

Networked Federalism: Subnational Governments in the Biden Era

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INTRODUCTION

Subnational governments, working with non-governmental advocates, drove climate action during the Trump administration while rebuffing federal rollbacks. Under the Biden administration, focus may initially shift towards the federal government, but the subnational network is critical to continued progress on climate change. I use the term “networked federalism” to describe how a horizontal, interconnected, and polycentric collection of states, local governments, Tribes, and advocates provides the resilient frame needed to buttress national action. Indeed, this structure mirrors the successful structure of the Paris Agreement¹—in which international action depends on subsidiary

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1. By “success” here, I obviously do not mean that the Paris Agreement has, on its own, restored emissions to a safe path. But what it has done—and in notable contrast to prior efforts, like the Kyoto Protocols—is create a durable system for climate politics that is manifestly steadily increasing climate ambition, and which has proven resilient even to sustained political attack from the United States government during the Trump administration. For a thoughtful treatment of these points, and the multi-

national contributions. A networked, federalist system of subnational climate action will be critical to continuing success, and should be nurtured and expanded. In this article, I discuss barriers to federal climate action under the Biden administration, trace the important role of subnationals in the climate movement, and lay out a policy agenda for strengthening subnational networks over the next four years.

I. BARRIERS TO FEDERAL ACTION UNDER THE BIDEN ADMINISTRATION

Despite its climate focus, the Biden administration inherits a depleted civil service,² multiple crises from COVID-19 to economic depression,³ and a hostile Supreme Court and federal judiciary.⁴ In this context, subnationals on the side of climate action can be force multipliers—advancing policies, making markets, and occupying legal and civil space even if the federal courts intervene and the legislative process falters.

Such setbacks are likely: congressional direction may be slow in coming due to the undemocratic design of the U.S. Senate,⁵ in which Jim Crow relics like the filibuster aggregate power in a Republican Senate minority that represents forty-one million fewer Americans than the thin Democratic majority.⁶ Congress is unlikely to produce sweeping new legislature—though there will be opportunities for focused action⁷—and the judiciary is unlikely to countenance comprehensive regulatory efforts in its absence. Though some regulations will certainly survive, Trump appointments mean that the judiciary is unfriendly to broad executive action by the Biden administration. Barriers include attempts to revive “non-delegation” doctrines limiting agency scope absent very specific Congressional direction,⁸ attacks on the deference due to agency technical judgments,⁹ and amplification of the ill-defined “major

level structure that seems to have supported this progress, see David Held & Charles Roger, *Three Models of Global Climate Governance, from Kyoto to Paris and Beyond*, 9 GLOBAL POLICY 527 (2018).

2. Eleanor Eagan, *Trump Has Quietly Hollowed Out the Government*, SLATE, (Jan. 19, 2021), <https://slate.com/news-and-politics/2021/01/trump-civil-service-government.html>.

3. David Leonhardt, *Biden’s First Day*, N.Y. TIMES, (Jan. 21, 2021), <https://www.nytimes.com/2021/01/21/briefing/executive-orders-biden-climate-proud-boys.html>.

4. See, e.g., Kadhim Shubber, *How Trump Has Already Transformed America’s Courts*, FINANCIAL TIMES, (Sept. 25, 2020), <https://www.ft.com/content/032b3101-9b8b-4566-ace4-67b86f42370b>. To be sure, the extraordinary legal sloppiness of the Trump administration meant that many of its own initiatives did not survive review, even before its own judges, but these appointees are not likely to be charitable to Biden administration initiatives—meaning that future rules face real constraints.

5. See Ian Milhiser, *America’s Anti-Democratic Senate, by the Numbers*, VOX (Nov. 6, 2020), <https://www.vox.com/2020/11/6/21550979/senate-malapportionment-20-million-democrats-republicans-supreme-court>.

6. *Id.*

7. For a sense of legislative options, see U.S. HOUSE SELECT COMMITTEE ON THE CLIMATE CRISIS, SOLVING THE CLIMATE CRISIS, (June 2020), <https://climatecrisis.house.gov/report>.

8. See *Gundy v. United States*, 588 U.S. ___, 139 S.Ct. 2116, 2133-2145 (2019) (Gorsuch, J., dissenting) (arguing for a revival of the nondelegation doctrine).

9. See *Kisor v. Wilkie*, 588 U.S. ___, 139 S.Ct. 2400, 2426-2431, 2437-2440 (2019) (Gorsuch, J., concurring) (articulating an extremely skeptical view of agency deference).

question” doctrine, which asserts that agencies may not solve substantial problems absent explicit mandates.¹⁰ Though these attempts have largely been supported only by minorities of the Court, they are of increasing currency, and are cropping up in lower court dissents.¹¹ The upshot is that regulatory action may be impeded by judicial doctrines that disfavor executive action—in theory, in deference to the legislature—even as the legislature struggles to act.¹²

Even if these barriers can be overcome, the midterm elections loom, and the historical odds favor gains for the Republican party.¹³ In short, federal action, after a heartening start,¹⁴ risks almost immediate reversals in court, or simply sputtering out legislatively if Congress cannot act commensurate with the challenge. In this context, the subnational network formed over the last four years is tactically critical. The new President can rely not just on the federal government, but on the entire network.

II. THE SUBNATIONAL INFRASTRUCTURE: MORE THAN A COUNTERWEIGHT

The Trump administration’s least likely legacy is genuinely robust and pervasive subnational climate action. Faced with wholesale federal hostility, subnationals banded together to challenge nearly every Trump-era climate and clean air action,¹⁵ and racked up an impressive win record,¹⁶ including vacatur of Trump’s marquee power sector rollbacks.¹⁷ As the litigation stalled the remaining rollbacks,¹⁸ states also increased policy collaborations.

10. See *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 323-24 (2014) (stating that “[w]e expect Congress to speak clearly if it wishes to assign to an agency decisions of vast ‘economic and political significance.’”).

11. See, e.g., *Am. Lung Ass’n v. EPA*, Case No. 19-1140 (D.C. Cir. 2021) (Walker, J., dissenting) (arguing that the so-called “major question doctrine” precluded EPA regulations of power plants under a section of the Clean Air Act).

12. For a lengthier treatment of this point, see Craig Holt Segall, *Democracy Defense as Climate Change Law*, 50 ENVTL. L. REP. 10115 (2020).

13. Katherine Schaeffer, *Single-party Control in Washington Is Common at the Beginning of a New Presidency, but Tends Not to Last Long*, Pew Research Center Fact Tank (Feb. 3, 2021), <https://www.pewresearch.org/fact-tank/2021/02/03/single-party-control-in-washington-is-common-at-the-beginning-of-a-new-presidency-but-tends-not-to-last-long/#more-384325>.

14. See, e.g., President Joseph R. Biden, Jr., EXECUTIVE ORDER ON PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT AND RESTORING SCIENCE TO TACKLE THE CLIMATE CRISIS (Jan. 21, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

15. For a partial tally, see Patrick McGreevy, *California v. Trump Hits the 100-lawsuit Mark with New Challenge to Environmental Rules*, L.A. TIMES (Aug. 28, 2020), <https://www.latimes.com/california/story/2020-08-28/california-100-lawsuits-trump-administration>. Dozens of suits would follow through to the last few days of Trump’s term.

16. See, e.g., Institute for Policy Integrity, ROUNDUP: TRUMP-ERA AGENCY POLICY IN THE COURTS (Jan. 29, 2021), <https://policyintegrity.org/trump-court-roundup> (Trump fails in 151 legal disputes, and wins 37).

17. See *Am. Lung Ass’n v. EPA*, Case No. 19-1140 (D.C. Cir. 2021).

18. For an accounting, see Ellen M. Gilmer, *Trump Environment Record Marked by Big Losses, Undecided Cases*, BLOOMBERG LAW (Jan. 11, 2021), <https://news.bloomberglaw.com/us-law-week/trump-environmental-record-marked-by-big-losses-undecided-cases>.

The result was a major acceleration in state-level climate policy: multiple states prepped to follow California's more rigorous vehicle emissions standards as soon as federal impediments were removed, accelerating decarbonization of the vehicle fleet;¹⁹ states in the Northeast created a massive new transportation decarbonization initiative;²⁰ many states adopted statutes cutting high-global warming potential gases like hydrofluorocarbons;²¹ and low carbon fuel standards began to spread.²² Subnational regulators also began to close down obsolete fossil fuel infrastructure, with record numbers of coal-fired power plants retiring,²³ to be replaced with renewable energy and storage facilities.²⁴ States accelerated markets for clean technology,²⁵ implemented major environmental justice efforts in, for instance, California²⁶, North Carolina,²⁷ and New Jersey²⁸, and pivoted towards a just transition.²⁹ Additionally, a bipartisan coalition of governors formed the United States Climate Alliance, which included states representing 55 percent of the population.³⁰ The United States Climate Alliance documented and shared climate efforts among the states, and provided a critical collaborative venue.³¹

19. Reuters, *Nevada to Join Other States That Follow California's Vehicle Rules* (June 23, 2020), <https://www.autoblog.com/2020/06/23/nevada-california-vehicles-emissions-rules/>.

20. The Transportation and Climate Initiative is described at <https://www.transportationandclimate.org/>.

21. See NRDC, U.S. STATES TAKE THE LEAD IN HFC PHASEDOWN (2019), https://www.nrdc.org/sites/default/files/media-uploads/fact_sheet_on_state_hfc_action_0.pdf.

22. See, e.g., Julie Witcover & Colin Murphy, *Oregon's Clean Fuels Program: A Review and Status Update*, TRANSP. RESEARCH RECORD (2020), <https://journals.sagepub.com/doi/abs/10.1177/0361198120972394>.

23. See Benjamin Storrow, *More Coal Has Retired Under Trump Than in Obama's 2nd Term*, E&E CLIMATEWIRE (June 22, 2020), <https://www.eenews.net/stories/1063430425>.

24. See Energy Information Agency, ANNUAL ENERGY OUTLOOK: 2020, ELECTRICITY (2020), <https://www.eia.gov/outlooks/aeo/pdf/AEO2020%20Electricity.pdf> (documenting huge growth in renewable energy).

25. See, e.g., Adam Thomson, *The New Sunshine State*, THE FINANCIAL TIMES (2018), <https://ig.ft.com/special-reports/renewable-energy/>.

26. See Assemb. B. 617, 2017-2018 Reg. Sess. (Cal. 2017) (enacted) (establishing the community air protection program, a first-in-the-world effort to reduce air pollution in historically disadvantaged communities).

27. North Carolina's Environmental Justice and Equity Board was chartered in 2020 to drive equity efforts, as described in its charter at <https://files.nc.gov/ncdeq/EJ/EJEAB-Charter-v2-9-23-20.pdf>.

28. See Arlene Karidis, *The Impact of New Jersey's New Environmental Justice Law*, WASTE360 (Oct. 14, 2020) (describing New Jersey's S232, which is intended to bar new polluting sources in overburdened communities).

29. For a sense of the substantial just transition focus of emerging policy, see, for example, Carol Zabin, PUTTING CALIFORNIA ON THE HIGH ROAD: A JOBS AND CLIMATE ACT PLAN FOR 2030 (June 2020), CALIFORNIA WORKFORCE DEVELOPMENT BOARD, <https://cwdb.ca.gov/wp-content/uploads/sites/43/2020/09/AB-398-Report-Putting-California-on-the-High-Road-ADA-Final.pdf>.

30. See U.S. Climate Alliance, FACT SHEET (2021), <http://www.usclimatealliance.org/us-climate-alliance-fact-sheet>.

31. See *id.* For a thoughtful philosophical defense of multi-level climate action of this sort, and an argument that states have a moral duty to undertake it, see Alexandre Gajevic Sayegh, *Moral duties, compliance, and polycentric climate governance*, 20 INTERNATIONAL ENVIRONMENTAL AGREEMENTS: POLITICS, LAW AND ECONOMICS 483, 495 (2020) (discussing the USCA in this context).

Beyond the value of policy progress in its own right, this decentralization of policy ultimately makes climate action more durable and effective on multiple axes:

States were the first and primary environmental regulators and the law continues to carve out ample space for state action.³² Federal authority cedes to subnationals in critical areas, including land use,³³ the intrastate power sector,³⁴ building codes, and emissions from existing stationary³⁵ and mobile sources.³⁶ The federal Clean Air Act is typical in specifying that federal regulations are floors above which subnational governments are free to act.³⁷ Thus, most emissions are firmly under subnational jurisdiction.

State and local legal authorities are particularly resistant to judicial reversals. Few statutes preempt subnational authorities, and the Supreme Court has long emphasized the importance of state sovereignty in our federal system.³⁸ Moreover, states receive “special solicitude” regarding their ability to be in court in lawsuits *against* the federal government.³⁹ States also have the resources and ability to file such suits—and indeed greatly accelerated their efforts to do so during the Trump administration.⁴⁰

In addition to offensive litigation, States have succeeded in defending many programs from challenges asserting a range of federal preemption and federal constitutional claims. For example, California and Oregon successfully preserved their Low Carbon Fuel Standards.⁴¹ Although the Trump administration attempted to limit state authority by, for instance, attacking California’s long-standing vehicle regulatory program,⁴² these attacks were on

32. For a useful discussion of the state role, see Nicholas Bianco et al., *NEW CLIMATE FEDERALISM: DEFINING FEDERAL, STATE, AND LOCAL ROLES IN A U.S. POLICY FRAMEWORK TO ACHIEVE DECARBONIZATION*, WORLD RESOURCES INSTITUTE (2020), <https://www.wri.org/publication/new-climate-federalism>.

33. Though federal authorities have extended their land use reach, and federal grant funds and guidelines play critical roles, the U.S. did not succeed in passing national land use planning in the 1970s era of major environmental regulation. See 1 Am. Law. Zoning § 3:2 (5th ed.).

34. For a description of state and federal authorities, see Congressional Research Service, *THE LEGAL FRAMEWORK OF THE FEDERAL POWER ACT* (2020), <https://crsreports.congress.gov/product/pdf/IF/IF11411>.

35. See 42 U.S.C. § 7416 (preserving state authorities over the federal floor).

36. See 42 U.S.C. § 7521 (defining only a narrow zone of federal preemption, largely over new vehicles).

37. 42 U.S.C. § 7416.

38. See, e.g., *Alden v. Maine*, 527 U.S. 706, 715 (1999) (extensively discussing state sovereignty as a bedrock proposition in the Constitutional order).

39. See, e.g., *Massachusetts v. EPA*, 549 U.S. 497 (2007).

40. See, e.g., Erik Ortiz, *State Attorneys General Have Sued Trump’s Administration 138 Times — Nearly Double Those of Obama and Bush*, NBC NEWS (Nov. 16, 2020), <https://www.nbcnews.com/politics/politics-news/state-attorneys-general-have-sued-trump-s-administration-138-times-n1247733>.

41. See, e.g., *Am. Fuels & Petrochem. Mfrs. Ass’n v. O’Keefe*, 903 F.3d 903 (9th Cir. 2018) (upholding Oregon program, and describing prior cases upholding California program).

42. See, e.g., 84 Fed. Reg. 51,310 (Sept. 27, 2019) (stripping California new vehicle regulatory authority).

shaky legal ground,⁴³ and may prove to be evanescent under the new administration. Indeed, even while its vehicle regulatory program was under attack, California was still able to conclude successful agreements under which leading automakers contractually bound themselves to vehicle decarbonization despite federal rollbacks.⁴⁴

Subnational advantages extend more deeply into the structure of our politics as subnational action offers a more varied and robust set of frameworks to sustain action, even in the face of federal reversals. Programs rooted in a single totalizing vision tend to be unstable.⁴⁵ There are simply too many distinct policy and political interests to make national consensus easy to attain.⁴⁶ Even after national consensus is attained, national programs can be subject to swift reversals in the courts—as the Supreme Court stay of the Obama-era Clean Power Plan underlined.⁴⁷ More fundamentally, as Harvard political scientist Theda Skocpol has observed,⁴⁸ any one climate policy is subject to retrenchment in the absence of sustained political organizing across multiple levels. The subnational network offers this sort of thick and resistant legal/political infrastructure.

Subnational policies are not immune to reversal—as Professor Leah Stokes has demonstrated, state-level retrenchment has occurred as incumbent fossil interests resist zero-carbon challengers⁴⁹—but they still have real advantages. Initially, there are simply more actors, meaning that progress can be sustained even if retrenchment occurs in some jurisdictions. But states are also often better able to secure lasting policy settlements: it is less expensive to organize in state politics, meaning that lasting political coalitions are somewhat easier to sustain, and may reach more deeply into the community.⁵⁰ The comparative flexibility and speed of state legislation and regulatory processes in some jurisdictions may make it easier to put programs in place and adapt them in the face of attack.⁵¹ And the nimbleness of state and local governments often makes it easier to pair technological policies with social ones—for instance, combining

43. See generally Greg Dotson, *State Authority to Regulate Mobile Source Greenhouse Gas Emissions, Part 1: History and Current Challenge*, 49 ENVTL. LAW REPT. NEWS & ANALYSIS 11037 (Nov. 2019) (exhaustively demonstrating legal errors of the federal preemption effort against the states).

44. See, e.g., Rachel Becker, *Five Automakers Finalize Deal with California to Clean Up Car Emissions*, CALMATTERS (Aug. 17, 2020), <https://calmatters.org/environment/2020/08/california-clean-car-emissions/>.

45. See Ostrom, *infra* note 53.

46. See Skocpol, *infra* note 48.

47. See *West Virginia v. EPA*, 84 U.S.L.W. 3439 (Feb. 9, 2016) (order granting stay).

48. Theda Skocpol, NAMING THE PROBLEM: WHAT IT WILL TAKE TO COUNTER EXTREMISM AND ENGAGE AMERICANS IN THE FIGHT AGAINST GLOBAL WARMING, HARVARD UNIVERSITY (2013), https://climateaccess.org/system/files/Skocpol_Naming%20the%20Problem.pdf.

49. See generally Leah Stokes, SHORT-CIRCUITING POLICY (2020).

50. For a discussion of how effective state-based organizing can be in shaping policy – alas, often more for the right than for the left – see Alexander Hertel-Fernandez, *Explaining Liberal Policy Woes in the States: The Role of Donors*, 49 PS, POLITICAL SCIENCE & POLITICS 461 (July 2016).

51. See *id.*; see also Stokes, *supra* note 49, at 101-02, 249-50 (discussing how the Energy Foundation, a major funder of state campaigns, has sought to use these benefits).

decarbonization rules for an industrial sector with support for transitioning workers.⁵²

The structure of climate progress ultimately is as multi-leveled and complex as the origins of the climate crisis itself. Elinor Ostrom, Nobel Laureate in Economics, described climate change as a “polycentric” problem, in that the decisions that created the crisis emerge at every level of government and society.⁵³ Solutions to that crisis will be more robust if they mirror this essentially fractal structure. This was ultimately the insight that motivated the Paris Agreement, with its focus on nationally-determined actions within a larger organizing frame, rather than one central climate regime.⁵⁴ The same insight should motivate the design of government programs in the United States, with climate action deepening at every level.

III. AN AGENDA FOR THE NEXT FOUR YEARS

Federal action should focus on meaningfully strengthening and engaging with the subnational climate network. Doing so now, while the new administration is at the height of its influence, will help ensure that the network persists, and provide assurance of continued action even if the midterm elections go poorly or federal courts slow executive action. The agenda I lay out here is just a sketch of the many opportunities available:

A. *Cease Undue Interference with Subnationals*

Any serious effort to strengthen subnational action needs to begin with ceasing attacks. This will require at least withdrawing the Trump administration’s preemptive limits on state vehicle regulatory authority,⁵⁵ its challenge to the California/Quebec Cap-and-Trade Program,⁵⁶ and unwanted federal fossil fuel projects inconsistent with local priorities.⁵⁷ The Biden administration has begun to set all of these failings right through early executive orders directing agency reviews of such actions,⁵⁸ though the effect of these directives will come later as final administrative action is taken.

52. For an example, see *supra* note (describing efforts in California to combine these policies).

53. See Elinor Ostrom, *A Polycentric Approach for Coping With Climate Change*, 15 ANNALS ECON. & FIN. 92 (2014).

54. See Held & Roger, *supra* note 1.

55. See *supra* note 47.

56. See *United States v. California*, 444 F. Supp. 3d 1181 (E.D. Cal. 2020) (finding for California in this litigation, which is now on appeal).

57. See, e.g., Reuters, *California Sues Trump Administration Over Drilling Plan*, REUTERS (Jan. 17, 2020), <https://www.reuters.com/article/us-california-fracking-lawsuit/california-sues-trump-administration-over-drilling-plan-idUSKBN1ZG296>.

58. See, e.g., Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan 25, 2021) (extensive review of Trump-era actions); EO 14008, 86 Fed. Reg. 7619 (Feb. 1, 2021) (reorienting government towards climate action).

B. Direct Affirmative Cooperation with States, Communities, and Tribes

The Biden administration can direct all federal agencies to affirmatively collaborate with subnational governments to advance climate action by revisiting executive orders—generally of Clinton-era vintage and long out of date—concerning consultation with states,⁵⁹ Tribes,⁶⁰ and environmental justice communities.⁶¹ It has made a start of this in its early Executive Orders,⁶² but much remains to be done.

Each of these Clinton-era orders, in their current forms, largely direct consultation, rather than positive efforts to enhance subnational authorities.⁶³ The result has been federal actions that harm subnational governments (such as the attack on the California vehicle program), undertaken with no ability for subnationals to resist outside of court. In the tribal⁶⁴ and environmental justice⁶⁵ contexts, the picture is similar, with major problems being proposed or forced through without affirmative community consent (as, for instance, in the case of the Dakota Access Pipeline on the Standing Rock Sioux Nation).

The Biden Executive Orders and other early actions do address these issues, but in a limited fashion, focused initially on process rather than substantive expansion of authorities—and they do so only for environmental justice communities and Tribal Nations. For instance, the climate Executive Orders direct some degree of reconsideration as to environmental justice communities, providing for new metrics to be developed and used, albeit without formally revising the prior order or providing communities an affirmative right of refusal.⁶⁶ This means that the Order does not create new rights, just improved analysis. Similarly, a Presidential Memorandum on Tribal Consultation⁶⁷ does not ultimately enhance Tribal authorities, instead focusing on improved consultation plans.

It would be better to collaboratively and more thoroughly revise these orders, with the communities they are intended to serve, to (a) direct federal agencies to actively collaborate with subnational entities to further climate and public health goals, and (b) to require very strong justifications for actions contrary to the recommendations of the entities consulted, if not an actual right of refusal.

59. Exec. Order No. 13132, 64 Fed. Reg. 43,255 (Aug. 10, 1999).

60. Exec. Order No. 13175, 65 Fed. Reg. 67,249 (Nov. 9, 2000).

61. Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb 16, 1994).

62. See *supra* note 58.

63. See *supra* notes 59-61.

64. See Troy Eid, *Beyond Dakota Access Pipeline: Energy Development and the Imperative for Meaningful Tribal Consultation*, 95 DENVER L. REV. 593 (2018) (arguing that failures of consultation ultimately produced a bad outcome for both the energy industry and the Tribes).

65. See, e.g., *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d. 68, 85-93 (4th Cir. 2020) (gathering examples from more than fifty years of law describing scanty and unsuccessful environmental justice analyses, and vacating pollution permit that failed to conduct a proper analysis).

66. See Exec. Order No. 14008, *supra* note 58, §§ 219-223.

67. 86 Fed. Reg. 7491 (Jan. 29, 2021).

Further, the absence of any clear order on federalism and state and local governments itself is worrying—though states are mentioned at a high level in the early action orders, there is no order focused on federalism, nor any firm directive to act to rapidly advance state climate action in partnership. This is a missed opportunity, and one that should be corrected—swiftly. This is no time to allow the network for action to degrade.

Such orders, and further strengthening actions, would lastingly empower the network of polycentric climate actors who have driven much of the progress to date.

C. Embed Climate and Public Health Metrics in Federal Grant Programs and Guidelines

The federal government, though its spending powers and information resources, can help steer subnational action, raise the federal floor, and encourage laggard jurisdictions to act. For instance, in the Trump years, the Department of Transportation withdrew greenhouse gas metrics for federal transportation spending.⁶⁸ The rule could readily be reinstated—helping redirect spending to lower vehicle emissions and favor transit. Similar opportunities exist throughout government to provide clear information on climate and public health impacts, to condition grants on appropriate action, and to target funds to subnationals making progress. One particularly useful strategy may be to fund communities themselves to further advocate for climate and public health progress. For instance, California has been providing such grants to disadvantaged communities working to improve their own air quality, offering community groups resources to develop data and arguments to further inform and influence regulatory decisions involving them.⁶⁹ Similar models would help build the interconnected networks of advocates and regulators needed to make climate action sticky.

D. Affirmatively Support Subnationals in the Paris Agreement Context

Although the Paris Agreement does not bind subnationals, subnational action has produced significant emission reductions that will aid the United States in meeting its overall goals—a pattern that has repeated worldwide.⁷⁰ There is every reason to recognize this progress in the Nationally Determined Contribution that the United States must present in Glasgow this year—for instance, by identifying state progress, past and continuing, as part of the Contribution—and commit to further supporting subnational action in the

68. See 83 Fed. Reg. 24, 920 (May 31, 2018) (withdrawing the GHG performance measure).

69. More information on these grants is available at: <https://ww2.arb.ca.gov/capp-cag>.

70. Extensive information on subnational climate efforts—and a round up of their effects, is available through the website of the Under2 Coalition, an association of subnationals, linked by memoranda of understanding, committed to holding global temperature increases under 2 degrees Celsius, and which govern 1.3 billion people and 43% of global GDP: <https://theclimategroup.prod.acquia-sites.com/under2-coalition>.

context of the U.S.'s international obligations, a commitment which could take the form of an executive order or memorandum directing the federal government to forward this action, of the form I have described above. Creating a State Department Office dedicated to supporting subnational climate action, within transnational networks,⁷¹ perhaps along with positions with the Domestic Policy Council to do the same inside the country, would also deepen this commitment and help operationalize it within the federal structure.

This sort of formal commitment would confirm there is no legal or policy question as to whether subnationals should act, and further mobilize national support for networked federalism across national borders.⁷² Supporting subnationals in the Paris Agreement context will help further connect subnationals globally, providing a solid platform for collaboration and increased climate ambition.

* * *

These actions—and doubtless many others—would help support the thickly interconnected, polycentric, and resilient networks needed to accelerate climate action, make it resilient, and (by bringing in many actors and voices) amplify solutions that equitably serve many. The climate problem is too big for any one government to take it on—including the federal government. The Biden administration, as it confronts this challenge, should embrace the irony that the Trump administration has left it a gift: an engaged, effective, and growing network of subnational actors. The Biden administration should nurture that network, setting us on a course for sustained progress with little time to lose.

71. See Anthony F. Pipa & Max Bouchet, PARTNERSHIP AMONG CITIES, STATES, AND THE FEDERAL GOVERNMENT: CREATING AN OFFICE OF SUBNATIONAL DIPLOMACY AT THE US DEPARTMENT OF STATE, BROOKINGS INSTITUTION (Feb. 17, 2021) (proposing such an office for general use; I would support this proposal, but propose that climate action be a strong program focus for a general office), <https://www.brookings.edu/research/partnership-among-cities-states-and-the-federal-government-creating-an-office-of-subnational-diplomacy-at-the-us-department-of-state/>.

72. For a thoughtful consideration of how U.S. subnationals may interact with foreign policy, and an argument that national recognition of the de facto importance of subnationals is timely, see David Freeman Engstrom & Jeremy M. Weinstein, *What if California Had a Foreign Policy? The New Frontiers of States' Rights*, 27 THE WASHINGTON QUARTERLY 27 (2018).