

D I A L O G U E

# YEAR ONE REVIEW OF THE BIDEN ADMINISTRATION

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## SUMMARY

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Following a turbulent transition and in the midst of a global pandemic, Joseph R. Biden was inaugurated as the 46th President of the United States on January 20, 2021. In its first year, the Biden Administration prioritized climate and environmental justice initiatives through executive actions, legislation—including the \$1.2 trillion Infrastructure Investment and Jobs Act—and international agreement at the 2021 Conference of the Parties in Glasgow. On January 20, 2022, ELI convened experts for an exploration of the Administration’s environmental first-year accomplishments and setbacks, as well as the opportunities and challenges that remain. Below we present a transcript of that discussion, which has been edited for style, clarity, and space considerations.

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**Narayan Subramanian** is Legal Advisor with the Office of the General Counsel, U.S. Department of Energy.

**Jonathan H. Adler** is Director of the Coleman P. Burke Center for Environmental Law and Johan Verheij Memorial Professor of Law at Case Western Reserve University School of Law.

**Vickie Patton** is General Counsel at the Environmental Defense Fund.

**Quentin Pair** is an Adjunct Instructor at Howard University School of Law.

**Jonathan Brightbill:** Joseph R. Biden was inaugurated as the 46th president of the United States on January 20, 2021. Starting on day one, the Biden Administration prioritized climate change, environmental justice, and many other environmental reforms and actions through executive actions. President Biden went on to propose various legislation, including the \$1.2 trillion Infrastructure Investment and Jobs Act,<sup>1</sup> also known as the Bipartisan Infrastructure Law, and negotiated an international agreement at the 2021 United Nations Climate Change Conference in Glasgow.<sup>2</sup>

We have an outstanding group of expert panelists to explore the Biden Administration’s first-year achievements and shortfalls on environmental and natural resources issues, and look ahead for opportunities and challenges in the years to come.

Professor Jonathan Adler is the inaugural Johan Verheij Memorial Professor of Law and director of the Coleman P. Burke Center for Environmental Law at the Case Western Reserve University School of Law. He’s a senior fellow at the Property and Environment Research Center, and one of the nation’s most cited legal academics in environmental as well as administrative law.

Quentin Pair is an adjunct instructor at the Howard University School of Law, where he teaches courses on environmental law, environmental justice, and Title VI of the Civil Rights Act. Quentin was a senior trial counsel in the Environment and Natural Resources Division at the U.S. Department of Justice (DOJ) from 1980 until 2015. He served as DOJ’s environmental justice coordinator and as a member of the Federal Interagency Working Group on Environmental Justice (IWG) before his retirement.

Vickie Patton serves as the Environmental Defense Fund’s (EDF’s) general counsel and leads its legal and regulatory initiatives. For more than 30 years, Vickie has worked with partners to secure national and state protections addressing climate and air pollution, participating in numerous successful climate and clean air cases to protect human health and the environment. Prior to EDF, she served in the U.S. Environmental Protection Agency’s (EPA’s) Office of General Counsel, where she helped to implement the historic 1990 Clean Air Act Amendments and received the Agency’s Gold Medal for Exceptional Service.

Finally, we have a representative of the Biden Administration, Narayan Subramanian, who was appointed into the Administration as legal advisor at the U.S. Department of Energy (DOE) on January 20, 2021. Prior to joining DOE, Narayan was a research fellow at the Center for Law, Energy, and the Environment at Berkeley Law, leading a project tracking deregulatory efforts. He also served

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1. Pub. L. No. 117-58, 135 Stat. 429 (2021).

2. Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement, *Glasgow Climate Pact*, FCCC/PA/CMA/2021/L.16 (Nov. 13, 2021), [https://unfccc.int/sites/default/files/resource/cma2021\\_L16\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf).

as a fellow at the Initiative for Sustainable Energy Policy at Johns Hopkins University, and began his career as a research associate at ELI.

I want to start with the legislative achievements and objectives of the Biden Administration. On that, I'll let Narayan give us his take as someone who's been a part of the Administration and has been working on the legislative side of the agenda during this first year.

**Narayan Subramanian:** The first year of the Biden Administration was not a quiet year on the legislative side. Toward the end of the year, President Biden signed the Bipartisan Infrastructure Law, which puts quite a bit of money into the nation's infrastructure. DOE in particular was entrusted with \$62 billion over the next couple of years to spend on clean energy research, development, and demonstration (RD&D) across the spectrum for various technologies.

The new law also sets up a new Office of Clean Energy Demonstrations for DOE. That gives about \$22 billion for clean energy demonstration, from carbon capture to hydrogen to advanced nuclear reactors, as well as rare earth demonstrations.

One of the things that became clear in the supply chain crisis is the extent to which we're reliant on critical minerals and materials for clean energy. So, that's also part of DOE's mandate—to push the ball forward on RD&D for critical materials and minerals, so that we can actually open up the supply chain for clean energy to be manufactured here in the United States. That is a major focus of the Bipartisan Infrastructure Law. It also puts money into existing programs like the Weatherization Assistance Program. That's been the bread and butter of DOE's deployment efforts on the energy efficiency side.

Then, finally, the new law puts a lot of money toward transmission infrastructure, improving our nation's energy resilience but also trying to expand transmission access to facilitate better deployment of clean energy technologies from offshore wind to solar in more remote parts of the country. It is a very, very exciting year for DOE. In the coming years, we'll be putting this money out there and pushing the RD&D ball forward for all major, cutting-edge clean energy technologies.

**Jonathan Brightbill:** Narayan, there's a lot of activity right now among investors and funders for clean energy projects, as well as the lawyers working on them, as the country transitions toward more carbon-free forms of energy. In the new Act, there is expanded authority for DOE to help identify needed transmission corridors and try to obtain approvals for them as a backstop to what may be happening at the state level. Is there anything you can share about when folks can expect to see that authority begin to come into play, and when some of that money will come into the system?

**Narayan Subramanian:** In January, DOE put out a notice of intent on how it plans to start using some of those

authorities.<sup>3</sup> Like you mentioned, one of those authorities that DOE now has is what we call an anchor tenant authority for DOE to essentially act as the first investor in a transmission line, and allow a private or public entity to then take the reins afterward.

Very often, in transmission, we find that there's a first mover problem. So, with the new authority entrusted to DOE under the Bipartisan Infrastructure Law, DOE can actually jump in first. Through the Transmission Facilitation Program fund, DOE now has a \$2.5 billion revolving fund that the Department can use to grease the wheels and get money out the door to start building transmission lines.

Once those transmission lines start to get built, demand for the transmission lines will follow. That's been a critical piece of DOE and the Administration's strategy moving forward: to expand transmission access for the federal government to take a more active role in facilitating transmission expansion.

**Jonathan Brightbill:** Let's continue our conversation about legislative achievements or shortfalls, and move to Professor Adler to provide observations outside of the Infrastructure Investment and Jobs Act.

**Jonathan Adler:** I think it's interesting that we just heard about how the federal government wants to use its authority to help accelerate projects, because that's going to be particularly important. One thing missing from the infrastructure bill was any substantial change to the various permitting and other processes that, while they historically may have been used to stop environmentally harmful development and infrastructure, today often end up obstructing the development and deployment of renewable energy.

I'm in Cleveland. If one looks at the efforts to put in offshore wind in Lake Erie, one sees how the current regulatory process can just chew up these projects and chew up resources. It's good for lawyers (I tell my students that there's lots of work to do here), but we're not very good at accelerating the rate at which we deploy these technologies.

Another notable aspect of the Biden Administration's legislative approach this first year is the broader debate within the Democratic party on how to approach the Congressional Review Act (CRA).<sup>4</sup> As folks may recall, four years ago, the Donald Trump Administration celebrated the unprecedented degree of legislative action that it had taken.<sup>5</sup> The bulk of those actions were CRA resolutions of disapproval that did no more than repeal the Barack

3. Building a Better Grid Initiative to Upgrade and Expand the Nation's Electric Transmission Grid to Support Resilience, Reliability, and Decarbonization, 87 Fed. Reg. 2769 (Jan. 19, 2022).

4. 5 U.S.C. §§801 et seq.

5. Specifically, the Administration claimed President Trump had signed "more legislation in his first 100 days than any president since Truman." See Lauren Carroll, *Trump Has Signed More Bills in 100 Days Than Any President Since Truman, Spicer Says*, POLITIFACT (Apr. 17, 2017), <https://www.politifact.com/factchecks/2017/apr/27/sean-spicer/trump-has-signed-more-bills-100-days-any-president/>.

Obama Administration's regulations. So, there was a question as to what extent the Biden Administration and the Democratic U.S. Congress would use the CRA to repeal Trump Administration regulations.

This question is important because, as we all know, the regulatory process is slow. It's laborious. If you want to survive judicial review, you've really got to take your time to dot your i's and cross your t's. That's arguably more important now than ever, given some of the recent trends in administrative law.<sup>6</sup> The CRA is potentially a very powerful tool to clear the decks relatively quickly.

But one concern has been a provision in the CRA that says agencies can't adopt a new rule that is substantially similar to one that has been repealed.<sup>7</sup> Since that provision has never been challenged in court, it's also never been interpreted in court. So, if you repeal, say, a Trump Administration regulation that is deemed to be insufficiently stringent and you want to then have the agency replace it with a more stringent one—would you be able to do that? There's some question around this.

I think that's been one of the reasons for reluctance and why there were only a total of three resolutions of disapproval for Trump Administration regulations. One was in the environmental space, but that one I think is quite significant because it involved regulation of methane.<sup>8</sup>

What's interesting is that the Trump Administration regulation simultaneously repealed the more stringent Obama Administration rule on methane emissions and replaced it with a much less stringent rule. It was correctly observed that since one rule remains, to repeal that rule is to restore the preexisting Obama air regulation. And so, perhaps counterintuitively, this legislative mechanism that is often seen as a purely deregulatory tool can actually be used to heighten the stringency of regulations.

This is one area where there may have been some lost additional opportunities for the Biden Administration. Folks at the George Washington University Regulatory Studies Center identified more than 170 Trump EPA rules that were subject to CRA repeal at the beginning of 2021.<sup>9</sup> The way the CRA was used was, I think, significant and—even if only on the margins—lessens the load on EPA, which is doing a lot of work to try both to undo policies from the Trump Administration that the Biden Administration disagrees with, and to adopt a new set of policies to move forward.

**Jonathan Brightbill:** Vickie, we've heard from Narayan about some successes, and Professor Adler noted the use of

the CRA on the methane front. The Biden Administration obviously had some successes, but I know there was a lot of proposed legislation that some would have liked to see go even further. I'm interested in your views on how the Biden Administration fared in the first year and what you're hoping to see in the next year.

**Vickie Patton:** The Bipartisan Infrastructure Law reflects some important collaboration with public investments and private-sector partnership, in addition to the investments in grid modernization that will unlock an enormous amount of private-sector investment and capital. There are significant investments in electric charging infrastructure that will be important to advance equity and ensure that charging infrastructure is accessible to all people and all communities. We need to continue to unlock those private-sector investments in electrification that have been historic in the past year.

I want to touch on the fact that the new legislation made historic investments in clean water. We have a crisis in our country when it comes to ensuring that every person in every community has access to clean drinking water. Those resources are now being pushed out, and these investments couldn't be more important. Hopefully, by year two, we'll be in a place where those resources are delivering tangible outcomes for clean drinking water for our children and all communities across America.

We continue to look to the Biden Administration and to members of Congress to take additional action on Build Back Better. Failure is not an option. There's an enormous amount at stake for the American people building on the foundation of the Bipartisan Infrastructure Law to, again, make crucial investments and find solutions that will address the climate crisis, that will create jobs, and that will put our country, now and for years to come, in a stronger position.

I want to touch on Professor Adler's comments on the CRA disapproval resolution that the president signed into law in June, which is significant. There are a couple additional elements to consider here. One is that there is clear support from the regulated community for Congress to countermand the Trump Administration's efforts to deregulate methane pollution from oil and gas. In the rulemaking that the Biden Administration is currently moving forward, we're continuing to see strengthened, protective, well-designed limits on methane pollution from oil and gas—and oil and gas companies, community leaders, and state innovators are all aligned in supporting this rigorous action. Second, to Professor Adler's point, we've gotten to a point where we're now working on solutions far more quickly because Congress is clearly countermanding the efforts by the prior administration to tear down those important safeguards.

Looking forward to next year, there's an enormous amount of progress to continue to make, both in implementing and giving meaning to carrying out the Bipartisan Infrastructure Law and in getting Build Back Better across the finish line.

6. See Jonathan H. Adler, *The Legal and Administrative Risks of Climate Regulation*, 51 ELR 10485 (June 2021).

7. See 5 U.S.C. §801(b)(2) (barring an agency from issuing a "new rule that is substantially the same" as rule repealed under the CRA).

8. Providing for congressional disapproval under Chapter 8 of Title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, S.J. Res. 14, 117th Cong. (2021).

9. See GW Regulatory Studies Center, *Rules in the CRA Window by Agency—117th Congress*, <https://regulatorystudies.columbian.gwu.edu/sites/g/files/zaxdzs3306/ff/image/CRA/Rules%20in%20CRA%20Window%20by%20Agency%20-%20Jan%202021.jpg>.

**Jonathan Brightbill:** Quentin, you're one of the nation's experts on issues of environmental justice. The Biden Administration came in with a very aggressive agenda and made announcements around environmental justice, some legislative and some by the executive branch. We're going to start on the legislative side. What was your impression of how the Biden Administration fared during this first year, and what are you looking for in the coming year?

**Quentin Pair:** Legislatively, I think it's a mixed bag. Of course, there is the proposed legislation to make environmental justice a federal law, which actually has been around for some time.<sup>10</sup> As I have to tell my students, there is no environmental justice law—and this begins a big discussion about whether we need the law or not. I know from my work in DOJ and on the Interagency Working Group that Executive Order No. 12898<sup>11</sup> was a lot more effective than people first thought. But this is a discussion that will be ongoing.

For me, the most notable action in terms of environmental justice is Executive Order No. 14008, Tackling the Climate Crisis at Home and Abroad.<sup>12</sup> It is a huge document putting in place the infrastructure, if you will, for moving the environmental justice agenda forward, particularly with the Justice40 initiative,<sup>13</sup> which set out early pilots and distribution of funding to programs.

The real accomplishment there is the establishment of the White House Environmental Justice Advisory Council and the White House Environmental Justice Interagency Council. This moves forward the actions of the President William Clinton-era Executive Order No. 12898, which created the IWG and coordinated the actions of a number of federal agencies under the leadership of EPA. It was a good beginning. It had its ups and downs, but it began the exploration of having agencies work together to address really big problems facing underserved communities. It has now been moved up into the White House, signifying its political importance and also enhancing control of the involvement of IWG efforts.

In the Obama Administration, under the IWG, all the agencies had to sign a pledge to promote the Executive Order No. 12898 goals on environmental justice. This included certain important obligations. For instance, each agency of the IWG had to publish yearly reports on their websites covering what they had accomplished in terms of environmental justice, what complaints they had received, how they would respond to those complaints, and so on. That was a well-coordinated effort.

Under the last Administration that all but died out. I looked recently at DOJ, where I was part of that program putting forth those reports, and unfortunately found that the last report published was from 2017. I would hardly call that current. Access to environmental justice accomplishments in these agencies has diminished over the past four or five years.

Also, the amount of money allocated and promoted in budgets for these efforts is very important. In the last Administration, budgets for environmental justice were all but eviscerated and had to be put in by Congress. So, it's something of a mixed bag.

But I think the Executive Orders, which are what the Administration has had to resort to, is where the action is. EPA programs have distributed a great deal of early funding. And particularly in water, approximately \$55 billion has been allocated under the Bipartisan Infrastructure Law to address all kinds of water issues for states and for tribes. The Administration is also addressing tribal issues, which is a new departure, and bringing the tribal communities—which are some of the poorest and hardest-hit communities in the country—into not only the discussion, but also into the decisionmaking process.

Lastly, I will point out that the Environmental Justice Advisory Council has brought in people who are in and of the communities affected. Not just experts and people who have titles, but a whole list of everyday working people and people who have been in the struggle for environmental justice for many years. The Council has brought them into the decisionmaking process. It's an important development, because communities like to say, "We speak for ourselves with our own voice."

**Jonathan Brightbill:** I want to stay on the topic of the executive branch, to which we have organically transitioned. But first, there are some audience questions. Vickie, you mentioned the monies that would be made available for clean water investments. You also mentioned funds in the Infrastructure Investment and Jobs Act. Do you know if those investments are only in the form of loans, or are there grants that are authorized to be issued? And do you have any sense of the proportions and amounts of money available?

**Vickie Patton:** I don't have the exact figures, but I think there are significant grants in addition to major resources that are going out right now to communities and to help replace lead service lines. As we remove lead from our drinking water, it's important to ensure we're comprehensive in our approach. For example, some programs remove only part of the lead service lines and not all of it. We've got to make sure that we address all of the lead that can leach into our drinking water. These are major investments happening right now that can reach across the country, along with many additional resources, but I don't have the number at my fingertips.

**Quentin Pair:** I don't have the exact figures either. But I know there are many grant programs throughout the fed-

10. Barry E. Hill, *Time Has Come Today for Environmental and Climate Justice Legislation*, 51 ELR 10102 (Feb. 2021), [https://www.eli.org/sites/default/files/docs/elr\\_pdf/51.10102.pdf](https://www.eli.org/sites/default/files/docs/elr_pdf/51.10102.pdf).

11. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12898, 3 C.F.R. 859 (1994).

12. Exec. Order No. 14008, 86 Fed. Reg. 7619, 7629 (2021).

13. Cecilia Martinez & Candace Vahlsing, *Delivering on Justice40*, WHITE HOUSE (Dec. 2, 2021), <https://www.whitehouse.gov/omb/briefing-room/2021/12/02/delivering-on-justice40/>.

eral agencies. EPA in particular has committed the largest number of grant monies into small grant programs, beginning with money to start programs in communities to address environmental justice issues.

What I'd call the poster child of these efforts is ReGenesis in South Carolina under the leadership of Harold Mitchell, the founder of this grassroots, community organization.<sup>14</sup> I remember Harold fresh out of undergraduate school—he would use any form he could find to get people's attention to the pollution and the mortality in his community. He was able to secure a \$20,000 small grant from the Office of Environmental Justice. Over 10 years, they have now leveraged that amount to about \$300 million in commercial development and investment. This includes everything from Volkswagen putting a plant there, medical research facilities, and so on. It shows you the power of seed money and what it can do. The community has been transformed by this investment, and the program is also pushing its money out into these communities.

More than the money, my concern is whether the people being recruited to positions in federal agencies have expertise in dealing with communities and environmental justice issues. At the beginning of the Obama Administration, there was a big meeting being planned to have the president meet with communities. I was invited to one of their planning sessions. I walked in and I saw more people than I'd ever seen before in one room on environmental justice.

When we went around with introductions, I thanked the people who organized it, but said, “the problem I have is I don't know any of you people, and I have been doing this work for a long time. You'd better go back into your agencies and find the people who actually have experience dealing with these communities and know what their issues are. You need to *ask and learn* what the communities think their problems are as opposed to being paternalistic and *telling them* what their problems are.” I still had my job after that, by the way. But this has always been a big problem. Now that environmental justice is the new, important, “sexy” thing, people want to get associated with it and put it on their resume and check that box off. But it is imperative to find people who not only are passionate about it, but also have the expertise in the area.

That's why I'm so pleased about the White House Environmental Justice Advisory Council. If you look at the membership, all of those people have a lot of experience in the issues of environmental justice *and* more importantly are from the community. There is this misguided perception that the people in environmental justice communities or communities with environmental justice issues are poor; therefore, they're not educated and don't understand the issues. In fact, there are a lot of Ph.D.s and lettered people in these communities with great experience that they bring to this Administration. That I really think is one of the major accomplishments in this first year of the Adminis-

tration. Money is always important; we need more of it in these projects. But getting people who are qualified and respected by the communities that we're trying to serve into positions of authority is just as important.

**Jonathan Brightbill:** Staying on the topic of the executive branch and what the Biden Administration has been accomplishing within the scope of the Article II agencies, we'll turn back to you, Narayan. One question from the audience relates to your mention of nuclear energy, and notes that there seems to be a building bipartisan consensus that nuclear can be an increasingly safe and important part of our carbon-free energy footprint in the future. The question asks whether and what the Biden Administration is doing and planning to do to advance nuclear energy.

**Narayan Subramanian:** Two things. I meant to mention this with regard to the Bipartisan Infrastructure Law. One of the programs that it sets up is the Civilian Nuclear Credit Program, which provides \$6 billion to help existing, safe nuclear generators stay online. All the studies show that, if existing nuclear generators go offline too early, it could definitely lead to a spike in our electricity-sector emissions. That's quite important. That's the program that DOE intends to set up in the next calendar year.

The other thing is, through the Office of Clean Energy Demonstrations, the Department is trying to explore new cutting-edge, safe nuclear technologies, such as small modular reactors and the like. Those efforts are still in the works. But with the Bipartisan Infrastructure Law, there's definitely a renewed mandate to put money and attention into nuclear.

**Jonathan Brightbill:** Any other observations on the Biden Administration's first-year accomplishments beyond nuclear?

**Narayan Subramanian:** On the regulatory front, DOE's major program is of course the Appliance and Equipment Standards Program. Executive Order No. 13990,<sup>15</sup> which was issued on day one of the Administration, directed all federal agencies to conduct a review of their policies to identify regulations that were inconsistent with the Administration's climate ambition.

DOE identified 13 appliance standards rules that we would take a second look at within the first year. Those rules range all the way from procedural rules—what we call the Process Rule—which inhibited the Department from setting new appliance standards as quickly as it otherwise could have—to showerheads, residential and commercial heaters, and general service lamps. There's a whole host of major appliance standards categories that the Department has revisited. In the past year, we put out at least a proposed

14. ReGenesis Institute, *Home Page*, <https://www.theregenesisinstitute.com/> (last visited Feb. 16, 2022).

15. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, Exec. Order No. 13990, 86 Fed. Reg. 7037 (2021).

rule for 10 of those 13 rules that were identified under Executive Order No. 13990. This is a work in progress.

Like I mentioned, the procedural rules that were addressed early on paved the way for the Department to forge ahead with the appliance standards regulatory schedule that it has been behind on for many years now. So, in the next couple years, you can expect many new rules to come out from the Department on appliance standards. But the first year was definitely a banner year for it to reestablish the Appliance and Equipment Standards Program as a critical pillar of the Administration's climate strategy.

**Quentin Pair:** I'd like to address Narayan's points about nuclear energy. I know all the good parts about nuclear power, but one problem that's never been solved by any administration has been nuclear waste. How do you address the issue of nuclear waste? I don't mean this as a criticism of the Biden Administration. But the federal government in general has to figure out a way to address that. DOE has never really satisfactorily addressed the issue of safe storage and disposal of nuclear waste. So, I hope that the Department will put some emphasis on addressing that and explaining how it is increasing efforts to ensure the safe storage and disposal of that waste.

**Jonathan Brightbill:** I want to turn it over to Professor Adler. As somebody who has watched a number of administrations, from the George W. Bush Administration to Obama Administration to Trump Administration and now the Biden Administration, I'm interested in your observations regarding the Biden Administration's first year and how the things we're seeing compare to what you've observed before.

**Jonathan Adler:** This isn't an original observation from me, but the trend over the past 20 or so years has been toward presidential administration. Less reliance upon Congress, more reliance upon the executive branch to make broad policy decisions. That trend includes efforts to find ways around some of the administrative law obstacles or roadblocks that slow things down. That has included centralizing decisionmaking in the White House—as we've seen in an increasing degree, from the Bush Administration through the Obama Administration and up to the Trump Administration until today—as well as trying to find ways to quickly reverse decisions.

I think one part of that trend that affects our political expectations has been emphasizing style over substance, or the sizzle over the steak. That means lots of executive orders and lots of attention to them, which is great because executive orders certainly set the tone and make clear what an administration's policies are. It's a public way of announcing to the world that these are our priorities, these are instructions we're giving to our agencies, these are the things we want to put on the table. Whether it's environmental justice or climate, we see the Biden Administration doing that, as the prior Administration did.

The problem is that the executive orders only set the agenda. They don't actually do all that much, and what

really matters is the follow-through. At this point, it's hard to know how successful some of that follow-through will be. The Biden Administration has done the tone-setting you would expect: putting issues—especially environmental justice and climate—on center stage within those agencies that have authority over those areas and, especially with climate, putting those issues on the agenda of agencies we haven't historically thought of as being environmental agencies. An example is encouraging the U.S. Securities and Exchange Commission (SEC) and agencies with jurisdiction over financial matters to incorporate climate considerations. It's very significant in terms of tone-setting. We'll have to see what the follow-through is.

One other thing that's worth watching is that we don't yet have a confirmed administrator for the Office of Information and Regulatory Affairs (OIRA). OIRA, like the CRA, is generally seen as a deregulatory office. "OIRA's where good rules go to die" has certainly been the view from environmental organizations and the progressive community historically.

What's interesting is that, at least based on reporting, this Administration's White House has wanted EPA to be more aggressive with its vehicle emission rules, and EPA has pushed back.<sup>16</sup> I will say that EPA's successful pushback is in part a consequence of not having a U.S. Senate-confirmed OIRA administrator. That means that the ability of the White House to exert pressure through the OIRA process is reduced. If you talk to people who have been in those rooms, they'll say that when you're sitting around the table, a person who is Senate-confirmed has more pull in that meeting than someone who's in an acting role.

If the White House is going to be successful at using presidential administration and White House directives to follow through on the priorities set in these Executive Orders, it needs to recognize that you need to, for example, have a Senate-confirmed head of OIRA. You need to have folks in place that can help follow through.

We saw with the Trump Administration that a lack of people in place who are Senate-confirmed with expertise and knowledge exhausts your ability to get things done quickly. In a bureaucracy, you need those folks in place who have the expertise, the knowledge, and the political stature that comes from being appointed or confirmed.

**Jonathan Brightbill:** As somebody who has sat at a number of meetings with people who are Senate-confirmed and not Senate-confirmed, I'd certainly endorse your observation about the pull that that status gives you. Do you read anything into the fact that we don't have a Senate-confirmed OIRA head at this point?

**Jonathan Adler:** I'll defer to others on that. Historically, there has been a parallel to the CRA in that OIRA has been viewed with suspicion by folks in the environmen-

16. Jennifer Dlouhy, *EPA Dismissed Biden Officials' Criticism of Auto Emissions Plan*, BLOOMBERG (Aug. 24, 2021), <https://www.bloomberg.com/news/articles/2021-08-24/white-house-warned-epa-its-auto-emission-plan-might-be-too-weak>.

tal community because that's where economists tended to push back against aggressive environmental rules. So, it's perhaps unusual to think of OIRA as a place where the Biden Administration could in fact put pressure on agencies to go in the opposite direction.

I don't know whether there have been internal political disputes about potential nominees, but as a practical matter, as time goes on, it'll be more and more difficult to turn those first-year aspirations and priorities into tangible on-the-ground results, embodied in rules that have gone through notice-and-comment procedures and other processes, if you don't have those folks in place.

**Jonathan Brightbill:** I want to bring Vickie into the conversation and get her perspective as someone who represents those environmental groups and maybe has been skeptical of OIRA.

**Vickie Patton:** I think there have been important parallels between executive branch actions to carry out the agencies' responsibilities to protect human health and the environment, and the investments that Congress is making to both support and accelerate that progress. So much of the infrastructure legislation is about investments that are complementary with and accelerating the core, delegated authorities of the expert agencies. That's important. It's a way to accelerate the progress that we're seeing in the private sector through well-designed public policy, and both public and private-sector investments.

A couple of examples along those lines. Just in the past year, there have been historic investments in electrification. They're coming from major American manufacturers—General Motors, Ford, Stellantis, formally known as Chrysler—which have made or committed to make investments of more than \$100 billion in electrification over the next several years. They see huge, important imperatives to address climate change and to address air pollution that affects human health, in order to remain competitive and create jobs in a rapidly changing global marketplace. The infrastructure investments, including in charging infrastructure, are very complementary with this transition in private-sector investments.

Likewise, EPA's efforts to restore partnerships with states that are innovating and leading on vehicle standards, and efforts to restore long-standing, well-designed clean car standards while developing the next generation of standards, are all aligned in carrying out core responsibilities in governing statutes like the Clean Air Act. Other examples include forging partnerships with the private sector. Those automakers were with the president on August 5 at the White House when he announced Executive Order No. 14037,<sup>17</sup> which has been a framework bringing people together around important, transformative change.

There's also been an important effort to restore science. We've seen that in a number of important decisions where

agencies like EPA are taking a careful, science-based, data-driven look at health-based standards for respirable particles that are breathed deep into the lungs and have enormous consequences for millions of Americans, including communities that have not been adequately protected from respirable particles. That's under close and careful review anchored in science, and that's how we solve problems in our country—by bringing people together, collaborating, and making decisions anchored in science and in law.

I also want to touch on Jonathan's and others' comments about financial regulation. As the Biden Administration carries out its core responsibilities to ensure that people have a safe, secure, financial future, there is a rapid change happening in the private sector where investors—small, medium, and large—now expect to get core information about climate risk in their investments.

It is imperative that the SEC and other financial regulators recognize the science that tells us that climate risk and climate change is here, for it has enormous consequences on our financial system. We can protect investors at all levels by doing a better job at providing greater transparency about those risks and how asset managers and publicly traded companies are managing those risks. A lot is happening in public policy that is consistent with and building on the trends and changes we're seeing in the private sector.

**Jonathan Brightbill:** On the topic of climate-related financial risk and disclosures—a lot of voluntary efforts have happened to date, which have led many companies to take public pledges to be net-zero or otherwise reduce their carbon emissions. I'm interested in this panel's views on whether and how these market-side disclosures—which may be encouraged by the SEC or Federal Trade Commission regulations, or greenwashing lawsuits—are likely to affect the country's transition to a carbon-neutral or zero-carbon energy future.

**Jonathan Adler:** I'm not entirely sure how much what the SEC does will move the needle, because a lot will depend on the requirements for disclosure, and how rigorous, verifiable, and standardized they are.

But whether or not the SEC moves forward in that direction, there's work by individuals like Michael Vandenberg,<sup>18</sup> whom I know ELI has highlighted in the past, that shows a tremendous change in the private sector to address emissions through supply chains and other efforts. These changes occur sometimes as a way of attracting consumers, and sometimes because of a change in a company's internal ethics.

There has been dramatic change there, and it's been where a lot of the change has occurred, given that the federal government's ability to directly regulate greenhouse gas emissions is constrained. The Biden Administration has been very aggressive with methane where the relevant legal authority is quite clear. Whether it has the broad legal

17. Strengthening American Leadership in Clean Cars and Trucks, Exec. Order No. 14037, 86 Fed. Reg. 43583 (2021).

18. See, e.g., Michael Vandenberg, *Private Environmental Governance*, 99 CORNELL L. REV. 129 (2013).

authority to regulate emissions in other contexts and if so, how broadly, is a bit more up in the air. The case is now before the U.S. Supreme Court,<sup>19</sup> but we have seen significant progress in the private sector.

What would really accelerate that lever is carbon pricing in some form. We've seen dramatic dematerialization across developed countries for pretty much every impact or input that's priced. If we want that sort of dramatic transformation, which I would argue is thus far the most important and positive environmental trend of the 21st century, you need to figure out a way to get carbon priced. That will accelerate what we see in the private sector.

The challenge is figuring out how to do that, and whether or not the Biden Administration has enough regulatory tools to do that. And if not, how can it get the tools? That's the big question going forward.

**Vickie Patton:** Here in Colorado, Xcel Energy has been working with a steel mill in Pueblo, Colorado, that employs more than a thousand people. The steel mill is transitioning to utility-scale solar to keep those jobs in Pueblo, because utility-scale solar is outcompeting the fossil fuel energy that it has long been purchasing. This solar is now being purchased through a long-term contract. It's a change that will provide cleaner and healthier air for the people of Pueblo and keep those manufacturing jobs in the city.

An important question as we move forward is how to eliminate the barriers to these sorts of market transformations. We're at a point where these clean energy solutions are outcompeting other forms of energy. That's great news. We can have zero-methane solutions in the power and transportation sectors that provide healthier lives for millions of people and communities that have been afflicted by pollution for far too long. It would create jobs and economic prosperity and opportunity. It would help us address the climate crisis.

The Federal Energy Regulatory Commission has indicated that it's going to look at ways to eliminate the market barriers to competitive clean energy solutions and unlock that private-sector progress. And in the financial regulatory space, we need transparency. We need to ensure that investors have rigorous, transparent information so that there is a full and fair functioning market to consider, address, and manage for those climate risks. Then, we need pollution standards that create protections and safeguards to ensure that we are delivering cleaner and healthier air to save lives and help create jobs.

All of these tools and measures are important for delivering vital public health protections, providing greater equity, and ensuring that markets all across America are operating in a way that is fair and rigorous in addressing climate harms, human health impacts, and environmental injustices.

**Quentin Pair:** I want to piggyback on and endorse Professor Adler's comments on the role of the executive order in setting the table, and the limitations vis-à-vis legislation. As we know, executive orders can be ephemeral but nonetheless important. Also, touching on what he said earlier, if there's a criticism I have of the Biden Administration, it would be in regards to the slow vetting and placement of people in appointed or Senate-approved positions. There are some great positions, but the vetting process by the White House in particular has been a bit slow.

As far as the confirmation process, some candidates have not been voted out of committee—some very important positions in EPA, the Office of Enforcement and Compliance Assurance, and throughout the government. There are a number of positions that have not been filled. As Professor Adler noted, these positions are important. The agenda is not going to be able to move forward, and here we are a year later. That is a real concern to me.

**Jonathan Brightbill:** Before we return to our discussion on the executive branch, I want to talk a bit about the courts and this past year's judicial achievements or shortfalls. Professor Adler mentioned that there is an important case coming up in the Supreme Court related to the Trump Administration's Affordable Clean Energy rule.<sup>20</sup>

From a judicial perspective, it may seem odd to examine the Biden Administration too closely because it's quite young. But there certainly have been developments, including in the Supreme Court, where the Biden Administration undertook some very well-publicized changes in position by the solicitor general before the Supreme Court on a variety of cases. I'm interested in the views of the panelists on how the Biden Administration has fared and is likely to fare in the courts on various priorities.

**Jonathan Adler:** The caveat here is that it's early. Most of the big cases typically involve challenges to or defenses of rules. It takes a while for an administration to have its own rules in place, and then a while before those challenges evolve and reach the appellate courts. So, we haven't seen too many examples of the Biden Administration having to defend the policies that the Administration itself has developed in the environmental space. We have not seen a repeat of what I would characterize as the reckless effort to undo a lot of policies, especially from EPA, that we saw under Administrator Scott Pruitt at the beginning of the Trump Administration.<sup>21</sup>

I suppose it was somewhat embarrassing for the Biden Administration to decide not to defend the Trump Administration's waiver that EPA had granted a small refinery, and then for the Supreme Court to rule in favor of the prior EPA policy that the Biden Administration was no longer defending.<sup>22</sup> I say "somewhat embarrassing" because

19. *West Virginia v. Environmental Protection Agency*, No 20-1530 (oral arguments were held Feb. 28, 2022). ELI members may view a webinar about the case at <https://www.eli.org/events/west-virginia-v-epa-epas-climate-authority>.

20. *Id.*

21. Jonathan H. Adler, *Hostile Environment*, NAT'L REV., Oct. 15, 2018, <https://www.nationalreview.com/magazine/2018/10/15/hostile-environment/>.

22. *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, 141 S. Ct. 2172, 51 ELR 20122 (June 25, 2021).

I think the dissent in that case probably got it right and so the Biden Administration position was the correct one, but it is still embarrassing to lose like that.

We have an interesting dynamic now, where the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit, which has a makeup that is sympathetic to the Biden Administration, is going to review a lot of these cases. On the other hand, we have a Supreme Court that in its makeup is likely to be less sympathetic to aggressive interpretations of regulations. Some early signs outside of the environmental context, such as in some of the COVID cases<sup>23</sup> and immigration cases,<sup>24</sup> suggest the Supreme Court is going to be reading regulatory authority narrowly, but is also going to be looking more closely at agency changes in position.

At the beginning of the Obama Administration, we had a case called *Federal Communications Commission v. Fox Television Stations*,<sup>25</sup> where ironically the conservatives on the Court said it's going to be easier for agencies to change positions. Justice Antonin Scalia wrote that opinion. During the Trump Administration, we saw the Court stepping back from that idea, most notably in the Deferred Action for Childhood Arrivals (DACA) decision.<sup>26</sup> This was again outside of the environmental context, but now the Court is emphasizing the importance of considering reliance interests when an agency changes positions, even if the agency is claiming the prior position was unlawful.

For example, the U.S. Army Corps of Engineers (the Corps) announced a few weeks ago that jurisdictional determinations that EPA and the Corps previously said would be valid for five years would not be relied upon if they were made under the Trump Administration's interpretation of waters of the United States.<sup>27</sup> The Corps said we're not going to use those for the next five years in our permit determinations.

To me, that's arguably a big, unforced error and this is something that I would not want to be in the position of defending in court, especially after the DACA decision and what we've seen the Supreme Court do with early Biden Administration switches in the immigration space. The Court's actions suggest that the DACA case was not simply about the Trump Administration's DACA decision, but about what agencies must do when they change positions and how they must treat reliance interests, even if the agency claims it needed to change its position in order to correct a prior unlawful action.

It's too early to give a grade for the Biden Administration and the courts, but there are some things that suggest the Administration will need to be quite careful, and per-

haps more careful than it's been in some areas to date, if it wants its actions to survive.

**Vickie Patton:** Toward the end of the prior Administration, there were a couple of important administrative law and environmental law decisions that addressed foundational threats to EPA's bedrock authority to protect human health and the environment. One example of these decisions came from a federal district court judge who struck down EPA's new standards that precluded EPA from considering peer-reviewed National Academy of Sciences data on environmental epidemiology.<sup>28</sup> So, the vacatur of that censored science initiative was important, and there were a number of other judicial vacatures that reflected the rule of law.

A number of petitions were not granted by the Supreme Court over the past year, and a number are pending. Automakers submitted a number of requests to review lower court decisions that had enforced actions against the automakers and engine-makers for emissions tampering based on state anti-tampering restrictions and laws, and they made a concerted effort to take that up to the Supreme Court.<sup>29</sup> The Court did not grant those petitions and did not grant the review. So, those important lower court decisions stand in protecting states' authority to enforce important public health and environmental protections.

A number of petitions are pending now before the Supreme Court. One is a Clean Water Act case.<sup>30</sup> Another is a Dakota Access Pipeline case that implicates and presents significant National Environmental Policy Act (NEPA) questions.<sup>31</sup> And there's a petition pending from a pipeline out of St. Louis that presents important questions about remedial action by administrative agencies that are well established.<sup>32</sup>

You alluded to the Supreme Court's decision to grant review of the D.C. Circuit ruling overturning the Trump Administration's repeal and replacement of the Clean Power Plan. I join Professor Adler in being quite surprised, indeed shocked, that the Supreme Court granted review of that case in a context where there is really no case or controversy. There are no emissions standards in effect. The prior Administration itself found out its action had zero cost, and our nation has made enormous progress in addressing carbon dioxide pollution from the power sector.

We far surpassed the projections that we were aiming for under the Clean Power Plan to achieve a 32% reduction in carbon dioxide pollution from power plants from 2005

23. See *National Federation of Independent Business v. Department of Labor*, 142 S. Ct. 661 (Jan. 13, 2022); *Alabama Association of Realtors v. Department of Health & Human Services*, 141 S. Ct. 2485 (Aug. 26, 2021).

24. See *Biden v. Texas*, No. 21-10806 (5th Cir. Aug. 20, 2021), application (21A21) denied Aug. 24, 2021.

25. 556 U.S. 502 (2009).

26. *Department of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (June 18, 2020).

27. Press Release, U.S. Army Corps of Engineers, Navigable Waters Protection Rule Vacatur (Jan. 5, 2022), <https://www.usace.army.mil/Media/Announcements/Article/2888988/5-january-2022-navigable-waters-protection-rule-vacatur/>.

28. *Environmental Defense Fund v. U.S. Environmental Protection Agency*, No. 4:21-cv-03, 51 ELR 20015 (D. Mont. Jan. 26, 2021) (Morris, J.).

29. See, e.g., Martina Barash, *VW Denied Supreme Court Review of Diesel Emissions Lawsuits (3)*, BLOOMBERG, Nov. 15, 2021, <https://news.bloomberglaw.com/us-law-week/vw-denied-supreme-court-review-of-diesel-emissions-lawsuits-1?context=article-related>.

30. *Sackett v. Environmental Protection Agency*, No. 21-454 (petition for cert. filed Sept. 22, 2021). The U.S. Supreme Court has granted review.

31. *Dakota Access, LLC v. Standing Rock Sioux*, No. 21-560 (petition for cert. denied Feb. 22, 2022).

32. *Spire Missouri Inc. v. Environmental Defense Fund*, No. 21-848 (petition for cert. filed Dec. 3, 2021).

levels by 2030.<sup>33</sup> We hit that mark in 2019 and then some.<sup>34</sup> There are no standards in effect that caused any injury, so it's not surprising to see the U.S. government forcefully filing and objecting to appellate standing and, more broadly, justiciability under Article III.

**Quentin Pair:** There are a couple of things that I'd like to bring our attention to in this discussion. DOJ has become more focused on the environment under this Administration, including how to involve environmental justice in litigation decisions. Recently, for example, the U.S. Attorney's Office for the Eastern District of New York has put together an environmental justice team looking at how to incorporate environmental justice into litigation claims.

As I've mentioned earlier, there is no environmental justice law, but EPA has developed research on how environmental justice can be brought under the existing environmental law statutes. To that end, in September 2021, a settlement was reached after DOJ brought action against the city of New York and the New York City Department of Education for problems with the school system's oil-fired boilers in public schools, particularly ones located in disadvantaged communities.<sup>35</sup> I think we are going to see more of this promotion of environmental justice in future cases.

The Limetree Bay settlement<sup>36</sup> in Saint Croix in the U.S. Virgin Islands was again emblematic of DOJ taking more interest and publicly touting its promotion of environmental justice. That case shut down an extremely polluting oil facility—an issue that had been going on for years. The Department shut it down with a suite of remedial activities posted under a settlement order.

Even though this is not a judicial matter per se, I'd like to take note that DOJ announced in November 2021 that it and the Department of Health and Human Services are investigating whether Lowndes County in Alabama, and potentially the state itself, are mismanaging sewage, and looking into the subsequent infectious disease outbreaks that disproportionately harmed the Black community.<sup>37</sup>

Lowndes County has been the center of the environmental justice movement. There are horrendous health problems there because of the state's inability or lack of desire to address the severe health problems caused by the state. The state has even imposed criminal sanctions on

residents who have not been able to come up to standard in terms of providing corrections to their cesspools and other local issues.

This is the first time DOJ has taken on an investigation of programs. It's a big deal in the environmental justice movement. A lot of attention is being paid to this. We'll have to see if it evolves into an actual violation of Title VI of the Civil Rights Act of 1964 or not, but they've begun this process.

I will lastly mention—again this is not directly a judicial matter—that under the last Administration, DOJ rescinded the authority to use supplemental environmental projects in settlements of big cases, whereby defendants voluntarily submit to do a program where they would provide remedial work on a specific community in a given location. This is not required by law, but can be used in certain cases. Then, the Department rescinded that authority. Over a period of time, that authority kept shrinking and shrinking until it eventually was obliterated.

The Environment and Natural Resources Division appears to be reinstating the program, much to the approval of stakeholders, whether it's business, government, states, or local people. DOJ found that these projects provided a useful tool in settlement negotiations. How it's going to be implemented is still under development, but that's an important update.

**Jonathan Brightbill:** To close our discussion, I'm going to ask you each to hand out a grade to the Biden Administration on its first year. This grade should not be based on your own views of its policies, but based on the Biden Administration's progress on its own objectives. Narayan, we're going to stipulate that it's an A from you. I'll start with you and let you tell us why it is an A.

**Narayan Subramanian:** I would recuse myself from grading the Administration. But that being said, I think it's been a very, very busy year. On the legislative front and on the executive action front, there's a lot that has happened at the Department.

I want to touch on one piece that Quentin brought up around the Justice40 initiative, which states that, under Executive Order No. 14008,<sup>38</sup> every federal agency is required to ensure that 40% of the investments made go toward disadvantaged communities. That is something that DOE has started implementing. As part of this effort, DOE released the Energy Justice Dashboard,<sup>39</sup> where you can go online and track every dollar that's spent by DOE and where it's going geographically. That's important as we start putting the \$62 billion from the infrastructure law out the door. One of the imperatives is to ensure that disadvantaged communities have access to that money.

DOE has also launched the Communities Local Energy Action Program initiative, which is a program partnering

33. U.S. EPA, *FACT SHEET: Clean Power Plan by the Numbers*, <https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-numbers.html> (last updated May 9, 2017).

34. See, e.g., Karl Coplan, *The Clean Power Plan Is Dead. Long Live the Clean Power Plan!*, JD SUPRA (Mar. 4, 2021), <https://www.jdsupra.com/legalnews/the-clean-power-plan-is-dead-long-live-6613871/>.

35. Press Release, DOJ, United States Announces Settlement of Civil Action Addressing Clean Air Act Violations at New York City Public Schools (Sept. 27, 2021), <https://www.justice.gov/opa/pr/united-states-announces-settlement-civil-action-addressing-clean-air-act-violations-new-york>.

36. U.S. EPA, *Limetree Bay Terminals and Limetree Bay Refining, LLC*, <https://www.epa.gov/vi/limetree-bay-terminals-and-limetree-bay-refining-llc> (last visited Feb. 16, 2022).

37. Hadley Hitson, *DOJ Opens Investigation Into Black Residents' Access to Sewage Disposal in Lowndes County*, MONTGOMERY ADVERTISER, Nov. 9, 2021, <https://www.montgomeryadvertiser.com/story/news/2021/11/09/justice-department-launches-investigation-into-racial-discrimination-lowndes-county-wastewater-dispo/6353055001/>.

38. Tackling the Climate Crisis at Home and Abroad, Exec. Order No. 14008, 86 Fed. Reg. 7619 (2021).

39. DOE, Energy Justice Dashboard (BETA), <https://www.energy.gov/diversity/energy-justice-dashboard-beta> (last updated Jan. 10, 2022).

with the National Labs to help local communities develop clean energy plans and improve their means to access federal money, especially from DOE. So, it's not just about putting clean energy investments out the door. It's also ensuring that communities and entities or organizations that have not traditionally had access to federal funds are better able to access them. That's an important part of the clean energy transition that DOE is leaning into under the direction of the president. On the environmental justice front, I think that DOE's been quite active.

On the regulatory front, there's a lot of work remaining to lay the groundwork for us to move even more aggressively with appliance standards. Over the next year, you'll see a lot of the Clean Energy Demonstrations money start to go out the door. You'll see how the Department is starting to lean into the demonstration and deployment part of its mandate.

It's an exciting time to be in government. I think DOE is looking forward to the next couple of years of this term of the Administration to implement the infrastructure law and move the regulatory agenda forward.

**Jonathan Adler:** In terms of the Biden Administration's own priorities and what you can expect to be accomplished in the first year, I would give it a solid B. But as an educator, I will say sometimes you have a student that's doing the preliminary stuff well enough, but at the same time showing signs of possible danger ahead.

In the written notes on the grade that I would be providing, I would point out that in some of the positions the Administration has taken, it may be setting itself up for later failures. The climate case to be argued in February may be an example. The Administration's argument that the courts should not have accepted certiorari here is a reasonable argument. I'm not quite sure that the case is non-justiciable, but certainly it was an unusual cert grant.

But when it comes to knowing what the rules are and understanding the legal parameters for either the next three or seven years to push forward climate policy, I would argue it is far better to know what those rules are in June 2022 than to figure them out in June 2024 and possibly waste two years of effort. So, getting the case dismissed could be a pyrrhic victory.

At this point, the Administration needs to focus on understanding the legal parameters and constraints we face, and what we can do within those constraints so that agencies are adopting lasting reforms and not spinning wheels and making investments of time and effort that go wasted. That's challenging in the area of climate. It's not an overly optimistic perspective, but it's one that would allow the Administration to successfully follow through on the tone-setting and priority-setting that we have seen in the first year.

**Quentin Pair:** As an educator, I'm with Professor Adler. I'm kind of loath to give a mid-term grade to students, because some of the ones who started a little questionable have turned out to be a few of my top students, while some of my bright and shining stars do the opposite.

I'm looking toward a grade of "E for effort" for the Administration. But it's unfair at this point for any administration in the first year to receive a conclusive grade. I'd like it to be a B+ quite frankly, because of the sheer difficulty of the problems facing this Administration. If you go down the list of what we have to do in climate change and racial equality—it's just daunting.

But even though the Administration may mean well, the question at the end of the day is how productive it has been. We will not have a fair view of this for the first two years. I think we're off to a good start, but there are things I'm not pleased about. For instance, DOJ has been given the authority to create an office of environmental justice. There's language in the Executive Order that says the Department is supposed to *consider* the office, but the expectation is that there needs to be an office of environmental justice in DOJ—and nothing has been said for a year. That's disconcerting and that needs to be addressed, and soon. But overall, I'm sticking with my dual rating of "E for effort" and B+.

**Vickie Patton:** We've talked a lot about the important investments that have been made through legislative appropriations and the bipartisan infrastructure legislation, paired with standards to protect human health and the environment, advance justice, and address climate pollution. We're seeing actions that are anchored in science and law and that will unleash American innovation and job creation.

With the case that's before the Supreme Court, one of the things that is noteworthy and a bellwether of our time is that a coalition of power companies, which serve more than 40 million Americans in 49 states and D.C., is defending and supporting EPA's authority to address climate pollution before the Supreme Court in a way that is consistent with how the power sector itself is tackling these problems, and how states are tackling these problems, an approach anchored in law, science, and sound investments. In this moment, we're seeing sweeping change happening in the private sector, and private-sector leadership paired with public policy that can help accelerate progress.

I would give the Biden Administration enormous credit for making important progress, but also an "Incomplete" because we have urgent work to do. We need to roll up our sleeves and work together to continue to advance environmental justice to protect our communities and our people, while creating jobs and tackling climate change with urgency. We can do it.