Foreword

Environmental and Energy Regulation Reformation: Challenges and Solutions After *West Virginia v. EPA*, *Sackett v. EPA*, and *Loper Bright Enterprises v. Raimondo*

Shannon Schooley[*]

The accelerating climate crisis is threatening ecosystems, economies, and communities across the globe.[1] From intensifying wildfires and hurricanes to rising sea levels and extreme heat events, the environmental and human toll of inaction is

[*] Symposium Articles Editor, *Minnesota Law Review*, Volume 109. I extend my sincerest gratitude to those whose support and assistance made this Symposium possible: Jack Whiteley, our symposium faculty advisor; Amy Cain, our incredibly helpful Journal Coordinator; Callan Showers, our tirelessly supportive Editor-in-Chief who never hesitates to roll up her sleeves to help; Samuel Makikalli and Mark Hager for their endless support and incredible attention to detail; Sam Buisman for his thoughtful comments on this Foreword and general support from the beginning; all the editors and staff members of the *Minnesota Law Review* who made our event possible and devoted time to carefully edit the pieces in this Issue; all the speakers and moderators who happily brought this event to life and were wonderful to work with; and finally, Keegan Flaharty, who provided me moral support behind the scenes through it all. Copyright © 2025 by Shannon Schooley.

1. *See* Myles R. Allen et al., *Framing and Context* ("Temperature rise to date has already resulted in profound alterations to human and natural systems, including increases in droughts, floods, and some other types of extreme weather; sea level rise; and biodiversity loss – these changes are causing unprecedented risks to vulnerable persons and populations."), *in* GLOBAL WARMING OF 1.5 °C 49, 53 (Valérie Masson-Delmotte et al. eds., 2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_Low_Res.pdf [https://perma.cc/2B8Z-8UYH]; Adam B. Smith, *2024: An Active Year of U.S. Billion-Dollar Weather and Climate Disasters*, CLIMATE.GOV; BEYOND THE DATA (Jan. 10, 2025), https://www.climate.gov/news-features/blogs/beyond-data/2024-active-year-us-billion-dollar-weather-and-climate-disasters [https://perma.cc/LCG9-77UM] (summarizing the twenty-seven climate disasters in the United States in 2024 that resulted in at least one billion dollars in damage).

increasingly visible and urgent.[2] Scientists warn that without swift and sustained intervention, the window to prevent the most catastrophic impacts is rapidly closing.[3] In this context, robust regulatory frameworks are an essential tool not only to mitigate future harm but to adapt to the changes already underway.[4] Yet at this critical juncture, the structure and authority of federal environmental and energy regulation in the United States is facing profound challenges.

Despite the present and looming effects of the global climate crisis,[5] the U.S. Supreme Court issued a string of decisions—

---

2. *See, e.g.*, *Climate Change Impacts*, NAT'L OCEANIC & ATMOSPHERIC ADMIN. (last updated Apr. 2, 2025), https://www.noaa.gov/education/resource-collections/climate/climate-change-impacts [https://perma.cc/A8LT-SGDJ] (describing the climate change impacts that are already occurring); *Climate Change Increased the Likelihood of Wildfire Disaster in Highly Exposed Los Angeles Area*, WORLD WEATHER ATTRIBUTION (Jan. 28, 2025), https://www.worldweatherattribution.org/climate-change-increased-the-likelihood-of-wildfire-disaster-in-highly-exposed-los-angeles-area [https://perma.cc/C3HU-HYLF] (explaining that the disastrous wildfires in Los Angeles were about thirty-five percent more likely due to climate change and likelihoods have been increasing more rapidly in recent years); Mark Poynting, *How Is Climate Change Affecting Hurricanes, Typhoons and Cyclones?*, BBC (Dec. 16, 2024), https://www.bbc.com/news/world-us-canada-42251921 [https://perma.cc/EKN6-LZX8] (discussing how rising temperatures lead to more destructive hurricane seasons); Daniel Dickinson, *What Is Sea Level Rise and Why Does It Matter to Our Future?*, U.N. NEWS (Aug. 26, 2024), https://news.un.org/en/story/2024/08/1153596 [https://perma.cc/6BPM-WESJ] (explaining that "sea level rise is a symptom of climate change" and briefly describing the consequences to coastal habitats and communities); *Extreme Heat*, ENV'T PROT. AGENCY (last updated Mar. 27, 2025), https://www.epa.gov/climatechange-science/extreme-heat [https://perma.cc/TQ9Y-96CV] (detailing the rise in extreme heat in the United States and its impacts to human health, daily activity, agriculture and food supply, and infrastructure and transportation).

3. *See, e.g.*, William J. Ripple et al., *The 2024 State of the Climate Report: Perilous Times on Planet Earth*, 74 BIOSCIENCE 812, 821 (2024) ("Despite six IPCC reports, 28 COP meetings, hundreds of other reports, and tens of thousands of scientific papers, the world has made only very minor headway on climate change . . . .").

4. *See* Arnaud Koehl, *What Is Climate Change Legislation?*, LONDON SCH. OF ECON. & POL. SCI. (Oct. 4, 2022), https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation [https://perma.cc/M8UY-6YTU] (describing climate policies from around the world aimed at tackling the climate crisis).

5. *See* sources cited *supra* note 2 (detailing examples of the impacts of the climate crisis).

West Virginia v. EPA,[6] *Sackett v. EPA*,[7] and *Loper Bright Enterprises v. Raimondo*[8]—that curtailed federal regulatory authority. Although the impacts of these decisions extend beyond environmental and energy regulation, the Court's anti-regulatory stance has been particularly highlighted in this set of environmental cases. Given the high stakes and collective nature of the climate crisis,[9] environmental and energy law offers a particularly compelling lens through which to examine this judicial trend. The 2024 *Minnesota Law Review* Symposium sought to explore the increasingly murky waters of environmental and energy regulation in the wake of these landmark decisions.[10]

What began as a topic proposal focused on *Sackett* and water law expanded in scope to acknowledge both the string of Supreme Court cases to which *Sackett* belongs and the pivotal moment we face in administrative law more generally. As planning for the Symposium began, we knew that the upcoming *Loper Bright* decision posed an existential threat to *Chevron* deference.[11] Our Symposium would have been incomplete without discussing it, no matter the outcome.

More recently, the second Trump administration's intensified anti-regulatory agenda adds yet another dimension worth acknowledging.[12] While our Symposium primarily examined the

---

6. 142 S. Ct. 2587 (2022).

7. 143 S. Ct. 1322 (2023).

8. 144 S. Ct. 2244 (2024).

9. *See* Cary Coglianese, Opinion, *Climate Change Necessitates Normative Change*, REGUL. REV. (Jan. 27, 2020), https://www.theregreview.org/2020/01/27/coglianese-climate-change-necessitates-normative-change [https://perma.cc/RJ33-AD54] (calling climate change "a collective action problem on steroids" and arguing a normative change in the public is needed in addition to policy solutions).

10. *Symposium*, MINN. L. REV., https://minnesotalawreview.org/symposium [https://perma.cc/NJ8E-RLBZ]. The Symposium took place on October 18, 2024, before the 2024 presidential election. Speakers acknowledged that the election results would have an impact on the lasting impacts of this anti-regulatory trend but were unable to delve into the current administration's mirroring and doubling down on the anti-regulatory initiatives.

11. *See* Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984) (establishing a two-step deference standard for administrative agency interpretations).

12. *See, e.g.*, *Fact Sheet: President Donald J. Trump Launches Massive 10-to-1 Deregulation Initiative*, THE WHITE HOUSE (Jan. 31, 2025), https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump

judiciary's role in limiting regulatory authority in environmental and energy contexts, the presentations during the event and the scholarship included in this Issue can serve as a starting point to larger discussions about the administrative state. They also capture a key moment—just before the executive branch doubled down on the anti-regulatory initiative that the judiciary initiated in the environmental and energy fields.

ENERGY ABUNDANCE

The day began with a Keynote Address by University of Michigan Law School's Alexandra Klass,[13] who presented an alternative framework for thinking about energy law. Klass introduced the abundance agenda, which encourages solving societal challenges by shifting away from a scarcity mindset and reducing bottlenecks with both "dynamic markets and a robust public sector."[14] Applied to energy, the abundance agenda promotes policies that aim to significantly expand clean, reliable, and affordable energy production, even in the wake of limitations on federal regulation.

She then pointed to four bottlenecks that prevent large-scale decarbonization in the energy sector: insufficient transmission, local siting for renewable energy generation, lengthy state-level permitting processes, and even lengthier federal permitting processes involving NEPA compliance. To reduce these bottlenecks, Klass offered abundance as a potential pathway forward. By streamlining the regulatory processes that often delay or obstruct the deployment of infrastructure, new, clean energy sources and related infrastructure can more rapidly come online and speed up the clean energy transition.

-launches-massive-10-to-1-deregulation-initiative [https://perma.cc/2GPM-QKYT] (describing an executive order Trump issued that requires repeal of ten rules, regulations, or guidance documents for every new one promulgated to "unleash prosperity through deregulation").

13. *See Alexandra B. Klass*, MICH. L., https://michigan.law.umich.edu/faculty-and-scholarship/our-faculty/alexandra-klass [https://perma.cc/V6B4-Y4BH]. This Keynote Address marked Klass's return to Minnesota Law, where she taught for many years. Klass's scholarship is also featured in this Volume of *Minnesota Law Review* in an earlier issue. Alexandra B. Klass & Hannah Wiseman, *Repurposed Energy*, 109 MINN. L. REV. 219 (2024).

14. *Abundance 2024*, BREAKTHROUGH INST., https://thebreakthrough.org/events/abundance-2024 [https://perma.cc/N934-9CCT].

ENVIRONMENTAL AND ENERGY REGULATION AT THE U.S. SUPREME COURT

Our first panel began by introducing the three title cases—*West Virginia*, *Sackett*, and *Loper Bright*.[15] Then, the panel analyzed the Court's jurisprudence within the decisions and explored their broader implications.[16]

Professor Robin Craig[17] tackled the elephant in the room: *Loper Bright*'s overturning of *Chevron* deference.[18] After walking through the highlights of the decision, Craig summarized the initial court reactions in the four months following the ruling. She observed that state supreme courts largely responded negatively—either by rejecting the decision as irrelevant to state law or expressly criticizing it as wrongly decided. Federal courts, by contrast, offered more varied reactions, with some beginning to invalidate agency actions under the new standard. Craig extends this analysis through the first six months in her Article in this Issue, *The Impact of* Loper Bright v. Raimondo*: An Empirical Review of the First Six Months*.[19]

Professor Jack Whiteley[20] situated the *Sackett* decision within the broader trend of "avoidance creep." He explained that the decision upended fifty years of defining "waters of the United States," as used in the Clean Water Act, broadly to support expansive enforcement of the Act. This definitional shift, Whiteley noted, was rooted in constitutional avoidance doctrine, which encourages statutory interpretations that sidestep potential constitutional issues. These principles, however, are increasingly used in ways that stray from statutory language and legislative intent. As he argues further in his Essay, *The Clean Water Act and Avoidance Creep*, *Sackett*'s treatment of the Clean Water Act is an example of an implausible statutory interpretation stemming from overreliance on constitutional avoidance principles.[21]

---

15. *Symposium*, *supra* note 10.

16. *Id.*

17. *See Robin Kundis Craig*, UNIV. OF KAN. SCH. OF L., https://law.ku.edu/people/robin-kundis-craig [https://perma.cc/ZD9A-HA92].

18. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).

19. Robin Kundis Craig, *The Impact of* Loper Bright v. Raimondo*: An Empirical Review of the First Six Months*, 109 MINN. L. REV. 2671 (2025).

20. *See Jack Whiteley*, MINN. L., https://law.umn.edu/profiles/jack-whiteley [https://perma.cc/8S87-Y5TF].

21. Jack H.L. Whiteley, *The Clean Water Act and Avoidance Creep*, 109 MINN. L. REV. 3053 (2025).

Professor Kamaile Turčan[22] concluded the panel by addressing the overall reduction of the federal government's policymaking capacity advanced by the trio of cases. Turčan argued that the Court's decisions in *West Virginia*, *Sackett*, and *Loper Bright* not only expressly reduced federal agency power but also undermined Congress's ability to delegate regulatory authority to agencies. In doing so, she contended, the Court weakened the implied preemption doctrine that permits federal regulations to preempt state law based on implied congressional intent. Turčan explores this erosion of federal power, along with the implication that states must fill the gap in climate policy, in her Article, *The Bogeyman of Environmental Regulation: Federalism, Agency Preemption, and the Roberts Court*.[23]

Together, the first panel broke down our title cases and painted a sobering picture of the Supreme Court's evolving approach to federal environmental and energy regulation. The Court's recent decisions signal a shift toward judicial skepticism of the administrative state through its overturning of *Chevron* deference, application of constitutional avoidance principles, and reduction of delegation authority through clear statement rules. As the panelists made clear, these decisions not only reshape the legal landscape but also force states to shoulder a growing share of regulatory responsibility, particularly in areas like climate policy where federal leadership is increasingly obstructed.

ENVIRONMENTAL AND ENERGY FEDERALISM IN THE WAKE OF NEW SUPREME COURT JURISPRUDENCE

The second panel explored the evolving role of federalism in environmental and energy regulation amid a diminishing federal presence.[24]

Professor Erin Ryan[25] discussed her work on negotiated environmental federalism and outlined the implications of our trio of cases on both horizontal and vertical separation of powers.

22. *See Kamaile A.N. Turčan*, UNIV. OF HAWAI'I AT MĀNOA WILLIAM S. RICHARDSON SCH. OF L., https://law.hawaii.edu/people/turcan [https://perma.cc/B2DP-2KEE].

23. Kamaile A.N. Turčan, *The Bogeyman of Environmental Regulation: Federalism, Agency Preemption, and the Roberts Court*, 109 MINN. L. REV. 2529 (2025).

24. *Symposium*, *supra* note 10.

25. *See Erin Ryan*, FLA. STATE UNIV. COLL. OF L., https://law.fsu.edu/faculty-staff/erin-ryan [https://perma.cc/5LMJ-E42G].

Ryan explained that environmental law is particularly susceptible to federalism and separation of powers disputes because the states and federal government each have strong competing claims to being the decision-maker in this realm. These tensions, however, are not inherently problematic and can prompt good governance through negotiations over which governmental actors make environmental regulatory decisions. In her Article, *The Four Horsemen of the New Separation of Powers: The Environmental Law Implications of* West Virginia*,* Sackett*,* Loper Bright*, and* Corner Post, Ryan further examines these shifting dynamics and proposes disaggregating judicial interpretive authority between constitutional rights-based and structural disputes.[26] She also offers practical recommendations for navigating the changing landscape.[27]

Professor Danielle Stokes[28] offered an updated vision of her earlier work on renewable energy federalism. In 2022, she proposed the beta version of renewable energy federalism to improve intergovernmental collaboration in the clean energy transition.[29] In light of the headline cases and resulting challenge to a centralized federal regulatory model, Stokes proposed a revised approach grounded in a sustainability framework that emphasizes more expansive collaborative governance and involves more stakeholders. Her Essay, *Renewable Energy Federalism 2.0*, outlines this model further.[30]

Although unable to present at the Symposium, Professor Jonathan Rosenbloom[31] contributes to this Issue with his Article, *Catching Nutrients in a Net: Collective Action, Institutional Impediments, and the Mississippi River Watershed*.[32]

---

26. Erin Ryan, *The Four Horsemen of the New Separation of Powers: The Environmental Law Implications of* West Virginia*,* Sackett*,* Loper Bright*, and* Corner Post, 109 MINN. L. REV. 2839 (2025).

27. *Id.*

28. *See Danielle Stokes*, UNIV. OF RICHMOND SCH. OF L., https://law.richmond.edu/faculty/ds9ca [https://perma.cc/R4DQ-2MUS].

29. Danielle Stokes, *Renewable Energy Federalism*, 106 MINN. L. REV. 1757 (2022).

30. Danielle Stokes, *Renewable Energy Federalism 2.0*, 109 MINN. L. REV. 3017 (2025).

31. *See Jonathan Rosenbloom*, ALBANY L., https://www.albanylaw.edu/faculty/faculty-directory/jonathan-rosenbloom [https://perma.cc/7KTE-M24V].

32. Jonathan Rosenbloom, *Catching Nutrients in a Net: Collective Action, Institutional Impediments, and the Mississippi River Watershed*, 109 MINN. L. REV. 2949 (2025).

Rosenbloom gives an overview of how federal and state regulatory structures constrain local regulation using the Mississippi River watershed as an example and highlights innovative solutions local governments have employed to navigate and overcome preemption.[33]

The second panel illuminated how a retreating federal role in environmental and energy regulation is modifying the dynamics of federalism while opening the door to new modes of intergovernmental collaboration. Rather than viewing these shifts as purely destabilizing, the panelists emphasized the potential for negotiated, flexible governance structures that adapt to changing legal and political realities. Together, their work underscores that while federal retrenchment poses significant hurdles, it can also open new space for innovation and coordination across all levels of government.

ENVIRONMENTAL ISSUES AND SOLUTIONS IN THE PRIVATE SECTOR

The final panel turned to the private sector, examining how private actors are both exploiting and addressing gaps in federal environmental regulation.[34]

Professor Vanessa Casado Pérez[35] discussed a vulnerability in water law: the financialization of water by private actors. She described the scope of the problem of purchasing water rights in the western states and holding them with profit motives until the value of water spikes, often in dire circumstances like droughts and fires. While some states have proposed bills to define and restrict water speculation, Casado Pérez explained, the problem is complex, and our current water law system is unprepared to handle it. Her Article, *Water Flowing Down Wall Street*, exposes this problem and explains how jurisdictions can solve it through proper regulation of water markets.[36]

---

33. *Id.*

34. *Symposium*, *supra* note 10.

35. *See Vanessa Casado Pérez*, TEX. A&M UNIV. SCH. OF L., https://www.law.tamu.edu/faculty/faculty-profiles/vanessa-casado-perez.html [https://perma.cc/P5D5-W3FA].

36. Vanessa Casado Pérez, *Water Flowing Down Wall Street*, 109 MINN. L. REV. 2749 (2025).

Finally, Professor Steph Tai[37] and Elodie Currier Stoffel[38] presented the private sector as a potential solution for filling regulatory gaps, including the one left by *Sackett*. After underscoring the value of wetlands and the growing threat to them post-*Sackett*, Tai and Currier offered private initiatives as tools to help preserve them. They explained that by aligning corporate responsibility with conservation efforts through private agreements and certification programs, businesses could play a meaningful role in environmental stewardship. Alongside Professor Michael Vandenbergh,[39] Tai and Currier expand on these ideas in their Article, *Filling the Sackett Gap: The Private Governance Option*.[40]

The final panel explored both the private sector's role in deepening environmental vulnerabilities and its potential to address regulatory shortfalls. While Professor Casado Pérez highlighted the risks posed by the commodification of critical natural resources like water, Professor Tai and Currier pointed to promising pathways for private governance. The panelists emphasized that while the private sector often exploits gaps in regulation, it also holds untapped potential to become a proactive force in environmental protection.

CONCLUSION

Together, the panels at Minnesota Law Review's 2024 Symposium highlighted a pivotal moment in the trajectory of environmental and energy regulation in the United States. As the Supreme Court—and now the executive branch—reshapes the boundaries of administrative authority and federal regulatory power recedes, scholars and practitioners alike are grappling with the implications for environmental and energy regulation, federalism, and administrative law at large. The Articles in this Issue not only document this regulatory transformation but also offer paths forward through reimagined models of federalism and innovative approaches to governance. As the climate crisis

37. *See Steph Tai*, UNIV. OF WIS.-MADISON L. SCH., https://law.wisc.edu/profiles/tai2@wisc.edu [https://perma.cc/KNU7-LNJG].

38. *See Elodie Currier Stoffel*, LINKEDIN, https://www.linkedin.com/in/elodie-currier-stoffel-43837414a [https://perma.cc/N6RQ-UNAR].

39. *See Michael P. Vandenbergh*, VAND. UNIV. L. SCH., https://law.vanderbilt.edu/bio/?pid=michael-vandenbergh [https://perma.cc/6XMV-2GCZ].

40. Michael P. Vandenbergh, Elodie O. Currier Stoffel & Steph Tai, *Filling the Sackett Gap: The Private Governance Option*, 109 MINN. L. REV. 2583 (2025).

intensifies, the need for adaptive, multi-level, and resilient regulatory frameworks becomes more urgent. This Symposium and the scholarship it generated serve both as a reflection on the present moment and a call to action for the future of environmental and energy law.