PFAS and PFAS-containing products. The attorneys general of [Michigan](#), [New Hampshire](#), [New Jersey](#), [New Mexico](#), [New York](#), [North Carolina](#) and [Vermont](#) have been leaders on this issue, using their enforcement authority under both state and federal law to initiate lawsuits against responsible parties. The following list of cases is not exhaustive, but is representative of this bipartisan effort:

- In June 2018, then-New York AG Barbara Underwood filed a [lawsuit](#) against 3M and five other companies to recoup at least \$38 million in costs incurred by the state in remediating environmental contamination caused by toxic chemicals in their products.
- In March 2019, New Mexico AG Hector Balderas filed a [lawsuit](#) against the U.S. Air Force over PFAS contamination resulting from decades of use of firefighting foam containing PFAS at several military installations in New Mexico. Shortly after filing the lawsuit, AG Balderas [urged](#) the Defense Department to “make publicly available all information in its possession related to the risk of PFAS exposure” at the affected sites, and to take proactive measures to protect the public from exposure while the litigation proceeds.
- In May 2019, Vermont AG T.J. Donovan secured a [settlement](#) that requires a plastics company to fund the extension of municipal water lines to deliver clean water to homes served by PFAS-contaminated wells.
- In February 2020, Michigan AG Dana Nessel secured a [settlement](#) that requires a major footwear manufacturer to monitor and remediate PFAS contamination surrounding the company’s former tannery, and to fund the extension of municipal water lines to more than 1,000 affected properties.
- In December 2020, Mississippi AG Lynn Fitch filed a [lawsuit](#) against 3M, DuPont, Chemours and other manufacturers of PFAS-containing firefighting foam over damage to the states’ natural resources and remediation and disposal costs incurred by the state.

### *Pushing for Regulatory Action*

State attorneys general have also been active in federal regulatory processes, insisting that the EPA recognize the scope of the PFAS contamination crisis and respond accordingly with rules that apply to the full range of PFAS compounds and applications. In April 2020, a coalition of 18 attorneys general [urged](#) the EPA to expand its [proposed](#) significant new use rule for long-chain PFAS under the Toxic Substances Control Act to cover all products containing long-chain PFAS, not only products with PFAS surface coatings. Similarly, in June 2020, a coalition of 22 attorneys general led by California AG Xavier Becerra, Pennsylvania AG Josh Shapiro and Wisconsin AG Josh Kaul [called](#) on the EPA to expand its [proposal](#) to establish drinking water standards for PFAS under the Safe Drinking Water Act beyond the two most common compounds, PFOA and PFOS.

### *Advocating for PFAS Provisions in Defense Authorization Legislation*

State attorneys general also weighed in as Congress considered adopting [PFAS-related legislation](#). In 2019, a coalition of 20 attorneys general led by New York AG Letitia James wrote a [letter](#) urging Congress to include important PFAS-related provisions in the fiscal year 2020 National Defense Authorization Act (NDAA). Pennsylvania AG Josh Shapiro sent a similar [letter](#). While the [fiscal year 2020 NDAA](#) did not include the strongest PFAS provisions that state attorneys general pushed for, the legislation did incorporate several of their priorities, including: tasking the U.S. Geological Survey with determining the scope of PFAS contamination; banning military use of firefighting foam containing PFAS after October 1, 2024; and encouraging the use of cooperative agreements between states and the Defense Department for the remediation of PFAS contamination near military installations.

## LOOKING AHEAD

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Despite the Trump administration's [eleventh-hour efforts](#) to lock in its so-called “energy dominance” agenda, the reality is that — thanks to state attorneys general and other advocates — the administration's anti-climate, anti-clean energy and anti-environmental agenda is limping across the finish line.

The aggressive involvement of state attorneys general in administrative rulemaking processes and in the courts has exposed the legal and factual deficiencies in many of the Trump administration's rollbacks, preventing them from taking root and in many cases defeating them outright.

State attorneys general have played a key role in slowing and blocking many of the Trump administration's anti-regulatory efforts, and the results of their “Full Court Press” defense are becoming clear as a new administration and Congress prepare to take office. There is hard work ahead, but thanks to the dogged efforts of state attorneys general and their allies, the incoming administration will receive the ball in a strong field position.

Fresh players from an experienced team will soon be taking over from Trump appointees, equipped with the tools to put our country back on a sound climate, clean energy and environmental track. Meanwhile, state attorneys general will remain vigilant to ensure that state interests are heard at the federal level, and will continue to advance their affirmative priorities to build a cleaner, safer, more sustainable future.





