Essay

Renewable Energy Federalism 2.0

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Much like climate change, the clean energy transition presents a "super wicked" problem that is further complicated by prioritizing justice. History has taught us that government regulation, industry innovation, and community engagement are the catalysts of effective transitions. Similarly, the just energy transition requires the support of these interconnected networks. This Essay offers sustainable collaborative governance as a theoretical framework through which decision-makers may filter their assessments, industry can model its metrics, and community can develop language to articulate its needs. Sustainable collaborative governance is also a means of navigating the complexities of renewable energy siting and regulation while fostering resilience, community engagement, and holistic governance that prioritizes long-term sustainability. By integrating diverse perspectives and values across sectors, Renewable Energy Federalism 2.0 *positions itself as a viable pathway toward achieving a just and sustainable energy transition amid political and regulatory uncertainties.*

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INTRODUCTION

In 2022, I called for renewable energy federalism—a collaborative federalism scheme featuring state and local governments integrating place-based expertise alongside federal agency siting incentives and recommendations.[1] This policymaking scheme included federal agency involvement from the likes of the Federal Energy Regulatory Commission[2] or the Department of Energy[3] in an effort to provide oversight, guidance, and expertise. I envisioned renewable energy federalism as dynamic and polycentric—an organic, breathing relationship among various stakeholders.[4] Within this collaborative relationship, preemption was the primary concern when contemplating challenges to facilitating streamlined siting processes on a national scale.[5]

Preemption aside, the Supreme Court's rulings over the past three years in *West Virginia v. EPA*,[6] *Sackett v. EPA*,[7] and *Loper*

1. *See* Danielle Stokes, *Renewable Energy Federalism*, 106 MINN. L. REV. 1757, 1759–60 (2022).

2. *Id.* at 1771, 1820–21 (highlighting current regulatory authority delegated to the Federal Energy Regulatory Commission and the agency's potential to act as a centralized agency while encouraging a system of collaborative governance).

3. Michael B. Gerrard, *Who Decides Where the Renewables Should Go?: A Response to Danielle Stokes'* Renewable Energy Federalism, 106 MINN. L. REV. HEADNOTES 400, 413–14 (2022) (recommending the Department of Energy act as a centralized siting agency under a collaborative federalism scheme due to its broad range of expertise on energy issues).

4. Polycentrism is the approach to governing that includes stakeholders from the public and private sectors while also allowing for innovation and incorporation of diverse perspectives. Stokes, *supra* note 1, at 1822; *see also* Hari M. Osofsky & Jacqueline Peel, *Energy Partisanship*, 65 EMORY L.J. 695, 718–19 (2016) (describing climate advocates' embrace of a more polycentric approach); Hari M. Osofsky & Hannah J. Wiseman, *Dynamic Energy Federalism*, 72 MD. L. REV. 773, 840–43 (2013) (proposing dynamic federalism principles for designing systems within the context of energy law); Erin Ryan, *Environmental Federalism's Tug of War Within* (promoting a system of dual federalism that "emphasizes dynamic interaction among the various levels of government and shared interpretive responsibility among the three branches of government, with the overall goal of achieving a balance among the competing federalism values that is both dynamic and adaptive over time"), *in* THE LAW AND POLICY OF ENVIRONMENTAL FEDERALISM: A COMPARATIVE ANALYSIS 355, 369 (Kalyani Robins ed., 2015).

5. Stokes, *supra* note 1, at 1781–83 (describing preemption concerns inherent in a coordinated renewable energy siting scheme).

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

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

Bright Enterprises v. Raimondo[8] have added new complexities to the version of renewable energy federalism that I initially envisioned. There is now a greater need for collaboration across sectors and scales of governance to secure a renewable energy future. Collaborative governance in the beta version of renewable energy federalism emphasized the advantages of federal government oversight because of its bird's eye view of the transmission grid and the entire country as a whole. Admittedly, my analysis was partially influenced by a new administration elevating energy and environmental justice across agencies.[9] There has now been a shift. The Court's rulings did not negate the need for renewable energy federalism—rather, they shifted the focus. This shift called for reframing the concept of renewable energy federalism as a more robust system of governance that is able to weather the storms of politicization. This shift called for Renewable Energy Federalism 2.0.

In Renewable Energy Federalism 2.0, collaborative governance still plays a critical role in forging toward a clean energy future. The Court's rulings prompted me to reflect on whether the federal government is actually best suited for overseeing the clean energy transition and the extent to which the transition will be just. Shifting toward *just* energy means moving away from extractive policies and holistically incorporating principles of sustainability across scales and sectors.[10] Each branch and

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

9. In January 2021, President Joeseph Biden enacted two executive orders that addressed climate change and the shift to clean energy. *See* Exec. Order No. 13,990, 3 C.F.R. 427, 428 (2022) (directing that "the Federal Government . . . must advance environmental justice"); Exec. Order No. 14,008, 3 C.F.R. 477, 480 (2022) (prioritizing climate considerations in foreign policy and national security). He also committed the United States to being a leader in reducing greenhouse gas emissions, as evidenced by rejoining the Paris Agreement. *See* Exec. Order No. 14,008, 3 C.F.R. 477, 478–79 (2022).

10. *See* Shalanda H. Baker & Andrew Kinde, *The Pathway to a Green New Deal: Synthesizing Transdisciplinary Literatures and Activist Frameworks to Achieve a Just Energy Transition*, 44 ENVIRONS 1, 4 (2020) (describing a just energy transition to a low-carbon future as one that "remedies the injustices of the fossil-fuel energy system across multiple sectors of the economy"). Scale has been used to divide political matters and regulatory structures spatially—local, regional, national, etc. This Essay discusses various scales of governance as a means of connecting regulatory structures to the spaces and places they govern. Accordingly, the call for expanded scales of governance where there are regulatory mismatches (as with land use planning and environmental law) is most

level of government has a role to play within the transition, but more importantly, community and industry have a role to play as well. These interconnected regulatory relationships exemplify what I call sustainable collaborative governance. Building out a sustainable collaborative governance framework allows for innovation and regulation that is well within the confines of the constitution, and reorients toward traditional principles of democracy.[11] It offers an opportunity to reimagine how we govern such that new perspectives are integrated into a governance process that infuses social equity into regulation.

Despite being a relative outsider, I come to the conversation about environmental regulation within the administrative state with the energy transition at the top of mind. Environmental justice, land use implications, and the need for decision-making processes that incorporate principles of sustainability ground my perspective. At the outset, my concern was primarily for local governments that were overwhelmed by, and underinformed about, the transition to renewable energy. What then emerged was a recognition that regeneration, resilience, and sustainability are tenets of decision-making processes both inside and outside of the land use context. Those tenets are critical to facilitating an energy transition and a willingness to confront the climate crisis head-on. Those tenets suggest that true democratic governance requires inclusivity and collaboration before arriving at the decision-making table rather than exclusively relying on existing systems and structures that have yielded inequitable outcomes. Transitioning to regenerative energy sources also means transitioning from an extractive economy, an extractive society, and an extractive relationship with the environment.[12] It means exploring alternatives—alternative governance structures, alternative resources, and alternative methodologies—that appreciate the complexities of governing from local

effectively articulated by the relationship to these geopolitical units. *See, e.g.*, Kevin R. Cox, *Spaces of Dependence, Spaces of Engagement and the Politics of Scale, or: Looking for Local Politics*, 17 POL. GEOGRAPHY 1 (1998) (arguing that there is a scale division of politics that is defined spatially).

11. *See* Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267, 373–75 (1998) (illustrating how experimentalist approaches to environmental regulation foster innovation within the bounds of existing regulatory and constitutional frameworks, promoting democratic principles of transparency, accountability, and public participation).

12. *See infra* notes 56–59 and accompanying text.

communities to a global society. Our understandings of climate change and the ever-evolving climate crisis provide an invitation to not only govern more collaboratively, but to also regulate and govern from a regenerative perspective.

In the pages that follow, I explore the ways in which the vision for renewable energy federalism can be reimagined within a sustainability framework in the wake of an eroding administrative state. Part I revisits my original vision of renewable energy federalism to provide context for understanding the current regulatory scheme. Part II examines how the Supreme Court's rulings in *West Virginia*, *Sackett*, and *Loper Bright* create a need for revisiting the initial vision of collaborative governance. It also considers how the Court's recent precedent will likely shape its forthcoming ruling in *Seven County Infrastructure Coalition v. Eagle County*.[13] Finally, Part III describes how expanding from collaborative federalism to collaborative governance allows for deeper integration of sustainability principles. It also sketches out how sustainable collaborative governance can be operationalized; in other words, it lays the groundwork for Renewable Energy Federalism 2.0.

I. RENEWABLE ENERGY FEDERALISM—THE BETA VERSION

The renewable energy dialogue centers around the speed and efficiency necessary to generate sufficient clean energy capacity,[14] support critical mineral mining,[15] and ameliorate job

13. Eagle County v. Surface Transp. Bd., 82 F.4th 1152 (D.C. Cir. 2023), *cert. granted sub nom.* Seven Cnty. Infrastructure Coal. v. Eagle County, 144 S. Ct. 2680 (2024).

14. *See, e.g.*, J.B. Ruhl & James Salzman, *The Greens' Dilemma: Building Tomorrow's Climate Infrastructure Today*, 73 EMORY L.J. 1, 14–18 (2023) (describing the increased production and transmission capacities necessary to meet the United States' de-carbonization goals by President Biden's proposed timelines); Adam Rogers, *Make America Build Again*, BUS. INSIDER (Nov. 16, 2023), https://www.businessinsider.com/america-build-infrastructure-transportation-housing-regulation-environment-2023-11 [https://perma.cc/9RHX-W77B] (emphasizing the urgent need for rapid infrastructure development to achieve carbon neutrality and support the transition to clean energy).

15. *See, e.g.*, Nadia Ahmad et al., *Synthesizing Energy Transitions*, 39 GA. ST. U. L. REV. 1087, 1105–06 (2023) (describing the recent dialogue surrounding the shift from traditional mining to critical minerals mining).

losses within the fossil fuel industry.[16] Within environmental groups, there are nuanced discussions about limiting global warming to 1.5°C and the prevalence of scientific data regarding carbon emissions.[17] Yet conversations about the connections between sustainability as described below, the complexities of siting renewable energy projects, and the implications for various stakeholders are comparatively less prominent within legal scholarship.[18] This was part of the gap I sought to fill.

A. HOW IT STARTED

The concept of renewable energy federalism developed as I was thinking about the challenges of siting utility-scale

16. *See, e.g.*, *id.* at 1105–07 (focusing on strategies such as retraining, upskilling, job creation, and target policy development to ameliorate job losses throughout the energy transition away from fossil fuels).

17. *See, e.g.*, *Global Warming of 1.5°C*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Full_Report_HR.pdf [https://perma.cc/4DV6-M2LH]. Relatedly, the Paris Agreement is an international treaty that encourages all member nations to reduce greenhouse gas emissions to limit global temperature increases to 1.5 degrees above pre-industrial levels. U.N. Framework Convention on Climate Change, *Adoption of the Paris Agreement*, art. 2, U.N. Doc. FCCC/CP/2015/L.9, annex (Dec. 12, 2015). As of January 20, 2025, the United States has again withdrawn from the Agreement, reneging on its commitment. *See* Exec. Order No. 14,162, 90 Fed. Reg. 8455 (Jan. 30, 2025).

18. Shalanda H. Baker, *Anti-Resilience: A Roadmap for Transformational Justice within the Energy System*, 54 HARV. C.R.-C.L. L. REV. 1, 7–8 (2019) (noting the lack of community-centered discussions surrounding energy policy in legal academia). Scholars, journalists, and industry leaders have honed in on development on federal lands and distributed renewable energy, but they focus far less on siting utility-scale projects within communities generally. *See* Hannah J. Wiseman et al., *Farming Solar on the Margins*, 103 B.U. L. REV. 525, 561 (2023) (finding that the growing demand for large-scale solar energy projects will likely lead to them being built on farmland enrolled in the Conservation Reserve Program); Anna Lundin, *The Next Phase of Energy Development on Federal Lands*, KIMLEY-HORN (Jan. 31, 2024), https://www.kimley-horn.com/news-insights/perspectives/energy-development-federal-lands [https://perma.cc/7EPP-EADF] (describing additional incentives to siting renewable energy projects on federal lands, including streamlined permitting for certain renewable energy development); Scott Streater, *BLM's New Mission: Protect Landscape in West's 'Sea of Solar*,*'* E&E NEWS (Feb. 1, 2024), https://www.eenews.net/articles/blms-new-mission-protect-landscape-in-wests-sea-of-solar [https://perma.cc/6N79-X359] (describing the Bureau of Land Management's plan to expand renewable energy on federal land in the West).

renewable energy projects.[19] These projects raised major issues relating to land use and local governance that often materialized as an omission of siting requirements in zoning ordinances and land use plans.[20] Local officials also had limited access to the technical assistance necessary to make informed decisions.[21] This deficit provides an opportunity to offer resources to educate localities (particularly in rural places) about the process and technical requirements for utility-scale energy siting.[22] When siting utility-scale projects, there are often a host of players at the table: real estate developers, government officials, planning commissioners, utility companies, attorneys, financial institutions, landowners, and community members.[23] Each stakeholder has varying levels of knowledge, sophistication, and development savvy. This background inspired my initial vision for renewable energy federalism: establishing coordinated siting guidelines and/or a centralized siting agency.[24]

To provide context, I described the development process for the Depot Solar Facility located in Campbell County, Virginia.[25] As the first utility-scale project within the county, the learning curves were quite steep. Because it was first, the county's zoning and land use plan did not reference renewable energy and many of the officials were uninformed about the complexities of renewable energy development.[26] The project was finally electrified in

19. "Utility-scale projects are large installations that produce quantities of electricity similar to traditional power plants. Jurisdictions differ as to the quantity of electricity required to qualify a project as utility-scale, but each of these projects transfers electricity via a larger transmission system." Stokes, *supra* note 1, at 1758 n.3.

20. *See id.* at 1772–77 (using a case study to discuss the struggle surrounding large solar project approval due to the lack of a land use plan for renewable energy, leading to delays and extra costs for developers).

21. *See id.* at 1777 ("Unfortunately, land use planners in areas where development is most favorable often lack the expertise, capacity, and resources necessary to effectively regulate project siting.").

22. *Id.* at 1775 ("With coordinated guidelines that are implemented from the top down, this type of delay and project deterrence will be avoided while under-resourced planning departments will be supported.").

23. *Id.* at 1775.

24. *Id.* at 1817–24.

25. *Id.* at 1772–75.

26. *Id.* at 1773–74 ("The county planning commissioners opposed the projects for several reasons, but most notably because they were hesitant to move forward with such large-scale projects since the county's zoning ordinance did

July 2022, approximately five years after the application was submitted.[27] Project completion ultimately required a revision to the zoning ordinance, community engagement, and site relocation.[28] The development company's CEO noted, "If you work right with the landowners, you can fit a site better, you can make it work for the community and for you."[29] As a legal practitioner who previously worked in the land use and siting space, I could appreciate the burden that is often placed on under-resourced or uniformed local government planners and commissioners. This underscored one component of my rationale for establishing coordinated zoning and planning guidelines: streamlined information and resources.

The second critical piece of my proposal was expanding the level of federal engagement in order to streamline the siting process. The rationale for this component was the size, scale, and geographic distinctions that impact utility-scale solar and wind projects. Many renewable energy projects span multiple jurisdictions. For example, consider the Blue Creek Wind Farm in Ohio located in Van Wert and Paulding counties.[30] Luckily for developers, the Ohio Power Siting Board regulated wind projects between five and fifty megawatts—including setback, height, and other construction requirements—and generally removed local control over siting.[31] At the time of development, the Power Siting Board was the primary regulator and ultimate siting

not contemplate solar facilities. There was no official guidance regarding where projects should be sited, lot requirements, or the most effective permit approval process. With limited county resources and no planning directive from the state, the county failed to incorporate solar facilities into its land use plan.").

27. The timeline was impacted by land use and zoning updates, as well as the COVID-19 pandemic. Jeffrey Westbrook, *New Solar Farm Launches in Campbell County*, ALTAVISTA J. (Nov. 17, 2022), https://www.altavistajournal.com/news/article_a18e770c-6688-11ed-bf16-db2f4d560346.html [https://perma.cc/DW95M285].

28. Stokes, *supra* note 1, at 1772–77.

29. Westbrook, *supra* note 27.

30. This 304 MW project was electrified in 2012 and has capacity to power approximately 76,000 homes. *Blue Creek Onshore Wind Farm*, IBERDROLA, https://www.iberdrola.com/about-us/what-we-do/onshore-wind-energy/blue-creek-wind-farm [https://perma.cc/UXL4-HEC5].

31. OHIO REV. CODE ANN. § 4906.20 (LexisNexis 2023–24) (setting notably restrictive setback requirements by establishing a minimum distance of at least 1,125 feet from the wind turbine's highest blade to the nearest property line, with limited exceptions that require explicit approval from both adjacent property owners and the Power Siting Board).

authority.[32] In 2021, the Ohio legislature passed Senate Bill 52, which allows local governments to prohibit energy construction and designate particular areas as restricted.[33] Now, developers who wish to site a project in multiple jurisdictions must comply with the requirements of each locality. The very fact of varying regulations increases the costs of permitting and efficiency more broadly, bolstering the need for streamlining, particularly to advance widespread renewable deployment. While a site may be ideal for interconnection purposes, the permitting process could be cumbersome, with no clear guidance as to which jurisdiction's regulations should take precedence. The costs of development would simply continue to rise, and collaboration between stakeholders would be exponentially more difficult.

Geographic distinctions are also significant to siting wind and solar facilities because these facilities cannot be sited just anywhere. As compared to siting traditional power plants, renewable energy facilities bear the geographical burden of being contingent on climate and requiring close proximity to transmission equipment.[34] By virtue of these distinctions, I proposed policies on a national scale because the federal government is uniquely positioned to provide siting recommendations given the geography-specific nature of renewables and their transmission requirements. Yet to facilitate the appropriate balance between centralized governance and experimentalism,[35] I acknowledged the significance of state and local governments as planning and siting experts, given their proximity to projects and the communities in which they are located. Upon reflection, that proposal

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32. *See* Matthew Eisenson, *Opposition to Renewable Energy Facilities in the United States: May 2023 Edition*, SABIN CTR. FOR CLIMATE CHANGE L. 149 (May 2023), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1201&context=sabin_climate_change [https://perma.cc/HK3C-XVAH] (describing the Ohio Power Siting Board's approval authority over renewable energy projects).

33. S. 52, 134th Gen. Assemb., Reg. Sess. (Ohio 2021) (enacted) (codified at OHIO REV. CODE ANN. § 303.58 (LexisNexis 2023–24)); Jeffrey Tomich, *'Volatile Place.' New Laws Thwart Ohio Renewables*, E&E NEWS (Aug. 5, 2021), https://www.eenews.net/articles/volatile-place-new-laws-thwart-ohio-renewables [https://perma.cc/9VLY-2HGE].

34. Stokes, *supra* note 1, at 1797.

35. "[A] growing consensus in the scholarship suggests that centralized and decentralized structures are internally compatible and complementary." Eva M. Witesman, *Centralization and Decentralization: Compatible Governance Concepts and Practices*, OXFORD RSCH. ENCYCLOPEDIA POL. (Oct. 27, 2020), https://doi.org/10.1093/acrefore/9780190228637.013.1390.

only described a small facet of the governance networks necessary to effectuate a more holistic version of collaboration.

B. HOW IT'S GOING

The beta version of renewable energy federalism identified the federal government as the premier regulator providing guidance documents and designating resources to either establish a new entity or allocate authority to an existing agency.[36] Guidance documents were proposed as an executive measure while direct agency action would require Congress to authorize a new, expanded purpose for agencies to fully engage in the siting process.[37] The proposal specified roles for the political arms of government: the legislative and executive branches.[38] With the exception of the Inflation Reduction Act,[39] Infrastructure Investment and Jobs Act,[40] and American Rescue Plan,[41] any semblance of bipartisanship and collaboration between branches has been limited particularly as it relates to combatting climate change.[42] Further, with the transition to a second Trump administration, it is evident that climate consciousness and the clean energy transition will not be integrated within the executive branch.[43] I made no special reference to the judiciary, but as of late, it has all but eroded agency authority given its holdings in *West Virginia v. EPA*, *Sackett v. EPA*, and *Loper Bright*

36. Stokes, *supra* note 1, at 1817–24.

37. *Id.*

38. *Id.*

39. Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818.

40. Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

41. American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4.

42. President Biden relied on executive orders for climate action, including rejoining the Paris Agreement, but climate change requires durable policies lasting beyond administrations involving legislative solutions specifically tailored to address these challenges. *See* Dan Bosch, *The Consequences of Over-Reliance on Executive Action*, AM. ACTION F. (Mar. 1, 2021), https://www.americanactionforum.org/insight/the-consequences-of-over-reliance-on-executive-action [https://perma.cc/9BPL-88GM].

43. *See* Elena Moore, *Trump Picks Former Rep. Lee Zeldin to Be His EPA Administrator*, NPR (Nov. 11, 2024), https://www.npr.org/2024/11/11/nx-s1-5187039/trump-lee-zeldin-epa-environment [https://perma.cc/X84F-HDN7] (touting the swift deregulatory actions that will be implemented to "unleash the power of American businesses"); Exec. Order No. 14,148, 90 Fed. Reg. 8237 (Jan. 28, 2025) (revoking climate-centered executive actions implemented by the Biden administration).

Enterprises v. Raimondo. The Court's rulings have actually underscored the need for greater collaboration across sectors and among stakeholders to realize the possibilities of renewable energy. Moreover, the retrenchment of the administrative state creates regulatory gaps whereby sustainability and regeneration could go hand in hand. National engagement with renewable energy siting was arguably unlikely when proposed three years ago, but the increase in partisanship combined with an executive branch that is hostile to environmentalism and the judiciary's revocation of agency deference means that collaborative governance structures that center stakeholder engagement are more important than ever.[44]

At first, I used the terms "collaborative federalism" and "collaborative governance" interchangeably to describe a network of governing relationships.[45] I now believe these terms are distinct. Collaborative federalism focuses exclusively on government action, whereas collaborative governance actually cultivates an interconnected network of governance relationships that lend themselves to dynamism across branches, sectors, and scales.[46] Collaborative governance allows for business and industry leaders to be included within the governance framework.[47] And maybe most significantly, it provides space for community expertise to be integrated into decision-making processes. There is now a real opportunity to consider *sustainable* collaborative governance.

In expanding this notion of governance, I fully leaned into the sustainability framework. At its core, sustainability means "meet[ing] the needs of the present without compromising the ability of future generations to meet their own needs."[48] Within

44. *See infra* Part II.

45. Stokes, *supra* note 1, at 1777–91.

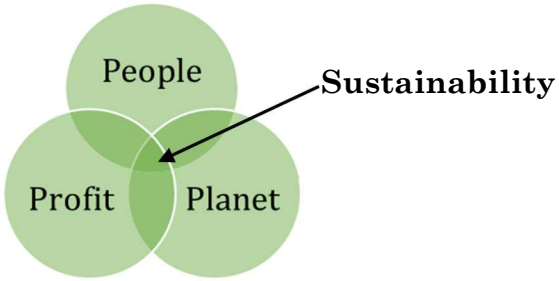
46. *Id.* at 1789–91.

47. Danielle Stokes, *Climate-Conscious Land Use Planning* (recommending a collaborative governance regime "that incorporates multiple scales of governance—federal, state, and local—as well as various public and private stakeholders in order to support and expand decarbonization efforts"), *in* A RESEARCH AGENDA FOR US LAND USE AND PLANNING LAW 187, 189–90 (John J. Infranca & Sarah Schindler eds., 2023) (ebook).

48. Wayne M. Feiden & Elisabeth Hamin, *Assessing Sustainability: A Guide for Local Governments*, AM. PLAN. ASS'N 3 (July 1, 2011), https://planning-org-uploaded-media.s3.amazonaws.com/publication/online/PAS-Report-565.pdf [https://perma.cc/P9FL-DWXX] (quoting Rep. of the World Comm'n on Env't & Dev., ¶ 27, U.N. Doc. A/42/427 (1987)).

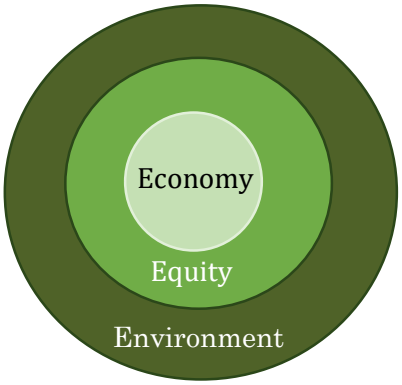
the business context, sustainability has been described as the triple bottom line,[49] or people, planet, profit, and has been depicted as a Venn diagram of overlapping circles, as shown in Figure 1.

Figure 1: Segmented Sustainability Framework



This depiction suggests that each element is equally important, and sustainability lies at the point of intersection. Conversely, within environmental studies, sustainability is depicted as a nested system with the environment as the outermost ring, social equity in the center, and the economy as the innermost ring, as shown in Figure 2.[50]

Figure 2: Nested Sustainability Framework



49. Alexandra Jonker, *What Is the Triple Bottom Line (TBL)?*, IBM (Dec. 1, 2023), https://www.ibm.com/think/topics/triple-bottom-line [https://perma.cc/JD9K-NU9E].

50. Georgiana Allison, *Wobbly Foundations: Taking a Nested Approach to Sustainability*, INST. OF ENV'T MGMT. & ASSESSMENT, https://www.iema.net/articles/wobbly-foundations-taking-a-nested-approach-to-sustainability [https://perma.cc/P6BV-4585].

From my perspective, this nested system displaying sustainability as concentric rings is actually the most viable ordering of these elements. Without a flourishing environment, it is very difficult to imagine an equitable society. In fact, social equity is virtually impossible in the absence of clean air, clean water, and a thriving ecosystem that can support various needs.[51] The state of the environment can expand or constrain opportunities for social equity.[52] Further, when the environment is stewarded well and social equity is prioritized, individuals, communities, regions, and nations are primed to invest in and take advantage of economic opportunities.[53]

Yet we often see an inversion of these rings when sustainability is realized within our laws and policies. Whether in statutory interpretation or the regulatory cost-benefit analysis, economic impacts usually rule the day.[54] The good news is the energy transition really gives us an opportunity to make some significant shifts.[55] American society has been entrenched in

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51. *See* Baker, *supra* note 18, at 10, 13–14 (describing historical inequities that perpetrate "environmental harms along racial and class lines" related to "compromised air quality, dirty water, and little hope of economic empowerment").

52. *Id.* at 6 (suggesting that a transition to a cleaner environment through changes in energy policy can expand social equity by reducing vulnerability and redistributing power, while "fossil-fuel based energy system[s] serve[] as a site for ongoing structural inequality").

53. *See, e.g.*, Marion McFadden & Rachel Kyes, *Community-Led, Government Funded: Federal, State, and Local Policies for Resilience* (describing how a catastrophic storm shifted the investment strategies in Grand Forks, North Dakota and advocating for investments in resiliency, migration planning, sound land use policies, and collaboration among stakeholders), *in* WHAT'S POSSIBLE: INVESTING NOW FOR PROSPEROUS, SUSTAINABLE NEIGHBORHOODS 240, 240–60 (Krista Egger et al. eds., 2024).

54. *See* MAEVE P. CAREY, CONG. RSCH. SERV., IF12058, COST-BENEFIT ANALYSIS IN FEDERAL AGENCY RULEMAKING 1 (2024) (emphasizing the importance of considering economic impacts in federal rulemaking with requirements to undergo a detailed cost-benefit analysis for regulations triggering significant economic effects); *see also* Todd Phillips & Sam Berger, *Reckoning with Conservatives' Bad Faith Cost-Benefit Analysis*, CTR. FOR AM. PROGRESS (Aug. 14, 2020), https://www.americanprogress.org/wp-content/uploads/sites/2/2020/08/cost-benefit-brief.pdf [https://perma.cc/XV2R-2ZCJ] (documenting the rise of cost-benefit analysis and the influence of economic factors in the development of federal regulations).

55. Shalanda Baker et al., *The Energy Justice Workbook*, INITIATIVE FOR ENERGY JUST. 63 (2019), https://iejusa.org/wp-content/uploads/2019/12/The-Energy-Justice-Workbook-2019-web.pdf [https://perma.cc/7YY5-CCHQ]

extractive policies, extractive principles, and extractive perspectives.[56] Transitioning from extraction to regeneration within the energy sector means a similar transition is possible within law and policy more broadly.[57] The next Section highlights how the Supreme Court's rulings serve as an impetus for reimagining renewable energy federalism from a sustainability perspective that takes a more holistic approach to governance. It also calls for incorporating principles of sustainability within each branch of government and beyond.

II. THE SUPREME COURT ENTERS THE CHAT

A series of Supreme Court cases has brought to the fore new considerations for collaborative governance within the energy and environmental space. In the beta version of renewable energy federalism, I gave significant credence to federal laws and policies that advanced the energy transition and granted agencies reasonable authority to act.[58] Now, considering the outcomes in *West Virginia v. EPA*, *Sackett v. EPA*, and *Loper Bright Enterprises v. Raimondo* (and the executive branch's shift in priorities), it is less clear how impactful federal agencies can be for environmentalism and the just energy transition. The Court's rulings in each of these cases exemplify the extreme emphasis on economic valuation and the fragility of agency expertise and authority within the current governance structure. While none of the cases directly speak to energy siting, they indicate the ethos that is guiding many national decision-makers. This ethos continually prioritizes economic value while undermining the

(describing a resist, reclaim, restructure process to shift from an extractive to a living economy).

56. Whether exploiting natural resources or labor, extraction has been a vestige of colonialism that, if left unchecked, will continue to be perpetuated in the clean energy transition. *Id.* at 21. Groups such as Movement Generation have proposed a shift from an extractive to a living economy that advances regeneration, cooperation, democracy, care, and well-being. *Id.* at 9–10.

57. While additional support is warranted, scholars are incorporating principles of energy justice more comprehensively into legal scholarship. *See, e.g.*, Joel B. Eisen & Mark B. Glick, *A Model for Community-Led Energy Planning and Climate Justice: Renewable Energy Development on the Hawaiian Island of Molokai*, 74 WASH. U. J.L. & POL'Y 1 (2024); Alexandra B. Klass & Hannah Wiseman, *Repurposed Energy*, 109 MINN. L. REV. 219 (2024); Uma Outka, *Evolving Legal Conceptions of "Energy Communities*,*"* 78 U. MIAMI L. REV. 471 (2024).

58. Stokes, *supra* note 1, at 1777–91.

value of environmental resources.[59] Land use planning and property development are especially consequential as we navigate the climate crisis.[60] And, the Court's shift in perspective severs many of the connections that have been tethered together by the administrative state.[61] These holdings have challenged the confidence I had placed in agency support within the energy transition. They also exemplify the need for broader understandings and methods of interpretation that transcend *text* and consider *context* to fully appreciate how decisions affect climate change and the future. The following Sections explore how the Court's rulings have changed the regulatory landscape and what this means for renewable energy federalism.

A. DIMINISHING AGENCY DEFERENCE

The Supreme Court has several tools in its interpretation arsenal—including the end of *Chevron* deference to agency interpretation,[62] the nondelegation doctrine, and the major questions doctrine—that, while necessary to maintain separation of powers, have been proven to hinder environmental protection.[63] In

59. Researchers have found a correlation between government spending and attitudes toward prioritizing environmental protection versus economic growth. The public perspective is often shaped by government action and constituents' trust in government decision-making. Marthe L. Holum & Tor G. Jakobsen, *Economic Growth Versus the Environment: Government Spending Trust, and Citizen Support for Environmental Protection*, 10 ENV'T SOCIO. 420, 422–23 (2023).

60. *See* Matthew Eisenson et al., *Opposition to Renewable Energy Facilities in the United States: June 2024 Edition*, SABIN CTR. FOR CLIMATE CHANGE L. 4 (June 2024), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1227&context=sabin_climate_change [https://perma.cc/FZB2-294M] (cataloging the regulatory constraints to renewable energy siting and the challenges posed by various laws and policies).

61. *See* Jeff Turrentine, *The Supreme Court Ends Chevron Deference—What Now?*, NAT. RES. DEF. COUNCIL (June 28, 2024), https://www.nrdc.org/stories/what-happens-if-supreme-court-ends-chevron-deference [https://perma.cc/3L77-G84F] (suggesting that agency deference allowed presidential administrations to "prioritize climate action, curb[] pollution, and promot[e] environmental justice").

62. *See* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024) (overruling Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984)).

63. *See* Turrentine, *supra* note 61 ("The court [in overruling *Chevron* deference] stripped many federal agencies tasked with protecting public health, public safety, and the environment—including the U.S. Environmental Protection Agency (EPA) and the U.S. Food & Drug Administration, to name just two—of

West Virginia v. EPA, the Court assessed whether the Environmental Protection Agency (EPA) could regulate greenhouse gas emissions from existing coal-fired power plants through generation shifting.[64] While the Court determined that the EPA can regulate greenhouse gases generally, it held that the agency was not permitted to do so by regulating emissions from existing coal-fired power plants.[65] The decision rested on the major questions doctrine and a determination that Congress had not specifically authorized the EPA to expand its regulatory purview to include generation shifting.[66] The major questions doctrine exemplifies the tendency of the Court to invert the concentric rings within the sustainability framework as it precludes deference to agency interpretations of matters with vast economic and political significance.[67] Justice Kagan described the major questions doctrine as a "get-out-of-text-free card" as it allows the Court to obfuscate Congress's delegation of authority to agencies in complex situations, such as climate change.[68] Not only did the holding in *West Virginia v. EPA* embolden the Court to limit agency authority, but it also prioritized the value that it places on the economy in relation to the environment.[69]

In *Sackett v. EPA*, the Court once again weighed in on the appropriate test for determining whether specific wetlands are waters of the United States under the Clean Water Act.[70] This

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their power to interpret the laws they carry out. Instead, federal judges now get to call the shots.").

64. 142 S. Ct. 2587, 2592–95 (2022). Generation shifting means transferring "electricity production from higher-emitting to lower-emitting producers." *Id.* at 2593.

65. *Id.* at 2612–16.

66. *Id.* at 2610–15.

67. *See id.* at 2612–13 (finding it unlikely that Congress would leave an open question as to agency discretion regarding coal-based electricity generation).

68. *Id.* at 2641–42 (Kagan, J., dissenting).

69. *See id.* at 2609 (majority opinion) ("Or, as we put it more recently, we 'typically greet' assertions of 'extravagant statutory power over the national economy' with 'skepticism.'" (citing Util. Air Regul. Grp. v. EPA, 573 U.S. 302, 324 (2014))).

70. 143 S. Ct. 1322, 1329 (2023). The question presented by petitioners was whether *Rapanos* should "be revisited to adopt the plurality's test" to determine whether a particular wetland was governed by the Clean Water Act. Petition for Writ of Certiorari at i, *Sackett*, 143 S. Ct. 1322 (No. 21-454). In *Rapanos v. United States*, the plurality determined that the appropriate test was whether

question was initially before the Court in *Rapanos v. United States* in 2006, but only resulted in a plurality opinion.[71] Following *Rapanos*, the significant nexus test—limiting agency jurisdiction to waters that had a significant nexus to traditional navigable waters—prevailed in most jurisdictions and was subsequently codified in the EPA and the Army Corps of Engineers' regulations.[72] With a new composition of the Court, the *Sackett* majority determined that the Clean Water Act extends only to those wetlands that are as a practical matter indistinguishable from navigable waters—i.e., difficult to determine where the water ends and the wetland begins.[73] It challenged the history of varied agency interpretations of *waters of the United States* and sought to assert the Court's authority as the master interpreter tasked with enforcing the system of checks and balances.[74]

"the wetland has a continuous surface connection with [a relatively permanent body of water connected to interstate navigable waters], making it difficult to determine where the 'water' ends and the 'wetland' begins." 547 U.S. 715, 744 (2006).

71. 547 U.S. 715. In *this* consolidated case, the particular questions before the Court were: (1) "Does the Clean Water Act extend to wetlands that are hydrologically isolated from any of the 'waters of the United States?'"; (2) "Do the limits on Congress' authority to regulate interstate commerce preclude an interpretation of the Clean Water Act that would extend federal authority to wetlands that are hydrologically isolated from any of the 'waters of the United States?'"; (3) "Does the Clean Water Act prohibition on unpermitted discharges to 'navigable waters' extend to nonnavigable wetlands that do not even abut a navigable water?"; and (4) "Does extension of Clean Water Act jurisdiction to every intrastate wetland with any sort of hydrological connection to navigable waters, no matter how tenuous or remote the connection, exceed Congress' constitutional power to regulate commerce among the states?" Questions Presented, Carabell v. U.S. Army Corps of Eng'rs, 547 U.S. 715 (2006) (No. 04-1384), http://www.supremecourt.gov/qp/04-01384qp.pdf [https://perma.cc/35CY-N58X]; Questions Presented, Rapanos v. United States, 547 U.S. 715 (2006) (No. 04-1034), https://www.supremecourt.gov/qp/04-01034qp.pdf [https://perma.cc/V6PY-VNFF].

72. EPA & U.S. ARMY CORPS OF ENG'RS, CLEAN WATER ACT JURISDICTION FOLLOWING THE U.S. SUPREME COURT'S DECISION IN *RAPANOS V. UNITED STATES* & *CARABELL V. UNITED STATES* 3–4 (2008), https://www.epa.gov/sites/default/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf [https://perma.cc/UU9E-C4RV].

73. *Sackett*, 143 S. Ct. at 1341.

74. *See id.* at 1329 ("On three prior occasions, this Court has tried to clarify the meaning of 'the waters of the United States.' But the problem persists. . . . Today, we return to the problem and attempt to identify with greater clarity what the Act means by 'the waters of the United States.'").

In *Sackett*, we also see the juxtaposition of an individual's right to develop private property to the perceived highest and best use, and the potential degradation of interconnected waterbodies.[75] The case highlights the significance of governance relationships and the need for common metrics of assessment that consider environmental implications holistically. The Court determined that a particular type of wetland is not within the purview of the Clean Water Act.[76] The Court, however, is not an expert in hydrology or ecology, and its decision shifted away from a flexible standard to a rigid rule within a context that is extremely fluid (no pun intended). In turn, regulatory authority shifted exclusively to the states, which are not inclined to consider how intrastate wetlands may have downstream impacts outside the state.

Lastly, *Loper Bright Enterprises v. Raimondo* challenged a rule requiring industry to fund a fishery management and monitoring program.[77] The case turned on the National Marine Fisheries Service's interpretations of the Magnuson-Stevens Fishery Conservation and Management Act.[78] In a final blow to agency authority, the Court overruled a forty-year history of *Chevron* deference.[79] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* established a two-step inquiry for assessing an agency's interpretation of a statute.[80] The first question was whether Congress had spoken to the precise issue at hand.[81] If so, and the intent was clear, then there was no further inquiry and Congress's intent would prevail.[82] If not, the Court would proceed to the second step and assess whether the agency's interpretation was reasonable.[83] If the interpretation was reasonable, the agency's interpretation would prevail.[84] Additional

75. *Id.* at 1341–43.

76. *Id.* at 1331–32, 1344 (finding that a wetland located on the other side of a thirty-foot road from an unnamed tributary, which fed into a nonnavigable creek that fed into an intrastate lake, was not covered by the Clean Water Act).

77. 144 S. Ct. 2244, 2254–55 (2024).

78. *Id.*

79. *Id.* at 2273.

80. 467 U.S. 837 (1984).

81. *Id.* at 842.

82. *Id.* at 842–43.

83. *Id.* at 843.

84. *Id.* at 843–44.

nuances developed over time, but these two steps were the crux of the analysis.[85]

In the *Loper Bright* decision, the majority harkened to the guidance of the Framers who asserted that "the final 'interpretation of the laws' would be 'the proper and peculiar province of the courts.'"[86] It also determined that in the absence of an explicit directive from Congress, the courts—not agencies—must resolve ambiguities, even those that implicate a technical matter.[87] While this perspective solidifies the courts' role within the separation of powers framework, it does not consider the fact that the Framers did not conceive of a robust administrative state, the consequences of industrialization, or the technical expertise necessary to govern a sustainable society. In overturning *Chevron*, *Loper Bright* virtually eliminated agency autonomy and the ability to advance policy through agency expertise. Environmental and energy innovations that are not explicitly articulated by Congress are now precluded.

These cases taken together inspired me to take a more expansive view of collaborative governance. The beta version of renewable energy federalism prioritized agency action and federal engagement within the energy transition given what seemed to be a shift toward greater environmentalism.[88] Yet with the volatile political climate and diverging views of the Roberts Court, I have come to realize that a sustainability perspective should actually be infused across governance scales and sectors, especially with an eye toward community engagement. Prior to the

85. For example, in *Auer v. Robbins*, the Court determined that it would defer to an agency's interpretation of an ambiguous regulation that it promulgated. 519 U.S. 452, 461 (1997). Additionally, when an agency interprets a statute by virtue of creating opinion letters and other informal guidance documents, the Court determined that "deference" was warranted where the agency's reasoning was persuasive. *See* Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944). In *Loper Bright*, the Court determined that although *Skidmore* deference was a misnomer, the Court should respect agency interpretations of informal guidance. *See* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2259 (2024).

86. *Loper Bright*, 144 S. Ct. at 2257 (quoting THE FEDERALIST No. 78, at 394 (Alexander Hamilton) (Ian Shapiro ed., 2009)).

87. *Id.* at 2267 ("But even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions.").

88. Stokes, *supra* note 1, at 1815–24 (explaining the benefits of a collaborative system of environmental regulation between federal, state, and local governments).

rulings in *West Virginia*, *Sackett*, and *Loper Bright*, there was at least the possibility that an agency's effort to expand environmental protections would not be thwarted, provided that it was within a reasonable scope of Congress's directive. That is no longer a possibility.

In December 2024, the Court again heard oral arguments on environmentalism and agency action in *Seven County Infrastructure Coalition v. Eagle County*.[89] The case is poised to tackle issues of agency authority, environmental justice, and the future of the energy transition.[90] The question before the Court is whether the National Environmental Policy Act (NEPA)[91] requires an agency to study environmental impacts beyond the proximate effects of an action over which an agency has regulatory authority.[92] *Seven County Coalition* consolidates two proceedings regarding the construction and operation of an eighty-mile rail line in Utah that would connect the Uinta Basin—an area rich in coal, crude oil, and other fossil fuels—with the national rail network.[93] The development process requires various assessments and approvals by the Surface Transportation Board (the Board), including a NEPA analysis.[94] Following its review, the Board determined that the project warranted an Environmental Impact Statement (EIS).[95] The case turns on the sufficiency of the EIS and whether it considered the requisite direct and indirect environmental effects.[96] Eagle County, along with

89. Eagle County v. Surface Transp. Bd., 82 F.4th 1152 (D.C. Cir. 2023), *cert. granted sub nom.* Seven Cnty. Infrastructure Coal. v. Eagle County, 144 S. Ct. 2680 (2024).

90. *Id.* at 1164–65.

91. Pub. L. No. 91–190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. §§ 4321–4347).

92. *Eagle County*, 82 F.4th at 1164–65. The question arose due to a circuit split resulting from the Court's ruling in *Department of Transportation v. Public Citizen*, 541 U.S. 752, 773 (2004) (holding that an agency is not required to study environmental effects that are outside the scope of the agency's statutory authority).

93. *Eagle County*, 82 F.4th at 1163–65.

94. *Id.* at 1164–65.

95. *See id.* at 1167.

96. *Id.* at 1175. The regulations in effect in 2019 defined these effects as follows: Direct effects "are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8 (2019). Indirect effects are those "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* Effects also include "ecological . . . , aesthetic, historic, cultural,

various environmental groups, assert that the EIS is insufficient because it failed to consider the environmental effects of downline oil refining in the Gulf Coast or greenhouse gas emissions from oil combustion.[97] Conversely, the Board and other petitioners argue that these effects are outside of the Board's scope of authority as its primary charge is to regulate the economic aspects of various modes of transportation, primarily freight rail.[98]

There is much speculation about the potential outcomes following this case, particularly its impact on the breadth and depth of NEPA analyses.[99] Yet most striking in the context of the discussion here is one of the issues that will likely fly under the radar: consideration of agency expertise as it relates to environmental justice. I am interested in the level of credibility, if any, that the Court will give to the regulations drafted by the Council on Environmental Quality (CEQ), the authorized regulator.[100] Specifically, I wonder whether the Court will consider Congress's directive that CEQ "be conscious of and responsive to the

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economic, social, or health, whether direct, indirect, or cumulative." *Id.* "Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." *Id.* Today, the definition of effects has been expanded to include cumulative effects, or the effects on the environment that result "from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.1 (2024). The current definition of effects also includes climate change effects and environmental justice concerns. *See id.*

97. *Eagle County*, 82 F.4th at 1175–76. The court also highlighted a failure to "quantify reasonably foreseeable upstream and downstream impacts on vegetation and special-status species of increased drilling in the Uinta Basin and increased oil-train traffic"; to consider wildfire risks and impacts on water resources; and to explain the lack of information on local accident risks as required by the regulations. *Id.* at 1196.

98. *See About STB*, SURFACE TRANSP. BD., https://www.stb.gov/about-stb [https://perma.cc/8G2C-HZJK] (explaining that the Surface Transportation Board is an independent federal agency that is charged with the economic regulation of various modes of surface transportation, primarily freight rail).

99. Edward Boling et al., *SCOTUS to Review the Scope of Agencies' NEPA Review*, PERKINS COIE (June 28, 2024), https://perkinscoie.com/insights/update/scotus-review-scope-agencies-nepa-review [https://perma.cc/2WQ8-8VTG]; Niina H. Farah & Pamela King, *Energy Sector Braces for Supreme Court NEPA Case*, E&E NEWS (June 25, 2024), https://www.eenews.net/articles/energy-sector-braces-for-supreme-court-nepa-case-ew [https://perma.cc/3K64-UQWT].

100. The D.C. Circuit recently weighed in on CEQ's function, finding that it does not have rulemaking authority. Marin Audubon Soc'y v. Fed. Aviation Admin., 121 F.4th 902, 908 (D.C. Cir. 2024).

scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment."[101] Or, the Court may simply rely on its own ability to resolve technical ambiguities by parsing text. If it follows the position set forth in *Loper Bright*, the Court will have the ultimate say as to the whether the Board is required to expand the scope of its analysis within the EIS despite the Court's limited expertise in environmental assessments. The Court has traditionally been reluctant to contextualize laws and regulations within a broader framework.[102] Within the regulatory state, judges have assigned significant weight to the economic burden of an outcome as compared to environmental and social impacts.[103] Therein lies the opportunity for the sustainability framework to take shape within the regulatory process.

An open question remains as to whether the Court will choose to amplify, dismiss, or overlook the concerns of environmental justice communities. In its ruling, the D.C. Circuit expressly acknowledges the need for the EIS to address the "effects of oil refining on environmental justice communities [in] the Gulf Coast."[104] Simply using the term *environmental justice communities* within the opinion is significant as this terminology is

101. 42 U.S.C. § 4342.

102. *See* VALERIE C. BRANNON, CONG. RSCH. SERV., R45153, STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS 10 (2018) (explaining the theoretical underpinnings behind contextualizing statutes within a legal system).

103. In 1981, President Ronald Reagan signed an Executive Order requiring agencies to perform a cost-benefit analysis and a corresponding regulatory impact analysis for any major rules. Exec. Order No. 12,291, 3 C.F.R. 127 (1982). Major rules were defined as regulations that resulted in an economic effect of more than $100 million, increased costs for consumers, and adverse effects on competition and productivity. *Id.* at 127. The goal was to ensure that agency action only be undertaken where "the potential benefits to society for the regulation outweigh the potential costs to society." *Id.* at 128. While these are noteworthy goals, they are limited in scope, exemplifying governance framing that prioritizes the economy, as costs were primarily assessed in monetary terms. This Order was modified by subsequent administrations but set the tone for economic prioritization within regulation. *See* TODD GARVEY, CONG. RSCH. SERV., R20846, EXECUTIVE ORDERS: ISSUANCE, MODIFICATION, AND REVOCATION 6 (2014).

104. Eagle County v. Surface Transp. Bd., 82 F.4th 1152, 1196 (D.C. Cir. 2023), *cert. granted sub nom.* Seven Cnty. Infrastructure Coal. v. Eagle County, 144 S. Ct. 2680 (2024).

generally limited to the executive branch.[105] Further, the briefs for both parties only make reference to the geographic location of the refineries rather than the broader community challenges.[106] In other words, the social equity impacts are not incorporated into the larger conversation.

Seven County Coalition exemplifies two existing tensions: debilitated agency authority and misalignment of sustainability principles. Historically, agencies have been the champions of environmental regulation, challenging industry to innovate.[107] The extent to which the executive branch prioritizes the environment is generally a function of partisanship and political affiliation.[108] The dismantling of agency authority is itself harmful to environmentalism, the energy transition, and environmental justice.[109] Further, agency actions—or any aspect of governance for that matter—that do not incorporate a sustainability perspective have the potential to perpetuate existing harms. *Seven County Coalition* suggests that a further shift away from a sustainability perspective could be harmful both within the judicial and executive branches.

Yet *Seven County Coalition* also shows the enormous opportunity to promote sustainability within two branches. For the judiciary, a decision that upholds an expansive requirement to

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105. *See, e.g.*, Exec. Order No. 14,096, 3 C.F.R. 381 (2024); *Explore the Map*, CLIMATE & ECON. JUST. SCREENING TOOL, https://edgi-govdata-archiving.github.io/j40-cejst-2/en/#3/39.34/-90.47 [https://perma.cc/ND9B-GEKH] (a mapping tool developed to highlight communities overburdened by pollution).

106. *See* Brief for Petitioners, Seven Cnty. Infrastructure Coal. v. Eagle County, No. 23-975 (U.S. argued Dec. 10, 2024), 2024 WL 4028330; Brief of Respondents Eagle County et al. in Opposition, *Seven Cnty. Coal.*, No. 23-975, 2024 WL 2621848; *see also* Brief of Ute Indian Tribe of the Uintah et al. as Amici Curiae Supporting Petitioners, *Seven Cnty. Coal.*, No. 23-975, 2024 WL 4149887; Brief of Amici Curiae American Forest Resource Council & Western Energy Alliance in Support of Petitioners, *Seven Cnty. Coal.*, No. 23-975, 2024 WL 4126045.

107. *See, e.g.*, Int'l Harvester Co. v. Ruckelshaus, 478 F.2d 615, 637 (D.C. Cir. 1973). Here, the Administrator of the EPA weighed environmental and economic costs of reducing automobile emissions by encouraging a shift to the catalytic converter in automobile production. *Id.* at 641. The technology-forcing standard encouraged industry to innovate in order to comply with regulations.

108. *See* Resources Radio, *Exploring Partisan Divides on Climate and Energy Policy, with David Spence*, RES. FOR THE FUTURE (Aug. 6, 2024), https://www.resources.org/resources-radio/exploring-partisan-divides-on-climate-and-energy-policy-with-david-spence [https://perma.cc/EUC7-ZFX3].

109. *See* Turrentine, *supra* note 61.

consider a wide range of impacts in the NEPA analysis would be a hallmark of future-oriented statutory interpretation that considers the nested system of sustainability: environment, social equity, and economy.[110] For agencies and the executive branch, the nested system of sustainability provides for a decision-making framework that assesses each of these elements simultaneously. Where one branch is inclined to focus on a particular element of sustainability, the other branch can elevate another element, further modeling a system of checks and balances.

In a post-*Loper Bright* administrative state, it is also significant to note that environmental justice is merely a creature of executive orders and regulations.[111] While Congress has granted CEQ broad authority to regulate, it has not specifically tasked it—or any agency for that matter—with defining environmental justice or integrating the concerns of environmental justice communities into NEPA analyses.[112] In the absence of an explicit directive, the prospect of environmental justice as a substantive aspect of law and policy becomes increasingly unlikely. Since their inception, principles of environmental justice have been fraught with skepticism and have received limited investment.[113] The connection between environmentalism and environmental justice has been tenuous at best with agencies doing

110. *See supra* notes 50–53 and accompanying text (introducing the nested system of sustainability).

111. The first environmental justice Executive Order required agencies to develop environmental justice strategies, conduct targeted research, and allow for public participation in development processes. *See* Exec. Order No. 12,898, 3 C.F.R. 859 (1995). The CEQ developed six principles for agency consideration including area composition, relevant public health and industry data, and recognition of the cultural, social, occupational, historical, or economic factors that amplify environmental effects. COUNCIL ON ENV'T QUALITY, *Environmental Justice: Guidance Under the National Environmental Policy Act* 8–9 (1997), https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf [https://perma.cc/98SF-SXF6]. The Biden administration further underscored the significance of environmental justice in the climate context when it passed the *Executive Order on Tackling the Climate Crisis at Home and Abroad*. *See* Exec. Order No. 14,008, 3 C.F.R. 477, 489 (2022). As of January 2025, these executive orders have been revoked, shifting environmental justice efforts to states, local governments, and community organizations. *See* Exec. Order No. 14,173, 90 C.F.R. 8633 (2025).

112. *See* 42 U.S.C. § 4321; 40 C.F.R. § 1515.2 (2024).

113. Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NAT. RES. DEF. COUNCIL (Aug. 22, 2023), https://www.nrdc.org/stories/environmental-justice-movement [https://perma.cc/KRQ5-JHQK].

the lion's share of the policy fortification.[114] *Seven County Coalition* may very well open the door to discrediting the validity of environmental justice concerns that have taken decades to be integrated across the federal government.

Environmental justice straddles the environment and social equity rings of the sustainability framework. It is grounded in an appreciation of community and environmental stewardship.[115] Environmentalists and developers each have a tendency to gloss over environmental justice concerns.[116] The procedural elements of community participation and the additional expenditures of time and resources often make this element of NEPA review overly costly.[117] Whether seeking expedited permitting to deploy renewables or utilizing NEPA to deter or delay development, the champions for robust community engagement are few and far between.[118] In each of these scenarios, social equity is omitted from the assessment calculus. Those seeking to circumvent NEPA in order to reduce greenhouse gas emissions as quickly as possible prioritize the environment above all else.[119] Conversely, those seeking to circumvent NEPA in order to preserve existing industries prioritize the economy above all else.[120] Each of these extremes encourage the status quo. Yet shifting to a sustainability framework that incorporates justice and fairness as it relates to those living in the environment and investing in the economy offers a new way forward—a true shift from extraction to regeneration. Whether addressing the complexities of climate change broadly or through energy siting specifically,

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114. *See* Exec. Order No. 12,898, 3 C.F.R. 859, 859 (1995) (directing each federal agency to "make achieving environmental justice part of its mission").

115. *See 17 Principles of Environmental Justice*, ENV'T WORKING GRP. (Oct. 2, 2007), https://www.ewg.org/news-insights/news/17-principles-environmental-justice [https://perma.cc/9THE-LTHX].

116. *See* Ruhl & Salzman, *supra* note 14, at 23–34 (describing the tension between equity and expense historically within the context of environmental regulation).

117. *Id.*

118. *See id.* (describing the urgency of the climate crisis and the competing interests of timely regulation).

119. *See* Richard Moore, '*Permitting Reform' Threatens Environmental Justice*, PROGRESSIVE MAG. (Oct. 25, 2024), https://progressive.org/op-eds/permitting-reform-threatens-environmental-justice-moore-20241025 [https://perma.cc/BQ4G-V3RA] (discussing the prioritization of speed over thorough environmental review and community input where there is expedited permitting).

120. *Id.*

a sustainability ethos is an integral aspect of collaborative governance.

B. WHAT IT MEANS FOR RENEWABLE ENERGY FEDERALISM

The Supreme Court's rulings in *West Virginia*, *Sackett*, and *Loper Bright*, along with my growing interest in and understanding of the just energy transition, have challenged me to reimagine renewable energy federalism and collaborative governance networks. The two biggest insights I have gleaned are: (1) sustainability is fundamental to governance, and (2) all stakeholders deserve a seat at the governance table. In redefining renewable energy federalism and expanding the scope of collaborative governance, I start from the original position articulated in the beta version—that the goal of collaborative federalism is to integrate local, state, and national siting policies into a cohesive governance structure.[121] Upon further reflection, I recognized that the hyperfocus on formal governance structures, especially at the federal level, does not truly incorporate a sense of collaboration. This was likely always the case, but the Court's dismantling of agency authority further illuminated this fact.

Rather than limiting governance to formal structures as defined in the Constitution, a sustainability perspective incorporates informal structures as well. My assertion that collaborative federalism and collaborative governance are distinct concepts solidifies this point. I previously conceived of renewable energy federalism as an exemplar for collaborative governance, a means of integrating the various scales of governance. I also acknowledged the need for input and expertise from the private sector. What I articulated, however, was much more closely connected to traditional notions of federalism in terms of the allocation of rights and responsibilities between the national and subnational levels of government.[122] Then the Supreme Court prompted me to rethink my position. In reality, I did not fully appreciate private stakeholder engagement within the governance structure and omitted community from the analysis. In

121. *See generally* Stokes, *supra* note 1.

122. *See e.g.*, Ryan, *supra* note 4, at 360 (describing the relationship between a central authority and political subunits and detailing the conflicting priorities and regulatory values as between local, state, and federal authority). *But see* Stokes, *supra* note 1, at 1760–62 (describing various governance networks including national, state, and local governments, as well as private sector stakeholders).

other words, I did not incorporate social equity within my own description of collaborative governance. By engaging with the energy justice literature and grassroots community organizers, I now recognize the need for a more holistic approach.[123] As a practical matter, governance is a very fluid process that takes shape through both formal and informal systems, particularly in the renewable energy context. Integrating a robust sustainability perspective within the renewable energy federalism context offers a path forward to a just energy transition.

III. SUSTAINABLE COLLABORATIVE GOVERNANCE

As with climate change generally, the clean energy transition is a "super wicked" problem even when justice is not at the forefront.[124] And, similar to other transitions over time, community buy-in is key to entrenching a sustainability framework into the societal fabric.[125] As we look toward the future, I offer sustainable collaborative governance as a theoretical framework through which decision-makers may filter their assessments, industry can model its metrics, and community can develop language to articulate its needs. I apply this framework within the renewable energy sphere, but propose it as a method of analysis in any policy area.[126] At a minimum, sustainable collaborative

123. *See, e.g.*, SHALANDA H. BAKER, REVOLUTIONARY POWER: AN ACTIVIST'S GUIDE TO THE ENERGY TRANSITION (2021); Baker & Kinde, *supra* note 10; Emma Kelly & Robert Kell, *Modeling a Just Transition in Virginia's Coalfields: Engaging Community Stakeholders on Emerging Energy Technologies*, APPALACHIAN VOICES (Mar. 2024), https://appvoices.org/resources/reports/Modeling_A_Just_Transition_report.pdf [https://perma.cc/J9ML-B35M] (describing a means of facilitating a just transition in Appalachia).

124. *See* Richard J. Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, 94 CORNELL L. REV. 1153, 1160 (2009).

125. *See* Ann M. Eisenberg, *Just Transitions*, 92 S. CAL. L. REV. 273, 276 (2019) (acknowledging the similarities between the energy transition and labor movements).

126. Similarly, the sustainability framework is a lens through which judges and justices alike can interpret statutes. In grappling with ambiguities to determine the appropriate outcome, the sustainability framework provides space to consider the past with an eye toward the future, particularly as debates regarding originalism and the living constitution perspective are reignited. *See generally* Lawrence B. Solum, *Originalism Versus Living Constitutionalism: The Conceptual Structure of the Great Debate*, 113 NW. U. L. REV. 1243 (2019); David A. Strauss, *The Living Constitution*, UNIV. OF CHI. L. SCH. (Sept. 27,

governance is infused with the sustainability framework and theories of collaborative governance, yielding a system through which various stakeholders work together to address social, economic, and environmental challenges in a way that meets the needs of the present without compromising future generations. This entails both substantive and procedural elements and is both ripe with opportunities and riddled with challenges.

Sustainable collaborative governance involves collective decision-making processes among various stakeholders in an effort to achieve long-term sustainability outcomes in policies and practices. I note five key steps in this process, which are closely related to land use and comprehensive planning as well as environmental justice: stakeholder identification, clear articulation of roles and responsibilities, joint decision-making, plan execution, and outcome evaluation.[127] It is also important to note that governance via this process is iterative as feedback and new inputs are continuously looped back in.[128] For instance, planners incorporate quantitative and qualitative methods to assess scientific, technical, political, and economic insights to determine community goals and outputs.[129] Each of these indicators serve a role in establishing resilient places.[130] Further, incorporating these facets into land use and comprehensive plans validates their significance. Planners have embraced the adage, "what gets measured gets done," which not only encourages collaboration, but also holds decision-makers accountable to the metrics

2010), https://www.law.uchicago.edu/news/living-constitution [https://perma.cc/3N5T-VHWN].

127. The mission, core values, and strategic goals of the American Planning Association inform the planning process and ultimately inform substantive aspects of land use and comprehensive plans. *See APA Mission*, AM. PLAN. ASS'N, https://www.planning.org/mission [https://perma.cc/8RFU-T22M]; *see also* Stokes, *supra* note 47, at 187 ("[L]and use planning is at the heart of regulating both the natural and built environment because it considers the intricacies at the intersection of property regulation and environmentalism."). Scholars have also advanced a holistic perspective of equity that integrates the triad of procedure, geography, and society by focusing on fairness in process, appropriate spatial configurations, and sociological and cultural influences. *See* Robert D. Bullard, *Environmental Justice in the 21st Century*, *in* THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION 19, 30–31 (Robert D. Bullard ed., 2005).

128. Ahmad et al., *supra* note 15, at 1101–05.

129. *See* Feiden & Hamin, *supra* note 48, at 9 (explaining the use of qualitative and quantitative measurements in studying sustainability).

130. *Id.* at 69.

that have been articulated.[131] This wisdom of planning and feedback implementation is vital to the sustainable governance model.

Commitment to a collaborative process is necessary but not sufficient for achieving sustainable outcomes. Process implementation is only half the battle. The other half entails taking inventory of and reckoning with how outcomes affect the environment, social equity, and the economy, and ensuring that no one element is consistently prioritized to the detriment of the others. Tradeoffs and paradoxes are inherent to integrating sustainability and collaborative governance. This means malleability and flexibility are warranted. It means grappling with power imbalances, conflicting interests, and resource limitations while embracing the possibility of enhanced resilience, increased engagement, and policy alignment.[132]

Renewable energy development serves as a prime example for sustainable collaborative governance given the various stakeholders, regulatory regimes, and geographic distinctions involved in planning, siting, and financing these electrical facilities.[133] It can simultaneously implicate national, state, tribal, and local governments as well as utility companies, investors, developers, and individual community members, each of whom approach the development process from a different perspective.[134] For example, each stakeholder is incentivized by competing interests ranging from adhering to renewable portfolio standards and maintaining constituent support to economic

131. *Id.* at 18.

132. *See* Ruhl & Salzman, *supra* note 14, at 12–13 (acknowledging the tradeoffs between rapid climate infrastructure development, "environmental protection, distributive equity, and public participation").

133. *See generally Global Warming of 1.5°C*, *supra* note 17, at 352–87 (assessing factors, challenges, and strategies related to implementing far-reaching climate responses, including the global energy transition).

134. Kauffman & Assocs., Inc., *Tribal Renewable Energy Development: Literature Review*, BUREAU OF INDIAN AFFS. 11 (June 2023), https://www.bia.gov/sites/default/files/media_document/bia_readi_litaturereview_final_stc_07112023.pdf [https://perma.cc/C9PF-FX9N] (describing tribes' roles and responsibilities as well as the regulatory barriers and opportunities for renewable energy development). *See generally* Hannah Wiseman, *Balancing Renewable Energy Goals with Community Interests*, KLEINMAN CTR. FOR ENERGY POL'Y (May 2020), https://kleinmanenergy.upenn.edu/wp-content/uploads/2020/08/KCEP-Balancing-Renewable-Energy-Singles-1.pdf [https://perma.cc/YRB9-CTQ7] (discussing the complexities of increasing renewable energy development, reducing regulatory transition costs, and embracing community engagement).

gain[135] and NIMBYism.[136] In the absence of a framework that seeks to balance these wide-ranging interests, there is a perpetual cycle of common winners and losers, which often facilitates further extraction even within a transition that seeks to be regenerative.[137]

Sustainability and renewable energy development is not a zero-sum game. When considering the environmental element of sustainability, renewable energy offsets the electricity generated from fossil fuel sources and reduces greenhouse gas emissions while also changing natural landscapes and requiring critical minerals for battery storage.[138] From a social equity perspective, it offers a path toward self-determination and investment in clean energy generation while also diminishing the pride associated with fossil fuel production and overburdening particular communities.[139] As it relates to the economy, renewable energy affords new employment opportunities and additional income streams while also resulting in decreased tax revenue[140] and

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135. *See generally* Sarah Moin et al., *Building Trust Through an Equitable and Inclusive Energy Transition*, WORLD ECON. F. (Jan. 2024), https://www3.weforum.org/docs/WEF_Building_Trust_through_an_Equitable_and_Inclusive_Energy_Transition_2024.pdf [https://perma.cc/AKQ5-ZZFH] (detailing the economic case for building social equity within the energy transition).

136. Not In My Backyard (NIMBY) complaints are commonplace with new development, particularly renewable energy projects. *See generally* Michael Dear, *Understanding and Overcoming the NIMBY Syndrome*, 58 J. AM. PLAN. ASS'N 288 (1992); Ashira Pelman Ostrow, *Land Law Federalism*, 61 EMORY L.J. 1397, 1410–13 (2012).

137. *See, e.g.*, Joseph B. Keller et al., *The US Must Balance Climate Justice Challenges in the Era of Artificial Intelligence*, BROOKINGS INST. (Jan. 29, 2024), https://www.brookings.edu/articles/the-us-must-balance-climate-justice-challenges-in-the-era-of-artificial-intelligence [https://perma.cc/X6XQ-95XY] (discussing the environmental footprint of artificial intelligence and the need to rectify inequities within vulnerable communities to ensure that machine learning does not perpetuate injustices).

138. Klass & Wiseman, *supra* note 57, at 325–31 (discussing the various narratives about renewable energy development including support of critical mineral mining as compared to energy project siting).

139. *See* Laura Mixter & Anna Smukowski, *Climate + Community Development: Emerging Investment Frameworks Fuel Transformative Impact* ("Communities with a history of economic disinvestment bear the greatest costs of environmental disasters and face the greatest risks from climate change."), *in* WHAT'S POSSIBLE: INVESTING NOW FOR PROSPEROUS, SUSTAINABLE NEIGHBORHOODS 261, 262 (Krista Egger et al. eds., 2024).

140. *See, e.g.*, VA. CODE ANN. § 58.1-3661 (2024) (exempting certain solar equipment from state and local taxation); N.J. REV. STAT. ANN. § 54:4-3.113b

potential supply chain disruptions.[141] Ultimately, the transition process is full of tensions that must be acknowledged in order to successfully manage that transition in a way that both addresses the needs of today and recognizes that the decisions of today impact tomorrow.

With the sustainability framework as the bedrock, there is an opportunity for holistic governance that is informed by common analytical tools—even if the analysis leads to different conclusions. The conclusions, however, call into question the various power structures as codified in federal, state, and local governing documents[142] and the informal power dynamics between government, industry, and community. There is thus a responsibility for all leaders, public and private alike, to take accountability, and to do so by balancing the interests of each stakeholder and by articulating how a decision effects the environment, social equity, and the economy. For instance, many local governments have taken the first steps of incorporating this framework through their Climate Action or Sustainability Plans.[143] These

(West 2024) (exempting certain renewable energy systems from real property taxation); NEV. REV. STAT. § 701A.360 (2024) (allowing for a partial abatement of local sales and uses taxes for renewable energy generation).

141. *See* Alberto Bettoli et al., *Renewable Energy Development in a Net-Zero World: Disrupted Supply Chains*, MCKINSEY & CO. (Feb. 17, 2023), https://www.mckinsey.com/industries/electric-power-and-natural-gas/our-insights/renewable-energy-development-in-a-net-zero-world-disrupted-supply-chains [https://perma.cc/S38E-7MDV] (explaining the impacts of supply chain disruptions on the development of renewable energy).

142. *See* JAY B. SYKES & NICOLE VANATKO, CONG. RSCH. SERV., R45845, FEDERAL PREEMPTION: A LEGAL PRIMER (2019) (explaining the layered power structure between federal, state, and local governments).

143. Many sustainability and climate plans were an outgrowth of the C40 Cities Climate Leadership Group, which is a global network of mayors that seek to confront the climate crisis. *See About C40*, C40 CITIES, https://www.c40.org/about-c40 [https://perma.cc/PHV9-LSA8]; *see, e.g.*, *2022 CAP: Chicago Climate Action Plan*, CITY OF CHI. (2022), https://www.chicago.gov/content/dam/city/sites/climate-action-plan/documents/Chicago-CAP-071822.pdf [https://perma.cc/6RZY-94RH]; *San Francisco's Climate Action Plan*, S.F. ENV'T DEP'T (2021), https://www.sfenvironment.org/media/14441 [https://perma.cc/Y7W6-7FW2]; *Climate Action Plan: 2019 Update*, CITY OF BOSTON (Oct. 2019), https://www.boston.gov/sites/default/files/embed/file/2019-10/city_of_boston_2019_climate_action_plan_update_4.pdf [https://perma.cc/3867-N9ZK]; *Climate Action Plan: 2021 Edition*, CITY OF PHX. (Sept. 27, 2021) [hereinafter *Phoenix Climate Action Plan*], https://www.phoenix.gov/content/dam/phoenix/oepsite/documents/climate/2021climateactionplanenglish.pdf [https://perma.cc/2JZV-TXMH]; *Towards Resilience: Strategic Energy Action Plan*, CITY OF CHARLOTTE (Dec. 2018)

plans describe goals related to emissions reduction, infrastructure improvement, and resiliency. Localities, such as the City of Phoenix, have also acknowledged that they are constrained by various limitations. The City asserted that it is unable to fully implement its plan, noting it needs "to work with partners across multiple sectors, since it lacks legal and institutional authority to completely implement all actions necessary on its own."[144] For those matters that are within its control—like achieving net-zero for municipal operations by 2030—the City has identified internal and external partners who can help it reach these goals.[145]

Sustainability plans exemplify the ways in which future-oriented, actionable planning can yield equitable outcomes. They do so by taking inventory of the goals and actions that are aligned with a larger vision. Whether the vision is to "become the most sustainable desert city on the planet"[146] or to "continuously improv[e], protect[], and preserv[e] the environment, its community, and economy,"[147] where the vision is clear, achieving sustainable outcomes can be a measurable goal. The same is true for renewable energy development. When the planning, siting, and decommissioning is grounded in sustainable collaborative governance, there is room for holistic decision-making and distribution of benefits and burdens in a manner that recognizes the past, appreciates the present, and considers the future.

Admittedly, framing development as a largely collaborative process is unlike the standard practice of prioritizing efficiency and limiting project engagement.[148] It is also counter to the calls for rapid deployment.[149] This framing, however, is a critical component of a just energy transition. Justice in the energy

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[hereinafter *Charlotte Strategic Energy Action Plan*], https://www.charlottenc.gov/files/sharedassets/city/v/1/city-government/departments/documents/seap-executive-summary-full-doc-final.pdf [https://perma.cc/E7AC-UZRK].

144. *Phoenix Climate Action Plan*, *supra* note 143, at 21.

145. Phoenix's Climate Action Plan identifies six pending actions that implicate renewable energy and require support from both internal and external partners. The plan also includes proposed time frames and identifies the lead stakeholders. *Id.* at 48–51, 64, 117.

146. *Id.* at 5.

147. *Charlotte Strategic Energy Action Plan*, *supra* note 143, at 3.

148. *See* Wiseman, *supra* note 134, at 3 (describing the tension between reducing environmental regulation for renewable energy while balancing government and community interests).

149. *Id.* at 1–2.

transition means providing for productive and sustainable livelihoods, centering traditionally excluded voices, and reassessing the methodology for reasonable and just energy rates, among other things.[150] Yet the just transition does not require upending traditional structures, but rather managing them differently and encouraging new methods of assessment. Take public private partnerships (PPP) as an example.[151] These dual-sector partnerships allow parties to allocate risks and benefits in a manner that is based upon their risk tolerance and expertise.[152] Within the PPP space, best practices include outlining procedures, describing decision criteria, identifying institutional responsibilities, understanding fiscal commitments, and setting forth jurisdictional parameters.[153]

These best practices are also useful within the renewable energy planning and siting context even though there are no formal requirements to approach the process in this way. Renewable energy siting implicates various stakeholders with a range of knowledge, authority, and expertise. As such, collaborative governance encourages engagement in a way that allows all stakeholders to be meaningfully involved. Further, incorporating criteria that requires developers, utility companies, and governments alike to articulate how the project will impact the environment, social equity, and the economy, establishes new, sustainable rules of engagement. This is but one example of how sustainable collaborative governance could be operationalized. No method is foolproof, but the existing governance structure

150. *See* Baker & Kinde, *supra* note 10, at 26 (synthesizing the legal, social science, and activist perspectives within the energy transition discourse); Shelley Welton & Joel Eisen, *Clean Energy Justice: Charting an Emerging Agenda*, 43 HARV. ENV'T L. REV. 307, 317 (2019) (identifying five reasons why justice should be prioritized: moral obligation, legal commitment to fairness, instrumentalism, necessity for technological advancement, and to circumvent growing inequality).

151. Public-Private Partnerships (PPP) are contracts between a private party—often a developer or financier—and a government entity for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance. *The APMG Public-Private Partnership (PPP) Certification Guide Chapter 2: Establishing a PPP Framework*, APMG INT'L 12 (2016), https://ppp-certification.com/sites/www.ppp-certification.com/files/documents/chapter-2-establishing-ppp-framework.pdf [https://perma.cc/PC5Q-W7U7].

152. *Id.* at 12–13.

153. *Id.* at 12–16.

and even the beta version of renewable energy federalism left much about the procedural and distributive outcomes to chance. Renewable Energy Federalism 2.0 is offered as a next best step, to shift toward a framework that incorporates principles of sustainability and collaborative governance.

Sustainable collaborative governance is not merely a normative frame offered to account for the Supreme Court's rulings or the second Trump administration. Rather, it is a framework that (1) validates environmental stewardship as a vital component of democratic governance; (2) explicitly considers social equity in decision-making and policy outcomes; and (3) incorporates a comprehensive set of quantitative and qualitative values into economic assessments. Sustainability's tripartite structure of environment, equity, and economy, coupled with the dynamic networks with the collaborative governance scheme, incorporates many substantive and procedural regulatory elements that are often disregarded. This coupling may also be a first step toward governing for a *just* energy transition.

CONCLUSION

In the midst of changing regulatory tides, Renewable Energy Federalism 2.0 seeks to amplify the conversation around energy justice and the just transition. In the beta version of renewable energy federalism, I asserted that the environmental justice and equity implications of renewable energy siting warranted further investigation. Little did I know that within a few years such policy goals might be totally disregarded at the federal level. Beginning in 2021, there was a renewed sense of climate consciousness. Environmentalism was praised on the national stage and there was momentum behind the shift from extraction to regeneration. Now in 2025, the future of greenhouse gas emissions reduction, environmental justice, and climate action at the national level is bleak. The Supreme Court has dismantled decades of precedent that had safeguarded agency authority, particularly in environmental regulation; the Administrator of the EPA has committed to take further steps to deregulate; and Congress's response to this deregulatory era is yet to fully be seen.

Despite these shifts, I see potential for sustainability, for collaboration, and for governing with the future in mind. This potential is not unearthed by focusing on a top-down hierarchy

or by exclusively relying on formal structures. The potential for sustainable collaborative governances lies with valuing each stakeholder—public and private, industry and community, federal and local. It lies in considering expertise informed by education and lived experiences. It lies in a willingness to consider today and tomorrow simultaneously. It is my belief that sustainable collaborative governance can offer a way forward to realize the promise of a renewable energy future.

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